

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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: 4831 WEST LANE, LLC : Case No. G-954
: Local Map Amendment :
: :
: 4831 WEST LANE, LLC : Case No. DPA 13-01
: Development Plan Amendment :
: :
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A hearing in the above-entitled matter was held on January 11, 2013, commencing at 9:39 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 7th Floor Conference Room, Rockville, Maryland 20850 before:

Lynn A. Robeson
Hearing Examiner

A P P E A R A N C E S

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1 PROCEEDINGS
2 MS. ROBESON: I'm calling the case of Local Map
3 Amendment G-954 and Development Plan Amendment 13-01, both
4 filed by 4831 West Lane, LLC. Local Map Amendment G-854 is
5 a request to re-zone from the R-60 Zone to the TS-R Zone
6 property known as 4901 Montgomery Lane, identified as Lot
7 26, Block 13 of the Edgemoor Subdivision, and right-of-way
8 on West Lane associated with Lots 24, 25, and 26 of the
9 Edgemoor Subdivision in Bethesda, Maryland.
10 Development Plan Amendment 13-01 is a request to
11 amend the Development Plan approved by the District Council
12 in LMA G-843 on July 10th, 2007 for property located at 4901
13 and 4903 Montgomery Lane, and 4831 and 4833 West Lane in
14 Bethesda, Maryland.
15 Okay. This hearing is conducted on behalf of the
16 District Council. My name is Lynn Robeson, for those of you
17 who don't know, I'm the Hearing Examiner, and I am going to
18 be taking the evidence and testimony on the case. I write a
19 report and recommendation, which is forwarded to the
20 District Council, also known as the County Council, and they
21 make the final decision on the case.
22 Would the parties please identify themselves for
23 the record?
24 MS. HARRIS: I'm Patricia Harris with Lerch, Early
25 & Brewer on behalf of the Applicant.

E X H I B I T S

DPA 13-01 Exhibit No.	Marked/Received
48 Affidavit of Posting	21
49 Affidavit of Mailing	21
50 Affidavit of Mailing	21
51 Aerial Photograph	42
52 Revised Development Plan dated 1/10/13	101
53 Surrounding Development Analysis	117
54 High-rise Edgemoor Public Use Space	135
55 Public Use Space for City Homes & the Edgemoor at Arlington North	138
56 City Homes & 4901 Hampden Lane Public Use Space	140
57 Edgemoor at Arlington Public Use Space	142
58 Building Offset Comparison	144
59 Staff Packet dated 11/13/12 on 2012 Housing Policy	157
60 Sector Plan Comparison	158
61 Architectural Section Comparisons	185
62 South Facade - Villages of Bethesda	201
63 Sandy Spring Building - Western Facade	210

1 MR. ABRAMS: I'm Stan Abrams from the firm of
2 Abrams & West in Bethesda, Maryland on behalf of City Homes
3 of Edgemoor, which is a 29-unit townhouse community south of
4 the subject property across Montgomery Lane.
5 MS. ROBESON: Okay.
6 MR. KNOPF: Good morning, Norman Knopf, Knopf &
7 Brown. With me is Ben Arem, an Associate in our firm, and
8 we represent the Edgemoor Condominium Residences, a 54-unit
9 building on Montgomery Lane, and also Andrew Niebler, Louis
10 Pohoryles, and Jon Weintraub who will speak on behalf of the
11 residences, and also as individuals.
12 MS. ROBESON: All right. Is there anyone here
13 that is not represented by either Mr. Knopf, or Mr. Abrams
14 who wishes to testify in the case? All right.
15 MR. ABRAMS: Well, I don't have all my witnesses
16 here. There is one witness here, but we had the
17 understanding with your staff that probably would not get to
18 any of the opposition witnesses, and therefore I would
19 recommend to the examiner that when the opposition case
20 starts that they take the --
21 MS. ROBESON: Okay. So, what you're saying is
22 there may be more people coming --
23 MR. ABRAMS: Yes, right.
24 MS. ROBESON: -- when your case begins.
25 MR. ABRAMS: Correct.

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1 MS. ROBESON: Okay. Well, we will ask the
2 question, my real purpose of asking the question is whether
3 people that are not represented by either you or Mr. Knopf
4 if they would like to designate a spokesperson because that
5 simplifies some of the process in the case. So, to the
6 extent that anyone gets a chance to posit that question,
7 that would be helpful, I think.

8 MR. ABRAMS: Okay.

9 MS. ROBESON: So, I'm not going to hold you to all
10 the parties being here today.

11 MR. ABRAMS: Thank you.

12 MS. ROBESON: Okay?

13 MR. KNOPF: I do want to say that that's the same
14 circumstance in our case, we advised people that they
15 probably would not be able to testify today because our
16 understanding was the Applicant's case would probably take a
17 least --

18 MS. ROBESON: And that's fine. That was the
19 discussion in the e-mail, so we're not going to bar people
20 that wish to testify from doing so. As you know, there's
21 limitations on relevance, et cetera, so we do like to move
22 things on if we may.

23 Are there any -- I do see a motion from Mr.
24 Abrams, before we get to that are there any other
25 preliminary matters?

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1 MR. ABRAMS: Which exhibit list are we going to
2 follow as --

3 MS. ROBESON: That's a good question. What I
4 would like to do is consolidate, instead of having to file
5 multiple exhibits in both files my thought it to consolidate
6 all the exhibits into the Development Plan file which has to
7 be approved by the County Council, and the reason is the
8 Development Plan has a few more requirements than the, you
9 know, the zoning standards. So, from now on all the
10 exhibits are going to be filed in DPA 13-01, but will be
11 applicable to both applications.

12 Any other preliminary matters? Seeing none,
13 Mr. Abrams, do you want to argue your motion to -- yes?

14 MS. HARRIS: I'm sorry, just for recording
15 purposes, do we need to be pressing the mic in this --

16 MS. ROBESON: No. No.

17 MS. HARRIS: We don't.

18 MS. ROBESON: Well, you may if you want to be
19 heard throughout the building, but the --

20 MS. HARRIS: No, and we don't, but okay.

21 MS. ROBESON: -- the recording mics are the ones
22 standing on stands, if I'm correct, and they're not
23 projection mics. The mics that are, you press the button
24 for are projection mics.

25 MS. HARRIS: Thank you.

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1 MS. ROBESON: Okay? We are in a different room,
2 so any other questions or preliminary motions? Mr. Knopf?

3 MR. KNOPF: I presume that by the end of today we
4 will try to work out schedule-wise where we're going from
5 here in terms of days?

6 MS. ROBESON: Yes. Uh-huh. Now, we do have
7 January 15th reserved, but I think the question is beyond
8 January 15th. Yes. That's correct.

9 MR. KNOPF: Thank you.

10 MS. ROBESON: All right. Mr. Abrams, you're on.

11 MR. ABRAMS: Yes. Madam Examiner, we had filed
12 previously, and we raised a motion, originally it was titled
13 motion to reject replacement applications, but we have found
14 out from your Staff who indicated that they can't reject
15 anything that hasn't been filed yet. So, we re-raised that
16 objection, plus if you want to alternatively title it a
17 motion to dismiss for failure to comply with the Zoning
18 Ordinance requirements. And what I'm specifically referring
19 to in terms of the Zoning Ordinance provisions is the
20 Section 59-H-2.24 of the Zoning Ordinance which essentially
21 says after acceptance for filing an application for map
22 amendment shall not be modified or amended so as to increase
23 the area proposed to be re-classified as to the class of
24 zone requested.

25 Now, if you go back in the history of this

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1 property and the zoning history of this property in July of
2 2007 the District Council approved an application, which was
3 G-843 to re-zone to the TS-R Zone three lots, Lots 24, 25,
4 27 of Block 13 of the Edgemoor Subdivision. And together
5 with that as required by the TR-R Zone is a Development Plan
6 which was approved at the same time. The application at
7 that time was filed by the Holiday Corporation, and you'll
8 find references throughout this hearing to that name and
9 that project.

10 The TS-R application contained a Development Plan
11 for those three lots which showed a four to six story
12 building, the four story unit being on the, I guess the west
13 side, extending to Montgomery Lane, and a six story portion
14 which was set back because Lot 26 was not under their
15 control, and was further back toward the north portion of
16 the site. The Development Plan at that point in time had a
17 density of 2.5 F-A-R, and proposed I think 48 dwelling
18 units, and came out to about a 73 growing unit per acre
19 overall density.

20 The property was thereafter sold and acquired by
21 this Applicant. Originally an application G-912 was filed
22 because they had acquired also Lot 26 and wanted to attach
23 that to the overall application, and filed a Development
24 Plan Amendment and application for Local Map Amendment for
25 Lot 26. The Development Plan Amendment, however, included

1 not only Lot 26, but also the three previous lots which had
2 been approved under G-843. That application was withdrawn
3 because of certain issues dealing with rights of way which
4 weren't included in that application. And essentially the
5 same application has been filed now as G-954 and Development
6 Plan Amendment 13-01.

7 So, that's the history. Basically, our contention
8 is that the property was originally zoned and subject to a
9 Development Plan Amendment which contained 28,000-plus
10 square feet, we're now up to 38,000 I think square feet,
11 which includes Lot 26 plus the right of way area. The whole
12 contention is based upon the fact that the Development Plan
13 is an integral part of the application, both the first
14 application, G-843, as well as this application. And that
15 Development Plan Amendment had a certain geographic area
16 attached to it, and what is happening here is that there is
17 an application process being followed by the Applicant which
18 merely seeks to amend the Development Plan Amendment without
19 going back to really re-file the zoning application to
20 include all four lots in this case.

21 And as noted in the resolution of the Council,
22 they said that the Development Plan is hereby approved, and
23 this is back in 2007, is hereby approved in the amount
24 requested subject to specifications and requirements of the
25 final Development Plan approved by District Council, in that

1 case it was Exhibit 85A.

2 Now, Lot 26, as I said, increases the application
3 area, and also the area subject to a Development Plan. By
4 combining Lot 26 with the only application for re-zoning
5 dealing with the remaining lots in G-843 you're basically
6 covering the entire parcel without a new zoning application.
7 There's no statutory authority to expand or combine the
8 zoned, previously zoned TS-R land with the new TS-R land
9 under an expanded Development Plan Amendment. As an example
10 where this authority does exist is in the cluster zoning
11 provisions, and I've cited Section 59-C-1.526 as an example
12 where you can combine, you can combine previous clusters
13 with new cluster subdivisions in an overall cluster plan of
14 development, but there's no similar authority in this case.
15 So, basically what we're contending is that the application
16 should have been re-filed for all four lots for the TS-R
17 Zone and it would be essentially going from TS-R and R-60
18 zoning to TS-R with an entirely new Development Plan,
19 because this Development Plan, first of all, has really no
20 relation to anything that was approved under the prior
21 Development Plan, it's too much at variance to even be
22 graciously called an amendment. So, we suggest that prior
23 to even going further that the Examiner rule that, you know,
24 the Zoning Ordinance has not been complied with, and a new
25 application should be filed.

1 MS. ROBESON: All right. Ms. Harris?

2 MS. HARRIS: Yes, thank you. Patricia Harris with
3 Lerch, Early & Brewer on behalf of the Applicant.

4 Let me start by restating Section 59-H-2.24 of the
5 Zoning Ordinance, which reads after acceptance for filing an
6 application for a map amendment shall not be modified or
7 amended so as to increase the area proposed to be re-
8 classified as to the class of zone requested. We are
9 neither modifying nor amending the previously approved map
10 amendment. That previous map amendment involved Lots 24,
11 25, and 27, it was Local Map Amendment G-843. We're filing
12 an entirely new application, Local Map Amendment G-954 to
13 re-zone Lot 26. This application independently re-zones Lot
14 26, separate and apart from G-843.

15 In November, 2012 the Applicant filed a
16 Development Plan/Development Plan Amendment for Lot 26, it
17 included Lots 24, 25 and 27. This document was entitled
18 Development Plan/Development Plan Amendment. And I want to
19 refer to note 14 on that plan which reads this Development
20 Plan/Development Plan Amendment and the corresponding
21 application represents the required Development Plan
22 associated with the Local Map Amendment for 4901 Montgomery
23 Lane, that's Lot 26, and the West Lane right of way, and an
24 amendment to the Development Plan approved in connection
25 with Local Map Amendment G-843 for Lots 24, 25 and 27.

1 The Local Map application, the subject one, G-954, is not
2 amending the previously approved Development Plan, it's a
3 separate independent application which has its own
4 Development Plan. The Development Plan Amendment which
5 covers the entire site is effectively marrying the two Local
6 Map Amendments.

7 Mr. Abrams's extension of 59-H-2.24 to Development
8 Plans is attenuated, at best, that section is in Article H
9 of the Zoning Ordinance entitled map amendments. While we
10 acknowledge that a Local Map Amendment does require a
11 Development Plan, the review and approval of Development
12 Plans is governed by a totally separate article of the
13 Zoning Ordinance, Article D, Division One, entitled
14 development plans. There's nothing in 59-D which would
15 preclude the amendment of a Development Plan to increase the
16 land area.

17 Mr. Abrams claims that there's no statutory
18 authority to combine the TS-R land zone under one Local Map
19 Amendment with the TS-R land zoned under a separate Local
20 Map Amendment, and in fact, to the contrary there is,
21 there's 59-H which deals with Local Map Amendments, and then
22 there's another section of the Code that deals with
23 Development Plan Amendments which can extend to both
24 properties that come in under two separate Local Map
25 Amendments.

1 I find the solution to remediate this supposed
 2 obstacle somewhat novel, what's being suggested is that we
 3 re-zone the three lots that were already zoned to TS-R again
 4 to TS-R and then file a Development Plan. But the problem
 5 is that the lots are already zoned TS-R, the three lots that
 6 were subject to G-843. There's no Zoning Ordinance
 7 provision that deals with re-zoning lots back again to the
 8 zone that is currently existing, and in contrast, there are
 9 Zoning Ordinance provisions that specifically deal with
 10 Local Map Amendments and Development Plan Amendments.
 11 I think it's worth noting that the Applicant's
 12 approach is precisely how the adjacent property to the west
 13 at the corner of Arlington Road and Montgomery Lane, which
 14 you'll hear later is being referred to as the Rothstein
 15 property was amended. In that case there was an original
 16 Local Map Amendment G-779, which re-zoned approximately
 17 28,000 square feet to TS-R with an accompanying Development
 18 plan, and then subsequently the owner acquired the adjacent
 19 lot next to it, and they filed a new Local Map Amendment and
 20 a Development Plan Amendment to cover the entire area. The
 21 District Council approved G-865 and Development Plan
 22 Amendment 07-03 in precisely the same manner in which this
 23 case is postured.
 24 I want to conclude that the Applicant in filing
 25 Local Map Amendment G-954 and the Development Plan DPA 13-01

1 has adhered to the correct zoning procedures to re-zone Lot
 2 26 and extend a Development Plan to cover the entire
 3 property, Lot 26, which is the subject of Local Map
 4 Amendment G-954, and Lots 24, 25, and 27, which are subject
 5 to G-843.
 6 Finally, I think it's worth noting that from a
 7 procedural standpoint there's absolutely no distinction
 8 between the procedure that Mr. Abrams is suggesting, or the
 9 correct procedures that we have filed, and that is that the
 10 filing requirements are the same, the processing procedures
 11 are the same, and that most importantly the standard of
 12 review and the findings are the same. So, we were a little
 13 perplexed to see this motion anyway. Thank you.
 14 MS. ROBESON: Okay. Mr. Abrams, I'm going to give
 15 you an -- or Mr. Knopf, do you want to weigh in on this?
 16 MR. KNOFF: I just want to say we concur with Mr.
 17 Abrams's motion.
 18 MS. ROBESON: Okay. I'm going to give you an
 19 opportunity to respond in a moment, but I did have some
 20 questions, and then you may want to address them in your
 21 response.
 22 I have to say, I tend to agree with Ms. Harris on
 23 this one. I did not see a prohibition of expanding, even
 24 though there's no explicit authority, there is no
 25 prohibition on expanding a Development Plan. And I also

1 know in the TS-R Zone there's a provision where they reduce
 2 the lot size, or dominium area, so that you could
 3 consolidate two parcels, they didn't want isolated parcels.
 4 And I guess my third question is it seems to me it sort of
 5 elevates form over substance that we should require the
 6 Applicant to re-zone, you know, just file a new application
 7 to get us exactly where we are today. And I have not looked
 8 at the -- I don't know why, I can speculate why, there's a
 9 prohibition on expanding a Local Map Amendment, but it does
 10 seem to me that it would elevate form over substance without
 11 an explicit prohibition in the Code. So, I'll let you
 12 respond to my concerns, as well.
 13 MR. ABRAMS: Okay. Madam Examiner, what the
 14 Zoning Ordinance says with reference to the TS-R Zone in
 15 Section 59-C-8.45 is that the Zoning Ordinance specifically
 16 states that, and I quote, the approval of the application
 17 includes the approval of this plan. That application is the
 18 only application which involves a majority of this property.
 19 That application has never been superseded, amended by any
 20 new application. Why it was done in this fashion in terms
 21 of the language about increasing the area seems to me that
 22 this is one of the situations where the District Council
 23 wanted the geographic area, which was included is part and
 24 parcel of the Local Map Amendment, and in which the
 25 development plan, which to me is one of the most important

1 parts of that combination, was known to the public as to,
 2 you know, what it's going to be developed as. When you all
 3 of a sudden expand the land area without likewise expanding
 4 the application with a new application, including the old
 5 and the new land area, it's basically a, it's deceptive if
 6 nothing else, because there is no Local Map Amendment which
 7 has actually been approved, again, the approval of an
 8 application includes the approval of the plan. And in this
 9 case the approval of the only application that's out there
 10 involves one lot.
 11 So, I don't think it's a situation where, you
 12 know, it didn't take a whole lot to come back under a
 13 different form with the re-classification for the entire
 14 property, with a new Development Plan. And in fact, I think
 15 I recall back in the stone age when I was in the Hearing
 16 Examiner's Office we had required some applicants to come
 17 in, even though their property or portion of the property
 18 was re-zoned, we didn't have the TS-R Zone back then, but we
 19 required the applicants to file a new application which had
 20 the existing zoning, didn't change the existing zoning, plus
 21 whatever new land area was required, so that --
 22 MS. ROBESON: So, are you saying it's a notice
 23 issue? Is it a notice issue?
 24 MR. ABRAMS: It's not specifically a procedural
 25 notice issue, it is an issue with how these projects are

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1 followed down the line, because if you continually do this
2 by the process which is being attempted here nothing ever
3 gets back to the original plan, it just gets a little piece
4 here, a little piece there, a little piece there, and
5 doesn't follow the Zoning Ordinance which says that the
6 approval of the application includes the approval of the
7 plan, because the application in this case doesn't include
8 the other lots, the Local Map Amendment.
9 MS. ROBESON: All right. Anything further,
10 Ms. Harris?
11 MS. HARRIS: Just very briefly. I'd note that
12 there's many zones that require a Development Plan with a
13 Local Map Amendment. Given that if there were, if the
14 intention was to not allow an expansion of land area with
15 the Development Plan Amendment it would seem to me that the
16 ordinance would specifically state that, and it does not
17 state that at all.
18 And then conversely, there's no place in the Code,
19 you know, I would be a little bit perplexed if I were
20 getting ready to file a new zoning application for property
21 that is already zoned TS-R and I filed it again for TS-R,
22 I'm not sure even what section of the Code I would have
23 proceeded under.
24 MS. ROBESON: Well, I'm not sure he's -- I think,
25 correct me if I'm wrong, the mistake here is not the re-

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1 zoning application but the Development Plan Application --
2 MR. ABRAMS: That's correct.
3 MS. ROBESON: -- is that what you're saying?
4 MR. ABRAMS: The Development Plan Application
5 extends --
6 MS. ROBESON: Yes.
7 MR. ABRAMS: -- into an area which is not
8 associated --
9 MS. ROBESON: Right.
10 MR. ABRAMS: -- with a Local Map Amendment.
11 MS. ROBESON: Yes.
12 MS. HARRIS: But that's not true. We have one
13 Local Map Amendment, G-843, that covers three properties; we
14 have another one, the subject, that covers Lot 27; two Local
15 Map Amendments; we have a Development Plan on the subject
16 Lot 27; and then we have a Development Plan Amendment that
17 takes the two Local Map Amendments and covers the entire
18 area of the property.
19 And I'd go back to what the Hearing Examiner
20 noted, to what end result is this? Is it just so that -- I
21 mean, I don't know if we assume for a moment that we hadn't
22 followed what our neighbor had done, the exact same
23 procedural posture, and we had done exactly what Mr. Abrams
24 had suggested, procedurally, substantively the end result is
25 identical.

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1 MS. ROBESON: Well, what I'm going to do, I do
2 tend to -- because I don't see a prohibition in the
3 Development Plan, I understand your argument that the
4 Development Plan is married to a map amendment, I guess I
5 would want more information on why you can't expand, rather
6 than simply speculating why, you know, why these should be
7 married more than just that statement in the Code that says
8 that the Development Plan must accompany the Local Map
9 Amendment, I would want to know exactly why the two should
10 be married from the legislative history, and why the
11 prohibition on expansion is there. So, what I'm going to do
12 is deny your motion without prejudice for the time-being,
13 and if you wish to raise it at the beginning of your case
14 with more legislative background I will consider it again.
15 So, with that, Ms. Harris?
16 MS. HARRIS: Thank you. Good morning, Patricia
17 Harris with Lerch, Early & Brewer on behalf of the
18 Applicant, 4831 West Lane, L.L.C., an affiliate of SJG
19 Properties. We're here this morning for Local Map Amendment
20 G-954, and Development Plan Amendment 13-01.
21 As previously noted, we are proposing the re-
22 zoning of Lot 26 from R-60 to the TS-R Zone, and amend the
23 existing Development Plan which currently applies to Lots
24 24, 25, and 27 to include Lot 26.
25 As a preliminary matter, we do have the affidavits

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1 of posting and mailing.
2 MS. ROBESON: All right. I will add that as
3 Exhibit, I've got so many pages here, I --
4 MR. ABRAMS: Is that 48?
5 MS. ROBESON: Okay. Exhibit 48 to the DPA 13-01.
6 (DPA 13-01 Exhibit No. 48 was
7 marked for identification.)
8 MS. HARRIS: Thank you. Briefly, and we touched
9 on this in the preliminary motion, but I want to explain the
10 history, Local Map Amendment G-843 and the corresponding
11 Development Plan for Lots 24, 25 and --
12 MS. ROBESON: Can I -- I --
13 MS. HARRIS: Yes.
14 MS. ROBESON: -- apologize, can I stop you for a
15 moment because there's really three affidavits here, one of
16 posting, one of mailing for this map amendment, and one for
17 mailing for the DPA, so I'm going to mark 48 is Affidavit of
18 Posting; 49 as Affidavit of Mailing for the DPA; and 50 as
19 Affidavit of Mailing for the LMA.
20 (DPA 13-01 Exhibit Nos. 49 and
21 50 were marked for
22 identification.)
23 MS. ROBESON: I'm sorry to --
24 MS. HARRIS: No.
25 MS. ROBESON: -- interrupt.

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1 MS. HARRIS: That's fine. The Local Map Amendment
 2 G-843 and the corresponding Development Plans previously re-
 3 zoned Lots 24, 25, and 27, that was approved by the District
 4 Council in 2007. Subsequently, those three lots obtained
 5 site plan and preliminary plan approval from the Planning
 6 Board.

7 The prior owner, Holiday Corporation, was unable
 8 to obtain the lot which is now the subject of the re-zoning
 9 application, Lot 26, and as you'll hear from the Applicant
 10 what was approved was an inefficient, costly building and
 11 uneconomical. Holiday subsequently sold Lots 24, 25, and 27
 12 to SJG Properties, and then subsequently SJG was successful
 13 in obtaining Lot 26, which allowed for a more efficient
 14 site. Our desire is to consolidate all four lots and design
 15 a building encompassing the entire area.

16 Given that Lots 24, 25, and 27 were previously re-
 17 zoned to TS-R, and subject to the Development Plan as just
 18 previously discussed, and I don't want to get into it again,
 19 the only way to reincorporate these lots with new Lot 26 was
 20 the Development Plan Amendment.

21 Much has been made over the fact that a portion of
 22 this case involves a Development Plan Amendment. As I noted
 23 before, the procedural requirements and the burden of proof
 24 are exactly the same. I think it's important to stress that
 25 the previously approved Development Plan does not serve as a

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1 benchmark by which this current Local Map Amendment and
 2 Development Plan should be evaluated. The new application
 3 involves an increased land area, a revised land
 4 configuration, a modified building design, and a new
 5 applicant. And just as any owner has a right to modify, re-
 6 develop an existing improved property, they also have a
 7 right to revise previous approvals.

8 The application G-954 and the Local Map Amendment
 9 should therefore be evaluated afresh in accordance with the
 10 Zoning Ordinance, the Bethesda CBD, and all of the other
 11 necessary documents and materials, but again, the previously
 12 approved doesn't serve as a benchmark for that evaluation.

13 I wanted to touch on the role of the sector plan
 14 in this proceeding, and clarify what role it plays in the
 15 evaluation of a Development Plan. It's well established in
 16 Maryland law that recommendations of a sector plan serve
 17 only as a guide and not a mandate, the exception, of course,
 18 is if a Zoning Ordinance provides otherwise. Zoning
 19 Ordinance Section 59-D-1.61, which governs Development Plans
 20 sets forth the findings that the District Council must make
 21 prior to approving the re-zoning application and the
 22 Development Plan. And what that provision says, 59-D-
 23 1.61(a) is that the proposed Development Plan must
 24 substantially comply with the use and density indicated by
 25 the sector plan.

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1 There's three things I want to emphasize with
 2 respect to that section. First of all, as the words say,
 3 the Applicant must comply, substantially comply with the use
 4 and density provisions, and our land planner is prepared to
 5 address this. The other recommendations of the sector plan,
 6 other than use and density, however, do not rise to that
 7 level of scrutiny of substantial compliance. Instead, they
 8 are recommendations which are intended to serve only as a
 9 guide, and again, our land planner and our architect will
 10 address this.

11 59-D-1.61(a)(1) provides for an exception to the
 12 sector plan height and density recommendations to
 13 accommodate all MPDUs including the bonus density that's
 14 derived by providing MPDUs. As our land planner will
 15 testify, we contend that our application substantially
 16 complies with the sector plan for the sector plan's
 17 recommendations for high density on the subject property,
 18 and therefore we don't think there's a need to rely on this
 19 section 59-A-1 which provides for the exception. However,
 20 in the event the Hearing Examiner were not to agree with us,
 21 I wanted to note that this section and the exception that it
 22 provides, and so I just wanted to read it into the record.
 23 It provides to permit the construction of all MPDUs under
 24 Chapter 25A, including any bonus density units on site in
 25 zones with a maximum permitted density more than 39 dwelling

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1 units per acre, or residential F-A-R more than .9, a
 2 development may exceed A) any dwelling units per acre or F-
 3 A-R limit recommended in a master plan or sector plan, but
 4 not to exceed the maximum density of the zone, or any
 5 building height limit recommended in a master plan or sector
 6 plan, but not to exceed the maximum height of the zone.
 7 Our experts will get into this later as we proceed, but I
 8 think it's important to lay the legal foundation for that.

9 Similarly, with respect to that section I just
 10 want to touch on the legislative history of it. That
 11 section 59-D-1.61(a) was actually, has been amended three
 12 times within the last five years. The original legislation
 13 noted that the purpose of the legislation was to increase
 14 the number of MPDUs in certain zones, including the TS-R
 15 Zone. The most recent legislation, which was adopted per
 16 Ordinance No. 16-28, reaffirmed this, that the primary
 17 objective of the section was to encourage the development of
 18 MPDUs. And the preamble to that ordinance makes it clear
 19 that the purpose was to infuse flexibility into the readings
 20 of sector plans in order to provide and accommodate MPDUs.
 21 I bring this all to your attention because it's important to
 22 note that the Council in adopting this most recent
 23 legislation in October, 2008, which was well after the
 24 adoption of the Bethesda Sector Plan, made a legislative
 25 determination that the provisions of MPDUs were an important

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1 policy issue which would override height and density
2 recommendations of a sector plan. And I think you will
3 likely hear more about that during the opponent's case, so I
4 wanted to make sure that was clear and note the legislative
5 history of that provision.

6 In evaluating the case it will be also important
7 to note that the TS-R Zone itself, Section 59-C-8.43(c)
8 recommends and specifically provides that the maximum
9 density in the zone may be exceeded to accommodate MPDUs.
10 The project needs to be evaluated comprehensively based not
11 only on the sector plan, but on all the relevant
12 legislation, as well, especially the legislation which was
13 intended to override certain recommendations of the sector
14 plan.

15 The Planning Board, we were before the Planning
16 Board on December 20th, the Planning Board submitted their
17 recommendation to the record, we had a positive Staff
18 report, which recommended approval, and I just wanted to
19 note that we only had one issue with that Staff report,
20 which was that the Staff had characterized the sector plan's
21 reference with respect to density which quotes about 100
22 units an acre as recommending, the Staff took that to mean
23 that that was a recommendation for the maximum density of
24 the zone. And as our land planner will address in greater
25 detail, the 100 units per acre was not in fact a

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1 recommendation, it was more an estimation of what high
2 density, which is what the sector plan recommended, would
3 yield.

4 The Planning Board voted four to zero to recommend
5 the Development Plan with no changes in the density. The
6 Board recognized that the overarching goal of the sector
7 plan was to increase density in the TS-R Zone. In regard to
8 the units per acre the Planning Board Chair did suggest a
9 cap of 100, but however, the other members saw no
10 substantial justification for this, and they recommended an
11 approval of the application as presented.

12 We will call seven witnesses to demonstrate that
13 the Applicant satisfies the criteria to re-zone Lot 26 to
14 the TS-R Zone, and to approve a Development Plan Amendment
15 encompassing Lots 24, 25, 26, and 27.

16 I'll first call the representative of the
17 Applicant, Ashley Wiltshire, who is the Principal of SJG
18 Properties.

19 MS. ROBESON: Okay. I'm going to let Mr. Abrams
20 and Knopf if they have an opening statement I'm going to let
21 them --

22 MS. HARRIS: Sure.

23 MS. ROBESON: -- make an opening --

24 MS. HARRIS: Okay.

25 MS. ROBESON: -- statement. Yes, Mr. Abrams.

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1 MR. ABRAMS: Okay. Madam Examiner, basically,
2 we'd like to defer our opening statement to the beginning of
3 our case, the opposition case. The only thing I would like
4 to note at this point in time is that the sections quoted by
5 Ms. Harris regarding exceeding the density and height
6 limitations in a sector plan by the provision of MPDUs does
7 not mean that they have a vested right to exceed the density
8 or height limitations recommended by the sector plan, and
9 it's subject to other findings by the Examiner and the
10 Council as to compatibility and development standards,
11 things of that nature. So, I just didn't want that to go in
12 the record without some response.

13 MS. ROBESON: All right. Mr. Knopf?

14 MR. KNOPF: I would like to just make a brief
15 outline of what our position is.

16 MS. ROBESON: Okay.

17 MR. KNOPF: We believe that the proposal is
18 contrary to the sector plan --

19 MS. ROBESON: Okay.

20 MR. KNOPF: -- in taking into account and being
21 aware of the MPDUs we believe it violates the height, it
22 violates the density, it violates the entire concept of the
23 sector plan of having an urban village, which is what the
24 goal is of the sector plan. It violates the principle of
25 mixed street, which is the street here. So, this is

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1 contrary to the sector plan. It is contrary to the purpose
2 and intent of the TS-R Zone, which is, the intent is to
3 encourage, facilitate and encourage innovative and creative
4 design. We believe that this project is inconsistent with
5 that purpose and intent; it is inconsistent with the
6 requirements, of the finding that the Council has to make
7 that it's compatible with adjacent development.

8 Also, the Council needs to find that the proposal
9 will provide for safe efficient circulation, and we believe
10 that this is, this does not, this in fact exacerbates a very
11 difficult existing situation there. That and there are
12 other reasons, but that's the broadest scope.

13 MS. ROBESON: Okay.

14 MR. KNOPF: And I will say we are fully aware of
15 the MPDU requirements, and in making my comments we have
16 those in mind.

17 MS. ROBESON: All right. With that, thank you,
18 Ms. Harris --

19 MS. HARRIS: Thank you.

20 MS. ROBESON: -- call your first witness.

21 MS. HARRIS: If I may, I want to just go back for
22 one moment just to correct one thing I said, I gave an
23 incorrect reference when we were discussing the preliminary
24 motion. I had noted that the Development Plan/Development
25 Plan Amendment was note 14 on the Development Plan, it's

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1 actually note nine.
2 MS. ROBESON: Okay.
3 MR. KNOPF: I think it would be helpful, I think
4 you were going to list your witness, and --
5 MS. HARRIS: Yes.
6 MR. KNOPF: -- if you're listing them in, and I
7 know I don't want to hold you to it, but if you're listing
8 them in the order you thought you might call them I think
9 that would be helpful for us to know how to plan.
10 MS. HARRIS: Certainly. So, our first witness
11 will be Ms. Ashley Wiltshire who is the Applicant,
12 representative of the Applicant; followed by Mr. Landfair,
13 who's the Land Use Planner; followed by our architect, Sami
14 Kirkoil, and Marius Radulescu; then our Landscape Architect
15 David Judd; followed by our Traffic Consultant Chris Kabatt;
16 and then finally our Civil Engineer Mr. Mark Morelock.
17 MS. ROBESON: Okay. All right. If there's
18 nothing else we'll let Ms. Harris proceed with her first
19 witness.
20 MS. HARRIS: Thank you. Our first witness, as I
21 noted, is Ms. Ashley Gerstenfeld Wiltshire with SJG
22 Properties.
23 DIRECT EXAMINATION OF MS. WILTSHIRE
24 MS. HARRIS: Please state your full name, primary
25 occupation, and full business address for the record.

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1 MS. WILTSHIRE: My name is Ashley Gerstenfeld
2 Wiltshire; I'm a Principal at SJG Properties which
3 represents the Applicant, 4831 West Lane, L.L.C. My
4 business address is 805 15th Street, N.W., Suite 625,
5 Washington, D.C. 20005.
6 MS. HARRIS: Thank you. How long have you been
7 involved --
8 MS. ROBESON: Just a second. Can you raise your
9 right hand?
10 MS. WILTSHIRE: Sure.
11 (Witness sworn.)
12 MS. ROBESON: Okay, proceed.
13 MS. HARRIS: Thank you. How long have you been
14 involved with SJG Properties, and what are your
15 responsibilities in that position?
16 MS. WILTSHIRE: I've been involved with SJG
17 Properties for 14 years, and my responsibilities run the
18 gamut from acquisitions, through development, financing, and
19 operations of the buildings that we build, as well as the
20 sale of any assets that occur.
21 MS. HARRIS: And can you please explain SJG's
22 development experience?
23 MS. WILTSHIRE: Sure. SJG Properties is a family
24 owned and operated company. It's about 40 years old. It
25 was established by my father, John Gerstenfeld, in the late

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1 '60s. In the last 10 years, which I think would be most
2 relevant, we have done about \$200 million worth of
3 commercial and residential development, all in urban
4 environments. They happen to be in downtown Washington. Of
5 note, I think, is Logan Circle. We were the first to start
6 re-development in that urban area. We brought the Whole
7 Foods there, which is an acre site, to 14th and P Street,
8 between 14th and 15th. And then we proceeded to build four
9 buildings across the street on P Street, two of which are
10 apartments, and two of which condominiums. We still own and
11 operate the apartments; they are managed by SJG Properties.
12 In addition, the last project we completed was the
13 Woodward Building down at 15th and H Street, which is two
14 blocks from The White House. It was a \$60 million
15 conversation; a class C office building into 189 apartments,
16 class A apartments, and 12,000 square feet of retail. And I
17 think of note on that project was that there were a number
18 of awards we received, the 2009 National Association of Home
19 Builders Pillars of Industry Award for the best of adaptive
20 reuse, in addition to the 2009 District of Columbia Planning
21 Historic Preservation Excellence in Historic Preservation,
22 and the 2009 Gala Award of Merit for building interior
23 design for a rental building.
24 MS. HARRIS: Thank you. Are you familiar with
25 Local Map Amendment G-954 and Development Plan 13-01, which

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1 are the subject of today's hearing?
2 MS. WILTSHIRE: Yes, I am familiar, and I am
3 representing 4831 West Lane, L.L.C., who is the Applicant.
4 MS. HARRIS: Thank you. Have you made a personal
5 inspection of the Local Map Amendment site, and are you
6 familiar with the area surrounding the property?
7 MS. WILTSHIRE: Yes, I've made quite a few
8 inspections of the site, and I am familiar with the
9 surrounding area.
10 MS. HARRIS: Please explain the existing uses on
11 the site.
12 MS. WILTSHIRE: Okay. Currently there are four
13 individual homes on the site. I guess we don't, we don't
14 have that up there, but they are single-family homes --
15 MS. ROBESON: Okay. Are you going to refer to
16 this exhibit, and if so, it needs to be marked, if you're
17 going to refer to an exhibit.
18 MS. WILTSHIRE: Should I get up and --
19 MS. HARRIS: Yes, and I'm trying to --
20 MS. WILTSHIRE: -- show you where it is?
21 MS. HARRIS: Is that exhibit -- is -- okay. So,
22 this is the existing conditions plan, which was previously
23 submitted to the record.
24 MS. ROBESON: Okay. Do you know the number?
25 MS. HARRIS: I can find it.

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1 MS. WILTSHIRE: Is it okay if I get up there and
2 point to what I'm talking about?
3 MS. ROBESON: Absolutely.
4 MS. WILTSHIRE: Okay. It's exhibit --
5 MS. ROBESON: What I'm asking, before you start in
6 on that, though, I'd just like to know the number, and if
7 someone could mark that with the number with the word
8 duplicate, that would be helpful.
9 MS. HARRIS: It is existing conditions plan -- I'm
10 sorry, it's Exhibit 16 on the Development Plan Amendment
11 list.
12 MS. ROBESON: Okay. So, if somebody could just
13 take a marker and put Exhibit 16 duplicate, that would be
14 helpful.
15 MR. KNOPF: Do we need to Exhibit 16DP or
16 something in order to distinguish it from Exhibit 16 on the
17 other list?
18 MS. HARRIS: I think we're just dealing with this
19 list, unless --
20 MR. KNOPF: It's just that we have duplicate --
21 MS. ROBESON: You ask hard questions, Mr. Knopf.
22 MR. KNOPF: If we have duplicate numbers, it's
23 very confusing.
24 MS. ROBESON: Yes. Yes. I don't want to admit it
25 as a new exhibit unless it's marked up, so --

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1 MR. KNOPF: No, but I mean it's existing, but I
2 just want to identify that it's 16 on the Development Plan
3 exhibit list rather than on the --
4 MS. ROBESON: Okay.
5 MR. KNOPF: That's all I'm saying.
6 MS. ROBESON: Okay.
7 MR. KNOPF: So, when one looks at it they know
8 where to find it.
9 MS. ROBESON: We will mark it 16 duplicate DPA,
10 16 --
11 MR. KNOPF: DPA duplicate.
12 MS. ROBESON: -- 16 DPA duplicate.
13 MR. KNOPF: Yes, that makes me happy. Thank you.
14 MS. ROBESON: Okay. Why don't you continue?
15 MS. WILTSHIRE: Shall I get started?
16 MS. ROBESON: Yes, now you're free to talk about
17 it. Thank you.
18 MS. WILTSHIRE: I discussed the existing uses on
19 the site as requested by Ms. Harris. There are four single-
20 family, well, what were single-family homes that are now
21 used as offices, the first one is 4903 Montgomery Lane,
22 which is currently a school, and it has approximately nine
23 employees and 50 students per day that come to the school,
24 and this is, and this is the house right here. There's 4901
25 Montgomery Lane, which is currently a law office, there are

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1 approximately five attorneys that work out of this office,
2 and we estimate between four to eight clients per day that
3 are in and out of that property. There's 4833 West Lane,
4 which actually consists of three separate businesses,
5 Massage Matters, which has two employees and approximately
6 10 customers per day; Montgomery County Chiropractic, which
7 has two employees and 10 customers per day, approximately; a
8 nutritionist that has one employee and approximately four
9 customers per day. And additionally, we have 4831 West
10 Lane, which has a number that has four different
11 occupational therapists and acupuncturists and three
12 psychologists that are employed there with approximately 19
13 customers per day. So, the total estimate of people,
14 frankly, working and accessing this area between, we
15 estimate to be about 118 to 122 people per day.
16 MS. HARRIS: Thank you. Can you please describe
17 SJG's acquisition of the site?
18 MS. WILTSHIRE: Sure. SJG looked at the site;
19 it's actually in line with what we have done, which is a lot
20 of urban in-fill development. We found the project to be
21 desirable and appropriate as it's 950 feet, you know, within
22 950 feet of a Metro Station, and a few blocks from very,
23 from downtown Bethesda. We understood when we, we believe
24 we understood the County's objective in purchasing this site
25 for higher density, to increase diversity, and to provide

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1 different, you know, a unit mix, a range of, I should say, a
2 unit mix, a variety of unit types, as well as to increase
3 the amount of affordable housing in the area.
4 And in terms of the acquisition, we acquired the
5 three lots, Lot 24, 25, and 27 from the Holiday Corporation
6 in December of 2009. These lots were fully entitled, but
7 the project, frankly, was economically infeasible and
8 inefficient, and Holiday was unable to build what had been
9 approved, so we obviously had to take that into
10 consideration. And in September of 2011 we were able to
11 acquire Lot 26, which is this lot right here on the corner,
12 which allowed --
13 MS. ROBESON: Okay. When you say this lot the
14 transcript doesn't know what you're pointing to.
15 MS. WILTSHIRE: I'm sorry.
16 MS. ROBESON: So, it's in the southeast corner?
17 MS. WILTSHIRE: It's 4901 Montgomery Lane would
18 be --
19 MS. ROBESON: Okay.
20 MS. WILTSHIRE: -- the address --
21 MS. ROBESON: All right.
22 MS. WILTSHIRE: -- of the lot. So, in acquiring
23 lot 26 this permitted us to design a much more efficient
24 building than previously had been approved.
25 MS. HARRIS: Can you provide a description of your

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1 evaluation of the site, and the general objectives of the
2 Local Map Amendment application?
3 MS. WILTSHIRE: Sure. I think as I touched on
4 briefly, we believe the site to be very desirable in terms
5 of its proximity to downtown Bethesda, and being within 950
6 feet of the Metro Station, we consider that obviously to be
7 in an urban core. We also looked at the objectives of the
8 Bethesda Sector Plan, which is to create diversity in unit
9 type, took the desire for high density around Metro
10 Stations, and also to increase the amount of affordable
11 units available in the neighborhood. We also looked
12 extensively at what currently exists in the neighborhood in
13 considering what we thought might be appropriate. And the
14 type, the unit type that currently exists along Montgomery
15 Lane is all very similar, it's all large condominiums
16 averaging probably between 1,700 and 2,000 square feet per
17 unit, which, you know, we don't believe provides a lot of
18 diversity. What we're proposing provides units that range
19 anywhere from 585 square feet to 1,200 square feet, and we
20 believe that is more in keeping with the Bethesda Sector
21 Plan. So, we believe that there is a need and a desire for
22 diversity in unit type compared to what currently exists on
23 the street and within the neighborhood.
24 MS. HARRIS: And when the Sector Plan said
25 diversity in unit type you assumed that they were speaking

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1 at least in part in terms of unit size, is that correct?
2 MS. WILTSHIRE: Yes. Yes. Again, we are -- I
3 mean, the units, and I can go through, shall I go through
4 the existing product and the approved product to discuss
5 what's been, what exists in the area and what's been
6 approved in the area? Or --
7 MS. HARRIS: Other consultants are going to do
8 that --
9 MS. WILTSHIRE: Okay.
10 MS. HARRIS: -- so I don't think that's necessary.
11 MS. WILTSHIRE: Okay.
12 MS. HARRIS: Okay.
13 MS. WILTSHIRE: But yes, we did believe our
14 average unit size, again, is 860 square feet, and provides a
15 diversity of unit type that doesn't currently exist on the
16 street or within the neighborhood.
17 MS. HARRIS: Okay. Can you explain the economics
18 and how that drove the proposed product, and more
19 specifically, if the product were to be rental could you
20 explain the economies scale and how the loss of a sufficient
21 number of units may make the rental infeasible?
22 MS. WILTSHIRE: Sure. The project as designed has
23 a range of units of 100 to 120 units. We provide -- with 15
24 percent MPDUs it's only actually 85 to 101 market rate
25 units, and if the building were to be a rental building this

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1 is critical that we are able to get 101 market rate units in
2 terms of the economies of scale that are required in order
3 to run and make a rental building economically feasible.
4 Rental buildings have almost the same expenditures or costs
5 associated with it whether there are 100 units or 300 units,
6 because staffing, which is your largest expense, remains the
7 same, we have to have, I mean, what we provide is class A
8 product and finishes, so, you know, what we provide and
9 build is similar to what we also would sell as a condominium
10 project, and the way we staff our projects is also the same.
11 So, we would need the same person at the front desk, we
12 would still need a property manager, and assistant property
13 manager, we have an engineering team on staff, and if you
14 don't have a critical mass of units to be able to do that
15 it's not feasible to build the product. So, if the unit
16 count is to be reduced below the 120 units then it would be
17 infeasible for us to build the rental product, and what we
18 would probably have to do is move to a larger condominium
19 product, which is exactly what has been provided, and is
20 being provided by the proposed projects in the neighborhood,
21 and we don't feel that this is what the neighborhood needs,
22 or the Bethesda Sector Plan really wants the neighborhood to
23 have at this point.
24 MS. HARRIS: So, your point --
25 MS. ROBESON: I just have a question, is this

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1 going to be a rental --
2 MS. WILTSHIRE: We haven't committed to what it's
3 going to be, but we're trying to keep, in order to keep the
4 project economically feasible, I don't know when we'll be
5 through this process, and permitted to actually start the
6 project, so what we're trying to do is ensure that when we
7 get to a point in time that we can actually start the
8 project that we have flexibility to do what is necessary to
9 do in order to get, you know, the project started. And I
10 think of note, too, that we hadn't discussed before is
11 currently in terms of the affordable housing aspect there is
12 not a single solitary MPDU on Montgomery Lane. And the
13 project as we are proposing it with 120 units would produce
14 19 MPDUs on Montgomery Lane, which is more than a 50 percent
15 increase in the immediate area. So, I think that is
16 something that is important to the dynamics of the
17 neighborhood.
18 MS. HARRIS: Thank you. There's been significant
19 community outreach in connection with this project, can you
20 please describe that?
21 MS. WILTSHIRE: Sure. We have had over a dozen
22 meetings with the neighbors, we have had numerous meetings,
23 we have had two meetings with the Villages of Bethesda,
24 which is -- should I point out the project?
25 MS. HARRIS: Yes, and --

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1 MS. WILTSHIRE: The Villages of Bethesda is a --
2 MS. ROBESON: Okay, that's -- can you tell me
3 what --
4 MS. WILTSHIRE: This is Exhibit 2, I believe, is
5 that correct?
6 MS. ROBESON: Okay. Exhibit 2 --
7 MS. HARRIS: Actually, this is a new exhibit that
8 is not yet in the record, so we'll introduce that exhibit.
9 MS. ROBESON: Okay.
10 MS. HARRIS: It's an aerial photo.
11 MS. ROBESON: So, let me mark it first, it's an
12 aerial of the subject property and surrounding area?
13 MS. HARRIS: Yes.
14 MS. WILTSHIRE: Yes.
15 MS. ROBESON: Okay. So, that'll be Exhibit 51.
16 (DPA 13-01 Exhibit No. 51 was
17 marked for identification.)
18 MS. ROBESON: Are there any objections?
19 MR. ABRAMS: No objection.
20 MS. ROBESON: Now, can someone mark it as
21 Exhibit 51?
22 MR. KNOFF: Do we just know when that was taken?
23 I mean, what year, or something like that. Is it current?
24 MS. ROBESON: Is there a witness that can answer
25 that?

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1 MS. HARRIS: Well, let me first note that in
2 connection with that aerial, as you'll see, there's three
3 projects including the subject property that are not
4 photographs, but are placed in there.
5 MS. ROBESON: Okay, do you have someone who can
6 explain this?
7 MS. HARRIS: Yes.
8 MS. ROBESON: Can they come up and we'll answer
9 the voir dire on this?
10 MS. HARRIS: Okay.
11 MS. ROBESON: Just a second. Your name and
12 address for the record.
13 MR. RADULESCU: I'm Marius Radulescu with SK and
14 I, I'm the architect for --
15 MS. ROBESON: Address, and then I'm going to --
16 MR. RADULESCU: The business address is 7735 Old
17 Georgetown Road, Bethesda, Maryland 20814.
18 MS. ROBESON: Okay. Please raise your right hand.
19 (Witness sworn.)
20 MS. ROBESON: Okay, Mr. Knopf, why don't you
21 repeat your question.
22 EXAMINATION OF MR. RADULESCU BY MR. KNOFF
23 MR. KNOFF: When, approximately when was this
24 photo, aerial photo taken?
25 MR. RADULESCU: I do not know. This is, the

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1 aerial background was done through MapQuest or data server,
2 and they are probably three years old, within that range,
3 but I do not know for sure.
4 MS. ROBESON: Do you have any other questions?
5 MR. KNOFF: Well, then also I understood the
6 statement was made that it's not just a photo but some
7 things were inserted into the photo?
8 MR. RADULESCU: Yes, we created a montage, if you
9 will, showing the proposed building and the buildings that
10 have been approved or developed.
11 MS. ROBESON: Okay.
12 MR. KNOFF: Okay, that's what was important. Now,
13 being approved or developed currently, or as of three years
14 ago when the photo was taken?
15 MR. RADULESCU: No, no, no. The background that
16 we used was probably done within a three year range. In
17 other words, the satellite that circles the globe doesn't
18 take photos all the time, so however, the buildings that we
19 inserted are based on the data by, provided by the buildings
20 that had been approved already for development. So, our
21 project is this, and this space --
22 MS. ROBESON: You can't say this.
23 MR. RADULESCU: I'm sorry.
24 MS. ROBESON: If you want to mark it -- well,
25 let's, before we get into this, Mr. Knopf, are you objecting

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1 to admission, or do you want to cross-examine on these
2 questions?
3 MR. KNOFF: No, I just was trying to get
4 clarification as to what was going in.
5 MS. ROBESON: Yes.
6 MR. KNOFF: I'm not objecting.
7 MS. ROBESON: Okay. Well, let's --
8 MR. KNOFF: As long as we have it clearly
9 identified what's going in.
10 MR. ABRAMS: Well, I want to withdraw my approval
11 of this, I didn't realize that there were insertions in
12 this --
13 MS. ROBESON: In this view.
14 MR. ABRAMS: -- aerial photograph.
15 MS. ROBESON: I called it aerial view, not --
16 MR. ABRAMS: Aerial view.
17 MS. ROBESON: -- aerial photo.
18 MR. ABRAMS: And I have extensive cross-
19 examination dealing with, you know, how those insertions
20 were put on that aerial photograph, in terms of what
21 documents were reviewed, you know, what was used --
22 MS. ROBESON: So, are you objecting to admission?
23 MR. ABRAMS: Well, yes, I'm objecting to the
24 admission.
25 MS. ROBESON: Okay. Then we'll have --

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1 MR. KNOPF: I think I will now agree with Mr.
2 Abrams.
3 MS. ROBESON: Okay. Okay. Now we will -- then
4 you may -- I'm sorry, can you say your last name again so I
5 can --
6 MR. RADULESCU: Radulescu, R-A-D-U-L-E-S-C-U.
7 MS. ROBESON: Thank you. You may ask
8 Mr. Radulescu questions regarding your motion.
9 MR. KNOPF: Me or Mr. Abrams?
10 MS. ROBESON: You, Mr. Knopf, and then Mr. Abrams.
11 FURTHER EXAMINATION OF MR. RADULESCU BY MR. KNOPF
12 MR. KNOPF: Well, could you identify, to start
13 with could you identify the buildings that were inserted, if
14 that's the right term?
15 MR. RADULESCU: Yes. I will start with the
16 project under discussion, which is West Lane project --
17 MS. ROBESON: Okay. Why don't you mark that with
18 a little check so we know which building you're, which --
19 mark every building inserted with a check, a red check.
20 MS. HARRIS: May I also interrupt for one moment?
21 Procedurally, is it necessary to swear in Mr. Radulescu?
22 MS. ROBESON: I thought I did.
23 MR. KNOPF: She did.
24 MR. ABRAMS: Yes.
25 MR. KNOPF: She did.

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1 MS. HARRIS: I'm sorry. Okay.
2 MS. ROBESON: It's okay. We've got three
3 attorneys here, so, four counting me. Okay, it's marked
4 with the red --
5 MR. RADULESCU: So, I'm pointing to the first
6 building, which is West Lane.
7 MS. HARRIS: The subject --
8 MS. ROBESON: And that's marked with a star, a red
9 star, right? Or --
10 MR. RADULESCU: Yes.
11 MS. ROBESON: -- asterisk? Okay.
12 MR. RADULESCU: Yes. Shall I put initials of the
13 building just for convenience, like --
14 MS. HARRIS: SPG?
15 MR. RADULESCU: -- W-L or something?
16 MS. ROBESON: Just mark the others with checks,
17 okay?
18 MS. HARRIS: No, check.
19 MS. ROBESON: No. Check.
20 MR. RADULESCU: Oh.
21 MS. ROBESON: See, the Council won't know -- okay.
22 Check. All right. So, everything checked is inserted, and
23 the proposed project is inserted and marked with a star.
24 All right. Mr. Knopf?
25 MR. KNOPF: Okay. Now, with those that were

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1 inserted am I correct that none of these inserted buildings
2 exist now?
3 MR. RADULESCU: Correct.
4 MR. KNOPF: Now, with --
5 MR. RADULESCU: That's why we have to insert them
6 otherwise.
7 MR. KNOPF: But I mean, but the map -- but if it's
8 three years old there might have been something built --
9 MR. RADULESCU: They are still --
10 MR. KNOPF: -- since the three years --
11 MR. RADULESCU: I see.
12 MR. KNOPF: -- that's why I was trying to ask that
13 question. Now, in terms of your -- I really can't see from
14 here too well, but the --
15 MR. RADULESCU: That's the West Lane, this is --
16 MR. KNOPF: Right.
17 MR. RADULESCU: -- Edgemoor, just what I finished.
18 Arlington Road, yes, Arlington Road and this is --
19 MS. ROBESON: Arlington Road runs north/south --
20 MR. RADULESCU: Right.
21 MS. ROBESON: -- on the western portion.
22 Montgomery Lane --
23 MR. RADULESCU: Montgomery Lane. Yes.
24 MS. ROBESON: Okay. Is that marked on that area?
25 MR. RADULESCU: Yes.

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1 MS. ROBESON: Okay. Good.
2 MR. KNOPF: So, in terms of the insertion
3 representation how is that arrived at? What is that taken
4 from?
5 MR. RADULESCU: It's actually -- technically it's,
6 you know, complicated but it's very straightforward. We
7 have dimensions for all these buildings, we have a site plan
8 that you see here that actually extends a little bit, so
9 with those data --
10 MS. ROBESON: When you say site plan you're
11 referring to 16 DPA duplicate, right? Yes, you are?
12 MR. RADULESCU: Yes.
13 MS. ROBESON: Go ahead.
14 MR. RADULESCU: And then with those data we're
15 able to build these buildings to their approximate size, and
16 then insert them into the existing photograph.
17 MR. KNOPF: But I understand the size and the
18 location, but in terms of what they look like?
19 MR. RADULESCU: Well --
20 MR. KNOPF: Because I'm looking particularly at
21 your building, your project building, could you point to
22 that? It's --
23 MR. RADULESCU: Our building has more detail
24 because we built it, so therefore --
25 MR. KNOPF: Right.

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1 MR. RADULESCU: -- we have the most data about
2 that building.
3 MR. KNOPF: My question with regard to that is, is
4 that the details of the building as the application has been
5 filed to date, or --
6 MR. RADULESCU: Yes.
7 MR. KNOPF: So, it doesn't contain any proposed
8 changes that might be made?
9 MR. RADULESCU: No, no, it's absolutely one to one
10 translated.
11 MS. HARRIS: Actually, if I could correct that,
12 and Mr. Knopf, you're aware of this given our meeting
13 yesterday, and we will get to this when we introduce the
14 Development Plan, based on comments we heard at the Planning
15 Board and meetings with the Civics we've made minor changes
16 to the building design and the Development Plan, and what is
17 represented on Exhibit 51 reflects those changes which we
18 will be submitting additional information and documents.
19 MS. ROBESON: All right. Well, let me ask you
20 this, rather than get into -- this is a little bit, I'm
21 seeing jumping the gun into -- do you need this to refer to
22 in your testimony?
23 MS. HARRIS: Ms. Gerstenfeld doesn't need it
24 specifically, however, that exhibit is going to be used
25 throughout the day --

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1 MS. ROBESON: All right.
2 MS. HARRIS: -- for reference.
3 MS. ROBESON: Then we'll continue. Go ahead.
4 MS. HARRIS: And I think, if I could, it may be
5 helpful for Mr. Radulescu to explain from where he got the
6 data for those three buildings, from --
7 MR. RADULESCU: Oh, from the old --
8 MS. HARRIS: Four buildings, yes.
9 MR RADULESCU: It's from the approved project. In
10 other words, the approved projects --
11 MS. ROBESON: From the approved site plans?
12 MS. HARRIS: Site plans.
13 MS. ROBESON: Do they all have site plans?
14 MS. HARRIS: No, the building immediately to the
15 east of our building, of the subject building, has an
16 approved Development Plan, and that information was taken
17 from that approved Development Plan. Similarly, the
18 building immediately to our west, the Rothstein building, is
19 an approved Development Plan, and the information was taken
20 from the approved Development Plan. Again, similarly, the
21 Hampden Lane project, the same exact situation; and then the
22 building which we will refer to as 4901 Hampden Lane had an
23 approved site plan and then actually just came back for a
24 Development Plan Amendment, which was approved. So, they're
25 either approved, primarily it's based on the approved

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1 Development Plans that the Council approved for each of
2 those projects.
3 MS. ROBESON: Okay. So, what I think Mr. Knopf's
4 point is, the massing could change of the buildings, like I
5 notice terracing on some of them, and --
6 MS. HARRIS: And actually I -- let me just correct
7 one statement I made. The Hampden Lane project actually
8 does have approved preliminary plan and site plan approval,
9 so that was based on what they would be --
10 MS. ROBESON: And what is the Hampden, which is
11 the Hampden Lane project?
12 MR. RADULESCU: It's this.
13 MS. HARRIS: Hampden Lane Associates.
14 MS. ROBESON: The one south --
15 MR. RADULESCU: Right on Hampden Lane and
16 Arlington Road.
17 MS. HARRIS: In the northeast corner of Arlington
18 Road and Hampden Lane.
19 MS. ROBESON: All right. Mr. Knopf?
20 MR. KNOPF: Just for some clarification. I gather
21 you're referring to that as the Hampden Lane project, and
22 the other project on the Hampden Lane you're referring to as
23 4901 Hampden Lane?
24 MS. HARRIS: Correct.
25 MR. KNOPF: Okay. Just because the -- okay.

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1 MS. ROBESON: Any other questions?
2 MR. KNOPF: No, I don't have any other questions.
3 MS. ROBESON: Mr. Abrams?
4 MR. ABRAMS: Yes.
5 EXAMINATION OF MR. RADULESCU BY MR. ABRAMS
6 MR. ABRAMS: Sir, where is the HOC building, which
7 was approved on Hampden Lane?
8 MR. RADULESCU: HOC what --
9 MR. ABRAMS: No, excuse me. Is it shown on that?
10 MR. RADULESCU: What, HOC, what is that?
11 MR. ABRAMS: Housing Opportunities Commission
12 building.
13 MS. HARRIS: I don't think Mr. Radulescu is -- Mr.
14 Landfair can testify to that.
15 MR. ABRAMS: I mean, is it on -- the question
16 is --
17 MS. HARRIS: It is not.
18 MR. RADULESCU: It's not.
19 MR. ABRAMS: It's not on that?
20 MS. ROBESON: Well --
21 MR. RADULESCU: No.
22 MS. ROBESON: Okay. Ms. Harris, I --
23 MS. HARRIS: Excuse me.
24 MS. ROBESON: -- know you know the answers --
25 MS. HARRIS: Okay. But I'm not allowed to say

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1 them. Okay.
2 MS. ROBESON: But you're not under oath --
3 MS. HARRIS: Okay.
4 MS. ROBESON: -- here. So, the witness is not
5 aware of the HOC building --
6 MR. RADULESCU: Yes.
7 MS. ROBESON: -- is that correct?
8 MR. RADULESCU: I don't know.
9 MS. ROBESON: All right.
10 MR. ABRAMS: And you're not aware of it because
11 it's not on that aerial photograph?
12 MR. RADULESCU: I am just --
13 MS. ROBESON: Do you know --
14 MR. RADULESCU: -- not aware of it.
15 MS. ROBESON: Do you know if it's on the aerial
16 photograph?
17 MR. RADULESCU: No, I don't.
18 MR. ABRAMS: Do you know that the Housing
19 Opportunities Commission project is for affordable housing?
20 MS. HARRIS: I'm going to object because this is
21 our architect, not our land planner, and he didn't testify
22 or mention anything in his statement regarding the HOC
23 project.
24 MS. ROBESON: Well, I think that whether it's
25 affordable housing or not that's, all we're doing is laying

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1 the foundation for this project, I mean, for this exhibit.
2 So, you can get to that question later.
3 MR. ABRAMS: Did you include in this exhibit the
4 Planning Board comments with respect to where the open space
5 would be located?
6 MS. ROBESON: Just a second. This --
7 MR. ABRAMS: In the insertions.
8 MS. ROBESON: In the insertions. Okay.
9 MR. RADULESCU: If you refer to our project --
10 MR. ABRAMS: Your project, yes.
11 MR. RADULESCU: -- it is up to date, in other
12 words, there is no difference between what you see in this
13 exhibit and all the other exhibits that are going to be
14 presented today.
15 MR. ABRAMS: Okay. So, what was filed originally
16 is shown on that exhibit?
17 MR. RADULESCU: No. What was filed originally
18 was --
19 MS. ROBESON: All right.
20 MR. RADULESCU: -- improved upon.
21 MS. ROBESON: Okay. This is what I'm going to do,
22 because I'm going to let it in now. You can -- for the
23 weight it deserves. I'm going to allow you extensive cross-
24 examination on this exhibit, but we keep jumping forward to
25 issues, and I have to keep some kind of order here. So, I'm

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1 going to let it in for the weight it deserved, I'm going to
2 let you cross-examine further. I want to get through the
3 Applicant's testimony, all right? So --
4 MR. ABRAMS: Is she going to be testifying from
5 this exhibit?
6 MS. ROBESON: Yes, but I'm letting it in --
7 MR. ABRAMS: Okay.
8 MS. ROBESON: -- for the weight it deserves, and
9 I'm going to let you tear it to pieces on cross-examination.
10 How's that?
11 MR. ABRAMS: Your letting it in, I would object
12 to.
13 MS. ROBESON: I understand.
14 MR. ABRAMS: Your letting me tear it to pieces, we
15 have no objection.
16 MS. ROBESON: Okay.
17 MR. KNOFF: May I just ask one other question?
18 MS. ROBESON: Yes, sir.
19 MR. KNOFF: Is the witness aware of any other
20 building other than the HOC building was is, should be on
21 that photo but is not?
22 MR. RADULESCU: What is the question?
23 MR. KNOFF: Are you aware of any building, any
24 other building --
25 MR. RADULESCU: How far? Left and right.

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1 MR. KNOFF: -- that's within the exhibit aerial
2 dimensions that --
3 MR. RADULESCU: We covered --
4 MR. KNOFF: -- was left out of that photo?
5 MR. RADULESCU: Nothing, as far as I know.
6 Nothing is left out on this street.
7 MS. ROBESON: On Montgomery Lane.
8 MR. RADULESCU: On Montgomery Lane, yes.
9 MR. KNOFF: On Montgomery Lane. Okay. Thank you.
10 MS. ROBESON: All right. So, it's in, you may
11 refer to it subject to later attack, okay? So, go forward.
12 FURTHER DIRECT EXAMINATION OF MS. WILTSHIRE
13 MS. WILTSHIRE: I believe what we were discussing
14 was the community outreach, and what I wanted to do was just
15 point out the projects as we're discussing them. And we
16 have had over a dozen meetings with the various neighbors.
17 We have, have met twice with developers of Bethesda, which
18 is the northeast corner of Arlington and Edgemoor Lane.
19 MS. ROBESON: Wait, it's the southeast corner.
20 MS. WILTSHIRE: I'm sorry. Yes.
21 MS. ROBESON: Correct?
22 MS. WILTSHIRE: Yes.
23 MS. ROBESON: Okay.
24 MS. WILTSHIRE: It is the southeast. We have met
25 with, on two occasions with Randy Rothstein, and this is his

1 had been proposing, and made a number of modifications that
2 we had hoped would make the project a better project. When
3 we first proposed the project the building was -- can I
4 refer to Exhibit 16?

5 MS. ROBESON: DPA duplicate. Yes, you may.

6 MS. WILTSHIRE: Sorry, DPA duplicate 16. The
7 building was situated up to the corner of Montgomery Lane
8 and West Lane, it had not set back, so it went straight up
9 70 feet on Montgomery Lane. There was suggestion that there
10 was a feeling that we should set back a portion of the upper
11 floors, so in our first revision to the building we went
12 ahead and we set back the top two floors nine feet,
13 listening to the community feedback. And then additionally,
14 after our meeting with the Planning Board we heard that they
15 felt that they still would like to have it set back even
16 further off the corner, and that they did not feel that the
17 public use space which was proposed on Montgomery Lane and
18 West Lane, as well as on the north property line, we had
19 public space that was provided on the north, that that was
20 appropriate, so we went back and re-addressed the design and
21 came up with what you see in Exhibit 51, which is we've now
22 set back the building 28 feet, set back from the corner of
23 West and Montgomery Lane, and we also set it 28 feet back on
24 West Lane, so effectively we've reduced -- so, we not only
25 set the facade back -- and the architect will talk about

1 this in more detail, but I'm just trying to talk about --

2 MS. ROBESON: Okay. My question is have you filed
3 revised plans with this office, with --

4 MS. HARRIS: We were planning to submit those
5 today.

6 MS. ROBESON: Today. Okay.

7 MS. HARRIS: Through Mr. Landfair's testimony,
8 which will be subsequent.

9 MS. ROBESON: Okay. So, let me get this straight,
10 you've moved the open space, is that what you're saying?

11 MS. WILTSHIRE: We have addressed the concerns
12 that were discussed at the hearing, and we have added
13 additional open space by opening up this corner, again, at
14 Montgomery and West Lane. I guess what I was just trying to
15 point out, and the architect can get into the details of it,
16 but what I was trying to point out is that we were
17 responding to the neighbors' concerns about where the public
18 space is.

19 MS. ROBESON: Okay. I'll wait --

20 MS. WILTSHIRE: Okay.

21 MS. ROBESON: -- till Mr. Landfair comes and
22 testifies.

23 MS. WILTSHIRE: I guess I'll just say that we
24 responded, we felt like we responded to the concerns, and
25 the concerns that we heard that the facade and that the

1 structure was tall, you know, was not creating a pedestrian
2 friendly environment. So, we have set the building back
3 nine feet, and we have reduced the facade along Montgomery
4 Lane by 30 percent. And additionally, we have spent -- we
5 listened to the community and their concern with I guess
6 it's been defined as traffic, we don't really believe it's
7 traffic, we believe it's parking.

8 MS. ROBESON: I'm sorry, I'm catching up here.
9 When you say reduced the facade, where's that?

10 MS. WILTSHIRE: We have, the facade that existed
11 along Montgomery Lane --

12 MS. ROBESON: Yes.

13 MS. WILTSHIRE: -- was, it went, it was -- we set
14 it back from the corner 28 feet, so --

15 MS. ROBESON: I see. Okay.

16 MS. WILTSHIRE: -- the facade, the actual facade
17 along Montgomery Lane has been reduced by approximately 30
18 percent, in addition to setting the top two floors back nine
19 feet, of the building.

20 MS. ROBESON: I see. Okay.

21 MS. WILTSHIRE: And that, again, was in response
22 to some of the concerns that we heard.

23 Another concern that exists is in relation to
24 parking, and the lack of parking, or trucks that are
25 illegally parking on the street of Montgomery Lane. When we

1 originally proposed the project and we met with DOT the
2 project was approved with one, an exhibit 16 DPA, with one
3 lay-by, here, as our loading requirement, but we heard the
4 concerns of the neighbors about the lack of parking and
5 places for trucks and FedEx to go, so what we did was we
6 went back and we added an additional loading bay at grade to
7 provide a second loading area for trucks, and we also
8 provided a space in the garage, so we now have provided
9 three areas for trucks to park. And we also agreed to at
10 the Council --

11 MS. ROBESON: At the Planning Board?

12 MS. WILTSHIRE: I'm sorry, at the Planning Board,
13 that we would be willing and it would be no problem for us
14 to agree to a binding elements that requires all service
15 trucks and deliveries to access the building through a
16 service quarter, which will exist in an entrance next --
17 well, can I -- I'm sorry. Can I enter this --

18 MS. HARRIS: You know what, actually, what I would
19 suggest is that we wait and --

20 MS. WILTSHIRE: Okay.

21 MS. ROBESON: Yes, I guess my question, too --

22 MS. WILTSHIRE: That's fine.

23 MS. ROBESON: -- is it would be helpful to me
24 to -- have you provided a copy of these --

25 MS. WILTSHIRE: Yes.

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1 MS. ROBESON: -- changes to Mr. Abrams and Mr.
2 Knopf?
3 MS. HARRIS: Yes, we have.
4 MS. WILTSHIRE: Yes, we actually met with them.
5 MS. ROBESON: Okay. Well, I wasn't in on that
6 meeting, so I'm hearing this for the first time. So, go --
7 okay. Go through, continue -- let's finish your testimony
8 and get through that. My basic question is are you
9 incorporating the binding elements that the Planning Board
10 recommended, or are you simply changing the design of the
11 site plan illustratively? I guess I'm confused.
12 MS. HARRIS: As a result of the Planning Board
13 hearing there were some changes made to the Development
14 Plan, and that will be reflected on the plan that we'll
15 introduce as soon as we put Mr. Landfair on. There were
16 some binding, but the binding element that was just referred
17 to I believe was on the Development Plan that was previously
18 submitted.
19 MS. WILTSHIRE: Yes.
20 MS. HARRIS: Yes. So, that's in the record.
21 MS. ROBESON: All right. Go ahead.
22 MS. WILTSHIRE: Do you want me to address this?
23 MS. HARRIS: Now, you know what, I actually, and
24 my apologies, I think for sake of understanding, I think --
25 MS. ROBESON: I think that would be helpful.

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1 MS. HARRIS: -- I'm going to ask the witness to
2 conclude, and then Mr. Landfair will present the revised --
3 MS. ROBESON: That would be helpful.
4 MS. HARRIS: -- Development Plan, and that will
5 provide a better understanding.
6 MS. ROBESON: Yes, I mean, if you want to reserve
7 the right to recall --
8 MS. HARRIS: To call, okay, I think that's
9 helpful.
10 MS. ROBESON: -- that's fine.
11 MS. HARRIS: Okay.
12 MS. ROBESON: Let's do that.
13 MS. HARRIS: Thank you. My apologies. Do you --
14 may I call the next witness?
15 MS. ROBESON: Yes, you may.
16 MS. HARRIS: Okay. Mr. Landfair.
17 MR. KNOPF: Well, wait. Excuse me.
18 MS. HARRIS: Or, right.
19 MR. KNOPF: We don't get a chance to cross-
20 examine? Or is she not finished, she's not finished, is
21 that it?
22 MS. ROBESON: I guess there is a possibility of
23 not, her not being recall, so you do get a right of cross-
24 examination. That's my apology, so go ahead.
25 CROSS-EXAMINATION OF MS. WILTSHIRE BY MR. KNOPF

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1 MR. KNOPF: I think either way -- okay. Yes, I
2 have just a few questions for you. You had talked about the
3 economies of scale in a rental project.
4 MS. WILTSHIRE: Sure.
5 MR. KNOPF: Have you had only experience with
6 rentals, or do you have experience with condominiums?
7 MS. WILTSHIRE: We have built both rentals and
8 condominiums.
9 MR. KNOPF: I see. Okay. And then let me ask you
10 in terms of the, you mentioned there's a difference in
11 economics between a rental property and a condominium
12 property.
13 MS. WILTSHIRE: Yes.
14 MR. KNOPF: Okay. Now, are there other
15 differences? I'm referring specifically to the terms of
16 amount of traffic or parking that, between a rental in terms
17 of, by traffic I mean in terms of maintenance vehicles
18 and --
19 MS. WILTSHIRE: Yeah, there actually is a
20 difference. When we provide a rental product we provide an
21 engineering team in house, so we have an engineer and an
22 assistant engineer on staff, so there frankly is, there are
23 lot less service trucks and other outside service personnel
24 coming in because we actually take care of a majority, I
25 would say about 90 percent of the service that has to be

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1 done within the building is done through our own engineering
2 team with a rental project. In addition, the parking
3 requirements, or the use of parking is significantly less in
4 a rental building than it is in a condominium project.
5 MR. KNOPF: So, if it's a rental project, I gather
6 you're saying that if somebody needs a plumber, or
7 something's wrong, the place needs painting or other repairs
8 there's people on board, or just one company that handles it
9 so that --
10 MS. WILTSHIRE: Yeah, it's actually, they're an
11 SJG employee. A majority of this is handled in house, those
12 are people that are there every day, so a majority of those
13 requests are handled by an engineering staff that remains
14 and is committed only to this building, so you're not
15 bringing in a lot of outside services.
16 MR. KNOPF: And that's compared to if this
17 building were a condo building with 120 units, or whatever,
18 each individual property owner would have, call their own
19 plumber, or their own repair people, and so on, so that
20 would be more vans, or maintenance trucks and so on?
21 MS. WILTSHIRE: Yes, I would, I would caveat that
22 with saying that if managed appropriately I believe, you
23 know, there are windows and things that could be created to
24 manage how many people arrive at one given time so that you
25 manage those people that come in, but the condominium owner,

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1 obviously, would be, it's at their liberty to decide who
2 they want to come, but I would propose that that process and
3 the number of vehicles allowed to be committed to would just
4 as they are in a rental project. You don't have three move-
5 ins at the same time, you reserve the loading bay, and each
6 individual condominium owner would actually, I would propose
7 would have to actually schedule when they would have these
8 services done in order that there not be a lot of issues
9 with these providers. But yes, I would say that --

10 MR. KNOPF: Have you ever had to manage, been
11 associated with a building where somebody has a plumbing
12 leak, or the electricity or something blows, they can't get
13 a repair person unless they first go through management and
14 schedule?

15 MS. WILTSHIRE: I think it's very doable. I
16 don't --

17 MR. KNOPF: It's doable?

18 MS. WILTSHIRE: Yes.

19 MR. KNOPF: I see. Well, am I correct in response
20 to the Hearing Examiner's question that you're not, that
21 there will not be a binding element or other commitment that
22 this project will remain rental?

23 MS. WILTSHIRE: No.

24 MR. KNOPF: I see. So, would you agree with me
25 that it would be fair to in assessing the lay-bys and other

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1 delivery areas, and for maintenance trucks and so on, one
2 should plan for a possibility that this could be a
3 condominium project in the future?

4 MS. WILTSHIRE: Yes, I would.

5 MR. KNOPF: Okay. Thank you.

6 MS. HARRIS: May I redirect, please?

7 MS. ROBESON: I'm not sure he's finished. Mr.
8 Abrams gets a chance, also. You're --

9 MS. HARRIS: And then I get --

10 MS. ROBESON: -- double-teamed.

11 MS. HARRIS: Okay. I thought it went like ping-
12 pong.

13 MS. ROBESON: No.

14 MS. HARRIS: Okay. Go ahead.

15 CROSS-EXAMINATION OF MS. WILTSHIRE BY MR. ABRAMS

16 MR. ABRAMS: When you looked and evaluated this
17 property, this property meaning the first three lots that
18 you acquired, did you look at how much Holiday Corporation
19 paid for the property?

20 MS. WILTSHIRE: How much they paid for it? No.

21 MR. ABRAMS: Wouldn't this be something that you
22 would want to know when you're negotiating with Holiday
23 Corporation?

24 MS. HARRIS: I'm going to object because the
25 witness didn't get into the financial components.

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1 MR. ABRAMS: Well, no, she's made a conclusion
2 that it wasn't economically feasible to first of all, use
3 the Holiday plan; and second of all, it's not economically
4 feasible to develop this property at less than 120 dwelling
5 units.

6 MS. ROBESON: Okay. Now that you've explained
7 that I'm going to let her answer.

8 MS. WILTSHIRE: I'm sorry, can you ask the
9 question again?

10 MR. ABRAMS: The question is when you negotiated
11 with Holiday --

12 MS. WILTSHIRE: Yes.

13 MR. ABRAMS: -- you did some sort of feasibility
14 study in terms of the market analysis, economic analysis?

15 MS. WILTSHIRE: Sure, we looked at --

16 MR. ABRAMS: And wouldn't --

17 MS. WILTSHIRE: -- yes, the economic feasibility.

18 MR. ABRAMS: -- you want to know what they paid
19 for the property in your negotiations with Holiday?

20 MS. WILTSHIRE: I'm not sure how that's relevant
21 to what we felt the property was worth.

22 MS. ROBESON: Well, that's not up to you --

23 MR. ABRAMS: Well, why don't you just answer the
24 question?

25 MS. ROBESON: -- to decide, you have to answer his

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1 question.

2 MS. WILTSHIRE: Were we aware of what they paid
3 for the property?

4 MR. ABRAMS: Yes.

5 MS. WILTSHIRE: Yes.

6 MR. ABRAMS: And what did they pay for the
7 property?

8 MS. HARRIS: I --

9 MS. ROBESON: I'm going to let him have leeway,
10 because she is --

11 MS. WILTSHIRE: Do I have --

12 MS. ROBESON: -- she is raising, we have a number
13 of these zoning cases that justify the density based on
14 economics, and so that is fair game. Go ahead.

15 MS. WILTSHIRE: I actually don't remember the
16 exact number, but I believe it was around \$5 million.

17 MR. ABRAMS: That Holiday paid for the property?

18 MS. WILTSHIRE: Yes.

19 MR. ABRAMS: Okay. And what did you pay for the
20 property?

21 MS. WILTSHIRE: We paid, for the three lots we
22 paid \$3.3 million.

23 MR. ABRAMS: Okay. And at that point in time did
24 you feel that you had enough land to put together an
25 economically feasible project?

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1 MS. WILTSHIRE: We had every intention of waiting
2 to acquire the other site, which is why we waited two years,
3 and we did not start any design on the project.
4 MR. ABRAMS: And when did you acquire the Holiday
5 property?
6 MS. WILTSHIRE: In December of 2009.
7 MR. ABRAMS: And when did you acquire Lot 26?
8 MS. WILTSHIRE: September, 2011.
9 MR. ABRAMS: And how much did you acquire Lot 26
10 for?
11 MS. WILTSHIRE: For quite a bit of money, \$2
12 million.
13 MR. ABRAMS: \$2 million. Okay. So, you paid
14 essentially the same price that Holiday paid for a larger
15 parcel of land, and had a -- well, strike the last portion.
16 You paid essentially the same price that Holiday paid for a
17 larger developable area?
18 MS. WILTSHIRE: Approximately.
19 MR. ABRAMS: Okay. And when you acquired the
20 first three lots did you know with any certainty that you'd
21 be able to acquire the fourth lot?
22 MS WILTSHIRE: No.
23 MR. ABRAMS: And you just intended to sit on the
24 property?
25 MS. WILTSHIRE: Yes.

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1 MR. ABRAMS: And you've had you said meetings with
2 the community, and specifically three meetings with City
3 Homes --
4 MS. WILTSHIRE: Yes.
5 MR. ABRAMS: -- is that correct? At those
6 meetings did City Homes request certain revisions to the
7 plan?
8 MS. HARRIS: Can you repeat that question?
9 MR. ABRAMS: In the first meeting, well, in the
10 meetings with City Homes did they request of you certain
11 revisions to the plans that had been filed, the Development
12 Plan?
13 MS. WILTSHIRE: Did they provide us information on
14 I believe what they didn't like about the project. I don't
15 know if they provided --
16 MS. HARRIS: I think we need to clarify because
17 before Mr. Abrams came on board we actually had a civic
18 meeting with the City Homes --
19 MR. ABRAMS: Okay.
20 MS. HARRIS: -- is that what you're referring to?
21 MR. ABRAMS: In the meeting, the first meeting
22 that I was involved in with City Homes --
23 MS. WILTSHIRE: Okay.
24 MR. ABRAMS: -- did not we suggest to you certain
25 revisions to the Development Plan which we believed would

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1 make the project more compatible?
2 MS. WILTSHIRE: I believe so.
3 MR. ABRAMS: Okay. Do you recall what those
4 revisions were?
5 MS. WILTSHIRE: In all honesty, we've had so many
6 meetings no, I do not recall what was on that list.
7 MR. ABRAMS: Okay. Let me put it this way, was
8 there a request in terms of the height of the building?
9 MS. WILTSHIRE: I don't remember.
10 MR. ABRAMS: Didn't the City Homes request that
11 the building be reduced to 65 feet in height?
12 MS. WILTSHIRE: I guess they did. You're
13 suggesting that they did.
14 MR. ABRAMS: No, I'm asking you.
15 MS. ROBESON: No, if you remember. If you don't
16 remember --
17 MS. WILTSHIRE: I do not specifically remember.
18 We've had over a dozen meetings with five different property
19 owners, and we've had three meetings alone, at least, maybe
20 more with City Homes. So, to be quite honest I don't
21 recall.
22 MR. ABRAMS: Do you recall City Homes objecting to
23 the lack of setback from Montgomery Lane?
24 MS. WILTSHIRE: Yes.
25 MR. ABRAMS: Okay. And at that point in time what

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1 was the setback?
2 MS. WILTSHIRE: There was no setback when we
3 initially proposed the project.
4 MR. ABRAMS: Okay. But when you met with City
5 Homes when I was there wasn't there a setback of 10 feet?
6 MS. WILTSHIRE: I don't recall, the setback would
7 have been nine feet if it was proposed. But when we
8 initially proposed the project to City Homes there was no
9 setback.
10 MS. ROBESON: Mr. Abrams, I guess my --
11 MS. WILTSHIRE: No, I think he means height
12 setback.
13 MS. ROBESON: Just a second. Okay?
14 MS. WILTSHIRE: Sorry.
15 MS. ROBESON: Mr. Abrams, where are you going with
16 these questions?
17 MR. ABRAMS: The question -- well, the statement
18 has been made --
19 MS. ROBESON: And how are they --
20 MR. ABRAMS: -- that they met with the community
21 and made concessions to the community.
22 MS. ROBESON: No, you cannot interrupt.
23 MS. WILTSHIRE: Okay.
24 MS. ROBESON: Do not talk while I'm talking, do
25 not talk when somebody else is talking. Okay? Go ahead.

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1 MR. ABRAMS: That they made concessions to the
2 community. What this line of question is, is whether she
3 was aware as a result of those meetings what the community,
4 at least City Homes, was requesting of the Applicant in the
5 way of revisions to the plans. And what she's basically
6 saying they made a whole lot of concessions, and I'm trying
7 to establish what the community, at least City Homes wanted,
8 and whether they made any concessions whatsoever to City
9 Homes and presumably to anybody else. Any revisions to the
10 plans.
11 MS. ROBESON: You can -- you know, I'm not sure
12 how -- she did testify as to her meetings with residents.
13 MR. ABRAMS: Well, it goes to the credibility of
14 what she's testifying to.
15 MS. ROBESON: I understand, and I'll let you
16 pursue it in a limited manner, but we need to move on, so
17 you can continue some of your questions, but at some point
18 I'm going to call a halt. Okay, go ahead.
19 MR. ABRAMS: At the meeting that you had with
20 myself and City Homes was there a question as to the
21 location of the open space?
22 MS. WILTSHIRE: Yes, I believe so.
23 MR. ABRAMS: And where was it located at that
24 point in time?
25 MS. WILTSHIRE: At the first meeting I believe the

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1 open space was located along Montgomery Lane, West Lane, and
2 also along the northern property line adjacent to the
3 Villages of Bethesda.
4 MR. ABRAMS: And at that meeting did we request
5 that the open space be transferred to the front of the
6 property?
7 MS. WILTSHIRE: Yes, I believe you did.
8 MR. ABRAMS: And was that open space transferred
9 to the front of the property before the Planning Board had
10 issued their recommendation?
11 MS. HARRIS: I think it's irrelevant when the
12 change occurred.
13 MR. ABRAMS: No, it's not irrelevant.
14 MS. ROBESON: No, he already explained the basis
15 of the questions, and I allowed him some leeway, so I'm
16 going to let her answer.
17 MR. ABRAMS: So, the changes which Mr. Landfair is
18 going to discuss later in his testimony did not occur until
19 after the Planning Board meeting, is that correct?
20 MS. WILTSHIRE: I'm going to have to let Mr.
21 Landfair answer because I'm not certain that there wasn't
22 some additional space added between the, well, what I would
23 consider to be the second meeting with City Homes, and this
24 last plan, that there wasn't actually some adjustment to the
25 public space where there was some additional public space

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1 that was added to the Montgomery Lane and West Lane facades.
2 MR. ABRAMS: But what you submitted to the
3 Planning Board at that point in time still showed a 15-foot
4 public use space on the north side of this building, did it
5 not?
6 MS. WILTSHIRE: Yes, it did.
7 MR. ABRAMS: And it didn't show any larger area
8 than say possibly a one-foot increase in the public use
9 space fronting on Montgomery Avenue --
10 MS. WILTSHIRE: Again, I'm going to let --
11 MR. ABRAMS: -- before the Planning Board?
12 MS. WILTSHIRE: -- Mr. Landfair respond to that
13 because I don't know the details of how the building moved.
14 MS. ROBESON: I understand your point. I don't
15 think you need to do more.
16 MR. ABRAMS: Okay. In terms of, again, an
17 economically feasible project with Lot 26 couldn't you
18 construct a building at a 2.5 F-A-R with a 65-foot height
19 limit and produce an efficient and markable development?
20 MS. WILTSHIRE: I haven't done the analysis on
21 that.
22 MR. ABRAMS: But it's not impossible to do it, is
23 it?
24 MS. WILTSHIRE: I can't answer that question
25 without actually --

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1 MR. ABRAMS: You didn't do it at all, did you?
2 MS. WILTSHIRE: I don't know the numbers related
3 to that.
4 MR. ABRAMS: Okay. So, you're not testifying to
5 the Hearing Examiner that it is economically infeasible to
6 use the limits which are stated in the Sector Plan and
7 produce an economically feasible project?
8 MS. WILTSHIRE: I'm sorry, repeat the question.
9 MR. ABRAMS: You're not telling the Hearing
10 Examiner, are you, that if you utilized the development
11 limitations in the Sector Plan with an F-A-R that you could
12 not produce an economically feasible project?
13 MS. WILTSHIRE: I would have to go back and look
14 at that analysis.
15 MR. ABRAMS: When you say it's critical that you
16 get 100 units to run and operate a rental building is this
17 an optimal figure, or is this the least feasible figure for
18 an operation of a building of that size?
19 MS. WILTSHIRE: It's not, no, it's not an optimal
20 figure. This would be the, what I would believe to be, the
21 least feasible figure in terms of market rate units
22 available.
23 MR. ABRAMS: And within the building envelope of
24 2.5 F-A-R you as the developer, the builder really have
25 discretion as to how many units are one-bedroom, how many

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1 are efficiency, and how many are two-bedroom, is that
2 correct?
3 MS. WILTSHIRE: Yes.
4 MR. ABRAMS: And so, within a 2.5 F-A-R you might
5 have more one bedrooms and efficiencies than you would have
6 two bedrooms, is that correct?
7 MS. WILTSHIRE: I might -- I guess so.
8 MR. ABRAMS: And if there were more one bedrooms
9 than two bedrooms how would that affect the economic
10 feasibility of this project?
11 MS. WILTSHIRE: I'm confused, but --
12 MR. ABRAMS: Why are you confused?
13 MS. WILTSHIRE: Well, it really has to do with the
14 mix --
15 MS. ROBESON: Mr. Abrams --
16 MS. WILTSHIRE: -- of units --
17 MS. ROBESON: -- she's --
18 MS. WILTSHIRE: -- within the building, and
19 what -- if it's, first of all, if it's a rental product
20 versus a condominium product --
21 MR. ABRAMS: Okay.
22 MS. WILTSHIRE: -- those are two completely
23 separate products, so if you're referring to a rental
24 product --
25 MR. ABRAMS: I'm talking about a rental product.

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1 MS. WILTSHIRE: I mean, optimally you would like
2 an average, there would be a small average unit size
3 preferred in a rental product to --
4 MR. ABRAMS: Correct.
5 MS. WILTSHIRE: -- a condominium product.
6 MR. ABRAMS: All right. Now, when the County
7 Council approved these projects around your property I think
8 your testimony was that they were approved without MPDUs?
9 MS. WILTSHIRE: No. I said there are no existing
10 MPDUs on Montgomery Lane.
11 MR. ABRAMS: On Montgomery Lane.
12 MS. WILTSHIRE: On Montgomery --
13 MR. ABRAMS: Okay.
14 MS. WILTSHIRE: -- Lane.
15 MR. ABRAMS: Now, when they approve projects on
16 Montgomery Lane they had the right or ability at that point
17 in time to approve the projects without MPDU use, is that
18 correct?
19 MS. HARRIS: I object. I don't know that the
20 witness has any knowledge of --
21 MS. ROBESON: Well, she can --
22 MS. HARRIS: -- of what --
23 MS. ROBESON: -- say --
24 MR. ABRAMS: Well, she should she doesn't know.
25 MS. WILTSHIRE: I'm sorry, could you repeat the

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1 question?
2 MR. ABRAMS: Along Montgomery Lane there were
3 certain projects approved.
4 MS. WILTSHIRE: Yes.
5 MR. ABRAMS: And you have pointed out some of
6 those projects, and some of those projects contain more than
7 the minimum requirements for MPDUs, yet the testimony, I
8 believe, is that there's no MPDUs in along Montgomery Lane.
9 MS. WILTSHIRE: Again, I testified that as far as,
10 to my knowledge there are no MPDUs that currently exist on
11 Montgomery Lane.
12 MR. ABRAMS: Okay. But that, nonetheless, that's
13 the way the projects were approved, is that correct?
14 MS. WILTSHIRE: I assume so, yes.
15 MR. ABRAMS: And are you trying to make up the
16 number of MPDUs on Montgomery Lane through this particular
17 development?
18 MS. WILTSHIRE: No, I'm simply stating that one
19 objective of Bethesda Sector Plan is to increase affordable
20 units, and a diversity of unit types, and I believe that
21 that is something that we are providing in the project that
22 we have proposed.
23 MR. ABRAMS: Now, you've also indicated that you
24 set back the two top floors nine feet.
25 MS. WILTSHIRE: Yes.

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1 MR. ABRAMS: Okay. Who specifically requested
2 that, if anybody, in the community?
3 MS. WILTSHIRE: I believe there was a request from
4 the City Homes, and I believe there was a request from the
5 high-rise Edgemoor.
6 MR. ABRAMS: To set back the two top floors nine
7 feet?
8 MS. WILTSHIRE: Well, to provide a setback --
9 MR. ABRAMS: And wasn't that --
10 MS. WILTSHIRE: -- on the building.
11 MR. ABRAMS: -- related to the Holiday project and
12 trying to emulate the setback in the Holiday project?
13 MS. WILTSHIRE: I don't --
14 MR. ABRAMS: Wasn't that explained to you as a
15 reason?
16 MS. WILTSHIRE: I'm sorry?
17 MR. ABRAMS: Wasn't that explained to you as a
18 reason?
19 MS. WILTSHIRE: It was suggested that the Holiday
20 project had a setback and would we consider a setback, but
21 to be quite candid, it's a completely different frontage
22 along Montgomery Lane, the building is a completely
23 different building that's being designed at this point. We
24 went back and decided to set it back because there was a,
25 you know, there was suggestion that they would like to be

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1 setback.
2 MR. ABRAMS: Wasn't the setback that was requested
3 was it a form of a transition, a downward transition?
4 MS. ROBESON: Mr. Abrams, where are you going with
5 this?
6 MR. ABRAMS: Well, again, I'm trying to
7 determine -- she says there's a nine-foot setback, and she
8 also indicated that this was requested by, as one of the
9 items requested by the community. My clients didn't request
10 this, I want to find out how she came about to set this
11 thing back nine feet on the sixth and seventh level.
12 MS. ROBESON: Well, does it matter how she came
13 about it?
14 MR. ABRAMS: Yes.
15 MS. ROBESON: Why?
16 MR. ABRAMS: Because in terms of what the Sector
17 Plan says there is a transitioning element, and I want to
18 find out if she believes that this is to satisfy the
19 transitioning element in the Sector Plans.
20 MS. ROBESON: Well, I would prefer to hear that
21 from Mr. Landfair than her. Or somebody. An expert.
22 MR. ABRAMS: All right. Well, I'll suspend it
23 until she finishes her testimony, I guess, later on.
24 MS. ROBESON: Okay. You have the right on recall
25 to raise the issue again if it's within the scope of her

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1 testimony.
2 MR. ABRAMS: It's my understanding that she's
3 coming back.
4 MS. ROBESON: No, I don't --
5 MR. ABRAMS: Is she coming back, or not?
6 MS. HARRIS: We reserve the right to call her
7 back.
8 MR. ABRAMS: Okay. So, her testimony is concluded
9 for the most part.
10 MS. HARRIS: No, I didn't say that. I said --
11 MS. ROBESON: She may or may not. You can't count
12 on it. I guess I just, I don't understand, she's not the
13 expert land planner, or the expert --
14 MR. ABRAMS: No, I understand that.
15 MS. ROBESON: -- architect, so are we back at how,
16 whether she listened to City Homes or not? Is that the --
17 MR. ABRAMS: No.
18 MS. ROBESON: -- point of --
19 MR. ABRAMS: No. Apparently, the impression was
20 left that she, because of the confusion with that particular
21 exhibit, the insertion of the buildings --
22 MS. ROBESON: Yes.
23 MR. ABRAMS: -- that her testimony had been cut
24 short to try to get to Mr. Landfair or some other witness.
25 MS. ROBESON: Yes.

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1 MR. ABRAMS: Now, all I want to know is, is she
2 finished as a witness in terms of what was planned for
3 today?
4 MS. ROBESON: Ms. Harris, did she cover everything
5 that she was supposed to cover, or --
6 MS. HARRIS: Yes, because we decided that Mr.
7 Landfair -- yes. The answer is yes.
8 MR. ABRAMS: Okay.
9 MS. HARRIS: But, I mean, as in any hearing,
10 obviously, we have the right to bring up one of the former
11 witnesses again before the close of our case.
12 MS. ROBESON: Okay. And you have the ability
13 to --
14 MR. ABRAMS: Recall.
15 MS. ROBESON: Yes, re-cross. Yes.
16 MR. ABRAMS: Fine.
17 MS. ROBESON: Okay? All right. Are you complete?
18 MR. ABRAMS: No, I mean --
19 MS. ROBESON: No, I mean on your cross-examination
20 of this witness?
21 MR. ABRAMS: Well, I think that might be one of
22 the reasons why we might need to recall her so that we can
23 get further clarification as to the areas that we tried to
24 evolve --
25 MS. ROBESON: Okay.

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1 MR. ABRAMS: -- through her testimony.
2 MS. ROBESON: Well, I will reserve the right to
3 recall her. All right? So, we'll keep that option open for
4 you.
5 MR. ABRAMS: Thank you.
6 MS. ROBESON: All right. Your witness.
7 MR. KNOPF: No, excuse me, may I follow up on some
8 exceptions of this on this financial --
9 MS. ROBESON: You can have five minutes, and then
10 Ms. Harris gets a chance to re-direct.
11 FURTHER CROSS-EXAMINATION OF MS. WILTSHIRE BY MR. KNOPF
12 MR. KNOPF: I'd just like to ask am I correct that
13 the Holiday, whatever the project is, the original project
14 as proposed had 48 dwelling units?
15 MS. WILTSHIRE: Yes, I believe so.
16 MR. KNOPF: And when the purchase of the new lot
17 by your people added what in area to the original Holiday,
18 is that roughly a third square feet?
19 MS. WILTSHIRE: I believe it's closer to 40
20 percent --
21 MR. KNOPF: Okay.
22 MS. WILTSHIRE: -- for gross area, land area.
23 MR. KNOPF: Well, would you agree with me then to
24 say roughly 40 percent if we increased the original Holiday
25 48 units by 40 percent, and added some MPDUs we'd be

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1 proportionally we'd be up in the seventies, dwelling units?
2 MS. WILTSHIRE: If you increased it by 40 percent.
3 MR. KNOPF: Yes, as compared to now what's being
4 proposed 100 to 120?
5 MS. WILTSHIRE: Yes, we're proposing a different
6 product type with a variety of units; it's not the same
7 product as what Holiday had proposed.
8 MR. KNOPF: And you've mentioned the proposed
9 project, or I guess it's approved project of 4901 Hampden.
10 MS. WILTSHIRE: Yes.
11 MR. KNOPF: Are you aware that that has, provides
12 for MPDUs?
13 MS WILTSHIRE: Yes, I believe it does.
14 MR. KNOPF: And what is your understanding of the
15 total number of units that's going to be in that building?
16 MS. WILTSHIRE: I actually don't know the total
17 number of units. I know, again, they're providing product
18 similar to what exists all along Montgomery Lane, which is
19 large condominium product.
20 MR. KNOPF: And if I were to tell you that that
21 project has been amended at the request of the Applicant to
22 lower the number of units from 50 to 40 --
23 MS. WILTSHIRE: Okay.
24 MR. KNOPF: -- would that provide a reason for you
25 to go back and re-assess the economics of your building as

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1 requiring 120 units?
2 MS. WILTSHIRE: No. I believe we are desirous of
3 providing a different product type, and frankly because of
4 the reasons is because all of the same product type
5 currently exists along Montgomery Lane.
6 MR. KNOPF: And my last question is you indicated
7 that some community groups asked for setbacks, did not
8 Edgemoor propose through their land planner setbacks of at
9 least 30 feet and down low, starting at lower stories rather
10 than ninth?
11 MS. WILTSHIRE: Yes, I believe they did. My
12 architect can address why that setback was not placed at 30
13 feet.
14 MR. KNOPF: Thank you. No further questions.
15 MS. ROBESON: All right. Redirect.
16 MS. HARRIS: Thank you.
17 REDIRECT EXAMINATION OF MS. WILTSHIRE
18 MS. HARRIS: I just one or two questions. One is
19 there was a question regarding whether the product's going
20 to be condominium or rental, and the point was made that if
21 it's condominium there will be more, likely more service
22 vehicles servicing the building. Irrespective of whether
23 the building is going to be condo or rental does the project
24 meet the parking and loading requirements required by the
25 Zoning Ordinance?

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1 MS. WILTSHIRE: Yes, it does. And in fact, it
2 exceeds it by two loading areas, or parking and loading
3 areas.
4 MS. HARRIS: Thank you. That was my only
5 question.
6 MS. ROBESON: All right. You may be excused
7 subject to recall.
8 MS. WILTSHIRE: Thank you.
9 MS. HARRIS: Our next witness is Mr. Landfair.
10 MS. ROBESON: All right. You have a seat here if
11 she wants to stay --
12 MR. LANDFAIR: That's fine.
13 MS. HARRIS: I also want to make one note. The
14 previous witness misspoke at one point when she referenced
15 that there will be 19 MPDUs, and as you will hear later
16 there will be 18 MPDUs. I wanted to correct that.
17 MS. ROBESON: Okay. As long as I hear it from a
18 witness I'm --
19 MS. HARRIS: Okay.
20 MS. ROBESON: -- okay with that. While you're
21 setting up how about if we take a 10-minute break and
22 that'll give you time to --
23 MS. HARRIS: Thank you. That would be helpful.
24 MS. ROBESON: Okay.
25 (Whereupon, at 11:35 a.m., a brief recess was

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1 taken.)
2 MS. ROBESON: So, we were at Mr. Landfair. Mr.
3 Landfair, please raise your right hand.
4 (Witness sworn.)
5 MS. ROBESON: And please state your name and
6 address for the record.
7 MR. LANDFAIR: My name is Bill Landfair, and my
8 business address is 20251 Century Boulevard, Suite 400,
9 Germantown, Maryland.
10 MS. ROBESON: And I know that Mr. Landfair has
11 been qualified as an expert in land planning --
12 MR. LANDFAIR: Yes.
13 MS. ROBESON: -- numerous times. Do we need to go
14 through his resume, or qualifications? Are you going to
15 check, or are you willing to stipulate that he is an expert?
16 MR. ABRAMS: I'm willing to stipulate --
17 MS. ROBESON: You may disagree.
18 MR. ABRAMS: I'm willing to stipulate that he
19 believes he's an expert, that, and unless he's been
20 committed for some offense within his last appearance before
21 the Hearing Examiner I have no objection.
22 MR. LANDFAIR: Thank you.
23 MS. ROBESON: Mr. Knopf?
24 MR. KNOPF: We have no objection.
25 MS. ROBESON: Okay. You're still licensed in

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1 Maryland, correct?
2 MR. LANDFAIR: Yes, I am.
3 MS. ROBESON: Okay. And do we have his, do we
4 have your resume in the file?
5 MS. HARRIS: Yes, it's Exhibit 35(b), but I don't
6 know --
7 MS. ROBESON: In the Development Plan?
8 MS. HARRIS: I don't know. That's why I --
9 MS. ROBESON: Okay.
10 MS. HARRIS: -- put up my finger. Hold on.
11 Now, on the Development Plan list it is 25(b).
12 MS. ROBESON: All right. All right.
13 Mr. Landfair, you are qualified as an expert in land
14 planning.
15 MR. LANDFAIR: Thank you.
16 MS. HARRIS: Thank you.
17 DIRECT EXAMINATION OF MR. LANDFAIR
18 MS. HARRIS: Mr. Landfair, are you familiar with
19 Local Map Amendment and the Development Plan Amendment
20 application which is before the Hearing Examiner today?
21 MR. LANDFAIR: Yes, I am. The proposed re-zoning
22 of 4901 Montgomery Lane, Lot 26 from R-60 to TS-R, and the
23 amendment of the Development Plan approved in conjunction
24 with Zoning Application G-843 to allow development of a
25 multi-family residential project on Lot 26, which is also

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1 known as 4903 Montgomery Lane; Lot 27 with an address of
2 4831 West Lane; Lot 24, which has an address of 4833 West
3 Lane; and Lot 25.
4 MS. HARRIS: Thank you. We previously submitted a
5 Development Plan for the record, which was then updated, the
6 record, Exhibit 30, indicates a Development Plan that was
7 submitted 12/12/12, but can you please introduce and explain
8 the most recent Development Plan that was shared with Mr.
9 Abrams and Mr. Knopf earlier this week?
10 MR. LANDFAIR: Certainly.
11 MS. ROBESON: Okay. Before you continue I'm going
12 to -- do we have an exhibit -- okay, this would be Exhibit
13 52 in the Development Plan case, revised --
14 MR. ABRAMS: What's the difference between Exhibit
15 29 and 40?
16 MS. ROBESON: I have to look that up. I'm not
17 sure what that is.
18 (Discussion off the record.)
19 MS. HARRIS: There's also two thirties on the
20 list, so I --
21 MR. ABRAMS: There's two.
22 MS. ROBESON: On the DPA list?
23 MS. HARRIS: Yes, we just noticed that. So,
24 perhaps 29 and 30 are the same thing and it just got
25 repeated.

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1 MS. ROBESON: Okay. All right. Hold on. Are
2 there any other corrections right, that before we start
3 marking things? Is the 29 and 30 in the DPA 13-01? Is that
4 your question? What's the difference?
5 MR. ABRAMS: Yes.
6 MR. KNOFF: But then there's another 30 so
7 likely --
8 MR. ABRAMS: It's probably --
9 MR. KNOFF: -- it was just an error.
10 MR. ABRAMS: We'll deal with it later.
11 MS. ROBESON: Yes, that's what I'm checking.
12 Okay. I have a December 29 as being a December, 2012 letter
13 transmitting an updated Development Plan. I have Exhibit 30
14 as being a letter from Mr. Abrams to Ms. Carrier opposing
15 the application. So, that is incorrect. The good news is,
16 though, that we can simply delete the Exhibit 30 immediately
17 under Exhibit 29 and we're still good to go. Are we all on
18 the same page on that one, or the same exhibit?
19 MR. ABRAMS: Yes, ma'am.
20 MS. ROBESON: All right. So, I have officially on
21 page four of 13-01 Exhibit List I have crossed out the
22 Exhibit 30 that is listed immediately under Exhibit 29, and
23 then the rest of the numbers should be correct. All right.
24 So, this is coming in, this revised site plan, what's the
25 date of this site plan, Mr. Landfair?

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1 MR. LANDFAIR: If you'll give me a moment I'll
2 check.
3 MS. ROBESON: Okay. Or I guess it's Development
4 Plan, revised Development Plan.
5 MR. LANDFAIR: It's a date of January 10th.
6 MS. ROBESON: Dated 1/10/13. All right. Why
7 don't you continue?
8 MR. LANDFAIR: Why don't I continue. Thank you.
9 I'd like to enter into the record the new Development Plan
10 dated January 10th, this plan was prepared in response to
11 questions, concerns, issues raised at the Planning Board, as
12 well as by the community.
13 MS. ROBESON: Okay. Now, is that marked Exhibit
14 52?
15 MR. LANDFAIR: No, I will do so now.
16 MS. ROBESON: And do I have objections?
17 MR. ABRAMS: Yes.
18 MS. ROBESON: Yes?
19 MR. ABRAMS: Yes.
20 MS. ROBESON: And what is your objection?
21 MR. ABRAMS: The objection is the first time that
22 my client saw this plan was, I guess, Wednesday at 4 o'clock
23 or 4:30. We did not have an opportunity to digest this, to
24 revise our cross-examination with respect to it, and also we
25 question the parameters which are shown on the plan in terms

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1 of the length of the lot and the length of the building,
2 they do not match up with Exhibit 29. So, we need --
3 MS. ROBESON: Exhibit 29 is the 12/12 site plan?
4 MR. ABRAMS: Which is the 12 --
5 MS. ROBESON: Development Plan?
6 MR. ABRAMS: The 12/10. Well, it's date received
7 12/10, Exhibit 29, that's the prior site plan --
8 MS. ROBESON: Right.
9 MR. ABRAMS: -- before they attempt to enter this
10 one. Because we believe that there's at least a five foot
11 difference in both the length of the property as well as the
12 length of the building.
13 MS. ROBESON: Ms. Harris, do you have a response?
14 MS. HARRIS: Yes, a couple of responses. First of
15 all, the changes were made, as Mr. Landfair indicated, in
16 response to things that we heard on December 20th. Since
17 December 20th the Applicant has worked, been working
18 diligently to one, first see what kind of revisions could be
19 made to be responsive; and two, once those were made then
20 they had to then be transferred to the Development Plan.
21 So, it was a work in progress, everyone working diligently
22 over the holiday period. The first -- and in fact, the
23 Development Plan was just completed 10 minutes before the
24 meeting with Mr. Abrams, I literally went down to the
25 printing office and got it as I was walking over to our

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1 meeting with Mr. Abrams.
2 Second of all, as we all know, the record in this
3 case is not going to close today, in fact, unfortunately, it
4 will likely not close based --
5 MS. ROBESON: At this rate it may --
6 MS. HARRIS: Exactly.
7 MS. ROBESON: Go ahead.
8 MS. HARRIS: So, my point is there will certainly
9 be sufficient time for Mr. Abrams and his client to
10 thoroughly evaluate the Development Plan between now and the
11 time that the record closes, and we certainly would not
12 object for him having the opportunity once he's had that, a
13 chance to thoroughly evaluate the Development Plan to the
14 extent he hasn't over the past two days to then re-cross our
15 witness with respect to it.
16 MR. ABRAMS: Well, I want to know what plan, you
17 know, is the correct plan in terms of the dimensions that
18 are shown on those plans.
19 MS. ROBESON: Well, I understand your confusion,
20 and you have four days, or, you know, however many days
21 benefit of me, but I'm going to let it in, but I am going to
22 ask Ms. Harris to make Mr. Landfair available again for
23 cross-examination because we don't anticipate the record
24 closing shortly. I am going to ask him to come back and
25 full cross-examination. I've never had the benefit of this

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1 plan, so I can't ask if I have any questions. So, we'll do
2 it like that, and I'm going to let -- and I also would
3 suggest that the parties if we have a gap in time I would
4 suggest that the parties meet to look over any technical
5 errors that may occur that they think is on this plan so
6 that we can have an accurate plan to work from. Mr. Knopf?
7 MR. KNOFF: I just want to mention that with
8 regard to my client we received this yesterday late in the
9 afternoon, and so we want to make sure that we can join in
10 cross-examining at a later date.
11 MS. ROBESON: Yes. What my goal today is to get
12 an understanding of the changes, because I can't figure out
13 what we're dealing with, and I'm not willing to postpone the
14 hearing to do that. So, with those caveats I would -- and
15 also, is there a copy for me to look at while he's talking?
16 Because I --
17 MS. HARRIS: Yes.
18 MS. ROBESON: -- can't read that, I may be old,
19 but I don't see anybody could read that writing from here.
20 MR. LANDFAIR: I brought 11 by 17 copies, I can
21 give you --
22 MS. HARRIS: My reading glasses wouldn't help you,
23 either.
24 MS. ROBESON: Thank you. So, this is a duplicate
25 of 52.

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1 MR. LANDFAIR: Right. And I think I have a few
2 more so Normand and Stan, if you --
3 MR. KNOFF: Yes, I would like, appreciate getting
4 one. Yes, thank you.
5 (Discussion off the record.)
6 MS. ROBESON: All right. Now, Mr. Landfair, after
7 you give Mr. Knopf a copy you may proceed.
8 MR. LANDFAIR: Thank you.
9 MR. ABRAMS: This is a duplicate of Exhibit 50 --
10 MS. ROBESON: Two. Fifty-two is the revised
11 Development Plan dated 1/10/13.
12 (DPA 13-01 Exhibit No. 52 was
13 marked for identification.)
14 MS. ROBESON: Go ahead.
15 MR. LANDFAIR: Thank you. Again, this plan was in
16 large response to comments that we received at the Planning
17 Board, as well as from the community. And it's an effort to
18 address, among other things, the concerns about public use
19 space. On the previous Development Plan we were utilizing
20 space along the north side of the building for public use
21 space, and there were questions about the viability of that
22 space, whether it truly would be made available to the
23 public, accessible to the public, desirable by the public.
24 So, hearing that from the Board through changes in the
25 architecture we were able to re-define what is the public

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1 use space.
2 Now, previously the Development Plan was showing
3 approximately 14 percent public use space, on site public
4 use space, so we had a little bit of a cushion there. Now,
5 we've absorbed that by re-locating it, now we're down to the
6 minimum of 10 percent, but by creating this arc in the
7 building at the corner of Montgomery and West Lane we've
8 created an area that's approximately 600-plus square feet,
9 it will become a pocket park, if you will. And this area,
10 along with additional area achieved along West Lane itself
11 by creating slight changes in the building facade where
12 previously it was basically a straight line on the building
13 facade, now you have some modest indentations. We are able
14 to achieve the 10 percent public use space without having to
15 resort to that area along the north side, which was so
16 problematic.
17 In addition, we have shifted very slightly the
18 location of a loading area, or, yes, loading area, which has
19 direct access from West Lane, which is immediately adjacent
20 to the entrance to the garage at the northern corner of the
21 building. And by doing so that actually gave us a bit more
22 space which was available for that loading area, such as
23 that we can now accommodate slightly larger trucks, and this
24 will be testified to in greater detail by our civil engineer
25 later in the hearing.

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1 Setbacks along Montgomery Lane itself remain the
2 same. The unit count remains the same. We did eliminate a
3 binding element, it was binding element number seven which
4 made reference to, quote, the garage door to the below grade
5 parking will be provided underneath and within the building.
6 That's no longer the case, it's not how it's designed, so
7 there was no need to have that as a binding element on the
8 plan.
9 MS. HARRIS: And Mr. Landfair, was that binding
10 element a carryover, if you will, from G-843 when there was
11 a different design?
12 MR. LANDFAIR: Yes, it was.
13 MS. HARRIS: Thank you.
14 MR. LANDFAIR: Thanks. Those are the substantive
15 changes to the building. As has been briefly testified to,
16 and will be testified to again by the architect, the
17 building will step back in terms of height along the front
18 facade facing Montgomery Lane itself, it's 50 feet in
19 height, and it will then step back to 70 feet in height.
20 MS. ROBESON: Is that step back changed from the
21 prior plan?
22 MR. LANDFAIR: In terms of once you get to the 50
23 feet how far back you then --
24 MS. ROBESON: Yes.
25 MR. LANDFAIR: -- step back itself? I'll have to

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1 defer to the architect --
2 MS. ROBESON: I see.
3 MR. LANDFAIR: -- as to the exact dimension of
4 that.
5 MS. ROBESON: Okay. So, the changes are is the
6 amount of right of way -- okay, the changes are you've put
7 the arc in.
8 MR. LANDFAIR: We put the arc in, and that allowed
9 us to make up for some public use space, which we are
10 eliminating from the north side of the building.
11 MS. ROBESON: Okay. Is the streetscape along the
12 facade, is that changing, or is that the same?
13 MR. LANDFAIR: In terms of depth and area along
14 Montgomery Lane itself it remains the same --
15 MS. ROBESON: Okay.
16 MR. LANDFAIR: -- but by introducing this arc we
17 have the urban park here which we've created --
18 MS. ROBESON: I understand. Okay.
19 MR. LANDFAIR: -- which is adding approximately
20 600-plus square feet at that corner --
21 MS. ROBESON: Okay.
22 MR. LANDFAIR: -- which we didn't have before.
23 MS. ROBESON: I wasn't questioning, you know, what
24 you're doing.
25 MR. LANDFAIR: Sure.

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1 MS. ROBESON: I just wanted to make sure I
2 understood.
3 MR. LANDFAIR: Okay. And then in addition, along
4 West Lane, because we have additional indentations into the
5 building itself, that created some additional space along
6 West Lane.
7 MS. ROBESON: Is that new?
8 MR. LANDFAIR: That's new. Yes.
9 MS. ROBESON: Okay. Are you still -- okay, that's
10 probably an architecture question. Okay.
11 MR. LANDFAIR: It's also important to note --
12 MS. ROBESON: And what did you do, again, what did
13 you --
14 MR. LANDFAIR: Yes?
15 MS. ROBESON: -- do with the loading area?
16 MR. LANDFAIR: The loading area we've shifted very
17 slightly. There was previously a separation between that
18 loading area and the garage entrance.
19 MS. ROBESON: Okay.
20 MR. LANDFAIR: And now they're immediately
21 adjacent to each other. And the advantage to that is it
22 creates more open space in front of that loading area, space
23 which is not inhibited by sidewalks or anything else, such
24 that a larger truck could be accommodated in that loading
25 area.

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1 MS. ROBESON: Okay.
2 MR. LANDFAIR: Okay.
3 MS. ROBESON: And did you make any change, I think
4 the Planning Board recommendation said something about the
5 transformers, but I could be --
6 MR. LANDFAIR: The transformers remain in the same
7 location.
8 MS. ROBESON: And are above ground.
9 MR. LANDFAIR: Right. But previously we had
10 public use space that was surrounding those transformers.
11 MS. ROBESON: So, you're saying --
12 MR. LANDFAIR: We're not counting that area any
13 more --
14 MS. ROBESON: -- without that here --
15 MR. LANDFAIR: -- as public --
16 MS. ROBESON: Okay.
17 MR. LANDFAIR: -- use space.
18 MS. ROBESON: Okay.
19 MS. HARRIS: And Mr. Landfair, given that the
20 Development Plan is a plan of the ground plane did the
21 previous plan reflect the setback, the architectural
22 setback?
23 MR. LANDFAIR: Yes, it did.
24 MS. ROBESON: What architectural setback?
25 MR. LANDFAIR: The previous --

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1 MS. HARRIS: The previous Development Plan.
2 MR. LANDFAIR: -- plan had a setback in terms of
3 the minimum setbacks of the building --
4 MS. HARRIS: No, I'm sorry.
5 MR. LANDFAIR: -- from the right of way line.
6 MS. HARRIS: You misunderstood my question.
7 MR. LANDFAIR: I'm sorry.
8 MS. HARRIS: I meant in the fifth floor setback.
9 MR. LANDFAIR: No, it did not.
10 MS. HARRIS: Okay.
11 MS. ROBESON: Say it -- what?
12 MS. HARRIS: The previous Development Plan, well
13 the Development Plan doesn't reflect the architectural
14 setback because it's a plan of the ground plane.
15 MS. ROBESON: I see your point.
16 MS. HARRIS: That's the point.
17 MS. ROBESON: Well, is the setback a binding
18 element?
19 MS. HARRIS: It is not --
20 MR. LANDFAIR: No, it's not.
21 MS. HARRIS: -- but it certainly could be.
22 MS. ROBESON: All right. Go ahead.
23 MR. LANDFAIR: The other point I wanted to make is
24 with the introduction of the arc here that reduces the
25 length of the building facade along Montgomery Lane, so I

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1 think that helps to reduce to some extent the building
2 massing. I know that was a concern for some in terms of the
3 view of the building from Montgomery Lane itself. So, I
4 wanted to make that point.
5 MS. HARRIS: Thank you.
6 MR. LANDFAIR: Yes.
7 MS. HARRIS: Can you please describe your
8 responsibilities in regard to the Local Map Amendment and
9 Development Plan Amendment?
10 MR. LANDFAIR: Certainly. I reviewed the Sector
11 Plan, I reviewed the Zoning Ordinance standards applicable
12 to this case, I also produced and oversaw the production of
13 the land use report, as well as the production of the
14 Development Plan and the exhibits, the civil exhibits that
15 were associated with that Development Plan, including the
16 surrounding area map, public use space exhibit, et cetera.
17 MS. HARRIS: Thank you. Can you please describe
18 the location of the property and the surrounding areas?
19 MR. LANDFAIR: Certainly. The subject property is
20 located in the northwest corner of Montgomery Lane and West
21 Lane. And I'm referring now to Exhibit 51, which was
22 previously introduced. This is what we would call a bird's
23 eye aerial view of the streets and the surrounding area. On
24 the north side of the property is a garage with recreational
25 facilities, tennis courts, which are associated with a

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1 nearby high-rise building called The Chase. To the
2 northwest is a townhouse development in the TS-R Zone known
3 as The Villages of Bethesda. These were built on top of a
4 podium, such that they are actually about eight feet above
5 grade on average.
6 To the west we have a development, or rather I
7 should say we have properties that were developed as homes,
8 currently have offices, but have also been approved for the
9 TS-R Zone. This property is known as the Edgemoor at
10 Arlington North, and the public use space for that property
11 would be located primarily along Arlington Road, also in a
12 podium type fashion.
13 To the southwest of the property is another
14 development known as the Edgemoor at Arlington, that is
15 developed, and that is similar to the one that will be right
16 across the street. It has, I believe, 31 dwelling units.
17 I'm sorry, no, it has 11 dwelling units.
18 To the south is the City Homes, which is a
19 development of 29 townhomes in five rows located
20 perpendicular to Montgomery Lane itself, developed in the
21 TS-R Zone. Directly opposite to the east along West Lane is
22 a property recently re-zoned to TS-R by the Sandy Spring
23 Builder's Group, that will become a four-story condominium
24 building containing four units.
25 Further to the east is the Edgemoor high-rise,

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1 which is approximately 100 feet in height in the TS-R Zone,
2 and right behind that to the north, again, is The Chase
3 high-rise building, which is about 125 feet in height.
4 MS. HARRIS: Did you review the heights of the
5 City Homes?
6 MR. LANDFAIR: Yes, we did. Those are
7 approximately 50 feet in height as measured to the roof
8 ridge. And also, I should note, they are built face online,
9 meaning where they are adjacent to the southern property
10 line they're put right on the property line itself. And I
11 should note that their relationship to our property, they
12 are approximately 70 feet from building face to building
13 face, meaning when our building is constructed they're
14 approximately 70 feet away.
15 MS. HARRIS: And what is the height of the Sandy
16 Spring building?
17 MR. LANDFAIR: The Sandy Spring building will be
18 65 feet, plus a four-foot high parapet.
19 MS. ROBESON: The Sandy Spring building is in the
20 northeast corner of Montgomery and Arlington, is that --
21 MR. LANDFAIR: No.
22 MS. ROBESON: No?
23 MR. LANDFAIR: The Sandy Spring building is
24 directly opposite our property, it's in the northeast corner
25 of West Lane and Montgomery Lane.

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1 MS. ROBESON: Okay. All right.
2 MS. HARRIS: And Mr. Landfair, do you know the
3 distance of that building from the face of the high-rise
4 Edgemoor Building?
5 MR. LANDFAIR: I'd have to scale it out. I have
6 an exhibit which I can refer to now if you'd like?
7 MS. HARRIS: No, as long as you get to that --
8 MR. LANDFAIR: Okay.
9 MS. HARRIS: -- later in your --
10 MR. LANDFAIR: Yes.
11 MS. HARRIS: -- testimony.
12 MR. LANDFAIR: I have an exhibit which will give
13 us an approximation of the distance between that building
14 and the high-rise Edgemoor.
15 MS. HARRIS: Thank you. And what residential
16 district within the Sector Plan is the property located?
17 MR. LANDFAIR: I'm sorry, the residential
18 district? It's located in the Transit Station Residential
19 District.
20 MS. HARRIS: And can you explain the general
21 development, well, you did just go through all the general
22 development of the properties within the TS-R district.
23 MR. LANDFAIR: Let me just say that the district
24 is developed primarily today with high-rise and mid-rise
25 multi-family buildings, as well as the townhouses that I've

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1 described. There are a number of pre-existing houses which
2 currently have commercial uses in them. I noted the,
3 several properties along Arlington Road, there are also two
4 that are located on West Lane directly opposite our own
5 property.
6 MS. HARRIS: Thank you. Have you made a personal
7 inspection of the property, and if so, can you describe the
8 existing improvements?
9 MR. LANDFAIR: Yes, I have, and the existing
10 improvements are that there are four houses on the property
11 used for commercial purposes.
12 MS. HARRIS: Thank you. And have you reviewed a
13 central zoning map?
14 MR. LANDFAIR: I have, yes.
15 MS. HARRIS: And what's the current zoning
16 classification of the property?
17 MR. LANDFAIR: The current zoning for the lot at
18 the corner, I'm sorry, Lot 26, is R-60, the balance of the
19 property is currently zoned TS-R.
20 MS. HARRIS: And are you familiar with the
21 previously zoning application that re-zoned Lots 24, 25, and
22 27?
23 MR. LANDFAIR: Yes, I am.
24 MS. HARRIS: And were you involved in that case?
25 MR. LANDFAIR: I was, and the services provided

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1 were very similar to what we are providing now, which is to
2 say a land use report, we produced the Development Plan, we
3 produced the supporting documents in conjunction with that
4 Development Plan, and as the project moved on further into
5 the entitlement process we've produced other plans
6 associated with it.
7 MS. HARRIS: Thank you. Are you familiar with the
8 Zoning Ordinance and the provisions relating to the TS-R
9 Zone?
10 MR. LANDFAIR: Yes, I am.
11 MS. HARRIS: And is the proposed multi-family
12 residential use permitted in the TS-R Zone?
13 MR. LANDFAIR: Yes, it is.
14 MS. HARRIS: Okay. I'm going to now ask you a
15 series of questions based on your knowledge of the Zoning
16 Ordinance, your familiarity with the project, and your
17 professional expertise.
18 Zoning Ordinance Section 56-C-8.21 and 8.22 set
19 forth the intents and the purposes of the TS-R Zone. Did
20 you evaluate the re-zoning application in connection with
21 this section, and if so, what conclusion did you reach?
22 MR. LANDFAIR: Yes, I did. The TS-R Zone is
23 intended to be used in transit station development areas
24 which Section 59-A-2.1 defines as areas near a Metro Station
25 which are not located within a CBD, which have been

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1 designated as transit station development areas by an
2 approved and adopted Master Plan or Sector Plan. Here the
3 Sector Plan very clearly designated the site for TS-R
4 development, it's located within 1,000 feet of the Bethesda
5 Metro Station entrance, and it's recommended for multi-
6 family residential use.

7 MS. HARRIS: Thank you. Please discuss how the
8 plan addresses each of the following purposes of the TS-R
9 Zone, Section 59-C-8.22, and I'll read subsections A, B and
10 C. A provides to promote effective use of transit station
11 development and access thereto; B, to provide residential
12 uses and compatible non-residential uses within the walking
13 distance of the station; and C, to provide a range of
14 densities that will afford planning choices to match the
15 diverse characteristics of the several transit station
16 development areas within the County.

17 MR. LANDFAIR: Yes, let me get into that. The
18 plan we believe will make contributions to improving
19 Montgomery Lane, which already has the makings of a great
20 street; and West Lane, with the continuation of new
21 streetscape and public use spaces. Now, the project's going
22 to contribute to different building densities, designs and
23 styles that already exist in this transit station
24 development area. Several recent TS-R developments have
25 provided a relatively small number of units, and even with

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1 the proposed project the resulting density for the area, and
2 I'm saying the TS-R zoned area in Bethesda, will still
3 remain only approximately 66 dwelling units to the acre.

4 MS. HARRIS: Subsection D provides to provide the
5 maximum amount of freedom possible in the design of
6 buildings and their groupings and layout within the area
7 classified in this zone; to stimulate the coordinated,
8 harmonious, and systematic development of the area within
9 the zone, areas surrounding the zone, and the regional
10 district as a whole to prevent detrimental effects to the
11 use or development of adjacent properties or the surrounding
12 neighborhood; to provide housing for persons of all economic
13 levels; and to promote the health, safety, morals, and
14 welfare of the present and future inhabitants of the
15 regional district and the County as a whole. Can you please
16 explain how the application addresses this section?

17 MR. LANDFAIR: Yes, this section encourages
18 flexibility and freedom in the design of buildings within
19 the Transit Station Residential District. The latitude
20 which is afforded to the design of buildings by this
21 provision is reflected in the other developments that
22 already exist in the area, including The Chase, the Edgemoor
23 high-rises, the low rise Edgemoor, the City Homes, and the
24 Villages of Bethesda. Each of these projects has a unique
25 character, density and appeal which has contributed to the

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1 charm of this part of Bethesda. What is lacking, we
2 believe, though, is a diversity in terms of unit size. All
3 the existing projects primarily provide larger units. In
4 contrast, this project will bring needed density to the
5 Transit Station District by offering a distinctive housing
6 choice with smaller rental units, and MPDUs attractive to a
7 broader range of economic levels including young,
8 professional demographic.

9 In addition, the development will also provide
10 needed affordable housing units with up to 18 MPDUs, this
11 would work out to 15 percent of the total number of units.
12 The proposed MPDUs would represent approximately 50 percent
13 of the MPDUs currently provided for TS-R projects in the
14 area. While other projects in the zone have provided 15
15 percent MPDUs, notably the Hampden Lane Associates
16 Development, and 4901 Hampden Lane, this project's MPDUs
17 will be the first to be located on Montgomery Lane itself.

18 MS. HARRIS: I want to clarify one thing, or ask
19 you to clarify, and that is that you noted that the project
20 will provide smaller rental units, is there a possibility
21 that it could be condo, as well?

22 MR. LANDFAIR: Yes, that's correct. There is --
23 MS. HARRIS: Okay.
24 MR. LANDFAIR: -- that possibility.
25 MS. HARRIS: Okay. Thank you. I believe exhibit

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1 was prepared that outlined all of the various projects that
2 you previously referenced --

3 MR. LANDFAIR: Yes.
4 MS. HARRIS: -- and then went through a detailed
5 analysis of them. Can you please discuss that?
6 MS. ROBESON: Now, is that in the record?
7 MS. HARRIS: No, we are about to submit them.
8 MS. ROBESON: Okay.
9 MS. HARRIS: So, this would be, we would offer
10 this as Exhibit --

11 MS. ROBESON: Fifty-three.
12 MS. HARRIS: -- 53, and I think it could be
13 entitled Development Analysis.
14 MS. ROBESON: Surrounding Development Analysis?
15 MS. HARRIS: That's -- yes.
16 (DPA 13-01 Exhibit No. 53 was
17 marked for identification.)
18 MR. LANDFAIR: Thank you. This exhibit was
19 prepared to break down under a number of different
20 categories the various projects and developments that have
21 either been approved or built in this particular area.
22 MS. ROBESON: Do you have a copy of that? Because
23 I --
24 MR. LANDFAIR: Yes.
25 MS. ROBESON: -- I don't know if it's my age --

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1 MR. LANDFAIR: Yes.
2 MS. ROBESON: -- that I can't read those numbers,
3 or just my eyesight.
4 MR. LANDFAIR: You know what, let me see if I can
5 give a copy to Mr. Knopf and Mr. Abrams, as well.
6 MR. KNOFF: We can't --
7 MR. ABRAMS: It would help.
8 MR. RADULESCU: You have to share.
9 MS. ROBESON: Thank you. Thank you. All right.
10 Sorry to interrupt.
11 MR. KNOFF: Can somebody --
12 MS. HARRIS: No, unfortunately, you're going to
13 need to share it.
14 MR. ABRAMS: Where is it?
15 MS. HARRIS: It's right in front of -- I think
16 it's on -- I'm sorry.
17 MS. ROBESON: 03. It's on page three of this.
18 MR. KNOFF: That's a key exhibit, I would like to
19 have a copy.
20 MR. ABRAMS: Yes, we'd like separate copies if
21 we --
22 MS. ROBESON: Can you provide copies after the
23 hearing?
24 MS. HARRIS: Certainly. And yes, my apologies,
25 some of the exhibits we have three copies, and others we

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1 don't.
2 MR. LANDFAIR: This exhibit shares information on
3 a number of projects that have been built or developed or
4 approved for this area of Bethesda, including our site, it
5 includes the property known as 4901 Hampden, the high-rise
6 Edgemoor, the low rise Edgemoor, City Homes, Villages of
7 Bethesda, the Sandy Spring project that was recently
8 approved for TS-R, and the Edgemoor at Arlington North, as
9 well as Hampden Lane Associations, which is located at the
10 corner of Arlington and Hampden Lane.
11 There are a number of columns, these columns are
12 titled total number of units, units per acre, the land area,
13 the average unit size, and the total numbers of MPDUs that
14 were provided with each one of these projects. It also
15 comes up with significant totals, average units per acre,
16 average unit size, and MPDUs. This was produced through
17 review and study of resolutions, as well as approved plans
18 by the consulting team. And it highlights --
19 MS. ROBESON: Now, did the resolutions, because I
20 did some of these cases, do they specify a unit size?
21 MR. LANDFAIR: Not necessarily in the resolution,
22 in fact, it would be unusual for the resolution to --
23 MS. ROBESON: Yes.
24 MR. LANDFAIR: -- specify unit size, so it would
25 have been produced upon review of the plans themselves

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1 associated with those projects.
2 MS. ROBESON: But the plans aren't binding?
3 MR. LANDFAIR: In some cases they're not, in fact,
4 unit size would probably not be binding --
5 MS. ROBESON: Right.
6 MR. LANDFAIR: -- on any one of those plans.
7 MS. ROBESON: Okay. That's just a question. Go
8 ahead.
9 MS. HARRIS: The other source was obviously the
10 SDAT, and then in one, the State Department of Assessment
11 and Taxation.
12 MS. ROBESON: For the existing property.
13 MS. HARRIS: Right. And also we actually have
14 condo plats for the high-rise Edgemoor. We can submit those
15 to the record.
16 MS. ROBESON: No, I'm just --
17 MS. HARRIS: Okay.
18 MS. ROBESON: -- asking, I was just trying to
19 understand which of these are set in stone and which --
20 MS. HARRIS: Right. Okay.
21 MS. ROBESON: -- are still to be determined.
22 MR. LANDFAIR: And we could clarify that for you
23 in terms of, you know, the information that's contained,
24 make it clearer in terms of what's based on --
25 MS. ROBESON: Well, I'll let --

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1 MR. LANDFAIR: -- the plan, and what is based on
2 the --
3 MS. ROBESON: Okay.
4 MR. LANDFAIR: -- resolution, et cetera.
5 MS. ROBESON: I have a feeling they're going to
6 ask all the questions that I'm, you know --
7 MR. LANDFAIR: Sure.
8 MS. ROBESON: -- and some, so --
9 MR. LANDFAIR: Sure.
10 MS. ROBESON: -- why don't you proceed with this.
11 MR. LANDFAIR: Okay.
12 MR. ABRAMS: Could I interpose?
13 MS. ROBESON: You may all -- have I ever stopped
14 you?
15 MR. KNOFF: Could you ever stop?
16 MR. ABRAMS: No, ma'am, but you could. I believe
17 your rules of procedure require that expert analysis and
18 studies be submitted with approval and submission, I haven't
19 seen this before.
20 MS. ROBESON: This was not?
21 MS. HARRIS: No. Nor is it an expert analysis,
22 it's a compilation of information that's part of the public
23 record.
24 MR. ABRAMS: No. Come on. Jesus. You know --
25 MR. KNOFF: The expert's important.

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1 MR. ABRAMS: -- to spring this on us now is
 2 unconscionable. How am I going to cross-examine him just
 3 looking at this without going into the background of the
 4 numbers?
 5 MS. ROBESON: Well, he's coming back. I'm going
 6 to overrule it, I don't see that it's an expert report,
 7 although I have to say that I'm going to allow them extra
 8 leeway because it's not just hard on them, it's hard on me
 9 because I did spend several days preparing for this case and
 10 now I'm not dealing with what I prepared for, so I don't
 11 have my questions together.
 12 MR. ABRAMS: Sure.
 13 MS. ROBESON: And my second question is, are you
 14 going to refer this revision to Staff or the Planning Board?
 15 MS. HARRIS: Actually, this exhibit was provided
 16 to Planning Staff.
 17 MS. ROBESON: Yes.
 18 MS. HARRIS: This was provided to Planning Staff
 19 at one point.
 20 MS. ROBESON: No, not this, the revised
 21 Development.
 22 MS. HARRIS: I'm sorry. We can certainly do that.
 23 Is that what you're suggesting?
 24 MS. ROBESON: Yes, I would recommend --
 25 MS. HARRIS: Okay.

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1 MS. ROBESON: -- they're aware of the Planning
 2 Board recommendation, I would like their input as to whether
 3 it meets the Planning Board's recommendation. It would be
 4 nice to have the Planning Board's recommendation on this --
 5 MR. ABRAMS: Certainly.
 6 MS. ROBESON: -- because it is a big deal. All
 7 right, Mr. Landfair. So, to answer your objection I'm going
 8 to let it in subject to he can be recalled when you've had a
 9 chance, I assume we're setting dates for about a month out
 10 that he can be there to, he will be there to be cross-
 11 examined on this exhibit?
 12 MR. ABRAMS: It was my understanding that the 15th
 13 was the date that we were going to set the future dates, and
 14 if so --
 15 MS. ROBESON: Yes.
 16 MR. ABRAMS: -- and in an effort to find out all
 17 my witnesses' available dates through the month of March, I
 18 guess it is, through February and March. So, the 15th we'll
 19 have it.
 20 MS. ROBESON: I'm not setting a date today.
 21 MR. ABRAMS: Okay.
 22 MS. ROBESON: No, that was the game plan. I'm
 23 fine with that.
 24 MR. ABRAMS: All right.
 25 MS. ROBESON: Okay. Mr. Landfair.

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1 MR. LANDFAIR: Before we move on from this exhibit
 2 I do want to highlight at the bottom of the table what is
 3 titled significant totals, and the gist of this is to show
 4 what the conditions out there would be like with this
 5 project and without the project. Without the project the
 6 average number of units per acre is between 48 and 54 units
 7 to the acre; with this project it increases up to about 57
 8 to 66 units to the acre. The average unit size likewise
 9 would go down from a range of 2,120 to 2,230 down to 1,950
 10 to 2,100, that's unit size reduction. And then finally, and
 11 perhaps most importantly, the numbers of MPDUs without this
 12 project falls within the range of 27 to 35, with this
 13 project it increases to between 42 and 53.
 14 MS. HARRIS: Thank you. Can you please evaluate
 15 the other Zoning Ordinance provisions of the TS-R as they
 16 relate to the re-zoning application and the Development Plan
 17 Amendment?
 18 MR. LANDFAIR: Certainly. We can start with
 19 Section 8.24, which is regarding the location, the TS-R Zone
 20 is permitted only in Transit Station development areas as
 21 described in the definition section of the Zoning Ordinance,
 22 and in accordance with an approved Sector Plan. As
 23 previously noted, the Transit Station Development Area is an
 24 area near the Metro not located in the CDP, and which has
 25 been designated as a Transit Station Development Area by the

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1 Sector Plan. The Sector Plan specifically designates this
 2 property for the TS-R Zone, the clear intent is that the
 3 site be developed as a Transit Station Development Area.
 4 Section 8.25 covers pump up facilities and
 5 amenities. The Development Plan for a TS-R Zone property
 6 must substantially conform to facilities and amenities
 7 recommended by the Sector Plan, including any recommended
 8 easements for circulation, open space, and recreation to
 9 ensure compatibility. This project provides additional
 10 dedications along Montgomery Lane and West Lane, as will be
 11 described in greater detail by the project civil engineer,
 12 which will allow us to upgrade the existing sidewalk along
 13 Montgomery Lane and create a new sidewalk along West Lane.
 14 Section 8.3 covers land uses. Multi-family
 15 residential is a permitted land use in the TS-R Zone.
 16 Section 8.4, development standards. The TS-R Zone
 17 sets forth a maximum density of 2.5 F-A-R, which can be
 18 exceeded to accommodate MPDUs. The zone also sets forth a
 19 maximum density of 150 dwelling units per acre. All
 20 existing buildings in the TS-R Zone on Montgomery Lane were
 21 built or approved to 2.5 F-A-R. However, unlike the
 22 proposed development, none of the projects on Montgomery
 23 Lane have MPDUs in them.
 24 In terms of units per acre, the issue goes to how
 25 many units fit within the overall F-A-R. Both City Homes

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1 and the high-rise Edgemoor have larger units. The average
 2 for City Homes is roughly 2,500 square feet, while for the
 3 Edgemoor it ranges between 800 square feet and 5,000 square
 4 feet, resulting in an average of about 1,900 square feet.
 5 From a land planning, housing policy, and smart
 6 growth policy perspective the TS-R district is intended to
 7 capitalize on the proximity to the Metro Station, and the
 8 CBD, and promote density in these locations. It's worth
 9 noting that when the high-rise Edgemoor was originally
 10 approved it was approved for 102 units, then subsequently
 11 the size of the units was doubled, effectively reducing the
 12 final total to 54 units.
 13 Section 8.51, building height. The TS-R Zone does
 14 not set forth the maximum building height, as the
 15 expectation is that heights are determined by the Planning
 16 Board at site plan. In making this determination the Board
 17 will consider the size of the lot, the relationship to
 18 surrounding uses and buildings, the need to preserve light
 19 and air, and of course, compatibility.
 20 The building height limits depicted in figure 3.2
 21 of the Sector Plan, which is found on page 39, recommends 65
 22 feet for many of the properties located along Montgomery
 23 Lane, including the subject property. At the same time the
 24 Sector Plan notes as an objective low rise high density
 25 development in the context of heights in the CBD, that's

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1 noted on page 80. In the context of the Sector Plan which
 2 recommends heights ranging from 35 feet to 200 feet, 65 feet
 3 is certainly low rise, in fact, the International Building
 4 Code considers 65 feet to be low rise. In evaluating the
 5 varying heights recommended in the Sector Plan there is
 6 strong support to conclude that low rise includes heights of
 7 35, 40 -- I'm sorry, 42, 50, 60, 65, and 75 feet.
 8 MS. ROBESON: Wait, what are you relying on for
 9 that -- BOCA (phonetic sp.)?
 10 MR. LANDFAIR: The International Building Code.
 11 MS. ROBESON: Right.
 12 MR. LANDFAIR: Right.
 13 MS. ROBESON: Okay. When you say, though, that
 14 that is for, not for a land planning purpose, but for a
 15 whole different set of regulations --
 16 MR. LANDFAIR: Sure, construction standards,
 17 construction means --
 18 MS. ROBESON: Fire safety.
 19 MR. LANDFAIR: -- pipes. Understood. Yes. But
 20 nevertheless, we still feel that based on what's been
 21 approved in the area as it relates to the height diagram
 22 found in the Sector Plan that 65 feet could be considered to
 23 be low rise.
 24 MS. ROBESON: All right.
 25 MR. LANDFAIR: In evaluating the varying heights

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1 recommended in the Sector Plan there was strong support to
 2 conclude, as I just mentioned, a range between 35 and 75
 3 feet. Mid-rise would include heights ranging from 90 to
 4 110, 120 to 125 feet. And high-rise would include heights
 5 of 143, 175 and 200. The proposed building will have a
 6 maximum height of 70 feet, stepping down to 50 as it
 7 approaches Montgomery Lane. While this exceeds the Sector
 8 Plan recommendation by five feet, this recommendation is
 9 just that. The Zoning Ordinance requires substantial
 10 compliance with use and density recommendations but not
 11 height, as noted in Section 59-D-1.61.
 12 There are many examples throughout the CBD of
 13 variations on height recommendations from what is depicted
 14 in the Sector Plan. For example, the Hilton Garden Inn, 90
 15 feet was recommended in the plan, it was approved for 116.
 16 A project called Upstairs at Bethesda Row was proposed, or
 17 rather supported at 42 feet and the Master Plan approved at
 18 65. Hampden Lane Associates, 65 feet versus 71. And
 19 finally, 4901 Hampden Lane, the Sector Plan recommended 65
 20 feet, and it was approved at 70.
 21 Furthermore, the Ordinance allows an increase in
 22 maximum densities and heights permitted by the Zone to
 23 accommodate MPDUs and associated bonus density. It should
 24 also be noted that the TS-R Zone itself does not specify a
 25 height limit, and allows up to 3.05 F-A-R.

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1 Actual development in the surrounding area
 2 displays wide variations in heights, some greater than the
 3 Sector Plan. I mentioned The Villages of Bethesda
 4 townhouses, which are three stories on top of a platform.
 5 MS. ROBESON: Where are they?
 6 MR. LANDFAIR: Those are located just to the, and
 7 I can refer back to the aerial exhibit. Northwest of the
 8 subject property.
 9 MS. ROBESON: I don't recognize that exhibit.
 10 MS. HARRIS: The one before.
 11 MR. LANDFAIR: Let's refer to the aerals again.
 12 MS. ROBESON: Okay. Exhibit -- wait, is that --
 13 MS. HARRIS: Fifty-one.
 14 MR. LANDFAIR: Referring to Exhibit 51, The
 15 Villages of Bethesda are located just to the northwest of
 16 the subject property, and have --
 17 MS. ROBESON: Okay.
 18 MR. LANDFAIR: -- frontage along Edgemoor and
 19 Arlington Roads.
 20 MS. ROBESON: Okay. All right.
 21 MR. LANDFAIR: City Homes has a height of 53 feet;
 22 low rise Edgemoor at Arlington, 48 feet, it's proposed to be
 23 on top of a terrace, as well. I mentioned the high-rise
 24 Edgemoor, which has a height of approximately 100 feet; The
 25 Chase with a height of about 120 feet.

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1 The Planning Board has previously found greater
2 heights on the north side of Montgomery Lane to be
3 compatible with surrounding development, again, the high-
4 rise Edgemoor at 100 feet. Our project will only be one
5 foot taller than the parapet of the Sandy Spring project
6 which was recently approved on the opposite side of West
7 Lane.
8 Section 8.52, off street parking, basically
9 requires that parking be located which has minimal impact to
10 adjoining properties. All of our parking will be located
11 off street and in sufficient number to meet the Zoning
12 Ordinance requirements. Access itself will be from West
13 Lane away from Montgomery Lane.
14 MS. HARRIS: We're going to move into the issue of
15 the public use space requirements for the zone. Can you
16 please indicate what the Zoning Ordinance requires in terms
17 of public use space, and identify other projects in the area
18 and what they provide?
19 MR. LANDFAIR: Certainly. The requirement is 10
20 percent, other projects in the area are providing roughly
21 that amount, they include Hampden Lane, which is providing
22 10.47 percent, the Sandy Spring project just approved at
23 10.6 percent --
24 MS. ROBESON: Which one is the Sandy Spring
25 project?

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1 MS. HARRIS: Actually, Mr. Landfair, we have a
2 number of exhibits, going through each of these I think it
3 may be helpful if we --
4 MS. ROBESON: All right.
5 MS. HARRIS: -- walk through each exhibit.
6 (Discussion off the record.)
7 MS. ROBESON: Is this also in this booklet?
8 MS. HARRIS: Yes.
9 MS. ROBESON: I see something like that in here.
10 MS. HARRIS: Are all the exhibits in the booklet?
11 MR. RADULESCU: Yes.
12 MS. HARRIS: Yes.
13 MR. RADULESCU: And labeled 05.
14 MS. ROBESON: Can you --
15 MS. HARRIS: So, it's labeled page 05?
16 MS. ROBESON: Edgemoor Phase 3 Approved Site Plan?
17 Yes. I see it.
18 MR. ABRAMS: We're still waiting for something
19 copied.
20 MS. ROBESON: All right. So, this will be Exhibit
21 54, how do you want to describe this, Ms. Harris:
22 MS. HARRIS: We have a series -- well, we can
23 either submit each one individually or all of them as one
24 exhibit. There's a series of public use space exhibits from
25 each project. I guess individually, so --

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1 MS. ROBESON: I'd rather just do it
2 individually --
3 MS. HARRIS: Individually. Okay.
4 MS. ROBESON: -- at this point, and --
5 MS. HARRIS: High-rise Edgemoor Public Use Space
6 exhibit.
7 MS. ROBESON: And?
8 MS. HARRIS: So, that would be Exhibit 54.
9 MR. ABRAMS: Can we just go A, B, C, D, and --
10 MS. ROBESON: Yes, okay. All right.
11 MR. KNOFF: Can we -- yes. Because they're all
12 attached.
13 MS. ROBESON: I guess my concern was we already
14 have a page for this exhibit introduced separately, but I'll
15 go -- this whole book, how do you want to describe this
16 book?
17 MS. HARRIS: Well, the book was intended, it was
18 our intent to leave the exhibits that we're presenting and
19 that the books were for just your use, but if you want us
20 to -- because what's in the book is a compilation of all the
21 individual exhibits.
22 MS. ROBESON: Okay. I'm just going to do it one
23 at a time.
24 MR. KNOFF: Well --
25 MS. ROBESON: Yes.

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1 MR. KNOFF: Okay. When we prepare to cross-
2 examine we're only going to have this, and it would be --
3 MS. ROBESON: I'm sure we'll have the exhibits
4 available.
5 MR. KNOFF: I know, but not in my office to
6 prepare. I'm just wondering --
7 MS. ROBESON: But you have the book, which is a
8 duplicate of all the exhibits.
9 MR. ABRAMS: Then I don't have a book.
10 MR. KNOFF: No, no. I --
11 MS. HARRIS: We will get you a book, Mr. Abrams,
12 by the end, close of business today.
13 MR. KNOFF: No, I'll give it back, but I'm just --
14 all right. If we're going -- could we simply if you're
15 going to make each one a separate exhibit if we read out the
16 numbers and I can mark this and we'll have it.
17 MS. ROBESON: Sure. Can we have these?
18 MS. HARRIS: The books?
19 MS. ROBESON: Yes.
20 MS. HARRIS: Certainly. And we are getting
21 another one made for --
22 MR. RADULESCU: We're going to get copies made.
23 MS. ROBESON: Okay. This is what I'm going to do,
24 okay, I'm going to mark mine with the exhibit numbers --
25 MR. KNOFF: Right, and I'll mark this one.

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1 MS. ROBESON: With the exhibit numbers, and then
2 you'll get a new one for each of you.
3 MR. KNOFF: But we have one, and I'll mark it, and
4 we can copy the exhibit numbers off of it. Right.
5 MS. ROBESON: Yes.
6 MR. KNOFF: Okay. But what I was suggesting is as
7 long as we have the book maybe right now we could go through
8 and assign each page a number.
9 MS. ROBESON: Okay.
10 MR. KNOFF: Then we have it all together.
11 MS. ROBESON: Why don't you go through in the
12 order you're going to present them, or we can just start
13 with page one and go in that order. So, page one would be
14 Exhibit 54, can you describe what that is, Mr. Landfair?
15 No, page one of this book.
16 MS. HARRIS: Wait, the problem is this was, the
17 books were put together and intended as a reference, and
18 they may not be in exactly the same order as what's
19 ultimately how they're going to be --
20 MS. ROBESON: Okay.
21 MS. HARRIS: -- submitted, so I think it would be
22 easier if as we introduce an exhibit here then we mark it --
23 MS. ROBESON: You mark it in the book.
24 MS. HARRIS: -- in the book. And we do have a
25 reduced sized copy that in the interim until we get Mr.

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1 Abrams his full size own book he can use for reference
2 purposes.
3 MS. ROBESON: Okay.
4 MR. ABRAMS: Thank you.
5 MS. HARRIS: You're welcome, Mr. Abrams.
6 MS. ROBESON: I'm not going to argue about
7 numbering any further. We will go through in accordance
8 with his testimony, and we will mark the corresponding
9 exhibit number on the duplicate copies. So, 54 is high-rise
10 Edgemoor what? Public Use Space?
11 MS. HARRIS: Public Use Space exhibit. Yes.
12 (DPA 13-01 Exhibit No. 54 was
13 marked for identification.)
14 MR. KNOFF: Is that the one that's up on the easel
15 now?
16 MS. ROBESON: Yes, it's page five --
17 MR. LANDFAIR: Yes. Yes, that's the one on the
18 easel.
19 MS. ROBESON: -- of your booklet.
20 MR. KNOFF: Thank you.
21 MR. LANDFAIR: So, this exhibit presents, it has
22 first of all in plan view, the building itself, and then
23 rendered in green it has what was approved as the public use
24 space, which is primarily located along the front of the
25 building, along Montgomery Lane itself, but it does extend

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1 back in both side yards, and we have photographs of those
2 side yards, up to points where they are gated. The one side
3 yard along the east side has a transformer, as well, in it.
4 MS. ROBESON: Now, the side yards are on the right
5 hand side of this exhibit? Those are the two side yards?
6 MR. LANDFAIR: Well, the top photograph is the
7 side yard to the left, or rather I should say the west side
8 of the building --
9 MS. ROBESON: Okay.
10 MR. LANDFAIR: -- and then in the lower right
11 corner of the exhibit we have a photograph which includes
12 the transformer, that's depicting the side yard along the
13 east side of the building.
14 MS. ROBESON: Okay.
15 MR. LANDFAIR: And then we have a third photograph
16 which depicts the public use space along the front of the
17 building, along Montgomery Lane itself.
18 MS. ROBESON: Is that parking part of the public
19 use space, or is the public use space the sidewalk?
20 MR. LANDFAIR: It includes the sidewalk, does not
21 include the --
22 MS. ROBESON: Not the parking --
23 MR. LANDFAIR: No.
24 MS. ROBESON: -- area?
25 MR. LANDFAIR: No.

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1 MS. ROBESON: Okay.
2 MR. LANDFAIR: So, that is Exhibit No. 54 duly
3 marked. We'll mark the next exhibit, Exhibit 55.
4 MR. KNOFF: Could you give me the number, please,
5 of the --
6 MS. ROBESON: What page number is it --
7 MR. KNOFF: Yes.
8 MS. ROBESON: -- in the book?
9 MR. LANDFAIR: I'm sorry, it's page number five.
10 MS. ROBESON: Five.
11 MR. ABRAMS: The other one was five.
12 MR. KNOFF: Wait, the other one was five.
13 MR. LANDFAIR: No, the previous one -- well,
14 it's -- I'm sorry, they both have the number five.
15 MS. HARRIS: Because they were intended to be, it
16 was our intention originally that all these would come in as
17 one exhibit. So, I would disregard the page numbers at the
18 bottom.
19 MS. ROBESON: Okay. So, the one that has a
20 picture of City Homes Lot 5 to 21, the plat in the upper
21 left corner, that will be 55. How do you want to describe
22 this?
23 MS. HARRIS: We would describe it as --
24 MR. LANDFAIR: Public Use Space for City Homes and
25 the Edgemoor at Arlington North.

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1 MS. ROBESON: City Homes and Edgemoor at Arlington
2 North --
3 MR. LANDFAIR: North. Right.
4 MS. ROBESON: -- Public Use Space.
5 (DPA 13-01 Exhibit No. 55 was
6 marked for identification.)
7 MR. LANDFAIR: And as with the previous exhibit it
8 shows in plan view both projects, similar to the high-rise
9 at Edgemoor, the public use space is located along the
10 frontage, in the case of City Homes it's along Montgomery
11 Lane. City Homes, as I mentioned before, the townhomes
12 themselves are in five rows perpendicular to Montgomery
13 Lane, so it's primarily public use space along the cap ends
14 of the townhouse units and along the streetscape and street
15 frontage of the drive. For the Edgemoor at Arlington North
16 the public use space is along Arlington Road itself, there
17 is none of it counted along Montgomery Lane.
18 MR. KNOPF: I think I'm on the wrong -- wait, can
19 you just wait one minute, please, because I think --
20 MR. LANDFAIR: Yes. Sure.
21 MR. KNOPF: -- I ended up on the wrong --
22 MS. ROBESON: Yes, there are two pages -- I did
23 the same thing. There are two pages that have City Homes up
24 in the upper left, the one you want to look for is the one
25 with Edgemoor at Arlington North on the right hand side.

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1 MR. KNOPF: That's what I have. I marked up the
2 wrong page. You're right. I have to try to find that.
3 Where?
4 MS. ROBESON: It's right before it.
5 MR. KNOPF: Oh, this is Exhibit -- thank you.
6 MS. ROBESON: All right. Now, this is right after
7 it, I think.
8 MR. KNOPF: After --
9 MS. ROBESON: This has --
10 MR. LANDFAIR: It should be, yes.
11 MS. ROBESON: -- City Homes, Lots 5 to 21, and
12 4901 Hampden Lane, right?
13 MR. LANDFAIR: Correct.
14 MS. ROBESON: So, this will be Exhibit 56.
15 MR. KNOPF: Wait a minute; I have to try to --
16 what's the number again? The original number on the right-
17 hand corner?
18 MR. LANDFAIR: It's still, I'm afraid, 05.
19 MR. KNOPF: Oh, still five.
20 MS. ROBESON: Because we're still on public use
21 space.
22 MR. KNOPF: Well, I'm trying to find --
23 MS. ROBESON: It's right next to 55.
24 MR. KNOPF: Oh, is this -- okay. Thank you.
25 MS. ROBESON: So, I'm going to label this City

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1 Homes and 4901 Hampden Lane Public Use Space.
2 (DPA 13-01 Exhibit No. 56 was
3 marked for identification.)
4 MR. KNOPF: This is 56?
5 MS. ROBESON: Yes.
6 MR. KNOPF: Thank you.
7 MR. LANDFAIR: So, this depicts once again in plan
8 view in green the public use space that was approved for
9 City Homes, Lots 5 through 21, the Hampden Lane Project,
10 otherwise known as G-842, and the project known as 4901
11 Hampden Lane. Now, interesting enough there is public use
12 space along both West Lane and Montgomery Lane for Hampden
13 Lane, for 4901 Hampden Lane there's also public use space
14 along Woodmont Avenue in addition to Hampden Lane.
15 MS. HARRIS: Mr. Landfair, can you explain a
16 little bit more the public use space that is shown on the
17 recently approved Sandy Spring site in terms of --
18 MR. LANDFAIR: Certainly.
19 MS. HARRIS: -- the public use space in between --
20 MR. LANDFAIR: Right.
21 MS. HARRIS: -- the driveways?
22 MR. LANDFAIR: Right.
23 MS. ROBESON: When you say Sandy Spring is that
24 4901 Hampden Lane?
25 MR. KNOPF: No, no.

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1 MS. ROBESON: Is that the same building?
2 MS. HARRIS: Sorry. It is --
3 MR. LANDFAIR: Referring back to Exhibit No. 51,
4 the aerial view, the Sandy Spring project is located
5 directly opposite our own --
6 MS. ROBESON: Across. Okay.
7 MR. LANDFAIR: It's on the east side of West
8 Lane --
9 MS. ROBESON: I understand.
10 MR. LANDFAIR: -- at the corner with Montgomery
11 Lane.
12 MS. ROBESON: Okay. All right.
13 MR. LANDFAIR: In the case of Sandy Spring, and
14 we'll probably point it out again later in the hearing, they
15 have garages, they have four garages that are serving the
16 four units in that building. Those garages have access
17 directly off of West Lane.
18 MS. ROBESON: Okay.
19 MR. LANDFAIR: And they were approved,
20 nevertheless, for public use space in those areas between
21 the garage doors themselves. In other words, along the base
22 of the building adjacent to the garages that was counted
23 towards public use space. It's basically planted area, it's
24 an amenity, it's attractive for the general public, but it's
25 obviously not directly usable by the public. Otherwise, the

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1 balance of the public use space for that project would be
2 found along Montgomery Lane itself.
3 MS. ROBESON: Okay.
4 MR. LANDFAIR: The last exhibit that we have,
5 which I guess would be Exhibit No. 57 depicts what is known
6 as Edgemoor at Arlington, which is located in the southeast
7 corner of Montgomery Lane and Arlington Road, and it
8 utilizes --
9 MS. ROBESON: Okay. I'm going to identify this as
10 Edgemoor at Arlington Public Use Space.
11 MR. LANDFAIR: Yes.
12 (DPA 13-01 Exhibit No. 57 was
13 marked for identification.)
14 MS. ROBESON: All right. Go ahead.
15 MR. LANDFAIR: It includes two photographs which
16 were taken of the development, one photograph is taken from
17 Arlington Road, the other is taken directly in front at the
18 corner of the building and depicts the public use space that
19 was approved. Most of the actual approved public use space
20 is situated at the corner of the building along the street
21 frontage itself.
22 And then the last point I want to make is that for
23 all these projects the public use space was basically 10
24 percent, the minimum required, between 10 and 11 percent.
25 MS. HARRIS: Thank you. Can you please describe

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1 the Montgomery Lane streetscape section compared to that of
2 the existing and approved projects along Montgomery Lane?
3 And with this we're going to introduce a new exhibit.
4 MS. ROBESON: Is it in here?
5 MS. HARRIS: It is.
6 MS. ROBESON: Okay.
7 MS. HARRIS: Hopefully it's the next page, but --
8 it is.
9 (Discussion off the record.)
10 MR. LANDFAIR: We're up to 58, I guess?
11 (Discussion off the record.)
12 MS. HARRIS: And it's entitled at the bottom left
13 hand corner it says building offset comparison.
14 MS. ROBESON: Okay. I'm just trying to find it.
15 MS. HARRIS: Do you -- okay. I'm sorry. Not to
16 make --
17 MS. ROBESON: I think I found it.
18 MS. HARRIS: It's actually because we're going to
19 hand out --
20 MS. ROBESON: Does it have an X03 --
21 MR. KNOPF: Yes, that's the --
22 MS. ROBESON: -- at the bottom right, or X02?
23 MS. HARRIS: Neither, and we're handing out --
24 because that, the booklet was put together by the architect,
25 and these were exhibits prepared by the landscape architect,

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1 so they are separate.
2 MS. ROBESON: Okay. So, this is not in the book.
3 Okay.
4 MS. HARRIS: No, but we are handing out copies.
5 MR. ABRAMS: And what are they?
6 MS. ROBESON: So, this would be 58, and Ms.
7 Harris, you gave me a description?
8 (DPA 13-01 Exhibit No. 58 was
9 marked for identification.)
10 MS. HARRIS: In the bottom, if you flip to page,
11 the last page of what I just handed out that is the exhibit
12 that we're referencing, and it's entitled Building Offset
13 Comparison.
14 MS. ROBESON: Okay. Well, are you going to be
15 introducing all these exhibits, all these pages?
16 MS. HARRIS: We are, but -- and they're all
17 stapled together, but when our landscape architect gets on
18 most of these are associated --
19 MS. ROBESON: Well, let's do this, this one --
20 MS. HARRIS: You want to separate them?
21 MS. ROBESON: No, I'm --
22 MS. HARRIS: Okay.
23 MS. ROBESON: -- just going to label them 58(a)
24 for the first page. How would you describe the first page?
25 Overall site it says; 58(b), which is site plan, a rendered

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1 site plan it looks like; 58 is overall site plan, 58(a);
2 58(b) is rendered site plan; 58(c) is design comparison;
3 58(d) is building offset comparison. So, I think what Mr.
4 Landfair is going to testify to is 58, marked as 58(d). I
5 hesitate to ask this, but other than the inability to
6 prepare for cross-examination do you have any, does either
7 Mr. Knopf or Mr. Abrams have any objections to these?
8 MR. ABRAMS: You put me at a disadvantage, Madam
9 Examiner. I'd like to reserve any objection because I've
10 just seen this, and I obviously can't formulate --
11 MS. ROBESON: That's fine.
12 MR. ABRAMS: -- you know, an objection or non-
13 objection.
14 MS. ROBESON: Okay, that's fine.
15 MR. KNOPF: I notice, not on these, but I've had a
16 chance now to look a little bit more on the first set there,
17 the group we called 54, some of them, and I think there are
18 some errors on there, so we might have objections, but we
19 need a chance to analyze this.
20 MS. ROBESON: All right.
21 MR. KNOPF: Yes.
22 MS. ROBESON: Very well, I'm going to allow you in
23 the interest of time to testify subject to further
24 objections. And for Tuesday I wondered if we could, I don't
25 know what's been shared with the parties, but it might be

1 helpful to share the exhibits in advance of the hearing.
 2 Usually they've been filed at the hearing, and I know that
 3 you've made some changes to try to address the Planning
 4 Board's concerns, so if there's any way we can get revised
 5 exhibits to the parties that would move the hearing along, I
 6 think.

7 MR. KNOPF: Because, you know, I would like to
 8 note that most of these exhibits do not relate to changes
 9 made, they're basic, and they should have been submitted
 10 along with the application.

11 MS. HARRIS: Well, my comment would be that until
 12 the Planning Board hearing little did we know that there was
 13 an issue in terms of the fact that certain of these
 14 buildings were closer to the street than we were, and so we
 15 wanted to put that all on one sheet so we could explain
 16 them.

17 MR. KNOPF: Yes, but --

18 MS. HARRIS: That was an issue that came up in the
 19 Planning Board.

20 MR. KNOPF: -- what are the heights of the
 21 building and the densities of the building and the site
 22 plans of the building those were all -- because I do have
 23 some dispute with some of these, I don't want to get into it
 24 now, but it would have been good if they'd filed it with the
 25 application then we could have studied it and not wasted

1 MS. ROBESON: Okay.

2 MR. ABRAMS: I just want to know, you know, when
 3 we're supposed to be doing this.

4 MS. ROBESON: I was speaking to the Applicant --

5 MR. ABRAMS: Okay.

6 MS. ROBESON: -- but if you want to do it -- what
 7 I'm -- this is the deal, we're not going to have another set
 8 of hearings until some of this dust settles because it's a
 9 little confusing for the parties, and I know you're well
 10 intentioned, and that you were trying to address the
 11 concerns. We're going to have at least a couple of weeks,
 12 and if you have any revisions to the exhibits I'm going to
 13 ask whatever date we set for the hearing that you provide
 14 exchange of exhibits, like we did for, none of you were in
 15 the Chelsea School, but I'm going to ask that you both
 16 exchange exhibits prior to the next hearing so there aren't
 17 any, everyone has the opportunity --

18 MR. ABRAMS: Well, could you set a time limit for
 19 the exhibits coming to us from the Applicant, and a time
 20 limit for us --

21 MS. ROBESON: That's what we're doing.

22 MR. ABRAMS: -- thereafter to submit our exhibits
 23 to --

24 MS. ROBESON: That's what we did in the Chelsea
 25 School.

1 anybody's time.

2 MS. ROBESON: Okay. Going forward there's no
 3 prohibition in our rules from introducing exhibits for the
 4 first time at the hearing. This is going to be a long,
 5 complex hearing, though, so what I am going to say is for
 6 Tuesday I want everything, I'm requesting the Applicant
 7 everything that you intend to introduce Tuesday you provide
 8 to Mr. Abrams and Mr. Knopf tomorrow. And then if there's
 9 further revisions it can come back on rebuttal as long as
 10 you've provided them in advance.

11 MR. LANDFAIR: Madam Examiner, do you mean
 12 tomorrow or Monday? Tomorrow being Saturday.

13 MS. ROBESON: Monday.

14 MR. LANDFAIR: Okay.

15 MS. ROBESON: Which I understand still isn't
 16 enough time for you to analyze it, so we're going to set a
 17 time for cross-examination once we get through more of this,
 18 you know, Tuesday.

19 MR. ABRAMS: Madam Examiner, do you want -- I have
 20 certain exhibits which I have made copies to hand out to
 21 everybody.

22 MS. ROBESON: Why don't you share those, as well.

23 MR. ABRAMS: Okay. I can give them to --

24 MS. ROBESON: Is that your question?

25 MR. ABRAMS: I don't have any objection. No.

1 MR. ABRAMS: Thank you.

2 MS. ROBESON: They had exhibits, you had
 3 responsive exhibits, and the Applicant gets rebuttal,
 4 whatever we called it, I don't remember. And we can set up
 5 a scheduling order for that, and that might make the rest of
 6 the hearing flow more quickly.

7 MR. ABRAMS: Yes.

8 MS. ROBESON: Mr. Landfair --

9 MR. LANDFAIR: Yes, ma'am. Where were we?

10 MS. ROBESON: -- you will get to speak. 58(d) --
 11 what did we -- I didn't write down what I called that. That
 12 is the Building Offset --

13 MR. LANDFAIR: Comparison.

14 MS. ROBESON: -- Comparison.

15 MR. LANDFAIR: Right.

16 MR. KNOPF: May I ask a clarification question
 17 before you start on the exhibits? We will be referring to a
 18 number of decisions by the Council; he's referring to these
 19 exhibits where he had approvals of various projects.

20 MS. ROBESON: Yes.

21 MR. KNOPF: It depends on the Hearing Examiner, do
 22 we need to actually make copies of those decisions and we
 23 can put them back in the record?

24 MS. ROBESON: No, but you may want to tell them
 25 what decisions you intend to rely on.

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1 MR. KNOPF: Sure. Okay. I just didn't want, you
 2 know, the --
 3 MS. ROBESON: No, I know.
 4 MR. KNOPF: -- there may be one sentence in a 50-
 5 page document --
 6 MS. ROBESON: And I don't want you to have to do
 7 that, either.
 8 MR. KNOPF: Okay. Thank you.
 9 MR. LANDFAIR: Okay. Moving on.
 10 MS. ROBESON: Moving on.
 11 MR. LANDFAIR: This exhibit attempts to show the
 12 relationship between each project, whether it's built or
 13 proposed, along Montgomery Lane to show the distance between
 14 the face of curb and the building phase of the various
 15 buildings to give some sense of how generous a streetscape
 16 we might end up with. And starting along the west with the
 17 Edgemoor at Arlington North, that was approved at roughly,
 18 or approximately 24 feet, again, measured from the face of
 19 curb to the building face. On the south side of Montgomery
 20 Lane for Edgemoor at Arlington that was built at
 21 approximately 22 feet from curb to building face.
 22 Moving east with City Homes, those measure
 23 approximately 26 feet from face of curb to building face.
 24 And then moving directly opposite to the high-rise Edgemoor,
 25 that measures approximately 24 feet from face of curb to

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1 building face, but it's important to note that from the face
 2 of curb to steps which then lead up to the main entrance of
 3 the Edgemoor high-rise it's about eight feet. And then the
 4 most recent project approved, the Sandy Spring building,
 5 that was approved at 18 and a half feet from face of curb to
 6 building face.
 7 Compare these distances with what we are
 8 proposing, which is approximately 26 feet from face of curb
 9 to building face, which will allow, again, generous
 10 streetscape in conformance with the Bethesda Streetscape
 11 Guidelines.
 12 MS. HARRIS: Mr. Landfair, I know you're going to
 13 get into this later in your testimony, but can you briefly,
 14 so that it will be easier to link this information to when
 15 you get to it later, can you briefly explain why, what the
 16 relevance of the distance is, please?
 17 MR. LANDFAIR: In terms of?
 18 MS. HARRIS: Why is that an issue? Why are we
 19 even identifying that information?
 20 MR. LANDFAIR: In terms of how it relates to the
 21 mixed use streets, or --
 22 MS. HARRIS: No, in how it related to the concerns
 23 about pushing the building back.
 24 MR. LANDFAIR: Yes. In part it's a question of
 25 compatibility and the relationship of the building,

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1 particularly given its height to the street to passersby, to
 2 people driving by, and we believe that, again, what we are
 3 showing is not only comparable, but actually exceeds what is
 4 provided on the street, that we are providing sufficient
 5 setback to achieve the compatibility that we will have, or
 6 we need for this building, which along the front facade
 7 rises up 50 feet from the ground plane.
 8 MS. HARRIS: Okay. Thank you. Thank you. Now
 9 we're going to get into a number of questions having to do
 10 with the Development Plan requirements and compliance with
 11 the Sector Plan.
 12 As you know, in the TS-R Zone the Council needs to
 13 approve not only the Local Map Amendment, but also the
 14 Development Plan, and make specific findings in connection
 15 with the application as set forth in Section 59-D-1.61.
 16 Have you had an opportunity to review these criteria and
 17 evaluate the Development Plan under these criteria?
 18 MR. LANDFAIR: Yes.
 19 MS. HARRIS: With regard to the specific findings,
 20 59-D-1.61(a) requires the proposed Development Plan to be in
 21 substantial compliance with the use and density indicated on
 22 the Sector Plan and not conflict with the general plan,
 23 capital improvement program, or other applicable County
 24 plans and policies. Have you had an opportunity to review
 25 the plan in this context?

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1 MR. LANDFAIR: Yes. The Sector Plan recommends
 2 the TS-R Zone for this property, and of course, that's what
 3 we're seeking. The Sector Plan also recommends residential
 4 development for this area. The major thrust of the Sector
 5 Plan is to promote high density. The first sentence in the
 6 plan on page 80 under recommendations says provide
 7 incentives for, and remove barriers to achieving high
 8 density housing. The objective provisions of the Sector
 9 Plan also makes reference to providing incentives and
 10 removing barriers for high density housing. This
 11 overarching objective was noted also by the Planning Board
 12 during their review of the application.
 13 Because of this, the Sector Plan recommends a
 14 minimum of not less than 45 dwelling units to the acre.
 15 This minimum requirement is unusual in Sector Plans. In
 16 promoting high density the Sector Plan estimates what this
 17 would be, about 100 dwelling units to the acre. This 100
 18 dwelling units to the acre was an estimate, not a
 19 recommendation. The Sector Plan notes the potential for the
 20 full 2.5 F-A-R permitted by the zone on the property.
 21 The total project provides 3.05 F-A-R, and other
 22 projects in the TS-R Zone which have provided 15 percent
 23 MPDUs, and 3.05 F-A-R have been determined to be
 24 substantially in compliance with the Sector Plan. And I
 25 refer you to Hampden Lane and 4901 Hampden Lane.

1 With regard to other County plans and policies the
2 development promotes the most important County housing
3 policies of having residential land use near Metro and
4 providing for MPDUs. The project is specifically consistent
5 with the pending 2012 Housing Policy, which seeks to
6 increase the number of affordable units, support development
7 of new housing, especially in transit oriented areas,
8 encourage housing development of varying types and price
9 ranges, and recognize the greatest need is for more rental
10 housing. Assess the potential for higher density
11 residential development, especially in transit serviceable
12 areas, reduce disincentives that limit the development of
13 affordable dwelling units, and increase the incentives for
14 production of MPDUs above the statutory requirements, the
15 minimum requirements.

16 MS. HARRIS: And while the, I believe the Hearing
17 Examiner can take judicial notice of that Housing Policy.
18 We do have a copy of it that we'll submit for the record.

19 MS. ROBESON: That would be good. Why don't we do
20 that. This is the Housing Amendment to the General Plan, is
21 that what you're reading from, or --

22 MS. HARRIS: It is the, and it's actually --

23 MS. ROBESON: Housing Element of the General Plan,
24 I think they called it.

25 MS. HARRIS: It was the 2012 Housing Policy.

1 MS. ROBESON: 2012. Then I would like it in the
2 record because --

3 MS. HARRIS: Okay.

4 MS. ROBESON: -- I'm not, I don't know where it's
5 published or anything.

6 MS. HARRIS: And actually, we would note, and I
7 think Mr. Landfair referenced this, but this says the 2012
8 Housing Policy, it was introduced in November, and it has
9 not been finally approved by the Council, but there have
10 been hearings on it.

11 MS. ROBESON: All right. Well, I anticipate -- I
12 hear Mr. Knopf's sigh because it hasn't been approved.

13 MR. KNOPF: Well, I'm also sighing because I hope
14 we get a copy, also.

15 MS. HARRIS: Here, I'll relieve your sighs.

16 MR. KNOPF: Well, that's very good. Mr. Abrams
17 may want one, also.

18 MS. ROBESON: What level is it at?

19 MS. HARRIS: There is public --

20 MS. ROBESON: Who prepared it, I guess?

21 MS. HARRIS: It was, the Planning Board approved
22 it, and sent it to the Council, the Council had hearings on
23 it, and I need to double check, but I believe the PHED
24 Committee has held hearings on it.

25 MR. KNOPF: It says on the bottom that the PHED

1 Committee will hold, schedule work sessions in 2013.
2 January.

3 MS. ROBESON: Well, it is a public record, so the
4 foundation, you know, I can, I'll let it in for the weight
5 it deserves with the understanding, as you know, that this
6 is far from a final document.

7 MS. HARRIS: Correct. And actually, one of the
8 things that we will be doing and we'll provide it in advance
9 of Tuesday is submitting the prior Housing Policy, which
10 indicates similar types of objectives.

11 MR. ABRAMS: Is this going to be an exhibit?

12 MS. ROBESON: Yes, 59. I guess, and my question,
13 but I don't want Ms. Harris to answer, I'd like a witness to
14 answer, is what's the difference between this and the
15 housing element of the general plan? Because we have a
16 housing element of the general plan, so what is the
17 relationship of this policy to the housing element? If you
18 can, it's just a question because, you know, legally I know
19 what impact the housing element of the general plan has on a
20 zoning case, so that's my question.

21 MR. LANDFAIR: Right.

22 MS. ROBESON: Now, I'm going to mark it because I,
23 you know, it is a, it's public record, I'm going to mark it
24 as 59, and it's really a staff packet on the housing policy,
25 so I'm going to say Staff Packet dated November 13th, 2012

1 on 2012 Housing Policy.

2 (DPA 13-01 Exhibit No. 59 was
3 marked for identification.)

4 MS. ROBESON: All right. Thank you.

5 MS. HARRIS: Can you please discuss other
6 recommendations of the Zoning Ordinance, other than the use
7 and density provisions?

8 MR. LANDFAIR: Well, the Zoning Ordinance requires
9 substantial compliance with use and density. The Sector
10 Plan also sets forth a number of other recommendations. As
11 noted, these are not mandates, but recommendations. I'll
12 review these now in the context of our project, as well as
13 how it relates to City Homes and the high-rise Edgemoor.

14 MS. HARRIS: I think it may helpful to --

15 MR. LANDFAIR: Sure.

16 MS. HARRIS: -- grab --

17 MR. LANDFAIR: Yes.

18 MS. HARRIS: -- an exhibit. We have prepared an
19 exhibit which just extrapolates the various conditions that
20 were set forth in the Sector Plan onto one sheet so we could
21 walk through them easily.

22 MS. ROBESON: Okay.

23 MS. HARRIS: But we will submit that as an
24 exhibit, as well.

25 MS. ROBESON: Exhibit 60.

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1 MS. HARRIS: Sixty, and we can entitle that Sector
2 Plan Comparison.
3 (DPA 13-01 Exhibit No. 60 was
4 marked for identification.)
5 (Discussion off the record.)
6 MS. HARRIS: Excuse us one moment.
7 MS. ROBESON: Sure. Ms. Harris, how much longer
8 do you expect Mr. Landfair to take?
9 MS. HARRIS: I was going to ask you that about
10 three questions ago.
11 MS. ROBESON: I know. I'm not like Mr. Grossman
12 who can wait till 3 o'clock, I can't.
13 MS. HARRIS: No. Actually, he could --
14 MS. ROBESON: Why don't we --
15 MS. HARRIS: -- after, either before or after this
16 question may be a good time to break.
17 MS. ROBESON: How about before?
18 MS. HARRIS: Perfect.
19 MS. ROBESON: Let's take one hour, well, let's
20 take till 2:30, that should give you enough time to pull
21 your exhibits, and we'll be back at 2:30.
22 MR. ABRAMS: Can we leave everything as is?
23 MS. ROBESON: You may.
24 MR. KNOFF: Nobody wants this, nobody will
25 steal it.

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1 MS. ROBESON: I don't know if, frankly, I don't
2 know if the door locks or not, but you're welcome to leave
3 them here.
4 (Whereupon, at 1:19 p.m., a brief recess was
5 taken.)
6 MS. ROBESON: We are back on the record. Before
7 we begin with Mr. Landfair, now that I have been fortified
8 with food, I did want to say one thing about proceeding
9 forward on the case. I was willing to push through when I
10 thought that the only changes were to the Development Plan,
11 but now it appears that there's a number of exhibits that
12 the parties may or may not have copies of, I don't have
13 copies of, and I guess why weren't these changes filed with
14 our office, or given to the parties in advance of the
15 hearing?
16 MS. HARRIS: As I explained before, the changes
17 were made in response to what we heard at the Planning
18 Board, which was --
19 MS. ROBESON: Okay. That's right.
20 MS. HARRIS: -- December 20th. So, actually, the
21 Development Plan Amendment literally, VIKA e-mailed it to
22 me, and I ran downstairs to the printer of the printing
23 office --
24 MS. ROBESON: Yes.
25 MS. HARRIS: -- in the basement of our building,

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1 got it, and headed over to Mr. Abrams. So, it was hot off
2 the press.
3 MS. ROBESON: Okay.
4 MS. HARRIS: We shared it as soon as we had it.
5 MS. ROBESON: Okay. Just in terms of proceeding
6 further, in fairness to, I know that you've done everything
7 you could, in fairness to the other parties I think it's
8 going to be really difficult to continue beyond Mr.
9 Landfair's direct testimony because they haven't seen those
10 changes, I haven't seen those changes, and, you know, I
11 don't know if I'm supposed to have questions or not, but
12 sometimes I do. So, I am concerned, how many more exhibits
13 are you intending to present through Mr. Landfair?
14 (Discussion off the record.)
15 MS. HARRIS: Give me one moment, please.
16 (Discussion off the record.)
17 MS. HARRIS: Four. And I would note that the rest
18 of them were presented at the Planning Board in our
19 presentation.
20 MS. ROBESON: The balance of the four?
21 MS. HARRIS: Yes.
22 MS. ROBESON: Okay.
23 MS. HARRIS: Except, and in fact, I think that one
24 was, as well. And it was submitted to the record of the
25 Planning Board.

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1 MS. ROBESON: Okay. Have --
2 MS. HARRIS: Such as it --
3 MS. ROBESON: Have you had the opportunity to --
4 MR. ABRAMS: I have not seen that exhibit before.
5 I was at the Planning Board hearing and I don't believe that
6 was given to the Planning Board. I mean, that's a complete
7 shock to me.
8 MS. ROBESON: All right. Okay. And I guess my
9 thought in --
10 MS. HARRIS: May I --
11 MS. ROBESON: Yes.
12 MS. HARRIS: -- make one other comment? As I
13 noted, what that exhibit is, is simply the Sector Plan
14 recommendations pulled out and put on a sheet, so it's not
15 like there's any great secrets on that exhibit.
16 MS. ROBESON: What, this one here?
17 MS. HARRIS: The exhibit to the left, it says
18 Sector Plan Recommendations, and it lists them on the left,
19 and then it goes through a comparison of how, how each
20 project relates.
21 MS. ROBESON: Okay. Is this one in evidence yet,
22 because I thought --
23 MS. HARRIS: No, I think that's where we --
24 MS. ROBESON: -- that was --
25 MS. HARRIS: -- that's where we broke. That's

1 where we took the break.
 2 MS. ROBESON: Okay. All right. I guess my
 3 concern is this, I'm willing to finish Mr. Landfair's
 4 testimony, the other consideration I'm concerned about, I
 5 don't have anything from the Planning Board on this revised
 6 plan, or Technical Staff, either one. And what I am going
 7 to do is I'll post, or continue this to Tuesday, January 15,
 8 but on Tuesday I would like to meet solely to set a
 9 schedule, and the schedule can include hearing, you know,
 10 future hearings and exchange of exhibits, because part of my
 11 responsibility is to develop a record, and it's quite
 12 confusing to reserve cross-examination, you know, to a time
 13 unknown. And so, I am going to reconvene, I looked at the
 14 statement of justification and it is very general, but I do
 15 think I would at least before hearing all the testimony and
 16 then having to go back and compare Technical Staff's
 17 comments, I think it's more efficient to simply wait for
 18 Technical Staff's comments. So, what I'm going to do is
 19 continue the case to January 15th, but on the 15th you don't
 20 need to bring your witnesses because all we're going to do
 21 is schedule the future, you do need to bring your calendar,
 22 and you do need to have contacted for the citizen
 23 representatives, you do need to have contacted your clients
 24 and have some hearing dates prepared. All right? And then
 25 we're going to set a scheduling order for the exchange of

1 exhibits, and we'll do it that way.
 2 With that being said, let's finish Mr. Landfair's
 3 testimony. You can, Mr. Knopf and Mr. Abrams, you may
 4 object, but just so you know, I am going to let the exhibits
 5 in at the moment for the weight they deserve unless you have
 6 some question as to authenticity or something like that.
 7 MR. ABRAMS: Well, we would just like copies of --
 8 MS. ROBESON: I understand that. And I am --
 9 MR. ABRAMS: -- what's on the board.
 10 MS. ROBESON: -- asking the Applicant, I've
 11 already asked them to provide you with everything -- yes?
 12 MS. HARRIS: I'm sorry. Finish, and then I --
 13 MS. ROBESON: With everything that they have
 14 submitted. On Tuesday we can talk about if they want to
 15 make additional exhibits, you know, we'll have a schedule
 16 for that. All right?
 17 MR. ABRAMS: So, are they supposed to submit to us
 18 Exhibits 51 through 59?
 19 MS. ROBESON: Yes.
 20 MS. HARRIS: By Monday, as you said previously?
 21 MS. ROBESON: Yes, I keep saying tomorrow. I
 22 apologize. By Monday.
 23 MS. HARRIS: So Monday --
 24 MS. ROBESON: Close of business Monday.
 25 MR. ABRAMS: Well, okay.

1 MS. HARRIS: So, Monday by close of business we
 2 submit all additional exhibits that have been introduced
 3 into evidence.
 4 MS. ROBESON: Thus far, which is up to 59, and
 5 then whatever's submitted today, I'm not going to start
 6 cross-examination of Mr. Landfair today. All right? That's
 7 going to be at some future date.
 8 MR. ABRAMS: Okay. But if they submit it to us at
 9 5 o'clock on Monday we have until 9:30 the next morning --
 10 MS. HARRIS: No, you get -- no.
 11 MR. ABRAMS: -- to look at those exhibits, digest
 12 those, integrate it into cross-examination --
 13 MS. ROBESON: No. No.
 14 MR. ABRAMS: -- for Mr. Landfair?
 15 MS. ROBESON: I'm -- no. We're not doing cross-
 16 examination of Mr. Landfair on Tuesday.
 17 MR. ABRAMS: Okay.
 18 MS. ROBESON: What I'm saying is we're coming back
 19 Tuesday solely to do the scheduling in the case. At this
 20 point I can't postpone the case indefinitely because that
 21 will trigger re-advertising --
 22 MR. ABRAMS: Right.
 23 MS. ROBESON: -- and some minimum time frames, and
 24 I don't want to have to delay the case that much.
 25 MR. ABRAMS: No, I understand. I misunderstood.

1 MR. KNOPF: Assuming, which usually happens, that
 2 by the close of business it will be one minute before the
 3 close of business we get it, maybe could we schedule Tuesday
 4 not right at 9:30 to give us a chance to look at these --
 5 MR. ABRAMS: Well, no, Norman, they're not doing
 6 any cross-examination.
 7 MR. KNOPF: I know not cross-examination, but at
 8 least we'd have a better feel for what's involved rather
 9 than meeting with you right at 9:30 in the morning.
 10 MS. HARRIS: It has nothing to do with the
 11 scheduling of the rest of the case, I don't think.
 12 MS. ROBESON: Wait, just a second. Just a second,
 13 please. I'm not sure I understand your point.
 14 MR. KNOPF: Well, I'm not sure what other exhibits
 15 we're going to get, and that might have a bearing on how
 16 long we think everything's going to go, and when we have to
 17 reply with our exhibits because you want to set up a
 18 schedule.
 19 MS. ROBESON: Well, we'll talk, we can talk about
 20 what additional exhibits you're going to get on Tuesday.
 21 MR. KNOPF: I thought they had to give us the
 22 additional --
 23 MS. ROBESON: No, what I'm saying is --
 24 MR. KNOPF: I'm sorry. I'm sorry.
 25 MS. ROBESON: -- that they have to give you what's

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1 submitted today --
2 MR. KNOFF: Today. I apologize.
3 MS. ROBESON: -- by close of business Monday. I
4 think I finally got that right. And --
5 MR. KNOFF: I understand.
6 MS. ROBESON: Okay. So, with that, yes --
7 MS. HARRIS: One last question.
8 MS. ROBESON: -- Ms. Harris? Yes?
9 MS. HARRIS: My apologies. For instance, Exhibit
10 51 that you see there, which is two by three in size, I
11 mean, right now at least Mr. Knopf has 11 by 17s of the
12 exhibits. It would seem to me that but for the Development
13 Plan that that size is acceptable? I just want to make sure
14 that we understand --
15 MS. ROBESON: I'm not saying it has to be the same
16 size.
17 MS. HARRIS: Okay.
18 MS. ROBESON: I'm simply saying that --
19 MS. HARRIS: Okay.
20 MS. ROBESON: -- it has to be readable copies.
21 MS. HARRIS: Certainly. Of course. Yes, thank
22 you.
23 MS. ROBESON: Okay.
24 MS. HARRIS: I also don't think other people's
25 mics are back on.

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1 MS. ROBESON: Everyone turn your mics on, please,
2 or I get in big trouble. All right.
3 MR. ABRAMS: Okay.
4 MS. ROBESON: With that we're going to go back to
5 Mr. Landfair, and we're going to continue with the
6 comparison of the Sector Plan requirements.
7 MR. LANDFAIR: Well, actually, before I do that I
8 just want to turn back to the Development Plan for just one
9 moment to clarify, if you will. I omitted one change
10 that --
11 MS. ROBESON: Okay. And that exhibit is 52.
12 MR. LANDFAIR: Exhibit 52. Correct.
13 (Discussion off the record.)
14 MR. LANDFAIR: Very simply, the western facade of
15 the building which is set back on the western property line
16 has been set back continuously 15 feet. Well, more recently
17 when we made changes to the public use space to find some
18 space, make allowances for the fact that we were losing some
19 of the building footprint elsewhere we actually pushed three
20 feet of the building, or a portion of it closer to the
21 property line. So, there is a segment of the building, I
22 can scale it off right now, about 50 feet long, which
23 instead of being set back 15 feet is set back 12 feet from
24 the western property line.
25 MS. ROBESON: Okay.

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1 MR. LANDFAIR: Okay?
2 MS. ROBESON: Thank you for the clarification.
3 MR. LANDFAIR: So, I just wanted to make that
4 clarification.
5 MS. ROBESON: Instead of 15 feet it's 12?
6 MR. LANDFAIR: Instead of 15 feet.
7 MR. WEINBRAUB: We couldn't see from here, so --
8 MR. LANDFAIR: I'm sorry.
9 MS. ROBESON: He's walking -- for the people in
10 the back, if you can move forward, because he's walking a
11 fine line between letting me see it and letting you see it.
12 So, we're trying to accommodate both.
13 MR. LANDFAIR: Well, here's the front of the
14 building, and here's the west property line. Previously
15 we've held to a continuous setback of 15 feet along here,
16 there is now a segment of the building about 15 feet long --
17 MR. WEINTRAUB: So, it's the segment of the
18 building closest to Montgomery Lane?
19 MR. LANDFAIR: Correct, by another three feet.
20 Okay. I now would like to turn back to the Sector Plan
21 recommendations, and it's a very simple matrix that we
22 produced to compare our property with the high-rise
23 Edgemoor, and the City Homes, and it takes a look at seven
24 or eight different criteria that are recommended in the
25 Sector Plan, and we note what each project did or did not do

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1 in terms of that criteria.
2 MR. ABRAMS: Excuse me. Is this --
3 MR. LANDFAIR: Yes?
4 MR. ABRAMS: -- Exhibit 60?
5 MR. LANDFAIR: I'm sorry?
6 MS. HARRIS: I don't think that it --
7 MS. ROBESON: Yes. Comparison of, or Sector Plan
8 Comparison, I think, is what I --
9 MS. HARRIS: Correct.
10 MR. KNOFF: What's the number in the right hand
11 corner?
12 MR. LANDFAIR: 08.
13 MR. KNOFF: Out of the five.
14 MS. ROBESON: Is that in this book?
15 MR. LANDFAIR: It should be. Yes.
16 MS. ROBESON: Okay. I see it as -- oh, no, that's
17 not it.
18 MS. HARRIS: The heading says SJG Sector Plan
19 Recommendation.
20 MS. ROBESON: I see it. It is at 08, yes. Okay.
21 So, this is 60. Okay.
22 MR. LANDFAIR: So, the first criterion that was
23 noted in the Sector Plan for all three properties is low
24 rise development. Well, clearly, the high-rise Edgemoor
25 doesn't qualify as low rise; City Homes, certainly; and we

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1 believe our property does, as well. High density, we
2 believe the high-rise Edgemoor despite its overall size, it
3 only has 52 units, and so we don't believe it qualifies as
4 high density, per se, nor City Homes, but we believe our
5 density does qualify as high density.
6 Does it appear to be townhouses? Well, clearly
7 the high-rise Edgemoor, no; City Homes, I do qualify that
8 when it says appear to be townhouses with three to six
9 floors with units on every level. Well, that's not the case
10 with City Homes, although otherwise clearly they look like
11 townhouses. We do not have a townhouse type structure, so
12 we don't necessarily meet that criteria.
13 Minimum of 45 dwelling units to the acre, yes,
14 certainly the high-rise Edgemoor does; City Homes, no; we
15 do. Publicly owned open space in front of the new
16 apartments, yes on all three counts, all three projects
17 provide for that. Parking located underground or in the
18 rear parking decks, high-rise Edgemoor, yes, they have
19 underground parking; City Homes, no, they provide their
20 parking in garages; yes, we do have underground parking.
21 Continuous building lines, certainly all three projects
22 provide for a continuous building line. Higher building
23 coverage, yes, the Edgemoor provides for that; City Homes,
24 no; we believe we do.
25 Design the roof tops to achieve a residential

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1 image, meaning hip, gable roof, turrets, varied roof line,
2 yes, certainly the high-rise Edgemoor does; City Homes
3 likewise; I'd have to say no, we do not. Locate the
4 entrances where units are on the first floor.
5 MS. ROBESON: Please, please.
6 UNIDENTIFIED SPEAKER: I turned it off.
7 MS. ROBESON: Thank you. It interferes actually
8 with the recorder.
9 UNIDENTIFIED SPEAKER: I perfectly understand
10 that. I'm embarrassed that it rang.
11 MR. LANDFAIR: Locate entrances where units are on
12 the first floor, what they mean by that is direct entrances
13 into the units. No, none of the projects necessarily
14 provide for that.
15 So, we actually established a scoring system, and
16 high-rise Edgemoor based on all these elements came in with
17 a six; City Homes a four; and our project we scored a seven.
18 MS. HARRIS: Mr. Landfair, can you please, you
19 previously testified that, and I had noted that the Zoning
20 Ordinance requires strict compliance with the use and the
21 density.
22 MR. LANDFAIR: Yes.
23 MS. HARRIS: It doesn't provide strict compliance
24 with these other recommendations, so can you and --
25 MR. LANDFAIR: Correct.

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1 MS. HARRIS: -- and obviously some of the projects
2 don't comply, none of the projects comply with all of those
3 recommendations --
4 MR. LANDFAIR: Right. Right.
5 MS. HARRIS: Can you shed some light on that?
6 MR. LANDFAIR: Sure. I mean, there's clearly not
7 that expectation. With building height, for example, the
8 expectation is that there will be some flexibility, that the
9 Planning Board through the site plan review process will
10 make findings with respect to that. There are other
11 criteria, though, where that's not necessarily the case
12 where there needs to be more strict adherence to the
13 findings. But we believe that with respect to that criteria
14 that you really do need to make a strong case for that we do
15 meet all the elements, all the criteria that is necessary in
16 terms of the Sector Plan conformance.
17 MS. HARRIS: Thank you. You'll hear from the
18 opponents, and their letters have indicated significant
19 emphasis on the illustrative drawing which appears on page
20 84 of the Sector Plan, can you please comment on this?
21 MR. LANDFAIR: Certainly. The illustrative
22 drawing on page 84 shows flat roofs along the south side of
23 Montgomery Lane.
24 MS. ROBESON: On the south side?
25 MR. LANDFAIR: Along the south side.

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1 MS. ROBESON: Okay.
2 MR. LANDFAIR: Yes. With a turret and pitched
3 roofs on the north side. This drawing is an illustrative
4 drawing, and therefore there is no requirement to follow it
5 exactly, or for the south side and north sides of Montgomery
6 Lane to read exactly as the picture depicts. Nonetheless,
7 we would note that the existing City Homes more closely
8 resemble the design on the north side of the street that's
9 shown in this figure, while the projects on the north side
10 of the street, except for the high-rise Edgemoor with its
11 100-foot height, resemble those depicted along the south
12 side. City Homes actually requested flat roofs as part of
13 their original submittal, of course, they ended up with
14 pitched roofs.
15 MS. HARRIS: Excuse me, was it, I want to clarify
16 that point, was it that the City Homes requested that the
17 subject be a flat roof? That the existing application have
18 a flat roof?
19 MR. LANDFAIR: With their original application, I
20 believe that they had requested a flat roof.
21 MS. HARRIS: Okay. Okay.
22 MR. LANDFAIR: The approved Edgemoor at Arlington
23 North and the project located at 4825 Montgomery Lane both
24 have flat roofs like the buildings on the south side of the
25 street. The proposed design of the subject building has a

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1 flat roof, as well, but also incorporates the modernized
2 corner treatment of the building, as will be further
3 discussed by the architect in their testimony.
4 MS. HARRIS: There's a provision in the Sector
5 Plan that deals with the age of sector plans and how these
6 general recommendations should be treated, can you comment
7 on that?
8 MR. LANDFAIR: Yes. This language is found on
9 page VII in the Sector Plan, and it states the specifics of
10 master plan may become less relevant as time goes on. The
11 Sector Plan is currently about 18 years old, certain
12 recommendations lose their relevance, especially those that
13 are design-related. And again, our architects will speak
14 more directly to that.
15 MS. HARRIS: Okay. And I just want to clarify one
16 thing that you said having to do with the flat roofs, and I
17 don't know that you were at the meeting, and it was the
18 second meeting with the City Homes folks where they
19 requested that our application, the subject application come
20 in with a flat roof, were you aware of that?
21 MR. LANDFAIR: No, I was not.
22 MS. HARRIS: Okay. For the record, I wanted to
23 clarify that that was the point that was intended. Thank
24 you. Page 180 of the Sector Plan identifies Montgomery Lane
25 as a mixed use street, and I am sure when the opposition has

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1 their chance for their direct testimony you'll hear lots
2 about that, can you please discuss this?
3 MR. LANDFAIR: Certainly. The Sector Plan
4 classifies Montgomery Lane as a mixed use street, which
5 means that it should have appropriate pedestrian oriented
6 improvements. The project appropriately, we believe, is
7 providing for such improvements, including wider sidewalks
8 and frontage improvements. This activity will make for a
9 more positive pedestrian experience up and down Montgomery
10 Lane. Page 189 of the Sector Plan says that the mixed use
11 street, mixed street emphasis pedestrian circulation while
12 allowing for limited slow vehicle traffic. As such, these
13 streets should be developed with streetscape elements,
14 including trees, plantings, special parking and furniture,
15 much like we will provide as recommended to the Bethesda
16 Streetscape Guidelines.
17 The proposed plan is to extend the existing
18 streetscape improvements to the Montgomery Lane/West Lane
19 frontage of the property, and perhaps now is the time to
20 introduce another exhibit, if I may?
21 MS. ROBESON: And this would be 61? And that
22 would be -- hold on. You know, I had that.
23 MS. HARRIS: It's in the -- it was in -- yes.
24 MS. ROBESON: Fifty-eight, is it in 58(b)? Is
25 that -- wait. Mr. Landfair, is that already in the record

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1 as 58(b)?
2 MS. HARRIS: Yes.
3 MR. LANDFAIR: Is it?
4 MS. HARRIS: Yes. Because we put it --
5 MR. LANDFAIR: Okay. So, I'll note it as 58(b).
6 MS. HARRIS: Yes.
7 MS. ROBESON: Okay. It's the rendered site plan.
8 MR. LANDFAIR: This drawing basically conveys what
9 we're trying to achieve along Montgomery Lane, and for that
10 matter West Lane. We are proposing, again, streetscape
11 improvements consistent with the Bethesda Streetscape
12 Guidelines, and these will include street trees, and
13 ornamental trees, hardscape, lighting, street furniture,
14 bicycle racks and such. But also notably we are providing a
15 small pocket park with a focal point at the corner, which we
16 think will help, again, to contribute to this mixed street
17 environment that we already have along Montgomery Lane.
18 I also want to note that there's one other mixed
19 use street in Bethesda, as noted in the Sector Plan, this is
20 Fairmont Avenue, which is in a very different area of
21 Bethesda, the Woodmont Triangle, located between Norfolk
22 Avenue and Old Georgetown Road. I mention this street
23 because, again, it has a very different character than
24 Montgomery Lane, it's much more commercial, it has approved
25 development, in fact, one building is under construction now

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1 for 17 stories along the street. The point I'm trying to
2 make --
3 MS. ROBESON: On Woodmont? Or on Wisconsin?
4 MR. LANDFAIR: On Fairmont Avenue. I'm sorry.
5 MS. ROBESON: On Fairmont?
6 MR. LANDFAIR: Right. The point I'm making is
7 that a mixed street can have different types of character,
8 that it doesn't necessarily have to have a residential
9 character with a lower scale, it can have a different scale
10 and character to it.
11 MS. HARRIS: Mr. Landfair, I want to refer back to
12 an exhibit that you discussed prior to the lunch break,
13 which was 58(d), which was the exhibit that showed the
14 dimensions on it.
15 MR. LANDFAIR: Yes.
16 MS. HARRIS: And when you walked through that you
17 indicated, you were indicating the distance between back of
18 curb to the place of the building, and you --
19 MR. LANDFAIR: Yes.
20 MS. HARRIS: -- indicated that the subject project
21 actually is providing a greater width than any of the other
22 projects.
23 MR. LANDFAIR: Yes, that's correct.
24 MS. HARRIS: So, to the extent that the other
25 projects were required to provide a pedestrian friendly

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1 environment is providing a greater distance, though just by
 2 a couple of feet, but would that further that goal and meet
 3 that goal of providing a pedestrian friendly atmosphere?
 4 MR. LANDFAIR: It certainly helps. It contributes
 5 to it. I mean, there's other measures, as well. There's
 6 the quality of what will be installed within that
 7 streetscape and within that public use space area. However,
 8 the distance helps, as well, the setback that you are
 9 providing helps. And the fact that what we are providing is
 10 the same as or greater than most every other setback along
 11 the street. And again, when you're measuring from the face
 12 of curb to the building face I think it says something.
 13 MS. HARRIS: Thank you. Now, there are several
 14 letters in the record from the opponents that noted that
 15 given the existing, that the existing development did not
 16 comply with the Sector Plan, the Sector Plan should no
 17 longer be controlling guide to development. Can you please
 18 comment on this?
 19 MR. LANDFAIR: Yes. The Planning Board and
 20 District Council have consistently held that projects
 21 developed in a manner inconsistent with sector plans do not
 22 negate recommendations of those plans. If that were the
 23 case just one deviating project could undermine years of
 24 planning, so we would disagree with that vantage point.
 25 MS. HARRIS: Thank you. Please comment on the

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1 sector plan provision which appears on page 37, which
 2 provides, quote, new developments should respect established
 3 patterns of development.
 4 MR. LANDFAIR: The lead in to this urban design
 5 objective is important because it provides that more intense
 6 development should be located in the CBD. The provision
 7 refers to development existing at the time of the Sector
 8 Plan; we don't believe it refers necessarily to new
 9 development. The Sector Plan's recommendations were
 10 intended to promote compatibility with what was then the
 11 existing framework for the area.
 12 MS. HARRIS: Thank you.
 13 MS. ROBESON: Mr. Landfair, when, and if you can
 14 answer this, because I know we'll have other testimony, were
 15 the townhouse built, the City Homes, were they built before
 16 1994 --
 17 MR. LANDFAIR: No, I believe --
 18 MS. ROBESON: -- or after?
 19 MR. LANDFAIR: -- they were built after 1994.
 20 MS. ROBESON: So, they were --
 21 MR. LANDFAIR: They were built in phases; they
 22 weren't built all at one time. I think they were built in
 23 three phases --
 24 MS. ROBESON: Okay.
 25 MR. LANDFAIR: -- but they were I believe built

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1 after that time period.
 2 MS. ROBESON: Okay. All right.
 3 MS. HARRIS: One last question to sort of bring
 4 together the Sector Plan discussion that we've had, and that
 5 is can you comment and provide your expert opinion on the
 6 overall Sector Plan recommendations with respect to the
 7 residential uses?
 8 MR. LANDFAIR: Yes. There are three primary goals
 9 with respect to residential uses. Number one, encourage
 10 more units, more residential units in the Bethesda CBD.;
 11 number two, encourage smaller units; and number three,
 12 encourage affordable units. The Sector Plan notes starting
 13 on pages --
 14 MS. ROBESON: Wait, is that specified in the
 15 Sector Plan?
 16 MR. LANDFAIR: Yes.
 17 MS. ROBESON: Okay.
 18 MR. LANDFAIR: Yes.
 19 MS. ROBESON: What page is that?
 20 MR. LANDFAIR: Well, I will quote some pages here.
 21 MS. ROBESON: Okay.
 22 MR. LANDFAIR: But I can --
 23 MS. ROBESON: Go ahead.
 24 MR. LANDFAIR: Starting on pages 28 and 29 the
 25 Sector Plan notes the special efforts that are necessary to

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1 ensure that new units meet the needs of lower income
 2 households. Further, on page 29, the Sector Plan talks
 3 about market demand for higher quality rental housing. Also
 4 on the same page it talks about providing variety and choice
 5 in housing. On page 30 the Sector Plan makes reference to
 6 modifying County regulations and policies to improvement
 7 feasibility and attractiveness of higher density housing.
 8 The TS-R Zone was amended in 2004 to provide for exceeding
 9 the allowable density through the use of MPDUs consistent
 10 with that Sector Plan recommendation. Also on the same page
 11 the Sector Plan talks about promoting adequate supply of
 12 affordable housing. And finally, on page 80 the Sector Plan
 13 makes reference to providing incentives for and removing
 14 barriers to achieving high density housing in the TS-R
 15 district.
 16 Our conclusion is that this project is consistent
 17 with the recommendations of the Sector Plan as it applies to
 18 those housing policies.
 19 MS. HARRIS: Thank you. Now we're going to move
 20 on to the discussion of compatibility, which is one of the
 21 requirements.
 22 MS. ROBESON: Yes. Okay. I just have one other
 23 question.
 24 MR. LANDFAIR: Yes?
 25 MS. ROBESON: We've done a couple of applications

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1 in the plan, within the Sector Plan area, and I recall that
 2 there's almost like a do a don't as far as urban form, you
 3 know, do this, don't do this, have you looked at that in
 4 relation to this Sector Plan? It actually goes through and
 5 says well, you have to step back buildings like this, and
 6 don't do this, don't have a building like this, and --
 7 MS. HARRIS: I think our architect is prepared to
 8 discuss that.
 9 MS. ROBESON: Okay.
 10 MS. HARRIS: Sorry.
 11 MS. ROBESON: Oh, no. Fine. Go ahead.
 12 MS. HARRIS: Okay. Yes, we were going to get to
 13 that, but it's more in the architect's realm.
 14 MS. ROBESON: I just want to make sure it's
 15 covered --
 16 MS. HARRIS: Yes.
 17 MS. ROBESON: -- before we --
 18 MS. HARRIS: Okay.
 19 MS. ROBESON: -- leave the Sector Plan area.
 20 MS. HARRIS: Okay. In terms of compatibility,
 21 59-D-1.61(b) requires the proposed Development Plan to
 22 comply with the purposes, standards, and regulations of the
 23 TS-R Zone, and provides the maximum safety, convenience, and
 24 amenity of the residence, and is compatible with the
 25 adjacent development. Can you please comment on this, and

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1 how the project satisfies this requirement?
 2 MR. LANDFAIR: Yes. But before I do so I need to
 3 introduce another exhibit.
 4 MS. ROBESON: Okay. Well, it may be already in;
 5 hopefully it's already in the record. Okay. That, I think,
 6 is already marked as --
 7 MR. ABRAMS: It's part of Exhibit --
 8 MS. ROBESON: -- Building Offset Comparison.
 9 MR. ABRAMS: It's part of Exhibit 58.
 10 MS. ROBESON: Yes.
 11 MR. KNOFF: 59(d).
 12 MS. ROBESON: Okay, 58(d).
 13 MR. KNOFF: Does that look right?
 14 MS. ROBESON: Wait, I have -- oh. Oh, yes. Okay,
 15 you're right.
 16 MR. WEINTRAUB: I think they're looking for
 17 something.
 18 MS. ROBESON: Yes. What?
 19 MR. WEINTRAUB: They're looking for something now.
 20 MS. ROBESON: Wait. Okay. I'll let him explain
 21 it. Just for the record, people in the audience can't just
 22 jump in even though it sounds like we're talking to each
 23 other.
 24 MR. WEINTRAUB: All right. Okay. Thank you.
 25 MS. ROBESON: That is -- okay.

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1 MR. LANDFAIR: I think this is a new exhibit.
 2 MS. ROBESON: Okay. So, this would be 61.
 3 MR. LANDFAIR: Number 11 in the lower right
 4 corner.
 5 MR. KNOFF: I thought I saw that. This, isn't
 6 that 11?
 7 MS. HARRIS: You did because we previously gave
 8 you all the exhibits in that booklet.
 9 MS. ROBESON: Yes, it's not been --
 10 MR. KNOFF: This hasn't been marked.
 11 MS. ROBESON: Yes.
 12 MR. KNOFF: I'm sorry.
 13 MS. ROBESON: So, I'm sorry, what page is this on
 14 this?
 15 MR. KNOFF: This is 11.
 16 MR. ABRAMS: Eleven.
 17 MS. ROBESON: Okay. So, this will be 61, can you
 18 describe this.
 19 MR. KNOFF: Excuse me, is it 61 or 60?
 20 MS. ROBESON: I have 60 as the Sector Plan
 21 Comparison.
 22 MR. LANDFAIR: I would describe this as
 23 Architectural Sections.
 24 MS. ROBESON: Okay.
 25 MR. LANDFAIR: Or comparables.

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1 MS. ROBESON: So, this will be Architectural
 2 Section Comparisons.
 3 (DPA 13-01 Exhibit No. 61 was
 4 marked for identification.)
 5 MR. LANDFAIR: Section. That's fine. So, this
 6 will be again Exhibit number?
 7 MS. HARRIS: Sixty-one.
 8 MR. LANDFAIR: Sixty-one. The purpose of this
 9 exhibit is to compare the high-rise Edgemoor with City Homes
 10 as a cross section through Montgomery Lane, again, the same
 11 cross section from the recently approved Sandy Spring
 12 project through to the City Homes, and then finally our
 13 project through to City Homes, and I want to show the
 14 relationships. Clearly, in the first two examples there's
 15 already been a finding of compatibility, the relationship
 16 between Edgemoor, obviously a much higher building at 100
 17 feet with City Homes, which are 53 feet high to their ridge
 18 line; Sandy Spring, 65 feet, again, found compatible with
 19 the slightly shorter City Homes; and then our building which
 20 is coming in at 70 feet, and how it relates to the City
 21 Homes building.
 22 I think I mentioned it before but I'll note again
 23 that the distance from building face to building face is 70
 24 feet, coincidentally, between our building and City Homes.
 25 MS. HARRIS: Mr. Landfair, can you comment on the

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1 facade of the Sandy Spring building as it relates to the
2 facade of the subject building and the proposed setback and
3 then the distances that that presents --
4 MS. ROBESON: I'm sorry to interrupt. I cannot
5 get -- which one is the Sandy Spring?
6 MR. LANDFAIR: Sorry.
7 MS. ROBESON: The one right on the other side of
8 West, Montgomery Lane?
9 MR. LANDFAIR: Right. Just to reorient you again,
10 yes, it's on the east --
11 MS. ROBESON: I mean, on the West Lane?
12 MR. LANDFAIR: It's on the east side of West
13 Lane --
14 MS. ROBESON: Okay.
15 MR. LANDFAIR: -- directly opposite our building
16 here.
17 MS. ROBESON: Is Sandy Spring the builder, is that
18 why it's called that?
19 MR. LANDFAIR: Sandy Spring is the builder, and
20 they --
21 MS. ROBESON: Okay.
22 MR. LANDFAIR: -- don't really have a project
23 name, so I've --
24 MS. ROBESON: Okay.
25 MR. LANDFAIR: -- I've just been referring it, to

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1 it --
2 MS. ROBESON: Okay. I just --
3 MR. LANDFAIR: -- as the Sandy Spring project.
4 MS. ROBESON: All right. I've internalized it
5 now. Go ahead.
6 MR. LANDFAIR: This middle exhibit, this middle
7 section here is illustrating the relationship between their
8 building and the City Homes building, here. And we do have,
9 at the risk of entering into the record one more exhibit, we
10 do have an elevation that we can enter now or I can just
11 simply describe it for you, I don't necessarily need to
12 refer to the elevation, we can save it for the architect.
13 Pat?
14 MS. ROBESON: That's up to you?
15 MS. HARRIS: Of the Sandy Spring building?
16 MR. LANDFAIR: I believe so. Do we not?
17 MR. RADULESCU: Yes, we have an exhibit.
18 MS. HARRIS: No, I think, actually, I don't think
19 we need that included.
20 MR. LANDFAIR: That's fine. Okay. In short, the
21 Sandy Spring building is 65 feet in height, it is four
22 levels above a garage, actually, it's four garages that have
23 direct entrances off of West Lane. The building is
24 oriented, importantly, towards Montgomery Lane, in fact,
25 that was very key to Staff to have that orientation to help

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1 enliven Montgomery Lane; they did not see West Lane as doing
2 that. So, again, Sandy Spring is very clearly oriented
3 towards Montgomery Lane, and we've tried to do the same with
4 our building design.
5 MS. HARRIS: Can you comment on the distance
6 between Sandy Spring and City Homes versus the subject and
7 City Homes and how far back given the, at the upper stories
8 that our project is set back from City Homes?
9 MR. LANDFAIR: Sandy Spring is closer to the
10 street; it is approximately 19 feet from building face to
11 face of curb. So, City Homes holding the same relationship
12 to the street as they are directly opposite our building.
13 It places their building roughly seven or eight feet closer
14 to the City Homes building than we are. Now, I guess the
15 point I'm making here is that their building is only
16 marginally shorter than ours, five feet shorter than ours,
17 and yet they are seven or eight feet closer to the City
18 Homes buildings.
19 MS. ROBESON: Is the middle illustration the Sandy
20 Spring?
21 MR. LANDFAIR: Yes, the middle illustration here
22 is the Sandy Spring building relating to City Homes.
23 MS. ROBESON: Okay. And then the, this, the one
24 to the left is Edgemoor. I see.
25 MR. LANDFAIR: This is the Edgemoor.

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1 MS. ROBESON: SSB refers to Sandy Spring.
2 MR. LANDFAIR: Sandy Spring.
3 MS. ROBESON: I see.
4 MR. LANDFAIR: Right.
5 MS. ROBESON: Okay.
6 MR. ABRAMS: Madam Examiner, are those marked,
7 those buildings, as to who or what they are?
8 MS. ROBESON: They're, at the bottom it says SJG
9 Project City Homes --
10 MS. HARRIS: You have the copy of it, Stan.
11 MS. ROBESON: -- SSB --
12 MR. ABRAMS: I don't have a copy of that.
13 MS. HARRIS: Yes, you do.
14 MR. ABRAMS: Of this.
15 MR. LANDFAIR: As illustrated here again in this
16 section our building is also set back at the 50-foot height
17 mark, it set back roughly nine feet before going up again to
18 70 feet in height. So, that helps in terms of establishing
19 our compatibility with the City Homes across the street.
20 MS. ROBESON: Now, do you have an elevation for
21 the project at the northeast corner of the Arlington Road
22 and Montgomery Lane?
23 MR. LANDFAIR: This --
24 MS. ROBESON: Yes.
25 MR. LANDFAIR: We don't, actually. I don't think

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1 we do.
2 MS. ROBESON: Okay.
3 MS. HARRIS: I'm sorry, what was the question?
4 MS. ROBESON: I wondered if, to sort of add to
5 this if you had an elevation the same perspective --
6 MS. HARRIS: I think the reason that we didn't is
7 because on the south side of the street it's not across from
8 City Homes, so we were trying to show the relationship to
9 the City Homes.
10 MS. ROBESON: Between City Homes.
11 MS. HARRIS: Yes.
12 MS. ROBESON: Okay.
13 MS. HARRIS: Mr. Landfair, I want to go back to
14 the aerial just for one moment --
15 MR. LANDFAIR: Yes.
16 MS. HARRIS: -- because you've described the
17 relationship of the buildings on the north side of the
18 street to the buildings on the south side of the street, and
19 actually before you take that, so there's a part where
20 there's 70 feet between the two buildings.
21 MR. LANDFAIR: Yes.
22 MS. HARRIS: Can you comment before we go to that
23 other exhibit on the picture at the bottom right hand corner
24 of Exhibit 61, and what that shows?
25 MR. LANDFAIR: Yes, that's a picture that shows

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1 the relationship, as I mentioned before the way City Homes
2 is oriented they are in five rows, perpendicular to
3 Montgomery Lane, and they are located right on the southern
4 property line. And what you see here immediately adjacent
5 to them is the HOC building that was constructed along
6 Hampden Lane. And you can see that it is immediately
7 adjacent to the City Homes buildings and to their parking
8 area, their common area.
9 MS. ROBESON: And how many floors is the HOC
10 building?
11 MR. LANDFAIR: I'd have to verify for you. I
12 believe it's three, three floors, but --
13 UNIDENTIFIED SPEAKER: Four.
14 MS. ROBESON: No calling out. If you don't
15 know --
16 MR. LANDFAIR: I do not know for sure.
17 MS. HARRIS: Okay. Now what I'd like to do is go
18 to the aerial again because we're going to pick up on what
19 you just touched on.
20 MS. ROBESON: Is that Exhibit 51?
21 MS. HARRIS: Yes. Okay, so the relationship of
22 the Hampden Lane Associates project to the City Homes.
23 MR. LANDFAIR: Yes.
24 MS. HARRIS: What's the height of the Hampden Lane
25 project?

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1 MR. LANDFAIR: That height --
2 MS. HARRIS: At its max.
3 MR. LANDFAIR: It does step up from Arlington Road
4 as required by the Sector Plan, and I believe it steps up to
5 at least 70 feet.
6 MS. HARRIS: Okay. And what's the distance from
7 the north facade of the City Homes, from the Hampden Lane
8 Associates to the City Homes?
9 MR. LANDFAIR: Well, it will be immediately
10 adjacent to the City Homes, but as previously approved for
11 Hampden they were obliged to have courtyards on the upper
12 levels to provide for air and light for City Homes. So,
13 while they're building we'll be immediately adjacent to,
14 it's right on the common property line. They will have
15 courtyards that will help to provide air and light for the
16 common areas for City Homes.
17 MS. ROBESON: Are those step backs, are they
18 binding, or are they conceptual at this point?
19 MR. LANDFAIR: I believe they're binding.
20 MS. ROBESON: Okay. Well, if you know. If you
21 think you know. Whatever you want to say.
22 MS. HARRIS: Okay. So now --
23 MR. LANDFAIR: I'm making a professional guess.
24 MS. HARRIS: -- for a moment go back to the photo
25 again on the previous exhibit, please.

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1 MR. LANDFAIR: Yes.
2 MS. HARRIS: Okay. So, you indicated that the
3 Hampden Lane Associate's building is going to be contiguous
4 to the City Homes, so there you have the HOC picture
5 building in the background --
6 MR. LANDFAIR: Right.
7 MS. HARRIS: -- which is three or four stories --
8 MR. LANDFAIR: Right.
9 MS. HARRIS: -- we haven't determined that, and
10 the Hampden Lane Associates building which will be
11 contiguous is how tall?
12 MR. LANDFAIR: Well, at its tallest point --
13 MS. HARRIS: It's 70 feet?
14 MR. LANDFAIR: -- it'll be 70 feet --
15 MS. HARRIS: Okay.
16 MR. LANDFAIR: -- tall, but at the --
17 MS. HARRIS: Immediately adjacent.
18 MR. LANDFAIR: -- upper floors it will have
19 insets, it will have essentially --
20 MS. HARRIS: Okay.
21 MR. LANDFAIR: -- courtyards to allow for air and
22 light. But at least for the lower levels you will have a
23 similar arrangement to what the HOC building has as it
24 relates to the City Homes --
25 MS. HARRIS: So, in your opinion that design,

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1 which was clearly found to be compatible by the District
2 Council, if that is found to be, that was found to be
3 compatible, so if you refer to the top portion of this
4 exhibit which says sections with a 70-foot distance --
5 MR. LANDFAIR: Yes.
6 MS. HARRIS: -- between the two buildings what
7 would your impression be of that distance as it --
8 MR. LANDFAIR: I would say it's more than ample to
9 establish compatibility.
10 MS. ROBESON: Was the HOC a zoning case? The HOC
11 building, was that a zoning case --
12 MR. LANDFAIR: The HOC building --
13 MS. ROBESON: -- or was that the County building?
14 MR. LANDFAIR: Well, it was developed by the
15 County, but I believe the land and perhaps it was even
16 financed by the developers for the Edgemoor high-rise and
17 for City Place to make up for the lack of MPDUs. So, the
18 HOC housing, I believe, it's not MPDUs, per se, I believe
19 it's a transitional type housing, which was built in essence
20 to satisfy the MPDU requirements for the Edgemoor and for
21 City Place. I'm sorry, City Homes.
22 MS. ROBESON: Mister --
23 MR. KNOPF: Yes, I just want to say I found very
24 helpful, and the Hearing Examiner might find helpful in 02
25 of their submitted exhibit has an aerial with all the

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1 heights on it, and the buildings blocked in, I found it very
2 helpful when following what he was testifying about, and the
3 Hearing Examiner might find that helpful.
4 MR. ABRAMS: What exhibit number?
5 MR. LANDFAIR: No, I'm not. Are you referring to
6 this exhibit?
7 MR. KNOPF: Yes.
8 MS. ROBESON: X02.
9 MR. KNOPF: I don't know that that's an exhibit
10 yet, but it's in --
11 MS. ROBESON: It's not in the record.
12 MR. KNOPF: But it --
13 MR. ABRAMS: Well, it's in Mr. Landfair's Planning
14 Board, which has been submitted.
15 MR. KNOPF: No, but we have it --
16 MR. LANDFAIR: So, I think it's part of the record
17 as part of the land use report.
18 MS. ROBESON: Oh, it is?
19 MR. LANDFAIR: Yes.
20 MR. ABRAMS: Yes.
21 MS. ROBESON: Okay. All right.
22 MR. ABRAMS: It's one of the exhibits.
23 MS. HARRIS: So, right. So, that is already in
24 the record. So, that shows the contiguous nature of the
25 Hampden Lane Associations project, and the HOC building to

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1 the --
2 MR. LANDFAIR: Along with the courtyards that were
3 established to ensure --
4 MS. HARRIS: Right.
5 MR. LANDFAIR: -- compatibility with City Homes.
6 MS. HARRIS: Okay. Now, if we could go back for
7 just one moment to Exhibit 61, are you familiar with the
8 distance in the photo, the distance between the two City
9 Homes rows? And if you're not could you scale it on --
10 MR. LANDFAIR: I'm not.
11 MS. HARRIS: -- that other plan?
12 MR. LANDFAIR: So, let me use the scale.
13 MS. ROBESON: Is that the rear, does that picture
14 on 61, is that the rear of City townhouse --
15 MR. KNOPF: Yes.
16 MS. ROBESON: -- units facing each other?
17 MR. LANDFAIR: Yes.
18 MS. ROBESON: So, it's the alley?
19 MR. LANDFAIR: Yes. So, this is not, for example,
20 the front facade and this is the rear facade, they're both
21 rear oriented. Just under 40 feet.
22 MS. HARRIS: Okay. So, it's 40 feet, and I'm
23 assuming that the living spaces above the garages are, well,
24 they have windows, so presumably --
25 MR. LANDFAIR: And balconies.

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1 MS. HARRIS: -- and so it's living space above
2 that.
3 MR. LANDFAIR: Yes.
4 MS. HARRIS: And it's 40 feet distance between
5 those two structures, and what was the maximum height of the
6 City Homes project, again?
7 MR. LANDFAIR: Fifty-three feet.
8 MS. HARRIS: Okay. So, again, trying to establish
9 the relationship, and that was clearly found to be
10 compatible in the approval of the City Homes case.
11 MS. ROBESON: Well, I guess my question is on
12 those types of townhouses, the urban form of townhouses,
13 they generally have a little bit wider courtyard in exchange
14 for the narrower alleys. To your knowledge do they have a
15 wider front common area than the alleys?
16 MR. LANDFAIR: I don't believe so.
17 MS. HARRIS: Though you may want to refer to the
18 exhibit, the building height exhibit.
19 MR. LANDFAIR: Yes.
20 MR. KNOPF: And on the bottom --
21 MS. HARRIS: And try to scale that.
22 MR. LANDFAIR: Scale it?
23 MS. HARRIS: No. It's not to scale.
24 MS. ROBESON: All right. Well, we --
25 MS. HARRIS: We think we can, we can look at that.

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1 MS. ROBESON: -- can leave that. Yes.
 2 MR. KNOFF: But the Hearing Examiner, to answer
 3 your question, if you look at the photo on the bottom of
 4 whatever this, that's the front of the townhouse system,
 5 here's the back.
 6 MS. ROBESON: Okay. Yes, I see.
 7 MR. KNOFF: You were asking questions --
 8 MS. ROBESON: Yes.
 9 MR. KNOFF: -- to where there's other space. Yes.
 10 MR. LANDFAIR: The public areas, the areas that
 11 would be enjoyed as recreational space is clearly wider, but
 12 I will have to get back to you in terms of the actual width.
 13 MS. ROBESON: Okay.
 14 MS. HARRIS: And actually, I want to clarify the
 15 distance in the photo, and I think we have in one of our
 16 drawings I believe we can scale that because I believe Mr.
 17 Landfair was mistaken in the plans that he provided. So, if
 18 we could just take a moment to clarify that.
 19 (Discussion off the record.)
 20 MS. ROBESON: You know, we have a long way to go
 21 in this case, so if you wish we can defer an exact
 22 measurement to later.
 23 MS. HARRIS: Okay. Why don't we do that?
 24 MR. LANDFAIR: I think it's --
 25 MS. ROBESON: If that would help move things

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1 along.
 2 MR. LANDFAIR: Okay. It's going to be roughly 30
 3 feet for the alley, and about 40 feet for the common area,
 4 but we will confirm that for you later.
 5 MS. ROBESON: Okay.
 6 MS. HARRIS: Okay. So, just, and we'll provide
 7 the details later, but just to follow up on the point one
 8 last time. So, in the rears you have a relationship of
 9 about 30 feet with a height of 53. In the front you have a
 10 distance of 40 feet and a height of 53. And again, can you
 11 comment on that in terms of the relationship which is shown
 12 in the center section above?
 13 MR. LANDFAIR: Right. Again, there was a finding
 14 of compatibility with those distances, we are exceeding
 15 those distances in terms of the relationships between our
 16 building and their building, and that doesn't even include
 17 the setback, the 50-foot height mark for our building where
 18 it's set back another nine feet before it goes up to the 70-
 19 foot mark. So, we believe in terms of that relationship
 20 with City Homes we do have a compatibility finding.
 21 MS. HARRIS: Thank you. Now, can we focus on the
 22 compatibility with our neighbor to the northwest, which
 23 would be the Villages of Bethesda?
 24 MR. LANDFAIR: Sure. And I think we may have our
 25 last exhibit to --

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1 MS. ROBESON: Okay.
 2 MR. LANDFAIR: -- enter into the record.
 3 MS. HARRIS: That's not true, but that's okay.
 4 MS. ROBESON: Okay.
 5 MS. HARRIS: There are just one or two more.
 6 MS. ROBESON: I'll let you be the judge of that --
 7 MS. HARRIS: Thank you.
 8 MS. ROBESON: -- Ms. Harris, how many, when he's
 9 finished. Now, I've seen that somewhere.
 10 MR. KNOFF: Yes.
 11 MS. ROBESON: I think it's in the booklet.
 12 MS. HARRIS: So, when are --
 13 MS. ROBESON: Twelve?
 14 MR. KNOFF: Look in another number?
 15 MS. ROBESON: Yes, that'll be 62, and how would
 16 you describe this?
 17 MS. HARRIS: Photo of the south facade of Village
 18 of Bethesda.
 19 MS. ROBESON: Okay. South facade Village of
 20 Bethesda, and that was 62.
 21 MS. HARRIS: Sixty-two, right.
 22 (DPA 13-01 Exhibit No. 62 was
 23 marked for identification.)
 24 MR. LANDFAIR: So, this is, I'm sorry, Exhibit --
 25 MS. ROBESON: Sixty-two.

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1 MR. LANDFAIR: -- 62? Okay. This is a photograph
 2 taken from our property looking due north to the Villages of
 3 Bethesda, which as I had previously mentioned are townhomes
 4 that are actually built up on top of a podium that allows
 5 for parking to be located below grade, and it works very
 6 well, but it does raise their units up higher than perhaps
 7 they otherwise ordinarily would be. So, this is the
 8 impression that we have, and this is what needs to be
 9 mitigated on our side of the property.
 10 The next exhibit that we have here, which I guess
 11 we do need to enter into --
 12 MS. HARRIS: That's actually in the record --
 13 MR. LANDFAIR: Sorry.
 14 MS. HARRIS: -- as 58(c).
 15 MR. KNOFF: 58(c).
 16 MR. ABRAMS: B or C?
 17 MS. HARRIS: C.
 18 MR. ABRAMS: C. Okay.
 19 MR. LANDFAIR: This I think is a useful exhibit
 20 for comparing the previous Holiday plan with our plan, in
 21 other words, the plan that was approved three and a half
 22 years ago, four years ago now with what we are showing.
 23 Yes, our building is a little higher, but in terms of the
 24 relationships with the Villages of Bethesda we are showing
 25 now substantially greater setbacks, where previously with

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1 the Holiday plan the entrance to the garage actually was
2 right on the common property line. Yes, you did have a
3 setback in the northwest corner of the property, in fact,
4 that was part of the private amenity area, so that helped to
5 establish some of that compatibility with them in the
6 original plan.
7 We have increased -- we now have a true buffer
8 here, whereas previously we had just the driveway into the
9 garage, we now have 15 feet continuously along the property
10 line. You may remember that was the form of public use
11 space, now it will just be amenity area to benefit all. The
12 amenity area for the residents has been greatly increased in
13 size, and in terms of the vantage point for the Villages of
14 Bethesda, when they step out of their units, as you can see
15 in this photograph here there are no windows in this unit
16 here, so the view that they have would be from the next unit
17 over and from their common area here looking down into our
18 property. And whereas previously yes, they did have some
19 open area for air and light, and it was a scenic private
20 amendment to space, it wasn't nearly as large as what
21 they'll now see. So, we believe that it's actually quite an
22 improvement for them in terms of establishing that
23 compatibility with their property.
24 MS. HARRIS: Thank you.
25 MR. ABRAMS: Can I ask a question about the

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1 exhibit?
2 MS. ROBESON: Yes.
3 MR. ABRAMS: There are two color greens there,
4 what is the light green and what is the dark green?
5 MR. LANDFAIR: The light green is public use
6 space, and the darker color green is essentially private
7 amenity area.
8 MS. ROBESON: Okay.
9 MS. HARRIS: Thank you. Can you comment on the
10 frontages going back to Exhibit, a previously introduced
11 exhibit, Exhibit 58(d), I just wondered if you could comment
12 on the width of the frontages of the buildings along
13 Montgomery Lane?
14 MR. LANDFAIR: Sure. This exhibit is useful.
15 This is the exhibit that was titled Building Offset
16 Comparison, and it was really designed just to show, again,
17 the relationship between each building and the street,
18 measuring the distance from the curb. And it's also useful
19 for seeing and understanding the length of the various
20 facades, of the buildings, both existing and proposed along
21 the street.
22 And to start with the high-rise Edgemoor, that's
23 183 feet across its frontage; the Sandy Spring building is
24 just under 50 feet across its frontage; the Edgemoor at
25 Arlington North is 66 feet; and our building will be 80 feet

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1 from corner to corner to where it starts the arc around the
2 urban park. So, we just wanted to show that relationship.
3 And I think, I forget who it was earlier in the
4 hearing, it might have been Mr. Knopf, somebody asked a
5 question about the distance between the Sandy Spring
6 building and the high-rise Edgemoor, and that's just under
7 20 feet.
8 MS. ROBESON: Okay.
9 MS. HARRIS: One last question with respect to
10 what you just testified to, and that is the prior
11 Development Plan which didn't include the arc, what is the
12 result in terms of the reduction of street frontage of the
13 building with the addition of the arc?
14 MR. LANDFAIR: Well, I'll have to scale it out
15 here. I'll have to scale it out.
16 (Discussion off the record.)
17 MR. LANDFAIR: It's just under 30 feet. And --
18 MS. ROBESON: Reduction?
19 MR. LANDFAIR: Reduction in terms of the length
20 of --
21 MS. ROBESON: From the prior Development Plan.
22 MR. LANDFAIR: -- that frontage. Right. And I'll
23 also add --
24 MR. KNOPF: Excuse me. I missed that. What did
25 he say? I'm sorry.

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1 MS. ROBESON: Thirty feet.
2 MR. KNOPF: Thirty feet.
3 MR. LANDFAIR: So, in other words, right, where
4 previously the entire length along the facade here was about
5 110 feet, now it's 80 feet.
6 MS. ROBESON: And what is it now?
7 MR. LANDFAIR: Now it's 80 feet.
8 MS. ROBESON: Eighty feet.
9 MR. LANDFAIR: And as a side note, all that open
10 area, that's about another 600-plus square feet of public
11 use space that we've added at that prominent corner.
12 MS. HARRIS: Thank you. In your -- you can take a
13 seat. Hopefully you'll have to get up again. In your
14 professional opinion is there more than one way in which
15 compatibility can be achieved among projects?
16 MR. LANDFAIR: Yes.
17 MS. HARRIS: Does the fact that the former Holiday
18 project was found to be compatible preclude an alternative
19 project from also being found compatible?
20 MR. LANDFAIR: No. No. The best evidence of this
21 is to review the existing and approved projects on
22 Montgomery Lane, and in fact, throughout the TS-R district,
23 all of which have been found to be compatible, but are
24 different in their own respective ways. Our architect can
25 speak to this in greater detail. But we conclude that the

1 proposed project is compatible with the existing and
 2 approved urban form in this area.
 3 MS. HARRIS: And then some may argue, I would just
 4 note that compatibility also may go to an operational issue
 5 and our other consultants are prepared to testify to that
 6 point.
 7 MS. ROBESON: As far as traffic --
 8 MS. HARRIS: Exactly.
 9 MS. ROBESON: -- or parking --
 10 MR. LANDFAIR: Vehicle access --
 11 MS. ROBESON: -- that type of thing.
 12 MR. LANDFAIR: -- et cetera.
 13 MS. HARRIS: Yes.
 14 MS. ROBESON: All right.
 15 MS. HARRIS: Thank you. Okay. Moving on in
 16 Article 59-D Section 1.61(c) provides that an application
 17 should require that the internal vehicular and pedestrian
 18 systems and points of access are safe, adequate, and
 19 sufficient, how does the project meet this requirement?
 20 MR. LANDFAIR: Yes. As I've mentioned, there will
 21 be pedestrian sidewalk improvements, these will be done
 22 consistent with the Sector Plan. The main pedestrian access
 23 for the project is located at that prominent corner, there
 24 at Montgomery Lane and West Lane. The vehicle access itself
 25 would be from West Lane. We believe it will be safe,

1 adequate, and sufficient.
 2 MS. HARRIS: Okay. Section 59-1.61(d) requires a
 3 finding that the proposed development would by the design by
 4 minimizing grading and other means tend to prevent soil
 5 erosion and preserve natural vegetation and other natural
 6 features, and that applicable forest conservation
 7 requirements and water resource protections requirements
 8 will be satisfied. Can you comment on how this project
 9 will --
 10 MR. LANDFAIR: I will have to defer to our civil
 11 engineer on that.
 12 MS. HARRIS: Okay. And then subsection E requires
 13 the adequacy and sufficiency of any documents for the
 14 perpetual maintenance of recreation or other common or
 15 quasi-public areas. How does this criterion apply in the
 16 context of the proposed development?
 17 MR. LANDFAIR: Well, we provide the necessary
 18 documentation, and I believe it is part of the record now,
 19 or will be entered as part of the record.
 20 MS. HARRIS: It is part of the record. It is
 21 public use space outline of the agreement. I'm trying to
 22 find the records number. My apologies.
 23 MS. ROBESON: The exhibit number?
 24 MS. HARRIS: Yes. Sorry.
 25 MS. ROBESON: Nineteen?

1 MS. HARRIS: Yes. Exhibit 19 of the Development
 2 Plan.
 3 MS. ROBESON: In the DPA file --
 4 MS. HARRIS: Yes.
 5 MS. ROBESON: -- it's 19.
 6 MS. HARRIS: I want to talk briefly about the
 7 location of the West Lane entrance. The opponents have
 8 suggested moving the pedestrian entrance to West Lane, can
 9 you please comment on this?
 10 MR. LANDFAIR: Certainly. We believe that by
 11 doing so if it was to be moved to the West Lane side that it
 12 would be contrary to the Sector Plan. It would mean turning
 13 our back to the street, that is to say the main street,
 14 Montgomery Lane, which we think is poor urban design. We
 15 think it's the reason why City Homes has cap units so that
 16 they do not turn their back on the street, they do have
 17 entrances off those end units. It's the reason why Sandy
 18 Spring has a binding element on their plan regarding the
 19 provision of their entrance on Montgomery Lane. We don't
 20 want to have, but we will have all back of house on the West
 21 Lane, we have the garages that we are fronting on, or rather
 22 we see across West Lane, that is part of the Sandy Spring
 23 project, we don't want to place the main entrance to our
 24 building directly opposite those garages, which is what
 25 would happen.

1 In addition to be an undesirable form of urban
 2 planning, and from a design standpoint we just don't believe
 3 from an operational or functional perspective there's really
 4 any grounds for moving the entrance.
 5 Further, and as will be testified later by our
 6 engineer, we have an additional loading bay that we have
 7 proposed off of West Lane, which is immediately adjacent to
 8 the entrance, gable entrance to the garage, and we don't
 9 want our loading bay to be immediately adjacent to the
 10 lobby. I will say, however, that within the interior of the
 11 building there will be a hallway that will provide direct
 12 access from that building bay to the lobby to make it more
 13 functional.
 14 MS. HARRIS: Thank you. And we would want to
 15 enter into the record the facade of the Sandy Spring
 16 building which shows those four garages along West Lane,
 17 which was one of the reasons, again, that one of the factors
 18 that helped influence our ultimate design. So, that would
 19 be exhibit number --
 20 MS. ROBESON: Is this a new exhibit?
 21 MS. HARRIS: It is, Exhibit 63 --
 22 MS. ROBESON: Sixty-three.
 23 MS. HARRIS: -- and it's entitled Sandy Spring
 24 Builder's Western Facade.
 25 (Discussion off the record.)

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1 MR. RADULESCU: Number fourteen.
2 MS. ROBESON: Is that -- oh, you're marking it?
3 Okay.
4 MS. HARRIS: So, that would be Exhibit No. 63.
5 (DPA 13-01 Exhibit No. 63 was
6 marked for identification.)
7 MS. HARRIS: And Mr. Landfair, it may be helpful
8 just to refer back to either the arrow of the Development
9 Plan to orient the Hearing Examiner in terms of where those
10 garages are with respect to the building. We can probably
11 use what's --
12 MR. LANDFAIR: Yes.
13 MS. HARRIS: How about the plan that's up there
14 now?
15 MR. LANDFAIR: This one right here?
16 MS. HARRIS: Yes.
17 MR. LANDFAIR: Okay. That's fine. Again, the
18 Sandy Spring building is located in the northeast corner of
19 the intersection of West Lane and Montgomery Lane. The
20 building by design is oriented onto Montgomery Lane, main
21 entrance on Montgomery Lane, however, the four garage
22 entrances are located directly off of West Lane. So, this
23 is the actual elevation showing the building with the double
24 bay garages, and it's a concern of ours if we place our main
25 lobby entrance directly opposite those garages, that it just

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1 isn't a very good relationship.
2 MS. HARRIS: Thank you.
3 MR. LANDFAIR: Sure.
4 MS. HARRIS: I want to touch one more time on the
5 public use space. There was a discussion at the Planning
6 Board hearing about setting the building back further to the
7 north to accommodate more public use space on Montgomery
8 Lane. From a land planning perspective can you please
9 comment on this?
10 MR. LANDFAIR: Sure. We have held to a building
11 line of roughly 25 feet, 26 feet from the back of curb,
12 which again, is consistent with what the other projects and
13 developments along Montgomery Lane have provided. We
14 believe in order to achieve a compatible urban form the
15 Sector Plan recommends establishing a building wall edge,
16 again, getting back to the importance of having this
17 continuous line. As noted on page 55 of the Sector Plan,
18 specifically the language in the Plan says the location of
19 the building line next to the sidewalk is a key element in
20 achieving an attractive and lively pedestrian environment.
21 The Sector Plan reinforces the importance of this concept to
22 further on page 83 recommending a continuous building line.
23 From a land planning standpoint it's important to establish
24 a consistent edge to achieve a greater streak definition
25 because it enhances the pedestrian experience, and enhances

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1 the visual character of the area. Such a continuous
2 building line is consistent with the Sector Plan
3 recommendation for a mixed street, which is intended to
4 promote and enhance the pedestrian experience.
5 MS. HARRIS: Thank you. Now I just have a few
6 miscellaneous items and then you'll --
7 MS. ROBESON: Okay.
8 MS. HARRIS: -- be glad to hear that Mr. Landfair
9 will be finishing up. Did you have an opportunity to review
10 the Development Plan in connection with the impact on public
11 facilities?
12 MR. LANDFAIR: Yes. I can address or speak to
13 specifically schools and fire and police.
14 MS. HARRIS: Okay. And then Mr. Morelock will be
15 addressing the other APF issues.
16 MR. LANDFAIR: Correct. The design of the
17 proposed building with its smaller unit sizes will not
18 generate a high number of school age children. The location
19 of the property places it within the BCC, Bethesda Chevy
20 Chase High School service area, which includes the Westland
21 Middle School and Bethesda Elementary School. Based on
22 information provided by Montgomery County Public Schools
23 projected enrollments for the middle school and elementary
24 school show them operating at acceptable capacity, however,
25 the enrollment at BCC High School is currently exceeding

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1 capacity, and as such is going to trigger the need for a
2 school facility payment. This payment would be required in
3 addition to the school impact tax that every residential
4 development would have to pay.
5 MS. HARRIS: And before you get to fire I just
6 wanted to note that in, there is a letter from Mr. Bruce
7 Crispell who is in charge of capacity issues reiterating
8 that there's adequate capacity, that's Exhibit 15 on the
9 Development Plan Amendment list.
10 MS. ROBESON: Exhibit 15 where?
11 MS. HARRIS: On the DPA list.
12 MS. ROBESON: Okay. All right.
13 MS. HARRIS: Thank you. Can you comment on fire
14 and police?
15 MR. LANDFAIR: And yes, just with respect to fire
16 and police. The property is located approximately one-half
17 mile from the Bethesda Fire Station number six, which is
18 located at the corner of Wisconsin Avenue and Bradley
19 Boulevard, and roughly one-half mile from the Bethesda
20 Police Station, which is located at Montgomery Avenue and
21 Wisconsin Avenue.
22 MS. HARRIS: In your opinion is the West Lane
23 project in the public interest?
24 MR. LANDFAIR: I believe so. Yes.
25 MS. HARRIS: And in your professional opinion does

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1 the proposed development plan satisfy all the applicable
2 code requirements?
3 MR. LANDFAIR: I believe so.
4 MS. HARRIS: And is there anything else you would
5 like to add?
6 MR. LANDFAIR: I've said enough.
7 MS. ROBESON: You don't want to keep going?
8 MR. LANDFAIR: No, ma'am.
9 MS. ROBESON: All right. All right. With that, a
10 couple of housekeeping items. Ms. Harris, you'll have, make
11 sure that Mr. Abrams and Mr. Knopf get copies of everything
12 that's been submitted here today by 5 o'clock on Monday?
13 MS. HARRIS: Yes, and I, but I would just comment
14 that Mr. Knopf has 11 by 17s of everything, plus he has a
15 full sized Development Plan Amendment plan that was provided
16 to him earlier in the week, so he should have everything,
17 and poor old Mr. Abrams only has half sized copies, so we'll
18 make sure to give him the 11 by 17s, and then I think that
19 should satisfy the requirement.
20 MS. ROBESON: Okay.
21 MR. KNOFF: Okay. But just I want to raise
22 something so we don't have any surprises later. My
23 understanding is that some of the exhibits that you have,
24 the current one, the Development Plan, they don't, the
25 scales don't match, there's something askew here, and I just

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1 want to, that needs to be corrected before it gets given to
2 us or we're going to be through a whole new series later of
3 wait a minute, which one is the right one, and et cetera.
4 MS. HARRIS: Are you saying that it's produced at
5 a different scale?
6 MR. KNOFF: No, the scale --
7 MR. ABRAMS: No.
8 MR. KNOFF: -- is the same, but the buildings
9 aren't in the same place.
10 MR. ABRAMS: The building lines and the property
11 lines are off.
12 MS. ROBESON: Well, let me do this --
13 MR. LANDFAIR: Well, we'll --
14 MS. ROBESON: -- let me do this before we get into
15 a big thing, you submit to them whatever you submitted
16 today. Mr. Knopf, if you already have what's been, both of
17 you already have the Development Plan that's been submitted
18 today, correct?
19 MR. ABRAMS: Yes.
20 MS. ROBESON: Okay. We'll leave it at that. I
21 would suggest the parties work together to double-check the
22 accuracy of the measurements that, for, and then we'll
23 entertain a new exhibit according to whatever schedule we
24 put in place on Tuesday.
25 MR. ABRAMS: Thank you.

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1 MS. ROBESON: I do need one to scale, how soon do
2 you think you could check that because I'd like Technical
3 Staff to have a, I'd like them to have a corrected copy.
4 MS. HARRIS: Well, if Mr. Abrams and Mr. Knopf
5 have a few moments after the conclusion of today's
6 proceeding, and we can just discuss it here that may be the
7 best way to handle it.
8 MS. ROBESON: All right. So --
9 MS. HARRIS: And then we'll get it revised --
10 MS. ROBESON: Okay.
11 MS. HARRIS: -- and to Staff as soon as possible.
12 MS. ROBESON: All right. Now, the second thing is
13 I'm going to refer, you can submit it directly to Staff, but
14 I'm going to make the referral as far as asking Staff what
15 to do, and I will CC all the attorneys here, because there
16 are some specific things I would like to take care of.
17 The other thing is I don't normally do this in a
18 case because I really do go in with my mind open, and we're
19 only halfway through the case, but because of the timing of
20 the changes, and the timing of the hearings, I would just
21 for the record gives a heads up as to initial, my initial
22 impressions so that if you wish to make changes or
23 revisions, and again, usually I wait to be convinced, but
24 because the timing here there may be a long delay I don't
25 want to waste that delay, and I haven't really had a chance

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1 to kind of think through this, the revised plan, I do think
2 it's an improvement. I did share basically what Chair
3 Carrier brought up as far as the original Development Plan
4 that I saw, and it's mostly the massing in relation to the
5 other properties. But I had the same initial reaction, and
6 it's just a preliminary reaction. I haven't had the chance
7 to look at this, but just to be fair to the Applicant, that
8 was my initial reaction.
9 MS. HARRIS: Could you elaborate in terms of is
10 there a particular facade that gives you concern, or --
11 MS. ROBESON: Montgomery Lane. The facade, and
12 whether I'm thinking, I do think that that circle is, I'm
13 concerned about, I'm really concerned about the transition
14 from City Homes to this project, and, you know, this is the
15 first time I've seen the cross section, that north/south
16 cross section, because I saw an east/west one, but that is a
17 concern, and that was my primary concern. And some of the
18 urban design guidelines call for stepping back things as a
19 means of ameliorating the bulk of buildings. And I don't
20 know what the answer is, but I'm just trying to give you a
21 heads up as to what my concerns were. But I did agree with
22 my initial reaction was to agree with Chairperson Carrier
23 and her assessment of the project, whether that means, you
24 know, a change in the number of units, it may not be driven
25 by density, it may just be driven by, you know,

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1 architectural design, I don't know.
2 The other thing is -- so, I wouldn't, I'm not
3 going to pick a density number. But again, I hadn't seen
4 these changes, I haven't seen them today, normally I
5 wouldn't even say anything till you had finished your case,
6 but if we're going to have a longer delay before we have a
7 second hearing I am going to give you a heads up on it.
8 The other thing is I did permit economic
9 feasibility testimony in, and we get, we do get that
10 sometimes from applicants, and it's, unfortunately it's not
11 part of my criteria. I allowed cross-examination on it
12 because you had raised it, and we, it's not uncommon to have
13 applicants come in and say well, sort of implicitly you're
14 not going to get your MPDUs unless I can get this density.
15 And I'm not saying that that's true or not true, sometimes
16 it turns out they can give a little, so I'm just saying that
17 that's not going to be, I don't have the authority to make
18 that kind of determination. My authority's in 59-D and so I
19 just did want to make that point that I don't want to go too
20 much further into the economic feasibility of things.
21 MR. ABRAMS: Madam Examiner, when the Applicant
22 submits copies of exhibits to us could they please put the
23 exhibit numbers on whatever pages or documents so that --
24 MS. ROBESON: Is that a problem for you, Ms.
25 Harris?

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1 MS. HARRIS: I think we can do that.
2 MR. ABRAMS: Okay.
3 MS. HARRIS: That is fine.
4 MR. ABRAMS: The second thing is Mr. Landfair
5 apparently has in terms of his examination extensively
6 referred to notes, I guess, or outline, or whatever, we
7 would request a copy of Mr. Landfair's notes as to what he
8 was referring to.
9 MS. HARRIS: I object.
10 MS. ROBESON: I'm not going to allow that. I
11 don't think that's necessary for the relevance of the case.
12 That being said, you shouldn't be, witnesses should not be
13 reading from notes, they should be testifying from their
14 experience. So, to that extent you may want to reduce
15 reliance on written scripts.
16 MR. ABRAMS: In terms of the transcript in this
17 case we want to be prepared as you go along, how will that
18 work?
19 MS. ROBESON: The transcript, we do not receive a
20 transcript until 10 days after the hearing, 10 calendar
21 days. I'm not going to space hearings 10 days apart just to
22 have a transcript because we'll never get finished if I do
23 that. You are welcome to have someone come and take notes,
24 but the transcripts are posted on our website almost as soon
25 as we receive them.

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1 MR. ABRAMS: So, they are on the website?
2 MS. ROBESON: They will be. Our website is being
3 re-done right now, but it should be on the website. Yes.
4 MR. ABRAMS: Okay.
5 MS. ROBESON: So, you don't have to order them, we
6 just post them.
7 MR. KNOFF: In view of the key issue here being
8 compatibility of this project with adjacent developments,
9 I'm wondering if the Hearing Examiner has any interest,
10 we've already had an objection to having the Hearing
11 Examiner visit the site, from the person who --
12 MS. ROBESON: I can visit the site. I hesitate
13 under the current case law because I'm required to put what
14 I see at the site on the record of the case that might
15 affect my decision in the case. And because of that case
16 law I could visit the site, I can't talk to anyone. I would
17 like to mull that over before I make a final determination
18 on that. Plus, I'm not on, I can't quality for workmen's
19 comp if I -- no, that's neither here nor there, but so,
20 that, I'd like to mull that one over.
21 MR. ABRAMS: We would just join in to request to
22 go out and take a look --
23 MS. ROBESON: Take a look.
24 MR. ABRAMS: -- at the site. We understand the
25 limitations in terms of nobody being with you, nobody asking

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1 questions, and what you have to I guess put into the record
2 as any observations that you might think is relevant.
3 MS. ROBESON: Well, if I do decide to go I will
4 notify everyone that I'm going just with the understanding
5 that I don't even want people to say hi to me because then I
6 get accusations that I spoke with somebody else, so just
7 with the understanding that I will be very rude to you if I
8 go.
9 MR. KNOFF: Go with dark glasses and a hat.
10 MS. ROBESON: Yes. Incognito. Anything else?
11 MS. ABRAMS: That's it. Thank you.
12 MR. KNOFF: Thank you.
13 MS. ROBESON: All right. With that, I am going to
14 adjourn this hearing to 9:30 on --
15 MR. ABRAMS: The 15th.
16 MS. ROBESON: -- January 15th. We will not be,
17 another reason I said what I did today about the substances,
18 you do not need to bring expert witnesses, you can save a
19 little money that way because we're only going to be talking
20 calendaring. All right. And then hopefully a scheduling
21 order will come out of this and we'll have a game plan for
22 the rest of the case.
23 How many -- I know that, I think Mr. Knopf, you
24 have three witnesses?
25 MR. KNOFF: Plus any, plus an expert.

1 MS. ROBESON: Plus an expert? Oh, Mr. Doggett.
 2 Okay. Mr. Abrams, how many witnesses do you have?
 3 MR. ABRAMS: I think I listed those on a pre-
 4 hearing submission for you.
 5 MS. ROBESON: Yes, I just can't remember. And how
 6 many, do you have any idea as to how many from the community
 7 may wish to testify? No?
 8 MR. ABRAMS: No.
 9 MS. ROBESON: All right. Just keep in mind --
 10 MR. KNOPF: The answer was it depends on the dates
 11 for the hearing whether my people --
 12 MS. ROBESON: Well, just keep in mind for the
 13 community representatives that are here that the testimony
 14 is limited to the criteria for approval. I know a lot of
 15 people want to come and say that they are upset, but it
 16 really needs to be limited to the criteria for approval, and
 17 not repetitious if that at all is, we can do that. All
 18 right. It's not sheer, sheer numbers don't necessarily
 19 count here; it's the quality, the relevance of the
 20 testimony.
 21 MR. KNOPF: Just one more for housekeeping. Yes,
 22 I'm going to go and see when people are available, but I'm
 23 wondering if we should get a guesstimate as to how many more
 24 dates we might need? I'm just wondering are we talking
 25 about another day, two, or three for the Applicant's case so

1 that then we're going to need a lot of dates February to
 2 March.
 3 MS. ROBESON: Well, some of that is going to
 4 depend on your cross-examination.
 5 MR. KNOPF: Well, I meant without cross-
 6 examination. Do you have any guesstimate of how long your
 7 other witnesses would take without any cross-examination?
 8 Are you talking about a day, half a day, two days? Just
 9 roughly, not being held to any.
 10 MS. HARRIS: Without cross-examination probably
 11 one more day.
 12 MR. KNOPF: Okay. Well, that's helpful.
 13 MS. ROBESON: All right. So, I'm adjourning this
 14 case to 9:30 on January 15th, at which time we will discuss
 15 scheduling.
 16 MR. ABRAMS: Thank you.
 17 MS. HARRIS: And Mr. Abrams and Norm --
 18 MR. ABRAMS: Thank you.
 19 MS. HARRIS: -- we can discuss --
 20 MR. ABRAMS: Oh, yeah.
 21 MS. HARRIS: -- the Development Plan issue.
 22 (Whereupon, at 3:54 p.m., the hearing was concluded.)
 23
 24
 25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that
 the attached pages represent an accurate transcript of the
 electronic sound recording of the proceedings before the
 Office of Zoning and Administrative Hearings for Montgomery
 County in the matter of:

4831 West Lane, L.L.C.
 Local Map Amendment No. G-954

&

4831 West Lane, L.L.C.
 Development Plan Amendment No. DPA 13-01

By:

 Paula Underwood, Transcriber

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