GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

Wednesday

February 23, 2000

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

| | |
|---|---|
| SHEILA CROSS REID | Chairperson |
| ROBERT N. SOCKWELL | Vice Chairperson |
| MS. ANNE RENSHAW | Board Member |

ZONING COMMISSION MEMBER PRESENT:

| | |
|---|---|
| MR. KWASI HOLMAN | Commissioner |

COMMISSION STAFF PRESENT:

| | |
|---|---|
| Sheri Pruitt, | Secretary, BZA |
| Beverly Bailey, | Office of Zoning |
| Paul Hart, | Office of Zoning |
| John Nyarku, | Office of Zoning |

OTHER AGENCY STAFF PRESENT:

Mr. Rodney Moulden, National Capital Planning Commission

D.C. OFFICE OF CORPORATION COUNSEL

Marie Sansone, Esq.

C-O-N-T-E-N-T-S


| AGENDA ITEM | PAGE |
|---|---|
| PRELIMINARY MATTERS | 6 |
| APPLICATION OF FATHER FLANAGAN'S BOY'S TOWN OF WASHINGTON | |
| 16531 ANC-5A | |
| PHILIP FEOLA, JR., Esq. | |
| MARTY SULLIVAN, Esq. | 7 |
| Wilkes, Artis, Hedrick & Lane, Chartered | |
| Suite 1100 | |
| 1666 K Street, N.W. | |
| Washington, D.C. 20006-2897 | |
| (202) 457-7814 | |
| WITNESS | |
| CONSTANCE WASHINGTON. | 10 |
| AMY WEINSTEIN | 42 |
| TIM RIORDAN | 54 |
| NORMA BROADNAX. | 112 |
| RAYMOND DICKEY. | 122 |
| EDWARD D. LEWIS | 159 |
| JAMES E. GLASGOW JR.. | 174 |
| CARMEN GILMORE SCOTT. | 177 |
| CYNTHIA REID. | 189 |
| ETHAN P. NORMAN | 207 |
| REVEREND DAVID TURNER | 210 |
| APPEAL OF GEORGE AND MARY CLARK, STUART SLOAME AND ELLEN SEEHERMAN AND JAMES AND EMILY BAKER | |
| 16533 ANC-3F | 247 |
| GEORGE CLARK | 250 |
| PATRICK BROWN, ESQ. | 268 |
| Greenstein DeLorme & Luchs | |
| 1620 L Street, N.W. | |
| Washington, D.C. | |
| (202) 452-1400 | |
| WITNESS | |
| NEIL DUNCAN | 272 |
| MURRAY COHEN | 312 |

C-O-N-T-E-N-T-S

AGENDA ITEM PAGE

REHEARING IN THE APPLICATION OF KASS MA, L.L.C.:
16457 ANC-6B and ANC-8B

WITNESS

WILLIAM LOCKRIDGE ..... 443
SHAWNTESK DEAN ..... 453
RODNEY KELLER ..... 456
HOWARD TERRY, SR. ..... 464
ORA GLOVER ..... 474
RICHARD KILGORE ..... 482
WENDELL WALLACE ..... 488
PATRICIA NEAL ..... 492
MARY WELLS ..... 496
JOHN PATTERSON ..... 497
VIVIAN FREEMAN ..... 498
HEDDY THOMAS ..... 499
THELMA JONES ..... 504

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

(9:40 a.m.)

CHAIRPERSON REID: This is the February 23rd meeting of the Board of Zoning Adjustment of the District of Columbia.

My name is Sheila Cross Reid, Chairperson. Joining me today is Robert M. Sockwell, and representing the National Capital Planning Commission is Rodney Moulden, and representing the Zoning Commission is Kwasi Holman. And also we have Ann Renshaw, who is the latest member of the BZA and Mr. Moulden is here representing Jerry Gilreid temporarily.

Copies of today's agenda are available to you. They're 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. Before coming forward to speak to the board, please give both cards to the reporter who is sitting to my right.

The procedure for special exception and variances is statement and witnesses of the applicant, government reports, including Office of Planning, Department of Public Works, etc., report of the Advisory Labor Commission. -- reports in support, --

in opposition, closing remarks by the applicant. In the cases of an appeal, normal procedure would be as follows: statement of witnesses of the appellant, -- administrator of the government official, the owner or lessee or operator of the property involved and not the appellant. The answer -- in which the property is located, interview his case -- taken by the appellant.

-- the witnesses submitted by the applicant or parties, the -- in which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except where specifically requested by the board and the staff who have specified in the hearing exactly what is expected.

-- and these contested cases must be based exclusively on the public record. To avoid any -- to the contrary, the board requests that persons not engage with the board in conversation. Please turn off all beepers and cell phones at this time so as not to disrupt these proceedings.

The Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today, such as requested postponement, continuance or withdrawal or whether proper or adequate notice of a hearing has been given. If you're not prepared to go forth with the

case today and believe that the board should not proceed, now is the time to lay such a matter. Are there any preliminary matters? The staff have any preliminary matters?

MS. PRUITT: No, Madam Chair.

CHAIRPERSON REID: All right, then we will proceed with the first case.

MS. PRUITT: Good morning. The first case of the morning is 16531, Application of Father Flanagan's Boys Town of Washington pursuant to 11 DCMR 3104.1 for special exception for the construction of four residential care buildings under Section 303, each housing no more than six persons and an addition to an administrative building, or in the alternative, the construction of four residential care building units, each housing no more than six persons and the conversion of the existing residential unit into administrative use in an R-2 district at premises 4801 Sargent Road N.E. (Square 3977, Lot 811).

All those planning to testify, would you please stand and raise your right hand?

(Witnesses sworn.)

MR. FEOLA: Thank you, Madam Chairperson and members of the Board.

For the record, my name is Phil Feola.

With me is Marty Sullivan of Wilkes, Artis, Hedrick and Lane on behalf Father Flanagan's Boys Town of Washington, which are the owner and applicant of the property, subject property, which is a 12 acre track of land on Sargent Road N.E.

I think it's instructive to note that this property has been utilized for almost 75 years to care for children that have been ignored or abused in the system so to speak. From 1927 to 1993 it had been the site of the St. Gertrude School and Development Center, which was a 24 hour residential care facility for mentally and emotionally disabled children. Boys Town purchased the property in 1993 and received a BZA approval to occupy the property with two community based residential facilities, one is a short term use residential shelter, 30 day stay plus or minus, for kids that are neglected or abused, and the second is a long term youth residential care facility, more commonly known as a foster home, for up to 15 kids.

We're here today to request a special exception to increase the number of kids in the foster care homes from 15 to 24, albeit it a new physical configuration that you'll see in a few minutes of essentially single family houses as opposed to the buildings that were there. The proposed use in this

application for special exception meets all the tests of Section 303. The site is on 12 acres as I said, and an R-2 zone can easily accommodate the additional construction. The project will have adequate off street parking as noted by the report from the Department of Public Works and the record, and it will not have an adverse impact on the neighborhood because of noise, traffic or its operation.

I don't want to oversimplify the application, but the applicant's really requesting the BZA to increase the number of kids it serves on this site from 15 in the foster care homes to 24, an addition of nine kids, with a comparable increase in staff to accommodate this increase. We ask the BZA to incorporate the record for historical reasons from 15805, which was a previous application, and as we go forward, keep in mind again the history of this site and how we got to where we are. So with that, I'd just like to introduce our, I think we have only three direct witnesses, and I think we can easily fit within the 60 minutes allotted to the applicant, hopefully closer to 30 minutes.

I'd like to introduce Miss Constance Washington, the site director for Boys Town. Ms. Washington, state your name and address for the record,

please.

MS. WASHINGTON: My name is Connie Washington and I work at 4801 Sargent Road, N.E., Washington, D.C.

MR. FEOLA: Kindly tell the Board a little it about the program and the application before it.

MS. WASHINGTON: Good morning Chairperson Reid and members of the Board. I am Connie Washington, site director of Boys Town of Washington. Currently, Boys Town of Washington operates four programs on site. Our two community based programs are therapeutic foster care and our common sense parenting program. We also operate two types of group residential services, a short term home with a capacity up to 20 youths, and a long term with permission for capacity up to 15 youths.

I'm appealing before you today to testify in support of Boy Town application for approval to construct four youth residential homes for up to 24 children and the conversion of the existing home into administrative use at 4801 Sargent Road, N.E. These homes will be for no more than six youths each, which will increase our authority from 15 to 24. The proposed addition to the residential facility will also be a part of Boys Town USA, a network of non-profit, non-denominational, non-sectarian residential programs

operating in nine states nationwide. Boys Town USA is the family and community based extension of Father Flanagan's Boys Home founded in 1917 in Omaha, Nebraska to help troubled boys. The program was expanded in 1979 to admit girls. The Nebraska campus is the home campus. Boys Town USA is the satellite program. The long terms residential component of Boys Town USA is designed to help abused and neglected children put their lives back together again through a program of responsibility, nurturing and love. Father Flanagan's philosophy that there are no bad boys, just bad environment, is the core of the Boys Town long term residential program. Father Flanagan's mission of changing the way America cares for her at-risk youth is still our mission today. Our task is to protect and provide hope and healing for children who are troubled, frightened and alone with no one to love them. Accordingly, Boys Town commits substantial financial and staff resources towards the creation of a structured, secure home life atmosphere to facilitate a change in thinking, life style and behavior view of both sexes. Almost all of the children in Boys Town programs are from dysfunctional families and have experienced significant emotional traumas. Individual treatment designed to change behaviors by teaching

appropriate skills is provided in a family style setting.

Boys Town seeks authorization to establish four long terms residential homes for up to 24 abused and neglected children on our Sargent Road site. The four homes would be an expansion of our existing residential program. All the Boys Town programs at Sargent Road serve the wards of the District of Columbia. Since the inception of our residential program in March of 1996, the one residential home has operated at full capacity. Although we were initially approved up to 15 youths, our program has remained at six youths because of the nature of our program structure and because of the physical space restrictions.

The primary criteria for admission will continue to be a sincere desire of a child to turn his or her life around. Youth between the ages of 10 and 17 who want help and who are functioning in a normal range of intelligence are eligible. Referrals will continue to be taken from government agencies, including the Department of Human Services, therapists, parents and concerned relatives and school personnel. Based on the current patterns, we expect that the average age of admission will be 14 years and expected

length of stay is at least 18 months. Upon admission into the long term program, Boys Town rules are explained and an individual treatment program is designed. Positive behaviors are emphasized, privileges are tied to performance. A child may continue to participate in the program as long as rules are observed and there is progress towards meeting goals. The ultimate goal is to develop skills that will allow the child to be reunited with his or her family, if possible, or to live independently or to pursue college education or a trade by the age of 18.

The physical environment of the long term residential facility or family home in the District of Columbia will continue to mirror a stable, middle class home in design, decor and atmosphere. Food, clothing and other essentials will be purchased in the community in the same manner that such goods and services are purchased by other families. Meals will be prepared and served family style. Housekeeping will be a family responsibility. The primary staff in the family home is a trained, married couple called family teachers who will reside in the home and function as parents. As such, the family teachers provide for the physical and emotional needs of children in their care. Boys Town conducts rigorous interviews of prospective family

teachers to insure that their marriage is solid and to insure that they have natural parenting skills, an abundance of patience and a willingness and ability to learn Boys Town child care treatment methods. With the additional homes, Boys Town will be looking to hire local couples as family teachers. Once selected, family teachers must successfully complete an intensive training program. The family teachers will be assisted by full time and part time assistant family teachers. A program coordinator and the site director will oversee the operations of the program. The staff to youth ratio for the long term residential facility will be one to two.

There continues to be a definite need for the Boys Town program in the District of Columbia. During 1990, 810 children were in homes where abuse was reported. In the same year, 8,414 children were in homes where neglect was reported. A large percentage of these kids end up in foster care. As of September 1998, there were over 3,000 children in foster care; 964 were children that were in a shelter status, which means the decision had not been made on their permanency plan. More than 65 percent of the children who entered foster care in 1990 did so for reasons

associated with abuse and neglect. Over the past year, the local media has reported on the realities of the District's foster care system. Clearly, this is a system where Boys Town can assist with its programs. Boys Town is committed to being a good neighbor.

Over the past year, Boys Town hosted and/or participated in approximately 14 meetings with the community to discuss our tentative expansion plans. On June 2nd, 1999, Boys Town held a meeting with the community and our civil engineers to actively solicit their concerns. This direct community input was used to develop plans to address their concerns. Some of the concerns, such as noise and tree overgrowth have been addressed. Other concerns, such as water run off and equipment noise require a more extensive assessing for resolution, and we are in the process of resolving them now.

Boys Town's commitment to working with the community has taken form and shape through the following activities. Again, the site operates two community based programs, therapeutic foster care and common sense parenting. The therapeutic foster care program utilizes homes in the community for placement of youth. Our common sense parenting program offers classes on site as well as

other locations throughout the city. Additionally, this program has provided parenting materials to the DC public schools through their parent resource centers. Our staff work cooperatively with the local schools, often having daily contact with them. Our family teachers have served on local school committees. Our Boys Town residents give back to the community through their volunteer efforts with local homeless shelters and kitchens. Our youth regularly worship at neighboring churches.

This site has offered the North Michigan Park Association the use of our conference room for meetings once their renovation begins. At the request of the Fifth District Police Precinct, when parking became an issue for a neighboring church, the site allowed the worshipers to park on-site. Some of the neighbors along the Delafield Street routinely use the site's abutting properties to supplement their street parking, to which we happily agree. Our clinical staff regular fields calls and walk-ins from the local community and provide appropriate resources to assist them in dealing with concerns regarding their youth. Our staff support local businesses and eateries.

Boys Town is a committee EEOC

employer and hires its staff locally. Our staff is currently comprised of 100 percent local residents. This staff is representative of the population served at Boys Town.

During its 83 year existence, Boys Town has developed a program that can be a small, yet vital link in the network of services that responds to the needs of abused and neglected children. We sincerely hope that the Board approves this application to allow Boys Town to provide this critical service to the District. Thank you for your consideration, and I would be pleased to answer any questions that you might have.

MEMBER RENSHAW: Yes. Good morning. Just a few questions about your operation. You have or will have 24 in long term care, and is long term 18 months?

MS. WASHINGTON: It's up to 18 months, yes.

MEMBER RENSHAW: Up to. And the number in short term care and how long is short term?

MS. WASHINGTON: The number -- our short term facility is a 30 day emergency shelter, and we have capacity at this point for up to 20, but we currently serve 16.

MEMBER RENSHAW: All right, so currently at 16. So that would be 24 and 20 that we're looking at as far as young people on the campus?

MS. WASHINGTON: It would actually be 24 and 16.

MEMBER RENSHAW: Twenty four and 16, but you can accommodate up to 20?

MS. WASHINGTON: Yes.

MEMBER RENSHAW: All right. And that's 30 day emergency. Would you say how your noise and the tree problem was addressed?

MS. WASHINGTON: The noise problem that has been addressed was a issue of our basketball court and it being too close to the neighbors. We actually physically took the basketball court down. The tree overgrowth, we actually hired an arborist to come in and do a tree study. They looked at which trees could be maintained and were healthy and actually, a lot of the trees were healthy so it was just a matter of hiring a tree company to trim the trees back. And we also will be maintaining the tree growth from this point on.

MEMBER RENSHAW: All right. In the January 17th, 2000 Boys Town letter to the Advisory Neighborhood Commission 5A, on page 3, it said "Boys Town will erect sound baffling walls, also as soon as possible, around the existing emergency generator, an HVAC mechanical unit on north side of the property in

order to reduce noise disturbance." Why not eliminate noise disturbance and what's that all about and have you corrected it?

MS. WASHINGTON: That is the noise problem that I alluded to that requires a little further assessment. That will actually be addressed by our architect, Amy Weinstein, when she comes up. However, that is a problem that we're currently working on and as I said, required a little bit more extensive assessment to actually resolve.

MEMBER RENSHAW: All right. How long has that been going on?

MS. WASHINGTON: I can only tell you when I first became aware of it. I've been the site director since March of '98, and shortly thereafter, I believe I was approached by one of the neighbors, actually Mr. Glasgow, concerning the noise coming off the generator.

MEMBER RENSHAW: All right. So since '98, that problem is still with us, with you?

MS. WASHINGTON: Yes.

MEMBER RENSHAW: All right. By what date are you going to eliminate the noise disturbance?

MS. WASHINGTON: We are in the process of it, and I'm not sure I'm the proper person that should be answering that. The design for the baffling is in

process, and as soon as the design is finished, I believe that they will be applying for the permit. We actually provided the neighborhood a schedule, a tentative schedule of how this would be addressed.

MEMBER RENSHAW: All right, and has the neighborhood written back to you or gotten back to you in some way to say that your schedule is acceptable?

MS. WASHINGTON: No, we met last on the 17th, I believe, 16th, thank you for the correction.

MEMBER RENSHAW: Sixteenth of February?

MS. WASHINGTON: Yes.

MEMBER RENSHAW: All right. So you do not have a date certain when you're going to have this done, but it's in process?

MS. WASHINGTON: Actually, what we submitted in writing to the neighborhood was that in terms of the acoustic mitigation is that the completion of the engineer and design would be completed by February 28th, anticipated building permit date would be March 15th, completion of the bid process would be April 21st, and anticipated construction time would be six to eight weeks, and anticipated project completion would be June 30th.

MR. FEOLA: Madam Chair, if it pleases, we can turn in the letter and the schedule that was

provided.

MEMBER RENSHAW: And a copy of your testimony, did we get that?

MS. WASHINGTON: I have copies for you.

CHAIRPERSON REID: Mr. Moulden.

MR. MOULDEN: The question is to the applicant. The water, the erosion problem, has that been totally addressed, is there a water management plan been developed?

MS. WASHINGTON: There has been a management plan developed and it is currently in one of the offices in the District. Again, we have been trying to seek a permit for that process, and we have not been able to successfully been able to do that to this date.

MR. FEOLA: Mr. Moulden, the civil engineer that developed the plan is there and he may be able to speak more directly.

CHAIRPERSON REID: Is he going to testify?

MR. FEOLA: Yes.

CHAIRPERSON REID: I have one question in regard to -- the previous BZA decision ordered that there be a neighborhood advisory committee established, and has that been done?

MS. WASHINGTON: Actually, it has been. We

held our -- actually we had a meeting on the 17th. I sent letters out to all the significant community groups, I want to say near the first part of February, with a date of February the 11th for them to send back responses for their participation. The meeting was called and held on the 17th. Unfortunately, only one participant showed up.

CHAIRPERSON REID: What I'm not understanding -- you're saying that, within the order you were directed to establish this committee and the first meeting that you called was just last week?

MS. WASHINGTON: Yes.

CHAIRPERSON REID: Can you explain the rationale -- help me understand.

MS. WASHINGTON: I basically think that we dropped the ball in terms of really addressing that particular issue. I'm actually --

CHAIRPERSON REID: How long did you have?

MALE VOICE: Seven years.

CHAIRPERSON REID: Seven years. And were you --

MS. WASHINGTON: I was not the site director at that time.

CHAIRPERSON REID: All right. When did you take over?

MS. WASHINGTON: I became the site director in '98, in February of '98 and --

CHAIRPERSON REID: This is what I have a difficult time understanding. This is not directed to you, but in instances where we have board orders and there are new directors taking over, invariably they come here and say well, that was not under my watch. But the fact of the matter is the board ordered the board order and no matter who take over the realm, it has to be complied with. So I don't understand -- so then it goes not to you, it goes to the organization itself. What about the board of directors? Don't they have some knowledge of board orders?

MS. WASHINGTON: We currently don't have a local board of directors.

CHAIRPERSON REID: You have a national board of directors, right?

MS. WASHINGTON: Yes, we do.

CHAIRPERSON REID: That board of directors would be aware of, they have jurisdiction over your particular facility, and they would then be aware of any board orders that have been proleated by the BZA under which your particular facility has to operate, correct?

MS. WASHINGTON: That's correct.

CHAIRPERSON REID: It would seem to me it would be important to them to make sure that any subsequent director be made aware of what the responsibility is to the city and the operation of that facility. And then, excuse me, Mr. Feola, you come to us seven years later to ask, you know, for more leave, and you know, with the stigma of not having complied with the previous order, that's a problem, that's a big problem.

MR. FEOLA: It's a problem, Madam Chair, and we see this regularly with entities that are not developers or builders. In this case, they treat kids and sometimes they're private schools that educate, and the last thing they think about is zoning or zoning conditions when they move into a position to run these facilities. It is a problem. Our office has actually started instituting for our clients a yearly reminder to these non-profit entities --

CHAIRPERSON REID: Did you represent them the first time?

MR. FEOLA: I did. I did.

CHAIRPERSON REID: So that was not something that would be part of your responsibility as the attorney, you don't usually follow up in other words.

MR. FEOLA: Once a certificate of occupancy is issued, we just do their land use approval process and then they go about their business. They have attorneys that do their 501(c)(3) work and the other things that happened.

CHAIRPERSON REID: But the zoning part, Mr. Feola, that would be what you're hired to take care of.

MR. FEOLA: Yes, ma'am.

CHAIRPERSON REID: And in instances where there is a term involved, then it occurs to me that you would have as a matter of record in your computers that you have a ticker or something to remind them and then of course, that's just business. Because that's another opportunity for you to able to represent them again. So I can't, you know, just let that fall.

MR. FEOLA: There's no excuse. It just happened. I don't know if Ms. Washington would care to comment on when she first became aware of this after taking over the site.

CHAIRPERSON REID: Because what happens, Ms. Washington, is that the community becomes upset and then they feel as if they're not being respected. And you know, it's just a simple matter, and there's no reason why you would not have had this established so that you could have a good rapport and to come here

with the support of the community. But typically what happens is that they feel as though you're not complying, you're not respecting them, then you have opposition, you have to come in here and you have to try to overcome the opposition, and that's, it doesn't make a lot of sense to me.

MS. WASHINGTON: And again, Chairperson Reid, I agree with you. Once I made myself aware and was able to pull the order, one of the things that I did try to do was to see how I could then go about establishing this.

CHAIRPERSON REID: And one person showed up. What does that tell you?

MS. WASHINGTON: It told me -- I did have persons to call to do a reminder. I did get a person to call and say that they couldn't' come because of personal reasons, but I did get responses for people's participation on the committee. I did get response letters back indicating that they were willing to participate.

CHAIRPERSON REID: How many?

MS. WASHINGTON: Four.

CHAIRPERSON REID: And how many did you send out?

MS. WASHINGTON: I sent out, I believe I

sent out five.

CHAIRPERSON REID: Seems like you would send out more than five.

MS. WASHINGTON: I sent them to --

CHAIRPERSON REID: We'll get to that. Basically A & C is the one who primarily is alerting you to the fact that this hasn't been complied with. Thank you.

Mr. Sockwell.

VICE CHAIR SOCKWELL: Ms. Washington, while we understand that a national organization may have some disconnection between local or regional groups, what does happen when people walk out of the Board of Zoning Adjustment with an approval in hand is that they are expected to think about that as being the marching orders. Just as the children are supposed to be supervised effectively to do the right thing, we feel that as the Board, we supervise you to the extent that we tell you what needs to be done with the community's assistance and then a decision is made and you're expected to do the right thing.

When were the -- when was the basketball court taken down?

MS. WASHINGTON: Um --

VICE CHAIR SOCKWELL: Was it while you --

MS. WASHINGTON: Yes, it was while I was director. I want to say it was, it may have been the fall.

VICE CHAIR SOCKWELL: This past fall?

MS. WASHINGTON: It may have been the summer or the fall period.

VICE CHAIR SOCKWELL: And the complaints have been registered for how long?

MS. WASHINGTON: Well, actually as soon as that complaint was registered to me, the next day it went down.

VICE CHAIR SOCKWELL: And you stated that you have an approved capacity of 20 children as opposed to the 15 that's in the brief?

MR. FEOLA: Maybe I can correct that. There are two community based residential facilities that the board approved in '93. One is the short term facility which has the authority to go up to 20 kids, and that's in place. The second is a short term facility -- I'm sorry, I've got it backwards. The short term facility is 20 kids, the shelter 20 kids, the foster care is for 15. And the short term is the one we're requesting additional capacity to 24. So right now there's 35 permitted on the site, following Ms. Renshaw's thinking, and we're asking to go to 44.

VICE CHAIR SOCKWELL: Okay, so the short term is 20, the foster care is 15, and the short term is being raised to 24?

MR. FEOLA: No, the short term is staying the same, the foster care is being raised.

VICE CHAIR SOCKWELL: Not wanting to harp on this issue of timeliness of response to BZA orders, but to say that the community has very little faith in Boys Town at this point. I mean, it was a great movie back whenever, but if the organization doesn't live up to its expected standards with regard to the community, the community, which would normally embrace the kind of program that you have, would rather have your program some place else, because there's been no attempt to meld with the community and Boy's Town isn't even designed to be a walled prison. But the community gets held hostage over issues that they can get no response from their efforts to resolve.

MS. WASHINGTON: Well, actually, Mr. Sockwell, although we, and I agree that we should have been more timely in establishing the community liaison committee, we actually had numerous meetings with the community, and when I say numerous, I can probably count 13 or 14 meetings that we've had with --

VICE CHAIR SOCKWELL: Since you've been on

board?

MS. WASHINGTON: Yes, since I've been on board. Again, once I learned of the fact that this was a requirement, I did begin efforts to try to begin communicating with the community and listening to their concerns, as much as actually going to people's houses and actually discussing their individual concerns with them.

VICE CHAIR SOCKWELL: Let me just ask you -- I don't mean to interrupt, but I would like to know, when do you believe you held your first community meeting?

MS. WASHINGTON: I can actually tell you. Actually on September the 9th in 1998 a delegation of the neighborhood, along with Grace Lewis who is actually the president of the North Michigan Park Civic Association, actually came to the agency and we at that point told them about our programming and gave them a site tour. So that was actually the very first group meeting. I actually had a meeting earlier with the ANC, with Mrs. Grace Lewis, to actually introduce myself, because again I was a new site director coming to the position and I did not know who the community players were. So my first effort was actually made in late August, early fall, to actually introduce myself

to Grace Lewis and then after had several conversations, we talked about her coming to the site to see the facility, although she had been there previously I think when they initially opened the facility. And at that time she actually invited some other community participants to come along with her. And that was on September the 9th, 1998.

VICE CHAIR SOCKWELL: Okay. And approximately when did Boys Town begin the planning of the new facility?

MS. WASHINGTON: We actually received the appropriation in October of 1998, and I believe the literal plan did not actually start until I believe the beginning of that year -- the beginning of the following year.

MEMBER RENSHAW: The beginning of '99?

MS. WASHINGTON: Yes.

VICE CHAIR SOCKWELL: Okay, so it could be surmised that the idea was presented to the national board for appropriation approval some time prior to September of '98 and the appropriation came through as a result of a process that takes place at the national level.

MS. WASHINGTON: Actually that was a total national effort.

VICE CHAIR SOCKWELL: Okay. So Boys Town was aware of the fact that there would be a new facility designed -- it just seems that the timing of the initiation of community relations came very close to the time of an appropriation for a new facility. So that while it does answer one of my questions, which would have been you came on board in February, you waited until September to talk to the community, you weren't new in September, and the relationship that could have bene built could have been started before the appropriation was eminent.

MS. WASHINGTON: I agree with you, Mr. Sockwell. I guess the other things that I was also trying to get in place were just programmatic kinds of things that I needed to become familiar with as a new site director as well.

VICE CHAIR SOCKWELL: Well sometimes, and I'm not saying that this has to happen, but sometimes as soon as a person comes on board, the first thing that that person does is have an administrative assistant indicate to that person who the appropriate community organizations are that would be dealt with on a regular basis and a hello letter sent out, my door is open if you have any questions, I'm the new person that you would be dealing with, etc. Anyway, that's just --

MEMBER RENSHAW: Madam Chair, the applicant, Ms. Washington, has cited 13 to 14 meetings with the community. Perhaps she would give the board a list of when those community meetings were held and how many persons attended and in what capacity.

MS. WASHINGTON: I certainly have a list of the meetings. I would have to add the information regarding how many people attended.

CHAIRPERSON REID: Ms. Washington, when you had these meetings, the purpose of the meetings were to discuss what? What was the purpose of the meetings?

MS. WASHINGTON: I think early on it was just to discuss the fact that we were tentatively planning to expand.

CHAIRPERSON REID: And did you make -- did you receive comments -- did the community assess you as to what in fact their problems they may have had with the facility there?

MS. WASHINGTON: On June 2nd, we literally had a meeting with our civil engineer for the sole purpose of listening to what concerns the community had.

CHAIRPERSON REID: So you gave them an opportunity to air their concerns, whatever grievances, and then what? Did you address those?

MS. WASHINGTON: Then what the civil engineer actually did was to take that information and develop the plans that he currently has now in terms of the water mitigation, the noise problems. The tree problem actually came up significantly later, but we certainly took that initial information that we got from the neighborhood to try to develop a plan.

CHAIRPERSON REID: So the hiring of the civil engineer was in response to what you regarded as being the community's concerns and so that could be addressed properly and the report made here today, is that what you're saying?

MS. WASHINGTON: The civil engineer was a part of the process of I guess the overall project.

CHAIRPERSON REID: So are you saying that you did not hire him specifically to address the concerns or --

MS. WASHINGTON: Yes we did.

CHAIRPERSON REID: That's what I was asking you. Because if in fact you had those meetings has had been so ordered by Board Order 15805, then the quarterly meetings would have enabled you to be able to address on an ongoing basis whatever concerns or problems that may have come up, and you could have addressed them in a more timely manner. The whole idea

of the community liaison or committees are to allow the applicant and the community to be able, or the applicant particularly, to be more proactive rather than reactive. And so therefore the adverse impact would be diffused properly or mitigated to the point that you don't have that problem.

MS. WASHINGTON: I understand.

CHAIRPERSON REID: All right. Thank you.

MEMBER RENSHAW: Madam Chair, I would like to know from Ms. Washington what plans are in place and shared with the community that's going to address from now on a very proactive stance. In other words, your original order called for community relations and a committee to be an ongoing effort with the community. So I'd like to know what plans you have right now for making sure that this does not fall between the cracks, what kind of a regular schedule are you going to advertise with the community, how you are going to reach out to them?

MS. WASHINGTON: Again, we did have the one meeting with the community liaison community and that committee will function quarterly minimally, more often if it necessitates itself to do so, and because there was so little turnout -- actually, Mrs. Lewis who was the one person who showed up, who is the president of

North Michigan Park Association, I selected an alternative date for next month. So we will have another meeting scheduled in March. It's tentatively scheduled for March 15th, but she needed to check the calendar to see what kinds of other events are occurring for the month so that we can pick an appropriate date that everybody could potentially come to. And again, this committee will be making both reports to all the various organizations that are a part of that committee.

CHAIRPERSON REID: Okay, and this is one last question that came up as a result of the seguay from Ms. Renshaw, what happens if you leave?

MS. WASHINGTON: If I leave I will make sure that I properly transition the next person coming in.

CHAIRPERSON REID: Are you going to engage Mr. Feola, I think that Mr. Feola had mentioned that while they don't usually keep track of the orders and their terms with their clients, would you reiterate for us what assistance you could possibly give or support you could give to this effort? Because if in fact -- my concern, sir, is if in fact they don't even have a local board of directors, that means that if two or three years down the line Ms. Washington for whatever

reason is no longer there, then the same problem can re-emerge.

MR. FEOLA: Yeah, Chairperson Reid, you're exactly right. And as I said, our law firm has internally developed a policy, it's not an obligation because our client relationship ends after the zoning is complete, to remind our, especially our non-profit clients who don't do zoning for a living, of the obligations they have, whether it's a capacity of a school. Because we've seen almost every one of our school clients slowly creep above their cap limit, and it's not intentional, it just happens, and all of a sudden they have 50 more kids. So we have just decided that it is prudent to keep people informed. Every year we send them a little note saying -- on the conditions that are ongoing. Some of them, you build the thing in accordance with the plans and then it's over. But if there are things like the community liaison or a population density cap and things like that, we write them a little note and say, this is a reminder that the BZA approval or the zoning commission approval has these conditions. So we've started that internally. I won't suggest that we're going to catch up to the 30 years of orders that are out there.

CHAIRPERSON REID: Trying to improve --

MR. FEOLA: Because it reflects on us when we come back before this board as to why there wasn't a continuation of the obligation.

CHAIRPERSON REID: And what happens if you are no longer with that law firm?

MR. FEOLA: Well, I think it's the firm that has decided --

CHAIRPERSON REID: As a matter of policy of the law firm, whether you're there or not, this would be followed up on to ensure that or to remind the applicant they have certain obligations and see that they're carried out. Is that what I'm hearing you saying?

MR. FEOLA: Yes ma'am. That's what we're trying to do.

CHAIRPERSON REID: That's great. I think that would be wonderful. It's a great service. But like you said, non-profits, unlike the big developers that come down here, don't have the wherewithal usually to stay in contact, they don't' think about that, and they need additional coddling I guess is the best word, and to provide that to them would be great because it would make everyone -- you would provide a great service, not just to the applicant, but also to the community and to the BZA as well.

MEMBER RENSHAW: Just to point out, Madam Chair, that non-profits are a business and they certainly know what they have to do at any particular time. So I think we have to realize the sophistication of non-profits and the relationship that non-profits keep with attorneys. And often attorneys are kept on in an advisory capacity. And in your firm, Mr. Feola, I know of one attorney who does keep track over a particular non-profit and there are community meetings ongoing. So it does work and you can't just step away from this.

MR. FEOLA: I agree.

MS. WASHINGTON: Madam Chairman, I also think that we can do something internally to make sure that we have a reminder as well so that should I vacate the position that there can be a reminder for that as well.

CHAIRPERSON REID: That was a given. I think that in my earlier discussion, let me reiterate if I didn't make it clear, not just relying on the law firm because that's not their responsibility, that is just basically an accommodation. When I asked what happens when you leave, it was a rhetorical question so that you could then establish within your facility a mechanism by which this would never, ever happen again.

So I thought you were saying to me, and if not done locally, to make sure that national is aware of this legally binding order so that you will not fall into the same problem that you are in now. Thank you.

MR. FEOLA: Madam Chair, I'd like to turn in the list of meetings that Ms. Washington addressed. It doesn't have the number of persons, but we can supply that later.

Our next witness is the architect, Amy Weinstein of Weinstein and Associates. I'd like the board to consider recognizing Ms. Weinstein as an expert in architecture and site planning. She's testified before you as an expert before. We are turning in her resume as we speak, and I am aware of the change in policy that the board is undergoing about getting these things two weeks in advance.

Ms. Weinstein has testified before this board and other bodies as an expert.

CHAIRPERSON REID: The ANC is here? Is there any opposition or any -- does the ANC have any problem with this particular witness being accepted? And is there an attorney for the opposition?

MS. PRUITT: Excuse me, you have to speak from the mike because we won't get you on -- you can

come up, we just need to get you on the record. Thank you.

MS. BROADNAX: Good morning. I'm Norma Broadnax, Chairperson of the ANC 5A. And I only wanted to comment that no, we don't have attorneys and this is an ongoing problem with ANC 5A is we can't afford high powered attorneys but the opposition can afford high powered attorneys, even if they're non-profit.

CHAIRPERSON REID: Wait a minute. Do you have a resume for Ms. Amy Weinstein?

MS. BROADNAX: No, I do not.

CHAIRPERSON REID: You should be given a copy so that you can look at it and to also determine whether or not you feel that she's acceptable as a witness.

MS. BROADNAX: Well, we've heard her before and we didn't, we had no opposition at that time.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Madam Chair, as a member of the board of directors of the Washington Chapter of the American Institute of Architects and a registered architect in the District since 1976, I would like to vouch for Ms. Weinstein's professionalism and expertise.

CHAIRPERSON REID: Okay. Having looked

over her resume, I have no problem with her as an expert witness. Any other board members have any objection? If not, do we accept her as such? Okay.

MEMBER RENSHAW: Madam Chair, I would just like to ask if these visuals could be slanted so that the members of the audience could also see them, please.

CHAIRPERSON REID: If in fact you have a problem seeing, then we have no problem with you just stepping up so that you can see the displays if you need to.

MR. FEOLA: Ms. Weinstein, state your name and address for the record please?

MS. WEINSTEIN: Amy Weinstein, and my address is 2311 Connecticut Avenue, N.W.

MR. FEOLA: Would you kindly describe the plans before the board today?

MS. WEINSTEIN: Yes, and I would like to stand at the board.

CHAIRPERSON REID: Just one second, Ms. Weinstein. I think if you used the light, then you won't in any way block anyone.

MS. WEINSTEIN: Thank you very much.

I'd like to quickly just do an overview of the site. The aerial photograph that you

see on your right was taken during the last year. The site itself is a little more than 12 acres, it's a large site. It is located in the North Michigan Park community. This is the intersection of South Dakota and Sargent Road right here. This is South Dakota. Sargent Road is the western boundary. On the northern boundary is a church property, a public alley and north of that are the Delafield Street residences. And then there is North Michigan Park and Recreation Center, which is a DC facility, and to the east the south is St. Anselm's School and Abbey. These are the playing fields to the south for the school. Also on the south, to complete the circuit, is a group of houses that we've been calling the 13th Place houses, because 13th Place is this little cul de sac street coming off of South Dakota. A brief review of the site history -- in the 1920's St. Gertrude built the first structure on the property, which at the time was at the high point of the property. And it was built as a convent to house nuns and the girls with disabilities that they cared for. About 40 years later they built a one story building right over here just to the east of the convent that housed administration, there was a chapel in it, and there was a little second story piece right at this end that had additional dorm rooms for the

nuns.

Then about 15 years after that, in the 1980's, the nuns permitted a construction contractor, who was under contract with Metro to build the tunnels and stations, the basic construction work for that, for the Metro system green line, they permitted this contractor to place a lot of earth that had been dug out in order to make the tunnels and the stations, and it is placed in a large berm here and a large berm here that actually slides a little bit off the property. St. Anselm's was also involved in that. And those berms are -- the top of the berms here and here are actually a few feet higher than the original grade of the site where the convent was built. At that time, the storm water that was in this area flowing, it flowed to a creek right about here, that was replaced with an underground pipe before they put the berms up, to take that water from this point out to where it was previously leaving the site.

In 1993, Boys Town purchased the property, they renovated the original convent building, which you can see on the left, right there, it's a half timber building with a stone base. They renovated that to be their short term facility. They also renovated the one story building to convert, to make a training room for

their coaching of how to be a parent type programs, and they created the one group home that currently exists in the southern end and they utilized the second floor where the nuns had dormitory rooms as part of the living quarters.

The proposed project today, as has been mentioned, makes no change to the existing short term facility in the old convent building. There are five components, though, of the project that we are proposing. The first is to convert the existing group home to administrative use, office use, which will make that structure entirely administrative and support services. Build four new group homes -- the group homes will be built here and in this are of the site on the photographs.

MEMBER RENSHAW: Would you mark that with your light on the aerial photograph?

MS. WEINSTEIN: See this lawn here, this little cul de sac circle is located in that lawn.

CHAIRPERSON REID: And what is the square footage of the area that would encompass those four group houses?

MS. WEINSTEIN: You mean that site area?

CHAIRPERSON REID: Uh-huh.

MS. WEINSTEIN: It's about 190 by 190, if

you fit that circle of houses into a square, 200 by 200.

CHAIRPERSON REID: One acre of the 12 acre? It looks like more than an acre. It looks like it's at least about a little less than a quarter of that site.

MS. WEINSTEIN: Right. And actually when we consider what would be rear yards in a more standard development, you are, I think, looking at it.

MEMBER RENSHAW: How many trees are you taking down?

MS. WEINSTEIN: We are taking down approximately 10 trees that are right here. We are going 30 feet into the woods here with this last house. Our landscape plan also show for planting new trees both behind the houses here, around the parking lot extension, and of course within the community so that it feels like a residential community.

That was component number two was to build four new group homes. We propose to increase the parking from currently there are 23 spaces on site. I think there are 18 required by the special exception. We will be increasing the total on site parking to 45. Now each home has two parking spaces right adjacent to it for the parent teacher and for the van that they use

to drive the kids to their schools and that type of thing. So eight of the new ones are at the group homes. We are also proposing to extend the existing parking lot, which you can see right here, a little further --

CHAIRPERSON REID: Where's the parking lot?

MS. WEINSTEIN: The parking lot on the photo is right here and there, and we propose to extend it a little bit to pick up additional spaces for the additional administration.

CHAIRPERSON REID: And it would be, you said 45?

MS. WEINSTEIN: There'll be a total of 45 on the site.

CHAIRPERSON REID: That area right behind the parking lot, what is that? Is that a field?

MS. WEINSTEIN: Oh that's one of those big berms.

VICE CHAIR SOCKWELL: Ms. Weinstein, one of the things that you didn't discuss was the facilities that are being taken down to accommodate the new facilities, which would be your demolition plan, and you probably should have started with that.

MS. WEINSTEIN: Okay.

CHAIRPERSON REID: Okay, let's deal with

this question about this berm.

MS. WEINSTEIN: This is the demolition plan. This is the short term facility. This is the existing administration, the existing group home is right here. The structures and elements colored in green will be demolished. They are a group of sheds, a carport and this was the basketball court. We're going to take out the asphalt actually, take out this basketball court, because these facilities either are not used currently, including an enclosed swimming pool that hasn't been used in years, or that need to come out due to construction of the new group homes.

CHAIRPERSON REID: So you're not going to provide those on the site anymore?

MS. WEINSTEIN: Yes we will, but in different locations in different ways. There won't be a swimming pool on the site. Boy's Town has never operated the swimming pool. It just came with the property.

CHAIRPERSON REID: The basketball courts?

MS. WEINSTEIN: Yes, there will be opportunities for basketball, but they will be over in amongst the group homes over here.

CHAIRPERSON REID: Do you have any other playing fields, baseball or football or soccer?

MS. WEINSTEIN: No, we don't. The North Michigan Park to the north has a softball field, it has basketball courts, it has --

CHAIRPERSON REID: They use those facilities?

MS. WEINSTEIN: Actually I can't speak for the program, whether the kids would be allowed to, under supervision, use those.

MS. WASHINGTON: Normally what we do is we take the kids off site for large periods of recreation.

VICE CHAIR SOCKWELL: What size is that existing swimming pool?

MS. WEINSTEIN: It's in a fiberglass shed that's locked. It's about 20 by 40. It's inside a fiberglass shed that is kept locked and barricaded so that no one gets into it. We understand that it's cracked and totally unusable.

Okay, with regard to the expansion of the existing parking lot, I did mention that we will be landscaping behind the area where we are expanding. We will also have site lighting, parking lot lighting, designed with cut off, proper cut off angles so that no light gets to neighbors and only gets down onto the pavement in this area. We will also be adding site lighting in the way of standard street type,

residential street type lighting here and we'd like to add a little, currently there's no lighting on the existing driveway, we'd like to add a little bit of kind of driveway lighting along that for security.

The fourth component of the project is a future component, and it's located just north of the existing administration building, and it would be a one story training room for the program that trains people to be better parents. I think Boys Town sees that as a possible expansion area where they would really serve the community. The current room they have is too small they feel, but they at the moment are not planning on constructing it in the next two years. They're asking for the permission, though, should it come to pass, to be able to build that.

And then the fifth component, or the mitigation projects, dealing with community concerns, which we will address in great specificity very soon.

VICE CHAIR SOCKWELL: Ms. Weinstein, what was it that you said would be built in two years?

MS. WEINSTEIN: The training room. My understanding of Boys Town's plans is that they do not intend to actually build that within the next two years, but they are asking for permission to pursue

that development, have the right to, in the future, as their programs develop.

The physical design of the project complies with all the physical development regulations of the zoning laws. As I mentioned the acres, 12 plus acres. The allowable lot occupancy in an R2 zone is 40 percent. With the new project in place, the total lot occupancy would be five percent, so it's much less than what's allowed. The minimum rear yard requirement is 20 feet. Once the site plan is built, the minimum rear yard will be 190 feet. The minimum side yard for the zone is eight feet. When this plan as you see it drawn here is built, the minimum side yard dimension will be 40 feet. With regard to parking, 18 are required by the special exception and 23 are currently provided, and we will increase that to 45, based on practicality and everyday experience.

There were five major issues, if I could umbrella them, that we heard from the community back in late spring when myself and Tim Riordan, who is our site civil engineer, and Connie met with the community. They were invited in. We had already had some sense of problems, water, sound, but we couldn't get a sense of it to understand it first, and so Boys Town held this meeting so that the professionals would have an

opportunity to hear first hand what are the problems and where are they so that we could then address it. And so all we did is listen at that first meeting.

MEMBER RENSHAW: And that date again, please?

MS. WEINSTEIN: That was June 2nd.

We then -- once we had a much better understanding of where the complaints were, we hired an acoustical engineer who came out and did a study of the two piece of equipment which are causing noise disturbance to the neighbors. There's an emergency generator right there, and right here, on this drawing it's obliterated by the future addition, but there is an existing cooling tower that serves the administration building which is not acoustically baffled in any way at this time. The emergency generator was put in place when Boys Town renovated the old convent building to become the short term facility. It was required by the DC permit office. Our acoustical engineer took sound measurements at the property line, did the calculations, looked at the two pieces of equipment, and came up with a series of recommendations. For the emergency generator, he suggested two parallel walls that extended 10 feet beyond the piece of equipment on either side. He

mentioned the possibility of putting actually a shed roof on that, but felt that it was unlikely to work engineering wise with the piece of equipment. For the cooling tower, he recommended basically building walls all around it six feet above the top of the cooling tower itself, which puts them up at about 18 feet, because the cooling tower is already raised off the ground.

After that was in place, we met with Boys Town and decided which options seemed feasible. He also did studies to see well, could we move the emergency generator someplace else on the site, and the conclusion was that it would only move the problem to the 13th Place neighbors because of the way the berms are formed and how they affect the sound. We then met with the community and explained what our, in general, the mitigation was that we were going to proceed with, which were two walls at the emergency generator and wrapping the cooling tower with walls. We have been working with our acoustical engineer as well as a mechanical engineer now and it's been interesting and more complex than I thought because it looks like we might be able to do the shed roof and still get the air flow around if we add certain critical baffles, I mean mufflers, critical mufflers and other pieces to these

existing equipment. We're trying to play the manufacturers of the equipment, make sure they'll stand by it against all of this. And we're at the point now where we are looking at putting the roofs on which will further help the acoustic, the mitigation, and we will be filing for a building permit next Monday with the drawings to build those. And on the schedule submitted, we assumed a certain day for receiving the permit and scheduled out the entire construction. I think it shows the June 30 completion.

As Connie mentioned, the basketball hoop was taken down and that noise problem has been dealt with.

Now storm water runoff, which, and I would like to invite Tim Riordan from A. Morton Thomas, our civil engineer if I could, Phil, to speak about what he gleaned from listening to the community's storm water concerns and the study that he did following that and the mitigation that he has come up with. He filed on December 12th with the DC permit office with storm water management drawings that would take care of runoff from Boys Town property that is contributing to the community's problems. That was December 12th. We have not yet received the feedback that we need to proceed from the permit office, though.

CHAIRPERSON REID: Thank you. Mr. Feola, is he also going to be proffered as an expert witness?

MR. FEOLA: Yes.

CHAIRPERSON REID: You can't find his resume? Basically, Ms. Beal is having difficulty finding your resume. Just give us, you know, just some information concerning your background and your qualifications to act in the capacity of expert witness in this regard.

MR. RIORDAN: My name is Tim Riordan. My address is 12750 Twinbrook Parkway, Rockville, Maryland.

I have been a civil engineer for 13 years, registered in the District since 1998, and have participated in project manager or site feasibility or infrastructure on 50 projects in the District in the past 13 years. I've done everything from very small jobs to very large jobs in the District. I have a very good understanding of all the regulations and everything that has to be done in the District, dealt with all the storm water management and the sediment control people, and have a general site hands on approach instead of an office approach to doing things myself and a couple of my engineers have actually been on the site at least eight to nine times doing flow

tests and dye tests, and we actually came out during Hurricane Floyd to see the way the water was running to make sure that our calculations were matching what we thought was happening.

CHAIRPERSON REID: And give us a couple of projects that you've worked on.

MR. RIORDAN: I've worked on Ellen Wilson project. That was an entire block in southeast DC. I just finished up 901 F Street in northwest. I'm dealing with now with Navy Metro Yard project. I've done projects that dealt with the Federal triangle with drigs, worked as a sub-consultant with them. I've done stuff for the Barney Circle project. So I've done --

CHAIRPERSON REID: Okay. Impressive enough. And what about your educational background?

MR. RIORDAN: I'm a degreed Civil and Environmental Engineer from BS in Civil and Environmental Engineering from Clarks University in 1987.

CHAIRPERSON REID: Any questions board members?

VICE CHAIR SOCKWELL: Just one. Mr. Riordan, you submitted to the District for storm water management review in December?

MR. RIORDAN: Right.

VICE CHAIR SOCKWELL: And you have had no conversations with them since?

MR. RIORDAN: What happened was Tim Karikari, the director, there was a meeting, I believe it was January 7th, with DPW, and Tim Karikari held back the plans to make sure that there would be a coordination between our work and DPW's work that's going to be going on in the near future to make sure we could coordinate everything. He didn't want us to go out and either contradict or do something that DPW's going to do themselves. So he, in a common sense manner, he held back the plans, and he's told me that, and we actually have a scheduled site meeting for the consumer regulatory commission to come out with us and walk the site and look at the concerns that the citizens have also.

VICE CHAIR SOCKWELL: And realistically that's a department of health function rather than DCRA function?

MR. RIORDAN: Yes.

MEMBER RENSHAW: And when are you meeting with DCRA?

MR. RIORDAN: It's not --

CHAIRPERSON REID: One second. Right now, Board members, we're trying to assess his expert

witness, whether nor not he can be accepted as an expert witness. Then he can be questioned. So let's establish that. If the board members have no objection and if there's no objection from the ANC, we'll accept him as an expert witness.

VICE CHAIR SOCKWELL: Madam Chair, since I know everyone that he would talk to in the District of Columbia government, I realize that he knows who he's talking to, so that's sufficient.

CHAIRPERSON REID: All right. So now, go ahead. Did you have a question before he starts, Ms. Renshaw?

MEMBER RENSHAW: Only to follow up on that, when are you having your DCRA site meeting?

MR. RIORDAN: It was actually scheduled for the day of the snowstorm, the 22nd of January, and Tim has been in and out of the office and he told me he'd get back to me, so we had one scheduled meeting, but it's rescheduled. He's going to call me for the reschedule and I told him if I have three hour's notice, I can be there.

VICE CHAIR SOCKWELL: It might be helpful for you to call him because he hardly ever calls.

MR. RIORDAN: No, I've been actually e-mailing him instead of calling.

Basically what our job was, in our first meeting we were told by the citizens that the water was coming, as they said, like a river down this alley, and that the water was getting in this area right here on the back of their houses.

MR. FEOLA: Mr. Riordan, point out the site for the board members.

MR. RIORDAN: I'm sorry. Back here is the -- this is the existing units as they stand now. This is the residence at Delafield Place, and this is the existing alley that's in the back of the houses. The way the ground is oriented, the water from the drawing on the right, the water basically, the red arrows show the water flowing away from the buildings and the blue arrows show the drainage divides and the way the water's handling.

When we went out there, what we found originally was from the existing drawings that we had, that the contractor had done something that wouldn't really be considered common sense that he took this pipe and he out flowed it right here. But what we found when we went out there was someone from the District more than likely nixed that and made him tie into the existing storm drain system. So what actually is happening is this large amount of off site water

that's found in this area here is actually going through a closed system and never gets to the houses in Delafield Place. The water that is affecting Delafield Place is, if you see this line right there, that's the water that gets down to the alley and gets in there.

Our next job, after we found out that, you know, first we thought it was going to be a river going down there, so once we found that out, once we were able to get away from that, what we looked at was what's happening with the water here and what's happening with the water over here. One of the major concerns is this area right here, those three homes right there, do not have any alley which, in the District the alleys are sloped at three percent to the middle so it can mitigate the water, these houses right here, so the water can be taken away from the property. So what our job to do was basically we can't build a public alley there, so what we did was we put in a, we have a design in for a retaining wall with a V-ditch below it and then we're going to take that water and do the same exact thing as what was done over here and pipe it into a closed system. What that's going to do is it's going to take the surface run off and the surface run off only away from those three houses and eliminate any run off from Boys Town on the surface.

The other item that we looked at was this alley here, I think we have a picture below, we got some photographs during the Floyd episode.

VICE CHAIR SOCKWELL: Mr. Riordan, would you explain the structure, the first structure one more time just?

MR. RIORDAN: Basically, what it is it's a three to four foot retaining wall -- there's an existing hill and in order to get any kind of grading in there, we had to build a four to six foot retaining wall here and then below the retaining wall is going to sit a V-ditch. The water will cascade over the retaining wall, get in the V-ditch, and then there's an inlet right here where the water drains in there. There is a couple different ways we could have done it. The reason we chose the way we did it, while it might be a little more expensive, it's going to be real easy to maintain and the homeowners, if at any time they see it being blocked or clogged, they can walk up to it and just kick the leaves or the debris off the inlet. There's other things we could have done that would have been sub-surface, they'd never, ever see it, and they wouldn't know when it's clogged and when it's not working. This is the real easy fix and it's real easy to maintain.

VICE CHAIR SOCKWELL: Now if you had used a catch basin system, that would have built in a control to collect leaves and would then spill the water out at a higher elevation?

MR. RIORDAN: Right. In the bottom of the inlet, but on the top, what we find a lot of times is in the top of the inlet you can get a newspaper that lays flat on top of an inlet and stops the water from getting in there and that would cause flooding also.

VICE CHAIR SOCKWELL: And it depends upon the type of design that you use as to whether or not it would clog that way.

MR. RIORDAN: Right. So the other item that we were looking at doing was basically a French drain design here, and that was thrown out just for the fact that you would never, it's a sub-surface drainage, you'd never be able to tell what was going on.

Over in this area here, the picture that is on the floor, shows there's an existing storm drain manhole cover right here, and there's about three or four inches of water running down there right there. That was approximately 11:00 during Hurricane Floyd. I think the airport got 6.2 inches of rain, and we actually went onto a weather station in Maryland at a public school, which is approximately three quarters

of a mile away, and they registered 5.8 inches of rain for the duration of the storm also. And what happens is this water runs down and comes down the alley. This is further down the alley, and the water runs down there. You can see it. The alley is right over here. So what our idea is, this really is not a serious flooding problem, because this water goes down and goes out into Delafield and goes away, but for a safety issue, a very simple fix is to take this manhole cover off, which is a storm drain manhole, and put a grate inlet on there instead so the water's captured. What happened is the District went in, and this inlet right here basically is about two tenths of an inch higher than this area right here. You can see where this debris is. So the water, instead of getting to the inlet, bypasses the inlet and goes down the alley. A better location for the inlet would have been right on top of that one. So that's what we're going to try to do.

VICE CHAIR SOCKWELL: It appears that there's a tendency for dirt and other things to collect on that manhole cover, which could present a problem. If you put a grate there, you're just going to collect all that sediment into that particular location if that location happens to be a low spot.

MR. RIORDAN: Well, it's not actually a low spot. What it is there's a little bit of a makeshift trough here and the problem is that this is the Boys Town property right here and this is grass, gravel, and with the parking on it, you get a little bit, you're going to get car debris, you're also going to get, you know, a little bit of mud. This area could be stabilized. In our sediment control review, they'll pick up on that and we'll have to do something for that.

VICE CHAIR SOCKWELL: Because anything you do should be stabilized because even under the standard regulations, water that's presented to the storm sewers is expected to be reasonably clear and if you have control over that. And I assume that the boat in the top of the picture is how they get down the alley in the rainstorms?

MR. RIORDAN: Actually, this is the location where the retaining wall is going to be located, so there is really no way to put a V-ditch here without building the area up here.

MEMBER RENSHAW: A question about that grate. Is that going to be secure so that children don't tamper with it and lift it up and get down in that drain?

MR. RIORDAN: The manhole weighs over 200 pounds.

MEMBER RENSHAW: The manhole weighs --

MR. RIORDAN: No, no. The grate will weigh over 200 pounds. That right there weighs over 300 pounds. Myself and two other people with eight foot rods tried to lift it, we couldn't get it off.

MEMBER RENSHAW: All right. When the grate's in place, who's responsible for cleaning it?

MR. RIORDAN: It'll be, that's in the District property. That would be -- that's the reason why -- that's part of the problem is that we have to go through Gary Birch's office because we're doing work to public, we're improving the public area so we have to have his go ahead before we can do any of this.

CHAIRPERSON REID: Now this is what I'd like for you do for us please. While we understand that the Boys Town has now taken the steps to correct the problem as far as the water run off is concerned, and I just wanted to make sure that, in layman's terms, so that every one understands exactly what you're saying, that you explain, in a nutshell, very simply, because obviously everyone doesn't understand the technical terminology and the jargon that is germane to your particular profession, so just summarize it very

simply and just bring it down to a layman's level.

MR. RIORDAN: Okay. Basically what we're doing is any surface rain or water that hits on Boys Town, we're trying to maintain that the water is going to get to a closed sanitary storm system before it has an opportunity to get to the Delafield Place houses.

CHAIRPERSON REID: So you're going to correct the problem basically?

MR. RIORDAN: Right. But the one thing that we were able to do, if you look right here, this alley right here we did computations, hydraulic and hydrology computations, and we found that this alley has the proper ability to actually hold the water coming from here and direct it in the proper locations. Our major flooding problem from Boys Town for surface run off is basically those three homes. These other red arrows depict the properties themselves have an inherent problem because they sit two or three feet lower than the alley, so any water that hits in their own backyards also goes towards their back door. So it's virtually impossible for me to say what is flooding, or that Boys Town water is getting to these houses right here. What we've bene able to determine is that this alley can handle the water that's coming down here and get into the proper location and funnel

down those two areas, except for this location here, which is why we have the wall there. But what our reasoning says that there's an inherent problem with those homes because of the way the ground is graded. Usually when you do grading around a house, you usually grade away at around two percent just to get the water away from it. That's the minimum. These houses have no real outlet. Over the years the space between the houses, if you build a fence or if you put a shed there, that'll dam up the water so the water goes to the easiest place, which happens to be probably in the back door.

CHAIRPERSON REID: So are you saying that as far -- that the problem with the water is partially the responsibility of Boys Town and that the, and I don't understand how you can really distinguish between what water's what --

MR. RIORDAN: What we did is we did a calculation with the amount of area that is here and what we found was the alley can hold the water so the water doesn't get high enough to go over into, if you look back at this picture here, the water would sit in this area. We do something called spread calculations that takes into account the area and the volume of water, and it shows that the alley has the ability to

hold back this water. One of our first thoughts when we started this design was hey, we'll just put a six inch concrete curb here and run it the length of the alley and that'll give us even more distance. The only problem is if there's anybody who lives here who's handicapped, they can't get in their house anymore. So we had access issues with that, and the District also does not usually, unless it's a very unusual circumstance, they wouldn't allow curbing on an alley anyway.

CHAIRPERSON REID: So are you saying that your responsibility and what you've done is to bring about the abatement of the water problem as it is germane to Boys Town?

MR. RIORDAN: Right.

CHAIRPERSON REID: But there would still be a water problem?

MR. RIORDAN: Yeah, we're not insuring that we're going to keep people's basement dry.

CHAIRPERSON REID: That would not be -- if there is still a water problem, you're saying that that water problem would not be a problem that stems from the Boys Town facility, it would be coming from somewhere else?

MR. RIORDAN: Right.

CHAIRPERSON REID: I'm not sure I understand that.

VICE CHAIR SOCKWELL: Let me try to put this into a different perspective. The natural grades along the Sargent Road frontage of Boys Town up to a certain point were altered significantly by the fill that came from Metro. What that did was first, raise the volume of earth that can contain water. Second, it created an unnatural grade for the run off of water that isn't absorbed, and so in reality, Boys Town is responsible, or the property that Boys Town is on, is responsible for a number of problems, one of which is an artificial raising of the natural water table. And if the soil that's down low where this slopes from 110 down to about 90, if that is now carrying a volume of water through it that was created 20 feet higher than it would have been 25 years ago, all because the property owners allowed Metro to put all that dirt there, which may or may not be permeable soils and since soil borings were probably not taken, you're only looking at this from a run off standpoint but not an absorption standpoint. So what you're getting is, you're saying that you're going to control run off. It may not help basements because the bottom line is there's a lot more water on that site that has to work

its way into the soil base and back into the water table than there had been many years before. So what has to be done is that the total picture, hydrologically, should be looked at to make sure that the solution is not just a surface solution but a long term solution that is truly the result of the current conditions of that piece of property.

MR. RIORDAN: Basically, what we have done, subsequent to our meeting last week, was I personally contacted a geologist and asked some of the questions that you're asking, and some of the concerns were that there were springs on the site or on their site, and I asked him if there is any viable way that an individual could determine where a spring came from.

And he said there is no way to determine where a spring came from or how it came and that there's no way you could directly associate the Metro dump with the occurrence of a spring. A spring can occur at any time. There's springs everywhere that, you know and he, basically, -- here.

This area here, this drainage area two, this is part of a, this is part of the Metro dump. That area there actually decreased the drainage area getting to, when this was put here this actually decreased the drainage getting to this alley because

originally all this water ran in this direction and ran down into here.

Now a lot of it s getting redirected into a storm drain.

VICE CHAIR SOCKWELL: But in the fact that you have water redirected to a storm drain that s one thing, but the other thing is that you re, you are basically doing a storm water management and a, an unnatural, unplanned storm water management system, which is a retention system.

MR. RIORDAN: Uh-huh.

VICE CHAIR SOCKWELL: That retention system means that the natural ability of the soil to shed water has been altered because you put a volume of water up here that now has to work its way down into that other soil which is below.

It s going to run somewhere. It may go to the virgin soil, hit a natural bottoming and them move horizontally off the site. We don t know that.

MR. RIORDAN: Right.

VICE CHAIR SOCKWELL: I don t know that.

MR. RIORDAN: Right.

VICE CHAIR SOCKWELL: But what you do have is a great deal more volume of water that s got to work its way to the soil. Now, if the water that would

normally be drained out of the soil at the backs of those houses was coming from a fairly smooth even level land area to adjacent, then that would be one thing.

But now, it has to, natural soil capacity has probably been over taxed. So it takes a lot longer for water to get out. So if the water can t get out normally by seeping out it s going to run horizontally, it s going to bubble up, it s going to create ponds, it s going to do a lot of things.

And all of that at least for those houses is the result of that unnatural land elevation. On the other side, on the Horning Brothers houses which are the ones that you have at the bottom, I mean those houses are at a higher elevation still.

So they don t have the problem.

MR. RIORDAN: No actually they re lower.

VICE CHAIR SOCKWELL: They re at least at a fairly, they re not, they re not 20 feet down though, they re --

MR. RIORDAN: Um, yeah, they --

VICE CHAIR SOCKWELL: The street is sloping up until it gets almost to South Dakota and as I recall that elevation, the elevation of those houses is the elevation of South Dakota Avenue.

MR. RIORDAN: The, I don t know what the --

VICE CHAIR SOCKWELL: Some of them actually slope up to the front doors as I recall.

MR. RIORDAN: This right here is the high area right in here.

VICE CHAIR SOCKWELL: Uh-huh.

MR. RIORDAN: And these sit, I would say, just by looking at the contours, probably 15, this is a 15 foot drop here.

VICE CHAIR SOCKWELL: To --

MR. RIORDAN: To these, to these houses down here.

VICE CHAIR SOCKWELL: But everything, but everything from the plateau is going to run off, much more of it s going to run off to the east than to the west.

MR. RIORDAN: Well, no, not necessarily. If you have a, if you have a, a large earth dump there s going to be a vertical, you re taking away the horizontal dropping, you re then going to have a vertical lift, a vertical drop of the, you know, you have a pressure on top of the water --

VICE CHAIR SOCKWELL: Natural --

MR. RIORDAN: -- it s going to go up anyway.

VICE CHAIR SOCKWELL: -- the natural land

contour.

MR. RIORDAN: Yeah, the natural, yeah, I agree.

VICE CHAIR SOCKWELL: -- along, the natural land contour along --

MR. RIORDAN: -- goes that way.

VICE CHAIR SOCKWELL: -- goes that way.

MR. RIORDAN: Right.

VICE CHAIR SOCKWELL: And anything that s dumped on top of it is going to deal with the natural land contour. When you get to the bottom of what you put on there, if everything underneath it is sloping to the left then everything goes to the left, regardless.

MR. RIORDAN: Well, well it depends on the, on what kind of earth fractures there are below it.

VICE CHAIR SOCKWELL: Of course, now we can get into earth fractures.

MR. RIORDAN: Right, no, --

VICE CHAIR SOCKWELL: I did earthquake engineering research for five years.

MR. RIORDAN: No, that, I understand.

VICE CHAIR SOCKWELL: Do you want to get into earth fractures?

MR. RIORDAN: No, no, no. I m --

CHAIRPERSON REID: Let s not go there. Let s not go there. Ms. Renshaw?

MEMBER RENSHAW: Yes, it s a fascinating discussion, I must say. I understand Mr. Riordan that it is D.C. law that property owners must dissipate water on their own property.

It s D.C. law that you cannot impact anyone else s property. All right. Did you look into, just out of curiosity, or because of what your charge is right now, did you look into the land records of what is in that, in those berms, in the landfill?

MR. RIORDAN: We have, we have plans of when the earth dump was done. We don t have any geo-technical investigation of the type of soil or what the soil was.

MEMBER RENSHAW: Why not?

MR. RIORDAN: Basically it was out of the scope of what we were doing. What we were trying to do is we were looking at it strictly as an existing condition in trying to rectify an existing condition.

We didn t see a correlation between the earth fill and the runoff.

MEMBER RENSHAW: Are you sure that it is all earth fill?

MR. RIORDAN: I can only go on what was on

the drawings, that s all I have to go on. We have, you know, like I said we don t have any geo-technical

MEMBER RENSHAW: Did you ask Metro for this information, because records have to be kept.

MR. RIORDAN: Right.

MEMBER RENSHAW: Of what is in a landfill.

MR. RIORDAN: Uh-huh.

MEMBER RENSHAW: And so my question is, to satisfy perhaps questions of the neighbors --

MR. RIORDAN: Right.

MEMBER RENSHAW: -- what s there? What is contributing to this problem and also landfills as I understand it have to be vented in some way. And I m curious to know in which direction the landfill is vented.

MR. RIORDAN: Well this wouldn t, I don t know if this would fall underneath the terms of an actual landfill, because it was, what they were taking out was, unless when Metro was doing their tunnels, unless Metro had found something of hazardous material, basically in the specifications, the specifications that I have seen for Metro jobs, Metro has something in there that all the dirt will be taken to a, an approved site by Metro.

And if they re, and they, they test the

soil as it goes. If the soil had something in it, it wouldn t be allowed to go and do a landfill dump. It s, when I say the landfill, it wouldn t be allowed to do a, a fill dump.

MEMBER RENSHAW: But you haven t checked the records?

MR. RIORDAN: No I haven t.

VICE CHAIR SOCKWELL: And by the way, while I was, I was a designer for the Metro system for seven years.

MR. RIORDAN: Uh-huh.

VICE CHAIR SOCKWELL: So let s, one thing I would like to say is that those were earth tunnels, and most of what was there was probably a mixture of sand and clay --

MR. RIORDAN: Right.

VICE CHAIR SOCKWELL: -- and similar expansive soils with somewhat limited absorption capability. So the chances are that runoff in that area is a naturally occurring, because you have a different type of soil that s there and it s very difficult without doing borings to know exactly what s under there and where it really meets the existing grade.

If you looked at two or three different

locations you ll probably find that the runoff patterns are not normal to what you see because what would be normal would be the naturally occurring grades below the artificial berm.

MR. MOULDEN: Do we have any documentation to show the correlation between flooding or any water problems before the landfill versus flooding water problems after the landfill to show any rate of increase since that time?

MR. RIORDAN: It s, that kind of, that s a good question, but it s kind of a Catch 22 from the Boys Town standpoint, in that before 1988 if you were to build anything new with impervious area you didn t have to retain the storm water runoff, you were allowed to just put it into the storm drain.

On or about 1988 they went to a system where much like this site, when I, when we go and do this, I m going to have to do a pre-existing condition where I take the entire site as it be having no impervious area, and come up with a number of what the runoff is from the site.

Then I have to take my new number from all the new impervious area and I have to retain that water and release it at the pre-existing rate.

This is harsh, but it has to be done

because of not having any kind of storm water management previous to 1988. So anybody who lived in this area from 1965 and they, you built these houses, then you built a road over here, you built this, much the same as PG County, the streams end up having low base flow and ten foot high banks, because when there is a storm there s a huge increase in runoff and the water gets there.

So anybody between 1965 and 1988 you would see an incremental increase of the, of the impervious area and an incremental increase in your runoff all that time.

Since 1988 I don t know what kind of development has been done down here. Most of the homes seem pretty mature. So as the area got more and more built up, right now, when Boys Town builds those houses and builds that parking lot, I m going to have to assume that this area here is all grass, and I m going to have to hold back our site water that releases that way.

I m going to have to release it as it was 200 years ago when it was just woods and grass. So we re going to actually decrease the runoff from the site with the new, with the new homes.

MR. MOULDEN: But there s no records of

community issues or concerns about residents complaining about flooding or water problems or --

MR. RIORDAN: Nothing that I m aware of.

MR. MOULDEN: -- what you may have today.

MR. RIORDAN: Right. Nothing that I m aware of.

CHAIRPERSON REID: Mr. Thomas, now what it sounds like I m hearing is that you ve been hired to mediate the problem of the water runoff, but, and I think I m hearing you say that you could do it partially but it s not going to really solve the problem.

And you also -- to us that any water that, that still was released would not be, you would then put that in a category of not being associated with Boys Town.

Now, the problem I have with that is, how in the world are you to distinguish one, one water from the other water? And so you can t just say, well, we ve done this, but the problem still exists, and then say, oh, well, if the problem still exists then whatever water is still coming down there and causing a problem to neighbors is not our water?

MR. RIORDAN: Well basically the only thing that we have to go on is, hydrology is basically a, is

based on history. And the only thing we have to go on is the history of rain events in the District.

So what we do is we do our calculations based on what a ten year storm or a 15 year storm or a 100 year storm event equals as far as the amount of water.

And then from there, what we do is we do calculations of capacity of the alley, the pipes that are in the road. And using those two items we re able to determine, yes, where the water that is the surface runoff from our, from the past history is indeed getting to the pipes and is indeed being flowed through the alley and is getting to the proper means.

If I would, it would be very easy for me if you doubled the amount of area there I would be able to tell you hey that, that alley can t hold the water. I can tell you, what the, what the volume of water is in the alley and I can tell you how easy, if the water is being captured by it or not.

That s --

CHAIRPERSON REID: Okay, what it sounds like --

MR. FEOLA: May I ask a question Madam Chairman --

CHAIRPERSON REID: Before my question?

MR. FEOLA: I m just trying to clarify --

CHAIRPERSON REID: Okay.

MR. FEOLA: -- maybe where you re going. Mr. Riordan is it your opinion that if the system you ve designed is permitted and approved along with the alley changes that have been suggested by DPW, that no surface runoff from Boys Town will cause flooding on the adjacent properties?

MR. RIORDAN: Yes.

MR. FEOLA: Thank you.

VICE CHAIR SOCKWELL: Mr. Riordan --

CHAIRPERSON REID: Let me --

VICE CHAIR SOCKWELL: I d like to follow-up on Mr. Feola.

CHAIRPERSON REID: But I would like to, I have a follow-up question as well. And, his name is, I m sorry I called you Mr. Thomas, I thought that was your name. I m sorry, I m sorry.

What I was going to say is that, that, and this is going to come out in the testimony, I know this. Before Boys Town and this problem with the Metro using it for their -- and all the problems that came as a result of that.

Now, we find out that there was no problem before this, and then as a result of the types of

things that occurred on that land, the community, the neighboring properties then had a problem.

All right? Now, I d like to know how you can distinguish between the fact that there was no problem, if there was no problem before, and then there was a problem, then how can you justify your position that all the water is not a result of the Boys Town facility runoff problem?

I don t think you can.

MR. RIORDAN: Basically the only thing we can do. What you re saying is correct. We can only go, we can only do what we did as far as surface runoff. Anything that s happening beneath the ground there s nothing that I can say one way or the other how that happens.

But the problem still is there.

CHAIRPERSON REID: You can t stop it. In other words, in other words you cannot, basically, what it boils down to is that you do not, you cannot guarantee us that once you, um, install all the negation --

MR. RIORDAN: Uh-huh.

CHAIRPERSON REID: -- aspects that you intend to do, that there still will not be a problem.

MR. RIORDAN: Well actually I think there s,

it s a three headed monster. There is the problem that Boys Town has, there is the problem that DPW has with the drains being in the wrong spot, and unfortunately the homeowners also have a problem because their land slopes towards their house.

So they re always going to have, until that is corrected they re always going to have some water that runs towards their house. There s nothing we can do about that.

CHAIRPERSON REID: That s the operative word, this, okay. That s the operative word. They re always going to have a problem until. So, speak to me about that until. What could be done on the part of Boys Town to make sure that they don t have to worry about the until.

MR. RIORDAN: Well it, you know, the only thing you could really do is raise up the backyards. And in doing so you re going to limit their ability to get into their homes.

I mean you re raising up, you re putting --

CHAIRPERSON REID: -- the backyards or put that curb that you mentioned earlier?

MR. RIORDAN: Right.

CHAIRPERSON REID: And you said then that would --

MR. RIORDAN: No, but, right but, that isn t going to help because it s, it s their own, it s their own rainwater that s getting to them anyway.

If you look, if you look at right here where those red arrows are, there s the alley right there. Well, here s a picture right here. There s the alley right there.

This ground slopes towards their homes. So they re always going to have rainwater getting to their back door, no matter what we do. I mean if we put, if we put a 25 foot concrete wall down to get around it they re still going to have water against their back door, there s nothing we can do about that.

And it s always been that way.

CHAIRPERSON REID: Mr. Sockwell?

VICE CHAIR SOCKWELL: Mr. Riordan, we accepted your credentials --

MR. RIORDAN: Uh-huh.

VICE CHAIR SOCKWELL: -- as an expert in this field. My degree is in architecture, so I m not going to try to use that as any kind of leverage, but are you telling me that A. Morton Thomas, which has been in business in this area for many, many years, has no way of calculating the impact of the berm that was added based upon the fill on the water table, the

runoffs, the potential for water to rise or not fall quickly enough in the yards that are east of the Boys Town property?

Are you telling me that there is no way that professionals from A. Morton Thomas can calculate the expected impact of that berm on that property to the east, based upon the size, the volume of water capacity, the, Metro can probably tell you what kind of soils were taken out of the tunnels and dumped there because they have those records.

MR. RIORDAN: Right. Um, based on --

VICE CHAIR SOCKWELL: And I m not through yet.

MR. RIORDAN: Okay.

VICE CHAIR SOCKWELL: I would also like to believe that once you calculate what the potential impacts are, you would be able to determine if there are ways to mediate, eliminate, reduce, adjust the impacts that might be cost effective and certainly would be important to the residents adjacent.

Now we know that at certain point in time costs exceed benefits, but at the same time controlling the surface runoff is one of several issues that have to be dealt with here.

Not to have determined what the other

issues are means that whatever solution you have chosen may not be enough. You don t even know to what extent your solution will reduce the problem.

You are taking a very limited narrow view of what s going on on that Boys Town site and the impact on the adjacent property. Because all you re dealing with is a surface.

And you re looking at a hill that wasn t there when those houses were built. And it seems to me that in order to have an effective response to the Boys Town management and an effective response to the community you got to look at all the issues.

And I think that s a fairly simple thing to ask.

CHAIRPERSON REID: Ms. Renshaw?

MEMBER RENSHAW: When Boys Town purchased the property in I understand 1993, you took over the problems from the existing land owner. And now you are proposing to remove up to ten trees which are useful in water retention.

You are putting, or you re requesting more surface working space and you are proposing more roof runoff. And I want to know have you thought at all about having a catch pond on your own property to accommodate this flow of water so that is not all of

the surfaces now are not going toward the alley but they are going, the water will be collected and stored on the property of Boys Town.

And I d also like to ask are these ten trees mature trees as I would imagine they are? -- Just a word about the trees --

MS. WEINSTEIN: The two or three that are mature are interesting trees the arborist looked at this with us, and two of them are two trees that grew together and have damaged each other over time and they re not going to last much longer anyway.

The other one is out there. This is a, what we are taking down in terms of tree canopy is pretty small relative to what s left, and we re also will be adding new trees.

Trees don t last forever, they, very few of them live 100 years old --

MEMBER RENSHAW: Right, but I d like Mr. Riordan now to address the issue of a catch pond on the property.

MR. RIORDAN: Basically --

MR. FEOLA: Before he does that, Ms. Renshaw, may I, I just want to make sure the Board understands. All the storm water issues that we have been talking about thus far have nothing to do with the

project that s before the BZA.

They all have to do with mitigating an existing condition. I just wanted to make sure everybody understands that we re talking, we re talking about everything that exists, not the new construction.

CHAIRPERSON REID: But Mr. Feola, --

MR. FEOLA: I m not -- I just wanted to make sure everybody understands that.

CHAIRPERSON REID: But yes, but you also have to remember now that the previous order, the -- site, site specific, determined that there would be no adverse impact.

And what we re, and I think that s the reason why we even have Mr. Riordan here today partially is to be able to show us that the adverse impact that has come up in the interim, while it has never been debated in the interim is now, has now been, been mediated.

So I don t really understand what you re saying when you say that it has nothing to do with, with the site, the application before us, because there is a correlation between the previous order and this order.

There s no question about that.

COMMISSIONER HOLMAN: Madam Chair, I was

just looking at the previous order and trying to find thereabout one, two, three, four, five, uh, there are several findings, but I don t see that finding here in the record.

CHAIRPERSON REID: Well, even though it doesn t, it may not say specifically --

COMMISSIONER HOLMAN: Right.

CHAIRPERSON REID: -- but inherent in every order is the aspect that adverse impact, any adverse impact, it would be any adverse impacts, there will not be any deleterious affect on neighboring properties, that s a given in any special order, special exception or variance.

So the point I m making is that if there is adverse impact already there then you can t come and say well, we ll put this application, this new application and not, not take into consideration the existing adverse impact, that, as I understand it, from what I ve seen in the files, the community is receiving as being exacerbated if in fact this goes forward without there being adequate mediation.

COMMISSIONER HOLMAN: Madam Chair I see and maybe I m just reading from the wrong place, but I see six findings of fact and I don t see that being addressed in any of those six items. That s all I was

saying.

MR. FEOLA: And Madam Chair I agree, Madam Chair I agree with you.

CHAIRPERSON REID: You don t see the adverse impact?

COMMISSIONER HOLMAN: No, no. I, I don t deny that there is an impact, but I guess I have a two prong concern, one was that I don t see it and perhaps I m misreading the order.

I don t see it having been addressed in this order. In fact one of the things that it talks about erosion in No. 6 and it says because the erosion problem is not relevant to zoning, the Board makes no finding on the issue.

That s where my confusion is coming in because I --

CHAIRPERSON REID: May I -- please?

COMMISSIONER HOLMAN: Yes, certainly.

CHAIRPERSON REID: Because I don t have --

COMMISSIONER HOLMAN: And I guess my concern is that if we, I don t, and I, admittedly I haven t been on this Board that long, and I only come periodically. I did not know that that was part of our charge to be in essence an environmental, a place where environmental issues were resolved.

And that s, that s just my confusion.

MR. FEOLA: Madam --

CHAIRPERSON REID: Go ahead with your questions while --

MR. FEOLA: Madam Chairperson, I agree with you, and I wasn t trying to separate the two, except to just make the Board understand as it addressed Ms. Renshaw s question, there is a storm water management plan for the construction of the new houses that s separate and apart from everything Mr. Riordan has described so far.

What he s described so far in an attempt to mitigate existing conditions whether those houses get built or not. And I just want to make sure everybody understands that.

Now, now I think he can answer the question about how, how we re going to handle additional problems.

MR. RIORDAN: Basically what we have on the site was, we re looking at putting in a sand filter down in the area where the existing parking lot is, that s the low spot.

The problem with the pond, is in order to put a pond in, and make it economical and not make it ten times more than it should cost, we would have to go

to a low area, and the low area is this trees which means we would be wiping out even more trees in order to get a pond in.

Obviously you can t put a pond on top of a hill, we d have to put it in a low area, and the low area which would be advantageous to a pond would be right here.

So that was looked at for about three seconds and dropped because of the tree issue. We didn t want to waste a lot of trees.

So along with the sand filter what we re going to have is, there s going to be underground detention in the third chamber of the sand filter.

And we re going to do our, our quality, excuse me, quantity control in the actual sand filter and the third chamber will be larger than usual.

CHAIRPERSON REID: In regard to Mr. Holman s point that he raised, in the, the Order of -- referred on 25805, under inclusion of law and opinion it says, -- the grading of such special exception relief requires the assuring to substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the zoning regulation map, and that granting the application will not adversely affect the use of neighboring property.

And that is what we were referring to, Mr. Holman, and I think that you are correct in that typically we do not get into environmental impact. That is beyond our purview.

However, if we have allegations what the opposition that their property is being adversely affected and there is a deleterious affect of the Applicant, the Applicant, application or order being granted, that s what we look at and I think that s the only aspect of it that we re looking at in this regard as far as the water is concerned.

Cause several people and ANC raised these as issues and as you know the ANC is given great weight, and anything that they, they put to us or proper to us in regard to the effect that it has on the community, we have to take with great seriousness. Thank you.

VICE CHAIR SOCKWELL: And the Applicant has offered as part of their program to deal with the issues of water runoff. It was not brought up by the Board, it was actually brought by the Applicant.

CHAIRPERSON REID: Yeah, I think that, I think that was probably in response to Ms. Washington having met with the community and those being some of the concerns that were raised and you re attempting to

address those issues is that not correct? All right. I appreciate that.

All right, were you done?

MR. RIORDAN: Yes.

CHAIRPERSON REID: Were there any questions, Board members?

VICE CHAIR SOCKWELL: By the way I have no questions. The storm water management issues with regard to the proposed construction I m sure will be more than adequate.

CHAIRPERSON REID: What did you say? I m sorry.

VICE CHAIR SOCKWELL: I said the storm water management issues with regard to the new construction itself, the sand filter with the retention portion of the tank I m sure will be more than adequate.

CHAIRPERSON REID: All right -- okay.

VICE CHAIR SOCKWELL: For that particular aspect of --

CHAIRPERSON REID: All right, and what about the existing problems?

VICE CHAIR SOCKWELL: The existing problem is a problem. But I believe that it should have been looked at a bit more comprehensively, although the charge given to ANC and Mr. Riordan was probably

somewhat limited in scope to the surface issues.

But the underlying issues are based upon what is existing there that was not normal to that site and what has perhaps led to an increased problem that perhaps is being exacerbated by other runoff issues and maybe somewhat or maybe greatly reduced by the program that Mr. Riordan has suggested with the retaining wall and conducting water to the proper underground facilities.

But still, the large picture is that, you look at the whole picture, and then you decide whether or not you think the picture is going to be improved significantly by what you would specify.

And that s, that s the part of it that I m really concerned about, that the whole picture would be looked at. Yes, that s what I m saying.

MS. WEINSTEIN: We have been told by community people, long term community residents that there were springs on the Boys Town property prior to the Metro dump. And I think that one of the issues here, it s been very, it s not that we have any evidence that there s a ground water problem.

In fact we can t see a ground water problem where we ve looked for it that was caused by the Metro dump. We don t see a ground water problem.

VICE CHAIR SOCKWELL: See a naturally occurring spring might have bubbled up along the property and been conducted off as surface runoff at one point and then with the dump the spring s natural way of dispersing its water has changed.

Plus you re putting a tremendous amount of soil bearing pressure on the spring so it could create new capillaries, it could go in any number of different ways, and of course being able to find it --

MR. RIORDAN: Is it, yeah, that s next to impossible, unless you find a wet spot.

VICE CHAIR SOCKWELL: -- probably, could be next to impossible. So it is an unfortunate condition of Metro having the opportunity to get rid of some dirt free and the previous owners of the property feeling that that was a good thing for them.

And maybe actually they bought the dirt, I mean, I mean or were paid to take the dirt, yeah, they were paid to take the dirt so they said sure, send it on over here.

I remember when it was being bermed up, I just didn t know what the ultimate plan was.

MS. WEINSTEIN: Ted I have one question. There is a house on the block at the west alley edge that has re-graded its back yard so that it doesn t

drain, it s own back yard doesn t drain into its own house.

If it is a ground water issue that is causing these problems, would we also expect to see water problems in that house s basement too?

CHAIRPERSON REID: You re asking us?

MS. WEINSTEIN: I m asking Mr. Sockwell --

VICE CHAIR SOCKWELL: It would probably be a question for Mr. Riordan more so than for me.

MS. WEINSTEIN: Okay.

VICE CHAIR SOCKWELL: Because he is the professional. I just have a degree in architecture.

MR. FEOLA: If I might Madam Chair I would like to ask Mr. Riordan two more questions that are germaine but not about this discussion.

CHAIRPERSON REID: But first, I would like to get the answer to Ms. Weinstein s question.

MR. FEOLA: Oh, okay, I m sorry.

MR. RIORDAN: Um, just common sense would say that if there was a ground water problem, if you did berm up the back yard and put a retaining wall in there, something of that nature, there would still be a ground water problem.

The ground water problem doesn t go away because of a surface feature.

CHAIRPERSON REID: Okay, Mr. Feola?

MR. FEOLA: Mr. Riordan we ve been concentrating on, on the Delafield Street place, part of the property. I would like you to comment on the 13th Place property which was the subject of the BZA discussion 1993.

Have you observed or taken a look at any problems that might occur there?

MR. RIORDAN: Basically what we did was, the direct opposite that what s happening at Delafield is happening on the 13th Place. That was basically a, when the dirt was put in it was a damn that was stopping the water to get through.

CHAIRPERSON REID: Where is 13th Street?

MR. FEOLA: 13th Place, ma am.

CHAIRPERSON REID: 13th Place is --

MR. RIORDAN: It s a cul de sac --

VICE CHAIR SOCKWELL: Falsely occurring street.

CHAIRPERSON REID: It s falsely occurring.

VICE CHAIR SOCKWELL: It s just a cul de sac.

CHAIRPERSON REID: Oh, oh, okay. And what about it?

MR. RIORDAN: Basically what was done was a

soil and a low spot was constructed and big rocks known as rip rap were put around to stop an erosion problem that could occur with a lot of water rushing to that area.

The black area here is a rip rap which was put there in order to stabilize the area so the water could run through the pipes without having a lot of sediment downstream.

Amy just asked me when it was done and I don t have the exact date of when it was constructed. But, I believe it had to be after the Metro dump, it looks, it looks fairly new.

MR. FEOLA: But, did you notice any, are there any problems there, I guess --

MR. RIORDAN: No, there is no problems on that side.

MR. FEOLA: So that system is working?

MR. RIORDAN: Right.

CHAIRPERSON REID: Okay, thank you.

MEMBER RENSHAW: So the, the 13th Place neighbors do not have problems with water in their basements from surface runoff from the Boys Town property?

MR. RIORDAN: As far as we no, there s been no complaints.

VICE CHAIR SOCKWELL: The question is, do the 13th Place dwellings have basements? They do? Are you sure? I thought that 13th, it was, I thought the 13th Place dwellings were slab on grade. I may be wrong.

MR. FEOLA: My only point Mr. Sockwell is that in the previous BZA application, in fact in one of the Summary of Evidence No. 32 a 13th Place resident came and complained about the water and I thought we should cover it.

It s on Page 9 of that Order, just to make sure that everybody understands it. The issue was addressed by Boys Town, they cleaned up that thing, but rip rap in and --

VICE CHAIR SOCKWELL: Okay, but it would be important to know if they have basements or not so that you would be dealing with apples and apples rather than apples and oranges.

I beg your pardon? -- Yeah, but I m talking about 13th Place, which was the Horning Brothers Development on the corner at South Dakota Avenue and Sargent Road.

CHAIRPERSON REID: Could that information be gotten to us Mr. Feola?

MR. FEOLA: I m sorry, ma am?

CHAIRPERSON REID: That information --

MR. FEOLA: Yes.

CHAIRPERSON REID: -- Mr. Sockwell is raising the issue as to whether or not those properties have basements, because that s, you know, certainly would have some bearing on this particular proceeding.

Now, let us move forward with, have all of your witnesses testified Mr. Feola?

MR. FEOLA: Well I think Ms. Weinstein never sort of concluded her --

CHAIRPERSON REID: She didn t conclude?

MR. FEOLA: -- presentation of, we were going to let Mr. Riordan talk about storm water and then let her come back and actually describe the proposed buildings.

And if we could just take three minutes. And also I might ask, might add Madam Chair that in the pre-hearing submission Boys Town proposed three alternatives.

In the time we ve had now since the, this first scheduled hearing it has eliminated two of those alternatives. They re minor, but it would like to if this Board is inclined to approve anything, approve Alternative C which is in your package.

And we will turn in a full set of drawings

of that just to make it, make it clarified as a separate exhibit. And that s what Ms. Weinstein is, has been talking to.

CHAIRPERSON REID: So you re saying that of the three alternatives you want to proper Exhibit --

MR. FEOLA: C, Alternative C. The other two have been decided programmatically didn t work quite as well.

CHAIRPERSON REID: Well how come you just didn t present C?

MR. FEOLA: Well that s what we ve been presenting.

CHAIRPERSON REID: No, what I m saying is why the other two?

MR. FEOLA: Well at the time of the application --

CHAIRPERSON REID: You weren t sure --

MR. FEOLA: -- they weren t being designed, the costs weren t evaluated and a lot of other things --

CHAIRPERSON REID: Oh, I see. So basically you were determinating which of the ones would be the best.

MR. FEOLA: Eliminating, yes. Yes. None of the parameters, the kids, the number of kids and all

that stays the same.

CHAIRPERSON REID: Okay. Which one is that?

MS. WEINSTEIN: Very briefly, just talk about the nature of the new construction. We, we are not bringing a new curb cut in to access the group homes, we re using the existing driveway here.

And this is the existing turnaround. There will be a driveway that goes behind the administration building to a circle. And the four houses are gathered around that circle, which is part of the Boys Town program for these group homes, that they have a sense of a community within the larger community.

Each home, they re identical in floor plan, essentially there is a first floor and a second floor. The first floor has a living room, dining room, kitchen, and an apartment for the parent/teacher couple that lives there.

The second floor has three two-kid bedrooms for a total of six, plus the bathrooms and there is a bedroom and bath for the assistant to the parent/teacher couple.

Some, two of the houses will have larger basements, these because of the way the land is sloped they re there. These houses will not have basements because they would be fully below grade.

So essentially they are two-story houses. They ve been designed to be both in character with the original convent, architecture which had half timber over a stone base.

So we re proposing a half timber feeling to them, with instead of a stone base, a red brick base that blends it back into the red brick used in, on Delafield and that whole area of the community.

And I think the very last thing I d like to address is the comprehensive plan, which designates the site as institutional use and as we ve said since the 20's this site has been used by non-profits to serve needy children.

In addition to that the site is surrounded by a significant number of other institutional uses. There is the church use here, there is the park and recreation center, the school and Abby of St. Anne s homes over here.

And so it is in my opinion that this project is very consistent with the comprehensive plan.

MR. FEOLA: With that Madam Chair, that concludes our direct. If it s possible we d like a few minutes for a concluding statement and rebuttal after --

CHAIRPERSON REID: Closing remarks.

MR. FEOLA: -- closing remarks.

CHAIRPERSON REID: Sure, thank you. Cross examination? I m sorry?

MEMBER RENSHAW: I just had a question for Ms. Washington. She said earlier that she took the kids off the site for recreational purposes, and where do you take them?

MS. WASHINGTON: There are actually a number of neighborhood rec centers that we have access to. There s actually one straight down Sargent Road, across the Maryland boarder.

MEMBER RENSHAW: All right, so you re taking how many children off site, all of them?

MS. WASHINGTON: Actually the, the long term residential home actually has an individual plan where they do activities for themselves. I m speaking of the short term facility. The kids who are actually are only there for a 30-day period.

VICE CHAIR SOCKWELL: Ms. Washington, to what extent have you had security problems with Boys Town over the last two years or since February of 98?

MS. WASHINGTON: To my knowledge we have not really had security problems. Our facility is not a locked facility. The kids that we serve are neglected and abused.

And it is their behavior, it is typical of their behavior to be impulsive. So that means that we take in kids who on occasion will abscond. We actually do not physically restrain a child unless the child is in danger to themselves or to others.

So if a kid actually has the likelihood to want to abscond they are able to do so. I mean they push the door open and they walk out.

VICE CHAIR SOCKWELL: Uh-huh.

MS. WASHINGTON: Now certainly our staff are trained to and teach that behavior, teach the consequences of absconding from the facility. And actually, when a child returns from abscondance they are actually put on a consequence system as a result of their behavior.

But we ve actually not really necessarily had security problems per se.

VICE CHAIR SOCKWELL: Uh-huh.

MS. WASHINGTON: The staff that works with the kids in the short term facility are there 24/7 and the kids are actually in eyeball to eyeball site at that particular facility.

The staff ratio on that facility, on the, on the shift which is from 2:00 to 11:00 where the kids are in the house for the majority of the time, is

actually six staffed, one staff to ever sixth child.

At night the staff ratio is four staff to every one child. And in the morning, from five until about two o clock the staff ratio is five to every one child.

VICE CHAIR SOCKWELL: Then my second part of that question is, have you had any problems with security from the outside to the facility?

MS. WASHINGTON: Uh, we, it s an open, it s an open campus and we ve actually had people to come on and harm staff s cars for instance.

We ve actually had individuals to walk on and steal property from, you know, if the kids leave their bicycles out back for instance. We ve, certainly, literally had people to walk on and ride off with their bicycles and those kinds of things.

VICE CHAIR SOCKWELL: -- the reason I asked the question, and you answered -- gave me a two part answer which answered the first part of my question, my main question second.

Ms. Weinstein suggested that there would be lighting along the drive to, for security purposes, and my feeling in terms of the neighborhood setting of this property is that perhaps it would be better to minimize the lighting along the walk until you get closer to the

buildings, so that you don t get that institutional look adjacent to private homes where people don t want to see some brightly lighted driveway across the street that looks like a WalMart store.

MS. WEINSTEIN: I think I miss spoke. Actually the lighting along the driveway --

VICE CHAIR SOCKWELL: Well you did say specifically that it was for security and I wrote it down that way.

MS. WEINSTEIN: That s right. I didn t mean that kind of security. I meant that, the idea came from me because I ve been coming to night time meetings --

VICE CHAIR SOCKWELL: Uh-huh.

MS. WEINSTEIN: -- and first of all you can t see the sight that says Boys Town, you drive by it.

VICE CHAIR SOCKWELL: Maybe you re not supposed to.

MS. WEINSTEIN: Well that s okay.

VICE CHAIR SOCKWELL: I mean it s --

MR. WEINSTEIN: Driving down the driveway myself, I m concerned that a kid might run across and you know, it s a low-level residential grade lighting that we had in mind with historic, you know,

appropriate to the -- type, small fixtures.

We were not envisioning big poles with --

VICE CHAIR SOCKWELL: I understand that.

MS. WEINSTEIN: -- that kind of lighting, and --

VICE CHAIR SOCKWELL: But it, it would seem, and here again it may not be a community issue. But I, when one sees a driveway that long if you line it with lighting, even if it s like GEICO up on Wisconsin and Western, it can be obtrusive to the neighborhood and should be kept regulated so that, I mean if you have more lighting 50, 75 yards up the walkway, where the parking lots and all the actual activity areas are, and just sufficient lighting to guide one down the path closer it would seem to me that it would be appropriate type of lighting.

And I don t know what you had in mind, but I m sure you did have down, down lighting that was going to be low level like volard lighting or something, but --

MS. WEINSTEIN: We, I, we were just thinking of an eight foot tall pole with maybe a lantern, you know, hung, and just --

VICE CHAIR SOCKWELL: Maybe something lower than, maybe something --

MS. WEINSTEIN: -- three of them along the whole driveway.

VICE CHAIR SOCKWELL: Maybe something lower than that would be more appropriate, because there s no reason to have an eight foot pole.

MS. WEINSTEIN: Right. We were just trying to do the historic character of the convent. I, your points are very well taken and they re, and I agree with them.

VICE CHAIR SOCKWELL: Uh-huh. Okay.

MEMBER RENSHAW: Madam Chair, in the Order 15805 it was very clear under Point 33B the Applicant does not plan to expand. Now we are here some six years later and you are expanding.

I would like to know if the Applicant has a long term plan that it can share with the community so that the community is not surprised about development on that site.

You said that you are asking for permission to put in a building that may or may not be used in two years. But what else? What else is there? Are you looking to purchase any abutting properties, anything at all?

MS. WASHINGTON: We re actually not looking to purchase any abutting property, however, our long

term plan for the Sargent Road site is to convert this site to an all female site.

Currently our campus is co-ed. But our long term plan is to convert this particular site to an all girls site and we are, we ve currently looking at and purchasing property in southeast to then build an all male campus.

CHAIRPERSON REID: Okay.

MEMBER RENSHAW: How long is the --

CHAIRPERSON REID: Excuse me Ms. Renshaw?

MEMBER RENSHAW: Yes? We have a question as to how long the community is going to be inconvenienced by the building?

CHAIRPERSON REID: Excuse me, Ms. Renshaw?

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: I d like to try to move this along, now that it s 12:00 o clock, so how many more questions do you have? That s the last one, okay. I appreciate it, thank you. Go ahead.

MS. WEINSTEIN: We are envisioning an approximate eight month construction period for the group homes and the renovation. All vehicles and everything will be contained within the site, et cetera.

We re envisioning a six week total

construction prior to that of the acoustic mitigation and the storm water mitigation described by Mr. Riordan.

Once we start construction we re anticipating that being finished in six weeks.

CHAIRPERSON REID: All right, thank you. ANC do you have cross examination questions for these witnesses?

MS. BROADNAX: Yes.

CHAIRPERSON REID: Please come forward. And we have no other parties in this case, right? Just ANC, okay thank you. The only people who can cross examine are in this particular case is the ANC, they re a party in the case.

And if you have any questions or concerns, or a question then it would have to be done through the ANC representative. You can give them a note or whatever, I have no problem with that.

MS. BROADNAX: Good afternoon again, my name is Norma Broadnax and I m Chairperson of ANC, and I just had two or three questions that came to mind as I listened to the testimony.

Ms. Washington stated that she had --

CHAIRPERSON REID: Direct your question to Ms. Washington.

MS. BROADNAX: Okay, Ms. Washington, you stated that you had initiated, well that you had set up meetings with the community to begin the liaison committee, set up the liaison committee that was specified in the previous Order.

You initiated this or did it, did it come from somebody else? Who advised you that this was in the previous Order, how did you come to this knowledge?

MS. WASHINGTON: I think I actually came to find this out at one of the community meetings. And then at that point I went back and did research in the zoning document itself.

MS. BROADNAX: Okay. The next question in relation to that is, I m not aware that -- was notified of these meetings.

MS. WASHINGTON: Actually, a letter was actually sent to Mr. Dickey who is -- District.

MS. BROADNAX: All right, but in the previous order, it points out that -- letter that this liaison committee, this advisory committee should report to the ANC. So --

CHAIRPERSON REID: I think what you re saying is, and I, tell me if I m incorrect Ms. Washington being new --

MS. PRUITT: Excuse me, Madam Chair I didn t

mean to barge in but the recorder is having a hard time. If you could turn your mikes away from each other they won t be. Thank you.

CHAIRPERSON REID: -- being new, may have thought that when she contacted the Single Member District Representative that she was contacting ANC proper. The ANC is a body that consists of all of the Single Member District Representatives.

So the Order specifies the ANC, do you understand that difference?

MS. WASHINGTON: Yes.

CHAIRPERSON REID: Okay, so that s what she s asking you, is, you re saying that you dealt with the Single Member District Representative. Did you understand --

MS. WASHINGTON: I did not understand that I needed to send it to that particular body. I thought in sending it to Mr. Dickey as the ANC representative that I had properly contacted them.

But I have no problem sending the correspondence directly to them.

MS. BROADNAX: Those were the only questions I had at this time.

CHAIRPERSON REID: This is the only time you have. To ask any questions, so this is, this is your

opportunity for cross examination.

MS. BROADNAX: I didn t make those notes. Well, I will bypass. Thank you.

CHAIRPERSON REID: Thank you. All right, thank you very much. Now, you might as well stay up here and, because now it s Government Reports and the ANC. I don t know if we have any other reports from DPW.

MS. PRUITT: Yes.

CHAIRPERSON REID: We do?

MS. PRUITT: Yes.

CHAIRPERSON REID: I didn t see it. Does anyone else have it? May we see it please?

MS. PRUITT: They re in your packages.

It s, one s in the original package, the other s in the supplemental. There s a January 13th letter from Ken Laden, and in this packet what you received this weekend.

CHAIRPERSON REID: May I see it please?

MR. PRUITT: Do you have an extra copy? Okay, well then I won t have one then. And also the ANC Report is, there s an ANC Report from, well, --

CHAIRPERSON REID: Okay, we have the ANC Report.

MS. PRUITT: Okay. Excuse me ma am, you

can t speak, you need to come up to speak, you can t speak from the audience. Yeah, actually, unless you re going. Oh you are an ANC? Are you the affected ANC? Is this property located in your ANC?

Well right now we just are dealing with --

MS. CURRY: --

MS. PRUITT: You can ask her a question but you have to wait to testify for that.

CHAIRPERSON REID: Sit down for one second. Sit down, sit down. What s your name? Mrs. Curry, right, Mrs. Curry. You are, I know that you are with the ANC, but you re with which ANC?

MS. CURRY: --

CHAIRPERSON REID: Is that adjacent? That s the adjacent ANC.

MS. CURRY: Yes.

CHAIRPERSON REID: So you want, you wish an opportunity to talk?

MS. CURRY: If possible. If not it is all right with me if I might speak through the Chair.

CHAIRPERSON REID: All right.

MS. CURRY: Okay.

(Pause.)

MS. BROADNAX: Madam Chair?

CHAIRPERSON REID: Uh-huh.

MS. BROADNAX: The question has been raised that the community has witnesses who wish to speak.

CHAIRPERSON REID: Oh, they will be given, everyone who wishes to speak will be able to speak either in support or testify in support or in opposition to.

MS. BROADNAX: Thank you.

CHAIRPERSON REID: No, this is just for the ANC segment. And then we then go into the rest of it, of the hearing.

MS. BROADNAX: Thank you.

CHAIRPERSON REID: Ms. Curry if you wish you could speak at that time.

MS. CURRY: All right.

CHAIRPERSON REID: The letter from DPW says impertinent part, basically that the Department staff will investigate drains in the alley behind the -- block of Delafield Place N.E. including any subsurface drains problem as soon as weather permits.

If correctable within the public right of way the Department will correct the drainage problem later this year. It then says the Department will replace existing asphalt -- from the east side of Sargent Road N.E. between Delafield and South Dakota Avenue in the Summer of Year 2000.

The Department will, No. 3, the Department will correct existing drainage problem near the intersection of 14th Street and Galavin Street as soon as weather permits.

And this is signed by Gary Burden who is the Chief Engineer.

MEMBERS IN UNISON: Burch.

CHAIRPERSON REID: Huh?

MEMBERS IN UNISON: Burch.

CHAIRPERSON REID: Oh. Burch?

MEMBER RENSHAW: Gary Burch.

VICE CHAIR SOCKWELL: Gary Burch.

CHAIRPERSON REID: Okay, cause this says B-u-r-o-n.

VICE CHAIR SOCKWELL: No, it s badly --

MS. PRUITT: It s a bad Xerox.

CHAIRPERSON REID: Oh, it s Gary Burch, Chief Engineer, Department of Public Works. And it was written to Mr. Raymond Dickey, do we have a -- who is Raymond Dickey?

UNIDENTIFIED SPEAKER: Affected ANC.

CHAIRPERSON REID: Oh, okay, affected ANC Member. Okay, this letter was not a letter to, was there a letter Ms. Pruitt to us, to the BZA?

MS. PRUITT: There s a letter, it should be

in your record, cause it s in my file that I got. It s January 13th from Ken Laden. It doesn t deal with storm water management, it deals with parking. It s in your --

CHAIRPERSON REID: Well it should be right, it s in this package you just gave me, right?

MS. PRUITT: No, it s in the original, that s a supplemental.

CHAIRPERSON REID: Okay, it s in here?

MS. PRUITT: Yes.

CHAIRPERSON REID: Okay --

MS. PRUITT: It s Exhibit 25 in the regular file.

CHAIRPERSON REID: Okay. Both of us didn t bring the other file with us. Okay. From Ken Laden, dated January 13th, regarding this application and pertinent parts it says that this application seeks to increase the number of foster children in its current facility from 15 to 24 or nine more persons, staff from 20 to 24.

We know that parking is available on-site in the existing parking lot to be expanded from 21 to 33 spaces. The parking is more than adequate to accommodate employees and visitors.

Okay, I think I saw a letter from the

Department of Health.

MS. PRUITT: That s in your supplemental package.

CHAIRPERSON REID: Okay, this letter from the Department of Health, I don t see a date on it. It s not, it s not a letter per se. What is this? A report?

MS. PRUITT: Madam Chair you have my package so I don t have anything to look at.

CHAIRPERSON REID: Okay, it looks like it s a report.

MEMBER RENSHAW: Who wrote this?

CHAIRPERSON REID: I don t know. I don t know, it doesn t say who wrote it, there s no date on it.

VICE CHAIR SOCKWELL: Which one is that?

CHAIRPERSON REID: Government, Department, Exhibit G.

UNIDENTIFIED SPEAKER: I see Environmental --

CHAIRPERSON REID: Right, but --

MS. BROADNAX: Madam Chair?

CHAIRPERSON REID: -- the person who signed as the responsible person for having, having --

MS. BROADNAX: Madam Chair?

CHAIRPERSON REID: Yes.

MS. BROADNAX: When we had our special meeting last week, Mr. Colin Burrell responded to the meeting with this information so apparently he s from the Department of Health. Although this it not signed by anyone, but he was, he was the representative there.

And apparently he was the representative at this, on this date, January 6.

CHAIRPERSON REID: All right, do we know --

MS. BROADNAX: Exhibit G.

CHAIRPERSON REID: Do we know where this came from, how we got it?

MS. PRUITT: Madam, it was in the, it s in the file.

CHAIRPERSON REID: All right.

MS. PRUITT: But you have that information and unless I can see the original file, I --

CHAIRPERSON REID: If you could walk over here. Because I just --

MS. PRUITT: So you can t speak, you need to consult --

VICE CHAIR SOCKWELL: May I approach, I have some information --

CHAIRPERSON REID: Have a seat, yes.

MS. PRUITT: Here s your package right

here, with all the supplemental information right here.

(Pause.)

VICE CHAIR SOCKWELL: Madam Chair?

CHAIRPERSON REID: Yes.

VICE CHAIR SOCKWELL: Based on the heading on it it was faxed on the 27th of January, from the Department of Health, Environmental Health Administration, Soil Quality Division.

CHAIRPERSON REID: The question is no, Mr. Sockwell what I m trying to ascertain is it was faxed to who?

MR. DICKEY: Madam Chair I can --

CHAIRPERSON REID: Okay.

MR. DICKEY: I am the affected ANC Commissioner. I had a --

CHAIRPERSON REID: Your name, sir?

MR. DICKEY: -- walk through, Raymond Dickey, I had to walk through with those people with Burch, and I asked for a report. When I came back to ask for a delay I told you I was waiting for those reports, that s why you delayed it.

CHAIRPERSON REID: Uh-huh.

MR. DICKEY: And I submitted those reports, and I will be talking about all those reports.

CHAIRPERSON REID: Okay, you submitted the

report.

MR. DICKEY: Yes, ma am, and I will be talking about --

CHAIRPERSON REID: All right, and the report that you submitted Mr. Dickey, was not, it was submitted to you, but it was unsigned.

MR. DICKEY: It was unsigned. That particular one was unsigned, but I know who it s from cause I had, I had communication with all those people. Talked with them personally. This is Mr. Etienne who is at the Health Department in Charge of Environmental Services.

That, Mr. Etienne and Mr. Burrell both walked though and prepared this report for this Committee. Thank you.

CHAIRPERSON REID: Thank you. Well basically from what I can garner from this report and Board Members help me out here to make sure that, and quickly looking over, I don t want to leave out anything that s pertinent, that it s a report from the Department of Health.

And I have, and I do have a problem with the fact that it s unsigned.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: So, I don t know if it s

authentic or what, so I just want for the record to note that this came from Mr. Dickey, who just stipulated to us that he received it form the Department of Health and he mentioned someone s name.

But it s hard to authenticate this without a signature. But anyway, what it does is, it mentions the parties involved and this drainage complaint at Boys Town problem, and several members, several people who, persons who live on Delafield Place, the ANC-5A Dickey, Bowser, DCRA Thomas Thurser of QCCA.

What is QCCA? Oh okay, okay, Queens Chapel Civic Association, Urban Integrated Environments, Ms. Hopkins, Mr. Normans, Mr. Jackson and Pearl, Colin Burrell from the Protection Division.

Anyway, basically it goes to the history of the problem of the ground water and underground spring in the area and tells about the Metro landfill and it goes into that, what they then determined was the problem, cause of the problem regarding the ground water seepage has not been resolved.

They had a fill meeting with Mr. Dickey and Ms. Washington and members of the Department of Recreational Parks and WPD and I suppose the Health Department did a walk through.

And they found probably cause, the history

of high ground water table, underground springs and the presence of -- association soils. They only found to be clay and -- as the probable cause.

Recommendation -- government agencies and Boys Town to correct outstanding drainage issues. It sounds like they just --

MS. PRUITT: Madam Chair I will note that on November 3rd we referred this to DPW and also, to other governmental agencies such as Office of Planning. And we have not received any response from those agencies in reference to this as a Zoning Case.

CHAIRPERSON REID: What about the Department of Health?

MS. PRUITT: No.

CHAIRPERSON REID: See we have to be very careful with documents coming into the file that don t, that are not submitted directly from the agency with the signature of someone there and perhaps we could ask that they submit to us a position as far as this is concerned that is directly, that is directed to the BZA.

MS. PRUITT: To this particular site.

CHAIRPERSON REID: To this particular body.

MS. PRUITT: Right, but I mean that letter actually addresses several sites and not just this

particular site and the new construction on this site.

CHAIRPERSON REID: Exactly.

MS. PRUITT: So it deals with a neighborhood problem versus a site specific problem which is the zoning.

CHAIRPERSON REID: Okay, then we need to get something from --

MS. PRUITT: We can certainly --

CHAIRPERSON REID: -- to clarify.

MS. PRUITT: We can certainly send them a letter and request them.

CHAIRPERSON REID: All right, thank you very much.

MS. PRUITT: We did make referrals, they just chose not to respond.

CHAIRPERSON REID: Oh, I, we always make referrals, don t we?

MS. PRUITT: Right. Yes.

CHAIRPERSON REID: Oh, so Planning did not submit a report on this.

MS. PRUITT: Right.

CHAIRPERSON REID: Okay, thank you so much Ms. Pruitt, and so we go now to the ANC Report.

MS. BROADNAX: Thank you Madam Chair. I think that you have my letter.

CHAIRPERSON REID: Uh-huh.

MS. BROADNAX: And I just, for the, will read this letter into the record because this is our position.

CHAIRPERSON REID: Well you don t have to read the entire letter, just, can you summarize it for us, just give us the pertinent parts?

MS. BROADNAX: Well let me just say that regarding Mr. Burrell from the Department of Health --

CHAIRPERSON REID: Okay, give your name, oh you already gave your name and address. I m sorry, okay.

MS. BROADNAX: I m Norma Broadnax. We had asked Mr. Burrell to give us a written statement following our meeting last week because he came to our meeting and appeared to have had a change of opinion somewhat in recognizing the severity and extent of the problem there.

And as I said in my letter he recommended that, he almost said that nothing should be done until all of the departments come together and clear this thing up.

But he said that, he suggested that there is a need for a geo-technical study. And he did say that Boys Town and the Department of Public Works

should not be working independently of each other but they should be working together to alleviate this problem.

And, let s see. As I, but my main question regarding, we heard from all of these people who were discussing the water problem, but one of the main issue for ANC-5A also includes this, the question of some of the issues that were brought up in BZA Application No. 15805.

We, in that application there were those neighbors who were in opposition to that application and complained of water runoff, and feared that their investments would be jeopardized if Boys Town were allowed to operate on the site.

And also it said that in the Findings of Fact that the Applicant is wiling to form an advisory committee to serve as a liaison between the facilities and the community.

The BZ, the Board ordered in this Application that the operator of the facility Boys Town USA shall establish an advisory committee which shall consist of representatives from Boys Town and members of the community, including area residents who at the public hearing on the application expressed an interest in participating.

The advisory committee shall meet quarterly and shall report to the ANC-5A annually and as I say to my knowledge this condition has not been complied with, especially as regards reporting to the ANC-5A.

Madam Chair and Members of the Board, in listening to the testimony this morning I have come to the conclusion that this problem will not be, it will not ever be alleviated of the water the underground water in through here.

I m reminded of my own house when we installed a parking pad and carport and so forth, and over a period of time, after some time I began to have water coming into my basement.

And when I consulted a company and I was told the reason for that was, was the pressure on the ground from the car pad and that the water, there s water in the ground in this area all of the time.

And that what happens is when it rains, the, it can t handle all of the water. And so because of the pressure of the car pad, I rather, I had to get a French trench in my basement.

And so what happens of course then this water is sump pumped out into the driveway. And I m thinking that we have a similar situation here at this location and that water coming into those people s

basement has been exacerbated because of the construction, of whatever construction that went on to establish what they have there now.

And it s going to be even worse whenever they add some more houses and driveways and parking lots and so forth.

CHAIRPERSON REID: Okay, I m sorry, I m sorry.

VICE CHAIR SOCKWELL: Ms. Broadnax.

CHAIRPERSON REID: Excuse me, would you just repeat the last thing you said cause I was answering a question. And I do apologize.

MS. BROADNAX: Oh, that s okay. Regarding my personal experience?

CHAIRPERSON REID: Uh-huh.

MS. BROADNAX: And see this all, all of this soil is about the same out there and it s all clay and whatever. And at sometime, at one point we built a car port and had a concrete, you know, pad for you know for parking.

And after some time as I was told that when I began to complain, I complained of water coming into the basement, and this is underground water. And it was because of the pressures on the soil from this car port pad.

Because all this is clay and there s water in the soil all of the time, there s underground water. And when it rains it s only worse. So as a result though I had to have built a French trench in my house to take care of this problem.

So what I m saying is that this, I think that the, that water coming into the basements of these people s homes, it may be a direct result of that kind of pressure on the soil from whatever construction that was done after the Boys Town took over.

And I don t think that this will ever be alleviated because if they re going to put other parking and housing and so forth it s going to be still more pressure on the soil.

As I listened to this this morning I m reminded of my own experience in this kind of a situation.

CHAIRPERSON REID: Thank you. Mr. Sockwell?

VICE CHAIR SOCKWELL: Ms. Broadnax, to respond if I may to your problem and not to over emphasize certain things. What, what I have been talking about and what I think is potentially an issue is tons and tons of soil, which cause a problem.

The actual soil pressure presented by your car port and pad are probably less the cause of that

problem that you re experiencing than the fact that you created an impermeable surface or a solid surface from which the water would run.

It would run in a direction rather than be contained and seep in a direction.

MS. BROADNAX: Uh-huh.

VICE CHAIR SOCKWELL: And sometimes causes a major change in the way water is conducted in the general vicinity of that and the French drain sounds like it would have solved the surface problem where the problem really was a surface problem and not a, not as much a deep pressure problem.

But I --

MS. BROADNAX: This drains in the basement of my house.

VICE CHAIR SOCKWELL: Yeah, but the water probably ran to the house and probably dropped down the foundation wall.

MS. BROADNAX: Probably.

VICE CHAIR SOCKWELL: I m making that assumption. But I would say that in the case of new construction in the District, the water is expected to be handled on site. In other words what the City requires is that the developer look at the land as virgin land and has to provide devices and methods for

managing any water that would be running from the roofs, from the roadways, from the development itself.

And that s why the sand filter, which is the cleaning portion of the facility and the retention tank, which is the part that allows the water to be held and then distributed to the sewers in a manageable fashion so as not to provide a supercharging or an over burden on the sewer system itself because of the changes in the way the water is actually handled from a natural to an artificial runoff situation.

So it s, you re collecting and holding it, cleaning it and then sending it to the sewers. I think that the new construction would not be the problem as much as the existing conditions not being dealt with. Now I do believe that there should be more study of the impact of the berm, since surface runoff is being dealt with.

It would be hopeful that from that additional study the Civil Engineer could determine whether or not he believes that his devices and methods to deal with this storm water runoff will be sufficient to reduce the burden.

Because right now you have an unchecked burden of water coming from two, what I think may be two things. One the berm and all the water that s

being conducted through the berm, and off the berm, that would be going east towards those houses.

Then, you have the improper management or lack of management of water that has been running off the site from a variety of different places that just exacerbates the problem that those neighbors along the alley have.

If you can reduce part of the problem or take part of the problem away, the soil may be able to handle the rest of the problem better. It may reduce the basement flooding and water issues of the neighbors that are most affected along that one, which appears to be the south end of the alley.

And those are things that have to be looked at. But the whole problem should be looked at as an overall problem before you can look at a partial answer that might be a good answer, I don t know.

But I think that part of it was just left out of the equation.

MS. BROADNAX: I agree. I agree with that. I didn t indicate that the Advisory Neighborhood Commission 5A voted to support the community in its opposition to this project and we recommended that the application be denied until the water drainage problem and any other previously cited concern has been

resolved.

CHAIRPERSON REID: And you had a quorum present in the meeting where there was unanimous vote.

MS. BROADNAX: Yes.

CHAIRPERSON REID: As reflected in your letter.

MS. BROADNAX: Yes.

CHAIRPERSON REID: The Report from the entire ANC.

MS. BROADNAX: Exactly.

CHAIRPERSON REID: Correct. Ms. Broadnax, when you were telling us about your personal experience, what was your, where do you live?

MS. BROADNAX: I live at 4702 6th Place N.E. I m, uh, not too, well I m off, I m not too, that s like 13th and I m 6th and --

CHAIRPERSON REID: So basically you re not adjacent property owners --

MS. BROADNAX: Uh-uh. --

CHAIRPERSON REID: You re just kind of empathizing with the kind of problem that they had.

MS. BROADNAX: Well I m told that most of that soil is so similar out there.

CHAIRPERSON REID: Uh-huh. So the soil, even in what, is that about five or six blocks away?

MS. BROADNAX: Right.

CHAIRPERSON REID: Has the same kind of problem? Okay, thank you. Any questions --

MEMBER RENSHAW: Yes, Madam Chair, a development in residential areas puts an enormous burden on an Advisory Neighborhood Commission. We recognize that. Or I recognize that.

But I would like to know given the long standing issue that we have before us of the water problem, how and when has ANC-5A dealt with Boys Town, DPW, the Department of Health and possibly the Environmental Protection Agency about this neighborhood problem?

MS. BROADNAX: Well, um, We ve only dealt with it as a result of the walk through that Mr., Commissioner Dickey had with these people, and since these people were involved we invited them to come to this special meeting that we held on February 13th to make a report to us.

And we ve also, now the report that the statement that is unsigned that the Chair is uncomfortable with, we talked with him and we asked him, Mr. Colin Burrell to send us a statement based on his remarks at that February 13th meeting.

However, he did not. He only sent us the

same statement that you have with the corrected address on it because that original statement had 2801 Sargent Road N.E. He sent us a corrected, with the corrected address but he didn t give us an update as I had asked.

But other than that, we have not, in my experience had any interaction with any of these agencies with reference to Boys Town.

MEMBER RENSHAW: Are you planning to do so?

MS. BROADNAX: Well yes.

MEMBER RENSHAW: And how are you --

MS. BROADNAX: We need to stay involved in this because for example even Mr. Burch s letter does not really address the problems that these people are experiencing over there.

MEMBER RENSHAW: And be advised that Gary Burch at DPW is retiring. So you will be dealing with a new person. And I would suggest that ANC-5A contact Mrs. Vanessa Dale Burns, the head of DPW and Ted Gordon, Theodore Gordon who is the head of the Environmental Protection Administration within the Department of Health and request a meeting of all parties in those two agencies concerned with and having anything to do with this problem.

MS. BROADNAX: Thank you. When we were, when our office was contacting DPW to get Mr. Burch to

come out and he absolutely said he wasn t coming out again. And then someone advised our staff that he s retiring.

And so then finally our Office Manager was able to persuade that somebody come so this Mr. Kenneth Laden came. And I think that he, I have an impression that he, he had a different view of the status of this or the concerns in this community.

But there again, we didn t get an updated report from him. So we have to get back to him.

CHAIRPERSON REID: Mr. Feola? Do you have any questions?

MR. FEOLA: No ma am, no questions.

CHAIRPERSON REID: Mr. Feola does not have any cross examination of this witness. Ms. Broadnax, from what I ve been able to garb from Mr. Dickey is that he in fact did have a meeting with Mr. Burch and several of the members of the community.

Wasn t that as a part of your ANC, him being Senior District Member --

MS. BROADNAX: Yes.

CHAIRPERSON REID: I m sorry?

MS. BROADNAX: Yes, that s part of the ANC.

CHAIRPERSON REID: Because I thought that you said when you answered Mrs. Renshaw that you had

not. Maybe I misunderstood.

MS. BROADNAX: I wasn t in the meeting with, that he had --

CHAIRPERSON REID: Okay, but that was for as a part of the ANC.

MS. BROADNAX: It s his Senior Member District, it s representative of that Senior Member District.

CHAIRPERSON REID: Okay, well what I m asking is as such, is that not, is that not for the benefit of the entire ANC?

MS. BROADNAX: One would assume so. I guess I m not understanding your question.

CHAIRPERSON REID: Okay, what I m asking you is when Mr. Dickey initiated the meeting and had people to come out for the site visit, were you present?

MS. BROADNAX: No, I was not. But --

CHAIRPERSON REID: But the, was the, excuse me, before you answer, was a report given to the full ANC as to the outcome of that particular meeting?

MS. BROADNAX: Yes, the same documents were given to the ANC. He, we, and it was brought to our monthly community meeting. His report on this meeting with these entities and he reported at our monthly community meeting and as a result of that meeting and

that report, the Commissioners present voted not to support his recommendation and in fact voted to have another meeting in which more members of the community could be heard.

Let me back up a little bit. What happened was our normal community meeting was scheduled for whatever, the fourth Wednesday in January and there was a snowstorm so we had to reschedule our meeting.

And in order to get this into coverage before our next monthly meeting, so we rescheduled the meeting for February 3rd, and because of the fact that it was such a short turn around time, and the word didn t really get out into the community to be at that meeting in which Mr. Dickey was reporting on his walk through, we, the Commissioners present voted to have a special meeting in which we could hear from the community on this issue.

And so we scheduled that meeting for February 16th. --

CHAIRPERSON REID: It appears that, what I m, I can determine from what s been submitted, and what you received from the Department of Public Works was Mr. Burch was a DPW, he has committed that if the problem is correctable within the public right-of-way, it will be so corrected.

And so, my question then becomes, did ya ll ask, what if it s not?

MS. BROADNAX: This is why we wanted them to come back to that February 16th meeting and explain, give us some assurances, because we were not happy with this if.

CHAIRPERSON REID: Right.

MEMBER RENSHAW: And assurances in writing.

MS. BROADNAX: Insurances in writing, that s right. We asked for that.

MEMBER RENSHAW: And you have no date certain when this is going to be repaired, and that s what you have to find out from DPW.

MS. BROADNAX: Exactly.

MEMBER RENSHAW: Okay.

CHAIRPERSON REID: Well, that s where their nebulous to say the least, so I don t, I just don t know what I recommend to you. I think that the issue that s being, of great concern here, this has not been adequately addressed.

MS. BROADNAX: Exactly. No.

CHAIRPERSON REID: And I don t know what, I don t know if anyone else has any ideas. I don t know what you would do in a situation like that. You do?

MEMBER RENSHAW: No. First of all I d like

to, you know, ponder this overnight, give it a little thought here because we have so much on the table, but, I think that this, that the ANC has to have a meeting with the top person in those agencies, and has to request that all parties having anything to do with this Boys Town development be at that meeting.

And when you do that it raises the issue on the radar screen of the heard of that Department. You also have to keep in touch with the Counsel s Oversight Committees having to do with those agencies.

So you have some leverage. The ANC has leverage. But you have to have a paper trail. Absolutely necessary, and when something does not happen that you expect to happen, be vocal.

At all costs, be vocal. And that s what s going to happen to really push this along. Don t sit back and say well when DPW is going to do it if it does it, just press. The full court press as they say in basketball.

CHAIRPERSON REID: What she said was that that causes me some concern is that Mr. Burch said he s not coming back.

MS. BROADNAX: He said he didn t want to come back.

MEMBER RENSHAW: Yes. He s not coming back

and Mr. Burch is retiring, so the point here is for ANC-5A to write to Mrs. Burns and lay it out that Mr. Burch who was involved in this case is not going to be with the agency.

Who is filling that slot? And you want at your earliest possible time to meet with that person with her. Period.

CHAIRPERSON REID: Yeah, you got your work cut out for you.

MS. BROADNAX: Indeed.

CHAIRPERSON REID: All right, thank you very much Ms. Broadnax for your testimony. Persons or parties in support of the application?

MS. PRUITT: Mrs. Reid? The time frame?

CHAIRPERSON REID: Okay well -- Is there anyone else here in support? All right, thank you.

MR. DICKEY: Madam Chair that s not in the packets that I gave --

CHAIRPERSON REID: Okay, this -- Mr. Dickey, typically when a person or parties in support is we ask that you try to as much as possible stay within a three minute time limit --

MR. DICKEY: Madam Chairman, I m the only one that submitted a report down here on this case, and because I ve been working with this case, with this

case for more than 20 years, I became an ANC in 1979 in this area, 1977 in this area.

I ve been elected every year, and I ve been working on this case ever since, and I ve got documents.

CHAIRPERSON REID: And you say, to say what?

MR. DICKEY: I have documented this case.

CHAIRPERSON REID: I understand that, but is that in response to my allowing you the information regarding the three minutes?

MR. DICKEY: Yes, ma am.

CHAIRPERSON REID: What are you saying?

MR. DICKEY: Yea, ma am. I m saying I hope you have my package that I submitted and my write up that I submitted on this case.

CHAIRPERSON REID: We do. We have that.

MR. DICKEY: Okay, but I just want to go through that briefly.

CHAIRPERSON REID: So you re saying that you may need a little bit more time?

MR. DICKEY: Maybe a couple of minutes.

CHAIRPERSON REID: All right.

MR. DICKEY: Okay. First, first of all, my name is Raymond Dickey. I am the ANC Commissioner for that area, and I ve been the ANC Commissioner for that

area from 1977 up until 1995 which I resigned, this past election I was written in because no one ran, so they wrote me in again.

Okay? So I ve worked in this area for several years. I moved into the area in 1957. So I know the area well. I live one block, approximately one block from this area.

CHAIRPERSON REID: Your address?

MR. DICKEY: Address is 1256 Emerson Street N.E.

CHAIRPERSON REID: Okay.

MR. DICKEY: That s just on the other side of Delafield Place, just one block off Delafield. And you have my report, I have it all written out here, and I would like for you, I would like for you to look at the exhibits that I mention in this report.

CHAIRPERSON REID: All right.

MR. DICKEY: The first exhibit was meeting, the ANC said that they didn t give the community time to look at this case. I held the first meeting here, Exhibit 1, I held the first meeting at, on this case, on the 10th of January at Queens Chapel.

Just, these flyers was well documented all through the community. I personally put them out, on this case. The people that are attending the,

attending that meeting were given the same kind of card that you have here.

And I asked them to listen to the case and when you finished pass these, mark your cards and pass them in to me. Okay? Boys Town made its presentation, well that, the community made its presentation.

The community made its, got it s answer. The next meeting, and the reason I had two meetings, because Boys Town separate two civic associations. And separate Queens Chapel from North Michigan Park.

So I held a meeting in Queens Chapel, which is affected by Boys Town, and I held a meeting in, in the North Michigan Park, which is affected by Boys Town.

North Michigan Park meeting is documented and the flyers was put out. That meeting was held on January the 12th, well distributed throughout the area. Everybody that came the same process took place, I gave them the cards, to check the cards and pass the cards back in whether they were for it or against it.

Boys Town spoke. Exhibit C, North Michigan Park Civic Association held a meeting after my meeting and had a vote, and this is the results of their vote. Now that s North Michigan Park, that s the Civic Association that covers the whole area.

This is the results of their vote.

CHAIRPERSON REID: Mr. Dickey, what is your point?

MR. DICKEY: My point is --

CHAIRPERSON REID: I m not, I just don t --

MR. DICKEY: I want to say that --

CHAIRPERSON REID: You seem to be very --

MR. DICKEY: I am, because I got, --

CHAIRPERSON REID: But where are you going with this?

MR. DICKEY: I m going with this on why I support it.

CHAIRPERSON REID: Okay.

MR. DICKEY: Why I support it.

CHAIRPERSON REID: Okay.

MR. DICKEY: And so the Civic Association voted for it.

CHAIRPERSON REID: Okay.

MR. DICKEY: I m a part of the Civic Association. The Civic Association covers all of the neighbors in the area, okay. Queens Chapel Terrace, I meat at Queens Chapel Terrance in a special meeting, but Queens Chapel Terrace Civic Association held a meeting, held a meeting and voted on this.

CHAIRPERSON REID: Okay, now you need to

move to why you support this application.

MR. DICKEY: Okay, I --

CHAIRPERSON REID: Please.

MR. DICKEY: Why do I support it? I support the application on conditions that the problems be solved. I called the meeting with these officials, I walked through with these officials, I showed them the problem, I walked through at Boys Town, I showed them the problem and asked them for a report, and the report that they gave is what you have there.

CHAIRPERSON REID: Uh-huh.

MR. DICKEY: And with their reports, with the report of the Civic Association, I support it, because my oath of office states that having been duly elected to the Advisory Neighborhood Commission, the bottom line is that I am to do the things that is convenient and for the District of Columbia.

This project is convenient. It is, it serves the District of Columbia children. I would rather meet on that Boys Town than to meet up out there in the street at night as you ve seen.

It s a project that I ve never seen before and I have had over 20 years working with youth. From children center as a counselor to a supervisor as a counselor, to a chief counselor, to assistant

administrator of the receiving home to the administrator of the receiving home, to setting up the residential training center.

The only residential training center in the District of Columbia, I set it up on Fort Lincoln. I know kids. I know what is good for kids. That s why I m supporting it.

CHAIRPERSON REID: Does that conclude your - -

MR. DICKEY: That concludes my report, Madam Chair.

CHAIRPERSON REID: Thank you for your very charged testimony. All right, are there any questions of this witness, Board members?

MR. DICKEY: And ANC had been advised along the line on all of this. And the ANC that we had the meeting in, there was five ANC Commissioners. Two voted for it, two voted against it and the Chairman breaked the tie. That was all.

CHAIRPERSON REID: Wait a minute. In the report that we got, it said that there was a quorum present and there was a unanimous vote.

MR. DICKEY: No. But, that s the second one. The first meeting that they had when I gave this testimony to them, when I gave this testimony to them,

there were five members left before I, in the meeting before I completed my report.

Two voted for my report to be accepted, two voted against my report, to not be accepted, and the Chairman broke the tie.

CHAIRPERSON REID: Now Mr. Dickey?

MR. DICKEY: Yes, ma am.

CHAIRPERSON REID: As you all know that our responsibility as the BZA is to give great weight to the ANC, the full ANC. Excuse me, let me finish. And when there s a quorum present and there is a unanimous vote then we afford the ANC great weight to which it s entitled.

Now, as a Single Member District Representative, I m understanding you to contradict what has been submitted to us?

MR. DICKEY: I say that if the ANC went by this and gave you the report, according to this, did they give you a report according to this document?

CHAIRPERSON REID: What document?

MR. DICKEY: In order to get great weight?

CHAIRPERSON REID: They gave us their official report that was dated February, not that one, February 22nd for a meeting that was held on Wednesday February 16th, which a quorum was present and that there

was a unanimous vote.

MR. DICKEY: What I m asking is, did the ANC comply with an Advisory Neighborhood getting great weight, 30115-1? With all of the documents there as to what they have to do to get great weight?

That s what I m saying. Did they apply, did they, did they go by that? Do you have that? And I say no. And that s why

CHAIRPERSON REID: Well I mean, we ll give it to staff, let s look at it, but nonetheless, what we need to see is that there was a meeting, there was a quorum and there was a vote taken and they give us the outcome of that vote.

And if there are any, either, either in support, in support of or in opposition to, and then they, usually they defend that position or they give us conditions or what have you.

And the elements that are typically, we typically see in an ANC letter, I think are contained in here. Ms. Pruitt, may I ask you to look over that document he gave you and tell us whether or not --

MS. PRUITT: What he s given us is basically our own regulations.

CHAIRPERSON REID: Okay, but is there anything in that that you see, I mean, off the top of

my head I don t know that would be --

MS. PRUITT: Well one of the, it says the number of members of an ANC that constitute a quorum and the number of members present at that meeting. That s one of the, a direct one.

So you re supposed to actually say the number of members of that ANC that constitute a quorum, not just state that there was a quorum, and then the number of members that were at that meeting.

MS. BROADNAX: Madam Chair?

CHAIRPERSON REID: Wait just one second, let me just look at this letter to see --

MS. BROADNAX: I think it s implicit.

CHAIRPERSON REID: Yeah, it s not in here. It s implicit but it s not in here. What typically another thing too is that they, in the letter, on the side it lists the Commissioners and it says that the vote was unanimous.

And so I don t know, it said there was a quorum present of the Commissioners. It did no say how many Commissioners comprised a quorum necessarily.

MS. PRUITT: Under --

CHAIRPERSON REID: Go ahead.

MS. PRUITT: Under 3115.1D the D states that the number of the members of the ANC that constitute a

quorum and the number of members present at the meeting. So it asks for a number.

CHAIRPERSON REID: All right. Ms. Broadnax, did you want to respond?

MS. BROADNAX: Madam Chair, this is Norma Broadnax again. Our Commission, in our Commission seven members constitute a quorum, and we did have seven members who answered the roll call at each of these meetings, the February, the January, the February 3rd meeting which Commissioner Dickey says five people voted.

What happens in our Commission, if you have a quorum when you open your meeting, it doesn t matter how many are there for the vote.

MR. DICKEY: That s right.

CHAIRPERSON REID: What? Explain that.

MS. BROADNAX: We have a quorum at the opening at the meeting, it doesn t matter how many are there for the vote.

CHAIRPERSON REID: Ah, I don t understand that, because you re saying that if we have a quorum at the opening of the meeting and five people leave and you only have two people --

MS. BROADNAX: You can still have a vote.

CHAIRPERSON REID: I don t think that s

true.

MS. BROADNAX: That is.

CHAIRPERSON REID: I don t think --

MR. DICKEY: That s not a quorum.

(All talk at once.)

MS. PRUITT: You have to maintain a quorum for each vote.

CHAIRPERSON REID: Yeah. Then other than that --

MS. PRUITT: You have to maintain the quorum for each vote. So that means --

MS. BROADNAX: That s not what we ve been told on through the years.

CHAIRPERSON REID: Well, but there would be no purpose of having a quorum.

MR. DICKEY: That s right.

CHAIRPERSON REID: If that were the case. I don t think that s true. But nonetheless, the meeting that Mr. Dickey was referring to and the meeting that you re referring to are two different meetings, right?

MS. BROADNAX: Well he s talking about, he said that the January, February 3rd meeting that five people voted.

CHAIRPERSON REID: Uh-huh.

MR. DICKEY: Five people present.

CHAIRPERSON REID: I m saying that that was two different meetings. Two different meetings, two different votes on the same issue.

MS. BROADNAX: -- that s right. Because at that meeting they also, the ones who were there voted to have another meeting so that the community could be notified, get ample notice and be present.

Cause, were, not many people were out at this February 3rd meeting because we couldn t get the word out in time.

CHAIRPERSON REID: Okay, so, Mr. Dickey, was Mr. Dickey present at that meeting that you held on February the 16th?

MS. BROADNAX: No.

CHAIRPERSON REID: So he was not aware of the subsequent vote having been taken? Is that not correct?

MS. BROADNAX: I guess, I can assume that he wasn t --

CHAIRPERSON REID: Mr. Dickey, were you aware of the second vote having been taken?

MR. DICKEY: I was not aware of that vote taken. I had no communication or information that a vote was taken and what the vote was, and I am the Representative of this case.

CHAIRPERSON REID: Also, in regards to a letter that was submitted, that is correct that there should be indicated the number present and the number that comprised the quorum.

And, and I guess we just have to kind of deduct from the number of Commissioners that are reflected on this letter are 12, and you re saying that seven constitute a quorum.

MS. BROADNAX: A quorum.

CHAIRPERSON REID: What is the --

MS. BROADNAX: It s six plus one.

CHAIRPERSON REID: What is the rule of thumb?

MR. FEOLA: Madame Chair maybe --

CHAIRPERSON REID: Half plus one?

MS. BROADNAX: It s six, half plus one.

CHAIRPERSON REID: Uh-huh.

MR. FEOLA: The Applicant doesn t challenge the fact that there was a quorum present for the February 16th meeting.

CHAIRPERSON REID: Okay, okay, sure. I understand that. But the point I m making is that if the rule of thumb is the majority, 12 plus one, in this instance seven, and it reflects that it was a, there was a quorum present, then I think that by deduction in

this instance we can glean that there was a quorum present.

MS. BROADNAX: There was a quorum present on the 16th.

CHAIRPERSON REID: Hereafter however, we have to make sure that it is, you know, stipulated in the letter that there was so many members in --

MS. BROADNAX: -- voting also.

CHAIRPERSON REID: Let me say this now. Based on what you just said. If the quorum was seven, were seven people involved in --

MS. BROADNAX: Voted.

CHAIRPERSON REID: -- the vote, the unanimous vote?

MS. BROADNAX: Yes.

CHAIRPERSON REID: Did he have a roll call?

MS. BROADNAX: Well we have a roll call --

CHAIRPERSON REID: A vote call?

MS. BROADNAX: I don t have that with me, but we do have a roll call form that is completed.

CHAIRPERSON REID: The question that s been raised by Mr. Dickey I d like to ask that you please submit to the record --

MS. BROADNAX: The roll call --

CHAIRPERSON REID: -- the roll call

reflecting the vote.

MS. BROADNAX: Was there a roll call on the vote, is that what you re saying?

CHAIRPERSON REID: Yes. Just listing members who were present and --

MS. BROADNAX: Where s the roll call who was present?

CHAIRPERSON REID: -- what in fact their position was, yea or nay, for us. As far as that vote was concerned. Okay, now do you have any questions of Mr. Dickey? Cross Examination, while you re here?

MS. BROADNAX: No. No I don t have any cross examination on the questions, I d just like to correct something. Mr. Dickey made the statement that we said that notices were not given.

We were not saying that he didn t, those notices were not made that he exhibited to you. What we were saying is that for our February 3rd meeting between the date of our regularly scheduled meeting which was snowed out on February 3rd a rescheduled meeting, didn t give us enough time to get the word out into the community that the meeting had been rescheduled for February 3rd.

That was what we meant when we said that about notification.

CHAIRPERSON REID: Thank you. Mr. Feola do you have any cross examination? Okay. Thank you very much Mr. Dickey.

MR. DICKEY: Thank you.

CHAIRPERSON REID: Thank you, and we ll have now, persons in opposition. Please come forward.

(Pause.)

MR. LEWIS: My name is --

MS. PRUITT: Madam Chair, can we get a feel for how many people want to testify? Cause Mrs. Mitten is here for the other --

CHAIRPERSON REID: I will. Come forward please. Is it four people? Four people. All right, each of you will have three minutes, and we ask that you not be repetitive if someone has already said what you wanted to say. Then please don t, don t use your time to reiterate what s already been said, and you don t have to use your whole three minutes, you concede it to the next person.

MR. LEWIS: Excuse me. My name is Edward D. Lewis.

CHAIRPERSON REID: You can sit down Mr. Lewis.

MR. LEWIS: Oh, okay, I m sorry. Edward D. Lewis.

CHAIRPERSON REID: I think everyone was sworn, everyone was sworn, correct? Did they come in later?

MR. LEWIS: We were sworn in to begin with, those who were going to --

MS. PRUITT: Why don t we just re-swear everybody --

CHAIRPERSON REID: If the person has not been --

MS. PRUITT: Anyone who has not been sworn in could you please stand?

CHAIRPERSON REID: These are the last people to testify today. So Mrs. Curry, were you going to testify? Did you come up? Is there a chair? Or you want to just, okay. Well when they get one, one person gets done you can come up.

(Witnesses sworn.)

MS. PRUITT: Thank you. Also just for understanding, anyone else here who would like to testify would you please raise your hand so we have an idea of how many people.

CHAIRPERSON REID: I think this is it.

MS. PRUITT: Ms. Curry? Are you, so we have two more aside from the four up here, is that correct? -- No, you want to testify either in support

or opposition, I just need to know if you want to testify. So, three more.

CHAIRPERSON REID: Wait. Wait, wait, wait. I ve already asked them. Let me ask just one more time. The persons who are here to testify in opposition, can you please by a show of hands let us know if you re going to testify.

Okay. Other than the four people here, we have two other people, and sir, when you raised your hand, what were you raising your hand in response to?

REVEREND TURNER: To also testify.

CHAIRPERSON REID: So he didn t just raise his hand, I just asked again. So that s three.

(Pause.)

All right, so sir, you re going to testify? Okay, so --

VICE CHAIR SOCKWELL: Reverend Turner?

CHAIRPERSON REID: So we have seven altogether.

VICE CHAIR SOCKWELL: Reverend Turner, you do intend to testify?

REVEREND TURNER: Yes.

CHAIRPERSON REID: Thank you. Opposition? This is all opposition? The support people have already, the one person has already spoken. Correct?

Okay. Sir.

MR. LEWIS: Okay. My name is Edward D. Lewis and I reside at 4925 Sargent Road N.E. that s in the area. Now I have here a letter that Mr. Feola wrote to Mr. Angel Clarens who was Chair at the date of the letter in any event July 21, 1993, shortly before that 15805 was published.

And he makes a statement, Mr. Feola, nonetheless Boys Town has retained the appropriate technical personnel, land surveyor and Civil Engineer to evaluate these problems, that s the flooding and erosion, and fully intends to honor its obligations in this regard upon the issuance of a final order.

That s six and a half years ago and we re going through this whole business today. That s item one, okay. Item two, this business of Metro dumping and landscaping, I m using the word landscaping instead of landfill the St. Gertrude s property at the time.

That was in violation of Chapter 20 of the Municipal Regulations Title 11 of the District of Columbia. We, we were never notified that this insult to the environment was going to take place.

St. Gertrude s stonewalled what was going on. People went and asked, they said oh, we re going to landscape it. According to Chapter 20, you can t,

you have to consider the adverse impact of, among other things, landscaping when you come into that community.

Okay, that s item two. Item three is this. What the Engineering Mr. Riordan, whatever, these people from Boys Town, they re trying to blame the victim.

There was no flooding in that area until after that dumping of the spoil by Metro. There s only one proper solution to make a permanent solution to the problem. Not all this money business with the engineers and public works.

You compel, get DCRA or whoever. That was illegal, that material was illegally dumped there. That material, Metro could be compelled to remove that stuff, bring the condition of the terrain there as nearly as possible.

Obviously you can t put, bring back the trees they removed to put that stuff in and all that, but there s no way you re ever going to fix that problem with all these halfway measures that Mr. Riordan is giving us.

It s a lot of nonsense. They re going to have, end up, we re going to have flooding again, and they re going to say, oh, well, it s your fault, the water is leaking underneath, it s this that and the

other thing.

You have to get down to the original conditions when the terrain was balanced. It was balanced for hundreds, thousands of years. The builders of those houses where these people are experiencing the flooding, they would never have built them.

They would never have sold them if they had been flooding there. So all this other stuff s a lot of nonsense. And it s criminal the way they re going on. Now so far as Mr. Dickey is concerned, the social implications of Boys Town, that s another matter.

But at least let Mr. Feola and his principal, that s with an a , let them honor, let them honor their obligations. This was six and a half years ago, July 21st, 1993.

This letter should be in your files. I have a copy here if you want me to give it to you.

CHAIRPERSON REID: Thank you --

MR. LEWIS: So that s really, also if they remove that dirt they should make a toxilogical survey. We don t know what s in that dirt. There was something in the paper a couple of weeks ago to the effect that I think the Korean Embassy had to have the land around its building removed because it was

saturated I think with arsenic.

So who knows what you dig up here in the District Area.

CHAIRPERSON REID: Let me ask you a question, a couple questions.

MR. LEWIS: Sure, go ahead.

CHAIRPERSON REID: Sir, you raise some really good issues. One, you, where do you live?

MR. LEWIS: 4925 Sargent Road N.E.

CHAIRPERSON REID: So are you --

MR. LEWIS: That s within two, it s probably less than 200 feet from the north boarder of the property.

CHAIRPERSON REID: But you haven t been, but your property, has your property had a problem with the --

MR. LEWIS: Well the only problem we ve had now, not the property directly, I m more concerned with what s happening in the neighborhood. But let me tell you something else. The flooding, the seepage problem had been getting worse and worse.

For the last couple of years. Where I live is at the corner of Sargent Road, which is more or less a main thoroughfare and Delafield Place, not Street as people have been saying. Oh, we know what they meant.

We ve had seepage coming out of the middle of Sargent Road at that intersection, out of a -- cap and also out of some cracks in the pavement.

And it s been going on and on, WASA, the Water and Sewer Authority has been sending crews out. They nose around, they can t do anything. And I think that that water is coming down from that Boys Town property.

We don t know where it s coming from. And it s ridiculous. The problem s getting worse and worse all the time.

CHAIRPERSON REID: How long have you lived there?

MR. LEWIS: Almost half a century. Since April of 50.

CHAIRPERSON REID: And you re, you re propering to us today that until, until the Metro put the landfill there --

MR. LEWIS: There s spoil from the diggings.

CHAIRPERSON REID: There was not a problem.

MR. LEWIS: No --

CHAIRPERSON REID: So you re saying that for years there was not a problem.

MR. LEWIS: None of the people who live in that abutting property ever complained about any kind

of flooding there. And let me say something else about, apart from the, you know, apart from the flooding which is the most serious problem.

According to that Order on 15805, Boys Town was not supposed to make, put in anything extraneous to their, the buildings they had at the time. They were supposed to fix them up internally.

Do you know that very shortly after they got the order, they went ahead and put some kind of noisy generator or air conditioning tower and then underneath the neighbors windows there, they put this basketball court.

And it wasn t until they wanted this additional exceptions that they did anything about it. They were complained to many times by the people living, you know, abutting that area.

So, I can say you know you got to judge them. They may do something socially good as Mr. Dickey states and I m sure he s correct that way, but they have to respect the community. And they haven t so far.

CHAIRPERSON REID: What had occurred to me early on was the liability of Metro in this regard. And my question then is have you all contacted or complained to Metro about what you have --

MR. LEWIS: No. I ll tell you the truth, it wasn t until I started writing some of the stuff up, you know, thinking about what I d say here today, that it even came to me that Metro had no right to dump his stuff there.

And in looking through an old copy, the 1987 DCMR Title 11, the closest thing I could find was that under Chapter 20 if you did anything there, and they mention several things, including landscaping, there could be an adverse impact and that would have to be discussed.

I assume that the BZA at the time that would have been in the early 80s would have sent notices out just like they sent notices out for the present exceptions.

CHAIRPERSON REID: Um, but the question --

MR. LEWIS: We never got anything.

CHAIRPERSON REID: But the question is, if the land owner allowed Metro to dump there --

MR. LEWIS: Uh-huh.

CHAIRPERSON REID: -- then the response, who has the responsibility? Metro or the --

MR. LEWIS: I think --

CHAIRPERSON REID: I m not sure --

MR. LEWIS: I m not sure either, but --

VICE CHAIR SOCKWELL: Madam Chair?

MR. LEWIS: Do you remember the Love Canal business in up-state New York? Eventually it turned out even though Hooker Chemical Company had posted that toxic dumping, they were eventually held responsible and I think they had to indemnify the homeowners there who came in after the dumping and who knew about the fact that the place, you know, the property was posted.

The point is, Metro, they certainly have plenty of lawyers, very competent engineers and so on. They should have considered what the environmental insult they were making to the community.

It s not nice. It s a terrible thing they did. We have a park about oh, I d say a quarter to a half a mile to the north of Delafield Place. I don t know, I think what it s, I don t know, it s, Fort --, whatever.

There s a nice open stretch of park run by the Federal Government. They could have dumped, they could have dumped that dirt over there. There s no property abutting it. There s just a couple of roads. I don t know why they had to come and dump it right in the middle of the community.

I know several people who lived across the street from the St. Gertrude s property, they were so

disgusted with this continual dumping. I don t remember how many days or weeks it went on, but it was one truck after another.

They just said they didn t know what was going on, they got away, they moved out.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Madam Chair?

MR. LEWIS: So do you want this letter?

CHAIRPERSON REID: Yes, definitely.

VICE CHAIR SOCKWELL: Madam Chair, the issue of liability is one that, maybe, as covered under current law, usually accrues back to the property owner even if the property has changed hands.

But, as to who s responsible in the ultimate, it could have been a contractor that worked with the St. Gertrude s property owners, it, it is less likely that the Washington and Metropolitan Area Transit Authority itself was responsible under the action that took place.

That the contractor that was involved in excavating or tunneling had a relationship with St. Gertrude s and that s where the landfill came from. But it may not actually be Boys Town s problem from the ultimate responsibility stand point.

From the immediate responsibility

standpoint Boys Town has taken the position that it wants to try to solve the problem. They may not have achieved the proper level of scrutiny or development of the issues, but it is something that the people here should recognize as not being something that Boys Town was responsible for creating.

Boys Town inherited the condition, and if their purchase of the property occurred after the landfill, and yet, Boys Town is now the immediate culprit in the matter that we re dealing with.

At least they re the immediate person or immediate organization that we re trying to work with on this. And I don t know what the environmental policies were, under DCMR 11's Edition that was covered back then, because it would be the 76 Edition I think that probably was good through 83.

But you may know better than I sir.

MR. LEWIS: No, I don t, the only issue I have is the 87 issue, and I assume that that had the same coverage as the previous issue which you say is 76.

VICE CHAIR SOCKWELL: Well they got thicker and thicker from 58 on, and in 58 it was this thick, and now it s this thick.

MR. LEWIS: Yeah, I know, I paid $8 for the

one I ve got and I was told it s now 25, so I didn t get a new one. But what I mean to say is, it seems to me, just as you were talking to Ms. Washington, and pointing, you or the Chair was pointing out to Ms. Washington, that we have to have continuity of the fact that you have a new, a new parent donor of the property doesn t alleviate the new owner from you know, from being responsible for correcting the conditions.

Now, Boys Town in my estimation should be able to go to the DC, what is it, DCRA or get an attorney that will take care of that matter if Mr. Feola can t, and compel Metro, they ve got the deep pockets, and compel them to start digging that spoil up and --

VICE CHAIR SOCKWELL: Well the issue, the issue, the issue as I stated sir, is not necessarily one that Metro, you look at Metro as the big animal. And Metro may not be the ones responsible.

What I am saying is that Boys Town as well might not be considered responsible. They bought the property with a pre-existing condition.

MR. LEWIS: But they knew it.

VICE CHAIR SOCKWELL: If you sold your house to me, and the second floor caved in and I didn t know it was going to cave in, I could probably come get you.

MR. LEWIS: Yeah, but the point is Boys Town knew about the condition.

VICE CHAIR SOCKWELL: They knew about the --

MR. LEWIS: We brought up the flooding and the erosion and all that --

VICE CHAIR SOCKWELL: Right, right.

MR. LEWIS: They were aware of the problem.

VICE CHAIR SOCKWELL: Right. They, but they did pick up the property as, as is. And I m not saying anything as to who s going to be responsible for fixing it, but I m just saying that be aware that they picked it up.

They didn t say we ll we re not going to take the property because it s got these berms on it.

MR. LEWIS: I don t know. I talked to a Mr. what is his name, Keller or Kelleher or something like that, from the National Capitol Planning Commission, whatever.

And I asked him whether the Environmental, the Federal Environmental Protection Association or Administration would have been involved, or should have been involved.

And he said he didn t think so. He said he thought maybe Public Works or the Public Health Department of the District. What happens is, you, we

don t have all this political pull or money or anything like that.

And say, oh, well, they bought it second or third hand, then, so they re not responsible for the problem. The problem is emanating from their property. And I m saying that either they dig it up, hire contractors, I don t know what s a million tons of that stuff.

There was an awful lot, an awfully big number of big dump trucks coming in. They weren t there all night, but they were coming in most of the daylight hours for a few. I m just going by my memory now --

VICE CHAIR SOCKWELL: Mr. Lewis, just to put closure to this. Until it s determined whether or not there were illegal activities that brought the dirt to the property, it s very difficult to conclude what should be done about that.

MR. LEWIS: Like I m saying is, the nearest I could come to anything was in Chapter 20 of my 87 book, okay? Now, it just seemed to me that that was the closest thing to determining that an illegality had occurred because the community did not receive any notice from the BZA.

St. Gertrude s probably didn t even inform anybody. We don t even know if anybody looked at it,

and I don t know whether it s in the BZA s province to look into it, but whoever owns the property now, it s their job.

Mr. Feola in that letter that you know I mentioned, he understood, he said they were going to honor their obligation. They did nothing.

COMMISSIONER HOLMAN: Madam Chair, with all due respect, can we move forward? I don t think we re, we re the correct forum to determine liability if any for something that we re not even exactly clear there is liability for.

CHAIRPERSON REID: I agree. All right sir. Next witness.

MR. GLASGOW: My name is James E. Glasgow Jr., and I reside at 1281 Delafield Place N.E. And I m one of the three houses that was identified on the chart that was receiving a lot of water.

And, at the time in 93 I testified down here, and we had a walk through, and I brought to the attention about the landfill to Boys Town officials that had the walk through with us.

And it was totally ignored, about the landfill, this was to let them know that they was inheriting a problem with the community with water.

I didn t, I moved in my resident in 1972.

I didn t start experiencing the type of water problems where I had to really do something to try to protect my interest and my home until after the landfill.

And we have significant amount of damage now that s done, and Boys Town has come out and walked through, but they only talk -- but I have no trust in anything Boys Town say unless they put it in writing.

And I think other people have addressed some of my other concerns, Mr. Lewis. So --

CHAIRPERSON REID: Well, there are instances where things have been put in writing of Boys Town.

MR. GLASGOW: But, nothing I see that they re put in writing that they have completed.

CHAIRPERSON REID: That s a point. To say that you don t believe it unless it s writing is very, --

MR. GLASGOW: No, -- believe it if it s not in writing.

CHAIRPERSON REID: Okay.

MR. GLASGOW: They haven t done anything to make me believe in -- a good neighbor. One more thing I would like to say. I ve had security problems with their residents up there coming across the fence, making verbal threats to me on my property.

The noise is, I wear a hearing aid, and I

don t sleep with my hearing aid, and this noise is beyond the level of the noise limit that it disturbs me at night while trying to sleep.

MEMBER RENSHAW: Is the noise from the generator?

MR. GLASGOW: Yes, ma am. It s from the, it s just from the, it s, --

MEMBER RENSHAW: The cooling tower?

MR. GLASGOW: The noise mostly comes from the cooling tower. When it cranks up it sounds like a train, that s connecting to another part of it. It s just start up of it wakes you up. It s so loud.

CHAIRPERSON REID: You said you ve been threatened?

MR. GLASGOW: Yes, by a resident. One of the residents come across the fence. He was, no one was, he had no kind of a guard inside there or anything. He was kind of irate on the property. I d seen him out and --

CHAIRPERSON REID: Was this like one time or what? An isolated incident?

MR. GLASGOW: Well this was an isolated incident, one time with me because I was at home that day and working on my automobile, and I had neighbors who was out to witness the ordeal.

But we have seen people come across the fence. I can t identify them as being Boys Town people, because it s at night, so.

CHAIRPERSON REID: Right.

MR. GLASGOW: I couldn t set here and say these are actually Boys Town people.

CHAIRPERSON REID: Thank you sir. Next witness?

MS. SCOTT: My name is Carmen Gilmore Scott. I m a long time resident of 40 years of 1273 Delafield Place N.E. My family has resided there for that long a period of time.

I moved away in 1980, moved to California and came back in 1992. When I came back and went down into my mother s basement, she had so much water down there her carpet was completely destroyed.

We had to throw it out, we get water in that basement. I ve had it snaked to the sewer line two times. I m sorry, I m really upset about this. When I talked to Roto-Rooter, Roto-Rooter says you should not have this problem as often as you re having it in less than three years I ve been snaked two the sewer line in the street.

We did not have this problem. When I moved to California everything was fine. When I came back

here there was water everywhere, constantly. The whole back area.

We ve had to purchase a new heating, um, hot water heater, the whole bottom rusted out. When Sears came out they said, you must be getting a lot of water in order for the bottom of this to rust out.

My mother purchased another washing machine; that s from having so much water -- bottom of the washing machine had rusted out. That s from water coming in.

And having plumbers come out telling me that your drain can t hold the amount of water that s coming in. This is not just rain water, this is constant water. Now I talked to the engineers who said oh, you can t hold the drain water.

Well it held it before, but if you stand out there right now you can see that water coming off the hill. And it s supposed to catch this inlet in the alley and it doesn t catch there.

They came out in Thanksgiving. I remember because Thanksgiving, it was Thanksgiving time, 1998, dug up the alley because it was a sinkhole in there. Dug up the alley and we hoped that that would catch some of that water.

The water, if you take my ring as an

example of where the catch drain is right here, the water goes from this side and this side and a tiny bit gets here, but most of it goes around it.

It doesn t even go up into this take-up drain. So water is still coming onto my property and it s bypassing the alley, it has a little dip in it, but it still keeps on going past it and comes down into our property.

Mine, my neighbor next door who has part of the side of her house eroded, she has a little hole on the side now where the soil has eroded and where things have now just kind of sunk down further and further and further.

But before the alley was repaired, the water just gushed straight down. So it does eliminate it a tiny bit, but it still has not resolved the problems. I don t know what s going to resolve that problem.

But right now the water s running down the alley. And there is no take-up drain there to catch it. So when we had those very cold days after the snow, I had a sheet of ice down in the front of my house.

I m not talking about the back, down the front of my house. And I mean my mother is 72 years

old. She shouldn t have to slip and fall on that ice that s out in the front of the house because there s so much water it has pushed itself out from the back of the house into the front in the sidewalk.

Most of the people on that side have a problem. A lot of people don t want to come out and say anything about it. They don t want to testify. I could hardly talk when I first started talking, but the real deal is we re having some serious problems.

CHAIRPERSON REID: And why? Why do people not want to testify?

MS. SCOTT: Nervous, afraid, afraid that older, most, we re in more of a senior area. And they are not going to come out. They will not come out. They ll talk to us about it, and Cynthia will talk about the results that we got back from the neighbors in the area.

CHAIRPERSON REID: Well, is it your, you live there with your mother are you saying?

MS. SCOTT: Yes. I do now.

CHAIRPERSON REID: And the address is what?

MS. SCOTT: 1273 Delafield. I m on the other side just on the other side of the alley.

CHAIRPERSON REID: You re right behind there.

MS. SCOTT: There s three houses on there where Mr. Glasgow and Ms. Davis and Mr. Jonathan live. I live on the very far end house.

CHAIRPERSON REID: I just wanted to point out that if the people in your neighborhood are older or they are reluctant to speak out, what have you, then through the ANC you can, they could have a representation through the ANC.

They could --

MS. BROADNAX: No, no --

MEMBER RENSHAW: They don t even do that. I have seniors in my neighborhood and they, it s the same experience.

MS. SCOTT: They ll talk to us --

MEMBER RENSHAW: But they don t --

MS. SCOTT: They talk to us and Cynthia will tell you about some of the comments that were made.

MEMBER RENSHAW: Okay.

MS. SCOTT: But they have problems, but they don t want to butt the system. They ll talk to us a little bit. I was finally able to get my two neighbors next door to agree to say something.

One of my neighbors Ms. Davis who still won t talk, who s having a significant amount of water problems. The thing is we, I, okay. For myself

personally. I have nothing against what Boys Town does. I think what they do is admirable.

But the problem that we have, regardless of whether St. Gertrude s had it or Boys Town has it, it s a problem that currently exists. When Boys Town had their first meeting with us it was actually an open house.

Congress gave $7.1 million to Boys Town, put it in the D.C. Government spearheaded specifically for Boys Town to build. Prior to that, we didn t know what was going to Boys Town. They never contacted us, never said anything to us whatsoever.

Now as soon as this money comes out, we find out about it, we go and start talking about it, and you know, talk to different members of the press, talk to them about it, then they have an open house and at the open house they come up with some of these plans to show us that they re building.

We didn t know this, we had not addressed that issue at that point. We don t know where we would be today. The thing is the problem that I have is that they were not up front with us.

When we asked them, okay, you re going to get this $7.1 million, what are you going to do with it? We don t know. It s possible that the local

office didn t know. But Nebraska knew. I called Omaha, that s the only reason I found out what I found out.

Because I figured if I m not going to get any results here, perhaps I ll get some there. I got annual reports and I read every paper of the annual reports.

I, they have an incredible amount of money and an incredible amount of power. I understand that. We re just neighbors, but this impacts our lives. I understand that these kids definitely have to have some place to go.

And I want them to have some place to go. But I also don t want to have to have them dig up there have a geyser gushing up and have to use Mr. Glasgow s boat or try to find Noah on an Ark.

CHAIRPERSON REID: Thank you for your, thank you for your very vivid testimony. Do you have questions of this witness?

VICE CHAIR SOCKWELL: Yes. Ms. Scott, your particular problem with water, you believe had come from the inadequacy of surface water control? You spoke of two things. One you spoke of the water bypassing the inlet.

MS. SCOTT: Right.

VICE CHAIR SOCKWELL: Basically going around it and heading down the alley because the grades in the alley apparently don t allow it to go where it s supposed to.

MS. SCOTT: Right.

VICE CHAIR SOCKWELL: And you spoke to a sinkhole in the alley that had to be repaired. The sinkhole issue is often caused by underground water that is not controlled.

The inlet problem is another problem. Now, the water issues that you ve had in your basement, do they appear to be coming from below up or do they, or does the water seem to be coming through the wall?

Is there any, can you see where the water enters the basement, the base of the wall, foundation wall?

MS. SCOTT: Well some of it is coming from the foundation wall, but if I stand outside my back door --

VICE CHAIR SOCKWELL: Yes.

MS. SCOTT: -- where the drain is, where that retaining wall is, the bricks --

VICE CHAIR SOCKWELL: Uh-huh.

MS. SCOTT: -- the water s coming through the, where the mortar is that holds the bricks

together. Water is coming through there --

VICE CHAIR SOCKWELL: Uh-huh.

MS. SCOTT: -- it never did before.

VICE CHAIR SOCKWELL: Uh-huh. Does it drain back up so that it ponds?

MS. SCOTT: The drain backs up, yes, the, the drain backs up terribly. And it s smelly.

VICE CHAIR SOCKWELL: Okay.

MS. SCOTT: And I can see the water coming off of the hill from Boys Town, and just, you can just stand right there. It was 103 degrees one day. I was watching water come off, out on that street where it was coming off from on Boys Town property, coming down, right down on to my property.

Mr. Glasgow has seen it. I mean we walked there and said look at this, this is ridiculous. So I m not sure if there s over ground and underground or just what. But it s a serious problem. And I don t know what to do about it.

I ve talked to Boys Town and they re willing to look at it. I mean it s not that they aren t willing to do any, to at least address it and look at it. But I ve also heard the Engineer say it s not our problem it s the rain.

It s the rain that s holding --

VICE CHAIR SOCKWELL: Well --

MS. SCOTT: It would have to be monsoon season every day for that to be rain.

VICE CHAIR SOCKWELL: There would, there would have to be some kind of flow calculations that incorporated the sewer in the street, the main trunk sewer, the feeder lines from the alley, and anything that s tying into those sewers from adjacent property on the upstream flow side to determine whether or not those sewers are surcharging, which means that water instead of going in and through the sewer is backing up out of the sewers, not able to go through your drains, into the sewer at a flow rate that prevents it from backing up.

And other issues, I mean there s a, a major problem here, and apparently it seems like something that Mr. Riordan would be looking at from the private property side, and that the Department of Public Works would have to look at from the public property side or the public space side.

Because apparently what is, what is going in has not enough place to go so that it flows smoothly. It s just like of your second floor drain pours in and there s something stopped up below the first floor drain, the water s going to bubble up out

of the sink.

So, you, it sounds like this is a very serious problem. And I m appreciative as the rest of the Board is that you came and were willing to speak about it.

CHAIRPERSON REID: Thank you, next --

Do you have a question?

MEMBER RENSHAW: Could I ask, yes. Ms. Scott you mentioned smelly water.

MS. SCOTT: Yes.

MEMBER RENSHAW: Is that condition continuing?

MS. SCOTT: Yes, it does. When, sometimes the water will well up in the back and it just sits there. And I have a couple of neighbors who will agree to that too, who actually said they d right it down, but of course they never did.

But if it sits there then it gets real smelly, and sometimes when I turn on my tap water it s smelly --

MEMBER RENSHAW: Oh, boy.

VICE CHAIR SOCKWELL: I d say the tap water is brought in on lines that run above the sewer lines by a number of feet. Hopefully that s not a contamination issue, but if you even think that it is

you need to take samples and get those samples analyzed immediately.

Because that s a major health issue. The other thing is you may have a combined sewer in that neighborhood which would mean that affluent from the toilets and the storm water runoff would all be combining at some point in the system.

If that s the case and you re getting back-ups, that would certainly contribute to smells that might be different from those of dead leaves and things like that.

MEMBER RENSHAW: I think that Mr. Sockwell s suggestion of getting samples, taking samples is a very good one. And I would urge you again as I spoke before to Ms. Broadnax of getting ahold of the Department of Health and I will offer his name again, Theodore Gordon, who is the Deputy Director over there in charge of Environmental Services, and ask that that sample be analyzed and in fact ask for a meeting immediately.

And don t wait on this. You said that a neighbor has a hole in her property, is this the neighbor right here?

MS. SCOTT: No, no. She s not here today.

MEMBER RENSHAW: But you, are you stating that the hole in the property has something to do from

the, has become a problem because of this drainage?

MS. SCOTT: Right. And she actually wrote it in one of these statements that Cynthia has.

MEMBER RENSHAW: All right thank you.

CHAIRPERSON REID: Thank you very much. Next witness please.

MS. REID: Hello. My name is Cynthia Reid. Hello. My name is Cynthia Reid and I m Chairperson of Concerned Neighbors in North Michigan Park. And we are neighbors living on Delafield, Sargent Road, within Michigan Park who have been concerned about things happening in our neighborhood because --

-- in July of 1998 while surfing on the Internet, I came across an article in the Washington Post where it stated that Congress was adding $7 million to the District s Budget for the buildings for the construction of four new buildings -- long term and one short term, that s how the article read at the time.

Unbeknown to us, I mean it was just something we stumbled on. So I mean, we immediately put out fielders with questionnaires stating just what is Boys Town, what do they do?

How, I mean, what s going on up here? Because we all knew about the Order, and so, but at

this point it became obvious is we need to ask about this, if they re going to grow like this.

This is when talks began. Boys Town -- they didn t initiate any discussions, it was all conversations for the last two years, with the exception of maybe the last three months was initiated as a direct result of concerned neighbors asking what the heck is going on?

That s all it came down to. We finally got tired and fed up. Yes, historically you ve heard our, you re getting bits and pieces but the fact in 16, this is a problem that s been doing on for 16 years with the original owner St. Gertrude s.

It was, and your own, if you read the entire Order that s been seven years ago, it give the history as to -- being involved in trying to get St. Gertrude s to fix these water problems.

Seven years ago when Boys Town came before the Board for a special exemption which was, they had to have a special exemption in order to buy the property, it was all brought up then.

It s in your Order. There are water problems, there s water running. It s a direct result of what St. Gertrude s did. We don t particularly see St. Gertrude s or Boys Town as two different entities.

They re one in the same to us, all basically within a -- foundation who has the whole square.

This is one large square with three different activities going on. Boys Town has this end -- so

these -- folks they deal with St. Abby s on the other side of the square. Water problems over there. Everybody who lives there, everybody knows that water runs on this property.

As a matter of fact I d like --

(Undecipherable.)

Well anyway, what I m trying to say --

VICE CHAIR SOCKWELL: I mean if you re certain then this is easy.

(Laughing.)

MS. REID: What I m trying to show you is just one block over is an existing -- we played in it as a child, we ve always known about -- over the course of time. The water never became a problem until people on square 3977, they start, they disturb the terrain or whatever the --

CHAIRPERSON REID: Who are those people?

MS. REID: Boys Town, St. Abbey s, and --

CHAIRPERSON REID: So you re saying even before Boys Town?

MS. REID: It s one and the same, it s all --

CHAIRPERSON REID: Girl, no, uh-uh, no. My question --

MS. REID: I m saying that we ve known about the water before Boys Town --

CHAIRPERSON REID: Okay, that s what I m trying to determine here.

MS. REID: --

CHAIRPERSON REID: So this is before the Metro landfill as well?

MS. REID: Yes.

CHAIRPERSON REID: So there s always been a problem? Is that what you re saying?

MS. REID: No, there s always been water, just not a problem --

CHAIRPERSON REID: Oh, okay. I see what you re saying. It s what happened 16 years ago.

MS. REID: 16 years ago it was St. Gertrude s who --

CHAIRPERSON REID: Take her to the mike please?

MS. REID: They uprooted these trees, roots and all, creating pockets for that water that runs underneath -- mounds Metro landfill, which disturbed

the flow again of how this water --

For 16 years we have been -- more and more water. This is a problem Boys Town inherited, accepted in 1993, and that Order, your papers, they told you that day they would put their engineers on it right then.

They said they re going to -- soil erosion, but we re going to have our engineers check it out. They said we will not be expanding. They said there is no security problem, we don t have -- want a family style place.

And I m bringing this up to say that it s not just the water. Our adverse impact goes beyond the water. There are security concerns. When I step out on my porch and I see three -- I see bandits lurking up here --

Mr. Glasgow talked about the kids, other neighbors have talked about the kids and so forth. They re out in the day time and night time. That s a question of supervision.

I m, I don t care how you look at it, it s an issue of supervision. You got five to one, somebody, all ten eyes must be -- look out for these children, and you can t.

CHAIRPERSON REID: They said two to one.

Ms. Reid, they said two to one.

MS. REID: Four eyes -- supervision, it s an issue of security. In 1998 I had the police report, 171 calls to the Police Department because you have to call when a child just shows up late -- if it s a family type environment, they re not calling on some child --

That child is gone more than 45 minutes or 15 minutes late. It s a supervision and security problem. 171 calls is too much. That s every other day you got a child who ain t doing what he s supposed to do. --

Back to adverse affect that was one, security -- Anyway, another adverse impact. Our ANC Commissioner of 5A or -- gets up there and tells you that he s been charge for 20 years.

So why do we still have a problem? The adverse impact that has resulted to all this, we are in the process of recalling -- we live there and can t even get representation to come up here and tell you how we live.

They come up here and tell you now he s important. He doesn t have, he lives a block away, he s not in the 200 foot radius and so forth, so he doesn t have any voice other than the people he s

supposed to represent.

The people he s supposed to represent on this issue are the people in the 200 foot radius. -- we took it upon ourselves again. We put this vote out, we let them decide for themselves.

It s a -- or just fix the problem, then we ll talk about expansion. What we re here today to say is, expansion shouldn t even be an issue. D.C. has a breech of contract, seven years ago we see a breech of contract 16 years ago.

And somewhere along the line if we can t get it from the ANC, if we can t get it from the -- the government to finally say enough is enough. You got to honor the obligations and promises that you have already made.

Then who s going to do it for us? -- watching our property wash away. --

CHAIRPERSON REID: Are they petitions? What do you mean --

MEMBER RENSHAW: What s the tally also?

MS. REID: That s 55 out of 100 homes, there s approximately 100 homes, and, on the list of the 200 foot radius. We sent each of them a package asking them to just cast their vote, either for to support the expansion and -- somewhere in the middle

where you ve got to solve the existing problem before we go on to expand --

CHAIRPERSON REID: Did we circulate this --

MS. REID: -- As I said this has gone on long before Mr. Glasgow, here s letters here -- This is back 97, again, the ANC representative -- The Civic Association, the -- what do you do? The only thing we have left to do is -- took it upon ourselves to do this the best way we can.

Basically it comes down to this, it s more than one issue.

CHAIRPERSON REID: Tell us again, please -- what was the tally?

MS. REID: That s 55.

CHAIRPERSON REID: 55 out of?

MS. REID: I don t know, -- it was approximately 100 homes.

CHAIRPERSON REID: These look like originals.

MS. REID: They are originals. I haven t had a chance to copy them.

CHAIRPERSON REID: Okay, well then what we should do really is itemize them -- staff to make copies and also give us a tally of how many, how many were for and against and what proximity, what radius

these ballots were --

MEMBER RENSHAW: If you could mark it off on a map, that would be very helpful --

CHAIRPERSON REID: So let s --

MS. REID: And they have comments that will be on the back and they can say whatever they wanted to say too you -- they don t come out to --

MS. SCOTT: These are only within the 200 foot radius. We didn t ask anyone else. And they mailed them. We sent them self addressed stamped envelopes. What we had to do is send a cover letter that would --the various aspects of this ballot and the parameters of this that and the other with it --

CHAIRPERSON REID: Thank you very much.

MS. REID: Oh I wanted to, there was one other thing that we objected to, which is -- but adverse impacts, I forgot which -- and they both said -- cause we re dealing with two, there are two facilities here that -- short term facilities.

Now do we ask do we go even farther beyond the -- and what I m asking is why -- why ask, why send the letter out to the people in a 200 foot radius and not pay attention to what they re saying.

The two issues, adverse impact -- District, but that area. We ve asked and we ve asked. We know

children come out of -- of the Court and that s Child and Family Services which is everything from the Criminal Court to whatever, but Placement, Child Placement and so forth.

These kids are not specifically coming from our community. They re not, they are not products of our community necessarily. Boys Town did a need assessment. The need assessment is not, this was seven years ago. Yes, the District may need this, but not in North Michigan Park.

There is a greater need in other areas. They ve made promises, and all this, we have a list of promises and discussions with them, what they said they re going to do.

And all of this, everything is still contingent on somebody s promise, they re going to promise this. The DPW reports and so forth. They re going to promise to do this.

One election, one retirement, one change, and we will still be under water, and nobody will do anything. If you go ahead and say ya ll can build, you can expand, what do we have to assure us that they re going to follow through this time when they haven t followed through seven years ago and they didn t follow through 16 years ago.

CHAIRPERSON REID: Okay I m going to have to cut you off, I m going to let you go a few more minutes.

MS. REID: But I can provide you with whatever you need to show what the community, the actual citizens living there are saying.

CHAIRPERSON REID: Thank you very much.

MS. REID: Thank you.

COMMISSIONER HOLMAN: Madam Chair, at risk of prolonging this hearing I need to, I d like to hear more about, you know, you talk about bandits in the woods and all that.

Were, were people robbed, were they assaulted? What happened? I m trying to understand.

MS. REID: No, they re basically coming out, well, we don t know that, I went inside, and I saw them on more than one occasion. For the most part they re just out. They re on other people s property.

Some neighbors said they were playing ball in their yards and so forth. This has diminished since we brought, since we started talking about it. We haven t actually noticed any real problems.

COMMISSIONER HOLMAN: And you know that they re from Boys Town, they couldn t be from anywhere

else?

MS. REID: Let s put, they didn t fit the profile of what we, what is normal over there, and we live across the street from the rec, so we have an idea what is normal hanging out.

But we live directly, that baseball field is a rec where they guys hang out, there s a little drug market and all that kind of stuff and everything. Now once in the 20 years the rec has been there have we seen hooded guys hanging, lurking up in the woods and going toward that direction or that property.

It s not a route that you take, it s not a path there or anything.

CHAIRPERSON REID: Hooded guys?

MS. REID: Masked. Yeah, black ski mask --

COMMISSIONER HOLMAN: But as far as what you re talking about in terms of actual crimes, are you talking about maybe trespassing --

MS. REID: Right, that s -- yeah.

COMMISSIONER HOLMAN: Okay.

MS. REID: There s trespassing and so forth. We know one child ran to Mr. Dickey s house late one night crying in fear of his life cause the kids their at Boys Town were threatening him and he was a person, a child there and so forth.

He s not going to tell you the truth about it now, but --

CHAIRPERSON REID: So but why do you call these, them bandits? I mean did they do something?

MS. REID: No, but if you sit there on your porch at 9:00 o clock at night smoking a cigarette and you see three guys dressed in black and three ski masks running back along the fence line up there. What, I mean I don t know who they are, they just look like three masked bandits. So that was the term we gave them.

CHAIRPERSON REID: Oh, okay.

MS. REID: It s frightening okay? You know, they re unrecognizable.

VICE CHAIR SOCKWELL: Ms. Reid, the, you mentioned 171 calls?

MS. REID: Uh-huh.

VICE CHAIR SOCKWELL: What were those calls again?

MS. REID: They re police calls, most of them are missing persons, which according to Boys Town is when the child is late, doesn t show up or leaves the property, should be on the property and so forth, they require them to require.

So the most of them are missing calls.

Some of the calls can random from settling off burglar alarms to fire to assault. -- in my house what ya ll would call domestic violence or whatever. You know, but --

VICE CHAIR SOCKWELL: And you said those occurred over what period of time?

MS. REID: This is over an 11 month period, in 98. Lack of time, lack of time in the whole situation with representation, we can t quite get everything together for you.

VICE CHAIR SOCKWELL: I understand. And you will probably have time. Yeah.

MS. REID: It s an 11 month period from October, December 97 to October 98. And it s just a print out of police calls for 4801.

VICE CHAIR SOCKWELL: I understand.

MEMBER RENSHAW: Ms. Reid, by the way, we don t want you to escape without giving your address.

MS. REID: 1276 Delafield Place N.E.

CHAIRPERSON REID: Okay. All right, now --

MS. REID: -- we do know it was presented by the police at meeting on the 16th that this has actually gone up in 1999 there s now like 209 calls for the next ten or eight month period that was, yeah, and so forth, so it is an increasing problem.

VICE CHAIR SOCKWELL: Now, you spoke of the creek that existed, and that s the creek that was apparently from what Ms. Weinstein stated, was piped underneath the berms to apparently it went --

MS. REID: No I didn t speak of that creek.

VICE CHAIR SOCKWELL: Oh, not that creek, it s another creek.

MS. REID: No.

VICE CHAIR SOCKWELL: Oh, okay.

MS. REID: I m talking about the existing creek which is the direction to which most of this water. Actually it s the direction which all this water flow naturally.

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: Before you started going up there and tearing up the land, pulling up trees and digging the foundation --

VICE CHAIR SOCKWELL: Once again, would you point out on the map where that creek was as best you can?

MS. REID: You re talking about the existing?

VICE CHAIR SOCKWELL: Yeah, is it still there?

MS. REID: Yeah.

VICE CHAIR SOCKWELL: Okay.

MS. REID: It s --

VICE CHAIR SOCKWELL: That creek.

MS. REID: It is, this is 14, this is the rec --

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: This is Emerson as it curves to 14th --

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: Do -- or another map that shows this --

It is actually right here.

VICE CHAIR SOCKWELL: Okay, so it s --

MS. REID: Yeah, at this point the next street will be Gallatin --

VICE CHAIR SOCKWELL: Gallatin --

MS. REID: -- Eastern Avenue which is the boarder.

VICE CHAIR SOCKWELL: Right.

MS. REID: The peak is right there. What, to put it bluntly what it is is Merlin s side has done everything necessary. They have several -- for this water to channel and so forth. On the DC side nobody s doing anything.

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: That s what it is. Nobody s addressing this water.

VICE CHAIR SOCKWELL: Yeah. There have always been water problems on Eastern Avenue between St. Anne s and the bottom of the Hill.

MS. REID: Right, which is where it meets the creek.

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: Which is where it meets the creek. But like I said, the water s always been there, but we ve never had these kind of problems until they started disturbing the terrain itself.

VICE CHAIR SOCKWELL: Uh-huh.

MS. REID: And that s what building --and that s why we re here. Hold, you know, no expansion, let s fix this first.

VICE CHAIR SOCKWELL: Uh-huh.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Thank you very much.

CHAIRPERSON REID: All right. Ms. Curry?

MS. CURRY: Yes, thank you. Mary Baird Curry. I am an ANC Commissioner with 5A, specifically 06. Obviously therefore this is not my Commission. Other, a couple of other Commissioners and myself decided to start visiting some of the meetings of these

citizens because we heard this outcry.

And I think within the past 12, 13 months I have gone to numerous meetings. Meetings on the campus of Boys Town and meetings in the community. This community has been unanimous discussing the problem of the water, the problem of security, the problem of supervision.

We do have at the ANC office, and I will ask that they are collected and forwarded to you, some recent statistics on the security at the facility. And if I could do nothing else but vote for them, I would vote to support the interests of this community, especially those persons that are within the 200 footage range.

There is a water problem. They have called me, I have gone down to actually see the water problem. I have listened to many of the displaced by the, by the, by Boys Town and its interest to develop their most recent foresights.

Even if the ANC had not voted several times to support this community I would have supported this community because I know the water is running because I have listened to many people from that area talk about the water, the dumping, and then nothing has been done to bring all of this into some kind of sanity or focus.

Thank you Mrs. Reid, you said, why didn t you all as ANC Commissioners call these people in and do that? Because as ANC Commissioners we truly respect one another. I respect, people respect my turf and I respect theirs.

So we try to listen to the Commissioner in that area. And I personally requested that people from the area, if you truly do not feel that your Commission is serving the welfare, write a letter, put something in writing so that the Commission can help you handle the problem.

We do not go into one another s turf and take over and start running the show. But if you come in and ask us for help, as a Commission, in writing, we will do that.

That is why I went out. I was out there with them. I ve listened to this, and I personally want to say that this construction should be halted, that the, that truly this community needs to have honored no further construction which is a part of the original contractual agreement.

CHAIRPERSON REID: Thank you Ms. Curry. Any questions of Ms. Curry? Okay, I think the last, oh.

MR. NORMAN: Ma am, my name is Ethan, my name is Ethan P. Norman. At 1269 Delafield Place,

right behind Boys Town.

My name is Ethan P. Norman, I live at 1269 Delafield Place, right behind Boys Town. However, as Mr. Glasgow stated, the young man jumped across the fence and into Mr. Glasgow property, and not only gave him some words, some stiff words.

And then Boys Town later on went up and put up a fence for Mr. Glasgow -- behind your house, behind mine. Well way down they didn t put that fence up, the boys still can jump over and come in and do what they want to do.

And come back to about the Boys Town again. They make you think that Boys Town are angels because they go back to Spencer Tracy and Mickey Rooney days and Boys Town. But those boys are more than angels.

I have a police scanner, and they always call 4801. 4801. I don t mean once a month, regularly. Now, the second part. The squatter situation. Right behind my house I have a toolshed on my property.

There s a paved concrete alley. The water is coming over the, over this paved concrete into my property. Now, the one that I was looking at is the one that s coming on top of the concrete.

Now the one I do not see, the one is coming under. In my yard they have grass as green water

grass -- and it s from, coming from Boys Town. Right as far as I said, right behind my house there s a slant about 14 feet, a slant, lead toward the concrete, this alley.

The water s coming over and under.

CHAIRPERSON REID: Okay, thank you Mr. Norman.

MR. NORMAN: Norman.

CHAIRPERSON REID: Thank you very much for your testimony.

MR. NORMAN: Okay, thank you.

CHAIRPERSON REID: Questions?

MEMBER RENSHAW: Could I ask Mr. Norman how long you ve lived at 1269 Delafield?

MR. NORMAN: I ve lived at 1269 Delafield 1952 March the 19th.

MEMBER RENSHAW: March the 19th, 1952.

MR. NORMAN: That s right.

MEMBER RENSHAW: Oh, all right.

CHAIRPERSON REID: And was there a water problem at that time or when did you first detect the water problem?

MR. NORMAN: Well as others have said before me, when they went in and put up those trees and they destroyed those trees and put that soil, that s when

the water started accumulate down.

CHAIRPERSON REID: Well when was that, what year was that?

MR. NORMAN: Give or take I couldn t say -- but it s not yesterday, I know that. --

CHAIRPERSON REID: Okay, thank you Mr. Norman. I think was it Reverend Turner? That was, I think that s the last witness? All right, thank you.

REVEREND TURNER: Good morning.

CHAIRPERSON REID: Good morning.

REVEREND TURNER: Good afternoon.

(Pause.)

Madam Chair, thank you very much for your time. I just wanted to bring to you, to your and your staff s attention one thing --

MS. BAILEY: Sir, excuse me, you need to identify yourself.

REVEREND TURNER: Oh, Reverend David Turner. I m retired and I live at 4889 Queens Chapel Terrace N.E.

CHAIRPERSON REID: Okay.

REVEREND TURNER: Madam Chair I would like to bring to the Commission s attention the fact that we have been working with this water issue since 1987. We ve received promises from D.C. Department of Public

Works and other agencies that things were going to be corrected.

We struggled with that promise until 1993 at which time -- the Department of Consumer and Regulatory Affairs and their Environmental Service Division to get all of the areas that we are talking about now declared hazardous situations.

So that we wouldn t be told that those people, property owners, would have to pay to have what we are struggling with corrected. It s called the Low Assessment Home and Property Assessment Act, 1993.

Now, I would like to leave that this information with you so that you can make a copy for your record because I believe this law will help guide us toward what we have been trying to accomplish over the years with the soil erosion, water problems and drainage throughout the years.

CHAIRPERSON REID: What s the name of the law?

REVEREND TURNER: The law is No., the law is D.C. Law 10186.

CHAIRPERSON REID: And --

REVEREND TURNER: The Title Road Ways, Alleys, Sidewalks, Improvement Act 1993 -- Since 1994 this law requires, the District of Columbia -- to

repair what is -- or has been -- because of this situation, anywhere in the District of Columbia.

Our areas have been declared as hazardous situations since 1994. Nothing has been done to correct -- today. So now I m taking up the run in with time, in case you re not familiar with this law, I would like to share that with you.

CHAIRPERSON REID: Please.

REVEREND TURNER: So that you will help us hopefully accomplish what needs to be done, because I can t understand why we append so many taxes, very high taxes. For example 150 or $200 dollars, maybe more, and yet we can not get any standard as --

This law ought to be enforced by everyone concerned. The agencies concerned are tax exempt. That means they don t have to worry about paying their 51 percent share. The property they own -- can no longer be told that they have to pay their 51 percent in order for the District government to -- no longer have to pay their share.

So this law -- requirement. Not a request. So I am hopeful that when this government gets all these things corrected, we ve been working on this since 1987 --

CHAIRPERSON REID: Thank you very much

Reverend Turner. I for one am not familiar with that law, nonetheless, I m sure you realize that -- not have a right to enforce the law.

Nonetheless, I would suggest that at the -- that you will have an organization and your ANC take the appropriate steps so that we -- City Council for, Corporation Counsel says to have whatever relief or whatever acknowledgment, whatever client or enforcement that you wish to have done.

REVEREND TURNER: Well thank you very much.

CHAIRPERSON REID: Give us a copy of it. I mean we d like to have a copy of it. I just want to let you know that they don t have, you don t have --

REVEREND TURNER: I understand that, I m concerned about, that we give so much from government agencies telling us that we can t do this or we don t have the money to do it -- we re supposed to give these kinds of problems priority. -- to not be here today.

CHAIRPERSON REID: I agree. Thank you very much.

MEMBER RENSHAW: Yes, I have just a question. Reverend Turner you said that since 1994 your area was declared a hazardous situation by whom?

REVEREND TURNER: The District of Columbia, D.C. Department of Consumer and Regulatory Affairs and

Environmental Safety Education.

CHAIRPERSON REID: Do you have any evidence of that?

REVEREND TURNER: Yes, ma am.

MEMBER RENSHAW: Something in writing.

REVEREND TURNER: Yes, ma am.

MEMBER RENSHAW: Also, just, since you re at the table let me ask you this. Back in, in this memo or minutes of meeting from the Department of Health, Environmental Health Administration dating, it s concerning January 6, 2000.

It must have been a site visit, and on Page 2 of that they had had a walk tour and they ended up in a church located at the southwestern corner of the alley adjacent to the Boys Town site.

Where would that be?

REVEREND TURNER: At the corner of --

MEMBER RENSHAW: Can someone point to that for me, because at this site a heavy flow of ground water was observed coming from the grounds of the church and there is a large crack in the rear wall of the church that extends from the middle of the wall to the ground.

And there was a construction inspector from DCRA and he was supposed to contact the property owner

and take appropriate action to correct the existing problems.

We don t know that anything has been. So where is the church?

REVEREND TURNER: --

MEMBER RENSHAW: Okay, thank you. So we don t, we don t know that DCRA has done anything at all.

(Pause.)

CHAIRPERSON REID: All right, does that answer your question Ms. Renshaw? Does that answer your question?

MEMBER RENSHAW: Yes.

CHAIRPERSON REID: Okay, thank you. Give it to staff please and they ll, do you have copies? -- All right, give it to staff. Yes, they will -- needs a copy please.

Okay, thank you very much. Mr. Feola, closing remarks, how long do you think you need for closing remarks?

MR. FEOLA: Five minutes.

CHAIRPERSON REID: Okay.

MR. FEOLA: There are a couple of points I d like to have clarified by the engineer. The response to Mr. Sockwell s question. That won t take but about

a minute. -- would like to respond --

Mr. Riordan, you heard Mr. -- or Mr. Sockwell or someone from the Board ask about whether --

MR. RIORDAN: Yeah, it is um, actually a separated sewer system at that point. Currently in Delafield I believe there s a 36" pipe that runs down to the corner of Delafield, and at that point there s a manhole and it, and it jumps to a 48" pipe.

Then when it goes down to Gallatin it becomes an enormous eight by ten culvert. It s basically one of the larger drainage basins that drains to the creek, that was spoken about before.

MR. FEOLA: The last question Mr. Riordan, there was a comment from one of the neighbors that she didn t believe that there could be enough rain water in her back yard to create flooding -- calculations?

MR. RIORDAN: The one thing we did after the meeting from last week was we took an average of the area behind every single house and did a very conservative impervious area in every house and we did a, approximately ten percent impervious area and the rest being grass.

We do a calculation that s just three factors. In the calculation we came up with on the low side approximately 31 gallons per minute will be coming

to the back doors of those houses during a 15 year storm event.

MR. FEOLA: And that s just rain water that hits their property.

MR. RIORDAN: That would just be, that would just be surface rain water.

CHAIRPERSON REID: What do you mean a 15 year storm event?

MR. RIORDAN: Well the way we design storm water like we had said before about the, there s a, you do it on a history. You can design to a five, ten, 15 or 100 year storm event.

The District requires that the storm that we attenuate off the streets to be a 15 year storm. And basically that s what if the District was going to be doing the calculation for their alley, they would be doing it for a 15 year storm, which is a storm that has one percent chance of happening in a 15 year period of time.

The Hurricane Floyd was approximately between a 75 and 100 year storm.

MR. FEOLA: Ms. Washington, would you care to comment on these reports that were testified to --

MS. WASHINGTON: Yes, I can. I wanted to make the comment that I actually didn t hear the

numbers that were given at the, I think ANC meeting the other night.

We are required, because we serve the Wards of the District of Columbia, any time that they are in abscondance, anytime that they have not reported back to the site in a timely manner from school, if they walk off the property in abscondance, we are required to make those reports to the Police Department.

That is a requirement that we have to fulfill. And any other childcare agency of similar status has to do the same thing. Now, one of the things that I did speak to Mrs. Broadnax about when she first brought this up as an issue to me in the February 3rd meeting was that I am more than willing to sit down with she and other police officials to discuss if there s anything we could be doing differently to reduce this number.

However, we have never asked them informally, approach by the Police Department. We have, I think we have a pretty good working relationship in this regard. As this being problematic, when the police officers come to take a report, our staff are trained to do as much of the leg work in terms of the police paperwork so when they do come to take a report or to close out a report that a

lot of that is done.

But that is something that we have, we have to do, it s not something that we can get around in that regard. I also just wanted to again emphasize that the kids that we serve are from the neglected abuse system of Child and Family Services.

They come to us after being traumatized, neglected and abused, and as a result of that they exhibit various behaviors. We, our staff are highly trained, and I mean highly trained to deal with the kids that we see in our facility.

That does not say that a kid will not walk out the door and we will not prevent them from doing so if they are not injurious or a danger to themselves at that point.

VICE CHAIR SOCKWELL: Two things, one, what is the time frame for tardiness or lack of reporting in, triggers a police report?

MS. WASHINGTON: The custody order that we function under says that we must, um, we must report to them immediately.

VICE CHAIR SOCKWELL: Okay.

MS. WASHINGTON: If in fact they are due, if they are in fact due back at a particular time, if they are not back at that particular time we have to

actually make that report immediately.

VICE CHAIR SOCKWELL: And that means that the police have to come to Boys Town at some point --

MS. WASHINGTON: To make a report.

VICE CHAIR SOCKWELL: -- each time a report is --

MS. WASHINGTON: To make a report.

VICE CHAIR SOCKWELL: So that means that the Police Department spent officer time 171 times during the year. I mean if you think of that like you think of false fire alarms, we re talking about a lot of public service time and money being spent hanging out at Boys Town trying to find the kids.

Which tends to somewhat support what some of the neighbors have said about the kids hanging out unsupervised possibly Boys Town residents being in the wrong place at the wrong time.

Not necessarily those children, if they came from Boys Town being contributors to the reports, but that s a abnormally large number of reports, it seems to me, especially since the police have to come to Boys Town.

Which means they can t be on the streets doing something else. And the other question, I want to make sure I have that question right. Let me hold

on that question.

CHAIRPERSON REID: Okay, Mr. Feola? While he s getting his question together, did you have any other comments?

MR. FEOLA: I would like to make one comment about the letter from me to the Board about storm water fixing, fixing the storm water problem. I want to direct the Board s attention to BZA Order 15805.

It s in the Summary of Evidence No. 32. There s a paragraph there, it s actually paraphrased in the ANC Report, but it was from the, from a woman, from the opponent at 4723 13th Place NE, who is Chairperson of the 13th Place and Sargent Road Block Party.

It s the only place in your order that identifies water and erosion as a problem. The very next Summary of Evidence was the Boys Town response to that problem.

There s not, there hasn t been a person here from 13th Place today to complain because the problem that was brought to Boys Town s attention, as Mr. Riordan testified, adjacent to 13th Place was fixed, as we were told, it was fixed.

So I just wanted to make sure the Board isn t confused by the charge today that Boys Town didn t take its critique seriously for those issues

that were brought to its attention.

CHAIRPERSON REID: So you re saying that the letter that was read and put in the report to us, that was from you, was in regard to that area that was mediated.

MR. FEOLA: To No. 32 of your Order.

CHAIRPERSON REID: Okay.

MR. FEOLA: From Delafield, from 13th Place.

CHAIRPERSON REID: Thank you.

VICE CHAIR SOCKWELL: Mr. Feola, the question that I raise again is if the 13th Place houses don t have basements a lot of the problem doesn t exist. And that s what we have to find out.

MR. FEOLA: They don t -- Mr. Sockwell, in 93 complaining, not me.

VICE CHAIR SOCKWELL: Yeah, but what they were complaining about --

MR. FEOLA: I don t know whether they have basements or not, but --

VICE CHAIR SOCKWELL: Yeah, but if you don t have a basement you don t have water running into it, do you?

MR. FEOLA: I don t know if they have them or not but --

VICE CHAIR SOCKWELL: Well that s what we

have to find out. I don t actually think those houses have basements, but I m willing to hold on anything until that time.

MR. FEOLA: All I know is she was here in person representing her --

VICE CHAIR SOCKWELL: Right, I understand.

MR. FEOLA: -- block, saying that they had problems.

VICE CHAIR SOCKWELL: I understand. Thank you. Ms. Washington, the question that I wanted to raise is, why Boys Town is building housing and deleting recreational facilities rather than building housing and relocating recreational facilities.

Basically you re saying that everything that has to happen to those kids other than living and being counseled has to happen off-site. It doesn t make sense to me.

MS. WASHINGTON: We re not --

VICE CHAIR SOCKWELL: Prisons have recreational facilities. Boys Town is supposed to be, and of course everybody remembers, you know, the great movies about Boys Town and all that good stuff, and Spencer Tracy was the other guy who played the role, and I can t remember the guy that --

No it wasn t Mickey Rooney, it was the guy

who played Father Flanagan.

CHAIRPERSON REID: --

VICE CHAIR SOCKWELL: Anyway, anyway, neither here nor there.

CHAIRPERSON REID: Let s -- so we can wrap this.

VICE CHAIR SOCKWELL: Yeah, yeah, the big issue is, the big issue is that if, if Boys Town is to function as more than a residence. If it s supposed to have, if it has as much land as it had, if it s, if it should have a rather complete environment, why doesn t it replace or utilize recreational facilities?

MS. WASHINGTON: There will be recreation for the kids, just like in any other neighborhood where there are homes. Our thought in terms of replacement of the basketball courts is to keep the noise within the court area.

So we will be having free-standing basketball areas as opposed to the hard court that has existed in the past. But we will still have basketball and other recreations for the families within the home.

VICE CHAIR SOCKWELL: Cause I didn t see anything that, in the site plan that showed any recreation facilities being built. I just saw recreational facilities being taken away.

Of course the pool which pre-existed, which apparently Boys Town either never used or didn t use, that s one thing, it wasn t something lost. But the basketball court, and any other land uses that would be considered recreational seem to be secondary and not part of the plan.

Including the two year plan outside construction, which was the second or third phase of your proposed project. And I just thought I d ask.

MS. WASHINGTON: Mr. Sockwell --

MR. FEOLA: If I might, cause I think we can wrap this up fairly quickly. The foster care homes are being designed by Ms. Weinstein as homes. Just like your house and my house, and I don t have a basketball court in my back yard, but I have a driveway with a basketball hoop up for my three kids.

VICE CHAIR SOCKWELL: Sure.

MR. FEOLA: That can happen here and it will happen here. There is internal recreation space for the shelter. There s a big playroom and ping pong tables and pool tables and the like.

But we re, we re sort of betwixt and between. You put them outside it creates noise, and neighbors complain. One of the things you heard and one of the first things Boys Town did was close down

the basketball hoop outside because it s noisy.

So the foster homes are supposed to function like our homes with foster parents, the six kids who go to the local schools or go to the local churches, who go out to dinner with their parents, come back, et cetera, et cetera.

And so there is land here and if the Board thinks we should have outdoor recreational facilities we can do it. But I want the Board to be aware that there s a countervailing feeling that when you go outside you create problems.

VICE CHAIR SOCKWELL: And certainly this could be a discussion if you had a degree in architecture, or if I had a degree in law, where we talk about neoclassical town planning versus bedroom communities.

But that s not what this is for. But, I just wanted to ask the question, because buffering is something that can be done effectively. And as Ms. Weinstein knows it doesn t have to be extraordinarily costly.

Noise can be controlled. You can control it with landscaping, you can control it with all sorts of other features. The fact that you had an uncontrolled situation doesn t mean it should go away

as a feature.

MS. WASHINGTON: -- Yeah --

MR. FEOLA: I can take now three minutes, just sort of, I m sorry.

MS. WASHINGTON: I was just going to say the other thing Mr. Sockwell is in terms of meeting the kids recreational needs, we try to meet them on an individual basis.

So if there is a kid that s interested in a particular activity or recreational activity, we re going to then cater to that particular activity.

For instance we have a kid that, a couple of kids who actually participate in the boxing. So they actually go to that facility to participate in it because that s where their interests lie.

We try to cater to what their needs are as well.

VICE CHAIR SOCKWELL: I mean to some degree kids that play on the property might stay on the property a little bit more, rather than 171 police calls.

MS. WASHINGTON: Those are mostly, actually those, those police calls are mostly from our shelter, our short term Thursday facility where they are more transitional in nature.

These are not calls that are for the most part been generated from our residential long term homes.

MR. FEOLA: Thank you Madame Chair. I appreciate the long hours that the Board has spent on this case. And we re, I really look at this as a place where everybody can win.

Boys Town for sure accepts the responsibility for what it can do to solve the water problems emanating from its property. I think we ve heard from the neighbors that there may be bigger problems here.

There are streams, there are springs, there are a lot of things going on here. The Department of Public Works obviously has control over, over a significant element of the big solution.

But I think the win/win situation is Boys Town with this Board s permission, can put in place a better long care facility for nine more kids, help the, those neglected and abused kids get out of that rut that they re in and back into the mainstream.

We talked about the 171 police calls. Well if I m a member of this community I d rather have those calls about kids who are running away from Boys Town than five years from now having calls that these kids

are doing drive-by shootings because they ve been neglected by the system.

So I think you have to balance what Boys Town does here versus the overall good it does. And we didn t hear anybody, neighbors included that challenged what Boys Town is doing here.

And this community based residential facility is not good for the bigger picture community. We ve heard ground water problems. You all can solve that. You can make it a condition of your order that this problem will be solved before a building permit is issued.

You can say the noise abatement must be in place before a building permit can be issued. But quite frankly, except for Boys Town promises it doesn t, it isn t violating the law with regard to noise abatement.

It may be on the ground water, we re trying to work that out. So all I m saying is we all can win. Boys Town can walk away with a better facility, a better place to help the kids of this community, and the community can have a start to solving those storm water problems which we don t think we can control all of.

There are a lot of things that have

happened in this neighborhood, including some things that probably happen in Maryland that we don t have any control over.

CHAIRPERSON REID: Uh-huh.

MR. FEOLA: So we would, we would urge the Board to consider the big picture and help us help solve the problems and help the kids.

MEMBER RENSHAW: Madame Chair, considering the big picture that Mr. Feola spoke about, since 1993 what s been the success rate of Boys Town? That hasn t been addressed.

MS. WASHINGTON: Nationally we have an 82 --

MEMBER RENSHAW: Locally. Locally.

MS. WASHINGTON: Locally we re actually still, we re still collecting data. However, if we determine our success based on the fact that we have kids reuniting with their families, that we have kids transitioning out of our programs, on the permanency track I can say that we probably still have about a 75 percent success rate locally.

MEMBER RENSHAW: Thank you.

VICE CHAIR SOCKWELL: Part of the big picture again is the fact that Boys Town has appeared to virtually categorically take more of the Board of Zoning Adjustments Orders and Requirements.

MR. FEOLA: Well I beg to differ Mr. Sockwell. The only thing that has been ignored, and it was by inadvertence or malfeasance possibly --

VICE CHAIR SOCKWELL: Was the community.

MR. FEOLA: -- was the community liaison. The number of, we haven t exceeded the numbers that were permitted by the Board. There hasn t been a stick of construction done on that property that wasn t permitted by this Board.

We have not done anything except we haven t called the community meetings together. Which we stand, we re guilty of. But there are a lot of things that they re doing right out there.

CHAIRPERSON REID: Can we wrap this?

MEMBER RENSHAW: And the community is central to Boys Town being at that location. In other words you cannot, you cannot be a part of the community without interacting with the community.

MR. FEOLA: We agree.

CHAIRPERSON REID: Okay. Thank you Mr. Feola. I think that the decision in regards to this particular application will be made at our next regularly scheduled meeting, which would be the first Wednesday in March, and what date is that the 5th?

UNIDENTIFIED SPEAKER: The first of the

month.

MEMBER RENSHAW: The 3rd.

CHAIRPERSON REID: I m sorry.

MS. PRUITT: The first. That s --

CHAIRPERSON REID: That s March 1st?

MS. PRUITT: That s next week.

CHAIRPERSON REID: Oh.

MS. PRUITT: That s next week, and unless you re going to, I understand you re requesting some additional information from the lawyers. Was there a time frame set as to when they were to have that into us?

CHAIRPERSON REID: Well I don t think that that was a focus in the point that this is next week. Cause we asked for several things. Do you have a list?

MEMBER RENSHAW: How about the first meeting in April for a decision?

CHAIRPERSON REID: All right, let s see.

MS. PRUITT: Ms. Bailey can you read back the list please?

MS. BAILEY: Madame Chair, bear with me as I go through my list because things were done pretty fast. So the first thing I have is the community liaison to be established. In other words the Applicant probably should give some indication of the

Community Liaison Group, what is his composition.

I think the Applicant indicated that the first meeting was scheduled for March, but other than that I don t think --

MR. PRUITT: You were --

CHAIRPERSON REID: That was not a request.

MS. PRUITT: My understanding was you were supposed to get us a list of the meetings you had and the number of people who attended, is that correct?

MS. WASHINGTON: Right.

MS. BAILEY: And then I have also from the North Michigan Park, Concerned Citizens of North Michigan Park is supposed to submit a list of the people they polled and a map indicating the locations of where those people lived.

VICE CHAIR SOCKWELL: I believe that s copies of the documents that were returned to them as responses.

MS. BAILEY: Okay.

CHAIRPERSON REID: Okay, from the ANC, I had requested that there be a roll call vote to --

MS. PRUITT: Madame Chair, we have that, they just faxed it to us, so I wanted to let you know.

CHAIRPERSON REID: Oh that s in already?

MS. PRUITT: Yes, they faxed it.

CHAIRPERSON REID: Oh, okay. So we have that. And I just want to make sure we didn t leave anything out.

MS. BAILEY: I have do of the houses on 13th Place have a basement? I m not sure to whom should be responding to that question?

CHAIRPERSON REID: Mr. Feola, I guess the architect is going to respond to that. Also a, with the testimony of Mrs., Ms. Cynthia Reid, we asked that the ballots that she has submitted that she do a tally for us and submit that for us so that we can have --

MS. PRUITT: Right, that s what Mr. Sockwell, I thought that s what you were referring to, right sir?

VICE CHAIR SOCKWELL: Yeah, that s --

CHAIRPERSON REID: Oh I was referring, I was referring to the ANC. The ANC was also to do a roll call vote on their. Oh, okay, I didn t hear the other part. And --

MS. BAILEY: Reverend Turner is to provide information concerning the designation by DCRA of the North Michigan Park Area as a hazardous neighborhood. That was discussed, I don t know if you want that --

CHAIRPERSON REID: I think, didn t he, didn t he already submit that? The law?

VICE CHAIR SOCKWELL: Okay, he had something in writing that you, you ve suggested that --

CHAIRPERSON REID: He didn t have, okay, all right. In addition to what he submitted. And he s --

VICE CHAIR SOCKWELL: Did he submit it all?

MR. HART: Yes, he did.

VICE CHAIR SOCKWELL: Okay.

MEMBER RENSHAW: I have one other, I had asked Mr. Riordan to check the Metro records about what is in that landfill. Okay?

CHAIRPERSON REID: All right. Now, the decision meeting. Mrs. Renshaw has suggested that we go to the April 1st decision meeting which would be April what?

MR. HART: 5th.

CHAIRPERSON REID: 5th? I have no problem with that. Any other discussion for the Discussion Board Members?

MS. PRUITT: Just a question of when you want this information in and --

CHAIRPERSON REID: Well, well --

VICE CHAIR SOCKWELL: There s one other item. And I had suggested that Mr. Riordan do some type of calculation on the impact of that volume of earth. And he knows what I was, was requesting. Can

you do that sir?

MR. RIORDAN: Well we d have to, we d have to contact someone who has a specialty other than ours. It would be a geologist and a geo-technical would have to help us with that. But we could, we can come up with something.

VICE CHAIR SOCKWELL: Cause the soil survey the District would probably tell you a certain amount about the base, but the impact of the volume on top of the base is really where we re --

MR. RIORDAN: Basically when I looked at the, saw those maps just as a turban complex which it is for most of the District.

CHAIRPERSON REID: Right.

VICE CHAIR SOCKWELL: Uh-huh. Okay, thank you.

CHAIRPERSON REID: All right? Thank you. Give those time lines. Ms. Pruitt, you can, better give us the time line for the submissions.

MS. PRUITT: That s what we re looking at. If we re doing an April 5th meeting, Findings of Draft Orders would be due on the 27th. On the 27th. A week before that, which would be, I m pulling up, excuse me, the calendar.

(Pause.)

MR. HART: 20th.

MS. PRUITT: Wait a minute, you have April? I don t have a 20, 27th is --

On the 20th, or rather let me start, on the 13th, responses, or rather information requested by the Board would be in. And then you have a week to respond to the various information. And then the following week on the 27th Draft Orders we would like you to have, to submit a Draft Order for Decision.

I m sorry, I was into March, I was in my April calendar. No that s correct.

CHAIRPERSON REID: Ms. Pruitt?

MS. PRUITT: Yes, here we go. I m sorry, excuse me. It s still the same days. Same days just different day of the week.

CHAIRPERSON REID: Well repeat it, because --

MS. PRUITT: 13th, submissions due from everybody. 20th response to submissions. 27th, draft order, for decision in your March meeting, April meeting, excuse me, April. Thank you.

CHAIRPERSON REID: Long day, huh?

MS. PRUITT: It s only beginning.

CHAIRPERSON REID: Okay. That now concludes this --

UNIDENTIFIED SPEAKER: I ve got a question.

CHAIRPERSON REID: We cannot go back. Sir --

UNIDENTIFIED SPEAKER: I want to go back to something that -- already stated. I want to know -- He stated --

CHAIRPERSON REID: Okay, you can ask him after the hearing.

UNIDENTIFIED SPEAKER: I want to because --

CHAIRPERSON REID: Well, you can t do that because that segment for your testimony is over and we can t go back.

UNIDENTIFIED SPEAKER: Mr. Feola --

CHAIRPERSON REID: I understand. I heard what, I understand that, but you can ask him.

UNIDENTIFIED SPEAKER: I m not interested in talking to him about it. It s something that I want to point out to the Board.

CHAIRPERSON REID: But you can t, but you can t do it.

UNIDENTIFIED SPEAKER: Boys Town violated the Board --

CHAIRPERSON REID: That concludes this morning s hearing. Thank you very much.

(Off the record)

CHAIRPERSON REID: Good afternoon. This is the February 23rd public hearing of the Board of Zoning Adjustments. The meeting will please come to order. The Chair will -- Sheila Cross Reid, Chairperson.

Joining me today is Robert N. Sockwell, and Anne Renshaw who will be here in a couple minutes. Representing the National Capitol Planning Commission is Mr. Moulden and representing the Zoning Commission is Kwasi Holman.

Copies of today s agenda are available to you. They re located to my left near the door. All persons who plan 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.

When coming forward to speak to the Board please give both cards to the reporter who is seated to my right. Order of procedure for special exception and variances is statement and witnesses of the Applicant, two, Government reports, including Office of Planning, Department of Public Works et cetera.

Three, report of the Advisory Labor Commission, four is reports in support, five is reports in opposition, closing remarks by the Applicant.

If an appeal application is on the agenda,

which it is, then the order of procedure for appeal applicants will be as follows. One, statement which is of the Appellant.

Two, the Zoning Administrator or other Government Official, three, the owner or lessee or operator of the property involved, but not the Appellant. Four the -- at which that property is located. Five, interview his case. Six, rebuttal includes the -- by the Appellant.

Cross examination witnesses submitted by the Applicant or parties. The -- in the case in which the property is located is automatically a party in the case. The record will be closed at the conclusion of each case except where specifically requested by the Board and the Staff who have specified in the hearing exactly what is expected.

Then the Board -- and these contested cases must be based exclusively on the Public Record. To avoid any -- to the contrary, the Board requests that persons present not engage with the Board in conversation. Please turn off all beepers and cell phones at this time so as to not disrupt these proceedings.

The Board will make every effort to conclude the public hearing as near as possible to 6:00

o clock p.m. If the Applicant case is not completed at 6:00 o clock p.m. -- pending case, a case -- on the agenda.

At this time the Board will now consider any preliminary matters. Preliminary matters are those which relate to whether a case will or should be heard today such as request for postponement, continuance or withdrawal or whether proper or adequate notice of a hearing has been given.

If you re not prepared to go forward with the case today and believe that the Board should not proceed, now is the time to raise such a matter.

Are there any preliminary matters? Does staff have any preliminary matters? All right, then I ll let us now continue with the first case of the afternoon.

MS. PRUITT: The first case of the afternoon is Application 16533, Appeal of George and Mary Clark, Stuart Sloame and Ellen Seeherman and James and Emily Baker, pursuant to 11 DCMR 3100 and 3101, from the administrative decision of Lloyd Jorden, Director of Department of Consumer and Regulatory Affairs, made on July 7, 1999, and September 17, 1999, to the effect that Forest Hills, LLC., did not comply with the height requirements of the Zoning Regulations for a private

residence.

Appellant alleges that the permits were issued in error based on the existing grade of property, inadequate side yard and that the property does not conform to the height requirements in an R-1-A District at 4512 28th Street N.W. (Square 2251, Lot 29).

All those planning to testify, would you please stand and raise your right hand.

(Witnesses sworn en masse.)

Thank you please be seated.

MR. BROWN: Good afternoon Madame Chair, Members of the Board. My name is Patrick Brown, Greenstein DeLorme & Luchs. I m Counsel for the intervener, the property owner this afternoon. I d like to welcome Mr. Moulden to this case mid-stream and Ms. Renshaw, welcome back to it.

I do have one preliminary matter just to make sure we re in agreement. The Appellant concluded their case at the prior hearing with the exception of two points.

One, their rebuttal which is provided for in the Rules and then the concurrence of the Chair to provide some additional photos of Mr. Sloame s property.

I m concerned that apparently the

Appellants have a video tape today which they plan to enter into evidence before the Board. That concerns me because I think it goes beyond the scope of the Board s leaving their case open, and for a very minor and specific matter.

It concerns me because one, fairness, and two, prolong the proceedings. And having that occur under rebuttal leaves me no opportunity to respond to what I imagine is substantial new evidence.

Certainly the format as well as in content. I think we, the Board supports action to want to limit the scope of that proceeding to have the Appellant in a very abbreviated fashion because again we spent the better part of seven and a half hours on the 2nd of February putting -- their case and the Zoning Administrators to have that put on now so that I have an opportunity in my Case in Chief to factor that in, and so request the Board to do that.

CHAIRPERSON REID: You re saying that your request would not allow the video tape with the rebuttal of the Appellants?

MR. BROWN: Well my concern is one, it seems to go substantially beyond what was a very narrow issue, which was to provide photos, particularly of Mr. Sloan who is the immediate, the adjoining property

owner.

And yet, a video tape, which I suspect both in a photographic representations as well as the narrative that may go with it. It goes significantly beyond what the Board allowed.

I think that basically it s going beyond rebuttal, it s going to allow the Appellants considerably more leeway in their case --

CHAIRPERSON REID: But you just repeated what you said before. -- my question, yes, or no. Are you asking us to --

MR. BROWN: Well I think it ought to be excluded because it certainly goes beyond what was permitted, or alternatively that they one, be allowed to put it on, but on a very strict controls and then do this so before our case so that I can respond to it.

MR. CLARK: Ms. Cross Reid this is George Clark for the Appellants. Two things. One is I m happy to play the video tape now, it s about 13 minutes long, and I m happy to play it now if that s what Mr. Brown wants.

It responds in part to the Board s questions the last time about Mr. Sloame s house. Secondly --

CHAIRPERSON REID: --

MR. CLARK: I m sorry.

CHAIRPERSON REID: Go ahead.

MR. CLARK: And secondly, I think the record will reflect that the photographs that I was talking about the last time were photographs in fact some of which I had already handed to Ms. Pruitt and that we hadn t had the opportunity to look at during the hearing.

And that won t take very long to do, but I think it s again correct to say that the photographs are going to be limited to Mr. Sloame s house because in fact we didn t have the photograph of Mr. Sloame s house that we wanted the last time and in fact the photos were indeed of other things.

And several of which as I say I had already handed to Ms. Pruitt, we never got to at that point in the hearing because of the way our case had been interrupted.

We -- had to be given to BZA, given the DCI people who were testifying.

CHAIRPERSON REID: Okay, what, just give me one second. What does the videotape consist of? What new evidence does it have that we have not already heard or --

MR. CLARK: The videotape shows the

property, and I ll tell you exactly what it does. I start in front of my house, I walk up my driveway, I go down the street, I go past Mr. Sloame s house which is one of the things you wanted to see.

It comes back down, it goes down to the other end of the street, it goes up behind the house and it comes back down in front.

CHAIRPERSON REID: Well don t the pictures do the same thing?

MR. CLARK: Well you had a problem with some of the pictures the last time and I think that s the reason I wanted to show the video.

CHAIRPERSON REID: The only problem I had was I did not believe I had a clear photo of Mr. Sloame s house.

MR. CLARK: Well we have that on the videotape.

CHAIRPERSON REID: Do you have one, do you have a still photograph?

MR. CLARK: No I did not bring a separate still photograph.

MR. BROWN: Madame Chair I provided my filing today --

MR. CLARK: Which I haven t seen before, if you want to talk about fairness.

MR. BROWN: There s a picture right in here on top of Mr. Sloame s house. I have given this --

CHAIRPERSON REID: Are you referring to this?

MR. BROWN: Yes.

CHAIRPERSON REID: This is one of the, on the left --

MR. BROWN: That is Mr. Sloame s house. And it shows the relationship between the two properties. Given that it s a 13 minute video, I do object and I think it ought to be excluded.

CHAIRPERSON REID: Okay, I don t, I don t --

MR. CLARK: I have 14 minutes left in my case.

CHAIRPERSON REID: How.

MR. CLARK: Because that s where we were the last time. I think Ms. Pruitt will confirm it.

CHAIRPERSON REID: You could, you present your, no, no.

MS. PRUITT: There was time left for the end for rebuttal, yes. He got interrupted because --

CHAIRPERSON REID: --

MR. PRUITT: Well he, actually Mr. Clark s case got interrupted because Mr. Johnson and Mr. --

MR. CLARK: Mr. Bellow --

MR. PRUITT: Mr. Bellow, thank you, had previous engagements. So he took them out of order and allowed Mr. Johnson and Mr. Bellow to respond and then Mr. Lourenco (phonetic) did respond and then at that point when we interrupted the Appellant s case there was 14 minutes left on the clock.

CHAIRPERSON REID: Okay, well I thought that, my understanding was when we started back up today, this morning to be for the interviewer --

MS. PRUITT: And then the Appellant can do it at the end. I mean that s what the, normally it s done at the end and I think Mr. Clark s point is that you just have 14 minutes to use somewhere.

CHAIRPERSON REID: Normally, no, no. No.

MR. CLARK: I m happy to do it that way. Mr. Brown said that he d like to see it now and I m happy to do it if he wants to.

CHAIRPERSON REID: We ll wait. After the Appellant has brought his case I was not aware of the fact that we were going to start back today with these 14 minutes, given 14 more minutes.

MS. PRUITT: It s not an additional 14 minutes. This is the original 60 minute --

CHAIRPERSON REID: I said, that s what I m saying, given 14 minutes to finish putting on his case,

but still, he still has rebuttal time.

MR. CLARK: Ma am?

CHAIRPERSON REID: -- the 14, that 60 minutes and that includes rebuttal time did it?

MR. CLARK: Ma am, I m not asking for the opportunity to start. Mr. Brown said that if the tape is going to be played, he d like to see it before his case. All I m saying is I m happy to do that if he wants to.

CHAIRPERSON REID: Okay, your case, but you re saying that your video is 13 minutes and you have 14 minutes left. Are you saying that that then would substitute for your rebuttal?

MR. CLARK: No, because I still have rebuttal time available.

CHAIRPERSON REID: That s what I m trying to figure out.

MR. BROWN: Madame Chair, I believe the way the record was left is that Mr., with the minor exception which the Board, the Chair approved, that Mr. Clark had concluded his case and --

CHAIRPERSON REID: That s what I thought.

MR. BROWN: -- and he forfeits any time leftover.

CHAIRPERSON REID: That s what I thought.

MR. BROWN: And --

MR. CLARK: Ma am, that s not correct.

MS. PRUITT: Madame Chair we will, we re going to research the transcript to just to make sure there s some detail left. I m going by my notes but we ll look at the transcript.

CHAIRPERSON REID: I think that at that time when we concluded the last hearing, Mr. Clark then said well I d like to have 14 minutes at the beginning of the next hearing time designated for me to complete my case.

And I also, I would say that if in fact he did not say that, I guess the assumption would be made that he forfeited the rest of his time.

MR. CLARK: Ma am, I didn t forfeit the rest of my time. We -- all the other witnesses. We put people on out of order.

CHAIRPERSON REID: But he didn t say anything. At the end he didn t say I want the 14 more minutes to conclude my case when we commence the hearing on February 23rd, Mr. Clark --

MR. CLARK: -- Page 302. --

CHAIRPERSON REID: And it says?

MR. CLARK: And you say, I think that makes all the sense in the world because we re going to come

back later. Obviously it ll be ambitious for us to try to finish it today. We did put forth a Herculean effort to do so. I think all of us would agree with that.

Nevertheless I give prudence to dictate that we adjourn here this evening and you allow -- allow you to put on your case and then cross examination and then for rebuttal by the Appellant, then Mr. Clark.

Which will include my pictures that didn t get into the main part of the case, but that s not an issue. And you say, Which would include your pictures that did not get into the main part of the case.

And I think in fact that appears in here two or three other times in the transcript.

CHAIRPERSON REID: -- You re prepared to go on record as not saying, I asked that you give me another photo of that, of Mr. Sloame s house. You didn t do that. Instead you bring a 14 minute video.

And I would be inclined to disallow the video. I don t know how the other Members feel about it.

MR. MITLEN: I just would like to ask a question for clarification. Is this that the, your intention Mr. Clark is that the video is a substitute

for the pictures or is it really rebuttal?

MR. CLARK: I could put it on as rebuttal, that s fine, but Mr. Brown said he wants to see it first, and I m happy to do that, that s all I m saying.

COMMISSIONER MITTEN: I mean that puts in kind of an awkward situation where we can t determine if it s appropriate rebuttal until we ve heard Mr. Brown s case I would say.

So I would agree with the Chair that I don t think it s an appropriate substitute for the photographs, but in terms of it s appropriateness for rebuttal I don t know that we can judge that at the moment.

MR. CLARK: Well I had asked to be able to put the photographs in--unrelated to Mr. Sloame s house, because I had handed them up to this group, plus some other ones which I hadn t gotten to the point of handing to her.

And so that s what I wanted to put in, and that s in this record five or six times.

COMMISSIONER MITTEN: Right, so where are the pictures?

MR. CLARK: They ve been submitted.

COMMISSIONER MITTEN: Okay, fine. --

CHAIRPERSON REID: So we re good on that.

MR. CLARK: Those pictures are in.

CHAIRPERSON REID: But you didn t, you didn t give, you didn t give a picture of Mr. Sloame s house, did you?

MR. CLARK: What I made and what I thought would be easier to see a video tape because you can see it better. That s all --

CHAIRPERSON REID: That s not what we requested --

MR. CLARK: I m trying, what I m trying to do is give the Board something that they can see.

CHAIRPERSON REID: We can see a still phonograph.

MR. CLARK: I understand but there was no direction to me that I could not use videotape.

VICE CHAIR SOCKWELL: The question that I would raise is that 14 minutes of video is a lot of video. And unless you can show, I mean I would have been willing to see a three minute video, or something like that, or stills, but 14 minutes, you might as well have gone to a ski resort and shown us everything that went on while you came down the slopes.

It s just a long bit of material. If you count 60 seconds to a watch and did that 14 times, we re all going to be asleep.

MR. CLARK: But Mr. Sockwell --

VICE CHAIR SOCKWELL: That s a lot of, that s a lot of videotape. You couldn t walk, if it took you 14 minutes to walk up the street then obviously you and David Letterman have some similar --

MR. CLARK: I would agree Mr. Sockwell, but maybe what I should do is just fast-forward the videotape to various spots and have it three or four minutes.

VICE CHAIR SOCKWELL: If you can do it in three or for minutes maximum, I d be willing to accept it, and that was what I was going to suggest. Thank you for doing so.

MR. BROWN: Mr. Sockwell s point about the length, but also, it s not just a photograph of record, I overheard it winding up and it s a narrative. So that it s, it s more than just photos, it s the presentation of narrative.

MR. CLARK: I m happy to turn off the sound.

VICE CHAIR SOCKWELL: If you don t have narrative then you will show them and Mr. Brown will accept that and I was going to suggest that too, thank you Mr. Brown.

But I d be more than happy to accept personally that you show three to four minutes, and

with that on the clock.

MR. CLARK: I d be happy to do it now or later, but Mr. Brown has stated that he was, he doesn t want narrative. No narrative.

CHAIRPERSON REID: Ms. Renshaw?

MEMBER RENSHAW: Yes, we re taking 13 minutes to decide about 13 minutes. I really don t have any problem with seeing the videotape albeit we d prefer to have a shorter version, because I think the impression that we need to get from the videotape can be made in that amount of time.

And it really would be my opinion helpful for this Board to see the videotape of the surroundings that we are dealing with today.

CHAIRPERSON REID: Well I don t agree with that, and I ve already stated my position, nonetheless, if the Board Members want to see I would allow a three or four minute, which I don t even think we need that, without a narrative, and it would be done before, that would be okay.

I just don t see the -- of it and I think that given the time factor we don t really need to allow any more time for something that we can clearly see on a still photograph.

But I don t want to belabor it and let s

just get on with it.

MR. CLARK: Do you want me to play it?

CHAIRPERSON REID: Okay.

MR. BROWN: Without sounding unreasonable I think it s a slippery slope that we re not going to be able to control and it goes significantly beyond and I still object. I think it ought to be excluded.

The photographs that we have I think are sufficient to make the points that were still left open. And it also with a matter of fundamental fairness to my clients, this hearing has become about the Appellants and I m having a very hard time getting my case on and given time constraints that occurred today it s 3:00 o clock and we re starting.

I seem to be giving all the time.

CHAIRPERSON REID: It s just 2:15.

MR. BROWN: No it s 3:15 by my watch.

CHAIRPERSON REID: Oh, I m sorry. --

MEMBER RENSHAW: Mr. Brown you could have brought a videotape also if you wanted.

MR. BROWN: But it s not the videotape, it s the fact that Mr. Clark keeps intruding into the precious time --

MR. CLARK: I haven t asked anything. Mr. Brown asked that I play it first, I was happy to play

it later.

MR. BROWN: I object to it being played at all, but I ll defer to the Board s judgement on this matter. I think my feelings are clear.

CHAIRPERSON REID: All right, well let s get on with it. We have three Members I think --

COMMISSIONER MITTEN: Well I think it, I don t think it s appropriate to put it in as a substitute for photographs. And I don t think that we can judge whether or not it s appropriate to use as rebuttal until we hear Mr. Brown s case.

So, I mean if we find that yeah, we would like to see that video now that we ve heard Mr. Brown s case, then maybe we could show the three minutes when it s appropriate.

But at the moment we can t judge whether it s appropriate rebuttal.

CHAIRPERSON REID: Yeah, but the thing about it is, if we allow it to be shown, then Mr. Brown has to have -- there is no opportunity --

COMMISSIONER MITTEN: Well I don t think it s appropriate then to show it because it, I mean I have to agree with Mr. Brown which is that the videotape if you wanted to have a videotape you, you know you, they didn t just invent video cameras in the

last three weeks.

So you could have had a video before, and you chose not to, so, I mean I think it is fair to Mr. Brown and his client that it be excluded unless it s appropriately used as rebuttal.

MR. CLARK: All I can say is I ve gotten some exhibits from Mr. Brown for the first time this afternoon and I m not complaining about those.

VICE CHAIR SOCKWELL: I think we can proceed with or without the videotape.

CHAIRPERSON REID: Okay, well, if that s the case then let s -- my position is not to, we wouldn t get, we can go on with what we need to, -- and let s just move forward.

MEMBER RENSHAW: Does Mr. Moulden have an opinion on this?

CHAIRPERSON REID: Mr. Moulden would not because he was not here for the first session so he doesn t have anything to be able to assess it on. That s why he s not, has remained silent in this discussion.

MEMBER RENSHAW: Okay.

CHAIRPERSON REID: Can we proceed?

MR. BROWN: Yes Madame Chair. And I d like to call, and Mr. Duncan my architect was I think out of

the room. So he needs to be sworn.

CHAIRPERSON REID: Is anyone else here who has not been sworn also affiliated to this case?

(Pause.)

MR. MOULDEN: Just for the record I would like to say that I have read the records for this case about this -- for this motion about the videotape versus the still photograph.

MR. BROWN: Thank you Mr. Moulden.

MS. PRUITT: We did swear in, but I believe the architect didn t get sworn in.

CHAIRPERSON REID: Right, that s what I was asking. Sir, could you please stand, the architect. Is there any person who has not been sworn?

MR. BROWN: Good afternoon again Madame Chair, Members of the Board. Patrick Brown from Greenstein DeLorme & Luchs, Counsel for the property owner and the intervener in this case.

With me this afternoon to my right, Neil Duncan, the Project Architect. To my left, immediate left, Murray Cohen, and further down Mr. Peter Burman (phonetic).

Mr. Burman and Mr. Cohen are Forest Hills LLC, the actual property owner but they re, in their individual capacities, they are here.

One of the things, and we ve heard a lot of testimony in, the Board, I think it s important, and various Members hit upon this throughout the earlier presentation is the need to remain focused in this case.

The Appellants have gone to great lengths to put on trial the zoning regulations, the Department of Consumer and Regulatory Affairs, and specifically my clients.

And an enormous amount of time was spent on that. The key to this case and the key to the Board s responsibility is the sole issue of compliance with the zoning regulations.

Mr. Sockwell pointed out that the zoning regulations in these regards were given birth in 1958. And as it relates to our issues have remained with minor, almost unimportant exceptions remain the same and been consistently interpreted in conformance with this case since then.

And we need to remain focused on that. One of the preliminary issues which I raised and the Board wanted to have an opportunity to hear testimony about, was several jurisdictional and defense issues.

And I d like to just set those issues in context for the Board hearing testimony from my

witnesses. Ultimately the jurisdictional issue is whether the Board has authority to hear the case and then the latches and -- issues are to whether the case is barred from being brought.

On the timeliness of the appeal, just by way of background, there are two permits that are at issue here today. The first was issued on June 7th of 1999, which provided for the construction of the house and included all elements of the house other than some issues that were brought up in Permit No. 3 having to do with the walkway out front and the rear retaining wall in the back of the property.

All of the issues that are in contention in the appeal, the side yard, lot occupancy and the height of the structure were present in what I refer to as Permit No. 1.

The construction began on Permit No. 1 the first of July. And continued a piece. The permit was issued in Permit No. 1. My clients relied on that permit and began construction, demolished the top of the structure and then proceeded to build three stories above it in accordance with the plans, and I think you ll see in the strict accordance with the plans.

An issue arose, under some minor dispute between the parties late June, late July, that first

week in August, as to the height of the structure, strictly as it relates to the height.

The dispute arose as to whether the stop work order issue, but I think there s agreement that my clients went in, saw the relevant DCRA officials and were told how to bring the property into what became evident from both sides, was complianced.

And in fact the original permit that was submitted was incorrect, and equally at the same time the City made the same mistake in reviewing that permit and improving it and in fact the lower level was the basement.

And I use that term -- which counts as a story as opposed to a cellar which does not count as a story for purposes of the three-story. The City told, the City, Mr. Bellow made it very clear and I think it s important in response to inquiry.

He said were you ever misled by a building owner and his response was at least twice absolutely not. Mr. Lourenco made the same point.

It s important that a mistake was made on both sides, a correction was needed, was made at the direction of the DCRA approved and Permit No. 2 which dealt solely with the issue of finished grade and the height of the structure on September 17th.

And all this is laid out in a chronology that s been provided by both parties and the ANC. At that point, and certainly prior to the issuance of the permit, relevant factors are one, the neighbors, the Appellants here, were currently made aware as early as the 7th of September, the 8th at the latest in a letter that a decision had been reached and that the construction and the permits would be issued.

That date is the outside date for purposes of a decision, and our decision making on timeliness. It s clear in the statute, I mean in the Case Law that when you re put on notice and the Appellants were put on notice, that the issue was decided and moving forward.

It s important because the appeal was not filed till November 3rd. During that period of time where Mr. Lourenco and Mr. Bellow made clear the point that my clients had the full right and in fact valid permits to continue, that they in fact continued.

And then during that period his testimony I think will be presented by Mr. Cohen, a great deal happened at this house. A great deal of money was expended in reliance on that permit.

That reliance is important for several reasons. One it s, in that the timeliness issue, it s

important in the latches and the stopple issue, it s also important because we have a situation here where the rule of law, the enforcement of the regulations in a fair and a consistent manner is important.

It s important not only for my clients but everybody else. And it s important for the Appellants because they need to know where they stand as well as my clients and others who might --

And that every step of the process my clients were told one, continue with your construction, you ve got a valid permit, you re in compliance with the law.

And that s important because of their good faith reliance on that. So as of, at the latest September 7th or the 8th, the Appellants were on notice. And for whatever reason, and it doesn t matter, took no action till November 3rd.

During that period almost two months, my clients were proceeding under the, is it now, mistaken belief that there was no issue. That the issues had been resolved.

They d been told to go ahead. And that s beyond what the reasonableness standard imposed by the Court for timeliness of appeals.

It s also important because, and one Court

has said that an appeal may be timely, but in the same facts and the same time frame, that in fact latches, that the reliance on prejudice to the clients was so great that in fact the appeal was barred as a legal protection to the rights of the party who relied on that.

And I think certainly as to timeliness, but in the same token to latches which is a complete bar -- I would refer to the, and I don t want to belabor the point, I ve referred to the detailed chronology, which both sides have updated and I think in large measure in the critical details are in agreement as to the dates, sometimes with a day or two separating.

But on the critical dates they re based on written exhibits that each side has submitted. One of the things I point out, and I think Mr. Lourenco made this point out of great frustration.

But I think the Board has appeal for it is, that this case has been, in the 12,000 permits that Mr. Lourenco s office processed last year, in fact this one has gotten a disproportionate, in fact an extraordinary level of scrutiny at every level of his department from the bottom, Mr. Bellow the Zoning Technician, up through the Zoning Review Branch, Mr. Nunley (phonetic) to the Zoning Administrator Mr. Johnson, through Mr.

Lourenco, and then also ultimately through the Director of the Department of Consumer and Regulatory Affairs.

And on every stage this permit has been judged to be in compliance with the zoning regulations as they ve been in existence and enforced and interpreted sine 1958.

And I use the phrase, and I m quoting Mr. Lourenco, we did it by the book. He wished, and he said, I wish the book was different, but I did it by the book and that was my responsibility.

The same is true for this Board. With that I d like to have Mr. Duncan take us through and just give you briefly the outlines of the project, both as we go through permits one, two and three, and also on occasion refer to the photographs.

COMMISSIONER MITTEN: We have a pointer if you find that useful.

MR. DUNCAN: That would be great. Can you hear me? Yeah, it was about a year ago, it was January of last year, I was asked to design a major renovation out in addition to this house on 28th Street.

The existing house, which, this is the basement floor plan of --

MR. HART: Excuse me. The recorder is not hearing you. Will you speak a little -- or get a

little bit closer to the microphone?

MR. DUNCAN: Okay. The existing house is, on this drawing, which is the basement level, is shown in heavy black lines and the addition part is here and I, sort of a gray hatch mark line.

We decided to keep the existing basement foundation and the existing floor joist and floor deck, cause they were in good shape. The upper walls and the roof of the house were of no use to us on this project.

The, as the design evolved we increased the footprint, taking care to step it back to maintain the required sideyards. We decided not to excavate the additional footprint because we didn t have the need for anymore underground space on the project.

The existing basement, three sides of which are almost completely underground was considered to us to be just basement space, a type of space that you put a boiler room, a mechanical room, some storage.

There was an existing garage there, and the leftover space which had windows in the front, we called a den. We also enlarged the front, the existing front porch a little bit and we over, we increased the size of the upper floor by one foot six inches by overhanging the existing joist in the front.

(Pause.)

This is the, what I call the ground floor plan. There s a front porch here, going around the perimeter again, this is the, above the existing part of the house.

The new footprint s back here, and you step back to maintain the side yards. There s a small fireplace and it s a gas appliance type fireplace that projects along the side of the building inside the rear, the sideyard setback.

The second floor plan is the same shape as the, as the first floor plan, except for the additional footprint is only one story, so it doesn t come up to the second floor.

And the third floor is really what is often called a half-story, rather than being a full floor it s built within the roof of the second floor, that is you have a full second floor and a roof over that, and within the high spaces of that roof we have a smaller space which is our third story.

(Pause.)

There was, I want to, partly I want to dispel any notion that we tried to mislead anyone at any point in this project. There was a suggestion that we had attempted to hide what was the new footprint and what was existing footprint.

And I just want to point out that I think it s very clear on this drawing that, and it s labeled as such, that this is the existing footprint and this is a new footprint. I think you can see that the difference is very clear there.

Now at some point, and this is where, I m going to admit to an honest mistake on the first set of plans. We re working with this lower level and this, we didn t even start thinking about this lowest level until I was well into working drawings.

But someone suggested that we actually enlarge these existing windows in the front of the house. And at that point I should have been able to tell my client no, we can t do that because that s going to be a zoning problem, that s going to turn this into a basement rather than a cellar.

But I didn t have my zoning cap on then, I was thinking as an architect, the bigger windows, that couldn t be bad, that s got to be good. So, I let him go ahead and do that.

VICE CHAIR SOCKWELL: Mr. Duncan, windows do not a basement or cellar make. There s another hat you should be wearing and a zoning hat doesn t come off with that statement.

MR. DUNCAN: Well, again just to show that

we weren t trying to conceal anything, I think the grade as it was, the existing grade already qualified it as a basement rather than a cellar.

The existing grade was lower than four feet from the ceiling of the basement. But I actually called the original submission for the grade to be lower than where it was from where, lowered it from about zero to about one and a half feet.

There s a dash line here representing where the existing grade was and I called it to be leveled out so it could put four slightly larger windows in. When it was brought to our attention that the, this caused it to be a four-story structure, we revised that.

I didn t catch it, the City didn t catch it, but it was eventually pointed out that that was the case. So we raised the grade to be in compliance with the four feet finished grade to the ceiling of the basement floor.

This was the permit number two, simply dealing with that issue, and that issue alone. The existing grade was here. I had called for it to be lower in the first grade, the first permit.

Now I m calling for it to be raised from, approximately one foot at one end to about maybe three

feet at the other end. About that much. I d also like to point out that this property is a steeply sloping hill.

The rear of the property is about 25 feet higher than the front of the property. And by that I mean this grade, the finished grade, which is then 15 feet higher then the street.

And we certainly did not create this hill that hill, nature created that hill, and the hill continues down on the other side of the street on Mr. Clark s side, lower down the hill than we are.

The, it was, a lot of the discussion at the previous hearing about how you could build a ten-story house and -- dirt around seven stories of it and make a three story house.

I just want to point out that we didn t do anything like that. We raised the grade by approximately this much.

CHAIRPERSON REID: How much?

MR. DUNCAN: Yeah, from one to three feet. And following, we didn t, and that was only following the existing hill, that is, if the, I should be, make a drawing.

Do you have a chalkboard or something? I see a -- back there. All right. The, oh, I just

wanted to show that -- I just didn t know if you could see this.

(Chatter.)

How about black?

UNIDENTIFIED SPEAKER: All right. Would you like blue or red? --

MR. DUNCAN: I want to just sketch a section of the grade here at the front of the house. This is the base of the house in sections. The existing grade did this, okay. The existing hill there. This hill that we did, we raised the grade of the house is filling in --

And then we steadily -- but it s not like this three feet is not three feet over an area of 20 feet. It s just following the natural grade of that hill on up -- to the house.

I can show actually that -- the, this drawing, this is the drawing of the original house. There s a line on this drawing that says, the present grade, and the present grade, this is, that means the grade --

They lowered the grade when they built this house, but the existing grade there was 110.5 at the existing house before the hill of the existing grade. We restored the grade to 111 --

-- we ve established at the house now, our finished grade is six inches higher than it was in 1956 when this house was built. -- to create a three-story house.

VICE CHAIR SOCKWELL: Mr. Duncan? The existing grade that I have indicated from the drawing at the middle of the front of the house is 106. And along with that the existing elevation --

MR. DUNCAN: This grade?

VICE CHAIR SOCKWELL: Let s see. I, excuse me, I have 108 at the finished grade at the front of the house, and 106 for the original ground floor, slab.

MR. DUNCAN: Well that was --

VICE CHAIR SOCKWELL: But, yeah, but you re not in front of the house, you re way over there. So why don t you take the grade where it belongs?

MR. DUNCAN: Well no, I was just referring to the original grade where they lowered it --

VICE CHAIR SOCKWELL: But that s, that s a finished grade that has nothing to do with the house that existed. The house that existed was the foundation and first floor slab, first floor structure of the house that you built.

MR. DUNCAN: I -- agree with you --

VICE CHAIR SOCKWELL: So you should not go

back to something that is non-existent and irrelevant to this.

MR. DUNCAN: I only, the only reason I bring it up is because the hill is still there. The hill was there, part of it was moved in the past. We re adding part of it back. Well we didn t create the hill is my point.

VICE CHAIR SOCKWELL: Yes, here again, you didn t create a new house either. You built from what was there. All right? So you have to deal with that. If the original grade had been 20 feet higher, and you could show a drawing that says that it was originally at 130, you can t say that well we restored it to 130 so everything s just fine.

You started with a house, a finished bottom-level that existed. So we have to work from what existed as opposed to what was there when the Indians from --

CHAIRPERSON REID: Mr. Sockwell I don t understand though. I wish you, what if, I don t get the gist of what you just discussed. What are you, what is --

VICE CHAIR SOCKWELL: What I m saying is that the house that was built was built on top of an existing foundation, existing first floor, therefore it

emanates from that point.

The grades that existed for the original house were still there when the new house was built over top of it. Then one must relate to the grades that existed as opposed to some non-existent grades that might have existed before any house was on the land.

CHAIRPERSON REID: Well when he says that the current grade at this time is only six inches higher than that that existed on the original house --

VICE CHAIR SOCKWELL: The Zoning Ordinance refers to the grade at which a house is measured. The grade that he referred to is not in the area where zoning would have taken its measurement --

CHAIRPERSON REID: So that s not correct.

VICE CHAIR SOCKWELL: -- therefore it s not relevant.

CHAIRPERSON REID: That s not correct.

VICE CHAIR SOCKWELL: It s not correct.

MR. BROWN: Mr. Sockwell s point is that, and the Zoning Regulations, cause I think, I suspect he knows them better than I do, is that, you re in this zone you measure, your measuring point is the center of the front.

You ll see I ve got a pink line there which

is the center of the front on that drawing. It also measures to the top of the ceiling there, 33 and a half feet, is that the measurement there? Where 40 feet is the limit.

VICE CHAIR SOCKWELL: And height was never an issue in this case?

MR. BROWN: That s true. I do not believe so.

One last question Mr. Duncan. Below the survey there and the survey shows the sideyards, the top drawing shows the sideyards for the original house.

And those are both more than five feet, is that correct?

MR. DUNCAN: Yeah, one is 5.7 the other one is 5.6.

MR. BROWN: And down below is a wall check, wall test report that was done by a professional engineer and submitted to the District of Columbia, and that shows that the sideyards are being maintained?

MR. DUNCAN: Yes. I have eight feet on this one, this corner, I think that says 8.1

MR. BROWN: And that s in the rear addition that was put on as opposed to the corners of the existing structure would stay the same.

MR. DUNCAN: That s correct.

MR. BROWN: And that is an exhibit previously submitted in our files.

MR. DUNCAN: Yeah that s in the --

MR. BROWN: In the interest of time, I think Mr. Duncan s completed subject to obviously any questions from the Board.

COMMISSIONER MITTEN: Madam Chair, maybe if he would put his whole case on, so then, I mean we ate up five minutes with questions, and I don t know if you re going to be close on using your time, but it would be better to keep running the clock and save our questions until the end I believe Madam Chair.

CHAIRPERSON REID: How many more witnesses do you have?

MR. BROWN: I just have Mr. Cohen.

CHAIRPERSON REID: Okay.

MR. BROWN: We could stop the clock and allow the Board members to focus in on Mr. Duncan. I m touched by Ms. Mitten s concern for my time cause it is tight.

CHAIRPERSON REID: Well yeah, the clock stops when we question, but any other questions from any Board members and directed to the architect Mr. Duncan? If not then we can move.

COMMISSIONER MITTEN: Well I have a couple

of questions but if we would stop the clock. Can we stop the clock? I mean I just want to be fair.

CHAIRPERSON REID: Sure.

MR. BROWN: 32 minutes and 33 seconds. Thank you.

COMMISSIONER MITTEN: Mr. Duncan, how high above the finished grade is the ceiling of this lowest level right now?

MR. DUNCAN: 310.

COMMISSIONER MITTEN: 310. And when you don t have a uniform grade, cause we have, it goes, it s flat and then where the garage door dips down, it s much lower. How do you measure the, how do you measure for purposes of calculating a basement door or cellar, where the grade is and where the ceiling, well we know where the ceiling is, it s flat.

But if the grade isn t flat how do you calculate whether how high above the grade the ceiling actually is? How do you calculate that?

MR. DUNCAN: You calculate it at the center of the building where the front entrance is.

COMMISSIONER MITTEN: Well, you know, it says that for purposes of calculating building height as far as the definitions go, but it doesn t specify that for calculating the basement or the cellar. So is

that, could you --

MR. BROWN: Can I add, the second definition where you re talking about stories and the cellar basement discussion is a, ultimately it s a story question.

COMMISSIONER MITTEN: Correct, right.

MR. BROWN: And in that definition as to stories it also defines the measuring point as the center of the front.

COMMISSIONER MITTEN: Okay.

MR. BROWN: So, for both purposes, and the height in the R-1-A, you have a dual standard. You have a 40 feet standard and then a three-story standard. But then the question in this case, when you have a lower-level which is a cellar which does not count as a story being less than four feet from the measuring point finished grade to the top of the ceiling of that lower level, I assume there.

COMMISSIONER MITTEN: I don t want to, I don t really want to nit pick, but I don t have a copy. Do we have a copy of the Ordinance here for the purpose of quoting the definition of a story? Does anybody have that?

MR. BROWN: I can do that.

COMMISSIONER MITTEN: I mean I just, I

really am not, I m not sure that it says center is all, and I just want to make sure that what it says is what we re --

MR. BROWN: If you ll give me a second.

(Pause.)

COMMISSIONER MITTEN: Okay, I see, okay.

VICE CHAIR SOCKWELL: I can read it if you d like. A story, the space between the surface of two successive floors in a building or between the top floor and the ceiling or underside of the roof framing. The number of stories shall be counted at a point from which the height of the building is measured.

For the purpose of determining the maximum number of permitted stories, the term story shall not include cellars, stair or elevator penthouses or other roof structures, provided the total area of all the structures located above the top story shall not exceed one third of the total roof area.

But in working with that let us also read the definition of cellar. And of basement. The definition of basement. That portion of a story below grade, the ceiling of which is four feet or more above the adjacent finished grade.

And the definition of cellar, that portion of a story, the ceiling of which is less than four feet

above the adjacent finished grade. Now, one would have to go to the section in residential that describes the fact that I punched the phone --

-- that describes how height is measured in that particular District.

COMMISSIONER MITTEN: Okay, so I guess the, what I m getting out of the, what we call, what we read now, is that because the references made in counting stories to the same point at which the, from which the height of the building is measured, that s the center and by inference you use the center.

VICE CHAIR SOCKWELL: Counsel has recommended that we go directly to building height in the definition section under B for building --

Okay. Under building height of, okay, the vertical distance measured from the level to curb opposite the middle of the front of the building to the highest point of the roof or parapet.

Now, in those Districts in which the height of a building is limited to 40 feet, the height of the building may be measured from the finished grade level at the middle of the front of the building to the ceiling of the top story.

Which allows residents to have peak roofs and things like that.

COMMISSIONER MITTEN: So everybody agrees it s the center, is that --

VICE CHAIR SOCKWELL: Right.

COMMISSIONER MITTEN: Okay, great.

VICE CHAIR SOCKWELL: Middle is the operative word.

COMMISSIONER MITTEN: All right, middle, center. And then around on the other sides of the building, on the sides besides the front, the height of the finished grade relative to the, the ceiling of the lowest level, do you have those figures?

MR. BROWN: Well, one, and I, given that the slope of this lot, which is from rear to the front is downward, that the distance in the, and it s important, I m happy to answer the question, cause it makes an important, -- to point the site.

But the measuring point is not an average or, it s at that one center point. In the rear you ll find that the property is on a grade. So that it will look essentially on grade. So that --

COMMISSIONER MITTEN: Okay.

MR. BROWN: -- there is no difference.

COMMISSIONER MITTEN: Okay.

MR. BROWN: And you ll see as it slopes down the side of the property going here from the rear to

the front.

COMMISSIONER MITTEN: Okay, thank you.

MR. BROWN: Without interrupting I d like to please --

CHAIRPERSON REID: Other questions? Do you have one more witness?

MR. BROWN: Well I wanted Mr. Duncan just to follow-up on two points. The question was raised about the open balcony above the front porch and just asked him if in fact that open balcony which you ll see on the second level, is in fact within the footprint of the porch below.

MR. DUNCAN: It is the, this balcony is the same footprint as the porch.

MR. BROWN: And that was done to maintain a compliance with building restriction --

MR. DUNCAN: That s correct, yes.

MR. BROWN: And then the other issue, which has also been brought up is the gas fireplace. One, does that intrude into the existing sideyard?

MR. DUNCAN: No.

MR. BROWN: And then also, the depth of that, in measurement, would be 1.4 feet?

MR. DUNCAN: One foot four inches from the base of the houses that -- that fireplace sticks out.

MR. BROWN: And so even though it doesn t intrude in the sideyard, a two foot projection for a fireplace would be permitted into a sideyard, is that correct?

MR. DUNCAN: Yes, but this does not intrude into the sideyard.

MR. BROWN: Thank you.

CHAIRPERSON REID: Thank you.

MR. CLARK: Madam Chair? If I have cross examination now, should I do it now or should I do it after Mr. Cohen testifies?

CHAIRPERSON REID: Um --

MR. BROWN: I d be happy to --

CHAIRPERSON REID: That s okay. Either way, Mr. Brown you had one more witness?

MR. BROWN: That s correct. I, --

CHAIRPERSON REID: And, go ahead --

MR. BROWN: Yes, Mr. Cohen, yes.

CHAIRPERSON REID: And Mr. Cohen? You have two --

MR. BROWN: No, no, just Mr. Cohen. Mr. Burman is available to answer questions. I suspect it may not be necessary because between the architect who designed the property and --

CHAIRPERSON REID: Okay.

MR. BROWN: -- Mr. Cohen who builds it, I think we ve got the bases covered.

CHAIRPERSON REID: All right, would you prefer to, do your cross at this point or after Mr. Cohen?

MR. CLARK: I m happy to do it later if that s acceptable to the Chair.

MR. BROWN: I think I would allow him to go now for -- purposes.

CHAIRPERSON REID: All right, go ahead.

MR. CLARK: Mr. Duncan, a few moments ago you referred to the drawing at the bottom right of the chart there, in talking about the distance of the sideyard, is that correct?

MR. DUNCAN: This?

MR. CLARK: Yes, sir.

MR. DUNCAN: Yes.

MR. CLARK: And could you tell us what the date of that document is?

MR. DUNCAN: 8/18/99.

MR. CLARK: 8/18/99?

MR. DUNCAN: Then there s another date here, it says, it s 9/17/99.

MR. CLARK: And, and let me ask, sir, was that document part of the original submission for the

June 7th, 1999 permit?

MR. DUNCAN: No, this is I believe is a wall check. It s done after the structure is built.

MR. CLARK: Can you tell me, sir, where in the original permit application there is a disclosure of the width of the sideyards?

(Pause.)

MR. DUNCAN: This is actually the erosion control sheet, but it has the same site plan as the, as the, this is part of the original permit. It has the same site plan it shows the erosion control, and it shows the setback or the distance to the corner of the -- house as six feet plus or minus.

MR. CLARK: Okay, and that s on the north side of the house. Can you tell me sir what it says about the sideyard on the south side of the house?

MR. DUNCAN: It doesn t say.

MR. CLARK: And when you submitted that application to Mr. Bellow at DCRA, did you tell him, oh, by the way, on this side of the house it s less than an eight foot sideyard?

MR. DUNCAN: I m sorry?

MR. CLARK: Did anyone tell Mr. Bellow at the time the application was submitted, oh, by the way, on the south side of the house it s less than an eight

foot sideyard?

MR. DUNCAN: I wasn t there when the application was submitted.

MR. CLARK: Do you know whether it was done, sir?

MR. DUNCAN: I do not.

MR. CLARK: It was not in the drawings you prepared and submitted, was it, sir?

MR. DUNCAN: I had a, all I had, all the information I had was the survey by -- Associates where only one sideyard was given. But scaling from the drawing was clear that it was about the same as the other side. So --

MR. CLARK: And was that disclosure made, do you know if it was specifically made or was it up to Mr. Bellow to do the scaling and try to figure it out?

MR. BROWN: I object because he s asking him to speculate about something Mr. Bellow did. Mr. Bellow testified clearly that he had reviewed these plans and found no sideyard violation.

MR. CLARK: Well I m amazed that he could do that without any disclosure as to the width of the sideyard, Mr. Brown.

CHAIRPERSON REID: It s sustained because Mr. Bellow is not here. So we cannot ask --

MR. CLARK: Ma am, I m not asking him.

CHAIRPERSON REID: -- Mr. Bellow --

MR. CLARK: Ma am, let me ask him a question if I may. Did you disclose to Mr. Bellow what the width of the sideyard was on the south side of the house?

CHAIRPERSON REID: That s okay.

MR. DUNCAN: In terms of a scale drawing, yes. In verbally, I did not have any contact with him --

MR. CLARK: And is it in writing anywhere that on that plan --

MR. DUNCAN: It s not in writing.

MR. CLARK: And do you know of anyone else did it on behalf of Forest Hills L.L.C.?

MR. DUNCAN: I don t know.

MR. CLARK: Sir, and you say you made an innocent mistake when on the permit application that the new house would be three stories, right?

MR. DUNCAN: It was an honest mistake, yes.

MR. CLARK: Yeah, and that was an intentional error?

MR. DUNCAN: It was.

MR. CLARK: And, simply a human error, I think, right?

MR. DUNCAN: Correct.

MR. CLARK: And so at the time that you made that error, you were unaware of the City s position about the berm, until it was suggested by the City, isn t that right?

MR. BROWN: Can I interrupt?

MR. CLARK: Can I let, if there s not an objection, let s let him answer the question.

MR. BROWN: I m objecting to the question because I think that there are things that, beyond --

CHAIRPERSON REID: What did, I m not, um, what, excuse me. Let s get the question -- we were showing -- sideyard --

VICE CHAIR SOCKWELL: Mr. Clark, what s your, what s your position on the sideyard?

MR. CLARK: My position on the sideyard is twofold. One is that in fact there was an extension of an existing non-conforming use. Structure, rather, an existing non-conforming structure. And that extension is not authorized by the Zoning Regulations.

And so therefore, the extent of the sideyard is an important question. The second point is here, is that there was certainly no determination as to the sideyard at the time the original permit was issued.

In fact we ve now seen that there was no disclosure made as to a less than eight foot sideyard at the time the original permit was issued. And therefore there could have been no approval of it.

MR. BROWN: But I think the testimony is contrary that Mr. Bellow specifically in his testimony said that the sideyard was in compliance with the zoning regulations.

MR. CLARK: He found that after, in August he said, not at the time of the original application. But the record will reflect it Mr. Brown.

MR. BROWN: I think the point also made is that, and Mr. Lourenco and both Mr. Bellow made the point is that they approved the application which indicates their view of compliance.

CHAIRPERSON REID: No --

MR. CLARK: Well I understand that they may be their view of compliance Madam Chair, but the fact is that if something isn t disclosed and then it s approved that doesn t mean that the one who approved it was aware of the non-disclosure.

I mean it doesn t make any sense.

CHAIRPERSON REID: Uh, now, when the, the certificate was, when the permit was applied for, then at that point isn t it coming to a time the official

DCRA to determine whether or not it is in compliance with zoning regulations prior to the issuance of the permit?

That s what I was, it was always been my understanding.

MR. CLARK: Madam Chair, I assume that that s done, but --

CHAIRPERSON REID: Excuse me, but whether or not a disclosure is made per se, nonetheless if they have the drawings, if they have the survey and the plat then they could determine by looking at it if in fact there is some, if there is some relief, some additional relief that s necessary prior to their issuing the permit.

MR. CLARK: Madam Chair let me respectfully suggest that if 12,000 permits a year are being processed --

CHAIRPERSON REID: That doesn t matter --

MR. CLARK: -- and if there is no disclosure made and if what you have to do is take a ruler to that and say okay is this less than eight feet or is it not less than eight feet, that that s not any way to run a permitting process.

CHAIRPERSON REID: Well, I mean, we re not, we re not here to assess the efficiency of DCRA today.

MR. CLARK: I understand that Madam Chair, but the fact is there could be no determination when the facts aren t disclosed.

CHAIRPERSON REID: But not, my thinking is that if, if the assumption, notwithstanding the fact that, whether or not disclosure is made that the responsibility lies on DCRA to make that determination, whether or not they re in compliance with the zoning regulations.

And if not, then they determine what kind of relief is necessary and they then would refer them to the appropriate Board or to apply for whatever they would need --

MR. CLARK: Madam Chair let me refer to Mr. Lorenzo s testimony the last time.

CHAIRPERSON REID: --

MR. CLARK: Mr. Lorenzo s testimony the last time, I asked him a question, does DCRA rely on the honesty, integrity, and accuracy of the representations which are made to it in permit applications?

His answer was absolutely. And so in fact if what we re saying here is that someone could come in and make a partial disclosure and then say later on, oh, by the way, I disclosed everything and it was up to you to find the mistake, that s not really what the law

requires.

CHAIRPERSON REID: Well no, I think that it s in their judgement, and obviously.

MR. CLARK: And Mr. -- Madam Chair, I don t want to belabor the point. In fact --

CHAIRPERSON REID: Let me finish. Obviously Mr. Clark, it is not a perfect world, and 12,000 applications, whatever it is that goes through there, nonetheless, if in fact it is the responsibility of that agency to make the determination, and of course many times they have to rely on the integrity of the Applicant who is presenting it to them.

I don t know if they use a scale or whatever to determine that every measurement is absolute and correct. But, if the judgement has been made, then it appears that it was in their judgement, it was in their best analysis, based on their best analysis that they in fact had submitted what was needed in order to get their certificate.

MR. CLARK: Madam Chair all I will say is the record will reflect that Mr. Bellow said that any determination on the sideyard was made in August after the problem had been called to his attention.

And all I am getting at is that it was done back in April.

MR. BROWN: Madam Chair I don t think, one, underlying this, we re going back to the same concept that I think the Chair was quite unforgiving about was this concept of misled and accusations.

Both Mr. Bellow and Mr. Lourenco said they weren t mislead. Mr. Bellow made a determination, initially and confirmed later that in fact he complied with the sideyard requirements.

The drawings both here and subsequently submitted, you know, once this became an issue showed that in fact the sideyard complies. So I think we re belaboring a point --

CHAIRPERSON REID: Okay, let s move on to the next question.

MR. CLARK: Let me just say this. The original building was apparently built somewhere around June or later of approximately 1955 or perhaps 1956.

MR. BROWN: I believe 56 cause the drawings are dated.

VICE CHAIR SOCKWELL: They re dated 55 and maybe some are dated 56. And just so that we can satisfy this and I didn t want to speak out until I had the Section. Section 405.8 which is the section that deals with residential property.

In the case of a building existing on or

before May 12th of 1958 with a sideyard less than eight feet wide, an extension or addition may be made to the building, provided that the width of the existing sideyard shall not be decreased, and provided further that the width of the existing sideyard shall be a minimum of five feet.

The existing sideyard is six feet. Therefore Mr. Clark --

MR. CLARK: I can point to Section 2001 I think it s C3 which talks about this same issue, and I have to pull the Section out.

VICE CHAIR SOCKWELL: Yeah, pull it out quickly.

MR. BROWN: Mr. Sockwell s point is well taken. Section 405.8 supercedes the non-conforming structure --

VICE CHAIR SOCKWELL: Of course it, of course it does. And Mr. Clark is well aware of the fact that Chapter 20 doesn t apply here.

MR. CLARK: Mr. Sockwell can I just interject something? In the transcript Mr. Bellow indicated that there was no sideyard problem, but he also indicated that this typical and you ll see here that a wall test report was done.

And that s a field verification. And we ve

shown you that before. So not only is he relying on what was in the plans, but is a follow-up, this occurred on September 17th, an independent licensed surveyor comes out and puts his certified stamp on a wall check and tells the Zoning Branch that in fact the field conditions are X, Y, and Z.

VICE CHAIR SOCKWELL: And Mr. Clark, as you know, what s a non-conforming use of land?

MR. CLARK: This is a non-conforming structure --

VICE CHAIR SOCKWELL: What s a non-conforming structure?

MR. CLARK: A non-conforming structure, this is a non-conforming structure.

VICE CHAIR SOCKWELL: What is it?

MR. CLARK: A non-conforming structure is one that doesn t conform to the current zoning code.

VICE CHAIR SOCKWELL: That was a great answer. I ve had enough of that. Okay, a non-conforming structure, or a non-conforming use of land have no bearing on the sideyard adequacy.

A non-conforming use of land is use of land in a manner unacceptable under the current ordinance, i.e. it s commercial in a residential zone, or some other thing like that.

A non-conforming structure is a structure that otherwise does not meet the zoning ordinance in bulk or height or other things. Now, a sideyard is a sideyard. An eight foot sideyard is the minimum.

A five foot sideyard for a building in existence before the Zoning Ordinance is acceptable. A six foot sideyard exceeds five feet, unless five and one is four and I m wrong.

And if this property extension addition does not decrease the sideyard to less than what was existing, provided the sideyard was at least five feet, it s a matter of right. That doesn t bring them in here, and you have no more questions on that subject.

MR. CLARK: Mr. Sockwell I will just say one thing I --

VICE CHAIR SOCKWELL: Please, one.

MR. CLARK: I have been told that I was late in appealing in June. What I am pointing out --

VICE CHAIR SOCKWELL: But this isn t a, this isn t late appeal, this is sideyard we re talking about.

MR. CLARK: What I am pointing out that is on the sideyard issue that there was no determination made by the City on the sideyard until August or September.

VICE CHAIR SOCKWELL: There wouldn t have needed to be any determination made on the sideyard if the sideyard met zoning. Zoning is specific in the area of sideyard in Section 405.8.

It doesn t require a ruling, a written determination or anything akin to that.

COMMISSIONER MITTEN: Madam Chair?

VICE CHAIR SOCKWELL: Now let s go on to something a bit more substantive, please.

COMMISSIONER MITTEN: Madam Chair, if I could just maybe just give a little clarity to this issue and then we can move on. Mr. Clark is not suggesting that the sideyard doesn t meet the requirement. What he s saying is there is no piece of paper that indicates you know when the permit was originally approved, that indicates what the width of the sideyard was.

And that s his point, is they didn t know. So that s the point --

VICE CHAIR SOCKWELL: No he may not have known, but it did not have to be specified as such. If it were, if it was shown adequately on the plat, and the plat is the determining document, if the plat showed it, if it was shown on the plans and it could be referenced, it s done that way every day.

CHAIRPERSON REID: Mr. Clark, continue with your cross examination. There s no testifying, please, just pose your question, pose your, whatever you say, pose it in the form of a question.

MR. CLARK: Sir, could you tell us whether the pre-existing house was a two-story rambler?

CHAIRPERSON REID: Mike?

MR. BROWN: Maybe you better say that again, I m not sure he heard you.

MR. DUNCAN: I think most people would have called it a one-story rambler, but I think under the definition for zoning purposes it would be considered a two-story.

MR. CLARK: And if you have it front of you, our Exhibit 4, which is from the original exhibit, it s the application for the June permit.

MR. DUNCAN: Yes.

MR. CLARK: And I ll wait for everybody else to catch up.

(Pause.)

MR. BROWN: Madam Chair, I may be able to save us some time. Mr. Duncan didn t prepare this document, so I m not so sure how he s going to be able to testify.

MR. CLARK: Well let s ask him a question

then Mr. Brown, did you ever see this document before, Mr. Duncan?

MR. DUNCAN: Not until this case.

MR. CLARK: And so, I think I ll reserve my question for Mr. Cohen on this, unless we re going to bring in Mr. Gangloff on this subject.

VICE CHAIR SOCKWELL: If I might say so, the likelihood is that Mr. Gangloff prepared the document. It carries his, apparently his handwriting throughout, and any modifications may have been made by Mr. Gangloff in those boxes that you would be concerned with Mr. Clark.

MR. CLARK: I think I ll ask Mr. Cohen my questions about this Mr. Sockwell.

VICE CHAIR SOCKWELL: That s all right. And you re quite welcome to do that.

MR. CLARK: I knew that. But I want to ask Mr. Duncan about --

CHAIRPERSON REID: Let s move on and let s dispense with the unnecessary exchange, please.

MR. CLARK: Mr. Duncan if you d look at the drawing which we now have sitting up on the Board to the right of you. And in the black line was the existing footprint?

MR. DUNCAN: Correct.

MR. CLARK: Now if you d go to the cross hatched line, I guess it is, behind that, is that entire cross hatching a one-story addition?

MR. DUNCAN: Yes. This is what you re referring to?

MR. CLARK: No, no.

MR. DUNCAN: It s not entirely a one-story addition. This part is two stories.

MR. CLARK: And when you say it s two stories, does that count what you called the half story on the roof?

MR. DUNCAN: Uh, no. If you counted that it would be three-story, but that part of the story, the third story is below five feet in height, so --

MR. CLARK: Okay, and could you tell us then sir, what is a --

MR. DUNCAN: This is the -- part of the house. This is the --

MR. CLARK: I m not sure if the Board could see that. Could you tell us, sir, what is the additional part in the back of the house, cause I think the top of that drawing is the back, in just rough measurements as to how much that had two or two and half or whatever numbers of stories added to it?

MR. DUNCAN: I m sorry, I didn t --

MR. BROWN: I object Madam Chair. I think he s talking, trying to talk about height. And height is I think we both would pretty much agree, is measured --

MR. CLARK: I m not talking about height Mr. Brown, I m talking about how much was added to the existing footprint and how much wasn t added to the existing footprint.

MR. BROWN: Again, that I don t believe is relevant to any of the issues that he s raised on the appeal. He s raised issues having to do with the height, and the sideyard.

MR. CLARK: And in fact one of the issues raised on the appeal was that the permit said it was to demolish single-family dwelling and to build on the existing footprint. That wasn t what was done. I just want Mr. Duncan to tell us how much was not built on the existing footprint.

CHAIRPERSON REID: Overruled, please answer the question.

MR. DUNCAN: This is all addition to the existing blue print.

CHAIRPERSON REID: All right.

VICE CHAIR SOCKWELL: And how much was of the more than one story? Could you just give us the

rough dimension?

MR. DUNCAN: Six foot eight by, I don t know what dimension that is.

VICE CHAIR SOCKWELL: Oh, 49 or 50 feet?

MR. DUNCAN: Something like that.

VICE CHAIR SOCKWELL: Thank you.

MR. CLARK: I have no other questions.

CHAIRPERSON REID: Thank you. All right. Let s see, where are we here? Are there any other questions from Board members?

COMMISSIONER MITTEN: I d like to just ask one additional question, and I think Mr. Duncan you had put up that erosion control plan earlier. I don t know which board that was on. And that was, I guess that was submitted with the first permit.

MR. DUNCAN: Yes.

COMMISSIONER MITTEN: Is there, would there be any change if you had, for the second permit, with the berming that was done, would there be a change in the erosion control plan that would be appropriate to show for someone to evaluate potential for soil erosion?

MR. DUNCAN: Not to my knowledge.

MR. BROWN: If I could, Ms. Mitten, when the second permit, and I believe it is, it s my Exhibit 8,

was processed, and if you go to Page 4 of the actual application, and it s got a black line at the top, approvals do not write on this page.

And you ll see on the right hand side the list of the various people who ve approved, and then item six you have erosion control. So that the plan, the second revised permit was in fact subject to and approved for erosion control purposes.

COMMISSIONER MITTEN: Well I guess that s my question is if there s nothing, if there s no change to this plan there s no actual recognition of the change in the, I don t know how you characterize that, contour of the lot, that would, that anyone could have evaluated.

MR. DUNCAN: Well I think you ll see in the plans that were submitted the, that was the original one, and then, again Mr. Lourenco said that they were viewing the two permits together, that there was a revision to the earlier one, and then you ll see the drawing that was provided, and that in fact the City signed off on it.

So I mean I can t speculate on exactly how they did that but certainly it was specifically approved.

COMMISSIONER MITTEN: I understand. I

guess, and this is what I had, I distinctly remember asking this question at the end of, or near the end of our last time together, which was, was the drawing that you have posted now that has the pink on it that s on the left hand side of this exhibit, was that the only drawing that was submitted?

And that shows in a two-dimensional fashion how there s going to be, the land will be raised. But if you were looking, say through the site from, the, what s on there, what s shown there, if you were on the right hand side of the house looking sort of through the site, it doesn t depict like how steep that slope is of the dirt being piled up and so on.

So, you know, in terms of how, you know, some dirt sliding or something like that, there s no opportunity for anyone to evaluate that.

MR. DUNCAN: In my opinion we were adding a relatively insignificant amount of soil to raise the grade of the -- house. I think it was, I still don t believe it s necessary to, the exact topography submitted for corrosion control purposes of this.

We were extending an existing hill along the same slope that was already on the lot.

COMMISSIONER MITTEN: I understand that. I guess wanted to basically get it all clear. Thank you.

CHAIRPERSON REID: Okay, Mr. Cohen? One more witness --

All right.

(Pause.)

MR. BROWN: And if I could allow Mr. Cohen to introduce himself, state his role in this project, and then I d like to I think help him focus on our efforts to tie, lead him through the issues that I think are important, and then make him available for questions of the Board.

MR. COHEN: Murray Cohen, Partner and Owner in the Forest Hills L.L.C. and the builder of the house.

CHAIRPERSON REID: And give your address.

MR. COHEN: 6005 Neilwood Drive, Rockville, MD 20852.

MR. BROWN: Day to day responsibility for building this house, is yours?

MR. COHEN: Correct.

MR. BROWN: In June of 1999 you received the building permit and began construct.

MR. COHEN: I believe that s the date.

MR. BROWN: Previously you ve said July 1 you started site work, is that correct?

MR. COHEN: Approximately.

MR. BROWN: And then you began to progress through the project. You removed in the second week, July 12th the roof of the existing structure, the top story and then moved back down to the sub-flooring of the first floor of the existing house.

MR. COHEN: Right.

MR. BROWN: Was it necessary after you removed the top story to remove the sub-flooring in the existing structure, replace it, replace joist in the existing structure?

MR. COHEN: Well, we, part of the new structure and part of the new plans was of course filling in the old stairwell. In addition to that I replaced floor joist that were either drilled or had split in the old structure where bath plumbing had gone through.

And so I replaced joist that I thought needed replacement.

MR. BROWN: To maintain the structural integrity of the --

MR. COHEN: Right, exactly.

MR. BROWN: Did you make, and you maintained the existing four walls of the basement below the level of the existing house?

MR. COHEN: That s correct.

MR. BROWN: You met in late June or the first week in July with Mr. Clark and some of his neighbors?

MR. COHEN: That s correct.

MR. BROWN: And at that time did you provide them schematic drawings, the elevations of the site?

MR. COHEN: I think I gave them eighth inch scale drawings of the elevations.

MR. BROWN: And also they indicated they made a copy or were allowed to make a copy of the plat showing the site plan.

MR. COHEN: Possibly, I don t recall that specifically.

CHAIRPERSON REID: What was the date?

MR. COHEN: Either late June or early July.

MR. BROWN: And at that time they expressed concerns about the house. Could you describe that, what they told you?

MR. COHEN: Well, I met with Mr. Sloame, his wife, Mr. Clark and his wife, and Mr. Zacks. They asked me if, they asked me some specific questions. They asked me in general that if I was, you know if they could make any architectural suggestions that might be a benefit, whether I would be amenable to that and I indicated that I would.

They, in addition they specifically mentioned things such as Mr. Zacks said he didn t think the street was of the price range that we were going to be in. He indicated that he didn t like garages on the front of the house.

Mr. Sloame asked whether the house would be put further down in the ground because it set too high. I indicated that s what it was, existing and we weren t changing the elevation of the house.

We were using the existing foundation. The garage in the front I said that was a condition that was already there, you know, we didn t create it, it was already there.

Mr. Clark asked me if I could take off the balcony and whether I could put the dormer windows facing the rear instead of the front. And that was the essence in much of the meeting.

MR. BROWN: Did the, Mr. Clark or the other people ever follow-up with you after that meeting?

MR. COHEN: No, they never came back with any suggestions or architectural at all.

MR. BROWN: In the time frame in June and July, did you have any indication that there were any issues with the building permit that you d been issued?

MR. COHEN: No, the permit had been issued

and we were following the permit.

MR. BROWN: And you built the structure in accordance with the permit that was issued?

MR. COHEN: We were building the structure according to the plans on the permit issued, correct.

MR. BROWN: When was the first time that you had any notice that there was a zoning issue related to this? Describe how that occurred.

MR. COHEN: I got a call from Rick Gangloff who was the permit expediter and I think he had seen Mr. Bellow and Mr. Bellow had indicated there was a problem and worked, something like there may be a stop work order issued on the property or what have you.

And I either called Mr. Bellow or called Mr. Gangloff to get a hold of Mr. Bellow and the following morning we had a meeting with Mr. Bellow concerning the issues.

CHAIRPERSON REID: When was this?

MR. BROWN: Was it July 28th?

MR. COHEN: I think that s the correct date. I gave you the dates. It was the following day after I heard from Mr. Gangloff, the next morning.

MR. BROWN: And what did Mr. Bellow tell you at that meeting, as far as zoning?

MR. COHEN: Well he indicated that the

homeowners or some of the homeowners or neighbors had brought up the issue of sideyard requirements, and also on the front elevation and the height and four-story structure.

He went through the situation and I said well, you know, I did what I was supposed to do, what I thought I was supposed to do, tell me where do we go right now? How do we make it right?

And Mr. Bellow said that, he defined to me this difference between basement and cellar. And indicated that if the grade was less than four feet to the ceiling of the lower level, that it would constitute a cellar and therefore the lower level would not count as a floor, and therefore it would be in compliance with the reading.

And I said fine, if that s what we need to do to come in to compliance with any questions then we agreed to do that.

MR. BROWN: And then you did proceed to, to revise your plans and submit a revised permit?

MR. COHEN: We submitted, let me add one question to that. Mr., I asked Mr. Bellow at the time if there is a stop work order, and that we have agreed to do it, is it okay to continue construction because the basic structure is the same in relate to the grade

and he said sure, that s fine.

We had meetings on changing the elevation to bring up the grade. I m the one who asked the, Neil Duncan the architect to try to get more light in the basement, to enlarge the windows.

-- more light down there, it would be more beneficial so we changed the window elevation to bring up the finished grade, proposed finished grade to a higher elevation in order to get underneath the four-foot dimension for the ceiling line in the lower level.

MR. BROWN: So coming out of the meeting, one, you were instructed by Mr. Bellow how to bring the property into compliance.

MR. COHEN: Correct.

MR. BROWN: You were also told specifically that you were authorized to continue construction.

MR. COHEN: Correct.

MR. BROWN: And you did so?

MR. COHEN: We did so.

MR. BROWN: Did you, you followed the revised building permit.

MR. COHEN: Correct.

MR. BROWN: And that building permit was approved?

MR. COHEN: Yes, it was.

MR. BROWN: That building permit was approved on September 17th, 1999?

MR. COHEN: Well looking at the display, yeah that s the date -- right. Right.

MR. BROWN: After that point, you were not aware of any other zoning issues that were outstanding?

MR. COHEN: Not that I was aware of. -- not that I recall.

MR. BROWN: And you continued construction?

MR. COHEN: Correct.

MR. BROWN: When was the first time you knew that the, after that date that there was a problem with zoning? Was that on November 8th?

MR. COHEN: I don t remember exactly what the date, but I did get notice that somebody was filing --

MR. BROWN: So, from September 17th to that date when you found notice of the appeal, further notice of appeal, you had no indication, no contact that would indicate that there was a zoning problem?

MR. COHEN: I m not sure whether the letter from Mr. Sloame came during that time or before that time. Mr. Sloame delivered the letter to me.

MR. BROWN: August 25th letter which --

MR. COHEN: I think the letter, the letter

was dated August 20th, and it went to other people and to the municipality, but he didn t hand deliver it to me until August 25th.

MR. BROWN: But that came before you were issued the revised permit.

MR. COHEN: That s correct.

MR. BROWN: During the period, September 17th through November 8th when you first got notice of the BZA appeal, you continued working. As a percentage of your overall cost of your project, could you tell me what that 60 day period was?

MR. COHEN: I don t know, maybe 20, 25 percent of the total budget, perhaps.

MR. BROWN: I m going to show you a picture here and you gave me the original Polaroid. The Board Members have a copy in their package. This is a Polaroid you took of the house, correct?

MR. COHEN: Correct.

MR. BROWN: Right. And on the back of it it says September 7th, 1999?

MR. COHEN: Okay.

MR. BROWN: All right. And that shows the, describe the condition of the house on that day when you took it as far as the progress of construction.

MR. COHEN: It appears to me that the upper

deck, sub-floor joist and plywood --

CHAIRPERSON REID: Which picture?

MR. COHEN: Oh, excuse me --

CHAIRPERSON: REID: This one?

MR. COHEN: It looks like the joist are in place and I would say probably the plywood too, and it looks like the gable ends, front gables are being put up. And it looks like some of the ridge beams are in place on the --

MR. BROWN: Can I just, while we re on this page, the picture below, what is that picture there?

MR. COHEN: That s the original house as it, as we purchased it.

MR. BROWN: The, built in 1956?

MR. COHEN: Correct.

CHAIRPERSON REID: Okay, September 7th, 1999 is the picture above. You took that picture on September 7th, 1999.

MR. COHEN: I m sorry. Correct.

CHAIRPERSON REID: And the other house below is the original rambler. Okay.

MR. BROWN: Just, the grade change, the revision in the grade, would you describe that as a minor change?

MR. COHEN: Very. On the lefthand side as

you re looking at the front it was like a foot to a foot and a half maybe, and as it came across the right hand side it was maybe two and a half to three feet, somewhere plus or minus.

But I thought fairly minor.

(Pause.)

MR. BROWN: That s all I have for Mr. Cohen. I would like to follow up with something with Mr. Duncan, but make him available, Mr. Cohen available for cross examination and questions from the Board.

CHAIRPERSON REID: All right. I believe he has some follow-up.

MR. BROWN: Well with Mr. Duncan, but that s a good stopping point with Mr. Cohen, so I d like to --

CHAIRPERSON REID: Okay, Mr. Cohen, was there ever a stop work order issued?

MR. COHEN: Not that I saw. I did not physically see anything.

CHAIRPERSON REID: If there was one issued, would you see it?

MR. COHEN: Normally, I believe it s posted on the job. I ve not, I never saw one physically. I stopped the work, I told the people on the job that there was a stop work issued because that was the understanding that I had.

MEMBER RENSHAW: Did you ask for a copy?

MR. COHEN: No.

CHAIRPERSON REID: Why would you stop, why would you stop work if you didn t have a stop work order posted on the building?

MR. COHEN: Because they told me that at stop work order, my understanding was that a stop work order was being issued. And if that s the case I might as well get it straightened out.

CHAIRPERSON REID: In other words, in anticipation --

MR. COHEN: Exactly.

CHAIRPERSON REID: -- of what you thought was going to be issued, you stopped the work.

MR. COHEN: Right.

CHAIRPERSON REID: But was there ever one actually issued?

MR. COHEN: Never saw one, and I was having a meeting the next day, so --

CHAIRPERSON REID: But wouldn t you know?

MR. COHEN: Only if it was posted. I, you know, I, I don t get stop work orders, so I m not familiar with them.

CHAIRPERSON REID: Right, but you know what they are and you know how they work.

MR. COHEN: Right, right.

CHAIRPERSON REID: And when you had the meeting the next day was there any mention of there being issued a stop work order?

MR. COHEN: No, I asked the question but I never really got an absolute yes or now. And --

CHAIRPERSON REID: But I think that if you had, if there was one you would know. I mean.

MR. COHEN: Probably.

CHAIRPERSON REID: That s what --

MR. COHEN: But the words were used.

CHAIRPERSON REID: All right, and when you had the meeting, that you referred to the next day, who was that meeting with, Mr. Bellows?

MR. COHEN: Mr. Bellow and Rick Gangloff.

CHAIRPERSON REID: Okay, now, was it at that meeting that Mr. Bellow proposed to you a possible solution to the problem, the grading, using the berm?

MR. COHEN: Yes, it was.

CHAIRPERSON REID: And prior to that, you didn t know anything about that being a probable solution to that type of problem in building in general?

MR. COHEN: No, because I didn t even know there was a problem.

CHAIRPERSON REID: All right, and so you re saying that, predicated upon that meeting and the suggestions that were made to you, and I know it s not uncommon for officials to suggest things, that you then took it upon yourself to heed their advise and to proceed with the direction of the berm there on the building.

MR. COHEN: Correct. It, I don t consider it a berm, but it was raising the grade.

CHAIRPERSON REID: Now is it a berm or not? Because that s what I, that s the --

MR. COHEN: Not in my definition, but people have used it, so I, you know.

CHAIRPERSON REID: I don t know, in my understanding that, the soil being placed, piled up like that, constitutes a berm, and then I hear it referred to as grading. And I thought that it was synonymous, so I m not really sure.

MR. COHEN: Yeah, I think it s a, I think it s a finished grade, but I didn t think of it as a berm.

VICE CHAIR SOCKWELL: Generally, and I m sure Mr. Duncan may or may not want to react to this. Raising a grade would tend to incur a level area of some sort or perhaps a large area of some sort that is

elevated to a new position, and that position would be relative to the adjacent grade.

In this case, the typical berming under any circumstances is usually the piling of earth up against a vertical or some other upright object, or creating a berm that might level off to a plateau which would then be considered a raised grade.

But the berm is generally pushing earth against something to create a slope, and I would think that that would be a typical definition to that, Mr. Duncan could generally agree.

CHAIRPERSON REID: So the question is, is it a berm or not?

VICE CHAIR SOCKWELL: I d call it a berm, myself.

MR. COHEN: Because --

VICE CHAIR SOCKWELL: Because it doesn t include anything other than a high point and a low point and earth piled up on an angle in between. I mean that s what I would consider to be a berm.

CHAIRPERSON REID: All right. So the berming and, is it synonymous, the terms to use if you know, to just change the --

VICE CHAIR SOCKWELL: Raising a grade and berming are not synonymous. I would not consider them

to be used in the same context normally.

CHAIRPERSON REID: So you would not call this raising a grade, you would then refer to this as a berm, specifically.

VICE CHAIR SOCKWELL: It is a berm. I guess we could get into semantics, but I won t. Let s say I would call it a berm, if you berm around the building you ve raised the grade at the building around the building.

But it is not what I would consider typically a raising the grade. I would use it as a berm definition because it is specifically pushing earth up against a wall to create a slope.

CHAIRPERSON REID: Well sometimes terms are used loosely.

VICE CHAIR SOCKWELL: Yeah, and they can be used loosely.

CHAIRPERSON REID: And I think that s what happens here --

VICE CHAIR SOCKWELL: If someone said well you need to raise the grade, then the method by which the grade could be raised would be berming. Berming is a more defined raising of the grade.

CHAIRPERSON REID: Okay, all right, thank you.

VICE CHAIR SOCKWELL: More specific.

CHAIRPERSON REID: Any questions Board Members? Any other questions of Mr. Cohen?

VICE CHAIR SOCKWELL: I do have questions.

MEMBER RENSHAW: Just one. I would like the architect to tell, to verify that, in the picture on the right hand side on the top, where you start the new steps. All of that is, all of that up to the front porch is what you have filled in, am I correct?

MR. DUNCAN: Not to that -- That s, that s not new fill to that height. That s, you re looking at soil that s on top of, you know, existing soil that s only a few feet below that.

MEMBER RENSHAW: Because I m just trying to gauge this from the picture of the original house, and it looks like we have a mountain instead of a mole hill here. Okay.

VICE CHAIR SOCKWELL: Mr. Duncan? Mr. Duncan, you spoke to the use of the ground or basement or cellar floor of the new building as mechanical space and things like that that you thought it was best suited for. Were you aware even generally of what the use of that space was in the previous house?

I mean you had access to the drawings as I do. And you know that there was a full bath down

there, a recreation room, two future bedrooms as per the 1956 plans, which may or may not have been built out.

MR. DUNCAN: They were not built, no.

VICE CHAIR SOCKWELL: Uh-huh. A laundry room and maybe those, maybe other things. So, it was used as a part of the principal living area in this house as, or at least it was designed for that.

MR. DUNCAN: It may have been designed for that, but it certainly didn t seem to, in reality to have been used for anything other than a basement, recroom.

VICE CHAIR SOCKWELL: And I can --

MR. DUNCAN: I mean if you look at --

VICE CHAIR SOCKWELL: But it was, it was living space.

MR. DUNCAN: -- you can t even see the lower level, that s why it looks like a one-story house to me.

VICE CHAIR SOCKWELL: Well, it has very high shrubs around it as you might be able to tell, and, and I m only reacting to what s on the drawings, rather than what grew around it between 1956 and today or last year.

MR. DUNCAN: Uh-huh.

VICE CHAIR SOCKWELL: And for Mr. Cohen, my question to you is when was that Polaroid taken?

MR. COHEN: I think September, I want to say September 7th.

MR. BROWN: That was the date on the back, and I believe the back of it was copied as an exhibit.

VICE CHAIR SOCKWELL: All right, and I want to draw your attention to that photograph. If one looks closely, it is quite apparent that the front elevated walls are being held in place by diagonal braces, and that very little other than a ridge beam perhaps is existent behind them.

And that the porch itself that projects out over the front entrance is merely a framed element with probably a, the floor maybe in the sub-floor, maybe on it or not.

And therefore I refer back to Mr. Cohen s testimony in which he stated that in July he met with Mr. Sloame, his wife, Mr. Clark and his wife, and Mr. Zacks who asked about any architectural changes that they might be able to suggest.

And I would say that at that point in time, that portion of the house was not even nearly there, because we are talking now July to September which is approximately two months.

And 60 days is a lot of construction. So it is highly unlikely that even looking at plans, Mr. Sloame or Mr. Clark, or their wives or Mr. Zacks would have known exactly how tall the house would be.

They wouldn t have had access to the elevation in place if they got to -- plans, and when you stated that they suggested some changes, based on what had to have been there at the time that they made those suggestions, they would have to have been looking at your drawings as opposed to looking at what was in place.

MR. COHEN: They had elevations.

VICE CHAIR SOCKWELL: Okay, so they got to look at the drawings.

MR. COHEN: They got those back in June or the beginning of July.

VICE CHAIR SOCKWELL: Okay.

MR. COHEN: Right.

VICE CHAIR SOCKWELL: So, until they actually saw the house, they may not have realized how large it appears -- It is very difficult for you, if you re not an engineer, or an architect -- what they re looking at, especially in context of its surroundings.

So it s highly likely that they suggested changes based on what they knew at the time. And that

they did not have the objections that they may have later developed as they saw the house actually come into being --

CHAIRPERSON REID: Um, this is submitted by you Mr. Brown?

MR. BROWN: That s correct.

CHAIRPERSON REID: Okay, these pictures are unlabeled, so could you just --

MR. BROWN: Yeah, and I was actually going to have Mr. Duncan take us through them.

CHAIRPERSON REID: Okay.

MR. BROWN: But the picture on the front, which shows obviously the house under, our house, and this, this picture was taken, I think, obviously there s snow on the ground, I think it s late December, early January.

CHAIRPERSON REID: And that s Mr. Sloame s house.

MR. BROWN: This is Mr. Sloame s house. I think it s instructed, what this one? Oh, yes, this one was taken, sorry, this one was taken last week. The pictures here were taken in the December time frame.

It s instructed to note that, and you have to, see Mr. Sloame s garage doors, and the, the brick

level, which is by and large the same level relative on the house, that s, that my clients are building.

And you ll form the clear impression that Mr. Sloame s house is sitting lower than my client s house.

CHAIRPERSON REID: You said you ll form the impression.

MR. BROWN: Well I mean it s clear.

CHAIRPERSON REID: Clear.

MR. BROWN: I mean, from looking at the picture, and again, using a similar frame of reference, and perhaps --

VICE CHAIR SOCKWELL: The frame of reference that I used was the retaining walls which are almost identical in height.

MR. BROWN: I don t, they re roughly the same, but --

VICE CHAIR SOCKWELL: They re very, very roughly the same.

MR. BROWN: But if you --

MR. DUNCAN: May I respond to that Mr. Sockwell? The retaining walls, and it s difficult to see in these pictures, but the retaining walls at the front are in fact very similar in height.

However, our house and the one, the ones up

to the right of our house are built on top of the hill, whereas his, Mr. Sloame s house is cut back into the hill.

So, the retaining wall to the right of his garage, to the right of his garage is a retaining wall. In the first hearing there was discussion of, he said there was a seven foot high fence between his house and our house.

It s actually a retaining wall. Our grade is higher than his grade because we re sitting up on the hill, and I think you can see it very clearly on the second page, photograph, that s taken from the rear.

If you look at our house in the middle and the house to our, to the left of our house in the photograph, you see that they re both up on the same hill, whereas Mr. Sloame s house which is to the right in that photograph is clearly lower down.

And there s a, there s actually a retaining wall. He s cut back into that hill.

VICE CHAIR SOCKWELL: Actually, if you prefer to look at the front of the third drawing, third picture which is the original 1956 house, and give some comparison to the slopes and the position of the garage relative to the street, there is a great deal of

similarity and the actual elevations or at least the point of reference from street level to garage entrance level of those two homes, which gives rise to an understanding of where they were really fairly compatible height wise and elevation wise realistically.

From the back it s a little bit more difficult to tell.

CHAIRPERSON REID: Okay, next pictures?

MR. BROWN: Following through, and I ll let Mr. Duncan continue. Describe them.

MR. DUNCAN: Well I was concerned about, to hear about Mr. Sloame s privacy issue, in the previous hearing. So I went back out there to investigate that. And I just took some pictures of Mr. Sloame s house from the various windows in our house.

CHAIRPERSON REID: That s your page four, is it?

MR. DUNCAN: Yes.

CHAIRPERSON REID: -- That s page four, correct? Correct?

MR. BROWN: Yes.

MR. DUNCAN: Yes.

CHAIRPERSON REID: All right, so now, looking out. The second picture, let s say picture B,

is that looking out the side window?

MR. DUNCAN: This one?

CHAIRPERSON REID: Uh-huh.

MR. DUNCAN: No, it s looking out a rear window, it s looking out --

CHAIRPERSON REID: Of the rear, huh?

MR. DUNCAN: Yes.

CHAIRPERSON REID: The rear window of the subject property looks over Mr. Sloame s house?

MR. DUNCAN: No, it doesn t, it faces, the reason I took that picture is because none of the windows on the side have any view of Mr. Sloame s house other than the roof.

He had mentioned, his patio and his hot tub, and I wanted to see if there s a view of his hot tub from our house.

CHAIRPERSON REID: Oh, all right, then, why, okay, I m not. I don t, I don t follow the rationale about, regarding, showing us this picture of the rear. I mean whose house is that?

MR. DUNCAN: That s, that s Mr. Sloame s patio, in this picture.

CHAIRPERSON REID: Wait a minute. Wait a minute. Let me understand this. This is, this is the subject property. This is Mr. Sloame s house. The

rear goes out that way. I don t understand how the rear picture, the view, going, looking out the rearview, of the window can show us how it overlooks Mr. Sloame s property, his patio.

MR. DUNCAN: This is, this is the window from which that picture was taken, Mr. Sloame s patio is down here. And then you see that I m not looking directly out the window, I m looking at an angle towards Mr. Sloame s house.

CHAIRPERSON REID: What did you do, lean out of the window?

MR. DUNCAN: Well I could not see his hot tub unless I did lean out of the window.

MR. CLARK: I ll object --

MR. BROWN: But he couldn t see the hot tub.

MR. DUNCAN: But the hot tub is in the other picture.

CHAIRPERSON REID: Oh, I see, so, so basically, without leaning out the window, you re saying that Mr. Sloame s house extends out beyond the property line of this, of the subject property s house.

MR. BROWN: You mean further back this way.

CHAIRPERSON REID: You know it looks, it looks like the property line of the subject property is

here, and then Mr. Sloame s patio is out like this and he took the picture from an angle?

MR. DUNCAN: I believe that, I m not sure what that structure is, it s a, it s a pool house or a --

CHAIRPERSON REID: All right.

MR. DUNCAN: It s not, it s not part of his house proper, that the --

CHAIRPERSON REID: But that s the window, that s the window that, where the hot tub is?

MR. DUNCAN: No, the hot tub is, is outdoors and it s, you can t see it in this picture but it s, it would be in this lower corner of the window --

CHAIRPERSON REID: What page are you on?

MR. BROWN: The same page.

MR. DUNCAN: The same page, yeah.

CHAIRPERSON REID: Oh, okay. It would be where?

MR. DUNCAN: Well if you pressed your face up against this glass, which I did, I can catch a corner of his hot tub down in this lower corner here.

CHAIRPERSON REID: All right, and the other picture is what view is that?

MR. DUNCAN: That s from a second story bathroom, a second floor bathroom facing his house.

CHAIRPERSON REID: So that s a window that faces his house on the side?

MR. DUNCAN: Yes.

CHAIRPERSON REID: Oh, okay, okay. And that s what, that s what the view is right here.

MR. DUNCAN: Facing his -- on the second floor, so it s a bathroom window.

CHAIRPERSON REID: Okay.

MR. DUNCAN: And then on the last page. This is the last page, the next page, the top photo is taken from this window, the third story window, looking at Mr. Sloame s house, and the bottom picture is actually ground level.

CHAIRPERSON REID: Okay, thank you.

MR. BROWN: Madam Chair just to clarify, you re looking out that second floor window here.

CHAIRPERSON REID: Uh-huh.

MR. BROWN: And what you re seeing there is the roof of Mr. Sloame s house.

CHAIRPERSON REID: Right. I understand that. So from looking at the pictures that you ve submitted, it appears that the only exposure is out of this back window on the corner of the side of Mr. Sloame s bathhouse is it?

MR. DUNCAN: That s correct. Yes.

CHAIRPERSON REID: Okay, thank you.

MR. DUNCAN: Actually a small fence could hide that patio pretty easily from any view from our house. It wouldn t have to be a 40 foot high fence as was testified to, it could be six feet high.

MEMBER RENSHAW: Are you planning to put one up?

MR. DUNCAN: Well I don t know, I haven t discussed it with anyone. -- possible.

MEMBER RENSHAW: All right, so it s a possibility.

MR. BROWN: If I could say --

MEMBER RENSHAW: I have some questions too.

CHAIRPERSON REID: Okay.

MR. BROWN: Ms. Renshaw, on that issue, that s certainly one of the things that --

UNIDENTIFIED SPEAKER: Excuse me.

MR. BROWN: Thank you. The concept of a fence there or some landscaping is one of the issues that we ve attempted to offer. And I don t want to go too deeply into the details, but I think that s the kind of thing in keeping with the Chair and others that of encouragement last time, the kind of thing that my clients think were appropriate and they d be willing to do to accommodate the concerns of the neighbors.

We re not there yet, that may happen, but certainly those type of things would respond and others would respond to issues that have been raised, which my clients take seriously.

Ms. Renshaw, Please go ahead.

MEMBER RENSHAW: Madam Chair, may I?

I just want to say in regard to the picture over here, there would be, if I lived next door there would always be the feeling that eyes would be on me if I were out on the deck. So I can understand the next door neighbor s sensitivity to that.

But Mr. Cohen I just wanted to ask, did you do a marketing study in advance of building this house that would tell you that this size house was appropriate for that location?

What kind of research did you do to determine that that is what would sell?

MR. COHEN: There was some comparables in the neighborhood, square footage wise, the house is, is similar to a couple houses across the street and maybe a little bit larger square footage wise.

But there are a number of very large houses, a very large house on the other side of Mr. Sloame.

MEMBER RENSHAW: Yes, I know, he --

MR. COHEN: -- or larger in square footage than this house.

MEMBER RENSHAW: I know the area. I wanted to ask, is this house pre-sold?

MR. COHEN: No it is not.

MEMBER RENSHAW: It is not, so it s almost a spec house? Would you call it a spec house? All right.

MR. COHEN: Right.

MEMBER RENSHAW: When the neighbors voiced concern back in June or July, late June, early July, you had time to make adjustments. Did you go back to the plans, and say all right, I hear what the neighbors are saying, I m going to cut out this or lower that?

Did you do anything at all, did you consider what they had to say to you?

MR. COHEN: I considered it the last --

MEMBER RENSHAW: But you dismissed it?

MR. COHEN: Let me finish, please.

MEMBER RENSHAW: Okay.

MR. COHEN: I considered it the last meeting that we had, they asked me, if they came to me, with ideas whether I would be open to them. The answer is yes. They never came to me with ideas.

CHAIRPERSON REID: These, are you done, Ms.

Renshaw?

MEMBER RENSHAW: Yes, I am.

CHAIRPERSON REID: Okay. Did you identify these pictures yet, because, and what they represent?

MR. BROWN: And if I could --

CHAIRPERSON REID: Please.

MR. BROWN: If you d allow me to. This is the site, and these were taken I think November, they have dates on the back. Oh, no, I m sorry, January 6th, 2000. My apologies. This is just looking at the site, Mr. Sloame s corner of Mr. Sloame s house here.

This is the front-on shot of the site. This is just a close-up showing the retaining wall. The steps here were widened as part of the -- new steps were put in, a little more graceful.

Here is a picture, and, trying to give the context of the steep grades in the neighborhood. This picture is taken, or actually, the photographers are standing right about here.

Our house is up here, and you re seeing basically from behind and below the corner of Mr. Clark s property -- He s got a quite steep front yard that takes him up to street level here.

You ll see here in the context of the adjoining houses, I believe this is Mrs. Baker here,

this is Mr. Clark here, down below, the sidewalk, and the next door neighbors which I believe is Ed Zacks.

UNIDENTIFIED SPEAKER: No that s Mr. --

MR. BROWN: So, and you ll see that, these houses are roughly comparable, Mr. Clark, his fact of life is that his house is sunk in quite far below. You ll see looking up here this is between the next house and Mr. Sloame s and again people further up the hill are looking down on the Sloame, our client s side of the street as the grade goes down.

This picture was taken from a second floor window of our house. From the second floor window.

CHAIRPERSON REID: Of the front, looking at the properties across the street?

MR. BROWN: That s right, looking at Mr. Clark, this, that house and then the Baker s would be here. This is the fireplace, the gas fireplace on the side shows that the property line comes this way so it doesn t protrude or project beyond the established rear yard line, which is more than five feet existing.

And then you also get the context -- No this is the side. This is the side. Okay? Which would be this side. But it, primarily to give you a context of the actual houses and the slope, which is something that s been there quite a long time and

particularly as it relates to Mr. Clark s house, quite pronounced.

That s been that way for quite some time.

CHAIRPERSON REID: Thank you. Is that all your witnesses? Okay. Is that all your witnesses Mr. Brown?

MR. BROWN: -- I d like to make some closing remarks --

MR. CLARK: Could I, I might take some -- opposing --

MR. BROWN: What I d like to do is I d like to make --

MR. CLARK: Could I have cross examination of Mr. Cohen?

CHAIRPERSON REID: Yes.

MR. BROWN: Go right ahead.

CHAIRPERSON REID: Just wait one second. Let me get some clarity as to where you are now?

MR. BROWN: Subject to further questions from the Board --

CHAIRPERSON REID: Okay.

MR. BROWN: -- I m finished with my witnesses. I d like to make some closing remarks, but I d like to hold them till --

CHAIRPERSON REID: After cross examination -

-

MR. BROWN: -- after cross examination.

CHAIRPERSON REID: Mr. Sockwell?

VICE CHAIR SOCKWELL: Yes, Mr. Duncan, I m sorry. The original window design for the front lower level, those windows which were revised to meet the requirements of the grade adjustment were approximately four foot tall from sill to head?

MR. DUNCAN: That s approximately correct, --

VICE CHAIR SOCKWELL: They were approximately 24 inches above the floor.

MR. BROWN: Mr. Sockwell just for my own clarity, you re asking for the length of the windows.

VICE CHAIR SOCKWELL: The length vertically and a position relative to the floor. And you can use this if you d like. I use the same thing.

MR. DUNCAN: I think they re approximately 24 inches above the --

VICE CHAIR SOCKWELL: And that area was designated as studio, or den, a den. So at the time that the house was conceived, it was going to take advantage of the availability of a direct view out to the street from that level.

MR. DUNCAN: Correct, yeah.

VICE CHAIR SOCKWELL: That s all I wanted to say.

CHAIRPERSON REID: Okay, any other questions, Board Members?

MEMBER RENSHAW: Yes, just one more that I d like to ask. Mr. Cohen as the developer, if Mr. Sloame s house became available, went on the market, and you purchased that house, would you feel as a developer that because of the house next door you would demolish that house and build it up to what the other house is?

In other words, as a developer your interested in selling this house, you ve got this very large square footage and height, home right here and you purchase that, would you feel that as a developer you would just demolish this house and build up to that house?

MR. COHEN: I don t know exactly the answer, but it would certainly be something that would cross my mind. It depends on the dollars and cents of the economy. You know, if you re buying what you re buying and what the neighborhood is.

MEMBER RENSHAW: You ve kind of put the neighborhood, at least that side of the street on a squeeze-play, because you re just going to, you re

ruining, well it is changing the site line along the block with these very large houses, as evidenced by what you have built.

I just wanted to point that out.

MR. COHEN: Sure.

MR. BROWN: Mrs. Renshaw you make a good point. I wouldn t though, to go back to my earlier remarks is that we re talking about one property and its relationship strictly to the zoning regulations. Mr. Lourenco and others, and certainly my home ANC and yours as well have looked at whether the rules need to be changed.

But, and be that as it may we have to deal with the current, and on a case by case basis, so.

MR. CLARK: Madam Chair, thank you. There were a number of additional questions by Mr. Duncan. I have one other for him if I may? Before I ask Mr. Cohen?

Mr. Duncan, I think you mentioned that you were thinking of perhaps just mechanical space in that basement when you did the original design. Is that what the plan is for it now?

MR. DUNCAN: No I didn t say I was adjusting the mechanical space, it included mechanical space.

MR. CLARK: I, in fact, in the back of that

basement now isn t there a full bath?

MR. DUNCAN: Yes, my original plans called for a full bath.

MR. CLARK: And isn t in the back of the basement I think something called the studio, has the pre-existing window-well been expanded there to something like at least four by four if not bigger?

MR. DUNCAN: Yes.

MR. CLARK: And is that plan for occupancy as far as you as the architect knows?

MR. DUNCAN: I think they would like to have the option to have it compatible with --

MR. BROWN: Madam Chair --

MR. CLARK: And so does that mean

MR. BROWN: That s not relevant to the discussion of the zoning issues. I mean he s fishing, I m sorry. He s fishing. It s not relevant to any of the zoning issues that have been raised. I mean he s raising housing code issues and --

MR. CLARK: And if Mr. Brown will listen to my next question I think it will become relevant.

CHAIRPERSON REID: Yeah, Mr. Clark, clarify how it leads to the zoning issue, please.

MR. CLARK: I will ask it directly right now. So Mr. Duncan is it your contention that this

lowest level is a cellar for purposes of height, but a basement for purposes of occupancy?

MR. DUNCAN: I don t understand that question.

MR. BROWN: Yeah that s a nonsensical question.

VICE CHAIR SOCKWELL: I can, I think I can address this.

In the chapters of the Building Code which would, the specific chapter is the chapter on interior environment, which, depending on whether it s 1996 or 1990, might be Chapter 12 and or Chapter 7 or whatever.

Anyway, you don t actually even have to have windows in a space in order for it to qualify for habitable space as long as there s greater than six foot six inches of head room, and that it would meet the requirements for residential head room which is a minimum ceiling height of seven feet or in a sloping ceiling an average ceiling height of about seven feet.

The issue is generally predicated upon whether or not the space can be conditioned if it has no windows --

MR. CLARK: I m sorry I m just --

VICE CHAIR SOCKWELL: -- and that would strictly mean it would have to have an operating

mechanical ventilation system, continuously in order to be habitable, if it were completely underground, and it could be.

We went over this very recently in an apartment project, just because the discussion came up as to what you could and couldn t do, not that anyone would ever rent one, with no windows.

But interior environment issues, we ve discussed very long and hard --

MR. CLARK: I m happy to move to Mr. Cohen.

VICE CHAIR SOCKWELL: Okay.

MR. CLARK: Mr. Cohen, I m handing you the time line which Mr. Brown submitted to me last evening, his updated time line. Is it your testimony sir that after the meeting with me and Mr. Zacks and Mr. Sloame, and our wives in late June or early July of 1999 that there was no further contact from any of us concerning potential changes to the property?

MR. COHEN: I didn t say there was no contact, I said that you asked if I was open to anything and you did some architectural and you came back with no architectural after that meeting.

MR. CLARK: Would you please look at the entry of your Counsel, dated July 27th, 1999, and see where it says Appellant Mr. George Clark visits site

and expresses his architectural concerns, including suggestions to move the top-story dormers to the rear and eliminate the second-story open balcony?

Are you saying your lawyer was wrong when we wrote that?

MR. COHEN: No, I m saying I already testified that that s what you told me.

MR. CLARK: And, yeah, I told you that on July 27th or thereabouts, correct?

MR. COHEN: No, you also, you also asked me that with our meeting in late June, early July.

MR. CLARK: Okay, and so the record will be wrong when it reflects the fact that you said after late June or early July that there were no further architectural suggestions.

MR. COHEN: There were no further, it s the same one.

MR. CLARK: And you rejected that, correct?

MR. COHEN: Did I reject doing, putting the, moving the balcony?

MR. CLARK: Yes.

MR. COHEN: And the windows?

MR. CLARK: Yes.

MR. COHEN: Yes.

MR. CLARK: And at the time of the July 27th,

1999 meeting, how many floors of the house were constructed?

MR. COHEN: I don t know --

MR. CLARK: The answer is none, isn t it, sir?

MR. COHEN: I can t answer that, I don t know the answer right now.

MR. CLARK: Well maybe we ought to look a little bit farther down the --

MR. COHEN: There are no floors other than the first floor, --

MR. CLARK: The basement floor.

MR. COHEN: First floor.

MR. CLARK: Okay, well.

MR. COHEN: The basement floor is concrete.

MR. CLARK: Okay. And there was some of the sub-flooring that was remaining above that. Were there any walls built above that?

MR. COHEN: Uh, no.

MR. CLARK: Okay, thank you. That s all I wanted to know, sir.

Now, you testified that you then, at roughly that same time in the chronology says the next day, July 28th, 1999, you met with DCRA?

MR. COHEN: I believe that s correct.

MR. CLARK: And so at the time you met with DCRA, you know that height issues had been raised by the neighbors, didn t you?

MR. COHEN: Height issues, yes.

MR. CLARK: And, then there was a period of time during which I think your Counsel said that this project, and I m going to try to find the exact words, uh, oh, I m sorry, let me go back for a second.

Who did you talk to besides Mr. Bellow at DCRA concerning the cellar/basement issue?

MR. COHEN: It was only Mr. Bellow.

MR. CLARK: Did Robert Chen s name ever come up?

MR. COHEN: Not at that time.

MR. CLARK: When did it come up?

MR. COHEN: Sometime later on.

MR. CLARK: And was it Mr. Chen who had made a suggestion concerning the cellar/basement issue?

MR. COHEN: Not that I recall.

MR. CLARK: And you went ahead with work after the meeting with DCRA, knowing that you had not even filed a permit application to do it, didn t you?

MR. COHEN: A permit application to do what?

MR. CLARK: To change the grade.

MR. COHEN: No, we, I got permission to

continue on our structure because it didn t have anything to do with the grade.

MR. CLARK: Okay, and when you, but, you did file another application on August 25th, right?

MR. COHEN: Later on --

MR. CLARK: On August 25th? I think the chronology will reflect that. And at the time that you filed that August 25th application, were you aware of the letter from the neighbors dated August 20th, which in fact you say you received on August 25th?

MR. COHEN: No I didn t get it until August 25th, so I didn t have it before then.

MR. CLARK: Okay, let s look at that which is Exhibit 6 to our original submission. And you say you received that on approximately August 25th, 1999?

MR. COHEN: Not approximately, the day August 25th.

MR. CLARK: Okay, so then let s use August 25th, 1999. Now how many stories had been constructed at that point?

MR. COHEN: Probably, two and a half or three.

MR. CLARK: I m sorry, sir?

MR. COHEN: It was on up past the second floor as I recall.

MR. CLARK: But what I will call the fourth floor and what you might call the third floor was not yet constructed, correct?

MR. COHEN: I don t know that is correct, no.

MR. CLARK: And, so let s see. If we look at your chronology, it says August 25th, 1999, floor tresses and joist for top-story delivered to site. Is it your testimony that on the date of delivery, the story was constructed?

MR. COHEN: No.

MR. CLARK: So it wasn t constructed as of August 25th, was it?

MR. COHEN: According to this, that s correct.

MR. CLARK: All right, now, if you would look at the August 20th, 1999 letter, that was submitted to you by the neighbors, you read, did you read that letter at all when you got it?

MR. COHEN: Ah, yes.

MR. CLARK: And let me ask you sir, if you read the last two sentences which state despite the fact that to the best of our knowledge the Division has not approved any such plans, that s a new permit, you are continuing construction pursuant to the original

plans.

Accordingly your continued unlawful construction is at your own risk. Did you see that?

MR. COHEN: I saw that.

MR. CLARK: And you disregarded it?

MR. COHEN: No I didn t disregard it. I knew that I had had a meeting, agreed to change the grade as they had requested, gotten permission to continue on with the plans, the permits, and the structure, and would continue to build the structure as per the plans.

MR. CLARK: And so you knew that in fact the neighbors were objecting to what I will call the fourth story and had said the construction was at your own risk prior to the time you began constructing it, correct?

MR. COHEN: That s not correct.

MR. CLARK: And, but, wait a second, I thought you didn t start building the fourth story until after August 25th.

MR. COHEN: But the letter doesn t change what I have a permit to build.

MR. CLARK: And you had a permit as, you had the, you had the September 17th permit as of August 25th?

MR. COHEN: No, but that one didn t have the

structure on it. The first permit had the structure on it.

MR. CLARK: Mr. Cohen, isn t it true that you didn t decide to go ahead with your investment and continuing construction until September 8th, 1999 when you spoke with Mr. Lourenco?

MR. COHEN: No, that s not true.

MR. CLARK: And didn t you know as of August and September 1999 that input was needed from Mr. Lourenco before you would get any approval for a new permit for 4512?

MR. COHEN: No, I didn t know that.

MR. CLARK: Didn t you know in August and September 1999 that the neighbors were protesting your building and trying to persuade DCRA that it was illegal?

MR. COHEN: I don t know what date I became aware of that.

MR. CLARK: Well you certainly knew it by August 25th, didn t you?

MR. COHEN: I had the letter August 25th.

MR. CLARK: Was this project being subjected to an unprecedented and long standing regulatory, political, and community scrutiny? Your lawyer says that on Page 23 of your opening brief.

MR. BROWN: That said, the product of hindsight, having been provided to --

MR. CLARK: Well let me, can I ask him a question Mr. Brown, I d like his testimony, not yours.

MR. BROWN: But I think you re quite frankly I object cause I think you re trying to lead him astray into an area where --

MR. CLARK: Mr. Brown, can, Madam Chair, can I have Mr. Brown let the witness answer the question rather than him?

CHAIRPERSON REID: Overruled.

MR. COHEN: What s your question?

MR. CLARK: The question is, wasn t this project being subjected to unprecedented and long-standing regulatory, political and community scrutiny?

MR. COHEN: There were a lot of people involved and taking a look at the project.

MR. CLARK: And if that was true, why did you build before that scrutiny was completed?

MR. COHEN: Because I felt that the permit issued was permitting me to do what it was supposed to be done. That s what I was building.

MR. CLARK: Okay, now, and you, but of course as of late August you didn t have the September 17th, permit, did you?

MR. COHEN: I wasn t building under that permit.

MR. CLARK: Let me show you sir, and I ve got some of my highlighting on it here, but it s just blue highlighting with no words. What s Exhibit 14 to your Counsel s original submission, which is a letter from you to Mr. Lourenco, dated December 10th, 1999.

MR. COHEN: Okay.

MR. CLARK: Did you sign that letter?

MR. COHEN: I certainly did.

CHAIRPERSON REID: 14, Mr. Clark, can we?

MR. CLARK: It s Exhibit 14 to the original submission by Mr. Brown.

CHAIRPERSON REID: Oh, the original.

MR. BROWN: My submission.

MR. CLARK: Right. And I ll wait for people to be able to find that. Thank you.

I m going to turn around so I can be more next to Mr. Cohen since that s the only copy I have here.

And Mr. Brown I see is directing Mr. Cohen what he s supposed to say here, but in any event Mr. Cohen --

MR. BROWN: Madam Chair --

MR. CLARK: -- the third paragraph says --

MR. BROWN: -- I object to Mr. Clark s --

MR. CLARK: Well I don t like Counsel pointing to things that involve witnesses testifying.

MR. BROWN: I m just pointing to the piece of paper. Mr. Clark --

CHAIRPERSON REID: All right.

MR. CLARK: Let me ask my question Madam Chair.

CHAIRPERSON REID: Okay, let s conduct this consistent with the protocol that is necessary for a hearing of this nature. I m sure that you re both attorneys and you both know how that s supposed to be done.

MR. CLARK: Mr. Cohen, didn t you tell Mr. Lourenco that Mr. Bellow had indicated that Mr. Lourenco s input was needed since neighbors had questioned the sideline requirements and the finished grade elements?

MR. COHEN: Somebody may have indicated that to me.

MR. CLARK: But didn t you tell Mr. Lourenco that in this letter? It s the third paragraph, sir.

(Pause.)

MR. COHEN: I indicated that Mr. Bellow had indicated to me what was needed --

MR. CLARK: Because the neighbors had questioned the sideline requirements and the finished grade elements?

MR. COHEN: Right.

MR. CLARK: And you then say in the next paragraph sir, that based upon our conversation which took place I believe on September 8th, 1999, and if you look at Paragraph 3, you can look at all three paragraphs, it says the house location is okay, revised plans submitted are going to be approved, and based upon the above we are proceeding with our investment and continuing construction.

Didn t you wait until Mr. Lourenco made his approval on September 7th or 8th, 1999 before proceeding with the investment relying on what he was doing?

MR. COHEN: No.

MR. CLARK: I understand, and Mr. Duncan has told us that he made an innocent mistake when he submitted the original application. You didn t know about the City s position on regrading or berming when that original application was filed back in April of 99, did you?

MR. COHEN: When the original application was filed, which was not by Mr. Duncan.

MR. CLARK: I agree it wasn t.

MR. COHEN: Well you just indicated it was. No, the grading is not a question. Didn t know anything about the grading.

MR. CLARK: Okay, so you weren t aware of any position which the City had with respect to regrading or berming back in April of 1999, did you?

MR. COHEN: That s correct.

CHAIRPERSON REID: That s the same question. Mr. Clark, please don t be repetitive.

MR. CLARK: Now, the pre-existing house was, I think Mr. Duncan said maybe it was one story, but, did you, I mean was it a one or a two-story rambler?

MR. COHEN: I thought it was a rambler on a basement.

MR. CLARK: Did you ever see the original application which was signed for the permit, which was signed by Mr. Gangloff?

MR. COHEN: I have.

MR. CLARK: When was the first time you saw it?

MR. COHEN: I believe in this submission.

MR. CLARK: So --

MR. COHEN: This, it was put together for this case.

MR. CLARK: So you didn t see it when it was

submitted back in April of 1999.

MR. COHEN: That s correct.

MR. CLARK: Did you see it prior to September of 99?

MR. COHEN: Not that I recall.

MR. CLARK: Can you remember when you first saw it. You may not, sorry.

MR. COHEN: The presentation for this hearing.

MR. CLARK: So when we filed it in January of 99?

MR. COHEN: Possibly.

MR. CLARK: And now --

MR. COHEN: January of 2000.

MR. CLARK: I m sorry, you re exactly right, 2000. Now I know and sir, since you re the, one of the partners in Forest Hills L.L.C., I m going to ask you, Mr. Gangloff was acting on behalf of Forest Hills L.L.C.?

MR. COHEN: He was the expediter for the permit.

MR. CLARK: And under whose direction or control of Forest Hills did he act?

MR. BROWN: I think he s asking a legal conclusion.

MR. CLARK: Who told him what to do? Madam Chair I see Mr. Brown is consulting with the witness in the middle of a questioning and I object.

MR. BROWN: I don t think my client --

CHAIRPERSON REID: Mr. Clark --

MR. BROWN: -- understands the question.

CHAIRPERSON REID: Yeah, well, Mr. Clark, the purpose of having Counsel is to so advise, so therefore I have no problem with that. But will you please answer the question?

MR. COHEN: I did not -- Mr. Gangloff. And so with the architectural, when the architectural people, they told me -- but I didn t know -- you know, go for a permit.

MR. CLARK: I understand that. My question is, who at Forest Hills gave Mr. Gangloff directions as to what to do, or did he act on his own?

MR. COHEN: He was acting with the architectural people in going through the process.

MR. CLARK: And so the directions as far as you know were coming from Mr. Duncan or others at his firm?

MR. COHEN: Uh, through the architectural originally starting, yes.

MR. CLARK: And so maybe we ll need to get

Mr. Duncan back to ask this question since he said before that he didn t know anything about it.

The question is, sir, if you look at Box No. 14 on that application, and that s Exhibit 4 to our original application, our original exhibit.

MR. BROWN: Madam Chair, if he s going to proceed to ask a question that we went through in great length in the previous hearing, and that he said that he had nothing to do with the preparation of this document, so, I think we re being led astray in a question that there s no way my client Mr. Cohen can answer.

MR. CLARK: We were talking --

CHAIRPERSON REID: --

MR. BROWN: Well but he s referring to a document that my client has already indicated that he ha no dealing with. He didn t --

CHAIRPERSON REID: But the question is --

MR. BROWN: No, I think it s to Mr. Cohen.

CHAIRPERSON REID: Who is it to, Mr. Clark?

MR. CLARK: I m asking this question of Mr. Cohen. What I m, I guess what I m understanding Mr. Brown s position is that nobody at Forest Hills was responsible for preparing this document. Nobody had any control --

CHAIRPERSON REID: No, --

MR. CLARK: Well what I want to ask Mr., I, let me ask Mr. Cohen the question, then we can deal with it. I agree, we need a question first.

CHAIRPERSON REID: All right.

MR. CLARK: Now, Mr. Cohen, my question is, how come the permit expediter got it right in Box 14, that there were two stories?

MR. BROWN: Madam Chair, I object he s asking Mr. Cohen to speculate about work that was done by somebody else.

MR. CLARK: You got it wrong if there were three stories, in Box 17.

VICE CHAIR SOCKWELL: This, if I might interject here. This question came up in the previous hearing.

CHAIRPERSON REID: Yeah, we ve already been there.

MR. CLARK: Can I just have the opportunity to ask this witness a question?

VICE CHAIR SOCKWELL: Well let me finish one thing.

MR. CLARK: Yes, sir.

VICE CHAIR SOCKWELL: And the reason I m going to say this is because it invalidates the ability

to determine who did what. The application was apparently filled out in Mr. Gangloff s hand and signed by Mr. Gangloff.

The application apparently stated in Box 14 two and a half and in Box 17 what looks like also two and a half.

MR. CLARK: No that s, it s a different application I m talking about.

VICE CHAIR SOCKWELL: Well which one are you talking about?

MR. CLARK: I m talking about the original application, which is Exhibit 4.

CHAIRPERSON REID: --

VICE CHAIR SOCKWELL: Oh, you re talking about the other one.

MR. CLARK: I am sir.

VICE CHAIR SOCKWELL: Okay.

CHAIRPERSON REID: What, under what tab is that one?

MR. CLARK: It s Exhibit 4 to our original exhibits.

VICE CHAIR SOCKWELL: And I apologize.

MR. BROWN: Or my Exhibit 2.

MR. CLARK: Either one.

(Pause.)

VICE CHAIR SOCKWELL: You said Exhibit 4?

MR. CLARK: Yes, sir, the original Exhibit 4, it s the second page.

MR. BROWN: It s the application. April 23rd, 1999.

VICE CHAIR SOCKWELL: All right, we re going to have to, give me, give us a second to.

CHAIRPERSON REID: Okay, here --

VICE CHAIR SOCKWELL: All right, I m sorry, okay now we re back. Go right ahead.

MR. CLARK: Thank you, sir. My question sir, is if you know, how come Mr. Gangloff got it right in Box 14 that there were two stories in the existing house but got it wrong that there would be only three stories in Box 17?

MR. COHEN: I already said that I didn t know, I wouldn t know that he got it right because I said it was a rambler on a foundation.

MR. CLARK: And so is there anyone at Forest Hills who would know the answer to that question other than perhaps Mr. Duncan?

MR. COHEN: No.

(Pause.)

VICE CHAIR SOCKWELL: Mr. Cohen, I d like to ask a question, and I apologize for stepping in front

of Mr. Clark. When you purchased the property, you received the deed, did you not?

MR. COHEN: Yes.

VICE CHAIR SOCKWELL: Was there a description of the building and the property on the, was there a description on the property tax records for taxation purposes?

MR. COHEN: Regarding how many stories?

VICE CHAIR SOCKWELL: Uh-huh.

MR. COHEN: Not that I recall, I don t recall reading how many stories.

VICE CHAIR SOCKWELL: But on the purchase documents there would have been statements eluding to what you were buying as opposed to the pig and the poke kind of situation, you would have been very astute in knowing what you were buying if it said one story with basement, that would be one thing, if it said two-story house that would be another.

And it would just clarify some things.

MR. COHEN: I can t help you with that because I was buying what I saw, not what somebody was reading to me or what was in print.

VICE CHAIR SOCKWELL: Uh-huh, but --

MR. COHEN: I saw a basement with a rambler on top is what I saw. I don t know what the

nomenclature was for it.

VICE CHAIR SOCKWELL: But you knew how many square feet that lot was.

MR. COHEN: Approximately, yes.

VICE CHAIR SOCKWELL: Yeah, and so what I m saying is that it would be uncharacteristic of a businessman of your caliber not to know what he is buying when he is expending that much money to build upon a site.

MR. COHEN: Okay.

VICE CHAIR SOCKWELL: I would think. I may be wrong, but I think that you re a very astute businessman.

MR. COHEN: Well regard, thank you, but regarding regulations on the stories itself I was not familiar with it.

VICE CHAIR SOCKWELL: But I m just saying that stories would be, just like square footage and what not. You would want to know what you re buying. Even if you looked at it, you would go over those papers or have an attorney go over those papers to make sure that you knew exactly what was specified was what, what you were getting, that there were no liens on the property, that all those dots and crosses were done.

MR. COHEN: Right.

VICE CHAIR SOCKWELL: Okay.

MR. BROWN: Mr. Sockwell, can I interject just to help you? Here is the house location survey dated December 22nd, 98, which we d actually put up on the Board --

VICE CHAIR SOCKWELL: Yeah you ve got on a lot of these --

MR. BROWN: This was prepared by Land Tech Associates who we ve all seen, and it says in the footprint of the building one-story and basement.

VICE CHAIR SOCKWELL: Uh-huh. Yeah. And of course that s a Civil Engineer s visual --

MR. BROWN: View of the world.

VICE CHAIR SOCKWELL: -- view of the world.

MR. BROWN: I understand.

CHAIRPERSON REID: Okay, Mr. Clark, how many more questions do you have?

MR. CLARK: Oh, we re just about finished. We re just about finished here.

CHAIRPERSON REID: All right.

MR. CLARK: Mr. Cohen, you re an experienced builder, aren t you?

MR. COHEN: I am

MR. CLARK: You ve built many, many properties haven t you?

MR. COHEN: I ve built a number --

MR. CLARK: You gained economic advantage from building the top floor, what I call the fourth story, didn t you?

MR. COHEN: Not as yet.

MR. CLARK: But if you sell it, you ll do that won t you?

MR. COHEN: I hope so.

MR. CLARK: I don t have any other questions Madam Chair.

CHAIRPERSON REID: All right, thank you.

MR. BROWN: One follow-up, I just want to clarify a minor point, but I think it s important. Mr. Cohen, you re an experienced builder, but you ve had limited experience in the District of Columbia?

MR. COHEN: Correct.

CHAIRPERSON REID: All right, Mr. Brown you said that you had some follow-up statements to make with regards to?

MR. BROWN: I d like to make some concluding remarks. I think, did you have a question for Mr. Duncan?

MR. CLARK: Maybe, maybe because of this application question we can figure out whether he actually did anything with it or not. And he may tell

me he didn t.

CHAIRPERSON REID: Do you have one more question?

MR. CLARK: This is for Mr. Duncan, now.

CHAIRPERSON REID: Yes. All right.

MR. CLARK: Mr. Cohen could you hand that down?

MR. DUNCAN: I have it.

MR. CLARK: Oh, he s got it.

Mr. Duncan and Mr. Brown, showing you now the application of April 23, 1999. And in Box 14 where it says existing number of stories of building two, had you ever seen that or discussed that prior to the BZA case here?

MR. DUNCAN: No, I hadn t seen it or discussed it. I think the answer to your question is yes, Mr. Gangloff operates with some autonomy, that s why we hire him as a permit expert.

So I d never seen it. He doesn t ask me how to fill out the form -- I never saw the permit application -- either of those documents until the BZA Hearing.

MR. CLARK: Do you know whether Mr. Gangloff is still under the employ of Forest Hills L.L.C.?

MR. DUNCAN: He s not, he s an independent

contractor -- Forest Hills.

MR. CLARK: Do you know whether he is still been hired by Forest Hills? If he s still there?

MR. BROWN: That s a question for Forest Hills, not Mr. Duncan.

MR. CLARK: The question is, does he know? Because he was working with them.

CHAIRPERSON REID: Well why don t you just ask that question directly to Mr. Cohen?

MR. CLARK: I ll ask Mr. Cohen, does Mr. Gangloff still do work for Forest Hills?

MR. COHEN: Not at this time.

MR. CLARK: Is he still under any kind of a contract with Forest Hills?

MR. COHEN: No, not any more.

MR. CLARK: When was he terminated?

MR. COHEN: He wasn t terminated.

MR. CLARK: So he s still available?

VICE CHAIR SOCKWELL: Generally Mr. Clark, if I might again interject.

MR. CLARK: Yes, sir.

VICE CHAIR SOCKWELL: Permit expediters who act independently are generally hired for work piecemeal. And on a case by case basis.

CHAIRPERSON REID: On a case by case basis.

VICE CHAIR SOCKWELL: Occasionally, and sometimes more often with a larger construction company that s doing a great deal of work, they will have a running contract for multiple elements or multiple properties or multiple buildings.

In the case of Mr. Gangloff, I m not sure whether it s relevant his current affiliation with Forest Hills. What may be relevant was his level of information with regard to this particular set of documents that he has penned.

Whether he got enough information, the right information, whether he had to make assumptions, which is usually not the case. Because he has to be given the information that he needs, specifically from the architect or the contractor, or the developer in order to fill out the form accurately.

MR. CLARK: I guess Mr. Sockwell, I d agree with that. And my statement about availability was just one that I guess is in effect a missing witness rule instruction which I might ask for, since Mr. Gangloff is available at Forest Hills discretion and control.

CHAIRPERSON REID: You re testifying --

MR. CLARK: Perhaps they could, no I m not ma am, I m saying what my view is, and I m under oath

anyway. And that is --

CHAIRPERSON REID: But you have to, whatever you want to get out, in the cross examination, pose it in a form of a question.

MR. CLARK: I appreciate that, ma am. I am just addressing Mr. Sockwell s point to me which I just want to show that I understand what he s saying, and secondly that I think that since he was acting in someone s direction and control, and that direction and control is Mr. Cohen is available to have him produced, and he isn t here, I think that s of some significance, that s all.

CHAIRPERSON REID: Okay.

MR. BROWN: I object to that, he s trying to, I think draw some sort, or attempt to draw some inference from somebody s non-presence here, and I just think that s inappropriate.

CHAIRPERSON REID: Well --

MR. CLARK: In the Civil Courts we call that the missing witness --

CHAIRPERSON REID: Well, the fact of the matter is, it s very difficult to determine what the intent of a party was, who is not here, in order to be able to give us some testimony, or to answer questions.

So can we move on?

MR. CLARK: And, ma am, maybe, since I have Mr. Duncan here, and he went back here, I just want to ask him on those pictures, that we were looking at, the pictures over to Mr. Sloame s property, and, which I think is the third page in there, sir.

CHAIRPERSON REID: The rear window.

MR. CLARK: Well, that the rear, that s right, the rear window and the one on the side. And my question is, really, the question is about the one on the side. And the question is, yes, sir. Which window did you take that from?

And if you want to look up at the drawing there, why don t you show us.

MR. DUNCAN: That was the only window it could have been.

MR. CLARK: I have no other questions.

CHAIRPERSON REID: Thank you. Mr. Brown?

MR. BROWN: Madam Chair, I have seven minutes. I would, particularly given the nature of this case, I d like to if I could reserve my seven minutes for some closing remarks after Mr. Clark s rebuttal.

I think that would be more productive and I promise to keep them well within the seven minute time frame.

CHAIRPERSON REID: But, but, um, the procedure allows for, after the end of yours case, rebuttal and closing remarks by the Appellant. That s it.

MR. BROWN: And I recognize that, but I think in this case, given the hearing stretched over two days and the kind of case has been bifurcated, that that would be appropriate. It would obviously require some flexibility.

CHAIRPERSON REID: It would be irregular.

MR. CLARK: And I think the rule is I get the last word.

CHAIRPERSON REID: That s correct. That s correct, Mr. Brown, if you have anything that you d like to say, then this is the time to do so, because once Mr., let s see, Appellant has his rebuttal, that is the end of the case.

MR. BROWN: Madam Chair, and Mr. Sockwell, and the Board collectively I think went to some great lengths to explore and understand various zoning regulation components, having to do particularly with the height issue, with the sideyard.

So I don t want to repeat them, other than to indicate that the Board, and as well as the City currently went through a process where they understood

the rules, applied them, and came up with a decision based on the long standing existence of those rules.

Clearly as it relates to the sideyard you ve got a situation where it s not non-conforming. It in fact is specifically provided for in Section 405.8 to have an addition to a property built pre-58 which this one was, and have a sideyard that is less than the current eight foot standard, but again the, the rules provide for that addition, provided that you do not decrease the sideyard and maintain the existing sideyard, and that the sideyard was five feet or more in the first place.

In this case, all those tests are met and from the sideyard prospective. The other issue is the height, the dual-standard. I don t think there s any dispute that measuring from the finished grade in the center to the top s ceiling, top, the top, the ceiling of the top floor, that you ve got less than 40 feet.

And the only question then is the secondary test of the stories. The Board went through and I think they spent a fair amount of time coming to grips with the definition of stories and cellar.

Clearly we have a cellar, less than four feet out of grade, in which case does not count, under the rules as they ve been since 1958. It doesn t count

for purposes of story, so that you re left with the ground floor, second floor and the top story, three stories and you have compliance with the Zoning Regulations.

Those, and a change in finished grade and a point that Mr. Lourenco made, and I believe also Mr. Bellow, is that if my clients have come in the door for their June permit, permit number one, and asked for the exact same thing they were asking for in the subsequent revised permit, that would have been granted.

So the fact that it occurred in a two-step process through a mistaken error on both, on my client s and the City s part, is not a factor. It doesn t affect the fact that what was approved would have been approved originally.

And that you have a three story building. And that, there are no limitations, Mr. Sockwell and Mr. Lourenco agreed that in fact there are no limitations on grading. There s some practical limitations, there may be limitations otherwise, but again we re talking about here a very minor change in grade, and such that the gloom and doom scenario of seven stories under ground, and various other possibilities aren t relevant to a very simple change.

The other area is of lot area compliance.

We re five and a half feet short of 7500 feet. Mr. Bellow, Mr. Lourenco, as well as, had laid out, and the regulations indicate that a lot that otherwise complies with all the regulations, that is less than the permitted 7500 square feet, is permitted under the regulations.

Section 401.1, which refers to the non-conforming structure section. In this case we meet all the tests there. Additionally, and Mr. Lourenco pointed out Section 407, which gives the Zoning Administrator the clear and absolute authority to approve a two percent deviation with respect to lot area.

Two percent being 150 feet. In this case we re only looking at a little over five feet. Mr. Lourenco went to great lengths to say one that was appropriate, and given the minor nature of it, quite frankly, not of great concern to him.

Looking at this case, we ve been at this now for a long time, probably almost ten hours, 11 hours of testimony.

Again, the standard s got to be not what we think the regulations ought to be but what they are, and whether this property complies with those regulations.

I think we ve dispelled any notion that my clients acted in anything other than good faith and in fact worked very hard with the City cooperatively.

The last issue that I would like to bring up is procedural in nature, but it s important. We ve had to go to a second hearing, is that, and I ve recently received a letter from Mr. Clark that makes it very clear that the outcome of this hearing, a favorable decision in my client s behalf will be taken to the Court of Appeals.

There s a great urgency, it s just a matter of fundamental fairness that we would resolve this case quickly, and that I d ask the Board s cooperation to schedule the matter quickly for a decision, and that also quickly on the written decision.

That, quite frankly helps my clients and also, and I think it gives Mr. Clark the opportunity to exercise his rights. I don t think a delay would be in anybody s interests and I d ask that and certainly draft orders will be appropriate of both sides to assist the Board in that endeavor.

I would also refer you to our filings and respects are the same, and also the highlights of the transcript from the first hearing, which would help those, even those who were there, to kind of flush out

the lot of testimony over an extended period of time.

I d ask, answer any questions, but I think your patience has been appreciated and also to help us in resolving this matter at this level as quickly as possible.

CHAIRPERSON REID: Thank you, Mr. Brown. Mr. Clark? Rebuttal?

MR. CLARK: Madam Chair, what s my time for rebuttal? I don t know.

CHAIRPERSON REID: Well you, you had the 14 minutes, but typically rebuttal is an opportunity to summarize and to basically have the last word in regard to your appeal.

So just utilize that time wisely. And if you don t need 15 minutes, then, or 14 minutes, then just try to expedite it.

MR. CLARK: I will do what I can, and I will point out only for the record that that 14 minutes was left from the direct case. But I d like to have Mr. Sloame come back and testify because we ve talked about these pictures which Mr. Duncan talked about and I d like to have him, and he was sworn this afternoon.

Mr. Sloame, can you tell us about these pictures, which Mr. Duncan showed to the Board, taken from the 4512 house. It s not marked as an exhibit

number, so I can t tell you what that is. And tell us what those show, that s your house over there.

MR. SLOAME: Yes, I, referring to, first of all to the picture which purports to show the patio.

CHAIRPERSON REID: The rear window picture.

MR. SLOAME: The rear, from the rear window. Let me describe that portion of the building that is visible on the left there, is actually my family room. And the problem I have with this picture is that it doesn t show what one could see standing at the window.

I say that, and you can certainly see that whoever took this picture, Mr. Duncan, was not standing at the window. I say that because I personally stood at that window and I could see the entire patio, including my hot tub, which is what I testified to at our previous session.

Secondly, with --

CHAIRPERSON REID: Mr. Sloame, it would have been great if you could have also, since you stood at that window, taken a picture, because we don t have anything to --

MR. SLOAME: Well you have my testimony Madam Chairman, but I stood at that window.

MR. CLARK: It s a number of months ago he did that.

CHAIRPERSON REID: Yeah, but we know what it is, basically is that we have a contradiction.

MR. SLOAME: Well that s up the trier of facts to make that decision.

CHAIRPERSON REID: And as such --

MR. SLOAME: But you have my testimony as compared to a photograph which was clearly taken several feet away from the window.

CHAIRPERSON REID: But what I m saying is --

MR. CLARK: Madam Chair I suggest --

CHAIRPERSON REID: Excuse me. What I said was, if it would have been great, rather than verbally, for you to make a representation that you had a picture that was basically substantiate your assertion of what you can see out of that window.

MR. SLOAME: Madam Chairman, I didn t see this until today. I couldn t possibly have gotten a picture. I didn t see it until I got into this room.

CHAIRPERSON REID: Oh, you mean because you did not receive the submissions.

MR. CLARK: Until today, that s right.

MR. SLOAME: That s right.

CHAIRPERSON REID: From third -- parties.

MR. SLOAME: That s right.

CHAIRPERSON REID: These parties. All

right.

MR. CLARK: We received that this afternoon.

CHAIRPERSON REID: All right.

MR. BROWN: Madam Chair, I ll point out that Mr. Clark in a thick bound filing, filed numerous pictures, some of which were introduced last time, of where he clearly has gone through a extensive interior visit of the site, taking pictures from the outside, putting aside the extreme danger of that from his standpoint.

They had the opportunity to do that, they clearly, quite frankly have not respected my client s property rights. But they ve had the opportunity, they provided pictures that show interior, pictures taken inside and pointing outside, and to I think the point raised is that the valid pictures that were taken and testimony supporting them.

CHAIRPERSON REID: Okay.

MR. CLARK: Madam Chairman my suggesting is I understand that after the hearing it s normally, it s normal to have a period of time to submit additional exhibits and then a brief. And if Mr. Brown will let us in the house we ll take a picture.

MR. BROWN: Well, and I think we need to be careful, Madam Chair. It s not, the record is usually

left open at the Board s specific direction to deal with issues, and I want this case to end.

I think Mr. Clark does too, and so I want to caution about going on a fishing expedition here.

CHAIRPERSON REID: Mr. Sloame, would you like to submit, have the record left open so you could then submit a, your picture from that same window?

MR. SLOAME: Yes. And I would also --

CHAIRPERSON REID: I have no problem with that.

MR. SLOAME: Thank you. And I will also submit a picture which will show the window of my bedroom, contrary to the picture which you have received here.

I stood at the windows and you can see right into my bedroom. We have not been able to put up, we have kept the blinds drawn ever since this construction, because you can see directly into the, there are three bedrooms on that side.

You can see directly in, and the pictures that I will take will reflect that.

CHAIRPERSON REID: And label them.

MR. SLOAME: Yes.

CHAIRPERSON REID: All right, thank you. Mr. Clark?

MR. CLARK: Thank you Madam Chair. Let the, in my exhibits which I submitted a number of those which I submitted were pictures which we didn t look at the last time. I m happy really to let the Board look at those independently as opposed to be marching through them one by one.

That s fine with me, but there were some additional exhibits -- behind the pictures, which I think bear some relevance. And I got to get my number here. I think they start at Exhibit 44, and if you take Exhibit 44 through 48, what I did was I went to the, the record of the Zoning Commission, in the Case, which was 99-2, which resulted in the issuance of 11-DCMR Section 223, which we talked about at some length the last time.

What this record makes clear is that Section 223 is applicable to, and Mr. Sockwell forgive me, I may say single-family dwelling, and I know that s not the word, but it s a single-family occupancy situation.

And it makes it clear that that is applicable to both, what I would call a single-family dwelling, and two-flats. In other words, when you look at this record, and when you look at the submissions, you ll see that Section 223 was, that s an or there,

and it s single-family or flats.

And you can see from the comments including from the DC Building Society, you ll see that that s what it was, and I pulled those out of the record at the Zoning Commission and have submitted them to the panel.

And I don t think that it s necessary for me to go through them, but that it s, the, the addition of the words or flat in a, the District in which a flat is appropriate, were submitted late in the game.

And in fact, the regulation was designed to cover both those situations. That s important. And the reason is that it s important is because that this property does not meet the requirements of Section 405 or Section 400 with respect to height, or sorry with respect to lot size and sideyard.

And let me address something there that Mr. Brown had to say. And I d appreciate, and that is what did Mr. Bellow do when he approved this application back in April or May, whenever he approved it back in 1999?

I asked Mr. Bellow, and it s on Page 214 of the transcript. I asked Mr. Bellow, so your testimony is, sir that in fact this lot is more than 7,500 square feet. Answer, that is correct.

So it s quite apparent though Mr. Bellow approved this original permit, he had no idea that it might be less than 7,500 square feet. And there was no way he was invoking any other provision of the Zoning Code and Zoning Provisions.

He was acting on the belief that it was a 7,500 square foot lot. That means that Section 223 is applicable. And the fact that we re all here and that Mr. Brown says that we ve been here for 11 hours or whatever, it s really kind of a point.

Section 223 says that when somebody has a lot that doesn t meet the requirements, and you want to do some expansion to it, that you go to the BZA. And when you go to the BZA you take into account all these situations.

You talk about the privacy of Mr. Sloame s, you talk about the character of the house on the block, which Mr. Lourenco said certainly doesn t fit in. You talk about all these situations.

That s what was supposed to happen here. That regulation was drafted with specifically this case in mind. And it wasn t used, and I m sorry that that may mean that Mr. Brown has to go back and do something else, but that s what it is.

That s what was supposed to have happened

in the first place. And it s no excuse for him that he didn t understand what the Zoning Regulations were, they re out there for everybody to see and act on.

Section 223 is applicable here. And in fact, all the construction which was done, is in violation of that. And it might have helped, had things gone to the ANC in the first place and maybe some of this could have been avoided.

But that didn t happen either, even though the ANC was supposed to give notice. Now, you know, whether Mr. Cohen has a claim against his architect is you know, not really very much of my concern.

The fact of the matter is that the regulations are what the regulations are. And Section 223 is applicable. The fact that the architect didn t know, didn t look, didn t care, that is not the problem that this Board is here to determine.

But in fact what we re hearing here is that Mr. Cohen is claiming sympathy because he built this house on the understanding that well gee wiz, he was going to get the approval for a permit.

We ve had it brought out very clear in Mr. Cohen s testimony this afternoon, that when I met with him in late July of 1999, and told him in fact, and I will, and Mr. Brown can cross examine me on this if he

wants to right now.

You know when I told him at that point on the site that it was a four-story house and it was illegal, and that s part of my testimony. I said to Mr. Cohen, you know this is four stories.

And he in fact was meeting with DCRA that day or the next day or two days, whatever it was later, where he heard the same thing. And he made it very clear that that took place before there was any construction, in terms of actually going up on that site.

And he also made it clear that in fact by the time that he got the letter from me and Mr. Sloame and others, which he says he got on August 25th, that that fourth floor wasn t going anywhere either.

It hadn t started. Mr. Cohen is pleading for sympathy but if, there s a doctrine in this, in the Court s, in the District of Columbia known as self inflicted harm.

That s what s taken place here. Mr. Cohen went ahead. He took a chance. Mr. Lourenco testified about this. Mr. Lourenco said that if you have someone who hasn t filed for a building permit, or who has filed and it hasn t yet been approved, and he goes ahead and builds, does he do it at his own risk?

And his answer was yes. And he s right. And that s what took place here. Now we spent a lot of time on some of the details of when certain things took place, because the fact of this, I ll call it specious claim, that in fact this appeal was filed late.

We ve detailed a whole bunch of other dates in the, in the time line which we have here. But I will say a couple things. Mr. Lourenco made it clear that there was no decision made on this property with respect to stories or to the sideyard requirement until September, I think in fact it s September 8th, but take your pick, September 7th, 8th or 9th of 1999.

He didn t tell me what he did. He told Kathy Paterson s office what he did. That information got over to me because of Ms. Patterson s office, but in any event the law in the District of Columbia is clear, that filing an appeal within 60 days and this is within 60 days is presumptively, presumptively, timely.

And here Mr. Cohen has testified that he knew very well that the neighbors were complaining about this. The law, I think it s the Murry Case, but it maybe the Baines Case, I m sorry, talks about that when a builder is on notice, that the neighbors are complaining and he goes ahead and builds, it s at his own risk.

It s his problem. Because what we have here is Mr. Cohen racing to put up this building in the hope that he can try to convince the BZA that he should be allowed to keep it.

Now, I want to talk very briefly about Section 405.8, because we ve heard an awful lot about the fact that we got to read these regulations technically, we got to read them technically.

Well you look at Section 405.8, and it talks about an expansion or an existing to a building. Well a building is a defined term under the Code. And the building says it s got a roof, the definition of a building is that it has a roof.

If you look at the plans here, the plans call for the complete demolition, complete demolition. Now why, and including the roof. And it says that right in the plans. That they re demolishing the roof.

There was no building left here to be expanded or added to under 405.8. Now why does that make sense? It makes sense again because of what took place here.

If what had happened here was that Mr. Cohen had left some of what this building was, instead of taking it down to the basement. If he d left something to be added to or expanded on, then maybe

he d have something he can talk about.

What we ve got here is a non-conforming structure. A non-conforming structure that he wants to expand. And he wants, he did extend the non-conforming aspect. There s no question. Mr. Duncan testified to that.

He extended back six and a half feet from the original footprint and put three stories or two stories, whatever you want, on top of that. And so he extended or expanded that non-conforming aspect.

And what he wants this Board to say is that s okay, you can always do that even if you basically destroy what was there before. That s not the purpose of 405.8, and that s not what it says.

It says it s a building, it s a building that s being added to or expanded. And if we re going to read the regulations technically one place, I think we d better read them technically everywhere. That s what it says.

Now, a couple of last things that I want to talk about, and that is this measuring point, and, Ms. Mitten asked a question today about how do you in essence measure where it s a basement or can it be a basement only at one point?

The regulations don t say that you can

convert, can convert a basement into a cellar by just making it four feet at one point. The one point may be the measuring point for height, but it doesn t say the definition of a basement or a cellar that you measure that at one point.

It does not say that. And in fact to make any sense in this particular situation, it would have to be that that basement would have to be no more or whatever we would call it that would be no more than four feet out of the ground along its entire life.

Now Mr. Lourenco said that he can understand how someone could reasonably infer that they were misled. He says that in Page 234 of the transcript. And Mr. Lourenco says that then there s testimony that that permit of 6/7 was correct, it should not have issued because it was for four stories.

And now who s going to bear the burden of that? Now, what s going on here? That house is going to be across the street from me, and next door to Mr. Sloame forever. Now, Mr. Cohen wants to sell, we heard that. DCRA says we goofed, and sorry.

Who bears the burden of that mistake? Why should it be the adjacent property owners? Mr. Cohen was put on notice long before he put up a single two by four on the side of that building, that there was a

problem.

He went ahead and did it. He raced to do it in order to try to convince you that he should be allowed to. And that s not what the regulations allow, that s not what the regulations are there for.

And this, this shouldn t be what s taking place. Mr. Brown reminds us through Mr. Cohen s testimony today, that there was offers to talk with him and meet with him and to suggest changes before he did anything.

His answer was basically I can do what I want. And sometimes you got to bear the consequences of your own acts. Thank you --

CHAIRPERSON REID: Thank you. Mr. Sockwell?

VICE CHAIR SOCKWELL: Again we have differences of opinion. First to Mr. Brown I d like to say that I do not agree totally with Mr. Lourenco s interpretations of the Zoning Ordinance, and that s strictly for the record.

Mr. Clark, again, with reference to Section 223, the requirement for Board of Zoning submission on issues that deal with Sections 401, 403, 405, 6, et cetera, along with that Section is a component that says that minor adjustments to Section 405 among others, minor flexibility by Zoning Administrator s

ruling.

CHAIRPERSON REID: Section 407.

VICE CHAIR SOCKWELL: Well, well, in this case it s Section 405.8, allows the deviation not to exceed ten percent of the linear requirements of Sections 404, 405, and deviation of direct, of requirements of Section 406, not to exceed either two percent of the area standard or ten percent of the width standard provided da, da, da.

Right, the building should not deviate from the requirements of more than two sections identified therein, basically, which allows a deviation in Section 405.8 of up to ten percent.

MR. CLARK: Do you want me to address that, sir?

VICE CHAIR SOCKWELL: Yeah.

MR. CLARK: The fact is that there was nothing like that done here. It says Zoning Administrator s ruling. We have Mr. Bellow s testimony on the lot size that he thought it was 7,500. We have the fact that we heard this afternoon there is nothing in the plans that disclose in fact that there was anything less than an eight foot side yard on the one side.

And there s nothing that discloses that

anybody could have made a ruling or should have made a ruling. Because in fact the information wasn t there to do it.

VICE CHAIR SOCKWELL: Well, since none of us are privy to the zoning review, and we have spoken with Mr. Bellow about certain issues, not necessarily very closely, we ve examined him on other issues.

Very often these things are decided by an internal phone call within the permit office where questions might be raised between a Zoning Reviewer and either the Chief of the Zoning Review Branch or the Zoning Administrator or in their absence Mr. Lourenco who on occasion acts in that capacity.

I don t see a problem with the sideyard issue, specifically, based upon recent rulings that I have been involved with and others that changes the way they handle this kind of thing, based on this particular Section.

So I m not so sure that that s really a big deal. And to send a bunch of cases down to the BZA for a one foot variation in something would be ludicrous unless you re an attorney.

And then the hourly rates, then the hourly rates the number of people standing at your door would be incredible. And I d go back to school, cause I just

have a degree in architecture.

MR. CLARK: Well let Mr. Brown make the --

VICE CHAIR SOCKWELL: But my, but on, on other --

CHAIRPERSON REID: Lot size.

VICE CHAIR SOCKWELL: Yeah, on lot size, it was, there was -- a deficiency in lot size again.

CHAIRPERSON REID: Well that was the --

MR. CLARK: About six square feet, five or six square feet.

VICE CHAIR SOCKWELL: Yeah.

CHAIRPERSON REID: And then we get an attempt to --

VICE CHAIR SOCKWELL: Yeah. And if, if it falls within the ability for such a ruling again, to be handled as almost, as almost a verbal, that may not be a problem again --

MR. CLARK: But the testimony is to the contrary. The testimony is that it did not happen. Cause Mr. Bellow said he thought it was more than 7,500 square feet.

VICE CHAIR SOCKWELL: Yeah, and, and here again --

CHAIRPERSON REID: Well we have to go on what the square footage is --

VICE CHAIR SOCKWELL: When Mr. Bellow testified, he didn t have access to files. I mean I, I try to at least be reasonable in the fact that I do work with the City on a fairly regular basis, and I know what they do and don t have.

And it s sometimes a tough deal for them to even get through this. But let s say that a few feet one way or the other, six square feet isn t a lot of square footage.

And on your, on your side of course, a half a square foot may mean everything.

CHAIRPERSON REID: But is that six feet within the ten percent deviation?

VICE CHAIR SOCKWELL: It would be within a ten percent deviation, very definitely. It would be within two percent deviation.

CHAIRPERSON REID: Okay, so two percent, so.

MR. CLARK: So the fact is that the law, and that the law is and the law is requiring is it s Melody Music versus FCC, it s a D.C. Circuit Case, same laws, same law in the District of Columbia Court of Appeals, and that is if somebody is going to grant a waiver, do something, you ve go to have some record of it.

It didn t happen here. That s the law. And it doesn t have to say it in the regulation, that s

just a law, period.

CHAIRPERSON REID: Okay.

VICE CHAIR SOCKWELL: In the District of Columbia, in many instances, what you look for in terms of written documentation won t happen yet. And they ve been working under these restrictions for a long time and it s unfortunate that we can t show you that.

Maybe in Montgomery County it wouldn t be a big deal because there d be a piece of paper that made everything document.

MR. CLARK: I wouldn t know I --

VICE CHAIR SOCKWELL: And the thing is that, that on things like six square feet or a situation that s normally handled under the Zoning Ordinance, I don t think this was written to force those minor issues into the Board of Zoning Adjustment.

MR. CLARK: In fact it was written for that, if you look at the record --

VICE CHAIR SOCKWELL: No, no, you misunderstand me. I didn t ask you what you thought. I told you what I thought, and I don t think that this was written to force a six square foot issue that s less than one percent, or something that falls well under a ten percent deficiency into the Board of Zoning Adjustment.

That s not what it s for. That s why they gave the Zoning Administrator more flexibility. The reason it was done was to keep these things out of BZA, not to have attorneys force them in to BZA, to suit their own purposes.

COMMISSIONER MITTEN: Madam Chair, I would like to ask that if Mr. Sockwell has some questions on the rebuttal testimony that Mr. Clark provided that you request that he ask those questions but that they cease having this conversation.

VICE CHAIR SOCKWELL: That s fine, and I appreciate your stepping in on that because I think that this has gone far enough.

CHAIRPERSON REID: Thank you very much. I think that we have now heard sufficiently the merits of this case, and based upon the testimony here today, we will then make our determination in regard to the outcome of the case.

It would be done at the next meeting, or it would be --

MR. CLARK: Madam Chair we have some other exhibits coming in and will there be a briefing schedule on this? I think there should be.

CHAIRPERSON REID: Well, the pictures, that they could not be in? Oh, that s right, we have to

have it in in such a time frame that Mr. Brown would then be able to respond to it. So that was, just one second.

MR. BROWN: Madam Chair, on the picture issue, and logistically it raises problems cause once again, Mr. Sloame and Mr. Clark have to come onto my client s property which is a construction site in work. It s a dangerous situation.

I m concerned about that. I mean, are you, and I think my clients, while not wanting to be uncooperative, are concerned by that.

CHAIRPERSON REID: Well I mean --

MR. CLARK: I assume we do it in conjunction with you Mr. Brown.

CHAIRPERSON REID: In instances like that, typically what you do is have a demification agreement that would hold harmless the owner and --

MR. BROWN: Could I ask for a --

CHAIRPERSON REID: -- accident or something.

MR. BROWN: And that s fine. I guess I would like in the nature of rebuttal, which you re correct, we can act quickly, is that I be allowed to come and take similar photographs from Mr. Sloame s side.

Cause we, and, you know, we can do this

all --

CHAIRPERSON REID: That s fair.

MR. BROWN: We can do that all

CHAIRPERSON REID: That s fair. I have no problem with that. Mr. Sloame, do you have an objection?

MR. SLOAME: No.

CHAIRPERSON REID: Okay, then, you exchange the permission to go into each other s property to take these pictures. And time line, Mr. Hart?

MR. HART: The first feasible date for a decision is April the 5th. The additional information should be in, or kindly in by the 13th of March. Assuming that the response is by the 3rd, the 20th of March, and a draft, or draft orders, the 27th of March.

CHAIRPERSON REID: One disk, please.

MR. BROWN: Madam Chair, is there any way, as I understand it there was an earlier decision date given in a case this morning or that went this afternoon. If we could expedite that, certainly, cause a very limited exchange of information at this point --

MR. HART: Let me --

CHAIRPERSON REID: Well our next meeting is March --

MR. HART: Excuse me. Let me explain here.

We, the decisions are usually made at the meetings. As you know, the meeting days are the first Wednesdays of each month. So we re talking the next meeting date is March the 1st.

Now if you, if you think that you can meet that deadline, fine. But there s another side to it, we are, you ve got to get it to us here in time to get whatever your responses are to the Board Members.

And at this point I see us talking about a week. That s why I went from March the 1st to April the 5th.

MR. CLARK: Madam Chair, can I ask a question?

CHAIRPERSON REID: Sure.

MR. CLARK: And that is, are we going to have a proposed findings, conclusions, a brief, is that what we re talking about on the 27th of March?

CHAIRPERSON REID: That would, yeah, that would be great.

MR. HART: Yes, that s what I m talking about, yeah.

CHAIRPERSON REID: If you can get it in.

MR. CLARK: I assume that the transcript, the rest of the transcript will be ready in sufficient time to be able to do that.

CHAIRPERSON REID: No.

MR. CLARK: The first one was ready in pretty quick fashion, so.

CHAIRPERSON REID: Wait, wait a second, please. Are you referring to moving it up to April?

MR. HART: The decision would be the April --

CHAIRPERSON REID: And then, yes. Because it takes approximately, what ten days?

MR. HART: Yes --

CHAIRPERSON REID: Ten days for the transcript to be back --

MR. HART: It will be available.

MR. CLARK: So we would submit findings and conclusions on the 27th.

MR. HART: That is correct. On the 27th, yes.

CHAIRPERSON REID: Uh-huh.

MR. HART: The 27th of March.

MR. CLARK: Correct.

CHAIRPERSON REID: What about the pictures?

MR. HART: Those are, no, no. Those are some of the original information to the sub-committee which would be the 13th of March.

MR. CLARK: And then the responses on the

20th.

MR. HART: And the responses the 20th.

MR. CLARK: And then findings of fact and conclusions of law on the 27th.

MR. HART: 27th, yes. Madam Chair, if I might, let me just say a few more things. Just to make sure we re all on the same page.

CHAIRPERSON REID: Okay.

MR. HART: Let me ask you a question. Those, those exhibits you have there, I was looking at the ones that you submitted to us, they re identical I think so --

MR. BROWN: No they re not.

MR. HART: -- so those would have to be, put into the record.

MR. BROWN: Yes.

MR. HART: All right.

MR. CLARK: Mr. Brown, can you make copies of those for us at some point?

MR. BROWN: Yes.

MR. HART: This is something that s, in the transcript, I think I should sort of raise it to you in the, it was verbalized, it would not hurt for DCRA to give us also a time line on their involvement.

This, I m giving you like this because it s

a decision you have to make. -- didn t say do it. The ANC had to do it, the --

CHAIRPERSON REID: That s a good suggestion.

MR. HART: Yes, so.

CHAIRPERSON REID: I have no problem with that.

MR. HART: Yes, but they didn t respond. There was no response.

CHAIRPERSON REID: Oh, you ve already requested it?

MR. HART: Oh, yes, it s in the transcript, yes.

MR. BROWN: At the last hearing.

MR. HART: At the last hearing.

CHAIRPERSON REID: I wasn t sure who, I know we did get a time line, I wasn t sure exactly who was, who would be --

MR. CLARK: I think in fairness DCRA may not have realized the fact, but I mean I have no problem if they do so, but I m not certain they really understood it.

CHAIRPERSON REID: Maybe if, report to the --

MR. HART: There is a possibility, because further on in that part of the transcript, Madam Chair,

Mr. Lourenco said that was it for him, and you said yes, do you have to come back he said no. And you said that s it for you.

So you know, he could have taken that as his understanding not to give the --

CHAIRPERSON REID: Okay, well we can, we can, re-request --

MR. HART: Okay.

CHAIRPERSON REID: -- from him. And stress the importance of that being done. Okay.

MR. HART: All right. Two more, two more things for the record agin. One is from Mr. Brown to submit his photos, and one from Mr. Clark to submit his photos.

MR. CLARK: And that s going to be on the 13th and the 20th.

MR. HART: That s the 13th of March.

CHAIRPERSON REID: Okay.

MR. CLARK: Oh, well, I see, we both submit it on the 13th and then if there s any rebuttal it s on the 20th.

MR. HART: Exactly.

CHAIRPERSON REID: Okay. Decision will be on April, what s the date again?

MR. HART: April 5th.

CHAIRPERSON REID: April 5th at our regular, regular scheduled monthly meeting, decision meeting.

MR. SLOAME: Do we come here to hear the decision or is it in writing?

CHAIRPERSON REID: It s open to the public. You don t have to, but it s open to the public.

MR. SLOAME: And that s the decision?

CHAIRPERSON REID: It s open to the public we will, basically have deliberations and have a vote and we will, and the decision will be as a result of that vote.

You are welcome to come if you like, it s open to the public. You can, there is no participation however, from the public, but it is open --

MR. CLARK: That s the good news for you.

CHAIRPERSON REID: Yes.

MR. SLOAME: Is it in the morning?

CHAIRPERSON REID: Typically it s at 9:30 a.m..

MR. SLOAME: And do you follow it afterwards with a written decision?

CHAIRPERSON REID: Yes, we do, an Order either to approve or to not approve, or to in this instance it would be to uphold the appeal or to deny.

MR. HART: One other thing. You requested

Madam Chair, someone, a Board Member requested it, the, oh, the drafts to be submitted, be submit, be located by transcript cited, in other words, specific stages in the document should be identified where they are in the transcript.

CHAIRPERSON REID: Who said that?

MR. HART: I, I, I think you might have said it.

CHAIRPERSON REID: Did you Ms. Renshaw?

MEMBER RENSHAW: Uh, one of us did.

CHAIRPERSON REID: I don t remember.

MR. HART: Someone did, yes.

CHAIRPERSON REID: I didn t.

MR. HART: Yes.

CHAIRPERSON REID: What was it that was requested?

MR. HART: The, when the drafts are being written --

CHAIRPERSON REID: Uh-huh.

MR. HART: -- that they be cited by transcript. In other words page so and so, line so and so. You know for major, that s for major points.

CHAIRPERSON REID: All right. Okay, is that it?

MR. HART: You understood, right.

MR. CLARK: Understood.

CHAIRPERSON REID: Okay. Well, thank you very much. I m sorry, Mr. did you have a, Mr. Sockwell said he had a --

VICE CHAIR SOCKWELL: I had a question that never got answered, and I had gotten sidetracked in a discussion with Mr. Clark, and I apologize for that.

Is there anyone from Mr. Brown s side who can explain why on the second construction permit which was to raise the grade that there was no description of the additional work that had to be done to the building, therefore, the permit was issued, strictly as a berming, but not a redoing of windows and all the other things that were necessary with the house in order to make it applicable for a berming?

Is there any reason why the permit that was requested was not for a modification to the house to include the regrading as opposed to just a regrading?

MR. BROWN: I think the permit was, it was a revision of the, and of specific references, the first permit, and it --

VICE CHAIR SOCKWELL: Right.

MR. BROWN: -- revision of that permit to do X, Y, and Z.

VICE CHAIR SOCKWELL: Right.

MR. BROWN: I think I understand the question you re answering and I don t think because

VICE CHAIR SOCKWELL: The only request was the X, which was the earth. None with regard to the fact that the windows had to be changed, that waterproofing would have to be applied, that changes to other things which came in a subsequent permit for redoing the stairs, and access to the front door, where those things were included there.

But the first permit, very definitely was limited and un, abnormally limited. Because it didn t say anything except put the earth in.

MR. BROWN: The second permit.

VICE CHAIR SOCKWELL: The second permit.

MR. BROWN: I m afraid I can t answer that question, and --

VICE CHAIR SOCKWELL: And the architect was not involved with that at all?

MR. DUNCAN: -- I did the drawing for the second permit -- I m not sure I understand the question.

VICE CHAIR SOCKWELL: Well actually, the second permit would have included revisions to the house. In order to berm up against the house you have to take the windows out in the front and make other

modifications, which were done because it was bricked up beneath the new level of the sill for the new basically high level windows.

All of that was omitted, the costs involved, for the modifications were omitted, the City didn t get to charge any fees on any of that, and none of it was reviewed by anyone.

MR. DUNCAN: I, again I didn t see the application for permits. I don t know what boxes were checked on that, but --

VICE CHAIR SOCKWELL: Yeah, well the description of it is in the record. But the permit was noticeably vague.

MR. DUNCAN: But my drawing that was submitted for permits is raised sill of existing masonry openings for new windows, and raise grade. Both of those items are included in that, on my submission.

I didn t, I didn t mention the changing the size of the windows. They were new windows on the original permit as well as on this permit. But I do say raise the sill of existing masonry opening for a new window --

VICE CHAIR SOCKWELL: Yeah. Under description and cost there was no cost, no engineering,

no architecture, no nothing. So the person who filled out the application either responding to limited instructions or specific instructions, basically didn t give the City a true picture of what was being done.

Because to convert a basement to a cellar would normally require some additional scrutiny to make sure that egress is provided appropriately and things like that, just because of the nature of the work.

But it wasn t done, and I ve always wondered why. It seemed like it was done fast and loose, that s all.

CHAIRPERSON REID: All right? All right. This will then be the end of the, well no, the end of this particular case. And we do have one more case. Now we need to do an assessment, we re going to take a recess.

MR. BROWN: Thank you Madam Chairman.

MR. CLARK: Thank you Madam as well.

CHAIRPERSON REID: You re quite welcome, thank you.

MR. CLARK: Thank you ma am.

CHAIRPERSON REID: You re quite welcome.

MR. CLARK: To the entire Board.

CHAIRPERSON REID: We would now do an assessment for the last case of the day is now after

the clock, there are quite a few people here. If I m not mistaken I think that we have yet to do the opposition segment and the closing remarks. That s it, right?

MR. HART: --

CHAIRPERSON REID: The opposition?

MR. HART: Yes.

CHAIRPERSON REID: Ms. Dobbins, the parties in support that were here, did we not take them so that they could, not have to return?

MS. DOBBINS: We only took two that would, that knew they would not be able to return.

CHAIRPERSON REID: Do you have additional people in support?

MS. DOBBINS: Yes, yes.

E-V-E-N-I-N-G S-E-S-S-I-O-N

CHAIRPERSON REID: Approximately how many?

MS. DOBBINS: Persons who intend to testify, I think there are maybe six or seven.

CHAIRPERSON REID: And how many persons in opposition? May I have a show of hands? All right. Board Members, what is your time frame?

MEMBER RENSHAW: Madam Chair are these new people or are these people who were at our first hearing on this?

CHAIRPERSON REID: Oh, well it has to be people who were here before, who have come back. How many people are here that were here before? Okay, so we have about, on both sides about six.

And then we have cross examination and rebuttal, closing remarks by the Applicant. I think that we could get through here approximately 7:00, 7:30 if we time, three minute time, everyone adheres to three minute time, except for the opposition.

Well the opposition, oh, wait a minute. The opposition has not had any time. They haven t, they have an hour. They have an hour. So within, I m sorry. The ANC or, the ANC had their, okay, so how much time did they take --

Okay, well the opposition has an hour,

right? Okay, the Applicant had an hour, okay, and -- how much time?

MR. HART: -- opposition has -- they can bring it up or they won t have to bring it --

CHAIRPERSON REID: That s what I m saying. They have an hour. They have an hour, they have, we have a party and we have several persons to testify. Even though you have an hour that doesn t mean that you know, you don t have to take an hour, that s okay.

But we want to make sure that ample time is afforded the opposition to make their case. So it s now 6:15. We re going to recess for about ten minutes, and then we ll finish up with the people in support and then the opposition.

Though I think then that s going to kick us up to at least 8:00 o clock.

(Pause.)

So all right. Okay, we ll have to lose one Board Member at about 7:30, but that s okay. We ll still have a quorum and more than a quorum, so. Did you have something to say, ma am? Can you come forward? No, no, just speak, speak from the mike, uh-huh. Give your name and speak in the mike.

MS. THOMAS: My name is Hattie R. Thomas, I live in -- and I just want to state that it seems like

we re not going to get enough time to put on the opposition.

They get more time than we get and then we ve lost so many of our people who were here before, and they didn t, they weren t able to come this time. So we re getting drowned down, we re getting drowned down.

CHAIRPERSON REID: Okay, let s, Mrs. what s your last name?

MS. THOMAS: Thomas.

CHAIRPERSON REID: Ms. Thomas, I understand that, and I certainly apologize for the lateness of the hour, the fact that the previous case took so much time. Nonetheless, I think that I have, my remarks with, we re going to allow the opposition adequate time.

All right. So we ll now recess about ten minutes and come back.

(Off the record.)

MS. NEAL: -- I d like to understand the procedure here. It appears to me that there are people here that weren t for the, for KSI that were not here at the last meeting, that s are going to get the opportunity to speak.

CHAIRPERSON REID: Ma am, I think I, again,

if you heard my remarks, I said only those persons who were here at the last hearing will be afforded time to speak tonight.

MS. NEAL: Okay.

CHAIRPERSON REID: No new persons who were not here and not sworn before.

MS. DOBBINS: Madam Chair, we had some people who left last time because they knew they would not get to testify, some persons who knew they were not going to get able to testify, we called and asked them not to come.

CHAIRPERSON REID: Well Ms. Dobbins, I think that, again, my instructions are, anyone who was here, whether they had an opportunity to testify or not, will be afforded time to speak today.

If they came last time and left, okay. They were here, even though they left. And so if they fall into that category they will be given a chance to talk.

MS. DOBBINS: Okay, but what about those persons who were on call? We have the Ward 8 Representatives from the School Systems here tonight.

CHAIRPERSON REID: What do you mean on call?

MS. DOBBINS: People who we said we ll call you when it gets close to the time, and by that time

the Board had determined that they would hear the public officials.

CHAIRPERSON REID: So are those people here?

MS. DOBBINS: We have about, I think two people, two or three people. Yes. One of which --

CHAIRPERSON REID: Two people from the School Board --

MS. DOBBINS: On Ward 8.

CHAIRPERSON REID: -- were on call.

MS. DOBBINS: Yes.

CHAIRPERSON REID: To the previous hearing.

MS. DOBBINS: Yes.

CHAIRPERSON REID: Well then, that, they would fall into that category. Even, if they were on call and they were scheduled to appear and did not appear.

MS. DOBBINS: But you did not know that, that s what I m saying.

CHAIRPERSON REID: No, at the end of the last meeting I think that you said you asked that, you said that you had people here who had to leave and that they would, were going to have an opportunity for them to be able to speak.

MS. DOBBINS: Two organizations.

CHAIRPERSON REID: Two organizations, okay.

MS. DOBBINS: Yes. --

MEMBER RENSHAW: If I may, let s even out the rules here. Did the neighborhood representatives know that they could keep people on call?

UNIDENTIFIED SPEAKER: No.

MEMBER RENSHAW: See? I mean we have to play on an even field here. I mean you have one arrangement where you ve got people on call, how nice, because then they don t have to come down here and sit as these other people have to do.

MS. DOBBINS: Ms. Renshaw, that s because folks are working, and that s something that s --

MEMBER RENSHAW: Well they re working too.

MS. DOBBINS: That s something that has been allowed for.

MEMBER RENSHAW: So are we.

CHAIRPERSON REID: Well I don t know. My feeling was that if there are people who were, were part of the case who were either here who had to leave and I was not aware of the fact that there were people who were on call, I consider those people, I consider those people to have been part of the case.

Now, the fact that the opposition may not, may not have people on call, I don t, I mean, if they have people on call then we would allow that as well.

If they don t have anyone on call --

MEMBER RENSHAW: They didn t know about it.

CHAIRPERSON REID: It wasn t a matter of giving permission. I, we never gave any permission to have anyone on call, that was a decision that was made by the Applicant as to how those particular people were going to be handled --

MEMBER RENSHAW: But I --

CHAIRPERSON REID: -- did not present. They did not prevent the opposition from having people on call as well. And if they do have people in that category then I will allow them to speak as well.

MEMBER RENSHAW: But they didn t know.

MS. DOBBINS: Madam Chair?

CHAIRPERSON REID: They didn t know what?

MEMBER RENSHAW: They didn t know anything about the fact that you could have somebody on call. I didn t know that you could have somebody on call.

CHAIRPERSON REID: Well quite frankly, this is the first time that I have, that, basically encountered that. But nonetheless it does not seem to me to be improper.

MS. THOMAS: Madam Chair, I can, I can explain to you why you ve never heard it before. Because in all the time that I ve come before the Board

or known the Board to hear cases public cases, they have not allowed persons to not testify who have come or when the hearing is still continuing.

Whether they re in support of it, of an application or opposed to an application. The Board has always been open, and now you have time limits for those persons to speak.

CHAIRPERSON REID: Uh-huh.

MS. THOMAS: You never would know about the understanding that an Applicant had with persons who were coming or other members of the community who had agreements with their, other parties of the community that will call you when we get to this point.

There was no need for you to know that. Because the Board has never, never, not taken the testimony of persons who have come before to provide testimony in opposition or in support.

CHAIRPERSON REID: That s correct, Ms. Thomas, and what Ms. Renshaw is saying is that the people that you re referring to are not here. So, this is the first time that we ve encountered this type of situation where there are people who were going to testify that were on call.

And, you know, it doesn t, to me, if in fact they are on call and they want to testify, I have

no problem. To tell you the truth if the opposition if they have other people, I have no problem with that as well.

I don t want to, in any way represent that it is an uneven type of treatment. Because I certainly don t want the opposition to feel that they ve been in any way slighted. Yes.

MR. TERRY: Thank you Madam Chair. My name is Howard Terry, I m from Fairlawn. My point, I m going to, I have a point of information. Those of us who, from Fairlawn who appeared last week, each of us filled out a card to show our presence here.

Did, did the Board maintain a copy of those cards for the purpose of record?

CHAIRPERSON REID: I think so, don t we?

MR. TERRY: To show those persons on the proponent s side who actually appeared.

CHAIRPERSON REID: We have, we do have.

MR. TERRY: Because, in that case then I think in all fairness to the, to all concerned, that those persons from their proponent s side who appeared and were not allowed to testify should be allowed to testify.

Any other persons who were on call and were not present, did not sacrifice the time, as we did to

come down here, I think should have to step down.

CHAIRPERSON REID: Thank you very much. -- other Board Members on this issue, please.

MEMBER RENSHAW: Do you want a motion or? Let the others --

CHAIRPERSON REID: Well, let s just move. There is -- Mr. Sockwell?

VICE CHAIR SOCKWELL: Ms. Dobbins, as far as knowing when someone may or may not be on call, it s difficult to know if the hearing is proceeding and you make a call to someone who is elsewhere and they come down prior to the time that they have to show their need to be.

And it s usually before the case has been called up that you were going to do that so that, well, I mean, what I m saying is, they have to be there when they have to be sworn in.

Your people would have to be here in time to be sworn in, or --

MS. DOBBINS: Mr. Sockwell that s not, that s not always the case either. People have come before the Board on many opportunities and said I have not been sworn in. And the staff would then swear that person it.

CHAIRPERSON REID: The people who were on

call are here today?

MS. DOBBINS: Yes.

CHAIRPERSON REID: So they re not on call today?

MS. DOBBINS: No. Everybody that we expect to testify in support of this is here today. And the ones that could not make it that there were a couple that were here last time that could not make it this time, and they will not be back.

VICE CHAIR SOCKWELL: All right, in your case if I might interrupt Madam Chair. In your case everyone who is here to testify, someone that you are aware of being here.

MS. DOBBINS: Yes. They came down earlier - -

VICE CHAIR SOCKWELL: Now on the other side there are people who are here to testify who don t have access to your level of, let s say control and they are here having spent the entire afternoon waiting for an opportunity to testify.

And they as well wish to testify, but they weren t so called, they weren t on call. They ve just been at the ready, so to speak.

MS. DOBBINS: Okay, can we shorten it, then? Or could we, yeah, I would proffer that there s there

was one organization here, or group here that probably has three people, three or four people.

If we could get one person, to testify for that group.

VICE CHAIR SOCKWELL: That would always be helpful.

CHAIRPERSON REID: Okay, and also -- for the other side. Excuse me, Ms. Dobbins, how many people are here today who were not here before? So everyone here to testify today was here before.

AUDIENCE: Yes.

(Pause.)

CHAIRPERSON REID: Okay. And, on your side you have?

MS. DOBBINS: There were, Marbury Plaza people would you, how many of you are there? There s three.

CHAIRPERSON REID: Uh-huh.

MS. DOBBINS: And we could have one person speak for the three people.

CHAIRPERSON REID: Is that it?

MS. DOBBINS: This young lady was here last time, and we have the --

CHAIRPERSON REID: So if she was here last time that s good --

MS. DOBBINS: Yeah, we have the Ward 8 Representative from the School Board. And one business owner who had to leave last time.

CHAIRPERSON REID: Well if he was here last time that doesn t matter, the only thing we re talking about --

MS. DOBBINS: We re talking about two people.

CHAIRPERSON REID: Okay.

MS. DOBBINS: Then you re talking about --

CHAIRPERSON REID: Ward 8 Representatives and the someone from Marbury?

MS. DOBBINS: That s correct.

CHAIRPERSON REID: Who were not, they were not here last time.

MS. DOBBINS: Marbury Plaza. Uh-huh.

CHAIRPERSON REID: Okay. I have no problem with the line, this, two people, two additional people, if there is, if it s, if there is no objection.

(Pause.)

MS. NEAL: I d like to know how Ms. Dobbins could have predicted last Wednesday that there are people that were on call wouldn t have an opportunity to speak today, last Wednesday anyway. They obviously didn t plan to show.

CHAIRPERSON REID: What did you say?

MS. NEAL: I d like to know how Ms. Dobbins predicted last Wednesday that her people wouldn t have all had the opportunity to speak then anyway, that they wouldn t come back today.

MS. DOBBINS: I m sorry, I didn t hear that, I m sorry. But I just am not even sure --

CHAIRPERSON REID: How did you know?

MS. NEAL: I am saying our trial was, our hearing was last Wednesday. We didn t know until the 7:30 hour that we would be returning this Wednesday. How did you know before then?

MS. DOBBINS: It was expected that a quorum would be lost at a particular time.

MS. NEAL: That --

CHAIRPERSON REID: It was anticipated that we were losing a quorum, remember? And, so therefore we had to have the continuation. I was trying to be able to wrap it up that night --

MS. NEAL: Uh-huh.

CHAIRPERSON REID: -- but because of the fact that we, time got away from us, as well as the fact that Board Members had to leave, we couldn t continue, so we continued it to today.

MS. NEAL: I think to allow additional

testimony from KSI Group when they ve already had an, a myriad of information to share, would grossly disadvantage our group.

CHAIRPERSON REID: All right, well, -- did she have any comment on this? All right.

AUDIENCE: Madam Chairman and Board members, we have been here for two days, we have heard other cases and we understand the Chairman of the Board s position as well because we know you have been going through a tiring day.

And I came in myself at 1:00 o clock. However, if that had been the case for our group to be on call, we would not have come here. We would just have waited until one of our neighbors to call us at our house and then we would hurry then.

CHAIRPERSON REID: Okay, well --

AUDIENCE: That is not a fair case to say on call --

CHAIRPERSON REID: Let s try this. Given the fact that there is so much objection from the opposition, number one, perhaps if we would disallow the Marbury Plaza persons from testifying, but in regard to the School Board Official, from Ward 8, typically Government Officials are afforded some discretion with this Board in that we know their

schedules are such that they can not always be here when we have representatives from DCRA as well as from the City Council come before us.

We do allow, we do try to accommodate them, so, as a compromise would you, would you mind allowing the Government Official to testify and not allow the Marbury Plaza organization to testify?

That s the best I can do.

AUDIENCE: I would allow that if the rest of our Fairlawn Citizen s Association will do so, however, we all have --

CHAIRPERSON REID: I know you don t like it. But we re talking about a compromise.

AUDIENCE: -- to keep our composure and we all have to be patient and we hope that you will be patient --

CHAIRPERSON REID: Well the only way to give that, the only way to give them, what is it three minutes? Three minutes.

MR. HART: Let me just talk about the timing, the times -- to each person. I have heard, there are organizations here or an organization. The time for an organization is five minutes.

CHAIRPERSON REID: Okay, for the organization it s --

MR. HART: Individuals would get three minutes.

CHAIRPERSON REID: All right. Then it s three minutes.

MR. HART: The, yeah, the three minutes.

CHAIRPERSON REID: Okay.

MR. HART: The Government Official, the, we don t use, put a time limit. On the party there is a party here -- they get 15 minutes.

CHAIRPERSON REID: Okay. What is the difference to the time that s usually afforded, a Government Official, Ms. Dobbins that could be truncated to a limited time to three minutes if we could limit that to maybe five minutes, and I think that perhaps we could get some closure on this matter and move forward, if that s all right.

MS. DOBBINS: Okay, Madam Chair, I think the Government Official in this case will give a summary of his testimony. He has submitted a record of, a letter into the record already. And as far as the citizens from Marbury Plaza, I d ask that you accept their written testimony into the record, since the record is still open.

CHAIRPERSON REID: Sure. Sure, that s no problem. Now, is the, but is the Government Official,

the School Board Representative going to speak?

MS. DOBBINS: Yes.

CHAIRPERSON REID: Okay. All right, good, then I think that if that s all right, there s no objection, hopefully, okay. Hopefully, it s not the best of both worlds, but at least it s just trying to accommodate both side in fairness, and if that s okay then we can go ahead and recess and then come back and finish up. Thank you.

MS. DOBBINS: Thank you.

(Whereupon a short recess was held.)

CHAIRPERSON REID: Okay, well let us begin. The other Board Members will be coming in. Ms. Dobbins, didn t you have any testimony in support, didn t we have some last time?

MS. DOBBINS: We only had a community organization, the Frederick Douglas Community Organization.

CHAIRPERSON REID: Right, right.

MS. DOBBINS: And the ANC. They were --

CHAIRPERSON REID: Right, other than the ANC.

MS. DOBBINS: Oh, and Tony Thomas Associates, there were two organizations.

CHAIRPERSON REID: Right.

MS. DOBBINS: Those were the two.

CHAIRPERSON REID: Mr. Hart was thinking that there was no --

It was the ANC --

MR. HART: Yes, the last, that s right.

CHAIRPERSON REID: And we have Tony Thomas --

MR. HART: Was the ANC.

CHAIRPERSON REID: No, no, we have Tony Thomas testified in support. --

MS. DOBBINS: Yes, she testified and Tony Thomas Associates because her business is in that area. And Frederick Douglas Community Improving Council.

MR. HART: Yes, I m talking about the -- not that she didn t testify. What I m saying that the ANC was the last --

CHAIRPERSON REID: The ANC was not last.

MS. DOBBINS: No, they were before.

MR. HART: Okay.

MS. DOBBINS: It was the, Mr. King, Ms. Thomas and Mr. Gray.

MR. HART: Okay.

CHAIRPERSON REID: All right.

MR. DOBBINS: And no persons, individual

persons.

CHAIRPERSON REID: Okay, so now, this, persons in support, and so would you please come up, persons in support? Three or four at a time, I think we have about six or seven?

MR. HART: Madam Chair?

CHAIRPERSON REID: Yes.

MR. HART: Two things, is it necessary to read the description of the case?

CHAIRPERSON REID: It would probably be good for the record, I m sorry, I m glad you mentioned that. Go ahead.

MR. HART: And two, I don t think everyone here has been sworn in. There s a new face around --

CHAIRPERSON REID: All right, we ll you re going to take care of that, right?

MR. HART: All right, all right, sure.

CHAIRPERSON REID: Because the persons, I m sorry?

MS. DOBBINS: There were persons here last week who were not sworn in. Mr. Lockridge was not sworn in and I think this gentleman was not sworn in. I think this young lady on the end was sworn in, and you left, you had to leave. I don t know whether he was sworn in or not.

CHAIRPERSON REID: you were here but you left?

AUDIENCE: Yes.

CHAIRPERSON REID: And you too, sir?

AUDIENCE: I m Robert, excuse me --

CHAIRPERSON REID: No, and you too, sir?

MS. DOBBINS: This is Mr. Lockridge, Board of Education.

CHAIRPERSON REID: Yes, but this gentleman right here was not here. No, you.

MS. DOBBINS: No, that s Mr. Lockridge, he was not here.

CHAIRPERSON REID: Oh, this is Mr. Lockridge.

MR. DOBBINS: Yes.

CHAIRPERSON REID: I m sorry. You re the Board of Education Representative. Oh, I m sorry. Okay. And, the other two, three were here. That s correct.

MS. DOBBINS: And only one was sworn in.

CHAIRPERSON REID: Okay, I understand that. All right, so everyone, oh, let s do this. Everyone who is going to testify in this case stand, and if you were sworn before, let s, if you were not sworn in please be sworn in now. Everyone.

MR. HART: Madam Chair?

CHAIRPERSON REID: Huh?

MR. HART: -- read the case then.

CHAIRPERSON REID: Right, I m sorry, I m sorry, sit down. He has to read the case first. We re getting ahead of ourselves here.

MR. HART: Case No. 16457, which is a Rehearing in the Application of Kass MA, L.L.C. pursuant to 11 DCMR 3104.1, for special exceptions under Sections 410 and 2516 to allow the construction of 33 new single-family detached dwellings with garages in a theoretical lot subdivision and 176 luxury garden apartments in the R-5-A and R-5-B Districts at premises bounded by Good Hope Road, S.E., between 24th Street, S.E. to the east, and 18th Street, S.E. to the west (Square 5735, Parcels 211/96, 220/31 and Lot 804 and Square 5763 Parcels 219/38).

All those who were not sworn, please stand.

CHAIRPERSON REID: If you were sworn in last time you don t have to be sworn in again. Okay. If not you will stand.

(Witnesses sworn.)

CHAIRPERSON REID: Okay, anyone, you can start. You each have three minutes except for Mr. Lockridge?

MR. LOCKRIDGE: Correct.

CHAIRPERSON REID: He has five. Okay?

MR. LOCKRIDGE: I guess I ll start.

CHAIRPERSON REID: All right.

MR. LOCKRIDGE: For the record my name is William Lockridge. I m the Ward 8 School Board Representative. I m here representing, I m not here representing the Board of Education as a body that supports this project. I m supporting it as the Ward 8 School Board Member, an individual.

I m in support of the project for a couple of reasons. First I just want to talk about the impact that I think that it might have on the education, on the, around the issue of education.

First of all I think it needs an upscale rental housing units and it brings another income level of people into the Ward 8 Area, the school that, would be the school where the project boundaries are located is in the boundaries of Stanton Elementary School.

And Stanton Elementary School has, fades in from various other housing communities around Stanton, and many, and one of them, in particular is a public housing unit, and --

What happens, and I m looking at what HUD looks at in terms of trying to deal with mixed kinds of

income communities, and I think that these upscale rental units will allow a mixture of incomes to come under a District and Stanton that will bring a different kind of parent into the Area.

And I think that parents who, the range in income probably I think that for these units will be anywhere between 30, 40, $37,000. And it s a matter of fact the folk who, and I m not saying that people in Ward 8 don t participate in their children s education, but not at the level we would like to.

And I think that the mixed income would allow parents of higher salaries to meet with parents in the lower areas who may be transitioning from welfare to work, and I think that will improve the climate of the schools.

And that s taking into consideration just the model that HUD is moving toward in their Hope Six Grants and other Grant Projects that are begin developed in and around that same area.

I also know that, I think that this is upscale housing. I don t think there will be such an influx of students that it would overcrowd or overburden the enrollment at Stanton as it exists.

We estimated that it will be I think something like 1.5 children per unit will come to

something like 320 additional students that would not just all be attending Stanton Elementary School, but also be attending the Junior High and Senior High School in that Area, which Kramer is the Junior High and Anacostia (phonetic) being the Senior High.

And currently the enrollment at Stanton Elementary School is just about at its capacity. And they currently have some 628 students, there are about 97 percent of their capacity.

When you look at Kramer, the Junior High School, they have 282 students. And their capacity is 750 students, and so they re somewhere with about 33 and a third percent of their capacity.

Anacostia, currently they have 833 students enrolled in Anacostia, and their capacity is somewhere around 1400 students. So it wouldn t be a burden on the Senior or Junior High Schools.

The Board of Education is in the process of developing a Long Range Master s Facility Plan. And things that the Board of Education are looking at, they re looking at the demographic and population shifts and changes in the student population.

And so when you look at this project, we re, we would be planning four projects of this type in our community that would increase the enrollment in

schools so that our Masters Facilities Plan will reflect the increase in enrollment based on the projects that exist in our community, that even, in some instances may increase the population in some instances there may be a decrease.

In Stanton s situation there possibly would be a decrease based on some of the recommendations that are being currently made, made at Stanton, I mean Stanton is a Junior High, I mean Stanton is an Elementary School that feeds into a Junior High School. And we re looking at a Middle School concept whereas the sixth graders will no longer be at Stanton, and those sixth graders will be transferred to the Middle School.

And that would alleviate right now about 33 students that would, that would attend Stanton. And then we also have other schools that operating and parents have a choice now, we have charter schools, we have private schools, where parents who elect not to send their children to a DC Public Schools have a wider choice of where their kids can attend school.

So we don t perceive there being a heavy burden on Stanton Elementary School. And in looking at the demographics and the population information on the school aged children, the Board of Education will be

planning, if there, if Stanton needs to be, if there needs to be an addition added to Stanton, then that addition would be a part of, would be a recommendation in the Masters Facilities Plan to accommodate the projects that are being developed in that area.

And we re doing the same thing at Garfield, at Turner Elementary School and also Malcolm X, because there s a, there s a large amount of development in that area. So we ll be considering all of the demographic changes in terms of population of the school children in the Masters Facilities Plan which is now in the hands of the Control Board, in draft form.

But it is not totally completed. Also in that Plan, the Community will have input in terms of what kinds of schools they see for their community, so Stanton would be include and parents would have an active roll in help developing and defining that school and how they would like that school to look, and what they would like that school to be.

The principal of Stanton Elementary School also sent a letter of support for this project. And I discussed with her yesterday, the possibility, how she really felt.

And when we, let s look at this project in totality and let s look at the areas and get a true

sense of where, even though you support it, let s get a true sense of where you are, based on what we had the numbers we have now, and where you see the projections and the shifts to be based on your being a principal at the school.

So, we did that and we came up with the fact that through the Masters Facilities Plan process, and also through possibly changing Kramer to a Middle School, that the population would help in terms of the school aged populations.

One thing that we do find is that --

CHAIRPERSON REID: Okay, Mr. Lockridge, you have exceeded your time. I was trying to let you wrap, but it seems like you kind of, are continuing along your dialogue, so could you just wrap your testimony?

MR. LOCKRIDGE: Well.

CHAIRPERSON REID: Basically you want us to know -- support the application --

MR. LOCKRIDGE: Basically what we want to you know that we support the project. I was just trying to give you some numbers so that you could get a better picture --

CHAIRPERSON REID: I understand. We got the picture.

MR. LOCKRIDGE: Okay.

CHAIRPERSON REID: You support the application and basically feel that the, the schools that are in that area have the ability to absorb the additional population and, should this application go forward.

And that also various accommodations are being made, some plans are being made to change Kramer to a Middle School, and all these things together, as well as the fact that somebody wants to send their kids to private school should be should more than, should be more than adequate for this particular application to go forward.

MR. LOCKRIDGE: Right, and one other thing, the developer has shown an interest in dealing with the public/private partnership that would add additional programs to the three schools that I just named, computer programs as well as cultural arts programs and humanities.

And that would be a plus for the schools in that area.

CHAIRPERSON REID: All right. Do you have any type of written agreement with the developer?

MR. LOCKRIDGE: Well we haven t signed a written agreement, but we re in a discussion. I m going to be part of a Committee that will be looking at

those recommendations and getting final approval, but we don t have anything in writing signed at this point.

CHAIRPERSON REID: Okay, I think that s highly laudable and I think that since you all are at this point involved in this dialogue and you are getting from the developer some cooperation, and support and commitment, in regard to education or providing facilities or services or support to the School System and to the children, then, I have, we ve received other agreements that the developers made in the community and I think that private as our deliberations, if that could be proffered to us if you are able to enter into a written agreement, because that s the only thing that we can really go by.

MR. LOCKRIDGE: Okay.

CHAIRPERSON REID: That s the only thing we can see tangible, is what we use as a basis. We can t at a deliberation say, oh, well they said they were talking about it. That s not adequate enough.

MR. LOCKRIDGE: I understand. Well we ll try and produce a memorandum of understanding that would spell specifically --

CHAIRPERSON REID: That would be great. Thank you.

MR. LOCKRIDGE: Okay.

MR. JAMES: Good evening, I m Robert James, President of Ward 8 Business Council. You know the property value is down all over the City except Ward 8 and Southeast Washington. And this is another reason why I support this particular application.

I think it would be an asset to the members and the people, the homeowners in Ward 8. Thank you.

CHAIRPERSON REID: Did I understand you to say that property values are down everywhere in the City except in Ward 8?

MR. JAMES: No, they are down, excuse me, they are down, they are down in Ward 8, but they re up all over the other parts of the City. Property values, the appraised values.

CHAIRPERSON REID: Oh, okay.

MR. JAMES: Okay?

CHAIRPERSON REID: I thought you said just the opposite.

MR. JAMES: Oh, I m sorry, I made a mistake there.

CHAIRPERSON REID: Okay, all right, and that s why you support the -- because you feel that --

MR. JAMES: I think it would be an asset to the community.

CHAIRPERSON REID: In other words it will

contribute to property values, ultimately being able to increase?

MR. JAMES: To increase the property values in Southeast Washington. I had an appraisal to tell me the other day, I said what about, I said, you know property values are up, in all of the Wards, then what s wrong with this particular Ward. He said well they re up, but they re not up in Southeast Washington.

CHAIRPERSON REID: Well that s not completely true. We have Hillcrest, the property values are stable and increasing all the time.

MR. JAMES: Well, I was really just trying to think about Ward 7 and 8.

CHAIRPERSON REID: Yeah. Well, oh, --

MR. JAMES: -- some parts of seven. But then especially eight.

CHAIRPERSON REID: Oh, okay, -- you have to be specific. If you say all of Southeast, well I tell people all the time that you know you cannot say that about Southeast because there are areas of Southeast that are, well, property values have kept in tune with the rest of the City and they re increasing.

MR. JAMES: Ward 8 is in serious trouble in regards to houses being appraised.

CHAIRPERSON REID: Some parts of 8, some

parts, yes.

MR. JAMES: Yes, of course.

CHAIRPERSON REID: Okay, thank you very much. Uh-huh. Next.

MS. DEAN: Hi, my name is Shawnteska Dean. My address is 2319 Harvard (phonetic) Street, S.E. I was concerning about last week at about the last week meeting about the shopping center, like up on Skyland and up on Good Hill Marketplace.

And I was just concerned, my main concern is about the Marketplace, cause well, Safeway and the whole Good Hill Marketplace has been building up for quite some time now.

And I guess as all of you know that the other shopping centers are just about closing down. They re trying to build up Southeast as far as like the Safeway up on -- Avenue has closed, and therefore, and the Safeway on -- Avenue has closed.

So therefore a lot of people from all over the Washington D.C. area and as far as the Maryland, Virginia Area, have to come up here to show and there s like overcrowding.

The shopping center at the American Center at Destin and Good Hill Marketplace that s because everyone has to come up and shop here, and it s like

the, like I said the Safeways and the other clothing stores, and things like that.

And then around standing dwellings and things like that, they re building up the townhomes around --Avenue, the townhomes over there by where, the apartments used to be called -- and the townhomes over there and the concern, my main concern is about the apartments. We have a whole lot of these townhomes are being built around the Southeast Area, Washington D.C. area.

But there are not enough apartments for people as myself and other people around that s being built. They re always talking about detached townhomes, and then --where the apartment buildings are.

And they re opposing it but I m saying they own the homes. A lot of people cannot afford townhomes and -- rent townhomes. A lot of people need apartments up here that are trying to project, affordable, they re nice. And a lot of these apartment on Good Hill Road need to be teared down, torn down so bad.

Because they re not really using that part, so therefore, for the apartment buildings, the apartment builders on Good Hill Road are taking up a lot of space, and where there is, the apartment

builders are taking up a lot of space, and therefore those apartment builders, the project are trying to build, should be used for that space for a good purpose.

CHAIRPERSON REID: Thank you very much. Are you, are you aware of the fact that the developer has now had some discussion and I think even agreements to assist with the renovation of some of those dilapidated and run down and boarded up apartment buildings?

MS. DEAN: Yes, that s the -- yes. I live right on the corner from 7th District and what I m saying is those apartments, there are a lot of apartment buildings from the 7th, but a matter of fact they re -- being built in the back of 7th District, the townhomes, not -- townhomes have been built, and that s been taking up a lot of space also.

Where are the apartment buildings?

CHAIRPERSON REID: Thank you. All right, sir?

MR. KELLER: Hi, my name is Rodney Keller. I m a retail owner on the Good Hope Marketplace and also we have a store in the Park Parkland. I m very much in support of the project for a couple reasons. One, it, it brings and promotes economic development, which we need in that area.

As a retail owner, we are constantly looking for employees and, in this project will bring more people and an influx of people for opportunities for employment.

It also brings foot traffic for the retail, for not only our store but the stores that are surrounding the area. It s, economic development is very important to me.

You look over across the City and you see that a lot of economic development is happening, but it s not really happening at a fast pace in that area.

And I think when you bring people of mixed incomes in that area, that supports and stabilizes the community, which is very much needed. If you look down in Parkland area you see boarded up businesses, some minority businesses that are failing becuase people are leaving and exiting that Ward, only because you have, as Mr. Lockridge mentioned Hope Six coming in there and, a tremendous amount of people that left.

And for a business owner it hurts. Believe me, and they were taking a blunt of that, and I m very much in support of it and I just want to reiterate that the project, it s a good project.

A mixed income is a good thing, bringing more and stability in the community, and for retail, we

have to look at what s surrounding the retail, what s there already.

We know that we want to attract more national brand retailers in that area. And the only way we can do it if we have people in that area. People that s going to support it, and if we don t, and people keep leaving the area, they re not going to come in there.

And once again I m in support of it.

CHAIRPERSON REID: Where is your business? --

MR. KELLER: -- in the Good Hope Marketplace.

CHAIRPERSON REID: What's the address?

MR. KELLER: 2863.

CHAIRPERSON REID: How far is that from the subject site?

MR. KELLER: It's about four blocks, five blocks.

CHAIRPERSON REID: What type of business is that?

MR. KELLER: Actually I have two businesses. One is a Timberland store. It's the first minority owned Timberland store ever. And what we do with that Timberland store is it's a partnership with a

non-profit and Timberland. What we do is we give a portion of the proceeds back to high school students, at Ballou and Anacostia. So every time you buy a shoe or a pair, a portion of that money goes back into the community.

We also next door have an Athlete's Foot store. Athlete's Foot store, also we have what you call connecting to community program. We get entrepreneurship. We provide a love and peace basketball tournament. We do a GPA connecting to the community with elementary school students. So they bring in their report card and depending on what GPA they have, they get a discount on shoes so we're very much in the community. We also have a store in the Parkland shopping center.

CHAIRPERSON REID: That's great. Thank you very much.

Other persons in support? Are there any other persons? Cross examination, Ms. Jones?

MS. JONES: Yes. First, I want to start with Mr. Lockridge. Mr. Lockridge, how long have you known about this project?

MR. LOCKRIDGE: I guess I learned about it, maybe it's been about eight or nine months, when we had the meeting at Almonte Cafe.

MS. JONES: Okay. All right. My next question to you is you wrote a letter on October 12, 1999, and in your letter you stipulated why you support this. And since July 23rd of 1999 and the opening of school in September, and you knew about this project, why is it that you waited until yesterday to talk with the principal of Stanton elementary?

MR. LOCKRIDGE: I talked with her in more detail. We had -- I talked with her in more detail yesterday about the enrollment and just where she saw the enrollment trend heading. And this was a meeting that was previously planned because I'm on the Facilities Committee at D.C. public schools and I'm trying to go to all the schools and wanting to find out what those principals, how they see their schools fitting into the scheme of the master facilities plan. In my conversations with her and meetings with her we discussed the issue.

MS. JONES: But what would have happened about that issue if this hearing had taken place last week?

MR. LOCKRIDGE: I would have still had my same position based on the information that I currently have about the enrollment and demographics of the area and enrollment shift. I would have still have had my

same position. But after talking with the principal it only strengthened my position and my thoughts, and gave more strength to my consideration for supporting this project.

MS. JONES: So why weren't you here last week?

MR. LOCKRIDGE: I wasn't here last week because the Board of Education, we had a meeting. I had a committee meeting and I was at the committee meeting.

CHAIRPERSON REID: Ms. Jones, where are you going with this?

MS. JONES: I wanted to know, what I was trying to find out, if he was in charge of facilities and if the principal at Stanton and he lives in Ward 8, then he knew about this hearing and about this last year. He wrote a letter and put it into the record and he was aware of all these facts, why were they detailed in his letter since he wasn't sure about where he would be on February the 16th.

CHAIRPERSON REID: Okay. Well, he answered your question.

MS. JONES: I now have a question for -- what's your name?

MR. KELLER: Rodney Keller.

MS. JONES: A question for Rodney. He said he was looking for employees. Why haven't you gone across the street to D.C. Employment, sir?

MR. KELLER: We have. Actually what we do is we look into the schools because we work with a non-profit that's called Community Impact, and we look into the high schools first, because we believe in the youth. And do very successful in doing so. All our employees except three I think, for all three of our stores, they live -- and either Anacostia or Ballou high school. So we're very proud of that. And of that a couple have been managers, our managers. One we just sent out to another store in Maryland.

MS. JONES: My question was, sir, because you made the statement that you were looking for employees and if you were looking for employees, the D.C. employment center is right across the street.

MR. KELLER: Okay. Thank you.

MS. JONES: Thank you.

CHAIRPERSON REID: Thank you. Thank you very much for your testimony. Persons and parties in opposition, please come forward.

MS. DOBBINS: Madam Chairman, just a quick housekeeping thing. You requested some additional materials from the applicant to be submitted to the

record.

CHAIRPERSON REID: Okay.

MS. DOBBINS: We'd like to do that and know that if the Board needs any information associated with the submissions.

CHAIRPERSON REID: They haven't been submitted yet?

You can do so now and then we'll determine if there's anything else we need.

All right. Come up four at a time. We have how many other people who will testify? Okay. This is in opposition. Okay. All right. This is Fairlawn Citizens Association has five minutes and each person has three minutes.

MS. BAILEY: Madam Chair, while you're waiting for people to get settled, in front of you are passed to each Board member, you had asked last week for the National Park Service to outline their testimony. And that was put in front of each Board member. It's correspondence from the U.S. Department of the Interior, National Park Service, outlining their testimony of last week. I just wanted to bring that to your attention.

CHAIRPERSON REID: Right. The Park Service had an opportunity to testify last week.

MEMBER RENSHAW: Can we ask questions of the Park Service later on about this document, Madam Chair.

MS. DOBBINS: Sure.

CHAIRPERSON REID: All right. Now, in giving your testimony it is asked that you not be repetitive, if someone has said what you wanted to say, then don't give that. Give us some new information and then if need be, if you have additional time, concede it to someone, next person.

Who wants to start?

MR. TERRY: Madam Chairman.

MR. HART: Excuse me, Madam Chair. Please bear with me. Mr. Jones up there, she is a party. So she has 15 minutes. Organizations have five minutes.

CHAIRPERSON REID: Ms. Jones, you have 15 minutes and individuals have three minutes.

MR. HART: That's right. That's right.

MR. TERRY: Madam Chairman -- good afternoon. My name is Howard Terry, Sr., a member of the Fairlawn Citizens Association, homeowner and resident of 1932 Good Hope Road, Southeast since November 10th, 1972.

Based upon my experience and knowledge of this community, I rise in opposition to this

development as proposed by KSI. During the KSI presentation I found some environmental issues fundamentally vague; therefore, my enumerated points of opposition will stress a specific concern that will be followed by questions.

First of all, soil soundings. Based upon my observations and knowledge of the content of the waste and debris deposited in the landfill, I'm not overwhelmingly convinced that this soil has the stability to support the type of development, and that gives rise to the following question.

First of all, with this land periodically tamped over the past 20 years -- stable composition to offset decomposition of deposited waste. Two, it power drilled down to bedrock to insure a sound footing? Also a letter from a fellow member in the Citizens Association, attachment number nine, dated May 24, 1999, specifically requested from the organization that we get a report on this particular feature and I don't recall hearing it in the testimony. In fact, it said until further adequate and appropriate test power borings have been done on this site for any development, I request that the Board deny this application, etcetera.

But continuing on, if so, when and where

was the report filed? If so, who regulated and who verified -- and what are the guarantees being offered by KSI for periods ten, 15 and 20 years from now when and if there is a land shift resulting from an unstable base or erosion? And last what will the reparations be to the tenants or city?

My second point concern is wetland containment and erosion. The area down through 19th Place and Good Hope Road is known for its underground water flow. The great pressure caused by that underground flow has created open trenches at 19th Place and Good Hope Road that has been capped off several times. Last year apartment buildings located at 1907, 1978 and 2020 experienced flooding following the autumn rains. Even now there's a periodic leakage from that source which requires DBW -- Across the street on the apartment side of 18th Street and 19th Place there's significant erosion on the hillside where underground streams have eroded the soil. And an apartment dwelling at 1855 Good Hope Road underwent extensive repairs within the last two years as a result of erosion.

Just below that area is standing water. It looks like a swamp. This water runs across the sidewalk both summer and winter. In summer there's

slippery green growth infested by tiny insects. In the winter there are patches of ice across the sidewalk. The underground flow affects private homes across on the north side of Good Hope Road where I dwell. We are the private homeowners in the low lying areas are required to have sump pumps in their basements because of uncontrolled underground water flow over the years. It has been proven that a simple containment cap will not suffice.

Madam Chairman, due to the extensive nature of my testimony, I'd like to present it in evidence to the Board for their considerations. And I'd like to also add this as a part of my testimony to Mr. Jones' -- letter, and I have copies for each Board member.

CHAIRPERSON REID: Do you have anything else to say in summary?

MR. TERRY: In summary, as I said, as the Board weighs all of these Fairlawn associations' testimony and other information, I respectfully request that the Board reject KSI because KSI's financially driven proposal has failed to properly balance the needs of the community -- with the needs and overwhelming concerns of the community. There are a lot of issues in here that I couldn't touch on, and I don't even want to fragment them because it wouldn't do

justice to what --

CHAIRPERSON REID: Submit it to the record.

MR. TERRY: I want to submit this to the record.

CHAIRPERSON REID: All right. Now, the issues that you raised which are some very good issues, have you discussed this with KSI?

MR. TERRY: I didn't discuss this with KSI, I personally didn't discuss it, but Mrs. Jones requested this information in this letter here dated May 24th and I did not hear that in their testimony.

CHAIRPERSON REID: May 24th of 1999?

MR. TERRY: 1999.

CHAIRPERSON REID: And she never got a response to that?

MS. JONES: No. That letter was written --

MR. TERRY: Ms. Schiller Gross Chairperson.

MS. JONES: -- to ZBA. When we were responding, after the hearing and we responded to Mr. Knapp's presentation, what they put in after the hearing, we responded with that letter.

CHAIRPERSON REID: The first hearing?

MS. JONES: Yeah. May 5th hearing. That letter was written to --

CHAIRPERSON REID: To my attention. I

guess you're trying to say Sheila Cross Reid.

MR. TERRY: Yeah.

CHAIRPERSON REID: But my question was, had you met with or talked to KSI to have them address those issues and concerns that you brought?

MS. JONES: No. The only thing I've done, I've been to other presentations in the community with KSI. And we did talk about that, when he came and made presentations at our civic association. There were a lot of questions that were brought up to him in the presentation to us.

CHAIRPERSON REID: Him, who is him?

MS. JONES: Mr. Dick Knapp.

CHAIRPERSON REID: Mr. who?

MS. JONES: Mr. Knapp.

CHAIRPERSON REID: Oh, Mr. Knapp. I thought you said Mr. Dignap.

MS. JONES: That's what we call him.

CHAIRPERSON REID: Oh, Dick Knapp. Oh, oh, I see.

MR. TERRY: Richard Knapp.

CHAIRPERSON REID: Okay. So you alerted him to the concerns, the issues of Fairlawn civic association and you're saying you never got any response?

MS. JONES: No, because of the letters we wrote and they got copies of that letter also, because everything I sent to you all, they got.

CHAIRPERSON REID: Did you direct the letter to them, to Mr. Knapp himself?

MS. JONES: No, I did not.

CHAIRPERSON REID: How come?

MS. JONES: I did not direct it to him but he knew about it because these were issues that were brought up in our civic association meeting when he came out to ask civic association meeting. Then he met with us again at our June executive meeting.

CHAIRPERSON REID: But you said that you made him aware.

MS. JONES: Yes, he's aware of those things.

CHAIRPERSON REID: What would have been much better for us is if you had a letter addressed to him where you specifically asked him to respond to the issues.

MS. JONES: No, I did not send that letter.

CHAIRPERSON REID: Then he would have an opportunity to do so in writing. For anything regarding business or any type of agreement or contract, it's always better if it's in writing so we

could have something to look at. At this point we don't have, we cannot ascertain if in fact you had the communication with him and if he had an opportunity to respond back to you directly, so that you could have your concerns addressed, and I think that's very important.

MR. FEOLA: Madam Chair, may I address that point? Philip Feola, for the record. The concerns that were alluded to in the testimony and Ms. Jones' letter in May were directly responded in our pre-hearing submission which was filed in January of this year of which Ms. Jones got a copy of. There is at least 60 pages in here on wetlands, geo-technical report, an environmental site assessment which is part of the record.

CHAIRPERSON REID: So you responded to her -- they responded to her in the form of a submission but there was not a letter or anything given directly to the Fairlawn civic association.

MR. FEOLA: She wrote to the Board and we gave the Board the technical information.

CHAIRPERSON REID: So basically you all were communicating through us, but not directly to each other.

MR. FEOLA: Right.

MR. TERRY: I address that in here, too.

MD: Madam Chair, we personally gave Ms. Jones those documents prior to the pre-hearing submission during the community meeting process. We gave her the geo-technical study, the environmental study and the transportation study. We put them in her hand.

MS. JONES: That's this.

CHAIRPERSON REID: You have it?

MS. JONES: Yes, but it's not relating to the geo-technical study that was done by WBT geo-technical consultants.

MS. DOBBINS: Those were the big documents that I personally gave to her.

MS. JONES: This is what --

MS. DOBBINS: That's not it.

MS. JONES: Yes, it is, because I got right here, received July 23rd at luncheon. We had the luncheon at Almonte Cafe, and this is what you gave me. And I wrote it right on here, received July 23rd at luncheon.

MS. DOBBINS: But there were other documents associated with that. There were thick documents.

MS. JONES: No, you didn't. This is all

you gave me. This is all you gave me because --

CHAIRPERSON REID: Okay. Let's move on. Let's do this, whatever Ms. Dobbins, KSI is saying they gave you, if you don't have it, then you don't have it, unless then we'll make sure that you get it. Okay? And make sure that hopefully it addressed the issues that you raised in that letter adequately for your benefit. Because I think that part of the problem is lack of communication. I think that the issues that you're raising should have and could have been addressed prior to today, and if Ms. Dobbins said or she thought she gave it to you and you're saying that she didn't or you thought that she didn't, at this point, let's rectify that. I'm sure that they'll agree to give it to you so that you can peruse it and then make a response if you so desire, if we leave the record open, prior to our deliberation. Okay?

MS. JONES: Okay.

CHAIRPERSON REID: All right.

MR. TERRY: Madam Chairman, that only addresses two parts of my testimony, so I'd like to know how do I get this entered into the record for consideration?

CHAIRPERSON REID: You said only just two parts?

MR. TERRY: What I submitted so far only addresses two parts of my concerns.

CHAIRPERSON REID: What was the other part? You want to just quickly tell us?

MR. TERRY: Okay. I have them enumerated here. I looked at wetland containment, soil soundings, erosions.

CHAIRPERSON REID: Have you seen the National Park Service report, sir, in regard to the wetlands and the environmental concerns?

MR. TERRY: Actually the landfill, too. That's part of the same thing, so if I can submit that. Traffic concerns and crime are the other two concerns that I have in there and I don't think they were adequately addressed so therefore, we can leave this.

CHAIRPERSON REID: Okay.

MR. TERRY: Now, who do I submit this to?

CHAIRPERSON REID: To staff. Thank you. All right. Ma'am, are you next?

MS. GLOVER: Yes. My name is Ora Glover. Chairperson and members of the Board, my name is Ora Glover. I live at 1408 T Street, Southeast, and I'm a chartered member of Fairlawn Citizens Association and the State -- Council on Libraries and member of the Federation of Friends of the D.C. Public Library and a

founder of the Friends of the -- Library, and to other organizations. I have been around, and I think I know all of these people out here.

Well, another thing that I'd like to say before I start with the main testimony is that we are taking up and consuming a lot of time. Now, I testify every year, twice a year during the budget time before the City Council. And what we have to do is to be sure that we get our names into the Council's secretary before, you know, the day before and then you will know and you won't have a problem and he will have it on record. So I didn't know whether the Board did the same thing, but I was just giving you the information in case you could use it. You could save a lot of time.

All right? Now, I'll go back.

CHAIRPERSON REID: Get to your testimony.

MS. GLOVER: I'm thankful for this opportunity to appear before you today to express my reasons for opposing 16457 development. I moved from northwest to southeast in 1941. Then we had no roads. We didn't have a store. The first store was built, Giant, on Alabama Avenue. Well, in came influctuation of apartments. You know we have the worst image in Southeast Washington in Anacostia than any place in the

world, and I think, I do believe I know.

It was during President Roosevelt's administration, all of these apartments, housing projects, infiltration of every low rat and almost -- I can tell you now I have -- I will tell you why we don't need any more apartments. We only need houses, townhouses in order that people can have a sense of pride in their neighborhood.

Well, there is not till -- I'm trying to tell you we don't need any more apartments. Okay. I'm trying to tell you that there are too many low income projects in the area. The Douglas dwellings, the -- project, -- place, Parkland apartments were built later, Shipley Terrace apartments, infiltration of apartments. The projects was within walking distance of each other.

CHAIRPERSON REID: Stop for a second. I don't think she got three minutes, because you didn't have the time running at first. But nonetheless, what's your name, ma'am?

MS. GLOVER: My name is Miss Glover.

CHAIRPERSON REID: These apartments are not low income.

MS. GLOVER: But I'm trying -- I'm telling you --

CHAIRPERSON REID: I understand what you're trying to say but the fact of the matter is let's let it be germane to this particular application, that these apartments are not low income.

MS. GLOVER: Well, I thought it would give you -- of course, I know we're out of time -- at to why Southeast's image is lost. And we are trying to keep the image of Southeast and we need townhouses, because in every other I listen to everything, even -- that's the reason I'm making such a mess of it, because I'm trying to skip over and save time.

CHAIRPERSON REID: Okay. But you're saying that you don't want any apartments, any new apartments.

MS. GLOVER: No apartments. We are for development. We want development.

CHAIRPERSON REID: I understand.

MS. GLOVER: As I'm trying to explain, Children's Hospital, I haven't heard of any developer in any place, you know, we have development all over the city, but will you tell me any place that they are developing apartments. Okay. Children's Hospital, there are 500 new townhouses on Minnesota Avenue, townhouses. -- townhouses. -- that's an organization, a church organization, townhouses. They are for the low income people. And then we have -- and the other

parts of the city. I'm talking about they help people to obtain these houses, low income people, they help them to obtain these houses. And then we have -- oh, we don't need apartments. I was going to tell you about the apartments that we have on Good Hope already. I have them down here but want to skip them. I'm trying to save time, you know.

I just want you to know that have more apartments in our neighborhood than we have homes. And of course, I've lost my good neighbor. I've lived in my house for 36 years and I moved in Anacostia for 41. I've lost two neighbors. The reason I've lost two neighbors because they could not stand the apartments. People coming to visit want to know if that is a community house. I live there. Okay, I'm not going to sell my community out to a developer. I've lived there long enough to know what causes our image to go down and we've worked very hard.

And traffic, the traffic, my gosh, we had a light in the 1970's. Children would get hit right and left. At the schools, at a particular corner and they didn't want to put a light there because, you know, you have to distance your lights, you know, so many feet. But so many children were getting hit and we had to put a sign on our street to safeguard the children. And we

also got a light. Children were getting hit so much we got a light. Speaking of traffic, you know, in Good Hope in the morning, and they couldn't get past Good Hope. They had to come up our street. We was successful in having a sign put up: you cannot come in my street in the morning. I heard the traffic -- I just wanted to jump up and tell him he's wrong. That happened in 1970.

I'm just trying to -- I was missing some things.

CHAIRPERSON REID: I think we get the gist. I think that we get the gist of your testimony.

MS. GLOVER: But you know, the developer does not know, I know.

CHAIRPERSON REID: The developer does not what?

MS. GLOVER: The developer does not know. I do know what's going on in my community.

CHAIRPERSON REID: Have you talked to the developer?

MS. GLOVER: Of course. That's another thing I missed saying. When he was Almonte's I was the one who brought up the environmental. Have you taken under consideration the environmental impact, is what I asked? They tried to tell her, they told us that we

had been working. It was called the Ruben Homes, and we have been working on that home for years, back in the 70's. We won our battle.

Now, we're working on it again, trying to make Anacostia's image. We enrolled in the class up to John Hopkins University, empowerment of a community, and they accepted -- because you can talk about other organizations if you want to, but this is our membership list. We have over 147 members. And when you come to the library to our meetings, the -- and everything come to our meetings because we always have enough people, more people than if they would call the meeting.

CHAIRPERSON REID: Okay. Wait a second. I'm going to have to cut you off. I want to say, we afforded you a little more time seeing as there was so much you wanted to get out.

MS. GLOVER: You don't have to, because I didn't give a good testimony.

CHAIRPERSON REID: But I think that some of the things, some of the concerns that you have as a member of Fairlawn Citizens Association were ones that were proffered by Mrs. Jones and we have made arrangements for the information that she didn't receive to be gotten to the organization. Ms. Jones,

would you make sure that she has a copy of that, because that might, I'm not saying all of the concerns, but especially the environment and landfill and the geo-technical reports would be in the information that Mrs. Jones gets and that would perhaps answer some of your questions or address some of your questions. Not all, but --

MS. GLOVER: I don't think you can answer my questions about no more apartments coming in --

CHAIRPERSON REID: We got that. We got that.

MS. GLOVER: Madam Chair, Miss Davidson from KSI will be at our executive Board meeting next month so we'll probably bring the information.

CHAIRPERSON REID: I think that you probably want it to be gotten to you before your meeting next month so that when they come, if there's anything in that report that you want them to address or to respond to, then you can be prepare when they come. Don't wait until they get there and get the report because you don't have time to read it and know what's in it.

MS. GLOVER: All right.

CHAIRPERSON REID: All right. Thank you very much, ma'am.

MS. GLOVER: I never -- I'm talking about --

CHAIRPERSON REID: We gathered what point you were trying to make.

MS. GLOVER: Thank you.

MR. KILGORE: Madam Chairman and the Board, my name is Richard Kilgore and I live at 1430 T Street, Southeast, PSA 609 Ward 6. Our family and I have lived in the area over 30 years. I worked with Fairlawn Association over 20 years. I'm the treasurer of the Friends of the Anacostia Library.

I want to respond to a realistic rebuttal to Mr. Elton George of KSI. I'm in the relevant location, approximately seven days per week and I firmly believe the very best observation of the congestion problem are the residents that live, drive and walk the area bounded by Good Hope Road, Southeast, between 24th Street Southeast to the east and 18th Street to the west. Let's deal with the daily facts from the horse's mouth, not periodical visitors from KSI traffic experts or other infrequent visitors.

Now it takes you about ten to 15 minutes just to get out of S Street or T Street, enter Minnesota onto Good Hope Road during the morning or afternoon rush hours. The present congestion and

traffic right now in the area by the senior citizen building at 25th and Good Hope Road, the barber shop, cleaners, shoe shop, carry out, dentist office, beauty shop, Skyland Liquors, CBS truck store, post office, Burger King, McDonald's, Kentucky Fried Chicken, Popeye's, DC training center which is open now and that was formerly the old Safeway before they moved over to the Good Hope Marketplace and two gasoline stations in that areas, Murray's body shop which is the old ACP Chrysler dealer and Mason's funeral home which is there and of course, they're extremely busy year round. Of course, we now have a laundromat where one of the Popeye's used to be. And of course, the congestion by the apartments that are already there, Marbury Plaza, Skyland apartments, Wagner Street apartments and the other small unit apartments right in the immediate area.

Also with the Metro traffic, you have the 32 friendship bus, the V-5 to Fairfax Village, 90 Anacostia bus, 92 Garfield bus, the B-2 Anacostia station bus, Duke Ellington bus. McClain Garden bus and the various handicapped buses and vans for the seniors and various handicapped children. And of course, with the school day cares you have the schools and also the day care, Ketchum elementary school, Stanton elementary

school and various outreach centers.

Speeding is not controlled satisfactorily, for example, if you travel down Good Hope Road or Naylor Road from the Good Hope Marketplace your car will reach approximately 45 miles per hour by the time you get to the light to make a turn to go into Marbury plaza in the 2300 block of Good Hope Road. I firmly believe that the traffic regulations state, or I believe it's stated that over 20 miles per hour is considered reckless driving. I think it could lead to five points on your permit and also a possible driver's suspension. The traffic safety factor is very prevalent there because of the number of senior citizens at the top of the hill and also the children.

Just to do I guess a little arithmetic relevant to that, with the 5,280 feet -- and if a car is speeding, doing 60 miles an hour, it's doing roughly about 88 feet per second. Of course, 30 miles an hour which would only be five miles over the speed limit of 25 miles per hour, a car will be traveling 44 feet per second and of course, even at the 15 miles per hour in the school zone, it still would be doing approximately 22 feet per second. So what I'm really saying, if a car is just five miles over the limit, the reaction time is half a second for the pedestrian to react and

another half second to react, to respond, to get across the street. That person really don't have adequate time to get from one side of the street to another at the intersection.

The other congestion, basically let's focus on the a.m. rush hour, 7:00 to 9:30 a.m. and the p.m. rush hour, 4:00 to 6:30 p.m. Of course, you go the opposite of the streets during the morning and the evening rush hours. Now, also was mentioned with KSI about 176 luxury garden apartments. And I don't think their figure of roughly about a half or three fourth cars is a realistic figure. If you have 176 luxury apartments, I feel basically there will probably be about three cars per family. So you're looking at 528 additional cars just with the luxury apartments.

Then if you have 33 single families, you're looking at roughly 99 more cars and that's 375 parking spaces. You've got 527 cars. So what are you going to do with the other 152? Put them in the Safeway carts? I don't want you to forget the junk cars, illegal parked cars, the burnt cars, the paper tag cars, etcetera. We don't need additional apartments because there's too many vacant apartments, boarded up apartments in the immediate construction area now. What we need are single family homes. Single family

homes is the answer.

Now, at our last --

CHAIRPERSON REID: Sir, you know you're exceeding your time? Do you want to summarize real quick?

MR. KILGORE: I can summarize. This is the final page.

CHAIRPERSON REID: All right.

MR. KILGORE: Going back to the presentation that was here on the 19th, did they speak about the 17,000 vehicles per day. And if you do 365 times 17 you're looking at 6.2 million, an astronomical figure that would be right within that corridor. Based upon 280 hours, work hours -- I'm using the government figure -- then you're looking at 6.2 million cars, additional cars right in that immediate area which will create additional safety factors for seniors and for the students.

So in my final summation, I recommend that this application, number 16547 be denied. Thank you for your time and attention.

CHAIRPERSON REID: Your name?

MR. KILGORE: Richard Kilgore.

CHAIRPERSON REID: Did you submit your testimony?

MR. KILGORE: I have a long hand, which I can submit. I had the young lady make a copy for the record. But it's not typed or computerized.

CHAIRPERSON REID: That's okay.

MR. KILGORE: But I think it's probably legible enough to read and understand.

CHAIRPERSON REID: Your name is Mr. Kilgore?

MR. KILGORE: Yes, ma'am.

CHAIRPERSON REID: All right. Thank you, sir.

MS. GLOVER: May I ask one question? Would you please tell me where any more apartments are being built in the city with all this development?

VICE CHAIR SOCKWELL: Actually, Mrs. Glover, Mrs. Glover, I'm over here. I'm behind this.

MS. GLOVER: Oh.

VICE CHAIR SOCKWELL: Actually you would be surprised to know that in upper northwest apartments are being built wherever they can find the space, multi unit high rise buildings, luxury apartments. The firm for which I work is building two of the most discussed buildings right now, and some of those apartments, as sale units, are selling for as much as four and five hundred dollars a square foot.

MS. GLOVER: Well, what part of northwest do you live in?

VICE CHAIR SOCKWELL: It's not where I live. It's where our company does work.

CHAIRPERSON REID: Let's not --

VICE CHAIR SOCKWELL: You're saying they're not being built. And I just want to let you know that apartments are really being built.

CHAIRPERSON REID: Okay. And Mr. Sockwell has made that point, and Mrs. Glover, I hope that you received it.

MS. GLOVER: Yes, yes.

MR. WALLACE: My name is Wendell Wallace. Madam Chairman, members of the Board of Zoning and other concerns at this session, as a resident and homeowner, living in the 1900 block of Good Hope Road for the past 29 years, I, too, have concerns about the new development at 18th Street and Good Hope Road Southeast or on that square 5735 and related adjacent lots and squares.

Number one, I am very much concerned about the retaining wall the developer intends on building to block the continuous movement of soil or soil erosion. Where will it be placed? How will you direct this water to the other side of Good Hope Road? And I would

appreciate if these questions would be held until I could finish my report. I have other questions for the developer.

The exits to and from the new development, could you please explain in detail where they are to be located? Number three, as you know, we are already saturated with apartments and vacant apartments. Therefore, we would like to see homes built in that location.

CHAIRPERSON REID: Okay. Mr. Wallace --

MR. WALLACE: And the repair and renovation --

CHAIRPERSON REID: Mr. Wallace.

MR. WALLACE: Yes, ma'am.

CHAIRPERSON REID: Excuse me. Not to cut you off, and remember we asked that you not reiterate what has already been said over and over and over again. So we're clear on that. Just please give us the testimony that you have that is something that we haven't heard before. This is what we would like.

MR. WALLACE: Okay. Anyhow, continuing on, without the information on the homes, I would like to see more detailed drawings of what is apartments and what is homes on your drawing, on your vague drawing. I believe that there is also mention of a traffic

light; is that true? Could you please give us the exact location of this traffic light?

Also I have rebuttal in reference to the people who were speaking here before in behalf of the development. For instance, Mr. Lockridge said he was the only one, as I recall, he was himself, not the school board, but yet he made reference to statements that were given him or he had already researched for the school board. This was not his own opinion. This was not his personal opinion. Ketchum, Anacostia and Kramer are the schools that are in that area, not Stanton. Stanton is not even in walking distance of that development.

This was the gentleman that said, or I think someone said that Stanton was very close and made reference to how Stanton would make reference to the community.

CHAIRPERSON REID: A couple more minutes.

MR. WALLACE: Also this gentleman here, Robert James, president of the Ward 8 Business Council, he said property values himself are not up in that area. So how do you expect to sell these homes for $190,000 which means that instead of building homes, the developer will probably resort to building apartments in that area, and keep us again in a high

impact area. It takes me from 15 to 20 minutes. I live on Good Hope Road, but it takes me from 15 to 20 minutes to get out into the traffic to go down to the bottom of the hill. I hope, in summary, that you really take the concerns of the homeowners, people who live in the community, people who have withstood all the difficulty and who have also had sons and daughters to attend the public school in Anacostia with others who have come from different areas. Thank you very much.

CHAIRPERSON REID: Thank you.

MR. WALLACE: I do hope that the developer will be able to answer my questions.

CHAIRPERSON REID: Are you with --?

MR. WALLACE: Yes.

CHAIRPERSON REID: Through your president and Mrs. Jones, those questions that you have just proffered to you would you please insure that she has them. She can then get them to the developer so that they could be responded to and then you have a meeting.

MS. JONES: The second Board meeting.

CHAIRPERSON REID: And KSI will be attending that meeting and we will then see the submission as to the responses that they had for your questions contained within Mrs. Jones' report.

MS. NEAL: And that will be part of your decision making process?

CHAIRPERSON REID: Absolutely.

MS. NEAL: Okay. Thank you.

MR. WALLACE: Thank you very much.

CHAIRPERSON REID: Thank you. All right.

MS. NEAL: Thank you very much, Madam Chair and members. My name is Patricia Neal. I reside at 1434 T Street Southeast in Anacostia. I am right in the area where this development is to take place and where I'm purchasing my home will be greatly impacted by this development. My neighbors are on both sides of this issue, and my friends, and I do mean that we are neighbors and friends. We all have a love for Anacostia and we're just performing our civic duty here.

We have, myself, I speak for myself. I have a testimonial that's written and I will give it to you. I will not read this material. I'll just recap what I have here.

First of all, let me tell you that I have lived in Anacostia for more than 27 years. As Ms. Glover was alluding to, trying to allude to earlier, we remember the days when Anacostia was nice, clean, respectable and safe. And she is absolutely correct.

We did notice a decline in our neighborhood with the influx of apartment dwellers. I won't just blame the apartment dwellers, because also with that pack, there was that particular type of dweller that came in the neighborhood, came also the derelict landlords to keep the buildings up. I'm very, very much elated, Mr. Knapp, that you want to come to our neighborhood with development. We want others to come there, too.

Homes are a welcome addition there, but apartments just are not. The thing that I fear most about your development is that I'm very leery that you're going to be able to attract the type of people that you hope to attract in that area. And I'm wondering at some point, and I don't blame you for financing purposes, you might even resort to Section 8 type financing for your apartments. That would not be nice. It just would not be at all. Those who live in Marbury plaza and Mr. King who so eloquently sat up here last week and told you how grand his building was. I want to tell you right now, that was grandeur of yesterday, it is not today. Marbury plaza is now Section 8.

I've noticed that most of the people here who are supporting the KSI proposal, with the exception of Mr. Gray who is a long time friend and neighbor, I

know that he is a long time resident homeowner, these other people are apartment dwellers. I can't imagine them wanting to go from one apartment to the other apartment. So I'm kind of like leery as to the type of people who are really going to be attracted to this development.

We need homeowners there. Home ownership anchors the neighborhood not apartment dwellers. They tend to be transient people. They just do not -- they're just not involved. They're good people. They're nice people. But they don't tend to mix in well with civic responsibility, like homeowners do. The only thing I expect the Board to do, and I won't reiterate things that we've already hashed, give me as a homeowner the opportunity to have my neighborhood restored and to be just as nice as other upper northwest neighborhoods. And the thing that will bring that type of niceness back, I'm am convinced, is home ownership, not more apartments.

I do disagree with you and I have some problems with you all calling these middle income apartments. You know, if my calculations are correct, you don't need really a middle income to get into Mr. Knapp's apartments. You don't really need that. I'm not concerned about the impact on the schools and all

because I believe that the type of people that you're trying to convince that are going to move into the apartments and the type of people don't want to go to Stanton anyway and definitely not to Anacostia and certainly not around the Kramer. That's a war zone.

Ms. Glover has already said that our neighborhood is talked about all over the world. And this is my ending thought. I went to Europe and people knew about the killings in Anacostia. Can you imagine how I felt?

CHAIRPERSON REID: All right.

MS. NEAL: I won't go on anymore. But just give us the opportunity to be a grand neighborhood.

CHAIRPERSON REID: I think that you most adequately expressed what your feelings were in your testimony and we appreciate that. Thank you.

How many more people? Are these the last two? Come up, sir. So we have three more and then Mrs. Jones, you're going last.

MS. JONES: Yes.

CHAIRPERSON REID: All right. So we have four more and then Ms. Jones.

MS. JONES: No, three more.

CHAIRPERSON REID: All right. Thank you.

MS. WELLS: My name is Mary Wells. I live

at 1822 18th Street Southeast, and I've been there for over 25 years. I'm just going to add a little portion to the traffic that wasn't mentioned before.

You know, the traffic is very congested on Good Hope Road in the morning and evening. It's almost impossible to make a left turn in the morning or on the north side of 18th Street. Also the people use 18th Street as a shortcut to Minnesota Avenue. The traffic is very heavy. They also come down and do not stop at the stop signs at 18th and T or the 18th and S.

CHAIRPERSON REID: Okay Ms. Wells, you know that we've heard a lot of testimony about the traffic congestion, the problem with the traffic light and pedestrians, safety issues.

MS. WELLS: This is the side street. They didn't mention the side street.

CHAIRPERSON REID: Several people have mentioned that it takes anywhere from ten to 15 minutes to get from the side street, T Street and other streets or to Good Hope Road, so we heard that several times. So do you have something that you can share with us that we haven't heard already?

MS. WELLS: Another thing, I had the crime report from the PSA 609. It's from January 1st to January 31st. It was up. They had 34 offenses, most

of them occurred in the area that we are talking about, the Good Hope Road corridor.

CHAIRPERSON REID: All right.

MS. WELLS: Thank you. And I think that's all.

CHAIRPERSON REID: Okay. Thank you very much, Ms. Wells. All right. Next.

MR. PATTERSON: Good afternoon, everyone. My name is John E. Patterson of 1905 T Street Southeast. I've lived there for the last 23 years and I have two children that grew up there. All the things that are said here this afternoon, this evening is true as far as traffic congestion, overcrowding and everything like this.

I have no problem with new houses, homes being built in the area and even apartments. I know that things change with progress. We do need change in the southeast area, and if this is going to bring change to our area, and I hope it's a good change, then I'm for it. But if it's going to make things worse as far as everything else that's been said goes, then I'm against it. And that's really all I have to say. Thank you.

CHAIRPERSON REID: So what are you saying is bad? Are you saying that you are for this project

or are you against the project? I heard you say that you're for new homes and apartments and the progress in your community. Yet you're testifying in opposition.

MR. PATTERSON: I think that this project is fine, it's just too elaborate. I believe it's kind of overpriced for our area. And that's about all the opposition I have against it.

CHAIRPERSON REID: Thank you, Mr. Patterson.

MS. FREEMAN: Good afternoon, Madam President and panel. I'm Mrs. Vivian Freeman and I have lived at 1820 18th Street Southeast for over 33 years.

CHAIRPERSON REID: What's your name again?

MS. FREEMAN: Vivian Freeman.

CHAIRPERSON REID: Freeman?

MS. FREEMAN: Yes. I agree with the things that we have spoke of today, that we do want a better neighborhood. We would love to have Anacostia have a new face. We would love to have a new beginning but we do not need more apartments. That is not a new beginning for Anacostia who is already overcrowded. Anacostia has gotten so overcrowded until the neighbors now have instead of beautiful yards, we have concrete in the back in order to park your car. We find that

when a car is broken down, it stays in our community for four, five, six weeks. We don't need that. Abandoned cars bring drugs. When you find drugs you find slums. We have been there too long for slums.

Since everybody has elaborated on all of the good things that we need, I will not take the time to do that. But right now, I hope you consider give us more homes. Homes give stable people. That's what we need. We need this new beginning, a new life for Anacostia. And I thank you for your time.

CHAIRPERSON REID: Thank you very much, Mrs. Freeman. Next witness.

MS. THOMAS: My name is Heddy R. Thomas. I live in Skyland apartments, 2405 Good Hope Road Southeast, apartment 1404. And I know that people have said -- I've seen and heard the reports that the different civic associations have said that they are all for this particular situation. But we are not. If I were to take a poll right now in Skyland right now, you would overwhelmingly be turned down. If I could take a poll right now where I live, I could find out people that their opinions have not even been sought after really. They don't even know anything about what's going on in this particular area. But they have been said that we all approve of the apartments.

That's why I'm speaking up.

I've been living in Skyland since 1980. Now, William D. Smith came in there in 1990. I have to thank Mr. Smith for what he's done, because that place was run down, beginning to be run down. He came in there and refurbished that place and it's really a decent place to live now. Where if you went down to Parkland where I used to live long ago, too, and he's refurbished that and it's really beautiful now. And now he's building townhouses, which is good. What I'm saying is he didn't come in there building apartments. He took the existing structures that was already there and refurbished them so people could have a decent place to live.

CHAIRPERSON REID: Are you saying Parkland is apartments or townhouses?

MS. THOMAS: Parkland is apartments, but they've been there.

CHAIRPERSON REID: Renovated apartments.

MS. THOMAS: Renovated apartments. In fact, there are condominiums, too. They are beautiful. I lived there in -- I moved out of there in 1967. I've been there for 13 years. I moved there when they were brand new, when they had no roads and everything. It was terrible when it went down. But Smith came in

there and he did a beautiful job. Just like he did in Skyland. You know, the place was run down when I was living there. The people didn't do a good job taking care of their apartments. But I have to William Smith credit. He has come in and done a beautiful job and I admire him for that. That's what everybody should do. The apartments that's there, run down, go in and fix them up. Don't keep building more apartments. We need homeowners, people who put the roots down and stay there. Those transients can't do a good job.

I'm a 70 year old woman. I've been where I live for almost 20 years, almost 20 years. But everybody is not going to be like I am, stay right in the same apartment for all that time. They're not going to do that. They're going to be moving place to place; therefore, you don't have any stability. How are you going to put down roots and have a community. That's not a community. Transients can't make a community. That's really wrong. Thank you very much.

CHAIRPERSON REID: Thank you. All right. Ms. Jones.

MS. JONES: I have some testimony that some people that came on -- a gentleman came on the 19th but he had to go out of town last week. And I called and Ms. Pruitt Williams said I could read his testimony.

And he submitted a letter.

CHAIRPERSON REID: Is that his testimony?

MS. JONES: This is his testimony that he typed up and he asked me to read it. And I called and Ms. Pruitt Williams told me that he had to put a letter with it.

CHAIRPERSON REID: How many letters do you have like that?

MS. JONES: These are for the Board.

CHAIRPERSON REID: Okay. How long is that letter? And the other is just a copy of your testimony?

MS. JONES: No. And I have another one from another lady that lived in Marbury.

CHAIRPERSON REID: Go the mike, please.

MS. JONES: From the lady that lived in Marbury plaza, I have hers. And I have two more, but only one of them sent a letter.

CHAIRPERSON REID: Ms. Jones, this letter is rather lengthy. Could you not just submit it to the Board and we can just read the letter? And as I'm just kind of glancing over it, I'm seeing that basically he's raising the same types of issues, like environmental concerns and traffic concerns and parking concerns, basically the same thing that we've been

hearing. If you don't mind, in the interest of time, just submit for the record and we will read it as part of the submission that we have.

MS. JONES: Well, okay. At the end I have some more to submit.

CHAIRPERSON REID: All the ones that you have, for instance, in opposition that we don't already have, then give it to staff and they will make copies for us and we will then read it prior to our meeting.

MS. JONES: Okay. Well, let me give you my testimony.

CHAIRPERSON REID: How many do you have, Ms. Jones?

MS. JONES: For each one of you all.

CHAIRPERSON REID: Okay. And you had some other testimony, too.

MS. JONES: I think they're in my bag.

CHAIRPERSON REID: Just make sure that you submit that to Mr. Hart.

MS. JONES: Okay.

CHAIRPERSON REID: Go ahead.

MS. JONES: I said good afternoon but it's evening now. My name is Thelma E. Jones. My address is 2217 T Place Southeast. I am here today to testify in two capacities. One as a resident and two, as the

president of the Fairlawn Citizens Associations, Inc. I will be really iterating my and residents of this community's opposition to application number 16457, filed by Phil Feola of Wilkes Artis Hedrick and Lane Chartered and Madeline H. Dobbins of Artis and Hadden LLP to represent the owner of the property Kass M.A. LLG, 1568 Spring Hill Road, Suite 400, McClain, Virginia, 22102.

First, I would like to request documentation that I use in my testimony today be entered into the record as part of my testimony. The proposal states that KSI is to develop the east parcel of land upon approval from BZA, the KSI will sell the west parcel to Vertex LLC to be developed by Mr. Gene Edgecombe. Mr. Edgecombe will or has applied to the D.C. Department of Housing and Community Development for assistance to develop the west parcel. Mr. Knapp of KSI Services will develop the east parcel, even though Mr. Knapp has stated to me that he did not want to develop the west parcel because he wanted to use his own money and receive no assistance from government funds.

Now, if Mr. Knapp is to build these apartments that he's stating will cost a great amount of money to prepare, drain and compact soil, which they

have already found some small areas of water mentioned in one of his environmental statements, and to offer the rental to medium and moderate income families. I have no doubt in my mind that KSI Services will be or has supplied to HUD or some other government agency for monies. Under Exhibit Tab B in KSI's portfolio reads as follows: Moderate income housing programs in addition to its luxury apartment portfolio KSI management is the area's largest provider of moderate income housing. These buildings developed by KSI Service Inc. come about either in the form of new construction or by rehabilitation. Government sponsored tax credits allow KSI to market these properties as affordable and to provide quality housing to those in the community that earn less than the area's median income, typically about 60 percent. KSI partners with companies such as Sun America and HUD to build and manage these types of properties.

I have handouts about the rent scale according to income that I obtained when I toured with KSI Services to view his apartments in Fairfax, Virginia and the renovated ones in Bethesda, Maryland. I also have a printed handout which was given to us at a Fairlawn meeting. Incidently, when Fairlawn residents asked Mr. Knapp about renovating some of the

many abandoned and boarded up apartments he reiterated that he didn't want government money, but in my previous testimony on May 5, 1999 I entered into the record an article from the Washington Post. This is the article and I will be submitting it again. Where did I stop.

In the Washington Post regarding the Bethesda project that he did with money from the Maryland Department of Housing and Community Development. I would like to show the pictures of some of the dwellings that Mr. Knapp refers to in the Frederick Douglas community. These pictures are in close proximity to the proposed development of homes at Woodmont. Some are approximately two blocks away from the development. And I have these pictures here that I'd like to take time to show these pictures. Or would you like for me to wait until the end of my testimony?

CHAIRPERSON REID: I'm sorry. I was reading further in your testimony. Do you want to submit the pictures? You can hand the pictures in now. Do you have copies for all of us?

MS. JONES: I have a display here.

CHAIRPERSON REID: That would become part of the record. Do you want to refer to them in your testimony first?

MS. JONES: Yes.

CHAIRPERSON REID: If you could bring one of those easels up closer so that she can display it. And then she can refer to it. You want to turn it a little bit more that way. A little bit that way. All right. Just do one picture at a time, do one board at a time, Ms. Jones. Can you both at the same time?

MS. JONES: These pictures here will reflect the vacant apartments that's in close proximity to the site. Here you have two pictures of the site that's right in the middle here. This one is the view that I took from up on the Skyland Street that looks right here, where the gully is, where Wagner Place is.

CHAIRPERSON REID: Is the reporter picking her up? Okay.

MS. JONES: This is the gully, when you come into the site from Wagner, this gully is to the left where they're going to build a street. This gully here on the opposite side -- I didn't take any pictures of the Habitat housing, because I didn't have much money. So coming off of 25th Street where they're going to come in from Wagner off of 25th, come into Wagner to the site, this is a vacant house here. It's boarded up. It's been like this for years. And it's vacant and boarded up. You come down Wagner, there's

two -- 12 unit apartment buildings here, and one lady told me, we saw when we were out taking the pictures, that one of these buildings, and I think this is it over here, where it had been set on fire three times. And she said she wishes somebody would do something about it, right here. This one is at 25th behind -- when you come down 25th Street right at the fence of the Skyland apartments, this is where the people have begin to dump the trash. That's what these two pictures here depict. This house here is on the other side of Wagner. It's two vacant houses here. And this one here is -- oh, I haven't gotten there yet.

This is directly across the street from this site, directly across the street. These are condominium apartments. They turned condominium before I retired, about four years -- and I've been retired since 1993. You can see a for sale sign in there. They have not been able to sell these apartments. Right over here, this is the side -- this is the front. This is on the Good Hope Road side. This one belonged to the same group of units which is on Altamount side, when you go off of Good Hope Road to Altamount. Further up, this is a part of new Horizon apartments which is the side on Altamount, this whole area is vacant. This site sits right in front of Altamount.

You come up Altamount, this new Horizon apartments it's vacant. Somebody could do something with that.

This one is across the street from Ketchum elementary school. It's two apartments there but I didn't get the one. Also there's a vacant house that's boarded up right on the corner where one of my members who lived over in the Frederick Douglas area, that's a member of our association, he talks about these and the principal at Ketchum had a hard time closing -- getting this to close down because of drug traffic in that vacant apartment. So they had a hard time closing it down.

Now, where is my other one?

Now, these apartments here, this is the site you come down off of 18th Street into that park area where, you know, they have the picnic tables. This apartment building here, it is a block down from this area where they're going to build the new homes. You heard me ask the engineer about building a street that would come up the steps. It's two of these large vacant apartments here, it was three. This is all 18th Street, right on the corner from where Mr. Bernard Gray lived, that testified here the other day. These vacant apartments, it was three of these buildings. This is the side on 18th, this is the side on B. Further down,

a non-profit agency bought one of these buildings and has rehabilitated it and now it's a home for AIDS families, where people have AIDS. These houses, which this is Fendel Street and this is the houses -- I took this one in September or October and the weeds hadn't fell down. These are the same group of little houses here that's boarded which is one block from this site. Over here across the street from these apartments -- now, this is the same building. This is the front of it. This is the front and that's the side.

This is apartment building, right where this site is, you go to the end of the street where these buildings are, and these are the front of the buildings on W Street. I had some pictures with the back of those buildings, but I don't know what I done with them. But anyway, these are a little further away from the site. The reason I took this, this is about three different complexes, one, two, three, four complexes in here. And if they didn't want to rehab them, they could knock them down and build up some single family houses or remodel or renovate them. And this is just a small sample. This is the back of these apartments that's on Douglas Street. This one is about two blocks from 18th and B where this was at 16th and W, and so these are basically -- these are right at the

site. These are close.

But I took a tour with the Department of Housing and Community Development to tour them through my community to show them all of the vacant apartments, boarded up apartments. And he took pictures of every one of those. The lady of the Department of Housing and Community Development, Mr. Howe from the Department of Community -- from Consumer Regulatory Affairs and they have sent these owners letters to either come in, rehab or fix up or be torn down. And I'm always out in the community looking around at different things. This isn't even the tip of the iceberg of what's vacant and boarded up.

This is on the south side of Good Hope Road. Oh, let me get back. My time is up. Here, they go into the record.

The construction of an additional 176 unit apartment complex added to 672 units at Marbury plaza, 213 units at the Skyland apartments, and 231 units at the Park -- apartments, brings to this a total of 1,292 apartment units, not to mention the apartments that are directly across the street from the proposed KSI project which they didn't include in their testimony. KSI does not mention the Altamount condominiums, the new Horizon apartment units nor the Naylor Overlook

apartments. KSI does not mention them because including these occupied units, the density would be overwhelming in that small area once other vacant apartments throughout the Frederick Douglas and Fairlawn communities have been renovated or rehabilitated. Mr. Knapp does not speak of the apartments turning to condominiums directly across the street from the site he intends to build his apartments. These condominiums are not selling. Under Tab E lists letters of support, most of those letters were obtained by Ms. Rosalind Willis who wrote the letters and asked the persons to put the letters on their letterhead and sign them. Many of the support letters are from people who do not live within 200 feet of the site nor in close proximity to the site.

Now, I want to take a minute to talk about the letter the Chair of ANC 6C submitted. I live in Chairman Ronald King's single member district. He did not inform me nor anyone in this community about the ANC meetings. The ANC voted to support this project on October 4, 1999. I have been attending ANC meetings on the first Monday of the month long before Mr. King became an ANC, a little over one year. The only notice Mr. King has put out in the community was about the economics summit and I helped him to do that, with the

help of the Fairlawn Citizens Association block captains. And I want to speak about the economic summit.

On the economic summit, they were deciding not to have it because they felt like they weren't going to get any participation because at that time Mr. King and the other ANC that spoke here the other day, they were the only two working ANC's and I worked with them. I told them, go ahead, don't stop, you've got to keep going. I encouraged them to go on with that economic summit. And at that economic summit Mr. Knapp then provided refreshments for the people which made it very nice in the middle of the day.

Mr. King held a meeting for his single member district in the Marbury plaza which I didn't know about. His letter does not give a date of the meeting. The residents of Fairlawn have not had the privilege of being invited to SMD meetings by ANC commissions. And I'll talk about -- I'm going to go through that letter because you all have it on record, and he said that they put notices out. No notices went out. I have it here and I'll talk about that in a minute.

The resolution which was included in the record, is not the voted on at the October 4th, 1999

meeting. At the meeting I asked for a copy and was told they could not give me one at that time because KSI had just faxed the resolution to Commissioner Johnson that evening, but that I would eventually receive one. I received a copy on Thursday, February 3rd, 2000. Commissioner Johnson put it in my door. Monday, January 3rd, 2000 ANR 6C Commission did not have a quorum for the meeting. A call was made to the home of Commissioner Wilson who was sick in bed with the flu, to come to the meeting so they could take a vote on the agreement which was prepared and presented to the community by Mr. Bernard Gray of the Frederick Douglas Civic Association in the presence of KSI representative Sara Davidson.

The four commission members who voted to the agreement were Oliver Joss and Drake Wilson, Ronald King and Tamara Spade. The commissioner for 6T04 abstained because she had just been sworn in. I asked if Sara Davidson was going to sign for KSI since she was there as a representative. The agreement had two corrections to be made, and Mr. King stated that this agreement was a draft. I then raised the question, why wasn't draft stamped on the agreement? When a document is brought to the committee and voted on without the community informed. The document at the ANC meeting on

February 7th, 2000, the second agreement which was modified by KSI was presented to the community.

I would like to talk about the traffic.

CHAIRPERSON REID: Ms. Jones, I'm kind of reading ahead and basically the traffic and the parking and the public transportation issues have been addressed. I think that they have been adequately addressed. So if you could just drop to page 11, Marketplace shopping center.

MS. JONES: Okay.

CHAIRPERSON REID: I appreciate that.

MS. JONES: The Good Hope Marketplace shopping center that serves Wards 6, 7 and 8 has one grocery store, Safeway and there's some doubt about bringing another supermarket to east of the river. Giant and Safeway have flatly refused. The documentation which I presented at the May 5th hearing about Ketchum elementary school is basically the same. And I will be putting that into the record today.

CHAIRPERSON REID: Okay.

MS. JONES: Crime is still a problem in this community. I am submitting copies of the recent statistics from the Metropolitan police departments 6 and 7 districts who monitors that area. Last week at our civic meeting Mrs. Marin Brooks from DCHD stated

that nothing is planned at this time for the lower end of Good Hope Road on the historic district side.

In closing, we the members of the Fairlawn Citizens Association are aware that development of that site is to take place. All we ask for is a fair decision of what type of development that will keep this community stable. We would like to see single family homes instead of having to replace roofs, fix plumbing, replace heating systems just like what is happening at Marbury plaza now.

The Fairlawn Citizens Association requests that the Board of Zoning take a good look at our testimonies. We do not want to end up with more abandoned and boarded up apartments in our community. I was notified of last Wednesday's hearing on Monday, February 7, 2000 by Mr. Rosenstock of the Park Service. I called Ms. Valle and inquired about the hearing on Thursday, February 10th, 2000. At 4:45 that evening Ms. Sherie Pruitt Williams called to inform me of that hearing. Please take a close look at the Park Service's letter because they still have some doubts about the construction and 40 foot wall on the southwest portion of the east property.

The Fairlawn Citizens Association requests that application 16457 be denied. If the Board feels

the application be approved we recommend that the following be included in your report. Number one, the statistics of occupancy for the apartment buildings be linked to the completion of the single family homes and the two should be completed for occupancy at the same time, all structures be compatible to the existing structures already in the community with no aluminum siding. And three, the fronts of all the homes to be built on the main thoroughfare face the homes directly across the street on Good Hope Road. Please assure us that the District of Columbia agency which has jurisdiction and responsibility for that endeavor be apprised. Thank you for allowing me to testify at this hearing.

I have an article that I wanted to submit about the parking in our surrounding areas, but I skipped over that part.

CHAIRPERSON REID: Summarize that, please, quickly.

MS. JONES: Huh?

CHAIRPERSON REID: Just give us the gist of the article.

MS. JONES: I highlighted the areas.

CHAIRPERSON REID: Just tell us. Tell us then submit it.

MS. JONES: The article says that the lack of parking has suburbanites fighting. Parking problems in nearby Virginia -- and it's also in --

CHAIRPERSON REID: No. Does this pertain to the subject application, the property?

MS. JONES: Well, the reason I brought this is because we have been talking about the overflow of traffic and people parking in our area from the Marbury plaza apartments. So I brought this in so that you could see that this what is happening, not only -- it's already happening in Virginia. They are taking -- first, the homeowners were painting no parking in front of their doors. Then the government went back and repainted over those, so then they started putting orange cones out in the street to keep the apartment dwellers from dwelling. So this is what this article is all about.

CHAIRPERSON REID: Would you submit it?

MS. JONES: I will submit all this for the record. Also I have the Ward 6 and Ward 8 articles out of the Ward plan which was passed in April -- let's see. When was it? Anyway, DC law 12-275, comprehensive amendment act of 1998. I will be submitting this. I have one part is from Ward 6 that talks about the Ward 6 objectors for housing. Also the

Ward 8 housing at -- and these were -- and I've highlighted areas of this. So I will be submitting this also to the record.

Also I have a letter, copy of a letter that I sent to Ms. Ellie McCarthy of the Director of Review, Office of Planning, after I called Office of Planning and talked with the people at Office of Planning and found out what was going on. So I sent her a letter and I will submit this letter also for the record.

And also I think when Mr. Knapp testified he said the apartments would start off at 750, but I have a price list where the apartments would start off at 725. And I have a price list for the ones he had did in Fairfax, Falls Church, also one that he did in Bethesda for the apartments that he renovated. I will be submitting these for the record. And also a copy of my May 5th testimony because I still stand by my May 5 testimony that I presented at the Board.

And I'd like to take a minute to talk about -- and I have copies of the first agreement that the ANC's came up with and it's totally different from the second agreement. This one that was passed out at the January meeting, this one was passed out at the February meeting and then I got these the other day when I got here at the hearing. Also I wanted -- and

the letter -- I think I spoke about the letter where Ronald King wrote and said that the people had been notified. They did not send out any notices. The ANC had never sent out any notices to the community. And he has more constituents than the Marbury plaza people.

Also I have the copy of the resolution that they sent in, is nothing like the resolution that they voted on. They voted on the resolution in October but it's not the same, because the one they voted on is the one that he said KSI faxed to him. In fact, I came down here and got a copy out of the record, and it's not the same which they voted on that he submitted for the record.

And then also I have a copy, even in 1995, when Marion Berry was the mayor he was asking for less multi family buildings in his planning, Title 10, for Ward 8. Also I have one that when Sharon Pratt Kelly was the Ward 8 they wanted to see less multi family buildings. So I will be -- if you are interested to have a copy of this, I will submit it and also the one from Sharon Pratt Kelly, that she didn't want to see multi family buildings.

CHAIRPERSON REID: Okay.

MS. JONES: So does anybody have any questions?

CHAIRPERSON REID: Mrs. Jones, there's one question I have. In your testimony you said that if the Board feels the application be approved you recommend that the following be included, in your report. You mean the order?

MS. JONES; I guess that's what I mean.

CHAIRPERSON REID: Statistics of occupancy and two, all structures are compatible with existing structures and the fronts be built on the main thoroughfare facing homes directly across the street on Good Hope Road. Have you discussed that with KSI?

MS. JONES: No -- yes, I did. I discussed it with her.

CHAIRPERSON REID: Those concerns that you are stipulating in your testimony, I think that after you've read their report and then they come to your meeting, then you can talk to them to determine whether or not they would be amenable to these suggestions that you have. See what I'm saying?

MS. JONES: I hear what you're saying. I'm hearing what you're saying. I don't know who can answer this question. On the 19th of January when we came and I went home and I went up the hill, I had to go to the postal meeting, they had a backhoe out there, and at first I called Mr. Rosenstock and they were

moving dirt. So he said they said they were taking samples. Then I talked to Sara, but they have been moving a whole lot dirt. That backhoe has been up there backhoeing. So I'm wondering, because I read somewhere in the rules and regulations that if he's on appeal that can get permission to do something. But we're not here for appeal I don't think, are we?

CHAIRPERSON REID: No.

MS. JONES: We're just here for a reconsideration, right?

CHAIRPERSON REID: Re-hearing, right.

MS. JONES: They were up there yesterday evening moving dirt, yesterday in the daytime, with this backhoe just moving dirt. So I mean -- and when I called -- and the reason why my testimony ends like that is because of the vibes I picked up. And let me make this clear. I'm going to tell you all how you all got that Office of Planning report. I kept calling. I had Vanessa Eakins and Mr. Colby at my October meeting. And I asked Vanessa Eakins at that time, I said, Vanessa, what is going on? Why can't you all get the report? All she talked about is that's the reason why they're going back for reconsideration and they didn't receive the notice, when the notice is in the files. I don't have mine but it's in your record. And then I

kept calling and calling. And finally I got ahold of someone -- and one time she wouldn't return my call. So I called Mr. Altman's office and she got in touch with her and she called. Then when I tried to get in touch with her again, she told me she didn't work there anymore. She didn't do reports anymore.

She didn't tell me that Mr. Colby had retired. She said Mr. Colby, something about Mr. Colby. I'm not going to say what she said because I don't want to say something she didn't say.

CHAIRPERSON REID: Mr. Colby now works as a consultant.

MS. JONES; I know that now. I found that out after I kept calling. Then when I asked Mr. Colby, I said, well, Mr. Colby, are you going to do the report? He told me no, I'm not doing no report. Mr. Cochran does that now. I said, can I have his number? So I talked to Mr. Cochran and Mr. Cochran told me hold on. He told me that he will call me back. When Mr. Cochran called me back, Mr. Cochran told me, he said, Ms. Jones, he said, I just been told that some cases in BZA that we do not have to submit a report. We do not submit reports, and that is one of them.

I said, no, Mr. Cochran. I said, this is why they're going back to reconsideration. And I told

him, I said, Vanessa Eakins was at my executive Board meeting and this is what she was saying, the reason it was denied. And he said, well, she said they didn't get a notice. I said, you all got two notices and I kept trying to call in here to get them to fax the notices to Mr. Cochran. So at 12:00 I called Mr. Cochran myself and told him I will bring him a copy of my notice. And I took it up there and took him a little piece of the paper out of the book, where it said it would be denied. And showed him that 25.6 of the zoning regulations. That's why it was denied because they didn't put in a report. And when I asked him, I told him I had Vanessa Eakins at the meeting. And he said, that's who told him that they did not do reports for this type of hearing. This is one of the types of hearings that they didn't do reports.

Then I kept calling and calling. I got Mr. Colby and he said he was working on it. Then I called back and Mr. Colby was gone home sick.

CHAIRPERSON REID: Ms. Jones, obviously it's your persistence and tenacity that certainly paid off. We got a detailed report. And we appreciate that.

MS. JONES: Yes.

CHAIRPERSON REID: So thank you for that.

Now, can we move on?

MS. JONES: Yes, ma'am.

CHAIRPERSON REID: I hate to cut you off but I think that you certainly have put together a very worthwhile presentation and your testimony has been very enlightening and I appreciate that. It was an effort that took a lot of time and coordination on your part to do so, and we really appreciate it.

Now, let's try to wrap it up.

MS. BAILEY; Ms. Jones mentioned quite a few exhibits. Did you want to put it in the record?

MS. JONES: Yes, I'm going to put them in the record.

CHAIRPERSON REID: Okay. Cross examination. First of all, do the Board members have any questions of any of the witnesses? They didn't question any of the witnesses in opposition. So at this time let me open the floor for that.

MEMBER RENSHAW: I just have a question for Mrs. Jones. Do you have legal training?

MS. JONES: No, I don't.

MEMBER RENSHAW: Well, you certainly can pass it off that you do. That's great. That's great. Good report.

MS. JONES: Thank you. I have some more

photos here of the site if you all want them. If not, I'll take these back home.

CHAIRPERSON REID: Don't we have enough?

MS. JONES: Yes, I think so.

CHAIRPERSON REID: Thank you.

MS. JONES: Did you all want a copy of this?

CHAIRPERSON REID: Yes, put that in there, too.

VICE CHAIR SOCKWELL: That's planning development Chapter one.

MS. JONES: No, it's Title 10, 1/8, 1995.

VICE CHAIR SOCKWELL: It used to be. Now it's called planning development.

CHAIRPERSON REID: If there aren't any questions for Ms. Jones.

VICE CHAIR SOCKWELL: I don't have any.

CHAIRPERSON REID: All right. Then another witness in opposition?

VICE CHAIR SOCKWELL: Yes. I just wanted to ask Mr. Terry.

CHAIRPERSON REID: Mr. Terry, would you please come back?

VICE CHAIR SOCKWELL: You had a lot of environmental concerns, Mr. Terry. I wanted to

understand the specificity of your soil related, bearing related questions. You spoke of soil stability and continuous compaction over a period of 20 years or something like that.

MR. TERRY: At least.

VICE CHAIR SOCKWELL: And rather than I guess the current practice of dynamic compaction, you spoke of piles driven to bedrock to support foundations, which is generally not required unless you're talking specifically about the apartments, and that would be a soil engineer's, that would be his call basically on the soil bearing pressures and what would be presented there and the knowledge, through test borings, what's actually down there.

You also spoke to a couple of other questions and I wasn't sure exactly what the soil base information that you used to determine that all of this was necessary would be.

MR. TERRY: Well, I didn't -- based upon my observation of what was thrown in there before they started filling it over with top soil. That's why I was concerned about it because I know that some of the metal things that they put in there will have a tendency to corrode and shift, you know, over time. And I didn't want a new tenant to come in there, I'd

say, ten or 15 years down the road and by the time water got down there and rode over that debris, I didn't want him thrust out with a high expense or it falling back on the city or someone else.

VICE CHAIR SOCKWELL: I realize that someone builds on top of that old '57 Chevy, that it's eventually going to cause the foundation to sink, and be very honest with you.

MR. TERRY: Refrigerators, tires and all kinds of crazy stuff.

VICE CHAIR SOCKWELL: Even to the extent -- I don't want to get into this -- but even to the extent that swails, used as fill swails in other areas where nothing like debris is included can cause tremendous problems with foundations, and those are things that just have to be looked into specifically for each development. Hopefully the District has the capability of making sure that such a process will be managed, if such a process does take place.

MR. TERRY: Well, if you won't reflect on that, that big sump, that big hole at the corner of 19th Place and Good Hope Road, we still have periodically -- periodically DPW still has to come down because water rushes up in the middle of the street or sometimes comes all the way over across the sidewalk

into my yard, into Mr. Wallace's yard and other neighbors. That's still going on after 27 years.

VICE CHAIR SOCKWELL: Okay.

MR. TERRY: Now, if they're going to set those apartments on something like that, in other words, as far as I'm concerned, an unstable foundation, they're putting a new resident and the community at risk.

VICE CHAIR SOCKWELL: I understand. I just wanted to get a little bit more from you on that. Thank you very much.

CHAIRPERSON REID: And those are similar questions that you will, through Mrs. Jones, make sure you -- about KSI, correct?

MR. TERRY: Well, I'll give her a copy of my testimony and we'll go over it and we'll get it more refined and directly to KSI.

CHAIRPERSON REID: Those questions should be responded to.

MR. TERRY: In fact, there's some other issues in there that I did not fail to address, because my report was so long, I didn't want to belabor the fact, because it covered a lot of the things other people are going to be talking about.

VICE CHAIR SOCKWELL: And I'm sure some of

that dovetails into Park Service concerns.

MR. TERRY: Especially that speed, and traffic light, things of that nature.

VICE CHAIR SOCKWELL: Many of you spoke of traffic congestion. There were two somewhat divergent views on it. One is that you can go 40 miles an hour and the other one is you can't go anywhere. And that of course depends upon the time of day and the number of signals there might be.

MR. TERRY: That's what they tried to go fix up.

VICE CHAIR SOCKWELL: The other thing, there has been discussion on a continuous basis about turning the houses, if the houses were to be built, turn certain ones toward Good Hope Road. That does present two issues. The first issue is that one, people want houses to face houses. The second issue is that if Good Hope Road is as bad as you say it is, no one would ever get out of his driveway onto Good Hope Road without causing even more loss of level of service to the road, which means that would become more congested as people try to come and go, evidence 16th Street. Some people have an absolutely impossible time getting out on 16th Street Northwest up above Alaska Avenue. You'll get killed.

MR. TERRY: My cars got hit so many times, in fact I had two totalled out. My cars got hit so many times that I put a -- I took half of my back yard and put a parking pad. So whenever I come out of my back yard, trying to get out onto Good Hope Road some mornings, I always sit at 22nd and Good Hope Road for ten minutes before I can get into the traffic flow. That's just getting out. And then directly in front of my house at 19th Place and Good Hope Road, there's accidents all the time, people trying to make that rush to avoid the traffic down Good Hope Road, they up U Street and go across to get to the 11th Street bridge and there are all kinds of accidents. In fact, my grandson was injured in one last year.

VICE CHAIR SOCKWELL: Thank you very much.

MEMBER RENSHAW: A further question for Mr. Terry. Your testimony was very, very interesting and on the matter of landfill, have you investigated with Metro or via the applicant about what is in that landfill, what is actually in the landfill?

MR. TERRY: Well, I know some of the things in the landfill, refrigerators, tires and all kinds of metal, furniture, all kinds of crazy stuff. That much I do know by observation, whenever they started filling in there, because a lot of the material that went in

there was not controlled material through Metro because people just took advantage of a dump site whenever they saw Metro filling in that area as a dump.

MEMBER RENSHAW: Again, there's supposed to be records kept of what went into that dump or that landfill.

MR. TERRY: I would like to know everything.

MEMBER RENSHAW: How long was the landfill open, for years or for a matter of months?

MS. JONES: Through about the early 90's.

MEMBER RENSHAW: From what to what? '80 to '90?

MS. JONES: It was around early 80's, around about '83 or something when they started dumping out there.

MEMBER RENSHAW: All right. So it's just an open dump and it was an invitation --

MS. JONES: It was just an open piece of land, just whoever owned the land, probably told them they could dump there.

Let me say this about that land. That land sits down in a gully. This land is in a gully. And what happened, I guess -- sold Habitat. In fact, the DC government -- I didn't put that in my testimony. I

guess it's too late to put this in my testimony. The DC government paid for that land with Habitat and they installed piles in there or piers or whatever to sit the single family homes on. Because this is why Mr. Knapp said they didn't want to build single family homes because the piers or piles cost too much money. But I see right here where they started 96 of them for $422 a piece for their homes. They built 96 homes.

This area, this is really in a gully. Over here, right in here, where this apartment sits back off of Good Hope Road and this is wetland, it's a stream that goes right down there about ten feet wide. It goes underneath the apartment buildings in there. Once those apartment buildings got flooded, the people, in their basements. They had to move out and I don't know what they did. Water was just going everywhere. Now, they have this big thing sitting in the middle of the yard, so I imagine -- I don't know what it is. It's a great big thing sitting in the middle of this apartment yard. But right here, by these wetlands, it's a big stream. These houses sit down -- they will be sitting in a gully and there's streams and things back here. Because the reason I know is because one of my neighbors used to work for Park. He was the superintendent of this area and up here I guess he

feels if he gets the land filled in then he could sell it for somebody to develop it, like he did for Habitat. He sold that land and gave it to Habitat and so they built houses.

But this is down in a gully. When you go off of Good Hope Road you walk down in a gully and that's probably -- this is the way all of that area was, and it was just trees, beautiful trees, because when I first discussed this project with my ANC commissioner he told me he didn't want to see anything. He like to look out at the trees. So now it's a whole different story. But that's a gully, where these houses will be built, it's down -- and you remember I asked the engineer about the 20 foot drop, where he said he's going to build a street? That's why he said he got to put some dirt over there to build a street on because it's in a gully.

MR. TERRY: It's a wet marsh in there. Remember, you and I, we took the pictures.

MEMBER RENSHAW: I would hope that someone gets in touch with Metro to ask for the records of that property and I would hope that the builders had done that, but we haven't any evidence before this Board as to what those landfills contain.

VICE CHAIR SOCKWELL: You'll have to come

forward.

MS. NEAL: I just wanted to say that as a resident of that area, I was quite concerned about that same landfill. About five, maybe six years ago I did attempt to get that information from Metro. The first thing I got from Metro was -- they denied even using it as a landfill. I never got any more information.

CHAIRPERSON REID: All right. Let's move on. Cross examination, Mr. Feola, Ms. Dobbins, do you have any cross examination questions for any of these witnesses in opposition or for Mrs. Jones specifically?

MS. DOBBINS: Madam Chair, we have no cross examination.

CHAIRPERSON REID: All right. Some closing remarks by the applicant.

MEMBER RENSHAW: Could we ask a question of the Park Service, since we just got a --

CHAIRPERSON REID: Oh, I'm sorry. That's right. Ms. Renshaw had asked previously for an opportunity to question the Park Service.

MEMBER RENSHAW: I want to thank our Park Service representative here, Mr. Rosenstock.

VICE CHAIR SOCKWELL: For his patience.

MEMBER RENSHAW: For his patience, definitely. Three cheers.

MR. ROSENSTOCK: I think we need to thank all the people of the community for their patience. I got a day's pay for this.

MEMBER RENSHAW: Well said. Well said. I went over your paper. Now, did you develop this and submit this to the Park Service, to the gentleman who is the supervisor of this area?

MR. ROSENSTOCK; Yes. And this has been worked out primarily in consultation with the applicant multiple times since this past May. We do have what I would consider a couple of tweakings of the applicant's submission here. We have worked extensively with the applicant in trying to articulate our concerns here.

MEMBER RENSHAW: I wanted to ask you about yard debris because with the positioning of these homes close to the wetlands and knowing how homeowners like to dispose quickly of grass cuttings, etcetera, limbs from trees, don't you have a fear that yard waste is going to end up on park land?

MR. ROSENSTOCK: Well, that happens on a lot of park land but we seen some conditions that are conducive to this and some that are not so conducive. Let me speak to that. We don't like to fence parks away from people. Specifically we don't like to see chain link fence to keep people out of parks. We

prefer that people enter the parks on the official trails and not cut new trails in and such like that.

What we found out is that when the fencing or the division between a home and park land is such that there's no clear division, oftentimes back yards get extended into parks, if you put up a privacy fence, you can't see over and stuff gets thrown over fences. In situations where there are transparent fences, a split rail fence, for instance, something like that, typically where the person is looking beyond the fence and into the park land, the park land tends to be treated well. We've discussed this extensively with the applicant. And also they've situated their single family homes so there are a minimum number of back yards backing up to parks and typically the park land is across the street and visually going to be appealing to the single family homes I hope. But we don't like to wall off the parks from the people. That's not our purpose.

MEMBER RENSHAW: I understand. But I also remember Bill Shields when he was superintendent of Rock Creek Park, saying that the park itself was becoming or had to deal with a great amount of dumping and that large spaces within Rock Creek Park had to be reserved for this. So I am looking at a development

which is kissing park property and it would appear to be just, shall I say, ripe for perhaps the yard debris which of course chokes off wetlands, to be distributed or dumped into the park. And so hence, my concern and I bring it up. I don't want to push on this.

MR. ROSENSTOCK: No, absolutely. And we would like to see conditions set up to encourage proper stewardship of parks. Typically when a park is fenced away from people or hidden away from people then the property is not respected. That's our philosophy. But absolutely, dumping of yard waste and worse is a problem throughout all the parks in this area, whether in the million dollar neighborhoods or others.

MEMBER RENSHAW: All right.

VICE CHAIR SOCKWELL: If I might add, Oregon Avenue, for example, in northwest kisses the park for virtually the entire length from Military Road to Western Avenue. Most of the fingers west of 16th Street north of Military Road kiss the park, and those things are just nature wonderful connections and adjacencies and sometimes there's a problem and sometimes there isn't. It's not to say they shouldn't exist.

MEMBER RENSHAW: Right. And thank you for that observation. I'm just going to skip through this

because the time is late and just a few observations for you. Number six, where the applicant is going to provide limited trail enhancement, these will include repairing culverts, etcetera. I would insert the words include but not be limited to repairing, so that you have a little elasticity there.

Number seven, on the east parcel line plantings. It's unclear by whom. Who is doing the plantings and what guarantees do you have and so if -- I am just suggesting that these words be inserted or something be inserted to tie this up.

Number ten, where you talk about a neighborhood liaison will be utilized to monitor any construction violation, who is this person reporting to? And who selects the person? Do you select the person? Does it come through the Fairlawn Civic Association? It's not clear at all.

MR. ROSENSTOCK: We intend to work closely with the community and the applicant and we're amenable to suggestions.

MEMBER RENSHAW: And number 13, where the applicant will provide permanent protection to all landscape, again it's unclear. These words sound fine, but you ought to put some teeth into them. You're talking about a tree preservation easement will be

placed on the rear yards of the single family homes. What is that easement going to say? What does it do?

MR. ROSENSTOCK: Basically a ban on development or cutting trees in the back portion of the lot.

MEMBER RENSHAW: This carries with the property in perpetuity?

MR. ROSENSTOCK: That is our intention, yes. These should be with the property rather than with the current owner. Also for the landscape plantings to screen the views of the apartments and also the reforestation plantings to augment the edges of the woods. That's our intention that protection be affixed to the property. Absolutely. That's kind of our most adamant point.

MEMBER RENSHAW: All right. The final question, with whom does the National Park Service deal? In other words, who is signing the agreement for the Park Service and who is signing the agreement for the applicant? In other words, when this comes to some kind of a funnel paper.

CHAIRPERSON REID: I don't know if there is an agreement in the works.

MEMBER RENSHAW: Is an agreement in the works?

MS. DOBBINS: Ms. Renshaw, Madam Chairman, you requested the Park Service to verbalize conditions that would be put in the Board's order. So they would be conditions that would be in your order that would be enforceable as part of that order.

MEMBER RENSHAW: Understood.

MS. DOBBINS: And there would be separate agreements, probably to deal with the conditions between the Park Service and the applicant as they work through these that are needed for the parks and for the easement, etcetera, etcetera.

CHAIRPERSON REID: I guess then we should ask Ms. Dobbins, is the applicant in agreement with the conditions as proffered to us by the National Park Service?

MS. DOBBINS; It's my understanding we are.

CHAIRPERSON REID: I think that Mrs. Renshaw wanted to have further clarification and a little more teeth into these conditions because some areas are rather vague.

MS. DOBBINS; I think some of the ones Ms. Renshaw referred to related to the easement, etcetera. Those are the kind of documents that actually will be recorded as easements.

CHAIRPERSON REID: Not that one

specifically, not that one necessarily. The one like seven. Who is going to be the liaison person to monitor the construction violations?

MR. FEOLA: Madam Chair, some of these things -- remember, this is a list of conditions -- of concerns, not conditions. And as concerns, they would have to be worked out into conditions that -- if the Park Service said we have to have these specific words as conditions these would have been written more tightly.

CHAIRPERSON REID: Why don't we ask.

MR. FEOLA: We've worked with the Park Service and they've been very helpful.

MR. ROSENSTOCK: We did not write these as a proposed order as such. If you would like some further articulation on that we will certainly --

CHAIRPERSON REID: What I think was requested was that you delineate for us conditions that you would like to have included in any order, if in fact the application was approved. And I think this is the basis for it, but nonetheless needs to be tightened up somewhat.

MEMBER RENSHAW: Some of them need to be tightened up, to say who will be responsible for what.

CHAIRPERSON REID: Specifically the ones

that Mrs. Renshaw just raised and then submit it back to us.

MR. ROSENSTOCK: Yes, absolutely.

CHAIRPERSON REID: Prior to deliberation. Okay. Thank you very much.

MR. ROSENSTOCK: Thank you very much.

CHAIRPERSON REID: All right. Closing remarks by the applicant.

MS. DOBBINS: Madam Chairman, we just have one issue on rebuttal and then we have closing remarks. But it will be very brief.

CHAIRPERSON REID: All right.

MR. FEOLA: Madam Chair, for the record, Phil Feola. This really isn't rebuttal, more like clarification.

CHAIRPERSON REID: All right.

MR. FEOLA: This must be my day for Metro landfills. Despite the capital of paper in the world, it is virtually impossible, we've tried, to track back to what goes in some of these fills that has happened as a result of Metro because Metro, I think as Mr. Sockwell said in another case, contracts with haulers to take it away. Metro doesn't care where it goes, it's just we pay, you take it away and the hauler dumps it where --

MEMBER RENSHAW: There has to be a record.

MR. FEOLA: There is no --

MEMBER RENSHAW: There has to be a record.

MR. FEOLA: The only record Metro has -- we've looked at this, Ms. Renshaw. The only records that Metro has is who hauled it away. That's all they care about. And they know it was clean when it got hauled away. That's about all they kept records of. Now, you can trace back to Jones, Jones & Jones hauling company and maybe, if that entity were still in existence, they may possibly have some records.

What we have found is the best way to found out what's in those landfills is to drill and find out. In fact, the first phase of that, when KSI looked at this property, in Tab F, our pre-hearing submission, a report by Whitlock, Dowripple, Posten & Associates. It's one of the reports that Ms. Jones wanted to see in her May letter, which is now in the pre-hearing submission, which is as detailed a first step, geo-technical look-see at what's there.

The backhoes that you heard referred to by Ms. Jones' testimony were actually backhoes out there doing more analysis of that landfill. It's going to be an ongoing process before they actually could start to build anything if this Board were to approve it. So

it's an ongoing thing and the best way to find out what's there is to dig and find it. Unfortunately, the records --

VICE CHAIR SOCKWELL: Let me just supplement that by saying in some cases a hauler that has a contract with Metro or someone else and has a landfill site that's in town, easy to access could just as easily have a few other trucks that they dump things from into the same thing, because, heck, we'll cover it over and nobody will ever see it.

MR. FEOLA: That unfortunately is true. It's a lot of risk on developers with these sites because they are buying a piece of property that they don't know everything about. I know it's incredible in this town that we live in, that those records weren't kept but we've looked in other cases and they just don't.

CHAIRPERSON REID: All right. Ms. Dobbins?

MS. DOBBINS: Madam Chair, before I do the closing, I did provide the submissions that you asked for. I wanted to ask if there were any questions.

CHAIRPERSON REID: Yes, I do. Is this the accident report that you're referring to?

MS. DOBBINS: Yes.

CHAIRPERSON REID: Okay. Number one, it

doesn't have any heading or anything on it, so who did it come from? Who submitted this?

MR. GEORGE: Madam Chair, I apologize because I did not understand this was going to be submitted in the record and I provided a handwritten, just a summary to Ms. Dobbins and Mr. Feola. I'd be glad to submit a table containing essentially the same information and sourcing it. I can tell you that the source is the Department of Public Works. The data is correct. I would not want to submit this as is into the record.

CHAIRPERSON REID: You don't have any more current data than 1997?

MR. GEORGE: Yes, that is correct. In fact, the department states that 1995 is the data that they would really like to give out. In traffic engineering you normally would not want to consider accident data that is more than three years old. So they gave us some 1997 data which they said was very provisional. They expect that within the next several months they would have data for the later years. But I could submit the data for 1996 and 19 -- I'm sorry -- 1995 or 1997 with the appropriate notations as to the source and relaying the comments received from DPW.

CHAIRPERSON REID: Okay. This came from

DPW, but what about the police department, the police reports? Aren't accidents investigated and recorded by the police department?

MR. GEORGE: Yes. The data is not obtainable directly from the police department. DPW obtains the records. They sort it out and provide the type of information. In other words, I believe the police department is adverse to providing accident records giving names of people who were involved in that type of thing. We do not get that information, only the basic statistics as to the location, the number of vehicles involved, the types of accidents, that type of thing.

So again, I would like to submit that, perhaps within the next day or two, if your procedure so allows.

CHAIRPERSON REID: So this is only for the year 1997?

MR. GEORGE: That is correct.

CHAIRPERSON REID: Then it would have 1994, 1995, 1996 on the previous?

MR. GEORGE: Yes. Again, I can submit that data if you would like.

CHAIRPERSON REID: I think I would like to see a five year report so that we can basically compare

annually the changes in any accidents, were there more, were there less, which intersections and we can do maybe -- when you submit your report you can then also, with that report, give us some idea as to what's happening on an intersection, like a snapshot of one day. What we need to do is to get some type of idea of pattern as to accidents in the area. And I'm really disappointed that the last report we can get is three years ago. The traffic and the conditions have not remained the same. So if that's all they could get, that's all they could get. I just think it's insufficient.

Thank you very much, Mr. George.

MR. GEORGE: Thank you.

CHAIRPERSON REID: Ms. Dobbins, this report, Homes at Woodmont, proposed traffic management strategies, who prepared this report?

MS. DOBBINS: Mr. George.

CHAIRPERSON REID: Oh, again no letterhead, no identification as to how it was prepared? When something is submitted to -- you have to remember, we have a voluminous number of papers coming from all different entities, and we have to be able to recognize and identify who the reports are coming from, what they mean. Now, this report, I had a chance to look over

it.

In my opinion the recommendations for vehicle trip reduction, I don't know, it just seems to me that it's just not as encouraging. It's basically you said, encourage ride sharing, car pooling and non-single occupant vehicles, modes of travel. Well, how effective is that?

MR. GEORGE: They're part of a menu of strategies that the developer or the management can put into place. One of the most effective means that the transportation engineering profession finds, whether it be in the employment centers or residential complexes, is appointing a coordinator. In this case we refer to it as a community transportation coordinator. That person would serve as a repository for information, would publicize information in the various media, whether the community has a web site or a newsletter, in community meetings and so on, and really keep this before the view of the residents. Remember, it's a voluntary thing and the management can only undertake to promote it, remind and encourage and facilitate as far as possible.

There are other items mentioned in the strategy which I believe have more teeth and could be more effective.

CHAIRPERSON REID: You have enhanced public transportation usage.

MR. GEORGE: Yes.

CHAIRPERSON REID: KSI and CDC will provide information on public transportation, route schedules. I mean the people who live there know that. That's nothing that is new or innovative.

MR. GEORGE: Yes. I think particularly for, let's say, proposed renters, people moving into the community, providing that information and inducing them at the very beginning.

CHAIRPERSON REID: People know how to do that. If they're going to use public transportation, they just call and find out the bus routes. You propose the commission -- would collect and analyze supplementary traffic data and consider input from the community, develop mitigation measures and provide documentation. Now, the development of mitigation measures is the item that I'm most interested in hearing more about because other than that, what I'm seeing reported here, for the most part, is whether they -- I don't really see in your report anything that actually goes far enough as far as being able to mitigate some of the adverse impact that's been presented in the testimony in opposition into that

community. The traffic, the congestion, when you gave your report, your traffic report you didn't mention anything about taking ten or 15 minutes to enter onto Good Hope Road during rush hour. The applicant had indicated in their submission to us that the opposition and everybody, was not done by lay people and that it was not -- it had the benefit of experts.

Now, that's the point that's been proven out, it's been borne out here this day and in the previous hearing that even though you're the expert, it's the people who actually live there, who deal with it on a day to day basis who come to tell us. I can understand if it was just one person. But person after person after person has come to tell us that they have a problem getting even out onto Good Hope Road, and that did not come out in your expert testimony. So what I'm saying is, these are the problems that have been borne out and the people who live there I think deserve to have some type of impact mitigation to try to diffuse these already existing problems, not problems that they perceive as beginning to occur once the development is done, if in fact it's approved, but these are existing problems. And I don't see that in your report.

MR. GEORGE: If I may just go back to the

transportation, first of all. I think perhaps item 2B could not be more specific in that the developer is looking at the visibility of even subsidizing transit fares. In item 2D, the developer is proffering to provide bus shelter at the adjacent transit stops.

CHAIRPERSON REID: Mr. George, how does that help? They've got bus shelters. I don't understand how building bus shelters is a mitigation of the adverse impact with regard to the traffic. Maybe I'm missing something.

MR. GEORGE: I'm dealing with just the public transportation usage first of all. So these are things -- and again, the studies have shown that providing these amenities do encourage the use of transit. We know that it's perhaps unachieveable to get everyone --

CHAIRPERSON REID: Okay. Not to cut you off, but what it appears that you're proposing here is that people are used to driving. Now, you want them to park their cars and encourage them to take public transportation.

MR. GEORGE: Yes.

CHAIRPERSON REID: Well, they have an option of doing that now. But is that something that the community really wants to do? For example, in my

neighborhood I drive and I enjoy having the benefit or having the luxury of going and coming any time I want. I don't want to catch a bus. If there's a development in my community, I don't want to have to take a bus wherever I have to go. I have to go three or four of five different places in a day. I don't want to have to depend on bus transportation or have to be relegated to bus transportation because someone is developing in my community. So just don't see that as being a viable solution, I really don't.

MR. GEORGE: First of all, these are measures being proposed for the residents of the new community. I don't think KSI is proffering to simply provide transit subsidities to all of the Fairlawn or the entire Good Hope area. So these are things specific to the proposed communities. You are correct, in that there is the love, the affinity for the automobile and government agencies, large employers are faced with the task of being creative as far as strategies to induce the use of non-single occupant vehicles. So this is one development, these are the attempts they are making. They are involved in preparing a transportation demand strategy for the government agency, for the Washington area. These are the types of measures that individual developers, managements can

take.

CHAIRPERSON REID: Okay. I understand more clearly now. But in your report it said, some problems do exist, KSI proposes the following as proper traffic management and enhance plans for the area. I did not understand for it to mean specifically and only for the site, those persons who are going to be occupying the premises, if in fact this application is approved. But even so, notwithstanding that, I still think that it would still be problematic, because again, if you've living in -- and I used to live over in southeast, and I know for a fact that people who live there, who want to get and forth across the bridges to the other part of town, I just don't think that they're so amenable to catching buses. I really don't. Really, I don't see that as being a solution.

MR. GEORGE: The fact is many people do use transit now. Metro has five bus routes along that very roadway and if you would go by you would see -- I drove through the area and just west of the intersection of Minnesota and Good Hope Road there were 20 people at a bus stop about 8:30 in the morning. So the fact is that they do use transit.

CHAIRPERSON REID: I know that they use public transportation. The point I'm making to you is

that typically people who would be purchasing in that development, in that price range, are not inclined so much to use buses. There's a Metro there that I know of, you talked about using bus transportation, on an already congested street so the buses -- the rush hour traffic within itself is stressful. So I just don't think that they would be so apt to want to catch the bus. I don't. Perhaps they do, but I don't see it.

VICE CHAIR SOCKWELL: I think in basic, what the Chairperson is saying is that people earn the right to own the car, they want to use the car. People who can't afford cars, can't afford reliable cars, may not use them as often and there's an option, may not seek to use them. But if you can afford an expensive car, a very nice car the likelihood is that you're going to use it.

MEMBER RENSHAW: I might add, though, that the government had some success with this riding sharing problem, where they pick up the cost of Metro for a lot of the government workers. I would have been happier if this had said, for instance, KSI will subsidize transit fares for residents. KSI will promote the establishment of a Good Hope Road, instead of all this conditional language which you have in here. We're looking for direct, what shall we say,

action on the part of the applicant to mitigate problems in the area for the neighbors and a lot of words that we are going to investigate, we're going to enter into discussion, doesn't really cut it with the neighbors, and I think you've heard that.

MS. DOBBINS: Board Member Renshaw, this was a first draft. The Board asked for a traffic management plan. This is the first stab at the management strategies.

MEMBER RENSHAW: But why hasn't this come to the Board as a definite? You've been in the planning stages for ages. You have known about the neighborhood reaction for a long time.

MS. DOBBINS; This is the first stab at it.

MEMBER RENSHAW: Why the first stab now? I can't understand. I don't mean to belabor it, because it is so late. But I just express my angst as it is, because it should have come to the BZA as a definite. You've cleaned it up, here it is.

MS. DOBBINS; Well, we worked on it during that week and this is what we came up with. We will clean it up. We will present it as a form that you're requesting to the Board. I was about to tell Ms. Renshaw that she has talked about some of the language that's soft, the language that we can say we will, we

shall, we'll put that in here for you.

CHAIRPERSON REID: Also the traffic light that was in Mr. George's report, he mentioned something about being able to have the traffic light timing adjusted or something like that, to try to eliminate some of the problems with the congestion and traffic and/or I think someone mentioned adding traffic lights, that that would help. But also I heard no mention of the problem with the speed, the speed issue that needs to be addressed, perhaps in your analysis and your discussions with the applicant you can come up with something. You heard that over and over again about how that speed now appears to be hazardous and with the new development that is seen as being an exacerbation of an already bad situation. So we need to have that addressed as well in your report. I just think that your report could be shored up considerably to address issues that have been brought up and to mitigate further, and more adequately the problems of adverse impact that this development would contribute to.

MR. GEORGE: If I may, Ms. Reid, I think you're correct. There are two issues here. In accordance with DPW guidelines, which are in keeping with standard engineering guidelines, we would evaluate the operational situation of a roadway as part of an

impact assessment by looking at peak hour traffic conditions. As you heard, during peak hours there is significant delay. So speed I think was well pointed to earlier, would not be an issue during the peak hours. During the off peak periods, perhaps. Again we didn't specifically look at those times of day because we're not required to.

I think what the applicant proposes under item three is to commission a traffic study in conjunction with the neighborhood, getting involvement from them. I think a lot of what we heard related to circumstances and problems which the community face that are really unrelated to the assessment of the traffic impact of a specific development proposal. We've looked at the accident data, some of it is provisional. But none of it points to a safety problem, even the provisional data that we give show no significant level of pedestrian accidents within the area. But I think what KSI is saying, that they propose to go further and work with the community, not to look at only the specific sections and access points that this development would impact but to look at broader issues.

And I might point out that we've done that successfully in other areas. As part of the master

plan for Howard University, a condition was put on the approval to continue to work with the neighborhoods of LeDroit Park, Bloomingdale and so on. And even though the master plan was approved two years ago, I'm attending a meeting this Friday where we're continuing to work with the community. So I think this is what we see happening here.

As far as the impact of the development I think we've satisfied the requirements. As far as continuing to help to ameliorate and mitigate the circumstances relating to traffic, I think that needs to be done in the Fairlawn, in the Good Hope Road community as well as elsewhere and I think I expect that we would be asked to continue to be involved and I assure you that we will do so, give it all that we've got. I think you're correct. The input provided by the community will be invaluable and we do intend to use that input and work with them as we move forward.

VICE CHAIR SOCKWELL: Since we're discussing this at length, in number 2D, generally bus shelters that are provided at transit stops are provided by CSC, which is a contractor to Metro to provide bus shelters primarily because they get the revenue from advertising on the in-panel. WMATA does not as a rule build bus shelters itself anymore. It's

easier to just lease the space out or however they handle it, let CSC do it. So KSI wouldn't be providing the bus shelters. If anything, you would just be recommending that bus shelters be placed in locations where there's a great deal of visibility for the advertising that would be there. Clearly that's what you're wanting them to do.

MR. GEORGE: I'm pleased to know that, Mr. Sockwell.

VICE CHAIR SOCKWELL: And the plan you did show us, my look at it was more tepid than it needed to be, because there are certain things you can do, certain things you can't do, but certain things that should say you will do as fixed items. That's all, just meat and potatoes.

MR. GEORGE: Yes, thank you.

CHAIRPERSON REID: Ms. Dobbins, closing remarks.

MS. DOBBINS: Madam Chairman, members of the Board, we thank you for your time and attention. We think we've put a strong case into the record geared toward earning your approval. We are pleased that the record contains substantial support for our proposal and substantial justification for approval of the zoning relief requested. There are no issues regarding

the proposed residential uses for the site, and the applicant has presented testimony today and included written evidence in the record demonstrating how it has met its burden of proof for the relief requested. The design presented by the applicant compliments and enhances the surrounding area and the proposed development provides a needed housing mix for the area.

We have worked very hard to garner support for this proposal. The Department of Public Works has reviewed the transportation aspects of the proposal and recommended approval. The Office of Planning has submitted a comprehensive report addressing the issues surrounding the application and has recommended approval. The Department of Housing and Community Development submitted a report into the record during the previous hearing process and recommended approval. The National Park Service has testified that we have worked with them diligently and to satisfaction to deal with the issues surrounding the wetlands, the views and the enhancement of the park land. ANC 6C and 8B have entered their support into the record, as well as other community organizations and residents.

We have reached out to the community and although, testimony presented has tried to discredit some of our efforts, the fact remains that all

organizations, entities and individuals who have submitted letters of support were briefed on the proposal, given an opportunity to ask questions, make suggestions and comment, and in the end they chose to freely submit their support to this application.

We will continue our work with the community, and we actually thank the community today for providing us some additional information about the inventories relating to housing that needs rehab and some of the vacant sites in the area. We are concerned about those issues and would like to know more about them, and have been doing research on our own. We have met the burden of proof for the special exceptions requested. We have addressed the traffic and parking issues and will continue to do that. We have addressed the need for a new kind of apartment unit in the community. We have addressed the landscaping, wetlands and park enhancement issues. We have made a long term commitment to this community. We have listened to the Board and the community and we have a better proposal because of the input.

Our proposal meets the standards of the zoning regulations and will not impact adversely on the use of neighboring property. For all the reasons detailed in the testimony and in the written record of

the case, the applicant submits that it has met its burden of proof and requests special exception approval.

We also just need to enter into the record that we understand that there's traffic issues, but we just need to leave with the Board, that the District of Columbia is going to continue to develop, we hope that that development will not be stopped because some of the streets are crowded by cars that come from Maryland and Virginia. Additionally, we request that the Board expedite its decision in this case, as we do have some issues related to acquisition of our property.

We will, and as you've heard, we will meet with the Fairlawn community on March 7th. We will provide all of the information again that we presented in the record in our pre-hearing submission to them prior to their meeting and have the opportunity to meet with them during that meeting so that we can respond to any concerns that they may have.

We thank you for your time and your close attention to this matter, and this concludes our case before the Board.

CHAIRPERSON REID: Thank you, Ms. Dobbins.

VICE CHAIR SOCKWELL: Ms. Dobbins, I have one item to discuss briefly which is a clarification

that was written from the Anacostia Economic Development Corporation, February 1st of this year to Ms. Thelma Jones. It says, Dear Ms. Jones, please be informed that the Anacostia Economic Development Corporation, AEDC's letter of October 12th, 1999 to Advisory Neighborhood Commission Chairman Ronald King regarding KSI Services' proposed single family housing development was written at the request of Rosalind Stiles, a consultant to KSI Services. AEDC's letter was in support of the proposed development of 37 single family homes and in no way was it in support of the planned apartment rental complex on Good Hope Road Southeast. Sincerely, Alfred R. Hopkins, Jr., President and CEO, with copies to Dr. Jesse R. King, Jr., Chairman AEDC.

CHAIRPERSON REID: Thank you, Mr. Sockwell. Did you want to respond to that?

MS. DOBBINS: The only thing I can say is that when we spoke with AEDC they were in support of the project. So their letter of October 12th was in support of the homes at Woodmont. If they decanted on that at this time, that's -- you know.

CHAIRPERSON REID: Okay. Now, what we need to do is some time lines and also I just wanted to say that this is a very troubling case for us. It appears

that since the first hearing, KSI, I'd have to give them credit for having done quite a good community outreach and having entered into agreements with various community entities for meeting of the minds in regard to their project which is commendable. On the other hand, there still remains quite a bit of opposition and the issues that are raised are, quite frankly, pertinent issues. Their issues should not be trivialized because these things have an impact on the people who live there and in many cases have lived there for 20 and 30 years.

I hope that that you'll have the meeting with KSI, that the information that has been requested from the opposition will be submitted by KSI, and some of the things we've asked for with regards to the traffic mitigation, a management plan being further developed so that it addressed to go further in addressing the issues. I know that all the problems cannot be solved, but I think that there is still work to be done. It makes our job a lot easier so that if in fact you all do meet and you are unable to try to come closer together, I think that what I'm hearing from the community, even the people who are in support and opposition, that still you have one mindedness about Anacostia, that you truly love Anacostia and that

you want to see what is best for your community and rightfully so. I certainly applaud that.

Hopefully when KSI has heard you and they know what your concerns are and then the reports they give to Mrs. Jones, who is the lead person, that that will be disseminated to the people who are in opposition and that if you can hammer out some of your problems and if you can proffer to KSI some of the things that you want to see, if in fact, it is approved, that you let that be known and that KSI then try to accommodate as much as possible, wherever the needs are, so that when you come back -- when we have our deliberation, we can then analyze and assess all that has been done and we can make our decision accordingly. It would make our jobs a little easier if we have a better feel for both what KSI is attempting to do in consideration of the opposition, and what the opposition needs. And then based on that, we'll make our determination. So I really would appreciate if in fact, you continue to try to meet and mediate and come up with some compromises or some type of, I don't want to say togetherness, but try to at least reach each other and understand that, and in many instances, all over the city, development is occurring. That's a given that if not this development, that someone else will be

coming in a few more years with something else. So that's reality. So I would suggest that you try to work together for the better good of that community. That's what we like to see.

Mr. Hart will give us timewise at what is to be submitted when and hopefully we can get findings of fact draft from both sides for us to use in our consideration. Thank you very much for your time, for your indulgence and for your patience today. It certainly has been a very long day for us, from 9:30 this morning, and just barely have a voice left.

MS. DOBBINS; Madam Chairman, there's some other things that come into the record. I assume staff will tell us what those need to be.

CHAIRPERSON REID: Yes. Yes. Mr. Sockwell had a comment?

VICE CHAIR SOCKWELL: This is primarily to the residents of what we call the east of the river community. A lot of you have made your concerns, the fact that the apartments which proliferate out there, which have been probably the worst thing that ever happened to your community, are still there and so many of them are vacant or havens for drug dealing and all sorts of other unpleasant and unsavory activities. Many of those buildings cannot be redeveloped into the

kinds of places that the people you would like to have living around you in greater numbers would want to live in. Perhaps some of those will have to be removed and replaced with single family housing.

But one of the things that I did notice, along with all of your concerns about traffic, the land itself, the issues of apartments versus single family homes, is that you really want a cohesive community to live in. At the same time, I think some of you are experiencing what we used to call a fear of flying, and that is that you don't really firmly believe that high cost housing will make it in your neighborhood. You don't think you're ready for that, some of you. And if you think deep down inside, even though you want single family houses and you want townhouses, you're somewhat afraid that something that's too expensive isn't going to make it, and the apartments, if they don't make it, they'll wind up being more of the same that you've had before. But they're not conceived that way, and whether this Board approves or disapproves this project, there are places where apartments are making money, whether they are doing well. There are places in parts of the city where you think everybody would want a single family home, where the apartments are selling out before they get built.

And if you take Northeast, and there was a project mentioned off of Rhode Island Avenue in Northeast, that is near Montana Terrace, it surprised me, and I grew up in Northwest, worked in Parkland, River Terrace and places like that, and now work downtown, but it surprised me that those units actually sold in a neighborhood that has Montana Terrace as a key piece which was part of what made that development work economically in its revitalization. But is around the corner from New York Avenue's industrial areas and the impoundment lot and all that. Those houses sold so quickly, and it didn't seem to me that that was the place for that infrastructure of single family homes with garages to sell like that.

So don't be afraid. Be optimistic that development is going to take an upside. Anacostia, my office I work for built the first new building on the historic side of Anacostia in 30 years which is the building the District of Columbia uses at 2100 Martin Luther King. The building has done very well I think. It was a good building. It's not unattractive and it has helped to bring services into the community, that the community needed. But I do believe that a mixed use type of development is a good thing for your community, and that mixed use developments are going to

be balanced developments, but they're not going to be expected to bring back what you have too much of now, which is very, very bad apartment housing with very, very poor maintenance and it was nice that somebody said very good things about William Smith. But let me tell you, your neighborhood is going to change and it's going to grow and those of you who remain there are going to be very happy with it at some point, and I hope that all of you are there when it happens.

MEMBER RENSHAW: A comment, to follow up on Mr. Sockwell's remarks. The mayor has a neighborhood emphasis. You all know about that. You probably participated in perhaps one or two of the summits that he has had. But he's putting the onus on the neighborhoods to come up with plans of what their neighborhood is going to be. And I think we have heard from the community loud and clear, they have certainly not been bashful. I don't get any sense that you have, as Mr. Sockwell put it, a fear of flying. I think you have a great insight as to what has worked in your community in the past and what is not working at the present and you want to shore up what's the best for your community at this time because you're coming before a governmental Board and you're expressing your hopes for your community. I commend you for it. I

really do. And I commend you for your interaction with this applicant and expressing to the applicant what you feel is best for your community. And I would certainly hope that you push forward on what the mayor wants, and that is a strong direction to his office as to what is going to be the best for you, and that is what will make Anacostia thrive again.

MS. DOBBINS: Madam Chair, may I make one last comment? I'd be remiss if I didn't say this.

CHAIRPERSON REID: Sure.

MS. DOBBINS: The three residents from Marbury plaza sat in the rear and wrote testimony out. Some of those residents have been in that building since it was built and they are requesting that you please the testimony.

CHAIRPERSON REID: The record is still open.

MS. DOBBINS; We've submitted it already.

CHAIRPERSON REID: They've left now? They're gone now?

MS. DOBBINS; Yes.

CHAIRPERSON REID: Please let them know that we appreciate them taking out the time to come down here and also to submit testimony for us to read. We appreciate that.

Okay. Thanks very much. The last thing is Mr. Hart, give a time line, please.

MR. HART: Yes, Madam Chair. Before I give the time line, I'd like to recap on what submissions need to be made.

There is a memorandum of understanding between Mr. Lockridge and the developer, as I understand it, a proposed indication of the program. That's one.

We also need some adjustment to the Park Service concerns, to readjust them to the point where they can be applied as a part of the order as conditions.

We want a traffic report over a five year period, traffic flow and so forth.

CHAIRPERSON REID: The accident report.

MR. HART: Accident report. And finally we also want the traffic plan -- and more precise --

Taking all into consideration, the request for a timely turnaround.

MS. BAILEY: Excuse me. There was one other thing unless I missed it. There was the speed on Good Hope Road and a traffic light.

MR. HART: Yes, I included it. That's included in the work of the traffic report, speed,

access to Good Hope Road. I didn't want to spell it out. That's included in what I'm talking about.

Now, here's where the applicant will have to work with me, because if the submissions are coming from the applicant -- here again, at the same time, the same time line that I used in the last case. Two and a half weeks or the 13th, what does that time look like, of March?

MD. DOBBINS: I'm sorry.

MR. HART: Approximately 18 days from today, for the first submission, the 13th of March.

MS. DOBBINS: The 13th of March is a Monday.

MR. HART: We can shift it one way or another.

MEMBER RENSHAW: Mr. Hart, may I ask, are you going to add this or are you suggesting we add this to the April 5th decision?

MR. HART: Yes.

MEMBER RENSHAW: Three cases?

MR. HART: Yes.

MEMBER RENSHAW: We are going to debate three cases?

MR. HART: You're not actually debating the cases at the meeting. You'll be getting all the

information in advance, a week in advance approximately, and you'll be actually coming with your thoughts in hand for that meeting. How it works, I don't anticipate you coming here and being involved in a long, you know, discussion. I think there are only for that date, which is a meeting date, I think there's just two other smaller decisions.

MS. DOBBINS: Well, Mrs. Renshaw, we wouldn't mind have a special public meeting on March 15th.

CHAIRPERSON REID: I think that on that day, Ms. Renshaw, what we would probably do is have an executive session prior to the decision meeting to give us an opportunity to try to organize the issues and the aspects of the cases. So that being the case, Mr. Hart, we probably could start at 9:30.

MR. HART: 9:30 or 9:00?

CHAIRPERSON REID: No, we'll start that session at 9:00.

MR. HART: 9:00, yes.

CHAIRPERSON REID: That day, and probably the decision meetings would maybe be around 10:00. People cam come early if they'd like, but I think we do need some time to digest these cases. They are all very involved.

MR. HART: Actually your concern is when you get the final information; i.e., the draft.

CHAIRPERSON REID: It could be April.

MR. HART: Yes.

CHAIRPERSON REID: We have the time to get things in and have their meetings and their discussions and what have you.

MR. HART: You see, I want the Board to have more than the regular week on these three. They're all being together. The date for receiving any final submissions and drafts or findings of fact would be the 26th, 27th of March. And take that down to the 5th, about a week and a half which is a little bit more than usual.

MS. DOBBINS: Submissions by the 13th and responses by the later date and findings of fact and conclusions of law?

MR. HART: Yes, by the --

MS. DOBBINS: March 27th?

MR. HART: March the 27th, by the 27th of March, yes. March 27th. Submissions the 13th, responses to submissions the 20th, for the April 6th meeting.

MS. DOBBINS: So we're submitting by the 13th. We're doing responses by the 20th?

MR. HART: 20th, one week, yes.

MS. DOBBINS: And proposed findings of fact by the 20th as well. There's no responses to those. Or are you changing that to the 27th?

MR. HART; To the 27th.

MS. DOBBINS: Proposed findings by the 27th.

MR. HART; The 27th, yes.

MS. DOBBINS: And that's for decision on April 5th.

MR. HART: That's right.

CHAIRPERSON REID: Is that it?

MR. HART: That's it.

CHAIRPERSON REID: All right. Thank you very much. That concludes this lengthy hearing for today, tonight.

VICE CHAIR SOCKWELL: This is the longest one we've had since I've been on the Board.

CHAIRPERSON REID: I think this is the longest one since I've been on the Board, since 1994.

(Whereupon, the hearing was adjourned at 10:10 p.m.)