

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF:

Consolidated PUD & Map Amendment &  
Tenleytown Metro Station -  
Albermarle Associates.

Case No.  
00-03C

-----+  
Thursday,  
October 19, 2000

Hearing Room 220 South  
441 4th Street, N.W.  
Washington, D.C.

The Public Hearing of Case 00-03C by the  
District of Columbia Zoning Commission convened at  
7:00 p.m. in the Office of Zoning Hearing Room at 441  
4th Street, Northwest, Washington, D.C., Anthony J.  
Hood, Chairperson, presiding.

BEFORE:

ANTHONY J. HOOD, Chairperson

HERBERT E. FRANKLIN, Commissioner  
KWASI G. HOLMAN, Commissioner  
CAROL J. MITTEN, Vice-Chairperson  
JOHN G. PARSONS, Commissioner

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STAFF PRESENT:

ANDREW ALTMAN	Director, Office of Planning
MARY VOGLE	Office of Planning
JULIE WAGNER	Office of Planning
MARY NAGELHOUT, Esq.	Office of Corporation Counsel
ALBERTO BASTIDA	Secretary, ZC
DAVID CATANIA	City Councilman
Phil Mendelson	City Councilman

On Behalf of Nelson Bregon:

PHIL T. FEOLA, Esq.  
of: Shaw Pittman  
2300 N. Street N.W.  
Washington, D.C. 20037

On Behalf of Tenleytown Neighbor's Assn.

CORNISH HITCHCOCK, Esq.  
1100 17th Street N.W., 10th Floor  
Washington, D.C. 20036

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

7:06 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission of the District of Columbia for Thursday, October 19th, 2000. My name is Anthony J. Hood, Chairperson of the Zoning Commission of the District of Columbia. Joining me this evening are Commissioners Herbert E. Franklin, Kwasi G. Holman, Carol J. Mitten who serves as vice-chair and John G. Parsons. I declare this public hearing open. Notice of today's hearing was published in the D.C. Register on August 11th, 2000 and in the Washington Times on August 22nd, 2000.

This hearing will be conducted in accordance with the provisions of 11 DCMR 30-20. The subject of this evening's hearing is Zoning Commission Case No. 00-03C. The applicant and owner of the property, Albermarle Associates, represented by the Law Firm of Wilkes, Artes, has requested the Zoning Commission for the District of Columbia for consolidated review and approval of the planned unit development and a related zoning map amendment from R1-B to R5-B for Square 1772, Lots 1, 2, 803 and 804 located adjacent to the Tenleytown Metro Station.

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1 The proposed PUD would permit construction of a  
2 residential development containing is it thirteen or  
3 fourteen?

4 MR. BASTIDA: -- it's 14 and I believe  
5 the -- proposed to amend it.

6 CHAIRMAN HOOD: Okay.

7 MR. BASTIDA: So I would have to say 14.

8 CHAIRMAN HOOD: Okay. Excuse me.

9 MR. BASTIDA: Excuse me.

10 CHAIRMAN HOOD: Fourteen residential  
11 condominium units containing approximately 47,500  
12 square feet with a building height of approximately  
13 40 feet. The total occupancy of the proposed  
14 development would be approximately 50 percent. 30  
15 parking spaces are to be provided as well.

16 The order of the procedure will be as  
17 follows. Preliminary matters, applicant's case,  
18 report of the Office of Planning, report of other  
19 agencies, report of Advisory Neighborhood Commissions  
20 3-E and 3-F, parties and persons in support, parties  
21 and persons in opposition.

22 The following time constraints will be  
23 adhered to in this meeting: the applicant, one hour;  
24 parties, 15 minutes; organizations, 15 minutes;  
25 individuals, three minutes; opposition, one hour

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1 total. The hour is to be divided among the parties.

2 The Commission will adhere to this schedule as  
3 strictly as possible.

4 Those presenting testimony should be  
5 brief and non-repetitive. If you have a prepared  
6 statement, please give copies to staff and orally  
7 present only the highlights. Please provide copies  
8 on your statement before summarizing.

9 All persons appearing before the  
10 Commission are to fill out two witness cards. These  
11 cards are located at each end of the table in front  
12 of us. Upon coming forward to speak to the  
13 Commission, please give both cards to the reporter  
14 sitting to my right.

15 If these guidelines are followed, an  
16 adequate record can be developed in a reasonable  
17 length of time.

18 The decision of the Commission in this  
19 case must be based exclusively on the public record.

20 To avoid any appearance to the contrary the  
21 Commission requests that persons present not engage  
22 the members of the Commission in conversation during  
23 any recess or at any time. The staff will be  
24 available to discuss procedural questions.

25 Please turn off all beepers and cell

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1 phones at this time so not to disturb these  
2 proceedings.

3 Would all individuals wishing to testify  
4 please rise and take the oath.

5 (Whereupon, all witnesses sworn)

6 CHAIRMAN HOOD: If you could bear with us  
7 for one moment again we're trying to take care of the  
8 problem. Again may I ask that the door that's to my  
9 right, if we could please not use it. We can use the  
10 one to the left because that sets the alarm off each  
11 time. Thank you.

12 MR. BASTIDA: Mr. Chairman, I have locked  
13 the door. I have locked the door, this door -- and  
14 that way I ask that we only can leave by the one that  
15 is on our left. Thank you.

16 CHAIRMAN HOOD: Okay. I think what we're  
17 going to have to do that because we're having a  
18 microphone problem. Can you hear me now?

19 Okay. We're getting some feedback here.  
20 Can you hear the feedback? Is it clear? Colleagues  
21 and those of us on the dais, we're going to need to  
22 speak loud enough so that the public can hear us  
23 because there's nothing worse than coming to a  
24 meeting and not being able to be heard -- not being  
25 able to hear rather. Okay. Any preliminary matters?

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1 MR. BASTIDA: Yes, Mr. Chairman.

2 CHAIRMAN HOOD: Just one second, please.

3 MR. BASTIDA: Yes, Mr. Chairman. We have  
4 a request for -- hello, hello. Can you hear me?

5 CHAIRMAN HOOD: I can hear you, but I  
6 don't think everyone can hear you. Let's take three  
7 minutes and let's try to get the microphone fixed so  
8 we can proceed because that's going to be a problem.

9 Just bear with us for three minutes, please. Can  
10 everyone hear me? It looks like I was the one who  
11 was the problem. So we'll proceed.

12 Preliminary matters.

13 MR. BASTIDA: Mr. Chairman, the Tenley  
14 Neighborhood Association applied for a motion to  
15 dismiss this application.

16 UNKNOWN PERSON: Mr. Chairman, before you  
17 take the motion to dismiss --

18 CHAIRMAN HOOD: Excuse me. Before you  
19 proceed I would like to do party status first.

20 MR. BASATIDA: Okay.

21 CHAIRMAN HOOD: And once upon party  
22 status then we will consider the motion.

23 UNKNOWN PERSON: Precisely. Thank you,  
24 sir.

25 MR. BASTIDA: Excuse me. You are asking

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1 for the parties to come forward.

2 CHAIRMAN HOOD: Party status.

3 MR. BASTIDA: And Ms. Mitten is going to  
4 call each party to the podium or what is your  
5 pleasure?

6 VICE-CHAIRPERSON MITTEN: I'd be happy to  
7 if that's what you want.

8 MR. BASTIDA: Would you please?

9 VICE-CHAIRPERSON MITTEN: Yes. We've had  
10 three requests for party status and I think after we  
11 deal with those requests then we'll deal with the  
12 issue of the fact that we have to ANCs involved in  
13 this case. Would that be suitable to you, Mr.  
14 Chairman?

15 CHAIRMAN HOOD: Yes. ANCs are going to  
16 be automatic so we'll just deal with the three who  
17 have requested so we can proceed in that order.  
18 We'll ask that you come up one at a time.

19 VICE-CHAIRPERSON MITTEN: So the three  
20 requests have come from the Tenleytown Neighbor's  
21 Association, Barbara Gunning and I'm going to  
22 apologize in advance for mispronouncing your name,  
23 Matthew Pavuk and Cheryl Browning. If they could  
24 come forward.

25 CHAIRMAN HOOD: I will ask you all to

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1 bear with us. We're going to get it together in a  
2 very few minutes. Okay. You can have a seat at the  
3 table and we will begin with the Tenleytown  
4 Neighbor's Association.

5 MR. HITCHCOCK: Good evening, Mr.  
6 Chairman. My name is Cornish Hitchcock. I'm a  
7 lawyer here in town and I have been asked to  
8 represent these parties to present a joint opposition  
9 to the application as parties in opposition so we are  
10 here as a unified front. The submission that we put  
11 in the record several weeks ago indicates that we  
12 contemplate some individual testimony as well as some  
13 expert testimony that could be done within the time  
14 limits that the Commission had proposed earlier  
15 tonight.

16 CHAIRMAN HOOD: Colleagues, the  
17 Tenleytown Neighbor's Association has asked to be a  
18 party in this case. Any comment, any discussion? If  
19 not, we will do it on general consensus. That's  
20 fine.

21 MR. HITCHCOCK: Thank you, Mr. Chairman.

22 CHAIRMAN HOOD: Okay. Next, Ms. Barbara  
23 Gunning.

24 MS. GUNNING: Right here.

25 CHAIRMAN HOOD: And Matthew --

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1 MR. PAVUK: Pavuk.

2 CHAIRMAN HOOD: Pavuk. I'm sorry. Thank  
3 you. Let's begin with Ms. Gunning first.

4 MS. GUNNING: Yes.

5 CHAIRMAN HOOD: You asked for party  
6 status in this case?

7 MS. GUNNING: Yes.

8 CHAIRMAN HOOD: Could you explain to the  
9 Commission why you feel that you need party status  
10 that you may not be able to work for one of the other  
11 groups or your ANC?

12 MS. GUNNING: Right. Well, I believe I  
13 can work through them. Obviously I'm not opposed to  
14 them, but I directly face this development as I come  
15 out my front door. I am squarely at the corner of  
16 this proposed development and I believe I'll have --  
17 with Lee Ann Oliver who directly faces the property  
18 also I believe I will have perhaps the greatest  
19 impact of all the neighbors.

20 CHAIRMAN HOOD: So, Ms. Gunning, you're  
21 saying your property, the front door of your  
22 property, you can look right out the window or your  
23 front door and you see the proposed site.

24 MS. GUNNING: Right. I can throw a  
25 baseball to the property.

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1 CHAIRMAN HOOD: Any comments, colleagues?  
2 Any discussion? Well, general consensus. Okay, Ms.  
3 Gunning.

4 MS. GUNNING: Thank you.

5 CHAIRMAN HOOD: Mr. Pavuk.

6 MR. PAVUK: Yes. We're actually the  
7 property that's closest, I believe. We're directly  
8 across the street in the other direction from Ms.  
9 Gunning, but our presentation is encompassed within  
10 the Tenleytown Neighbor's Association presentation.  
11 I'm testifying on their behalf. There will be  
12 nothing additional over that we intend to offer.

13 CHAIRMAN HOOD: Okay. Let me make sure I  
14 understand, sir. You're saying that you will be the  
15 spokesman for the Tenleytown Neighborhood?

16 MR. PAVUK: I will be one of the people  
17 testifying on their behalf during their presentation.

18 CHAIRMAN HOOD: Okay.

19 MR. PAVUK: We intend to submit nothing  
20 beyond that.

21 CHAIRMAN HOOD: We had made them a party  
22 so would you just put your testimony along with  
23 theirs?

24 MR. PAVUK: Yes.

25 CHAIRMAN HOOD: Or would you want to be

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1 separately? Okay. So you will join party status  
2 with Tenleytown.

3 MR. PAVUK: Yes. We do.

4 CHAIRMAN HOOD: That's fine. Any  
5 problems with the colleagues? Okay.

6 MR. BARDIN: Mr. Chairman, David Bardin,  
7 the Chair of the ANC across the street from the  
8 property, ANC3F. You have already made us a party.  
9 For the convenience of the Commissioners I've  
10 prepared an exhibit which I believe staff has  
11 distributed to you which I furnished to counsel  
12 delineating where these two ANC's boundaries are in  
13 the vicinity of the particular property. These are a  
14 combination of two Sanborn maps furnished by the  
15 Office of Planning with the lines to show you exactly  
16 where they are so you will be able to, I hope, help  
17 follow the proceedings.

18 CHAIRMAN HOOD: Okay.

19 MR. BARDIN: I also have a big map of the  
20 ANC boundary. We can talk about that later on.

21 CHAIRMAN HOOD: Okay. Thank you, Mr.  
22 Bardin.

23 MR. BARDIN: Thank you, Mr. Chairman.

24 CHAIRMAN HOOD: Let's do this. We have a  
25 lot on the agenda for tonight. We want to be

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1 courteous to all sides and all interested parties.  
2 Again I just want to ask in my preliminary matters  
3 that we adhere to the clock and let's be courteous of  
4 others because everyone wants to give us their  
5 viewpoint so we can take it and make the best  
6 decision we most possibly can. So with that, Mr.  
7 Bardin.

8 MR. BARDIN: I've got a question on the  
9 clock here, Mr. Chairman. I was asked by ANC 3E to  
10 report to you that they have two Commissioners who  
11 will be speaking representing majority and minority  
12 views. We have two Commissioners. We are all seven  
13 unanimous. What is the time limit? Is the time  
14 limit separate for each ANC I trust?

15 CHAIRMAN HOOD: Staff, do you have the  
16 time limits?

17 MR. BASTIDA: Yes, Mr. Chairman. Let me  
18 point that out to you.

19 MR. BARDIN: I would ask that we have  
20 separate time because we have interest in ANC 3F  
21 dealing with Soapstone Creek that goes through our  
22 ANC ultimately reaching Rock Creek in our ANC via the  
23 last stretch of Broad Branch which does not pertain  
24 to --

25 CHAIRMAN HOOD: Mr. Bardin, let's do

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1 this. We will be fair. We will definitely be fair  
2 when we get to that point.

3 MR. BARDIN: Thank you, sir.

4 CHAIRMAN HOOD: So we won't prolong it  
5 any more so let's move on and we will definitely be  
6 fair. I've been informed that that will be done as  
7 needed. It means we can deal with it when we get to  
8 that point.

9 MR. BARDIN: Thank you, sir.

10 CHAIRMAN HOOD: You're welcome. Okay.  
11 Commissioner Mitten has a disclosure.

12 VICE-CHAIRPERSON MITTEN: I would like to  
13 disclose the fact that I share office space with the  
14 architect who has been working for the applicant in  
15 this case and I feel that I can be impartial in this  
16 case, but if anyone has any objections, any of my  
17 colleagues or any of the parties, I'd be happy to  
18 hear what those are and address them.

19 CHAIRMAN HOOD: Okay. Colleagues and all  
20 interested parties and all those involved,  
21 Commissioner Mitten has done a disclosure. If there  
22 are any problems, I would ask you to speak not. If  
23 not, we will proceed. There seems to be no problems  
24 and everything is in order. Staff, could we continue  
25 with the preliminary matters?

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1 MR. BASTIDA: Yes, Mr. Chairman. You  
2 have a motion to dismiss that was filed on October  
3 the 5th. You can handle that --

4 CHAIRMAN HOOD: Okay. Colleagues, let's  
5 make sure we have that in front of us. While we're  
6 doing that I'm going to ask Corporation Counsel if  
7 they could speak to this issue.

8 MS. NAGELHOUT: My recommendation, Mr.  
9 Chair, would be to let Tenleytown present its motion  
10 and response from the applicant and anyone else who  
11 wishes to speak.

12 CHAIRMAN HOOD: Okay. I'm going to ask  
13 the representatives from Tenleytown to come forward  
14 to comment on the motion to dismiss.

15 MR. HITCHCOCK: Mr. Chairman, members of  
16 the Commission, I'm Cornish Hitchcock for the  
17 Tenleytown Neighbors Association. We filed with the  
18 prehearing submission a motion to dismiss on the  
19 basis of the fact that the minimum lot requirement  
20 here is less than the minimum that is required in the  
21 zoning regulations, the PUD regulations for property  
22 within the R1-B zone and the only way that the  
23 applicant says that this case can go forward is to  
24 assume that this is an R5-V zone or properly  
25 considered as an R5-V zone and to grant a waiver

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1 from the minimum area requirements down from the R5-V  
2 level instead of looking at the R1-B level. In  
3 our view that is disqualifying from the particular  
4 application. We think the regulations do not allow  
5 it to go that far based on the text of the  
6 regulations and various precedents previously decided  
7 by this Commission as well as the text of prior  
8 decisions and the general policy implications and  
9 considerations in connection with PUD regulations.

10 The motion contains a memorandum of law  
11 that discusses the various precedents. I can go into  
12 them in some detail if the Commission likes. There  
13 was an opposition which Mr. Feola filed yesterday  
14 which responds to it and deals with the individual  
15 cases, but let me just make a couple of general  
16 comments at this point and perhaps respond to  
17 questions or deal with it in the level of detail and  
18 if the Commission wants to reserve and have Counsel  
19 study, that's something we can certainly work with as  
20 well.

21 In any event, the purpose of the PUD  
22 regulations and the waiver of the minimum area  
23 requirements is to provide some flexibility in  
24 considering PUDs, but the problem with the broad  
25 interpretation that the applicant has asked you to

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1 consider is that it makes a mockery out of the  
2 minimum area requirements. The purpose of having  
3 some flexibility in this area and of sticking with  
4 the R1-B definition rather than R5-B is particularly  
5 well shown in this case.

6 There is a proposal to increase  
7 dramatically the density of uses here in the R1-B  
8 area and it makes sense to require more minimum land  
9 in this area in a less dense zone like the R1-B to  
10 maintain the flexibility and not to increase  
11 dramatically the density that they are proposing  
12 here. If the regulations were to be interpreted the  
13 way that the applicant suggests, then it makes no  
14 sense to have the very fine and gradated type of  
15 regulation. It would make more sense to simply say  
16 go to the smallest area required. Take that in half  
17 and use that as the basis so you would have 7500  
18 square feet as the minimum area.

19 I think there is another policy reason  
20 here in addition to the text and I won't go into the  
21 text because I think it's fairly clear, which is the  
22 possibility of abusing the regulations. What it does  
23 is it lets applicants choose the zoning  
24 classification that they want for a PUD according to  
25 the minimum area rather than other considerations

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1 that may be appropriate given the surrounding uses in  
2 the vicinity. It is most appropriate and the most  
3 logical interpretation of the statute to take the  
4 default zone R1-B to require that any deviation from  
5 the minimum requirement be 50 percent at a maximum  
6 from that requirement rather than, as the applicant  
7 is saying, assume that relief is granted to the R5-B  
8 and then subtract 50 percent from there. That's got  
9 the cart before the horse and it's inconsistent by  
10 adding more density than is consistent with the R1-B.

11 There are several cases that we have  
12 cited. They are exhibits. Mr. Feola discussed them  
13 in his responses. Well, Order Number 693 which we've  
14 cited deals with a situation where the zoning case  
15 was -- the Commission denied the relief at the  
16 outset. It did not progress this far and it was  
17 stated in that case that the minimum area  
18 requirements are those of R1-B. It did not get into  
19 the assumptions that you could look even further.

20 The principal case Mr. Feola cites in his  
21 behalf is Case No. 86-32C. That was a split zone  
22 case and he cites it for the proposition that the  
23 Commission in that case, it was partly R5-C and  
24 partly a commercial zone. It was from the 1980s. He  
25 cites it for the proposition that the Commission

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1 there referred to the minimum area requirements for a  
2 commercial zone suggesting that it's okay to look to  
3 commercial zone to the type of zoning classification  
4 that the applicant is seeking. The problem with  
5 relying on that case is that there was a different  
6 issue. Under the regulations at issue when the  
7 applicant of than came in in 1986 there was no  
8 deviation possible, no waiver of the minimum area in  
9 commercial districts. So, therefore, the order  
10 referred to the fact when they talked about  
11 commercial district it was in the context of the fact  
12 that the proposed area had a commercial designation  
13 so was not eligible to deviate downward. So I think  
14 that the cases that he's citing are distinguishable.

15 Exhibit 120 in that particular case, they've cited  
16 one exhibit, I'm here looking at the OP report on  
17 that case, talked about the fact there was no  
18 provision to waive the minimum area back in the  
19 1980s. By the time that case was decided the  
20 Commission had gone through the rule making in 84-3  
21 and had changed the rules to provide what now exists.

22 So I can go into more detail if the  
23 Commission likes. I think we've put forward the  
24 arguments in our memorandum and if Mr. Bardin for the  
25 ANC has something to add, I will stop at this point

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1 or let Mr. Feola proceed as the Commission sees fit.

2 CHAIRMAN HOOD: -- like the Commission to  
3 know --

4 MR. BARDIN: Excuse me. Mr. Chairman.

5 CHAIRMAN HOOD: Let me do this. Let's  
6 start off right so we all won't have any problems on  
7 down the line. Before you come to the table and  
8 speak I would appreciate it and the Commission would  
9 if you would wait until you are acknowledged. So let  
10 me just say this. Mr. Hitchcock, we heard your  
11 comments. I don't know if you went a little further  
12 than what I've seen you submit although we will  
13 discuss that and we will take it under advisement and  
14 I will ask that we stick to the points and let's move  
15 forward so, therefore, we can give everyone a chance  
16 to respond. Again, Mr. Bardin, if you can wait until  
17 you are acknowledged, I would really appreciate it.  
18 Let me do this. Let me let Mr. Feola respond and  
19 then I will ask if anyone else wants to speak to the  
20 motion to dismiss.

21 MR. FEOLA: Thank you, Mr. Chairman.  
22 Phil Feola of Shaw Pittman for the applicant in this  
23 case. I think the issue is fairly straightforward.  
24 If you accept the arguments of Tenleytown Neighbors,  
25 then this Zoning Commission could continue to

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1 compound what might be an error. If this property,  
2 let's say hypothetically, was shown as dark red on  
3 the comprehensive plan map, an obvious inconsistency  
4 with the R1-B zone, and this Commission refused to  
5 hear PUD and a map amendment for that change, then it  
6 would be measuring the PUD standard against what is  
7 clearly an inappropriate zone.

8 It's not that clear here, but the  
9 regulation that allows the waivers says specifically  
10 that you could only grant the waiver after a public  
11 hearing. Your rules allow you to file a map  
12 amendment in conjunction with the PUD and as part of  
13 that hearing this Commission evaluates whether or not  
14 the zoning proposed is appropriate as you look at the  
15 comprehensive plan and all the other policies and  
16 plans and the adverse impact and all the things that  
17 you do. You can't do that, however on a summary  
18 motion. You can't decide whether or not this  
19 property, which, by the way, is shown on the  
20 comprehensive plan map as institutional, clearly a  
21 mistake, what the zoning should be. There is a  
22 zoning that predated the comprehensive plan, but  
23 we're asking this commission to hold a hearing to  
24 determine what the zoning is and at the same time  
25 determine if it is the correct zoning to place the

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1 restrictions of the PUD around it which everybody I  
2 think acknowledges is a better way to control  
3 development than just map amendments and as you go  
4 through it, you have to make a determination whether  
5 this project has the exceptional merit that would  
6 allow you to grant that waiver.

7           So if you follow Tenley Neighbors theory,  
8 we could refile this application as a map amendment,  
9 come down here, have a public hearing to decide  
10 whether or not our call for what the zoning should be  
11 is correct or their call is correct and if we happen  
12 to be successful in that argument before this  
13 Commission and this Commission changes the zoning,  
14 then we have to come back for a second hearing on the  
15 PUD. Well, the whole idea of combining these things  
16 is for efficiency of government and to avoid two  
17 hearings.

18           So it seems pretty evident to me that we  
19 may be wrong on all those points, but it seems to me  
20 you can't make those decisions on a summary motion.  
21 I think you need to hear the evidence and make a  
22 determination first is this zone appropriate and if  
23 you decide no then maybe the whole thing goes away.  
24 Secondly, if it is an appropriate zone, that is the  
25 R5-B zone, then what constraints, what restrictions,

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1 what elements that you would place on that property,  
2 and then thirdly, whether or not the development as  
3 it has been shaped through this process is of  
4 exceptional merit as defined in Section 2104.2 to  
5 whether it is deemed meritorious enough for the  
6 waiver.

7 So I think that's the logical way you  
8 have to look at it or we'll be back down here a  
9 couple times for a couple different hearings and I  
10 think if you look at the history of the text  
11 amendment that we attach this part of our pleading it  
12 was an idea to try to get everything together for  
13 this Commission to evaluate the standards and at the  
14 end of the day you may say no, the whole thing fails  
15 or part of it fails or not, but it's almost  
16 impossible to do it without building a record. Thank  
17 you.

18 CHAIRMAN HOOD: Thank you. Okay. Mr.  
19 Bardin.

20 MR. BARDIN: Thank you.

21 CHAIRMAN HOOD: If I mispronounce  
22 anyone's name and it sounds correct and I'm speaking  
23 of you. You can just come to the table.

24 MR. BARDIN: Okay. Thank you, Mr.  
25 Chairman. First I want the Commissioners to know

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1 that Monday night in reviewing the Office of Planning  
2 final report my Commission adopted a second  
3 resolution. I don't know whether you have it yet or  
4 not. I only filed it yesterday, in which we took a  
5 position on this issue which we have not taken before  
6 seven to nothing, that is to say all seven  
7 Commissioners voted to support the motion to dismiss.

8 We were frankly surprised that the Office of  
9 Planning didn't even acknowledge there is such an  
10 issue in this case and that illustrates my first  
11 point which I would like to make strongly to you.

12 I would hope that in your decision in  
13 this case you squarely face this issue and write a  
14 reasoned opinion whether it's the final opinion  
15 after everything happens or you decide that you don't  
16 have enough information to deal with some of the  
17 other issues maybe an interim decision, but you  
18 address this issue and illuminate the issue because  
19 it seems very strange to us that when you have a  
20 property which is zoned R1-B and nobody is saying it  
21 isn't zoned R1-B today. This isn't a technical  
22 amendment proposed or somebody made a typographical  
23 error. This is a policy amendment being proposed to  
24 you which would have to go to the National Capital  
25 Planning Commission for review if you approved of it.

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1  
2           The purchaser of this property, who is a  
3 sophisticated developer, undoubtedly knew that it was  
4 an R1-B property and came up with a purchase price  
5 negotiated with the seller based on that. All kinds  
6 of decisions are made by sellers, by buyers, by  
7 communities, by others based on the zoning as it is.

8       Now, we have in the regulations three acreage  
9 levels. For R1, R2, R3, R4 and R5-A it's one acre  
10 minimum and this wouldn't qualify even after a  
11 waiver. You couldn't do it. I mean it's two acres  
12 minimum. You couldn't give them a waiver that would  
13 qualify.

14           There is just a question of fact that --  
15 and I don't understand. His response to the motion  
16 says three acres and I thought the regulations I was  
17 given by the documents office says two, but that you  
18 can clarify later. It's a higher acreage, I mean,  
19 sorry, a lower acreage if you go up to R5-B. Then  
20 you cut it down to one acre and a 50 percent waiver  
21 could knock the minimum down to as little as half an  
22 acre and this is only six-tenths of an acre.  
23 Anything else it goes down to 15,000 square feet  
24 which is a third of an acre and the 50 percent waiver  
25 could get you down to 7500 square feet, a sixth of an

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1 acre which happens to be the size of the two little  
2 lots on the phase 1 part of this property.

3 I mean if they came with this argument  
4 that we hear that PUDs are the only way to do  
5 business in this city or the best way to do business,  
6 it would seem to us that it means the Office of  
7 Planning and the developer could get together,  
8 propose a commercial zoning for a 7500 foot lot in a  
9 residential or at the edge of a residential  
10 neighborhood at the so-called transitional edge and  
11 through a PUD and a waiver proposal come to you and  
12 come up with townhouses instead. We doubt that's  
13 what these regulations mean, but in any event our  
14 message to you is please address it, please think it  
15 through. You're the experts on the subject and your  
16 thoughtful guidance is very important to us even if  
17 you reject this application for other reasons which  
18 we will recommend at the appropriate time we would  
19 like you to address this important issue. Thank you,  
20 Mr. Chairman.

21 CHAIRMAN HOOD: Thank you, Mr. Bardin.

22 MR. FEOLA: Mr. Chairman.

23 CHAIRMAN HOOD: Anyone else that would  
24 like to comment on that motion to dismiss?

25 MR. DIBIASE: If I might and I will only

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1 literally sit at Mr. Feola's side for a moment, not  
2 figuratively. My name is Tad DiBiase and I'm an ANC  
3 for 3E representing the majority of 3E and I just  
4 wanted to point out a few points.

5 We asked Mr. Feola when he came in  
6 September to Wilson High School, "Give us some  
7 precedent. Tell us when this type of zoning change  
8 has been done." If you look at the cases he cited  
9 and consider Mr. Hitchcock's analysis, you're going  
10 to see there is no precedent for this. There is no  
11 case that this Zoning Commission has ever done that  
12 has approved an R1-B zoning up to R5-B and then doing  
13 a PUD waiver. There's none and if you analyze it  
14 from the standpoint of this being an R1-B property,  
15 it's a 70 percent waiver of the land requirement and  
16 that is really the way to analyze this because as my  
17 colleague Mr. Bardin points out expectations of what  
18 zoning is are important and I wanted to just on my  
19 last point quote to you what a wise land use attorney  
20 once said. "The zoning has been in place on  
21 Wisconsin Avenue for 30 years. People make  
22 investments in real estate based on that zoning" and  
23 I'll give you one guess as to who the land use  
24 attorney is who said that. He's sitting right next  
25 to me and he said that in 1986. So even Mr. Feola

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1 agrees. Zoning is important because people make  
2 investment decisions based on that, not just his  
3 clients, but people buying homes in that area and if  
4 the bottom line is this is a 70 percent waiver of an  
5 R1-B property, something that's never been done by  
6 the Commission. Thanks.

7 MR. FEOLA: May I respond, Mr. Chairman?

8 CHAIRMAN HOOD: Here's what I don't want  
9 to happen. I don't want us to have a hearing, a  
10 motion to dismiss and everything all in one. Unless  
11 you have something new, other than what you said,  
12 we're going to have one more round. Let me see if  
13 there is anyone different. If not, we're going to do  
14 one more round and then I'm going to ask my  
15 colleagues if we can discuss how we're going to  
16 proceed. So, Mr. Hitchcock --

17 MR. FEOLA: May I respond though, to the  
18 opponent's motion because they are all saying  
19 somewhat different things. I responded to Mr.  
20 Hitchcock, but then Mr. Bardin and Mr. DiBiase said  
21 something slightly different.

22 MR. CHAIRMAN: Okay. Well, let's do  
23 this. Mr. Feola, if you want to respond let Mr.  
24 Hitchcock and you can respond to everything and then  
25 that way we only have to do it once.

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1 MR. FEOLA: Fair enough.

2 MR. HITCHCOCK: I was simply going to  
3 request, Mr. Chairman, the opportunity to put in a  
4 brief response in writing to Mr. Feola's opposition  
5 which just came in yesterday which could present the  
6 material in paper form to the Commission and the  
7 staff and that might be the easiest way to review it  
8 and provide the citations rather than have to have  
9 somebody go poking through the record.

10 CHAIRMAN HOOD: Thank you, Mr. Hitchcock,  
11 and I'm sure the record will be left open if we  
12 proceed. Mr. Feola.

13 MR. FEOLA: Thank you, Mr. Chair. Just a  
14 couple points and I think Mr. DiBiase quoting a  
15 comment from me in a case that resulted in a rezoning  
16 and my point is that this Commission, and in fact,  
17 there's a right to seek a rezoning. There is no  
18 guarantee that you are allowed to have a rezoning and  
19 zoning changes and in that case I was arguing that it  
20 shouldn't change but it changed and this Commission  
21 made those changes.

22 There is a right to seek a change in  
23 zoning based on comprehensive plan policies based on  
24 changes in circumstances, based on a whole series of  
25 things which this Commission is well aware of and the

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1 analysis that needs to be done in my opinion is you  
2 need to look at first blush is the zoning change  
3 responsible given the comprehensive plan and good  
4 planning policy and the like?

5 The second analysis, if that is true  
6 should we do a PUD here and if it's true then you  
7 measure it by the zoning that you think is the  
8 appropriate zoning. So we should be having an  
9 argument not about whether to dismiss this but having  
10 an argument as to what is the appropriate or  
11 inappropriate zoning.

12 Now, Mr. Bardin raised a point and I'm  
13 sorry. I forget which one. Somebody said it has  
14 never been done before. Well, this Zoning Commission  
15 changes the zoning all the time. It changes  
16 sometimes for the betterment of the property owner,  
17 sometimes for the detriment, but part of this  
18 Commission's charge is to make sure zoning is not  
19 inconsistent with the comprehensive plan.

20 Our position is the zoning of this site  
21 is inconsistent with the comprehensive plan. We  
22 can't prove that until we get a record. We can't try  
23 to prove that until we have an opportunity to make  
24 some testimony and present evidence and so it seems  
25 silly to make us come back three months from now with

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1 a map amendment to seek a rezoning to make it  
2 consistent with the comprehensive plan and then yet  
3 file a PUD and seek a waiver of their requirements.

4 It's a waste of our time and it's probably a waste  
5 of the community's time and certainly a waste of your  
6 time.

7 So I think all the precedential  
8 information aside, and we can argue back and forth  
9 there is no case right on point and whether Mr.  
10 Hitchcock is right at his reading of the 26th and L  
11 PUD or not.

12 The one last point I'd like to make is  
13 the Office of Planning did speak on this issue. Mr.  
14 Bardin said it didn't, but in its preliminary report  
15 to this Commission which led to the set down when its  
16 Commission addressed this issue it spent almost a  
17 full page single spaced on this issue and came to the  
18 conclusion and I quote and this is in the exhibit,  
19 it's in the record, the March 3rd preliminary report  
20 by the Office of Planning.

21 "The Office of Planning feels the  
22 Commission should permit the public hearing as a PUD  
23 because the amount of control which the PUD process  
24 provides the Commission over design and  
25 transportation, storm water management and related

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1 issues through the PUD process this will better  
2 permit the Commission to make sure that if the  
3 decision to permit higher density on this site, that  
4 density will take place with a minimum amount of  
5 adverse impact on the residential community. This  
6 amount of control would not be possible if the  
7 application were simply heard as a map amendment."  
8 It says it right there. It seems like you make the  
9 first call as to whether the zoning is appropriate  
10 and if our proposed zoning is appropriate, you may or  
11 may not apply the PUD standards. You may or may not  
12 find it exceptional merit for waiver. Thank you.

13 CHAIRMAN HOOD: Okay. Thank you, Mr.  
14 Feola. Before we proceed I would like to ask my  
15 colleagues do we think we need additional  
16 information? We've heard all sides that wanted to  
17 present their position on the motion to dismiss. I  
18 want to open it up. Do we need to hear some more  
19 testimony or would we just like to decide now whether  
20 we're going to proceed or not or refuse the motion to  
21 dismiss or what? Okay, Mr. Franklin. If you all  
22 could just remain at the table, Commissioner Franklin  
23 has a question.

24 COMMISSIONER FRANKLIN: The question is  
25 to really the proponents of the motion. Is it your

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1 position that the proper procedure here would be as  
2 Mr. Feola had suggested as the alternative that we  
3 consider a map amendment which we do all the time and  
4 consider whether there should be a change in the  
5 zoning here as requested and then if we were to  
6 decide that the zoning should change, of course, we  
7 have no assurance that anybody would come in with a  
8 PUD request and, therefore, if we made a change in  
9 zoning whoever owns the property could proceed as a  
10 matter of right without any involvement of this  
11 Commission in any of the considerations that are  
12 present here.

13 So I just want to get some clarity from  
14 the proponents. When all is said and done is your  
15 proposal essentially a procedural one?

16 MR. HITCHCOCK: I believe it is  
17 procedural. I don't disagree that the assessment,  
18 that the proper thing if they think it's  
19 inappropriately zoned is to come in and seek a map  
20 change and to put that in context let me address a  
21 point that has been mentioned in the papers but not  
22 yet mentioned tonight, the idea with respect to smart  
23 growth principles guiding development here. The idea  
24 that this area is somehow inappropriately zoned deals  
25 with its proximity to the Metro station and a

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1 disagreement that this area should be considered low  
2 density residential, that it should have different  
3 uses. Our view is that the appropriate way to  
4 consider those cases is through a map case. The  
5 Office of Planning should come in and recommend to  
6 the Commission if it thinks smart growth is a policy  
7 that ought to be implemented, exactly how it should  
8 be done in a systematic planned method, which sites  
9 ought to be developed rather than the sort of ad hoc  
10 piecemeal basis that's being talked about here.  
11 That's the broader policy issue that has not been  
12 brought up yet that will doubtless come up later on.

13 So we don't disagree in terms of the  
14 procedure. What we do disagree on is the  
15 interpretation of the regulations and its legal  
16 issue. The PUD process and the availability of  
17 minimum -- whether there should be minimum  
18 requirements, whether there should be waivers was  
19 something that this Commission considered at some  
20 length back in the 1980s, 1986, '87 when the rule was  
21 considered. There was the problem that I mentioned  
22 earlier. There was not flexibility with respect to  
23 commercial zones. There couldn't be a waiver  
24 downward, but the Office of Planning in that  
25 proceeding talked about the need of setting some

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1 limits, of having some protections so you don't get  
2 inappropriately dense development in the guise of a  
3 PUD context as we submit is being proposed here to go  
4 right from R1-B to the very intense R5-B without the  
5 protections for the community.

6 So if it is inappropriately zoned, let's  
7 have a map case, let's talk about it. If smart  
8 growth is the overall policy objective, let's have a  
9 map-in-text case to talk about how Metro Rail areas  
10 ought to be zoned, but let's not do it piecemeal as  
11 is being proposed here.

12 COMMISSIONER FRANKLIN: Well, of course,  
13 as you know, we often take up map amendments to make  
14 the zoning conform to the comprehensive plan and we  
15 do so, in your terms, on a piecemeal basis because we  
16 can't, you know, intellectually and from a standpoint  
17 of just time do it comprehensively. We're not a  
18 comprehensive rezoning --

19 MR. BARDIN: To answer Commissioner  
20 Franklin's question directly, our answer is yes. ANC  
21 3F takes the position that you have no jurisdiction  
22 as a Commission to entertain this application.

23 COMMISSIONER FRANKLIN: I understand  
24 that, Mr. Bardin.

25 MR. BARDIN: And if that is the case

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1 whether it's a good thing or a bad thing, I mean if  
2 that's the case, if you think it's a bad thing, there  
3 is a procedure for amending the regulations, but the  
4 argument that you must hold a hearing before you  
5 decide whether you have no jurisdiction is cart  
6 before the horse. The regulation says that you have  
7 to hold an oral argument, I mean, excuse me, a public  
8 hearing before you can grant a waiver and approve a  
9 PUD, but this is a threshold legal jurisdictional  
10 question and our position is you should get the  
11 advice of Corporation Counsel, come to your own  
12 conclusion as the authorized Commission. If you  
13 agree, dismiss this case. If you disagree, then go  
14 forward.

15 COMMISSIONER FRANKLIN: But I then --  
16 into the next question which is this. We're dealing  
17 with a regulatory pattern here which sets certain  
18 standards and then allows the Commission to waive  
19 them. What is your view of the purpose of having a  
20 waiver of those standards?

21 MR. BARDIN: The purpose of having a  
22 waiver of the standards is, as the regulation  
23 indicates, to allow projects of exceptional merit  
24 with a significant housing component, but I think to  
25 read the regulation in context, the Commission, when

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1 it adopted this rule 15 years ago, did not want to  
2 have more dense projects or more dense PUDs at any  
3 price because the nature of it even with a very small  
4 area as low as 11,000 square feet, here it is 7500,  
5 could be something that is inappropriate with the  
6 surrounding area.

7 COMMISSIONER FRANKLIN: Could one  
8 interpret this regulatory pattern as saying in effect  
9 to a proponent of a PUD that you have a much stronger  
10 burden of persuasion with respect to the merits of  
11 your PUD when you are joining it with a requested  
12 waiver of these standards? Does that make any sense  
13 to you?

14 MR. HITCHCOCK: Well, I understand the  
15 policy reason for that, but I don't think the  
16 regulations are written that way because what it does  
17 is it's a race to the bottom. It the lowest square  
18 area is 15,000 square feet, it's conceivable it can  
19 go down to 7500. There are no protections. It's one  
20 thing to say, well, how about a two acre zone that  
21 you could go down to one acre. You know, more dense  
22 development on one acre might be more compatible to  
23 the neighborhood and not as intrusive as a situation  
24 where you go down to permit it in a very small area.  
25 I mean one of the concerns here also is striking a

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1 balance so that you don't have individual cases that  
2 come along and look like spot zones. That's  
3 something that has been argued and I think that the  
4 regulations and the area limitations help maintain  
5 some degree of conformity with the surrounding area  
6 so you don't cross over the line and have  
7 inappropriate development, overly dense development  
8 as we submit would happen here. I think that's why  
9 it's in there.

10 If the regulations were intended to be  
11 the way Mr. Feola argues, it would have been very  
12 simple to say come in and ask for whatever new zone  
13 you want and the minimum area is 7500 square feet,  
14 but that's not the way the rules were written. There  
15 is more of an architecture there that suggests that  
16 it be gradated that if you're an R-1 area the area  
17 can be waived down to this level. If you are start  
18 going down, if you're starting in an R4 area that you  
19 may be able to get smaller areas and so forth. Thank  
20 you.

21 MR. BARDIN: If you reach the legislative  
22 question of changing your rules or reviewing what the  
23 rules mean today, it is conceivable, Commissioner  
24 Franklin, that you would come with a two tier  
25 evaluation of exceptional merit and really

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1 exceptional merit. If you go through the entire  
2 hearing on this case, you will see, in our judgment,  
3 that the Office of Planning has been willing to make  
4 do without even a recommendation if there is  
5 exceptional merit and expect you to find exceptional  
6 merit when there is nothing exceptional in favor of  
7 the neighborhood interests and this project.

8 In the discussion by the Office of  
9 Planning that Mr. Feola read to you in the  
10 preliminary opinion there is no discussion of the  
11 legal issue. It's just the policy in favor of PUDs.

12 I understand that the Office of Planning and perhaps  
13 this Commission has a policy in favor of PUDs and you  
14 can strengthen that policy by amending your  
15 regulations or if I'm wrong by interpreting your  
16 present regulations as Mr. Feola suggests, but I do  
17 urge you to address it carefully and ask yourselves  
18 why do we have these three tiers of acreages?

19 CHAIRMAN HOOD: Okay. Thank you, Mr.  
20 Bardin. Mr. Franklin, okay. Commissioner Mitten.

21 VICE-CHAIRPERSON MITTEN: I just want to  
22 bring this back to the real focus I believe of the  
23 motion to dismiss which is there is an ambiguity in  
24 the language in the zoning ordinance and it's up to  
25 us to interpret what it means in a very narrow

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1 section that has to do with minimum area requirements  
2 for PUDs and what it says in Section 2401.1, and I'll  
3 just quote from -- is that "Minimum area included  
4 within the proposed development shall be for R5-B a  
5 total of one acre for a development to be located in  
6 any R5-B zone district" and there is similar  
7 language, parallel language for the others. So it's  
8 for a development to be located in any Rr-B zone  
9 district.

10 So what I did was to see if there has  
11 been some effort to clarify this language over time  
12 so I went back into the regulations and I believe  
13 that Mr. Bardin's request is well-founded because we  
14 want to eliminate ambiguities where they exist, but  
15 the former language went something like a total of  
16 one acre for projects located in an R5-B zone  
17 district. So the language has been modified to say  
18 to "developments to be located in."

19 So I find that there is some evidence to  
20 suggest, based on the changes in the zoning  
21 ordinance, that the intention is for looking forward,  
22 looking to if the PUD is worthwhile and including any  
23 rezoning that might be part of the package that that  
24 might be the threshold if the change in the language  
25 is any evidence of what was intended.

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1 COMMISSIONER HOLMAN: Could Commissioner  
2 Mitten kind of go a little further on that? So  
3 you're saying the language is perspective in your  
4 view and is there a further point regarding that?

5 VICE-CHAIRPERSON MITTEN: I just wanted  
6 to point out that the changes that have been made  
7 thus far to the zoning ordinance and I'm not  
8 suggesting that further clarity isn't warranted, but  
9 I'm just saying based on the changes that have been  
10 made so far it seems to indicate to me that the  
11 intention is that we should be looking to the  
12 totality of what's being proposed and if there is a  
13 zone change included in that, that would compel the  
14 minimum area requirement and the whole other issue  
15 that has been discussed about exceptional merit is  
16 another matter entirely.

17 COMMISSIONER HOLMAN: Thank you.

18 COMMISSIONER PARSONS: Mr. Chairman, I  
19 think we need a little common sense here. The PUD  
20 concept was first dealt with in this Commission in  
21 the early 70s and the idea was to take large tracts  
22 of land, the Watergate being the one at the time  
23 where the area was so complex and so uncertain that  
24 an architectural solution was needed so that people  
25 understood what it is that was proposed rather than a

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1 more blanketed zoning category that then as a matter  
2 of right could move forward at what many people felt  
3 was to the potential detriment to any community.

4 So in R1-B we decided that three acres  
5 should be the minimum and the idea was that this  
6 would be reserved for large estates that were being  
7 subdivided of which there are many in this city that  
8 we've seen. Hillandale is a good example of that.

9 To -- back and forth hasn't been done many times, but  
10 that was the idea in an R1-B zone that it would be  
11 large estates that were being subdivided and then we  
12 worked with that for about ten years, 15 years maybe  
13 and found that this tool of PUD was much more  
14 beneficial to a community because a straight zoning  
15 or rezoning left that doubt as to what was going to  
16 be built and we debated for a long time as to whether  
17 we should have a minimum area at all and dropped R1-B  
18 to two acres. You might say I opposed that, but it  
19 was done and the reason I did and continue to is that  
20 a straight rezoning on this site, for instance, which  
21 is troubled by an unfortunately comprehensive plan  
22 designation, but staring at a Metro stop needs the  
23 kind of precision that a PUD brings to it.

24 For us to have a hearing and debate  
25 whether it should be R4, R3 or R5, what the citizens

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1 really want to know is what the heck is going to be  
2 built here and not for us to proceed with a rezoning  
3 that could end up in any category but the community  
4 has no idea what's going to be built as a matter of  
5 right until the bulldozers start and that to me is  
6 what we're about here tonight, to find out what the  
7 community's view is on whether 13 rowhouses or ten  
8 houses belong in this community and whether in the  
9 context of the comprehensive plan and all of the  
10 other issues that we're going to discuss is something  
11 we should do and that's what I mean by common sense.

12 For us to dismiss this and have the  
13 applicant come back with a zoning proposal and the  
14 citizens would be in here saying, "How can you  
15 possibly decide this without knowing what the  
16 developer is going to build?" So I think we should  
17 proceed and rely on the uncertainty of this  
18 comprehensive plan to give us any real guidance as to  
19 what we should do and to go to the precision of the  
20 PUD and get on with it.

21 CHAIRMAN HOOD: Okay. Colleagues, we  
22 have discussed this I think thoroughly. We've heard  
23 from the parties so without further adieu I would  
24 like to see what our pleasure is as far as whether we  
25 move on and again let me just remind my colleagues

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1 that we do not have to decide on this motion at this  
2 point. We could take it under advisement and move on  
3 and make our ruling at a later time.

4 So I want to see if we can get a motion  
5 to proceed with the hearing or a motion to dismiss.

6 COMMISSIONER PARSONS: Well, I don't see  
7 any reason to postpone this decision. I would move  
8 that we deny the motion to dismiss and proceed this  
9 evening.

10 VICE-CHAIRPERSON MITTEN: Second.

11 CHAIRMAN HOOD: Been moved and properly  
12 seconded. All those in favor -- voted.

13 STAFF: Aye.

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

16 MR. BASTIDA: Yes, Mr. Chairman. The  
17 Staff would record the vote five to zero. Mr.  
18 Parsons moving it, Ms. Mitten second it and Mr.  
19 Holman, Mr. Hood and Mr. Franklin voted in the  
20 affirmative. Thank you.

21 CHAIRMAN HOOD: Also, Staff, if we could,  
22 before we get started, before the applicant, well,  
23 he's already at the table, but can we identify again  
24 the parties so when they come to cross examination we  
25 won't have any confusion?

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1 MR. BASTIDA: Yes, Mr. Chairman, but I  
2 believe that you have all the names.

3 CHAIRMAN HOOD: I have them?

4 MR. BASTIDA: Yes.

5 CHAIRMAN HOOD: The parties are the  
6 Tenleytown Neighborhood Association, Barbara Gunning,  
7 Matthew Pavuk, and I hope I didn't mess your name up,  
8 and Cheryl Browning. Also we were joined by Council  
9 member Catania who must have left.

10 MR. BASTIDA: He just stepped out  
11 momentarily.

12 CHAIRMAN HOOD: When he comes in we'll  
13 make sure. I know his schedule is busy like all the  
14 rest of ours, but we will take priority and adjust  
15 our schedule accordingly so if you can let me know  
16 when he returns.

17 MR. BASTIDA: Certainly, Mr. Chairman.

18 CHAIRMAN HOOD: Okay. We will now  
19 proceed with the applicant's case. Mr. Hitchcock,  
20 unless this is something that is new.

21 MR. HITCHCOCK: Yes.

22 CHAIRMAN HOOD: We have moved away from  
23 preliminary matters.

24 MR. HITCHCOCK: Well, I had a question.  
25 There was a preliminary matter I wanted to raise

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1 dealing with the point made in our submission about  
2 the need for compliance with the D.C. Environmental  
3 Protection Act having this agency deal with the  
4 environmental issues. I just wanted it noted for the  
5 record that we believe that this Commission should  
6 deal with those issues up front and that the  
7 environmental issues should be considered as part of  
8 the proceeding in this case and not be deferred. I  
9 can talk about it now or later or simply rely on  
10 offers we've submitted.

11 CHAIRMAN HOOD: We have read your  
12 material. I would rather for us to talk about it  
13 later on when you come up and do your presentation.

14 MR. HITCHCOCK: Okay. Thank you, Mr.  
15 Chairman.

16 MR. BASTIDA: Mr. Chairman, I forgot  
17 another preliminary matter which is the affidavit --  
18 which is in front of you and the staff believes that  
19 the applicant go forth with the regulations  
20 regarding --

21 CHAIRMAN HOOD: Okay.

22 MR. BASTIDA: Thank you.

23 CHAIRMAN HOOD: Okay. Thank you. Mr.  
24 Feola, I believe you asked for one hour.

25 MR. FEOLA: Yes, sir.

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1 CHAIRMAN HOOD: Let me just say that we  
2 have read the material that has been provided with  
3 the exception of the material that was provided  
4 today, this afternoon. Well, this evening actually,  
5 and as we sit here we'll be skimming through it as  
6 each person comes up, but I would ask you if you can  
7 combine some of that and not take an hour that would  
8 be great, but if you need the full hour, no problem.

9 MR. FEOLA: Thank you, Mr. Chair. Does  
10 it please the Commission that we would go through our  
11 entire presentation before questions?

12 CHAIRMAN HOOD: I would ask my colleagues  
13 that as the applicant is giving the presentation that  
14 we will write our questions down, let you all proceed  
15 and we will ask questions at the end. If that's in  
16 agreement, colleagues.

17 STAFF: Yes.

18 MR. FEOLA: One last preliminary matter,  
19 Mr. Chair, and then we can do this for Tenleytown  
20 Neighbors as well to identify witnesses who both  
21 parties proposed to use as expert witnesses.

22 CHAIRMAN HOOD: Mr. Feola, let me ask you  
23 first so we could --

24 MR. FEOLA: Yes, sir.

25 CHAIRMAN HOOD: I didn't see where

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1 different people have already been declared an expert  
2 in front of this Commission. Could we do those  
3 members first, the ones who have already been  
4 declared as expert witnesses in front of the D.C.  
5 Zoning Commission?

6 MR. FEOLA: Yes, sir. In our submission  
7 dated October 5th we have listed the witnesses who  
8 will testify as experts. Mr. Colbert is an expert in  
9 architecture and rèsùmès are attached to that.

10 CHAIRMAN HOOD: So you're saying Mr.  
11 Colbert.

12 MR. FEOLA: And Mr. Colbert has testified  
13 before this Commission.

14 CHAIRMAN HOOD: Anyone else? Let's just  
15 do the whole --

16 MR. FEOLA: Oh, you want to do all?

17 CHAIRMAN HOOD: All the ones that have  
18 testified before this Commission.

19 MR. FEOLA: Before.

20 CHAIRMAN HOOD: Right.

21 MR. FEOLA: Martin Wells, the traffic  
22 expert, has been recognized as an expert.

23 CHAIRMAN HOOD: Mr. Wells.

24 MR. FEOLA: John Amatetti, the civil  
25 engineer, has testified before. Ken Doggett, urban

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1 planner, testified before the BZA as an expert but  
2 not the Zoning Commission.

3 CHAIRMAN HOOD: Those are the only four?

4 MR. FEOLA: Yes, but not all of these  
5 people, by the way, will be testifying tonight.

6 CHAIRMAN HOOD: Okay. Colleagues, so far  
7 they have been presented previously. Does anyone  
8 have any problems? Okay. Ms. Mitten.

9 VICE-CHAIRPERSON MITTEN: I just wanted  
10 to add to the list I think that John Litistanski as  
11 well  
12 as --

13 MR. FEOLA: He's not going to testify  
14 this evening.

15 VICE-CHAIRPERSON MITTEN: Oh, okay.

16 MR. FEOLA: But he has testified as --

17 VICE-CHAIRPERSON MITTEN: All right.

18 CHAIRMAN HOOD: Okay. Mr. Litistanski.  
19 Is it Letistanski or Litistanski?

20 MR. FEOLA: Litistanski.

21 CHAIRMAN HOOD: He's not testifying?

22 MR. FEOLA: That's correct.

23 CHAIRMAN HOOD: Okay. So we will accept  
24 them as expert witnesses. Okay.

25 Next we will take Mr. Rolband and Ms.

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1 Reker and again forgive me if I'm mispronouncing your  
2 names.

3 MR. FEOLA: Mr. Rolband will testify and  
4 Ms. Reker who works with him will not.

5 CHAIRMAN HOOD: Okay. Colleagues, any  
6 concerns, any comments about Mr. Rolband? He wants  
7 to be accepted. I'll give you a minute. No  
8 problems. He will be accepted.

9 MR. FEOLA: And then our last proposed  
10 witness is Ed Milhous who is an arborist, expert  
11 arbiculture.

12 CHAIRMAN HOOD: Okay. Mr. Milhous is an  
13 arborist. Any comments, questions, any problems? He  
14 will be an expert witness. Let me just say I don't  
15 know if the counsel member is ready to testify as of  
16 yet. I've been informed that's going to come later,  
17 but I want to acknowledge The Honorable David  
18 Catania, his presence in joining us this evening.

19 MR. CATANIA: Mr. Chairman, I'll waive.

20 CHAIRMAN HOOD: Okay. Thank you. Okay.  
21 Let's proceed with your case, Mr. Feola.

22 MR. FEOLA: Thank you. Thank you, Mr.  
23 Chairman. We'll try to truncate the presentation as  
24 you have asked.

25 I think what we are proposing we have

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1 already talked about it somewhat and I think the  
2 thought we'd like to leave this Commission with is  
3 that by pretty much any standard of reasonable  
4 development this project fits. The applicant, since  
5 this application was filed in March of this year, has  
6 made dramatic changes to this application and part by  
7 comments from this Commission, by the Office of  
8 Planning, by the Department of Public Works, by  
9 neighbors both opponents and supporters and the  
10 process has resulted in a better product we believe.

11 The changes have resulted in a project that we'll  
12 show is more sensitive to the environment, more  
13 sensitive to the urban fabric and we think it does  
14 further that national demand that's being made for  
15 smart growth, that is growth development that takes  
16 advantage of urban infrastructure to at least quell  
17 the amount of urban sprawl we're seeing in our  
18 communities.

19 I want to thank the Commission for  
20 hearing this case because we think it will set  
21 important precedence for the city. Not the  
22 precedence that our opponents suggest which is the  
23 destruction of Tenleytown, but the precedence of what  
24 this city needs to do around Metro stations to take  
25 into account the existing urban fabric and to provide

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1 a transition from the high density, in this case  
2 commercial use is on a heavily traveled corridor like  
3 Wisconsin Avenue and the very stable residential  
4 neighborhoods in this case to the east.

5 But I'd like this Commission as we go  
6 through this to evaluate this case for what it is.  
7 This is a single family for sale, attached housing  
8 community and as you look at it I'd like you to keep  
9 in mind in the back of your mind to compare it with a  
10 matter of right development that could go on this  
11 site in the existing R1-B zone which is five single  
12 family detached houses with forty percent lot  
13 occupancy with almost 32,000 or 33,000 square feet of  
14 gross floor area. We think if you do all these  
15 things, you'll come to the same conclusion that the  
16 Office of Planning did and that this application  
17 strikes the right balance between competing interests  
18 and should be approved. With that I'd like to call  
19 our first witness, Rita Bamberger of the Hollady  
20 Corporation. Ms. Bamberger, state your name and  
21 address for the record, please.

22 MS. BAMBERGER: My name is Rita Bamberger  
23 and I reside at 3838 North Upland Street in  
24 Arlington, Virginia. I'd like to first just give you  
25 a brief overview of the Hollady Corporation. We were

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1 founded in 1952 by Wally Hollady who is an architect  
2 by training and is now 80 years old. His son, Hap  
3 Hollady, runs the company on a daily basis and is  
4 president.

5 Over the years as many of you may know  
6 we've done a number of projects of all different  
7 kinds in the city. We developed The Village at  
8 McLean Gardens, we developed 4000 Wisconsin Avenue  
9 where Fannie Mae has her adjunct headquarters,  
10 380,000 square feet along with the movies and a  
11 health club.

12 We developed 4100 Massachusetts Avenue with 308  
13 apartments, Connecticut Heights at Connecticut and  
14 Ellicott with 508 apartments. 25 years ago we built  
15 the Chevy Chase House and the Georgetown which  
16 provides 230 units of elderly housing both in those  
17 neighborhoods that we continue to own and operate and  
18 we also, the Hollady's, are the founders, creators,  
19 and run on a daily basis the National Museum of Women  
20 and the Arts at 12th and New York Avenue. So not  
21 only have we contributed to the housing stock of the  
22 city but we've had a major impact on the city's  
23 economic development and on its cultural vitality in  
24 the form of the museum.

25 In terms of the presentation we're going

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1 to make tonight I'd like to just set a framework for  
2 the discussion we're going to have. You're going to  
3 hear a lot of technical data about floor area ratios  
4 and level of service and hydrology and landscaping  
5 and storm water management bioretention facilities.

6 All of these issues we think are very important and  
7 we plan to address them thoroughly tonight. However,  
8 when you look at the overall picture as Phil just  
9 said, what this case is really about is land use  
10 policy in the District of Columbia. Does the  
11 District want to provide housing choices for all  
12 residents 420 feet from a Metro next to commercial  
13 shopping and retail development, a school and a major  
14 120 foot right of way. We think the answer to this  
15 question should be yes. Like numerous other blocks  
16 and neighborhoods in the city, townhomes, are a  
17 transitional land use for commercial and residential  
18 uses.

19 We also believe that it would be  
20 disadvantageous to the District to build the type of  
21 plan that we would be allowed to build by right. A  
22 by right plan of large single family houses averaging  
23 6000 square feet is simply not the best utilization  
24 of this property and would offer none of the benefits  
25 that the PUD would. So with that I'd like to

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1 introduce our proposal and run through it real  
2 quickly.

3 This is a streetscape which you'll see  
4 in Eric's presentation. This is the plan that we  
5 presented to you in our prehearing submission in  
6 August. This is the 14 unit plan. As some of you  
7 may remember our March plan actually had a 26 unit  
8 condominium. It was a two over two stacked unit. At  
9 that time in March you had advised us to come back  
10 with a plan that was less dense. We came back with a  
11 plan that you didn't see in May that had 17 units.  
12 We then reduced it to 14 units at the request of the  
13 neighbors and other input that we received and with  
14 OP's recommendation of last week we took a look at  
15 the plan yet again and deleted one more unit. So the  
16 plan that you're going to be hearing about tonight  
17 and all the data that goes with it is 13 units.

18 These are townhomes instead of  
19 condominiums and one other change that you'll see in  
20 this plan is that there is a green space at the  
21 corner of Albermarle and Nebraska right there where  
22 Eric's pointing that actually was deleted in this  
23 plan so it creates a little bit more of an open  
24 field. So it's 13 units and let me give a better  
25 overview of it. Four buildings as you just

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1 saw priced from the mid 400's. We expect the  
2 purchasers to be professional singles, young  
3 childless couples and empty nesters. Each home has  
4 three bedrooms, two and a half baths with integral  
5 two car garages, a traditional architectural styling  
6 consistent in scale and design with homes found  
7 throughout the neighborhood, seven additional visitor  
8 parking spaces in addition to the two per unit that  
9 we're providing and as you probably have read we've  
10 got a two phase project. The first phase is 11 homes  
11 on the property that we own that we would start upon  
12 receipt of all

13 appropriate approvals and then phase 2 which is two  
14 homes on the property owned by the Bregons who  
15 currently reside on this portion of the property.

16 Now, we talked about the changes that  
17 we've made. We got a lot of input both from the  
18 neighbors, from the Zoning Commission and from the  
19 Office of Planning and we tried to incorporate all  
20 these changes and show you what was done. Obviously  
21 we've reduced density from our first plan of 26 units  
22 to our current plan of 13 units. We have insured  
23 that the homes are architecturally sensitive and  
24 compatible with the community's historic nature. We  
25 increased sales prices. At the time in March when we

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1 saw you we had the units priced at 275 and there was  
2 a concern that AU students would be too attracted to  
3 the units. We've assured traffic and pedestrian  
4 safety as you'll hear from our expert consultant in  
5 traffic. We've increased building setbacks and the  
6 amount of onside parking. We provided adequate  
7 access for emergency and sanitation vehicles. We've  
8 increased the open space, we've decreased the amount  
9 of building lot coverage. We protected Soapstone  
10 Creek. We've designed an innovative storm water  
11 management system and we provided attractive  
12 landscaping.

13 So with that I'll turn it over to Eric  
14 and he can give you a more detailed presentation of  
15 our program.

16 MR. COLBERT: Good evening. My name is  
17 Eric Colbert and I'm very excited to be involved in  
18 this project. I live at 3829 Fessenden Street N.W.  
19 only a couple of blocks from the site and I think the  
20 Hollady Group chose me because of our track record  
21 with doing residential projects in neighborhoods in  
22 D.C. and so it's very nice to be able to have the  
23 opportunity to design a nice group of houses that are  
24 going to be near where I live.

25 The old photograph is very instructive

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1 because it gives you a really good idea of the nature  
2 of our site. Right now I'm outlining our site. Here  
3 is the Metro station at Tenley Circle, Tenley, and  
4 you can see that there are buses that cue up. This  
5 is Fort Drive and 40th Street and also on both sides  
6 of the street they have significant bus loading and  
7 unloading areas. Directly to the west of our site is  
8 this very large parking structure that's three  
9 stories high and then to the north of that is a Fresh  
10 Fields and then you have office structures and the  
11 towers in this area. To the north of our site is  
12 Wilson School and directly north of our site is the  
13 swimming pool complex that has a significant blank  
14 wall and I'll show you later that's in the range of  
15 50 feet above the adjacent grade.

16 I think that in terms of orientation this  
17 is Nebraska Avenue and as you can see here Nebraska  
18 Avenue, which is 120 feet wide, forms a significant  
19 barrier between the single family detached and duplex  
20 houses that exist mainly in this area. So that's a  
21 very significant 120 foot right of way. This is  
22 Albermarle Street. That is also a very significant  
23 street that is one of the major intersections. This  
24 is Wisconsin Avenue and then you can see River Road  
25 here starting as it goes out of town. This is the

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1 Hechinger's-Sears side which, as everyone knows, is  
2 trying to be redeveloped.

3 This is a figure -- of our site and as  
4 you can see again here this is Nebraska Avenue and  
5 Albermarle Street, but you can see how Nebraska, the  
6 figure -- really shows that you get the single family  
7 detached and semi-detached houses in this area, but  
8 then once you cross Nebraska it's predominantly the  
9 high density zone with Wisconsin Avenue here, River  
10 Road, Wisconsin going this way and Fort Drive and  
11 40th Street in this location. Here's the Metro stop.

12 This is the Metro stop and you don't see the buses  
13 in this particular picture, but it's very uncommon  
14 not to have a bus idling right here and you can see  
15 the Hollywood Video store and the three story parking  
16 deck. This is the former Hechinger's site, Sears  
17 site. It's currently vacant.

18 Here you can see what is directly to the  
19 west of our site with the towers looming in the  
20 background and the bus is idling to pick up folks  
21 that are either going to or from the Metro station.

22 This is an interesting photograph because  
23 this shows the intersection of Albermarle. This is  
24 Albermarle here and Nebraska and this is our site.  
25 Actually, the site is set back about 40 feet at this

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1 location from the curb so there is a significant  
2 setback and it's quite a ways before you get to the  
3 nearest residence in this area and then there is this  
4 large blank wall existing in the background. This is  
5 what is directly to the north of our site.

6 This is another photograph showing that  
7 same intersection, but here you can see the buses and  
8 then the Metro station is right in this area. This  
9 is directly across the street and there are a lot of  
10 similarities between our development and this  
11 condition. We are going to be set back exactly the  
12 same amount from the street. We're using the setback  
13 as our setback from the curb for our houses that  
14 exist here. In addition, you can see that this is a  
15 very common situation in this area. You go up a few  
16 steps from the sidewalk and the yards are actually at  
17 a slightly elevated plane and then the house  
18 itself. But the houses in this area are very cute  
19 and, you know, there's an architectural style that we  
20 picked up on which I feel personally was the most  
21 predominant style in the area and I'll show you some  
22 examples of that and how we adapted that architecture  
23 for our development.

24 Here again is across Albermarle Street  
25 and you can see, I think it's also important to point

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1 out in terms of impact on the adjacent structures  
2 this is across Albermarle which is a 90 foot right of  
3 way, but these houses are set back as ours are about  
4 27 feet from the curb, but these are the backs of the  
5 houses. So we're actually not, you know, this is  
6 our exposure to the south but we're actually facing  
7 the backs of these residences. This is the one on  
8 the northern side that we face, the garage of that  
9 house and there is the front of that same house with  
10 the garage. You can see the other two houses there.

11 It's called Grant Road, but the backs of these  
12 houses with that garage is what faces our  
13 development.

14 This is just a half a block down  
15 Albermarle from the intersection of Nebraska and  
16 Albermarle and as you can see these houses are set  
17 way up and the height of our buildings will be  
18 considerably lower than the heights of these houses.

19 Here is another example of what we're seeing across  
20 the street from our site.

21 These are on Windham Street and as I  
22 mentioned the architecture that we are proposing is  
23 something that's one of the most common prototypes in  
24 this neighborhood. In this area you see a lot of  
25 this semi-detached. I don't know what the proportion

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1 of semi-detached are, but it's quite a large  
2 proportion in that area, but we're taking  
3 architectural cues from these buildings. We're  
4 having the mansard roof on the top. We're including  
5 the dormers, we're including the shutters that you  
6 see here, the kind of decorative treatment that you  
7 see above the window openings, the divided lights on  
8 the windows, multi-pane windows. The porches, that's  
9 something that we're including to provide a  
10 transitional zone between the house and the street  
11 and as I mentioned before, again you can see that the  
12 front yard is elevated above the sidewalk which is a  
13 common reoccurrence in that neighborhood and we plan  
14 to incorporate that in our houses as well plus the  
15 lush landscape in the front yards we will incorporate  
16 that in our designs. Here is another example on  
17 Windham Street. It is another group but they are  
18 really all over the place.

19           You know, I live in this neighborhood. I  
20 walk a lot. I'm a runner and I go running in the  
21 neighborhood in the morning and so one thing that was  
22 really important to me was to help my client come up  
23 with a development that was very characteristic to  
24 this area and the reason I'm showing you the Sanborn  
25 map is this is Ellicott Street, Wisconsin Avenue.

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1 I've colored in red the group of townhouses here that  
2 are right next to a school just as we are and  
3 actually I cut out about, you know, a huge number of  
4 precedents like this and my clients, you know, I tend  
5 to be long winded, but they made me call it down to a  
6 small fraction of the precedents that you see for the  
7 same kind of development.

8 Here is another example on River Road of  
9 single family townhouses just as we're providing.  
10 These, generally speaking, actually are more dense  
11 than what we have in mind. Here you see, you know, a  
12 public function, a fairly wide street like we have  
13 and then this provides a transitional zone between  
14 the more heavily trafficked street and then the semi-  
15 detached houses behind it and then single family  
16 houses beyond.

17 Here is another example. This is on  
18 Harrison Street. This is Wisconsin Avenue. Here are  
19 the row houses and then you see near a Metro station.

20 So we feel that what we're going there is ample  
21 precedence for that kind of development. Here is  
22 another one just a few blocks away, 41st St. and  
23 Military Road. You can see all the row houses and,  
24 you know, again if you take the density of these  
25 structures it's actually more dwellings per square

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1 footage of land than what we're proposing.

2 Now, this is a photograph of those  
3 buildings that I just showed you the Sanborn map of.

4 Again these are totally different than the ones I  
5 showed you before, but as I mentioned, on all sides  
6 of the Tenley community you can see the raised area,  
7 the porches, the shutters, the divide-a-light  
8 windows. We'll be using the same kind of brickwork,  
9 the heavy cornice line and then the top floor or  
10 attic level is up on the top.

11 This is the last example I'm going to  
12 show you even though, as I mentioned, there are many.

13 This is on Ellicott Street and 41st literally two  
14 blocks from our site. This shows the townhouses  
15 there in that location. Here you can see a  
16 photograph of those and you can see how the  
17 relationship between the first floor of these houses  
18 and the street with the front yards being slightly  
19 elevated above the sidewalk, the brick piers, the  
20 porches and the mansard roofs and the chimneys coming  
21 up just as we have shown.

22 This is a rendering of our proposed site.

23 We're going to include the brick sidewalks. We have  
24 the individual walkways going up, the porches just as  
25 you saw in those examples, the multi-pane windows,

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1 the cast stone cornices and then the heavy cornice  
2 line and then the Spanish tile or slate roofs and  
3 then the chimneys, decorative chimneys gracing these  
4 townhomes.

5 This plan shows you and I think it's  
6 important to point out that, as I mentioned before,  
7 we have exactly the same setback as the other houses.

8 If you go down Nebraska, every house is on the  
9 property line as we are, but then there is a 40 foot  
10 setback exactly the same that we have. People see  
11 that and they think it's a front yard, but it's  
12 actually public space. So our setback is consistent  
13 with what's been happening in our neighborhood.  
14 These are the houses on Grant Road. We're looking  
15 into the backs of those, but most of those are very  
16 close to the property line.

17 Here you can see this is the entrance to  
18 our development and we located it at the site which  
19 is the furthest point from the intersection for  
20 traffic safety. This plan shows our willingness to  
21 compromise. We've taken a unit out here and we've  
22 opened up the corner, but this is just the last in a  
23 series of compromises. I've been with Rita meeting  
24 with the community. One of the previous schemes,  
25 actually the initial scheme had 26 units. Then we

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1 kept paring it down, but some of the plans had these  
2 houses pushed back to the north further and we put  
3 them as close to the south as possible so that we  
4 wouldn't disturb this very magnificent tree. We're  
5 going to do everything in our power to save it.

6 Another important point that's shown in  
7 this plan is you can see the shadows that are cast by  
8 these townhomes, single family residences and north  
9 is up on this plan so the shadows that will be cast  
10 by these houses will be to the inner part of our site  
11 and will not obstruct light to any other existing  
12 residence.

13 These are the elevations. Just to give  
14 you an idea of the height, one of the important  
15 points of our design is because we have a strong  
16 cornice line and then the mansard roof this strong  
17 cornice is the kind of visual top of the house is at  
18 27 feet above the front yard. When you take the  
19 distance from the front yard to the ceiling that's in  
20 the uppermost part it's a modest 34 feet, six feet  
21 below what's permitted as a matter of right under the  
22 most restrictive residential zone. We will have a  
23 very modest three feet from the front yard down to  
24 the sidewalk which is very typical of this area as I  
25 pointed out previously in the other slides.

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1           This shows our inclination to do a very  
2 generous landscaping package which will include  
3 street trees in the front yards which is actually  
4 public space and then we'll work with the city where  
5 appropriate to also include street trees in this  
6 area. As I mentioned the brick sidewalks, the slight  
7 inclination and the very generous landscaping package  
8 along with the porches. This is the section which  
9 shows the even greater setback along Nebraska Avenue  
10 than we have along Albermarle Street.

11           Here again let me just summarize. Again  
12 you see the very strong Nebraska Avenue which really  
13 divides all this high density commercial from the  
14 semi-detached and single detached houses on the other  
15 side of Nebraska. Our side is really -- it's really  
16 separated. These are the backs of existing houses on  
17 Grant Road and this is a very busy street with buses  
18 idling at both sides. This is a blank wall. I feel  
19 strongly compelled that this development is very  
20 modest. It's been reduced and then we worked  
21 carefully with the community to come up with a good  
22 plan. Thank you.

23           MS. BAMBERGER: Let me just finish up our  
24 part of the presentation. There are a lot of numbers  
25 on this chart and I don't expect you to digest

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1 everything, but focus particularly on the last two  
2 columns, the current plan versus what's allowed by  
3 right and you'll see that this is a very modest  
4 density proposal. We're proposing 13 units as you  
5 heard. We're allowed five by right in R1-B. We're  
6 proposing townhouses which is single family attached  
7 versus single family detached. We are proposing  
8 10,740 square feet. We're allowed to do 10,696 feet  
9 by right. We've got 7000 more square feet in our --  
10 area than we were allowed to by right. In a by right  
11 zone you can do an FAR 1.2. We're only at 1.49. A  
12 lot covered ratio is exactly the same as in an R1-B  
13 by right zone and interestingly our lot coverage, our  
14 area covered by paving, is only 26 percent. If we  
15 did five single family homes we could pave over 100  
16 percent of it.

17 Our unit heights are the same or less  
18 than what's allowed by right. We're providing double  
19 the amount of parking that's required by right, two  
20 spaces instead of one space, and there is no guest  
21 parking required in an R1-B zone and we're providing  
22 seven spaces.

23 In the interest of time I won't go  
24 through the original plan, but suffice it to say I  
25 think you understand by now that we've made major

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1 reductions in density and all of the categories are  
2 reflected therewith.

3 Again, project amenities. Let me just  
4 run through these briefly. Of course, we're  
5 providing new housing in the District of Columbia and  
6 alternative housing choices. High quality  
7 architecture as Eric just described, ample and  
8 abundant landscaping, brick paved sidewalks. We've  
9 proffered to provide 25 additional trees of three  
10 inch caliper that can be planted anywhere the  
11 neighbors decide they'd like them. We've got  
12 innovative bio-retention storm water systems which  
13 you'll hear about in a minute, we're proposing to  
14 restore the stream and provide some outfall  
15 protection. We'll be talking about the white oak and  
16 what we're doing to preserve that and we're  
17 generating approximately \$60,000 in annual revenue  
18 for the city.

19 MR. FEOLA: Thank you, Mr. Chairman. Our  
20 next witness is Michael Rolband of Wetland Studies  
21 and Solutions who is going to talk a little bit about  
22 the natural condition of the stream adjacent to the  
23 site. There was a report submitted by Wetland  
24 Studies and Solutions in the prehearing submission.  
25 That has been amplified due to some concerns of the

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1 Office of Planning which we are turning in now and,  
2 Mr. Rolband, please state your name and address and  
3 go ahead and make your presentation.

4 MR. ROLBAND: My name is Michael Rolband.

5 I'm the president of Wetland Studies and Solutions.

6 My address is 6285 Clifton Road, Clifton, Virginia.

7 Our company was engaged by the Hollady Corporation  
8 originally in May of 1998 to perform a wetlands and  
9 waters -- reconnaissance. Recently we were also  
10 engaged in October of this year to conduct a stream  
11 reconnaissance for a stream that's on the adjacent  
12 property known commonly as Soapstone Creek. The  
13 result of our studies, number one, is that we found  
14 no waters within -- as wetlands or any streams on the  
15 property. We did locate, as everyone knows, a small  
16 intermittent stream that is off the site. It is on  
17 the north side of the site between our property and  
18 the school.

19 This picture from Nebraska Avenue shows  
20 you the stream valley. It might be called by some a  
21 ravine. It's an overgrown area where there is a  
22 stream flowing. The result of our study is that we  
23 recommended that site design practices be  
24 incorporated to avoid all impacts to waters in the  
25 United States. That is pursuant to Section 44B-1 of

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1 the Clean Water Act. That's the guidelines that  
2 direct people to avoid and minimize any impacts to  
3 those areas if at all practical.

4 Now, there has been lots of talk about  
5 Soapstone Creek. This is a picture from Nebraska  
6 Avenue. This next picture shows you about halfway up  
7 the roughly 300 foot long reach, the defined stream  
8 channel which was taken about three weeks ago. It's  
9 just to the left of one of my employees. There is  
10 about a two to three foot wide area you can see some  
11 visible water. This creek has 8.8 acres of drainage.

12 It basically leaves an eight inch and a ten inch or  
13 it was a ten inch and 12 inch pipe to reinforce  
14 concrete pipes. That forms the headwater of this  
15 stream. It flows approximately 300 feet until it  
16 gets to Nebraska Avenue where it reaches a 24 inch  
17 diameter pipe. Of this 8.8 acres about 0.6, roughly  
18 two-thirds of an acre, flows from our site into the  
19 stream.

20 What we found was that this site, this  
21 stream, is fed by four outfall channels, four  
22 outfalls of pipes. We have a very stable channel  
23 except in the outfall area where the pipes discharge  
24 under the channel there is erosion occurring. This  
25 picture shows you not too clearly, but I'm going to

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1 show you the next one some of the outfalls and how  
2 the erosion is occurring.

3 The stream also is very shaded mostly by  
4 invasive non-native plants. Many people talked about  
5 the fact that it may be intermittent or perennial and  
6 some people asked what's the difference and why do we  
7 care. A perennial stream is typically determined to  
8 be more valuable than an intermittent stream. A  
9 perennial stream is a stream that flows all year  
10 round during a year of normal rainfall because there  
11 is ground water that provides this base flow. An  
12 intermittent stream has some ground water  
13 contribution, but not enough to make it flow all year  
14 round in a year of normal precipitation patterns.

15 This year has been a year of above normal  
16 rainfall yet we have observed it in the position  
17 where it does not flow. Therefore, we believe, this  
18 is observation number one, that it's intermittent.  
19 This is also supported by the fact that the U.S.G.S.  
20 maps, which always are not perfectly accurate, do not  
21 indicate it as a perennial stream.

22 Finally, there is significant statistical  
23 analysis data available that shows in this area, in  
24 the northern coastal plain which we are on the edge  
25 of, that the typical minimum size of -- area supports

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1 a perennial stream as 75 acres, almost nine times the  
2 -- area of this stream.

3 Finally, you have to remember that this  
4 is a highly degraded urban stream. It leaves the  
5 storm water pipe right here and it enters a storm  
6 water pipe about 300 feet farther down stream. It's  
7 not the pristine conditions that many people  
8 discussed, but there is an effect on the stream for  
9 the proposed development. The increase in impervious  
10 area will increase the amount of surface runoff in  
11 the site and it will decrease the amount of ground  
12 water infiltration for the rainfall. Because of that  
13 we developed recommendations to mitigate for this  
14 effect.

15 We proposed best management practices and  
16 those are practices that are determined by engineers  
17 to be the most effective at improving water quality  
18 and maintaining predevelopment hydrologic patterns.  
19 We suggested a BMP design to infiltrate water into  
20 the ground to offset the increased runoff and lack of  
21 infiltration for the impervious areas. We estimated  
22 about 8800 cubic feet per year of water will be  
23 needed in a typical normal rainfall year to offset  
24 this effect.

25 The BMP system is designed to treat the

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1 first half inch of water. Later our civil engineer  
2 will discuss more details about that, but if we look  
3 at a typical year and look at the first half inch  
4 flush of water or less in the smaller storms and at  
5 least get 25 percent of that water to infiltrate into  
6 the ground, we will have offset the effect of the  
7 additional impervious area.

8 The second recommendation we've suggested  
9 is to remove the trash. One of the slides earlier  
10 that was a little unclear shows you some of the tires  
11 -- and just typical household trash that's in the  
12 area and finally we suggested these outfalls, there  
13 are four of them, be stabilized with small rocks or  
14 some people call it rip-rap. We are suggesting more  
15 of a river washed stone. It would be a little more  
16 natural. That rock will absorb some of the energy,  
17 reduce the velocity of the flow out of these pipes  
18 and reduce the amount of suspended solids that the  
19 eroding materials go into the water column and then  
20 endanger the species of fish and also small aquatics  
21 that live in the stream downstream.

22 So in conclusion we've recommended and  
23 achieved with our client complete avoidance of any  
24 impacts to a regulated water --. That's the number  
25 one goal of the Clean Water Act. Secondly, we've

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1 recommended BMPs to offset any secondary effects from  
2 this development. We believe the result is a project  
3 that is the least environmentally damaging practical  
4 alternative as defined by Section 4441 of the Clean  
5 Water Act.

6 The project civil engineer will now give  
7 details on storm water management and the BMP  
8 systems.

9 MR. FEOLA: Thank you, Mr. Chair. We had  
10 a technical difficulty with slides coming back from  
11 the photo place so we're going to have to turn the  
12 lights on and use boards for the next couple seconds  
13 here if you don't mind.

14 MR. AMATETTI: My name is John Amatetti.  
15 I'm with Vica, Incorporated. I live at 1599 Lupine  
16 Den Court in Vienna, Virginia. I'm a principal at  
17 Vica and I was engaged to provide preliminary design  
18 of civil engineering for this project. Our primary  
19 focus, as Mike pointed out, was to provide a real  
20 focus on storm water management and best management  
21 practices for this particular site. At an absolute  
22 minimum we need to meet city standards, but what we  
23 were trying to accomplish was to go beyond those  
24 standards and look at methods that would go beyond  
25 the normal and typical type of facilities that you

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1 might find in the District of Columbia and employ  
2 some innovative practices.

3 Our goal was to meet the minimum  
4 standards, but our objective was to take into account  
5 the opportunities and constraints of this site and  
6 the unique hydrologic characteristics that provide an  
7 innovative BMP that provides water quality. As Mike  
8 indicated our primary objective is to protect and  
9 maintain the hydrology surrounding the stream valley.

10 Your first step in analyzing a watershed  
11 like this is to basically look at first what are the  
12 characteristics of your drainage area? The board  
13 that you see here, the area highlighted in green,  
14 represents 8.8 acres which is the drainage area to  
15 the 24 inch outfall culvert under Nebraska Avenue.  
16 The water is primarily generated from Wilson High  
17 School and I've walked the drainage area myself and  
18 I'm satisfied that this is an accurate  
19 representation. Also I've reviewed the city maps  
20 pertaining to the close conduit storm drain systems  
21 and the surrounding streets and when the streets were  
22 improved, Ford Road to the west, Albermarle to the  
23 south, Chesapeake to the north, they basically route  
24 all the drainage around this site and these outfalls  
25 that Mike has pictures of and was documenting are

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1 outfalls from the high school drainage system both  
2 around the west side of the high school and a portion  
3 of the east side of the high school.

4 The next thing you look at is the  
5 characteristics of your site itself. As Mike pointed  
6 out our site is two-thirds of an acre of the 8.8 acre  
7 drainage area and the characteristics which I've  
8 highlighted in blue arrows is predominantly sheet  
9 flow. Water flows from Albermarle north in four  
10 general sheet flow areas to the stream valley which  
11 is highlighted on the northern side.

12 What you would try and accomplish by  
13 doing this analysis is to match these drainage  
14 patterns with any storm water detention facility that  
15 you provide. CHAIRMAN HOOD: Excuse me. Mr.  
16 Rolband, if you could step on the other side and show  
17 us so the audience will be able to see, too.

18 MR. ROLBAND: These are the sheet flow  
19 patterns.

20 MR. AMATETTI: Correct, correct. The  
21 storm water detention system that we're proposing is  
22 referred to as a bioretention facility. This  
23 facility basically handles the first half inch of  
24 runoff which tends to be the runoff that has the most  
25 pollutants in it, take this water, introduce it on

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1 top of a bioretention bed and then the water filters  
2 down through the bioretention bed which is a mixture  
3 of sand, topsoil and mulch and ultimately to be  
4 infiltrated into the ground and provide not only  
5 water quality by cleansing the water, but also to  
6 recharge the ground water from the impervious areas  
7 that have been introduced.

8 What you see here is a modification of  
9 what we had discussed earlier when we made some  
10 presentations to the ANC because we're trying to take  
11 advantage of the opportunity that the redesign has  
12 presented to us by removing the one townhouse unit in  
13 the center of the northernmost --. What we are  
14 accomplishing now is matching the drainage patterns  
15 that exist naturally and taking water from the west  
16 side of the project over bioretention facility in the  
17 northwest corner and then additionally on the east  
18 side taking the water that would have naturally  
19 flowed in that area and bring it over that  
20 bioretention bed. The bioretention facilities  
21 are a sound technique. They work, they provide not  
22 only water quality, but they also provide ground  
23 water recharge which will meet our goal of trying to  
24 preserve the hydrology in this area. I believe this  
25 design meets those goals and objectives and I also

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1 believe by introducing these facilities we'll  
2 preserve the hydrology of the stream valley area in  
3 this particular area.

4 MR. FEOLA: Thank you, Mr. Chairman. Our  
5 next witness is Ed Milhous, our arborist.

6 MR. MILHOUS: Good evening. My name is  
7 Edward Milhous. I reside at 6771 Jefferson Street in  
8 Haymarket, Virginia. My company is Trees Please.  
9 I'm a consulting arborist. I'd like to talk a little  
10 about the trees that exist on this site tonight.

11 There are 19 trees that have the potential to  
12 become very large shade trees along the strip of land  
13 that borders Albermarle Street and Nebraska Avenue.  
14 Generally speaking, these trees are not in very good  
15 condition. They have been overrun with vines mostly  
16 English Ivy. A number of them have been pruned  
17 drastically in order to keep them out of the utility  
18 wires overhead and they are crowded in some cases.

19 There are four trees in question here  
20 that are very large today. One of them is a 72 inch  
21 poplar. I consider this tree a hazard. It's been  
22 struck by lightning twice, it's full of decay and it  
23 needs to be removed as soon as possible. There is a  
24 white pine that is in good condition about 30 inches  
25 in diameter. The white pine is not a native tree

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1 here and has a relatively short useful life span in  
2 our area. You can expect one to live about 60 to 70  
3 years and this one is getting close to that age.

4 There is also a black locust that's 24  
5 inches in diameter. The black locust has two  
6 leaders, two main stems. They are weakly attached.  
7 I think this tree could fall apart at any time. I  
8 consider it a moderate risk.

9 There is also a white oak, a very large  
10 white oak which has been the subject of a lot of  
11 discussion. This white oak is very nice, no doubt  
12 about it. It's 41 inches in diameter. It sits just  
13 north of the proposed development site right there.  
14 In your information you have a document provided by  
15 the Tenleytown Neighbors from Pitchford and  
16 Associates dated October 17th, 1999 in which Keith  
17 Pitchford indicates that he believes this tree needs  
18 a 40 foot radius preservation area all the way around  
19 it to guarantee its survival.

20 I looked at the tree before I saw this  
21 memo and I thought that there had been a  
22 misinterpretation of the site when I saw the memo. I  
23 say this because there is a retaining wall running  
24 right along the property that stops right directly in  
25 front of the white oak. On the development side of

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1 the site the land had been leveled out and hilled  
2 behind that retaining wall. That retaining wall has  
3 been there for quite a number of years. The process  
4 of leveling that site out and filling and building a  
5 retaining wall would have damaged or destroyed any  
6 roots from that white oak that were existing at the  
7 time and that would have restricted future growth of  
8 it. So I didn't think that was the case.

9 In the memo Mr. Pitchford also indicated  
10 that the white oak is an upland species and requires  
11 dry soils. Therefore, it wouldn't be growing in a  
12 stream valley but instead on the development site. I  
13 also think that's a mistake. Looking at the  
14 literature, the standard textbook on dendrology  
15 indicates the white oak is a very adaptable species  
16 and actually grows best on soils that are constantly  
17 moist but well drained the kind that you find on the  
18 upper parts of flood plains and indeed you find white  
19 oak all through the flood plains in the Mid-Atlantic  
20 region. It's a very common tree there.

21 Hollady Corporation asked me if I could  
22 take a look at the situation in some way to verify  
23 just where this tree's root system was. They  
24 indicated it was very important that the tree be  
25 preserved during this process of development. So a

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1 week ago I had a contractor come out with an  
2 airspade. An airspade is a device that used high  
3 speed air pressure to blow soil away. We use it  
4 commonly on trees to remove the soil around the base  
5 of the tree from the root system to see where the  
6 roots are, to see what their condition is.

7 We took the air -- and removed the soil  
8 around the retaining wall where it comes right to the  
9 tree. At that point the retaining wall was 25 inches  
10 deep. It tapered to 16 inches at the tree and at the  
11 end of the retaining wall was about in the middle of  
12 the tree.

13 Looking at the root system of the tree,  
14 of this white oak, there was a five inch buttress  
15 root. The large roots that flare out at the base of  
16 the tree are called buttress roots. There is a five  
17 inch buttress root running along the retaining wall  
18 toward Nebraska Avenue that goes about two or three  
19 feet from the tree and then starts to curve  
20 underneath the retaining wall. There also was a  
21 small buttress root, about four to five inches in  
22 diameter, coming right out of the tree at the end of  
23 the retaining wall and then there was a large  
24 buttress root, about 12 inches in diameter, going  
25 west in this direction. There also are five buttress

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1 roots on the lower side of this tree at least 12  
2 inches in diameter going the stream valley. Now,  
3 this furthered my conclusion that the roots were  
4 predominantly in the stream valley.

5 To determine if there were roots on the  
6 side being proposed for development we took the  
7 airspade and dug two trenches about five feet long,  
8 eight to ten inches deep, about 12 feet from the  
9 tree. We dug one in the southeast direction from the  
10 tree right in here and we dug one in the northeast or  
11 southwest direction right in here. In the one on the  
12 southeast we found several roots, but none of them  
13 were oak roots. All of them belonged to a species we  
14 couldn't identify. The largest one was about one  
15 half inch in diameter. I took a sample of it and  
16 looked at it with a microscope and counted the growth  
17 rings. It was six years old. In the trench on the  
18 lefthand side on the southwest we did find one oak  
19 root about an inch and a half in diameter and several  
20 roots of the same species that were in the other  
21 trench.

22 All this leads me to conclude that the  
23 white oak has relatively few roots in the development  
24 site, that most of its root system is actually in the  
25 stream valley. This would be reinforced by the fact

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1 that there is another white oak off the site on the  
2 Wilson School side that has even less upland rooting  
3 zone than the tree in question. It's quite vigorous.

4 Its root system must be growing in the stream  
5 valley.

6 Now, what can we do to preserve this  
7 white oak? The tree has already been pruned. I  
8 don't see any need to prune it further at this point.

9 I would recommend to the Hollady Corporation that it  
10 be root pruned in the area where development will  
11 occur, that a fence be erected to prevent traffic in  
12 the area underneath the tree, that areas that must be  
13 traversed by workers be padded with mulch to protect  
14 the root system if it is there and then to monitor  
15 the health of this tree during the progress of the  
16 development. Doing those things I think this tree  
17 has an excellent chance of surviving. I don't see  
18 any problem with it. Thank you very much.

19 MR. FEOLA: Mr. Chairman, our next  
20 witness, Marty Wells, will talk about the traffic  
21 implications of this development. Mr. Wells, state  
22 your name and address, please, for the record.

23 MR. WELLS: Good evening. My name is  
24 Marty Wells. I'm president of Wells and Associates  
25 and my home address is 4504 North 38th Street in

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1 Arlington. My firm was retained by the Hollady  
2 Corporation to conduct a traffic study of the Tenley  
3 Part Project and we evaluated the streets bordering  
4 the site and the intersections along Albermarle  
5 Street including 40th Street, Fort Drive, Nebraska  
6 Avenue, 39th Street. We also looked at 39th and  
7 Grant Street. We took traffic counts on multiple  
8 days.

9 Counts were taken at the Nebraska Avenue,  
10 Albermarle Street intersection on Wednesday,  
11 September 15th, 1999; Wednesday, October 4th, 2000.  
12 That's about a year later and on Saturdays on October  
13 9 and 23, 1999 and September 30th, year 2000. This  
14 chart displays the weekday A.M. peak hour count  
15 results here, P.M. peak, weekday P.M. peak here and  
16 the Saturday counts here.

17 The weekday A.M. peak hour generally  
18 occurred around 7:45 to 8:45. The afternoon peak  
19 hour generally occurred around 5:15 to 6:15 and the  
20 Saturday peak hour was around noon. These counts  
21 show that the traffic counts were reasonably  
22 consistent between the various count dates. There is  
23 not a whole lot of variation here. There is not  
24 variation also in the levels of service. During the  
25 weekday A.M. peak hour at this particular

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1 intersection the intersection performs at an overall  
2 level of service C. As you know level of service D  
3 or better is generally acceptable in urban areas.  
4 The comprehensive plan suggests in Ward 3 that level  
5 of service C be achieved and I'm pleased to report  
6 that that's being achieved at this intersection both  
7 during the A.M. peak hour and the P.M. peak hour. On  
8 Saturday all three of these counts level of service B  
9 is achieved.

10 This next slide shows the variation again  
11 on the same count dates of the traffic along  
12 Albermarle Street which is one of the two frontages  
13 on the site and the frontage on which the proposed  
14 driveway would be located. There is almost no  
15 variation in the counts during the weekday A.M. peak  
16 hours roughly about 800 trips. That's the combined  
17 total of eastbound and westbound trips on that street  
18 segment. It's about 700 during the weekday P.M. peak  
19 and roughly about 600 during the Saturday peak hours.

20 In terms of the levels of service I know  
21 this is a little faint, but at Albermarle at 40th  
22 Street and Fort Drive the levels of service are B in  
23 the A.M. peak hour, B in the P.M. peak hour and A on  
24 Saturday. Again at Nebraska and Albermarle it's C, C  
25 and B and we have levels of service A at Albemarle,

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1 39th and 39th and Grant.

2 The Tenley Park Project, as you know, is  
3 located less than 500 feet from the Tenleytown Metro  
4 station. Our analysis was based on 14 townhomes and  
5 now, as you heard from Rita Bamberger, the proposal  
6 is 13 townhomes. We estimate that those units will  
7 generate a very modest number of trips, during the  
8 weekday A.M. peak hour about six trips, during the  
9 weekday P.M. peak hour about seven trips and a very  
10 low two trips on Saturday.

11 Those are low numbers in absolute terms.

12 They are very low numbers in relative terms. If you  
13 look here during the -- this is meant to show there  
14 is actually two stripes to this bar. The blue stripe  
15 shows the roughly 800 trips that are the existing  
16 traffic on Albemarle. To that we would add six trips  
17 which would be about three-quarters of one percent.  
18 During the P.M. peak hours we would add seven to the  
19 700 which is roughly one percent and on the weekday -  
20 - Saturday it's a very small number.

21 The site driveway itself, the turning  
22 movements in and out of the driveway, would operate  
23 at level of service A or B. In terms of the site  
24 access a single site driveway is being proposed.  
25 That driveway would be located on Albermarle Street

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1 roughly at the safest and most appropriate location  
2 in my view midway between 39th Street and Nebraska  
3 Avenue. Compare that, for example, to five driveways  
4 which might be permitted under the by right  
5 development.

6 I am pleased to be able to say that the  
7 Department of Public Works agrees with our findings  
8 specifically in their October 3rd referral letter.  
9 They agree with our findings with regard to the site  
10 trip generation, levels of service, site access and  
11 safety. The DPW concludes as we conclude that Tenley  
12 Park "will have no significant impact on the  
13 transportation system in the area." Thank you.

14 MR. FEOLA: Mr. Chairman, our last  
15 witness is Ken Doggett, our urban planner. Mr.  
16 Doggett, your name and address, please.

17 MR. DOGGETT: My name is Ken Doggett and  
18 I'm a land planner with 30 years experience. I  
19 reside at 2702 36th Street N.W. in the Cathedral area  
20 and have been for 32 years. Because of the time  
21 factor I originally divided my analysis into overview  
22 description, zoning, comprehensive planning and  
23 summary. I will abbreviate the first two and move  
24 into the zoning as quickly as possible.

25 This is a composite map I drew showing

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1 Wisconsin Avenue, the four lane very busy Nebraska  
2 Avenue, Albermarle Street to the south and I believe  
3 it's Fessenden --. The grey -- that you see is a  
4 composite zoning and comprehensive plan designation.

5 It includes institutional uses, local public  
6 facilities, some housing and open space. The yellow  
7 that you see primarily on this side is the R-1 single  
8 family housing divided by a very strong Nebraska  
9 Avenue, a four lane and a busy Nebraska Avenue. The  
10 orange is a special area which is the Metro station  
11 area, Tenleytown Metro station. The red is the site  
12 and the H you see on the property is designating land  
13 west of Nebraska as housing opportunity areas. So  
14 this is quite a busy area that you see where the  
15 whole thing combines together.

16 The site is 400 feet from the entrance of  
17 the Metro station, about 300 from the WMATA bus stop.

18 I will now briefly go over the zoning area.

19 The site together with the school  
20 building's land and recreation facilities to the  
21 north retains its original R1-B zoning. West of the  
22 site the properties are zoned C2-B and C3-A. These  
23 are the areas that run down Wisconsin Avenue. You  
24 can see them in --. The proposal is for R5-B using  
25 the PUD designation to achieve sound design and

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1 planning placeability.

2 The D.C. Office of Planning has listed in  
3 their excellent well analyzed report 13 reasons why  
4 PUD is justified. There are many public amenities  
5 associated with this PUD application. Zoning  
6 flexibility is grounded to achieve the objectives of  
7 a comprehensive plan to provide aesthetic elements in  
8 addition to those of a by right development and to  
9 offset any of the negative impacts for the proposed  
10 development.

11 The beneficial land use features include  
12 some of the following: the proximity of the proposed  
13 townhouses to Tenleytown Metro station and the Fort  
14 Drive Bus Line; a housing opportunity area that  
15 encourages diverse and innovative housing; the  
16 preservation of Soapstone Creek and the  
17 environmentally sensitive treatment of the site; the  
18 undergrounding of on-site utilities; a better than by  
19 right traffic system and the design of comparable  
20 architecture and compatible site planning.

21 This is the policies and features map as  
22 I call it. There you see the -- that's the Metro,  
23 that's the site and the number 2 represents the area  
24 as being a housing opportunity area. That is to  
25 encourage innovative housing and by implication

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1 higher housing than you would normally by by right  
2 development.

3 The suggestion has been made in an ANC  
4 motion that this is spot zoning, but this is not a  
5 reasonable statement in my opinion. The site is  
6 transitional use located on the edge of the R1-B  
7 zoned area adjacent to institution and commercial  
8 properties and has been referenced by the  
9 comprehensive plan in the Planning Office as a  
10 housing opportunity area. The comprehensive  
11 plan shown here is from the planning report and shows  
12 Nebraska Avenue as the sharp dividing line between  
13 the low density residential detached housing and the  
14 institutional, commercial, Metro station and open  
15 space planning to the west. The comprehensive plan  
16 and the generalized land use policies map recommend  
17 this area as a housing opportunity area as you saw in  
18 the previous policy map  
19 which stresses elevating housing as I said in close  
20 proximity to existing facilities and infrastructure  
21 especially the Metro system, in short, a basic  
22 concept of smart growth.

23 Smart growth is really not a new thing.  
24 It's an old thing. It's preventing sprawl using what  
25 facilities and infrastructure you have and taking

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1 advantage of them. The D.C. Office of Planning also  
2 recognizes that the actual site is unique which is  
3 the term they used in our report quite rightly due to  
4 its location near the Metro station and the more  
5 intense long residential existing uses that are  
6 separated from the R1-B zone properties located on  
7 the east by the heavily traveled Nebraska Avenue.  
8 The proposed townhouses would also help to support  
9 the employment base located along the commercialized  
10 Wisconsin Avenue by establishing a greater number and  
11 a diversity of homes.

12 Furthermore, it is located, as I said,  
13 only 400 feet from the Tenleytown Metro station and  
14 300 feet from the Fort Drive Metrobus. I have to  
15 repeat that because I think it's such an important  
16 factor.

17 The opposition may indicate this area was  
18 originally planned as a low density metro area, that  
19 the continuing validity of this approach remains  
20 questionable. When the original plans were drawn  
21 up --

22 CHAIRMAN HOOD: Let me just interrupt,  
23 Mr. Doggett.

24 MR. DOGGETT: Yes.

25 CHAIRMAN HOOD: Let me just explain the

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1 applicant's time has expired.

2 MR. DOGGETT: I have about one minute to  
3 go, sir.

4 CHAIRMAN HOOD: We will give you one  
5 minute. Mr. Feola, how much more time do you need?

6 MR. FEOLA: That will be it. He's our  
7 last witness, Mr. Chairman.

8 CHAIRMAN HOOD: Okay. Proceed.

9 MR. DOGGETT: Okay.

10 CHAIRMAN HOOD: Thank you.

11 MR. DOGGETT: That people have objected  
12 in the past the conditions have changed to the  
13 proximity of the Metro station and often people buy  
14 houses just to be near a Metro facility. Also the  
15 argument becomes superfluous when one looks at the  
16 site's unique location, its designation as a housing  
17 opportunity area and its striking proximity to the  
18 Tenleytown Metro station and -- Bus Lines.

19 In summary, the concept of smart growth  
20 is very evident in this proposal. The D.C. Office of  
21 Planning declares three basic components necessary  
22 for smart growth which I think came from the Urban  
23 Institute which is the basis of many of the  
24 comprehensive plan recommendations for this area.  
25 There must be an economic incentive for the

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1 developer, a community's vitality should be increased  
2 by good design and there should be concern for  
3 environmental factors. It is my opinion that this  
4 criteria has been met and the following summary  
5 indicates some of the land use justifications for  
6 change demonstrated by the PUD proposal that has  
7 embodied the smart growth policies.

8 The site's close relationship to the  
9 institutionally commercial land west of Nebraska  
10 Avenue, the increasing -- to commercial areas and  
11 Wisconsin will require a transition to separate it  
12 from the single family detached homes east of  
13 Nebraska Avenue which the PUD has accomplished. The  
14 enhancement of the environmentally sensitive land and  
15 protection of the Soapstone Creek, the application of  
16 the housing opportunity and its policy to the area  
17 especially west of Nebraska Avenue and the  
18 opportunity to use the existing infrastructure to  
19 provide more and diverse housing, the separation of  
20 the site from the single family housing located on  
21 the east of the heavily traveled Nebraska Avenue that  
22 forms an appropriate line of separation, the minimum  
23 negative traffic impact from the development of the  
24 site as opposed to the by rights -- and the extreme  
25 close proximity to the Metro station and the -- Bus

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1 Lines.

2 In conclusion, I would like to thank you  
3 for this opportunity to testify before the Commission  
4 in support of this application.

5 MR. FEOLA: Thank you, Mr. Chairman.  
6 That concludes our direct case. We would like to  
7 reserve some time for rebuttal and concluding remarks  
8 at the end of that. We do believe this is a  
9 responsible development and I think in your file you  
10 received a letter from the Chesapeake Bay Foundation  
11 which supports this proposal as well as the  
12 Washington Regional Network for Livable Communities.  
13 Thank you for your time and we stand ready for  
14 questions.

15 CHAIRMAN HOOD: We'll break here.

16 Colleagues, before we proceed with our  
17 questions we have a housekeeping issue. We need  
18 cards from Ms. Gunning and Mr. Tobias. We need  
19 witness cards from you.

20 Also, Commissioners, if we could take a -  
21 - if we could look at our time and see exactly how  
22 far we plan on going into the night. I know a lot of  
23 people may have used Metro and I believe they close  
24 at 12:00. So we need to do an assessment.

25 It's obvious to the audience that we're

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1 going to have to have another hearing obviously, but  
2 I am prepared to go as long as we need to, but then  
3 again we have to keep in mind that public  
4 transportation. So I want to be fair and let  
5 everyone know up front that it's obvious that we're  
6 going to have to have another hearing or a  
7 continuance. So any comments, colleagues, about how  
8 long you'd like to or do you want me to make the  
9 call?

10 COMMISSIONER PARSONS: I think anything  
11 after 10:30-10:45 I think we found in the past  
12 people's attention span is lapsing and certainly I  
13 can't stay after 11:00.

14 MR. FEOLA: Mr. Parsons, I'm about going  
15 to sleep about that time so --

16 CHAIRMAN HOOD: Let me just say that we  
17 have 15 people on the witness list proponent or  
18 opponent. I'm going to also give this to staff if  
19 anyone who has come in later wants to sign up for the  
20 witness list. So I guess we'll look at 11:00 and  
21 maybe we'll call it if that's okay with all parties  
22 interested and everyone. Is that fair? Then we'll  
23 come back and try to finish it at another date, but  
24 for those who may have to leave earlier, Mr. Bastida,  
25 do we have another date?

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1 MR. BASTIDA: Mr. Chairman, we have a  
2 tentative hearing on the 2nd of November that is  
3 being -- they are asking for a postponement.  
4 Accordingly, we have that evening and we will need  
5 some Commissioners -- to postpone that hearing to a  
6 date certain in December. So I am proposing that we  
7 do it that night.

8 CHAIRMAN HOOD: November the 2nd. Is  
9 that okay with all parties and the audience and  
10 colleagues? November the 2nd at 7:00 in this room?  
11 So if you don't have an opportune time tonight I will  
12 assure that we are going to be fair across the board.

13 If you can't stay because we had to do this this  
14 way, we will make sure that we hear from you. Okay.

15 With that if everything is in order and you have any  
16 questions, we can begin. Well, I'll start them off.

17 If we can put up the rendering, the first rendering  
18 with Ms. --

19 MR. FEOLA: Mr. Chairman, would you like  
20 us to use the boards for the questions so we can keep  
21 the lights on?

22 CHAIRMAN HOOD: Actually I saw a picture  
23 that I think was the first slide.

24 MR. FEOLA: We I think have boards of  
25 everything so would you rather have the slides?

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1 CHAIRMAN HOOD: I'd rather have the  
2 slides.

3 MR. FEOLA: Okay.

4 CHAIRMAN HOOD: -- I think it was your  
5 first slide.

6 MR. FEOLA: We've got to go back. Hold  
7 on. Maybe Mr. -- could get the light.

8 CHAIRMAN HOOD: I'm sorry. Maybe it's  
9 the slide after that. I don't remember which.  
10 That's it. Let me just ask. Where is the storm  
11 water retention going to be placed?

12 MR. FEOLA: John. Mike, point for him  
13 because he has to talk him into the microphone.

14 CHAIRMAN HOOD: If you can just use the  
15 pointer. Yes, that --

16 MR. AMATETTI: There would be two  
17 facilities. One would be located in the northwest  
18 corner for the -- and the other in the northeast  
19 corner.

20 CHAIRMAN HOOD: The construction of that  
21 retention pond is what? I heard her say sand, mulch.

22 MR. AMATETTI: At the bottom, excuse me,  
23 at the bottom of the facility there is a layer of  
24 sand between the natural soil and the bioretention  
25 facility and then usually it varies depending upon

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1 the plant material that you place in the facility,  
2 but usually at least a two and one half foot median  
3 of topsoil, made of topsoil from the site, sand and  
4 other agents that loosen up the soil to promote  
5 permeability.

6 CHAIRMAN HOOD: So you're going to have  
7 two retention ponds?

8 MR. AMATETTI: Two bioretention  
9 facilities. They're really not ponds.

10 CHAIRMAN HOOD: Okay.

11 MR. AMATETTI: They -- the way that they  
12 work is they are a slight depression in the ground so  
13 that they will allow water to be held to give it time  
14 to soak into the ground, but it's not really a pond.

15 It's more of a low spot and then there is usually an  
16 inlet placed in that vicinity so that if there is a  
17 heavy rainfall and water continues to come in, then  
18 it will start to go into a closed conduit storm sewer  
19 system. As I said the objective of these facilities  
20 is to get the first half inch of runoff at a minimum.

21 CHAIRMAN HOOD: How often would that  
22 facility need to be cleaned?

23 MR. AMATETTI: Well, we don't have a  
24 tremendous amount of data on these facilities. I can  
25 share a maintenance check list that's been published

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1 by various agencies. It's an innovative technique  
2 that's been used in Prince George's County, it's been  
3 used in the city of Alexandria. They are beginning  
4 to come into use in Fairfax County. I personally  
5 have never used this practice in the District of  
6 Columbia, but it's a new enough technique to where I  
7 can't give you an answer that's based on anything  
8 other than a gut feel because they haven't been in  
9 use for that long a period of time.

10 They are designed, I will tell you, to be  
11 relatively maintenance free from a standpoint of we  
12 usually put a layer of filter cloth right at the  
13 surface so that you never have to deal with the  
14 median below that and if there is a cleaning that  
15 needs to take place, it's right at the surface rather  
16 than, you know, full scale, you know, digging up of  
17 the facility and so forth.

18 CHAIRMAN HOOD: So where those two  
19 facilities are located it downslopes? Am I correct?

20 MR. AMATETTI: Correct. They're  
21 downsloped from the units.

22 CHAIRMAN HOOD: All the runoff on the  
23 site will go into either one of those facilities?

24 MR. AMATETTI: That's the way that we  
25 propose at this point is to direct all the runoff

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1 from the site. We will, in addition, pick up some  
2 runoff from the west from the park property that  
3 we'll also handle in those facilities.

4 CHAIRMAN HOOD: So from what I'm hearing  
5 from you you're not familiar or you have not seen  
6 enough of them to the point where you can say that  
7 this is foolproof?

8 MR. AMATETTI: No. I don't think  
9 anything is foolproof. I think that I would consider  
10 them a step above sand filters with respect to  
11 maintenance considerations and so forth. As I said I  
12 have a checklist. They do take, you know, a yearly -  
13 - on a yearly cycle to see and make sure that they're  
14 functioning properly and so forth. The city of  
15 Alexandria is currently doing some tests to try and  
16 come up with more concrete recommendations. I  
17 believe at this point the best thinking is that the  
18 upper layer may need to have maintenance done on it  
19 within say like a three or four year period and that  
20 means, you know, just cleaning that filter layer and  
21 making sure that it's still functioning properly.

22 CHAIRMAN HOOD: Let me just say I am  
23 familiar with a little bit of this retention facility  
24 and my concern is that once they are put back in and  
25 once the top is put back on then who is going to pay

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1 to have that cleaned out because that's a big cost?

2 MR. AMATETTI: It's not a huge cost.  
3 It's -- usually what happens in these circumstances  
4 is that there is usually a homeowners association  
5 involved and usually there is some money set aside  
6 for the  
7 maintenance of this facility so that it can be -- it  
8 can be accomplished on an ongoing basis without there  
9 being a tremendous burden.

10 CHAIRMAN HOOD: Let me just ask you and I  
11 don't want to prolong it, if we could have some data  
12 on how often they need to be cleaned from other  
13 facilities that have worked. You said Fairfax County  
14 and other places. If we can have some data on the  
15 amount of time that it takes before they have to be  
16 cleaned, then I would appreciate it.

17 MR. AMATETTI: I can furnish you that  
18 information.

19 CHAIRMAN HOOD: Thank you. My next  
20 question is to the transportation specialist. Is  
21 there going to be any parking set on Albermarle  
22 Street?

23 MR. WELLS: There will be no -- there is  
24 no parking on the north curb face today. There is no  
25 curb parking. This thing's alive. There is no curb

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1 parking today on the -- on either side of Albermarle  
2 Street. There is no curb parking at Nebraska Avenue  
3 and none is proposed.

4 CHAIRMAN HOOD: There is? Okay.

5 MR. WELLS: I'm sorry. There is none on  
6 the north side.

7 CHAIRMAN HOOD: Let me just ask one  
8 question before I turn it over to my colleagues. The  
9 significance -- now, show me again where the Metro  
10 station is.

11 MR. WELLS: It's off this drawing, but  
12 it's over here. It's less than 500 feet from here.

13 CHAIRMAN HOOD: And this may be directed  
14 to Mr. Feola. The significance of building up the  
15 residence around the Metro station. You've now -- I  
16 think you went from 26 houses where you started you  
17 went down to --

18 MR. FEOLA: 13.

19 CHAIRMAN HOOD: 13 now.

20 MR. FEOLA: Yes, sir.

21 CHAIRMAN HOOD: What impact do you think  
22 that's going to have using the Metro station? If you  
23 have two folks that live in each home, I just want to  
24 know how do you see that as being an asset? You're  
25 probably going to have to --

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1 MR. FEOLA: I'm not sure I'm the right --  
2 I'm not sure I'm the right person to answer that  
3 question.

4 CHAIRMAN HOOD: Okay. I'm sorry.

5 MR. FEOLA: Probably Mr. Doggett should  
6 answer it from a planning perspective.

7 CHAIRMAN HOOD: Okay. Mr. Doggett.  
8 Let's have Mr. Doggett come to the table.

9 MR. FEOLA: Or Mr. Wells can talk from a  
10 traffic --

11 MS. BAMBERGER: I think Marty.

12 MR. FEOLA: Yes.

13 MR. WELLS: The significance of Metro?

14 MR. FEOLA: Yes.

15 MR. WELLS: I think it's very  
16 significant. In our work we have assumed that about  
17 40 percent of peak hour trip making would be made by  
18 Metrorail. This is very close to the Metrorail  
19 station and presumably people who buy here will find  
20 this a significant amenity of this location.

21 WMATA has done various surveys over the  
22 years and suggests that for residential uses of this  
23 type in this location in the city this close to Metro  
24 then perhaps 50 or 60 percent of people may use Metro  
25 for commuting purposes let's say during peak hours.

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1 Our assumption is about 40 percent. I think it's  
2 very significant.

3 CHAIRMAN HOOD: Mr. Doggett, do you want  
4 to comment?

5 MR. DOGGETT: Well, I would thought the  
6 figure slightly higher, but it is certainly a high  
7 proportion and going to townhouses rather than single  
8 family housing is obviously going to be an advantage  
9 especially as the city is encouraging mass transit  
10 use and the more people that can use it obviously the  
11 better on a citywide basis and most -- and the  
12 District, the small sides so whether this one might  
13 seem small the compilation of several of them are  
14 going to melt to quite a few travelers.

15 CHAIRMAN HOOD: Last question. Any more  
16 townhome developments within the area within maybe a  
17 five block radius?

18 MR. FEOLA: New?

19 MS. BAMBERGER: New?

20 MR. FEOLA: Is that for new development,  
21 sir. Does it have a --

22 CHAIRMAN HOOD: Townhome developments  
23 period, any townhome developments.

24 MR. FEOLA: Yes. I think. Eric?

25 MR. COLBERT: Yes.

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1 STAFF AND WITNESSES: Yes. No.

2 CHAIRMAN HOOD: Let me just -- let me  
3 just withdraw that question because I got -- Okay.  
4 Next. Colleagues, any -- Vice-Chair Mitten.

5 VICE-CHAIRPERSON MITTEN: I'll just  
6 follow up on a couple of questions that Mr. Hood  
7 asked. In the studies that have been done about  
8 predicting transit usage for residential located near  
9 Metro and Metrobus is there any differentiation made  
10 for income levels and the likelihood of usage of  
11 public transportation?

12 MR. WELLS: As I recall I don't believe  
13 that was reported in the Metro -- in the WMATA  
14 studies. I will go back and check that. That's --  
15 the nice thing about Metro is it does have some mass  
16 appeal, pardon the pun, not just for those of modest  
17 means, but it has a reputation of being clean and  
18 mostly reliable. It's an attractive system and I  
19 think people of means use it as well. That's part of  
20 the universal appeal of Metro in my opinion.

21 VICE-CHAIRPERSON MITTEN: But in terms of  
22 the study or anything specific in your experience  
23 that you could point to other than anecdotal  
24 evidence?

25 MR. WELLS: Well, generally it's thought

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1 that the higher the income the less use there is of  
2 Metrorail. I don't -- I don't know that that applies  
3 here, but that is the general trend.

4 VICE-CHAIRPERSON MITTEN: Okay.

5 MR. WELLS: But I will -- based on your  
6 question I will go back to the WMATA studies that  
7 were done in the late 80s and see what that said  
8 about income, household income.

9 VICE-CHAIRPERSON MITTEN: Okay. Thank  
10 you. Mr. Doggett, I had a question for you about,  
11 you know, there is some concern that's been voiced  
12 about the three houses across the street from the  
13 proposed development and in terms of this -- the  
14 change in land use that we -- well, the proposed  
15 change in land use. From a planning perspective what  
16 would you advocate for the site that's directly  
17 across the street?

18 MR. DOGGETT: I haven't given any thought  
19 to it. I would imagine that it would all must be  
20 that the people who own the property can live as  
21 exactly as they want. The Planning Office will give  
22 a direction. In terms of suitability it might be  
23 considered a -- housing opportunity and for that it  
24 could be looked at for higher -- housing.

25 VICE-CHAIRPERSON MITTEN: So you think

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1 that kind of thinking would be advanced?

2 MR. DOGGETT: It's an option, but it's  
3 not the only option. The other one is to remain  
4 single family because it is single family at the  
5 moment.

6 VICE-CHAIRPERSON MITTEN: Okay. And then  
7 I just had another question for Mr. Amatetti. I'm  
8 trying to understand the storm water retention  
9 facility. Because this bioretention facility is  
10 being offered as a -- or being characterized as an  
11 amenity of the PUD project could you explain what is  
12 the alternative? What would another alternative be?

13 MR. AMATETTI: The normal alternative in  
14 an urban situation like this would probably be what's  
15 called a D.C. Sand filter which was something that  
16 D.C. pioneered which in ultra-urban environments such  
17 as you know, downtown where you really don't have any  
18 green areas at all it's probably a very appropriate  
19 measure. In an area like this when you're trying not  
20 only to just do water quality but also to promote  
21 ground water recharge I find that type of facility  
22 limited. While it does provide the water quality and  
23 so forth it doesn't provide any ground water recharge  
24 benefit and at the current time that would probably  
25 be the only other alternative. The site is too small

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1 to, in my opinion, introduce any sort of extended  
2 detention pond or anything like that and in this  
3 particular environment I think the bioretention  
4 facility meets a lot of the goals that we're trying  
5 to accomplish and is an innovative technique that  
6 should be encouraged in this type of development.

7 VICE-CHAIRPERSON MITTEN: Capability.  
8 What does that mean exactly?

9 MR. AMATETTI: Well, basically I refer to  
10 a bioretention facility as a sand filter that instead  
11 of being in a concrete structure, in a vault, it's  
12 basically dug out of the native soil. What you do is  
13 you dig the facility out, usually two and one half to  
14 three feet deep depending again on what type of plant  
15 material you intend on planting back on top of it and  
16 you introduce, through a recognized specification, a  
17 mixture of top soil, sand and other agents that  
18 loosen the soil up and basically when the water comes  
19 into it from the runoff it doesn't go into a chamber.

20 It just goes under the ground at a slight depression  
21 and then soaks down through this median and as it  
22 passes through the natural or the soil median it is  
23 cleansed of various pollutants and then oftentimes in  
24 residential areas like this we usually do put an  
25 underdrain, a small underdrain in there just to make

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1 sure that over a long period the water is not sitting  
2 there and does have a way of getting out of there,  
3 but in this particular soil on this site we've got  
4 what's called a manor soil which is some of the best  
5 soil in the District relevant to its ability to allow  
6 for infiltration.

7 So it's not the type of facility that you  
8 would want to use everywhere. It's the type of  
9 facility where you've got to really look at your  
10 drainage characteristics for the soil median you've  
11 got.

12 VICE-CHAIRPERSON MITTEN: Well, let me  
13 just interrupt you because I don't know if you  
14 answered the question which is is the recharge the  
15 ability of the facility to cleanse the water or what  
16 specifically is -- when you say recharge what do you  
17 mean?

18 MR. AMATETTI: Instead of allowing the  
19 water to run off into the storm drain system we're  
20 giving it a chance to soak back into the ground --

21 VICE-CHAIRPERSON MITTEN: Okay.

22 MR. AMATETTI: And recharge the natural  
23 ground water.

24 VICE-CHAIRPERSON MITTEN: I see. Okay.  
25 Okay. Great.

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1 MR. AMATETTI: Wherein a sand filter  
2 device as soon as it passes through the median it  
3 directly goes through storm drain system and is  
4 discharged like every other storm.

5 VICE-CHAIRPERSON MITTEN: I understand.  
6 Great. Now, in terms of the minimum standards is  
7 there -- I take it there is no standard to do any of  
8 this recharge or is there?

9 MR. AMATETTI: Well, there's design  
10 guidelines that I will share with the Commission that  
11 have been developed by the state of Virginia as well  
12 as Maryland and they deal with minimums as far as  
13 minimum areas, minimum lengths and depths and so  
14 forth. It is the type of facility that lends itself  
15 very well to in-fill type development and to small  
16 development where your only other alternative might  
17 be a sand filter device. It's not the type of  
18 facility that you would probably use for a relatively  
19 large area.

20 VICE-CHAIRPERSON MITTEN: Okay.

21 MR. AMATETTI: And so it's a good fit.

22 VICE-CHAIRPERSON MITTEN: I guess what  
23 I'm ultimately driving at is just trying to gain an  
24 understanding of what the alternative would be.  
25 That's A and B is to the extent that the bioretention

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1 facility exceeds the minimum standards or exceeds  
2 what we would achieve with the other kind of the sand  
3 filtration facility. That needs to be explained at  
4 least to me because this is all, you know, new. So  
5 anything that you could do about advancing our  
6 understanding of that would be great. Thank you.

7 COMMISSIONER FRANKLIN: If you want the  
8 lights can go back on. I don't want to have too many  
9 people falling asleep. Mr. Feola, maybe you could  
10 sort of facilitate the answer to this because what I  
11 really need to better understand is assume the  
12 regulatory environment on the existing zoning and  
13 what would be the reasonable supposition of what  
14 would occur in the R1-B existing zoning with respect  
15 to traffic and curb cuts, guest parking, paving was  
16 touched on. I'm not quite clear, for example, in  
17 terms of the storm water management what the existing  
18 regulatory requirements would be under existing  
19 zoning as distinguished from the PUD approach, tree  
20 planting and other environmental infrastructure  
21 architectural design, community input and continuing  
22 regulatory oversight. Now, that's a handful I  
23 understand, but I just want to better understand in  
24 one comprehensive answer what we would be finding  
25 likely to happen under the existing zoning in these

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1 respects as well as any others you might think of  
2 that are relevant. I started off with traffic and  
3 curb cuts and --

4 MR. FEOLA: Well, I think the matter of  
5 right baseline area would allow five single family  
6 houses, detached single family houses where they put  
7 side yards and 25 foot rear yards.

8 COMMISSIONER FRANKLIN: There was some  
9 earlier reference to driveways.

10 MR. FEOLA: There they would -- could  
11 have individual driveways to those houses. Now, in  
12 truth if this were being developed by a single  
13 developer, they would try to figure out a way to  
14 minimize that, but as record lots, they are right now  
15 on that property four record lots so one of them  
16 would have to be made into two, but those record lots  
17 have a right under D.C. law to have a curb cut. In  
18 fact, there are actually three curb cuts on the site  
19 now, one on Nebraska and two on Albemarle.

20 So they would -- there is the potential  
21 to introduce two more curb cuts from existing and  
22 four more than are there now. Reality if the  
23 developer were to do all these houses and not sell  
24 them as individual lots they would probably find a  
25 way to try to minimize the number of curb cuts.

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1 COMMISSIONER FRANKLIN: Is it a  
2 reasonable supposition that that parcel would have  
3 been developed by one entity?

4 MR. FEOLA: Well, it's owned by two  
5 entities now. So --

6 COMMISSIONER FRANKLIN: But prior -- I'm  
7 talking about without respect to the present pattern  
8 of ownership. What was the status of the ownership  
9 prior to the existing state ownership?

10 MR. FEOLA: The Albermarle Associates,  
11 the Hollady Corporation, purchased the majority of  
12 the property from a single owner.

13 COMMISSIONER FRANKLIN: It was in single  
14 ownership?

15 MR. FEOLA: Yes.

16 COMMISSIONER FRANKLIN: Okay.

17 MR. FEOLA: It was the owner, actually  
18 the owner or occupant, resident occupant of the  
19 property.

20 COMMISSIONER FRANKLIN: And then there  
21 was a comment made about paving which I didn't quite  
22 --

23 MR. FEOLA: May I -- one other thought  
24 about that?

25 COMMISSIONER FRANKLIN: Yes.

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1 MR. FEOLA: But that owner had two houses  
2 on the property, one which the owners rented.

3 COMMISSIONER FRANKLIN: Oh.

4 MR. FEOLA: And lived in a second house  
5 so there were three existing single family houses on  
6 this site before Hollady purchased the property.

7 Pavement is just that there is no  
8 requirement in the zoning regulations for the amount  
9 of impervious surface that's permitted on a single  
10 family lot and someone could put a tennis court,  
11 somebody could put a flagstone deck, any number of  
12 machinations to -- or put just a big driveway for two  
13 or three cars.

14 COMMISSIONER FRANKLIN: What about tree  
15 preservation and planting?

16 MR. FEOLA: There would be -- there is no  
17 requirement for that in this zone. There are some  
18 zones, as you know, tree -- overlay. They have that  
19 restriction.

20 COMMISSIONER FRANKLIN: Going back to the  
21 storm water situation what is a reasonable  
22 supposition for the treatment of storm water under  
23 the matter of right and development?

24 MR. AMATETTI: My experience in the  
25 District is that if you are providing a development

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1 that has less than 5000 square feet of disturbed area  
2 that there is no requirement to provide any sort of  
3 detention or water quality so long as you have an  
4 appropriate outfall. Whether each one of these lots  
5 would be developed singularly you'd be able to meet  
6 that criteria I'm not sure. If they did exceed that  
7 parameter, usually there would be some attempt made  
8 by the District of Columbia storm management section  
9 to require some sort of storm water management, but  
10 my experience is that it varies quite a bit as to  
11 have what they require of single family homes.

12 COMMISSIONER FRANKLIN: Architectural  
13 design I take it there would be no --

14 MR. FEOLA: No review.

15 COMMISSIONER FRANKLIN: -- fiscal  
16 control.

17 MR. FEOLA: No review.

18 COMMISSIONER FRANKLIN: Community  
19 involvement in what was done on the site?

20 MR. FEOLA: Well, there would be some  
21 involvement. As you know, all building permits are  
22 referred to the Advisory -- Commission and certainly  
23 with environmental screening forms which come as part  
24 of the building permit application there would be  
25 some review. I don't think there is the forum set up

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1 like a zoning commission to encourage changes or  
2 compromises -- in those notice provisions.

3 COMMISSIONER FRANKLIN: Have I omitted  
4 anything?

5 MR. FEOLA: No, sir. I don't believe so.

6 COMMISSIONER FRANKLIN: Thank you.

7 CHAIRMAN HOOD: Commissioner Parsons.

8 COMMISSIONER PARSONS: Well, I'm glad Mr.  
9 Franklin did what he just did because he did it a lot  
10 more politely than I would have. I think it was your  
11 obligation to do what he just did for you and you  
12 didn't do a very good job on your initial  
13 presentation. Ms. Bamberger, I'm trying to figure  
14 out who owns what here .

15 MS. BAMBERGER: Okay.

16 COMMISSIONER PARSONS: And I don't mean  
17 that maybe the way it sounds, but it seems as though  
18 the implementation of what you've shown us is  
19 dependent on whether somebody wants to live there for  
20 a long period of time or not or what is this other  
21 arrangement with the two houses to the west?

22 MS. BAMBERGER: Marty, can you point --  
23 pointer. The -- you might want to turn the lights  
24 off, too. The two houses -- well, let's go to the  
25 other side. We own, Albermarle Associates, owns

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1 everything to the east of the two houses shown  
2 adjacent to the National Park Service land. That is  
3 approximately 23,000 square feet and the remaining  
4 two houses that we're showing there comprise the  
5 difference to equal a total of 26,741 square feet.  
6 We've drawn a phase line between the two properties,  
7 what we own and what the Bregons own because we do  
8 not intend to purchase that property, but Mr. Bregon,  
9 given the proximity of our development to his,  
10 thought that he wanted to participate in the PUD and  
11 we thought it made sense from -- planning perspective  
12 to do that.

13 COMMISSIONER PARSONS: So what assurances  
14 does the community have that this is ever going to  
15 happen? I'm not sure I understand. I mean is --  
16 Bregons may live on for 20-25 years?

17 MR FEOLA: Well, yes, I think --

18 COMMISSIONER PARSONS: Is there an option  
19 to whether this PUD is ever --

20 MR. FEOLA: Well, no. I think that  
21 option is exercised by the Commission if it chooses  
22 to implement this PUD the thought being that they  
23 live there with small children and that it is a  
24 single family house now and it would remain a single  
25 family house for some period of time while they

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1 decide whether they want to move or change locations  
2 or have the property developed. That site plan would  
3 stay the same except that there would be a single  
4 family house where there are now two townhouses on  
5 the Bregon's house -- site. So at some point, and  
6 this Commission has traditionally put time limits on  
7 that, three years, five years or some amount of time,  
8 the Bregons will have to answer that question. Do we  
9 want to keep it a single family house or sell it and  
10 turn it into townhouses, but the planning rationale  
11 stays the same except that instead of 13 units  
12 ultimately there will be 12, 11 townhouses and one  
13 single family house.

14 MS. BAMBERGER: His current house.

15 MR. FEOLA: His current house.

16 COMMISSIONER PARSONS: I guess I'm  
17 confused here. Are the Bregon's in the audience?  
18 Are they participants?

19 MR. FEOLA: Co-applicants. Yes.

20 COMMISSIONER PARSONS: Wonder whether the  
21 -- we're either going to get two townhouses or we're  
22 not. I mean what if this Commission decides that  
23 instead of the two townhouses a single family house  
24 would be better on that site and carves it out of the  
25 PUD? Is this an option for us or what?

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1 MR. FEOLA: Well, I mean it's an option  
2 just like you could carve out any other of these  
3 units. I think that is an existing condition. There  
4 is an existing well-kept single family house on the  
5 property that's owner occupant and also a family with  
6 small children.

7 COMMISSIONER PARSONS: So it seems to me  
8 if I -- well, I may have put words in your mouth.  
9 I'll ask you. If the economics of this project from  
10 your standpoint, the Hollady standpoint, have nothing  
11 to do with the family on the property. Is that  
12 right?

MS. BAMBERGER: That's correct.

13 COMMISSIONER PARSONS: It's just the  
14 neighborly thing to do to include them here.

15 MS. BAMBERGER: We have no financial  
16 interest in his property. That's correct.

17 COMMISSIONER PARSONS: So why are you  
18 paying that aspect for?

19 MR. FEOLA: Well, I think when you look  
20 at the site, that property, it's the last private  
21 property on the north side of Albermarle between  
22 Nebraska and the Metro station and it made sense to  
23 plan it as a unit and the Bregon's agreed with that  
24 and wanted to participate in the PUD as a co-owner.  
25 They would like some flexibility because they are not

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1 developers unlike the Hollady Corporation to live  
2 there a while longer and choose to develop it at some  
3 other time. That's all. It's just a phased  
4 development except it's a small portion of the phase.

5 It just made planning sense to incorporate it.

6 COMMISSIONER PARSONS: All right. So  
7 what would you have us do, to leave it open-ended as  
8 to what --

9 MR. FEOLA: No. I think some reasonable  
10 amount of time given to the Bregon's like -- I don't  
11 know what that amount is, but I think the important  
12 thing that we're trying to stress is that if it  
13 stayed a single family house forever it really  
14 doesn't change the planning rationale or the impacts  
15 that we've been talking about today. It will be a  
16 single family house as opposed to two single family  
17 houses. The driveway curves and everything stays the  
18 same. It's just an existing condition that will  
19 continue.

20 COMMISSIONER PARSONS: So would they have  
21 access off your driveway in the interim in phase 1 or  
22 they have their own curve cut?

23 MR. FEOLA: Yes.

24 MS. BAMBERGER: In Phase I they have  
25 their own curve cut. They have a current driveway on

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1 Albemarle.

2 COMMISSIONER PARSONS: I hate to prolong  
3 this, but I think that Mr. Bregon, it would be  
4 helpful if he came forward.

5 MR. FEOLA: Sure.

6 COMMISSIONER PARSONS: He's been raising  
7 his hand back there so I know who he is.

8 MR. BREGON: Well, for reasons --

9 MR. FEOLA: You have to speak into the  
10 mike.

11 COMMISSIONER PARSONS: Please sit down.

12 MR. FEOLA: State your name.

13 COMMISSIONER PARSONS: Tell us who you  
14 are and where you live.

15 MR. BREGON: My name is Nelson Bregon and  
16 I reside at 3921 Albermarle Street. The reason why  
17 we have decided to agree to be part of this  
18 development is because we feel that this development  
19 is going to have an impact on us. We offered to sell  
20 our property to the Hollady Corporation. They did  
21 not want to buy our property. We feel that with this  
22 development that is being proposed if it goes  
23 through, then we would sell our property to another  
24 developer that would like to develop it as two units  
25 or we would develop it ourselves.

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1           We feel that this development would not  
2 be compatible with a single family sitting right next  
3 to it. It would have a detrimental impact on us so  
4 we agreed that we would not voice an opposition to  
5 the project if we were included in the project giving  
6 us the alternative to sell our property to a  
7 developer or, as I mentioned, for us to develop it  
8 ourselves.

9           We've resided in that property now for 17  
10 years, probably longer than most of the neighbors  
11 here. Our three children were born in that house.  
12 We are an integral part the community and that's why  
13 we decided to go along with the development if it's  
14 structured the way that is being proposed. Now, if  
15 this honorable body decides that our property should  
16 remain as a single family next to 12 townhouses, then  
17 we would oppose a development next to us of this  
18 magnitude.

19           COMMISSIONER PARSONS:       That's very  
20 logical. Thank you. But you have no relationship or  
21 contractual relationship with Hollady that says if  
22 you get this through, if they get this through  
23 they'll buy your property?

24           MR. BREGON: That is correct. We do not  
25 have such agreement.

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1 COMMISSIONER PARSONS: Bizarre but true.

2 Thank you.

3 COMMISSIONER HOOD: Excuse me,  
4 Commissioner Parsons. Mr. Bregon, if you could stay  
5 seated.

6 MR. BREGON: Sure.

7 CHAIRMAN HOOD: And also we need you to  
8 fill out two witness cards.

9 MR. BREGON: Okay.

10 COMMISSIONER PARSONS: I wanted to go to  
11 another subject. If somebody wants to follow up with  
12 this one.

13 CHAIRMAN HOOD: Yes. I did want to ask  
14 Mr. Bregon a question. Let me ask you something.  
15 Would you be equally satisfied if someone came along  
16 and proposed single family homes on that site?

17 MR. BREGON: Absolutely.

18 CHAIRMAN HOOD: Any other questions of  
19 Mr. Bregon? Thank you. You can take your seat back  
20 in the audience. Now, the question was coming from  
21 me.

22 CHAIRMAN PARSONS: I had a question of  
23 Mr. Milhous, but maybe he didn't make this decision  
24 so -- maybe he influenced the decision so you removed  
25 a house in the middle of the northern strip of

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1 houses. I didn't hear any testimony, maybe I wasn't  
2 paying enough attention to the testimony as to why  
3 the one -- disappeared and did it have something to  
4 do with Mr. Milhous's tree. I shouldn't personalize.

5 I'm sorry. The oak tree, or does it have to do with  
6 some other urban design consideration or what?

7 MS. BAMBERGER: Actually, there were two  
8 houses on the property that we purchased and both of  
9 them were removed. One house was an older farmhouse  
10 type structure which was in very poor repair. It was  
11 in poor repair on the outside and it was in even  
12 worse repair on the inside. The individual who lived  
13 there was somebody who didn't stay there all the time  
14 and really wasn't very focused on kind of keeping his  
15 house up. There were vines growing in from the roof,  
16 the floors were a mess. It was in a very bad state  
17 of repair so we determined that it was almost a  
18 hazard as it was and we took that down when the  
19 property was purchased.

20 The second house which was directly next  
21 to Mr. Bregon was a small bungalow type structure and  
22 it was primarily rental to American University  
23 students. That, too, was in a very, very poor state  
24 of repair and in both cases actually when the current  
25 owner of the property had moved out which was prior

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1 to the sale the homes had been totally vandalized.  
2 There were vagrants getting in, the houses had been  
3 boarded up, the boards would be broken through and so  
4 it was kind of a health hazard as well.

5 COMMISSIONER PARSONS: I'm sorry. I  
6 guess I might -- didn't phrase my question properly.

7 You presented to us initially five houses facing  
8 north or on the back side of the property.

9 MS. BAMBERGER: Yes.

10 COMMISSIONER PARSONS: Now, it's four.

11 MS. BAMBERGER: Correct.

12 COMMISSIONER PARSONS: There is a  
13 missing --.

14 MS. BAMBERGER. Right. I'm sorry.

15 COMMISSIONER PARSONS: Why did you select  
16 that house to be removed when you reduced the number?  
17 Did it have to do with Mr. Milhous's advice on the  
18 tree? That's why I was going to ask him about that  
19 tree, but ask you about the house first.

20 MS. BAMBERGER: Okay. I get it. Sorry  
21 about the other answer.

22 COMMISSIONER PARSONS: Of course you're  
23 sorry.

24 MS. BAMBERGER: I knew you wanted to hear  
25 that.

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1 COMMISSIONER PARSONS: Yes.

2 MS. BAMBERGER: Actually the idea for  
3 removing that particular house came from the Office  
4 of Planning and after their analysis they had  
5 determined that they thought that house made the most  
6 sense vis-a-vis the tree and primarily the tree and  
7 the view shed and increasing the pervious surface and  
8 so we kind of followed their lead on that.

9 COMMISSIONER PARSONS: All right then,  
10 Mr. Milhous, if you had a house to remove which would  
11 it be?

12 MR. MILHOUS: Actually, I never saw this  
13 sight when the houses were there --

14 COMMISSIONER PARSONS: No, no.

15 MS. BAMBERGER: No, no, the new plan,  
16 the new plan.

17 MR. MILHOUS: Oh, the new plan. Oh, I'm  
18 sorry. I think this is a good one. That's a good  
19 one to remove as far as the tree goes. Since I  
20 didn't find any roots to speak of on that side of  
21 the development I don't think the development has any  
22 effect on that other tree.

23 COMMISSIONER PARSONS: So the removal of  
24 the house has nothing to do with the tree.

25 MR. MILHOUS: Not as far as I'm

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1 concerned. I don't see where it has any bearing on  
2 the health of that tree or the survivability of it.

3 COMMISSIONER PARSONS: So if we were to  
4 remove another house, I don't mean an additional  
5 house but move over one and say we're doing that as  
6 an effort to protect the tree from your standpoint it  
7 really has no bearing on it.

8 MR. MILHOUS: I think you could by right  
9 development and not affect that tree severely. We  
10 could put a swimming pool back there and not affect  
11 it.

12 COMMISSIONER PARSONS: As long as you  
13 stayed in your report 30 feet away from the tree.

14 MR. MILHOUS: I don't think it's got  
15 roots 15 feet from it.

16 COMMISSIONER PARSONS: Well, isn't that  
17 you say in your report, 30 feet?

18 MR. MILHOUS: I recommended staying 30  
19 feet away because that's where the current design is  
20 and I see no point in encroaching further, but by  
21 right development I don't think would hurt that tree  
22 any more than what's being planned.

23 COMMISSIONER PARSONS: Now, if you were  
24 that tree -- sorry. And if somebody put a  
25 bioretention system up the way a bit, would you tend

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1 to go up there and see if you could some water for  
2 your roots or would you stay down in the intermittent  
3 stream? I don't mean facetiously. Do you think this  
4 tree might change its habit if it saw a recharge area  
5 being created in a different location?

6 MR. MILHOUS: Trees grow roots where  
7 conditions are favorable more than -- and I think  
8 that bioretention pond makes that particular area  
9 more favorable for the tree, so yes, in the long run  
10 it's certainly conceivable that the tree would grow a  
11 root system in the area of that bioretention system.

12 COMMISSIONER PARSONS: And how far is  
13 that from the tree?

14 MR. AMATETTI: Forty feet.

15 COMMISSIONER PARSONS: And that's about  
16 the drip line of the tree, is it?

17 MR. MILHOUS: I really don't know what  
18 the drip line of the tree is. I don't think that has  
19 a bearing on where the tree's roots are so it's  
20 immaterial to me. I'm concerned about --

21 COMMISSIONER PARSONS: So if it were 60  
22 feet away it could go that far to get that water.

23 MR. MILHOUS: Oh, absolutely. It could  
24 go 100 feet away, 150 feet away. Sure.

25 COMMISSIONER PARSONS: Okay. Thank you.

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1       There's mention of a fence on the drawings.    What  
2       have you got in mind?

3               MS. BAMBERGER:    Actually the fence was  
4       suggested by the National Park Service.    It wasn't  
5       our idea.    It was suggested at a meeting on site with  
6       the Park Service in late 1999 and it was Dave  
7       Murphy's suggestion that in order to basically  
8       prevent people from walking from the townhomes across  
9       the Park Service property to the Metro or to go  
10      shopping it would be a good idea to have a fence.

11              COMMISSIONER PARSONS:    So at this point  
12      you don't have a design for the fence.

13              MS. BAMBERGER:    We were really only doing  
14      it to respect his concern about that and he said  
15      that, you know, they were concerned about people  
16      walking across the park land.    We're happy to work  
17      with the Commission or any of the agencies to design  
18      that fence detail, but we haven't come up with one  
19      yet.

20              COMMISSIONER PARSONS:    Well, I think it  
21      would be helpful to have that move along and get into  
22      the record so that we don't have something hanging  
23      out at the end that --

24              MS. BAMBERGER:    Happy to do that.

25              COMMISSIONER PARSONS:    Mr. Wells, is the

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1 provision of two car garages here and I guess in one  
2 case three car garage something that's required in  
3 our regulations and I ask that because this close to  
4 a Metro stop it seems a suburban kind of concept is  
5 being applied or is it when somebody pays \$400,000  
6 for a house they deserve a two car garage?

7 MR. WELLS: I don't know what those folks  
8 deserve, but I'm coming -- that decision was made by  
9 the developer. Let me give you my opinion on that.  
10 My opinion is that people who live near Metro  
11 stations use the Metro to commute, but that doesn't  
12 mean they give up their cars. They still have their  
13 cars because they want to use them on the weekend and  
14 holidays, vacations and so forth. There is a  
15 question of balance here. What's the right number of  
16 parking spaces? The code says one parking space per  
17 unit as I understand it. A reality of life in  
18 America is that there are more private automobiles  
19 than there are licensed drivers in this country and  
20 there probably are many households in this area that  
21 have two cars. So should they be stored on site or  
22 should one of them be stored on site and one of them  
23 be stored on the street as many of the homes around  
24 in this area do, that's a question of community  
25 impact.

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1 I guess our approach here is to satisfy  
2 the full demand for parking on the site not to have  
3 significant spillover parking into the surrounding  
4 residential streets. Some of the fine people here  
5 today I assume depend on their curb parking to park  
6 their car. Some I don't know, but I would guess that  
7 some don't have off street garages to house their  
8 cars. So we don't want to compete with the  
9 community. We do want to provide the supply of  
10 parking on the site for the residents and some spaces  
11 also for visitors, but I don't think that's mutually  
12 exclusive from use of the Metro because as I say I  
13 think people will tend to use that Metro because  
14 they're locating here and it's so convenient so they  
15 will use it for their commute, but they still want  
16 their car for weekends and holidays.

17 COMMISSIONER PARSONS: Ms. Bamberger, is  
18 this a marketing issue for you? I mean when you  
19 market a property like this, you know, also in your  
20 experience a two car garage is mandatory?

21 MS. BAMBERGER: Well, in some of our  
22 close and suburban locations we do provide two car  
23 garage parking. We just finished a job in the city  
24 of Falls Church where we provided two cars for every  
25 townhouse. In this particular case probably we would

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1 have thought long, a little longer and harder about  
2 it because of it's proximity to the Metro, but as  
3 Marty Wells just mentioned it was a great concern to  
4 the neighbors and as we were redesigning the project  
5 and making them into townhouses instead of  
6 condominiums we were able to get two car garage  
7 parking in and we decided to do that. It will be a  
8 nice amenity, but it's not  
9 mandatory to sell the homes.

10 COMMISSIONER PARSONS: Okay. Thank you.

11 That's all.

12 COMMISSIONER HOLMAN: The disadvantage of  
13 being the last questioner, that was my whole line of  
14 questioning, but I'll see if I can be creative. I  
15 don't want to prolong this, but I was just reading  
16 the letters of support from the various organizations  
17 concerned with the environment and they seem to be  
18 focused on the idea of issues like affordability and  
19 one-to-one parking ratios. Was that a recent change  
20 in your proposal or was that something you have been  
21 considering all along?

22 MS. BAMBERGER: The more expensive  
23 product?

24 COMMISSIONER HOLMAN: Yes.

25 MS. BAMBERGER: Well, as I indicated

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1 briefly in the slide show our condominium program was  
2 a concern to the neighborhood because our original  
3 pricing of about \$275,000 was thought to be more  
4 attractive to students and there has been a big  
5 concern in Tenleytown of American University students  
6 and other students moving in and causing a little bit  
7 more disruption than the neighbors like and so they  
8 asked us to increase the price of the homes and in  
9 doing so it's tough to sell a condominium at a much  
10 higher price range and so we went to a different  
11 product and necessitated the higher price and then  
12 that brought along the parking changes with it.

13 COMMISSIONER HOLMAN: Okay. All right.  
14 I won't prolong this, but those are my only questions  
15 for now.

16 VICE-CHAIRPERSON MITTEN: I just have one  
17 additional question that is I'm sure going to get a  
18 lot of discussion later which is something that was  
19 touched on during the first hour of our hearing which  
20 is I didn't hear anything specifically articulated  
21 about the exceptional merit that's required to  
22 qualify for the waiver of the minimum area  
23 requirement and so if there is anything you'd like to  
24 put on the record specifically speaking to that  
25 issue.

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1 MS. BAMBERGER: Well, I think that there  
2 are a number of variables that can be considered.  
3 One is, of course, just the addition of new housing  
4 which is one of the benchmarks that's used to judge  
5 exceptional merit. Innovative urban design is  
6 another benchmark, streetscapes.

7 VICE-CHAIRPERSON MITTEN: On that point  
8 when you say innovative urban design what  
9 specifically are you thinking of when you say that?

10 MS. BAMBERGER: Well, I think that we've  
11 come up with a site plan that is innovative. If you  
12 look at a lot of the newer townhomes that have been  
13 built in the District and/or some of the suburbs you  
14 see a very kind of for lack of a better word cookie  
15 cutter approach and we've made a very strong effort  
16 as Eric described to come up with a very contextual  
17 product mirrored from the neighboring blocks with the  
18 same kinds of roof detailing and porches and mansard  
19 roofs and divide-light windows so I think that we've  
20 made an effort to really blend in albeit in a new  
21 product context and so I think it is an innovative  
22 urban design.

23 VICE-CHAIRMAN MITTEN: Okay. I  
24 interrupted you. You were --

25 MS. BAMBERGER: Yes. But in terms of

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1 other features of exceptional merit, the streetscape,  
2 improving the community with the brick sidewalks, the  
3 innovative storm water systems that we've talked  
4 about, there is a number of variables that we think  
5 all add up to the project being of exceptional merit  
6 and also just introducing the element of housing  
7 choice which we think is important in this instance.

8 VICE-CHAIRPERSON MITTEN: And when you  
9 say that do you mean a townhouse versus a detached  
10 house?

11 MS. BAMBERGER: Yes, a single family.  
12 We've -- and you'll hear more later I'm sure about  
13 stability of Tenleytown. We've never meant in any of  
14 our communication to imply that Tenleytown was  
15 unstable, but we do think that adding another type of  
16 housing, i.e. single family attached housing for  
17 people who don't want to buy a single family home  
18 adds to the vitality of the neighborhood. It brings  
19 a younger person into the neighborhood and adds  
20 vibrancy and we think that diversity of housing  
21 choice is a good thing.

22 VICE-CHAIRPERSON MITTEN: And just so I'm  
23 perfectly clear about it is it the idea that a  
24 townhouse is less expensive than a single -- is that  
25 what we're really talking about?

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1 MS. BAMBERGER: No. It actually -- it  
2 may be that in some cases, but it really has more to  
3 do with lifestyle choices and there are a lot of  
4 people who either don't want the yard maintenance or  
5 who for whatever reason don't like the layout of a  
6 single family home. Typically townhomes don't  
7 attract families per se because they're not kind of  
8 geared to families with children, but there -- it's  
9 easier upkeep. There is a Homeowners Association in  
10 place that takes care of the grounds. They're  
11 somewhat smaller than a single family home so --

12 VICE-CHAIRPERSON MITTEN: Okay. Thank  
13 you.

14 MR. FEOLA: Ms. Mitten, if I might just  
15 bootstrap on that. I think it's important to read  
16 the rest of that particular phraseology in the  
17 regulation and it says, "Development is of  
18 exceptional merit and in the best interests of the  
19 city and country" and I think one of the things we're  
20 trying to show tonight and maybe we haven't been  
21 successful enough is that this is the kind of  
22 development, this is the smart growth development,  
23 this is the thing that the Chesapeake Bay Foundation  
24 and the American Planning Association is calling for  
25 maximizing development opportunities at a higher

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1 density around existing infrastructure and the  
2 infrastructure here isn't just the Metro station.  
3 It's the grocery store, it's -- there is a drug store  
4 within walking distance, there is a public library,  
5 there are schools.

6 This is an urban core and we think that  
7 this development is in the best interests of the city  
8 and country and it's exceptional because it does have  
9 many of these bells and whistles that you wouldn't  
10 get in matter of right development, everything from  
11 the brick paving to the bioretention to the very  
12 fine architecture. So I think read in its context,  
13 in a planning context, we think we meet that.

14 COMMISSIONER FRANKLIN: Could I follow up  
15 on just a detail that Commissioner Mitten was  
16 exploring. Mr. Colbert had indicated that in context  
17 a lot of the housing in Tenleytown is at a plane  
18 higher than the sidewalk and that's being followed as  
19 a pattern here. Is that something that the natural  
20 grade is permitting or how are you doing that in  
21 terms of effectuating that design? What -- is it  
22 adding cost? Would you suppose somebody who was "not  
23 innovative" would build these at grade?

24 MR. COLBERT: In a zone that is actually  
25 the underlying more restrictive zone permits and

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1 that's the most restrictive in any residential zone,  
2 a 40 foot house. The way that's measured is the  
3 definition of building height and the zoning  
4 regulations states that in the zone that restricts  
5 the height to 40 feet it's measured from the grade at  
6 the middle of the front of the building to the  
7 ceiling. Based on that we're -- which is the only  
8 way to measure in that zone we're six feet lower than  
9 what's permitted. So we were just trying to make it  
10 as low as possible to be good neighbors.

11 The way the house is situated above the  
12 sidewalk that's because of our interest in  
13 maintaining a similarity to other houses not only  
14 just across Albermarle Street but throughout the  
15 community where they do have that kind of step up  
16 from the sidewalk to the front yard and it just helps  
17 to give the front yard a little more privacy and then  
18 you have a few steps more up to the porch. It's just  
19 an architectural you see over and over again there  
20 and in our effort to try to blend in that was what we  
21 were trying -- what we were doing.

22 COMMISSIONER FRANKLIN: No. I understood  
23 that point, but I wasn't phrasing my question very  
24 well. Suppose you had a client that, you know,  
25 wanted you to do this as inexpensively as possible.

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1 Would you do this?

2 MR. COLBERT: The relationship between  
3 the houses and the ground are not -- it's not  
4 something that is either more or less expensive.  
5 It's really more driven by what we wanted to do from  
6 the architectural perspective.

7 COMMISSIONER FRANKLIN: Thank you.

8 CHAIRMAN HOOD: In trying to manage the  
9 clock, which trust me, is not very easy, I want to  
10 thank everyone for being patient as we've moved  
11 through the proceedings. I'm going to ask first,  
12 colleagues, do we have any more questions?

13 Then I'm going to ask if we can be joined  
14 at the table by our Council Member, the Honorable  
15 David Catania and also the Honorable Phil Mendelson  
16 who have asked to testify this evening. Again I  
17 would like to thank the council members for sticking  
18 it out with us. I know they have different places  
19 and even though we're going to reconvene November the  
20 2nd, a council member's schedule never dictates the  
21 way he may be so we want to afford him the  
22 opportunity now.

23 COUNCILMAN CATANIA: Thank you, Mr.  
24 Chairman.

25 CHAIRMAN HOOD: Councilman, if you could

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1 turn your mike on.

2 COUNCILMAN CATANIA: My name is David  
3 Catania. I'm an at large member of the City Council.

4 Thank you, Mr. Chairman, for  
5 accommodating me tonight. I would certainly have  
6 been willing to wait until the end of the evening. I  
7 won't take this personally in an effort, Mr. Hood,  
8 for you to try to get me out of here as fast as you  
9 can. Mr. Holman and those of you who know me will  
10 blame Mr. Hood for trying to get me out of here as  
11 fast as he can.

12 If I could, I'd like to speak to a couple  
13 of matters and somewhat informally. The individuals  
14 behind me know this subject backwards and forwards.  
15 I have walked this site. I know the area and I know  
16 the community. I know the ANCs that have spoken.  
17 David Bardin and Ted DiBiase are among the finest  
18 commissioners in the city and ANC 3-E and 3-F are  
19 among the finest Commissions in the city. They do  
20 very thoughtful work and represent their communities  
21 very well, but let me get to that in a minute.

22 Before we get into the specifics of the  
23 case I'd like to address some of the references to  
24 Metro. There is a bit of a story here. My first job  
25 at Council I got into too much trouble so the

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1 Chairman appointed me to the Metro Board of Directors  
2 as a way to punish me. I have been sentenced there  
3 since January of 1999 so in a year and a half of that  
4 sentence I have actually learned a thing or two. I'm  
5 one of the 12 Metro board members and I'm a little  
6 troubled by the notion that this is somehow a clever  
7 smart growth tactic. I mean this is a bit of a red  
8 herring, frankly. I would expect that it would be  
9 fewer by their own estimates, fewer than 5000 trips  
10 per year on a system that has multiple million trips.

11 This is where, you know, in terms of revenue less  
12 than \$5000 to a multi billion dollar system and, in  
13 fact, it just isn't a real issue.

14 If I could also mention just as a plug  
15 for the Council, we are actually operating smart  
16 growth in the District and it isn't an absence of  
17 affordable space or affordable facilities in the  
18 District. You know, if Hollady is interested I, as  
19 an at large member, would be happy to take them on a  
20 tour of a number of sites in the city for which there  
21 is ample land that is appropriately zoned including  
22 around the Minnesota Avenue side. So if their heart  
23 really is in developing affordable housing Metro  
24 accessible stops, I'd be happy to take them on a  
25 tour. This happens not to be necessarily the best of

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1 them.

2           The best of the smart growth literature  
3 at this point, and I did draft and published a policy  
4 monograph on this subject last January for the  
5 Republic Main Street Partnership on the subject of  
6 smart growth and the District, I'm pleased to say,  
7 yesterday the Council marked up a very significant  
8 piece of legislation on the subject of brownfields  
9 which are abandoned and under-utilized industrial and  
10 commercial spaces just for this very purpose of  
11 reclaiming land then having that land be used for  
12 just this purpose. So we aren't a jurisdiction  
13 without a strategy. We appreciate Hollady pointing  
14 this out and we are very much involved in this right  
15 now.

16           Next, I was touched by the subject of the  
17 standard that, you know, in order to change this  
18 zoning balance they really had to demonstrate the  
19 best interest of the District of Columbia and I was,  
20 you know, privileged as a member of the Council to be  
21 a part of the confirmation proceedings of the three  
22 mayoral appointees, Ms. Mitten, Mr. Hood and Mr.  
23 Holman, and during your confirmation hearings you  
24 will recall I asked among other questions, you know,  
25 where do you stand as far as the community goes and

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1 what is your definition of the valued great weight of  
2 the community and you all three gave very, very good  
3 an answers to that. It was based on a comfort level.

4 I very confidently voted for each of you and it  
5 certainly wasn't with the impression that you will  
6 vote the way I want you to every time. That isn't  
7 what I mean to say at all, but I do know each of you  
8 and your experience in the city and you do and have  
9 demonstrated your willingness to listen to the  
10 community.

11 So it's an issue of balance and what is  
12 in the nest interest and let me get to the point and  
13 then let the folks who really know the details much  
14 better than me get involved. The balance. Is it  
15 worth, and again the major proponent -- the major  
16 reasons for supporting this plan include Metro  
17 accessibility among other things. So you ask are  
18 approximately seven visits per day or seven trips per  
19 day on the Metro, is that worth, is that in the best  
20 interests of the city when put against what will be  
21 an upset of the apple cart in my view of our zoning  
22 laws and regulations? I we were to adopt what the  
23 proponents of this plan had in mind, we are then  
24 going to really open up zoning across the city around  
25 our Metro stops and we have a good many Metro stops

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1 that were built in primarily single family  
2 residential housing. Are we going to open that door  
3 throughout this city? I don't think that's something  
4 we want to do. Are we going to open that door not  
5 only to more dense residential, but more dense  
6 commercial? I mean if you do that, know that this  
7 will set a very dangerous precedent that will keep  
8 this room hopping for some time to come. So again  
9 it's a tradeoff. I mean is it in the best interest  
10 of Metro to have seven additional, maybe, visits per  
11 day or is it in the District's best interest to have  
12 kind of an upsetting of the zoning apple cart? I  
13 just don't think it's in the District's best  
14 interest to do that.

15 For among other reasons I serve on the  
16 Strategic Planning Committee of Metro and happen to  
17 know that during peak hours we're pretty much near  
18 our capacity. Any more riders we're going to have  
19 significant capital investment into the system which  
20 we can't afford, but that's another story for another  
21 day.

22 I do want to say that I've been touched  
23 by this community and it's not an anti-development  
24 community and it's not one that says, "Look. We  
25 don't want anything." They appreciate what the law

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1 will provide and what the law will allow and all they  
2 are asking, these are good folks who have been with  
3 the city through thick and thin, and all they're  
4 asking is that you meet their expectations.

5           You know, we have issues as the city is  
6 doing better across, you know, the four corners of  
7 the city. At certain corners we have individuals  
8 being pushed out because as the city is doing well, -  
9 - what have you, residents are being pushed, those  
10 who have paid the bills and stayed with the city.  
11 This is very similar. Individuals who have stayed  
12 with the city through thick and thin now find the  
13 city doing well and it's now right for developers to  
14 come forward and say, "Well, you know, if you just  
15 let us have a change in the zoning, it's in the best  
16 interest of the city," but these people aren't back  
17 here for their health. I mean they know what's in  
18 the best interest of their communities. They are not  
19 unreasonable people. They expect the land to be  
20 developed, but just consistent with their  
21 expectations. I'm fearful that if we establish a  
22 precedent that just says, "Well if you can hire  
23 lawyers and consultants and kind of buy into the  
24 cottage industry of development, then you win and  
25 those of you who have stayed here through thick and

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1 thin, you lose." That's not the kind of city that I  
2 want to be a part of and that I don't believe is in  
3 the nest interest of what we are all about.

4 Finally, with respect to ANCs, you know,  
5 it's no secret that I'm a champion of ANCs having  
6 been a former chairman of one chairing Kalorama. I  
7 believe very much in community input and community  
8 participation and these two ANCs, you've seen their  
9 work product. It's exemplary, it's been very  
10 thoughtful, very thorough, and I think, you know, you  
11 are given the opportunity to accept these  
12 recommendations with great weight and the issues of  
13 community with great weight. I just don't believe  
14 that the developers have made or met their burden of  
15 proof in terms of what is in the best interests of  
16 the city.

17 So with that I know you all will make the  
18 decision that you see fit and I don't necessarily  
19 demand it be the same as mine. I hope it would be,  
20 but with that I'm going to go back, take my seat and  
21 allow the other to come forward to testify. I  
22 appreciate very much this opportunity to speak. Are  
23 there any questions?

24 CHAIRMAN HOOD: Are there any questions  
25 for Council Member Catania? No. Okay. Thank you,

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1 Councilman.

2 COUNCILMAN CATANIA: Thank you, Chairman.

3 CHAIRMAN HOOD: Council member Mendelson.

4 COUNCILMAN CATANIA: He's going to -- at  
5 the later date.

6 CHAIRMAN HOOD: November the 2nd is when  
7 he's --

8 COUNCILMAN CATANIA: Right.

9 CHAIRMAN HOOD: Okay. Thank you. Okay.  
10 Let's see how far we can get into -- I would like  
11 maybe to -- Mr. Feola, if you could come sit here.  
12 We're going to do cross of the parties. I think the  
13 way it looks depending upon how cross examination  
14 goes we will begin November the 2nd hopefully with  
15 the Office of Planning report. Okay. The ANCs. I'm  
16 sorry. Let me ask you, Mr. Bardin.

17 MR. BARDIN: Yes, sir.

18 CHAIRMAN HOOD: Excuse me. I have a lot  
19 of names I'm trying to remember.

20 MR. BARDIN: We're all learning. Yours  
21 is easier than mine.

22 CHAIRMAN HOOD: Yes, from the hood.

23 MR. BARDIN: I've had a problem all my  
24 life.

25 CHAIRMAN HOOD: Okay. Mr. Bardin, if --

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1 I don't know how you all want to work it.  
2 Representative from ANC 3B I believe. 3-E. Would  
3 you all like to cross exam at the same time or  
4 however. You know, you can do it separately, but I'm  
5 just saying come to the table at the same time if  
6 that's not a problem, Mr. Bardin.

7 MR. BARDIN: I'd like to make a different  
8 suggestion if I may, Mr. Chairman.

9 CHAIRMAN HOOD: Sure.

10 MR. BARDIN: I'd just like to ask a few  
11 clarifying questions --

12 CHAIRMAN HOOD: Sure.

13 MR. BARDIN: -- what you have and the  
14 Commissioners have. Some aspects of this project  
15 that we heard tonight are different from anything  
16 I've heard before. Some of the witnesses we heard  
17 tonight were not at our joint ANC meeting when the  
18 two ANCs met together. Some witnesses were there,  
19 some we've never heard from. There is information  
20 that we never saw or heard of until tonight.

21 COMMISSIONER HOOD: Mr. Bardin.

22 MR. BARDIN: So I'd just like to ask very  
23 few questions and move ahead.

24 COMMISSIONER HOOD: Let me just say that  
25 that point you can bring up when you come up to --

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1 when you come back up, but right now you're doing  
2 cross exam.

3 MR. BARDIN: I understand.

4 CHAIRMAN HOOD: So anything that the  
5 applicant is -- and we will --

6 MR. BARDIN: I just want to ask him some  
7 factual questions to clarify which I think will be  
8 useful to get done now because then they'll tell us  
9 between now and November 2nd if it's different --

10 CHAIRMAN HOOD: Okay.

11 MR. BARDIN: -- from what the questions  
12 are. I want to limit my questions pretty  
13 drastically.

14 CHAIRMAN HOOD: Okay.

15 MR. BARDIN: So if you don't mind, I'd  
16 just like to go forward first.

17 CHAIRMAN HOOD: Let's do it.

18 MR. BARDIN: And work that way. Let me  
19 start with one of the questions Commissioner Franklin  
20 asked. He asked about R1-B zoning. There are a  
21 number of trees on the public space between the  
22 private property and Albermarle Street and between  
23 the private property and Nebraska Avenue. If this  
24 land were zoned R1-B would the adjacent land owner  
25 have the right, without a permit, to cut down living

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1 trees?

2 MR. FEOLA: Who are you asking that  
3 question of?

4 MR. BARDIN: Well, I'll ask Mr. Feola if  
5 he knows the answer.

6 MR FEOLA: I didn't testify. I can't  
7 answer a cross examination question.

8 MR. BARDIN: Does anybody from the --

9 CHAIRMAN HOOD: Let me just ask, Mr.  
10 Feola, if you could speak into the mike so we can  
11 have more --

12 MR. FEOLA: Oh, I'm sorry. You need to  
13 ask a cross examination question of somebody who  
14 testified. Do you want to direct that to --

15 MR. BARDIN: Well, you answered  
16 Commissioner Franklin about the difference -- I'm  
17 trying to know, find out, whether --

18 MR. FEOLA: Well, you're a lawyer, David,  
19 you can look up the law.

20 CHAIRMAN HOOD: Let me --

21 MR. BARDIN: All right. Let me not -- I  
22 don't want to argue with anybody. I just want to go  
23 on.

24 CHAIRMAN HOOD: All right. Thank you,  
25 Mr. Bardin.

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1 MR. FEOLA: The answer is you need a  
2 permit to take down a tree in public space. You know  
3 that.

4 MR. BARDIN: Okay. I know that. You  
5 know that. If a PUD is approved, well, no. Let's  
6 first find out what the plans are. Ms. Bamberger, is  
7 it your plan to take down all of those trees in the  
8 public space along Albermarle Street and along  
9 Nebraska Avenue?

10 MS. BAMBERGER: No. We're not planning  
11 on taking down all of the trees. I think you heard  
12 Ed Milhous testify that the poplar tree on Albermarle  
13 Street is in very poor shape and is a hazard. There  
14 are a couple of other trees that --

15 MR. BARDIN: No, you've answered my  
16 question. Which -- you're not planning to take them  
17 all down. Which are you planning to save?

18 MS. BAMBERGER: Well, I don't have a tree  
19 survey in front of me today that identifies every  
20 single one, but we will be evaluating that on a case  
21 by case basis.

22 MR. BARDIN: You have a landscape plan in  
23 the --

24 CHAIRMAN HOOD: Let me just interject,  
25 Ms. Bamberger. I'm going to ask that if you don't

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1 have one, if you could get it and answer the question  
2 so we can proceed because I think that's what this  
3 whole track is for so we can answer the questions and  
4 I think he's asking you a legitimate question.

5 MR. FEOLA: Mr. Chairman, may I make a  
6 suggestion in sort of technical things like this  
7 we'll be happy to supply this to the ANC between now  
8 and maybe -- between now and Friday or between now  
9 and Monday or something as opposed to going through  
10 and let Ms. Bamberger try to read this plan and maybe  
11 make a mistake.

12 CHAIRMAN HOOD: Mr. Bardin, is that --

13 MR. BARDIN: That is satisfactory. What  
14 is would like you to do between now and Friday --

15 MR. FEOLA: If he can clarify exactly  
16 what he wants, we'll do it.

17 MR. BARDIN: Compare Sheet C-7 which is  
18 called Tree Preservation Plan and shows trees all  
19 along the public space as well as trees inside the  
20 property with Sheet C-6, Detailed Landscape Plan,  
21 which no longer shows and of those trees in the  
22 public space except this faint background. I don't  
23 understand why the -- is all being cut down. Your  
24 tree expert is Mr. Milhous. Mr. Milhous.

25 MR. FEOLA: We'll provide that.

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1 MR. BARDIN: Mr. Milhous, still talking -

2 -

3 MR. MILHOUS: Yes, sir.

4 MR. BARDIN: -- still talking about those  
5 public space trees along Albermarle and Nebraska and  
6 including the so-called parking space between the  
7 property line and the sidewalk. You testified today  
8 that there were 19 trees there. How do you know  
9 that?

10 MR. MILHOUS: There is a tree survey done  
11 by another company and I am relying on that as well  
12 as a document provided by Commissioner Phil Heinrich.

13 MR. BARDIN: That's Appendix B to the  
14 filing we made yesterday --

15 MR. MILHOUS: Correct.

16 MR. BARDIN: -- and the resolution we  
17 adopted Monday night and I call your attention to a  
18 statement up on top in Commissioner Heinrich's  
19 statement. "Some trees omitted." I was there Monday  
20 with Commissioner Heinrich and with Bill Beckett of  
21 the tree division and we saw several trees that Phil  
22 Heinrich had not counted, but let me go on. One of  
23 the trees you mentioned today is the white pine, a  
24 very large white pine on Albermarle Street. That  
25 tree does not appear in the current conditions of the

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1 Tree Preservation Plan and I would like by Friday an  
2 explanation of why that white pine isn't shown at all  
3 in any of the documentation that was furnished.  
4 There is no conifer, there is no evergreen shown at  
5 that point on Albermarle. The poplar is shown, but  
6 the white pine is not. Maybe it's shown as a  
7 deciduous tree. Did you prepare any of those sheets,  
8 Mr. Milhous?

9 MR. MILHOUS: No, sir.

10 MR. BARDIN: Did you review any of them?

11 MR. MILHOUS? Yes. I did.

12 MR. BARDIN: Why don't we -- by Friday --  
13 but going back to Commissioner Heinrich's list of  
14 trees. Do you have that in front of you, Mr.  
15 Milhous? Let me give you mine.

16 MR. FEOLA: He's got it.

17 MR. BARDIN: He's got it? He has  
18 identified a white oak at the corner which he says is  
19 74 inches in circumference. Do you favor saving that  
20 white oak?

21 MR. MILHOUS: I believe that's a willow  
22 oak.

23 MR. BARDIN: A willow oak? I'm sorry.

24 MR. MILHOUS: And, no. I probably would  
25 not.

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1 MR. BARDIN: Okay. Thank you. I now  
2 have some questions about the drainage plan. I  
3 prepared an exhibit based on the topographical maps  
4 and charts that you furnished, the applicant  
5 furnished and it shows generally the direction of  
6 natural flow today. I saw you have an exhibit. I  
7 don't know if you're going to give it to the  
8 Commissioners or not. Would you agree that generally  
9 the exhibit I just handed to you shows in big arrows  
10 and wide arrows the part of the drainage across this  
11 property that heads to the upstream end of the creek  
12 and the lighter lines, the narrower lines shows the  
13 part of the drainage across this property that heads  
14 to the downstream end.

15 MR. AMATETTI: Yes. I would agree that  
16 the general patterns shown are correct except I might  
17 take some exception to the large arrow on the very  
18 right hand side.

19 MR. BARDIN: Why would you take exception  
20 to that?

21 MR. AMATETTI: Well, it's really not --  
22 that's almost like a ridge line right there and --

23 MR. BARDIN: Okay.

24 MR. AMATETTI: -- and it really the  
25 majority of that area is heading more toward where

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1 the lighter arrows are portrayed on the far right  
2 hand side.

3 MR. BARDIN: So there is a ridge there  
4 and you have to define how it worked and some of the  
5 -- let me. I need to waive my hand.

6 CHAIRMAN HOOD: Mr. Bardin, we need to be  
7 near a microphone so you can be picked up for the  
8 record.

9 MR. BARDIN: Just tell me if I talk like  
10 this, will the record get it or not?

11 CHAIRMAN HOOD: Let me find out. I think  
12 that will do it.

13 MR. BARDIN: Okay. I'll be careful. So  
14 there is a kind of ridge line here. You see the  
15 topos curving and some goes this way and some goes  
16 that way.

17 MR. AMATETTI: Yes, sir.

18 MR. BARDIN: That defines the ridge.  
19 Right?

20 MR. AMATETTI: Yes, sir.

21 MR. BARDIN: Okay. And the point I'm  
22 trying to make here is that the whole basin involving  
23 the park land on the left as well as the private  
24 property which now drains to the upper portion of the  
25 stream.

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1 MR. AMATETTI: Well, one thing to  
2 remember is when you say the upper portion of the  
3 stream the very upper portion of the stream is  
4 probably in the vicinity where the U is of natural on  
5 the small exhibit I'm looking at. It's well to the  
6 north of all of these arrows.

7 MR. BARDIN: Okay. How far does the  
8 stream continue?

9 MR. AMATETTI: Well our topo stops at  
10 that point, but I believe it is almost to the point  
11 of the wall on where it is labeled Woodrow Wilson  
12 High School.

13 MR. BARDIN: Isn't there a curvy drive  
14 that goes from Woodrow Wilson High School --

15 MR. AMATETTI: Correct. And --

16 MR. BARDIN: -- down to Fort Drive with a  
17 substantial slope downward to the stream?

18 MR. AMATETTI: Correct.

19 MR. BARDIN: Could we, by Friday, have a  
20 topo which shows us where this stream really ends?

21 MR. AMATETTI: Friday being tomorrow?

22 MR. BARDIN: Oh, I'm sorry. Let's make  
23 it a week from Friday.

24 MR. AMATETTI: Yes, sir.

25 MR. BARDIN: Now, let's talk about the

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1 overall drainage. I remind you, you said this  
2 section of stream is 300 feet. Isn't that what you  
3 said?

4 MR. AMATETTI: Mr. Rolband testified to  
5 that.

6 MR. BARDIN: Oh, Mr. Rolband, sir.  
7 That's right.

8 MR. ROLBAND: I said it was approximately  
9 300 feet. We have not surveyed the lane.

10 MR. BARDIN: And you've identified four  
11 outfalls from north of the stream into the stream.  
12 Is that right?

13 MR. ROLBAND: Correct.

14 MR. BARDIN: Could you locate those four  
15 outfalls for us tonight or would you rather do it  
16 afterwards?

17 MR. ROLBAND: I could -- it's right here  
18 on your plan I believe.

19 UNKNOWN PERSON: Well, one of them is.  
20 The others we will pick up when --

21 MR. ROLBAND: I have a plan in my  
22 briefcase that has that if you'd like that  
23 information.

24 MR. BARDIN: Okay. Could you just  
25 generally tell us where they are?

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1 MR. ROLBAND: Yes. There is --

2 MR. BARDIN: Are any of them on what I  
3 call the upstream end?

4 MR. ROLBAND: There are two pipes in the  
5 upstream end at the very head of the stream and then  
6 the other, hold on a second, the other outfalls were  
7 along the stream and I don't recall the exact  
8 direction. When I walked the stream they were  
9 somewhere towards the middle of the stream. I do  
10 have a plan in my briefcase with those locations.

11 MR. BARDIN: Have you analyzed where the  
12 water comes from?

13 MR. ROLBAND: Have you analyzed where the  
14 water comes from?

15 MR. ROLBAND: We had just looked at the  
16 overall watershed.

17 MR. BARDIN: You said it was an eight  
18 acre watershed.

19 MR. ROLBAND: If I could interrupt you,  
20 sir and answer your question. There is an eight inch  
21 pipe and a ten inch pipe at the head of the stream  
22 and then about in the center of the stream is a ten  
23 inch pipe coming from the high school and then right  
24 before it gets to Nebraska Avenue there is a 12 inch  
25 pipe.

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1 MR. BARDIN: Have you identified what  
2 these pipes are draining?

3 MR. ROLBAND: They are draining the high  
4 school property, sir.

5 MR. BARDIN: All the way up north.

6 MR. ROLBAND: I did not do the watershed  
7 analysis. Mr. Amatetti did it.

8 MR. AMATETTI: I did the watershed  
9 analysis. There is a series of inlets along the  
10 western portion of the high school that pick up water  
11 between Fort Road and the high school and then the  
12 system curves around the high school on the western  
13 side and then outfalls into the stream valley.

14 MR. BARDIN: Is there also a -- storm  
15 sewer that runs from Fort Reno along Fort Drive or  
16 parallel to Fort Drive?

17 MR. AMATETTI: If I could come up and  
18 look at that exhibit, I think I can answer that  
19 question.

20 MR. BARDIN: Sure.

21 CHAIRMAN HOOD: I'm going to ask that you  
22 speak loud enough, too, so we can hear you.

23 MR. BARDIN: Well, we'll get you a -- Ms.  
24 McCarthy will let you speak on her --

25 MR. AMATETTI: There is a storm sewer

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1 system in Fort Drive that picks up a series of inlets  
2 from 40th Street and directs it down to Albermarle  
3 Street and then to the east on Albermarle Street. It  
4 flows down that way.

5 MR. BARDIN: Now that system totally  
6 bypasses this 300 foot stretch, doesn't it?

7 MR. AMATETTI: To the best of my  
8 knowledge it does.

9 MR. BARDIN: And does none of the Woodrow  
10 Wilson High School land drain into that storm sewer?

11 MR. AMATETTI: From my observation, no.

12 MR. BARDIN: Okay. Well, I'd like to  
13 learn more about that between now and the 2nd of  
14 November. Sounds interesting. Mr. Chairman, I have  
15 another exhibit which is essentially what I have up  
16 on the board and this, Mr. Amatetti, was my analysis  
17 of the materials we were given by the applicant  
18 before tonight, namely, that where you have the broad  
19 arrows the drainage from the park was going to go  
20 into a v-ditch and be diverted into the drainage from  
21 the developed property and go to the retention basin  
22 and that only the northernmost part of the park and  
23 the northernmost part of the private property were  
24 going to drain to the upper reaches or toward the  
25 upper reaches of the creek. Is that a fair

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1 representation of the plan as it was presented before  
2 tonight?

3 MR. AMATETTI: If I didn't present that  
4 properly, that's my fault. With the original plan we  
5 had a v-ditch on the western side of the stick, the  
6 northernmost stick of townhouses and that water was  
7 always flowing to the north in the opposite direction  
8 of the arrow that you have on your exhibit, sir.  
9 That's my fault if I mislead you or didn't present  
10 that properly in the last --

11 MR. BARDIN: And what was the original  
12 intention as to what would happen to the water in the  
13 v-ditch flowing north -- changed it if at all?

14 MR. AMATETTI: Well, the original  
15 intention was to maintain the drainage pattern from  
16 the park around to the north, but because it was so  
17 constricted in there the only way that I could get it  
18 done was in a v-ditch. When the unit was removed  
19 from the center of the northernmost stick of  
20 townhouses I took that opportunity to slide those  
21 units over so that I could introduce a six foot grass  
22 swale in there still to direct the water to the north  
23 and also took the opportunity to introduce another  
24 facility in that area which we, in fact, you and I  
25 had some discussion about in the last hearing.

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1 MR. BARDIN: You mean at the meeting --

2 MR. AMATETTI: Yes, sir.

3 MR. BARDIN: Or in our phone conversation  
4 or somewhere along the way.

5 MR. AMATETTI: Well, actually, we had a  
6 conversation at the ANC presentation where you asked  
7 me several questions about potentially locating the  
8 facility in the northwest corner.

9 MR. BARDIN: I'll accept that as a  
10 hearing --

11 CHAIRMAN HOOD: Let me just interject and  
12 remind that we're going to ask the questions upon  
13 what was testified -- what the applicant testified.  
14 So let's ask our questions. Let's give him time to  
15 get a response so we can have a fair dialogue between  
16 the two. Thank you.

17 MR. BARDIN: Thank you, Mr. Chairman.  
18 I've now distributed an exhibit that I prepared based  
19 on the drainage plan that I found in the prehearing  
20 statement and if you look at the little upper right  
21 hand box, you will see it does a cut from west to  
22 east along the inside roadway of the property and  
23 very roughly, I'm not an engineer, takes the grade as  
24 I found it and takes the -- to this ridge and tries  
25 to portray the existing grade on the one hand and the

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1 proposed grade under the plan. Is that a  
2 conceptually fair or roughly fair approximation of  
3 what the plan was at the time of the papers in the  
4 prehearing statement?

5 MR. AMATETTI: Yes, sir.

6 MR. BARDIN: Are you now proposing to  
7 change that grade?

8 MR. AMATETTI: Yes, sir.

9 MR. BARDIN: And could you -- there are  
10 two features to the grade that interests me. On the  
11 one hand the proposed grade as you see is several  
12 feet lower than the existing grade. Correct?

13 MR. AMATETTI: Where it crosses to the  
14 ridge we talked about.

15 MR. BARDIN: Right. And second, in each  
16 of those larger squares is a foot. If I'm going to  
17 the left we start at about 369 feet of proposed grade  
18 as compared with 374 feet of existing grade. So  
19 that's about a five foot reduction in grade and at  
20 the ridge it's more of a reduction. Correct?

21 MR. AMATETTI: Well, I find generally  
22 that what you portrayed here is accurate. As far as  
23 what the proposed grades would have been I'm not --  
24 I'd have to compare it to the plan.

25 MR. BARDIN: Fair enough. I'm not trying

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1 to hold you to the details.

2 MR. AMATETTI: Yes.

3 MR. BARDIN: But the concept I want to  
4 get across. Now, what you've announced tonight  
5 proposes to change that and are you going to change  
6 the direction of the grade?

7 MR. AMATETTI: Yes, sir.

8 MR. BARDIN: Could you just tell us  
9 generally how?

10 MR. AMATETTI: Generally with the removal  
11 of that one unit we have the opportunity to match the  
12 -- to hold that ridge line and to bring water down  
13 between those units and also along the northwestern  
14 side to maintain the pattern that exists today with  
15 respect to the drainage area towards the large tree.

16 MR. BARDIN: How about the depth of the  
17 reduction of the proposed grade below the existing  
18 grade? Are you significantly or drastically going to  
19 change that or will it be roughly the same number of  
20 feet reduction in proposed grade compared to existing  
21 grade?

22 MR. AMATETTI: I think the new plan would  
23 allow us to match the existing grades very closely.

24 MR. BARDIN: Do you think you could  
25 prepare for me a more accurate version of this kind

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1 of analysis by a week from tomorrow?

2 MR. AMATETTI: Yes, sir.

3 MR. BARDIN: Thank you very much. And  
4 obviously I mean under your new proposal not under  
5 the old one. Mr. Chairman, I have another exhibit  
6 and this takes a cross section from south to north in  
7 much the same way as the exhibit we were just talking  
8 about takes a cross section from west to east. Mr.  
9 Amatetti, I tried to do something which may or may  
10 not be legitimate. Maybe I need a tube. I tried --  
11 the line goes right along the edge of the driveway  
12 and the westernmost unit along Albermarle and then  
13 goes right between the two units, units 2 and 3, 3  
14 being the middle one which is now out of your plan,  
15 but I didn't know that then. I didn't know whether.

16 I thought it might be and again as I analyze the  
17 data in your prehearing statement the existing grade  
18 is considerably higher than the proposed grade going  
19 from south to north. Is this generally an accurate  
20 version, too?

21 MR. AMATETTI: I would have to cut these  
22 sections myself to truly answer that question and I  
23 think it would be worthwhile once I prepare the  
24 grading plan that we talked about earlier to cut a  
25 section of both these directions in precisely the

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1 same general -- generally in the same location you  
2 did.

3 MR. BARDIN: That would be quite  
4 acceptable. If you know, where the building in the  
5 middle and back is now proposed to be removed what is  
6 the plan to do with the earth between the two  
7 buildings? Is it going to be -- is the natural grade  
8 going to be preserved, is a new grade? Do you know  
9 what's going to be done there?

10 MR. AMATETTI: I would like to show that  
11 on the same presentation if I could, but we would  
12 like to keep the grade generally what it exists today  
13 in that area.

14 MR. BARDIN: Thank you, Mr. Amatetti.  
15 Mr. Rolband. In your study of this little bit of  
16 Soapstone Creek have you studied bioto?

17 MR. ROLBAND: I understand what you're  
18 trying to --

19 MR. BARDIN: An animal to the --  
20 amphibians, etc?

21 MR. ROLBAND: The answer is no. We've  
22 simply looked at the condition of the channel and  
23 the fact that we are not going to be impacting the  
24 channel from a physical standpoint as well as a flow  
25 standpoint. The natural flow pattern you've been

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1 looking at you also have to understand that only 6.8  
2 percent of the total drainage area is affected by  
3 this site at all. So it's a very small percentage to  
4 begin with and then to offset those impacts a best --  
5 system with infiltration capacity has been provided  
6 so there will not be any ground water changes.

7 MR. BARDIN: Yes. And I'm just showing  
8 you a map of my ANC with the property in question  
9 being right next to the part at Fort Drive and this  
10 little blue tick representing the 300 feet of  
11 Soapstone Creek which then goes under Nebraska  
12 Avenue, goes through a pipeline all the way across  
13 Connecticut to where Soapstone Creek opens up and  
14 becomes a tributary of Broad Branch and almost  
15 immediately Rock Creek. Have you studied the  
16 downstream open area of Soapstone Creek?

17 MR. ROLBAND: No. We have not studied it  
18 because it's not being impacted by this project.

19 MR. BARDIN: Have you -- I don't know who  
20 speaks for the applicant here, but I think, Mr.  
21 Feola, I'll start with you and you'll tell me how you  
22 want to handle it. The charts that you provided in  
23 the prehearing statement clearly show that the  
24 applicant, meaning the Bregons, have fenced in some  
25 public property belonging to the National Park

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1 Service. If you don't know that to be the fact, just  
2 assume it for purposes of this question. My question  
3 is with this phasing and how PUD's work is there any  
4 obligation in phase 1 to correct that and give back  
5 to the Park Service the publicly owned land which has  
6 been privately fenced by the Bregons?

7 CHAIRMAN HOOD: Mr. Bardin. Mr. Bardin.

8 Excuse me. Before you answer that, colleagues, I  
9 don't remember any testimony on that, but I can stand  
10 to be corrected. If not, I would ask you to withhold  
11 your question and --

12 MR. BARDIN: I don't need -- I'll take,  
13 for example, detailed landscape plans, any one of  
14 these charts, Mr. Chairman, that are in the  
15 prehearing statement. We have maps which show the  
16 property line and which show the fence. Now, you can  
17 take my word for it or I can connect by just showing  
18 you.

19 CHAIRMAN HOOD: Please speak louder when  
20 you --

21 MR. BARDIN: I'm sorry. I've given you  
22 this map as an --

23 MR. FEOLA: Mr. Chairman, just for --

24 MR. BARDIN: -- as an exhibit on the tree  
25 preservation plan and you'll see that it shows a

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1 fence, a rectangular fence on the left.

2 MR. FEOLA: Mr. Chairman, this was not  
3 the subject of our direct presentation. If Mr.  
4 Bardin and the ANC want to make a point of this in  
5 direct, I think that's fine and it's up to the Park  
6 Service to enforce if there is somebody stepping over  
7 the bounds. It's not -- I don't understand --

8 CHAIRMAN HOOD: Mr. Bardin, I'm going to  
9 ask you again because I didn't remember hearing it,  
10 but then again I've missed things, too.

11 MR. BARDIN: They're not saying anything  
12 about it.

13 CHAIRMAN HOOD: Okay.

14 MR. BARDIN: They're being very cozy  
15 about it.

16 CHAIRMAN HOOD: We're going to -- let's  
17 do this.

18 MR. BARDIN: Let's go on to something  
19 else.

20 CHAIRMAN HOOD: You can -- let me just  
21 say this, Mr. Bardin. You can bring that up at a  
22 later time, but I will just for sake of managing the  
23 clock. Mr. Bardin, I want to make sure so we're on  
24 the same page.

25 MR. BARDIN: I hear you.

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1 CHAIRMAN HOOD: I'm going to listen and I  
2 would appreciate it if you would listen to what I'm  
3 saying. We have about ten minutes. My colleagues  
4 informed us earlier. We did an assessment early on.

5 MR. BARDIN: Right.

6 CHAIRMAN HOOD: So I'm going to ask you  
7 to take another five minutes and kind of wind it down  
8 and colleagues, if not because of the substantialness  
9 of this particular case I would not have any problems  
10 with Mr. Bardin coming back when we reconvene on  
11 November 2nd for about ten to 15 minutes.

12 MR. BARDIN: I understand your points,  
13 Mr. Chairman. I was listening to you while I was  
14 checking another point, too, and I understand your  
15 points. I accept your points and I am quite willing  
16 to stop right now.

17 CHAIRMAN HOOD: Well, you have five more  
18 minutes and that would take off the time for November  
19 the 2nd. It's up to you. If you want to stop now,  
20 we can stop now.

21 MR. BARDIN: Well, I just wanted to ask  
22 clarifying questions and set the foundation for  
23 understanding what this project is this minute which  
24 has been troubling me.

25 COMMISSIONER FRANKLIN: Mr. Chairman,

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1 could I intervene at this point because I found your  
2 questioning quite interesting, but I'm not sure I get  
3 the drift of the questions regarding the changes in  
4 grade. What point were you striving to make with  
5 these questions?

6 MR. BARDIN: Well, the plan as it was  
7 presented to us was, in our judgment, extremely  
8 destructive of the creek and the values associated  
9 with the creek and subject to connection later on  
10 with some downstream effects. What I heard today was  
11 implied to me that there was a substantial change in  
12 the grading. Mr. Amatetti confirmed that. He also  
13 said that it wasn't clear that they meant the v-ditch  
14 which I have other problems with that I can bring up  
15 in November, but I'd like to talk with him about it  
16 first that the v-ditch is intended to go northward  
17 not southward as I interpreted it.

18 COMMISSIONER FRANKLIN: Am I inferring  
19 from that you're saying that the proposed plan you  
20 felt was destructive at that stage and you feel that  
21 the  
22 change in grade is more destructive. Is that the  
23 point?

24 MR. BARDIN: Well, I thought that the  
25 proposed plan and the change of grade in that plan

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1 was extremely destructive. They were proposing, in  
2 effect, a great big ditching between the two sets of  
3 buildings.

4 COMMISSIONER FRANKLIN: Okay. I got that  
5 point and then the changes you think are --

6 MR. BARDIN: What I'm hearing is that  
7 they're trying to ameliorate that.

8 COMMISSIONER FRANKLIN: Oh, they're  
9 trying to ameliorate the destructive effect.

10 MR. BARDIN: And I'm trying to be  
11 realistic about this --

12 COMMISSIONER FRANKLIN: Okay.

13 MR. BARDIN: -- and fair about this and  
14 understand what they're trying to do and see what it  
15 implies.

16 COMMISSIONER FRANKLIN: Okay. Thank you.  
17 I just needed to be --

18 MR. BARDIN: I just got -- no, that's all  
19 right. I just want you to understand, Commissioners,  
20 we're hearing something tonight which has changed  
21 again substantially I think from the two ANCs heard.

22 Whether it's good to overcome the objections that's  
23 a different question, but it's significant and I  
24 would very much like to see in number next week sit  
25 around the table between now and November 2nd people

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1 who know trees, people who know streams, people who  
2 know biology from different agencies and see if they  
3 can come to at least a meeting of the minds on the  
4 facts and then they can present their policy  
5 differences.

6 It very much bothers me that we have  
7 piecemeal review the way we do where pieces of paper  
8 are sent to various agencies to write comments. I  
9 don't want to go further because we don't have -- the  
10 Office of Planning will testify next time and I think  
11 this recess gives us an opportunity to pull this case  
12 a little tighter together to make it easier for the  
13 Commission to focus on the real policy choices in the  
14 best way possible.

15 CHAIRMAN HOOD: We will continue with Mr.  
16 Bardin, ANCE and ANCF on November 2nd. I was  
17 thinking more or less 15 minutes is not a lot of  
18 time, but it is some time. I was thinking we could  
19 start about 6:45 if that's okay with everyone or if  
20 you'd just rather keep it at 7:00. I think 15  
21 minutes might help us out to a point.

22 MR. FEOLA: Absolutely.

23 CHAIRMAN HOOD: If not, I believe we may  
24 be coming back for a third night. Also let me just  
25 say that Mr. Bardin has asked for a number of things.

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1 MR. FEOLA: We'll get them to the  
2 parties.

3 CHAIRMAN HOOD: That will be the first  
4 thing that we will ask for and he will -- if you  
5 respond to him satisfactorily. That would be  
6 something that we would also follow.

7 MR. FEOLA: In fact, Mr. Chairman, if you  
8 like, well, with your permission we can file them  
9 with the Commission as well.

10 CHAIRMAN HOOD: Exactly.

11 MR. FEOLA: So you will have them in your  
12 packets. The rules would prohibit that unless you  
13 say it's okay.

14 CHAIRMAN HOOD: Okay.

15 MR. FEOLA: And one last thing, Mr.  
16 Chair. The Tenley Neighbors have identified two  
17 experts that are going to testify. It would be, I  
18 think, helpful for this process if their reports  
19 could be given to the parties ahead of November 2nd  
20 as well of those two experts.

21 CHAIRMAN HOOD: Okay. If the Tenleytown  
22 Neighbor's Association and their two experts and make  
23 sure that that is in the packet. I thought it was --  
24 but make sure that their report is given also to the  
25 applicant. With that, if everything is in order --

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1 MR. BARDIN: Mr. Chairman, on that score  
2 could we add one requirement, namely that if they  
3 want -- they have an arborist Tenleytown Neighbor's  
4 Association and applicant has an arborist.  
5 Applicant's arborist came up with a whole new set of  
6 studies tonight he never told us about. We never  
7 heard a word about it. If we're going to have a, you  
8 know, joining of issues could we give the TNA people  
9 if they want to the right to have some dialogue  
10 involving the two experts before they file a report?

11 CHAIRMAN HOOD: Mr. Bardin, I concur with  
12 your comments. If that could happen, this Commission  
13 would be greatly appreciative. So during the time  
14 that we have, this recess, and I agree with the  
15 comment but I'm not exactly sure who said it that  
16 maybe some of those issues could be worked out, a  
17 meeting of the minds so we could come back here on  
18 November the 2nd and try to move forward in the  
19 proceedings. Okay? If everything is in order --  
20 Mr. Bastida?

21 MR. BASTIDA: Yes. Two housekeeping  
22 matters. The applicant has submitted three full size  
23 drawings to the Office of Zoning. The request to put  
24 it into the record has not taken place. I would  
25 appreciate if they do that and also they provide us

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1 with the -- produce copies and that way the  
2 Commissioners can have it.

3 Secondly, on the 2nd we'll have to have a  
4 short hearing regarding the Giant case which will  
5 take five-ten minutes, but I wanted you to be aware  
6 of that -- to postpone the case to a date certain.  
7 So it's just reading the statement as --.

8 CHAIRMAN HOOD: Well, what we can do we  
9 can still start this at 6:45 -- well, because that's  
10 supposed to start at 7:00.

11 MR. BASTIDA: Right. That is correct.

12 CHAIRMAN HOOD: Because that starts or is  
13 supposed to start at 7:00.

14 UNKNOWN PERSON: We can do 6:45 and then  
15 close.

16 CHAIRMAN HOOD: Close and then that.  
17 Okay. Let's do that.

18 MR. BASTIDA: Okay. But I wanted to make  
19 everybody aware that that will happen.

20 CHAIRMAN HOOD: Okay. We have one more  
21 thing and we're going to adjourn.

22 VICE-CHAIRPERSON MITTEN: I just wanted  
23 to also request that we don't have any building  
24 materials that have been submitted yet. We don't --  
25 is there anything that we'll need to make our final

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1 decision on that score would be helpful to have on  
2 the 2nd.

3 MR. BASTIDA: Ms. Mitten, do you mean  
4 also -- Okay. Thank you.

5 CHAIRMAN HOOD: Okay. With that I want  
6 to thank the public and all interested parties  
7 involved for coming out tonight. I appreciate your  
8 patience and we'll see you November 2nd at the  
9 continuance.

10 (Whereupon, at 10:55 p.m., the hearing was  
11 adjourned).

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