GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

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TUESDAY

MARCH 8, 2005

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE MILLER	Vice Chairperson
CURTIS ETHERLY, JR.	Board Member
JOHN MANN, II	Board Member
JOHN PARSONS	Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Deputy Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL:

LORI MONROE, ESQ.
SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

JOHN MOORE	Office of Planning
STEPHEN MORDFIN	Office of Planning

This transcript constitutes the minutes from the public hearing held on March 2, 2005.

AGENDA ITEM PAGE

CALL TO ORDER:
Geoffrey Griffis 4

IDS-DC, INC.
APPLICATION NO. 17290 ANC-6B 9

THIRD BAPTIST CHURCH
APPLICATION NO. 17289 ANC-2C 9

VOTE TO APPROVE APPLICATION 48

ARCH TRAINING CENTER
APPLICATION NO. 17262 ANC-8A 49

VOTE TO APPROVE APPLICATION AS AMENDED 104

JAMES MCRAE V. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
CIVIL INFRACTION APPEAL NO. 03-OAD-2800G & 03-OAD-2801G 111

ACTION TAKEN - CONTINUANCE UNTIL MAY 17, 2005 136

BROOKLAND UNION BAPTIST CHURCH
APPLICATION NO. 17261 ANC-5A 137

VOTE TO DENY CONTINUANCE 159

PHILLIPS PARK LLC
APPLICATION NO. 17276 163

ADJOURN
Geoffrey Griffis 442

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

10:03 a.m.

CHAIRPERSON GRIFFIS: Good morning, ladies and gentlemen. Let me call to order the morning session of the 5th of March 2005.

My name is Geoff Griffis, Chairperson.

Joining me today is the Vice Chair, Ms. Miller and also our important and esteemed mayoral appointee Mr. Etherly. Representing the National Capital Planning Commission with is Mr. Mann.

Copies of today's hearing agenda are available for you. They are located where you entered into the hearing room. Please pick one up and you can see where you are in the chronology and what we will accomplish this morning.

I do apologize for the late detail. We had quite a bit of work to get done, but I think we'll make up our time and get everyone out in this beautiful snow for a warm lunch. Perhaps chicken soup.

There are very important things that I'll go through fairly quickly in terms of my opening remarks.

First of all, all procedures before the Board of Zoning Adjustment are being recorded and --in

two fashions. The first fashion, of course, is the court recorder sitting to my right. He is creating the official transcript that will be part of the record.

Secondly, we are being broadcast live on the Office of Zoning's website.

Attendant to both of those, we ask several things. First of all, when coming forward to speak to the Board for the first time, you will have needed to state your name and address for the record. Obviously, that will give you credit on all of the transmissions and transcripts which will be created.

Before coming forward to speak to the Board, I would ask that you fill out two witness cards. Witness cards are available for you where you entered in the hearing room. They're also available at the table in front where you will provide testimony.

I would ask that everyone please turn off cell phones and beepers at this time so we don't disrupt people giving testimony and any transmission that we will be creating.

The order of procedure for special exceptions and variances is first we hear from the applicant and their case presentation and any

witnesses that they might have.

Second, we'll hear any Government reports or agencies reporting into the application such as the Office of Planning or Department of Transportation.

Third, we will hear from the Advisory Neighborhood Commission within which the property is located.

Fourth, we will go to persons or parties in support of an application.

Fifth, we will hear from persons or parties in opposition to the application.

Sixth, finally, we will have closing remarks and any rebuttal witnesses by the applicant.

Cross examination of witnesses is permitted by the applicant and parties in a case. The ANC as I've indicated within which the property is located is automatically a party in the case and, therefore, will be able to conduct cross examination.

There is nothing that limits this Board from putting restrictions on cross examination. I don't see any need to go through a labyrinth of zoning regs to cite on this issue for this morning's cases, but if need be, I will.

The record will be closed at the conclusion of the hearing today except for any

material that the Board would specifically request be submitted into the record and we will be very specific as to what should to be submitted into the record and when it should be submitted into the Office of Zoning.

After that material is received, of course, the record would finally be closed and no other information would accepted into the record.

The reasons for that is, of course, everything that this Board hears in a hearing is what it will deliberate on. Another way to say it is the official record that's created before us has to be done in the open and before the public and that is the limits of which we will base our decision.

So, it's very important that if the Board requests certain information that it actually be put into the record. Otherwise, we will not be able to deliberate on it and it will not be a basis of our decision.

The Sunshine Act requires that this Board conduct its proceedings in the open and before the public. We may, however, enter into executive session both during or after a hearing on a case and that would be for the purposes of reviewing the record on a case or deliberating on that case and this would be in accordance with our rules, regulations, and

procedures. It is also in accordance with the Sunshine Act.

Let me ask all those who are going to provide testimony today or are thinking of providing testimony if you would not -- if you would please stand and give your attention to Ms. Bailey who is on my very far right. She is going to administer the oath.

MS. BAILEY: Do you solemnly swear or affirm that the testimony you will be giving today will be the truth, the whole truth, and nothing but the truth? Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you all very much and a very good morning to you, Ms. Bailey, with the Office of Zoning. Also Mr. Moy with the Office of Zoning closer to my right.

Representing the Office of Attorney General, Ms. Monroe is with us today keeping us out severe trouble.

At this time, I believe that it is appropriate for the Board to consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today. Requests for postponements, withdrawals or whether adequate and proper notice has been provided are

elements of which might be a preliminary matter.

If you have a preliminary matter on a particular case in the Board's schedule this morning, I would ask that you come forward and have a seat at the table as an indication of a preliminary matter.

Ms. Bailey, are you aware of any preliminary matters for the Board's attention at this time?

MS. BAILEY: Mr. Chairman and to everyone, good morning. There is one Mr. Chairman and it has to do with the first case. That's Application Number 17290 of IDS-DC, Inc. That application was withdrawn, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good. Thank you very much. Therefore, there's no official action by the Board required. Is that correct?

MS. BAILEY: Yes, sir.

CHAIRPERSON GRIFFIS: Good. Is there anything else? And don't see any other preliminary matters or indication of having such. Why don't we call the first case of the morning?

MS. BAILEY: Application Number 17289 of Third Baptist Church pursuant to 11 DCMR 3103.2 for a variance from the off-street parking requirements under subsection 2101.1 and pursuant to 11 DCMR 3104.1

a special exception to establish a private school under section 206. The property is located in the R-4 District at premises 1544 5th Street, N.W., Square 478, Lot 811.

CHAIRPERSON GRIFFIS: Ready?

MS. SACHS: Good morning --

CHAIRPERSON GRIFFIS: Good morning.

MS. SACHS: -- Mr. Chairman, members of the Board. My name is Heidi Sachs. I'm from the law firm of Shaw-Pittman. Garland Stillwell from Shaw-Pittman is here with me as well.

We are here this morning to represent the Applicant the E. E. Just Collegiate Academy in BZA Application Number 17289.

The Applicant is here today seeking a special exception under section 206 and a parking variance pursuant to section 2101.1.

Special exception relief is necessary in order for the school to operate in a residential zone.

E. E. Just Collegiate Academy is located at 1544 5th Street, N.W. in the greater Shaw neighborhood.

E. E. Just Collegiate Academy is located in the Miles Educational Annex which is connected to the Third Baptist Church located at the corner of 5th

and Q Streets.

As discussed in detail in the pre-hearing statement, the Applicant fully satisfies the standards for the Board to grant the requested special exception and variance relief.

We have two witnesses here this morning who will provide statements and are available to answer any questions that you may have.

Our first witness is Rev. Stanley Byrd, Pastor of the Third Baptist Church. Rev. Byrd will discuss the location of the school within the church and will also talk about the churches long-standing relationship with and commitment to the Shaw community and without further ado, here's Rev. Byrd.

REV. BYRD: Good morning, Chairman.

CHAIRPERSON GRIFFIS: Good morning.

REV. BYRD: Good morning, Chairman Griffis and to all the Board members.

My name is Stanley Byrd, Sr. and I have the great privilege and honor to serve as the Pastor of the Third Baptist Church at 1546 5th Street here in Washington, D.C. and I'm here today to speak on behalf of the Applicant, E. E. Just Collegiate Academy, which is housed in our educational annex.

The Third Baptist Church is -- was founded

in 1858 and has been in the Shaw community all of that time. It has been in this current location since 1885 and the original church building still remains on -- on that lot and in the late 1850 -- 1950s, the church acquired some properties which initially -- I mean it essentially erected the educational annex.

Now, in that annex, we have Sunday School, other outreach activities such as tutorial training, computer training, job training. We also have the Pause Writing Program for the children in the church and in the community.

CHAIRPERSON GRIFFIS: So, the educational annex is something that was acquired by the church --

REV. BYRD: Yes.

CHAIRPERSON GRIFFIS: -- some time ago?

REV. BYRD: In -- the land was acquired in 1950 and it was erected in the 1980s.

CHAIRPERSON GRIFFIS: 1980s and was there other work done on the church recently?

REV. BYRD: Recently, not any major renovations, you know.

CHAIRPERSON GRIFFIS: Interesting. Okay.

REV. BYRD: And I've -- I've had the privilege to serve there the past seven years just -- and as a result, you know, we are here today to speak

on behalf of the -- the school and the relationship that the church and school has.

We constantly have, as I said, have been a part of that community for many years prior to my coming. Since I've been there, we've continued to expand that relationship working with Scott Montgomery School in terms of providing them rides to any of their field trips, providing -- purchasing uniforms for students who cannot afford to -- to purchase their own uniforms.

We've been very active in terms of trying to help those who found themselves in -- without housing and we've been providing counseling and -- and emergency food bank in the community.

CHAIRPERSON GRIFFIS: So, that's a church outreach --

REV. BYRD: Yes.

CHAIRPERSON GRIFFIS: -- for the rest of the community?

REV. BYRD: Right.

CHAIRPERSON GRIFFIS: Excellent and certainly it -- if not stated directly in the application, it definitely reads through the importance of this institution in this area.

I think it's probably best if we move

right into the 206 requirements. Obviously, that's the jurisdiction which we'd have to be reviewing this and I think we -- if -- if it's amenable to you, we could just start talking about more of the impact and then the -- the variance for the parking.

MS. SACHS: Sure. Sure. Well, I can talk a little bit about that and then I will hand it over to Mr. David Spruill who is the Headmaster of the E. E. Just Collegiate Academy.

CHAIRPERSON GRIFFIS: Good. Let me interrupt you again as I often do. I think one of our important or the first question probably you need to address is first of all the -- it's indicated that this is for 11 students and --

MS. SACHS: Yes.

CHAIRPERSON GRIFFIS: -- and we just want to clarify the fact of whether that's an enrollment number or an on-site number and there's a little bit of concern I think from the Board that is this the absolute number.

To be very clear, if we approve something today with what has been submitted, you have 11 students and one staff. There is no opportunity for growth. So, I want to put that out there very quickly in terms of thinking about this order and how long it

might last and also, in terms of a time on the special exception.

So, if there's an anticipation that this may grow to 15, that obviously needs to be addressed today.

Staff also there was a question obviously there is one, but there was mentioned a volunteer, but also a specific staff member. These are accounts that we're -- we're obviously going to need to get to.

MS. SACHS: I can let Mr. Spruill speak --

CHAIRPERSON GRIFFIS: Excellent.

MS. SACHS: -- to those questions in more detail, but I just want to point out that there is a maximum capacity of 15 students at the school. Once there are more than 15 students, the Applicant will need to seek space elsewhere.

CHAIRPERSON GRIFFIS: So, that's 15 students on site is what you're saying. In terms of the certificate of occupancy, they're only allowed to have 15 students. Is that correct?

MS. SACHS: That's correct.

CHAIRPERSON GRIFFIS: Now, what would preclude them from having 60 enrolled, but 15 on site at all times?

MS. SACHS: Well, those are enrollment

numbers.

CHAIRPERSON GRIFFIS: Right. What is? My 60 or your 15?

MS. SACHS: Fifteen.

CHAIRPERSON GRIFFIS: Indeed.

MS. SACHS: Fifteen.

CHAIRPERSON GRIFFIS: Okay.

MS. SACHS: Just to clarify, there is only one teacher and that is Mr. Spruill.

CHAIRPERSON GRIFFIS: Good and we'll get that in testimony now. Is that correct?

MR. SPRUILL: Good morning, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good morning.

MR. SPRUILL: My name is David Spruill, Headmaster of E. E. Just Collegiate Academy and yes, sir, the enrollment number is 15. Student/teacher ratio 15 to 1.

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: Were there advancement for that in the future, we would certainly have to relocate space-wise and -- and whatnot.

CHAIRPERSON GRIFFIS: But, I'm -- I'm sorry to interrupt you.

MR. SPRUILL: That's all right.

CHAIRPERSON GRIFFIS: And we see a lot of

these at different levels. I mean from --

MR. SPRUILL: Um-hum.

CHAIRPERSON GRIFFIS: -- you know, ten to whatever 16,000 students, but there -- there's also -- in my experience, there's -- there -- for instance, you have an after-school program. Is that correct?

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: And conceivably you have a student that's enrolled in the day program that goes home and you take up some -- a different student for an afternoon program. I mean you may not do that now, but is that something that might be possible?

MR. SPRUILL: Actually, sir, no, that would not be possible because I'm -- I'm in the -- in the business of actually knowing the students that I actually am responsible for from sunup to sundown. So, no, that would not be, you know --

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: -- a possible situation.

CHAIRPERSON GRIFFIS: So, your on-site and your enrollment are the same number?

MR. SPRUILL: Yes, sir. Yes, sir.

CHAIRPERSON GRIFFIS: I just make things so complicated.

MR. SPRUILL: No, that's fine.

CHAIRPERSON GRIFFIS: Good. So, we're talking about 15 now which is a good clarification from 11.

MR. SPRUILL: Yes, sir. Excellent.

CHAIRPERSON GRIFFIS: Okay. Go ahead.

MR. SPRUILL: And I just wanted to expand on -- the school is a private Christian school currently housing 11 students grades fifth and sixth and as mentioned before, that's a capacity of 15 -- no more than 15 students.

We're under a -- the Abeka curriculum which is a Christian-based curriculum which is utilized at -- for -- for the students at -- at the school and because of the curriculum, it makes sense to house the school inside of a church building, faith-based, what have you.

The church allows us the use of the sanctuary for Wednesday morning chapel services and it just kind of brings a center to children who are being reared today. It -- it's utmost respect, sense of authority, respect for authority, what have you. Having to know that there's a higher power being in the faith-based curriculum.

The operation of the school is from 7:30

a.m. until 3:30 p.m. with an after-school component which runs from 3:30 p.m. until 6:00 p.m.

Outreach programs have been -- we have had great ties with the neighboring school which is Scott Montgomery Elementary which is on the opposite end of 5th Street. We've done a join effort with them in the Thanksgiving basket drive this year. Our excess, we took it over to them. We introduced ourselves to them.

I'm a former United States Army drill sergeant. My students, the entire school is on the drill team because they're only 11.

CHAIRPERSON GRIFFIS: The fifth and sixth graders are no problem for you.

MR. SPRUILL: No problem at all, sir, and it's not the traditional step team. We have actual uniforms. They're maneuvering not the bayonet rifles, but the seven-foot flag poles. So, it's very military oriented and we've performed at various high schools and colleges in the area. We're due to do a performance at Barnett Elementary this Thursday morning. Some teachers caught us performing at Howard University during a basketball game at half time.

And it just instills a lot of discipline in our young students. I'm constantly reminding them

that whenever we're out towards the Metro in public that we share this space with other citizens. That we're not to be loud. We're respectful of elders walking down the street. Just that old school type of mentality that kids are seeming to be missing at today's -- in today's society.

So, the drill team has been an outreach to the Montgomery Elementary. Students there are certainly welcome to participate although I haven't had any yet. The principal is aware of that and there are -- as well as the church. Students of the church, they're -- they're welcome to participate in this as well.

And in conclusion, I'd -- I'd just like to say that we've had great ties with the church as well. The church, the deacons and the deaconesses have been most -- most -- very impressed with the -- the students and just their general manners and the respect for the building and the respect for the area that we're leasing out to the church.

Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

In your submission, you indicate that there is an outside play area which is somewhat

buffered by the surrounding residential. What I found intriguing is that there is a half hour outside time for the students. Is that correct? There's only half an hour a day?

MR. SPRUILL: Sometimes its extends, sir.

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: Reward permits an extra 15 minutes or so.

CHAIRPERSON GRIFFIS: So, that's certainly not something that you are looking for us to condition in an order if it needed to be that there was only 30 minutes allowed outside?

MR. SPRUILL: I'm sorry. I misunderstood. Is there anything that?

CHAIRPERSON GRIFFIS: You want the flexibility to be -- to have kids recreate outside as -- as much as they need quite frankly. Would you agree?

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: Good.

MR. SPRUILL: We also use the Kennedy -- the Kennedy Rec Center is two blocks away from us. We -- we also utilize that area for recreation and PE as

well.

CHAIRPERSON GRIFFIS: Right. Which is a new facility that's there. It has outside and indoor areas.

MR. SPRUILL: Yes, sir, exactly.

CHAIRPERSON GRIFFIS: Is that correct?

MR. SPRUILL: Exactly. Located on 2nd Street.

CHAIRPERSON GRIFFIS: We've heard things about that in past applications. Excellent. And you have teachers on staff as well as yourself?

MR. SPRUILL: No, sir, I'm the only one.

CHAIRPERSON GRIFFIS: Is that it?

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: Okay. Anticipation of growing?

MR. SPRUILL: Yes, sir, with growth. Yes, sir, anticipation of more teachers. Absolutely.

CHAIRPERSON GRIFFIS: Okay. So, in terms of us looking at this application today, how would -- what are you requesting then? It would be 15 students enrollment and two staff members?

MR. SPRUILL: Fifteen to -- 15 to two. Yes, sir.

CHAIRPERSON GRIFFIS: Is that --

MR. SPRUILL: Fifteen to two.

CHAIRPERSON GRIFFIS: I mean so far nothing has come in that gives any evidence or testimony, we haven't finished with this yet, but obviously, there's no evidence currently presented that would rise to creating objectionable conditions. So, to be direct, I think you've got some flexibility to ask exactly what you need for and otherwise, we can't create it. So, you have to tell us exactly what it is.

So, two -- two teachers is what -- the level that you're looking at. I think we can move ahead with that.

MR. SPRUILL: Yes, sir. Yes, sir, absolutely.

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: Two teachers and parking. I park on the opposite side of 5th Street --

CHAIRPERSON GRIFFIS: Right.

MR. SPRUILL: -- which is available public parking space there. So, that has posed no problems whatsoever for the neighbors.

CHAIRPERSON GRIFFIS: Now, there was some indication in the application that resident permit parking was being instituted, but the area which you

have available is not part of that which would be instituted into the RPP.

MS. SACHS: If I could interrupt. We just made aware in the --

CHAIRPERSON GRIFFIS: Your mike.

MS. SACHS: -- Office of Planning's report.

CHAIRPERSON GRIFFIS: Can you turn your mike on?

MS. SACHS: Oh, I'm sorry. We were just made aware in the Office of Planning's report that the site is within the boundaries of the proposed residential parking program for the area around the convention center and as a result, there will be three dedicated spaces, two in front of the church building, one in front of the education annex, that will be dedicated to church and school parking.

CHAIRPERSON GRIFFIS: Okay.

MR. SPRUILL: And, Mr. Chairman, if I may, I just wanted to state the fact that there have been no objections to the -- from the neighbors in the neighborhood. There are a lot of neighbors there who are walking their dogs and whenever the children are out, it's always a good relationship with the dogs and the kids and so, that's been an absolute great

relationship with the neighbors in that sense.

Our kids -- my kids are very disciplined. There's no loud noise during recess. There's no loud noise entering or exiting in the morning and afternoon. There have been no problems from the neighbors. Only good relationships. Mostly because of the pets they're walking. There are a lot of pets in that area. So, kids and dogs are a great mix. So, that -- that has helped to have good ties with -- with our neighbors.

CHAIRPERSON GRIFFIS: What about drop offs in the morning? Where -- where does that occur?

MR. SPRUILL: Drop offs are staggered right in front of the building. So, that doesn't --

CHAIRPERSON GRIFFIS: In the front? That's on -- the front is on what street?

MR. SPRUILL: 5th Street. Yes, sir.

CHAIRPERSON GRIFFIS: On 5th.

MR. SPRUILL: I have photographs to show if you'd to --

CHAIRPERSON GRIFFIS: Are they the same one that -- that we have or are they different?

MR. SPRUILL: I believe they are, sir, but just -- should I pass this to you?

CHAIRPERSON GRIFFIS: No, you can leave it

right there.

MR. SPRUILL: Here it gives 5th Street here and this is the location of the --

CHAIRPERSON GRIFFIS: We're going to need you -- I'm sorry to -- you -- you just have to be on a mike.

MR. SPRUILL: I'm sorry.

CHAIRPERSON GRIFFIS: Otherwise, you're not getting picked up.

MR. SPRUILL: Here is 5th Street. The -- this is the front of the Miles Educational Annex and the kids are dropped off right in front of the building here. I have parents volunteering who pick them up. They're -- they're dropped off in a staggered situation as well as picked up in the afternoon. So, there's never congestion there for -- causing a problem for the neighbors and so forth or the church members.

CHAIRPERSON GRIFFIS: Can you use the alley for curb space for a parking space out of traffic?

MR. SPRUILL: Yes, sir, there's a section right in front of the church that's designated for the church. We use that for dropping off and picking up

the students.

CHAIRPERSON GRIFFIS: Is it designated parking for the students?

MR. SPRUILL: There appears to be two spaces that don't have permit only signs in front of the education annex and --

CHAIRPERSON GRIFFIS: Control --

MR. SPRUILL: No, they're not under our control.

CHAIRPERSON GRIFFIS: Right.

MR. SPRUILL: No. No, we don't have any off-street parking available to us at this time.

CHAIRPERSON GRIFFIS: Got to follow my own rule and turn my mike on when I talk. Okay. There it is. Any other questions from the Board?

Now, of course, we do have -- well, Ms. Miller.

VICE CHAIRPERSON MILLER: I have a few questions.

I have one basic question. Well, to begin with, it appears from the papers that the school is already operating and I'm wondering if you can address why that is in light of the fact that you don't have a special exception yet?

MS. SACHS: Sure. Sure and that's a good

and legitimate question. We had some talks with the school I believe back in October and we were made aware that the school was operating in the R-4 zone.

At that point, we informed the school that they would need to apply to the Board of Zoning Adjustment for a special exception because private schools are not permitted to operate without special exception in the R-4 zone.

From then on, the Applicant has pursued all of the correct steps. The Applicant has diligently performed and -- and has undertaken all of the necessary steps --

CHAIRPERSON GRIFFIS: Indeed. So, are we suppose to --

MS. SACHS: -- and here we are today.

CHAIRPERSON GRIFFIS: I glean from that the fact that you opened up the school and weren't aware that you, in fact, needed some sort of approval from the city in terms of the zoning. Is that correct?

MR. SPRUILL: Yes, sir, that is correct.

CHAIRPERSON GRIFFIS: Okay. So, in '04, you obviously approached folks. Somehow, you got wind that you may and now, you're here.

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON MILLER: Thank you. My next question is I just want to make sure and I know that the chairman was trying to get at this also. You've come here presenting what your needs are and what you want approval for and we just want to make sure that there's also a little room for growth if you anticipate that in anyway and from what I understand, the 15 students, that's the maximum capacity and you're totally comfortable with that and I want to make sure that on the staff question that you don't see any possibility that you'd want to grow to three.

Because if -- if you're given -- you know, we're going to put in an order, you know, the number of staff, the number of students and so, if -- I just wanted to make sure that is two going to anticipate the future or do -- would you be more comfortable with a little more? Three or something like that?

MR. SPRUILL: You know, a teacher loves a small environment --

VICE CHAIRPERSON MILLER: Um-hum.

MR. SPRUILL: -- as well as the parents. That's -- that's our biggest plus now. That the student/teacher ratio is absolutely phenomenal. Kids

are given more attention. That's why they're absolute brilliant scholars now, but beyond, 15, these kids will be with me until eighth grade, until they move on to senior high. So, beyond -- I absolutely know beyond 15 would not be the case because of the -- the desire to have the small environment, the small student --

VICE CHAIRPERSON MILLER: Right. I heard you say that. I -- I wanted -- I wanted to make sure. On the staff level --

MR. SPRUILL: Um-hum.

VICE CHAIRPERSON MILLER: -- is two also the number that --

MR. SPRUILL: Three. I would say three. Yes, ma'am.

VICE CHAIRPERSON MILLER: Three for a comfort. Okay.

MR. SPRUILL: For a comfort. Absolute comfort.

VICE CHAIRPERSON MILLER: Okay.

MR. SPRUILL: Be in need of a substitute on day and whatnot. So.

VICE CHAIRPERSON MILLER: Okay. Right.

MR. SPRUILL: We would be great.

VICE CHAIRPERSON MILLER: Okay. And I

just want to make sure --

CHAIRPERSON GRIFFIS: Anyone else want to raise the bet there? For four. Mr. Mann? Okay. And we've got you to increase to three.

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: We're going to get a better -- child development centers. Okay.

VICE CHAIRPERSON MILLER: One more question and that goes to the dedicated parking spaces. Does that mean -- is there going to be names on those spaces? Reserved for church or reserved for school. Is that what you mean by dedicated or what did you all mean by dedicated?

MS. SACHS: Well, I'm just getting this information from the Office of Planning report and perhaps, Mr. Moore could speak more to this.

It's my understanding that there will be three dedicated spaces and I'm not sure what type of signage will be erected.

VICE CHAIRPERSON MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: We'll be sure to give him a hard time. Okay.

One thing we haven't talked about, of course, is oftentimes there are child development

centers and the orders that go through there is a time put on them. For instance, a specialist exception might last for two years or it might last for five years.

Has there been any discussion and maybe perhaps I've missed it in the submissions.

MS. SACHS: No, Chairman Griffis, I don't believe there has been any discussion today. I don't think there was any discussion in any of our submission materials either. I think that at this point, the school is just unsure as to what its growth will be. Currently, it doesn't want to expand past 15 children. So, ostensibly, it could be in this space for five to ten years though.

CHAIRPERSON GRIFFIS: What do you propose then in terms of a time limit?

MR. SPRUILL: I would say a time from five to six years. Five to six years.

CHAIRPERSON GRIFFIS: Five to six. Okay. Now, you made a statement on answering Ms. Miller's questions that you'll be with these students until eighth grade, until they go on to high school.

MR. SPRUILL: Yes, sir.

CHAIRPERSON GRIFFIS: You mean you have a class now of fifth and sixth graders that are then

going to stay until they all go to high school?

MR. SPRUILL: Exactly, sir. Be in the ninth grade.

CHAIRPERSON GRIFFIS: And so, how do you -- then what do you do? Then you get a whole new class of fifth and sixth graders?

MR. SPRUILL: That's the -- I'm doing something that's absolutely phenomenal. It's -- it's -- I -- I have a core group and I nurture them until ninth grade and then they move on and that -- that certainly seems to be what's happening.

Now, I'm about to work on my doctorate and I'm looking to somehow do a thesis of that. What is the affect of long-term study with teachers and students?

So, that, yes, sir, Mr. Chairman, would be the case at this point.

CHAIRPERSON GRIFFIS: Okay. So, actually, the application is not for a child development center of fifth and sixth graders, but it's from fifth to eighth grade.

Do you understand? If we -- if we approve today --

MR. SPRUILL: Oh, I see.

CHAIRPERSON GRIFFIS: -- we just call it.

We're done. We just approved you for 11 students --

MR. SPRUILL: Um-hum.

CHAIRPERSON GRIFFIS: -- fifth and sixth graders. The minute you get a seventh grader in there, you're in noncompliance and they could conceivably worse case shut you down.

MR. SPRUILL: Um-hum.

CHAIRPERSON GRIFFIS: Pull your C of O. That's why we're just really getting into the -- the details here because we're about to detail a heck of a lot of things in -- in terms of reviewing this order.

MR. SPRUILL: Okay.

CHAIRPERSON GRIFFIS: So, conceivably -- well, now, you've -- you've brought up the fact that okay, so, it's fifth through eighth. Right?

MR. SPRUILL: Actually, fourth -- fourth grade through eighth grade.

CHAIRPERSON GRIFFIS: Look at that. We've got to increase teachers. We've got to increase -- excellent. Okay. We're getting somewhere.

MR. SPRUILL: We're still a maximum 15.

CHAIRPERSON GRIFFIS: We're getting somewhere. Okay. And so, right. The student -- I'm not revisiting staffers.

The -- and so just for my understanding

then, as this class graduates, you'll bring on a whole new class all of a sudden.

MR. SPRUILL: Well, it would be staggered. Because the -- obviously, eighth graders would leave before the seventh and sixth and fifth and fourth graders. So, they would leave staggered each year. Which means that as the eighth graders leave, I have room for fourth graders which continues the cycle, but still no more than 15 students.

So, they won't leave altogether. They'll leave by class. Two -- two to three students at -- per time.

CHAIRPERSON GRIFFIS: Indeed. Okay. Ms. Miller.

VICE CHAIRPERSON MILLER: I just wanted to clarify though. So -- so, it's not just this one group you're following through all the way. You keep adding fourth graders or whatever --

MR. SPRUILL: Yes, ma'am.

VICE CHAIRPERSON MILLER: -- as the top grade moves on? Okay.

MR. SPRUILL: Yes, ma'am, exactly.

CHAIRPERSON GRIFFIS: All right. Any other questions of the Board? Anything else?

MS. SACHS: No.

CHAIRPERSON GRIFFIS: ANC support?

MS. SACHS: Yes.

CHAIRPERSON GRIFFIS: Excellent.

MS. SACHS: We have all of the necessary approvals and support from the ANC.

CHAIRPERSON GRIFFIS: Let's move ahead and see who else is lining up here in terms of the application and we'll move ahead. Of course, we'll give you an opportunity for any closing remarks and address anything that goes about.

Let's move on to the Office of Planning who has submitted an excellent report on this. A very good morning, sir.

MR. MOORE: Good morning, Mr. Chair and members of the Board. I'm John Moore of the Office of Planning. We stand in support of the application.

In terms of trying to clarify the resident parking program, there would be parking restrictions on the areas in and around the convention center except for the space in front of church and church facilities.

The number three you see in the OP report is basically a calculation that says the church width would accommodate two cars and the annex will accommodate a third cars. So, there's no hard fixed

formula for saying three. It's just the amount of space in front of the church.

With that, I'll take any questions.

CHAIRPERSON GRIFFIS: Excellent. So, the -- the three spaces in front of the church are not restricted, residential restricted. They're open parking and they're not metered --

MR. MOORE: Yes, sir.

CHAIRPERSON GRIFFIS: -- or anything at that point.

MR. MOORE: Right.

CHAIRPERSON GRIFFIS: So, that's why they're available and with the street frontage that the church accommodates, you're anticipating that, you know, a home is not competing with that necessarily.

MR. MOORE: True.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller, follow-up questions.

VICE CHAIRPERSON MILLER: So, it's -- it's more correct to say then they're not residentially restricted and they're -- but, they're not specifically dedicated to the church.

MR. MOORE: Not dedicated.

VICE CHAIRPERSON MILLER: Right.

MR. MOORE: Just not restricted.

VICE CHAIRPERSON MILLER: Right. Okay.

CHAIRPERSON GRIFFIS: Good. Anything else for the Office of Planning from the Board? Again, indicate that it's an excellent report that walks through the entire case of the special exception for the 206.

It also addresses the part that we've kind of skipped over very quickly. The variance for the parking. It's obviously established from the fact that there's an existing structure. It has been well held by this Board and, of course, other courts that the existing building can go towards the uniqueness of a property and also can be the creation of a practical difficulty in which case it is in this application.

If there's no other questions from the Board, does the Applicant have any cross examination of the Office of Planning?

MS. SACHS: No cross examination.

CHAIRPERSON GRIFFIS: No cross. Is the ANC-2C represented today? ANC-2C for this Application 17289? Not noting the ANC is representative is here.

We thank you very much, Mr. Moore. Again, an excellent report.

Let's move ahead then to the ANC report. As there is not a member here present to present it,

did you want to run through the ANC? Did we get a submission of the ANC report?

MS. SACHS: Sure. Yes, we did and it is in the exhibit log.

CHAIRPERSON GRIFFIS: Oh, 25. That's that thing right in front of me. Got ya.

MS. SACHS: Yes, number --

CHAIRPERSON GRIFFIS: Good.

MS. SACHS: -- number 25.

CHAIRPERSON GRIFFIS: There was four -- we had four commissioners required as a quorum to support the application.

Is there any clarifications that the Board would like from that? I think it's pretty straightforward. It meets the test to be granted great weight and we will do so.

I would also indicate that we have Exhibit Number 22, member from Council Member -- a letter from Council Member Evans in support of the application.

Is there anything else in terms of agency reports that I am missing. Is the Applicant aware of any other submissions?

MS. SACHS: The Applicant just today received two letters in support which I can submit for the record.

CHAIRPERSON GRIFFIS: From who?

MS. SACHS: One is from Ms. Betty Newall.

CHAIRPERSON GRIFFIS: So, they're adjacent residents?

MS. SACHS: She is the representative of the East Central Civic Association.

CHAIRPERSON GRIFFIS: I see.

MS. SACHS: We --

CHAIRPERSON GRIFFIS: Did you present to the East Central Civic Association?

MR. BYRD: Well, it represents that area and the church hosts their monthly meeting.

CHAIRPERSON GRIFFIS: Yes.

MR. BYRD: As a matter of fact, we just had a meeting last night. So.

CHAIRPERSON GRIFFIS: So, there may be a conflict of interest though. Right. No.

Did you -- did you present this application or anything to them or you talked to them obviously about --

MR. BYRD: Right. Well, we informed them about the school coming forward and we requested their support.

CHAIRPERSON GRIFFIS: Great.

MR. BYRD: And they said they would write

a letter.

CHAIRPERSON GRIFFIS: Great. And the other letter is from? The residents?

MS. SACHS: The other letter is from a woman who works at the Third Baptist Church.

CHAIRPERSON GRIFFIS: She live in the area?

MS. SACHS: One of the deaconesses.

MR. BYRD: She lives in the city.

CHAIRPERSON GRIFFIS: Okay. That's all right. Good. Let's put them in the record.

Let's move ahead then. If there's no other submission or reports, is anyone here present for Application 17289 either in support or in opposition to provide testimony? Person to provide testimony.

Not noting any indication of persons present to provide testimony, let's move ahead to any closing remarks that you might have.

MS. SACHS: Just in closing, I'd like to say that because the Applicant satisfies the special exception and variance relief standards and the application has received the unanimous support of the ANC-2C, we request that the Board approve this application by bench decision.

Thank you for your time.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Board members, I'd like to get through this fairly quickly. I think the application is full and we're ready to move on.

I'm going to propose some conditions. First before we go into a motion so the Applicant has an opportunity to address them if I have gone in a -- in a direction that is not amenable, we'll have a brief discussion about it.

But, I first would look to approval of the facility for a period of five years. It would be for a total number of teachers and staff not exceed three. We would look for children's ages shall be from fourth to eighth grade. Not really ages, but I can't figure out the ages right now. There would be no more than 15 children on site and no more than 15 enrollment.

The center would operate Monday through Friday from 7:00 a.m. to 6:00 p.m. and that's all I have.

Other elements. Mr. Mann, yes.

MEMBER MANN: I was just trying to recall whether or not there were any proposed restrictions on

the use of the play area.

CHAIRPERSON GRIFFIS: Yes, it's a good point that we brought up. I was kind of -- I guess it was the Office of Planning's report that put it in there, but obviously, the information somewhere there was a 30-minute period around lunchtime.

I don't see anything and based on, in fact, a buffering of the site and the distance from the residential. There's no evidence in the record for me to be moved to go into conditioning any sort of restrictions on outside. It seems to --

MEMBER MANN: No, we didn't hear anything to that effect. I just remember reading something about the limitations.

CHAIRPERSON GRIFFIS: Yes. No, the Office -- I believe it was the Office of Planning's report.

Mr. Moore, you may bring clarification of that. Wasn't it in your report that you indicated that there was a 30-minute period? Indeed, under noise.

MR. MOORE: Yes.

CHAIRPERSON GRIFFIS: Indeed.

MR. MOORE: And then information was gotten from the headmaster.

CHAIRPERSON GRIFFIS: Oh, sure. Sure.

Okay. Mr. Mann, let me see if I understand you correctly then. You're not proposing a condition that restricts it, but just --

MEMBER MANN: No, I'm not.

CHAIRPERSON GRIFFIS: -- make sure we were aware.

MEMBER MANN: I just wanted to make sure that we didn't overlook anything.

CHAIRPERSON GRIFFIS: Excellent. Anything else?

VICE CHAIRPERSON MILLER: Since we're not in a motion yet, I think I just would like to ask Mr. Moore his opinion also on the term time limit. Whether five years is long enough or do you have any opinion on that?

MR. MOORE: As has been pretty customary with this Board, a new application five years isn't a bad period by which you can come in to monitor to see if there's any problems going happen here. I doubt it in this case. I called and I was quite favorably impress with the student who answered the phone that day. As I already told, the headmaster told me to come in and visit to inside on one day.

But, I think five years would be appropriate for this application.

CHAIRPERSON GRIFFIS: Good. Anything else?

The Applicant want to respond to any of the proposed conditions at this time? Actually, this would be the only time.

MR. SPRUILL: Full accept, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much.

MR. SPRUILL: Thank you, sir.

CHAIRPERSON GRIFFIS: Okay. Board members. Ms. Miller, action?

VICE CHAIRPERSON MILLER: Well, no, I just want to throw out one -- one concern and we keep -- we seem to be doing this to the Applicant like saying don't you want a little more or whatever, but --

CHAIRPERSON GRIFFIS: Doesn't like to stop.

VICE CHAIRPERSON MILLER: Okay. I just had heard him say five to six years and I don't know if the -- the school's only going to go for five years.

CHAIRPERSON GRIFFIS: There it is. We have five years on the table as proposed. If you'd like to --

VICE CHAIRPERSON MILLER: All right. He's

comfortable five --

CHAIRPERSON GRIFFIS: -- move a motion with something different, then we'll take that up in deliberation. Is there a motion?

Very well, I would move approval of Application 17289 for Third Baptist Church and this would be for the variance of the off-street parking requirement as was calculated in the application.

This is also for the approval of the special exception for the private school under section 206 and that is for the premises at 1544 5th Street, N.W.

I have included in my motion six conditions if I can recall correctly as we have indicated and stated in that the timing, the enrollment, the on site, et cetera.

And I would ask for a second.

VICE CHAIRPERSON MILLER: Second.

CHAIRPERSON GRIFFIS: Thank you very much, Ms. Miller.

I think it's very appropriate and I put great reliance on the Office of Planning's report and their analysis of the 206 requirements for the special exception and clearly for the variance under 2101 for the parking and I don't believe I need to fill out further the -- any additional comments in deliberation

on that.

But, I will open up to others who have motion for us that hasn't been added to the conditions. So.

VICE CHAIRPERSON MILLER: Mr. Chairman, just for clarification, I have in my notes five conditions and I'm just wondering if I'm missing something. If we could just clarify. I mean one went to the term five years, the staff three, the grade four to eight, no more than 15 in enrollment and on site at one time, and then the hours of operation I think was 7:00 to 6:00.

Is there something else in the conditions?

MEMBER MANN: The way that I recorded that information was identical to yours except that I think the Chairman kind of indicated that the 15 enrollment and the 15 on site were two --

VICE CHAIRPERSON MILLER: Two different conditions.

MEMBER MANN: -- separate ones.

VICE CHAIRPERSON MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Whichever. Okay. Any other questions? Deliberation? Comments on the motion? Great. Okay.

We have a motion before us the conditions and then seconded. I'd ask all those in favor signify by saying aye.

(AYES)

CHAIRPERSON GRIFFIS: And opposed? Abstaining? Excellent. Why don't we record the vote?

MS. BAILEY: The vote is recorded as 4-0-1 to approve the application with conditions. Mr. Griffis made the motion. Ms. Miller second. Mr. Mann and Mr. Etherly are in agreement and we don't have a Zoning Commission member with us today.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much, Ms. Bailey. Thank you all very much.

MS. SACHS: Thank you.

CHAIRPERSON GRIFFIS: Appreciate you being down here and we look forward to the publication of your doctoral thesis when it comes out.

MR. SPRUILL: Yes, sir. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Indeed.

MR. SPRUILL: Thank you, sir.

CHAIRPERSON GRIFFIS: Let's move ahead and call the next case for the morning.

Oh, Ms. Bailey.

MS. BAILEY: Yes, Mr. Chair.

CHAIRPERSON GRIFFIS: We don't have any party in opposition on this. I think it might be appropriate to waive our rules and regulations into a summary order.

MS. BAILEY: Summary order. That it is. Application Number 17262 of ARCH Training Center pursuant to 11 DCMR 3103.2 for variances from the lot area and lot width requirements under section 401, a variance from the lot occupancy requirements under section 403, and a variance from the side yard requirements under section 405 to allow the construction of a new single-family detached dwelling in the R-3 District at premises 1528 W Street, S.E., Square 5779, Lot 824.

CHAIRPERSON GRIFFIS: Excellent. Are we ready?

MS. GIORDANO: We are.

CHAIRPERSON GRIFFIS: Very good morning to you. It's a whole different kind of feel today. Isn't it? Maybe it's the snow or something. All right. I'll stay on the record and --

MS. GIORDANO: I think it's all the positive cases.

Cynthia Giordano with Arnold & Porter law firm. We are pro bono legal counsel for the Applicant

ARCH Training Center.

With me from ARCH is Rachael Gautier who is Vice President of ARCH and, of course, Nat Gross is with my office from Arnold & Porter also.

The architects are from Inscape Studio. We have Gregory Kearley who is a principal and Petros Zouzoulas.

And also our ANC Single Member District Representative Latesha Hudson is sitting at the table with us as well.

I am going to turn the presentation over to Ms. Gautier and then Nat will speak after her and just kind of set the context on the zoning issues because there are a number of variance at play here before the architects proceed with the architectural presentation.

So, unless there are any questions, we'll go ahead and -- and get started with Ms. Gautier.

CHAIRPERSON GRIFFIS: Sure.

MS. GAUTIER: Hi. My name is Rachael Gautier and I work with ARCH Training Center.

This project on W Street is part of our curriculum for Youth Build which is one of our programs at ARCH.

ARCH has been in Anacostia for 18 years

doing job training and educational programs for ages ranging from six to 12, 14 to 24 and then we also have adult programs both for male and female.

The program that the W Street house is going to be in conjunction with is Youth Build which is a 16 to 24 year old age both female and male who learn construction skills while they acquire also educational training. They get their academics, you know, up to at least a GED level. We try to encourage them to go to school, to college or get in an apprenticeship program after ARCH as well.

This program for the W Street house has been infused into their curriculum for this year. They're already busy building a to scale model of the home. The architects both Petros and Greg who are sitting here from Inscape have worked with them to do so and they'll be a big part of the building process. They've also been a part of the application process, the estimate process. So, that they are learning all facets.

So, this is not only going to be a, you know, great thing for the neighborhood which, you know, I feel because it's an empty lot and we're going to build a home and have another viable member of a community living in the home to spend money in the

neighborhood hopefully when, you know, the -- the downtown Anacostia area gets more commercial business.

So, I mean we're -- we really are hoping. This part of our mission is also economic development and we -- we do a lot with the commercial areas in Anacostia as well. So.

CHAIRPERSON GRIFFIS: Good. Thank you. Actually, one quick question.

Of course, the ANC had a letter that was submitted that raises a question of -- and obviously they're concerned none of which -- well, some of which may go into the application for our jurisdiction in terms of review, but do you want to just address briefly. There was some concern about --

MS. GAUTIER: Yes.

CHAIRPERSON GRIFFIS: -- how this was going to be sold or who it was sold to.

MS. GAUTIER: Right. There are -- there are actually two -- two issues that I've -- I've -- I've heard both sides of it from the neighborhood.

So, there's one issue with some of the neighbors that they're worried that the -- the house will increase their taxes.

CHAIRPERSON GRIFFIS: Correct.

MS. GAUTIER: The other side though it's a

-- it's a completely other issue. So, it really is split. I don't know, down the middle, 40/60, what it is, but we've heard from other neighbors that they don't want the house sold at low income. They want it sold at market and that market on the street can be outwards of 400,000 to 500,000 based on -- so, depending on who you talk to, the money issue and the cost issue is going to be maybe one side or the other.

CHAIRPERSON GRIFFIS: Right.

MS. GAUTIER: I can tell you where we are on it.

CHAIRPERSON GRIFFIS: Good.

MS. GAUTIER: And hope that we can work with the ANC or the neighbors to --

CHAIRPERSON GRIFFIS: That's not what I care about actually, but how are you going to sell this house. Is there a --

MS. GAUTIER: We -- okay. So, we -- we're not -- we're not looking to -- ARCH -- ARCH is 40 percent funded from our own initiatives. We have a 13 percent operational cost which is, you know, you can only go up to 35 percent. So, for us to have 13 percent, it's amazing as a nonprofit. We have 53 full-time employees.

So, we do have ways of making money. That

-- that goes 100 percent in the program. We don't pull a profit. It's just we fund ourselves as you can -- you know, you could say.

On this house, however, we just want the house to be built because of the way we're infusing it into the curriculum. We don't -- we don't feel like we're going to make a profit on it just based on the way the house is going to get built.

CHAIRPERSON GRIFFIS: Okay. And let me be clear because I -- I'm not concerned about whether you're making a profit or not.

MS. GAUTIER: No, I know, but we're -- so, I guess we're going to do it at cost. Maybe a little bit above cost.

CHAIRPERSON GRIFFIS: How are you going to sell it? Are you are going -- is it going on the market? Do you have a list of --

MS. GAUTIER: One -- there are two ways that --

CHAIRPERSON GRIFFIS: -- of pre-approved?

MS. GAUTIER: There are two ways that we -- well, if -- if we go through Zoning, there are two -- if we get the house through Zoning, there are two ways that we've been thinking about it.

One way is because we have full-time

employees all of which who have worked for ARCH, you know, between two and ten years, we were hoping -- actually two and 15 years, but we're hoping that one of the ways we could do is get our employees pre-approved for the sale of the house because it's very rare that we can offer our employees employee benefits like this. Most of whom live in the neighborhood, all of whom support the neighborhood, you know, Ward 7 and 8 --

CHAIRPERSON GRIFFIS: Okay.

MS. GAUTIER: -- in some way.

CHAIRPERSON GRIFFIS: So, conceivably, you're going to have a controlled list of which --

MS. GAUTIER: Right.

CHAIRPERSON GRIFFIS: -- you'll sell it to.

MS. GAUTIER: However --

CHAIRPERSON GRIFFIS: And not just turn it over the ReMax.

MS. GAUTIER: Right. However, the issue is raised that the -- at the ANC that that's not how they would like to see it go and I'm not going to --

CHAIRPERSON GRIFFIS: Understood.

MS. GAUTIER: -- I don't want to get into anything --

CHAIRPERSON GRIFFIS: Good.

MS. GAUTIER: So, we would probably just put it on the market if that became an issue. So.

But, we would probably just put it on the market if that became an issue.

CHAIRPERSON GRIFFIS: Well, don't lose too much control of it. Okay. I don't think we need to talk anymore about that.

MS. GAUTIER: Okay.

CHAIRPERSON GRIFFIS: That has nothing to do with our jurisdiction or --

MS. GAUTIER: Okay.

CHAIRPERSON GRIFFIS: -- authority. It was just an interest in terms of an issue that was brought up.

So, let's move into our field of interest.

All right. Board members, let me ask you while they get set up for this. Clearly, we have an area variance because of the existing lot dimensions. That being the total square footage and the width. Do we need to hear much more evidence, testimony on that issue? I think we're pretty clear on that. So, we can move -- move ahead on the other that are a little bit more particularly troublesome perhaps.

MR. GROSS: Okay. Well, I will just --

Mr. Chairman, my thought was to go ahead of the architects to provide just a little bit of land-use context and also --

CHAIRPERSON GRIFFIS: Good.

MR. GROSS: -- to run through the variance tests as a context because we actually have two alternative plans.

CHAIRPERSON GRIFFIS: Uh oh.

MR. GROSS: And so, you'd have the background and we're requesting that if you consider the second plan that -- that you would accept that as an application today, but I may leave that for when the architects --

CHAIRPERSON GRIFFIS: Perfect.

MR. GROSS: -- present that. But, in general --

CHAIRPERSON GRIFFIS: Do we have the second plan?

MR. GROSS: You don't have it yet.

CHAIRPERSON GRIFFIS: Indeed. Okay.

MR. GROSS: This is Square 5779, the subject square presented in two ways. The subject property at 1528 W Street is shown first in the top the way it was when it existed. Constructed in 1905. Most of the houses along W Street built around the

turn of the 20th century.

And here it is on the bottom with the outbuilding and the house removed. Just showing the lot the way it would be for development.

One observation is that the historic pattern along W Street is that of deep narrow lots kind of like you would expect in R-3 zoning which is what you'd have here, but it's all -- except for the pair of semi-detached kind of in the middle, it's all detached houses sited virtually on or maybe in some cases on the side lot line.

This is a little bit similar to what's called zero lot line zoning today which is used out in California and in other jurisdictions where the idea is to have the attached houses without party walls, but more density and the way they do that is -- of course, the houses to decide to have one side yard that's a little wider instead of two narrow side yards. It wouldn't have lots of -- anyway, the only reason for that observation is that this is the historical pattern along here.

And the -- as you'll see, the footprint of the proposed house fairly close to that property line. It's consistent with the historical pattern of houses along the street.

As I mentioned, it is the R-3 zone which allows, of course, single-family row dwellings and also detached and semi-detached houses as a matter of right with different standards.

Now, going down to the vacant lot, we have a lot 24-feet wide versus 40 feet required for a detached house. It would only be -- it would be less for both a semi-detached or a -- or a row dwelling and then 115-feet deep. So, we have 24 feet wide versus 40 and 2,760 square feet versus 4,000 square feet required.

First observation is that in this zone if there were a building on the property line, it would be possible to construct a semi-detached house and with a house 16-feet wide provide a conforming side yard on the 16th Street -- on 16th Street side. That is the house as proposed is 16-feet wide. The lot is 24. So, if you had an attached, you could -- you could do a conforming side yard.

Obviously, there's no party wall. So, that option is not there.

CHAIRPERSON GRIFFIS: So, you're saying the point if -- if the adjacent property was built on the property line, you could attach to that common wall. Then you would obviously be moving the building

over without losing the interior dimension and providing a conforming side yard.

MR. GROSS: Right.

CHAIRPERSON GRIFFIS: And the side yard would be on 16th Street?

MR. GROSS: Right. However, since there's no party wall, it has to be a detached house and becomes a difficult question of where you site it on the lot and at this point, I would just want to run through the exceptional conditions and resulting practical difficulties real quickly.

Those are in our statement, too, but the -- the lot and the house were created before there was any zoning in the District of Columbia.

The lot obviously can't be expanded because it's bounded on three sides by an alley and two streets and on the other side by an improved house and we are in the Anacostia Historic District which makes any hypothetical acquisition of that house and subdividing to create a larger lot pretty much out of the question.

As I mentioned, the house was damaged by water flowing into it from a broken fire hydrant in front of it.

Historic preservation, we would argue, is

also a constraint in this case in the sense that design review is mandatory and it actually resulted in an addition of a variance to the case that wasn't in our original design.

CHAIRPERSON GRIFFIS: Which variance?

MR. GROSS: And that is the variance for a court and -- and this came out in the OP report. We actually didn't catch it, but in the modifications to satisfy the HPRB, one design change that was made was to create a wraparound porch and you'll see this in the architect's plan which -- where it extends four feet beyond the remainder of the house on the 16th Street side so that the porch would go to the property line.

And then the remainder of the house would be -- would be set back four feet from the property line.

CHAIRPERSON GRIFFIS: On the plans that we have as proposed, what's the front of the house?

MR. GROSS: W Street I believe.

CHAIRPERSON GRIFFIS: Could you not pick 16th Street as the front of the house?

MR. KEARLEY: Do you want me to address that?

CHAIRPERSON GRIFFIS: No, not necessarily.

MR. KEARLEY: No. Okay.

CHAIRPERSON GRIFFIS: I'm asking for a legal interpretation of whether you could pick 16th as the front of the house.

MS. GIORDANO: We haven't really considered that.

CHAIRPERSON GRIFFIS: Could you turn on your mike?

MS. GIORDANO: I'm sorry. We haven't considered that. So, I don't know the -- the answer to your question --

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: -- offhand.

CHAIRPERSON GRIFFIS: I mean it obviously wouldn't cure your situation because then you'd need to provide a rear yard.

MS. GIORDANO: I would eliminate that open court --

CHAIRPERSON GRIFFIS: And you wouldn't --

MS. GIORDANO: -- is what you're saying.

CHAIRPERSON GRIFFIS: Right.

MS. GIORDANO: Um-hum.

CHAIRPERSON GRIFFIS: Then you'd -- you'd add in a rear yard requirement which you couldn't satisfy on that property line.

MS. GIORDANO: Right. It seems like we're just -- in this case, it's like an amoeba, you know. You push and pull and another variance pops up and that's -- that's been our frustration.

MR. GROSS: I believe the Preservation Review Board would have a problem with that. I think they wanted the front porch a certain way and wanted it to --

CHAIRPERSON GRIFFIS: No, but, I'm not --

MS. GIORDANO: But, it's just for zoning purposes.

MR. GROSS: Yes.

CHAIRPERSON GRIFFIS: Yes, design or anything. I mean --

MS. GIORDANO: For zoning purposes. I -- I don't -- I'm not sure what the advantage would be there in terms of number of variances.

CHAIRPERSON GRIFFIS: Okay. But, you don't refute the fact that you couldn't pick 16th as your front and W would be your side yard.

MS. GIORDANO: Yes.

CHAIRPERSON GRIFFIS: Okay.

MR. GROSS: The last constraint I would observe is that the property line on 16th Street is virtually on the sidewalk. So, that in the original

design before the wraparound porch came into the picture, we proposed a four or five-foot setback off of 16th Street just because you wouldn't want that side entrance landing right on the sidewalk and so, you know, it's -- so --

CHAIRPERSON GRIFFIS: This place then -- well, maybe we'll wait. Go ahead.

MR. GROSS: I guess as far as the -- the small interior side yard propose that only about three feet in places in the center of the building and then four feet in the rest of the building. That is indeed narrow, but I guess I would say that certainly follows the historic pattern and so, you have kind of a tradeoff between historic preservation and zoning standards and few windows were placed on -- on that side of the house.

With that I think as far as tests two and three on the variances, I think I'll stand on the -- on the statement on that and we can come back with questions if you would like and -- and with that, I think it's the architect's -- oh, I know. To formally request that -- that if you are interested in the design, it has been -- it has received conceptual design approval from the HPRB. That one does have the wraparound porch and that one does trigger the court

variance which we did not have -- that is what we would propose to amend the application today if you decide to go in that direction.

And then we have a plan that's more along the lines of the approach that --

CHAIRPERSON GRIFFIS: Yes. Right.

MR. GROSS: -- the Office of Planning would suggest.

CHAIRPERSON GRIFFIS: Right.

MR. ZOUZOULAS: Good morning. My name is Petros Zouzoulas. I'll be talking briefly about the context of the neighborhood so we get a better understanding of the neighborhood and what sort of help to shaped the design. Greg will be talking about design specifically.

CHAIRPERSON GRIFFIS: Okay. Let me interrupt you because I don't want -- we're not going to go very far in the design stuff.

MR. ZOUZOULAS: Okay.

CHAIRPERSON GRIFFIS: These are actually great boards and get diagrams. There's a limit at which it's going to be pertinent for us to get too far into it and you've already been through the labyrinth of the historic review and to that, was there a question -- the Office of Planning has a comment in

their report about the side flange of a porch. Was this a critical component of the presentation to HPRB?

MR. ZOUZOULAS: I'll let Greg tend to that.

MR. KEARLEY: I'm going to talk about this. My name's Greg Kearley. I'm principal with Inscape Studio.

We worked very closely with Tim Denae in coming up with the scheme here that was approved by Historic and he actually recommended that we do the wraparound porch. It was something that we worked --

CHAIRPERSON GRIFFIS: So, in your presentation, you didn't have it as kind of an option or --

MR. KEARLEY: No, not at all.

CHAIRPERSON GRIFFIS: -- discussion of taking it off or putting it on?

MR. KEARLEY: No.

CHAIRPERSON GRIFFIS: And where are you with the Historic? I know we just got the letter. You've got conceptual approval?

MR. KEARLEY: We -- we went -- we had original meeting Historic from a design that was -- was much different than this. It was more modern design. They had some concerns about that.

So, we worked with Tim for the next month or so in terms of coming up with a scheme that was going to be workable for Historic and they actually put us on the consent list and we didn't even have to go to the review based on the changes that we made which is what you're seeing here.

CHAIRPERSON GRIFFIS: Oh, I see.

MR. KEARLEY: So, we didn't go to a second meeting -- a second review. It was put on the consent.

CHAIRPERSON GRIFFIS: Okay. So, you were on the consent calendar and it went through unopposed?

MR. KEARLEY: Um-hum. Exactly.

CHAIRPERSON GRIFFIS: Okay. And this is obviously a corner lot.

MR. KEARLEY: Exactly.

CHAIRPERSON GRIFFIS: A different condition then the porch is on the rest of the W --

MR. KEARLEY: That's a little bit what Petros was going to share with you. Some precedents in the neighborhood for the wraparound porch.

CHAIRPERSON GRIFFIS: Okay.

MR. KEARLEY: Because it is a corner lot and a couple of items that we talked about in terms of just not talking about the design and telling you

where bedrooms and those types of things, but why we actually placed the building in certain location was if we had -- if we had used the setbacks at eight feet, current zoning regulations would have an eight-foot wide building which --

CHAIRPERSON GRIFFIS: Right.

MR. KEARLEY: -- is unusable for a house. In terms of the -- the side setback and asking for the variance for the side setback which is adjacent to the neighboring property, we are trying to be consistent with what was in the neighborhood which was about a four or five-foot distance between the houses and we're actually going a little bit beyond that in terms of having -- ours having four feet on ours plus there's a couple of feet from the neighbor's side yard.

One thing, when we're talking about the lot occupancy variance we're asking for, the only reason we're actually addressing that is the building itself and the footprint of the building meets the lot occupancy of 40 percent, but since we're engaging into the side setback, you have to include that whole setback in terms of the lot occupancy.

So, that kicks us to the 50 percent. We're actually below 40 percent when you're talking

about the footprint of the building and the decks and the porches.

CHAIRPERSON GRIFFIS: And what's the percentage of the lot occupancy if you don't include -- although that's absolutely correct --

MR. KEARLEY: We're just below 40 percent. We're like 39 and some change.

CHAIRPERSON GRIFFIS: That's with the porch actually with structure?

MR. KEARLEY: With those two -- with the wraparound porch.

CHAIRPERSON GRIFFIS: I see.

MR. KEARLEY: We're within -- we're within -- we're within the 40 percent.

CHAIRPERSON GRIFFIS: So, in fact, obviously, the intent of the regulations was if you enclose that area, you ought to count it towards lot -- because it functions the same way, but this is fronting on a street.

MR. KEARLEY: Exactly.

CHAIRPERSON GRIFFIS: Okay.

MR. KEARLEY: So, we are -- I think we're meeting the spirit of the lot occupancy of 40 percent and the only reason we're actually -- we're kicked up towards the 50 percent mark is because of the side --

we're engaged into the side setback.

CHAIRPERSON GRIFFIS: Got ya.

MR. KEARLEY: Office of Planning had addressed and wanted us to push the building all the way to the edge of 16th Street. One of the reasons we were a little reluctant to do that is one because of the porch because Historic had given us specific approvals on having that porch.

And also, there's not an official building restriction line on 16th Street. But, when you look at the buildings that are going I guess it would be north of that street, there are setback somewhat from the sidewalk and so, we were trying to be consistent with that in setting it back the four feet from that place -- from that particular street on 16th Street.

CHAIRPERSON GRIFFIS: Got ya.

MR. KEARLEY: And also, you would have -- if you had a side -- a side door, you would actually be stepping right onto the sidewalk if you did that and we wanted to have that four feet so we could actually get out of the house.

CHAIRPERSON GRIFFIS: Knock your neighbors in the head getting out. Huh?

MR. KEARLEY: So -- so, anyway, we --

CHAIRPERSON GRIFFIS: Maybe the fifth and

sixth graders. No, it's a different neighborhood.

MR. KEARLEY: By creating two -- by creating two setbacks, two side yards of four feet, we were trying to come with a compromise in terms of the existing historic nature of the neighborhood and also addressing 16th Street and addressing the sort of an unofficial building restriction line on 16th Street.

CHAIRPERSON GRIFFIS: Okay. But, more in -- and in all seriousness, I clearly understand the fact of your doors which will probably swing out or maybe not, but the -- the issue of your side entry as you've called it --

MR. KEARLEY: Um-hum.

CHAIRPERSON GRIFFIS: -- I mean there's a great change there is there not from the sidewalk up? Relatively.

MR. KEARLEY: It's -- it's not very steep, but there is a grade change.

CHAIRPERSON GRIFFIS: Right.

MR. KEARLEY: It's down --

CHAIRPERSON GRIFFIS: You have a level -- a level area.

MR. KEARLEY: -- three or four steps --

MS. GIORDANO: So, that's -- that's our practical difficulty basically.

CHAIRPERSON GRIFFIS: Right. And so, that step out would have to accommodate on the sidewalk is what you're saying.

MR. KEARLEY: Exactly.

CHAIRPERSON GRIFFIS: So, they'd be a curb and okay.

MR. KEARLEY: Exactly. Which I didn't think we would get city approval to build out on the sidewalk. So.

CHAIRPERSON GRIFFIS: Probably not. Okay.

MR. KEARLEY: So, those are the difficulties that we face when building the house in, excuse me, in terms of designing the house. It specifically related to the variances we're talking about.

I think we did try to cover and work within the spirit of the 40 percent lot occupancy and we are within that except, you know, it rolls over with the -- with engaging into that side yard.

And then we are a corner lot addressing both W Street and 16th Street, we felt it was important and moving back, you know, a reasonable amount of space from the 16th Street so the building's not right up against that sidewalk.

CHAIRPERSON GRIFFIS: Okay.

VICE CHAIRPERSON MILLER: Could you just clarify for me? There's a reference on page eight of the pre-hearing statement to a side yard of two feet, ten inches on the interior west side of the lot. What is --

CHAIRPERSON GRIFFIS: The center of the building bumps out.

MR. KEARLEY: The center of the building bumps out on that side yard. So, you have a typical side yard of four feet, but the center of the building it bumps -- it's a little bit narrower.

VICE CHAIRPERSON MILLER: So, it's only -- part of it is -- part of the side yard is -- is that narrow. Okay.

MR. KEARLEY: You can see right here where it bumps out from the center. It was a design decision that was made in terms of working with the students and articulating the different forms of the building.

CHAIRPERSON GRIFFIS: You can have them lop it off if you'd like.

VICE CHAIRPERSON MILLER: I just wanted to understand it.

CHAIRPERSON GRIFFIS: Totally within your justification to do it.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: But, obviously in all seriousness if I can muster that the -- the issue that Office of Planning brings up is not unique to this application. They're very consistent with making sure that with these new buildings, one, it doesn't encroach on the maintenance ability of adjacent --

MR. KEARLEY: Sure.

CHAIRPERSON GRIFFIS: -- but most importantly on the house itself I mean as the new homeowners and certainly as the developer would want this --

MR. KEARLEY: Um-hum.

CHAIRPERSON GRIFFIS: -- should be something that can function --

MR. KEARLEY: Sure.

CHAIRPERSON GRIFFIS: -- in -- at least for 30 years and be maintained. So, that's where we're --

MR. KEARLEY: And -- and that's -- I mean we -- we want to work with Office of Planning obviously and it's something where by having a typical side yard of four feet we felt that was a comfortable dimension in terms of accessing the side yard for maintenance and for security reasons.

I think a lot of it has to do with security when you have side yards so people can move freely if there's problems. So, it's something where we try to come up -- we -- we try to balance having the width of the house which is at 16 and the exterior dimension with both -- both side yards.

So, we appreciate the concerns of Office of Planing.

CHAIRPERSON GRIFFIS: Well, addressing it directly, is it your opinion that someone could put a ladder there and actually clear the gutters on that side or repair the stucco or wash the windows?

MR. KEARLEY: I think -- yes, I think four feet would be adequate to do --

CHAIRPERSON GRIFFIS: What about --

MR. KEARLEY: -- any type of maintenance or upkeep to the particular house.

CHAIRPERSON GRIFFIS: What about two feet ten inches?

MR. KEARLEY: Two fee ten inches, it becomes narrow. That portion of the building is actually a flat roof which we're hoping to maybe have a green roof on, but it's something where access to that particular roof could be done from inside the house. So, you wouldn't necessarily need to access

that particular of the roof and since it's -- it's -- it's only -- instead of maybe 25 feet high, you're looking at something that's about 18/19 feet high. That access to that particular portion of the building, I don't think is being compromised by having a narrower side yard at that portion of the building.

CHAIRPERSON GRIFFIS: Then you would maintain the stucco on the elevation. You don't think there's a problem in two feet ten inches?

MR. KEARLEY: I think it's tight, but I think it's -- I think it's manageable.

Yes, the length of that segment is 16 feet. So, it's -- it's -- it's a short -- it's a short distance in there.

CHAIRPERSON GRIFFIS: Or since -- Mr. Mann.

MEMBER MANN: Can you -- can you point to the four foot dimension on the open court?

MR. ZOUZOULAS: Yes, four foot in which? Is that going --

MR. KEARLEY: East/west or --

MEMBER MANN: Yes.

MR. ZOUZOULAS: East/west.

MEMBER MANN: Going -- that's right. East/west. From here to here.

MR. KEARLEY: It's from the building -- face of the building to the sidewalk.

MEMBER MANN: So, the --

MR. KEARLEY: Which is -- the property line is basically on the sidewalk.

MEMBER MANN: Okay. And under the zoning definition then the open court is that more or less rectangular area.

MR. ZOUZOULAS: It's this -- it's this space in -- it's this space between the building and the property line. Right. It's this area here. Just this little area.

MR. KEARLEY: Typically, it seems to me that I think the -- the courtyard, I think the intent of these types of things for a courtyard is when you have another building abutting that particular property where you're -- where you're creating a -- a -- sort of a light shaft or something that -- and since we're on 16th Street and no one's going to actually be able to abut this particular property, that it's sort of a -- it -- to me, it's not a true court because it doesn't have that. I think by definition it is, but I think in the spirit of the zoning regulations, we're not going to be able to create an enclosed area on this space because you're

on public space as you're coming out to there.

MEMBER MANN: What do you think terminates the open court on 16th Street?

MR. KEARLEY: The entire length of the --

CHAIRPERSON GRIFFIS: Yes, it runs the property.

MR. KEARLEY: -- the property.

CHAIRPERSON GRIFFIS: Because the court's going to be defined by the building on two sides and/or property lines.

MR. ZOUZOULAS: Okay.

CHAIRPERSON GRIFFIS: So, it's not just that small little --

MR. ZOUZOULAS: Okay. So, it's the entire length here.

CHAIRPERSON GRIFFIS: That's right.

MR. ZOUZOULAS: Okay.

MEMBER MANN: So, it's a court that narrows into a very small neck as it passes in front of the entrance canopy. Is that --

CHAIRPERSON GRIFFIS: No, because the -- no, the entrance can't -- wow. Interesting.

MR. KEARLEY: I think the definition if it's two sides, you have the porch as one side. You have the building as the other side and so, that four

foot strip that runs the length of the building would be considered a court.

CHAIRPERSON GRIFFIS: Let's ask the Office of Planning how do they define that open court.

MR. MORDFIN: I had interpreted it, you know, considering there are two sides to the building and --

CHAIRPERSON GRIFFIS: Right.

MR. MORDFIN: -- there are no walls on that canopy, so, I thought it was the entire length from --

CHAIRPERSON GRIFFIS: Right.

MR. MORDFIN: -- from the side --

CHAIRPERSON GRIFFIS: What's interesting -- I mean we're talking about lot occupancy it makes no difference how we actually define it because you could, in fact, I think make a strong case. The whole point of a court or a side yard it has to be open to the sky. So, the canopy covers that. So, you could have a -- actually, it might then be a closed court, but an open court let's call it on the left side of the canopy and then an open court on the right side of the canopy and then, you'd still have to calculate the whole thing as you've done for lot occupancy because it would all count towards it with the canopy just

being different and all that.

Courts are a fascinating thing. Maybe we could take some --

MR. KEARLEY: It's been -- it's always difficult to actually figure out what is -- you know, the definition of this and that's why it was actually brought to our attention --

CHAIRPERSON GRIFFIS: Right.

MR. KEARLEY: -- after we had filed from this. Because it wasn't our interpretation that this was a court and, you know, once getting into it, I think it fits the definition when you're talking about the porch and the building acting as two sides of the building and then you have this four foot dimension between --

CHAIRPERSON GRIFFIS: Right.

MR. KEARLEY: -- the property line and the actual side.

CHAIRPERSON GRIFFIS: Let me ask Office of Planning that's been here, why this wouldn't be a court niche? I mean a court niche, of course, is defined as an aspect of something architecturally that's happening that creates this thing, but doesn't create -- you know, I'm not sure actually what the difference is, but it sure is intriguing and obviously

a court by definition isn't a court niche.

MR. MORDFIN: Well, from reading the definition, I think there's also a court niche in there.

CHAIRPERSON GRIFFIS: Okay.

MR. MORDFIN: Because you've got the two end parts of the building and the middle part that's pushed back and I think there you have a court niche. You can see that in there.

CHAIRPERSON GRIFFIS: Okay. Indeed.

MR. MORDFIN: And that's the articulation.

CHAIRPERSON GRIFFIS: Excellent. Okay. There it is hopefully. Anything else?

MEMBER MANN: It actually -- yes. It actually wasn't quite clear to me. Where is the court niche?

CHAIRPERSON GRIFFIS: On the top side. Where the little bump out for the stucco area. Where the diminished --

MR. KEARLEY: We're causing all kinds of problems with this one. Put bump out.

MEMBER MANN: Well, you know, I mean quite frankly, I don't think there's necessarily a problem. What I was actually getting at was were it not for the fact that HPRB suggested the porch, would there be

otherwise a court issue at all? If -- if the porch -- if the wraparound porch went away, is there still any court issue?

MR. GROSS: No. No, there's not.

MR. KEARLEY: We believe no and there was something where -- I mean I think we agreed with -- with -- with the Historic and Tim in working with them that -- that engaging both 16th Street and W Street and this is something that we talked quite a bit about is how to sort of engage both these streets. That the wraparound porch was something that we -- we agreed with them and that the -- you know, it was a dialogue. I don't know who suggested what or who did what, but we were in their office many times, you know, sketching up ideas and talking to them. So.

CHAIRPERSON GRIFFIS: For clarity so we don't get too bogged down in this, I don't think it's an actual requirement of the Preservation Board to do this, but I think the testimony, what evidence that we have in here, it obviously is a good design move for it.

You know, it's an interesting point that we get into now at this --

MS. GIORDANO: I think at this point it is a requirement.

MR. KEARLEY: In the consent -- in the consent letter, they actually wrote that there were going to be a porch in there. So, I don't know.

CHAIRPERSON GRIFFIS: A porch.

MR. KEARLEY: Right.

CHAIRPERSON GRIFFIS: But, the portion of the porch -- is it articulated in that letter that a portion of the porch is on 16th Street?

MR. KEARLEY: Yes.

CHAIRPERSON GRIFFIS: It is?

MR. KEARLEY: It's clear. I think it's pretty clear on that that it's both -- both streets. That letter that the Historic wrote for the consent.

CHAIRPERSON GRIFFIS: Okay. All right. We don't need to spend a lot more time on that.

MR. KEARLEY: The front porch has become more traditional and functional and it addresses the street corner and wrapping around 16th Street. So, I -- so, it was part of their -- their ruling that --

CHAIRPERSON GRIFFIS: It's a -- it's a -- it's a dynamic piece. Although this is very small scale, not to be negative, but on some of the larger things we're doing, I think we have well established the fact that design, intent, and direction can be part of the -- the practical difficulties that arises

out of the unique condition and situation.

I think we have on a smaller scale that perhaps we've seen recently in larger buildings, but it is -- you know, and frankly, I think it's -- Office of Planning should be applauded for holding a very strict line in bringing this to the attention. I think we need to obviously look at their entire analysis in reviewing this.

MR. KEARLEY: Sure.

CHAIRPERSON GRIFFIS: But, let's move ahead with anything else that you need to tell us on this at this time.

MR. KEARLEY: We will -- I guess -- I think we're -- we're pretty much -- I don't know if we have anything else to say about the architecture until -- unless there's specific comments you want us to address. I was going to hold off in -- in showing an alternative plan which addresses Office of Planning at your request. So, if it's something where you want us to share that with you and bring that into the record, we'll be glad to do that.

One of the reasons I'm not doing it right now unless you ask me is we --

CHAIRPERSON GRIFFIS: We don't want to see it.

MR. KEARLEY: -- we have a preferred --

CHAIRPERSON GRIFFIS: We have an application before us. We got the drawings in front of us.

MR. KEARLEY: Yes, exactly.

CHAIRPERSON GRIFFIS: I don't -- I don't think we're being to the level of seeing other stuff at this point.

Did you have a quick question or clarification?

VICE CHAIRPERSON MILLER: Well, I have a quick question. Yes, we just got the Historic Preservation report this morning --

MR. KEARLEY: Okay.

VICE CHAIRPERSON MILLER: -- up here. So, I haven't actually studied it, but in listening to the conversation, it -- it seems to me footnote two says that the side porch could be eliminated. I mean I don't -- it sounds like it's not necessarily required.

MR. KEARLEY: Okay.

VICE CHAIRPERSON MILLER: Am I reading it wrong? I understand that they strongly prefer it and recommend it and --

MR. KEARLEY: If it -- I -- I would agree with you. If -- if that's there, I -- I don't -- I

didn't read that footnote. So, it's something where if that's the case, we would -- we would definitely work with Office of Planning --

CHAIRPERSON GRIFFIS: Yes, it contradicts in way what they're -- what they're -- what they're indicating in footnote two is they were well aware that this is coming to BZA and they're talking about a couple of other things and they said if a larger side yard is ultimately required on the opposite side, it's certainly conceivable that the house could be shifted a few feet towards 16th Street and the side porch eliminated. I mean I think that's a well stated footnote from the Preservation because essentially what it's saying is they're not requiring making your case for a variance and I think that's a good balance between the two design review and then the zoning elements. I think we have what we need in front of us and can make our own deliberative --

MR. KEARLEY: And we do have that drawn up if you need to see that.

CHAIRPERSON GRIFFIS: That's an option, too.

MR. KEARLEY: We have -- we have -- we have seven copies of that for you if you need that. We have that option.

CHAIRPERSON GRIFFIS: Okay. No more talking about options here until we ask for it. Okay.

Anything else? Anything else from the Applicant?

MS. GIORDANO: No, that concludes our case.

CHAIRPERSON GRIFFIS: Okay.

MS. GIORDANO: Thank you.

CHAIRPERSON GRIFFIS: Then let's move ahead then as we've jumped into the Office of Planning's report already and have them present it for us.

MR. MORDFIN: Good morning, Chairman and members of the Board. I'm Stephen Mordfin with the Office of the Planning.

And one of the variances that the Applicant is requesting is to reduce the minimum width of the west side yard from eight feet to two feet ten inches and the need for this variance results from the placement of a four-foot wide side porch on the east side of the dwelling.

If the side porch were eliminated, a minimum west side yard of six feet ten inches could be provided significantly reducing the extent of the variance requested. Therefore, the Office of Planning

recommends against the granting of this variance.

A variance is also required to the minimum width of an open court and the zoning regulations require that the proposed open court be a minimum of 9.5 feet in width and the application proposes a width of four feet, less than half and elimination of the side porch would eliminate the open court and the need for this variance and so, the Office of Planning also recommends against the granting of this variance.

And the last variance that's required for this application is to increase the lot occupancy from 40 percent to 50.8 and that's necessary because the proposed side yard and the open court on the east side of the building are less than five feet in width each and therefore, cannot -- therefore, do count toward lot occupancy and if the side porch were eliminated again and the west side yard increased, the open court on the east side could be eliminated reducing perhaps or even eliminating the need for a lot occupancy variance and so, the Office of Planning also recommends against the granting of that variance.

The last variance which is to lot width and lot area, the Office of Planning recommends approval of as this is a lot that predates the adoption of the zoning regulations and it cannot be

enlarged.

And that concludes the presentation from the Office of Planning.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Questions from the Board? Ms. Miller?

VICE CHAIRPERSON MILLER: Could you address for me in the context of the variance analysis why Office of Planning opposes the variances that it does?

I mean I think you said because they could eliminate the porch. That's why you oppose it, but could you address that in the -- in the variance test?

MR. MORDFIN: Yes. Well, this is an unusually narrow lot and that would create some practical difficulties in the application. However, it's also a vacant lot which we think then expands the options that are available to the Applicant and by providing the side porch, we think that -- you know, there's not a need to provide a side porch. This isn't the actual dwelling itself, but this is a side porch which is an amenity added onto the house and that creates the need for -- for the variances.

Also, reducing it to two feet ten inches, the Office of Planning is of the opinion that that is too narrow and that's going to -- that it's not in the

spirit of the zoning regulations to have a side yard that narrow because of issues of maintaining not only the yard, but also the side of the dwelling and that the reason for having a wide side yard does serve a purpose in that we think that reducing it to that extend will impair that intent.

VICE CHAIRPERSON MILLER: I guess the point of my question goes to things like, you know, there may -- you may say that there may not be a need for it or it's an amenity, but I guess my question is is there for instance an adverse public impact -- detrimental impact to the neighbor, detrimental impact to the zone plan. I mean reasons like that that we should be rejecting --

MR. MORDFIN: Well, I believe the detriment to impact to reducing the side yard is to the neighbor. The neighbor on the other side. Because it does bring these houses closer together. It does reduce the ability of the Applicant to maintain his property on this property without having to infringe upon the adjoining property. The neighbor to the west.

VICE CHAIRPERSON MILLER: And did you discuss this application with the neighbor to the west?

MR. MORDFIN: No, I did not.

CHAIRPERSON GRIFFIS: Mr. Mordfin, you brought up the fact that you are concerned which is viable and understandable that space for the adjacent property to conduct maintenance on their own property based on the sighting of this house, but what's the distance away from the property line of the adjacent two-story residence with basement?

MR. MORDFIN: We estimate that that's probably about two feet off of the property line. The existing house to the west? Was that the question?

CHAIRPERSON GRIFFIS: Yes.

MR. MORDFIN: The existing house to the west, we estimate it was probably about two feet off of the property line.

CHAIRPERSON GRIFFIS: So, on the drawings here, are these not graphically scaled?

MR. KEARLEY: Well, if we -- I think we can show that a little bit better in the board that Nat brought which shows all the properties on that particular street.

CHAIRPERSON GRIFFIS: But, so, the answer to the question is yes, on this board?

MR. KEARLEY: On this board right here.

CHAIRPERSON GRIFFIS: Right.

MR. KEARLEY: Yes.

CHAIRPERSON GRIFFIS: It makes it look like it's got a nice ten-foot side yard.

MR. ZOUZOULAS: The -- the underlays -- the underlays that we got in terms of building placement, we got from the city. This is the most --

CHAIRPERSON GRIFFIS: I don't care.

MR. ZOUZOULAS: Okay.

CHAIRPERSON GRIFFIS: But, are they correct or not?

MR. ZOUZOULAS: We believe -- from what I could calculate when I was at the site, I believe it was in between three to four feet.

CHAIRPERSON GRIFFIS: Okay.

MR. ZOUZOULAS: Given there are no clear lot lines, but, you know, given -- I know how wide our particular lot is and --

CHAIRPERSON GRIFFIS: Indeed. Are there privacy fences? We talked a lot about this neighborhood character and placement of -- are there privacy fences between most of these buildings?

MR. KEARLEY: Well, we have -- we can see a little bit of the streetscape here. Actually --

MR. ZOUZOULAS: Currently, there aren't any fences. I think there's a few fences in the back

where people have their cars, but --

CHAIRPERSON GRIFFIS: Right.

MR. ZOUZOULAS: -- at the street level on -- on W Street, you don't see any -- there aren't -- there aren't any fences.

CHAIRPERSON GRIFFIS: Okay. All right. Now, just for a little bit. Okay. Anything else? Board questions for the Office of Planning? Good. Thank you very much, Mr. Mordfin. An excellent report.

Does the Applicant have any cross examination of the Office of Planning?

MS. GIORDANO: No, we don't.

CHAIRPERSON GRIFFIS: Indeed. Well, that only means we move on. In which case, is ANC-8A present today? Indeed.

COMMISSIONER HUDSON: Yes, I am. ANC-8A, Single Member District 04. Currently, me and T'Chaka Sapp, the other commissioner, we were at -- we were at odds at exactly which single member district it is in. It is T'Chaka Sapp's single member district.

CHAIRPERSON GRIFFIS: Um-hum.

COMMISSIONER HUDSON: My block cuts off like right there and they were in communication with T'Chaka Sapp and not with myself LaTesha Hudson and I

come to brief -- brief the Board as a whole, the commission as a whole tends to oppose the project. So, I only can speak on behalf of myself.

CHAIRPERSON GRIFFIS: Indeed.

COMMISSIONER HUDSON: And I'm going to -- I'm suppose to resubmit the letter to the Office of Zoning that we are still going to -- as a commission, we still oppose, but myself, I do support it.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER HUDSON: My name is Commissioner Hudson of 1849 Good Hope Road, S.E. Apartments.

CHAIRPERSON GRIFFIS: Good. Thank you very much.

Did you want to talk a little about why you personally don't oppose the project?

COMMISSIONER HUDSON: I personally don't oppose. The reason why we opposed as a commission at -- at the -- at the January meeting when they presented it as -- presented it to us, the design was totally different. It didn't have the porch.

They met our design requests. We weren't -- the commission as a whole was not notified of the design request being met. So, we then forwarded our letter saying that we opposed the project.

CHAIRPERSON GRIFFIS: I see.

COMMISSIONER HUDSON: And then we were later -- we were informed maybe about a couple of days ago --

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER HUDSON: -- that the design was changed.

CHAIRPERSON GRIFFIS: Okay.

COMMISSIONER HUDSON: And that's why --

MS. GAUTIER: Can I -- can I add something? We -- we actually have been in constant contact with T'Chaka Sapp. He had not spoken to the rest -- we -- we were talking to T'Chaka because that's who we thought was the --

CHAIRPERSON GRIFFIS: Okay.

MS. GAUTIER: -- ANC single member district. He actually told -- told me that he was in favor. Asked me to write up a letter, meet him at the ANC. He never met me. We just kept missing each other, but as communicated to me, he was willing to sign a letter in support.

We showed him the designs a week later. Got a piece of the Hardy plank which was one of the other things they wanted us to do.

CHAIRPERSON GRIFFIS: Right. Material

stuff.

MS. GAUTIER: So, we -- we had been -- he had just not communicated our communications with the rest of the ANC.

CHAIRPERSON GRIFFIS: Okay. Not unheard of. Okay. Anything else?

MR. GROSS: Mr. Chairman, it's worth note -- I'm sorry to cut in, but it's worth noting that the original design was much more contemporary.

CHAIRPERSON GRIFFIS: Contemporary.

MR. GROSS: So, the original contact with Historic Preservation resulted in quite a dramatic change and I think the ANC was concerned about the modern nature of the original design and how it fit into the neighborhood.

CHAIRPERSON GRIFFIS: Okay.

MR. KEARLEY: One last thing on that, too. That one of the -- I -- I think the -- the relationship between W Street was something that the ANC wanted to see in terms of that front porch not being closed off from the street and so, we actually opened it up to the street and have really a -- a front door on W Street with steps coming up to that and it's not gated. So, it does engage the neighborhood. So, that was one of the concerns that

ANC had that we addressed and we made -- I mean our office made multiple attempts and Rachael at ARCH made multiple attempts to try to get ANC together to do this and it was --

CHAIRPERSON GRIFFIS: That's right. Yes.

MR. KEARLEY: -- it was not able to do.

CHAIRPERSON GRIFFIS: We're not going to arbitrate communication with the ANC as much as we'd love to. Wouldn't we want to take that? No.

But, I fully understand. There's always communication problems especially when you're going through all sorts of reviews and designs are changing all the time.

MS. GAUTIER: I do want to add though, LaTesha has been very forthcoming in the last few days trying to get in touch with us and we appreciate her being here. She's missing class.

COMMISSIONER HUDSON: Thank you.

CHAIRPERSON GRIFFIS: Indeed. Let's get you out of here. Okay. And we -- and the Board absolutely appreciates you taking the time to come and present the position of yourself in support of this application.

Okay. Any other questions from the Board?

Let's go to whether there's anyone else.

There's no one else present here. So, I won't go into the formalities of seeing if any other person would like to give testimony.

We do have a support letter from 1673 W Street, S.E., Exhibit Number 25.

Is the Applicant aware of any other submissions that I haven't articulated at this time? No others? Good.

Ms. Miller, questions to the Applicant?

VICE CHAIRPERSON MILLER: Yes, following up on Office of Planning's opposition to the variance related to the side porch, I'm interested if you could address what the practical difficulties would be of complying with the regulations if you didn't have the side porch?

MS. GIORDANO: The -- as was mentioned, if we had to move the building all the way to the 16th Street property line, you would basically -- and -- and meet the requirements of the neighborhood to have the eyes on the street and have an entrance there, you would be basically stepping out of the house onto the curb.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Anything else? Any other questions from the Board? Does the Applicant

have any closing remarks, summations that they want to provide?

MS. GAUTIER: No. Thank you.

CHAIRPERSON GRIFFIS: Nothing else at this time. Board members are we prepared to move ahead with this today? It sounds like we are a hardy yes there. Therefore, let's go right into it.

I think it's appropriate to take this up under a motion and deliberation by the Board and therefore, I would move approval of Application 17262.

For the four area variances which would allow the construction of a single family detached dwelling at 1528 W Street, S.E. and that is, of course, for the area in which the lot dimensions -- the lot occupancy from 40 to just over 50.8 percent or maybe it is exactly 50.8 percent from the side yard that diminishes to the two foot ten for 16 feet on that side and also the open court which fronts on 16th Street.

I'd ask for a second.

MEMBER MANN: Second.

CHAIRPERSON GRIFFIS: Thank you very much, Mr. Mann.

Let me get quickly into this. I think it -- it's an interesting piece and again, I -- I was

absolutely pleased that the Office of Planning held a very strong line and a very obviously direct one in terms of the regulations and it's requirements.

As we look into this, it starts to unravel in terms of the uniqueness of this property and the practical difficulty that arises out of this uniqueness. There was a whole statement of this historical pattern on the block going up W Street. It was also mentioned on 16th Street and that is a setback.

The architect indicated that there is no required building restriction line, but there's a historical context at which buildings are set. As this is a replacement, an in fill into a historic neighborhood, not only has the design actually gone through the design review, but implicit in that for us I believe we ought to take under account how it does fit into the character.

I mean if we talk about not impairing the public good, which obviously is our later test after the first two, how could we not take under great advisement the historical pattern and then specifically the -- the setback in keeping in mind with the other adjacent buildings. 16th Street being one, but also the W Street.

I think in terms of the articulation of the -- the design as I indicated earlier in the application, it is -- does create a bit of a practical difficulty in looking at this one. It is a smaller lot for an R-3. It must have been rezoned before it was actually plated in terms of the dimensions although maybe not.

But, the point being as you chart to set a house on a corner which now you're actually opening up to primary facades on this that have to both have character on the 16th Street and on the W Street, how do you do that with -- with limited space and I think it's been successfully done. Not that that's our test, but obviously, it -- it is -- becomes a unique circumstance in dealing with that corner and in sighting the property on it.

It's very persuasive the de minimis aspect of the lot occupancy. I mean really lot occupancy does go to secure the open circulation of light and air to adjacent properties and also the instant property and as we start talking about progressing above the 40 percent lot occupancy, what comes into play is actually that which fronts on the 16th Street which unless then close 16th Street and deed it over to a developer, we can pretty much be secure that

that's going to remain open and obviously won't diminish the -- the light and air.

I think it's intriguing not that this has anything to do with the zoning application, but intriguing to try and facilitate two entrances in and out of a building and in terms of -- actually, it's like two different styles that have happened within this building, but I digress too much.

On the other -- the side yard which I think is probably the most concern to me in my review of this application and in the terms of my own deliberation that diminishing an area adjacent to or in the side yard to two feet ten inches, there is only one issue as we haven't had a lot of -- or testimony that it would tend to diminish the light, air to the adjacent property, but it is to the maintenance of both.

I think if we look at it in terms of the pattern of not having a lot of big privacy fences in between these, the kind of openness between the -- the property lines. Even if a fence was to go, the -- the diminished dimension of which you would have to facilitate a ladder to repair or maintain that wall I think does not rise to a level of -- of denial of the application and I don't think it creates an incredibly

adverse condition for the adjacent property or for the current or the proposed new resident of this property.

That being said, I'll open it up to any others for their comments. Ms. Miller.

VICE CHAIRPERSON MILLER: Oh, I think you've said it very well and I just would add I think there was a good case for the practical difficulties here when -- when certain changes were made to comply with -- with our regulations that it causes other problems and also that -- I think it's important that while HPRB did not want to bind the BZA and they couldn't in our -- in our decision making, I think we should certainly waive in the public interest or no public detriment category the importance of the historic context and the design that they -- they found would further that and also, I didn't think that there was a public detriment case that was really made in this case.

CHAIRPERSON GRIFFIS: Unless you don't like stucco. We didn't really get into that. Did we? We could color the stucco, you know. That's within our jurisdiction under the -- okay.

Anything else then? Any other comments on the motion? Very well.

We have a motion to approve before us. It

has been seconded. Ask for all in favor signify by saying aye.

(AYES)

CHAIRPERSON GRIFFIS: And opposed? Abstaining?

Very well, Ms. Bailey, if you wouldn't mind recording the vote.

MS. BAILEY: Yes, Mr. Chairman. The vote is recorded as 4-0-1 to approve the application as amended. Mr. Griffis made the motion. Mr. Mann second. Mr. Etherly and Ms. Miller in agreement and the Zoning Commission member did not hear this case.

And, Mr. Chairman, the ANC is in opposition to this, but is the Board approving a summary order?

CHAIRPERSON GRIFFIS: I'm not sure we can with an ANC in opposition.

MS. BAILEY: So, we're doing a full order.

CHAIRPERSON GRIFFIS: Boy, that's some fun. Anyone propose to submit a draft order?

We got a volunteer from the crowd.

MS. GIORDANO: We will submit a draft.

CHAIRPERSON GRIFFIS: Indeed. I think it can be obviously very succinct and I -- I think the Board's own deliberation will obviously inform that.

Okay.

Very well. If there's nothing further, thank you all very much for being here this morning and let's move ahead. Good.

Is there any other business for the Board in the morning session?

MS. BAILEY: No, Mr. Chairman, not that I'm aware of.

CHAIRPERSON GRIFFIS: Good. Then if I'm not mistaken, we've been called to go out and shovel the front of 441. So, why don't we adjourn the morning session and go get to work.

(Whereupon, the hearing was recessed at 11:42 a.m. to reconvene this same day.)

A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

1:10 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the afternoon session of the 5th of March, is it the 5th, it's already the 8th, indeed, of 2005. We'll just note for the record it's the same date it was this morning when we called this to action here.

That being said, I am Geoff Griffis, Chairperson.

Joining me today, of course, is the Vice Chair Ms. Miller and also our other mayoral appointee Mr. Etherly. Representing the National Capital Planning Commission is Mr. Mann and representing the Zoning Commission with us this afternoon is Mr. Parsons.

A very good afternoon to all of you.

Copies of today's hearing agenda are available for you. They are located on the wall where you entered into the hearing room. You can pick it up and see what we have on our docket for today.

As many of you are aware and those that are not you should be aware that all proceedings before the Board of Zoning Adjustment are recorded and

broadcast. They are recorded by two means. First being the court reported sitting on the floor to my right who is creating the official transcript of the hearing. The second is we are being broadcast live on the Office of Zoning's website.

Therefore, we ask several things. First of all, I'd ask everyone to turn off their cell phones and beepers at this time so we don't have a disruption of the proceedings and the transmission.

I would also ask when coming forward to speak to the Board that you state your name and address for the record and then proceed with your presentation to the Board.

Also, if you have not -- if you are not -- if you are a part of a new application hearing today, I'd ask that you fill out two witness cards. Witness cards are available for you at the table you entered into and also the table in front where you will provide testimony. Those two witness cards go to the court reporter to my right prior to coming forward and addressing the Board.

That being said, our order of procedure for special exceptions and variances is first, we hear from the applicant and their case presentation and all their witnesses.

Second, we will hear any Government report attendant to the application.

Third, we will hear from the Advisory Neighborhood Commission within which the property is located.

Fourth, we will hear from persons or parties in support of an application.

And fifth would be persons or parties in opposition.

Sixth, finally, is the time for the applicant to present any closing remarks, rebuttal testimony or summations for the Board.

Cross examination of witnesses is permitted by the applicant and parties in the case. The ANC within which the property is located is automatically a party in the case.

The record will be closed at the conclusion of the hearing on the case except for any material that this Board's requests and we will be very specific on what is to be submitted and when it is to be submitted into the Office of Zoning.

After that material is received, no other information or material would be accepted into the record. The record would be finally closed.

The Sunshine Act requires that we conduct

all our proceedings in the open and before the public. This Board may enter into executive session both during or after a hearing on a case for the purposes of deliberating on a case or reviewing the record. This would be in accordance with our rules, procedure, regulations and it also is in accordance with the Sunshine Act.

This Board must base its decisions on the record that's created before us. So, we ask first that you submit all the information that we request into the record. Secondly, that we do ask that people present today not engage Board members while present in the hearing room in private conversations so that we do not give the appearance of receiving information outside of the record.

At this time -- actually, let me say a very good afternoon to Ms. Bailey who's sitting on my very far right with the Office of Zoning. Also, Mr. Moy on my closer right with the Office of Zoning.

Representing the Office of the Attorney General is Ms. Monroe.

Ms. Bailey -- let me first of those present today that are planning or thinking about providing testimony that have not been sworn in previously, if you would please stand and give your

attention to Ms. Bailey, she is going to administer the oath or if you just want to go through it again because you've been through it once, you can stand also and get that done.

Has anyone here not been sworn in yet? Good. We have a couple of takers. It's free. It's also a little -- good. If you could just give your attention to Ms. Bailey, she'll administer the oath.

MS. BAILEY: Please raise your right hand. Do you solemnly swear or affirm that the testimony you will be giving this afternoon will be the truth, the whole truth, and nothing but the truth?

CHAIRPERSON GRIFFIS: Good. Thank you all very much. I may have been unclear as an awful lot of people are here for a continuation of a case and they have already been sworn in and, therefore, wouldn't need to be sworn in again. However, that being taken care of, let us go to any preliminary matters.

Preliminary matters are those which relate to whether a case will or should be heard today. Requests for postponements, withdrawals, whether adequate and proper notice has been provided for an applicant or an application, these are types of preliminary matters that the Board will take up at this time.

If you have a preliminary matter for the Board's attention, I would ask that you come forward and have a seat at the testimony table as an indication.

I'm going to ask Ms. Bailey if she's aware of any preliminary matters that the Board needs to pay attention to at this time.

MS. BAILEY: Mr. Chairman and to everyone, good afternoon and yes, sir, there are.

The first is a Civil Infraction matter and it concerns Case Number 03-0002 of Mr. McRae. Is that -- is that civil infraction appellant here at this time?

CHAIRPERSON GRIFFIS: Are the parties in the civil infraction here? If they would, would they come forward please and have a seat at the table? Is anyone here in the room at this time? Outside of yourself, ma'am. Here for civil infraction appeal 03-OAD-2800G, 03-OAD-2801G.

MS. GILBERT: Good afternoon. I understand that -- Laura Gilsausi Gilbert for the Department of Consumer and Regulatory Affairs.

I understand the Mr. McRae did file a motion for a continuance. It was filed --

CHAIRPERSON GRIFFIS: Wait a -- do you

know where he is?

MS. GILBERT: But, I have no idea.

CHAIRPERSON GRIFFIS: Okay.

MS. GILBERT: There is a written motion of continuance in the file. That's all I'm aware of.

CHAIRPERSON GRIFFIS: And that's our preliminary matter in this case.

MS. GILBERT: And we had a motion to dismiss the appeal.

CHAIRPERSON GRIFFIS: Indeed you did.

MS. GILBERT: Right.

CHAIRPERSON GRIFFIS: Hum. Well, there it is. Why don't we take up the first motion for that who is present?

Board members, we have a motion before us to dismiss.

I'm not sure we can hear any sort of discussion on it from the Government side as we don't have the others involved in this case, but actually, I'm open for any procedures one might propose, Board members.

Other than that, I'm fully prepared. I think we have the information that we -- yes, if you wouldn't -- do you want to just have a seat at table, sir? Are you hear for a case in the afternoon?

MS. GILBERT: Mr. McRae.

CHAIRPERSON GRIFFIS: Have a seat at the table, sir.

MS. BAILEY: Are you, Mr. McRae?

MR. MCRAE: I am.

CHAIRPERSON GRIFFIS: There it is. So, our small delay was worthwhile.

Very well. If you wouldn't mind, sir, could you touch the base of your microphone. There's a button. You can turn it on. I'm going to ask you to state your name and address for the record.

MR. MCRAE: My name is James McRae and I live at 3228 11th Street, N.W.

CHAIRPERSON GRIFFIS: Good and you're here involving the Civil Infraction Appeal 03-OAD-2800G and 03-OAD-2801G. Is that correct?

MR. MCRAE: That's true, sir.

CHAIRPERSON GRIFFIS: Excellent. You filed a motion for a continuance. Is that also correct?

MR. MCRAE: That's true.

CHAIRPERSON GRIFFIS: Very well. Board members, we have that in front of us. We have the parties that are involved in this civil infraction at this time. Is there questions from the Board?

That's what we're doing. The motion for a continuance. Yes.

Mr. McRae, let me ask you very quick. I'd -- let me be straight. I don't find your motion for a continuance persuasive at all. The filings were over -- due over a year ago. The fact of the matter that you've indicated that you didn't realize that your counsel was no longer representing you --

MR. MCRAE: That's true.

CHAIRPERSON GRIFFIS: But, I don't understand how you couldn't know that, but be that as it may, what -- were you unaware that this date was set?

MR. MCRAE: My counsel didn't notify me. Sir, my counsel didn't notify me. I didn't know anything until I received the motion on Saturday evening.

I received a hand motion laying on the floor by my door. I picked it up. That was the first time I had any idea that my counsel was not representing me.

CHAIRPERSON GRIFFIS: But, you knew this proceeding was going -- was coming?

MR. MCRAE: Yes, I had this.

CHAIRPERSON GRIFFIS: How long ago did you

know this proceeding was coming?

MR. MCRAE: I've had this since I believe it was January.

CHAIRPERSON GRIFFIS: January.

MR. MCRAE: I was looking forward to coming down here today, but I thought I had a counsel coming with me.

CHAIRPERSON GRIFFIS: But, you weren't working with your counsel to prepare for today?

MR. MCRAE: I had called my counsel on several times and he never returned the call and it wasn't like he's not paid. I'm filing --

CHAIRPERSON GRIFFIS: Okay. But, that's not something we can do anything about.

Questions, Board members? Ms. Miller.

VICE CHAIRPERSON MILLER: Mr. McRae, did you get a copy of the briefing order which required a brief to be filed by last March, March 2004?

MR. MCRAE: No, I didn't.

CHAIRPERSON GRIFFIS: Were you aware before your counsel dropped you as a client that that was the schedule of submissions?

MR. MCRAE: No. This is the only thing that I got and I'll --

CHAIRPERSON GRIFFIS: What is that?

MR. MCRAE: This is --

CHAIRPERSON GRIFFIS: No, I can't have you -- just have a seat. I'll -- I'll ask for things. If you would just describe it please.

MR. MCRAE: It's something that says the infraction and it says Dear Mr. McRae, you're hereby notified to appear before the Board of Zoning on Tuesday, March the 8th, 2005.

CHAIRPERSON GRIFFIS: And what's the date on that?

MR. MCRAE: The only date on here is the date that I'm suppose to appear. Today.

MEMBER ETHERLY: Mr. Chairman, if I may. Mr. McRae, did you have a -- so, it would appear to be the case that you did not have any direct communication from your counsel with respect to his discontinuance of his representation?

MR. MCRAE: No.

MEMBER ETHERLY: Okay.

MR. MCRAE: I did not.

MEMBER ETHERLY: If I may, Mr. Chair, I'd like to direct a question to DCRA. In terms of any of the documentary filing that you've undertaken, had you

had any contact with Mr. McRae's counsel recently?

MS. GILBERT: I have not. In fact, I'm -- as an officer of the -- of the court, I do know that the certificate of service on the briefing order is in care of Mr. Galloway and I also note that the notice -- I'm not trying to argue against my -- my client, but the notice signed by Mr. Galloway, the certificate of service did not named Mr. McRae. So.

CHAIRPERSON GRIFFIS: Very well. Excellent, Mr. Etherly. Ms. Gilbert, do you have a position on this motion for a continuance?

MS. GILBERT: Well, you know, I am concerned that the proceedings have been, you know, extended to the extent that they have, but I -- under the circumstances, I -- you know, I don't know really what to say.

CHAIRPERSON GRIFFIS: We don't have a case to go forward today.

MS. GILBERT: Right.

CHAIRPERSON GRIFFIS: But, the issue before us quite frankly and directly is whether we dismiss this --

MS. GILBERT: Right.

CHAIRPERSON GRIFFIS: -- or we grant the continuance and -- and that's where my mind is in

terms of looking at this. I don't know if the Board members have other opinions on this.

VICE CHAIRPERSON MILLER: Well, I -- I want to ask another question before we -- we reached that decision and that is, Mr. McRae, do you live at 2823 11th Street or do you work at that address?

MR. MCRAE: I live there.

VICE CHAIRPERSON MILLER: You live there and you lived there in December 2003?

MR. MCRAE: Sure.

VICE CHAIRPERSON MILLER: Okay. And so, did you get a copy of the order that -- that you're appealing on that date?

MR. MCRAE: This is the only thing that I've got here.

VICE CHAIRPERSON MILLER: Okay.

CHAIRPERSON GRIFFIS: You've never received anything else on this entire proceeding?

MR. MCRAE: I haven't received anything.

VICE CHAIRPERSON MILLER: How about --

MR. MCRAE: As far as I was concerned, my lawyer was handling everything.

CHAIRPERSON GRIFFIS: Okay.

MR. MCRAE: I thought everything was okay.

CHAIRPERSON GRIFFIS: Well, the record

shows that you -- you received an NOI at your address. So, that's not the only thing you've received. You've received other materials involved in this infraction.

MR. MCRAE: Sir --

CHAIRPERSON GRIFFIS: Is that correct?

MR. MCRAE: -- I haven't received anything but this. This is the only thing I received until Saturday evening I received a copy of the motion.

VICE CHAIRPERSON MILLER: But, Mr. McRae, did you see the decision that you're appealing?

MR. MCRAE: I seen the decision. Yes.

VICE CHAIRPERSON MILLER: When did you receive that decision?

MR. MCRAE: Saturday night.

VICE CHAIRPERSON MILLER: The decision you're appealing from 2003?

MR. MCRAE: That's right. That's right.

CHAIRPERSON GRIFFIS: Who did you receive it from?

MR. MCRAE: Laying in the gate of my door.

CHAIRPERSON GRIFFIS: Someone dropped it off.

MS. GILBERT: I believe what --

MR. MCRAE: Someone dropped it off.

MS. GILBERT: -- I believe what Mr. McRae's referring to is that we hand delivered the motion to dismiss on Saturday. The certificate of service says it was --

CHAIRPERSON GRIFFIS: Okay.

MS. GILBERT: -- hand delivered on Friday. It was actually hand delivered on Saturday because I waited too late and couldn't get an investigator to deliver it Friday.

CHAIRPERSON GRIFFIS: Understood.

MS. GILBERT: So, I personally delivered it on Saturday.

VICE CHAIRPERSON MILLER: I just want to finish with -- with -- where I was going is that the copy of the decision and order that is the subject of your appeal shows a certificate of service that it was mailed postage prepaid to you on December 3rd, 2003. I'm referring to the decision on DCRA that you're appealing.

MR. MCRAE: I never got it.

MS. GILBERT: A decision by --

VICE CHAIRPERSON MILLER: And how do you know what you're appealing if you never got the

decision?

MR. MCRAE: The only thing -- the only way I know what I'm appealing is from the motion that I received Saturday night.

These are the only two items that I received from you.

CHAIRPERSON GRIFFIS: Why did you retain an attorney then?

VICE CHAIRPERSON MILLER: It's not from us.

MR. MCRAE: I --

CHAIRPERSON GRIFFIS: If you didn't think anything was coming, this is all news to you from Saturday.

MR. MCRAE: I got an attorney because when I went over on North Capitol Street, I didn't like their ruling. I didn't think their ruling was fair. In fact, I knew it wasn't fair. They didn't listen to what I had to say. So, I had to get an attorney.

CHAIRPERSON GRIFFIS: But, that's because you made the case in front of the administrative law judge that you didn't receive the notice of infraction. In fact, it was the second notice that -- and -- and the judge's order here indicates that you said you didn't receive the first although you did

receive the second and that's why you were requesting a postponement of that hearing and he denied you.

MR. MCRAE: That's true.

CHAIRPERSON GRIFFIS: And that's why we're here.

MR. MCRAE: I didn't receive your first. I received your second. They wrote two infraction. The first one, they sent the wrong place. The second one I got.

CHAIRPERSON GRIFFIS: I understand that. I've read the record. There it is. Let me hear from others.

MEMBER ETHERLY: I think, Mr. Chair, the rock and hard place that -- that perhaps we find ourselves in is as Mrs. Miller was alluding to as we -- as we proceed through the record, Mr. McRae, we have as part of the record an indication that you're previous attorney Mr. Galloway had apparently concluded his representation with you in a notice -- well, there's an official notice at Exhibit Number 8 which denotes that Mr. Galloway concluded his representation -- ended his representation of you with regard to this matter as of essentially July the 8th, 2004.

It's your testimony today that you were

not aware that Mr. Galloway, your -- your counsel, had ceased to represent you until --

MR. MCRAE: That's true.

MEMBER ETHERLY: -- until Saturday.

MR. MCRAE: Until Saturday.

MEMBER ETHERLY: Okay. The -- the notice that I've referencing at Exhibit Number 8, Mr. Chair, does not note in the certificate of service page that Mr. McRae was a -- was in receipt of service on that notice, but the notice does note in relevant part that the Appellant, Mr. McRae, has not maintained contact with the undersigned attorney for several months.

Are you aware or were you aware of any efforts on the part of Mr. Galloway to contact you pursuant to this case?

MR. MCRAE: It's very easy for him to contact me. I had two phone numbers, my address. I called him constantly. He never returned by call and the last that I talked to him he said that he was handling this case.

MEMBER ETHERLY: And can you roughly pinpoint or identify generally speaking what time -- what -- what was the last general time frame in which you spoke with your attorney? A month ago, two months ago, a week ago?

MR. MCRAE: Probably about two months ago.

MEMBER ETHERLY: Okay. Mr. Chair, I'm -- I'm -- it's -- it's -- it is a rock and a hard place, Mr. Chair. I -- I would perhaps err on the side of trying to balance not unduly prejudicing the -- the Appellant in this particular case.

Clearly, we have evidence that the -- that -- that the counsel for whatever reason ceased his representation of you, but enough of a question albeit somewhat thinly, but I think enough of a question has been raised with regard to Mr. McRae's familiarity or I should say notice with regard to what he needed to do in preparation for today that I might be inclined to -- to be somewhat lenient with regard to a -- a continuance in this regard.

But, I would be very brief and -- and very, very limited in terms of the scope of that continuance.

CHAIRPERSON GRIFFIS: You mean for the second time?

MEMBER ETHERLY: For the second time.

CHAIRPERSON GRIFFIS: Mr. McRae, what kind of time frame are we looking at if it was to be entertained -- rather if it was to be granted a

continuance? How long do you need to get an attorney and prepare for a case?

MR. MCRAE: Well, I have several attorneys say -- you know, it's a good possibility they'll take the case.

CHAIRPERSON GRIFFIS: So, they'd be ready to go tomorrow? What kind of time frame do you need?

MR. MCRAE: Not tomorrow, sir. They would have to look at it and he would have to study the case certainly.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller.

VICE CHAIRPERSON MILLER: Mr. Chairman, I -- I see this a different way. I think that it's clear that at some point and certainly we have a certificate of service that shows that Mr. McRae was served with the decision that's on appeal right now more than a year ago and that decision said that he had 30 days to appeal at that time.

I don't see any indication of due diligence on his part or good cause for us a year later to be granting a motion to continue -- for a continuance here.

Secondly, this goes to another issue which we may get to with respect to the motion to dismiss. I'm not even sure we have jurisdiction over this --

this issue of timeliness, but I don't see anything to rebut the certificate of service at least notifying him of the decision and of his rights to appeal.

MEMBER ETHERLY: Mr. Chair, I understand where my -- where my colleague Mrs. Miller lands on this issue. I just want to be clear in terms of my understanding of the situation. I -- I definitely don't dispute that Mr. McRae received notice.

MR. MCRAE: Sir --

MEMBER ETHERLY: It's -- it's my sense that he undertook steps to secure representation that would carry him forward through -- through this appeal, but it appears at some point that representation ceased for whatever reason and I'm just not certain enough if there was adequate notice provided by Mr. McRae's counsel that that representation had ceased. I don't see anything that indicates that he received notice that his counsel was no longer representing him.

That's my only concern, but I do agree with Mrs. Miller in terms of having had adequate notice, more than adequate notice with regard to the fact that this matter was pending. So, my concern is just prejudicing the -- the Appellant due to the -- to the -- the loss of representation.

VICE CHAIRPERSON MILLER: I just want to add to that. I just don't see any effort that's really been made on the Appellant's part and then he did -- if he had notice of -- of this hearing and felt he needed new counsel, then he could have done something.

There's just not much affirmative evidence of any kind of extenuating circumstances such as he was ill or something to that affect.

MR. MCRAE: Excuse me. This was just passed to me. This is the first time I've seen this.

MS. GILBERT: It's the notice from -- from Attorney Galloway.

MR. MCRAE: Now, whatever -- whatever you all sent out that you were suppose to send to me, apparently you sent it to Mr. Galloway because Mr. Galloway was handling the case.

I have not received but two pieces -- two items and that's this item that I was looking to come down here today on and the item that I received Saturday night.

CHAIRPERSON GRIFFIS: And the order a year ago.

MR. MCRAE: I didn't receive no more than where I went to over on North Capitol for the

infraction.

CHAIRPERSON GRIFFIS: Right. That's what we're here for today. Ms. Gilbert.

MS. GILBERT: Yes, I mean honestly -- I mean clearly I filed a motion to dismissed based upon the failure to meet the terms of the briefing order and to get a transcript and file a brief in this case. However, you know, I have to say that I am a little bit disturbed that an attorney is able to just file a notice with the Board saying I'm no longer representing this person and not serve the Appellant with a copy of that notice and it appears in looking at the briefing order --

CHAIRPERSON GRIFFIS: Setting this off 60 days, would you be prejudiced in anyway?

MS. GILBERT: Excuse me.

CHAIRPERSON GRIFFIS: If we set this off 60 days would you be prejudiced in anyway in presenting your case?

MS. GILBERT: Not really.

CHAIRPERSON GRIFFIS: Not really? Not very definitive. Is it? So, perhaps you might be?

MS. GILBERT: I mean --

CHAIRPERSON GRIFFIS: Would you or wouldn't you?

MS. GILBERT: -- obviously -- obviously there is some kind of prejudice in not being able to pursue the -- the fines. Right. But, beyond that, there is no prejudice.

CHAIRPERSON GRIFFIS: Forty-five more seconds. Comments?

MEMBER MANN: I'm going to simply add that -- and I'm sure that this is not based in any sort of legal requirement. I just find it somewhat unusual on its face that a client doesn't realize that nine months ago an attorney has filed papers that he's no longer going to be representing his client.

CHAIRPERSON GRIFFIS: Agreed.

MR. MCRAE: I couldn't possibly know. He didn't notify me.

CHAIRPERSON GRIFFIS: But, Mr. McRae, I think what the Board is saying is that this has been going on for over a year, over a year in terms of the -- even the -- the initial date of the notice of infraction and the appeal of the second notice of infraction. If this was of great concern to you, it would have been your burden and your attention to be pursuing this.

So, to come to us to say, well, no one told me nothing was going on and no one was working

for me is hard for us to take the burden and -- and frankly, interrupt our schedule and have to reschedule this when we were ready to go this afternoon.

But, that being said, I also know that civil infractions are a strange being in this city and there's all sorts of different stops and not everyone does them daily and we're certainly glad that they don't.

I'm certain that you -- I'm not certain. I imagine that you haven't been through this before and it may well be a confusing endeavor and process to get through and -- and we're not always clear in our procedure and such.

So, therefore, I would suggest that -- let me take up any further discussion from the Board of setting this off 60 days. Ms. Bailey will find a date for us that is appropriate in the afternoon or not. I'm personally open and can be further persuaded if the majority of the Board would like to --

MEMBER ETHERLY: Mr. Chairman.

CHAIRPERSON GRIFFIS: -- yes.

MEMBER ETHERLY: I will -- I will speak in support of a 60-day continuance and I just want to be very clear about -- about the grounds for -- for that support.

I think we're -- we're in something of -- I won't say a gray area, but we're in a little bit of a -- of a middle ground here where I think to an extent clearly and -- and especially the recipient of a civil infraction shoulders the responsibility of insuring that his or her case, his or her rights are adequately defended and protected and -- and that is indeed I think the burden of -- of any appellant or any plaintiff or any defendant.

I think, however, there are indications here that there were at minimum some basic and preliminary steps that were undertaken by Mr. McRae to protect and safeguard his rights.

For whatever reason, there appears to be -- there appears to be some uncertainly as to the manner in which those rights were safeguarded by the counsel that he chose to -- to represent him before this body.

I think there is enough of a question there that raises some concern for me which as counsel for DCRA indicated is a fairly important and significant question and that is the -- the responsibility of the requirement of an attorney to notify his or her client of any decision relative to their representation.

That is of concern to me and I don't think we have anything that's definitive in the record that would suggest that there was adequate notice on the part of -- of Mr. Galloway, Mr. McRae's former counsel, that his representation was -- was being discontinued.

I understand where my colleagues are coming from, but I think it's a very important point here that -- that is best protected and safeguarded rather than used inadvertently as a hammer in this case to -- to prohibit or prevent Mr. Galloway from safeguarding his rights.

I don't hear a definitive answer from DCRA that there's going to be some significant prejudice assumed on the part of the District. So, in the absence of that, I'm inclined to grant the 60-day continuance, but with a very clear message that Mr. McRae should undertake all due efforts to secure counsel and -- and get back here.

Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Well said.

Anything else?

VICE CHAIRPERSON MILLER: If -- if I may, I'd like to say a couple of things. One is I think that it's significant that the notice of Mr.

Galloway's withdrawal as your counsel was not sent to you at least as indicated. So, I can concur at this point then with a continuance based on that reason that you may not have gotten notice.

I -- I would just like to suggest though if I could for -- for the -- the hearing that we hold in 60 days, I -- I am wondering personally as one Board member whether or not we, in fact, have jurisdiction over this case, whether or not this is, in fact, a decision involving the zoning regulation or whether not -- or whether it is, in fact, a decision that's being appeal that involves 16 DCMR 3102 and 3102.3(a) that he wasn't entitled to a hearing because he didn't respond to the two notices.

So, that's -- that's a question that I just would like to lay -- lay out there. The parties might keep that in mind.

Because we could be back here in 60 days and dismiss for that reason or not, you know. It's just a question that I had when I looked at the -- and I understand it is a little ticklish because it would come before you on the --

CHAIRPERSON GRIFFIS: Right. We need to discuss --

VICE CHAIRPERSON MILLER: -- merits on the

certificate of occupancy issue.

CHAIRPERSON GRIFFIS: Some of us are very clear on the issue. Others have questions.

VICE CHAIRPERSON MILLER: Right.

CHAIRPERSON GRIFFIS: But, we'll deal with that later. Is there any objection then from the Board or other comments on this granting a continuance, holding in abeyance the motion to dismiss? Is there any -- yes, Mr. Parsons.

MEMBER PARSONS: Mr. McRae's asking for 45 days. Why are you going to 60?

CHAIRPERSON GRIFFIS: Because I think this is a May kind of thing and that will get us into May.

MEMBER PARSONS: Oh. Okay.

CHAIRPERSON GRIFFIS: Look I -- no sense in 45 days from now needing another couple of weeks and frankly, our afternoons are not freed up until about that date.

Ms. Bailey, you can correct me if I'm wrong, but I was proposing the 17th of May.

MS. BAILEY: Certainly, Mr. Chairman.

CHAIRPERSON GRIFFIS: Okay.

MS. GILBERT: If -- if I may supplement my request although I'm -- although I've pretty much gone along with the continuance for the reasons we've

discussed, though an area in which there could be prejudice is if a new attorney enters this case and then asks for --

CHAIRPERSON GRIFFIS: That's exactly why I was putting 60.

MS. GILBERT: 90 days to do briefing and so on. So, the --

CHAIRPERSON GRIFFIS: Without a named attorney at this point 45 days and 45 days will be asked for a continuance because they just got the case. Sixty days. I cannot imagine my support of another continuance. I can't project, but I wouldn't imagine that the Board members would support a continuance and I would say Mr. McRae it seems to me the consensus of the Board to grant this continuance, but as Mr. Etherly has eloquently indicated, the hammer will be used on the 17th of May and I can't imagine that we would move this on any further.

Comments?

MS. GILBERT: Can the order indicate that no further continuances, that any briefing --

CHAIRPERSON GRIFFIS: No, can't.

MS. GILBERT: -- needs to be done within that period?

VICE CHAIRPERSON MILLER: Mr. Chairman, I was just wondering. Do we need to set a deadline for when the Appellant needs to file his briefing?

CHAIRPERSON GRIFFIS: Do we want to get through one issue, the -- the continuance and then we can set the schedule --

VICE CHAIRPERSON MILLER: Sure.

CHAIRPERSON GRIFFIS: -- on how we get to May? Is there any opposition to granting a continuance for 60 days to the 17th of May? Mr. Mann.

MEMBER MANN: I'm opposed to it. Yes.

CHAIRPERSON GRIFFIS: Indeed. Would take that as a voice roll and we can record the vote then as indicated that Mr. Mann was in opposition to the -- to the motion for a continuance.

Ms. Bailey, do you mind? The 17th of May is appropriate in the afternoon starting at 1:00. Is that correct?

MS. BAILEY: It's shown as that's open, Mr. Chairman.

CHAIRPERSON GRIFFIS: Excellent. Do you have the -- can you run down the filing dates?

MS. BAILEY: May 3rd and DCRA may respond by May 10th. So, the filings from Mr. McRae -- Mr. McRae?

MR. MCRAE: Yes.

MS. BAILEY: The filings are to come in from your attorney by May 3rd and that will give DCRA a week to respond by May 10th.

MR. MCRAE: Thank you.

MS. BAILEY: Is that sufficient time for you, Ms. -- Laura? Ms. Gilsausi?

MS. GILBERT: Well, certainly, I would prefer that Mr. McRae be required to file sooner and that I be given until May 10th. So that I would have two weeks to respond rather than one week to respond.

CHAIRPERSON GRIFFIS: I think that's appropriate. Let's set it back a week. We've got two weeks for a response.

MS. BAILEY: So, that will be April 26th. Mr. McRae, April 26th your filing date, sir.

MR. MCRAE: Thank you.

CHAIRPERSON GRIFFIS: Very well. Is there anything else attendant to this civil infraction case that's a -- a preliminary matter for us? Ms. Gilbert, Mr. McRae, you aware of anything else that requires our attention at this time?

MR. MCRAE: No, sir.

MS. GILBERT: No, sir.

CHAIRPERSON GRIFFIS: Ms. Bailey.

MS. BAILEY: Mr. Chairman, there is another preliminary matter, but that's all for this case.

CHAIRPERSON GRIFFIS: Indeed. Thank you, both, very much. Appreciate your patience.

Let's move onto the next.

MS. BAILEY: There is a request from the Brookland Union Baptist Church, Application Number 17261 for a postponement of this application as well, Mr. Chairman.

CHAIRPERSON GRIFFIS: Is the Applicant present?

MR. SANDERS: Yes.

CHAIRPERSON GRIFFIS: Would you -- would you mind coming forward? How are you?

MR. SANDERS: I'm doing fine, sir.

CHAIRPERSON GRIFFIS: Good. You wouldn't mind just providing your name and address for the record.

MR. SANDERS: My name is Andre Sanders. I live at 1109 Allison Street, N.W., Washington, D.C.

CHAIRPERSON GRIFFIS: Excellent and you had a preliminary matter for the Board's attention?

MR. SANDERS: Yes, we did.

CHAIRPERSON GRIFFIS: You do?

MR. SANDERS: Say that again?

CHAIRPERSON GRIFFIS: I'm sorry. What is it?

MR. SANDERS: No, I was waiting on you.

CHAIRPERSON GRIFFIS: Don't wait for me. You tell me.

MR. SANDERS: Unfortunately, a lot of stuff is not ready. We -- we turned the application in. Turned in all our blueprints and scans.

The two gentlemen that is working with our company because we're a small company I can bring their affidavits. Both of them have been called -- if you know, contractors have been going over to Iraq to -- to make some money. So, we have two of our guys, Mr. Charles O'Brien and Mr. Champ De Marcus went to Iraq.

CHAIRPERSON GRIFFIS: And I'm sorry. What -- how are they related to --

MR. SANDERS: They're the ones that actually do the reports and actually do going out for the outcome. They do our reports and stuff when they go out to parking lots. When they go out to different sites, they do the site designs.

So, it was kind of left on me. We're a small company and it was left on me and another

person.

CHAIRPERSON GRIFFIS: I see.

MR. SANDERS: And also, the Pastor was trying to make it today and I just got off the phone with him probably and about 30 minutes ago. Him and his secretary had another issue within a church. A very important issue. They --

CHAIRPERSON GRIFFIS: Okay. So, your question your postponement of this which is actually the second request.

MR. SANDERS: Correct.

CHAIRPERSON GRIFFIS: And what kind of timing did you have in mind?

MR. SANDERS: Chuck will be back April. The guys dealing with it, he will be back April the 26th.

CHAIRPERSON GRIFFIS: April the 26th. Is Mr. McKay here?

MR. MCKAY: Yes.

MR. SANDERS: Yes.

CHAIRPERSON GRIFFIS: Mr. McKay, would you mind coming forward?

Is the ANC commissioner here from 5A? Would you mind coming up please.

They're back around the 26th which means

-- you said, I'm sorry, the 26th of --

MR. SANDERS: That's -- that's when they be -- that's when they'll be back.

CHAIRPERSON GRIFFIS: I know.

MR. SANDERS: They'll be in Dover, Delaware.

CHAIRPERSON GRIFFIS: Which month? April? May?

MR. SANDERS: April.

CHAIRPERSON GRIFFIS: April.

MR. SANDERS: They'll be here April.

CHAIRPERSON GRIFFIS: I see. Okay. So, conceivably, this is ready to go on the 3rd of May.

Mr. McKay, speak to the motion for a continuance please.

MR. MCKAY: Mr. Chairman, I speak to the motion of dismissal. Frankly, this -- this -- all this body BZA set this matter for a hearing on January the 4th this year.

This representative for the Brookland Union Baptist Church and representing the Applicant requested a postponement so that the Applicant could review and consider the comments of the Department of Transportation, D.C.'s Department of Transportation

and D.C.'s Office of Planning.

Now, among the Officer of Planning recommendation was that the -- the Applicant to meet with the ANC, that is the Advisory Neighborhood Commission and the community groups to address the -- the neighbors concerns about the adverse impact of the parking lot on the community.

The Applicant, that is Brookland Union Baptist Church, has -- has addressed neither DDOT's, the District Department of Transportation nor the Office of Planning's recommendation. There's been no revised plan offered. Nothing was added to the record.

Again, this Applicant has wasted this Board's time and frankly, our time, the community's time.

These are further examples of the Applicant's inability to keep its word, to deal with the community in good faith, and to comply with the regulations and codes of this city.

Now, for the Applicant's documented -- we ask that BZA summarily deny the application and so, we make the motion for dismissal strongly.

CHAIRPERSON GRIFFIS: Okay. I appreciate that and that's understood. Is there any comment

regarding the specific aspect that was brought up today in terms of the staff that they were counting on to put together their application documentation having been called Iraq?

MR. MCKAY: You will recall that the recommendation that the Office of Planning made in which this Applicant specifically asked for a postponement when we met on January the 4th. The Office of Planning made three recommendations. Okay.

They said that in meeting and subsequent conversation with the Applicant the Office of Planning advised the Applicant to provide the following three things. A pre-hearing statement detailing how the zoning requirements would be met including section 214, section 2116 with emphasis on 216.6 through 2116.9, 2117, section 2303 as well as section 2108.

Secondly --

CHAIRPERSON GRIFFIS: Yes, I have all that.

MR. MCKAY: Yes.

CHAIRPERSON GRIFFIS: You don't need to tell us that.

MR. MCKAY: What I'm saying is that the Applicant has demonstrated having done none of that, having nothing to do at all with staff personnel being

in Iraq.

We -- we are terribly inconvenienced. We're prejudiced. We spend lots of time and effort preparing for these hearings and apparently, they do nothing. They absolute do nothing. They have not made any effort to meet with us, the neighbors concerning -- the neighbors of Brookland Union Baptist Church nor with the ANC. Having nothing to do with that staff personnel.

It has to do with the church's regard for the community concerning and for this -- all this body.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. Let me just hear from the ANC and then I'm going to let you respond to both of those and you are Mr. Artisee. Are you not?

COMMISSIONER BOSTON: No. I'm -- I'm Mr. Boston. Mr. Artisee is behind me a couple of rows.

CHAIRPERSON GRIFFIS: So, indeed.

COMMISSIONER BOSTON: I'm the new -- I'm the new commissioner. My name is William Boston. I live at 1201 Kearney Street, N.E.

CHAIRPERSON GRIFFIS: So, we're suppose to give you a hard time. I have a note here. As a new commissioner, please give him a hard time.

COMMISSIONER BOSTON: Please don't do that. I think I need a welcome instead.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER BOSTON: I think that would help.

CHAIRPERSON GRIFFIS: You're very -- very welcome here of course.

I need you just to address from the ANC's position --

COMMISSIONER BOSTON: Um-hum.

CHAIRPERSON GRIFFIS: -- the motion for a -- a request for a continuance.

COMMISSIONER BOSTON: Yes, I believe the continuance should be denied. I think what Mr. McKay laid out certainly -- well, just the basics of how this should have been done in the beginning. They did not approach the community in proper time. They did not approach the ANC. They did not approach the civic association and then the houses were removed without permit or one and a half.

So, when you begin to look at how this was set in motion from the beginning, there was a total disrespect for the ANC, the community, and for the civic association.

That right there is really a foul.

The church is historical. It's been there for many years and then if you look in Brookland at the difficulties we're having in Brookland, I'm sure it's -- it's been laid out in the media. With the crime that we're having, with the type of issues that we're having in Brookland, if you look at -- if a parking lot is there, it will only add to the type of issues that we're having in Brookland, you know.

CHAIRPERSON GRIFFIS: Understood. We're not getting into the substance of the case.

COMMISSIONER BOSTON: Okay. Okay. All right.

CHAIRPERSON GRIFFIS: Good. You're whole point is if I understand you correctly the same issues that we had in January when this was first asked for a continuance are the same issues we have now in March and the proper procedure wasn't done and they're not ready because. So, you don't support the motion for a continuance.

COMMISSIONER BOSTON: Right. No, I do not support the motion.

CHAIRPERSON GRIFFIS: Indeed. Thank you very much. Okay. Yes, sir. Last word.

MR. SANDERS: How you doing? I -- when I received this job in 2003, give you a little history,

I came along with the job. I met some of the community people. They asked me was I the company come to tear the houses down. I said no, we just bidding on the contract. Will not touch.

CHAIRPERSON GRIFFIS: Well, we're not arguing substance here.

MR. SANDERS: Okay. Okay. Let's go back then. Well, I called Mr. Boston when I left from the last meeting in January and once I found out he was the ANC Commissioner and I called him and I had asked what -- how could I set a meeting up with the community --

CHAIRPERSON GRIFFIS: I know.

MR. SANDERS: -- to try to resolve this situation either to a flower garden because the neighbors said they don't want a parking lot.

CHAIRPERSON GRIFFIS: But, this is a small step. I mean we -- we don't -- we don't -- we're not -- we don't often get very deep into who called who and why wasn't the meeting set up.

If we were just dealing with that, I'd say let's go ahead with the case, but here we are again for the second time, same issues. I mean this brings back distinct memories of the same conversation we were having before of you're not ready to go. You

haven't even put together the preliminary things to submit that were due weeks before the January hearing and we're now into mid-March.

And I mean I'm -- I'm very persuaded by the -- the party in opposition indicating that they're actually prejudiced by the fact that they've had to prepare twice. They've had to put all this together and come down here. I mean this is time on everyone's account.

Why should we and what -- quite frankly, what insurance do we even have if it was to continue again that in -- in 90 to 120 days we'd be ready to go at that point?

Let me ask you directly. Has the property ever been posted for this application?

MR. SANDERS: Say that again.

CHAIRPERSON GRIFFIS: Has the property been posted?

MR. SANDERS: Yes, I have posted it.

CHAIRPERSON GRIFFIS: Do you have the affidavit of posting?

MR. SANDERS: I believe it's in the office. I had to return it that evening with some pictures.

CHAIRPERSON GRIFFIS: When did you turn

that in?

MR. SANDERS: Way before January and then I also gave the Pastor a copy. As a matter of fact, the Pastor is the one who brought them down.

CHAIRPERSON GRIFFIS: Okay. I won't -- let's not detract from that issue. Okay. Yes, we're going over it one more time very quickly and then have Board comments.

MR. MCKAY: Two comments. One deal with the posting and the second one deals with timeliness.

The property was posted for about two weeks. It was posted the week of -- of Thanksgiving.

CHAIRPERSON GRIFFIS: Okay. This is all going to be anecdotal though. I mean we have strict requirements in terms of the submissions.

MR. MCKAY: But -- but -- but, it was suppose to -- over two weeks and since then nothing.

CHAIRPERSON GRIFFIS: No. Let me be clear. No matter what you say --

MR. MCKAY: Sure.

CHAIRPERSON GRIFFIS: -- it frankly doesn't really matter --

MR. MCKAY: Sure.

CHAIRPERSON GRIFFIS: -- in the sense that if they are required to put in a certified affidavit

of posting, if it's in, it's in and then we can refute that. If it isn't, it isn't.

MR. MCKAY: True. True.

CHAIRPERSON GRIFFIS: But, I -- I think we're -- we're -- we don't need to spend a lot of time on that. Second issue.

MR. MCKAY: And a -- a second comment is that it is very ironic and very telling again that the Applicant makes a motion for postponement on the very day of the hearing.

CHAIRPERSON GRIFFIS: Right.

MR. MCKAY: Okay. The issue with the -- with the -- the -- with the staff, Iraq and what have you, according to him, preceded this by several weeks.

CHAIRPERSON GRIFFIS: Indeed. Well, said again and it goes back to the -- to the whole point of how much -- well, how it impacts you and also the ANC in terms of showing up for the hearing and then asking for a continuance. Okay.

Other questions, comments from the Board?

MR. SANDERS: Can I -- can I say something?

MEMBER ETHERLY: Well, before yo comment, Mr. Sanders, let's -- let's kind of -- give me a little for -- real point in question, real point in

answer. What is the nature of Mr. O'Brien's and Mr. De Marcus' --

MR. SANDERS: Yes.

MEMBER ETHERLY: -- role with respect to the project? Who are they and what do they do?

MR. SANDERS: Mr. Marcus with our company is a legal writer and Mr. O'Brien is a project director that actually -- he's not a PE, but he do civil engineering. Where he just don't have his stamp.

MEMBER ETHERLY: And with respect to the -- the Iraq component, are -- are those two gentlemen involved in -- in military service?

MR. SANDERS: No, they civil. They went over --

MEMBER ETHERLY: Okay. Civilian contractors essentially.

MR. SANDERS: Correct. Yes. Yes, sir.

MEMBER ETHERLY: Okay. They presently have some type of business commitment --

MR. SANDERS: Correct.

MEMBER ETHERLY: -- in Iraq that prevents them from being here.

MR. SANDERS: That is correct.

MEMBER ETHERLY: Okay. And how long had

you been aware of that conflict or this scheduling issue?

MR. SANDERS: Both left February the 7th. One left February the 7th and one left February the 14th.

MEMBER ETHERLY: Okay. I won't ask the logical question after that. Okay. Because it is what it is.

The -- so, it's your sense that you can't move forward today in terms of carrying this case forward without them?

MR. SANDERS: I can, but as far as certain paperwork, I do not have in my hands. As far as verbally, yes, I could, but as far as in -- having the actual hard copy documents, no.

MEMBER ETHERLY: Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Anything else? Any other questions? Yes.

MR. SANDERS: Also, I want to make noted we are the contractors with the church and I spoke to Mr. McKay on many occasions about the project and I guess we -- we as the contractors not trying to get directly personally involved, but the 16th of this month, there's another problem maybe arising with the

church.

The gates are leased that are up around the -- the perimeter and we actually own the gates. I've been pushing as far as in don't pull the gates down. Don't pull the gates down. Because as you know, you have to put gates up at every site that you go to and I just want to make that noted with the community. I'm trying to leave them up as long as I can to the safety of children. Anybody can drop debris. I don't want anybody to come to my neighborhood and drop the debris and stuff.

CHAIRPERSON GRIFFIS: Okay. I'm not sure there's any --

MR. SANDERS: The gates that we have up there, they may be coming down.

CHAIRPERSON GRIFFIS: I know.

MEMBER ETHERLY: You're talking about the wrought iron fence around --

MR. SANDERS: Not -- not the wrought iron. Those are chain links --

MEMBER ETHERLY: Chain links.

MR. SANDERS: -- that we just put up temporarily.

MEMBER ETHERLY: Okay.

VICE CHAIRPERSON MILLER: And how is that

connected to the application if the gates come down?

MR. SANDERS: The safety issues. I'm looking at safety issues and stuff. Far as, you know, keeping the place still fenced in. Because like I said, I understand. I always express my concern to him, but in my neighborhood, I don't want nobody putting trash within -- next door to me or across the street from me.

MEMBER ETHERLY: Mr. Chair, would you like to invite some deliberative comment at this particular point up to --

CHAIRPERSON GRIFFIS: Absolutely.

MEMBER ETHERLY: I'm -- I'm inclined to move forward today, Mr. Chair. Now, what direction that might entail, I'm -- I'm open to discussion, but -- but I -- I don't think we're in a situation here where for me a compelling argument is being made for continuance of the matter.

Mr. Sanders has indicated that he would be able to move forward in some measure. I'm -- I'm just not inclined to -- to -- to hold off.

COMMISSIONER BOSTON: May I make a comment here? I make a comment.

This is very important because this sets a precedent.

As you know, we have several other churches that have lots beside the churches and this sets a precedent for several other areas, several other churches in Brookland with little plots that sit next to the churches and this is very important. Many of the other churches and pastors are paying very close attention to this because they have ideas that they want to do with their plots and so, that's why this is so important to the community area-wide.

CHAIRPERSON GRIFFIS: But, doesn't that support your fact that you wanted to hear the case?

COMMISSIONER BOSTON: Excuse me.

CHAIRPERSON GRIFFIS: I mean does that -- what -- I'm not sure I'm understanding which way you're going with that.

COMMISSIONER BOSTON: Oh, no. Well, I'm saying that because I want a dismissal. Of course, there's -- that's not -- I'm not changing my direction. What I'm saying if that -- this has further implications. If you allow a party to come forth unprepared twice, they're asking for a third time, on a matter in which they're asking for a special exception and the community as a whole is against, then the ANC is against the matter. I mean it really lays out a ground in which other folks can

-- can really push forward and try to make changes that are against the will of the community.

CHAIRPERSON GRIFFIS: Good. Very well. Understood. I do appreciate that and very well said.

Board members, I would move denial of the motion for a continuance and ask for a second.

MEMBER ETHERLY: Seconded.

CHAIRPERSON GRIFFIS: Thank you, Mr. Etherly. I think -- I think it -- one, a party in opposition and the ANC have been very persuasive in the fact of the difficulties of how they might be adversely affected quite frankly in continuing this.

Also, I haven't heard anything persuasive in terms of the Applicant's representative and Mr. Sanders does represent the Applicant of why this is any different than it was in January or why, in fact, it's persuasive today on its face to grant another continuance.

I don't have -- there hasn't been anything shown to the fact that -- that they would or have provisions since February to put together an application not to mention the preliminary application should have been filed in January. Still there's enough time to put together the simplest things to move ahead with this. So, I would not support

granting a continuance.

Ms. Miller, did you have something?

VICE CHAIRPERSON MILLER: I guess I have a little different point of view on it. I think what is different is that there are the key personnel that indicated that -- that are in Iraq. That seems like somewhat of an extenuating circumstance.

Granted, I think it would have been preferable if the Applicant had notified the Board and the parties earlier that this was a problem so that the community would not be prejudiced by preparing, but I see that as different and I see it as very -- I don't know where we're going on the next issue, but I see it as very inefficient to proceed without the responses that we asked for to -- to DDOT, to OP and without having worked with the community.

So, I would be in favor of a -- a continuance and then -- but, that would be the last one with, you know, a strict continuance.

CHAIRPERSON GRIFFIS: Yes, Mr. Parsons.

MEMBER PARSONS: You want another opinion?

CHAIRPERSON GRIFFIS: Of course.

MEMBER PARSONS: I think the -- the proper thing for us to do is to dismiss this case to -- to allow the Applicant to go back and attempt to work

with the community and bring this back in a -- in a -- in a different fashion.

I understand the extenuating circumstances, but is there -- is there any limit as to when they can file? We're looking into that. I don't want to put them in a situation where they got to wait nine months to come back.

CHAIRPERSON GRIFFIS: Well, in terms of the regulation, in terms of timing, one, if a continuance was not granted today, they could withdraw after this motion. That would keep it open for a refiling.

MEMBER PARSONS: But, it seems silly for us to pretend we're hearing a case this afternoon.

CHAIRPERSON GRIFFIS: That's correct.

MEMBER PARSONS: I just want to dispose of this.

CHAIRPERSON GRIFFIS: That's right.

MEMBER PARSONS: And not put anybody through any agony when they're not prepared.

CHAIRPERSON GRIFFIS: Good.

MEMBER PARSONS: Give them a chance to -- to do that, but if you --

CHAIRPERSON GRIFFIS: I think that's excellent points to be brought up. We have a motion

before us. I don't think I will let that go without addressing the options before we take next actions on that.

If we want to dispense with the motion that's before us at this time, is there anyone else that wants to speak to the motion?

MEMBER PARSONS: No, I'm going to agree with the position that you and -- that the Chairman and Mr. Etherly --

CHAIRPERSON GRIFFIS: Excellent. We have a motion to deny the continuance today. It has been seconded. Let me ask for all those in favor signify by saying aye.

(AYES)

CHAIRPERSON GRIFFIS: And opposed?

VICE CHAIRPERSON MILLER: Opposed.

CHAIRPERSON GRIFFIS: Thank you, Ms. Miller. We'll get that recorded.

Mr. Sanders, are you aware of your options at this point?

MR. SANDERS: No, sir.

CHAIRPERSON GRIFFIS: We have three. The first option you could do right now and withdraw the application and that, if I'm not mistaken, you will correct me if I am, will allow you to bring back the

application at -- at your timing.

The second is we will go to the case that we have scheduled in the afternoon. It will take us probably several hours. You would have several hours to get ready and we'll call the case in this afternoon and we'll hear it. That means you got to be ready to go.

The third is that quite possibly we get to that point and the -- the Board as a preliminary matter when we call that case will take up the motion from the party in opposition to dismiss it and it could conceivably be dismissed today.

So, there's really two options that you have, but there's three potential outcomes.

Is that understood?

MR. SANDERS: Sure.

CHAIRPERSON GRIFFIS: I mean I'm -- I'm totally serious. I'll take time to make sure you -- you do clearly understand.

MR. SANDERS: I'll take the withdrawal. Then I can come back once I can address the community. Because I have been working somewhat with Mr. --

CHAIRPERSON GRIFFIS: Okay. Ms. Monroe, do you agree with that opinion?

MS. MONROE: I just want to point that if

the Applicant --

CHAIRPERSON GRIFFIS: Boy, it's hard to get just a simply yes or no around here. Isn't it? Go ahead.

MS. MONROE: I just want to point out that if the Applicant withdraws, it says new applications shall not be accepted for filing for at least 90 days. Okay. So, you would have to wait 90 days if you withdraw.

If the Board dismisses the application as -- as Mr. Parsons was saying, for failure to comply with procedural requirements which I assume we can -- we can see here, you couldn't accept a new filing for at least 90 days. So, you'd have to wait 90 days anyway and --

CHAIRPERSON GRIFFIS: All we're looking at three months. Right? Okay. Mr. Sanders, it's up to you. What -- what do you propose we do?

MR. SANDERS: Withdraw.

CHAIRPERSON GRIFFIS: You would like to withdraw the application at this time?

MR. SANDERS: Yes.

CHAIRPERSON GRIFFIS: Very well. That doesn't take any requirements, Board action and we will note that Application 17261 has been withdrawn.

Let me be straight and honest and direct here. In my opinion, we look forward to seeing this application and we certainly look forward to having full support of it. We don't -- that's not a requirement. Hopefully, things can be worked out to the -- the -- to the best for everyone's circumstance.

With that being said, you've got some time down here. You're all here in the same place. You might want to take a few moments to get coordinated, but that's frankly none of my business.

Outside of that, I appreciate you all being down here and taking the time and, Mr. Boston, we look forward to seeing you again very soon perhaps.

COMMISSIONER BOSTON: Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you.

MS. MONROE: Mr. Chairman, can I say one thing?

I just want to be sure that you are authorized to withdraw this. I mean are you representing the church here and their --

MR. SANDERS: Yes. Yes, I'm Andre Sanders. Yes.

MS. MONROE: Okay. I want that on the record to be sure that -- because you are the contractor and --

MR. SANDERS: Yes.

MS. MONROE: Okay. So, that's.

CHAIRPERSON GRIFFIS: They are the Applicant's representative agent. Okay. Good.

Again, thank you.

Very well. Anything else for us to do today? How about any other preliminary matters?

If not, let's move ahead then to the last case in the afternoon and if there's no preliminary matters attendant to that, let's -- let's call the case.

MS. BAILEY: Application Number 17276 of Phillips Park LLC pursuant to 11 -- for a special exception to allow theoretical lots for 35 single family detached dwellings. The project also includes 13 single family detached dwellings as a matter of right. The project is under section 2516 and it's located at premises 2101 Foxhall Road, N.W. The property is zoned R-1-A and it's located in Square 1346, Lot 822.

CHAIRPERSON GRIFFIS: Good. Okay. Last when we left off, we were going to call the -- the persons in support of the application and parties and persons in opposition to the application.

However, we've been handed today the

submission from the Applicant. For whatever reason and what -- there is some interest from the Board just for a quick discussion on -- Mr. Nettler, are you planning on calling these -- the witnesses that prepared the documentation to this or is this submission addressing the Board's request for information and you were going to let this rest on its face of -- go ahead.

MR. NETTLER: Well, this -- it is two responses. One, it is a response to some of the questions that have been raised by the Board and as part of our rebuttal, the people who had been working on this are here to -- to walk through the -- those aspects of it and I can -- just in general what I'm talking about is in terms of giving further clarity to the storm water management plan that we had presented initially and how that lays out.

We have moved at least -- we haven't changed the -- the number of houses, still 46 and 33 and the -- for the most part the lot lines, but we've moved the houses further away from the park. So, we are having a bigger buffer, but otherwise these are simply in response to the things that you had asked for some further clarification on in terms of what the presentations were in our opening presentation.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: And --

CHAIRPERSON GRIFFIS: So, conceivably, we'll get through this and we'll go to your rebuttal witnesses and closing statements. If you didn't call rebuttal witnesses, then I would allow the parties in opposition to address the -- your witnesses --

MR. NETTLER: Right. I understand.

CHAIRPERSON GRIFFIS: -- based on these submissions.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Okay. I think that -- I think that's fairly straightforward at this time.

We do have the additional submission from the ANC also which I know Board members have and I'm assuming it was served to everyone around.

We now have just been handed attached map, larger scale plans submitted by DDOT from the ANC also. Okay.

I think we're ready to go. Persons in support today to give testimony. Are there persons present in support of this application which happens to be Application 17276.

Are there persons in opposition to the application that want to give testimony? Persons?

Yes? Not parties. Persons.

MR. NETTLER: I thought we had already gone to parties in opposition when we finished.

CHAIRPERSON GRIFFIS: I know. I know.

MR. NETTLER: Okay.

CHAIRPERSON GRIFFIS: But, I like to start slow --

MR. NETTLER: I'm sorry.

CHAIRPERSON GRIFFIS: -- on a snowy day. There was some -- anyway. You're absolutely right. Let's go into parties in opposition.

If the parties in opposition indicated how -- an order of presentation of their cases, whatever it is, let's -- let's roll.

Yes, I'm totally ready. Someone should talk. Yes, is Ms. Brady here? She's out of town. But, the -- the concern neighbors are going to be a resident -- certain residents. CR. I knew it was a CR somewhere. Okay. So, you're going to be presenting that -- that --

MR. NETTLER: No, they already made their presentation.

CHAIRPERSON GRIFFIS: Right. You're right. Right. Right. Right. Because she was leaving town.

MR. NETTLER: We were discussing two.

CHAIRPERSON GRIFFIS: And we had that all done.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Okay. Great.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Boy, it's all coming back to me. Good. The process is lost, but substance isn't. There it is. Yes.

MS. GATES: May I address you?

CHAIRPERSON GRIFFIS: Of course. Come have a seat in our plush chairs. Make sure there's a microphone on.

MS. GATES: Also with us today is Julie Moore. I mentioned Julie in my testimony earlier. There was some question about who she is. She is with us today. Yes, she is and it would be nice if she had an opportunity to address you herself.

CHAIRPERSON GRIFFIS: Under what capacity? I mean why?

MS. GATES: I fully -- we have -- she has acted as a resource --

CHAIRPERSON GRIFFIS: Correct.

MS. GATES: -- for us just as the consultants have acted for the Appellant.

CHAIRPERSON GRIFFIS: So, that's true and we have -- we have her testimony in -- in the record. Right?

MS. GATES: Well, you have a written statement, but she's here today and it would be nice if she could just have a word with you.

CHAIRPERSON GRIFFIS: Well, let me be straight with you. It's kind of odd that you would want to bring up a witness and subject her to cross examination when, in fact, you have a free ride and you put her statement in writing that hasn't been crossed.

Why not be satisfied with what you have? Perhaps I shouldn't say that on the record, but it just seems to me there would be a little bit of strategic error on your part unless she's bringing further information.

In which case, I would suggest that you have her called as a witness or one of the parties in opposition and put it into their case.

MS. GATES: Thank you

CHAIRPERSON GRIFFIS: All right. Well, tell me what you want to do. I'm just laying out all -- I'm big on options today.

MS. GATES: I -- I -- and I really

appreciate those.

COURT REPORTER: Excuse me, Your Honor. There's a --

CHAIRPERSON GRIFFIS: Oh, see -- see he calls me Your Honor.

Okay. While in all seriousness, let me address the fact that Ms. Moore is here. Also just indicate that we had the three remaining parties that are presenting today. Is that correct?

CHAIRPERSON GRIFFIS: Two remaining parties that are presenting today. They were splitting 45 minutes. We were looking at about 15 minutes for each presentation. Ms. Hardy, is that your recollection?

MS. HARDY: No, it's more like -- I thought we had half an hour each.

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: Not that I need it.

CHAIRPERSON GRIFFIS: I got my notes here, but I don't want to open them up because I thought it was going to be clear, but I guess I'll do that.

MS. GLAZER: Mr. Chair, according to my notes, you're correct. The first day of hearing when the requests for party status were granted, the three parties were told they would split 45 minutes.

MS. HARDY: We were told we would split whatever time Mr. Nettler took and he took more than 45 minutes.

CHAIRPERSON GRIFFIS: Ms. Hardy, if you could turn your microphone --

MS. HARDY: Yes, beg your pardon. We were told we would split whatever time the Applicant took and they did take more than 45 minutes.

MR. MOY: Mr. Chairman -- Mr. Chairman, according to my notes and Mr. Nettler can add to this, that's correct. It's 45 minutes, but the Applicant also had an additional time of 33 minutes and 17 seconds.

CHAIRPERSON GRIFFIS: Okay. Now, my notes from the 15th of February, we set up 45 minutes and the Applicant minutes and when I was -- and I have the clock right in front of me. We added 15 minutes that the clock didn't stop of which Board questions were coming in. So, 15 minutes into the 45 was -- I mean I think it -- and even to call it 60 which case -- I don't know. Whatever.

MR. NETTLER: Yes, I wouldn't disagree with that. I think -- because we had -- we had pointed out the fact that the clock hadn't stopped, but you did give us some additional time.

But, if we were dividing up the time that we had taken among the three who were parties in opposition, then you'd have to take into account the time that was spent by the -- certain residents of W Street because they took more than 15 minutes in their presentation. So --

CHAIRPERSON GRIFFIS: That's right.

MR. NETTLER: -- I don't know what -- whether you were counting the time that they took, but that was -- your direction was the three had to divide up that time that we had taken.

CHAIRPERSON GRIFFIS: That's right.

MR. NETTLER: It was more than 45 minutes, but certain residents took up more than 15 minutes.

CHAIRPERSON GRIFFIS: Indeed. Those certain residents. Okay. Ms. Hardy, how much time do you need? Twenty minutes?

MS. HARDY: Mm.

CHAIRPERSON GRIFFIS: Indeed. We're going to set 20 minutes just to be a little bit flexible on this and stop talking about time and actually use it and I'm sorry, Ms. Gates, you left, but I wasn't sure on what you were doing with Ms. Moore. Perhaps, you're going to talk to one of the parties in opposition to call him as a witness and you'll advise

us if that's otherwise.

Ms. Hardy, why don't we turn to you?

MS. HARDY: Okay. My name is Chandra Hardy and I live at 2001 Foxhall Road. I'm the adjacent property owner.

In fact, I'm the only resident on the property of the former Phillips estate. My property, Lot 818 is in Square 1346, was part of the Phillips estate.

Since the 1930s when the Phillips family acquired the property, only three families have lived in my house. The mother and son of Marjorie Phillips and my family. The children of Phillips grew up in the house as did mine.

My house is part of the history of the city and of my community. We have lived there for almost 30 years and it's my intention to live the rest of the my life in my house.

I welcome the residential development of the former Phillips estate and I've been cooperative with the developers in all of our discussions.

However, I oppose the current plan because of its adverse affects on my life, the value of my property, and the ecology of the 16-acre site.

I have tried to reach agreement with the

developers on my concern, but I have learned that the assurances I received from Mr. Visnick who was listed up to a month ago as a joint owner and builder of the project have no validity.

And two, in their presentation to the Board, the development team has not indicated what actions they propose to take to insure that my concerns as the adjacent neighbor have been addressed.

In February 8th, I submitted a list of reasonable conditions that I'm asking the BZA to attach to this project. They're Exhibit 28.

On February 9th, I gave the exact same list to the development team. I would like to speak to these conditions or as many of them as I can in the time available, but before I do, I would like you to consider precisely where I am located in relation to the development.

The topography of the Phillips estate is like a very large steep bowl. My property is located on the southeastern rim of this large bowl. The northern boundary of my lot runs about 300 feet along the development and the eastern boundary runs about 200 feet.

My house is located about 260 feet above the development. This location means that I'm being

sandwiched between two constant flows of traffic, noise, and lights from the development and from Foxhall Road. It also means that I am directly above and in front of the noise and dust and visual pollution during the period of construction.

Now, to my conditions, members of the Board, I have asked for a perimeter fence to be installed -- a permanent perimeter fence along the two adjoining sides of our property for privacy and security.

I was told that I would get an attractive black iron fence and that they would landscape both sides of the fence, but I have not been able to get this agreement in writing.

Without this fence, anyone from the development can walk across my property looking for a shortcut to Foxhall Road.

I have also asked that a permanent fence and landscaping take place within 90 days of the regrading and land preparation and I have asked for covered chain link fence to be installed between our properties during the -- the land preparation phase.

Tree protection a big part of my conditions. There are some magnificent old and native trees on the Phillips property. This land was never

cultivated and the landscape is in its natural state. The loss of trees and the extensive regrading on the property is environmentally damaging and will irreversibly alter the ecology of the property.

There is little that I can do about this, but I intend to do all that I can to protect the trees that are on or near the border of my property.

The current site plan does not show accurately all the trees along our current common boarders nor does it identify the smaller trees on my property that will be damaged by construction of roads, retaining walls, and houses along the northern boundary of my property.

I estimate that up to eight very large more than 80 feet high very old poplar and sycamore trees and several smaller trees will be destroyed.

The current site plan creates a legal nuisance in this regard and it shows a large retaining wall, six feet tall, is to be constructed near a group of these old trees which you will recall that Mr. Pitchford said in answer to my question that he was more concerned about this wall than about the nearby road. But, the large wall is needed because the road is being constructed on a very steep slope.

In order to protect the root zone of these

trees, the road must be located 50 to 60 feet away from the trees instead of 25 feet which is currently shown.

The developers cannot claim that they are protecting old trees when they are planning to construct retaining walls and steep roads near them.

I also asked that the developers be responsible if the contractors ignore the guidelines of Mr. Pitchford or if the workers accidently cut into the root system. These large trees can take up to ten years to die after the root system is damaged. They are expensive to remove and they're irreplaceable.

Members of the Board, I am conscious of time and I will not read all of my conditions, but I would like to speak to two that are left.

Protection during the period of construction. The failure to include a construction management plan and construction schedule in this application to the BZA and the lack of discussion with the neighbors about these plans is in my view a major deficiency in the application.

I say this because this is a very large project. Forty-six or is it forty-seven houses on 16 acres, but it is located in a very small corner of a residential neighborhood. The property is bounded on

two sides by national park land.

This means that 12 families, 11 on W Street and Fox Place and me, will bear the brunt of the impact of the construction and because of my location, the damage to me will be the greatest.

The developers have said that they will construct the houses along W Street first in order to create a buffer against the construction of the 34 house. I'm asking for similar protection against the impact of the construction activities.

The developers have said that the land preparation phase could take eight to ten months. I do not know if this estimate is for the entire 16 acres or part of it.

Mr. Griffis asked Mrs. Brady how long she thought this project would take to complete and she said four to five years.

I'm an economist and in my view, the construction and sale of 47 multi-million dollar houses could take eight to ten years depending on what happens to the economy and the housing market.

Therefore, I am asking for protection during a construction period in my view could last a long time. I've asked that the construction staging area, equipment vehicles and the vehicles of the

workers to be parked in a secluded place to the far right of my property and to be kept out of sight from the back of my property which has 180 degree view of the construction site.

The view from the front of my house is not pretty. It faces Foxhall Road and the architecturally uninspiring buildings of George Washington University.

The special value of my house lies in the beauty of the woods and the adjoining park. Replacing this landscape with a view of a building site and construction vehicles will seriously reduce the value of my property.

I will not read the full list of conditions which are in Exhibit 28 and which I am resubmitting today, but I would like the members of the Board to know that I feel very strongly that the quality of my life and the value of my property will be harm by the failure to obtain all of these protections during the period of construction.

On storm water management, I have two storm water problems. My property lies well below the Field School and W Street part of the Phillips property and I have a permanently or I have had a permanently wet basement and peeling walls over the past two years. Several contractors have told me that

this problem is caused by the rise of the water table and the uncontrolled runoff from further up Foxhall Road.

I have to be shown the grading plan and storm water plans for the area of their property that runs along Foxhall Road so that I can have them reviewed by an engineer and assured that I will not be adversely protected. I'm asking for information to enable me to prevent a problem instead of having to deal with it after the fact.

The second storm water problem relates to the runoff along Foxhall Road. There is no storm drain on Foxhall Road between W Street and White Haven Parkway. The flow of water has eroded the asphalt buffers along the road and the water flows across my property and has caused erosion.

The developers have said they will install a catch basin at the southern boundary of the property and pipe the water to the drain at White Haven and Foxhall. I am located at that southern boundary and I would like to know when this new system to manage the runoff will be installed and whether it has been coordinated with DDOT.

Installing this pipe will entail a major traffic disruption in front of my house. I would like

to know if the pipe will be included in the repair of the road which is planned to begin this spring or is the road going to be dug up after it's been repaired. When will this happen? Et cetera.

Finally, members of the Board, I have two issues with regard to disputed parcels of land. It is my contention that one of the theoretical lots, lot A 4, encroaches on my property.

There is also an issue about my continued access to a cabin that I own which is located on another theoretical lot, A 10.

I have been engaged in discussion with the developers trying to settle these issues and I have expressed willingness to continue to try to reach agreement, but in reviewing this application, the Board needs to be aware of these unresolved issues.

To conclude, I am asking the Board to attach specific and enforceable conditions to minimize the adverse impact of the development on my life and my property. I'm asking for conditions that are designed to prevent problems from arising and I'm asking for conditions that will allow my to participate in and not simply be informed about decisions that will have an immediate and direct impact on me especially those related to the

protection of the trees on and near my property, the construction management plan, the storm water plan, and the installation of a perimeter fence.

Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. Board members, questions? Yes, Mr. Parsons.

MEMBER PARSONS: I want to talk about the trees. You mentioned nine trees.

MS. HARDY: Yes.

MEMBER PARSONS: That you believe are on your property?

MS. HARDY: They are on my property. Yes.

MEMBER PARSONS: And in the drawing submitted to us, it shows some on your property and some right on the property line.

MS. HARDY: Yes, the -- the ones near the -- the specific ones near the retaining wall are on my property. But, this -- the site plan basically they had no obligation to show the trees on my property. So, there are only a selected number of trees here.

I should have -- I should have -- the survey that I am trying to complete of the trees on -- along the borders of my property and it was not -- I could not complete it before this hearing, but one of the things about a site plan, it -- it does not show

all the trees on my property.

MEMBER PARSONS: So, it does show five?

MS. HARDY: It shows five that are particularly near that wall.

MEMBER PARSONS: The wall. Um-hum. And -- and you feel that if we move the road over, that those trees --

MS. HARDY: Well, my understanding of the -- the -- and I'm not an arborist. If those trees are over eight-feet tall and they need a root zone area of up to 70 feet and this -- this is -- this wall as far as I understand it goes to 25 feet away from those trees.

MEMBER PARSONS: Okay. Thank you.

CHAIRPERSON GRIFFIS: Any other questions? Good. Let me ask you. First of all, it's often that we have people come in that -- in opposition to an application and speak about value of property and how it might be diminished and you started out saying, in fact, you're an economist and it will take two things, eight to ten years to sell are these. Which my first question to that is how you are setting that type of a time period and two, what is it that leads you to believe that you're property value would diminish without getting in too lengthy of a period, but is it

essentially loss of green open park land?

MS. HARDY: Yes, I mean on that one. The -- the house is old. It's been there since 1930s and it's been modernized in the '60s. The house itself is -- is --

CHAIRPERSON GRIFFIS: So, it's more valuable if you look out the back of your house on the --

MS. HARDY: It's value because it's got that 16 acres of --

CHAIRPERSON GRIFFIS: As opposed to being adjacent to --

MS. HARDY: -- and then the park. But, it's also -- it's not that you're just -- Mr. Barnes is right. Four or five years from now, that place might be landscaped and be pretty to look at, but in the next -- if the -- if the project was completed in four or five years, for that period if I am not protected against the construction, vehicles and -- and what they do with the building site, I will be looking at 180 degree view of a building site.

CHAIRPERSON GRIFFIS: Okay. So, if I --

MS. HARDY: And -- and -- and your --

CHAIRPERSON GRIFFIS: -- from -- from your point of view as an economist, you say that generally

we should be -- we should be persuaded of the fact that a building that's surrounded by park land is more valuable not of a building surrounded by development.

MS. HARDY: Yes, I should think so. Yes. Maybe a building that has a view of -- of woods and a national park is clearly got to be of more value than a building that's looking at a construction site.

CHAIRPERSON GRIFFIS: Is it? What do you base that on? That's all my question is. It's your opinion that you --

MS. HARDY: That's my opinion. Yes, I'm not --

CHAIRPERSON GRIFFIS: -- you would rather look out on it.

MS. HARDY: Yes.

CHAIRPERSON GRIFFIS: So, conceivably a piece of property downtown in the middle of the city may well be more valuable than that way out miles into farmland?

MS. HARDY: Yes, I mean I'm just -- right now, I'm speaking general for any piece of property anywhere. I can tell you that the piece of property I'm --

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: -- sitting on is -- is --

CHAIRPERSON GRIFFIS: So, in your opinion your --

MS. HARDY: -- is looking --

CHAIRPERSON GRIFFIS: The value of your --

MS. HARDY: The particular value because of what it currently looks at and you replace that with something else.

CHAIRPERSON GRIFFIS: The value of your property to you will be diminished with development.

MS. HARDY: And I would imagine to anyone else because of its view.

CHAIRPERSON GRIFFIS: I understand.

MS. HARDY: I said the view from the front is nonexistent.

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: And your second question with regard to the economy, 47 multi-million dollar houses, the -- it -- it would be great if they could sell it in four years, but interest rates are rising and -- and it's quite possible that you could have more difficulty.

My problem is that you have to have a plan for if it lasts longer. The longer the construction period lasts is the longer I'm going to be exposed to noise and dust and visual harm. That's my point.

CHAIRPERSON GRIFFIS: I see.

MS. HARDY: I wish them great success in finishing it in four years. We would all be better off, but if it doesn't, I will be staring at a hole in the ground for ten years.

CHAIRPERSON GRIFFIS: Indeed. Okay. Ms. Miller.

VICE CHAIRPERSON MILLER: I just want to make sure I understood your points about lots A 4 and A 10. Did -- are you saying that you may have some ownership rights on that --

MS. HARDY: Yes.

VICE CHAIRPERSON MILLER: Okay. And you all are trying to work that out outside of this application?

MS. HARDY: We were.

CHAIRPERSON GRIFFIS: Let me ask you directly. What do you think our role is in those issues?

MS. HARDY: Not at all.

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: I was simply informing you of them.

CHAIRPERSON GRIFFIS: Indeed and I appreciate that. That's a clarification I think we

need and I think we can move on for that.

Ms. Miller, any other questions?

VICE CHAIRPERSON MILLER: No, not at this time.

CHAIRPERSON GRIFFIS: Any other questions from the Board? Does the Applicant have any cross examination?

MR. NETTLER: Yes. Yes. Ms. Hardy, you've made a -- I think a broad assertion that there is a -- a number of issues that you wanted to have the Applicant address and there were attempts at addressing those things, but the Applicant has not -- to this date has not addressed the concerns that you've raised before the Board today. Is that correct?

MS. HARDY: Yes.

MR. NETTLER: And you're saying that the -- are you saying that the Applicant was unwilling to do a number of the things that you have raised as concerns in terms of protecting trees and fencing and dealing with whether it's grading, storm water management, construction issues? Are you saying that the Applicant was unwilling to do so?

MS. HARDY: I -- I would like to state how I said it. I said that I was not able to obtain

agreement in writing on any of these things. I would get assurances about -- about things that would be done, but I my opinion, they were not enforceable.

MR. NETTLER: Okay. And you were given a -- you were provided a drafted agreement that related to those issues. Weren't you?

MS. HARDY: I was given a draft agreement and I turned it down because it lacked specificity.

MR. NETTLER: Okay. And one of the -- one of the things -- the reasons you turned it down is, correct, is because you wanted the Applicant to give you some of its property. Wasn't that one of the things that you wanted out of that agreement?

MS. HARDY: No, I'm not aware that I wanted anybody to give me anything.

MR. NETTLER: You're not -- you're not aware that you had asked the Applicant to give you some of the portions of property that abuts your land as part of the agreement for your support of this?

CHAIRPERSON GRIFFIS: Was this --

MS. HARDY: Absolutely, absolutely not. We have been -- the Board said this matter was of -- not in your jurisdiction. On the -- on the disputed parts of land, I have been engaged in a discussion about a swamp and if I consider the swamp unfair, I

have not asked you all to give me anything.

MR. NETTLER: Okay. And wasn't -- one of the other things that you had asked for was to have an opportunity to be able to have an easement that gave you the right to utilize our storm water management system and our road system so that you could develop your site with an additional three houses?

MS. HARDY: Absolutely not. Again.

MR. NETTLER: Are you --

MS. HARDY: The record -- no, you point -- accuse me of things like this without me answering. I have been engaged in a discussion about the swamp to settle the -- the disputed parcel and in -- in one -- in my response that one of their proposal was unfair, Mr. Barnes sent me an e-mail which I am happy to read to you in which Mr. Barnes suggested that the advantages that could be available to me via these connections to your sewer because I am on a septic tank.

Here is Mr. Barnes' -- Monday, January the 31st. The suggestion of the link to you was -- was Mr. Barnes is pointing out that we can offer you a substantial advantage in that regard by potentially offering you access to our new road and new sanitary sewer on your eastern boundary.

This was not initiated by me. It was a suggestion from Mr. Barnes.

MR. NETTLER: And you didn't -- you didn't then follow that up when a draft agreement was prepared requesting that the Applicant make sure that the agreement take into account that you might develop your property with an additional three houses and that's why you requested this action.

CHAIRPERSON GRIFFIS: Okay. I don't really see the relevance.

MR. NETTLER: Well, I'm going to the credibility of some of the assertions --

CHAIRPERSON GRIFFIS: I know, but --

MR. NETTLER: -- being made as to whether we're willing to do the things that really are -- potentially provide adverse impacts to this property or whether we're dealing with --

CHAIRPERSON GRIFFIS: She made one single assertion that she didn't have -- she didn't have substantive belief that the agreements at the point that they are now were enforceable. I don't -- I don't think we need to go into a lot of the substantive --

MS. HARDY: He should also point out --

MR. NETTLER: Well, she's --

MS. HARDY: -- that I asked for the agreement to be part of the BZA record and that was the part that they did not want to have happen.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: Well, they're -- and with regard to the -- let's deal with some other aspects that you were asked -- that you made comments about with regard to the specific project.

You said that the -- let's go back to the -- go to the value issue. Is it your assertion that if these houses are sold for multi-millions of dollars as you're saying that the -- as the Applicants want to do, that that in itself would devalue the -- your property.

MS. HARDY: You must not have been listening to me. I talked about the value of my property going down during the period of construction and it was in the context of during the period of construction if I am not given protection against the adverse affects of light, dust, and visual pollution during the period of construction.

MR. NETTLER: Okay. So, you're not taking the position that if this application is approved and this project is developed that that will have an adverse impact on your property?

MS. HARDY: I haven't thought that far down the road. My conditions were about during the period of construction.

MR. NETTLER: Okay. And you said that as an economist, it is your belief that it was more likely that it would take ten years for these 46 or 33 houses which are the subject of this application to be sold. Is that your position?

MS. HARDY: I said that as an economist, it's my business to have contingency plan and as a homeowner, I -- the developers told me maybe four years, but as a homeowner, I have to look at the possibility that if that doesn't happen I would be exposed for longer.

MR. NETTLER: Okay. So, you're not relying on any economic studies --

MS. HARDY: No.

MR. NETTLER: -- about the sales of property --

MS. HARDY: No.

MR. NETTLER: -- or real estate --

MS. HARDY: No.

MR. NETTLER: -- in the District of Columbia? Okay. And in terms of the construction management plan that you had or the construction plans

of the Applicant to start with construction along W Street, is it your position that you would rather they started construction of the buildings along your property as opposed to the ones along W Street?

MS. HARDY: It is not my concern which one you started with. I was simply saying that I -- I -- you gave a courtesy to W Street or that's how you presented it. That you were responding to W Street concerns about the same noise, dust, and visual pollution. That's -- at least that's what I was told and that you very kindly agreed to start it there and I was simply saying that I would like a similar courtesy in my case.

MR. NETTLER: You have made reference to the trees that you said would be lost on your property. Have you had a tree survey done of your property?

MS. HARDY: No.

MR. NETTLER: Okay. And have you had a landscape architect or an arborist provide you advice about the -- the plans that have been prepared by the Applicant with regard to the trees on its property?

MS. HARDY: I have asked, yes, for advice on -- on the trees on my property. Yes.

MR. NETTLER: Okay. Could you give me the

name of the arborist or landscape architect that you utilized for those -- that purpose?

MS. HARDY: No.

MR. NETTLER: Do you not remember the name of the --

MS. HARDY: No, I do remember, but I don't think I want to.

MR. NETTLER: Could you direct the Applicant to answer the question?

CHAIRPERSON GRIFFIS: She did answer it. You asked her if she'd give you the name and she said no.

MR. NETTLER: Did that -- did that arborist or landscape architect produce a report for you?

MS. HARDY: No.

MR. NETTLER: Did that landscape architect or arborist come onto the Applicant's property at all?

MS. HARDY: Absolutely yes.

MR. NETTLER: And they did so with -- with the Applicant's knowledge or the property owner's knowledge?

MS. HARDY: Do you mean your property? We're talking about mine.

MR. NETTLER: No, I'm talking about -- I'm

talking -- I'm talking about the property which is the subject of this application.

MS. HARDY: Yes, I mean I'm talking about the trees on the border of my property and -- and the development. Yes.

MR. NETTLER: No, I'm talking about the trees on the -- on the property of the Applicants.

MS. HARDY: I'm sorry. Could you rephrase your question?

MR. NETTLER: I'm asking you -- you said that a -- you had either a landscape architect or some arborist who -- who's name will remain I guess --

CHAIRPERSON GRIFFIS: Unknown.

MR. NETTLER: -- unknown.

MS. HARDY: Yes.

MR. NETTLER: And that this person has come onto the property at some point to review the --

MS. HARDY: To look at my trees and the likely hard it could -- I could face from your development.

MR. NETTLER: And came to --

CHAIRPERSON GRIFFIS: The application is this. I think we're getting a little distracted. He wants to know did your consultant, arborist, landscape architect --

MS. HARDY: Yes.

CHAIRPERSON GRIFFIS: -- go on their property.

MS. HARDY: Well, again the distinction between what is their property please refer to the -- the typed sketch on your -- that was submitted to you in 28, but there is no --

CHAIRPERSON GRIFFIS: In your understanding --

MS. HARDY: -- it must have gone on their property. Yes.

CHAIRPERSON GRIFFIS: They must have gone on their property?

MS. HARDY: Yes, I would say yes.

CHAIRPERSON GRIFFIS: Did you know that they went on their property?

MS. HARDY: Yes, I'm fairly certain --

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: -- I could stipulate the walking. They went on your property.

CHAIRPERSON GRIFFIS: So, they went on the property.

MR. NETTLER: Okay. And when did they do this?

MS. HARDY: Anytime in the last several

months.

MR. NETTLER: You don't know the dates? You weren't --

MS. HARDY: No.

MR. NETTLER: -- you weren't there when they did this?

MS. HARDY: I was there some of the time.

MR. NETTLER: Okay. So, was it within -- was it January or February?

MS. HARDY: It was between January and now. Yes.

MR. NETTLER: Okay. And did you have an engineer look at the -- at the grading plan or the -- this retaining wall that you --

MS. HARDY: I had a friend who is an architect and an engineer look at it. Yes.

MR. NETTLER: Okay. And what's the name of that individual?

MS. HARDY: I'm not -- I don't -- it's not my business to give it to you.

MR. NETTLER: Okay. And did that person tell you that the so-called retaining wall that you referred to as being six feet is on grade as it faces your property?

MS. HARDY: Yes.

MR. NETTLER: So, it's not six feet from -- when you look at it from your property. It's not a six-foot retaining wall. Is it?

MS. HARDY: I don't know what it -- what it looked -- whether it's six foot when you look at it from my property. It's six-foot tall I was told.

MR. NETTLER: Six-foot tall from what vantage point?

MS. HARDY: From it's -- it is six-foot tall.

MR. NETTLER: But, it's on grade when it -- with regard to the -- where it's located and your property. Isn't it?

MS. HARDY: I'm -- I -- your mystifying me as to the relevance of that.

MR. NETTLER: Okay. Do you understand whether there's going to be any grading along the property that's adjacent to your lot?

MS. HARDY: Yes.

MR. NETTLER: Okay. And --

MS. HARDY: I understand there's grading.

MR. NETTLER: -- and who told you that there's going to be grading along the property?

MS. HARDY: I can -- I can read also. I've got your new attachment. I could see that the

road rises from 200 feet to 250 feet.

MR. NETTLER: Okay. So, you're an engineer as well as a --

MS. HARDY: No, I'm not an engineer, but I'm also not stupid. I can read maps.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: Are you --

CHAIRPERSON GRIFFIS: This -- this is -- Mr. Nettler, we're taking just a brief moment just to understand the importance of cross examination for the Board's perspective and it is to have very informative, very direct questions which elicit either difficulties in a case presentation or other avenues which need to be explored.

It should not be lost that, in fact, all this process, Ms. Hardy and Mr. Nettler, is for the Board's perspective and our understanding.

Although Mr. Nettler is asking some perhaps difficult questions, just direct answers back and, in fact, if there's a question that comes up that is not of your understanding, ask for an understanding. If you cannot answer, you say I cannot answer and we move on.

MS. HARDY: Fine.

CHAIRPERSON GRIFFIS: So, obviously, this

is a most heated point of any case presentation, but it doesn't need to be totally uncomfortable for anyone involved in this. So, why don't we proceed from this point now.

MR. NETTLER: Thank you. You said that the road that's on the -- on the Applicant's plans needs to be relocated 50 or 60 feet away from the trees that are indicated on the plan or that are near your property. Was this based on some analysis that was done by an arborist or a landscape architect?

MS. HARDY: Those were views that even came in the discussion with Mr. Pitchford. That the poplar trees need a 70-foot root zone area.

MR. NETTLER: So, you're saying that Mr. Pitchford --

MS. HARDY: No, I'm not saying. See, he's one of the people who said that, too.

MR. NETTLER: Okay. So, who said that the road should be located 60 -- 50 or 60 feet away from those trees?

MS. HARDY: I said it.

MR. NETTLER: But -- and that's based on information you obtained from some landscape architect or arborist?

MS. HARDY: And -- and the architect's and

advice I received. Yes.

MR. NETTLER: Okay. And they specifically told you that was the amount?

MS. HARDY: Yes.

MR. NETTLER: Okay. And these are the -- those people that you're unwilling to name.

MS. HARDY: Correct.

MR. NETTLER: Is that correct? Okay.

MS. HARDY: They've not given me permission to name them.

MR. NETTLER: Okay. And you -- so, you've asked as a condition that the Applicant be required to landscape on your property if it should put up a fence or not between your properties, but you're requesting a fence anyway. But, that should be landscaping placed on your property. Is that correct?

MS. HARDY: Yes.

MR. NETTLER: Okay. And -- and what's the basis for that landscaping on your property?

MS. HARDY: None at all. Just good neighborly stuff.

MR. NETTLER: Okay. I don't have any other questions.

CHAIRPERSON GRIFFIS: Very well. Does the ANC have any cross?

MS. GATES: Do I give my name again now?

CHAIRPERSON GRIFFIS: Sure. Why not?

MS. GATES: Elma Gates, ANC-3D. Thank you.

I'm -- I just want to be sure I understood what you said, Mrs. Hardy. Did you say the Applicant was or was not willing to put things in writing?

MS. HARDY: The Applicant, there was a draft agreement about some of the issues, but they lacked specificity. They were to the extent feasible in general. There wasn't anything that I thought was an enforceable condition, but they also did not want the -- although the agreement preferred it to be about the conditions that I had submitted to the BZA, they did not want the agreement to be part of the BZA record.

MS. GATES: And did they explain why?

MS. HARDY: No.

MS. GATES: At anytime during these discussions, did you feel you were being threatened?

CHAIRPERSON GRIFFIS: What's the relevancy of that?

MS. GATES: Well, I don't know. I just have a sense. We've heard over and over about how often they've met with the W Street residents.

CHAIRPERSON GRIFFIS: So, there's some unfairness with meeting with all the other residents on W Street?

MS. GATES: Well, no, I'm not -- I don't want to say there's unfairness, but --

CHAIRPERSON GRIFFIS: Where's the threatening aspect come off?

MS. GATES: Well, if -- if they didn't want things put in the BZA record that they agreed to do, I feel that where's the trust here?

CHAIRPERSON GRIFFIS: Okay. Understood. Good point. Not necessarily in agreement with you. We have numerous agreements that are done outside of any sort of BZA --

MS. GATES: But, we have nothing in writing at this point.

CHAIRPERSON GRIFFIS: Okay. Anything else?

MS. HARDY: I'd like -- two separate parts. The question that the -- the conditions -- the -- the agreement was purporting to be about the conditions I submitted to the BZA.

CHAIRPERSON GRIFFIS: I understand that.

MS. HARDY: In which case, I thought it should have been part of the BZA record. On the other

aspect of Ms. Gates' question, I -- I did receive from the contract sellers letters that I interpreted to be threatening.

CHAIRPERSON GRIFFIS: Okay. But, I don't want to get into that.

MS. HARDY: No.

CHAIRPERSON GRIFFIS: Unless you want to produce those letters --

MS. GATES: And I -- I don't either.

CHAIRPERSON GRIFFIS: -- so that we can have a subsequent hearing on how one was threatened and I don't know what we'd do with that. It just goes well beyond what we're going to be able to deal with here.

MS. GATES: As a resident of Foxhall Road, you are aware and you mentioned that Foxhall Road will be upgrade. It's not upgraded, resurfaced, improved for safety reasons starting this spring. If the storm water plan that we saw is put in place, it will require a considerable amount of regrading. Correct? Because at the present time didn't you say the water is running now down --

MS. HARDY: No.

MS. GATES: -- a culvert next to your house?

MS. HARDY: The -- the water runs and this is evident. The water runs straight down from W Street all the way to White Haven -- the drain at White Haven Parkway.

MS. GATES: For -- for clarification --

MS. HARDY: Yes.

MS. GATES: -- Foxhall Road -- isn't Foxhall Road sitting on the watershed for that area?

MS. HARDY: Yes.

MS. GATES: So, wouldn't it require sort of a reverse here in the watershed? To get it to go down White Haven instead of in your direction --

MS. HARDY: Yes, they would have to design, you know, a grade. I was shown a pipe going down the middle of the road and my -- my only question on it is will they coordinate that with DDOT because of having the -- I would have construction on three sides of me if that is not coordinated since it would take place in the front of my house.

MS. GATES: Thank you. And the perimeter fence, you mentioned you wanted a special kind of perimeter fence. The same kind of fence that was agreed to for the W Street neighbors.

MS. HARDY: No, the fence that I -- these were the -- what Mr. Visnick, when he was say project

builder, we talked about a fence similar to the fence on the neighboring St. Patrick's property.

MS. GATES: Okay.

MS. HARDY: The black fence.

MS. GATES: Okay. Thank you. I have no more questions.

CHAIRPERSON GRIFFIS: Thank you. Other parties in opposition cross? None of the friends? Yes. Concerned citizen.

SPEAKER: Mr. Chair.

CHAIRPERSON GRIFFIS: Yes.

SPEAKER: I don't object. I -- clearly, I thought that there could only be one cross examiner per party. I thought that was the whole --

SPEAKER: There is today. We're -- we're the only -- I'm the only one available.

SPEAKER: Okay. I -- I thought the rules -- I just want to make sure I understood the rules. I thought the rules were one of consistent -- no, I just want to know --

CHAIRPERSON GRIFFIS: That's okay. None of that was on the record. So, nonetheless, let me just put that on the record in terms of the Friends of White Haven were concerned that we're substituting the person that represents their concerned neighbors and

clearly, the intention -- the actual direction and substance of it is the fact that we wouldn't have six people at one time doing cross examination, different topics and expertise, but rather one per party and it seems like we have just one person here. Seems to follow well. There it is. Why don't we have --

MR. NEVINS: I'm Louis Nevins with the -- some citizens of whatever we're called.

I just have one quick question for you, Ms. Hardy. You've -- you've heard a lot of testimony on the -- some of the safety issues and how difficult it's going to be for people entering or trying to get to the entrance that is proposed on Foxhall to look southward and one of the reasons is that -- is the high level of the berm in front of -- of your home.

If this developer came to you and said you know, for the -- for the good of the order, we'd like to cut some of that berm down. We'd really like to lower -- lower the hillside and it might mean that you have a little closer look at Foxhall Road, but it's for the good of the order. Would you be inclined to go along with something like that?

MS. HARDY: No.

MR. NEVINS: No further questions.

VICE CHAIRPERSON MILLER: Ms. Hardy. Ms.

Hardy.

MS. HARDY: Sorry.

VICE CHAIRPERSON MILLER: That's okay. As a follow up, I'm wondering if you would answer why you wouldn't be inclined to do that?

MS. HARDY: Well, the long answers and the short one is that construction on three sides of me would be more than I could take. It would be a considerable disruption and it would -- my property apparently runs along Foxhall Road. It would -- there would be loss of trees and I would be more exposed to the light and traffic of Foxhall Road.

VICE CHAIRPERSON MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Anything else? Follow up for the Board?

I've called all the parties and there's no other cross examination from the parties, the ANC, the Applicant. Ms. Hardy.

MS. HARDY: Thank you.

CHAIRPERSON GRIFFIS: Thank you very much. Let's move ahead then. Who's next? Friends, are we ready?

MR. SNAPE: I see, Mr. Chair, that I'm not able to bank the seven minutes that Mrs. Hardy had

remaining.

CHAIRPERSON GRIFFIS: You need 27 minutes?

MR. SNAPE: I do have one preliminary question on -- on Julie Moore. We are happy to have her be a witness of Friends, but I'm worried that we'll be further condensed with what we thought would be about a 20-minute presentation.

Is she able to be a person in opposition on her own or are we past that point? There was some confusion.

CHAIRPERSON GRIFFIS: Yes, I gave that big window of opportunity.

MR. SNAPE: Well, that was to Mrs. Haas.

CHAIRPERSON GRIFFIS: And no one jumped forward.

MR. SNAPE: We're flexible. I'm just asking, Mr. Chair.

CHAIRPERSON GRIFFIS: Let's just go. Call Ms. Moore if it's part of your case presentation and we'll deal with the time as it comes up with a little bit of flexibility, but not much.

MR. SNAPE: Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Sure.

MR. SNAPE: Mr. Chair, Ms. Vice Chair, and the rest of the Board, my name is Bill Snape. I am

counsel for a group called Friends of White Haven.

As we have publicly stated several times, the Friends are not opposed outright to this special exception application and could indeed support it with several reasonable conditions.

However, over the past several months, the more we have learned about this proposal, the more we have become concerned.

We believe regretfully there remains significant outstanding questions that prevent this Board from approving this present application package. I refer you to the Advisory Neighborhood Commission 3B conditions that were past just last week that we hardily endorse.

As a threshold legal matter, the Friends are seeking protections for both the national park land, White Haven and Glover Archibald and the surrounding community as a neighboring property.

Three D.C. regulatory provisions directly before this Board are pertinent here and I will quickly recite them.

The first is 11 DCMR 3104 which states that special exceptions must tend not to affect adversely the use of neighboring property, in this case the park land and some of the wetlands that we

will talk about.

Second, pursuant to 11 DCMR 25-16-9, the proposed development shall comply with the stand-up provisions of this title and "shall not likely have an adverse affect on the present character and future development of the neighborhood."

And, then, third, under 11 DCMR 25-16-10, there are a series of factors and issues that this Board under law is required to consider including the environment relating to water supply, water pollution, soil erosion, and solid waste management. I will return to the water issues in a second.

I have three substantive issues that I would like to briefly lay out for you that cause us this concern and then I will hand it over to Kent Slowinski who will talk about some of the more technical aspects of our presentation.

As I said several weeks ago, I -- I am just a lawyer.

First on trees, we believe that saving 64 trees out of at least 252 special --

MR. NETTLER: If I might just -- if --

CHAIRPERSON GRIFFIS: Mr. Nettler.

MR. NETTLER: If he is just a lawyer is he going to be because otherwise I'm going to object --

CHAIRPERSON GRIFFIS: Indeed.

MR. NETTLER: -- providing to the Board that this statement is -- is testimony that's going to be provided by his witness or is it testimony that he is being or that -- is it testimony that he's giving regarding trees --

CHAIRPERSON GRIFFIS: Good. His question goes directly to are you going to be cross examined on this? Meaning you're providing testimony.

So, your statement was taken very seriously in just being a lawyer. Are you laying out the legal argument of which your witness is about adopt and flesh out?

MR. SNAPE: I would have no -- the answer is -- well, the answer is that on all technical legal issues like this particularly in the environmental law realm, the facts of the law are integrally related. The issue of migratory birds, the issue of wetland protection have technical components in the law that must be addressed.

I would have no problem with Mr. Nettler cross examining both of us to get at the technical aspects or the legal aspects, but there's a very natural interplay between these issues.

MR. NETTLER: Well, that's not what I was

asking. The issue is whether the statement that he's making --

CHAIRPERSON GRIFFIS: Correct.

MR. NETTLER: -- as to facts regarding trees --

CHAIRPERSON GRIFFIS: Correct.

MR. NETTLER: -- migratory birds and wetlands' issues are statements of fact which this individual is making or statements that he's -- simply a synopsis of what his witness is suppose to be testifying to.

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: Because if he's making them and his witness doesn't have -- isn't -- isn't here to testify as to those specific aspects, then I should be able to cross examine him because he's appearing as a witness --

CHAIRPERSON GRIFFIS: That was my understanding also.

MR. SNAPE: No, I -- I agree with that and I am only going to be talking about facts that are in the record before us and my legal interpretation of those facts. I -- I --

MR. NETTLER: So, I then I may able to object anytime he goes beyond merely a legal

interpretation of those facts if that's what the --

MR. SNAPE: Certainly as it relates to Bill Snape's testimony. Yes.

CHAIRPERSON GRIFFIS: Oh, boy. We're really getting lost here.

Are you providing testimony that will be crossed?

MR. SNAPE: I'm providing an overview of the legal parameters that I think --

CHAIRPERSON GRIFFIS: So, you don't anticipate entertaining cross examination questions?

MR. SNAPE: They might in terms of interpretation of facts that are in the record and whether they're in the record or whether they're not in the record and how the facts in the record relate to what I view are legal obligations of the Applicant.

MR. NETTLER: Well, let's just deal with the -- in concrete terms. In his first -- he is just about to go into trees. I don't see any legal argument being made here about trees. He's testifying as to what --

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: -- is appropriate or not appropriate for -- given the plan that's being presented. Is that he -- is this just a synopsis of

what Mr. Slowinski is going to be testifying about or is this factual information that he is providing?

MR. SNAPE: It's factual information that is in the record. For instance on the trees, just if we can give an example and we can see whether there's a -- an objection that will be upheld, it is clear from the tree survey that has been submitted by the Applicant that many of the saved trees border other people's property and that's in the record. You don't need to be an expert to see that.

CHAIRPERSON GRIFFIS: So, legal -- it's a legal opinion that neither sufficient nor laudable is 64 trees out of 252? Whose testimony is that is the question?

MR. SNAPE: That will be something that Mr. Slowinski will address.

CHAIRPERSON GRIFFIS: Okay. So --

MR. SNAPE: I haven't even had a chance to start yet if you recall, Mr. Chair.

CHAIRPERSON GRIFFIS: Absolutely. We like to get all the objections over with --

MR. SNAPE: I had a chance to read it before though and it says clearly on -- once we move along --

CHAIRPERSON GRIFFIS: I'm clear on what

the objection is and it needs -- and it's sufficient to be clarified and it certainly is -- Mr. Nettler is listening to this case. He's going to need to present it. As far as I understand, you correct me if I'm wrong, your witness is about to adopt all of the testimony that you will summarize as you open.

MR. SNAPE: Absolutely.

CHAIRPERSON GRIFFIS: And he will be crossed on all of the information that's here.

MR. SNAPE: Absolutely. It says on my testimony accompanied by Kent Slowinski. That is why he is here.

CHAIRPERSON GRIFFIS: Clear?

MR. NETTLER: Okay. So, to the extent that anything is stated here. I just don't want to have it come back to say that objections meet cross examining this witness about these statements simply because they're given by his counsel.

CHAIRPERSON GRIFFIS: I could not see after this now having that objection come up.

MR. SNAPE: Okay. I wouldn't count on that, Mr. Chair.

So, on the trees, just to -- to summarize, on the trees, you can see from the information supplied by the Applicant in the record that many of

the trees they are saving arguably must be saved because they certainly from the record indicate that they're on the border of either of Mrs. Hardy's property or the National Park Service property.

Moving on to migratory birds and other wildlife, the concerns we have there. You do not need to be a lawyer to see that there is a fox den on the National Park Service property. Nowhere in the record is the fox den and the health of this fox family discussed. That is a factual issue not in the record or considered by this Applicant.

Second, in the application, there's an assertion that the migratory flight path for migratory birds only relates to waterfowl. This is incorrect based upon records that are in the Park Service's position and that I have seen. These include many declining species of birds including warblers, sparrows, wrens, woodpeckers, flycatchers, vireos finches, hawks, and eagles and as I think I mentioned, last time the cerulean warbler particularly is a species that is a candidate for the Federal endangered species list. It has been cited on and around this property according to Park Service records.

But, perhaps the most serious problem caused by this development proposal, legal problem

caused by this proposal which relate to both the tree and the wildlife conservation concerns that we have is the fact that there are wetlands of Federal jurisdiction on the Phillips property and on the Park Service property.

Nowhere in the record has the Army Corps of Engineers or any D.C. agency indicated what would happen to these wetlands, these accepted wetlands, with the proposal now before this Board.

Indeed, all of the U.S. Army Corps documents in the record support the Friends' view that we should be proceeding with extreme caution and, in fact, they are quoted in Tab 4 of the February pre-hearing statement as reminding the Applicant that any grading or filling of waters of the United States including jurisdictional wetlands is subject to authorization.

To our knowledge, no such authorization has occurred and indeed conversations I've had with the Army Corps of Engineers and the D.C. Department of Health indicate that they have not been consulted on any aspects of the plan as we now know it.

Related to this theme of lack of information for this Board to -- for technical, important information about the health of the wetlands

and the health of the park land, Mr. Parsons I think it was had asked for the preliminary geo-technical engineering report at one of the previous hearings. Well, Mr. Nettler did supply the September 21st, 2004 engineering report and it is clear on page seven of this report that additional borings should be drilled once the building location's proposed lowest levels, proposed cuts and fill, and structural loads are available.

At the time that this report was done, those things were not available and, therefore, I would argue as a matter of law this report is preliminary and cannot be used to support this development. There is no final report that I am aware of on this central issue.

I would urge this Board to hear from the U.S. Army Corps of Engineers or the D.C. Department of Health, the Water Quality Office to understand the impacts of this development -- this proposed development on the Federal wetlands.

Mr. Slowinski will talk about the most recent grading plan and our assertion that the Applicant continues either to fight or simply to level the steep grades that mark the natural topography of this property and of the adjacent park land.

Before I hand it over to Mr. Slowinski, I would like to talk about three conditions that the Friends are requesting that this Board adopt in addition to the ANC-3D conditions that we again hardily endorse.

One related to additional protection of trees. Mr. Slowinski will address that.

Second is the -- wildlife experts who help protect the fox den which we think ought to be addressed since the Applicant has not addressed it at all.

And third, to repeat, we really need to hear from the U.S. Army Corps of Engineers and the D.C. Department of Health on this final plan or near final plans as they relate to wetland protection. We have great concerns that we'll not only be violating Federal and D.C. law with regard to this proposal, but that it directly relates to the very factors that you're suppose to be considering as you decide upon this special exception.

So, with that, I will hand it over to Mr. Slowinski who will add some details to the overview I have given.

Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Thank you.

MR. SLOWINSKI: Good afternoon. My name is Kent Slowinski. I'm the Chair of the Friends of White Haven. I have 22 years experience as a landscape architect with LDR and Kent Slowinski Landscape Architecture.

I grew up in Spring Valley in Wesley Heights and I've lived in the neighborhood and enjoyed the benefits of Glover Archibald Park for 48 years. I live one long block north of the old Phillips estate on Dexter Street.

My main concern is that what happens on the Phillips property impacts wetlands on two national parks. The Phillips wetland flows into the adjacent White Haven wetland which flows into Glover Archibald Park wetland as you see on attachment A.

Not all known wetlands are documented on the D.C. wetland map.

Last Sunday, I walked the site. I -- I had permission from Mr. Vissery to photograph the albino deer. Joining me were ANC Commissioners and a biologist from the Fish and Wildlife Service.

We identified a perennial stream in the vicinities of lots A3, A5, and the proposed Foxhall Road entrance approximately 400 feet northwest of the designated wetland. See attachment B.

We estimated the flow to be two gallons per minute. The stream was already tagged as wetland with pink and black striped ribbons.

Adjacent to the stream was a stand of willow trees and cattails on approximately one acre of wetland that was not tagged. This western wetland is separate from the eastern wetland which was identified in the pre-hearing statement as possibly being augmented by a broken water line.

This western wetland and perennial stream suggest that the eastern wetland might also be a nature wetland fed by a perennial stream.

The true extent of wetlands and streams both natural and manmade should be accurately documented and peer reviewed by an independent third party.

Steep slopes. On several occasions, representatives for Phillips LLC presented their developing plans to the community. Each time we were reassured that they were working with the existing contours and fitting the roads to the topography.

I was especially interested in seeing how they proposed to do this as a quick slope analysis shows that the site is approximately one-third slopes exceeding 20 percent, one-third slopes ten to 20

percent, and one-third slopes less than ten percent. See attachment C.

It's a difficult site to develop. Roads on steep slopes require extensive grading which results in extensive tree loss. Extensive tree loss results in increased storm water runoff, erosion, and sedimentation.

Approximately 90 or approximately 80 percent of the property drains to the wetland which flows onto the White Haven wetland. The wetland serves as a bio-retention basin slowing runoff and filtering sediments and pollutants.

As storm water flows are increased, the wetland will dry out or excuse me. If storm water flows are increased, the wetland will erode. As storm water flows are decreased, the wetland will dry out and die.

Extensive regrading. When I saw the grading plan with existing contours for the first time just last week, I realized they weren't working with the contours. Instead, they are working the contours. Instead of working with the steep slopes, the proposed solution is to get rid of the steep slopes by regrading most of the site. Approximately ten to 20 feet from the W Street area will be excavated and 20

to -- ten to 20 feet of fill will be placed on what might be manmade wetlands.

The slope of the southern wetland will be approximately 30 feet high, 300 feet long and more than 30 percent steep. The dimensions are similar to an infamous retaining wall in the neighborhood that many of you are familiar with.

Unfortunately, the Phillips site isn't protected by tree and slope overlay.

Approximately 80 percent of the site will be regraded. Removing native vegetation from most of the site. See attachment D.

Such extensive regrading will increase tree loss, storm water runoff, erosion, and sedimentation. Filling in the wetlands will eliminate the bio-retention benefits, removing sediments and pollutants and reducing storm water runoff.

Tree preservation. There are approximately 230 trees per acre on the four acre eastern woodland as stated in the developers pre-hearing statement or approximately 900 trees.

This area has steep slopes. Some more than 33 percent.

If the intent is to save trees, the last thing you want to do is place a road on steep slopes.

A better alternative is to move the road to the side of the woodland ridge and fit the houses to the slope among the trees.

The proposed regarding requires retaining walls some up to 12-feet high. See attachment E. Some of which are built within the tree root protection zones. One and a half feet per inch caliper for poplar. One foot per inch caliper for beech and one-half foot per inch caliper for oak.

The proposed cut and fill will likely impact the sensitive poplar and beech roots.

One stand of trees on the southwest portion of the site is completely encircled by retaining walls. Many of these retaining walls and the corresponding fill will disturb the root protection zone of trees to be saved. There is no information on these 12-foot high retaining walls such as engineering, footing depth, materials, limits of grading or tree root protection zones.

I'm going to skip ahead in the interest of time.

Recommendations. With valuable woodland and wetland habitat on this site and wetlands downstream on two adjacent properties and the longest running migratory bird study on the adjacent National

Park, shouldn't we require or at least encourage environmentally sensitive development?

The Friends of White Haven are not against development. We're for good development, but all begins with environmentally sensitive site planning and design and as former Interior Secretary Bruce Babbitt said eternal vigilance.

I have enclosed some proposed conditions and I thank you for your attention.

CHAIRPERSON GRIFFIS: Thank you very much. That's it?

MR. SNAPE: The only question I would have, we're done with our testimony --

CHAIRPERSON GRIFFIS: You've got plenty --

MR. SNAPE: -- relates to the issue of evidence and what's going to be in this record.

I would just like to -- I know the normal practice, Mr. Chair, is that the record closes at the end of today because the hearing will be over and I have no idea obviously what this Board will decide with regard with what to do with this application. I would like to suggest, however, given the changing nature of these proposals, the technical nature of these proposals and I think the issues that are now before you that you -- I respectfully ask that you

consider keeping the record open if indeed that will help you make a decision because I think there are some data gaps that might help you.

Maybe not. You may -- I may be barking up a tree that you're not at, but --

CHAIRPERSON GRIFFIS: No, but you need to be specific. You've mentioned several times the Army Corps of Engineer study or report --

MR. SNAPE: Right.

CHAIRPERSON GRIFFIS: -- on their review. It is your understanding that that's a requirement that would have to happen based on the different phases of the development plan that goes through?

MR. SNAPE: Yes, and -- and particularly in conjunction with D.C. Department of Health. I have been --

CHAIRPERSON GRIFFIS: Okay.

MR. SNAPE: Yes.

CHAIRPERSON GRIFFIS: Do you see them as an authority of which they could change a plan that was submitted to them for review? Do they have approval process?

MR. SNAPE: Yes, certainly with regard to a proposal that would fill a wetland under section 404 of the Clean Water Act. Yes.

CHAIRPERSON GRIFFIS: So, conceivably, this went forward positively with some iteration from us and it went to the Army Corps, there would be nothing that prohibited them from changing any aspects that we -- we approve.

MR. SNAPE: No, but you're at a point -- I mean the -- the Army Corps as I described just this morning tend to be overwhelmed with a lot of these types of disputes and you -- what you're setting up is at that point legal conflict down the road where perhaps you could prevent that train wreck now.

It is true that there will be legal options down the road to deal with allegations that wetlands are filled.

CHAIRPERSON GRIFFIS: Is there any reason why the Army Corps wouldn't be here now?

MR. SNAPE: You know, I don't know. We certainly could have asked them. It was late in the process reading these recent grading plans that we realized the centrality of the stuff they had in the record and that was good up to a point, but that was insufficient for any reasonable person to make a decision.

CHAIRPERSON GRIFFIS: Just to be clear to -- perhaps it's a -- you didn't ask them to be a

witness?

MR. SNAPE: No, I -- it was this morning and yesterday and I didn't feel as though that was my -- I mean we're -- we're a party to this. We're a private party. It seems to me that as a Government agency -- I mean the people I was talking to, I could not have --

CHAIRPERSON GRIFFIS: Sure. I'm not saying it was your responsibility. I just want to clarify --

MR. SNAPE: No.

CHAIRPERSON GRIFFIS: -- so we don't spend a lot more time on that. Okay. But, are you calling Ms. Moore?

MR. SNAPE: Yes.

CHAIRPERSON GRIFFIS: Let's do that. You are Julie Moore, the conservation biologist?

MS. MOORE: Among other things. Yes. I am Julie Moore.

CHAIRPERSON GRIFFIS: The secret witness.

MS. MOORE: Yes.

CHAIRPERSON GRIFFIS: Excellent. If you wouldn't mind just stating your address for the record.

MS. MOORE: I live at 1428 Cedar Avenue,

McLean, Virginia.

CHAIRPERSON GRIFFIS: And what would you like to tell us?

MS. MOORE: Rather than you all ask me questions? I was asked to look at the site by Ann Haas who's on the --

MR. NETTLER: Can I raise an objection? To the extent that she's now going -- without people asking her questions now going to testify essentially what's already been submitted into the record, I think that's inappropriate. She can -- if she's going to be brought as a witness of this party, they can certainly ask her questions, but the redundancy is not -- I don't think it's appropriate here and by being called as a witness, she can certainly be cross examined as to that. But, I don't think giving the same statement that's already been given is appropriate.

CHAIRPERSON GRIFFIS: Okay.

MR. SNAPE: Mr. Chair, there's no independent analysis of the impact of wetlands beyond the parties in this case. That's been one of the fundamental problems of the application package.

CHAIRPERSON GRIFFIS: Okay. Which --

MR. NETTLER: Absolutely, that's not true, but let's not get into that issue.

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: What I'm talking about is --

CHAIRPERSON GRIFFIS: Let's reach this thing and rather be redundant of you having to repeat everything that we have in already and -- and frankly, in terms of page four of the submission of the case presentation, do you -- is it your reasonable recommendation is to lay roads that fit the topography; two, to reduce the lot sizes to save valuable wetlands; three, preserve more trees and groves; and four, to save certain percentages of native vegetation on each lot?

MS. MOORE: That was a summary of the recommendations I made at looking at the site. We discussed wetlands here today a good bit. I mapped all of eastern North Carolina wetlands in the mid-'80s. I feel that I'm qualified to address what's a wetland and what isn't and some of the questions that have been asked today I think the recommendations I was making were to help protect those wetlands.

CHAIRPERSON GRIFFIS: Okay.

MS. MOORE: That was the point. Was it wasn't for aesthetic reasons or any other reasons. It was because there were features on this site that were both hard to interpret and also very fragile.

That these recommendations were made in regard particularly to the wetland situation and the fact that that's a very complicated site both due to past land use and also to the unusual drainage patterns in that property.

Surprisingly enough, there are a number of springs on that property that generate a tremendous of water in addition to the broken mains that at one time were pumping water through the area.

CHAIRPERSON GRIFFIS: You walked the site on this photographic journey of albino deer?

MS. MOORE: I walked this site in December with Ted Visnick the first time and then yesterday -- whenever that was looking for the deer, we were there, too.

CHAIRPERSON GRIFFIS: Okay. And so, you helped identify some of these wetlands that have now been discussed?

MS. MOORE: I identified them in December. I looked at them again. I also studied the aerial photo and topographic maps.

CHAIRPERSON GRIFFIS: Okay.

MS. MOORE: And you may ask what my interest is in this and it's purely as --

CHAIRPERSON GRIFFIS: Okay. Let's ask

that. Good question, Ms. Miller.

VICE CHAIRPERSON MILLER: What's your interest?

MS. MOORE: Moore. Moore is my name.

CHAIRPERSON GRIFFIS: No, I was giving my Vice Chair credit for the good question.

MS. MOORE: I was asked initially to identify trees. I am in a botanist. I have a Master's Degree in Botany. I've taught extensively. I've also worked for the Corps of Engineers. I now work for the Fish and Wildlife Service in regard to a very different part of --

CHAIRPERSON GRIFFIS: So, it's your job why you care about these --

MS. MOORE: No, this is not -- this is not my job. That's why I'm trying to clarify. This was made by outside expertise and past experience. It was not part of my work with the U.S. Fish and Wildlife Service which is restricted to voluntary agreements for private landowners with endangered species, but it does relate to my former occupations.

CHAIRPERSON GRIFFIS: Okay. How did you get called in from McLean, you said you lived?

MS. MOORE: I guess I work with one of your members of the Advisory Neighborhood Commission

who knew I could identify trees.

CHAIRPERSON GRIFFIS: I see.

MS. MOORE: I can also measure them and estimate ages pretty well, too.

CHAIRPERSON GRIFFIS: What about horoscopes? No, wait a minute.

MS. MOORE: Palms.

CHAIRPERSON GRIFFIS: Okay. Ms. Miller, question.

VICE CHAIRPERSON MILLER: So, do you have expertise with respect to the impact of the development on the deer, the foxes, the migratory birds or just -- or just the trees?

MS. MOORE: No, I can address all those issues.

VICE CHAIRPERSON MILLER: Okay. If the Applicant were to do a site plan in accordance with your four recommendations, what would the difference be with respect to that impact than from the way the plan is now to the way it would be with your four recommendations?

MS. MOORE: The recommendations were made to minimize disturbance to the site. Disturbances aren't only just for the wetlands. You've heard the fact that the site will be graded and that less than I

think it was 20 percent of the site -- ten percent of the site will be left with its natural topography. That's a pretty serious change.

Part of the property along the northern boundary down to the bottom, it's a bowl as one of your former witnesses said. So, the tremendous amount of earth moving that will take place on this site is probably not like anything else that's ever happened in that neighborhood and that earth moving is what needs to be minimized because the earth moving is not only what traumatizes the neighbors when it happens because it will be an extensive change in the topography. Probably with some blasting going on also for the subterranean rock material. So, you have that earth moving which then impacts the wetlands and the whole slopes and -- and actually --

CHAIRPERSON GRIFFIS: But, I think Ms. Miller's direct question is so, you've got the plan proposed. You're saying that there's problems with what they're proposing.

MS. MOORE: I'm saying to minimize --

CHAIRPERSON GRIFFIS: Do you have anyway of actually looking at the plan and giving some indication of how they could change their physical development plan?

I'll tell you we understand. Don't remove some earth.

MS. MOORE: Yes, I could.

CHAIRPERSON GRIFFIS: Don't -- okay. Good. What is it?

MS. MOORE: Work with the topography. Work with the wetlands. Use them an amenities.

CHAIRPERSON GRIFFIS: Okay.

MS. MOORE: It's a beautiful site. I don't know if any of you all have been there, but it really is a dramatic piece of property.

CHAIRPERSON GRIFFIS: Indeed. Okay.

VICE CHAIRPERSON MILLER: So, basically, I hear you saying it would be much better if you -- if you did it this way, but you're not really quantifying that specifically like so many more birds would --

MS. MOORE: I haven't been asked to do that, but I probably could.

VICE CHAIRPERSON MILLER: Okay. And then I -- other --

CHAIRPERSON GRIFFIS: Wait a minute. You could estimate how many birds would be impacted if this development went through?

MS. MOORE: No, but you estimate the existing forest cover and you -- then you estimate the

removal of that forest cover and from that, you can predict to some extent what the changing patterns will -- use by that area will be.

It's not so much there will be three of this less and four of that, but if you do remove some of the trees, particularly, used by the nesting birds, you can pretty well figure out that you've lost that number.

CHAIRPERSON GRIFFIS: How many acres are in this site?

MS. MOORE: Sixteen.

CHAIRPERSON GRIFFIS: How many acres are adjacent that are wooded?

MS. MOORE: You have a -- two park strips, one directly beneath to the south, and then the major part, but the areas used currently is the issue by these species. You're not anticipating they'll be there. They will be displaced.

CHAIRPERSON GRIFFIS: Right.

MS. MOORE: And when they move into the adjacent land, they will be in competition with the species that are already there.

CHAIRPERSON GRIFFIS: Okay. So, we're at full density for species in the wooded areas? Is that right?

MS. MOORE: Pretty much. Yes.

CHAIRPERSON GRIFFIS: Wow. That's a concern. Okay.

MS. MOORE: Their displacement.

VICE CHAIRPERSON MILLER: You also make the statement about laying the roads so that they fit with the topography. Have you seen any plan of a road layout like that that you would recommend instead of the road layout that's before us?

MS. MOORE: Do you mean for this specific property or for other properties?

VICE CHAIRPERSON MILLER: For this property.

MS. MOORE: I have seen one or two suggested layouts that were just based on that very premise that was addressed. That was -- I actually took the development plans myself and drew them on top of the existing topography to see what the impacts were. That now has been produced and shared with people, but to me, that was how I analyzed what the issues were by looking at the situation and so, I -- I think that there are good plans that can be made for this property.

There's one that was proposed, but other ones could be proposed based on the fact you put your

existing topographic map and then you work your road system on top of that rather than vice versa.

Because what happens if you plan your development and then put the topography, then you got to change the topography and that's when the earth moving comes in.

VICE CHAIRPERSON MILLER: Yes, I understand that. Okay.

MS. MOORE: Okay.

VICE CHAIRPERSON MILLER: But, no one has put that in the record as far as you --

MS. MOORE: I don't know if it's in the record.

VICE CHAIRPERSON MILLER: As a proposal.

MS. MOORE: I've -- I've seen one that this gentleman has developed, but I'm sure other ones could be developed, too. It's -- it's quite possible. This is a very nice plan that leaves some wetlands protected and gives public open space to the community.

This is going to be a very nice neighborhood and if I was living there, it would be great to have some space where you could walk both with your children and your animals or just walk and it -- within the community and not just on the roads

between the houses.

MR. SNAPE: It's one of the -- one of the attachments to Mr. Slowinski's testimony is an example of an alternative.

VICE CHAIRPERSON MILLER: It's an example, but it's not something specifically --

MR. SNAPE: Attachment G.

VICE CHAIRPERSON MILLER: -- you're proposing.

MR. SNAPE: No, it's our proposal, but it's -- it's more -- the reason I'm hesitating is because we actually had an earlier dialogue with the Applicant about this. We were told that that was not feasible for a variety of reasons and -- and I'm trying to be humble and realize there may be other considerations, but this is an example of something that we would put forth that would be ecologically consistent with the topography. I'm not claiming that's the only one and I'm just pointing that out.

But, it -- this proposal does what the current proposal doesn't. It works with the topography. That -- that is our point in issue. It can be done.

MS. MOORE: And also protects the wetlands rather than filling wetlands.

VICE CHAIRPERSON MILLER: Right.

CHAIRPERSON GRIFFIS: Okay. It opens up 44th Street. Connects it into a cul-de-sac. Essentially a turnaround in the center of the site. It exists two -- twice onto W Street. Once onto Foxhall Road. Is that correct?

MS. MOORE: Yes, that's the way it --

MR. SLOWINSKI: That's correct. 44th Street is an abandoned right-of-way.

CHAIRPERSON GRIFFIS: Yes, I know.

MR. SLOWINSKI: There are piles of concrete rubble.

CHAIRPERSON GRIFFIS: Right. The Park Service representative talked a lot about what it was.

MR. SLOWINSKI: One of the principles of environmentally sensitive development is to restore impacted areas and if there is an issue with the height of the houses on W Street, that area could be excavated and that fill could be used to raise the grade on the abandoned 44th Street right-of-way just on the -- just on the owners property.

My understanding is that half of the right-of-way would -- if it's transferred out of the D.C. Government, half of it would go to the adjacent property owners. So, the Park Service would get half

and Phillips LLC would get the other half.

So, that road could be put on the Phillips LLC half and they could restore the area, build it up. Building it up would mean that -- cutting into the bank side access to the driveways on that houses that front on Glover Archibald Park would -- would be minimized.

In addition to reducing the fill there, they could have shared driveways. Two -- two properties share the same driveway. So, there again minimizing the impact.

CHAIRPERSON GRIFFIS: They do that?

MR. SLOWINSKI: This is -- this is one --

CHAIRPERSON GRIFFIS: Okay.

MR. SLOWINSKI: -- one -- one of the ways to get --

CHAIRPERSON GRIFFIS: Understood.

MR. SLOWINSKI: -- access to the lower part of the site and avoiding the steep slopes.

CHAIRPERSON GRIFFIS: Good. Okay. Any other questions?

VICE CHAIRPERSON MILLER: Oh, one more and I don't know who wants to answer this, but it's in Mr. Snape's testimony that the property has over a hundred different birds species and I'm wondering what's the

source for that?

MR. SNAPE: The source is data that's in the Park Service files. Fifty years of data from the Rachel Carson Society. Shirley Briggs who just recently passed away married the Imperia who's actually still alive. They kept files, incredible files of bird sightings, fall, winter, summer and they -- they note all of the species that have been observed.

One of the -- a lot of them are in Glover Archibald Park. One of them -- one of the sites though that they observed and that was a regular checking was point was right at the intersection of the White Haven National Park, the Glover Archibald Park, and the Phillips property. That was one of their locations that they would look for birds and that's -- I'm basing it from that.

VICE CHAIRPERSON MILLER: Okay. Thank you.

CHAIRPERSON GRIFFIS: Any other questions? Yes, Mr. Parsons.

MEMBER PARSONS: Mr. Snape, you -- you speak of a fox den that is to the southeast of this subject property. Where is that? Whose property is that one?

MR. SNAPE: It's on the Park Service's line, Mr. Parsons.

MEMBER PARSONS: What would you have the Applicant do?

MR. SNAPE: You know, I honestly don't know. I am just a lawyer, but it was not mentioned.

The fox den -- I mean this is a carnivore It's a -- it's a canid and I know that canids can be displayed sometimes in this type of development. I would just like some independent -- since the Applicant has not mentioned the fox den in his -- in the wildlife impacts, I would like just an independent consultant scientific expert maybe even Ms. Moore to -- to take a look at what things could be done to make sure that fox then survives.

But, I -- I have no specifics except that it wasn't in the Applicant's -- wasn't mentioned in the Applicant's application.

MEMBER PARSONS: Thank you. Mr. Slowinski, find your alternative site plan attachment G, now are there -- are there substantive trees in this Glover Archibald right-of-right or the 44th Street right-of-way that would have to be removed? That's why I'm asking.

MR. SLOWINSKI: The -- the -- go on.

MS. MOORE: If I may answer that for him because I did look at that very carefully, there was an old roadway cut through there perhaps maybe 75 years ago. I don't know how old. Older trees are along the edge and in the center, there are some younger small diameter trees that have filled in what had been the cutout area.

The older trees are on the edges rather than in the middle of the road because that roadway is much younger than the other area.

So, you asked if it's a substantial number of trees there. Certainly, there is a number of small diameter trees, but not many things -- I would say very few trees over maybe five, maybe six inches in diameter from my close look at the area.

Because it -- it was at one time completely open as a roadway fairly recently.

MEMBER PARSONS: Open?

MS. MOORE: Um-hum.

MEMBER PARSONS: You mean paved?

MS. MOORE: Yes, there -- there are places where there is concrete there that shows at one time it was paved slightly below W Street and you can also see -- if you walk in there, you can see a variety of rocks and bricks that were thrown in that area. So,

it may not have been all paved, but they did open it -- they did make it -- a corridor was made in there for the street, at one time cleared for a street.

But, it -- because it has some natural soils in there, adjacent trees have seeded into it. So, it was a fairly wide passageway through that -- through that area. You could easily put an existing road through there now.

MEMBER PARSONS: You may be straying a little bit from your expertise.

MS. MOORE: But, not size of trees.

MEMBER PARSONS: Let me go back to Mr. Slowinski.

MS. MOORE: I'm sorry.

MEMBER PARSONS: And how wide --

MR. SLOWINSKI: Well, it was definitely paved. It was regraded for a road. It's a -- it's a uniform slope from the end of W Street down to the -- the White Haven wetland.

MEMBER PARSONS: So, how wide would this road need to be under code? I don't -- I don't know the answer to do. Do you?

MR. SLOWINSKI: I believe code is -- is it 24 or 26 feet?

MEMBER PARSONS: Don't ask me. I just

wondered if you knew.

MR. SLOWINSKI: The right-of-way is 80 --

MEMBER PARSONS: I don't.

MR. SLOWINSKI: -- the right-of-way is 80 feet. So, half of that would be 40. So, I think you have enough room to work a road in there.

MEMBER PARSONS: I see. So -- so, what this -- this proposal would do I guess is to sacrifice some of the trees along Glover Archibald in the tree protection area that we identified earlier.

In other words, they already got these smaller lots, 14, 15, 16, 17. We're going to have to sacrifice some trees.

MR. SLOWINSKI: No, this would not sacrifice any of those trees. You'd -- you'd sacrifice some of the trees that are --

MEMBER PARSONS: You have to.

MR. SLOWINSKI: -- 44th Street right-of-way.

MEMBER PARSONS: No, on lot 15 for instance --

MR. SLOWINSKI: Okay.

MEMBER PARSONS: -- one of the major preservation sets of trees that's proposed by the Applicant would be impacted. So, if there's a

driveway coming off of your new road to get into the house, I'm presuming they would be sacrificed and I'm not criticizing that. In other words, what you're doing is saving what? A third of the property with -- with no lots on it to save the wetlands and other tree preservation zones, but you're willing to sacrifice -- the result would be, not you're willing, I don't want to personalize this. The result would be you would lose those trees along Glover Archibald Park most likely.

MR. SLOWINSKI: You'd lose some trees before. Fewer trees than if you put a road along the woodland branch.

MEMBER PARSONS: Yes, I understand.

MR. SLOWINSKI: Okay.

MEMBER PARSONS: I just wanted to -- because a major portion of those preservation -- preserved trees by the Applicant I think would be lost under your scheme.

MR. SLOWINSKI: Suppose --

MEMBER PARSONS: Why is this road necessary that goes between the -- the wetland conservation area? It's the Loop Road. Why would you need to drive through a -- the wetland there at all? Because for fire access, a turnaround or -- or -- I

mean it looks like a road through the wetland that isn't necessary or between the wetlands.

MR. SLOWINSKI: You mean the southern part of that loop?

MEMBER PARSONS: Thank you for helping me do --

MR. SLOWINSKI: Yes

MEMBER PARSONS: -- that. Yes.

MR. SLOWINSKI: That's actually a road that was rough graded back in the '80s by -- by John Dregs.

MEMBER PARSONS: The Dregs Road. That's shown on another exhibit. So --

MR. SLOWINSKI: Right.

MEMBER PARSONS: -- it exists --

MR. SLOWINSKI: It exists.

MEMBER PARSONS: And --

MR. SLOWINSKI: And it exists in the field. It doesn't exist on the topographic map. As there is approximately six to ten feet of fill north of the wetland, but it doesn't show up on their existing conditions.

MEMBER PARSONS: So -- so, you did this in order to avoid cul-de-sac or -- or some other device that would be required?

MR. SLOWINSKI: Well, it would make sense to provide easy access to the homes on the northern part of the site and a cul-de-sac takes up space. It takes -- I think it requires a 60-foot diameter.

MEMBER PARSONS: Yes.

MR. SLOWINSKI: So, a road would be less impact and you already have the fill on the site. So, it makes sense to continue the loop.

MEMBER PARSONS: If you -- makes sense. Have you shared this with the Applicant?

MR. SLOWINSKI: I -- I shared a previous version of this that I had drawn up before. I walked the site before I realized that the central portion of the site could, in fact, be man-made or natural wetlands. Actually, I -- I drew this up last night.

MEMBER PARSONS: Ah, so, it's a little fresh?

MR. SLOWINSKI: Yes.

MEMBER PARSONS: I'm just curious about that little pipe stem thing going on up there at W and Foxhall. What -- what -- what happened there between four and five? Just --

MR. SLOWINSKI: That's -- that's one of the features that the developers included.

MEMBER PARSONS: I see. Okay.

MR. SLOWINSKI: Didn't want to rule it out.

MEMBER PARSONS: A little plagiarism there. MR. SNAPE: Comedy.

CHAIRPERSON GRIFFIS: Any other questions? No.

MEMBER PARSONS: Wait. I did have one question of Mr. Snape because he didn't read this statement, but it's pretty -- pretty direct.

It has to do with wetlands. It's on page three and it says "Perhaps the most serious problems caused by this development proposal an issue enteralgia which impacts both tree and wildlife conservation is the high probability if not certainty that the federally identified wetlands in Park Service land and Phillips property will be irreversibly damaged or destroyed."

Now, that's pretty close to expert testimony. Where does that come from? As a lawyer, where did you -- how did you come to that conclusion?

MR. SNAPE: That's a very good question and I'm probably not expert to -- to make that assertion by itself, but where it came from was twofold. One, was the fact that the current plan actually has development on the wetlands. That -- so,

I, not to be glib, but it doesn't take a rocket scientist to figure out that if the development is on the wetland, it will be filled. That was how I got to the Phillips property conclusion and I consulted with Mr. Slowinski on that as well and he agreed with that basic conclusion although perhaps he would word it differently.

On the park land where I think the impacts are admittedly more indirect, I based it on the fact that there are tremendous amounts of fill being added and sometimes as high as 30 feet as I understand it, certainly 20 feet in a lot of areas, without any assurance that -- that there would not be erosion and runoff.

And so, that -- those two -- to me it was -- and -- and my ultimate point in the recommendations as you know the directness of that statement aside is why isn't the Army Corps of Engineers and the D.C. Department of Health making that determination. That was my way of prodding perhaps too directly an expert to actually make that determination, but I -- it seems to me it's fairly clear that there's a huge concern on that level.

MEMBER PARSONS: Thank you.

MR. SNAPE: That's my long winded answer.

CHAIRPERSON GRIFFIS: Good. Anything else from the Board? Mr. Nettler?

MR. NETTLER: If I could just to follow up on Mr. Parsons' last question since it was directed to Mr. Snape, Mr. Snape, when you keep on saying that the Applicant is grading or filling or developing wetlands, you're not talking about the wetlands that are delineated by the Corps of Engineers. You're talking about a wetlands area that the Corps of Engineers has already determined is not a natural wetlands. Aren't you?

MR. SNAPE: I honestly don't know. I think it would be better to have Mr. Slowinski answer that.

MR. NETTLER: Well, but you just responded to Mr. Parsons. You're -- you're -- so, your response to Mr. Parsons was based on what Mr. Slowinski told you?

MR. SNAPE: It's my understanding that the development as it's now planned is directly on jurisdictional waters that the Army Corps of Engineers has identified and in my conversation this morning with George Harrison of the U.S. Army Corps of Engineers, I -- I believed him to say that that was true and that was confirmed that there was an issue as

it related to that identified jurisdiction wetland. Yes.

MR. NETTLER: Mr. Slowinski, is there -- is that true that there is -- that on the plan that you're -- that you looked at that's proposed by the Applicant there is either grading or development on what's been determined by the Corps of Engineers already to be the jurisdictional wetlands?

MR. SLOWINSKI: Based on the pink and black striped ribbons that we saw on the site on Sunday --

MR. NETTLER: No, I'm asking you about the plans that have been filed. Does that show any development, grading or otherwise, in the jurisdictional wetlands? Not about ribbons.

MR. SLOWINSKI: Jurisdictional --

MR. NETTLER: Wetlands that the Corps of Engineers --

MR. SLOWINSKI: -- wetlands --

MR. NETTLER: -- has determined to be jurisdictional wetlands?

MR. SLOWINSKI: As -- as on the plans submitted, no.

MR. NETTLER: No. Okay. So, there is no -- so, and we do have a Corps of Engineers

determination. Is it your position that the Corps of -- Mr. Slowinski, it is your position that the Corps of Engineers determination is not an independent determination?

MR. SLOWINSKI: I -- I do not know.

MR. NETTLER: You don't know whether the Corps of Engineers has been -- is -- is working for the Applicant or somebody else. Is that what you mean?

MR. SLOWINSKI: It may be independent, but it may not be accurate.

MR. NETTLER: But, so far, that's the only other determination that's been made with regard to what's jurisdictional wetlands and what isn't jurisdictional wetlands. Is that correct?

MR. SLOWINSKI: I'm not sure I understand your question.

MR. NETTLER: Well, who else have the authority to determine what are jurisdictional wetlands?

MR. SLOWINSKI: The D.C. Department of Environmental Health.

MR. NETTLER: Okay. And do you know whether the D.C. Department of Environmental Health has -- has determined? You -- you were here when they

testified at the hearing the last time. Did they testify any differently than the Corps of Engineers?

MR. SLOWINSKI: I -- I don't recall.

MR. NETTLER: Okay.

MR. SLOWINSKI: Um --

MR. NETTLER: That's all right. Thank you.

MR. SNAPE: Well, I -- I'll answer that.

MR. NETTLER: No, that's -- the question's not pending towards you. You're not a witness on this -- on --

MR. SNAPE: But, it's a leading -- then I object. It's a leading question and it leads to a conclusion that's incorrect.

MR. NETTLER: Well, it's been asked. It's been asked and answered already.

CHAIRPERSON GRIFFIS: Let's move on.

MR. SNAPE: Hold on. I want to make a point to the Chair, Mr. Nettler.

First of all, we have two expert witnesses here who have similar but not identical areas of -- of expertise. I don't believe Ms. Moore was able to answer that last question.

CHAIRPERSON GRIFFIS: That's right.

MR. NETTLER: Well, I didn't ask Ms. Moore

that question.

MR. SNAPE: Okay.

MR. NETTLER: Well, get to Ms. Moore.

Mr. Slowinski, let me ask you. You're -- you're a landscape architect. Correct?

MR. SLOWINSKI: Yes.

MR. NETTLER: You're not a civil engineer. Correct?

MR. SLOWINSKI: Correct.

MR. NETTLER: You're not a land planner?

MR. SLOWINSKI: I do some land planning in my career.

MR. NETTLER: Okay. Do you do some land planning in the District of Columbia?

MR. SLOWINSKI: Yes, I do.

MR. NETTLER: Okay. You're familiar with the zoning regulations?

MR. SLOWINSKI: Yes, I am.

MR. NETTLER: Okay. The lots that you have set out on Exhibit G to your testimony, have you calculated the front yard/rear yard setbacks that are required for those lots?

MR. SLOWINSKI: No, I haven't. This is something that I drew up as a concept to show that there are environmentally sensitive development

alternatives.

The -- the lots do approximate the required square footage and minimum width of lots.

MR. NETTLER: And what is -- a lot of them are 7500 square foot lots. Is that correct?

MR. SLOWINSKI: Minimum. Yes.

MR. NETTLER: Okay. As opposed to the -- to the average 11,000 square foot lots that the Applicant is proposing?

MR. SLOWINSKI: Correct.

MR. NETTLER: Okay. So, these are smaller lots and this wetland conservation easement area that you have in the center of this, this is not a -- this is not part of the jurisdictional wetlands that the Corps of Engineers has determined to be wetlands. Correct?

MR. SLOWINSKI: Correct.

MR. NETTLER: Okay. And the wetland conservation easement area that you have running against White Haven Park, Ms. Hardy's property, Glover Archibald Park, that's beyond the -- the area that the Corps of Engineers has determined to be the jurisdictional wetlands as well. Isn't it?

MR. SLOWINSKI: Correct.

MR. NETTLER: Okay. The -- let me ask you

one other question about this -- this plan. You have on here this road as Mr. Parsons pointed out that was running along what is presently known as 44th Street and you've testified that it's your understanding that this was once a paved road?

MR. SLOWINSKI: It was regraded for a road. Whether -- whether or not it was paved, it's -- it's -- I'm unable to determined. There are --

MR. NETTLER: Did you ever -- did you ever consult the District of Columbia's either their surveyor's office, Department of Transfers -- Department of Transportation records to determine whether, in fact, this was ever graded as a road or ever used as a road?

MR. SLOWINSKI: Just by visual inspection, you can see it was regraded for a road.

MR. NETTLER: Okay. You're not a traffic engineer also. Are you?

MR. SLOWINSKI: No.

MR. NETTLER: Okay. You're not a civil engineer. Are you?

MR. SLOWINSKI: No, I'm not.

MR. NETTLER: Okay. And you're not an environmental scientist. Right?

MR. SLOWINSKI: I'm a landscape architect.

MR. NETTLER: Just a landscape architect. Okay. Now, with regard to the road that you have running through the top portion of the property, does that one line up with the area that was -- does that line up with the ingress and egress that the present road is on the plan that is prepared by the Applicant?

MR. SLOWINSKI: Yes, it does.

MR. NETTLER: Okay. And this -- this plan as well would require a fair amount of grading. Wouldn't it?

MR. SLOWINSKI: Not as much as what has been proposed --

MR. NETTLER: Have you done the calculations as to how much grading would be required?

MR. SLOWINSKI: I am a landscape architect. I can eyeball.

MR. NETTLER: You can eyeball, but you don't have any calculations as to the amount of grading?

MR. SLOWINSKI: That's correct.

MR. NETTLER: Okay. And do you have any calculations as to the amount of fill that this would require?

MR. SLOWINSKI: No, I don't.

MR. NETTLER: Okay. Do you know whether

Colony Hill, Spring Valley, and Wesley Heights have all been similarly graded as this plan -- the plan the Applicant is providing for on this site?

MR. SLOWINSKI: I know that an effort was made in Spring Valley and Wesley Heights to preserve trees and to lay the roads to fit the topography.

MR. NETTLER: Right.

MR. SLOWINSKI: And this plan is more in line than what the -- has been proposed.

MR. NETTLER: Okay. But, in terms of the grading that was done in Spring Valley and Wesley Heights and Colony Hill which served as a backdrop for the Applicant's plan, wasn't the grading similar that was done there as -- as what's being proposed here?

MR. SLOWINSKI: It's my understanding that Spring Valley and Wesley Heights were used as examples for lot sizes.

MR. NETTLER: That's your understanding as to the only basis for using those?

MR. SLOWINSKI: Well, I -- I see very little -- what's the word? I see very little similarities in the way the roads fit the topography.

MR. NETTLER: Okay. Are you a registered landscape architect?

MR. SLOWINSKI: I -- I was registered up

until two years ago.

MR. NETTLER: Do you -- were you present when Mr. Barnes testified as to the need for grading and Mr. Pitchford testified the need for grading that was done -- being done to save a significant amount of trees? That the grading that was being proposed was done in a way to preserve trees? Do you recall that testimony? I know it was over a month ago now.

MR. SLOWINSKI: Not specifically. I -- I couldn't say that. I couldn't recall.

MR. NETTLER: Okay. Now, even if the roads followed the contours on the site, wouldn't it still have to be graded out?

MR. SLOWINSKI: Yes.

MR. NETTLER: Okay. And would it be safe to develop the site without any type of grading?

MR. SLOWINSKI: No.

MR. NETTLER: The bird sightings that were mentioned as part of the records of the National Park Service. Those are bird sightings on Park Service property. Correct?

MR. SLOWINSKI: One of the -- or one of the marker trees is visible from the property.

MR. NETTLER: Well, though --

MR. SLOWINSKI: It is -- it is on National

Park Service property.

MR. NETTLER: -- it was mentioned that I believe you adopted the testimony that there is all these records that the Park Service keeps about -- about bird sightings that are just legion including Rachel Carson Society records and so forth, but those are only bird sightings on the Park Service property and not -- they're not bird sightings on the -- on the property owned by the Phillips -- on the Phillips property.

MR. SLOWINSKI: I walked once with Neil Fitzpatrick.

MR. NETTLER: I'm asking you about the records that are kept.

MR. SLOWINSKI: They -- they do include bird sightings and sounds. They record the sounds of the birds and some of the birds can be actually on this property.

MR. NETTLER: They can be, but they don't show on those -- on all those records that you make mention of.

MR. SLOWINSKI: Actually, they do. They do. They have trails that are set up and the way they mark it, they'll -- they'll put an arrow in the direction in a -- in a line a feeder to the -- the

area where the bird was either sighted or heard.

I walked once with Neil Fitzpatrick of the National Audubon Society and it's pretty incredible what a birder can identify and I -- I -- I would say that some of the birds that have been sighted or heard were on this property.

MR. NETTLER: Okay. And those are on those records that you referred to?

MR. SLOWINSKI: Yes.

MR. NETTLER: Do you have a copy of those records here?

MR. SLOWINSKI: I can -- I can --

MR. SNAPE: I have a copy of those. Not here, but I have a copy.

MR. NETTLER: Ms. Moore, the site, you did I gather two visits to the site. Correct?

The interior of the site is overrun with invasive and exotic -- and mostly exotic vines and shrubs. Is that correct?

MS. MOORE: Certainly a lot of the interior is.

MR. NETTLER: Okay. And this very heavy density of these vines has eliminated the majority of the forest regeneration in that part of the property. Hasn't it?

MS. MOORE: It could be that that -- there's some disturbance that's been continuous in that center part of the site. The vines are a secondary product of whatever that disturbance was.

MR. NETTLER: Okay.

MS. MOORE: And they certainly do interfere with natural reproduction of trees.

MR. NETTLER: Okay. But, the tree canopies is along the perimeter of the site are pretty thick. Aren't they?

MS. MOORE: Yes.

MR. NETTLER: Okay. And the perimeter of forest would you say stands at a climax in the stage of forest development?

MS. MOORE: I'd say a large part of it is at what we call climax condition which means it's a mature forest that's characteristic of the area.

MR. NETTLER: Okay. And these stands are pretty typical of the -- would you say of the tulip poplar forest associations that are found in the mid-Atlantic area?

MS. MOORE: I'd say they're --

MR. NETTLER: Tulip poplar or white oak.

MS. MOORE: -- I'd say that -- yes, I think they're -- I'd say their characteristic of this

Potomac River drainage. I wouldn't go so far as to say all of the southeast.

MR. NETTLER: Okay. And when you have a lot of -- when you have mature trees that are in a climax stage if -- it's possible that if they're over mature that they're apt to fall in the short-term. Aren't they?

MS. MOORE: Just as damaged trees do that also, but the issue of a mature forest is it's also self-reproducing and so that it -- you have younger trees and older trees and so you have as -- as the old ones go down due to either storms or tip overs that there will be other ones that fill them in.

MR. NETTLER: Right. And you -- did you have a chance to look at the different tree surveys that have been done on the site?

MS. MOORE: Yes, I have.

MR. NETTLER: Okay. And those surveys identify not just the mature trees. They identified late successional stage of development of trees -- the late successional stage of development. They identified very, very small trees. They -- they identified trees that were covered by District's tree ordinance. Correct?

MS. MOORE: That's what was indicated on

the maps. They did.

MR. NETTLER: Okay. And they made distinctions between those trees that were likely to fall, trees that were covered by the -- the tree ordinance, and trees that were not covered by the tree ordinance.

MS. MOORE: As best I can interpret them reading what the legend was, that's what they said they did.

MR. NETTLER: Okay. And wouldn't you say that the best approach on a large site like this for tree protection is to concentrate on the grouping of trees?

MS. MOORE: Well, certainly.

MR. NETTLER: And which obviously enables us to preserve more trees.

MS. MOORE: That's what I recommended. Yes.

MR. NETTLER: Right. And if you enclose these groupings of trees with whether it's fencing or whether it's -- it is other types of protective barriers to prevent development from impacting the roots, you have a better chance of preserving those stands of trees. Don't you? Do you not?

MS. MOORE: You certainly do.

MR. NETTLER: Okay.

MS. MOORE: But, sediment, moving over sites, is one of the quickest things to kill trees particularly beeches and tulip poplars which have extremely sensitive root systems as do dogwoods and any kind of movement of -- new movement of water or sediment through those areas where you set things aside, frequently create problems that you don't anticipate. So --

MR. NETTLER: Right. And that's -- and so, it's up to the arborist working with the construction people and with the planners to make sure that to the extent that any of that sediment is being moved or fill is being put in it doesn't impact those trees that are trying to be protected. Correct?

MS. MOORE: Well, ideally you plan it before it could happen so the arborist isn't out there putting in fences to make sure it doesn't happen.

MR. NETTLER: Right. So, to the extent that the arborist is recommending certain fences as -- as --

MS. MOORE: No, you don't understand. You plan so you don't have the problem. The fences are the last resort.

MR. NETTLER: The -- with regard to the

storm water management plan, did you have any opinion regarding the storm water management plan?

MS. MOORE: I'm not qualified to address storm water management plans other than the fact there was a lot of impervious surface on hillsides. It would be moving a tremendous amount of water from the top of the sight down to the bottom and that it didn't look like there was an adequate -- the design was not quite adequate to take care of the amount of water that would be moving down the road.

MR. NETTLER: Not based on any expertise that you have in this area?

MS. MOORE: No, not specifically.

MR. NETTLER: Okay.

MS. MOORE: But, I would -- may I mention one thing that is confusing about wetlands? It's --

MR. NETTLER: Well, I don't think there's a pending question. So, I don't think so.

MS. MOORE: Okay. The Clean Water Act --

MR. NETTLER: I said

CHAIRPERSON GRIFFIS: No. No. No, he's got to ask the question. You have to answer a question. That's what his point was.

MR. SNAPE: I thought it was a continuation of her answer, Mr. Chair.

CHAIRPERSON GRIFFIS: Not when she says might I offer --

MR. SNAPE: Answers are frequently more than one or two sentences long. I mean she said --

CHAIRPERSON GRIFFIS: Understood. Mr. Nettle --

MR. SNAPE: -- she -- she gave a response and then she --

CHAIRPERSON GRIFFIS: -- follow-up --

MR. SNAPE: -- there was a clause connecting that. I mean it seems to me that it was rationally connected to what she was already saying.

CHAIRPERSON GRIFFIS: Let's move along.

MR. NETTLER: I don't have any other questions.

CHAIRPERSON GRIFFIS: Good. Last word. We'll -- the sentence then. What were you going to say about wetlands?

MS. MOORE: The issue isn't simply not building on a wetland. It's also the sedimentation that moves into a wetland.

CHAIRPERSON GRIFFIS: Indeed.

MS. MOORE: That is what the Clean Water Act addresses and that is where the problems come in addition to the building in a wetland.

CHAIRPERSON GRIFFIS: Okay. Let's talk about that in terms of now the -- the point that you made with the wetlands, but also the point that you were talking about the trees and -- and obviously, the most devastating thing could be where soil is moving over the root system. Basically, burying the tree.

MS. MOORE: I said that's one of the things that happens.

CHAIRPERSON GRIFFIS: Okay. I'll get the question out in a second and so, my -- what my concern is or what I'm unclear on is that a construction time period condition that you're concerned with?

MS. MOORE: No, I'm concerned about the plans that's fitted up. If you're not careful, no matter how many fences or whatever you put in, it can't stop it if the volume is too high because the design is odd.

CHAIRPERSON GRIFFIS: But, you're talking about after it's all built out you're thinking that sediments going to be eroding all the way down or is it during construction? You got bulldozers that are moving sediment.

MS. MOORE: I'm concerned about in the initial stages when the land is --

CHAIRPERSON GRIFFIS: During construction?

MS. MOORE: Yes.

CHAIRPERSON GRIFFIS: Construction is your concern?

MS. MOORE: Design come first and then the construction comes second.

CHAIRPERSON GRIFFIS: But, design, what does that mean? You mean you have a blank land and you want to regrade the whole thing and then you come back and implant the trees?

MS. MOORE: No, that's exactly what I'm trying to say you don't do.

So, often we think that we can stop erosion on a site and frequently, we can't because of the volume -- unknown volumes of water or storm events. So, you plan so you don't set it up to have a problem to start with.

CHAIRPERSON GRIFFIS: But, you're saying if you put up -- if you put up fencing to protect trees, then you obviously haven't planned well. So, what is the planning?

MS. MOORE: No, I'm saying you have to -- you have to do both. It's a --

CHAIRPERSON GRIFFIS: So, your statement in answer to the question is it's too late if you have to put up fences is not correct?

MS. MOORE: I said frequently it's too late by that time because it's the design of the operation that protects the trees not the fences. The fences are a secondary issue.

CHAIRPERSON GRIFFIS: Indeed. For those -- as you said, for those conditions where you cannot anticipate, the hundred year storm. Was that this case? We were doing that. No, it's probably something else. Okay.

So, in those conditions where you have a heavy rain or something that you obviously don't totally anticipate, but you're saying design the roads correctly so you don't have a lot of sediment erosion or movement.

MS. MOORE: Certainly. That's exactly it. So, that then the fencing becomes to keep the vehicles out rather than to keep the sediment out.

CHAIRPERSON GRIFFIS: Or a construction aesthetic. No, I'm kidding. I know. Okay.

What's the next? Anything else?

VICE CHAIRPERSON MILLER: I was wondering if Mr. Nettler would clarify for the record what jurisdictional wetlands are as compared to non-jurisdictional wetlands?

MR. NETTLER: Jurisdictional wetlands are

the wetlands areas that are -- that the Corps of Engineers has the authority over and which are required to be protected from the type of issues that we've been talking about here and the Corps of Engineers has -- in the submissions that we've made has made a determination as to what those wetlands are on this site, what are not wetlands and the buffer areas that's being provided for the wetlands so as to protect them from the types of things that have been suggested as being possible adverse impacts on those wetlands.

CHAIRPERSON GRIFFIS: Are there certain restrictions with wetlands in terms of building areas? The setbacks?

MR. NETTLER: Twenty-five feet buffer area from the wetlands.

CHAIRPERSON GRIFFIS: Okay. So, if --

MR. SNAPE: That is not a requirement. Twenty-five foot just for the record. I specifically asked that question this morning.

CHAIRPERSON GRIFFIS: So, you don't think there's any setback requirement from wetlands?

MR. SNAPE: It's a rule of thumb. I asked is there a rule or regulation and the Army Corps of Engineers officer who I talked to this morning said

no, that that is a general rule they use in the District to deal with these issues, but it depends on the topography, you know, all these other environmental factors that have been just discussed.

CHAIRPERSON GRIFFIS: But, he's not saying, you know --

MR. NETTLER: It's a regulation of the District of Columbia.

CHAIRPERSON GRIFFIS: -- you can have a wetland, but -- right. But, you can have a wetland, but conceivably there would be no setback. There's always some sort of setback distance away from wetland.

MR. SNAPE: That's right.

CHAIRPERSON GRIFFIS: The 25 feet is what you're saying is not necessarily --

MR. SNAPE: Right. And I asked Mr. Greg Hope this morning who's with the D.C. Department of Health whether the 25 foot is a D.C. regulation and he said no. Now, maybe he's wrong, but I've been trying to get at this 25 foot issue and neither the Corps nor the D.C. Department of Health was able to verify precisely where that came from until the Army Corps of Engineers guy who I called back said it's a general rule of thumb.

CHAIRPERSON GRIFFIS: Okay. But, we're talking about generally here.

She's asking the big question of what's a jurisdictional wetland. I don't want to banter about whether it's 25/24 or 100 feet setback on this based on the grade of it.

So, the issue is if it's jurisdictional, it doesn't mean that you couldn't have a wetland or a water standing on a piece of property which may actually look exactly like a wetland, but jurisdictional wetland will have those requirements around it in terms of the development --

MR. NETTLER: Well, it has to -- a wetlands that's covered by the Corps of Engineers and that's protected by the Corps of Engineers has certain characteristics about it.

One of the -- one of the things that it's not -- that it's not something that's created by man or -- or -- and that's this area that in our view has been -- and the Corps of Engineers has agreed has been suggested in the center of the site that is non-natural wetlands area and so, it's not protected.

MR. SNAPE: The Army Corps of Engineers does not agreed with how Mr. Nettler just describe it. He's over stating it.

MR. NETTLER: Well, all we have -- all we -- all we have --

MR. SNAPE: Okay.

MR. NETTLER: -- in the record is what the Corps of Engineers has said as a determination on it. I'd object to any hearsay coming in here since --

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: -- what we have is two statements from the Corps of Engineers. Both their statement on the -- on the site which is a -- if you -- you have a map that was filed with the application as well as a statement that was in the letter that was provided to us as to what the wetlands area is.

If the Corps of Engineers is going to change that determination, that's something we're going to have to deal with, but that's all that's in the record at this point and nothing else and to say that the Corps of Engineers has changed that, I don't think is appropriate.

MR. SNAPE: No, it's in -- it's in -- it's in Tab 4.

CHAIRPERSON GRIFFIS: Okay.

MR. SNAPE: No, this is a -- Mr. Chair.

CHAIRPERSON GRIFFIS: I understand it's in the report in point, but it's more important that Ms.

Miller gets her question answered.

MR. SNAPE: All right.

CHAIRPERSON GRIFFIS: And the we can move on to you to rebut it or answer it also.

MR. SNAPE: All right. Thank you, Mr. Chair. I apologize.

CHAIRPERSON GRIFFIS: So, we'll just slow down the pace here and get through this. Anything else?

VICE CHAIRPERSON MILLER: I -- I was really just looking for a general answer and I know you have different interpretations of what might be required and I don't really want to get into that argument right now.

I just want to also just understand terminology. If there's -- if there's water in the middle of this property that is not jurisdictional wetland, is it still referred to as a wetland or is it just referred to as water?

MR. NETTLER: Well, it's water. It's -- it is water that is being created because of a break in a pipe and so, it is water. It's not --

VICE CHAIRPERSON MILLER: It's not -- in your view, it's not wetlands?

MR. NETTLER: That's correct.

VICE CHAIRPERSON MILLER: And now, in your view, it is wetlands?

MR. NETTLER: It's not protected wetlands.

MR. SNAPE: My view is I'm a lawyer and I don't know.

VICE CHAIRPERSON MILLER: Okay.

MEMBER PARSONS: Mr. Chairman, can I jump in here?

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Of course.

MEMBER PARSONS: These two witnesses who are arguing with each other shouldn't be arguing with each other and shouldn't be testifying and if we want the answers to these questions, Mr. Nettler -- you'll get them from -- from somebody else.

CHAIRPERSON GRIFFIS: Um-hum.

MEMBER PARSONS: Because this banter of -- of two lawyers --

CHAIRPERSON GRIFFIS: Isn't going to be productive.

MEMBER PARSONS: -- is not helpful to me.

CHAIRPERSON GRIFFIS: Indeed. But, I thought that three lawyers together might be.

MEMBER PARSONS: Well, yes, I --

CHAIRPERSON GRIFFIS: And it's -- that's

just my own mission of --

MEMBER PARSONS: But, I'm going to ask --

MR. NETTLER: Mr. Parsons, I was asked for a legal --

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: -- question -- I was asked a legal question. I was not asked --

CHAIRPERSON GRIFFIS: I think we digressed a little bit. Mr. Parsons point is in all seriousness. I mean Ms. Miller really wanted a very, very general answer to the question of what's a jurisdictional wetland and I think that has been provided. Correct?

MR. SNAPE: Well, she did just ask me a question that I was going to answer. So, I'll --

VICE CHAIRPERSON MILLER: You know, it has. I don't really want you all to pursue this. I just wanted to know the terminology when you were bantering about with certain words what you were referring to and I understand that at this point.

CHAIRPERSON GRIFFIS: Okay. Any other questions of the Board? Mr. Parsons.

MEMBER PARSONS: I did want to ask Ms. Moore. You're familiar with Mr. Slowinski's Exhibit B.

MS. MOORE: Yes.

MEMBER PARSONS: And you said earlier that you were an expert in identifying wetlands?

MS. MOORE: Yes.

MEMBER PARSONS: And have you -- admittedly, these are kidney-shaped scheme -- schematic drawings. So, as I understand it, the southern wetland is the one that's been identified by the Corps of Engineers or -- or in the previous process.

MS. MOORE: Correct.

MEMBER PARSONS: Is that your understanding as well?

MS. MOORE: This goes back to Ms. Miller's what's a jurisdictional wetland versus what's a wetland?

MEMBER PARSONS: Right.

MS. MOORE: What makes a wetland a wetland is the hydrology, how much water there is and it can be permanent. It can seasonal. It can be a saturated site.

MEMBER PARSONS: Sure.

MS. MOORE: What the vegetation is and what -- if the soils are hydric soils or not which reflect long term water in the soil profile. Those

are the three things that make a wetland a wetland.

MEMBER PARSONS: Okay.

MS. MOORE: And so, in these cases, I can the Corps jurisdictions. I can also read the amount of water on the surface and the vegetation that are there and so, when it says these things -- when your map indicates these are wetlands, these are wetlands in the general sense that support wetland vegetation and then that have surface water seasonally during the year. Because it was certainly was -- there was water on the surface coming through here at this time. It may be from broken pipes or it may be because of the snow, but these have wetland features whether they're jurisdictional wetlands or not.

Does that answer your question?

MEMBER PARSONS: No.

MS. MOORE: Oh.

MEMBER PARSONS: The question was has the Corps of Engineers identified this southern wetland as identified in this by Mr. Slowinski? That's the one the Applicant's trying to protect.

MS. MOORE: That's the one --

MEMBER PARSONS: If you don't know the answer, that's fine.

MS. MOORE: No, it has designated flagging

that indicates wetland.

MEMBER PARSONS: Okay.

MS. MOORE: Which also extend up a little further beyond -- beyond the -- the southern area. There -- there's more -- we keep saying pink tape with stripes on it. That's what they used to designate wetlands.

So, there's a southern area and then there's some additional wetlands in -- in a narrow strip going up to the west of the southernmost one.

MEMBER PARSONS: So, you would agree with Mr. Slowinski's diagram on what he -- what he shows, an eastern wetland and a western wetland?

MS. MOORE: Yes.

MEMBER PARSONS: Even -- even though you believe that some of this might be runoff from -- from a leaky pipe?

MS. MOORE: I was told that was the case and at one time when I first went to the site, we could see below the old house site where water was coming out. That appears to have been stopped, but the volume of the water is sufficient particularly in these -- above the -- the two kidney -- the two biggest kidneys that are parallel to each other. There's surface water now and there's long-term

wetland vegetation there. Dense stands of cattails and willow trees which indicates there's been a wetland there for some time. It may be artificial.

Without having the equipment to dig down in the soil, I couldn't -- I could not tell you that, but it is wet. They are wetland features.

MEMBER PARSONS: Okay. Thank you.

MR. NETTLER: Can I do a follow up to Mr Parsons' question?

CHAIRPERSON GRIFFIS: His questions? You should take a follow up.

MR. NETTLER: Thanks. Ms. Moore, you said you haven't done any analysis of the soil in that area that Mr. Parsons asked you about. Did you do any analysis of the water? Any of the water that you had seen there either?

MS. MOORE: I was observing flow and to see how much sediment was it in, but I did not take any testing equipment with me.

MR. NETTLER: Okay. So, you didn't -- you didn't determine whether there was chlorine in that water that was different than what the -- okay.

No other questions.

CHAIRPERSON GRIFFIS: Okay. Anything else? Okay. Thank you. Any other questions? Good.

Mr. Nettler, you'll all set with the cross on this then?

Any redirect of your witnesses? Fabulous.

Ms. Gates?

MS. GATES: Ms. Moore, I believe in either your testimony today or in testimony that was written, you talked about treating wetlands as amenities.

In this particular instance, would you describe for the Board how the wetland currently exists, the slope to it as well as how the wetland will exist once the grading is done?

MS. MOORE: If we can go back to the picture.

MS. GATES: The kidney picture?

MS. MOORE: The kidney picture. There's several situations on this property. The southernmost wetland which runs along the southern boundary line is largely wooded and that has a cistern. You can tell the springs where water's been coming out of the base of the hill on the western side for some time. It's surrounded on the west by a steep slope.

Immediately to the north of it is the road that was constructed. What is the name of that road?

MS. GATES: Drigs.

MS. MOORE: Drigs Road. Which has had --

has impacted the site to some extent because of the erosion and of -- actually the road has begun to wash out in part.

But, the bottom area is a more natural-type wetland. It has large trees around it and is quite --

MS. GATES: That's -- that's actually the area --

MS. MOORE: Is running water.

MS. GATES: -- I'm concerned about.

MS. MOORE: Okay. That particular area is extremely attractive. It has a functioning system. It has large trees and very steep slopes. It's a fairly stable wetland. It's been there for a long time as opposed to the one I was talking about earlier, the large kidney, where there's active seepage now and cattails.

As proposed, the Drigs Road would be built up another 20 feet I think it was. Ten to 20 feet on top of the existing area. So, the residents who live north of this in no way could see this wetland. It would be -- it would be a -- it would be a feature on the site, but it wouldn't be an amenity in the sense of having anything that could be observed or used as a part of the community.

MS. GATES: Would it -- will a situation be created where you would sort of walk out to the edge of a precipice to look down at it?

MS. MOORE: Yes, you would be a good bit above the wetland, but my real concern about that -- adding soil on top of that is it's already an unstable situation and it would be more -- more fill being put on the north side of a wetland at a very steep slope. With a 25-foot setback from that wetland, that's barely as long as this room is and the -- and you'd be -- if you were at the base of it from the wetland, you'd be looking up and you'd be looking up almost 30 feet and that would almost all be bare soil.

So, if you came to look from the top down, you'd be looking down and if you were at the bottom, you'd be looking up.

My real concern is the sediment coming down from that road into that wetland.

MS. GATES: As you were talking about sediment, I was thinking about a super silt fence and how does one build a super silt fence large enough to hold back the amount of fill that proposed for this area? I won't go there because I don't think that question can be answered.

Mr. Slowinski, throughout the

presentations for this project, we have been lead to believe I think that we've heard a lot about following natural topography and a comparison was made to Wesley Heights and Spring Valley where we do have very hilly streets and -- and houses are stepped down.

Would you as a resident of Wesley Heights identify with this particular development in the same way you would with Wesley Heights or Spring Valley?

MR. SLOWINSKI: No, I do not.

MS. GATES: And why is that?

MR. SLOWINSKI: They -- the roads do not fit the topography and the site has been extensively regraded.

Basically, the site one inclined plane at ten to 12 percent slope leading down to the wetland.

MS. GATES: And earlier, wasn't your point that if we followed the natural topography, we would have a development that looked more like Wesley Heights and Spring Valley?

MR. SLOWINSKI: Yes.

MS. GATES: Thank you. Ms. Snape, you were talking about migratory birds and I understand that Mr. Nettler is concerned about where records are kept, et cetera, but does a migratory bird necessarily know that this line delineates private property from a

park land?

MR. NETTLER: Objection.

CHAIRPERSON GRIFFIS: Yes.

MR. NETTLER: She's asking if Mr. Snape, I don't think Mr. Snape has identified himself as an expert on what migratory birds know or do not know.

CHAIRPERSON GRIFFIS: Right. I think that's more what -- that's an interesting way to phrase it. Isn't it? Do they have that -- no.

MR. SNAPE: Mr. Chair, I have -- I will let Ms. Moore answer it. I have spent hundreds of hours birding on this site.

CHAIRPERSON GRIFFIS: Indeed.

MR. SNAPE: And examining the data, but I will defer to others who perhaps can answer --

CHAIRPERSON GRIFFIS: Ms. Moore, can you answer that question? Do you know what migratory birds know?

MS. MOORE: Boy, do I wish I did.

CHAIRPERSON GRIFFIS: Me too.

MS. MOORE: They don't distinguish. It's the suitability of the available habitat that's makes the difference regardless of ownership.

CHAIRPERSON GRIFFIS: Okay. There's no big straight property line in the sky. Okay. Next

question.

MS. GATES: Thank you. I have no more questions.

CHAIRPERSON GRIFFIS: Very well. I think that's all -- oh, I'm sorry. Yes. Certain residents.

SPEAKER: Certain residents. I shall forever refer to myself as a certain resident at least henceforth and forevermore.

I'm -- your pardon. I'm somewhat of a novice at all of this and I am not sure what the status of this. Is this part of the record now? Is this -- this is not part of the application.

CHAIRPERSON GRIFFIS: Absolutely part of the record.

SPEAKER: This is not --

CHAIRPERSON GRIFFIS: Not part of the application. It's actually a party in somewhat opposition. Maybe --

SPEAKER: Right. Another -- another -- just --

CHAIRPERSON GRIFFIS: -- submission as part of their case presentation.

SPEAKER: So, that if this became -- somehow or other became the submission, if it was amended to this degree, I'm not suggesting that it

would be.

CHAIRPERSON GRIFFIS: Right.

SPEAKER: But, if it were, I gather there would be some additional opportunity for certain neighbors to -- certain residents --

CHAIRPERSON GRIFFIS: Yes.

SPEAKER: -- to come back and -- but, our main concern has been --

CHAIRPERSON GRIFFIS: Any certain residents could actually address.

SPEAKER: Certain residents of the --

CHAIRPERSON GRIFFIS: Yes. But, in all seriousness, yes, if -- if you're concerned and your direct question is could this be adopted without comment by those parties, absolutely not.

SPEAKER: Okay.

CHAIRPERSON GRIFFIS: If that plan was adopted which may be the smartest thing in the world to do, that would fundamentally change the application.

SPEAKER: Right.

CHAIRPERSON GRIFFIS: It would have to go through at minimum at least a presentation for the Board and certainly cross examination from all the parties involved.

SPEAKER: We're not prejudging it either. I just would --

CHAIRPERSON GRIFFIS: Right.

SPEAKER: We just haven't had the opportunity. I don't know what the traffic implications are and that's been our main concern from the -- from the get go, but anyway. That's really all I have. I have no --

CHAIRPERSON GRIFFIS: That's it.

SPEAKER: -- no questions for you people and I don't know anything about wetlands.

CHAIRPERSON GRIFFIS: Good. So, we'll call that the cross of me. Okay.

SPEAKER: Fair enough.

CHAIRPERSON GRIFFIS: Ms. Miller.

VICE CHAIRPERSON MILLER: I just have a follow up to that question. With respect to the -- the road that's more environmentally sensitive, did you assess it at all with respect to traffic impacts?

MR. SLOWINSKI: No.

VICE CHAIRPERSON MILLER: Thank you.

CHAIRPERSON GRIFFIS: Is this the first time that the Applicant has seen this proposal?

MR. SLOWINSKI: Proposal G?

CHAIRPERSON GRIFFIS: Yes.

MR. SLOWINSKI: There was one similar to it that I presented in January.

CHAIRPERSON GRIFFIS: Similar. Just what's similar? Opening. Just concepts? Opening 44? One interior road.

MR. SLOWINSKI: It has some of the same ideas. Preserving the woodland.

CHAIRPERSON GRIFFIS: Okay.

MR. SLOWINSKI: Setting up a wetland conservation easement area.

CHAIRPERSON GRIFFIS: Okay.

MR. SLOWINSKI: Laying out the roads to respect the topography.

CHAIRPERSON GRIFFIS: Okay. So, in your opinion as the Applicant looks at this, would this be new information for them or would this be something that you think that they would have understood as an option in developing their own design?

MR. SLOWINSKI: Some of it, they have heard before. Some of it is new.

CHAIRPERSON GRIFFIS: What -- what aspects are new?

MR. SLOWINSKI: The wetland -- the large wetland conservation area in the center.

CHAIRPERSON GRIFFIS: In the center.

MR. SLOWINSKI: Yes.

CHAIRPERSON GRIFFIS: I see. Okay. How did you access -- you don't have the other plan that they've seen with you. Do you?

MR. SLOWINSKI: I'm sure one of our ANC commissioners have it.

CHAIRPERSON GRIFFIS: Do you have a copy of it? Here's where I'm trying to go. Is that -- is -- conceivably a good question from the Board is the Applicant why don't you do this rather than sending this off for three months to figure out why or why not? Let's figure out what they know.

MR. SLOWINSKI: Actually, the -- the alternative plan that presented to the developer's architect in January, when he said it he said it's too late in the --

CHAIRPERSON GRIFFIS: Okay.

MR. SLOWINSKI: -- at this stage to make any changes.

CHAIRPERSON GRIFFIS: That's fine. And I see you opened up so much with that one comment.

Mr. Nettler?

MR. NETTLER: If you're finished.

CHAIRPERSON GRIFFIS: Oh, no, not even close, but go ahead.

MR. NETTLER: No. No, I can wait until they're finished.

CHAIRPERSON GRIFFIS: I actually just wanted to see the submission, but I'm -- I'm finished for the time.

Are you wanting to cross on this?

MR. NETTLER: Yes. This is it.

CHAIRPERSON GRIFFIS: So, this has not been submitted in before?

MR. SLOWINSKI: This is something that I showed the developer's architect back in January.

CHAIRPERSON GRIFFIS: That's not in the record. Correct?

MR. SLOWINSKI: No, it isn't.

CHAIRPERSON GRIFFIS: Okay. Let's move ahead.

MR. SLOWINSKI: It is -- it is the same thing in that it's titled environmentally sensitive design improvements.

CHAIRPERSON GRIFFIS: Okay. Some similarity there in two words anyway. I'm done. Mr. Nettler.

MR. NETTLER: Mr. Slowinski, didn't, in fact, the Applicant's architect take some of the suggestions you had on your prior proposal such as

taking the road off the adjacency to the park and -- and moving it further upland on the property? Didn't he do that?

MR. SLOWINSKI: Yes, he did, but in the process he --

MR. NETTLER: Okay. So, that's -- so, that's not a -- so, he didn't say that he --

MR. SLOWINSKI: -- he impacted two -- but at streams and he took out more trees.

MR. NETTLER: Took out more trees. I see and so -- so, it's not correct to say that he said it was too late to adopt any of your suggestions. Was it?

MR. SLOWINSKI: No, that is correct in that he said it was too late to make any changes.

MR. NETTLER: Didn't he point out to you that there were some other problems with your plan in terms of both the actual sighting of houses on those lots in terms of the impervious surfaces, in terms of side yards, rear yards, and other setback requirements? Didn't he also tell you that?

MR. SLOWINSKI: I'd -- I'd had since made -- made revisions to that plan.

MR. NETTLER: But, you -- but -- but, I understand from your testimony earlier today that

notwithstanding the revisions you've made to it, you still haven't done any analysis of the side yards, the setbacks, rear yards, front yards that are required for a theoretical subdivision. Isn't that correct?

MR. SLOWINSKI: On this plan or -- or --

MR. NETTLER: On -- on the plan that you've just done that you've just handed in today.

MR. SLOWINSKI: It's a concept.

MR. NETTLER: It's a concept. Okay. So, the answer's no.

CHAIRPERSON GRIFFIS: Okay. Good. Anything else? Yes.

VICE CHAIRPERSON MILLER: I just -- well, just one other question either for Mr. Slowinski or for the certain neighbors. I think we ended the last hearing where certain neighbors wanted to look into an alternative for the road and I'm wondering whether this -- how these two are connected if at all.

SPEAKER: Well, the concern that we had was the access -- the proposed access on Foxhall. I think our concern was that was is planned now does not appear to us to be safe and I don't believe anybody has used the word safe in describing it. They've used the word safer because it would have a demand light. But, I don't believe that any witness yet has used the

word safe.

I think DDOT said that they hadn't really come out and looked at it. But, they -- they -- they agreed with the developer's proposal only to the extent that they agreed that it would -- that the planned entrance would accommodate the amount of traffic it needs to accommodate onto Foxhall, but I don't believe anybody has used the word safe.

I'm don't know if I'm answering your question or not.

VICE CHAIRPERSON MILLER: No, my question really was -- I'm sorry. My question really goes to how does this alternative that Friends is presenting relate in anyway if it does to what certain neighbors wanted?

SPEAKER: It does because it would appear to have a lot of cars coming out of the development onto W Street and then I don't know whether -- I gather the -- be expected to make another left turn into the road that's planned now to get to the entrance at Foxhall. I think our concern would be that a lot of them would just proceed right up W Street and we'd have even more competition to get out of W Street which is not going to have a light. I don't believe anybody has said that -- that we could

have a light and so, I think it -- it could.

VICE CHAIRPERSON MILLER: Okay. It's not an alternative you're supporting. Isn't it?

SPEAKER: I -- I -- I'm not sure that we -- I don't want to say that.

VICE CHAIRPERSON MILLER: Okay.

SPEAKER: I don't understand. I don't think any of us really understand enough about it right now, but until it becomes presented, it becomes the developers or a proposal that is before this Board, I don't think we would want to comment on it. It certainly doesn't address our primary issue, but I'm not sure that it exacerbates any that it seems to, but I'm not sure of that. Don't want to say that.

VICE CHAIRPERSON MILLER: Okay. Thank you.

SPEAKER: Okay.

CHAIRPERSON GRIFFIS: Good. Anything else? Very well. Thank you all very much. It seems to me that we've concluded then the parties' cases we can go to rebuttal witnesses, summations, and conclusions by the Applicant.

Mr. Nettler, are you ready to proceed?

MR. NETTLER: Yes.

CHAIRPERSON GRIFFIS: Good. We're going

to take ten minutes and then we'll get to it.

(Whereupon, at 4:30 p.m. off the record until 4:47 p.m.)

CHAIRPERSON GRIFFIS: Whenever you're ready.

MR. NETTLER: Good afternoon. Richard Nettler for the Applicant. What I'd like to do is I have a panel of our consultants here. I'd like to walk through them with the different issues that you've heard questions being raised about and then open it up for cross examination both by yourself -- examination by yourself and by the others, but allow us to sort of move through this I think which might be a little quicker if we do it that way.

CHAIRPERSON GRIFFIS: Good. Okay.

MR. NETTLER: I also have provided to you with the submissions that we made last week résumés of the three additional people who were here from Greenhorne & O'Mara -- O'Mara, Roy Gauzza, James Ingram, and Mary -- oh -- Sears. Sorry, Mary. Each of whom I'm proffering as an expert in terms of a -- Roy as a landscape architect, Mary as a civil engineer, and James as an environmental scientist and you will -- if there's no objection to their being qualified as such or if you would like me to go

through a little bit more in terms of their qualifications, I can do that as well.

CHAIRPERSON GRIFFIS: Very well. Are there any questions from the Board at this time in terms of granting status of expert witnesses?

Is there any objection from the parties or substantive issues to raise for the Board's consideration? The ANC.

MS. GATES: My only question would be what's happened to Mr. Lzn?

MR. NETTLER: Well, Mr. Lzn is sitting here, but I'm asking about these three individuals. We've already had Mr. Lzn's résumé --

CHAIRPERSON GRIFFIS: I don't understand the question.

MS. GATES: I thought we were having a new person present --

CHAIRPERSON GRIFFIS: I know. I can get it --

MS. GATES: I thought we were having a new person present a plan that Mr. Lzn had already discussed with us.

CHAIRPERSON GRIFFIS: Mr. Nettler.

MR. NETTLER: Well, I don't know if that's responsive to the issue I have about the -- the --

these particular three individuals, but these individuals have worked with Mr. Lzn and they will be discussing the storm water management program, the wetlands issues, the --

CHAIRPERSON GRIFFIS: Okay. So, they have the specific unique knowledge of the actual plan that had been submitted?

MR. NETTLER: Correct.

CHAIRPERSON GRIFFIS: Which is why they're being called as a rebuttal witness.

MR. NETTLER: Correct.

CHAIRPERSON GRIFFIS: So, the work that Mr. Lzn has done in the past is still on the record and it's still substantive to the case.

MR. NETTLER: Correct. That's right.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: Absolutely.

CHAIRPERSON GRIFFIS: Anything else? Any other concerns that need to be raised for the parties in opposition? Very well.

Board members, any concerns, questions to the proposed witnesses?

If not, I don't see any issue in granting the expert status to the three witnesses. So, why don't we move ahead.

MR. NETTLER: All right. Let me call Mr. Pitchford first.

You've heard testimony about the -- from those who were somewhat in opposition to the project about the concerns regarding the trees, preservation of the trees that we've delineated on our plans both during construction and after construction.

Can you comment on that?

MR. PITCHFORD: Yes, I mean you could ask me specific questions, but in general, you know, I laid out in the first session the tree protection process, the minimum clearance zones and critical root zones and since that time, we've adjusted the grading plan significantly to preserve the critical root zone and minimum clearance zones of the trees.

MR. NETTLER: And -- and how will these be protected during the construction period as well?

MR. PITCHFORD: Well, initially, the stands of trees that I've identified would be encompassed by the tree protection fence, a six-foot tall wire mesh fence, which would encompass the minimum clearance zone and a portion of the critical root zone that I feel is necessary to keep them alive. There would be no rough grading in those areas. They would be off limits for everything during the rough

grading process.

MR. NETTLER: And you're familiar with the grading plan that's been developed. Have you not?

MR. PITCHFORD: Yes.

MR. NETTLER: Okay. And from -- based on your review of that plan, do you perceive that as having a adverse impact on our ability to protect those trees?

MR. PITCHFORD: Not at all.

MR. NETTLER: And could you explain why that -- that's --

MR. PITCHFORD: Well, I sat down with the Barnes advance team and Greenhorne & O'Mara. We sat down in the room for almost a full day and went over this grading plan to make sure it allowed for the protection of the trees and for the necessary grading for the homes. So, I felt very good at the end of that process.

MR. NETTLER: The -- Mr. Ingram, let me turn to you. In terms of the wetlands area, could you -- you've heard -- there were a number of questions that were raised as to what were jurisdictional wetlands and how that's defined and how the Corps treated this site. Could you comment on that?

MR. INGRAM: What a wetland scientist does

when they go out to a site to delineate the wetlands, they'll generally flag the wetland boundaries. Sometimes they'll also flag the limits of problematic areas and then they will submit an application to the Corps of Engineers to conduct what's referred to as a jurisdictional determination.

An application was submitted to the Corps of Engineers on September 2nd. The field visit with the Corps of Engineers, Mr. George Harrison, was completed on -- later that month on September 28th.

The -- at that field meeting, one of the most critical things that was discussed was the large area in the center of the site that's shown on some graphics that I believe you all have that the consultants did not believe should be jurisdictional because of the previously discussed water leak.

There was testing that was done of this water that confirmed the presence of chlorine and fluoride in the water. Also, this area did not meet one of the three parameters that are used to delineate wetlands. It did not have hydric soils.

The Corps of Engineers only took jurisdiction over what has been referred to today as the southern wetland which perhaps we can show on this drawing.

So, that would be shown, I -- I guess we'll refer to that as teal color area, in the -- in the south. That's -- that was the limit of the jurisdictional wetlands.

A map showing those wetlands was then submitted to the Corps of Engineers on October 15th and the Corps of Engineers in response to having received that revised map on the 15th, that same day sent out a letter approving of the wetland limits that were submitted which is the southern wetland.

MR. NETTLER: As far as you understand from the plans that have been presented by the Applicant, is there any development that's being done on the wetlands area that's been delineate?

MR. INGRAM: I'm not aware of any proposed impacts.

MR. NETTLER: Okay. Is there any grading that's being done?

MR. INGRAM: I'm not aware of any.

MR. NETTLER: Okay. And tell me is this a high quality wetland and can you explain what that is?

MR. INGRAM: It isn't a high quality wetland because there are so many invasive species that -- that frankly dominate a lot of the site. A mile -- there's a bunch of species, porcelain berry,

mile a minute Asiatic bittersweet, tall fescue, and other things. So, it's certainly not a pristine wetland.

MR. NETTLER: But, from your perspective, it is being protected?

MR. INGRAM: It is being protected and I think, in fact, will likely be enhanced through the development.

MR. NETTLER: And how will it be enhanced?

MR. INGRAM: It can be enhanced by the removal of the nonnative invasive species and there -- there is currently a significant negative impact to the wetland from the -- the leaking water line which released chlorinated water at a constant rate and has been doing so for approximately 17 years.

MR. NETTLER: Now, there's been talk about a buffer around this wetland and the Applicant is proposing a 25-foot buffer. Do you know where that comes from?

MR. INGRAM: Well, first of all the Corps of Engineers has no jurisdiction over anything outside of -- their jurisdiction ends at the limit of the wetlands and stream.

States or -- or local government can impose buffers. In Maryland, there is a 25-foot

buffer to vegetated wetlands. I'm not aware of -- of a buffer requirement within the District. I believe the District may have adopted the state of Maryland's 25-foot buffer.

MR. NETTLER: Okay. And do you think that's a sufficient buffer for protecting this wetlands area?

MR. INGRAM: I do particularly if the invasive species are removed from the buffer and native vegetation -- and it's replaced with native vegetation and that ground is stabilized.

MR. NETTLER: Okay. And do you understand that that's what's being proposed?

MR. INGRAM: I understand that nothing has been finalized on that, but there's been discussions in that direction.

MR. NETTLER: Okay. There -- there was some discussion previously about whether there is the discharge and we'll get into the storm water management plan with another witness, but the discharge from the storm water management of some salt from the -- from snow removal. Do you perceive that as being a -- a problem if there is any and do you -- do you -- with regards to this wetlands area?

MR. INGRAM: Well, there are several

questions in your question. The first thing that -- as I understand it that's going to happen is that the leak is going to be fixed. So, when the -- when that water leak is fixed, the volume of water flowing to and through that wetland will decrease significantly. I can't tell you an exact percent, but pretty significantly.

That'll be both positive and negative. It'll be negative in that -- that one of the three criteria for -- that wetlands need is water. So, the volume of water will decrease. However, the water that's getting there has been determined to contain chlorine and fluoride and so, there will certainly be an improvement in that that will -- will be decreased.

The -- with regard to the salt water, salt that's used on the roads, I haven't done any analysis that would compare the amount of road salt that would reach the wetland post-development as compared to, you know, chlorinated water today, but, you know, we have salt water enter in our wetlands everywhere within our area because of treatment.

MR. NETTLER: Mr. Pitchford, I have you done any research from an arborist perspective on the impact of salt on vegetation and trees?

MR. PITCHFORD: Well, I'm starting to.

Because it's subjects that's of interest to me. One of my volunteer roles is as a co-chair of the Technical Advisory Board for the Casey Tree Foundation here and one of the topics that we're looking at is what the District uses for its road salts and how that's affecting trees. So, I'm starting to get some background on it.

But, my preliminary work from looking at Michigan and Minnesota and their Departments of Transportation and the studies they've done is that sodium chloride ends up being about as environmentally sound as any other alternative because some of the other chemicals that some of these alternative products contain.

So, what we're using now is basically what they say the best that's available.

MR. NETTLER: Okay. Thank you. Mr. Ingram, coming back to you.

You've heard some comments about the cerulean warbler. Do you have any -- is this species a rare species in this area?

MR. INGRAM: The cerulean warbler's species is in decline nationwide. It is an endangered species. It was proposed to be listed on the Endangered Species Act in October 2000. However, do

to funding cuts, Fish and Wildlife Service is not processing applications to add new species.

With regard to whether there's good habitat on this site, the good habitat is adjacent in the park system. This is really -- the habitat on this site, there is some. It's a -- it is what they refer to as a forest interior species. It does not like edge habitat and frankly, most of this site contains edge habitat. There is some areas contiguous to the park that would provide some habitat for the species, but certainly, it's minuscule compared to what's in the park.

MR. NETTLER: With regard -- you've heard also mentioned that there are adjacent to this area significant number of areas where birds do -- habitat -- areas that are habitats for a variety of different bird species.

Do you see the development that's being proposed on this site and the trees that are being preserved as something that will have an adverse impact on the adjacent sites?

MR. INGRAM: Well, again, most of the habitat that's on this site is edge habitat. There is some -- probably some forest interior habitat on certain portions of this site. So, there will

probably be some minor impacts where there are the larger forested areas, but I certainly can't see any species being displayed regionally by, you know, development of such a small parcel.

(Whereupon, at 5:00 p.m., the hearing continued into the evening session.)

E-V-E-N-I-N-G S-E-S-S-I-O-N

5:00 p.m.

MR. NETTLER: Mary, there's been a lot of questions about the storm water management plan for this site. Could you walk us through what the plan is and its impact and how it's being dealt with on the site and its impacts? If you can.

MS. SEARS: Sure. If I could have the storm water management plan exhibit up there.

Some -- I'll first start off with the storm drain system. The existing storm drain system along W Street which we are not touching that will remain. We do not introduce any additional drainage into it nor does it provide any drainage onto our site.

Foxhall Road, we're proposing a couple of inlets here and here to be picked up and discharged

into the existing White Haven Parkway system. Thirty-inch pipe existing. That will take the roadway runoff. Again, does not -- no water from W Street will enter onto our site.

For our proposed on-site storm water management, this site is about 16.4 acres and it is located in a watershed of the Glover Archibald Park that at our discharge point at the confluence to that park has a watershed of approximately 840 acres. So, we're only 16.4 acres at the downstream end at that confluence.

So, our storm water management provides a quantity control and a quality control combined.

Our quantity control -- well, first let me talk about the quality.

What we are proposing is the use of a couple methods, BMPs, best management practices, which involve buyer retention, filtera, and a base saver unit. We are not proposing one downstream water quality treatment. We are proposing a non-point source solution which uses these throughout the site.

For example, buyer retention which is a filtering device on the surface used to treat runoff from pervious areas will be located in the teardrop islands in the proposed roadway. We'll use a series

of retaining walls within those islands to create flat areas which are needed for buyer retention. Buyer sits on flat areas and filters the water through.

In areas outside of the road of the median strips where we can to the greatest extent possible, for example, in some of the backs of lots where we've graded flatter areas, we will also propose buyer retention.

One area that's possibly in consideration is the back of these lots right here.

In addition to buyer retention, we are using filtera units. Filtera units are essentially buyer retention in a box, in a concrete box. They are inlet structures, curb opening inlets located along the roadways. They look just like a storm drain inlet except they have a filter media inside of them.

Runoff from the road enters these inlets as it would a normal storm drain system. It's filtered through and -- and after it's filtered, discharges back into the storm drain pipe system.

Storm drain pipe system proposed is throughout the whole roadway network and we will use these to treat purely impervious runoff from the streets. They can be planted with a tree or shrub and a grate opening at the top and then they are used to

enhance the streetscape.

Lastly, for water quality, we will use a base saver system or unit device right before our water quality underground pipe. The base saver unit is not a filtering device, but a hydrodynamic separator. It separates floatable pollutants from those that settle and then discharges that treated water -- all of these combined will end up in the storm drain system which then after it's treated dispersely throughout the site for water quality will get into our underground storm water management pipe system which is our quantity control.

We are proposing an underground system of about 72-inch diameter corrugated metal pipe system. This will -- what is shown here is size for a 15-year post-development storm managed back to a two-year pre-development release rate.

DCDOH standards only requires treating a two-year post back to a two-year pre and a 15-year post back to a 15-year pre. Our quantity goes above those requirements and takes a 15-year post back to a two-year pre.

MR. NETTLER: So, is this -- this proposal goes beyond what is required by the D.C. regulations. Correct?

MS. SEARS: Yes, it does.

MR. NETTLER: Could you explain how it -- how the 15-year pre I guess is what you said or the 15 year is -- is equated to the two year?

MS. SEARS: The 15-year storm event has -- over a 24-hour period is defined as a rainfall of 6.79 inches in the District. A two-year storm event is defined as 2.17 inches of rainfall over a 24-hour period. What we are doing is taking that 6.79-inch storm event and releasing it as if only a 2.17 two-year storm event in the existing conditions fell.

MR. NETTLER: And what impact does that have on the wetlands?

MS. SEARS: Well, any storm event from two years through 15 years in a post -- after this place has been constructed will release back at a storm event that is a two-year existing condition now. It only enhances the wetlands. It takes a 15 -- up to a 15-year post development storm and releases it at what the wetland would -- is receiving today at a two-year rate.

MR. NETTLER: Let's say you had a 25-year storm come through. What -- how would -- how -- could you quantify how that would be taken care of by this system and -- and the consequences of the 25 year?

MS. SEARS: Sure. In a 25-year storm event, I think to clarify a 25-year event, this storm drain system is only sized for a 15-year storm. However, just because a 25-year storm event happened doesn't mean all 25-year storm event which is 8.35 inch storm, that runoff volume isn't all overflowing and going into the wetland. Up through a 15-year storm event, it's picked up in our system and managed both -- in our underground storm water management pipe system.

What that means is the difference between a 25-year storm and a 15-year storm which would actually overflow is only 1.56 inches of runoff which is less than a two-year storm event.

MR. NETTLER: And do you know what the history has been in the District let's say over the last five years in terms of rainfall?

MS. SEARS: Yes, from NOAA's website, we've gotten data since the year 2000 until today and each -- quantifying each month within each of those years and there has only been five months total since the year 2000 for which a storm over a 24-hour period greater than a two-year storm event has occurred.

MR. NETTLER: That's why there are 15-year storms and 25-year storms.

MS. SEARS: Correct. The probably of a 15-year storm is one storm in 15 years and the probably of a 25-year storm is one storm in 25 years.

MR. NETTLER: Now, did you look at the amount of impervious surfaces that would be accommodated by this storm water management program?

MS. SEARS: Yes, we did. In fact, we did a pretty detailed analysis of what we are proposing the number of lots, the houses, the rooftops, the sidewalks, the driveways, the road network, individually breaking them down into a square footage amount, totalling those up, and adding a 15 percent possibility for future additions and that amount is 276,176 square feet which is about 6.34 acres of our 16.4 acre site, only 39 percent.

MR. NETTLER: And that's accommodated by this storm water management plan?

MS. SEARS: The preliminary storm water management design that has been done had assumed a 50 percent impervious coverage which is beyond what we will actually be doing.

MR. NETTLER: And you -- and in planning this system, you -- did you look at the soil survey that was done for the site as well?

MS. SEARS: Yes.

MR. NETTLER: Okay. And how does it relate to the soil survey that was done?

MS. SEARS: The preliminary geo-technical report that was provided to you listed some borings that had a ground water table level and possibilities of structural fill, but relating to storm water management, we could probably, as been inferred, require an additional study and final design. However, our storm water management design does not rely on infiltratable soils. None of the devices we have proposed for water quality need to have infiltratable soils.

MR. NETTLER: In other words, regardless of what the soil condition ultimately may be and so far the soil survey suggests that it's -- this is land that can be -- this is soil that can be built on, this system can accommodate whatever soils are there. Is that correct?

MS. SEARS: Correct. If soils are not infiltratable, then, for example, in buyer retention, we provide an under drain so that the water that filters through gets into a -- that under drain and that goes into the storm drain system.

As far as fill media and soil on the site that may be fill, if they are not structurally

compatible, then they will end construction and during final design of the site, be replaced with structural fill materials that can be suitable to be built on.

MR. NETTLER: Okay. You were here. I think you heard testimony. A number of people were looking at a program that was similar to the one that was utilized for the field school, but yet alone, the field school program seems to be creating problems.

First of all, are you familiar with the program that was created for the field school?

MS. SEARS: Yes.

MR. NETTLER: And could you tell the Board what that program is? The storm water management program.

MS. SEARS: The storm water management that was done for the field school used an underground pipe system like we have and -- but, the -- one of the main differences for water quality it just used a sand filter at the very down -- the most downstream point and only one device that treated all runoff as it got to the lowest point of the site prior to entering into the quantity underground storm water management.

MR. NETTLER: And in terms of its -- and it's capacity in terms of the 15/2 year? What --

MS. SEARS: And we have gotten

confirmation from DCDOH of the final design that was done for that project which for their underground storm water management system only provided that D.C. required two-year post back to two-year pre and 15-year post back to 15-year pre. Nothing more.

MR. NETTLER: So, this -- this plan -- this program again goes beyond the situation at the -- the storm water management program that was provided at the field school?

MS. SEARS: Yes, because we are taking a 15-year post back to a two-year pre.

MR. NETTLER: And you heard that there were -- notwithstanding the fact that ours -- our storm water management proposal is -- goes beyond theirs, that there was concerns in the neighborhood about the fact -- the conditions adjacent to the field school site -- downstream from the field school site because of runoff. Had you made any inquiries to determine what the cause of that was?

MS. SEARS: From all accounts that I have been aware of, it is not storm water management related, but constructed related issues.

MR. NETTLER: And what do you mean by construction related issues?

MS. SEARS: Maybe not compacting the soils

to the proper compaction which may have over time eroded and caused the failure on the slopes that exist today.

MR. NETTLER: And to -- to deal with that situation, the District of Columbia Department of Health would have to come back and develop a remedy for the site if that was -- if that is the cause of it. Correct?

MS. SEARS: That is true.

MR. NETTLER: Thank you. Mr. -- I'm sorry. Roy Gauzza, you worked on the grading plan for the site. Correct?

MR. GAUZZA: That's correct.

MR. NETTLER: Could you run through that grading plan for the Board? And I think we have to bring that up.

MR. GAUZZA: The grading plan addresses input from our architect, our arborist, our engineer, environmental, and planning and naturally, the site.

I would like to emphasis that the last thing a developer wants to do is move earth.

So, we have minimized as much as possible the grading of the site. It is a preliminary grading plan and it shall be finalized for the permit process.

When I say preliminary, there's no spot

shots, no proposed spots. That type of thing. Spots being just a spot giving you the height of that particular location.

We have taken --

MR. NETTLER: And that's normally -- and that normally is finalize when you've got to the permit process. Correct?

MR. GAUZZA: When we get to the permit process, when we know what the houses will be, when we know finished floor elevations, when we know garage elevations. Most of the houses that we're proposing will be walkouts meaning the basement will be of full height exposed in the rear. The fronts will be full height above.

MR. NETTLER: Is that so that the house acts as its -- as a retaining wall rather than putting in retaining walls into the site?

MR. GAUZZA: The house can act as a retaining wall. It doesn't necessary preclude the addition of retaining walls, but on a sloping site like this, it's extremely typical. You will find this on most sloping sites. Walkouts. That type of --

MR. NETTLER: Then, you're not providing -- I'm sorry. I keep interrupting you. You're not providing for the grading in the wetlands area.

Correct?

MR. GAUZZA: There's no grading in the wetlands. There's no grading in the buffer, in the 25-foot buffer. We are proposing a retaining wall between the three to one slope above the wetlands and the buffer outside the 25-foot buffer.

MR. NETTLER: And there's no grading in the -- in the 50-foot buffer areas between the park areas and the rears of any houses as well. Correct?

MR. GAUZZA: That's correct.

MR. NETTLER: And there no grading adjacent to Ms. Hardy's property. Correct?

MR. GAUZZA: That's correct. We have a retaining wall.

MR. NETTLER: But, that's not against her property. Right?

MR. GAUZZA: That's not. No, it's not against her. That's preventing the grading from touching or coming closer to her property.

MR. NETTLER: Okay. I'm sorry. Go ahead.

MR. GAUZZA: We are incorporating a number of retaining walls in an effort to save trees. I believe we're saving quite a few trees with the expense of the retaining walls. The retaining walls are meant to save trees not hurt the minimum clearance

which is our sacred area of the trees that should ensure its survival.

With the preservation of the clusters of trees, there should not be any significant wind throw. Meaning that if you're removing a number of trees and you save one or two, the stability is not as great as it is when they are in a cluster. So, we are still retaining most of the main clusters if not all of them of the significant trees. I believe we're over 60, possibly 64 trees. I think that's the final count.

Again, that's through the use of retaining walls which is atypical on a site like this. A site with these kinds of slopes is often developed. I'm sure that you see them all the time in this metropolitan area. It's just how feasible is it for the developer to develop a site like this and in this case, it is feasible.

So, the cut and fill may not balance, but the steep slopes in themselves, existing steep slopes, do not become a challenge to -- to developing this site.

MR. NETTLER: Do you have a concern about erosion on the site as a result of --

MR. GAUZZA: The erosion in my opinion is not an issue when you deal with your sediment and

erosion control plans and we won't be allowed to do anything without a sediment erosion control plan and with the proper placement of silt fence and, you know, straw bales, any -- any -- the -- the sediment erosion control plan has -- has not been prepared yet. But, with several different methods, they're tried and true methods and they are used to prevent erosion of unstabilized slopes from eroding.

MR. NETTLER: You are a landscape architect.

MR. GAUZZA: Correct.

MR. NETTLER: Correct? A registered landscape architect?

MR. GAUZZA: Correct.

MR. NETTLER: In looking at the retaining walls that you've provided on the grading plan, there are -- it's not -- the grading doesn't provide for retaining walls everywhere on the site. Does it?

MR. GAUZZA: It does not.

MR. NETTLER: Okay. But, in terms of keeping down the height of those retaining walls, have you looked at other measures for -- to make sure that those are not very steep retaining walls?

MR. GAUZZA: We -- we began to look at some of the walls. In one particular case, there was

a nine foot at the corner. When you -- when you see the top of wall and bottom of wall elevations on those walls, that is just for that one point and it's an arbitrary point. Just to give a feeling.

Actually, I tried to find the highest point of the wall. So, the wall will feather down one way or the other way.

I think in the case of the retaining wall next to Ms. Hardy's property, the highest point is indeed six feet, but it feathers down to four feet and then it feathers down to nothing and that six feet is -- perhaps 20 -- 20 lineal feet of a 65-foot wall is perhaps six -- six feet high.

MR. NETTLER: And that's to insure that you're not grading around the trees that are adjacent to her property. Correct?

MR. GAUZZA: Correct. Correct. The purpose -- I'm -- we have to say I believe the purpose of -- 100 percent of the retaining walls is to save trees in this particular case.

MR. NETTLER: Just one second. Thank you.

MR. BARNES: Good afternoon.

MR. NETTLER: Could you walk through the development plan and how you've made -- and what changes you've made to it to respond to some of the

comments that were raised at the previous hearings we've had.

MR. BARNES: Certainly. With pleasure. Let's get back to the plan.

Throughout the process of the ANC and the BZA hearings as we have heard concerns of neighbors or interested parties where we had not been able to respond to them before and they thought valid points were made. We've tried to make adjustments, refinements to the same spirit of the original design to meet those intentions and some of the points raised by the Board and other parties recently have been incorporated.

Recently, there was quite a bit of discussion about the -- the setbacks from the national park land and the sort of visual pollution affect of development and that's one of the things that we have paid attention to. I'll draw your attention to the southern area of this. This was contained in the package that was landed out to you last Tuesday, but the houses that front on the White Haven Park, the national part on the south side have been located with a little more accuracy.

In your package, there were three sections drawn at Mr. Parsons' request through three of these

houses that actually fronted onto the park just to be sure that they could be developed. What we have done is we have increased the size of the setback of the building footprint along the southern area voluntarily to address the concern that was raised.

We have with our tightest side over here 30 feet here and we're offering 30 feet all the way along the eastern boundary in the land that we are not claiming as a run and could when the road is closed, but, in fact, would turn over to be park land. So that you would have the 30-foot minimum setback there.

Along the most open sweeping gentle grades down into the White Have Park which is the prettiest relationship we probably have to public park land, we are actually proposing a 40-foot setback on these five sites that actually have that sort of orientation.

Because our architectural standards require that the house be on or very close, the front of it, to the building restriction line, then these houses that are shown here and the sections that were drawn in your package show that the house, in fact, would be really quite far back in this case.

I've just jotted down the distances here. Here where the house is closest, the point is -- the point of this house is -- is 32 feet away from the

park land. The point of this house here is 34 feet away and that should get into the bigger sites that goes to 80 feet, 130 feet over here, 90 feet, and more than 100 feet at this case.

There might be a pool built in this area that is 40 feet back from there, but it's not going to be a tall structure. It's not going to be a looming house because the house would end up being just extraordinarily large and beyond the requirements that we again have in the architectural standards. Would the limit the development of the house.

MR. NETTLER: But, that wouldn't be in the 50-foot buffer area.

MR. BARNES: It would not be in the 50-foot buffer area either, but the -- the Park Service representative earlier, Mr. Murphy, who talked about having what you see from the park not be a tall wall or building close to the park is something that we agree with them. So, we are also showing it in this setback area. We would voluntarily plant native species that are in our approved plant list to help soften the visual appearance from the park.

The other thing that we have done since the previous submission after some concerns of Mr. Parsons and others is we have made this lot a 13th

smaller. It used to have a dogleg into this -- probably the most beautiful part of the entire site between the wetland and the -- the park on the south and we've instead straightened the line, made the lot smaller, and voluntarily given over almost 300 feet in width, about 100 feet deep of private land that would essentially be thrown in as kind of a visual buffer and a connection to the wetland from the -- the park area.

So, in fact, the feeling of the park when you're in it is that, in fact, the development would end after these four houses. There would be this deep area here which is probably about 400 feet deep, more than that, before you get to the first house that you would see up here as you look in from the park and then you get to these houses which again are on the rim.

Again, this house is 80 feet. This house about 100 feet back here. So, we have really tried to address the concern of the -- the visual impact from the national park land of the houses.

Other than that, during the grading which was reconsidered as mentioned before, we went back and looked at all the trees of significance and tried our best to make adjustments to the layout of the roads

and so on to save them.

One comment if I may about the grading is contrary to some of the statements you heard earlier, it has been our intention to work with the grades. We've said it all along and I'm just going to describe our attitude to that.

The site is a bowl. You've about that. It's rather like a baseball glove. It's extremely steep though on its perimeters. You could sled off of this side, the slope below were the existing houses, below Ms. Hardy's property and right down into the wetland. That means that the center area here is substantially depressed. The only places you can access this either from Doherty Street or from Foxhall and so, what we have done is kept some of the grade, some of the roads following the Washington grid system which is the way Wesley Heights, Spring Valley, and other neighborhoods like this were planned and where it started to get too steep, we have then followed the lowest point in the valley.

The ridge that you heard about earlier, the treed ridge on the right is exactly where we have tried to locate this road following the ridge pretty closely. You can see how many trees we were actually saving close to this road because it's actually very

close to the existing ridge as was mentioned earlier.

That ridge drops off almost to a cliff right here. So, this portion here has to be filled just as a matter of math. If you got to get down from Foxhall Road where the safest traffic entrance is because, of course, the grading exercise that we're doing has to balance with all the needs of the neighbors and the traffic and access and safety, this is the safest way to get on and off Foxhall Road and not drag everyone past the neighbors.

This road here is as steep as it can be. Our grading has followed the gentlest possible path. This just happens to be very low in here. So, we've scrape off the -- the aggressive edge of this rim and the very high contours that exist right here, we've scraped those off and we've pulled them down into the middle. There is a lot of fill in the middle.

You've heard a lot about the soils. The soil's report is really -- there's nothing unusual about it. As you would expect, there's quite a bit of fill on the site of the old house. Nine feet of fill one of the borings showed. This was underneath it, perfectly normal and certainly stable for construction.

We have nine houses. We've looked at the

site closely. They'd be nine houses. Most of them in this area here where the basements themselves would not sit on the natural soil or cut below the current soil, they would actually be on fill. There's nothing unusual about it. It would have structural soils below it. All the houses would be on piles, would have a spread footing designed to accommodate it.

And as Roy said as we went through the grading exercise, many of these houses are designed to clutch the necessary grading to make the roads save to act as a kind of a retaining wall. It's very typical and very attractive for a steep site to walk in the front door at the first floor level and walk out in the backyard at the basement level.

So, these -- these houses here are all of these terrific yards filled with existing trees where you walk out at that level and the same is true with the -- with this site over here.

MR. NETTLER: You've seen a couple of plans that were -- concept plans that were developed by the Friends of White Haven. Had you had a chance to review the earlier plan?

MR. BARNES: Yes, the new plan that you saw today, I had never seen until today, but the earlier plan that was described that you saw waived

around was somewhat similar in that there was a -- an egg-shaped loop around here with a connection there and a connection there. Somewhat similar to ours.

The time that we met with Mr. Slowinski and one of his colleagues, we were impressed by some of the concerns they had particularly about the -- and a sense of openness to the wetland and try to incorporate that to the White Haven Parkway and it was at that time that we inspired by that discussion changed the road that used to run all the way around here with a bridge over the wetland to a much smaller loop road.

This was also in response to some of Mrs. Hardy's concerns about the amount of pavement and light pollution that she would see so that there would be much less road in her view and it would no longer be a road on the edge of the park.

When we looked at that plan and it was a preliminary plan although it gave up about half the site of -- very strong third of the site to not being developed at all which is very difficult to make the numbers work, it also looked like the lot sizes wouldn't meet minimum lot sizes.

My only comment on the plan that was submitted today is it doesn't seem environmentally

sensitive to me to come and build a road through 400 or 500 feet of area that we're going give over to the park land to get down to the bottom area over here. We have much less road I think in this development to access, you know, more sites.

Our job is to try and balance all the needs. The -- the -- the concerns that the Friends of White Haven Park have are ones that we share completely. We're interested in tree preservation. We're interested in the amenities of the wetland.

One of the things about the slope that you heard over here is that this is not precipitous. This is a one in three slope. If you look at the ceiling tiles over there and count them. From that light to that light is nine feet and that's probably three feet there. So, the slope you're looking at above the wetland goes from right there down to right there.

You'll easily see the wetlands as an amenity from these houses over here and it's not like some kind of cliff we'll ski jump where the water goes rushing down.

MR. NETTLER: You've had a number of different concerns you've had to address in doing this plan. Do you think that the concept that you looked at today responds to those as well?

MR. BARNES: I think that the -- the -- the plan that you saw today was advancing the environmental issues at the expense of several others. For example, all the neighbors who are the biggest group of neighbors together with Ms. Hardy on the south here, look, they would have almost all the houses driving past W Street and creating, you know, a difficult traffic situation over there.

I also think this is private land that is up for development and one needs to try and balance all of these factors together and the plan that we're offering up here, we are within the site, voluntarily leaving about three acres open. We have a little neighborhood park up there. We have this boulevard in the middle over here. The storm water is below. A big open sloped meadow that would lead down to the wetland and the wetland itself has then this other beautiful hump of land. Certainly, the prettiest part of the whole site over there, voluntarily given over. That's about three acres.

There's another whole acre on the right-hand side here which we could have claimed for the developer, but instead we're offering it over to the park.

So, essentially, there are four acres of

area that we think is a very -- a substantial gesture towards the environmental issues balance with the needs of development.

MR. NETTLER: Okay. My last witness Mr. Peterson. He hasn't testified before in this case. He was sworn in and you do have his résumé from the pre-hearing submission.

Mr. Peterson is a traffic engineer.

Did you have responsibility for reviewing the -- the report that was done by Guro Slade?

MR. PETERSON: Yes, I did.

MR. NETTLER: And you've heard some comments about the concerns both with regard to the -- the ingress and egress off of Foxhall and the use of W Street. Could you comment about that?

MR. PETERSON: Certainly from my perspective, the -- the concept of providing an access to this site, it's own access to this site to Foxhall Road is a great improvement and a benefit to those residents that are on -- that live along W Street because it removed a potential traffic impact that would otherwise be directed to an intersection that is far from desirable in terms of its -- its grades and its approaches to Foxhall Road and one which has been adamantly opposed for segmentation.

So, by creating another access to -- to the site, to Foxhall Road, we remove conflicts and one of the objectives in traffic engineering is to -- to spread out your conflicting movements. So, that instead of concentrating conflicting movements at a four-way intersection, we've removed them, put them at a second access onto Foxhall Road and, therefore, spread the conflicts out.

MR. NETTLER: You've heard a comment today I assume that at no time has anybody said that this is safe. Could you respond to that?

MR. PETERSON: First of all, in terms of accidents related to land development, there's no accidents or random events that occur at random times and are not -- cannot be related to any particular time for development or any specific development location.

But, the thing that this -- by providing a separate access to Foxhall Road for this site, provides us an opportunity to engineer the final intersection to meet current standards in terms of site, distance, and the geometry of the road, the creation of the extra -- the left-turn lane, all the things that don't exist at the existing W Street intersection and those things move towards making for

a safer environment for the new access as contrasted to the existing W Street intersection.

MR. NETTLER: Thank you. And the last person, Mr. Pryor.

MR. PRYOR: Good evening.

MR. NETTLER: Mr. Pryor, you've heard a number of comments over the last three days I guess of hearings on this about whether you've been -- the present Applicant has been the applicant throughout this entire time and how can we assure that we're sensitive to both your neighbor Mr. Hardy and the other residents in the area. Could you comment on that?

MR. PRYOR: Since the beginning, the inception of this project over a year ago, we have attempted to try to keep a continuity to this project and to self and -- and as such, we have attempted to use always local elements, engineers, consultants, builders, architects, et cetera and it was our intent at all times to give the neighbors a sense that there was a local group here who was going to -- to take this project to -- to term which was from the moment of acquisition entitlement to it's actual build out of site improvements and build out of the homes.

MR. NETTLER: Have you -- you -- you've

heard some of the issues that Ms. Hardy has raised about dealing with her site and protecting it. Have you had any intention of not insuring that her site is protected from the --

MR. PRYOR: On contrary. I think we've pretty much bent ourselves over backwards trying to have documents drafted, have her legal counsel draft agreements, and every time that we've given her agreements basically ready to sign, she has always pulled back wanting to find additional factors to go through, but we still are receptive to finding ways to -- to resolve it.

MR. NETTLER: Good. Thank you. I don't have any other questions of these witnesses.

CHAIRPERSON GRIFFIS: And no other witnesses. Right?

MR. NETTLER: No.

CHAIRPERSON GRIFFIS: Seven will do it. Let me ask the team perhaps the developer, the -- the report which was going into the soil, there was an issue that was brought up about the bedrock and blasting. It -- it -- my reading at 18.5 feet you start hitting heavy rock.

Is it -- I don't know who can answer this. Is it proposed or has it been anticipated at this

point that there would be that type of construction?

MR. BARNES: Just an architect not a soil scientist, but we don't plan to have anything that low at all.

CHAIRPERSON GRIFFIS: Okay.

MR. BARNES: So, I don't see -- nothing in the soil's report suggested that we would need to blast.

CHAIRPERSON GRIFFIS: Good and in terms of the -- were did our traffic person go? A quick question on -- you indicated that -- I forget what your exact phrase was, but certainly bringing intersections up to current standards, is it -- is it your testimony that this evening talking about that out of Foxhall that it would meet the current standards?

MR. PETERSON: As far as I can determine, it will be engineered to meet those standards. The District has certain standards that and will imposed those upon this access point.

CHAIRPERSON GRIFFIS: And you mentioned one critical one and that is site distance. Did you analyze this intersection in terms of meeting standards for sight clearance?

MR. PETERSON: No, I have not made

specific determination as to the potential reserved for -- for sight distance at this location. I know we've had testimony suggesting that it's not available, but these are based on -- these aren't engineered plans. We haven't got the -- all the geometry in place yet to determine exactly what the sight distance is.

CHAIRPERSON GRIFFIS: How much would change once you started getting engineered plans or could change? I mean I guess the direct question is in terms of a traffic engineering standpoint, how much reliance shall we place on these if -- if you can't tell me that they're engineered enough to see whether they would answer certain questions or standards?

MR. PETERSON: When you get into the -- to the engineering, you will -- you will have actual curb lines and once you've got those curb lines, there will be determinations made that -- as to what's available sight distance-wise and what you have to do to create the sights.

I think the advantage of the proposed location is that it's on a much flatter section of Foxhall Road and -- and a relatively straight section of Foxhall Road and therefore, you don't have the hills and the crests conditions that tend to restrict

sight distance. So, that the -- and then there's -- there's been comments about this fact that there's trees along Foxhall Road, but the question that -- that you have to review is whether those are within the city's right-of-way.

If they're within the city's right-of-way, then the -- the city will ask to -- measures to be taken to improve the sight distance to a point where it meets the standards.

CHAIRPERSON GRIFFIS: Okay. And in looking at this schematic or concept plan in terms of that intersection, have you looked at it closely enough to ascertain whether there is conceptually enough room for all that's been asked to happen there? Meaning, the -- the pull-off lane, the -- the cut in the sidewalk. Have you looked at those aspects of it?

MR. PETERSON: As I -- as I understand it, the -- any addition land that's required to create that left-turn lane in the center will be coming from the site side of the -- of the existing street. If there's not existing right-of-way to accommodate it, it will end up being dedicated as part of the development plan.

CHAIRPERSON GRIFFIS: So, you don't have any difficulty in believing that this concept plan

could actually be realized?

MR. PETERSON: None. None whatsoever.

CHAIRPERSON GRIFFIS: I see and going to the storm water management, you talked about the filtera and also the -- the bay saver.

Two questions with that, do these actually contain water? Meaning does that affect the amount of water volume that's running into the -- the -- the pipe storage system?

And, two, how much maintenance actually goes into that? You've talked about the bay saver I think it was that separated out larger objects. I would take it like, you know, my daughter's boots in the snow get washed and those wash down the drain. So, we could retrieve it -- well, I digressed. But, how much maintenance actually happens with those?

MS. SEARS: To answer your first question about the storage of water with regard to the filtering devices, filtera, the water -- it's not full of water to begin with. It only has water as water enters the street, runs along the curb, and enters the inlet as if it -- in a normal storm. It's only sized to take the water quality storm event which has the pollutants and picks up those roadway pollutants in it.

Beyond that, it would bypass into the proposed inlets that are just part of the storm drain system alone.

The water filters through them to a pipe which also enters into the storm drain system. So, there's never any standing water in them --

CHAIRPERSON GRIFFIS: Okay.

MS. SEARS: -- permanently. Water filters through over time, less than a 24-hour period, but there's never permanent ponding involved with these things.

CHAIRPERSON GRIFFIS: Okay.

MS. SEARS: As far as maintenance goes, both the filtera and the bay saver, it's one of the advantages to using these type of devices. Water quality and the design to treat them is always changing and these are innovative techniques that reduce such maintenance procedures.

For example, the filtera has a grate top. Simple maintenance would be to come in, open the grate, can take a rake, take out the trash that would enter the normal roadway, cups, whatever and if there's any sedimentation, it's just on the surface. It could easily be scraped off and removed. You don't need to replace the whole depth of the filter media in

these devices.

Bay saver, the maintenance on those, they are placed so that they are in proximity to a roadway and the maintenance that bay saver has dictated is -- it's like a vacuum truck would come in. This is a separator type of the device. It separates floatables from the settlable solids and the vacuum truck can go in and vacuum all of that out both the trash that floats and the water that it's in as well as --

CHAIRPERSON GRIFFIS: Who does that? Is that like a commercial company that does that?

MS. SEARS: Yes, and it's written into when you buy these devices they have maintenance agreements with the purchaser.

CHAIRPERSON GRIFFIS: Oh.

MS. SEARS: In this case, the homeowner's association.

CHAIRPERSON GRIFFIS: That's a good idea. Write in a maintenance plan that keep you going. Okay. Excellent.

Oh, last question in terms of organization. We've now talked an awful lot about setbacks, the 40 feet from -- from the park. How is that going to be incorporated into the ownership documents and -- and preserved and maintained if it

was, in fact, to be the -- the final plan that would go forward?

MR. NETTLER: Well, there's actually three -- three ways in which we're planning on doing that. One is proposed conditions that we are suggesting here. One is proposed conditions that we're suggesting here. Two is by covenants that we are going to place on the property and three is through homeowners documents that we are -- that we are -- are creating as well.

But, it's all based on I think as -- Anthony and we have working on pretty restrictive guideline for each of those different -- in each of those different -- for each of those different protective measures.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: We have proposed a number of conditions with our -- I think it was with our pre-hearing statement and we are -- will be expanding upon those to -- to accommodate what the changes -- they are. That is, the additional setbacks that we are willing to and buffer areas that we're willing to provide as -- as detailed today in the plans that we have submitted. As well as the restrictions as to what could be done in any of those areas.

CHAIRPERSON GRIFFIS: Okay. And do we have -- do we know what the restrictions would be?

MR. NETTLER: Well, as Anthony said there couldn't be any -- any development at all within those particular buffer areas and the types of development that would be on any property in the rear of their houses in the non-buffer areas would also be restricted as to that as well.

CHAIRPERSON GRIFFIS: Okay. Good. Questions? Mr. Etherly.

MEMBER ETHERLY: Thank you very much, Mr. Chair. Just very briefly. A short series of questions for Ms. Sears and then I want -- a couple of questions for Mr. Ingram.

Ms. Sears, with respect to water, help me understand -- if you could put it succinctly, what's -- how would you describe the biggest problem for this site from the standpoint of water?

MS. SEARS: I think there are problems that people have brought up, but I don't consider them problems because I think our storm water management that is proposed accommodates all the runoff.

MEMBER ETHERLY: Okay.

MS. SEARS: Both for water quality and water quantity.

MEMBER ETHERLY: But, is there something that you would identify as kind of like the leading thing that as you look at the design of the system and it's implementation? As you said, there's a series of concerns, but what's kind of the biggest issue? Is it that the water on this site pretty much as it hits whether it's runoff, whether it's a 15-year storm event, a ten-year storm event, the big is -- is the big issue the fact that all this water wants to head towards what is that southwest corner of the site?

MS. SEARS: I don't believe that's a problem.

MEMBER ETHERLY: Okay.

MS. SEARS: I think that the runoff generally has a trend to go from the top left-corner down to the bottom right.

MEMBER ETHERLY: Um-hum.

MS. SEARS: But, our -- the series of devices that we are proposing for water quality pick it up throughout that process.

MEMBER ETHERLY: Okay.

MS. SEARS: It's not at a downstream point.

MEMBER ETHERLY: Okay.

MS. SEARS: So, I think we addressed that

better than if we only had one device --

MEMBER ETHERLY: Okay.

MS. SEARS: -- downstream. As far as the amount and the storm event, I would say you really should be focusing from a storm water management aspect on the everyday storms. That's what people see. That's what people think causes their problems and those storms as I mentioned earlier are mostly except for five months out of the last five years --

MEMBER ETHERLY: Um-hum.

MS. SEARS: -- have been the smaller less -- two-year storm of less.

MEMBER ETHERLY: Okay.

MS. SEARS: So, I think to the level which DCDOH's standards are to address a 15-year storm and they only require you to address it back to its 15-year existing condition and we take it all the way back to -- all storms up to a 15-year back to a two year --

MEMBER ETHERLY: A two year.

MS. SEARS: -- which is your everyday --

MEMBER ETHERLY: Okay.

MS. SEARS: -- preexisting condition. I think we more than meet the requirements and solve all problems --

MEMBER ETHERLY: Okay.

MS. SEARS: -- as far as runoff.

MEMBER ETHERLY: Now, you referenced a little the field school. I just want to talk briefly about that, but not get into too much detail. Obviously, you haven't perhaps looked at that site closely. But, you did reference some of the challenges or some of the problems that that site has encountered and you started to speak a little bit about perhaps what may have been the root -- the root of that particular problem.

As you talked about the field school, could you state a little -- say again what you felt the problem there? What was the stumbling block to that system not operating efficiency based on what you know broadly speaking?

MS. SEARS: Based on what I know, it's construction related.

MEMBER ETHERLY: Okay.

MS. SEARS: Not the type of storm water management devices that were proposed or used.

MEMBER ETHERLY: Okay. Have you seen in terms of your experience with this project or let me ask it another way, are there measures that you think need to be implemented here or are there measures that

you are aware of being implemented from a construction standpoint that would avoid or not replicate those kinds of issues for this particular site?

MS. SEARS: I think as standard protocol there's inspection during construction phase and I think that needs to be mandated which is typical to be put on this final design plans that get reviewed and approved during the permitting process at DCDOH.

They dictate now that we have to have a sequence of construction on our plans which would call out those times at which inspections need to be done.

MEMBER ETHERLY: Got ya, but as you referenced the field school piece, I think one of the things that you identify was maybe an issue of soil compaction --

MS. SEARS: UM-hum.

MEMBER ETHERLY: -- and not having that happen. There's -- above the typical or usually required inspection steps in construction, there's nothing specific that you would identify here whether it's soil compaction or anything else that would need to be done particular to this site in order to avoid similar problems compared to what happened at the field school site.

MS. SEARS: I don't think there's

additional measures that need to be beyond what D.C. would -- beyond the requirements of inspection.

As far as compactioning goes, there would be -- I was kind of referring from storm water management as having someone there storm water management related to inspect that the pipes were put in properly, proper bedding was there, but in addition to storm water management inspector, as required --

MEMBER ETHERLY: Um-hum.

MS. SEARS: -- there should be a geo-technical representative on site that does testing of the soil as it's compacted.

MEMBER ETHERLY: But, it's your testimony and belief that because of the -- the above and beyond that you've done with this particular system, the soil regardless of its type there and there should be a further look at that. I think I hear you saying that.

MS. SEARS: Oh, yes, as far as the type of soils --

MEMBER ETHERLY: But, that's not a problem.

MS. SEARS: No, because our system that is proposed can adapt to whatever additional geo-technical investigations --

MEMBER ETHERLY: Okay.

MS. SEARS: -- prove to be the soils in this -- in this location.

MEMBER ETHERLY: Okay.

MS. SEARS: We don't have to have infiltration to -- to do our system.

MEMBER ETHERLY: Okay.

MS. SEARS: All that will determine is whether the underground pipes are perforated in a gravel bed or whether they're solid.

MEMBER ETHERLY: Okay. Okay. Let me turn to Mr. Ingram now. Just very briefly. I wanted to talk a little bit about I think what's essentially labeled as attachment B from the Friend's of White Haven testimony. In particular, it's the testimony of Mr. Slowinski and what I wanted to just talk briefly about was the kind of wetland delineation sheet that you see here.

Now, I want to make sure that I'm clear with respect to -- as it's reflected in this document, the southern wetland, that is the document that has the jurisdictional delineation attached to it. Correct?

MR. INGRAM: Yes, I believe they used as they base map a map that had the actual jurisdictional

limits of the wetland.

MEMBER ETHERLY: Okay.

MR. INGRAM: The limits that are shown there and I wouldn't refer to this as any type of delineation map.

MEMBER ETHERLY: Okay. Okay.

MR. INGRAM: It's a walk through.

MEMBER ETHERLY: But, broadly speaking, that -- the area that we're talking about as the jurisdictional delineation roughly is --

MR. INGRAM: Yes, sir.

MEMBER ETHERLY: -- in that vicinity? Okay. Now, with respect to some of the other undocumented "wetlands" that have been referenced in the Friend's of White Haven --

MR. INGRAM: Um-hum.

MEMBER ETHERLY: -- testimony, is there anything that we should be concerned about or that gives you concern by virtue of the fact of these undocumented wetlands or maybe the more straightforward question is are they undocumented wetlands, all they something that should be a problem or should be of worry or concern here?

MR. INGRAM: Well, certainly it's an unusual condition to go out on a property and have a

water leak and have a -- in this case, an approximately three acre wet area in the center of it.

However, the process of delineating a wetland is pretty rigorous. I, myself, did not delineate this wetland, but I reviewed some of the information that was developed during the delineation process and the soil's criteria is one of the most important criteria and I, myself, have been on plenty of sites where there was an artificial source of water which would lead one to believe that there was a high probability of a wetland there, but, in fact, there were not underling hydric soils or wetland soils there.

MEMBER ETHERLY: Um-hum.

MR. INGRAM: If that's the case, the Corps of Engineers cannot take jurisdiction over those areas. The legal boundaries of the wetlands are as shown on that map.

MEMBER ETHERLY: Okay. Now, let's take a step back then from the legal requirement and perhaps from the spirit of what wetland delineation and the protection and maintenance of wetlands were all about.

Is there anything relative to this property outside of the formal boundaries that should be taken into consideration as to site plan and as

this overall project is being put together? Understood than there's an official set of boundaries here that's been -- that's been kind of set forth, but should there -- perhaps from the spirit of the approach to wetlands, should there be some other things that are done on this site in your opinion?

MR. INGRAM: Certainly -- certainly, the water leak needs to be fixed. The chlorine that is going into the receiving wetland and into the stream and into the national park is not good clearly.

Beyond that in terms of what will happen during the development of the development plans and during the construction process and thereafter, I certainly think there are many opportunities here to make the wetlands and the generous buffer surrounding the wetlands be an amenity for the community and that can be done through carefully developing a specific landscape for the wetland and the buffer by planting, you know, again native species particularly shrub species, for example, that produce a lot of seeds and berries for -- for birds.

MEMBER ETHERLY: Okay.

MR. INGRAM: So -- so, it would be very easy to create an area here that will attract. I mean people are innately attracted to water and they will

be attracted to this portion of this site.

MEMBER ETHERLY: Okay. Thank you. Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Others?

MEMBER MANN: Yes.

CHAIRPERSON GRIFFIS: Mr. Mann.

MEMBER MANN: I just have a couple of fairly narrow questions.

Has any further consideration been given to the Park Service's request or discussion of a fence along their property?

MR. NETTLER: Yes. Anthony, you want to talk about it?

MR. BARNES: Again, our architectural standards, we are requiring that a three-foot fence be built against the Park Service property.

MEMBER MANN: And so, no consideration is being given to the testimony that we heard last week or the -- at the last hearing from the Park Service representative that might have suggested that a different sort of fence be considered?

MR. BARNES: I must have missed the testimony.

MEMBER MANN: I know that there was some discussion that perhaps some more appropriate fence

might have been five or six feet although I don't know that there was any definitive testimony of that sort.

I was just wondering whether or not you had engaged in any further conversations with them about that?

MR. BARNES: No, we haven't.

MEMBER MANN: Okay. Thank you.

CHAIRPERSON GRIFFIS: Let me just follow up with that. My understanding and the recollection that the testimony, and not looking at full record notes, was that it was more of a boundary delineation that they were looking for, but not necessarily, you know, a six-foot stockade fence that might --

MEMBER MANN: Well, I think the one term that we heard was psychological separation.

CHAIRPERSON GRIFFIS: Right. Exactly.

MEMBER MANN: So, they weren't insisting necessarily on that.

CHAIRPERSON GRIFFIS: Okay.

MEMBER MANN: But, I was wondering whether or not there had been any further discussions regarding that with the Park Service so that it was clearly understood by both of those groups what was really being -- what was really being sought.

MR. NETTLER: We have -- we have although

in -- in the letter that we submitted before that issue came up, told the -- to Mr. Murphy, said that we would work with them on whatever fence they thought was appropriate. We would continue to work with them and that has not changed.

CHAIRPERSON GRIFFIS: Okay. Excellent.

MR. NETTLER: This is -- architectural guidelines standpoint, we have been suggesting a three foot together with a landscape buffer that --

CHAIRPERSON GRIFFIS: Okay.

MEMBER MANN: I just didn't want that to -- right. I just didn't want that to get lost.

CHAIRPERSON GRIFFIS: Indeed and I think it's excellent to bring up. Three foot right now in terms of the proposed guidelines. What kind of material or fence are we actually visualizing here?

MR. BARNES: It would be either a black dipped chain link fence or it would be something of a wrought iron. Again, we're open to discussion.

CHAIRPERSON GRIFFIS: Certainly like a picket or very thin.

MR. BARNES: It would specifically not be a wooden fence.

CHAIRPERSON GRIFFIS: Right.

MR. BARNES: But, it would be something

that's more substantial.

CHAIRPERSON GRIFFIS: Okay.

MR. BARNES: But, also transparent.

CHAIRPERSON GRIFFIS: Yes. But -- yes.

VICE CHAIRPERSON MILLER: My recollection from -- on this subject of the fence which I think it was pretty unsettled, but I thought there was a question out there as to whether or not even there should be a fence and I guess my question is is the Applicant doing the fence only because -- only response to the Park Service or is that something that the Applicant wanted to do?

MR. BARNES: I'd say it's a combination. We were initially led to believe that the Park Service clearly wanted that fence and it makes sense to us so that the delineation of private property to public property is clear and together with a sense of security so that people in the park realize when they're reached private property. It makes the whole neighborhood more secure not to invite people in by not having that boundary. It's a combination.

CHAIRPERSON GRIFFIS: You don't want all those birders walking through the park up into your backyard. Rowdy bunch they are. Okay.

VICE CHAIRPERSON MILLER: Okay. I have

one more -- another question.

CHAIRPERSON GRIFFIS: Indeed. Ms. Miller.

VICE CHAIRPERSON MILLER: If I dare. On this 25-foot setback -- I mean no, 25-foot buffer zone from the wetlands, is there some regulation or something that the Applicant is relying on for that number? The 25 feet.

MR. INGRAM: I'm not certain if D.C. has a requirement. As I said earlier, I believe they may have just adopted Maryland's 25-foot buffer.

CHAIRPERSON GRIFFIS: So, you're establishing it on a regional standard set in Maryland.

MR. INGRAM: Well, as was said earlier, there was some testimony earlier that referred to discussions that individuals had with the Corps of Engineers.

CHAIRPERSON GRIFFIS: Right.

MR. INGRAM: And again, the Corps of Engineers cannot require such buffers. Only state or local governments.

CHAIRPERSON GRIFFIS: Right.

MR. BARNES: Can I also?

CHAIRPERSON GRIFFIS: Sure.

MR. BARNES: It's my understanding that if

you build anything within 25 feet of the wetland and it's only the wetland itself that has -- falls under the jurisdiction of the Army Corps of Engineers, you're required to get a special near wetland construction permit.

So, the delineation was in response to not wanting to do anything within 25 feet. We didn't need the permits and we wouldn't disturb the wetlands.

MR. NETTLER: Well, we -- Frank, if you want to answer this.

MR. LZN: DOH has indicated that 25-feet buffer is what you need.

CHAIRPERSON GRIFFIS: Is what?

MR. LZN: What they need for the wetland.

CHAIRPERSON GRIFFIS: Is what they need, but is it what they require?

MR. LZN: What they require. Yes.

MR. INGRAM: It would make sense. In the District when you are going to have a wetland or a proposed wetland impact or buffer impact, you -- because you fill out the state of Maryland application, that application specifically, you -- on that application, you have to list all buffer impacts.

So, if they're using the state of Maryland application, then it would make sense that you would

list all of those buffer impacts if there were any within 25 feet of the wetlands.

CHAIRPERSON GRIFFIS: Okay. Anything else?

VICE CHAIRPERSON MILLER: One other question. Just -- just for clarification. I think I understand what you're saying, but when you're talking about the pools being in certain areas, but not buildings are you talking about the setback areas like the rear yard setback area or something like that?

MR. BARNES: It was something I referred to. Yes, that the -- in the areas where there's still -- the building restriction line would be moved back is our -- is our suggestion to 40 feet along here and 30 feet there and 30 feet there.

It's actually -- it would -- no building of any kind, no structure which includes a pool or retaining wall or gazebo, anything could be built at all in that area. In this area behind the house, you could build a gazebo or a pool or something like that, but it's more minor structure. So, that the scale of the development from a visual point of view is gradual.

VICE CHAIRPERSON MILLER: Right. Okay. That's what I thought I just wanted to make sure.

Thank you.

MEMBER PARSONS: I want to follow up on that point. I think now that we've got the building sited on your drawing, it's much more comforting to me especially those 130-foot setbacks, 100-foot setbacks.

Would you be willing to say that other major structures as pool house, cabanas, something of that scale couldn't be built in that setback area?

I'm not making myself clear. You've got a 45-foot setback. I'm trying to push right to the wall of the building and define that as well.

Because we've achieved the visual impact of pushing the houses back that we could have achieved by the original plan with a road, but now we are allowing swimming pools and sometimes they come with cabanas and outdoor kitchens or whatever people are doing nowadays, which could be just as obnoxious, defeating all that we've done.

So, is there anyway you could look at that -- you're preparing some covenants. Don't have to respond to that tonight, but I was hoping those covenants --

MR. BARNES: The answer's yes.

MEMBER PARSONS: -- might -- yes.

MR. BARNES: Yes.

MEMBER PARSONS: So, I should stop?

MR. BARNES: Yes.

MEMBER PARSONS: These sessions are very helpful. Thank you for your response.

I wanted to talk to Ms. Sears and others wherever. Whichever one of you.

Still a little troubled by this -- this 30-foot fill and I'm -- I'm glad you used the wall, Mr. Barnes. It was very helpful.

But, you've got -- I -- I somehow this isn't coming together as an amenity for this community and when you look at the wetland, you've setback 25 foot. You've got a seven-foot high wall and then a fill and I notice possibly the landscape architect has sprinkled some trees on there, but underneath all this, underneath all this, is your pipe system. Ms. Sear's pipe system or maybe I shouldn't. Naming these pipe systems, it will get us all in trouble.

That slope looks like it needs to be landscape to me, but you've got maintenance people coming in with big hoses and wanting to suck stuff out of the -- the bay savers and so forth. What's really going to -- what is this place going to look like from the roadway and from the park below?

MS. SEARS: Well, from a storm water

perspective, we aren't going to be planting directly over where the pipes lay any major trees. Because if ever for some reason in the future, you needed to -- if there was a failure which won't happen, but --

MEMBER PARSONS: Promise.

MS. SEARS: -- but -- promise. But, by code, you should not be planting on the embankments with trees over these facilities.

MEMBER PARSONS: So, it will probably be a grass environment then?

MS. SEARS: Or for stability purposes, it can be ground cover planting.

MEMBER PARSONS: I see, but something that could be torn up --

MS. SEARS: Yes.

MEMBER PARSONS: -- in the event of an emergency?

MS. SEARS: Yes. Yes.

MEMBER PARSONS: And you still got at least four locations where -- where fellows or people with hoses have to get down in to pump out these bay saver things?

MS. SEARS: The bay saver, it's not up there, but --

MEMBER PARSONS: I thought they were at

the four corners of your treatment area?

MS. SEARS: There's only bay saver.

MEMBER PARSONS: Oh.

MS. SEARS: At the top, at the road.

MEMBER PARSONS: Oh.

MS. SEARS: There's only one bay saver. The out falls are at the lower end of the pipe after water fills up in the -- in the pipes and releases, we have -- right there's the bay saver which is our last water quality device. Down here --

MEMBER PARSONS: So, what are the --

MS. SEARS: -- is just -- well, right here and right here are discharge points.

MEMBER PARSONS: Oh, those holes fakes me out.

MS. SEARS: They are manholes.

MEMBER PARSONS: I thought they were bay savers. Okay. Fine.

MS. SEARS: No. No, they're just access points.

MEMBER PARSONS: All right. Now, whoever designed the walls, who's the wall --

MR. BARNES: Could I add one more piece to your answer -- to the answer about what it would look like? If you imagined -- we heard a lot about the 30-

feet. At the corner of the most extreme rise to that point of the intersection down to that corner there, there's 30 feet of grade change over about 100 feet.

MEMBER PARSONS: Yes.

MR. BARNES: So, it is a -- it is a gentle grassy bank if I can go on the wall again like that. That kind of slope all the way down. Which would be grass or ground cover.

So, it's essentially looking down on a stream bed over a long open green substantially flat area except where the grade doesn't allow it and it has to be the retaining wall right at the edge on the right --

MEMBER PARSONS: Okay. At Exhibit 9, there's a simple little detailed stonewall and in keeping with the quality of the neighborhood, natural stone is shown.

MR. BARNES: Yes.

MEMBER PARSONS: But, then there's a troubling note or approved split-faced block retaining wall.

MR. BARNES: Right.

MEMBER PARSONS: Now, that's a concrete surface. A much different look than -- than this natural stone.

MR. BARNES: Right.

MEMBER PARSONS: Why are you suggesting that?

MR. BARNES: And we plan not to use a concrete retaining wall faced with stone as much as a gravity retaining wall which is built either of natural stone or these concrete block interlocking elements.

A gravity retaining wall has a height limit usually of around ten feet in which it makes sense to do it and would never fail. Allows water through it. Doesn't show mortar joints and it's a much softer sort of feeling environment. The split safe block systems of which there are some very attractive ones out there can allow the wall to be taller. They are engineered. They can be placed with extreme precision.

So, in areas, for example, where the road loops around here and we have a tall wall near to some trees that we're very keen on saving, the precision of the placement of those set of walls and their engineering is something that we think we want to rely on.

They are -- we care a lot that they be attractive and as much as possible, we will use the

natural stone, but there's some places where I think the split-faced block would need to be in.

Facing the wetland area over here, certainly would be attainable in stone. It would certainly be our choice to use it there.

MEMBER PARSONS: So, you only use stone where you're going higher than seven feet? You only use the concrete material when you're going higher than seven feet?

MR. BARNES: Even closer to ten feet. That would be our plan. Um-hum.

MR. NETTLER: But, there is no site on here which goes to that height. Correct?

MR. BARNES: No, we have one or two walls taller than that and they're only right in this corner right here right now.

MR. NETTLER: It's only -- it's only -- it's not the entire wall. Doesn't it --

MR. BARNES: Right. We might change our minds and just stick with the natural stone all the way, but it -- there are some of these split-faced --

MR. NETTLER: Preferable I think.

MR. BARNES: -- that are -- are -- are attractive and those would only be the ones that would be allowed.

MEMBER PARSONS: As may know these concrete walls, there's no height limit.

MR. BARNES: Right. They go forever.

MEMBER PARSONS: Up. They just keep building.

MR. BARNES: I know.

MEMBER PARSONS: I don't know when they collapse. All right. Good.

The Schnabble study says that you've got brown and gray sandy silt. That's what you're going to be building on as I grasp it.

Is that problematic?

MR. BARNES: No, it's -- it's probably more of a question for a structural engineer, but being somewhat familiar with the report as well, it's not listed at all if you read the details of the different types of soils as being unstable at all. The coloration just helps them identify. No, it's considered to be --

MEMBER PARSONS: So, sandy slit is not --

MR. BARNES: Sandy slit, no.

MEMBER PARSONS: -- not something --

MR. BARNES: No, if it contained a lot of clay or something like that, they would not allow it to be compacted. Then it couldn't be structural fill.

That sort of soil is -- is used all the time for structural fill. It's very common.

MEMBER PARSONS: I was just asking in case you had to excavate this out and bring in --

MR. BARNES: No, we don't.

MEMBER PARSONS: -- material.

MR. BARNES: The only thing we should excavate out is the fill in the area of the old house.

MEMBER PARSONS: Now, Ms. Sears, I guess it was us that talked about the -- I'll call it the boulevard. That is where the median is -- is separating the roadways and there are these odd looking devices that seem to be drawn the wrong way. You described them as some kind of terrace device that was capturing the water in a flat plane as it spilled down. Is that correct? Did I get that right?

MR. BARNES: In your comment that they're going the wrong way, the choice would be they could be drawn like dams or they could be shown the opposite way. They're drawn as if they were not -- as they're back to front dams. I think that's what you're referring to.

The purpose for that, there are small retaining walls. They go up to two/two and a half feet in height, but they don't raise up above the

roadway at all.

If you follow the contour of the roadway on either side, the curb edge would be completely consistent, but as the road slopes down, these create a cut that's a small flat area, a series of small flat terraces inside of that island.

MEMBER PARSONS: So, as the road goes down the hill, the wall goes like this and the flat area is that way?

MR. BARNES: As the road goes past, they are cut out next to the road, between the roads.

MEMBER PARSONS: Now, is there a curb or something to keep people from sliding into this this morning?

MR. BARNES: Does anyone go down to it, yes.

MEMBER PARSONS: I mean I didn't see it on the drawing. I just wanted -- it seems like a -- kind of a navigational hazard for cars. A good thing for the slowing of storm water, but --

MR. BARNES: Yes, there would -- there would clearly have to be a curb.

MS. SEARS: Just to add to that real quick. Even if there's a curb, water can still enter the proposed buyer retention facilities in these

islands by curb cuts.

MR. BARNES: Yes.

MS. SEARS: Right.

MR. BARNES: Sure.

MEMBER PARSONS: Now, Mrs. Hardy's trees. Mr. Pitchford, you've been too quiet. We need your help.

MR. PITCHFORD: I know. I thought you forgot -- forgot about me.

MEMBER PARSONS: Now, she's concerned. She got some expertise from somewhere. She can't disclose the name. Says a tree needs 70 feet and I'm not going to ask you to dispute an unknown expert. But --

MR. PITCHFORD: Right.

MEMBER PARSONS: -- here we are with 25 feet.

MR. PITCHFORD: Right.

MEMBER PARSONS: So, help us with that.

MR. PITCHFORD: I explained it a little bit in the first go round and that is that there is a critical root zone which is much larger than the minimum clearance zone --

MEMBER PARSONS: Yes.

MR. PITCHFORD: -- that I've talked about

and that critical root zone can be rather amorphous. Doesn't have to be a perfect circle. What we do is look at the volume of that critical root zone and what I'm really concerned about is the circle that is the minimum clearance zone which is the thick scaffold roots and the woody lateral roots that are critical for the feeder roots to come off of and that sort of thing. That's what we really want to avoid.

Once I avoid that, I can pick up the critical root zone in other areas, for instance, in her property. How much she's going to go doing something in her property that will sever the root zone of those trees which I doubt she would do. Then there's plenty of critical root zone in her property and elsewhere.

The really, really important part is that minimum clearance zone which we've avoid now by moving the retaining wall further out against the road.

So, I don't anticipate any problem with that at all and if I did, we have talked about putting this retaining wall on pier footings with grade beams or -- or spanning the root system if I felt it was necessary and I would do tests with an air spade to see if there were larger roots down there that we might impact. But, I wouldn't expect there to be any

impact at all.

So, I think our new plan addresses her concerns quite well.

MEMBER PARSONS: So, I don't have the drawing in front of me. How far did you move it from the previous submission?

MR. PITCHFORD: Oh, before, it was right up against the property line basically. They moved it 20 feet. We've moved it outside the minimum clearance zones for all the trees that she's talked about.

MEMBER PARSONS: Okay.

MR. PITCHFORD: So, that area between the retaining wall and her trees would remain at existing grade? Nothing would occur in there at all. It would remain just as it is today.

MEMBER PARSONS: Good. Thank you.

CHAIRPERSON GRIFFIS: Quick follow-up on that wall. We just had a description that -- the utilization of the gravity walls be it split-faced or the natural stone, it seems to me you were describing the impact of deep footers or grade beams. What's the difference in that?

MEMBER PARSONS: I don't know if there would necessarily have to be a footer on that wall or not. I'm not --

CHAIRPERSON GRIFFIS: Conversation of the -- the impact on the trees if you utilize a gravity wall type construction described?

MR. BARNES: There's none. If we used a conventional retaining wall, then you might need piers or footers like that, but we think we can accomplish all these walls with the gravity walls and that would be --

CHAIRPERSON GRIFFIS: Then is there lesser impact on the trees from the --

MEMBER PARSONS: Oh, definitely. Absolutely.

MR. BARNES: Gravity wall doesn't have as deep an excavation by a long shot.

CHAIRPERSON GRIFFIS: Indeed. Okay. Now, I'm following up on all this storm water and setting and all of that. I believe it's going to be for the architect, but the Schnabble report also goes into the subterranean conditions and I'm talking about particular details in terms of water flow at slabs on grade adjacent to below grade walls and also -- find the exact thing here because I'm getting tired.

Temporary monitoring wells recommended during the final investigation and better determine ground water levels. That's a temporary condition in

terms of their investigation.

But, just for our understanding, those would be typical details in terms of drainage runoff or drainage redirection around structures that were below grade?

MR. BARNES: Yes, the code requires and good building practice to keep basements dry would require essentially that you consider every cut to be a wet area and so, there are -- there's water protection against the structure and then there's gravel below the slab, below the house which is piped away. There's also gravel against the side of the house to take the static pressure and that is all piped away and tied eventually into the storm water management system.

CHAIRPERSON GRIFFIS: Okay. Good.

MEMBER PARSONS: I wanted to make sure there's no misunderstanding. What I see with your new grading plan where you've -- you've placed the house -- I don't expect that that L is going to end up exactly looking like it, but that is a commitment of some kind that is -- last time, we had kind of dashed line around the whole lot saying this is where they could put the house. So, what does -- what do these A10, A11, A12, A13 mean to us and mean to the Zoning

Administrator when somebody goes forward to get a building permit?

MR. BARNES: In conjunction with the architectural standards which require that I think 30 percent of the front of the house be within two or three feet of that front yard building restriction line, it means that the front of the house will begin at the front of the lot and not that the house could be all the way at the back against the park.

We then also have some sure area restriction ratios of how big the house could be based on lot size as well as this D.C. coverage requirement anyway on these lots. So, the houses that we've shown and what we think are typical size that -- that we would plan to build here on these sites and they would certainly start near the road to maintain the road scape which we see as a strong town planning and neighborhood gesture and the, you know, the houses would be build back as far as -- as the volume of the house would require.

MEMBER PARSONS: Well --

MR. BARNES: So, our rules do require that you start close to the street and the houses are going to be similar in volume is our intention.

Does that answer the question?

MEMBER PARSONS: No.

MR. BARNES: Okay.

MEMBER PARSONS: What --

MR. NETTLER: Maybe I -- maybe I can answer it.

MEMBER PARSONS: I'm just trying to see if -- if that line at the back of these houses means anything. They're nice sections and they look great, but how can we --

MR. NETTLER: It does in a sense because as I explained before what we're envisioning happening here is a number of different controls affecting each of the placement of the houses. One is the covenants that we're putting on there. The architectural standards which become part of the -- both those covenants and the homeowners as well as the conditions that -- that we're proposing for placement here and what the -- the idea here is when we -- when you ask the question at the first hearing about showing how you can place the houses on the site that doesn't have this impact was to actually create a volume, an area, that where the house would be. So, whether the -- you know, whether you have a dogleg that goes on the right side or the -- or the left is if yo look on the --

MEMBER PARSONS: Sure.

MR. NETTLER: -- the two lots or whether you have just a flat area, that's the volume there and it's -- we're working within that volume for the development because it's based on as Anthony said you have to start under the guidelines. You're going to have to start a certain number of feet from the front of the lot and you won't he able to go back further than a certain number of feet and so, that's that volume.

MEMBER PARSONS: Okay. Maybe you could put that into some control that you're going to submit to us.

MR. NETTLER: Right.

MEMBER PARSONS: Thank you.

VICE CHAIRPERSON MILLER: I just want to follow up on this pool house issue and this setback and how you control it. Because you made a very quick yes, you know, when it was being discussed. But, if somebody wanted to have a pool house, could they have it if they had like a smaller house further away from the buffer zone?

MR. NETTLER: Well, I think the idea here is to put -- we're trying to deal with the impacts on the park first of all.

VICE CHAIRPERSON MILLER: Right. Right.

MR. NETTLER: So, we're trying to limit the amount of construction on those lots that face the park. So, my expectation is that's where you're going to have the most -- they may be the nicest lots because they face the park, but you're going to have the most restrictions in terms of what you can do in the back of those houses.

But, when you get further into the site and up, I think you're not going to have those same types of restrictions. You still have the restrictions in terms of the ones that Anthony has talked about in terms of where you have to start the construction and maintaining open space on each of those lots, but you're going to be able to have people who can have some additions that we've taken into account the possibility of in the future for -- for the storm water management program and the pools and things that go along with that. I think primarily though we're looking at those restrictions dealing with houses that are backing up into the park.

VICE CHAIRPERSON MILLER: So, your response to Mr. Parsons was limited to those houses that back up to the park. Is that correct?

MR. NETTLER: Correct.

VICE CHAIRPERSON MILLER: Okay.

MR. NETTLER: Right.

VICE CHAIRPERSON MILLER: And I guess the response to my question is though are those houses just not going to be able to have pool houses or -- or are they going to -- or maybe this hasn't been worked out or can they just be smaller and then they could still have a pool house as long as they were the required distance away?

MR. NETTLER: Yes, my concern about pool houses, unfortunately, I've had this issue years ago before the BZA with what's a legitimate pool house. It goes back 20 years which was never --

CHAIRPERSON GRIFFIS: Not resolved.

MR. NETTLER: Right. The court never -- the court of appeals said, you know, you have a typical -- what's a typical pool house in the District of Columbia?

I think it's better not to get into this amorphous idea as to yes, you can have a pool house, but have a smaller house than sort of saying no, you can't do certain things.

CHAIRPERSON GRIFFIS: But, if this --

MR. NETTLER: But, this is your volume of the house.

CHAIRPERSON GRIFFIS: We're looking at a

conceptual plan. We've set building restriction lines or you're proposing them.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Aren't we then -- aren't we then to go to the regulations and say what would be matter of right allowable to be built on this site with the covenants that run with this --

MR. NETTLER: Yes, but we're actually going beyond that. We're --

CHAIRPERSON GRIFFIS: I know you are.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: But, if the Board's searching for this security, what's the level of -- the threshold of security of what could actually be proposed there?

So, in an R-1-B zone --

MR. NETTLER: Not R-1-B.

CHAIRPERSON GRIFFIS: What did I say?

MR. NETTLER: R-1-B.

CHAIRPERSON GRIFFIS: Sorry. You could conceivably build an accessory structure on this site.

MR. NETTLER: Right and the Board has decided and the court has agreed that an accessory structure depends on what that use is. In terms of its size, depends on what the use it.

CHAIRPERSON GRIFFIS: Right.

MR. NETTLER: And what similar types of accessory structures are in a similar type of zoned area. So, for example, with the pool house, when in -- I know it wasn't Foxhall, but it was -- maybe it was Foxhall further up. It was Foxhall. The Davidson pool house. I don't know if you all remember the case, but where, you know, much, much further up Foxhall, where you had a pool house that essentially was a --

CHAIRPERSON GRIFFIS: Bigger than most of our houses.

MR. NETTLER: Yes, bigger than most of our houses.

CHAIRPERSON GRIFFIS: Yes.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Yes.

MR. NETTLER: Bedrooms on the top. Had a kitchen and it was being masked as a pool house.

So, the idea was, you know, the zoning regulations say accessory structures have certain height requirements, well, how do you hide those in the --- in the -- in that pool house and so, what I argued and the court of appeals agreed with was you had to go back to what are typical pool houses and the

typical pool house is one that is a small little structure that's related to the use that it's for which is the pool and not some other uses.

You can't -- by you saying that you as a Board have the zoning regulations to fall back on doesn't give you an answer because it only gives the general idea of what's the use that's considered accessory and then --

CHAIRPERSON GRIFFIS: No, my point is it gives us -- it gives us definitiveness at this point in it's ambiguity of what it could possibly propose because I want to be straight. We have conceptual ideas of these design parameters. The only concrete thing that's been presented at our -- to date in this application is the restriction line of what structures won't be build.

MR. NETTLER: Well, they're also the conditions that we've already submitted which we're expanding on.

CHAIRPERSON GRIFFIS: Okay.

MR. NETTLER: We already submitted those to you in our -- our pre-hearing --

CHAIRPERSON GRIFFIS: Okay. But, it doesn't address definitively if you do a small house could you have a pool house or what the design of the

pool houses are going to be or how they're going to face or anything of that nature. We -- I haven't seen any of that in this application.

MR. NETTLER: Right. Right.

CHAIRPERSON GRIFFIS: So, rather than spend the time to kind of theoretically talk about those aspects, I think we ought to fundamentally understand what the base restrictions are within this application that we're looking at.

MR. NETTLER: Right and the base restrictions for those properties that face the park are going to be different than the base restrictions for the rest of the site.

CHAIRPERSON GRIFFIS: Based on the design covenants that you're going to imposed.

MR. NETTLER: That's right.

CHAIRPERSON GRIFFIS: And perhaps --

MR. NETTLER: And they will become part of this order.

CHAIRPERSON GRIFFIS: Right. Conditions.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: Okay. What else? Any other questions?

MEMBER MANN: I just want to clarify that last sentence. Make sure I understand. CCRs are

going to be developed for each of the lots depending on where on the property they're located. Correct?

MR. NETTLER: In a sense, yes, that's correct.

MEMBER MANN: And then you just said that the information that's contained in those will also be reflected as conditions of this order?

MR. NETTLER: Well, we -- the conditions will -- will precede the CCRs.

MEMBER MANN: Right.

MR. NETTLER: But, we have specific conditions that we've already suggested and that we are -- have -- are expanding upon based on what you're seeing here that we will provide as well as part of this order.

So, it will then again get incorporated into the CCRs.

MEMBER MANN: At the end of the day, the CCRs can only become more restrictive?

MR. NETTLER: That's right. That's right.

MEMBER MANN: Okay.

CHAIRPERSON GRIFFIS: Okay. If there's nothing else from the Board at this time, let's go to cross examination. Does the ANC have any cross of the witnesses seven?

MS. GATES: So, I'll stand up and ask the questions.

CHAIRPERSON GRIFFIS: No, we can pull up another chair.

MS. GATES: You talked about covenants. Having we just seen covenants in Spring Valley broken by a vote of the homeowners association?

MR. NETTLER: I'm not aware of which covenants you're talking about in Spring Valley that were broken by the homeowners association.

MS. GATES: Well, I'm not going into a lengthy thing.

CHAIRPERSON GRIFFIS: No, we don't want to hear it.

MS. GATES: And just tell you, but yes, this did just happen.

CHAIRPERSON GRIFFIS: Good to know. But, isn't your direct question Mr. Nettler, what is your client doing to insure the fact that you adopt all these great design parameters and limits with a homeowners association? What the control of changes and amendments to that? What's to say in a year all these guys get together and say boy, you know, what we really want is a -- is a -- yes, a big truck -- monster truck --

MS. GATES: We all want pool houses.

CHAIRPERSON GRIFFIS: And that's what we're going to get. What's the insurance of that? Is there any? Is what -- what --

MR. NETTLER: Well, there are. As I think Mr. Mann noted that what we're doing here is we're saying that the order itself will contain significant -- the order here and the conditions that we're suggesting will be significant restrictions. The CCRs will only go beyond that to be even more restrictive and CCRs can be developed in a way that can make it very difficult to be amended which is not unusual in terms of covenants either.

But, without knowing what situation that Ms. Gates is referring to, I can't say whether that's an analogous situation to this, but that's not --

CHAIRPERSON GRIFFIS: But, it's a redundant insurance you're saying in terms of one, any conditions in our order aren't changeable by a homeowners association meeting and vote. They obviously run with the land and so, they would have to be complied with.

MR. NETTLER: That's correct.

CHAIRPERSON GRIFFIS: Okay. Other questions?

MS. GATES: I trust you.

CHAIRPERSON GRIFFIS: Did you say that loud enough?

MS. GATES: Mr. Ingram, you said that, and I think I'm going to say this right, that on September 2nd, the Army Corps received your application and then on the 28th of September, they did a field visit with you. Has the Corps seen, and really I just need a yes or no here, has the Corps seen the most recent site plans?

MR. INGRAM: Couple points and I'll be quick. I wasn't the one who submitted the application for the jurisdictional determination and the dates are a little off, but no, the Corps hasn't seen the most recent site plan. They typically never get involved at this point in a project.

MS. GATES: Okay. And what about the Department of Health?

MR. INGRAM: I'm not sure at what point in the -- yes, my -- many times.

MS. GATES: So, they have reviewed this most recent piece that we received last week?

MR. INGRAM: Yes.

MS. GATES: Okay. I'm referring to this plan. There appear to be a number of wetland areas on

here.

MR. INGRAM: Absolutely.

MS. GATES: The pipe. How can the pipe be creating this many wetlands?

MR. INGRAM: Well, you know, one of the -- one of the most common mis-perceptions that we're under is that water moves downhill. I'm here to tell you water does not move downhill. It does move down pressure which is not always downhill.

So, we don't know what happens to that water at the point that it discharges from the leak. It is reasonable that it infiltrates to a certain elevation and then can move around that hillside at that elevation to a number of different discharge points.

MS. GATES: How long after WASA deals with this leak will you be able to determine what is and isn't a wetland?

MR. INGRAM: The issue is -- been to bed as a result of the jurisdictional determination that the Corps of Engineers did.

MS. GATES: They wouldn't -- you wouldn't invite them to come back and revisit it because now you know the leak isn't causing all these other places?

MR. INGRAM: They hadn't indicated to us that they would want to come back to see anything post check off --

MS. GATES: I'm asking if you would ask them back.

MR. INGRAM: I'm not in a position to.

MS. GATES: Who is in a position to do that? Let's direct the question to them.

MR. NETTLER: Well, I guess I can answer the question. The answer is no. It's not -- there's -- there's no basis for them to come back and do that because they've made a determination based on their review of the site as to what is within their jurisdiction. So, whether it's we or WASA or more likely us correct the problem with the leak, there isn't going to be an issue for anybody to come back to deal with.

MR. INGRAM: Let me just make one -- one other point. I can tell by reviewing the record that on the field day when -- when this work was completed that an extensive amount of time was spent in that three acre area digging soil profiles and looking at the soils in that area because it was a problem area.

MS. GATES: Thank you.

MR. INGRAM: So, that would only become

more upland over time when that leak shut off.

MS. GATES: Okay. Ms. Sears, I think I might have missed something. On the drawing, there is a storm pipe that travels along Foxhall Road.

MS. SEARS: A proposed storm drain.

MS. GATES: Okay. That you -- so, you all are planning to put that in?

MS. SEARS: Yes, as part of the road.

MS. GATES: Okay. And what is the relationship of that pipe to all this other storm water management plan we've talked about tonight or heard about?

MS. SEARS: That is only treating Foxhall Road runoff.

MS. GATES: Okay. So, you all aren't pumping anything in there?

MS. SEARS: No, not at all. Nothing from our site gets into the -- it's just the road runoff.

MS. GATES: Okay. One little question about the filtera system. Over time, do things like road pollutant, I'm talking about oils, get into the system or are they really all captured right on the top in that area that you said could easily be cleaned or is that the bay saver? I just --

MS. SEARS: Well, all pollutants in the

road get treated by all these devices and the filtera if it is in the roadway runoff that gets into it, yes, it will enter the filtera, but it -- it filters through. But, through the top portion of the filter is where most of these pollutants are captured and it can be scraped off and maintained over time.

The bay saver unit separates out the oils which float from other pollutant which settle.

MS. GATES: And they don't build up over time? In other words, at some point, the system begins to fail is I guess my question. Either one of these.

MS. SEARS: With proper maintenance, no, they will not fail because they are maintained on the annual basis.

MS. GATES: Okay. Mr. Barnes, I believe you said that some of the houses in the bowl area --

MR. BARNES: Yes.

MS. GATES: -- might have to have pilings.

MR. BARNES: I was saying pilings are one solution for building on fill. If there was ten feet of fill below a basement which is probably the most extreme case here, it might be economical if you test the soil as the new purchaser of the lot to just put -- to drill piles of dried piles down in there and

residential piles are not like the sort of things you see downtown if that's what you're concerned about.

A friction pile could be cast in -- in place there rather easily and may be cheaper than a wider spread footing or pulling up the soil and laying it down to a compacted standard.

MS. GATES: Earlier, there was some talk about maybe having subsurface rock.

MR. BARNES: Yes, subsurface rock that was located was only in the spur of -- very steep spur of land below Mrs. Hardy's property down there and it was 18 or 19 feet below the existing grade and we're not planning to go down there at all.

MS. GATES: Okay.

MR. BARNES: The other drillings which were like 20 feet deep each, none of them hit rock.

MS. GATES: Ms. Sears, I do have one more question for you. In the bay saver system, the water from that flows into the wetland. Correct?

MS. SEARS: Well, the water flows first into the underground pipe system.

MS. GATES: Correct. And then --

MS. SEARS: And then --

MS. GATES: -- tell us how it gets into the wetland from that system?

MS. SEARS: Well, the bay saver unit is at the end, the bottom portion of our storm drain system. Water -- water enters the bay saver through pipe. It's filtered through. This separates the floatable pollutants from the settled pollutants. That clean water will then go into the underground storm water management for storage management and then get discharged into the wetland at two proposed locations there and there.

MS. GATES: And when it gets discharged, does it come out of a perforated pipe and sort of get released slowly or does it just get flushed out?

MS. SEARS: I think the best answer to your question -- let me just let you envision what happens in the underground storm water management. Water enters it and fills up like a -- like say a bathtub.

MS. GATES: Um-hum.

MS. SEARS: Filling a bathtub up and there's a control structure. At both of the out fall locations, there's two circles as we are graphically representing them as manholes. Those would have a control structure inside which has a small opening say within a wall in the middle of the manhole that allows that water to be released at a slower rate, our two-

year pre-developed condition.

Okay. That is -- that releases within that manhole and then it discharges through a large pipe to accommodate a 15-year event into the -- the wetland. It's not under pressure flow. It is a gradual flow in the larger pipe after it's released at that smaller orifice rate.

MS. GATES: So, it does not encourage silt buildup?

MS. SEARS: No, all of the silt and sediment and pollutants are already addressed through our water quality --

MS. GATES: No, but if it runs over.

MS. SEARS: No, at the end of our discharge points right here and here, we will have as typical at out falls like a rip rap device which --

MS. GATES: I don't know what that is.

MS. SEARS: Okay. Stone --

MS. GATES: Okay.

MS. SEARS: -- at the end of the pipe to prevent erosion, dissipates the water so that it is not harmful to enter the wetlands.

The sediment has already been settled prior to that. There's no sediment that would be discharged.

MS. GATES: Thank you.

CHAIRPERSON GRIFFIS: Good. Thank you. Ms. Hardy.

MEMBER MANN: Can I just follow-up real -- real quick for a moment and just -- this is -- when the -- the water comes out of that system that eventually makes it way to the wetland, any -- any potential remaining pollutants there just gets treated in a more natural -- in a more natural way through the wetland? Is that the idea? Anything that didn't settle in the -- in the process.

MS. SEARS: If throughout the many devices we have throughout the site there's still something left that didn't get treated which all water is entering these devices --

MEMBER MANN: Right.

MS. SEARS: -- from impervious areas, but if -- if there's still a small trace of pollutant, yes it would go through the wetland. But, keep in mind which --

MEMBER MANN: Which is --

MS. SEARS: -- is the best natural --

MEMBER MANN: Exactly.

MS. SEARS: -- water treatment you can have.

MEMBER MANN: Right.

MS. SEARS: It's purpose is to filter. So, I don't think at that point anything that is still remaining would be in -- in such a small amount that it's only there for the wetland to do it's job.

MEMBER MANN: I just wanted to kind of close the loop on the purpose of the wetland.

MS. SEARS: Right.

CHAIRPERSON GRIFFIS: Right. I think it's an excellent point.

MS. SEARS: It is a natural filter and it will do that.

CHAIRPERSON GRIFFIS: Okay. Good question. Ms. Hardy.

MS. HARDY: Did I get your name right, sir?

MR. PRYOR: Right.

MS. HARDY: Isn't it a fact that you and I have never met?

MR. PRYOR: That's correct.

MS. HARDY: Thank you.

MR. PRYOR: I believe you have met my associate, Mr. Pearl, many times.

MS. HARDY: Yes, I had. Yes, but you and I -- you because you use --

MR. PRYOR: That's correct.

MS. HARDY: Now, are you aware of the sequence of events that you characterize of me in agreement with you about the facts that I received an agreement on a Friday afternoon at 5:30 which was then returned to you with our comments on Monday morning and that at 5:30 on Monday afternoon before the 15th which would Monday the 14th, that's when the documents -- and those were the only exchanges that have taken place between us.

MR. PRYOR: I'm only aware of the correspondence between the two lawyers and the dates. Not the chronological -- the time factor.

MS. HARDY: But, those -- those were the dates. Are you aware that it was -- it was Friday the 10th and then this Monday the 14th.

MR. PRYOR: Again, I don't have the document in front of me. I can't say.

MS. HARDY: Okay. It's just goes towards your characterization of what I've been like now.

Are you aware also of the fact I refused to sign your agreement because I thought your conditions they were not specific of enforceable and -- and one of the reasons was that you did not want it to be part of the BZA record?

MR. PRYOR: The fact of you not signing the documents that have been proposed to and reviewed by your counsel and my counsel and which we agreed to was just returned to me saying she has not signed period.

MS. HARDY: That's all you know about it.

MR. PRYOR: That's correct.

MS. HARDY: Okay. Well, because you did add another ringer. You said something about I made additional demands.

MR. PRYOR: I said nothing like that. I believe that was said this morning to you by --

MS. HARDY: But, I apologize if I didn't hear you, but that's what I thought I heard.

This may not be to you. Mr. Pitchford, can I ask you to characterize my understanding of my present situation with regard to protecting my trees?

I can either accept your understanding of what is needed to protect my trees and Anthony's presentation of what kind of walls you will build or I can file a claim, a nuisance claim, to protect my trees and then we can have battling landscape architects and engineers. Is that your understanding of how I'm to go with this?

MR. NETTLER: I'm objecting.

CHAIRPERSON GRIFFIS: Yes, indeed. I think you just need to rephrase the question to get to the heart of what you're looking at --

MS. HARDY: Well, the --

CHAIRPERSON GRIFFIS: -- because he can't -- well, just -- just for clarification, you've asked him to tell you what you believe or what you were thinking. I forget your exact words and you're laying it out as this -- and I'm having a hard time remembering --

MS. HARDY: Well, is this his understanding of what is -- I -- I've said that I think my trees are in danger.

CHAIRPERSON GRIFFIS: Right.

MS. HARDY: And I'm asking Mr. Pitchford to comment on my understanding of what are the alternatives that are there to protect my trees and it would appear I'm asking him to say yes or no to confirm that the only choice I have is to accept his characterization of what is correct and Mr. Barnes' characterization of the -- a wall that is 25-foot long and six-feet high.

CHAIRPERSON GRIFFIS: Okay.

MS. HARDY: That it's not going to endanger my trees.

CHAIRPERSON GRIFFIS: Understand why you should believe you?

MS. HARDY: Yes.

CHAIRPERSON GRIFFIS: Is that what it is? Why should she believe you?

MR. PITCHFORD: Because I'm the expert. No, I think we've gone to great extent to accommodate your trees.

MS. HARDY: No, I accept you're an expert.

MR. PITCHFORD: Okay.

MS. HARDY: But, what I'm -- but, I'm -- this is really for the Board's understanding that all I can do is have dueling experts and -- and to -- and then to put it the way that someone else said today, what I try to say to the Board, either I face -- claims and dueling experts on this issue or you find preventative measures.

I don't see that there's -- that there's preventative measures. The condition that I'm asking for says Mr. Pitchford says this is the condition and that's it or I sue and there must be something in between that.

CHAIRPERSON GRIFFIS: One would hope there's an awful lot in between those.

MS. HARDY: Well, okay.

CHAIRPERSON GRIFFIS: First of all, we've conducted public hearings on this which you were actually granted party status to present a full case and one forum was this one exactly where you presented your case to bring your experts to refute the Applicant's experts in what you believe is a wrong determination in preserving your trees.

Secondly, well, I think that's really it.

MS. HARDY: Okay.

CHAIRPERSON GRIFFIS: You could have --

MS. HARDY: If that's only it then this -- this only -- this -- but, if that was not done because I wasn't aware that's how it's suppose to be done, the alternative is -- is a legal claim I guess to protect the trees.

CHAIRPERSON GRIFFIS: Well, I certainly hope you don't come to this forum to ask us directions on --

MS. HARDY: No, I'm not asking you. I've trying to clarify my own survey.

CHAIRPERSON GRIFFIS: I think -- and if you asked my opinion of it which you haven't, but I'll take the opportunity. I think there's an awful lot more to do before you go into some litigious posture in terms of providing to protect your trees if that's

the fundamental aspect that is trying to be looked at and in fact, it's a fundamental concern of this Board.

There is still time to input detailed information of which we might be able to look at and more so, it seems that the Applicant has been fairly receptive. I don't know this, but only seeing in this hearings, fairly receptive to any sort of options that might be taken or concerns that could be addressed, but we need to get them all out here in order for it to happen and certainly for this Board's deliberation in terms of its determination and conditions that might be put out on order. Okay.

MS. HARDY: Well, I failed to get them to -- to -- but I have one more question. I don't know who it's addressed to. I have asked for specific conditions during the construction period and I have not heard any from anybody. I don't know. Maybe we could try Anthony, but most of my concerns that I laid out to you today --

CHAIRPERSON GRIFFIS: Indeed.

MS. HARDY: -- that bothered me terribly during the construction period and not -- have not been part of this presentation.

CHAIRPERSON GRIFFIS: Indeed. It was interesting in -- let's get their connect up with the

Chair and why does that? Let me address that briefly because it was fascinating to me in listening to your concerns of which are all very substantive that you said you weren't necessarily objecting to new development adjacent to your property and it might be kind of nice once it's done, but the process to get there, the construction was so objectionable that conceivably you wouldn't be able to develop anything.

Is that my understanding?

MS. HARDY: Sorry, the last part missed me. The first part I got. What was the last sentence?

CHAIRPERSON GRIFFIS: It seems like the means to the end. You don't have a problem with the end, but the means to get there. Their construction is objectionable.

MS. HARDY: Right. I --

CHAIRPERSON GRIFFIS: So, how can we --

MS. HARDY: Well, I think there are a number of different mitigating things we can do. There is phasing it.

CHAIRPERSON GRIFFIS: Right.

MS. HARDY: There is days, hours of work and days of work. There is controls on the blasting and the dynamite. I mean I'm at the top of a bowl

that all this stuff's going to come out to me.

CHAIRPERSON GRIFFIS: Right. Just for clarity, they've indicated that they're not going to need to blast.

MS. HARDY: There's watering. There's water. I mean you're asking me. I'm not a construction engineer. If this project had a contractor, I might get some answers on it.

CHAIRPERSON GRIFFIS: Okay. And forgive me.

MS. HARDY: But, excuse me. But -- but, you said.

CHAIRPERSON GRIFFIS: No, I see. Excuse me.

MS. HARDY: I am not objecting to.

CHAIRPERSON GRIFFIS: It's my question. The issue is you come back -- we're asking you for information not -- not to say I'm not the expert. It's your concern --

MS. HARDY: Yes.

CHAIRPERSON GRIFFIS: We're not going to create the darn thing. If you have specific concerns and that's what needs to be addressed, that's all I'm asking you --

MS. HARDY: Okay.

CHAIRPERSON GRIFFIS: -- is to get specific with that.

MS. HARDY: I put my specific concerns.

CHAIRPERSON GRIFFIS: Secondly, is the whole aspect of construction and construction management agreement, this Board in my tenure on it has moved decidedly away from that. That steps well beyond our jurisdiction. Almost every single facet that goes into or had been adopted in past construction management agreements, there's an entire agency that deals with construction and that's the agency that ought to have that. For us to usurp that jurisdiction steps beyond us.

And it's almost impossible for me to send the Zoning Administrator out to go say are they in compliance with zoning because they started construction at 7:00 a.m. in the morning. He's going to look at anyone that sends him out there and say I have not a clue. It's not a zoning issue.

So, to put it into context, we need to look at specifically those aspect that might be able to be mitigated. You brought up phasing and such.

Let's here what -- what proposals there might be for construction management and -- and progress throughout.

MR. BARNES: In -- in the agreement, the near agreement that you've heard much about, we had agreed on many terms that we were prepared to support to address Mrs. Hardy's concerns including offering to wash her house when it's covered with dust and things like this and there was some things that were very specific that were hard to guarantee like you would not see a parked bulldozer below your house.

She is 200 feet above to bowl. It's kind of hard to guarantee the sight lines.

I think I could say truthfully that as with other neighbors, this groups remains very open to reaching a private understanding with her to address those concerns. We --

CHAIRPERSON GRIFFIS: For construction management understanding?

MR. BARNES: Beg your pardon?

CHAIRPERSON GRIFFIS: A construction management or is that understanding or agreement, whatever you're proposing does that go beyond even the construction management?

MR. BARNES: It was a combination of the things in the case Mrs. Hardy --

CHAIRPERSON GRIFFIS: How soon do you think that's going to be ratified?

MR. NETTLER: To the extent it goes beyond anything in construction management, I don't think that's very soon because there's a very fundamental difference of opinion as to what can be guaranteed.

CHAIRPERSON GRIFFIS: So, one -- one option attentive seven on a Tuesday evening is to break out the documents that need to be agreed upon which might save some time and effort and actually look at some milestones and accomplishments.

So, you could, in fact, go in and enter into an understanding and create a construction management agreement with yourself, the other neighbors, and the developer and have it signed.

It will be legally enforceable. Will it not, Mr. Nettler?

MR. NETTLER: Yes, it will.

CHAIRPERSON GRIFFIS: Indeed. So, that can happen. Okay. Fine. I think I got a role as a mitigator. What do you think, Mr. Etherly?

MEMBER ETHERLY: I agree, sir.

CHAIRPERSON GRIFFIS: Let's still zoning.

MEMBER ETHERLY: I agree, Your Honor.

CHAIRPERSON GRIFFIS: Other questions.

MS. HARDY: I -- may I ask for clarification while --

CHAIRPERSON GRIFFIS: Sure.

MS. HARDY: Two sides. I mean I'm the adjacent neighbor and I understood that the Board has some ability to mitigate the circumstances that I believe adversely affect me and did I understand you right that you're saying if I say that they -- if a certain activity is during the construction period and going to adversely affect me, you're saying that's not within your jurisdiction to deal with?

CHAIRPERSON GRIFFIS: Oftentimes, the specifics are not within our jurisdiction. The aspects of adverse impact or adverse affect --

MS. HARDY: Yes.

CHAIRPERSON GRIFFIS: -- are those which go to the development that's proposed and we measure whether the development as proposed would create or tend to create adverse impacts. That means once it's built, once it's run, once it's occupied or once it's use is established, it's zoning. These aspects run with the land.

If we were to condition just on specifics, if we were to condition an order that approved this theoretical lot development that said construction will start only at 7:00 a.m., then 30 years from now when one of the houses wants to put an addition on,

they would have to come into compliance with that condition. Well, it makes not sense because the condition was just set for a temporary situation and that's why oftentimes we've moved well beyond construction management agreements.

But, there's nothing that prohibits you or precludes you from some signing frankly. Though probably a more enforceable agreement and that would be in the private realm.

MS. HARDY: Yes, I think that's it. I think, Mr. Barnes, I just need to follow up saying that I objected to one construction vehicle is to minimize what I've had to say about a construction staging area. That's not quite the same thing as asking not to see one -- one vehicle.

Thank you.

CHAIRPERSON GRIFFIS: Understood. Thank you. Okay. Next, Friends.

MR. SNAPE: Mr. Ingram, I'm looking for to start out.

MR. INGRAM: Here I am.

MR. SNAPE: Mr. Ingram, are you familiar with the jurisdiction determination that the Army Corps of Engineers made with regard to the wetland in the southeast portion of the Phillips property? Well,

I see it right there.

MR. INGRAM: I am.

MR. SNAPE: I'm glad you have a copy. Is there anywhere on that document where the Army Corps says that the other wetlands that we've identified on this map are not jurisdictional wetlands? Is there anywhere on that document where it says they are not jurisdictional wetlands?

MR. INGRAM: What it says is that the map that was given to the Corps of Engineers was the accurate depiction of the extent of jurisdictional wetlands on the site.

MR. SNAPE: So, are you saying no, it does not say? What are you saying? Can you -- I don't understand that answer.

Is there anywhere on this document where they say that these wetlands here in the middle and here in the south, but particularly here in the middle, that they're not jurisdictional wetlands? Is it contained in that letter? Yes or no?

MR. INGRAM: I believe it -- allow me to take review of the letter for a second. I think that it may say that the wet area in the center that was caused by the broken water line is not a jurisdictional wetland, but let me review the letter

for 30 seconds.

I do not see reference in their letter to the area that was caused by the broken water line.

MR. SNAPE: Thank you, Mr. Ingram.

Sticking with the letter on the jurisdictional determination, have you seen the maps and data referenced on the last page of that letter? It says data reviewed for jurisdictional determination, mark all of it and there are several maps and data sheets. Have you seen any of those maps and data sheets?

MR. INGRAM: I'm not sure that I've seen everything. I've seen some of the information.

MR. SNAPE: Mr. Nettler, are these maps or data in your possession?

MR. NETTLER: If you can tell me which maps and data you're referring to.

MR. SNAPE: I'm talking about geological survey, topographic maps, and hydrologic maps which are mentioned here as part of the record. Are you in possession of these maps?

MR. NETTLER: They may -- I may or may not. I just don't know sitting here that --

MR. SNAPE: Are these maps a part of the record before this Board?

MR. NETTLER: Some of them -- some of them apparently are.

MR. SNAPE: Which ones are, Mr. Nettler?

MR. NETTLER: Well, I think at this point we're getting beyond what's legitimate questions.

MR. SNAPE: How so, Mr. Nettler?

MR. NETTLER: I'm not here to testify as a witness.

MR. SNAPE: Right.

MR. NETTLER: You want to ask the witness here to testify.

MR. SNAPE: Well, I'm trying to -- either one of you. I'm trying to just understand.

MR. INGRAM: Okay.

MR. NETTLER: Well, you can make argument to --

MR. INGRAM: Okay. But, in the -- in the section that is being referred to, it says that this office concurs with the delineation report dated September 2nd, 2004 prepared by Environmental Systems Analysis. That report would have included a number of maps. It is the obligation of the Corps of Engineers to review the data that is supplied to them in support of jurisdiction determination such that when they send this letter out, they have made their final

determination.

MR. SNAPE: Are the maps by the U.S. Geological Survey in your possession, Mr. Ingram, or are they in the record? Either one. You can answer both questions.

MR. INGRAM: I don't know what maps you're referring to by the USGS.

MR. SNAPE: This is -- I guess I'll proceed.

CHAIRPERSON GRIFFIS: Yes. Indeed. If they can't answer it, they can't answer it.

MR. SNAPE: Mr. Ingram, do you or anyone here know whether WASA has fixed the pipe that was leaking water? Do you know whether that pipe has been fixed or not?

MR. INGRAM: I don't know for sure, but I don't believe it has.

MR. SNAPE: Okay. Okay. Mr. Ingram, are there any invasive species on either the National Park Service wetland or on the wetland that has been identified as a jurisdictional wetland? Are there any invasive species on either of those two wetland complexes?

MR. INGRAM: I've not looked at those wetlands.

MR. SNAPE: Can you explain -- you're not a lawyer. Is that correct?

MR. INGRAM: Come from a family of them, but I'm not one.

MR. SNAPE: Okay.

CHAIRPERSON GRIFFIS: We're going to have to ask you to leave.

MR. SNAPE: Can you explain -- can you explain why it is that the -- that the Army Corps requires buffers? We've had a discussion. We don't know if it's -- but, why does the Army Corps have buffers?

MR. INGRAM: In fact, they've pointed out under section 404 of the Clean Water Act, it is, in fact, illegal for the U.S. Army Corps of Engineers to require buffers to anything outside the jurisdictional footprint of wetlands or streams.

MR. SNAPE: Do they not require buffers so precisely those wetlands are not filled?

MR. NETTLER: Objection.

CHAIRPERSON GRIFFIS: Wait. Yes, why do we continue with a question when the answer is they don't have buffers.

MR. SNAPE: Well, I tried to frame in a -- in a -- the reality is that he's making a legal

opinion about the Army Corps --

CHAIRPERSON GRIFFIS: He said the section code that they don't require the buffers.

MR. SNAPE: And I was asking that don't we have buffers as a regulatory matter and we all admit that the Army Corps does have buffers as a regulatory matter. Precisely --

CHAIRPERSON GRIFFIS: That's not exactly the answer he said.

MR. INGRAM: No, the -- the -- what I had said earlier was --

MR. SNAPE: I'll listen more carefully.

MR. INGRAM: -- that in the state of Maryland, the state of Maryland has --

CHAIRPERSON GRIFFIS: Right. Right. Don't answer a question that hasn't been asked. The direct question was the Army Corps why do they require the buffers and you cited 409 section 221 that indicated they don't require them. Next question.

MR. INGRAM: Okay.

MR. SNAPE: Are you aware that in Virginia they have 100 foot buffers in the Chesapeake Bay region around wetlands, Mr. Ingram?

MR. INGRAM: The size of the buffers depends whether you're in the critical area of the

Chesapeake Bay or outside of it and whether you're talking buffers to streams or buffers to wetlands. The widths -- the widths, excuse me, are all over the place.

MR. SNAPE: I think it was either you or Mr. Gauzza, I hope I'm pronouncing your name correctly, that said that you had spoken with someone in the D.C. Department of Health about these plans that are before the Board today as they impact the jurisdictional wetland. Did I hear that correctly from either you or Mr. Gauzza?

MR. INGRAM: Others have. I haven't had -- I have not spoken to the Department of Health concerning these plans.

MR. SNAPE: Okay. Can I ask who in the Applicant's team did talk to the Department of Health? I could have sworn I heard someone say they had talked to the Department of Health.

CHAIRPERSON GRIFFIS: Mr. Lzn did.

MR. SNAPE: No? Mr. Lzn. Can I ask who you spoke to in the Department of Health about these plans before the Board today and they're impact on the jurisdictional --

MR. LZN: I talked to Ademosa and the also Chief, Tim Caracari.

MR. SNAPE: Okay. Are -- is there a written determination that they've made as it relates to -- because -- I ask because as you know he didn't have information when he testified here. So, is there anything --

MR. LZN: Okay. The -- the 35-foot buffer was implied to most of the -- sites. We have other sites, they have -- they have said --

CHAIRPERSON GRIFFIS: Yes, but the question is is there a written determination from the Department of Health on the setback from the buffer?

MR. LZN: No, it's just verbal. It's verbal. It was --

CHAIRPERSON GRIFFIS: Okay.

MR. LZN: -- during the field trip.

CHAIRPERSON GRIFFIS: That's right. No.

MR. SNAPE: Okay. That is it for Mr. Ingram. Mr. Pitchford, in your response to Ms. Moore on her concerns about trees and grading and things like that, you made the statement that trees that could die within the next 20 years should be removed. Can you explain? That was an -- it's an attachment. Exhibit 12 I believe of the most recent submission. It was in response to an e-mail to Ms. Moore.

CHAIRPERSON GRIFFIS: Wow.

MR. PITCHFORD: I don't think -- yes, I said that they don't make the best preservation candidates. I don't believe I ever said that they shouldn't -- should be removed.

MR. SNAPE: And can you explain why that is? Why don't they?

MR. PITCHFORD: Well, simply that they're likely to die within a shorter period of time.

MR. SNAPE: And so, you did write "I did not want to pick trees that could fail within the next 20 years or less." In terms of mature -- you're talking about mature trees here that you wanted to keep.

MR. PITCHFORD: Correct.

MR. SNAPE: Okay. Mr. Barnes. Mr. Barnes, why have you changed the grade or are you proposing to change the grade along W Street? I believe I've heard you say that you're going to lower that portion of what we're calling the baseball mitt or the bowl and can you just explain to me and the Board why you're going to reduce level there if indeed that is what you're doing?

MR. BARNES: There are two reasons. We are planning to lower the level where it's higher than the roadway for a couple of reasons.

Firstly, in our discussions with the W Street neighbors, they specifically were concerned about houses being built up there that would tower over them on the south side of the street.

Secondly, the -- because that exaggerates the amount of fall to the lowest part of the site, it made more sense in trying to make the grades more gentle and the grading plan to scrape off the highest exaggerated rim of the glover to make the grades more gentle through the site.

MR. SNAPE: One last question for you, Mr. Barnes. What is the -- with the proposed plan now before the Board this evening, what is the steepest slope or steepest grade that you'll now have on this property? Do you know the answer to that?

MR. BARNES: I might defer to Roy.

MR. GAUZZA: On the roads, it's 12 percent which is maximum code and on the green areas, it's a three to one slopes.

MR. SNAPE: Okay. And what was the steepest slope before -- as it stands right now? In other words, I'm asking to compare this plan with just the grade right now.

MR. GAUZZA: I believe it's probably 25 percent, but I'm not absolutely sure on that.

MS. SEARS: Actually, just in a quick look of a plan I have right now, there are existing slopes up there that are two to one slopes. Steeper.

MR. GAUZZA: Twenty-five percent.

MR. SNAPE: Okay. Now, as opposed to the future.

MS. SEARS: Existing.

MR. SNAPE: Right. I'm finished.

CHAIRPERSON GRIFFIS: Thank you very much. Who else do we have? Ms. Gates, come up for your last quick question and is that the parties? We've done all the -- indeed.

MS. GATES: It's not a question, Mr. Chairman.

CHAIRPERSON GRIFFIS: Uh-oh.

MS. GATES: It's a comment --

CHAIRPERSON GRIFFIS: Oh, dear.

MS. GATES: -- on your concern about the construction management plan.

CHAIRPERSON GRIFFIS: Oh --

MS. GATES: I understand you feel --

CHAIRPERSON GRIFFIS: -- I couldn't imagine that went unnoticed.

MS. GATES: I understand you feel you don't have jurisdiction. However, having just lived

through one of these unconditioned construction plans --

CHAIRPERSON GRIFFIS: None of my comments said that it wasn't disruptive.

MS. GATES: No, I'm going to tell you what happened. When we went to DCRA with it, DCRA came back to us and said there was no condition put in this. It's the BZA's fault.

So, before the --

CHAIRPERSON GRIFFIS: That's nice.

MS. GATES: -- neighborhoods begin planning hot potato --

CHAIRPERSON GRIFFIS: I'll leave the -- I'll leave the record open for all the parties, the Applicant and yourself and attorneys.

MS. GATES: What do we do?

CHAIRPERSON GRIFFIS: You brief this Board on where our jurisdiction is in the zoning regulations to cover construction management, construction of projects and I will -- I'll put in everything you ever wanted. Easy enough.

MS. GATES: Do we have an enforcement officer now for the BZA?

CHAIRPERSON GRIFFIS: We're getting well beyond the scope of this hearing which is still in

progress. So, I need to get into closings at this point.

MS. GATES: Thank you.

CHAIRPERSON GRIFFIS: In terms of bigger questions, in fact, the -- oh, I shouldn't say. The office is open tomorrow and certainly the director's in for -- for questions on that.

VICE CHAIRPERSON MILLER: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON MILLER: I would just like to make a comment on the construction management question. I think in all the cases that I have sat on in where there have been major ramifications for construction management, while we have not had conditions in orders, there have been agreements that have been worked out by the parties that are enforceable before another body.

CHAIRPERSON GRIFFIS: That's a great idea. Okay. Last thing on that. Who would you rather enforce, your attorneys or DCRA? Who do you want to have in control of an agreement? Leave it up to you.

Mr. Nettler, how long do you need for your closing?

MR. NETTLER: About five minutes.

CHAIRPERSON GRIFFIS: Five minutes. Let's

go right into it unless the Board needs a quick break. We all set. Are you ready to go right now?

MR. NETTLER: I'm ready.

CHAIRPERSON GRIFFIS: Okay. Let's do it.

MR. NETTLER: I know it's been a long number of days in which we've heard a significant amount of testimony, but I would like to at least bring us back to what the requirement is for the Board here.

This is a special exception that's being sought and it's a special exception that's been part of the zoning regulation since about 1989 since the Zoning Commission adopted an emergency regulation actually on May 5th, 1989.

And it was to insure that there were -- as it says in the Zoning Commission's notice, to insure that construction of these sites that require theoretical subdivisions will protect residential neighborhoods from developments which could have an adverse affect on the neighborhood or be inharmonious with the general propose and intent of the zoning regulations.

And it was particularly directed at situations I think all of which are the -- are the issues that have been raised here which in terms of

density, in terms of storm water management issues, in terms of tree protection. While not going as far as the tree and slope overlay or some of the other overlays that have developed, it provided the Board with an opportunity to take into account the variety of different factors in making sure that a proposed project on a theoretical subdivision is compatible with a residential neighborhood.

It's also important to understand in terms of -- it's called basic special exception juris prudence zoning understandings that the -- the task on the part of the Applicant is to determine whether there's been a reasonable accommodation that's been made to a variety of different issues that have been raised and as well to -- that the Applicant is not in the position of being charged with considering every option that a party may raise in opposition, but merely to make sure that they have made accommodations or have mitigated what are potential impacts.

And the whole idea is because the special exception process recognizes that you have a situation where you have uses that are -- that are otherwise permitted as a matter of right, but simply because of where they're located and how they get developed do have the potential for having impacts that are

slightly different than a matter of right development and we don't disagree with that.

And I think what we've tried to do and I hope the testimony has demonstrated that over these three meetings is that from the very beginning we recognized that this site had a number of challenges that had to be addressed.

It had traffic issues which are always issues regarding any special exception process regardless of whether it's one car coming out of a site or a lot more. Everyone's going to raise a traffic issue and you have to address it and you have to be cognizant of how that gets resolved.

The second one was we wanted to make sure that this site wasn't going to be built out to the full capacity that it would -- would be permitted otherwise under the zoning regulations. You've seen a PUD that was approved for this site that had significant more number of houses on this site located in areas that -- actually in -- in the jurisdictional wetlands areas that have been approved and for roads going through there that were significantly different in some respects than this, but -- but ultimately had other restrictions that I think as Mr. Parsons pointed out at the first meeting that were appropriate for

being applied here as well to create this buffer between the park and the part areas and the project.

Dealing with the runoff on -- on Foxhall, while it's not something created by this project, it's something that we've been willing to take upon ourselves to remedy going beyond, I think, in some respects what would otherwise be required to us and -- and addressing the situation with trees themselves.

And trees is a difficult issue. The District after a long period of time, after many efforts on the part of the counsel has recognized that with the adoption of the tree ordinance and with the regulations that have gone into effect I think last -- just this past month that there has to be a way of protecting significant trees in the District of Columbia and if those aren't protected, there has to be a compensation that's paid for that to insure that we still reforest the District of Columbia.

And so, with those things in mind, the Applicant, I think, came together with the idea of looking for consultants who would provide the ability to demonstrate an understanding and a response to those issues and at the same time, and -- and you've heard them all here today, also identify a peer review process to test those conclusions that were reached by

its initial consultants.

The Greenhorne & O'Mara come in secondly as a peer review, but nevertheless, they were the peer review that was done here.

Mr. Peterson on the traffic issues and -- and others that you've heard from. Anthony didn't have any peer review. I guess he doesn't have any peer in this sense, but -- but he certainly was a significant resource to us in understanding what we needed to do to develop a project that was compatible with what we thought were neighboring areas around this portion of the District of Columbia, Spring Valley, Wesley Heights, and Colony Hill.

Not only that, but we looked at, I think -- as Anthony talked about as well, we looked at some of the overlays as well that have been adopted to see how they can be integrated in here even though they didn't apply to this site and I think what you've heard today, you know, it takes a little while to bring things out and to get things refined and to -- and to address the issues that we've started to address back in June about the storm water -- a storm water management program that goes way beyond anyone that's required under the local regulations and one that's been developed on adjacent sites that people

had asked us to look at as -- as recommendations for this site.

So, we're going way beyond in that respect. Going way beyond in insuring that we provide this buffer to the -- to the park that's meaningful. Going way beyond in insuring that we have sites.

Eleven -- average size of these lots 11,000 square feet. How many developers come before you with the -- an opportunity to go way beyond not just to 9,000, you know, 20 percent/15 percent, but going way beyond what would otherwise be required to insure that we provide as many protections for the environment as possible.

And the last thing I want to focus on is the fact that there are a lot of competing interests here. The W Street neighbors some of whom became parties have certain interests using White Haven Parkway. There are those W Street neighbors who have certain interests in terms of what they wanted to see along W Street in terms of the access into this area or not. There are those who have particular concerns about protecting trees at the expense of other concerns whether they're traffic or whether they're storm water management and there are others who have personal concerns because they're adjacent to this

property.

And what we've tried to do is reach an accommodation. Just as this Board and as the core recognizes what you're trying to achieve is an accommodation. An accommodation of all those competing interests, but with a project that at bottom is environmentally sensitive, does not have an adverse impact on traffic. That does, in fact, benefit the present traffic situation, relieves certain stresses on that traffic situation.

That will ultimately have a site that has more trees on it and healthier trees on it than it has today and that has houses on it that will be sited in a way that will protect both the park and protect the values of property in that area and I think that's what's been presented here today.

And we would hope that you would support it and we will provide you with those additional conditions that we've spoken about with our proposed findings of fact and conclusions of law.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. We appreciate your participation, Mr. Nettler and everyone's participation in this long case and this will conclude our hearing.

At this time, I'm going to set up the

dates for submissions.

Board members, I'll open it up very quickly if we should keep the record open for any other submissions and Ms. Bailey, I don't know if you made any notes. I don't have anything that was required. One thing that rises to my thought is maybe we'd keep the record open for a supplemental Office of Planning's report to react to the submissions that were sent in. I don't see why anyone would object to that.

Is there other elements that we would require the record to be --

VICE CHAIRPERSON MILLER: I wouldn't require this, but I -- it's one more comment on the construction management issue.

I think that while the Board has concluded that it doesn't have jurisdiction to enforce construction management agreement, I -- I believe that we are interested in whether or not a construction management agreement exists because I think that does address some adverse impacts.

So, if there does -- if there is a construction management agreement that is agreed to, I would be interested in having that information come before the Board.

CHAIRPERSON GRIFFIS: Right and to be clear on that information that you're requesting, we'll keep the record open for notification an agreement has been signed.

We don't need the agreement sent into the record. Is that correct?

VICE CHAIRPERSON MILLER: No. Yes, I think that the existence is what's most important.

CHAIRPERSON GRIFFIS: Good.

VICE CHAIRPERSON MILLER: That the parties come to an agreement.

CHAIRPERSON GRIFFIS: We'll note that. We will keep the record open for the legal briefing on jurisdiction for construction management agreements. I wasn't actually kidding about that, but it's not a requirement for the record.

Okay. If that's the case then -- yes, Mr. Parsons.

MEMBER PARSONS: Well, I don't want to beat this one to death, but I think I have to because I want to tell you how critical this is to my vote and that is these covenants and setbacks --

CHAIRPERSON GRIFFIS: Right.

MEMBER PARSONS: -- from the park and -- and if there's two instruments going on here, you said

three, I think, suspenders, belt, and something else.

There's a homeowners association which has not yet been formed. There are covenants to be filed in the land records of the District of Columbia and then our order. Are they duplicative? I mean are they -- are they the same?

MR. NETTLER: As I explained to Mr. --

CHAIRPERSON GRIFFIS: Use your mike. You need your mike, sir.

MR. NETTLER: Actually -- will actually ultimately be more restrictive, but what I'm going to give you is a baseline which -- a baseline which we've talked about here today that would become part of this order that will also be a baseline as part of those, but those may go even farther beyond. But, they're -- but, this baseline is going to address the issues that we've talked about.

MEMBER PARSONS: Okay. Thank you. So, that would come in with the findings of fact.

MR. NETTLER: Correct.

MEMBER PARSONS: As a -- as a part of the order.

MR. NETTLER: Right.

CHAIRPERSON GRIFFIS: And we have a couple of stages here. The other aspect is, of course, we

need to have specifically identified the site plan which would be attached to the order and I'm assuming that it's the one we have recently sent in, but we'll note that. But, it will be noted as an exhibit.

One aspect and very quickly and we'll get out of here. Board members, I'd propose to you. Would you want --

MEMBER PARSONS: Yes.

CHAIRPERSON GRIFFIS: Would we want proposed conditions sent in first for a week and then -- and responses for that? Right now, we don't have additional information coming into the record. So, there's no responses.

I'm prepared to set this for a decision the first of April which our first meeting is on the 5th. That would allow us for -- conceivably two weeks for everyone to put together their draft orders.

Do we need -- I think there's enough information in the record that we don't need responses to proposed conditions if you follow what I say.

Is everyone in agreement? We'll just do proposed orders, draft orders which will have the conditions in it. Critical aspect of that, of course, don't worry about the legal -- oh, I shouldn't say it out loud. Should I? Don't worry about the up front

stuff. Let us get to the substance. Okay.

Then that being not said on the record, let's get --

VICE CHAIRPERSON MILLER: Mr. Chairman.

CHAIRPERSON GRIFFIS: Yes.

VICE CHAIRPERSON MILLER: I'm sorry to interrupt you. As I understand it then, all the parties have the opportunity to submit proposed findings and conclusions of law and proposed conditions. Correct?

CHAIRPERSON GRIFFIS: As they always do.

VICE CHAIRPERSON MILLER: Right. Okay. And we often have been saying as -- when you do your proposed conditions, if you can put the rationale for those conditions with it, that would be helpful to our assessment of them. That's okay with you?

CHAIRPERSON GRIFFIS: That's absolutely okay. In fact, it's an excellent point to keep reiterating. That's the only reason why we have conditions on orders. They're supposedly addressing a specific piece of evidence that we found may tend to or would -- the condition would abrogate or -- or reduce the potential for an adverse impact.

So, we're going to know what the adverse impact is before we start conditioning it. Okay.

Enough from me.

Ms. Bailey, when are these due?

MS. BAILEY: Mr. Chairman, I just want to go over very quickly what you've just said just to make sure that I'm on the same page as you are.

CHAIRPERSON GRIFFIS: Good.

MS. BAILEY: And that's April 5th. That's when the Board is scheduled to make a decision on the case.

CHAIRPERSON GRIFFIS: Good.

MS. BAILEY: The submissions that were spoken of were addressed just now, but there will be no responses to those submissions. Am I correct, sir?

CHAIRPERSON GRIFFIS: That's correct.

MS. BAILEY: And the date that I'm proposing for the submissions to come in will be March 28th.

CHAIRPERSON GRIFFIS: March 28th. Do any of the parties or the Applicant have any difficulty meeting that date? Not noting any responses or difficulty in that time period. Okay.

Now, specifically, Mr. Nettler, you have a condition number five which talks about work and construction entrances going to be. It also goes into phasing.

One of the aspects that did come up in this or a concern of this and also an aspect of the application is the entire build out and the entire phasing of this. I would anticipate and will draft it myself if one isn't proposed of what the time line is for this construction, articulate as well, and also any aspects that's articulated either in a finding or in a condition as to how the construction is phased which will lend the Board's idea of how long it will actually go.

I'm digressing quite a bit because I think you know what I mean, but we're looking at a -- the timing of full implementation of this project and impact of that.

MR. NETTLER: Actually, the first Board decision under the regulations back in 1990 dealing with NV Homes and Foxwell Crescent created that -- that contained that condition.

CHAIRPERSON GRIFFIS: Right. And I think it's an appropriate one. You've started a draft or one of the conditions of it here. Okay.

Other than that, anything else? Oh, it's the last opportunity. Very well.

Thank you all very much. We appreciate you staying late this evening and we'll look forward

to all those submissions.

Ms. Bailey, is there any other business for the Board today?

MS. BAILEY: No, Mr. Chairman, that's it.

CHAIRPERSON GRIFFIS: Very well. Thank you very much, Ms. Bailey.

MS. BAILEY: You're welcome.

CHAIRPERSON GRIFFIS: And let's go home for dinner.

(Whereupon, the hearing was concluded at 7:24 p.m.)