GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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MONDAY,

DECEMBER 18, 2000

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The Public Hearing convened in Hearing Room 220 South, 441 4th Street, N.W., Washington, D.C., at 9:30 a.m., Anthony J. Hood, Chair, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	CHAIRPERSON
CAROL J. MITTEN	VICE CHAIRPERSON
HERBERT M. FRANKLIN	COMMISSIONER
KWASI HOLMAN	COMMISSIONER
JOHN G. PARSONS	COMMISSIONER

OFFICE OF ZONING STAFF PRESENT:

ALBERTO BASTIDA	SECRETARY, ZONING COMMISSION
GERALD FORSBURG	OFFICE OF ZONING

OTHER AGENCY STAFF PRESENT:

ANDREW ALTMAN DIRECTOR,	OFFICE OF PLANNING
ELLEN MCCARTHY	OFFICE OF PLANNING
JENNIFER STEINGASSER	OFFICE OF PLANNING
ALAN BERGSTEIN	OFFICE OF CORPORATION COUNSEL
MARIE SANSONE, ESQ.	OFFICE OF CORPORATION COUNSEL

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9:33 a.m.

CHAIRMAN HOOD: Good morning, ladies and gentlemen. This is a Public Hearing of the Zoning Commission of the District of Columbia for Monday, December 18, 2000. My name is Anthony J. Hood, Chairperson of the Zoning Commission of the District of Columbia. Joining me this morning are Commissioners Franklin, Holman, Mitten, who serves as Vice Chair, and also Parsons will be joining us shortly.

Copies of today's hearing agenda are available to you. They are located to my left near the door. All persons planning to testify either in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us. Upon coming forward to speak to the Commission, please give both cards to the reporter, who is sitting to my right.

The order of procedure for special exceptions and variances is statement and witness of the applicant, government reports, including Office of Planning, Department of Public Works, et al., report of Advisory Neighborhood Commission, parties or persons in support, parties or persons in opposition, closing remarks by the applicant.

Cross examination of witnesses is permitted by the applicant or parties. The ANC within which the property is located is automatically a party in the case. The record will be closed at

the conclusion of each case except for materials specifically requested by the Commission, and the staff will specify at the end of the hearing exactly what is expected.

The decision of the Commission in these contested cases must be based exclusively on the public record. To avoid any appearance to the contrary, the Commission requests that persons present not engage the members of the Commission in conversation. Please turn off all beepers and cell phones at this time so not to disrupt these proceedings. The Commission may or may not make bench decisions at the conclusion of hearing all the cases.

The Commission will now consider any preliminary matters. Preliminary matters are those that relate to whether a case will or should be heard today, such as requests for postponement, continuance or withdrawal or whether proper and adequate notice of the hearing has been given. If you are not prepared to go forward with a case today or if you believe that the Commission should not proceed, now is the time to raise such a matter. Does the staff have any preliminary matters? If not, let us proceed with the first case.

MR. BASTIDA: Mr. Chairman, yes, the staff has a preliminary matter. BZA Case number 16661, the applicant has requested a postponement to a day certain in this case. The applicant needs more time to work with the community and accordingly have asked for that postponement. If the Commission decides to postpone the case, staff has a certain date to postpone

it to.

CHAIRMAN HOOD: Okay. Ms. Prince, did you have something that you -- is it related to the same issue?

MS. PRINCE: The same case. Allison Prince with Shaw Pittman. With the final application on today's agenda, the application was filed as 16661. And while we appreciate this Commission's rapid scheduling of these EEF cases for hearing, we simply didn't have time -- adequate time to work with the two ANC's. We are really right on the borderline. We have been to two meetings with ANC 6-B and a meeting with ANC 2-D. And as recently as Friday, we met with the single member District Commissioner of ANC 2-D. He would very much appreciate if we requested this postponement. We spoke to him over the weekend and agreed to ask for the postponement. He was going to be here today, but I don't think he is here yet -- Mr. Akbed A-salaam from the ANC.

CHAIRMAN HOOD: I think he is in the back and I think he, from what I am hearing, obviously agrees with your comments. Colleagues, I have no problems. They are asking for a postponement so they can work out whatever issues there may be. So with that, if we can do a general consensus to just postponement Case number 16661. Okay? Okay, we will do that.

MS. PRINCE: Thank you.

MR. BASTIDA: Mr. Chairman, the case is postponed to March 1, which is a Thursday, at 7:00 p.m.

CHAIRMAN HOOD: Okay. And I believe that is the

only notice that will be given?

MR. BASTIDA: That is correct.

CHAIRMAN HOOD: So it will be March 1 at 7:00 p.m. in this room. Mr. Bastida, could you call the first -- are there any other preliminary matters?

MR. BASTIDA: Yes, Mr. Chairman. There has been in the last two days a request for party status over the telephone by Mr. Thurman Walker and by Mr. Richard Sowell. Those individuals did not meet the party status requirements of filing in writing 14 days prior to the hearing date, and I would like -- I put that in front of the Commission for their decision regarding what they would like to do with that -- with the request for party status.

CHAIRMAN HOOD: Let me just say that based on -- I don't see Mr. Walker. Mr. Bastida?

MR. BASTIDA: Yes?

CHAIRMAN HOOD: Mr. Walker was the first person's name?

MR. BASTIDA: Right.

CHAIRMAN HOOD: And I don't see Mr. Sowell. Oh, Mr. Sowell is in the men's room. When he comes in, we will make sure we let him know that we all know where he is. I think they have specific cases that they want to be party status --

MR. BASTIDA: That is correct, but I failed to write down the case number that they were requesting the party status. So I just wanted to open -- to mention it so you are aware

of their request.

CHAIRMAN HOOD: We cannot, colleagues -- I don't believe it is -- due to the first case, we cannot ask Mr. Sowell what is his rationale or reasoning for wanting to be party status since we know where he is. So what we will do at this time is we will proceed with the first case and we will mention it as it goes on. But I think that they need to come forward and address why they feel they need party status, and I don't believe the first case is the one in which they are asking for party status. If it is, then we will do some backtracking and make up for it since they are not here at this time.

So, Mr. Bastida, if everything else is in order, colleagues, could you call the first case?

MR. BASTIDA: Yes. Case 16660, Application of Montgomery Road I Limited Partnership pursuant to 11 DCMR 3104.1, for a special exception under Subsection 743.2 and a parking variance under Section 3103.2 and 2101 to use existing property as an electronic equipment facility to house an array of telecommunications equipment for access by technical staff of numerous collocated web hosting companies to be operated 7 days a week, 24-hours-a-day, in a C-3-C District at premises 90 K Street, N.W., Square 674, Lot 432.

All those who are going to testify, please rise to take the oath.

(WITNESSES ARE SWORN.)

CHAIRMAN HOOD: Let me say before we get started with this case, we are not going to try to rush the issue, but I will tell you that we have read the submittals. We have read what you have submitted to us, and we can proceed accordingly.

COMMISSIONER HOLMAN: Mr. Chairman, Mr. Sowell has returned.

CHAIRMAN HOOD: Let me just ask -- excuse me for one second, Mr. Briggs. Let me just ask Mr. Sowell, this first case we have in front of us, I understand that you have asked for party status. This first case we have in front of us, Case Number 16660, is this the case in which you have asked for party status?

MR. SOWELL: Yes.

CHAIRMAN HOOD: This is the one? With that, if you could just -- did he say Level 3 or number 3? That is this one, right? Let me just ask if you could step back from the table, and Mr. Sowell, if you can come up. And Mr. Walker -- is Mr. Walker here? Parking? Okay. Mr. Sowell, let me just ask if you could come to the table and could you speak for you and Mr. Walker? Mr. Walker and yourself, if possible? I believe you are representing the same organization.

MR. SOWELL: No.

CHAIRMAN HOOD: You are not? Okay. Okay. Well, let me just say that part of the rules is we are supposed to have something in writing and we don't. So what we wanted to do was to find out from you why you thought that you needed to have party

status.

MR. SOWELL: You keep saying status. What is status? I am not understanding. You have asked for -- Mr. Bastida?

MR. BASTIDA: Yes, Mr. Chairman.

CHAIRMAN HOOD: Mr. Sowell, I believe, has asked for party status, which gives you the opportunity to cross examine, Level 3, back and forth. You will be a party to this case.

MR. SOWELL: Party status, okay.

CHAIRMAN HOOD: Is that what you asked?

MR. SOWELL: Yes. I wasn't understanding what you were saying when you said party status. May I begin?

CHAIRMAN HOOD: Yes, you can proceed.

MR. SOWELL: How are you. My name is Richard Sowell, and I am a life-long District resident. I have been living in that community since the 1960's -- actually 1968. Mr. Walker is coming in now.

CHAIRMAN HOOD: Do you want to ask Mr. Walker to come to the table too, please?

MR. SOWELL: I am the former Director of the Christmas Attics Museum and Park of the Yards, which we had to get a zoning variance in order to start back in 1976. I am a former elected Advisory Neighborhood Commissioner, and I am presently working for the North Capital Area Business Association as the

resource development coordinator. I also, for the Mayor's office, convened what is called the North Capital Revitalization Committee, which basically looks at the seven neighborhoods along the North Capital area in reference to how best to revitalize that neighborhood and actually stop the influx of open-air drug markets that was started by Camille Barnett about three years ago.

I am here today because we have worked extremely hard as a community to bring forth a compatible blend of new commercial and retail development in the area, primarily commercial, i.e. high tech, and to blend them into the surrounding community. We have been successful with the former Director of Housing and his assistant in encouraging the business community to execute a life-long dream of the community, which was to create the Rhode Island Avenue Metro, which many of you all might have came to Saturday. We finally broke ground on it. What is significant about this is it is one of the first Metro's in the country where developers, i.e. high tech and real estate entities, put forth one-third of the money for development. I dwell on that because this demonstrates how the Mayor's initial concept of bringing new business, i.e. high tech, media and so on, can actually benefit the city/community.

CHAIRMAN HOOD: Mr. Sowell, let me just interrupt you.

MR. SOWELL: Yes.

CHAIRMAN HOOD: The intent -- we are getting into

testimony and your testimony can come at a later time. Right now, we just need to hear why you want to be party status.

MR. SOWELL: I want party status so that I can demonstrate that Level 3 -- or ask them about their social responsibility. As other developers have come into the neighborhood and have contributed, such as XM Radio, and others bringing a police station into the neighborhood for and on our behalf, I would like the Board to understand how amenable Level 3 has been in working with us even prior to their ability to actually locate.

CHAIRMAN HOOD: Okay. So, Mr. Sowell, let me ask you this. Are you asking for party status for your organization or for your group?

MR. SOWELL: For the North Capital Revitalization Committee, not myself, yes.

CHAIRMAN HOOD: That is who you represent. Okay, North Capital.

MR. SOWELL: Yes.

CHAIRMAN HOOD: Okay, colleagues, let's -- we have heard Mr. Sowell's comments.

MR. BERGSTEIN: Mr. Chairman, I think that you need to ask the applicant if they have any opposition. And if the gentleman is representing an organization, he needs to provide you with some proof that the organization has authorized him to represent them.

CHAIRMAN HOOD: Okay. Thank you, Mr. Bergstein. I will ask Mr. Sowell, if you don't have it and if my colleagues don't have any problems, if you can provide that to us. We might need that before the end of the day.

MR. SOWELL: That is not a problem.

CHAIRMAN HOOD: Okay, if you can provide that to us.

MR. SOWELL: As soon as I get next to a fax machine and a telephone, I don't think we will have a problem with that.

CHAIRMAN HOOD: Okay. Because we do need that. Mr. Briggs, do you have any --

MR. BRIGGS: Mr. Hood, for the record, my name is David Briggs with Holland & Knight. The applicant has no opposition to Mr. Sowell's participation as a party.

CHAIRMAN HOOD: Okay.

MR. BERGSTEIN: One last thing, Mr. Chairman. You are going to need to technically waive your rules -- okay, I am sorry.

MR. BASTIDA: If you decide to accept the gentlemen as parties, you need to waive your rules because it should have been requested in writing 14 days prior to the hearing date.

CHAIRMAN HOOD: Okay. Colleagues, we would like to waive our rules. We have heard the request from Mr. Sowell. Any comments or questions? Mr. Parsons?

COMMISSIONER PARSONS: Yes, I -- we have a piece of

paper here that lists you, maybe in error, as the North Capital Review Commission. It is the Revitalization Commission?

MR. SOWELL: I think somebody got a word wrong, yes, sir.

COMMISSIONER PARSONS: Okay. So there are not two commissions? There is just the --

MR. SOWELL: No.

COMMISSIONER PARSONS: And how far south on North Capital Street does your organization go?

MR. SOWELL: Massachusetts Avenue.

COMMISSIONER PARSONS: Okay.

MR. SOWELL: North of Michigan.

COMMISSIONER PARSONS: So I am trying to determine -- and we haven't spoken to Mr. Walker yet. But he apparently is asking for the same thing and I am trying to -- what we need to determine is as to whether your organizations are more affected than the general public. What is it about your organizations, plural, that is more affected than the general public of the community. I don't mean the city, but the people that would be affected along the route. That is how we grant party status. If you live next door or if you live across the street, you are obviously going to be more affected than somebody else. An ANC is an automatic party, for instance. But I am trying to determine why your two organizations would fit that category.

MR. SOWELL: Might I -- I am sure Mr. Walker can

describe their area, because it is different than the Revitalization Committee. The Revitalization Committee basically works in four Wards, Ward 2, Ward 1, Ward 6 and Ward 5. Those are seven neighborhoods along the North Capital area corridor. ANC's are members and have been members since the outset as are the civic associations in the neighborhood, as are many of the businesses in the neighborhood and the social service organizations. We meet once a month to basically look at what we can do in the neighborhood to make it work. So we actually end up as being a brain or thinktank for where the businesses can find out what the community needs and so on. So they are members. There is no fee to join. There are over 75 members of the Revitalization Committee and they have several successes under their belt. Again, it was initiated by the Department of Housing and the Mayor's office. Whatever position Camille Barnett initially held, then it became a community responsibility to continue it when the Department of Housing went through a reduction in force. It became our responsibility to find someone to convene it, and I have been that individual for the last year-and-a-half or so.

COMMISSIONER PARSONS: Now as I understood it from this other piece of paper that you haven't seen that I am looking at, that you had asked to be a party for more than one case today, is that correct?

MR. SOWELL: It is general -- basically it is

general -- most of the cyber groups are in our area. And, yes, we did want to make sure that the Board was clear that these groups do have a social responsible mechanism within their development thrust. They have been to the community and to the ANC's that they are located in, and they are -- will be of unique benefit to the community as well as to demonstrate that perhaps, if anything, they ought to be given special status as opposed to special exceptions because their predecessors have blazed a trail that has been extremely beneficial to the community, things we would have never been able to do. The Metro -- 20 years we have been trying to do that. We would have never done it without these folks. The new central operations division, the police place -- they gave a whole floor to the police. There is a variety of things that they have done that we need to make sure that you guys know about.

COMMISSIONER PARSONS: So you are not opposed to these as you understand them?

MR. SOWELL: No. The way the neighborhood has been improving since they have come, we need as many as we can get.

COMMISSIONER FRANKLIN: Mr. Sowell, are you aware that you can testify without being a party?

MR. SOWELL: I am aware of that, sir, yes.

COMMISSIONER FRANKLIN: And you want to be a party for the purpose of cross examination?

MR. SOWELL: Short cross examination. Mickey Rooney style.

CHAIRMAN HOOD: Well, colleagues, we -- let's just deal with Mr. Sowell first. I have -- I personally have no problems because I know that they represent a conglomerate group of folks in that area who are trying to move forward. And the applicant doesn't have any problems. But I want to open it up to my colleagues and see if we have any problems. If not, we will move forward. Hearing none --

COMMISSIONER PARSONS: Well, I am a little troubled by this. I remember a milestone case that we had which I don't think the Committee of 100 will ever forgive us for. But maybe Ms. McCarthy was the outcome. There was an effort by the Committee of 100 to become a party to a case, and it was a city-wide techs case. But we determined that we would not give them party status. And it goes to our rules as to who is more affected. And I don't sense that -- although I think that Mr. Sowell and Mr. Walker can contribute to these proceedings, I am not sure I understand why, from what they have told us, that party status is required. Certainly the comments that they want to make about the social contribution that should be made here can be done without party status. So I wanted to have some discussion about it. Maybe -- we don't normally take in associations of this kind as parties.

CHAIRMAN HOOD: Okay. I would just only say that due to the way that we have been proceeding in the past, I understand. But things have changed. We have -- this whole piece

-- the reason we are here today is we have expedited. And I would be inclined to move forward with it and I would rather err on the side of caution. Because as far as I am concerned, they are the only two people who have asked for party status in this whole EEF and data center situation. So I think that we need to make sure that we allow the opportunity, which may not have been done in the past in certain instances -- I won't be specific. So I just would rather have it than not to have it, and then also afford them the opportunity to be able to cross examine. I think that is what I am hearing, cross examine and be able to put things on the record as opposed to just testifying and not being able to get their specific questions to the application.

But, Mr. Sowell, I will tell you that I am concerned about being a party status to all four or five cases. I think it is four that we have now. Some of them maybe you can -- the ones that are more important. And it is not confirmed yet with my colleagues that all of them are important. But the ones that you want to really -- that you have really important issues, if you could just be party status to maybe Level 3 and maybe testify at the other ones. Maybe you can work that out. But to be a -- I think you are asking for party status to all cases.

MR. SOWELL: I think we can set the pace with Level 3 so that the other applicants would know where we are coming from. One thing I don't think I really emphasized is it does affect me. I live in the neighborhood and I have been there since

1968. So this is not a passing fancy or an employment situation with me. It is a survival situation. If our neighborhood doesn't flourish, myself and many of my neighbors will be gone. So this does definitely affect my immediate block and my immediate community. And I didn't mention that initially.

CHAIRMAN HOOD: Okay. Colleagues, any other questions or comments?

MR. BASTIDA: Mr. Chairman?

CHAIRMAN HOOD: Let me hear from Commissioner Franklin first.

MR. BASTIDA: Oh, I am sorry.

COMMISSIONER FRANKLIN: Mr. Chairman, I don't have any objection to party status here where the applicant has had no objection. But I would ask the chair to -- because we have so much business to conduct today to make sure that the parties are not repetitive.

CHAIRMAN HOOD: Okay. And I think that we can --

COMMISSIONER FRANKLIN: And that we can move along. Because we may spend more time on deciding the --

CHAIRMAN HOOD: Party status.

COMMISSIONER FRANKLIN: Whether to give them party status than the party will take on cross examination.

CHAIRMAN HOOD: Mr. Sowell, I will just ask that you just -- that moving forward with the first case, if you will just be a party in this one and you can testify at the other ones.

Like you say, they will get the gist. If this is approved -- now we haven't voted on it yet and I have to agree with my colleague, Commissioner Franklin. We don't want to spend three hours on party status. So, colleagues, with that any other comments? Mr. Bastida, you --

MR. BASTIDA: Yes. You might want to request the input from the ANC regarding the granting of the party status.

CHAIRMAN HOOD: Request -- I am sorry, I didn't follow you.

MR. BASTIDA: From the ANC. The ANC is a party and they might have an objection to the granting of these two individuals party status.

CHAIRMAN HOOD: Oh, okay. In the first case, who is the ANC?

MR. SOWELL: 6-A, Parnell.

MR. BASTIDA: 6-A.

CHAIRMAN HOOD: 6-A. Is the representative from ANC 6-A here? Okay, we don't have a representative --

MR. SOWELL: They made a presentation to 6-A, but I don't see him here.

CHAIRMAN HOOD: Mr. Briggs, I see you have come back to the table.

MR. BRIGGS: Mr. Hood, we would object to party status for 6-A at this time.

MR. BERGSTEIN: Mr. Briggs, that wasn't the issue.

The question was -- what you are saying is that 6-A should not be considered a party and therefore should not --

MR. BRIGGS: They did not -- 6-A as an ANC has not acted. We understand that a single member Commissioner has submitted a letter as of 1:00 this morning. And as far as party status for the individual single member individual district member, we would oppose that. 6-A did not take action.

CHAIRMAN HOOD: Okay. Okay. So with that, we have heard that 6-A obviously has not moved on this. But we do have a letter, and I have not had a chance to read it because it did come in late and I am not sure what they are asking for. But let's -- colleagues, we have in front of us Mr. Rick Sowell for party status. With that, I will accept a motion either up or down. And if it goes down, Mr. Sowell, you can always testify. Can I get a motion?

COMMISSIONER FRANKLIN: So moved, Mr. Chairman, to waive the rule in this case.

CHAIRMAN HOOD: Okay. It has been moved. Can I get a second?

COMMISSIONER MITTEN: Second.

CHAIRMAN HOOD: All those in favor by the usual sign of voting?

BOARD COMMISSIONERS: Aye.

CHAIRMAN HOOD: Any opposition?

COMMISSIONER PARSONS: No.

CHAIRMAN HOOD: Staff, would you record the vote?

MR. BASTIDA: Yes. The staff would record the vote as 4 to 1, Mr. Franklin moving and Ms. Mitten seconded. Mr. Holman and Mr. Hood are voting on the affirmative and Mr. Parsons voting on the negative.

CHAIRMAN HOOD: Mr. Franklin, also in your motion did it include him being party status or just to waive the rules?

COMMISSIONER FRANKLIN: Well, I will -- it was to waive the rules first and I will now move that party status be granted to Mr. Sowell's organization.

CHAIRMAN HOOD: It has been moved. Can we get a second?

COMMISSIONER MITTEN: Second.

CHAIRMAN HOOD: All those in favor?

COMMISSIONER HOLMAN: There is a question.

CHAIRMAN HOOD: Question?

COMMISSIONER HOLMAN: Is that just for this case?

COMMISSIONER FRANKLIN: Yes, just for this case, Mr. Chairman.

COMMISSIONER HOLMAN: Okay. I just wanted to clarify.

CHAIRMAN HOOD: Okay. It has been moved and seconded. All those in favor -- any further discussion? All those in favor?

BOARD COMMISSIONERS: Aye.

CHAIRMAN HOOD: Any opposition?

COMMISSIONER PARSONS: No.

CHAIRMAN HOOD: Staff, would you record the vote?

MR. BASTIDA: The staff would record the vote as 4 to 1, Mr. Franklin moving and Ms. Mitten seconding. Mr. Hood and Mr. Holman voting in the affirmative and Mr. Parsons voting in the negative.

CHAIRMAN HOOD: Let me just say, Mr. Sowell, at the other cases you can always testify.

MR. SOWELL: I understand.

CHAIRMAN HOOD: Thank you. Mr. Walker, if you could turn your microphone on?

MR. WALKER: Good morning. My name is Thurman Walker. I am President of the North Capital Area Business Association. We have a very unique interest in new businesses as they come into the North Capital community, and we are here this morning to ask for status because we think that we have some unique concerns that need to be raised and need to be made a part of the record. As we too have survived as development has taken place in the North Capital community and the businesses that are there, we want to be sure that the new businesses as they come, how they affect the businesses that already exist in the community. So for that reason, we think that it is important that it be made a matter of the record as to the businesses that are there and the new businesses coming and how we work together to

make a balance in the North Capital communities, for the old businesses as well as residents in that area.

I am a resident of the North Capital community. I live from some of these sites about two to three blocks as a resident. So I have a very unique and keen interest into this development. So it will affect us in several ways as being the President of the organization, it will affect us as a resident -- it affects us. And I think that we bring a unique blend to the table and ask to be heard.

CHAIRMAN HOOD: Okay. Colleagues, any comments on -- and Mr. Walker, we would ask that we proceed in the same way in which we dealt with Mr. Sowell if it is granted to you. That you just be a party in this specific one, and then you always have the opportunity to testify in the later cases.

MR. WALKER: Yes.

CHAIRMAN HOOD: Commissioner Mitten?

COMMISSIONER MITTEN: Mr. Walker, could you describe the boundaries of the area that your organization encompasses?

MR. WALKER: The North Capital Business Association area goes down to Massachusetts Avenue on the south. It goes up to Michigan on the north. It goes over as we call the railroad tracks, and we go over to 7th Street or 6th Street on the east -- on the west and to the railroad tracks on the east. That is the boundaries of the North Capital Area Business Association.

COMMISSIONER MITTEN: Thank you.

CHAIRMAN HOOD: Any other questions or comments? With that, I will ask for a motion whether to make Mr. Walker a party or not?

COMMISSIONER FRANKLIN: Does the applicant have any objection, Mr. Chairman?

CHAIRMAN HOOD: Oh, I am sorry.

MR. BRIGGS: For the record, Mr. Hood, David Briggs of Holland & Knight representing the applicant. No, we do not have any opposition to Mr. Thurman's qualification as a party.

CHAIRMAN HOOD: Okay. Thank you. I am sorry, your last name is Thurman --

MR. WALKER: Walker.

CHAIRMAN HOOD: Walker, oh, okay. Any other comments, colleagues? If not, I would like to obtain -- ask for a motion.

COMMISSIONER FRANKLIN: Move we waive the rules in Mr. Walker's case, Mr. Chairman.

CHAIRMAN HOOD: It has been --

COMMISSIONER MITTEN: Second.

CHAIRMAN HOOD: Okay, it has been moved and seconded. All those in favor?

BOARD COMMISSIONERS: Aye.

CHAIRMAN HOOD: Opposition?

COMMISSIONER PARSONS: No.

CHAIRMAN HOOD: Staff, would you record the vote?

MR. BASTIDA: The staff would record the vote 4 to 1, Mr. Franklin moving and Ms. Mitten seconding. Mr. Hood and Mr. Holman voting on the affirmative. Mr. Parsons voting on the negative.

CHAIRMAN HOOD: Also, we want to -- I would like to get a motion -- and, Mr. Franklin, I don't know if your motion included making Mr. Walker a party.

COMMISSIONER FRANKLIN: No. My second motion would do that, Mr. Chairman.

CHAIRMAN HOOD: Okay.

COMMISSIONER FRANKLIN: I move they be made a party for purposes of this first case.

CHAIRMAN HOOD: Moved and seconded --

COMMISSIONER MITTEN: Second.

CHAIRMAN HOOD: Moved and seconded. All those in favor?

BOARD COMMISSIONERS: Aye.

CHAIRMAN HOOD: Any opposition?

COMMISSIONER PARSONS: No.

CHAIRMAN HOOD: Staff, would you record the vote?

MR. BASTIDA: Staff will record the vote as 4 to 1, Mr. Franklin moving and Ms. Mitten seconding. Mr. Holman and Mr. Hood voting on the affirmative and Mr. Parsons voting on the negative.

CHAIRMAN HOOD: Before we get started, thank you. I wanted to also rectify this issue with ANC 6-A. I believe the ANC's are automatically a party status, but the applicant has objected to the single member district, which if they did not have a quorum, we could not hold them as a -- give them the great weight which they are afforded. But I would ask Mr. Bergstein -- can we -- I think the law is written that the ANC has to be a party, am I correct?

MR. BERGSTEIN: They are a party, but there is a prerequisite to participation in a hearing in that they have to submit a report within a certain period of time. So although they are automatically a party, they are not permitted to participate as a party unless they satisfy the requirement of submitting a report to you.

CHAIRMAN HOOD: Okay. So since that is not done in this case, we will be proceeding correctly in not making them a party, am I correct?

MR. BERGSTEIN: Yes.

CHAIRMAN HOOD: Okay. Thank you. I just wanted to make sure that -- so that won't come back to haunt us. I am going to ask the applicant -- thank you, Mr. Walker and Mr. Sowell. I am going to ask the applicant to come forward and present your case. Also, again, we do have your submittals. With that, Mr. Briggs.

MR. BRIGGS: Thank you, Mr. Chairman. For the record, my name is David Briggs. I am with the law firm of Holland

and Knight. We will -- being the first case, we may be a little more expansive than maybe the Commission would prefer, but the idea is to set the ground -- the framework for the entire EEF situation.

With that, let me proceed with some very brief introductory remarks. Mr. Bastida has fully laid out the case that we have asked as far as special exception relief. The applicant has filed this relief on behalf of Level 3 Communications LLC. Level 3 is the contract purchaser of the property that Mr. Bastida has described at 90 K Street.

Level 3 intends to develop and operate a colocation facility on the property. It is our belief that a colocation facility falls within the definition of electronic equipment facility as defined in the emergency rulemaking. We believe that through the prehearing submission, our application and the testimony we present today that we have satisfied all the bases that justify special exception relief that we will be setting forth and have asked for.

Let me give you a brief description of this property with the assistance of Mr. Sher of our office. The property, as Mr. Bastida has identified, is Lot 432 and Square 674. It has an address of 90 K Street, N.E. It is abutted by three streets. L Street on the north, which is 90 feet in width and is a single-way traffic pattern going eastbound. K Street on the south, which is 110 feet wide, which is a two-way traffic

pattern. And then First Street, which is also 110 feet and is a two-way north/south transaction.

The property itself is located -- let me give you some identifying marks. The Greyhound Peter Pan Bus Terminal is directly across First Street from the property. The property is also diagonally across K Street from the 941 North Capital Building, where many of the DCRA, Department of Transportation and Tax and Revenue is located. The property is probably equidistant between the existing Union Station Metro stop and the new proposed New York Avenue Metro stop. In each case, this property sits more than a quarter of a mile from either of the site entrances as we understand them at this time.

The current property is used as a surface parking lot. It is asphalted. There are minor improvements of an attendant booth, but otherwise not improved. The lot area of the property of this lot is 103,878 square feet. The current zoning is C-3-C, but it also happens to exist in the North Capital receiving zone and there have been TDR's transferred. This property invested in legal title of the property in accordance with the requirements of the rezoning regulations adopted by this Commission.

We did -- with regard to participation in the community, we went to ANC 6-A's land use and zoning committee in early November, right after the application was filed. In accordance with procedures, we met with three of the Commissioners, including Mr. Fields, who is the chair of the Land

Use Committee. Mr. Dan Parnell was there as well as Frank Withrow, who is a Commissioner from the abutting ANC. We then returned to ANC 6-A for its December regular meeting. As noted earlier, there was no quorum in that meeting and no action was taken.

We have, as I noted, only received this morning the letter from Commissioner Parnell concerning his position on the electronic equipment facilities generally. But we have had numerous conversations with him, and nowhere have we ever indicated an opposition to any of the facilities.

I will note for the record there is a letter of support for this project from Ms. Sharon Ambrose, who is the Ward 6 Council member. This property is located within her Ward.

In conclusion, we are asking for two special actions today. First, we would request a bench decision, and we will note our reasons for the need for the bench decision at this time. And second, we would want to make sure that any relief granted, if granted by this Commission, would be applied to the project as a whole. There is a very good chance that this project would be developed in phases, and we want to make sure that any special exception relief granted today by the Commission would cover the whole project in a phase, assuming the first phase was vested in accordance with the emergency rulemaking that was set forth.

With that, let me call our first witness, Ms. Susan

Chapman of Level 3 Communications. Ms. Chapman, would you state for the record your name, please?

MS. CHAPMAN: Susan E. Chapman.

MR. BRIGGS: And would you please state your affiliation and title?

MS. CHAPMAN: I am the director of Global Real Estate for Level 3 Communications.

MR. BRIGGS: Okay. Could you briefly describe Level 3 Communications for the Commission, please?

MS. CHAPMAN: Level 3 is a broad band infrastructure company. We have over 16,000 miles of fiberoptic cable in the ground in North America. We have got a presence in Europe and a presence in Asia as well. We see ourselves as the enablers of the Internet economy. Our network itself is a fully upgradeable network, that is, we don't retrench. We put between 12 and 24 conduits in the ground every time we go in, and we use roughly half of those. So when it is time to upgrade the network, we are not going back in to retrench the streets. We simply blow new pipe through the existing fibers that are not being used -- the conduits, excuse me -- and then we pull out the old ones.

In essence, our network itself is made up of two major components, that being a long-haul network, which moves traffic from city to city, and a local Metro access network, which actually moves traffic around cities, so you can actually tap into it. As networks go, we are -- our network is redundant. So,

therefore, the ability to tap directly into the long-haul network is not available. So what we do is we -- as I said, we have the traffic from city to city network. So we have got actually three legs coming to the Washington, D.C. area. So if you were in Pittsburgh and you were to send an e-mail, it would go out on the Metro loop in Pittsburgh and then go over the long-haul loop down to Washington, D.C., get back on the Metro loop to its end-user. So that is how essentially our network works.

In order to tap into the actual network, you have to have what we call colocation facilities. Our major customers are Web-centric customers, the .com's of the world and some of the other bigger users that actually leverage Internet protocol technology. So they are using -- they are sending data over the Web or over the Net. So in order to do that, we develop what we call colocation facilities. And what those facilities are are they are housed as technical equipment so a portion of the building -- and in particular, this particular facility has 35 percent of the building will be the actual switches and the fiber that actually moves things throughout. Ten percent will be sort of technical support or office space. And then the remainder of the building is what we call colocation space. So imagine, if you will, a school building. When you walk in the door and you see a row of lockers and you see a row of classrooms. The lockers represent private suites -- excuse me, the lockers represent cabinets and the classrooms represent private suites. So customers have the

ability to come in and take space from us. They lease space, if you will, under a license agreement, where they put their servers, either in a cabinet or they take a private suite because they need more space. And they are able to tap directly into the network from there.

The important piece of this puzzle is many of us think that -- you know, because we have our computers at home that that is the way we actually tap into the network. But for these companies, this is their business. So they absolutely, positively have to be up running 24-hours-a-day, 7-days-a-week, 365-days-a-year. So what we provide with these facilities are basically the security that they have that ability. Many of these companies, if they are not up and running, their businesses go down. Imagine if you have been following the papers over the last 12 months when eBay's website went down. A significant impact on their business. Well, companies like that come to our facilities and put their equipment into either the private suites or the cabinets because the building is built with a raised floor on all the floors to regulate the airflow through the building. There is back-up power. There is N-plus one redundancy. Basically, if the city breaks down and the external forces go down, this particular facility will continue to run. So it is absolutely, positively important that they have the ability to do that.

MR. BRIGGS: Let me interrupt here, Mr. Chairman and members of the Commission. We have a video, which I will

submit for the record. Unfortunately, technical problems with the connection between the video machine and the TV are going to prevent it from being shown, I believe. Mr. Nyambi was attempting for the last 40 minutes to try to make the connection. It doesn't work. Apparently it can be viewed at the screen at the dias, but cannot be viewed on the screen. So I would like to submit this to the record. It is a very good video from Level 3 -- to describe the Level 3 operation individually and the whole system of colocation generally, showing the allocation of space the way that Ms. Chapman has described.

CHAIRMAN HOOD: Let me just say I apologize for that not working, but I think we had an instance, Mr. Bastida, just a couple of days ago where that was not working. So I am going to put this on this record. I would hope that our staff would get that working. Because I think that would have been a very vital piece, at least from this Commissioner's standpoint, for me to be able to view at this time before I proceed. So, again, I am going to ask Mr. Bastida to get with Ms. Kress and make sure we can get that fixed. Thank you. You may proceed.

MR. BRIGGS: Thank you, Mr. Chairman. Ms. Chapman will try to distill what was on that video and bring it down to this specific facility, so you will have hopefully a visual picture of what we are doing. But I would urge you, whether it is after you consider this case or -- that you do look at this video, because I think it provides a general overview, not for just the

cases that are here, but generally for the EEF rulemaking that will be coming up.

With that, let me focus Ms. Chapman's testimony a little further, please. First, would you explain, Ms. Chapman, to the Commission why this property at 90 K Street is uniquely situated for Level 3's operations.

MS. CHAPMAN: As I talked about earlier, our network -- basically, the two components of that. In order to locate these colocation facilities where the long-haul and the local network come together, we develop what we call a span bubble. The span bubble is a fairly tight geographic area where the electronics actually work. I am not sure if you are familiar with fiberoptic technology, but as data goes out on fiber, it has to basically be relit. And so the amount of times that you have to relight the fiber to actually get it to its location determines where you can locate these facilities.

So within the span bubble for the Washington, D.C. area, this becomes an ideal location for us. It is actually crucial that we have both long-haul and local access loop capability, because it allows us to offer a full complement of services to our customers, as opposed to if we were just on a Metro loop, it would severely limit the scope of what we would be able to offer to the customers.

MR. BRIGGS: Ms. Chapman, we have identified this property as unique in D.C. What other areas within the

metropolitan area would Level 3's operations be suited, understanding the loop context that you have identified?

MS. CHAPMAN: There are really only two areas where this would work for us, and that would be this particular area and then over in Northern Virginia in McLean, where our existing gateway is. But clearly by our desire to work in the District, we started talking with the city earlier this year, I believe it was April, and working with the Mayor's office because we wanted to locate in the District because we think it is a strategic location for us.

MR. BRIGGS: Ms. Chapman, could you take us through a tour of this building that is being proposed with regard to how it would be operated and with regard to personnel and staffing matters, please?

MS. CHAPMAN: As I said, it is a 24-hour, 7-day-a-week, 365-day-a-year facility. The actual customers, we expect between 200 and 300 customers based on our experience in our New York facility today that will actually use this facility or house their equipment there. On a day-to-day business, we expect there to be between 100 and 150 people in and out of that building. Our economic consultant will talk a little bit more about this later on in the testimony. But Level 3 expects to have between 20 and 50 employees at this particular facility.

MR. BRIGGS: Ms. Chapman, would you explain to the Commission how the colocators and others might be using this

facility as well, please?

MS. CHAPMAN: As I said before, we expect the 200 to 300 customers to actually house their equipment in this facility. We expect between 100 and 150 of them to be in the building either installing equipment or servicing their equipment. The most important piece of this puzzle, I think, is if you are a .com company or a web-centered company and you've got your servers in there, you need to have access to that at all times. So we have security features in the building that allow them to come into the building at all times. It is pretty high tech. There are palm-readers that folks have to use to access the facility as well as badge cards and other security features.

MR. BRIGGS: Ms. Chapman, for the Commission would you sort of describe the special features that a colocation facility such as the one being proposed at 90 K Street would have?

MS. CHAPMAN: As I talked about, security is clearly one of the most important pieces of this puzzle. In all of our facilities, we try to have, if you will, non-descript security features. It doesn't serve our customers well to come into a facility that has got cinder blocks and razor wire across because that doesn't make them feel comfortable in that environment. So we employ other security features and our architect will talk a little bit more about that as well. With security cameras, the palm-readers, the badge-readers. We have security personnel on site at all times that will be monitoring

the building as well. As I said before, in order for them to be able to be up and running at all times, the floors are built on a raised floor. So the floor plates accommodate that. The floor loads are increased and our architect will talk a little bit more about that. And the air and humidity in the building are regulated on a regular basis within a certain parameter. There is redundancy in the building. So, as I said, if the power goes down, there are back-up generators and batteries that are there to serve as support for the facility.

MR. BRIGGS: Ms. Chapman, in speaking to the way this building operates, could you speak briefly about your direction concerning the design of the off-street parking and off-street loading facilities for this operation, please?

MS. CHAPMAN: When we employed this to move forward with this particular facility, we recognized that, number one, the facility is going to have an impact on the community. But we also recognize that this facility has got to have some value and use if it becomes such that the market doesn't support this. So we have basically designed this building as if it were an office building utilizing the base standards for it. Our architect will talk more about that. But in terms of the parking, it has the minimum parking number of spaces as if it were an office building, I believe it is 385 spaces, that we can use for that. Clearly, we don't want to. We want to be able to maximize the use in that building. We think that we will use around 100 of those parking

spaces in any given day at any one time. So the way it is being designed, and we will talk a little bit more, is such that those spaces will be available and we can use the other space for non-habitable equipment uses. But that would be easily converted back to office if it requires such, the office parking standard.

MR. BRIGGS: You mean converted, i.e., these parking spaces could be returned to that use?

MS. CHAPMAN: Exactly.

MR. BRIGGS: There would be no fixtures, per se, within the parking spaces that are excess to your actual operations?

MS. CHAPMAN: Right.

MR. BRIGGS: Thank you. Another factor or set of factors that this Commission has to consider in special exception relief relates to economic benefits or adverse economic impacts. Would you briefly express your thoughts and the thoughts of Level 3 concerning involvement with the economy of the District?

MS. CHAPMAN: Well clearly we believe, as I said, that we are the enablers of the Internet economy. So we believe that we bring a very valuable piece of the network infrastructure to the District by being able to be in this particular location. Also, given sort of who Level 3 is in this business -- I don't know if you have been following the technical press that is out there for Internet companies and technology companies, but Level 3 has consistently been identified as one of the top companies that

is moving forward and blazing the trail. So we do think that adds a significant value to the community.

We also recognize that building a facility of this size has a tremendous impact on a neighborhood and on a community. And as I said before, prior to the emergency rulemaking process, we had been working with the city on trying to realize and develop programs from job training all the way down to how do we best serve the community, and we are still working through that process. Clearly this has created sort of a roadblock for that, but we are still working with that process because it is something that we are committed to. We have a desire and a need for folks who have the technical ability to work in our facilities. So clearly we want to work with the community that is there and all the way. Not just from that perspective, but also on the construction side as well in terms of how we do our contracting requirements and how we hire District residents and those kinds of things. So we have worked with our GC on that as well.

MR. BRIGGS: Ms. Chapman, have you met with several of the business and local neighborhood organizations concerning economic opportunities that may be available from this Level 3 facility?

MS. CHAPMAN: We have. And as I said, we are in the process of determining what that is going to be at the end of the day. We see a partnership effort with the community in this particular area. As I said, this special exception process -- we

had already started doing that prior to this process.

MR. BRIGGS: I don't have any other questions of this witness at this time but reserve the right to recall her at the end of our case. Thank you, Ms. Chapman. I call John Lederer to the stand, please. Mr. Lederer, would you please state your name for the record, please?

MR. LEDERER: Yes, I am John Lederer.

MR. BRIGGS: Would you identify your affiliation, please?

MR. LEDERER: Yes. I am a principal at Donnelly, Lederer and Voucek Architects and Planners.

MR. BRIGGS: Would you briefly advise the Commission of your qualifications?

MR. LEDERER: Yes. I am a registered architect, a member of the American Institute of Architects. I have worked with DLV for about three years and we have been responsible for about 20 million square foot of facilities, primarily office buildings, primarily in the Washington metro area. A lot of these buildings have required either special technical or operational requirements. We are currently delivering two buildings actually for AT&T just north of Dulles Airport in Northern Virginia. We are also working on an office campus for Exodus Communications for about a million square foot of space. I was trained as an architect and also studied engineering at the University of Virginia. I also have a graduate degree from MIT, where I studied

architecture and urban studies. I have practiced primarily in the Washington metro area for about 20 years. I have also worked nationally and internationally with UNESCO. Most of my work has been involved in delivering buildings, very often of technical complexity or urban design complexity.

MR. BRIGGS: Thank you, Mr. Lederer. For the Commission's benefit, we have supplied this morning a binder that contains the various resumes, including Mr. Lederer's as well as the resumes of our other witnesses this morning. And I would ask and request that this Commission qualify Mr. Lederer as an expert in the field of commercial architecture and planning.

CHAIRMAN HOOD: Okay, colleagues, you have heard the request. Any objection?

COMMISSIONER HOLMAN: No objection.

CHAIRMAN HOOD: No objection.

MR. BRIGGS: Thank you very much, Mr. Chairman. Mr. Lederer, have you been employed to design a proposed facility at 90 K Street, N.E., which Level 3 proposes to introduce a colocation facility as described by Ms. Chapman?

MR. LEDERER: Yes, that is true.

MR. BRIGGS: Would you please give the Commission a brief description of the major features of the building and use the drawings that you have provided and presented to the Commission and that you have here?

MR. LEDERER: Thank you. Actually, if you refer to

the rendering on the right-hand easel, the building is an eight-story facility, 130-foot tall, with floor-to-floor heights of about 16 foot. It provides 652,000 square foot of usable space. The first two levels occupy about 90 percent of the site and then there are two separate towers that rise an additional six stories up off the base. The office -- well, the two towers are typically 120-foot deep by 300-foot long. There is additionally two levels of space below the facility for parking 385 cars and to provide technical support area to the facility.

MR. BRIGGS: Would you go to the easel and with the board sort of run through that briefly so that the Commission can understand the lot coverage issues and the way this building is designed?

CHAIRMAN HOOD: I am going to ask, Mr. Lederer, so you could speak loud enough so we can make sure we get it all on the record.

MR. LEDERER: Sure. Can you hear me?

CHAIRMAN HOOD: He is the one I want to make sure.

MR. LEDERER: Can you hear me?

COURT REPORTER: No.

MR. LEDERER: Can you hear me now?

COURT REPORTER: Yes.

MR. LEDERER: Okay. Is there a hand-held or something? Okay, I will try to speak loud enough. If you can't hear, just make a loud noise. I am going to point to a number of

exhibits. Some of them are graphics and some of them are plans. Talking to this one first, the building was designed through its initial concept as a high quality office building. It is modern in design. It is fitted out on the exterior with either architectural precast concrete, glass, steel or metal panels. I am going to refer to my notes every now and again. This is a fairly complicated program.

The first two levels are set back about 10 foot from the property line to widen the sidewalk and create an arcade that will be well-lit and accessible.

MR. BRIGGS: Mr. Lederer, could you show the ground floor plan, A-3, to indicate the way the way the ground floor is -- how it is situated and how the present design is set forth and maybe indicate the arcade as well as other features?

MR. LEDERER: The building sits on --

COURT REPORTER: You are going to have to speak in this direction.

MR. LEDERER: Sure, sorry. Let me walk around this way.

CHAIRMAN HOOD: Let me just say we might need -- thank you, Ms. McCarthy -- to put on some more microphones. Because it is very key that it gets on the record. We are going to have to work on that so we can get a hand-held microphone.

MR. LEDERER: Okay. The building extremity and design development have been working with Level 3 and a team of

architects, engineers and consultants since the concept, the original concept of the building. The building sits on about 90 percent of the site. It is set back from the property line on three sides and then there is a yard along the adjacent property line. The primary entrance to the building is on L Street, the entry into the Level 3 facility as well as truck parking and access to the garage would be located on L Street. L Street was chosen in part because it is one-way. Vehicles coming into the site have to make a simple right-hand turn into the parking facility and can leave the same way. The entry ramp to the garage is located as far away from the intersection of First Street and L Street and the bus traffic from the Trailways Bus Station as possible.

It is primarily an open plan. It has wide column spacings, about 40 by 40. There is an operational area, which would be in this area, where there are not either conference rooms or offices located on the perimeter in order to control the humidity and heat transfer into the operational facility. There would be an interior partition set back about 18 inches from the exterior glass of the building. This would be used to either display Level 3's exhibits on their emerging role in technology or for community art or cultural interest items.

MR. BRIGGS: Mr. Lederer, is this building going to have windows over its facade?

MR. LEDERER: Yes, the building will be windowed on

all sides on all levels.

MR. BRIGGS: Okay. Would you just show the depiction of the phasing that is possible and further describe with the diagram how the tower concept exists? And please fix the street locations for the Commission.

MR. LEDERER: Sure. L Street is on the north of the side, First Street on the east, and K Street on the south side. Again, the base of the building is pretty much lot line to lot line with the arcade set back. There are two towers. The east tower -- I am sorry, the west tower and the east tower. Level 3 would initially occupy the two levels and the west tower. The east tower would be built in a phased format as the marketplace for colo facilities would demand. It could also be built as an office building as well.

MR. BRIGGS: So, Mr. Lederer, it is possible in the phasing that one tower and the ground floor could be utilized for colocation, but if market demanded, the other tower could be constructed as an office use?

MR. LEDERER: That is exactly true.

MR. BRIGGS: So in your opinion professionally, this building as designed and as proposed by Level 3 is a very flexible facility that would incorporate multiple uses or could be easily converted to an office use?

MR. LEDERER: That was true from the initial concept for the building. It is designed to be either a colocation

facility, an office facility and it also has some retail capabilities that we will talk about in a moment.

MR. BRIGGS: Right. Which leads me to my next question, which is concerning retail capability for the ground floor. Would you please go through some alternate designs and describe, number one, the existing condition as proposed but also the alternatives for retail development?

MR. LEDERER: Yes. In terms of occupying the building, Level 3 would begin to position their racks from the west to the east along the floor of the first level. If retail proved to be a viable use in the area, it would probably be on First Street more than any other spot because it is across the street from the bus station and it would be adjacent to the pedestrian corridor that is being planned between Union Station and New York Avenue.

The floor plates are open and flexible. They can be used pretty much for any use. The first two floors are fitted out with a storefront blazing system, which could accept doors as retail use developed. Services to this retail area could be accessed from the parking levels below. There would also be a service corridor which would run directly from the loading area, past the security office, through the reception and down the service corridor, servicing the stores from behind so that you would not get traffic from loading and unloading on First Street.

MR. BRIGGS: With regard to servicing of any

potential future retail for utilities and other types of services, how could that be accommodated within this building?

MR. LEDERER: Plumbing, HVAC and power could all be provided from the parking levels below.

MR. BRIGGS: So it would be a very easy adaption of the building?

MR. LEDERER: Yes. Simple core drills would be all that would be required.

MR. BRIGGS: Okay. Understanding the Commission's desire to have a building that though initially intended to be an electronic equipment facility that it be readily adaptable to office use or another use, in your professional opinion, is this building readily adaptable to a multiplicity of uses?

MR. LEDERER: Yes, it is true. The two office towers are about 120 foot deep front to back and they are fully functional office floor plates. They are windowed on all sides on all levels. If an office user was to occupy this, they would find that the floor loading characteristics, the floor-to-floor heights, the ceiling heights and the power, telephone and data capabilities of this space would be slightly higher than the standard office building, which would make it attractive to either first class or tech office users.

MR. BRIGGS: Mr. Lederer, Ms. Chapman has described the Level 3's immediate demands or what they perceive to be the demands for electronic equipment facility parking. Could you

briefly describe the parking as designed and how you would accommodate Ms. Chapman and Level 3's requirements?

MR. LEDERER: Sure. As in all other issues, the --

MR. BRIGGS: And if you would bring up the plans for the two parking levels, please?

MR. LEDERER: Again, just to orient the Commission. This would be the upper of the two lower levels and this would be the lower of the two lower levels. Again, L Street, First Street, K Street, and the entry ramp down below.

Like in every other aspect, the building is designed to either meet or exceed the regulations. Regulations require 360 cars and 385 cars are currently provided. And that would allow for full office use of the facility. If Level 3 only needed 100 cars, what they are requesting is that the lower level for the building and the south portion of the upper garage be separated. And this could easily be done by closing the ramp to the lower level and building a demise partition across the upper level. Parking would still be able to reach the north part of the deck. No other uses are being anticipated right now other than some technical support areas for equipment serving the colo use.

MR. BRIGGS: This type of uses that Level 3 is proposing and which you have been designing are non-habitable in nature, is that correct?

MR. LEDERER: That is exactly true.

MR. BRIGGS: And they would be for storage

batteries and potentially supplementary generators and other types of equipment. That would not be human occupancy.

MR. LEDERER: Again, we are in the DD aspect of the project and working very hard with the engineers to make sure that the facility is optimized in terms of support equipment. And we are looking at a number of different options for either the lower level or the south half of the upper level. But again, these are not habitable uses. They would be storage batteries, how would you say, substations, DC plants, things that actually drive the colo use. And if the building became a non-colo use building would no longer be servicing the building.

MR. BRIGGS: I presume any petition used to separate off the second level across the ramp to the second level or a petition across the first level could be easily removed because of design?

MR. LEDERER: Yes.

MR. BRIGGS: The petition is there merely for safety and security.

MR. LEDERER: That would be true. It could be fire rated but easily removed.

MR. BRIGGS: I don't have any further questions of this witness.

MR. LEDERER: Thank you for your time.

MR. BRIGGS: At this time, Mr. Chairman, I would like to call Ms. Sheila Brady to the stand. Again, for the

record, Ms. Brady's resume is in the package delivered to you. For the record, please state your name, Ms. Brady.

MS. BRADY: Sheila A. Brady.

MR. BRIGGS: Could you state your affiliation and job title, please?

MS. BRADY: Yes. I am a principal and partner at the firm -- the landscape architecture firm of Umal and Sweden Associates in Washington, D.C.

MR. BRIGGS: Would you please briefly describe your qualifications?

MS. BRADY: Yes. I am a registered landscape architect. I have had 20 years of practice and experience here in Washington. Our firm is nationally recognized throughout the country and I have worked on that work for 20 years.

MR. BRIGGS: Having Ms. Brady's resume before you and hearing her qualifications, I request at this time that she be recognized and accepted by the Commission as an expert in the field of landscape planning and architecture. I believe Ms. Brady has also testified before this Commission numerous times before.

CHAIRMAN HOOD: Colleagues, I believe she has testified in front of us before.

COMMISSIONER HOLMAN: No objection.

CHAIRMAN HOOD: Okay.

MR. BRIGGS: Thank you very much, Mr. Chairman. You were requested, Ms. Brady, to advise Level 3 related to the

landscaping of the exterior areas of the proposed project at 90 K Street. And you have prepared a set of recommendations that were submitted in the applicant's prehearing statement as Exhibit E. Is that a true statement?

MS. BRADY: It is true.

MR. BRIGGS: Would you briefly describe for the Commission the current pedestrian conditions and environment around this property at 90 K Street?

MS. BRADY: Well, it is pretty desolate. There is not a lot there. The streetscape environment is not built up, as you know. There are a few existing street trees that could be protected and cared for. There is existing cobra lighting on First Street. It is basically a pretty unfriendly -- un-pedestrian-friendly environment.

MR. BRIGGS: Would you briefly highlight for the Commission your recommendations and advice to Level 3 concerning this property and the project?

MS. BRADY: Yes. I did submit for the record some streetscape guide standards. Those standards were written as guidelines for streetscape elements or streetscape design that will be eventually designed when the landscape plan is developed or when the streetscape plan is developed. Those streetscape guidelines include things like lighting, benches, paving, ballards -- all of the essential design elements that are included in an active pedestrian corridor that makes a pedestrian corridor

cohesive, ordered and pedestrian friendly. Those would be our intentions to use those guidelines in developing the landscape plan.

MR. BRIGGS: In your professional opinion, do you see Level 3's colocation use and the proposed building they are requesting as having any adverse impact on the pedestrian environment around the proposed site?

MS. BRADY: Not at all. I think actually it would significantly improve the pedestrian environment and I think it would be a welcoming addition to the community. I think particularly with the possibility along First Street. That corridor and its relationship to the two Metro centers, the future ones, is most likely going to be a more active pedestrian corridor, and I think the setback of the building, allowing for it to be wide and allowing for street trees, paving and lighting allow the pedestrian-friendly environment that the street needs.

MR. BRIGGS: Ms. Brady, if you could -- if you remember Mr. Lederer's comments earlier about the setback of a wall on the interior side of the glass line and the ability and the desire of Level 3 to have that available to the community for public art and other community activities as far as display place as well as for a potential video display of Level 3's operations, how would that relate and impact the pedestrian environment?

MS. BRADY: I hope the Board understands where that is in the building. I think it could be very fun and lively. I

think that Level 3 has demonstrated that they would be interested in having that as an art corridor. Subsequently when you are walking down the street and being able to view that and interact with the community would be terrific. I think it would be wonderful and I think it is a great commitment on their part.

MR. BRIGGS: And might I ask finally with regard to the potential of future retail development in this First Street corridor, how would your landscaping proposals work with regard to that as being compatible. The intent is on the part of Level 3, I believe, to have your landscaping design work well with retail access to store fronts.

MS. BRADY: Yes. It would work well with retail access. It would be -- materials selected would be appropriate in an urban design context as well as the building architectural design context, which would encourage and respond to retail activity.

MR. BRIGGS: Thank you. I don't have any further questions of this witness. Thank you, Ms. Brady. I would like a this time to call Anita Morrison, please. Good morning, Ms. Morrison. Would you state your name for the record, please?

MS. MORRISON: Anita B. Morrison.

MR. BRIGGS: And would you state your affiliation and title?

MS. MORRISON: I am a principal with Bay Area Economics.

MR. BRIGGS: Okay. Would you briefly advise the Commission of your qualifications?

MS. MORRISON: I have been an economic consultant focusing on economic development and economic impact analysis for almost 24 years now, starting with Hammer, Siler, George Associates and then for the last four years with Bay Area Economics.

MR. BRIGGS: For the Commission's benefit, Ms. Morrison's resume can be found at Tab 3 in the materials we submitted this morning. I would request at this time that she be recognized as an expert. I do understand that she has testified before this Commission before on the matters of economic analysis.

CHAIRMAN HOOD: Okay, colleagues, we have heard a request.

COMMISSIONER HOLMAN: No objection.

CHAIRMAN HOOD: No objection.

MR. BRIGGS: Thank you, Mr. Chairman. Ms. Morrison, were you requested to evaluate the proposed Level 3 project in light of the factors that the Commission set down in its emergency rulemaking related to economic benefit and economic impacts of this project at this location?

MS. MORRISON: I was.

MR. BRIGGS: Would you briefly summarize your findings for the record? Because of the sort of expedited nature of the way we have been proceeding in the special exception

relief, we were not able to get Ms. Morrison's full report in within the prehearing submission. It is contained in the materials we submitted to you this morning. And to the extent that there needs to be any relief from the rules, we would request that. But I will ask Ms. Morrison to briefly summarize her findings to the Commission that are contained in that report. Ms. Morrison?

MS. MORRISON: From a tax standpoint, the 652,000 square foot building would generate an annual tax revenue to the District averaging $6.9 million. that represents an increase of $6.6 million over the current taxes received from property tax and parking taxes on the current property in its existing use. That is a very high revenue generation. It relates to the construction costs and the equipment costs of a colocation facility, which are well in excess of $500.00 per square foot. In addition, the project would generate $2.6 million in taxes during the construction period.

On an employment basis, the building would have 20 to 30 Level 3 technicians. These are very highly compensated jobs with salaries ranging from $57,000.00 to $110,000.00 a year. In addition, there would be 25 security staff assigned to the building. During the day, you would expect to see roughly 100 to 150 technicians coming in from the colocation customers to service their facilities or their equipment within the building. And then with spinoff, we would expect another 9 jobs elsewhere in the District economy.

During construction of the project, we expect over 1,000 direct construction and architecture engineering jobs within the District. Those would support 463 jobs elsewhere in the District economy as the companies buy materials and equipment and services and then as the employees spend their own dollars in the local economy. So altogether that would be just over 1,500 one-year, full-time jobs supported during the construction period.

MR. BRIGGS: Ms. Morrison, going back to your answer concerning the taxes that would be generated by this electronic equipment facility or colocation facility, how would you relate that to the same tax benefit that might come from an office building?

MS. MORRISON: An office building of comparable size would generate a net new revenue level of $5.3 million as compared to $6.6 million associated with this EEF project.

MR. BRIGGS: Thank you. Go on?

MS. MORRISON: Actually, that would be for actually a larger office building using TDR's to reach a 10 FAR. If it were of the same size building, the office building would generate $3.4 million in annual taxes as compared to $6.6 million for the colo facility.

MR. BRIGGS: With regard to the impact of this development as far as encouraging development on the adjacent lands, do you have an opinion?

MS. MORRISON: I do.

MR. BRIGGS: Would you please state it for the Commission?

MS. MORRISON: I expect that the quality and the design of the project will enhance the environment, making it much more pedestrian friendly and supportive. That upgrade in quality levels and the image improvement that would result from the building would be likely to generate additional interest from adjoining property owners to upgrade their facilities and redevelop some of the low intensity, light industrial uses in the area.

MR. BRIGGS: Ms. Morrison, do you see in your analysis any adverse impacts that this type of facility might generate on the immediate neighborhood?

MS. MORRISON: No, I do not.

MR. BRIGGS: With regard to retail marketplace at the present time, do you have an opinion with regard to the existing retail marketplace that exists in this area?

MS. MORRISON: Currently the site is not at all suited for retail use. The low intensity and light industrial nature of the nearby uses has limited the amount of pedestrian traffic. Most of what exists is focused more on North Capital Street rather than First Street. The one exception to that would be the bus terminal across First Street from the site. And its retail uses are pretty well met on-site with the fast food outlets within the bus station. I think generally the critical mass of

retail spaces at Union Station, the quality of those retail operations will tend to draw the office workers from the development south of K Street to the south away from this project. And at this point, the New York Avenue station is at least five years away and this site is further -- is too far away from that station to benefit from spinoff pedestrian activity and retail demand associated with the New York Avenue station.

MR. BRIGGS: In summation, Ms. Morrison, in your expert opinion does Level 3's colocation use and the proposed building to house that use have any adverse economic impacts on the property in the immediate vicinity?

MS. MORRISON: No, I don't see any adverse impacts. I think if anything it would be positive impacts resulting from the upgrade of the quality of the environment and also the additional security available by virtue of the operation being a 24-hour-a-day, 7-day-a-week operation with external cameras on the street that are monitored around the clock and with improved lighting and landscaping to create a better pedestrian environment.

MR. BRIGGS: Thank you, Ms. Morrison. At this time, I would like to call Mr. Steven Sher to the witness table, please. Mr. Sher, would you please state your name for the record, please, and your affiliation?

MR. SHER: My name is Steven E. Sher. I am the Director of Zoning and Land Use Services with the law firm of

Holland & Knight LLP.

MR. BRIGGS: You have testified multiple times before this Commission, so I would request that Mr. Sher be accepted as an expert in land planning matters.

CHAIRMAN HOOD: Colleagues? No problem. Thank you.

MR. BRIGGS: Mr. Sher, have you been asked by Level 3 to evaluate the Level 3 proposal and the EEF use and the special exception relief requested by the applicant?

MR. SHER: Yes.

MR. BRIGGS: Would you please give the Commission a brief statement of your thoughts concerning the project and how it relates to the factors set forth in the emergency zoning rulemaking on EEFs?

MR. SHER: In the outline which I have just handed in on pages 3 and 4, I have set forth the standards that are contained in the emergency rulemaking which the Commission published in the D.C. Register. And on pages 4 and 5, I have looked at how this application meets those standards. And rather than summarize the standards, let me just go straight to how we meet them.

With respect to what the impact of the proposed use would be on the future revitalization of the area, it is my opinion that the proposed use contributes to improvements in the area. It replaces a service parking lot with a well-designed

building. It invests a substantial amount of funds in both real property and equipment in an area which is currently lacking in new investment. It provides the communications and technological infrastructure to support other high tech businesses in the area and in the city. As you have heard described, the building allows for retail use along the First Street frontage if demand exists. The building is going to include that window display space around the perimeter of the building on the first floor, particularly on the First Street side, which will be used to display Level 3 stories as well as art and other things which would enliven the street frontage before there is the opportunity to put retail in there if that comes. There will be no blocking of the sidewalks or other inhibition of pedestrian movement along the streets. The security features are essentially internal to the building. The building can be adapted for office use in the future. You have seen Mr. Lederer talk about the floor plates and how rather than having one big block, we have got two towers that rise above the second floor base which would allow for windows around all four sides of the two towers.

With respect to the economic development potential, the site is about halfway between the existing Union Station Metro Station and the proposed New York Avenue Metro Station. Most sites in the area are much more favorably located with respect to a rail transit than this site, because this site is about as far from either one of those two sites as you can be within that area. And

there is a substantial amount of undeveloped land available for office or other commercial development.

The proposed use would have positive economic impacts for the city. It is supportive of other high tech and business activities. And as you heard Ms. Chapman testify earlier, it is located at the convergent of the inter-city and the local access fiberoptic line systems. And as Ms. Morrison just testified, the tax benefits from development of this site in this manner are substantial for the city.

With respect to the exception for parking, this is not quite what the regulations contemplate in the sense that this building will provide area which would accommodate all of the parking that is required for this use and then some. But what is the situation here is that Level 3 has no need to use all 385 of those parking spaces for its colocation use as proposed at the moment. And what we have requested from the Board is permission to utilize about 100 of those spaces now and take the area which would otherwise be devoted to the other 285 spaces and use it for facilities that are incidental to Level 3's activities in the building. That space could be converted back to parking if the demand ever exists for that, and we believe that we have met the standards for the special exception that are set forth.

I conclude that the proposed development meets those standards. That the interim use of parking spaces for storage and equipment support would create no adverse impacts.

That approval of the application would have no adverse impacts on the area and that the application should be granted.

MR. BRIGGS: Thank you, Mr. Sher. I would like to recall Ms. Chapman briefly for four questions at this time. First, with regard to the parking -- and I don't believe that this is a matter that got covered in your original testimony. How would this parking facility be operated? Would it be a public parking facility or a private parking facility?

MS. CHAPMAN: It is a private -- it would be operated as a private facility.

MR. BRIGGS: And the reasons for that?

MS. CHAPMAN: For security reasons as well as the desire not to create this as a place where people come and park and go other places. But mainly for security purposes, limiting access to our customers as well as to our operations.

MR. BRIGGS: To confirm for this Commission Level 3's intent, you have heard the presentation by Mr. Lederer concerning the architectural design and land planning issues and Ms. Brady as well concerning the land planning issues. In the case of Mr. Lederer, does the exterior design of the building, the phasing plan and the urban planning, are those features things that Level 3 is committed to and would do so on the public record?

MS. CHAPMAN: Yes.

MR. BRIGGS: With regard to Ms. Brady's presentation concerning the adoption of the pedestrian features

that have been submitted to the Commission as part of the prehearing statement, are those matters that Level 3 is prepared to incorporate into the design of this building?

MS. CHAPMAN: Yes. Those were things that we had contemplated prior to this process.

MR. BRIGGS: One final question. We have asked -- the applicant has asked for a bench action on this. Would you briefly describe or discuss for the Commission the reasons for the need for the bench decision, please?

MS. CHAPMAN: We appreciate the Commission expediting this process for us, as we were midway in design and moving forward with development and ready to prepare the site for construction. In our business, speed to market is absolutely crucial and important. There are a few things that are driving this. We have had the site under contract and have had to extend that contract date. That is going to continue to be an issue going forward. It would create some significant barriers for us. If we can't move forward in this particular facility, we need to have that decision made fairly quickly. Otherwise, we are going to have to basically go and find another site to move forward on. It is absolutely crucial that we have the ability to move forward very quickly. As I said, there are several dates that we have kind of had to slow down with construction, with ordering equipment and with all kinds of other things as a result of this particular process. So we would like to have the comfort and security to know

that we can move forward with that. Otherwise, we are going to have to make some contingency decisions.

MR. BRIGGS: Thank you, Ms. Chapman. Brief summation, members of the Commission. Mr. Sher has ably identified and gone through the evaluating factors that are in the emergency rulemaking setting forth how the Level 3 proposal for this project at 90 K Street meets or exceeds all the various factors. And we do not, I believe, from our presentations today and our prehearing materials create any adverse conditions that would impact or cause special relief exceptions not to be granted both for the electronic equipment use and for the temporary, nonhabitable use of the excess parking that would be areas that would be provided within the building.

We would request a bench decision at this time. And also as noted earlier in my opening statement, that in any relief granted that it cover the entire project, even if it is done in a phased condition. With that, the applicant closes its case at this point.

CHAIRMAN HOOD: Thank you, Mr. Briggs, for moving as expeditiously as you could. I would ask, though, that all your witnesses now come back to the table. I think it was five. If they could all come to the table at once for questions from my colleagues? Okay, Commissioners, do we have any questions? Commissioner Mitten?

COMMISSIONER MITTEN: I have just a few questions.

This is for Ms. Chapman. I just want to make sure that I understood something that you said earlier when you were describing the locations that would be suitable for a facility like this. And I believe I understood you to say that there is basically only two areas that would be suitable, and the area north of Union Station is one and Northern Virginia is another in terms of providing access to both these long-haul lines and the local loop. And I was wondering, is that specific to Level 3's needs or is that in general for a facility of this type?

MS. CHAPMAN: It is specific to our needs.

COMMISSIONER MITTEN: I see. Okay. I didn't want to use that in making generalizations about anything else. In terms of the potential for the use of the first floor for retail when the demand would exist for retail, you talked about -- well, in the presentation it was discussed that there would be relative ease of converting the parking levels that would be used for storage and so on. It would be easy to convert those to parking use when the time arose if they were needed. Is the same level of flexibility afforded on the first floor or would the first floor be used for something that requires more of an installation of equipment?

MS. CHAPMAN: No, I think it still applies. It is not as easy, clearly, if we have ladder racks and those issues on the facility. But it is fairly easy to move them. All you are doing is moving equipment and rerouting fiber in the building.

COMMISSIONER MITTEN: And is that true of everything in the building? That it is relatively --

MS. CHAPMAN: As we build out the cabinets and the private suites and the raised floor, it is extremely expensive. It costs -- just to give you a perspective -- around $350.00 a square foot to improve a raised floor environment, which would be the upper floors of the towers. So it would be very difficult to convert that to something else. Well, not difficult. Let me not say difficult. It would be costly.

COMMISSIONER MITTEN: That is difficult.

MS. CHAPMAN: Yes. And that would only occur if it became such that the colocation market would not be supported and it had to be transferred to an office use. So you would basically be tearing out what you put in. So tearing out the equipment, tearing out the raised floor and reconverting the building back to an original shell.

COMMISSIONER MITTEN: So would it be fair to say that you are not going to be putting any cabinets or suites on the first floor?

MS. CHAPMAN: It will mostly be equipment and offices on the first floor. There may be some cabinets and some suites on the first floor, but they would be on the back part of -- if you look at the drawing that is there right now, the wide open space there --

COMMISSIONER MITTEN: Right.

MS. CHAPMAN: That is where that would be. The actual -- it is fairly difficult to build cabinets and suites to the building perimeter mainly because of controlling the temperature and the humidity and those kinds of things in the facility. So they tend to be away from the extremities.

COMMISSIONER MITTEN: Would it be possible to delineate an area on the first floor where you would not install cabinets and suites, so that that could be the area that is specifically designated for potential future retail, so that we would know that it would be strictly local economics that would be driving the potential to put retail in as opposed to in addition to that having to overcome whatever costs would be involved.

MS. CHAPMAN: Well, I think there are two points to that. The first is that this building is still in flexibility of design. We weren't planning on having finalized design issues until the first quarter of next year in our plan. So those are clearly issues that we are still throwing around. The first floors John can probably speak to better than I am. Actually, it lends itself better for offices and those types of uses along that particular corridor. So it would be fairly easy because it is just demising walls to do that. And that is what our thoughts are right now on that. But as I said, it is still in design. It is flux.

COMMISSIONER MITTEN: Okay.

MS. CHAPMAN: That is what our thought is in terms

of direction.

COMMISSIONER MITTEN: Okay. And then just another question. This is probably for Mr. Lederer and related to the ease of conversion of -- I understand it is very easy if you haven't built the tower yet. But if it turns out that there is not sufficient demand for a second tower for colocation that you can build an office. In terms of if a tower has already been constructed as a colocation facility and then it is converted to office, how easy is it to expand the toilet rooms and how easy would it be to also expand elevator service for office use.

MR. LEDERER: That is a very good question. As a matter of fact, both towers -- both the west tower and the east tower are designed with that concept in mind. There is a series of structural knockouts at the center bay that could accommodate up to six elevators. There is a knockout for a central fire stair and there is plumbing chases and HVAC chases already established in that central core that would allow either tower to be fully developed as an office building.

COMMISSIONER MITTEN: Okay. Thank you. That is all I have right now, Mr. Chairman.

CHAIRMAN HOOD: Thank you. Any other questions? Commissioner Franklin?

COMMISSIONER FRANKLIN: Ms. Chapman, as you know, we acted rather rapidly on this and we did so knowing the nature of these facilities from the standpoint of the architectural

character and the possible impact on the streetscape. But my questions concern your business and the nature of it, and if they reveal a certain ignorance, it is only because I am ignorant. Tell me, what kind of -- you mentioned your clients as being .com companies.

MS. CHAPMAN: Web-centric.

COMMISSIONER FRANKLIN: Pardon me?

MS. CHAPMAN: Web-centric.

COMMISSIONER FRANKLIN: Web-centric, okay.

MS. CHAPMAN: There is a difference.

COMMISSIONER FRANKLIN: Tell me the difference.

MS. CHAPMAN: The .com's are part of the Web-centric community. If you -- I mean, our customers range from -- I want to not necessarily mention names, although some of it is a matter of public record. From large companies that send data. So if you just think in that -- many of you all have Internet access at home and you dial into a specific company that you use. Whoever that is, we sell managed modem services. So when you dial that telephone number, it actually goes to our network. It goes to our colocation facility and taps into a line there and goes out on our fiber over across directly to their server. So some of those larger companies are our companies as well. As you see the spectrum changing today, if you look sort of in the Wall Street Journal, you see IPO's for .com's all the time. But also, this will continue to move over to the more franchise Fortune 100 and

Fortune 1000 users -- Sony and some of the other just big Fortune companies that are technical users, if you will.

Some of the things that you see in terms of the industry changing is five or six years ago to attach a file to an e-mail was extremely difficult to send it. You had to zip it up, attach it, and it may or may not have gotten there. Today, you click a button, you hit it, and ding, in two seconds, it gets to the person that you want it to get to. Those are some of the improvements that are happening. One of the other interesting things. Everybody has heard about Napster. Napster is sort of changing the face of the way data is used, the way people send and receive and use files. One other example is Lucas -- George Lucas Filmworks. He is actually designing -- he doesn't do any movies today that aren't in a digital format, and he is actually designing and working with some folks that I know that are outside of our company on actually digitally distributing all of his films. So as opposed to sending a big reel to a movie theater, you hit the button and it goes directly to the movie theater.

COMMISSIONER FRANKLIN: Is there any need for these Web-centric companies to be proximate to this facility?

MS. CHAPMAN: This is such a new industry that we frankly don't know the answer to that. Today, they want to touch it, feel it, smell it, be able to get in there and work on it and do it. Does that mean that they need to be located directly next door? I don't know the answer to that question. But they do need

to be located proximate and that is what has been driving our markets. Washington, D.C. happens to be the top three -- the number three market for us in terms of Web-centric companies wanting space and that is driven by their proximity today. Now if you --

COMMISSIONER FRANKLIN: Well, let's focus a little on what the word proximity means. Would a Web-centric company in let's say Northern Virginia be able to use your services or be attracted to your services?

MS. CHAPMAN: They definitely would use our services.

COMMISSIONER FRANKLIN: More than they would if a similar facility were located in Northern Virginia?

MS. CHAPMAN: Well, you know, there is a two-part answer to that question. A lot of people -- a lot of our customers come to Level 3 because it is Level 3. There is a difference in a lot of the space that is out there. Some of the companies don't build up to raised floor. Some of them don't have the same kind of redundancy. If you go into one of our facilities, we have what we believe to be the class A of colocation space. So companies come to us because they are betting on the redundancy. They are betting on the fact that 365 days a year they are going to be up and running and ready to go. And so they are coming for that particular piece of the puzzle. So I think that, number one, drives more than anything somebody's desire to want to be in

space. And then the second part of that is clearly the space is severely supply constrained today. So people are going wherever they can get space frankly. I don't know if those market dynamics are going to change. But the lead time for this kind of space is so long because the construction process is so long that it takes -- every time I say I have got two cabinets or two suites, I have got 25 people knocking on my door saying I want it.

COMMISSIONER FRANKLIN: Of course we are looking at not only your application but quite a few others. So that segues into the nature of the next questions. And that is the nature of the competition in this business. This project is, I guess, being built on spec to some degree.

MS. CHAPMAN: Our project is not being built on spec.

COMMISSIONER FRANKLIN: Your project is not being built --

MS. CHAPMAN: We are building it for our customers. I could --

COMMISSIONER FRANKLIN: You have lessee's signed up?

MS. CHAPMAN: Well, we don't sign leases, if you will. But I have got enough demand in my pipeline today to fill that building.

COMMISSIONER FRANKLIN: And the pipeline consists of what?

MS. CHAPMAN: It is basically a reservation system, if you will, that we employ internally. So as opposed to a -- I believe some of the other applicants who are developing a space that would be a core and shell, we are delivering a full suite complement of space.

COMMISSIONER FRANKLIN: And the nature of your competition is such that you -- if you lease space, let's say either cabinet space or suite space, your competition is presumably doing the same thing?

MS. CHAPMAN: Yes.

COMMISSIONER FRANKLIN: And the pricing is dependent upon the level of quality of the infrastructure?

MS. CHAPMAN: And the tenant finish level, yes.

COMMISSIONER FRANKLIN: Tenant finish. Is there any reason to suppose that your facility, once it is up and running, would attract Web-centric or content provider companies to the District of Columbia?

MS. CHAPMAN: I don't think we have any anecdotal evidence of that. The markets where we are today where that has actually happened are so different, New York City being one -- our 85 Tenth Avenue facility. There are several of these types of facilities there and there has been a lot of sort of Web-centric growth of .com's there. But clearly the market there is very different than the market here. This is so new. This is probably an industry that is three years old. So we don't have any

anecdotal evidence to suggest that. All I can say is as I said before, people want to touch it, smell it, feel it, and put their hands on it. So are they going to be 150 miles away and locate their servers here and want to have that ability? The answer is probably no. But I don't know what the mileage is.

COMMISSIONER FRANKLIN: Could you tell us a little bit more about the back-up power arrangements? References have been made to storage batteries. Or maybe Mr. Lederer can answer this.

MS. CHAPMAN: I think he should.

COMMISSIONER FRANKLIN: What are we talking about in terms of the back-up fuel?

MR. LEDERER: Yes. The building is supplied with a number of generator sets, which would be located either on the roof or on the upper-most level, as far away from the street as possible. There would be three fuel-source containment tanks, double-walled tanks, meeting all environmental requirements located below grade on the yard that is next to the adjacent property. It would be hard-surfaced. Trucks would access that service area and there would be spill containment built into that same service area.

COMMISSIONER FRANKLIN: So you are not using what some people refer to as fuel cells as such?

MR. LEDERER: No. The technology on the electrical power generation is very tested, standard technology. There is a

number of technology decisions which Level 3 is making now regarding UPS, uninterrupted power supply storage, and there is a number of fundamental technical decisions they are also making regarding AC or DC power as the need and the type of service for users comes into play.

COMMISSIONER FRANKLIN: Turning now to the windows that have been referred to. In the towers, presuming that they will be built as colocation -- for colocation purposes, what will those windows look like at night?

MR. LEDERER: They will be like standard windows with the blinds drawn.

COMMISSIONER FRANKLIN: Will they be dark?

MR. LEDERER: It can be dark. It could be lit. That is an issue which we have tossed around internally a number of times. It would depend on how much of a signature, I think, Level 3 would like to have. Obviously, those buildings would be viewed primarily through people coming in on the Amtrak line. One of the notions we have kicked around is that, yes, this should really be a gateway facility for Washington in a number of different ways -- signaling Washington's true center as being a key player in the information age.

COMMISSIONER FRANKLIN: What is your opinion as to the desirability of having some sense of liveliness in these windows at night?

MR. LEDERER: I personally think it is a good idea.

I think it is also an idea which should be further developed. I think it is an idea which can be addressed very simply.

COMMISSIONER FRANKLIN: What might be a way of addressing it simply?

MR. LEDERER: By providing some sort of lighting in that cavity between the wall that separates the operation space for the humidity and temperature control reasons.

COMMISSIONER FRANKLIN: Continuing with the lighting, you made reference to a well-lit arcade. Could you be more specific as to how that arcade would be lit?

MR. LEDERER: Yes, it would probably be lit with soffit lighting, pendant lighting or lighting mounted on the pilasters. Again, part of this facility is that it is, as Susan has really emphasized, 24-hours-a-day, 7-days-a-week, 365-days a year. The building would be lit and on and operating all the time. The arcade would be open. Again, soffit lighting, pendant lighting or column lighting. There is also additional opportunities for bollard lighting to make the pedestrian environment safer at vehicle crossings and at entries.

COMMISSIONER FRANKLIN: One more question about the streetscape guidelines. They appear as recommendations to Level 3. Ms. Brady, have those recommendations been accepted?

MS. CHAPMAN: They have.

COMMISSIONER FRANKLIN: They have. Is that true, Ms. Chapman?

MS. CHAPMAN: Yes.

COMMISSIONER FRANKLIN: No more questions at this time, Mr. Chairman.

CHAIRMAN HOOD: Any other questions, colleagues?

COMMISSIONER PARSONS: Let me then follow up on what Mr. Franklin was just asking. The design guidelines then, Ms. Brady, just give some ideas. And you say they have accepted them. What level of commitment do we have here?

MS. CHAPMAN: Well, as I said before, we are -- we were not planning on having full, complete design until first quarter of next year. So this continues to be in flux. But we have committed to the base regulations that she has put forth.

COMMISSIONER PARSONS: Fine. Ms. Chapman, you are a very impressive witness.

MS. CHAPMAN: Thank you.

COMMISSIONER PARSONS: I wanted to ask you about power consumption, because I have seen newspaper accounts that you really suck it dry.

MS. CHAPMAN: We do.

COMMISSIONER PARSONS: I notice in Ms. Morrison's computations that the difference is about 50 percent more, I guess, for utilities for your facilities versus an office building. Maybe you can describe that a little bit.

MS. CHAPMAN: They draw a significant amount of power. If you think about what it costs -- in terms of Level 3's

expectations for what we need to build from a base standpoint, number one is fiber access. I talked about the local and the long-haul access. And number two is power. If you think how technology is improving. Ten years ago, a server was about this big. Today a server is this big. And so in a cabinet ten years ago, you could put two servers. In a cabinet today, you can put ten servers. In other to do that, number one, you've got to have the power to drive it, but you also have to have the power to cool it. And that is the most important piece of the puzzle because you don't want your equipment catching fire because of the nature of the heat intensity. So the majority of the power, if you will, is driven by maintaining the environment in the facility. And we, very early on, have been working with the power company on making sure that we have got the power supply. This particular area also has the power requirements in terms of the existing infrastructure. And that was another reason why we were able to move forward.

COMMISSIONER PARSONS: But is it possible that we could locate in some section of this city too many of these and then brown-outs, as we know them, would occur or something?

MS. CHAPMAN: No, I don't think so. The way it happens is today we have a base power requirement. I think we are building to 75 watts a square foot. Which means that the total potential for it is 75 watts a square foot. A typical office building uses 6 watts a square foot. Today we are using probably

drawing 20. And so what we do is work with the power company to upgrade that system over time according to the needs that we have, and that is what we have done in every city that we have been in to date.

COMMISSIONER PARSONS: Mr. Lederer, I wonder if we could put up the rendering perspective.

MR. LEDERER: Sure.

COMMISSIONER PARSONS: I don't see any dish antennas on the roof, but I do see some either flagpoles or antennas or something. What is anticipated on the roof of the building?

MR. LEDERER: Right now principally the roof is dedicated to equipment. Yes, those are flagpoles and really have no function right now.

COMMISSIONER PARSONS: So no antennas are anticipated?

MR. LEDERER: None.

MS. CHAPMAN: I don't know the answer to that question honestly. If there are antennas, then they are within the scale. But the thing that we have done is we have screened all the equipment on the ceiling so that it looks like -- if you look on the -- you can't tell that there are generators up there. And those will be pulled, if there are antennas, to the center of the building so that they are not visible from the street.

COMMISSIONER PARSONS: You put them within the

penthouse then.

MS. CHAPMAN: Yes.

COMMISSIONER PARSONS: Rather than dotted around the edge.

MS. CHAPMAN: Exactly.

COMMISSIONER PARSONS: Good. How important is this sign to you? This type of signage is really foreign to this city. I wonder --

MS. CHAPMAN: That is architectural license.

COMMISSIONER PARSONS: I am glad the designs are in the early stages.

MS. CHAPMAN: Although we have been asked to put a big sign on the building, we are not going to. For these types of facilities, because of what is in there, our customers do not want to advertise that that is where their stuff is. So you won't see a big sign out there.

COMMISSIONER FRANKLIN: You don't expect walk-in business?

MS. CHAPMAN: No.

COMMISSIONER PARSONS: That is all I have. Oh, Mr. Lederer, the cantilever I assume is not over public space but over your own property?

MR. LEDERER: No. The arcade is recessed into the building inside the property line.

COMMISSIONER PARSONS: Thank you.

CHAIRMAN HOOD: Ms. Chapman, in the -- did you have a question? The Chairman is always last.

COMMISSIONER HOLMAN: All right. Fine, Mr. Chairman. Ms. Chapman, can you describe the nature of the jobs that will be created and to what extent they will create opportunities for D.C. residents? And kind of in that vein, what kind of technical qualifications individuals might need to possess?

MS. CHAPMAN: There is really two spectrums of jobs that will be created. One is the technical side of the equation. There are highly skilled technical jobs. Clearly, we have been trying to address with the city how we can pull District residents into this. Because it is not simply a matter of you want a job. You have to have a certain level of technical education. So that is either with a community college technician programming type of facility. As Ms. Morrison talked about earlier, we are talking about wages between $55,000.00 and $100,000.00. So that gives you some level of the technical ability that needs to be there. The second level are support -- those who handle building maintenance. We tend to contract those opportunities out, but clearly we have got control over our contractors in terms of who they hire. So it is our intention to work with the District. As I said before, I probably met with Michael Hodge in July of this year to talk about this specific issue in terms of how -- what is the best mechanism. We haven't come to a conclusion of what that is yet. But as many

of the members of the community can tell you, I have been in Washington, D.C. more than I live in my own house over the last six months to actually figure this out and have worked with several community organizations. I have actually requested that they provide some level of feedback to me in terms of what they would like to see. And it is my intention that by early January to craft a preliminary strategy and then to come back to the community and hold what I call a community work session. I kind of like to stay away from hearings where people just have an opportunity to stand up. It is our intention to have a work session where we work together with the community to figure out what that is and have clear metrics and clear walking orders. What Level 3 is going to be responsible for and what the community is going to be responsible for so that we work together to figure that out.

COMMISSIONER HOLMAN: And in that regard, when your customers come into the facility, can you just describe what they would basically be doing and whether they would normally be there for an hour or all day.

MS. CHAPMAN: It just depends. I have got one guy in one of my facilities who thinks he lives there. He has got a cot there. He is not supposed to, but he does. I am always telling him to move out. So it is just a matter of what they are doing. Clearly on the front side, there is the installation piece of the puzzle. But the maintenance -- it just depends on what

people are housing. If they have got major server equipment that they are constantly upgrading their Web pages and they are constantly upgrading the data that they are sending out and they are constantly upgrading the applications that they are managing, they are going to be in there all the time. Whereas some other folks may not be in there as often. It is across the board.

COMMISSIONER HOLMAN: Thank you, Mr. Chairman.

CHAIRMAN HOOD: I just have a few questions. Let me see where I want to start. Some of them have been asked. I too am concerned about the working along with the District residents for the employment piece. So however that can be worked out, if it is approved, I am hoping that that would go forward in the manner that it needs to.

On page 6 of the submittal, it said -- and I am going to read it -- "Level 3's proposed site would be broken out as 10 percent office space, 55 percent technical equipment and 35 percent support area." In reading that, and you may have mentioned that earlier, what is the 35 percent support area?

MS. CHAPMAN: The 35 percent support area is actually the switches, the fiber, the battery, the generators, that kind of stuff. The 55 percent is attributable to the colocation, to the actual private suites and cabinets that is in the building. So that is on a raised floor environment. And then the rest is offices.

CHAIRMAN HOOD: Let me make sure I understand this

process. My service provider -- I am not going to mention any names -- if I send an e-mail, and I am just using specifically e-mail, just an e-mail, to someone, with this being in the District of Columbia located where it is, if my service provider is one of your clients, would the e-mail that arrives to the person that I was sending it to within the same location that usually comes the next day, will this help to increase the speed of the e-mail which I send?

MS. CHAPMAN: Yes. As I said, we have a fully upgradeable network. Level 3 has the latest technology in terms of fiber. The quality of the fiber and the quality of the electronics that actually light the fiber depends on the speed at which your e-mail gets there. And so we have a fully upgradeable network, so we have got contracts with the largest providers -- the Cornings of the world. So as soon as the next generation of fiber -- the current generation is called LAEF fiber, local area effective fiber -- not that that means anything to you all. But the current generation of fiber is what we have in the ground now. And as we move to a generation of 2, 3, 4 and 5 fiber, we will have the first fiber. Essentially, that combined with the electronics. So the switches, the gear, the CISCO systems of the world, who built those pieces of equipment, the Juniper Networks, who built those pieces of equipment. As we continue to upgrade our network, that is what drives the speed of it. So when we talk about the technical space, if you will, your e-mail is housed on

somebody's server. So that is in a private suite or a cabinet. And then when you send an e-mail to somebody, it goes out off that server through the technical equipment, if you will, that sends it. So that is the Juniper Networks and the CISCO System's equipment, onto the fiber, which is the Corning fiber, to the location, through the technical switching equipment, the Juniper Networks and the Corning equipment, back to the server at which the person you are sending the e-mail to is housed on.

CHAIRMAN HOOD: Also in the center, is there room for improvement? Technology is moving every day. I think a couple of weeks ago they were talking about T-1 lines. I don't even hear that anymore. So is there room in this facility -- which is going to lead me to my next question -- is there room in this facility for improvement purposes?

MS. CHAPMAN: Yes. As I said, it is fully upgradeable. Also, it is redundant. So that when we upgrade technology, there is always two connections somewhere in that facility for whatever equipment that is. So we take down the one side and upgrade it so that you are never down. Plug that in and then redundant on the other side as well.

CHAIRMAN HOOD: Are there any examples already out there where -- and I am sure it probably isn't because of the modernization of this technology -- where you have built a data center and have converted it into an office use because the market demanded?

MS. CHAPMAN: Not at all. Not at all. As I said, this market is severely supply constrained. Over my realm of what I am responsible for, I have got 77 markets across the globe. And just to give you an idea, when we started this process two years ago, we went around and we took 50,000 square feet of space in every market that we thought -- which we call our gateway markets, our big markets -- because we thought that 50,000 square foot of space would last us for five years. In every single last one of those markets, we were sold out of space in 5 months. And that trend continues today. We have a facility in New York City in Manhattan at 85 Tenth Avenue, which is 565,000 square feet. We opened the facility in April and it is totally sold out today. So as soon as I can build it, they are all over it. If you think about it in terms of the emergence and the building of the broad band infrastructure economy, if you will, think about how the Internet has changed the way you live and think about the way it is going to change the way you live. So as opposed to today, where you run programs -- you do Microsoft Word on your computer and it is actually housed on your computer. As applications become more powerful and they become more that people want to use, they will actually be run off a server in a colocation facility somewhere. And that means that instead of having to wait until Microsoft goes through their big thing and has their new update every other year for Windows or for Microsoft Word, you will get those upgrades literally in a split second because you are running

the applications off of a server. I used the example of Napster. I used the example of Lucas Films. It just continues. And I could go on and on about how the Internet is actually changing our economy, and it is all driven by band width, which is what we sell.

CHAIRMAN HOOD: This next question -- I am sure a lot of community people would ask this question if they had the opportunity, so I am going to ask it. MS. CHAPMAN: Okay.

CHAIRMAN HOOD: Again, this center is power-driven -- a lot of power. And I know the area. Amtrak and everything has a lot of power and they are going to it. But you say that you have centers all around, internationally and everywhere. Is there any evidence of any illnesses caused by these facilities?

MS. CHAPMAN: No. And we actually -- David, if you want to speak to -- we had a consultant do an evaluation for this particular site as well. And actually we have our mechanical and electrical contractor, DLV, they are a specialist in this field. Well, they had a specialist that they work with do an evaluation of this facility, and in their estimation there are no adverse impacts as a result of it. And there is no documentation or there is nothing that has been proven that I have seen that shows that either.

CHAIRMAN HOOD: Let me ask you, you also -- I think you said that you could have either 100 to 150

companies within that facility?

MS. CHAPMAN: Of customers in and out of the building on a regular basis.

CHAIRMAN HOOD: Oh, okay.

MS. CHAPMAN: Between 200 and 300 actual customers.

CHAIRMAN HOOD: 200 and 300 customers?

MS. CHAPMAN: Yes, it just depends on the number of suites and the number of cabinets that we build out. Some customers take one cabinet and some take five and some take a private suite, that is 5,000 square feet. So it could be totally across the board. In our New York facility, we have, I believe today, 275 actual customers that house information in that building.

CHAIRMAN HOOD: Okay. So the market would be -- to that demand, the way you would need to have

-- if you had 270 and say your competitor across the street or down the street or wherever they are located had another 270, is there that much out there that you have the need for all those data centers?

MS. CHAPMAN: Well, I think that -- I just want to be clear about the spectrum of what data centers are. Because our facility itself in many ways is very different than some of the other things that you consider to be an EEF. Some EEF's are simply switching facilities. You have some developers who build on a spec basis, if you will. And so they lease space to whoever will

come in. So they may have a colocation space user like a colo.com or a Switch & Data or even a Level 3 come into their facility and take a certain amount of space. But they also may have Global Crossing that has switch facilities in there. They also may have an e-manage that may be a Web hoster that has a different use within their facility. Our facility is strictly dedicated to colocation -- to serve it. Because we have got a need for it and that is where our market is for it.

CHAIRMAN HOOD: Okay. Thank you. Colleagues, any other questions?

COMMISSIONER FRANKLIN: Mr. Chairman, just one question of Ms. Chapman. I am a bit confused. You are depicting a situation where there is a constraint on the supply. There is just enormous demand for at least the services that you are providing. If that is the case, why are we being told that you are going to be doing this in stages?

MS. CHAPMAN: Because it is a matter of us just building out -- we want the flexibility to build it out in a phase. Because the lead time on this is so long, it takes 18 to 24 months to get a building up for this particular facility. In 12 months, the actual market for this may be different. So we want the flexibility that if 12 months from now the market for this is different, then we can build an office tower and have one colocation tower and one office tower. So it is just a matter of flexibility. And it is a matter of moving and having the

flexibility with the market demands. I don't expect it to.

COMMISSIONER FRANKLIN: So at present you don't see the market being such that this could be an entirely colo --

MS. CHAPMAN: Oh no, actually I do. But as any good developer would be, you have to plan for the down side and for the potential down side. So you try to brainstorm about all the possible things that could change the nature of your business. And that happens to be one of them. But from the demand that we see in the marketplace, we think the market is going to be severely supply constrained for at least another five years. The main sort of barrier to entry for this is cost. When you are talking about $500.00 per square foot to build, even though a lot of people may want to build, it is fairly difficult because it is a tremendous burn of equity. And it is a today in equity play. It is not a leveraged play, if you will.

COMMISSIONER FRANKLIN: So you are not contemplating building this through debt, but through equity?

MS. CHAPMAN: I am sorry, could you repeat that?

COMMISSIONER FRANKLIN: The financing for this is equity not debt?

MS. CHAPMAN: Yes. And Level 3 has today got a $12 billion balance sheet. That is what is required in the marketplace today. You are seeing some changes over with the financing community, but it is fairly very difficult to do that because it is a new market.

COMMISSIONER FRANKLIN: So talking about staging is just in your view a matter of prudence and caution?

MS. CHAPMAN: Yes.

COMMISSIONER FRANKLIN: Where you sit now and what you know now, you wouldn't stage?

MS. CHAPMAN: No, we wouldn't. We would move forward with the full development.

COMMISSIONER FRANKLIN: Thank you.

CHAIRMAN HOOD: I just have one last question. Is there a chance that in this facility you could be maxed out, to where you can't have any more users?

MS. CHAPMAN: Clearly there is that chance.

CHAIRMAN HOOD: Okay.

MS. CHAPMAN: But as I said, that is why we are building big. Because we are trying not to get -- you know, we expect and it is clearly a good business decision for us to max it out. But we want to max it out with the right users.

CHAIRMAN HOOD: Okay. Any other questions? With that, I am going to ask the parties -- if you could just hold your seat for a second. Make room if the parties have any cross examination that they want to do.

MR. SOWELL: Only to Ms. Chapman.

CHAIRMAN HOOD: Okay. If we could clear a space, one person. Now I want to make sure I am clear. If anyone is here from the ANC -- I understand because of the documentation not

provided by the ANC, they are not a party. I think I said that correctly. Okay, first Mr. Sowell and then we will hear from Mr. Walker. Do I need to speak louder?

MR. SOWELL: No. I am going to do a Mickey Rooney. I will be out of here in a couple of seconds.

CHAIRMAN HOOD: Okay. Thank you.

MR. SOWELL: First of all, I am Rick Sowell. I am with the North Capital Area Revitalization Committee. And we have interacted with both ATF, which is a government agency, as well as Metro in reference to firms moving into the neighborhood or groups moving into the neighborhood. We have also interacted with a group called XM Radio, which is now at 1500 Eckington Place. So many of these questions are based on our experience with them and the grandfather of all these groups, which is Action 29, in reference to the way that the community has been involved in development. I have heard, because many of the individuals on the Commission have asked you about job opportunities. Do you have any estimate on how many jobs from construction to finish might be available in this process?

MS. CHAPMAN: I actually would rather have Ms. Morrison speak to that since she is our economic consultant and has run the numbers.

MS. MORRISON: We had estimated for construction that there would be 1,044 full-time, one-year jobs.

MR. SOWELL: You have been, Ms. Chapman, going to

several community meetings, and we kind of wanted to get an idea of your view of the land or the business and residential community and how might Level 3 become a "good neighbor" to the business and residential community in reference to being involved in partnering or whatever. What is your process for that? I heard you mention it, but I wanted to give you an opportunity to expand on that based on the experience that you have been exposed to, again with Action 29 and others in seeing what they have done. How do you intend on doing that?

MS. CHAPMAN: Well, clearly -- you know, as you made reference to -- I did start meeting with the community members back in early summer on trying to figure out what Level 3's impact on the community is going to be. And the process that I put in place is such that I have asked for comment from several community organizations by early January so that we can come back -- and then I will take that and craft a preliminary strategy. And we have talked with folks about making contributions to McKinley Tech, as you know -- participating in that process. I think there is a larger issue that we need to focus on, and that is really how do we get District residents into this process. From my side of the coin, clearly I have spoken with our contractors and are working with them, our general contractor, on crafting a plan on the construction side, which will be the piece that comes up the most quickly. But then also on the back-end side for the permanent jobs that will be there. How can we best service

community residents to make sure that they are prepared to handle the technical qualifications that are required. Because we can always put up several people for positions, but if they can't perform the job, then we have done all of ourselves a disservice. So as I said, early first quarter I will be back in the District and am planning a work session with community members to work through what it is that we are going to do and how that is going to be carried out.

MR. SOWELL: Okay. Well, this is an advance from the other firms that have been located. We have been fortunate in having more and more firms that come in and that see the community as a partner from the beginning and start involving us early on. Are there any other areas where you see Level 3 benefitting the immediate business, educational and residential community that you haven't mentioned as of yet?

MS. CHAPMAN: You know, it is an ongoing process, as I said. And clearly we are open to whatever we need to be open to. We want to set realistic metrics and realistic expectations for what we as a community, being Level 3 and the community, can do.

MR. SOWELL: Thank you. Based on my commitment to Mr. Franklin, that is Mickey Rooney over.

CHAIRMAN HOOD: Okay. Thank you, Mr. Sowell. Mr. Walker?

MR. WALKER: Mr. Hood and members of the

Commission, one of the things that we are proud to see that Level 3 have taken a lead in terms of community outreach. And we hope as the Commission reviews the application that is before them today that a community outreach plan will be part of that package. And we would like to thank Level 3 for exemplifying a strategic plan in working with the community. We would just like to ask Level 3 to ensure that their plan is incorporated as has been articulated today for the community and for the immediate community in terms of the business and the residents. That the jobs that are there, that we get our share in terms of the immediate community around there. And we hope that that kind of incorporation will be in the other applications before you, so we won't have to be redundant in terms of what our community concerns are. And I would just like -- Ms. Chapman has already kind of expounded on that, and I do know that she has been working hard with community groups about their involvement. And we would just like for that to be a part of the record for her group as well as others coming before the Commission today.

CHAIRMAN HOOD: Okay. You didn't have any specific questions?

MR. WALKER: Well, the specific question is just for her to give just an overview of that total community outreach from residents and from business and from the immediate surrounding areas of their facility. Because we know that there are several issues as we see the construction phase. We know there

are going to be parking issues, and would just like for her to address how they begin to work on addressing some of those issues.

MS. CHAPMAN: I think it clearly starts with the affected parties, which I think we have done a fairly good job of identifying who the affected parties are and touching base with them. Clearly this process has caused a slight detour from that. But we clearly, as I said, expect to have in place a plan. And as I said, I don't -- I personally don't believe in crafting a plan that is lipservice. I think it has to be something that we work on with the community. I have the benefit of outside of my day job having done quite a bit of community development work here in the District as well as in several other metropolitan areas across the country. So I bring that to the table and I understand the sort of challenges there. And I also understand that we have got to come up with something that is realistic and that makes sense. I could promise the pie in the sky and all the wonderful things that are out there in order to get approval. But I don't think that serves anybody. I think what makes sense is working with the community in a work session mode, where we are making input and the community is making input to actually come up with something that makes sense. Having metrics that we can all move forward on. In one of the ANC meetings, one of the community members asked me, how does he know that a year from now Level 3 is going to live up to what it says it is going to do. And I replied to him that a year from now it is a partnership effort, so it is up to you to make sure I

am doing my job and it is up to me to make sure that you are doing your job. So that is the way I plan to approach it. And if folks have issues, then --

MR. WALKER: Thank you, Mr. Chairman.

MR. SOWELL: Mr. Chairman, if I might take the prerogative to indicate that on Wednesday -- the Revitalization Committee meets every third Wednesday -- many of the firms and government agencies will be making a status report at 12:00 at the Department of Housing on the 9th floor. We would like to extend an invitation to the Commission and staff to come and basically hear what has been going on in the neighborhood from a variety of aspects. So that if you do create a mechanism for other applicants to be involved with the community, you will kind of know what we are looking for in reference to the community and what has been done. I think it is extremely important to understand some of the reasons or at least to hear some of the reasons why our developers and business communities have decided to interact with the residential community. It is very unusual for developers to start this type of relationship, and I think Level 3 picked up immediately from interacting with Action 29, which puts the original $25 million aside for the Metro stop, as to how this new process is working. It came out of the Department of Housing, so it came out of government, and it has worked very well for the North Capital community. I think it can be repetitive in other communities. However, it is not down on paper. It is not a pure

theory. Level 3 has improved on the process to some degree. But we would invite you to that. We will have repast, something other than just Christmas cookies, to expand your waist size, but we would very much like to have you attend or have some staff attend the Revitalization Committee. That is 801 North Capital, N.E., Department of Housing, 9th floor, on Wednesday. CHAIRMAN HOOD: Okay. Thank you.

MR. SOWELL: At high noon.

CHAIRMAN HOOD: Thank you. I would like to thank Mr. Sowell and Mr. Walker and also the applicant. With that, we are going to kind of move a little expeditiously with our agenda. We are going to go to government reports, which is the Office of Planning. And I am going to ask in the report that the Office of Planning gives us that they also include any submittals that have been submitted from public works and other government agencies. If there were none, then we have none. Mr. Altman, Director of Office of Planning.

MR. ALTMAN: Members of the Commission, we have four applications before you today. We will now speak to the one immediately before us, which is the Level 3 Communications. I just -- and our report will be brief. I think you have had it before you and we have had an extensive discussion about how this applicant has met the criteria that the Commission established in the review of these proposals.

I just want to -- a couple of words of setting

context for this. Which is when we adopted these -- when we recommended and then you subsequently adopted the regulations related -- the emergency regulations related to the EEF's or the data centers, we did so at the time, as you know, because of our concern about the number of potential EEF's that might be out there. And we didn't know at the time how many. We knew there were a few, and some of those are here before you today, ones that have been in the works. But we are concerned that there might be a larger volume of those, and we remain concerned about that. Which is why we are working very closely with the industry. We have held a number of many forums now, and we will be holding additional forums as we release draft regulations to come up with permanent regulations. We still believe that that is very important because we are trying to balance here on the one hand the needs of the technology infrastructure, which we have learned more about today, and the revitalization of the area in terms of -- particularly not just this area, but other areas of the city where we have Metro. Here we have New York and Florida, a new Metro stop that was -- again, there is a groundbreaking for this weekend -- where you are promoting people-intensive/employee-intensive areas. Hence, a lot of the criteria try to address issues of the streetscape, issues of the vitality of the street, issues of retail, which is not there today but may be there in the future, and sort of the overall urban design issues as well as the issue of employment density and the number of workers that would

come to that area to create vital areas.

So that was the balance we were trying to achieve and we will be bringing forward to you permanent regulations along those lines. The applications you have before you today we recommended approval of, because we felt that it was important, one, that there be a certain amount of that technology infrastructure. And you are seeing some of the key ones. You hear Level 3 today and the kind of service they provide. What is that right amount? We don't know exactly. The industry is changing rapidly. Again, that is what our permanent regulations will sort out. But that as these applications come forward that they do meet the criteria that the Commission adopted. And that is why we were able to recommend today approval of the Level 3 Communications and you will hear about the other reports. Because we felt we have worked with them, particularly Level 3 came in immediately and we have worked very closely with them over the past two months basically since we adopted the emergency regulations to try to address all the issues. You can see the results in the design before you today related to the flexibility of the space, the ground floor. I think although Mr. Parsons is right that this is not the standard Washington signage, but the notion of creating a tech district that does have interesting signage and does have some vibrancy and does announce that it is a tech district we think is important.

Jennifer Steingasser of our staff has been project

manager for this and working closely with the industry and will make the report on the specifics. But I just wanted to let you know that we will shortly be bringing forward those regulations. We are going to have another round of meetings with the industry when we release those, and we will be releasing those hopefully by the end of the day today so that people can start to get -- we can start to get input on those. But we did want to move forward with these initial applications that were in the pipeline, because we believe that this could bring a needed technological service while respecting the criteria as we go through the more permanent process to sort out the areas where we want to promote these uses, the areas where we want to be more restrictive, and the overall technology economy.

So with that, I will turn to Jennifer Steingasser, and she can go through some of the report.

MS. STEINGASSER: When we took the applications and reviewed them, we looked extensively at the design criteria that was established for the special exception review by the Zoning Commission. We went through each application and went through it against those criteria and came to the conclusion that this project did not pose an adverse impact to the neighborhood. The future revitalization of the neighborhood we felt was served through the introduction of new construction and new building, which brought with it streetscape improvements, landscaping. The potential for the vibrant streetscapes and street life were there.

The introduction of an arcade for the pedestrians. Again, the landscaping provided vibrant streetscapes. The security issues were addressed by having internal security that wasn't visible from the streets or the sidewalks. The glass windows would be animated along the streets where the pedestrians -- both K, L and First Street. We felt they respected they First Street pedestrian activity that could be incurred by having these windows and having an art display. I guess they are calling it etown along First Street. The overall building was designed as an office building. It appears as an office from the street. The architect has testified that they are going to be made with class A office construction materials, which we felt was very critical to its efficient use and being readapted to office space. And again, it was designed for readaptation to office space if the market changed. It accommodated retail along First Street through the 40-foot design on the interior and included the extension of utilities through the basement, which we thought was also a plus for the potential for a vibrant streetscape.

We recognize that the vibrancy may not be there today, but we were very concerned about there being a potential to accommodate it. We felt that the utilities were arranged so that it could also serve both the office and the retail. The pedestrian and vehicular movement were addressed. They brought full on-site parking and loading. It is off of L Street, which is a one-way street. It minimized the traffic interaction and interference

that we had heard some concerns when the applicant did address the audience at the ANC. There was some concern raised about interference on First Street with the traffic, and the applicant at that time pointed out that the traffic has been loaded off of L Street, which is a one-way traffic, so that should minimize any kind of interaction between both the pedestrians and the vehicular movement on the streets as well as what is going on with the building.

The parking and loading have been done for full -- have been provided at full office standards and then some, as the applicant has testified. We felt that that provided for future adaptability as well as the retail options. And they moved through to the future accommodation. I mean, many of these things interact with each other. The retail facilities and accommodation also address the vibrant streetscape.

We came to the conclusion that the project as proposed did not pose an adverse impact and we recommend approval.

CHAIRMAN HOOD: Okay, thank you. First, I want to start off by asking the Office of Planning, as opposed to how we did it on the emergency side, I understood you correctly, Mr. Altman, to say that you are having dialogue now for the final regulations with the different groups? Okay. I just want to say that there has been a lot -- and I don't usually respond to everything I read -- about this Commission not being business friendly. But I really want to say that I believe that it was

good for a change to see that our Planning Office presented something for this city, for the best interest of all of us, a plan. There were no regulations in place, and these facilities, like a number of other things in our city, need to be regulated. So I just wanted to say that at no time is this Commission not business friendly, but we are going to do our charge and do what is best for the best interest of the city. And I wanted to commend the Office of Planning for putting it forward. It might not have all been squeaky clean, but we needed to have some regulations in place. That is this Commissioner's perspective and point of view. Colleagues, any questions for the Office of Planning? No questions. Okay. If I could find my agenda --

COMMISSIONER PARSONS: While you are looking, I did want to ask. The question that I asked Ms. Chapman about the consumption of electricity, are you working with PEPCO on these applications?

MR. ALTMAN: Yes, we have been actually meeting with PEPCO to do the planning for this whole area actually, and they are very interested in it and want to work closely with us on it.

COMMISSIONER PARSONS: Just so there is no chance that if we put three or four of these units in this area that office buildings won't follow because we can't serve them? Or housing?

MR. ALTMAN: No chance. I wouldn't speak for PEPCO,

but let me say that they are right now gearing up what they think, based on the projections that we have both for future development in this area and the applications before us, so that they can serve this area well. They have put their line staff to work with us and made it a priority. So I think they will accommodate this. If that becomes an issue, obviously we will bring that to the Commission in subsequent cases.

COMMISSIONER PARSONS: I am worried about the semi-abandoned plant on the Anacostia River that we hope to use for another purpose. I would hope this wouldn't generate something that would -- not that this is part of this case, but you kind of worry about those things. That suddenly we have created a demand that they have to meet somewhere else.

CHAIRMAN HOOD: Colleagues, first I think we need to waive the Office of Planning report. Can we do that -- well, we are on this case. I wanted to do all of them, but let's waive this report. The general consensus -- okay. So we will waive the report and relax our rules. Any other questions of the Office of Planning? If not, report of the Advisory Neighborhood Commission, ANC --

MS. SANSONE: Mr. Chairman, the applicant and the parties would have the right to ask -- cross examination of Office of Planning.

CHAIRMAN HOOD: Oh, okay. I am sorry. I am moving too fast. Let me slow down. Mr. Briggs, did you want to cross

examine the Office of Planning?

MR. BRIGGS: We don't have any cross examination at this time.

CHAIRMAN HOOD: Okay. The parties -- Mr. Walker and Mr. Sowell? Obviously not. I think they have left. Thank you, Ms. Sansone. Thank you for keeping me straight. Now I think everything is in order and I can move on. I have called for the Advisory Neighborhood Commission, which I don't think is present. Persons and parties in support? Dr. Weiss?

DR. WEISS: Thank you, Mr. Chairman and my distinguished Commissioners for the opportunity to speak with you today. I am Dr. Marc Weiss. I am a public policy scholar at the Woodrow Wilson Center, which is part of the Smithsonian Institution. As you know, in 1997 and 1998, I served as the coordinator of the Strategic Economic Development Plan for Washington, D.C., the Economic Resurgence Plan, which really was the birth of a lot of the issues that we are here talking about today. The strategy to grow a technology industry in the District of Columbia focusing on media and publications and information technology and telecommunications, and the focus on the north of Massachusetts Avenue area, NOMA, which was Action 26, and the building of the New York Avenue Metro Station to serve as a linchpin and catalyst for development around that area, Action 29.

Since leaving full-time the position with the D.C. Government nearly two years ago, I have continued to stay actively

involved in a number of capacities as chairman of the Action 29, New York Avenue Metro Station Corporation. And as Andy Altman mentioned, we have the groundbreaking just on this Saturday. And just to correct what was stated by one of the earlier witnesses, the Metro Station will be opening in three-and-a-half years, not in five years.

And I have also served on the steering committee for the NOMA Development Strategy, which will be coming out very soon on the Board of the North Capital Area Business Association and a founding member of the Washington, D.C. Technology Council, and officer of the Federation of Citizens Associations, a consultant on the McKinley Technology High School Campus and an advisor on the Ward 5 Economic Summit. So in all those ways, I have stayed very deeply involved in these issues.

I am here today to testify in favor of the application for Level 3 Communications and to specifically -- but also to note I agree with the recommendations of the Office of Planning and take a favorable view of the other applications that you will be reviewing today. I think there is very strong reasons for you to support this application and really none to oppose it. I did do a background memo a couple of months ago, which I will leave you with copies with. But let me just briefly highlight some of the key points.

First, from the perspective of economic development city-wide and the benefits to all of our citizens and residents

here in the District of Columbia. If we are going to compete with Northern Virginia and grow a media technology industry here, much more substantially than what we have, we need large technology companies to see Washington, D.C. as a location for them to come to, not just the small Internet start-up companies. So to have a Quest Communications International, to have an MCI Worldcom, to have a Global Crossing, to have a Level 3 Communications, world class firms, it is very vitally important that we welcome them here. And one of the attractions has been because of the central location. You know, it is no accident that Federal Express is located at New York and Florida Avenue. That is the most single central location in the entire region. As well as the existing rail line infrastructure. That has been one of the attractions we want to take advantage of.

Secondly, these investments that are being made by these companies build the infrastructure in terms of the broad band, as Susan Chapman laid out so well, that make it possible for us to be more attractive to the smaller technology and media companies, and so it builds the critical mass to grow, both in terms of physical capacity, which is so vital, and in terms of human capacity, the expertise, which is where the colocation becomes so important, as I think Level 3 explained very well. This facility becomes a magnet, as has happened in Silicon Alley in New York, for the other kinds of companies, both direct that use technology as well as cell technology services to want to be

nearby. So if we are going to build critical mass and if we are going to compete effectively -- in Northern Virginia, they are providing millions of dollars in incentives, here we are not. But at least we should be welcoming in terms of making it possible for them to fit into a mixed use fabric as we recommended all along in the NOMA plan.

If you look -- for example, the first big victory that we had that opened the door even to the idea that we would have a technology industry and a technology district here in Washington, which was the signing of the lease of Quest Communications International in December of 1998 to put a technology center at 1500 Eckington Place. That put us on the map. That opened the door to XM Satellite Radio moving into that area and taking the rest of the space, which has been the biggest single win that we have had. Under these regulations, Quest is also an electronic equipment facility. So it is important for us to show that they can commingle. You know, we have got Quest and XM in the same building, and we have got Quest as a catalyst for all of the things that happened around it from ATF going across the street to Enron going across the street to the McKinley High School going up the block.

Secondly, in terms of community development, one of the things I want to emphasize -- you know, when we did the New York Avenue Metro Station, it was unprecedented. Gladys Mack, the Chairman of the Lomato Board talked about this on Saturday. We

had three public hearings and not one neighborhood witness against ever and dozens and dozens and dozens in favor of it. That had never happened before in anything that Metro had ever done. So I feel in fairly close touch in working with the community, and I think it is fair to say that in this case not only are there no adverse impacts as Office of Planning found, but there is really no opposition and a tremendous amount of support. Why? Because the people in the neighborhood recognize that there are job opportunities that this helps generate. There are business opportunities that this helps generate in terms of vendors and suppliers and subcontractors and retail spinoff. And thirdly, that this helps bring critical mass. Each investment builds momentum for the next. And if you are going to do a $300 million investment like Level 3 is going to do, that is going to help act as a catalyst for other things to happen, all of which will be beneficial for the neighborhood as they work together to make sure that people in the community have those opportunities.

And third, and I think you have seen it pretty clearly here, that Level 3 brings activity into the area, beyond the direct number of jobs that they have on site, 100 to 150 people in and out a day. A quality design that looks like a first class office building with the potential for ground floor retail. As I mentioned, a huge investment that will really send a signal that Washington, D.C. can compete. Because this will be the first really big one that we would get and all the rest of them have

been going to Virginia. In fact two just recently of the same magnitude, AOL and U.S. Dataport. And as was mentioned in the estimate, even just $7 million in annual property taxes that will go to the D.C. revenues, of which now there is just $300 being generated by that site.

So let me just say that I am very pleased that the Zoning Commission, as the Chairman said, and the Office of Planning took this seriously and said that this is a whole new phenomenon. We want to take a hard look at it and act responsibly. And while we don't want to be overwhelmed by these facilities so that there is not an opportunity for street level activity and mixed use, we also want to make it possible for them to come here. And I think Level 3 is the place to start to prove that and the other ones you have here before you. Thank you very much.

CHAIRMAN HOOD: Thank you, Dr. Weiss. Let me just say that in all due respect, Dr. Weiss, we didn't start the clock until later, but we normally allow all of our support witnesses three minutes. I think you had about five, but that was fine. That was some good testimony provided to us. Colleagues, do you have any questions of Dr. Weiss?

COMMISSIONER HOLMAN: No, Mr. Chairman. I just -- every time Dr. Weiss testifies, I find myself compelled to disclose once again that I am a member of Dr. Weiss's Action 29 board, but in no way did I have any discussions with him about the regulations or the pending applications. I just wanted to make

that clear to the Board and to the applicant.

CHAIRMAN HOOD: Okay, good. I guess since we are not taking a vote, colleagues, we don't have any problems with Commissioner Holman being on Council 29. Any other questions? Okay. Thank you, Dr. Weiss. Let me just put on the record that we do have a letter of support from the Honorable Sharon Ambrose from Ward 6. Also, the council member from Ward 6, Sharon Ambrose, who supports this application. Let me also put on the record that I have had a chance to skim through the concerns of single member district ANC Commissioner Daniel Parnell. Colleagues, in my reviewing of the record, I believe we have basically answered a lot of his questions and found some resolution and put it on the record.

With that, persons and parties in opposition. Seeing none, closing remarks by the applicant.

MR. BRIGGS: Thank you, Mr. Chairman, I will make this very brief. I think Mr. Sher, in the end of his testimony, reviewed very completely that this applicant in this case has met and evaluated all the factors set forth in the emergency rulemaking. I believe it has shown from its case and its submittals that there is no adverse impact and I would respectfully request special exception relief for the use of this site as a colocation facility and that we be afforded special exception relief to allow the temporary, nonhabitable use of the parking areas in excess of what would be required from time to

time for Level 3's operations in this facility. I think the case is with full merit and deserves your support. And we would request, as I had noted earlier, a bench decision and addressing the matter of the phasing to incorporate Ms. Chapman's comments. Thank you.

CHAIRMAN HOOD: Thank you. Colleagues, we have a request for a bench decision on this Case Number 16660. I am inclined to hear the other three cases and then make a decision on the back-end. But that is open for discussion. Or would you like to proceed and make a decision now.

COMMISSIONER MITTEN: Well, I think we have learned an awful lot and I am very grateful to Ms. Chapman for sort of giving us a primer on all of this. And I think we will learn even more if we go through the other cases. I would be, I think, amenable after hearing all of the other cases, that we be committed to trying to come to resolution on them, either today or on Wednesday, so that we are not prolonging this unreasonably, but just so we can get the full benefit of whatever we can glean from the rest of the applications so we can have it all in our mind when we make our decision.

CHAIRMAN HOOD: Okay. Let me hear from my other colleagues. Okay, we have one person who agrees -- three and four?

COMMISSIONER HOLMAN: Yes, Mr. Chairman, I would like to see if we could do this today if we could.

CHAIRMAN HOOD: The goal is, I think, Ms. Chapman,

that the first group really set the procedure. They told us a lot of information. I am hoping that the other three -- not saying that they are going to be voted up or down -- this is not a vote of confidence -- that we can move a little bit more expeditiously through the other ones. But, again, I do think that we will learn some other things in the other three. So I agree, I would like to dispose of this as soon as possible, no later than Wednesday morning. Mr. Briggs?

MR. BRIGGS: Mr. Hood, I understand your level. But this is a special exception relief case and the case is on its individual merits for each case. And I would just hope that if the Commission elects to proceed in that fashion that there are clear demarcation by each of the cases. Some may have certain merits versus the others. I do not and would not want any confusion among the record of the individual cases as to whether that case has met the merits or the requirement to be shown. This is not like a regular public hearing or a rulemaking arrangement. So that would be my only concern in waiting until the end to consider all of them in a unit is confusion of the record.

CHAIRMAN HOOD: Mr. Briggs, I am sure that we would not mix your case up with the one that we are going to hear right after it. I can assure you that we will not take your case into the next case and then come back with some of the things that we found on the next case and bring them back to your case. I can assure you that that will not be done.

MR. BRIGGS: I had to just respectfully make that notation for the record, Mr. Hood.

CHAIRMAN HOOD: Okay. Thank you. Colleagues, any other -- so in that fashion -- Mr. Franklin?

COMMISSIONER FRANKLIN: My inclination would be to decide this case on its merits and then move on to the others. But if it is the Chairman's desire to defer that, I will certainly respect that. I think that this case -- we've heard sufficient information about this particular case to be able to make a decision, and I don't think that we are likely to hear anything in the other cases that have a relevance to this particular case.

COMMISSIONER MITTEN: Mr. Chairman, if I may just speak to one aspect of the emergency regulations that I think a short delay in making this decision until we hear the other cases would be relevant and it really hasn't been developed in any of the applicants' cases and it hasn't been addressed specifically in the Office of Planning report, is this notion that is introduced in Section 756.2, which relates to proximity to other EEF's. And so I think we will get a sense of the global nature -- you know, not global in the sense of Ms. Chapman's job, but global in the sense of the area that we are dealing with where EEF's are being proposed, and that is the additional information that we will glean by waiting until we hear all the cases. Just where are these other projects going to be located and the nature of their business. So we will have a way of fully addressing that section

of the emergency rules.

CHAIRMAN HOOD: I have -- I am going to throw this out there. I have heard from Commissioner Franklin and I also heard from Mr. Briggs. After thinking about it for a second, I don't see where it may be advantageous for us, even though I understand where you are coming from, Commissioner Mitten. Maybe we do need to go ahead and dispose of this. If we are all in agreement to dispose it, I don't want to make it look like the Chairman took the lead. But if we are in agreement of disposing of it, I agree maybe we don't want to tie other things in. I just think that it might have been better to wait at the end, but I really don't see and I have to agree with Commissioner Franklin where I am going to get anything else that is going to have any bearings on my position on this particular data center.

COMMISSIONER HOLMAN: If that is a motion, Mr. Chairman, I will second it.

CHAIRMAN HOOD: I didn't actually make a motion, but okay. So I will make the first motion. I make a motion that we approve application 16660. There are no -- from the testimony that has been provided, there are no adverse impacts to the community. And with that, I make a motion that we approve.

COMMISSIONER HOLMAN: Second.

CHAIRMAN HOOD: It has been moved and seconded. All those in favor by use -- any discussion?

COMMISSIONER PARSONS: Mr. Chairman, I think that

there are some things that we discussed that we might want to make as conditions to this approval. The streetscape commitment comes to mind that really is not firm in the record. There is no plan in other words. No antennas on the roof, which is of extreme interest to me. And the retail is presented as an alternative, I think, and I think we should reflect that that is the alternative we prefer. And, of course, I have my own personal views on that sign there that fortunately are shared by Ms. Chapman, but I am not sure they are shared by Mr. Altman. So maybe we need some discussion on that. But I really think a sign at ground level is fine. I mean, that is the traditional use that we have and retail signs would be along first street. But banner-like signs that we have allowed on the MCI Center I don't think are appropriate on a building of this nature. So I would offer those as conditions to this approval.

CHAIRMAN HOOD: Okay. We are now moving to the point of putting conditions. Mr. Altman?

MR. ALTMAN: I just wanted to speak to the one condition, since Mr. Parsons singled me out for that. I think the idea here is to allow some creativity for Level 3 in terms of signage to create an excitement and an energy in the area. I think the notion of whether it is this type of signage which we encourage -- because we want these buildings to, both in terms of their architecture as Level 3 has presented, but also in terms of I think this tech district and what it might be. You have seen in

other places where you can look at examples -- the Circuit District in Tokyo and other places that have created kind of a spark and energy. You look at it and it is a definable district that kind of reflects what that technology is that is occurring there and within it. Obviously, I don't know what the precise signage of that is going to be. It is not my intent to try to design that today. But I wouldn't want to preclude that possibility, because I think it could really give the whole district a unique sense. You can imagine if each building of these tech buildings that we are seeing today each had some kind of a design element that was not only at the ground floor but also part of the building, I think it could give a real identity to the district and I wouldn't want to preclude that creativity on the part of the architect or on the part of these users to help us in the creation of that sense of a district, from an urban design sense and an overall feel of establishing something that I think could be very unique. So that is why we encouraged them to do something so that it in fact wasn't just a matter of the office veneer and the office facade, but that in fact you are not just trying to mimic that it is an office, but you are also trying to show that there is something going on inside of these buildings and what is going on inside of these buildings is very exciting. What is going on is the technology infrastructure, the Web-centric economy, however you want to term it. But there is something going on and that something is unique and is something that is really

signified in this area we are trying to create. That is why we encouraged them to do so and why I would urge you to allow for that flexibility in this building and others that may occur in this district.

COMMISSIONER PARSONS: Well, I respectfully disagree. We have had a -- I think the only exception we have made on this Commission is the Union Labor Life Building, which in my judgment is a mistake. I can't believe I voted for that. The building itself and the sign. But anyway, it is there. And we have actually sued Arlington County to stop them from putting signs on their buildings facing the mall. And I think the temptation here to illuminate a sign at the roof level so that those coming into the city from the train station or from the train can see this as a billboard like device -- certainly, Ms. Chapman isn't going to do that, but maybe her successors would. And I think it is troubling to me. I think we ought to deal with it at the street level and not encourage signs on the roof or other things that could intrude on the skyline and set a precedent that we are concerned about. That suddenly this is more important because of its color or shape, the signage, than the Capitol dome or the barrel vault over Union Station. So those are my concerns. If we can keep it at ground level, I am fine.

CHAIRMAN HOOD: Okay. Colleagues, any other comments?

COMMISSIONER FRANKLIN: Yes, Mr. Chairman, could I

see if the following list reflects the kind of conditions that we are talking about? I presume that we would want to see the structure reflect the elevations that have been displayed to us. I don't have a drawing number -- I can't see it from here.

CHAIRMAN HOOD: I think that is E-13.

COMMISSIONER FRANKLIN: E-13. That is item one. That the streetscape guidelines are followed. I understand that that is a broad, general condition that is not typical of the ones we normally have. But I think for our present purposes, I would be willing to go with it. I would also add that the windows above the first floor have some lighting as the architect had recommended. I think we have to approve the parking allocations that had been referred to that the ground floor, particularly the -- that is, the design that is able to accommodate a retail should be called out as an important consideration. With regard to signage, I agree with Mr. Parsons that we don't want anything really above what would normally be the canopy level of the building, and I would hope that it would read horizontally as the language normally reads and not something that requires you to turn your head to read it. I have said this about Metro for a long time. It is about time we got rid of all these signs that require you to go like this to be able to determine what they say. It has been requested that this approval apply to later stages of the development so that it would be grandfathered in. And the other major condition is that the design retain its ability to be

adapted to office use as described by the architect. I think that may encompass all of the conditions.

MR. BASTIDA: Mr. Chairman, the applicant doesn't address the off-street loading requirements, and I don't know if they are asking for a special exception on that either. They can -- okay, thank you.

COMMISSIONER FRANKLIN: Was the answer that they are requesting --

MR. BASTIDA: No, they are not. They can meet the off-street loading requirements as specified in the regulations.

CHAIRMAN HOOD: Okay. Commissioner Holman, you wanted to add to the conditions list?

COMMISSIONER HOLMAN: No, I -- Mr. Chairman, since this was originally your motion, I just wanted to see if you were comfortable adding the issue of working with the city and the neighborhood to maximize employment of community and D.C. residents. I thought you might be.

CHAIRMAN HOOD: Yes, I am very interested in that. But I can assure you that -- colleagues, let me just state this. I was calling for the motion and following with my colleague on the Board of Zoning and Adjustment, Ms. Sheila Cross Reid. She usually calls for the motion, they vote it up or down, and then they come back with the conditions. And that was the way I was proceeding. But I think -- and I am just setting the precedent so we can do this for the next cases. We can do that, whether it is

up or down. And then if it is approved, then we will just do all that all in one. So we can proceed --

COMMISSIONER PARSONS: I feel --

CHAIRMAN HOOD: No, I am just saying that that is how --

COMMISSIONER PARSONS: I feel strongly enough about that sign that if my colleagues didn't agree, I would vote against it.

CHAIRMAN HOOD: Okay, I wasn't necessarily talking about the sign, Mr. Parsons.

COMMISSIONER PARSONS: But what I mean is if I voted for it and then I found the conditions weren't acceptable to me, I would then have to retract my vote.

CHAIRMAN HOOD: Okay. Point well taken. Again, sometimes -- I was trying to follow the procedures of the BZA since this was a special exception. But point well taken. I do concur with the sign piece and with both of my colleagues on the sign. I am hoping that we could address that and also submit final plans into the record. I believe that is how it is normally done for the final record of how that sign is going to actually be as opposed to being vertical.

MR. BASTIDA: Mr. Chairman, also in the motion Mr. Franklin didn't include a previous item, that was the retail alternative if that is preferred. And I was pondering if he still wanted to include it in his list.

COMMISSIONER FRANKLIN: Oh, I thought I did, Mr. Bastida. I think I did. But, yes, I do agree.

CHAIRMAN HOOD: I am going to ask that we recite the list of conditions so it is well understood on exactly what we are going to be voting on.

COMMISSIONER FRANKLIN: If you want me to repeat it again?

MR. BASTIDA: Do you want me to do it? I took it down.

COMMISSIONER FRANKLIN: Fine.

MR. BASTIDA: And then you can correct me.

CHAIRMAN HOOD: Let's do this. Let's do this. Mr. Franklin, if you don't mind going through it again. This is just for everyone's knowledge.

COMMISSIONER FRANKLIN: Yes. The elevations as shown to us on the exhibit or drawing E-13 would be the way in which this building would be developed. Secondly, the streetscape guidelines that have been presented to us would be followed. Third, the windows above the ground floor would be lit as suggested by the architect. Fourth, that the parking allocation of 100 spaces is agreeable. Fifth, that the design on the ground floor that is to adapt the ground floor to retail should the market permit should be followed. Sixth, that the special exception approval extends to later stages of the development. Seventh, that the ability to adapt this structure to office uses

as outlined by the architect be followed. Eighth, that the signage should be horizontally aligned and appear no higher than above the canopy level of the building. And ninth, that the employment of community residents be maximized as far as practicable.

CHAIRMAN HOOD: Okay, colleagues, we have a motion on the table. We have heard the conditions. It has been moved and it was seconded. I would just like to incorporate the conditions to be a part of the motion which I made.

COMMISSIONER MITTEN: Mr. Chairman?

CHAIRMAN HOOD: Commissioner Mitten?

COMMISSIONER MITTEN: If I could just put a couple of finer points on what Mr. Franklin said, which is I believe Mr. Parson raised a concern relative to E-13 about the antennas. And just so that we could modify that so that the antennas would not be visible. And then to also -- on the issue of the parking allocation of 100 spaces, and then to add to that the condition that we would permit the temporary use of the balance of the parking spaces for nonhabitable uses by the applicant.

COMMISSIONER FRANKLIN: I agree, Ms. Mitten.

CHAIRMAN HOOD: Okay, colleagues, we have a motion on the table. Before we vote on it, I think the Office of Planning wanted to --

MR. ALTMAN: I just have one quick comment on I guess two issues. On the design issue, one way we could deal with

that is that when we bring back the permanent regulations, we can also bring design criteria. Because we are developing design criteria which we could then work through then. So anything that would then be applicable at that time, we would obviously work with Level 3 to see how that would work in the context of their building. And then we could have some more fuller discussion of that. I think it is worth that. Ellen, did you want to --

MS. MCCARTHY: I believe in the course of the discussions that Level 3 had with the community about employment that there was at least an understanding of a first source hiring agreement with the Department of Employment Services. That was one of the things that you were discussing. Okay. And I didn't know if rather than saying employment of community residents as much as possible, if we wanted to talk about first source hiring agreement or not.

COMMISSIONER FRANKLIN: Mr. Chairman, I am a little bit concerned about the notion that after having granted a special exception here that there might be further changes resulting from the permanent regulations. I think that the thrust of my -- at least if I had made the motion, the thrust would be that the special exception grandfathers this particular project in, notwithstanding any subsequent changes to the permanent regulations. Is that the Office of Planning understanding?

MR. ALTMAN: Yes. What I was saying is that if we developed criteria in the permanent, at that time it would

obviously be voluntary if Level 3 wanted to work with us what those criteria would be. But that this approval would obviously be as to the conditions that you have outlined.

COMMISSIONER FRANKLIN: Fine.

CHAIRMAN HOOD: Okay. Again, colleagues, we have a motion on the table that has been seconded with the conditions. Any more in readiness? Any questions? All those in favor?

BOARD MEMBERS: Aye.

CHAIRMAN HOOD: Any opposition? So ordered. Mr. Bastida, would you record the vote?

MR. BASTIDA: Yes, Mr. Chairman. The staff would record the vote as 5 to 0, Mr. Hood moving, Mr. Holman seconding, and Mr. Franklin, Ms. Mitten and Mr. Parsons voting on the affirmative.

CHAIRMAN HOOD: Mr. Bastida, could you let the applicant know when he can get his summary order?

MR. BASTIDA: Yes, I will be in touch with the applicant to discuss that, Mr. Chairman.

CHAIRMAN HOOD: Okay. With that, give us a minute and we will call the next case. We are going to take about a three-minute break and then we are going to come back and see how much longer we are going to go before our lunch break.

(Whereupon, at 12:37 p.m., off the record briefly.)

CHAIRMAN HOOD: May I have everyone's attention? Let me just say that my colleagues have asked for a 20-minute

lunch break. So if you could -- if we can all reconvene about 1:05. From now until 1:05, we are going to try to move as expeditiously as possible this afternoon. Thank you.

(Whereupon, at 12:38 p.m., the hearing was adjourned for lunch to reconvene this same day at 1:23 p.m.)

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

1:23 p.m.

CHAIRMAN HOOD: We are now going back into session. The next case is case number 16662, Application of Kay First Data Center, LLC., pursuant to 11 DCMR 3104.1, for a special exception under Subsection 743.2, and a parking variance under Sections 3103.2 and 2101 to construct an electronic equipment facility in a C-3-C District at premises 101 K Street, N.E., Square 715, Lot 11.

Mr. Bastida, do we have any preliminary matters? I have already called the case. Are there any preliminary matters with this case?

MR. BASTIDA: No, Mr. Chairman. The staff has no preliminary matters. I apologize, an ANC was requesting information.

CHAIRMAN HOOD: Okay. With that, I want to ask Ms. Prince --

MR. BASTIDA: Mr. Chairman, can I make a clarification? Because probably there is nothing that is correct on the advertisement. We should have a parking and off-street loading requirement under Section 3104.7 through 3107.8 and 2101. Those are the paragraphs that we are looking at for the special exception for parking and off-street loading and unloading.

CHAIRMAN HOOD: Mr. Bastida --

MR. BASTIDA: I apologize.

CHAIRMAN HOOD: Could you repeat that for my

benefit?

MR. BASTIDA: Yes. I am sorry. The Application for Kay First Data Center LLC, pursuant to 11 DCMR 3104.1 for a special exception under Subsection 73.2, and for special exception for parking and off-street loading requirements under Section 3104.7 through 3107.8 and 2101 to construct an electronic equipment facility in a C-3-C District at premises 101 K Street, N.E.

CHAIRMAN HOOD: So what I am hearing from you is that this was not properly noticed?

MR. BASTIDA: It was noticed because at the time of this notice, we didn't know if it was going to be a special exception or a variance. So the variance was advertised because it requires a bigger magnitude of relief than a special exception. Accordingly, if we advertise it as a variance, it can be heard as a special exception. Because the magnitude of the variance is greater than the special exception.

And remember, Mr. Chairman, this was advertised over 45 days ago.

CHAIRMAN HOOD: Okay. Colleagues, any questions? Do my colleagues understand what is going on? Okay. Well, I am glad you all do because I don't. Anyway, we will -- I am not following you, but I guess it must be irrelevant and I guess we can proceed forward without not having properly noticed -- I guess we can still move forward?

MR. BASTIDA: Yes, Mr. Chairman. The short answer is yes.

CHAIRMAN HOOD: Okay. That is all that we need, a short answer. Ms. Prince?

MS. PRINCE: Good afternoon -- is this picking up? Okay, good afternoon, members of the Commission. I am Allison Prince with Shaw Pittman. I am pleased to be here today on behalf of Kay First Data Center LLC. I have worked with Kay First since the spring and assisted in the evaluation of the subject site for the proposed EEF use. Since the use was permitted as a matter of right at that time, my client purchased the property and immediately began design, financing and permitting to allow for the construction of the building. The triangular site is the entirety of Square 715 at First and K Streets, N.W., immediately west of the tracks of Union Station. It is probably one of the smallest squares in the city consisting of only 7,900 square feet. A large portion of the Square was condemned for the tracks of Union Station many years ago.

This application was filed two weeks after this Commission's emergency decision to change the regulations and require special exception approval for EEF's. We appreciate the Commission's rapid scheduling of this hearing to address particularly difficult situations such as my clients.

As Robert McMahon will testify on behalf of the applicant, the subject application satisfies the newly adopted

standards. And just to address what Alberto was saying, at the time the emergency regulations were adopted, there were no parking or loading standards. It was unclear what the requirement was. Now, as your regulations have been changed through your most recent action, you can grant essentially exceptions to parking and loading based on the currently adopted standards within the scope of your special exception approval today. A variance is not required.

The proposed building is small, only 40,000 square feet of gross floor area. And the site is highly constrained and inappropriate for most other uses. It is not located in close proximity to Metro, nor will it interfere with any existing or proposed pedestrian or vehicular routes. It will enhance the appearance of the site, which is now being used as a parking lot, and will bring activity to the immediate area as a result of the employees and 24-hour-a-day presence. Minor relief is needed from the parking and loading requirements that apply to EEF's under the emergency regulations. Under the regulations, the needed relief may be granted as part of the special exception approval.

The proposed use will bring both jobs and extremely significant tax revenues to the city. It is attractive in design and includes landscape features that have been favorably reviewed by the Office of Planning. It is designed to be easily convertible to office use should that use become desirable in the future. It could also accommodate ground floor retail use.

We made a detailed presentation to Advisory Neighborhood Commission 6-A on December 11. The ANC lacked a quorum. Only 3 of 14 Commissioners were in attendance. Accordingly, no action was taken. I would note that the letter filed by the single member district commissioner yesterday, which I have just reviewed this morning, did not appear to be site-specific in the issues that were raised. Rather, they seem to be issues that may be considered by this Commission more appropriately as you consider the permanent regulations governing EEF's.

If the Commission has no questions, I would like to proceed with the testimony of our only witness, Robert McMahon. Mr. McMahon is testifying on behalf of the applicant. He has an ownership entity in the company -- in the partnership. He is also the project architect and in the past has testified before this Commission as an expert in architecture. I have submitted his qualifications, if Mr. Bastida could distribute them. As I said, he is a long-time Washingtonian and has participated in many planned unit development and other projects. And I would like to ask your consideration of Mr. McMahon, not only as the applicant but also as an expert in architecture.

Our landscape architect, David Zollman of Vica, is also here to answer questions should you need him.

CHAIRMAN HOOD: Colleagues, before we get started, we have a request from Mr. McMahon to be an expert witness. He

has testified in front of this Board before?

MS. PRINCE: Numerous times.

CHAIRMAN HOOD: Okay. I have just never seen him. Okay. No problems? Okay. We will accept him as an expert witness.

MR. MCMAHON: Thank you, Mr. Chairman. Good afternoon, members of the Board. My name is Robert McMahon, and I am here on behalf of the applicant, Kay First Data Center LLC, the owner of the unimproved property located at 101 K Street, N.E.

We propose to construct a building devoted to EEF use on this site. The proposed building would be built to a height of 83 feet and an FAR of 5.2. This is lower than the maximum height permitted in this zone, which is 90, and is lower than the maximum FAR, which is 6.5. Although the site is located in a TDR receiving zone, which allows additional height and density, this project does not propose to make use of any TDR's due to its size and for other reasons. We could not even put another foot of density on it.

As described in the statement of the applicant, my situation is compelling. We purchased the property in May of 2000 for the sole purpose of constructing an EEF. Prior to purchase, we confirmed the permissibility of the use with the Zoning Administrator, as Allison has said. We had several meetings going through the various things that were required by the zoning code. In addition, we secured a zoning opinion along with the other due

diligence data. Immediately after purchase, I prepared working drawings and filed for a billing permit application. My construction financing is in place and we are paying a sizeable monthly payment on the loan, yet we are unable to start construction.

Our building permit review was well underway at the time that the Commission adopted the emergency action restricting EEF's, which is the reason we are here today. As of October 22, the permit had not yet been issued, but was very close. And there were no provisions for grandfathering a permit application that had been that far along. They were under review.

The subject site is located at the southeast corner of First and K Streets, N.E. Because of its small size, only 7,900 square feet, and because of its triangular shape, its adjacency to the railroad right-of-way -- because of these things, the property is ideal for EEF use but appropriate for very few other uses. It is currently used as a surface parking lot and is located in an area consisting primarily of commercial buildings and parking lots. The nearby uses are shown in the photographs attached to the statement as Exhibit E.

I believe that the application clearly satisfies the standards set forth in the zoning regulations. Further, approval of the application will permit the development of a long-vacant property with a use that will have no adverse impacts on the surrounding area. This project will stimulate economic

development and will benefit neighborhood businesses. Further, it will stimulate the economy of the District in general by creating new jobs, attracting new technology and increasing tax revenues.

Under Section 745.2 of the regulations, an EEF should not, as a consequence of its design, operation, low employee presence or proximity to other EEF's preclude future revitalization of the neighborhood, reduce the potential of vibrant streetscape, deplete street life or inhibit pedestrian or vehicular movement. Our proposed EEF will not have any such negative impact on the surrounding area. In fact, it will stimulate future revitalization of the neighborhood and increase the potential for vibrant streetscapes. Because of the shape, size and location of the property as well as the proposed operation of the facility, an EEF on this site will not inhibit pedestrian or vehicular movement. The regulations also require consideration of potential retail use, adverse effects of security or other elements of the building design in the consideration of effect of an EEF on any officially proposed pedestrian routes. These tests are easily satisfied for the subject building.

The site is located in an area that has very little retail or pedestrian traffic. The elevated railroad right-of-way divides the square, leaving only a small, triangular-shaped lot. The rail use limits the flow of east/west pedestrian traffic. The area traditionally has been void of any major reach-out presence or active street life. The construction of an EEF on this site

would not be inconsistent with the future development of the area. In fact, it may be a catalyst for future development. Also, the design and construction of the building will not preclude future office use or ground floor retail uses if market conditions change. The building was designed with a window tower element at the corner and the rest of the building has been designed to allow flexibility for windows to be installed later as needed. The flexibility is needed to permit potential tenant use for conventional office space as well as EEF space.

The proposed security features will be virtually undetectable from outside the building. Therefore they will not impair the street life or pedestrian flow. In addition, the building would have no adverse impact on any officially proposed or established pedestrian or vehicular routes.

Section 745.4 provides that the Commission shall consider the economic development potential of the area and not encourage EEF use in close proximity to a Metro station. The proposed building represented an opportunity for the highest and best use of the property given its particular restrictions. Further, this site is located five blocks from Union Station, and as was mentioned in the previous case, it is midpoint between that station and the future station. So it is as far away as you can get from both of the stations in the area and it does not have any close proximity.

Therefore, under Section 745.5, the Commission may

give positive weight to any economic benefits that the proposed EEF will have on a neighboring property, including the potential for increased business activity. Given its current underdevelopment, the proposed EEF use with its total approximate 20 employees and 24-hour-a-day, 7-day-a-week presence would only benefit the surrounding area. We have proposed significant public space improvements that will affect the aesthetics of the building, and we also provide an environment that will stimulate the economy of the surrounding area.

Finally, we need minor relief in parking and loading requirements. As you are aware, the regulations allow this relief to be granted as part of the special exception case. 22 parking spaces are required based on the office requirements set forth in the regulations. The ability to provide that amount of parking is affected by the ground water situation and the subject site, which precludes excavation. In addition, given the small number of employees, the proposed 16 spaces are more than adequate to serve the number of employees.

In addition, relief is required from the loading requirements. One 30-foot loading berth and one 20-foot service delivery van space are required. Due to the particular shape of the site, the provision of the second smaller loading berth was extremely difficult to accommodate. Also, there is no need for this loading berth since it is usually a delivery van and this EEF use doesn't have that requirement. We do have the 30-foot loading

space, though.

In summary, we are proposing the construction of an extremely small EEF on a site for which there are few alternative uses. We were on the verge of beginning construction when the regulations were changed and would appreciate your immediate action to allow the project to commence.

MR. BASTIDA: Could you be kind enough maybe to move the easels closer so you can be recorded properly? Thank you.

MR. MCMAHON: Can that be heard now? Is that good? Okay.

MR. BASTIDA: Can the recorder hear you now? That is the important thing. Thank you.

MR. MCMAHON: We have here the first drawing, which is the site plan showing the landscaping and the development of the building. This is K Street and this is First and this is the railroad right-of-way. This wall is approximately 20 feet tall and is the barrier that I talked about earlier dividing the square. The office building is set back off the street a considerable distance because of the wide public right-of-ways. First Street is 110 feet wide and K Street is nearly 150. So from the curb to the building, we have a considerable distance back. We are going to be developing a landscape that is appropriate for that area. We are also going to be improving the public sidewalks with pavers as is found in the areas south of us, the office building.

You see the building shape and it size. The entrance for parking for the first floor is off of K Street, and the loading that I mentioned earlier is off of First. This is the building elevation. It is an 83-foot high building, as I mentioned. The ground floor is consumed by the use for loading and parking. The reason that we are unable to -- the reason we have it on the ground floor is that we are unable to excavate this site. There is two problems with this parcel besides its shape. One is that the retaining wall has a footing that encroaches onto this site and consumes about 10 feet of area all the way along its length. This easement was granted to, I think, the rail yards. The other is that when we excavated the site for test footings, we found what is the remaining part of Tiber Creek. There are running sands that go through this particular area. We are not exactly sure what the geology is, but we have this water and all this whole building is set on a mat. So, therefore, as I mentioned, the ground floor has those uses. It is all consumed with parking, loading, exit stairs and the entrance and the elevator.

I don't think that there is anything else on this unless you have any questions about the architecture.

CHAIRMAN HOOD: I think what we will do is we will ask all of our questions at the end of your presentation.

MR. MCMAHON: The building materials -- I am sorry. The retaining wall is here that provides for the elevated terrain. We are trying to mimic that line and provide something

very similar to it as it wraps the corner. This wall goes all the way down First and continues along the railroad right-of-way here. So we are creating a stone-like material. This is 2 X 2 stone blocks with an intermediate relief line, and it shields the uses of the ground floor from the public. It will also be -- that wall will be then shielded with the landscaping plan that we saw earlier.

The building itself has a building entrance at the corner. This is the windowed element that I spoke of earlier. It will be lit the entire day -- all evening -- so that it will shine out onto First and K. The EEF floors currently are unwindowed, but we can provide those windows as those uses come forward. We have talked to other tenants who would like to take advantage of the views on the upper floors. So they can be incorporated.

The building also can be converted to an office use from the same point of view. If this use sometime in the future, the EEF use, becomes unattractive, the building could be easily converted to an office floor. We have the required means of egress already in the building and the bathrooms.

MS. PRINCE: That completes our presentation unless you would like a more detailed presentation of the landscape plan or any other features of the building.

CHAIRMAN HOOD: What I will do at this point, Ms. Prince, is turn it over to my colleagues and ask them if they have any questions. And if that comes out at that point, then we will

deal with it at that point. Commissioners, let's open it up for questions and comments. Commissioner Holman?

COMMISSIONER HOLMAN: No, this is not a -- I don't think it is a question. But from what I can understand of your design as you have presented it, this is the kind of facility due to its location and the size of the lot that wouldn't really accommodate any retail or any other uses on the ground floor, am I correct, because of the parking?

MR. MCMAHON: I, in fact, did represent the previous owners of this site about 12 years ago, in which they explored other uses. And there were none that we could bring forward in that period of time that made any economic sense.

COMMISSIONER HOLMAN: Okay.

MR. MCMAHON: And it was when we discovered the footing encroachment and we discovered the soil conditions and the running sands just below the surface that it became evident that no parking could be provided below grade.

COMMISSIONER HOLMAN: Thank you. I just wanted to get that on the record.

CHAIRMAN HOOD: Mr. McMahon, I have one question. You said the entrance was on the K Street side, and I am trying to get my orientation correct. On the K Street side, if I am coming -- what is that west -- and want to make a left into the facility --

MR. MCMAHON: Yes, sir.

CHAIRMAN HOOD: I am coming up under the underpass, I believe, right? And I am going to make a left. What type of impacts will you have on traffic for me making that left or can it be done?

MR. MCMAHON: Well, it can be done. There is an island. The travel lanes are divided underneath the railroad tracks, but not much further beyond them. And the pavement from curb to curb is complete without interruption. So that if you are coming from the east to west for the purposes of entering the parking garage, you can make that left in.

CHAIRMAN HOOD: Okay. Excuse me, Mr. Bastida? Were you saying something for the record or were you just telling me something?

MR. BASTIDA: Well, I have to put it on the record. You have a legal left turn. I am pondering with the amount of traffic that takes place there at certain times if you actually can physically do the left turn.

CHAIRMAN HOOD: Mr. Bastida, thank you. Because that is exactly where I was going. I am not sure that can be done. I don't know if that has been

-- and I will also ask the Office of Planning when it comes around to their turn. Because I see some tremendous problems with making a left turn right there. And that may be something that may need to be expanded on if it is approved to maybe say no lefts at certain times. I am not sure. I will be interested in hearing what

the Office of Planning has to say about that and how much involved they got into that traffic piece.

Also, let me ask you about the punch-out panels for the future. Those structures -- the structure of the punch-out windows, what -- as long as it is an EEF, what is made of that structure? What is it? It is not concrete or anything, is it?

MR. MCMAHON: No, it is efface material. They are put on 6-inch metal studs and the finished material is placed on that over top of fiber board. And we have six inches of bat installation in the interior finish. That is the exterior wall configuration. And we are doubling up on the studs in the location for a pre-planned window opening in those areas. So that we simply can cut out the area where the window would go and install it.

CHAIRMAN HOOD: Okay. My other question is are you also -- I realize that you are on, I guess, a smaller scale. But how many companies do you think you will be able to accommodate?

MR. MCMAHON: We have talked to a number of users who are interested in this site. And two of them were single companies.

CHAIRMAN HOOD: Okay.

MR. MCMAHON: We see this as really a boutique building in the EEF constellation of buildings. It is not at all like the case you heard before.

CHAIRMAN HOOD: Right. So it is possible that you

will max out at some point.

MR. MCMAHON: Clearly.

CHAIRMAN HOOD: Okay. All right. Any further questions, colleagues? Commissioner Mitten?

COMMISSIONER MITTEN: About the windows, Mr. McMahon. I think that you had made a comment about some of the people that you have been talking to thought that they might want to take advantage of some of the views. Is it your notion that at some point if you had multiple occupants of the building that you would punch out some windows on one level and not punch out windows on another level, so that there would be an irregular pattern?

MR. MCMAHON: No. We would restrict that. We have a plan that just uses the band at the top. And the lower levels have poorer views and we would try to make sure that the EEF equipment went on those levels. But it is -- this one tenant in particular who wanted to headquarter in Washington in NOMA and take advantage of the tax benefits that are offered in D.C. That is really where my comments are coming from.

COMMISSIONER MITTEN: Okay. And could you speak a little bit more to your choice of design for the elevation along First Street that you have shown there? Given that one of the goals of the regulations is to create a pedestrian-friendly environment, and I think you mentioned that in your design choice there you were trying to mimic the retaining wall, which I have

been there many times, but just looking at the photographs you have, it is not particularly pedestrian friendly. So could you just explain your choice there?

MR. MCMAHON: The materials -- really what makes the site pedestrian friendly is the landscaping. The wall itself was used to shield the uses that are on the ground floor. So we incorporated a greater amount of landscaping, more vertical elements at the building, and provided for the green space. This is a very wide area, a very wide public space. It is very unusual in the District to get this type of treatment. And it will look much softer for the pedestrian walking up and down First and K.

COMMISSIONER MITTEN: Do you have anything that would put the plantings that you have on the landscape plan into an elevation so that we could get a sense?

MR. MCMAHON: I don't have that drawing, but these -- the species of plants that we have here are -- particularly on K Street, which is this elevation -- this is the entrance to the parking garage here. These two very large ornamental trees are placed here and here. And their canopy will be something of this nature. And there will be a flowering cherry tree or something of that order. And then they are supported by vertical evergreens close to the building. That is what we have all the way around here, upright hollies. So that we are going to plant this out as fairly a green wall in all cases. Not only in this facade, but on the First Street facade. So we will have vertical -- very tall

vertical evergreen shrubs planted here and then leaving a gap only at the entrance.

COMMISSIONER MITTEN: Okay, thank you.

CHAIRMAN HOOD: Okay, Commissioner Franklin, do you have any questions?

COMMISSIONER FRANKLIN: Just one briefly. What in your expert opinion would motivate pedestrians to walk along K Street at that point?

MR. MCMAHON: Not much.

COMMISSIONER FRANKLIN: Thank you.

MR. MCMAHON: We don't see much pedestrian traffic along that area anyway.

CHAIRMAN HOOD: Okay. No further questions. We don't have any parties, I believe, Mr. Bastida. No. The ANC 6-A? That is right, they haven't issued -- I still need to call for it. Any member of the ANC 6-A? There is none. So with that, we are going to move on to the Office of Planning report. Ms. Prince, you all can remain at the table if you would like.

MS. STEINGASSER: Mr. Chairman and Commissioners, staff took the same review approach of this building as we did with the previous application. We looked at the site and we looked at the proposed developments addressing of the criteria and the fact that this is new construction versus an existing building. We found that the general areas of revitalization of the neighborhood and vibrant street life and streetscape had been

addressed through their treatment of the site, which we found to be unique because it is an oddly shaped site. It is adjacent to the railroad stone wall. It is relatively small. And according to the geotechnical report, it has a very high water table. We felt the construction itself, a new building on the site as opposed to the existing surface lot did create an improvement to the existing neighborhood. Vibrant streetscape and street life were not impeded, let's say, through the internal security issues, on-site parking, loading being within the building so that there was not a lot of vehicles on the street. We felt the pedestrian experience was enhanced through the landscaping, the addition of the sidewalks and improvement of the open space, which as the applicant has shown is quite large around the building.

The retail accommodations -- this is, again, like I said a very unique site. It is small. It is at an odd corner. It is up against the railroad tracks. So there is not -- in conjunction with the physical characteristics of the site, an opportunity to address retail in the most standard way. The applicant has, however, addressed an expansion of office potential for the building, and we felt that that lack of retail in this particular case did not pose an adverse impact to this small corner. We felt the pedestrian vehicular movement were improved through the landscaping and through the sidewalks again, and the parking being inside the building and the loading being inside the building off of First Street.

We were not concerned by the left turn movement as raised, mostly because the site is small. There is only 16 parking spaces there. We didn't consider that to be much of a vehicular threat. We could readdress the issue if that is the Commission's wish. The parking -- again, they requested the relief from 22 to 16 spaces. The staff felt that the request was not one that would cause an adverse impact because by the very nature these kinds of facilities have very low employee requirements and very few visitors. So we had no objection to their request and felt that the overall potential development of the site did not pose an adverse impact or had addressed those issues that did. And we recommend approval.

CHAIRMAN HOOD: Okay, Ms. Steingasser, let me just ask you a brief question. You mentioned that you are not looking to the left turn because -- I didn't hear you. I think you said because you didn't see where it was --

MS. STEINGASSER: Well, we saw the site as a very low traffic generator. There is only 16 on-site parking spaces. It is a very small site. It is -- though there is not a lot of pedestrian activity now, it is close enough to Metro that they did -- if there was an increase beyond the parking, people could take the Metro. So we just felt it was a low traffic generation use and site.

CHAIRMAN HOOD: So it was looked into, though? You all did consider the left turn onto K Street?

MS. STEINGASSER: Yes, we did consider it.

CHAIRMAN HOOD: Okay. That is my concern. Colleagues, any questions of the Office of Planning?

COMMISSIONER FRANKLIN: Just one question, Mr. Chairman. Would it be your opinion that the coming and going from this site would tend to be like what we have been advised on the other site of not necessarily concurrent with the commuter patterns and therefore not taking place typically during rush hours?

MS. STEINGASSER: That is our understanding of the way these facilities operate. They do operate 24-hours-a-day. The shifts are a little off. They are not 8:00 to 5:00. They are typically more -- I think we have heard the nursing hours, you know 6:00 or 7:00 to the morning.

COMMISSIONER FRANKLIN: Thank you.

CHAIRMAN HOOD: Any other questions or comments?

COMMISSIONER PARSONS: Mr. Chairman, I have noticed something in the interim. I want to refer to the landscape plan and ask you a couple of questions. There appears to be a vent system or something along this First Street.

MR. MCMAHON: Yes, Mr. Parsons.

COMMISSIONER PARSONS: Help me with that, will you? It is not on your drawings. It is on the landscape drawings.

MR. MCMAHON: That is the transformer vault for PEPCO for the underground transformers.

COMMISSIONER PARSONS: You mean they are there now?

MR. MCMAHON: No. They are part of this design.

COMMISSIONER PARSONS: I see. So what results then is there is no way to landscape in front of those?

MR. MCMAHON: Yes. The vault itself is only about -- I think about 6 or 7 feet wide and is adjacent to the building. And they require access to the vault to pull the transformer out in the event of a failure. So we don't have any upright plants in front of that, but we could incorporate some. It is also at the very end of the building. That would be in this area here. But we could --

COMMISSIONER PARSONS: No, I see what you mean. They would drive right over the things, wouldn't they?

MR. MCMAHON: Yes.

COMMISSIONER PARSONS: All right. Thank you.

CHAIRMAN HOOD: Any other questions, colleagues, of the Office of Planning? Okay. Also, let me ask if the applicant would like to have any questions of the Office of Planning?

MS. PRINCE: No questions of the Office of Planning.

CHAIRMAN HOOD: Okay. We have no parties, at least none that have come forward. So with that, report of the Advisory Neighborhood Commission. Again, I believe this letter has gone to all of the cases that was presented to us earlier by the single member district, and I think we have raised those issues. I

understand they had some issues with not having a quorum. Next, persons and parties in support. Persons and parties in opposition. Closing remarks by the applicant.

MS. PRINCE: I would briefly like to state in closing that I believe we have satisfied the standards that are clearly set forth in the emergency regulations regarding adaptability for future use, security and no adverse effects on any existing or proposed pedestrian or vehicular routes. We have benefitted from discussions with the Office of Planning on this matter and we would greatly appreciate the ability to proceed with the permitting process and continue and get this process underway. Therefore, we would like to request a bench decision from the Board today. Thank you.

CHAIRMAN HOOD: Thank you. Colleagues, we have heard the request for a bench decision. This time, before we start with the motions or whatever we are going to do, let's have some discussion. Any discussion? Any discussion?

COMMISSIONER PARSONS: Well, I am ready to move to approve this. Did you mean that you -- you don't want a motion until we discuss the conditions? I move we approve the application, Mr. Chairman. I would like to add conditions regarding antennas that I did not see on this building just the way that we did with the other one, that they would be contained within the penthouse.

CHAIRMAN HOOD: Okay.

COMMISSIONER PARSONS: That is the only condition that I --

COMMISSIONER FRANKLIN: Does the motion grant the parking relief and loading dock relief?

COMMISSIONER PARSONS: Oh, yes.

COMMISSIONER FRANKLIN: Okay. I second the motion, Mr. Chairman.

CHAIRMAN HOOD: Okay. It has been moved and properly seconded. Before I call for the question, I believe that all the conditions are included in the motion, colleagues, unless somebody wants to add something. Other than that, all those in favor by usual sign of voting?

BOARD MEMBERS: Aye.

CHAIRMAN HOOD: Any opposition? So ordered. Staff, would you record the vote?

MR. BASTIDA: Mr. Chairman, staff would record the vote as 5 to 0, Mr. Parsons moving it, Mr. Franklin seconding it, Ms. Mitten, Mr. Holman and Mr. Hood voting in the affirmative.

CHAIRMAN HOOD: And also, staff, if you could let the applicant know when they can get their order. I guess you will work that out.

MR. BASTIDA: Right.

CHAIRMAN HOOD: Right. Okay.

COMMISSIONER FRANKLIN: Mr. Chairman, I assume it is understood that our approval goes to the plans that have been

set forth in this application?

CHAIRMAN HOOD: Right. Okay. Thank you, Commissioner Franklin. Okay, with that, we can move right along. Mr. Bastida, can you call the next case?

MR. BASTIDA: Yes, Mr. Chairman. The next case is 16663, the Application of 52 L Street Data Center LLC, pursuant to 11 DCMR 3104.1, for a special exception under Subsection 743.2 and a special exception for the parking and off-street loading requirements under Sections 3104.2 through 3104.8 and 2101, to construct an electronic equipment facility in a C-3-C District at premises 52 L Street, N.E. All who are going to testify can stand up and be sworn in.

CHAIRMAN HOOD: I think everyone was here earlier.

MR. BASTIDA: But this is a different case.

CHAIRMAN HOOD: Right. But didn't everyone stand up? Well, okay, go ahead.

(Witnesses are sworn.)

CHAIRMAN HOOD: Okay. Thank you. It looks like we have the same people at the table. Okay. You may proceed.

MS. PRINCE: Good afternoon, members of the Commission. My name is Allison Prince of Shaw Pittman, and I am pleased to be here today on behalf of 52 L Street Data Center LLC. I have worked with 52 L since the spring and assisted in its evaluation of the site that is proposed for EEF use. Since the use

was permitted as a matter of right at that time, my client purchased the property and immediately began the design and financing processes to allow for the construction of an EEF on the site.

This application was filed two weeks after this Commission changed the regulations on an emergency basis to restrict EEF use. We again appreciate the rapid timing of a hearing on this matter to address what was a difficult situation for my client.

As I said in the earlier case, in adopting the emergency regulations, this Commission has made provision for the ability to grant parking and loading relief as part of the special exception. With respect to this building, very minor parking relief is required. I have submitted today for the record two revised sheets of drawings. The sheets include a revised ground floor level that incorporates the display windows requested by the Office of Planning in its report that was filed on Friday.

In addition, the basement plan has been reconfigured slightly to address a storm water management structure that needs to be incorporated into the basement plan. Also, as reconfigured, there are actually 54 parking spaces rather than the 52 under the original plan. 57 would be required for the use, therefore we need a very minor bit of parking relief.

As Robert McMahon will testify on behalf of the applicant, the subject application satisfies the newly adopted

standards. The proposed mid-block building will contain approximately 100,000 square feet of gross floor area. It is not located in close proximity to Metro, nor will it interfere with any existing or proposed pedestrian or vehicular routes. The proposed use will replace a vacant lot and will bring both jobs and extremely significant tax revenues to the city. It is attractive in design and includes landscape features that have been favorably reviewed by the Office of Planning. It also includes design windows, as I mentioned that are shown in the revised drawings. These windows will include animated displays. I think we heard about that from Level 3. It is that same type of animated display that will increase activity at the street level. It is located in the space that would be convertible to retail use at such time as market conditions can support such a use.

The entire building is designed to be easily convertible to office use should that use become desirable in the future. The project was reviewed by Advisory Neighborhood Commission 6-A on December 6, 2000. Only three of the 14 Commissioners were present at that meeting, therefore a quorum was lacked and no official action was taken.

If the Commission has no questions, I would like to proceed with the testimony of our only witness, Robert McMahon. He has already been qualified as an expert by you today. I am not sure we need to go through that again. He is an owner and he is also the project architect. And we do have a representative of

the landscape architecture firm here as well, Dave Zollman of Vica. If you have no questions, I would like to proceed with our first and only witness.

MR. MCMAHON: Good afternoon, members of the Board. I am Robert --

CHAIRMAN HOOD: Just turn your microphone on.

MR. MCMAHON: Thank you. Good afternoon, members of the Board. I am Robert McMahon of 52 L Street Data Center, LLC, the owner of an improved lot located at 52 L Street, N.E. The proposed construction of the building would accommodate EEF uses. It will be built to a height of 86 feet and an FAR of 5.2. This is lower than the maximum height permitted of 90 feet and the maximum FAR of 6.5. Although this site is located in a TDR receiving zone, which allows for additional height and density, no TDRs will be used in connection with this building.

Similar to my First and K Street site, we purchased this property in the spring of 2000 for the sole purpose of constructing an EEF. I confirmed the site zoning and permissibility of the EEF use with the Zoning Administrator. Having purchased the site, we began preparations of working drawings to allow for the filing of a building permit application. While the drawing preparation was underway, this Commission took the emergency action that removed the by-right development of this use.

This site is located on the north side of L,

between North Capital and First Streets, N.E. It has a land area of 20,163 square feet and is currently unimproved. There are warehouses, offices and parking facilities in the immediate neighborhood. The proposed EEF use will not have negative impacts on the area and will stimulate future revitalization of this neighborhood. Further, the EEF use will not inhibit pedestrian or vehicular movement.

Consistent with the standards set forth in Section 745.3, the design is capable of accommodating retail use in the future and the security elements will not impair street life or pedestrian flow and the building will not disrupt existing or proposed pedestrian or vehicular use. The design includes potential for retail use along L Street frontage. A ground floor window display are being provided at this time. The L Street facade is fenestrated as shown, and the remaining facades are similarly fenestrated. Under Section 745.4, you are permitted to consider the economic development potential of the area of which it will be located. The building will house a total of approximately 50 to 60 employees based on a 24-hour day, 7-day-a-week period. The employee presence will provide a benefit of increased activity on and around the subject site without creating an adverse effect on traffic or parking. The project includes significant streetscape improvements that will improve the aesthetics of the neighborhood and will also provide an environment that will help stimulate the economy of the

surrounding area. The tax revenues that will be generated by this project are significant.

In connection with the application, a minor reduction in the number of parking spaces is required from 57 to 54. The ground water and soil situation at the subject site dictates a single basement level for parking. It is extremely difficult to locate more than the 54 spaces on this one level in the small building footprint. The location of the building and the low number of employees expected to be working at the EEF and the provision of public transportation nearby and the amount of public parking available in the area are all factors that justify this slight reduction in parking.

We are anxious to begin this project and look forward to this Board's favorable consideration of the application.

With regard to the plans, this is the building site area showing the landscaping. This is L Street. North Capital Street is here. Pierce and First is about in this area. We are consuming the entire site. There is a rear yard provided. And the streetscape improvement, as you can see, will be the development of the tree wells that are here, those trees that are going to be replaced, and planting within that tree well. This public space is much less than we saw in the previous project, and we are going to pave the entire frontage as it is in the adjoining neighborhood. We will use the same pavers that are found across the street in

front of Kaiser Permanente.

The entrances to the garage are located to the west. L Street is a one-way eastbound street, so we will be collecting the traffic before it goes past the site. The second area here are entrances to the loading dock on the ground floor. And the retail area that we can -- if the market conditions permit will be located at this end of the building.

The building itself is just under 90 feet. It is windowed and fenestrated as shown in the elevation. The building entrance is here and the parking and loading docks located here, this giving the area for the retail frontage. And these will be the windows that have the animated displays at street level.

The building materials in this building are stone and glass and aluminum, and it will look like a traditional office building. The other elevations will have punched windows like this and they will be fit up with spandrel glass. The penthouse setback conforms with the D.C. regs for penthouse structures. It is set back 20 feet off of this facade and 20 feet back off of the side yards.

That is essentially the plan. I can show you, I guess, the groundfloor plan with the area or indicating the area that could be reserved for the retail. This amounts to about 3,000 square feet, if that becomes marketable, and that is where that would be located.

I was asked about the landscape plan. We really

are just replacing the street trees and planting the -- I think it is a 4 x 10 bed with groundcover in each tree well. We are replacing the granite curb and putting in the pavers.

MS. PRINCE: If there are no questions, that completes our presentation. We have no further witnesses.

CHAIRMAN HOOD: Okay, colleagues. I almost got confused. I see the same people and I was wondering where we were. Colleagues, any questions?

COMMISSIONER FRANKLIN: Mr. Chairman?

CHAIRMAN HOOD: Commissioner Franklin.

COMMISSIONER FRANKLIN: I don't know whether you were present for the Level 3 presentation, but I had raised a question about the treatment of the windows above the ground floor. You indicate those will be appearing like regular windows, but at night they will be black presumably, is that correct?

MR. MCMAHON: Yes, sir, Mr. Franklin, they will be black. We are proposing in this building to use spandrel glass in those openings instead of glass above the ground floor. On the ground floor at retail level, it will be vision glass and they will be animated behind them.

COMMISSIONER FRANKLIN: So is the spandrel glass opaque?

MR. MCMAHON: Yes, sir.

COMMISSIONER FRANKLIN: And I guess you are doing that just for the aesthetics during the daytime?

MR. MCMAHON: Yes.

COMMISSIONER FRANKLIN: Of course I am not sure what this street looks like at night in any event. Do you have an opinion? It is pretty bleak in the dark?

MR. MCMAHON: The neighborhood is fairly bleak. L Street is only a 90-foot wide right-of-way. It is a one-way street with very little activity on it currently. And the activity that is proposed from the previous plan and from this one will not encourage much pedestrian traffic either.

COMMISSIONER FRANKLIN: Thank you.

CHAIRMAN HOOD: Colleagues, any other further questions? Commissioner Parsons?

COMMISSIONER PARSONS: This elevation that you showed us, which is L Street, I believe --

MR. MCMAHON: Yes.

COMMISSIONER PARSONS: How many walls will be treated like this?

MR. MCMAHON: All of them.

COMMISSIONER PARSONS: Even the party walls with the neighbors adjacent?

MR. MCMAHON: Yes.

COMMISSIONER PARSONS: That is above and beyond the call, isn't it?

MR. MCMAHON: Well, I mean the fenestration will be the same. We will probably omit the vertical elements -- the

architectural elements that tie into the --

COMMISSIONER PARSONS: The yellow and the straw, you mean?

MR. MCMAHON: Yes. Those will be a series of punch windows as they are in every other normal office building in Washington. I mean, they developed a special brick in D.C. called alley brick for that purpose, but we will be using standard building material.

COMMISSIONER PARSONS: All right. Now I have been waiting all morning to ask you about Section SE-1.0.

MR. MCMAHON: I thought you might.

COMMISSIONER PARSONS: That is one of the most handsome drawings we have ever had before this Commission and I wanted to talk to you about it. What are those things on the roof of the penthouse?

MR. MCMAHON: Those were to be antennas.

COMMISSIONER PARSONS: I see. And there is no way to get those inside the penthouse?

MR. MCMAHON: We will remove them.

COMMISSIONER PARSONS: Oh. And then the cooling equipment seems to be outside. Is there something -- they can't be contained in the penthouse? Just make the penthouse bigger.

MR. MCMAHON: The penthouse is consumed with the emergency generators for back-up power. And as you have heard earlier, there is an awful lot of cooling requirement for these

buildings. They are -- in this case, these are the -- we are using dry coolers, which are about this tall, and they set back from the edge of the roof. And within the D.C. zoning code, they are permitted to be on the roof.

COMMISSIONER PARSONS: And the parapet would certainly screen them.

MR. MCMAHON: Yes, they would.

COMMISSIONER PARSONS: So this penthouse is designed, I assume, for a size that would be needed for conversion to an office building?

MR. MCMAHON: Yes, it would.

COMMISSIONER PARSONS: And what size is that? Because you have got one on this drawing here, the landscape plan, and then I see it has been changed on that landscape plan, but there is no roof drawings of your type.

MR. MCMAHON: It is the size here, Mr. Parsons. It is 40 feet deep by the width that you see on the drawing. It would incorporate not only the elevator machine room and the stair, one stair, but also all the future office building equipment that would be required to put in there.

COMMISSIONER PARSONS: Okay.

MR. MCMAHON: We have to put in a central building system which is not in this building type now.

COMMISSIONER PARSONS: Okay. Going to the landscape plan. I am curious as to why you feel you need to pave

the whole front yard with concrete. Can't you get something else in there?

MR. MCMAHON: We could. It is the -- it is the way the street treatment was viewed in the neighborhood. And it was common for any downtown project to do that. In some parts of it, we could add other landscaping. But we thought for -- particularly with the mention of not interrupting the pedestrian movement that are located in the site sections of the code that I read earlier that we didn't want to put any more trees except behind the curb.

COMMISSIONER PARSONS: So on the landscape plan, there seems to be a sidewalk coming along and there is labeled grass. I don't know whether it is actually there or not.

MR. MCMAHON: It is dirt. That sidewalk that is there is only 3 feet wide. The standard for sidewalks in this whole area is greater than that. It is supposed to be 12 to 15 feet.

COMMISSIONER PARSONS: I see.

MR. MCMAHON: And that consumes most of the public space that we have in this project.

COMMISSIONER PARSONS: And there is a label transformer here. That is existing. That is nothing to do with your project.

MR. MCMAHON: That is new.

COMMISSIONER PARSONS: Well -- so if this was an office building, it would probably be paved right to the front

wall is what you are saying?

MR. MCMAHON: It would.

COMMISSIONER PARSONS: Okay, thank you.

CHAIRMAN HOOD: Any other questions, colleagues? I just have one question. I am looking at the pictures. What was taking place on the site right now?

MR. MCMAHON: Actually, it is shown here. Would you be looking at that picture?

CHAIRMAN HOOD: No, actually I am looking at a number of pictures.

MR. MCMAHON: Those pictures, yes. We had leased this to a third party, to a parking lot vendor, and he found a construction company who was working on the fiber in the area to lease it from him. We have advised him that that is not the use and we have a letter to them telling them to cease and desist that operation. They have cleaned it up since these photographs were taken. All the building materials have been removed. I think they do have some equipment parked on the site now, but they are no longer bringing project spoils to this site.

CHAIRMAN HOOD: I was just asking because I was wondering if you had already started construction of your EEF and then we came with the regulations. I was just wondering.

MR. MCMAHON: No, we have not started.

CHAIRMAN HOOD: Okay.

MR. MCMAHON: We would like it to look like this

very shortly.

CHAIRMAN HOOD: Okay. Any other questions, colleagues? Okay. Let's see, next we have the Office of Planning -- we have no parties, so I won't ask for any other parties to examine the applicant. I am going to ask the Office of Planning for the Office of Planning report. But first I am going to say that we need to waive our rules for the late submittal in the report of case number 16663. Any problems with waiving our rules, colleagues? Okay. With that, Ms. Prince, if you and Mr. McMahon could stay right at the table. Now we have the Office of Planning report.

MS. STEINGASSER: Chairman and Commissioners, I will be brief and this will sound familiar. We reviewed the application against the special exception criteria and found that any adverse impact had either been offset or did not exist. When looking at the revitalization of the area, we did not feel that the construction of the building would detract from that. Rather, it would add to it, at least to the construction and the introduction of a new building. That the streetscape would be enhanced through the obvious planting of the landscaping and the plant wells and the better treatment of the existing trees. The internal security again was addressed through the building and was not apparent from the street, thus did not pose any kind of threat or adverse appearance. The applicant agreed to set the windows with some kind of art or interact, animate the windows in some way

to make it interesting on the street, which we felt served as a benefit to the vibrant streetscape. The retail was accommodated as a future potential use through the 3,000 square feet set aside in the southwest corner. They also included a proposal for a sidewalk cafe, which certainly adds to the vibrant streetscape and street life that could potentially develop in this area. Pedestrian and vehicular movement was not impeded in any way. The parking was provided on site with the building, the same with the loading. It is a one-way street. We didn't feel that this -- to the contrary, we felt that the one-way street actually aided in the vehicular circulation, avoiding any kind of conflict with oncoming traffic. We have no objection to the reduction in the parking spaces. Again, these uses generally generate low employees and low visits and they are very, very close to the required number.

We found that the site posed no adverse impact and recommend approval.

CHAIRMAN HOOD: Okay, colleagues, any questions of the Office of Planning?

COMMISSIONER FRANKLIN: Yes, Mr. Chairman.

CHAIRMAN HOOD: Mr. Franklin?

COMMISSIONER FRANKLIN: Ms. Steingasser, the animated windows -- I am looking at drawing or rendering R-1, the windows that are supposed to be containing something of interest would be the two windows to the right of the entrance?

MS. STEINGASSER: Yes, in the southwest corner of the building.

COMMISSIONER FRANKLIN: But not the third one? Or am I wrong?

MS. STEINGASSER: Well, it was our intention that the whole streetscape -- I am sorry, that whole -- all three windows will be included.

COMMISSIONER FRANKLIN: All three windows. Okay. Are you aware of any special lighting on the facade other than the windows?

MS. STEINGASSER: No, sir, we are not. I imagine there is probably lighting around the entrance.

COMMISSIONER FRANKLIN: None is indicated on this drawing. Perhaps Mr. McMahon can answer that.

MR. MCMAHON: There will be canopy lighting and permanent lighting in the lobby will shine to the street. And the display windows will be lit and they will also provide light to the street.

COMMISSIONER FRANKLIN: When you say canopy lighting, does that canopy extend just over the entrance or am I --

MR. MCMAHON: Just over the entrance.

COMMISSIONER FRANKLIN: Okay, thank you.

CHAIRMAN HOOD: Colleagues, any other questions of the Office of Planning? Okay. With that, we have no parties.

Our report of Advisory Neighborhood Commission ANC 6-A. Persons and parties in support? Persons and parties in opposition? Closing remarks by the applicant.

MS. PRINCE: In closing, I would like to simply note the satisfaction of all of the standards set forth in the emergency regulations. The building is clearly adaptable to office use. There is space readily available for retail use, 3,000 square feet, should market conditions allow for that use in the future. It appears that the proposed building will actually enhance pedestrian traffic in the area through the widening of the sidewalk. And it also appears that the minor relief in the parking area will not have any adverse impact on the neighborhood.

And there is also no opposition to the application. So once again, we would like to ask your rapid disposal of this application through a bench decision today. All of the conditions that have been mentioned thus far are perfectly acceptable to the applicant and he would like to proceed with construction as soon as possible.

CHAIRMAN HOOD: Okay, colleagues, we have in front of us -- we have heard the case and we have in front of us a request for a bench decision. But I would like to do as we did in the last case, to make a motion with the conditions and let's put it all in one piece if that is okay with my colleagues.

COMMISSIONER MITTEN: Mr. Chairman, I move approval of this application to include the minor parking relief that has

been requested with the following conditions. That the plans be, in addition to those submitted in the prehearing statement, that they include the revised drawings that were submitted today. That the display windows east of the main entrance will include animated displays, and that the antennas shown on drawing SE-1.0 will be removed.

COMMISSIONER PARSONS: Second.

CHAIRMAN HOOD: It has been moved and properly seconded. If I can just add -- did we include the recommendation of the Office of Planning?

COMMISSIONER MITTEN: The applicant responded to it.

CHAIRMAN HOOD: Okay.

COMMISSIONER MITTEN: And that is the nature of the revised drawings we got today.

CHAIRMAN HOOD: Forgive me. I can't catch everything.

MR. BASTIDA: Mr. Chairman, could we request that the drawing that shows the antenna will be substituted for one without showing the antennas? I think it would make the whole issue more clear.

CHAIRMAN HOOD: Okay. For the record?

MR. BASTIDA: Yes, for the record.

CHAIRMAN HOOD: Okay. We have a motion on the table. It has been moved and seconded with the conditions. All

those in favor by the usual sign of voting?

BOARD MEMBERS: Aye.

CHAIRMAN HOOD: Any opposition? So ordered. Staff, would you record the vote?

MR. BASTIDA: Yes, Mr. Chairman. The staff would record the vote as 5 to 0, Ms. Mitten moving, Mr. Parsons seconding, Mr. Franklin, Mr. Holman and Mr. Hood voting on the affirmative.

CHAIRMAN HOOD: And also, again, Mr. Bastida, if you can get with the applicant and let them know when their order will be ready.

MR. BASTIDA: Yes, I will discuss that.

CHAIRMAN HOOD: Thank you. Do you have another case? While we are getting ready, we will take a two minute break.

(Whereupon, at 2:31 p.m., off the record until 2:42 p.m.)

CHAIRMAN HOOD: Okay. Thank you for your indulgence. Now we are going to reconvene. Mr. Bastida, if you could call the next case.

MR. BASTIDA: Yes, Mr. Chairman. The next case is 16664, Application of Clearview Teleplace R Street, LLC, pursuant to 11 DCMR 3104.1 for a special exception under Subsection 802.4 and a special exception about the parking and off-street loading requirements under Sections 3107.7 through 3104.8 and 2101 to

convert an existing warehouse into an electronic equipment facility in a C-M-2 District at premises 175 R Street, N.E., Square 3576, Lots 49, 53 and 807 and parcel 117/21. All who are about to testify will rise to take the oath.

(The witnesses are sworn.)

CHAIRMAN HOOD: Okay, thank you. Mr. Glasgow, if you can proceed?

MR. GLASGOW: Thank you, Mr. Chairman. Good afternoon, members of the Commission. For the record, my name is Norman M. Glasgow, Jr. of the law firm of Wilkes Artis. Here with me today are Mr. David Hannah and Mr. Bob Jones of Teleplace, Mr. Steve Smoak of Smoak Architects, Lou Slade of Gross Slade Associates in the first row and Mr. Steven Sher of Holland & Knight, LLP. Mr. Slade and Mr. Sher are being offered as expert witnesses in traffic engineering and land planning respectively and have been accepted by this Commission as experts on many occasions in the past. So I submit them as experts.

With the permission of the Commission, I would like to give a brief opening statement concerning the project. The site is located at 175 R Street, N.E., at the intersection of Eckington Place and R. I assume all the members of the Commission have a copy of the statement of applicant. We will be using that for the plans and for the photographs of the site, as we have an existing building and there will be very little change to that building.

The site is zoned C-M-2 and contains an area of

approximately 40,000 square feet, approximately 30,000 square feet occupied by an existing warehouse building with 10,000 square feet of vacant land to the east. Across the street to the north is the McKinley Tech School. This information is all contained in the statement of applicant, and the statement of applicant sets forth at pages 4 through 11 the manner in which the applicant meets the requirements of the regulations as to be entitled to the special exception relief for both the EEF facility, the number of parking spaces provided, and we are providing two loading berths on site. We have never provided a service delivery space and we submit that we are compliant with respect -- through our grandfathering rights with respect to the loading. We do not need any more than the two loading berths that we will continue to provide.

Since this building is presently used as a warehouse and self-storage facility, there are presently nine loadings berths at the property. Seven of those will be blocked in. And I think if you've read the Office of Planning report, that is in and of itself an improvement to the area and will be improvement to the streetscape.

We are also pleased to have reviewed the report of the Office of Planning, which recommends approval of the application.

Proceeding to the exhibits contained in the statement of applicant, Exhibit A is a Sanborne plat map that shows the property and shows where the McKinley Tech School is

across the street.

Exhibit B is a zoning map showing the subject site located within the C-M-2 District and also shows where McKinley is located.

Exhibit C are a series of photographs of the existing building. The architect will be explaining how the building will be changed. The first page on Exhibit C is where you can see a whole stream of loading berths going down R Street, and seven of those nine berths will be closed in. It will be the seven on the left side of the photograph that you are looking at, which is east. The photograph to the bottom of that sheet is a photograph of the building looking from the south across the Flower Mart facility. And the photograph on the next page, the third view, is a photograph looking west along R Street. And it also shows part of the area that is going to be used as a parking lot for the facility, which is located on the east or the left side of that photograph.

The next exhibit is Exhibit D, which are a set of the plans which will be explained by the architect.

Exhibit E and F are outlines of the statements of the architect and of the applicant. Exhibit G is the report of the traffic consultant, and Exhibit H is the outline of the testimony of the land planner.

If there are no preliminary questions, I would like to proceed with the testimony of the witnesses.

CHAIRMAN HOOD: You may proceed. Mr. Glasgow, we will ask our questions on the back end.

MR. GLASGOW: Yes, sir.

CHAIRMAN HOOD: Okay.

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

MR. HANNAH: Yes. My name is David Hannah. Good afternoon, Commissioners. As I said, my name is David Hannah and I am here as a representative for the Clearview Teleplace R Street, LLC. I am also one of the founders and Senior Vice President of Teleplace, which is the operating company that will be working in the facility. The owner of the property -- as owner of the property, we contracted for this in the summer -- this past summer. We conducted our due diligence and then closed on the property on I think it was September 12 of this past year. At that time, during our due diligence phase, we understood that our anticipated use was a permitted-by-right use and were proceeding on that path.

Just to give you a little background, what Teleplace is we call ourselves an Internet infrastructure provider. You probably learned more about EEF's and the Internet buildings than you ever wanted to know. But what we are doing at Teleplace is developing a global network of what we call convergent technology centers. And through these centers, we feel we are an enabler for the Internet economy. We put together the

specially built facilities, fill it up with high tech engineers, incorporate some state-of-the-art systems and equipment, all of which come together and provide what some people call the virtual bricks in this Internet economy to help the companies deliver the electronic business. We, ourselves, are not Internet service providers or Web hosters or some of the things that you will hear. They are all our customers. So they are out there using our facilities and engineers and capabilities to delivery that Internet economy.

This particular facility I chose -- we are trying to roll out a global network of facilities and have a big vision for maybe 100 of these around the world. I specifically chose this site because, one, I live nearby. But I chose this one over several competing Northern Virginia sites because I think it is an absolutely perfect location, the site, from the structure of the facility, the location on a number of levels. You have probably heard all about the requirements for fiber and for proximity for power and that. But I think it also works on the people level as well. We hire many younger, high tech people that want to be in an urban environment. They don't want to be out in the suburbs. We think this NOMA corridor and the New York Avenue corridor is going to be a growing and exciting place for our company over the next 30 or 50 years. As I mentioned, the zoning issues were somewhat different when we settled, but I am sure we will get through that.

What we will do with the facility is invest many

millions of dollars in creating an environment that works for our clients, as I said, the providers of the Internet economy. So you have heard, I am sure, today about a lot of the work done on the electrical side, the heavying up of the facilities. But really where the real money is is in the electronic equipment and the infrastructure that we will be putting in to house the requirements for those. We will also, as mentioned, add high tech personnel and systems -- IT systems as well. And then what that creates for us is this convergence of different technologies through the clients that we attract. And our facilities are a little bit of a mix in that unlike some of the applications you have heard today where it is really a real estate development and they are going to just lease out on a lease basis, what we do is actually come in and operate within our facilities. We build a state-of-the-art data center and provide services directly to clients as well as we reserve -- and that will take place in this facility on the first and second floors. The balance of the building then we make available on a lease basis to customers that have a similar requirement in terms of the facility but bring with them additional capabilities, either connectivity or processing or personnel that we then can through the infrastructure we have created in the building make available to all of our customers as well. So you get a lot of synergy in the customer mix.

The neighborhood, as I said, I have -- kind of my signature is on this site. So I have a vested interest here today.

And we really want to be a good neighbor. We have met with the neighborhood and are very pleased to understand the plans with McKinley Tech and welcome the opportunity to develop with them programs, either mentoring programs or internship programs. I mean, frankly, there is a tremendous shortage of IT workers in the country and we welcome the opportunity to help develop some right in our backyard. We believe that our facility will be a magnet for IT businesses and for developing growth in the NOMA corridor.

Then on a real practical level -- and please don't quote me on this -- but I understand the tax levels for our facility will be going from $30,000.00 to $50,000.00 today as a self-storage warehouse to in excess of a million dollars once completely fitted out with the equipment that we plan to put in the site.

I am afraid I can't speak intelligently about the special exception standards or the comp plan, and Mr. Glasgow will talk a little bit more as well as the other witnesses. But I believe we are four square within the requirements and we respectfully request approval of our application. Thank you.

MR. GLASGOW: I would like to call the next witness, Mr. Steve Smoak, the architect.

MR. SMOAK: Hello, folks. My name is Steve Smoak. I am the President of Smoak Designs Architects. We are the corporate architects for Teleplace. We represent them nationally. The facility that is mentioned here in the report is located there

at Eckington Place and R Street. This was a facility that was actually built about 75 years ago by the Sanitary Bakery Company. The irony is what they did back then is perfect for the kind of facility that David described. Structurally, the building has 12-inch and 16-inch deep concrete slabs, so it can hold up a lot of weight. If you look at the outside of the facility, it has been modified about 20 years ago. If you look over at Exhibit C, you can see that the original windows and fenestration of the facility was covered up back when this facility was converted from a bakery to a storage building. Those coverings were just a full metal panel. What they did was simply take out the existing fenestration and place the metal panel instead. There is some windows down on the first floor and then there is a couple of windows on every floor that simply is provided for compliance with the fire codes. The rest of the building, other than some very minor modifications for administrative spaces, have not been upgraded since the building was built. If you looked into the electrical and the mechanical systems along with the circulatory systems within the facility, literally they are 75 years old. The electrical systems that David describes obviously will have to be completely redone. Part of a pet peeve to my profession is taking old buildings and finding new uses for them. So this is a wonderful opportunity to see this old building turned into something that will quite frankly far exceed its original purpose.

What we are going to do is bring this building up

to code. It will be ADA compliant. You will have new passenger elevators. The only elevators in the building right now are freight elevators. As a matter of fact, one of them has the old toggle up and down. You have to know how to use it to be good. But anyway, I applaud Teleplace's effort to take buildings like this, and they are doing this in several other cities in the country.

Mechanically, as you have seen in previous applications, it is a very, very intensive kind of equipment as far as heat release once these buildings are up and going. So we will be providing air conditioning facilities up on top of the roof using dry coolers. As with previous applicants, those units are only 2.5 to 3 foot tall and provide a minimal amount of sound whenever they are running. The other facilities, you will see generation facilities located on the first floor. As Chip mentioned before, there are nine loading berths along R Street. There is a continuous drive or access, if you would, along R Street there. We will let our traffic engineer talk about the improvements that we will make once those are reduced down to two. But our intent is to come in and build these systems such that David's use and his future clients' use will be easy to move into in a quick amount of time. Everyone knows how the Internet economy is. So we are very excited about a speedy delivery, if you would.

The other good thing about the amount of capital

that is being put into this building, this building, like the original use -- let me rephrase that. Without the modifications that Teleplace is planning to build, this building could not be used for really anything else than what it is presently being used for. So as far as its future use as an office building or even retail use or anything else, the building would have to have a great deal of capital expenditure just like Teleplace is proposing. Again, we are very excited about what Teleplace is proposing to do with the building. It will be fully brought up to code and obviously all this new construction will comply with the District of Columbia's regulations.

MR. GLASGOW: Mr. Smoak, I only had one question for you. With respect to the sheet A-1.1, could you just briefly describe the parking area and the landscape planning that goes with that?

MR. SMOAK: Sure. Please flip over to that site plan, if you would. The original building was built right up to the property line. The building obviously had non place for parking other than on-street parking. As part of this process, Teleplace has acquired the adjacent piece of property to the east and we are proposing to build a parking lot to house approximately 20 vehicles, being sensitive to the neighborhood and being sensitive to the aesthetics of the existing building, we are providing a screened fence, using ornamental iron type fencing. It will also have brick masonry to match the existing structure. We

are also putting a good bit of landscaping. You will see some Ginko trees, some maples and a lot of evergreens to provide a landscape screen, if you would, between our property and the adjacent residential area.

MR. GLASGOW: Thank you, Mr. Smoak. I would like to call the next witness, Mr. Lou Slade.

MR. SLADE: Mr. Chairman and members of the Commission, my name is Louis Slade. I reside at 3500 Cassada and I am a principal with Gross Slade Associates. My firm was asked to help the Teleplace team to evaluate the property and the changes that are being proposed from a traffic and parking standpoint, and I have just a very brief few comments in my report.

You have heard about the location and the street network in this area, which really consists primarily of R Street and Eckington Place. As you go south down along Eckington Place, you come into the heart of the sort of industrial warehouse office district that is developing in this area and has been over a long, long period of time, and we are excited to be part of this new wave of development in this area.

I happen to have a meeting in the Shaw neighborhood every Thursday morning, so I had several meetings over the period of time we were working on this when I would just come over here to observe traffic conditions. In the vicinity of the site during the morning and evening peak hours, there is very, very little traffic congestion. There is no traffic congestion at all, really.

There is very little traffic. The streets are very lightly used and the curb parking that is available is also very lightly used.

The site has bus service immediately in front of it on R Street, so it has excellent public transportation service. But it is about a half a mile away from the nearest Metro station at this time. The use of the building will employ 60 to 65 employees on three shifts, spread out over those three shifts, so roughly 22 or so people per shift. The parking should be more than adequate for that. Typically there will be a few people absent out of each shift. There will be people who will use public transportation or Ride-Share. So we expect that the 20 spaces will be more than adequate.

Consolidation of the loading docks, the nine loading docks along R Street will create new street frontage where the city can reclaim curb parking spaces along this frontage, so that any visitors who may come to the Teleplace facility here will either be able to use the available spaces in the off-street parking or park right in front of the building. On the rare occasion when the tractor trailer has to bring in heavy equipment or take out heavy equipment out of the building, they will be able to park right in front of the building and do that without having any disruption to the neighborhood.

The findings of our report are that the development of the property as it is proposed should have no adverse impact on

traffic and parking conditions in the neighborhood. Thank you.

MR. GLASGOW: I would like to call the last witness, Mr. Steven Sher.

MR. SHER: Good afternoon, Mr. Chairman and members of the Commission. For the record, my name is Steven E. Sher, the Director of Zoning and Land Use Services with the law firm of Holland & Knight LLP. I would like to just make a few brief comments about this application. What perhaps distinguishes this from the other applications which you have heard today are a couple of things. Number one, this is in a C-M-2 District, where everything else you heard before was in a C-3-C District. So the general character of uses permitted on this site and on the sites to the south, which are also zoned industrial, are different.

Number two, this is an existing building. The other three sites that you heard were vacant sites. This is an existing building. Its history has been as a bakery and more recently as a warehouse. So what you are looking at is an industrial type building in an industrial type neighborhood. Having said that, on pages 4 and 5 of the outline which staff has passed to you, I have reviewed the application with respect to the standards that are set forth in the regulations and without going through each and every point, again recognizing that this is an existing industrial type building in an industrial type area, I believe that the application meets all of those standards that are set forth in the regulations for this kind of use. We have also looked at the

consistency with the comprehensive plan and note that the plan talks about in this particular part of the city creating a physical and regulatory atmosphere to encourage high technology and light industries in the area north of Florida Avenue, which encompasses this site. And I would conclude without again reading each and every word that the application meets the standard set forth for a special exception and should be approved.

MR. GLASGOW: Mr. Chairman, that concludes the direct testimony of the applicant.

CHAIRMAN HOOD: Okay. Thank you for your testimony. Colleagues, any questions? Let me just ask -- I was going to ask everyone to come to the table just in case there were a number of questions. And colleagues, let's open this up for questions. Let me ask first, though, Mr. Glasgow, are you aware of the letter that is dated December 16 addressed to me from Advisory Neighborhood Commission 5-C?

MR. GLASGOW: Yes, I got that letter -- it was provided to me by staff today at the hearing. So we have read that letter.

CHAIRMAN HOOD: And what response do you have to that?

MR. GLASGOW: Well, assuming that the hearing continues or goes well today, what we would probably like to do is see whether we could have some type of approval from the Commission subject to the ANC submitting their writing as

requested by Mr. Barry. We had a good meeting and the people that were there were supportive of the application. What they wanted to discuss, I think, was anything that we could work with with McKinley Tech. It was not so much along a special exception type discussion, but almost like

-- more like what you would have with community relationship in a PUD application, which we are not adverse to doing. I think we testified today about doing a mentoring program and working with McKinley Tech. I think they all recognize that having McKinley Tech across the street is very fortuitous to take an existing warehouse use and turn it into a telecom hotel with McKinley Tech being right across the street. That is a win/win scenario for everybody. So they wanted to discuss how it is that we can interact with that facility, which we are happy to do.

CHAIRMAN HOOD: Okay.

MR. GLASGOW: But I think it doesn't directly tie into the special exception per se. I don't think anybody could reasonably state, for instance, that there is a traffic problem in the area or that we don't provide parking or that type of thing.

CHAIRMAN HOOD: Traffic is going to be my next question. But the first one, back to our original question, that is a spot for the new technology school. And Mr. Hannah, I was glad to hear you say that you were willing to forge and develop a partnership with that school, especially with you being right across the street. Let me ask Ms. Sansone if --

MR. BASTIDA: Mr. Chairman, may I interrupt you? If you want to wait for the ANC letter, you really cannot make a decision today. You would have to wait until you receive that letter in order to make a decision.

CHAIRMAN HOOD: Thank you, Mr. Bastida, but I wanted to direct that question to Ms. Sansone. I appreciate that. But, Ms. Sansone and colleagues -- if anyone wants to chime in you can -- due to the concern, Ms. Sansone, of what we have here, if we did approve it today, could we make it contingent on the discussions or whatever report we get from the ANC on Tuesday -- or when are we supposed to -- on Wednesday?

MS. SANSONE: Mr. Chairman, if the Commission's decision is intended to depend upon the ANC's report -- if that is what you are trying to achieve, then I don't see how you could really make a decision today. But if what you are intending more is that you keep the record open to have an additional report submitted and that is the condition that the applicant and the ANC are meeting and this report is coming out or something of that nature -- I mean, we have conditioned orders in that way. But the Commission's decision would have been made. It is just that there is a sort of subsequent condition that is being fulfilled by the submission of the ANC's report. And that might be a way to sort of compromise.

CHAIRMAN HOOD: Okay.

MR. GLASGOW: Yes, I believe we have done that in a

couple of cases before.

COMMISSIONER FRANKLIN: May I make the suggestion, Mr. Chairman? If the Commission is willing to accept Mr. Glasgow's representation that the focus of the ANC discussion is really around the extraordinary opportunity to really deal McKinley Tech into this picture in some kind of creative way, if we were to approve the application today subject to a condition that McKinley Tech or students there would, through mentoring programs or otherwise be involved to the greatest extent practicable, they could have their discussion on the 19th, and that would inform the final order, which is not before us at the present time. Presumably, we are going to have to approve an order, and the order would at that point flesh out whatever arrangements might be entered into. Does that make any sense to you, Mr. Glasgow?

MR. GLASGOW: It ties into, I guess, the last paragraph on page 2, where the community was talking about the point of significant interest that gained unanimous support from the members who attended the meeting. It was talking about working with the McKinley High School. And that is something that we have told them that we will work with them on.

CHAIRMAN HOOD: Mr. Franklin, if I am correct --

MR. BASTIDA: Mr. Chairman --

CHAIRMAN HOOD: Hold on. Let me just make my point, Mr. Bastida. If I am correct, I don't think we are going

to have a second time to deal with this?

COMMISSIONER FRANKLIN: We are not?

CHAIRMAN HOOD: No. This is going to be the vote.

COMMISSIONER FRANKLIN: Will we not have an order?

MR. BASTIDA: Mr. Chairman or Mr. Franklin, you are operating under the rules of the BZA. Accordingly, the order will be faxed to all the Commission members since they have conditions for you to be aware of those conditions if you have any objections. But this order is only signed by the Director. We will take your comments into account, but you will not -- officially, you will not have another shot at it. If you approve it today with those conditions, that is basically it.

COMMISSIONER FRANKLIN: Would we have another shot unofficially?

MR. BASTIDA: Well, yes. You know, we do that as a -- yes.

COMMISSIONER FRANKLIN: Just a suggestion.

CHAIRMAN HOOD: What I wanted to do was to put that out before we proceed so we can all think about it so on the back end we can come up with some resolution of how we are going to proceed. Because I do take note, this is the only ANC today -- and I am not trying to bring everybody else's case over to yours -- where we had a response from any community group on these data centers. And I am concerned. And while I realize from reading the little bit that I was able to read of the letter, you have made a

great effort in dealing with the community. I still wanted to make sure that if there was concerns that should have been in the special exception, I wanted to give them the voice that they so righteously should have as far as I am concerned. But I wanted to throw that out colleagues, first. We can deal with that on the back end. Any further -- let me just ask my questions since I started. Mr. Slade, R Street -- R Street, part of it is one way, am I correct?

MR. SLADE: The portion from Second Street east --

CHAIRMAN HOOD: East is one-way.

MR. SLADE: It is one-way eastbound, correct.

CHAIRMAN HOOD: Now there is an entrance that is going to be on the R Street side, I believe -- and I am going off the top of my head.

MR. SLADE: Well, the entrance to the parking?

CHAIRMAN HOOD: Right, it is on the R Street side?

MR. SLADE: It is on R Street, but it is in the section that is two-way. The frontage of the property, the combined properties, is all west of Second. I wish I had a map here on the board that I could point.

CHAIRMAN HOOD: I am familiar. I am a McKinley alumni. I don't want to sound like one of my other colleagues, but I am a McKinley alumni, so I am familiar.

MR. SLADE: Great. So, for example, Chairman Hood, if you were coming down Second Street adjacent to the McKinley

property, coming southbound on Second, you would be able to go directly into the parking area off the end of Second Street essentially.

CHAIRMAN HOOD: Your new proposed parking area, if I am not mistaken, I believe that there is residential parking there now.

MR. SLADE: I am sorry, I didn't notice. I can't answer that.

CHAIRMAN HOOD: Okay. Well, there is some residential parking in there below the storage facility.

MR. GLASGOW: I guess there is curb-side parking, Mr. Chairman. It is a vacant lot that we are talking about that is east of the property where the entrance to the parking lot would go.

CHAIRMAN HOOD: Right. And that is your proposed parking lot which is on the other side. If I am going down R Street, it is to the right.

MR. GLASGOW: Right. Going east on R Street.

CHAIRMAN HOOD: It is on the right-hand side. It is just below the building. That vacant lot over there. And my -- the conclusion is that there is residential parking already. People park right in that little area. Not in the parking -- not on the site that you propose.

MR. GLASGOW: No, I think I know what you mean. If you drive down there at least in this area, there is a vacant lot

-- there is a vacant 10,000 square foot lot. Then there is a single row house. And then there is vacant property -- I am still going east on R Street -- and then there is about two or three row houses right at the end of the block. So it is mainly vacant property to the east of the warehouse facility.

CHAIRMAN HOOD: Right. But I guess -- let me get straight to the point. There is also some homes on the left-hand side.

MR. GLASGOW: Right. On the north side of R Street. Catercorner from us because McKinley is sort of right in front of us.

CHAIRMAN HOOD: Right.

MR. GLASGOW: So on the other side -- on the north side of R Street, there are some row houses where McKinley stops.

CHAIRMAN HOOD: Which in turn those people in those row houses probably have more than one car. They also park. I guess -- let me get to the nuts and bolts of my question. Right there where you are going to be taking away their parking, have you discussed with the community or Office of Planning or whoever about those spaces that you are going to be taking away? And how many spaces do you anticipate taking away?

MR. GLASGOW: Probably two.

CHAIRMAN HOOD: Two spaces?

MR. GLASGOW: Probably two. And they weren't --

they have never been used when I have been out there. I don't know, Mr. Slade, when you have been there.

MR. SLADE: They haven't, Chairman Hood. The parking along R when I was there, which was the peak hour in the morning and in the evening, there wasn't much use of the curb parking along R Street. We will be replacing by eliminating those seven loading docks curb frontage where parking spaces could be replaced, probably more than two.

MR. GLASGOW: I think there would be approximately seven. Each loading berth looks like it is almost a space wide. If you look at all of those garage door openings.

CHAIRMAN HOOD: Okay. My other question is --

MR. GLASGOW: That is just one long curb cut there right now. It is the longest curb cut I have ever seen. It goes all the way from one end of the building almost to the other.

CHAIRMAN HOOD: My other concern is speed. In your evaluation, if you are going to be unloading and there is going to be more traffic right in that area, I believe the speed limit now is 25 or 30. And I don't know if the discussions about speed -- I guess my concern is accidents. Even before that building was over there, you have a lot of accidents right in there.

MR. SLADE: Well, this will generate a very small amount of traffic. It will be employees who come to work every day. They will be -- the shift changes will probably not coincide with the 9:00 to 5:00 typical day that most of us work. So that we

don't see that the impact of these 18 or so employees commuting to work are going to be the kind of traffic that would be cutting through the neighborhood, for example, that might speed through the neighborhood. These people are coming to work, turning into a driveway and parking. Much of the traffic generated by this property will come from the south on Eckington because it will be using New York Avenue or Florida Avenue. Some will come -- a small percentage probably will come through the neighborhood.

CHAIRMAN HOOD: Okay. Colleagues, any other questions?

COMMISSIONER HOLMAN: Mr. Chairman.

CHAIRMAN HOOD: Mr. Holman?

COMMISSIONER HOLMAN: I just wanted to observe that maybe in fact having this kind of activity there and having the employees there might actually reduce some of the accidents because it would generate a level of activity that that particular stretch of street doesn't normally have that kind of

-- I don't want to say induces people to speed. That is a bad terminology. But it gives them the feeling that they can have license because there is nothing else around. So it might have an opposite effect.

Let's see, going further, do you feel that your relationships with ANC 5-C were positive and as far as you could recall there weren't any specific comments that related to the requested relief in particular but were more in terms of community

relations would you say?

MR. GLASGOW: I believe so. I think their letter is pretty extensive as to what all we went through and I don't -- when I read through the letter, and I have read through it twice now, I don't think there was anything mentioned that was part of the criteria of the special exception relief. And I think in two different passages on page 2 that they expressed their -- the members in attendance expressed an inclination to support the application. Then they said the members who attended the special meeting are in concurrence with the Office of Planning's overall assessment. That is in the context of supporting the application. I think the main focus was how can you all being right there by McKinley Tech -- how can you all interact with us in a positive way with respect to opportunities that would be presented there? Because we are in a unique location. We recognize that. And I think that they all recognized also that -- because the last question the Chairman of the ANC asked me -- he said, now it is my understanding that, for instance, if this didn't go through for some other reason that the use as a warehouse as a matter of right under the regulations. I said, yes sir, that is the use. And I think that was -- then they asked me to leave the room for a couple of minutes and then he called me back in and said they were supportive of the application but they would like me to see them on the 19th.

COMMISSIONER HOLMAN: Thank you, Mr. Chairman. Any

further questions? Commissioner Parsons?

COMMISSIONER PARSONS: Mr. Smoak, I am looking at your drawing labeled proposed plan roof. And that is followed by some elevations and I am trying to figure out what is happening here.

MR. SMOAK: According to the regulations, anything that we place on the roof has to be protected, if you would, by a screen wall so it is not visible.

COMMISSIONER PARSONS: Yes.

MR. SMOAK: So what you see on top of the roof is a super structure that would actually raise the equipment a couple of feet above the roof. Therefore, we can get under it to reroof it in the future. But we will have a screening wall around that equipment so that if you are coming in off of New York, if you will, you are not looking down on top of a bunch of air conditioning units.

COMMISSIONER PARSONS: So that would be the solid line on this drawing. Is that what that indicates? It is hard to tell.

MR. SMOAK: That is on the very top -- yes, sir, it is, it is. And that is set back -- the existing parapet is about 4.5 feet tall. So it by itself is going to hide most of this equipment. But we are proposing, at least as you see on those elevations, we are proposing a partial screen wall. It is not going to be as high as the existing penthouses. You can see that

in the elevations.

COMMISSIONER PARSONS: So then let's go to the north elevation a couple of sheets later then. There appears to be two such structures that are proposed.

MR. SMOAK: Those are two structures. What you will see is a -- let me back up. What you see is the face. If you look back on the roof plan, you can see that the super structure area is sort of a U shape that steps back towards the penthouse. So we simply didn't draw the screen wall behind it.

COMMISSIONER PARSONS: Oh, I see. Yes, sure, that makes sense.

MR. SMOAK: We just tried to make it where it would be easier to read.

COMMISSIONER PARSONS: And the inscriptions along the parapet, America, Europe and Asia, are those there at this time?

MR. SMOAK: It actually says Sanitary Bakery Company. So we are actually proposing to match the existing finishes of the structure, but recognize what Teleplace is, and they are an international company. You can see that the signage on the building is down at grade level. If you look at the existing photographs, that signage was actually existing signage on the facility now. So that is all the signage that you will see that actually says Teleplace. We just wanted to cover up the Sanitary Bakery Company.

COMMISSIONER PARSONS: So it will be incised into a precast stone and then placed up there?

MR. SMOAK: Yes, sir.

COMMISSIONER PARSONS: Do you know if this building is historic?

MR. SMOAK: It is not.

COMMISSIONER PARSONS: Okay. Thank you.

CHAIRMAN HOOD: Colleagues, any other questions? Commissioner Franklin?

COMMISSIONER FRANKLIN: Yes. Mr. Smoak, you mentioned in passing that the existing owners had placed some metal over the window openings. What your elevation drawings show is -- or do they show a continuation of that treatment?

MR. SMOAK: Yes, sir. If you look over at Exhibit C, there is three photographs of the existing facility.

COMMISSIONER FRANKLIN: Right, I see that.

MR. SMOAK: You can see those metal panels. They sort of stick out very plainly. The only change that you will see on our elevations is some minimal changes on the corners of the facility. If you look at the building where the stairways are -- for instance, look at photograph number 1 on the far right side. As typical with a stair tower, you see the alternating windows. We were simply trying to make it a little more attractive by covering that entire bay up with those four metal panels.

COMMISSIONER FRANKLIN: And you think that that is

more attractive?

MR. SMOAK: Yes, sir.

COMMISSIONER FRANKLIN: And those are stairwells?

MR. SMOAK: Yes, sir.

COMMISSIONER FRANKLIN: Is there any reason to cover them up functionally? Leaving the aesthetics of the exterior aside, is there any reason to cover that area up? What am I -- on your north elevation, am I seeing glass brick or what am I seeing on these?

MR. SMOAK: On the -- on the grade level?

COMMISSIONER FRANKLIN: Yes. For example, on the north elevation drawing on the left side, we have this bland metal covering going up the entire building. On the right, we don't.

MR. SMOAK: That is correct. On the right-hand side is existing glazing. The owner's plans right now are to use that area for administrative office areas. So we were trying to introduce some natural light into those office areas.

COMMISSIONER FRANKLIN: And you don't think that natural light would be helpful in the stairwell?

MR. SMOAK: We could easily change those metal panels out to windows if it would be more appropriate.

COMMISSIONER FRANKLIN: Well, of course, it is a matter of taste. But I have to tell you that I don't find a long metal panel running from the ground level to the top to be particularly an aesthetic enhancement of the elevation.

Particularly since there doesn't seem to be a functional reason for it.

MR. SMOAK: Right. The rest of the facility it would be functional because we plan to back those panels up with masonry on the inside for ballistic protection. You won't see that on the outside, but we could easily do that inside the stairwell. That shouldn't be a problem.

COMMISSIONER FRANKLIN: And the colors would remain as you have indicated?

MR. SMOAK: Yes, sir.

COMMISSIONER FRANKLIN: Or as presently exist. So then if I am reading this correctly on the north elevation, the treatment on the left corner would be similar to the right corner in terms of glass brick?

MR. SMOAK: The far left-hand side is actually inside an equipment space, Mr. Franklin.

COMMISSIONER FRANKLIN: On the north elevation?

MR. SMOAK: Yes, sir. So the --

COMMISSIONER FRANKLIN: Oh, that is not a stairwell?

MR. SMOAK: That is not a stairwell, no, sir.

COMMISSIONER FRANKLIN: Oh.

MR. SMOAK: The one on the -- if you look back to the east or the west -- look at the west elevation and the right-hand side of that elevation is a stairwell. And what we are

saying is if it would be more appropriate, we could cover those up with glass.

COMMISSIONER FRANKLIN: Well, I don't know how my colleagues feel. I just personally would prefer to see a certain amount of detail and variation in the facade if functional imperatives don't dictate otherwise. Am I to assume that -- now where does Teleplace have its facilities at the present time throughout the world?

MR. HANNAH: We currently have an operational facility in Miami. We have facilities in Atlanta -- two facilities in Atlanta. One in Dallas and one in Tampa, the D.C. facility, another in Haarlem, but it is actually Amsterdam -- two a's in it, Haarlem outside of Amsterdam in the Netherlands, and Frankfort, Germany, with another in Irvine, California that is just recently acquired to be constructed a little bit later.

COMMISSIONER FRANKLIN: And one I presume planned in Asia?

MR. HANNAH: Asia is not so easy to work in, but yes, we have plans for Asia very soon.

COMMISSIONER FRANKLIN: The people who represented Level 3 I thought were very candid in not raising expectations on our part that their presence would spawn adjacent or nearby or approximate IT investments in other companies. You seem to be saying that this will. What is the difference between what you are doing and what they are proposing to do?

MR. HANNAH: Level 3 is primarily building a gateway facility which will sell their band width. Level 3 wants to be the world's premier provider of cheap band width. And to do that, they need to house their customers on or near their network. So they provide facilities that primarily do that. Now we have a different business plan, which is providing a much richer level of service to customers. Band width is certainly a key component of their overall requirement, but that infrastructure for the Internet economy or the e-business economy can require a far higher number of services around monitoring and management and change configuration and a whole litany of things that companies need. Well, then if you provide that service, you are not just buying commoditized band width. You are providing a location and a total solution for an application service provider or someone of that type, which in then their customer base is served, which are Fortune 2000 companies and small to mid-size companies and others that need those kinds of services. It attracts them to come to those areas as well. I mean, I may be -- I may be putting my foot in my mouth by suggesting that I think that it will attract, but that has certainly been part of our business plan and part of our experience.

COMMISSIONER FRANKLIN: Well, does that also imply that you will have more people coming and going from your facility than they think are coming and going from theirs?

MR. HANNAH: Not coming and going. You will

certainly have -- there is people that come in to set up equipment. And part of why they come to us is they do not want to provide their own engineers deployed around the world or they don't have the skill sets to do it. So our 50 or 60 people that are populating the building are now providing on an outsource basis services to many customers. So I don't see it as people coming in and out all the time. We are not that different. It is just that Level 3's focus is, again, they are a band width provider primarily. But they will have many similar customers as we have.

COMMISSIONER FRANKLIN: So you think that your on-site people will be customizing the service for your clients and they won't have to be sending folks in?

MR. HANNAH: That is the plan, yes, sir.

COMMISSIONER FRANKLIN: All right. Assuming approval from the Commission, what does your business plan call for the date of completion of this facility?

MR. HANNAH: Well, I believe that we are targeting a July time frame. But, again, for our facility there is the full-blown data center, where a lot of these activities on the first and second floor that I am describing. That is a long process and we are targeting the July time frame for completion of that. We are in the process, though, on the top two floors of leasing that out to a couple of large communications Internet companies that bring in their own capabilities -- fibers, switches, routers and

all that. That looks more like a real estate development lease -- a real estate lease. So, in fact, those are contingent upon gaining this approval. Because when we started those conversations, we didn't need the approval. So everyone is waiting with bated breath on those. So those will begin fairly soon. We target that they would be ready to begin work on their own premises in January.

COMMISSIONER FRANKLIN: Is this being financed through your own equity or is this debt-financed?

MR. HANNAH: It is a combination. We have raised -- our first round of equity is supposed to cover mainly operating expenses. But we have -- we have a $60 million initial raise of equity and then we have additional fundings made available for the acquisition and fit out of buildings as well as we will have financing for the energy systems through Texas Utilities, their energy services company. So it is a real mish-mash. That is primarily my job is raising money. So it is not so easy right now, if you follow the reports.

COMMISSIONER FRANKLIN: That is why I was curious as to when you expect to be completed.

MR. HANNAH: Well, the good news here is that what we have done rather than what many companies have done and gotten into trouble is followed a very, very aggressive approach and built on the assumption that halfway through they could raise additional funding. And we have decided that is not in today's

world the right approach. So we are following a fully funded business plan. And where we have identified the existing facilities that I have spoken already to are. We have acquired the necessary financing or funding is in place to make those work to a cash-flow positive position. So this will not be a project that is threatened by the need for additional funds.

COMMISSIONER FRANKLIN: And you say you live in this area?

MR. HANNAH: I was born in Columbia Hospital for Women. My family still lives in Northern Virginia. I live on a 737 right now.

COMMISSIONER FRANKLIN: Thank you very much.

CHAIRMAN HOOD: Any further questions, colleagues? Okay. Thank you for your testimony, gentlemen. You can remain there at the table, I believe. I am going to ask -- first, before we go to the Office of Planning report, that we waive our rules on accepting the report for case number 16664. Okay, so noted. Next, we will have our Office of Planning report.

MS. STEINGASSER: Yes, thank you, Chairman and Commissioners. The Office of Planning looked at this case and we looked at it slightly different than the other cases, because what is unique about it is it is an existing building and it is in an industrial zone. By being an industrial building in an existing industrial zone that actually is across the street from a very established existing residential neighborhood, the retail

potential was somewhat limited to this building. We did not view that as necessarily a handicap. The applicant has made strides to fully upgrade the building to current building codes. It actually brought it closer to an office type facility than an industrial facility by having passenger elevators instead of the freight elevators. It accommodated a vibrant streetscape through closing down some of the excess loading bays, improving the sidewalk and the curb and gutter along that stretch and increasing the landscaping around a parking facility. We felt that this kind of spurred revitalization for the area. It didn't detract from the area and it served as a mild buffer for an industrial area directly across the street from residential. Because this is indeed a much more lower impact type of use. And being right across the street from residential, we felt it was actually a good choice of uses.

Again, the pedestrian and vehicular movement has been improved by the removal of the excessive loading bays, the increased sidewalks. The parking situation currently is well below code and the applicant has made strides to bring it closer to code by purchasing the adjoining vacant lot and proposing a well-landscaped parking lot. We asked the applicant to increase landscaping along the adjoining parking lot residential line and they agreed to do so and those changes are reflected in the application. And we felt with the ground floor offices that were provided, the removal of lead paint and upgrading of utilities

that it brought the structure closer to adaptability for an office use and we recommend approval.

CHAIRMAN HOOD: Okay, colleagues, any questions of the Office of Planning? Any questions of the Office of Planning? Okay. The Office of Planning got off on this one. Applicant, do you have any questions of the Office of Planning? There are no parties. I believe we have no parties to this case with the exception of ANC 5-C. Is anyone here from ANC 5-C? Okay. Report of Advisory Neighborhood Commissions -- call for it. No one is here. Parties or persons in support. Parties and persons in opposition. Closing remarks by the applicant.

MR. GLASGOW: Mr. Chairman, we believe we have met the criteria under the special exception application with respect to all those enumerated items, and you have heard what they are through the other cases and with the Office of Planning. Teleplace is intending to occupy two floors of the building. We have a leasing commitment with respect to another floor. So three out of the four floors of this building are spoken for. And given the history that we had with respect to acquisition of the property and closing on the property in September, obviously we are pleased to be coming through the special exception process, particularly since all the testimony and evidence is that we have met that criteria. But we would like to have a decision today if we could, recognizing the issues that were stated before with respect to -- for instance, in the case earlier today with Level 3, a condition

of employment of community residents be maximized as much as practicable. We accept that type of condition with respect to our order. And that we would be working with the community to develop a mentoring program with McKinley Tech students. We would be accepting of that type of condition and I think that that would address the issues that were raised with respect to the letter from the community. I don't think they had any other issues that dealt with the special exception application from a review of the letter. And with that, we would respectfully request that the application be granted.

CHAIRMAN HOOD: Okay. Thank you, Mr. Glasgow. Colleagues, you have heard the request for the bench decision. I think this requires a little discussion. But I want to first ask maybe Ms. Sansone, if this were to be approved -- no, first, let me ask you, Mr. Glasgow. Between now and Wednesday, would that be an issue?

MR. HANNAH: Well, as you know with leasing -- every day that a lease isn't signed is a difficult day for us. But I don't have a problem with until Wednesday. We are just concerned that we not -- that it not be contingent upon -- that indefinitely it come back. Because I think everything was very positive. It sounded like they just wanted to follow their quorum process. But, no, Wednesday works for us.

CHAIRMAN HOOD: Okay. I just threw that out there. Let me ask Ms. Sansone, do we have any recourse if, for example,

they do come up with something that is an adverse impact dealing with the special exception criteria, before the order is written can we reconsider?

MS. SANSONE: Mr. Chairman, yes. You could reconsider or even have a rehearing at any point prior to the issuance of the final order. I think if we are going to allow the ANC to submit a written report by Wednesday, we probably should allow Mr. Glasgow at least a few hours to review that and respond if need be to preserve the applicant's rights.

CHAIRMAN HOOD: Here is where I was going to go, colleagues, and we can feel free to discuss this. Is that we vote on it up or down today. And if there is some substantial -- that is, a big impact dealing with the special exception, that I will be the first one to come back to the table and ask for reconsideration on this application before the order is written. And that way, maybe we can proceed. But let me open it up for discussion.

COMMISSIONER HOLMAN: Yes, Mr. Chairman. I know I won't be available on Wednesday. So I would prefer that we take a vote. I am very sensitive to this issue because once upon a time this used to be my ANC. So I know they conduct business very efficiently. And based on the letter from Commissioner Barry, I don't expect any changes. But if you -- you know, I certainly respect the concern of trying to give them every opportunity to be heard. So I would hope that we would vote today.

CHAIRMAN HOOD: Any other comments? Commissioner Mitten?

COMMISSIONER MITTEN: I think with the -- you know, just acknowledging the fact that if there was new information that would come from the ANC, we would have the opportunity to reconsider. But given that the overall sense is that it is positive and we leave the record open to take in whatever information they would have without making our decision contingent, I think that sort of satisfies everyone that is involved. So I would go along with your suggestion.

CHAIRMAN HOOD: Okay. Any further discussion?

COMMISSIONER FRANKLIN: Just a question, Mr. Chairman. You know, I am sensitive to the concerns of the ANC. Were they notified in a timely manner about these proceedings? I know we have been on a very accelerated schedule.

MR. BASTIDA: Yes, Mr. Franklin. Yes, they were notified in a timely manner. That is why the announcement was written the way it was written with the variance rather than waiting on resolving that problem to advertise it.

CHAIRMAN HOOD: But I believe in skimming through the letter that apparently when they got the notice, their ANC meeting came the third Thursday or third Tuesday of the month, which then put them in another cycle, am I correct?

MR. BASTIDA: That is correct.

CHAIRMAN HOOD: Okay. So they may have been

noticed, but then again that is a community group. And getting them together, especially around this time, is very difficult to do. Any other comments? I would just --

COMMISSIONER FRANKLIN: I would like to take a vote today. And along the lines of my colleagues, leave that one matter open with respect to relationships with McKinley Tech for whatever elaboration or illumination can be shed on that. And I suppose if it requires some tweaking of the order, that can be done without the need for us to reconvene. CHAIRMAN HOOD: And also, I would again like to just reemphasize that we make sure that we incorporate in this motion that if there is something substantial to where it should overturn this decision that there is the possibility of it being reconsidered. But from what I am seeing, it doesn't look like that is going to be the case. But I always want to leave us some room and I want to err on the side of caution.

So with that, colleagues, I will accept a motion. And also, if we can like we have done with the previous, include any conditions.

COMMISSIONER FRANKLIN: Well, let me just say, Mr. Chairman, that I don't want to have us misunderstood by the ANC or anybody else as inviting reconsideration except under the most -- except with respect to the area that I think we are focusing on. But if it is -- if we indicate that -- I think the applicant has to have some assurance of finality in what we are doing. And if

it is a matter of being final on Wednesday, I would rather be final on Wednesday than to have a decision made today that invites reconsideration.

CHAIRMAN HOOD: I agree. But I was going by what I heard on the record, Commissioner Franklin. That is that -- well, I understand exactly your comments. But I wanted to make sure that it was understood that there was some recourse. I believe it is final from what I am hearing here today. And all I can do right now is go by what I am hearing from the applicant. I mean, I just said reconsider just in case it gets to that point. I think the applicant made in his closing statements that the special exception -- if it is an impact on that special exception from what I don't see in the letter and the correspondence that we received at this point in time. So I think there is some finality here today. You know, it is hard to predict the future. If I could, I would play the lottery and I wouldn't be here. But while taking that into consideration, colleagues, how do we wish to proceed? Do we wish to vote on it today? I think I do. Commissioner Mitten?

COMMISSIONER MITTEN: I'll make a motion if you like.

CHAIRMAN HOOD: Could you make a motion with all the conditions? Because I was not keeping track.

COMMISSIONER MITTEN: I will try to include the ones that I heard. I move approval of the special exception for

175 R Street, N.E., including minor parking relief that has been requested and with the following conditions that are consistent with what Mr. Glasgow just recited that the applicant would seek to maximize local employment and that the applicant would seek to enter into a -- or to provide a mentoring program with McKinley students.

COMMISSIONER FRANKLIN: How about the fenestration?

COMMISSIONER MITTEN: That -- I am going to need a little bit of help on that one.

COMMISSIONER FRANKLIN: Okay.

CHAIRMAN HOOD: Okay, Commissioner Franklin, can you add to the conditions?

COMMISSIONER FRANKLIN: Yes. I think in accordance with my colloquy with Mr. Smoak that there be a treatment on the elevations where appropriate in the stairwells that allows natural light to come in as shown on the right-hand side for the north elevation and I assume as shown on the south elevation on the two ends of the elevation. Is that correct?

MR. SMOAK: It would show up on one elevation only because that is the only elevation that the stair abuts. But we will provide windows inside that stairwell.

COMMISSIONER FRANKLIN: Okay. And that is the north elevation?

MR. SMOAK: Yes, sir.

COMMISSIONER FRANKLIN: Thank you.

MR. SMOAK: Excuse me, the west elevation.

COMMISSIONER MITTEN: So the condition would be that the stairwell would be fenestrated as viewed on the west elevation.

CHAIRMAN HOOD: Okay, colleagues, it has been moved with the conditions. Can I get a second?

COMMISSIONER HOLMAN: Second.

CHAIRMAN HOOD: Okay. It has been moved and properly seconded. All those in favor --

MR. BASTIDA: Mr. Chairman, before the vote. Can we have a submission of the plan showing the new fenestration? I think it would make life much easier for the Zoning Administrator to have it in a drawing.

CHAIRMAN HOOD: Okay. If we can ask for that also. Thank you.

MR. BASTIDA: Thank you, Mr. Chairman.

CHAIRMAN HOOD: Okay, sure. We have a motion on the table that has been moved and properly seconded with the conditions. All those in favor by the usual sign of voting?

BOARD MEMBERS: Aye.

CHAIRMAN HOOD: Any opposition? So ordered. Staff, would you record the vote?

MR. BASTIDA: Staff will record the vote as 5 to 0, Ms. Mitten moving and Mr. Holman seconding and Mr. Parsons, Franklin and Hood voting on the affirmative. Thank you.

CHAIRMAN HOOD: Okay, thank you. I am going to ask, colleagues, if we can have a stop back meeting for two minutes. Any other comments? Mr. Altman?

MR. ALTMAN: Just when you have a moment, I just wanted to address the Commission for a minute. CHAIRMAN HOOD: Okay.

MR. ALTMAN: But there is nothing proposed. There is no -- just a comment whenever it is the appropriate time.

CHAIRMAN HOOD: The appropriate time is right now, Mr. Altman.

MR. ALTMAN: I actually just wanted to thank the Commission for your I think both considerate and your expeditious treatment of this whole issue of the EEF's and the data centers. I think you have done a tremendous job in the face of significant controversy about dealing with obviously an urgent issue. I think today, in fact, the intent of what we all tried to do -- what I proposed and what you approved was that we have a way to get ahead of what is obviously a dynamic and a fast-moving economy and that we can begin to understand this technology and understand what it means for the city, for development, for the building environment and in particularly the areas of revitalization, which as you can see today the confluence where these areas for revitalization that we want to promote with the New York Avenue Metro is the same area that we are getting demand for data centers. And I think what we wanted to do and put into place was this process. I think it

proved today that, in fact, this was not a moratorium. I mean in fact people who had claimed all along that this was a moratorium or were saying it was, shows that it is not. You approved close to 2 million square feet today roughly of data centers. So that is hardly a moratorium. I think in fact what that demonstrated is that the core level of demand, which is what we have heard over and over in these forums, has been people have said between 1.5 and 2 million square feet demand for this kind of space. That is essentially what we have accommodated today in terms of the technology industry. I think we now move to another phase, which is as we are developing these permanent regulations and have continued forums with the industry, the continued need for balance. And what we will be developing is the issue of what is the right threshold and what is the right concentration or over-concentration, that issue. Particularly in the areas where we have now accommodated a tremendous, I think, core level of as I said service for this industry in NOMA in particular. We will have to look very closely at it in these final regulations. So that on the one hand we have accommodated a good amount of this technology and proven there is not a moratorium, but at the same time now that we have done that, we have to sort of carefully -- I think the regulations will have to carefully deal with this issue of the amount and the sort of radius around the Metro stops. That is what we will be bringing forward today. So it is in some sense -- we wanted to send a positive signal to the industry that, yes, we

need some amount of this. There is this amount of demand that has been frankly expressed to us at various forums. We have done that and I think you have done a tremendous job in expeditiously dealing with this by taking this issue on yourself and not the BZA, waiting for a hearing time, and having this special hearing. And now we look forward to bringing you the permanent regulations, which I think can deal with some of the issues that now, whether those are issues of design, as John Parsons and I got into a discussion today, but it is an important issue. The issues of radius from the Metro and the issues of the amount of concentration of these, so that you can have the right balancing, which was the intent all along. But I just wanted to thank you for all the work that you have done today. I think the industry and the city and everyone really appreciates what you have put into this.

CHAIRMAN HOOD: Thank you for your nice comments, Mr. Altman. And again, back to you, kudos to the Office of Planning. Like I said, it is about time that you see the horse come out of the gate sometime before the cart. So I want to commend the Office of Planning. Even though I know you got beat over the head a little bit. But I think you all -- the city is better served as the way you presented this. And I think we can now move forward as you stated. Any other comments, colleagues?

With that, ladies and gentlemen, the other members on the Commission and I wish to thank you for your testimony and

assistance in this hearing. These hearings are adjourned.

(Whereupon, at 3:54 p.m.. the public hearing was concluded.)