OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC Local Map Amendment	:	**Case No. G-954**
4831 WEST LANE, LLC Development Plan Amendment	:	**Case No. DPA 13-01**

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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E X H I B I T S

DPA 13-01 Exhibit No.		Marked/Received
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49	Affidavit of Mailing	21
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52	Revised Development Plan dated 1/10/13	101
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P R O C E E D I N G S

MS. ROBESON: I'm calling the case of Local Map Amendment G-954 and Development Plan Amendment 13-01, both filed by 4831 West Lane, LLC. Local Map Amendment G-854 is a request to re-zone from the R-60 Zone to the TS-R Zone property known as 4901 Montgomery Lane, identified as Lot 26, Block 13 of the Edgemoor Subdivision, and right-of-way on West Lane associated with Lots 24, 25, and 26 of the Edgemoor Subdivision in Bethesda, Maryland.

Development Plan Amendment 13-01 is a request to amend the Development Plan approved by the District Council in LMA G-843 on July 10th, 2007 for property located at 4901 and 4903 Montgomery Lane, and 4831 and 4833 West Lane in Bethesda, Maryland.

Okay. This hearing is conducted on behalf of the District Council. My name is Lynn Robeson, for those of you who don't know, I'm the Hearing Examiner, and I am going to be taking the evidence and testimony on the case. I write a report and recommendation, which is forwarded to the District Council, also known as the County Council, and they make the final decision on the case.

Would the parties please identify themselves for the record?

MS. HARRIS: I'm Patricia Harris with Lerch, Early & Brewer on behalf of the Applicant.

MR. ABRAMS: I'm Stan Abrams from the firm of Abrams & West in Bethesda, Maryland on behalf of City Homes of Edgemoor, which is a 29-unit townhouse community south of the subject property across Montgomery Lane.

MS. ROBESON: Okay.

MR. KNOPF: Good morning, Norman Knopf, Knopf & Brown. With me is Ben Arem, an Associate in our firm, and we represent the Edgemoor Condominium Residences, a 54-unit building on Montgomery Lane, and also Andrew Niebler, Louis Pohoryles, and Jon Weintraub who will speak on behalf of the residences, and also as individuals.

MS. ROBESON: All right. Is there anyone here that is not represented by either Mr. Knopf, or Mr. Abrams who wishes to testify in the case? All right.

MR. ABRAMS: Well, I don't have all my witnesses here. There is one witness here, but we had the understanding with your staff that probably would not get to any of the opposition witnesses, and therefore I would recommend to the examiner that when the opposition case starts that they take the --

MS. ROBESON: Okay. So, what you're saying is there may be more people coming --

MR. ABRAMS: Yes, right.

MS. ROBESON: -- when your case begins.

MR. ABRAMS: Correct.

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

MR. ABRAMS: Okay.

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

MR. ABRAMS: Thank you.

MS. ROBESON: Okay?

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

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

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

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

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

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

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

MS. ROBESON: No. No.

MS. HARRIS: We don't.

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

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

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

MS. HARRIS: Thank you.

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

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

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

MR. KNOPF: Thank you.

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

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

Now, if you go back in the history of this

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

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

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

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

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

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

case it was Exhibit 85A.

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

MS. ROBESON: All right. Ms. Harris?

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

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

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

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

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

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

I find the solution to remediate this supposed obstacle somewhat novel, what's being suggested is that we re-zone the three lots that were already zoned to TS-R again to TS-R and then file a Development Plan. But the problem is that the lots are already zoned TS-R, the three lots that were subject to G-843. There's no Zoning Ordinance provision that deals with re-zoning lots back again to the zone that is currently existing, and in contrast, there are Zoning Ordinance provisions that specifically deal with Local Map Amendments and Development Plan Amendments.

I think it's worth noting that the Applicant's approach is precisely how the adjacent property to the west at the corner of Arlington Road and Montgomery Lane, which you'll hear later is being referred to as the Rothstein property was amended. In that case there was an original Local Map Amendment G-779, which re-zoned approximately 28,000 square feet to TS-R with an accompanying Development plan, and then subsequently the owner acquired the adjacent lot next to it, and they filed a new Local Map Amendment and a Development Plan Amendment to cover the entire area. The District Council approved G-865 and Development Plan Amendment 07-03 in precisely the same manner in which this case is postured.

I want to conclude that the Applicant in filing Local Map Amendment G-954 and the Development Plan DPA 13-01

has adhered to the correct zoning procedures to re-zone Lot 26 and extend a Development Plan to cover the entire property, Lot 26, which is the subject of Local Map Amendment G-954, and Lots 24, 25, and 27, which are subject to G-843.

Finally, I think it's worth noting that from a procedural standpoint there's absolutely no distinction between the procedure that Mr. Abrams is suggesting, or the correct procedures that we have filed, and that is that the filing requirements are the same, the processing procedures are the same, and that most importantly the standard of review and the findings are the same. So, we were a little perplexed to see this motion anyway. Thank you.

MS. ROBESON: Okay. Mr. Abrams, I'm going to give you an -- or Mr. Knopf, do you want to weigh in on this?

MR. KNOPF: I just want to say we concur with Mr. Abrams's motion.

MS. ROBESON: Okay. I'm going to give you an opportunity to respond in a moment, but I did have some questions, and then you may want to address them in your response.

I have to say, I tend to agree with Ms. Harris on this one. I did not see a prohibition of expanding, even though there's no explicit authority, there is no prohibition on expanding a Development Plan. And I also

know in the TS-R Zone there's a provision where they reduce the lot size, or dominium area, so that you could consolidate two parcels, they didn't want isolated parcels. And I guess my third question is it seems to me it sort of elevates form over substance that we should require the Applicant to re-zone, you know, just file a new application to get us exactly where we are today. And I have not looked at the -- I don't know why, I can speculate why, there's a prohibition on expanding a Local Map Amendment, but it does seem to me that it would elevate form over substance without an explicit prohibition in the Code. So, I'll let you respond to my concerns, as well.

MR. ABRAMS: Okay. Madam Examiner, what the Zoning Ordinance says with reference to the TS-R Zone in Section 59-C-8.45 is that the Zoning Ordinance specifically states that, and I quote, the approval of the application includes the approval of this plan. That application is the only application which involves a majority of this property. That application has never been superseded, amended by any new application. Why it was done in this fashion in terms of the language about increasing the area seems to me that this is one of the situations where the District Council wanted the geographic area, which was included is part and parcel of the Local Map Amendment, and in which the development plan, which to me is one of the most important

parts of that combination, was known to the public as to, you know, what it's going to be developed as. When you all of a sudden expand the land area without likewise expanding the application with a new application, including the old and the new land area, it's basically a, it's deceptive if nothing else, because there is no Local Map Amendment which has actually been approved, again, the approval of an application includes the approval of the plan. And in this case the approval of the only application that's out there involves one lot.

So, I don't think it's a situation where, you know, it didn't take a whole lot to come back under a different form with the re-classification for the entire property, with a new Development Plan. And in fact, I think I recall back in the stone age when I was in the Hearing Examiner's Office we had required some applicants to come in, even though their property or portion of the property was re-zoned, we didn't have the TS-R Zone back then, but we required the applicants to file a new application which had the existing zoning, didn't change the existing zoning, plus whatever new land area was required, so that --

MS. ROBESON: So, are you saying it's a notice issue? Is it a notice issue?

MR. ABRAMS: It's not specifically a procedural notice issue, it is an issue with how these projects are

followed down the line, because if you continually do this by the process which is being attempted here nothing ever gets back to the original plan, it just gets a little piece here, a little piece there, a little piece there, and doesn't follow the Zoning Ordinance which says that the approval of the application includes the approval of the plan, because the application in this case doesn't include the other lots, the Local Map Amendment.

MS. ROBESON: All right. Anything further, Ms. Harris?

MS. HARRIS: Just very briefly. I'd note that there's many zones that require a Development Plan with a Local Map Amendment. Given that if there were, if the intention was to not allow an expansion of land area with the Development Plan Amendment it would seem to me that the ordinance would specifically state that, and it does not state that at all.

And then conversely, there's no place in the Code, you know, I would be a little bit perplexed if I were getting ready to file a new zoning application for property that is already zoned TS-R and I filed it again for TS-R, I'm not sure even what section of the Code I would have proceeded under.

MS. ROBESON: Well, I'm not sure he's -- I think, correct me if I'm wrong, the mistake here is not the re-

zoning application but the Development Plan Application --

MR. ABRAMS: That's correct.

MS. ROBESON: -- is that what you're saying?

MR. ABRAMS: The Development Plan Application extends --

MS. ROBESON: Yes.

MR. ABRAMS: -- into an area which is not associated --

MS. ROBESON: Right.

MR. ABRAMS: -- with a Local Map Amendment.

MS. ROBESON: Yes.

MS. HARRIS: But that's not true. We have one Local Map Amendment, G-843, that covers three properties; we have another one, the subject, that covers Lot 27; two Local Map Amendments; we have a Development Plan on the subject Lot 27; and then we have a Development Plan Amendment that takes the two Local Map Amendments and covers the entire area of the property.

And I'd go back to what the Hearing Examiner noted, to what end result is this? Is it just so that -- I mean, I don't know if we assume for a moment that we hadn't followed what our neighbor had done, the exact same procedural posture, and we had done exactly what Mr. Abrams had suggested, procedurally, substantively the end result is identical.

MS. ROBESON: Well, what I'm going to do, I do tend to -- because I don't see a prohibition in the Development Plan, I understand your argument that the Development Plan is married to a map amendment, I guess I would want more information on why you can't expand, rather than simply speculating why, you know, why these should be married more than just that statement in the Code that says that the Development Plan must accompany the Local Map Amendment, I would want to know exactly why the two should be married from the legislative history, and why the prohibition on expansion is there. So, what I'm going to do is deny your motion without prejudice for the time-being, and if you wish to raise it at the beginning of your case with more legislative background I will consider it again.

So, with that, Ms. Harris?

MS. HARRIS: Thank you. Good morning, Patricia Harris with Lerch, Early & Brewer on behalf of the Applicant, 4831 West Lane, L.L.C., an affiliate of SJG Properties. We're here this morning for Local Map Amendment G-954, and Development Plan Amendment 13-01.

As previously noted, we are proposing the re-zoning of Lot 26 from R-60 to the TS-R Zone, and amend the existing Development Plan which currently applies to Lots 24, 25, and 27 to include Lot 26.

As a preliminary matter, we do have the affidavits

of posting and mailing.

MS. ROBESON: All right. I will add that as Exhibit, I've got so many pages here, I --

MR. ABRAMS: Is that 48?

MS. ROBESON: Okay. Exhibit 48 to the DPA 13-01.

(DPA 13-01 Exhibit No. 48 was marked for identification.)

MS. HARRIS: Thank you. Briefly, and we touched on this in the preliminary motion, but I want to explain the history, Local Map Amendment G-843 and the corresponding Development Plan for Lots 24, 25 and --

MS. ROBESON: Can I -- I --

MS. HARRIS: Yes.

MS. ROBESON: -- apologize, can I stop you for a moment because there's really three affidavits here, one of posting, one of mailing for this map amendment, and one for mailing for the DPA, so I'm going to mark 48 is Affidavit of Posting; 49 as Affidavit of Mailing for the DPA; and 50 as Affidavit of Mailing for the LMA.

(DPA 13-01 Exhibit Nos. 49 and 50 were marked for identification.)

MS. ROBESON: I'm sorry to --

MS. HARRIS: No.

MS. ROBESON: -- interrupt.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. HARRIS: Sure.

MS. ROBESON: -- make an opening --

MS. HARRIS: Okay.

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

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

MS. ROBESON: All right. Mr. Knopf?

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

MS. ROBESON: Okay.

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

MS. ROBESON: Okay.

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

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

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

MS. ROBESON: Okay.

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

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

MS. HARRIS: Thank you.

MS. ROBESON: -- call your first witness.

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

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

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

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

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

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

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

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

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

evaluation of the site, and the general objectives of the Local Map Amendment application?

MS. WILTSHIRE: Sure. I think as I touched on briefly, we believe the site to be very desirable in terms of its proximity to downtown Bethesda, and being within 950 feet of the Metro Station, we consider that obviously to be in an urban core. We also looked at the objectives of the Bethesda Sector Plan, which is to create diversity in unit type, took the desire for high density around Metro Stations, and also to increase the amount of affordable units available in the neighborhood. We also looked extensively at what currently exists in the neighborhood in considering what we thought might be appropriate. And the type, the unit type that currently exists along Montgomery Lane is all very similar, it's all large condominiums averaging probably between 1,700 and 2,000 square feet per unit, which, you know, we don't believe provides a lot of diversity. What we're proposing provides units that range anywhere from 585 square feet to 1,200 square feet, and we believe that is more in keeping with the Bethesda Sector Plan. So, we believe that there is a need and a desire for diversity in unit type compared to what currently exists on the street and within the neighborhood.

MS. HARRIS: And when the Sector Plan said diversity in unit type you assumed that they were speaking

at least in part in terms of unit size, is that correct?

MS. WILTSHIRE: Yes. Yes. Again, we are -- I mean, the units, and I can go through, shall I go through the existing product and the approved product to discuss what's been, what exists in the area and what's been approved in the area? Or --

MS. HARRIS: Other consultants are going to do that --

MS. WILTSHIRE: Okay.

MS. HARRIS: -- so I don't think that's necessary.

MS. WILTSHIRE: Okay.

MS. HARRIS: Okay.

MS. WILTSHIRE: But yes, we did believe our average unit size, again, is 860 square feet, and provides a diversity of unit type that doesn't currently exist on the street or within the neighborhood.

MS. HARRIS: Okay. Can you explain the economics and how that drove the proposed product, and more specifically, if the product were to be rental could you explain the economies scale and how the loss of a sufficient number of units may make the rental infeasible?

MS. WILTSHIRE: Sure. The project as designed has a range of units of 100 to 120 units. We provide -- with 15 percent MPDUs it's only actually 85 to 101 market rate units, and if the building were to be a rental building this

is critical that we are able to get 101 market rate units in terms of the economies of scale that are required in order to run and make a rental building economically feasible. Rental buildings have almost the same expenditures or costs associated with it whether there are 100 units or 300 units, because staffing, which is your largest expense, remains the same, we have to have, I mean, what we provide is class A product and finishes, so, you know, what we provide and build is similar to what we also would sell as a condominium project, and the way we staff our projects is also the same. So, we would need the same person at the front desk, we would still need a property manager, and assistant property manager, we have an engineering team on staff, and if you don't have a critical mass of units to be able to do that it's not feasible to build the product. So, if the unit count is to be reduced below the 120 units then it would be infeasible for us to build the rental product, and what we would probably have to do is move to a larger condominium product, which is exactly what has been provided, and is being provided by the proposed projects in the neighborhood, and we don't feel that this is what the neighborhood needs, or the Bethesda Sector Plan really wants the neighborhood to have at this point.

MS. HARRIS: So, your point --

MS. ROBESON: I just have a question, is this

going to be a rental --

MS. WILTSHIRE: We haven't committed to what it's going to be, but we're trying to keep, in order to keep the project economically feasible, I don't know when we'll be through this process, and permitted to actually start the project, so what we're trying to do is ensure that when we get to a point in time that we can actually start the project that we have flexibility to do what is necessary to do in order to get, you know, the project started. And I think of note, too, that we hadn't discussed before is currently in terms of the affordable housing aspect there is not a single solitary MPDU on Montgomery Lane. And the project as we are proposing it with 120 units would produce 19 MPDUs on Montgomery Lane, which is more than a 50 percent increase in the immediate area. So, I think that is something that is important to the dynamics of the neighborhood.

MS. HARRIS: Thank you. There's been significant community outreach in connection with this project, can you please describe that?

MS. WILTSHIRE: Sure. We have had over a dozen meetings with the neighbors, we have had numerous meetings, we have had two meetings with the Villages of Bethesda, which is -- should I point out the project?

MS. HARRIS: Yes, and --

MS. WILTSHIRE: The Villages of Bethesda is a --
MS. ROBESON: Okay, that's -- can you tell me what --
MS. WILTSHIRE: This is Exhibit 2, I believe, is that correct?
MS. ROBESON: Okay. Exhibit 2 --
MS. HARRIS: Actually, this is a new exhibit that is not yet in the record, so we'll introduce that exhibit.
MS. ROBESON: Okay.
MS. HARRIS: It's an aerial photo.
MS. ROBESON: So, let me mark it first, it's an aerial of the subject property and surrounding area?
MS. HARRIS: Yes.
MS. WILTSHIRE: Yes.
MS. ROBESON: Okay. So, that'll be Exhibit 51.
(DPA 13-01 Exhibit No. 51 was marked for identification.)
MS. ROBESON: Are there any objections?
MR. ABRAMS: No objection.
MS. ROBESON: Now, can someone mark it as Exhibit 51?
MR. KNOPF: Do we just know when that was taken? I mean, what year, or something like that. Is it current?
MS. ROBESON: Is there a witness that can answer that?

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

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

to admission, or do you want to cross-examine on these questions?
MR. KNOPF: No, I just was trying to get clarification as to what was going in.
MS. ROBESON: Yes.
MR. KNOPF: I'm not objecting.
MS. ROBESON: Okay. Well, let's --
MR. KNOPF: As long as we have it clearly identified what's going in.
MR. ABRAMS: Well, I want to withdraw my approval of this, I didn't realize that there were insertions in this --
MS. ROBESON: In this view.
MR. ABRAMS: -- aerial photograph.
MS. ROBESON: I called it aerial view, not --
MR. ABRAMS: Aerial view.
MS. ROBESON: -- aerial photo.
MR. ABRAMS: And I have extensive cross-examination dealing with, you know, how those insertions were put on that aerial photograph, in terms of what documents were reviewed, you know, what was used --
MS. ROBESON: So, are you objecting to admission?
MR. ABRAMS: Well, yes, I'm objecting to the admission.
MS. ROBESON: Okay. Then we'll have --

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

MS. HARRIS: I'm sorry. Okay.
MS. ROBESON: It's okay. We've got three attorneys here, so, four counting me. Okay, it's marked with the red --
MR. RADULESCU: So, I'm pointing to the first building, which is West Lane.
MS. HARRIS: The subject --
MS. ROBESON: And that's marked with a star, a red star, right? Or --
MR. RADULESCU: Yes.
MS. ROBESON: -- asterisk? Okay.
MR. RADULESCU: Yes. Shall I put initials of the building just for convenience, like --
MS. HARRIS: SPG?
MR. RADULESCU: -- W-L or something?
MS. ROBESON: Just mark the others with checks, okay?
MS. HARRIS: No, check.
MS. ROBESON: No. Check.
MR. RADULESCU: Oh.
MS. ROBESON: See, the Council won't know -- okay. Check. All right. So, everything checked is inserted, and the proposed project is inserted and marked with a star. All right. Mr. Knopf?
MR. KNOPF: Okay. Now, with those that were

inserted am I correct that none of these inserted buildings exist now?
MR. RADULESCU: Correct.
MR. KNOPF: Now, with --
MR. RADULESCU: That's why we have to insert them otherwise.
MR. KNOPF: But I mean, but the map -- but if it's three years old there might have been something built --
MR. RADULESCU: They are still --
MR. KNOPF: -- since the three years --
MR. RADULESCU: I see.
MR. KNOPF: -- that's why I was trying to ask that question. Now, in terms of your -- I really can't see from here too well, but the --
MR. RADULESCU: That's the West Lane, this is --
MR. KNOPF: Right.
MR. RADULESCU: -- Edgemoor, just what I finished. Arlington Road, yes, Arlington Road and this is --
MS. ROBESON: Arlington Road runs north/south --
MR. RADULESCU: Right.
MS. ROBESON: -- on the western portion. Montgomery Lane --
MR. RADULESCU: Montgomery Lane. Yes.
MS. ROBESON: Okay. Is that marked on that area?
MR. RADULESCU: Yes.

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

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

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

Development Plans that the Council approved for each of those projects.
MS. ROBESON: Okay. So, what I think Mr. Knopf's point is, the massing could change of the buildings, like I notice terracing on some of them, and --
MS. HARRIS: And actually I -- let me just correct one statement I made. The Hampden Lane project actually does have approved preliminary plan and site plan approval, so that was based on what they would be --
MS. ROBESON: And what is the Hampden, which is the Hampden Lane project?
MR. RADULESCU: It's this.
MS. HARRIS: Hampden Lane Associates.
MS. ROBESON: The one south --
MR. RADULESCU: Right on Hampden Lane and Arlington Road.
MS. HARRIS: In the northeast corner of Arlington Road and Hampden Lane.
MS. ROBESON: All right. Mr. Knopf?
MR. KNOPF: Just for some clarification. I gather you're referring to that as the Hampden Lane project, and the other project on the Hampden Lane you're referring to as 4901 Hampden Lane?
MS. HARRIS: Correct.
MR. KNOPF: Okay. Just because the -- okay.

MS. ROBESON: Any other questions?
MR. KNOPF: No, I don't have any other questions.
MS. ROBESON: Mr. Abrams?
MR. ABRAMS: Yes.
EXAMINATION OF MR. RADULESCU BY MR. ABRAMS
MR. ABRAMS: Sir, where is the HOC building, which was approved on Hampden Lane?
MR. RADULESCU: HOC what --
MR. ABRAMS: No, excuse me. Is it shown on that?
MR. RADULESCU: What, HOC, what is that?
MR. ABRAMS: Housing Opportunities Commission building.
MS. HARRIS: I don't think Mr. Radulescu is -- Mr. Landfair can testify to that.
MR. ABRAMS: I mean, is it on -- the question is --
MS. HARRIS: It is not.
MR. RADULESCU: It's not.
MR. ABRAMS: It's not on that?
MS. ROBESON: Well --
MR. RADULESCU: No.
MS. ROBESON: Okay. Ms. Harris, I --
MS. HARRIS: Excuse me.
MS. ROBESON: -- know you know the answers --
MS. HARRIS: Okay. But I'm not allowed to say

them. Okay.
MS. ROBESON: But you're not under oath --
MS. HARRIS: Okay.
MS. ROBESON: -- here. So, the witness is not aware of the HOC building --
MR. RADULESCU: Yes.
MS. ROBESON: -- is that correct?
MR. RADULESCU: I don't know.
MS. ROBESON: All right.
MR. ABRAMS: And you're not aware of it because it's not on that aerial photograph?
MR. RADULESCU: I am just --
MS. ROBESON: Do you know --
MR. RADULESCU: -- not aware of it.
MS. ROBESON: Do you know if it's on the aerial photograph?
MR. RADULESCU: No, I don't.
MR. ABRAMS: Do you know that the Housing Opportunities Commission project is for affordable housing?
MS. HARRIS: I'm going to object because this is our architect, not our land planner, and he didn't testify or mention anything in his statement regarding the HOC project.
MS. ROBESON: Well, I think that whether it's affordable housing or not that's, all we're doing is laying

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

going to let it in for the weight it deserved, I'm going to let you cross-examine further. I want to get through the Applicant's testimony, all right? So --
MR. ABRAMS: Is she going to be testifying from this exhibit?
MS. ROBESON: Yes, but I'm letting it in --
MR. ABRAMS: Okay.
MS. ROBESON: -- for the weight it deserves, and I'm going to let you tear it to pieces on cross-examination. How's that?
MR. ABRAMS: Your letting it in, I would object to.
MS. ROBESON: I understand.
MR. ABRAMS: Your letting me tear it to pieces, we have no objection.
MS. ROBESON: Okay.
MR. KNOPF: May I just ask one other question?
MS. ROBESON: Yes, sir.
MR. KNOPF: Is the witness aware of any other building other than the HOC building was is, should be on that photo but is not?
MR. RADULESCU: What is the question?
MR. KNOPF: Are you aware of any building, any other building --
MR. RADULESCU: How far? Left and right.

MR. KNOPF: -- that's within the exhibit aerial dimensions that --
MR. RADULESCU: We covered --
MR. KNOPF: -- was left out of that photo?
MR. RADULESCU: Nothing, as far as I know. Nothing is left out on this street.
MS. ROBESON: On Montgomery Lane.
MR. RADULESCU: On Montgomery Lane, yes.
MR. KNOPF: On Montgomery Lane. Okay. Thank you.
MS. ROBESON: All right. So, it's in, you may refer to it subject to later attack, okay? So, go forward.
FURTHER DIRECT EXAMINATION OF MS. WILTSHIRE
MS. WILTSHIRE: I believe what we were discussing was the community outreach, and what I wanted to do was just point out the projects as we're discussing them. And we have had over a dozen meetings with the various neighbors. We have, have met twice with developers of Bethesda, which is the northeast corner of Arlington and Edgemoor Lane.
MS. ROBESON: Wait, it's the southeast corner.
MS. WILTSHIRE: I'm sorry. Yes.
MS. ROBESON: Correct?
MS. WILTSHIRE: Yes.
MS. ROBESON: Okay.
MS. WILTSHIRE: It is the southeast. We have met with, on two occasions with Randy Rothstein, and this is his

proposed building, currently there are four houses there, and has a Development Plan approved for this project. And his project is in the --

MS. ROBESON: Northeast --

MS. WILTSHIRE: -- northeast corner --

MS. ROBESON: -- corner of Montgomery and Arlington.

MS. WILTSHIRE: -- of Montgomery and Arlington, and these are obviously the two abutting properties to us.

MS. ROBESON: Correct.

MS. WILTSHIRE: We've met with Mr. and Mrs. Chipouras, who is in the north, is on the northeast side of West Lane, located right here, it's a little bit difficult to see.

MS. ROBESON: No, that's the southeast.

MR. LAWCH: Madam Examiner, we can't see anything when she's holding --

MS. ROBESON: Can you angle that toward the audience, but I still would like to be able to see it.

MR. LAWCH: If she gets on the other side --

MS. WILTSHIRE: I'm sorry.

MR. LAWCH: If she just gets on the other side.

MS. ROBESON: Well, then I can't see it.

MS. WILTSHIRE: But you'll be able to see.

MS. ROBESON: So, you are also welcome to move --

MS. WILTSHIRE: Well, do you want --

MS. ROBESON: That's -- can you see it now?

MS. WILTSHIRE: I mean, I think you all --

MS. ROBESON: You're also welcome to --

MS. WILTSHIRE: -- know where the projects are.

MS. ROBESON: -- move briefly --

MR. KNOPF: But does someone have a pointer? That might help. Then she can stand back a little bit.

MS. ROBESON: I am not going to --

MS. WILTSHIRE: Well, I'll try to stand --

MS. ROBESON: -- delay this hearing while somebody finds a pointer, so --

MS. WILTSHIRE: I will try --

MS. ROBESON: -- we're going to keep going.

MS. WILTSHIRE: -- to stand out of the way, but most of you live in this area, so --

MS. ROBESON: No, it doesn't matter.

MS. WILTSHIRE: Okay.

MS. ROBESON: They have a right to see the exhibit. So --

MS. WILTSHIRE: Okay. So --

MS. ROBESON: -- where are these people?

MS. WILTSHIRE: The Chipouras are here in the southeast corner of West Lane.

MS. ROBESON: Okay.

MS. WILTSHIRE: There's a home here. In addition, we have met with the City Homes on I believe three occasions.

MS. ROBESON: And the City Homes are?

MS. WILTSHIRE: On the south side of Montgomery Lane. And --

MS. ROBESON: Are they townhouses?

MS. WILTSHIRE: They are townhouses. Yes.

MS. ROBESON: Okay.

MS. WILTSHIRE: And with the high-rise Edgemoor, which is on the north side of Montgomery Lane. Northeast corner, I guess, of Montgomery Lane.

MS. ROBESON: No.

MS. WILTSHIRE: Yes. Right?

MS. ROBESON: North, it's in the northwest quadrant of, it's north of Montgomery and then west of Woodmont, correct?

MS. WILTSHIRE: West of Woodmont, yes. Sorry. It's --

MS. ROBESON: Okay. Okay.

MS. WILTSHIRE: -- east of our site. So --

MS. ROBESON: Correct.

MS. WILTSHIRE: -- however -- yes?

MS. ROBESON: Going for the nearest corner.

MS. WILTSHIRE: From Woodmont and Montgomery it

will be northwest.

MS. ROBESON: Yes.

MS. WILTSHIRE: In the northwest corner.

MS. ROBESON: Yes. Okay.

MS. WILTSHIRE: Yes. So, those are, that's, those are the meetings that we've had with the community.

MS. HARRIS: Okay. Thank you. As we will be testifying, and as the record reflects, we are proposing, you are proposing 3.05 F-A-R based on the MPDU bonus. When SJG Properties decided to put, to include that into the, be part of the program was there guidance that you took from any of the other projects in the area?

MS. WILTSHIRE: Sure. We felt it appropriate given the development approval of both 4901 Hampden Lane, which is 70 feet in height, 3.05 F-A-R, and additionally Hampden Lane Associates as has been previously mentioned, is actually 71 feet in height at 3.05 F-A-R, so we felt that our application was appropriate, and there was precedent for that.

MS. HARRIS: Thank you. Can you describe the design of the proposed building, and how it's been influenced by your interaction with the community?

MS. WILTSHIRE: Sure. We met with the community on a number of occasions and listened to some of their suggestions or, frankly, criticisms of the building that we

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

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

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

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

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

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

MS. ROBESON: Today. Okay.

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

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

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

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

MS. WILTSHIRE: Okay.

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

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

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

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

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

MS. ROBESON: Yes.

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

MS. ROBESON: I see. Okay.

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

MS. ROBESON: I see. Okay.

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

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

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

MS. ROBESON: At the Planning Board?

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

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

MS. WILTSHIRE: Okay.

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

MS. WILTSHIRE: That's fine.

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

MS. WILTSHIRE: Yes.

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

MS. HARRIS: -- I'm going to ask the witness to conclude, and then Mr. Landfair will present the revised --
MS. ROBESON: That would be helpful.
MS. HARRIS: -- Development Plan, and that will provide a better understanding.
MS. ROBESON: Yes, I mean, if you want to reserve the right to recall --
MS. HARRIS: To call, okay, I think that's helpful.
MS. ROBESON: -- that's fine.
MS. HARRIS: Okay.
MS. ROBESON: Let's do that.
MS. HARRIS: Thank you. My apologies. Do you -- may I call the next witness?
MS. ROBESON: Yes, you may.
MS. HARRIS: Okay. Mr. Landfair.
MR. KNOPF: Well, wait. Excuse me.
MS. HARRIS: Or, right.
MR. KNOPF: We don't get a chance to cross-examine? Or is she not finished, she's not finished, is that it?
MS. ROBESON: I guess there is a possibility of not, her not being recall, so you do get a right of cross-examination. That's my apology, so go ahead.
CROSS-EXAMINATION OF MS. WILTSHIRE BY MR. KNOPF

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

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

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

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

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

MR. KNOPF: It's doable?

MS. WILTSHIRE: Yes.

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

MS. WILTSHIRE: No.

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

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

MS. WILTSHIRE: Yes, I would.

MR. KNOPF: Okay. Thank you.

MS. HARRIS: May I redirect, please?

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

MS. HARRIS: And then I get --

MS. ROBESON: -- double-teamed.

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

MS. ROBESON: No.

MS. HARRIS: Okay. Go ahead.

CROSS-EXAMINATION OF MS. WILTSHIRE BY MR. ABRAMS

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

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

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

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

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

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

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

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

MS. WILTSHIRE: Yes.

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

MS. WILTSHIRE: Sure, we looked at --

MR. ABRAMS: And wouldn't --

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

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

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

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

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

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

question.

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

MR. ABRAMS: Yes.

MS. WILTSHIRE: Yes.

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

MS. HARRIS: I --

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

MS. WILTSHIRE: Do I have --

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

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

MR. ABRAMS: That Holiday paid for the property?

MS. WILTSHIRE: Yes.

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

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

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

MS. WILTSHIRE: We had every intention of waiting to acquire the other site, which is why we waited two years, and we did not start any design on the project.
MR. ABRAMS: And when did you acquire the Holiday property?
MS. WILTSHIRE: In December of 2009.
MR. ABRAMS: And when did you acquire Lot 26?
MS. WILTSHIRE: September, 2011.
MR. ABRAMS: And how much did you acquire Lot 26 for?
MS. WILTSHIRE: For quite a bit of money, $2 million.
MR. ABRAMS: $2 million. Okay. So, you paid essentially the same price that Holiday paid for a larger parcel of land, and had a -- well, strike the last portion. You paid essentially the same price that Holiday paid for a larger developable area?
MS. WILTSHIRE: Approximately.
MR. ABRAMS: Okay. And when you acquired the first three lots did you know with any certainty that you'd be able to acquire the fourth lot?
MS WILTSHIRE: No.
MR. ABRAMS: And you just intended to sit on the property?
MS. WILTSHIRE: Yes.

MR. ABRAMS: And you've had you said meetings with the community, and specifically three meetings with City Homes --
MS. WILTSHIRE: Yes.
MR. ABRAMS: -- is that correct? At those meetings did City Homes request certain revisions to the plan?
MS. HARRIS: Can you repeat that question?
MR. ABRAMS: In the first meeting, well, in the meetings with City Homes did they request of you certain revisions to the plans that had been filed, the Development Plan?
MS. WILTSHIRE: Did they provide us information on I believe what they didn't like about the project. I don't know if they provided --
MS. HARRIS: I think we need to clarify because before Mr. Abrams came on board we actually had a civic meeting with the City Homes --
MR. ABRAMS: Okay.
MS. HARRIS: -- is that what you're referring to?
MR. ABRAMS: In the meeting, the first meeting that I was involved in with City Homes --
MS. WILTSHIRE: Okay.
MR. ABRAMS: -- did not we suggest to you certain revisions to the Development Plan which we believed would

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

was the setback?
MS. WILTSHIRE: There was no setback when we initially proposed the project.
MR. ABRAMS: Okay. But when you met with City Homes when I was there wasn't there a setback of 10 feet?
MS. WILTSHIRE: I don't recall, the setback would have been nine feet if it was proposed. But when we initially proposed the project to City Homes there was no setback.
MS. ROBESON: Mr. Abrams, I guess my --
MS. WILTSHIRE: No, I think he means height setback.
MS. ROBESON: Just a second. Okay?
MS. WILTSHIRE: Sorry.
MS. ROBESON: Mr. Abrams, where are you going with these questions?
MR. ABRAMS: The question -- well, the statement has been made --
MS. ROBESON: And how are they --
MR. ABRAMS: -- that they met with the community and made concessions to the community.
MS. ROBESON: No, you cannot interrupt.
MS. WILTSHIRE: Okay.
MS. ROBESON: Do not talk while I'm talking, do not talk when somebody else is talking. Okay? Go ahead.

MR. ABRAMS: That they made concessions to the community. What this line of question is, is whether she was aware as a result of those meetings what the community, at least City Homes, was requesting of the Applicant in the way of revisions to the plans. And what she's basically saying they made a whole lot of concessions, and I'm trying to establish what the community, at least City Homes wanted, and whether they made any concessions whatsoever to City Homes and presumably to anybody else. Any revisions to the plans.

MS. ROBESON: You can -- you know, I'm not sure how -- she did testify as to her meetings with residents.

MR. ABRAMS: Well, it goes to the credibility of what she's testifying to.

MS. ROBESON: I understand, and I'll let you pursue it in a limited manner, but we need to move on, so you can continue some of your questions, but at some point I'm going to call a halt. Okay, go ahead.

MR. ABRAMS: At the meeting that you had with myself and City Homes was there a question as to the location of the open space?

MS. WILTSHIRE: Yes, I believe so.

MR. ABRAMS: And where was it located at that point in time?

MS. WILTSHIRE: At the first meeting I believe the

open space was located along Montgomery Lane, West Lane, and also along the northern property line adjacent to the Villages of Bethesda.

MR. ABRAMS: And at that meeting did we request that the open space be transferred to the front of the property?

MS. WILTSHIRE: Yes, I believe you did.

MR. ABRAMS: And was that open space transferred to the front of the property before the Planning Board had issued their recommendation?

MS. HARRIS: I think it's irrelevant when the change occurred.

MR. ABRAMS: No, it's not irrelevant.

MS. ROBESON: No, he already explained the basis of the questions, and I allowed him some leeway, so I'm going to let her answer.

MR. ABRAMS: So, the changes which Mr. Landfair is going to discuss later in his testimony did not occur until after the Planning Board meeting, is that correct?

MS. WILTSHIRE: I'm going to have to let Mr. Landfair answer because I'm not certain that there wasn't some additional space added between the, well, what I would consider to be the second meeting with City Homes, and this last plan, that there wasn't actually some adjustment to the public space where there was some additional public space

that was added to the Montgomery Lane and West Lane facades.

MR. ABRAMS: But what you submitted to the Planning Board at that point in time still showed a 15-foot public use space on the north side of this building, did it not?

MS. WILTSHIRE: Yes, it did.

MR. ABRAMS: And it didn't show any larger area than say possibly a one-foot increase in the public use space fronting on Montgomery Avenue --

MS. WILTSHIRE: Again, I'm going to let --

MR. ABRAMS: -- before the Planning Board?

MS. WILTSHIRE: -- Mr. Landfair respond to that because I don't know the details of how the building moved.

MS. ROBESON: I understand your point. I don't think you need to do more.

MR. ABRAMS: Okay. In terms of, again, an economically feasible project with Lot 26 couldn't you construct a building at a 2.5 F-A-R with a 65-foot height limit and produce an efficient and markable development?

MS. WILTSHIRE: I haven't done the analysis on that.

MR. ABRAMS: But it's not impossible to do it, is it?

MS. WILTSHIRE: I can't answer that question without actually --

MR. ABRAMS: You didn't do it at all, did you?

MS. WILTSHIRE: I don't know the numbers related to that.

MR. ABRAMS: Okay. So, you're not testifying to the Hearing Examiner that it is economically infeasible to use the limits which are stated in the Sector Plan and produce an economically feasible project?

MS. WILTSHIRE: I'm sorry, repeat the question.

MR. ABRAMS: You're not telling the Hearing Examiner, are you, that if you utilized the development limitations in the Sector Plan with an F-A-R that you could not produce an economically feasible project?

MS. WILTSHIRE: I would have to go back and look at that analysis.

MR. ABRAMS: When you say it's critical that you get 100 units to run and operate a rental building is this an optimal figure, or is this the least feasible figure for an operation of a building of that size?

MS. WILTSHIRE: It's not, no, it's not an optimal figure. This would be the, what I would believe to be, the least feasible figure in terms of market rate units available.

MR. ABRAMS: And within the building envelope of 2.5 F-A-R you as the developer, the builder really have discretion as to how many units are one-bedroom, how many

are efficiency, and how many are two-bedroom, is that correct?
MS. WILTSHIRE: Yes.
MR. ABRAMS: And so, within a 2.5 F-A-R you might have more one bedrooms and efficiencies than you would have two bedrooms, is that correct?
MS. WILTSHIRE: I might -- I guess so.
MR. ABRAMS: And if there were more one bedrooms than two bedrooms how would that affect the economic feasibility of this project?
MS. WILTSHIRE: I'm confused, but --
MR. ABRAMS: Why are you confused?
MS. WILTSHIRE: Well, it really has to do with the mix --
MS. ROBESON: Mr. Abrams --
MS. WILTSHIRE: -- of units --
MS. ROBESON: -- she's --
MS. WILTSHIRE: -- within the building, and what -- if it's, first of all, if it's a rental product versus a condominium product --
MR. ABRAMS: Okay.
MS. WILTSHIRE: -- those are two completely separate products, so if you're referring to a rental product --
MR. ABRAMS: I'm talking about a rental product.

MS. WILTSHIRE: I mean, optimally you would like an average, there would be a small average unit size preferred in a rental product to --
MR. ABRAMS: Correct.
MS. WILTSHIRE: -- a condominium product.
MR. ABRAMS: All right. Now, when the County Council approved these projects around your property I think your testimony was that they were approved without MPDUs?
MS. WILTSHIRE: No. I said there are no existing MPDUs on Montgomery Lane.
MR. ABRAMS: On Montgomery Lane.
MS. WILTSHIRE: On Montgomery --
MR. ABRAMS: Okay.
MS. WILTSHIRE: -- Lane.
MR. ABRAMS: Now, when they approve projects on Montgomery Lane they had the right or ability at that point in time to approve the projects without MPDU use, is that correct?
MS. HARRIS: I object. I don't know that the witness has any knowledge of --
MS. ROBESON: Well, she can --
MS. HARRIS: -- of what --
MS. ROBESON: -- say --
MR. ABRAMS: Well, she should she doesn't know.
MS. WILTSHIRE: I'm sorry, could you repeat the

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

MR. ABRAMS: Okay. Who specifically requested that, if anybody, in the community?
MS. WILTSHIRE: I believe there was a request from the City Homes, and I believe there was a request from the high-rise Edgemoor.
MR. ABRAMS: To set back the two top floors nine feet?
MS. WILTSHIRE: Well, to provide a setback --
MR. ABRAMS: And wasn't that --
MS. WILTSHIRE: -- on the building.
MR. ABRAMS: -- related to the Holiday project and trying to emulate the setback in the Holiday project?
MS. WILTSHIRE: I don't --
MR. ABRAMS: Wasn't that explained to you as a reason?
MS. WILTSHIRE: I'm sorry?
MR. ABRAMS: Wasn't that explained to you as a reason?
MS. WILTSHIRE: It was suggested that the Holiday project had a setback and would we consider a setback, but to be quite candid, it's a completely different frontage along Montgomery Lane, the building is a completely different building that's being designed at this point. We went back and decided to set it back because there was a, you know, there was suggestion that they would like to be

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

testimony.
MR. ABRAMS: It's my understanding that she's coming back.
MS. ROBESON: No, I don't --
MR. ABRAMS: Is she coming back, or not?
MS. HARRIS: We reserve the right to call her back.
MR. ABRAMS: Okay. So, her testimony is concluded for the most part.
MS. HARRIS: No, I didn't say that. I said --
MS. ROBESON: She may or may not. You can't count on it. I guess I just, I don't understand, she's not the expert land planner, or the expert --
MR. ABRAMS: No, I understand that.
MS. ROBESON: -- architect, so are we back at how, whether she listened to City Homes or not? Is that the --
MR. ABRAMS: No.
MS. ROBESON: -- point of --
MR. ABRAMS: No. Apparently, the impression was left that she, because of the confusion with that particular exhibit, the insertion of the buildings --
MS. ROBESON: Yes.
MR. ABRAMS: -- that her testimony had been cut short to try to get to Mr. Landfair or some other witness.
MS. ROBESON: Yes.

MR. ABRAMS: Now, all I want to know is, is she finished as a witness in terms of what was planned for today?
MS. ROBESON: Ms. Harris, did she cover everything that she was supposed to cover, or --
MS. HARRIS: Yes, because we decided that Mr. Landfair -- yes. The answer is yes.
MR. ABRAMS: Okay.
MS. HARRIS: But, I mean, as in any hearing, obviously, we have the right to bring up one of the former witnesses again before the close of our case.
MS. ROBESON: Okay. And you have the ability to --
MR. ABRAMS: Recall.
MS. ROBESON: Yes, re-cross. Yes.
MR. ABRAMS: Fine.
MS. ROBESON: Okay? All right. Are you complete?
MR. ABRAMS: No, I mean --
MS. ROBESON: No, I mean on your cross-examination of this witness?
MR. ABRAMS: Well, I think that might be one of the reasons why we might need to recall her so that we can get further clarification as to the areas that we tried to evolve --
MS. ROBESON: Okay.

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

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

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

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

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

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

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

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

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

of the length of the lot and the length of the building, they do not match up with Exhibit 29. So, we need --

MS. ROBESON: Exhibit 29 is the 12/12 site plan?

MR. ABRAMS: Which is the 12 --

MS. ROBESON: Development Plan?

MR. ABRAMS: The 12/10. Well, it's date received 12/10, Exhibit 29, that's the prior site plan --

MS. ROBESON: Right.

MR. ABRAMS: -- before they attempt to enter this one. Because we believe that there's at least a five foot difference in both the length of the property as well as the length of the building.

MS. ROBESON: Ms. Harris, do you have a response?

MS. HARRIS: Yes, a couple of responses. First of all, the changes were made, as Mr. Landfair indicated, in response to things that we heard on December 20th. Since December 20th the Applicant has worked, been working diligently to one, first see what kind of revisions could be made to be responsive; and two, once those were made then they had to then be transferred to the Development Plan. So, it was a work in progress, everyone working diligently over the holiday period. The first -- and in fact, the Development Plan was just completed 10 minutes before the meeting with Mr. Abrams, I literally went down to the printing office and got it as I was walking over to our

meeting with Mr. Abrams.

Second of all, as we all know, the record in this case is not going to close today, in fact, unfortunately, it will likely not close based --

MS. ROBESON: At this rate it may --

MS. HARRIS: Exactly.

MS. ROBESON: Go ahead.

MS. HARRIS: So, my point is there will certainly be sufficient time for Mr. Abrams and his client to thoroughly evaluate the Development Plan between now and the time that the record closes, and we certainly would not object for him having the opportunity once he's had that, a chance to thoroughly evaluate the Development Plan to the extent he hasn't over the past two days to then re-cross our witness with respect to it.

MR. ABRAMS: Well, I want to know what plan, you know, is the correct plan in terms of the dimensions that are shown on those plans.

MS. ROBESON: Well, I understand your confusion, and you have four days, or, you know, however many days benefit of me, but I'm going to let it in, but I am going to ask Ms. Harris to make Mr. Landfair available again for cross-examination because we don't anticipate the record closing shortly. I am going to ask him to come back and full cross-examination. I've never had the benefit of this

plan, so I can't ask if I have any questions. So, we'll do it like that, and I'm going to let -- and I also would suggest that the parties if we have a gap in time I would suggest that the parties meet to look over any technical errors that may occur that they think is on this plan so that we can have an accurate plan to work from. Mr. Knopf?

MR. KNOPF: I just want to mention that with regard to my client we received this yesterday late in the afternoon, and so we want to make sure that we can join in cross-examining at a later date.

MS. ROBESON: Yes. What my goal today is to get an understanding of the changes, because I can't figure out what we're dealing with, and I'm not willing to postpone the hearing to do that. So, with those caveats I would -- and also, is there a copy for me to look at while he's talking? Because I --

MS. HARRIS: Yes.

MS. ROBESON: -- can't read that, I may be old, but I don't see anybody could read that writing from here.

MR. LANDFAIR: I brought 11 by 17 copies, I can give you --

MS. HARRIS: My reading glasses wouldn't help you, either.

MS. ROBESON: Thank you. So, this is a duplicate of 52.

MR. LANDFAIR: Right. And I think I have a few more so Normand and Stan, if you --

MR. KNOPF: Yes, I would like, appreciate getting one. Yes, thank you.

(Discussion off the record.)

MS. ROBESON: All right. Now, Mr. Landfair, after you give Mr. Knopf a copy you may proceed.

MR. LANDFAIR: Thank you.

MR. ABRAMS: This is a duplicate of Exhibit 50 --

MS. ROBESON: Two. Fifty-two is the revised Development Plan dated 1/10/13.

(DPA 13-01 Exhibit No. 52 was marked for identification.)

MS. ROBESON: Go ahead.

MR. LANDFAIR: Thank you. Again, this plan was in large response to comments that we received at the Planning Board, as well as from the community. And it's an effort to address, among other things, the concerns about public use space. On the previous Development Plan we were utilizing space along the north side of the building for public use space, and there were questions about the viability of that space, whether it truly would be made available to the public, accessible to the public, desirable by the public. So, hearing that from the Board through changes in the architecture we were able to re-define what is the public

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

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

defer to the architect --
MS. ROBESON: I see.
MR. LANDFAIR: -- as to the exact dimension of that.
MS. ROBESON: Okay. So, the changes are is the amount of right of way -- okay, the changes are you've put the arc in.
MR. LANDFAIR: We put the arc in, and that allowed us to make up for some public use space, which we are eliminating from the north side of the building.
MS. ROBESON: Okay. Is the streetscape along the facade, is that changing, or is that the same?
MR. LANDFAIR: In terms of depth and area along Montgomery Lane itself it remains the same --
MS. ROBESON: Okay.
MR. LANDFAIR: -- but by introducing this arc we have the urban park here which we've created --
MS. ROBESON: I understand. Okay.
MR. LANDFAIR: -- which is adding approximately 600-plus square feet at that corner --
MS. ROBESON: Okay.
MR. LANDFAIR: -- which we didn't have before.
MS. ROBESON: I wasn't questioning, you know, what you're doing.
MR. LANDFAIR: Sure.

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

MS. ROBESON: Okay.
MR. LANDFAIR: Okay.
MS. ROBESON: And did you make any change, I think the Planning Board recommendation said something about the transformers, but I could be --
MR. LANDFAIR: The transformers remain in the same location.
MS. ROBESON: And are above ground.
MR. LANDFAIR: Right. But previously we had public use space that was surrounding those transformers.
MS. ROBESON: So, you're saying --
MR. LANDFAIR: We're not counting that area any more --
MS. ROBESON: -- without that here --
MR. LANDFAIR: -- as public --
MS. ROBESON: Okay.
MR. LANDFAIR: -- use space.
MS. ROBESON: Okay.
MS. HARRIS: And Mr. Landfair, given that the Development Plan is a plan of the ground plane did the previous plan reflect the setback, the architectural setback?
MR. LANDFAIR: Yes, it did.
MS. ROBESON: What architectural setback?
MR. LANDFAIR: The previous --

MS. HARRIS: The previous Development Plan.
MR. LANDFAIR: -- plan had a setback in terms of the minimum setbacks of the building --
MS. HARRIS: No, I'm sorry.
MR. LANDFAIR: -- from the right of way line.
MS. HARRIS: You misunderstood my question.
MR. LANDFAIR: I'm sorry.
MS. HARRIS: I meant in the fifth floor setback.
MR. LANDFAIR: No, it did not.
MS. HARRIS: Okay.
MS. ROBESON: Say it -- what?
MS. HARRIS: The previous Development Plan, well the Development Plan doesn't reflect the architectural setback because it's a plan of the ground plane.
MS. ROBESON: I see your point.
MS. HARRIS: That's the point.
MS. ROBESON: Well, is the setback a binding element?
MS. HARRIS: It is not --
MR. LANDFAIR: No, it's not.
MS. HARRIS: -- but it certainly could be.
MS. ROBESON: All right. Go ahead.
MR. LANDFAIR: The other point I wanted to make is with the introduction of the arc here that reduces the length of the building facade along Montgomery Lane, so I

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

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

which is approximately 100 feet in height in the TS-R Zone, and right behind that to the north, again, is The Chase high-rise building, which is about 125 feet in height.

MS. HARRIS: Did you review the heights of the City Homes?

MR. LANDFAIR: Yes, we did. Those are approximately 50 feet in height as measured to the roof ridge. And also, I should note, they are built face online, meaning where they are adjacent to the southern property line they're put right on the property line itself. And I should note that their relationship to our property, they are approximately 70 feet from building face to building face, meaning when our building is constructed they're approximately 70 feet away.

MS. HARRIS: And what is the height of the Sandy Spring building?

MR. LANDFAIR: The Sandy Spring building will be 65 feet, plus a four-foot high parapet.

MS. ROBESON: The Sandy Spring building is in the northeast corner of Montgomery and Arlington, is that --

MR. LANDFAIR: No.

MS. ROBESON: No?

MR. LANDFAIR: The Sandy Spring building is directly opposite our property, it's in the northeast corner of West Lane and Montgomery Lane.

MS. ROBESON: Okay. All right.

MS. HARRIS: And Mr. Landfair, do you know the distance of that building from the face of the high-rise Edgemoor Building?

MR. LANDFAIR: I'd have to scale it out. I have an exhibit which I can refer to now if you'd like?

MS. HARRIS: No, as long as you get to that --

MR. LANDFAIR: Okay.

MS. HARRIS: -- later in your --

MR. LANDFAIR: Yes.

MS. HARRIS: -- testimony.

MR. LANDFAIR: I have an exhibit which will give us an approximation of the distance between that building and the high-rise Edgemoor.

MS. HARRIS: Thank you. And what residential district within the Sector Plan is the property located?

MR. LANDFAIR: I'm sorry, the residential district? It's located in the Transit Station Residential District.

MS. HARRIS: And can you explain the general development, well, you did just go through all the general development of the properties within the TS-R district.

MR. LANDFAIR: Let me just say that the district is developed primarily today with high-rise and mid-rise multi-family buildings, as well as the townhouses that I've

described. There are a number of pre-existing houses which currently have commercial uses in them. I noted the, several properties along Arlington Road, there are also two that are located on West Lane directly opposite our own property.

MS. HARRIS: Thank you. Have you made a personal inspection of the property, and if so, can you describe the existing improvements?

MR. LANDFAIR: Yes, I have, and the existing improvements are that there are four houses on the property used for commercial purposes.

MS. HARRIS: Thank you. And have you reviewed a central zoning map?

MR. LANDFAIR: I have, yes.

MS. HARRIS: And what's the current zoning classification of the property?

MR. LANDFAIR: The current zoning for the lot at the corner, I'm sorry, Lot 26, is R-60, the balance of the property is currently zoned TS-R.

MS. HARRIS: And are you familiar with the previously zoning application that re-zoned Lots 24, 25, and 27?

MR. LANDFAIR: Yes, I am.

MS. HARRIS: And were you involved in that case?

MR. LANDFAIR: I was, and the services provided

were very similar to what we are providing now, which is to say a land use report, we produced the Development Plan, we produced the supporting documents in conjunction with that Development Plan, and as the project moved on further into the entitlement process we've produced other plans associated with it.

MS. HARRIS: Thank you. Are you familiar with the Zoning Ordinance and the provisions relating to the TS-R Zone?

MR. LANDFAIR: Yes, I am.

MS. HARRIS: And is the proposed multi-family residential use permitted in the TS-R Zone?

MR. LANDFAIR: Yes, it is.

MS. HARRIS: Okay. I'm going to now ask you a series of questions based on your knowledge of the Zoning Ordinance, your familiarity with the project, and your professional expertise.

Zoning Ordinance Section 56-C-8.21 and 8.22 set forth the intents and the purposes of the TS-R Zone. Did you evaluate the re-zoning application in connection with this section, and if so, what conclusion did you reach?

MR. LANDFAIR: Yes, I did. The TS-R Zone is intended to be used in transit station development areas which Section 59-A-2.1 defines as areas near a Metro Station which are not located within a CBD, which have been

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

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

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

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

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

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

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

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

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

MR. LANDFAIR: Yes, that's correct. There is --

MS. HARRIS: Okay.

MR. LANDFAIR: -- that possibility.

MS. HARRIS: Okay. Thank you. I believe exhibit

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

MR. LANDFAIR: Yes.

MS. HARRIS: -- and then went through a detailed analysis of them. Can you please discuss that?

MS. ROBESON: Now, is that in the record?

MS. HARRIS: No, we are about to submit them.

MS. ROBESON: Okay.

MS. HARRIS: So, this would be, we would offer this as Exhibit --

MS. ROBESON: Fifty-three.

MS. HARRIS: -- 53, and I think it could be entitled Development Analysis.

MS. ROBESON: Surrounding Development Analysis?

MS. HARRIS: That's -- yes.

(DPA 13-01 Exhibit No. 53 was marked for identification.)

MR. LANDFAIR: Thank you. This exhibit was prepared to break down under a number of different categories the various projects and developments that have either been approved or built in this particular area.

MS. ROBESON: Do you have a copy of that? Because I --

MR. LANDFAIR: Yes.

MS. ROBESON: -- I don't know if it's my age --

MR. LANDFAIR: Yes.
MS. ROBESON: -- that I can't read those numbers, or just my eyesight.
MR. LANDFAIR: You know what, let me see if I can give a copy to Mr. Knopf and Mr. Abrams, as well.
MR. KNOPF: We can't --
MR. ABRAMS: It would help.
MR. RADULESCU: You have to share.
MS. ROBESON: Thank you. Thank you. All right. Sorry to interrupt.
MR. KNOPF: Can somebody --
MS. HARRIS: No, unfortunately, you're going to need to share it.
MR. ABRAMS: Where is it?
MS. HARRIS: It's right in front of -- I think it's on -- I'm sorry.
MS. ROBESON: 03. It's on page three of this.
MR. KNOPF: That's a key exhibit, I would like to have a copy.
MR. ABRAMS: Yes, we'd like separate copies if we --
MS. ROBESON: Can you provide copies after the hearing?
MS. HARRIS: Certainly. And yes, my apologies, some of the exhibits we have three copies, and others we

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

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

MR. LANDFAIR: -- the plan, and what is based on the --
MS. ROBESON: Okay.
MR. LANDFAIR: -- resolution, et cetera.
MS. ROBESON: I have a feeling they're going to ask all the questions that I'm, you know --
MR. LANDFAIR: Sure.
MS. ROBESON: -- and some, so --
MR. LANDFAIR: Sure.
MS. ROBESON: -- why don't you proceed with this.
MR. LANDFAIR: Okay.
MR. ABRAMS: Could I interpose?
MS. ROBESON: You may all -- have I ever stopped you?
MR. KNOPF: Could you ever stop?
MR. ABRAMS: No, ma'am, but you could. I believe your rules of procedure require that expert analysis and studies be submitted with approval and submission, I haven't seen this before.
MS. ROBESON: This was not?
MS. HARRIS: No. Nor is it an expert analysis, it's a compilation of information that's part of the public record.
MR. ABRAMS: No. Come on. Jesus. You know --
MR. KNOPF: The expert's important.

MR. ABRAMS: -- to spring this on us now is unconscionable. How am I going to cross-examine him just looking at this without going into the background of the numbers?

MS. ROBESON: Well, he's coming back. I'm going to overrule it, I don't see that it's an expert report, although I have to say that I'm going to allow them extra leeway because it's not just hard on them, it's hard on me because I did spend several days preparing for this case and now I'm not dealing with what I prepared for, so I don't have my questions together.

MR. ABRAMS: Sure.

MS. ROBESON: And my second question is, are you going to refer this revision to Staff or the Planning Board?

MS. HARRIS: Actually, this exhibit was provided to Planning Staff.

MS. ROBESON: Yes.

MS. HARRIS: This was provided to Planning Staff at one point.

MS. ROBESON: No, not this, the revised Development.

MS. HARRIS: I'm sorry. We can certainly do that. Is that what you're suggesting?

MS. ROBESON: Yes, I would recommend --

MS. HARRIS: Okay.

MS. ROBESON: -- they're aware of the Planning Board recommendation, I would like their input as to whether it meets the Planning Board's recommendation. It would be nice to have the Planning Board's recommendation on this --

MR. ABRAMS: Certainly.

MS. ROBESON: -- because it is a big deal. All right, Mr. Landfair. So, to answer your objection I'm going to let it in subject to he can be recalled when you've had a chance, I assume we're setting dates for about a month out that he can be there to, he will be there to be cross-examined on this exhibit?

MR. ABRAMS: It was my understanding that the 15th was the date that we were going to set the future dates, and if so --

MS. ROBESON: Yes.

MR. ABRAMS: -- and in an effort to find out all my witnesses' available dates through the month of March, I guess it is, through February and March. So, the 15th we'll have it.

MS. ROBESON: I'm not setting a date today.

MR. ABRAMS: Okay.

MS. ROBESON: No, that was the game plan. I'm fine with that.

MR. ABRAMS: All right.

MS. ROBESON: Okay. Mr. Landfair.

MR. LANDFAIR: Before we move on from this exhibit I do want to highlight at the bottom of the table what is titled significant totals, and the gist of this is to show what the conditions out there would be like with this project and without the project. Without the project the average number of units per acre is between 48 and 54 units to the acre; with this project it increases up to about 57 to 66 units to the acre. The average unit size likewise would go down from a range of 2,120 to 2,230 down to 1,950 to 2,100, that's unit size reduction. And then finally, and perhaps most importantly, the numbers of MPDUs without this project falls within the range of 27 to 35, with this project it increases to between 42 and 53.

MS. HARRIS: Thank you. Can you please evaluate the other Zoning Ordinance provisions of the TS-R as they relate to the re-zoning application and the Development Plan Amendment?

MR. LANDFAIR: Certainly. We can start with Section 8.24, which is regarding the location, the TS-R Zone is permitted only in Transit Station development areas as described in the definition section of the Zoning Ordinance, and in accordance with an approved Sector Plan. As previously noted, the Transit Station Development Area is an area near the Metro not located in the CDP, and which has been designated as a Transit Station Development Area by the

Sector Plan. The Sector Plan specifically designates this property for the TS-R Zone, the clear intent is that the site be developed as a Transit Station Development Area.

Section 8.25 covers pump up facilities and amenities. The Development Plan for a TS-R Zone property must substantially conform to facilities and amenities recommended by the Sector Plan, including any recommended easements for circulation, open space, and recreation to ensure compatibility. This project provides additional dedications along Montgomery Lane and West Lane, as will be described in greater detail by the project civil engineer, which will allow us to upgrade the existing sidewalk along Montgomery Lane and create a new sidewalk along West Lane.

Section 8.3 covers land uses. Multi-family residential is a permitted land use in the TS-R Zone.

Section 8.4, development standards. The TS-R Zone sets forth a maximum density of 2.5 F-A-R, which can be exceeded to accommodate MPDUs. The zone also sets forth a maximum density of 150 dwelling units per acre. All existing buildings in the TS-R Zone on Montgomery Lane were built or approved to 2.5 F-A-R. However, unlike the proposed development, none of the projects on Montgomery Lane have MPDUs in them.

In terms of units per acre, the issue goes to how many units fit within the overall F-A-R. Both City Homes

and the high-rise Edgemoor have larger units. The average for City Homes is roughly 2,500 square feet, while for the Edgemoor it ranges between 800 square feet and 5,000 square feet, resulting in an average of about 1,900 square feet.

From a land planning, housing policy, and smart growth policy perspective the TS-R district is intended to capitalize on the proximity to the Metro Station, and the CBD, and promote density in these locations. It's worth noting that when the high-rise Edgemoor was originally approved it was approved for 102 units, then subsequently the size of the units was doubled, effectively reducing the final total to 54 units.

Section 8.51, building height. The TS-R Zone does not set forth the maximum building height, as the expectation is that heights are determined by the Planning Board at site plan. In making this determination the Board will consider the size of the lot, the relationship to surrounding uses and buildings, the need to preserve light and air, and of course, compatibility.

The building height limits depicted in figure 3.2 of the Sector Plan, which is found on page 39, recommends 65 feet for many of the properties located along Montgomery Lane, including the subject property. At the same time the Sector Plan notes as an objective low rise high density development in the context of heights in the CBD, that's

noted on page 80. In the context of the Sector Plan which recommends heights ranging from 35 feet to 200 feet, 65 feet is certainly low rise, in fact, the International Building Code considers 65 feet to be low rise. In evaluating the varying heights recommended in the Sector Plan there is strong support to conclude that low rise includes heights of 35, 40 -- I'm sorry, 42, 50, 60, 65, and 75 feet.

MS. ROBESON: Wait, what are you relying on for that -- BOCA (phonetic sp.)?

MR. LANDFAIR: The International Building Code.

MS. ROBESON: Right.

MR. LANDFAIR: Right.

MS. ROBESON: Okay. When you say, though, that that is for, not for a land planning purpose, but for a whole different set of regulations --

MR. LANDFAIR: Sure, construction standards, construction means --

MS. ROBESON: Fire safety.

MR. LANDFAIR: -- pipes. Understood. Yes. But nevertheless, we still feel that based on what's been approved in the area as it relates to the height diagram found in the Sector Plan that 65 feet could be considered to be low rise.

MS. ROBESON: All right.

MR. LANDFAIR: In evaluating the varying heights

recommended in the Sector Plan there was strong support to conclude, as I just mentioned, a range between 35 and 75 feet. Mid-rise would include heights ranging from 90 to 110, 120 to 125 feet. And high-rise would include heights of 143, 175 and 200. The proposed building will have a maximum height of 70 feet, stepping down to 50 as it approaches Montgomery Lane. While this exceeds the Sector Plan recommendation by five feet, this recommendation is just that. The Zoning Ordinance requires substantial compliance with use and density recommendations but not height, as noted in Section 59-D-1.61.

There are many examples throughout the CBD of variations on height recommendations from what is depicted in the Sector Plan. For example, the Hilton Garden Inn, 90 feet was recommended in the plan, it was approved for 116. A project called Upstairs at Bethesda Row was proposed, or rather supported at 42 feet and the Master Plan approved at 65. Hampden Lane Associates, 65 feet versus 71. And finally, 4901 Hampden Lane, the Sector Plan recommended 65 feet, and it was approved at 70.

Furthermore, the Ordinance allows an increase in maximum densities and heights permitted by the Zone to accommodate MPDUs and associated bonus density. It should also be noted that the TS-R Zone itself does not specify a height limit, and allows up to 3.05 F-A-R.

Actual development in the surrounding area displays wide variations in heights, some greater than the Sector Plan. I mentioned The Villages of Bethesda townhouses, which are three stories on top of a platform.

MS. ROBESON: Where are they?

MR. LANDFAIR: Those are located just to the, and I can refer back to the aerial exhibit. Northwest of the subject property.

MS. ROBESON: I don't recognize that exhibit.

MS. HARRIS: The one before.

MR. LANDFAIR: Let's refer to the aerials again.

MS. ROBESON: Okay. Exhibit -- wait, is that --

MS. HARRIS: Fifty-one.

MR. LANDFAIR: Referring to Exhibit 51, The Villages of Bethesda are located just to the northwest of the subject property, and have --

MS. ROBESON: Okay.

MR. LANDFAIR: -- frontage along Edgemoor and Arlington Roads.

MS. ROBESON: Okay. All right.

MR. LANDFAIR: City Homes has a height of 53 feet; low rise Edgemoor at Arlington, 48 feet, it's proposed to be on top of a terrace, as well. I mentioned the high-rise Edgemoor, which has a height of approximately 100 feet; The Chase with a height of about 120 feet.

The Planning Board has previously found greater heights on the north side of Montgomery Lane to be compatible with surrounding development, again, the high-rise Edgemoor at 100 feet. Our project will only be one foot taller than the parapet of the Sandy Spring project which was recently approved on the opposite side of West Lane.

Section 8.52, off street parking, basically requires that parking be located which has minimal impact to adjoining properties. All of our parking will be located off street and in sufficient number to meet the Zoning Ordinance requirements. Access itself will be from West Lane away from Montgomery Lane.

MS. HARRIS: We're going to move into the issue of the public use space requirements for the zone. Can you please indicate what the Zoning Ordinance requires in terms of public use space, and identify other projects in the area and what they provide?

MR. LANDFAIR: Certainly. The requirement is 10 percent, other projects in the area are providing roughly that amount, they include Hampden Lane, which is providing 10.47 percent, the Sandy Spring project just approved at 10.6 percent --

MS. ROBESON: Which one is the Sandy Spring project?

MS. HARRIS: Actually, Mr. Landfair, we have a number of exhibits, going through each of these I think it may be helpful if we --

MS. ROBESON: All right.

MS. HARRIS: -- walk through each exhibit.

(Discussion off the record.)

MS. ROBESON: Is this also in this booklet?

MS. HARRIS: Yes.

MS. ROBESON: I see something like that in here.

MS. HARRIS: Are all the exhibits in the booklet?

MR. RADULESCU: Yes.

MS. HARRIS: Yes.

MR. RADULESCU: And labeled 05.

MS. ROBESON: Can you --

MS. HARRIS: So, it's labeled page 05?

MS. ROBESON: Edgemoor Phase 3 Approved Site Plan? Yes. I see it.

MR. ABRAMS: We're still waiting for something copied.

MS. ROBESON: All right. So, this will be Exhibit 54, how do you want to describe this, Ms. Harris:

MS. HARRIS: We have a series -- well, we can either submit each one individually or all of them as one exhibit. There's a series of public use space exhibits from each project. I guess individually, so --

MS. ROBESON: I'd rather just do it individually --

MS. HARRIS: Individually. Okay.

MS. ROBESON: -- at this point, and --

MS. HARRIS: High-rise Edgemoor Public Use Space exhibit.

MS. ROBESON: And?

MS. HARRIS: So, that would be Exhibit 54.

MR. ABRAMS: Can we just go A, B, C, D, and --

MS. ROBESON: Yes, okay. All right.

MR. KNOPF: Can we -- yes. Because they're all attached.

MS. ROBESON: I guess my concern was we already have a page for this exhibit introduced separately, but I'll go -- this whole book, how do you want to describe this book?

MS. HARRIS: Well, the book was intended, it was our intent to leave the exhibits that we're presenting and that the books were for just your use, but if you want us to -- because what's in the book is a compilation of all the individual exhibits.

MS. ROBESON: Okay. I'm just going to do it one at a time.

MR. KNOPF: Well --

MS. ROBESON: Yes.

MR. KNOPF: Okay. When we prepare to cross-examine we're only going to have this, and it would be --

MS. ROBESON: I'm sure we'll have the exhibits available.

MR. KNOPF: I know, but not in my office to prepare. I'm just wondering --

MS. ROBESON: But you have the book, which is a duplicate of all the exhibits.

MR. ABRAMS: Then I don't have a book.

MR. KNOPF: No, no. I --

MS. HARRIS: We will get you a book, Mr. Abrams, by the end, close of business today.

MR. KNOPF: No, I'll give it back, but I'm just -- all right. If we're going -- could we simply if you're going to make each one a separate exhibit if we read out the numbers and I can mark this and we'll have it.

MS. ROBESON: Sure. Can we have these?

MS. HARRIS: The books?

MS. ROBESON: Yes.

MS. HARRIS: Certainly. And we are getting another one made for --

MR. RADULESCU: We're going to get copies made.

MS. ROBESON: Okay. This is what I'm going to do, okay, I'm going to mark mine with the exhibit numbers --

MR. KNOPF: Right, and I'll mark this one.

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

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

back in both side yards, and we have photographs of those side yards, up to points where they are gated. The one side yard along the east side has a transformer, as well, in it.
MS. ROBESON: Now, the side yards are on the right hand side of this exhibit? Those are the two side yards?
MR. LANDFAIR: Well, the top photograph is the side yard to the left, or rather I should say the west side of the building --
MS. ROBESON: Okay.
MR. LANDFAIR: -- and then in the lower right corner of the exhibit we have a photograph which includes the transformer, that's depicting the side yard along the east side of the building.
MS. ROBESON: Okay.
MR. LANDFAIR: And then we have a third photograph which depicts the public use space along the front of the building, along Montgomery Lane itself.
MS. ROBESON: Is that parking part of the public use space, or is the public use space the sidewalk?
MR. LANDFAIR: It includes the sidewalk, does not include the --
MS. ROBESON: Not the parking --
MR. LANDFAIR: No.
MS. ROBESON: -- area?
MR. LANDFAIR: No.

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

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

MR. KNOPF: That's what I have. I marked up the wrong page. You're right. I have to try to find that. Where?
MS. ROBESON: It's right before it.
MR. KNOPF: Oh, this is Exhibit -- thank you.
MS. ROBESON: All right. Now, this is right after it, I think.
MR. KNOPF: After --
MS. ROBESON: This has --
MR. LANDFAIR: It should be, yes.
MS. ROBESON: -- City Homes, Lots 5 to 21, and 4901 Hampden Lane, right?
MR. LANDFAIR: Correct.
MS. ROBESON: So, this will be Exhibit 56.
MR. KNOPF: Wait a minute; I have to try to -- what's the number again? The original number on the right-hand corner?
MR. LANDFAIR: It's still, I'm afraid, 05.
MR. KNOPF: Oh, still five.
MS. ROBESON: Because we're still on public use space.
MR. KNOPF: Well, I'm trying to find --
MS. ROBESON: It's right next to 55.
MR. KNOPF: Oh, is this -- okay. Thank you.
MS. ROBESON: So, I'm going to label this City Homes and 4901 Hampden Lane Public Use Space.
(DPA 13-01 Exhibit No. 56 was marked for identification.)

MR. KNOPF: This is 56?
MS. ROBESON: Yes.
MR. KNOPF: Thank you.
MR. LANDFAIR: So, this depicts once again in plan view in green the public use space that was approved for City Homes, Lots 5 through 21, the Hampden Lane Project, otherwise known as G-842, and the project known as 4901 Hampden Lane. Now, interesting enough there is public use space along both West Lane and Montgomery Lane for Hampden Lane, for 4901 Hampden Lane there's also public use space along Woodmont Avenue in addition to Hampden Lane.
MS. HARRIS: Mr. Landfair, can you explain a little bit more the public use space that is shown on the recently approved Sandy Spring site in terms of --
MR. LANDFAIR: Certainly.
MS. HARRIS: -- the public use space in between --
MR. LANDFAIR: Right.
MS. HARRIS: -- the driveways?
MR. LANDFAIR: Right.
MS. ROBESON: When you say Sandy Spring is that 4901 Hampden Lane?
MR. KNOPF: No, no.

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

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

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

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

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

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

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

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

MR. KNOPF: Yes, but --

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

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

anybody's time.

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

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

MS. ROBESON: Monday.

MR. LANDFAIR: Okay.

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

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

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

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

MS. ROBESON: Is that your question?

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

MS. ROBESON: Okay.

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

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

MR. ABRAMS: Okay.

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

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

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

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

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

MR. ABRAMS: Thank you.

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

MR. ABRAMS: Yes.

MS. ROBESON: Mr. Landfair --

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

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

MR. LANDFAIR: Comparison.

MS. ROBESON: -- Comparison.

MR. LANDFAIR: Right.

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

MS. ROBESON: Yes.

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

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

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

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

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

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

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

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

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

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

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

MS. HARRIS: It was the 2012 Housing Policy.

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

MS. HARRIS: Okay.

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

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

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

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

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

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

MS. ROBESON: What level is it at?

MS. HARRIS: There is public --

MS. ROBESON: Who prepared it, I guess?

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

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

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

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

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

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

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

MR. LANDFAIR: Right.

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

on 2012 Housing Policy.

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

MS. ROBESON: All right. Thank you.

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

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

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

MR. LANDFAIR: Sure.

MS. HARRIS: -- grab --

MR. LANDFAIR: Yes.

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

MS. ROBESON: Okay.

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

MS. ROBESON: Exhibit 60.

MS. HARRIS: Sixty, and we can entitle that Sector Plan Comparison.

(DPA 13-01 Exhibit No. 60 was marked for identification.)

(Discussion off the record.)

MS. HARRIS: Excuse us one moment.

MS. ROBESON: Sure. Ms. Harris, how much longer do you expect Mr. Landfair to take?

MS. HARRIS: I was going to ask you that about three questions ago.

MS. ROBESON: I know. I'm not like Mr. Grossman who can wait till 3 o'clock, I can't.

MS. HARRIS: No. Actually, he could --

MS. ROBESON: Why don't we --

MS. HARRIS: -- after, either before or after this question may be a good time to break.

MS. ROBESON: How about before?

MS. HARRIS: Perfect.

MS. ROBESON: Let's take one hour, well, let's take till 2:30, that should give you enough time to pull your exhibits, and we'll be back at 2:30.

MR. ABRAMS: Can we leave everything as is?

MS. ROBESON: You may.

MR. KNOPF: Nobody wants this, nobody will steal it.

MS. ROBESON: I don't know if, frankly, I don't know if the door locks or not, but you're welcome to leave them here.

(Whereupon, at 1:19 p.m., a brief recess was taken.)

MS. ROBESON: We are back on the record. Before we begin with Mr. Landfair, now that I have been fortified with food, I did want to say one thing about proceeding forward on the case. I was willing to push through when I thought that the only changes were to the Development Plan, but now it appears that there's a number of exhibits that the parties may or may not have copies of, I don't have copies of, and I guess why weren't these changes filed with our office, or given to the parties in advance of the hearing?

MS. HARRIS: As I explained before, the changes were made in response to what we heard at the Planning Board, which was --

MS. ROBESON: Okay. That's right.

MS. HARRIS: -- December 20th. So, actually, the Development Plan Amendment literally, VIKA e-mailed it to me, and I ran downstairs to the printer of the printing office --

MS. ROBESON: Yes.

MS. HARRIS: -- in the basement of our building,

got it, and headed over to Mr. Abrams. So, it was hot off the press.

MS. ROBESON: Okay.

MS. HARRIS: We shared it as soon as we had it.

MS. ROBESON: Okay. Just in terms of proceeding further, in fairness to, I know that you've done everything you could, in fairness to the other parties I think it's going to be really difficult to continue beyond Mr. Landfair's direct testimony because they haven't seen those changes, I haven't seen those changes, and, you know, I don't know if I'm supposed to have questions or not, but sometimes I do. So, I am concerned, how many more exhibits are you intending to present through Mr. Landfair?

(Discussion off the record.)

MS. HARRIS: Give me one moment, please.

(Discussion off the record.)

MS. HARRIS: Four. And I would note that the rest of them were presented at the Planning Board in our presentation.

MS. ROBESON: The balance of the four?

MS. HARRIS: Yes.

MS. ROBESON: Okay.

MS. HARRIS: Except, and in fact, I think that one was, as well. And it was submitted to the record of the Planning Board.

MS. ROBESON: Okay. Have --

MS. HARRIS: Such as it --

MS. ROBESON: Have you had the opportunity to --

MR. ABRAMS: I have not seen that exhibit before. I was at the Planning Board hearing and I don't believe that was given to the Planning Board. I mean, that's a complete shock to me.

MS. ROBESON: All right. Okay. And I guess my thought in --

MS. HARRIS: May I --

MS. ROBESON: Yes.

MS. HARRIS: -- make one other comment? As I noted, what that exhibit is, is simply the Sector Plan recommendations pulled out and put on a sheet, so it's not like there's any great secrets on that exhibit.

MS. ROBESON: What, this one here?

MS. HARRIS: The exhibit to the left, it says Sector Plan Recommendations, and it lists them on the left, and then it goes through a comparison of how, how each project relates.

MS. ROBESON: Okay. Is this one in evidence yet, because I thought --

MS. HARRIS: No, I think that's where we --

MS. ROBESON: -- that was --

MS. HARRIS: -- that's where we broke. That's

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

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

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

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

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

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

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

in terms of that criteria.
MR. ABRAMS: Excuse me. Is this --
MR. LANDFAIR: Yes?
MR. ABRAMS: -- Exhibit 60?
MR. LANDFAIR: I'm sorry?
MS. HARRIS: I don't think that it --
MS. ROBESON: Yes. Comparison of, or Sector Plan Comparison, I think, is what I --
MS. HARRIS: Correct.
MR. KNOPF: What's the number in the right hand corner?
MR. LANDFAIR: 08.
MR. KNOPF: Out of the five.
MS. ROBESON: Is that in this book?
MR. LANDFAIR: It should be. Yes.
MS. ROBESON: Okay. I see it as -- oh, no, that's not it.
MS. HARRIS: The heading says SJG Sector Plan Recommendation.
MS. ROBESON: I see it. It is at 08, yes. Okay. So, this is 60. Okay.
MR. LANDFAIR: So, the first criterion that was noted in the Sector Plan for all three properties is low rise development. Well, clearly, the high-rise Edgemoor doesn't qualify as low rise; City Homes, certainly; and we

believe our property does, as well. High density, we believe the high-rise Edgemoor despite its overall size, it only has 52 units, and so we don't believe it qualifies as high density, per se, nor City Homes, but we believe our density does qualify as high density.

Does it appear to be townhouses? Well, clearly the high-rise Edgemoor, no; City Homes, I do qualify that when it says appear to be townhouses with three to six floors with units on every level. Well, that's not the case with City Homes, although otherwise clearly they look like townhouses. We do not have a townhouse type structure, so we don't necessarily meet that criteria.

Minimum of 45 dwelling units to the acre, yes, certainly the high-rise Edgemoor does; City Homes, no; we do. Publicly owned open space in front of the new apartments, yes on all three counts, all three projects provide for that. Parking located underground or in the rear parking decks, high-rise Edgemoor, yes, they have underground parking; City Homes, no, they provide their parking in garages; yes, we do have underground parking. Continuous building lines, certainly all three projects provide for a continuous building line. Higher building coverage, yes, the Edgemoor provides for that; City Homes, no; we believe we do.

Design the roof tops to achieve a residential

image, meaning hip, gable roof, turrets, varied roof line, yes, certainly the high-rise Edgemoor does; City Homes likewise; I'd have to say no, we do not. Locate the entrances where units are on the first floor.

MS. ROBESON: Please, please.

UNIDENTIFIED SPEAKER: I turned it off.

MS. ROBESON: Thank you. It interferes actually with the recorder.

UNIDENTIFIED SPEAKER: I perfectly understand that. I'm embarrassed that it rang.

MR. LANDFAIR: Locate entrances where units are on the first floor, what they mean by that is direct entrances into the units. No, none of the projects necessarily provide for that.

So, we actually established a scoring system, and high-rise Edgemoor based on all these elements came in with a six; City Homes a four; and our project we scored a seven.

MS. HARRIS: Mr. Landfair, can you please, you previously testified that, and I had noted that the Zoning Ordinance requires strict compliance with the use and the density.

MR. LANDFAIR: Yes.

MS. HARRIS: It doesn't provide strict compliance with these other recommendations, so can you and --

MR. LANDFAIR: Correct.

MS. HARRIS: -- and obviously some of the projects don't comply, none of the projects comply with all of those recommendations --

MR. LANDFAIR: Right. Right.

MS. HARRIS: Can you shed some light on that?

MR. LANDFAIR: Sure. I mean, there's clearly not that expectation. With building height, for example, the expectation is that there will be some flexibility, that the Planning Board through the site plan review process will make findings with respect to that. There are other criteria, though, where that's not necessarily the case where there needs to be more strict adherence to the findings. But we believe that with respect to that criteria that you really do need to make a strong case for that we do meet all the elements, all the criteria that is necessary in terms of the Sector Plan conformance.

MS. HARRIS: Thank you. You'll hear from the opponents, and their letters have indicated significant emphasis on the illustrative drawing which appears on page 84 of the Sector Plan, can you please comment on this?

MR. LANDFAIR: Certainly. The illustrative drawing on page 84 shows flat roofs along the south side of Montgomery Lane.

MS. ROBESON: On the south side?

MR. LANDFAIR: Along the south side.

MS. ROBESON: Okay.

MR. LANDFAIR: Yes. With a turret and pitched roofs on the north side. This drawing is an illustrative drawing, and therefore there is no requirement to follow it exactly, or for the south side and north sides of Montgomery Lane to read exactly as the picture depicts. Nonetheless, we would note that the existing City Homes more closely resemble the design on the north side of the street that's shown in this figure, while the projects on the north side of the street, except for the high-rise Edgemoor with its 100-foot height, resemble those depicted along the south side. City Homes actually requested flat roofs as part of their original submittal, of course, they ended up with pitched roofs.

MS. HARRIS: Excuse me, was it, I want to clarify that point, was it that the City Homes requested that the subject be a flat roof? That the existing application have a flat roof?

MR. LANDFAIR: With their original application, I believe that they had requested a flat roof.

MS. HARRIS: Okay. Okay.

MR. LANDFAIR: The approved Edgemoor at Arlington North and the project located at 4825 Montgomery Lane both have flat roofs like the buildings on the south side of the street. The proposed design of the subject building has a

flat roof, as well, but also incorporates the modernized corner treatment of the building, as will be further discussed by the architect in their testimony.

MS. HARRIS: There's a provision in the Sector Plan that deals with the age of sector plans and how these general recommendations should be treated, can you comment on that?

MR. LANDFAIR: Yes. This language is found on page VII in the Sector Plan, and it states the specifics of master plan may become less relevant as time goes on. The Sector Plan is currently about 18 years old, certain recommendations lose their relevance, especially those that are design-related. And again, our architects will speak more directly to that.

MS. HARRIS: Okay. And I just want to clarify one thing that you said having to do with the flat roofs, and I don't know that you were at the meeting, and it was the second meeting with the City Homes folks where they requested that our application, the subject application come in with a flat roof, were you aware of that?

MR. LANDFAIR: No, I was not.

MS. HARRIS: Okay. For the record, I wanted to clarify that that was the point that was intended. Thank you. Page 180 of the Sector Plan identifies Montgomery Lane as a mixed use street, and I am sure when the opposition has

their chance for their direct testimony you'll hear lots about that, can you please discuss this?

MR. LANDFAIR: Certainly. The Sector Plan classifies Montgomery Lane as a mixed use street, which means that it should have appropriate pedestrian oriented improvements. The project appropriately, we believe, is providing for such improvements, including wider sidewalks and frontage improvements. This activity will make for a more positive pedestrian experience up and down Montgomery Lane. Page 189 of the Sector Plan says that the mixed use street, mixed street emphasis pedestrian circulation while allowing for limited slow vehicle traffic. As such, these streets should be developed with streetscape elements, including trees, plantings, special parking and furniture, much like we will provide as recommended to the Bethesda Streetscape Guidelines.

The proposed plan is to extend the existing streetscape improvements to the Montgomery Lane/West Lane frontage of the property, and perhaps now is the time to introduce another exhibit, if I may?

MS. ROBESON: And this would be 61? And that would be -- hold on. You know, I had that.

MS. HARRIS: It's in the -- it was in -- yes.

MS. ROBESON: Fifty-eight, is it in 58(b)? Is that -- wait. Mr. Landfair, is that already in the record

as 58(b)?

MS. HARRIS: Yes.

MR. LANDFAIR: Is it?

MS. HARRIS: Yes. Because we put it --

MR. LANDFAIR: Okay. So, I'll note it as 58(b).

MS. HARRIS: Yes.

MS. ROBESON: Okay. It's the rendered site plan.

MR. LANDFAIR: This drawing basically conveys what we're trying to achieve along Montgomery Lane, and for that matter West Lane. We are proposing, again, streetscape improvements consistent with the Bethesda Streetscape Guidelines, and these will include street trees, and ornamental trees, hardscape, lighting, street furniture, bicycle racks and such. But also notably we are providing a small pocket park with a focal point at the corner, which we think will help, again, to contribute to this mixed street environment that we already have along Montgomery Lane.

I also want to note that there's one other mixed use street in Bethesda, as noted in the Sector Plan, this is Fairmont Avenue, which is in a very different area of Bethesda, the Woodmont Triangle, located between Norfolk Avenue and Old Georgetown Road. I mention this street because, again, it has a very different character than Montgomery Lane, it's much more commercial, it has approved development, in fact, one building is under construction now

for 17 stories along the street. The point I'm trying to make --

MS. ROBESON: On Woodmont? Or on Wisconsin?

MR. LANDFAIR: On Fairmont Avenue. I'm sorry.

MS. ROBESON: On Fairmont?

MR. LANDFAIR: Right. The point I'm making is that a mixed street can have different types of character, that it doesn't necessarily have to have a residential character with a lower scale, it can have a different scale and character to it.

MS. HARRIS: Mr. Landfair, I want to refer back to an exhibit that you discussed prior to the lunch break, which was 58(d), which was the exhibit that showed the dimensions on it.

MR. LANDFAIR: Yes.

MS. HARRIS: And when you walked through that you indicated, you were indicating the distance between back of curb to the place of the building, and you --

MR. LANDFAIR: Yes.

MS. HARRIS: -- indicated that the subject project actually is providing a greater width than any of the other projects.

MR. LANDFAIR: Yes, that's correct.

MS. HARRIS: So, to the extent that the other projects were required to provide a pedestrian friendly

environment is providing a greater distance, though just by a couple of feet, but would that further that goal and meet that goal of providing a pedestrian friendly atmosphere?

MR. LANDFAIR: It certainly helps. It contributes to it. I mean, there's other measures, as well. There's the quality of what will be installed within that streetscape and within that public use space area. However, the distance helps, as well, the setback that you are providing helps. And the fact that what we are providing is the same as or greater than most every other setback along the street. And again, when you're measuring from the face of curb to the building face I think it says something.

MS. HARRIS: Thank you. Now, there are several letters in the record from the opponents that noted that given the existing, that the existing development did not comply with the Sector Plan, the Sector Plan should no longer be controlling guide to development. Can you please comment on this?

MR. LANDFAIR: Yes. The Planning Board and District Council have consistently held that projects developed in a manner inconsistent with sector plans do not negate recommendations of those plans. If that were the case just one deviating project could undermine years of planning, so we would disagree with that vantage point.

MS. HARRIS: Thank you. Please comment on the

sector plan provision which appears on page 37, which provides, quote, new developments should respect established patterns of development.

MR. LANDFAIR: The lead in to this urban design objective is important because it provides that more intense development should be located in the CBD. The provision refers to development existing at the time of the Sector Plan; we don't believe it refers necessarily to new development. The Sector Plan's recommendations were intended to promote compatibility with what was then the existing framework for the area.

MS. HARRIS: Thank you.

MS. ROBESON: Mr. Landfair, when, and if you can answer this, because I know we'll have other testimony, were the townhouse built, the City Homes, were they built before 1994 --

MR. LANDFAIR: No, I believe --

MS. ROBESON: -- or after?

MR. LANDFAIR: -- they were built after 1994.

MS. ROBESON: So, they were --

MR. LANDFAIR: They were built in phases; they weren't built all at one time. I think they were built in three phases --

MS. ROBESON: Okay.

MR. LANDFAIR: -- but they were I believe built

after that time period.

MS. ROBESON: Okay. All right.

MS. HARRIS: One last question to sort of bring together the Sector Plan discussion that we've had, and that is can you comment and provide your expert opinion on the overall Sector Plan recommendations with respect to the residential uses?

MR. LANDFAIR: Yes. There are three primary goals with respect to residential uses. Number one, encourage more units, more residential units in the Bethesda CBD.; number two, encourage smaller units; and number three, encourage affordable units. The Sector Plan notes starting on pages --

MS. ROBESON: Wait, is that specified in the Sector Plan?

MR. LANDFAIR: Yes.

MS. ROBESON: Okay.

MR. LANDFAIR: Yes.

MS. ROBESON: What page is that?

MR. LANDFAIR: Well, I will quote some pages here.

MS. ROBESON: Okay.

MR. LANDFAIR: But I can --

MS. ROBESON: Go ahead.

MR. LANDFAIR: Starting on pages 28 and 29 the Sector Plan notes the special efforts that are necessary to

ensure that new units meet the needs of lower income households. Further, on page 29, the Sector Plan talks about market demand for higher quality rental housing. Also on the same page it talks about providing variety and choice in housing. On page 30 the Sector Plan makes reference to modifying County regulations and policies to improvement feasibility and attractiveness of higher density housing. The TS-R Zone was amended in 2004 to provide for exceeding the allowable density through the use of MPDUs consistent with that Sector Plan recommendation. Also on the same page the Sector Plan talks about promoting adequate supply of affordable housing. And finally, on page 80 the Sector Plan makes reference to providing incentives for and removing barriers to achieving high density housing in the TS-R district.

Our conclusion is that this project is consistent with the recommendations of the Sector Plan as it applies to those housing policies.

MS. HARRIS: Thank you. Now we're going to move on to the discussion of compatibility, which is one of the requirements.

MS. ROBESON: Yes. Okay. I just have one other question.

MR. LANDFAIR: Yes?

MS. ROBESON: We've done a couple of applications

in the plan, within the Sector Plan area, and I recall that there's almost like a do a don't as far as urban form, you know, do this, don't do this, have you looked at that in relation to this Sector Plan? It actually goes through and says well, you have to step back buildings like this, and don't do this, don't have a building like this, and --

MS. HARRIS: I think our architect is prepared to discuss that.

MS. ROBESON: Okay.

MS. HARRIS: Sorry.

MS. ROBESON: Oh, no. Fine. Go ahead.

MS. HARRIS: Okay. Yes, we were going to get to that, but it's more in the architect's realm.

MS. ROBESON: I just want to make sure it's covered --

MS. HARRIS: Yes.

MS. ROBESON: -- before we --

MS. HARRIS: Okay.

MS. ROBESON: -- leave the Sector Plan area.

MS. HARRIS: Okay. In terms of compatibility, 59-D-1.61(b) requires the proposed Development Plan to comply with the purposes, standards, and regulations of the TS-R Zone, and provides the maximum safety, convenience, and amenity of the residence, and is compatible with the adjacent development. Can you please comment on this, and

how the project satisfies this requirement?

MR. LANDFAIR: Yes. But before I do so I need to introduce another exhibit.

MS. ROBESON: Okay. Well, it may be already in; hopefully it's already in the record. Okay. That, I think, is already marked as --

MR. ABRAMS: It's part of Exhibit --

MS. ROBESON: -- Building Offset Comparison.

MR. ABRAMS: It's part of Exhibit 58.

MS. ROBESON: Yes.

MR. KNOPF: 59(d).

MS. ROBESON: Okay, 58(d).

MR. KNOPF: Does that look right?

MS. ROBESON: Wait, I have -- oh. Oh, yes. Okay, you're right.

MR. WEINTRAUB: I think they're looking for something.

MS. ROBESON: Yes. What?

MR. WEINTRAUB: They're looking for something now.

MS. ROBESON: Wait. Okay. I'll let him explain it. Just for the record, people in the audience can't just jump in even though it sounds like we're talking to each other.

MR. WEINTRAUB: All right. Okay. Thank you.

MS. ROBESON: That is -- okay.

MR. LANDFAIR: I think this is a new exhibit.

MS. ROBESON: Okay. So, this would be 61.

MR. LANDFAIR: Number 11 in the lower right corner.

MR. KNOPF: I thought I saw that. This, isn't that 11?

MS. HARRIS: You did because we previously gave you all the exhibits in that booklet.

MS. ROBESON: Yes, it's not been --

MR. KNOPF: This hasn't been marked.

MS. ROBESON: Yes.

MR. KNOPF: I'm sorry.

MS. ROBESON: So, I'm sorry, what page is this on this?

MR. KNOPF: This is 11.

MR. ABRAMS: Eleven.

MS. ROBESON: Okay. So, this will be 61, can you describe this.

MR. KNOPF: Excuse me, is it 61 or 60?

MS. ROBESON: I have 60 as the Sector Plan Comparison.

MR. LANDFAIR: I would describe this as Architectural Sections.

MS. ROBESON: Okay.

MR. LANDFAIR: Or comparables.

MS. ROBESON: So, this will be Architectural Section Comparisons.

(DPA 13-01 Exhibit No. 61 was marked for identification.)

MR. LANDFAIR: Section. That's fine. So, this will be again Exhibit number?

MS. HARRIS: Sixty-one.

MR. LANDFAIR: Sixty-one. The purpose of this exhibit is to compare the high-rise Edgemoor with City Homes as a cross section through Montgomery Lane, again, the same cross section from the recently approved Sandy Spring project through to the City Homes, and then finally our project through to City Homes, and I want to show the relationships. Clearly, in the first two examples there's already been a finding of compatibility, the relationship between Edgemoor, obviously a much higher building at 100 feet with City Homes, which are 53 feet high to their ridge line; Sandy Spring, 65 feet, again, found compatible with the slightly shorter City Homes; and then our building which is coming in at 70 feet, and how it relates to the City Homes building.

I think I mentioned it before but I'll note again that the distance from building face to building face is 70 feet, coincidentally, between our building and City Homes.

MS. HARRIS: Mr. Landfair, can you comment on the

facade of the Sandy Spring building as it relates to the facade of the subject building and the proposed setback and then the distances that that presents --

MS. ROBESON: I'm sorry to interrupt. I cannot get -- which one is the Sandy Spring?

MR. LANDFAIR: Sorry.

MS. ROBESON: The one right on the other side of West, Montgomery Lane?

MR. LANDFAIR: Right. Just to reorient you again, yes, it's on the east --

MS. ROBESON: I mean, on the West Lane?

MR. LANDFAIR: It's on the east side of West Lane --

MS. ROBESON: Okay.

MR. LANDFAIR: -- directly opposite our building here.

MS. ROBESON: Is Sandy Spring the builder, is that why it's called that?

MR. LANDFAIR: Sandy Spring is the builder, and they --

MS. ROBESON: Okay.

MR. LANDFAIR: -- don't really have a project name, so I've --

MS. ROBESON: Okay.

MR. LANDFAIR: -- I've just been referring it, to

it --

MS. ROBESON: Okay. I just --

MR. LANDFAIR: -- as the Sandy Spring project.

MS. ROBESON: All right. I've internalized it now. Go ahead.

MR. LANDFAIR: This middle exhibit, this middle section here is illustrating the relationship between their building and the City Homes building, here. And we do have, at the risk of entering into the record one more exhibit, we do have an elevation that we can enter now or I can just simply describe it for you, I don't necessarily need to refer to the elevation, we can save it for the architect. Pat?

MS. ROBESON: That's up to you?

MS. HARRIS: Of the Sandy Spring building?

MR. LANDFAIR: I believe so. Do we not?

MR. RADULESCU: Yes, we have an exhibit.

MS. HARRIS: No, I think, actually, I don't think we need that included.

MR. LANDFAIR: That's fine. Okay. In short, the Sandy Spring building is 65 feet in height, it is four levels above a garage, actually, it's four garages that have direct entrances off of West Lane. The building is oriented, importantly, towards Montgomery Lane, in fact, that was very key to Staff to have that orientation to help

enliven Montgomery Lane; they did not see West Lane as doing that. So, again, Sandy Spring is very clearly oriented towards Montgomery Lane, and we've tried to do the same with our building design.

MS. HARRIS: Can you comment on the distance between Sandy Spring and City Homes versus the subject and City Homes and how far back given the, at the upper stories that our project is set back from City Homes?

MR. LANDFAIR: Sandy Spring is closer to the street; it is approximately 19 feet from building face to face of curb. So, City Homes holding the same relationship to the street as they are directly opposite our building. It places their building roughly seven or eight feet closer to the City Homes building than we are. Now, I guess the point I'm making here is that their building is only marginally shorter than ours, five feet shorter than ours, and yet they are seven or eight feet closer to the City Homes buildings.

MS. ROBESON: Is the middle illustration the Sandy Spring?

MR. LANDFAIR: Yes, the middle illustration here is the Sandy Spring building relating to City Homes.

MS. ROBESON: Okay. And then the, this, the one to the left is Edgemoor. I see.

MR. LANDFAIR: This is the Edgemoor.

MS. ROBESON: SSB refers to Sandy Spring.

MR. LANDFAIR: Sandy Spring.

MS. ROBESON: I see.

MR. LANDFAIR: Right.

MS. ROBESON: Okay.

MR. ABRAMS: Madam Examiner, are those marked, those buildings, as to who or what they are?

MS. ROBESON: They're, at the bottom it says SJG Project City Homes --

MS. HARRIS: You have the copy of it, Stan.

MS. ROBESON: -- SSB --

MR. ABRAMS: I don't have a copy of that.

MS. HARRIS: Yes, you do.

MR. ABRAMS: Of this.

MR. LANDFAIR: As illustrated here again in this section our building is also set back at the 50-foot height mark, it set back roughly nine feet before going up again to 70 feet in height. So, that helps in terms of establishing our compatibility with the City Homes across the street.

MS. ROBESON: Now, do you have an elevation for the project at the northeast corner of the Arlington Road and Montgomery Lane?

MR. LANDFAIR: This --

MS. ROBESON: Yes.

MR. LANDFAIR: We don't, actually. I don't think

we do.
MS. ROBESON: Okay.
MS. HARRIS: I'm sorry, what was the question?
MS. ROBESON: I wondered if, to sort of add to this if you had an elevation the same perspective --
MS. HARRIS: I think the reason that we didn't is because on the south side of the street it's not across from City Homes, so we were trying to show the relationship to the City Homes.
MS. ROBESON: Between City Homes.
MS. HARRIS: Yes.
MS. ROBESON: Okay.
MS. HARRIS: Mr. Landfair, I want to go back to the aerial just for one moment --
MR. LANDFAIR: Yes.
MS. HARRIS: -- because you've described the relationship of the buildings on the north side of the street to the buildings on the south side of the street, and actually before you take that, so there's a part where there's 70 feet between the two buildings.
MR. LANDFAIR: Yes.
MS. HARRIS: Can you comment before we go to that other exhibit on the picture at the bottom right hand corner of Exhibit 61, and what that shows?
MR. LANDFAIR: Yes, that's a picture that shows

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

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

MR. LANDFAIR: Yes.
MS. HARRIS: Okay. So, you indicated that the Hampden Lane Associate's building is going to be contiguous to the City Homes, so there you have the HOC picture building in the background --
MR. LANDFAIR: Right.
MS. HARRIS: -- which is three or four stories --
MR. LANDFAIR: Right.
MS. HARRIS: -- we haven't determined that, and the Hampden Lane Associates building which will be contiguous is how tall?
MR. LANDFAIR: Well, at its tallest point --
MS. HARRIS: It's 70 feet?
MR. LANDFAIR: -- it'll be 70 feet --
MS. HARRIS: Okay.
MR. LANDFAIR: -- tall, but at the --
MS. HARRIS: Immediately adjacent.
MR. LANDFAIR: -- upper floors it will have insets, it will have essentially --
MS. HARRIS: Okay.
MR. LANDFAIR: -- courtyards to allow for air and light. But at least for the lower levels you will have a similar arrangement to what the HOC building has as it relates to the City Homes --
MS. HARRIS: So, in your opinion that design,

which was clearly found to be compatible by the District Council, if that is found to be, that was found to be compatible, so if you refer to the top portion of this exhibit which says sections with a 70-foot distance --

MR. LANDFAIR: Yes.

MS. HARRIS: -- between the two buildings what would your impression be of that distance as it --

MR. LANDFAIR: I would say it's more than ample to establish compatibility.

MS. ROBESON: Was the HOC a zoning case? The HOC building, was that a zoning case --

MR. LANDFAIR: The HOC building --

MS. ROBESON: -- or was that the County building?

MR. LANDFAIR: Well, it was developed by the County, but I believe the land and perhaps it was even financed by the developers for the Edgemoor high-rise and for City Place to make up for the lack of MPDUs. So, the HOC housing, I believe, it's not MPDUs, per se, I believe it's a transitional type housing, which was built in essence to satisfy the MPDU requirements for the Edgemoor and for City Place. I'm sorry, City Homes.

MS. ROBESON: Mister --

MR. KNOPF: Yes, I just want to say I found very helpful, and the Hearing Examiner might find helpful in 02 of their submitted exhibit has an aerial with all the

heights on it, and the buildings blocked in, I found it very helpful when following what he was testifying about, and the Hearing Examiner might find that helpful.

MR. ABRAMS: What exhibit number?

MR. LANDFAIR: No, I'm not. Are you referring to this exhibit?

MR. KNOPF: Yes.

MS. ROBESON: X02.

MR. KNOPF: I don't know that that's an exhibit yet, but it's in --

MS. ROBESON: It's not in the record.

MR. KNOPF: But it --

MR. ABRAMS: Well, it's in Mr. Landfair's Planning Board, which has been submitted.

MR. KNOPF: No, but we have it --

MR. LANDFAIR: So, I think it's part of the record as part of the land use report.

MS. ROBESON: Oh, it is?

MR. LANDFAIR: Yes.

MR. ABRAMS: Yes.

MS. ROBESON: Okay. All right.

MR. ABRAMS: It's one of the exhibits.

MS. HARRIS: So, right. So, that is already in the record. So, that shows the contiguous nature of the Hampden Lane Associations project, and the HOC building to

the --

MR. LANDFAIR: Along with the courtyards that were established to ensure --

MS. HARRIS: Right.

MR. LANDFAIR: -- compatibility with City Homes.

MS. HARRIS: Okay. Now, if we could go back for just one moment to Exhibit 61, are you familiar with the distance in the photo, the distance between the two City Homes rows? And if you're not could you scale it on --

MR. LANDFAIR: I'm not.

MS. HARRIS: -- that other plan?

MR. LANDFAIR: So, let me use the scale.

MS. ROBESON: Is that the rear, does that picture on 61, is that the rear of City townhouse --

MR. KNOPF: Yes.

MS. ROBESON: -- units facing each other?

MR. LANDFAIR: Yes.

MS. ROBESON: So, it's the alley?

MR. LANDFAIR: Yes. So, this is not, for example, the front facade and this is the rear facade, they're both rear oriented. Just under 40 feet.

MS. HARRIS: Okay. So, it's 40 feet, and I'm assuming that the living spaces above the garages are, well, they have windows, so presumably --

MR. LANDFAIR: And balconies.

MS. HARRIS: -- and so it's living space above that.

MR. LANDFAIR: Yes.

MS. HARRIS: And it's 40 feet distance between those two structures, and what was the maximum height of the City Homes project, again?

MR. LANDFAIR: Fifty-three feet.

MS. HARRIS: Okay. So, again, trying to establish the relationship, and that was clearly found to be compatible in the approval of the City Homes case.

MS. ROBESON: Well, I guess my question is on those types of townhouses, the urban form of townhouses, they generally have a little bit wider courtyard in exchange for the narrower alleys. To your knowledge do they have a wider front common area than the alleys?

MR. LANDFAIR: I don't believe so.

MS. HARRIS: Though you may want to refer to the exhibit, the building height exhibit.

MR. LANDFAIR: Yes.

MR. KNOPF: And on the bottom --

MS. HARRIS: And try to scale that.

MR. LANDFAIR: Scale it?

MS. HARRIS: No. It's not to scale.

MS. ROBESON: All right. Well, we --

MS. HARRIS: We think we can, we can look at that.

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

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

MS. ROBESON: Okay.
MR. LANDFAIR: -- enter into the record.
MS. HARRIS: That's not true, but that's okay.
MS. ROBESON: Okay.
MS. HARRIS: There are just one or two more.
MS. ROBESON: I'll let you be the judge of that --
MS. HARRIS: Thank you.
MS. ROBESON: -- Ms. Harris, how many, when he's finished. Now, I've seen that somewhere.
MR. KNOPF: Yes.
MS. ROBESON: I think it's in the booklet.
MS. HARRIS: So, when are --
MS. ROBESON: Twelve?
MR. KNOPF: Look in another number?
MS. ROBESON: Yes, that'll be 62, and how would you describe this?
MS. HARRIS: Photo of the south facade of Village of Bethesda.
MS. ROBESON: Okay. South facade Village of Bethesda, and that was 62.
MS. HARRIS: Sixty-two, right.
(DPA 13-01 Exhibit No. 62 was marked for identification.)
MR. LANDFAIR: So, this is, I'm sorry, Exhibit --
MS. ROBESON: Sixty-two.

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

the Holiday plan the entrance to the garage actually was right on the common property line. Yes, you did have a setback in the northwest corner of the property, in fact, that was part of the private amenity area, so that helped to establish some of that compatibility with them in the original plan.

We have increased -- we now have a true buffer here, whereas previously we had just the driveway into the garage, we now have 15 feet continuously along the property line. You may remember that was the form of public use space, now it will just be amenity area to benefit all. The amenity area for the residents has been greatly increased in size, and in terms of the vantage point for the Villages of Bethesda, when they step out of their units, as you can see in this photograph here there are no windows in this unit here, so the view that they have would be from the next unit over and from their common area here looking down into our property. And whereas previously yes, they did have some open area for air and light, and it was a scenic private amendment to space, it wasn't nearly as large as what they'll now see. So, we believe that it's actually quite an improvement for them in terms of establishing that compatibility with their property.

MS. HARRIS: Thank you.

MR. ABRAMS: Can I ask a question about the

exhibit?

MS. ROBESON: Yes.

MR. ABRAMS: There are two color greens there, what is the light green and what is the dark green?

MR. LANDFAIR: The light green is public use space, and the darker color green is essentially private amenity area.

MS. ROBESON: Okay.

MS. HARRIS: Thank you. Can you comment on the frontages going back to Exhibit, a previously introduced exhibit, Exhibit 58(d), I just wondered if you could comment on the width of the frontages of the buildings along Montgomery Lane?

MR. LANDFAIR: Sure. This exhibit is useful. This is the exhibit that was titled Building Offset Comparison, and it was really designed just to show, again, the relationship between each building and the street, measuring the distance from the curb. And it's also useful for seeing and understanding the length of the various facades, of the buildings, both existing and proposed along the street.

And to start with the high-rise Edgemoor, that's 183 feet across its frontage; the Sandy Spring building is just under 50 feet across its frontage; the Edgemoor at Arlington North is 66 feet; and our building will be 80 feet

from corner to corner to where it starts the arc around the urban park. So, we just wanted to show that relationship.

And I think, I forget who it was earlier in the hearing, it might have been Mr. Knopf, somebody asked a question about the distance between the Sandy Spring building and the high-rise Edgemoor, and that's just under 20 feet.

MS. ROBESON: Okay.

MS. HARRIS: One last question with respect to what you just testified to, and that is the prior Development Plan which didn't include the arc, what is the result in terms of the reduction of street frontage of the building with the addition of the arc?

MR. LANDFAIR: Well, I'll have to scale it out here. I'll have to scale it out.

(Discussion off the record.)

MR. LANDFAIR: It's just under 30 feet. And --

MS. ROBESON: Reduction?

MR. LANDFAIR: Reduction in terms of the length of --

MS. ROBESON: From the prior Development Plan.

MR. LANDFAIR: -- that frontage. Right. And I'll also add --

MR. KNOPF: Excuse me. I missed that. What did he say? I'm sorry.

MS. ROBESON: Thirty feet.

MR. KNOPF: Thirty feet.

MR. LANDFAIR: So, in other words, right, where previously the entire length along the facade here was about 110 feet, now it's 80 feet.

MS. ROBESON: And what is it now?

MR. LANDFAIR: Now it's 80 feet.

MS. ROBESON: Eighty feet.

MR. LANDFAIR: And as a side note, all that open area, that's about another 600-plus square feet of public use space that we've added at that prominent corner.

MS. HARRIS: Thank you. In your -- you can take a seat. Hopefully you'll have to get up again. In your professional opinion is there more than one way in which compatibility can be achieved among projects?

MR. LANDFAIR: Yes.

MS. HARRIS: Does the fact that the former Holiday project was found to be compatible preclude an alternative project from also being found compatible?

MR. LANDFAIR: No. No. The best evidence of this is to review the existing and approved projects on Montgomery Lane, and in fact, throughout the TS-R district, all of which have been found to be compatible, but are different in their own respective ways. Our architect can speak to this in greater detail. But we conclude that the

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

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

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

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

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

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

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

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

the proposed development plan satisfy all the applicable code requirements?

MR. LANDFAIR: I believe so.

MS. HARRIS: And is there anything else you would like to add?

MR. LANDFAIR: I've said enough.

MS. ROBESON: You don't want to keep going?

MR. LANDFAIR: No, ma'am.

MS. ROBESON: All right. All right. With that, a couple of housekeeping items. Ms. Harris, you'll have, make sure that Mr. Abrams and Mr. Knopf get copies of everything that's been submitted here today by 5 o'clock on Monday?

MS. HARRIS: Yes, and I, but I would just comment that Mr. Knopf has 11 by 17s of everything, plus he has a full sized Development Plan Amendment plan that was provided to him earlier in the week, so he should have everything, and poor old Mr. Abrams only has half sized copies, so we'll make sure to give him the 11 by 17s, and then I think that should satisfy the requirement.

MS. ROBESON: Okay.

MR. KNOPF: Okay. But just I want to raise something so we don't have any surprises later. My understanding is that some of the exhibits that you have, the current one, the Development Plan, they don't, the scales don't match, there's something askew here, and I just

want to, that needs to be corrected before it gets given to us or we're going to be through a whole new series later of wait a minute, which one is the right one, and et cetera.

MS. HARRIS: Are you saying that it's produced at a different scale?

MR. KNOPF: No, the scale --

MR. ABRAMS: No.

MR. KNOPF: -- is the same, but the buildings aren't in the same place.

MR. ABRAMS: The building lines and the property lines are off.

MS. ROBESON: Well, let me do this --

MR. LANDFAIR: Well, we'll --

MS. ROBESON: -- let me do this before we get into a big thing, you submit to them whatever you submitted today. Mr. Knopf, if you already have what's been, both of you already have the Development Plan that's been submitted today, correct?

MR. ABRAMS: Yes.

MS. ROBESON: Okay. We'll leave it at that. I would suggest the parties work together to double-check the accuracy of the measurements that, for, and then we'll entertain a new exhibit according to whatever schedule we put in place on Tuesday.

MR. ABRAMS: Thank you.

MS. ROBESON: I do need one to scale, how soon do you think you could check that because I'd like Technical Staff to have a, I'd like them to have a corrected copy.

MS. HARRIS: Well, if Mr. Abrams and Mr. Knopf have a few moments after the conclusion of today's proceeding, and we can just discuss it here that may be the best way to handle it.

MS. ROBESON: All right. So --

MS. HARRIS: And then we'll get it revised --

MS. ROBESON: Okay.

MS. HARRIS: -- and to Staff as soon as possible.

MS. ROBESON: All right. Now, the second thing is I'm going to refer, you can submit it directly to Staff, but I'm going to make the referral as far as asking Staff what to do, and I will CC all the attorneys here, because there are some specific things I would like to take care of.

The other thing is I don't normally do this in a case because I really do go in with my mind open, and we're only halfway through the case, but because of the timing of the changes, and the timing of the hearings, I would just for the record gives a heads up as to initial, my initial impressions so that if you wish to make changes or revisions, and again, usually I wait to be convinced, but because the timing here there may be a long delay I don't want to waste that delay, and I haven't really had a chance

to kind of think through this, the revised plan, I do think it's an improvement. I did share basically what Chair Carrier brought up as far as the original Development Plan that I saw, and it's mostly the massing in relation to the other properties. But I had the same initial reaction, and it's just a preliminary reaction. I haven't had the chance to look at this, but just to be fair to the Applicant, that was my initial reaction.

MS. HARRIS: Could you elaborate in terms of is there a particular facade that gives you concern, or --

MS. ROBESON: Montgomery Lane. The facade, and whether I'm thinking, I do think that that circle is, I'm concerned about, I'm really concerned about the transition from City Homes to this project, and, you know, this is the first time I've seen the cross section, that north/south cross section, because I saw an east/west one, but that is a concern, and that was my primary concern. And some of the urban design guidelines call for stepping back things as a means of ameliorating the bulk of buildings. And I don't know what the answer is, but I'm just trying to give you a heads up as to what my concerns were. But I did agree with my initial reaction was to agree with Chairperson Carrier and her assessment of the project, whether that means, you know, a change in the number of units, it may not be driven by density, it may just be driven by, you know,

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

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

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

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

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

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

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:

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Paula Underwood, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC Local Map Amendment	:	Case No. G-954
4831 WEST LANE, LLC Development Plan Amendment	:	Case No. DPA 13-01

A hearing in the above-entitled matter was held on January 15, 2013, commencing at 9:41 a.m., at the Council Office Building, 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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E X H I B I T S

Exhibit No.		Marked/Received
64	City Homes Matrix of Witness Availability	11

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing for a local map amendment and development plan amendment filed by 4831 West Lane, LLC, Local Map Amendment No. G-954, Development Plan Amendment No. 13-01. I believe what we were going to do today is schedule, set some scheduling requirements and deadlines for exchanges of exhibits.

I did talk to technical staff this morning; I understand the applicant has a meeting with them at 1 o'clock. They would like one and a half months to review the plan because they want public input. Whether that's going to, I don't know if I necessarily agree with that. I don't think, given the changes and the fact that all the parties are fully aware of the process, I'm not sure I necessarily agree with that. And they also would like to send, because the issue doesn't meet with the Planning Board's guidelines, they would like to schedule it before the Planning Board. I'm more inclined to give that process a month to get it back to the Planning Board, but I don't see the need for two months.

MR. KNOPF: What doesn't meet with guidelines?

MS. ROBESON: I'm sorry?

MR. KNOPF: What doesn't meet with guidelines?

MS. ROBESON: The Planning Board issued a

recommended, well, the Planning Board issued, recommended approval but it was subject to a number of requirements or a number of recommendations. And, the question is, whether the revised plan meets the intent of those recommendations that they would still recommend approval.

MR. KNOPF: Oh, I see. Okay. I was thinking some kind of technical guideline.

MS. ROBESON: Oh no, no. There's no mystery guidelines. So, that is my conversation with the technical staff. Do you want to comment?

MS. HARRIS: Yes. Pat Harris of Lerch, Early and Brewer on behalf of the applicant. In the course of our meeting we'll have a further discussion about this. If it is ultimately determined that it need not go back to the Planning Board, that may change the scheduled. So, I mean, unless the hearing examiner feels strongly about that, we would like the option to explain to them, I don't necessarily feel that it does need to go back to the Planning Board.

MS. ROBESON: I don't have 59-H in front of me. I know special exceptions you can either go to technical staff or the Planning Board. But 59-H --

MS. HARRIS: I had thought that the Chelsea School, the posture of that was similar. That they went back, they revised, then went back and had technical staff

weigh in. But it did not go back to the Planning Board if I understood that case correctly.

MS. ROBESON: No, that was remanded.

MS. HARRIS: Right. But prior to the remand, during the initial hearing there were some changes that were made that then went back to technical staff for comment.

MS. ROBESON: Okay, I should have, I apologize. I should have brought the ordinance up. Do you want to comment on this?

MR. ABRAMS: Stan Abrams for City Homes. I think it's basically within the discretion of the examiner the responsibilities to develop a full record. And, if the Planning Board feels a necessity to look at it again, then it should be scheduled for the Planning Board because yes, the board does have certain responsibilities, particularly for the development plan amendment, and with reference to the recommendation that they've made, it probably would be a lot simpler for the District Council, for yourself, if they reviewed the new application, well, the changes to the application, and in that context, I had suggested and I have a list, actually it's a worksheet of the unavailable dates for my witnesses.

And, I informed Ms. Harris, I think some time ago, that a lot of my witnesses were not available during the month of or, I guess it's the first almost three weeks of

February. So I'm not sure whether, you know, a remand would not be in the best interest if we're going to get a series of dates which are just going to carry through without being interrupted. I think you should send this back one way or the other because yeah, there's a significant change which has been submitted by the applicant, and you should get the input of staff, and I think in this case, the board.

MS. ROBESON: I'm recalling I think what the ordinance says is that I, well, I can always ask the Planning Board to review it. I think the statute says that I have to refer it back to them for an opportunity to comment. So, what I'd like to do is I'd like to get some dates going. Yes, Mr. Knopf?

MR. KNOPF: Norm Knopf for Edgemoor Condo. I just don't, first of all, I don't understand what the major change is that was going back to the Planning Board for all this re-review. I just think it's a, they do have the right to look at. The staff has a right to look at it. But I'm sure we ought to be holding up everything because I just don't see much happening after the Planning Board reviews. The hearing examiner may wish to have their views, but I don't know that we all have to wait in suspension until we get those views because I'm not sure there's anything really majorly changed here from what the Planning Board reviewed. And I think the staff, the technical staff could comment on

the obvious of what the changes are and how that compares to what the Planning Board recommended. I don't see that huge a deviation.

MS. ROBESON: Yeah. I just spoke with technical staff and they're reluctant to say whether it meets the Planning Board's recommendations without sending it back to the Planning Board.

MS. HARRIS: If I could, I think one issue obviously is, they haven't seen it yet so they're sort of talking in a vacuum until we meet with them and show them, they may end up with a different opinion. They may concur with Mr. Knopf in terms of, this is not a major change and therefore it doesn't merit going back.

MS. ROBESON: I think what I, I would like to schedule some hearings. Did you all have an opportunity on Friday to go through the plan and how soon will you have a plan, a correct plan, ready to submit. Well this afternoon you're going, but I think you had some technical questions about the property lines.

MS. HARRIS: It turns out, and the engineer is not here to explain this, but it is really a reproduction issue that when they printed, they sent it to me via PDF, my computer distorted it very slightly. I sent it downstairs to the printer, distorted again very slightly. It was a fairly minor change, but what we did yesterday was send to

Mr. Knopf and Mr. Abrams a copy that was produced at the engineer's office.

MS. ROBESON: Okay, so you have a plan ready to go?

MS. HARRIS: Yes.

MR. KNOPF: We've been served with it, yes.

MR. ABRAMS: Is that the plan that is among the sheets?

MS. HARRIS: No. I sent to you yesterday the sheets that were bound, and then there was a miscommunication between me and the engineer's office because I thought they were going to send directly to you the development plan.

MR. ABRAMS: I didn't receive it.

MS. HARRIS: Well it went, you would have received it by about 5 o'clock because they left my office at about quarter to five and they were going to stop at your office first.

MR. ABRAMS: All right, I'll check with the receptionist.

MR. KNOPF: We received it.

MS. ROBESON: Okay, so there's an exhibit ready to go. How soon do you think you, do you have for your case-in-chief, do you have the exhibits ready to provide to the other parties?

MS. HARRIS: Not all of them, and we would need about approximately two weeks to prepare those.

MS. ROBESON: Two weeks?

MS. HARRIS: The additional ones, yes.

MS. ROBESON: Okay, so.

MR. KNOPF: Can I ask a question on that. The pressing thing as far as I'm concerned is, as I understand, Mr. Landfair completed his testimony, is that correct?

MS. HARRIS: Well, we had indicated on Friday, however, in re-review of the various issues, I would actually request that we bring him back up for just a very brief period of time.

MR. KNOPF: Because I just sort of wanted to have an opportunity to cross-examine him while he was still somewhat fresh in everybody's mind, but apparently he's not finished. I thought he was finished and at least we could get that out of the way. Because I presume he used all of the exhibits he was going to use and we have those at least, and the other exhibits will be for other witnesses, I guess.

MS. ROBESON: Well, okay, I understand. The purpose of this is to get everybody on the same page as far as what the exhibits are. So, if he needs to come back with, you can, I think we did finish his direct testimony. If he needs to come back and update his testimony, I don't have a problem with him doing so, and then you will,

hopefully, when he comes back you will have all the exhibits in hand to be able to cross-examine him and have had the opportunity to review them. So, what I'd like to do is set time frames for the exchange of exhibits, which is something we can do right now. So, when do you think is a realistic, because I'm going to be really reluctant to change these dates for exchange of exhibits.

MR. ABRAMS: I have prepared a matrix of dates. These are the unavailable dates for my witnesses. Individuals who are unavailable for certain dates, and I'd like to just hand this up. I've given copies to both counsel and it may at least facilitate.

MS. ROBESON: I'm going to enter it out of an abundance of caution; I'm going to enter it as an exhibit in the record unless anyone has an objection.

MR. ABRAMS: Pat, did you do the same thing?

MS. HARRIS: I took your, I hand wrote my dates on the bottom of your sheet for what that's worth.

MS. ROBESON: Thank you. When is the ball park date, okay, so February is pretty much out?

MR. ABRAMS: Yes, ma'am.

MS. ROBESON: Okay. Let's see where we are on having sufficient time to exchange the exhibits first and then we'll go through. I'm going to mark this as Exhibit 64 which is matrix of City Homes --

MR. ABRAMS: Unavailable dates.

MS. ROBESON: Yes. Thank you, that's very helpful.

MR. KNOPF: I also have a matrix but I only made it for my use.

MS. ROBESON: That's fine as long as you can tell me which dates.

MR. KNOPF: Absolutely. I only went through March. It sound to me like we may --

MS. ROBESON: No. We're going to get this done. What I've found is the exhibit exchange, and you may disagree with me at the end of the day, but it does make things move more quickly. Okay, that's 64.

(Exhibit 64 was marked for identification.)

MS. ROBESON: Now, let me go through the exhibit exchange. What's a realistic timeframe for you to exchange exhibits with, or to provide exhibits to Mr. Knopf and Mr. Abrams?

MS. HARRIS: Well, I just indicated two weeks. But following on the heels of your comment that you're going to be reluctant to change dates, I think an extra week just to be safe. So I would say February the 5th.

MR. ABRAMS: Fifth?

MR. KNOPF: Fifth?

MS. HARRIS: If that's acceptable.

MS. ROBESON: Okay.

MS. HARRIS: And just to be clear, is that, does the hearing examiner intend for every exhibit to be presented to be provided at that point in time?

MS. ROBESON: Yes. But what we did earlier is, you provide the exhibits for your case-in-chief. They're going to have an opportunity and we'll talk about time frames, that they need to give you your exhibits, I mean their exhibits, and then you're going to have an opportunity to provide rebuttal exhibits all in advance of the hearing.

MS. HARRIS: Okay.

MS. ROBESON: So, the applicant to provide exhibits for case-in-chief is February 5th. Now, my question, I know this is a tough question because you haven't seen the exhibits, but do you have a timeframe for when you think you could prepare exhibits in response. I know you have one expert witness, Mr. Doggett.

MR. KNOPF: Well the part that's going through my mind is, I have no problem putting in exhibits but, I think we need a little wiggle room because until we hear the oral testimony that may bring to mind we need something else.

MS. HARRIS: Well, I mean, typically, first of all, most of these cases usually last one day and you don't necessarily have the benefit of a pause to go back and

think, oh, I need three weeks to prepare another exhibit.

MS. ROBESON: Well, they don't mostly last one day when you have this much opposition. We've had cases that last five days.

MS. HARRIS: I'm aware of that.

MR. KNOPF: I mean, basically what I'm think of is at this point what we'd be doing is a lot of photographs, and I'm not sure, some things happened after Landfair testified that didn't even occur to me we need a photograph on it, now I think we do. So, I mean, that's what I, you know.

MS. ROBESON: Well, you've heard the basics of what Mr. Landfair is, testified to. So, I'm not willing to, I would like to give you a reasonable time to submit exhibits. What's a reasonable time?

MR. ABRAMS: Since most of my people are going to be out for a good part of February, --

MS. ROBESON: Yeah, I saw that.

MR. ABRAMS: Could we have at least four weeks?

MS. ROBESON: Well, that would accommodate technical staff's schedule.

MR. KNOPF: He asked if I needed more than four weeks. No, I don't need more than four weeks. I was thinking more like two weeks.

MS. ROBESON: Do you have an expert witness?

MR. ABRAMS: No.

MS. ROBESON: Okay.

MR. ABRAMS: I have a letter report which has already been submitted from an expert witness.

MS. ROBESON: Right.

MR. ABRAMS: But that expert witness will not testify.

MS. ROBESON: Okay. Well, what I'll do --

MR. KNOPF: And I don't anticipate having a written report from our expert.

MS. ROBESON: I'm sorry?

MR. KNOPF: I don't anticipate having a written report from our expert.

MS. ROBESON: Yeah, but I assume, knowing Mr. Doggett, there may be some other exhibits.

MR. KNOPF: Oh yes, surely. And you had said, one of the things we will be referring to, and you said it's enough to just list them, if we list the prior council decisions or hearing examiner decisions rather than putting in all of the huge decisions.

MS. ROBESON: That will be helpful, yes.

MR. KNOPF: We can just list them.

MS. ROBESON: Yes, I'm fine with that. Okay. So, Mr. Abrams, you don't have expert exhibits. How about we say two weeks, how about February 22nd?

MS. HARRIS: And that date is for what?

MS. ROBESON: Their exhibits to you.

MR. ABRAMS: Well, my primary witness, which is Mr. Walsh, apparently is going to be out until the 28th.

MS. ROBESON: Is he out now?

MR. ABRAMS: No.

MS. ROBESON: Oh, but you haven't seen the --

MR. ABRAMS: I haven't seen what she's going to submit.

MS. ROBESON: Right, right. I thought he's going to be out until, oh, wait.

MR. ABRAMS: You've got a second page there.

MS. ROBESON: I see that.

MS. HARRIS: I'm a little concerned about the non-expert witnesses driving totally the hearing schedule and hopefully we can be a little accommodating in terms of who may be able to testify in place of someone else, if someone else looks like, you know, a number of these people look like they're going to be out for two weeks time.

MR. ABRAMS: No, basically, we're concerned with that is, when you submit your exhibits by the 5th of February, the chief witness that I have who has input and will testify is out until the 28th, continuously.

MS. HARRIS: And, who is that?

MR. ABRAMS: Walsh.

MS. ROBESON: You don't have a way to contact him?

MR. ABRAMS: He's going to be, I think, out of the country. And I have no way, well.

MS. HARRIS: And he can't receive a PDF on his Ipad?

MR. ABRAMS: I don't know. I don't know. I just asked him for a list of dates.

MS. ROBESON: Well, what I'm going to do, that is a long time to have a witness unavailable.

MR. ABRAMS: Could we have until the 25th, which is, let me see, that's, yeah, the 25th?

MS. HARRIS: I mean, I understand, but a number of these are exhibits that in the normal course of any hearing are presented and people respond, you know, whether it be a detailed elevation or something like that. So the rules don't call for presentation in advance of any supporting exhibits.

MS. ROBESON: Yeah, but my rules do. So, I think what we're going to do, I understand what you're saying. I don't want to, its unusual for a non-expert, you know, I know he's where ever he is, there's got to be a way in this day and age to convey to him the information. So, I'm going to keep it at February 22nd, and Ms. Harris, can you submit a PDF or can you submit, when you give your exhibits to them, can you give them an electronic version?

MS. HARRIS: As well as a hard copy, correct, or just electronic?

MS. ROBESON: Yes.

MS. HARRIS: Yes.

MS. ROBESON: That's February 22nd that your response exhibits are due. Now, rebuttal exhibits. Yes?

MR. KNOPF: Is the electronic version only electronic or will it be hard copy?

MS. ROBESON: No, both. Hard copy and electronic, so you can communicate it easily to your clients.

MR. KNOPF: Thank you.

MS. ROBESON: Okay. And, rebuttal exhibits. You have a suggestion? February 22nd. What about March 5th? Because what I'd like to try to do is get into hearings in March. So, you know, your exhibit, I mean, your witness was out until February 28th. We can get going in March.

MS. HARRIS: I think it'll be helpful to know that I am tied up with the other ZHA on another case March 11, 15th, 18th and 22nd.

MS. ROBESON: Oh, Costco?

MS. HARRIS: Yes.

MS. ROBESON: Well then, what's your suggestion?

MS. HARRIS: Ideally, I mean, ideally, I'd like to do it before or it's going to have to be after. It can't be during.

MS. ROBESON: Well, we have Monday the 4th. We have March 1st. Or if you want to, I mean, we could shorten your time for rebuttal exhibits. If you want to submit rebuttal exhibits on March 1st. We could start --

MS. HARRIS: Okay, if we can take a step back for a moment. The 5th to the 22nd is two and a half weeks. And is that time, is it felt that that time necessary for Mr. Abrams and Mr. Knopf in an effort to try to reduce the schedule?

MR. KNOPF: The time necessary for what?

MS. HARRIS: For your exhibits to be provided to me.

MR. ABRAMS: Yeah, we got to see what you give.

MS. ROBESON: She's saying your time from the 5th to the 22nd to respond. Mr. Knopf, you have an expert, what's your?

MR. KNOPF: I'm sorry. I'm a little lost with what we're shortening.

MS. ROBESON: Okay. Right now we have her exhibits, the applicants' exhibits to you on February 5th.

MR. KNOPF: Oh, that 5th. I'm sorry. I got mixed up with the March 5th.

MS. ROBESON: I understand. I understand. What's your position on, what is your time frame to respond to the applicant's exhibits, to submit your response exhibits?

MR. KNOPF: Two weeks maximum.
MS. ROBESON: So that would be the 19th.
MR. KNOPF: Let's see, the 19th is a --
MS. ROBESON: February 5th is when she gets the exhibits to you.
MS. HARRIS: And I can shorten ours a little bit.
MS. ROBESON: How about this. How about shortening the February 5th.
MS. HARRISON: That's what we were just discussing. So how about, well, it could be the 1st or the 4th. Friday or Monday.
MS. ROBESON: Let's go with the 1st.
MS. HARRIS: Okay.
MS. ROBESON: February 1st and then we can do February 19th, well, 18th?
MR. KNOPF: 18th is a holiday, I believe.
MS. ROBESON: It is.
MS. HARRIS: I mean, why not, again, the 15th? Yeah, that's two weeks.
MR. KNOPF: 15th is fine with me.
MS. ROBESON: Okay, I'm going to go with the 15th. So let's do that. And then --
MS. HARRIS: And the 22nd, one week later for any rebuttal exhibits?
MS. ROBESON: That's your call.

MS. HARRIS: That's fine.

MS. ROBESON: And, you'll send CD's of any rebuttal exhibits too.

MS. HARRIS: And, I would hope that similarly, hard copies and electronic copies can be provided to us as well from Mr. Knopf and Brown.

MS. ROBESON: Well, do you have that capability with your expert? The reason I'm asking you to submit the hard copies, I mean, the electronic versions is Mr. Abrams client being out of the country.

MS. HARRIS: Okay, well then --

MS. ROBESON: I don't know if Mr. Doggett has the ability, since you're going to have people here I'm not going to require him to --

MS. HARRIS: Okay, then the only thing I would request is hand deliveries though, because we had a situation in the past where things were put in the mail as opposed to hand delivered and three days after whatever date is provided.

MS. ROBESON: Okay. Do you have a problem with that?

MR. KNOPF: No.

MS. ROBESON: So, February 26 will be the rebuttal exhibits, and then we could do a hearing, I mean, I'm not helping, February 22nd is the rebuttal exhibits. Then, we

could do a hearing March 4th.

MS. HARRIS: Okay.

MR. ABRAMS: That's fine.

MR. KNOPF: This is the applicant's case would be on March 4th.

MS. ROBESON: Right.

MR. KNOPF: So we don't have to worry about my availability. He was mentioning some people unavailable on our side, but that doesn't matter because it's the applicant's case.

MS. ROBESON: Yeah, I think we have another day on the applicant's case since we only go through a portion of -- so anyway. Now, that's not a guarantee, but, you know, I do think we have an extra day. I don't want to be limited by that, but since you both are so, such good advocates, I'm guessing that the 4th is going to be the balance of the applicants' case.

MR. KNOPF: I'm thinking that they may need another day. Because they've got five more witnesses or something.

MS. ROBESON: Well, let's do this. Let's just schedule hearings and we will work from there. One thing I did ask the opposition attorneys to do in Chelsea is, if you could make available exhibits for the community. Well, I don't know. Never mind. Strike that.

MR. ABRAMS: That's probably part of my question. The exchange of exhibits, what do we submit to you in terms of keeping track of what's been exchanged. Do you want copies of the exhibits?

MS. ROBESON: I guess what we should have is copies in the file, and if you want to submit the hard copies and the electronic versions, then people can come to our office and look at the exhibits. So that's the best thing to do. And we'll put them in the record subject to objections at the hearing. You know, we'll include them in the official file subject to objections at the hearing.

MR. ABRAMS: And would you accord exhibit numbers at that time?

MS. ROBESON: Yes. And then you would use the exhibits on file with us at the hearing.

MS. HARRIS: Correct. Okay.

MS. ROBESON: So we don't have to do duplicates. Okay, so we have one hearing on March 4th. Tuesday is the council, so I don't know if you all are going to want to do the 5th.

MS. HARRIS: I would suggest yes.

MR. ROBESON: Okay.

MR. KNOPF: If something should come up, which is unlikely, one could defer for the half hour when everyone went to the council.

MS. ROBESON: Okay, we'll go with the 5th. Now, I don't have, I can't do the 6th because I don't have either this room or the hearing examiner's room. So, I can see on the 6th if we have, there's a hearing room on the second floor, but it's not big. I could do the 14th, if you don't have the Planning Board.

MS. HARRIS: My concern is, again, I mean, that other case is going to make this one look like a walk in the park. And so --

MS. ROBESON: Well, that's comforting. Well, give me a follow up date.

MS. HARRIS: How many does do opponents, I mean, how many days are we totally targeting? Because I indicated previously I thought the completion of our case will take a day, a day in a half, max. I would assume.

MR. KNOPF: In addition to what's already been done or counting the day already?

MS. HARRIS: Additional.

MR. KNOPF: Addition.

MS. HARRIS: An additional day, day and a half.

MR. KNOPF: That's counting cross-examination?

MS. HARRIS: That's a little bit out of my control.

MR. KNOPF: I mean, I'm working on the assumption the next two hearing days will be their case. I think

that's a reasonable.

MS. ROBESON: How about your case?

MR. KNOPF: I think three hours, not counting cross-examination.

MS. ROBESON: Your case?

MR. ABRAMS: Probably a day, maybe a little over a day.

MR. KNOPF: Well, wait a minute. I say three hours for my witnesses, but there then can be community people that are going to show up.

MR. ABRAMS: Well, yeah, I'm including cross-examination but, I don't know. I suggest we schedule four days.

MS. ROBESON: Four days?

MR. ABRAMS: Yes.

MS. ROBESON: All right. And if we need more, we schedule more.

MS. HARRIS: You mean four days total for all of us, or four days for your case?

MR. ABRAMS: No, not for my case.

MS. HARRIS: Oh, I was like, really.

MR. ABRAMS: Four days total.

MS. HARRIS: Okay, thank you.

MS. ROBESON: Let's do this. Let's do four days so we at least have the dates reserved. If, for some

reason, we need more, you know, we can work from then. My experience is the exhibit exchange cuts down on cross-examination, which is why I'm doing it.

MS. HARRIS: Okay, so March 6, did you indicate that was available?

MS. ROBESON: No, because I don't have a hearing room. I don't have a hearing room the rest of that week.

MR. ABRAMS: When do you start in March, Pat?

MS. HARRIS: Eleventh.

MS. ROBESON: Actually, I may be able to get this room on the 7th. Wait a minute. Okay. I have Wednesdays and Fridays only in this room. And we have hearings scheduled in the other room.

MS. HARRIS: So Wednesday, March 6 would work in this room?

MS. ROBESON: Yes.

MR. KNOPF: Well, I have a problem with that.

MR. ABRAMS: Yeah, I have a problem also with the 6th. One of my witnesses, and I think by that time I'm getting into our case.

MS. HARRIS: Yeah, but that's just one.

MR. KNOPF: I have all three of my witnesses are not available. The expert's available, the all three are not available. The other people. And I would like, well, what I'm aiming for here is to have the people, the general,

the residents show up and so on, take the day off from work or whatever and then come. I think it might be good if we could have some kind of break after they finish, just a day or whatever, so we know they're done. Maybe we could have the 6th as an overflow, if necessary, and then can we do the 7th to start up again.

MS. ROBESON: I don't have a room on the 7th. And, you know, we've got to get this done. The only room I have is on the 6th. That's the only place. Wait a minute. Okay, the only place, okay, I could get a room. I've got my own matrix going up here.

MS. HARRIS: I have a suggestion. Could we scoot the first hearing date to March 1st or the 28th? How about the 27th?

MR. ABRAMS: No, my primary client is Mr. Walsh, who's the --

MS. ROBESON: Yeah, I'm not going to do that. I'm going to wait for him to -- yeah, I have the 8th. I think I can get this room on the 8th.

MR. ABRAMS: That's a Thursday.

MS. HARRIS: No, I can't do that. I'm jeopardizing that other case I believe.

MS. ROBESON: Well, do you want to finish in one week? When do you want to finish? I mean, I know Costco is heavily opposed. It is my experience that the hearing goes

much more quickly, you know, with the exhibit exchange because cross-examination is reduced. We do have people that are going to testify but, you know, really, from the community but.

MR. ABRAMS: Is there opposition counsel in that case?

MS. ROBESON: Costco? I think there is. I think there's multiple opposition counsel.

MR. ABRAMS: I was going to say if there's no cross-examination by counsel.

MS. HARRIS: You mean in the other case?

MR. ABRAMS: Yeah.

MR. KNOPF: You should be so lucky. Did you lose the toss of the coin on that one?

MS. ROBESON: Well, the other option is to move it up. You've got February 1st for your initial submission. Can you do it faster?

MS. HARRIS: The architects told me yesterday they needed two weeks, which takes us to, let me go back, to the 29th. And I was just giving us a little bit of room just because you don't want to --

MS. ROBESON: I don't want to mess with the schedule.

MS. HARRIS: Can we make a phone call to just to confirm. Take a two-minute break?

MS. ROBESON: Let's take a two-minute break.

(Whereupon, a brief recess was taken.)

MS. ROBESON: Okay. Do we have any news from the applicant?

MS. HARRIS: Yes. My original inclination regarding the exhibits was unfortunately correct. And that is, we are going to need three weeks to make sure that we have the correct exhibits. So, I have a different suggestion, which is, that we look at the beginning of April and we start scheduling the hearing dates in April. I mean, we can figure out the exchange of exhibits prior to that in March, but we scratch all these hearing dates that we were talking about. I think it's helpful to Mr. Abrams client regarding their February and March vacations or whatever they're doing, and we focus on April. Or the last week in March.

MR. KNOPF: Well, the last week in March is a problem. Passover starts Monday night, and I think I may be out of town and others may be out of town that week.

MS. ROBESON: Well then, first week of April. If we're going to April and then we'll schedule.

MR. ABRAMS: So the exchange of exhibits is off in terms of those dates?

MS. HARRIS: Well, what I'm suggesting is maybe we sought of conceptually agree on hearing dates and then we

can go back and figure out the exchange.

MS. ROBESON: Back out the other dates. All right, April. April is good from our calendar. You know, I know that we have a lot of people that want to testify, but I can't get this room because it's budget, I have Wednesday's and Friday's, maybe, so I'm going to schedule for downstairs and hopefully that'll be enough to accommodate everyone.

MR. KNOPF: The only problem with April is that I didn't go that far with my calendar. So we could do it, hopefully it'll be all right, because apparently people are all taking their vacations in February and March.

MS. ROBESON: Yeah. Where did I go wrong?

MS. HARRIS: I know.

MS. ROBESON: And I'm a skier.

MS. HARRIS: Well now maybe we've helped you out as well.

MR. ABRAMS: In terms of April, my grandson is getting operated on on the 24th, which is a Wednesday, so I will not be here for that. There is a CLE, State Bar, urban, or land use institute which is scheduled for the 26th, which is a Friday, so my bad days are the 24 and 26th.

MS. HARRIS: Well, I would hope that we can, given that we're pushed out this far now, hopefully we can focus on the first half of April.

MR. ABRAMS: Well, that's fine. I just wanted you to know in April those are my dates.

MS. ROBESON: Let me do this then. Let's set some tentative dates. You guys check back with your powers that be. My main concern is the expert witnesses' availability. So, I have a lot of days open. When does Passover end?

MR. KNOPF: It's that week. It starts Monday, the 25th.

MS. ROBESON: Of March.

MR. KNOPF: Of March.

MS. ROBESON: So it ends April 1st.

MR. KNOPF: Well, we need to be back, yeah.

MS. ROBESON: I mean, you'll be back April 1st. So the only hearing date that I do not have is the 4th, the 11th and the 25th. We already have hearings scheduled on those days. And I can't this room on Thursday. But the rest of the calendar is open. And I'm going to take whatever room I can get.

MS. HARRIS: So any date besides 4, 11, 25 and then Mr. Abrams, which day did you say?

MS. ROBESON: The 24th and the 26th.

MS. HARRIS: And how many days do we think we need to come up with?

MR. KNOPF: Well, have we used, we haven't had any hearings yet? No hearings in March?

MS. HARRIS: Correct.

MR. KNOPF: Because I got lost. Whatever happened to the week of the 18th?

MS. ROBESON: That is Costco.

MR. ABRAMS: Why don't you pick four dates. The first four dates you have a hearing room available in April.

MS. ROBESON: Okay.

MR. ABRAMS: Is that all right, Pat or do you need more time for Costco?

MS. HARRIS: I'm sure I will, but then they'll have to juggle their schedule.

MS. ROBESON: So, do you need a date to have people come back from wherever they are on Passover or?

MR. KNOPF: Well, I won't, presumably we're starting with their case on, isn't the first hearing date in April and that'll be their case still, so I don't need to worry about my people's availability.

MS. ROBESON: Well, that's up to you. I'm not delaying.

MR. KNOPF: I'm sorry. I have to confirm, my expert is the only one that I want to make sure is here to hear their case.

MS. ROBESON: Well, what I'm going to do, let's set some tentative dates and you go back and confirm them, and we'll go from there. So, April 1st, I can do April 1st,

2nd, 3rd and 5th. Now, the 2nd is the County Council, so you know, you have to pay your money and take your chances if you have anything at the County Council.

MS. HARRIS: Can we identify dates the next week as well just in case those drop out.

MS. ROBESON: Sure.

MR. KNOPF: That was the 1st, 2nd and what was the other one?

MS. HARRIS: Third and 5th.

MS. ROBESON: April 1st, 2nd, 3rd, and 5th.

MR. KNOPF: Presumably, is it fair to say we're assuming that at least a day and a half of the first two hearing days would be their case?

MS. ROBESON: Yes. Well, that's what Ms. Harris said.

MS. HARRIS: At least the first day.

MR. KNOPF: How many expert witnesses do you have? You have about four or five other experts, right?

MS. HARRIS: Four, yes.

MR. KNOPF: Four in day.

MS. HARRIS: I mean, I just, it's hard to predict. I don't want to be, it's at least a day.

MR. KNOPF: Yeah, I'm worried about the cross-examination. I think it's realistic to say at least a day.

MS. HARRIS: Okay. And then the next week?

MS. ROBESON: I have everything but Thursday, the 11th.

MS. HARRIS: So, 8, 9 10, and 12. So perhaps what we should do is all of us should take a look at this, e-mail you all dates that we're available and then you'll --

MS. ROBESON: Set a hearing date.

MS. HARRIS: You'll select a date?

MS. ROBESON: I'll set five.

MR. KNOPF: Just as an abundance of caution, maybe you should go to the third week. Just in case.

MS. ROBESON: I'm totally open the third week.

MR. KNOPF: Oh, okay. I just wanted to know, so we don't have to go back again if it turns out.

MR. ABRAMS: So we have the 1st of April, the 2nd of April, the 3rd of April and the 10th of April?

MS. ROBESON: No. First, 2nd, 3rd, 5th.

MR. ABRAMS: Fifth.

MS. ROBESON: Eight, 9, 10, 12.

MR. KNOPF: Then the next week it's fully available.

MS. ROBESON: Yes. So, using that time frame, huh?

MR. KNOPF: We should be able to get some days out of that.

MS. ROBESON: Yeah, I have another case coming up

that is also controversial. So I'm just going to at the moment reserve every one of those dates, but I need you guys to get back to me because it's hard for us to hold that many dates. So, when do you think you can get back to me?

MS. HARRIS: By close of business tomorrow, certainly. Maybe close of business today.

MS. ROBESON: Okay.

MR. KNOPF: I'll try today, but tomorrow.

MR. ABRAMS: We'll try close of business tomorrow.

MS. ROBESON: Okay. Now assuming that the first date is April 1st, except I need a date to continue this today, or I have to --

MR. ABRAMS: Well, that's up to Pat because they, you're going to presenting your case. So we have no problem with April 1st.

MS. ROBESON: Let's do the exhibits and then if you need time to check with your witnesses and pick the first date, I just need the first date or we have to readvertise and all that stuff.

MS. HARRIS: I mean, I'm confident, because I did ask my folks through April. Why don't we say, because you need to continue at least one date now, right, April 2nd.

MS. ROBESON: April 2nd. All right.

MR. KNOPF: I can't.

MR. ABRAMS: We've already got a date, April 2nd.

MS. ROBESON: Well wait, this is her case, so we're going with April 2nd, which is a Tuesday --

MS. HARRIS: Okay, then we can make it April 1.

MR. KNOPF: I'm sorry, what? April 1?

MS. HARRIS: April 1.

MR. KNOPF: Yeah, that's fine. I was going to suggest that if, you need a date to set this, to continue it, right.

MS. ROBESON: Today. I just need one.

MR. KNOPF: If for some reason, and I'm not saying it's going to happen, it turns out that witnesses aren't, my expert's not available or something isn't available, maybe you could turn one into we could review the exhibits that have been filed and object or not object so you'd have a continuation there, just as a worst come scenario.

MS. ROBESON: No. We're just going to, yeah, this is her case, so we are going to do April -- yeah?

MR. KNOPF: Well, the only thing is, I need my expert to be present when they make their presentation, and I don't know whether he's available on April 1. I could --

MS. ROBESON: Can you e-mail him?

MR. KNOPF: I can find out now if you'd give me --

MS. ROBESON: Why don't you take a moment and do that.

MR. KNOPF: Yeah, I mean, I just didn't ask him in

April, I'm sorry.

MS. HARRIS: Should we figure out the exhibit schedule and then we'll take a pause and he'll confirm the 1st or 2nd?

MS. ROBESON: Yes. So when do you --

MS. HARRIS: I mean, we could take the same timing and back up from the 1st or we could go the other direction.

MS. ROBESON: It's your --

MS. HARRIS: My call, okay.

MS. ROBESON: Because now we've got lots of time.

MS. HARRIS: Okay, right. So now we're going to be more conservative and we'll just say that a month from today --

MS. ROBESON: Oh wait, I wasn't thinking a month.

MS. HARRIS: Because we had three weeks before. No?

MS. ROBESON: But I want, okay. We originally had February 1st.

MS. HARRIS: That's when we reduced it, but then I checked my --

MS. ROBESON: I know. I'm not backing out. I want to start the exhibit exchange as early as possible without crowding you. So, you had February 1st. Is February 8th enough leeway for you?

MS. HARRIS: Let me get back to my calendar. Yes.

MS. ROBESON: So your exhibits will be due to the opposition on February 8th.

MS. HARRIS: I mean, can we take a full four weeks just because now that we now have a month and a half more.

MS. ROBESON: Well, I'm going to give them more time to respond to your exhibits. Okay, let's work it out. 2/15/12, but I want the opposition to have significantly more time to respond. I was cutting them short.'

MS. HARRIS: Okay.

MS. ROBESON: 2/15. So what if we say the opposition exhibits March 8th, and then your rebuttal exhibits March 22nd.

MS. HARRIS: I think that --

MS. ROBESON: Yes.

MS. HARRIS: So our first date for submitting is, and you had said 2/15/12. 2/15/13, correct?

MS. ROBESON: Yes.

MS. HARRIS: Okay. Then they respond 3/8 and we respond 3/22. We will send hard and electronic copies. They will hand deliver by COB on their date.

MS. ROBESON: And then copies to us.

MS. HARRIS: Yes.

MS. ROBESON: And ours will be marked. Now that may give you time, I don't know what technical staff is going to say on your revised plans but, you know, that'll

give you time to --

MS. HARRIS: Exactly. Which is one of the reasons when we made the call to the architect, we thought it would make sense just to back out to wait.

MS. ROBESON: Let's just go off the record while he's making his call and we'll come back on.

(Whereupon, a brief recess was taken.)

MR. KNOPF: I was not able to reach him; I got voicemails and phone numbers.

MS. ROBESON: All right, well what I' going to do is this. I was trying to avoid just convening a hearing to reschedule a hearing but, if worse comes to worse I'll convene it. Let's go with April 2nd. I'm sorry. April 1st is the first hearing at 9:30. And if necessary, you know, that hearing will just be to convene, to adjourn to the next date. So, what we have now, February 15, 2013 applicants exhibits to opposition. March 8, '13, opposition exhibits to applicant, March 22, '13, applicants' rebuttal exhibits to opposition. The applicant will provide electronic versions of their exhibits to Mr. Abrams and Knopf, and hard copies of all the exhibits are to be filed in our office. What I'm going to do -- off the record.

(Discussion off the record.)

MR. KNOPF: He believes --

MS. ROBESON: Who is he?

MR. KNOPF: Ken Doggett, the expert, is in London for the, he believes through the 7th, but his wife has the tickets and his wife isn't home. So I'm just telling you he thought that that's when they were scheduled to go from the end of March to, he'll be back on the 7th of April. But he's not sure. He might be back, he thought he could be back on the fourth, but he just doesn't know and he doesn't have the tickets. He never thought, I never told him to look in April, I'm sorry. It's my fault.

MS. ROBESON: No, it's not. We didn't tell you to look that far. April 8th and then we just go 8th, 9th, 10th, 12th, as long as it takes.

MR. KNOPF: Okay.

MS. ROBESON: So I'm going to reserve, I'm going to continue this case to April 8th and 9th, and then I'm going to reserve the 9th, 10, 12th, 15th.

MR. ABRAMS: So, the 1st, 2nd, 3rd and 5th are out?

MS. ROBESON: Yes. Now, if you could get me your availabilities for all the dates, but whatever happens, we're going to continue this to 4/8 at 9:30. I do, go ahead.

MS. HARRIS: Just to be clear. The next hearing date's the 8th then we, as we discussed previously, will confer with all of our witnesses, experts for these other

dates and provide you every date that works?

MS. ROBESON: Right. And I'm going to just reserve the 8th, 9th, 10th, 12th and the entire following week.

MR. KNOPF: Oh, and the entire, 15th, 16th?

MS. ROBESON: Yes, because I don't want anymore delays. So I'm going to put a hold on it in your calendar. If you could, get back to me by close of business tomorrow.

MS. HARRIS: Perfect, okay.

MR. KNOPF: That's fine. And one of those days we should be able to have.

MS. ROBESON: Right. And I don't know, I'm going to announce it for the second floor hearing room but, if we need to change it they'll be a sign on there just for the record. And also, I am going to, I decided that I would do a site visit for the property. I have to announce it on the record, the time and the date. I cannot speak with anyone when I go out but, I am going to get out there Wednesday, February 6th at 2:00 p.m. So, that's when I'll be going out there.

MS. HARRIS: I wanted to make two comments regarding that. I think it's important to note that there a number of approved but not yet built projects that weigh into the compatibility issue that obviously aren't constructed yet. So, when you take your site visit that

obviously should be kept in mind. The other thing is, I would urge you obviously to walk all the way down to the north on West Lane so that you have appreciation for the entire property including how it is situated with respect to the adjacent properties to its north and to its northeast. So I just don't want you to walk just --

MS. ROBESON: I will probably walk Montgomery Lane to Arlington to whatever the street is above Montgomery Lane.

MS. HARRIS: Edgemoor.

MS. ROBESON: Edgemoor to Woodmont, and then West Lane.

MS. HARRIS: Okay.

MS. ROBESON: Unless that's five miles. Well even if it's five miles, I'll walk it.

MR. KNOPF: It's two blocks.

MS. HARRIS: I want to make one other comment which you will hear later in testimony, and I don't want to plant any seeds in the opposition's head but, you know, there's some contention about traffic congestion. I would prefer a site visit which is not announced on a specific date and time because I would hate to see any engineered issues occurring on the street.

MS. ROBESON: Well, I can't do that. I have to announce it on the record.

MS. HARRIS: You can't announce it after you've taken the site visit?

MS. ROBESON: No. No, there's some case law that just came out, so I have to announce it on the record. And so I am going to do it in advance out of an abundance of caution because, as I said, nowadays these site visits are trickier than one would think. All right. Does Mr. Knopf need to come back? I'll go off the record in case that's his wife and then after that we're cutting it off.

(Discussion off the record.)

MR. KNOPF: Things get very complicated. He reached his wife who is in a meeting and they are definitely going to London and he isn't sure whether they're going to be back the 7th, 8th or 9th. And she has the tickets and she's coming home tonight and looking. I'm sorry.

MS. ROBESON: You want to be hopeful and stick with the 8th and if I have to convene it and continue it.

MS. HARRIS: I mean, I'm a little concerned that this hearing has been dictated from the very start by people's vacation schedules. I mean I've totally, myself and my client have totally worked around everyone's vacation schedule, and I would hope that others on the other side are making some accommodations.

MR. KNOPF: The only accommodation that I can't make is my expert. Everybody else I've waived it.

MS. ROBESON: But he can listen to the tape and look at the exhibits. The transcript will be up on the web.

MR. KNOPF: Not on the day afterward. I mean, if we go on the 8th and he starts on the 10th that's the problem.

MS. ROBESON: Deposition Services, can you make the tape available?

MS. HARRIS: Since he's not available anyway, we go back to the 1st or the 2nd, and then the transcript will be available and then we pick up the 9th.

MR. KNOPF: Well, one way to do that perhaps is that if we go ahead with the 8th or whatever, and then if he comes back we just don't go the very next day on the 10th, if we have another day or two he can listen to the transcript and then testify.

MS. ROBESON: Well you have more than one witness, right?

MR. KNOPF: Yes. They're lay witnesses.

MS. ROBESON: So you could put your other witnesses on.

MS. HARRIS: Or can't Mr. Abrams go before Mr. Knopf?

MS. ROBESON: Okay, so it's the 8th at 9:30. All right, I do appreciate your patience, but yes?

MS. HARRIS: I just wanted to register a formal

objection about the site visit, just so that it's on the record. My objection is that given everything that's occurred in this case thus far, some of which is on this record and some which isn't, I'm concerned about a pre-announced visit that could end up with a prefabricated engineered issue on the street that does not typical reflection of what occurs on the street.

MS. ROBESON: You mean the neighbors are going to come and park their cars and all that kind of stuff?

MS. HARRIS: Potentially. That's my concern.

MR. ABRAMS: That's ingenious.

MS. HARRIS: I say that because there's information in the record now of one situation that appeared to happen at a moment, at one specific time and it certainly isn't a reflection of what occurs on a daily basis. And so I would, I think there's the potential of that.

MS. ROBESON: Well, your objection is noted.

MS. HARRIS: Thank you.

MS. ROBESON: And I'm going to go February 6th at 2:00 p.m. If they can manipulate the street to that extent, well, whatever. I'm going.

MR. KNOPF: I'm very flattered that she thinks that we could so manipulate the traffic.

MS. ROBESON: Well, the Planning Board already found that there's a problem on the street. So I don't

think it's news but, I'll be there February 6th at 2:00 p.m.

MR. KNOPF: I was just going to ask that, I think as part of your walking --

MS. ROBESON: There's a lack, I'm sorry, I think the Planning Board indicated that there is a lack of parking enforcement on the street.

MS. HARIS: Correct.

MR. KNOPF: I was just going to suggest that on the streets that you said you were going to walk, you mentioned the one north of Montgomery Lane, Edgemoor, and I was suggesting that you may wish to walk also the one south, which is Hampden Place of Montgomery Lane.

MS. ROBESON: Fronting where the HOC building is going to be?

MR. KNOPF: That's correct.

MS. HARRIS: Well the HOC building is there and then there's another building immediately to the west of that that was approved but not yet built.

MS. ROBESON: Okay. Well, I'll see all that then. And I don't have a problem with that. All right. So, that's the story. So this hearing is continued. One more time, applicants exhibits due to opposition 2/15/13; opposition exhibits due to applicant 3/8/13; applicants rebuttal exhibits to opposition 3/22. Applicant to provide a electronic version to the opposition of the exhibits and a

copy to OZAH for the file. And with that I'm going to -- a site visit is February 6, '13 at 2:00 p.m., and with that I'm going to continue this case to April 8th at 9:30.

MR. ABRAMS: We're supposed to get electronic and hard copy?

MS. ROBESON: Yes. Any other questions? Thank you for your cooperation. And with that, we're adjourned.

(Whereupon, at 11:12 a.m., the hearing was continued to April 8, 2013.)

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:

Keena Lukacinsky
Transcriber

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC **LOCAL MAP AMENDMENT G-954**	:	**Case No. G-954** **DPA 13-01**

A hearing in the above-entitled matter was held on April 8, 2013, commencing at 9:41 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 1st Floor Auditorium, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

A P P E A R A N C E S

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On Behalf of the Respondent:
Patricia Harris, Esq.

* * * * *

Witnesses:	Direct
William Landfair	19, 57

P R O C E E D I N G S

MS. ROBESON: Okay. This is a continuation of the public hearing of the matter of Local Map Amendment No. G-954, filed by 4831 West Lane, LLC, which requests rezoning from the R-60 zone to the TSR zone, a property known as 3901 Montgomery Lane, Lot 26, Block 13, and the West Lane right-of-way associated with Lots 24, 25 and 26, Edgemoor subdivision in Bethesda. It's also a public hearing on Development Plan Amendment No. DPA 13-01 filed by 4831 West Lane, LLC, which requests an amendment to the development of plan approved by the district council on July 10, 2007, in zoning application G-843. The applicant seeks an amendment to increase the number of residential units and add an additional 5,989 square feet of land area.

All right. First of all, thank, I thank the parties very much for getting in all their exhibits on time. That was very helpful to me. Is there anyone here that wishes to testify that is not represented by Ms. Harris, Mr. Abrams or Mr. Knopf? Okay. Seeing none, I am going to skip that part and go to some -- first of all, will counsel identify themselves for the record?

MS. HARRIS: Pat Harris, with Lerch, Early and Brewer on behalf of the applicant. Good morning.

MS. ROBESON: Good morning.

MR. ABRAMS: Good morning. Stan Abrams on behalf

of Sydney Homes townhouse community and Mr. Richard Lawch at 4810 Montgomery Avenue.

MS. ROBESON: Okay.

MR. ABRAMS: Montgomery Lane, excuse me.

MR. KNOPF: Norm Knopf from Knopf and Brown on behalf of the Edgemoor Condominiums and the various individuals I've listed in the filing with the --

MS. ROBESON: Okay. Thank you.

MR. KNOPF: I have a housekeeping matter when --

MS. ROBESON: Sure.

MR. KNOPF: -- it's appropriate to raise. I have something before the County Council tomorrow which has been scheduled, it's scheduled for a half an hour for the Council.

MS. ROBESON: Yes.

MR. KNOPF: -- at 1:55.

MS. ROBESON: That's always a risk.

MR. KNOPF: That's the Council's scheduling. Yes.

MS. ROBESON: Yes.

MR. KNOPF: I was wondering whether perhaps we could take a late lunch tomorrow or something like that because --

MS. ROBESON: Well, that is -- I was going -- well, I was going to reschedule the site visit, but I think that if you're at the Council, we couldn't do it that way

either. We have quite a few dates reserved. How would the parties feel about skipping tomorrow and then you don't need the flexibility of, you know, having to break at a particular time?

MR. KNOPF: Well, I'm -- this is scheduled for 1:55. I mean we can meet at least in the morning. They're not going to meet -- they're not sitting as a District Council until 1:55, so there's no danger of my being --

MS. ROBESON: All right. All right. I don't have a problem with it. Does anyone else have a problem seeing if we can accommodate Mr. Knopf's --

MR. ABRAMS: Then let's go for a morning session up until a certain point and then recess it?

MS. ROBESON: Yes.

MR. ABRAMS: Okay.

MS. HARRIS: And then recess for the day or just for the half hour that he needs, just so we can coordinate?

MS. ROBESON: The only problem with the Council is you never really know when you're going to get on, so I think that it's probably best just to recess for the day and then you don't have to keep your experts here. You know, it may be an hour, it may be an hour and a half, just depending on what their schedule is. All right. Then we'll do that.

I had a few preliminary matters. I did receive this flash drive, which is a video. It's Exhibit 106s and

it's a video of seven days of the street view in front of the subject property. We generally don't admit videos because the Council does not have a way to view them. What we can do, if you have somebody that can testify as to what's on this tape, we do accept sworn testimony, but we don't accept the actual video because the Council isn't going to watch seven days of parking or non-parking or however you want to phrase it.

MS. HARRIS: Two things, or a number of things. One is actually the Hearing Examiner should have received two tapes because one was submitted during the February 15th filing and then there were, there was an additional tape on the March 22nd. So I want to make sure that you, in fact, received two.

MS. ROBESON: Okay.

MS. HARRIS: And then, if I understand correctly, we did also submit pictures that were representative.

MS. ROBESON: I saw that.

MS. HARRIS: Okay. But so what you're suggesting is that we then get a sworn statement from the party responsible for the preparation of those?

MS. ROBESON: Exactly.

MS. HARRIS: Okay. And that can obviously then be submitted into evidence?

MS. ROBESON: Yes, subject to --

MS. HARRIS: Okay.

MS. ROBESON: -- the ability to cross-examine.

MS. HARRIS: Right.

MS. ROBESON: So you may have to bring the person here to be subject to cross-examination.

MS. HARRIS: Right. Okay. That's acceptable.

MS. ROBESON: All right. So I am not going to admit this and I will have to check through and see if there's other videos in here.

MR. ABRAMS: What exhibit was that now?

MS. ROBESON: This is 106s. And I'm not going to do it right now. I'll do it at a break when I can search through the --

MR. ABRAMS: 106f?

MR. KNOPF: S.

MS. ROBESON: S as in Sam.

MR. ABRAMS: S? Okay.

MS. HARRIS: The other one was Exhibit 93 that was submitted on March 15th and that was a flash drive.

MS. ROBESON: Okay. Then I'm going to treat that one the same way, not admit it. I'm not going to change the numbering of the exhibits at this point, but I'm going to just note that that is -- I'm sorry, it was 99 what?

MS. HARRIS: It was 93.

MS. ROBESON: 93? Okay. So that is not admitted into the record. All right. The other matter is the site visit. What I need to do with the site visit is schedule it for a day and then have at least one more hearing where I can put my observations on the record and you can ask me questions or challenge my recommendations. There's some procedural rules relating to site visits that I have to observe. You are welcome to -- you will be welcome to attend the site visit, but I can't speak with anyone because I have no way of recording what is there.

So what we're going to do is schedule the site visit and then come back at least one more day so you have the, so I can put my observations on the record and you have the ability to question me on those observations, all right? So think about, you know, I don't want to extend the hearing too long, but you may want to just think about which day would be a good day -- I think one day I'm just going to do the site visit and then a following day we'll come back for the hearing, all right? Yes, sir?

MR. KNOPF: I would suggest that you may find it helpful to have the site visit earlier rather than later to help you follow the testimony that comes before you.

MS. ROBESON: All right. Well, I was going to propose Thursday because I think that we're definitely going to continue to have hearings through Friday. That would be my guess. And --

MR. KNOPF: I was working on the assumption we'll have hearings the following week also, so --

MS. ROBESON: Yes, that's true. I can do Thursday or I can do Monday.

MR. KNOPF: Thursday?

MS. HARRIS: Let's do Monday.

MS. ROBESON: It --

MR. ABRAMS: Monday is the hearing, isn't it?

MS. HARRIS: Yes.

MR. KNOPF: Yes, Monday is the hearing.

MS. HARRIS: Unfortunately, I have an all-day, excuse me, an all-day meeting scheduled for Thursday.

MR. KNOPF: Oh.

MS. ROBESON: Okay.

MS. HARRIS: So that will not work.

MR. KNOPF: Oh.

MS. ROBESON: Okay. I can do, well, I can, in lieu of a hearing here, technically a site visit is a hearing. So I can do it Monday. I can do it Monday and in lieu of a hearing here, I'll do the site visit and then we can follow-up. We have work days scheduled next week.

MS. HARRIS: Would it be possible, just because I know time schedules are tight, to have the site visit at a certain time perhaps in the morning --

MS. ROBESON: Oh, yes, I have to --

MS. HARRIS: -- and then --
MS. ROBESON: I have to announce a time.
MS. HARRIS: Right. But then could we then resume the hearings if you scheduled it for the morning, for instance, then resume the hearing from 11:00 on or whatever it may be just because we've put all, and I'm sure the other opponents as well, have put their various witnesses on notice to reserve certain days.
MS. ROBESON: Right. Well, we're going to finish within this time period.
MS. HARRIS: Absolutely. I have that direction.
MS. ROBESON: We can do that. I guess my concern is, well, maybe the best thing to do is to schedule it at, for instance, 3 o'clock and we can come here first and then do it in the afternoon.
MR. ABRAMS: Was there a problem with either Wednesday or Friday of next week, or of this week?
MS. ROBESON: This week?
MR. ABRAMS: Yes.
MS. ROBESON: No. I mean I can do it --
MR. KNOPF: Yes, I would -- my only hesitancy is 3 o'clock because you're going to start running into rush hour going either way.
MS. ROBESON: Well, I'm trying to avoid rush hour in the morning, which coming from Columbia --

MR. KNOPF: At least it's early, though. Yes.
MS. ROBESON: -- is, it's going to take me, you know, a couple of hours to get there, but I can do the morning and hope for the best. Well, let's --
MR. KNOPF: Well, could we, let's see.
MS. ROBESON: I did not bring my calendar with me. I will be flexible and attempt to get there. I can attempt to get there by 10 o'clock, okay, and then we can do the site visit and come back in the afternoon.
MR. KNOPF: This is on Friday you're talking -- which --
MS. ROBESON: We can do -- I'm waiting to hear consensus from you all.
MR. KNOPF: Friday was one of the days you had suggested for hearing, so I think we have those free? I think --
MS. ROBESON: Yes, it should be a hearing day.
MR. KNOPF: So we have those free.
MR. ABRAMS: Friday is fine. That's the 12th? Yes.
MR. KNOPF: That's fine for me.
MS. ROBESON: Is that acceptable to you?
MS. HARRIS: Unfortunately, well, first of all, Friday is not a hearing day.
MR. KNOPF: It is.

MS. HARRIS: The 12th?
MR. ABRAMS: The 12th is not a hearing day, no.
MS. HARRIS: Correct.
MR. KNOPF: It wasn't?
MS. ROBESON: Oh.
MS. HARRIS: It is not. But --
MR. KNOPF: I thought it was Monday, Tuesday, Friday?
MS. HARRIS: But although I'm not available, the applicant is.
MR. KNOPF: I have Monday, Tuesday, Friday. Did I write down the wrong date? Is it Monday, Tuesday, Wednesday we're coming in?
MS. HARRIS: Could I suggest tomorrow at 3 o'clock perhaps?
MS. ROBESON: I can't do that.
MS. HARRIS: Oh, okay.
MS. ROBESON: Plus, isn't that the day that --
MS. HARRIS: Oh --
MR. KNOPF: Yes, that's when I'm having a hearing.
MS. HARRIS: That's right. Sorry.
MS. ROBESON: Well, I think that we can't do it tomorrow. We could try for --
MS. HARRIS: Wednesday morning?
MR. ABRAMS: Do you want to do it today?

MS. HARRIS: Did someone suggest that?
MS. ROBESON: We could try it today.
MR. ABRAMS: We'll do it today.
MS. ROBESON: I can do it for today in the afternoon. Are you -- is that acceptable to you?
MS. HARRIS: That's acceptable to us.
MR. KNOPF: Yes.
MS. ROBESON: Okay.
MR. KNOPF: Sure.
MS. HARRIS: This was the only thing on our schedule today.
MS. ROBESON: Okay. We'll, we can -- is that acceptable to you?
MR. KNOPF: That's fine.
MR. ABRAMS: Yes.
MR. KNOPF: What time did you have in mind?
MS. ROBESON: Well, I think I better do it for 1 o'clock just to make sure that we have enough time. No?
MS. HARRIS: I mean I was, well, I mean -- I was thinking a little later so we could get through at least two or three of our witnesses, but whatever works.
MS. ROBESON: Okay, 2 o'clock?
MR. ABRAMS: No way.
MR. KNOPF: No way.
MR. ABRAMS: No, let's make it --

MS. ROBESON: 2 o'clock, okay?
MR. KNOPF: So people still have to stop and when to eat and travel.
MS. ROBESON: Well, I mean --
MS. HARRIS: That's fine.
MS. ROBESON: -- we've got to do it.
MS. HARRIS: Right. Right. Exactly.
MS. ROBESON: So let's just --
MS. HARRIS: And then it's 2 o'clock and then after the site visit, the hearing is --
MS. ROBESON: Is adjourned, yes.
MS. HARRIS: -- adjourned for the day. Okay.
MS. ROBESON: And what I'll be doing is I will be walking from the site east on Montgomery Lane, south to, I think it's Hampden Lane, west to Arlington Road, north and then to --
MR. KNOPF: Maybe we just better meet you someplace.
MS. ROBESON: Well, I --
MR. KNOPF: We'll follow you, that's --
MS. HARRIS: Right.
MS. ROBESON: -- believe it or not, believe it or not, I have to announce under the most recent case law or the County Attorney is going to get mad at me if I don't announce the route.

MR. KNOPF: I see.
MS. ROBESON: So, so north to, I didn't expect to do this right at the moment. I'll do it before we leave, okay? I don't have the streets memorized. So we'll do it before we leave, but I have to announce the route. So it's generally going to be Montgomery Lane and then the perimeter of the neighborhood, all right, that staff has defined. You look confused.
MR. ABRAMS: So it's one street on each side, north and south, and Woodmont and --
MR. KNOPF: Onto --
MS. ROBESON: Woodmont, yes.
MR. KNOPF: Yes. Okay.
MS. ROBESON: Okay?
MR. KNOPF: It makes sense.
MS. ROBESON: 2 o'clock, are we agreed? Okay.
MR. KNOPF: And where, at what point will you start so we know where to find you?
MS. ROBESON: Oh, I'm going to start at the subject property.
MR. KNOPF: The subject property, that's a clue. Thank you.
MS. ROBESON: Yes. Yes. I'm going to do that.
MR. KNOPF: You better leave us now to find a place to park.

MS. ROBESON: And then when -- okay, no editorial comments. And then when I go like this, no, when I finish the route, I'm just going to get on the Metro and come back here, all right? So we've done that.
All right. Are there -- I hesitate to ask this, are there any other procedural matters?
MS. HARRIS: I have --
MS. ROBESON: Seeing none, no, go ahead.
MS. HARRIS: I have just a very minor one, which is logistically -- several of our experts are going to be wanting to use the easels, but there's -- I don't know if that's a microphone on that table, so it's a little awkward given the configuration of the room.
MS. ROBESON: Can we move the microphone to the end of the table? Okay. We'll go off --
MS. HARRIS: Okay. And then --
MS. ROBESON: Do we need to go off the record for a minute? No?
MS. HARRIS: Thank you.
MS. ROBESON: All right. Any more preliminary matters? Seeing none, we will proceed with your first witness.
MS. HARRIS: Thank you.
MR. KNOPF: Well, can I -- I do, I do have a question. I presume since we've got a whole slew of new

filings, I presume that's one of the things your witnesses will be addressing, the 322 submission?
MS. HARRIS: I was going to make just a couple of introductory remarks, if I may, and that was included in there --
MR. KNOPF: Okay. Thank you.
MS. HARRIS: -- how we were going to introduce various --
MS. ROBESON: We can have --
MS. HARRIS: -- exhibits.
MS. ROBESON: -- since it is an amended petition, you can have a brief time just to summarize --
MS. HARRIS: Yes, thank you.
MS. ROBESON: -- sort of like a, an amended opening statement.
MS. HARRIS: Thank you.
MS. ROBESON: But not too long.
MS. HARRIS: No, it will be very amended. Thank you. For the record, Pat Harris with Lerch, Early and Brewer here on behalf of the applicant, 4831 West Lane, LLC. We welcome the opportunity to be able to continue this hearing and present the project which was at the corner of Montgomery Lane and West Lane. Since the last hearing, we did have the opportunity to develop improved exhibits which better describe the property and the surrounding environment

and its context and we will be introducing those when the various witnesses come up and we'll be referring to the exhibit list from the zoning case so that there's no confusion there.

We submitted exhibits on February 15th and March 22nd and also at the direction of the ZHE we did meet with planning staff and, as you know, the Planning Board had a hearing on March 7th. We received a positive staff report and also a positive recommendation from the Planning Board and that's in the record as Exhibit 105. Our first witness will be Bill Landfair, who will further elaborate on the Planning Board proceeding and then he will also be addressing several questions that the Hearing Examiner raised at the January 11th hearing.

Our order, presentation of witnesses that we indicated previously will be Mr. Landfair. We also have Mr. Perry Berman as a land planner and then our architect, Marius Redulescu; our transportation planner, Chris Kabat; our landscape architect, David Judd; and then our civil engineer, Mark Morlock. And so with that --

MS. ROBESON: All right. I think you --

MS. HARRIS: -- I will call Mr. Landfair.

MR. KNOPF: Is Mr. -- if I recall correctly, Mr. Landfair was qualified as land planning?

MS. HARRIS: Correct.

MR. KNOPF: So you're having two land planners?

MS. HARRIS: Yes.

MR. KNOPF: Thank you.

MS. ROBESON: I suspect that Mr. Berman is going to tell us what the master plan really means.

MS. HARRIS: And I neglected to note that we also have two other witnesses that we'll call at the end of our expert witnesses, which is Cheryl Cort from the Coalition for Smarter Growth and Dan Reed from the Action Committee for Transit.

MS. ROBESON: Okay. Mr. Landfair, you were sworn in last time and you're still under oath.

MR. LANDFAIR: Yes, ma'am.

MS. HARRIS: We're just logistically trying to figure out where he should sit because he's going to be getting up and down.

MS. ROBESON: Well, you can bring a chair to this table if you wish. While he's doing that, I will note that all the exhibits and testimony from the prior hearing are in the record of this hearing, so you don't have to -- no one has to re-introduce anything.

MS. HARRIS: Thank you. Thank you. What the Exhibit 106a, which was submitted, is a revised development plan and I think it may be helpful to start with the revised development plan, explain what has changed and also explain

the binding elements that several were edited as a result of our visit back to the Planning Board.

MR. LANDFAIR: 106a?

MS. HARRIS: Correct.

MS. ROBESON: Just write duplicate on that because we already have one in the file.

MR. LANDFAIR: Okay. Okay. The development plan before you has been revised a number of ways. Firstly, it now reflects a continuous setback along the western wall of the building as it faces to the west, as it faces Lot 28, which was previously approved for a TSR project. In addition, we have amended a number of binding elements and added a number of binding elements to the plan. These include a setback provision starting at the 6th floor of the building, that part of the building facade that fronts along Montgomery Lane with the intent that it will reduced the building mass and height as viewed from the street.

In addition, a binding element will limit the lighting found in the rear outdoor amenity space that's reserved for the residents to keep the lighting to a manageable level, no more than 24 inches in height. There is a binding element that echoes language found in the technical staff report that will ensure conformance with the public use space provisions that are proposed on this plan.

The plan also reflects a new design for the

southeast corner of the building. We now have a scallop, essentially a cut-out if you will, an arc, at the corner of Montgomery Lane and West Lane and this now provides or accommodates a pocket park which is approximately 1,000 square feet in size. I think previously they had been referenced either on the record or in perhaps some materials that were submitted suggesting it was 600 square feet in size. It actually will measure approximately 1,000 square feet in size. We'll note that this pocket park will take its cues from the building itself and is convenient to the corner, convenient to the crosswalks and will provide a very comfortable public use space for both residents, visitors and passersby. It will be equipped with seating areas, landscaping, shade trees, et cetera.

MS. HARRIS: Thank you.

MS. ROBESON: What is the setback along that west side? I mean how many feet is it set back?

MR. LANDFAIR: The building itself, above grade --

MS. ROBESON: Yes.

MR. LANDFAIR: -- is 12 feet.

MS. ROBESON: 12 feet? Okay.

MR. LANDFAIR: Right. And below grade, there is a garage that looks down right to the parking lot.

MS. HARRIS: And just for clarification purposes, that is a minimum of 12 feet?

MR. LANDFAIR: Correct.
MS. HARRIS: Okay.
MR. LANDFAIR: Right.
MR. KNOPF: I'm sorry, I'm having trouble because you have a nice back, but --
MS. ROBESON: I was thinking that. Could you just angle the board more toward Mr. Knopf and Mr. Abrams because I have the plan up here and I can see. And then you may now, and you may want to stand, if you could move the second easel back, you may want to stand on that side and that way I can see and they can see.
MS. HARRIS: We also prepared a mini-packet if that would be helpful if they don't have it, to have it at the --
MS. ROBESON: Do you have the mini-packet?
MR. ABRAMS: We do.
MR. KNOPF: Have a mini --
MS. HARRIS: Okay.
MR. KNOPF: Yes.
MS. ROBESON: Okay.
MR. KNOPF: We do.
MS. ROBESON: But it would be nice, all of us need to be able to see what you're testifying to, so how does that work out?
MR. KNOPF: It sounds good.

MS. ROBESON: Okay.
MR. KNOPF: But just ask, I'm sorry, 12, was it 12 feet?
MR. LANDFAIR: 12 feet, right.
MR. KNOPF: Was the --
MR. LANDFAIR: A minimum setback of a building above-grade along the west side.
MR. KNOPF: The minimum setback?
MR. LANDFAIR: Right.
MR. KNOPF: Thank you.
MR. LANDFAIR: All right.
MS. ROBESON: Okay. You can keep going.
MR. LANDFAIR: Okay. Those are the changes that have been made to the development plan since the last public hearing.
MS. ROBESON: Okay. And what is going on with the space at the north side of West Lane? I remember the Planning Board -- is that going to be --
MR. LANDFAIR: Originally that was contemplated, that was proposed --
MS. ROBESON: That was --
MR. LANDFAIR: -- to be public use space and there were concerns raised by staff and the Planning Board and I think the Hearing Examiner as well raised concerns about the viability of that space as, quote, "Public use space," unquote. And I know the citizens had concerns as well. That space will still be open. It will be landscaped. There will be hard scape treatment, but we are not counting it towards the public use space requirement for the project.

MS. ROBESON: Okay. And are the transformers, I see the pads are still showing on the plan?
MR. LANDFAIR: Yes.
MS. ROBESON: Are they going to be above-ground still?
MR. LANDFAIR: Yes, they will be. Yes.
MS. ROBESON: Okay.
MR. LANDFAIR: But they'll be, they'll be screened. So the view of the transformers will be mitigated. They won't be completely hidden from view, but the view will be mitigated.
MS. ROBESON: Okay.
MS. HARRIS: And, Mr. Landfair, is there a binding element addressing the transformers?
MR. LANDFAIR: Yes.
MS. ROBESON: That's what I was just looking for. I wanted to -- I see it, they'll screen the transformer units along the northern property.
MR. LANDFAIR: Right. That had always been the intent, but now it's a binding element.
MS. ROBESON: I see. Okay.

MS. HARRIS: Thank you. By way of review, what is the height in the FAR permitted by the zoning?
MR. LANDFAIR: Yes. The Zoning Ordinance permits a, allows 3.5 FAR or maximum of 183 dwelling units per acre when you're providing 15 percent MPDU's. The sector plan cites 2.5 FAR and a 60-foot, I'm sorry, a 65-foot height limitation. In this case with this project, we are proposing 3.5 FAR and, of course, 70 feet in height, but we feel that this is perfectly appropriate because we're taking advantage of the MPDU bonus density which allows us to increase the density to the 3.5, 3.05 FAR.
MS. HARRIS: And in the sector plan's recommendation of 2.5 FAR and 65 feet, was that with or without consideration of MPDU's?
MR. LANDFAIR: That was without the consideration of MPDU's without the bonus, correct.
MR. KNOPF: Excuse me, I just want to clarify something. You're saying the FAR 3.5?
MR. LANDFAIR: No, I'm sorry.
MS. ROBESON: 3.0 --
MR. KNOPF: 05? Okay.
MR. LANDFAIR: I corrected myself. 3.05.
MR. KNOPF: That's what it is. Sorry. Thank you.
MR. LANDFAIR: Sorry.
MS. ROBESON: You missed that part at the Planning

Board where they increased it to 3.5.
MR. LANDFAIR: Surprise.
MS. HARRIS: And which they fully support.
MS. ROBESON: And let me just clarify one other thing. Did, I thought I read that the setback, that the 6th floor, instead of being nine feet is now 12 feet, is that correct?
MR. LANDFAIR: Correct. It's a, we call it a step back.
MS. ROBESON: Step back?
MR. LANDFAIR: Right.
MS. ROBESON: Yes.
MR. LANDFAIR: Right. Exactly.
MS. ROBESON: Okay. I just wanted to make sure I was remembering that.
MR. LANDFAIR: Correct. And that's a binding element on the plan.
MS. ROBESON: Okay.
MS. HARRIS: Exhibit 106b sets forth, which is a comparative base plan, sets forth all the relevant development standards and dimensions in the surrounding neighborhood and provides a context for evaluating the project and it showed compatibility and during the first --
MS. ROBESON: Is there a question there?
MS. HARRIS: Yes, sorry.

MS. ROBESON: Just checking.
MS. HARRIS: The question is can you please describe the surrounding neighborhood in the context of the surrounding buildings and the dimensions and the FAR's just to provide a reorientation given the depth of materials that we went over almost two months ago?
MR. LANDFAIR: Sure. The subject property, of course, is located in the northwest corner of West Lane and Montgomery Lane and I'll start clockwise at roughly 1 o'clock. We have an existing project called Chase at Bethesda 2, this project which was developed in the TSR zone is 120 feet in height. Just to the south of that project is the Edgemoor high rise which has a height of 100 feet.
MS. ROBESON: Can you point to that just so I know -- okay.
MR. LANDFAIR: Here we go. And it has an FAR of 6.05. To the south confronting Montgomery Lane is a project which it has yet to be built, but is approved known as 4901 Hampden Lane. That project was approved at 70 feet with an FAR of 3.05. Moving to the west are the City Homes, townhouses located along the south side of Montgomery Lane. These have a height of approximately 50 feet, I'm sorry, 53 feet and an FAR of 1.8.
MS. HARRIS: Okay.
MR. LANDFAIR: Just to the south of the City Homes

is a project that was approved, but not yet built known as Hampden Lane. That has an approved height of 71 feet with an FAR of 3.05. Further to the west at the corner of Montgomery Lane and Arlington Road is a project known as Edgemoor at Arlington. This is approved at a height of 46 feet with a 1.9 FAR.
So the south, I'm sorry, to the north a project that's been approved in TSR, but not yet built, known as Edgemoor at Arlington North. This project was approved at 48 feet with an FAR of 1.8 FAR. Coming full circle, a project recently approved by the Planning Board known as 4825 Montgomery Lane. This project has a height approved at 65 feet with a 2.5 FAR.
MS. HARRIS: Thank you. I do want to go back to the previous question just for one moment where you indicated that the master plan, sector plan shows a maximum of 2.5 and 65 feet. What does the Zoning Ordinance say with respect to the standard in the TSR as, and when they may be exceeded?
MR. LANDFAIR: They can be exceeded when you are seeking additional density through the MPDU provisions.
MS. HARRIS: Thank you.
MR. KNOPF: May I just ask the, it's easier, the record, the exhibit number that you're referring to in doing those?

MR. LANDFAIR: It's No. 106b.
MR. KNOPF: Thank you.
MS. ROBESON: Why don't you mark that as 106b duplicate so we can keep track of what you're referring to.
MS. HARRIS: Thank you. We submitted, the applicant submitted sections which are set forth as Exhibit 80 and can you please describe the relationship between the north and the south side of the street --
MR. LANDFAIR: Sure.
MS. HARRIS: -- as it relates to the proposed buildings, both existing and the proposed subject building?
MR. LANDFAIR: If I may, I'd like to continue to refer to Exhibit 106b --
MS. ROBESON: All right.
MR. LANDFAIR: -- if possible?
MS. HARRIS: Yes. Do you have the section exhibit there as well?
MR. LANDFAIR: I was just --
MS. HARRIS: If not, we can use one of the miniaturized.
MR. LANDFAIR: Here you go.
MS. ROBESON: Okay. And the one you just put on, oh. Okay. So what is that that you're putting on the second easel, what exhibit?
MS. HARRIS: That's Exhibit 80.

MS. ROBESON: Okay.
MR. LANDFAIR: Should I mark it as duplicate?
MS. ROBESON: Yes. And can you move that --
MS. HARRIS: I think she can't see.
MR. LANDFAIR: Yes. Yeah, I'll do that in just a second.
MS. ROBESON: Somehow -- all right. That's fine.
MR. LANDFAIR: Is that all right?
MS. ROBESON: Yes.
MR. LANDFAIR: She can't see it.
MS. HARRIS: I think she's got one.
MS. ROBESON: I'm fine.
MS. HARRIS: The Hearing Examiner has it.
MS. ROBESON: I'm fine now. I've got it. Okay. Let's move along.
MS. HARRIS: And I think it would be helpful if you could please start off by referring back to the comparative base plan --
MR. LANDFAIR: Sure.
MS. HARRIS: -- in terms of which section is taken from where.
MR. LANDFAIR: Right. Okay. The first section is the section from the Edgemoor high rise.
MS. ROBESON: Okay. So when you say the first section, you're talking about --

MR. LANDFAIR: At the top of Exhibit --
MS. ROBESON: -- the picture on --
MR. LANDFAIR: At the top of Exhibit 80.
MS. ROBESON: Okay.
MR. LANDFAIR: Exhibit 80 has three sections to it.
MS. ROBESON: Right.
MR. LANDFAIR: And each section is through Montgomery Lane. The first section at the top is a section from Edgemoor high rise through to City Homes. The second section is from 4825 Montgomery Lane --
MS. ROBESON: Or in the middle section.
MR. LANDFAIR: The middle section, right. And then the bottom section is from our property across Montgomery Lane to City Homes.
MS. ROBESON: Okay.
MR. LANDFAIR: So to begin with, at the top, Edgemoor high rise to City Homes has a distance of approximately 71 feet between the two buildings, building face to building face. And 4825 is a distance of 66 feet from building face to building face. And from our building to City Homes, the distance of 73 feet. So in terms of the relative distance between each building along Montgomery Lane, the setback or distance between our building and the confronting building, City Homes, is greater than other

projects along Montgomery Lane.
MS. HARRIS: Can you also describe the step backs of the subject building and the, whether the other two buildings have step backs?
MR. LANDFAIR: Yes. Edgemoor high rise has no step back to it, neither does 4825 Montgomery Lane. Our building, of course, starting at the 6th floor has a step back of 12 feet from the front building facade.
MS. HARRIS: And what is the relative height of our building, of the City Homes, excuse me, and the buildings that the City Homes was compared to?
MR. LANDFAIR: Relative height, Edgemoor high rise is 100 feet in height. 4825 Montgomery Lane is 65 feet in height. Our building to its topmost point is 70 feet, but starting at the point where it steps back, it's approximately 50 feet. So it's akin to, similar to the overall height of City Homes at the step back.
MS. HARRIS: So it may be helpful just to make sure that this exhibit is perfectly clear, if you can show on the comparative base plan where one would be standing if one were observing the sections as they were looking down Montgomery Lane?
MR. LANDFAIR: Sure. Again, starting with the top exhibit, the top section, you would be standing approximately here. You'd be in the middle of the street

looking towards the east, Edgemoor high rise to your left or to the north side, City Homes to the south.
MS. HARRIS: And when you say here, you mean at the southeast corner of the subject property?
MR. LANDFAIR: Correct. Looking at the middle section, you would be standing in the middle of the intersection between West Lane and Montgomery Lane, again, looking towards the east. And for the third section, cross-section, you would be standing just to the west of our property in the street, again, looking towards the east.
MS. HARRIS: Thank you. You just provided a thorough description of the immediately surrounding properties. Can you please indicate which of these existing and proposed projects exceed the height recommendations set forth on page 39 of the section plan and with respect to this question we'll be referring to Exhibit 106c.
MS. ROBESON: C?
MS. HARRIS: Yes.
MR. LANDFAIR: Referencing this exhibit, which shows two things, it shows existing projects that are exceeding the sector plan height recommendations and it shows projects that are approved, but not yet built, which also were approved exceeding the sector plan height recommendations. Starting just to the northwest of the subject property, our property, is an existing development

known as Villages of Bethesda. This project was built with height of 42 feet which exceeds the height limitation or recommendation, I should say, in the sector plan of 35 feet. Incidentally, we have a line drawn which approximates the recommendation in the sector plan. There's a schematic drawing in the sector plan which shows the boundary line, if you will, the defining line between 35 feet and 65 feet.

MS. ROBESON: And that line that you're referring to is a dashed gray --

MR. LANDFAIR: Yes.

MS. ROBESON: -- gray on this, dashed gray line that buys, that runs to the rear of the properties along Arlington Road, correct?

MR. LANDFAIR: Exactly right. It runs north-south essentially along the rear property line of those properties that are fronting along Arlington Road, correct. So to begin with, again, Villages of Bethesda was built exceeding the height recommendation of 35 feet. Edgemoor at Arlington North, which has not yet been developed, is approved at 48 feet. To the south, Edgemoor at Arlington was built at 46 feet and Hampden Lane was approved at 71 feet. So there is actually a segment of Hampden Lane at 71 feet proposed within the area that was recommended for 35 feet in height.

MS. ROBESON: I thought there were step backs on that?

MR. LANDFAIR: There are. Hampden Lane, the building, does step back from Arlington Road, but there is an uppermost portion of that building which is 71 feet in height. It's a small portion, but it's roughly right about here. I'm pointing just to the west --

MS. ROBESON: When you say here --

MR. LANDFAIR: I'm pointing just to the west of the demarcation line.

MS. HARRIS: Mr. Landfair, we have an exhibit that's prepared that goes directly to the Madame Hearing --

MS. ROBESON: Okay.

MS. HARRIS: -- Examiner's question.

MS. ROBESON: Then we can, just go in the order that you used -- I'll stop asking questions.

MS. HARRIS: I think actually since you posed the question, it's a perfect time to show that exhibit.

MS. ROBESON: And this exhibit is? Which exhibit is this?

MS. HARRIS: It's 106. I believe it's 106e.

MS. ROBESON: Okay.

MS. HARRIS: That's 106e.

MS. ROBESON: It looks like it. E as in egg?

MS. HARRIS: Excuse me?

MS. ROBESON: Oh, I was just saying --

MS. HARRIS: Oh.

MS. ROBESON: -- it's E as in egg.

MS. HARRIS: Oh. Oh, okay.

MS. ROBESON: Or Easter or --

MR. LANDFAIR: So as the Hearing Examiner pointed out, the building is designed to be step back from Arlington Road.

MS. ROBESON: Now which building is this?

MR. LANDFAIR: I'm referring to the building, the proposed building known as Hampden Lane --

MS. ROBESON: Okay.

MR. LANDFAIR: -- which is proposed to be located in the northeast corner of Arlington Road and Hampden Lane --

MS. ROBESON: Okay.

MR. LANDFAIR: -- approved in the TSL zone.

MS. HARRIS: So can you point to it on the red, the plan that has the red in the displays?

MS. ROBESON: I see it.

MS. HARRIS: That.

MS. ROBESON: Okay.

MR. LANDFAIR: So in this drawing, it's a prospective, we're standing on the opposite side of Hampden Lane looking really to the northwest at what the building might look like. And, again you can see that it steps up, that there is a portion of the building that greatly exceeds

the 35-foot recommended height in the sector plan.

MS. ROBESON: And you said that portion of the building that's 70 feet is just to the west --

MR. LANDFAIR: Correct.

MS. ROBESON: --

MR. LANDFAIR: -- a little bit to the west of the demarcation line?

MR. LANDFAIR: Correct.

MS. ROBESON: Okay.

MR. LANDFAIR: Right.

MS. HARRIS: Thank you.

MR. LANDFAIR: Moving further to the east at the corner of Woodmont Avenue and Montgomery Lane, there's a project known as 4901 Hampden Lane, which has a building height of 70 feet and that, of course, exceeds the 65 feet recommended by the sector plan. Finally, turning to the Edgemoor high rise on the north side of Montgomery Lane, which is at 100 feet, exceeds 65 feet that was recommended in the sector plan.

MS. ROBESON: Okay.

MS. HARRIS: Can you please explain the importance of creating a continuous urban edge with respect to building placement and in connection with the presentation he's going to, Mr. Landfair will be relying on in Exhibit 77.

MS. ROBESON: Exhibit 77?

MS. HARRIS: Yes. There it is.
MS. ROBESON: Do you want to mark that 77 duplicate so we're --
MR. LANDFAIR: Yes.
MS. ROBESON: All right.
MR. LANDFAIR: Okay. Importance of creating a consistent street edge. The sector plan talks about this and for a continuous building line or street edge, a building wall or a facade near a sidewalk to achieve an attractive and lively pedestrian environment. This is a particularly important consideration for a street like Montgomery Lane which is one of only two streets recommended in the sector plans, a mixed street where there's an emphasis on establishing a vital pedestrian linkage walking environment, if you will.
The concept of street enclosure is so important that where building facades don't exist, it's often very helpful to have a wall or colonnades, some other architecture to help maintain that continuous street line to maintain a desirable rhythm and consistency. This concept is even recognized with new zones that are now being implemented in the County, for example, the CR zone, which recognizes the value of a street edge and, consequently, the public use space requirements have been reduced in part to eliminate the dead spaces that might otherwise exist in

front of buildings. So it's a very important concept. It's one that's necessary to ensure a vital pedestrian street.
MS. HARRIS: Thank you. And related to this question, could you please explain in your expert opinion from a land planner's perspective what are the characteristics of a positive streetscape and what features contribute to this?
MR. LANDFAIR: Sure. To start with, of course, within a street there are important elements like the width of the pavement, the curve radii around the corner. You know, if it's too broad, it makes for a less comfortable walking experience. Other factors to consider would be even the on-street parking, it would be the pavement materials themselves that might be used curb to curb. But just as importantly, a consideration is for the streetscape itself and how it's implemented, the street trees with hard scape, the street furnishings, lighting, all those elements all contribute to make for a very walkable street.
Also, very importantly it's helpful to have a good balance, if you will, between the pedestrian environment and the vehicle environment. In other words, it's ideal to have at least 50/50, 50 percent pedestrian, 50 percent vehicle. If you can exceed that percentage with pedestrians, so much the better.
Along our frontage, we have 26 feet of

streetscape. When you include the streetscape that's on the south side of Montgomery Lane in front of City Homes, you add up another 27 feet. So in total, you have 53 feet of pedestrian environment, if you will, compared to 21 feet of pavement for the vehicles, all that contributes to a very nice, very vital pedestrian experience for people walking along there.
A good street requires a sense of transparency, the ability to see and focus beyond the edges. This is difficult to achieve, but we feel with the setbacks that we're maintaining, the step back, our building is taking, the pocket park that we have established at the corner of the building, that we're achieving that sense of transparency, if you will. Human scale is important along the street and that goes back to maintaining the street edge. It helps to maintain perspective.
The street should be visually rich in terms of the variety of buildings and in terms of the colors and textures and materials, the ground cover, the trees, the landscaping, again, everything that is contributing to that streetscape. It helps if it's rich and if there's a diverse design to it and we feel we're contributing to that.
MS. HARRIS: Thank you. During the last hearing, the Hearing Examiner had asked a question and I think it was coined as the dos and don'ts of the sector plan. These

appear on pages 42 through 50 and while the landscape architect and the architect are going to address a number of these, I would like you to comment please on the following. One is the -- I'll just read the three that I'd like for you to comment on. One is achieve a concentrated center, avoid dispersal. That's on page 42. Achieve compatible transitions. Avoid incompatible transitions. That's page 43. Avoid isolated spaces, page 46. I lied, there's a couple more. There's five. Respond to existing pedestrian movements. Avoid re-district, restricting pedestrian movement and that's on page 50.
MR. LANDFAIR: Sure. I can go back and I can reference Exhibit 106, duplicate exhibit. Or actually let me, let me reference 106b. To start with, the property, our property is in the transit station residential district. We're immediately adjacent to the Metro core. We are providing a concentrated amount of development here within that district. We're not dispersing that development. We're contributing to, again, keeping a concentrated center of development in that immediate area.
We believe we've establishing a compatible transition from the east to the west, from the Metro core west to the single-family residential development that's across Arlington Road. An important consideration is to maintain compatibility with nearby single-family residential

neighborhoods and this has been echoed by the Planning Board in previous zoning cases for TSR zone in this immediate area.

It's very important not to isolate any properties when you're consolidating for redevelopment in the TSR zone. The previous zoning application for this property that was approved actually did end up isolating a single-family property located at the corner here. It was unfortunate at the time. It's still --

MS. ROBESON: When you say at the corner here, can you just identify what corner you're --

MR. LANDFAIR: The northwest corner of the intersection of West Lane and Montgomery Lane.

MS. ROBESON: Okay.

MR. LANDFAIR: There was a single-family residential lot that was actually improved with a house that had an office on it and that property was not consolidated as part of a previous zoning application for the property. We are including it, so we're not separating or isolating any single-family residentially zoned property with our zoning application. We are establishing this pocket park at the corner which will help to provide usable, viable public use space in a very public setting and will also contribute to improving the pedestrian network for the area.

MS. HARRIS: Thank you. Another question that

came up during the January 11th hearing that the Hearing Examiner raised had to do with the relationship of the housing policy which was pending at the time and still is pending and the housing element which the Council did adopt back in March of 2011 by Resolution 17-78 and that is set forth in the record.

MS. ROBESON: Okay. Is there a question?

MS. HARRIS: Yes. Can you please describe, excuse me --

MS. ROBESON: That's all right.

MS. HARRIS: Can you please describe how the proposed project meets the furthers the goals of that housing element?

MR. LANDFAIR: Certainly. The broad objectives of that housing policy were focused on providing housing in the County for seniors, for the disabled, providing for MPDU's, providing affordable housing in the County.

MR. KNOPF: Excuse me.

MR. LANDFAIR: Yes.

MR. KNOPF: I'm sorry, I'm a little confused. You said there was one thing, but it was pending and another was adopted and you're talking about the pending now?

MR. LANDFAIR: No, I'm sorry.

MS. ROBESON: No, this is that element --

MR. LANDFAIR: I'm going back to the --

MS. ROBESON: -- the housing element.

MR. LANDFAIR: -- the housing caused the element, right.

MS. ROBESON: She, that was in her introductory remarks to her questions.

MR. KNOPF: But his testimony started to talk about policy.

MS. HARRIS: No, excuse me, it's the --

MR. KNOPF: That's why it got me confused.

MS. HARRIS: -- it's the, so the question is --

MS. ROBESON: Okay. Just -- okay. You can ask that on cross-examination. He, Mr. Landfair, what specifically are you addressing now?

MR. LANDFAIR: I'm addressing the housing elements.

MS. ROBESON: Okay.

MR. KNOPF: Thank you. I'm sorry.

MS. HARRIS: And it is 106q of the exhibits?

MS. ROBESON: Yes, okay.

MR. LANDFAIR: The County recognizes through a combination of factors the rising, excuse me, cost of land, the availability of land, energy crisis, County demographics, environmental considerations only in the County to take a new approach with respect to providing housing and the County is trying to achieve a balance in a

convenient and sustainable approach to providing for this housing.

There are a number of goals and objectives that are stated and we believe we're meeting two of the three goals and we're meeting all four objectives. With respect to the goals, we're providing concentrated new housing and mixed use transit oriented area. We're also encouraging and we're providing, we're consistent, rather, with providing a wider choice of housing types and neighborhoods. In other words, we're providing a rental housing --

MS. ROBESON: Well, is it --

MR. LANDFAIR: -- affordable housing in an area --

MS. ROBESON: -- rental for sure? I thought you weren't sure? Is it -- no talking please -- is it rental or do you know?

MR. LANDFAIR: I'll retract the statement about rental.

MS. ROBESON: Okay.

MR. LANDFAIR: We're providing smaller, more efficient units --

MS. ROBESON: Okay.

MR. LANDFAIR: -- which are designed to appeal to a particular demographic that we don't feel is, the needs are being met in this immediate area.

MS. ROBESON: Okay.

MR. LANDFAIR: With respect to objectives, again, new housing in a transit-oriented area near jobs, near employment centers, in this case downtown Bethesda, we are providing, as I mentioned, smaller units, but more efficient units with an emphasis on energy efficiency. This building will be LEED certified, we're committed to that. There will be a green roof associated with it. This is a transit-oriented neighborhood. We feel we're fully consistent with the housing neighborhood design objectives and we are also, of course, contributing to a very pedestrian-friendly network in the area.

MS. ROBESON: Thank you.

MS. HARRIS: Do the binding elements of the development plan help further compatibility, ensure the compatibility of the proposed property?

MR. LANDFAIR: Yes, they provide very specific parameters to ensure that the development will be compatible with the surrounding area. They address height, density, MPDU's. They're very specific in terms of setbacks. They even go so far as to cite the percentage of window glazing to ensure, again, compatibility of the building with the surrounding area, the building facade treatments, lighting, the step back at the building starting at the 6th floor to reduce the massing, to reduce the height as viewed from Montgomery Lane. We would note that there are more binding

elements on this particular development plan than what would be typically found on a development plan of this type.

MS. ROBESON: Well, I don't think that compatibility is measured in terms of a number of binding elements, but --

MR. LANDFAIR: Understood.

MS. ROBESON: -- okay, go ahead. You -- I guess it's an effort. Okay.

MR. ABRAMS: So it's like plebiscite of the binding elements?

MS. HARRIS: And do the binding elements also, and you mentioned this previously, but I just wanted you to reiterate, refer back to the design conceptually of the public use space?

MR. LANDFAIR: Yes, it does, to ensure that that public use space fully is consistent with the expectations I should say of planning staff, the Planning Board and hopefully the community.

MS. HARRIS: Thank you. Can you please explain in your expert opinion how this project will be in the public interest?

MR. LANDFAIR: Certainly. This project conforms with the recommendation, we believe substantially conforms with the recommendations of the sector plan. The sector plan specifically recommends the property for the TSR zone.

We're consolidating single-family residentially zoned property without isolating any adjacent properties. We're providing multi-family residential units in close proximity to the Bethesda court. We're providing MPDU's. We will not, as will be testified to by witnesses following myself, we will not have an adverse effect on public facilities, including water and sewer services, transportation. With respect to schools, this type of development will attract younger professionals. It does not typically attract families with children, so in terms of generating a lot of new students for nearby schools, we don't anticipate that that will be an issue.

MS. ROBESON: But did you pass this, I mean, I guess for the record, even though it may not tend to do that, you still have to pass the school's test, correct?

MR. LANDFAIR: Right.

MS. ROBESON: Is that going to be through another witness or through you?

MS. HARRIS: I believe Mr. Landfair, and I would need to double-check, I believe he testified to that on January 11th.

MS. ROBESON: Earlier? Okay.

MS. HARRIS: But we will check, and if not, we'll make sure we do that.

MS. ROBESON: Okay. All right. Go ahead.

MR. LANDFAIR: On that, I would note that with respect to, excuse me, the demographic that we're likely to attract, we feel that it's consistent with the recommendations of a recent task force that was established by the County Executive seeking to find ways to attract a younger population to the County. So I just throw that out there.

MS. HARRIS: Thank you. We submitted as Exhibit 84 a revised surrounding development analysis and just so that there's no misunderstanding, I would like for you to just clarify what changes were made to that so it's clear why that --

MR. LANDFAIR: Sure.

MS. HARRIS: -- that exhibit was revised and submitted.

MR. LANDFAIR: The chart found in --

MS. ROBESON: I'm sorry, which exhibit is this?

MS. HARRIS: Exhibit 84.

MS. ROBESON: Okay.

MS. HARRIS: It's a chart.

MS. ROBESON: All right. Go ahead.

MR. LANDFAIR: The chart found in that exhibit provided for the average unit sizes of the West Lane project and the other TSR projects in the area. Previously, it showed a range in the unit sizes above the subject property,

as well as 4901 Hampden Lane, now provides the average unit size for our project and 4901 Hampden Lane. In our case, 860 square feet. In the case of 4901 Hampden Lane, 2,150 square feet.

The overall relevance of this exhibit is to show the overall units per acre in the TSR zone with the subject property is still very low, approximately 53 to 56 units per acre, and as such this density is still less than what was envisioned given the area's proximity to Metro in a zone which allows up to 150 units per acre. Secondly, the project on its own will nearly double the number of MPDU's in the area, which we think is an important consideration.

MS. ROBESON: Define area.

MR. LANDFAIR: The area as defined by the technical staff --

MS. ROBESON: The neighborhood or --

MR. LANDFAIR: -- surrounding area --

MS. ROBESON: -- the surrounding area defined by technical staff?

MR. LANDFAIR: -- correct.

MS. ROBESON: Okay.

MR. LANDFAIR: That's my recollection. Thank you.

MS. HARRIS: Actually, it may be helpful just very briefly to bring that exhibit up, which is Exhibit, Exhibit, our numbering system 18.

MR. LANDFAIR: Okay.

MS. HARRIS: Just so it's clear. It should be 18.

MS. ROBESON: Okay. And what's our numbering?

MS. HARRIS: So it's Exhibit 80.

MS. ROBESON: 80?

MS. HARRIS: 84, I'm sorry.

MS. ROBESON: Is that --

MS. HARRIS: 84.

MS. ROBESON: Do you know if that's a large exhibit or a smaller exhibit?

MS. HARRIS: I believe it was a smaller exhibit.

MR. LANDFAIR: Ledger size.

MS. ROBESON: I'm sorry?

MR. LANDFAIR: Ledger size exhibit.

MS. ROBESON: Okay.

MS. HARRIS: And, Mr. Landfair, if you could, while people are looking through that, if you could just look, look at the projects that are included on there and were all of those projects post-1994 sector plan?

MR. LANDFAIR: Yes.

MS. HARRIS: So they were either approved or developed after the 1994 Bethesda sector plan?

MR. LANDFAIR: That's correct.

MS. HARRIS: Okay. Thank you.

MS. ROBESON: Okay. Okay, go ahead.

MS. HARRIS: Okay. Now that -- the project was sent back to the Planning Board on March 7th. There was a positive staff report and the Planning Board had comment and submitted a letter to the ZHE. I think it may be helpful just to very briefly summarize the staff report and the Planning Board's comments during the hearing.

MR. LANDFAIR: Sure. The planning staff in the staff report found that the revised plan was responsive to the Planning Board's previous direction, particularly with respect to the public use space and shifting the location more to the frontage of the property, the corner of the property where it was truly public use space, accessible to all. They found that particularly the curve building facade was very effective in terms of accommodating that new pocket park, that public use space. It also helped to reduce the impact or the impression of the building along Montgomery Lane because it reduces the width of the building as measured along Montgomery Lane.

Further, the step back of the building starting on the 6th floor they felt was very helpful in terms of, again, mitigating the overall massing and height of the building as viewed from Montgomery Lane. So they were pleased. The Planning Board voted unanimously in support and approval. They, again, also found the revised design to be compatible with the surrounding area. They found the setbacks to be

sufficient, including the 12-foot step back provision.

They also found the 12-foot set back that's being maintained consistently along the west property line to be adequate for compatibility purposes. And they found that the density was necessary to achieve the critical mass on the site in recognition in part of the provision and MPDU's.

I'll note that Commissioner Anderson found and noted that the sector plan, because of its age, you know, in his mind cannot be read literally on certain elements. Nevertheless, it's still a very helpful guide and very valuable guide and particularly with respect to affordable housing and density at Metro and he felt that what is proposed here was completely consistent with that.

MS. HARRIS: The proposed development plan that was set forth and presented to the Planning Board on December 20th, what was the -- did the Planning Board at that time find that plan to be compatible?

MR. LANDFAIR: Yes, they did.

MS. HARRIS: And so, and did they find the subject plan, which is now before the ZHE, to be compatible as well?

MR. LANDFAIR: Yes. Yes, they continued to make the finding that it was a compatible plan. Again, appreciating the changes that had been made to the architecture as to the staff, the fact that we have this scalloped corner, the reduced amount of building fronting

along Montgomery Lane, step back, the setbacks, again, the provision of the MPDU's, they found the public use space to be well-designed. All of it made for, in their minds, a better project.

MS. HARRIS: Thank you. So is it correct to say that, in fact, they found it probably more compatible than the previous --

MS. ROBESON: Okay.

MR. KNOPF: Objection.

MS. ROBESON: I'm going to, yes, the Planning Board's recommendation, I hesitate to interrupt you again, but the Planning Board recommendation speaks for itself. So if we could move on to something else?

MS. HARRIS: Thank you. Okay. Certainly. Your testimony has been quite extensive and I think it may be helpful for you just in your, in your capacity as an expert land planner to summarize the less important components of the project and how it furthers the recommendations of the second plan and why in your opinion is the project compatible?

MR. LANDFAIR: Yes. The project meets the overarching goals of the sector plan, including the provisions of residential density near the Bethesda core area, the provision of affordable housing to the provision of MPDU's. We're providing smaller, more affordable units

we believe are satisfying a market demand for high-quality housing in this area. We're providing a variety of housing. We feel we are consistent with the density provisions in terms of the FAR that's proposed, the density that's proposed in terms of units per acre. We believe that this building will help to establish an appropriate transition from the Bethesda core through the transit station residential district west to the single-family residential neighborhoods.

We believe the setbacks and the step back as proposed will help to achieve compatibility. We believe the pocket park and the streetscape enhancements will improve significantly the pedestrian network that's along Montgomery Lane and along West Lake. We believe that we are satisfying all the other provisions and recommendations of the sector plan, again, the step down and height, the architecture itself mitigating particularly the massing along Montgomery Lane. We believe that this building achieves good building, good design proportions and we believe that through the flexibility afforded by the TSR zone, we've taken full advantage of designing a building that is compatible with its neighbors.

MS. HARRIS: Thank you. Do you have anything else to add in your expert opinion?

MR. LANDFAIR: Not at this time, no.

MS. HARRIS: That concludes Mr. Landfair's testimony.

MS. ROBESON: Thank you. Mr. Abrams?

MR. ABRAMS: Yes.

MR. ABRAMS: Mr. Landfair, what I'm going to do is sort of work backwards, give you a few questions on your testimony today and then go over the exhibits which have been filed most recently and then previous to that so we'll know that we're not heading in a forward direction, we're sort of going backward.

MR. LANDFAIR: Sure.

MR. ABRAMS: As of today, you indicated, I think, in your testimony that the corner cut out, the semi-circular cut-out is about 1,000 square feet?

MR. LANDFAIR: Uh-huh. Correct.

MR. ABRAMS: That 1,000 square feet, does it not also include the area in which was previously not cut out, but set 10 foot back from the right-of-way?

MR. LANDFAIR: Yes, it does. In other words, previously, the building did not have the scalloped and maintained less of a set back, if you will, from the public right-of-way line.

MR. ABRAMS: Okay. And wasn't that where the 680 feet came in, in other words, the amount of new net new public use space being provided in the front area?

MR. LANDFAIR: It's possible. I'd have to scale it off as to why the 600 square feet was previously quoted as the area that was being provided for public use space there.

MR. ABRAMS: Now on Exhibit 106b, that's the comparative chart for FAR in height? The first two projects which you mentioned, could you repeat what those were? They were along Woodmont Avenue.

MR. LANDFAIR: Yes. The Chase at Bethesda 2 and the Edgemoor high rise.

MR. ABRAMS: Okay. When were those constructed or approved?

MR. LANDFAIR: Chase at Bethesda, it's one of the very first projects. It's been built for --

MR. LANDFAIR: Would you concede that those were approved before 1994 sector plan?

MR. LANDFAIR: Not the Edgemoor high rise.

MR. ABRAMS: No, Chase.

MR. LANDFAIR: No, Chase? Yes, it could have been as stated.

MR. ABRAMS: And that was the first one. Did you, did you have another one before you got to the Edgemoor high rise --

MR. LANDFAIR: No. No, I referenced the Chase at Bethesda 2 and then the Edgemoor high rise.

MR. ABRAMS: Okay. Exhibit 106c that you testified to, these are the buildings which exceed the height limits I think it was.
MR. LANDFAIR: Yes.
MR. ABRAMS: And specifically along Arlington Road, where you had that dash line --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- didn't the Council in each one of those cases find that the buildings were in conformance or at least compatible with the sector plan when they approved those applications?
MR. LANDFAIR: Yes, they would have made that finding.
MR. ABRAMS: Okay. And in those buildings, particularly the one immediately west of the subject property, there is, in fact, a 35-foot element, is there not?
MR. LANDFAIR: That's correct. Yes.
MR. ABRAMS: And that 35-foot element is recommended in the sector plan?
MR. LANDFAIR: That's correct.
MR. ABRAMS: All right. Now Exhibit 77, which you just testified to, talking about a consistent building edge --
MR. LANDFAIR: Yes.

MR. ABRAMS: -- and you said that that was an important concept?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now is that a concept which is more important than other sector plan concepts?
MR. LANDFAIR: It's not the most important, no.
MR. ABRAMS: Well, is it as important as height density and scale of buildings in that district?
MR. LANDFAIR: I think height scale massing of the buildings is probably a little more important than establishing that --
MR. ABRAMS: A little more important?
MR. LANDFAIR: -- maybe slightly more important than establishing that street edge, but it is still a very important element, particularly along a street such as Montgomery Lane which, again, is a mixed street, one of only two of the sector plans.
MR. ABRAMS: And I think you testified that it was important in terms of that exhibit for the pedestrian experience to have appropriate street scaping and lighting in accord with a sector plan?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Wouldn't wider sidewalks, more public open space provide a better pedestrian experience along Montgomery Lane than what is provided in the current

plan?
MR. LANDFAIR: Not necessarily. And, of course, what is being provided, 26th Street, from building face to face and curb is still very substantial. There's -- it exceeds virtually every other project that's been either built or approved along Montgomery Lane. It gets back to quality. It's not just the amount of area, it's the quality of the space, how it's designed and what's being provided with the mass space.
So in terms of what we're doing, we believe we are providing a substantial amount of space both as measured within our site itself as public use space, as well as within the public realm, within the public right-of-way, but also the quality that we're providing we believe is very high.
MR. ABRAMS: In terms of the housing policy, one of the elements of housing policy is to increase the level of MPDU's throughout the County?
MR. LANDFAIR: Yes.
MR. ABRAMS: Couldn't that be done here in the context of the sector plan recommendation for building 2.5 FAR with 100 dwelling units by basically mixing up the type of units and how many MPDU's you provide? In other words, you could provide more MPDU's than the minimum to comply with the housing element and have fewer market rate units,

could you not?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now the Planning Board and the staff, they addressed only two elements in the remand, did they not?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And those elements dealt with whether the public use space had been shifted to the front of Montgomery Lane and the other one dealt with the scale of the building?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And they didn't at all touch upon the first Planning Board recommendation in terms of at least the chairman's comments in that point in terms of what the FAR and the number of units should be in light of what the sector plan was?
MR. LANDFAIR: Correct.
MR. ABRAMS: Okay. So those are still out there in terms of her comments? I'm going to go into a little more in-depth with the last set of exhibits starting with Exhibit 106. Okay. 106b specifically
MR. LANDFAIR: I'm sorry, remind me again which one is 106b?
MS. ROBESON: I think that's it.
MR. LANDFAIR: There it is.

MR. ABRAMS: That's it. That's it. Now can you locate the Edgemoor at Arlington North?
MR. LANDFAIR: Yes. It's located just west of our property in the northeast corner of Montgomery Lane and Arlington Road.
MR. ABRAMS: Okay. That's listed in the descriptive caption as being 71 feet in height?
MR. LANDFAIR: Well, it's actually listed here as being 48 feet in height.
MR. ABRAMS: Excuse me, 48 feet in height.
MR. LANDFAIR: Correct. Right.
MR. ABRAMS: Is it not, does it not contain a lower element --
MR. LANDFAIR: Yes, it does.
MR. ABRAMS: -- facing Arlington?
MR. LANDFAIR: Yes, it does.
MR. ABRAMS: And what height is the lower element?
MR. LANDFAIR: I believe it's 35 feet.
MR. ABRAMS: So that exhibit really isn't completely accurate as to what the building heights are on that building, is it?
MR. LANDFAIR: Well, this is a sense of what the maximum height of that building is within that area that's defined as 35 feet.
MR. ABRAMS: There's no, anywhere on that plan

that says that this is why the 71 feet or 48 feet is there?
MR. LANDFAIR: The plan doesn't further define the building footprint in terms of what parts of the building step up, that's correct.
MR. ABRAMS: In other words, it's not really a totally complete, accurate picture of what that building is in terms of its height?
MR. LANDFAIR: It's accurate in terms of the maximum height, but doesn't tell you the full story in terms of the height of the building that it steps up, that's correct.
MR. ABRAMS: Now the Hampden Lane apartments, Hampden Lane, they're listed at 71 feet, is that correct?
MR. LANDFAIR: Correct.
MR. ABRAMS: Does any portion of the Hampden Lane apartments closer to Arlington Road have a different height or reduced height?
MR. LANDFAIR: Yes, it does, it steps down.
MR. ABRAMS: Okay. And what are the individual steps as you go back from Arlington Road?
MR. LANDFAIR: I believe there are two steps stepping down to 35 feet onto Arlington Road.
MR. ABRAMS: And that portion that steps back to where the 71 feet starts, would you say that's approximately 20 percent of the total length of that building or 25

percent? What percentage would you say?
MR. LANDFAIR: The percentage of the building that exceeds the height limitation?
MR. ABRAMS: That is within the height, that is with, that is lower than 71 feet?
MR. LANDFAIR: I would say it's probably about 25 percent of the building.
MR. ABRAMS: Okay.
MS. ROBESON: I'm sorry, how much?
MR. LANDFAIR: About 25 percent.
MR. ABRAMS: So in the exhibit as it's labeled is not totally accurate, is it?
MS. HARRIS: I'm going to object. The witness has testified that the heights listed on that plan indicate the maximum height of all the projects plain and simple. I think we established that.
MS. ROBESON: Okay.
MR. ABRAMS: There's --
MS. ROBESON: Do you want to respond?
MR. ABRAMS: Yes. They have an exhibit and it has a height listed in it. What I'm trying to do is to develop the fact that there are other heights associated with the same buildings that they have a single number listed with. And that is in terms of the conformance with the sector plan.

MS. ROBESON: Right. Hasn't he already said, though, that it's the maximum?
MR. ABRAMS: Well, we don't know which buildings other than --
MS. ROBESON: Oh.
MR. ABRAMS: I'm going building by building which --
MS. ROBESON: Okay. All right.
MR. ABRAMS: -- which has the difference in height.
MS. ROBESON: All right. Fine. You can continue.
MR. ABRAM: So, again, there are more than one heights associated with the Hampden Lane apartments --
MR. LANDFAIR: Yes, there are.
MR. ABRAMS: -- and those are lower than 71 feet?
MS. LANDFAIR: Correct. Yes.
MR. ABRAMS: Okay. Now the Edgemoor at Arlington is at what height?
MR. LANDFAIR: The Edgemoor at Arlington is at 46 feet.
MR. ABRAMS: And the Villages at Bethesda is at what height?
MR. LANDFAIR: Villages at Bethesda is at 42 feet.
MR. ABRAMS: So the first tier of buildings east of Arlington Road have its tallest height somewhere between

42 and 48 feet?
MR. LANDFAIR: Correct.
MR. ABRAMS: Okay. On the south, yes, south side of Montgomery Lane between Arlington and Woodmont Avenue, the building heights gradually decrease in height from Woodmont Avenue, isn't that correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: And they're at 70 feet for 4901 Hampden Lane?
MR. LANDFAIR: Yes.
MR. ABRAMS: And then go to 53 feet according to your chart or plan to the city homes?
MR. LANDFAIR: Correct.
MR. ABRAMS: And then go to 48 feet for Edgemoor at Arlington?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now on the north side of Montgomery Avenue, the existing and approved building heights, I believe, also decrease from Woodmont Avenue to Arlington Road and those go from what to what?
MR. LANDFAIR: From 100 feet for the Edgemoor high rise to 65 feet for the project known as 4825 Montgomery Lane, to 70 feet for the West Lane project down to 48 feet for Edgemoor at Arlington North.
MR. ABRAMS: But in terms of what has been

approved for that area, that's not quite accurate, is it?
MR. LANDFAIR: What's that, sir?
MR. ABRAMS: The Holiday project that's been approved for 48 feet?
MS. HARRIS: Objection. He didn't testify to the Holiday, regarding the Holiday project.
MR. ABRAMS: Well, he testified as to building heights and their compatibility.
MS. ROBESON: That's fair. Go ahead and answer the question.
MR. ABRAMS: In terms of what has been approved and what is existing is not the Holiday project at 48 feet?
MR. LANDFAIR: Yes, it was approved at a lower height, that's correct.
MR. ABRAM: And it's a lower height than the Sandy Spring building builder's project, is it not?
MS. ROBESON: Wait. Which one is the Sandy Spring builders --
MR. LANDFAIR: Sandy Spring is also known as 4825 Montgomery Lane.
MR. ABRAMS: 4825.
MS. ROBESON: Okay.
MR. LANDFAIR: And so it's located directly opposite on West Lane.
MS. ROBESON: The east side of West Lane?

MR. LANDFAIR: Correct.
MS. ROBESON: Okay.
MR. ABRAMS: And then you get eventually down again to Arlington Road at 35 feet?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Isn't that a gradual transition in terms of height?
MR. LANDFAIR: Yes, I would characterize it as such.
MR. ABRAMS: Isn't that also possibly what is meant by the tent-like effect in the sector plan?
MR. LANDFAIR: That's consistent with the tent-like effect, yes.
MR. ABRAMS: So what's there now is consistent with the tent-like effect in the sector plan or what's approved for there on Montgomery Lane?
MR. LANDFAIR: You could make that statement, yes.
MR. ABRAMS: I just did. Okay.
MS. ROBESON: But what's your opinion actually?
MR. LANDFAIR: Yes, in my opinion I feel that it does, well, it has been approved previously, what is built, but then also what we hope will be approved --
MS. ROBESON: No, no. I want just a specific answer to Mr. Abrams' question. You said you could make that statement?

MR. LANDFAIR: Yes.
MS. ROBESON: My question is in your opinion is it consistent with the tent-like effect?
MR. LANDFAIR: Yes, it is.
MS. ROBESON: Okay. That's what I wanted to know. Go ahead, Mr. Abrams.
MR. ABRAMS: Thank you. The transition in height effect which is called for in the sector plan somewhat becomes disrupted when you insert a 71-foot building into that transitional line.
MR. LANDFAIR: I would not characterize it as disruptive, or disruptive rather, no. I think it is still consistent with the overall tent effect that is being achieved or recommended by the plan.
MR. ABRAMS: Okay. If you took side view elevation line, the previous set of questions you had a straight line --
MR. LANDFAIR: Sure.
MR. ABRAMS: -- going from --
MR. LANDFAIR: Right.
MR. ABRAMS: -- Woodmont to Arlington --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- with the 71-foot, we have somewhat of a bump in that and if you put a penthouse on top of that bump, is one proposed here in your, in yes?

MR. LANDFAIR: Not for people. No, there's HVAC equipment and such but, yes, there is a projection, if you will. There is space that is accommodating equipment and such. It's not habitable space which is located on top of the building above the seventh floor.
MR. ABRAMS: Nonetheless, it's space on top of the building?
MR. LANDFAIR: True.
MR. ABRAMS: And how high is that?
MR. LANDFAIR: That would be another 10 or 15 feet.
MR. ABRAMS: Okay. Is there an equivalent space on top of the Sandy Spring building?
MR. LANDFAIR: On top of the Sandy Spring building? There is, yes.
MR. ABRAMS: 10-foot high?
MR. LANDFAIR: Approximately.
MR. ABRAMS: Are you sure?
MR. LANDFAIR: I'd have to check the record, but it does exist.
MR. ABRAMS: Okay. Based on your testimony just a few minutes ago, isn't the subject project, the West Lane building, surrounded on all sides by buildings with lower heights?
MR. LANDFAIR: Yes.

MR. ABRAMS: Is it also, based upon your Exhibit 106b surrounded by buildings where the FAR's are also noted and lower or at least the same as recommended in the sector plan?
MR. LANDFAIR: Yes.
MR. ABRAMS: And those projects do include MPDU's?
MR. LANDFAIR: Yes, they do or will.
MR. ABRAMS: Okay. Therefore, if you compare the responses with Exhibit 106h -- can you put that up -- which compares heights and densities --
MS. HARRIS: 106h is the bar chart?
MS. ROBESON: This exhibit?
MS. HARRIS: Oh, no, that's the --
MR. ABRAMS: This is this one, yes.
MS. ROBESON: Which exhibit?
MR. ABRAMS: This is the red and blue --
MS. ROBESON: Okay.
MR. ABRAMS: -- bar chart.
MS. ROBESON: So that is 106h?
MR. ABRAMS: That's 106h. When you look at sheet 106h, exhibit at 106h, you're comparing heights and densities --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- for three projects?
MR. LANDFAIR: Yes.

MS. HARRIS: Objection. We didn't present this exhibit. It's in the, it was submitted as one of our exhibits, but the witness did not testify to this exhibit.
MS. ROBESON: Are you going to have a witness testify to this exhibit, because it is in the record? You did submit it. And he did testify as to heights and densities --
MR. ABRAMS: Yes.
MS. ROBESON: -- which --
MR. ABRAMS: And I got this exhibit from Mr. Landfair. It was mailed or --
MS. ROBESON: Well, I --
MR. ABRAMS: -- delivered to me.
MS. ROBESON: Okay. It doesn't matter. I don't care who provided it. It does relate to height and density, which is what he spoke with, spoke about and it is in the record. So you can answer the question.
MR. LANDFAIR: Sure.
MR. ABRAMS: This compares heights and densities of three projects, correct?
MR. LANDFAIR: Yes, it does.
MR. ABRAMS: Okay. Is it really complete in terms of a comparison for this particular street?
MR. LANDFAIR: No, it's only referencing three projects.

MR. ABRAMS: Okay. It doesn't include the Edgemoor at Arlington, does it?
MR. LANDFAIR: No.
MR. ABRAMS: Doesn't include the Edgemoor at Arlington North, does it?
MR. LANDFAIR: No.
MR. ABRAMS: Doesn't include the Villages at Bethesda, does it?
MR. LANDFAIR: No.
MR. ABRAMS: Doesn't include the Sandy Spring builder's project, does it?
MR. LANDFAIR: No.
MR. ABRAMS: Wouldn't it have been more complete and not as, I hate to use the word misleading, if you included in your bar chart all of those projects?
MR. LANDFAIR: I would have been more comprehensive, but it would not have been necessarily more accurate.
MR. ABRAMS: Now on Exhibit 106c, that's the one where the sector plan supposedly has been exceeded?
MR. LANDFAIR: Oh, the height?
MR. ABRAMS: This building.
MR. LANDFAIR: Yes.
MR. ABRAMS: This one here.
MR. LANDFAIR: This is simply 106, I'm sorry.

MR. ABRAMS: Can you explain to the Examiner why the Villages of Bethesda, the Edgemont, Edgemoor, excuse me, at Arlington and the Edgemoor at Arlington North are depicted as existing at approved projects which exceed the sector plan height limits?
MR. LANDFAIR: Why?
MR. ABRAMS: Yes.
MR. LANDFAIR: Because we're trying to draw a comparison between surrounding projects approved and/or built in the area with our project and we're trying to show it in relationship to the sector plan recommendation particularly with respect to the height, 35 feet versus 65 feet.
MR. ABRAMS: Now there are elements in each one of those projects which are within the sector plan height limits, are there not?
MR. LANDFAIR: Yes, there are.
MR. ABRAMS: So, again, the chart which indicates deficiencies only is partially correct in terms of those portions of the building which are higher than the height limits?
MR. LANDFAIR: Partially correct in the sense of we're showing maximums versus the step effect of those buildings.
MR. ABRAMS: Well, if only 10 percent of the

building, if any one of those buildings had been higher than indicated in the sector plan, would you still show the height of that 10 percent?
MR. LANDFAIR: If only 10 percent?
MR. ABRAMS: Yes.
MR. LANDFAIR: I don't know. I don't know.
MR. ABRAMS: On Exhibit 106e, that's the line which identify the 35-foot zone?
MR. LANDFAIR: Yes.
MR. ABRAMS: 65-foot zone?
MR. LANDFAIR: Yep.
MR. ABRAMS: Is there a 70-foot zone anywhere?
MR. LANDFAIR: No.
MR. ABRAMS: Why?
MR. LANDFAIR: Why?
MR. ABRAMS: Yeah.
MR. LANDFAIR: We just wanted to show the difference between those two particular height recommendations.
MR. ABRAMS: So it's pick and choose as to what you want to show?
MR. LANDFAIR: We want to focus on those projects, again, that were immediately adjacent or confronting our own and/or along Montgomery Lane.
MR. ABRAMS: All right. Let's go to 106f, which

is the aerial photo.
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. You're familiar with this exhibit?
MR. LANDFAIR: Yes, I am.
MR. ABRAMS: And you've testified from this exhibit?
MR. LANDFAIR: I believe so, yes.
MR. ABRAMS: This exhibit is not to scale, is it?
MR. LANDFAIR: It's taken from a Google image, so it is difficult to provide a very precise scale, but it's, in terms of its purpose showing comparison with other projects built or approved along Montgomery Lane, we feel it is adequate.
MR. ABRAMS: Well, what scale is it at?
MR. LANDFAIR: There is no scale actually shown on it. It's not a plan view meaning you're not looking straight down, so it would be difficult anyway to scale off anything on it. It's looking at the area from an angle, birds eye view if you will.
MR. ABRAMS: So the scale would depend upon what the angle is that you, that it was shot at?
MR. LANDFAIR: Correct. Right.
MR. ABRAMS: Now you can, you've used the aerial photographs before, have you not --

MR. LANDFAIR: Sure.
MR. ABRAMS: -- in your testimony?
MR. LANDFAIR: Sure.
MR. ABRAMS: And while choosing an angle, you can show certain things --
MS. HARRIS: Objection. While this is in the record, as are all the exhibits, Mr. Landfair did not testify to this. The purpose of this exhibit was not to show precise dimensions or setbacks and one of our other experts was going to use it just for contextual purposes. I think it's being misconstrued for the purpose that it's in the record.
MS. ROBESON: Well, that is something that you can bring out on redirect. I think it's fair for cross-examination and, you know, I understand that and I think that you can bring it out on redirect. Go ahead, Mr. Abrams.
MR. ABRAMS: In terms of what you want to show on an aerial photograph, you can sort of change the visual that you get by looking at it from different angles, can you not?
MR. LANDFAIR: You can, sure.
MR. ABRAMS: And any reason why this particular angle was taken?
MR. LANDFAIR: No, I think --
MS. ROBESON: If you know?

MR. LANDFAIR: I don't know. I would have to, I would speculate as to why. I think it gives a very clear impression of certainly the north side of Montgomery Lane.
MS. ROBESON: Well, is this speculation or just, I mean if you --
MR. LANDFAIR: It's my speculation. I did not prepare the exhibit.
MS. ROBESON: Then just say you don't -- I don't want to hear you speculate, his --
MR. LANDFAIR: That's fine.
MS. ROBESON: -- his speculation about it.
MR. LANDFAIR: I don't know why this particular angle was chosen.
MR. ABRAMS: Okay. Do you have Exhibit 83 at hand?
MR. LANDFAIR: What exhibit is 83?
MS. ROBESON: That was 83.
MS. LANDFAIR: That was 83?
MR. ABRAMS: 83 was previous --
MS. ROBESON: Yes, I think it -- this is what I have as 83.
MR. ABRAMS: It's another aerial photograph.
MR. LANDFAIR: Okay.
MS. ROBESON: It's a different aerial photograph?
MR. ABRAMS: Yes.

MS. ROBESON: Okay.
MR. ABRAMS: Do you have 83 or not?
MR. LANDFAIR: I do not have it.
MS. ROBESON: Is that it?
MR. LANDFAIR: Is that 83?
MR. ABRAMS: No, it's not. It's not the same.
MR. LANDFAIR: This is dated March 22, 2013?
MR. ABRAMS: This is dated February 16th.
MS. ROBESON: 15th.
MR. ABRAMS: Okay. I have 83, take a look at it, I have 83. It's dated February 15 --
MR. LANDFAIR: Okay.
MS. ROBESON: -- 2013.
MR. LANDFAIR: Okay. So this is not 83, this is, we've marked it as --
MS. ROBESON: If you know? I mean --
MS. ROBESON: The issue is that this witness --
MS. ROBESON: You can use --
MS. HARRIS: -- didn't, wasn't involved in the preparation of this exhibit.
MS. ROBESON: And that's fine. He doesn't have to speculate, he can simply say he doesn't know. Who did prepare these --
MS. HARRIS: The architect and he was prepared to speak to them.

MS. ROBESON: Mr. Abrams, do you want to reserve your questions for the --
MR. ABRAMS: Yes, I want to repeat the questions with the architect.
MR. LANDFAIR: The aerial photograph will be addressed by our architect's testimony.
MS. ROBESON: Well, do you know if -- Mr. Abrams, repeat your question.
MR. ABRAMS: Are you familiar with Exhibit 83?
MR. LANDFAIR: I am in that a variation of this Exhibit 106f.
MR. ABRAMS: Now can we address if there are any variations in those exhibits, and I'll ask you questions so you don't have to scan the exhibit right now. To your knowledge are there any variations, let me ask you --
MR. LANDFAIR: I don't know.
MR. ABRAMS: You don't know? When you compare Exhibit -- what's the most recent one though?
MR. LANDFAIR: 106f.
MR. ABRAMS: 106f with Exhibit 83, the spaces between West Lane and the face of the applicant's building on West Lane appear to be different?
MR. LANDFAIR: I think on Exhibit 83 it's wider, it's more, it's deeper if you will versus 106 where it has been narrowed up so that it's a more accurate representation

of the plan.
MR. ABRAMS: Okay. So you're saying Exhibit 83 is more accurate --
MR. LANDFAIR: No, I'm saying 106 --
MR. ABRAMS: -- or Exhibit 106f is more accurate?
MR. LANDFAIR: Correct. Yes.
MR. ABRAMS: And the other exhibit is inaccurate?
MR. LANDFAIR: Only with respect to the prospective of that area between the street and the building, yes.
MR. ABRAMS: Now the setback of the buildings for both exhibits is supposed to be 10 feet from Montgomery Lane, is that correct?
MR. LANDFAIR: Correct.
MR. ABRAMS: The most current aerial, Exhibit 106f, is set back between the applicant's building and West Lane appear to be greater than 10 feet as compared to the front of the applicant's building and the 10 feet setback on Montgomery Lane, is that what it appears to be to you?
MR. LANDFAIR: I'd have to scale it off and, of course, it's difficult to scale without a proper scale to the exhibit.
MR. ABRAMS: Now the setback of the Sandy Spring building across from the subject property, is that supposed to be set back an equal 10 feet from Montgomery Lane?

MR. LANDFAIR: I don't know offhand. I'd have to double check.
MR. ABRAMS: Now on both aerial photographs, Exhibit 106f and Exhibit 83, the top two floors are depicted as setback 12 feet supposedly?
MR. LANDFAIR: Yes, step back, yes.
MR. ABRAMS: And that is from the west corner of the building all the way over to the eastern corner of the building, is that correct?
MR. LANDFAIR: Before it starts to scallop, yes.
MR. ABRAMS: So it doesn't include a scallop?
MR. LANDFAIR: Well, it includes the scallop, then it rounds the scallop to the eastern-most part of the building facade along West Lane.
MR. ABRAMS: So you're only setting the building back outside of the scalloped area?
MR. LANDFAIR: The top two floors?
MR. ABRAMS: You're including the scalloped area as part of that 12-foot step back.
MR. ABRAMS: Okay.
MR. LANDFAIR: Yes.
MR. ABRAMS: Just so we make sure --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- it includes the 10-foot setback area --

MR. LANDFAIR: Yes.
MR. ABRAMS: -- okay? Once it goes around the scallop --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- on West Lane?
MR. LANDFAIR: Yes, correct.
MR. ABRAMS: That setback is 12 feet?
MR. LANDFAIR: Yes, the step back, yes, 12 feet.
MR. ABRAMS: And that's consistent with the binding elements on the plan?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now also on Exhibit 106f, where is the HOC building?
MR. LANDFAIR: It's along Hampden Lane. It's immediately to the east of what is known as the Hampden Lane project here. It's in a beige color. It's not realized with any real details.
MS. ROBESON: So it's immediately --
MR. LANDFAIR: It's basically --
MS. ROBESON: -- to the left or right, just for the record, I need to --
MR. LANDFAIR: For the record, it's on the north side of Hampden Lane approximately equal distance between Arlington Road and Woodmont Avenue.
MS. ROBESON: Okay.

MR. ABRAMS: It's a U-shaped appendage?
MR. LANDFAIR: Yes. Yes, it is.
MR. ABRAMS: Now that building is how tall?
MR. LANDFAIR: I don't know.
MR. ABRAMS: Is it shorter than the 71-foot --
MR. LANDFAIR: Yes, it is.
MR. ABRAMS: -- which --
MR. LANDFAIR: It's approximately the same height as the adjacent City Homes.
MR. ABRAMS: It doesn't look like it, like 106f, does it?
MR. LANDFAIR: In terms of the prospective, it's a flat roof building.
MR. ABRAMS: So is that part of the problem with the utilization of aerial -- the top of the, in terms of measuring heights or comparing heights?
MS. HARRIS: Objection. The exhibit was not presented to go to the heights of the buildings. We have another exhibit specifically prepared for that that the witness had reviewed.
MR. ABRAMS: This exhibit shows the relative heights of sections --
MS. ROBESON: No. I guess --
MR. ABRAMS: -- of focus.
MS. ROBESON: -- when I looked at it, I thought it

was to compare the compatibility in part of the heights and the setbacks between proposed and existing. So you can answer the question, Mr. Landfair.
MR. LANDFAIR: In terms of --
MS. ROBESON: If -- to your knowledge -- Mr. Abrams, can you repeat the question? Isn't there a problem? No. You know, if he didn't prepare the exhibit, I think I would prefer to hear it from the architect as to the accuracy of this exhibit as opposed to what's on the ground.
MR. ABRAMS: Well, I'm not specifically asking him about the accuracy of the exhibit, I'm just asking him what it purports to show in terms of the relative heights between two buildings.
MR. LANDFAIR: It's showing a building that is approximately the same height as the adjacent City Homes buildings located to the north. It is showing a building that has no setback, side yard setbacks, but has a U-shaped courtyard to provide air and light in part for its own use, but also for the adjacent City Homes property to the north.
MR. ABRAMS: And you made that statement without knowing the height of the HOC building?
MR. LANDFAIR: Correct. I know what the setbacks are from having observed out in the field.
MR. ABRAMS: Okay. Let's do, you can be seated, Mr., if you wish. 106j, that's the Planning Board hearing

transcript which was submitted along with that package of exhibits. Have you reviewed that?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now the chairman commented in the first excerpt that densities in the sector plan were not followed and this changed the neighborhood density and character in a way that leads us in a different situation than what the sector plan originally contemplated in 1994. Is that a fair summary?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay.
MR. LANDFAIR: Yes.
MR. ABRAMS: Now the sector plan recommended an FAR of 2.5 and then in parens it's got 100 dwelling units per acre, is that correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now what has occurred in this TSR district is that less density is on the ground since the sector plan was adopted, is that a correct or accurate statement?
MR. LANDFAIR: That's a correct statement.
MR. ABRAMS: Okay. So isn't the character of this neighborhood less dense than what is recommended in the sector plan?
MR. LANDFAIR: Yes.

MR. ABRAMS: If this is true for the purposes of evaluating compatibility according to the Planning Board chairman, it appears that this project is to be compared to the existing and approved conditions on the ground relative to density and height rather than what the sector plan recommended, that's her feeling?
MR. LANDFAIR: That's her opinion, yes.
MR. ABRAMS: Okay. Do you share that opinion?
MR. LANDFAIR: No.
MR. ABRAMS: Now is this somewhat consistent in terms of the portion of the quoted statements given in this exhibit with a second full quotation by the chairman to the effect, and I think it's a quote, it's meaning the subject property more than the plan is originally written and it's especially more than the current on-the-ground pattern of development, well, there in light of what's developed around it. So she's pretty firm in her feeling that you really look at what's around it in terms of the density height to determine if there's a compatibility?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. On Exhibit 106d, which is reflecting surrounding property under supporting the application, is it not true that at least two of the four supporting applicants are developers with their own projects in this neighborhood?

MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Is it unusual for a developer not to support projects in their own neighborhood?
MR. LANDFAIR: It's not unusual.
MR. ABRAMS: Highly unusual?
MR. LANDFAIR: No, it's not unusual.
MR. ABRAMS: Not unusual for them --
MR. LANDFAIR: Right.
MR. ABRAMS: -- to oppose?
MR. LANDFAIR: No, it would be highly unusual for them to oppose.
MR. ABRAMS: Okay. Thank you. Now from the standpoint of the Villages of Bethesda, they were another one that you say recommended the approval or supports this application?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now they were essentially given a setback which they wanted, correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: And that's adjoining a, the open recreation area --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- for this building?
MR. LANDFAIR: Yes.
MR. ABRAMS: So they essentially got what they

want?
MR. LANDFAIR: Yes.
MR. ABRAMS: And that was 15 feet?
MR. LANDFAIR: Right.
MR. ABRAMS: Okay. Yet the people in the Edgemoor at Arlington North only get 12 feet?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Why?
MR. LANDFAIR: We felt that it's for purposes of establishing compatibility, first of all, it's greater than, I believe, than what was originally approved for the previous development on the property, but regardless, we feel that given the overall massing of our building, that it is still an appropriate setback. Further, in comparison to what other projects in the immediate area have provided which in some cases is nothing, we feel that it is appropriate, particularly also in light of the design for Edgemoor at Arlington North in terms of its relationship to the common property line with us. So in total, we believe that it will be a compatible setback.
MR. ABRAMS: The last property I think which was mentioned in support is the owner of the single family home across West Lane?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And his basic concern was

screening of those utility --
MR. LANDFAIR: Transformers.
MR. ABRAMS: -- transformers? And he got that, right?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay.
MR. LANDFAIR: It's part of a binding element, correct.
MR. ABRAMS: Now in terms of the City Homes people --
MR. LANDFAIR: Uh-huh.
MR. ABRAMS: -- they wanted a number of things and you were in meetings with them, were you not?
MR. LANDFAIR: Or members of the consulting team. I didn't personally attend those meetings.
MR. ABRAMS: Well, yes.
MR. LANDFAIR: Yes.
MR. ABRAMS: Now City Homes requested certain things?
MR. LANDFAIR: I believe so.
MR. ABRAMS: They wanted more than a 10-foot setback from Montgomery Lane?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now the exception of the punched out area, the new entrance, they didn't get that, did they?

MR. LANDFAIR: There was no other increase on that side.
MR. ABRAMS: Okay. Now with reference to the way by on West Lane --
MR. LANDFAIR: Way by, yes.
MR. ABRAMS: Okay. They wanted a larger way by, did they not?
MR. LANDFAIR: I believe so.
MR. ABRAMS: Okay. There's no larger way by shown on your development plan, is there?
MR. LANDFAIR: It has not been increased in size.
MR. ABRAMS: In terms of the height, they wanted a reduction in height from 70 to 65 feet, I believe?
MR. LANDFAIR: Yes.
MR. ABRAMS: Did they get that?
MR. LANDFAIR: The height remains the same.
MR. ABRAMS: Is it a fair characterization to say that basically most of the other property owners got what they wanted with the exception of City Homes?
MR. LANDFAIR: If their interests were narrowly defined in terms of what you just stated in terms of those setbacks and such, then they're disappointed. But there are other elements of the project, most notably the scallop, the inset at the corner and the proposed pocket park which will benefit everyone including, I would imagine, the residents

of City Homes.
MR. ABRAMS: Well, it benefits mostly the project in terms of providing an attractive entrance, does it not?
MR. LANDFAIR: Yes, it does.
MR. ABRAMS: So if somebody would have to walk up that area if they were walking along Montgomery Lane, to even know that park area was there, would they not?
MR. LANDFAIR: Well, it would be readily seen from up and down Montgomery Lane.
MR. ABRAMS: Now Exhibit 83, if you can go back up there, Bill, the extension of West Lane --
MR. LANDFAIR: Sorry, 83 is exhibit --
MR. ABRAMS: Exhibit 83 is the aerial photograph.
MR. LANDFAIR: Oh.
MR. ABRAMS: It's basically the --
MR. LANDFAIR: An older version, the February version of the aerial photograph?
MR. ABRAMS: Yes.
MR. LANDFAIR: Got you.
MR. ABRAMS: The earlier version. And West Lane, it seems to extend back to a point parallel with the big Edgemoor, the rear of the big Edgemoor apartment building?
MR. LANDFAIR: Correct.
MR. ABRAMS: Is that, in fact, accurate on the ground?

MR. LANDFAIR: It doesn't extend quite that far. In the aerial photograph, it shows a light red pattern and at that furthest most light red pattern, which is where the text for West Lane is shown, it probably stops maybe around the letter N.
MR. ABRAMS: Now is there to be a cul-de-sac there?
MR. LANDFAIR: No.
MR. ABRAMS: Is there to be a hammerhead turnaround there?
MR. LANDFAIR: Yes, there will be some additional pavement to ensure that it more fully meets today's standards, but it will not be a full cul-de-sac.
MR. ABRAMS: Have you submitted that in terms of any plan in evidence?
MR. LANDFAIR: It is shown on the development plan, the reference is --
MR. ABRAMS: Shown on the development plan?
MR. LANDFAIR: Yeah.
MS. ROBESON: Help me out and tell me what a hammerhead turnaround is, Mr. Landfair.
MR. LANDFAIR: Essentially --
MS. ROBESON: Mr. Abrams is beyond my vocabulary here.
MR. ABRAMS: It's like a T.

MS. ROBESON: No, no, not you.
MR. ABRAMS: Oh, I'm, oh, I'm sorry.
MS. ROBESON: He can, I'll let him tell me.
MR. LANDFAIR: It can have any number of shapes to it. In this case it is, it's actually more square in shape than anything else, but it essentially is just enough paving and on the development plan it shows repaving boundaries.
MS. ROBESON: Okay.
MR. LANDFAIR: In other words, it's implied that we will improve the area there of the so-called hammerhead turnaround.
MS. ROBESON: So the sidewalks are going to come to a terminus?
MR. LANDFAIR: Correct.
MS. ROBESON: And the rest is going to be --
MR. LANDFAIR: And there --
MS. ROBESON: -- paving?
MR. LANDFAIR: Right. It comes to a terminus at Lot 35 driveway entrance and then there will be some additional paving to ensure, again, that this hammerhead or turnaround area will be sufficient to accommodate turning movements for vehicles.
MS. ROBESON: Okay. I'm sorry to interrupt, Mr. Abrams. Go back. I mean you can continue with your question.

MR. ABRAMS: My question was is that to be the turnaround area at the end of West Lane?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So there's not going to be any further improvement other than what's shown on Exhibit 106a for the turnaround?
MR. LANDFAIR: As shown on the development plan.
MR. ABRAMS: 106a?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And has all of that area been acquired by the County?
MR. LANDFAIR: It's within the public right-of-way.
MR. ABRAMS: Okay. Development, well, this is Exhibit 84? I'm not sure -- do you have a copy of that? Yes, that's the chart.
MR. LANDFAIR: The chart, okay. Yes. Yes.
MR. ABRAMS: The subject property, the SJG West Lane --
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. That has the highest number of dwelling units per acre in this chart, does it not?
MR. LANDFAIR: Correct. Yes.
MR. ABRAMS: Okay. And it's even higher than the Edgemoor high rise, correct?

MR. LANDFAIR: Correct.
MR. ABRAMS: Okay. And on this list where is the HOC building?
MR. LANDFAIR: It's not on this list.
MR. ABRAMS: Why not?
MR. LANDFAIR: Well, in part, of course, the HOC building was approved to satisfy the MPD requirements for the high rise at Edgemoor.
MR. ABRAMS: But you're comparing total number of units, units per acre, land area, average unit size, total MPDU's. So why wasn't it included?
MR. LANDFAIR: I think the intent was to show what is being provided within the properties themselves as opposed to what the obligation might have been offsite or elsewhere in the area.
MR. ABRAMS: I'm not sure I understand in terms of what this exhibit is showing.
MR. LANDFAIR: I think the intent was to show the density on the property as built or as approved not to include projects or developments that are built elsewhere which were built just to satisfy the MPDU requirements for that use, in other words, the high rise at Edgemoor.
MR. ABRAMS: Could you have included it?
MR. LANDFAIR: Yes, we could have included it. We did not --

MR. ABRAMS: But you didn't?
MR. LANDFAIR: We did not.
MR. ABRAMS: Okay. And that would have affected the total number of MPDU's?
MR. LANDFAIR: Yes, it would have.
MR. ABRAMS: Possibly affected the average unit size?
MR. LANDFAIR: Yes.
MR. ABRAMS: Units per acre, it would have affected that?
MR. LANDFAIR: Yes.
MR. ABRAMS: Total number of units?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So all of these bottom figures essentially would have been affected by inclusion?
MR. LANDFAIR: Inclusion of the HOC development, yes.
MR. ABRAMS: Correct. You have additional space on this page. Mr. Landfair, why didn't you compare the FAR's of these projects?
MR. LANDFAIR: Why didn't we?
MR. ABRAMS: Yes.
MR. LANDFAIR: I don't know offhand. I did not prepare the exhibit. It certainly could have been done.
MR. ABRAMS: Okay. According to -- I asked you

some questions about an exhibit which was received at the public area shortly after the first public hearing in this case and I think it's marked in the record as, I've got it as development plan amendment Exhibit 60. It is --

MS. ROBESON: I'm sorry, what number?

MR. ABRAMS: DPA Exhibit 60. That is a sector plan recommendations chart comparison of projects being in compliance with the sector plan? I can find it for you, Bill, to show you what I'm talking about.

MR. LANDFAIR: I don't have it here.

MS. ROBESON: Do you know if it was a large drawing or --

MR. ABRAMS: Well, the one I have is on one of these --

MS. ROBESON: Oh, okay.

MR. ABRAMS: -- spiral binder.

MS. ROBESON: Okay. I think I have it as a large, well, I'm sorry, did you say 60?

MR. ABRAMS: Development plan amendment 60, that was the other listing that we were using.

MS. ROBESON: I have a 67 as the development plan.

MR. ABRAMS: Is that -- oh, here it is. Well, the one I have was received from Pat -- Mrs. Harris with a No. 60 at the bottom.

MS. ROBESON: Okay.

MR. ABRAMS: So I'm not sure that was the --

MS. ROBESON: I believe at that point we were on a different numbering system because we were on the development plan amendment exhibit list, so it's not 60 on this list.

MS. ROBESON: Okay.

MR. ABRAMS: So --

MS. ROBESON: Do you know the date --

MS. HARRIS: We --

MS. ROBESON: -- of what Mr. Abrams is referring to?

MS. HARRIS: Not offhand, but we submitted it --

MS. ROBESON: I mean I'm asking Mr. Abrams, do you have the date?

MR. ABRAMS: There is no date on this sheet when it was sent over. The -- no, I don't have a date for it. The original page is labeled 08 on a copy that I have.

MS. ROBESON: Okay.

MR. ABRAMS: And then when it was sent over to me by counsel, it had No. 60 on it.

MS. ROBESON: Okay. Let me just see what 60 is on the exhibit list.

MR. KNOPF: It's -- are you talking, is this what you're talking -- I have it marked Exhibit 52 with a question mark if that's any help, and the DPA file, not in

the --

MR. ABRAMS: Well, the DPA file, that's where I'm getting this from. I have Exhibit 60 sector plan comparison with development plan.

MR. KNOPF: 53?

MR. ABRAMS: And I wrote this in because we were receiving exhibits as we went along.

MS. ROBESON: Right.

MR. KNOPF: No, I do -- it is Exhibit 60. I mean I have it marked 60.

MR. ABRAMS: You have it 60.

MS. ROBESON: I have it on the --

MR. KNOPF: I'm backing you up.

MS. ROBESON: -- DPA file. I have it as 60, sector plan recommendation.

MR. KNOPF: Yes.

MR. ABRAMS: Yes, sector plan comparison with development plan. Is that a chart?

MR. KNOPF: It says sector plan recommendation.

MS. ROBESON: This on DPA 13-01 it says sector plan recommendation. On G-954, it says letter from Randall Rothstein expressing --

MR. ABRAMS: No, it's a sector plan recommendations.

MS. ROBESON: Okay. So, okay, I'm looking in the

wrong file.

MR. ABRAMS: Well, this is what we're talking about. Do you have that?

MS. ROBESON: Okay. Go ahead. Do you have it, Mr. Landfair?

MS. HARRIS: We don't have a copy of it.

MS. ROBESON: Okay.

MR. ABRAMS: Well, why don't you just use this?

MS. HARRIS: Well, does he have it?

MR. LANDFAIR: Yes, I do.

MS. HARRIS: Oh, you have it?

MR. ABRAMS: You do?

MS. HARRIS: Yes.

MR. ABRAMS: Yes, that's it.

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. Can you go down the column for SJG?

MR. LANDFAIR: Yes.

MR. ABRAMS: And you have the first row where it says low rise and then you have yes. I assume that you mean that SJG is low rise?

MR. LANDFAIR: Yes.

MR. ABRAMS: And that conforms with the sector plan recommendation?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. SJG project is really not low rise as defined by the sector plan, is it?
MR. LANDFAIR: We believe it is consistent with the heights that are recommended and allowed in the sector plan whether it would be characterized as low rise or mid-rise, under the building code it's characterized as low rise.
MR. ABRAMS: Well, the question wasn't the building code.
MR. LANDFAIR: I understand. I understand.
MR. ABRAMS: The question was the sector plan in terms of the heading --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- for this community --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- says low rise and then you compare that to the height table or the height map.
MR. LANDFAIR: Yes.
MR. ABRAMS: 65 feet apparently is the outside maximum for low rise, wouldn't you agree with that?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So this is 70 feet, which exceeds the 65 foot sector plan definition by five feet?
MR. LANDFAIR: Yes.
MR. ABRAMS: Plus you have the 10 foot above that

for the --
MR. LANDFAIR: The penthouse for the mechanical --
MR. ABRAMS: -- penthouse?
MR. LANDFAIR: -- equipment, et cetera, yes.
MR. ABRAMS: Now the high rise at Edgemoor, you indicated that it's not high density? The high rise at Edgemoor is 102 dwelling units per acre, is it not?
MR. LANDFAIR: Yes.
MR. ABRAMS: And isn't that more density than is recommended in the sector plan for the transit station area in terms of development?
MR. LANDFAIR: Yes, it is.
MR. ABRAMS: Okay. So shouldn't that really no be a yes in that column and, likewise, the SJG in terms of the low rise element I just asked you about, instead of a yes should be a no?
MR. LANDFAIR: It could be quantified that way, yes.
MR. ABRAMS: Okay. And then you have the third category, appear to be townhouses with three to six floors with units on every level?
MR. LANDFAIR: Yes. Uh-huh.
MR. ABRAMS: And you have City Homes as a no, that it doesn't comply with that?
MR. LANDFAIR: Right.

MR. ABRAMS: How do you arrive at that when not only it appears to be townhouses but, in fact, three to six floors aren't, in fact, townhouses?
MR. LANDFAIR: Right. City Homes has a unique orientation to it. It doesn't -- it presents the end units to Montgomery Lane. Perhaps if they were oriented directly along Montgomery Lane, we could have characterized them better as, again, appearing to be townhouses. Certainly, they are technically speaking townhouses, but in terms of appearing to be townhouses, we would have quantified them as most definitely townhouses if the orientation had been different if they were fronting along Montgomery Lane as opposed to turning their end units to Montgomery Lane.
MR. ABRAMS: So because you're standing on Montgomery Lane as opposed to standing in the new areas --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- you classify them one way as opposed to another way?
MR. LANDFAIR: Yes.
MR. ABRAMS: All right.
MR. LANDFAIR: For purposes of this particular --
MR. ABRAMS: For the nature and the character of the actual buildings and their use is a townhouse?
MR. LANDFAIR: Yes. I think we've characterized it that way in our own documentation. Certainly, public

record has done so as well.
MR. ABRAMS: Okay. Now we come down to a column that says parking underground for in rear decks?
MR. LANDFAIR: Right.
MR. ABRAMS: And, again, unfortunately City Homes strikes that and you've got no there --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- as being, conforming with the sector plan?
MR. LANDFAIR: Right.
MR. ABRAMS: Okay. What's the purpose of that recommendation in the sector plan?
MR. LANDFAIR: I think the purpose is to take the cars off the street, to mitigate the view of the cars. It's, you know, obviously there are other ways to achieve that. Certainly City Homes did so with the garages that they proffer. But in the sector plan itself, it talks about underground parking. So we're --
MR. ABRAMS: So in terms with meeting the purpose of that recommendation in the sector plan, it's met with the garages, is it not?
MR. LANDFAIR: You could say the intent is met with the garages, yes.
MR. ABRAMS: Well, I could say that. Is that what you say?

MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So that could be a yes?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay, yes. Now higher building coverage, where in the sector plan does it have building coverages for individual parcels or just as a general statement or something like that?
MR. LANDFAIR: Offhand, I don't recollect the chapter or the page, but perhaps at some point during intermission I can find it.
MR. ABRAMS: I wish you would.
MR. LANDFAIR: Good.
MR. ABRAMS: Okay.
MS. ROBESON: Is there an intermission? Is there food in the lobby? No, go ahead. We'll give you a break after Mr. Abrams finishes his cross.
MR. ABRAMS: He needs a break before that because I'm not --
MS. ROBESON: I'm not going --
MR. ABRAMS: -- I'm nowhere near --
MS. ROBESON: I'm not going there.
MR. ABRAMS: What?
MR. ROBESON: All right. So go ahead.
MR. ABRAMS: All right.
MR. LANDFAIR: I'll be happy to review the plan --

MR. ABRAMS: Thank you.
MR. LANDFAIR: -- on that particular subject, yes.
MR. ABRAMS: Okay. There's a couple of exhibits dealing with height and, again, unfortunately, I have go back to the development plan amendment file, Exhibit 61 in that file.
MS. ROBESON: Okay.
MR. ABRAMS: Okay. City Homes's height is shown as 55 feet to 61, yes, 55 feet, but the heights on Exhibit 91 show City Homes at a 53-foot height limit. I mean which one is correct, that's all I want to know, in your estimation?
MR. LANDFAIR: Is this the exhibit you were speaking of?
MR. ABRAMS: Yes, I think so.
MR. KNOPF: Which number is that?
MR. ABRAMS: DPA Exhibit 61 and current Exhibit 91.
MR. LANDFAIR: The current exhibit is consistent with the height that's noted here. They're both reflecting 53 feet.
MR. ABRAMS: 52 feet?
MR. LANDFAIR: 53 feet.
MR. ABRAMS: So it's 53 feet, not 55 feet?
MR. LANDFAIR: Correct. Both exhibits are showing

the same thing.
MR. ABRAMS: DPA Exhibit 61 shows 55?
MR. LANDFAIR: Well, I'm referencing this exhibit.
MR. ABRAMS: Let me see if he has that.
MR. KNOPF: That's not the one that's, we got marked 61. 61 and 55, it's not 55. He has a different exhibit.
MR. ABRAMS: Let me see it.
MS. ROBESON: I have -- is this what he's referring to?
MR. KNOPF: He is, but this is what --
MR. ABRAMS: Yes.
MR. KNOPF: -- 61 is.
MR. ABRAMS: Yes. This is 53, right?
MR. LANDFAIR: Right. That's 53, which is what is shown on our composite exhibit that I have previously referenced.
MR. ABRAMS: And you showed --
MR. KNOPF: I think that's 60.
MS. ROBESON: I have this as 61.
MR. KNOPF: 61?
MR. ABRAMS: 61 shows 55 feet.
MR. KNOPF: Yes.
MR. LANDFAIR: This is an earlier --
MS. ROBESON: Wait a minute. Wait a minute. I

just, I want to make sure we're on the right exhibits here.
MR. ABRAMS: Yes.
MS. ROBESON: I have this as being 61. Is that not what you have?
MR. ABRAMS: That's not what was put on --
MR. KNOPF: This is --
MR. ABRAMS: -- exhibits which were delivered to us.
MR. KNOPF: This is the DPA. Are you looking at the DPA --
MR. ABRAMS: The DPA exhibit.
MR. KNOPF: -- or the, that may make all the difference.
MS. ROBESON: Okay. All right. I understand. Sorry about that. Go ahead.
MR. ABRAMS: Okay. One says 55. One says 53.
MR. LANDFAIR: I didn't prepare the exhibit you're referencing. I can't -- 53 feet is the accurate measurement, height. We've got --
MS. ROBESON: Which one is accurate?
MR. LANDFAIR: 53 feet is accurate and we have background data which, we being my firm was responsible for measuring the heights of those buildings.
MS. ROBESON: Okay.
MR. LANDFAIR: I did not prepare the exhibit that

Mr. Abrams was referencing which shows 55 feet.
MS. ROBESON: Okay.
MR. LANDFAIR: 53 feet, which is what is shown on our composite drawing which is Exhibit 106b, as well as on the earlier submitted height comparison drawing, they're all showing 53 feet.
MS. ROBESON: Okay.
MR. ABRAMS: Do you know where the 55 foot number came from?
MR. LANDFAIR: I don't know. It could be something as simple as a typo.
MR. ABRAMS: Now going back to the aerial photographs --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- Mr. Landfair, doesn't the relative height fall back or fall down toward both Woodmont Avenue and Arlington Road from the subject, from say West Lane?
MR. LANDFAIR: Well, if you're comparing it directly with the two immediately adjacent projects that have been approved, the heights of those projects are less.
MR. ABRAMS: No, I'm talking about ground elevations.
MR. LANDFAIR: Ground elevation. The actual highest point of the ground elevation is just east of our property and Montgomery Lane itself. So it's roughly

directly opposite what is now known as 4825 Montgomery Lane.
MR. ABRAMS: And that's where you measured your building height from?
MR. LANDFAIR: That's not where we measured our building height. For the West Lane project, no, we measured it along West Lane.
MR. ABRAMS: Okay. But basically that area from that point as the highest point extending back along West Lane --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- that's basically the same height, is it not?
MR. LANDFAIR: It's several feet higher.
MR. ABRAMS: Several feet higher?
MR. LANDFAIR: Yes.
MR. ABRAMS: Going to the north?
MR. LANDFAIR: As compared to the center of Montgomery Lane just to the east of our property.
MR. ABRAMS: Okay. I want to go east and west, okay? From that high point --
MR. LANDFAIR: It does fall.
MR. ABRAMS: -- it does fall?
MR. LANDFAIR: The elevation of the street does fall in both directions.
MR. ABRAMS: Okay. And how much does it fall in

one direction and how much does it fall in the other direction to each of those streets?
MR. LANDFAIR: Offhand, I don't recollect. It's certainly several feet. I'd have to review the record.
MR. ABRAMS: So when you're estimating heights in terms of some of the exhibits you've testified from --
MR. LANDFAIR: Each one has its own building height measurement point.
MR. ABRAMS: Correct.
MR. LANDFAIR: Yes.
MR. ABRAMS: And so if there's a building which is 65 feet in height, but on a lower elevation, that's different than being on the same elevation and the effect and impact on the community is different, isn't it?
MR. LANDFAIR: Well, it depends. You know, if you're walking along the street, I mean you're, as the eye, you know, you're tracking the building and your perceived height of the building is going to be relative to the immediate surrounding area that you're in. You're not going to be comparing the height of that building from say a measuring height, measuring point 100 feet, 200, 300 feet away, which could be lower. It could give you a perceived height difference.
MR. ABRAMS: Well, if you're on lower elevation toward Arlington Road and you're a pedestrian and you're

walking up Montgomery Lane and you see a building on a higher elevation, isn't that building going to appear taller --
MR. LANDFAIR: Sure.
MR. ABRAMS: -- than the building at Arlington Road?
MR. LANDFAIR: It could, yes.
MR. ABRAMS: So, and that curves, as you go up toward West Lane and away from West Lane toward Woodmont?
MR. LANDFAIR: Yes.
MR. ABRAMS: All right. What time are we going?
MS. ROBESON: Well, I'm thinking that we can go comfortably, because I want everybody to have the opportunity to get to the site, I was going to cut it off at 12:30 and that gives an hour and a half to eat lunch and get there. How much more do you have because I think that rather than starting more cross-examination --
MR. ABRAMS: Well, I've got probably another 2 1/2, 3 hours.
MS. ROBESON: Of cross-examination?
MR. ABRAMS: Oh, yes.
MS. ROBESON: You can't like streamline that? There aren't, there are only like 300 exhibits. How can you --
MR. ABRAMS: Well, every time the exhibits change

and Lord knows there have been, what, four or five iterations of development plans and exhibits, we have prepare questions as to each because if you won't accept it all into the record, we want to make sure that you understand which are correct, which are not correct, unless you're going to exclude from --

MS. ROBESON: Okay.

MR. ABRAMS: -- the record --

MS. ROBESON: Well, I can't categorically say you're limited to X amount of cross-examination right now, but we will make sure that you're following the rules of cross-examination. And if that's the case, then we're going to go until 12:15 to give people a little bit of comfort room. And I had one question that I would like to get in in the midst of all of Mr. Abram's questions which is -- and I'm not sure you're the witness to answer this, but on that aerial photograph, I think it's 106f is the aerial photograph, it shows the HVAC up at the front. Is that the HVAC that's sticking up on there?

MR. LANDFAIR: Well, it's the penthouse which is non-habitable space.

MS. ROBESON: Right. That's going to have --

MR. LANDFAIR: -- which would include the HVAC.

MS. ROBESON: -- the mechanical equipment?

MR. LANDFAIR: I'll let the architect speak to

that if I may?

MS. ROBESON: Okay. Well, let me just get my question out.

MR. LANDFAIR: Sure.

MS. ROBESON: My question is is it, I suppose that is over the core, well, is there any way to move that back further from Montgomery Lane? I didn't realize that was 10, an additional 10 feet. So I'm just throwing that out there. Maybe there is or maybe there isn't, I don't know, but -- and with that, I think that how about one more question, or no. What's your next question, because I have to make sure everybody has an opportunity to get to the site visit. I've been scolded about what I need to do with the site visit. So I need to make sure everybody has an opportunity to get there. So if you can finish your question and his answer by 12:15, we'll do that.

MR. ABRAMS: Okay. I'm trying to eliminate questions so that I streamline this.

MS. ROBESON: Because I still have to tell you what my route is going to be.

MR. ABRAMS: Oh, what your what is going to --

MS. ROBESON: My route.

MS. HARRIS: Route.

MR. ABRAMS: Oh, route.

MS. HARRIS: Hearing Examiner, while Mr. Abrams is

looking at that, I have a procedural question.

MS. ROBESON: Yes.

MS. HARRIS: And that is especially given the extent of his cross-examination, whether it be two or three hours or whatever, I would request that we have an opportunity to ask Mr. Landfair redirect questions before Mr. Knopf goes on with his cross-examination, otherwise it will get highly confusing.

MS. ROBESON: I think we can handle it. I'm going to stick to the typical order and, plus, I may have additional questions. So you can clean up the whole thing at once.

MR. KNOPF: I have --

MS. ROBESON: Yes, sir?

MR, KNOPF: -- scheduling. I think I must have written down the wrong date. Are we going -- I understand we're doing tomorrow?

MS. ROBESON: No, today.

MR. KNOPF: I mean today. We're skipping, we're doing Tuesday not at all or doing the morning?

MR. ABRAMS: Just the morning.

MR. KNOPF: The morning and Tuesday?

MS. ROBESON: Yes.

MR. KNOPF: And then when is the next hearing date? I wrote down Friday --

MS. ROBESON: You know what, I had --

MR. KNOPF: -- and I --

MS. ROBESON: She did not --

MR. ABRAMS: That's a week from this Friday.

MS. ROBESON: Monday, Tuesday --

MR. KNOPF: It's not Monday, Tuesday? It's not just Friday?

MS. HARRIS: No.

MR. KNOPF: It's not this Thursday?

MS. ROBESON: No.

MR. KNOPF: Well, better yet. Okay.

MS. HARRIS: It's the 8th and 9th of this week.

MR. KNOPF: Oh, and then the next week it's --

MS. HARRIS: And then it's next week for four --

MR. KNOPF: -- next week I had down --

MS. HARRIS: -- days.

MR. KNOPF: -- Monday, Tuesday, Wednesday.

MS. ROBESON: Well, we are not going to need any more hearing dates. We are going to finish this within those reserved hearing dates.

MR. KNOPF: I'm just trying to understand what dates were reserved.

MS. ROBESON: Oh.

MR. KNOPF: I'm not making it, no, I just, I think I may have written down the wrong dates, that's all.

MS. ROBESON: Oh, okay.
MR. KNOPF: That's all I'm saying.
MS. ROBESON: We have -- I don't have the, our official calendar with us, but they are written down on the, or I can bring it --
MR. KNOPF: All right. That's all right. So it's -- okay. So it's just this week, it's just tomorrow --
MS. ROBESON: Right.
MR. KNOPF: -- morning at, morning, that's fine. Thank you. I just wrote down Friday for some reason and that's not correct.
MS. ROBESON: Well, I can check it. Why don't we do this.
MR. KNOPF: No, everybody agrees with you, so I'm the one out. That's fine.
MS. ROBESON: Okay.
MR. KNOPF: That's fine. And then next week we're doing Monday, Tuesday, if we need it, Monday, Tuesday, Wednesday, right?
MS. ROBESON: I don't have the calendar with the additional dates. Why don't we do this. Let me take a 5-minute recess. I'll come back with the calendar of the official dates and then, Mr. Abrams, I think I'm just going to describe the route and we'll do the site visit, okay? All right.

MR. ABRAMS: One more question?
MS. ROBESON: We're taking a 5-minute recess.
(Recess)
MS. ROBESON: Okay. We're back on the record. The hearing dates that I have are April 8th, today; tomorrow, the 9th; next Monday the 15th; Tuesday the 16th; Wednesday the 17th; Friday the 19th. So that's what I have. Now, you know, dependent -- yes, did you want to say something?
MS. HARRIS: The only thing I wanted to say because I was absolutely respect your goal of making sure we don't need any more hearing dates --
MS. ROBESON: Yes.
MS. HARRIS: -- but between recessing early today for the site visit --
MS. ROBESON: And tomorrow.
MS. HARRIS: -- and tomorrow, I feel like we're cutting out almost one day and so --
MS. ROBESON: Then I think what we're going to do, Mr. Knopf, we will break when you have to be up -- is it a long item do you expect up a the District Council?
MR. KNOPF: It could be. It could be. It's a very complicated item.
MS. ROBESON: Well, then I would --
MR. KNOPF: And I never can predict what the

Council is going to do.
MS. ROBESON: Yes. Well, then I agree with Ms. Harris. I think we need to add a back-up day. And right now I have, we've been staying away from Thursdays because so many of the attorneys have conflicts with the Planning Board. So I could add in Monday, April 22nd.
MR. ABRAMS: I will be out of town.
MS. ROBESON: Okay. Well, I have, I can see if we can get this room tomorrow the 10th, I mean, I'm sorry, Wednesday, April 10th.
MS. HARRIS: I have two, the 10th and the 11th -- based on the hearing scheduled that was established and with all due respect to Mr. Knopf, I mean everyone has juggled their schedules knowing that these dates have existed for the last two months. So in preparation for my other hearing case that I have starting at the end of this month, I have --
MS. ROBESON: Costco?
MS. HARRIS: Yes, I have two --
MS. ROBESON: That's why we did it in April.
MS. HARRIS: I know. And so on this coming Wednesday and Thursday, I have all-day meetings with respect to that case.
MS. ROBESON: So, Mr. Knopf --
MR. KNOPF: 9th --

MS. ROBESON: -- you don't have co-counsel that could attend either here or there tomorrow for --
MR. KNOPF: No, no, this is --
MS. ROBESON: -- a brief period of time?
MR. KNOPF: This is something that is legislation and we were drafting it collectively and it's, I can't, and I did not schedule it on Tuesday. This was in the Council, sort of emerged out of nowhere. They picked that Tuesday. I had no control over that.
MS. ROBESON: Well, I have April 18th.
MR. KNOPF: I can't -- that's Planning Board day and I have two matters on --
MS. ROBESON: I have Monday the 22nd.
MR. ABRAMS: I will be out of town.
MS. ROBESON: Thursday the 25th.
MR. KNOPF: I don't think I have --
MR. ABRAMS: That's fine.
MR. KNOPF: I have to double-check that --
MS. ROBESON: Well --
MR. KNOPF: -- it sounds all right.
MS. ROBESON: You know, I do agree with Ms. Harris. I know how the Council works and you don't have any control over their schedule. I have Friday the 12th, this Friday the 12th.
MR. ABRAMS: That's fine with me.

MS. HARRIS: I can't do that.
MR. ABRAMS: You can't do that?
MS. HARRIS: No.
MR. KNOPF: Well, the 25th would mean, that would be good because we may not need it. I mean that, that would be toward the end.
MS. ROBESON: Thursday the 25th?
MR. KNOPF: I don't believe I have something. I have to check, but I don't believe I have anything on.
MS. HARRIS: My next hearing is the 26th if that's the only day we can go, but my client is out of town that day I think.
MS. ROBESON: Well, does she -- Ms. Wilshire, do you have anyone that you can send in your place?
MS. WILSHIRE: No.
MS. ROBESON: Well, then, you know, Mr. Knopf really does not have control over the Council. What we can do if nobody has any days, I can put it in for May.
MR. ABRAMS: I suggest you put it into May in any event because I think we're going to want closing argument. I mean I'm perfectly willing -- any date that you've suggested thus far except for the 22nd I'm perfectly willing to do, you know, and I'll stay in the evening hours if you wanted to do that.
MS. HARRIS: Based on the Council's schedule

tomorrow, I mean here's another suggestion --
MS. ROBESON: What I could -- yes?
MS. HARRIS: Knowing that this could be a 15-minute item or maybe just an hour item --
MR. KNOPF: It's --
MS. HARRIS: -- can we assume that we will recess if Mr., I mean reconvene if Mr. Knopf is available at 3:00 and if he is available, you know, as soon as he's available, we can all reconvene? It may mean an hour break. It may mean an hour and a half break, but then at least we'll have another three hours or so --
MR. KNOPF: It could be two hours.
MS. HARRIS: -- to continue tomorrow.
MR. KNOPF: I just know this is a very complicated matter and highly contentious. They put it down, you know, but you never can say. They put it down --
MS. HARRIS: What is it?
MR. KNOPF: -- for a half an hour. It's zoning tech amendments and small lots. It's been kicking around for years and --
MS. ROBESON: Okay.
MR. KNOPF: -- you know the developer is on one side, the citizen, you know, the whole thing. But you can never tell. It could take 10 minutes. It could take three hours. You just don't know. It's so complicated that I

suspect the Council is going to need to get lectured a little bit by their staff as to what's going on.
MS. HARRIS: Is it a work session?
MR. KNOPF: No, no, it's a legislative section.
MS. HARRIS: Will you have an opportunity to speak?
MR. KNOPF: I suspect I will because we drafted the, it's a long story, it's a committee that was put together, developers and citizens.
MS. ROBESON: Well, okay. I, you know, I think I said I would schedule this case for Thursday with the caveat that you, I -- or for Tuesday with the caveat that that's the day the Council meets.
MR. KNOPF: Right.
MS. ROBESON: I do feel since this schedule has been set for such a long time that we have to do something to follow through on it. What I'll do is, if we can get the court reporter to stay late, I'm willing to convene for two hours to allow you to get your whatever you need done at the District Council and come back and go into the evening. You know, we can do that. I don't know what else to tell you, but that's the best I think we're going to do because I agree. I think that we're going to need all five hearing days or six, all right? So be prepared to bring dinner.
MS. HARRIS: This is for tomorrow evening?

MS. ROBESON: Yes. Well, what I think -- when is your item, 1:55 at the District Council?
MR. KNOPF: Yes, I think that's, yes, yes.
MS. ROBESON: 1:55 at the District Council? And I do understand the legislation and it is complicated.
MR. KNOPF: Yes, and I, my understanding was that whenever hearings, they start to schedule on Tuesdays and Thursdays with the understanding that Council, might, something might come up beyond their control and they have to be a little bending there.
MS. ROBESON: Well, the only other thing I have is to push it to May. That's the only other option.
MR. KNOPF: Well, that may be better.
MS. ROBESON: Ms. Harris --
MR. KNOPF: I mean I'd hate to have everybody sit around.
MS. ROBESON: But I think she's in the middle of Costco, although we just accommodated Costco already. The best, I think what we're going to do is do as I said, give you two hours at the County Council and reconvene and maybe you can get a sense from Mr. Zion as to what extent he's briefed the Council in advance and we can talk at a specific time to come back into the hearing tomorrow.
MR. KNOPF: I would be happy to.
MS. ROBESON: Okay.

MR. KNOPF: The committee report just got released on Friday and so that's why --
MS. ROBESON: Yes. Well, you, I would suggest talking to Mr. Zion and explaining the situation and asking him if he has a sense of how long the item is going to be.
MR. ABRAMS: Yes. If it's not a public hearing, they could take it out of order of some sort.
MS. ROBESON: Well, that's the other possibility.
MR. KNOPF: Yes.
MS. ROBESON: So I think, is it just up for adoption, it's not the public hearing, correct?
MR. KNOPF: No, it's not a public hearing, but it's --
MS. ROBESON: But I know it's, I do understand that it's complicated.
MR. KNOPF: You may get, have to interpret it.
MS. ROBESON: So that's what we'll do. Now before I forget, I'm going to give you my route and I'm going to start at the southeast -- I'm going to start at the corner of Montgomery Lane and Woodmont, okay? I've changed my --
MR. KNOPF: Oh, it's different.
MS. ROBESON: Yes, I did, because I figured the backtracking. And then I'm going to proceed west on Montgomery Lane up to the end of West Lane, continue further west on Montgomery Lane, turn right at Arlington, right at

Edgemoor, south on Woodmont all the way down to Hampden, I believe, and then I'm going to head west on Hampden, north on Arlington and then head back out.
MR. KNOPF: Are you not going up West Lane at all?
MS. ROBESON: I am.
MR. KNOPF: Oh, I'm sorry. I missed -- I got you west to West Lane, but then you're going to go -- okay.
MS. ROBESON: Yes, I'm going to go, I'm going to start at Woodmont and Montgomery, go, proceed west on Montgomery to West Lane to the, go up West Lane --
MR. KNOPF: West Lane.
MS. ROBESON: -- to the end. And, again, you can be present, but I'm not going to speak with anyone because I don't have a way to record our conversation. And so I will put my impressions on the record tomorrow. Yes?
MS. HARRIS: May I go back to the scheduling item just for one second?
MS. ROBESON: Sure, if you have a date in May --
MS. HARRIS: No, it -- no. Just looking at the Council --
MS. ROBESON: I will vouch for Mr. Knopf. It is a complicated piece of legislation.
MS. HARRIS: Okay. But I notice that the Council get allotted, and we all know that the Council can be wrong in their allotment of time, but 35 minutes for three items,

for action on three items. So, again, in the spirit of efficiency, I would hate for everyone to be sitting around for two hours if, in fact, his item takes 10 minutes. Is there a way that we can --
MS. ROBESON: Well, I need on the, I need a way on the record to inform everybody it's time to come back. So that's the problem. I have to have a time set so everybody knows when to come back. I just can't call around the building and say it's time to come back. So I don't have a solution other than to give him -- Mr. Knopf, if you want to talk to Mr. Zion tomorrow and tomorrow morning you can give us an estimate, we can do it that way. But I can't just say, you know --
MR. ABRAMS: On the site visit, will you be going down or up Hampden Lane between Arlington and Woodmont?
MS. ROBESON: Yes.
MR. ABRAMS: Okay.
MS. ROBESON: Yes. The other option is if -- let me, I'll check this tomorrow, but perhaps I can just -- does everyone have access to a computer so they can stream the Council or know when the Council comes back? I could, I'm seeing nods in the affirmative. The other thing I could do is I need to check this, but I could double-check whether that's sufficient to say when the count, when Mr. Knopf's item is finished, we'll come back.

MR. ABRAMS: Will you be able on the site visit to go like behind certain buildings or do you have to stay in the right-of-way?
MS. ROBESON: I don't want to trespass. I can walk up West Lane and I assume I have permission to go on the subject property to the rear? Can you affirmatively for the record just say yes.
MS. HARRIS: Yes, you have.
MS. ROBESON: Okay.
MR. ABRAMS: Okay. We were thinking of going behind the Hampden Lane apartments which are next to City Homes.
MS. ROBESON: Behind the Hampden Lane apartments? Oh, the Hampden Lane is the large project that the --
MR. ABRAMS: Yes, to get a reference in terms of the height to the City Homes.
MS. ROBESON: I understand. Okay. Well, what about walking down one of the driveways or the, I don't know if that's public space or not, but I could walk down one of the alleys --
MR. KNOPF: Of City Homes.
MS. ROBESON: -- of City Place.
MR. ABRAMS: Well, you mean, is that what -- okay. Well --
MS. ROBESON: Well, I hope not, but yes.

MR. ABRAMS: My clients would like you to see it from both sides. So if there's an alleyway or something along Hampden Lane that takes you into the back of that section --

MS. ROBESON: You want me to see the back of the HOC?

MR. ABRAMS: Back of the Hampden Lane building and the HOC building, yes.

MS. ROBESON: I will try. If I see an opportunity, I will try.

MR. ABRAMS: Okay. And then you could walk up if you want to going to the City Homes muse on the other side because I want you to get a picture of both sides, okay?

MS. ROBESON: Okay.

MR. ABRAMS: It's a vision line.

MS. ROBESON: Okay. I understand it. I will try to do so.

MR. ABRAMS: Thank you.

MS. ROBESON: So with that, we're going to continue the hearing until 2 o'clock at the route I've described and then after that we will reconvene at 9:30 on April 9th, Tuesday, April 9th. Thank you.

(Whereupon, at 12:35 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954

By:

Tracy Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC **LOCAL MAP AMENDMENT G-954**	:	**Case No. G-954** **DPA 13-01**

A hearing in the above-entitled matter was held on April 9, 2013, commencing at 9:45 a.m., at the Office of Zoning and Administrative Hearings, 100 Maryland Avenue, 1st Floor Auditorium, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

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* * * * *

Witnesses:	Direct
William Landfair	126, 240, 312, 326

E X H I B I T S

Exhibit No.		Marked/Received
108	Marked Development Plan	329

P R O C E E D I N G S

MS. ROBESON: Is everyone ready?
MR. ABRAMS: Yes.
MS. HARRIS: Yes. Thank you.
MS. ROBESON: Will counsel please -- this is a continuation of the public hearing in the matter of Local Map Amendment G-954 filed by 4831 West Lane, LLC, and Development Plan Amendment No. DPA 13-01 filed by the same entity. As a, just as a brief preliminary matter, I was discussing this with our administrative personnel. We can't leave -- we, apparently we can't lock the door here and we can't leave the exhibits unsecured. So I assume you'll be taking the exhibits home or leaving them with us today and we'll clear the room, but for next week we'll have to clear the room. We can't just leave them unsecured here, okay?
I, as we stated, we did have a site visit at 2 o'clock yesterday and we walked the route described and all counsel were there. We did say, I will disclose on the record we did say hello to each other, but other than that -- and I thank counsel very much for being cooperative and not attempting to talk to me during the exhibit. I hope I didn't lead anyone astray while we were walking.
We did follow the route described. We also walked to the rear of the properties along Hampden Lane to see the setbacks there and we walked to the rear of the Villages of

Bethesda and I did that so I could view what the lay of the land back there where there's going to be setbacks from the building. We also walked to the very end of West Lane to view it there.
My notes, when I came back, I put down my observations and I did note it was sunny out. I did note that Montgomery Lane is very narrow. Cars are prohibited from going the full length of the block from west to east. I don't know the -- I'm going to ask questions too because these were the questions that came to mind while I was visiting. I believe that it is a mixed street and I don't know whether they intended eastbound traffic to be local traffic. I did notice it was very narrow. There were no -- the volume of traffic while we were there, what I observed was very low. I didn't see any operational problems with the street, however, I could see that if one car was parked illegally on the side of that street, it could cause a lot of problems because the traffic or the street is so narrow.
I did notice that on West Lane the street grade does rise up. I -- from both sides, both ends toward the middle, I would estimate, just guesstimate that it's more than five feet from Arlington.
MR. KNOPF: Did you mean to say West Lane or you meant to say --
MS. ROBESON: Montgomery Lane.

MR. KNOPF: -- Montgomery Lane?
MS. ROBESON: Sorry. Yes. And I had a question as to what's going to happen to that peak grade on the street once the building is built, is that going to be leveled off or is the building, is it going to be built up, you know? In other words, are you going to be grading the highest point down or is it -- how is that going to work as far as the street grade?
I noticed that delivery traffic from Woodmont or from the east must flow -- I could not remember exactly where the stop, the do not enter signs were and I had a question as whether delivery traffic can enter from the west part of the street or whether operationally delivery has to come from the east and proceed through to Arlington Road or turn around on West Lane. As far as -- I did also notice that the setbacks of -- I was a little surprised that the setbacks of the development on the north side of Montgomery Lane were not as, from the, or at least the curb space, the pedestrian space was relatively small given that this is supposed to be a pedestrian -- as I read the Master Plan, this is supposed to be a pedestrian connection to the library and so I was a little surprised at that.
West Lane is a narrow street to handle, my, these are my impressions. West Lane is narrow. My questions are, and I think you're going to address this, but my questions

are does the right, did the right-of-way include the existing parking areas? There's some houses at the end and I think one is Mr. Chipouras's or 4828 West Lane, which I know is not part of this, but there's houses after the curb, I think, after the curb, and does that hammerhead turnaround include that area and how are, with the radius of that turn, are there going to be trucks that, can the trucks turn around operationally?
My other question as there clearly is, I know that you added some loading bays to this and are you going to have conflicts with multiple trucks going back that narrow lane? I don't really see this as -- I don't see operationally the way it's coming out, I don't see West Lane serving a very valuable public use space for pedestrian function, especially since all the service vehicles are going to be routed back there. I know they counted those little areas between the driveways on the east side as public green space.
I did have a question as to whether or why because of the configuration of Montgomery Lane, which I can see how that would be really problematic, why can't you provide a second path or the ability in that parking pad, I call it a pad, the lay-by, can that be larger? And these are just questions that I'm asking. And the reason I'm asking, the reason I brought out that I don't see West Lane operating

really as a pedestrian-oriented area is that it's better to have a parking pad there and use it for that. And, again, these are just questions. It's -- there's no pre-judgment. I'm really just positing the questions for response. I do think that the development plan with the public use space up front is a larger, very big improvement over the prior plan.
I also, okay, so that West Lane. City Place, they do get a fair amount of sun from -- they have fairly broad courtyards and alleys that provide sun. I don't know if the court reporter said, but you have to keep your phones off --
MS. HARRIS: I'm sorry. I thought it was off.
MS. ROBESON: Okay. You're like me, I can't get it to --
MS. HARRIS: Right.
MS. ROBESON: -- to turn off. Okay. So I, they did get some sun. I don't know whose that is, but it's not mine. I don't have mine with me because I can't turn it off.
The, I'm sorry, the project itself is structured because of the broad courtyards and alleys, they do get sun. The setbacks adjacent to the HOC building are minimal and not favorable to, in my opinion, not favorable to City Place. The building adjacent to the west, which I couldn't, I didn't have the chart with me, but immediately adjacent looks to be about the same height and I was going to check

that. As far as that building goes, I thought that building did a very nice job of transitioning from the 35 feet to whatever the full height is. I think it might have been 48 feet, but I can't swear to that because they, not only did they provide the streetscape, but they stepped back with steps and then they stepped back with an awning type of structure and then they stepped back with the height and so I think they did a very good job of mitigating the impact of the full 48-foot height if the height is really 48 feet.
MR. KNOPF: You're talking now on Arlington, the building on Arlington?
MS. ROBESON: Yes.
MR. KNOPF: Okay. I'm sorry. I --
MS. ROBESON: Am I mis-speaking? You see, I can't work a cell phone, I can't -- I'm talking about the building that fronts Arlington, which I think is the building immediately to the west of City Place, it just has a different orientation. Its frontage is to Arlington.
MR. KNOPF: I think that's called, is that called the Edgemoor?
MR. LANDFAIR: Edgemoor at Arlington is what it's known as.
MS. ROBESON: Thank you. The Edgemoor at Arlington.
MR. LANDFAIR: Adjacent to City Homes.

MS. ROBESON: Yes. The Villages of Bethesda are, I think, a good example of low rise urban development. I do question why the setbacks for those properties aren't the same for City Place because overall my concern is that City Place in a way, now the project is arranged so it gets sun of its own accord, but it does seem that it's being sort of surrounded by higher projects. And I did question why the setbacks for the Villages at Arlington are not the same as for City Place.

And let me tell you a little bit more of my concern. I don't usually give you my impressions until I've heard the evidence, but it's tied into the site visit, so I want to fully disclose what my impressions were. I guess my question is that that, Montgomery Lane is supposed to be a, somewhere I read a 50 percent pedestrian, 50 percent traffic, or it's supposed to be a pedestrian-oriented street.

MR. LANDFAIR: Mixed street --

MS. ROBESON: Mixed street.

MR. LANDFAIR: -- is how it's characterized.

MS. ROBESON: And I guess my question is I think that that semi-circular cut-out does a, provides a very important function, but I also find that, or I also could anticipate that setback from the southern, south, the western property line having an impact just on having a --

you've got the cut-out, but the setback from the paved, the curve is not as big. For instance, the setback, I was surprised the developed property on the easternmost portion of the northern part of the street, that north of Montgomery Lane to the very east.

MR. LANDFAIR: Edgemoor Highrises.

MS. ROBESON: Thank you. There is a -- that setback from the street is, I mean you can walk and it does a lot, but it doesn't really remind me of the mixed street, you know, the really welcoming for pedestrian. I think that your arc improves that, but I think it would be a far better plan to provide a setback to shorten that smaller street frontage or to shorten the area of the narrower street frontage on the western part of your building. You're not following me, are you?

MR. KNOPF: No, I got lost.

MS. HARRIS: Can I --

MS. ROBESON: Can you do a 15-foot setback there, that's what I'm asking?

MR, KNOPF: Where is there? That's where I'm lost.

MS. ROBESON: Western property line to --

MR. KNOPF: No.

MS. ROBESON: I'm just asking.

MS. HARRIS: If you're looking for an answer now,

we will get into it, correct?

MS. ROBESON: Yes.

MS. HARRSIS: Okay.

MS. ROBESON: You can't answer now because it will get way out of order.

MS. HARRIS: Right.

MS. ROBESON: So can you provide a 15-foot setback there because I am concerned about City Homes because I do feel that some -- and I know that somebody is going to tell me about the history of the Master Plan, but somehow I feel that the development is overshadowing City Homes in a manner that may not have been what the low rise urban development intended.

Okay. Now the Edgemoor Highrise, they do not seem, unless there's an operational issue with the road, I'm not sure -- they do not seem heavily impacted by this development. They are taller. They've got a lower rise building in between them, so I'd like to know what impacts they're concerned about and that's it. That was the extent of what my impressions were and what my questions are, all right?

Now you can ask me questions. I'd appreciate it if you don't try to answer my questions right now because I fully expect -- I'm just throwing the questions out there. I don't expect -- I expect that you will address them when

we get closer to the hearing. Yes?

MS. HARRIS: Just a point of clarification. You just noted that there, you questioned whether there could be a 15-foot setback. I assume you mean on Montgomery Lane, that was your question?

MS. ROBESON: Yes.

MS. HARRIS: Okay.

MR. KNOPF: Oh. She said the western.

MS. ROBESON: No, no, a 15-foot setback on the western boundary where you have a 12-foot in the --

MS. HARRIS: Oh, I see. Okay.

MS. ROBESON: The portion of the building closest to Montgomery Lane, can you set back that, can you set that back 15 feet instead of the 12 feet or is there some other way to mitigate that frontage on Montgomery Lane, reduce, you know --

MS. HARRIS: Okay. I understand.

MS. ROBESON: Okay.

MR. ABRAMS: So are you evidencing your comments to both the western side as well as the southern side?

MS. ROBESON: Yes.

MR. ABRAMS: Okay.

MS. ROBESON: It's the area of the building that is mid, approximately between a third and a half of the way north of Montgomery Lane on the western edge. If you go to

the western edge of the project, and I'm referring to -- what is that, Exhibit 106b, I think?

MR. LANDFAIR: Yes.

MS. ROBESON: Okay. If you go to the southwest corner of the project and start at that edge, okay, and proceed up to the private open space, that's the setback I'm wondering whether can be 15 feet and maybe it can't for some operational reason. I'm just -- that's the question I'm raising because I do see the major impact on this development as this street builds up on City Homes. Did that answer your question?

MR. ABRAMS: Well, it answered the question, but I'm concerned the 15-foot setback that you speak of, which was in the original plan, that deals with the Edgemoor at Arlington north as opposed to City Homes. City Homes is across the other side of --

MS. ROBESON: Well, I thought you said, in your earlier testimony, I thought you said that you wanted, why did they reduce the setback to 12 feet there when they're giving 15 feet to the Villages of Bethesda?

MR. ABRAMS: Well, that is --

MS. ROBESON: I thought I heard that.

MR. ABRAMS: Well, that was one element.

MS. ROBESON: And I also --

MR. ABRAMS: Madame, first of all --

MS. ROBESON: -- heard --

MR. ABRAMS: -- I didn't testify or --

MS. ROBESON: Yes, that was a point that you raised.

MR. ABRAMS: Okay. No, that was one point in terms of developing a foundation for other questions which have yet to be asked.

MS. ROBESON: Okay. That's fine. That's fine. So and, again, I haven't pre-judged. I really have not pre-judged anything because I haven't heard all the testimony. Mr. Knopf --

MR. KNOPF: Yes. You didn't mention something. I'm just going to ask whether it was inadvertent or you didn't observe it. There were repair trucks parked in the City Place alleyway or something.

MS. HARRIS: I object to even suggesting --

MR. KNOPF: I just was asking --

MS. HARRIS: -- that.

MR. KNOPF: I'm asking whether she observed it or not.

MS. ROBESON: No, I didn't observe it. I don't recall it. I could have had a brain freeze. I don't know. But, no, I don't recall it. But that's a fair question. That's the reason we have to put this on the record. Anyone else? Yes, Ms. Harris?

MS. HARRIS: I don't have a question about this, but I have a procedural question once we're --

MS. ROBESON: Okay.

MS. HARRIS: -- once we're, we've completed the issue about the site visit.

MS. ROBESON: Okay. Hold on. Is there anything else about the site visit? All right. Ms. Harris, your procedural question about is?

MS. HARRIS: Yesterday there was extensive discussion about a number of exhibits which as it turned out as we went through the questions, as the cross-examination from Mr. Abrams revealed, that the exhibit had actually been superseded. And for the purposes of efficiency, I would suggest that I identify the several exhibits that have been superseded so that future questions can focus on the latest copy in the record so there's not time wasted, if you will, addressing details of a plan that's been superseded.

MR. ABRAMS: Well --

MS. ROBESON: Well, I, you know, go ahead.

MR. ABRAMS: I object to that. No, I object to that because we want to show the difference in terms of certain elements in close plan and what has been proposed here and why we believe that it is detrimental to the community.

MS. ROBESON: I understand that, so I'm not going

to agree to that. It is an evolving plan and it's a valid question why you did it one way as opposed to now you're doing it this way. Anything else?

MR. ABRAMS: No, ma'am.

MS. ROBESON: Mr. Knopf, as far as your appearance at the District Council, did you obtain any information?

MR. KNOPF: I obtained a, I spoke with Jeff Science. He said his best estimate is 15 minutes to a half an hour, but you never know.

MS. ROBESON: Okay. Yes. Well, that's exactly right. I can hear his response now. I think that I, I did consult with Mr. Grossman and we both felt that this -- it was not a good idea to just leave everybody monitoring the Council. I don't want to go through five days of hearings and for some reason have it overturned on a procedural error. I had the bright idea last night, but it may not be bright enough for you guys, instead of giving a 2-hour delay that we, I will end this hearing at 1:30 and I will say that we will reconvene at 2:30 and then if Mr. Knopf is not here, then I can reschedule it again and that way at least we're not creating, forcing a 2-hour vacuum. Do you, does anyone have a problem with that?

MS. HARRIS: And just to be clear, so I assume there won't be -- the Court lunch break will be at 1:30 to 2:30?

MS. ROBESON: Yes.
MR. KNOPF: Just --
MS. HARRIS: That's unacceptable.
MS. ROBESON: No, I think we need a 2-hour lunch about 11:30 and then --
MR. KNOPF: I just fear, you're sending me before the Council on an empty stomach now.
MS. ROBESON: Well, I mean if, the timing --
MR. KNOPF: Can you do it like 1:20 or something?
MS. ROBESON: -- doesn't matter. It could be 1:15.
MR. KNOPF: And that would be great. I could get something to eat.
MS. ROBESON: And then we'll reconvene at 2:15 or, no, we'll reconvene at 2:30. Is that --
MR. KNOPF: That's fine.
MS. ROBESON: And that way --
MR. KNOPF: I'd just like to try to grab a bite to eat before I --
MS. ROBESON: Right. And that way we're not losing a full two hours.
MR. KNOPF: That's fine.
MS. ROBESON: All right?
MR. KNOPF: I appreciate that. Thank you very much.

MS. ROBESON: So --
MR. KNOPF: I'll tell the Council you're waiting, they better speed it up.
MS. ROBESON: Oh, I'm, I don't think that we have any sway in that regard. So with that, I believe, Mr. Abrams --
MR. ABRAMS: Yes, ma'am?
MS. ROBESON: -- have you managed to cull through your cross-examination questions to --
MR. ABRAMS: I have. I've eliminated about a day's worth, but we still got quite a bit.
MS. ROBESON: All right. Let's -- Mr. Landfair, are you ready? Have you eaten?
MR. LANDFAIR: I have. Yes, thank you.
MS. ROBESON: Okay. Let's continue then.
MR. ABRAMS: All right. Mr. Landfair, what are the ground elevations for each of the six of the City Homes town homes?
MR. LANDFAIR: The ground elevations?
MR. ABRAMS: Yes.
MR. LANDFAIR: Excuse me for just one moment. I do not have an exhibit which would reflect those ground elevations.
MR. ABRAMS: Can you find the ground elevations and submit it to the Hearing Examiner --

MR. LANDFAIR: Yes, we can.
MR. ABRAMS: -- for the next hearing?
MR. LANDFAIR: Yes, absolutely.
MR. ABRAMS: And send me a copy?
MR. LANDFAIR: Absolutely, yeah.
MR. ABRAMS: All right. As a general observation, the ground elevations, do they get lower as they proceed toward Arlington Road?
MR. LANDFAIR: Generally, yes.
MS. ROBESON: From the subject property?
MR. ABRAMS: From the subject property?
MR. LANDFAIR: Yes, they do.
MR. ABRAMS: So the building elevations for each stick of the townhouses would likewise be at different elevation points getting lower as you proceed toward Arlington Road?
MR. LANDFAIR: Possibly. The road elevation certainly will change, but because of the grading for each one of those sticks, that grading may be moderated and it may not be consistent with the elevation of the road. In other words, if the road decreases in elevation by two feet along our frontage or one foot just to express a number, it wouldn't necessarily change that much on the City Homes property.
MR. ABRAMS: I'm asking you what you know, not

what if.
MR. LANDFAIR: Right.
MR. ABRAMS: Do you know that that's the case?
MR. LANDFAIR: I do not know at this time.
MR. ABRAMS: Would you know as part of the submission before the next hearing?
MR. LANDFAIR: Yes, yes, we would have background information that we can submit.
MR. ABRAMS: And what is the ground elevation which was used as the measuring point for the subject building, the applicant's building?
MR. LANDFAIR: That ground elevation is expressed on the development plan. I don't have the exhibit number. It just simply says duplicate, but I think the development plan that's dated March 22nd is the one I'm referencing.
MS. ROBESON: I'm sure it's 106 --
MS. HARRIS: Right.
MS. ROBESON: -- I just don't --
MR. ABRAMS: 106a.
MR. LANDFAIR: 106a.
MS. ROBESON: A?
MR. ABRAMS: And what is it?
MR. LANDFAIR: It's 335.8.
MR. ABRAMS: And what is the ground elevation at the intersection, as close as you can get to the

intersection?
MR. KNOPF: What intersection?
MR. ABRAMS: The intersection of West Lane and Montgomery Lane.
MR. LANDFAIR: 328.
MR. ABRAMS: So it's some seven feet lower?
MR. LANDFAIR: Yes.
MR. ABRAMS: So by my deduction, it means that the ground elevation increases as you get further away from the intersection --
MR. LANDFAIR: Correct.
MR. ABRAMS: -- in terms of elevation --
MR. LANDFAIR: Into West Lane.
MR. ABRAMS: -- points along West Lane? If the application is approved for the 70-foot maximum height limit, what would be the maximum elevation of the building?
MR. LANDFAIR: It would be at 405.8.
MR. ABRAMS: And that elevation would be the same for the entire building, excluding the circulation step back area, excuse me, the step back area on the 6th and 7th level?
MR. LANDFAIR: Right. And that's an important distinction because that elevation, of course, is 20 feet less. So that elevation for that step back on Montgomery Lane is approximately 50 feet.

MR. ABRAMS: Then what is the elevation in the roadway of Montgomery Lane in front of the proposed building?
MR. LANDFAIR: Again, it's roughly 328.
MR. ABRAMS: Okay. And does that vary somewhat, is there a 330 elevation point in there also on the east side of the building?
MR. LANDFAIR: Well, the decrease, of course, as you head further to the west, so approximately 20 feet west of the property line it would decrease to 326. It looks like the highest point would be approximately 329.2, which would be approximately directly opposite of the steps that would lead into the main lobby area.
MR. ABRAMS: Okay. So if you're standing in the street near the sidewalk on Montgomery Lane looking at the building, and again you would ignore the step back situation, how tall is the building at that point?
MR. LANDFAIR: If you're standing on the sidewalk and you're looking up at the building?
MR. ABRAMS: Yes.
MR. LANDFAIR: It will be 50 feet.
MR. ABRAMS: Now how tall would the height of the building be, excluding the step back?
MR. LANDFAIR: If you were measuring it to the uppermost part of the roof, it would be 70 feet.

MR. ABRAMS: What would be the elevation?
MR. LANDFAIR: That elevation would be approximately 405.8.
MR. ABRAMS: Okay. And do you take away from that the prior elevations of 328 or 330 and get the difference in terms of what the full elevation height would be at that point?
MR. LANDFAIR: Well, it would -- the building at measuring point is found on West Lane. We are within our rights to establish a building height measuring point where it is shown currently at the top of curb on West Lane. If you were to measure it from another point that had a lower elevation, yes, that would have an increase in terms of the overall height, but that's not under the zoning ordinance or under County Code, that would not be a prescribed way to measure the height.
MR. ABRAMS: No, I'm not contesting that that's the appropriate way to measure the height. What I'm asking is the impression or visibility that shows on somebody in that area walking along the sidewalk or across the street at City Homes, in other words, in an area of compatibility as opposed to does it legally comply with the development standard?
MR. LANDFAIR: The impression one will have is of the 50-foot height as you're walking along either on the

north side or along the south side of the street because of that 12-foot step back. You're not going to perceive the additional 20 feet because you're not going to see much of it.
MR. ABRAMS: So from that side, the building is not really 70 feet, it's more of a 75 to 77 feet?
MR. LANDFAIR: It's all perception.
MR. ABRAMS: Correct.
MR. LANDFAIR: But you will not see that 70 or 75 feet as you're walking along the street, either side of the street.
MR. ABRAMS: How about if you were looking at the side windows of the City Homes town homes by residents, you would be able to see it, wouldn't you?
MR. LANDFAIR: If you were at the upper elevation, in other words, if you were on an upper floor at one of the City Home town homes and you were looking across the street, you would be able to see the uppermost portion of this building.
MR. ABRAMS: Now in addition to what you just described, there was previous testimony about a penthouse --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- at the top?
MR. LANDFAIR: Yes.
MR. ABRAMS: And I think you said it was about 10

feet?
MR. LANDFAIR: Correct.
MR. ABRAMS: And that's an equipment penthouse?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Is that a binding element anywhere in the plan, in other words, you will not exceed 10 feet in height for the equipment building?
MR. LANDFAIR: No, I don't believe it is.
MR. ABRAMS: And will the applicant be willing to do that?
MR. LANDFAIR: I don't know. I would add that that would be an unusual binding element. I have not seen such a binding element typically on a development plan.
MR. ABRAMS: But you're not surprised about anything that happens in zoning in Montgomery County?
MR. LANDFAIR: No, sir, I'm not.
MR. ABRAMS: All right. I want to refer you now to Exhibit 80. That's the three plans that were colored to show the height or the spacing between various buildings?
MR. LANDFAIR: Okay.
MR. ABRAMS: Okay. These are three diagrams showing the relationship of the subject building to 4825 Montgomery which you've described as the Sandy Spring building and the Edgemoor Highrise, all these relating to City Homes, is that correct?

MR. LANDFAIR: Yes, exactly right. Each section is shown in relationship from a confronting building, the Edgemoor Highrise at the top, the middle cross section is 4825 Montgomery Lane, otherwise known as the Sandy Spring Builders Project and, again, our project.
MR. ABRAMS: Okay. Referring to the bottom drawing, I think you previously indicated that the distance between the subject project and City Homes was 73 feet?
MR. LANDFAIR: Correct. Yes.
MR. ABRAMS: And you contrasted that with a distance of the Edgemoor, which I believe you said was 71 feet?
MR. LANDFAIR: Correct.
MR. ABRAMS: Now can you go to Exhibit 69, which has the distances between buildings along the street? Bill, this is the one I'm referring to.
MR. LANDFAIR: Let me see if I have a full-size copy. I do. It may be necessary to flip back and forth. I do have that exhibit. Would it be helpful for me to mount it on a separate board if we're going to be referencing --
MR. ABRAMS: I'm going to be referencing setbacks that are duplicated in there.
MR. LANDFAIR: Okay.
MR. ABRAMS: The Hearing Examiner has a copy.
MS. ROBESON: I have a copy.

MR. LANDFAIR: That's fine. I can refer to --
MR. ABRAMS: Yes. So I'm not sure you need --
MS. ROBESON: So --
MR. LANDFAIR: -- I've got a ledger size copy, so I don't need to --
MS. ROBESON: Okay. That's fine.
MR. LANDFAIR: -- put it up on the easel.
MS. ROBESON: I don't have a copy, I have three of them.
MR. ABRAMS: No, the real thing.
MS. ROBESON: But go ahead.
MR. ABRAMS: Okay. For the record.
MR. LANDFAIR: For the record. Yes, sir.
MR. ABRAMS: Okay. Do you see the distance indicators in this Exhibit 69?
MR. LANDFAIR: Yes.
MR. ABRAMS: And, specifically, first of all, relating to the distances between the various buildings and the curbs?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And take a look at the numbers in the front of the applicant's project. Can you add them up and come up with a total distance between the SGJ project and the City Homes building?
MR. LANDFAIR: City Homes is reflecting a number

of 26. The West Lane project is just under 26. So together that would be 52.
MR. ABRAMS: What about the 20-foot for the road?
MR. LANDFAIR: Well, I think in that vicinity the road was actually 21 feet.
MR. ABRAMS: Well, 21 feet. Okay. If you add up all of those numbers, that's?
MR. LANDFAIR: 73 feet.
MR. ABRAMS: 70 what?
MR. LANDFAIR: 73 feet.
MR. ABRAMS: 72 feet?
MR. LANDFAIR: 73 feet.
MR. ABRAMS: 73 feet? Are you sure it's not 71 feet, 10 inches?
MR. LANDFAIR: This exhibit shows 25 feet, 10 inches.
MR. ABRAMS: Okay. Plus 20 feet for the -- or 21 feet for the road?
MR. LANDFAIR: Correct.
MR. ABRAMS: Okay. Plus 26 feet of curb in front of City Homes?
MR. LANDFAIR: Correct.
MR. ABRAMS: Okay. So that's about 72 feet?
MR. LANDFAIR: 72 feet, 10 inches.
MR. ABRAMS: Okay. It's basically not 73 feet as

claimed, is it?
MR. LANDFAIR: There's a difference between 72 feet, 10 inches and 73 feet.
MR. ABRAMS: Okay.
MR. LANDFAIR: It's a difference of two inches.
MR. ABRAMS: And now can you do the same math for the Edgemoor, the big Edgemoor?
MR. LANDFAIR: 24 feet, 4 inches, plus 7 feet, 10 inches for the lay-by and add another 21 feet for the street, and add another 26 feet approximately for City Homes.
MR. ABRAMS: Well, don't you had 6 feet for the lay-by?
MR. LANDFAIR: The entrance is not show there. I'm sorry?
MR. ABRAMS: Don't you add 6 feet for the lay-by?
MR. LANDFAIR: Well, the lay-by here is actually measured at 7 feet, I'm sorry, yes, it's approximately 6 feet.
MR. ABRAMS: Okay. And add up the 24 feet, 4 inches, plus the 6 feet for the lay-by --
MR. LANDFAIR: Right.
MR. ABRAMS: -- plus 20 feet, plus 26 feet from the City Homes, right?
MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. What's the total?
MR. LANDFAIR: That would be 76 feet, 4 inches. Now that's suggesting that the dimension from that particular stick of City Homes is the same as what is found further to the west for 26 feet. This is not dimensioned as such, so I don't know that to be the case.
MR. ABRAMS: Okay.
MS. HARRIS: Can I offer a clarification?
MS. ROBESON: No.
MS. HARRIS: Okay.
MS. ROBESON: You can on redirect.
MS. HARRIS: Okay.
MR. ABRAMS: Okay. I want you to go now to Exhibit, I think it's 80, page 14. Exhibit 80.
MR. LANDFAIR: The title of that exhibit? The cross section?
MR. ABRAMS: And I want you to focus on 4825, which is the Sandy Spring building.
MR. LANDFAIR: Yes.
MR. ABRAMS: You show a penthouse on that plan, correct?
MR. LANDFAIR: Correct, yes.
MR. ABRAMS: Have you seen the approved plans?
MR. LANDFAIR: I've reviewed them in the past, yes.

MR. ABRAMS: Well, in preparation for this case have you reviewed them?
MR. LANDFAIR: Not recently, no.
MR. ABRAMS: All right. So you're not sure whether that's a full-size penthouse or just small portions raised above the roof?
MR. LANDFAIR: Correct.
MR. ABRAMS: Or where they're located?
MR. LANDFAIR: Correct.
MR. ABRAMS: This looks like a pretty substantial penthouse, correct?
MR. LANDFAIR: Yes, it does. It looks like a standard 10-foot high penthouse.
MR. ABRAMS: And you go from the street up to the first level before you get to the penthouse, what is the height of that?
MR. LANDFAIR: 65 feet.
MR. ABRAMS: So that's 65 feet?
MR. LANDFAIR: Right.
MR. ABRAMS: And then are you saying that there's a 4-foot parapet wall that goes around it or is it a 60-foot building with a 4-foot --
MR. LANDFAIR: There is a parapet wall around it.
MR. ABRAMS: Okay. Which is it then? Is it a 65-foot building with a 4-foot parapet wall or is it a 60-foot

building with a 4-foot parapet wall?
MR. LANDFAIR: The latter. 60 --
MR. ABRAMS: 60-foot building?
MR. LANDFAIR: Right.
MR. ABRAMS: So when you look at the top of the front of this building, Montgomery Lane --
MS. ROBESON: Your attorney can bring this up on redirect. I don't want your responses picked up on the mic, okay? Go ahead. Not you, Mr. Abrams.
MR. ABRAMS: Oh, I thought I did something wrong.
MS. ROBESON: No.
MR. ABRAMS: Okay.
MS. ROBESON: You're in time-out.
MR. ABRAMS: So the front of the building, the top of the front of the building shown on Exhibit 80 --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- to Montgomery Lane is 60 feet?
MR. LANDFAIR: To the top of the parapet wall is 65 feet.
MR. ABRAMS: Well, but the building itself included, separate from the parapet wall is 60 feet?
MR. LANDFAIR: But if you're walking along, you're not going to separate out the parapet wall from the building itself.
MR. ABRAMS: Okay.

MR. LANDFAIR: So it's going to read as a 65-foot height building.
MR. ABRAMS: Okay. That wasn't the question. The question was actual heights. Now the height of City Homes' units, are they a uniform height?
MR. LANDFAIR: They are represented on the plan as being 53 feet in height. There may be a slight variation in height for each one of the sticks. The highest stick would be 53 feet.
MR. ABRAMS: And where did you get those heights?
MR. LANDFAIR: They were surveyed by our staff.
MR. ABRAMS: By your staff? Okay. And how many stories are the town homes?
MR. LANDFAIR: They're three stories.
MR. ABRAMS: How many?
MR. LANDFAIR: I believe they're three stories.
MR. ABRAMS: And how many feet are usually in a story?
MR. LANDFAIR: Approximately 10 feet.
MR. ABRAMS: So where does the extra space come from to get to 53 feet?
MR. LANDFAIR: It would be the peak of the roof and, of course, you have the garage below. The height, when you're dealing with sloped roofs is measured between the peak and the eave.

MR. ABRAMS: When you're talking about the side of the building before we get to the roof element --
MR. LANDFAIR: Right.
MR. ABRAMS: -- would that be approximately 40 feet?
MR. LANDFAIR: To the eave?
MR. ABRAMS: To the --
MR. LANDFAIR: Before you get to the roof, in other words, here's a peak in the roof?
MR. ABRAMS: Yes, before you get to the eaves.
MR. LANDFAIR: Correct. Approximately.
MR. ABRAMS: All right. And the windows are just below the eaves?
MR. LANDFAIR: Yes.
MR. ABRAMS: So the upper floors would have full view of the upper stories of the proposed building, correct?
MR. LANDFAIR: Of those sticks that are directly opposite, yes.
MR. ABRAMS: Now this is a common sense type thing. Is it really fair to compare pitched roofs with the flat roof building when you're talking about effects on occupants of a building?
MR. LANDFAIR: It's obviously very different. I mean flat roofs are flat roofs.
MR. ABRAMS: So the perception would be totally

different, wouldn't it?
MR. LANDFAIR: I think for most people the perception of a sloped roof versus pitched would be different, yes, or flat.
MR. ABRAMS: Okay. We went out on a site visit yesterday and were you there?
MR. LANDFAIR: I was not, no.
MR. ABRAMS: You were not? Okay. Well, we walked along Hampden Lane and I want to ask you a couple questions about that.
MR. LANDFAIR: Sure.
MR. ABRAMS: Is Hampden Lane at a significantly lower elevation than Montgomery Lane?
MR. LANDFAIR: It is at a lower elevation generally than Montgomery Lane, yes, but as with Montgomery Lane, it's not uniformly flat. There is a slope to it, realizing that --
MR. ABRAMS: In some areas isn't the elevation difference as much as 12 feet?
MR. LANDFAIR: Yes, I'd say that.
MR. ABRAMS: And aren't there significant retaining walls between the City Homes property and what is a current development, I guess single-family residences facing Hampden Lane, including the HOC building?
MR. LANDFAIR: Yes, there's substantial masonry

retaining walls.
MR. ABRAMS: And do you know how high those walls are?
MR. LANDFAIR: Approximately 10 to 12 feet.
MR. ABRAMS: So when you talk about the development of the proposed project on Hampden Lane and you indicated that that was 71 feet at its highest point, isn't that really below the 70 feet of the building height of the subject property?
MR. LANDFAIR: Based on the contour elevation, yes.
MR. ABRAMS: Now with the Hampden Lane building being at a lower elevation than Montgomery Lane and at the City Homes developments, basically isn't the City Homes town homes at the same elevation as the 48-foot high HOC building?
MR. LANDFAIR: Yes, they are, give or take a foot.
MR. ABRAMS: Do you know how many units are in the HOC building?
MR. LANDFAIR: No, I do not.
MR. ABRAMS: Could you also get that number for us --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- as a submission?
MS. HARRIS: Objection.

MS. ROBESON: Yes, he doesn't have to get it. I mean you can provide that number.
MS. HARRIS: And I, actually, if we could go back to the other information that they requested? If opponent's counsel wants that information, they can very, they can research it just as well as applicant's can, experts can.
MR. ABRAMS: Well, when they make certain opinions as to things, we have to know what that's based upon. And I think it's part of cross-examination to test the veracity of the foundation of an opinion.
MS. ROBESON: Well, that is true, but it's a question of who provides it and it's, you know, at some level it's your burden of proof to obtain the information unless you're unable to obtain it. So --
MR. ABRAMS: Well, the information that we have obtained is that there are 12 units.
MS. ROBESON: Well, you can testify to that in your --
MR. ABRAMS: Well, I don't want to testify. I want to find out if he knows.
MS. ROBESON: Well, he's already said he doesn't know.
MR. ABRAMS: Okay.
MS. ROBESON: So he doesn't have to provide the information.

MS. HARRIS: And if we can go back for a moment on the questions about the elevations that he requested that applicant's expert researched that as well, does Mr. Abrams have those answers? I mean I don't, I don't know that it's necessary for --
MS. ROBESON: Yes, I know. I'm just trying to get through this case in five days. So if you have the information, I would appreciate your providing it. If you don't, Mr. Abrams, if you have it readily at hand, I would appreciate your providing it. If you don't, Mr. Abrams, you're going to have to provide it, okay?
MS. HARRIS: Certainly.
MS. ROBESON: Okay. Well, let's go.
MS. HARRIS: Thank you.
MS. ROBESON: He doesn't, he didn't know how many units are in the HOC --
MR. ABRAMS: Okay.
MS. ROBESON: -- project.
MR. ABRAMS: But he is still going to provide us with the building coverages that he said, which were part of his own exhibit?
MS. ROBESON: Yes, that I think that that would be too difficult for Mr. Abrams to provide since you have the base information on the building coverage. So I do, I am requesting you provide that. I'm not talking about it more.

I think -- yes?
MS. HARRIS: I just need a clarification because earlier this morning Mr. Abrams requested building elevations, but then you just said building coverage. Were you referring to -- so I'm not clear what you're referring to.
MS. ROBESON: I --
MR. ABRAMS: The --
MS. ROBESON: Yes, I thought he asked for the building coverages as well.
MR. ABRAMS: Well, the building coverages is part of an exhibit which compares the different developments with the Sector Plan and I asked Bill yesterday where are those in the Sector Plan. He didn't have them available. I asked him to, if he --
MS. HARRIS: You reference in the Sector Plan is what you asked.
MR. ABRAMS: Well, the reference, yes, either to this property in terms --
MS. HARRIS: Not the specific building coverages.
MR. ABRAMS: -- of building coverages or general reference as to what maximum building coverage would be for the transit station district.
MS. HARRIS: As --
MS. ROBESON: What are you asking for, Mr. Abrams,

exactly?
MR. ABRAMS: I'm --
MS. ROBESON: Do you want the actual building coverages?
MR. ABRAMS: No. I want to know where, first of all, where he got the building coverages from that were representative --
MS. ROBESON: That he used for that exhibit?
MR. ABRAMS: -- in that exhibit.
MS. ROBESON: Okay.
MR. ABRAMS: Okay? Number two, where are the references in the Sector Plan to building coverages either generally for this district or specifically for these individual properties?
MS. ROBESON: So and you have a problem with --
MS. HARRIS: We don't have a plan that showed percentages of building coverages. We never calculated that. We know it for our building, I presume, our project. We don't know it for the surrounding projects.
MS. ROBESON: Where, where --
MR. ABRAMS: Well --
MS. ROBESON: -- which exhibit are you referring to?
MR. ABRAMS: It's the exhibit of comparison to the Sector Plan. It's the chart.

MS. ROBESON: Oh, the chart? Is that -- I know the exhibit, I just don't have the number. Is it 84, which is this? Well, I don't see building coverage on --
MR. ABRAMS: No, this is not the exhibit.
MS. ROBESON: Okay. Well, I think it would be helpful to identify the exhibits so I can figure out -- can the applicant help with the exhibits?
MS. HARRIS: The exhibit that I believe Mr. Abrams is referring to is the Sector Plan recommendations exhibit.
MS. ROBESON: So that was 60 in the DPA file, is that correct --
MS. HARRIS: Just one moment.
MR. ABRAMS: Yes, 60 in the --
MS. ROBESON: -- if memory serves?
MR. ABRAMS: -- development plan amendment file.
MS. ROBESON: Yes. Okay.
MR. ABRAMS: And I don't know what the corresponding number is.
MS. ROBESON: Well, let's just go with a number we know for the moment.
MR. ABRAMS: Yes, it's Exhibit 6, well, it's development plan amendment Exhibit 6. Well, this is it. This is what I'm talking about.
MS. ROBESON: Okay. And what do you want from that exhibit?

MR. ABRAMS: Okay. There is a column there that says higher building coverage. It says yes or Sector Plan recommendation under --
MS. ROBESON: That's one you cross-examined on at length yesterday.
MR. ABRAMS: That's right. That's correct.
MS. ROBESON: Okay.
MR. ABRAMS: And I want to know, you know, what are the building coverages and how did he come up with them? And how did he compare those supplements in the Sector Plan?
MS. HARRIS: Well, I think it would be helpful on cross, we will, we can determine how those determinations were made on the chart as to which ones had higher building coverage, but it did not involve a precise calculation and, therefore, I don't think -- my objection is that I don't want to have to go back and calculate that.
MR. ABRAMS: Well, I mean it goes to the veracity --
MS. ROBESON: Well --
MR. ABRAMS: -- of the exhibit.
MS. ROBESON: -- it's not up to Mr. Abrams to ask you to provide information. So, you know, but the burden of proof is on you.
MS. HARRIS: Absolutely.
MS. ROBESON: So you, you can, I hope at some

point tell us how you arrived at that information if it wasn't from the actual building coverages. So, Mr. Abrams, I'm not going to require them to provide it. I am -- and hopefully they will explain what the basis of their exhibit is.
MR. ABRAMS: So I understand that you will, in terms of this ruling, it will go to the weight that you afford this particular --
MS. ROBESON: Exactly.
MR. ABRAMS: -- exhibit rather than --
MS. ROBESON: That is exactly correct.
MR. ABRAMS: -- the admissibility? Okay.
MS. ROBESON: I'm going to leave it to the applicant to convince us that their exhibits are accurate and support what they say.
MR. ABRAMS: Okay. With reference to that specific exhibit, again, it's the compliance with the Sector Plan chart, who made up the comparison column in the left side?
MR. LANDFAIR: Various members of the consulting team.
MR. ABRAMS: Were you included?
MR. LANDFAIR: It was a joint effort.
MR. ABRAMS: Were you included?
MR. LANDFAIR: I don't know if I actually

specifically reviewed for the high edge at Edgemoor, that particular column in terms of particular responses.
MR. ABRAMS: You don't know specifically among the witnesses that are listed or the applicant who contributed to that description?
MR. LANDFAIR: I would say amongst the members of the team it would include the attorney, the architect. I could very well have played a role, but I don't recollect whether that particular column in terms of addressing these specific Sector Plan findings, whether I actually provided any of the responses.
MR. ABRAMS: But they did consult you at least on that exhibit?
MR. LANDFAIR: Yes, on the overall exhibit, yes.
MR. ABRAMS: Was it basically a subjective type of yes/no type answer?
MR. LANDFAIR: To a degree, yes.
MR. ABRAMS: Now that chart says under the column for City Homes, no in the column where you had locating entrances where the units are on the first floor, do you see that?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Don't you enter the City Homes units on the first floor?
MR. LANDFAIR: Well, actually I believe in most

cases, but not all cases, they're stepped up, they have steps. So they're not necessarily at the ground level. You do step up. The ground floor or the first floor would be above the garage units.

MR. ABRAMS: Well, you would go into the garage and you would enter the interior of the house from the garage. The garage would be on the first floor and that would be an entry point into the house, right?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay.

MS. ROBESON: Okay. No speaking, no nodding heads. It's very distracting. I'm sorry, the witness is here to testify what he knows. He doesn't need prompting nor, you know, you can consult with your clients, but quietly. Okay. Go ahead.

MR. ABRAMS: I didn't do anything.

MS. ROBESON: I'm not -- I'm not putting you in timeout. I'm just saying -- I'll put her in timeout.

MS. HARRIS: No, it is very distracting, so --

MR. ABRAMS: Yes, please. No, please.

MS. ROBESON: She can, she, I mean if you can -- well, then sit up next to them or something, you know, but I can't have that. Okay. Go ahead.

MR. ABRAMS: Have you been in any of these townhouse units?

MR. LANDFAIR: Actually I have. It's been quite some time ago, but I have been in one of the units, yes.

MR. ABRAMS: So if you can actually enter, and many people do enter through the garages to the house, the -- doesn't the no really, couldn't that be a yes?

MR. LANDFAIR: If we were to say, yes, enter in through the garage, yes, we could do that, we could put yes.

MR. ABRAMS: Okay. On the new development plan 106a, what is the setback from the face of the building the first five stories to the property line along Montgomery Lane?

MR. LANDFAIR: 10 feet.

MR. ABRAMS: 10 feet? And that was the same setback, 10 feet, in the original plan and throughout the first Planning Board meeting?

MR. LANDFAIR: That's correct.

MR. ABRAMS: Now -- and there was a 10-foot setback along West Lane which hasn't changed?

MR. LANDFAIR: The setback from the right-of-way of the line is less than 10 feet.

MR. ABRAMS: It was less than 10 feet?

MR. LANDFAIR: From the right-of-way line.

MR. ABRAMS: Well, the right-of-way line is next to the property line, isn't it?

MR. LANDFAIR: No.

MR. ABRAMS: No?

MR. LANDFAIR: It's set off by about 4 feet.

MR. ABRAMS: What is the length of that 10-foot area along the front of the building on Montgomery Lane?

MR. LANDFAIR: I'm estimating approximately 50 feet. I'm relying upon the scale which is a 1-inch to 20 scale.

MR. ABRAMS: And that's for the, from the --

MR. LANDFAIR: That's from the westernmost corner of the building --

MR. ABRAMS: Yes.

MR. LANDFAIR: -- to the easternmost corner.

MR. ABRAMS: No, no, I'm going back a little, before you changed the plan. The original plan had a 10-foot setback along the entire southern portion of the building, correct?

MR. LANDFAIR: Correct.

MR. ABRAMS: Okay. Now what is the length of that 10-foot setback before the plan changed?

MR. LANDFAIR: I'd have to reference that plan, but you've got another 20 feet to it, 25 feet to it.

MR. ABRAMS: Do we have a scale? Why don't you just measure it?

MR. LANDFAIR: Yes.

MS. HARRIS: Here.

MR. ABRAMS: Thank you very much.

MR. LANDFAIR: Great. 150, 150 feet. I'm sorry. About 108 feet, again, measuring from the westernmost corner to the easternmost corner.

MR. ABRAMS: It's 108 feet?

MR. LANDFAIR: Yes.

MR. ABRAMS: Are you sure it's not closer to 80 feet?

MR. LANDFAIR: No.

MR. ABRAMS: Okay. 108 feet? Now that setback area, again, before any change with the cut out at the corner --

MR. LANDFAIR: Yes.

MR. ABRAMS: -- and even now, that was recommended as public use space in the Sector Plan?

MR. LANDFAIR: I'm sorry, say, could you repeat the question again?

MR. ABRAMS: The setback area which you just described, 108 foot --

MR. LANDFAIR: Yes.

MR. ABRAMS: -- 10-foot setback --

MR. LANDFAIR: Yes.

MR. ABRAMS: -- in front of the building, was that not recommended for streetscaping and like a special sheeting area consistent with the mixed use street in a

Sector Plan?
MR. LANDFAIR: Yes. Yes.
MR. ABRAMS: And I'm specifically referring for the Examiner's record page 82 of the Sector Plan. Now originally part of the applicant's plan, and this is again before the Planning Board made a comment and you changed the plan, they recommended -- where was the public use space for this property in addition to the front?
MR. LANDFAIR: Before the plan was changed?
MR. ABRAMS: Yes.
MR. LANDFAIR: Right. The public use space, like most of the other TSR projects in the vicinity, relied upon the frontage of the property between the right-of-way line from Montgomery Lane and West Lane, but then we also had a substantial amount of public use space located to the north side of the building.
MR. ABRAMS: Were you involved in meetings with your client and City Homes representatives to discuss the development plan?
MR. LANDFAIR: No.
MR. ABRAMS: You were not? Were you aware that City Homes had requested the public use space on the north side to be transferred to the Montgomery Lane frontage?
MR. LANDFAIR: I was aware that there were concerns on the part of City Homes to expand upon the public

use space along particularly Montgomery Lane. I recognize there were concerns about, from some citizens about the ability of the public use space on the north side of the building. I'm aware of all that.
MR. ABRAMS: Okay. Are you aware also that the City Homes had requested that the way by be enlarged on West Lane?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And were you likewise informed that City Homes requested that the 65-foot height limit in the Sector Plan and the 2.5 FAR be complied with in this plan?
MR. LANDFAIR: Among other requests, yes.
MR. ABRAMS: And it was at a Planning Board meeting where the Planning Board discussed the public use space and where it should be located, correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: And as a result of that, you had changed the plan to the point where it is now reflected on Exhibit 106a?
MR. LANDFAIR: Right. What we have done is we are now calculating our public use space along frontage of the property with Montgomery Lane and West Lane. We have increased what was previously provided at the corner. We've increased that amount now. Just the area at the corner for

the pocket park scales out at about 1,000 square feet. In addition to that, we are still retaining the area on the north side of the building. We're not counting it as public use space. I would characterize it more as onsite amenity area, but we're still retaining that area. So in terms of the design of that space, that has not changed. It will still be accessible to the public, but we're not counting it as public use space. In terms of technically speaking, what is counted towards public use space, it's primarily along the frontage with both Montgomery and West Lanes and then within the pocket park itself.
MR. ABRAMS: What's the public going to do back there?
MR. LANDFAIR: There will be hardscape treatment. There will be benches. There will be landscaping. They could go back. They could read a book. It also holds open the option in the future if and when the Edgemoor at Arlington North develops, they could consider a joint option to allow access from our property through their property and vice versa, effectively creating a mid-block crossing.
MR. ABRAMS: But that was sort of dismissed, was it not, by the Planning Board?
MR. LANDFAIR: It was, the idea was not dismissed. What was suggested by the Board is that could happen in the future. We don't know if that will happen in the future, so

we would like you to reconsider how you are technically defining the public use space. But I think the Board recognizes and appreciates that we are still retaining this area and holding out the option that in the future it may become more a legitimate public use space. But right now it's not technically being counted as such.
MR. ABRAMS: Now how much public use space was there on the north side of the building?
MR. LANDFAIR: I think probably a third of what was counted towards public use space was on the north side, so it was a substantial amount.
MR. ABRAMS: And originally the public use space was 4,092 square feet?
MR. LANDFAIR: I don't have the plan to reference. I don't know if that number is correct.
MR. ABRAMS: Well, it's either Exhibit 39a or Development Plan Exhibit 29a. On all of the plans prior to the change, or the cut out was, wasn't the public use space 4,092 square feet?
MR. LANDFAIR: I'll have to refer to the exhibit.
MR. ABRAMS: Well, can you look it up?
MS. ROBESON: Well, that, rather than finding the exhibit, since we have so many, can he assume that that's what it was?
MR. ABRAMS: If he has no problem with that

assumption.
MR. LANDFAIR: I have no problem with that assumption.
MS. ROBESON: Okay.
MR. LANDFAIR: It sounds about right.
MS. ROBESON: I'm just trying to save time.
MR. LANDFAIR: Sure.
MS. ROBESON: So if you feel, or hypothetically whatever --
MR. LANDFAIR: It sounds about right, but --
MS. ROBESON: You don't know for sure? Okay.
MR. LANDFAIR: -- if I'm to say with precision --
MS. ROBESON: Well, assume --
MR. LANDFAIR: -- I'd have to reference the plan.
MS. ROBESON: Well, assume that that's what it was.
MR. LANDFAIR: That's fine. That's fine.
MR. ABRAMS: Okay. So we have a 15-foot public use space in the old plan which went the entire length of the rear of the property?
MR. LANDFAIR: Correct. That's right.
MR. ABRAMS: Okay. And you say it's about a third, but you're not absolutely sure?
MR. LANDFAIR: Right.
MR. ABRAMS: It's certainly more than the 10-foot

section in the front of the building?
MR. LANDFAIR: Yes, I would agree.
MR. ABRAMS: Okay. Now in terms of transferring public use space, is it, hasn't the public use space decreased in the most current plan over the one that was originally filed and submitted to the Planning Board?
MR. LANDFAIR: In terms of what is being counted as public use space, the amount has decreased, but in terms of area that would be enjoyed by the public, I'm counting the public use space that goes towards the zoning requirement, as well as the amenity area on the north side. That overall area has expanded and I don't think a member of the general public walking along the street would, unless they had a plan in hand, think, well, gosh, this is what's counting towards the zoning requirement and this is what's counting towards just, you know, the general amenity area.
In terms of the overall area that will be landscaped, that will have hardscape, that could be enjoyed by the public, that area has expanded over the original plan.
MR. ABRAMS: But that's private property, it's not public property, correct?
MR. LANDFAIR: On the north side that would be private property.
MR. ABRAMS: Okay. Would you erect signs saying

public welcome or how would you get people up there?
MR. LANDFAIR: I don't think they're -- right now it's not designed to that degree of detail. I don't think we would anticipate putting the gate up or putting signage up at this point in time. But because it's on private property and because it's not technically counting towards public use space, we would hold open the option of at least limiting the hours of public access. But, again, that hasn't been discussed amongst the team or worked on any specific plans.
MR. ABRAMS: Well, in any event, the total area of public use space has been significantly reduced, has it not?
MR. LANDFAIR: The area that's counting towards the zoning requirement has been reduced.
MS. ROBESON: What's the difference between public use space, I don't have the definitions, and just open space, amenity space --
MR. LANDFAIR: There's a public use space --
MS. ROBESON: -- do you have a --
MR. LANDFAIR: -- requirement. The zoning ordinance suggests we need to provide a minimum requirement of public use space.
MS. ROBESON: Right.
MR. LANDFAIR: And it's a somewhat subjective finding in terms of what qualifies as public use space.

Public use space typically can either be active space, meaning there would be hardscape, there would be --
MS. ROBESON: Is there a legal definition -- my, what I'm getting at is is --
MR. LANDFAIR: Is it specifically defined in the ordinance?
MS. ROBESON: Yes.
MR. LANDFAIR: No, not to any great detail.
MS. ROBESON: Okay. I'm sorry. Go ahead. I'll look it up later. Go ahead.
MR. ABRAMS: Now the public use space along the frontage, which is 10-feet wide, that's five feet less than the public use space for the existing approved plan for the holiday project, is it not?
MR. LANDFAIR: I don't know. I'd have to pull out that plan. I actually might have that plan. No, I have elevations. I don't have the plan itself. So I'm prepared to, assuming what you're stating --
MS. ROBESON: Hypothetically --
MR. LANDFAIR: -- hypothetically what you're stating is --
MR. ABRAMS: Hypothetically it was 15 feet?
MR. LANDFAIR: -- correct.
MR. ABRAMS: And weren't you --
MS. ROBESON: Thank you.

MR. ABRAMS: -- involved in that project?
MR. LANDFAIR: I was, yes.
MR. ABRAMS: And didn't you have a planning report --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- for that project?
MR. LANDFAIR: Yes. I have not reviewed it in some time.
MR. ABRAMS: Okay. Now in that 10 feet for the current project --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- what's going in there?
MR. LANDFAIR: It's not been completely refined, but I think I do have an exhibit. Bear with me for a moment.
MS. ROBESON: Which are, I'm sorry?
MR. ABRAMS: The 10 feet between the front building or the southern portion of the building and, I guess, the sidewalk is the --
MR. LANDFAIR: It will be a mixture of landscape and hardscape. I may have --
MS. ROBESON: Hardscape meaning benches?
MR. LANDFAIR: Hardscape meaning pavers, but that might include benches and such. If you'll just bear with me for a moment, we may have an exhibit that the landscape

architect put together.
MS. ROBESON: Maybe, maybe --
MR. ABRAMS: You know, all I'm asking for is what's going to be.
MR. LANDFAIR: It's a mixture of landscape and hardscape. Most of the hardscape came closer to the actual entrance.
MR. KNOPF: Excuse me, does that have a number?
MS. ROBESON: Okay.
MR. LANDFAIR: This is an exhibit titled very simply site plan. It's dated February 15th. It was part of the February 15th submittal to the Hearing Examiner's office.
MS. ROBESON: February 15th?
MR. LANDFAIR: Yes.
MS. ROBESON: So that would be in the eighties, I think.
MS. HARRIS: I believe it's 86.
MS. ROBESON: 86? It would be helpful -- we spend a lot of time, and I'm, there's a lot of exhibits and they're all, I know that it's been through a lot of iterations, but for the hearing it would be helpful if both, for people cross-examining and for you if we have quick access to the exhibit numbers so we can get through this. Anyway, keep going. It's 86?

MR. LANDFAIR: So right now it's contemplated to be planted. There would be a landscape bed. There would be ornamental trees. There would be ground cover. Benches are contemplated along the sidewalk. So, again, a mixture of hardscape and landscape.
MR. ABRAMS: Okay. Would there be trees planted in that area?
MR. LANDFAIR: Yes, there would be, ornamental trees as currently contemplated, yes.
MR. ABRAMS: And as far as the Park and Planning Commission is concerned, they have regulations dealing with the distance between planting trees and obstacles?
MR. LANDFAIR: Distances between trees --
MR. ABRAMS: Yes.
MR. LANDFAIR: -- and obstacles?
MR. ABRAMS: Off of center line, how many feet off of center line?
MR. LANDFAIR: There are rules of thought that I find the Department follows. There are the Bethesda streetscape guidelines, which also make suggestions, however, Park and Planning historically, particularly in urban areas, will allow for a great deal of flexibility between particularly the spacing of trees, recognizing that there is an awful lot going on within the urban environment, within the public right-of-way, lights, signage, etcetera.

So --
MS. ROBESON: I don't think I saw any trees there yesterday. I may be wrong, except within the courtyards of City Homes.
MR. LANDFAIR: There are street trees that have been planted.
MS. ROBESON: I saw the benches.
MR. LANDFAIR: -- as part of the TSR developments along Montgomery Lane and then there are trees that have been planted by the County as well. They're not mature.
MS. ROBESON: Okay. Maybe that's why.
MR. LANDFAIR: Easy to miss.
MS. ROBESON: Okay.
MR. ABRAMS: Okay. The spacing rules of thumb, if you will, are to prevent crowding of trees with other trees?
MR. LANDFAIR: Sure, depending upon the species of the tree, right. You want to ensure the health of the tree. You want to make sure it's going to thrive, so --
MR. ABRAMS: Okay.
MR. LANDFAIR: -- spacing is part of that.
MR. ABRAMS: Within the 10-foot area, would you basically put a tree five feet from either the sidewalk --
MR. LANDFAIR: Five feet on center?
MR. ABRAMS: Yes.
MR. LANDFAIR: That strikes me as a bit close, but

it depends on the species of the tree.
MR. ABRAMS: Well --
MR. LANDFAIR: If it's a small ornamental tree --
MR. ABRAMS: -- my question, I guess, is getting to the point is if you have a very constricted site like that, the crown of the tree would have to be very small not to be touching or hitting the side of a building in a 10-foot space, wouldn't it?
MR. LANDFAIR: If it's small or a middle tree, I don't think there would be any problem. You know, typically you'll have some maintenance. You will want to ensure that doesn't crowd any of the other trees or the building, but I wouldn't suggest that 10 feet in and of itself is that narrow a confine for a certain species of small, ornamental trees or shrubs or ground cover or such.
MS. ROBESON: Well, Mr. Abrams, can you mark that, the exhibit number was 80 --
MR. LANDFAIR: I have. It's No. 80. I've marked it in the lower right corner.
MS. ROBESON: Thank you.
MR. ABRAMS: Is that a new exhibit?
MS. ROBESON: No.
MR. LANDFAIR: No, this exhibit was --
MS. ROBESON: No, no.
MR. LANDFAIR: -- submitted to the record on

February 15th.
MR. ABRAMS: And as what, exhibit what?
MR. LANDFAIR: It's Exhibit No. 86 and it's titled simply site plan.
MR. ABRAMS: Now in addition to the relocation of the open space, public open space from the north to the south of the building, what I'm trying to determine is where, where that ended up if it did end up at all on the southern side of the building? Can you explain?
MR. LANDFAIR: In terms of the --
MR. ABRAMS: 15-foot wide, 106 feet across from the north section, how did that end up in the southern section facing Montgomery Lane?
MR. LANDFAIR: How is it defined? How is the actual area defined?
MR. ABRAMS: Well, what is the difference in terms of square footage, what you had originally and what you have now, which appears to be 2,841 square foot as compared to previously 4,092 square feet?
MR. LANDFAIR: Well, in part, the building has, the setback for the building has changed a little bit along West Lane and there are fluctuations in terms of the building footprint. I know at one point, and if it's not actually officially part of the record, I know we had produced it, so it would be easy to include it in the

record. We had produced an exhibit that defined the precision, the area that we were calculating as the quote, public use space, unquote, for zoning purposes. So we can --
MS. ROBESON: Well, can you describe exactly what area it is?
MR. LANDFAIR: Essentially the area is all in the frontage.
MS. ROBESON: Of West Lane?
MR. LANDFAIR: West Lane. It includes the 1,000 plus square feet for the pocket park --
MS. ROBESON: Right.
MR. LANDFAIR: -- at the corner and it includes the frontage along Montgomery Lane itself. It does not include any part of the north side, the area that was formerly counted towards public use space, nor does it include the area that immediately surrounds the transformer pads.
MS. ROBESON: Okay.
MR. ABRAMS: I guess what I'm trying to find out and the bottom line is if there's a difference of approximately 1,200 square feet between what was previously offered as public use space and what we have in this current plan, where is the 1,200 square feet?
MR. LANDFAIR: I can simply define the area.

MS. ROBESON: Were the transformers part of the public use space before?
MR. ABRAMS: Yes, ma'am.
MR. LANDFAIR: Previously there was an area surrounding the transformers. I don't think we ever counted the transformer pads themselves.
MR. ABRAMS: Well, it's on your prior exhibit.
MS. ROBESON: So could it be --
MR. LANDFAIR: There is an exhibit --
MS. ROBESON: Yes.
MR. LANDFAIR: -- that was submitted. It was part of the February 15th packet which is titled design comparison and what it's doing is it's showing the public use space as it was originally calculated for the Holiday project. It shows it calculated or defined rather for the previously proposed development plan for this project and then it shows how it's calculated now for this project based on the new development plan.
MS. ROBESON: And do you know what exhibit that is?
KNOPF: Exhibit 85.
MS. HARRIS: 85.
MR. LANDFAIR: 85.
MS. ROBESON: 85. Okay. Thank you.
MR. ABRAMS: So in Exhibit 85, Mr. Landfair, in

the previously proposed plan, it extends it all the way down to the West Lane right-of-way, right?
MR. LANDFAIR: Correct, yes.
MR. ABRAMS: Okay. And it does the same with the exception of the utility box in the current plan?
MR. LANDFAIR: Pairing this to this?
MR. ABRAMS: Yes.
MR. LANDFAIR: I prepared this exhibit, so I don't know, this exhibit was done purely for general illustrative purposes on the original development plan and any exhibits that we would have provided with that original development plan. I don't believe that we actually counted the transformer pad areas for public use.
MS. ROBESON: Well, see the iteration all the way to, if you're facing that plan, all the way to the right, you'll see a white box there?
MR. LANDFAIR: Yes. Right.
MS. ROBESON: Is that the transformer pad?
MR. LANDFAIR: That's the transformer pads, correct.
MS. ROBESON: And is the dark green on that Exhibit 85, is that the, is that the private amenity space or the --
MR. LANDFAIR: Right. In all three cases in terms of whether we're referencing the Holiday plan, the old

development plan --
MS. ROBESON: Correct.
MR. LANDFAIR: -- for this project or the current development plan --
MS. ROBESON: Right.
MR. LANDFAIR: -- the dark green represents the, what I would characterize as onsite amenity area, private amenity area --
MS. ROBESON: Right.
MR. LANDFAIR: -- for the residents. The lighter green is what is the public use space that's counting towards the zoning --
MS. ROBESON: What --
MR. LANDFAIR: -- ordinance requirements.
MS. ROBESON: Okay. What is the setback from that rear property line required in the zone?
MR. LANDFAIR: There isn't.
MS. ROBESON: Is there?
MR. LANDFAIR: We've always proposed 15 feet. That's never changed. So between the old plan and the new plan, that distance has always held true. It's always been 15 feet.
MS. ROBESON: Okay. Continue.
MR. ABRAMS: So I guess the question, at least I didn't hear an answer, of course, where did the 1,200 square

feet go?
MR. LANDFAIR: All I can tell you is that it's always been defined as the area between the building and the right-of-way line between Montgomery Lane and West Lane in terms of the public use space. Previous plan 21, 25, 2,125 square feet of that public use space, a substantial amount, was on the north side. On the south side, it's all along the frontage here, West Lane and Montgomery Lane.
MR. ABRAMS: When it was transferred from the north side to the south side and you tried to find out the difference --
MR. LANDFAIR: In part, it's a reflection of the pocket park which in and of itself has added 1,000 square feet, almost half of what was found on the north side. In addition, the building has a more varied footprint along the West Lane side which allows for some additional public use space.
MR. ABRAMS: Okay. But you're counting in 1,000 square feet the 10-foot setback from the original plan for public use space? So that's not new, that's there.
MS. HARRIS: I'm going to object. I think the witness has clearly established what was calculated as public use space previously --
MR. ABRAMS: Well --
MS. HARRIS: -- what he's calculated now and then

a portion that was previously calculated, though it continues to be open green space, is not classified as public use space. I don't see where the line of reasoning, the line of questioning is going.
MS. ROBESON: Yes, I -- what are you trying to get at?
MR. ABRAMS: What I'm trying to get at is the area that they have moved now --
MS. ROBESON: Well, it's not necessarily moved. I think what he's saying is that just by making that --
MR. LANDFAIR: Adjustment.
MS. ROBESON: -- amenity space, he's got a net loss of, you know, 1,000 square feet. But I don't think that they moved, I don't think necessarily it's been moved anywhere.
MR. LANDFAIR: It's still approximately in the same area, but we're taking advantage of the fact that the building now has a scalloped corner which adds a tremendous amount of public use space at the corner and, again, the building has some fluctuation now along the West Lane side which also provides for some additional public use space. Is there a net loss? Technically speaking in terms of public use space, yes, but is there a net gain in terms overall area, amenity area that could be enjoyed by the public, yes, there is.

MR. ABRAMS: My point is in this area, my line of questioning is that it is not 1,000 square feet. That is the total area within the cut out, the former cut out, but you have to subtract from that, the 10-foot setback that was originally along the entire frontage of the building.
MS. ROBESON: Okay. So --
MR. ABRAMS: So it's 1,000 square feet, it's something less than 1,000 square feet.
MS. ROBESON: I understand. Are you double counting?
MR. ABRAMS: No.
MS. ROBESON: No, seriously.
MR. LANDFAIR: Seriously, we're not. We're not double counting. It's not a case of --
MS. ROBESON: If you measure all the area along Montgomery Lane, including the arc and all the West Lane --
MR. LANDFAIR: Yes.
MS. ROBESON: Okay.
MR. LANDFAIR: The area as we currently have defined on this exhibit.
MS. ROBESON: What is that amount? I mean it's got to be on the development plan, doesn't it?
MR. LANDFAIR: It's, yes, roughly 2,200 square feet. Well, it's actually about 2,800 square feet.
MS. ROBESON: 2,800 square feet?

MR. LANDFAIR: Right.
MS. ROBESON: And that is all of the area, when you came up with that 2,800 square feet, that's all of the area shown in the light green?
MR. LANDFAIR: Yes.
MS. ROBESON: That doesn't assist you?
MR. ABRAMS: What I'm trying to do is have this witness, when he says 1,000 square feet, advise whether he's including or not including the original 10-foot setback area from --
MR. LANDFAIR: It's --
MS. ROBESON: Wait. Let him finish.
MR. ABRAMS: -- Montgomery Lane.
MS. ROBESON: I'm sorry, I couldn't hear.
MR. ABRAMS: From Montgomery Lane because we contend that if you take that 10-foot setback area, the number that he has been using for that entire circular area is not 1,000, but something less than 1,000 because it's, as you said, it's double-counting the area.
MS. ROBESON: Okay. So, okay. So if you took just the circular area exclusive of the 10-foot right-of-way along Montgomery Lane, what would the -- how big would that space be? At one point I remember you testified something like 680, but I could be wrong. So I guess --
MR. LANDFAIR: I made that point actually at

yesterdays' hearing.
MS. ROBESON: Yes.
MR. LANDFAIR: We might have suggested something like 600, 600 plus.
MS. ROBESON: Yes. Well, I guess the question now is, and I think it's a fair question, what is the area net of the 10-foot frontage, 10-foot strip of frontage?
MR. LANDFAIR: I --
MS. ROBESON: Is that your question?
MR. LANDFAIR: I don't know.
MR. ABRAMS: It's 10-foot and since it's on a corner, not only is it a 10-foot setback from Montgomery Lane, but also a portion of the 10-foot setback from West Lane.
MS. ROBESON: Okay. So maybe what I'd like is if you can't figure it out right now that the applicant could provide us with that measurement --
MR. LANDFAIR: Certainly. We can break it out into --
MS. ROBESON: Well, maybe even on redirect if you can do that. So I'm not going to ask you to stand here and scale it off now, but if you could do so at some point on redirect, that would be helpful.
MR. LANDFAIR: Sure.
MS. ROBESON: Okay. Go ahead.

MR. ABRAMS: Okay. Mr. Landfair, so are we in agreement that the public use owned space went, was reduced by some 1,200 square feet?
MR. LANDFAIR: From a zoning perspective it was reduced, correct.
MR. ABRAMS: Okay. And essentially in the most current plan the north area has not changed at all in terms of setback?
MR. LANDFAIR: Correct. Right. The spatial arrangements, the distance, the setbacks all remain the same for that northern area.
MR. ABRAMS: Okay. In terms of the West Lane frontage, the only difference is certain cut outs on the building?
MR. LANDFAIR: Primarily, yes.
MR. ABRAMS: Yes. So it's still basically a 10-foot setback for most of the building?
MR. LANDFAIR: Yes.
MR. ABRAMS: So that hadn't really changed a whole lot? Okay. And in the frontage, the only change is the circular element at the corner?
MR. LANDFAIR: Correct, but that's --
MR. ABRAMS: Okay.
MR. LANDFAIR: -- a substantial contribution to the public realm.

MS. ROBESON: Well, would it be better from a land planning perspective because it does seem unlikely that that rear area is going to get a lot of use, but that's, you can prove me wrong. Would it be better from a land planning perspective to scoot the building back further?
MR. LANDFAIR: No.
MR. ABRAMS: And why is that?
MR. LANDFAIR: You're taking this wall that is so helpful, this continuous wall that will provide a sense of enclosure that helps to define the street line, the building line, the street edge, the pedestrian experience. When you start to pull it back too far, you're starting to create a space that is actually less welcoming. Typically, in fact, when Park and Planning staff are reviewing these applications, in fact, that actual point came up with the Sandy Spring builders project on the opposite side of the street.
MS. ROBESON: Which is 4825?
MR. LANDFAIR: 4825, right, because it is difficult sometimes to provide adequate, onsite public use space. They were thinking we'll just pull the building back. We'll put it all up front on the street, perhaps the citizens, the neighbors will enjoy a benefit. Maybe we can design it so it looks attractive. The response from the Planning Department was, no, we don't want to see that. We

don't want to see setbacks that are excessive from the street. In our case, we're providing 26 feet if you count the public right-of-way.
MS. ROBESON: From where?
MR. LANDFAIR: From the building face to the face of the curve along Montgomery Lane. That's certainly consistent, if not more setback than most of the other projects up and down the street. So it's substantial. So we felt there would be nothing --
MS. ROBESON: Okay.
MR. LANDFAIR: -- to gain to do that and, of course, it would then impact the possibilities for this amenity area on the north side of the building. We don't want to preclude what may happen in the future, either for our residents or perhaps for some future mid-block crossing that may or may not take place. We don't want to preclude the possibilities.
MS. ROBESON: And Mr. Abrams.
MR. ABRAMS: So this is the same planning staff that okayed a 15-foot setback for the Holiday project thought?
MR. LANDFAIR: It was the staff from the Planning Department. I don't know if it was the exact same reviewers. I suspect not.
MR. ABRAMS: But, okay. But they recommended a

deeper setback than what apparently was recommended by them in this case?
MR. LANDFAIR: There may be other reasons for doing that. In part, it may have had to do with the relationship to the corner property, what is known as the Wolf property, lot 26, which is now incorporated as part of our development.
MS. ROBESON: But you don't know that?
MR. LANDFAIR: I don't know.
MR. ABRAMS: Okay. We're traveling around this property?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. There basically haven't been any changes to the north, to the east, to the south with the exception of the cut out. Now to the west, you pull the building three feet closer in the southwest section?
MR. LANDFAIR: The building had a varied line. There was one portion of the west facade, building facade which was at 15 feet. There was one portion which was at 12 feet. And, yes, it's now been reduced consistently into 12 feet.
MR. ABRAMS: Now the private use space in the original plans and the private use space in those current plans, they're the same, correct?
MR. LANDFAIR: Yes, for the most part. There is

some very slight changes, but the overall shape, programming, etcetera is about the same, yes.
MR. ABRAMS: Okay. So if you reduce the public use space, you expand the foot pad of the building in the southwest corner by three feet. Does that mean that the building size has increased?
MR. LANDFAIR: The building footprint size --
MR. ABRAMS: Yes.
MR. LANDFAIR: -- is basically the same. It's like a balloon. When you squeeze it at one end or make adjustments to one end, there's a tension there that, you know, if you're going to hold to roughly the same square footage, which I believe we have for the building footprint, it's roughly the same.
MR. ABRAMS: But this is a vertical wall situation with the exception of the cut outs at the top?
MR. LANDFAIR: True.
MR. ABRAMS: So the foot pads under the same, from the first through the fifth floor is it essentially?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Again, my question is with a, the same private use space, less public use space, expansion of the footpad of the building on the west by three feet, don't you have more building square footage?
MR. LANDFAIR: You're dismissing the area to the

north in terms of this amenity area. The square footage of the building remains roughly the same, plus or minus a few feet. I don't think there's been a substantial change in the overall square footage of the building.

MR. ABRAMS: Well, how do you account for the expansion of the footpad and the reduction in the public use space? Where does that go?

MR. LANDFAIR: Well, a substantial amount of that has simply been discounted for zoning purposes from the north side.

MR. ABRAMS: Well, you had the same amount --

MR. LANDFAIR: Correct.

MR. ABRAMS: -- of private use space --

MR. LANDFAIR: Right.

MR. ABRAMS: -- as you've always had?

MS. HARRIS: I would like to object. The line of questioning goes to questions that the architect will be able to answer. The witness is a land planner. He wasn't involved in the square footage decisions of the --

MR. ABRAMS: He was involved in describing the public use space.

MS. ROBESON: Well, so what you're saying is that the public use space decisions were determined by the architect, is that --

MS. HARRIS: No, I think the witness has

explicitly explained the public use space situation. As I understand the current question, it goes to the square footage within the building envelope and the architect can answer those. The land planner is not qualified to answer those questions.

MS. ROBESON: Well, let me do this. Whether he should be or shouldn't be, I'm reserving judgment on it. But if he doesn't know the answer, Mr. Abrams, it seems pointless to continue that and we'll improve that and you can pursue that line of questions with the architect.

MR. ABRAMS: Okay. The interior floor area has not changed?

MR. LANDFAIR: I don't believe so.

MR. ABRAMS: Now in terms of your original amount of square footage for public use space, 4,092, would it have been more, would it have been to the public benefit to still provide that amount of public use space as compared to what is provided in your most current plan?

MR. LANDFAIR: Is more better than less? We still feel that --

MS. ROBESON: That's a question. I'm waiting for the answer.

MR. LANDFAIR: Obviously, if you have more public use space as defined by the zoning ordinance, that's going to be preferable than less public use space, but you cannot

discount the other amenity area that we are providing. That's just, that's --

MR. ABRAMS: Nobody is --

MR. LANDFAIR: -- not right.

MR. ABRAMS: Nobody is discounting it, I'm just trying to figure out the rationale of the applicant in terms of its decisions on public use space. Now in terms of the public use space, if you have blank slate like this property, you can basically configure the building anyway you want, put the public use space anywhere you want except that it has to be usable, feasible to the public. Now if that public use space were somehow devoted more to a setback along the building frontage of Montgomery Lane, it doesn't have to be a whole lot, but if you provided more public use space, wouldn't that be utilized more by the public than your private use space to the rear?

MR. LANDFAIR: It would certainly be visible to the general public. It depends on how it's designed in terms of whether it would be more enjoyable. I suspect that most members of the public as they walk along wouldn't be able to tell whether it's 26 feet of streetscape or 27 or 28 feet of streetscape along there. You know, if you added a foot or two to the length of the public use space that's being provided, in my opinion I don't think it would substantially increase the enjoyment for the general public.

MR. ABRAMS: So even if you had the 15-foot originally approved or existing approval, you don't think that's any better than the 10 feet which you add now?

MR. LANDFAIR: It would depend on how it's designed, but I don't think it would be substantially improved, no.

MR. ABRAMS: Now in the surrounding --

MS. ROBESON: Well, wait, I have a question. If you can't perceive the difference of three feet, why would technical staff insist on -- I mean if you can't perceive the distance between 10 feet and 13 feet, why would technical staff insist on this straight line building, straight line streetscape?

MR. LANDFAIR: Well, it's an urban design concept and you're trying to establish in part a sense of enclosure for the street to make it a more comfortable experience. You're defining the borders for the streetscape. We are achieving 26 feet from building face to face of curb.

MS. ROBESON: Yes, I understand that.

MS. LANDFAIR: That includes public right-of-way as well as our setback from the right-of-way line. That's a substantial amount, particularly in comparison with the other projects that have been approved or built up and down Montgomery Lane.

MS. ROBESON: Well, I have to say that -- I'm not

sure how Montgomery Lane turned out the way it was, somewhat piece meal perhaps and too many exceptions to the Master Plan and the late comer is possibly paying the price for that. But -- and I think the concept of this is good. I -- it's very difficult for me to think why you would put useless space in the rear of that project because if West Lane is going to be full of trucks, or not full of trucks, but you know West Lane goes nowhere really except to this hammerhead turnaround.

MR. LANDFAIR: Right.

MS. ROBESON: So I guess I'm having difficulty seeing why in the world you would have, you know, you could still leave an alleyway, you know, with 10 feet.

MR. LANDFAIR: You're speaking of the north side?

MS. ROBESON: Yes. Why in the world wouldn't you pull it back when public use space, when it's such a tight site?

MR. LANDFAIR: Well, there's other considerations in terms of the setbacks from the northern property line. Why we are doing that, in part --

MS. ROBESON: Well, is it -- don't you back up in part to that tennis where the rec area?

MR. LANDFAIR: Yes. There is, and it's for the nearby Chase development --

MS. ROBESON: Right.

MR. LANDFAIR: -- high rise. You have on top of structured parking you have tennis courts there --

MS. ROBESON: Right.

MR. LANDFAIR: -- that's true, right. But we're also trying to establish compatibility with the Villages of Bethesda. We also have our own issues.

MS. ROBESON: Well, if you can't perceive five feet difference --

MR. LANDFAIR: Right.

MS. ROBESON: -- why do they care if it's five feet?

MR. LANDFAIR: Well, there's a difference between standing here in your backyard in the Villages of Bethesda looking out across this buffer area, this open space area to our building and somebody walking along the street and perceiving, wow, this is 28 feet versus 26 feet versus 24 feet. I don't think, particularly if it's well-designed and we believe that it will be a well-designed streetscape both consistent with Bethesda streetscape guidelines, as well as the need to make this a very attractive development. We believe that we can accomplish what we need to accomplish within that 26 feet.

MS. ROBESON: I guess -- okay. Go ahead. Keep going because we need to get through this.

MR. LANDFAIR: Sure. Okay.

MR. ABRAMS: I'd like to direct your attention --

MS. ROBESON: Mr. Abrams, how many more questions do you have?

MR. ABRAMS: Probably about an hour and a half.

MS. ROBESON: No, you can't, you got to have a way to get this done more quickly. Let's do this. Let's take a five minute break and I'm going to let Mr. Abrams find a way to get this done more quickly, okay, or a 10 minute break.

(Recess)

MS. ROBESON: Okay. Is everyone ready? Are you ready, court reporter? Okay. We're back on the record.

MR. ABRAMS: Okay. Mr. Landfair, I believe you were the expert witness in the Holiday --

MR. LANDFAIR: Yes.

MR. ABRAMS: -- project? And in terms of Exhibit 101g, which I believe is the Hearing Examiner's report from the Holiday project, that's application G-843, did you not testify that the applicant provided in that case generous setbacks in that case? And I'm specifically referring to page 30 of the Hearing Examiner's report with a reference of the Hearing Examiner.

MS. ROBESON: Is that 101g in our record?

MR. ABRAMS: Yes.

MS. ROBESON: Okay.

MR. KNOPF: Is it e or g?

MR. ABRAMS: I'm trying not to pull this stuff out to --

MS. ROBESON: Thanks.

MR. ABRAMS: -- to try to --

MS. ROBESON: That's great.

MR. LANDFAIR: I assume you're correct.

MR. ABRAMS: Okay. Okay. Now the 15 feet that face, the face of the Holiday building that was along Montgomery Lane, that was a 4-story element, was it not?

MR. LANDFAIR: I believe it was 48 feet.

MR. ABRAMS: 48 feet?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. And the element along Montgomery Lane on this project is 70 feet, right?

MR. LANDFAIR: 50 feet. 50 feet and then it steps --

MR. ABRAMS: Steps back?

MR. LANDFAIR: Steps back.

MR. ABRAMS: All right. The step back in the Holiday plan -- how far was the 4-foot element back to the six, the four, 48 foot element back to the 60-foot height element?

MR. LANDFAIR: The step back was substantial for Holiday.

MS. ROBESON: Well, what does that mean?

MR. ABRAMS: What does it -- yes.
MR. LANDFAIR: It steps back to the center part of the building. However, I will note that there were two penthouses, I believe, that were located on top of that 48-foot wing of the Holiday building. So it wasn't just a flat roof. You have penthouses.
MR. ABRAMS: So you're comparing a 48-foot section with the penthouses --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- going back to the mid-portion, it appears, from that exhibit of the Holiday building to a 12-foot setback on the top two floors of the subject property?
MR. LANDFAIR: It's different. It's different.
MR. ABRAMS: Okay. Quite a bit different, isn't it?
MR. LANDFAIR: It's different.
MR. ABRAMS: All right. I want to ask you some questions generally, so you can have a seat.
MR. LANDFAIR: Sure.
MR. ABRAMS: And if you can try to -- I don't know whether I need your back or I need your front.
MS. ROBESON: Actually, if you can, if you can just move to, close to where those --
MR. ABRAMS: Yes, why don't you move, right, to the end? That's it.

MS. ROBESON: There you go. I want to make sure you're, no, don't look at me. I want to make sure your counsel can see you. So this is fine. I can see your face. I think Mr. Abrams can. And can you, Ms. Harris?
MS. HARRIS: I'm going to move right here.
MS. ROBESON: Thank you. I appreciate that.
MR. ABRAMS: Now I want to speak for a moment in general terms about compatibility which is an element of this application, is it not?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And the compatibility element would be within the surrounding neighborhood which you've, or the staff has defined as a TSR district?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And in terms of compatibility, it's more important with respect to the buildings and occupants closest to the subject property than it would be in the fringe elements of the surrounding neighborhood?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now it's important from the standpoint of both the findings required in the development plan, as well as in the TSR zone. And are those findings in terms of the Development Plan Section 59b, 1.61(b)(c)? Just trying to make it easier for you when you do the --
MS. ROBESON: Yes, I'll answer that. Yes, they

are.
MR. ABRAMS: Okay. And with reference to the purposes of the TSR Zone, that section would be Section 59c 8.22, is that correct?
MR. LANDFAIR: It sounds correct, yes.
MR. ABRAMS: Okay. Now can an application for rezoning and a development plan approval meet all of the development standards in the zone and still not be compatible with the adjacent development, particularly the most immediate development?
MR. LANDFAIR: Because that finding of compatibility is somewhat subjective, yes, one could make a finding that you satisfy the criteria, but nevertheless there would be an issue with compatibility.
MR. ABRAMS: Okay. In fact, aren't there, and TSR zone is the flooding zone?
MR. LANDFAIR: Yes, correct.
MR. ABRAMS: Okay. And in many of the flooding zones, don't they have a specific indication that the fact that you comply with all the development standards does not mean or require a finding of compatibility?
MR. LANDFAIR: It's quite common, yes.
MR. ABRAMS: Does the requirement for the provision of MPDU's override any required finding that an application for TSR zoning and the development plan be

compatible with the adjacent development?
MR. LANDFAIR: Would conformance with the MPDU requirements found in the County Code, would they supersede any findings in the zoning ordinance --
MR. ABRAMS: Yes.
MR. LANDFAIR: -- particularly with respect to compatibility? No, I would say no.
MR. ABRAMS: Okay. Now in determining compatibility with adjacent development, you basically look at a number of different elements, do you not?
MR. LANDFAIR: Sure.
MR. ABRAMS: And would those elements include such things as use, density, height, bulk?
MR. LANDFAIR: Massing, setbacks.
MR. ABRAMS: Yes.
MR. LANDFAIR: Yes.
MR. ABRAMS: A bunch of different factors?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now are the recommendations contained in the Master Plan and the Sector Plan with respect to these elements, are they promulgated to evaluate the issue of compatibility as well as guide future development?
MR. LANDFAIR: Yes.
MR. ABRAMS: So what's in the Master Plan or Sector Plan? Is there also for the purposes of determining

a baseline for compatibility?
MR. LANDFAIR: Yes.
MR. ABRAMS: Now in order to evaluate whether an application is or is not compatible, you have to establish what is already developed --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- in the immediate neighborhood.
MR. LANDFAIR: Uh-huh.
MR. ABRAMS: And I guess you've described what is in the immediate neighborhood by virtue of some of the exhibits?
MR. LANDFAIR: Right.
MR. ABRAMS: We don't have to go over those at the point, this point. Now each of those properties, both existing and approved, they all had an approved development plan, did they not?
MR. LANDFAIR: Those properties that were approved for the TSR zone, yes.
MR. ABRAMS: Okay. And as part of that finding the District Council found that they were compatible and in compliance with the Sector Plan?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And with reference, again, to those projects which were immediately adjacent to this property, this property has the highest FAR and is the

tallest building of any of the surrounding buildings?
MR. LANDFAIR: In the immediate adjacency, yes.
MR. ABRAMS: Okay. Now in terms of the Holiday project which was G-843 as an application number, that was approved in 2007?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now that project, likewise, was also found to be compatible according to the District Council --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- resolution? And also according to the Hearing Examiner's recommendation?
MR. LANDFAIR: Correct.
MR. ABRAMS: And for purpose of the Hearing Examiner's review, I'm referring to Exhibit 101c as a copy of the Council resolution Exhibit 101d, as a copy of the Hearing Examiner's report. So in approving the Holiday project, the District Council, as well as the Hearing Examiner in recommending approval of the project considered the building height, the density, the form of development, scale of development, things of that nature?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Now with these findings in the Holiday case, is it reasonable to conclude that a model or baseline for evaluating compatibility exists with reference

to this case?
MR. LANDFAIR: Are you saying that every project, every development, every proposal that would follow the Holiday proposal for this property would need to follow the baseline as you say in terms of building massing height to setbacks, etcetera? If that's the case, I would say no.
MR. ABRAMS: Okay. No, that's not the case.
MR. LANDFAIR: Okay.
MR. ABRAMS: The case is if there has been a finding of compatibility that there were certain elements associated with that development and --
MR. LANDFAIR: Sure.
MR. ABRAMS: -- is that or is that not some of, one of the baselines in terms of compatibility and obviously you can have greater height still be compatible, you can have lesser height still be compatible, that type of thing.
MR. LANDFAIR: Sure, many of the --
MR. ABRAMS: Okay.
MR. LANDFAIR: -- same elements, right. You could design a hundred different buildings for this site.
MR. ABRAMS: So let's compare what happened at Holiday with what is being proposed here. In G-843, you had 48 dwelling units proposed which included six MPDU's, is that correct?
MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. And the subject application, we have up to 120 dwelling units, is that correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So you were talking about somewhere between two and three times the number, actually three times the number of units that was already approved?
MR. LANDFAIR: Yes.
MR. ABRAMS: The recorder can't get the nod of the head. Is that affirmative?
MR. LANDFAIR: Yes, that's an affirmative.
MR. ABRAMS: Okay. The 2.5 FAR is the FAR which was approved in the Holiday project, correct?
MR. LANDFAIR: Yes. Correct.
MR. ABRAMS: And that also included the MPDU's --
MR. LANDFAIR: Yes, it did.
MR. ABRAMS: -- within the FAR?
MR. LANDFAIR: Right.
MR. ABRAMS: Okay. And what you're proposing or the applicant is proposing is a 3.05 FAR for this project?
MR. LANDFAIR: True.
MR. ABRAMS: Okay. 73 dwelling units were proposed and approved in the Holiday project, is that correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: 73 dwelling units to the acre?

MR. LANDFAIR: To the acre, correct.
MR. ABRAMS: Correct.
MR. LANDFAIR: Right.
MR. ABRAMS: And what is the dwelling unit per acre which is requested here?
MR. LANDFAIR: It's more than that. I think we've, I don't know the number offhand. I could get that number very quickly for you.
MR. ABRAMS: Would it be around 127 dwelling units --
MR. LANDFAIR: Something like that, yeah.
MR. ABRAMS: -- to 130 something? So we're talking about in excess of 40 percent increase?
MR. LANDFAIR: An increase certainly, yes.
MR. ABRAMS: Yes. In the number of dwelling units per acre?
MR. LANDFAIR: Yeah.
MR. ABRAMS: Okay. And dwelling units per acre is a measurement of density, correct?
MR. LANDFAIR: Yes. Yes, it is.
MR. ABRAMS: Okay. Going on to the comparison, we have a building design in the Holiday project which is a 4-story element facing Montgomery Lane going halfway back to the length of the project and then sort of transitioning into a 6-story element, is that correct?

MR. LANDFAIR: Correct. Yes. Yes.
MR. ABRAMS: And here we have the front of this building which is five stories with a little 12-story, 12-foot indentation?
MR. LANDFAIR: 50 feet with a 12-foot step back.
MR. ABRAMS: Okay.
MR. LANDFAIR: Yeah.
MR. ABRAMS: Now in the Holiday project, you had a design for 78 parking spaces, is that correct?
MR. LANDFAIR: It sounds right.
MR. ABRAMS: Here, what's the number of parking spaces?
MS. ROBESON: Mr. Abrams, where, I know that you, he testified that 843 was a baseline. Do we have to go through every aspect of the project or is there some --
MR. ABRAMS: Well, I'm finished with establishing the baseline. The whole focus of this exercise --
MS. ROBESON: Because I think he said the baseline can go higher.
MR. ABRAMS: Yes.
MS. ROBESON: Okay.
MR. ABRAMS: My point is how much higher?
MS. ROBESON: Okay. If we could get to that point, that would be good.
MR. ABRAMS: Okay.

MR. LANDFAIR: 123 is the proposed parking for this new project.
MR. ABRAMS: And we were talking about a 15-foot setback, correct, in the Holiday project on Montgomery Lane?
MR. LANDFAIR: Correct.
MR. ABRAMS: And this building is five feet closer as proposed?
MR. LANDFAIR: From the right-of-way line, correct.
MR. ABRAMS: Okay. So we have, would you not agree that there's quite a comparative difference between the two projects?
MR. LANDFAIR: In terms of density, there is a difference, but you're also comparing apples with oranges. This project incorporates a fourth lot, the lot at the corner and makes better, more efficient use of the overall land area. Also, this project is providing 15 percent MPDU's, which entitles us to a bonus which also is addressed through the additional height that we are seeking.
MR. ABRAMS: But Holiday provided 12 1/2 percent MPDU's?
MR. LANDFAIR: Correct. Correct.
MR. ABRAMS: Now when do we get to a point in time where what is being proposed becomes incompatible in your view?

MR. LANDFAIR: Well, it depends on a number of issues having to do with building height, building massing, setbacks. It's not necessarily just what's on the interior of the building, meaning numbers of units or numbers of parking spaces. In this case, our density is partly a reflection of the 15 percent MPDU's that we are providing which is affordable housing, which is consistent with the Sector Plan recommendations.
In this case, we believe the building as designed, as reflected on the development plan, as reflected in the other exhibits, is fully compatible based on, again, the height, the massing, the setbacks, the amount of public use space, etcetera.
MR. ABRAMS: Well, there's nothing that says that the applicant can't voluntarily supply the same number of MPDU's as you're providing?
MR. LANDFAIR: There's nothing to say that you can't do that. I don't know of an instance where that's ever been done except perhaps through some public/private partnership, but I can't imagine that our land developer would take it upon themselves to do that because, of course, MPDU's are very expensive to construct and there would be no advantage to doing that.
MR. ABRAMS: Well, if they got an exception a good deal on the land prices, would that, in essence --

MR. LANDFAIR: I can't speculate on motivations.
MR. ABRAMS: Okay. Let's go into Sector Plan and conformance. Is it correct to say that there are really only two areas where the Sector Plan and the zoning ordinance limits in terms of height and I guess it's density are exceeded and that is with respect to the actual building height and the actual density in terms of FAR I guess it is?
MR. LANDFAIR: Right. Right.
MR. ABRAMS: And this is only with the provision or the application of the MPDU --
MR. LANDFAIR: Right.
MR. ABRAMS: -- in excess of the minimum amount required?
MR. LANDFAIR: Right.
MR. ABRAMS: Okay. Okay. All other recommendations in the Sector Plan aren't given the same type of exemption or waiver or whatever --
MR. LANDFAIR: Correct.
MR. ABRAMS: -- so then if there were other requirements in the Sector Plan, they should be looked at in terms of compliance?
MR. LANDFAIR: Certainly.
MR. ABRAMS: Now there are a number of pages I just want to go over with you.
MR. LANDFAIR: Uh-huh.

MR. ABRAMS: And they involve Exhibit 101 and Exhibit 56d and e.
MS. ROBESON: What -- can you tell us what those exhibits were?
MR. ABRAMS: Yes, they're pages out of the Sector Plan.
MS. ROBESON: Oh. Mr. Landfair, so you have a copy of the --
MR. LANDFAIR: I have a copy of the Sector Plan.
MR. ABRAMS: Do you have a copy of the Sector Plan?
MS. ROBESON: -- Sector Plan?
MR. LANDFAIR: Yes, I do.
MS. ROBESON: Okay. So that's taken care of.
MR. ABRAMS: Okay.
MS. ROBESON: Is the Sector Plan the full Sector Plan in exhibit, in this case?
MR. ABRAMS: I don't know. I have been putting in H's --
MS. ROBESON: I'm going to --
MR. ABRAMS: -- which are relevant to --
MS. ROBESON: Right. I am going to --
MR. ABRAMS: -- my examination.
MS. ROBESON: -- just take official notice of the Bethesda's Sector Plan as it appears on Park and Planning's

website, which is basically a photograph of it.
MR. LANDFAIR: I think ordinarily your office actually, if not requires, strongly encourages applicants to provide a full copy of --
MS. ROBESON: Well, if you're willing to --
MR. LANDFAIR: I think we've done so, so I think you may want to check the exhibit list.
MS. ROBESON: I haven't seen it.
MR. LANDFAIR: Okay. Well, we'll be happy to provide it.
MS. ROBESON: And I -- so if you want to provide that, that would be great.
MR. KNOPF: I just worry. Sometimes the pagination comes out differently than what's on the website.
MS. ROBESON: Okay. Then if you can submit the hard copy, that would be helpful. Does, is Mr. Doggett proffering a hard copy for the record?
MR. KNOPF: He's just showing he has his own copy.
MS. ROBESON: Okay. All right. Okay. Go ahead.
MR. ABRAMS: Okay. Do you have a copy there?
MR. LANDFAIR: I do, yeah. Yes.
MR. ABRAMS: And I'll refer to Exhibit 101a and it would be page 37, Mr. Landfair. These are under general objectives, paragraph No. 4.
MR. LANDFAIR: 4, that would be under, okay, so

it's titled No. 4 at the top of the page?
MR. ABRAMS: Paragraph No. 4 at the top.
MR. LANDFAIR: Yes.
MR. ABRAMS: Right.
MR. LANDFAIR: That --
MR. ABRAMS: Could you review that to yourself for a second?
MR. LANDFAIR: Sure.
MR. ABRAMS: Okay. In terms of the pedestrian environment and the stimulating experience, wouldn't more occur if you had more public use space in the front of the building?
MR. LANDFAIR: It would depend upon the design. But to get back to what we're actually proposing, what we're actually proposing is substantial and at least as much, if not more so than any other project up or down Montgomery Lane. We are providing a substantial amount of streetscape, amount of space, area for the pedestrian experience. I testified yesterday to the value of striking a good balance between pedestrian area, pedestrian space and vehicle space. And along this particular segment of Montgomery Lane, we have a substantial amount of area on both sides of the street, but certainly on our side of the street as for the benefit of the pedestrian, 26 feet from the face of the building to the face of the curb. That's a substantial

amount of area.
Could it be improved upon if you set aside some additional area that would be technically defined as public use space? Maybe, maybe not. I mean it depends upon the design. But the design right now is showing landscape, hardscape treatment, as well as the Bethesda streetscape, and we feel that this is quite substantial.
MR. ABRAMS: In terms of building height, and that's discussed on page 39 --
MR. LANDFAIR: There's a figure titled building height limits.
MR. ABRAMS: Right.
MR. LANDFAIR: Yes.
MR. ABRAMS: And, specifically, this property is within what height limit area?
MR. LANDFAIR: The height limit area, it's designated as 65 feet.
MR. ABRAMS: Okay. Now Exhibit, or on page 40, and I'm directing your attention to -- and this discusses urban form, paragraph 2, first of all, and specifically the first sentence in that paragraph.
MR. LANDFAIR: Establishing a desirable and compatible transition.
MR. ABRAMS: Step down building heights?
MR. LANDFAIR: Yes.

MR. ABRAMS: Have you reviewed that?
MR. LANDFAIR: Yeah.
MR. ABRAMS: Okay. With the exception of the subject building, there are step down building heights going down from Woodmont Avenue to Arlington Road?
MR. LANDFAIR: Starting with the Edgemoor Highrise at 100 feet and then 4825 Montgomery Lane at 65 feet, true.
MR. ABRAMS: And in many cases some of those transitions have occurred within the same building project, correct?
MR. LANDFAIR: True. Case in point, the Hampden Lane --
MR. ABRAMS: Such as the one to the west --
MR. LANDFAIR: -- project, sure.
MR. ABRAMS: -- has a 35-foot --
MS. ROBESON: Let him finish the question. Don't talk over him or it gets garbled on the tape.
MR. LANDFAIR: Understood. Thank you.
MR. ABRAMS: Such as the 35-foot element, you know, in front of the 48-foot element. The same goes for the Hampden Lane buildings?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. Why wasn't that type of transition considered for this project?
MR. LANDFAIR: Well, we are providing transition.

We're providing a transition from Montgomery Lane to the rear side of the building. In other words, we have step back starting at the 5th floor of the building, starting at the 50-foot high mark stepping back 12 feet to further mitigate the massing and the height of the building as viewed from Montgomery Lane.
MR. ABRAMS: But that's not what the Sector Plan says. It's talking about transitions from east down to the west.
MR. LANDFAIR: True. True.
MR. ABRAMS: You're talking about north to south?
MR. LANDFAIR: Right. But if you were to establish that, and it gets back to the tenting effect that's described in the Sector Plan, if you were to start measuring that tenting effect from the high rise, the Edgemoor Highrise, I think as was testified yesterday you'd have this plane and top portion of the 70-foot mark of our building might actually pierce that plane, okay? But if you establish that plane in the Metro core district, okay, if you set it back a bit more to the higher buildings just across the street at Woodmont Avenue, we easily fit within that plane, that tenting effect that's been established that's delineated here in the Sector Plan.
MR. ABRAMS: Isn't it a fact that all the approved projects in the TSR District which have the step down

effect, the step down effect runs north and south as opposed to east and west?
MR. LANDFAIR: Hampden Lane is from east to west --
MR. ABRAMS: Well --
MR. LANDFAIR: -- stepping toward Arlington.
MR. ABRAMS: -- it's also north to south, correct?
MR. LANDFAIR: Hampden Lane, the Hampden Lane building?
MR. ABRAMS: The big building?
MR. LANDFAIR: That's not been constructed yet, that's --
MR. ABRAMS: Right.
MR. LANDFAIR: It doesn't step back from Hampden Lane.
MR. LANDFAIR: No, it's stepped back from Arlington?
MR. LANDFAIR: Yes, that's correct.
MR. ABRAMS: That's what I'm talking about.
MR. LANDFAIR: Right.
MR. ABRAMS: So that is part of the transition --
MR. LANDFAIR: Right.
MR. ABRAMS: -- going north to south?
MR. LANDFAIR: Well, from east to west I guess is how I'm thinking of it but, yes, I see your point.

MR. ABRAMS: No question with reference to the Edgemoor North, the Edgemoor to the west of this project, that's all north to south? Okay. Paragraph 3, achieve and fill character for new development by dividing large projects into several buildings which will achieve an urban form with fine grain versus coarse grain created by the larger, single structures. Has this project achieved that?

MR. LANDFAIR: We believe so, yes.

MR. ABRAMS: How?

MR. LANDFAIR: By providing substantial setbacks, setbacks that I might add are not normally required by the zone, nevertheless, we're providing substantial setbacks from all four sides of the property, from the right-of-way, as well as the adjacent neighboring properties, something that cannot be said of other nearby developments in the TSR zone. So, in part, by providing those setbacks, we're mitigating the massing of the building. So we believe that the size of the building, the building footprint, the massing fits the property and is consistent with the intent here in the Sector Plan.

MR. ABRAMS: Well, wouldn't it fit the intent of this if the 12-foot setback went along either the east or west boundary line of this property, in other words, carry it around? You're only affecting a setback on one, one side.

MR. LANDFAIR: To what end? What would be achieved by doing that? I don't know if that would increase compatibility or not.

MR. ABRAMS: Well, for one thing, it would reduce the FAR to the 2.5 which is noted in the Sector Plan.

MR. LANDFAIR: Yes, it would.

MR. ABRAMS: Okay. So we're not dividing this single project into several buildings, are we?

MR. LANDFAIR: Correct.

MR. ABRAMS: Okay. Now Item No. 5 on that same page, could you review that and tell us how we're treating the rooftop elements in conformance with this recommendation?

MR. LANDFAIR: What we have is a flat roof, a flat roof that steps back in part to achieve compatibility, particularly from the street. It's a flat roof that does have a penthouse to accommodate elevator, accommodate mechanical equipment, etcetera, that may or may not end up being other elements on that roof which could be used for recreational purposes, perhaps a passive area for benefit of the residence not designed yet, but it's possible. I would rather not speak beyond that. I would rather defer to the architect to speak to what rooftop elements we might have that would be fully consistent with this section.

MR. ABRAMS: But it's basically right now a flat

roof with a 10-foot punch out for a HVAC or whatever utilities?

MR. LANDFAIR: Sure. Yeah.

MR. ABRAMS: Elevators?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. On page 44, the next to the last paragraph, it talks about the mixed streets?

MR. LANDFAIR: Yes.

MR. ABRAMS: And how many mixed streets are there in this CBD area?

MR. LANDFAIR: There are two that are culled out in this plan, Montgomery Lane and Fairmont Avenue.

MR. ABRAMS: And the observations of the Hearing Examiner that it's basically geared to pedestrian orientation --

MR. LANDFAIR: Absolutely. A mixed street is --

MR. ABRAMS: -- as opposed to --

MR. LANDFAIR: -- essentially, it's designed to encourage, to foster good interconnectivity, a good pedestrian experience. That is the goal of a mixed street.

MR. ABRAMS: Okay. What is the other street?

MR. LANDFAIR: Fairmont Avenue, which is in the Woodmont triangle area. It's very much a commercial street. It's surrounded by CVD zoning.

MR. ABRAMS: That's a much more intensively

developed area, is it not?

MR. LANDFAIR: Yes, it is.

MR. ABRAMS: Now page 82 of the Sector Plan, I want to direct your attention to the middle of the page in the paragraph that starts, the plan recommends a minimum of 45 dwelling units, do you see that?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. Going down to the last sentence, it says the plan, and I quote,

"The plan anticipates that some projects will incorporate higher densities and the full 2.5 FAR density (about 100 dwelling units per acre) would be allowed."

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay? In terms of the full 2.5 FAR density, why was that language used, why do you think, if the density was already established in the TSR zone and elsewhere in the Sector Plan? Why the word full?

MR. LANDFAIR: Well, within this particular district, I think the planning staff probably envisioned that that was a perfectly appropriate density to have for what is further described in the Sector Plan as low rise development, but it is still characterized in the plan as low rise, high-density development as you can see on the following page. It was a number that staff thought would be

appropriate as a transitional area in a district such as the transit station residential district.
MR. ABRAMS: Well, why do you think that that language was used if it was already well-known what the density limits were?
MR. LANDFAIR: To reinforce the concept of a particular density.
MR. ABRAMS: Okay. So that was basically to be a cap even though we didn't have caps. Now you've had a report, did you not, in the prior zoning case which addressed that specific issue?
MR. LANDFAIR: The Holiday case?
MR. ABRAMS: The Holiday case, correct.
MR. LANDFAIR: Yes.
MR. ABRAMS: And in that case did you not state that the Holiday project was at the full 2.5 FAR?
MR. LANDFAIR: I may have. I assume that that's what is stated in the report.
MS. HARRIS: I'm going to object.
MS. ROBESON: Basis?
MS. HARRIS: The District Council, the Court of Appeals, this Court of Special Appeals have established it's clear where the line of questioning is going, that 3.05 FAR is perfectly acceptable in the TSR zone.
MS. ROBESON: What's your, what is the point

you're trying to ascertain, that the Master Plan should control density even with the MPDU bonus?
MR. ABRAMS: I'm saying that the discretion is there for both the District Council, as well as the Planning Commission to limit the FAR even if there is provisions for allowing higher heights because of the MPDU's or more density because of the MPDU's. It's part of the discretionary approvals even though the zoning ordinance allows something more. I mean that's built throughout the zoning ordinance.
MS. ROBESON: Yes, but the language, I do agree with Ms. Harris, I don't think we've ever interpreted it would, it may go to compatibility which I think is independent, but I am not aware of any case where we, where the County has taken the position that the 2.5 density in the Sector Plan would limit bonus density.
Now if your argument is compatibility, I agree with you that they still have to meet the compatibility requirement, but --
MR. ABRAMS: No, that's basically my argument.
MS. ROBESON: Okay. Well --
MR. ABRAMS: I'm not saying that it eliminates the ability to request additional MPDU's.
MS. ROBESON: But, okay, this -- I agree. I don't know if we need cross-examination from the master about the

Master Plan on this because if it is a compatibility issue, so that is, you know, I would not use the Master Plan as a cap per se.
MS. HARRIS: I believe Mr. Abrams in the last line of questioning established the fact that we need to prove compatibility. We all recognize that.
MR. ABRAMS: No, I said it was a baseline.
MS. ROBESON: No, what he established is that the guidelines of the Master Plan, I think what his questioning was was the, that the guidelines from the Master Plan are a baseline, perhaps that's what the questioning was, for compatibility. But I don't think that legally if you're trying to establish that the Sector Plan intended to include bonus, MPDU bonus density in its cap, we have never legally treated the Master Plan in that way.
MR. LANDFAIR: May I add something?
MS. ROBESON: No.
MR. ABRAMS: Okay. I found a copy of your report and it's Exhibit 101e.
MR. LANDFAIR: Okay.
MR. ABRAMS: Pat, do you have a copy that you can give to Bill?
MS. ROBESON: This is his report in the 843 case?
MR. ABRAMS: Yes.
MS. ROBESON: G-843?

MR. ABRAMS: Right.
MS. ROBESON: Okay.
MR. LANDFAIR: Okay.
MR. ABRAMS: Okay. Page 4. Come down to the first full paragraph.
MR. LANDFAIR: Yes.
MR. ABRAMS: Can you quote that please?
MR. LANDFAIR: First full paragraph, starting with the larger, 6-story component?
MR. ABRAMS: Correct.
MR. LANDFAIR: "The larger, 6-story component of the building will occupy the widest portion of the property and is designed to a height strictly consistent with the recommendations of the Sector Plan. The proposed --
MR. ABRAMS: That's good enough.
MR. LANDFAIR: Okay.
MR. ABRAMS: Let's go down further to the last paragraph.
MR. LANDFAIR: Uh-huh.
MR. ABRAMS: And how about, I guess if you can complete the entire paragraph in that?
MR. LANDFAIR: Starting with the building massing?
MR. ABRAMS: Yes.
MR. LANDFAIR: "The building massing has been carefully broken up to give it a low residential

scale along Montgomery Lane. At this southern end of the building, the design, including the townhouse-style facade, conforms to the existing scale of the City Homes townhouses and Edgemoor at Arlington buildings, completing the low rise, high-density urban village pattern along Montgomery Lane in accord with the Sector Plan's objections. To this end, the width of that portion of the building fronting Montgomery Lane is comparable to the widths of the City Homes across the street. In keeping with the character of Montgomery Lane, the Montgomery Lane facade of the building resembles a contemporary take on an urban town home. The east facade along the mews leading to the main building entrance is articulated at the corner with a bay window which transitions to simple punched windows at the center of the facade."

MR. ABRAMS: Okay. Does anything in this paragraph resemble the project today?

MR. LANDFAIR: It's describing a very different building obviously.

MR. ABRAMS: So the answer is no?

MR. LANDFAIR: It's describing a very different building. We, through different building articulations,

setbacks, building massing, the step back at the fifth floor are achieving similar goals.

MR. ABRAMS: Okay. This refers to the last portion of this, that paragraph, bay windows. Originally, you had bay windows in this project, did you not?

MR. LANDFAIR: On this project?

MR. ABRAMS: Yes.

MR. LANDFAIR: I don't recollect. I don't recollect.

MR. ABRAMS: Didn't you tell me that that was the only revision in --

MR. LANDFAIR: Bay windows?

MR. ABRAMS: Yes, eliminating any bay window reference?

MR. LANDFAIR: Did I testify to that? I don't remember.

MR. ABRAMS: No, you told me that.

MS. ROBESON: Well, then you can just say you don't remember.

MR. ABRAMS: Okay.

MS. ROBESON: Don't ask him what you testified to.

MR. ABRAMS: Okay. Let's go to page 8.

MR. LANDFAIR: Okay.

MR. ABRAMS: There's a big paragraph toward the lower portion that starts, the building has been designed --

MR. LANDFAIR: Yes.

MR. ABRAMS: -- do you see that?

MR. LANDFAIR: Yes.

MR. ABRAMS: Okay. Come down to the sentence starting, by maintaining a 4-story height.

MR. LANDFAIR: Yes.

MR. ABRAMS: Can you read that sentence?

MR. LANDFAIR: "By maintaining a 4-story height for the majority of that portion of that building along Montgomery Lane, the proposed development is respectful of the adjacent City Homes townhouses and the Edgemoor at Arlington buildings and will compliment these developments by providing further enhancements to Montgomery Lane."

MR. ABRAMS: That doesn't quite describe what the project is before us today, does it?

MR. LANDFAIR: Well, I would disagree. It describes our project as a different design, but I would still say that our project, again, through the building, massing, setbacks, etcetera, is fully compatible with those adjacent confronting uses.

MS. HARRIS: Madame Hearing Examiner, can we please just stipulate because I think everyone acknowledges that there is one project in the Holiday case and this is a different project. I don't know what's served by going back

in and focusing on every single distinction.

MR. ABRAMS: Well, it's called impeachment, Mrs. --

MS. ROBESON: Yes, I know what you're doing. I guess I'm not so swayed. He was selling one project at that time and now he's selling, I mean he was pointing out the benefits of the project at that time. This is a different project, so he's pointing out the benefits of this project. It doesn't carry a lot of weight with me because, you know, it is a different project. So --

MR. ABRAMS: Okay. I'll ask you just one more thing from this.

MR. LANDFAIR: Sure.

MR. ABRAMS: Starting on the bottom of page 9 going to the top of page 10 there's a bullet there that says 2.5 FAR density, page 82. I assume 82 is the Sector Plan page?

MR. LANDFAIR: That's probably what we're referencing, yes.

MR. ABRAMS: Okay. Can you read that paragraph on page 10, at the top of the page?

MR. LANDFAIR: "The Sector Plan recommends the full 2.5 FAR in the TSR zone as provided for by Zoning Ordinance Section 59c 8.4. Accordingly, the development plan proposes a total of 71,343 square feet or 2.5 FAR on

the property, accommodating 42 market rate units and six MPDU's."
MR. ABRAMS: Okay. So when you say the Sector Plan recommends the full 2.5 FAR --
MR. LANDFAIR: That's in the context -- you're asking a question?
MR. ABRAMS: What?
MR. LANDFAIR: You're asking me a question?
MS. ROBESON: You need to let him finish.
MR. LANDFAIR: Okay. I'm sorry.
MR. ABRAMS: In terms of what the Sector Plan recommends, you describe it as a full 2.5 FAR?
MR. LANDFAIR: Right.
MR. ABRAMS: Was the intention there to indicate to Hearing Examiner and to District Council that that is basically the high portion of the Sector Plan recommendation as to the FAR?
MR. LANDFAIR: If you're only providing the 12.5 percent MPDU's that they were providing in this particular project.
MR. ABRAMS: Well, you didn't say that.
MR. LANDFAIR: No, it doesn't, but I would not infer that that would be the absolute cap, particularly if you were providing the MPDU bonus that we are providing with this particular project to which we are entitled to the 3.05

FAR.
MR. ABRAMS: On page 83, the Sector Plan talks about providing unit entrances along the street front, does it not?
MR. LANDFAIR: Yes, it talks about relationships to the street. There's a figure, a figure, 4.14.
MR. ABRAMS: Right. Are there any unit entrances to this project to the street?
MR. LANDFAIR: Any unit, you mean individual units?
MR. ABRAMS: Isn't that what this is talking about?
MR. LANDFAIR: It could be read that way. I would say that we are not providing individual unit entrances to the street with this particular project.
MR. ABRAMS: Okay. In terms of what they're talking about, are you familiar with the project on Georgia Avenue just above the Wheaton?
MR. LANDFAIR: Wheaton Safeway?
MR. ABRAMS: No, not Wheaton Safeway. It's south of that. There's some apartments which were constructed by Buzzuto.
MR. LANDFAIR: Right, yeah, right there at the Metro entrance.
MR. ABRAMS: Yes.

MR. LANDFAIR: Yes.
MR. ABRAMS: Isn't that an example of an apartment, an apartment structure with the lower units having --
MR. LANDFAIR: Yes, it is.
MR. ABRAMS: -- single --
MR. LANDFAIR: Yes, and I can think of other examples too.
MR. ABRAMS: Okay. Is that what you believe they're talking about here?
MR. LANDFAIR: That's one illustration. That's one, one development concept, yes.
MR. ABRAMS: Now in the, when this first came before the Planning Commission for review, the chairperson, I believe, in her comments and fully in her recommendation to the Hearing Examiner, wasn't she of the opinion that the 100 dwelling units, 2.5 FAR was stated as a cap for development in this area?
MR. LANDFAIR: I don't think she meant to imply that is a cap with respect to what one would be entitled to through the MPDU bonus.
MR. ABRAMS: No, I'm talking about what was recommended by the Sector Plan with reference to a compatible form of development.
MR. LANDFAIR: She may very well have made that

statement. I don't remember her saying it, but I --
MR. ABRAMS: Well, do you have a copy of the --
MR. LANDFAIR: The resolution?
MR. ABRAMS: -- Planning Board recommendation?
MR. LANDFAIR: Not with me.
MS. ROBESON: Do you have an exhibit number?
MS. HARRIS: The original one, right?
MR. ABRAMS: Yes.
MR. LANDFAIR: Dated January 16th?
MS. ROBESON: I think that's the second one.
MR. ABRAMS: Yes.
MS. HARRIS: I'm sorry, here's --
MS. ROBESON: I think it's in the --
MS. HARRIS: January 2nd.
MR. KNOPF: I think it's 55. That's my guess.
MR. ABRAMS: Yes, that's probably 55.
MS. ROBESON: No, it's not -- oh, yes, it -- that's the -- okay. Let me look.
MR. ABRAMS: I think that's the first one.
MS. ROBESON: Yes. Okay.
MR. ABRAMS: Do you have a copy of that?
MS. HARRIS: That's what you wanted, the January 2nd one, correct?
MR. ABRAMS: Well, it was received January --
MS. HARRIS: The date of the letter is January

2nd?
MR. ABRAMS: I guess so. Let me see it.
MS. ROBESON: Yes, I've got to get them to change how they do this. We've had, well, another --
MR. ABRAMS: Okay. Yes, that's it. Mr. Landfair, can you read the top paragraph on page 2?
MR. LANDFAIR: "Montgomery County Planning Board of the Maryland National Capital Park and Planning Commission reviewed Local Map Amendment No. G-954 and Development Plan Amendment DPA 13-01 at our regular meeting."
MR. ABRAMS: On page 2, top of the page.
MR. LANDFAIR: I'm sorry. Starting with, "To achieve greater compatibility."?
MR. ABRAMS: Well, you can start at the prior page to get a complete sentence.
MR. LANDFAIR: Okay.
"While Commissioners Ms. Anderson, Dreyfus and Presley mind the development proposal as reflected on the development plan amendment application is of an appropriate density for the location of the development, Chair Carrier expressed a different opinion. Chair Carrier articulated that reducing the number of units is reasonable since the Sector Plan recommends

development in the TSR zone occur at a density of 45 to 100 dwelling units per acre. Chair Carrier recommended that the number of dwelling units be limited to 100 units, including moderately priced dwelling units."
MR. ABRAMS: Were you there when she made that statement?
MR. LANDFAIR: Yes, I was.
MR. ABRAMS: You can give that back.
MR. LANDFAIR: Great. Thank you.
MR. ABRAMS: Okay. Mr. Landfair, when there are maximum limits in a zoning ordinance in terms of the development standards, or for that matter minimums, does that mean that the applicant for approvals has a right to build to those maximums, their discretionary approvals which can require less than the maximum?
MR. LANDFAIR: Yes.
MR. ABRAMS: And that can occur in this case too?
MR. LANDFAIR: Theoretically.
MR. ABRAMS: Now in terms of the development in the TSR district, hasn't most of the land area been developed with less than the maximum in terms of height and building density?
MR. LANDFAIR: Certainly building density. There are exceptions to the height as we have testified to in

exhibit and testimony yesterday. But certainly with respect to density, many projects have provided less density than what the zoning would allow or the Sector Plan recommends.
MR. ABRAMS: And that's part of the discretionary approval of the District Council, correct?
MR. LANDFAIR: Correct.
MR. ABRAMS: So they could have approved more if more were requested or they could have rejected those with lesser density because of the MPDU housing policy?
MR. LANDFAIR: Or for other reasons.
MR. ABRAMS: Or for other reasons, correct. Nonetheless, they went ahead and chose to approve projects that had less impact in terms of the number of MPDU's provided?
MR. LANDFAIR: They have approved projects that provided fewer MPDU's, if any MPDU's at all.
MR. ABRAMS: And that establishes, does it not, an element of the character of the surrounding neighborhood?
MR. LANDFAIR: Not necessarily, no. The fact that they with respect to certain applications in this immediate area have approved them at certain densities or with or without MPDU's doesn't necessarily mean or establish a baseline for this particular project. I would say, no, that's not the case.
MR. ABRAMS: But it establishes a precedent as to

what they did in those prior cases?
MR. LANDFAIR: Yes.
MR. ABRAMS: And part of the precedent is a make-up of the current character of the neighborhood, is it not?
MR. LANDFAIR: Yes.
MR. ABRAMS: The Examiner, and I'm sure this witness will be happy to know, that I am forfeiting another day's worth of examination of this witness.
MS. ROBESON: Okay. Thank you. Thank you. I -- now we are going to have redirect for you. Does anyone --
MR. KNOPF: I thought I was supposed to get --
MS. ROBESON: I'm coming. I'm getting there. I was going to ask if anyone needs a five minute break. If not, we'll forge ahead.
MR. KNOPF: I need to get a little organized.
MS. ROBESON: What?
MR. KNOPF: I need to get a little organized.
MS. ROBESON: So you're asking for a five minute break?
MR. KNOPF: To see if I can get some -- yes.
MS. ROBESON: Five minutes, all right? And then we'll come back until -- so 1:46 and we'll come back at 1:15, until 1:15, all right?
MR. KNOPF: 12:46?
MS. ROBESON: Yes. Yes. All right.

(Recess)
MS. ROBESON: I'll give him a moment to tell me your name. I --
COURT REPORTER: Stephanie.
MS. ROBESON: Stephanie? Okay. Are you ready? All right. We're back on the record.
MR. KNOPF: Okay.
MS. ROBESON: So I believe we're at cross-examination by Mr. Knopf of Mr. Landfair.
MR. KNOPF: I do want to say that I'm trying to avoid any duplication of things --
MS. ROBESON: Oh, that --
MR. KNOPF: -- that were asked by --
MS. ROBESON: Yes.
MR. KNOPF: -- Mr. Abrams, but you may have to bear with me because my organization chart is a little bit off now --
MS. ROBESON: It's different? Okay?
MR. KNOPF: -- to say the least, plus I wasn't thinking I was going to go so soon, but anyway. Mr. Landfair, if I recall your testimony yesterday, you had said that one of the benefits of this project that met the Sector Plan requirements and the zoning requirements is that there was a diversity of housing? I'm not trying to put words in your mouth. Tell if I missed --

MR. LANDFAIR: I don't think it was one of my main points, but I may have noted that one of the advantages or one of the goals is to try to achieve diversity of housing and that can be achieved --
MR. KNOPF: Diversity of housing?
MR. LANDFAIR: -- any number of ways. It can be achieved in terms of the architecture. It can be achieved through the provision of MPDU's, affordable housing, as we're doing.
MR. KNOPF: Right. And I believe you originally said that one of those diversities was this was a rental, but then I believe you said that's not the case because there's not a binding element?
MR. LANDFAIR: That's correct, yes. That decision has not been made yet in terms of whether these will be condominium apartments or rental apartments.
MR. KNOPF: Okay. Now I believe you said as part of that diversity one of the pluses was that this had smaller size units in terms of total square footage, is that correct?
MR. LANDFAIR: I may have said that, yeah.
MR. KNOPF: Well, do you agree --
MS. ROBESON: Well --
MR. KNOPF: -- with that?
MR. LANDFAIR: It's certainly something that we're

doing and I would agree to the statement. I don't know if I actually made that statement yesterday, though.
MS. ROBESON: I, okay. I think you did.
MR. LANDFAIR: Okay.
MS. ROBESON: But if you don't remember --
MR. LANDFAIR: It's --
MS. ROBESON: What -- okay, so let me ask you --
MR. LANDFAIR: Right.
MS. ROBESON: -- what is, what do you mean by diversity of housing? Is it -- what does that mean?
MR. LANDFAIR: It can mean any number of things. I think in our case it does mean that we are providing, the emphasis is certainly on the MPDU's, the 15 percent MPDU's, the affordable housing.
MS. ROBESON: Well, I think the plan says variety of housing types. I mean I swear you testified yesterday that you were going to have smaller units. Is that not the case?
MR. LANDFAIR: I can tell you that we --
MS. ROBESON: Don't, don't prompt the witness --
MR. LANDFAIR: I can tell you that we --
MS. ROBESON: -- please.
MR. LANDFAIR: I can tell you that that is one of the objectives that we are doing that we will have smaller units in part to accommodate the MPDU's that we are

providing.
MR. KNOPF: Well, let me, that's one of the things I wanted to explore. Would you agree with me, well, is there a binding element as to the square footage dimensions you gave the other day in terms of small --
MR. LANDFAIR: No, I don't believe there is in terms of --
MR. KNOPF: So it's not binding, just like it's not binding that there would be a rental?
MR. LANDFAIR: In terms of the size of the units?
MR. KNOPF: Right.
MR. LANDFAIR: It's something that we very likely will proffer.
MS. ROBESON: Wait, wait, okay.
MR. LANDFAIR: I'm speaking of the size of the units.
MS. ROBESON: If you could just answer the question? Is it binding or is it not binding?
MR. LANDFAIR: It's not binding --
MS. ROBESON: Okay.
MR. LANDFAIR: -- in terms of -- correct.
MR. KNOPF: In fact, doesn't, in 106a, the site plan, if I'm reading this correctly, in terms of the number of units and this, have, you have there a parking tabulation?

MR. LANDFAIR: Yes.
MR. KNOPF: And the parking tabulation is based on the number of 1-bedroom units and --
MR. LANDFAIR: Right.
MR. KNOPF: -- efficiencies and so on? And am I correct that this is for illustrative purposes only, so that means we should not rely on this, is that correct?
MR. LANDFAIR: You would typically note on a plan like this, either a development plan or a project plan, you would have a note saying that this is illustrative, typically when it comes to parking, and that the final determination with respect to parking would come at site plan when you are able to finalize the exact mix of units that you would be providing because, of course, parking is based on the types of units whether they're one, two, 3-bedroom units, as well as, of course, the final MPDU count because MPDU's are assessed at half the normal parking rate.
MR. KNOPF: So would you agree with me that it would be wrong for the Hearing Examiner to make a finding that this meets diversity of housing thinking there would be smaller units or that there would be rental and that's not binding?
MR. LANDFAIR: No, I think you could make a finding that, you know, as contemplated right now, as testified to that we are going to be providing smaller

units, but we're also providing the MPDU units and, of course, what we are providing is what is binding is the 15 percent MPDU's.
MS. ROBESON: Okay. If you could move back, I want to make sure your counsel can see your face as you're speaking.
MR. LANDFAIR: Sure. Sorry.
MS. ROBESON: It's hard. This room -- maybe I should move over here, but I've got the, everything here. I'm sorry, Mr. Knopf.
MR. KNOPF: No, that's quite -- well, I just want to make this clear. As someone was testifying on these projects and so on, would it, would I, would it be correct for me to say that this project could end up with considerably less than 120 units and all of them could be at least the 5, 600 square feet or 800 or 1,000 square feet, whatever the dimensions to this building hold?
MR. LANDFAIR: The number of units and size of those units could end up being something that is not currently contemplated.
MR. KNOPF: All right.
MR. LANDFAIR: Testified to.
MR. KNOPF: Now you make a lot out of that this has MPDU's --
MR. LANDFAIR: Uh-huh.

MR. KNOPF: -- and that that is part of, I gather, part of your diversity of housing conclusion?
MR. LANDFAIR: Yes.
MR. KNOPF: Is it fair to say that any building that would be built here with a different design or features would also contain the MPDU's? There's nothing unique about this design that permits the MPDU's compared to some other design, is there?
MR. LANDFAIR: You could accommodate those MPDU's in any number of different types of designs. That's true.
MR. KNOPF: So what I'm trying to get at is would you agree with me that in terms of the public interest of this building there is nothing that is being provided here that's guaranteed any different than any other building that could come down the pike in terms of design?
MR. LANDFAIR: Well, not, not necessarily true. There are binding elements that we are proposing which do govern, certain aspects of the architecture that mitigate certain elements of, for example, the private amenity area has lighting, has outdoor lighting. We are proposing a binding element that controls that lighting, keeps that lighting to 24 inches in height.
MR. KNOPF: You're saying there's no requirement at the private amenity area to have outdoor lighting, is that, so this is some special feature?

MR. LANDFAIR: We are contemplating outdoor lighting. There was a concern of the neighboring property owners that we, that this lighting might adversely affect them, so we agreed to establish the height of that lighting to no more than 24 inches off the ground and we are so committed to it that it's a binding element on the plan.
MR. KNOPF: And that's one of the special features you're relying on that this makes this in the public interest?
MR. LANDFAIR: It's just one of many elements, many elements that are noted on the plan.
MR. KNOPF: Well, let's talk about some other elements. You're not providing any more public use space than is the minimum required, is that correct?
MR. LANDFAIR: We are, we are -- correct. We are showing public use space that meets the minimum standards, correct.
MR. KNOPF: Okay. Now let's take a look at some of those binding elements because I do have a question on that. You say you're binding elements in terms of the features of the building.
MR. LANDFAIR: Right.
MR. KNOPF: Could you look -- I'm looking at the binding elements at 106a, I guess that's what -- here.
MR. LANDFAIR: Yes.

MR. KNOPF: And could you read, could you read that quote, binding element that nails things down because I'm having trouble understanding how you nailed it down.
MR. LANDFAIR: For example, binding element No. 12 is the following features will form the basis for the final design to be determined at site plan. It includes predominantly masonry facade, excluding, accentuating details.
MR. KNOPF: Wait a minute, just pause right there. Excluding accentuating details means it's not, accentuating details are not, are not binding, is that the way I read this?
MR. LANDFAIR: I read that to mean the finer architectural elements like the trim materials and such that at the zone stage we are not committing to.
MR. KNOPF: So -- okay. So far you've committed to masonry facade?
MR. LANDFAIR: Correct.
MR. KNOPF: Let's continue.
MR. LANDFAIR: All right. Which could be brick, stone, okay? I could be precast. It could be ceramic tiles. We're committing to landscaping along the plaza edges and, of course --
MR. KNOPF: Oh, wait. Just pause there now. it says on the stone and so on, which may include, so it

doesn't have to include this, is that -- am I reading that right?
MR. LANDFAIR: I mean it could be another element that's not listed there, that's true.
MR. KNOPF: Okay. I'm just trying to understand what we're finding here.
MR. LANDFAIR: Right.
MR. KNOPF: So far we've only had masonry that's binding, the --
MR. LANDFAIR: Correct.
MR. KNOPF: Okay. Continue.
MR. LANDFAIR: Landscaping along the plaza edges, flat roofs, vehicle access, the location of that vehicle access, onsite parking to be located below grade.
MR. KNOPF: Just pause there for a minute. We can go back and do whatever you want.
MR. LANDFAIR: Yes.
MR. KNOPF: The landscaping, isn't that sort of set by the Sector Plan and the Bethesda plan and the Planning Board is going to tell you, so no matter what building you put there, you're sort of -- this is not a unique landscaping?
MR. LANDFAIR: Within the public right-of-way, yes, you need to adhere to the Bethesda streetscape guidelines which govern the types of trees, the types of

paving materials, street furnishings, lighting, etcetera. Yes.
MR. KNOPF: Okay. So it's not something unique here? I'm just trying to nail down --
MR. LANDFAIR: Well, let's look at --
MR. KNOPF: -- what we're getting here on a binding element.
MR. LANDFAIR: Let's look, I mean I've already referenced the height of the landscape lighting and the private outdoor amenity area. Of course, we make reference to the step back. We are committed to the step back as a binding element located here on the plan. We are committing to the outdoor private amenity space located along the western portion of the property. I'm reading directly off the plan here.
MR. KNOPF: Which number are you on now?
MR. LANDFAIR: That's binding element No. 17.
MR. KNOPF: But in terms, what I was mainly concerned about in terms of the design of the building --
MR. LANDFAIR: Right.
MR. KNOPF: -- you presented some elevations --
MR. LANDFAIR: Right.
MR. KNOPF: -- as to what the building looks like.
MR. LANDFAIR: Sure.
MR. KNOPF: And -- let me try to understand this.

I'm trying to understand that what we see --
MR. LANDFAIR: Uh-huh.
MR. KNOPF: -- is that what we're going to get? I don't see that required by these binding elements that you have on that -- you have the discretion when you actually design this to come back with something quite different as long as it's masonry. Is that the only thing that's binding, plus the setbacks, plus the setbacks on the ground floors.
MR. LANDFAIR: And the other elements noted in the --
MR. KNOPF: All right. What I'm talking about, the building itself, what the building looks like.
MR. LANDFAIR: Now there is a binding element to No. 20 and it does speak, again, to the public use space. I mentioned the one about the step back, those binding elements that refer to the transformers.
COURT REPORTER: I'm sorry, if you could speak just a little louder?
MR. LANDFAIR: Sure. The binding element that references the transformers, the fact that they should be screened.
MR. KNOPF: Okay. Now I notice, I'm now looking at the, I'm looking at the Planning Board, Exhibit 105, which is the Planning Board's recommendation and I'm

noticing there that -- would you agree with me that what the Planning Board recommended in terms of binding elements is not what was, in fact, accepted by the applicant and placed on Exhibit 106a?

MR. LANDFAIR: I'm sorry, is this the most recent resolution?

MR. KNOPF: Yes, it is.

MR. LANDFAIR: Let me take a look at it.

MR. LANDFAIR: We're looking, for example, on Exhibit 13, I'm sorry, Paragraph 13. It says, for example, that the final design is supposed to include bay window projections. I didn't see those here.

MR. LANDFAIR: I'm sorry, where are you looking, Norm?

MR. KNOPF: On Paragraph No. 13, page 3.

MR. LANDFAIR: I see that, yes. We're not citing that. That's true.

MR. KNOPF: You're not citing that? Okay. Now there was also the, whatever you call that, the corner treatment that --

MR. LANDFAIR: The pocket park?

MR. KNOPF: -- pocket park circular whatever that is.

MR. LANDFAIR: Right. Right.

MR. KNOPF: Is that on your 106a, a binding

element you're offering here that that freezes -- I use the term freeze -- but so that it has to be built substantially like that?

MR. LANDFAIR: Well, we have binding element No. 20 references the public use space concept was substantially conformed to the development plan amendment drawing and rendering as shown on pages 4 and 5 of the technical staff report.

MR. KNOPF: In your opinion, that language substantially conforms to sort of like the Master Plan says, it has to substantially conform with the Master Plan, doesn't it?

MR. LANDFAIR: I think I can safely say that we are committed to providing that public use space, that pocket park at the corner. It's an important element for us. It's an important part of the public use space.

MR. KNOPF: And would you be committed sufficiently to put that in as a binding element that it not be substantially in conformance, but something stronger?

MR. LANDFAIR: It could be considered.

MR. KNOPF: That's a fair answer. It might not be the one I want. By the way, on that -- this has always bothered me and it's -- one has to worry about a lawyer playing architect and whatever, but I was trying to figure out with that pocket park sitting there, how does a disabled

person get in the front door if they're in a wheelchair, aren't there only steps there?

MR. LANDFAIR: Well, actually there is a ramp off to the side along West Lane.

MR. KNOPF: To the side?

MR. LANDFAIR: Yes.

MR. KNOPF: To the side? So that will require then, the drop-off for somebody disabled would be on West, on West Lane?

MR. LANDFAIR: And we have a lay-by that's proposed along West Lane.

MR. KNOPF: So that would definitely be -- so disabled -- that's the same lay-by that I thought was supposed to accommodate delivery trucks?

MR. LANDFAIR: Well, we have a loading bay that could accommodate delivery trucks but, yes, it could also accommodate delivery trucks within that lay-by.

MR. KNOPF: Okay. Thank you. Oh, in terms of the MPDU's which you're saying the size of this, the number of units, I guess, MPDU's, the number of MPDU's is based on the total number of units --

MR. LANDFAIR: Correct.

MR. KNOPF: -- that you're building?

MR. LANDFAIR: Right.

MR. KNOPF: So would it be fair to say that if the

units that you were building were smaller so you had more units, and all in terms of square footage, that, and the average, then you would end up with more MPDU's, would you not?

MR. LANDFAIR: Correct. More units, more MPDU's.

MR. KNOPF: And, similarly, you have the larger units, you'd have less MPDU's?

MR. LANDFAIR: Conversely, yes.

MR. KNOPF: Okay. Is there a binding element here that guarantees the number of MPDU's you are projecting here now or that's, again, illustrative?

MR. LANDFAIR: That we are -- right now the binding element No. 3 states the developer will provide 15 percent of the units ultimately permitted for construction as MPDU's.

MR. KNOPF: But that's a percentage --

MR. LANDFAIR: Correct.

MR. KNOPF: -- not an actual number?

MR. LANDFAIR: Correct, because it's based on the number of market rate units that we ultimately would build.

MR. KNOPF: So if this were to end up with, I just pick a figure out of that, all of those were 1,000 square feet, maybe you can do a figure in your head, I don't know how many dwelling units that would then reduce this to, but you end up with a lot, a great reduction in MPDU's also?

MR. LANDFAIR: Considerably yes, yeah.
MR. KNOPF: So for, if I'm not mistaken, you made the, expressed the opinion that one of the big pluses of this project was it provided so many MPDU's --
MR. LANDFAIR: Yes.
MR. KNOPF: -- because you went to the option -- but that's illusory again, it's illustrative. It's not anything we can nail down and count on, is it?
MR. LANDFAIR: It's dependent upon the maximum number of units within the building.
MR. KNOPF: Thank you. Something just reminded me. Something came up today so I could ask that. You answered in response to Mr. Abrams's question that with the decrease in the setback area along the western side some 15 to 12 feet, I was trying to understand, I believe you testified that that didn't increase not much or substantial at all, that's what I want to clarify, the total square footage of the building?
MR. LANDFAIR: The building?
MR. KNOPF: Yes. I mean isn't this three feet times the entire length of the building times seven stories, doesn't that add up to --
MR. LANDFAIR: Well, it's because the building has morphed a little bit in other places. In fact, those changes were so relatively minor in nature that it's hard to

even see them on this illustration here. I'm referencing Exhibit No. 85. It shows the footprint of the previously proposed plan compared to the current plan. There are places where it's just very difficult to tell, but the building has, I used the analogy earlier, like a balloon such that if you are taking space away from the building footprint as we were doing at the corner to provide for the pocket park or trying to make up that square footage elsewhere within the building footprint.
MR. KNOPF: Well, just humor me. If there's three feet times the length of the building, how long is the building?
MR. LANDFAIR: From north to south?
MR. KNOPF: Yes.
MR. ABRAMS: While he's doing that, it's 1:15.
MS. ROBESON: I know. It's, well, that clock says 1:13. So this is going to be your last question.
MR. KNOPF: Thanks. Well, anyway, I don't like him getting answers from the team over there.
MS. ROBESON: Oh, yes, please, Ms. Wilshire, I know you know this project backward and forward. No, let me talk. I don't want you discussing it with the witness or even I can hear you whispering sometimes and it's nothing against you, but it's very important that he answer himself. Okay.

MR. LANDFAIR: 280 feet, 285 feet --
MR. KNOPF: Is the length?
MR. LANDFAIR: -- is the maximum length. But the building is irregular in shape. So it's, you know, it's in and out, you have the scallop at the corner, but from the northernmost point to the southernmost point is about 285 feet.
MR. KNOPF: So you're not moving the entire building three feet closer, just certain segments of it? I thought the whole building went three feet closer.
MR. LANDFAIR: This segment here.
MR. KNOPF: But you have to explain on the record what you mean by --
MR. LANDFAIR: Sorry. I'm referring to the west facade.
MS. ROBESON: That is closest to Montgomery Lane?
MR. LANDFAIR: That is closest --
MS. ROBESON: Before --
MR. KNOPF: No.
MR. LANDFAIR: -- to Montgomery Lane.
MS. ROBESON: South of the amenity area?
MR. LANDFAIR: Correct, south of the outdoor amenity space and confronting the adjacent Lot 28, otherwise known as the Edgemoor at Arlington North property. This building facade previously varied between 12 and 15 feet.

Now it's consistently 12 feet. So along its entire length it varied, but now it's consistently 12 feet. So it's not like we've added three feet to the entire length of that facade.
MR. KNOPF: Well, I'm just trying to get a rough idea because whatever you do we have to multiply it by seven, right, because there are seven stories?
MR. LANDFAIR: No. Actually it's not quite that simple because a portion of the building, of course, steps back at the 50-foot mark as you go up.
MS. ROBESON: How far does the step back go --
MR. LANDFAIR: 12 feet. 12 feet from the front facade of the building.
MS. ROBESON: Okay. So there's no step back --
MR. LANDFAIR: Beyond that 12 feet.
MS. ROBESON: -- beyond that 12 feet north of the face of the building?
MR. LANDFAIR: Or the upper two floors, correct.
MS. ROBESON: Yes. All right.
MR. KNOPF: I think I better stop at this point.
MS. ROBESON: Yes.
MR. KNOPF: I'll pick up if you don't mind --
MS. ROBESON: Okay. So we are going to adjourn until 2:30. We'll reconvene at 2:30 and hopefully we will give Mr. Knopf five to 10 minutes to appear. If he doesn't,

we'll convene at a time to be announced. Mr. Knopf, is there any way you can get us word about, you know, around 2:30 if you're not done? Is there any possibility of giving us an idea?

MR. KNOPF: I will certainly try, but I suspect it will be in the middle of the deliberations --

MS. ROBESON: Right.

MR. KNOPF: -- and that's -- but can, don't you get it piped into your office?

MS. ROBESON: I do, but --

MR. KNOPF: But you do, you're best to keep it off I'm sure.

MS. ROBESON: -- I don't -- huh? Yes, but I can't, I don't know the legislation, so for me it doesn't tell me whether you're almost done or not done. So we'll leave it with the plan. We'll reconvene at 2:30.

MR. KNOPF: Thank you very much.

MR. ABRAMS: Thank you.

MR. KNOPF: Hopefully it will go quick.

(Recess)

MS. ROBESON: I'm just going to take a moment and shift my stuff over here because it's easier on the witness.

MS. HARRIS: Can we also have a discussion, I don't know if it needs to be on the record, just in terms of timing as to whether we will need to call another one of our

witnesses, I mean call, I mean literally call to have them come here?

MS. ROBESON: Oh, today?

MS. HARRIS: Yes.

MS. ROBESON: Let's do that on the record.

MS. HARRIS: Okay.

MS. ROBESON: It will only take me a couple of minutes --

MS. HARRIS: That's fine.

MS. ROBESON: -- to shift this. All right. We will -- all right. We will go back on the record. Ms. Harris, you were inquiring as to how long we're going to go today?

MS. HARRIS: Yes. We have with us here today we have Mr. Landfair, obviously, and then we have our next witness, Perry Berman. Following Perry, we would be calling our architect who is not here. He's at his office. So the question is --

MS. ROBESON: Well, I'm not a mind reader.

MS. HARRIS: -- what do we do?

MS. ROBESON: But, Mr. Knopf, do you have any estimate as to how long your cross-examination will go?

MR. KNOPF: I'd say from one to two hours. That's a guess.

MS. ROBESON: Okay. I would say -- I, what I

found, I initially said we'd go, I told the court reporter we'd go until 7:00. What I kind of found is that my mind starts to go somewhere in the range of 6:00 to 6:30. It's tied heavily, unfortunately, to my stomach.

MS. HARRIS: You're not the only one.

MS. ROBESON: So I would say we'll go to 6:00. We'll try to make up some of the time that, while Mr. Knopf successfully achieved resolution, we're going to start to look for a closing at 6 o'clock or not soon after 6:00

MS. HARRIS: Okay. That part provides us enough direction to know that we'll tell the architect he doesn't need to postpone.

MS. ROBESON: Yes, he can -- all right.

MR. KNOPF: I think it's going to be closer to two hours than one hour at least.

MS. ROBESON: That's -- certainly you need to do what you need to do as did Mr. Abrams. So, Mr. Landfair, you are back on the hot seat. Mr. Knopf, it's your turn to cross --

MR. KNOPF: Thank you.

MS. ROBESON: -- finish cross-examining.

MR. KNOPF: Mr. Landfair, we left off with, there was some discussion as to whether the setback change from 12 feet, from 15 feet to 12 feet on the western side --

MR. LANDFAIR: Right.

MR. KNOPF: -- ended up in any addition to the total square footage and I believe you said that it was, the building was approximately the same square footage with that change?

MR. LANDFAIR: Right. If not, maybe perhaps slightly smaller.

MR. KNOPF: But that was stated --

MR. LANDFAIR: But not larger.

MR. KNOPF: -- and that takes account in redesign of the building with the setbacks on the, starting on the 6th floor, I guess, is that correct?

MR. LANDFAIR: 5th and 6th floor, yeah. Starting at the 6th floor, yes, 6th and 7th floor.

MR. KNOPF: It's the 6th and 7th floor --

MR. LANDFAIR: Yes.

MR. KNOPF: -- that are set back?

MR. LANDFAIR: Correct.

MR. KNOPF: So would it be fair to say then that the setbacks that are offered as part of this building have resulted in no decrease in rental area for the developer?

MR. LANDFAIR: No, it may have resulted in a decrease in rental area.

MR. KNOPF: Well, how is that if it's the same square footage?

MR. LANDFAIR: Well, the square footage may have

decreased at little bit and I'll have to defer to the architect in terms of the overall impact to the square footage of the building. Certainly, it hasn't increased.

MR. KNOPF: I see. Would you agree with me that units now that face the setback and now have a terrace in front of them might result in a higher rental than previously, that those that just face the street?

MR. LANDFAIR: I can't speculate. I don't know.

MR. KNOPF: Now going back, because as long as we're there, I'm going back to the binding elements and I do apologize if some of my questions hop around because I'm trying to fill in where --

MS. ROBESON: I understand.

MR. KNOPF: -- we left off. Now there has been, as I understand it, there has been representations made and even in the binding elements that the deliveries are not to come through the front door?

MR. LANDFAIR: Correct.

MR. KNOPF: And binding elements have been offered on that? Okay. If you would read those binding elements because I want to ask you as a land planner and you know how restrictions on traffic, govern and so on, can you tell me how, how that's going to work? What happens if somebody just ignores those things? How binding is the binding element? When you read it, if you would read it please for

the record, it sort of just says please don't, doesn't it?

MR. LANDFAIR: I'm sorry, which binding element is it I'm looking at?

MR. LANDFAIR: Let's see, I will tell you in a minute. It says,

"The management entity of the building, whether rental or condominium, must require that all service deliveries occur through the service entry located on the West Lane."

Is that correct reading?

MR. LANDFAIR: Correct.

MR. KNOPF: And how does that work? What happens if the driver says I hear you, but I'm coming in through the front door?

MR. LANDFAIR: It's a management issue. I think management --

MR. KNOPF: It's a what?

MR. LANDFAIR: A management issue.

MR. KNOPF: Okay.

MR. LANDFAIR: In other words, management of the building will be fully advised that this is an important element to the management of the building and I think the staff would be well-advised to abide by it. Now it's possible that a delivery truck may pull up and ignore despite what may otherwise be posted or advised in terms of

where deliveries are to be made. But I think management would be advised and they would take every step necessary to try to control that to the extent possible.

MR. KNOPF: To the extent possible?

MR. LANDFAIR: Yes.

MR. KNOPF: And what -- I'm just asking from a land planning standpoint or the way the Planning Board operators or the County operates, what happens if management says we keep telling you not to go through the front door, but they do?

MR. LANDFAIR: Right. Right. From a convenience perspective, first of all, I think the deliveries are going to take advantage of the fact that we have a lay-by along West Lane. So in terms of -- and just general observation of how these delivery, delivery trucks work, these deliveries are made, it's a matter of convenience for them and they'll often take the path of least resistance. And if we're providing them with a lay-by space that allows them to pull right up, and they've already been educated as to where the entrance is that they need to use, we think they'll more often than not abide by that.

MR. KNOPF: Now let's explore that and take the path --

MR. LANDFAIR: Sure.

MR. KNOPF: -- of least resistance.

MR. LANDFAIR: Right.

MR. KNOPF: Can you point out, I guess that's 106a, where is that lay-by that they're supposed to us?

MR. LANDFAIR: The lay-by is located along the --

MR. KNOPF: Uh-oh. We have a problem. I can only see you and not --

MR. LANDFAIR: Oh, I'm sorry.

MR. KNOPF: No, that's side --

MR. LANDFAIR: Along the west side of West Lane, approximately halfway up the frontage of the property, the lay-by, again, located along the west side of the street.

MR. KNOPF: Okay. Now let's see about that least resistance. I'm a UPS driver. Now do I come, if I come from Arlington, I can make a left turn, okay.

MR. LANDFAIR: Onto West Lane.

MR. KNOPF: Onto West Lane. If I come from Woodmont, I make a right turn.

MR. LANDFAIR: Right.

MR. KNOPF: Now let's just say if I came from Woodmont, my choice would be, not legal choice, my choice would be to simply cross West Lane and pull up in front of this building --

MR. LANDFAIR: Sure.

MR. KNOPF: -- and run in not properly, but that's what I'd do. That's one choice. Now the one they're saying

is least resistance is I make a right turn into West Lane --
MR. LANDFAIR: Uh-huh.
MR. KNOPF: -- and then I'm going in the wrong direction. So don't I have to turn around someplace?
MR. LANDFAIR: You're making a turn onto West Lane?
MR. KNOPF: And, yes, and how do I get to come back to the lay-by and face the right direction?
MR. LANDFAIR: It's a simple three-point turning movement for a --
MR. KNOPF: Three-point turn?
MR. LANDFAIR: -- for a typical small panel truck, like a 30-foot truck, what we call an SU-30 truck. And, in fact, in the record we have exhibits that show auto turn movements for various sizes of vehicles from passenger cars to small panel trucks to tractor trailer trucks to show how they make these turns at the end of West Lane. That's part of the record.
MR. KNOPF: Okay. Pardon my ignorance --
MR. LANDFAIR: Yeah.
MR. KNOPF: -- but does three-point turn mean you have to back-up?
MR. LANDFAIR: Basically it's a maneuver that's being made and so that they would pull up, okay, they would back into the driveway --

MR. KNOPF: Back --
MR. LANDFAIR: -- pull back out and pull into the lay-by.
MR. KNOPF: I see. So it's not they go to the end and just turn on the end and come back. You have --
MR. LANDFAIR: Right. Correct.
MR. KNOPF: -- to back out?
MR. LANDFAIR: Correct.
MR. KNOPF: Okay.
MR. LANDFAIR: All right.
MR. KNOPF: Now let's take a look at that. Now on the way down the street to that three-point turn --
MR. LANDFAIR: Yeah.
MR. KNOPF: -- I go by four garages of 4825 project where people could be going in or coming out, backing out?
MR. LANDFAIR: Correct. That's correct.
MR. KNOPF: Okay. I also might be meeting cars coming out of the garage of this building?
MR. LANDFAIR: Possible.
MR. KNOPF: But where is that garage?
MR. LANDFAIR: The entrance is right here.
MR. KNOPF: Is that what they're supposed to back-up into?
MR. LANDFAIR: The one close to the front

building --
MS. ROBESON: When you say right here --
MR. LANDFAIR: The northernmost point of the building, the northernmost corner of the building.
MS. ROBESON: Where it says garage entrance?
MR. LANDFAIR: Correct.
MS. ROBESON: We're on the record. Okay. Go ahead.
MR. KNOPF: I'm sorry, I couldn't see that distance. When you said that the truck making a three-point turn would have to back up, is it back-up into that garage entrance?
MR. LANDFAIR: Exactly right, it's backing up into the entrance here and then it turns back down --
MR. KNOPF: So if somebody --
MR. LANDFAIR: -- southbound West Lane.
MR. KNOPF: -- is coming out of the garage or going into that garage, I presume I sort of have to wait before I back up?
MR. LANDFAIR: Possibly.
MR. KNOPF: Now then, okay, for now I'm on the west side of the street and how many lay-bys are there?
MR. LANDFAIR: There's just one that's proposed.
MR. KNOPF: And was that the same lay-by you were talking about before that the handicapped person was going

to have to take the wheelchair?
MR. LANDFAIR: Yes, it is.
MR. KNOPF: And would that be the same entrance that everybody else should really be using rather than parking on Montgomery Lane and going into the building if I'm going to pick up somebody say or drop off somebody?
MR. LANDFAIR: We would encourage, yes, visitors to use that. The idea is that it would be for temporary parking and queuing. We would not expect people to be there long.
MR. KNOPF: So --
MR. LANDFAIR: It could even be posted as such.
MR. KNOPF: So if I'm the UPS driver, I'm coming from Woodmont, and I get to West Lane --
MR. LANDFAIR: Right.
MR. KNOPF: -- and I look down and, guess what, I find there's somebody parked in the lay-by, do you think the path of least resistance would be just keep going and park in front of the building and block the street while I run in?
MR. LANDFAIR: I suspect they would just pull ahead of the lay-by and park along West Lane, but again they're going to park closest to the entrance that they are supposed to be making the deliveries to, which will be clearly marked and signed as such.

MS. ROBESON: Mr. Landfair, where are the do not enter signs in relation, on the --
MR. LANDFAIR: On the street that controls traffic.
MS. ROBESON: Yes. Are they -- where are they?
MR. LANDFAIR: They're located just east of the actual intersection itself --
MS. ROBESON: Okay.
MR. LANDFAIR: -- at the corners, one on either side of the street.
MS. ROBESON: Okay. I just -- okay.
MR. KNOPF: Let me explore this a little more. On the lay-by area, how long is that? In other words, how many vehicles could it accommodate?
MR. LANDFAIR: It could accommodate one panel truck or two cars.
MR. KNOPF: Oh. And how high is the garage entrance? In other words, what kind of truck can go down and is it a loading zone is down in the garage?
MR. LANDFAIR: There is a smaller loading zone down inside the garage proper --
MR. KNOPF: And --
MR. LANDFAIR: -- but then there's also a loading bay that's just immediately adjacent to the garage entrance.
MR. KNOPF: And how many does the loading bay

hold?
MR. LANDFAIR: That would hold one.
MR. KNOPF: One?
MR. LANDFAIR: Right.
MR. KNOPF: So --
MR. LANDFAIR: That could accommodate one small panel truck.
MR. KNOPF: One small panel truck?
MR. LANDFAIR: A 30-foot panel truck, which would be a typical UPS type truck.
MR. KNOPF: Well, how high is the, well, what kind of trucks can the garage accommodate? There's unloading in the garage too?
MR. LANDFAIR: There is a small loading space, dedicated loading space in the garage which could accommodate a, like a small rental truck that somebody moving or belongings out of a small apartment might --
MS. ROBESON: Like a cargo van or --
MR. LANDFAIR: Yeah, like a small cargo van. Something larger than a minivan, but smaller than a panel truck, so --
MR. KNOPF: So these painter's trucks, for example, which frequently are a van, but they have ladders on top --
MR. LANDFAIR: Right.

MR. KNOPF: -- would they be able to go down in the garage or that gets a little iffy, excuse me?
MR. LANDFAIR: I suspect the clearance would be very close.
MR. KNOPF: Very close? All right. So would I be correct that if there were two repair truck that came there, whether somebody came to have their computer fixed and somebody else had something delivered, that would take up the two spaces on the ground, not in the garage, but outside the garage and there would be nothing left for the UPS or FedEx or the food delivery trucks that might be coming there?
MR. LANDFAIR: Well, I think the intent is that the lay-by would be posted for temporary parking --
MR. KNOPF: Oh.
MR. LANDFAIR: -- for temporary loading. I don't think we would intend for it, for the reasons I think you're suggesting for long-term parking along the street. So hopefully that would deter service vehicles from parking there on a long-term basis.
MR. KNOPF: Because I think, doesn't the finding have to be made if this is the maximum safety efficiency in circulation and so on? In your opinion is this the maximum efficiency and circulation?
MR. LANDFAIR: I think it is.

MR. KNOPF: Okay.
MR. LANDFAIR: We've, the plans have been approved, not approved, but have been reviewed by the County Department of Transportation. We're meeting the County guidelines for loading. We have a small loading space inside the garage proper. We have a loading bay which is directly accessible from the street which the County Department of Transportation said was great, it wasn't required, but that is terrific.
Likewise, we have the lay-by which, again, was not required, but they said that's great. You're providing the lay-by along the street, so we feel that we're taking the service vehicles off of Montgomery Lane. Could somebody continue to park along Montgomery Lane on a temporary basis?
MR. KNOPF: You said the County approved it. This is the same County people that approved the Edgemoor and the City Homes for service vehicles where there's, you see pictures and other evidence submitted in this record where there are problems with those vehicles parking on the street?
MR. LANDFAIR: It would be the County Department of Transportation --
MR. KNOPF: I see.
MR. LANDFAIR: -- and I'm sure they weighed in on those problems.

MR. KNOPF: Would you agree with the Hearing Examiner's comment that she made during her comments on her observations that if a truck or car were to stop in front of this project on Montgomery Lane, it would, it could cause serious traffic problems?
MR. LANDFAIR: This street is very narrow.
MR. KNOPF: Okay. Thank you. Okay. And, let's see, you're proposing about 120 dwelling unit in this?
MR. LANDFAIR: Maximum, yes.
MR. KNOPF: Where does the moving van park when you do those -- people coming in and going out? And if this is rental, would you agree with me they tend to come in and go out a lot more than in condominiums?
MR. LANDFAIR: If it was rental then, yes, there would be more move-ins, move-outs than there would be if it was condominiums.
MR. KNOPF: So where do the --
MR. LANDFAIR: We would anticipate that they would coordinate with management of the building and that we would find times, hopefully during off-peak periods, where they could utilize the lay-by.
MR. KNOPF: Would a moving truck fit in a lay-by? You said it only held a small van?
MR. LANDFAIR: The auto turn exhibit that we provided on the record would show that a tractor trailer

truck can pull into the lay-by. It's not fully within the lay-by, but it takes it mostly off the street. So it wouldn't inhibit vehicles from coming and going.
MR. KNOPF: So some of the trucks would hang over into the street?
MR. LANDFAIR: A little bit.
MR. KNOPF: Well, here's another question. Can you explain how the vans and whatever do a three-point turn at the end of the West Way --
MR. LANDFAIR: Right.
MR. KNOPF: -- what does a moving van do? That --
MR. LANDFAIR: The auto turn movement that we provided --
SECURITY GUARD: A Nissan Parked --
MS. ROBESON: Just, hold one second please.
MR. LANDFAIR: Certainly.
SECURITY GUARD: A Nissan parked in the dock area, is it anybody here?
MS. ROBESON: No. Okay. I'm sorry.
MR. KNOPF: No, that's not your fault. I was asking how does a moving van make that --
MS. ROBESON: Well, let me cut in here a moment. I scanned your -- okay. Do you have an expert who is going to testify on onsite circulation?
MS. HARRIS: Yes, we do. We have a land planner

who, I'm sorry, excuse me, we have a traffic consultant who is going to get, testify to the circulation issues.
MS. ROBESON: Okay. Because there is some, I was just scanning my summary of the January --
MR. KNOPF: Yes.
MS. ROBESON: -- testimony. There is some testimony in there, but my question is would it be better until we've heard how the access is going to work to -- I mean I have to say it's probably within the scope. So I'm asking you, I think it would be better to wait. You can continue the questions, but I, this is not the witness to elicit, I think, that from.
MR. KNOPF: I understand. And the only reason I was raising it is that he testified as an expert and as I recall that testimony, he testified this would meet maximum efficiency circulation --
MS. ROBESON: Yes, I know.
MR. KNOPF: -- and so on.
MS. ROBESON: That's why I'm saying --
MR. KNOPF: So --
MS. ROBESON: -- it is within the scope. So you can continue, I just --
MR. LANDFAIR: And, again, we have an auto turn exhibit which is in the record which shows how those movements would be made for passenger cars, the small panel

trucks and a tractor trailer truck.
MR. KNOPF: And you didn't -- did you prepare those exhibits or someone else?
MR. LANDFAIR: Our staff did.
MR. KNOPF: But not you?
MR. LANDFAIR: I did not, I didn't not personally, right.
MR. KNOPF: So you're deferring basically to others in terms of the efficiency of that operation?
MR. LANDFAIR: In terms of --
MR. KNOPF: In turning movements.
MR. LANDFAIR: -- calculating those turning movements and exhibiting them, that's correct.
MR. KNOPF: Okay. Thank you.
MS. ROBESON: Thank you.
MR. KNOPF: The Planning Board's second recommendation, I guess I'll call it the Exhibit 105 --
MS. ROBESON: Okay.
MR. KNOPF: -- it says that the western, one of the binding elements that they recommended was that the western facade of the development will include a minimum of 20 percent windows. That's not in what you're presenting at 106a as a binding element, is it? Or maybe I missed it if it was.
MS. ROBESON: What was your --

MR. LANDFAIR: It is. It's binding element No. 6.
MR. KNOPF: All right. I'm sorry if I missed that. Oh, yes, it is. I apologize. Well, my question then is, now this is the side that there is going to be a 12-foot setback, correct?
MR. LANDFAIR: Correct.
MR. KNOPF: Okay. Now am I correct that the building that's to be built on Arlington that is parallel to this building rises up to 48 feet in height as it approaches the property line?
MR. LANDFAIR: Correct. Now it's separated on its own side by a driveway.
MR. KNOPF: By a driveway?
MR. LANDFAIR: By a driveway that's at least 20 feet in width. So that building is set back from its own property line and then, of course, another 12 feet into our property.
MR. KNOPF: Does the driveway run the entire --
MR. LANDFAIR: No, it doesn't.
MR. KNOPF: -- end of your building?
MR. LANDFAIR: No.
MR. KNOPF: So what I'm trying to get at is by shrinking from 15 feet to 12 feet, what is the distance between your building and the building footprint of the building that you built along Arlington?

MR. LANDFAIR: You know, I scaled that off. I should have that here.
MR. KNOPF: Well, it may well be. I apologize if I didn't find some of the exhibits.
MR. LANDFAIR: That's all right.
MR. KNOPF: There's a lot of documentation.
MR. LANDFAIR: 42 feet.
MR. KNOPF: 42 feet from building to building?
MR. LANDFAIR: Correct.
MR. KNOPF: And is there anything -- the, is there any, do we know whether the building along Arlington will construct a fence or a masonry wall or whatever after the property line or --
MR. LANDFAIR: I don't know. I would presume for their own benefit that they would, but I don't remember the plan well enough to say.
MR. KNOPF: Well, what I'm trying to get at is from a planning standpoint and consideration what, if we have 20 percent windows on the west side, what will those people look at and what will they get in the way of light if we shrink it another three feet?
MS. HARRIS: I'm going to object. Mr. Knopf is representing the Highrise Edgemoor. I am perplexed as to how this in any way represents the interest of his clients.
MS. ROBESON: Well, that's not the basis on cross-

examination. He can impeach the witness on any basis.
MR. KNOPF: And I can explain that readily. My client is concerned that this is too big a building --
MS. ROBESON: Okay.
MR. KNOPF: -- both in terms of aesthetics --
MS. ROBESON: Okay. Okay. But it's not your --
MR. KNOPF: -- traffic.
MS. ROBESON: -- turn to testify and I've already --
MR. KNOPF: Thank you. Sorry.
MS. ROBESON: -- overruled her objection. So you can do with that -- so, Mr. Landfair, you can answer the question.
MR. LANDFAIR: In my opinion, the distance between the buildings, the 42 feet, is more than sufficient to allow for sufficient air and light. I don't believe -- I haven't done a solar analysis or anything like that that would formally or scientifically show the impact of our building on that adjacent building in terms of the light and the sun. But 42 feet is substantial. I might add that in this zone, conceivably the setback on our side could be zero feet, but we're providing 12 feet. And, again, in turn, they have their own setback. So we feel that, you know, the marginal difference between 12 and 15 feet is not sufficient to increase or improve the compatibility in any way.

MR. KNOPF: And did you say they're adding an alleyway there, the --
MR. LANDFAIR: They have a driveway entrance.
MR. KNOPF: A driveway entrance?
MR. LANDFAIR: Right.
MR. KNOPF: That goes down in a garage?
MR. LANDFAIR: Goes down into their own garage, correct.
MR. KNOPF: So it goes down where -- they may well have a wall to fence off the driveway area.
MR. LANDFAIR: Well, they'll have certainly a retaining wall on their side, yes.
MR. KNOPF: So units in your building on the lower floors at least could look out and to see the retaining walls?
MR. LANDFAIR: No, because of the change in grade on their side. We won't see their retaining wall. They would be looking out over their driveway towards their building.
MR. KNOPF: But if they had a wall on top of the retaining wall to keep people from falling out the backyard?
MR. LANDFAIR: Right. Right. Certainly. That would further screen the view from our side.
MR. KNOPF: And would that, those units in your building that might look out at the retaining wall and the

driveway, is that where you're going to put the MPDU's?
MR. LANDFAIR: I can't speak to that. I don't know where the location of the MPDU's would be.
MR. KNOPF: Okay. Thank you. On the setback, I'm now moving to Montgomery Lane --
MR. LANDFAIR: Sure.
MR. KNOPF: -- we're going around the building, if I remember correctly, you said from the footprint of the building, is it to the curb --
MS. ROBESON: I'm sorry, can we -- for some reason sound really carries in this room more than our normal hearing room. Can you not have, or have conversations outside? Thank you.
MR. KNOPF: Do I remember correctly from the building footprint to the curb, I believe you testified, is, is it 26 feet?
MR. LANDFAIR: 26 feet from building face to face of curb.
MR. KNOPF: Face of curb. Now in that area we have a sidewalk?
MR. LANDFAIR: Correct.
MR. KNOPF: And how wide is that sidewalk?
MR. LANDFAIR: The sidewalk will be at least a minimum of five feet.
MR. KNOPF: And you anticipate maybe broader, I

mean --
MR. LANDFAIR: It could be broader.
MR. KNOPF: Okay.
MR. LANDFAIR: The final hardscape treatment hasn't been designed. It's quite possible that the paving that would be within the public right-of-way will merge with hardscape on our side of the right-of-way line.
MS. ROBESON: I'm sorry. I missed which edge this is on?
MR. LANDFAIR: This would be Montgomery Lane side --
MS. ROBESON: Yeah.
MR. LANDFAIR: -- within the public right-of-way --
MS. ROBESON: Right.
MR. LANDFAIR: -- you'll have a sidewalk.
MS. ROBESON: Right.
MR. LANDFAIR: It will be a minimum of five feet in width, but it's possible that hardscape treatment on our side of the right-of-way line might widen that.
MS. ROBESON: Okay.
MR. LANDFAIR: The final design hasn't been worked out yet.
MS. ROBESON: I'm sorry. Go ahead.
MR. KNOPF: Now, if you know, between the sidewalk

and curb, is it a grass panel?
MR. LANDFAIR: It will be a grass panel and you'll have street trees.
MR. KNOPF: Street? And how wide would that be?
MR. LANDFAIR: It would be roughly five feet.
MR. KNOPF: Five feet?
MR. LANDFAIR: Right.
MR. KNOPF: Okay. So then the, now five feet and five feet is 10 feet. Okay. Subtracting 10 from 26, I got 16 feet.
MR. LANDFAIR: Correct.
MR. KNOPF: Am I correct that that 16 feet, 10 is yours and six is the public's or --
MR. LANDFAIR: Ten would be ours and then the balance would be within the public right-of-way.
MR. KNOPF: Ten is yours?
MR. LANDFAIR: Right.
MR. KNOPF: So what we're dealing with is a maximum of 16 feet from, if I'm walking along the sidewalk and I'm looking at your building?
MR. LANDFAIR: A maximum --
MR. KNOPF: The space between the sidewalk and --
MR. LANDFAIR: And the public right-of-way, yes.
MR. KNOPF: Right. Now do you know what the spacing is from the sidewalk to the foot printing of the

Edgemoor, the big building at the corner of Woodmont and Montgomery Lane?
MR. LANDFAIR: We have those dimensions on an exhibit. That's --
MR. KNOPF: I would appreciate if you could -- well, let's say what that is?
MR. LANDFAIR: The distance --
MS. ROBESON: What exhibit are you --
MR. LANDFAIR: I'm referring to Exhibit 106b.
MS. ROBESON: Okay.
MR. LANDFAIR: Okay? And we have a number of different dimensions. One dimension that I'll read off is the distance from face of building to the lay-by. There's two lay-bys. There's two places for cars to park along the front of the Edgemoor Highrise. So you have dimension of 16 feet from building to the lay-by and then in turn from the steps that lead down from the building to the lay-by, it's a lip of approximately eight feet. So that's the effective width of the sidewalk that runs along the front of the Edgemoor Highrise.
MR. KNOPF: Well, what I was interested is the distance between the footprint of the building and to the sidewalk. We just started the sidewalk.
MR. LANDFAIR: I can scale it off.
MR. KNOPF: Thank you.

MR. LANDFAIR: About nine feet.
MR. KNOPF: Nine feet? Okay. And that's to the sidewalk?
MR. LANDFAIR: To the sidewalk.
MR. KNOPF: And 16 feet was to the lay-by going through the sidewalk?
MR. LANDFAIR: Correct.
MR. KNOPF: Okay. Now you heard the Hearing Examiner mention during her observations that she thought that the, she was commenting that there seemed to be a narrow strip of landscaping between the building and the --
MR. LANDFAIR: Right.
MR. KNOPF: -- sidewalk? She had noticed a widespread --
MR. LANDFAIR: Right.
MR. KNOPF: -- area. Do you think adding another three feet like this is proposed here will make all that big a difference in terms of aesthetics for people walking?
MR. LANDFAIR: If you added a few more feet along the Edgemoor Highrise --
MR. KNOPF: Well --
MR. LANDFAIR: -- would it make a difference?
MR. KNOPF: It would make a difference. But that's what you're adding from your building, it's just you're providing a few more feet, isn't that right?

MR. LANDFAIR: Well, we're providing 26 feet.
MR. KNOPF: No, I'm going back between the building footprint and the sidewalk.
MR. LANDFAIR: Right.
MR. KNOPF: But you said you had, we're talking about 16 feet?
MR. LANDFAIR: Right.
MR. KNOPF: And at Edgemoor, you add 16 feet to the lay-by?
MR. LANDFAIR: Correct. Right. So roughly half of that is the sidewalk. So would it make a difference?
MR. KNOPF: I see.
MR. LANDFAIR: Yes, it would.
MR. KNOPF: All right. I just want someone to get, we hear numbers and it's helpful to have something, at least to me to have something pictured in my mind.
MR. LANDFAIR: It's a very tall building and as you walk along there, it feels like it's very close to you.
MR. KNOPF: Now if, as long as you're on one -- let's see, 106 -- we have an aerial view. It's, I think it's 106f or g. Let me see here. It's 106f. Sorry about that. It's the context aerial, that's what it's labeled. Oh. Yes. Yes. Yes. That's not what I'm using it for. It's the -- there we go.
Now could you point out for all of us the rooftop

structure on this project?
MR. LANDFAIR: Here's our property. There's the proposed building, rooftop penthouses.
MR. KNOPF: Okay. Now would I be correct in stating that the rooftop structure depicted in 4825, the Sandy Spring building, is both smaller and back further than, from the street?
MR. LANDFAIR: It appears to be that way, yes.
MR. KNOPF: Similarly, the proposed rooftop structure on the building to go up on Arlington Road and Montgomery Lane, that corner, that also seems smaller and set back further, am I correct?
MR. LANDFAIR: Yes.
MR. KNOPF: Okay. Now I don't see, am I correct, any, quote, rooftop structures, on City Homes?
MR. LANDFAIR: No, they have peaked roofs --
MR. KNOPF: Yes.
MR. LANDFAIR: -- so there are no rooftop structures that we can see.
MR. KNOPF: I see. And similarly when you look at the Edgemoor, it seems, am I correct there may be some rooftop structures in the rear of the building away from Montgomery Lane?
MR. LANDFAIR: There are. There are rooftop structures actually to the rear and the center part of the

building which are screened from view by a pitched roof.
MR. KNOPF: By the pitched roof?
MR. LANDFAIR: Right.
MR. KNOPF: So you wouldn't really see them from Montgomery Lane?
MR. LANDFAIR: Correct.
MR. KNOPF: Okay. Well, let's talk about what we're going to see. You had testified, if I'm not mistaken, in response to questions from Mr. Abrams that someone walking by the building, I guess your project, would only see 50 feet in height, they wouldn't see the two stories above that setback, am I correct? I'm not trying to put words in your mouth.
MR. LANDFAIR: I think I may have said also that it's possible they could see just the upper end of the 6th and 7th floors as they're walking by, but the view that they would have for the most part, what they would focus on would be the lower floors.
MR. KNOPF: Now where are you putting that person when you say they can't see? Where on this --
MR. LANDFAIR: They would be walking along the street. They would be walking along the south side of Montgomery Lane.
MR. KNOPF: The south side of Montgomery Lane?
MR. LANDFAIR: Right.

MR. KNOPF: So are you saying that I would say in front of the, say I'm at the front of the 4825 --
MR. LANDFAIR: Right.
MR. KNOPF: -- and just approaching 4825 --
MR. LANDFAIR: Right.
MR. KNOPF: -- and I look up, you're saying I wouldn't see the 6th and 7th floors?
MR. LANDFAIR: At an angle from down the street you would have a clearer view. But if you are directly opposite --
MR. KNOPF: Well, I'm not -- you --
MR. LANDFAIR: Sure.
MR. KNOPF: -- previously testified directly opposite.
MR. LANDFAIR: Okay.
MR. KNOPF: I'm trying to put one walking up the street so to speak.
MR. LANDFAIR: You would have a clearer view of the upper floors, that's true.
MR. KNOPF: Now, similarly, wouldn't it be true if I were coming from Arlington and I was on the south side of the street and I saw the building, wouldn't I have a pretty view of the 6th and 7th floors and probably the penthouse to boot --
MR. LANDFAIR: I --

MR. KNOPF: -- of the, excuse me, the rooftop structure?
MR. LANDFAIR: I don't know about the rooftop structure. You probably would have a view of the upper two floors. In fact, I think in one of our perspectives which shows the view along the street, I think we're actually illustrating that.
MR. KNOPF: And didn't you say that, if I remember correctly, Montgomery Lane elevation goes down as you approach Arlington?
MR. LANDFAIR: Correct, yeah.
MR. KNOPF: So if I am at the, say the corner of Arlington and Montgomery Lane, just to be safe, I'm down sort of lower and I look up and see your project, that would be because I'm lower, wouldn't it give the effect of being even taller, the project, than it might be if I were level, on level ground with the project?
MR. LANDFAIR: Well, I think your perspective might suggest that, but they would also color your view of the other surrounding buildings at that corner. So everything would look a little higher because you're at a lower elevation.
MR. KNOPF: Well, one of the surrounding buildings would be the building on the corner of Montgomery and Arlington. That's only, what, 35 feet, is it?

MR. LANDFAIR: The -- it's 35 feet at that portion that fronts Arlington, but then it steps up.
MR. KNOPF: Does that one step up?
MR. LANDFAIR: Yes, it does.
MR. KNOPF: Okay. Well, what about City Homes, that's constant, it's certainly lower than what you're proposing?
MR. LANDFAIR: I think the same would be set for City Homes. That's your perception of that 53 feet, or City Homes would imply that maybe it looks a little higher if you're standing at the corner of Arlington.
MR. KNOPF: And I think we previously established not, people that live in City Homes that look out, say that they're closer to the Edgemoor, across the street from Edgemoor --
MR. LANDFAIR: Right.
MR. KNOPF: -- if they looked out their windows and looked down the street, they would be apt to see the 6th and 7th stories?
MR. LANDFAIR: Yes, they would.
MR. KNOPF: And, similarly, the Edgemoor building, we have so many Edgemoors. When I refer to Edgemoor, I'll refer to the one on the corner of Woodmont and Montgomery Lane --
MR. LANDFAIR: Right.

MR. KNOPF: -- unless I say otherwise.
MR. LANDFAIR: Okay.
MR. KNOPF: Aren't there windows on the Edgemoor that face west, face your project?
MR. LANDFAIR: On the Edgemoor Highrise?
MR. KNOPF: Yes.
MR. LANDFAIR: Yes.
MR. KNOPF: And wouldn't those windows, even with the construction of 4825, wouldn't the upper units be able to look out over 4825 and see your building?
MR. LANDFAIR: Possibly but, again, they would be looking out over 4825 and their view would be obstructed I would think.
MR. LANDFAIR: Well, what's the height of 4825 again, is that --
MR. LANDFAIR: 65 feet.
MR. KNOPF: -- 65 feet? And what's the height of the Edgemoor you've been telling us so many times?
MR. LANDFAIR: 100 feet.
MR. KNOPF: There's a little room in there to look out, isn't there?
MR. LANDFAIR: Right. Right. It's the angle of the view is what I'm thinking and the distance, of course, between the two buildings.
MR. KNOPF: I'm looking at, just rather than get

it, I'll just -- Exhibit 54, which is the staff report, on page 7, they say that the City Homes height is 48 feet in height and we've been using 53 feet in height that I believe you testified to and I'm wondering if you have an explanation of the difference there?

MR. LANDFAIR: I, I don't. I don't. And I've seen in resolutions references to 55 feet for City Homes. All I can say is that the height that we've been referencing was from our own survey.

MR. KNOPF: Well, would you agree with me that maybe the difference is if you're measuring from the very peak of the roof as compared to the bulk of the building?

MR. LANDFAIR: It's possible that they are measuring it to the eave of the roof, perhaps, as opposed to the roof peak.

MR. KNOPF: Well, would you agree with me then in terms of the aesthetic impact on the pedestrian walking down the street or someone living in the area there's quite a bit of difference if both, if two different buildings, they're both the identical height of the peak, but one is solid that height such as your building and another one just has sort of a peak roof and then it falls away, so it's a lower --

MR. LANDFAIR: There's less building mass with the --

MR. KNOPF: Right.

MR. LANDFAIR: -- the gabled roof or the peak roof, yes.

MR. LANDFAIR: Thank you.

MR. KNOPF: Now I believe in your testimony, I believe, I think it was on the, in the first hearing, but in any event, I have you quote, unquote, that the City Homes have a, quote, "Unique orientation," unquote. Do you recall that testimony?

MR. LANDFAIR: Yes, I, I stand by that, yes. I agree with that.

MR. KNOPF: Now does that unique orientation, I'm trying to understand that, in terms of that the home, town homes don't face Montgomery Lane, but the side, I don't know how you describe that.

MR. LANDFAIR: That was my intent. No, that's my intent, yes. I think that's somewhat unique or unusual. It's not typical in terms of --

MR. KNOPF: Right.

MR. LANDFAIR: -- even for an urban townhouse.

MR. KNOPF: Now looking at the picture, the exhibit right behind you --

MR. LANDFAIR: Yes.

MR. KNOPF: -- would you say that those town homes constitute really the bulk of the Montgomery Lane on the south side?

MR. LANDFAIR: Certainly today and I think even once the project along the east side there with Woodmont Avenue is constructed, yes, I think they make up the bulk of the frontage along Montgomery Lane.

MR. KNOPF: And so it establishes this unique orientation along that side of the street?

MR. LANDFAIR: Yes.

MR. KNOPF: And part of that unique orientation is not only that the townhouses face sideways so to speak, but they're broken up with courtyards between townhouses and alleys between townhouses. It's not a solid mass, is that correct?

MR. LANDFAIR: Correct. You have two mews which are landscaped in part, they provide the public use space. And then you have three alleyways that provide access for the garages.

MR. KNOPF: And would you agree with me that one, one standing on the street on the north side looking at the townhouses in terms of bulk and mass gets quite a different impression than if they stood on the south side and looked into your project even if it were the same height because your project is solid mass, is it not?

MR. LANDFAIR: It's, it's wider, I grant you that, at the base where it fronts along the street. You know, it's 80 feet in width, plus the scallop going up 50 feet.

So, yes, the impression of our building would be different than the impression you would get from the City Homes town homes.

MR. KNOPF: Well, where did I get 108 feet from this morning? I thought I remembered 108 feet in width.

MR. LANDFAIR: I, during our lunch break, I had a chance to review the dimension and so I can formally correct the record now or I can correct it later.

MS. ROBESON: Well, I would prefer if you do it now.

MR. LANDFAIR: Okay.

MS. ROBESON: What is the correct --

MR. LANDFAIR: The correct dimension actually is 79 feet along --

MS. ROBESON: Is that for --

MR. LANDFAIR: That's from the --

MS. ROBESON: Just for the record I just am asking you to identify the measurement.

MR. LANDFAIR: The measurement of the building along its base from the westernmost point to the easternmost point where it begins to scallop is 79 feet.

MR. KNOPF: Oh, where it begins to scallop?

MR. LANDFAIR: Right. So I'm not, I'm not including the scalloped area. So it's just from the westernmost point to the easternmost point.

MR. KNOPF: Well, okay, bear with me. I'm the first to admit I'm not so good in spatial relations. If I'm on the south side of Montgomery Lane right where West Way is, across the street, and I'm looking at your project, would I not see the 79 feet of your building along Montgomery Lane and also the scalloped portion?

MR. LANDFAIR: Certainly you would. The scalloped portion is receding, so the impression of building mass, I think, would be differ than if it was just a solid building mass to the corner.

MR. KNOPF: I see. And how much does it recede? We talked about this before. It depends.

MR. LANDFAIR: It depends.

MR. KNOPF: It's receding almost nothing where it starts to curve and then it recedes more in the center.

MR. LANDFAIR: Right.

MR. KNOPF: So if the difference is between 79 and, I'm sorry --

MR. ABRAMS: 108.

MR. KNOPF: It would be 79 and 108, we're not saying between 79 and 108 it's all receded so many feet. It starts out at zero feet and goes inches until you go around.

MR. LANDFAIR: But it's about, you know, if it was to continue to the corner, you would add another 28 feet to the width of the building.

MR. KNOPF: And that's 108 in total. And do you have any idea of the townhouses, the side of the townhouses, how many feet those are just roughly?

MR. LANDFAIR: Can I scale it? May I scale it?

MR. KNOPF: Sure. But don't use the one that you said didn't have a scale.

MR. LANDFAIR: It's about 38 feet.

MR. KNOPF: 38 feet. As long as you're there --

MR. LANDFAIR: Uh-huh.

MR. KNOPF: -- am I correct that the alleys between the townhouses in terms of your width is about the same size as the width of Montgomery Lane?

MR. LANDFAIR: I think that's probably a fair assumption without measuring it. Actually they're closer to 30 feet than the other --

MR. KNOPF: Oh, the alleys are wider than Montgomery Lane?

MR. LANDFAIR: Yes, they are.

MR. KNOPF: On the rooftop structure, the HVAC goes up there?

MR. LANDFAIR: Among other things, yes.

MR. KNOPF: But, and the elevator shafts have to go up there too, don't --

MR. LANDFAIR: Correct.

MR. KNOPF: And is 10 feet, is that the, is that

conservative? Wouldn't it be more like 15 feet to 20 feet?

MR. LANDFAIR: I'll have to defer to the architect. I don't know offhand. I don't know if it's even been finally designed to be honest with you. I wouldn't know. I would approximate 10 feet though.

MR. KNOPF: Approximate? Okay. Yes, the 106f, I think it is --

MR. LANDFAIR: Yes, the aerial.

MR. KNOPF: Just bear with me, I've got to get the -- we have along Hampden Lane, we have that dubbed in block of buildings, I guess, if you're starting at the corner of Arlington and heading toward Woodmont.

MR. LANDFAIR: Correct.

MR. KNOPF: No, on Hampden.

MR. LANDFAIR: I'm sorry, yes, Hampden Lane with Hampden building and then the HOC, correct.

MR. KNOPF: Okay. Now you've dubbed in buildings because, I mean they haven't been built yet, it's to be approved --

MR. LANDFAIR: Correct.

MR. KNOPF: -- except --

MR. LANDFAIR: Right.

MR. KNOPF: -- last dubbed in. Isn't that the HOC building, I'm sorry, of that group right --

MR. LANDFAIR: This is the HOC building.

MR. KNOPF: That has been built, isn't it?

MS. ROBESON: Okay. When you say this, you're talking to the one that has the courtyard --

MR. LANDFAIR: I'm talking about --

MS. ROBESON: -- in the rear along Hampden Lane?

MR. LANDFAIR: Correct, a U-shaped building. It's in the center of the block on the north side of Hampden Lane, left an equal distance from Arlington to Woodmont.

MR. KNOPF: That one isn't in place, is it?

MR. LANDFAIR: It is in place, yes.

MR. KNOPF: And am I correct that that contains the HOC units?

MR. LANDFAIR: Correct. Correct.

MR. KNOPF: Now are you familiar with what that looks like?

MR. LANDFAIR: Yes, I am, yes.

MR. KNOPF: And doesn't that have porches or balconies in the front --

MR. LANDFAIR: It does.

MR. KNOPF: -- that market as a definite residential building?

MR. LANDFAIR: It's a very attractive building, yes.

MR. KNOPF: Well, why wasn't that put in there when you have all the other buildings put in there that have

been built?
MR. LANDFAIR: It's a function of the image from Google. We went to Google Earth, which was the source for the aerial photograph and sometimes, depending upon the area, it's updated or it's not updated. In this case, it would have been terrific if it was reflected in the Google image, but it wasn't. So rather than ignore it, we wanted to go ahead and portray it as best we could.
MR. KNOPF: All right. Well, just, I'm looking, I'd ask you to look at 106g, which is, it's labeled surrounding, existing and improved TSR projects. It looks like this.
MR. LANDFAIR: Okay. Okay.
MR. KNOPF: Okay. Now in terms of the Montgomery Lane being a mixed use street and we've been focusing on compatibility with existing structures --
MR. LANDFAIR: Right.
MR. KNOPF: -- I'm looking at 4825 Montgomery Lane, that --
MR. LANDFAIR: The Sandy Spring building, yes.
MR. KNOPF: Yes. That's not a showing of what faces Montgomery Lane, thought. Isn't that what faces West Lane?
MR. LANDFAIR: Well, it's showing -- the image is taken from the corner, so this side of the building --

MS. ROBESON: Wait --
MR. LANDFAIR: -- the side that has --
MS. ROBESON: Okay. The driveway, the side with the driveway --
MR. LANDFAIR: Correct.
MS. ROBESON: -- are those on West Lane?
MR. LANDFAIR: The garage entrances face West Lane --
MS. ROBESON: Okay.
MR. LANDFAIR: -- and then the other side, the narrow side of the building, if you will, faces Montgomery Lane.
MR. KNOPF: So if one wanted to, as we do, compare your project with other buildings along Montgomery to see whether the character and how it fits, shouldn't we really be looking at the narrower portion to the right rather than backing up into West Lane? Is there some reason why this was facing this direction?
MR. LANDFAIR: It may have been the only image available. I don't think there was any particular reason why this angle was taken.
MR. KNOPF: Okay. Similarly, with 4901 Hampden Lane, that's at the corner of Hampden, Woodmont and Montgomery Lane, is that not correct?
MR. LANDFAIR: Correct.

MR. KNOPF: Well, what we have showing here at 4901 Hampden, that's not what faces Montgomery Lane, is it?
MR. LANDFAIR: This image here?
MR. KNOPF: Yes.
MR. LANDFAIR: Correct.
MR. KNOPF: Okay.
MR. LANDFAIR: This is the image that faces Hampden Lane, so --
MR. KNOPF: So we're comparing oranges and apples if we were to compare the facade, facades along Montgomery Lane and the facade of this new building because we don't have the right side.
MR. LANDFAIR: Well, again, the images were not selected for any particular use and they were available. We felt they best represented the building as approved. We didn't have a tremendous amount of control over what was available. So we did the best we can in terms of selecting --
MR. KNOPF: Well, let's think about that. The best is approved. Isn't --
MS. HARRIS: I'm going to object because that exhibit was entered into the record not for the purposes of making comparisons about what appears on Montgomery Lane. It was submitted into the record for another reason which the architect will testify to.

MS. ROBESON: Well, it was submitted, I assume, for compatibility, is that correct, to demonstrate compatibility with the surrounding buildings?
MS. HARRIS: And to show variety of the architecture in the area.
MS. ROBESON: Well, you know, I don't have that testimony in front of me. I think what Ms. Knopf is cross-examining on is that does this really show compatibility, that these images show compatibility. Is that your point with this?
MR. KNOPF: Well, I, my understanding was his testimony was that this project is compatible with what's on the summary.
MS. ROBESON: Yes. And you're saying --
MR. KNOPF: And they put in these photos. That's what they're relying on.
MS. HARRIS: Is it, well, part of the problem was we were required to submit exhibits prior to them being introduced by individual experts that were testifying to them.
MS. ROBESON: Well --
MS. HARRIS. So that is in the record. You are correct. But it's not in the record for the purpose which you just stated.
MS. ROBESON: Well, but it's been referred to.

MS. HARRIS: I don't --
MS. ROBESON: Okay. What --
MS. HARRIS: I don't believe that it has. It wasn't yesterday. Maybe on January 11th, but that is not my recollection.
MS. ROBESON: That's what I'm -- that's what --
MR. LANDFAIR: It could have been the architect's testimony during the earlier hearing.
MS. ROBESON: That's what I'm thinking because --
MS. HARRIS: The architect didn't testify.
MS. ROBESON: I thought that I had seen it before. What's the number?
MR. KNOPF: On this exhibit?
MS. ROBESON: Yes.
MR. KNOPF: 106g.
MS. ROBESON: Well, that was submitted after, I think, the --
MS. HARRIS: There was a previous exhibit which was submitted that was identical to this but for the fact that it didn't have the building names identified on it, but 106g --
MS. ROBESON: Okay. So I do recall, I can't prove it at the moment, that he had relied on this in his testimony of January 25th.
MS. HARRIS: Mr. Landfair?

MS. ROBESON: Yes, but what was the prior exhibit?
MS. HARRIS: Just a moment.
MS. ROBESON: I understand your point. Your point is we can't take, you know, their cross-examining on exhibits that you haven't had a chance to lay the foundation for. The only thing is I remember an aerial photo like that and I thought I remembered this. But if you can give me the prior exhibit, I can try looking it up.
MS. HARRIS: Just a moment.
MR. KNOPF: Well, I -- well, we may be able to --
MS. ROBESON: And, you know, I don't -- is it 81?
MS. HARRIS: Hold on. Actually, it's --
MR. ABRAMS: It is 81. It's the same as that.
MS. HARRIS: But 81 was submitted on February 15th. I, this is the booklet that we used during the January 11th and I don't have a number at the bottom indicating the various points we were identifying exhibits. I think they're like in the 53 to 60 range. This exhibit does not have a number on it that I would have handwritten in.
MS. ROBESON: And what's your problem with him being cross-examined on it?
MS. HARRIS: The purpose of the exhibit is not to show compatibility on Montgomery Lane. The purpose of that -- and, in fact, two of the projects aren't even on

Montgomery Lane. The purpose of the exhibit was to show architecture variety in the surrounding area and so Mr. Knopf is trying to make a point which that exhibit isn't intended to make.
MS. ROBESON: I think I was remembering this exhibit which I have noted is in the record. Do you have anything to say, Mr. Knopf?
MR. KNOPF: Well, I think I can ask questions around this problem.
MS. ROBESON: You can reserve your questions for the, whoever is going to testify to it.
MR. KNOPF: Right, but I have -- let me try a question and see if it isn't appropriate.
MS. ROBESON: Okay.
MR. KNOPF: In, you testified that you thought this proposed project is compatible with the character and development on this mixed street, is that correct?
MR. LANDFAIR: Yes. Yes.
MR. KNOPF: When you did, gave that testimony, did you have in mind what is labeled on Exhibit 106g, 4901 Hampden Lane? Was that the picture that you had in mind when you said your building would be compatible?
MR. LANDFAIR: Well, with the images that are depicted here, buildings both existing and proposed, as well as other buildings in the immediate area, yes.

MR. KNOPF: All right. So you did have that structure in mind as the way it looks?
MR. LANDFAIR: Yes.
MR. KNOPF: That's just all I wanted to know. Now, and your understanding then is that it was sort of all, that's what it looked like on Edgemoor, I'm sorry, Montgomery Lane and it was that height and that design with all the glass?
MR. LANDFAIR: Yes.
MR. KNOPF: All right. Now I'm going to show you, I have an exhibit --
MS. HARRIS: Are you introducing an exhibit?
MR. ABRAMS: Is this an additional exhibit?
MR. KNOPF: Yes, it's an additional exhibit because I didn't know I needed it. I mean --
MS. ROBESON: Well, wait a minute. The agreement was that you would have -- do you really need it because is there a way you can make your point about it because nobody was supposed to be surprised at the hearing?
MR. KNOPF: Well, yes, but I mean I always --
MS. ROBESON: What's the exhibit?
MR. KNOPF: The exhibit is what has been actually approved for the 4901 Hampden as it faces Montgomery Lane, which is a totally different structure than what we're relying on and I wanted to show him that and see if that

changes his view about whether his building is compatible with the street.
MS. ROBESON: Well, where are you getting that from?
MR. KNOPF: This is the, I took the Planning Board staff report --
MS. ROBESON: Well, that's in the record.
MR. KNOPF: No, on 4901 Hampden Lane?
MS. ROBESON: Oh, it's a, oh, it's from that staff report?
MR. KNOPF: Yes. It's a staff -- it, it's a totally different building and different height and I just think that that's relevant and I --
MS. ROBESON: Well --
MR. KNOPF: -- my understanding was that, you know, in cross-examination, so when things came up during direct, I had the right to get other exhibits to -- I can't anticipate everything that's going to happen.
MS. ROBESON: Well, can't you cross-examine it with him on whether it complies with the development approval without introducing the exhibit or --
MR. KNOPF: Well, I wanted the Hearing Examiner to see what's going up on that side also. This is what's been approved. This is a very important building for many reasons.

MS. HARRIS: I find it surprising that you could not have anticipated that you would have needed that when your exhibits were due.
MR. KNOPF: I did anticipate and it is an exhibit in terms of the Hearing Examiner and the Council's decision I made those exhibits, but I didn't know I was going to need a picture of the building because I assumed --
MS. ROBESON: Wait, wait. What Hearing Examiner? The other case?
MR. KNOPF: Yes.
MS. ROBESON: Why didn't you, her question is why didn't you put it in this case?
MR. KNOPF: No, let me have the, excuse me.
MS. ROBESON: I mean bottom line, it's a public document. I can take official notice of it.
MR. KNOPF: I put in, I have, let's see here -- this is different. I have put in as part of my exhibits, I thought it was 102, Exhibit 102, I have to find it, one of those exhibits is the County Council opinion granting 4901. I did anticipate that and I put it in and that's an exhibit. I didn't realize that I needed to have a picture of what was approved because I thought all of these pictures accurately showed what was on the street. Now I discovered it has nothing to do with it.
MS. ROBESON: Well, that's the same picture that's

been in the file. I think you can --
MR. KNOPF: All right.
MS. ROBESON: -- get through your cross-examination without introducing the staff report as a new exhibit. If it turns out at the end that it's so critical to see that staff report, you know, I could do something like official notice, but I would prefer to stick to the game plan.
MR. KNOPF: All right. Well --
MS. ROBESON: So --
MR. KNOPF: -- certainly we'll respect that, but I do want to just give a --
MS. ROBESON: And you can object to that, so --
MR. KNOPF: Well, I am going to object to that. I did not realize when I had to give all my exhibits that I was supposed to anticipate mis-information or every answer that would be given so that I couldn't come up with my own exhibits to --
MS. ROBESON: Okay. I don't want to characterize the testimony. I think if you have dimensions, you can cross-examine him on the dimensions. If you think -- or you can cross-examine the architect where he got those drawings.
MR. KNOPF: Okay. All right. Let me just -- I don't want to belabor this. Let me try to very briefly ask a couple questions.

MS. ROBESON: Okay.
MR. KNOPF: I'll just show him the exhibit. Let me see now.
MS. ROBESON: Wait, what are you showing him?
MR. KNOPF: I'm handing him a copy of the staff report of 9/27/12, 4901 Hampden Lane development plan amendment.
MS. ROBESON: Okay. But he can't testify to something that's not in the record. What are you trying to elicit from him?
MR. KNOPF: I wish to elicit from him that the design of this building is totally different than what's there and knowing that design in terms of height and what it looks like, would he still say that his project is consistent with all the other buildings being built on the street because I believe he said he based his testimony on something that I believe is not the correct -- he already admitted that doesn't show the Montgomery Avenue side.
MS. ROBESON: Did you prepare this exhibit, Mr. Landfair?
MR. LANDFAIR: No, ma'am.
MS. ROBESON: Then let's, I would prefer to leave it for the person. If you're going to go there, I would prefer to leave it for the person who is going to testify and then you can get the foundation where the drawings came

from.
MR. KNOPF: Well, but that, that misses the point I'm trying to make that his testimony as to compatibility --
MS. ROBESON: But you've already made this. He already said he did base it on that.
MR. KNOPF: Right.
MS. ROBESON: So if you think that that is incorrect, you can bring that out when the architect comes.
MR. KNOPF: Well, what I wanted to ask him --
MS. ROBESON: Or whoever.
MR. KNOPF: -- was if the building was lowered, it has such and such a thing in the back would change his idea as to whether this building is in back.
MS. ROBESON: Well, you can still ask that.
MR. KNOPF: All right. Well, that's why I wanted to show him. It has a photo of the building.
MS. ROBESON: Well, no --
MR. KNOPF: No?
MS. ROBESON: You can't show him. Just ask him --
MR. KNOPF: All right. I didn't think about it. Sorry.
MS. ROBESON: It's okay.
MR. KNOPF: Thank you. My assistant has pointed out 102g.
MS. ROBESON: Go it is in the record?

MR. KNOPF: Well, it's a different, but it's good enough.
MS. ROBESON: Okay, 102g. If it's got a number and a g, I'm going to assume it's in this case.
MR. KNOPF: So may I hand him this?
MS. ROBESON: You can hand him 102g if that's what's in the record.
MR. KNOPF: 102g, I am referring to page 7.
MS. ROBESON: Okay.
MR. KNOPF: There is a --
MS. ROBESON: That you can show the witness.
MR. KNOPF: And what I'm handing him is 102g is the Council resolution dated July 25, 2006, approving application 6819, which is 49001 Hampden Lane.
MS. ROBESON: Okay. I think it's 4901.
MR. KNOPF: Oh, sorry.
MS. ROBESON: That's okay.
MR. KNOPF: Too many zeros.
MS. ROBESON: We work through it.
MR. KNOPF: Okay. Now I am --
MS. HARRIS: Excuse me.
MS. ROBESON: Yes?
MS. HARRIS: Is that in your submission?
MR. KNOPF: Yes. It's 102g. I gave her 102 as an exhibit number, but the, the Hearing Examiner's office put

these on, each one of these.
MS. HARRIS: You only submitted certain pages of that. Resolution 17-599?
MS. ROBESON: Yes, I but I remember --
MR. KNOPF: This was in it.
MS. ROBESON: -- taking, we, what I said is Mr. Knopf had asked me early on is this one of the Council resolutions?
MR. KNOPF: Yes, it is.
MS. ROBESON: And he did ask me would I take official notice of the Council resolutions and I said yes, so we don't have a larger record. And if I had time, I do remember the conversation.
MS. HARRIS: I recall that conversation, but now we're at a disadvantage because I've never seen the picture before.
MR. KNOPF: Well --
MS. ROBESON: Well --
MR. KNOPF: It's in, no, it's --
MS. ROBESON: -- you know --
MR. KNOPF: No, wait a minute, that's part of what I submitted.
MS. ROBESON: Are you looking in the right file?
MS. HARRIS: I'm looking at Mr. Knopf's March 8th submission and it is labeled 4g on a submission,

resolution --
MR. KNOPF: 4c, it's labeled as 4c.
MS. HARRIS: 4c?
MR. ABRAMS: Well, 4c is the resolution.
MR. KNOPF: Right.
MR. ABRAMS: Doesn't have it.
MR. KNOPF: Page 7?
MS. ROBESON: Let's go off the record for a moment and we'll try and locate this.
(Recess)
MS. ROBESON: Well, wait a minute. We're back on the record. Okay. Come up, yes. Do you have an application number? Yes, you're referring to 102. Right.
THE COURT REPORTER: I'm not --
MS. ROBESON: Okay. How is this? Except g at 19, is that what you're looking -- that's not the one you're looking for, is it?
COURT REPORTER: You have to speak louder --
MS. ROBESON: Yes.
COURT REPORTER: -- I cannot hear you from over here.
MS. ROBESON: Okay. But what I intended was that we allow me to take official notice. He may not have submitted that as an exhibit, but what I intended is that we be able to take official notice of the entire decision

rather than have the decision, you know, all these lengthy decisions in the file. And I can find that section of the transcript.

MS. HARRIS: I recall a conversation as I acknowledged previously.

MS. ROBESON: Okay. So what I need, and that was, so for some reason sound-wise this room is more difficult. Mr. Knopf, what are you attempting to show the witness?

MR. KNOPF: I wanted to show him the, contained in the resolution is an elevation of the building that they approved.

MS. ROBESON: In G-819?

MR. KNOPF: Yes, it's G-819, yes.

MS. ROBESON: So I'm going to allow that to come in.

MR. KNOPF: I just wanted to show it to him. Thank you. I'm referring to page 7 of that resolution.

MS. ROBESON: Okay.

MR. KNOPF: And I'm showing it to him. And do you want to hold onto that? But I want it back. Mr. Landfair, would you agree with me that that, what would I call it, an elevation depiction, what's the title?

MR. LANDFAIR: Well, it's titled artist rendering.

MR. KNOPF: A rendering? Thank you. Would you agree with me that that rendering is very different than the

photo shown on Exhibit 106, is that f, whatever?

MS. ROBESON: 106g.

MR. KNOPF: G, would you agree with me that it's different?

MR. LANDFAIR: Yes, I would agree it's different.

MR. KNOPF: And if I were to advise you that -- can you see where it shows the rendering facing Montgomery Lane? I think it's the right-hand, lower rendering.

MR. LANDFAIR: Yes, I see it, yes.

MR. KNOPF: And it's that rendering?

MR. LANDFAIR: It's actually at the top of page 8.

MR. KNOPF: On the top of page 8? Thank you. And does that, those renderings are, you said are different than what you've seen on 106g, correct?

MR. LANDFAIR: Correct.

MR. KNOPF: And does this, if I were to advise you that the height, part of the height on Montgomery Lane is 60 feet, not 70 feet? Now if you had in mind, and does this building here have a lot less glass than the one that is in 106g?

MR. LANDFAIR: Yes, it does.

MR. KNOPF: Would you agree with me that that appears more residential in character than 106g?

MR. LANDFAIR: Architecturally it's more traditional.

MR. KNOPF: More traditional? All right. Well, if, having in mind a -- the right-hand, on the corner of the building where I said the 60 feet, is that rooftop terrace of some sort?

MR. LANDFAIR: It appears to be, yes.

MR. KNOPF: Living area for a unit there that can go out on a terrace?

MR. LANDFAIR: Right.

MR. KNOPF: That, again, is considerably different than what's depicted in 106g?

MR. LANDFAIR: Yes, it appears to be.

MR. KNOPF: Now would you, having this in mind as to what you're holding in your hand now, 102c? Oh, yes, g, I guess it is, g.

MS. ROBESON: Yes.

MR. KNOPF: Is that -- would you say, would you agree with me that the building that you are proposing here today perhaps is more compatible with what the 106g building is than what the actual building approved by the Council is?

MR. LANDFAIR: Well, and you would only make that finding if you were talking about architectural vernacular. Our building is contemporary architecture. The picture depicted on this exhibit is surrounded in existing and approved TSR project exhibit is also contemporary. Just because they're both contemporary elevations doesn't

necessarily mean that our building would be any more or less compatible with this particular one.

MR. KNOPF: Okay. Thank you. But you would agree that the one that the Council resolution, you said you would characterize it as more traditional?

MR. LANDFAIR: I would characterize that as such, yes.

MR. KNOPF: Can I have that back? I'm sorry.

MR. LANDFAIR: Sure.

MR. KNOPF: Thank you. Sorry. In terms of what is traditional and much more modern, I'd ask you to look at 106g, the Edgemoor Highrise, the photo of that in the left-hand corner. Now does that have -- does one characterize that as having more traditional features than the modern building?

MR. LANDFAIR: I can render my personal opinion, but I'm not an architect, so I'm not speaking as a --

MR. KNOPF: All right.

MR. LANDFAIR: -- professional.

MR. KNOPF: Well, how does one describe -- this is important for terms of your testimony with regard to compatibility in the Sector Planning. Pardon me, because if you don't have the knowledge, I have even less knowledge, but what do you call these pointed features?

MS. HARRIS: Well, objection. Perhaps the line of

questioning should be reserved for the architect who is an expert in the field of architecture.
MS. ROBESON: Well, it doesn't -- he doesn't need the knowledge to cross-examine, but is there a point? Mr. Landfair, in my recollection, has not testified as to architectural compatibility. He's testified as to compatibility, density, height, Sector Planning compliance, many, many compatibility, but I don't recall architectural compatibility. Is this going to something else?
MR. KNOPF: No, I guess I hadn't quite made a distinction between -- he did testify that his building is aesthetically compatible with what's on the street and surrounding buildings and I guess I don't know quite how one separate the aesthetic compatibility from an architectural compatibility. That's what I was trying to --
MS. ROBESON: Well, yes.
MS. HARRIS: Well, if you're starting to question the land planner on architectural terms of stylistic things pertaining to the building form and architecture, that's clearly questions for the architect, not a land planner.
MS. ROBESON: Yes, I guess he's not qualified as an expert in architecture.
MS. HARRIS: So --
MS. ROBESON: He's qualified as an expert in land planning, so not to draw too fine a distinction because

compatibility does encompass a lot of things, but I think that it is beyond the scope of -- I did look back through my summary of what he testified to before and I didn't see that. And I know you're kind of in the position of having to jump around and figure out what Mr. Abrams asked versus what you need to ask, but I do think that series of questions should wait. I have that he testified to high rise, low rise, number of units, size of units, but I don't see architectural compatibility.
MR. KNOPF: Well, I'm going to get at a different place, but I have on -- I'm not quite sure where the Hearing Examiner would put design criteria in the category of architecture or not.
MS. ROBESON: Well, design of what?
MR. KNOPF: Buildings, design buildings at, on page, I have, on page 170 of the transcript of the January 11th hearing, he talked about the design criteria as called for in the Sector Plan and whether they were met.
MS. ROBESON: And that would be the, but the Sector Plan relates to the step backs?
MR. KNOPF: Well, I was just going to go through that with --
MS. ROBESON: Okay. The step backs are, he's testified at length about the step backs.
MR. KNOPF: Well --

MS. ROBESON: So if you can tie your questions on the Edgemoor into those, that previous testimony, that's fine.
MR. KNOPF: Well, I -- I will tie it. I just have to get the right pages.
MS. ROBESON: Do you need a -- why don't we do this? Why don't we take a 10-minute break?
MR. KNOPF: Thank you.
MS. ROBESON: And then -- because I know you've been juggling back and forth and you can re-look at your questions in light of that, okay?
MR. KNOPF: Thank you. Thank you.
MS. ROBESON: We're off the record.
(Recess)
MS. ROBESON: All right. Is everyone ready? I'm taking that silence as a yes and we're back on the record. Mr. Knopf.
MR. KNOPF: Okay. Thank you. Just something clear, I previously referred to the, a rendering. I said it was on page 7 of the report which the Hearing Examiner said she would take judicial notice of. That continues onto page 8.
MS. ROBESON: Okay. That's fine.
MR. KNOPF: I know you may read the transcript and you might --

MS. ROBESON: Okay.
MR. KNOPF: Thank you. Okay, Mr. Landfair, you've testified that in your opinion, am I correct, that your opinion that the proposed project is compatible with this mixed street and the development that is currently on the street and projected to be on the street, is that correct?
MR. LANDFAIR: Yes.
MR. KNOPF: And now when you said it was compatible, in terms, did you have in mind the building itself as part of that compatibility?
MR. LANDFAIR: Yes, I'm thinking of the building, I discount more the facade treatment and I, I'm considering more of the building massing, the building setbacks, the building height, etcetera.
MR. KNOPF: The building height? Is that --
MR. LANDFAIR: The building height.
MR. KNOPF: -- that's part of it?
MR. LANDFAIR: Right, which would include the step back --
MR. KNOPF: Building setback?
MR. LANDFAIR: -- and the setbacks, correct.
MR. KNOPF: Massing?
MR. LANDFAIR: Yes.
MR. KNOPF: And you don't -- you give some or a lot of importance to the, what the building looks like?

MR. LANDFAIR: Some, not, because I, again, I, when I'm working with a team, I'll defer to the expert, I'll defer to the architect and likewise in this setting I'll defer to the architect as well. But you can't completely discount the facade of the building from factoring into the compatibility equation.

MR. KNOPF: So in your opinion is it, without completely discounting the facade, your opinion, would it be important if the building is observed by most people, considered by most people to be projecting an appearance of an office building as compared to a residential building, is that something that you want to consider?

MR. LANDFAIR: Well, I have not heard that characterization. It's certainly not something that I would think of when I'm looking at the building, but it's a modern design and I can see how maybe some might think of a modern design or consider a modern design to have aspects of, you know, different types of uses.

MR. KNOPF: Now, and I believe you've also testified with, that this building, in your opinion, meets the requirements of the Sector Plan?

MR. LANDFAIR: Yes.

MR. KNOPF: And in terms, I believe you testified in terms of the design criteria?

MR. LANDFAIR: Yes.

MR. KNOPF: Now looking again at the Edgemoor, which is 106g photo --

MR. LANDFAIR: Uh-huh.

MR. KNOPF: -- that has, well, why don't you tell us in my opinion and you tell me your opinion, this projects, has features that are normally considered part of the residential building as compared to the office building. Could you -- such as balconies. You don't normally associate balconies, do you, with a commercial office building?

MR. LANDFAIR: Not normally, no.

MR. KNOPF: This has balconies, is that correct?

MR. LANDFAIR: Yes, it does.

MR. KNOPF: And this has peaked roofs?

MR. LANDFAIR: Yes, it does.

MR. KNOPF: And is that type of roof that's normally associated with the residential building?

MR. LANDFAIR: Ordinarily, yes.

MR. KNOPF: It has, well, you tell me what other features that you see there. Does it have gables?

MR. LANDFAIR: It does have gables. It has, as you've pointed out, balconies. It has windows and doors that have, it looks like window bullions. In other words, they, the windows and the doors are of a scale that would be more typically associated with them, residential-type

buildings.

MR. KNOPF: And as articulated?

MR. LANDFAIR: Yes.

MR. KNOPF: Now am I correct the building that, this project here, we don't have closed features, is that correct?

MR. LANDFAIR: I'm sorry, say again?

MR. KNOPF: We don't have those features?

MR. LANDFAIR: We have articulation of the building facade along particularly West Lane and at the corner of the building and, of course, we have the step back feature, but it has a more contemporary facade that I don't think anybody would deny that.

MR. KNOPF: Especially the portion that just fronts Montgomery Lane?

MR. LANDFAIR: Correct.

MS. ROBESON: Okay, because we're getting in architecture territory and I'd rather just move beyond that.

MR. KNOPF: Well, he -- I don't know how you separate his compatibility from the architecture, plus he testified that that Sector Plan, and I'm going to ask him --

MS. ROBESON: Okay. If it's in the --

MR. KNOPF: -- some questions about it.

MS. ROBESON: -- Sector Plan --

MR. KNOPF: Yes.

MS. ROBESON: -- that would be within his --

MR. KNOPF: Okay. I'm referring now to page 40 of the Sector Plan.

MR. LANDFAIR: Okay.

MS. ROBESON: Okay.

MR. KNOPF: And I'm reading No. 5 where it says treat rooftops as sculpture elements that contribute to the visual interest of the skyline where appropriate consider rooftops as usable outdoor space for recreational or commercial purposes. Now is this the 12-feet setback that you would say meets this requirement?

MR. LANDFAIR: Well, this question has been asked before. Well, I'm trying to answer it again. We are not proposing any sculptural elements at least as of yet on top of the roof. We may or may not have a recreational amenity. It would be passive in nature on the roof, but that has not been designed, it has not been discussed. So the building may ultimately have one or more of these elements, but at this stage as part of this zoning case, we have not proposed this.

MR. KNOPF: All right. Now I'm referring to Paragraph 7 on the same page.

MR. LANDFAIR: Uh-huh.

MR. KNOPF: It says achieve compatibility with nearby residential areas through techniques such as step

down height, articulate building walls and facade treatments --
MR. LANDFAIR: Right.
MR. KNOPF: -- and other architectural means designed to minimize the building bulk in shadow impacts --
MR. LANDFAIR: Right.
MR. KNOPF: -- and create a gradual transition.
MR. LANDFAIR: Right.
MR. KNOPF: Those techniques that are set forth there, are those techniques the ones we just talked about the Edgemoor building?
MR. LANDFAIR: They are employed to some degree by the Edgemoor Highrise, yes.
MR. KNOPF: But they're, they're --
MR. LANDFAIR: Likewise, they are utilized on our building as well.
MR, KNOPF: But you mentioned the articulation that was basically not along Montgomery Lane?
MR. LANDFAIR: Well, you can't discount the scallop which, of course, also fronts Montgomery Lane, as well as West Lane at the corner of the building. So this, I think, goes a long way towards providing some relief from the building massing along --
MR. KNOPF: Does your building have --
MS. HARRIS: I would like to object again and on

the same line which is we submitted elevations. They're going to be introduced by the architect. It would be much more efficient and effective if the architect can talk about the architecture of the building.
MS. ROBESON: I agree. He testified as to compatibility with the Sector Plan, but we can use multiple witnesses to answer that as far as compatibility and I would like to stay away from the architectural issues with this witness.
MR. KNOPF: All right. Just one last question, because he did say that it was consistent with the Sector Plan, I'm referring to page 85, No. 5. It says design rooftops to achieve a residential image by using hip roofs, gables, turrets and other type of pitched roof lines. The varied group line is desirable to improve the character and reduce the sense of bulk. Now your building is a flat roof, is it not?
MR. LANDFAIR: Correct.
MR. KNOPF: So it does not meet that requirement?
MR. LANDFAIR: No, it doesn't meet that particular requirement, but I would call your attention to the opposite page which has an illustration of what Montgomery Lane could look like and it's illustrating flat roof structures.
MR. KNOPF: Which illustration, I'm sorry, are you on page 84?

MR. LANDFAIR: This would be page 84, right, Figure 4.15.
MR. KNOPF: 4.15. I don't see flat roofs. I see sloped roofs. I'm sorry.
MR. LANDFAIR: No, that's a flat roof structure of the left side of the street.
MR. KNOPF: But on the corner is there not a, what do you call that that goes up the corner that rises up there?
MR. LANDFAIR: A little modest gable of some sort.
MR. KNOPF: Gables?
MR. LANDFAIR: That's a flat roof structure.
MR. KNOPF: And on the opposite side of the street it's all --
MR. LANDFAIR: Peaked roofs. It's hard to tell what the other structure is.
MR. KNOPF: Okay. Thank you.
MS. ROBESON: Does anyone have control over that beeping or is that something in the room that --
MR. BERMAN: It's probably me. I'm sorry. I'll do what I can to stop it.
MS. HARRIS: It's his hearing aide.
MS. ROBESON: Oh, you're hearing aide. Okay. I remember you have one.
MR. BERMAN: My hearing aide. I'll take it off.

MS. ROBESON: No, it's okay. If you need it to hear, it's okay. Mr. Berman, don't take it off.
MR. BERMAN: No, but I'll do what I can. I'll put it in order. Thank you.
MR. KNOPF: Now I am correct, you testified that it was your understanding that the, excuse me, the County policy, the Sector Plan policy, the housing policy was to maximize the number of MPDU units or --
MR. LANDFAIR: Well, to provide affordable housing and, of course, MPDU's in part satisfies that goal.
MR. KNOPF: And your understanding is that this is what the reason why, one of the reasons why this project should be approved because it provides so many MPDU's?
MR. LANDFAIR: Or MPDU bonus, correct.
MR. KNOPF: MPDU bonus? And to your knowledge has that view been persuasive with the County Council to allow projects with the MPDU increase overriding other concerns of compatibility or other Sector Plan concerns?
MR. LANDFAIR: I can't think of specific examples, but I would say that the MPDU bonus legislation was, I believe, approved prior to the adoption of this Sector Plan which dates back to 1994. So that legislation was approved by the County Council. The County Council, likewise, adopted the Sector Plan. So I would presume that they, when they adopted the Sector Plan, felt that provisions, unless

it's otherwise explicitly stated in the Sector Plan, that provisions such as the MPDU bonus don't contradict the recommendations found in the Sector Plan.

MR. KNOPF: But did you not also testify that it was your understanding with the Council and the staff that they wanted to have as many dwelling units as possible in this area, the transit zone area, that their goal was to try to increase the number --

MR. LANDFAIR: Correct.

MR. KNOPF: -- of units?

MR. LANDFAIR: So close to the Metro, absolutely.

MR. KNOPF: Okay. Now I want to refer -- this is in the record -- to the G-819, which is 4901 Hampden Lane. And let me ask one other question. You had indicated that the height limits, well, let me rephrase that. You were at the Planning Board hearing when Mr., Commissioner Casey expressed some doubts about the validity or the importance should be given in the Master Plan height requirements, other requirements because the plan was sort of an older plan?

MR. LANDFAIR: Well, he did state that, you know, the plan is an older plan.

MR. KNOPF: Right.

MR. LANDFAIR: Nevertheless, it's still a valuable guide and recommendations in it shouldn't be easily

dismissed. But I think in his mind, at any rate, he felt like there are certain findings where there's more flexibility in terms of whether you find substantial conformance or not.

MR. KNOPF: Okay. Well, are you aware of a Council decision recently where the Council lowered the height limits on Edgemoor, lowered the number of units authorized in buildings and lowered the number of MPDU's?

MR. LANDFAIR: No.

MR. KNOPF: You're not?

MR. LANDFAIR: I'm not.

MR. KNOPF: Well, if I can acquaint you with that, would that lead you to change your opinion that that perhaps you were mistaken that the Sector Plan's requirements to have as many units as possible, many MPDU units and great flexibility and the height is not an accurate perception?

MR. LANDFAIR: I doubt it, but I'd be willing certainly to review it, but I haven't had a chance. I'm not familiar with that legislation.

MR. KNOPF: And I wanted to go into my exhibits so I can question him on that. I don't --

MS. ROBESON: Are they filed --

MR. KNOPF: Yes.

MS. ROBESON: -- already?

MR. KNOPF: Yes.

MS. ROBESON: Yes, you can -- that's fair. I know the one you're talking about because I presented that to the County Council.

MR. KNOPF: I am --

MS. ROBESON: Are you referring to G-819?

MR. KNOPF: Yes, I am. And that is, well, I have to figure out which number your office assigned it. It was my 102, Exhibit G, and I, let's see if I can, 102a, b, c.

MS. HARRIS: I'm going to object because the applicant did not testify about G-819 or --

MS. ROBESON: Well --

MS. HARRIS: -- 4901 for that matter.

MS. ROBESON: -- he testified as MPDU's, the volume of MPDU's and that the height limits of the Sector Plan should be exceed for MPDU's because that's in the public interest.

MS. HARRIS: Right.

MS. ROBESON: So I think it's fair for cross-examination.

MS. HARRIS: Okay.

MR. KNOPF: Actually, I have --

MS. ROBESON: And I actually thought of G-819 when he was testifying, but --

MR. KNOPF: I have -- I'm trying to -- it's E-X 102 --

MS. ROBESON: I have 102g.

MR. KNOPF: Right. And there, it is g, and there is also submitted the prior decision of the Council in c, 102c. The g is the, approval of the development plan in 2012 and the c is the --

MS. ROBESON: Oh, I see.

MR. KNOPF: -- is the prior. This has been modified several times by the Council.

MS. ROBESON: Right. No, I have g as the original resolution approving it in 2006 and I have k --

MR. KNOPF: K, that's right, k, I'm sorry, k is the current --

MS. ROBESON: As the most recent DPA amendment.

MR. KNOPF: Correct. That's what I have. Okay. Now -- Mr. Landfair, I want to -- you asked whether you were aware of the following. In the 4,000, what's now called 4901 --

MR. LANDFAIR: 01.

MR. KNOPF: -- Hampden, that was originally proposed as 100 feet in height and that was rejected by the County Council as too high. Now I want to ask about this because this is important. If you take 106f or g, well, what is on the bottom there? I'm --

MR. LANDFAIR: 106f.

MR. KNOPF: F, I'm sorry. Now we have, the way

the Sector Plan is set up, if you go across the other side of Woodmont Avenue, those are commercial office buildings there?

MR. LANDFAIR: Yes, they are.

MR. KNOPF: Right. And under the Sector Plan, those are to be the highest --

MR. LANDFAIR: Yes.

MR. KNOPF: -- in height?

MR. LANDFAIR: As high as 200 feet.

MR. KNOPF: And how high are those buildings?

MR. LANDFAIR: Some of them are approaching 200 feet. I don't think any are quite that high.

MR. KNOPF: Am I correct that the Master Plan calls for as you cross Woodmont, you're supposed to be coming down?

MR. LANDFAIR: Stepping down.

MR. KNOPF: The so-called tenting concept?

MR. LANDFAIR: Correct.

MR. KNOPF: And that basically the street is supposed to have about 65 feet in height until you get to Arlington when you're to go down to 35 feet, is that --

MR. LANDFAIR: Correct.

MR. KNOPF: Okay. Now I would advise you that the Council rejected in 2006 a 100-foot high building across the street from the 100-foot high building, Edgemoor, and across

the street from you tell me how tall is the buildings on the other side of Woodmont, a couple hundred feet or whatever?

MR. LANDFAIR: Yeah, 160, 180 feet maybe.

MR. KNOPF: Okay. The Council found that too high and lowered it to 70. Did you have that in mind when you opined that your building at 70 feet was perfectly consistent with the Master Plan, Sector Plan?

MR. LANDFAIR: I was not focused on 4901 Hampden Lane --

MR. KNOPF: Okay. Thank you.

MR. LANDFAIR: -- in terms of making that compatibility finding for our own building.

MR. KNOPF: Now, similarly, are you aware that the Council found, and were you aware also that the building that was approved had a 60-foot height limit on Edgemoor on one corner that was actually 10 feet lower than the 70 feet, that's what the Council approved? Were you aware of that?

MR. LANDFAIR: I was not aware of that.

MR. KNOPF: Thank you. Were you aware that the Council said 70 feet would be consistent with the Sector Plans, quote, "Scheme of greater heights along Woodmont Avenue and provide a significant step down in height from adjacent high rises to the north and east as called for in the Sector Plan?

MR. ABRAMS: What exhibit is this?

MR. KNOPF: This is 102, I'm reading from -- it would be g.

MS. ROBESON: Well, are you reading from the original one or the amendment?

MR. KNOPF: I'm reading from the original pages 9 and 10.

MS. ROBESON: Okay. So it is g, 102g?

MR. KNOPF: Were you aware of that?

MR. LANDFAIR: I was not.

MR. KNOPF: Okay. Now I'm now going to refer to the 2012, which is 4901 approval, which is 102 --

MS. ROBESON: K.

MR. KNOPF: -- k. And are you aware on page 1 that the original plan -- excuse me just one minute -- sorry. The original plan called for 50 to 70 dwelling units. The Council approved a reduction from, to go from 40 to 50. Now that's in --

MR. LANDFAIR: 50 to 40 you mean?

MR. KNOPF: Well, 40 to 50 was the range, yes, sorry. But originally they approved it in the range of 50 to 70. Now they reduced it from 40 to 50. And, as you would expect, along with that, they reduced the MPDU's. Okay. Now is that not an indication that the Council does not have as its primary goal to avoid other requirements of the Sector Plan in order to have the most MPDU's and the

most dwelling units?

MR. LANDFAIR: I'm not sure one could reach that conclusion from the area. Certainly they reached it for that particular site.

MR. KNOPF: I see. Okay. Well, now I'm quoting the -- the Council's opinion looks at the staff report which, by the way, proved this.

MR. LANDFAIR: Okay.

MR. KNOPF: Let me ask you a question there. Assuming the staff approved this, which I represent it did, is that finding that this was consistent with the Sector Plan, did that --

MS. HARRIS: I'd like to object. The witness had indicated early on that he had not read the staff report, had not read the Hearing Examiner report and so I think -- or the District Council report -- and so I believe it's, to just pull excerpts, he's not being able to evaluate in the full context of the case and as we know, that these cases are very complex and so I don't think that he can give accurate answers just based on specific questions from opponent's counsel.

MS. ROBESON: Well, he can simply say he doesn't know --

MS. HARRIS: Okay.

MS. ROBESON: -- if he doesn't know.

MR. KNOPF: I want to read you two quotes from the staff which the planning, the Council opinion quotes. One is at page 2. Okay. I quote the staff saying,

"One of the purposes of a TSR zone is to provide a range of densities that will afford planning choices to match the diverse characterization of the several transit station development areas.''

They go on to say technical staff, quote,

"Concluded that the reduced number of dwelling units continues to fulfill this purpose as it is within the density recommended by the Sector Plan," unquote. Now the density here was down to 57 dwelling units per acre. Would you agree with me that that staff recommendation in 4901 is inconsistent with the position they've taken in this case?

MR. LANDFAIR: I just don't know enough of the background information to render an opinion one way or the other.

MR. KNOPF: Well, let me -- you are familiar with the Sandy Springs --

MR. LANDFAIR: Yes.

MR. KNOPF: -- at 4825? And in the -- I have to get the number --

MS. ROBESON: Is that, are you looking for the exhibit number?

MR. KNOPF: Yes.

MS. ROBESON: That was G-908, right?

MR. KNOPF: Let's see.

MS. ROBESON: I think it's h, 102h.

MR. KNOPF: No, I don't have an h. It's got d. I believe it's d. No, wait a minute, no, no, take it back. Take it back. E, I think e.

MS. ROBESON: No, that's the Bethesda excerpts from the Sector Plan.

MR. KNOPF: 102e?

MS. ROBESON: That's what I have. If you're looking for excerpts, experts, excerpts from --

MR. KNOPF: I think it's in then.

MS. ROBESON: That's 843?

MR. KNOPF: Right, the Holiday, the --

MS. ROBESON: Okay.

MR. KNOPF: Yes.

MS. ROBESON: All right.

MR. KNOPF: On the -- I'm reading you now from page 4, 6, excuse me, page 6, which is -- this is the Council's opinion granting Holiday in 2007. And on page 6, let's see, let me see here, if you'll just bear with me here one minute? I believe it's on page 6. I'm reading you the

following quote.

"Although the proposed building fails to achieve the density of at least 45 dwelling units per acre recommended in the Sector Plan, technical staff found that the density of 27 dwelling units per acre proposed here to be acceptable because the building will be consistent with nearby residential uses of comparable heights less than 45 feet that have been developed with densities between 24 to 36 dwelling units per acre,"

end of quote. Were you familiar with that? Well, you worked on that project, right?

MR. LANDFAIR: I, yeah, I'm sure I've read that at some point in time and reviewed the record on that.

MR. KNOPF: So something of considerably less density --

MR. LANDFAIR: Yes.

MR. KNOPF: -- the staff and Council found less, found acceptable under the Sector Plan, is that correct?

MR. LANDFAIR: Clearly they did because they ultimately, of course, approved the zoning and made a finding.

MR. KNOPF: So is that not inconsistent with your statement that the policy and the goals of the Sector Plan and the housing policy required the most units as possible

in order to be found to meet the Sector Plan?

MR. LANDFAIR: Not necessarily. In this case, with that particular development on that property as it was configured at that time, they found it to be reasonable to approve that density.

MR. KNOPF: All right. Let me do one more thing if I might?

MS. ROBESON: Okay.

MR. KNOPF: If I'm not mistaken, when you were testifying about the compatibility of your project, you went around the area and pointed out the buildings and you put emphasis on the fact that the Edgemoor was right on the street and was 100 feet tall?

MR. LANDFAIR: Right. Right.

MR. KNOPF: Which you, I believe, pointed out was not consistent with the 65-foot height limit of the Sector Plan? Okay. Now, again, we have in the record various excerpts from the Edgemoor hearing.

MS. ROBESON: Okay. And is that --

MR. KNOPF: 106, 102 --

MS. ROBESON: J?

MR. KNOPF: No, wait a minute, I have to get --

MS. ROBESON: G-865?

MR. KNOPF: It's 106, yes, j, yes, and also f.

MS. ROBESON: Okay.

MR. KNOPF: Now are you aware that the Edgemoor hearings and approvals were done in conjunction or consolidated with, I'm not quite sure what word, with the City Place --
MR. LANDFAIR: Yes.
MR. KNOPF: -- hearings?
MR. LANDFAIR: Yes, City Homes.
MR. KNOPF: City Homes, thank you. That was sort of viewed as a combined project in terms of trying to evaluate the densities and the heights, wasn't it?
MR. LANDFAIR: Yes.
MR. KNOPF: Thank you. Now, okay, now you did rely on the Edgemoor in --
MR. LANDFAIR: Yes.
MR. KNOPF: Okay. Now I want to read you something and ask for a question on this. I am reading pages 13-14 from the Hearing Examiner report in 1998 on the Edgemoor and City Place. That's G-763 and G-769.
MS. ROBESON: Okay.
MR. KNOPF: And I quote,
"The subject property is located at the northern edge of the 65-foot height limit adjacent to areas where the building heights are much greater. The building high rise will be located in the same block with a taller building and will

confront a much taller building across Woodmont Avenue."
Let me point there, do you know the taller building, is he referring to the Chase Building behind it?
MR. LANDFAIR: Chase, correct.
MR. KNOPF: Right. Okay. Now continue the following sentence of the Hearing Examiner.
"The site is uniquely situated so that it will not constitute a precedent for deviation from the height limits as it can be easily distinguished from other locations,"
unquote. Aren't you being inconsistent with that directive not to constitute this as a precedent?
MR. LANDFAIR: No, I was on staff at that time.
MR. KNOPF: Okay.
MR. LANDFAIR: I was the reviewer of that zoning application. I took issue with the Hearing Examiner's finding with respect to height of that building.
MR. KNOPF: All right. But you don't take issue with the fact that he made that finding?
MR. LANDFAIR: I agree me made the finding.
MR. KNOPF: All right. Thank you. By the way, the buildings behind that he was relying on --
MR. LANDFAIR: The Chase?
MR. KNOPF: -- I think we, yes, we established

that was under the prior Sector Plan?
MR. LANDFAIR: Correct. Right. It's an older building.
MR. KNOPF: And the Sector Plan, and that current Sector Plan established a new criteria, low rise urban village criteria totally different than the prior Sector Plan, is that correct?
MR. LANDFAIR: Correct. Correct.
MR. KNOPF: Thank you.
MR. ABRAMS: While Mr. Knopf is looking through his records, can we go off the record for a second?
MS. ROBESON: Yes.
(Recess)
MS. ROBESON: We're going to go back on the record and we're there, back on the record. Mr. Knopf.
MR. KNOPF: Okay. Okay, Mr. Landfair, you had, let's see, just let me -- in terms of the Sector Plan, you had agreed that the prior sector, the plan prior to the current Sector Plan had quite different height provisions and design provisions in the current one and that is expressly stated in the current Sector Plan, is it not?
MR. LANDFAIR: I believe it is, yes.
MR. KNOPF: Okay. I'll find the page later and not hold you up. Just let me see if I have any reasons and then --

MS. ROBESON: You can take your time. I mean --
MR. KNOPF: I'm just -- in the adoption of the, by the Council in 4825 Montgomery Lane, that's the Sandy Spring development that you used, the Council made the following, I quote page 5,
"The building is designed primarily in a more traditional residential style because that is typical of the neighborhood. It will have double-hung windows, a porch on the corner and covered porches which is a very residential feature typical of a lot of older, smaller apartment buildings. The buildings will be articulated with a base at the middle and a top which is a traditional way of detailing a residential building,"
unquote. Now is that what you were referring to previously when you said there were traditional designs and there are more modern designs?
MR. LANDFAIR: Yes, but I would also say that the neighborhood is also comprised of some more modern designs as well.
MR. KNOPF: I see. Would you agree -- technical staff is quoted on page 5, quote, technical staff agreed that the design of the building successfully communicates a, quote, residential character, unquote, including features

similar to those of residential townhouses directly across Montgomery Lane, unquote. You would agree with that?
MR. LANDFAIR: Yes.
MR. KNOPF: Okay. Thank you. Thank you. I'm just trying to skip around.
MS. ROBESON: Well, since we don't have Mr. Berman, we have a little more time, hopefully, you know, not an unreasonable amount.
MR. KNOPF: Now you tell me.
MS. HARRIS: And, if I can?
MR. KNOPF: Okay.
MS. HARRIS: One of the reasons, I mean after Mr. Knopf, then I have the opportunity to redirect, which --
MS. ROBESON: That's right.
MS. HARRIS: -- I'm just putting that in for the equation when we dismiss --
MS. ROBESON: Okay.
MS. HARRIS: -- Mr. Berman.
MR. KNOPF: Okay. Yes. No. I think I will stop at this point. Thank you. And I'm saving -- you want me to ask questions of other witnesses and on.
MS. ROBESON: I think that would be helpful.
MR. KNOPF: Yes.
MS. ROBESON: Okay.
MR. KNOPF: And, again, I'm sorry it was a little

disjointed --
MS. ROBESON: No.
MR. KNOPF: -- but --
MS. ROBESON: Please don't apologize. Your expertise is apparent.
MR. ABRAMS: In terms of the order of witnesses, we want Ms. Harris to go to her redirect prior to my redirect.
MS. ROBESON: Wait, you don't get redirect. What do you mean redirect?
MR. ABRAMS: He has answered certain questions of Mr. Knopf which are --
MS. ROBESON: No. You -- no. You don't get any recross. You -- no. So that's not the order. Ms. Harris, you're on redirect.
MS. HARRIS: Okay. And can we have five minutes just as the other witnesses --
MS. ROBESON: Absolutely.
MS. HARRIS: -- I mean counsel has had time? Thank you.
MS. ROBESON: We're off the record.
MR. ABRAMS: What is the procedure done for recross?
MS. ROBESON: Well, you don't get recross. I will go check. I don't think they do because I've had people ask

for it, but I will check during this break. But you wouldn't get recross until he gets redirect.
MR. ABRAM: Correct.
MS. ROBESON: So I will check, but I am 99 percent sure there is none.
(Recess)
MS. ROBESON: All right. We're back on the record. I do have to allow recross based solely on the redirect. So I'm sure that I don't expect a 2-hour recross. So where is Mr. Knopf? We don't know?
MS. HARRIS: And Mr. Landfair.
MS. ROBESON: And Mr. Landfair, yes, I guess we need him.
MR. LANDFAIR: My apologies.
MS. ROBESON: Don't. It's --
MS. HARRIS: We're beyond apologies.
MS. ROBESON: We're beyond apologies, but we are on the record just so you know.
MR. LANDFAIR: Yes, ma'am. Thank you.
MS. ROBESON: All right. Are we ready?
MR. LANDFAIR: Yes.
MS. ROBESON: Now, Mr. Abrams, you get to have recross on redirect, not on Mr. Knopf's cross.
MR. ABRAMS: I understand.
MS. ROBESON: You follow what I'm saying?

MR. ABRAM: Yes, ma'am.
MS. ROBESON: Okay. I'm just checking. All right. Ms. Harris, Mr. Landfair is back.
MS. HARRIS: Mr. Landfair, did the zoning hearing in that, the Zoning Hearing Examiner, as well as the District Council, find the Hampden Lane case, and it may be helpful to point to that on one of the exhibits, compatible with the surrounding buildings, including the adjacent City Homes?
MR. LANDFAIR: Yes, they did.
MS. ROBESON: Okay. You've got to tell me which one that is?
MR. LANDFAIR: I'm referring to Exhibit 106f.
MS. ROBESON: Is that 4901? Okay.
MR. LANDFAIR: And it is the building that is located in the northeast quadrant of Arlington Road and Hampden Lane.
MS. ROBESON: Okay.
MS. HARRIS: And what is the height of that, the maximum height of that building?
MR. LANDFAIR: 71 feet.
MS. HARRIS: And what's the distance of that building from the City Homes?
MR. LANDFAIR: Zero feet. It's built, or will be built right on the property line.

MS. HARRIS: And just for comparison purposes because it was part of the site plan visit and the building exists, what's the approximate distance between the HOC building and the City Homes?
MR. LANDFAIR: Approximately 12 feet.
MS. ROBESON: You mean the east/west setback is 12 feet?
MR. LANDFAIR: The setback of the HOC building from the rear property line.
MS. ROBESON: Oh, okay.
MR. LANDFAIR: The common property line of City Homes --
MS. ROBESON: I see what you're saying.
MR. LANDFAIR: -- is 12 feet?
MS. ROBESON: So the Hampden Lane project has zero setback?
MR. LANDFAIR: Correct.
MS. ROBESON: Do you know what zoning case that is, was? Don't look it up. I'll figure it out. Okay. Keep going.
MS. HARRIS: Did the ZHE and the District Council also find 4901 Hampden Lane building to be compatible with the surrounding buildings --
MR. LANDFAIR: Yes, they did.
MS. HARRIS: -- including the adjacent City Homes?

MR. LANDFAIR: They did.
MS. HARRIS: And what is the height of the 4901 building?
MR. LANDFAIR: 70 feet.
MS. HARRIS: And its distance from the City Homes?
MR. LANDFAIR: Approximately 48 feet.
MS. HARRIS: And what is the height of the subject building?
MR. LANDFAIR: The height of the subject building is 70 feet.
MS. HARRIS: And what is the height at the immediate front edge along Montgomery Lane?
MR. LANDFAIR: 50 feet along Montgomery Lane stepping back 12 feet.
MS. HARRIS: And the distance between the subject building and the City Homes building?
MR. LANDFAIR: 73 feet.
MS. HARRIS: So in your professional opinion, if the Hampden Lane building which has zero setback immediately abutting the City Homes was found to be compatible and the 4901 Hampden Lane in its relationship to the surrounding buildings, including the City Homes, was found to be compatible, is the SJG building compatible with the surrounding area?
MR. LANDFAIR: I would say yes.

MS. HARRIS: You established that the Hampden Lane building was built abutting the City Homes, correct?
MR. LANDFAIR: Correct.
MS. HARRIS: Now there was some discussion earlier by the, I believe it was the suggestion by the Hearing Examiner about potentially setting back the subject building further beyond the proposed 73-foot setback. Would moving that building, even setting the subject building back further to increase that setback beyond 73 feet in any way mitigate any of the impacts to the City Homes which has caused, that could be caused by the Hampden Lane building?
MR. LANDFAIR: No, I don't believe so.
MS. HARRIS: Exhibit 106c was intended to indicate the maximum heights of the surrounding buildings and to identify which exceeded the Sector Plan recommendations, is that correct?
MR. LANDFAIR: Yes.
MS. HARRIS: It may be helpful to get that, to pull that exhibit. Okay. So pursuant to the County zoning ordinance and as well as the Planning Board practice, when the height of a building identified as we've identified among those, on that plan, what height is set forth?
MR. LANDFAIR: It would be the maximum height of the building as approved.
MS. HARRIS: So that height, that height exhibit

does not in any way misrepresent the heights of the adjacent building?
MR. LANDFAIR: No, it does not.
MS. HARRIS: Now we also identify, that building identifies the Rosstine Building, which is immediately west of ours as having a maximum height of?
MR. LANDFAIR: 48 feet.
MS. HARRIS: Although we did acknowledge, I believe it came up through redirect or cross-examination that a very small portion of it?
MR. LANDFAIR: Approximately 10 feet fronting along Arlington Road itself --
MS. ROBESON: Okay.
MR. LANDFAIR: -- was 35 feet.
MS. ROBESON: I have to ask you, the Rosstine Building, is that identified as --
MR. LANDFAIR: It's --
MS. ROBESON: -- the Edgemoor at Arlington north?
MR. LANDFAIR: Correct.
MS. ROBESON: Okay.
MS. HARRIS: Which buildings in the surrounding area shown on the Exhibit 106c have an upper-story step back?
MR. LANDFAIR: Well, the Edgemoor at Arlington has an upper story setback, but that, step back, but that's

fronting on Arlington Road. 4825 Montgomery Lane, as approved, does not. Edgemoor Highrise does not --

MS. HARRIS: Just, it may be easier, just identify those that do.

MR. LANDFAIR: I'm sorry. The only one that would, that fronts again on Arlington Road is the Edgemoor at Arlington.

MS. HARRIS: Does the Edgemoor at Arlington north have an upper-story step back?

MR. LANDFAIR: It will, yes. I'm sorry.

MS. HARRIS: Okay. And will, and the Hampden Lane project?

MR. LANDFAIR: And the Hampden Lane at the corner of Arlington and Hampden Lane will as well, stepping back from Arlington Road.

MS. HARRIS: Okay. So three that are shown on that plan?

MR. LANDFAIR: Correct.

MS. HARRIS: And what do all three of those buildings have in common?

MR. LANDFAIR: Well, they're all exceeding the 35-foot height recommendation in the Sector Plan, in some cases by as much as 33 percent for both the Edgemoor at Arlington and the Edgemoor at Arlington north, considerably more than that, approximately 100 percent by the Hampden Lane building

which one portion of that building is about 70 feet within the area that is defined as recommended for 35 feet.

MS. HARRIS: So in your opinion do you believe that the upper-story step back has something to do with the fact that they're in that 35-foot zone?

MR. LANDFAIR: Yes, I do.

MS. HARRIS: And so just to be clear, is the 100-foot high rise at Edgemoor have an upper-story step back?

MR. LANDFAIR: No, it does not.

MS. HARRIS: And the 65-foot Sandy Spring building?

MR. LANDFAIR: No.

MS. HARRIS: And the 53-foot City Homes?

MR. LANDFAIR: No.

MS. HARRIS: But the subject building will --

MR. LANDFAIR: Yes.

MS. HARRIS: -- our subject building?

MR. LANDFAIR: Yes, it will.

MS. HARRIS: So it will, to some extent is it correct to say it would be the anomaly in the zone at 65 feet, we would be the only one providing the upper-story step back?

MR. LANDFAIR: Step back from Montgomery Lane, correct.

MS. HARRIS: Thank you. I'm going to ask a few

questions now regarding the measurement of height.

MR. LANDFAIR: Uh-huh.

MS. HARRIS: Can you please identify the, and you don't need to identify it on the plan, but just verbally identify the measuring points for the high rise at Edgemoor, the Edgemoor at Arlington and the Hampden Lane project?

MR. LANDFAIR: Certainly. The Edgemoor Highrise, as approved, the building height measuring point was taken from the podium level fronting along Montgomery Lane. The Edgemoor at Arlington was measured from the curb at approximately the middle of the building and the Arlington at, I'm sorry, the Edgemoor at Arlington North was measured from the podium level as well.

MS. HARRIS: And why do you believe that these measuring points were used?

MR. LANDFAIR: Well, it was advantageous to do so. Of course, the developers were well within their rights to do so as permissible under the zoning ordinance and it allowed them to essentially maximize the height if they so choose.

MS. HARRIS: So in the case of the Hampden Lane building, what was the benefit of measuring where they tend to measure that?

MS. ROBESON: I'm sorry, is, when you say Hampden Lane, that's not 4901 --

MS. HARRIS: No, I'm sorry.

MS. ROBESON: -- Hampden Lane?

MS. HARRIS: So I, when I refer to 4901, 4901 --

MS. ROBESON: Okay.

MS. HARRIS: -- 4901 and then the one, the building at the corner of Arlington and Hampden Lane --

MS. ROBESON: Okay.

MS. HARRIS: -- I've been referring to that as Hampden Lane.

MS. ROBESON: Go ahead.

MR. LANDFAIR: The measuring height point for the Hampden Lane building is located along Hampden Lane itself and while they did not maximize the highest elevation along the street, which they could have, it is located in a spot that will allow them to build higher than they otherwise would be able to if the measuring point was located closer to Arlington Road. As has already been testified to, the elevation of Hampden Lane increases the further east you go from Arlington Road.

MS. HARRIS: So would you say that in, as a general rule, a property owner or developer would look for the most advantageous position or point on their site for which to measure for the structure?

MR. LANDFAIR: Yes.

MS. HARRIS: And is this common only to buildings

within this TSR district or is this a practice and you see all of them doing that?
MR. LANDFAIR: This is a practice you would see everywhere.
MS. HARRIS: So in the case of the subject building, did you measure in accordance with the zoning ordinance?
MR. LANDFAIR: Yes, we did.
MS. HARRIS: And what's the difference in -- actually I want to clarify something that you had said previously.
MR. LANDFAIR: Right.
MS. HARRIS: And that has to do with the elevation of West Lane and Montgomery Lane.
MR. LANDFAIR: Right.
MS. HARRIS: Can you --
MR. LANDFAIR: Yes, I had previously testified that the elevation based on contour that I read on the development plan was 328. And when you compare that to the building height measuring point of 335.8, that suggested an elevation difference of, well, simple math, six, eight feet between the building height measuring point and a nearby grate in the street. And in actuality I had an opportunity during the lunch break to take a look at a survey plan which was clearer, easier to read, and on that plan --

MR. ABRAMS: Objection. Is that survey plan a record exhibit?
MS. ROBESON: You can -- that's my question too. Is it in the record?
MR. LANDFAIR: I don't recollect if it is.
MR. ABRAMS: I would object to the testimony.
MR. LANDFAIR: Can we take a look at the --
MS. HARRIS: Well, yes, but maybe I'm going to avoid this discussion. Are there contour plans on the development plan?
MR. LANDFAIR: There are contours. It's the same contours. The --
MS. ROBESON: Okay. Then testify --
MR. LANDFAIR: -- development plan relies upon the survey base and so --
MS. ROBESON: Right.
MR. LANDFAIR: -- the survey base that I was looking at is --
MS. ROBESON: Well, you're testifying as far as the development plan. Does that not show the elevation?
MR. LANDFAIR: It does, but the print was very fuzzy, so it was difficult for me to read it.
MS. ROBESON: Okay. I'll let you testify based on -- you can testify based on, you took the development plan and compared it to the original, is that correct?

MR. LANDFAIR: Correct.
MS. ROBESON: All right.
MR. LANDFAIR: It's the same base information.
MS. ROBESON: Okay. So --
MR. LANDFAIR: So the conclusion is that the contour line was actually 330, 332. So that suggests that the difference between the nearby highest elevation point, which is in the intersection of West Lane and Montgomery Lane, is actually about two feet less than what I had previously recommended or suggested. That means that the difference between our building height measuring point and that nearby height point, if you will, in the street is at least two feet less than what was represented.
MS. ROBESON: So the overall, the overall --
MR. LANDFAIR: So the perception of the --
MS. ROBESON: -- the overall --
MR. LANDFAIR: -- overall building height is two feet less than what one might otherwise think.
MS. HARRIS: And so would you conclude that the measuring point that the applicant is proposing to use is within the range and potentially less in terms of what benefit it may provide than what other buildings would rely on?
MR. LANDFAIR: Yes. Yes, I do.
MS. ROBESON: My question is, okay, you're

building from, where are you measuring the height as far as the facade, the front, frontage? Where are you, what, where are you measuring the height from?
MS. HARRIS: For zoning purposes, we are measuring the height from a measuring point that is located on the West Lane. I'm referring now to --
MS. ROBESON: 106a?
MR. LANDFAIR: Right, the development plan itself. On the west side of West Lane just south of where we had the driveway entrance into the garage, we had --
MS. ROBESON: Okay.
MR. LANDFAIR: -- noted on the top of curb a building height measuring point --
MS. ROBESON: Oh.
MR. LANDFAIR: -- 335.8.
MS. ROBESON: Okay. And then what is the elevation -- okay, that's the building height measured, but okay. So what's --
MR. LANDFAIR: Right.
MS. ROBESON: -- the elevation at the intersection of West Lane?
MR. LANDFAIR: So at that intersection it's between 330 and 332. So there's no precise spot elevation, but it would be between those contours.
MS. ROBESON: Yes. Okay.

MR. LANDFAIR: So two feet higher in that intersection than what I had previously suggested.
MS. ROBESON: Right.
MR. LANDFAIR: Which means that the overall perception of height is two feet less.
MS. HARRIS: What, just to clarify --
MS. ROBESON: I'm not sure what you meant -- I'm sorry.
MR. LANDFAIR: Yes.
MS. ROBESON: Or maybe you were going to ask this. What do you mean by the overall perception of height?
MR. LANDFAIR: What I mean by that is --
MS. ROBESON: Don't shake your head, okay? I'm sorry that I'm slow, but it's been a long day. Now can you explain what you just said?
MR. LANDFAIR: I'll try, yes. The zoning ordinance has a way of, or has a requirement in terms of how you would measure the building height and in addition to that, there's also the perception, in other words, one can say from a building code perspective or a zoning ordinance perspective your building is 70 feet in height. But one can also say, well, to the eye as you're walking along the street, you have a perception that it's --
MS. ROBESON: Right.
MR. LANDFAIR: -- 70, 75.

MS. ROBESON: The subject --
MR. LANDFAIR: Right. And that was a point that was actually brought up earlier --
MS. ROBESON: Yes.
MR. LANDFAIR: -- is that if you're at a lower elevation, even though from a zoning perspective your building may look like it is 70 feet high --
MS. ROBESON: Yes.
MR. LANDFAIR: -- to the eye it may look at little higher.
MS. ROBESON: So if I'm standing -- but I thought that went to the perception from Arlington as you're walking up?
MR. LANDFAIR: Well, that point was made by the opposition attorney.
MS. ROBESON: Okay. So what's your point?
MR. LANDFAIR: My point is that one could perceive from that intersection because the elevation is three, four feet less than what it is higher up, in other words further up West Lane --
MS. ROBESON: Okay.
MR. LANDFAIR: -- that one could perceive that the building is a little higher than what the zoning ordinance would state it would be.
MS. ROBESON: Right.

MR. LANDFAIR: But I don't want the record to misrepresent what that perception is.
MS. ROBESON: The actual -- okay.
MR. LANDFAIR: Right.
MS. ROBESON: I understand. Thank you. You can go ahead.
MS. HARRIS: Thank you. You testified in response to a cross-examination question, I believe it was from Mr. Knopf, that from certain angles on the street, the 6th and 7th floors of the building may be visible, is that correct?
MR. LANDFAIR: Correct.
MS. HARRIS: And is there a requirement in either the Sector Plan or the zoning ordinance or any other law or regulation of Montgomery County that upper stories of buildings should not be visible?
MR. LANDFAIR: No, no, there isn't.
MS. HARRIS: And can you explain, because I have having difficulty understanding what the point was if the upper stories, in fact, are visible, does that create some kind of issue?
MR. LANDFAIR: I don't think so. You know, it's, yes, they would be visible from certain angles. You know, we have gone to great lengths to minimize the massing of the building, to minimize the height of the building, but it's not to say that you can't from certain angles see the entire

height of the building and the point was made that as you're walking further up Montgomery Lane and you look back or perhaps from one of the upper stories of City Homes, you will see the upper stories of our building. But, again, that building is 73 feet from the City Homes buildings. We don't think just because you see it necessarily means that it is objectionable or not compatible with the surrounding area.
MS. ROBESON: I understand. I think the point was whether the height, the perception of the height would be higher.
MR. LANDFAIR: Right.
MS. ROBESON: But I understand the point you're making.
MS. HARRIS: And then one final question and I'll note that my original is, do you think it's realistic that to expect that people that have moved voluntarily into an urbanized environment like Bethesda CBD would have an expectation of seeing a building outside their window?
MR. LANDFAIR: I don't think that's realistic.
MS. HARRIS: You do think it's realistic?
MR. LANDFAIR: No, I don't think it's realistic that they would find that objectionable if they were to see other buildings outside of their window.
MS. HARRIS: So, in other words, is it correct

that it would be a realistic expectation to live in downtown Bethesda and think you're going to look out your window and see another building?
MR. LANDFAIR: Correct. Correct.
MS. HARRIS: You responded during cross-examination that the existing developments are consistent with the tenting concept, is that correct?
MR. LANDFAIR: Correct.
MS. HARRIS: And why did you conclude this? And I think it may be helpful to refer to Exhibit 79, which was the street elevation with the tenting.
MR. LANDFAIR: I'm sorry, do you have --
MS. HARRIS: It's Exhibit 79.
MR. LANDFAIR: I don't think it's --
MS. ROBESON: While you're doing that, I'm just going to clarify for the record, when I said don't roll your eyes, I was addressing that to Ms. Wilshire. The purpose of this, it's very distracting because I'm seeing you right behind there and it was an expression that I wasn't being fast enough on the uptake.
MS. WILSHIRE: In all honesty, I wasn't.
MS. ROBESON: Well, that may be, but I don't know and your activity, and I don't mean to come down on you, but I am going to say it on the record just in case anybody has a question, it's incredibly distracting when I'm trying to

watch your witness, okay?
MS. WILSHIRE: Well, then maybe I'll move. I'm just trying to help find exhibits and I was trying to facilitate getting some of this done a little quicker, but --
MS. ROBESON: Well, you know what, I'd rather just have a -- I'd rather take a little more time.
MS. HARRIS: Bill, if we don't have it, we can refer --
MR. LANDFAIR: I'm sorry.
MS. HARRIS: -- my apologies, for some reason we don't have the full size.
MS. ROBESON: And what exhibit is this?
MS. HARRIS: 79.
MS. ROBESON: Okay. I see.
MS. HARRIS: Could it be under the development plan? No, there it is. Is that the one with the line?
MS. ROBESON: I have it.
MS. HARRIS: Okay. Given that the concept of tenting says you, your heights are supposed to step down from the core, is that correct?
MR. LANDFAIR: Correct.
MS. HARRIS: And in line with that then, does, this plan takes the point, the highest point, the point from the building that's in the core --

MR. LANDFAIR: Correct.
MS. HARRIS: -- that's closest to the subject property and then draws a line down to the low edge?
MR. LANDFAIR: Right, the westernmost part of the district, of the transit station residential district along Arlington Road.
MS. HARRIS: And it creates a plane, is that correct?
MR. LANDFAIR: Correct, that's right.
MS. HARRIS: And would the subject building fit within that plane?
MR. LANDFAIR: Yes, it does.
MS. HARRIS: So in your professional opinion is that consistent with the concept of tenting?
MR. LANDFAIR: Yes, I believe it is.
MS. HARRIS: And is there some kind of interpretation or requirement with respect to tenting that each building which is further away from the core should be lower than the one that precedes it?
MR. LANDFAIR: No, I don't think so, no.
MS. HARRIS: And are there any examples -- and in keeping with your answer that you don't think that's the case, are there, does the Hampden Lane Associates Building, the Hampden Lane building which is 71 feet next to the 53-foot high, 53-feet high City Homes --

MR. LANDFAIR: Just --
MS. HARRIS: -- does that respect that tenting concept?
MR. LANDFAIR: No, it doesn't. I mean it attempts to, but it doesn't fully respect --
MS. HARRIS: Uh-huh.
MR. LANDFAIR: -- the tenting concept.
MS. HARRIS: In terms of its relationship between the City Homes and the Hampden Lane building?
MR. LANDFAIR: Correct.
MS. HARRIS: And how about the HOC building which is, I believe you testified, approximately 48 feet in height --
MR. LANDFAIR: 48 to 50 feet.
MS. HARRIS: -- and closer to the core, does that respect a strict interpretation of that tenting requirement?
MR. LANDFAIR: Yes, it does. The HOC building does.
MS. HARRIS: The HOC? But does the Hampden Lane building, which is higher than the HOC building?
MR. LANDFAIR: It would not.
MS. HARRIS: Okay. Is the whole concept of tenting, is that one of those requirements under the Sector Plan that requires substantial compliance?
MR. LANDFAIR: It needs to be substantial, but you

don't need to be fully consistent with the tenting. In other words, the expectation was that there might be some anomalies that you're building, again, case in point, Hampden Lane could be approved protruding above that tenting effect. But, again, with our building, our project, we fully respect that plane that's been established.

MS. HARRIS: And in terms of substantial compliance, is it correct that the zoning ordinance requires that development plans must substantially comply with respect to the use and density recommendations?

MR. LANDFAIR: Correct. Correct.

MS. HARRIS: And is the -- recommendations such as tenting --

MR. LANDFAIR: It's one of the more flexible standards.

MS. HARRIS: Okay. Thank you. But, in any event, you concluded does the proposed building comply with that concept?

MR. LANDFAIR: It does, yes.

MS. HARRIS: Okay. What does the Sector Plan recommend in terms of height for the subject building?

MR. LANDFAIR: It recommends 65 feet.

MS. HARRIS: Actually I want to go back to the tenting for one moment. There was some discussion about why the subject building didn't itself step down from east to

west in furtherance of the tenting concept. Did the Holiday project step down from east to west?

MR. LANDFAIR: It, well, it's, no, it's a step down from east to west, it's a step down --

MS. ROBESON: Oh, I see.

MR. LANDFAIR: -- from north to south.

MS. HARRIS: Correct. Okay. Turning to page 39 of the Sector Plan, what was the height recommended for the subject building?

MR. LANDFAIR: For our building, 65 feet.

MS. HARRIS: And then in the narrative description for the entire, for a good portion of the TSR zone, is that correct?

MR. LANDFAIR: Correct.

MS. HARRIS: And then in the narrative portion of the Sector Plan with respect to heights, what did they describe, how did they say the height should be portrayed?

MR. LANDFAIR: In terms of feet or in terms of --

MS. HARRIS: No, in terms of --

MR. LANDFAIR: Well, it was a low rise.

MS. HARRIS: Okay.

MR. LANDFAIR: That's how it was classified, low rise, high density, 65 feet in height.

MS. HARRIS: So the fact that the page 39 says 65 feet and then the text which supports that page 39 says low

rise, is it your opinion that 65 feet, in fact, does constitute low rise?

MR. LANDFAIR: Yes. Yes.

MS. HARRIS: And does the addition of five extra feet change your opinion?

MR. LANDFAIR: No, it doesn't.

MS. HARRIS: And do you base that in part on the fact that the Sector Plan, again, page 39, provides for height variations from between 35 feet and 200 feet?

MR. LANDFAIR: Yes.

MS. HARRIS: And you've already testified to this, but I just want to clarify, are there other projects in the low rise area that were approved that are 70 feet?

MR. LANDFAIR: Yes. Of course, the portion of the Hampden Lane building was and the, I'm blanking, I'm sorry, 4901 Fairmont was as well.

MS. HARRIS: And yesterday you, I believe it was yesterday, you testified with respect to the height of the Holiday project and I think today you may have clarified that, but I just wanted to make sure it's in the record correctly. What was the height of the Holiday, the maximum height of the Holiday project?

MR. LANDFAIR: I believed it was 70 feet. Is that what I testified to? I thought that's what --

MS. HARRIS: No, the Holiday project.

MR. LANDFAIR: The Holiday project? I'll have to go back to my notes.

MS. ROBESON: The prior project on this --

MS. HARRIS: No, the prior project on this site, what was the maximum height?

MR. LANDFAIR: I'll have to refer to my notes. I'm sorry.

MS. HARRIS: That's okay. I think that's okay.

MS. ROBESON: Do you want to take a minute now?

MR. LANDFAIR: If I may, yes, thank you.

MS. HARRIS: Just to clarify, it's the height of the Holiday project, not the penthouse, which is the maximum height that was approved --

MR. LANDFAIR: No, I --

MS. HARRIS: -- by the Hearing Examiner.

MS. ROBESON: Well, I was going to ask him just for the record, can you explain, is the penthouse excluded from --

MR. LANDFAIR: From height calculations?

MS. ROBESON: Yes.

MR. LANDFAIR: Yes, it is. My apologies, I had it noted here and I don't, I don't see it in my notes.

MS. HARRIS: The architect may be able to testify to that. We'll move on. How many units are in the Highrise Edgemoor?

MR. LANDFAIR: The Highrise at Edgemoor is 52 units, I believe. Let me -- 54, my apologies.
MS. HARRIS: Okay.
MR. LANDFAIR: 54 units.
MS. HARRIS: And since you had indicated that you were the planner on that case, do you recall how many units were proposed at the time that the Highrise at Edgemoor was approved?
MR. LANDFAIR: I think it was on the order of, it was less than 150. I think it was 148, 149.
MS. HARRIS: And was that, was the height of the Highrise Edgemoor tied to some extent on the number of units that were proposed?
MR. LANDFAIR: It was. That was, for lack of a better description, it was one of the selling features of the project, the fact that it was so close to Metro, the fact that in theory with its height and building massing it could accommodate quite a few units that it was desirable to provide that amount of housing.
MS. ROBESON: I don't understand why -- okay. But how did that relate to the transition for the lower densities on, in City Homes? Or is -- I don't want to -- if you have another witness that's going to address that, that's fine, but I'm not clear on how the two were -- I know they were tied together. I'm not clear on how the two were

tied together.
MR. LANDFAIR: They were united under joint plans and ultimately, of course, the HOC development was also tied to the same development, but in terms of the specific review of the Edgemoor Highrise, the support that it received from the County was based, at least in part, on the fact that potentially it could provide quite a few units, almost up to 150 units. Now, obviously, as it was finally built, we didn't end up with that many units. There was consolidation and we ended up with larger units.
MS. ROBESON: But why there and then have much lower density at the town homes?
MR. LANDFAIR: At the time the town homes were built, the developer believed that the density that was being proffered, being proposed made sense for that property. There may have been economic factors. There may have been other factors that --
MS. ROBESON: So you don't know?
MR. LANDFAIR: I don't know.
MS. ROBESON: Okay.
MR. LANDFAIR: I don't know specifically.
MS. ROBESON: That's fine.
MS. HARRIS: And do you have any sense of what the units per acre were for the Highrise Edgemoor when it was approved with 148 or so units?

MR. LANDFAIR: Yes, I wrote that down too. Just bear with me for a second.
MS. ROBESON: Is that something we could calculate and then you could argue in your closing arguments?
MR. LANDFAIR: It is, yeah, it is. We did and I had written it down. My apologies.
MS. HARRIS: We can follow-up with that, is that what you're suggesting?
MS. ROBESON: Yes. Or have another witness --
MS. HARRIS: Okay.
MS. ROBESON: -- bring it in.
MS. HARRIS: Certainly. The, well, he may be able to answer the next question without --
MS. ROBESON: Okay.
MS. HARRIS: Yesterday you testified that you had concluded that the Highrise Edgemoor was low density. While it's a 6 FAR, it is only 54 units?
MR. LANDFAIR: Right.
MS. HARRIS: Is the -- can you explain your conclusion that it is low rise density based on the FAR, the unit issue and then also the fact that at one point it was going to be 150 units and now it's one, it's only 54 units?
MR. LANDFAIR: Well, I would base that argument on the number of units that we actually ended up with. It's, in terms of the overall density, obviously the overall

massing of the building didn't change, the height didn't change, but the numbers of units were drastically reduced. So from that perspective I would make the argument that it was low density.
MS. HARRIS: And do you have a sense of the Council's opinion or the Planning Board's opinion when they approved the project for 150 units that close to the Metro and then was decreased to 52 units?
MR. LANDFAIR: I would be speculating, but I would imagine there was disappointment that we ended up with that many units.
MS. HARRIS: That few units?
MR. LANDFAIR: That few units.
MS. HARRIS: Okay. I'm going to --
MS. ROBESON: In the TSR note, in the Sector Plan they recommend a minimum number of units I remember. Is 54 above the minimum?
MR. LANDFAIR: I believe in this case it is, yes.
MS. HARRIS: But is it well below the estimation of the maximum?
MR. LANDFAIR: Yes.
MS. HARRIS: Was it a recommendation? I don't believe it was an estimation.
MR. LANDFAIR: Yes, it was well below that number.
MS. HARRIS: Which is, which was?

MR. LANDFAIR: Well, it was well below the, obviously the one, nearly 150 --
MS. HARRIS: Which the zone permits?
MR. LANDFAIR: Right. Correct.
MS. HARRIS: Okay. On page 72, excuse me, page 82 of the Sector Plan, can you please read the recommendation with respect to townhouses? I need to help you with those.
MR. LANDFAIR: I found it. It's, the second full paragraph at the top of the page. That says the type of housing should appear to be townhouses, but actually be three to six floor buildings with apartments at each level.
MS. HARRIS: So --
MR. LANDFAIR: Yes.
MS. HARRIS: So yesterday during cross there was a question about whether the City Homes', the criteria of being townhouses, but I don't think that that sentence was read in full. So in your opinion does the City Homes meet this requirement?
MR. LANDFAIR: It doesn't meet that requirement as described there in the Sector Plan.
MS. HARRIS: And the reason that it doesn't?
MR. LANDFAIR: Because it doesn't provide individual units on each floor.
MS. HARRIS: It just provides --
MR. LANDFAIR: Single, individual townhouse units

that are multiple floors, multiple levels.
MS. HARRIS: What is the purpose of the Sector Plan provision on page 85 which reads, locate required parking either underground or in rear decks so as not to be seen from surrounding streets?
MR. LANDFAIR: Well, I think the intent is to fully mitigate the view of the parking to make sure that it's not creating an objectionable view for surrounding properties.
MS. HARRIS: And how many parking units does the City Homes have?
MR. LANDFAIR: It has --
MS. HARRIS: And actually I'd like -- you can refer to, it may be helpful to refer to an exhibit, whichever one you think may be best.
MR. LANDFAIR: We can refer to 106b and referencing that exhibit, we actually have, I would describe the views as the scenic areas, but then we have the alleyways which provide access to the rear loading garages of which there are one, two, three.
MS. HARRIS: And are they concealed from the surrounding streets, these parking areas?
MR. LANDFAIR: No, they're readily visible from the streets.
MS. HARRIS: And were there ever cars parked on

those, in those alleys?
MR. LANDFAIR: Yes.
MS. HARRIS: And if you take the frontage of the proposed building and extend our, that frontage south across Montgomery Lane, can you explain what vantage, what the residents of the proposed building will be viewing?
MR. LANDFAIR: Well, they would be able to see actually right down one of those alleyways directly opposite our building.
MS. HARRIS: And then they also face how many of the end caps of the City Homes?
MR. LANDFAIR: And they would face two of the end caps of the City Homes.
MS. HARRIS: So the, and actually so the opposite question not related to parking is how -- there's two end caps -- how many units from the City Homes will have direct view of the proposed project?
MR. LANDFAIR: Two.
MS. HARRIS: Is one of them immediately across the street from the scalloped car well?
MR. LANDFAIR: Yes, it is.
MS. HARRIS: On page 85 of the Sector Plan, No. 6, can you please read that?
MR. LANDFAIR: Locate front unit entrances along the street when residences are provided on the first floor

to encourage street light.
MS. HARRIS: And what do you think the purpose of that recommendation is?
MR. LANDFAIR: Well, the purpose is to activate the street and it makes sense when you have, again as it states, units that are on the ground floor of the street. It's a helpful thing to do.
MS. HARRIS: And are the -- we touched on this during cross, you touched on this, are the end cap units of the City Homes, do those provide direct access onto the street?
MR. LANDFAIR: Well, they have direct access onto the street, but it's via very large stairways that are located along the end cap itself facing the street. And I might add that those stairways and the landscaping surrounding them actually encroach into that streetscape area such that as one is walking by, you don't really feel like it is part of the public realm. You feel like it's more part of a private space, even though technically speaking it's been counted as public use space.
MS. HARRIS: And we've gone through a number of these Sector Plan recommendations, but I just wanted to, for you to reiterate again, are these -- do any of these relate to use and density which requires substantial compliance?
MR. LANDFAIR: I'm sorry, say it again?

MS. HARRIS: The various Sector Plan recommendations that we've discussed --
MR. LANDFAIR: Yes.
MS. HARRIS: -- do they relate whether it's tenting or access on the street, entrances on the street or the parking, do those relate to either use or density that requires substantial compliance --
MR. LANDFAIR: No.
MS. HARRIS: -- with the Sector Plan?
MR. LANDFAIR: They're also called flexible standards I would think.
MS. HARRIS: Okay. The next series of questions relate to public use space. Did the overall green area, whether it be hardscape or softscape, decrease as a result of revision of the plan to provide the pocket park in the front of the building?
MR. LANDFAIR: No, it didn't. I testified previously that, in fact, let me see if I still have the exhibit handy. Well, never mind. I spoke previously about the fact that we are still retaining what was classified as public use space on the north side of the building, but now we're characterizing it as onsite amenity area. We factor that into what we are providing in the way of onsite public use space. I believe what we're actually proposing right now is in excess of what was previously proposed in terms of

landscaped area, hardscape area which considerably could be enjoyed by the public.
MS. HARRIS: Can you please, using Exhibit 70, which is the composite base plan that shows the public use space area as various iterations of this?
MR. LANDFAIR: Oh, yes, it can.
MS. HARRIS: Well, not of our project, it's the one that shows the TSR zone in general and --
MS. ROBESON: Oh, okay.
MS. HARRIS: -- the public use spaces. Can you please reference that and discuss from the standpoint of both quantitatively and qualitatively how the subject property compares?
MS. ROBESON: And I have to ask you to hold that thought because I have to actually go get my keys before I get locked out of the Zoning Office.
MS. HARRIS: That's important.
MS. ROBESON: So three minutes. Just let me go get them.
MS. HARRIS: We're off the record?
COURT REPORTER: Yes.
(Recess)
MS. ROBESON: Okay. We're back on the record.
MS. HARRIS: I forgot where I was. Just --
MS. ROBESON: Okay.

MS. HARRIS: Okay. So excuse me. Based on Exhibit 70, you were going to explain the differences qualitatively and quantitatively of the public use space of the subject property is proposing?
MR. LANDFAIR: Typically the approach to providing for public use space for any one of these TSR projects whether they're built today or proposed or approved is to provide public use space along the frontage. There's lots of good reasons for doing that and certainly that is what has been done. In the case of some projects, the public use space, I think, is more successful than others. The Edgemoor Highrise utilizes its frontage for much of its public use space. Within that public use space, though, there are handicap ramps, there's actually a transformer and a portion of the public use space actually also extends into the side yard. So I think it's debatable as to how successful that public use space might be.
With 4825 Montgomery Lane, the site was very constrained. So they were really limited in terms of where they could locate their public use space. They've actually accounted, and it was accepted, the medians between the driveway entrances to the garages. For both Edgemoor and Arlington North and the Edgemoor at Arlington, both utilized podiums, partial podiums with much of the public use space located in those podium areas. Particularly with respect to

Edgemoor at Arlington, I think it's debatable as to whether one would consider that public use space as you walk along the street, would you as a member of the general public feel invited up to that area, or would you see it as the private space reserved for the residents.
Contrast that to what we are providing. Yes, we are providing some public use space along the frontage, but we have the pocket park at the corner which is taking advantage of the fact that it is at a corner that is at the entrance to our building, very public in nature and, of course, as I previously mentioned, while we're not counting it specifically as public use space, we have that amenity area on the north side of our building.
MS. HARRIS: So in your professional opinion qualitatively --
MR. LANDFAIR: I think qualitatively and quantitatively we compare very favorably with all the other projects in the surrounding area.
MS. HARRIS: There was a very long line of questioning this morning regarding the area devoted to the pocket park.
MR. LANDFAIR: Right.
MS. HARRIS: And I want you to clarify the total area of the pocket park and then that area less what was previously counted in the public use space along Montgomery

and West Lane, and then I have a follow-up question. No, you can use the -- you passed it. One more, no one more. There.

MR. LANDFAIR: This?

MS. HARRIS: Oh, I'm -- oh, you're looking for the detail. Sorry.

MR. LANDFAIR: I was actually looking for the comparison, right. It actually has the square footage. Here it is.

MS. ROBESON: What exhibit is this?

MR. LANDFAIR: It's Exhibit No. 85.

MS. ROBESON: Okay.

MR. LANDFAIR: And just as a reminder, this exhibit compared/contrasted the public use space and private amenity areas for the original Holiday plan, as well as the original proposed plan for this project, as well as the current plan for this project. And referring to the current plan, it notes that there's public use space, in fact, the number are the same both for the previously proposed, as well as the current proposed which shows public use space along the frontage of 2,225, 2,225 square feet. And when you count that part of the pocket park which was not shown on the previous plan, we're not double-counting, that area adds up to about 630 plus square feet, in effect, taking this up to the minimum amount of public use space, the

required amount of public use space of 2,841. So I know there was a lot of discussion back and forth in terms of, you know, where is the public use space, how is it calculated. I hope that clarifies it.

MS. HARRIS: And when you originally testified this morning, you noted that the entire pocket park area is 1,000 square feet approximately?

MR. LANDFAIR: Just over 1,000 square feet, right.

MS. HARRIS: And does that space, will that entire 1,000 square-foot space operate in a totality in terms of how it operates or assumptions as of public use space of the pocket park?

MR. LANDFAIR: Well, it actually reads much bigger because that 1,000 square feet is just the area that is within the property itself, just the area that counts towards the public use space requirement. But if you as a passerby walking along look at the corner, one could argue that a portion of that corner is also part of that pocket park, people would congregate there. Steps leading up to the entrance were carefully designed to be seating area steps. So the whole area was designed to engage people and engage passersby.

Looking at it that way, the area from building face to the face of the curb is in excess of 2,000 square feet. So, yes, it's not an insubstantial amount of area to

consider for congregation of people.

MS. HARRIS: Thank you. In response to Mr. Abrams's question, you testified that the setback, or maybe if you know, that the setback of the building in the Holiday case was approximately 15 feet, is that correct?

MR. LANDFAIR: Correct.

MS. HARRIS: And was, is it your opinion that it was 15 feet?

MR. LANDFAIR: I believe so, yes.

MS. HARRIS: And did the Holiday project have bays along the front of its building?

MR. LANDFAIR: Yes, it did.

MS. HARRIS: And how, how far out from the face of the building did those bays project?

MR. LANDFAIR: I believe three or four feet, so that meant that then the building setback was more comparable to what we are proposing.

MS. HARRIS: So, effectively, the public use space or streetscape in front of the Holiday project was comparable to what's being proposed?

MR. LANDFAIR: Right, the usable public use space, what could actually be landscape or utilized by the public is comparable to what we're proposing.

MS. HARRIS: When the Holiday project was proposed, was either the Edgemoor at Arlington North or the

Sandy Spring building yet approved, so the buildings on both the east and west sides?

MR. LANDFAIR: The, I believe the, I believe the Edgemoor at Arlington North was. I believe the other one was too.

MS. HARRIS: The Sandy Spring building, that was just approved?

MR. LANDFAIR: I'm sorry, no, I'm sorry. The, only the Arlington at, the Edgemoor Arlington North was.

MS. HARRIS: So -- and did, upon the approval of the Sandy Spring building, as well as the Edgemoor, did that, what did that do in terms of the establishment of that continuous line?

MR. LANDFAIR: Well, of course, with the height that was approved for the Sandy Spring building, 65 feet, it created a slightly different plane, but nevertheless --

MS. HARRIS: No, I'm not talking about the height --

MR. LANDFAIR: Right.

MS. HARRIS: -- I'm talking about the continuous street edge --

MR. LANDFAIR: Right.

MS. HARRIS: -- given the building placement.

MR. LANDFAIR: Right. Well, certainly it contributed to a continuous street edge and I can tell you

that as a part of the review for the Sandy Spring project, there was an issue early on for staff --

MS. ROBESON: When you say Sandy Spring, you're talking about --

MR. LANDFAIR: 4825 --

MS. ROBESON: -- 4825 --

MR. LANDFAIR: -- Montgomery Lane, yes.

MS. ROBESON: Okay.

MR. LANDFAIR: Sorry, I go back and forth.

MS. ROBESON: I know.

MR. LANDFAIR: Yes. There was a concern about the distance from the street for that building. Previously they wanted to achieve most of their public use space up front along Montgomery Lane and staff discouraged that and preferred to have it brought up closer to the street so that, again, you can realize this continuous line, this street edge, this sense of enclosure along the street.

MS. HARRIS: Thank you. The Hearing Examiner this morning noted that she thought that the sidewalk area in front of the Highrise Edgemoor seemed somewhat tight. What is the sidewalk in front of the Highrise Edgemoor and how does it compare to what's being proposed?

MR. LANDFAIR: Well, it is, it is very narrow and the overall, or maybe I should refer to Exhibit 106b where the actual distance from face of building to the,

essentially the edge of the street, which is the parking encompassing the sidewalk is 16 feet. So that's 10 feet less than what we have along our street, along our segment of the street.

MS. HARRIS: And in your mind from a pedestrian experience, does that increase in width? What kind of difference would that make?

MR. LANDFAIR: Well, for us it's more landscaping opportunities, more green area. We'll provide, we can provide just as much pedestrian way. But it just -- you don't feel quite so confined meaning you don't feel like the building is right on top of you.

MS. HARRIS: And does it make a difference as well given the width of the frontage of the Highrise Edgemoor building as compared to the width of the frontage of the subject project?

MR. LANDFAIR: Well, I think that contributes to it because certainly the frontage of the Highrise Edgemoor is much greater than the frontage that we have along Montgomery Lane.

MS. HARRIS: Thank you. Going to the south side for one moment, I want you, I would like for you to refer to Exhibit 102f, which was submitted by Mr. Knopf, and it shows the sidewalk along the south side of this street.

MR. LANDFAIR: Right.

MS. HARRIS: And can you comment on the width of that and whether there are any projections that may detract from the pedestrian --

MS. ROBESON: Wait, is that 102f or d?

MS. HARRIS: Sorry, d.

MS. ROBESON: That's okay.

MS. HARRIS: D.

MS. ROBESON: Okay. I'm just trying to make sure because we're --

MS. HARRIS: No problem.

MR. KNOPF: It's getting late.

MS. HARRIS: Exactly.

MR. LANDFAIR: What it shows is the streetscape for City Homes along the south side of Montgomery Lane and it shows the end caps of the townhouse units, it shows the stairs that lead up to the main level of those units. These stairs in every case are fairly substantial structures. They take up a fair amount of space. They have landscaping at their base. And as you walk along, it feels like they are encroaching into the public realm. So even though a portion of them is within the public use space area, you still feel as a pedestrian that it is encroaching out into the public area and while technically speaking you have 26, 27 feet from the face of these buildings to the face of curb, it doesn't necessarily feel that spacious as you're

walking along the street.

MS. HARRIS: We focused on the south side of the building. I want to move to the north side of the building for a moment. You were involved in the Holiday case, correct?

MR. LANDFAIR: Yes.

MS. HARRIS: And are you familiar with the discussions that occurred at that time with the Villages of Bethesda with respect to the setback, the setbacks of the Holiday building and the --

MR. LANDFAIR: Yes.

MS. HARRIS: And can you describe that to some extent?

MR. LANDFAIR: Yes. For the original Holiday application, there really was only opposition from the Villages of Bethesda and I would say that it was, concerned issues raised by those residents and it was almost exclusively related to the setback of the proposed Holiday building to their properties. They recognized that they did have some views from both the rear side of their units, as well as from their own public use space area looking back into the subject property. And it was a very real concern for them.

And recognizing that, the Holiday developer said, well, we're going to try to provide as much setback as we

possibly can back there to mitigate that, in fact. And, of course, a few years later, as we moved forward with our own application, meeting with that group of individuals, those citizens, the issue again was raised and we felt it was only fair to try to address the concerns that were raised previously and we were successful and they've been satisfied because you don't see citizens from that development here today. But we feel like we have an agreement, if you will, and we want to abide by that agreement to provide setbacks, recognizing again that they do have certain views directly into our property and we want to mitigate the impact of our building on their views.

MS. HARRIS: And I would just note Exhibit 99 from the Villages of Bethesda, which specifies --

MS. ROBESON: I saw that.

MS. HARRIS: -- their support with the stipulation of the setback. What is the distance, if you have the scale handy, of the building to the closest Villages of Bethesda building?

MR. LANDFAIR: From our building to the closest?

MS. HARRIS: From the north, the side of the subject to the closet VOB building.

MR. LANDFAIR: That would be 15 feet. Their building is right on the property line.

MS. HARRIS: So in your professional opinion, the

fact that we've allowed for a setback, it seemed to have made a, made, satisfied the Villages of Bethesda with that 15-foot setback and then comparing that to the property to the south of us where we have a 73-foot setback, what's your professional opinion about any suggestion moving the building further back closer to the Villages of Bethesda?

MR. LANDFAIR: Well, I think we're providing a very generous setback or distance from the City Homes to the south. And I don't feel that by adding another few feet to the setback from Montgomery Lane that you would accomplish much in terms of establishing greater compatibility. I don't think you'll be improving the streetscape and it will be violating this agreement that we have with the Villages of Bethesda, reducing their buffer. Frankly, I think the impact on Villages of Bethesda would be much greater than the, conversely any benefit that would be realized by increasing the setback along Montgomery Lane. So I think it would be a mistake.

MS. HARRIS: Thank you. Now moving into a new subject matter, I'm only saying that just to let you know that.

MS. ROBESON: I want to --

MS. HARRIS: If you wanted to --

MS. ROBESON: -- try and finish Mr. Landfair.

MS. HARRIS: Okay.

MS. ROBESON: Well, we'll see.

MS. HARRIS: Okay. Moving on to MPDU's. How did the Highrise Edgemoor and the City Homes satisfy their MPDU requirement?

MR. LANDFAIR: They worked out an agreement whereby the HOC development was developed along Hampden Lane.

MS. HARRIS: And was it a matter of just providing the land for that building?

MR. LANDFAIR: Essentially, yes.

MS. HARRIS: And how long after the Highrise Edgemoor and the City Homes were constructed that the HOC building was constructed?

MR. LANDFAIR: I have that in my notes. The HOC units were not constructed for more than, well, it was at least nine to 14 years after the construction of the market rate units. So it was some substantial period of time after the construction of the market rate units.

MS. HARRIS: And in your opinion is there a difference in terms of the HOC units and MPDU's?

MR. LANDFAIR: Yeah, you know, MPDU's are affordable units. Typically they're integrated into the market rate housing. They're designed to accommodate an individual, excuse me, individuals earning 60 to 70 percent of the average median income for the area. The HOC housing

units are accommodating a different population and, of course, it's not integrated into the --

MS. ROBESON: What do you mean a different population?

MR. LANDFAIR: Meaning different income levels, yes.

MS. HARRIS: And, in fact, is it correct that the HOC building has been classified as a transitional housing?

MR. LANDFAIR: I believe so, yes.

MS. HARRIS: And did --

MS. ROBESON: What do you mean a transitional housing?

MS. HARRIS: It's single or --

MS. ROBESON: Mr. Landfair, what does she mean?

MR. LANDFAIR: It's housing that accommodates people that are -- it's more temporary in nature is my understanding as opposed to housing which you would be there for many years. It's helping people to transition from one --

MS. ROBESON: One income level to another?

MR. LANDFAIR: Well, hopefully, yes. I mean it's not -- it's --

MS. HARRIS: From no income level pretty much.

MR. LANDFAIR: Essentially, yeah. It's to, it's not meant to be a permanent solution, if you will, for the

housing units.
MS. ROBESON: So are you saying it -- okay.
MR. LANDFAIR: Unlike MPDU's --
MS. ROBESON: I'm not going there right now.
MR. LANDFAIR: -- which, again, are to accommodate people who have, are earning 60 to 70 percent of the median area income. It's a very different population.
MS. ROBESON: Did the Council tie the Highrise Edgemoor and City Homes, is there, is the affordable housing --
MR. LANDFAIR: Yes.
MS. ROBESON: -- for those projects?
MR. LANDFAIR: Yes, it is. It is.
MS. ROBESON: So you're saying that the provision of MPDU's here is still important because it's different, different target --
MR. LANDFAIR: Different demographic group.
MS. ROBESON: -- clientele?
MR. LANDFAIR: Right. Yes.
MS. ROBESON: Okay. I understand.
MS. HARRIS: And does that, and does providing the first MPDU's on the street, does that go to the Sector Plan goal of achieving diversity of housing on the street?
MR. LANDFAIR: Yes, it does.
MS. HARRIS: Mr. Abrams indicated that a developer

could provide more than 12.5 percent MPDU's in furtherance of the County's housing objectives and I think you testified about this earlier. Are you familiar with any market rate housing developer the County has provided 12.5 percent MPDU's, more than 12.5 percent MPDU's without either receiving some type of bonus density or being involved in a joint venture or some kind of involvement with the County where it was required to provide more?
MR. LANDFAIR: No, I do not.
MS. HARRIS: And the reason why one developer would not necessarily do that?
MR. LANDFAIR: MPDU's are very expensive to construct. There would be no incentive. Without that incentive to do so, you know, it makes no sense from an economic perspective.
MS. HARRIS: And Zoning Text Amendment 0807, which provided that the Sector Plan recommendation was on both height and density could be exceeded to provide additional MPDU's, what was the point of that Zoning Text Amendment?
MR. LANDFAIR: Well, it was to realize that providing MPDU's is a valuable benefit to the community and to do so, though, might have implications for the development of a particular project. And so realizing that, realizing the economic costs, there are incentives to doing this and those incentives would include increasing the

height of the building if necessary.
MS. HARRIS: You previously testified that you can only exceed the heights when you -- the Sector Plan recommended heights when you provide additional MPDU's. Is that a correct statement or do you want to --
MR. LANDFAIR: No, it's when you provide the MPDU bonus, in other words, the 15 percent.
MS. HARRIS: And are there buildings within the TSR zone that exceed the Sector Plan --
MR. LANDFAIR: Certainly there are, yes.
MS. HARRIS: And where are those located?
MR. LANDFAIR: Well, they would be the Hampden Lane building located --
MS. HARRIS: Well, the Hampden Lane building, is that providing additional MPDU's?
MR. LANDFAIR: Well, actually it will, yes. It would include the Edgemoor Highrise. It would include 4901 Hampden Lane.
MS. HARRIS: And is that providing 15 percent MPDU's?
MR. LANDFAIR: No, it's not. I don't believe so.
MS. HARRIS: We may want to check that one.
MR. LANDFAIR: Okay. I don't believe --
MS. ROBESON: Yes.
MR. LANDFAIR: -- it is. I don't know.

MS. HARRIS: Okay. And the two buildings, the two Edgemoor buildings --
MR. LANDFAIR: Right.
MS. HARRIS: -- the one which is 48 feet in a 35-foot zone, is that providing extra MPDU's?
MR. LANDFAIR: No. No.
MS. HARRIS: And the -- it's counterpart on the south side of the street, does that provide any MPDU's?
MR. LANDFAIR: No, it does not.
MS. ROBESON: Okay. Okay. The counterpart on the south are --
MS. HARRIS: The Edgemoor at --
MR. LANDFAIR: She's referencing Edgemoor at A-Arlington.
MS. HARRIS: -- Arlington.
MS. ROBESON: Now why doesn't Edgemoor at Arlington have MPDU's, do you know?
MR. LANDFAIR: I don't know.
MS. ROBESON: You mean no MPDU's, zero MPDU's, or no bonus MPDU's?
MR. LANDFAIR: I'd have to --
MS. ROBESON: If you know?
MR. LANDFAIR: I don't know. I don't know. What I can say, though, is that the heights exceeding the 35 feet that is recommended by the Sector Plan, you know, in both

cases, both buildings are exceeding those heights. Edgemoor at Arlington North is 48 feet, Edgemoor at Arlington is 46 feet.

MS. ROBESON: But, okay. But what is the height at the street level, at the facade?

MR. LANDFAIR: Along Arlington Road --

MS. ROBESON: Yes.

MR. LANDFAIR: -- is 35 feet in both cases.

MS. ROBESON: And -- okay.

MS. HARRIS: And can you identify in that plan where the line is, the Sector Plan line that indicates the 35-foot zone?

MR. LANDFAIR: It's along the rear side of those properties, along those properties fronting Arlington Road.

MS. ROBESON: Okay. So you're saying part, okay, I understand.

MS. HARRIS: So just to summarize, is it a correct statement that Edgemoor at Arlington and the Edgemoor at Arlington North, both of which exceed the Sector Plan recommendations in terms of heights, have no MPDU's?

MR. LANDFAIR: I believe that's a correct statement.

MS. HARRIS: Thank you. During cross-examination, you indicated that two of the four surrounding -- and this goes to the issue of who is affirmatively supporting the

application -- you indicated that two of the four surrounding property owners were developers. Is Mr. Rosstine, who is the applicant on the Edgemoor at Arlington North, is he a developer?

MR. LANDFAIR: No, he's not. He actually maintains an office on the property, but he's certainly not a land developer.

MS. HARRIS: So the number of developers supporting the application is actually one, is that correct?

MR. LANDFAIR: One, correct, yeah.

MS. HARRIS: And whether a property owner is a developer or not, what's the most, what would be your most important concern in your opinion with respect to our building?

MR. LANDFAIR: Well, their concern is going to be the effect on the value of their property, how it impacts their property and the possible resale value of their property. Essentially compatibility will be their issue. And by virtue of the fact that we don't have opposition from those immediately adjacent property owners, I think suggests that they find our development, our proposed development compatible.

MS. HARRIS: Thank you. Mr. Abrams appeared to suggest that the applicant has made concessions to its surrounding neighbors, but not to City Homes. What's the

distance of the subject property to the Villages of Bethesda?

MR. LANDFAIR: To the Villages of Bethesda, 15 feet.

MS. HARRIS: And to the Rosstine property?

MR. LANDFAIR: The closet point, I think I had suggested earlier, was --

MS. ROBESON: You mean of the building --

MR. LANDFAIR: The building to the property line.

MS. ROBESON: -- not the property?

MS. HARRIS: Well, correct, I'm just going to clarify that --

MS. ROBESON: Okay.

MS. HARRIS: -- because I mis-stated. Thank you.

MR. LANDFAIR: That's 12 feet to the property line, but it's --

MS. HARRIS: Okay.

MR. LANDFAIR: -- there was an additional setback there to the building as proposed on the Rosstine property.

MS. HARRIS: So the subject property shares a property line, has a common property line with both VOB --

MR. LANDFAIR: Yes.

MS. HARRIS: -- and the Edgemoor at Arlington North?

MR. LANDFAIR: Yes, it does.

MS. HARRIS: And how many feet from the building, how many feet is the subject building from the City Homes?

MR. LANDFAIR: From City Homes, it's 73 feet from building face to building face.

MS. HARRIS: And can you review, and if it's helpful I can identify and say yes or no, various revisions that the applicant has, in fact, made to the respond to the City Homes' concerns?

MR. LANDFAIR: Well, of course there's the -- I have my notes here which I can take a look at, but basically, I mean we've made lots of gestures to be compatible with the neighbors and I think many of those elements that we've added to the project I think also should go some way to satisfying the concerns of City Homes. It includes the fact that we have a flat roof. It includes windows on all the facades. It includes the masonry material to be used on the building facade. It includes the vehicle access located in the northeast corner of the property off of West Lane.

It includes the landscaping, the streetscape, which is being proposed in conformance with the Sector Plan, all of which I think are elements that City Homes has requested. Providing loading space within the building. Providing an area for loading at grade within our way by area and, of course, the step back that we're providing

along the front edge of the building starting at the 50-foot high mark.
MS. HARRIS: So are we providing two additional loading spaces in response to the comments made by City Homes?
MR. LANDFAIR: Yes, we are. And we are exceeding the County guidelines for both of them.
MS. HARRIS: By how many spaces?
MR. LANDFAIR: By two.
MS. HARRIS: By two? And did City Homes also request that the project be condos and not rental?
MR. LANDFAIR: I think they may have.
MS. HARRIS: And are we -- and how are we responding to that?
MR. LANDFAIR: That decision has not been made yet.
MS. HARRIS: Can you please explain why the lay-by has not been relocated or reduced in size?
MR. LANDFAIR: Typically an element like the way by would be approved at a later state in the entitlement process. With the Holiday project, it was approved at the time of the preliminary plan and we would anticipate the same in this case as well. So it's premature to try to get approval for a larger lay-by at this stage within the zoning. It's an element that will be more fully analyzed at

the preliminary plan stage and certainly there's the ability to increase the size if it's warranted by the County.
MS. HARRIS: Thank you.
MS. ROBESON: Well, do you intend to pursue that if this is approved or is that what you're saying or is that saying -- what are you saying?
MR. LANDFAIR: At this point in time there are no plans to increase the size, but it is something that we can certainly consider, but there are no plans right now to increase the size.
MS. HARRIS: I'm going to have the applicant speak to that when she gets back on because, in fact, we have had side, additional discussions which --
MS. ROBESON: Okay.
MS. HARRIS: -- suggest otherwise. Thank you.
Earlier today you were, opponents counsel requested that you read from the January 2nd Planning Board letter which commented on the prior design of the building.
MR. LANDFAIR: Right.
MS. HARRIS: Was that language that you read contained in the most recent letter from the Planning Board which reflects the current design of the building?
MR. LANDFAIR: No. No, it did not.
MS. HARRIS: And why was that language not included?

MR. LANDFAIR: Well, because the language was very different than the new resolution from the Planning Board.
MR. ABRAMS: Objection. The reasons that the Hearing Examiner sent the case back was for very limited purpose. The comments on the portion which was read was not part of the remand proceeding.
MS. HARRIS: I disagree because the, one of the issues that the Planning Board took up was the design of the building and how the, and the general compatibility of the building. And I would suggest that that comment --
MR. ABRAMS: What --
MS. HARRIS: -- in fact, did go to that.
MR. ABRAMS: What that comment addresses is the density, 100 dwelling units to the acre does not address the massing.
MS. ROBESON: Okay. I'm going to let him, I'm going to let him testify on it. I'll give it the weight it deserves. I don't have the transcript in front of me. I have the Planning Board's recommendations. You can cross-examine on it. Well, wait, I don't want to invite you to cross-examine. No, I'm going to let it in.
MS. HARRIS: So is it your impression that the Planning Board viewed the revised design of the building in much more favorable terms than they reviewed the original application?

MR. LANDFAIR: Yes, I would say that.
MS. HARRIS: And did they find the original application to be compatible?
MR. LANDFAIR: Yes, they did.
MS. HARRIS: And they found the, is it correct, that is to say that they found the current application to be more compatible?
MR. LANDFAIR: Yes, I would make that statement.
MS. HARRIS: In terms of the Planning Board hearing, as you may recall did the staff, the Planning Board staff recommend a setback of 15 feet along the western property line?
MR. LANDFAIR: They did, yes.
MS. HARRIS: And what did the Board conclude was an acceptable setback?
MR. LANDFAIR: The Board concluded that what we're currently proposing, the 12 feet, is an acceptable setback.
MS. HARRIS: And do you recall how far the Holiday project was set back from the property line?
MR. LANDFAIR: I think it was comparable. Actually, no, it wasn't. It was less than that.
MS. HARRIS: If you could take a look at the plan right before you, Exhibit 85, that may help you --
MR. LANDFAIR: Right.
MS. HARRIS: -- jog your memory.

MR. LANDFAIR: It's spilling out about eight feet, seven to eight feet, so significantly less than what we're proposing now.
MS. HARRIS: You previously testified that the western portion -- so with the proposed 12-foot setback, we are, the building is 42 feet from the Rosstine project, is that correct?
MR. LANDFAIR: Correct, that's correct, yeah.
MS. HARRIS: And if you, if you evaluate the City Homes properties, projects, and the distance between the two, the mews, I'm sorry the distance between two rows of the City Homes between their parking mews, what's the distance between those two rows of buildings?
MR. LANDFAIR: It's about 30 feet.
MS. ROBESON: Are you, when you say parking mews, are you talking about the alley?
MR. LANDFAIR: She's referring to the alley.
MS. ROBESON: Okay. Because I learned on another case that mews have a very particular meaning. So, but you're talking about the alley?
MR. LANDFAIR: We're talking about the alleyways --
MS. ROBESON: Okay.
MR. LANDFAIR: -- that provide access to the rear building garages.

MS. HARRIS: And so the space between the two rows of City Homes is how much?
MR. LANDFAIR: 30 feet.
MS. HARRIS: And then, so there, and is that -- so is every row of City Homes within 30 feet of another row of City Homes?
MR. LANDFAIR: The -- what I would describe as the landscape mews are wider, but the alleyways themselves, two of the alleyways are 30 feet, one alleyway is 25 feet in width and then the two landscape mews, one is 39 feet in width, the other is 44 feet in width.
MS. ROBESON: Isn't there a half a landscape mew there at the very western edge?
MR. LANDFAIR: A little bit of landscaping, yes. Yeah, on the rear side of the --
MS. ROBESON: Okay.
MR. LANDFAIR: I wouldn't describe that as a mew so much as a landscape strip.
MS. HARRIS: So in your professional opinion, if the configuration of the City Homes which provides for the distance between rows of City Homes that you just indicated, is there -- if that's deemed to be compatible and acceptable, is there any reason to think that a setback of 42 feet from the western facade of our building to the Rosstine would not be compatible?

MR. LANDFAIR: No, I would think, think it would be more than sufficient to provide compatibility.
MS. HARRIS: Does the -- I have a number of random questions here. We're getting toward the end.
MS. ROBESON: That's fine.
MS. HARRIS: Does the Highrise Edgemoor have a space designated for ADA drop-offs?
MR. LANDFAIR: It has space in front of the building, yes. It has two I've described as lay-bys.
MS. HARRIS: And have you -- you visited Montgomery Lane, I assume?
MR. LANDFAIR: Yes, yes, I have.
MS. HARRIS: And in your experience are those, are those lay-bys maintained for the exclusive use of the ADA drop-offs?
MR. LANDFAIR: Not for the exclusive use of ADA drop-offs, no. I've seen service vehicles. I've seen members of the general public park there. They're used by, whenever the spaces are available which doesn't seem to be that often.
MS. HARRIS: So, in fact, the ADA drop-off for the subject building is no different than the ADA drop-off for the Highrise Edgemoor, is that correct?
MR. LANDFAIR: I would say, no, that's correct.
MS. HARRIS: And does City Homes have any ADA

accommodations for drop-off?
MR. LANDFAIR: No.
MS. HARRIS: This may be a question for the applicant, but are you familiar with recent, with the applicant's intent to provide recreational space on the roof of the building?
MR. LANDFAIR: I'm aware of that. There may be some passive recreational space provided on the building, but I can't speak beyond that.
MS. HARRIS: Okay.
MS. ROBESON: Is that new?
MS. HARRIS: No, it's been part of the plan from the inception really. The architect will speak to that.
MS. ROBESON: All right.
MS. HARRIS: The -- and from the inception of this project, what have been the discussions today in terms of the number of units that the applicant is intending to propose?
MR. LANDFAIR: IN terms of the maximum number of units?
MS. HARRIS: The range.
MR. LANDFAIR: The range? Well, it's noted on the development plan. As expressed on the development plan, it's up to 120 multi-family units, and with 15 percent MPDU's, that would mean up to 18 MPDU units.

MS. HARRIS: And has there been any suggestion of anything less than, between 100 and 120 units?
MR. LANDFAIR: No.
MS. HARRIS: Thank you. A couple -- the, you earlier testified to the length of the building in terms of the north/south distance. Can you recalculate that please because I'm not so sure we had it correct.
MR. LANDFAIR: I did and it is 208 feet. And I apologize for the confusion earlier. I think I had stated on the record that it was 280, 2-8-0. It's 2-0-8.
MS. HARRIS: Did the -- moving on to 4901 Hampden Lane just for a moment, are you aware that the Planning Board expressed concern regarding their request for a decrease in density?
MR. LANDFAIR: For 4901?
MS. HARRIS: Yes, when they wanted to lower the number of units?
MR. LANDFAIR: Just generally. I wasn't involved with the project per se but, yes, I had some general knowledge about that.
MS. HARRIS: And just because the Council approved a project where the unit count was decreasing, is that, is there any suggestion that they would not support something else on a different site, including an increase of the number of units and which would then correlate to an

increase in the number of MPDU's?
MR. LANDFAIR: Yeah, I would think they would be free to consider any number of combinations or schemes even in the immediate area if you want to harp on design.
MS. HARRIS: And if the objective of the County both as stated in the Sector Plan and in other County policies is diversity and the Council approves lower density on one project, is there any reason to believe they would not support a higher density on another project?
MR. LANDFAIR: Not at all. I would think they would want to support that higher density.
MS. HARRIS: And are you aware that the applicant in the case of 4901 specifically requested the reduction in density?
MR. LANDFAIR: I believe that's the case.
MS. HARRIS: So it wasn't a case of a public policy or a --
MR. LANDFAIR: I don't --
MS. HARRIS: -- requesting the reduction?
MR. LANDFAIR: Right.
MS. HARRIS: Thank you. Moving on very briefly, just the distinction, because, well, we don't necessarily think it's relevant, opposing counsel thinks it's relevant, the differences between the Holiday case and this case. And there was some suggestion that the Holiday case should be

used as a benchmark by which this project should be judged. Can you please identify the commonalities between this project, the subject project and the prior Holiday project?
MR. LANDFAIR: There aren't many.
MS. HARRIS: How many lots were involved with the Holiday project?
MR. LANDFAIR: There were three lots involved.
MS. HARRIS: And how many projects are -- how many, excuse me, how many lots are involved in the subject?
MR. LANDFAIR: There are four lots.
MS. HARRIS: And does that pretty much cover the commonality between the two?
MR. LANDFAIR: That's pretty much it.
MS. HARRIS: And is the square footage of the site different?
MR. LANDFAIR: Yes, it is.
MS. HARRIS: And would you classify the Holiday project as being an oddly configured site?
MR. LANDFAIR: Very much so.
MS. HARRIS: And how does the subject site compare?
MR. LANDFAIR: Well, it's, obviously we have the advantage of consolidating the lot and corner. The property is, you know, much less constrained in terms of its shape, in terms of its relationship to the neighboring properties.

So it lends itself to a much more efficient design.
MS. HARRIS: And is there a different developer involved in this case?
MR. LANDFAIR: And there's a different developer involved.
MS. HARRIS: You've been doing this for a very long time. Would you agree that every developer has its own sets of goals, objectives and motivations?
MR. LANDFAIR: I would say so.
MS. HARRIS: And are we involved in a very different economic climate now than we were when the Holiday project was approved?
MR. LANDFAIR: Absolutely.
MS. HARRIS: And so your summary in terms of the Holiday project and this project are in terms of comparability?
MR. LANDFAIR: That there is not much to compare the two.
MS. HARRIS: Thank you. Going to the issue of compatibility, the Holiday project was found to be compatible. The fact that it was found to be compatible, does that exclude any other project on this site from being found compatible?
MR. LANDFAIR: No, not at all. And there's any number of options or designs, building designs, densities

that could be accommodated on this property and could be found to be compatible and consistent with the Sector Plan recommendations, not just Holiday and this particular proposal, but many I'm sure could be accommodated on the site.

MS. HARRIS: Thank you. May I take just a one-minute break to confer with my client to make sure there are no other remaining questions?

MS. ROBESON: Sure.

MS. HARRIS: Thank you. I appreciate it.

MS. ROBESON: We'll go off the record. Actually, you can -- how long? Three minutes, is that --

MS. HARRIS: I requested one, but I'll take three. That would be helpful.

MS. ROBESON: Okay.

MS. HARRIS: Thank you.

(Recess)

MS. ROBESON: Okay. We're back on the record.

MS. HARRIS: Yes. And I just had two very quick clarifying questions --

MS. ROBESON: Okay.

MS. HARRIS: -- if Mr. Landfair recalls. The height of the Holiday project, do you recall the height of that at this point?

MR. LANDFAIR: It sounds like a trick question. I

should because I wrote it down.

MS. ROBESON: Well, what's the second question while he's --

MS. HARRIS: The second question was the issue of the density of the Highrise Edgemoor when it was approved for 150 units.

MS. ROBESON: And what's the question?

MS. HARRIS: What is the density per units per acre of the Highrise Edgemoor when it was approved with the 150 units?

MR. LANDFAIR: I believe it was 280.

MS. HARRIS: 280? 280?

MR. LANDFAIR: 280 units to the acre, those originally approved.

MS. HARRIS: And just to clarify, that's based on the land area of --

MS. ROBESON: Is that the gross tract area?

MR. LANDFAIR: Right. Correct. Correct.

MS. HARRIS: But it does not include the -- it gets complicated -- is it correct that it gets complicated because of the fact that the entire land area, it was the transfer of density?

MR. LANDFAIR: Right.

MS. ROBESON: Oh, it was the land area --

MR. LANDFAIR: Because you have the other

properties --

MS. ROBESON: -- of City Homes too?

MR. LANDFAIR: -- factor into it, right.

MS. ROBESON: Now are you -- okay. But is your answer meaning that just the gross tract area of the Highrise Edgemoor is 280 units per acre and that's because the --

MR. LANDFAIR: Yes.

MS. HARRIS: -- perceived, or they looked at the density as one large, large and --

MR. LANDFAIR: Yes. Yes. And in answer to your first question, 65 feet.

MS. HARRIS: Thank you. That concludes our redirect of this witness.

MS. ROBESON: Thank you. Mr. Abrams.

MR. ABRAMS: Yes.

MR. KNOPF: I also have about six questions that I would ask also.

MS. ROBESON: I'm not, I was going to include --

MR. KNOPF: Oh, okay.

MS. ROBESON: -- you also.

MR. KNOPF: Okay. Thank you.

MS. ROBESON: I would never exclude you.

MR. KNOPF: Thank you.

MS. ROBESON: Okay, Mr. Abrams.

MR. ABRAMS: Okay. Mr. Landfair, you said there's no commonality except for those two areas in terms of the number of lots and things like that between the Holiday project and what's being proposed now, is that basically your testimony?

MR. LANDFAIR: Yes.

MR. ABRAMS: Wasn't it, in fact, in both the 4825 Montgomery Lane project, as well as the Edgemoor at Arlington North second project, didn't they both heavily rely upon what happened in the Holiday project in terms of height, density, setbacks?

MR. LANDFAIR: I think they were certainly referring to on the record. I think certainly staff probably considered that in their analyses as to the Board and the Council.

MR. ABRAMS: Okay. And you said in your testimony a few minutes ago that there was no suggestion at any time of anything less than 100 to 150 units to the acre, do you remember, do you recall that?

MR. LANDFAIR: Yeah.

MR. ABRAMS: Hasn't City Homes requested since its appearance in this case that there be no more than 100 dwelling units per acre in terms of the limits which are in the Sector Plan?

MR. LANDFAIR: I think that request has been made.

I think it's been made in --
MR. LANDFAIR: Okay. So your statement that there's never been a suggestion?
MS. HARRIS: Objection. The intent of the question was a suggestion amongst the internal team on behalf of the applicant. We are very well aware that outside, that the opposing counsel has suggested less.
MS. ROBESON: Okay. All right. You can't testify as to the intent of the question.
MR. LANDFAIR: No, I --
MS. ROBESON: So --
MR. LANDFAIR: But I testified previously indicating that I wasn't privy to the discussions or the meetings between this client and City Homes.
MS. ROBESON: Okay.
MR. LANDFAIR: So I just, what I'm relating is simply what I've heard. It wasn't based on immediate experience, personal experience.
MR. ABRAMS: You were basing, you were at the first Planning Board hearing, weren't you?
MR. LANDFAIR: I was at the first Planning Board, that's correct.
MR. ABRAMS: Okay. And wasn't that proposition made to the Planning Board on behalf of City Homes?
MR. LANDFAIR: It might have been. I don't

recollect that specific proposition.
MR. ABRAMS: Now was City Homes required to have ADA accessible parking when it constructed?
MR. LANDFAIR: I don't know. Probably not.
MR. ABRAMS: Well, what's the purpose of bringing it up?
MR. LANDFAIR: To compare and contrast because certainly, you know, at any time, even when City Homes was developed --
MS. HARRIS: Objection. He didn't bring it up. Counsel brought it up.
MR. ABRAMS: Who brought it up?
MS. ROBESON: No, he testified to it.
MR. ABRAMS: He testified.
MS. HARRIS: To the ADA building of the City Homes?
MS. ROBESON: He said, he said the Edgemoor has the same lay-by provision.
MS. HARRIS: Right. But I asked the question because Mr. Knopf was making a suggestion that for some reason our project did not provide adequate ADA.
MR. ABRAMS: And then he responded --
MS. ROBESON: But --
MR. ABRAMS: -- by saying, among other projects --
MS. ROBESON: Hold on. Stop it.

MR. ABRAMS: -- City Homes.
MS. ROBESON: He testified to it on redirect. It doesn't matter who asked the question, so continue and I'm going to overrule the objection. I understand where you're coming from, I really do, but I'm going to overrule the objection and, Mr. Abrams, continue. Re-ask the question.
MR. ABRAMS: In terms of the, any requirement on City Homes to provide ADA handicap parking spaces or handicap accessible facilities, do you have any information as to the requirement for the same when they were constructed?
MR. LANDFAIR: No. No, I don't.
MR. ABRAMS: So you don't know what the requirement was at that time?
MR. LANDFAIR: At that time, that's correct, right.
MR. ABRAMS: Now in terms of concessions to City Homes, you had your laundry list that you recited?
MR. LANDFAIR: Yes.
MR. ABRAMS: Weren't many of the most important elements, and what I'm talking about is moving the public open space from the back to the front and the massing of the building, okay, they weren't provided in any plan until after the Planning Board strongly suggested that that should be incorporated into this plan, isn't that correct?

MR. LANDFAIR: In terms of any formal submittal, that's correct.
MR. ABRAMS: Okay.
MR. LANDFAIR: But internally, all these options --
MS. ROBESON: Okay.
MR. LANDFAIR: -- have been debated back and forth for some time.
MS. ROBESON: Yes. And in the long run, I mean I remember that cross-examination earlier. In the long run, how -- unless it's for impeachment -- I would prefer not to get into the negotiations.
MR. ABRAMS: Now the Holiday project had no opposition from City Homes, did it?
MR. LANDFAIR: I don't believe it did.
MR. ABRAMS: And the applicants in that case had some discussions, many discussions with City Homes?
MR. LANDFAIR: They may have. I don't recollect.
MR. ABRAMS: Do you know why there was no opposition?
MR. LANDFAIR: Not offhand, no.
MR. ABRAMS: Now who in City Homes or from what correspondence or from what conversation or how do you come up with the testimony that City Homes wanted to push the building back closer to Villages of Bethesda? Who told you

that or where did you come up with this?
MR. LANDFAIR: I think just within internal team discussions talking about how we could address the various concerns that have been raised by citizen groups, including City Homes, talking about the ability to provide additional public use space, additional setback from the street along Montgomery Lane, realistically what does that mean for the project? How could we possibly do that?
Well, really the only way it could be done and not lose density, not lose square footage would be to push it back closer to Villages of Bethesda.
MR. ABRAMS: Well, you could lose square footage if you push it back from Montgomery Lane, could you not?
MR. LANDFAIR: There you could, yes, but --
MR. ABRAMS: But the applicant didn't want to do that?
MR. LANDFAIR: It changes the dynamics of the proposal.
MR. ABRAMS: But the applicant didn't want to do that?
MR. LANDFAIR: It was not an option we wanted to do.
MR. ABRAMS: Now are you aware that the Edgemoor at Arlington North had a commercial element to it?
MR. LANDFAIR: I don't recollect that it did. It

might have, maybe had offices, medical offices associated with it.
MR. ABRAMS: Well, could that be one reason why they had no MPDU's?
MR. LANDFAIR: It could be.
MR. ABRAMS: Now the previous development plan provided 14 percent public use space, correct?
MR. LANDFAIR: Yes.
MR. ABRAMS: This plan provides the bare minimum --
MR. LANDFAIR: 10 percent.
MR. ABRAMS: -- 10 percent?
MR. LANDFAIR: Yeah.
MR. ABRAMS: Okay. And you indicated that the 680 or 81 feet was necessary to bring it up to the minimum?
MR. LANDFAIR: Correct.
MR. ABRAMS: But, nonetheless, you could provide more public use space than the minimum if the applicant chose to do so?
MR. LANDFAIR: We could. We could also reconfigure what we've done. We could perhaps, as other developments have up and down Montgomery Lane, Edgemoor Highrise for one, we could extend some of the public use space into, along the side yard area. That has to say the, along the western property line. We opted not to do that

because we felt it wouldn't be that viable for much of the reasons that staff and the Planning Board raised the viability of the north side, amenity space, which we're still retaining and which in theory someday could be public use space.
MR. ABRAMS: If you could provide a bigger oyster shell or however you described it, could you not?
MR. LANDFAIR: You could make a bigger scallop in that corner.
MR. ABRAMS: And that would be more beneficial to the public in terms of its utilization and that narrow strip on the western side, would it not, as a professional planner?
MR. LANDFAIR: Depending on how it's designed. Yes. It's already a sizeable area. As I testified previously, it's over 1,000 square feet of public use space and 2,000 square feet of consolidated area. It's a good size pocket park.
MR. ABRAMS: Was there a density transfer set off between the City Homes area and the big Edgemoor so that basically the big Edgemoor would get higher density than --
MR. LANDFAIR: There wasn't a --
MR. ABRAMS: -- might be allowed or --
MR. LANDFAIR: -- range up there, yes.
MR. ABRAMS: -- recommended and City Homes area

would get lesser density?
MR. LANDFAIR: I believe that --
MR. ABRAMS: And so that was a tradeoff?
MR. LANDFAIR: Yes, there was. Yeah.
MR. ABRAMS: And in terms of the selection point of measuring height, okay, and I think you said it was done for the developer's benefit?
MR. LANDFAIR: And there's nothing wrong with that.
MR. ABRAMS: No, I'm not saying that there is, but it was done, it's basically done for the developer's benefit, isn't it?
MR. LANDFAIR: A developer, any developer will within the rules, you know, if it works to their advantage, they'll establish a building height measuring point that, you know, accommodates their building program.
MR. ABRAMS: Okay.
MR. LANDFAIR: Now some will recognize that there are certain perceptions that maybe they want to avoid, for example, case in point, Hampden Lane --
MR. LANDFAIR: But it's --
MR. ABRAMS: -- where they adjusted the building height measuring point so it wasn't located at the absolute highest spot elevation contour.
MR. ABRAMS: But it's not done from the standpoint

of the public reception of compatibility, is it?
MR. LANDFAIR: Generally it's not considered.
MR. ABRAMS: Now the discussion dealing with the Hampden Lane building or Hampden Lane --
MR. LANDFAIR: Yes.
MR. ABRAMS: -- again, that is at the, a lower elevation, is it not, than --
MR. LANDFAIR: Than the properties that are located along Montgomery Lane --
MR. ABRAMS: Right.
MR. LANDFAIR: -- that's correct.
MR. ABRAMS: That's about 10 or 12 feet?
MR. LANDFAIR: Roughly that, yes.
MR. ABRAMS: Okay. That's a pretty substantial difference in topography, isn't it?
MR. LANDFAIR: Yes, it is and you can see that quite readily when you're walking along Hamden Lane. You can look back to the north and see the retaining wall and the brick facade of City Homes, you know, looming up over those properties. So, yes, you can see quite readily the difference in grades between those two homes.
MR. ABRAMS: So you when you talk about a 70-foot or 71-foot height limit for a portion of that building, that's sort of mitigated by that 10 to 12-foot retaining wall elevation difference?

MR. LANDFAIR: Yes. Yes, it is.
MR. ABRAMS: But you're still putting in smack dab against the City Homes' buildings --
MR. LANDFAIR: Yes, you are.
MR. ABRAMS: -- is that correct?
MR. LANDFAIR: Yes, you are.
MR. ABRAMS: Okay. If that's the case, don't you sort of get a hemmed in feeling if you're a resident of City Homes?
MR. LANDFAIR: Well, that issue was raised and for that very reason they established courtyards for the Hampden Lane project to provide sufficient air and light and for that reason also they HOC building was stepped back 12 feet --
MR. ABRAMS: Right.
MR. LANDFAIR: -- from the City Homes property.
MR. ABRAMS: But how large are those areas that provide the air and the light?
MR. LANDFAIR: Well, they're the width of the alleyways that provide the vehicle access for City Homes, about 30 feet.
MR. ABRAMS: Now you indicated that you could see the parking on the City Homes alleyways?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. And the garages for the City

Homes, are they one car, two car, three car?
MR. LANDFAIR: Two car garages.
MR. ABRAMS: Two car garages? And basically they're for the occupants of the buildings?
MR. LANDFAIR: Yes.
MR. ABRAMS: Okay. So the parking on the side of the alleyways would be for visitors for the most part?
MR. LANDFAIR: For the most part I would imagine.
MR. ABRAMS: Maybe service personnel?
MR. LANDFAIR: Possibly.
MR. ABRAMS: Okay. Don't you sort of have the same situation in your own building where you have the amount of parking basically for a number of residents that are there?
MR. LANDFAIR: Well, I draw a distinction with our parking. Of course, it's below grade. We don't see any of the parking spaces at all. We are also providing very defined loading areas, a loading bay off of West Lane immediately adjacent to the entrance to the parking garage providing the lay-by, of course, which is, you know, part of the street, but it's a defined area that's useful for loading purposes. So I would characterize it as a different situation than City Homes.
MR. ABRAMS: Well, it's a very different situation, particularly when you have 100, up to 120

dwelling units as compared to 29 dwelling units --
MR. LANDFAIR: Uh-huh.
MR. ABRAMS: -- where you're going to accommodate visitors and service delivery trucks.
MR. LANDFAIR: Uh-huh. But the parking standards are different for our project. They're based on the types of units and in addition to that, the parking is also for MPDU units, which we're providing up to 18, is half the normal parking rate. So we are providing parking in accordance with the zoning ordinance standards.
MR. ABRAMS: 117 parking spaces?
MR. LANDFAIR: I think the plan actually culls out 122, 123. 123.
MR. ABRAMS: 123 spaces?
MR. LANDFAIR: Yeah.
MR. ABRAMS: Okay. And you have up to 120 units?
MR. LANDFAIR: Uh-huh.
MR. ABRAMS: And if you had a single car occupying a residence --
MS. HARRIS: Objection to --
MS. ROBESON: I haven't heard the question. Just let him finish the question and then --
MS. HARRIS: Ask the question and then I can object.
MS. ROBESON: Okay.

MR. ABRAMS: Okay. Why don't you object now so --
MR. LANDFAIR: Go ahead.
MS. ROBESON: Well, I'd rather you just ask the question.
MR. ABRAMS: Okay. If each one of those units had a vehicle and it was parked in the building, you would have how many excess parking spaces?
MR. LANDFAIR: We'd have a couple, two.
MR. ABRAMS: Two? Okay.
MR. LANDFAIR: If we were built out to the maximum number of units that we're --
MR. ABRAMS: Right.
MS. HARRIS: Objection.
MS. ROBESON: Now what is your objection?
MR. ABRAMS: What are you -- he just testified.
MS. ROBESON: Just a second. What's your objection?
MS. HARRIS: Mr. Landfair was testifying as to, on redirect as to the visibility of the parking areas as they relate to the Sector Plan recommendation. He did not get into the issue of number of spaces required given the program of the --
MS. ROBESON: And where are you going with it?
MS. HARRIS: -- of the building.
MR. ABRAMS: Well, visibility comes in. If you

don't have enough spaces to accommodate your guests, where are they going?
MS. ROBESON: No, I think he --
MR. ABRAMS: Visible areas.
MS. ROBESON: I think he was testifying as to just the visibility.
MR. ABRAMS: Okay. If there were no guests, no servicemen that came to City Homes, you wouldn't see any cars in the alleyway, would you?
MR. LANDFAIR: Probably not.
MR. ABRAMS: Okay. That's all the questions I have.
MS. ROBESON: Well, it's in for the weight it deserves, okay? So, Mr. Knopf.
MR. KNOPF: I have very few and I'll try to be very quick.
MS. ROBESON: That's fine.
MR. KNOPF: Okay. You said the measurement was done from the podium level. Pardon my ignorance, what is the podium level?
MR. LANDFAIR: Speaking of which building?
MR. ABRAMS: It's the which?
MR. LANDFAIR: Which building are you speaking of?
MR. KNOPF: No, I mean you used, you used the term podium.

MS. ROBESON: I think it was the Arlington.
MR. LANDFAIR: Right.
MR. KNOPF: But you used the term. I'm just not familiar --
MS. ROBESON: Oh.
MR. KNOPF: -- with the term.
MR. LANDFAIR: Right. The podium is basically a raised platform area and it's quite useful, particularly in urban design, particularly in urban areas, to, particularly if you have space below grade like parking. You can make it work with the grades. You're raising the area and the zoning ordinance allows you to take the building height measurements from that raised area. The problem is, for example, with the Edgemoor at Arlington, that podium area which is raised above the surrounding streetscape by several feet doesn't often read as public use space. When you're walking by, you see it as more the private space for the benefit of the residents.
MS. ROBESON: What's the --
MR. LANDFAIR: I think that's problematic.
MS. ROBESON: Was -- at the Edgemoor at Arlington, was that the space that goes up several steps?
MR. LANDFAIR: Edgemoor at Arlington is here in the --
MS. ROBESON: Right. And I remember, in fact, I

said something how I thought the transition was nice, but that was the one where you have steps --
MR. LANDFAIR: You do have steps, right.
MS. ROBESON: -- what you call the podium?
MR. LANDFAIR: The podium level, which is a raised level. It's like a -- you could think of it as like a small plaza area.
MS. ROBESON: Right.
MR. LANDFAIR: And typically what you locate below grade is parking or other infrastructure --
MS. ROBESON: Right.
MR. LANDFAIR: -- related to the building.
MS. ROBESON: And I was one of those people that did not interpret it as public use space.
MR. LANDFAIR: Right.
MS. ROBESON: So --
MR. LANDFAIR: Right.
MS. ROBESON: I just wanted to make sure --
MR. LANDFAIR: I think --
MS. ROBESON: -- that we're looking at the same area.
MR. LANDFAIR: I think many would agree with you.
MS. ROBESON: I'm sorry to interrupt.
MR. KNOPF: No, that's quite all right. I just, I wasn't familiar with the term. I'm sorry, but I got lost

on -- you had the 330 and the 332 height limit that you, on west, you were, you were correcting your prior testimony regarding the height and I'm, I don't understand. You had a 335 and a 330 and the 332 and then we ended up with 2 feet and I get 5 feet. I'm just a little confused. If you could re-explain that and could you also go to the map and show us where you're pointing to and perhaps mark it on the map or --

MS. ROBESON: Okay. If he marks it, I've got to make that a new exhibit. So what is that exhibit called now?

MR. ABRAMS: It's 106a.

MS. ROBESON: I'm going to -- okay. So that's 106a. So now it's going to be -- and I'm letting this in as a new exhibit simply so it can be marked up, is 108, which is marked development plan. Okay. I couldn't hear what you just said. What's he putting a circle around?

MR. LANDFAIR: I'm just going to put an X and I'll note the 330.

MR. KNOPF: If it's all right with the Hearing Examiner, I'm going to ask that my exhibit also be marked, if Mr. Landfair could put an X on that where he's marking too?

MS. ROBESON: Which exhibit?

MR. KNOPF: That same exhibit he's -- the 106a, so

I know where to find that mark.

MS. ROBESON: Oh, okay. I'm sorry.

MR. KNOPF: So go over there and mark it. Take a pen.

MS. ROBESON: But the exhibit in the record controls, wherever he marks your exhibit, the exhibit, the big exhibit, 106, or 108 controls.

MR. KNOPF: Okay. I just --

MS. ROBESON: Thank you. Okay. And what -- okay, that's the West Lane, intersection of West Lane and Montgomery Avenue elevation. Okay. Now continue.

MR. KNOPF: Okay. Now you had said --

MR. LANDFAIR: Yes, I previously testified that in that general area that the elevation was roughly 328 and we compared that, this is a building height measuring point which we've established to be along the west side of West Lane just south of the garage entrance and has an elevation of 335.8. But there was almost an 8-foot difference between that building height measuring point and the spot elevation we established in the center of the intersection.

MR. KNOPF: So the actual intersection is 330 to 332?

MR. LANDFAIR: Correct. Correct.

MR. KNOPF: And you measured it at 35.8?

MR. LANDFAIR: Right.

MR. KNOPF: But then I heard something about two feet, so in my mind that's at least three feet to five feet, so that's why I --

MR. LANDFAIR: It could be --

MR. KNOPF: -- got a little mixed up.

MR. LANDFAIR: -- it could be a two to four foot difference.

MR. KNOPF: Oh.

MR. LANDFAIR: Okay. Because I had, again, I had established 328, so it could be as much as 332, but it's a range between 330, 332.

MR. KNOPF: Thank you.

MR. LANDFAIR: So I was being conservative in terms of referencing two feet.

MR. KNOPF: Okay. Thank you.

MR. LANDFAIR: So the whole point is that there's not quite as much elevation change between that intersection and our building height measuring point.

MR. KNOPF: And that was --

MR. LANDFAIR: And that was the point I wanted to make.

MR. KNOPF: Thank you. To save time, I'm just going to advise for the record something, and not ask a question. Exhibit 102f, which is the Edgemoor approvals at page 8, there is discussion of what the density is combining

both projects and so on. There were questions asked about that and we were surmising --

MS. ROBESON: Oh, okay.

MR. KNOPF: -- what it might be. I believe that it's set forth at that point.

MS. ROBESON: Okay.

MR. KNOPF: I will have Mr. Landfair find it and repeat. Okay. Now, Mr. Landfair, you had stated in response to questions from Ms. Harris that it's the sector, the law requires that the, there be substantial compliance with the use and density requirements of the Sector Plan.

MR. LANDFAIR: Correct, substantial compliance.

MR. KNOPF: Right. Now you are also aware, I assume, that the County Council has made certain findings before they approve this and one of those findings is they must make a finding under 59d-1.61 that the project, quote, would be compatible with adjacent development, unquote.

MR. LANDFAIR: Sure. Yes.

MR. KNOPF: So that still stands irrespective of the Sector Plan requirements?

MR. LANDFAIR: Yes.

MR. KNOPF: Okay. Similarly, are you familiar with the fact that that 59d-1.61 requires the Council find that the proposed development would comply with the, quote, purposes, standards and regulations of the zone, unquote?

MR. LANDFAIR: Yes.
MR. KNOPF: That, again, is a separate requirement from the density and use?
MR. LANDFAIR: Yes.
MR. KNOPF: And is one of the purposes, do you agree that one of the purposes of the zone, that there must be a finding of compliance as, quote, to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood, unquote?
MR. LANDFAIR: Yes.
MR. KNOPF: Okay. So, okay. The Villages of Bethesda, there's much talk about setbacks and so forth. Could you -- do you have a picture or could you tell us from your memory the Villages of Bethesda dwelling units, how many of them, which ones, where, have windows that face, because it would be south, face the project? And on my trip I don't remember seeing any, but that's why I rely on you.
MR. LANDFAIR: You're referring to 106b? The closest end units of Villages of Bethesda has no windows in that end unit, but faces directly out onto the property. However, directly opposite, its own mews, or public use space area, to the rear side of these units and through here, you do have windows that look out, look to the south and would have a view into the subject property.
MR. KNOPF: I'm sorry --

MS. ROBESON: Are there any windows on the eastern property border, you know, the part that --
MR. LANDFAIR: Well, there's -- yes. And there's windows along this side and there's windows along this side. This would be the --
MS. ROBESON: Wait, I'm sorry.
MR. LANDFAIR: I'm sorry.
MS. ROBESON: I can't see. When you say side --
MR. LANDFAIR: Along the west side, which would be the front of the townhouse unit --
MS. ROBESON: Okay.
MR. LANDFAIR: -- in Villages of Bethesda.
MS. ROBESON: And --
MR. LANDFAIR: That would have windows indoors. And then, likewise, on the east side, the rear side of those units, there would also be windows and doors.
MR. KNOPF: Excuse me, I didn't mean to -- is the Hearing Examiner finished with the questions?
MR. KNOPF: Oh, I'm sorry. I'm still -- point to the windows again, which way the windows are facing?
MR. LANDFAIR: There's windows are here.
MR. KNOPF: Wait, so you look out -- show which way, I'm standing in a window and I'm looking out, which way would my vision go?
MR. LANDFAIR: Well, you could look. I mean you

could actually step out into your own rear yard there and also have a view into our property, but you could look out through these windows diagonally into the subject property.
MR. KNOPF: Diagonally?
MR. LANDFAIR: Yes.
MR. KNOPF: And does, is there, I'm sorry I forgot, is there some kind of wall or plantings or something that's at the, on the southern property line that separates it?
MR. LANDFAIR: I think, if you can give me a moment, I can dig out a photograph for you.
MR. KNOPF: Okay.
MS. ROBESON: Well, we didn't we wander -- I thought there is some kind of fencing along the southern property --
MR. KNOPF: It's --
MS. ROBESON: -- having wandered there.
MS. HARRIS: The aerial might be helpful.
MS. ROBESON: It's not as helpful as I thought it would be.
MS. HARRIS: This?
MS. ROBESON: Well, you can testify, I mean as best you can.
MR. LANDFAIR: Referring to --
MR. KNOPF: This is 106f, I believe.

MR. LANDFAIR: -- 106f, aerial dated February 15th, the Villages of Bethesda, of course, is located at the corner of Arlington and Edgemoor. The rear side of the development does back up to the subject property. The closest end unit to the subject property has no windows in that end unit, but the rear side of the building and the front side of the building, the front side faces to the west, rear side faces to the east, both have windows and doors. Certainly, the side facing to the east you would have a diagonal view, marginally, but a diagonal view into the subject property.
That view, however, is somewhat mitigated by trees that are planted along the common property line, actually I think it's just inside the adjacent property, that are planted to screen the structured parking which is below the tennis courts on the adjacent face property.
MS. ROBESON: So those trees, those aren't inserted, those are actually there? Maybe it's just the glare?
MR. LANDFAIR: Those trees are actually there.
MS. ROBESON: Okay.
MR. LANDFAIR: They're in reasonable shape, yes.
MR. KNOPF: All right. I'm just trying to understand that. And the, the distance between the, your building and, like we said, Arlington North that's being

built, there's a green space between the buildings as you go back toward Bethesda, the Bethesda Villages?
MR. LANDFAIR: Right.
MR. KNOPF: Right?
MR. LANDFAIR: We have our own green space and then there's --
MR. KNOPF: And what's the width of that? You said that was 40 some feet?
MR. LANDFAIR: About 42 feet, yeah.
MR. KNOPF: So you that someone, assuming someone could see down in that area, they, the first view would be the 40 feet of open space or --
MR. LANDFAIR: Well, whose view are we talking about? Is it the view from Edgemoor at Arlington North?
MR. KNOPF: No, I'm talking about the Villages of Bethesda --
MR. LANDFAIR: Oh, okay.
MR. KNOPF: -- houses, you said somebody could look out the window diagonally and see?
MR. LANDFAIR: Yes, yes, they could have, and they would have a view from their own public use space. They have their own sort of miniature mews, if you will, looking directly south and they could see both into our, what would be the future private amenity area for our residents, as well as into the rear area of Edgemoor at Arlington North.

MR. KNOPF: And I cut you off, is that 42 feet in width?
MR. LANDFAIR: From building to building, yes.
MR. KNOPF: Yes.
MR. LANDFAIR: Yeah.
MR. KNOPF: Thank you. My last question, you'd be happy to know, is, there was some discussion back and forth in response to the questions from your counsel as to whether the chairman at the Planning Board changed her opinion somehow between the first report and the second report and I'm now referring to the second report, Exhibit 105. And I want to read something to you here. This is the report.
"The majority of the board concluded that an increased setback from nine feet to 12 feet along the top floors of the building parallel to Montgomery Lane, as well as contrasting building materials that these floors effectively reduce the bulk and mass of the building. Moreover, the majority of the Planning Board found the density proposed is necessary to achieve a critical mass on the site,"
etcetera. Do you agree with me in reading that that by specifying it was the majority that she has preserved what she said in the original opinion?
MR. LANDFAIR: Not necessarily. It's hard to tell

just by reading that resolution just how much of the majority opinion she fully supports and how much of her own because, clearly, I think many of us were there. She voiced some strong statements and strong opinions about what projects have conformed to or not conformed to in the past over the years. So I'm not sure one could say that she's basically restating the opinion that she stated in the first resolution to be honest with you.
MR. KNOPF: So you are not certain?
MR. LANDFAIR: I'm not certain.
MR. KNOPF: Okay. Thank you. I have no further questions.
MS. ROBESON: All right.
MS. HARRIS: May I ask Mr. Landfair two questions? We'll clarify one thing that Mr. Abrams said just for clarification on the record.
MS. ROBESON: Okay.
MS. HARRIS: Mr. Abrams stated that the units per, he was referring to the number of units and instead of saying 100 to 120 units, he said 100 to 120 units per acre and I'm assuming that's not what you meant?
MR. ABRAMS: No, I thought I said 100 to 120 units.
MS. HARRIS: You said per acre at one point --
MR. ABRAMS: Okay. Well --

MS. HARRIS: And I just want to clarify that that wasn't what was intended.
MR. ABRAMS: Right.
MS. HARRIS: The second question, and the only question I have for Mr. Landfair, isn't it correct that the Planning Board always has the opportunity to issue minority opinions when they send over a transmittal to either the Council or the Zoning Hearing Examiner?
MR. LANDFAIR: Yes, they do.
MS. HARRIS: And --
MR. LANDFAIR: I can remember when I was on staff trying to write those --
MS. ROBESON: Okay.
MR. LANDFAIR: -- provisions.
MS. ROBESON: You said yes?
MR. LANDFAIR: Yes.
MS. ROBESON: Don't go further.
MR. LANDFAIR: That's fine. Thank you.
MS. ROBESON: Do you guys want to cross on that, either of you? Okay. With that, I am going to -- you do have to clear your exhibits out because apparently we can't lock these doors. So I'm going to adjourn until 9:30 on Monday, April 15th. Thank you for staying so -- oh, what?
MR. KNOPF: Just for planning purposes for my clients and so on, I'm just trying to get a feel as to when

they might be on to testify, if we could just take a minute to --
MS. ROBESON: Well, that's up --
MR. KNOPF: -- discuss that here about -- you have four, you have four more witnesses? I'm just trying to figure out what day I need to have them come.
MS. HARRIS: It seems to me since the cross has taken longer than the direct, that you may be better able to answer that question than I can.
MR. KNOPF: Well, if you could just --
MS. HARRIS: Just a moment.
MS. ROBESON: I anticipate a long cross-examination of the architect and I don't know what Mr. Berman is going to say.
MS. HARRIS: So we have Mr. Berman. We have Mr. Redulescu, Mr. Kabot, our landscape --
MS. ROBESON: Who is Mr. --
MS. HARRIS: -- architect.
MS. ROBESON: Oh, Mr. Kabot is the civil --
MS. HARRIS: And then our civil engineer and then we have two --
MS. ROBESON: You have a traffic person too?
MS. HARRIS: Yes, that's Mr. Kabot. One, two, three -- we have five more primary witnesses and then there are two people, as I noted, that we're calling from two

organizations. And I actually expect, because they expected and arranged their schedules to be here on Monday and that they will be very brief. I anticipate putting both of them on on Monday.
MS. ROBESON: That's fine. We can take them first.
MS. HARRIS: Thank you.
MR. ABRAMS: So that --
MR. KNOPF: Just five experts and then two lay witnesses?
MR. ABRAMS: Would it be --
MS. ROBESON: Is it the smart, is it the Smart Growth?
MS. HARRIS: Coalition for Smart Growth and the Action Committee for Transit.
MR. ABRAMS: Would it be safe to say that no opposition witnesses will be heard on Monday?
MS. ROBESON: I think that's safe. I mean you are always at your own risk, but I think that Monday you will not need opposition.
MR. ABRAMS: Okay. The next thing is what is Mr. Berman going to testify to since basically all I got was an entry of his name and his curriculum vitae. I don't know what his --
MS. HARRIS: Mr. Berman is going to be testifying

to the intent of the Bethesda Sector Plan since he was integrally involved in the drafting of it.
MR. ABRAMS: So the intent of the Sector Plan, is that what you're saying?
MS. HARRIS: Yes.
MR. ABRAMS: Okay.
MS. ROBESON: Okay.
MR. KNOPF: And just for the record, are you envisioning you would go next and then my witnesses? I'm just trying --
MS. ROBESON: Well, I think we might as well stay in the same order and we'll take Mr. Abrams's witnesses and then your witnesses.
MR. KNOPF: So I think -- okay. So I think it's safe my witnesses wouldn't be on before Wednesday.
MS. ROBESON: Unless for some reason you would like your expert to go earlier. You don't have an --
MR. ABRAMS: I don't care.
MS. ROBESON: -- expert witness, right?
MR. KNOPF: Okay. It just gives me --
MR. ABRAMS: No, I don't have --
MR. KNOPF: -- a rough idea. Thank you.
MR. ABRAMS: He does.
MS. ROBESON: Okay. All right. With that, we're adjourned.

MS. HARRIS: Thank you.
MR. KNOPF: Thank you for your patience.
MS. ROBESON: Oh, no, thank you.
MR. KNOPF: I have a question for --
(Whereupon, at 7:22 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Tracy Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

4831 WEST LANE, LLC	:	**Case No. G-954**
Local Map Amendment No. G-954	:	**DPA 13-01**

A hearing in the above-entitled matter was held on April 15, 2013, commencing at 9:38 a.m. in the Rita Davidson Memorial Hearing Room, 100 Maryland Avenue, Rockville, Maryland.

Lynn Robeson

Hearing Examiner

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Cheryl Cort	8		--	--
By Mr. Abrams:		21		
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E X H I B I T S

Exhibit No.		Marked/Received
108	Development Plan with Marks	6
109	Mathematical Calculation of MPDU and Bonus Density	74

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Local Map Amendment No. G-954 filed by 4831 West Lane, LLC, which requests rezoning from the R-60 to the TS-R zone, a property known as 4901 Montgomery Lane, Lot 26, Block 13, in the West Lane right-of-way associated with Lots 24, 25 and 26, Edgemoor subdivision, Bethesda.

It is also the public hearing on Development Plan Amendment No. DPA 13-01 filed by the same applicant, which requests and amendment to the development plan approved by the District Council on July 10th, 2007, in Zoning Application No. G-843.

Good morning, everyone. Are there any preliminary matters? Yes.

MS. HARRIS: I had just one. And that is, in our applicant's prehearing statement, we identified Chuck Irish as testifying as the civil engineer, and we submitted his resume. And then subsequently I've been referring to the fact that his colleague may be testifying. But in fact, it will be Chuck Irish testifying with respect to civil engineering and some land use surveying matters.

MS. ROBESON: All right. All right.

MR. ABRAMS: The only preliminary matter that I have is that Mr. Landfair, when he testified, was supposed

to provide some information on building coverages from the sector plan. He didn't have that available in response to the question.

MS. ROBESON: I thought that we had agreed that it was your burden to provide that information.

MR. ABRAMS: I thought we were talking about some other information, but if that's your ruling, that's your ruling.

MS. ROBESON: Oh, it could be. I don't have the transcript get to double check. Ms. Harris, is there a problem with him doing that?

MS. HARRIS: No. I am certain that Bill Landfair will be back up for redirect, and we can address it at that time.

MS. ROBESON: For rebuttal?

MS. HARRIS: Yes. Excuse me. Rebuttal.

MS. ROBESON: Is that sufficient?

MR. ABRAMS: Yes, ma'am. Yes.

MS. ROBESON: Okay.

MR. KNOPF: I don't have any preliminary matters. I'm hoping by the end of the day we might be able to get an estimate as to when my witnesses might be on, because they're trying to figure out what day they have to be here.

MS. ROBESON: I understand. I have one preliminary matter. There was a, I think it was the

development plan that someone had put an X on. And I called it 108. But when I looked after the -- Exhibit No. 108. But when I looked at it after the hearing, it wasn't marked, unless I missed it.

MS. HARRIS: It is not marked. It should be marked.

MS. ROBESON: Okay. So for the record, we'll mark it as 108. And that is the marked development plan.

(Exhibit No. 108 was marked for identification.)

MS. HARRIS: And it's not duplicate. This says duplicate, but it has the measuring right there.

MS. ROBESON: Right. It was a duplicate. Now it's not. Yes, sir?

MR. KNOPF: One thing that just occurred to me, I forgot to look, do we have a revised exhibit list?

MS. ROBESON: The exhibit list --

MR. KNOPF: Typed up, I mean, from your office.

MS. ROBESON: The exhibit list is identical except for 108. I didn't officially update.

MR. ABRAMS: What is Exhibit No. 107?

MS. ROBESON: Letter received 4/1/13 entering appearance of Stanley Abrams.

MR. ABRAMS: Okay. Thank you.

MS. HARRIS: Are you familiar with that one?

MR. KNOPF: I did have, now that you mention it, I seem to recall, and now I'm doing it from memory. I wrote it down someplace, I don't know where. I'm not sure, at least I couldn't find, did Planning Board staff report a second staff report? I couldn't find that in the exhibit list.

MS. ROBESON: Okay.

MR. KNOPF: It may just be that I couldn't find it. It could be there, but I did look.

MS. ROBESON: Right. 105. I am going to have our office change, I don't know how this started, but I'm going to change it from the first line being when it was received.

MS. HARRIS: Is 105 the letter, or is that also the staff report.

MR. KNOPF: That's just the letter, not the staff report.

MS. ROBESON: Oh, you're looking for the staff report?

MR. KNOPF: Yes.

MS. ROBESON: I'm sorry.

MR. KNOPF: I couldn't find it.

MS. ROBESON: Well, I recall it being in the file.

(Discussion off the record.)

MS. ROBESON: I see what happened. It was forwarded to us as an attachment to the Planning Board's

recommendation. So what I'm going to --

MR. KNOPF: I didn't know that.

MS. ROBESON: Yes. What I'm going to do is have them change this. And 105A, unless anyone has an objection, 105A will be the Planning Board recommendation, and B will be the supplemental staff report.

MR. KNOPF: Okay. Thank you.

MS. ROBESON: Okay. All right. Anything else? Okay, Ms. Harris? Nothing? Ms. Harris?

MS. HARRIS: Thank you. We'd like to call our first witness, which is Cheryl Cort from the Coalition for Smarter Growth.

MS. ROBESON: All right. Please raise your right hand.

(Witness sworn.)

DIRECT EXAMINATION

BY MS. HARRIS:

Q Thank you. For the record, please state your name, address, and your organization.

A My name is Cheryl Cort, and I am with the nonprofit called Coalition for Smarter Growth. And we are located at 316 F Street, Northeast, Suite 200, Washington, D.C. 20002.

Q And your position at the coalition?

A I'm the policy director.

Q And can you just briefly describe what the mission of CSG is?

A The organization works to ensure that transportation and development decisions in the Washington, D.C. region accommodate growth while revitalizing communities, providing for housing and travel choices, and conserving our natural historic areas.

Q And are you familiar with the Bethesda CBD sector plan and also the TS-R zone?

A Yes, I am.

Q And are you familiar with the goals of the sector plan?

A I am.

Q And can you just briefly describe, you've reviewed the sector plan, is that correct?

A Yes, I have.

Q And can you just briefly describe what those goals are?

A Yes. So the 1994 Bethesda CBD sector plan provides a vision of fostering a pedestrian environment encouraging a wide range of housing types for people of all incomes, ages, and physical abilities. In particular, the sector plan seeks to provide an adequate supply of housing, including affordable housing units to reinforce that Bethesda is a place to live as well as work.

Q And in general, how would you compare CSG's mission and goals to that of the Bethesda sector plan?
A CSG's mission and the sector plan goals share the vision that the Bethesda CBD can be a place to concentrate jobs and also allow for more people to live in the area and take advantage of employment services and transit. Especially important in this is the shared value of building inclusive places where people of all incomes can be a part of the Bethesda CBD and enjoy its many amenities and access to jobs and services.
The sector plan's priority of housing near transit, near Metro, and as a major employment center, along with offering a diversity of housing choices and affordable housing, are all critical elements to creating smart, inclusive communities. The Coalition for Smarter Growth works to achieve these goals throughout the Washington Metropolitan region, and we're eager to support the achievement of these goals in the Bethesda CBD.
Q And have you reviewed the proposed plans for this project?
A Yes, I have.
Q In your opinion, does the proposed project further the goals of CSG and if so, how?
A Yes. We believe that the proposed project is a good example of achieving the goals that we see for the

region. With the adoption of increased funding at the Maryland State level, we also think that this provides an even more urgent impetus to follow through on this kind of an opportunity, because the purple line is more of a reality today than it was a few days ago. So we're hoping that this project can move forward and help us address our goals of bringing more housing to high-quality transit.
Q And can you comment on this project with respect to the diversity that it would provide?
A So this, as a multi-family residential project, will enhance the housing choices and number of affordable housing opportunities in very close proximity to the Bethesda Metro Station, which also furthers the goals of the Bethesda sector plan.
This is a great benefit to the County and to the region because it's building more housing, especially more housing in a job-rich area, next to Metro, in a job-rich part of the region. And this reduces overall traffic in the region, shortens commutes, and reduces household transportation costs, and gives more moderate income households access to jobs and amenities in a highly desirable community.
Q What is your opinion with respect to the project as it relates to the height, the location, and the design, and especially with respect to the pedestrian environment

that's being fostered?
MR. KNOPF: Excuse me. You're asking her for an opinion. I'm not quite sure that's the right question. You're not qualifying her as an expert.
MS. ROBESON: That's actually, can you rephrase it in another way?
MS. HARRIS: Can I understand Mr. Knopf's objection? I don't understand his objection.
MS. ROBESON: His objection is, you're asking her for an opinion, and she's a fact witness, not an expert.
BY MS. HARRIS:
Q Okay. Does the proposed building foster a pedestrian environment along Montgomery Lane?
A Yes.
MR. KNOPF: I still object, but --
MS. ROBESON: You know, she isn't qualified as a land planner. She's here for the Coalition for Smarter Growth. So I do have --
BY MS. HARRIS:
Q In your experience, in terms of other projects that the Coalition of Smarter Growth has supported, how does this project compare to those projects, especially with respect to the pedestrian environment?
A Well, regarding our --
MR. ABRAMS: Objection. What other projects are

you talking about?
BY MS. HARRIS:
Q Okay. Can you please identify some other urbanized Metro sector projects that the Coalition has supported?
A I just testified in support of a project close to the Tenleytown Metro Station in the District of Columbia.
MR. ABRAMS: Objection.
MS. ROBESON: Basis?
MR. ABRAMS: The basis, it's not in Montgomery County.
MS. HARRIS: That's irrelevant.
MS. ROBESON: She can, we've used urban comps before from Washington. In fact, Mr. Doggett testified at length to some things. So it's an urban environment. So overruled.
THE WITNESS: So what's important, what I'd like to talk about are the key principals of pedestrian-oriented design. That's something that I spend a lot of time on in terms of looking at developments around the region.
We want to see that we are creating buildings that are supporting a more supportive pedestrian environment, an environment that can help encourage people who walk more to use transit more. And I see that this proposal is consistent with that.

And the key principals of that pedestrian-oriented design are bringing the building up to the sidewalk, so that it has a close relationship between the building and the public realm; and that there are doors and windows that are engaging that public realm, rather than a blank wall.

So the build-to line, as it's called, the street wall, that there's a consistency along the public right-of-way that people walking on the sidewalk feel a sense of enclosure, that they have a relationship to the adjacent buildings. And that there's a consistency along the street wall.

So we see that this project is placed fulfilling that or creating that consistent street wall along Montgomery Lane. And that the entrance placed on the corner of the building has helped to animate the main public street, which is Montgomery Lane.

MS. ROBESON: Okay. All right. Again, you're bordering on expert testimony so, you know, I'd prefer if you could move on.

MS. HARRIS: But I would say, I mean, the purpose of their organization is to promote projects that bring density and promote an urbanized environment. And as the policy director, I think she's quite capable of commenting on what the components of this project that, in fact, further that objective.

MS. ROBESON: When you look at projects, do you, in addition to density and proximity to transit, do you look at, do you look at the streetscape? Because you really are, when you get into, it seems to me that any streetscape is a good streetscape. And when you're getting into details about bringing it closer, that's something I prefer to hear from a land planner.

THE WITNESS: Well, I would say that it's not just about building a big building next to a Metro station. It's much more than that. I mean, we need to design communities that invite walking, that create, that we need to build buildings that are compatible with their neighbors, that support --

MS. ROBESON: Okay, but --

THE WITNESS: It's not just plopping down --

MS. ROBESON: But you're not a land planner here to testify as to compatibility.

THE WITNESS: But we're looking for improving transit ridership, for instance. So we want to make sure a building is supporting greater walkability. It's going to be generating more walk trips, basically, and encouraging more use of transit that's nearby.

And that's not just about, it is, proximity is one element, but it's also the design itself, that the building needs to be supporting and inviting people to use their

front doors to walk outside to get on the sidewalk and walk to the Metro station, as opposed to going down into the parking garage and drive off.

So from a transit ridership perspective, in terms of fully taking advantage of transit ridership, design elements are important to make sure they are pedestrian-oriented so that it's not just about a place to live, that you go down in the parking garage and drive off; that that building engages with the public realm in a way that makes people want to walk for more of their trips, basically, so we can reduce driving. We can increase activity with local businesses. We can increase connection to transit, use of transit.

MS. ROBESON: All right. Is that good enough for you?

MS. HARRIS: That answer? That explanation of why she should be able to testify? Is your, that was satisfactory.

MS. ROBESON: My concern is that she's expressing what essentially is an expert opinion, and she isn't qualified.

MS. HARRIS: But I don't, if we assume that she's not an expert, take it for the weight that it's proffered.

MS. ROBESON: All right. I was just going to suggest that. So we'll take it for the weight it deserves.

MS. HARRIS: Thank you.

BY MS. HARRIS:

Q You touched on the importance of the pocket part. Can you briefly expand on that, please?

A Yes. And you know, I have experienced, I've looked at other projects or certainly seen the build out of the public space requirements in Montgomery County. And It's possible, sometimes those don't really lead to the best outcomes, usually, in great public spaces.

But what I think is proposed here is a very good solution to the public space requirement in a way that creates a very usable, a very urban space that's tightly connected to the building itself, so that it's not sort of isolated off on its own, but it actually has a relationship, and it basically is creating that public space that is the connection between the private space of the building and the public realm through the space that's the public urban space which is next to or opens onto the entrance of the building, and so creating that relationship between the private and the public.

This is usable public space. People can meet their friends there, wait, and go off together. And so I see that the public, it's important that public space, as a principal, be animated in that it's connected to other activities. So --

MS. ROBESON: Did you see the first design?
THE WITNESS: The first design did not have a corner public space. It had it in the back on West Lane.
MS. ROBESON: Right.
THE WITNESS: Correct. Well, I think this is a far better solution. I mean, and I think that --
MS. ROBESON: But you supported the other one, too, correct?
THE WITNESS: Yeah, I mean, I think that this, what I'm saying is, this is a good solution because I think that the public space requirements are something of a, not a very well designed requirement for creating great public spaces. I think it's a bit more of a suburban solution that's being kind of shoehorned into a more urban place. But I think that this public space is a really good solution to that question.
MS. ROBESON: Okay.
THE WITNESS: Because it's creating that connection between the entrance where you have, you're creating, you're generating that pedestrian traffic, and then there is this usable place that's very sit-able, a place that people could sit and wait for friends. And so it creates that connection between that private space and the public realm. That's something that the government has an interest in, is creating that connection between private

space and a usable public realm.
MS. HARRIS: And actually I just want to clarify that the Coalition of Smarter Growth, we did not communicate this project to them until after the project was revised and the pocket park was proposed. So although they saw the prior proposal, which did not have the pocket park --
MS. ROBESON: Okay. Well, she can testify to that, okay.
MS. HARRIS: Okay.
MR. KNOPF: I didn't want to interrupt her, but, and I understand the Chair's ruling, but I just want a continuing objection, because I think we've left off, because I don't hear any facts now. I just hear solely opinion, as if she were a land planner.
MS. ROBESON: Objection noted. It's in for the weight it deserves. You can have a continuing objection.
MR. KNOPF: Thank you.
MS. ROBESON: Go ahead, Ms. Harris.
BY MS. HARRIS:
Q Thank you. And one final question, and that is, others have testified that the building will provide an average unit size of 860 square feet, including a total of 120 units with 18 MPDU's. Can you please comment on this proposal as it relates to the development of the urban fabric within the Bethesda CBD and the CSG's goals?

A So in terms of the contribution of a 120-unit building with 18 MPDU's, this is an important part of ensuring the Bethesda CBD can be an inclusive place where people can live and work, and where people of all incomes have the opportunity to live there.
We, you know, we commend the foresight of the 1994 plan which committed to this inclusive vision. This project advances that sector plan goal, and the goal of building inclusive mixed use, mixed income transit-oriented communities. This is certainly our goal.
We spend a lot of time working on affordable housing as a part of transit-oriented development, and particularly in this case, with this part of the Bethesda central business district, which is intended to provide for more living opportunities in the downtown environment, it's a good compliment to the build-out happening in the area by providing slightly smaller units that are slightly more affordable, plus really maximizing its MPDU delivery.
And that is something that is of a high priority to us. We actually organized a conference on inclusionary zoning and MPDU's last October to look at these issues in terms of the challenges facing it, and sort of the declining yield in MPDU's.
We're concerned that Montgomery County zoning change is actually discouraging developers from taking

advantage of the full density bonus to get the full 15 percent of MPDU's. So we very much welcome this kind of a project in such an ideal, in such a desirable location.
Q Thank you. Do you have anything else to add?
A I just wanted to note that the building is, has a similar development envelope, or compatible envelope to similar building. And it's going to be providing more housing units, and more MPDU's, which is not only our goal, but also a sector plan goal of providing diversity of housing and affordability. So we think it's an important compliment and fulfillment of the sector plan. Thank you.
MS. HARRIS: Thank you.
MS. ROBESON: All right. Mr. Abrams.
MR. ABRAMS: Yes. Just a few questions.
CROSS EXAMINATION
BY MR. ABRAMS:
Q The Coalition for Smarter Growth requires, I guess, funding to operation, is that correct?
A Yes.
Q And is one of the funding entities the National Association of Realtors?
A Yes.
Q Is that the only funding you receive?
A We just get a small grant from them, a few thousand dollars.

Q Okay. Who else do you receive money from?
A The majority of our funding is foundation funding. The vast majority is foundation funding, followed by individual dollars and a small component of corporate contributors.
Q Are any of the other contributors related to the real estate industry or the development industry?
A Yes.
Q Such as?
A I mean, there is a number of developers and architectural firms, transportation, planning firms.
Q And have you testified on their behalf?
A I have testified in support of projects that we believe fulfill our goals.
Q And are some of these projects for members who have, are contributors?
A We have received contributions from developers or, you know, some industry-related groups that have been on a project that we have supported. Yes.
Q Okay. I noticed that in your testimony, you're referring to some notes.
A Yes.
Q Okay. Do those notes have questions?
A Yes.
Q Okay. Who prepared the questions?

A Pat Harris prepared them.
Q Do the notes also have responses to those individual questions?
A Yes.
Q And who prepared the responses?
A I prepared those.
Q Did you submit those to Pat Harris for review?
A Well, not for review. I gave her, I sent them back, because I wanted to discuss any questions that I had about the project.
Q Did you have any discussions with Pat Harris regarding the responses --
MS. HARRIS: Objection. This is no more than consultation between someone who is speaking on behalf of the project and the attorney.
MS. ROBESON: Well I think --
MS. HARRIS: It's not out of the normal course of communications with --
MS. ROBESON: I understand. I understand what you're saying. I think it is fair grounds if we get to impeach. Is this going to be impeachment?
MR. ABRAMS: Yes, ma'am.
MS. ROBESON: I think it is fair grounds for impeachment.
BY MR. ABRAMS:

Q Now, did Pat Harris suggest that you change anything in your statement?
A No, and in fact, I asked Pat about, it looked to me like I wanted to understand the details of the heights of the adjacent buildings. And so I asked her to give me the specifics of the heights because I know that this building is 70 feet, and that I asked about the other buildings in the area, because one looked particularly, one of its neighbors looked particularly tall. And so I was told that that one is 110 feet. That's the Edgemoor, correct? And then I --
MS. ROBESON: Well, do you know it's 110 feet?
THE WITNESS: I was told it's 110 feet. But I didn't testify. I'm saying now, I was just getting a sense of the context in terms of the relationship between the height of this building and its compatibility with its neighbors. And from the drawings that I had seen, it looked like it was a very tall building. So I was asking about that.
And then I know that there is the other building next to it that's planned but not built which I was told is 65 feet. And so I was interested in the relationship. And if you look at the staff report for this, the West Lane project, it says that the zoning can be 65 feet plus additional for fulfilling the MPDU on site, basically. And

so 70 feet. So it's a five-foot difference. It seems like a very good deal for the County, in terms of fulfilling the goal of the sector plan to provide all of the MPDU's on site.
MS. ROBESON: Okay. But aside from fulfilling, I guess the disconnect I'm having is that when we have a fact witness you say how it furthers your goals.
THE WITNESS: Okay
MS. ROBESON: You don't say how it furthers the master plan goals.
THE WITNESS: Okay.
MS. ROBESON: So if you could address --
THE WITNESS: Yes. So let me --
MS. ROBESON: -- not compatibility.
THE WITNESS: Right.
MS. ROBESON: Well, no, you're on cross-examination now.
THE WITNESS: Okay.
MS. ROBESON: I'm just saying that, I'm just raising that.
THE WITNESS: Okay.
MS. ROBESON: Mr. Abrams.
BY MR. ABRAMS:
Q Yes, ma'am. You've reviewed the sector plan?
A Yes.

Q Okay. Do you recall any description in the TS-R district about mixed streets?
A About, I'm sorry.
Q Mixed streets?
A Mixed streets. I do not.
Q Do you know what the purpose of a mixed street is?
A I do not.
Q You also indicated that there were several important principals of pedestrian-oriented design, and you indicated that the cut out area at the corner was one example. Would pedestrian-oriented design be furthered if the, well, first of all, how much setback is there facing Montgomery Lane, exclusive of the cutout at the corner?
A You mean to the building line?
Q Yes.
A To the public right-of-way?
Q Yes.
A I don't know. It's consistent with the street while along Montgomery Lane. I don't know specifically how many feet is the setback.
Q Okay. If that building line were 10 feet, and it were moved further back into the center, toward the center of the project, to create an extension, I guess, of a pocket park, or places where people can sit and trees can be planted, would that facilitate a pedestrian-oriented design

for this street?
A I don't think that would support a more pedestrian-oriented design, and here is why. I mean, I feel like that's sort of like a suburban solution that doesn't recognize the important relationship between the building and the public right-of-way.
We need to, in the past, the suburbs what we've seen is we push buildings back and create a lot of passive space in front of buildings, and disconnect the building's activities and relationship to the public right-of-way. This is where, as a pedestrian, you want to feel connected to the adjacent uses to the sidewalk you're walking on. And so it's important not to oversize parks.
And so the park space here I think is an appropriate scale. It's not too big. To make it larger creates more of a disconnect between the activities in the building and the activities on the street, basically. And so you don't want to just push away and create sort of a passive sort of no man's land between a building and the public right-of-way. You want it to be an animated environment.
Now, for instance, if this were a mixed use street with retail on the front, you would want retail fronting Montgomery Lane. But this is not. This is a residential district. And so the way to animate that public space is

with that building entrance. That's a good solution.
Q So you're advocating, or your group advocates solutions of hardscape materials as opposed to green space in pedestrian-oriented areas?
MS. HARRIS: Objection. She didn't say that.
THE WITNESS: We are --
MR. ABRAMS: That's what I'm trying to find out.
MS. ROBESON: It's fair on cross-examination. He can --
THE WITNESS: We're interested in the compatibility of these buildings.
MS. ROBESON: She's on the border of opinions, so go ahead, Mr. Abrams.
BY MR. ABRAMS:
Q Is that the response?
MS. ROBESON: What's the response? I didn't hear it.
THE WITNESS: In a more urban environment like this, you would be looking at a fair amount of hardscape to go along with green elements. It's about creating usable public spaces, someplace that is sit-able. A place that you could say, meet me at the bench in front of my entrance so that we can go to the store together.
It's about creating places that have a sense of identity and connection to the surrounding uses, as opposed

to a ballpark, a sort of passive use. That belongs a little bit farther away from so close to the Metro station in such an urban district.
BY MR. ABRAMS:
Q One of the other principals that you indicated I believe dealt with doors and windows being close to the right-of-way or sidewalks, things like that. Has that occurred in this project?
A Well, the entrance, yes, you have windows overlooking the sidewalk on Montgomery Lane. And what's really important is to have that entrance coming to Montgomery Lane rather than on West Lane.
For instance, if this were a mixed use project with retail, you would want the retail on Montgomery Lane. You would put the residential entrance --
MS. ROBESON: Wait. This isn't hypotheticals. Okay. I really don't want to get into -- I have a question. Have you ever supported a project that varied a little from the street line from the building faces?
THE WITNESS: Sure. You can have some variation.
MS. ROBESON: Yes.
THE WITNESS: But there's sort of a, you don't want to have --
MS. ROBESON: No, that was my question.
THE WITNESS: Okay.

BY MR. ABRAMS:
Q Are you familiar, well, I assume your response, I guess your response is that for an apartment building such as this, that a single entrance is what is important to your principals of pedestrian-oriented development?
A What I like about the proposed design is bringing that entrance to the corner of Montgomery Lane and West Lane, and having it have a strong relationship with the pocket park there. And if that is fulfilling the principal of creating a pedestrian-oriented design where the entrance is engaging the main public street, which is Montgomery Lane.
Q Would it be superior if individual units, carrying out this principals which you've indicated is important, would it be superior if the individual units on the ground floor had direct access, and there were windows from that unit having visibility out onto the sidewalk and the streets?
A Well, there are windows. You're talking about, are you suggesting doors?
Q Yes.
A So in terms of doors, I don't know. I'd have to look at that project. I think that this is not a -- I mean, the length of the building, the frontage on Montgomery Lane does not appear to be too long in terms of having no

entrances other than the one on the corner.
Q Are you familiar with the apartment project over the Wheaton CBD Metro station?
A I've heard of it, but I haven't reviewed the designs for it.
Q Have you reviewed any projects where there are direct entrances to garden apartments or multi-family apartments where the entrances are from the street to individual units?
A I've seen projects that have some mix of main entrances and individual unit entrances. Yes.
Q And you believe that those projects are consistent with the goals of your organization?
A I can be sure.
Q Now, you are particularly indicating that the project supports more MPDU's in this area?
A Yes.
Q Do you know how the County currently defines moderate income projects?
A 65 percent of area median income for the baseline is a 12 and a half percent requirement, with no bonus density. But the County has designed a bonus density up to 22 percent to encourage developers to provide a full 15 percent of those MPDU's at the 65 percent AIM level.
Q Do you know if this project is going to be rental

or condominium?
A I don't know that it's been determined yet. We certainly, we are hopeful that it could be rental, since there's a lot of home ownership in this area. So it would be great if it were rental.
Q And what would the rents be under the current level?
A I would have to look at the price schedule in terms of the 65 percent, what is 65 percent AIM. And the other thing I will say is on rental, what would be helpful is that it's a 99-year period, control period for MPDU's, where it's, I think, a 30-year control period for home ownership.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Mr. Knopf.
MR. KNOPF: I have a few.
CROSS-EXAMINATION
BY MR. KNOPF:
Q I believe your testimony was that you understood the facts of this project to provide a diversity of housing. That was one of the reasons that I did hear?
A Yes. Yes.
Q And is your diversity based on rental?
A No, it's MPDU's. That's what's really critical here.

Q So --
A And the number of units.
Q It's based on the number of units. Are you aware that there is not requirement for the number of units represented here, even in terms of MPDU's or total units is fixed. It could change.
A Right. Well, the staff report talks about a variance from -- let me see. A number, there is some variability in terms of the predicted number of MPDU's.
Q You're referring, they said somewhere from, they said around 100 in terms of dwelling units.
A I think it's 120.
Q Right. So 100-120, is that what you're referring to?
A Right, and so there is some variation in terms of the number of MPDU's.
Q And you're relying on that as part of your testimony that this provides a variety of housing, diversity of housing?
A Yes, I mean --
Q If I were to tell you that they could build one unit per floor, would that change your testimony?
A Oh absolutely.
Q So you would favor some kind of requirement here that they have to build a number of, at least the minimum

number of units the staff is talking about?
A I'm sorry, to what?
Q Would you favor a requirement, as part of the approval of this project, that the applicant has to build at least the range of units that the staff is anticipating?
A Yes.
Q Now, are you aware, do you understand the way MPDU's work, that regardless of the design of the building, if the building has so many units, a certain number of units, the MPDU's are a percentage of that number of units?
A Yes.
Q So the number of MPDU units isn't necessarily based on the design?
A Right, it's based on the total number of units.
Q Right. And you had mentioned that you thought a design was important for fostering pedestrian walking on the spacing --
A Yes.
Q So it's important also there be compatibility?
A Absolutely.
Q And are you familiar with the term, urban village, as used in the sector plan?
A Yes.
Q And have you, what's your understanding of the facts of urban village in terms of whether those facts that

go with an urban village are met here in this project?
A Well, I'm not an expert on the term urban village from the sector plan. But I think it's the --
MS. ROBESON: Well, you're not an expert.
THE WITNESS: Okay. I mean, it's the idea that we're creating --
MS. ROBESON: But you are, you know --
THE WITNESS: I am an advocate. I mean, we're advocating for inclusive transit-oriented development.
MS. ROBESON: You're an advocate, and that's good. Yes.
THE WITNESS: I mean, urban village, the idea that we're creating a mixed-use environment where people could live and work, where their environment is very walkable.
BY MR. KNOPF:
Q You're saying work on the street in this area, mixed use?
A No. In the, that there is close proximity between jobs and housing.
Q And a walkable environment, would you agree that's very important to have aesthetically pleasing sidewalk areas to walk?
A Yes.
Q And would you agree with me that -- well, you had mentioned in terms of that walkable area and streetscape,

the entrance way is very important.
A Yes.
Q Now, the entranceway, what's your understanding of how far back from the street the entrance doors are?
A Well, the entrance is designed in a way that has the pocket part, the public urban space in front, and then the entrance coming around with a ramp on the side, and stairs on this side. In terms of its, I don't know the exact feet. The relationship to the street --
Q Is more than 15 feet setback?
A You know, I can't tell you the exact footage, but basically, it's creating enough of a -- the proportionality is there in terms of creating a connection between the entrance, the sidewalk, and the public space.
Q And would you a agree that we carry that that concept further, having plantings or park area and setting the building back more, all along Montgomery Lane. Wouldn't that carry out the same kind of thing?
A No, see the problem with that is we're creating a more passive environment. We're sort of disconnecting the building and its relationship to the public space. In a more urban place you want, that walkability is actually related to feeling that you're in an engaged environment to where the buildings --
Q You want to be engaged.

A Yes, as opposed to kind of more bucolic --
Q And what would you, I understand --
A -- passive --
Q -- I think you mentioned engaged if there were retail stores you'd want to be up near the street front, because I guess that's part of your engagement, is that what you're referring to?
A Right.
Q But what are you engaging in, looking along the apartment windows?
A Well, you want people to sort of, you want, if you scream in the middle of the night, you want people to look out and see you on the sidewalk. You know, like the ultimate test in terms of like safety and walkability. So the windows and doors, I mean, this is, this carries forward the principals of the overlooking of an appropriate relation, proportionality between the windows overlooking the sidewalk so that people feel like they're connected to what's happening in this private space, and people in the private space are directly observing the public space.
Q Would you agree with me that tree plantings along sidewalks, and then enhance walkability?
A Oh, trees are very important.
Q And benches?
A You know, benches, it's sort of a question of how

usable they are. There are a lot of benches throughout the Bethesda business district which aren't very well connected to their surroundings, aren't in a place that really make a lot of sense for someone who wants to sit there related to another activity.

Q So that I understand, your association's position actually is, you would prefer to have the building line up closer to the sidewalk than to have benches and trees and other greenery?

A Well, trees are very important in terms of the landscaping for the sidewalk right-of-way. But there's an important balance to be achieved between a private building that's supporting a public realm that is engaging the sidewalk, rather than creating a lot of distance and sort of a kind of passive environment.

Q And this is your opinion. Do you have any factual example of where a building was setback say 15 feet, 20 feet from the sidewalk with benches and trees and that was found to be, turn people off? They were no longer engaged?

A Well, I mean, there's a lot of sort of poorly designed and poorly used public space in Bethesda. I can't pull out the examples. Other people have certainly examined that kind of thing. I certainly have encountered it as I've walked around Bethesda.

MR. KNOPF: Okay. Thank you. I have no further

questions.

MS. ROBESON: I have a question. Usually when we get somebody in here testifying on behalf of an organization they use the word we or our. And you've used a lot of words, I, in my opinion. And I guess my question is, you've clearly studied the plan. Do you have a board of directors that, is your organization governed by a board of directors?

THE WITNESS: We are. Our fiscal agent is Piedmont Environmental Council, and then we are the board of directors. and then we have a Champions Council that is our advisory board. I work with my staff to review these kinds of transit-oriented development projects around the region, or fight bad projects. We do both. In fact, we --

MS. ROBESON: And has your board studied this plan?

THE WITNESS: No.

MS. ROBESON: I mean, have they looked at the --

THE WITNESS: That's the job of the staff.

MS. ROBESON: Have they looked at the sector plan, your board?

THE WITNESS: I have.

MS. ROBESON: You have.

THE WITNESS: Yes. We don't have the board look at every --

MS. ROBESON: My question is, has your board?

THE WITNESS: No. We don't have -- I mean, there are other processes, like there is the smart growth alliance, is sort of like a jury system where there is --

MS. ROBESON: Well, okay. All right. All right. I have no further questions. I know you guys are going to redirect. I have to let you redirect, so Ms. Harris.

MS. HARRIS: There will be no redirect if there is not any --

MS. ROBESON: I mean, recross. But is there redirect?

MS. HARRIS: Do they recross if there is no redirect?

MS. ROBESON: No. Well, they do get to ask questions based on my questions. Do you have any questions based --

MR. ABRAMS: No.

MR. KNOPF: No.

MS. ROBESON: Okay. Do you have redirect?

MS. HARRIS: No, I don't. Thank you.

MS. ROBESON: Okay. Thank you very much for coming.

MS. HARRIS: Our next witness is Dan Reed with Action Committee for Transit.

MS. ROBESON: Okay. Please raise your right hand?

(Witness sworn.)

MS. ROBESON: Thank you.

DIRECT EXAMINATION

BY MS. HARRIS:

Q For the record, please state your name, address, and organization that you are representing?

A The organization's address, too, right?

Q Yes, please.

A My name is Dan Reed. I'm with the Action Committee for Transit. Their address is P.O. Box 7074, Silver Spring, Maryland 20907.

Q And what is your position with ACT?

A I sit on their board. I'm a non-voting member. And I'm their chair of their land use committee.

Q And what is ACT's mission, please?

A The Action Committee for Transit's mission is to support stronger communities and better transit in Montgomery County. And they promote expanding transit in the County, and supporting land use. That, in turn, supports that transit.

Q And is ACT's objective with respect to promoting transit consistent with the objectives of both the Bethesda sector plan and the County's?

A I believe it is.

Q Do you know the current modal split for Bethesda?

A Let's see. I don't know it exactly, but it's

fairly high. I mean, about, I'd say, gosh --
Q You don't know, though.
A It's high.
MR. ABRAMS: He said he didn't know.
MS. ROBESON: Yes.
BY MS. HARRIS:
Q All right. Okay. That's fine.
A I mean, I've done research on it. It's about 50 percent.
Q In an effort to promote transit use, what type of housing product is desirable?
A Well, near transit you want to have the highest density housing that you can get near it, so usually that means multi-family housing.
Q And do you want, if you are given a certain land area, is it more desirable in order to promote transit use to have larger units and less units within a building, or a more average size units, and more units?
A Well, the ideal to maximize density near transit would be to have smaller units, and more units.
Q Okay. Thank you. And other than the, and is proximity to Metro also important in promoting that use of Metro?
A Absolutely. People will use transit if it's close at hand.

Q Thank you. Other than the fact that this, the proposed project is close to the Metrorail, and also has a desired density to promote transit ridership, are there any other components of this project that would promote use of Metro?
A Well, in addition to the density and the number of units, I think the design supports transit-oriented development. I think the building situation to the street supports walkability to public transit. And I think the size and mix of units also support transit by, you know, providing a wider array of people access to one of the region's major transit hubs.
MS. HARRIS: Thank you. I have no other questions for the witness.
MS. ROBESON: All right. Cross-examination. Mr. Abrams, sorry.
CROSS-EXAMINATION
BY MR. ABRAMS:
Q Have you supported, has your organization supported other projects within the TS-R, transit station residential district, in Bethesda?
A I don't know specifically if we've supported projects I that zone.
Q Now, are you familiar with the principals in the '94 BCC-CBD sector plan with respect to location of

densities within the TS-R district?
A I'm familiar with the principals of the plan in general, not necessarily that zone. The idea being that you place the highest density at the Metro station, and you taper from there.
Q Okay. Woodmont Avenue is closest to the Metro station in terms of this district. Along Woodmont Avenue, are there high-density projects?
A There are some, yes.
Q Do you know what they are?
A Having been there, I could point them out to you if we were standing on the street, but I can't tell you their names, maybe.
Q Are you aware of any step down in density and height which is recommended in the sector plan?
MS. HARRIS: Objection. The witness didn't testify to anything with respect to height.
MR. ABRAMS: Density.
MS. ROBESON: Well, yes.
MS. HARRIS: Density but not height.
THE WITNESS: Well, the highest densities are going to be the closest to the Metro station.
BY MR. ABRAMS:
Q And has that occurred, if you know, within the TS-R district?

A I believe it has.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: All right. Mr. Knopf.
CROSS-EXAMINATION
BY MR. KNOPF:
Q I would just like to plagiarize the hearing examiner's question. Has your testimony been reviewed by the board of directors of your organization?
A Actually, it has. I, after meeting with the applicant and Ms. Harris, we looked at, as a board, we looked at some of the plans of the project. We talked about the Bethesda plan. We talked about our goals and how this project fit those goals. I drafted a letter which was then reviewed by the board, which we submitted. And so the board is fully in support of this project.
Q The letter is, the letter is what, that was submitted? I didn't see you reading any prepared testimony, so I was wondering how the board could have approved that testimony?
A Well, I mean, the things that I am saying are in line with what we wrote.
MR. KNOPF: I see. Okay. Thank you.
MS. ROBESON: All right. Redirect?
MS. HARRIS: No. Thank you.
MS. ROBESON: Thank you.

THE WITNESS: Thank you.
MS. HARRIS: Our next witness?
MS. ROBESON: Yes.
MS. HARRIS: Thank you.
MS. ROBESON: For some reason, I couldn't get it out. Okay. Go ahead.
MS. HARRIS: Is --
MR. KNOPF: Just administratively. Is it just me, or could we get some air circulating in here?
(Discussion off the record.)
MS. ROBESON: Please raise your right hand.
(Witness sworn.)

DIRECT EXAMINATION

BY MS. HARRIS:

Q Thank you. Please state your full name and primary occupation.

A Marius Radulescu. I'm an architect.

Q And with whom are you an architect?

A SK&I in Bethesda, Maryland.

Q And the address for SK&I, please?

A 7735 Old Georgetown Road, Bethesda, Maryland 200, 20814.

Q And your current position at SK&I, and your responsibilities?

A I'm a senior associate, and I am the project

designer for this project.

Q And what is your educational background?

A Well, I graduated and practice at the time as an architect.

MR. ABRAMS: Can't hear you.

MS. ROBESON: Yes, can you speak up a little bit. Thank you.

THE WITNESS: Again the question?

BY MS. HARRIS:

Q How long -- oh, I asked you what your educational background was. Sorry.

A I have an architectural degree from Pratt Institute in New York.

Q Thank you. And in what year did you obtain that degree?

A 1988.

Q And have you been employed as an architect since 1988?

A Since before that.

Q And have you ever been qualified --

MS. ROBESON: Wait a minute. Go ahead.

BY MS. HARRIS:

Q Have you been qualified as an architect, as an architect, and if so, where?

A Yes, in the District of Columbia.

MS. ROBESON: As an expert in architecture.
MS. HARRIS: Sorry.
MS. ROBESON: That's fine.

BY MS. HARRIS:

Q As an expert in architecture. So you have not been qualified as an expert in architecture in Montgomery County?

A I have not sat in this particular forum. However, I testified for several projects and various other entities for Montgomery County. But I don't remember --

MS. ROBESON: What about, okay, what about courts? Have you ever qualified as an expert in one of the Maryland courts?

THE WITNESS: No.

MS. ROBESON: But you're licensed in Maryland.

THE WITNESS: I am licensed in Maryland.

BY MS. HARRIS:

Q And how long have you practiced architecture in Maryland?

A Since, I would say 2001.

Q Okay. And have you worked on projects in Montgomery County?

A Yes.

Q So you're familiar with Montgomery County zoning, then?

A Yes.

Q And have you worked on other projects in the TS-R zone?

A Yes, Lot 31, right in Bethesda, right a few blocks south of the subject property.

Q And is it correct that your firm also worked on the prior project that was approved for this property on behalf of the Holiday Corporation?

A Yes, we did.

MS. HARRIS: I'd like to move Mr. Radulescu as an expert in the field of architecture and design.

MS. ROBESON: Any objections?

MR. ABRAMS: No objection.

MS. ROBESON: He is qualified as an expert in architecture. Congratulations. Now you have another notch on your resume.

BY MS. HARRIS:

Q Yes. Now I want to focus on the West Lane project. But first I would like for you to describe you firm, SK&I's experience with respect to the projects surrounding the subject property?

A Yes. I was going to this Exhibit No. 106F. We designed the Edgemoor, this project, and we designed the City Homes across the street.

Q And what was the year, approximately, that the

high-rise, Edgemoor, was designed?
A I would say when I joined the firm in 2004, that project was already being built. So it's probably two three years prior.
Q Okay.
A Based on the construction documents that I've seen.
Q And similarly with the city --
A And similarly, those were done within the same time.
MS. ROBESON: The City Homes?
THE WITNESS: The City Homes, yes.
BY MS. HARRIS:
Q So your firm has a high level familiarity with the street, in terms of the design of the architecture, is that correct?
A Yes.
Q Are you familiar with the subject application, LMA G-954, and the Development Plan Amendment 13-01?
A Yes, I am.
Q And can you please describe what your responsibilities have been with respect to this project?
A I've been the project architect or the project designer for this project?
Q Have you had an opportunity to visit the site, and

are you familiar with the surrounding area?
A Outside of this.
Q Have you visited the site on more than one occasion?
A Probably a hundred times.
MS. ROBESON: That's why you're so thin. Go ahead.
BY MS. HARRIS:
Q A lot of walking. During the first day hearings, we introduced an area which you just referred to, in fact, 106F, which has been subsequently revised since it was first admitted to the record. Can you please explain what the changes have been since it was originally submitted to the record?
A Yes. We did three changes. One was, we inserted HO, I forgot the term.
Q The HOC building?
A HOC building, which we didn't have before mentioned at that time when we first visited the exhibit. We linked this model to the latest model, so that will be --
MS. ROBESON: When you say this, the transcript doesn't know --
THE WITNESS: I'm sorry. So we linked the SAG project, the current property, subject property --
MS. ROBESON: The subject project. Yes.

THE WITNESS: -- the subject property to the overall mass, and we set an amount or just to make it clear that this is not a construction document or a drawing from which one could measure or build anything. It's just the illustration.
MR. KNOPF: Excuse me. Are you saying, is he explaining this exhibit, or are you saying you're going to put in a new exhibit?
MS. HARRIS: No, he's explaining this exhibit.
MS. ROBESON: No.
MR. KNOPF: I'm sorry. Thank you.
THE WITNESS: Yes, I was explaining the difference between this one and all of these.
MR. KNOPF: Thank you.
BY MS. HARRIS:
Q So it's correct to say that this exhibit, Exhibit No. 106F, should not be relied upon for determining setbacks. Is that correct?
A Yes, absolutely. This is just an illustration to present the context on which the building is built so it shows you the location, also, it shows you the relation between the TS-R and CDB on this one. So it's just to present the context.
Q Okay. And so similarly, it should not be used for determining heights either. Is that correct?

A I would not. Yes, we don't use this one to determine heights.
Q Thank you. Okay. Are you familiar with the Montgomery County zoning ordinance and the provisions of the TS-R zone as they relate to the urban design and development components for this project?
A Yes.
Q Please describe the basic concepts that were applied, and the principals upon which the design of the subject building and space?
A Well, the starting point for this project was the zoning ordinance and I believe there is a second of 59-C-8.4, which sets some development standards. And that specifies a few things that we need to follow.
Q Okay. And what I would like to do is just go through those development standards.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q And I'll ask the architect piece by piece --
A I hope that I'm not going to miss anything.
MS. ROBESON: Wait. You can't cross-talk because it won't come out.
THE WITNESS: I'm sorry.
MS. HARRIS: Okay.
MS. ROBESON: Let her finish the question, and

then you go ahead.
BY MS. HARRIS:
Q Okay. The section 59-C-8.4 requires a minimum lot area of 18,000 square feet. Has that been provided?
A Yes.
Q And can you please note what the square footage of the property is? Do you have that information?
A Yes. One second. I do have it. The total is 160,500 square feet.
Q No, I'm talking about for the lot area.
A Oh, the lot area. Yes, I'm sorry. The net lot is 26,410. And the gross tract is 38,800.
Q Thank you. The zoning ordinance provides for a maximum of 2.5 FAR unless an increase is proposed to accommodate MPDU's and associated bonus density. What is the proposed FAR?
A The proposed FAR is 3.05.
Q And does that include the MPDU's?
A That includes the MPDU's, yes.
Q Okay. And the section, the zoning ordinance section 59-C-8.4 also provides for maximum dwelling units per acre of 150 units per acre unless it is increased to accommodate more MPDU's. What is the units per acre of this project?
A Right now we have 135. That is based on 120 units

in the building. So if you stop only at 100 units in the units per acreage, you get to 135.
Q Thank you. The public use space requirement is 10 percent. What is the public use space being provided?
A 10 percent.
Q Okay. And the active/impassive rec area is required to be 20 percent. What is the percentage?
A If I'm not mistaken it's actually 30 percent. I could be.
Q This is the active and passive recreational space.
A No, I'm referring to the total open space.
Q Okay. So the total open space is required to be 30 percent. Do you have a percentage as to what that is?
A 30 percent.
Q Okay. And then the active and passive rec space is required to be 20 percent. And are we meeting that requirement?
A Yes, we do.
Q Thank you. Can you please explain how another important provision of the zoning ordinance, which was 59-C-D.161(b) influenced your approach? And this is the provision that allows for increased height and density if additional MPDU's are being provided.
A Yes, so that provision allows one --
Q Actually, can I -- I want to scratch that

question.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q I misspoke. The section that I just referred to is the section that requires compatibility with adjacent developments. Can you please indicate how that influenced your approach and your design?
A Yes. Compatibility was what guided the design for the project.
Q Okay. And will you get into the issue of compatibility later in your testimony?
A Yes.
Q Thank you. After you reviewed the base zoning ordinance requirements, what was the next thing that you did? And what did you take into consideration?
A One of the important things that we looked at is, we were aware that the County, the County policies are encouraging density around transit centers. And the provision that allows you to increase density if you provide MPDU's.
Q And there are two provisions of the zoning ordinance that relate to this. Can you please read 59-C-8.42(c)?
MS. ROBESON: Well, do we have to read it, or can you just ask him about it?

THE WITNESS: Yes, I can --
MS. ROBESON: I don't want to mess your train of thought up.
MS. HARRIS: That's okay. He can, I'll ask him a question about that.
BY MS. HARRIS:
Q Does 59-C-8.42 provide that the density of development may be increased above the maximums that the zoning ordinance provides if MPDU's above the 12.5 percent requirement are being provided?
A Yes.
Q And then does 59-D-1.61(a)(1) provide that if you are providing MPDU's in excess of the 12.5 percent requirement, that the sector plan requirements for both -- excuse me, the sector plan recommendations with respect to both height and density may be exceeded?
A Yes. It can mix in.
Q And did you rely on both of those as you developed the design of this project?
A Yes, we did. We relied on both provisions.
Q And are there other projects within the TS-R zone that have similarly relied on those two sections?
A Yes, we are aware of several projects in the same zone. And I can point to the on this exhibit.
Q That would be helpful.

A One is Hampden Lane.
MS. ROBESON: Which is the building on the southwest, or north, northeast corner of Arlington and Hampden Lane.
THE WITNESS: Yes, and the other one is 4901 --
MS. ROBESON: Okay.
THE WITNESS: -- I believe it's Hampden Lane. It's the one on west side of Woodmont Avenue between Hampden Lane and Montgomery Lane, which is this one.
MS. ROBESON: Right.
BY MS. HARRIS:
Q And is it accurate with respect to the Hampden Lane project, as we noted, the sector plan does allow additional height in excess of the sector plan recommendation when MPDU's are provided. Does that project exceed the 35-foot height requirement?
MS. ROBESON: Which project?
BY MS. HARRIS:
Q Does the Hampden Lane project exceed the 35-foot sector plan recommendation for height?
A Yes, it does.
Q And by how much? Are you aware?
A The Hampden Lane project is, the maximum height is 71, and it goes into the 35-foot zone. And we have an exhibit that shows how this project height works against the

35-foot limit.
MR. KNOPF: Excuse me, just on second. For sake of clarity, is there some way we can give that Hampden Lane a name? Because we have the 4901 Hampden Lane, and sometimes we just say Hampden Lane and it's very confusing as to which one we're referring to.
MS. HARRIS: Why don't we refer to 4901 Hampden Lane as 4901, and this one can be Hampden Lane. Does that work?
MR. KNOPF: As long as we all understanding.
MS. ROBESON: For the record, okay.
THE WITNESS: Yes, I believe both of them are on Hampden Lane.
MS. ROBESON: That's fine. I think there is an exhibit somewhere that labels them that way. So that's fine.
BY MS. HARRIS:
Q I believe Mr. Landfair showed Exhibit No. 106E, which is the one that you were just referring to. But can you bring that one back up, because I think it makes a strong point.
A You know the number?
Q Here it is. That's 106E, which was previously introduced. So can you just explain the point you were just making?

A So, this is the Hampden Lane project. This would be Hampden Lane. And this line, the dotted line represents the break between the 65 zone and the 35-foot zone, and it shows that a portion of this project, Hampden Lane, exceeds the height limitation on the 35-foot zone.
Q Thank you. Okay. So you started your evaluation with the zoning ordinance, both the development standards and also the recommendations regarding height and density as they relate to MPDU's. And then did you next evaluate the sector plan?
A Yes.
Q And were there certain over-arching recommendations of the sector plan that helped guide your design?
A Yes, there were several. One was increased density near Metro, housing diversity, and affordable housing.
Q And in your opinion, would the addition of unit sizes that average 850 square feet, contribute to the goal of diversity in this TS-R zone?
A Yes, absolutely. And I would like to note that in this particular area, there is a lack of rental units. So depending on how the project develops, I think that that will be beneficial for, to further the goals of the sector plan.

Q But if a project were not rental, and I believe we heard earlier that that has not, there hasn't been a commitment to that, would the difference in the unit size in and of itself, lend to the diversity?
A I think that presenting an option of what are diversity of unit types, and unit types that are probably smaller than what has been historically built, that would be beneficial to the objectives of the sector plan.
Q And would the inclusion of MPDU's also contribute to that?
A Absolutely. Yes.
Q Okay. After evaluating the zoning ordinance and the sector plan, what next was involved in your evaluation of the appropriate designs for the property. Did you evaluate the surrounding development area?
A Right. After we looked at the program itself, we looked to see what the site conditions are so we can design a project that will fit in the neighborhood. And probably we can use this exhibit --
Q Actually --
MS. ROBESON: What number?
BY MS. HARRIS:
Q Actually, I would prefer for you to rely upon the exhibit that shows the five surrounding buildings.
A Okay.

Q That one.
MS. ROBESON: And what exhibit is that?
BY MS. HARRIS:
Q That is Exhibit 106G. So you previously indicated at least two of the projects on that board, SK&I designed, is that correct?
A Yes. And those are the Edgemoor, which is --
MS. ROBESON: Which is shown, is that labeled on the --
THE WITNESS: Yes. Edgemoor high-rise.
MS. ROBESON: All right.
THE WITNESS: Then the other one that we designed was City Homes, which Is this one, and it also is labeled.
BY MS. HARRIS:
Q If you could, could you go through all five projects that are shown on this Exhibit No. 106G, explaining the design of them, the height, and how their physical appearance played into your development of the subject building?
A So the first image is the Edgemoor high-rise, as the name implies, is a high-rise project that has a height of approximately 100 feet. And that is measured from the top of the podium, not from the sidewalk.
Then across the street there are a series of buildings, all of them one project, but it's called City

Homes. There are probably five rows of these. And the height is approximately, 50, I could be wrong, but 52. We have an exhibit, actually, that has all the heights. So if I misspoke, we have a board to back me up.
Then it's 4824 Montgomery Lane, which is the property right across from us on Montgomery Lane. So it's in between the high-rise Edgemoor, and SJG project, or the subject property.
Then on Hampden Lane on the south there is the Hampden Lane project. And then on Woodmont Avenue we have 4901 Hampden Lane. And what is interesting, there are variations in height and also a wide variation in style. So it's hard to pinpoint to one particular element. But all of them, they form a fabric which is actually quite diverse. So that is the context in which we designed our building.
Q And going to the 4825 Montgomery Lane, what is the height of that building?
A The height of this building is 65-foot to the roof, which means that if you have the parapet, the impression will put it over 69.
Q And the parapet, can you just, for those that may not be familiar, please describe what the parapet is?
A So the parapet is a low wall that sits on top of the roof, so if you have, let's say this is the roof, that will be a, called a parapet.

MS. ROBESON: When you say that, you're talking about the bench wall in this --
THE WITNESS: The low wall around the roof would be called a parapet.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Thank you. And in terms of design, stylistically, if you had to describe the buildings that are set forth on 106G, how would you characterize those?
A Well, as I mentioned earlier, there's a variety of style on this, probably a neo-Georgian.
MS. ROBESON: The Edgemoor high-rise?
THE WITNESS: The Edgemoor. None of them are true styles, in other words, it's just a veneer that was employed, to give us a look. So this one would have a neo-Georgian look to it. Probably this one will have on this --
MS. ROBESON: The City Homes you're talking about?
THE WITNESS: The City Homes are more of a federal style.
MS. ROBESON: A what style?
THE WITNESS: A federal style.
MS. ROBESON: Federal.
THE WITNESS: Right.
MS. ROBESON: Okay.
THE WITNESS: This one, I could not really

pinpoint. It's very boxy, so it doesn't fit into any type of, as I said --
MS. ROBESON: What is that called?
THE WITNESS: That is 4925 Montgomery Lane. So I cannot really say that it is anything in particular that points to a style. Those are fairly contemporary. When I say those, it's Hampden Lane.
MS. ROBESON: When you say -- yes.
THE WITNESS: Sorry. So the Hampden Lane is a very modern building, and so is 4909 Hampden Lane.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q And when you referred to the high-rise Edgemoor and City Homes, you said that they don't, they're representative of a style, but I assume you mean because they were built within the last 10 or 15 years, they're not true Georgian or true federal, is that correct?
A Right, it's not a true Georgia, or true federal, as what we would learn in school. It is just a veneer to give an appearance of a certain time period.
Q Okay. And then in regard to 4901 Hampden Lane, why did you use the image that's presented on 106G, as opposed to the image that was presented by Mr. Knopf last week in cross-examination. And I'm sorry, I don't know where we ended up finding that exhibit.

MS. ROBESON: It's --
MS. HARRIS: I know it's in the staff report of 4901.
MR. KNOPF: It's also, I believe, in the Council approved --
MS. ROBESON: It's was in the resolution.
MS. HARRIS: Okay.
MR. KNOPF: Yes, Council --
THE WITNESS: We believe that this is a more recent representation of what the building is going to look like.
BY MS. HARRIS:
Q And is it correct that the Council resolution, or at least the staff report, the reference actually noted that the image was from 2006 --
A Yes. Yes.
Q -- which was presented last week? Okay. Thank you. One other question regarding 4901, before you sit down, and unfortunately it's not visible from the image on 106G, but we did note last week that there is a step back along Montgomery Lane for 4901.
A And probably I can point to this exhibit, which is 106F. So this is the 4901 Hampden Lane. And it shows that the corner of a building, so that will be the northwest corner of a building, is chopped up.

MS. ROBESON: Where it fronts Montgomery Lane?
THE WITNESS: Where it fronts Montgomery Lane.
MS. ROBESON: Yes.
THE WITNESS: But it's just a corner of a building. And actually, that's the step back, or whatever the name is.
BY MS. HARRIS:
Q And do you have an approximation of what that step back is, in terms of size of that?
A Yes, an approximation, I'm extrapolating based on what I've seen. It fits, let's say, a living room and a balcony. So that's the size of the --
Q And can you translate that into potential square footage?
A I would say there will be many 14 by 18.
Q Okay. So it's not a step back that goes all the way across Montgomery Lane, is that correct?
A No. No, definitely not. Definitely not. It's just a corner of that.
Q Thank you. So you evaluated the sector plan. Excuse me. You started with the zoning ordinance. And then you looked at the surrounding context in terms of what would potentially make the building compatible. Based on, can you describe what you did next in the process? Well, let me, if I could --

A Yes.
Q Based on the development standards, the sector plan recommendations, and the surrounding context, can you describe what decisions were made in terms of the height, scale, and massing decisions?
A Sure. So in terms of styles, we concluded that there is a variety of stylistic. We cannot pinpoint to one particular area that we can copy into our building. But we look at several factors, such as scale, and I can address each one separately, if I may.
Q And actually, I'm sorry, let me interrupt just one more time. We may want to, for answering this, it may be helpful to rely upon the elevations and the perspectives that were submitted to the record.
A Yes.
Q So feel free to refer to those in your testimony.
MS. ROBESON: And can you identify this exhibit?
THE WITNESS: This one is 71.
MS. ROBESON: Thank you.
THE WITNESS: So this exhibit is a perspective taken on Montgomery Lane from Arlington Road, more or less, looking west towards the library.
BY MS. HARRIS:
Q At Arlington Road or Woodmont, looking west?
A Woodmont. I'm sorry. Towards Arlington.

Q Okay.
A So in terms of scale, we have a very large building on the east side, which is the Edgemoor, the Edgemoor high-rise.
MS. ROBESON: Okay. Can you stand just there?
THE WITNESS: Yes.
MS. ROBESON: Now I can see it. I'm sorry.
MS. HARRIS: Should we angle it more?
MS. ROBESON: What?
MS. HARRIS: Should we angle it more?
MS. ROBESON: No.
MS. HARRIS: Okay.
MS. ROBESON: We need everybody to see it. His body was blocking it.
THE WITNESS: So in terms of scale, we try to blend in between the very high high-rise, Edgemoor, and the stepping down which occurs towards Arlington Road. In terms of massing, we look at what's across the street and around us. So across the street being City Homes, the height is 52-53. I forgot the exact number. But then what we did, instead of building height at 50 foot, so there is an appearance of a brick frontage that matches what is on the other side.
In terms of appearance, as I said earlier, there is no one particular style that we wanted to copy, because

it's not to use as a perfect model. But then what we did is have a, say, a contemporary interpretation of a classical style. This street, in particular, had more of a classical way of designing. So we did the same thing. We have a strong base. We have a middle, and we have a top. So we have these classical composition elements.

In addition to that, stylistically, we have French balconies. We have this large curve out that is shown on our other exhibit.

MS. HARRIS:

Q Right there.

A And the 76. So we were a large portion of a building that is scooped out, and where we have the entrance. We have various elements, as I point out. The first one is French balconies. We have this reading of bays and French windows, to look like to represent a typical residential building. Also we have a rustication of the base. And a rustication, basically, is a brick work out element, in which you set up the bricks in and out to create a different texture.

Q Can you, there is another perspective looking east.

A Yes.

Q Can you show that, and to the extent that you may want to elaborate on anything you just said in terms of

height, scale, or massing?

A That's Exhibit No. 72. And it's an exhibit showing the perspective from Arlington looking west towards Woodmont Avenue. Our building, subject property, is on the left hand side. And it shows here. So what this exhibit shows is how we blend it in from the height of a high-rise, Edgemoor, and we are progressively going down towards Arlington Road. And it shows the relation between the frontage of our building that steps back that 50 feet across one half across the street toward City Homes.

MR. KNOPF: Excuse me. How many feet did you say?

THE WITNESS: We have a step back at 50 foot, at 50 foot.

MR. KNOPF: 50?

THE WITNESS: Yes. So those are the architectural elements that we make. We also made our top in a lighter material, again to try to dissipate the height, and to distinguish the top of the building from the surrounding, from the rest of the building, which is the middle and the base.

BY MS. HARRIS:

Q The two buildings on Exhibit 72 that are in the foreground, referred to as the Edgemoor at Arlington and Edgemoor of Arlington North, what zone are they in. What, the sector plan recommends them for what height?

A They recognize them to be 35 feet.

Q And then can you show on that exhibit where the 65-foot zone?

A The 65-foot zone starts actually in between the subject property and Edgemoor at Arlington North.

Q Okay.

A Which is the building on the northwest corner of --

MS. ROBESON: And in the foreground in the left on 72?

BY MS. HARRIS:

Q Correct.

A Yes.

Q And others have testified to the fact that while the, that existing or proposed buildings in the 35-foot zone have what we're referring to as a step back, can you identify the -- you did, but do any of the other projects within the 65-foot zone have the step back that the subject is providing?

A In the 65-foot zone?

Q Yes.

A No.

Q And can you identify that on Exhibit 72? I mean, show, what's the height of the Sandy Spring building, please?

A The Sandy Spring building, which is the building between high-rise Edgemoor and the subject property, is 65-foot to the roof. And then there is a parapet of about four-feet on top of that.

MS. ROBESON: Okay. So the Sandy Spring building is the one with the white --

THE WITNESS: With a white top.

MS. ROBESON: Okay.

BY MS. HARRIS:

Q And so that goes up from the, straight, straight up?

A So from the point of measurement, goes up to 65 foot, and the parapet.

Q With no step back?

A With no step back. No. As the exhibit shows, it's a straight. Right.

Q I see. Okay. And similarly, for the high-rise Edgemoor?

A For the high-rise Edgemoor, the height is 100-foot from the top of the base, not from the sidewalk. And the height is measured to a meet point in the roof, so probably would be that.

Q Okay. And I believe Mr. Irish will get into more details in terms of the precise measurement of the high-rise, Edgemoor, because we've heard a lot about that. Thank

you. And in terms, actually, it may be nice -- well, Exhibit 72, does that also identify the continuous street edge that the proposed building will be providing?

A Yes. This exhibit shows that our building is set within a range of what the other buildings built or approved have established as a street.

Q Thank you. Okay. Now, if the hearing examiner can bear with us for one moment, because the next question I'm going to ask may involve a mathematical, some math. And so if you can find a blank piece of paper, just so that we can work through this question, it may be the best way to show it.

MR. KNOPF: Just a minute.

MS. ROBESON: Wait.

MR. KNOPF: If he's going to use the back of a current exhibit, that may not be allowed.

MS. ROBESON: We need to mark it. Yes. Well, we can make it 109. But you have to mark it.

(Exhibit No. 109 was marked for identification.)

(Discussion off the record.)

MS. HARRIS: I'm just going to use this one, because it's a lesser used exhibit.

MS. ROBESON: Okay.

MS. HARRIS: Instead of that one, I think it's

easier.

MS. ROBESON: So this is 109. And what is this going to be?

MS. HARRIS: I'm sorry, what's it going to be? Is that what you just --

MS. ROBESON: How would I title it?

MS. HARRIS: Additional density and height to support the MPDU's.

MS. ROBESON: Okay. Mathematical calculation of what?

MS. HARRIS: Of MPDU's and bonus density.

MS. ROBESON: Okay.

THE WITNESS: And what number is this?

MS. ROBESON: 109.

BY MS. HARRIS:

Q Thank you. Okay. So the zoning ordinance, and we noted this previously, 59-D-1.61(a)(1) provides that the height and density recommendations of the sector plan may be exceeded, quote, ''To permit the construction of all MPDU's under 25, chapter 25A, including any bonus density units.'' The heights of the building exceeds the sector plan recommendation by five feet, as was testified. In order to reduce the height, in order to reduce the height by five feet, the top floor would need to be eliminated.

So my question to you is, and if you can explain

it, work through the numbers, is the top floor necessary to accommodate the bonus density as well as the MPDU's?

A So this is not so much as a calculation as a way for us to identify how to make the building work. What we know is that at 2.5 density we have a square footage of 97,010. And to get an MPDU density, we increase the total FAR to 3.05. So at 3.05, the total GSF, gross square footage, would be 118,352.

Q And that number represents 22 percent increase, is that correct?

A Right. That will increase to 22.2 increase --

Q Okay.

A -- for the MPDU's. So there is a delta of 21,342 square feet. So in order to --

MS. ROBESON: What's a delta?

THE WITNESS: Delta is the difference between one number and another number. So in other words, the difference between 2.5 FAR and 3.05 FAR is 21,000 square feet.

MS. ROBESON: Okay.

THE WITNESS: So that would be the square footage needed to accommodate the MPDU's.

BY MS. HARRIS:

Q And I just want to verify something because, to make sure that the record is completely clear. That 22

percent bonus density includes, does it include the additional MPDU's, because that's an additional 2.5 percent of MPDU's --

A Yes, it includes.

Q -- in addition to the regular bonus density that's permitted?

A Yes. Right.

Q Okay.

A So this number represents the 2.5 percent increase.

Q Okay.

A So just looking at the numbers, say okay, we need an additional 21,342 square feet to accommodate the additional, the bonus. So also we look at the site, and there is only that much we can do, because we have streets, we have properties, we have setbacks. And also we have a step back of 50 foot.

So what is left in terms of square footage, the footprint of the building. So the building roughly is that. So what is left is actually 15,800 square feet.

Q So that number, that 15,800 is representative of one floor?

A What's available to build.

Q Okay.

A So then if I look at this number and that number,

that means that to accommodate the additional bonus density, I would have to be at 1.35 floors. So this is, again, how we -- in a way, we go through this analytical to find out the shape of a building. So I will need 1.35 floors.

Now, we don't, we didn't want to increase the building by that much. So to increase just by one floor we will need probably additional of 10, 11 feet. Our height is 65 feet. So if I add another floor to that, that will mean 75-76 feet.

What we are doing instead, we tie back everything into the building. We succeeded in packing 21,000 square feet only in 15,800, and reduce the height from 10 feet to five feet. So from a 65 allowed by the zoning, plus bonus density, instead of building up to 75 feet, that would allow us to fit all that, we squeeze everything down and we just build up to 70 feet. So we just need less than that number, 1.35. But, and also less than height. So volume-wise, we pack a lot into just a tiny space.

Q What is the standard, because if I understood you correctly, you, as you said, packed a lot into the building envelope. What's the standard floor to ceiling height for a typical building, typical residential building?

A In this market it would probably be 10 feet. Then you have slabs. So you end up with 10-foot-seven, 10-foot-eight.

Q Okay. And so that's the distance from the floor to the ceiling and --

A No. Allow me to, 10-foot-seven, 10-foot-eight would be slab to slab.

Q Okay. And what is it in the proposed building?

A We do a nine-foot slab.

Q So there's a considerable decrease in the floor to ceiling height --

A Yes.

Q -- in order to --

A We compromise.

Q -- to accommodate the bonus density --

A Yes.

Q -- and the extra MPDU's. So is it fair to say that having done this, that the applicant is minimizing the, minimizing the additional height that's necessary to accommodate the extra MPDU's?

A Right. So we tried to accommodate all the MPDU's on the bonus density, but to have a minimal impact into the building.

Q Thank you. Section 59-D-1.61(b) requires compatibility with the surrounding area. In your expert opinion as an architect, please describe the building design generally and explain how this compatibility is achieved? I think you hit on some of these points previously, but it may

be helpful to just reflect again, in case there is anything that you may have missed.

A I would like to refer back to those Exhibit 72 and maybe 75.

Q And I'm interested, to some extent, in how this building compares to other buildings on the street in terms of achieving that compatibility?

A So there are several things that will make a building compatible or not. So actually, I went back to see what the Oxford English dictionary labels this or defines its compatibility.

And first this is the, well, several, but I would like to start with the cover. Is the scale, the texture, and those are probably two major important things to achieve compatibility.

The composition itself, as we mention, we look at the surrounding, and they are fairly traditional. So what we did is just to take a look and to interpret classical architecture, but in more contemporary way. After all, it's a building that needs to be designed for the present, or is designed for now and needs to support certain technologies and market conditions.

So we designed the building with the same way. We have a strong base, then we have a middle, and then we have a top, almost like this building has, not that it doesn't

have any other features, but it has those three elements. I'm referring to 4901 Montgomery.

MS. ROBESON: No. That's 4825.

THE WITNESS: 4825. Right. Thank you. Sorry. So we are doing the same thing. We have a strong base that has the rustication brick elements. Then we have a façade that is clearly residential in nature, like all the other buildings. So we have punch windows and we have bay window readings with French balcony. So that's a clearly residential element.

Then we have a top that sits back. But probably the most important thing is at the intersection of Montgomery Lane and West Lane, we setback the entrance on a very nice architectural gesture. We are curving the building in, and we created a totally unique identifiable architectural element.

BY MS. HARRIS:

Q And in terms of the materials, are the materials for the proposed building comparable to those on the street?

A If you look at the surrounding area, the vast majority of the buildings are built in brick, and in this reddish tonality. So we are doing the same thing. The frontage of the building, so the building, up to the point where we step back is brick in the same tonality as all the other buildings. So that's the compatibility.

Also, the fact that we have punch windows, and we don't have large expansions of glass, and then we have windows that have the same mullion reading as those examples, other examples on the street, makes the building fit into the residential character of the street.

Q So you would say that the wall to window ratio, if you would, is comparable in the proposed building as it is in the other buildings?

A It's comparable to what you see in the surrounding areas.

Q And that helps promote the compatibility of it?

A Yes. That makes the building compatible to the surrounding architecture.

Q You noted early on that SK&I in fact had been the architect for the high-rise Edgemoor, and the City Homes, over 10 years ago, more than 10 years ago now. Can you discuss a little bit the evolution of the architectural style on the street?

A Probably the best way is to point to, again, go back to this exhibit just to --

Q 106.

MS. ROBESON: 106.

THE WITNESS: 106, just to present the larger context of the neighborhood. So if you look at those two buildings, which is the high-rise Edgemoor, the one that

SK&I designed over 10 years ago, and City Homes, none of the other buildings that we have presented today on Montgomery Lane were present. So the context was what you see on Arlington Road. So it's very 70 --

BY MS. HARRIS:

Q Woodmont Road. Woodmont.

A Woodmont Avenue. I'm sorry. So it was very '70-ish straight office, very cold. Now, the market at that time, the high-rise market has changed, has turned, so it was a demand for a building that has all the modern amenities, but has the veneer of a traditional look. But the building itself, again, it has all the -- actually it has elements of modern architecture, but it's like windows that didn't exist back then. So that was the context when SK&I designed these buildings.

So they were unique. They were breaking, let's say, new ground. They were nothing like those around them. So they created their own environments.

Q Okay. Does the proposed building have any impact on the City Homes, in terms of light in their houses?

A I will go back, the same exhibit. So --

MS. ROBESON: So 106F?

THE WITNESS: 106F. City Homes buildings sits across the subject property. And it is on the southern portion of the site. So in terms of sun, and in terms of

shadow, I would say that it is the other way around. The City Homes, probably in the winter solstice, would cast a shadow on the lower floors of the project subject. But in terms of lights and sun, subject property will have absolutely no impact on City Homes.

MS. ROBESON: And why is that?

THE WITNESS: Because the sun shines from the south. So the shadow will be cast on the subject property, not the other way around.

BY MS. HARRIS:

Q So there has been some discussion about, and suggestion by the opposition, of moving the subject building back 10 feet or so. So if the building were moved back 10 feet, you're saying that that would have absolutely no effect whatsoever on the light and air of the City Homes?

A Right. It has no impact now. It will have no impact then.

Q Okay. Thank you. The proposed setback of 50 feet, when the building was, has been proposed in order to accommodate comments that we heard from the opponents, can you please describe why you think, what's achieved by that, by the 12-foot step back which occurs at the height of 50 feet?

A I will point again to Exhibit 71 to illustrate it. This is the 50-foot frontage and shows the step back of 20

foot above that.

Q Excuse me one second. Can you refer to Exhibit 72, just because I believe it's more apparent than that exhibit. Thank you.

A This is Exhibit 72 which shows the 50-foot frontage, and the step back above the 50-foot height.

MS. ROBESON: How high is -- okay, so the step back portion is 20 feet high?

THE WITNESS: Yes. Yes. So what it does, it creates a top of the, a top for the building without actually overwhelming the composition of the street, unless, let's say, the 48 --

MS. ROBESON: 25.

THE WITNESS: -- 25 --

MS. ROBESON: Montgomery Lane.

THE WITNESS: Anyway, so unlike this example, we have as step back. It achieves a meaningful terrace that is usable without actually creating a no man's land. You know, if there was terrace at the street, nobody will use. We wanted the top to be part of the composition, not just something that we are hiding there.

BY MS. HARRIS:

Q So on the street, the frontage of the building which is on the street is what height?

A The frontage of the street is 50 feet.

Q Okay. And in comparison on that street, is it correct that to the west we have a 48-foot building. Across the street we have a 53-foot building.
A Yes.
Q We have a 65-foot building immediately to our east. And then further, we have a building that's at least 100 feet.
A 100 feet, yes. So that's the context in which this frontage of 50 foot exists.
Q Thank you. And is it correct that the building that's 48 feet in height is in that recommended zone of 35 feet?
A Yes, as well.
Q In your opinion, does the curved entrance that you referred to, help break up the building mass?
A Yes. One thing, it just physically shortens the frontage of the building. So it takes away a third of the frontage. It creates an identifiable element. So for the street will be a positive experience to have a step back.
Q And given that the building frontage is, can you comment on how that building frontage of 50 feet in height, how that relates to the pedestrian experience?
A From the pedestrian experience, it will probably be the experience that one would fit in the middle of the block. In other words, it's a height compatible to City

Homes across the street. So you have a very even, very balanced experience at this location.
Q And is it correct that the upper stories step back, the portion that is between 50 and 70 feet, that will, in fact, be visible from certain vantage points, correct?
A From most of the street, if you look directly up, you will see, probably, a foot maybe. You won't see that looking right across the street from where we're building.
Q And is there anything wrong with that, or is it desirable to see the top of the building?
A We want a building, we want the top not to disappear. We have nothing to hide on that top. So it's an integral part of the composition.
Q And are there any practical considerations? Well, you mentioned the terrace, so that's adequate. And then can you please describe the location and size and height of the penthouse?
A Yes.
Q Or actually, why don't we back up for one moment. Why don't you generally explain what the purpose of the penthouse is?
A All the buildings, the majority, or the vast majority of multi-story buildings have a penthouse. And the reason for that is, we need access for, you need to put mechanical equipment somewhere, and you have elevators that

are much taller than actually a floor is. So all the buildings then have a couple of stories, and the multi-family will have some sort of a structure on the roof.
Q Okay. And can you please describe and locate, or identify, I should say, the penthouse on the subject?
A Yes, on Exhibit 72, you can see the penthouse on our building, right here.
MS. ROBESON: Is that the brown --
THE WITNESS: It's the brown --
MS. ROBESON: -- on the top of the one that's showing.
THE WITNESS: -- brown volume sticking slightly above the top.
BY MS. HARRIS:
Q And is it correct that that steps back from Montgomery Lane approximately 23 feet?
A Let's see what I have.
MS. ROBESON: From the right-of-way?
BY MS. HARRIS:
Q From the front of the building.
A I could get this but I need to -- got it. So from Montgomery Lane, from the frontage, the penthouse is approximately 23-8, 23-10 feet.
Q Okay. And then how far setback from West Lane?
A From West Lane, approximately 26 feet, 25 and

change.
Q Okay. And is the height of the penthouse included in the height calculation?
A No. On any building, the penthouse is not included.
Q Okay. So when we refer to the height of one of the other buildings in the area --
A Yes, that will not include the penthouse.
Q That does not include the penthouse. Okay. The sector plan on page 84, in the sector plan and urban design guide, well, there's an illustration on page 84 of the sector plan. And then on page 88, are the urban design guide, which provides, ''Design rooftops to achieve residential image by using hip roof, gables, turrets, and other types of pitched roof line.''
Now, I would note that, as we noted previously, opponents actually wants us to have a flat, wanted the applicant to propose a flat roof. But can you sort of point out --
MR. ABRAMS: Object to her testimony. Has she got a question?
MS. ROBESON: Sustained. Just point it out.
MS. HARRIS: Ask the question. Okay.
BY MS. HARRIS:
Q The sector plan, we've noted, is 20 years old.

But can you identify what you think the purpose of that recommendation was and how the proposed building is nonetheless achieving the goal?

A Yes. If I look at this exhibit, it's clear that the objective was to create a residential character. But even on that exhibit --

MS. ROBESON: Which exhibit?

THE WITNESS: Not Exhibit. I'm sorry. Page 84 of the sector plan.

MS. ROBESON: The sector plan.

THE WITNESS: Right. There are two pictures, and they show you yes and no.

MS. ROBESON: Okay.

THE WITNESS: I mean, most of the pictorial exhibits there are yes and no. Do this, don't do that.

MS. ROBESON: Yes.

THE WITNESS: So even on that, they do show a flat roof. Now, so the objective of that is to promote a residential feel. But I would like, also, to point out that the sector plan, though it was good intention, was done 20 years ago. And things have changed. Concern about the environment. The green roofs here, they existed 20 years ago, but they were not part of architecture culture, so to speak.

So there are technologies which make some of the

requirements obsolete. They need to be revisited regularly. But the spirit, I think, was there to promote residential architecture, was not to be prescriptive. Do exactly this. Do exactly that. So on that we achieved the goals.

BY MS. HARRIS:

Q And do the --

MS. ROBESON: How do you achieve the goals, with the parapet roof, or are you saying this being residential in character?

THE WITNESS: It is residential in character. But one of the things that the sector plan proposes or encourages is the use of other space. So we are doing that. We're providing access to the roof. You can, part of that roof you can be outdoors.

MS. ROBESON: So you're going to have -- wait, I'm sorry. I thought you said you weren't going to have any outdoor use on the roof.

MS. HARRIS: I believe the previous witness, Mr. Landfair, was unclear on that.

MS. ROBESON: Okay.

MS. HARRIS: So actually, maybe I should ask --

MS. ROBESON: Why don't you tell us about what's going to go on, on the roof?

THE WITNESS: On the roof, so we're going to have the penthouse. And we are going to provide access for the

people, the tenants, or the residents, access to the roof. So the elevator will stop on that roof, and there is going to be two stairs going to the roof. And we're going to have, there is mechanical equipment like the majority, the vast majority of the roof is for the business.

MS. ROBESON: Are you going to have any landscaping or improvements up there?

THE WITNESS: We're going to have green roof.

MS. ROBESON: Okay.

THE WITNESS: Now, I wouldn't call it landscape. It's just a way to mitigate for the environmental and County issues.

MS. ROBESON: And what exactly, what is green about the green roof?

THE WITNESS: What is green roof, is, well, because green roof has some planting in it. I mean, it has plantings, so the planting gives you overall green color. Besides, the green is used today to illustrate a lot of environmental feature.

But what a green roof does, it retains and it filters rain water. So you don't, when you have a rain, you don't dump the same water on the city system. So it filters and it retains, and it slowly drains the roof. So it mitigates --

MS. ROBESON: I guess my question is, is there

going to be any screening or trees? Is there going to be like trees around the penthouse or no?

THE WITNESS: No, it's going to be just, the green roof has just low planting. And the purpose is, again, to mitigate environmental and energy issues.

MS. ROBESON: Right.

MS. HARRIS: But if I could clarify or ask the, I will ask the architect to clarify.

MS. ROBESON: Ask him.

BY MS. HARRIS:

Q Is it correct that the green roof is used for storm water management purposes?

A Yes.

Q And is that on a different section of the roof than the recreational portion?

A Yes.

Q Okay. And so will the recreational portion of the roof be improved with such things as benches or chairs or things to allow people to enjoy the outdoors on an evening on the roof?

A It could be improved with any number of tools. I don't think that we have been designed. I don't know the answer for that question, but yes, it can be improved.

Q So there could likely be potted plants or potted --

MS. ROBESON: Well, like, do you know if it's likely or not?
THE WITNESS: We are --
MR. KNOPF: That's what I was just going to ask. Are we now having an amendment to this?
MS. ROBESON: Just a second. Just a second.
MR. KNOPF: Excuse me. Sorry.
MS. ROBESON: Was this part of your original, or were you silent on what's going to be up there?
MS. HARRIS: Because it's typically it's a site plan item because there is nothing, except for the base of the space, it is really a furnishing question. So it's certainly not a zoning or development plan question. So I think as that, as the expert, as the architect has testified, there will be an outdoor recreational space which will be improved with --
MS. ROBESON: Which could be improved with.
MS. HARRIS: Well, it will be improved with portable or -- no permanent, not necessarily permanent features, but containers of landscaping and portable furniture.
MS. ROBESON: Yes. I guess the real reason I was asking is, we had some projects with step back roofs to try and be compatible with, you know, other buildings. And they used actually trees on the roof to kind of mitigate the,

mitigate the height. Is that part of your application, or not at this point?
THE WITNESS: Not at this point, but I'll say if one puts trees on the roof, you need additional three foot of soil.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Is it correct, however, that trees were contemplated likely in containers on the 50-foot step back area? And you can refer to Exhibit 72.
MS. ROBESON: Well, that was my next question. Just a second. Just a second.
THE WITNESS: We do have landscaping features in the public space.
BY MS. HARRIS:
Q And take and please examine the step back.
MS. ROBESON: Yes, the step back.
THE WITNESS: We do show landscaping feature in the step back zone. It is shown under Exhibit 17, too.
MS. ROBESON: But that's not a binding element, correct?
THE WITNESS: I don't know.
MS. ROBESON: To your knowledge?
THE WITNESS: I don't know.
MS. ROBESON: Okay.

BY MS. HARRIS:
Q And is it correct, as you noted --
MS. ROBESON: Just one second. Yes?
MR. KNOPF: I have an objection. The witness is testifying regarding, as I understand it, regarding compliance with the sector plan, talking about compatibility and other features of the sector plan, like rooftops and so on. Unless that is made a binding element, or there's some kind of commitment. But I thought they were revising this, but now in response to the hearing examiner's questions, I understand they are saving whatever they are going to do to site plan. I don't think any reliance can be placed on that. It's just wasted effort.
MS. ROBESON: I do, I do understand that, and I guess part of, we do have landscaping, in some cases, as part of binding elements.
MR. KNOPF: Absolutely.
MS. ROBESON: But I understand. I'm not sure it's an objection, but I understand that it's illustrative, only --
MR. KNOPF: Illustrative.
MS. ROBESON: -- illustrative, I guess.
MR. KNOPF: I'm trying to save time, and talking about a lot of ethereal things that will disappear.
MS. ROBESON: No, I understand.

MS. HARRIS: And I understand what Mr. Knopf is saying, but I would also note that the vast majority of all the projects in the TS-R zone that have been approved had maybe three, five binding elements.
MS. ROBESON: It's not a numerical thing, though. I mean, you're getting a lot of a tight site. And that's a good thing, maybe, you know, if it can be done right. I have had other projects on tight sites that do work a little more on the details.
MS. HARRIS: Well, we've certainly listened over the course of the hearing, and we are, it is very likely that we will be proposing additional binding elements to be responsive to the comments that we've heard over the course of the hearing.
MS. ROBESON: Okay. And, you know, to me it's not a numerical thing. Some of these projects are much older. Some, you know, are new. And we also have, I guess, the other -- a lot of your public interest argument is the MPDU's. And that's a great, you know, that is an element of public interest.
One concern about that is that, you know, we just had a project, and I can't remember which one it was, right in this defined neighborhood, I think, that decreased, they had a minimum amount of units, and they just lowered the minimum because they said the real estate market is such

that they can't sell ownership units unless they're larger units. So I'm just throwing that out there. And I'm not trying to be hard on you. I just, you know, this is an important area, as you know. So I'm sorry to interrupt. Go ahead.

MS. HARRIS: No, that's fine.

BY MS. HARRIS:

Q I'd like to refer to sector plan pages 42 and 43. Let me just, one clarification on the roof discussion, though. I believe you said, but I wanted to clarify, that the sector plan does, in fact, recommend outdoor recreational roof areas, is that correct?

A Yes. That's correct.

Q Okay. Thank you. Sector plan 42 and pages 42 and 43, which go to the urban foreman again, this is the do's and don'ts that you're requested to address, I would like for you to take a look at the items two through six on those pages. The first one is the step down in heights. Can you please comment on that, and then I'll identify the others as we move forward.

A Yes. I will go back to the same --

MR. KNOPF: Which pages?

BY MS. HARRIS:

Q 42 and 43.

A 42. The same Exhibit 72, and on these pages of

the sector plan, there are a couple of diagrams. And again, they show you what you should do, what you showed me. So in terms of step downs, we do clearly have a step down. And also, I would like to point out that the whole frontage of the building, the building is not a long building.

So, but within that smaller frontage, we have variety of the roof. So I think that the goal is, when one looks on the street, you don't see a straight line going for a mile. So you see this variety of skyline, so it's diversity and we feel we achieve them.

Q Thank you. And number three says, ''Achieve a fine grain and texture.'' Can you comment on that one, please?

A Right. In terms of the grain, we are using the same material as every other, as all the other buildings built or approved on this street. We have architectural detail such as the rustication of the base. And the read of the solid wall fenestration is the same as all the other buildings. So you have this read that is compatible. You have this residential feel to it.

Q And the overall lot area is comprised of how many lots?

A Four lots, I think.

Q So if the project would have done something more ambitious, such as obtained the properties on the east side of West Lane, and closed West Lane, and comprised a building

with six or seven lots, would that achieve the fine grain, in your view? Would that be furthering this fine grain texture recommendation?

A If the project is, I mean, it's not the number of lots, it's just what you do with what you get. So you employ architectural elements that we pointed out, to break out the mass. That's what we did.

Q Thank you.

A That is what we did.

Q Number four says, ''Take advantage of the views.''

A Well, the view in a sense that what the building offers is a view. This probably, this is what they meant. And if I point to the other exhibit, probably because that's the Exhibit number is 71. This is the approach. And you have from the higher density CBD zone a fundamental.

So we have a clear identifier of the building with this scooped out element. In fact, the diagram is fairly similar to what page 42 shows. The only thing is an inverted element. You know, they show an architectural accent for the corner, and we have an architectural accent in the corner.

Q And where ours is conclave --

A They show more of a turret, but we show a concave shape that fosters this bucket park.

Q Which creates a focal point, is that correct?

A Which creates a focal point. Yes.

Q Again, number five, and I think we addressed it previously, but it says, ''Designed for visual interest.'' How does the step back help achieve this?

A Again, the visual interest comes from the fact that you avoid having a straight line going for a long distance. So it's to break up a potential boring or potentially oppressive repetitive environment. And clearly what we do have with the step back and with this curve, we are breaking that monotony, potential monotony.

Q Okay. And then the final one was, ''Achieve compatible building styles.'' I think we've touched on this before in terms of the discussion of compatibility. But do you have anything to add with respect to that?

A It's just that the building, again, fits well within the existing context, because of architectural elements and the style.

Q Okay. Thank you. And then moving to page 50 of the sector plan which says, and this is in its pathways, principals, it recommends animating facades and avoiding blank walls. Please comment on how the building achieves this?

A We don't have it just as a fact. It's not even subjective. We don't have a blank wall. All the walls have fenestrations. Not only that, the fenestration varies. We

have a read of large, small windows. Large, small windows. And we interlace those with French balconies readings. Besides we have this curve element where the entrance is. So for a short distance, or a short frontage, we achieve a lot of interest.

Q Thank you. Moving on and going back to the zoning ordinance in terms of 59-C-8.52, which deals with parking, and it says, ''Provide that off-street parking shall be located so as to have a minimal impact on adjacent residential properties.'' Can you please address how the project responds to this requirement? But you may take a sip of water first.

A The parking is achieved by providing underground or below grade parking spaces.

Q And so will those be visible, will the parking be visible from the street?

A The parking will not be visible from the street.

Q And is the access to the parking in a -- where is it located on the site with relation --

A The access to the parking is located on the northeast corner of the building on West Lane.

Q Thank you. And how many parking spaces and loading spaces will be available?

A We have approximately 120 parking spaces that they provide for approximately a one to one ratio between the

parking and the units. And in terms of service loading, we have three spaces. One is a lay by on Montgomery Lane. One is access from Montgomery Lane, but it's within the building. And one is below grade.

Q And can you please --

MS. ROBESON: I'm sorry. On Montgomery Lane or West Lane?

THE WITNESS: I'm sorry. West Lane. All of them are West Lane.

BY MS. HARRIS:

Q And actually, it may be helpful to refer to Exhibit 89, which highlights these. I'm sorry. It's either -- I may have missed the --

MR. KNOPF: Could I ask your witness to repeat what he said, because I got so confused when he said Montgomery Lane, I lost track of what you were saying.

MS. HARRIS: Yes, I think it may be helpful, once we get the exhibit.

MR. KNOPF: Thank you.

THE WITNESS: I can repeat.

BY MS. HARRIS:

Q It's Exhibit 89. It's the --

A So going back to the loading and service spaces. We have one lay by on West Lane. We have a loading space within the building, access from West Lane. And we have

another space access from the garage entrance, below grade, in the garage. So it's a dedicated space in the garage for loading, for service purposes.

Q And are you familiar with the size of the loading bay and what --

A Yes.

Q -- in terms of the height and what kind of trucks would be accommodated?

A Yes, I am. The height, you can accommodate a panel truck, so like the UPS moving van.

MS. ROBESON: For which space? I'm sorry?

THE WITNESS: For the space --

MS. ROBESON: That's outlined in red on Exhibit 89?

THE WITNESS: On Exhibit 89.

MS. ROBESON: And that's inside the building?

THE WITNESS: Inside the building.

MS. ROBESON: Okay.

THE WITNESS: And the space in the garage will accommodate the same panel van, UPS, U-Haul --

BY MS. HARRIS:

Q Type truck.

A -- type truck.

Q Thank you. And I believe the traffic consultant, as well, the civil engineer, will get into that in more

detail. Can you please summarize the changes that are made to the building in response to the comments by staff and some of the comments?

A Yes. Probably I could use Exhibit 106F.

Q That's fine. And if you need to refer back to Exhibit 89, or the development plan.

A Yes. Again, actually, this is probably a better exhibit. 89.

Q Okay.

A So the few comments, we got a few comments from the staff and also from the civic component. And we did several changes. One is to sit the entrance back. The entrance to the building used to be right on the corner of Montgomery and West Lane. And now we sit back, after we have this pocket park. So there is a pocket park between the Montgomery Lane and the entrance.

Then we created this architectural element. So we curved the façade, where we have this concave element which forms, actually, the pocket park. And that is located at the intersection of West Lane and Montgomery Lane.

We relocated or, yes, I guess relocated would be the public space. When we calculated for the public space, included a space in the back, say back in the back. But the public space was larger than needed. So then with the inclusion of the pocket park, all the public space is

located on Montgomery Lane and West Lane.
And then we have the corner experience. So I guess this would be the largest change that we to this architecture here, was to create this.
Q And was the step back, you mentioned the upper story step back?
A Oh yes, and we pulled the façade back 12 feet at the height of 50 foot, so we have the step back.
Q Did the original design of the building include the off-street loading bay?
A The off-street loading bay being the lay by?
Q No, that. That one.
A I don't think so. I could be wrong.
Q Okay. And were articulations to the facades provided?
A We have a few more articulations on the façade. The, let's say, more than half of the façade on West Lane was a street light. And now we have indentation to better create sort of a townhouse feel to the building.
Q Thank you. There was discussion last week during the land planner's testimony, and questions from opposition counsel regarding whether the various changes that you just discussed resulted in a decrease in the overall square footage. Can you please identify whether, in fact, that occurred?

A Yes. I believe that the --
MS. ROBESON: In the square footage of the --
THE WITNESS: Of the building.
MS. HARRIS: Total building.
MS. ROBESON: Total building. Okay.
THE WITNESS: I think that the building originally was 118,341, I believe. But the current building is 116,000 and change.
BY MS. HARRIS:
Q Okay. So there has been a slight decrease --
A So there's a reduction, about 2,000 square feet.
Q Okay. Is there anything else that you would like to add that we didn't cover in your testimony?
A Well, I think I did cover a lot, but --
Q Oh you just wait.
A The only thing I would like to add is that all these exhibits, they show that how we thing, from an architectural perspective, that the building will actually benefit the entire area.
MS. HARRIS: Thank you.
MS. ROBESON: Thank you.
MS. HARRIS: That concludes his testimony.
MS. ROBESON: All right. It being almost noon, I am going to take a lunch break now, and we will be back at 10 until 1:00. And I will check on the air conditioning.

So we'll be back at 10 minutes -- yes, Ms. Harris?
MS. HARRIS: I just wanted to get a sense of timing, because we were anticipating, just based on last week, that Mr. Radulescu may be up here for the rest of the afternoon. But if that's not the case, then we obviously want to give some of our other consultants a call, so they can be available. Can we get a sense of that before the lunch break?
MS. ROBESON: Well, it's, you know, it's cross-examination and -- how close are they?
MR. KNOPF: I'm not going to be as long as Landfair. I'm going to be much shorter.
MS. HARRIS: An hour and a half?
MR. KNOPF: I'd say for me, about an hour.
MS. ROBESON: How close are your consultants?
MS. HARRIS: I mean, how long would it take them to get here? One of them, a half an hour. Our traffic consultant could be here in half an hour.
MS. ROBESON: I mean, I think that there is a possibility.
MS. HARRIS: I think it sounds like it.
MS. ROBESON: But you can't rely on what I say because I don't know what the cross-exam --
MS. HARRIS: Mr. Abrams has been silent in his response. Do you have a sense of how long your cross-

examination is going to take?
MR. ABRAMS: A while.
MS. HARRIS: Can you be a little bit more definite?
THE WITNESS: I booked the whole week.
MS. ROBESON: Well, I'll try to be flexible.
MS. HARRIS: Okay.
MS. ROBESON: And if we need to take a 15-minute recess, you know, if --
MS. HARRIS: I'm going to call them early, one or two of them, per my notes.
MR. ABRAMS: Who is your next witness?
MS. HARRIS: Well, we've had, because -- I'm not sure. I'm going to need to juggle things around given the schedule. So I don't know at this point.
MS. ROBESON: Are you sure we shouldn't schedule another hearing date? I'm kind of getting, I didn't expect, when we set the dates, that it would take so long.
MS. HARRIS: Well, my approach is always better safe than sorry. We can always abandon the last one if we don't need it.
MS. ROBESON: That was mine. I was wondering if you are available on an extra date.
MS. HARRIS: I am.
MS. ROBESON: Or we can set it, you know, we can

see how it goes. It may be faster with the civil.
MR. ABRAMS: I think our side is going to go a lot faster.
MR. KNOPF: Yes. Ours also.
MS. ROBESON: Well, it's up to you. Think about it. We don't have to decide right now. We can see how these are going to go.
MS. HARRIS: Thank you.
MS. ROBESON: All right. With that, now we're up to five until 1:00. So we're going to adjourn until, recess until then, and I will check on the air conditioning.
MR. KNOPF: Thank you.
(Whereupon, at 11:53 a.m., a luncheon recess was taken.)

A F T E R N O O N S E S S I O N
MS. ROBESON: For some reason our library no longer has the adopted Bethesda master plan. I've got every draft that there ever was, but I don't have the adopted one.
MR. KNOPF: Are you referring to the CBD one, or the master plan?
MS. ROBESON: CBD, central business district sector plan. So if the parties have one that you can submit, it doesn't have to be now, that you can submit into the record, that would be helpful. And, I mean, I have the one online, but as Mr. Knopf noted, the numbers don't sink up.
MS. HARRIS: We can get you that. My apologies. I thought it was actually submitted with the application. And it may be, I wonder if there are copies in that former, you know, we originally filed a rezoning and development plan.
MS. ROBESON: Right.
MS. HARRIS: And then we had to refile. You may want to check there.
MS. ROBESON: Oh, if it's in 9-12?
MS. HARRIS: There may be four copies sitting there collecting dust.
MS. ROBESON: I will double check.
MS. HARRIS: Okay. And otherwise, we can get you

one.
MS. ROBESON: Okay. Thank you. All right. Ms. Harris. No, Mr. Abrams. You are here on cross-examination. I hope you ate and drank and we did turn the air conditioning on.
MR. KNOPF: Yes. Thank you very much.
MS. ROBESON: Okay. Go ahead, Mr. Abrams.
CROSS-EXAMINATION
BY MR. ABRAMS:
Q Could you please repeat your testimony with respect to the gross square footage of this building?
A Isn't the number in the application?
Q Well, you're the architect. Do you know it?
A But it is in application. Why do I need to memorize?
MS. ROBESON: No, but you don't get to ask him that. You get to answer his questions.
THE WITNESS: If I may --
MS. ROBESON: Yes.
THE WITNESS: My point is that there are a lot of numbers that I need to memorize, and that --
MS. ROBESON: Well, if you can't recall it, you can either look at your plans or you can say you can't recall it.
THE WITNESS: I will look at the plans.

MS. HARRIS: And refer to the plan that you are looking at.
BY MR. ABRAMS:
Q Try 106A. You had that.
MS. ROBESON: Can you show him what it looks like?
MR. ABRAMS: Yes.
MS. ROBESON: It's the development plan.
BY MR. ABRAMS:
Q The development plan.
A I'm sorry. What was the question? What is the --
Q Building coverage, yes, the square footage. Let's see, gross floor area?
A 118,352.
Q 118,352?
A Yes.
Q Okay. I think you said it was some other number other than that during the latter part of your testimony. Was there another number?
A Was there another question? I mean, I don't --
Q What I'm trying to do is make sure that everybody understands that the gross floor area is what is represented on 106A, and not through any other testimony.
A Then I will say that I'm relying on this drawing, on these documents to get the number right, if I am wrong.
MS. ROBESON: I think you said 116, but I could be

wrong. Go ahead.
MR. ABRAMS: I'd like these marked for identification.
MS. ROBESON: Okay.
MR. ABRAMS: Do I show you or can I put them up on the --
MS. ROBESON: Have you provided them to the parties?
MR. ABRAMS: No, I haven't.
MS. ROBESON: Okay. Well, let me mark them.
MS. HARRIS: Objection. I thought all exhibits were due, per the schedule that we have identified.
MR. ABRAMS: Well, he's testified from these exhibits, or as to these exhibits. This is cross-examination.
MS. HARRIS: I don't know what they are.
MR. ABRAMS: Well, they are the site plan for 4825.
MS. HARRIS: Well, why wasn't that submitted as an exhibit per the exhibit schedule?
MS. ROBESON: Can I see them? Because I did let you put in an exhibit of the calculations.
MR. ABRAMS: The first one is notification and a map to the citizens. The second is a copy of the site plan.
MS. ROBESON: For 4825?

MR. ABRAMS: Yes.
MS. ROBESON: Well, you can, you know, I don't want to -- you're right. We were supposed to have -- what's your point?
MR. ABRAMS: The point is, he testified in his direct testimony today that the 4825 Sandy Spring building is 65 feet, plus four feet for the parapet wall. This shows, the site plan shows that it's 60 feet plus four feet for the parapet.
MS. ROBESON: Okay. Well, why don't you ask him that instead of introducing the exhibit?
BY MR. ABRAMS:
Q Have you looked at the site plan for 4825 Montgomery Lane?
A For the buildings outside the subject property, I was relying on documents provided by the civil.
MS. ROBESON: By who?
THE WITNESS: By the civil engineer.
BY MR. ABRAMS:
Q And what documents were those?
A Various site plans, using the process of designing the building.
Q Did you rely upon a site plan which was filed on February 15, 2013, for 4825?
A No, I relied only on what was provided by our

team.
Q Okay. If there is a site plan which says 60 feet plus four feet for the parapet wall for 4825, you have no way of contesting that at this point in time, do you?
A I have no way of -- I'm sorry. Paraphrase?
Q Can you contest that the site plan filed for 4825 shows a building height of 60 feet, plus a four foot parapet wall?
A That's a document that I'm not familiar with, so I cannot say one way or another.
Q So it's possible that your testimony as to a 65-foot building with a four-foot parapet wall could be in error?
A If the information that was provided to me was in error, I would assume that that would be the case.
Q Now, in terms of the height of City Homes, how is that, how is that measurement conducted?
A The measurement was --
MS. HARRIS: Objection. The applicant, the witness did not testify as to how the buildings were measured. He's, it's outside his field, where the other witnesses could very easily answer the question.
MS. ROBESON: Well, he did say that the heights were from the podium. Where are you going with this?
MR. ABRAMS: Well, I'm going to show that the

heights, slab-to-slab, which I believe he testified is somewhere, in an ordinary townhouse project would be somewhere around 10 feet seven or eight inches.
MS. ROBESON: Okay. Yes, he did go into that. And also, he did testify to relative heights. So to that extent, I don't know if, I don't think where Mr. Abrams is going is to say it doesn't meet the zoning ordinance.
MS. HARRIS: I think he's asking the witness, though, how the measurement was determined. And --
MS. ROBESON: Yes, and I think that he did go into heights, as far as his testimony. If you can't answer, if you don't know the answer, you can simply say that.
THE WITNESS: So the question is how, I just want to understand. How was the height of the City Homes determined?
MS. ROBESON: The City Homes.
MR. ABRAMS: City Homes.
THE WITNESS: Yes.
MS. ROBESON: You testified a number of times that I think it was 52 feet in height.
THE WITNESS: Right. And all the heights, with the exception of the building that we designed, were provided by the team. So I do not have the methodology of how that dimension was decided.
BY MR. ABRAMS:

Q Okay. But you testified that in terms of the representative townhouse, that the calculations of slab-to-slab would be around 10 feet eight inches?
A I did not say anything about the slab-to-slab height other than our building. The slab-to-slab reference was for the design of the subject property.
MS. ROBESON: But didn't you compare that with the typical height? I thought you --
THE WITNESS: Yes. A typical height, well, a typical height may refer to any buildings done anywhere.
MS. ROBESON: In a floor.
THE WITNESS: In a floor.
MS. ROBESON: Yes.
THE WITNESS: In other words, if I refer to a typical height, I would say that a typical height today would be 10 foot. That would be any building from Miami to Seattle.
MS. ROBESON: Okay. All right.
THE WITNESS: Including City Homes.
BY MR. ABRAMS:
Q Including City Homes?
A Yes, but it's not specific to City Homes. It's any building.
Q Okay. Okay. I understand. Now, if that's the case, wouldn't City Homes be based on a 53-foot height limit

that you've indicated previously, really, wouldn't City Homes calculation, slab-to-slab, be 42 feet eight inches, rather than 53 feet?
A This will be, if I answer this question, it will be pure speculation, because I don't know anything about what's inside the City Homes. So maybe I shouldn't answer.
MS. ROBESON: So your answer is, you don't know.
BY MR. ABRAMS:
Q You don't know.
A I do not know what's inside the walls of City Homes.
Q Now, on Exhibit 72, which I think is an architect's rendering of the buildings --
A Yes.
Q -- at Montgomery Lane, is this to be an accurate representation of what's there now?
A Define accurate.
MS. ROBESON: No, you have to answer. You don't get to ask --
THE WITNESS: The reason I'm asking is, accurate is a subjective matter. It's not, accurate is not 10 feet or 15 feet. It's a subjective interpretation, yes.
MS. ROBESON: Okay. You have to tell him in what ways it may be accurate or if there is something that didn't, is not accurate, you have to say what is not, it's

not to scale?
MS. HARRIS: Can Mr. Abrams clarify the question, because did he say existing and approved or just existing.
MR. ABRAMS: Existing.
MS. HARRIS: What's existing?
THE WITNESS: Well, I suppose that that's existing, and this is existing.
MS. ROBESON: The two on the front I know are existing.
MR. ABRAMS: No.
MS. ROBESON: Oh, the Arlington North?
THE WITNESS: The Edgemoor is highlighted, is existing.
MS. ROBESON: Is existing.
THE WITNESS: And the Edgemoor at Arlington --
MS. ROBESON: Right.
THE WITNESS: -- is existing.
MS. ROBESON: I get the Edgemoor.
THE WITNESS: And the City Homes that probably you can see already is existing. So as to accuracy, we took a photograph, and we, in this building, I know that is accurate.
MS. ROBESON: You're pointing to your building, the subject property?
THE WITNESS: Right. So it's, accuracy again is a

subjective. But not only, it implies a certain standard. What is that certain standard? It's accurate as humanly possible with today's technology.
BY MR. ABRAMS:
Q Now, in terms of what has been approved, is that an accurate representation?
A What has been approved again, with today's technology, meaning a digital camera and computer, this is accurate as it gets.
Q With reference to the flowering trees on the front of the Hampden Lane building, do they exist or are they an artistic representation?
A Since I haven't done the rendering myself --
MS. HARRIS: On which building? Can Mr. Abrams clarify the building? You said the Hampden --
MR. ABRAMS: The Edgemoor. Excuse me.
MS. ROBESON: Wait, which Edgemoor? The front one?
BY MR. ABRAMS:
Q The one to the front as you face it.
A In terms of --
MS. ROBESON: Exhibit 72. Okay.
THE WITNESS: Can I rephrase my answer?
MS. ROBESON: Yes.
THE WITNESS: In terms of buildings, with today's

technologies, we are as accurate as possible. In terms of birds and clouds, no.
MS. ROBESON: Or trees? His question was trees.
THE WITNESS: These trees are accurate interpretation of what we intend. And those trees again are probably, yes. But these, I don't know.
MS. ROBESON: Okay. So what you pointed to was the landscaping on your building.
THE WITNESS: The landscape. Yes.
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q Okay. But the flowering trees that are in the upper left and upper right corner, are artistic license that the architect has taken?
A Yes.
Q And the same with the flowering trees fronting on Arlington Road.
A Now, I haven't done the rendering. I know about the buildings. And that's it. If you come to this, the facts of rendering are the sky, the birds, I cannot tell you how they are done.
MS. ROBESON: But what about the trees? Did you do the trees?
THE WITNESS: No.
MS. ROBESON: Okay.

BY MR. ABRAMS:
Q Do you have any idea what the representative height of those trees would be?
A No, I do not.
Q Now, you talked about the development standards, and Ms. Harris went through a number of zoning ordinance development standards with you this morning. Does meeting all of those development standards mean that a project is conclusively compatible with a neighborhood?
A Meeting those standards, yes, would be in the direction of having a compatible project.
Q So, if you meet all those standards, i.e., you're compatible with the neighborhood?
A I would say that if you don't meet the standards, probably you're not going to be compatible.
Q Can we reverse that and try to answer the question. If you meet all those standards, is your project compatible with the neighborhood?
A Our project is compatible with the neighborhood.
Q If you meet all those standards?
A If. We believe we meet those standards.
Q Now, the project as currently submitted barely meets, has the minimum for public use and private use space, is that correct?
A It meets the requirement for public use.

Q The minimum requirement?
A It meets what is required. Yes.
Q 10 feet is --
MS. ROBESON: Mr. Radulescu, I think what he's asking is, does it exceed the minimum requirement?
THE WITNESS: No.
MS. ROBESON: It doesn't.
BY MR. ABRAMS:
Q Originally, when the project was applied for, when this application was filed, and up through the Planning Commission, first Planning Commission meeting, was there 14 percent public use space?
A I believe it, I don't know the exact number, but it was probably that. I don't have, what is in the document is what is real. I don't remember all these numbers..
Q Well, there was a difference between what is submitted now and what was submitted then, correct? In terms of the amount of public use space?
A You're asking me to remember what was submitted first time versus that time and see if there was a difference.
Q Yes.
A I don't know. I know what is now.
MS. ROBESON: Wait. You don't --
THE WITNESS: I just, I just really cannot

memorize all the pages of all the -- I can testify what is present here. What was submitted in November, I'm sure if it was submitted, that's what was submitted. So in other words, I did not commit to memory numbers from the past. I just --
MS. HARRIS: I believe that was testified to by Mr. Landfair, so the answer is in the record.
MR. ABRAMS: Well, we also got representations from counsel that some of these questions are more appropriate for the architect. And I want to get into some of these figures that are in the development plan.
BY MR. ABRAMS:
Q You prepared the development plan, didn't you?
MS. ROBESON: He testified to it, and as you said, these are his exhibits. So I'm going to let him do it.
MR. ABRAMS: Okay.
MS. ROBESON: Mr. Radulescu, to the extent you can, can you try to remember the numbers, even if you have to refer to the prior development plan, which may be help?
THE WITNESS: Can I ask a question? If he refers, Mr. Abrams knows the number, can he just say, in the past it was this number and now it is this number?
MS. ROBESON: But if you don't know the answer, is that --
THE WITNESS: I don't know the answer. That's the

obvious.
MS. ROBESON: Well, let's get the prior development plan up here, and that may make things more simple, which I think is, is it 67? 2/15/13. Or is that the revised on?
MS. HARRIS: No, that's the revised. It would have come in. It would have been one of the very early numbers.
MS. ROBESON: Oh, well, there's one on 11, but I think there's one after that, too.
MR. ABRAMS: Well, it's Exhibit 11, and that was revised in January.
MS. ROBESON: Yes, right before the hearing. But your question goes to --
BY MR. ABRAMS:
Q Compare Exhibit 11 to --
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q -- what is currently the public use space?
MS. ROBESON: So do you have access? Do you want my Exhibit 11?
MS. HARRIS: Yes. That would be helpful, if you don't mind.
MS. ROBESON: I had to change the order. Here is Exhibit 11.

MS. HARRIS: May I approach to where he needs to look to expedite the process, or no?
THE WITNESS: Yes, I see the number.
MS. ROBESON: Okay.
THE WITNESS: Yes, so the number on DP-01 --
MS. ROBESON: It's Exhibit 11.
THE WITNESS: -- Exhibit 11 is 4,092 square feet.
BY MR. ABRAMS:
Q Okay. That same open space, public open space calculation for the current plan is what?
A The current number is 2,841 square feet.
Q And that represents a difference between 10 percent in the current plan and 14 percent in the original plan?
A This is 10 percent. The percentage of the old plan, we can do a calculation, but --
Q Isn't it on the plan?
A It doesn't, there is no percentage. It just says, public space required and proposed. It has the numbers. Oh, it says 14 percent. I'm sorry.
Q So there is 4 percent difference?
A Yes.
Q And that equates to, let's see, I'm not sure I have the arithmetic, but it's almost several thousand square feet, isn't it?

A It will be, no, several thousand would be, let's say, what is number?
MS. ROBESON: I have 1,251.
THE WITNESS: Yes. 1,200.
BY MR. ABRAMS:
Q 1,200 square feet?
A Yes.
Q 1,200 square feet. Okay. And most of that area in the original plan for public use open space, or a lot of it, was in the rear of the building to the north, correct?
A Right.
Q All right. And the overall size of the building has not changed in terms of the gross floor area between the original plan and the current plan, is that correct?
A Probably yes.
Q Is it or isn't it?
A I have to go back to the original plan and --
MS. ROBESON: Take your time.
THE WITNESS: We have the same number.
BY MR. ABRAMS:
Q Same number?
A Yes.
Q So the first floor area has not changed, even though the public use space has changed?
A The public space, well, the change between 14

percent and 10 percent?
Q Yes.
A We used to include the rear of the, some of it is part of the public space. And that's why it was 14 percent. We took that one out, and bringing it down to 10.
Q Okay. Now, the private recreational space, that hasn't changed between Exhibit 11 and this exhibit, has it?
A It looks identical. Active, passive. Yours does.
Q It looks like what?
A Identical, yes.
Q And the original plan showed a 15 foot setback in the southwest corner, did it not?
A Southwest corner. Yes.
Q The current plan shows 13 feet?
A 12.
Q Okay. Now, in light of the reduction in the public use space, and in light of the fact that the private use space hasn't changed, and in light of the fact that the gross floor area of the building hasn't changed, what happened to the 1,200 square feet that was the difference in public use space?
A It's probably how we assign the public space space, mean that we took that one out. We may have not added it to the -- I cannot really, I know what the public space is right now, but if I don't know if this number that

used to be public space was added back to the open space. Probably it was not. It could be. I really don't know what, why the public space has reduced, and no other number has increased.

Q So you don't know why?

A No.

Q Doesn't it seem odd to you that it would not be reduced, as an architect?

A As an architect, if the consensus was to exclude that space from public use space, would I include it in a private space? Probably not.

Q No, the point is, has the building become bigger?

A The building has not become bigger. It's the same.

Q I know that's what the plans say, but if you have 1,200 square feet of space --

A Yes.

Q -- which is now reduced in size, that space can't evaporate in the air. It's got to be put someplace, wouldn't it?

MS. HARRIS: I'm going to object. Mr. Landfair testified very clearly and very extensively to the fact that the area in the northern portion of the property which was previously counted a public use space which makes up that 1,200 square feet, is no longer counted for a public use

space. It wasn't added anywhere else. That's the answer.

MS. ROBESON: No, but, well, first of all, you did defer, we did defer these questions to the architect. Second, I don't think that's what Mr. Abrams is asking. I think he's saying that the numbers don't add up. He's saying that if the building footprint hasn't changed -- well, wait. He's saying, if the gross floor area hasn't changed, and the private recreational space amount hasn't changed, and the original plan showed more of a setback, then where is the 1,251 square feet. And I'm going to let him answer.

THE WITNESS: I may be wrong with the math, after all, I'm an architect. But if I add those things, it looks like the building should get smaller, not larger, if anything.

BY MR. ABRAMS:

Q Correct.

A But it didn't, because maybe this area within -- I can testify, well, I can testify, I do not know what happened to that number. But this one stayed the same. The building stayed the same. And we calculated the public space, excluding the 1,200 square feet from the back.

MS. ROBESON: What --

THE WITNESS: So we excluded --

MS. ROBESON: Yes. From the public space. I

think you -- okay. I understand.

MR. ABRAMS: I'm glad you do.

MS. ROBESON: Well, you know, maybe -- okay. Go ahead.

BY MR. ABRAMS:

Q Now, those projects which are abutting this property or confronting the property, are any of them taller than what's proposed? Abutting or confronting, that's the key words?

A No, they are not taller.

Q Are any of them with a higher FAR than this project?

A I do not know the FAR of the other projects.

Q Now, with reference to 4901 Woodmont Lane, and I think you referenced Exhibit 106G --

MS. ROBESON: Wait, that's Hampden Lane, right? 4901 --

BY MR. ABRAMS:

Q Hampden Lane. Yes. That project is on Woodmont Avenue, correct?

A Yes.

Q And under the sector plan, aren't the tallest most intensive buildings supposed to be on Woodmont Avenue?

A I don't think so.

Q You don't know or --

A I don't know.

Q The Hampden Lane project in the northeast corner of Arlington Road, Hampden Lane, does that have a series of step backs from Arlington Road?

A It has step backs from Arlington Road, yes.

Q Do you know what the height is for each, on each of those step backs?

A I know the top step is at 70 feet or 71 feet.

Q But you don't know what the --

A The middle steps, no, I do not know.

Q Now, I think you testified that the volume of space, you attempted to take the volume of space and sort of pack it in to a limited building area, is that correct?

A To mitigate the height. To minimize the height.

Q To minimizes the height. Could you have varied the size of the units, or varied the mix of the units, also, without increasing the height of the building? In other words, more efficiencies and one bedrooms, than two and three bedrooms, things of that nature?

A The envelope of the building is based on the FAR.

Q Correct.

A And FAR gives you a total GSF. So having a unit smaller than larger, doesn't change the overall envelope of the unit.

Q No, that's not what I'm saying. Couldn't you have

gotten the same number of units without raising the height of the building or the FAR?
A That's, I cannot really see the -- I don't understand the question as to this project. So can I have, in a building, instead of having one-bedroom, two-bedroom, can I have only efficiencies?
Q Well, can you have a mixture of smaller units than what you're proposing here without raising the height of the building, and still come out with 100 dwelling units to the acre?
A No, because the number, the 100, the building was designed for the allowable GSF, not for -- and the number of units is a result of the GSF, not the other -- a result of the GSF, not the other way around.
In other words, you don't design the mass of the building based on number of units. You see what the zone allows you to, there's a value on it, a square footage, and you see how many units in the current market conditions, whatever you want to assume, could fit. You don't say, I'm going to build maybe 100 units and then see how big it's going to get.
Q Is there any rule of thumb used by architects in terms of the number of units which would make a project minimally, economically acceptable?
A It depends on the market, on the zoning and on the

market.
Q Now, when was it decided that this roof area was going to be a green roof?
A I cannot point to a specific day, but it was part of the design process. So I cannot say that in the first month or first week or first -- it's part of the design process, in the process of analyzing different requirements including code, energy, zoning, so on and so forth. You end up with a conclusion that a green roof has to be implemented into the project.
Q When you do a project of this nature, don't you design each floor, in other words, what's on the floor?
A At the end of the design, yes, you have an idea what's on the floor, yes.
Q In other words, you don't have any floor elevation, floor plans for this specific project?
A At this stage, no.
Q So can you point to anything within the plans that you worked on, or the plans that you're familiar with, which indicate that the top floor is to be a green space?
MS. ROBESON: Green roof.
BY MR. ABRAMS:
Q Green roof, or what that green roof is to contain?
A I do not recall to any exhibit that points to a green roof representation.

Q Now, was the roof ever envisioned to be part of the private open space recreation facilities or areas?
A I believe a portion of the roof, yes, was intended.
Q When was that decided?
A Within the design process.
Q Before the application was filed?
A I do not recall.
Q In terms of that private recreation space, since square footage devoted to that type of area has not changed from the original square footage in the first development plan, was that included among that figure?
A I do not know.
Q Where is the private open space going, besides the area to the north and the area to the east? Is there any in the building? Private recreation open space?
A Yes, we have a large amount on the west side of the property, between the property line and the building.
Q And space to the rear?
A I don't know if the space to the rear was calculated, included in after we strike it from the public space. I don't know.
Q And you don't know whether that space, the space in the rear, constitutes the totality of the square footage --

A I do not.
Q -- of the private use space?
A I do not.
Q Now, in terms of a green roof, what is proposed here in terms of materials to make it a green roof?
MS. HARRIS: Objection. That's a question for the civil engineer. It goes straight to storm water management. The civil engineer will be testifying to that.
MS. ROBESON: But he testified --
MS. HARRIS: That there would be one there. I don't think the architect knows the components of a green roof.
MR. ABRAMS: Well, he better, or else he's going to have a problem in terms of the weight of that roof.
MS. HARRIS: I think he knows --
MS. ROBESON: Well, to the extent you can. I mean, you did say there would be three foot of soil on it. And so I assume you're familiar with some of the requirements. So Mr. Abrams, repeat, can you repeat your question?
BY MR. ABRAMS:
Q What type of materials will comprise the proposed green roof on the top level?
A Generally the green roof, and I don't know exactly what manufacturer, because there are variations. Generally,

there is a water retention portion, a filtration portion, and a water channeling portion. So there are these layers that go on top of a regular roof.
Q Is there space on that green roof to plant trees?
A No.
Q Is there space on the green roof to have these large planter berms or boxes?
A Usually, well, there is probably, but usually that's a different system. Green roof is not a landscape. It's not one system, and you cannot just add trees. You have to get probably the proper system that may include trees. But right now, this one doesn't have this way to get any trees for the reason that you mentioned, that it will add weight. But of more concern is adding height.
Q Okay. So is it safe to say at this point in time that this project will not have any trees or shrubbery on the roof?
A This project, at this stage, will not have, as part of the green roof, any trees. As part of the green roof.
MS. ROBESON: But there's another part of the roof, correct?
THE WITNESS: There are several components. It's the green roof, the penthouse that we talked about --
MS. ROBESON: Right.

THE WITNESS: -- and then there is a public access or a residents access space. So those are the components. Within the green roof, at this stage, I don't think that we anticipate planting any trees.
BY MR. ABRAMS:
Q Okay. So the public use space on the roof will not include any green roof area?
A The public space can include any accessories. You can bring a lounge chair. You can have potted plants.
Q Where is the public use space on the development plan, in terms of the roof element? Where is it going?
A I don't know if we have an exhibit. We don't have an exhibit.
MS. ROBESON: Do you know?
BY MR. ABRAMS:
Q Can you show us on the development plan? I'm assuming that the building goes straight up in the air.
A Well, this is the roof. And I am pointing to the subject property. So this is the penthouse. So the access needs to be in the proximity of the penthouse, so you have access to it. So I anticipate that it's not going to be there because you don't have access.
Q So it will be towards the front portion which faces the street?
A It could be, it could be in the front. It could

be to the left or to the right, but in the proximity of the penthouse for the need to have access.
Q Will there be an parapet wall up there?
A The parapet wall around the -- no.
Q Now, how high from the floor of that roof to the edge of the building, is that -- in other words, I'm concerned about the safety. If somebody goes out on that roof area, I mean, is there going to be railings? Is there going --
A Of course there will be a railing, yes.
Q There will be railings up there.
A Yes.
Q Now, could you go back to, I think it's Exhibit 89, which was the site plan showing the loading spaces.
MS. ROBESON: I'm sorry, showing what spaces?
MR. ABRAMS: Loading spaces off of West Lane.
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q Okay. Now, the area in red, that is for what type of vehicles?
A Those are for loading of vehicles.
Q Okay. The garage space, that is for --
A The garage is just an entrance.
Q Just the red, outlined in red.
A This is the loading areas.

Q Yes. For what type of vehicles?
A I think it's a U-Haul panel van.
Q Okay.
MS. ROBESON: UPS?
THE WITNESS: U-Haul.
MS. ROBESON: U-Haul.
THE WITNESS: Panel van.
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q So no residents of the building use that area to access their parking spaces?
A There is a different access for the parking.
Q Okay. So there is, what, like a small loading dock at the end of the smaller --
A This is a loading area, a loading dock, and then adjacent to it is the entrance to the underground parking.
Q Okay. And how deep is that into the building?
A How deep is it in height?
Q No, feet, you know, going from the edge of the building?
A This dimension?
Q Yes.
A Yes, I have the numbers. Just one second. This dimension is 12 foot wide by 22 foot deep.
Q Okay. Is it a level area, or does it go in a

downward slope?
A This is flat.
Q Flat. Now, let's go to the portion above that, the garage entrance. Is that the entrance that the occupants of the building use?
A Yes.
Q Is that also the entrance that moving van is going to use?
A This one is access to an additional service loading moving space.
Q So will the residents and movers, service trucks use that larger space?
A Correct.
Q Now, is that level, or is that in a downward grade?
A To get to the level spaces, you have to use an incline or a ramp.
Q And how deep is that ramp to the loading dock?
A The ramp to the loading dock is what the code requires. And it is, to be exact here is eight foot for the first 10 feet, well, eight percent for the first 10 feet, 16 percent, another eight for the last 10 feet. And then you get to a flat area.
Q How much distance from the garage door entrance to the loading dock is that?

A From the garage, I don't know, but I can scale it, if you want an approximate number. So it will be 70, another 150.
Q 150 feet. How wide is this building?
A The garage -- you asked how much is from the entrance to the loading space.
Q Right.
A And I would say the number is around 200 feet. In other words, you have to drive into the building that much for the building.
Q How wide is this building?
A I don't remember that. I'm not sure. Yes.
Q Why don't you scale it off? Do you have a scale?
A Yes, I do. But if I may, is there a question other than the scale? The back is approximately 80 feet.
Q 80 feet?
A Yes.
Q Okay. So it's not 200 feet. So again, I ask you --
A You didn't ask how wide it is. You asked how much is from the entrance to the loading area.
Q Right.
A And I answered. 200 feet.
Q So it's 200 feet, yet the building is only 80 feet wide?

A Yes.
Q Okay. That's because you're going on a downward plane?
A Yes.
Q That's a pretty steep grade, isn't it?
A No. It's what the code allows. We are not doing anything that is against what the code allows.
Q Do you have any idea what the code allows in terms of a driveway to an ordinary single-family residential lot?
MS. HARRIS: Objection.
THE WITNESS: For a single family, no, because this is not a single family.
BY MR. ABRAMS:
Q I understand that.
A I do not know. If I design a single family, I will research the code. Right now, I'm designing this, so that's what I can testify.
Q Are trucks going to back into that area?
A the trucks could go front or back. But if I were driver, I would go front.
Q If you were a driver, you'd go front?
A Yes.
Q And you'd carry everything out the back and carry it all around?
A I don't.

MS. ROBESON: He didn't testify on circulation. So I would save that.
MR. ABRAMS: I just find some of these answers kind of interesting.
MS. ROBESON: Let's save that for your traffic engineer.
MS. HARRIS: And the civil engineer.
MS. ROBESON: Civil engineer.
BY MR. ABRAMS:
Q Okay. Now, when a building is constructed on ground that is at a higher elevation than the surrounding land, doesn't the height and the bulk and the scale of the building become more visible to passersby on the street, neighboring residents?
A If the building is built on a slope --
Q No. If the building is built on a ridge line, let's say --
A Yes.
Q -- higher than the surrounding area, does the building height, bulk and scale become more visible and pronounced to the surrounding neighborhood and people that are walking by that building?
A If a building is built on top of a hill, rather than on the bottom of the hill, by the nature of the geography, it would be more visible.

Q Now, isn't this building on a ground elevation along West Lane, which is among the highest elevation between Woodmont Avenue and Arlington Road?
MS. HARRIS: Objection. The architect didn't testify about elevations.
MS. ROBESON: He testified as to compatibility and height. And I think this goes to that.
MS. HARRIS: I don't think he knows the elevations.
MS. ROBESON: Well, he can say that.
THE WITNESS: Can you repeat, please?
BY MR. ABRAMS:
Q Isn't the proposed ground elevation along West Lane among the highest elevation on the properties between Woodmont Avenue and Arlington Road?
A The highest point of the street is probably here, which, and I'm pointing to 4325 --
MS. HARRIS: 4825.
THE WITNESS: 4825.
MS. ROBESON: 4825 West Lane?
THE WITNESS: West Lane. And then from this point, that would be the peak.
MS. ROBESON: And that's on Montgomery Lane?
THE WITNESS: On Montgomery, and then to slope back to Arlington Road and back to, or down to Woodmont

Avenue.
BY MR. ABRAMS:
Q What is that elevation point feet, as opposed to the elevation point on which building height was measured?
A I do not know.
Q Okay. Is it the architect's function to prepare drawings for buildings of certain heights and other dimensions?
A We are designing the building, yes.
Q You haven't done that yet?
A Yes, we did, and --
MS. ROBESON: Just a second. Let him answer, unless you want to, are you going to object?
MS. HARRIS: I was going to object and say, the civil engineer will get into great depth about the elevations of the surrounding areas.
MS. ROBESON: Okay.
MR. ABRAMS: Well, the question was, don't you, if you're an architect, don't you have to know the elevations around as well as how high your building is going to be.
MS. ROBESON: All right. Go ahead and ask that.
THE WITNESS: The answer is, yes.
BY MR. ABRAMS:
Q Okay. Now, in light of that answer, what was the elevation that you pointed to on Montgomery Avenue, and what

is the elevation that height was measured from for this building?
A For the subject property, the major eight was 335.80 feet.
Q Okay.
A As to the height of the other properties, I do not know.
Q Well, you pointed to the highest elevation --
A Yes, I did.
Q -- in the area.
A Yes, because walking the site, I know that that is the highest --
Q But you don't know specifically?
A I do not know specifically what the height is.
Q Now, when you design a building, do you consult the guidelines, objectives, and limits with are included in an area master plan or sector plan?
A Yes.
Q Did you do that in designing this project?
A Yes.
Q Now, the master plan or sector plan speaks of a transition in building heights. When you say point A and point B, what does that mean?
A That refers to a tenting between a high point to a low point. And what it means is that the buildings need to

fall within this tenting concept.
Q So basically you're talking about a tenting concept?
A Yes.
Q Now, was a transition in height achieved in this TS-R district prior to the filing of this application for this property?
A So the question is, what happened before we started the project? I do not know what happened. I mean, I do not know what other projects have done prior to our project.
Q Well, you were part of preparing the exhibits --
A Yes.
Q -- which have been put into evidence, which shows building heights for various projects, were you not?
A Yes, but it shows the context without, in other words, our analysis for the tenting was with our project.
Q Are you familiar with the Holiday project --
A Yes.
Q -- for this property?
A Yes.
Q And what was that?
A I mean, I know that was done in our office. Familiar is a relative term.
Q Do you know the height limits which were obtained

for the buildings and the height of the Holiday project?
A No. No.
Q Now, on page 84 of the sector plan, in the after version on the bottom of that page --
A Yes.
Q -- the building, I assume, is facing Arlington Road. Is that flat roofed?
A The lower left hand side --
Q Yes.
A -- is a flat roof. Yes.
Q Okay.
MS. HARRIS: Just to confirm, did you mean Arlington or Woodmont?
BY MR. ABRAMS:
Q Arlington. Isn't this Arlington Road?
A Actually, I don't know. This is probably Woodmont, based on the right hand side high-rise building, which is called the Chase, I believe.
Q Okay. So this is looking westward.
A This is looking westward. And I think that you can barely see a little building that probably is the library, at the end of the street.
Q Okay.
A Just a tiny --
Q On top of the building in the lower left hand

corner, is that supposed to be a representation of a green roof, the trees?
A I don't think that when this plan was done, green roof was in our vernacular yet.
Q Okay. You went over some of the paragraphs on page 40 of the sector plan. I think one of them was a step down of building heights from the Bethesda Metro Center?
A Yes.
Q To achieve compatible transitions. Now, isn't it a fact that the building heights on both sides of this property are lower than --
A The immediate adjacent buildings are lower, yes.
Q So the step down from the west, from the east, going down to the west, when it comes to this property, there is somewhat of a blip in the step down, is that correct?
A There is an accent, yes.
Q An accent?
A Yes.
Q An architectural --
A Is that an architectural step? Okay. Number three says, ''Achieve an infill character for new development by dividing large projects into several buildings. There has been no attempt to do that on this property, has there?
A Sure it was. First of all, large is again a

qualitative figure, not quantitative. So I don't think that you can qualify this project as large, looking at what happens on the street. I mean, after all, we have high-rise edge on this. So based on that alone, the project is not that large.
Then we do have architectural elements to address that very issue. We step the building back, and we do have an architectural element, the curving at the intersection of Montgomery and West Lane, which again is mitigating or trying to address this potential issues.
Q And number five, what sculptural elements have contributed to the visual interest in the skyline on the roof area?
A I think that the most dominant one is the curved concave entrance element.
Q Now, when this project was initially proposed, it did not have the step downs on the sixth and seven floors, is that correct?
A Yes.
Q Weren't those types of elements recommended or requested by the City Homes community, in meetings with the applicant?
A I know that some of the elements were requested, but I don't know by whom. It could have been by the staff or by the civic groups with an interest in the project.

Q Now, that occurred, that element occurred after comments were received by members of the Planning Board. Am I right?
A I honestly don't know.
Q You weren't there at that meeting?
A No, but I do not know with the time line of when things occurred.
Q Now, page 44 of the sector plan, the last paragraph and this first sentence, and I quote, in addition to the development of the urban and linear open spaces, there is a need to provide more traditional parks and green open spaces within the sector plan area as Bethesda continues to grow. Do you see that?
A Yes.
Q Now, in light of that language, does that fulfill, is the building as planned with the hardscape area in front of the concave cutout? Does it fulfill that language?
A First of all, I would like to address this in a larger context. When we design the building, we look at the sector plan, the zoning, or all the other elements such as fire safety code, in totality. We don't look and have a check list and say what we'll do. But it's not like one particular element makes or breaks. We have to look at the totality. So is there a way, or is there a possibility that one request gets into a conflict with another request. For

instance, is the desire to have a pedestrian meaningful and friendly street get into a conflict of creating a park? Is there a park responding to the need to increase density next to the Metro? So all these things need to be viewed in totality.

First of all, a park, I don't think that you can do in combining four lots. That's not really a park. I mean, if we talk about a meaningful place in which we can plant and we can landscape, can have a picnic or whatever, play, you cannot do the park under certain conditions no matter what.

But then, in looking at the totality and providing a respite, if you want, a place where you can break and you can socialize a little bit, yes, we are providing that in the spirit of the sector.

Q Apparently there weren't enough traditional parks, open spaces, when this was adopted within the transit station area. And they put this language in for a purpose. Now, by a 10-foot area in the front, which is a green space in the front, open green space, does that in and of itself meet this recommendation of providing more open space, traditional park area where people sit, have trees, relax, as we see.

A The 10-foot also need to be seen adjacent to the other semi-circular space that we created. So it's not just

one in isolation. So this complex of spaces, they allow for one to take a break, sit on a bench, have a conversation, meet friends, just read a paper. So in that spirit, we absolutely 100 percent.

Q Now, on page 83 of the sector plan, and the top representative buildings, do you see those?

A Yes.

Q And that page is entitled, ''Low-rise, high-density housing prototype.'' So what does that mean to you, when you look at that page and that portion of the page?

A What does it mean? I think that what this one shows, probably a guideline is the relation between the street and the other buildings is actually, if I look at the whole page, I think that they are again in totality of the page it shows that you bring the building to the street and you shift the private space in the middle of the block. And the top drawing is, in fact, a section through the right hand side, lower right hand side sketch.

Q So that is representative of low-rise high-density housing prototype?

A It is representative of certain type of housing problem.

Q How many floors are on those representative cross-sections?

A Six.

Q Okay. And you're proposing?

A Seven.

Q There's a little guy on the left hand, at the top of the drawing, there's a little guy going up stairs. Is that supposed to represent something?

A Is it okay to speculate on what is the intention of that guy?

MS. ROBESON: Just answer to the extent you know.

THE WITNESS: I suppose that that's an intention to show somebody who instead of accessing the first floor is accessing the second floor, which is a little unusual, but be it as it may.

BY MR. ABRAMS:

Q But it's an access point?

A Yeah, on the second floor, to go back to the first floor.

Q Now, were there ever bay windows proposed for this project?

A We are proposing a bay window reading.

MS. ROBESON: I'm sorry?

THE WITNESS: We are proposing a bay window reading. In other words, a disposition of windows to look like a bay window. So the way we group them, and the appearance of the window will look like what a bay window would look like.

BY MR. ABRAMS:

Q And was that to make the building appear more residential?

A Yes.

Q That has been deleted, has it not?

A No.

Q Are you sure?

A Let's go back to the middle page. I'm referring to Exhibit 106F. And I'm pointing to this grouping of windows that mimic a bay window.

Q The bay windows were a binding element.

A I do not know.

Q But they're no longer a binding element, if they were originally a binding element?

A I do not know. I can only point to the design.

Q Now, did you design the way by of West Lane, or was that done by the engineer?

A No that was done by the engineer.

Q Do you know whether the garage access is going to be secured in any way?

A I do not know. That is part of the building management. It can be secured, but I don't know if it's going to be secured.

Q You don't know whether there's going to be a gate there or --

A There is going to be a door.
Q -- a door there?
A Here is going to be a door, yes.
Q Now, if the Holiday project had a four-story element which proceed towards Montgomery Lane, and this applicant picked up lot 26 since that project was approved, is there any reason why a four-story element couldn't cross lot 26?
A Firstly, I did not work on the Holiday project. I know that our office has done it, but I did not work on it.
Q Did you consult any information on the Holiday project in your work on this project?
A I don't remember. I don't remember.
Q As an architect, you wouldn't look at the history, the development history of the specific property that you're designing?
A As an architect, I'll looking at the existing conditions on the site.
Q But you don't look at the approved plans for the site previously?
A No.
Q Now, the new circular entrance at the corner, I think Mr. Landfair testified that that was about 1,000 square feet total?
A Yeah, I'm not sure what he said.

Q You don't know how many square feet?
A Well, I'm not sure how he measured, but I know they are radius of that circle. That I know.
Q And do you know that part of that radius also included the 10-foot setback area which was originally in the first set of drawings?
A The circle, no. It's outside the 10-foot setback.
Q Now, who determined the height of the City Homes building to be 53 feet?
A I believe was, and I'm not sure, I believe it was done by the civil engineer, in documents provided by the civil engineer. But I could be wrong.
Q But you didn't determine that height?
A No, we did not.
Q If you were told, this is the number that you use in your testimony, correct?
A I'm sorry?
Q If you were told this by somebody else, you used that figure in your testimony?
A Yes.
Q Now, the 12-foot setback along Montgomery Lane, that was done at the suggestion of the Planning Commission?
A It was done as a, yes, it was done as a recommendation. But I'm not sure it was the Planning Commission or the city group.

Q Now, what was the purpose of the inset area?
A The purpose was to respond to a concern raised by either the Planning, the staff or the city zoning group.
Q Concern about what?
A I suppose by -- I don't know.
MS. HARRIS: Can we clarify what the question, what area he's talking about?
MR. ABRAMS: The 12-foot inset.
MS. ROBESON: You mean the scallop or the arc?
MR. ABRAMS: No, the setback along Montgomery Lane from the fifth, from the sixth, the seventh floor.
MS. ROBESON: Okay.
THE WITNESS: I do not know what the reasoning. I just know that it was a request.
BY MR. ABRAMS:
Q Would I have anything to do with the mass and scale of the building?
A I do not know. I do not know now what the reasoning was for making that request.
Q Were you ever advised the reason for it?
A I don't remember.
Q If the purpose was to break up the mass and scale of the building, has it fulfilled that purpose?
A Yes.
Q Would the fulfillment of the breakup of the mass

and scale of that building be enhanced if that 12-foot inset went around the West Lane frontage, as well as the Montgomery Lane frontage?
A I don't think it will have an effect on the appearance of the building.
Q You don't?
A I don't.
Q Okay. The Hampden Lane project, the big building, how close to the City Homes townhomes is that project?
A Just to make sure, are you referring to --
Q Along Hampden Lane and Arlington Road.
A So how close is Hampden Lane project --
Q Yes. How close are the buildings in the Hampden Lane project to be from the property line or the building line of the City Homes?
A Zero feet. How close is this to that?
Q Yes.
A Zero feet. It's like touching.
Q Okay. It goes right up to the property line?
A Yes.
Q And it's 71-feet high in a portion of that area, right?
A Yes.
Q What's going to happen to the view of somebody on one of those end units, closest to the Hampden Lane, trying

to look, I guess, south, southeast, southwest, or northwest out of their apartments?
A Can I ask you a question?
MS. ROBESON: Well --
THE WITNESS: No, but the reason I ask that, I didn't design this, none of this project. So what does it -- I mean, whoever --
MS. ROBESON: Okay, but to your knowledge, you do have to try and answer the question. And so if you're at the end, southernmost unit of City Homes, and you want to look northwest --
THE WITNESS: If you want to look northwest, it doesn't --
BY MR. ABRAMS:
Q No, southwest.
MS. ROBESON: I'm sorry.
BY MR. ABRAMS:
Q If you are in, and I'm pointing to the southernmost units --
MS. ROBESON: Of City Homes.
BY MR. ABRAMS:
Q -- City Homes. If you want to look either in a southwest direction, or a southeast direction, what are you going to see?
A You are going to see this building, West Lane --

Q So basically, the only relief that those people down here are going to have, is a view across the alley and the commons in front of their property, the street, and this building here. So that's the limitation of their view?
MR. KNOPF: This building here, please?
MS. ROBESON: The subject property.
BY MR. ABRAMS:
Q The subject property.
A Well, no, they can look across the alleyway.
Q To another building.
A But that was the case when the building was designed and when they bought it.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Thank you. Mr. Knopf. Round two, Mr. Radulescu.
CROSS-EXAMINATION
BY MR. KNOPF:
Q If I remember correctly, part of your testimony, you said that among the changes in the building from the original proposal, there were articulations or some other changes made on West Way to make the building more compatible, or whatever. I want you to focus on those. I'm not quite sure what those are. If you could show us something, or explain verbally what is going on?
A Yes, I can refer to Exhibit 106B. And I'm

pointing to a line on the east side of the building, going north/south. That line, the perimeter of the building, that wall was straight, and now it has indentations.
Q And how big are those indentations?
A The depth is about five-foot, I would say.
Q I'm sorry, but indentations every foot, every 50 feet.
A Oh, yes.
Q I'm just trying to understand what this is.
A Yes. I think it is 24-foot, 12-foot, 24-foot, 12-foot, 24-foot.
Q And what is the purpose of making those indentations? What were you trying to achieve by that?
A Well, we're trying to respond to a concern raised by somebody outside our team, and to make the building even more residential.
Q Would I be correct in saying, by making indentations in the -- let me ask, how long is that? Are we about 100 feet? Or just roughly?
A Probably, I would say, yes, let's say 100 and something feet.
Q So the purpose of making indentations you said every 20 some feet, is that --
A Roughly every 12 to 24 feet, there is a 12-foot indentation, or a setback.

Q A setback. Does that sort of make the building appear not as one wall, but breaks it up into separate --
A To give it even more residential feel, that's what we have it for. To enhance that residential feel.
Q Well, I understand, but I'm having trouble understanding what you mean by residential. I mean, because it breaks the wall up into separate units to make it appear residential?
A No, no, no. We design the building to look residential, but there were some opinions that it is not residential enough. So to address those concerns, we have broke down that length of the wall even more than it was broken down before.
Q Into separate --
A Into separate readable independent, yes --
Q And did you, readable independent. That's what I wanted to know. And did you do the same thing along Montgomery Lane?
A Montgomery Lane is a very short --
Q No, the question is, did you do the same thing along Montgomery Lane?
A Yes, we did but we did it differently.
Q How different?
A Yes.
Q What did you, did you break it up every 12 to 24

feet?
A No, we did one big break.
Q One big break?
A Yes.
Q Where is that one big break?
A It is this.
Q The corner.
A Because it is semi-circular break, that was it.
Q So not counting the break, I know we've been through this before, but refresh my recollection, what's the length along Montgomery Lane from the western boundary, western corner, to the indentation, not --
A That dimension?
Q Yes. Was that 80 feet, if I remember correctly?
A That dimension is 70 foot eight inches.
Q 70 feet. All right.
A Not 70, 70-8.
Q 78?
A Eight inches.
Q Eight, sorry. Thank you. So that's not broken up in to 12 or 24?
A Yes. 70, no.
Q It's just one solid?
A Well, it's not solid.
Q I mean it's --

A It has a reading of bay readings and regular windows.
Q Bay windows. Okay. Now, is there any, would you agree with me that if you made some indentations such as that were on West Lane, and actually made them, I don't know if it's the right term, deeper than one foot, it would be more like separate indents, more like a townhouse?
A I do not agree.
Q You don't. All right. Well, let's look at the building next door. You have 106. You have looked at that. It was 106F and 106G. If you would put both of those up, I would appreciate it. They're both color.
A Well, I mean --
Q One is the aerial and the other is the various buildings. One is the aerial.
MS. HARRIS: I think it's in there. I think it's in that group.
BY MR. KNOPF:
Q Thank you. Looking at 106F, I'm focusing your attention now on 4825, I think it's 4825 Montgomery Lane, although it's been referred to as West Lane. I believe it's Montgomery Lane. Whatever, 4825. Wherever that is. I'm looking at 106F. About how, what's the frontage along Montgomery Lane on that? Is that 70 feet, 50 feet, 40 feet?
A You're referring to --

Q Yes.
A What is the frontage? I don't know. We can scale that. We didn't design that, sir.
Q Right. Is it more or less than the frontage that you have on your building, without counting the curve?
A Just by looking at this Exhibit 106F --
Q Yes.
A -- it looks like the brick area is almost the same.
Q You're estimating?
A Yes.
Q Okay. Now, looking at 4825, isn't that designed in a way so that its broken up so that there is architecturally, or you can explain it to me, because I don't know the terms --
A Yes.
Q -- architecturally or setbacks or something? It's broken up in to what, at least three or four different buildings?
A Gladly. This is put on this street, you know. It's a shoebox which has been clad. There's no relief. There is no setback. It's just a straight exterior building with a solid base with garage doors.
Q No, I'm -- sorry, I'm asking you to focus on Montgomery Lane, not West Lane.

A Montgomery Lane. Yes, sir.
Q That's why I find it helpful to look at 106F.
A Okay. So going back to --
Q I said 106F. When I look at that, don't I see on one section, say to the west, it has one kind of windows. When you get in the middle it has another kind of windows. And when you get to the east it has another kind of windows? So it's sort of reads, it reads as three -- it breaks up this into sort of like three units, doesn't it? Or am I reading that wrong?
A No, it reads as three windows. I wouldn't say --
Q I mean, three units?
A No, it reads as three windows.
Q Three windows.
A But you pointed out, there is one window, second and third.
Q No, I -- yes, there's three windows to the west facing Montgomery Lane. Is that correct?
A Yes.
Q Right. But then, when we go to the east, is the western portion set back? Is that what those -- let me, if I may approach. It may be easier.
MS. ROBESON: You may.
BY MR. KNOPF:
Q I don't know the right terminology. My reading is

wrong that this, sort of what would you call that feature? Brick or stone?
A Cornerstone.
Q It's what?
A Cornerstone.
Q Cornerstone. Does that mean that this is set back, the western part is set back?
A Well, the cornerstone doesn't mean anything. The drawing shows the setback.
Q Oh, so it is setback. So a portion of the buildings is set back?
A Yes.
Q And would I be, would it be fair to say that it's set back more than a foot?
A You tell me.
Q No --
MS. ROBESON: You can't, you can't say that. You have to try and answer his question.
BY MR. KNOPF:
Q That's not an indentation is it?
A Even if I didn't design the building.
MS. ROBESON: Well, if you know.
THE WITNESS: I don't know. I didn't do it. I don't know as a fact what that dimension is.
MS. ROBESON: You know it's set back, but you

don't know by how much?
THE WITNESS: Yes.
MS. ROBESON: All right.
BY MR. KNOPF:
Q What I'm trying to get at, I don't want to prolong this. I'm trying, doesn't this building looking at 106F, doesn't the building as it fronts Montgomery, and you're looking straight at it, appear to be divided in some way, or separated into three separate parts?
A I would say that the building has made no attempt to break the mass in a way compatible to actually the rest of the street.
Q I see. But would you agree with me, it does make attempt to break the mass? You may not like the compatibility part.
A No.
Q No?
A Because breaking the mass is not just cut in the building. You are trying to achieve a goal, is that correct?
Q I'm trying to reduce the bulk and mass of this facing this, and would you agree with me --
A I understand.
Q -- that by varying the window treatments, by having a, I forgot what you called it, but the stone work

going down --
MS. ROBESON: Cornerstones.
BY MR. KNOPF:
Q -- cornerstones, that that is, that is a breaking of the mass?
A No, I disagree completely.
Q I see. All right. Let me, now, is it not, is that, do I see a doorway? I'm sorry, I'm looking at, this says 81, but I think it's 106, 106E, I think.
MS. ROBESON: That's 81?
MR. KNOPF: Well, this says 81. I think it was 106.
MS. HARRIS: The difference was the most recently one, which is 106 something, had the names of the buildings at the bottom.
MR. KNOPF: I was using, that's why I was referring to 106.
MS. ROBESON: I'm sorry. I missed it.
MR. KNOPF: Well, it doesn't matter. This has the same pictures. I just, I just was surprised to see 81, when I said for the transcript purposes that we were dealing with 106F and 106G.
MS. ROBESON: Right. I understand. Is it 106C?
MR. KNOPF: I think it's F and G.
MS. ROBESON: F is the aerial. G is surrounding

an approved TSO?
MR. KNOPF: Yes, that's what this is.
MS. HARRIS: That's it.
MR. KNOPF: Yes.
MS. HARRIS: Can you put it up?
MR. KNOPF: No, we can use this. It's the same.
MS. ROBESON: Well, I'd like the other one, just for the record. It's easier when we're referring to the building names.
MS. HARRIS: 15, Marius.
THE WITNESS: 15.
MS. HARRIS: Yes, it should be 15.
THE WITNESS: That's 81.
MS. HARRIS: No, that's it.
MS. ROBESON: We had it this morning, I think.
MS. HARRIS: Yes, we did. Try seven, Marius.
MS. ROBESON: Well, I mean, he can proceed with 81. I was just -- now, we turned one over. No, it wasn't that one.
THE WITNESS: Got it.
MR. KNOPF: Good for you.
MS. ROBESON: Now we're looking at 106G. Correct?
MS. HARRIS: Correct.
MS. ROBESON: That's what it says.
MR. KNOPF: 106G. Just to make the record clear,

4825, it does say Montgomery Lane.
MS. ROBESON: Oh, it does say Montgomery.
MR. KNOPF: Yes, it is Montgomery Lane.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q Would you agree with me that --
MS. HARRIS: Can you move back a little bit?
BY MR. KNOPF:
Q Sorry. The depiction of 4825 Montgomery Lane on 106G basically is an orientation looking into West Lane rather than looking at the building from the front into Montgomery, from the front of Montgomery?
A I wouldn't say. I mean, I would know what orientation it is now, based on that image.
Q Well, would you know whether a depiction in the lower right hand corner of 4825 Montgomery Lane, is that an entrance way, a doorway there?
A It looks like a, it looks like a door, yes.
Q Okay. All right. Now, the, to refresh everyone's memory, the number of dwelling units per acre for this site, if I'm correct, it's 135?
A Yes.
Q And the sector plan, would you agree with me that the sector plan calls for a range of a minimum of 45 dwelling units, and they say would maybe average out at

about 100? Do you recall that, in the sector plan?
A I do not know.
Q You don't know?
A No.
Q But you've nevertheless concluded that you don't know but you concluded that this did meet the sector plan's density requirements without knowing that?
A When we set out to design the building, we use all the applicable codes or regulations. The fact that one, the building incorporates those, I really cannot remember all the names or all the where they came from.
Q All right. Well, then, let me do this another way. I believe you, part of your testimony, you explained that if you lowered, took off a floor of this building, it would be harder to get the number of units you want?
A It would be harder to get the square footage necessary for the bonus density.
Q For the bonus density. Well, it would harder, therefore, it would be harder to get the total number -- well, back up. Couldn't you have, if you had a -- how many MPDU's does this building provide under your proposal? Is it 15 or 18?
A I believe it's 18.
Q 18. All right. So if you had 100 dwelling units of a size, smaller size of dwelling units than the average

size you're proposing here, couldn't you put in another 18 MPDU's and still have say six floors?
A Well, I think that if I read the code correctly, at 100 units, the MPDU's will be only 15.
Q Excuse me. Okay. Whatever the math. 120.
A And then the 15 percent is based not on any number of units. It's based on getting bonus density. And the bonus density is based on the net lot. And the net lot is based on FAR. So there's a whole mathematical calculation. We start with that, not with the number of units. The number of units results based on those facts. The FAR --
MS. ROBESON: Well, I think when you say that you have 120 units, you must have a size unit. Like I've had other architects testify that they use, I forget what it is, 1,000 square feet per unit to design the building. So you must allocate that space to come up with a total unit count. You must allocate a size of units.
THE WITNESS: Yes, but what I wanted to say, the process starts with what's available. And that is a total square footage, based either from --
MS. ROBESON: Right. But I think what Mr. Knopf is asking is, could you get the same number of units. Don't, say you're not designing to fill in the maximum FAR. Okay. Just pretend you're not filling in that 3.05. You are simply designing for X number of units. I think his

question is, is it possible to design smaller units, and not have this in the same amount of units in six floors?
THE WITNESS: You can design smaller units or larger units. So a number of units can result in a smaller or a larger building.
MS. ROBESON: That's what I wanted to know.
BY MR. KNOPF:
Q So we could get, let's say, to get 18 MPDU's, we have to have 120 total units. Am I correct to say, you could get 120 units in a seven-story building, or you could get 120 units in a six-story building, but the units obviously would be smaller in the six-story building?
A I'm afraid that my answer needs to be put in the right context. In other words, you can say yes or no to a question.
Q Yes, that's what I want you to do.
A Yes, but the --
MS. ROBESON: That's what you have to do. I mean, if you can do it, you are supposed to answer. I already heard what you said about the context, and I understand that. But now you need to answer his question, and just answer his question.
THE WITNESS: So the question is --
BY MR. KNOPF:
Q Could you get the same --

A Can I --
Q I'm sorry. Go on. You remember the question.
A Can I get the same amount of units in a smaller building?
Q Yes, but with the understanding that they would be, the average unit would be smaller than it would be if it's in a seven-story building. The six-story building would have smaller units than the seven-story.
A I believe, I can say no because then the units would be at the size that is not marketable.
Q Okay. Let's back up.
MS. ROBESON: So what is the marketable size?
THE WITNESS: I believe that I would just say 1,000 average. But there are units that are two-bedrooms, that are one-bedroom, but --
MS. ROBESON: As an average.
THE WITNESS: I do know, it would not be specific to this project, I would say that depending where you are, if you are designing in downtown or in New York or in the, let's say Gaithersburg, would be the size --
MS. ROBESON: Wait a minute. You just said that if you reduce the size, they units wouldn't be marketable.
THE WITNESS: Yes.
MS. ROBESON: So you must have an idea of some marketable size.

THE WITNESS: Right. And I will say that what we have right now on the drawing is in the interest of numbers is what the team believes is a marketable result.
MS. ROBESON: But do you know, do you know if smaller units would be marketable?
THE WITNESS: That, I would say that is not my role to define what is marketable and what is not.
MS. ROBESON: That's fair.
BY MR. KNOPF:
Q I see. Well, let me ask, on the Exhibit 106A, which is the development plan, it lists something like five efficiencies, 29 one-bedroom, six, 42 one-bedroom with den, seven one-bedroom, I'm sorry, 26 two-bedroom. Is your understanding that what's set forth here is in stone, in other words, you know that only market rate you can only have five efficiencies. You won't be able to sell six?
A I don't believe that is set in stone, but I don't, this is, again, the program doesn't come from the architect.
Q I see, but from an architectural expertise, not from a marketing expertise, would you agree with me that a six-story building can have the same number of units as a seven-story building, but they would just be smaller?
A Hypothetically, yes.
Q All right. Thank you. Okay, now, one other thing. But obviously, as you get to a smaller building,

less stories, less square footage, you're saying, your testimony is, it becomes more difficult to put in more units because you're saying there's a market considerations that come into effect?
A It's more difficult. Yes.
Q Yes. Now, are you aware, you've read the sector plan, correct?
A Yes.
Q And the sector plan recommends on Montgomery Lane that the stories, they average from three to six stories, is that correct?
A On Montgomery Lane? No, I don't --
Q No. Do you not recall the urban village concept?
A Right now I don't.
Q Well, let's --
MS. ROBESON: You've browbeat him too much. You remembered it before the hearing.
BY MR. KNOPF:
Q Well, just work on the assumption that there is a three to six-story recommendation for along Montgomery Lane. Would you agree with me, then, that if the sector plan talks about 100 foot, sorry, 100 DU's in the transit station area, so all of Bethesda, would you agree with me that perhaps the sector plan was not calling for the maximum number, or even the average number of dwelling units on Montgomery Lane,

since they're shrinking it down to three to six stories, that perhaps the sector plan, talking about the whole transit station district was saying, you've got to put more in some other place where we don't have that height limitation?
A I would say that the sector plan talks about the transit. And then as you go some other place, meaning you still need to be within a certain distance from the transit areas.
Q But the sector plan, assume it talks about a minimum of 45 dwelling units. And the transit station, are you aware of how many units, total, you can have in the transit station zone, TS-R zone?
A How many dwelling units in the total TS-R zone?
Q No, per acre?
A Well, I think that I --
Q Are you aware that --
A -- I wrote that there is a maximum of 150.
Q Right. But would you agree with me that by the sector plan, assuming it's correct, because I understand you don't recall, the sector plan is calling for three to six stories along Montgomery Lane, that it was not home for the maximum of 150 dwelling units along this area, or perhaps not even 100, which they said might be the average?
A Yes, but the zoning, my interpretation is clear,

that you can exceed those numbers if you provide MPDU's.
Q I understand. But are you suggesting that they can exceed the three to six story limit to unlimited heights, up to 100, up to 150, if, or whatever --
A Well, I think that --
Q -- height limit as long as they make the MPDU's?
A I believe that as long as you look at the totality of the skylines, and you are in that, you can exceed to fulfill the goal of the sector plan. Yes.
Q Right, but the goal of the sector plan is, the whole sector plan area, including the large area that has the TS-R zone, is that correct?
A You're still specific now, and it's too -- sorry but it's too legalistic. What --
Q Well, would you agree with me that the goals to be achieved are not all, not the total number of units the goals seek to achieve are supposed to be put on one street, but are supposed to be put all around the TS-R zone?
A But we are not, we are not designing other streets. We are designing just one building.
Q Right. Now, just to look at, and I forgot what the number is, the one behind you, 106 --
A 106G.
Q Okay. Now, the building in the left hand corner, Hampden Lane, I believe we've been referring to that, right?

A Yes.
Q And you, if I remember your testimony correctly, you said that you were looking at that building and keeping in mind how you would design your building, to try to make it compatible with the buildings in the area?
A We look at the overall concept.
Q Right. So you relied on that to some degree to see what's going on in the area?
A Yes.
Q Okay. And would you agree with me that that building on Hampden Lane looks across Hampden Lane into commercial strip shopping center?
A Yes.
Q So there's quite a difference in what one might architecturally create on one side of a street that looks into commercial, as compared to what's going on on Montgomery Lane, isn't that correct?
A Right, but the back doesn't look into a commercial street.
Q You're not looking at the back here. Let me get the front.
A We are talking about one building. There's the back and the front. And the impact, the impact would be around the building, not only one side.
Q Well, let's take a look at another building, for

example. On the right hand corner you have 4901 Hampden Lane. Now, as you know, just let me reflect for the record, we do not agree that that is an accurate representation of what's going on. But assuming, assuming, I understand you relied on that representation, and began trying to figure out whether your building was compatible, the side of your buildings, is that correct?
A We rely on all of this, yes.
Q Right. Now, doesn't that building, 4901, the view that we have, doesn't that face across Woodmont?
A Yes. Yes, it does.
Q And could you, and could you go to the other exhibit and explain your exhibit? What are you looking at across the street on Woodmont? Isn't it solid commercial office building type things along that street?
A What I believe, that this is residential.
Q Right. But when you look behind and you look north, it's a solid canyon of commercial and --
A Well, up to a point, then this is canyon residential. This is canyon residential. So it's a mixed canyon.
Q But it's quite -- right. Okay. But there's not a canyon, not yet anyhow, on Montgomery Lane?
A No, it is not going to be --
Q Okay.

A -- unless somebody builds another Edgemoor on the other side.
Q Thank you. I got a little bit lost, and if you bear with me, I'm going back to the loading and those areas because I couldn't quite find that. If you could find that, you had an exhibit with red markings on it which showed the loading areas, which you were using.
By the way, as long as you are looking at that, you talked about bay windows, that reads as a bay window. Why don't you put in a real bay window?
A That would decrease the setbacks. So we would project closer to the surrounding buildings.
Q But if you pulled the building -- how far out would a bay window stick out, a real bay window?
A It probably depends.
Q But the minimum, that it looks like a real one, not a reading one. Six feet, 10 feet, eight feet, five? I'm just --
A No, it would be in the order of maybe 18 inches to, depending on the scale of the building, of course, but if you look at the, I don't know, there are no other, but single-family home would be that big.
Q That big meaning --
MS. ROBESON: When you say that big, no, it's okay.

THE WITNESS: It would be, let's say 18 inches, two feet.
MS. ROBESON: 18 inches.
BY MR. KNOPF:
Q Two feet. All right. So if we set the building back two-feet more from the property line, you could still put in two feet of bay window, and we wouldn't be protruding into the setback.
A If the goal would be to check a number, in other words, to judge a building by the number of feet, and not look at any other aspect of the building, what you want to achieve, what the goals are, it probably is correct. But that wasn't our --
Q I want to understand. That was my idea, not yours.
A So what is the number of exhibit that you are --
Q Well, it's 106A marked up with the --
A 106A.
Q -- but I don't know that that's the one that has the markings on it. It's the same plan with red markings on it. Mr. Abrams asked you a number of questions about that.
MS. HARRIS: Is that the one you wanted, Mr. Knopf?
MR. KNOPF: Yes. Yes.
MS. ROBESON: And what is that? 80?

THE WITNESS: 89.
MS. ROBESON: 89.
BY MR. KNOPF:
Q Sorry. You explained this, but I'm just a little bit lost. There is a garage loading area, I understand, going down into the garage. And then there is something I will call a surface level loading area. Is that all right to say? Could you point that -- right. Now, is that, that's into the building?
A Yes, into the building.
Q So there would be a door or --
A There will be a door, yes.
Q I thought we had testimony from Mr. Landfair that when one made the three, the hammerhead turn, they would have to back up into that loading area to turn around. Am I misunderstanding that?
A I don't know what Mr. Landfair said.
Q But if there's going to be a door there, they obviously couldn't.
A Well, if you say you couldn't, that means that you cannot get into a building unless you have a door.
Q No, I mean, somebody not getting into the building, just turning around, not using that loading area, just wanting to turn around so they could use the --
A I don't know what Mr. Landfair said.

Q Okay. And you said that was, I believe, 22 feet deep?
A It was, I believe, it was I believe 22 by 12. I have to go back to the notes.
Q Okay. That's what you did, I agree with that. That's what my notes reflect, yes.
A Okay.
Q Now, if somebody is unloading there, what, I guess at the end of the 22 feet, if there is what? So what do you do when you unload? That's what I'm --
A You, I figure there is a door, and you get into a corridor and you get into the building.
Q So there must be an elevator there, or no, do you have to go down to the garage to use that elevator?
A No, no, no. You can go back to where the elevator is. But through the building.
Q To get to the elevator in the front of the building, toward the front of the building?
A Yes, where they are there. Where the elevator is, yes. So you unload and you walk what you unload to the elevator.
Q Through the lobby?
A No, not through the lobby, through a corridor. The lobby is --
Q If I'm unloading furniture, for example, how do I,

how do I -- I thought you said that they may be able to unload furniture here.
A Yes. You just unload the furniture, and you push it or you carry it or whatever you do, and go to the elevator. You don't go to through the lobby. The lobby is here. Okay.
Q Is it the same elevator lobby?
A I think I can explain.
Q I think that's what I'm asking.
A The elevator is in between the loading dock and the entrance. So if you come from one side, you come from the entrance to the elevator. You come from the other side, from the loading dock to the elevator. You don't have to cross into the lobby.
Q So actually, if you move the elevator a little bit further away from Montgomery Lane, you'd be closer to the loading area?
A But further away from the entrance.
Q I understand. Well, that reminds me, and thank you for reminding me, the building, I'm sorry, the building in depth from Montgomery Lane to the end of the building footprint, yes, how long is that?
A I believe it's 209 feet.
Q 209 feet.
A But I will rely on what has been submitted rather

than on my --
Q Well, just roughly. Let's just say roughly --
A Yes.
Q -- 200 feet. I'm not trying to do this exactly. Now, there will be units toward the rear of the building, is that correct?
A Yes.
Q And what's your rough estimate of somebody in the last unit, how far would they have to walk to get to the elevator in the front of the building?
A Let's say they'll have to walk two-thirds.
Q Two-thirds, so 170 --
A No, it's two-thirds minus the depth --
Q Thank you.
A -- of the unit. So it's from 209 minus 60, 149, divided by -- so about 70 feet. I don't know. I'm just saying.
Q 70 feet.
A It's just --
Q Roughly. Would you agree with me, though, if you move the elevators back from Montgomery Lane, that they would be closer to those back units?
A But this unit would be further away.
Q I understand. So it's a trade-off. Some units are closer, and some units aren't. Okay. Thank you. Now,

to get back to my original question, sorry. I'm a little -- now, is it your understanding if a UPS truck, just delivering packages, would not be using the loading dock? They would be using the lay by, is that it?
A Yes, because a UPS truck would be there, and I don't want the traffic can speed more by, but that's why.
Q Okay. Just one last thing. I'm totally lost. You got my truck in the basement, but I'm not quite sure why I have to go 120 feet. I'm not going down 120 feet. You said there was some huge, kind of a number, some huge number of footage that the truck had to go to get to the loading dock. And it was more than the width of the building. Could you explain that? That's what I'm a little bit lost on. I don't understand that.
A Well, I don't see the relevance of how much a truck would have to drive into the building to park.
MS. ROBESON: But that's not up to you. I'm sorry. You said it was 200 feet.
THE WITNESS: Yes, I gave a number. Yes.
MS. ROBESON: And can you explain --
MR. KNOPF: Yes, please.
MS. ROBESON: -- how you arrived at that number?
THE WITNESS: Yes. I calculate, so from the end of the building, which is on the northeast corner, so you go into the building. You go down the ramp, then you make a

turn, and then you make a turn and then you park somewhere here. So then I approximated a height, the length from the entrance to where the van would start.
BY MR. KNOPF:
Q I see, because -- now I think I understand, because that's where the elevators are to take the things upstairs?
A As I mentioned before in that graphic explanation of how we packed the building. In trying to pack the building in the most efficient way, we found not only that the elevators would occupy less space if they are where they are right now, but also that the loading dock, because how the building is configured, will be a large area that they could use. So it's not only just a space. It's more room to unload with boxes, whatever, unpack. So, but then you have to just drive a few more feet otherwise.
MR. KNOPF: And I presume, I'm going to ask Ms. Harris, this, we'll have, I don't want to ask him questions, if we're going to have a traffic person that can explain this, or am I wrong?
MS. ROBESON: The on-site circulation?
MR. KNOPF: Yes.
MS. HARRIS: He will testify to the on-site circulation, but the civil engineer prepared the turning radius diagram. And so those questions should be directed

toward the civil engineer.
MR. KNOPF: So he would explain the loading and unloading area in the basement? I just don't -- or do I ask this witness?
MS. ROBESON: Someone is going to explain the loading and unloading, how the circulation, the on-site circulation.
MS. HARRIS: Yes, that will be Mr. Irish.
MR. KNOPF: Okay, because I have other questions. I don't want to ask --
MS. ROBESON: Yes. Thank you.
MR. KNOPF: But if I weren't going to have someone, I was going to stay with him. All right. Just a minute. Let me see if I have any more questions. By the way, will the civil engineer or someone be testifying as to all of the exhibits that Mr. Abrams asked questions about that the witness said he didn't prepare? Is somebody going to then validate these exhibits?
MS. ROBESON: Well, Mr. Radulescu, did you prepare that aerial?
THE WITNESS: Yes.
MS. ROBESON: And that was based on other information that was provided to you, correct?
THE WITNESS: Yes.
MS. ROBESON: And what about the elevations, the

ones with the geese? Remember that.
THE WITNESS: That was prepared by a renderer, based on the information that he got from the team.
MS. ROBESON: Okay. And that was, I'm sorry, prepared by who?
THE WITNESS: A renderer. A professional renderer.
MS. ROBESON: Okay. Was it prepared under your supervision?
THE WITNESS: Yes.
MS. ROBESON: And what about the one with the line showing the height, the division?
THE WITNESS: This one, we prepared the exhibit, however, the location of the line came from the team, and the photographs --
MS. ROBESON: Who on the team?
THE WITNESS: Well, the civil engineer told us what the 35-foot zone was.
MS. ROBESON: Okay. All right.
THE WITNESS: The picture came from what I think is a public record.
MS. HARRIS: Correct.
MS. ROBESON: Yes, the site plan.
THE WITNESS: But we put together that image.
MS. ROBESON: Okay. All right. So some of your

exhibits are based on the information that the civil engineer provided you.
THE WITNESS: Yes.
MS. ROBESON: But you supervised the preparation of these?
THE WITNESS: Some of the exhibits, just like that one or this one.
BY MR. KNOPF:
Q Speaking of, thank you for reminding me. Speaking of the birds, that picture that we have of the birds, the photo, if you could get that one, please? Could you explain to us where, if somebody were taking that picture, apart from the birds and the trees, where would they be standing? Where was that picture taken from? What were we viewing this from? Were we on the opposite side of Arlington?
A This is Arlington Road.
Q Right. But I mean, is the person, where is that view from the standing in the library parking lot? I'm trying to understand who would see that? Is that realistic. Is anybody going to be able to even stand where that picture is taken from?
A Well, if nobody was standing, how would they take that picture. So by the fact --
Q This is all computerized, is it not?
A The picture is. In other words --

Q The computer didn't have to stand someplace then.
A Well, these buildings are real buildings.
MS. ROBESON: Well, let me do this. I thought you testified that you took an existing picture.
THE WITNESS: We took pictures from the surrounding area, and we used those in the preparation of the exhibit.
MS. ROBESON: Okay.
THE WITNESS: So we have, I don't know, 100 pictures from around this. And we choose picture that shows the street.
MS. ROBESON: Does that answer your question.
BY MR. KNOPF:
Q Well, not, I'm trying -- after this project is built, let's assume it looks exactly as you depict there, where would one have to be to see that view? Where would one have to stand? Does that help?
A We'll have to see to, yes, to stand on Arlington Road on the west side of Arlington Road.
Q All right. And they would see from there, then, the top two stories of your building, even though they are set back. Is that correct?
A From Arlington Road, yes.
Q And I believe you said that you are building, you're not trying to hide the top two stories. People can

see them.
A Right.
Q Now, if I'm walking across the street, where, in your view, if any place, and I'm walking down Montgomery Lane, where would I stop seeing those top two stories?
A When you are in front of the building.
Q We're directly in front of the building?
A Yes.
Q So that I'm walking toward the building, either from Arlington or from Woodmont, I could see the tops?
A Yes.
Q Okay. Thank you. That's helpful. Okay. Now, you mentioned on the rooftop there may be some use, and I want to get into it, either private or public use space on the rooftop? Correct? You're considering that.
A Yes. Access to the roof.
Q Right.
A The residents have access to the roof.
Q Now, if that's the case, would that mean that the rooftop penthouse would have to be higher, because the elevator would go up to the roof?
A Yes.
Q So it would be higher?
A The elevator will have to, will have to stop at the roof, yes.

Q So then that means we're talking about another 15 feet above what we have now?
A For the elevator housing, yes.
Q So we already have, if I'm not mistaken, I think you estimate, someone estimated, let me rephrase that, I think Mr. Landfair said we were talking about 15 feet for the penthouse. Now we're saying that we add another 15 feet --
A No, no.
Q -- to bring that elevator up?
A No. 15 foot will be the top of the elevator hoist weight.
MS. ROBESON: I'm sorry, I couldn't understand the last word you said.
THE WITNESS: Hoist weight.
MS. ROBESON: Okay.
THE WITNESS: Which is basically, the elevator has some space from the last stop to allow for mechanical from the gears and whatever they have.
MS. ROBESON: Okay.
THE WITNESS: So that one is always higher than floor to floor.
MS. ROBESON: I see. So how high would, approximately, the penthouse be, if that's active public use space?

THE WITNESS: The penthouse, I believe we have it at 10 or 11 feet. But the elevator sticks out to 15 feet.
MS. ROBESON: All right.
BY MR. KNOPF:
Q And that, with the understanding that the elevator may have to go all the way up to the top, to the rooftop level?
A That includes where the stop is, yes, includes the stop of the top floor.
Q You've been talking about having a green roof, or some portion of the roof being green. Is, pardon my ignorance, but there is an LEED, is that what it's called?
MS. ROBESON: LEED.
MR. KNOPF: LEED. Yes.
MS. ROBESON: Certification.
BY MR. KNOPF:
Q LEED certification. Does that have standards for green roofs?
A No. Green roof, to achieve LEED, and this is outside the subject here, but you have several tools that you need to achieve. And you can do a green roof, but it's not necessary. They don't, LEED doesn't require, it's not a prerequisite to achieve LEED.
Q Right, but if one says a green roof, is that in the architectural are, or some other area, imply that

there's a certain definition that has, certain standards that have to be met? Or one can just say, I have a green roof, and I put a potted palm up, and that's my green roof. And somebody else has something else
A No there is, a green roof is an integral part of the mechanical or planning in this case, the calculations for the building. In other words, it's not something you just throw away. It needs to be calculated. In other words, it's a precise element into the building.
Q And that's what we're going to have the civil engineer talk about?
MS. HARRIS: Yes. It's a storm water management component.
MR. KNOPF: Okay.
MS. HARRIS: And Mr. Irish will testify to that.
MR. KNOPF: Thank you.
BY MR. KNOPF:
Q So the remainder, any portion of the roof that's not a green roof, but may be a public or private space, that's just up to the discretion of the management as to what they want to put there? That's not needing some kind of definition like a green room?
A No, that will not be part of our green roof.
Q Okay. Just give me one -- looking at 100, the exhibit on the right, I think it's 106F, yes, the -- just

trying to see. Your penthouse feature, that's a product, where that's located on the roof is a product of where the elevators are, is that correct?
A The elevator overrun, which is a small link, a small area, that represents that elevator.
Q And do you have something on the rooftop structure for the HVAC system?
A We are going to have, yes, also some other vents.
Q Is that depicted there, or it is not?
A No, none of the buildings show any mechanical representation of what the buildings have. None of the, I would say, proposed buildings that we depict here, go into that detail.
Q Well, let's look at the existing building.
A Yes.
Q Well, let's back up first. Let me stay with your building. Do you mean, in addition to this roof, do I understand you correct that this penthouse feature relates to the elevator?
A Yes.
Q And there are going to be additional penthouse features that might related to the HVAC?
A No, that will not be penthouse, but it will have some mechanical equipment.
Q And will that be, what height will that be,

roughly?
A I mean, four feet. Four foot six. Three foot 10. Around that number.
Q And what are we talking about? Five feet in length? 25 feet in length?
A I don't know that. We didn't go through a mechanical analysis. But generally speaking, we will have some mechanical to cool the building.
Q I see. But now you say, I understand on the buildings that are proposed that you didn't go into that detail, but I thought this was an aerial photo of existing buildings. Wouldn't that show the existing rooftop structures?
A Well, yes. This one, for instance, the rooftop here shows clearly the various mechanical towers.
Q And there's quite a lot there, isn't there?
A Well, it's quite a lot, yes.
Q So you couldn't see any of that from Montgomery Lane, would you? Because is there a roof --
A Well, at that height, you could not.
Q But even without the height, isn't their rooftop structures that block that, that screen that from Montgomery Lane?
A Usually all this equipment you build a screen so you don't look at it.

Q Now, in terms of the existing buildings on Arlington, I guess it's Little Edgemoor? I'm not sure. The one south of Edgemoor that exists.
A South of Edgemoor?
Q On Arlington.
MS. ROBESON: On Arlington.
THE WITNESS: On Arlington.
MS. ROBESON: Yes.
BY MR. KNOPF:
Q Right there.
A This one?
Q Yes. That shows its rooftop structures also, doesn't it?
MS. ROBESON: That's south of Montgomery Lane.
BY MR. KNOPF:
Q Excuse me. I meant Montgomery Lane. Sorry.
A This is Edgemoor at Arlington.
Q Edgemoor what?
MS. ROBESON: At Arlington.
THE WITNESS: At Arlington.
BY MR. KNOPF:
Q Oh, at Arlington. Sorry.
A And it shows mechanical.
Q Right, and there's quite a lot of mechanical stuff there, isn't there? I mean, it's a large area covering it.

A It shows the mechanical. It shows probably a penthouse, whatever it shows.
Q I see. Okay. And, all right. Now, where, where are the mechanical features? You say building have this on them in City Homes, on the top of the roof. I don't see anything there.
A They will have it somewhere. If it's not on the roof, it will be on the yard. I mean, it has to be someplace, outside.
Q You will agree with me, though, it's not on the roof?
A I don't know about all these other ones, I don't know what they represent. So I really don't know where they are.
Q Okay. Thank you. Just before I forget, is there anything else, I should ask, that might go on the roof, that isn't depicted here, that nobody asked you about?
A Well, you shouldn't ask anything else. Sorry.
Q Maybe, I don't know what else. Do satellite dishes go up there? I don't know what else is considered likely. Do you have any comment on that?
A Satellite dishes?
Q You know, for TV?
A Well, usually it is fiber optics these days. That will be the sector plan for 1994.

MR. KNOPF: Okay. I have no further questions. Thank you.
MS. ROBESON: All right. Ms. Harris.
MS. HARRIS: Can we take a 10-minute break?
MS. ROBESON: No. Yes. Go ahead. 3:15.
MS. HARRIS: Okay. That's perfect.
MS. ROBESON: Is that okay?
(Whereupon, at 3:05 p.m., a brief recess was taken.)
MS. ROBESON: We're back on the record.
MR. KNOPF: Madam Hearing Examiner, in the break I realized I asked my questions by going around the building, and I forgot to get to the west side. I had a few questions on the west side. I wonder whether I could ask those before she does the cross-examination, or redirect.
MS. ROBESON: All right. Go ahead.
MR. KNOPF: Thank you.
MS. ROBESON: If you can make it expeditious.
BY MR. KNOPF:
Q Okay, maybe 106A, again, that's the site plan.
MS. ROBESON: Or development plan.
MR. KNOPF: Sorry. Development plan.
MS. ROBESON: That's good.
BY MR. KNOPF:
Q Yes. The west side of the building, as originally

proposed, was 15 feet from the property line. And now at the closest point it's 12 feet, is that correct?
A Yes.
Q And could you please explain, I'm going to put it as colloquially as possible, what's there between -- it has 12 feet, and as you start at the street level and go all the way to the back, what kind of space do we have, and what is the use proposed for that? Yes.
A So on the west side of the subject property, in between the building and the property line, we have a garden, or an whatever, a space.
MS. ROBESON: What's going to be in the 12 feet?
THE WITNESS: Oh, in the 12 feet it's going to be pavers and plantings.
BY MR. KNOPF:
Q Where is the, is there an alley type situation in terms of that there's the building line and then there's another building or wall immediately to the left?
A No, no. There's a zoning, there's a space, and there is a driveway, then there is a space.
Q In the driveway. And whose driveway is that?
MS. ROBESON: On the other property?
THE WITNESS: Edgemoor Road, Arlington North.
BY MR. KNOPF:
Q On the other property there's a driveway?

A Yes.
Q And is there a garage there, then, that they go down to?
A Well, I suppose. I don't know. I suppose at the end of the driveway there is a garage, but I don't know.
Q So then there would need to be, the driveway would presumably go down, if the garage is under the building, is that correct?
A I know there is a driveway. What that driveway does, I don't know.
Q You don't know, but it's not surface parking on that site?
A As I remember, there's a driveway and there are, there is a wall about here. So there's a driveway, and there is a space, and there is a wall right here. Actually, this exhibit probably shows the condition.
Q Okay, so --
A So that will be 106B.
MS. ROBESON: Okay.
THE WITNESS: So this is our building, west wall. There is a space, 12 foot --
BY MR. KNOPF:
Q The 12-foot --
A -- the property line. Then there is this driveway. Then there is another space and then the building

Edgemoor at Arlington North starts.
Q And that would be, as we think we had testimony, that the building goes back up to 48 feet in height, as opposed to the, adjoins to the rear of your property?
A We already have testimony on that.
MS. ROBESON: Well, you --
THE WITNESS: I don't know.
BY MR. KNOPF:
Q You don't know. Okay. Well, what I'm trying to -- okay, so there is a driveway, and you have 12 feet on your property, that you're familiar with.
A Yes. Right.
Q Then is there a fence, a wall that would be on your property to keep you from going into the driveway?
A Yes.
Q So we have 12 feet from the building into a fence or wall, and units would look out in that 12-feet area, I mean, if they had windows over there?
A Right.
Q Okay. And does, has the applicant proposed what use would be there, or what it would be, what landscaping, and what it's going to look like?
MS. HARRIS: The landscape architect will be able, who will be testifying tomorrow will be able to give details.

MS. ROBESON: Thank you.
MR. KNOPF: Okay.
THE WITNESS: But just to clarify the space, if you look at the building, your site will not stop at 12-foot, if that is a concern.
BY MR. KNOPF:
Q Even if I look out the window --
A The property line is not the site element. You can look beyond it.
Q Into the 48-foot building, assuming it's 48?
A Into the other building.
Q Okay. Now, if you go back, it seems to open up a little more. Is that --
A Quite a bit, yes.
Q Yes. And there seems to be some markings there. Is that for some features, or looking from a distance here.
A Well, the landscape architect will testify.
Q Okay.
A But it is a nice feature.
Q Okay. And just my last question, going around the west, if you could take that down and -- wait a minute. What happened? No, take the other one down, too. I'm trying to get to the photo behind it. Sorry. I forgot this was there.
A This one?

Q Yes. Now, if I remember correctly, you testified that one of the reasons, one of the design features you took into consideration in your building -- two design features, one is, you wanted it along the street edge, and the other is you wanted, I think you said you went up so far, was it four stories or five stories, and you hit a certain feature, and that was compatible with the other features at that height?

I'm sorry, now I'm getting into testimony, but do you know what I mean? I think that you had said that there was a, you had talked about there was a top, a middle -- a bottom, a middle and a top.

A Yes.

Q And I think you had said you got up around, was it 40 feet, or four stories or something, and then you hit a feature that marked, separated one of those elements from the other?

A If you refer to the step back.

Q No, I was talking about the other buildings on the street, you were talking about. Like the townhouses across the street. Didn't you say that they went up so far, and then had a marked element?

A I don't think that I talked about the architectural --

Q That wasn't, all right. Never mind. Then your

building, you said it went up so far and then it was marked by the setback? Is that it?

A There's a step back at 50-foot. Yes.

Q Right. Okay. There's a setback. Okay. And I thought that, you didn't testify that that setback then was compatible with the way the features, or the character of the street, that others were setback like that?

A I'm sure that I mentioned that the whole building is, we feel it is very compatible to the architecture of the street.

Q But am I also correct that you said one of the features that you were after is to have the street edging lined up with the street, so there was a uniform straight edge?

A What I think, at that point, goal of the sector plan is to have a street.

Q The street edge.

A So therefore you want the buildings to be pretty much in line to form a street.

Q To line up along the street in a uniform way sort of?

A To form a frontage.

Q I see.

A The lineup doesn't have to be within quarter inch, but pretty much --

Q I see.

A -- form an edge so you create this ambiance of a street with buildings left and right.

Q All right. Now, looking at one, what exhibit is this?

A This is number 72.

Q Okay, number 72. I want to, I was trying to notice that straight down the street, and so I started at the corner of Arlington and Montgomery, and I went past the first building which we understand is to be built. And I went in straight and I ran straight into your building rather than smooth surface. And then I went beyond your building, and I ran smack into another building, which is 4825, rather than some straight streetscape down there.

So I was wondering what you were talking about when you said your building had to be close to the street in order to line up with everybody else?

A I think the smack thing that you mentioned is just a visual, a visual effect that you will see in any city, in any space, when you have buildings. And I will explain why. Because if you look from this point, you will always see the sight of the building. In here you have a street. So there is a certain distance. So the site is always exposed.

But that's not, will be the same thing. If I sit on the other side of the street, in other words, instead of

being on the south side of Montgomery, I will be on north side, I will see the smacks of this building.

Q Okay.

A So this is just something that one would expect to see when you have buildings aligned. You will see the front, but you see also the side.

Q Well, I'm looking at 106B, and I see 4825 Montgomery Lane, it's filled in. That seems, unless my eyesight is off, which could well be, it seems this is in front of your building. That's not just an optical illusion, is it, that the building has permission to build out further, doesn't it?

MS. HARRIS: Mr. Landfair testified to that fact.

MR. KNOPF: Well, I'm thinking maybe he wasn't aware of that when he testified.

BY MR. KNOPF:

Q Are you aware that that building, 4825, is going to stick out closer to Montgomery Lane than your building?

A We are aware of what you see in these exhibits.

Q All right. And you are still saying that it's important that your building not, that your building has to be located exactly where it is to be lined up with the streetscape?

A No. Actually, I was specifically saying, we don't have to be exactly. And I said, quarter inch. I just give

a feeling. I think it's about the feeling. It's not about the numbers. You reach, you have to reach a certain quality, not quantity.

Q All right. And just my last question here. You talk about, if I'm not mistaken, the residential character of the building, in your opinion, on Montgomery Lane. And you mentioned windows and reading of bay windows, and so on. Would you agree with me, I'm looking at the windows facing Arlington.

A Yes.

Q Those aren't residential windows, are they? Either on the fifth and sixth and seventh floors? Or even down on the lower floors. They look to me like sort of commercial office building windows.

A That's your interpretation. You know, they are, for one, I mean, just simple thing, the number of mullions, the density, the graphic appearance of the windows with the small glass areas, and the reason of the mullions, that's very residential. And you have already for a French balcony, that's also residential.

Now, I'll grant you there are many office buildings which want to look residential. So if you do that comparison, you can say that, you know, the building looks not as residential. But that's just because other buildings try to emulate a residential building.

Q But am I correct that you build the windows that face Arlington are a different design that the windows that face Montgomery?

A No, you are not correct.

Q Those are the same windows?

A We have several window types. And what you see here is one of them. On this exhibit, it shows that there is a written of say window type A, window type B, and so on and so forth. So what you see in that corner is, see window type, I'll call it type A.

Q And it is, the ones facing Arlington type A or type B?

A On all facades we have this variation so as to break the monotony.

MR. KNOPF: Thank you. I have no further questions.

MS. ROBESON: All right. We'll try again. Ms. Harris?

MS. HARRIS: Thank you.

REDIRECT EXAMINATION

BY MS. HARRIS:

Q And just because it's fresh on everyone's mind, I'll just ask the question, are the windows that you were just describing similar to the ones of the Edgemoor at Arlington, which is built?

A I would say --

Q Go ahead.

A Yes, the windows generally are very similar. And again, it's given by how the mullions are disposed and arranged.

Q Thank you. Mr., I'm forgetting who, opponent's counsel, excuse me, noted that the site plan for 4825 indicates that that, the site plan that's been filed indicates a height of 60 feet with a parapet of four feet. And we had previously testified that the height was 65 feet and a parapet of four. Where did the 65 feet and four come from?

A I think the information came from what has been approved, or the zoning stage.

Q So at the zoning stage it was 65 feet and four?

A Right.

Q And then potentially this subsequent change at site plan may reduce it slightly?

A It could be, yes.

Q Okay. Thanks. Can you please refer to the development plan, which is 106A, I believe? Right there. Your hand is on it. And I just want to clarify what the active and passive, so you need to look at the numbers that are specified on the development plan, the active and passive development standard requirement in the zone, and

what is being provided? So the requirement is 20 percent. And what does the development plan indicate the active and passive recreational space is?

A 26 percent.

Q Okay. And so when you add that 26 percent with the 10 percent from the public use space, our total open space that we're providing is?

A Would be 36 percent.

Q And the requirement is 30 percent?

A 30 percent.

Q Okay. Thank you. I want to go to a couple of questions on the roof, if you will. So just to be clear, the green roof, which is a storm water management component, is separate and apart from the recreational space. Is that correct?

A Yes, correct.

Q And the mechanical area, and I'm going to refer to 106F, the mechanical area that you identified that our building has, which it seems like all of the other, most of the other buildings except for perhaps a townhouse --

MS. ROBESON: Well, if you could just ask him the question.

BY MS. HARRIS:

Q Okay. The mechanical area that our building will provide, it's common and typical of other buildings, of

other commercial and residential buildings, correct?
A Yes. All the vast majority of buildings will have mechanical on the roof.
Q And you indicated that the screen wall or the equipment will be screened, is that correct?
A Yes. I don't know if there is a requirement, but we'll screen the, it's customary to screen the mechanical area.
Q And will that area be visible from the street, given --
A No, because there is always a setback that you maintain.
Q Okay. Then why, the 106F, opponent's counsel was referring to the fact that those equipment, that mechanical equipment is visible. But can you explain why it's visible on 106F? Is it because of the angle of that picture?
A What is the, on which building?
Q On all of the. I mean, the reason that you can see them, explain why on that photo, on that Exhibit, 106F, you can see the mechanical?
A If you take a view from a satellite or from up high, you see the roof, everything that is on the roof.
MS. ROBESON: But I thought I saw it on one of your elevations, on the one from Arlington Road, taken from Arlington Road looking east towards Woodmont, because you

pointed it out.
THE WITNESS: Oh, yes.
BY MS. HARRIS:
Q But if you can go to the prospectus, that was the penthouse. I was referring to the mechanical area.
MS. ROBESON: Oh, you're referring to the HVAC?
THE WITNESS: Yes, I was --
MS. HARRIS: Yes, exactly.
MS. ROBESON: Okay. Okay. All right.
MR. KNOPF: I'm sorry. The mechanical area is different than the elevator area, is that what you're saying?
MS. HARRIS: Yes.
MR. KNOPF: I'm sorry. I missed that. Thank you.
BY MS. HARRIS:
Q In terms of the penthouse, you testified that the elevator override is just a small portion of the penthouse, correct?
A Yes.
Q And can you give an approximation of the area, what the dimension is?
A Well, it's the footprint of two elevators. So 11 by 22, approximately --
Q Okay.
A -- to give an approximation of what an elevator,

and that depends on the manufacturer, where we are getting it from.
Q And you testified previously that the sector plan recommends recreational space on the roof, correct?
A Yes.
Q In order to meet ADA requirements, is it necessary for an elevator to go to the roof?
A Absolutely. Stairs would not suffice. You have to have level or flat accessible means of getting there.
Q Okay. So in order to satisfy that sector plan recommendation, we need to have an elevator come to the roof?
A We have to bring the elevator stop all the way to the roof.
Q On page 44 and 45 of the sector plan having to do with open space, on the left hand, on page 44, as Mr. Abrams noted that the bottom paragraph refers to urban open space, can you take a look at page 45 which identified the title of that plan?
A Open space concept.
Q And is urban open space identified in the legend?
A Yes. I cannot think of what they said the first word but --
Q It says urban.
A Urban. Yes.

Q Okay. It's in script?
A It's in, yes.
MS. ROBESON: It's okay. You're just not supposed to prompt him, but it does --
MS. HARRIS: He was just reading.
MS. ROBESON: -- I'm not going to argue that it says urban. So go ahead.
BY MS. HARRIS:
Q If you can identify the subject property on that plan, and can you please describe whether or not there is an urban open space designation for our property on page 45 of the sector plan?
A Yeah, I have to -- it's a tiny diagram, so I have to put -- I don't see that. No, I don't see any hatching that the legend shows as urban open space.
Q But there are other urban open spaces designated throughout the sector plan, right?
A There are. Yes.
Q Okay, just none on our property?
A No.
Q Thank you. Is the, is the sector plan goal to maximize density at the Metro station?
A I believe it is, yes.
Q And is it also the sector plan goal, and a goal of the housing element to promote affordable housing?

A Yes.
Q But the zoning ordinance also requires a requirement of compatibility, correct?
A Yes.
Q And the sector plan also provides that you can exceed the height and density --
A Yes, it does.
Q -- to achieve the goal of affordable housing?
A Yes.
Q So how does, can you please explain how that compatibility component fits into that picture?
A Compatibility was, to us as architects, was the most important. So in a way, we took it to heart. So we look at the surrounding area. We look at what is allowed, what is not allowed, what the sector plan recommends, and we implement these elements. We compose a building that we believe articulates all these guidelines and promotes what the zoning plan, and what the sector plan recommends. And it's very compatible to what is on Montgomery Lane.
Q Thank you. And then I want to refer to, I'm forgetting the number, the plan that shows the five different elevations, I mean, the five different projects? 106 something?
MS. ROBESON: G? No.
BY MS. HARRIS:

Q Yes. 106G. Are all of these projects located, on 106G, located within the TS-R district?
A Yes, they are.
Q So they all needed to comply with the development standards of the TS-R zone, is that correct?
A Yes.
Q And they are all located within the Bethesda sector plan district?
A Yes. Yes, they are.
Q So they, presumably, when they were approved, needed to also comply with the recommendation of the sector plan?
A Yes.
Q And in your mind, are all of those projects compatible?
A Yes, I believe --
Q But are they all also stylistically and visually different?
A No, but just to give one example to what Edgemoor was, really, nothing was looking like that when it was built. And therefore, well, not therefore, but the architect or the developer, whatever, they concluded that this is the right place to do it for what they were trying to achieve back then.
These buildings have been for a different

condition. But we are not looking at one particular building to see if it meets or if it doesn't. We look at the whole ensemble of buildings. And in a way, they all have a similar scale. Yes, some of them have more glass, less glass. But they are trying to achieve or to bring the neighborhood together into a comprehensive, let's say, look or feel. So all of them, yes, they are compatible.
Q So even though their style is different, they're compatible?
A Yes.
Q Okay.
A Again, compatibility does not mean same.
Q And if you were to then add a sixth drawing on that 106G rendering, which would be the subject property, would your conclusion change?
A No, absolutely. They're fitting right in.
Q To the fabric of the neighborhood --
A To the fabric, right.
Q -- in terms of the stylistically and compatibility?
A Yes, or more specifically, to Montgomery Lane.
MS. HARRIS: Okay. Thank you. I don't think I have any more questions for Mr. Radulescu. That was all.
MS. ROBESON: Okay. Recross, Mr. Abrams?
RECROSS-EXAMINATION

BY MR. ABRAMS:
Q If compatibility was so important, why did the applicant wait until after the Planning Board meeting and discussions with staff to put in the concave element on the front? Why not do it, if it was so important to being compatible to begin with?
A Because I believe when we designed the building, we designed it from the get go to meet what we believed are the criteria. So we never design a building saying, you know, I'm going to try not to do that and if they catch it we will do it. No. The building from the get go is trying to be as compatible as we feel it should be.
Q And the building from the get go basically maxed out height, density, bulk, mass.
A From the get go the program didn't change. I mean, this is, this was --
Q Yes or no?
A Well, since the program didn't change, I'm not sure what --
Q Well, from the very beginning --
A Yes.
Q -- the subject and the instructions that were probably given to you were to maximize the development of this property. Isn't that correct?
A I believe it is, yes.

Q And that's what you've attempted to do throughout, correct?
A We are always trying to respond to the program, yes.
Q And the current plan maximizes the development compatibility or probability for this project, correct?
A Yes, based on the numbers.
Q So you can't go up in terms of intensity, density. You can only go down, is that right?
A You can go up. We choose not to. In other words, we demonstrated how we believe that the sector plan or the sector zoning, actually, allows you to go up, providing you -- provided you provide -- provided you provide the MPDU's. But we demonstrated how we tried to pack the building in the most efficient way as to minimize what otherwise the zoning allows you to do.
MR. ABRAMS: No further questions.
MS. ROBESON: Thank you. Mr. Knopf.
MR. KNOPF: Just a couple, yes.
RECROSS-EXAMINATION
BY MR. KNOPF:
Q On the compatibility issue, you said that in your opinion this was, your project was compatible with the sector plan's requirements for the TS-R zone. Do you know how the boundaries on the TS-R zone in the center business

district of Bethesda, or roughly how many acres we're dealing with?
A No, I do not.
Q Would you agree with me it's considerably larger than the area along Montgomery Lane?
A Since I don't know, I cannot agree or disagree.
Q But you said it was compatible with the TS-R zone development, but you don't know where that development occurs, where it's located?
A Offhand I do not know. It's probably I mentioned that before that when we designed the building, there are several documents that we need to take into consideration. I do not remember that exactly is what I notice at the end when we deliver a project, it has to meet all these height limits, wherever they came from.
Q Would you agree with me that in determining compatibility, the most important area to look at for compatibility in this case would be Montgomery Lane between Arlington and Woodmont?
A That was a priority for us.
Q Priority. Okay. And are you aware, when you decided whether this was compatible or not, are you aware of what the requirements were on the prior sector plan, and how they were changed on the current sector plan in terms of lowering heights or other design features?

A I do not, I do not know the history of the sector plans.
Q You don't. Would you find relevant that the prior sector plan allowed a much higher building than the higher buildings than what are allowed here?
A I'm not familiar with the prior sector plan.
Q Would you find relevant that the, I'm now quoting from pages 12-13 of the sector plan, that the 1994 sector plan, now I'll quote, ''Replaced the higher building heights for this area with a concept of lower rise urban village with building heights ranging from three to six stories with structure parking on both.'' Were you aware of that change?
A I think that we touched about the sixth floor height. The building is a low-rise. Currently, the subject property is a low-rise.
Q You just skipped from three to six floors. What happened to the three and four stories, floors. It says, ''From three to six stories.'' Were you aware of that change when you gave your opinion as to compatibility with the sector plan? That's all I'm asking.
A I'm sorry. Go?
Q Were you aware of this language that I read to you changing the prior sector plan?
A I am not, I am not familiar with the prior sector plan.

MR. KNOPF: All right. Thank you. I have no further questions.
MS. ROBESON: All right. You may be excused.
MS. HARRIS: Thank you.
MS. ROBESON: Ms. Harris, your next witness.
MS. HARRIS: Yes. It is the traffic consultant, so if I could, Mr. Radulescu is free to --
MS. ROBESON: He may leave. Yes.
MS. HARRIS: -- go back to his other job. Thank you. Thank you. We'll be calling Chris Kabatt, our traffic consultant.
MS. ROBESON: I recognize him. Please raise your right hand.
(Witness sworn.)
DIRECT EXAMINATION
BY MS. HARRIS:
Q For the record, please state your full name and occupation?
A Chris, Christopher L. Kabatt. I'm a transportation engineer and planner with Wells and Associates. And I'm a registered professional engineer in Maryland.
Q And what's the address of Wells and Associates?
A We just moved.
Q That wasn't a trick question. I promise.

A I have the old address on here, but we moved. We have an office located at 8730 Georgia Avenue, Suite 200, in Silver Spring, Maryland.
Q Thank you. And how long have you been a transportation planner?
A 15 years.
Q What are your responsibilities in that position with Wells and Associates?
A I oversee the preparation of traffic impact studies and provide consultation and expert testimony on transportation aspects of projects including access, circulation, parking, and the impact of adjacent transportation facilities.
Q And have you testified before as an expert before the hearing examiner of Montgomery County?
A I have. The latest case was Chelsey Court.
MS. HARRIS: So I give Mr. Kabatt as an expert in transportation planning.
MS. ROBESON: Any objections?
MR. ABRAMS: No objections.
MS. ROBESON: All right. You're qualified as an expert in transportation engineering.
MS. HARRIS: Thank you.
THE WITNESS: I would like to apologize for the attire. I was anticipating going on tomorrow; therefore, no

tie.
MS. ROBESON: No, we forgive tie-less people. So that's fine.
BY MS. HARRIS:
Q Are you familiar with local map amendment G-954 and the subject development plan currently in that I'm showing?
A Yes, I am.
Q And can you please describe the responsibilities that Wells and Associates had with regard to the rezoning and development plan?
A Yes, we prepared a local area transportation review and a policy area mobility review, known as the traffic study, traffic impact study, for the West Lane project. We observed traffic and parking on the adjacent streets, and we reviewed the proposed plans for vehicular circulation, and we analyzed the County requirements included in the LATR and PAMR.
Q And have you made a personal inspection of the property, and are you familiar with the area surrounding the property?
A Yes, I visited the site on many occasions, and I am very familiar with Bethesda.
Q Thank you. Can you please describe, and this is in response to a question the hearing examiner raised after

the site visit, in terms of the general circulation of the area, including development patterns, and also identifying where the one-way circulation is on Montgomery Lane? And you may want to refer, probably what's best is, it may be the aerial. That may be the best, 106F, perhaps.
A Sure.
Q Or I'm sorry, yes, the composite plan may be the best one. So this is 106B.
A 106B.
Q So if you could describe the general circulation, the one way portion of Montgomery Lane where the stop sign is, and how regular traffic, as well as deliveries, with their transportation pattern is?
A Okay. I'm going to start from the east and move west. The site is west of Woodmont Avenue, which is a north-south arterial roadway in Bethesda. It happens in this section of Bethesda, Woodmont Avenue, this one way southbound from Old Georgetown Road, south through Montgomery Lane as it turns east. And then it continues one way southbound through to Hampden Lane.
Montgomery Lane from Woodmont Avenue west towards Arlington Road, is a one-way section starting at Woodmont Avenue to just about the point of West Lane. It's a one-way section, westbound, and then it's a two-way street as you proceed to Arlington Road. And it operates under a traffic

signal control at Arlington Road. The West Lane, Montgomery Lane intersection is a stop-controlled intersection where West Lane stops and Montgomery Lane has no control.
So to get to the West Lane site and general circulation in the area, you have southbound traffic on Woodmont Avenue. And then they could either go straight down Woodmont Avenue, or they could turn right onto Montgomery Lane and proceed out to the West Lane, to the Town Homes or the Edgemoor high-rise, and then out to Arlington Road,
To get to Montgomery Lane and the uses along it, if you were coming from the south, you would approach from Arlington Road.
MS. ROBESON: Do you know why they put the do not enter at that point on the street for eastbound traffic. What functionally, do you know what the purpose of that is?
THE WITNESS: I believe it has to do with the desire to improve Woodmont Avenue and Montgomery Lane, and for pedestrians.
MS. ROBESON: Okay.
THE WITNESS: And then also along, the sector plan does call for the consideration of a one-way section along Montgomery Lane. But I understand it to be all geared towards improving the pedestrian environment in the Woodmont area.

MS. ROBESON: Okay. Thank you.
BY MS. HARRIS:
Q Did you and your firm prepare a written report comparing the existing uses on the site with the proposed uses set forth in the development plan?
A Yes. The results are documented in the traffic study. The existing uses general 16 a.m. peak hour trips, and 11 p.m. peak hour trips, based on driveway counts that we took. Assuming 120 dwelling units, the proposed project would add 20 trips to the road network during the a.m. peak hour, and 25 trips during the p.m. peak hour. This is approximately one car every two and a half to three minutes.
Q And are you familiar with the Montgomery County local area transportation review and policy area mobility review guidelines, as well as TPAR, I should add.
MS. ROBESON: I was going to say --
MS. HARRIS: I know, this is dated.
MS. ROBESON: -- do you still have PAMR? How about TPAR? Well, go ahead.
MS. HARRIS: Well, we have an option for, still there is a period of time that some projects have an option to go either.
MS. ROBESON: Okay.
THE WITNESS: I am familiar with it, and we can talk about TPAR later, but I am familiar with that as well.

BY MS. HARRIS:
Q And is the proposed rezoning subject to the LATR review? For simplicity, because of the PAMR/TPAR shift, let's focus on LATR first, and then we'll get into PAMR. So is the proposed rezoning subject to LATR?
A Yes, it is, because of the 120 dwelling units, they are expected to generate 36 peak hour trips during the a.m., and also during the p.m. peak hour. And that triggers the LATR requirement. If a site generates 30 or more peak hour trips, you have to do a traffic study.
Q And how about PAMR or TPAR, what would be the requirements for the site under PAMR or TPAR?
A Well, the time that we did the traffic study, it was PAMR, and now it is TPAR. I think it's if you generate more than three peak hour trips, you would have to go under that review. And I would say in both cases, this project would satisfy it's requirement, whether it was PAMR or TPAR, since it is in the CBD, it would be exempt from the tax or the test.
Q The test. And so when this project goes forward under preliminary plan, it would be under the TPAR, is that correct?
A It would be under TPAR.
Q Okay. Thank you. Can you summarize your findings with respect to the traffic study?

A Yes. Again, this is assuming up to 120 dwelling units. The proposed 72 additional dwelling units, that's in addition to the 48 that had been previously approved, so 48 plus 72 is 120. But if we just focus on the 72, the 72 dwelling units would generate 22 a.m. peak hour trips, and 22 p.m. peak hour trips. The total 120 dwelling units would generate 36 a.m. peak hour trips, and 36 p.m. peak hour trips.
As stated previously, this is an increase of only 20 morning and 25 evening peak hour trips compared to the existing development on the site. The existing commercial uses located within the single-family structures on the property already generates 16 a.m. trips and 11 p.m. peak hour trips.
It is important to note that the anticipated number of vehicles generated by the residential building is based on unit count, not marking spaces. The subject property, while providing up to 72 more units than the previous approval is providing only 38 more parking spaces.
Also, as reflected in the Bethesda CBD trip rates, not all parked vehicles will leave or return to the West Lane site during the same peak hour.
Q So I want to ask you a couple of questions about that. So while -- so it's the LATR that says you need to base it on unit count, right? Is that correct? The number

of units?
A Yes.
Q And so even though we are only providing 38 more parking spaces, we're providing 72 more units. So it's based on the difference, and it's based on the 72 units, not the 38 parking spaces?
A Correct. The trip rate is number of trips per residential unit.
Q Okay. But in your opinion, if you were, if it were based on the number of parking spaces, and you're providing less parking spaces, what would that do to the difference between the two?
A Well, if it was based on the number of parking spaces, obviously, the rate would be different, I would presume. But in this case, it would be our adding 72 more dwelling units, but only 28 more parking spaces. And so logic would say that that impact may be less than based on the unit count.
Q Okay. Thank you. You can continue.
A Okay. An LATR study is required since the proposed development will general 30 or more peak hour trips. The critical lane volume analysis shows that all three studied intersections would operate and would continue to operate, or they do operate and they would continue to operate within the 1,800 CLV congestion standard for the

Bethesda CBD. This is with the proposed West Lane project and the other pipeline projects in the vicinity.

Even considering, if you would consider the most stringent congestion standard in the County, a CLV standard of 1,350, that is for the rural east and rural west policy areas, these intersections would still operate adequately within that congestion standard.

Q And what were the three intersections that you evaluated?

A We evaluated the Woodmont and Montgomery Lane intersection, the Montgomery Lane and West Lane, and also Montgomery Lane and Arlington Road.

Q Thank you.

A I could talk about PAMR here, the PAMR mitigation would have been, the PAMR mitigation requirement would have been fully mitigated for both the morning and evening peak hours per our traffic study. There's a test you do where you consider both the Countywide and CBD rates.

But now that TPAR has replaced PAMR, and you would do that test during your preliminary plan or at site plan review, you would likely go under the TPAR test. And again, as stated earlier, since this site is in the CBD, there is no requirement.

MS. ROBESON: There's no policy area congestion level at all?

THE WITNESS: Well, there is a, you do 25 percent of the impact tax for the Bethesda Chevy Chase policy area, but because you're in the CBD you're exempt from that 25 percent.

MS. ROBESON: Okay.

BY MS. HARRIS:

Q Can you more specifically describe the traffic capacity at the Arlington Road and Montgomery Lane intersection, and within Montgomery Lane itself?

A Yes. First, as documented in the study, and mentioned, the Montgomery Lane intersection with Arlington Road currently operates, and will continue to operate well within the congestion standard for the Bethesda CBD. The fact that it's operating at 27 and 42 percent capacity during the a.m. and p.m. peak hours, based on the critical lane volume calculations.

Second, we went a step further and evaluated the peak hour levels of service, and the vehicle queues at the Arlington Road, Montgomery Lane intersection, and along Montgomery Lane, the Montgomery Lane approach, using the highway capacity manual methodology.

We took into account lane width, number of travel lanes, and the operation of the traffic signal at the Arlington Road intersection with Montgomery Lane. We used the highway capacity manual methodology, because it allows

us to evaluate vehicle queues.

The results of the level of service and the queue analysis confirm the intersection and the Montgomery Lane approach at Arlington Road operates at acceptable levels during both the a.m. and p.m. peak hours. In fact, the Montgomery Lane approach currently operates at only two to 13 percent capacity.

Vehicle queues were calculated at 22 to 50 feet, or

that equates to one to two vehicles, assuming that a vehicle is --

MS. ROBESON: Did you use the queuing study methodology in the LATR guidelines, or did you just use the highway capacity manual to get to study the queues?

THE WITNESS: We used the highway capacity manual.

MS. ROBESON: Okay.

THE WITNESS: Which is an accepted practice, per the guidelines --

MS. ROBESON: Right.

THE WITNESS: -- and that the County uses.

BY MS. HARRIS:

Q And I wanted --

A I'm sorry.

Q Go ahead.

A I just wanted to --

Q Okay.

A -- finish up this point. The vehicles on Montgomery Lane are able to turn left and right onto Arlington Road during the green phase of the traffic signal. And thirdly, Montgomery Lane is classified as a mixed street in the sector plan, and a business street according to Montgomery County's master plan of highways and transit ways.

The sector plan defines a mixed street as one with limited capacity. Montgomery Lane is approximately 20 feet wide with on-street parking on the one-way segment of Montgomery Lane, limiting capacity, the on-street parking. The street currently operates with a limited capacity of only 2 to 13 percent on the approach.

Q So the fact that the sector plan calls for a mixed street, and then notes that a mixed street should function at limited capacity, is it your opinion that a street that functions within two to 13 percent of its total capacity is functioning at limited capacity?

A Yes.

Q Okay. And I'd like to introduce Exhibit 87 which were photos that showed, that represented what Mr. Kabatt has just testified to in terms of the level of activity on the street.

MR. KNOPF: Those were already introduced.

MS. HARRIS: You're correct. I want to reference Exhibit 87, and just ask Mr. Kabatt a question regarding those. Thank you. Okay.

BY MS. HARRIS:

Q So based on your traffic study, your quantitative traffic LATR study, plus your personal observations of the site, are the photos that are displayed on Exhibit 87 reflective of what your conclusions were from the LATR?

A Yes. As I said, I've been out there numerous times. And we were out there also during the peak hours when we, that's the focus of our study. And our field observations that confirm our results.

MS. ROBESON: Okay. Can you just describe where these photos, what vantage point they were taken from?

THE WITNESS: Okay. The photo on the, if you're looking at the board on the left side, is from Woodmont Avenue, looking west along Montgomery Lane.

MS. ROBESON: Okay.

THE WITNESS: If you're looking at the one-way section.

MS. ROBESON: And the --

THE WITNESS: And then the photo on the right side of the board, it looks like it's taken from the West Lane intersection looking west towards Arlington Road. You can see two vehicle, one appearing to be, wanting to turn left,

and one when you turn right towards Arlington Road.

BY MS. HARRIS:

Q Thank you. Did you quantify the development plan's effect on capacity at the Arlington Road and Montgomery Lane intersection, and within Montgomery Lane?

A Yes. Again, based on the critical lane volume analysis, the intersection would operate at 29 to 44 percent capacity during the a.m. and p.m. peak hours with the development plan, and also with the background development in the area. This is a 2 percent increase from existing conditions.

Based on the highway capacity manual methodology, the Montgomery Lane approach would operate at 3 to 15 percent capacity. This is with the proposal and with the pipeline projects. And this is also, this is only an increase of 1 to 2 percent from the existing condition. The impact of the West Lane proposal is imperceptible.

Q Okay. And so from a transportation perspective, how would you characterize the development plan's effect on traffic capacity?

A It's insignificant in terms of actual vehicles. The development plan for the 120 dwelling units would add only 24 and 20 vehicles at Arlington Road, Montgomery Lane intersection during the a.m. and p.m. peak hours. This is approximately two during the a.m. peak hour, and one percent

of existing traffic at that intersection. To put this in perspective, traffic counts can vary up to 10 percent on a daily basis.

Q Thank you. I want to move onto vehicle circulation. With regard to vehicle circulation, did you observe existing vehicle operations on Montgomery Lane?

A Yes. I have observed the parked vehicles outside of the designated areas, particularly on the one-way section on the south side of the street.

Q And can you please describe any observed vehicle queues?

A As noted previously, we calculated vehicle queues on westbound Montgomery Lane during the a.m. and p.m. peak hours. The results indicated vehicle queues of 22 feet and 50 feet, one or two vehicle on Montgomery Lane during the peak hours. These queues were confirmed by our field observations.

Q And the next couple of questions I had related to queuing, but maybe you can summarize that. Is there anything else that you can add with respect to queuing in this area?

A Well, let me --

Q I think you hit most of those points, but go ahead.

A Yes, we did. And then let me, we did confirm

those queues based on field observations, and then we projected them out to the future condition with the pipeline projects and with West Lane, and with the proposed West Lane project and pipeline projects included in the traffic study, the vehicle queues are anticipated to increase to 37 feet and 57 feet. This is essentially the same queue as the existing conditions.

I would note, as we see in Bethesda, that other roads have queues along them that extend a lot, that are a lot longer than one or two vehicles. Montgomery Lane is limited and part of that is because of that one way section.

Q Okay. Thank you.

MS. ROBESON: Wait. Are you saying that the 37 to 57 is typical of other roads in Bethesda? Is that what your point was?

THE WITNESS: No. I'm saying that Montgomery Lane, the queues along Montgomery Lane may be less than some of these other sites, such as Elm Street or Bethesda Avenue.

BY MS. HARRIS:

Q So that you would expect those other streets -- did I interrupt? I'm sorry.

MS. ROBESON: No. Go ahead.

BY MS. HARRIS:

Q Okay. That you would expect those other streets to potentially have longer queues than 37 to 57 feet?

A Yes.
Q And that's 37 to 57 continues to be one to two cars, is that correct?
A Yes. It assumes that, in queue analysis you assume that a vehicle is 25 feet long, and that assumes for the car itself. And then the gap that is provided in between cars.
Q So from a transportation perspective, again, how would you characterize the development plan's effect on the queues?
A It's minimal, imperceptible, even with the increase, even with the increases attributable to the background projects. That's also included in the calculation.
Q Okay. And then can you describe how the vehicles will, how vehicles currently enter and exit the existing property, which is comprised of four separate lots with four separate improvements?
A Yes. Currently there are four curb cuts for the four existing structures for the commercial uses on the property. There is one on Montgomery Lane, and there are three on West Lane.
Q And can you please describe the proposed access for the building that's being proposed by the applicant?
A The four existing driveways will be consolidated

into driveways. The northernmost driveway leads the vehicles into the parking garage. The other driveway, just south of the garage access will be used by service vehicles and delivery vans. A service corridor connects the service space to the front lobby. Most importantly, the curb cut on Montgomery Lane will be eliminated.
Q And are you familiar with other projects that provide a service corridor from the loading to the lobby? Is that a common occurrence?
A Yes. It is. The service corridor may not be, or the loading space may not be provided right next to the lobby and residential buildings like to have their service separated from their main lobby. So there is typically a corridor of some sort that connects the loading dock to the elevators.
Q In your opinion will the vehicular access be safe, efficient, and adequate?
A Yes. The dedication on West Lane will result in 50 feet of right-of-way with a 22-foot section of paving, which is more than adequate to handle the forecasted traffic. The driveway is located on the northernmost portion of the building, providing separation of vehicles and pedestrians, as the lobby is located at the corner of Montgomery Lane and West Lane.
Montgomery Lane would continue to operate well

within the congestion standard, adequately accommodate existing and pipeline traffic, as well as the proposed West Lane trips.
One of the two curb cuts, one of the two curb cuts has been provided solely for access to a dedicated loading and service bay. Both the location and the use of the proposed operational controls will force loading and service vehicles to access the property from West Lane, removing them from Montgomery Lane so as to prevent the type of congestion that's created at the adjacent buildings.
A lay-by lane will also be constructed on West Lane. We also, we raised this issue with DOT about the additional, an additional lay-by lane on Montgomery Lane, a lot of lanes --
Q Yes.
A -- and DOT appears agreeable, based on these recent conversations with the project team. To the extent the neighbors are concerned about existing service vehicles parking, this would be beneficial.
MS. ROBESON: Wait. What would be beneficial?
THE WITNESS: If there was a lay-by lane on Montgomery Lane.
MS. ROBESON: Okay.
THE WITNESS: We could, this issue can be further addressed at the preliminary plan or site plan.

BY MS. HARRIS:
Q Thank you. With regard to parking, is it your opinion that the project will provide a sufficient number of spaces?
A The project will provide approximately 120 parking spaces, which is more than sufficient, whether this project is rental or condo. It is anticipated that most of the MPDU units will not own cars. This would free up approximately nine parking spaces for visitors.
MS. ROBESON: What is your ratio? What's the calculation for required parking here?
THE WITNESS: It's one per unit, and then the MPDU is calculated at 50 percent of that parking rate, so one every two units.
MS. ROBESON: Okay.
THE WITNESS: The U.S. Census data for this tract surrounding the subject site, according to that U.S. Census data, approximately 36 percent of renters have no vehicles. This would mean a minimum of 43 units will not have a car if this building is rental. And this also does not, that 43 does not take into account the 18 MPDU's. This is more than enough space for residents as well as providing some spaces for guest parking.
BY MS. HARRIS:
Q And was that census tract information taken from

the area with the census tract within which this building is located?
A Yes. And I would also note that there are numerous public parking garages, or there are public parking garages within walking distance of this site.
Q Thank you. With regard to loading, and I'm going to note up front that as I indicated previously, the civil engineer is going to be testifying to actual turning movements. So we'll save that for him. But does a development plan provide a sufficient number of loading spaces to meet applicable county requirements?
A It does. The County does not have any loading requirements. It does have loading guidelines which DOT frequently waives or modifies. The building satisfies the loading guidelines with the provision of the West Lane lay-by. In addition to this space and the lay-by, the project is providing two additional loading spaces for service vehicles, one within the parking garage, and one in the interior loading service bay along West Lane.
The project team met with DOT in the spring of 2012, at which time the applicant was providing one loading area, the lay-by on West Lane. And DOT determined at that time the one loading space was sufficient. The addition of the two service loading areas only improves the situation.
Q Thank you. Can you please explain the deliveries

from an operational standpoint?
A The building loading bay provides a door to the interior corridor which will be required for deliveries. For convenience, delivery trucks will want to use this bay as the loading bay --
MS. ROBESON: Wait. Which? Not the one that goes down into the -- there is an exhibit somewhere that is marked in red that shows all the -- thank you. Is that 89?
MS. HARRIS: 89.
MS. ROBESON: Okay. Is the loading bay you're talking about the northernmost red outline there?
THE WITNESS: Yes, that was the loading bay I was referring to.
MS. ROBESON: Okay. Could you just continue? I just mean --
THE WITNESS: Sure. The loading bay, the northern loading bay that's in the building, I then access off of West Lane, would be connected to the lobby by a service corridor. It would be require that deliveries and move-ins, move-outs would occur through that service corridor, and not through the main lobby.
It's also proximate to the lay-by lane, so even if a van was delivering and using the lay-by lane, they would be required to go through the service corridor, not through the main entrance, the lobby.

MS. ROBESON: Now, how are people going to know that they have to go there to load and unload?
THE WITNESS: Well, I could imagine here, like most residential buildings, when you would move in, you're speaking to the leasing agents, and they would --
MS. ROBESON: I'm talking about delivery people.
THE WITNESS: Delivery people, they could be advised via signs. They could go up to the front door and the person working the desk could tell them that you're not allowed to load through this doorway. So they may try, attempt it once, but the UPS driver or the FedEx who typically do the same route, that they would then know to go somewhere else.
And then it could be that other deliveries, that the resident would have to tell them to please use the service corridor. And again, the applicant is committing to no deliveries or services through that main door. So it would be their enforcement and their policy not to allow anybody through that front door.
MS. HARRIS: I would note that the applicant will speak to this. They've done this on other buildings, so they can shed even further light on operationally, how they will make sure it works.
MS. ROBESON: Okay.
THE WITNESS: We're still, there's a couple of

other points.
BY MS. HARRIS:
Q Do you have a sense of, from your experience and observation, when for instance the FedEx truck, when they come up to the building and make a delivery, do you have an estimate of how long that would, how long the truck would actually be there?
A Based on our observations in this area, the FedEx truck would likely take five minutes or so for a building. And this would be similar for other mail deliveries, UPS deliveries. The loading bay would not be occupied by these vehicles, the UPS or FedEx for extended periods of time.
Q So even --
MS. ROBESON: And what kind of vehicle can go in the loading, the red loading bay?
THE WITNESS: Well, that loading bay is 22 feet deep, and I believe it's 12 feet high. And that would accommodate your typical UPS or FedEx delivery van or truck.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q So that even if the FedEx truck came for say four times a day, which I think that may be high, but it would be a total of, what, 20 minutes that the FedEx truck would be occupying the loading space? Is that correct?
A Correct.

Q Okay. Has anyone else reviewed the proposed rezoning and development plan in terms of traffic impact?
A Yes. Maryland National Capital Park and Planning Commission's development review staff, and the transportation staff has reviewed the application.
Q And did they determine that the vehicular access will be safe, adequate, and efficient?
A They have, with the necessary frontage dedications, the corner truncation, roadway and sidewalk improvements, and additional loading area off of West Lane, staff concluded, quote, ''Its impact on the overall traffic flow in the area will not severely degrade the pedestrian and vehicular environment on Montgomery Lane,'' end quote.
Q And I would note that the civil engineer will testify further with respect to the dedications and truncations that we'll be referring. The ZHA, on her site visit noted that Montgomery Lane appeared to be narrow. Can you please address this?
A Again, as Ms. Harris was saying, the engineer will testify to the widening of Montgomery Lane. But I would like to add one comment regarding the operational, from an operational standpoint. The sector plan did not envision parking on the south side of Montgomery Lane. You can refer to page 180 of the sector plan, Exhibit 106K.
Q Okay. Hold on one moment. It may be helpful if

we get 106K up here. 106K, which was -- I'm sorry. Yes, that is the sector plan.
A Yes.
Q Okay. And that was page 180-181. Okay.
MR. KNOPF: Page what was that?
MS. HARRIS: 180 and 181.
MR. KNOPF: Thank you.
BY MS. HARRIS:
Q And so it was submitted and is noted as 106K, Exhibit.
A If Montgomery Lane did not provide that parking on the south side, as was envisioned in the sector plan, the scenario of a delivery truck stopped for a delivery would not present any problems. In other words, you wouldn't have the parking and then the delivery vans.
MS. ROBESON: Okay. I'd like to understand this. I just don't have your same book. Is there a diagram that you have on 181?
THE WITNESS: Yes. It's figure 5.12, 5.12.
MS. ROBESON: Okay. No, I got it now.
THE WITNESS: And the text below the image for the West Lane, or excuse me, the Montgomery Lane street is the illustration on the top of the page.
MS. ROBESON: Okay.
THE WITNESS: It says, proposed Montgomery Lane,

52 feet right-of-way, two lanes with parking on one side only. And you can see the parking, the parking lanes on the north side. And that is what is on that section of West Lane in front of, or excuse me, on Montgomery Lane, in front of the high-rise at Edgemoor, the cut-outs for the parking.
MS. ROBESON: Okay. So how did it get there?
THE WITNESS: Well, DOT, I'm not sure of the history, but DOT could do what they want inside their right-of-way, and because this is a one-way section, assuming they determined that parking could be provided on that south side.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Thank you. Similarly, the ZHA commented that West Lane appeared to be, commented on the width of West Lane. Can you please comment on this, and functionally how it would operate, given the width?
A Okay. Once again, the engineer will, the civil engineer will testify as to the widening of West Lane. There is no parking permitted on West Lane, and the most important thing to remember is that cars traveling on West Lane will be traveling at unusually low speeds, approximately five to 10 miles an hour. It's a very short segment of roadway. And you'd be turning from Montgomery Lane. So you're going to be going from five miles an hour

up to maybe 10 miles an hour, to get to a driveway.
Each lane on West Lane is 11-feet wide. Put this in perspective. The travel lanes on the Capital Beltway are 12-feet wide. And we all know that the speeds on the Capital Beltway exceed 55 miles an hour.
I would also like to note that Connecticut Avenue through Chevy Chase has 10-foot wide lanes, and there's a posted speed limit there of 30 miles an hour.
Q So in your view is the 11-foot wide width, the lanes at 11-feet wide, adequate to serve the traffic on West Lane?
A Yes. It's more than adequate.
Q Is there anything else you would like to add to your testimony?
A I just want to reiterate that based on the field observations, the traffic study, and the capacity and queue analyses, that Montgomery Lane would operate safety, adequately and efficiently with the proposed West Lane project.
MS. ROBESON: Okay. Is that all?
MS. HARRIS: That concludes Mr. Kabatt's testimony.
MS. ROBESON: Okay. Mr. Abrams.
MR. ABRAMS: How long do we anticipate going today?

MS. ROBESON: How long is your cross-examination?
MR. ABRAMS: Approximately an hour.
MS. ROBESON: Okay.
MR. ABRAMS: I'm bringing it up because my bride has certain plans for this evening.
MS. HARRIS: If I could just given, I mean, a normal work day, typically, for all of us in the room, probably doesn't end at 4:30. And given the tight hearing schedule, I would think that at least he can get his cross in, and then we can decide.
MS. ROBESON: Yes. I'd like to go until 5:30, if we can do that, unless you want to let Mr. Knopf go. But I'd like to be able to go 5:30.
MR. ABRAMS: Why don't I let Mr. Knopf do it?
MS. HARRIS: I object to that, just because the normal -- my sense is that there is more going on than Mr. Abrams' bride waiting for him. And the normal course of questioning has been Mr. Abrams and then Mr. Knopf. I see no reason to change that at this point.
MS. ROBESON: Well, hold on. Let me think.
MR. ABRAMS: Well, is the object not to bring this witness back? Is that what we're shooting for?
MS. ROBESON: Yes. Well, what I'm shooting for is to get this case done.
MR. ABRAMS: We all are.

MS. ROBESON: Yes. And I would like to go to 5:30. If you want to figure out a way we can do that, because otherwise we're not going to get it done.
MR. ABRAMS: Could I make a phone call, take a five-minute recess?
MS. ROBESON: We could take a five-minute recess.
(Whereupon, at 4:31 p.m., a brief recess was taken.)
MS. ROBESON: Cross-examination.
CROSS-EXAMINATION
BY MR. ABRAMS:
Q All right. The lay-by on Montgomery Lane that you were talking about a potential possibility for, was that something investigated with DOT?
A Yes, back in earlier discussions. But there have been some recent discussions with the project team regarding a lay-by on Montgomery Lane, and they seem receptive.
Q Okay. So that would create a six-foot indentation or depth into the curb on Montgomery Lane?
A Yes.
Q And that would be six feet closer to the building?
A Yes, it would be on the north side.
Q And would that cause the sidewalk to be pushed back at all?
A I have not seen a design of it, but -- I'm just

now sure without seeing a design. It would either be taking away the grass panel or moving the sidewalk further north. It's possible.
Q Montgomery Lane in this area is the pedestrian pathway, isn't it?
A It is, it does accommodate pedestrians, the mixed use street.
Q Well, as opposed to West Lane, Montgomery Lane is the pedestrian way from Arlington up to Woodmont Avenue, isn't it?
A That's correct.
Q So you're taking away a potential, or moving the sidewalk back towards the applicant's building if the lay-by is installed on Montgomery Lane?
A Yes, I would say the sidewalk would move closer to the building, and it could. But you could, you have 52-feet of right-of-way. And so you get other travel lanes.
MS. ROBESON: Wait. 50-feet of right-of-way where, on Montgomery? Not on Montgomery.
THE WITNESS: Montgomery Lane will have 52-feet of right-of-way.
MS. ROBESON: Okay.
THE WITNESS: And so you would have your two travel lanes for your vehicles, and then those are, that takes up 20 feet. And then, I guess if you did it from the

center line, you would have your --
MS. ROBESON: That's 32 feet.
THE WITNESS: You have 32 feet, but assume that you split that in half, because of taking the measurements from the center line, you could still put in a lay-by lane and have half of it sidewalk on the west side.
BY MR. ABRAMS:
Q Well, the lay-by lane would be on the north side, not the south side of Montgomery Lane?
A It would be on the north side. That's what we're talking about.
Q And a lay-by in that area, assuming that you have UPS and Federal Express trucks, and other deliveries and service people using that lay-by, they would have to walk all the way around the corner to get to the restricted delivery entrance, would they not?
A Well, this would be in addition to service bay that's within the building, the service space that's within the garage, and then also the lay-by on West Lane. And you could anticipate that someone delivering to the West Lane project building would try to park as close to that service corridor as possible.
Q Okay, but that one is tied up. Okay. They go back down around to Montgomery Lane. Now, that means they have to carry their packages, or put it on a cart of some

sort, and wheel it all the way around to this restricted delivery entrance. Is that what we're talking about?
A If there was a lay-by lane on Montgomery, if they park there they would have to cart it. Yes.
Q Now, it's likely that UPS or Federal Express, the delivery services, when they make deliveries, they try to make as many in one location as they have boxes or packages available for delivery. Is that correct?
A That's my understanding.
Q So when you say it takes about five minutes for a delivery to be made on average on those types of companies, are you talking about a single box to a single destination?
A No, to a building, like a residential building, 120 units or so. They would take several boxes and drop them off.
Q So you could have anywhere between one and a half dozen, or a dozen boxes, and it all takes five minutes?
A Yes. And I think the reason is, is because they don't go to the individual units delivering the packages. They go to the front desk and they have them on their cart, and they unload them. And it's the person at the front desk that typically, that notifies the resident that they have a delivery.
Q Is that the operational aspect that has been labeled as a part of a binding element in this case?

MS. HARRIS: Objection. We're not in a -- I mean --
MS. ROBESON: That's okay. He can. It's not really a basis of cross-exam. I understand what you're saying, but he can answer.
THE WITNESS: I do not know offhand.
BY MR. ABRAMS:
Q You don't know. Okay. Is there any parking along the western portion of Montgomery Lane, any parking permitted?
A On Montgomery Lane there is no on-street parking west of West Lane.
Q So it's prohibited by signage?
A I don't recall if there are signs out there saying no parking.
Q Well how else would it be prohibited?
A There are just two travel lanes. I think it's understood. I'm just not certain that -- I don't recall if I saw no parking signs out there.
Q If parking were prohibited in that section of Montgomery Lane, where were the cars parked for the buildings along Montgomery Lane?
A If parking was -- could you repeat that?
Q If parking was prohibited from West Lane west to Arlington Boulevard, along Montgomery Lane, and we're not

talking about people with parking spaces in buildings, but visitors, service people, to buildings other than the applicant's building, where would they park here?
A Well, they would have to park in the designated parking areas along Montgomery Lane that's closer to Woodmont Avenue. Or they would have to park on the adjacent streets that have on-street parking.
Q Does West Lane permit parking?
A No, it does not.
Q Now, if somebody came up from Arlington Road into Montgomery Lane, and wanted to get to Woodmont Avenue, what would happen?
A They would have to turn around using West Lane. They could not, you could not travel legally from Arlington Road east to Woodmont Avenue. You would have to turn around.
Q Is there any signage to prevent people from making that mistake?
A There is. Bear with me one second. I don't recall if there's a no outlet sign at the intersection on Arlington Road. I do know that there is a do not enter sign at West Lane.
Q Now, did you or somebody else prepare the LAR traffic impact analysis?
A Well, I prepared the study. There were other

associates in our firm that helped with preparing it. But ultimately, I prepared the study.
Q Okay. In preparing the LAR analysis, are you assigned critical intersections by the Planning Commission staff to analyze as part of your analysis?
A Yes, we scope the traffic study with staff, and they identify the intersections to be analyzed.
Q What were the intersections?
A Arlington Road and Montgomery Lane, the intersection of Montgomery Lane and West Lane. And then the intersection of Montgomery Lane and Woodmont Avenue.
Q Now, as part of the preparation of your analysis, do you count cars on the road going through these critical intersections?
A Yes.
Q And that's an important, if not a critical task in your analysis, is that correct?
A It's an important task, yes.
Q Now, why is it so important?
A Well, those existing accounts are used as the basis of the critical lane volume analysis, to start with existing traffic counts.
Q And when did you conduct these counts?
A The counts were taken in April of 2012.
Q And how did you count the traffic movements

through the critical intersections in this case?
A There are actual people at the intersection, and they have counter boxes, and they record every vehicle that goes through the intersection, turns left, and turns right.
Q Do they have hand counters or is this a tube that is laid across the street?
A They're hand counters. They're a box and you have corresponding buttons for each movement at the intersection, and press those buttons to record the vehicle.
Q And are these boxes checked regularly for their accuracy?
A The boxes are checked, and more thoroughly, what we do is the output or the counts that we get, we compare them to historic counts in the area at adjacent intersections, to make sure that they are in line with traffic in the area.
Q So these counts are made by people who monitor the hours at these intersections for the total period of time that's reflected in your traffic report?
A Per the guidelines, we collect the traffic counts from 6:30 to 9:30 a.m., and then from 4:00 p.m. to 7:00 p.m.
Q But people are physically there to monitor and count the traffic, as opposed to putting a mechanical device at the intersection, leaving and then coming back and picking up the device?

A That's correct.
Q Now, what are the existing dimensions of the right-of-way for Montgomery Lane, existing right-of-way?
A Do you want me, the cross-section? Excuse me.
Q What are the existing right-of-ways for Montgomery Lane in front of this property?
A I know that, I'm not sure what the existing right-of-way width is. I know that in front of this project, in the future it'll be 52 feet.
MS. HARRIS: As I noted, the civil engineer will be testifying.
BY MR. ABRAMS:
Q Well, how do you know how much you have to dedicate if you don't know the existing right-of-ways?
MS. HARRIS: Objection. The witness only said that the roads will be dedicated. He didn't specify an amount. And as I said, the civil engineer is going to go into great detail on this.
MS. ROBESON: Okay. What is the lane width right now on Montgomery Lane?
THE WITNESS: It's, Montgomery Lane is 20-feet wide, so --
MS. ROBESON: 10 feet each.
THE WITNESS: -- 10 feet each, in front of the site.

BY MR. ABRAMS:
Q A 20-foot width is, is that the same as the width of a drive isle on a two-way parking area, parking lot?
A In a parking lot, the drive isles can vary in width, just like on roadways.
Q What's the minimum required?
A For two-way, 10-foot lanes are typically --
Q A 10-foot lane in each direction, right?
A Yes.
Q Okay. So this is about the same with as you would find in a drive isle in a parking lot that has a 20-foot --
A Drive isle.
Q -- drive isle?
A Could be, yes.
Q And what is the existing paved width on West Lane?
A West Lane varies in width, existing. I don't have the existing width numbers here in front of me. But again, the future would be two 11-foot travel lanes.
Q Okay. So existing, it wouldn't be any wider than Montgomery Lane, would it? You've been out there observing.
A I've been out there. Yes. From my visits, I don't believe that where West Lane is wider today than Montgomery Lane.
Q So you're saying, within a 52-foot right-of-way that's proposed for Montgomery Lane, there will be two 11-

foot sections, one moving in one direction, and one moving in another direction? Is that how you describe what is proposed?
A On Montgomery Lane, along the site frontage, anyway, I believe where it's being held at 10-foot, it's still a 20-foot travel lane, two 10-foot lanes.
Q Okay. So the actual paved section isn't proposed to be any wider than it is currently, is that right?
A That's my understanding.
Q Now, these 20-foot paved sections, are they about the same width in the road code, which is the minimum requirements for a tertiary or low road or standard secondary residential street?
A Yes, tertiary streets are a type of a travel lane.
Q So it's very similar to a tertiary street then?
A As far as lane width.
Q All right. Are tertiary streets typically located in low-density, low traffic volume areas?
A There are tertiary streets in the Bethesda, in Bethesda. There are tertiary streets in the Bethesda-Chevy Chase policy area.
Q Have they been associated and described with 20-foot sections in the CBD for any other street other than Montgomery Lane?
A In the CBD?

MS. HARRIS: Objection. The question suggests that Montgomery Lane has been classified as a tertiary street. I don't think that's been established by any means.
MR. ABRAMS: No.
MS. ROBESON: No, he didn't say that. He said it's similar. And he's, Mr. Kabatt said it's similar.
MS. HARRIS: Okay.
MS. ROBESON: So he can keep going.
THE WITNESS: I don't know of any streets classified as tertiary within the CBD. And I'm not certain of actual lane widths on each road in the CBD. But 10 to 12-foot lanes are typical in both rural and in your urban areas.
BY MR. ABRAMS:
Q Would they be typical serving a high-density portion of the CBD?
A Yes, you could use 10-foot lanes in a high-density street.
Q I know you could. Is that reasonable from a traffic engineering standpoint?
A Again, 10 to 12-foot travel lanes are adequate for CBD streets.
Q Would such 20-foot wide streets be found serving projects which have densities of 120 units to the acre?
A Yes, I think DOT's standards, and they take into

the context of the uses that the road is serving. And this road, Montgomery Lane, has a one-way section on it. And it serves residential, it directly serves residential units. And based on our studies and observations, it's more than adequate, the section that, the pavement section that's provided.
Q Is there a lane standard for CBD streets for operational two way CBD streets, in other words, how wide they would have to be?
A They County does have their design standards. But again, DOT agreed previously, because it's built, that this road at 25 feet would be adequate.
Q So is it fair to say that the design standards would have required something more, but DOT feels that operationally this is satisfactory?
A I think the classification of a mixed use street and DOT would not have approved something that's inadequate. So if you want more, they could, they have the right-of-way. They could provide a wider street, if they determine that 10-feet, 10-foot travel lanes was appropriate.
Q Have you conducted a formal parking study of Montgomery Lane?
A No.
Q Have you seen any photographs which show traffic congestion on the upper, I'll say, the eastern portion of

Montgomery Lane?
A Yes, I have.
Q And in terms of the traffic, and I am specifically referring to Exhibit 56B little 6, little 7. Do you have copies of these?
A Can I get a copy?
MS. HARRIS: What exhibit is it?
MR. ABRAMS: It was part of our prehearing submission.
(Discussion off the record.)
MS. ROBESON: I have it as 56B. This one, right? And then there is a letter from Lee Cunningham?
(Discussion off the record.)
BY MR. ABRAMS:
Q Okay. This is 56B. Call it 56B. And it's a series of four photographs. Have you seen these before?
A I've seen these photos, yes.
Q Okay. Now --
MS. HARRIS: I'd like to object on the basis of, those haven't been authenticated. We have no idea what date they were taken, what time of day they were taken, by whom they were taken.
MS. ROBESON: Well, he can do that. Are you planning to have a witness do that, Mr. Abrams?
MR. ABRAMS: Yes.

MS. ROBESON: Why don't you save your cross-examination on the foundation then.
MR. ABRAMS: Well, can we bring him back?
MS. ROBESON: No, I'm saying, use them. I'm saying use these --
MR. ABRAMS: Use them now.
MS. ROBESON: -- and she can cross-examine.
BY MR. ABRAMS:
Q Now, the conditions which are shown on these photographs, now, if somebody wanted, if a truck wanted to pass, how would they pass under these conditions? Pass up and down Montgomery Lane?
A Well, it looks like they would have to, one vehicle would have to turn onto West Lane or a street, or pull over in order to yield to the other vehicle.
Q So it's pretty tight in this area, is it not?
A Well, I would suggest that, or it appears that the vehicles that are stopped are parked, I believe are in the non-designated parking areas, make the street narrow.
Q Okay, so that's a problem, irrespective of a parking plan that the applicant has in accommodating in these pictures. Do they exist today?
A They exist today. Yes.
Q And if you add more cars coming out of that building, is it likely to assume that the situation

reflected in those photographs in Exhibit 56B would stay the same or be even worse?
A As we concluded, I think that where the additional vehicles generated by this project would be imperceptible.
Q Imperceptible from what standpoint?
A Well, just, there's trips on the street today, the existing uses, and the redevelopment would generate only 20 to 25 additional trips. I could get the exact numbers in my testimony, but it was, the proposed project would add 20 to 25 additional trips. I don't perceive this to be a problem beyond more than what's happening today.
Q You don't perceive there to be a double parking problem?
A No, I have seen that, I have seen vehicle parked outside of the allowed parking areas, the parking on the south side and then the parking on the north side. So I recognize that there is a problem of people parking illegally out there.
Q What about additional rush hour trips as opposed to just additional trips during the 24-hour day period?
A Our study does focus on the rush hours, the peak hours.
Q And you say there's going to be no deterioration in traffic circulation during rush hour on Montgomery Lane and West Lane?

A That's correct. Staff also concluded that.
Q Now, will on-street parking be reduced by development of the Sandy Spring project at 4825 Montgomery Lane?
A Not to my knowledge.
Q Well, doesn't that project show four driveways where none exist currently?
A I don't know the answer.
Q I'll show you Exhibit 81, top right hand corner, that is the architectural perspective for the Sandy Spring building. Have you seen this before?
A I have.
Q Now, there are four garage doors there? Each one of those, do you know, has a curb cut into West Lane?
A Yes, they're on West Lane.
Q Would the fact that it's not there now, but will be in the future, will that reduce parking on West Lane?
A No, because there is no on-street parking on West Lane.
Q Okay. So there's no on-street parking on West Lane. There's no on-street parking on this section of Montgomery Lane or West Lane?
A That's correct. There's no on-street parking on West Lane or on the western section of Montgomery Lane.
Q Now, basically, the apartment units, they park,

with the exception of the MPDU units, on the basis of one space per unit, correct?
A Well, I believe that's what is going to be provided, is approximately one space per unit.
Q That will be provided. Now, this area isn't within a parking lot district, is it?
A I'm not certain.
Q Well, those areas that are not within a parking lot district have to provide the minimum required parking, is that correct?
A Correct.
Q And are we saying that what is being provided is the minimum required, or what is being provided is more than the minimum required? And if so, how much more?
A I'm just going to look at the development plan. This is 108. They're providing the, per the development program on 108, they're providing the required parking.
Q The minimum required parking? Is that what you're saying?
A Yes. According to this, there is the base residential parking. Then you get a credit for proximity to Metro. And then you get a credit for the transit station development area. So they are --
Q Okay. In actuality, how many spaces are being provided versus how many units are there in the building

that they are using for the model for this?
A I understand that the ultimate, the parking spaces will be determined later at site plan, the exact number. But per the Exhibit 108, the development plan, there will be, it's showing a total of 123 parking spaces provided, and 123 required.
Q Okay. Suppose people have like dinner parties where they have numerous guests invited, or they have car parties, whatever, that there's more guests than there are spaces available in the building garage to accommodate them. Where are they going to park?
A Well, they could park in the public parking garage that's to the north by the Metro station. Then there's also other private parking garages in the area that are used. And there's also some on-street parking proximate to the site, just not adjacent to the site, immediately adjacent to the subject property.
Q So there really isn't any extra parking within the building to accommodate those people, is there?
A Well, we, based on the number of units, and the one, if you do the one, if you narrow it down to one space per unit, that's what they'd be parking. But the market conditions actually suggest that one space would not be -- one space per unit would not be used. It would be something lower, as evidence in that Census data. It suggested that,

the Census data says that 36 percent of rental units do not have cars, in this area.
Q But there is no guarantee that this will occur at this one?
A All I can say is what -- you can't guarantee it, but you can just point to the evidence of what actually occurs in the marketplace.
Q Would you categorize parking in this area as being at a premium?
A For residential?
Q Yes, well, for any use?
A I would not categorize that. Parking with public parking garage in the private garages without problems. But that's a personal experience.
Q And how far away is the closest private garage that's available for use?
A I know there is a private garage up here, and I'm looking at Exhibit, looks like it's 106F. It's an aerial image.
MS. ROBESON: Yes.
THE WITNESS: I note, I know there's a private garage underneath the building that's on the east side of Woodmont Avenue and south of Montgomery Lane. There's also a private garage in the office building that's on the north side of Montgomery Lane, and east of Woodmont Avenue.

There's also another private garage that's underneath, Metro 3, that complex where Bethesda Metro is. That's a private garage, and that's east of Woodmont Avenue, north of North Lane.
BY MR. ABRAMS:
Q Okay. So do all these private garages require the crossing of Woodmont Avenue?
A Yes, they do.
Q Okay. And do they also require at least a two or three or four block walk to the subject center?
A Yes, I guess it's one, could stretch it to two blocks. It's actually one block.
Q That's the closest one. The furthest one is more than two blocks?
A The one I talked about under Metro Three, that would be one block. It's one block to the north and one block to the east, so two blocks.
Q So it's two blocks away?
A Yes.
Q And that's talking and not as the crow flies, correct?
A Yes, you would walk along Woodmont Avenue and then along Montgomery Lane.
Q Now, the proximity to Metro and public parking lots and garages, they are not really a factor when

considering service vehicles, delivery vehicles, those types of vehicular trips, are they?
A Delivery vehicles would, they'd like to go directly to the building.
Q Right. So Metro, being in close proximity to Metro is no advantage in terms of those types of trips?
A Well, I guess so, yes. I haven't seen a FedEx person using Metro.
Q Carrying boxes? I would doubt it. And how many cars did you say could be accommodated in the existing wait by, the one that's proposed to be on West Lane? How many cars can be accommodated in that wait line?
A Approximately two.
Q And how many trucks can be accommodated, and of what size?
A Well, if it was, say, if, again, you're different sizes. If you're a 30-foot truck, that would take up, essentially, the whole lay-by lane. So one. You could potentially get two UPS trucks or delivery vans in that lay-by on West Lane.
Q So if there was one in there, the driver of another truck of equal size or greater size, would have to find some space to park somewhere in that vicinity to make the delivery, or a service truck?
A Well, I think you could get two, again, you could

get two service vans or deliveries. You could get two in there. But if there were two in there, you would still have the opportunity to use the, there is the actually loading dock, loading berth within the building.
Q And that can accommodate how many trucks of the size that you are speaking of?
A The berth in the building is 22 feet long. So that would handle your service vehicles and UPS or FedEx delivery vans.
Q Okay. Now, I'm interested in the larger trucks, the moving vans. There is an exhibit up there that was a copy of a development plan, but it had markings on it. And I think --
MS. ROBESON: 108?
BY MR. ABRAMS:
Q Exhibit 108. If it is possible, I would like this witness to mark on that exhibit -- to show us where the moving trucks, how the moving trucks proceed in and out of that building?
MS. HARRIS: Objection or just clarification. As I said, the civil engineer is going to discuss turning movements. He can, this witness can show general patterns. But turning radiuses should be left to the civil.
BY MR. ABRAMS:
Q All right. First of all, before you do that,

where is your understanding of the loading dock, position of the loading dock for the moving vans and the larger vehicles? Can you put a line with your initials by it?
MS. ROBESON: Go ahead.
THE WITNESS: Well, the lay-by on West Lane --
BY MR. ABRAMS:
Q No, I'm talking about the garage.
A Oh, the garage. This doesn't show the garage. This shows the --
Q It shows --
A It shows the service space.
Q Do you know where the garage entrance is, in relationship to this service area? Doesn't this say garage entrance?
A There is a garage entrance to the north here.
Q Okay. Where is the loading dock for that garage entrance?
A Are you referring to the loading space within the garage?
MS. HARRIS: Objection. The traffic engineer is not an architect. He didn't design the parking layout of the building.
MS. ROBESON: But he is testifying to site circulation. So if you can answer, that would be good.
THE WITNESS: I would like to see the, do we have

an exhibit showing the garage, so I could show it to him?
MR. ABRAMS: I wish we did. There has been testimony --
MS. ROBESON: If you don't know, if you're not familiar, just --
THE WITNESS: I don't know the exact location within the garage. I do know that the applicant is committing to providing a space within the garage for a service vehicle.
BY MR. ABRAMS:
Q And that space, do you know how high the entrance is to that garage door access? If you don't, just say you don't.
A I don't know. I don't know the height. I think any garage would be 98 inches as your minimum to get ADA requirement. So it would have to be at least 98 inches.
Q 98 inches?
A Which is like nine, or eight-feet-six inches.
Q Is that going to accommodate a moving van, that height?
A It would accommodate a -- there's different size moving vans. It would accommodate a standard U-Haul van.
Q I'm talking about the standard North American, you know, whatever companies are out there.
MS. ROBESON: Van Lines, or something?

THE WITNESS: It would not accommodate a tractor trailer or a 30-foot box truck. No.
BY MR. ABRAMS:
Q So you couldn't, where it says garage entrance on Exhibit 108, you couldn't fit into that area in a tractor trailer or very large moving truck?
A You wouldn't be able to proceed down into the garage.
Q You wouldn't. Why?
A You wouldn't be able to -- a tractor trailer would not be able to -- going through a garage, a tractor trailer is, they can be up to 12 to 14 feet in height.
Q Okay. So we're talking about loading and unloading in the way-by, is that right?
A Yes. But if you add the 30 foot single unit vehicle, the 30 foot truck that we're talking about --
Q I'm not talking about the big ones.
A What the --
MS. ROBESON: The moving, the tractor trailers.
BY MR. ABRAMS:
Q Tractor trailer type moving vans?
MS. HARRIS: Objection. The question assume that a tractor trailer would be used to move people into this building, and I don't think that's been established.
MS. ROBESON: It hasn't been established, but he

can ask the question.
MS. HARRIS: Okay.
BY MR. ABRAMS:
Q I asked the question.
A Well, should a tractor trailer want to deliver to this site, again, I didn't prepare the turning movements, but they would either have to pull up and do some kind of -- they would have to turn around to get into the loading lay-by lane.
Q So you didn't have anything to do with the design of the garage or the loading docks from the garage, their location, and whether they fit a safe and efficient circulation pattern?
A I did not design them.
Q All right. That's fair enough. Now, if you had a regular U-Haul truck, could that fit in either one of those areas, the garage entrance or that furthest area directly below the garage entrance?
A There are U-Haul trucks that would fit in the -- there are U-Haul trucks that would fit in the loading space.
Q And are there --
MS. ROBESON: What's the biggest, I'm sorry.
MR. ABRAMS: Yes.
MS. ROBESON: What's the biggest truck that could fit in the loading space? Because U-Haul trucks have like,

you know, they come in different sizes. So I guess what I'm trying to get a sense of is the biggest truck that could fit in that loading space?

THE WITNESS: It would be a 20-foot truck. Because it's 22 feet.

MS. ROBESON: Is that like a UPS truck? 20 feet high or --

THE WITNESS: 20 feet long.

MS. ROBESON: Long. Okay.

THE WITNESS: There are U-Haul trucks that you could get that are 20 feet or less.

MS. ROBESON: Okay.

BY MR. ABRAMS:

Q Now, the building entrance is actually located on the corner, correct?

A The lobby is --

Q Building entrance?

A Yes.

Q Yes. The public entrance to the building?

A Yes.

Q Now, most people go to a public entrance, such as the one proposed on the corner, to seek entry to the building, whether they are visitors or delivery service personnel.

A A visitor would likely go to the lobby, the corner

entrance. The delivery, they would, if it's their first time there and no one notified them, I'd assume that they would walk up to the lobby and then they would be directed to the service area.

Q So they would have to come back out to their vehicle, and find a space, whether it's in the way-by or in the loading area, correct?

A Yes, and they could be parked in the lay-by ready.

Q And if those areas were occupied, they would sit in their truck and wait for a vacancy? What would they do?

A I guess I would assume they would have to wait for a vacant spot.

Q Where will the handicapped visitors to the building enter the building, do you know?

MS. HARRIS: Objection.

MR. ABRAMS: Well, I'm getting to handicapped parking. I guess this is a foundation for that type of question.

BY MR. ABRAMS:

Q Is there any handicapped parking provided?

A Within the garage, they would have to meet their ADA --

Q How about outside?

A Outside?

Q Yes. Like, I guess in a parking lot they have

little signs that say, handicapped parking?

A I don't believe any of the marked on-street spaces on Montgomery Lane are marked for handicapped spaces only.

Q Now, if you've had a moving van, a laundry van, would that take up most of the space on West Lane, in terms of negotiating that street?

A If we're talking about these large moving vans, one, you just don't -- again, the marketplace, they just don't occur at these types of buildings and locations on a frequent, you know, you just don't see it coming to these buildings. They typically try to, they would consolidate their -- they would consolidate to a smaller truck. We're looking at apartment units here that are the sizes probably wouldn't fill up a large truck. But regardless --

Q Are you familiar with moving services which have several different customers, put smaller loads to make up one load for a specific area?

A Yes, I do know that that occurs.

Q Okay. And that's fairly common when you're outside of a metropolitan area such as this, when you have a long distance haul. Okay.

A Right.

Q So it's conceivable that that could happen more than occasionally?

A Well, I think that may happen because they are

transporting across the country or wherever they're coming from. But once they get to the local area, they would then have to use a smaller truck to access the building.

Q Is that a normal practice for a long distance mover, to transfer those smaller trucks when they reach a destination?

A It occurs, yes.

Q Is that a normal occurrence?

A Well, I do know in urban areas that they do transfer the freight or the goods to smaller vehicles.

Q Do you know the width of the moving van?

A Of a moving van?

Q Of a tractor trailer type moving van?

A Those large tractor trailers are, they are about 12-feet-one, the large tractor trailers tend to --

Q So if any of them --

A Excuse me. Excuse me. Not 12 feet wide. The large tractor trailers, they're about eight feet wide.

Q So that the van on the back of the tractor trailer is eight feet wide?

A Yes.

Q Now, in terms of a grade of the driveway, is a 14 or 15 percent grade considered to be steep?

MS. HARRIS: Objection. I believe the question is outside the scope of, first of all, what the witness

testified to. And too, outside his scope of expertise. He's a traffic engineer, not an architect or a civil engineer.

MS. ROBESON: Mr. Abrams, I don't know if -- I tend to agree with Ms. Harris on this one. I think that might be a question for the civil. Is the civil engineer going to be able to answer questions like that?

MS. HARRIS: Yes.

MS. ROBESON: Okay.

MS. HARRIS: It's a long list for that civil engineer.

MS. ROBESON: Yes.

MR. ABRAMS: That's all the questions I have.

MS. ROBESON: All right. Mr. Knopf, how long do you think yours will take?

MR. KNOPF: I guess a half an hour.

MS. HARRIS: I'm sorry, what was your answer?

MR. KNOPF: I'm guessing half an hour.

MS. ROBESON: Okay.

MR. KNOPF: Assuming we all don't fall asleep during that time.

MS. ROBESON: Well, I would like Mr. Kabatt to come back tomorrow morning, if that's possible?

MS. HARRIS: That's possible. Yes.

MS. ROBESON: Okay. So what I'm going to do

tonight is, or tomorrow morning, is check with my office and for one additional hearing date. And we will continue this case until tomorrow at 9:30. And you may leave your exhibits in here, because we can lock this room, unless you don't wish to.

MS. HARRIS: When you check with your office, you'll have a number of dates, just given --

MS. ROBESON: Yes.

MS. HARRIS: Okay.

MS. ROBESON: I'm going to get a couple of back-ups.

MS. HARRIS: I appreciate it. Thank you.

MS. ROBESON: Mr. Knopf, were you going to say something?

MR. KNOPF: No, I'm just pondering. It's very tempting. I'm leaving here and I don't have to work tonight on this.

MS. ROBESON: And not know where it is. Okay.

MR. KNOPF: I appreciate it.

MS. ROBESON: We are off the record.

(Whereupon, at 5:41 p.m., the hearing was adjourned.)

. Digitally signed by Teresa S. Hinds

ELECTRONIC CERTIFICATE

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 in the matter of:

4831 West Lane, LLC
Local Map Amendment No. G-954
4831 West Lane, LLC
Development Plan Amendment No. DPA 13-01

By:

_____

Teresa S. Hinds, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC **LOCAL MAP AMENDMENT G-954**	:	**Case No. G-954** **DPA 13-01**

A hearing in the above-entitled matter was held on April 16, 2013, commencing at 9:47 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

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* * * * *

Witnesses:	Direct
Christopher Kabatt	8, 52, 66, 73
David Judd	75, 85, 115, 129
Perry Berman	133, 161
Charles Irish	214

* * * * *

E X H I B I T S

Exhibit No.		Marked/Received
110	Bethesda CBD Sector Plan	106

P R O C E E D I N G S

MS. ROBESON: We're on the record. This is a continuation of the hearing in G-954, an application of 4831 West Lane for rezoning of property to the TSR zone and Development Plan 13, let me get my, 13-01 filed by the same entity requesting an amendment to the development plan, approved by the District Council on July 10, 2007. I believe that we are on Mr. Knopf's -- are there any preliminary matters?

MR. ABRAMS: Just one, Madame Examiner. We have one witness that cannot make it in tomorrow, but we are scheduled for Friday and so I would like to reserve some time on Friday for that particular witness if we don't get to him tomorrow.

MS. ROBESON: That's fine.

MR. ABRAMS: Okay.

MS. ROBESON: All right. I don't --

MS. HARRIS: I have three preliminary matters.

MR. KNOPF: And is your witness available any time on Friday or limited to a certain --

MR. ABRAMS: I believe so.

MS. HARRIS: And who is that witness?

MR. ABRAMS: That witness is --

MR. KNOPF: Dan Joseph.

MR. ABRAMS: Dan Joseph.

MS. HARRIS: Okay.

MR. ABRAMS: He's a member of the, you know --

MS. HARRIS: Right.

MR. KNOPF: We have one witness. I presume all eyewitnesses will be on Friday and we have one who has to be on earlier Friday morning because she's not available later in the day. So -- that's just, that's why I was asking when his witness was --

MS. ROBESON: Okay. That's fine.

MR. KNOPF: -- going to be there.

MS. ROBESON: I mean we've gone out of order to adjust, especially for citizens to adjust our schedules and let them testify out of turn. So I don't have a problem with that. Yes?

MS. HARRIS: We were going to identify a potential --

MS. ROBESON: Yes.

MS. HARRIS: -- new date just in the event that it is needed.

MS. ROBESON: Yes and she said they were here. I apologize. Can I go off the record for two minutes and I'll get them? We got several.

(Recess)

MS. ROBESON: Okay. We had some Thursdays, but we usually stay away from Tuesdays and Thursdays because of

potential conflicts with the Planning Board and the Council. So we have Monday, April 29th; Friday, May 3rd; and okay, we have Monday, 4/22; Monday, 4/29; and Friday, 5/3. Otherwise, we're into Tuesdays and Thursdays.

MR. ABRAMS: I'm out of town on the 22nd and the 29th is fine for me. The dates in the 3rd of May, is that what you had?

MS. ROBESON: Yes.

MR. ABRAMS: That's fine.

MS. ROBESON: Friday, May -- that's fine?

MR. ABRAMS: And the other date you had?

MS. ROBESON: I have some Tuesdays and Thursdays, but --

MS. HARRIS: Of the dates that you identified, the 29th works for us and then, unfortunately, because of previously scheduled other matters, we're not available again until the 15th.

MS. ROBESON: May 15th?

MS. HARRIS: Yes.

MS. ROBESON: Mr. Knopf, are you available on the 29th?

MR. KNOPF: I am trying to -- I asked people who are testifying to send me e-mails. I'm looking at the e-mails to see which dates they said they couldn't be and I didn't get it from everybody because I thought, the ways

things were going, I thought we could make our entire presentation on one day, like Friday morning, this Friday, but so I'm trying to see here. The --

MS. ROBESON: Well, I know since we have another hearing tomorrow --

MR, KNOPF: Right.

MS. ROBESON: -- I would --

MR. KNOPF: The 6th.

MS. ROBESON: -- we will try for the 29th at this point.

MR. KNOPF: The 29th, this, let me just --

MS. ROBESON: That's Monday.

MR. KNOPF: Let's see, we're going this week until the --

MS. ROBESON: We don't, we aren't going Thursday this week.

MR. KNOPF: No, I know. I have another full day hearing at the Planning Board, of course.

MS. ROBESON: Oh.

MR. KNOPF: Yes, I have, apparently two said they could do it. I don't know. Can we -- I think it may be all right, but maybe lunchtime I could try to get --

MS. ROBESON: Yes.

MR. KNOPF: -- all these --

MS. ROBESON: Why don't we settle on the 29th by

the end of today, all right? And did you say you had more?

MS. HARRIS: Yes. One other preliminary matter. That is Mr. Abrams had brought up the issue of building coverage and the applicant providing that information to Mr. Abrams, it was in reference to Exhibit 85, which was a design comparison exhibit. And the building coverages indicated in terms of City Homes, the Highrise Edgemoor and the subject property what had, which ones had higher low building coverage. I, in consultation with Mr. Landfair, was simply based on visual observations. So we have no information to provide.

MS. ROBESON: All right.

MS. HARRIS: Thank you.

MS. ROBESON: All right. Anything else? Seeing nothing, Mr. Knopf, it's your turn.

MR. KNOPF: Right. If I recall, you had testified yesterday that visitors to this building would need to park in, at another location other than a building, is that correct? Is that your testimony?

MR. KABATT: Well, what I testified was that we didn't, we don't think that the residents of the building would use all the parking spaces that are being proposed and there is a potential for the excess spaces to be used by visitors. In the event that that's not the case, there are public parking garages and private garages and off-street

parking in the vicinity of the site.

MR. KNOPF: Thank you. So, and if I recall then correctly, if there are extra spaces available for visitors in the garage, I think you said that you were basing that on the fact that there's a certain percentage of -- you had statistics or something that showed a certain percentage of renters don't have cars, was that the basis of your thought that there would be extra spaces?

MR. KABATT: The U.S. Census data does report that 36 percent of the rental units do not have vehicles.

MR. KNOPF: And that's what you were relying on, that there may be extra spaces in the garage for visitors?

MR. KABATT: Well, that and other, just other experience that I have with residential buildings in urban locations.

MR. KNOPF: Okay. Well, when you say census, that's a census figure 36 percent, is that a national census figure or the census figure for this particular census tract that the building is located?

MR. KABATT: For this tract.

MR. KNOPF: And what area does that tract cover?

MR. KABATT: Bear with me, I'll give you the exact proportions. So the 30, this area, it's tract, the U.S. Census tract is 7048.04 and --

MR. KNOPF: I can't say that brings up any

boundaries anyway.
MR. KABATT: I'll give you that tract number. I don't have the map right here. It's, you have to print out the map to see what it is, but it's the local area right around this subject site.
MR. KNOPF: Is, are we talking, do you know, we're talking about blocks, miles?
MR. KABATT: It's blocks.
MR. KNOPF: I see. So this would cover both -- do you know for a fact whether this covers only new luxury rentals or does it cover older buildings that would not fall under that category?
MR. KABATT: It would be, it was, it would be whatsoever in this, the few block area around the site.
MR. KNOPF: I see.
MR. KABATT: So north and south side Montgomery Lane east of Woodmont Avenue and I believe, I recall that it extends west actually of Arlington Road, but that gets in the single family homes.
MR. KNOPF: I see. There is housing to the west down Arlington? I mean does it cover all, down on Georgetown also to the west?
MR. KABATT: I don't recall, I don't believe this tract goes north of Old Georgetown, but they're going to give you the tract number and provide a map at a later time.

MR. KNOPF: I would appreciate that if you could get that. Now you have these figures, you're talking about the 36 percent for rental. What figures do you have about condos that, whether that's -- you say -- not representing that there's a 36 percent of condo owners do not have cars?
MR. KABATT: No, the data, it does give you owner occupied, but -- and that is 4 percent --
MR. KNOPF: 4 percent?
MR. KABATT: -- do not own vehicles.
MR. KNOPF: 4, is that 4 percent? I'm sorry. I missed it.
MR. KABATT: 4 percent, yes.
MR. KNOPF: Okay. So -- and are you, what's your understanding as to whether this building is guaranteed to be rental or be condo?
MR. KABATT: It's my understanding that they want to keep the flexibility.
MR. KNOPF: So would you agree with me that even under your own analysis if this building were condo, there would be insufficient visitor parking spaces?
MR. KABATT: No, I wouldn't conclude that. I would -- we use census data as a guide and then there's also your market experience of what is provided and then that is why we also identified that there are public garages and private garages and on-street parking in the area, but --

MR. KNOPF: Let me -- that isn't what I asked, but I did ask it properly. Would you agree with me that there was insufficient visitor parking onsite if this were a condo building, would you agree that there would need to be -- visitors would probably need to park off the site?
MR. KABATT: No, I, my interpretation of codes are that that includes all uses of the building. So when you go through your math of the code to get to the 123 parking spaces as required, that that would include some -- it would either be used by all the residents or could potentially be provided for visitors.
MR. KNOPF: Potentially? But if my math is correct, 4 percent of 123 spaces is what you say is existing in the building?
MR. KABATT: Well, that's what's required.
MR. KNOPF: Right, but that's what you're providing, isn't it?
MR. KABATT: And that's what they're --
MR. KNOPF: Right.
MR. KABATT: -- proposing.
MR. KNOPF: But if we had 4 percent of the unit owners didn't have cars, we'd end up with what, five, six empty spaces?
MR. KABATT: I think, I think the U.S. Census data in this tract, it doesn't specify whether you're simply

looking at condo buildings or single-family homes or town homes. So you would -- single-family homes may have more cars than the condo unit. So that's why we would use census data, but then you also look at what's provided in the marketplace and what's also experienced at other buildings.
MR. KNOPF: And have you done such an analysis as what's been experienced at City Homes or at the Edgemoor Condominium in terms of availability of visitor parking, whether it's a terrible shortage or they have access or just right?
MR. KABATT: We have not done a parking study yet at those locations.
MR. KNOPF: I see. Well, in terms of 123 spaces, by the way, you mentioned something in response to Mr. Abrams. Do some of those spaces have to be set aside for handicap?
MR. KABATT: Yes.
MR. KNOPF: Okay. So there wouldn't be 123 general spaces available? How many would have to be set aside for handicap?
MR. KABATT: I'm not certain of that number, but it's -- whatever the ADA code is. Actually it's on the development plan.
MR. KNOPF: I didn't see that. There's a lot on the development plan.

MR. KABATT: This is Exhibit 108 and for the, for the five --
MR. KNOPF: Five?
MR. KABATT: Five of those spaces would be for accessible vehicles.
MR. KNOPF: Okay. And is it your experience in rental buildings that there is, when one rents an apartment, one may also rent a parking space that's assigned to him in the building I'm talking about?
MR. KABATT: Different management companies are, do different things in different jurisdictions require different, some buildings you go in and you, if you rent an apartment, you, the space comes with that, but other buildings, it's separate from the lease. The parking space, you can choose whether or not to lease the parking space.
MR. KNOPF: Well, what I'm getting at is if one gets a parking space as part of their lease or one rents the parking space separately, would you agree with me that then becomes what I call a reserve space and is not available for anybody just to come in as a visitor and park there?
MR. KABATT: Well, I -- my personal experience is we do, if you rent a space, and this is also in other buildings, but if you rent a space, then there should be a space available for you in the garage. Again, some management companies, they will actually assign you a

parking space so, you know, a number in the garage and then others, just say it's 100-unit building and 75 people rent spaces, then it's -- you can park in any of the spaces that are available. They're unreserved.
MR. KNOPF: I see.
MR. KABATT: It's up to the management how they want to manage this.
MR. KNOPF: Well, we have the situation here where there's 120 units and maybe 118 parking spaces if we deduct the handicapped. There's not a lot of extra just floating around there.
MR. KABATT: Well, then in that situation the management would know how many parking spaces are, how many they leased out and if the next person to come in to lease the unit, they would, if all the other ones were occupied, they would not be able to lease the parking space --
MR. KNOPF: But in terms --
MR. KABATT: -- unless they were, unless they needed an ADA space.
MR. KNOPF: In terms of condo buildings, is your experience that the purchaser of a condo also is offering the option of purchasing the parking space with the unit?
MR. KABATT: Again, I believe that's based on the seller of the building or the reseller.
MR. KNOPF: No, in a building where they offered

condos and didn't offer any parking spaces in that building?
MR. KABATT: Well, I don't -- one is not coming to mind, but it's, I know a lot of condo buildings do like to provide parking, but it's becoming the trend more and more that buildings are trying to get below 1.0 parking --
MR. KNOPF: I see.
MR. KABATT: -- because they just don't use those spaces.
MR. KNOPF: They're trying to get them, but you can't give us any example in Montgomery County or Bethesda, downtown Bethesda, a new building where that's the case, can you?
MR. KABATT: Not off the top of my head.
MR. KNOPF: Okay. Now you mentioned that if somebody, a visitor needed a space and there wasn't one on the building, in the building, I believe you mentioned that they could go to a private or public garage over by Woodmont, do I recall that testimony correctly? You said there were garages available over toward Woodmont --
MR. KABATT: Yes.
MR. KNOPF: -- on the other side of Woodmont actually, right?
MR. KABATT: Yes.
MR. KNOPF: And would you agree, do you know what this, do you know --

MS. ROBESON: Yes, can you move back, Mr. Kabatt? Thank you.
MR. KNOPF: Do you know what this area is over here on the other side? I'm pointing to the opposite side of Arlington between --
MS. ROBESON: The western side.
MR. KNOPF: Excuse me, western side of Arlington, between Montgomery Lane and Edgemoor Lane? Do you know what that --
MR. KABATT: That's the library.
MR. KNOPF: The library? And is that the parking lot for the library?
MR. KABATT: Yes, it is.
MR. KNOPF: And I'm going to ask you as a traffic expert, what's your opinion if I were coming to this new building and was told there's no visitor parking, you need to park in another location, do you believe I would, a person is likely to go all the way down Montgomery Lane which, by the way, you can't go all the way down Montgomery Lane. Don't we get a one-way?
MR. KABATT: You would --
MR. KNOPF: You get a one-way -- isn't Montgomery Lane one-way --
MR. KABATT: West.
MR. KNOPF: West Lane to Woodmont? So if I wanted

to go to the garage, I guess I'd have to go back out toward Arlington, wouldn't I?
MR. KABATT: Yes.
MR. KNOPF: Okay. And I'd go right by that parking lot to the library. Where do you think I'm going to end up parking, in the library parking lot or going all the way around the block and going to the private parking?
MR. KABATT: Well, I believe the library parking lot is regulated.
MR. KNOPF: In, because they're having trouble, patrons had trouble finding a space, right, because non-patrons were using it?
MR. KABATT: Well, I don't -- I don't know.
MR. KNOPF: You don't know.
MR. KABATT: I can't confirm that.
MR. KNOPF: But you say, well, what's the regulation? Is it parking meter, regulation?
MR. KABATT: Parking meter too.
MR. KNOPF: And do you know how many hours you can get on a parking meter there?
MR. KABATT: No, I do not.
MR. KNOPF: Okay. Well, assuming you can several hours on the parking meter, I again ask you, do you think someone is likely to drive by the library and go all around to pay for parking on the other side of Woodmont or they're

going to go into the library parking lot?
MR. KABATT: I suppose if they could park in the library, they could feed a meter and the library doesn't frown upon that, that they could park there.
MR. KNOPF: Okay. Thank you. One of the --
MS. ROBESON: Before we go any further, I didn't disclose this about the site visit because I didn't think it was a big deal, but I parked at the library. I'm embarrassed, but I did. So I'm just throwing that out there. I did park at the library because it was the easiest parking I could find. Okay. But I did pay the meter and I did walk in the library, but anyway. So --
MR. KNOPF: I'll fully disclose I parked there also.
MS. ROBESON: Ah-hah.
MR. KNOPF: That's exactly my point. Thank you. One of the findings that has to be made in order to grant this rezoning is that the proposed development would provide for the maximum safety convenience and so on of the residence. Do you think this provides for the maximum convenience when there's no, there may be insufficient visitor parking?
MR. KABATT: I would not conclude that it is insufficient visitor parking.
MR. KNOPF: Based on what you previously stated,

isn't that --
MR. KABATT: Yes.
MR. KNOPF: Let me -- well, you talked about a new lay-by on Montgomery Lane, did I hear that testimony correctly, that's what they've taken under consideration?
MR. KABATT: Well, the applicant is considering it.
MR. KNOPF: Considering it?
MR. KABATT: Yes.
MR. KNOPF: And am I correct that the lay-by would be right -- well, can you show us where the location of that lay-by would be? I think you have an exhibit right behind you maybe you can use?
MS. ROBESON: Yes, 108, you've actually marked. That one is already marked with something, so you can --
MR. KNOPF: Although, maybe I suggest, I think -- did we have one with red and maybe we can keep all the lay-bys on --
MS. ROBESON: Oh, okay.
MR. KNOPF: -- everything on that one --
MS. ROBESON: Oh, okay. Okay.
MR. KNOPF: -- keep it together? You know, we had a --
MS. ROBESON: Except I --
MR. KNOPF: We've only --

MS. HARRIS: If I could, this one, I mean the Exhibit 89 has those that are marked that the applicant has confirmed they are providing. I would hate for there to be some confusion if it's something on there that is not confirmed saying that's being proposed. So I would prefer to put it on 108.
MS. ROBESON: I would, Mr. Knopf, I would simply for technical reasons because of reproducing that for the report, I would prefer that if we could put it on 108, that would be easier.
MR. KNOPF: That's fine. What I was, I thought I had a step-saving suggestion, but obviously not.
MS. ROBESON: No, I know. It makes too much sense.
MR. KNOPF: Thank you. Could you point to the area that's under consideration for a lay-by?
MR. KABATT: It would be along the property frontage, so it would be on the north side.
MS. ROBESON: Would you kindly just, with the understanding that it's approximate, would you kindly mark that so we know visually approximately where you're considering it?
MR. KABATT: And I would just say this is approximate and it's, you know, the -- it's my interpretation --

MS. ROBESON: I understand.
MR. KABATT: And I also --
MS. HARRIS: And I want to object for one moment because I think this is being taken out of context. I don't, I think saying the applicant is considering it is not an accurate representation of what was, what the witness testified to.
MS. ROBESON: Well, that's what --
MR. KNOPF: Well, then --
MS. ROBESON: -- he did testify to.
MR. KABATT: No, I want to -- if I could just clarify --
MS. ROBESON: No, I would like you to mark the concept please that you've had discussions, and you can clarify, Ms. Harris, you can have the witness clarify the status --
MS. HARRIS: Okay.
MS. ROBESON: -- of those --
MS. HARRIS: Thank you. Okay.
MS. ROBESON: -- whatever.
MS. HARRIS: Okay.
MS. ROBESON: And can you -- how did you mark it? Did you mark it with blue X's, is that blue ink?
MR. KABATT: I'm going to -- it's blue ink and it will be a rectangle shape.

MS. ROBESON: Okay. That's fine.
MR. KABATT: And, again, please don't --
MS. ROBESON: Just for the record.
MR. KABATT: Please don't take the width or --
MS. ROBESON: No, we're not.
MR. KABATT: -- the length as accurate. It's just a general location.
MR. KNOPF: Yes, I need to get something clarified in part from the witness. This seems to be a moving target. I'm not sure how I handle this. This may be a lay-by that's going to be proposed as part of her rebuttal later or is going to spring up after the project is approved or what? I mean we, I thought it was presented here as a possibility, so I here for one will explore it because --
MS. ROBESON: That's why I'm allowing him --
MR. KNOPF: Okay.
MS. ROBESON: -- to mark it because he did bring it up in his testimony.
MR. KNOPF: Okay. I just want to ask you as a traffic expert, assume the lay-by is put in -- I understand it's an assumption I put in. I want to try to understand how it works. Now, let's see, if I -- let's see. If I -- I'm very bad at -- I'd rather use this one. Okay. If I'm correct, the lay-by is around this area here, right in front of the building, right, correct?

MR. KABATT: Correct.
MR. KNOPF: Okay. Now let's say I'm going to pick up a friend at the, at this building and I'm coming from Arlington, let's say I'm coming --
MS. ROBESON: You're coming north?
MR. KNOPF: -- and I'm going, I'm coming, going this way, I would be going -- this is west, I would be coming, going north from the south, going north. I make a right onto Montgomery Lane and there is the building. Now I guess I have two choices. I could go past the building, make a left, go down West Lane and go to the Hammerhead, back up, turn around, come back out to Montgomery, make a right and then I pull right into that space or I guess before I get to Montgomery, I could pull into another lay-by space along West Lane, is that correct? Those are options available? You have to say yes.
MR. KABATT: That's correct. That's correct.
MR. KNOPF: Okay. Now isn't there another option that I make a right on Montgomery Lane and as I get to West Lane, make a U-turn and just pull right over there into the lay-by right behind Montgomery Lane, is that another option available to me?
MR. KABATT: Yes.
MR. KNOPF: And which would take less time and be the quickest?

MR. KABATT: The shortest distance doing a U-turn or a 3-point turn at West Lane, Montgomery Lane would be.
MR. KNOPF: Okay. Or wouldn't there be another option, I guess, I could pass -- I could -- since this is -- as this states here, opposite the lay-by area, is that a drive area into City Homes drive, an alleyway or driveway, a mews, whatever we would call it?
MR. KABATT: Yes, it is.
MR. KNOPF: Isn't that another option, I could make a right into that, back out and then pull over into the lay-by?
MR. KABATT: Sure.
MR. KNOPF: From a safety standpoint as a traffic expert, is it good to have those kind of turns, U-turns or back-up turns onto the, onto Montgomery Lane?
MR. KABATT: Given the low volume on Montgomery Lane, I think those movements could be accommodated.
MR. KNOPF: So it's fine with you?
MR. KABATT: Yes.
MR. KNOPF: And does that achieve the maximum safety that's one of the requirements of the zoning code, in your opinion?
MR. KABATT: I would, I would submit that a driver would know its environment around it and would not freely barrel over anything in its path that it would, given the

low volume on the street, that it would make a safe U-turn or a 3-point turn to turn around.

MR. KNOPF: Let me ask another question. However I got there, I'm sitting in the lay-by no matter which --

MS. ROBESON: Which lay-by?

MR. KNOPF: The one on Montgomery Lane.

MS. ROBESON: Uh-huh.

MR. KNOPF: No matter how, what route I took, but I'm sitting there. Now I'm sitting there waiting for my friend to come down. And the UPS truck comes down Montgomery Lane and which route do you think the driver would take, would make -- he sees that something, there's a car sitting there in the lay-by, so he would make a right-hand turn and go down West Lane, goes into West Lane, make a hammerhead turn backing up and coming back and pull over to an existing lay-by along West Lane or go back out to Montgomery Lane and pull up in front of the building and if the car is still there, just double park, or just not bother to make a turn onto West Lane this close to Montgomery Lane and pull up next to the car and double-parking right near the building and make his delivery. Do you think that's a very logical, likely scenario that rather than going down West Lane and going through that whole turning motion, just would pull up and double-park next to the car that's in the lay-by so it would block traffic, at least one lane on

Montgomery?

MR. KABATT: The delivery vehicles would, their first, or their choice would be to go to the lay-by on West Lane or the loading space on West Lane since the building, because they will have to go to that service corridor.

MR. KNOPF: That's assuming they go to that service corridor?

MR. KABATT: They have to.

MR. KNOPF: Well, let me ask you this then. Which do you think would be quicker, double-parking on the lay-by and walking back to that service entrance, assuming that's what they're using, or making a right-hand turn and going down West Lane and making a back-up turn at the hammerhead and coming back and going in the parking area? Which do you think would be quicker or would be perceived to be quicker by the driver?

MR. KABATT: I would think the driver would go to the loading areas on West Lane.

MR. KNOPF: You do?

MR. KABATT: Yes.

MR. KNOPF: I see. Now wouldn't there be -- let's, I left out one scenario, possibility. A car or a truck going down West Lane, rather than going into West Lane, wouldn't that car pull into one of the driveways at 4825 Montgomery and back out that way and then, heading back

toward Montgomery or going in the lay-by, that would be another option available?

MR. KABATT: Sure.

MR. KNOPF: And if they did back-up, I'm just trying to figure out -- and there was a parked truck in that lay-by. Does that then become sort of tight and back up, they'd have to maneuver their car and turn around if they're backing up that truck?

MR. KABATT: Well, again, I would submit that a driver would know its vehicle and know where it could or could not turn around.

MR. KNOPF: You have great confidence in drivers, right? Okay.

MR. KABATT: I do.

MR. KNOPF: And, similarly, would you agree with me you would know that UPS drivers are people that make frequent deliveries who know exactly what the quickest way is to get in and out of that building?

MR. KABATT: Yes.

MR. KNOPF: Now, by the way, in terms of my picking my friend, do you have any information as to the demographics of people who rent on this street or right around the Metro generally, specifically the street in terms of age? Is there not a higher than average age that occupies these buildings?

MR. KABATT: I do not know that.

MR. KNOPF: But as a traffic person, would you agree with me that very, senior citizens may take longer to get in and out of cars than younger people?

MR. KABATT: I would agree with that.

MR. KNOPF: Now you gave us some figures -- you had given us some figures as to the amount of cars that, or trips that would be generated by this building, is that, am I correct?

MR. KABATT: Yes.

MR. KNOPF: And I think you, like 20 some additional trips or whatever, I'm not trying to get the exact numbers down. Were you -- how did you arrive at those? Are there national or local charts that say for every dwelling unit, rental or condo or something you can expect so many trips? Is that what you used or, for the base of your testimony?

MR. KABATT: Yes. The local area transportation review guidelines provide trip rates for apartments in the Bethesda CBD.

MR. KNOPF: And you use those?

MR. KABATT: Yes.

MR. KNOPF: And those say so many car trips per unit --

MR. KABATT: Correct.

MR. KNOPF: -- on the average? So they're all averages, is this correct?
MR. KABATT: Yes.
MR. KNOPF: Including the 36 percent as an average, is that correct?
MR. KABATT: Well --
MR. KNOPF: The 36 percent of the leased, of rental units don't have cars, so they're all averages?
MR. KABATT: That's based on actual -- it's based on actual data. It's not -- the census data isn't an average, it's -- we'll, the data that was actually collected in that tract.
MR. KNOPF: Averaging all the rental buildings in the tract, correct?
MR. KABATT: Well, it's whoever responds to the census data that they collect.
MR. KNOPF: All right. In terms of, going back to the terms of the number of trips generated per unit, that's referring to car trips, correct? Is there figures as to how many delivery trips are generated per unit?
MR. KABATT: Those trip rates are derived based on driveway counts and observations of buildings. So it does not discriminate as to who is coming in and out of that driveway.
MR. KNOPF: Be in -- well, it is based upon if

somebody doesn't use a driveway, they just pull up in the street and make deliveries, does it count those vehicle trips also?
MR. KABATT: I'd have to go back and look at the sources of the, where the Park and Planning got those trip rates from, but I generally think driveway counts where if there's a drop-off area, you would include that as part of the trip generation for your, for that site.
MR. KNOPF: Well, I think you said you observed, in your visits to the site, you observed some congestion on the street in terms of service vehicles and delivery vehicles? You saw some trucks or service vehicles parked on the street, do I recall that testimony?
MR. KABATT: In my observations of the numerous times that I've been out there --
MR. KNOPF: Yes.
MR. KABATT: -- I have not -- I saw vehicles parked outside of the designated parking areas, but I have not seen the double parking. I have only seen those in the photos.
MR. KNOPF: Well, I guess what I'm asking is to your knowledge you don't know whether those vehicles parked outside the parking areas would be counted as part of the trips of that building because they don't go in and out of the building's garage or pull up right in front of the door?

MR. KABATT: Right. Again, going to a general trip generation site you would do, one would normally count vehicles using the site's driveway --
MR. KNOPF: Driveway?
MR. KABATT: -- or if there was a designated courtyard or drop-off area, that would also be included. You would look at all the access points for that building.
MR. KNOPF: Okay. Now let me go back since apparently you wanted to do that. If we could get -- which was the one that was marked with the red, 106? We had --
MS. ROBESON: Oh, the loading exhibit?
MR. KNOPF: Yes.
MS. ROBESON: I think it's in the '80's.
MR. KNOPF: Oh.
MS. HARRIS: 89.
MS. ROBESON: 89.
MR. KNOPF: 89, sorry. I'm way off. Okay. Yes. I'm trying to -- to your knowledge, would the lay-by on Montgomery Lane that's under consideration be approximately the same dimensions as the lay-by that's proposed on West Lane?
MR. KABATT: I could not tell you. We haven't even --
MR. KNOPF: Haven't done that?
MR. KABATT: I have not seen a design of the --

MR. KNOPF: I see.
MR. KABATT: -- as a discussion.
MR. KNOPF: Well, let's look to the West Lane lay-by. Does that -- that we do have the dimensions for, don't we?
MR. KABATT: We do.
MR. KNOPF: Okay. And how long is that?
MR. KABATT: It's 40 feet, but I'll confirm. That's its architectural scale. It's -- no, it's --
MS. HARRIS: Oh, that's an architect?
MR. KABATT: Yes, that's an architectural sketch.
MR. KABATT: It's 40 feet.
MR. KNOPF: 40 feet? And what, what is the requirement in Montgomery County for a regular parking lot for a car, for the length of the car space?
MR. KABATT: Within a parking lot?
MR. KNOPF: Well, in a parking -- what's a regular parking whether it's garage, parking lot?
MS. ROBESON: Do you mean a space?
MR. KNOPF: The space, what is it for a car? There's dimensions the County Code says that is normal for a regular-size car you have to have a space of such and such a width and such and such a length, depth, and what is that?
MR. KABATT: The length is 18 feet.
MR. KNOPF: 18 feet? So applying that standard,

what, we could get two cars into this lay-by?
MR. KABATT: Yes.
MR. KNOPF: Now and how -- well, what, how many -- the type of truck, I'm going to call it a box truck, can you tell me if I'm wrong, the UPS comes with its boxes, a UPS traditional truck, I know they have different size trucks, but the normal delivery truck, is that called a box truck?
MR. KABATT: I would say those are more, classified as delivery trucks than --
MR. KNOPF: Well, what is the length of those?
MR. KABATT: They are about, they're about 15 to 20 feet.
MR. KNOPF: 15 to 20? Okay. So we could get two of those in a lay-by?
MR. KABATT: Yes.
MR. KNOPF: The theory if, however, if the lay-by is empty and the first truck, if there is a car or a truck parked in the lay-by already that isn't pulled all the way up at the very end of the lay-by, if they left some room so they can pull out without struggling and turning the wheels, so say they're six feet from the edge, do you already got a situation where the next vehicle that wants to pull into the lay-by was going to have to do a very careful parking job, will they not? They'll have to pull up parallel, back-up and turn wheels to get into that space?

MR. KABATT: Well, the lay-by lanes also, they have the tapered edges so you can pull in and pull out in an easier movement than if it was a 93.
MR. KNOPF: So you could go all the way up, take full advantage of the ramp to the edge until you have full advantage of the total 40 feet?
MR. KABATT: Yes, you would have advantage of the 40 feet and then I would also say that there's delivery vehicles, as I said yesterday, are there for about five minutes or so.
MR. KNOPF: I see. And are the delivery vehicles also having, you frequently observed not, maybe not on this street, that if there's any maneuvering for parking involved, they just pull up and leave it in the street, double-parking, running in and out?
MR. KABATT: I have seen UPS trucks pull along the curb and run into a building.
MR. KNOPF: And you've also seen them double-park. If there's cars parked at the curb, they just pull up next to, parallel to the car and just sit here in the street and running in to do their job?
MR. KABATT: In urban areas --
MR. KNOPF: Yes.
MR. KABATT: -- I have seen them.
MR. KNOPF: You have seen them? Okay. Thank you.

Now if there's 120 units, and there could be 120 units in this building, right?
MR. KABATT: Yes.
MR. KNOPF: Okay. And if, let's assume a certain percentage of people when they're moving in have a couch, that wouldn't fit into the UPS truck, would it? It would come in a larger truck, would it not?
MR. KABATT: Generally, yes.
MR. KNOPF: Yes? And what size is that larger truck? I imagine there's a range of sizes, but let's go to the next one beyond the UPS, 15 feet, what are we talking about 25 feet, 20 feet, 40 feet? What are the options that could come with delivery?
MR. KABATT: Anywhere from, you have 10-foot trucks, you have 14-foot trucks, 7-feet trucks, 20-foot trucks, 30-foot trucks.
MS. ROBESON: What's the next -- okay.
MR. KNOPF: 30-foot trucks? And a moving van? The next step would be a large moving van or there's something between 30 feet?
MR. KABATT: There's the 30-foot, it's called a single unit truck, single unit vehicle, and the next design vehicle is called a WB 40.
MR. KNOPF: WP?
MR. KABATT: WB as in --

MR. KNOPF: B?
MR. KABATT: -- bravo.
MR. KNOPF: WB 40? Okay.
MR. KABATT: That indicates that's a 40-foot trailer.
MR. KNOPF: I see.
MR. KABATT: There also is a single unit, 40-foot truck that the difference there is one, as the cab that articulates and the other ones does not.
MR. KNOPF: So would you agree with me that if we have one of those 40-foot trucks, they wouldn't fit into the 40-foot lay-by?
MR. KABATT: The WB 40, well, I think the engineer has the, approximately, I'm not sure that that truck would fit in the lay-by because it then tapers, but many people testified to that.
MR. KNOPF: But you don't know whether it would fit or not?
MR. KABATT: Well, I understand that that WB 40 truck with the tapers would be able to fit into that lay-by.
MR. KNOPF: Then if the lay-by is 40 feet, they can fit a 40-foot truck into that?
MR. KABATT: Yes.
MR. KNOPF: And would you agree with me that he's just going to pull in? He'd have to maneuver to park that?

MS. ROBESON: Mr. -- I think, Mr. Kabatt, are you basing your answer on what the engineer has told you or --
MR. KABATT: Well, I had seen the sweeps, I just, I did not run them --
MS. ROBESON: When you mean the sweeps, the --
MR. KABATT: They're --
MS. ROBESON: -- the exhibits?
MR. KABATT: The auto turns, yes, the exhibits that --
MS. ROBESON: Okay. And you're a civil -- are you a civil engineer as well?
MR. KABATT: My degree is in civil engineering, but my work capacity is transportation.
MS. ROBESON: These may be more appropriate for the civil.
MR. KNOPF: Well, the only reason I was, not the only reason, the reason I was asking is he gave an opinion that this was of the maximum safety, and events and so on and --
MS. ROBESON: That's correct.
MR. KNOPF: -- an internal, and that an internal, what was the thing, vehicular and pedestrian points of interest are safe, adequate and efficient and I just want to see what he based that on. But I won't pursue that.
MS. ROBESON: Okay.

MR. KNOPF: I think I made my point. Would you just let me ask another question? So far I focused only on the length of the vehicle. How deep width-wise is the space, the, this lay-by and would a box truck or a moving truck, assume they're parked in that space, protrude into the driving lane because the width is insufficient to contain the whole vehicle?
MR. KABATT: The width of the lay-by of West Lane is six feet.
MR. KNOPF: And what, excuse me, what did you say the width is required under the County Code for a parking space?
MR. KABATT: The width --
MR. KNOPF: The width.
MR. KABATT: -- of a --
MR. KNOPF: Of a normal, for a regular car when you have to design a parking lot, parking spaces and building, do you have -- you said it was 18 feet in length, I believe, and what is the width?
MR. KABATT: In a parking lot --
MR. KNOPF: Yes.
MR. KABATT: -- the spaces are generally 8 feet wide.
MR. KNOPF: 8 feet? So you're saying this is six feet? I just wanted that as a reference, so okay. And how

wide then is the van, a UPS, normal UPS -- not a van, a truck or whatever we're going to call it, delivery vehicle, why don't we do it that way, that sounds neutral?
MR. KABATT: Yeah. They could be, depending on their size, they could be six to eight feet.
MR. KNOPF: Six to eight feet? So even if we had a, if we had an 8-foot one, obviously some portion of that vehicle will stick out into the travel lane?
MR. KABATT: Correct.
MR. KNOPF: Okay. And that would be true whether it's on West Lane or on Montgomery Lane or are you saying --
MR. KABATT: If they were both 6-feet wide and you've got an 8-foot --
MR. KNOPF: And you don't --
MR. KNOPF: -- but the truck, those --
MR. KABATT: Okay. So, and I just want to -- just one other thing, I'm sorry, you said the box, a box truck -- is box truck the type of thing that you might rent from U-haul as a -- I'll take that -- U-haul has all size of trucks, don't they, all different sizes?
MR. KABATT: They do.
MR. KNOPF: Is a typical box truck about 26 feet in length or you don't know?
MR. KABATT: No, there's like -- I think the sizes that I went through a few minutes ago, a box truck is that

general term. You can see them up to the 30-foot length, but again they could be 10-foot, 14, 17, and that's the size truck that we believe will be using this, coming to this building.
MR. KNOPF: Okay. And just again, as I remember correctly, you're saying that in terms for the garage, to go down into the garage and use that loading facility, the garage, do I understand you correctly to say that larger moving van vehicles would not be going down and not using that area in the garage, is that correct?
MR. KABATT: Right. I would understand that the truck would not go into the garage.
MR. KNOPF: And what did you say the height of the door was at the garage? Would that be another consideration as to whether the vehicle can get in, not only the width and the length, but the height?
MR. KABATT: The height, yes.
MR. KNOPF: What is the height of the entranceway in the garage?
MR. KABATT: I'd have to measure it, but from reviewing the plans, I recall it being about 10 feet, six inches.
MR. KNOPF: 10 feet, six inches? And what is your understanding of the height of a normal delivery vehicle?
MR. KABATT: Is this the UPS?

MR. KNOPF: UPS.
MR. KABATT: The UPS trucks, delivery vehicles or vans, they could be six to eight feet in length.
MR. KNOPF: Six to eight feet? And what about the box trucks, the next time, those that are --
MR. KABATT: Yes, they --
MR. KNOPF: Do they exceed 10 feet?
MR. KABATT: They could be 10 feet. A 14-foot U-haul truck is about 10 feet. The smaller 10-foot truck is eight feet, seven inches.
MR. KNOPF: And I -- now I asked you about the garage to go down into the garage. There, is the loading -- there's another loading area on that exhibit next to the garage door and I guess that's in the building also, but it doesn't go down into the garage. Could you point to that so you both, make sure we're talking about the same thing.
MR. KABATT: Are you referring to the loading spot marked in red --
MR. KNOPF: Yes.
MR. KABATT: -- on Exhibit 89?
MR. KNOPF: Right. Now does that have a garage door?
MR. KABATT: Yes.
MR. KNOPF: And what would be the height there?
MR. KABATT: Without seeing the elevation and from

my earlier review of the plans, I believe it's 11 feet.
MR. KNOPF: 11 feet?
MR. KABATT: Yes.
MR. KNOPF: And what's the, I believe you testified and I could be, my memory could be wrong, the loading area, the length of that loading area is what, how many feet is that? Refresh my recollection.
MR. KABATT: Inside the building is 22 feet.
MR. KNOPF: 22 feet? I see. And if we had a moving van, something that carried furniture that was able to fit within that 11 feet, are vans longer than 22 feet?
MR. KABATT: There are some vans that are longer than 22 feet.
MR. KNOPF: Okay. By the way, that's --
MR. KABATT: Some trucks are longer than that.
MR. KNOPF: Thank you. Did, just currently, since that garage door is on here, let's assume you're absolutely correct, there is visitor parking and someone coming to visit. How do I get in? Do I have to first stop by the front door, go in and ask the desk to --
MS. HARRIS: Objection. That's an operational question that the traffic engineer is not, doesn't have the knowledge to answer.
MR. KNOPF: But he said this operates at maximum efficiency.

MS. ROBESON: Don't --
MR. KNOPF: Excuse me.
MS. ROBESON: Just a second. I think it does go to, I think it does go to onsite circulation because he's trying to ascertain whether they will have to stop or not stop and I assume you will have some kind of rebuttal as the whole testimony has been on operations. So to the extent you know, can you answer the question?
MR. KABATT: Yes. This building in particular, those details are typically worked out at later stages and not at a zoning stage, but in my experience with buildings of this size and use, a visitor would contact the person they're going to visit and they would either come down and meet them to get them into the garage or they would go into the front lobby and get a pass. Another operation is that you could pull up to the garage door and they have an intercom system and the person at the front desk would open the door for you.
MR. KNOPF: So, but is it fair to say you don't know at this stage what, if any, system they're going to have?
MR. KABATT: That has not been worked out, yes, to my knowledge.
MR. KNOPF: You said, I believe, that you've observed on the street, and now I'm talking about the

eastern part, near the Edgemoor and Woodmont area of the street, you said you observed parking on both sides of the street?
MR. KABATT: You're referring to Montgomery Lane?
MR. KABATT: Yes, I'm sorry, Montgomery Lane, thank you.
MR. KABATT: By the Edgemoor. Yeah, there's the segment of Montgomery Lane between Woodmont Avenue and West Lane. There's on street parking on both the north side and the south side.
MR. KNOPF: And I believe you testified that the original master, Sector Plan did seem to indicate there was only going to be parking on one side of the street?
MR. KABATT: Correct.
MR. KNOPF: Thank you. So would you -- do you know why they added parking on both sides, would that not indicate there was a need for more parking spaces and that's why they have parking on both sides?
MR. KABATT: I don't know the history as to why it's on both sides.
MR. KNOPF: Okay. I thought you also said that you had seen, you had seen traffic congestion on the eastern part of that street due to parked vehicles, do I recall that correctly? And I thought that the -- do I recall that you said that?

MR. KABATT: I think I stated this a couple of times, but I, in my observations in the street when I was out there --
MR. KNOPF: Yes?
MR. KABATT: -- I had seen the vehicles parked outside of the designated parking areas, but I have not seen the double-parked vehicles.
MR. KNOPF: Okay. So when you say -- I'm sorry, when you say outside the designated parking areas, are these indentations in the curb where they're supposed to pull off, I mean like lay-by areas and what is the designated parking area?
MR. KABATT: Well, I'd say designated area because the north side, they do have the cut-outs to park and then there is a cut-out to a lay-by.
MR. KNOPF: So you're referring --
MR. KABATT: And there's on the south side, it's curb parking.
MR. KNOPF: I see.
MR. KABATT: And if you park in between two signs that say that you're allowed to park there.
MR. KNOPF: Parking. Okay. And you said you saw parking outside of those areas?
MR. KABATT: On that south side vehicles would be parked on the outside of those two signs, yes.

MR. KNOPF: And did that mean they protruded into the driving, the travel lane?
MR. KABATT: Well, not any more than a parked vehicle, it's just that they were, again, longer than what was that designated area.
MR. KNOPF: What I'm trying to understand is I thought the lanes were rather narrow on Montgomery Lane, so if they kind of parked a car along the side, there was not, if it was an indentation, there might be enough room to have parked car along the side and to have a full travel lane, that's what I'm trying to understand, as to whether that decreases the travel lane area.
MR. KABATT: Montgomery Lane generally --
MS. ROBESON: Can you clarify for me where is -- on the, how about 106(b)?
MS. HARRIS: (b)?
MS. ROBESON: Is that what it is? Can you just clarify for me where you saw the parked cars parked illegally because I'm confused about it?
MR. KABATT: Okay. On 106(b), I'm looking at the Edgemoor Highrise.
MS. ROBESON: Yes.
MR. KABATT: And 106(b) there's the two darker gray and those are the parking areas.
MS. ROBESON: Are they lay-bys or are they actual,

designated parking areas?
MR. KABATT: The one to the east --
MS. ROBESON: Yes.
MR. KABATT: -- so Woodmont Avenue is the actual parking spaces on the north side of the street and the one on the --
MS. ROBESON: To the west?
MR. KABATT: -- west side is a lay-by.
MS. ROBESON: Okay. And where did you see the cars illegally parked?
MR. KABATT: So on the south side of Montgomery Lane opposite the lay-by in the parking lane is the general area of the on street parking.
MS. ROBESON: Okay.
MR. KABATT: And then, so that would be where on occasion you would see the vehicles parked outside of those lanes.
MS. ROBESON: And what is the width there, the same as the width past the do not enter signs to the west of the do not enter signs or is it wider?
MR. KABATT: Montgomery Lane is -- there's some variance in the exact width.
MS. ROBESON: That's what I recall.
MR. KABATT: It's generally 20 feet. It actually goes from 19 to 20, approximately 21 and to 20 feet, but in

this area it's generally the paving section of the travel lanes, including that parking lane on the south side is approximately 20 feet wide.
MS. ROBESON: Okay. So does the 20 feet include the travel lane, I mean does the 20 feet include the parking area or is the parking area in addition to the travel lane?
MR. KABATT: The 20 feet includes the parking area on the south side of the street. It does not include the cut-out, the parking area --
MS. ROBESON: The cuts?
MR. KABATT: -- on the north side.
MS. ROBESON: Okay. So where did you see the illegal cars, illegally parked cars, not stolen?
MR. KABATT: They were -- so that parking on the south side is generally across from the Edgemoor Highrise.
MS. ROBESON: Okay.
MR. KABATT: And this exhibit is not showing the exact limits on that parking.
MS. ROBESON: Right.
MR, KABATT: But it would be, because you're traveling west toward West Lane outside that parking area on the south side and then also on the east side, you can see there's a driveway --
MS. ROBESON: Yes.
MR. KABATT: -- or drive aisle between City Homes

on the east side.
MS. ROBESON: So was it blocking that drive aisle through the City Homes?
MR. KABATT: On my occasions being out there, I have not seen driveways to City Homes being blocked.
MS. ROBESON: Okay. Okay, I'm sorry to interrupt.
MR. KNOPF: No, no, that's -- you've asked -- that's what I wanted to find out and you guys do better than I do. Just one minor thing, the Hearing Examiner assumed the vehicles parked were cars. Did you observe service vehicles rather than cars that parked any time along there in that area? By service vehicles I mean like panel trucks for plumbers or electricians and so on.
MR. KABATT: I have seen electricians or lawn care or landscaping, I guess not really lawn care, but --
MR. KNOPF: Thank you. I believe you testified your principle concern about traffic was during the a.m. to p.m., is that not your focus on number of trips and how the road operated?
MR. KABATT: Yes, per the guidelines.
MR. KNOPF: Right. So did you -- you personally observed the operation of the street then at those hours, a.m. peak and p.m. peak?
MR. KABATT: I have been out there during a.m. and p.m. peak hours.

MR. KNOPF: Would you agree with me that service vehicles and delivery vehicles try to avoid the a.m. and p.m. peak and so tend to concentrate in between those peaks in terms of when they will do their work and park on the streets?
MR. KABATT: I agree with that, yeah.
MR. KNOPF: Thank you. Do you, are you aware of any studies or do you have any information for the Bethesda central business district, the street or even Montgomery County as to the number of service vehicles, by service vehicles I mean from repair to delivery vehicles whether it's the cleaners or computer repair guy or the painter and so on, how many units, how many trips are generated on the average year, whatever, by a rental unit or co-op or even single-family home?
MR. KABATT: I don't know that off the top of my head.
MR. KNOPF: You don't know? Okay. Just one other question. You said you observed some service vehicles parked on the street down by the Edgemoor, is that correct?
MR. KABATT: That's correct.
MR. KNOPF: Is there a, the parking on that street, is there, is it limited in terms of time by signage?
MR. KABATT: It used to be 2-hour parking, but I think that limit has been --

MR. KNOPF: Well, if the limit was there, has your experience been that service vehicles sometimes take longer than two hours to do their work?
MR. KABATT: I don't know the reason why that -- you can see it on the sign, but I don't know why that was eliminated.
MR. KNOPF: Are you sure it was eliminated?
MR. KABATT: I recall that the signs, through your typical green and white parking signs, and when I looked at them, it looked like there was a time limit on there that had been whited out or --
MR. KNOPF: Oh, whited out?
MR. KABATT: -- renewed.
MR. KNOPF: All right. Thank you. I have no further questions.
MS. ROBESON: All right. Redirect?
MS. HARRIS: Thank you. Mr. Kabatt, I first want to respond to two questions that the Hearing Examiner asked yesterday that you've had a chance to investigate. One is the question came up as to whether there are parking signs on Montgomery Lane west of West Lane. Can you -- are there parking signs on Montgomery Lane west of West Lane?
MR. KABATT: I did go back and review my field notes and there are no parking signs on Montgomery Lane west of West Lane.

MS. HARRIS: There are no parking -- okay.
MR. KABATT: Yes. So you --
MS. ROBESON: That was a hard one.
MS. HARRIS: I know.
MS. ROBESON: Between the two wests and the two double negatives --
MS. HARRIS: I know it's difficult.
MS. ROBESON: Okay. Go ahead.
MS. HARRIS: And the second one, which won't be quite so difficult grammatically, is, were, are there any requests, are there any no, no outlet signs at the intersection of Montgomery Lane and Arlington Road?
MR. KABATT: There are. There are no outlet signs.
MS. HARRIS: Okay. Thank you. And how many or were you able to observe that?
MR. KABATT: Two --
MS. HARRIS: Okay.
MR. KABATT: -- that I saw.
MS. HARRIS: Thank you. Okay. Can you please reiterate how many loading spaces are being, how many are recommended by the Montgomery County guidelines with respect to this project?
MR. KABATT: There are three loading spaces proposed with this project and they're required to provide

one --
MS. HARRIS: And is the --
MR. KABATT: -- per the guidelines.
MS. HARRIS: Okay. And is the provision of one space typical in a project like this?
MR. KABATT: Yes.
MS. HARRIS: Can you give any examples of other projects in Montgomery County that have, that are similarly sized that have just one space or have been approved for just one space?
MR. KABATT: Yes, in fact, I was involved in a case that just went through the project plan on Old Georgetown Road and Commerce Lane and both DOT and DPS, the Department of Permitting Services, agreed to one loading space for that building and that building so happens to be about 120 units as well.
MS. HARRIS: Thank you. So with subject properties providing three times what is normally recommended, is that correct?
MR. KABATT: That's correct.
MS. HARRIS: You also testified yesterday as to the possibility of a fourth loading space on Montgomery Lane. In your opinion, is this necessary?
MR. KABATT: Absolutely not. That's why I did want to clarify. Again, we think that one loading space

that loading criteria calls for is adequate. We're providing two additional beyond that. This fourth loading space had come up because of conversations and because of there being some concerns about delivery and service along Montgomery Lane, so we approached DOT. I went to them and just asked them if they would entertain a lay-by on that lane but, again, we think that the loading we're providing is more than adequate with three spaces.
MS. HARRIS: So is it correct to say that while such a lay-by could be physically accommodated, the applicant, to your knowledge, has not advocated it, is that correct?
MR. KABATT: That's, yes, that is correct.
MS. HARRIS: Okay. Thank you. Will the project's three loading spaces provide an improved situation with respect to the loading which currently exists on the property?
MR. KABATT: Yes, there's four buildings. They're home-like structures, but they're businesses that operate in there. I think there's about six or so individual businesses in those four structures and they, those structures, they have small parking lots for a few vehicles, but they don't have designated loading areas.
MS. HARRIS: And, presumably, being businesses, they have deliveries that are being made during the day, is

that correct?
MR. KABATT: Yes.
MS. HARRIS: Okay. I'd like to revisit the loading accommodations with respect to move-ins?
MS. ROBESON: I'm sorry, what did you say?
MS. HARRIS: With move-ins.
MS. ROBESON: Oh, okay.
MS. HARRIS: Moving in. What's the largest truck that can be accommodated in the loading bays in the building?
MR. KABATT: 30 feet.
MS. HARRIS: And is this truck intended to service what type of household?
MR. KABATT: A 30-foot truck, according to U-haul's webpage, would, could accommodate a 3 to 4-bedroom home.
MS. HARRIS: Okay. So what does the U-haul information say with respect to the type of truck that would typically accommodate the average size unit in this project, which is approximately 860 square feet?
MR. KABATT: U-haul recommends that you use a 14-foot truck.
MS. HARRIS: And then just to be safe, we, the project may have units as large as 1,100 square feet, 1,150. What type, what size truck would be necessary per the U-haul

information?
MR. KABATT: 17 feet.
MS. HARRIS: And so, and the loading bay can accommodate a 17-foot truck, is that correct?
MR. KABATT: Yes.
MS. HARRIS: Thank you. And the lay-by, I assume, can also accommodate that size truck?
MR. KABATT: Two of them, yes.
MS. HARRIS: Thank you. Okay. You testified yesterday that it's common practice for moving companies to transfer contents from a large moving van if someone is moving across the street and those households are consolidated into one van to a more reasonably sized urban-type truck, is that correct?
MR. KABATT: That is correct.
MS. HARRIS: And is this a common situation in an urbanized area?
MR. KABATT: Yes, and my experience with loading for these types of buildings, it is common that these moving companies have -- they move across the country. They investigate what their options are at the buildings they're going to and the streets that they're using to access the loading facility.
MS. HARRIS: So, presumably, when you call up the moving company and say I want to, I need you to move me over

to West Lane, they would either ask or make personal observation in terms of what kind of truck can be accommodate at the destination?

MR. KABATT: That's correct.

MS. HARRIS: So in your opinion is it quite remote that semi-size moving truck would ever be on West Lane?

MR. KABATT: Yes, I -- that is the case.

MS. HARRIS: There was some discussion about the lay-by on West Lane and the potential that cars may be, that it's six feet in length and the cars may be, may be slightly wider than that. Is that similar, is a similar situation occurring on the lay-by in front of the Highrise Edgemoor in terms of the width of the lay-by and the cars?

MR. KABATT: Yes.

MS. HARRIS: And on Montgomery Lane in front of the Highrise Edgemoor, how many -- that's the one-way section, but how many trips during the peak hour on Montgomery Lane?

MR. KABATT: On Montgomery Lane?

MS. HARRIS: Yes.

MR. KABATT: There's, during the peak hour it's the p.m. peak hour that has more, but there's, well, that one-way section, it's, that's about 110, 120, but the peak on Montgomery Lane itself is 155 peak hour trips.

MS. HARRIS: Okay. But 120 in that section

possibly?

MR. KABATT: Yes.

MS. HARRIS: And how many peak hour trips on West Lane?

MR. KABATT: On West Lane there is, again, just to make sure I have my numbers straight here, on West Lane there are, today there are about 28 peak hour trips and then in the future, in the future there would be about 58 peak hour trips.

MS. HARRIS: So one car every minute, is that correct?

MR. KABATT: Yes.

MS. HARRIS: So if there were, happened to be a car or two cars in the lay-by, and there's one car every minute on West Lane, do you foresee any problems in terms of utilization of the lay-by when cars are going by West Lane?

MR. KABATT: No, I do not. West Lane is 22 feet, will be 22 feet wide, two 11-foot travel lanes.

MS. HARRIS: Okay. Thank you. In terms of, you testified in terms of the census information and you noted that with respect to ownership it could be distorted because there are single -- it doesn't distinguish between single-family homes and condominiums, is that correct?

MR. KABATT: That's correct.

MS. HARRIS: And then you also noted -- is it

correct that you also noted that the single-family homes likely, that the car ownership could be greater in a single-family home, is that correct?

MR. KABATT: That's correct.

MS. HARRIS: And then would you also -- in your opinion would you also conclude that in condominium units that average 2,500 square feet, that the car ownership may, in fact, be greater in a condo, condo of that size versus a unit whether rental or condo of 860 square feet?

MR. KABATT: Yes.

MS. HARRIS: Thank you. You testified yesterday that there would some excess parking available in the building and that to the extent more parking was needed, guests of the residence could park in one of the nearby commercial or public parking garages, correct?

MR. KABATT: That's correct.

MS. HARRIS: And you have worked on a number of projects in urbanized areas?

MR. KABATT: Yes, both here in Montgomery County and Washington, D.C., and in Arlington County.

MS. HARRIS: Okay. And would -- if you, if a guest were not able to park in the building and had to park in one of these garages two or three blocks away, is that in any way unexpected given the urbanized nature of this area of Bethesda?

MR. KABATT: No, I think in an urbanized area people expect that there, people expect to walk, you know, a certain distance to get to their destination.

MS. HARRIS: Okay. And then how about, say you visit someone in a single-family residence when you're going to a dinner party, do you ever have to park two blocks away, three blocks away?

MR. KABATT: Sure. I guess, you know, it all depends on what part of the County or streets you're on, but you know there's occasions where, you know, you're having a party at your house and obviously your front of the house isn't going to accommodate 10 vehicles and then your neighbors park, so you may have to park two or three blocks away to get to that house.

MS. HARRIS: So there's really, whether it's an urbanized area such as what were, that were the size located or single-family neighborhood, walking two or three blocks is in no way out of the ordinary or the normal realm of expectation for parking for guests?

MR. KABATT: No, particularly in an urbanized area.

MS. HARRIS: So it sounds like what you're saying, the only difference may be whether you're parking on the street in front of a single-family home or maybe parking in a parking garage, is that correct?

MR. KABATT: Correct.
MS. HARRIS: Okay.
MS. ROBESON: Okay, but not so much leading the witness --
MS. HARRIS: Okay.
MS. ROBESON: -- okay?
MS. HARRIS: Okay. Ears are wide open.
MS. ROBESON: Good.
MS. HARRIS: In response to Mr. Abrams's question regarding the -- Mr. Abrams yesterday testified, or asked you the question that Montgomery Avenue lane width was comparable to the drive aisle way, is that correct?
MR. KABATT: Yes.
MS. HARRIS: And then you had compared -- what did you compare the width --
MS. ROBESON: Just a second. Just a second. Excuse me, I can't -- it's difficult for me to hear --
UNIDENTIFIED SPEAKER: Sorry.
MS. ROBESON: -- what Ms. Harris is saying. Ms. Harris, I'm sorry, to interrupt.
MS. HARRIS: That's okay.
MS. ROBESON: Can you keep going?
MS. HARRIS: And then you prepared the width of the lanes on Montgomery Avenue to what street that most of the people in the room seem to be familiar with?

MR. KABATT: Well, Connecticut Avenue in Chevy Chase has 10-foot travel lanes and that -- Connecticut Avenue carries approximately 3,700 peak hour trips on an average day.
MS. HARRIS: Okay. And the --
MR. KABATT: And West Lane, or Montgomery Lane carries, as I mentioned a few minutes ago, 155 peak hour trips in a 2-lane section and they're 10-foot travel lanes.
MS. ROBESON: Okay. Just on that, I will also disclose, and I'm familiar with the date here, the case that was on Connecticut Avenue that they had a tremendous parking problem because of those lanes because of drop-off and pick-up. So I'm just disclosing that.
MS. HARRIS: Can you disclose where on the, on Connecticut?
MS. ROBESON: I can't remember, but I can -- it was 10-foot travel lanes.
MR. KNOPF: Yes.
MS. ROBESON: And that doesn't mean I'm making a judgment here or anywhere, I'm just disclosing that there were problems with drop-off and pick-up which were non-peak hours. Now it was peak in the a.m. and non-peak in the p.m. I tried to say, you know, I'm trying to give you a chance. It doesn't mean I made a decision, I just, when these things pop into my head, I want to be fair and let you know that

I'm thinking of situations where the 10 feet wasn't, you know, did create some problems.
MS. HARRIS: Well perhaps it would be helpful to just highlight again the differences between the 10-feet drive aisle, excuse me, the 10-foot wide lane, 10-foot wide lane on Montgomery Lane as compared to the situation on Connecticut Avenue?
MR. KABATT: Well, again, Connecticut Avenue carries approximately 3,700 peak hour trips and --
MS. HARRIS: So how many cars is that a minute?
MR. KABATT: Well, 30, I guess.
MS. HARRIS: Right, exactly. That's a test.
MR. KABATT: Well, 36 if you --
MS. HARRIS: Call it 36.
MR. KABATT: That's one every second.
MS. HARRIS: Okay. Versus how many every, on Montgomery?
MR. KABATT: Well, Montgomery Lane has 155. So if you do your quick math there, that's 155 in an hour, 60 minutes, that's three vehicles a minute, less than three vehicles a minute.
MS. HARRIS: So that's a significant difference?
MR. KABATT: 180 would be three a minute.
MS. HARRIS: Thank you. And the speed difference?
MR. KABATT: Connecticut Avenue is, I know it's

posted for 30 miles an hour, but they had to put in the speed camera because people were traveling higher than 30 miles an hour. Montgomery Lane, Montgomery Lane I don't believe has a posted speed limit, but given its, if that's the case, that means it's usually 25 miles an hour and given its length between Arlington Road and Woodmont, when you expect there to be high speeds, certainly not above 30 miles an hour.
MS. HARRIS: Okay. Thank you. There's been a lot of -- I want to go back to parking just for a moment just because there's been a lot of discussion about parking in terms of whether there's enough parking in the building and whether there's enough guest parking. But can you comment on that dynamic as it relates to the building's proximity to the Metro station in terms of expectation of behaviors for the guests and the residents?
MR. KABATT: Yes. Well, I would, I would think a building of this size and this size unit, that people would be attracted to living there because of its proximity to Metro and because of the other options of using their means of transportation besides your personal vehicle. And that's even evident in the trip generation rate of .3 trips per unit and that right there suggests that not everybody drives a vehicle when they're going to and from say work or wherever they're going during the peak hours. And also

guests, I live in a rather urbanized area and when I have people over, they always ask me if I can get a guest parking pass in my garage and if I ask the management and if there's not a directum to a parking facility, or there is on-street parking in the area where I live.

MS. HARRIS: Thank you. Finally, opposing counsel had a number of questions regarding the parking on the street, noted the illegal parking, noticed that there's sometimes service vehicles out on the street, are these all existing conditions?

MR. KABATT: Yes.

MS. HARRIS: And is the proposed project in your opinion going to do anything to exacerbate the situation?

MR. KABATT: No. In fact, with the three or two additional loading spaces, we think we're more than accommodating our building and hopefully improving the situation out there today.

MS. HARRIS: Thank you. That concludes my questions.

MS. ROBESON: All right. Recross, Mr. Abrams.

MR. ABRAMS: Yes. I want to, first of all, touch on your comparison of the 10-foot lanes on Montgomery Lane and Connecticut Avenue. How many lanes of traffic are there on Connecticut Avenue?

MR. KABATT: Six.

MR. ABRAMS: And how many lanes of traffic are there on Montgomery Lane?

MR. KABATT: Two.

MR. ABRAMS: Now are the drop-offs and pick-ups that occur or would occur on Montgomery Lane the same character, frequency and type as might occur on Connecticut Avenue?

MR. KABATT: The residential uses along Connecticut Avenue is the country club. I know there -- I've seen on occasion the country club having people park on Connecticut Avenue, but I don't know that there would necessarily be UPS trucks stopping right on Connecticut Avenue.

MR. ABRAMS: Well, if somebody attempted to stop on Connecticut Avenue, say during a peak commuter rush hour because they were to drop off somebody or were to pick up somebody, forget about the service or delivery trucks, there's a likelihood that they may end up in an accident like being rear-ended, isn't that correct?

MR. KABATT: Well, there are buses that run along Montgomery like that.

MR. ABRAMS: Well, let's stick with the vehicles. There are buses, I understand that, but cars, that's what we're talking about. In light of the difference in the speed limits, the number of lanes, the amount of traffic, is

there really any comparison here? Are we really comparing say apples with watermelons in this case?

MR. KABATT: Not at all. I would say that the comparison is that if a 10-foot lane is adequate on Connecticut Avenue where it carries so much more, so many more trips during the peak hour than Montgomery Lane, I would say the comparison is that the 10-foot lane on Montgomery Lane is more than that, would handle the 155 peak hour trips.

MR. ABRAMS: Now can you provide parking and loading in accord with the minimum requirements in the County with parking standards or whatever you're evaluating it on, can you provide that and still have a problematic and incompatible parking and loading condition for a project?

MR. KABATT: To clarify, are you asking for any project? Could you repeat the question?

MR. ABRAMS: Okay. If you provide parking and loading based on the minimum code requirements, can you still have a problematic and incompatible parking and loading condition for that project?

MR. KABATT: I would say no. I would say the code is designed to meet the, to meet the standard or to figure out how to put public facilities.

MR. ABRAMS: And that's your experience as a transportation planner, traffic engineer?

MR. KABATT: Yes.

MR. ABRAMS: Truck sizes, you base most of your testimony on U-haul type trucks?

MR. KABATT: Yes.

MR. ABRAMS: Okay. Would you consider this neighborhood an upscale neighborhood?

MR. KABATT: I would.

MR. ABRAMS: Now how many of the residents of this building are likely to use and move themselves in a U-haul truck as opposed to using a moving van?

MR. KABATT: I'm not certain on who may live in this building, but given the size, I would think a person moving in would try to get a truck that fits the size and I would, we used U-haul because 860-foot units on average, it's been my experience that people do move themselves, but I would also think that a moving company, if they did want to pay for a moving company that they would have trucks that are appropriately sized for that size unit.

MR. ABRAMS: Well, I think you testified yesterday, your response to a question, particularly if they're out-of-town movers to a project such as this and they don't have a whole lot of furniture to move, that there are more than one loads for a moving van before they contract to come to a specific geographic area, isn't that what you testified to the other day?

MR. KABATT: I do know that that occurs, yes, and I do remember saying that.
MR. ABRAMS: And it's likely to occur here, isn't it?
MR. KABATT: But what I also did testify to was that it's common practice for, once that cross country trip gets to Washington, the Washington area, that it may take the, or go to a facility and then redistribute the items in the truck to the smaller trucks to go to the actual destination.
MR. ABRAMS: When you say common practice, how do you know it's common practice?
MR. KABATT: Just based on my experience on projects in Washington and Bethesda and Arlington, we do not have large tractor trailers coming to apartment buildings of this size.
MR. ABRAMS: Is that based upon dealings with specific moving companies, national moving companies?
MR. KABATT: I think it's more based on the fact that residential buildings provide a certain loading facility, if any at all, or on, you know, in some other areas if they don't have an actual loading dock or they would have to load on a street and some of these streets are narrow and narrow in terms of what a large tractor trailer can fit on. So they have to use some electronics.

MR. ABRAMS: After people would move into this project, what about new furniture deliveries, what size trucks or vehicles are they going to use?
MR. KABATT: I would --
MR. ABRAMS: I'm talking about like --
MR. KABATT: They --
MR. ABRAMS: -- Crate and Barrel or --
MR. KABATT: Yes. They can be done 30 foot, that's the 30 truck that I spoke of earlier.
MR. ABRAMS: Okay. Now are those trucks big enough to fit into that garage or small enough?
MR. KABATT: They would not go into the garage, no.
MR. ABRAMS: Would not go in?
MR. KABATT: They would go onto the lay-by lane or if they could fit into that loading, in the building loading area that goes to that service corridor.
MR. ABRAMS: The Old Georgetown Road and Commerce Lane example, that was in a commercial area, was it not?
MR. KABATT: It's right next to the -- there's an office building -- or next to it there's residential on the south side of Old Georgetown.
MR. ABRAMS: But that's also across the street from a public parking garage, correct?
MR. KABATT: There's a public parking garage on

Woodmont and there's a public parking garage on the east side of Wisconsin Avenue.
MR. ABRAMS: Well --
MR. KABATT: There's a private garage --
MR. ABRAMS: There are --
MR. KABATT: -- near the Metro.
MR. ABRAMS: -- parking garages in closer proximity to that example than there are to the subject example, subject property.
MR. KABATT: There's the --
MR. ABRAMS: I mean that's the point I'm trying to find out.
MR. KABATT: There's that public parking garage. It's the same one I'm referring to for this case, but it is on the south side of Old Georgetown. But there are -- if you, depending on which one you would go to, there's one to two blocks away and that's the same as you have parking options one to two blocks away on the West Lane.
MR. ABRAMS: Other than the library?
MR. KABATT: Right. The parking garage that's, well, the parking garage that's on the east side of Woodmont Avenue is at Edgemoor, public parking garage. That's about one to -- that one would be three blocks, but there's the private garages that are closer from the two blocks and there's also the on-street parking on Hampden Lane.

MR. ABRAMS: On Hampden Lane? Have you viewed the parking conditions on Hampden Lane?
MR. KABATT: I'm knowledgeable of them. I --
MR. ABRAMS: Well, are there restrictions in terms of parking on Hampden Lane?
MR. KABATT: I believe they're metered parking spaces.
MR. ABRAMS: Is that one of the 25 cents for each 15 minutes?
MR. KABATT: I don't know the price.
MR. ABRAMS: It's not long-term parking, is it, unless you're very rich?
MR. KABATT: I don't know the price.
MR. ABRAMS: How many parking spaces per unit, if you know, does the new Hampden Lane residential project provide?
MR. KABATT: I don't know that.
MR. ABRAMS: No further questions.
MS. ROBESON: Mr. Knopf.
MR. KNOPF: Just -- you mentioned that Connecticut Avenue situation, where Connecticut Avenue, where you come off the Beltway going south, has lanes of what width?
MR. KABATT: I that section they are wider.
MR. KNOPF: Right. And as you go down toward the District, especially through Chevy Chase Village, don't they

get to be narrower?
MR. KABATT: Correct.
MR. KNOPF: And don't they ban trucks and buses from that entire area because of the narrowness of the lanes?
MR. KABATT: There are truck restrictions, yes, but buses do travel on that section of Connecticut Avenue.
MR. KNOPF: But, and the truck restrictions are because the lanes are what, 10 feet?
MR. KABATT: I don't know the exact reason, if it's just because the lane widths or if it was some other reason why they restrict the trucks from that area.
MR. KNOPF: Thank you. I have no further questions.
MS. HARRIS: I have three follow-up questions.
MS. ROBESON: Then I have to give recross. You do have rebuttal, okay?
MS. HARRIS: Okay.
MS. ROBESON: So let's -- I'm going to excuse him for now and you can use your time on rebuttal for that, all right? Thank you, Mr. Kabatt. You are excused. Who is your next witness?
MS. HARRIS: Mr. Judd, David Judd, our landscape architect.
MS. ROBESON: All right.

MS. HARRIS: Do you want us to proceed?
MS. ROBESON: Yes.
MS. HARRIS: Okay.
MS. ROBESON: Unless you --
MS. HARRIS: No, I --
MS. ROBESON: -- are asking for a --
MS. HARRIS: No, not at all. I --
MS. ROBESON: Please raise your right hand.
(Witness sworn.)
MS. ROBESON: Thank you. Go ahead, Ms. Harris.
MS. HARRIS: Thank you. For the record, please state your full name, company and business address.
MR. JUDD: My name is, my name is David Judd, Jr. I'm with Studio 39 Landscape Architecture. The address is 6416 Grovedale Drive, Suite 100A, Alexandria, Virginia 22310.
MS. HARRIS: And what's your current position at Studio 39 and what are your responsibilities and position?
MR. JUDD: I'm currently a senior project manager. My responsibilities include planning all the way from the concepts, concept days all the way up to construction documentation, mentoring staff, also development of a company-wide detailed library, as well as just quality control for the project as well as management responsibilities.

MS. HARRIS: And how long have you been employed as a landscape architect?
MR. JUDD: 23 years and as of last Friday, nine years with Studio 39.
MS. HARRIS: Congratulations. Please describe for the record your educational experience.
MR. JUDD: I have a master's, well, not a master's, a bachelor of landscape architecture from the University of Georgia, the School of Environmental Design.
MS. HARRIS: And are you a licensed landscape architect?
MR. JUDD: I'm a licensed landscape architect.
MS. HARRIS: Are you licensed in Maryland?
MR. JUDD: I am licensed in Maryland, as well as Virginia, West Virginia and North Carolina and Georgia.
MS. HARRIS: And have you worked on projects in Montgomery County?
MR. JUDD: Yes. I've worked on many different projects in Montgomery County, including the brownstones over there in Park Potomac, in both condo buildings at Our Potomac with Foulger-Pratt, Building E Office Park over in Park Potomac as well. I am currently working on Building D, the open plaza right there and the development of Stoney Springs with Winchester and several others since then.
MS. HARRIS: And have you ever worked on any

projects in Bethesda?
MR. JUDD: Yes, I have. We worked on a project, the garden plaza renovation which is right there on Old Georgetown Road.
MS. HARRIS: Okay. And have you ever presented a landscape project to the, before a Planning Board or Commission?
MR. JUDD: I have. I presented to, down in Georgia, in Atlanta and then the surrounding vicinities, as well as Arlington, Alexandria, Falls Church, Rockville.
MS. HARRIS: Have you been qualified as an expert before this Board --
MR. JUDD: I never have been qualified --
MS. HARRIS: -- or this Hearing Examiner?
MR. JUDD: -- as an expert.
MS. ROBESON: I'm sorry?
MR. JUDD: I've never had to be qualified as an expert witness before in any jurisdiction.
MS. ROBESON: Okay, in any jurisdiction? All right.
MR. JUDD: Right.
MS. HARRIS: And despite the fact that he has not previously been qualified as an expert, I think his level of experience and education certainly suggest that he is an expert and --

MS. ROBESON: Okay. Do you have any objections?
MR. ABRAMS: No objection.
MR. KNOPF: I just -- expert --
MS. ROBESON: In --
MR. ABRAMS: Landscape --
MS. HARRIS: -- the field of landscape architecture.
MR. KNOPF: I have no objection.
MS. ROBESON: Okay. Just one thing --
MR. KNOPF: If, right, all you --
MS. ROBESON: -- when they start asking questions, you really do have to answer them. You can't just say why are you asking me that, okay? So I'm just giving you that heads up if that's okay?
MR. JUDD: Yes, I've been watching.
MS. ROBESON: All right. Go ahead.
MS. HARRIS: Are you familiar with the Bethesda Sector Plan?
MR. JUDD: Yes, I am.
MS. HARRIS: And are you familiar with the subject local map amendment and development plan amendment?
MR. JUDD: Yes, I am.
MS. HARRIS: Can you please describe your responsibilities with regard to the rezoning and the development plan application?

MR. JUDD: Within the project, I'm responsible for the design of the approved spaces. We have some inactive spaces, as well as the areas in the back and also some treescape on the side.
MS. HARRIS: And actually before we go any further, it may be helpful if we can just put up for reference two exhibits --
MS. ROBESON: Okay.
MS. HARRIS: -- is that okay?
MS. ROBESON: That would be helpful. Do you know the numbers? Is it in the 106 series?
MS. HARRIS: It's the landscape plan of the street and then the perspective of the -- I'm sorry, the landscape detail of the property and then just the perspective of the public park. I probably knew them at the end of yesterday and now I'm forgetting them. I think they're in the 80 range. Oh, I'm sorry.
COURT REPORTER: Do you want this one?
MS. HARRIS: Yes, that one and then I --
MS. ROBESON: Is that 76?
MS. HARRIS: Yes.
MS. ROBESON: Okay. All right.
MS. HARRIS: Can I just -- have you ever had an opportunity to visit the site and are you familiar with the surrounding area?

MR. JUDD: I have visited the site and wanted to make sure what we were doing, the original designs to make sure that we were consistent with the adjacent properties and just the street itself.
MS. HARRIS: And then can you please describe the proposed landscape, including the public space and the outdoor pass of the active recreation spaces and you're not limited to the two exhibits that we just, I got tabbed, but --
MR. JUDD: Well, I can explain it. The way the --
MS. ROBESON: And you're referring to Exhibit 76?
MR. JUDD: Exhibit, yes, exhibit, the perspective on Exhibit 76.
MS. ROBESON: And can you move back just a little bit?
MR. JUDD: I'm sorry.
MS. ROBESON: So there. Thank you.
MR. JUDD: Sure. The open space and the space includes both active and passive components to it. We have hardscape as well as landscape for the open space, the decoration of open space. Also what we've got is we have areas for sitting, areas for gathering in the park over here that we developed with the new indention of the building. Also, some seating space along West Lane, as well as a passive facility on the patio in the back, as well as a

green roof, an extensive green roof on the top of the building.
MS. HARRIS: Can you refer to the top page please?
MR. JUDD: This?
MS. HARRIS: And just go through a little bit of that detail.
MR. JUDD: And also on Exhibit 50, 86, 86, it shows the streetscape that we have. The streetscape along Montgomery Avenue or, excuse me, Montgomery Lane is consistent with the requirements for the Sector Plan with use of the Willow X, which is the requirement for the street. The seating areas, so we have street trees as well as several little planting here, various shrubs, ground coverings, things like that. We also carry the same theme of tree material coming up West Lane.
I also created some seating areas and, again, landscape areas. And then back in the back area, I haven't quite gotten to the point of definition of these spaces, so they're kind of still in the works of being designed.
MS. HARRIS: And those are the private spaces that --
MR. JUDD: Those are the private spaces, yes.
MS. HARRIS: Okay.
MR. JUDD: The public spaces along the streets have never been parked.

MS. HARRIS: Thank you. And can you -- how did the public use space improvements in the streetscape, I'm sorry, excuse me one second. Has your design been influenced in any way by Park and Planning staff or the community?

MR. JUDD: Yes, definitely, it's, well, the incorporation of the building redesign of the corner space that gave us the opportunity to create a private park here. This is one of the discussions we had with the Planning Board. So with, the indention of the building gave us an opportunity to create the open space, which was along the mixed use street, which is, the whole concept is to create more of a pedestrian flair and also incorporating the different elements in lighting and streetscape, as well as the paving and things like that.

And, again, a scenario for people to gather because this is a, a local landmark over here with the library, there's going to be a heavy, a heavy pedestrian flow going through the street, so we're giving them an opportunity to gather here, a little entrance spaces here, a little bit more entrance spaces up on West Lane as well and I'm also going to focus the open space on readily accessible and easily seen spaces. So I'm focusing on the streetscape rather than say before we had previously had the back space back over here as an open space, but per discussions with

the Planning Board, they asked us not to consider that open space, so we designated the spaces that were more easily seen as the open space.

MS. HARRIS: And I believe you touched on this, but is there anything else you want to add in terms of how the design furthers the goal of the mixed street classification set forth in the Sector Plan?

MR. JUDD: The mixed street use, it's pedestrian enhancements. So I think when we created the space, the gathering space, it kind of furthers the concept of gathering the pedestrians and bringing people along the street and also giving them a gathering space too.

MS. HARRIS: And will there be bike racks provided in connection with the streetscaping improvement?

MR. JUDD: Yes, what we've done is we've created benches, as well as seating areas, both defined as like a bench and/or seating areas along the front over here with like I'll call it stadium seating. It's not really stadium seating. And then wrapping around on West Lane, we have more benches and we've also included a bike rack on West Lane up here on the entry going to the building.

MS. HARRIS: Thank you. Can you describe the landscape buffer in the north of the building adjacent to the Villages of Bethesda property?

MR. JUDD: Right now we're just keeping it as a

green space. It's landscaping, not really anything defined to take them there.

MS. ROBESON: On that drawing, which is 86, is the tan in the northern part, that's the garage access?

MR. JUDD: Yes, ma'am.

MS. ROBESON: Okay. Very good.

MR. JUDD: This is the access to the door.

MS. HARRIS: Is it correct that the landscaping details on the public use space, well, on the private space back by the Villages of Bethesda, that will be determined in detail at the time of the site plan?

MR. JUDD: Yes, I believe it is.

MS. HARRIS: And except for the street trees which are specifically identified the species in the Sector Plan, I assume under the shrubbery or flowers that those details will also be determined at the time of site planning?

MR. JUDD: They'll be flushed out later, but the trees, street trees along Montgomery Lane are determined to be where --

MS. HARRIS: Because that's what the Sector Plan says?

MR. JUDD: That's what the Sector Plan says.

MS. HARRIS: Okay. Is there anything else you would like to testify to with respect to the landscaping?

MR. JUDD: Well, I think with the space that we've

created it's, we created a level and inviting space here that whether the people are just walking by the street, they have a place to gather and it's an interesting space. I think also with the fact that with the space that we've been given as well, it's relatively narrow, but I think at the corner we'll definitely build those things up to kind of invite you into the space and the whole idea, the concept of being pedestrians is to invite the people, so --

MS. HARRIS: Okay. Thank you. No further questions.

MS. ROBESON: All right. Mr. Abrams.

MR. ABRAMS: I want to make sure that I've got the right witness.

MS. ROBESON: All right.

MR. ABRAMS: There was testimony the other day about green roofs and -- I've still got the wrong one?

MS. HARRIS: That would be, yes, because green roofs are a component of storm water management and you will have your chance when Mr. Irish, the civil engineer --

MR. ABRAMS: Yes.

MS. HARRIS: -- testifies.

MR. ABRAMS: Okay.

MS. ROBESON: Okay. How about do you have any questions on the other portion of the roof, because I am still a little confused --

MR. ABRAMS: The --
MS. ROBESON: -- by --
MR. ABRAMS: The recreational portion?
MS. ROBESON: Yes.
MR. ABRAMS: Okay.
MS. ROBESON: That portion.
MR. ABRAMS: Do you have anything to do with the recreational portion of the roof?
MR. JUDD: Are you talking about in the upper area or --
MR. ABRAMS: Yes, the top, the roof.
MR. JUDD: Yes, we will be. Yes.
MR. ABRAMS: Okay. Can we put up the -- I guess it's Exhibit 108 that we've been marking up sort of.
MS. ROBESON: It's a development plan that has --
MR. ABRAMS: Yes, it's a copy of the development plan --
MS. ROBESON: -- little blue marks on it.
MR. ABRAMS: -- with markings on it.
MS. ROBESON: Yes.
MR. ABRAMS: Okay.
MS. ROBESON: This is our mark-up exhibit?
MR. ABRAMS: Right. Now what I'd like to do, Madame Examiner, is if you know, what area on the roof, and say we're looking down on the project and that shows the

roof, what area is the recreational component and what area is the green roof component if they are separate?
MR. JUDD: They're basically the same space.
MR. ABRAMS: The same space?
MR. JUDD: The same space, but with the exception of, I mean it hasn't been clearly defined yet because it hasn't been, they still haven't flushed everything out, the exact design yet, so --
MR. ABRAMS: Okay. So the entire roof area is part of the recreational or private open space?
MR. JUDD: That hasn't been determined yet.
MR. ABRAMS: Well, if that hasn't been determined yet, how do you come to the private open space, square footage and percentage in the development plan?
MR. JUDD: For the open space, I would have to defer to Bill Landfair. He was, I believe he was --
MR. ABRAMS: Well, he --
MS. HARRIS: Or Chuck Irish.
MR. JUDD: Or Chuck Irish. They determined --
MS. ROBESON: Do you swear?
MS. HARRIS: Promise.
MR. JUDD: They determined the square footages that we would put.
MS. ROBESON: Well, are you counting anything on the roof towards the open space to your knowledge?

MR. JUDD: To my knowledge, I don't believe it's open, public, open space, but it is considered open space. Those are things I might want to --
MS. ROBESON: Okay. I'll defer. We'll defer.
MR. JUDD: Maybe I shouldn't answer that. I'm not exactly sure exactly.
MS. ROBESON: Okay. Thanks.
MR. ABRAMS: All right. Let's now go down to the street level. Are there going to be benches --
MR. JUDD: Yes, sir.
MR. ABRAMS: -- on Montgomery Lane?
MR. JUDD: Yes, sir.
MR. ABRAMS: And are they going to be traditional benches or are they going to be just a slab? What type do you recommend to the applicant?
MR. JUDD: I, we haven't gotten that far in the design. I believe it's --
MR. ABRAMS: And how many benches and where would they be located?
MR. JUDD: There are two benches that go back to --
MS. ROBESON: If you could just name the number of, what, 86?
MR. JUDD: Sure. Just, it was 86. We're showing two benches in these locations right here on Montgomery

Lane.
MR. ABRAMS: Okay. And that's in the 10-foot setback area?
MR. JUDD: From the right-of-way?
MR. ABRAMS: Yes.
MR. JUDD: Yes, sir.
MR. ABRAMS: Now are there any benches going to be provided along West Lane?
MR. JUDD: Yes, sir, there are two.
MR. ABRAMS: Where are they located?
MR. JUDD: They located right here at the entrance of the building. Then there's also a bench located up in this area over here.
MR. ABRAMS: Okay. Are they marked on Exhibit 86?
MR. JUDD: They are defined as, there are no labels, but it's, graphically it's represented as a bench.
MS. ROBESON: They're the little, tiny rectangles?
MR. JUDD: Yes.
MR. ABRAMS: And that represents --
MS. ROBESON: Round.
MR. ABRAMS: -- a bench?
MR. JUDD: Yes. You can see a little bit better in that one.
MR. ABRAMS: There had been discussion about a potential lay-by on Montgomery Lane. Were you here or

present for that discussion?
MR. JUDD: I was present.
MR. ABRAMS: Okay. What happens if you have a 6-foot lay-by on Montgomery Lane approved? What happens to the open space and the distance between the right-of-way and the sidewalk and the green panel and the building?
MR. JUDD: I'm not really quite sure, but --
MR. ABRAMS: Well, in Montgomery County you're aware that there are sidewalks proposed for this area?
MR. JUDD: Uh-huh. Yes, sir.
MR. ABRAMS: Are you also aware that as part of the Bethesda streetscape plan you have to have green panels, which means a sidewalk and a curb?
MR. JUDD: Yes.
MR. ABRAMS: And those green panels would include trees as you've shown --
MR. JUDD: Shown --
MR. ABRAMS: -- in your rendered elevation?
MR. JUDD: Yes.
MR. ABRAMS: Landscape plan?
MR. JUDD: Yes.
MR. ABRAMS: Now, again, going back to Montgomery Lane, how, if a 6-foot line or deep lay-by is put in Montgomery Lane, how does that affect what you've shown on Exhibit 86?

MR. JUDD: It will be just sort of how, what was shown on West Lane. Things will be stretched out and the trees up and things like that.
MR. ABRAMS: So you would reduce the street panel or eliminate the street panel?
MR. JUDD: It would be, it would be modified, yes, but that's a design, a geometric design that I'm not really quite sure about, so if you go in, yes, you'll lose some, a little --
MR. ABRAMS: You'll lose a little bit of the green street panel? You move the sidewalk?
MR. JUDD: You leave the sidewalk where it was. Sort of what was done on West Lane but, again, spatially, I'm not sure, I'm not totally, but actually worked there.
MR. ABRAMS: Now in terms of the open spaces which were virtually designed for this project and it was filed, that was in the rear of the north of the project, is that correct?
MR. JUDD: Yes, it was.
MR. ABRAMS: And ultimately through discussions with the Planning Commission staff and the board, that was moved to the front?
MR. JUDD: Yes, sir.
MR. ABRAMS: And when it was in the original plan, the green space was, I think, 14 percent of the tract area

and after it was moved and that cut-out and when the corridor was put in, the green, the open, public, open space was reduced to 10 percent. And I think we've had discussions during the course of this proceeding that there's 680 square feet between what was first proposed and what is currently proposed in terms of public open space. Is there any reason why from a landscape architect standpoint that that 680 square feet could not be put along the front of the area in front of Montgomery Lane?
MR. JUDD: I'm not really quite sure if I follow the question.
MR. ABRAMS: The question is we have now less public open space than when we started out, okay?
MR. JUDD: Okay.
MR. ABRAMS: All right. The difference between before and after is, approximately 680 square feet.
MR. JUDD: Okay.
MR. ABRAMS: Is there any reason from an architectural, landscape architectural standpoint that that 10-foot setback could not be expanded to include additional open space? Very simple.
MR. JUDD: I think I understand your question, but I guess I have to say that the original numbers included this area which was requested by the Planning Board not to be considered as open space. So that's where the minus land

came from.
MR. ABRAMS: Correct.
MR. JUDD: They're not considering this, so, so, okay.
MR. ABRAMS: But you understand the purpose of it is public use space?
MR. JUDD: Yes, readily accessible and housing.
MR. ABRAMS: The public is getting less public use space than the applicant was originally willing to give them by virtue of the earlier plan?
MR. JUDD: But we still need the 10 percent of the zone requirement.
MR. ABRAMS: I understand, but I'm asking if some governmental authority requires that 680 square feet to be re-imposed in this plan, is there any reason why it cannot be added to the frontage, the building on Exhibit 86, the frontage being Montgomery Lane?
MR. JUDD: Well, the whole point, the understanding of mixed use streets is, is creating some continuity and consistency visually and all of the buildings along Montgomery Lane, Edgemoor, the building over here, the Montgomery Lane here, all built to be consistent facially with, the building face is basically a line, very similar setbacks, some a little bit further back, but very similar. If you start setting back, you -- and also the West Lane a

little bit over here -- when you start stepping back, you start creating an uneven rhythm. And in fact, it's my understanding that the way the streets are, the pedestrian comes down the road, you want to create some kind of coverings, rather than a lot of flexibility with the faces of the building going in and out.

MR. ABRAMS: But does the public benefit more from a straight-edge design like that or from increased green space along this street?

MR. JUDD: I believe that maintaining consistency is a better feeling. It's a better feel for -- everyone is going to experience everything differently, I think, so it's my understanding the way I feel about the streets and stepping, a fine edge is what you want to create.

MR. ABRAMS: Okay. Now on Exhibit 78, 86, excuse me, what are these pink areas in the 10-foot setback?

MR. JUDD: it is --

MS. ROBESON: It's a circle.

MR. ABRAMS: Circles?

MS. ROBESON: Just so in case the record doesn't --

MR. ABRAMS: Yes.

MS. ROBESON: -- know what pink is.

MR. ABRAMS: Well --

MS. ROBESON: Circles. Aren't these circles?

MR. ABRAMS: They're circles.

MR. JUDD: It's proposed landscape. It hasn't -- this is an artistic place. It's about where we could possibly propose in this area. It has a redefined edge. It could be trees, flowering trees, shrubs, ground cover.

MR. ABRAMS: Okay.

MR. JUDD: It hasn't been fully flushed out yet.

MR. ABRAMS: Okay. Now do you know if the Park and Planning Commission when they review landscape plans has either guidelines or requirements for the spacing between trees at planting?

MR. JUDD: Yes, they do.

MR. ABRAMS: And what is that?

MR. JUDD: Well, this could go on because it's a level four requirement for vertical spacing of trees.

MR. ABRAMS: What's that?

MR. JUDD: 30-foot --

MR. ABRAMS: 30-foot?

MR. JUDD: -- spacing of trees.

MR. ABRAMS: Okay. And why is it that particular distance?

MR. JUDD: It's just the growth of the tree. Easily you want to make sure that horticulture, if you plant a tree in a correct spacing.

MR. ABRAMS: And is that to prevent entanglement

of root systems within themselves or within structures that, for buildings that are nearby?

MR. JUDD: It's not defined as -- that's not the reason that they're spaced that way, it's just --

MR. ABRAMS: Is it because of the crown of the tree?

MR. JUDD: Now it is --

MR. ABRAMS: Okay.

MR. JUDD: -- because of the tangling of trees.

MR. ABRAMS: So if you planted trees within the green space on that specific Exhibit 86, they would have to be what, small flowering trees or --

MR. JUDD: In this area here --

MR. ABRAMS: Yes.

MR. JUDD: -- now? Yes.

MR. ABRAMS: So they couldn't be of the same size and distance as a, as the street trees that you've shown there --

MR. JUDD: Right.

MR. ABRAMS: -- or another building? Now will the roof top have any plantings at all?

MR. JUDD: Sedum, it will be green with sedum.

MR. ABRAMS: If you have a stupid lawyer, what is a sedum?

MR. JUDD: It's a very large growing plant. The

green and, again, this is a storm water issue, with the capacities for late issues, as well as on the building as well as depth issues for the planting medium --

MR. ABRAMS: Okay.

MR. JUDD: -- it's usually and, again, I'm sure that's because of the storm water, we're finding that that, it's often three to six inches of planting medium and the sedum is a low-growing carpet, which is very tolerant of urban conditions, as well as drought tolerant and things like that.

MR. ABRAMS: Okay. How is this planted? Do you cover the roof with coil and then plant this on top of it?

MR. JUDD: Exactly.

MR. ABRAMS: Okay. How thick is the soil there?

MR. JUDD: The thickest, like I said, I'm not really quite sure. It varies because of the capacities. If it's based on storm water capacities, there's a certain depth that's required and that's just the engineer who is going the calculations on that. So that would determine the depth.

MR. ABRAMS: And is the sedum going to be planted through the entire roof section as far as you know?

MR. JUDD: Yes, sir.

MR. ABRAMS: So it will cover that area which is occupied by the, for recreational purposes or lounging up on

the rooftop?
MR. JUDD: In the landscape areas that's defined as, that's needed for the --
MR. ABRAMS: Okay. Is --
MS. ROBESON: The what? The green roof?
MR. JUDD: The green roof. It's actually the green roof for the capacity --
MS. ROBESON: Oh.
MR. JUDD: -- for the storm water use.
MS. ROBESON: Okay. So the sedum will be part of the storm water management system, but not necessarily over in the remainder of the roof?
MR. JUDD: Correct, because there are other components on the roof.
MR. ABRAMS: I didn't get the last part of your question. Not necessarily over what?
MR. JUDD:
MS. ROBESON: It will be on the storm water management -- they'll be on the part of the roof necessary for storm water management, but not the balance of --
MR. ABRAMS: Now is the entirety of this roof necessary for storm water management?
MR. JUDD: I can't answer that question. Mostly.
MR. ABRAMS: Will container plants be used on the roof?

MR. JUDD: It hasn't been defined yet exactly what materials are going to be -- it could be a mat, it could be plugs.
MS. ROBESON: No, I mean on the non-green roof.
MR. JUDD: Are you talking about in this area over here?
MR. ABRAMS: Yes.
MR. JUDD: Which, on the very, the top roof?
MR. ABRAMS: Right. It would be below the low-growing sedum, which can either come in plugs, small plants or so it can mat where you just kind of roll.
MR. ABRAMS: No, I'm talking about taking a container, putting it on the roof, it has a tree in it or a bush of some sort?
MR. JUDD: I --
MS. ROBESON: Okay. Let me ask this.
MR. JUDD: I don't know what you're asking.
MS. ROBESON: Let me do this. Who can give a picture, which witness is going to give us a picture of everything that's going to be --
MS. HARRIS: Mr. Irish can, but I also would note that I think part of the problem is that details in terms of planting along recreational areas on rooftops is far beyond the zoning scope and that's why you're hearing a little bit --

MS. ROBESON: So you're saying you're saving that for a site plan?
MS. HARRIS: Mr. Irish will be able to give some definition to be responsive to the questions that have been asked, but the details, what types of flowers are going to be planted and what types of containers on the roof, we don't know that yet.
MS. ROBESON: So you're not proposing -- okay. I think that questions were coming, at least from my perspective of needing to screen the, sorry, I'm blanking out --
MS. HARRIS: And plus --
MS. ROBESON: -- the --
MR. KNOPF: Penthouse.
MS. ROBESON: Penthouse. Thank you. So, anyway, so --
MR. ABRAMS: Okay.
MS. ROBESON: -- that's your, that's the scope.
MR. ABRAMS: My, what I'm trying to determine is what are you going to be able to see in the way of landscape green area, would anyone call up on the roof if you are standing down on the street or you are in one of the townhouses across the street, what will you be able to see? That's why I'm asking --
MS. ROBESON: To your knowledge.

MR. JUDD: To my knowledge when you're looking from the street looking down towards the roof line, you'll never see the roof.
MR. ABRAMS: What, you'll never see any plantings on the roof, is that what you're saying?
MR. JUDD: You can maybe see the tops of them, but if it's not -- you're not creating a green screen if that's what you're saying. But I might add also that structural requirements are also contradicting what we're about to do up there. It's actually --
MR. ABRAMS: Well --
MR. JUDD: So --
MR. ABRAMS: This was the other point of my question. You have to be concerned about the lode-bearing elements of the roof itself, okay? And in terms of those lode-bearing elements, plant containers generally add to the weight of the roof on the roof?
MR. JUDD: The locations and --
MR. ABRAMS: Or the locations, correct.
MR. JUDD: -- things like that are coordinated with inspections to make sure it's viable.
MS. ROBESON: It can bear the load.
MR. JUDD: Exactly. It won't be proposed if it can't hold the weight.
MR. ABRAMS: That's all I have. Thank you.

MS. ROBESON: Okay. Mr. Knopf.
MR. KNOPF: Yes. Is, I wanted to ask a question about Exhibit 76(a). Are they both on the same panel or we can't have them up at the same time? Just leave that one up before you get 76.
MS. ROBESON: Okay.
MS. HARRIS: He wants you to stay with 86 for now.
MR. JUDD: I'm sorry, this one here?
MR. KNOPF: You mentioned that the lay-by that was under consideration for Montgomery Lane would be similar and would have an indention, similar to what you pointed out on West Lane, is that correct?
MR. JUDD: Yes.
MR. KNOPF: So that's this area, I'm referring to the lay-by area there and it's just a small, green panel between the lay-by and the building itself?
MR. JUDD: Those green panels are a different style. It's roughly six feet or so.
MR. KNOPF: Six feet? Okay. Now would you go to 76? We were talking about 64 before. Now the lay-by that's under consideration --
MS. HARRIS: I want to object to that. There's a continued misrepresentation of that lay-by as being under consideration. That is not what the, what was set forth. It's that it's physically feasible, but the applicant is not

considering it.
MS. ROBESON: Well, you opened the door to it. Your witness --
MS. HARRIS: Right, but we --
MS. ROBESON: -- opened the door.
MS. HARRIS: But the witness also clarified in cross-examination that it's physically feasible, but it's not being recommended by the applicant. It's physically feasible and so the continued --
MS. ROBESON: Well, why did you open the door? I mean I'm going to let the -- I understand your point, but it was raised in your witness's testimony they have a right to cross-examine on it. If you're saying you're now withdrawing that from consideration, that's another matter. But if it's not off the table and --
MS. HARRIS: We're withdrawing it and there's not, so there's no need to have any further discussion on that lay-by.
MR. KNOPF: Now by withdraw it, does that mean we will have a binding element that there will be no lay-by on Montgomery Lane?
MS. HARRIS: No, because if one were to do that, then you would have to find every non-event that's going to occur on the property.
MS. ROBESON: No, wait. I think what you're --

okay. Basically it's still on the table and I think if, I mean I think it's better to -- because there is a potential for you to pursue this and it does go to the operational issue in the compatibility of traffic. I think it's simpler, there are, just like there are negative easements, there are negative binding elements. So, you know, if you want to put it in a binding element, you could put it in a binding element. But because he raised it, I think you have to, until that happens, I think we have to allow cross-examination.
MS. HARRIS: Well, then we would proffer a binding element that says that there will be no lay-bys provided on Montgomery Lane along the frontage of the property.
MS. ROBESON: Does that satisfy you?
MR. KNOPF: What --
MS. ROBESON: Do you need a minute to think about it?
MR. KNOPF: Yes, because -- yes, I do think -- what I'm concerned about is, and maybe somebody can help me here --
MS. ROBESON: Yes, let's stay on the record for a moment. Go ahead.
MR. KNOPF: -- is the applicant agrees to that, but a site plan is decided for whatever reasons that a lay-by is needed and the Planning Board proposes it.

MS. HARRIS: Then it would be no different than any other binding element. You'd have to come back to ZHE and get an amendment that's --
MS. ROBESON: Right.
MS. HARRIS: -- not been planned.
MR. KNOPF: All right. Well, because -- since it's probably on public property, I didn't realize that they have to go back.
MS. ROBESON: Any modification of a binding element has to come back, at least under the current zoning ordinance and who knows what's going to happen under the other zoning ordinance.
MR. KNOPF: Let me think that through.
MS. ROBESON: Okay. I know it's a swift-changing target, so I'm going to give us five minutes because I think after this witness, or 10 minutes, because I don't know how your brain is moving today, but mine isn't moving quickly. So we'll take 10 minutes and then we'll take a lunch break after -- see, I can't remember Mr. Judd?
MR. JUDD: Yes, ma'am.
MS. ROBESON: Okay. Mr. Judd's testimony and at which time, Mr. Knopf, you'll check on the April 29th. Okay. So we're going to take a 10-minute break and I, if you want to talk, you know, you can talk. Let's -- we're off the record.

(Recess)
MS. ROBESON: All right. We are back on the record. One thing I forgot to mention is I did look back at G-912 and Exhibit 27 is the Bethesda CBD Sector Plan. And what I'm going to do is put a marker in G-912, cross-referencing that this is now an exhibit in, I don't know how kosher, well, it's kosher in saying that this is now an exhibit in G-954 and as far as which exhibit number, I think it's 110, but let's -- let me double-check. Okay. So it will be the Bethesda master Sector Plan will be Exhibit 110, Bethesda CBD Sector Plan. All right.
MR. ABRAMS: Will that include what is known as the technical appendix?
MS. ROBESON: I don't see that in here. Do you wish that? Can -- if you, I'll accept it in if you have a copy. All I have --
MR. ABRAMS: I just have a copy of the page that I --
MS. ROBESON: You want to use?
MR. ABRAMS: In my hands.
MS. ROBESON: Is --
MS. HARRIS: I think that's submitted as an exhibit.
MR. ABRAMS: Because she is accepting the --
MS. ROBESON: Yes, I mean --

MS. HARRIS: But it's not --
MR. ABRAMS: And this is part of the CBD Sector Plan. It's not the entire technical plan.
MS. ROBESON: Yes, I --
MS. HARRIS: But it's also a separate document.
MS. ROBESON: But I'm going to take official notice of --
MS. HARRIS: Okay.
MS. ROBESON: -- the technical appendix is typically included, I've seen it numerous times --
MS. HARRIS: Okay.
MS. ROBESON: -- in an appendix of the Master Plan. Why it's not in here, I don't know. What I do want to make sure of is that there is a copy somewhere that I can reference, so if you could locate a version of it for me, that would be helpful.
MR. ABRAMS: Okay.
MS. ROBESON: Because I don't see the appendix actually within the Sector Plan. So 110 will be the Bethesda CBD Sector Plan. Okay. Did you come to resolution of what you want to do vis-à-vis the lay-by or --
MS. HARRIS: Well, the applicant, as I noted right before the break, we are, we would agree to a binding element that there will be no lay-by on West Lane.
UNIDENTIFIED SPEAKER: No, not West Lane.

MS. HARRIS: I'm sorry, on Montgomery Lane. Thank you. That would open up a whole other case.
MS. ROBESON: Yes, I was like what? No, no.
MS. HARRIS: On Montgomery Lane. So --
MS. ROBESON: Okay.
MS. HARRIS: But we did not confer with opponent's counsel on that. I thought they were going to confer internally.
MS. ROBESON: Oh, well, I --
MS. HARRIS: I thought your intent for --
MS. ROBESON: No, it wasn't my intent. My intent was to give everybody time to think about it before they committed themselves, that's all. So, Mr. Knopf, do you feel that, you know, I need a basis for you to have to, to continue to cross-examine about the lay-by on Montgomery Lane.
MR. KNOPF: Given, given what the concerns expressed regarding the impact of the lay-by on the traffic and the impact on aesthetics, we are perfectly pleased they are withdrawing. That will make it a binding element. I just will note that we, of course, would like to see and reserve their right to comment upon the language of the binding element because we have --
MS. ROBESON: I'm sure.
MR. KNOPF: -- we had some problems with the

binding elements to date.
MS. ROBESON: Well, will you share -- typically what I ask people to do or I think it's typical is that they actually draft with rebuttal or whatever, draft the binding element and provide a copy to counsel. If you could do that prior to rebuttal, that would be helpful.
MS. HARRIS: Yes, I will do that.
MS. ROBESON: Thank you.
MS. HARRIS: Certainly.
MS. ROBESON: All right.
MR. KNOPF: So I will then have very brief questions --
MS. ROBESON: Okay.
MR. KNOPF: -- not on that subject.
MS. ROBESON: Okay.
MR. KNOPF: I believe you testified that the, excuse me, the plantings between the sidewalk -- I'm now on Montgomery Lane -- the plantings between the sidewalk and the building footprint because of the size of that area and so on would be bushes or low-level plantings of some sort? I mean what type? You couldn't put trees in there, is that it?
MR. JUDD: You could put smaller trees.
MR. KNOPF: Small trees?
MR. JUDD: But definitely you want to plant

material that's going to fit within the context of the spatial limit and --

MR. KNOPF: Right. And that space we're dealing with is how many feet roughly in terms of width?

MR. JUDD: 14 feet maybe or so, plus or minus.

MR. KNOPF: If, and those plantings you say would be something that would grow like one story high?

MR. JUDD: Again, we haven't gotten into the exact --

MR. KNOPF: You haven't gotten in? Well, would you agree with me if you had more space than say 14 feet, say you had 20 feet or 25 feet, would that permit you to put in bigger plantings which might be able to provide more of a buffer or screening of the building?

MR. JUDD: I think with the way the concourse of the building, the way that it's laid out right now is spatially, we're defined by that space is what we're working with, so --

MR. KNOPF: I'm asking you to not be spatially. So it's a hypothetical question, not be so confined. Let's assume you had 20 or 25 feet, would that permit you to have taller plantings of a different type that would, perhaps, screen more of the building for people walking along the street or opposite side of the street or the same side of the street?

MR. JUDD: Actually what we could do is with the way and, again, it's not being dictated by the street trees as well. We have, these are oak trees. So there's a huge, huge canopies of trees over the course of time. So knowing that, if there is, if there's screening that is wished upon the building, we'd use larger shrub material in the area. But we don't necessarily have to put another large street tree right within that area, that's not a requirement for --

MS. ROBESON: But could you put something like a flowering cherry or something or Japanese Maple? I don't know, but --

MR. JUDD: That's within the context of the space right now. Something like that would --

MR. KNOPF: But, and how tall do they grow?

MR. JUDD: With different varieties, they grow different heights, but 15 to 20 feet. It all depends on the variety you choose. And, again, the material we would choose would fit within the --

MR. KNOPF: Well, let me go back again. Don't be constrained by the current location of the building. Just assume you have 20 or 25 feet from the sidewalk to where the building started. Would that give you more options to provide taller plantings of more of a screening nature than what you have now in this more limited space?

MR. JUDD: Not necessarily because we can choose

upright material if that would fit in the context of the space. I mean if you have a larger like, for example, if I'm in Central Park, I've got a wide open space, of course, I can plant much larger material. But given this urban condition, the space that we have is --

MS. ROBESON: Yes, but he's asking you to, whether you could plant larger trees if the space was bigger?

MR. JUDD: Possibly, yes.

MS. ROBESON: You're saying you can plant some trees now --

MR. JUDD: Yes.

MS. ROBESON: -- so maybe it doesn't have to be bigger, but what he's saying is if you have more space, you would have more choice maybe in plant material, bigger plant material?

MR. JUDD: If you have more space, there's that opportunity if that's what the answer, what he's looking for. But, again --

MS. ROBESON: And your attorney can get that to you on redirect. So --

MR. KNOPF: I'm just, I think my curiosity had something to do with it, street trees that are planted, you said that when they get to mature, they'll be a very large canopy, is that it, that the canopy then will overhang the sidewalk and go to the building where the building is

currently located?

MR. JUDD: Some of the buildings down the road with the City Homes, as well as the Edgemoor eventually.

MR. KNOPF: And what do we mean by eventually when they get mature, are you talking about five years?

MR. JUDD: Oh, no.

MR. KNOPF: 50 years?

MR. JUDD: Years down the road.

MR. KNOPF: Years?

MR. JUDD: Yes.

MR. KNOPF: So would that not -- if one were interested in providing screening of the building to some degree that one could screen that, wouldn't it not be possible to plant trees in the area between the sidewalk and the building that might have to be replaced 25, 30 years from now when the street trees reach maturity, but at least up until that time as providing much more screening?

MR. JUDD: So basically you're saying that if the plant material right now, you're talking about we would have to take it out later on down the road?

MR. KNOPF: I'm talking about what, 15, 20, 25 years you may have to replace it, yes, some of the plant material if the trees mature and actually all of them grow and reach --

MR. JUDD: But, again, also you have to figure out

the material that we're deciding on. Like if the tree grows, the branches are going to get much higher and much higher and this plant, they will choose them at the lower level and stay within the under-story of the tree, of the contact with them, the shape of the oak tree. It, they don't necessarily have to be replaced.

MR. KNOPF: Okay. Well, my last question is, I'm still a little bit lost, what I'm getting at is, and this is, I'm a lawyer, that's why I'm asking you as an architect, if one could plant, say you had 20, 25 feet between the sidewalk and the building, another row of trees? So as the two rows of trees grew, the street trees and the ones next to the building you would have an arch to walk under and you would be at least what, 15, 20, 25 years until they got maturity, you would have more street?

MR. JUDD: The horticulture wouldn't necessarily be the best thing to do because within that context, they would be within 15, 15 feet of each other and horticulture with them, with the branching structure, I know that's not the, necessarily the best thing to do.

MR. KNOPF: Would they be -- if we move the building back 20 feet, 25 feet, would they be within 15 feet of each other?

MR. JUDD: Well, because you can't plant, you don't want to plant the tree so close to the building. If

you start planting larger trees --

MR. KNOPF: Right.

MR. JUDD: -- the canopies get larger and so do the root structures. So that's why we choose smaller trees next to the buildings so they don't damages --

MR. KNOPF: Right.

MR. JUDD: -- damage the structural interior of the building.

MR. KNOPF: But you said that under the guidelines that Mr., in response to Mr. Abrams's questions, the street trees are going to be planted 30 feet apart?

MR. JUDD: Uh-huh.

MR. KNOPF: Couldn't you plant them between those 30 feet along the building closer to the trees, some other trees, and eventually as they matured after years and years and years, then maybe you'd have to prune or remove them?

MR. JUDD: Hypothetically -- there's a lot of hypotheticals we could possibly do.

MR. KNOPF: I'm sure you could. Thank you. I have no further questions.

MS. ROBESON: Thank you. Redirect?

MS. HARRIS: Yes. I want to refer to the plan that shows the landscape planting along the street. Focusing just on the northern side of the street, the suggestion that just came up of putting a double row of

trees in front of the subject property, from the landscaping standpoint, do you have, qualitatively, what's your opinion on doing that given the existing landscape being, that's been established by the other three buildings on the street?

MR. JUDD: It would not be consistent with that.

MS. HARRIS: Excuse me?

MR. JUDD: It would not be consistent with everything that's located right on the street itself.

MS. HARRIS: Would it be aesthetically desirable?

MR. JUDD: To add another row of street trees? I think it kind of defeats the character that's being created.

MS. HARRIS: Okay. And given that the Bethesda Sector Plan called for a continuous street edge, in your opinion to the landscaping recommendations such as they are in the Bethesda Sector Plan, were they designed to take in mind the space that would be provided given the building setback?

MR. JUDD: I guess they're kind of related more to the, within the right-of-way.

MS. HARRIS: Okay.

MR. JUDD: So like the builders were taking into account what was going to the public, outside the right-of-way.

MS. HARRIS: And then just one final question which is if one were for some reason, and this is making,

just assuming that one would want to mask the building and landscaping at the ground level, did you testify that given the amount of landscaping that does exist on the north side of the sidewalk to the face of the building, that in fact there are some landscaping type materials that could be grown in that space to reach that goal?

MR. JUDD: Yes.

MS. HARRIS: Thank you.

MS. ROBESON: I just have one question. It will be easy.

MR. JUDD: Okay.

MS. ROBESON: Mr. Abrams pointed out -- are you familiar with the -- there is a point, a lot is being placed on, a lot of emphasis is being placed on having this straight pedestrian edge, all right? And so you don't want to move the building back further, some of which may or may not be driven by an agreement with the neighbors. I don't know. But if you look at 106(b) over there, and there is an alley directly across from the subject property on City Homes, and --

MR. JUDD: Right here?

MS. ROBESON: No, no, down there. Yes. Mr. --

MR. JUDD: I'm sorry, here.

MS. ROBESON: Did you point -- I couldn't see what you were doing. Yes. And the person at the end of that

alley is looking at a blank, another building to the south, and so the emphasis is what are they going -- what kind of perception are they going to have given that this building is now to the north? And I think that that is where the concerns about can we get any more green space because, yes, there's this great pedestrian edge, but to me the pedestrian edge -- there's a lot about this area that has not, I think, gone maybe according to plan in my perception. But, you know, you've already got cut-outs in the pedestrian area along the Edgemoor Highrise. You've got driveways, cut-outs on West Lane. So I guess my question is how, what are you going to tell those people as far as how this is going to impact them from a landscape point-of-view?

MR. JUDD: Well, visually they're not looking into a driveway. They're looking at the landscape and also looking into the corner park.

MS. ROBESON: No, they're looking --

MR. JUDD: Well, if you're looking through this way, then --

MS. ROBESON: They're not looking into the corner park because the end, the northern units are, but the southern units aren't.

MS. HARRIS: May I ask --

MR. JUDD: I guess --

MS. HARRIS: -- for clarification? Was your

question --

MS. ROBESON: Please don't -- go ahead.

MS. HARRIS: I'm not clear. When you said there's someone at the southern end of the alley, where, the person that --

MS. ROBESON: Mr. Abrams, do you know the -- you had a question the other day. Can you tell them what units -- do you know what units I'm referring to? Just while I have the architect here, what about showing him on Exhibit 106(b), which is the one behind you, Mr. Abrams.

MR. ABRAMS: The first or second, so I can --

MS. ROBESON: Any unit in the southernmost portion of the alley.

MR. KNOPF: I know exactly.

MR. ABRAMS: Is this it?

MS. ROBESON: Well, you don't have to pick a particular -- if you have the end --

MR. ABRAMS: If you have end unit --

MS. ROBESON: That's right.

MR. ABRAMS: -- on this stick here --

MS. ROBESON: Yes.

MR. ABRAMS: -- this building up against the property line above the wall --

MS. ROBESON: Yes.

MR. ABRAMS: -- our point was basically your view

is going this way.

MS. ROBESON: That's correct.

MR. ABRAMS: And that's, that's the view.

MS. ROBESON: So in light of -- do you still stick with your argument that the 15-foot setback to the north is set in stone and that there's, on the northern part of the building, northern part of your building --

MR. JUDD: Up here? I'm sorry.

MS. ROBESON: Okay. That's -- so do you still stick to your argument in light of that configuration that the building absolutely has to be where it is? Don't look at your attorney. I'm asking you the question.

MR. JUDD: I mean with the configuration of the building the way it is, especially how the units are laid out, I think it needs to be where it's located right now.

MS. ROBESON: Why? You're already going back 1,000 feet or 500, you know, you're already creating a cut-out, so why, what's the big deal if it's another 10 feet?

MR. JUDD: Well, I guess --

MS. ROBESON: I really --

MR. JUDD: I guess --

MS. ROBESON: I'm trying to translate this planning concept of having this straight street edge, you know, when there's already been so many variations --

MR. JUDD: Right.

MS. ROBESON: -- here, because you've got all the cut-outs on the town, town homes too.

MR. JUDD: Right.

MS. ROBESON: So what's the big deal?

MR. JUDD: I think what it is also is it is a town home development. It's a completely different building type. These other buildings are much taller over here. And then being set back over here, I guess maybe, can I maybe ask another question to you is is the view from here and a view from here are, they're experiencing two different things and I didn't quite follow what, the question you were asking about rather than (indiscernible)?

MS. ROBESON: Yes, they have a 70-foot building to the south, the City town homes stick there, yes, they have a 70-foot high building to the south, all right? So they are not going to see anything from the south. The only thing that they're going to see to the north is your, whatever your setback is. And my question is, why is it -- and there have already been variations in the setback on the street. So I guess this planning concept of not being able to move that building north and south, it, I'm having a little trouble understanding that unless there's some agreement with the neighbors to the north that's driving it.

MR. JUDD: This 15-foot?

MS. ROBESON: Yes.

MR. JUDD: I believe it's, the 15-foot is being driven, I believe, by the building.
MS. ROBESON: Okay. But from totally a landscape architect point-of-view, totally -- don't look at Ms. Harris.
MR. JUDD: I'm not looking, I'm not looking at her.
MS. HARRIS: I'm actually looking at the plan.
MS. ROBESON: Yes, okay.
MS. HARRIS: I have not made eye contact.
MR. JUDD: No, no.
MR. BRALEY: I'm sorry. I'm sorry. So totally, and I have not made a decision in this case, but I am searching for a justification.
MR. JUDD: I think a space is more important, a quality space rather than a quantity space. For example, in Japan, there may be small spaces that create, made impacts and they're no bigger than a 10 by 10-foot area.
MS. ROBESON: Yes, but these people can't see your circular thing.
MR. JUDD: True, but I guess when I was looking at -- in this particular view, corridor right through here --
MS. ROBESON: Yes.
MR. JUDD: -- is -- I believe these are garages.

So basically you're looking at garages all the way up to this point right here. And I guess what I was saying about the, I was also kind of including the step area over here as part of that open space because it is a seating area.
MS. ROBESON: What's the, I'm sorry, what's the step area?
MR. JUDD: Going back to --
MS. ROBESON: Oh, there's a step coming out of the circular --
MR. JUDD: Exactly. Right.
MS. ROBESON: Yes, okay.
MR. JUDD: And, I guess going back to 77, this is the view right through here, so it's capturing a part of a component that within --
MS. ROBESON: The park or whatever --
MR. JUDD: And it's a seating area as well. So it's not just stacked, it's elevated seats, elevated steps that you can use as seats. And also you've got a tree centered on here, so you're not looking right directly into a, approach, or a building, you're looking --
MS. ROBESON: Well, that tree is not set in stone?
MR. JUDD: No, but I think also with the canopy of the tree because this issue -- it's going to be spreading out and filling in the space. So --
MS. ROBESON: I just want you to understand why

they're asking those questions --
MR. JUDD: Right.
MS. ROBESON: -- because, you know, it is a factor here.
MS. HARRIS: May I ask the witness two other questions to follow-up?
MS. ROBESON: Oh, sure. Let me just -- so let me understand your answer again. What is your answer?
MR. JUDD: I don't think, I think the setback as it is right now is ample to provide what we need to do with the landscape material. Adding a visual feat I don't think is necessary.
MS. ROBESON: And why is that?
MR. JUDD: Because the quality of space.
MS. ROBESON: And what does quality of space mean?
MR. JUDD: That is, that could be a subjective thing.
MS. ROBESON: I know. That's why you're --
MR. JUDD: Well --
MS. ROBESON: -- that's why you're an expert.
MR. JUDD: Right. Well, and I think also is this is kind of going back to being more, where they experience the different space. You could, if you --
MS. ROBESON: No, tell me, just right now what I want to focus on is what is quality of space? What is it

about that space that they see that's going to make everything all better?
MR. JUDD: We have landscape base, landscape base between the hierarchy of the plant material, different colors, different textures, things like that, so visually there's interest with that. Also it's not like you're seeing a sheer wall of one different component. You see the tail-end of these steps right here, so it's a different architectural component --
MS. ROBESON: Okay.
MR. JUDD: -- you're seeing. You see the little parts of this area. You see a large tree --
MS. ROBESON: Okay.
MR. JUDD: -- or a portion of the large tree.
MS. ROBESON: Okay.
MR. JUDD: And also the landscaping material between the space of the sidewalk and the building. So quality of space, visually I think it's interesting. It's not a bland, we're not creating a bland visual corridor that someone over here, if you're looking out, okay. A bland, it might --
MS. ROBESON: And that's why you're here. That's why I'm asking you. Okay.
MS. HARRIS: Thank you.
MR. JUDD: Did that your answer question?

MS. ROBESON: It did.
MR. JUDD: Okay.
MS. HARRIS: I want to refer to Exhibit 61, which was previously submitted and shown. It's the view of the corridor, which I think may be helpful to follow-up on the Hearing Examiner's question. Now this is not the, just for, to be clear, Exhibit 61 is not this alley, but it's the one that's a little bit further to the east --
MS. ROBESON: All right. But --
MS. HARRIS: -- that's representative.
MS. ROBESON: Okay. But --
MS. HARRIS: I'm just trying to orient the exhibits.
MS. ROBESON: Yes, but you're -- I can't even remember if we've had testimony on where that exhibit -- but I know it's, I know that it's an alley --
MS. HARRIS: Okay.
MS. ROBESON: -- from City Homes. So -- or hypothetically were that the alley, what's your question?
MS. HARRIS: Okay. Two or three questions. First of all, can you scale approximately the distance of the entire row of the City Homes?
MR. JUDD: Roughly 105 feet --
MS. HARRIS: Okay.
MR. JUDD: -- from the building.

MS. HARRIS: So the 105 feet of the City Homes added to the 73 feet of the distance between the City Homes and the subject property provides for a total distance between that end southern townhouse and the face of our building is what, 173, about 173 feet. So if -- imagine 173 feet, which is half a football field, I guess, and imagine that you set back something five feet or 10 feet more from a perception standpoint, perceivable, unperceivable?
MR. JUDD: Unperceivable, I think.
MS. HARRIS: The other question is if you look at those townhouses, there are slight bay windows it looks like in the parking alley, correct?
MR. JUDD: In this area here?
MS. HARRIS: Yes.
MR. JUDD: Yes.
MS. HARRIS: So I guess my question is it your opinion from what vantage point you're in, that southernmost townhouse, which is the one that was of concern --
MS. ROBESON: Well, any of them really, but just go from the southernmost so we can --
MS. HARRIS: -- the view from that southernmost townhouse, would there actually even be a view to -- would they be seeing their other residents of the City Homes or are they even going to be able to view the West Lane building?

MR. JUDD: It's a canyon that's been created there, so if you're sticking your had out, I think you could see --
MS. HARRIS: What?
MR. JUDD: -- it just means -- you can see in the canyon of the parking door, the garage doors --
MS. ROBESON: But can you see the building?
MS. HARRIS: From that southernmost townhouse?
MR. JUDD: If you, I think if you look through, around then possibly I think if you're looking --
MS. HARRIS: Okay. Okay. And then if you moved a little bit further to the middle of the row or a little bit further north, arguably you may be able to see the second --
MR. JUDD: As you get closer.
MS. HARRIS: But, okay, and at the same point is the, as you move closer, further north, is the impact from this building less than it would be on the southernmost units?
MR. JUDD: As you move, as you move forward, yes.
MS. HARRIS: Okay. Thank you.
MS. ROBESON: Okay?
MS. HARRIS: Yes.
MS. ROBESON: Is that it?
MS. HARRIS: I'm sorry. Okay. Yes, that concludes our questions.

MS. ROBESON: And recross, Mr. Abrams?
MR. ABRAMS: Were you testifying as to the back view of the townhouses or the front windows of the townhouses? In other words, there's a front and back --
MR. JUDD: Right.
MR. ABRAMS: -- correct?
MR. JUDD: So you come out this, the area that we just talking about?
MR. ABRAMS: Yes, would you exercise with what views there are.
MR. JUDD: The area we were just talking about through the questions was the rear of the building.
MR. ABRAMS: Okay. What about the front windows of some of those townhouses?
MR. JUDD: They're facing the opposite direction. These guys are facing the opposite direction.
MR. ABRAMS: Well, it depends upon which stick you're talking about.
MR. JUDD: True. True.
MR. ABRAMS: And if you have a bay window, what's your projection now?
MR. JUDD: Okay.
MR. ABRAMS: Okay. So there really isn't any to out and turn if you could just stand in your bay window and look out that, in that direction, yes or no?

MR. JUDD: Sure.
MS. ROBESON: No?
MR. ABRAMS: Sure?
MS. ROBESON: Okay. Yes or no?
MR. JUDD: Yes. Yes. Yes.
MS. ROBESON: Okay. I just didn't hear.
MR. JUDD: Okay.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: All right. Mr. Knopf?
MR. KNOPF: Yes. In response to the questions, you said that one could look out and could see the street tree through that? Am I correct that you, what's required for landscaping for those street trees is not an evergreen tree, is that correct?
MR. JUDD: It's a willow and a deciduous tree.
MR. KNOPF: It's deciduous? Okay. And the last question I have for you is you indicated that as you got closer, I think that's what you said, as you got closer to Montgomery Lane from those townhouses, the view, it would have, the building would have less impact, is that what you said?
MR. JUDD: No, I didn't say that the building had less impact.
MR. KNOPF: Okay. I'm sorry. I thought you said, well, you indicated something had less impact as you moved

toward Montgomery Lane or that --
MS. ROBESON: I thought you did say it would have less impact.
MR. JUDD: Walking towards the building would have less impact than --
MR. KNOPF: No, no, as the --
MS. ROBESON: Oh, maybe it was Hampden Lane?
MR. KNOPF: No. I thought you said as you went, in units in the townhouses, you moved closer to Montgomery Lane?
MR. JUDD: As you --
MR. KNOPF: Now I'm giving you walk, I'm sorry, standing in the units, the townhouse units, as you got closer to --
MR. JUDD: But what happens then?
MR. KNOPF: You said it would have less impact from those units as you looked out from those units?
MR. JUDD: And I'm not really quite sure if I'm following your question, the impact of the building --
MR. KNOPF: The impact of the building.
MR. JUDD: -- to the setback? I believe --
MR. KNOPF: Yes.
MR. JUDD: -- that the building was set back --
MR. KNOPF: To the setback.
MR. JUDD: -- between 5 foot --

MR. KNOPF: Right.
MR. JUDD: -- I think a 5-foot setback additional, I don't think that would be perceivable. I think that's what I --
MR. KNOPF: Right.
MR. JUDD: -- had mentioned.
MR. KNOPF: But I thought you had indicated it was less impact. I was trying to understand in what context you had said that.
MR. JUDD: I guess I remember that. I guess what I meant by that was that additional five feet would not be, would not make that much more of an impact.
MR. KNOPF: I see.
MR. JUDD: If that --
MR. KNOPF: Well, all right, but would you agree with me that as you got closer to the building, the building, because you are closer --
MR. JUDD: It gets larger.
MR. KNOPF: -- yes, it gets larger and it's more impact?
MR. JUDD: Yes.
MR. KNOPF: Thank you.
MS. ROBESON: That's it? Okay. We're going to take an hour for lunch. If you could double-check your schedules on April 29th --

MR. KNOPF: We seem to be all right.
MS. ROBESON: Okay. And everyone else is?
MR. ABRAMS: I'm fine.
MS. ROBESON: Okay. So we will add April 29th as a hearing date after this Friday. Okay. So with that, we'll be back at 1:50.
MR. KNOPF: We may not need it all.
MS. ROBESON: We may not need it, but we can reserve it.
(Recess)
MS. ROBESON: All right. Are the parties ready?
MR. ABRAMS: Yes.
MS. ROBESON: Are you ready? Okay. Excuse me. We're back on the record and I see Mr. Berman. I take it that you did confirm the 29th is okay with you?
MR. KNOPF: Yes, just we may have to take somebody out of order, but yes.
MS. ROBESON: Well, we'll work with you on that.
MR. KNOPF: Yes, that's fine.
MS. ROBESON: All right. Mr. Berman, please raise your right hand.
(Witness sworn.)
MS. ROBESON: Then, Ms. Harris --
MS. HARRIS: Thank you. Please state for your, state your full name and primary occupation for the record?

MR. BERMAN: My name is Perry Berman and I'm a city planner and I'm also a commercial real estate agent.
MS. HARRIS: And how long have you been employed as a city planner?
MR. BERMAN: I have been a city -- I was afraid you were going to ask me that. I'm a city planner for 40, for approximately 40 years.
MS. HARRIS: And your professional educational background is?
MR. BERMAN: I have a master's in public administration with a concentration in planning from NYU. I've done undergraduate work at Queens College in political science. I have -- am a licensed commercial real estate agent and I am the chair of the Builder's Industry Association Subcommittee on Entry Level Housing.
MS. HARRIS: Thank you. And have you testified as an expert before the Zoning Hearing Examiner previously?
MR. BERMAN: Yes. I've testified on several occasions, the most recent was Towne Crest on G-910. That was the Gaithersburg vicinity Master Plan. I've also been before the Board, I think, before the Hearing Examiner last year on Roy Rogers's special exception in Burtonsville and several others in the past, several other cases as well.
MS. HARRIS: And have you been qualified as an expert in Sector Plans?

MR. BERMAN: Yes.
MS. ROBESON: Not with, not with me he hasn't. But what are you seeking to qualify him in?
MS. HARRIS: As an expert and maybe I need to provide --
MS. ROBESON: I qualified him as an expert in land use planning.
MS. HARRIS: Okay.
MS. ROBESON: And there was a distinction that the applicant was trying to make, so I --
MS. HARRIS: Well, if I may then --
MS. ROBESON: -- go ahead.
MS. HARRIS: Can you please -- because I would like to have him qualified as an expert with respect to the Bethesda Sector Plan. So --
MR. ABRAMS: Well --
MS. ROBESON: Well, I don't think that you can be an expert in a particular plan. It's just -- do you have an objection?
MR. ABRAMS: Yes. I mean it's not a recognized field. He has special expertise as, you know, as a land planner or urban planner because he's worked in the field, but to qualify him as an expert in this very narrow area I think goes way beyond the process that we've been using over the years.

MS. ROBESON: And that was the discussion and I do agree with that. So I'll qualify him as an expert in land use planning --
MS. HARRIS: That is fine.
MS. ROBESON: -- if that's acceptable?
MS. HARRIS: That's acceptable. And then through testimony, he'll explain his vast experience with respect to the Sector Plan.
MS. ROBESON: And are you going to tell us about another mistake in the -- you're going to tell us the true meaning. Okay. Go ahead.
MS. HARRIS: So you've been qualified as an expert in the field of land planning, is that correct?
MS. ROBESON: Land use planning, yes.
MR. KNOPF: I'm a little confused because he said he was, he stated he was a licensed real estate agent. Was that another area you're going to have him qualified?
MS. HARRIS: No, I think he was just giving his broad range of experience in real estate related matters.
MS. ROBESON: So solely --
MR. BERMAN: I didn't want to hide anything.
MS. ROBESON: Not to limit you because it's a broad cap, but land use planning is what --
MS. HARRIS: Land use planning. Thank you. Are you familiar with subject local map amendment and

development plan before the Hearing Examiner today?
MR. BERMAN: Yes, I am.
MS. HARRIS: Thank you. Can you please describe what you were asked to do by the applicant?
MR. BERMAN: The applicant asked me to take a look at the application and compare that to the goals and objections of the Bethesda Sector Plan.
MS. HARRIS: And can you please describe your responsibilities, well, let me, first of all, how long were you employed at Maryland Park and Planning Commission?
MR. BERMAN: I worked for 28 years for Park and Planning Commission.
MS. HARRIS: Okay. And can you please describe your responsibilities in the preparation and supervision of the 1994 Bethesda Sector Plan?
MR. BERMAN: I was chief of community planning and I supervised the entire gate, the entire, this Master Plan. I had the responsibility of supervising most of the Master Plans during, done, that were done in the '90's and '80's, and as such I established the goals of the plan, reviewed the goals of the plan and reviewed the key language recommendations, attended all the various hearings and work sessions and was the key point person for the professional staff before the Council and the Planning Board on these Master Plans.

MS. HARRIS: And did those activities include reaching, outreach to the community such as the Bethesda CAC or --
MR. BERMAN: Right. Right.
MS. HARRIS: -- other similar organizations?
MR. BERMAN: We had a team. We have teams of people who worked on each of the Master Plans and my job was to supervise each of the teams and make sure the teams were doing that. But that --
MS. ROBESON: By CAC, you mean the Citizens Advisory Committee?
MR. BERMAN: The Citizens Advisory Committee. That's -- thank you. And since Bethesda Master Plan was more controversial than some of the other plans we were doing, I made sure that I was attending most of the important meetings and hearings. And I also at that time assumed the lead responsibility for the hot job site. So I worked on the redevelopment of the hot job site in terms of the concept in the Master Plan.
MS. HARRIS: Thank you. And what was the central role of, excuse me, the central goal of the Sector Plan?
MR. BERMAN: Right. The Sector Plan followed the, took a look at the 1976 Sector Plan and looked at that and saw what occurred over that time period and on whether we could do a better job than that plan envisioned and see

what, whether those goals were being achieved. In our judgment, the number one problem with the '76 plan was that it was not creating enough housing and that the TSR area was not creating enough housing and that we wanted to steer the direction of the area toward, of Bethesda towards much more of a balanced community and the TSR area was one of the key locations that we felt necessary to see if we can encourage development. We were not happy with what had occurred since 1976.
MS. HARRIS: So was the effort to --
MS. ROBESON: When you -- I'm sorry. I had this question in G-910 and this time I'm going to clarify it for my own information. You say we. Who is we?
MR. BERMAN: We, well, it all depends --
MS. ROBESON: Is it the planning staff?
MR. BERMAN: It, certainly the staff, the professional staff --
MS. ROBESON: Yes.
MR. BERMAN: -- has the responsibility to prepare, as you know, the staff draft.
MS. ROBESON: Right.
MR. BERMAN: And that sets the tone for the discussion. But as it goes along, other people become the we. The Planning Board then accepts that.
MS. ROBESON: Well, how do I know which we we're

talking about?
MR. BERMAN: Let's talk about the final product then.
MS. ROBESON: Why don't, well, don't you talk --
MR. BERMAN: Or --
MS. ROBESON: -- about when you're talking about the staff draft --
MR. BERMAN: Yeah.
MS. ROBESON: -- just identify --
MR. BERMAN: Thank you.
MS. ROBESON: -- either say I --
MR. BERMAN: That would be helpful.
MS. ROBESON: -- or who the we is.
MR. BERMAN: Right. Thank you.
MS. ROBESON: That would be helpful. Go ahead, Ms. Harris.
MS. HARRIS: Just for clarification purposes, so when Mr. Berman talks about the Sector Plan, we're assuming he's talking -- unless he clarifies otherwise, he's talking about the final plan that was approved and adopted, correct?
MS. ROBESON: All right. So the we is the Planning Board and the County Council?
MR. BERMAN: That's correct. That would be --
MS. ROBESON: Okay.
MR. BERMAN: That would be the sum total of that

process.
MS. ROBESON: The we?
MR. BERMAN: Yes, the we to 3-year process.
MS. ROBESON: Okay. I just wanted to understand that.
MR. BERMAN: The we at the beginning of the discussion was the 1976 plan. We took a look at we, the staff took a look -- I better not use that pronoun. The planning staff took a look at what had occurred since 1976. And when we, the staff took that issue to the Planning Board, we said we were not, the staff was not satisfied with the development of the, in terms of housing. The Planning Board accepted that and said, yes, go forth and encourage more housing in the Bethesda area. Come up with a plan that did that. We then prepared that plan and that thought, that concept was then incorporated by the County Council when they adopted the plan.
MS. HARRIS: And page 29 of the Sector Plan makes some introductory remarks about housing and what's desired there. Can you just sort of touch on that please?
MR. BERMAN: Well, the plan, let me get my section plan, I don't have that reference quite in front of me, but I will tell you that the plan talked -- could you show me the, okay.
MS. HARRIS: We're on this page, primarily the --

MR. BERMAN: Reading from the plan, page 29, the plan talks about, number one, promote a variety in choice in housing of quality design, durable construction types of neighborhoods. But I think you're talking about --
MS. HARRIS: I'll find you the section. Hold on one second.
MR. BERMAN: I have it. Okay.
MS. ROBESON: Well, can he just testify --
MR. BERMAN: Okay. Basically, it's --
MS. HARRIS: Okay. Yes.
MR. BERMAN: -- it talks about providing, page 29 talks about in addition to the need for more affordable housing, there is a market demand for rental housing that is high-quality, that in many areas existing than they want more rental housing and that the rental housing should be higher quality than the existing garden apartments that occurred, that are there now.
MS. HARRIS: Okay.
MR. BERMAN: Or then.
MS. HARRIS: They're -- what were the, you touched on this, but what are the, what were the reasons for the desire to have more housing in the Bethesda Sector Plan?
MR. BERMAN: Well, there are a variety of different reasons why the plan supported more housing, the vitality of an area to make it more 24-hour and the desire

was not to have an all-office development where everybody left and the streets were quiet at night. To provide for housing close to jobs so that it would reduce the amount of long-distance trips and the plan actually talks about even jobs for a variety of different housing types for not only just for the people who would shop in the stores, but for the people who actually worked in the stores, particularly the restaurants. The restaurant business in Bethesda is very important and it's very important to have people who can actually live in Bethesda who work in those restaurants.
But the support of use in Metro obviously, the fact that Bethesda was a great place to live and more people should live in this wonderful area that, what the, Bethesda has evolved to and to support the local retail. They -- this is not only a goal for this CBD, but this type of goal is for housing is recommended in other CBD's like Silver Spring and Wheaton. But this is a particular, a major part of the Bethesda plan of 1994.
MS. HARRIS: And in terms of -- and was one of the overarching goals, you mentioned this, was the provision of MPDU's within both the Sector Plan area and then more specially the TSR area. Can you comment on that?
MR. BERMAN: Yes. One of the problems in the planning for Bethesda was the edge of Bethesda.
MS. HARRIS: The edge?

MR. BERMAN: The edges of around Bethesda.
MS. HARRIS: Okay.
MR. BERMAN: And if we were going to increase the housing area that we wanted to look at, the staff wanted to, where would be the appropriate places to do that? And we struggled with that because, as you know, the -- Bethesda is ran by very active civic associations and wonderful single-family neighborhoods. So the thought was to try to concentrate the housing as much as possible not on the edge, but more towards the center of town as we give a distance. And the TSR area was that place that we would want to put the housing. If we weren't able to get the high-density housing we wanted in, excuse me, we, the plan, and -- we would have to find, and staff would have to find another area. And we didn't think that that was going to be a good place to put housing on the edge. So the TSR was that predominate area that we've put a lot of eggs, housing eggs in that basket. Sorry for the --
MS. HARRIS: Can you explain or do you have any knowledge of why -- the explanation for the 35-foot zone recommended height zone along Arlington Road in the TSR area?
MR. BERMAN: That gets back to transitioning to the residential area. Again, it's not a reflection upon the -- it's more of a reflection on the residential on the

outside of the area than the concern to proffer the area from the middle --
MS. HARRIS: Okay.
MR. BERMAN: -- from the middle of a TSR. The -- we would have probably, the staff would have recommended a higher density, higher on Arlington Road except for the concern for transitioning to the residential area to the west. And that same kind of, if you look at the Master Plan, you can see that the Master Plan are broken down into districts and that each district was done -- we looked at each district and one of the issues of the districts was to transition from the main part of Bethesda to the residential area. In some, in this case we have a library in this area. We have a wonderful library along Arlington Road and that was a good buffer, but then we thought the 35 feet would be another, another step --
MS. HARRIS: Okay.
MR. BERMAN: -- and then the higher density as you get closer to the Wisconsin Avenue.
MS. HARRIS: Okay. Thank you. Were there any changes made in the TSR zone in order to promote the goals that you just identified?
MR. BERMAN: Right. It's not unusual that as part of this process that the zoning ordinance that implements the Master Plan needs to be tinkered with to see, to make

sure that the zoning is, is working along with the Master Plan goals. One of that was to, so we amended the TSR zone or the County amended the TSR zone to, one, provide for greater building coverage than had been before; and, two, allow for wider range of commercial uses; and, three, to allow for smaller assembly complaint.

MS. HARRIS: And does the TSR zone and, provide for any necessary setbacks?

MR. BERMAN: Yes it, it does, but the key to all of that was to have flexibility with it in terms of setbacks and to allow for the development to proceed as, in an urban format.

MS. HARRIS: Okay. I just wanted you to bring, I want you to --

MR. BERMAN: Yes.

MS. HARRIS: -- rethink your one question --

MR. BERMAN: Let me look --

MS. HARRIS: -- and may I refer to the zoning ordinance section --

MS. ROBESON: Wait a minute, rethink what?

MS. HARRIS: No, I'm sorry. I wanted to, I wanted to, for Mr. Berman to clarify a section based on zoning, clarify a statement that he just made based on 59C 8.4, because I believe he mis-spoke.

MR. BERMAN: I believe I did.

MS. ROBESON: Okay.

MS. HARRIS: So can you review 59C 8.4 and let, and tell me whether there are any setback requirements within the new TSR zone?

MR. BERMAN: I don't see any.

MS. HARRIS: So there are none?

MR. BERMAN: None.

MS. HARRIS: So that -- the omission or elimination of setbacks in the TSR zone, in addition to emphasizing a greater lot coverage, what do you think was trying to be achieved with those tougher standards?

MR. BERMAN: Bigger, bulkier buildings. If you have more lot coverage, then the buildings get bigger and wider and certainly on the setback requirements that was, that, again, the geometry is that the buildings get larger. So -- and the same is true with small assembly requirements. We had a hard time, the properties were a hard time being assembled and so we, Council, through the trio of amendments that allow for projects to proceed with assemblage, but we wanted to encourage dense development at this location.

MS. HARRIS: Thank you. What was the intention of the designation of Montgomery Lane as a mixed street?

MS. ROBESON: And can you clarify -- when you answered this question, who you're speaking of?

MR. BERMAN: Thank you. The adopted plan, let me

start off the adopted plan rather than we.

MS. ROBESON: Okay.

MR. BERMAN: The adopted plan provides for Montgomery Lane as a mixed street and the rationale for that was that, for two reasons. One, the plan recognized that the --

MS. ROBESON: Well, okay, go ahead.

MR. BERMAN: Okay. That's --

MS. ROBESON: Yes, go ahead.

MR. BERMAN: Okay. The plan recognized that in one of the goals of an urban village was to have a pedestrian-friendly mixed street with --

MS. ROBESON: What's mixed mean?

MR. BERMAN: Mixed street means it's -- a mixed street is a street that works for both cars and for people at the same time and that you, if you -- that type of street classification evokes the streets of Europe. When you travel to Europe, you see many streets which are pedestrian streets or mixed streets where they have people walking, what we would think of would be the right-of-way and cars going through. The sense, the planning, general planning philosophy is that that creates a sense of a more intimacy and more friendliness of the street. It is not a suburban concept. It is an urban concept. It is one that says that -- and we're seeing it more and more -- you'll be

seeing more mixed streets as part of the redevelopment of other parts of the County.

Maryland Avenue in Rockville right here in front of the courthouse I would say is a mixed street. You can see cars, you see trucks and the way the pavement is handled, that is a mixed street, one form of mixed street. Ellsworth Street in Silver Spring is, and behind the, behind the AFI theater is a mixed street where you have a commercial area, a retail area and you have cars and you have pedestrians and sometimes they close the street, sometimes they open the street. They -- you'll see that as part of the development of the redevelopment of White Flint Mall as that develops, that, they'll have a series of both public and private use. So that is one of the ways of trying to create more urbanity or more charm to a neighborhood.

MS. ROBESON: Now --

MR. BERMAN: The --

MS. ROBESON: -- I'm back at the nomenclature --

MR. BERMAN: Yes.

MS. ROBESON: -- of how you -- the plan didn't do this because the plan is a, not a person. But in your opinion, it's your opinion that this is what was meant by the Council?

MR. BERMAN: Yes.

MS. ROBESON: Is that what you're saying or is this what staff meant?
MR. BERMAN: I think you will see in the plan that that's what Council meant. There was no, to my recollection, the process of this particular recommendation, there was no change in that recommendation throughout the process. The other reason was the Council realized and the plan realized that --
MS. ROBESON: Not the plan, the Council?
MR. BERMAN: Well, the Council --
MS. ROBESON: Somebody did realize?
MR. BERMAN: The plan realized, the plan realized.
MS. ROBESON: No, no, no, it can't be the --
MR. BERMAN: Well, the plan reflected, the plan reflected a --
MS. ROBESON: Whose concern?
MR. BERMAN: The community's concern that --
MS. ROBESON: All right.
MR. BERMAN: -- the traffic along Montgomery Lane would be very high unless you discourage traffic from going through it because of its location on the way to the Metro station.
MS. ROBESON: Okay.
MR. BERMAN: And as part of that concern that was expressed by the community and recognized by the plan and

adopted by the Council, there was a series of steps to discourage through traffic through Montgomery Lane and that was part of this rationale for creating a mixed street on that street. It's the only street in the TSR that has that and that concern was reflected by the narrowness of the pavement, the widening of the sidewalks, and other things which have subsequently changed, come along by DOT's interpretation of that provision in the code, in the Master Plan.
MS. HARRIS: So if I understood what you just said correctly, are you -- was, the staff was concerned that there could potentially be cut-through traffic and so decided to design something which ended up having the name of a mixed street to limit or, not prevent, but to limit cut-through traffic?
MR. BERMAN: That was one of the -- that was one reason. The other reason was to create a sense of urbanity along that street.
MS. HARRIS: Okay. And do you think that the design of the street has been successful in achieving that goal?
MR. BERMAN: I have -- I believe so.
MS. HARRIS: Okay. At the same time, the zoning ordinance recommended in the sector, well, the Sector Plan recommended certain levels of development along that street.

Was there any, was there anticipation of how much development that mixed street could accommodate and what would be developed there?
MR. BERMAN: Yes, the plan reflects an estimate of about 100 units per acre and from the development statistics I've seen, and that are in the record, the, on average the development density on this street would be around 56 units per acre, assuming the development of the, of this application I believe.
MS. HARRIS: So in your view, the development of this -- the approval of this application and the development would still be consistent with the objectives of the mixed street and the functioning of the mixed street?
MR. BERMAN: That's correct.
MS. HARRIS: Okay. Thank you. The Sector Plan is almost 20 years old. Can you comment, and you referred many, a lot of discussion during the course of this hearing in terms of the various recommendations of the Sector Plan. Can you comment on the age of the Sector Plan and how it relates to the relevancy of some of these recommendations?
MR. BERMAN: Right. The -- it's clearly an old plan. As we've talked in the other case, it's an old plan. And I think that the plans do show their age and I, this Sector Plan had a, like all of us, the Sector Plan had in the beginning of it a place, a statement that says that,

quote, "Master Plans generally look ahead in time, horizon about 20 years from the adoption. Though it is intended that they will be updated and revised every 10 years, it is recognized that the original circumstances at the time of plan adoption will change over time and the specifics of a Master Plan may become less relevant as time goes on." And that's the forward in that plan.
And I, that was crafted, I remember that, and we at the time during this time period, all the plans that we worked on put that provision in as a way of saying -- and it was, this, the Council put in, it was done at the Council's behest. There was some discussion about all the illustrations, do the illustrations, how exact are those? Do we really think the illustrations should be followed exactly and we, we the plan ended up saying, no, they're just in --
MS. ROBESON: No, no, no, no. It's not we, the plan.
MR. BERMAN: The, it's the plan.
MS. ROBESON: In your opinion --
MR. BERMAN: Thank you.
MS. ROBESON: -- the Council said --
MR. BERMAN: The Council said, thank you, that the illustrations in the plan were just illustrations and that they were examples, one type of, one form of development,

not that the plan, that there are many different types of forms of development and these illustrations are just that, illustrations. But what the plan does say that, that, that as time goes on, the specifics of each Master Plan must become less relevant. I would say personally and professionally I don't think the general goal is to have more housing. That is, that probably will not change my opinion when the --

MS. ROBESON: You mean that isn't -- you're saying that's not outdated?

MR. BERMAN: That's not, that's not outdated.

MS. ROBESON: The goal of housing?

MR. BERMAN: That's the principle core of growth.

MS. ROBESON: So are you -- okay. Go ahead.

MS. HARRIS: Thank you. And then, so the provision of housing is a core goal that didn't change. Would you say that the provision of affordable housing is a core goal that did not change?

MR. BERMAN: That change will not change. That is still a core goal.

MS. HARRIS: Okay. And how about housing near Metro?

MR. BERMAN: That is a core goal.

MS. HARRIS: And how about diversity in housing?

MR. BERMAN: That is still a core goal.

MS. HARRIS: Okay. Do -- in your opinion, are the residential units on Montgomery Lane that have been developed since the adoption of the plan, are they representative of what was envisioned by the plan, are they representative of what, what the plan wanted to see develop there?

MS. ROBESON: What the Council wanted?

MS. HARRIS: What the Council -- I'm sorry, I did it as well.

MS. ROBESON: I'm sorry to be -- it's important, though.

MS. HARRIS: Right.

MS. ROBESON: And I need to know the context from which you're testifying. So go ahead.

MR. BERMAN: I think the Council would, the Council's adopted plan talks about diversity of housing type and --

MS. ROBESON: Or you can talk on staff's perspective, but go ahead.

MR. BERMAN: But just be precise? I've got that.

MS. ROBESON: Yes.

MR. BERMAN: Thank you. I've got that. The plan perspective talks about diversity of housing types and diversity, and a diversity of housing types. I would say the plan would not be -- could you restate your question? I

want to make sure --

MS. HARRIS: Yes.

MR. BERMAN: -- I'm getting it right.

MS. ROBESON: Sorry, I won't interrupt again.

MS. HARRIS: That's okay.

MS. ROBESON: But it is, it is important.

MS. HARRIS: In terms of -- is the housing that currently exists on Montgomery Lane, is it reflective of what the Council intended in its adoption of the Bethesda Sector Plan, particularly as it relates to density, diversity and affordability?

MR. BERMAN: Could -- I'm going to answer as me individually and in this case I would say that --

MS. HARRIS: You individually as having been --

MR. BERMAN: -- as a --

MS. HARRIS: -- the plan --

MR. BERMAN: -- the plan author.

MS. HARRIS: Okay.

MR. BERMAN: One of the plan authors. I would say as one of the plan authors, I would not be satisfied with what was in the, what's occurred along Montgomery Lane today.

MS. HARRIS: And what's lacking in your mind?

MR. BERMAN: Small units, cheaper units, more rental, more affordable housing. I think that the density

that has occurred on Montgomery lane is not as intense as what was envisioned by either the author of the plan or, in fact, the plan itself, but -- the plan itself.

MS. HARRIS: And when you say the plan itself, which --

MS. ROBESON: Go ahead.

MS. HARRIS: The County Council's, what the County Council intended when they adopted the plan?

MR. BERMAN: That's correct.

MS. HARRIS: Okay. Thank you.

MR. KNOPF: Excuse me. Now I'm lost. Who is the author of the plan? He said it was envisioned by the author. Is that the staff?

MS. HARRIS: I think --

MR. KNOPF: That's you? That's the Council? The Planning Board? I'm getting a little lost here.

MR. BERMAN: Do you want me to respond to that? Is that a question?

MS. HARRIS: Yes.

MR. BERMAN: Okay. The author of the plan, when I just stated that, I was referring to the staff of Park and Planning Commission. That is the author. The County Council adopts the plan clearly.

MS. HARRIS: Right.

MR. BERMAN: However, it was written by the staff

and it went through a 3-year process of being --
MS. ROBESON: So it was a collective -- okay. So, but I think -- okay. But you were involved -- when you're answering as the author, you're answering as one of the authors, correct?
MR. BERMAN: One of the authors. That's correct.
MS. ROBESON: Okay. Does that satisfy --
MR. KNOPF: It helps. Thank you.
MS. ROBESON: Okay.
MS. HARRIS: Before the lunch break there was some discussion about the City Homes and their view of the subject property. And so my question to you is if you were buying one of the end cap units, and perhaps it would be helpful to put up 106?
COURT REPORT: 106(b).
MS. HARRIS: (b)? Thank you. I've got that all shuffled around. So this is 106(b)? So if you were buying one of the end-cap units which faces north --
MS. ROBESON: In the City Homes?
MS. HARRIS: -- in the City Homes, first of all, are you familiar with the fact that Montgomery County sales contracts have a provision regarding reviewing Master Plans?
MR. BERMAN: Yes, I am.
MS. HARRIS: And what is that obligation?
MR. BERMAN: The obligation --

MR. ABRAMS: Objection. This goes beyond the expertise of a land planner. It gets into the commercial real estate licensing act.
MS. HARRIS: Absolutely not. I'd say anyone that's ever purchased a house in Montgomery County could probably answer that question.
MS. ROBESON: I think it's a fair question because it is a provision that's come up in many, many zoning hearings as far as, you know, attempts to say buyer beware. So go ahead.
MS. HARRIS: So that -- can you briefly explain first what that provision in the standard sales contract provides?
MR. BERMAN: That requires a buyer of a home to check a box on there, a settlement sheet that they've been shown and aware of the Master Plan recommendation is for that particular area.
MS. HARRIS: And if one would have satisfied that obligation when they were purchasing those end units, what would they have determined by reviewing the Bethesda Sector Plan?
MR. BERMAN: Well --
MS. ROBESON: Go ahead.
MR. BERMAN: I, when I worked at Park and Planning initially, I answered questions like that all the time.

People would come to us and say I'm buying a house, what does the Master Plan recommend and please translate this Master Plan and I would have said to someone that this Master Plan recommends high-density housing in an area within X amount of feet of the Metro station, that the height of the building is going to be pretty high and that the recommendations for along the street edge would be buildings along the street edge and that you would have a, and that there would be a variety of housing types likely to be developed along that street and that the street would be narrow and the pavement would be narrow and that it would be mixed street and that you would find, there would not be a suburban-type street situation in front of your house.
MS. HARRIS: Would it have been likely for you to have said to the owner, the potential purchaser of one of those end units, refer them to perhaps what the experience looks like further east on the street?
MR. BERMAN: I would have pointed out the other tall buildings that were on the street like the Chase. Now the Chase and some of the other buildings were built before the TSR zoning height was lowered or discussed, but I would indicate and show them a copy of the, if they wanted, the zoning ordinance, but I would indicate that, I would show them the height map, for example, in the Master Plan and I would show them various, our intention to increase the

amount of housing in that area.
MS. HARRIS: And would you, would it be reasonable to expect that this potential purchaser given the Sector Plan and its recommendations would have an expectation to, one, see other buildings; two, see building penthouses; and, three, perhaps see tops of buildings?
MR. BERMAN: Yes, I would.
MS. HARRIS: Do you have any other comments, final comments that you may want to make about the development plan or the Sector Plan or how they relate to one another?
MR. BERMAN: Well, it is my judgment --
MS. HARRIS: Yes.
MR. BERMAN: It is my judgment that the plan is consistent with the Sector Plan, I, and that it accomplished the goals of the Sector Plan. I've read the staff report, the technical staff report. I've read the Planning Board's judgments on that and I feel comfortable making those recommendations.
MS. HARRIS: Thank you. That concludes Mr. Berman's testimony.
MS. ROBESON: Okay. Mr. Abrams?
MR. ABRAMS: Yes, ma'am?
MS. ROBESON: You're up.
MR. ABRAMS: Okay. Now how is work, when you were down at Park and Planning as the chief of community plans,

how was work assigned to the staff in terms of plan preparation?

MR. BERMAN: Well, I was responsible for making those internal staff recommendations within my division, within my division, community planning division, and then I would work with the other division chiefs to match up the transportation staff, the urban design staff and make sure that those staffs were compatible and available.

MR. ABRAMS: Now who were the staff people that you assigned to make or the point people? Were they urban designers, planners, transportation people, who?

MR. BERMAN: They were both. The lead planner in this particular plan was Don Downing who was a community planner. He was assisted by -- remember Don -- okay, and Karen Koon, who was the urban designer.

MR. ABRAMS: How about Carolyn Hufbauer?

MR. BERMAN: And Carolyn Hufbauer.

MR. ABRAMS: Who lives with three people?

MR. BERMAN: That's correct, Carolyn.

MR. ABRAMS: Okay. Now what were their responsibilities, not yours, theirs?

MR. BERMAN: They prepared the reports and the recommendations. They did the day-to-day work on it and they would come and develop the recommendations and I would review those.

MR. ABRAMS: Did they write the text in the --

MR. BERMAN: They wrote it. They generally wrote it or I re-wrote it, but they had the first shot at it.

MR. ABRAMS: So most of the final work product of the staff draft came from those three individuals?

MR. BERMAN: I don't know if I'd characterize that. I would say that the initial ones certainly.

MR. ABRAMS: When did the staff work start on the Sector Plan?

MR. BERMAN: I don't have an exact date. My -- I would say three or, maybe four years before adoption. I don't have the staff draft plan. I don't remember.

MR. ABRAMS: 1990, '91, that area?

MR. BERMAN: I wouldn't dispute that statement.

MR. ABRAMS: Okay. Now during that period of time before the staff draft came out, what did these three individuals do besides drafting language?

MR. BERMAN: They attended a lot of community meetings and met with lots of property owners. They did their research. They prepared various reports.

MR. ABRAMS: So when somebody called in from the community and wanted to set up a meeting with the people who were involved in this, they were directed to these three people or --

MR. BERMAN: That's correct.

MR. ABRAMS: Now how many other Master Plans or Sector Plans were being worked on at about the same time in '90, '91 through '94?

MR. BERMAN: I would say -- I don't remember exactly, but I would say typically I did three, four, five plans at a time.

MR. ABRAMS: As chief of community plans, what other tasks did you perform at the time the Sector Plan was being processed?

MR. BERMAN: Well --

MR. ABRAMS: What else did you do?

MR. BERMAN: I was involved in any major planning issue that was going on at the same time.

MR. ABRAMS: And this was county-wide?

MR. BERMAN: County-wide issues, county-wide issues, administrative issues, personnel issues, a whole host of other issues.

MR. ABRAMS: Did you work on the regulatory side too?

MR. BERMAN: Not too much. Not too much, unless it was a big case.

MR. ABRAMS: So you were kind of spread pretty thin at this point in time?

MR. BERMAN: I wouldn't answer that affirmatively.

MR. ABRAMS: Okay. So, Mr. Downey and Ms.

Hufbauer and it was Karen Koon did you say?

MR. BERMAN: Karen Koon.

MR. ABRAMS: Yes, who was the third person?

MR. BERMAN: Karen, Don Downey, Carol Hufbauer, and Karen Koon was the urban design.

MR. ABRAMS: Okay. Did they attend work sessions --

MR. BERMAN: Yes.

MR. ABRAMS: -- on the County Council?

MR. BERMAN: Yes.

MR. ABRAMS: Did they attend meetings with the community?

MR. BERMAN: Yes.

MR. ABRAMS: Did they respond to the Planning Board in terms of issues that the Planning Board members had?

MR. BERMAN: Absolutely.

MR. ABRAMS: And did they attend the County Council public hearings and work sessions on the plan?

MR. BERMAN: Sometimes yes and sometimes no. Before the County Council, we would try to reduce the amount of staff to the absolute minimum.

MR. ABRAMS: But they were the most knowledgeable people with respect to the evolution of this plan and what it contained?

MR. BERMAN: Well, yes, that's what their assignments were.
MR. ABRAMS: At the time of the adoption of the Sector Plan, what projects were already constructed in this TSR zone area?
MR. BERMAN: Well, I'm sorry, I'm not going to give you a good answer on that. I would have to say it's the Chase.
MR. ABRAMS: You can give me a bad answer.
MR. BERMAN: I'll give you a bad answer.
MS. ROBESON: Any answer as long as it's true.
MR. BERMAN: I'd rather not. I probably can give you a couple buildings, the Chase and the Edgemoor and, but that's --
MR. ABRAMS: Those were the projects up to Woodmont Avenue?
MR. BERMAN: Yes, right.
MS. ROBESON: The Edgemoor Highrise?
MR. BERMAN: The high rise. The high rise.
MR. ABRAMS: Do you know which projects had been approved at that time, but not yet constructed?
MR. BERMAN: Do I know? I've seen the list.
MR. ABRAMS: But you don't remember which ones?
MR. BERMAN: Right. Well, I know that there's some projects along Montgomery Lane, but I don't know --

MR. ABRAMS: But don't remember which ones? Okay. Would this type of information have been considered, in other words, what's there as well as what was approved, and this would be the period of '91 through '94 when the evolution of the Sector Plan would -- those projects have been considered in what was ultimately recommendations in the Sector Plan for this district?
MR. BERMAN: That would have been part of the equation, yes.
MR. ABRAMS: Okay. In what way would they be considered? Why would they be important?
MR. BERMAN: Well, in this case I think that we would look at the buildings that were built and see whether they were compatible with the intent of the Master Plan and we would look at those and say is this the kind of form that we're looking for and is this the, is this something that -- what we looked at, frankly, was, as I said before, what was not occurring. In this area we said what was not occurring was more important. What's more important was not occurring and what was not occurring in this area was much development.
MR. ABRAMS: What projects were approved after the adoption of the Sector Plan in this district?
MR. BERMAN: I'm sorry, I can't give you an answer to that. I don't know.

MR. ABRAMS: Are you familiar with the Holladay project for this property?
MR. BERMAN: Yes, I am.
MR. ABRAMS: Do you know the height and density of that project?
MR. BERMAN: I know it's less and I think it was 55 feet height and it was less, but it did include the, yes, I know some of the elements of that. That included density for the roads and things like that.
MR. ABRAMS: Do you know that it was found to be compatible by the District Council?
MR. BERMAN: Yes.
MR. ABRAMS: Do you know that it was also found to be in accord with the Sector Plan of the District Council?
MR. BERMAN: Yes, I know that.
MR. ABRAMS: Now most of the projects include subsequent to the 1994 Sector Plan adoption. Were those projects of a height and an FAR dwelling unit density less than the subject application?
MR. BERMAN: Yes, they were. It's one project that I'm aware of that was built less. I suspect, I will take that back, there were more than one.
MR. ABRAMS: More than one? And these were less than the Sector Plan recommends?
MR. BERMAN: That's correct.

MR. ABRAMS: Now who has the ultimate responsibility for approving those projects?
MR. BERMAN: In the TSR case? If they're TSR, the County Council.
MR. ABRAMS: County Council? Now would you say that they made a conscious effort after reviewing the entire facts of each one of those cases and come to a decision with reference to Sector Plan conformance and compatibility?
MR. BERMAN: They had to, otherwise they wouldn't have approved it.
MR. ABRAMS: Okay. Now did you work on any of the projects which were adopted after the Sector Plan when you were with the Park and Planning Commission?
MR. BERMAN: No, I left in 1996.
MR. ABRAMS: Okay.
MR. BERMAN: So I don't believe I did.
MR. ABRAMS: Okay. In private practice have you worked on any projects in this district?
MR. BERMAN: No, I have not.
MR. ABRAMS: Now were requirements of MPDU provisions in effect at the time of the adoption --
MR. BERMAN: Yes.
MR. ABRAMS: -- of the Sector Plan? They were --
MR. BERMAN: The subsequent changes after that, but yes.

MR. ABRAMS: Okay. Was one of the goals and intentions for recommendations of the Sector Plan to provide significantly more MPDU's?
MR. BERMAN: I don't recall a statement in that, in the plan. I think the statement was -- I don't think it said there was any -- I don't believe there was a, significantly more MPDU's. It said a range of housing prices and more affordable housing.
MR. ABRAMS: Okay. If this were a goal which you might have overlooked in the Sector Plan, has this been accomplished?
MR. BERMAN: No, it hasn't been accomplished.
MR. ABRAMS: And the fact that it had not been accomplished, again, in this assumption, would be the responsibility of what body of officials?
MR. BERMAN: Well, I think we've seen what body of officials because the District Council did change a text amendment subsequent to the adoption of the plan by increasing, allowing for additional height for MPDU's.
MR. ABRAMS: Okay. I think you indicated that one of the other goals and recommendations of the Sector Plan is to provide high-density housing in the district?
MR. BERMAN: That's correct, sir.
MR. ABRAMS: Has this been accomplished?
MR. BERMAN: Not as high as we had hoped as the

plan intended.
MS. ROBESON: As staff, as you intended?
MR. BERMAN: As I intended and as the plan commits. How is that?
MR. ABRAMS: Did the Sector Plan recommend low-rise buildings in this district?
MR. BERMAN: Yes.
MR. ABRAMS: Are the big Edgemoor and the Hampden Lane project on Hampden Lane examples of low-rise buildings?
MR. BERMAN: Yes. Well, no, but there is --
MR. ABRAMS: The big Edgemoor, do you know what I'm referring to?
MS. ROBESON: The high rise.
MR. BERMAN: The high rise? No, absolutely not.
MR. ABRAMS: Okay.
MR. BERMAN: No.
MR. ABRAMS: The same goes --
MR. BERMAN: Yes.
MR. ABRAMS: -- for Hampden Lane?
MR. BERMAN: Right.
MR. ABRAMS: Okay. Were these the same people responsible for making these decisions, has made the other decisions with respect to density?
MR. BERMAN: Yes.
MR. ABRAMS: Okay. Now if there had been non-

adherence to the Sector Plan in the view of the staff and in your personal view, who was responsible for the non-adherence?
MR. BERMAN: Well, the staff would be. And then ultimately if the staff recommendations that the staff report, and that subsequently the, whoever approved it, which in this case would be the District Council.
MR. ABRAMS: Okay. Now is the height limit of 65 feet in the TSR district to be read in conjunction with the Sector Plan description of this area being high rise?
MR. BERMAN: I -- let me think about that for a second. That's a good question.
MR. ABRAMS: Well, take your time.
MR. BERMAN: Thank you. I appreciate that, Stanley. I think the 65 feet is a reasonable height and it, the plan said high rise, or it said mid-rise, but I would say that that's -- it's an acceptable number.
MR. ABRAMS: Well, isn't the description of the TSR district low-rise, high-density?
MR. BERMAN: That's correct.
MR. ABRAMS: Okay. 65 feet, is that low-rise in the staff review opinion when this was adopted?
MR. BERMAN: I think it is.
MR. ABRAMS: So anything above 65 feet would be mid-rise?

MR. BERMAN: Well, I think that you'd have to read that in the context of the County Council's change on the MPDU legislation. The County Council, as you know, when it adopted the MPDU ordinance, permitted townhouses to occur in single-family houses in the R-60 zones, R-90 zones and one time there was only single-family zones. The Council said because we feel that there's an increase in need for moderate-priced dwelling units, that zone now all of a sudden permits townhouses. I think that is analogous to this situation in the case that Council said normally 65 feet is the number, but because we think MPDU's are very important to provide, we'll allow you to go five feet more to allow for MPDU's. That is the same rationale that they did when they approved, when the Council approved townhouses and single-family homes, single-family zones.
MR. ABRAMS: The ability to use that particular -- when was that amendment adopted first of all, do you remember?
MR. BERMAN: I believe, I can't, I'd just be guessing two years, but I'm sorry, I don't know.
MR. ABRAMS: When that amendment is sought to be utilized, that is not a matter of right, is it? It's a part of the discretionary approval?
MR. BERMAN: It's a matter of the applicant seeking that. The applicant has a matter of right to

approve that. Certainly it can't be required by the District Council. Is that your question?
MR. ABRAMS: No. My question is part of the discretionary approval whether the Planning Board is doing site planning review or the County Council is doing development plan approval, can the Council or the Planning Board say we're going to stick to the limit say in a Sector Plan rather than -- and you have to absorb --
MR. BERMAN: Well, it's --
MR. ABRAMS: -- the MPDU's in the context of those limits?
MR. BERMAN: It is presumed, I presume over the years that when the County Council approves a height change from 65 to 70 feet, it knows, the Council knows that an applicant can come in and apply for an increase of five feet above this height in the Sector Plan. That the Council knows that their height limited in the Master Plans and all guidelines in the Master Plans, height limits and that, therefore, they took action that permits a developer to apply for that. Otherwise, they wouldn't -- and I'm, I was not -- and I'm, I've seen them do that many times, take action that -- you have to assume they know what they're doing.
MR. ABRAMS: Mr. Berman, in projects which are presented to the Planning Commission, particularly a

preliminary plan and site plan, do many of those projects ever achieve the highest number that they request in terms of dwelling units per acre or some other density formula?
MR. BERMAN: No, that's on a case-by-case basis.
MR. ABRAMS: Right. And most of them that you have observed or are familiar with have been approved for density less than originally requested?
MR. BERMAN: I don't know that, but it would not be unusual.
MR. ABRAMS: Would not be unusual? Now can you focus on page 82 of the Sector Plan?
MR. BERMAN: Uh-huh.
MR. ABRAMS: The middle paragraph.
MR. BERMAN: Yes, yes, sir.
MR. ABRAMS: Okay. And specifically I want you to focus on the sentence that says, quote, "The plan anticipated that some projects will incorporate higher densities and the full 2.5 FAR density," and then in parens it says about 100 dwelling units per acre, closed parens, "Would be allowed." End quote. Are you familiar with that language?
MR. BERMAN: Yes, I am.
MR. ABRAMS: Now wasn't the intent here at the time that the Sector Plan was adopted to limit the density to 2.5 FAR with 100 dwelling units per acre irrespective of

being allowed to have any density bonus?
MS. HARRIS: Objection.
MR. ABRAMS: What?
MS. HARRIS: Either last, earlier in this hearing it was stipulated and recognized that the Council has repeatedly allowed 3.05 FAR in heights in excess, we were just talking about density now, density --
MS. ROBESON: Well --
MS. HARRIS: -- in excess of the 2.5. And so I don't know why we're rehashing this issue again.
MS. ROBESON: Because he's holding himself out as an expert or knowing a lot about this plan and so I think it's a fair question to ask. Mr. Abrams, can you restate that question?
MR. ABRAMS: Yes. Wasn't the intent when the Sector Plan was adopted with this language in it, wasn't the intent here to limit the density, the 2.5 FAR for dwelling units per acre, irrespective of being allowed to request any bonus or MPDU's?
MR. BERMAN: Well, the, as we just said, the MPDU provision was adopted subsequent to this change to the statement.
MR. ABRAMS: Well, you could get an MPDU bonus back in 1994?
MR. BERMAN: But you could not get an extra floor.

MR. ABRAMS: I'm not -- that wasn't the question, Mr. Berman.
MR. BERMAN: Well, you said --
MR. ABRAMS: The question is FAR.
MR. BERMAN: -- 2.5 FAR --
MR. ABRAMS: Right.
MR. BERMAN: -- so if you have an extra floor, you can get an extra, I think --
MR. ABRAMS: Well, if they have more land you can get it too.
MR. BERMAN: No, you get more development. You can't get more FAR.
MR. ABRAMS: Well, but the maximum was 2.5 FAR with that range of up to 100 dwellings?
MR. BERMAN: Well, I would, I would disagree with the about 100. It doesn't say up to. That's a --
MR. ABRAMS: All right.
MR. BERMAN: That's sort of informational statement, the 100 units per acre. That's not a fixed guideline as to be that's the number. It says about. That's just an approximation and it's in parentheses. That's the way I read it.
MR. ABRAMS: Okay. Yet you let that get by in terms of remaining in the text of the plan despite being the author of the plan?

MS. HARRIS: He said -- objection. The witness said it was an estimation. He didn't say he overlooked it. He clearly clarified what he, what the intent of that was.
MR. ABRAMS: It was an estimation based upon your experience in handling projects with FAR, different FAR's?
MR. BERMAN: This plan and the staff that wrote the plan said that about 100 dwelling units per acre would be -- okay? That is, was a way of the staff, and adopted by the Council, an illustration of what the density could be. It didn't say, there's no limit on that. If you had a limit, you are familiar with other ways the plan limits development and has limited development. We would say no more than, you would no more than this, no more than that. Our other plan said that.
MS. ROBESON: Like the height?
MR. ABRAMS: So, excuse me.
MS. ROBESON: Like the height and the FAR?
MR. BERMAN: The height, the height issue and, yes, the height is a guideline and that over time has now become more than the guideline. It's been a standard. However --
MS. ROBESON: What about the FAR?
MR. BERMAN: Again, I would say that's been, the, it's been superseded by further Council actions by the MPDU's that, that trump this plan. It's the recommendation

that if the Council knowingly, that if the District Council knew you, pursuant that they knew that there were plans I mean that said 2.5 FAR by provision for more MPDU's, they're saying --
MS. ROBESON: But I guess I heard your counsel say if somebody pulled this plan to know what was going on, they should be prepared to deal with this building. But the fact is if you pulled this plan and you wouldn't be prepared for what's proposed necessarily.
MR. BERMAN: And I agree with you, but that's the law.
MS. ROBESON: Yes.
MR. BERMAN: That's correct.
MS. ROBESON: That's correct.
MR. BERMAN: But that is the law. But the --
MS. ROBESON: Okay. I'm sorry to interrupt.
MR. BERMAN: Uh-huh.
MS. ROBESON: I'm sorry to interrupt, Mr. Abrams.
MR. BERMAN: It is, we ran into the same problem with the change in MPDU's that allow townhouses and single-family houses --
MS. ROBESON: Okay.
MR. BERMAN: -- I'm very familiar with that. If you bought a plan that said that there would be single-family --

MS. ROBESON: Oh, I see what you're saying.
MR. BERMAN: -- and now the MPDU ordinance came after that plan and said now you can have townhouses --
MS. ROBESON: Right.
MR. BERMAN: -- all storm regulations, their regulations are already changing, so if the standard of the street changes, it's the best we have. It doesn't mean it's 100 percent, but it gives you a pretty good idea what's happening.
MR. ABRAMS: Regulations are always changing?
MR. BERMAN: Yes.
MR. ABRAMS: The Sector Plans don't change that much, do they?
MR. BERMAN: No, well, they get older.
MR. ABRAMS: Just like we do.
MS. ROBESON: Really, I'm starting to feel very old.
MR. KNOPF: It is, does age.
MR. BERMAN: There is a new Sector Plan coming.
MS. ROBESON: What part of me doesn't matter any more?
MR. ABRAMS: There --
MR. BERMAN: There's a new Sector Plan coming.
MS. ROBESON: No.
MR. ABRAMS: There was an opportunity, there has

been an opportunity since the adoption of that language to resolve say the Hearing Examiner's dilemma by amending the Sector Plan, isn't that correct?
MR. BERMAN: There is a process for minor Master Plan amendments.
MR. ABRAMS: But that hasn't occurred?
MR. BERMAN: There is -- recently the County Council put a system in for regulating minor Master Plan amendments.
MR. ABRAMS: That hasn't occurred with reference to this --
MR. BERMAN: This has not occurred on this property, no.
MR. ABRAMS: Now the TSR zone has a maximum density of 2.5 FAR?
MR. BERMAN: That's -- well --
MR. ABRAMS: The court reporter can't pick up the up and down or back and forth --
MR. BERMAN: Yes.
MR. ABRAMS: -- head motion. Is the answer yes?
MR. BERMAN: Yes.
MR. ABRAMS: The density under the zoning ordinance allows a building to exceed, according to your 2.5 FAR, for the purposes of accommodating MPDU's, is that right?

MR. BERMAN: Yes, sir.
MR. ABRAMS: There's no right to the exercise of that type of exceeding of the density limits in the Sector Plan, it's all part of the discretionary approval, correct or incorrect?
MR. BERMAN: That's -- I wouldn't say it's, again, it is the -- an application is filed. It complies with the, it refers to the Master Plan that is before, that was adopted and also references all subsequent legislation. And, for example, let's say it's storm water management. Storm water management is adopted since the Sector Plan. That affects the way the development occurs. If the storm water management requires different kinds of standards or setbacks, that applicant has to meet those. I don't see -- and so the development on that piece of property changes to reflect that. There's the same issue here with the MPDU and the technical staff refers to that on page 3 of the technical staff report on how this particular MPDU provision is applied in the same way. It's the same as any traffic study or any other regulation that occurs since the Sector Plan.
MR. ABRAMS: In the language that is quoted from the Sector Plan, the Council chose to use the qualifier full density, is that correct?
MR. BERMAN: That's the word.

MR. ABRAMS: Why did they choose to use that terminology?
MR. BERMAN: At the time that was their expectation.
MR. ABRAMS: So at the time it was their expectation that full density of 2.5 FAR included MPDU's which were allowed at that time, plus any bonus density which was allowed at that time?
MR. BERMAN: I don't remember, Mr. Abrams, whether the -- I can't speak to the TSR zone, how it dealt with MPDU's at the time. You know, as you know, Mr. Abrams, some MPDU's, some of the MPDU's go above the standard height and standard and allow for extra density within and some are counted only up to the maximum of that zone. It's not a consistent way zone has dealt with MPDU's. I'm sorry, I can't speak to the specifics of the TSR zone.
MR. ABRAMS: Well, words mean something, do they not?
MR. BERMAN: Of course, sir.
MR. ABRAMS: So full means something in the context of this sentence in the Sector Plan?
MR. BERMAN: As I said, it was the expectation at that time.
MR. ABRAMS: I guess the absence of words also means something, correct?

MR. BERMAN: Yes, sir.
MR. ABRAMS: Okay. So if the word full was deleted, wouldn't it be merely a repetition of the TSR zoning ordinance density standard at that time?
MR. BERMAN: Yes, that's correct.
MR. ABRAMS: So it must mean something to be put in there, but you can't speak to it, is that correct?
MR. BERMAN: I can't recall what that word meant.
MR. ABRAMS: Now when you say that we, again, staff, I assume, in your testimony today, prepare the goals and objectives of the Sector Plan, what about the goals and objectives of the citizens, the Planning Board and the County Council? Aren't they also part of this overall package of consideration?
MR. BERMAN: Of course, sir.
MR. ABRAMS: Of course. And you said that the problem with the 1976 Sector Plan is not creating enough housing?
MR. BERMAN: That's correct.
MR. ABRAMS: Okay. Has this occurred since the adoption of the 1994 Sector Plan?
MR. BERMAN: I'm sorry, I didn't hear the last part.
MR. ABRAMS: Has this occurred, in other words, creating enough housing since the --

MR. BERMAN: I've -- there have been a good deal of more housing built in Bethesda, but I don't believe -- again, this is my personal judgment, not the plan's judgment or the current staff, it's about my that there has not been enough affordable housing built in Bethesda and enough, and I would say that there's still a strong demand for more housing in Bethesda.
MR. ABRAMS: Okay. And I think one of the goals you indicated in the Sector Plan is to put more high-density housing in the TSR zone?
MR. BERMAN: That's correct.
MR. ABRAMS: What about the CBD 2 zone and the CBD 1 zone? Hasn't there been more high-density housing put in those zones?
MR. BERMAN: Yes, there are. There have been a good deal.
MR. ABRAMS: And we're talking about such areas along Wisconsin Avenue, Fairmont Avenue? Fairmont Avenue, by the way, is that close by? Is it a mixed street?
MR. BERMAN: I don't --
MR. ABRAMS: In the Sector Plan?
MR. BERMAN: I can't recall.
MR. ABRAMS: The section 59C 8.4 of the zoning ordinance, this came up with regard to no setback requirements --

MR. BERMAN: Uh-huh.
MR. ABRAMS: -- in the TSR zone?
MR. BERMAN: Yes.
MR. ABRAMS: Okay. What were the setback requirements in the TSR zone before this amendment?
MR. BERMAN: I don't know.
MR. ABRAMS: Borderline?
MR. BERMAN: I can't recall.
MR. ABRAMS: And in terms of the mixed street rationale, I think one of the elements is that it becomes pedestrian-friendly, mixed street with cars and pedestrians sort of mixed together?
MR. BERMAN: Well, in this case they have separate right-of-ways, clearly, the sidewalks.
MR. ABRAMS: Well, yes. But it's to accommodate both?
MR. BERMAN: That's correct.
MR. ABRAMS: Okay. Now if you introduced more cars onto a mixed street, don't you lessen the desirability of the street for pedestrians?
MR. BERMAN: No. This is an urban area, it's a very urban area. This is an urban area within 1,000 feet of the Metro station. One would assume and one would hope that they have been, there would be a series, there would be a lot of cars and a lot of people on the streets. This is not

Aspen Hill. This is not -- it's a different kind of neighborhood.
MR. ABRAMS: Is the answer yes or no to my original question or do you want me to repeat the original question?
MR. BERMAN: I'd like you to answer, repeat the question.
MR. ABRAMS: Okay. If you introduce more cars into a mixed street such as Montgomery Lane, don't you lessen the desirability of the street for pedestrian, and I might say bicycle use?
MR. BERMAN: It makes it more difficult for the pedestrians.
MR. ABRAMS: You can stop beating your wife, Mr. Berman.
MR. BERMAN: It makes it more difficult.
MR. ABRAMS: Okay. A mixed street is, is that really a special type of street which is to be treated differently than other streets in the CBD --
MR. BERMAN: Yes.
MR. ABRAMS: -- Sector Plan?
MR. BERMAN: Yes.
MR. ABRAMS: Now I think you said the illustrations in the Sector Plan were just illustrations?
MR. BERMAN: That's correct.

MR. ABRAMS: Okay. In your experience as being a member of the Park and Planning Commission staff, don't these illustrations sort of get cast in concrete with the staff members and try to get applicants to adhere as closely as possible to those illustrations?
MR. BERMAN: That's why it's a two-edge sword. We are very -- it has always been a problem to put an illustration of what could happen as, A, an expectation that it will happen, or, as you said, or what must happen. So it's a very difficult discussion. That's why we use the word illustration. But, and this, every Sector Plan has that difficulty of you try to say what could happen, what would likely happen, what does it all look like, but it doesn't mean it will happen or should. It means this is one of many ways that it could happen. That's the intention of it.
MR. ABRAMS: Well, one of the illustrations and intentions, I guess, in the Sector Plan was, with reference to Montgomery Lane, was the straight edge --
MR. BERMAN: That's correct. Yeah.
MR. ABRAMS: Why is that more important in terms of an illustration than any other illustrations?
MR. BERMAN: Well, there was -- there's more to that -- there's another diagram in the plan which talks about a straight edge. There's another diagram that shows

that the edge should be straight along -- not just in that pictorial, but another diagram in urban design elements or what was desirable and that straight edge is part of that. Do you want me to find that example, but there is an example.
MR. ABRAMS: No, I'll take your word for that.
MR. BERMAN: Okay.
MR. ABRAMS: It's in here. I think the last question I have for you is just as a purchaser of a unit might have certain expectations in terms of the neighborhood and would come to a person like yourself on the staff and say, you know, what's going to happen in this neighborhood and I think you said you would basically reiterate what the Master Plan has recommended for that area, is that a fair characterization?
MR. BERMAN: That's correct.
MR. ABRAMS: Okay. What about if somebody came to your and your staff member at this point in time and they asked you the question of, I see this vacant parcel of land next to Montgomery Lane, is there anything approved on that parcel and what would you say?
MR. BERMAN: If there wasn't, we would say there wasn't.
MR. ABRAMS: If there was, would you tell them?
MR. BERMAN: Oh, yes.

MR. ABRAMS: And if there was, would you tell them what was approved?
MR. BERMAN: Yes, we would.
MR. ABRAMS: Okay. But you don't remember what's approved on this specific parcel, do you?
MR. BERMAN: I know there is an approved site plan on this property, development plan.
MR. ABRAMS: I have no further questions of this witness. Thank you, Mr. Berman.
MR. BERMAN: Thank you, Mr. Abrams, a pleasure.
MS. ROBESON: Mr. Knopf?
MR. KNOPF: Could we take a 5-minute break now?
MS. ROBESON: Oh, sure.
MR. KNOPF: Start --
MS. ROBESON: A 5-minute break.
MR. ABRAMS: 5-minute break?
MR. KNOPF: Five minutes. Thank you.
(Recess)
MS. ROBESON: Okay, Mr. Knopf, are you ready?
MR. KNOPF: Yes.
MS. ROBESON: Mr. Berman, are you ready?
MR. BERMAN: Yes, I am.
MS. ROBESON: All right.
MR. KNOPF: Thank you. Mr. Berman, as I understand it, you're saying this project in your opinion

meets the goals of the Sector Plan?
MR. BERMAN: That's correct.
MR. KNOPF: Am I correct that you said that --
MS. ROBESON: Stop one second. Do you mind shutting the door or actually if you shut the -- try shutting the door.
MR. KNOPF: She can shut the door.
MS. ROBESON: If I shut the door, it gets hot.
MR. KNOPF: Hot.
MS. ROBESON: So that's the only reason. Thank you for, thank you for doing that and I'm sorry to interrupt.
MR. KNOPF: It's quite all right. And was I correct that you said among the goals of the Sector Plan sought to achieve, where I think I'm quoting, smaller, cheaper units --
MR. ABRAMS: Can we take a break for a second? I think we have a flood.
MS. ROBESON: A what?
MR. ABRAMS: A flood.
MR. KNOPF: Oh.
MS. ROBESON: Okay. Just, we'll --
MR. KNOPF: I'm not doing well at all, am I?
MS. ROBESON: We're just having a pause. We're not off the record.

MS. HARRIS: I'm fine, thank you.
MR. ABRAMS: Okay.
MS. ROBESON: You sure?
MS. HARRIS: Yes.
MS. ROBESON: Because I can still see --
MS. HARRIS: No, it's --
MS. ROBESON: Okay. All right.
MR. KNOPF: Let me try again.
MS. ROBESON: Let's start over.
MR. KNOPF: I believe you said that the goal, some of the goals to be achieved by the Sector Plan were smaller units, cheaper units, more affordable housing and rental housing as part of the diversity?
MR. BERMAN: That's correct.
MR. KNOPF: Okay. Is any one of those goals a binding element in this proposal?
MR. BERMAN: I'm not aware of that.
MR. KNOPF: So are you aware that smaller, cheaper, more affordable housing and rental units, none of those might be met here as the finally, the building is built?
MR. BERMAN: I am not aware of what they are.
MR. KNOPF: Okay. Well, but you said that this building met the goals?
MR. BERMAN: I don't -- it's as proposed, but I

don't know if they're binding elements.
MR. BERMAN: Oh, as proposed? So would you agree with me that it would be consistent with the Sector Plan to make those binding elements as part of this development plan?
MR. BERMAN: I believe what is a binding element and what is not is a responsibility of the hearing here and the applicant, not my judgment.
MR. KNOPF: But would you agree with me that if the units were not smaller, cheaper and more affordable housing or rental they would not meet the goals of the setback?
MR. BERMAN: It would be more desirable if they, if that's, if those types of units were developed, yes.
MR. KNOPF: More desirable?
MR. BERMAN: Desirable, would be an excellent, excellent --
MR. KNOPF: In your opinion, would it then meet the goals of the Sector Plan with those absent?
MR. BERMAN: Yes.
MR. KNOPF: It still would?
MR. BERMAN: I'm sorry, I'm sorry, I'm not hearing you all completely.
MR. KNOPF: If the units --
MR. BERMAN: Yes.

MR. KNOPF: If the units were not small --
MS. ROBESON: Just a second. Let him --
MR. BERMAN: That's --
MS. ROBESON: There you go.
MR. BERMAN: Thank you. I'm sorry.
MS. ROBESON: That's all right. Go ahead.
MR. KNOPF: If this plan were changed, the development plans now proposed were changed, you would have much larger units so there would be fewer units and, therefore, fewer MPDU's and the units would be say expensive condominium units, would this project then meet, in your opinion, the goals of the setback?
MR. BERMAN: I would, I would, I would probably have to find it compatible with the goals. I would not be as supportive of it. The --
MR. KNOPF: And what would be left for it to be compatible with?
MR. BERMAN: I would -- I think there is a real need for affordable housing in this area and more rental housing, yes, if that's your question. But an applicant is free to propose a unit type of mixture.
MR. KNOPF: Let me try again. If there's no rental housing and less the number of MPDU's that are here proposed, considerably less, and the, and it is expensive and the units are large, in your opinion would this project

meet the goals of the Sector Plan?
MR. BERMAN: As you're aware, there's a site plan that was approved, a development plan that was approved prior to this development plan. It was different in character. That was approved, and that was approved by the District Council and, I'm sorry, District Council and that was made, that was acceptable.
MR. KNOPF: No, I was asking about your opinion.
MR. BERMAN: Okay. Then I'll rephrase. In my opinion, there is unfortunately no finding that we can make, the, we being the staff that can require a developer to meet mixture of housing types. There is no finding. If you come in for a subdivision, I can't deny you if you are not building more cheaper rental housing. So I would approve it because there's no finding not to.
MR. KNOPF: Please --
MS. ROBESON: Well, I think his question is would the project still further the Sector Plan goal.
MR. BERMAN: We would have the --
MS. ROBESON: Not --
MR. BERMAN: -- in my opinion --
MS. ROBESON: In your opinion?
MR. BERMAN: -- my opinion, my opinion would be that it would be approvable.
MS. ROBESON: Okay.

MR. BERMAN: Okay?
MR. KNOPF: We're almost there. Would the approvable, but would it meet, apart from approving criteria that you had testified, as I understand it today, that there is certain goals, requirements of the Sector Plan and certain goals and this project met those and, therefore, you favored it, you thought it was fit and met all those goals and requirements and I'm saying if we removed smaller units, cheaper units, rental units and lowered the number of moderately priced dwelling units, in your opinion would it meet those goals? I'm not asking you whether it would satisfy enough goals to get approved or not. I'm just asking you whether it would meet the goals to get approved or not. I'm just asking you whether it would meet the goals that you had made.
MR. BERMAN: It would meet the goals.
MR. KNOPF: It would meet the goals?
MR. BERMAN: It would meet the goals because the goals, there's a difference, sir, between goals and what is, and what the regulations --
MR. KNOPF: Ah.
MR. BERMAN: -- provide.
MR. KNOPF: I see.
MR. BERMAN: There's a difference. They're on, as I said, there are goals and sometimes there are not findings

that one could make during the process to support every single goal.
MR. KNOPF: Well, let's talk about another goal. I'm not quite sure. You had mentioned having more dwelling units, I don't, but is that a goal that was -- that was what the Sector Plan was trying to accomplish, is that correct?
MR. BERMAN: Yes. In other, for example, we had a project in Silver Spring. We had to approve it, had to approve it. It was much less dense than we recommended. It was next to the Metro station. It was Cameron Townhouse projects. It was not -- but the plan recommended a much bigger building, much higher building. At the time the market didn't support that and we, we, the staff, excuse me, recommended approval to the County Council of that application. We were not happy with that recommendation, but there was no way of denying that recommendation.
MR. KNOPF: Well, okay, let me try to back up so we get this clear. I thought you were saying that the we, meaning staff, Planning Board, Council, the whole board had in mind by the Sector Planning to try to encourage more dwelling units in this area?
MR. BERMAN: That's correct.
MR. KNOPF: That is correct? And as I understand it, that would be driving many of the recommendations of the Sector Plan?

MR. BERMAN: That's correct.
MR. KNOPF: Okay. Now let's look at that for a minute. Are you -- I think you mentioned that prior to the current Sector Plan there was, the Chase was built?
MR. BERMAN: Right.
MR. KNOPF: Am I pointing to the case?
MR. BERMAN: Correct.
MR. KNOPF: And is there a Chase 1 and Chase 2?
MR. BERMAN: I think so.
MR. KNOPF: I am pointing now behind the Edgemoor building on Montgomery Lane. There is a, fair to say, a high rise building higher than the Montgomery Lane Chase 1 and Chase 2? And are you familiar with the Christopher?
MR. BERMAN: Yes.
MR. KNOPF: And is your understanding they were all built under the prior --
MR. BERMAN: Prior, that's correct.
MR. KNOPF: -- sector? And is it your understanding that under the prior Sector Plan you could go higher in height and more dwelling units than what this new 1994 Sector Plan is?
MR. BERMAN: That's correct.
MR. KNOPF: So if the -- so they lowered it from the 70, the prior Sector Plan was 1976, am I correct?
MR. BERMAN: Yes.

MR. KNOPF: So they lowered the height and the number of units from 76 to 94. Is that consistent with what you're telling me, that they want to put in the most dwelling units, that was why they raised, that they did the 1994 Sector Plan? Isn't that inconsistent?
MR. BERMAN: The way -- I would say that there, what the hope was that providing for more building coverage was the issue rather than the, allowing for more building coverage was it and less assemblage were, would be sufficient to allow, to spur more development.
MR. KNOPF: Or would you agree with me that allowing more building coverage assemblage and a higher height would, in fact, provide for more DU's, dwelling units?
MR. BERMAN: The -- I'll restate what I said. The goal was to increase the amount of housing in that area and the extra -- but it was felt that that the development that had occurred prior to the, under the existing TSR of zoning was not as desirable as we'd like to see in the future.
MR. KNOPF: What is the height limit of the TSR zone?
MR. BERMAN: At the time there was no height limit.
MR. KNOPF: And it's still true today?
MR. BERMAN: That's correct.

MR. KNOPF: So theoretically we wanted more dwelling units that could go to the sky in theory, is that correct?
MR. BERMAN: Well --
MR. KNOPF: No height limit?
MR. BERMAN: Well, okay. Assuming they were compatible.
MR. KNOPF: Yes. But also consuming, didn't they put a height limit, though? Doesn't the Sector Plan put a height limit?
MR. BERMAN: Well, it's a guideline. I would consider that a guideline.
MR. KNOPF: Oh, a guideline? And that guideline is 65 feet for the street?
MR. BERMAN: That's correct.
MR. KNOPF: Is there not, call it guidelines, that's not to indicate I agree with the terminology, isn't there a guideline that you tent from higher at the Metro to go down 35 feet at Arlington?
MR. BERMAN: Well, there's a -- I think that you're considering it to be a straight, straight tent. There are, yes, you start at a higher point and you go lower, but it doesn't mean that the -- the issue is whether the starting point and the ending point doesn't, necessarily doesn't mean that there can't be a bump or two along the

way.
MR. KNOPF: That wasn't my question, but let's -- I'm just asking do you recognize that the Sector Plan does provide for certain height -- I'll use your term guidelines?
MR. BERMAN: Thank you.
MR. KNOPF: That's true, right?
MR. BERMAN: That's true.
MR. KNOPF: Okay. So it would be -- and you also mentioned, like I said, you could got to the sky, you said, well, as is compatible. So is it not fair to say that the driving force for the Sector Plan was not to maximize the number of units, but was to provide for units in development that was consistent with these other requirements such as height and compatibility?
MR. BERMAN: I would say that those all were the same and the question is how to balance all those conflicting goals. That's always the question, how to balance it all.
MR. KNOPF: You'd have to have balance. So would you agree with me that it would be inappropriate in deciding whether to approve a project that you had just looked at the number of dwelling units?
MR. BERMAN: I don't think any, I don't think we look just at the number of units.
MR. KNOPF: I see. Or just look at the number of

MPDU's?
MR. BERMAN: Or the MPDU's.
MR. KNOPF: All right. Well, now you had, in fact, the Sector Plan does more than just have a 65-foot guideline on this street. Doesn't it talk in terms of three stories and 6-story buildings?
MR. BERMAN: Yes, it does.
MR. KNOPF: Six to 3-story buildings?
MR. BERMAN: Uh-huh.
MR. KNOPF: And as a matter of fact, to explore further what you said, if I was going to buy a house, excuse me, a unit somewhere along Edgemoor --
MR. BERMAN: That's a saw house.
MR. KNOPF: Well, okay, I --
MR. BERMAN: A home.
MR. KNOPF: I don't want to be exclusive, I want to be inclusive. If I were to buy a unit --
MR. BERMAN: A unit.
MR. KNOPF: -- and I went to you in the -- when did you say you left, in --
MR. BERMAN: In '96.
MR. KNOPF: -- and I said to you what can, how is this street supposed to be developed, would you tell me this is supposed to be three to six stories as an urban village?
MR. BERMAN: No, I wouldn't tell you that.

MR. KNOPF: Oh, you wouldn't?
MR. BERMAN: I would say that that's a guideline, that there are examples in the area of higher buildings than that.
MR. KNOPF: On that street?
MR. BERMAN: In that district.
MR. KNOPF: In the district? Okay.
MR. BERMAN: In the district or neighborhood. I would say that there is a guideline in the plan that calls for 65 feet and that the likely, then that property across the street would likely develop.
MR. KNOPF: And you wouldn't say as to how it would develop in terms of appearance or character?
MR. BERMAN: I would give you some ranges of things that I could foresee.
MR. KNOPF: Well, I did consult you, but I just happened to read the Master Plan. Would you agree with me to be a fair impression I would get from reading the Master Plan that that was to be developed as an urban village with three to six story buildings at a 65-foot height limit?
MR. BERMAN: I -- you could interpret it that way, but I don't think you should. I think you should interpret it that high-density housing is in that area as well and that within that district there are -- I, again, you're asking for what's the -- there's no way to predict that the

MPDU ordinance would change, right? There's no way to predict that. There's no way to predict storm water regulations would change.
MR. KNOPF: And the change in the MPDU ordinance would change from three to six stories and having low-rise urban village concept?
MR. BERMAN: It permits to go higher than the Master Plan. It permits it to go higher than the Master Plan. Why didn't --
MR. KNOPF: So if I --
MR. BERMAN: -- District Council do that?
MR. KNOPF: Well, so if I had been allowed to have three stories, maybe now I can go to four stories?
MR. BERMAN: That's correct. That was the intention of the County Council.
MR. KNOPF: All right. Let me -- well, now you also mentioned, I believe, that the Master Plan, the age of the Master Plan was a factor in your considerations because things have changed. I'm not trying to put words in your mouth, but is that a fair statement?
MR. BERMAN: That's a fair --
MR. KNOPF: Okay. Are you aware of the, that the County Council as recently as last year approved a project, which I believe we've been calling 4901 Hampden --
MR. BERMAN: Uh-huh.

MR. KNOPF: -- that decreased the number of dwelling units considerably and as a result of that decrease, obviously also decreased the number of MPDU's that go with it. Are you aware of that?
MR. BERMAN: I'm not that aware. I'm aware of that case and I've looked at the file, but I'm not exactly sure what happened in that case.
MR. KNOPF: Are you aware of the original plans for that site were at 100 feet in height and the Council rejected it because it was too high and the developer came back with a 70-foot height on three sides of the 60-foot height portion on Montgomery Lane?
MR. BERMAN: I'm not aware of that.
MR. KNOPF: You're not aware? Well, assuming that's the case, would that not be inconsistent with your testimony that what is driving the Sector Plan has to be the maximum number of dwelling units and things like that?
MS. HARRIS: Objection. The witness did not say what was driving --
MR. KNOPF: Right.
MS. HARRIS: -- the Sector Plan was maximizing the number of units.
MR. KNOPF: I, increase, I thought he did.
MS. HARRIS: It was a mis-characterization.
MS. ROBESON: I thought he -- what?

MS. HARRIS: I believe that was a mis-characterization on the part of Mr. Knopf.
MR. KNOPF: I thought that's what he said.
MS. ROBESON: It was my understanding he said --
MS. HARRIS: One of?
MR. KNOPF: No, he said it was --
MS. ROBESON: I thought he said he went through three or four major goals and one of them was that. So if you want to rephrase your question?
MR. KNOPF: We, didn't you say, I believe that we rephrased that maximizing the number of units was a core goal?
MR. BERMAN: I don't ever use the word maximize. I said increase.
MR. KNOPF: Increase?
MR. BERMAN: Increase, that actually, that's correct. I never said maximize.
MR. KNOPF: Okay.
MR. BERMAN: There's a big difference.
MR. KNOPF: I'm never wrong. I thought -- well, whatever. Let's --
MS. ROBESON: Yes. If he doesn't agree, the transcript will tell us.
MR. KNOPF: Whatever. Well, would you agree with me that the Council's, assuming, I understand you're not

familiar with this, assuming the Council just last year lowered considerably the density, the number of dwelling units in the building, including lowering the number of MPDU's, would you agree with me that that is inconsistent with your understanding that a core element of the Sector Plan is to have dwelling units --
MR. BERMAN: As I said, I wasn't --
MR. KNOPF: -- dwelling units and MPDU's?
MR. BERMAN: -- familiar with that case enough to comment on that.
MR. KNOPF: I see. Well, if you were to be advised that the Council lowered the height and rejected the building at 100 feet as too high and lowered it to 70 feet, would that be an indication to you that the Council still found, to find a better word, alive and well, the Sector Plan recommendations regarding height for at least this street?
MR. BERMAN: I would -- yes, it said -- that's correct.
MR. KNOPF: All right. Now the Sector Plan, we had a lot of talk about 100 dwelling units, whether that was maximum or average or whatever. But when the Sector Plan on that page talked about 100 dwelling units and the FAR, they were talking about the entire TSR district, were they not?
MR. BERMAN: That's correct.

MR. KNOPF: And that district --
MR. BERMAN: That's an average statement.
MR. KNOPF: An average? And that district goes, it covers quite a lot of streets other than Montgomery Lane, is that correct?
MR. BERMAN: That's correct.
MR. KNOPF: So as a planner, if you wanted to have the average of 100 or even over 100, if the Sector Plan said on the particular location you shouldn't go above 65 feet and you should have from three to six stories, would that be the street that you would look at to put in more dwelling units than other places in the zone that didn't have that restriction?
MR. BERMAN: I would have looked at, well, I will say what the Planning Board said and the Planning staff said on this application, which is that this application and this site plan is approvable and is ordered, and is compatible and is approved based upon the Master Plan. That's the judgment of the Planning Board and the Planning staff.
MR. KNOPF: The Planning Board and Planning staff also said the building next door, Sandy Springs, 4825 Montgomery Lane, I believe that has a density -- that was only four units and that has a density of way below even the minimum 45 and the Planning Board staff approved that.
MR. BERMAN: Yeah. As I said, that's, but that

was, that application. This is this application. And I think that -- anyways, that's what I stated.
MR. KNOPF: Okay. Well, I understand what the Planning Board staff said and what the Planning Board said. I want to know what you said because you were saying in your opinion what this Sector Plan required as you understood it and I guess my question is if -- is that consistent with putting, your understanding of the Sector Plan that you had an average of 100 at least, would you say your opinion is that you shouldn't try to put that average or above that average on this particular street because of the peculiar requirements of the street in the Sector Plan?
MR. BERMAN: I don't see that.
MR. KNOPF: You don't see that?
MR. BERMAN: I don't see that.
MR. KNOPF: Okay. All right. Actually, Mr. Abrams said to you words have meanings, don't they? So let me ask you what do the words urban village have in the Sector Plan if you say, well, forget it? And three to six stories, what did that mean if you say forget it?
MR. BERMAN: Do you have question? What do you want -- what's your question?
MR. KNOPF: Well, what I want to know is how do you ignore and what grounds do you justify ignoring those, that language?

MR. BERMAN: Well, let's take the words urban village. Urban means high density or means a -- it does not meet suburban standards in terms of compatibility. In my judgment it means there's congestion, it means activity on the street, it means a lot of different things, but it doesn't mean -- it means an urban area. That's what that means, urban village. A village could mean that there is a community there, an urban community and I think that's what the plan recommended.

MR. KNOPF: Well, I'm referring to page 84 of the Sector Plan where it's referring to this urban village, Montgomery Lane, and it uses the term proposed low rise high density. Isn't that inconsistent with what you just said?

MR. BERMAN: Yes, that's --

MR. KNOPF: All right. Thank you. You answered the question. Just one minute please. Oh, I believe, if I quoted you right, I think you said that the, in amending the TSR zone to provide coverage, more coverage, assemblage was easier and so on, you said that they -- that the TSR zone sought to, and I have quotes after this, sought to achieve, quote, "Bigger, bulkier buildings."?

MR. BERMAN: That's an accurate statement. I did say that.

MR. KNOPF: And is that -- given the guidelines or provisions, whatever you want to call it, for this

particular street, do you think that we, whichever we is, had in mind that bigger and bulkier buildings were to go on Montgomery Lane?

MR. BERMAN: Higher, higher, less open space, more building coverage will create a bigger building on the lot. Yes, I mean that's my, that is what would happen.

MR. KNOPF: It would happen if one were then to ignore the 65-foot height limit?

MR. BERMAN: That's -- I'm not going to answer.

MS. ROBESON: Well, and I, when I read this, what I see them doing, and maybe I'm wrong, but what I see them doing is by this low rise urban village, what they did is they decreased open -- they increased the footprint of the building, but decreased the height. That's how I read the plan. They had higher heights permitted along the road and then they imposed these height limits because what they wanted to have as a -- to me I read the plan that what they wanted to have was a transition between the CBD core and the R-60 on the other side of Arlington. And when I read the -- even in the, on page 80, the description, it looks to me like they increased the footprint so they could have high density at lower heights.

MR. BERMAN: That's correct. I would think that's a correct assessment and then the Council on top of that, subsequent to that said you can go one more floor, you can

go up to 70 feet higher than the Master Plan if you provide MPDU's. So you end up an application such as this, which is a bigger building, wider building, less open space according to the zone and higher than was probably a little, you know, five feet higher than was conceived of in the Master Plan.

MS. ROBESON: Well, I guess my question is about, okay, I'm sorry to interrupt.

MR. KNOPF: No, that's quite all right. That's -- I think that's on everybody's mind. Can I ask a question or are you still --

MS. ROBESON: No, you go ahead.

MR. KNOPF: Okay. What you said that the Council had in mind in your opinion to add additional height because of the MPDU's, is it your opinion they had in mind to add that irrespective of compatibility concerns and height concerns in Sector Plans?

MR. BERMAN: No. No.

MR. KNOPF: Thank you. Excuse me one second. I have no further questions. Thank you, Mr. Berman.

MR. BERMAN: Thank you.

MS. ROBESON: All right. Redirect, Ms. Harris?

MS. HARRIS: No, thank you.

MS. ROBESON: Okay. Mr. Berman, thank you. You may be excused.

MR. BERMAN: Thank you.

MS. HARRIS: Can we take another 5-minute break just with the understanding that we probably won't take another one after this one?

MS. ROBESON: Oh, sure.

MS. HARRIS: Is that all right?

MS. ROBESON: How many more witnesses do you have?

MS. HARRIS: One.

MS. ROBESON: One more witness. And who is it?

MS. HARRIS: Mr. Irish.

MS. ROBESON: That's the civil --

MS. HARRIS: The long-awaited Mr. Irish.

MS. ROBESON: Engineer, the rooftop man? Yes, let's take five minutes and then we'll end the hearing after Mr. Irish, okay?

MS. HARRIS: Okay. I'm not sure I have --

MR. ABRAMS: End the hearing at direct or are we going into cross?

MS. ROBESON: It depends on how long direct is. I mean I'd like to keep it until 5:30 --

MR. ABRAMS: So would I.

MR. KNOPF: Half a day.

MS. ROBESON: -- at the latest. I don't know if you got in trouble last night or what was going on, but --

MR. ABRAMS: It's going to cost me.

MS. ROBESON: But three days in a row, I find by

the third day you're kind of --
MR. KNOPF: Yes.
MS. HARRIS: Yes, these back-to-back --
MS. ROBESON: So, you know, if we can get through him by 5:00, between 5:00 and 5:30, that would be good. And tomorrow we'll be in the room downstairs.
MS. HARRIS: And if we can't get through him, then I'll -- when that time approaches, I'll let you know when we're about to start another subject matter.
MS. ROBESON: That sounds good. So we have a coherent place to -- okay, that's great. Thank you.
(Recess)
MS. ROBESON: All right. Everyone ready? We're back on the record. We'll try and stop around 5:00 or 5:15, wrap it up. My stamina is going, so okay, go ahead.
MS. HARRIS: We need to swear the witness.
MS. ROBESON: Oh, yes we do.
MS. HARRIS: Maybe we should stop right now?
MS. ROBESON: Yes, I know. Please raise your right hand.
(Witness sworn.)
MS. HARRIS: Thank you. Please state your full name and primary occupation?
MR. IRISH: Charles A. Irish, Jr. I'm a civil engineer and land surveyor.

MS. HARRIS: And how long have you been employed as a civil engineer?
MR. IRISH: For about 40 years.
MS. HARRIS: And could you please describe your, excuse me, your educational background and your professional designations or accreditations?
MR. IRISH: I graduated from the --
MR. ABRAMS: I would --
MS. ROBESON: Stipulate?
MR. ABRAMS: -- stipulate to his qualifications as a civil engineer.
MS. HARRIS: And I also would like him to be qualified as an expert in the field of site development.
MR. ABRAMS: What's that?
MS. HARRIS: Site development.
MS. ROBESON: Site development?
MS. HARRIS: Yes.
MS. ROBESON: And what is that expertise?
MS. HARRIS: It goes beyond the scope of civil engineering. It relates to the development of buildings in, with respect to the various components, including the contributions to site plans, to some civil engineering components such as elevations and things, and maybe Mr. Irish, who has been qualified as an expert in site development, can explain it more eloquently --

MS. ROBESON: Yes.
MS. HARRIS: -- than I can.
MS. ROBESON: Can you explain it, Mr. -- or we can start tomorrow. No, go ahead.
MR. IRISH: Civil engineering is more focused on roads and utilities. I've been developing my practice on site development design, whether it be subdivision or site planning, or development plans, rezoning projects. I've worked on projects in Montgomery County since 1973 and if I had to characterize them, they would all be site --
MS. ROBESON: But --
MR. IRISH: -- site development.
MS. ROBESON: But we have a number of civil engineers come in here and talk about housing designs, the site and they're all qualified as civil engineers. Isn't that part of civil engineering?
MR. IRISH: It's --
MS. ROBESON: Well, let me hear from -- I didn't mean to cut you off. Let me hear from you all if you have an issue with this.
MR. ABRAMS: My understanding is the same as what you've just expressed. You know, I view civil engineers are going into design elements of a project because that's part of their discipline and their practice. So I mean I think it's all part of civil engineering.

MS. ROBESON: Mr. Knopf.
MR. KNOPF: I don't understand that as a recognized expertise.
MS. ROBESON: I would like to just keep it to the recognized expertise if possible.
MR. IRISH: I have been recognized as an expert in site planning. I do not recall the case, but I know it's been at least one time.
MS. ROBESON: Yes, but I don't know the context of that case and typically the engineers will come in and say, well, we had to design this this way and we do design it this way.
MS. HARRIS: I just want to make sure that given Mr. Irish's experience and knowledge of zoning ordinance, Sector Plans, and the process in and of itself, that when he -- if, in fact, he testifies to some extent to those things, that it's recognized that that's all within the realm of what a civil engineer and a project like this would be doing.
MS. ROBESON: Give me an example of what you're going to testify to as far as Sector Plan compliance?
MS. HARRIS: Well, there was a number of issues about the recommended height and so he's going to touch on that in the context, starting with the context of the elevation of the, of the ground elevation or the elevations

of tops of roofs or things like that, but he will go further than that given his experience, again, of doing this for 40 years and putting into the context of how that fits into the recommendations of the Sector Plan.

MR. KNOPF: It sounds to me like we're getting a third land planner.

MS. HARRIS: No.

MR. KNOPF: You've already had two.

MS. HARRIS: I don't think you'll hear anything different from Mr. Irish that you would have heard on any other case that he has testified on and there's been plenty of them.

MR. ABRAMS: Well, I'm a little concerned about the last element, compliance with the Sector Plan.

MS. ROBESON: I am too and the reason is because, you know, I thought the woman from Coalition for Smarter Growth, I can't remember who --

MS. HARRIS: Cheryl Clark?

MS. ROBESON: That was almost like back door expert testimony and I know you're an expert. I would -- what are your qualifications as far as -- the answer is I'm going to keep it as civil engineering, all right?

MS. HARRIS: Okay. So he's qualified as an expert in the field of civil engineering. And as we've noted before to the extent, he can testify in regard to something

else, you'll give it the weight to which you think is appropriate.

MS. ROBESON: Well, then I get -- what, can you proffer what he's going to say about the Master Plan?

MS. HARRIS: Well, why don't -- we could --

MS. ROBESON: Because he's not a planner, what's he going to say about the Master Plan?

MS. HARRIS: I don't have an example.

MS. ROBESON: Because what I don't want to have is a gazillion objections constantly either, so if it's not that --

MS. HARRIS: I don't think that you will have objections, or maybe you would. That was naive of me, wasn't it?

MS. ROBESON: Okay. This is Bethesda. It's --

MS. HARRIS: I, believe me, we well aware of that.

MS. ROBESON: An urban environment generates a lot of input.

MS. HARRIS: Clearly. Why don't we -- I would suggest that we just commence. If there's an issue when we get to it, then we'll discuss it at the time. Does that make sense? Otherwise, we're --

MS. ROBESON: All right. He's qualified as an expert in civil engineering. Go ahead, Ms. Harris.

MS. HARRIS: Are you familiar with the local map

amendment, development plan amendment, applications which are the subject of this application?

MR. IRISH: Yes.

MS. HARRIS: Thank you. See, I told you.

MR. KNOPF: Thank you very much.

MS. ROBESON: Wait, are you --

MS. HARRIS: Can you please describe the scope of services that VIKA was responsible for with respect to the rezoning application?

MR. IRISH: We were responsible for the surveying, the planning and the land planning and the civil engineering all relative to the rezoning application. We assembled the submission, parts that we were responsible for. It included the development plan, the development plan amendment, certified zoning map, surrounding area map, public use space exhibit, natural resource inventory, forest conservation exemption, existing conditions plan, storm water management concept plan.

MS. HARRIS: And did VIKA prepare a civil engineering report that was part of the submission in this case?

MR. IRISH: Yes. It was part of Mr. Landfair's land use report.

MS. HARRIS: Thank you. And have you and other members of your firm made a personal inspection of the

subject property?

MR. IRISH: We have.

MS. HARRIS: And have you evaluated the water, sewer, gas and other utilities at this location with respect to their availability to serve the project?

MR. IRISH: We have. There's adequate utilities to serve the project. There's gas, electric, power, water, sewer, storm drain availability adjacent to the site. Water and sewer categories, W-1, S-1, which means lines exist that can be tapped into. There's an 8-inch sewer in Montgomery, 8-inch water in Montgomery, as well as West Lane. There's a storm drainage system in Montgomery Lane on the, across the street that we'll be extending it across Montgomery and up West Lane to serve the storm water management system. All of that will be designed per Montgomery County DPS standards. There's gas mains in Montgomery and West Lane. There's overhead power lines in both Montgomery and West Lane.

MS. HARRIS: And are there storm water management concept plans instead of the original control plans as part of this project?

MR. IRISH: The storm water management concept plan, while not required at this stage, has been prepared, submitted, reviewed and approved by Montgomery County permitting services. A concept sediment and erosion control

plan will be required as part of the preliminary plan process. As part of that process, as part of the site plan process, an updated storm water management concept will be required, as well as a conceptual sediment erosion control plan. Once site plan is approved, then final construction documents will be required for both sediment control and storm water management, among other engineering documents.

MS. HARRIS: And there's a lot of discussion about storm water management. Can you please describe the storm water management -- I believe we should have stopped.

MS. ROBESON: Green roof.

MS. HARRIS: The storm water management measures as well as how sediment will be managed?

MR. IRISH: Sure.

MS. HARRIS: Thank you.

MR. IRISH: Do you want me to do sediment control first? That's --

MS. ROBESON: Whatever.

MR. IRISH: -- fairly -- sounds like there's going to be questions on the evidence. Sediment control, as I'm sure you're aware at this point, the project has an underground garage. So part of the construction will involve excavating down. So run-off that would fall into the site would go into the hole and you wouldn't typically run off on adjacent properties. If there are places where

we think that would occur, there would be a silt fence constructed. The silt fence will allow the water to filter through, but hold the sediment back.

The, at the bottom of the hole there will be a sediment tank that the run-off would drain to a corner of the hole, be pumped into the sediment tank and then once it settles out from there, it would then be pumped out into the storm drainage system once it's cleaned. There would also be a construction entrance to allow the construction -- with the gravel area so that the dump trucks and construction vehicles can have their tires washed off before they exit onto the public highways that that there would be minimized tracking of mud on the streets.

As far as storm water management is concerned, several years ago the state legislature and the County Council, both in their infinite wisdom, chose to approve a storm water management bill that is commonly referred to as ESD to the MEP, which we're getting like the Federal Government with an acronym, anyway, environment site design to the maximum extent practical.

In Montgomery County, we have the strictest ESD regulation in the state. In Montgomery County for a redevelopment project, which this is, you're required to provide environment site design to the maximum extent practicable for the site treating 100 percent of the

impervious area, essentially take it back, make calculations as if it were a forest and compare the difference. Other jurisdictions are 50 percent.

In a new project, you have that requirement as well as the first inch of run-off has to be treated that way. There's no MEP. It has to be treated that way.

So what is ESD? It's typically treating run-off in a manner similar to the way it would be treated naturally in a forested area. Now in an urban area, it's difficult to do that because we don't have large, open spaces where you could accomplish that. We also have soil that is over the years been either contaminated or disturbed or whatever to where it's not -- or you just won't get infiltration rates. So typically we are importing a situation to create this filtration through soil and plants rather than through our official measures that have routinely been used in the past.

The measures that we have approved in the concept plan thus far are basically threefold. They would be a portion of the roof will be green roof. There will be micro bio-filtration planters around part of the site and then within West Lane under the sidewalk area, a portion of it will have what's referred to as silva cells.

MR. KNOPF: Excuse me, what?

MR. IRISH: Silva, S-I-L-V-A, cells.

MR. KNOPF: Thank you.

MR. IRISH: Do you want me to --

MS. HARRIS: I think --

MR. IRISH: -- elaborate on any of that?

MS. HARRIS: I would like you to elaborate on the, for the benefit of, the green roof concept please.

MR. IRISH: There are --

MS. ROBESON: Can you move your chair a little toward this way because I have --

MR. IRISH: More facing you?

MS. ROBESON: Yes, just a little so they can see you too. I just have trouble hearing you when you're --

MR. IRISH: I'm trying to articulate.

MS. ROBESON: I know. Thank you.

MR. IRISH: There are a variety of ways to design and construct a green roof. We use the term extensive and intensive. Intensive means a, typically a deeper soil, more intense planting. Extensive is a lighter weight soil, less soil volume and more of a basic planting. We have an extensive green roof approved for, conceptually for this. It doesn't mean we couldn't elaborate and go further if that fit in with the ultimate design, but we're at the conceptual phase now. So basically we've agreed at this point that about 6,000 square feet of the rooftop area will be devoted to some form of green roof.

Green roof is basically -- I'd say it's just

painted green, but it's not that simple. You have to have soil and plants on top of the roof. The preferred method is where you have trays that can be delivered to the site with the plants already planted in them and you essentially place them on the roof with protection of the waterproof membrane. Then if one of those -- if the plants are not thriving in one of those trays or you want to switch them around, lift the trays out, you can substitute around. They do grow together to where it makes it a little bit difficult to do that, but it's much easier to maintain than where you just throw the soil on the roof and then plant it. That can be done. You need to protect, certainly protect the roof membrane.

The roof itself is typically designed very similar to a normal roof. It's got roof drains in it and the water that filters through the soil that is not taken up by the plants would then flow through to the typical roof and then flow to the drainage, the roof drainage system and it would be piped off. The area of the roof that would receive rainfall on a green roof would then be piped to, directly to the storm drain. It's deemed as having been treated at that point for quality, so it can then go directly to the storm drain.

Other areas of the roof where we can't do a green roof for whatever reason, the runoff from those areas would

go through the building system in a different pipe and go to another treatment facility whether it be the bio planters along West Lane, along the building there, or on the northern edge of the building in the famous 15, infamous 15-foot strip. Below grade is a storm, we're a proposing a storm water management vault, if you will, that will provide treatment through more conventional methods than used in urban areas. We -- like the use of a, what's called a storm filter, it involves several cartridges that have a material in them that literally filters the water so the water would get into the vault, filter through these cartridges and be piped out clean. They're very easy to maintain.

MS. ROBESON: Okay. So you're not having any like bio-retention planter or anything like that?

MR. IRISH: No, there will be.

MS. ROBESON: There will be?

MR. IRISH: Micro bio-retention planter, not typical in the standpoint where you would just grade out an area. You would have a planter that would be elevated that would have, water would outlet into the top of that --

MS. ROBESON: Right.

MR. IRISH: -- there would be plants in that, in there, then there would be the plant media and then lower down in the planter would be gravel and then an under drain such that once the water filtered through all that was no

longer supplying nourishment to the plants, but then would be piped off into the storm drain system.

MS. HARRIS: But just to clarify so that there's no misunderstanding, the component that --

MR. IRISH: Like the --

MS. HARRIS: -- you just described, where would that be located?

MR. IRISH: Along the building. There may be someone on the courtyard side, but right now we're showing them, I believe, along West Lane.

MS. ROBESON: So the ground up?

MR. IRISH: At ground level, yes. Yes. I mean they could be on the -- I said the courtyard, which is the area to the west of the upper portion of the building, the private space area --

MS. ROBESON: Yes.

MR. IRISH: -- there may be some in there.

MS. HARRIS: I recognize that at this stage the roof plan is highly conceptual and as is the storm water management, but can you give a rough estimate, or do you have a rough estimate of what percentage of the overall roof will be devoted to the, to the green roof?

MR. IRISH: I said 6,000 square feet approximately. I don't recall the actual footprint of the building, well, whatever that percentage --

MS. HARRIS: Okay.

MR. IRISH: -- works out to.

MS. HARRIS: And the outdoor area that's anticipated on top of the room for recreational purposes, that could be -- they could utilize that, a portion of the green roof, is that correct?

MR. IRISH: In theory they could. It depends on how it's designed. The purpose of the green roof is to treat the runoff, so it doesn't matter whether you have a plant that you can just look at or a plant that you -- an area that you could more heavily plant an area that could be part of a formal garden per se. So it's really more a function of what the program, how they program for the building would involve and what amenities the owner will be looking to put on the roof. But within the area that we're talking about, there's a lot of options.

MS. HARRIS: Thank you. Does the application require preparation of the preliminary forest conservation plan?

MR. IRISH: This one does not. The site is exempt from forest conservation due to its size and that exemption has been confirmed by Park and Planning.

MS. HARRIS: Okay. Is there any information you want to add in terms of the existing tree cover or the trees subject to the forest conservation plan or is that, is there

anything more?
MR. IRISH: Well, I certainly can answer your question. There's two significant trees on the site which would be 24-inch or larger and they're both pin oaks. One of them, I believe, is not in very good condition and they both will come out as part of the construction. If we were to go ahead, or Edgemoor at Arlington North were to proceed, they would probably come out as part of their construction because they're basically on the property line.
MS. HARRIS: Thank you.
MR. IRISH: There's also a specimen tree on the, what's it, 4825 Montgomery, the Sandy Spring builder site that will be coming out as part of their construction as well. If we were to proceed, then we could get a variance for any possible interference with the root zone. Our construction wouldn't kill the tree and wouldn't go as a result of that, but more than likely there's no doubt in my mind that variance would be approved. The, but timing of the construction might be that if we're both under construction at the same time, it would be necessary because their tree would have to come down.
MS. HARRIS: Thank you. Pursuant to Zoning Ordinance Section 59 D 1.61(d), and based on your professional experience, does the proposed development plan tend to prevent erosion of the soil and preserve any natural

vegetation and any other natural features on the site?
MR. IRISH: The design that has occurred thus far and will continue to be provided will certainly make sure that erosion control is appropriately managed and I believe I described how that would occur. So it certainly would be satisfied under the final permit plans and would be approved by Department of Permitting Services before construction. Given that the site is exempt from forest conservation or even though it is exempt from forest conservation, there are no forested areas on the site, just a few trees, the two larger ones I mentioned. There's no flood plains or protected soil or rock on the property through the other natural features that would be, that would need to be preserved and protected.
MS. HARRIS: And then Section 59 C 8.25 requires the development plan to provide for any easements or dedications shown on the Sector Plan or that the Planning Board deems necessary. In the case of the subject development plan, are there any such easements or dedications?
MR. IRISH: There are dedications proposed. The Sector Plan recommends that Montgomery Lane have a 52-foot right-of-way. It is 52 feet in some areas where development has occurred in front of this site on our side of the street itself. It's only 25 feet from the center, so we would

dedicate that additional 12 feet to make it 52. West Lane is not mentioned in the Sector Plan in terms of a desired right-of-way width, so with the prior application the transportation planning, the Holladay application, the transportation planning staff recommended that a 50-foot right-of-way be provided for West Lane. In that application as well as this one, given that the current right-of-way is 45 feet, we would propose to dedicate 2 1/2 feet on our side so the, there would be 25 feet from the center line of the existing right-of-way to our new right-of-way line. So we would be dedicating 2 1/2 feet along our West Lane frontage and will be dedicating one foot along on Montgomery Lane frontage.
MS. HARRIS: Thank you. A lay-by is proposed along the West Lane frontage. Would you describe the proposed improvements to West Lane, as well in terms of operations, please describe how the lay-by and how the additional dedication will allow for vehicle maneuverability in West Lane?
MR. IRISH: Sure. The -- West Lane is currently about 18 feet wide from curb to curb and is in the hammerhead turnaround area. The plan as proposed by transportation planning staff we agreed to by the prior applicant and this applicant is to widen that pavement to 22 feet. In addition, the prior applicant received approval to

construct a lay-by on the west side of West Lane approximately six feet wide and 40 feet long. This applicant has agreed to install that as well. Thus, there will be 28 feet of paving from the curb of the lay-by to the curb on the other side of the road, 22 feet of basic paving curb to curb, plus the additional six feet for the lay-by. The size of the vehicles that will be using the lay-by are less than eight feet wide, so there will be 20 feet left available for two cars to easily pass West Lane when a vehicle is using the lay-by. The location of the lay-by that we're proposing is essentially the same as what was approved as part of the preliminary plan No. 1 in 2008, 0050, and site plan 8, 2008, 0030, for the Holladay project.
MS. HARRIS: And did DOT weigh in on this lay-by?
MR. IRISH: It did. We discussed it with Greg Leck, the County Department of Transportation, and he felt that this lay-by in itself would satisfy the loading requirements for the project and was comfortable with it being, he was comfortable with it in prior applications, comfortable with it being permitted and built as part of this application.
MS. HARRIS: And during the prior application, were the details of the lay-by determined at the time of the preliminary plan?
MR. IRISH: I'm sorry, say that again?

MS. HARRIS: At the, during the prior application, were the details of the lay-by determined at preliminary plan?
MR. IRISH: Yes.
MS. HARRIS: And so to the extent that we've heard conversation about potentially shifting the lay-by north or south, would those be worked out --
MR. IRISH: Yes.
MS. HARRIS: -- at preliminary plan?
MR. IRISH: Typically that's where you would do it, where the basic geometry would be approved at that level and then the final plans would be part of a storm drainage plan that would be reviewed by DPS and permitted in conjunction with the building permit.
MS. HARRIS: Thank you. One of the long-awaited questions from Mr. Irish had to do with the turning radius of the various loading vehicles. So with that, if you could turn to Exhibit 88?
MR. IRISH: I just happen to have it here.
MS. HARRIS: You're efficient.
MR. IRISH: I heard that you didn't like people fumbling for exhibits, so I hopefully have all of mine ready.
MS. ROBESON: Well, that is a different -- thank you.

MS. HARRIS: We have improved on that front.
MS. ROBESON: Yes, it's much smoother.
MS. HARRIS: Yes.
MS. ROBESON: Thank you.
MR. IRISH: Exhibit 88 shows at the top how vehicles --
MS. ROBESON: Can you move just there? I can see it now. Thank you.
COURT REPORTER: Should we move this down?
MS. ROBESON: No, I think he's -- thanks, but I think it's okay.
MS. HARRIS: The type of vehicles that we'll be using, the size of vehicles that will be used in the garage will be those vehicles that would be limited to a height of about 8-foot, seven or eight inches. Eight foot six is the height requirement for an accessible van. U-haul has a truck that is 8' 7" and it's the size of the vehicle that many of our move-ins would use. So in addition to allowing them to use the lay-by on West Lane, if we add another inch or so to the height in the garage, then that vehicle could also use the space that will be dedicated in the garage and they would be able to use the loading bay that we added on to the exterior of the building. So those vehicles would have three spaces that they could use.
So walking through this, the upper left two

sketches --
MS. ROBESON: And that's Exhibit 88?
MR. IRISH: Exhibit 88, this is a copy of it, the furthest to the upper left is a passenger vehicle making a left turn into the garage. The next one, moving left to right, is a passenger vehicle leaving the garage. The sweep of the vehicle is shaded in blue and at the end, either end of the shaded path, you can see the vehicle. We concede that it easily presented out of the garage.
The SU-30 box truck is a standard AASHTO vehicle that is typically used to, for larger deliveries. It's basically a 30-foot long vehicle. So it's a truck much larger than any of our move-ins would need, but what we've shown in the two exhibits on the upper right are how that vehicle, if they, if it were to find itself on West Lane, or if it were coming to the project for some reason, how it could pull in up to the, head easterly onto hammerhead, back in a little bit to the garage entrance and then pull out so that it could either turn around if it found itself there by mistake or turn around so it could then back into the lay-by which would be in this location, which is just to the left of the vehicle on the third exhibit from left to right.
The four at the bottom are different -- let's go to the right half of the bottom.
MS. ROBESON: The two on the right?

MR. IRISH: The two on the lower right. That is that SU-30 vehicle again, which as I said is larger than what we would expect for any of the deliveries to the project, but the -- not the one furthest to the right, but the one just next to it shows how that vehicle could come in to the turnaround, the hammerhead, and back into the loading bay. It would also show how it could, the way it would leave the loading bay would be to pull out towards the hammerhead, back slightly into the garage entrance and then pull out. So that would require a back and forth movement.
The height of the loading bay wouldn't accommodate an SU-30 anyway, so it would basically use the movement at the upper right. It would show backing into the garage entrance, pulling out and if we had a delivery from them, they would have to use the lay-by.
MR. KNOPF: Excuse me, I'm sorry. Did you say would or would not be able to use the garage? I missed it.
MR. IRISH: An SU-30 would not, would have a height that would exceed the --
MR. KNOPF: Thank you.
MR. IRISH: -- the height of the loading dock.
MR. KNOPF: Thank you.
MS. ROBESON: Wait, the loading dock, but not the garage?
MR. IRISH: Not the first part of the garage.

Once you get down --
MS. ROBESON: Right.
MR. IRISH: -- into the garage, the height would be limited --
MS. ROBESON: Okay.
MR. IRISH: -- to about 8-foot, seven or eight inches.
MS. ROBESON: So we can use the garage entrance to back up and turn around?
MR. IRISH: Correct.
MS. ROBESON: Okay.
MR. IRISH: Now the lower left, the two on the lower left are a WB-40 vehicle, which is in lay terms a tractor trailer. It's a vehicle that we really don't think is going to be on this project. We certainly wouldn't expect it for move-ins or deliveries or anything. But it shows how that vehicle could get itself turned around if it somehow found itself in that location. Similar to the SU-30 in the upper right, we would pull into the hammerhead, back slightly down the garage entrance and then in the second from the lower left shows how it would pull out. It too could fit in the lay-by, but again we really don't expect there to be any vehicles like that serving the project.
MS. HARRIS: Could you please -- there's been a lot of discussion about Fedex trucks and UPS trucks. So

just to be clear, in terms of size, can you compare the Fedex truck or UPS truck to the SU-30?
MR. IRISH: They're all smaller.
MS. HARRIS: Okay.
MR. IRISH: We actually measured a Fedex truck delivering to our office, so we've got reasonable dimensions. 20, the Fedex truck was 23 feet long, nine foot, eight inches high and the UPS truck was, I'm sorry, eight feet wide, 23 feet long and nine foot, eight inches high. The UPS truck was seven foot, nine inches wide, 25 feet long and 10 feet, one inch high.
MR. KNOPF: Excuse me. Could you just do that slower so I can get --
MR. IRISH: Sure.
MR. KNOPF: I don't want to have to be asking like --
MR. IRISH: I thought you were the one that wanted to hurry it along, so --
MR. KNOPF: I appreciate that.
MS. ROBESON: No, that was me. No.
MR. IRISH: He said it too.
MS. ROBESON: Okay.
MR. IRISH: Okay. Can you give the FedEx, FedEx --
MR. ABRAMS: And UPS.

MR. IRISH: FedEx truck, eight feet wide, 23 feet long, nine feet, eight inches high. UPS box truck seven feet, nine inches wide, 25 feet long, 10 feet, one inch high.
MS. HARRIS: And so while you're turning the diagram set forth on Exhibit 88, it doesn't show the turning movement for FedEx truck or a UPS truck. Can you just briefly explain where, whether those could be accommodated in a loading bay and --
MR. IRISH: Certainly.
MS. HARRIS: -- what it would involve?
MR. IRISH: They would be, they would involve less sweep than the SU-30 vehicles and the height of the loading space that we're proposing in the garages is basically 10 feet. I mentioned the UPS truck was 10 feet, one inch. I believe if you look at maybe adding an inch to the height there to accommodate it so they --
MS. ROBESON: It's a loading space?
MR. IRISH: In this loading space.
MS. ROBESON: Okay.
MR. IRISH: The FedEx truck is less than 10 feet high, so it would certainly be able to back in there as well. So this movement down in the lower right shows an SU-30 doing, well, an SU-30 wouldn't fit, the FedEx truck or the UPS truck being shorter would at least do this movement

or better. We don't have a template for that vehicle, so I can't say whether it would have to make this double movement to come out or not, but it can certainly make --
MS. ROBESON: So you're saying it --
MR. IRISH: The upper right, it can --
MS. ROBESON: -- it's possible?
MR. IRISH: -- make the movement to turn --
MS. ROBESON: Right.
MR. IRISH: -- the three-point turn, one, two, three, to make the turn to pull out and most likely stop in the lay-by.
MS. HARRIS: Thank you. There's been extensive testimony regarding the heights and the setbacks of the building, so much so that it, I think the record is a little bit unclear. So I'm hoping that you can clarify for us the heights and setbacks.
MR. IRISH: Sure.
MS. HARRIS: I think it was thrown away.
MR. IRISH: Are you sure you don't want to take a break until tomorrow now?
MS. HARRIS: After this, maybe is a good time to take a break.
MS. ROBESON: Yes, this may be a good time. Is this a good time for you guys?
MR. ABRAMS: Yes, ma'am. It's been a good time

since 2:00.
MS. HARRIS: On January 11th you meant?
MS. ROBESON: Since we are starting a new topic, we will adjourn for today, continue this case to 9:30 tomorrow in the First Floor Auditorium. You do have to -- we don't have this room tomorrow, so you do have to remove the duplicate exhibits. I think the one exhibit that's, has to stay here is 108 and then there's one where he wrote on the back. He wrote on the back of a bar graph one.
MS. HARRIS: Right. Okay.
MS. ROBESON: That has to stay here.
MS. HARRIS: Should the other ones go across the hall or should we take them with us?
MS. ROBESON: You can do, you can put them in our library --
MS. HARRIS: Okay.
MS. ROBESON: -- if you want to do it that way rather than having to cart them home, that's fine, okay?
MR. ABRAMS: Madame Examiner --
MS. ROBESON: Yes?
MR. ABRAMS: -- for purposes of clarification as to what he's talking about today, different types of trucks --
MS. ROBESON: Yes.
MR. ABRAMS: -- okay, if you have -- don't go to

any special trouble, but if you have it, do you have any photographs of what these trucks look like when you talk about SU-30 and whatever the other ones are? And I know what a FedEx truck looks like.
MR. IRISH: Not photographs, but I have the ASHKO sketch that would show the vehicle.
MR. KNOPF: Well, that -- well, anything.
MR. ABRAMS: Well, that's, yes.
MR. IRISH: We can copy that --
MR. ABRAMS: Yes, right.
MR. IRISH: -- and provide it for --
MR. ABRAMS: Whatever numbers and designations you've referred to, I'd like to see what they are.
MR. IRISH: Well, there were three that we referred to, the P vehicle, which is a passenger vehicle --
MR. ABRAMS: Yes.
MR. IRISH: -- which is basically your --
MR. ABRAMS: Okay.
MR. IRISH: -- your Cadillac El Dorado --
MR. ABRAMS: No, not mine.
MR. IRISH: -- that doesn't, well, the Volkswagen or the Mini Cooper would fit --
MR. ABRAMS: Okay.
MR. IRISH: -- well within that. And then the SU-30, which is the 30-foot box truck, and the WB-40, which is

in lay terms a tractor trailer with a, basically a 40-foot long trailer.
MR. ABRAMS: Okay.
MS. ROBESON: And just for the transcript, ASSHTO is A-A-S-H-T-O?
MR. IRISH: That's correct.
MS. ROBESON: And can you just tell us what that is when you refer to that?
MR. IRISH: I hope I get it right. It's American Association of State Highway and Transportation Officials.
MS. ROBESON: Okay. Thank you.
MR. KNOPF: Before we adjourn, I'm trying to get a, some information so I can schedule my witnesses.
MS. ROBESON: Okay.
MR. KNOPF: We have various, sudden problems with the workers and somebody whose mother is dying. And I'm just trying to, I guess, nail down -- I'm thinking, I'm just throwing this out there, but I consider that tomorrow, presuming we finish with Mr. Irish and then Mr. Abrams would present his case and I would like to then be able to say that my case would start on Friday, so I would have the witnesses not come and sit here tomorrow and waste their time.
MR. ABRAMS: When are you going to take rebuttal from the applicant?

MS. ROBESON: Well, we have an extra day now. Is this, is Mr. Irish your last witness?
MS. HARRIS: Yes.
MS. ROBESON: Okay.
MR. IRISH: Saved the best for last.
MS. ROBESON: And I think Mr. Abrams said that his case was short, correct, or not?
MR. ABRAMS: It's like a morning and an hour.
MS. ROBESON: Well, what we could do is this. We could -- if you wish, we could go as far as Mr. Abrams's case -- okay. Thank you. We can -- I lost my train of thought. We can go forward with as long as your case takes on tomorrow and then just take -- we'll lose a half a day and then have your -- do you think your case is going to take more than a day?
MR. KNOPF: No.
MS. ROBESON: Okay. Then --
MR. KNOPF: Even with cross-examination I wouldn't, well, I can't speak for them, but I doubt it.
MS. ROBESON: Okay. And then we can finish your rebuttal on the 29th. Do you have a problem with that? Okay. So we'll go ahead and do it that way if it's okay with everyone. So now I just got a note, the Board of Appeals changed their schedule. They're not going to use this room tomorrow. So we can have this room tomorrow. So

you can leave your exhibits here, okay? So with that, we'll adjourn in this room tomorrow at 9:30. Thank you.

MS. HARRIS: Thank you.

MR. KNOPF: Thank you very much. That works out.

(Whereupon, at 4:49 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Tracy Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC	:	**Case No. G-954**
LOCAL MAP AMENDMENT G-954	:	**DPA 13-01**

A hearing in the above-entitled matter was held on April 17, 2013, commencing at 9:35 a.m., at the Council Office Building, 100 Maryland Avenue, Rita Davidson Memorial Hearing 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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Also Present:
Ashley Wiltshire
Ken Doggett

A P P E A R A N C E S (Continued)

Witnesses:	Direct
Charles Irish	5, 87, 128, 170, 179
Susan Turnbull 4838 Montgomery Lane Bethesda, Maryland 20814	193
Brent Polkes 4808 Montgomery Lane Bethesda, Maryland 20814	270, 278

E X H I B I T S

Exhibit No.		Marked/Received
111	Updated Charles Irish Resume	5
112	Marked Version of Exhibit 77	12
113	Marked Version of 106D	12
114	Marked Version of 106G	30
115A	AASHTO Truck Illustrations page 22	88
115B	AASHTO Truck Illustrations page 31	88
116	2/15/13 Notice of Application	90
117	Composite Site Plan - 4825 Montgomery Lane	91
118	Preliminary Plan - 4825 Montgomery Lane	91

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Local Map Amendment No. G-954 filed by 4831 West Lane, LLC which requests re-zoning from the R-60 Zone to the TS-R Zone, a property known as 4901 Montgomery Lane in Bethesda. It's also a continuation of the public hearing on Development Plan Amendment No. DPA 13-01 filed by the same applicant which requests an amendment to the development plan approved by the District Council on July 10th, 2007 in Zoning Application No. G-843. I believe there is an updated exhibit list by the sign-in sheet. We've added three exhibits. Okay. Good.

MR. KNOPF: Thank you.

MS. ROBESON: So I believe we left off, we're in the direct examination of Mr. Irish. Are there, is there any, are there any preliminary matters? Yes.

MS. HARRIS: I have one preliminary matter, and that is Exhibit 35A, which is Mr. Irish's resume that was submitted with our pre-hearing statement --

MS. ROBESON: Yes.

MS. HARRIS: -- I realize that it does not reflect his most up-to-date resume, and if I would be able to provide --

MS. ROBESON: Do you have an objection?

MR. ABRAMS: No. No objection.

MS. ROBESON: All right.

MS. HARRIS: Thank you.

MS. ROBESON: We'll admit it as 111. Yes. If you could -- thank you. So that will be updated resume of Mr. Irish.

(Exhibit No. 111 was marked for identification.)

MS. ROBESON: All right. Anything else? Okay. You can continue. You were starting a new topic but I don't remember what the topic was.

MS. HARRIS: We were, but right before we started that new topic, we were discussing turning diagrams and I just want to go back because to that just for one minute.

MS. ROBESON: Okay.

DIRECT EXAMINATION (Continued)

BY MS. HARRIS:

Q Mr. Irish, if you could explain the various turning diagrams for the loading on Exhibit 88, and I would just like for you to put that in perspective in terms of other urbanized areas and whether the loading movements, turning movements that you describe, how do they compare with other similarly situated projects throughout the CBD or in the TS-R Zone.

A They're virtually identical. I mean, as you know, most loading movements, the truck pulls up, backs in and

then it pulls out which is essentially what, what we have here. The truck pulls up, backs in and then pulls out, so it's, it's a very normal movement, one that you'd see pretty much anywhere. In fact, the highrise Edgemoor has their loading, loading right here. I'd say if any --

MS. ROBESON: When you're looking at, you're looking at 7 -- I can't see the --

MS. HARRIS: Exhibit 77.

THE WITNESS: Exhibit, I'm sorry, Exhibit 77.

MS. ROBESON: 77.

THE WITNESS: Eastern end of the Edgemoor highrise.

MS. ROBESON: Okay.

THE WITNESS: It is their loading space.

MS. ROBESON: Yes.

THE WITNESS: If you recall, the width of the pavement on Edgemoor is 20 feet from curb to curb.

MS. ROBESON: Right.

THE WITNESS: We're proposing to make West Lane 22 feet wide.

MS. ROBESON: Okay.

THE WITNESS: So we actually have two feet more maneuvering room to back in to our loading space than you would have to get in and out of the Edgemoor. Unless I'm mistaken, I don't think City Homes have loading spaces.

They've got the alleyways. I don't know how they, how a moving truck would accommodate one of them, whether they would park illegally on Montgomery Lane or back into the alley and block the other garages that would be in front of it or whatever unless there's a loading space I didn't see out there.

BY MS. HARRIS:

Q So is it your impression that in fact the configuration of the street, which is a little unusual with the hammerhead, may in fact create a preferred environment for loading movement?

A It, it's better than virtually any you can imagine because you're at the end of a street. There's not -- you're not going to be blocking traffic, or maybe one vehicle leaving one of the two structures further in for a brief moment while you back up as opposed to -- well, again, if you take Edgemoor, backing in there, any vehicle coming down there would have to wait while it backed up.

Q Thank you.

A Certainly more traffic on Montgomery Lane than West Lane.

Q Thank you. Now we'll continue where we had left off which has to do with, as I noted yesterday, there's been a lot of discussion and perhaps some confusion regarding, and direct testimony and cross-examination about the

building heights and the setbacks which may have left the record a little bit unclear, so I'd like you to clarify, if you could, what exists with respect to the building heights and setbacks along Montgomery Lane with respect to --

A Certainly.

Q -- the project. And I think we may want to refer back to another exhibit again. I think 77 is helpful. Okay.

A The --

MS. ROBESON: That's 106G?

THE WITNESS: 106G. I've got two exhibits up, 77 and 106G. If I could, I'd like to mark, make some notations on 77 so that you have, have those tied to the drawing.

MS. ROBESON: Okay. Well, then I'll have to mark that as a new exhibit. Do you have an objection if he uses the old exhibit and marks on it?

MR. ABRAMS: We just would like some consistency here because there are heights which were put on other exhibits in terms of the buildings along Montgomery surrounding the subject property. And somehow or another, it seems to me it's easier for not only you but for us to collate and correspond the testimony he's giving now with the heights that are on those specific exhibits.

MS. ROBESON: You mean 106B?

MR. KNOPF: One of those has it.

MS. ROBESON: One of --

MR. ABRAMS: One of those has --

MS. ROBESON: I think it's one of those.

MR. ABRAMS: -- has the type and FAR and things like that.

MS. ROBESON: Yes.

MS. HARRIS: Or what I would suggest, because I think it, for illustrative purposes, it, Exhibit 77 may be more helpful, is he can certainly repeat those things and put them on this exhibit as well.

MS. ROBESON: Well, I don't -- can you pull up 106B?

THE WITNESS: I hadn't planned to speak to that one.

MS. ROBESON: Well --

THE WITNESS: But I'm sure we can find it.

MS. ROBESON: It has --

THE WITNESS: My intent is not to obfuscate things but to make it clearer.

MS. ROBESON: I know.

MS. HARRIS: We're getting off the list.

THE WITNESS: So, and with respect to heights, if I disagree with any height, I certainly would make that clear in my testimony.

MS. ROBESON: Okay. Have you, well, let me ask

you, have you, anticipating cross-examination, have you had the opportunity to look at the actual heights of the other buildings?

THE WITNESS: I've reviewed certain documents and we've made certain measurements, so I do have a good handle on most of the buildings.

MS. ROBESON: Okay. Well, let's try 106B. Is that the one with the heights?

MR. KNOPF: It may be 106D.

MS. ROBESON: 106B --

MS. HARRIS: Yes. It has the heights. Well, we can refer here and write it on there I guess. I mean, does that --

THE WITNESS: If it's okay with you, could, I think this would make it clearer for you, I'd write it on here and I could write whatever dimensions on there as well.

MS. ROBESON: All right. Put them both up.

MR. KNOPF: I'm also calling the Hearing Examiner's attention, 106D which clearly has the heights stated on each.

MS. ROBESON: Oh, that's it. I'm sorry. 106D. I think you're right. That is the exhibit I was thinking of.

THE WITNESS: D as in Dave?

MR. KNOPF: D as in Dave.

MS. HARRIS: 106D?

MS. ROBESON: D.

MR. KNOPF: Yes.

MS. HARRIS: That's not going to show --

MS. ROBESON: Well, we're already into letting him use three exhibits so we're going to get there.

THE WITNESS: 106C has the building heights on but I don't see other dimensions. Would that be okay? That's the one I'm holding up. Do you have D? I haven't found it yet. Let me see.

MR. ABRAMS: D has the building heights.

THE WITNESS: Well, C has the building heights.

MR. ABRAMS: That's got building heights and some other information.

MS. ROBESON: Here. Let me -- did you find D?

THE WITNESS: Yeah, that's D.

MR. KNOPF: Yes.

MS. ROBESON: Okay. So whatever you decide to mark on is going to be a new exhibit. Those are all duplicates I believe so. Do you need the chair as a third easel? Why not? I hope you didn't want to sit.

THE WITNESS: No.

BY MS. HARRIS:

Q Are you sure?

A I'm fine. I'm fine.

MS. ROBESON: All right. Now, we've got three

exhibits.

THE WITNESS: I think it would be helpful if I wrote on 77 --

MS. ROBESON: Why don't you proceed --

THE WITNESS: -- as well as 106D.

MS. ROBESON: That's fine. Why don't you proceed with your testimony as you planned it, and then we'll, we'll duplicate.

THE WITNESS: Is that going to be Exhibit 112 which is --

MS. ROBESON: I don't know which one he's marking. Which one are you going to, you're going to mark both?

THE WITNESS: I would mark both if --

MS. ROBESON: Okay. So 77, I've got to get, 77 will be, that 77 duplicate is now going to be 112. Marked version of Exhibit 77. And then 113 will be marked version of 106D was it? Okay.

(Exhibit Nos. 112 and 113 were marked for identification.)

MS. ROBESON: Thank you, Mr. Irish. Let's --

THE WITNESS: I hope you say that after I finish. My purpose --

MS. ROBESON: Always.

THE WITNESS: My intention is to walk down the street the way I understand you did and describe some of the

spatial relationships.

MS. ROBESON: Okay.

THE WITNESS: So starting with the Edgemoor highrise -- well, actually, before we even go to that, the sidewalk, the brick sidewalk on the north side of --

MS. ROBESON: Of Montgomery Lane?

THE WITNESS: -- of Montgomery Lane is six feet wide. Six feet of brick. In some cases, there's a half a foot concrete band, either curb or band on the outside of that, but that six foot brick walk is very consistent essentially through that entire street. Basically six feet on south and north. One difference is that the, on the north side in front of the Edgemoor, there's a tree space or plant space, green strip in the location between the lay-by just east of their entrance and just west of their entrance. That tree space is approximately seven feet wide. On the City Homes side, that tree space is approximately nine feet wide so to say it differently, the sidewalk on the City Homes side is about two feet closer, two feet further away from the curb --

MS. ROBESON: Okay.

THE WITNESS: -- than the curb on the north side.

MS. ROBESON: Okay. What is the setback -- okay. Go, go ahead.

THE WITNESS: Similarly, the lay-by on the north

side is also about that seven feet. All right. So if you measure from the face of the curb northward on the north side of Montgomery Lane, you have either a seven foot lay-by or a seven foot tree space and then a six foot brick sidewalk. So a lot of the relationships that I'll be describing are what it is from the brick sidewalk back because that's something you would walk along as a pedestrian, where you to get your feel of that relationship.

The Edgemoor highrise, I mean, all of the buildings vary a little bit in their dimension because of the undulations in the front of the building. The Edgemoor on the west side is about 12 feet or 10 feet from that back of sidewalk to the building. In the middle of the building --

MS. ROBESON: When you say back of sidewalk, are you talking about the sidewalk that's adjacent to, I can't see the little arrows, are you talking about the sidewalk that's adjacent to that green strip or that --

THE WITNESS: Yes.

MS. ROBESON: -- sidewalk that's adjacent to the curb?

THE WITNESS: There isn't a sidewalk, there is not a sidewalk -- well, there's a sidewalk adjacent to the curb where the lay-by is, but where the tree space is is not adjacent to the curb. It's set back seven feet.

MS. ROBESON: Okay. All right.

THE WITNESS: So again, as I said, this -- I'm drawing my line, pen along the north curb line.

MS. ROBESON: Okay. All right.

THE WITNESS: If you go back --

MS. ROBESON: That's helpful.

THE WITNESS: -- seven feet, well, then that's, seven feet roughly, you get the width of the curb or whatever but let's just --

MS. ROBESON: So can you just mark that curb line that -- I didn't mean to make you --

MS. HARRIS: He's going to have sore knees by the end of the day.

MS. ROBESON: -- genuflect or something. All right.

THE WITNESS: So, so from that curb as you go to the building, you either have a driveway entrance, loading entrance, small tree space, lay-by, small tree space, another lay-by, and then you have a larger green space as you head west towards West Lane. Behind that, then you have this brick sidewalk.

MS. ROBESON: Yes.

THE WITNESS: The basic building is 10 to 12 feet back from that sidewalk, from the northern edge of that sidewalk.

MS. ROBESON: Okay.

THE WITNESS: However, in the middle, you see the steps coming down just to the right of the middle, they come down almost to the back of the sidewalk, a foot of so. Let's be generous and say two feet, or one to two feet there. Yeah. I believe you commented when you were walking there that it felt tight. If you're leading to Edgemoor and someone comes down, they barely have room to stand before they're on the sidewalk.

Just to the west of that is an accessible ramp that, it takes up about half of that 10 to 12 foot space. So there's a, maybe four or five foot plant, planter there between the accessible ramp and this, and the sidewalk and then where you don't have the driveway or the loading, you've got about a 10 to 12 foot planted area. So I think the reason you felt a little tight there, not to suppose --

MS. ROBESON: No, fine.

THE WITNESS: -- I'm in your mind or anything --

MS. ROBESON: That's fine.

THE WITNESS: -- the space right at the front door there does seem tight. On the unbuilt project -- well, why don't I just add one more dimension. Edgemoor is about 172 feet wide as you look at it from Montgomery Lane.

BY MS. HARRIS:

Q And, Mr. Irish, what's the height as well? We've

talked about that a lot.

A Yeah.

Q But approximately, what's the height?

A Yeah. The height as measured to the middle of the mansard, being, and the mansard's about 20 feet high on, on this building. As measured from this entry stair here, the top of that is 100 feet.

A Thank you.

Q So you'd add 10 feet to get to the top of the, visually, the top of that roof.

MS. ROBESON: Okay.

THE WITNESS: It's not how it's measured for zoning purposes.

MS. ROBESON: Right. Right.

THE WITNESS: The 4901 Hampden Lane project, you couldn't see because of house or two there --

MS. ROBESON: Right.

THE WITNESS: -- hasn't been built yet but it's been approved by the District Council and it is 76 feet wide approximately. You still have that same six foot brick sidewalk and their plan is also showing that nine foot planter. Not to mention, I'm scaling off, but it would make infinite sense to continue that long brick wall one more lot.

MR. KNOPF: Excuse me. I'm sorry because I just

saw your back. You said nine foot planter. Is that between the sidewalk and the building or between the building and, the sidewalk and the curb?

THE WITNESS: Between the sidewalk and the curb.

MR. KNOPF: Okay. Thank you. I couldn't see.

THE WITNESS: Now --

MS. ROBESON: Do we need to angle that a little differently?

MR. KNOPF: I'll get up and stand over there.

MS. ROBESON: Okay.

THE WITNESS: I just need to not stand in front of it.

MR. KNOPF: You have to hang from the ceiling.

BY MS. HARRIS:

Q You need to be transparent.

A The critical dimension closest to the City Homes though, from the back of the sidewalk, where I was measuring the Edgemoor, to that face of the building is only three feet to scale off.

Q So just to clarify that, from the southern edge of the sidewalk to the building is how much?

A From the southern edge of the sidewalk to the western edge of the building as it faces Montgomery Lane is approximately three feet.

Q Okay.

MS. ROBESON: Wouldn't that be the northern edge?

THE WITNESS: Northern edge of the building from the southern edge of the sidewalk.

MS. ROBESON: Okay. Oh, oh. On the western side. Okay. I see what you're saying.

THE WITNESS: The building does step back a little bit, not, not at the top but at the foundation level, away from Montgomery as it approaches Woodmont, kind of as a gesture to open up the view towards Woodmont, but relative to what we're really talking about, the location closest to City Homes is only about three feet behind that curb.

BY MS. HARRIS:

Q Behind that sidewalk.

A I'm sorry. Behind the sidewalk. Thank you.

MS. ROBESON: Yeah.

THE WITNESS: There's enough opportunities for confusion. I don't need to --

MS. ROBESON: How side is the sidewalk there? Are you saying it's --

THE WITNESS: It doesn't exist. The sidewalk --

MS. ROBESON: I mean on the plan. I mean on the --

THE WITNESS: It would be -- they're showing a continuation of the six foot brick walk that's in front of the City Homes.

MS. ROBESON: Okay. Okay.

THE WITNESS: If you take that brick walk and extend it, and the nine foot planter area and extend that, you'll end up with that three foot space between the --

MS. ROBESON: Brick sidewalk.

THE WITNESS: -- side of the sidewalk closest to the building and the building.

MS. ROBESON: Okay.

THE WITNESS: So you've got room for some azaleas.

MS. ROBESON: Okay.

THE WITNESS: To put it in perspective, again, the City Homes has some undulations in the front, but that dimension from the City Homes is also about 10 to 12 feet. Again, from that, the sidewalk close, edge of the sidewalk close to the building to the building, it's about 12 feet at, at the easternmost edge and then the building gets a little fatter in the middle and it's about 10 feet there. That's not allowing for the step in front which is almost to store things up. I mean, the buildings have garages in them so these steps are taking them I would assume to a level above the garage. So they're very extensive grand steps. They're not just a couple steps up to a landing. They go up a lot further than the Edgemoor steps for example.

BY MS. HARRIS:

Q And can you explain the distance between the steps

and the sidewalk?

A Well, on the unit that I just marked, which is the easternmost City Homes unit, it's maybe a foot. The steps come right down to the sidewalk in that location. You can see that graphically on this exhibit. The steps just go right to that sidewalk. I'll mark the sidewalk there again. And you still have the nine foot planter. Now, while we're talking about City Homes, that relationship repeats for the next unit to the west. Then the last three, when I say units, sticks of units --

MS. ROBESON: When you say left, that's west.

THE WITNESS: West. That's correct.

MS. ROBESON: Yes.

THE WITNESS: On this exhibit to the left, the, the three westernmost City Homes units have a similar 10 to 12 foot relationship from the main part of the structure to the back of the curb.

BY MS. HARRIS:

Q Excuse me, back of the sidewalk.

A The back of the sidewalk.

MS. ROBESON: 10 feet, correct?

THE WITNESS: Ten to twelve feet.

MS. ROBESON: Okay.

THE WITNESS: The -- at the corners, it's probably 12 because the building sits back a little bit. The middle

part, you can see it more on the unit, the steps --
MS. ROBESON: I -- yes.
THE WITNESS: -- going straight down, bumps out. This stairway, as well as for the other two of the three westernmost, you come up from either side to a landing. The width of that stairway is a little wider than five feet so, so I'll be conservative and call it five feet. So if you've got 10 to 12 feet but you've got 10 feet in the middle where the building projects out, and then you have 5 feet of that space is taken up by the stairs, that then leaves you essentially five feet left for that plant space.
MS. ROBESON: Okay.
THE WITNESS: Okay. And you've got similar relationship to the other City Homes --
MS. ROBESON: Sticks?
THE WITNESS: -- sticks.
MS. ROBESON: Yes.
THE WITNESS: So to recap where we are there again, we've got a six foot brick sidewalk on the south side of Montgomery Lane, then it's separated from the curb by a nine foot planter. From that brick walk, I've marked dimensions to the various buildings. The City Homes are 10 to 12 feet depending on the portion of the building you measure to, and the 4901 Hamden Lane is three feet at the western end of the building.

BY MS. HARRIS:
Q If I may, I want to ask you a couple questions with respect to the buildings that you just identified.
A Okay.
Q You noted that the height was 100 feet, approximately, the higher up here including all the mansard for the highrise Edgemoor, and that building, does that building include any MPDUs?
A I don't believe it does.
Q Okay. And so it's approximately what percentage over the recommended 65 foot guideline in the Sector Plan?
MR. KNOPF: I'm going to inquire now as to whether they are, this is in his area of expertise. We seem to be shifting him to a planner rather than a civil engineer as to what the Sector Plan requires.
MS. ROBESON: You know what? You can simply -- he's already testified to the height and we can read the Master Plan, so I don't think he needs to opine as to that.
THE WITNESS: So you don't want me to answer the question?
MS. ROBESON: You can --
MS. HARRIS: The mathematical question.
MS. ROBESON: The answer is don't answer but, you know, all the evidence is there for you to make that argument.

THE WITNESS: Well, as part of an engineering function when you do a site plan, you are looking at what allowable heights are or what recommended heights are, and what we were referring to here is recommended height of 65 feet. In fact, it's 65 feet for all of the buildings on this exhibit until you get to Edgemoor at Arlington North and Edgemoor at Arlington.
MS. ROBESON: Which is 35.
THE WITNESS: At that point, it's 35.
MS. ROBESON: Yes.
THE WITNESS: So you've got 100 feet versus 65.
MS. ROBESON: Right.
THE WITNESS: Now, the 4825 Montgomery Lane project, also known as Sandy Spring Builders, also shows that continuation with the brick walk with, on this side, the seven foot planter.
BY MS. HARRIS:
Q Can you describe that seven feet just for the record, where you're drawing it, please, in the plan?
A Directly, it's between the sidewalk in front of 4825 Montgomery Lane and the curb.
MS. ROBESON: So on Exhibit 112, it's where the line of trees is showing.
THE WITNESS: Line of four trees, that's correct.
MS. ROBESON: Yes.

THE WITNESS: It would pick up from the western edge of the Edgemoor and continue up to West Lane.
MS. ROBESON: Got it.
THE WITNESS: So their building, again, has some undulations in it but at the closest point here, it is six feet.
MS. ROBESON: And when you say here, it's where --
THE WITNESS: At the midpoint of the --
MS. ROBESON: Building.
THE WITNESS: -- Montgomery Lane facade.
BY MS. HARRIS:
Q And you said that it's six feet. Six feet to what? Can you be clear on that, please?
A Six feet from the northern edge of the sidewalk, closest edge of the sidewalk to the building, to the building.
Q Thank you.
A It's a little bit more on either side but at that pinch point, that's what you would see. The subject property is the next one that you come to and again, when you see that, you saw two, two homes there. That space hasn't been designed finally but you certainly would expect the continuation of the six foot sidewalk, brick sidewalk.
Q Mr. Irish, if you could back for just one moment to 4825, what's the width of that building?

A That building is approximately 46 feet wide, okay, as you face it from Montgomery Lane. It's certainly wider as you look at from West Lane. In fact, if I may, I'll set 113 down and I can add --

MS. ROBESON: That's fine.

THE WITNESS: -- add those dimensions. On the upper right rendering from their development plan package, the right most area is the Montgomery Lane facade. It's really a view looking at, at it from West Lane when you see the four garages. But looking at it from the right would be the view that you would see looking at it were you standing on Montgomery Lane looking at it. So you could see the, the little bump out that's a good portion of the width of the building, that it is really only six feet from the, the sidewalk there.

BY MS. HARRIS:

Q And could you also now, since we've now revealed 106G, could you just, could you just go back to the City Homes actually and just explain the relationship given that that photo does show the stairwell going up to that first end cap unit?

A The photograph in the middle --

Q In the middle.

A -- on the top is a photograph of one of the City Home units, one of the three end ones, the westernmost ones.

It would be -- I can't -- let's see. The driveway is on, on the right so it's either the middle one, probably the middle of the two. In fact, it would have to be with the driveway on the right.

MS. ROBESON: The second to the furthest west.

THE WITNESS: Yes.

MS. ROBESON: Okay.

THE WITNESS: But it, it's a similar relationship for that one and the one to the left of it and the one to the right of it.

MS. ROBESON: Okay.

THE WITNESS: What we're showing here is that stairway that goes up essentially a story. You see the garage on the right. You see the stairs coming up from both sides to a landing and then a doorway in. And I'm guessing there might be a couple steps inside because this doorway looks a little lower than this window but you can also see that there's a doorway into the end of that structure. I don't know whether that goes into the unit or into a storage space. I'm not familiar with the architecture. But the, I do see this major structure projecting out from the building almost a story high with handrails. To the left on the upper side is a view of the Edgemoor without the 4825 building built next to it because that would block a portion of it, but it does show the windows on that western face of

the Edgemoor. It would be looking directly at the 4825 building.

BY MS. HARRIS:

Q And actually, by the way, do you have the dimension between 4825 and the highrise Edgemoor, what that is? What the setback is between those two buildings.

A I do. I --

Q It may be helpful.

A Get my notes here.

Q Oh, okay. It's dimensioned on one of the exhibits that, and that's Exhibit 106 --

MS. ROBESON: Is that B?

BY MS. HARRIS:

Q That's B.

A 106B is --

Q It's right here.

A It's difficult to read the reduction. 106 --

MS. ROBESON: Yes.

THE WITNESS: 106 --

BY MS. HARRIS:

Q I could have given you my glasses.

A 106B has that dimension as 23 feet.

MS. ROBESON: Okay. What dimension is that? I'm sorry.

THE WITNESS: From this, from this little bump out

on the --

MS. ROBESON: I see.

THE WITNESS: -- eastern edge of the 4825 to the Edgemoor is 23 feet.

MS. ROBESON: So that's the space between the two side building facades.

THE WITNESS: Two building sides, correct. So in other words, you've got this whole wall of unit windows.

MS. ROBESON: Right.

THE WITNESS: One, the first story is blocked by a fence I believe but then one, two, three, four, five, six, seven, seven stories above that first story and then two stories above that in the penthouse area. Now, the 4825 Edgemoor is 65 feet to the flat roof plus a four foot parapet. And you talk about the Edgemoor being about 100 feet. The 100 feet would, would, the 100 feet does -- this, this is the point that's, I --

MS. ROBESON: You've marked --

THE WITNESS: -- put a mark at the point about, on the top of one of the peaks of the Edgemoor in that view. That's where you would be about 110 feet, again, from this terrace which how ever many steps up from the roof. So the --

MS. ROBESON: Okay. Hold on. We've marked another exhibit, which is fine, but it's 106G so that's --

THE WITNESS: I described it. My pen hasn't touched it. I don't need another exhibit for that.
MS. ROBESON: Oh, why not?
THE WITNESS: It's one of the peaks on the Edgemoor.
MS. ROBESON: So I'm just going to put 114, marked version of 106G.
MR. KNOPF: 106, which one, D was that?
MS. ROBESON: G.
MR. KNOPF: G.
(Exhibit No. 114 was marked for identification.)
BY MS. HARRIS:
Q And that marked 110 point of the top of the roof?
A Yeah.
Q Okay.
A That would be the 110 feet from basically this level where I'm drawing a horizontal line which is the top of the, roughly the top of the stairs. It may be a little higher than that because of this walk in. See that? But that's essentially where the --
MS. ROBESON: Height is measured.
THE WITNESS: -- measuring point is. That 100 feet would go to about right here where I'm drawing a horizontal line.

MS. ROBESON: So you've drawn -- okay.
THE WITNESS: Near the, near the top.
MS. ROBESON: And you've, on the bottom, you've drawn a black line from the --
THE WITNESS: It's blue.
MS. ROBESON: -- measuring point, a blue line from the measuring point.
THE WITNESS: I actually drew it, there's a wall that sticks out from the steps, and I couldn't see this flat point. It might be a foot below that.
MS. ROBESON: Okay.
THE WITNESS: But it's generally --
MS. ROBESON: Approximately --
THE WITNESS: Approximately, yeah.
MS. ROBESON: -- where the measuring --
MR. KNOPF: Excuse me. I'm sorry because I couldn't see anything. Would you just point, now that you've stepped back a little bit, where you said you drew the 100 foot line?
THE WITNESS: The top of it?
MR. KNOPF: Where you said you drew a 100 foot line someplace. I just couldn't see because -- I still can't see.
THE WITNESS: I'll mark the dimension here.
MS. ROBESON: Yes.

MR. KNOPF: I just can't see anything. I still can't see.
MS. ROBESON: Well, let's do this. He's marked the dimension. Can you angle that a little more toward --
THE WITNESS: Toward the audience?
MS. ROBESON: Yes. Toward the audience. And then if you could stand a little more -- is that -- and then if you could stand, when you're talking about that one, stand to this side. When you're talking about this one, stand to that side.
THE WITNESS: Certainly.
MS. ROBESON: If you could remember all that, that's just so people can see.
MR. KNOPF: Thank you. This is confusing enough even when you can see it.
MS. ROBESON: Yes.
THE WITNESS: I'll do my best.
MS. ROBESON: Thank you.
THE WITNESS: So just a slight recap. The top three buildings are, from right to left, 4825 Montgomery, City Homes and the Edgemoor, that we marked their relationships so the curb and their, the width of also the 4901 Hampden Lane building, on Exhibit 112. I was about to describe the subject property.
MS. ROBESON: Okay.

THE WITNESS: Which is not on Exhibit 114 but is on Exhibit 76.
MS. ROBESON: All right.
THE WITNESS: I also have marked on Exhibit 112 that continues, continuation of the six foot brick sidewalk, it is seven feet back from the curb. And that seven feet being a plant, a tree planter space.
MS. ROBESON: And that's where the three trees in front of the subject property are shown on --
THE WITNESS: The three large, large green trees --
MS. ROBESON: -- 112.
THE WITNESS: -- adjacent to the curb.
MS. ROBESON: Okay.
THE WITNESS: Would you like me to mark the curb line there as well?
MS. ROBESON: No. I think we're okay. I understand that.
THE WITNESS: So the critical dimension that we're talking about here is the dimension from the building to the back of the walk like I measured in other places. This is 12 feet plus, not plus or minus, plus. You know, you got width of curbs and so forth, but we stipulated that it will be 10 feet back from the right-of-way line which is about two feet behind the, the sidewalk. Hence, you have 12 feet

to the sidewalk. So that space, other than the park area, is, as you can see in Exhibit 76, is shown with some benches adjacent to the sidewalk and a great deal of planting behind that. In other words, you've got 12 feet for that.

BY MS. HARRIS:

Q Again, compare that 12 feet to the pinch point on the highrise Edgemoor, please.

A Pinch point, because the building exits there and has this large ADA ramp, a major portion of the frontage essentially comes right, the stair portion comes right to the sidewalk. Between the accessible ramp and the sidewalk is about a four or five foot planted area. On the end, the western end where the building steps back the farthest, you might get to 12 feet for that space but again, just in that area.

Q And what's, not to make you mention something else, but the handicap, what's the width of the handicap ramp? So from that --

A You mean --

Q Correct. So sort of --

A That, I have to scale.

Q Okay.

MS. ROBESON: Okay. I can't see the exhibit. Can you just --

THE WITNESS: 112?

MS. ROBESON: Yes. Can you show where you're talking, where the handicap ramp is?

THE WITNESS: I'll mark it on here.

MS. ROBESON: Thanks.

THE WITNESS: The way that -- if you see that frontage of the building. On the east side, you have steps going up to a landing. To the west of it --

MS. ROBESON: Okay.

THE WITNESS: West of the steps approximately 20 feet, you can enter the accessible ramp and then ramp up as you go to the right to get to that landing.

MS. ROBESON: Okay.

THE WITNESS: And Ms. Harris asked for that dimension which I'll scale to be about 45 feet.

MR. KNOPF: She asked for the width.

MS. ROBESON: I'm sorry?

MR. KNOPF: I thought she asked for the width.

MS. ROBESON: Oh, and what's --

THE WITNESS: She had asked for that with --

MS. HARRIS: I did. What the width --

MS. ROBESON: The length.

MS. HARRIS: Length.

MS. ROBESON: That's fine.

MS. HARRIS: Right.

THE WITNESS: Well, the width is about five feet.

MS. ROBESON: Yes.

MS. HARRIS: I'm sorry.

MS. ROBESON: No. It's --

MS. HARRIS: Thank you for the correction. Length. My engineer knew what I was saying.

THE WITNESS: Well, as you can see, you're 10 feet back from its closest point and the ramp takes up about half of that space.

BY MS. HARRIS:

Q Just compare the length of that to the frontage of Montgomery which nobody ever picked up on before.

MS. ROBESON: 4825 Montgomery.

THE WITNESS: 4825 Montgomery is 46 feet wide as, as I scaled it off the plan, and this scales 45 feet, so basically the same. That portion of the 172 foot frontage of the Edgemoor. I just marked 78 feet on the frontage of the subject property from the edge of the scallop to the western edge of the building. To again put it in perspective, it's larger than the 4825 and less than half of the width of the Edgemoor. The steps, you see there's multiple steps coming up to the landing in, in the, what we professionally call the pocket park.

MS. ROBESON: Right.

THE WITNESS: And we've had many discussions about the area of that which I could clarify if you'd like, but

it's better seen in the rendering.

MS. ROBESON: On 76?

THE WITNESS: 76. Unlike the rendering of City Homes on 114 where it comes up almost a story, you see the steps here are fairly gradual. It actually enters a grade pretty much on the West Lane side, comes up a couple feet on the Montgomery Lane side. The steps are also designed on the western edge. You see they're double height so they're more designed as seating elements than steps. So it's actually part of the park area, the park as a central feature and planting. Again, it's not a final design but it's our illustration of what it could look like.

So unlike any of the other projects, we, we've got more space. Well, at absolute best, you might get 12 feet in front of a portion of the Edgemoor. We're at least 12. I believe it's maybe 12 and a half so, in front of our whole frontage there, plus the pocket park which at its greatest stepback, is 28 feet further. On the rendering where the gray meets the brick on the left side is where it starts to curve back and then where the gray meets, or I guess probably right, pretty much right behind this tree by the, the Audi convertible is, in the rendering is -- I'm sorry. I misspoke. I think the two windows to the right of the brick into the gray is really where --

MS. ROBESON: On the Montgomery Lane frontage.

THE WITNESS: On the Montgomery Lane frontage is where the curb starts to go, and then the curb stops about, looks like it's between the light post and the tree. Little closer to the light post.
MS. ROBESON: Near the convertible on 76.
THE WITNESS: So that area, obviously, this is --
MS. ROBESON: On the West Lane side.
THE WITNESS: On the West Lane side.
MS. ROBESON: Yes.
THE WITNESS: This, this drawing -- I'm sorry. I was instructed to do it this way. This drawing is two-dimensional. It makes it harder to see, but I believe the architect started to change material before the scallop to accentuate the setback of the scallop and minimize the frontage. Then the scallop starts and works through in the area where I'm moving my pen, the center part of it, major center part of that gray area.
MS. ROBESON: Okay. And can you --
THE WITNESS: And you can see --
MS. ROBESON: -- point out, I don't think they can see the light pole in the tree on West Lane. They couldn't see.
THE WITNESS: Here's the tree. Here's the light pole. I'm drawing my line now closer to the light pole vertically on this --

MS. ROBESON: On West Lane.
THE WITNESS: -- exhibit about a half inch to the right of the light pole. That's about where the scallop would stop on the east side.
BY MS. HARRIS:
Q And you identified like the height along that 78 foot frontage just so they can be consistent in your presentation of all the buildings?
A Well, as testimony has shown before, that, that building steps back on that frontage 12 feet so the building height along there is 50 feet and it would be five stories. 4825 Montgomery Lane is 65 feet. It also reaches five stories as you can see in Exhibit 114. So comparably, looking at it, similar height buildings, 4825 is actually higher but visually, five stories. Ours is in color, theirs is black and white so I think ours looks better.
Q Could you also, on the pocket park, identify the distance from the back of the scallop to the edge of the sidewalk? To the edge of the --
MS. ROBESON: When you say back of, can you --
MS. HARRIS: Describe that?
MS. ROBESON: Yes. I don't know where the back of the --
BY MS. HARRIS:
Q One inch to the right of the light pole --

A You're talking this?
Q Yes. To the edge of --
MS. ROBESON: The scallop that's beginning on the West Lane frontage. Is that where you're talking about?
MS. HARRIS: No. The scallop that -- yes, I'm sorry. The scallop that begins on the West Lane frontage to the back of the sidewalk, what is that dimension?
MS. ROBESON: The back of the sidewalk on Montgomery Lane.
MS. HARRIS: Yes. Thank you.
THE WITNESS: Well, to --
MR. KNOPF: Could I get a clarification? We used the term, you used the term and Ms. Harris used the term one inch or an inch. We were referring to, I presume, the rendering --
THE WITNESS: One inch on the exhibit.
MR. KNOPF: -- in the scale, not actually one inch of the, of area. Okay. Let the record reflect that. I think it got a little confusing. Thank you.
THE WITNESS: It's difficult to visualize that dimension for, for several reasons. You can, as you can see in Exhibit, I'm sorry, 76 --
MS. ROBESON: That's all right.
THE WITNESS: -- the bricks, all the dimensions I've given have been from the edge of the brick sidewalk

away from the curb.
MS. ROBESON: Closest to the curb.
THE WITNESS: No. Away from the curb. Furthest away from the curb.
MS. ROBESON: Yes. Yes. Okay.
THE WITNESS: So again, seven foot plant area which is wider than --
MS. ROBESON: Yes.
THE WITNESS: -- which is wider than Bethesda streetscape would recommend. Six foot brick sidewalk.
MS. ROBESON: Right.
THE WITNESS: In this case, 12 feet plus of landscape area.
MS. ROBESON: Yes.
THE WITNESS: Now, when you get to where Ms. Harris wanted me to make that dimension, make that measurement, it's easy to do mathematically because I know all the measurements, but you see the brick sidewalk goes all the way up to the steps so the brick walk is actually wider there.
MS. ROBESON: Okay.
THE WITNESS: Now, if you were to measure from that same point on the sidewalk, in other words, extend that, in this case, northern edge of the sidewalk across --
MS. ROBESON: Okay.

THE WITNESS: -- to measure from there to be consistent with the other dimensions, if you recall, we're 12 feet plus back to the building --
MS. ROBESON: Right.
THE WITNESS: -- and the scallop is 28 feet, so if I can add properly in my head, that's 40 feet.
MS. ROBESON: Right. Okay. I understand.
MR. ABRAMS: Did you get the dimensions from the sidewalk, the back edge of the sidewalk to the building? Have you gone into that yet?
THE WITNESS: Which building?
MR. ABRAMS: Your building.
THE WITNESS: I've mentioned it about three times.
MR. ABRAMS: Okay. What is it?
THE WITNESS: Twelve feet plus.
MS. ROBESON: Wait, wait.
THE WITNESS: Twelve feet plus.
MS. ROBESON: No commentary. If you can just --
MR. ABRAMS: There's so many figures going --
THE WITNESS: He asked if I mentioned it.
MR. ABRAMS: Twelve feet from the back edge of the sidewalk.
THE WITNESS: Twelve feet from the northern edge of the sidewalk --
MR. ABRAMS: To the --

THE WITNESS: -- to the --
MR. ABRAMS: -- base of the building.
THE WITNESS: -- base, the closest edge of the building.
MR. ABRAMS: Okay. No, I just --
THE WITNESS: Could be 12-and-a-half. It's at least 12.
MR. ABRAMS: We'll give six inches.
THE WITNESS: Okay. I rounded down for our project, rounded it up for the others. Okay?
BY MS. HARRIS:
Q Actually, I'd like to just, given that commentary, please explain that last comment.
A We could be, if we were 12-and-a-half feet, I'd round down to 12.
Q To be conservative in other words?
A To be conservative. If any of the other projects were 11-and-a-half feet, I might say 12.
MS. ROBESON: I, I got that. You were being conservative in your testimony.
THE WITNESS: Okay.
MS. ROBESON: In your measurements.
THE WITNESS: And we're dealing with feet so you've got 12 inches of variation. I haven't discussed it in fractions of a foot primarily because there's a lot of

undulations in the face of the building. And we could do a very detailed survey and give you precise measurements but visually, this is what you're going to see and, or --
MS. ROBESON: Minus the convertible.
THE WITNESS: Well --
MS. ROBESON: Well, maybe not. We don't know.
THE WITNESS: I'm sure one of the tenants will probably have one of those.
MR. KNOPF: A more expensive one.
THE WITNESS: Simply put, this 12 plus foot planting area in front of the subject property is large, basically larger than all the others. Portions in front of the Edgemoor might approach that dimension. City Home would approach it but uses a lot of that space for stairways and frankly, planters you might read more as private as they're right off of that stairway.
BY MS. HARRIS:
Q You've designed a number of, you've been a civil engineer on a number of projects and I assume you get to see the finished product.
A I do.
Q Which is, must be satisfying. Can you explain, because you suggest, you indicated that the six foot sidewalk actually, at the corner, will read much wider than six feet.

A Well, it will be wider.
Q And can you explain once that's a finished product, how that will, in your opinion, how that will feel or how that will read?
A Well, in this case, it's, you're walking into the park. See if I have those dimensions handy. While we're talking about the park, I thought it would be a good opportunity to clarify some of the measurements because Mr. Abrams seemed to be confused where some of that square footage went and I can, and we referred to this space as 615 feet or 600 and some feet or 1,000 feet, so I've taken, taken several area measurements just to give you a feel for it. The one that's very easy to calculate is the area of the scallop that came out of the building, the 28 foot radius at 615 square feet.
MS. ROBESON: From, is that from the 12 feet off the building face? Where do you begin that measurement?
THE WITNESS: The 615 feet would be if you extended the --
MS. ROBESON: Facade.
THE WITNESS: -- southern face of the building and the eastern face.
MS. ROBESON: Okay.
THE WITNESS: That 28 foot quarter of a circle --
MS. ROBESON: Okay.

THE WITNESS: -- is 615 feet. If you then take the space from there out to the ultimate property line, right-of-way line which would be set back behind the sidewalk, it's an additional 393 square feet.
MR. KNOPF: Excuse me. When you said there, where is there? Where -- there is where?
THE WITNESS: What I just described verbally, between the 28 foot quarter of a circle portion of the park out to the ultimate right-of-way line which on Exhibit 112, basically, you could see a fine line here that's long with two shorts.
MS. ROBESON: Why don't you mark that on Exhibit 112 so we can see?
MS. HARRIS: Or we have another exhibit where we could do it on this which is a blow-up of just that area. Would that be easier or do you want it on this one?
MS. ROBESON: I would prefer it on this one --
MS. HARRIS: All on this one.
MS. ROBESON: -- so I have it all on one drawing.
MS. HARRIS: Okay.
MS. ROBESON: Because it is a lot of dimensions.
THE WITNESS: I just marked a line coming east along Montgomery Lane curving to the north and a little bit up West Lane.
MS. ROBESON: And is that the right-of-way line

that you've marked?
THE WITNESS: That's approximately where the right, the ultimate right-of-way line would be located for this project after one foot is dedicated on Montgomery and two-and-a-half feet are dedicated on West Lane.
MS. ROBESON: Okay. So it's net of dedication.
THE WITNESS: Yes.
MS. ROBESON: Okay.
THE WITNESS: So if you project the scallop straight out on either end to that line, you have the 615.74 square feet that we started with and you add 393.24 to it to get to the right-of-way line. So on private property, round numbers, it's a little over 1,000 square feet.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Can you just note those square footages on that plan, please?
A I can. For what?
Q The square footages for the area --
MS. ROBESON: Extending the edge of the scallop to the net --
THE WITNESS: It might be easier to use this.
MS. ROBESON: -- right --
MS. HARRIS: Actually --
THE WITNESS: I have my, I have my worksheet if

you want to exhibit, enter that in.
MS. ROBESON: Well, they haven't had a chance to review that exhibit.
THE WITNESS: I'd be happy to mark it on there.
MS. ROBESON: Yes. I'd rather you just --
THE WITNESS: I can use a different -- how about I use a red marker so that it stands out from the --
MS. ROBESON: That's fine.
THE WITNESS: But before I do that, let me give you one more area and then --
MS. ROBESON: No. Do that first because we're all with you.
THE WITNESS: It's in the same area though. I want to see which ones you want me to mark on because I have three.
MS. ROBESON: Okay. All right.
THE WITNESS: Actually, I have four. We took, initially, we took 615 feet of the scallop, then extend that out to the right-of-way, you get another 393 square feet. If you take that line and extend it straight out to the curb line, you get another 1171.95 square feet so.
MS. ROBESON: In addition to --
THE WITNESS: In addition to the roughly 1,000 square feet in, on the property. If you were then to add these seating, the seating area in front of the building to

the west of the scallop out to the curb, you pick up another 398 square feet. So I mention all this so that you get a sense that this is not a small area. On the -- visually looking at Exhibit 76, you can't see where the property line is. You're going to see the curb line and the building.
MS. ROBESON: Right.
THE WITNESS: And from the curb line to the building, you've got 22, I'm adding quickly in my head, about 2200 square feet not even counting the seating area to the west of the scallop.
MS. ROBESON: So do me a favor and have you marked, could you mark the square footage of -- let's see. You've got four measurements. You did one that's 615 feet which was from the building face, correct?
THE WITNESS: Correct.
MS. ROBESON: Can you mark that in some color roughly?
THE WITNESS: Sure.
MS. ROBESON: And write 615.
THE WITNESS: I'll use red and draw a line to show that area, quarter of a triangle.
MS. ROBESON: Yes. And can you do the --
THE WITNESS: Thank you. That's correct.
MS. ROBESON: And would you mind making this, the second one was to the 12, what was the second one, to the

right-of-way?
THE WITNESS: To the right, to the right-of-way line, the blue line.
MS. ROBESON: Okay. Would you mind marking that? You have a green there
THE WITNESS: I do.
MS. HARRIS: To the property line.
MS. ROBESON: Would you mind marking --
MS. HARRIS: Right-of-way line.
THE WITNESS: To the ultimate right-of-way line.
MS. ROBESON: Right. And can you write that square footage in green on there, on 112?
THE WITNESS: Again, I'm rounding down to be conservative. That is -- and then would you like me to mark that to the curb, what you'd really see?
MS. ROBESON: That, I can understand from the graph. I'm thinking of trying to explain this to the Council. That's what I'm getting at. So I think -- why don't you mark to the curb line.
THE WITNESS: Sure.
MS. ROBESON: Just, if you don't mind leaving out the steps for -- I understand your point about the steps but I'd rather stick with apples and apples so.
THE WITNESS: Sure. Not a problem.
MR. KNOPF: It's much, much easier when you can

see it. It's still not too easy.
MS. ROBESON: Can we angle it differently do you think?
MR. KNOPF: It's -- no.
MS. ROBESON: Or is it just distance?
MR. KNOPF: Well, it's --
THE WITNESS: It's me standing in front of it making it, measuring it.
MR. KNOPF: It's --
MS. HARRIS: Norman, you could always move your chair over there. It might be helpful.
MR. KNOPF: It's the distance plus his back, but that's all right. I can see once I --
MS. ROBESON: You can?
MR. KNOPF: I appreciate your spelling it out on the record with colors. That's my kind of demarcation.
THE WITNESS: Since I'm not as good in my head as I am with my calculator --
MS. ROBESON: That's fine.
THE WITNESS: -- I added those three numbers. I get 2,179 square feet which I've used red, green and blue for area.
MS. ROBESON: Right.
THE WITNESS: Red green and black, so I will --
MR. KNOPF: Which is the black?

THE WITNESS: -- call it total.
MR. KNOPF: I'm sorry.
MS. ROBESON: The black is to the net, the curb, is that -- what's the black?
THE WITNESS: I'll summarize in just a second.
MR. KNOPF: Thank you. Glad it's just not me.
THE WITNESS: Okay. Now that they're all on there, it's easier to refer to --
MS. ROBESON: Okay.
MR. KNOPF: Good.
THE WITNESS: Starting with the scallop of the building, 615 square feet.
MS. ROBESON: The red.
THE WITNESS: That's shown in red.
MS. ROBESON: Right.
THE WITNESS: Between that and the right-of-way line after dedication shown in green, it's an additional 393 square feet.
MS. ROBESON: Okay.
THE WITNESS: Between that and the curb line --
MS. ROBESON: Okay.
THE WITNESS: -- which is public space but as you can see in rendering 76, it's part of the park, there's an additional 1171 square feet noted in black. Within the building itself, I marked total 2,179 square feet for the

sum of the red, the green and the black from curb to the scallop of the building.
MS. ROBESON: Okay. Thank you.
THE WITNESS: So we're clear on the size of the park.
MS. ROBESON: Thank you.
THE WITNESS: The other two buildings on Exhibit 112, I have not yet addressed their relationships. If you'd like me --
MS. ROBESON: The two closest to Arlington.
THE WITNESS: Edgemoor at Arlington North and Edgemoor at Arlington.
MS. ROBESON: Yes.
THE WITNESS: I'd be happy to write those on, on as well. The Edgemoor at Arlington at the south, southeast corner of the intersection is a building that exists. I'm sure you saw it. It's a building that has a three-story front on both streets. Just very quickly, I think about 10 feet back, steps up to 4 feet. And in that 10 feet step back I believe is a trellis or pergola or a patio area on the roof. The -- here's where the sidewalk gets a little different or difficult to measure, same way, addressing what Ms. Harris asked about measure from the sidewalk to the back of the scallop because in front of the Edgemoor at Arlington, it's basically all hardscape.

MS. ROBESON: I see.
THE WITNESS: I just marked ELEC on an area. That is actually an underground electric transformer that sticks up. It's not one that you can walk over easily. It doesn't -- you could walk on it but you'd be stepping up, from memory, more than a foot at the eastern corner I believe.
MS. ROBESON: Okay.
THE WITNESS: You may, you may recall seeing it. The width of this building, I believe there is a cut-out here. This is, might be showing the building above or something but this dimension is 46 feet, and I've marked in blue on here.
MS. ROBESON: The width along Montgomery Lane.
THE WITNESS: Correct. The continuation of that six foot brick sidewalk basically goes to where I just drew the arrow on this little stem walk that sticks to the east off of their main steps along Montgomery. That's roughly that continuation of the southern side of that brick walk. From there --
MS. ROBESON: The brick walk?
THE WITNESS: This brick, brick sidewalk.
MS. ROBESON: I couldn't understand if you said wall or walk. Okay, walk. So it's a continuation of the --
THE WITNESS: From there to the building face is, is 11 feet.

MS. ROBESON: Okay.
THE WITNESS: And you still have roughly nine feet of planter area here.
MS. ROBESON: Which is where the three trees are shown on the southern side of Montgomery Lane.
THE WITNESS: This -- I don't -- this rendering shows the sidewalk stepping, becoming wider to the north just to the west of the westernmost City Home so the walk would be wider. That would make this plantar area narrower. I don't recall that measurement there but I, the 11 foot is consistent in measuring from the southern edge of that continuous six foot walk. If you give me a moment, I can check my notes. The planter area nixed down to seven feet. If you recall on the, you've got continued six foot brick sidewalk and east of there, a nine foot tree space.
In front of Edgemoor North, that tree space nixed down to seven but the sidewalk is, goes from there all the way to the building. So if we're trying to measure from a continuous line so that we're showed comparable measurements, this western edge of Montgomery Avenue facing the building is 11 feet back from that, that line. Again, the largest one being 12 feet plus. Maybe it's only half a foot larger but it's at least larger than everything else. The others step in towards, could be as close as three feet.
The last one is Edgemoor at Arlington North.

That's 65 feet wide and it's 11 feet also back from that side of the walk. So 11, as you go left, west to east on the north side, you've got 11, 12, 6, 12, 10, almost a foot. On the south side, we still have a 3, 10 to 12 and then back to 11.
BY MS. HARRIS:
Q Mr. Irish, you didn't identify, although you did on the other projects, the heights of the Arlington, Edgemoor at Arlington an Edgemoor at Arlington North.
A Edgemoor at Arlington North steps from 35 feet on the Arlington Road side to 48 feet. Similarly, the Edgemoor at Arlington steps at 33 feet to 46 feet.
MR. KNOPF: I'm sorry. We now have two Edgemoors at Arlington. I think we need to distinguish.
MS. ROBESON: Oh.
THE WITNESS: Edgemoor at Arlington North, 35 to 48. Edgemoor at Arlington --
MS. ROBESON: Thank you.
THE WITNESS: -- 33 to 46. Basically the same. Visually the same.
BY MS. HARRIS:
Q You identified, you noted that the subject property enjoys a setback of 12 feet plus from the back of curb compared to the other properties.
A From the back of sidewalk.

Q Back of sidewalk. I, I -- anyway --
A You're giving me less and less setback.
Q Can you explain the relationship of that building as well as the other ones on the north side of the street to the, that are across the street from the City Homes and the relative distances between, the distances from the City Homes to the subject, City Homes to 4825 and City Homes to highrise Edgemoor?
MS. ROBESON: Excuse me.
MR. KNOPF: Excuse me. Didn't we have some --
MS. ROBESON: Say that again. I'm sorry. You want him to compare --
MS. HARRIS: I'm asking the distance between the northern face of the City Homes buildings to the buildings immediately across the street from the City Homes.
MS. ROBESON: Okay.
MR. KNOPF: Excuse me, but I thought we already had this testimony unless this is going to differ from what Mr. Lanford testified to. He gave us all those dimensions.
MS. HARRIS: Well, I thought it was a little bit confusing just because he noted that our, that the subject building was set back a little further, so I just want to make sure I'm clear on how it relates to the distance of the subject from the City Homes as compared to the other, 4825 and the highrise Edgemoor.

MS. ROBESON: I'm going to let it in because there was some inconsistencies in both Land Fair and I think I wasn't sure -- well, go ahead.

THE WITNESS: The, from the subject, the face of the subject building, subject project, the Montgomery Avenue face, the furthest, the closest to the road, closest to City Homes, from there to the main portion of the building, not the step --

MS. ROBESON: Of the City Homes.

THE WITNESS: -- or the steps of the City Homes is about 73 feet.

BY MS. HARRIS:

Q Okay. Now, and you're also aware that there's a step back on the upper floors of 12 feet, correct?

A On the subject property.

Q So what would the distance be from the step back?

A 73 plus 12, so it would be 85.

Q Okay. And then the distance between the City Homes and 4825?

A Well, that would be six feet less, so 73 minus 6 would be 67 feet.

Q Okay. And then the highrise Edgemoor. And their, since the handicap ramp takes up approximately a third, if you could measure from both there and the face of the building, that would be helpful.

A Well, it varies from maybe at the corner, 73 to 71 or up to 10 feet, and then take say 5 feet off for the ramp, so 6, 6, I want to say 71 minus 5, so 67.

MS. ROBESON: No. 66.

THE WITNESS: I'm getting confused.

BY MS. HARRIS:

Q Thank you.

A I'm getting confused with inches and feet. 66 feet to the, that would be to where you're holding the pen now which is the portion of the handicap ramp closest to Montgomery Lane. Probably a little less than that. We allow for the thickness of the wall and so forth, so it's, it's certainly closer than -- the dimension I've given you on the subject property is the closest point. Everything would be behind that.

Q So in conclusion, which building sits the furthest away from the City Homes?

A The subject applications building does.

Q And then one other -- well, let me just ask. Do you have any other general comments or, that you want to make with respect to the dimensions that you've just reviewed?

A No. I, I believe we've covered it. I hope it's clear.

MS. ROBESON: I --

THE WITNESS: It might make sense if you have questions now to ask before we go into other --

MS. ROBESON: I don't have a question on the dimension but, on the dimensions but I did have a question. Mr. Abrams accurately pointed out that the tabulations for, didn't match up as far as building area, footprint and --

MS. HARRIS: That's --

MS. ROBESON: Are you getting, are you going to address that?

MS. HARRIS: We're very close to getting to that question.

MS. ROBESON: Okay. Then I won't --

MS. HARRIS: You're pressuring -- no. We have a couple questions and then we are going to clarify that. Thank you.

BY MS. HARRIS:

Q One question I had, because there's been a lot of discussion about height versus differing elevations, based on your vast experience as a civil engineer in Montgomery County, can you explain the county's approach with respect to height and elevation and how they handle that?

MS. ROBESON: What do you mean how they handle it?

BY MS. HARRIS:

Q And whether there's any distinct, the -- as we can see throughout the Sector Plan, for instance on page 39,

they identify and recommend a given zone for a certain height. The Zoning Ordinance itself ties certain zones to certain heights. Does the, and the Council, in making those determinations of recommendations or requirements for heights, do they take into account elevations?

A No. They do not take into account ground elevations. The Zoning Ordinance limits height in either it doesn't have a limit or it has a limit to maximum height, and height is defined in the Zoning Ordinance as the measurement from a measuring point to a certain point on the roof depending on the type of the roof. It doesn't matter whether it's on the ground at elevation 100 or 200 or 102. It doesn't really -- that's not factored into the Zoning Ordinance. It doesn't feel that that needs to be factored in.

Similarly, the, I'm not aware of any Sector Plan that, that says that you, building can't exceed elevation X. The page 39 of the Sector Plan for Bethesda, I've seen so many times it's torn out of all the copies by the way, shows recommended height limits. Height, not elevation. So in this case, it's referring to 65 feet for this property and 35 for the adjoining property as a recommended height, and that's again from where you would measure it from, not a dimension from some point on -- I mean, it could be a point on the ground but the point is, if you're comparing two

buildings in that 65 foot zone, they're each measured on their own. They're not, if one of them happens to have a ground elevation five feet higher, that doesn't mean it could only go to 60 feet.

MS. ROBESON: Well, wouldn't height or elevation go to compatibility?

THE WITNESS: I don't think so. I mean, I think the Council, if they felt elevation was important, they would have limited it that way. And as you walk down the, as you walk down the street, your eyes are either lowering or raising as the ground elevation would do the same. The changes aren't dramatic in the sense there's not a cliff or anything like that. I've never seen it determined that way or limited that way. I don't think it, personally, I don't think it makes sense. The measuring point is fairly clearly defined and so you measure it that way.

BY MS. HARRIS:

Q So in your opinion, it would be highly unusual to take, to measure, to determine a maximum height based solely, based on the elevation of the ground.

A Yes. I've never seen it done that way in Montgomery County.

Q You spoke about the relationship of the subject to the properties across the street, the City Homes, and noted that there's a 73 foot distance, at a minimum, between those

two buildings. Can you just briefly touch on the relationship between the City Homes and the subject building with respect to the impact from, in terms of light and air?

A Sure.

MR. KNOPF: Excuse me again. I'm going -- it sounds to me like we have land planning testimony here.

MS. HARRIS: I think the civil engineer is --

MS. ROBESON: What --

MS. HARRIS: It's within his realm.

MS. ROBESON: You're asking on the impact. Didn't we already have testimony from the architect on light and, shadow?

MS. HARRIS: Who noted that the, that the subject property wouldn't be casting any --

MS. ROBESON: So do you, does --

MS. HARRIS: -- shadows on the City Homes.

MS. ROBESON: Do you have anything to add to that?

THE WITNESS: I do.

MS. ROBESON: And what, do you want to proffer what it --

THE WITNESS: I'd like to describe the, what I believe the view of this project would be from City Homes that are directly across the street.

MS. HARRIS: There was additional testimony after the land, the architect testified to the, to just -- all he

was noting was the fact that given the southern orientation of the sun, that there will be no impacts in terms of --

MS. ROBESON: Right.

MS. HARRIS: -- sun, but my question had more to do with light and air and that discussion came up yesterday after the landscape architect had testified. So it's not new -- it is new testimony. It is not rehashing old testimony.

MS. ROBESON: Well, I guess I don't typically get this from the civil. Now, you do have rebuttal. Remember.

MS. HARRIS: Right. I recognize that.

MS. ROBESON: So to the extent we can avoid, you know, we've had a couple of, two land planners, plus the architect, plus the, the witness from the Coalition for Smarter Growth all testifying on Master Plan compliance so --

MS. HARRIS: It's not Master Plan compliance and typically --

MS. ROBESON: No. I'm just saying.

MS. HARRIS: -- it's sight lines and frankly, of all of our experts, the only expert we have on our team to ever address an issue such as sight lines would be the civil engineer. We have no other expert for that.

MS. ROBESON: If you want to limit it to sight lines, that's fine.

THE WITNESS: Okay.

MS. HARRIS: It actually may be helpful to refer to an exhibit that shows -- that would be a good one to refer to, 106B.

MS. ROBESON: So we're looking at 106B?

MS. HARRIS: Yes.

MS. ROBESON: Or 108? 106B.

THE WITNESS: 106B. And primarily, the address in the western three sticks of City Homes townhomes because the two east of there primarily would have the bulk of their view blocked by the 4825. I mean, there could be some views from maybe the first unit that also looks directly to Montgomery Lane at their back area which is, I'm sure you know, it's a very short balcony. It's only big enough for a grill and a person to stand there. But from there, from that location, you could look at, at the subject property and be looking right at the park.

The two sticks directly across from the subject property are connected by alleyway that goes from building to building with six garage entrances on either side. The only one that has -- I believe this first unit that also looks directly to Montgomery Lane has a, I believe a short bay. If I could check my notes. Yeah. There are windows on either side of these first two sticks that face each other and so you could look out of those windows directly at

the building across the street but you certainly would be having to crane your neck quite a bit and have very limited views looking to the north. If you are able to though, you'd be looking basically at the eastern half of the building including the scallop and the park.

If you are looking out of the one end unit that looks that way, looks to the north, those windows would look directly at the building but they're 73 feet away, similar relationship to what you have at City Homes to Edgemoor but those buildings are closer together and I believe designed at the same time by the same developer. So they, the Council felt it was appropriate in approving the development plan and the applicant, or the developer certainly did, and we're set back further than that.

If you look out of the western edge of the westernmost stick, you really can't see our building. You look at the sight line. The western edge pretty much lines up with our western edge so you're, you basically will be looking at the view between the building which is basically the Edgemoor at Arlington North, their property, which the District Council also has already approved.

So they must have felt that the view from this City Home unit, the one in the west, westernmost stick looking to the north, it would be, would look out to the left but Edgemoor at Arlington North must have thought that

was appropriate and it too is closer to the road than in our building, or closer to City Homes. I guess it might be a little bit further if you measure on the angle but in terms of spatial relationship to the sidewalk and greenspace, it's a little bit closer.

The end unit on the second stick from the west looks directly on our park. You could look to the angle and see part of the, look to your left probably, you know, varying degrees but you'd have to look to the left to see the front face of the building. You're basically looking straight out on the park area which I think it shows a pretty nice, intended to be a very nicely designed space.

BY MS. HARRIS:

Q Can you --

A Sorry.

Q Go ahead and then I'll -- continue.

A Similarly, the front of the units in the third stick from the west that front on the mews have windows that look straight out across at each other. Again, the windows from that stick, if you look out, you're basically looking, looking directly at our park again. So their mews, if you extend that across, it's pretty, it kind of aligns with the curb of West Lane but, you know, in general, if you widen it out a little bit, you're widening out to our park area. So the portion of our building that is closest to the road

really doesn't engage that, that space like the 4825 Montgomery Lane would directly across the street and half the distance back from the curb than we are which was I believe the most recently approved plan.

Q I wanted to -- that's very helpful. I think one other relationship may be helpful, which is the most eastern stick of the City Homes, as it relates to the 4901 and primarily, because there, you could be looking directly out of the windows. And what's the distance between those two buildings.

A Exhibit 106B shows 25 feet from the City Homes to the curb line of their driveway and an additional 23 feet to the 4901 Hampden project, so that would be 48 feet. So looking directly out, 48 feet away is a 71 foot I believe, or 70 foot 10 inches tall building, whereas looking out of the front of just two units as opposed to all six here, looking out of the front there, we're 73 feet away instead of 48. I really believe that this relationship not only is it a little bit larger than the largest anywhere else on the street, it also makes that, it goes to that consistent street edge that the Sector Plan referred to.

Q Thank you. Moving onto the public use space issue and to clarify the square footage, another topic on which there was some confusion, Mr. Abrams was very concerned about the several hundred feet of public use space and where

it went. Can you please explain that?

A I'd be happy to. I'm all about enlightenment.

Q Do we have an exhibit that may be helpful?

A We do. I want to make sure I'm on the same page here.

Q I think it was 85 that we're looking for, is that right?

A 85.

Q Yes, okay.

A If we --

Q Now, first -- go ahead.

A If we could, I'd like to mark on this to correct some inaccuracies on the plan, so do we need to enter it as an exhibit? It won't be --

MS. ROBESON: You mean on the development plan?

THE WITNESS: No. On Exhibit 85, which is a comparison from the Holiday public use space to the originally submitted SJG plan to the current SJG plan.

MS. ROBESON: But does this involve a change to the, what's on the development plan?

THE WITNESS: No.

MS. HARRIS: No. It's just that this, this exhibit we realized, in the course of the hearing, notes inaccurate square footages. The development plan is correct but in order to avoid future confusion, I think it would be

helpful just to clarify what the square footages are.
MR. ABRAMS: We would certainly object to changing exhibits at this point in time. We've had no opportunity to see what the changes are, what affects there are. I mean, we've been in this thing for six weeks now, or six hearings and we haven't received a proffer from the applicant that this exhibit is in error and we'd like to change it. I mean, now to come to a, to a public hearing and try to do this. It certainly puts us at a disadvantage.
MS. HARRIS: It is not a change to the development plan. All the figures, facts and figures on the development plan are --
MS. ROBESON: Well, I guess that's not the point because they haven't had the opportunity to review, I mean, one of the issues in this case is the correct, you know, is the green area and the open space, and they haven't had an opportunity, so what I'm going to do is this. I'm going to let him mark it up but I'm not, I'm going to reserve cross-examination for the 29th so they have, on that issue only.
MS. HARRIS: That is fine, and I am sure once they hear Mr. Irish, they will realize that there's not a lot of --
MS. ROBESON: Well --
MS. HARRIS: -- issue related to the change.
MS. ROBESON: Whatever --

MS. HARRIS: That's fine. Whatever they would like.
MR. ABRAMS: I guess there's going to be another exhibit number?
MS. ROBESON: Yes. And you would provide them --
MS. HARRIS: A corrected exhibit?
MS. ROBESON: Yes. Except we can't let it out.
THE WITNESS: I didn't do this exhibit, but we can certainly get together with the author of it and make the corrections. Us, as surveyors for the project, are more capable in precisely measuring areas. This I think was simply a mistake where they copied one image and forgot to change the numbers.
MS. ROBESON: Well, that's a big mistake.
THE WITNESS: Yes.
MS. ROBESON: Because that's a critical issue here and as I said, the point of this proceeding like we have is that they, that everyone has the opportunity to really examine the project.
MS. HARRIS: We would be more than happy to provide the opposing counsel with a revised exhibit.
MS. ROBESON: And when do you think you could do that?
THE WITNESS: I could have it done tomorrow so by Friday, we could send out a revised exhibit.

MS. ROBESON: Okay. And then our next hearing --
MS. HARRIS: Is the 29th.
MR. ABRAMS: The next hearing is this, this Friday.
MS. HARRIS: After this Friday.
MS. ROBESON: The next hearing is Friday so if we reserve cross-examination until the 29th, then you'll have about a week.
MS. HARRIS: To reserve cross-examination with respect to this exhibit.
MS. ROBESON: This, yes. So --
MR. ABRAMS: Is this to be a new exhibit number?
MS. ROBESON: Well, yes.
THE WITNESS: I'm not here on the 29th.
MS. HARRIS: Would it, and would it -- may we, may I confer with Mr. Irish just logistically for one moment?
MS. ROBESON: Why don't we take a five, ten minute break?
(Whereupon, at 11:11 a.m., a brief recess was taken.)
MS. ROBESON: Have you, are we able to do the 29th as a reserve date for cross-examination?
MS. HARRIS: Actually, we didn't discuss that. In fact, we noted, what we discussed is the fact that we will not rely upon that exhibit 85 for the next portion of the

testimony, and we would just note for the record that 85 should not be relied upon with respect to the numbers that are on that plan. Does that solve the problem?
MS. ROBESON: I guess the thing is it would have been nice to have the right numbers from the beginning but I can't say that I can, you know, deny testimony on it because it is a, you know, requirement of the zone, so I will let you, let Mr. Irish testify as to the correct amount of open space or green area. I can't remember the requirement off the top of my head.
MS. HARRIS: Okay. And before we do that, I just want to go back to the last exhibit for one last question. My apologies. I overlooked a question that I thought was important.
BY MS. HARRIS:
Q Which was can you please dimension, identify the distance and then dimension it on Exhibit 112 between the face, northern faces of the City Homes and the northern portion of the scallop?
A Yes. I'll add two dimensions. We've talked about the dimension from the face of the building across Montgomery Lane to be 73 feet. The scallop is an additional 28 feet. So I'm noting in blue the dimension to the main portion of the City Homes as 101 feet.
Q Thank you.

A So it's 101 to the back of the scallop, 73 to the front of the scallop.
Q Thank you. That's very helpful. Now, back to the question about the public use space.
A Okay.
Q Hold on. Let me get my question.
A Thank you.
Q So there was some concern expressed by opposing counsel with respect to the calculation of the public use space, and I think it may be helpful if you could rely upon Exhibit 70.
A 70.
Q 70 to explain the public use space numbers. Thank you.
A Okay. Simply put, and hopefully, this will clarify where the space went, 4,092 square feet of public use space was the number that was shown on the original SJG submittal. Of that 4,092, 1781 square feet of it was along the northern property line. The Planning Board questioned, and I believe you did as well, how functional that could be as public use space.
If you look at the Edgemoor at Arlington North on this Exhibit 70, you could see that they have a sidewalk coming back to a courtyard area in the northeast corner of their building. It's an easy thing to imagine that that

might continue through to West Lane for some reason. So it's, it's certainly not an impossibility that it could someday be used as public use space when both projects develop but, and it certainly is every bit as functional as some of the other public use spaces that have been approved on other projects.
MS. ROBESON: Wait. Are we justifying that or are you just --
THE WITNESS: No.
MS. ROBESON: I just want to know what the difference is.
THE WITNESS: Okay. Of the 4,092 square feet that was shown on the original application --
MS. ROBESON: Yes.
THE WITNESS: -- that significantly exceeded the requirement, 1781 square feet of it, of that number was in that northern area. So 2,311, the difference between those two is the amount of square footage in the original application. It was along West Lane and Montgomery Lane frontage. 2,311 doesn't meet the 10 percent minimum. 2,841 does. So there's a delta of over 500 square feet there. We added 615 square feet for the, for the scallop if nothing else changed but we also shortened this a little, the West Lane edge of it, to allow for the change to incorporate a loading dock there. So by adding the pocket park, adjusting

for the loading dock, the public use space now, before the project, is, meets the minimum. The space top the north didn't go away.
So call it whatever you want to call it. It's, it's not the whole truth to pretend that it went away and the public use space got smaller. Yes, the number got smaller but we just chose not to fight and call this public use space anymore. We have in fact added space to the plan of 87 square feet. The building square, the building footprint shrank by 87 square feet as a result of the change from the original submittal to the, to the current one, and all of that went into the additional green, plus some.
MS. ROBESON: Okay.
THE WITNESS: So the current plan is proposing the minimum --
MS. ROBESON: Okay.
THE WITNESS: -- 2,841 square feet.
MS. ROBESON: What was the difference between, in green area, what's the difference between this and the original submission in square feet?
THE WITNESS: You mean public use space?
MS. ROBESON: Yes.
THE WITNESS: The original submittal was 4,092. This submittal is 2,841 of area that we're choosing to call public use space. The 2,841 that we have still, in addition

to that, we still have the 1781 square feet at the north.
MS. ROBESON: Right, but I'm talking about just the public use space.
THE WITNESS: We meet the minimum. We will at least meet the minimum, which is 2,841.
MS. ROBESON: Okay.
MS. HARRIS: Do you have any other questions for --
MS. ROBESON: No, I don't.
BY MS. HARRIS:
Q I'm going to ask you to characterize, tell me if this characterization --
MS. ROBESON: Well, I do. If the building area shrank by 87 feet, how come the gross floor area on the two development plans is the same? How come? Why is the gross floor area on the two development --
THE WITNESS: I'm just talking the footprint at grade of the building. The --
MS. ROBESON: But the footprint is what impacts the open space, right?
THE WITNESS: Well, there were, there were other adjustments that were made to the building as well. I'm not the architect. I can't --
MS. ROBESON: Oh, I see. You mean --
THE WITNESS: -- in detail tell you what got

changed but --
MS. ROBESON: You're saying it could have been the GFA could have, more space could have been added to the GFA somewhere else besides the footprint. So your testimony is the footprint shrank by 887 square feet. The footprint.
THE WITNESS: Correct. In, in total.
MS. ROBESON: Okay.
THE WITNESS: I can say two simple explanations. We talked about the western edge being 12 feet from the property line. It was originally 15, so the building grew there. The building used to come to a point at West Lane. We cut the scallop out, so it shrank there. But the net of that plus whatever else the architect did, I'm just looking at the footprint dimensions. It is a reduction.
MR. ABRAMS: So that it's clear for the record, are we talking about, when you say, the gross shrinkage of 87 square feet relates to the building footprint and not the gross floor area.
THE WITNESS: Correct.
MR. ABRAMS: Okay. All right.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Are you aware of any other projects within the TS-R Zone that came in originally with a public use space of 14 percent which is what the applicant proposed?

A I don't recall. I know there are a lot of projects that are struggling to get public use space. This Exhibit 70 shows, for example, across the street, 4825 Montgomery Lane's three little green islands in between the driveways and greenspace to the north on the side property line. You kind of question the viability of that as public use space. Similarly, the Edgemoor highrise includes their entire ADA accessible ramp and stairway in that space. To me, that space reads as private, not public. When we sit down with a client and describe public use space and what the requirement is, my description is that the space needs to read like it's public. If you're enjoying that space, you don't feel like you're intruding on someone's private space.
Q And as noted, that the project meets the requirement of the 10 percent public use space, correct?
A It does, and it will.
Q Thank you. Does the Sector Plan prohibit heights in excess of 65 feet on this site?
A No, it does not. Page 39 of the Sector Plan recommends a height minimum --
MR. KNOPF: Objection again. Here we go with some land planning testimony.
MS. ROBESON: Yes. I, I really -- we've had a lot of testimony on heights and I would prefer to move onto

something else. I don't know --
MS. HARRIS: Well, I would just note that the civil engineer, as part of his job, needs to take the Zoning Ordinance and Sector Plan and integrate it into the physical components of the site and so therefore, and those items really can't be divorced.
MS. ROBESON: Well, we've already had, I mean, we all know what the measuring height is, we know where it was measured, and I really don't think that there's anything that he's going to be able to add.
MS. HARRIS: Okay. We'll move on.
THE WITNESS: I was looking forward to that part.
MS. ROBESON: You can give it to your wife tonight if you want to.
THE WITNESS: I'm sure she would enjoy it.
MS. HARRIS: Over a fine rose.
BY MS. HARRIS:
Q The next question's related to height but only to clarify that, or to ask the question that the Sandy Spring building project is 65 feet but then someone also noted that it's 61 feet. Can you please clarify that?
A Yes. The development plan and the elevation submitted with the development plan clearly show that the building is 65 feet to the roof plus 4 feet for the parapet.
Q And has the site plan been approved for this, for

that project?
A I don't know whether it's been approved and I have not seen it. I have heard rumors that the height might be --
MS. ROBESON: Well, we don't need to -- well, go ahead. I don't want to go into rumors --
THE WITNESS: Well, let me --
MS. ROBESON: -- if that's all we know.
THE WITNESS: -- retract that sentence. The site plan has to conform with limits on the development plan.
MS. ROBESON: Right.
THE WITNESS: If the development plan says the height, 65 feet, they could submit a plan showing 63 feet.
MS. ROBESON: That's right.
THE WITNESS: And be in conformance. But they couldn't submit a plan showing 65 feet, 1 inch.
MS. ROBESON: If, if, I think the TS-R Zone, the height's determined at site plan unless they have a binding element.
MS. HARRIS: Correct.
MS. ROBESON: Correct?
THE WITNESS: Correct.
MS. ROBESON: So unless you, you know, have anything to add to that, you really don't know the height right now.

THE WITNESS: Well, I guess --
MS. ROBESON: Or whether there's a cap on that height.
THE WITNESS: Well, I guess I should -- what I'm trying to say is irregardless of what the site plan might, might or might not show for the height, it could be amended to be 65 feet without amending the development plan.
MS. HARRIS: Thank you.
MS. ROBESON: Well, that is a possibility.
BY MS. HARRIS:
Q Does the proposed development plan conflict in any way with the county Capital Improvement Program?
A No, it does not. It doesn't rely on any Capital Improvement Program projects.
Q And in your professional opinion, does the application, the local map amendment and the development plan meet all applicable code requirements?
A It does and it will, yes.
Q And then finally --
MR. KNOPF: Well, excuse me. I presume you're referring, I mean, he's not -- there's code requirements about compatibility and about adverse impacts. He's not testifying about that. Let's narrow it down what type of code requirements he's blessing here.
MS. HARRIS: All right. We'll go -- hold on one

moment.
MR. KNOPF: That's a little broad.
THE WITNESS: I do think it's compatible.
MS. ROBESON: Okay.
THE WITNESS: I can't say?
MS. ROBESON: Don't volunteer.
THE WITNESS: Okay.
MS. HARRIS: Bear with me for one moment. I'm looking for what --
BY MS. HARRIS:
Q In terms of Section 59-8.4, the development standards, does --
A 59-C or B?
Q Yes. 59-C, sorry, the TS-R Zone. Does the proposed project meet the minimum area requirements?
A Yes.
MR. KNOPF: Excuse me again. I don't mean to interrupt but this is going on so long. Didn't we have the architect swear to all of these things, the development standards and all the other things were met, and somebody else testified about public facilities and so on? I mean --
MS. HARRIS: No. Mr. Irish testified to public facilities.
MS. ROBESON: Yes. It would be the civil that does the public --

MR. KNOPF: But I thought we already had this. That's what I'm getting at.
BY MS. HARRIS:
Q Okay. For sake of efficiency --
MS. ROBESON: Well, I'm going to let him testify as to develop standards --
MS. HARRIS: Thank you.
MS. ROBESON: -- which are generally the height, bulk, you know. I don't think there's too many in the TS-R Zone but --
MS. HARRIS: That is true.
MS. ROBESON: -- that is something the civil, the civil engineer usually does.
BY MS. HARRIS:
Q Section 59-C-8.42, which it says that the density of the development must not exceed the FAR except that the maximum density committed may be increased to accommodate the construction of moderately priced dwelling units as required by Section 25A. Does the project meet that requirement?
A It does. The standard FAR allowable for the site would be 2.5, and that section that you read allows for the density FAR to be increased --
Q In accordance --
A -- in accordance with Chapter 25, 25A I believe

for MPDUs. That's such that you would, for 15 percent MPDUs, you would get a 22 percent bonus FAR. That multiplied by 2.5 is how we arrived at the 3.05 FAR.
Q Thank you.
MS. ROBESON: Okay. How about just does it -- are you familiar with the development standards that are set out in 59-C-8.4?
THE WITNESS: Yes.
MS. ROBESON: Okay. Why don't -- and does it comply with those?
MS. HARRIS: Well, I was, that's what I was going through.
MS. ROBESON: Yes. I know.
MS. HARRIS: We only had three more but we can, I mean, I was -- until you requested that we go through those, I was going to summarize it but then I thought you actually wanted us to go through these specific --
MS. ROBESON: No. I just --
MR. KNOPF: I have no objection
MS. ROBESON: I just want to identify that what he's testifying to is the development standards in 59-C-8.4.
MR. KNOPF: And that's all I had in mind with my objection, just to what area.
MS. HARRIS: It's unclear to me. Should I proceed and ask him about meeting the open space requirements of 59-

C?
MS. ROBESON: Well, he's already testified to that. Mr. Irish, does this project, in your opinion, meet the development standards in 59-C-8.4?
THE WITNESS: Yes.
MS. ROBESON: Okay.
MS. HARRIS: Thank you.
BY MS. HARRIS:
Q And then one final question. Based on your many years of experience in Montgomery County and experience in, with projects within the Bethesda CBD and also with several projects within this TS-R district, in your professional opinion, would the project be compatible with the surrounding area?
MR. KNOPF: Objection.
MS. HARRIS: He can base -- and what's the objection based on?
MR. KNOPF: That's land planning testimony.
MS. HARRIS: Not --
MR. KNOPF: Or architectural.
MS. ROBESON: For the weight it deserves, he can answer it.
THE WITNESS: My answer is absolutely. There's a lot of reasons why it's compatible, and I've discussed many of them.

MS. ROBESON: Okay.
THE WITNESS: It's shorter than the tallest building.
MS. ROBESON: Based on what you testified to.
THE WITNESS: Exactly.
MS. ROBESON: Okay.
MS. HARRIS: Thank you. That concludes our testimony.
MS. ROBESON: All right. Cross-examination.
CROSS-EXAMINATION BY MR. ABRAMS
BY MS. HARRIS:
Q Okay. Mr. Irish, I don't want to leave you in the state of speculation.
A We'd never want to be there. I'm sorry. You had asked me to get copies of the truck exhibit. If I had those made, would you --
MS. ROBESON: Oh, are you --
THE WITNESS: From yesterday.
MS. ROBESON: -- going to introduce those now?
MS. HARRIS: I'm sorry. I should have done that before.
THE WITNESS: Whether they need to be in the record or not, they asked for copies of them, I have them.
BY MR. ABRAMS:
Q Is this the turning radius?

A The dimensions of the --
Q Trucks.
A -- trucks.
Q Yes. All right.
MS. ROBESON: Okay. Why don't we mark. Do you have copies for --
THE WITNESS: I have four copies.
MS. ROBESON: Okay. Thank you.
THE WITNESS: Which exhibit number?
MS. ROBESON: Okay. And it would be number --
MR. KNOPF: 115.
MS. ROBESON: Is that what it is? Thank you. So this is AASHTO truck illustrations.
MR. KNOPF: I note it's two-sided.
MS. ROBESON: Well, do you want to put A and B?
MR. KNOPF: For the sake of referring to it, maybe it would help.
MS. ROBESON: Okay. So 115A I'm going to, it's listed as page 22 at the bottom. And 122B is page 31 of --
MR. KNOPF: It's 115B.
MS. ROBESON: 115A is AASHTO truck illustrations, page 22, and 115B is AASHTO truck illustrations, page 31.
MR. KNOPF: Thank you.
MS. ROBESON: Okay. Go ahead.
(Exhibit Nos. 115A and 115B were

marked for identification.)
BY MR. ABRAMS:
Q I'll show you a document. What is that document?
A It's the first time I've seen it. There's several, quite a few pages.
Q Okay. Let's go to the top.
A Notice of Application.
Q Okay. Which application?
A Preliminary plan 1-2013-0120, site plan 8-2013-0150.
Q And what's the date of the notification?
A 2/15/13.
MS. HARRIS: Objection, or can there be copies shared so that others --
MR. ABRAMS: Yes, as soon as --
MS. ROBESON: It's not admitted yet.
MR. ABRAMS: I admit it. It may not be admitted.
THE WITNESS: Why are we looking at it?
MS. HARRIS: Well, it's difficult for him to be asking our --
MR. ABRAMS: Well, because he can testify to it.
MS. HARRIS: -- witnesses something if we haven't seen it.
MR. ABRAMS: All right.
MS. ROBESON: Okay. Let's -- we can mark it as

116. What is this?
MR. ABRAMS: This is the notification of the site plan and preliminary plan filing for, with the Montgomery County Planning Board for the 4825 building. And basically, I'm going to follow that up with copies of the site plan and preliminary plan which show what has been filed in terms of the building height and the parapet wall height.
MS. ROBESON: Which he testified to.
MR. ABRAMS: Yes.
MS. ROBESON: Okay. So I'll mark 116 is the 2/15/2013 notice of application of, for 4825 Montgomery Lane.
(Exhibit No. 116 was marked for identification.)
MS. ROBESON: Wait just one second. And then 116 is the, what is this, the --
MR. ABRAMS: That's the composite site plan. It's on the bottom.
MS. ROBESON: Oh, I see it. I see it. Is the composite site plan for the same project?
MR. ABRAMS: This is a preliminary plan for the same project.
MS. ROBESON: It's the preliminary plan?
MR. ABRAMS: Yes.
MS. ROBESON: Okay.

MR. KNOPF: Was that an A, B, C or you gave it different numbers?
MS. ROBESON: I gave it different numbers.
MR. KNOPF: Okay. Thank you.
MR. ABRAMS: Okay.
MS. ROBESON: So 116 is the notification of the development plan hearing, 117 is the composite site plan and 118 is the preliminary plan, all for 4825.
(Exhibit Nos. 117 and 118 were marked for identification.)
MR. ABRAMS: Do you want me to show this to Counsel at this time before the examination?
MS. ROBESON: You may.
MS. HARRIS: Did Mr. Irish get a good look at it?
MR. ABRAMS: No. Not yet.
MR. KNOPF: Do you have copies for Counsel?
MR. ABRAMS: No. Norman, do you want to see these?
MR. KNOPF: That's all right. I'll rely on -- are you using these?
MR. ABRAMS: Yes.
BY MR. ABRAMS:
Q Now, Exhibit 116, is that the typical type of notification for a preliminary plans and site plan approvals before the Planning Board?

A Yes.
Q Okay. Now, I'm going to show you what has been marked as Exhibit 118, and what is that document?
A Both of them?
Q No. Just this one.
A It's entitled Preliminary Plan Edgemoor, File No. 1-2013-0120.
Q And that matches the notification?
A Yes.
Q Okay. So essentially, is that the preliminary plan for 4825 Montgomery Lane?
A Yes.
Q Does it have a series of notes under a heading building heights?
A Yes.
Q I've check marked two of the numbers that I'm interested in your testimony to. What does it say about building height in terms of number of feet?
A It's difficult to read due to the size, but it appears to say height of building from first floor to top of roof, 60 feet per architect.
Q Okay. Now, what does the line under that say?
A Height of building from first floor to top of parapet wall, 64 feet.
Q Okay. So a 60 foot --

A That's not how building height is measured for zoning purposes.
Q I'll just ask you to read it.
A Okay.
Q Now, would a 60 foot building height on a site plan and preliminary plan, would there be any problem in a deviation from a 64 foot or 65 foot height in an approved development plan in terms of it being consistent?
A I don't know that that's consistent with the development plan. The height is not measured from the first floor of the building per the zoning code.
Q But it does say 60 feet.
A It does say 60 feet.
Q Is that the type, if it were properly measured, we're assuming that it is, it were properly measured, would a five foot difference or variation between the approved development plan and the site plan be a basis for disapproval on the grounds that it was not consistent with the development plan?
A Let me restate what I think you're asking me because I'm not sure I understand. You're asking me that if a project had a development plan approval at 65 feet, measured appropriately per the Zoning Ordinance, and then a site plan were submitted with 60 feet, measured appropriately, which this doesn't do, would that be a

grounds for denial of the plan or would it be appropriate.
Q Would it be consistent with your approved development?
A It wouldn't be the same. It would be allowable.
Q Well, the sameness and consistency is equal in terms of the Zoning Ordinance provision requiring consistency of the site plan with the approved building plan.
A I think it would probably be deemed consistent. I, as I mentioned before, I don't think there would be a problem with the building coming in slightly lower than what was shown in the development plan. You typically call for that.
Q All right. Getting back to the public use space, I'm still somewhat confused and here's my confusion. The original building footprint, up until the time that the scallop corner piece came into being, wasn't that building footprint, including the southwest side of the building, further back by three feet than --
A Further back from where?
Q Further back from the southwest corner, property line, from the Arlington North. Is that --
A The original project was submitted with a 15 foot setback from the western property line.
Q Correct. Do we have an exhibit? Okay. I'm

referring to Exhibit 108. 108, on the southwest side, shows a straight line proceeding north and south, does it not?
A On the west side it does.
Q Southwest side. Well, on the southwest side of the project.
A Yes.
Q Okay. Now, that is currently 12 feet, correct?
A The, the current proposal for that face would be 12 feet from the western property line, yes.
Q Okay. Now, the original proposal, up to the time that the scallop portion came into being, wasn't that 15 feet back?
A Yes.
Q Okay. Now, how many square feet was involved in that minor adjustment?
A I don't know.
Q You don't know. Where did that three foot difference go in terms of what part of the building and in terms of the first floor area of the building?
A What I said under the direct testimony was I'm not the architect and I can't tell you exactly where it went. There's two simple places. The building was reduced by 615 feet to take the scallop out, and it was increased by some amount to move the building closer to the western line by three feet. It was increased on one side and decreased on

the other side, and I said that the net was 87 feet less at the ground area.
Q And also, on the West Lane side, there were cut-outs in the face of the building.
A Correct.
Q To, I guess, increase the public use space on the west side of the building?
A The revised plan does show some articulation along that face, yes.
Q And where did the amounts factor into the gross floor area of this building? I mean, the gross floor area of this building has shown on the development plan, from the time it has been filed, this application filed, to the current time, remains, has remained the same.
MS. HARRIS: I'm going to object. I think the witness has testified as to the footprint which he obviously knows as a civil engineer, but I believe what Mr. Abrams is asking has to do with how the interior space is configured to get to a certain square footage. That's certainly outside the realm of this witness.
MR. ABRAMS: Well, we've been told that it's always the next witness including the architect telling us --
MS. ROBESON: I have to say the architect's come and gone, and now we find out it's the gross floor area. Do

you know the answer?
THE WITNESS: What I can say is that the building was designed to the maximum allowable gross floor area by the architect, and that is analogous to a water balloon, if you will, in fixed size. And if it grew in one area, it shrank in another area and it morphed a little bit in the process, the intent -- and the building is not final design. This is the zoning plan. The intent of the project is that the building, within he setback limits defined will achieve a 3.05 FAR and how the architect fills that space is --
MS. ROBESON: So you don't know exactly what happened.
THE WITNESS: No.
BY MR. ABRAMS:
Q In terms of the building footprint, you said it shrunk by 87 square feet.
A In total.
Q In total. Now, did that 87 square feet include the area on the southwest side of this building which was expanded from the original plan?
A I don't know how to answer your question. The footprint is 87 feet smaller. On the west side of the building, it's bigger than before. On the southeast side of the building, it's smaller. Out along the east side, there's articulation that I don't know whether it made it

smaller or bigger. The bottom line is that balloon, water balloon, got pushed and pulled a little bit there and we resulted in a footprint that was 87 square feet smaller.
Q You must have done calculations or come up with --
A I don't, I rely on the architect for the gross floor area because it --
Q I'm talking about the building footprint.
A -- involves calculations of every floor.
Q The building footprint.
A Well, that's how I arrived at it. I compared the two footprints, and they're 87 square feet different.
Q What is the width of the face of the City Homes buildings facing Montgomery Lane?
A I don't have it committed to memory. Let me check. I don't see it in my notes. I can scale it if you'd like.
Q Well, it's in preparation for some following questions so if you could scale it.
MS. ROBESON: How about 112. Would that do it? Or well, can you do it under 112 because that's the one that has all the comparatives. It's right under that. Yes. There you go.
BY MR. ABRAMS:
Q And while you're up there, measure the alleyways or the distance between the two buildings.

A These western two City Homes on Exhibit 112 scale about 39 feet in width, and face-to-face, the building, not allowing for projection bays or Romeo and Juliet balconies or whatever, is about 30 feet.
Q Okay. Now, is the proposed building facing Montgomery Lane, well, what is the linear foot, width of the building, your building facing Montgomery Lane?
A As I stated in my direct testimony, 78 feet.
Q Seventy-eight feet. Okay. So it's basically twice, your building is twice the width of the City Homes townhouse buildings.
A And half the Edgemoor.
Q And it also, the City Homes also has a considerable distance between each stick of townhouses to break up the facades of the townhouses facing Montgomery Lane, is that correct?
A I'm not sure why they have the distance in between the first two sticks. The distance is to, presumably to allow the cars to get into their garages.
Q Isn't the building mass for the City Homes considerably less than the building mass of the subject property, or subject project, facing Montgomery Lane?
A Yes.
Q Now, in terms of what is viewed from the sticks of townhomes that you testified previously to the subject

building, you said they are limited views of the subject building.
A It depends on --
Q Except --
A It depends on where you're looking from.
Q -- the end units.
A Certainly looking out the side windows or the windows facing east or west, the views would be limited if you would, the view would more be looking at the adjacent properties.
Q Okay. You haven't been in any of those units, have you?
A No, I have not.
Q So you really don't know what they see out of their windows with respect to each unit within each stick of units.
A I've looked at the windows from the street or from the subject property. I haven't looked the opposite direction but I would assume a straight line would be a straight line.
Q Well, but you testified looking from the units in City Homes toward this project.
A My testimony was related to where the windows might be and the angle that someone inside the building would be, would look and what the view would be, what the

sight line would be.
Q Now, in terms of sight lines, there's a 25 foot difference between, what is it, 8701 Hampden Lane and the last stick of townhouses in City Homes.
A I don't follow your, 80 --
Q Did I look at the wrong address?
MS. HARRIS: That's a new address.
BY MR. ABRAMS:
Q The last. This one. I'm pointing to --
MS. HARRIS: 4901.
BY MR. ABRAMS:
Q -- Exhibit 106B, 4901. You said that there was a 25 foot difference?
A No.
Q Well, what is the difference?
A It's 25 feet to the edge of the driveway and an additional 23 feet to the face of the building.
Q All right. So they don't really have a closeness which is attached to what people would see in the City Homes units when viewing 4901 Hampden Lane, would they?
A Well, I described the relationship of all of them. There's --
MS. ROBESON: You may want to go back to 112.
MS. HARRIS: And I notice that --
THE WITNESS: Yes. I didn't mark it here but this

dimension between 4901 and City Homes is 48 feet. Between Edgemoor and Montgomery, 4825, is only 23 feet. Between the subject property and City Homes is anywhere between 73 feet and 101 feet.

BY MR. ABRAMS:

Q Okay. Why don't you put the distance between 4901 Hampden Lane and the edge of the easternmost City Homes building.

MS. ROBESON: And that's 48 feet did you say?

THE WITNESS: 25 and 23 is 48.

MS. ROBESON: What color are you using, black?

THE WITNESS: Blue.

MS. ROBESON: Oh, blue. And you've got arrows, okay.

BY MR. ABRAMS:

Q Now, again referring to Exhibit 106B, what is the distance between the Hampden Lane building on Hampden Lane and the three sticks of townhouses which it touches?

A I believe they basically abut. The City Home was constructed -- well, that Hampden Lane project was not constructed. City Homes were built on the property line with no windows as one would be required to do if you build on the property line. That would then allow the building on the opposite side to abut as you see in many of them here.

Q Okay. Realizing that Exhibit 112 does not, and

this is number, Exhibit 77 duplicated with the markers, does not go all the way south to the property line with Hampden Lane, could you just put a line across here with the word Hampden Lane and what the setback is from City Homes?

A It wouldn't be drawn to scale.

Q I understand that, but I just want a relationship between these two exhibits to exist. You can do it toward the bottom.

A What do you want me to call this building on Hampden Lane?

MS. ROBESON: Just Hampden Lane.

BY MR. ABRAMS:

Q Just Hampden Lane.

MS. ROBESON: That's how it's been referred to.

BY MR. ABRAMS:

Q The rendering that you used was Exhibit 77 or 76?

A The one behind me is 76.

Q 76. Was there another rendering which was 77? That's what I marked down. I think it's the one that you put a line at the top of one of the buildings.

MS. ROBESON: Oh, that's the one with the multiple buildings?

MR. ABRAMS: Yes. That's it. Is that 77?

MS. ROBESON: Well, it's now --

THE WITNESS: That's 114.

MS. ROBESON: It's now 114 because he marked it.

BY MR. ABRAMS:

Q Now, those are rendered versions of those buildings, is that correct?

A The -- some of them. The City Homes is clearly a program.

Q Okay.

A In terms of the representations on that exhibit, are they to scale?

Q To the best of my knowledge, yes.

A What's the scale? These are perspective drawings. Perspectives don't have a scale. They're three-dimensional.

Q When you draw a line at the top, don't you have to know precisely the amount of height that you're talking about?

A You would if you were scaling off of this drawing. I was illustrating on this drawing a dimension that I know to be the case from other exhibits, used this exhibit to illustrate it.

Q Would you agree that you can't scale photographs such as this?

MS. HARRIS: Objection. He didn't scale it.

BY MR. ABRAMS:

Q You haven't scaled photographs such as this.

A I haven't scaled any.

Q Now, the handicap ramp in the front of the building, and you can go back to that perspectives of the front of the building. I think it's the first one in that sheet.

A Which building?

Q Your building. Yours generically. Okay. Where is the handicap ramp on Montgomery Lane?

A You mean to cross Montgomery Lane?

Q No. On the Montgomery Lane side of the entrance, is there a handicap ramp there?

A Handicap ramp right --

Q No.

A -- behind the lady in the pink shirt.

Q Getting into the building from the sidewalk.

A From Montgomery Lane, there are steps from West Lane and there's a grade.

Q Okay. Would it be correct to say that there is no handicap ramp which would allow access from Montgomery Lane directly into the lobby of the building?

A Not in this illustration.

Q Well, is it or isn't it?

A We're not at final design.

Q When we were talking a few moments ago about the size of the building, proposed building, and the size of the side of the City Homes townhouses, the proposed building is

approximately twice as wide as the City Homes townhouse stick, is that correct?
A Yes. I've said that.
Q Okay. If the width and mass of the City Homes buildings are smaller than the subject property, or the subject building, wouldn't the setback produce a visual and physical feel of closeness with regard to somebody passing your project, taking the setbacks from each side, as opposed, and relating those to the mass and scale of the building?
A I think you would feel closer on the City Homes side because the, while the bulk of the building is essentially the same setback from the sidewalk as our building, City Homes has stairways that are essentially a story tall that project five or six feet into that space.
Q Those are -- excuse me.
A So essentially, half of that space is absorbed by private, you know, stairways or planters, whatnot so if you're walking on the sidewalk on the south side, the public space would appear smaller there than it would in front of our proposed building.
Q Isn't that the same situation that occurs with the entrance and that little pocket park area, that it intrudes upon the right-of-way in the sidewalk area, it comes out from the building?

A The pocket park, depending on how you define it, yes, projects into public space.
Q And aren't the stairs that you described on the sides of the City Home units, aren't they basically exempted projections?
A From a setback, yes, but I believe so. I'm not sure that the height of it meets them but, meets the setback, the setback exemption. These steps aren't part of the building. They're part of the park, and they're not as high as the City Homes steps as you can see from the rendering in 76, you know. It's to pick up the little bit of grade difference around the corner, between West Lane and Montgomery Lane. In terms of -- I believe that would all read as public space as opposed to an entry in a single unit.
Q What is the total square footage of the roof area, do you know?
A Not offhand.
Q Is it on any of the drawings?
A I honestly don't know. I don't, I don't see it.
Q Okay. Let's try it this way. Exhibit 108 is a marked up copy of development plan. Can we find that, possibly use that for these next questions?
A This 108 duplicate. I don't --
Q Right. His markings are on that, that plan.

A Okay.
Q Now, if you're looking straight down and assume that the roof covers all of the, the building area -- first of all, is that a rational assumption?
A Unless you want to get wet.
Q Okay. With the --
A I mean, if we carry it to a different level --
Q With the exception of the setbacks in the front of the building.
A Well --
MS. ROBESON: The step back.
THE WITNESS: Well, there's a roof over the front of the building. It just happens to be at the five story level. There's a roof over the seven story level.
BY MR. ABRAMS:
Q What I'm trying to do is get to the roof so that you can show us where the green roof portion is going to be and where the recreational private use space is going to be, or are they the same.
A I don't know that that space has been designed from the standpoint of what active/passive uses might be on might or might not be on the roof.
Q Well, isn't that --
A As I've said, there's 6,000 feet of green roof.
Q Isn't that important, in terms of the notes on the

development plan, as to how much private, community use space there is?
A I don't believe that it is. If we meet the minimum or meet the amount that we say without going on the roof, doesn't matter. If we have space on the roof that is active/passive but isn't accessible we state on the plan, is that a problem?
Q It's not a question of being a problem. It's a question of being consistent with the development plan. It's a question about --
MS. HARRIS: Objection. There was never any testimony indicating that the recreational space on the roof was, went toward the active and passive recreational requirement of the zone.
MR. ABRAMS: Well, that's what I'm trying to find out. If it isn't, then it isn't.
MS. HARRIS: Well, I think he just testified to that fact.
MS. ROBESON: Well, just a second. I wasn't hearing the question in what you were starting to say.
BY MR. ABRAMS:
Q The question was is the active/passive private recreational space noted in terms of square footage, does that include the roof area.
A I don't believe it has to.

MS. ROBESON: No, but does it? Does it? Are you meeting your minimum, or whatever the percentage, does that include the roof?

THE WITNESS: There is more than enough space at grade to meet the minimum. The development plan indicates that there is 7,421 square feet as opposed to the minimum of 5,682 square feet, so an additional 6 percent. There's a community room proposed in the building that would count, there is a fitness center in the building that would count. I don't recall the size of those. It may be -- I did not make that calculation. It may be that the -- as I said earlier, the space, the space behind the building on the west side of the building exceeds the minimum requirement for active/passive. We will be exceeding that for the project just by adding community room and fitness center. I don't know whether the applicant intends to put recreation space on the roof or not. If she does, it would just be additional.

BY MR. ABRAMS:

Q How did you determine, if you are the person that determined this, the height of the City Homes buildings?

A The -- I think what was indicated in testimony was that the height was to the peak of the roof which is not how it's measured for zoning but is what visually you would see there. So the 53 feet is roughly what you would get from

the peak of the roof to the measuring point.

Q So the actual zoning height, in terms of the building height definition in the Zoning Ordinance, how high are the City Homes buildings?

A I believe they're approximately 48 feet. I haven't measured the, the peak of the roof to the, to the eave. We may have -- the one right across from us to the mean of the eave where you would measure it by zoning code is I believe about 47 feet.

Q Okay. Now, if that's the case, the measurements on say Exhibit 106D and some of the similar measurements on similar exhibits, are they really accurate in terms of the representations on those exhibits?

A Let me get the exhibit you're referring to first.

MR. ABRAMS: This is the one, Pat.

MS. HARRIS: No. I'm not sure.

BY MR. ABRAMS:

Q Okay. So the 53, this is Exhibit 106D, the 53 feet shown on the City Homes exhibits, they go to the very tippy top of the building, right?

A Correct.

Q Okay. What is known for West Lane is, I think you got 71 feet. It's hard to read.

A Seventy.

Q Seventy feet, okay. That doesn't go to the tippy

top of the structures on the roof, does it?

A It goes to the top of the flat roof.

Q Okay. It doesn't go to the top of the penthouse, does it?

A No.

Q And how many feet would that be, if you know?

A I don't know.

Q Does it go to the top of any other structures that are going up there?

A What other structures?

Q Well, I'm going to ask you as a follow-up question.

A Well, it goes to the flat roof so if there's anything above the flat roof, it does not go to it.

Q What other structures are going to be other than the penthouse?

A None that I'm aware of.

Q Okay. Above the penthouse, is there going to be equipment related to the elevators?

A Above the penthouse?

Q Above the penthouse.

A I don't know. I thought the elevator would be part of the penthouse. That's architectural question. I don't know how he's designed that space.

Q The box which is the penthouse on the roof, is

that to take the elevator, I guess you call it the elevator enclosure, up to a certain height?

A I don't know. It's, you're asking an architectural or a mechanical question. I'm a civil engineer.

Q Okay. The same goes for, you've got the building height for 4825 Montgomery Lane as 65 feet.

A That's correct.

Q Okay. And that includes up to what point?

A That's to the flat roof. It doesn't include any penthouse, if any, and it doesn't include the parapet.

Q Notwithstanding that the preliminary plan says 60 feet.

A We've all heard of Clarksburg, and Clarksburg came about as a result of somebody buying townhouses that had site plan approval and built them to a height higher than the site plan called for but was allowed in the zone. My point is we've got a project that has County Council approval to be 65 feet tall. If somebody chooses to submit a site plan to call it 60 feet from first floor, so I don't know what that is from the measuring point but probably some point higher, and then sells the project and a new builder comes in, he could build it to 65 feet as long as he could, amended the site plan, wouldn't have to amend the development plan.

Q When an, excuse me, when an application is filed down at Park and Planning for site plan or preliminary plan approval, before it's actually accepted, it's reviewed by staff, isn't it?
A Yes.
Q For completeness and for accuracy.
A Yes.
Q Okay. Wouldn't that have occurred before those --
A For completeness.
Q Wouldn't that had occurred before the notification, copy of the site plan were sent out to the community?
A Yes.
Q Now, on that same Exhibit 106D, there's a building height for Edgemoor at Arlington North being 48 feet. There are actually two steps to that height, isn't it, correct?
A Yes. I marked, I believe I marked those on 112.
Q Okay. And the front edge is what?
A Thirty-five, I'm showing the height as 35 to 48 on Edgemoor at Arlington North, and 33 to 46 on Edgemoor at Arlington.
Q Now, those height limits, do they include any roof elements or structures on the roof?
A No.
Q Do you know if there are roof elements or

structures on the roof?
A On the three story portion of the building that exists at Edgemoor at Arlington, I described that there is a pergola or terrace or whatever, so the actual four story roof appears to project out at that level. It's not solid mass there but there's terrace or whatnot there. Above on the four story portion above the floor, the floor of the roof if you will, Exhibit 106F shows an area outline for what I would assume is the penthouse and elevator override.
A Using Exhibit 112, can you show me the high point of this area between Woodmont Avenue and Arlington Road elevation-wise?
Q On Montgomery Lane?
A Yes. Or in the vicinity of West Lane and Montgomery Lane.
Q There aren't contours on there but I know from memory that the high point is somewhere in front of the 4825 Edgemoor Lane building.
A Okay. Do you know what that high point is?
Q No. Not precisely.
A But it's higher than where the building height measurement was taken for the subject, is that right?
Q It's, it's about the same, yeah. Roughly the same elevation.
A Okay. The elevations of the City Homes townhomes

as they proceed down to Arlington Road are at lower elevations, is that correct?
Q What do you mean, the elevations?
A Elevations upon which City Homes townhomes are constructed as you proceed on West Lane down to Arlington Road and are at lower elevations.
Q The road is at a lower elevation. I'm not certain whether the homes are because if you think about it, they access the same alleyway so presumably, the driveways would be, your garages would be roughly the same elevation.
A So if you're walking down that pathway, whether they were or were not a downward slope, you would be able to perceive that, would you not?
Q Perceive what?
A Whether they were going on a downward slope from, on Montgomery Lane from West Lane down to Arlington Road.
Q As you walk along Montgomery Lane, I don't believe you would, could identify whether the buildings are different in height. You could identify that you are walking downhill so as you proceed towards Arlington from 4825 Montgomery, you would be declining in elevation. You would perceive it if you were thinking about am I going downhill or uphill. Most people, not thinking about it, would just think they're walking along flat. It's not that steep of a grade.

A Aren't buildings constructed based upon the elevation and contours of property?
Q Among other things.
A Was the City Home built based upon the contours of the property adjacent to Montgomery Lane?
Q Mr. Abrams, I don't know. What I --
A Just say you don't know.
Q What I told you, what I did say was that the first two sticks from the west share an alleyway. There's only, there's very limited grade that could be picked up east to west in that alleyway so I would assume that the garages are approximately the same elevation. If that's the case, then presumably, the houses are about the same elevation and since the road falls towards Arlington, the westernmost one would be higher. Taller.
MR. ABRAMS: Excuse me, Madam Examiner. I'm trying to go through my notes for the architect who said it wasn't his function, that it was in your ballpark.
MS. ROBESON: I do recall that.
BY MR. ABRAMS:
Q Okay. Can I direct you to, what I'm trying to do is ask you some questions about the loading area and dock area.
A For our project?
Q Yes. For this project.

A Would you want to --
Q Was that something that you could --
A Turning of an exhibit?
Q Why don't you, we've been marking up Exhibit 108, just can we use that? I don't want to go into another exhibit. 108 is the development plan, the marked up version of the development plan.
A Okay.
MR. KNOPF: Didn't we have that marked in red with the grade? I thought we had an exhibit.
MS. HARRIS: That wasn't marked.
MR. KNOPF: Pardon?
MS. WILTSHIRE: That one wasn't hand-marked. That was a different --
MS. ROBESON: Yes. That, that wasn't marked.
BY MR. ABRAMS:
Q Okay. Now, Exhibit 108 is a copy of the development plan, and does that show the garage entrance?
A Of the subject building, yes.
Q Yes. Yes. Actually, there are two entrances. As I understand the testimony, is one for like small service trucks and the other is for residents and some larger vehicles?
A The area on this exhibit labeled garage entrance is how any vehicle that would be going down into the garage

would enter. It's also an area where larger vehicles might back into a little bit in order to turn around as I showed on the turn movement exhibits. The vehicles that can go into the garage is anything that would have a height less than about 8 foot, 8 inches.
Q Okay. In terms of where it says loading below the garage entrance on Exhibit 108 --
A Yes.
Q -- is that for the larger trucks or the smaller trucks?
A Any -- well, I could tell you what it could accommodate.
Q Okay.
A Because it can accommodate a truck up to, up to 10 foot in height and up to 30 feet in length, and anything smaller would also fit in there.
Q Okay. So if there were a moving van, they would use the area that's known as loading as opposed to the area marked garage entrance.
A Not necessarily.
Q Where is the loading dock for the area of loading marked on here?
A At the back of it.
Q At the back. Okay. Could you just put an LD at the back portion there? Now, where is the loading dock, if

there is one, for the portion which is marked garage entrance?
A There's not a loading dock. There's a space allocated in the garage for loading and would accommodate vehicles up to a small U-Haul that, that's suitable for moving a studio or small apartment.
Q Okay. If a moving truck were to use the area at the loading dock which you marked, how do they get to the elevators up to the units?
A I, I don't know. The architect, I'm sure, has designed, has or will design a means to do that.
Q Okay. But there, to your knowledge, there are no elevators located next to the loading dock.
A I don't know.
Q You don't know. You've never seen the drawings?
A I may have. I don't recall whether there's an elevator at the loading dock or not.
MS. HARRIS: I believe the architect testified as to where the elevator was in relationship to the loading dock.
BY MR. ABRAMS:
Q Do you know what the garage door heights are going to be?
A The height of the door, no.
Q No. That's an architectural?

A Well, the building has been designed to accommodate certain vehicles so it would have, I believe it's at least an 8 foot, 7 inch clearance all the way down. There's a portion where we've shown larger vehicles could back in and turn around, not going in the garage, so that the height there would be designed to accommodate those vehicles.
Q So any vehicle which is above 8 feet plus few inches could not back into the garage or the loading area.
A No. Not into the garage. The loading area would be about 10 feet high.
Q The loading area is higher than the garage entrance.
A That's correct.
Q And the loading area --
MS. ROBESON: I'm sorry. When you say loading area, are you talking about the area marked on 108 and says LD or are you talking about the garage?
THE WITNESS: I'm talking about the area that says loading --
MS. ROBESON: Okay.
THE WITNESS: -- on that exhibit.
MS. ROBESON: Okay. All right.
THE WITNESS: That's to be designed to accommodate a vehicle that would be 10 feet in height or less which is

the largest U-Haul vehicle, the height of the largest U-Haul vehicle that would move even a three-bedroom apartment.
BY MR. ABRAMS:
Q Okay. We have Exhibit 115A and B. All right. I hope I got A right and B right but the, it's marked as page 22 in the lower left-hand corner.
MS. HARRIS: That's A.
MS. ROBESON: That's 115A.
MR. ABRAMS: Is that A?
MS. HARRIS: That's 115A.
THE WITNESS: Okay. I have it.
BY MR. ABRAMS:
Q Okay. You got it?
A Yeah. Right here.
Q Page 22, which is Exhibit 115A, what is the height of that truck?
A It's not shown on the exhibit.
Q I know. That's why I'm asking.
MS. ROBESON: There is a scale although I don't know if you can --
THE WITNESS: Thirteen-and-a-half feet.
BY MR. ABRAMS:
Q Okay. Now, is that the truck you just described as taking just about any apartment's furniture and --
A No.

Q So that's, is this a smaller one or --
A Larger.
Q This is larger. Okay. Now, could this fit inside either garage door or both garage doors?
A It can't fit in the loading space. I believe it can back in slightly into the garage entrance if it would need to make a three-point turn to turn around.
Q Okay. But it couldn't go all the way into the garage entrance.
A It couldn't go all the way into the bottom of the garage. The turning movement exhibits show the limited it would, that it could go.
Q The loading dock area has a lower or higher door than the entrance door? I'm trying to figure out which door is higher.
A And I'm, and I'm not trying to be difficult. I'm trying to answer your question but part of it is I don't know. I don't know exactly where along the garage entrance where the door actually is, so what I do know is that we showed turning movement exhibits that showed a vehicle being able to back in there slightly and then pull out so.
Q Assuming that there could be an inset into the face of the wall for the garage door, are we talking about four to six feet?
A I brought up Exhibit 88, which shows the turning

movements, and the upper right two show the extent that a SU-30 would, per this exhibit, could back in to make a turn around. Looking at the exhibit, I think they were a little generous with how far they'd have to back in. You could do it in a shorter distance but this shows how, theoretically, that movement could occur.
Q Is Exhibit 115A an SU-30?
A Yes.
Q Okay. Now, Exhibit 115B, how high is that truck?
A Thirteen and a half feet.
Q And that's a semitrailer?
A Yes.
Q Could that fit within the opening of either garage door entry? Either the little loading area or the bigger garage entrance area.
A It could back into a portion of the garage entrance in order to turn around. It could not go all the way down into the garage and it could not get into the loading dock.
Q Now, how far back into the garage could this truck proceed?
A I don't know exactly. I mean, we show in the turning movement exhibit that it could work. Presumably the architect will design the building to, to accommodate that move.

Q Okay. You've got a building here which is approximately 80 feet in width.
A Seventy-eight.
Q Seventy-eight feet. Okay. And you've got a fairly steep grade for the internal driveway. Is that a fair, fair?
A Yes.
Q Okay. And what is the degree of slope?
A I believe it's 14 percent at its steepest.
Q And within a 78 foot wide building, how far down before you make the turn could you proceed with a truck considering the height of the ceiling?
A I think you need to ask the architect this. I mean, he's designing the building.
Q The architect is gone. Fourteen percent grade is a pretty steep grade, is it not?
A It's all relative. It's not uncommon. I mean, it's 14 feet in 100 feet.
Q Right.
A So to put it in perspective, the width of this room is approximately 25 feet. So it would be a drop of about three-and-a-half feet over the width of this room, so that doesn't seem that steep.
Q In order to make the turn in the garage, how many feet from the entrance of the garage, considering a 14

percent slope, would be necessary to achieve that turning?
A I don't understand the question.
Q Once you get into the garage you've got a 78 foot wide building. How much leeway do you have to make that turn within the building?
A What turn? Well, referring to Exhibit 88, any one of these turning movements which would bring you into, westerly and turning south.
Q Right.
A Okay. What is the question?
Q The question is what is the maximum amount of feet, distance, between the garage entrance and the ability to make a turn into the west and south direction of the building?
A I don't know what the ceiling height in -- well, I know that the lower level is, the garage level is 8 foot, 7 inches floor to floor. I don't know what the slab thickness is and how that relates to the first floor.
Q Do you know where the 8 foot height of the interior garage ceiling starts?
A Well, it would be, the entire way would be at least 8 foot, 8 because it has to accommodate a vehicle that high, 8 foot, 7 inch height.
Q Well, you said that the garage doors would be higher than eight feet.

A No. I said I didn't know what the garage doors were. Yeah. It would be higher than eight feet. I would agree with you.
Q Okay. And that you could move a truck back or forward into the garage. What I'm trying to determine is how many feet into the garage could you get a truck before it hits the eight foot ceiling. Do you know?
A No. I do not know. Depends on how the -- the architect is going to design the building to accommodate it.
Q Now, on Exhibit 108 -- well, let me -- okay, this was done, or do you know when this was done, this Exhibit 88? Was this done for the original filing because I notice none of these have any portion of the new entrance?
A Well, the loading bay didn't exist in the original filing so, so I assume these were done to accommodate the garage entrance and the loading bay, so that would be the more recent plan.
(Discussion off the record.)
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Okay. We are going to take a lunch break at this point, so we will be back at 2:00. Mr. Knopf, it will be your turn for cross-examination.
MR. KNOPF: I'll try to be brief because I'm still hoping we can finish.
MS. ROBESON: We will try.

(Whereupon, at a 1:01 p.m., luncheon recess was taken.)
MS. ROBESON: Now we're back on the record. It is Mr. Knopf's turn for cross-examination of Mr. Irish.
CROSS-EXAMINATION BY MR. KNOPF
BY MR. KNOPF:
Q Mr. Irish, I'll try to be brief to move this along. On the Exhibit 76, the so-called pocket park.
A Yes.
Q I heard you mention as part of your testimony that you didn't, couldn't answer certain things because it hasn't been finally designed, the concept there, is that correct?
A Yes.
Q That's not a final design. Are we looking that something that's an illustration or what can we rely on that we know we will have when this project is built? What will be required?
A Well, as you well know, the process from conception through occupancy of a project goes through many stages. In this case, it starts with the re-zoning application that we're working with and then proceeds through preliminary plan, site plan and permit drawings, and the design gets ever more specific as you go through that process.
Q Can the design shrink in terms of these square

footages that you represented that the park has? I think you said about 1100 and, 2100 and some square feet.
A Well --
Q Can that shrink?
A The -- it depends on what's in the binding elements.
Q Exactly. And is the, to your knowledge, is there a binding element in here that freezes the amount of square footage, that it should be no less than X amount of square footage?
A The square footage of what?
Q Well, you gave us square footage for the, for the park space. I remember you had the, you had -- in fact, get that exhibit if you would, please. You marked an exhibit with and, a color-coded exhibit with the --
MS. ROBESON: It's 112 I think.
MR. KNOPF: No. That's -- I'm sorry. Yes.
BY MR. KNOPF:
Q You have, if I remember, there was 600 and some square feet, 615 marked in red.
A Yes.
Q Is -- then you had another green, 393 green area marked and a black area, I think, of 1171. Are any of those square footages binding elements here so that the Hearing Examiner is relying on this to find compatibility or

whatever else she needs to find that will be there when the building's built?
A I don't believe there's binding elements with, I'd have to re-read them again to double-check. If you give me a second, I'll scan down them just to make sure I haven't missed something.
Q I think if you get to the very end, you'll see something maybe relevant. I'm not trying to influence you but trying to save time.
MS. ROBESON: I would try item 20, but it's your testimony.
MR. KNOPF: That's right.
THE WITNESS: Well, item 20 says the public use space concept will substantially conform to the development plan amendment drawing and rendering shown on page 4 and 5 of the technical staff report. So it --
BY MR. KNOPF:
Q So that's you, that's your answer.
A That's the binding element.
Q Right.
A Now, obviously, when the planning staff and Planning Board reviewed the plan, they got to interpret whether or not the site plan or preliminary plan at that point satisfies this condition.
Q Right. And the condition is substantial

compliance. Your --
A Substantially conform, yes.
Q Substantially conform. Thank you. And if this is off by 25 percent square feet, is that substantial conformity or we just don't know?
A My opinion, the 25 percent would be a substantial reduction and probably not something they would recommend approval on.
Q But would you agree with me that the way this is written, we don't know for sure exactly what's going to be deemed substantial conformance and substantial now.
A I'll say it this way. Binding element 20 does not require 615 square feet of a scallop.
Q All right.
A It could be 614. It could be 620.
Q Of the 1171 square feet you talked about, let me take that back, the 615 square feet, does this binding, element, what does this binding element require? Can you say anything with certainty as to what it provides in total square footage compared to the 615?
A It requires substantial conformance.
Q But you can't give me a figure as to what that is, right? I'm not being critical. I'm just saying that's the name of the game, isn't it?
A Exactly.

Q All right. And --
A As I said, it's part of a process and it evolves.
Q Now, so --
A We're not at a point where we would say specifically that it's 1171.35 square feet. That's premature to say that.
Q All right. And isn't it --
A But we can say it's generally as shown on the plan.
Q But isn't it premature then to say, as you did in your testimony, exactly what people are going to see say from City Homes or as they walk down the street because we really don't know what's going to be there yet, do we?
A Yes, we do. They can't -- people at City Homes looking out aren't going to tell whether that quarter of a circle is 615 square feet or 620 square feet. They're not going to be able to see that difference.
Q So you're --
A I wouldn't be able to see it without measuring it.
Q You're assuming then we're limited. They can't deviate more than 25 feet, square feet. Is that what you're testimony is?
A No.
Q All right. Then let me ask another question. If we take the -- let's assume for your sake that what is shown

on Exhibit 76 is exactly what's approved when, and this gets built. I want to know what do we have, it's a little bit confusing to me. You're counting as part of the 615 square feet, tell me if I'm wrong, the sidewalk that goes, leads one into the entranceway, is that correct?
A Yes.
Q So this, these two young girls walking along here around the quadrant, they're walking on the sidewalk into, into the building, so part of this park is --
A How do we know they're going into the building?
Q Well, would you agree --
MS. ROBESON: Okay. Find another marker. Don't want to argue.
BY MR. KNOPF:
Q Would you -- am I correct pointing to where there are two pedestrians on the corner of, closest to the building on the corner of West Lane, am I correct that there is a pathway from there that goes leading to the front door, going right near the building next to the, adjacent to the building?
A And continuing on to Montgomery Lane.
Q I understand. But and that's, that would be, unless you have another name for it, the sidewalk, walkway going into the building, the entranceway.
A That's a walkway across the front of the building.

You can stop and go into the building or you can continue on and sit on the, the seats in this location here which would be the western edge of the steps that were purposely designed as seating areas for different than the benches that are, are sat on behind the sidewalk itself.

Q My question really, could be answered by yes or no. Yes, it is --

A But it might be misleading.

MS. ROBESON: Well, that's not up to you. You have an attorney. This is cross-examination. It is yes or no. And your attorney has the opportunity if something, if she feels something you say is misleading, then she can follow up and ask you a question to clarify it. It's easier than arguing with the attorney that's asking you the question.

THE WITNESS: Not to be difficult but --

MS. ROBESON: So --

THE WITNESS: -- you asked me to tell the truth, the whole truth. To me, the whole truth is presenting the image of --

MS. ROBESON: I know, but he asked you a yes or no question and so if you look at it that way, you can simply say yes, and your attorney's role is to come back and clarify it.

THE WITNESS: Okay. Understood.

BY MR. KNOPF:

Q Let me try to make it easier. Would you agree with me that right next to the facade of the building in this present scallop shape area, there is a, a path, I guess a concrete path, that one could use, if they wanted to, to walk into the building?

A Yes.

Q Okay. And you're counting that as part of the park, the square footage that that occupies, is that correct?

A It's part of the square footages that I marked on --

Q Right.

A -- Exhibit 112.

Q But that was a part of the 615 square feet that you said was part of the pocket park, is that correct, or did I misunderstand?

A It's part of the 615 feet that was cut out of the building and designed as a park there, yes.

Q So that you're counting that as part of the park area. I'm not mistaken if I say that sidewalk is encompassed within what you say is the park area.

A That's correct.

Q Okay. Now, similarly, these steps going down to Montgomery Lane to the left, no, going down to Montgomery

Lane, those steps also provide access to the building, is that correct?

A That's one of --

Q Lead, that lead to the building.

A -- the things that they do, yes.

Q Yes. Right. And okay. So and that's, that, those steps, the entranceway steps are also part of the pocket park area that you advised us of.

A That is correct.

Q Okay. Now, if, pardon me but as a layperson, I --

A I'm sorry. I need to correct that. Part of them is.

Q Part.

A Part of the steps --

Q Oh.

A -- are part of the park.

Q Are part of -- well, could you show me then which part aren't? I misunderstood that. I thought all of the steps were part of the park that we were talking about.

A On Exhibit 112, we, we drew the line straight out from the, the crescent, the corner of the crescent on Montgomery Lane. As you can see here, there's, we call it steps or seating area/steps that extend west of that area.

Q And that's not part.

A That's not part of these areas that I mentioned.

Q Okay. Thank you for that clarification. Would that be fair, well, I was going to say would it be fair to say it's the gray part of the steps that's part of rather than the white part of the steps but I'm not sure that's exactly correct. That would be roughly, roughly the dividing line?

A The darker gray portion that has higher treads --

Q Yes.

A -- would, is generally the space where we, where I didn't count it in those measurements.

Q You didn't count it. Okay. Now --

MS. ROBESON: And you're looking at exhibit, what is that, 76?

MR. KNOPF: 76.

BY MR. KNOPF:

Q Now, when I think of park, I think green. I know you don't, but can you tell me how many square feet of something green is in this park? Am I correct, I see just a few feet of green planted area and the rest is concrete or stone?

A Or sculpture or there's a variety of things.

Q Correct.

A The area is not final design. It's an area that is intended to be a public space and in this illustration, there's more hardscape than green.

Q You know, that reminds me. I see this lovely red tree to the right, near the corner of Montgomery and, and West Lane. I thought we had expert testimony that you can't plant a tree so close to the building and yet, isn't that --

MS. HER: Objection.

BY MR. KNOPF:

Q -- literally between the sidewalk --

MS. HER: Objection. It was clear, it's been made clear that this drawing is for illustrative purposes only. It is not a landscape plan.

MS. ROBESON: Well, he can cross-examine on that.

MR. KNOPF: I'm trying to show that --

MS. HER: I'd also note that --

MR. KNOPF: -- what you see is not what you get.

MS. HER: -- Mr. Irish is not a landscape architect but he may know the answer to --

MS. ROBESON: Well, he got to testify some on compatibility which they don't usually do so.

BY MR. KNOPF:

Q Would you agree with me that in this park --

MS. ROBESON: You can --

BY MR. KNOPF:

Q -- whatever the parkland, that tree would not be planted there because it's too close, you can't have a tree that big next to a building?

A The tree in that illustration scales about nine feet from the corner, the West Lane corner of the crescent.

Q Well --

A There are certainly ornamental trees that could be planted in that location.

Q I see people sitting on a, on the concept here, on what you would call a circular concrete wall or something. I don't know what name, but do you see that circular wall?

A Yes.

Q What is the -- and then on that wall, there are plantings which would be flowers?

A Yes.

Q And then behind that wall, presumably the wall ends because we see that, you said that's the area where there's a walkway. What's the width between that wall and the building itself? Are we talking about three feet, four feet, two feet, and that's where the tree is going?

A You're correct. It's about three or four feet.

Q So would you agree with me again that this concept plan, even assuming the same number of square footage is finally approved, it would not contain a tree in that location, this size?

A No.

Q You wouldn't agree with that.

A I wouldn't.

Q Oh, I see. You think tree, a tree that size could be planted within two feet of a building, three feet? I mean, isn't there a walkway there to boot? It would be in the middle of --

A So it wouldn't be within two feet of the building.

Q But what's the distance between the wall and the building itself?

A I, I said that scaling off of Exhibit 112, that that planter is about three or four feet wide. Let's say it's four feet wide. And I said that it was nine feet from the tree to the building.

Q I thought you said nine feet from the tree to the, to the street.

A No. Nine feet from the corner of the crescent to the tree. I've got a maple at my house that's about 10 feet from the front of my house.

Q So you're saying there's nine feet behind this wall to the, to the building facade.

A No. That's not what I said.

Q I'm sorry. I'm not trying to put words in your mouth.

A I said there's --

Q I'm just trying to understand.

A I mean, we could ask her to read it back or I can tell you. There's nine feet from the tree to the corner of

the crescent.

Q Would you point --

MS. ROBESON: And then how far from the tree to the wall?

BY MR. KNOPF:

Q Going straight back from the tree in toward the building. How --

A The closest dimension, scaling off of Exhibit 112, the closest dimension from that -- I'll stand where you can both see.

MS. ROBESON: Thank you.

THE WITNESS: This orange tree, circular thing that represents a tree in the northeastern portion of that --

MS. ROBESON: Scallop.

THE WITNESS: -- scallop, quarter of a circle, not triangle, is the tree that was in the rendering. If you scale from the center of that tree to closest point on that scallop, it's about nine feet. The width of the planters, as you mentioned, about three or four feet so that, so the planter -- again, we're attributing a whole lot more precision to this drawing that is intended --

MS. ROBESON: I understand.

THE WITNESS: -- but if we're going to rely on this as you asked me to, then you've got, if the -- let's,

for round numbers, let's say the planter's four feet wide. Center of the tree to the outside of the planter would be two feet. Subtracted from the nine would be a seven foot walk. Maybe when it's ultimately designed, the walk is six and the planters are wider. Whatever.

BY MR. KNOPF:

Q So the --

A My point, you asked me if a tree can be put there and I said yes.

Q It would be within seven feet of the wall, of the building, is that --

A This is the third time I've said the tree would be nine feet from the building as illustrated there.

Q I thought you said that included in this would be room for the planter in that nine feet.

A Well, of course the planter is closer than the, than the trunk of the tree.

Q Oh, I see.

A Where do you want me to measure from.

Q You're talking about the planter for the tree. I'm talking about the planter for those flowers.

A They're the same planter.

Q I'm calling this a planter. Oh, the tree is in the planter?

A Yes.

Q Oh, I'm sorry. I don't, I didn't see that in this diagram. You were making that assumption. I was making the assumption it was behind it. It looks like it was behind it. All right. But this is a much better, for my purposes, on Exhibit 112 I guess, it shows the pocket park with a swirl of greener which I presume is the, depicts the flowers planted here on the, on this wall.

MS. ROBESON: On 76.

BY MR. KNOPF:

Q On 76. Just roughly, what square footage are we talking about in terms of that green area, actual green area? Are we talking about, you know, 50 square feet, 20 square feet?

A I haven't measured it. It's scaled approximately 50 feet. Let me double-check that. Yeah. If you measure along the arc, it's scaled about 50 feet. If it's four feet wide, that would be 200 square feet.

Q Excuse me. And you're saying that width remains constant?

A No.

Q So you multiplied a constant width times length, didn't you?

A You suggested it was three to four feet. I agreed with you.

Q Well, that's kind of you but now, I want you to

tell the truth and not agree with you. Doesn't this seem to be wider as one faces Montgomery and then it narrows down as you go back?

A It does.

Q So we're talking about a lot of -- A So maybe it's more than 200 feet. If it's four feet at the narrowest and gets wider and I multiply 4 times 50, then it would be more than that.

Q Are you representing to us that this is wider than, that this, the West Lane end is wider than the Montgomery Lane end?

A No. It's narrower.

Q Narrower. Exactly. And this is the four. Would this be the four feet width?

A No. You asked me the dimension by the tree.

MS. ROBESON: Okay. Just a second. I think is it your testimony that the arc with the flowers is narrower at the northwest, I mean northeast, than it is at the southern portion?

THE WITNESS: Yes.

MS. ROBESON: And what's the width at the northeast most point?

THE WITNESS: It's three to four feet.

MS. ROBESON: Okay.

BY MR. KNOPF:

Q Does this, I'm looking at Exhibit 112 or 77, does that have a scale on it?

A It's one inch equals 20 feet.

Q One inch equals 20 feet. Okay. And I'd ask you again to look at that carefully and tell me which end appears wider, the width at the Montgomery Lane side or the width at the West Lane side?

A Again, we're attributing far too much precision --

MS. ROBESON: I understand and --

THE WITNESS: -- to the details of this drawing, but I'm happy to answer your question. If you look at Exhibit 112, there is a green crescent and inside of part of that is a yellow and pink dotted crescent. I am assuming that the yellow and pink dots are some type of ground cover and it would probably be illustrated by the area we're pointing now which is between the heads of the lady in the pink and the man in the white suit jacket.

BY MR. KNOPF:

Q All right. So I don't wish to argue. Let's move this along. Without being precise, we're saying roughly 200 square feet possibly green planted area.

A Easily.

Q Okay, fine. Now, the -- so 200 square feet on the -- okay. Then why don't we want to move on to, we now go onto the 1100, 2100 and something square feet for the

total park area that you talked about. Does that -- I'm trying to understand that. I believe you said that included the sidewalk. Where is your --

MS. ROBESON: That's 112.

BY MR. KNOPF:

Q Yes. Here it is. Does that come out in taking -- I'm trying to both of this at one time. I guess maybe it would be helpful to put it here. I'm just saying looking, looking at 76, I'm trying to understand what comes within the boundaries of what you said was the park. I presume that takes in this gray --

A Yes.

Q -- area of, sidewalk area. And does it take in any of the sidewalk area immediately next to what's green and gray?

A Yes.

Q And is that the public street? Is that the public right-of-way? Excuse me.

A Well, the way I explained it in my testimony --

Q Yes.

A -- was that 615 feet of that area was created by cutting a quarter of a circle 28 foot radius --

Q Right. I understand.

A -- out of the building. That was 615 square feet. If you then added the space from there to the property line,

the new property line where the right-of-way dedication line would be, you add 393 square feet.

Q And just pause there for a minute. Where would that 393 square feet be here on this depiction to help us out?

A Well, that's kind of the point. You don't see the property line on the ground when you're walking which is why I described the balance of the area as reading like part of the public space.

Q Well, my problem is I don't see the park. That's why I'm trying to ask you if you could do this. All right. Where do you go with the 11, 2100? You get to the next step. We're taking in the sidewalk, public sidewalk, is that it, as counting that as part of the park?

A Well, the 2100, as I said, goes all the way to the curb.

Q So I'm just trying to understand that. So we are going down, is this the curb you're referring to? I'm pointing to the curb in front of the car.

MS. ROBESON: On 76, yes.

BY MR. KNOPF:

Q Are you referring to this curb area here?

A One in the same.

Q I see. So under that definition, I gather we have everybody has parkland in front of their buildings up and

down the street --

A That's not what --

Q -- because they're close to the curb?

A No. What I was -- I was trying to clarify some area of confusion so I was explaining how we arrived at a, I believe the testimony was about a 1,000 square foot park.

Q All right. Let me --

A And so 615 plus 393 gets you to that, all on private property. In my direct testimony, I also stated that in reality, you're not going to see the property line so as you walk down the street or look across from the City Homes, this is the image you're going to see --

MS. ROBESON: I understand.

THE WITNESS: -- that all reads as parkland.

BY MR. KNOPF:

Q Okay. Thank you.

A And I want to give you a sense of that area.

Q The last question or almost last question on this is how does someone with handicaps, say a wheelchair, access to the building?

A From right where your finger is.

Q Right here. They, they would -- that was the sidewalk path we talked about before next to the building.

A That's correct.

Q Now, didn't I recall you mention -- and you're

counting that as part of public park space in through this.

A Just like every other project on the street.

Q But didn't I hear you mention that the Edgemoor counted their handicap space as part of their public space and you disagreed with that, that you counted that as it read more like private space.

A I said that the Edgemoor ramp and stairway reads more as private space than as public space. It's been approved by the Planning Board as public use space similar to other projects that I think I pointed out in other areas on the street that had spaces that are, aren't as desirable as our park space, as public use space. But the, but the difference between the Edgemoor and this, this case is that this, this is a single entrance into the building and it is an area where people that are coming from West Lane to Arlington could choose to walk there and down the steps rather than around the corner. No one is going to walk up that ramp in front of the Edgemoor unless they're going into the Edgemoor.

Q And you're saying that people walking down West Lane could walk right next to the building and they would feel that that's not the building's entrance, that that's public space?

A That would, that would read very similar to walking along a retail front. We unfortunately, the --

Q That's not retail front though. It's a private --
A It's a --
Q -- door into a building, isn't it?
A It's a door into the lobby of a building. But unfortunately, our renderer didn't follow instructions, but the purpose of the area that I'm pointing to where the steps look like they're double height is so that those, they can be designed as seating areas.
MS. ROBESON: I understand.
THE WITNESS: Some, something different than the benches, and that's an area in that space so if someone was there and they wanted to walk up West Lane, they get up, walk up the steps and go.
MS. ROBESON: I understand.
BY MR. KNOPF:
Q Okay. Let me just quickly go to another -- I had the, here it is. If you could quickly, I want to move you from the front of the building to the back of the building. And we talked about, I don't want to spend much time on this, I'm looking at 108 and I see in the rear, I'm pointing to the rear of the building where it says garage entrance. I go beyond the garage entrance toward the north, and that's the 15 feet of open space we were talking about or --
A Yes.
Q Now, I see there's something there called, on 108,

storm water vault.
A Yes.
Q What is that?
A In my testimony about the storm water management concept plan, I talked about various ways that we would treat storm water management, and one of those was with an underground vault that I said would be located in that 15 foot space at the north.
Q My purpose of asking that is since we've been talking about this with the open space for use, is it, the existence of that structure mean that one could not plant trees on, in that area or other greenery because it would interfere with the vault or there wouldn't be any soil or it would be concrete?
A No. It does not mean that.
Q So you could plant trees on top of that?
A No. I didn't say you could plant trees on top of it. You said in that area.
Q Oh. I'm talking -- okay. Let me be very precise. In exactly this area demarked storm water vault, what kind of landscaping could one plant that would survive in terms of height of trees or nature of trees or bushes or what?
A On top of the vault, you wouldn't plant trees. You could plant low shrubs. More likely, you would plant grass or ornamental grasses, something to that effect.

Q Okay.
A There would be --
MS. ROBESON: Could you put an alley there on top?
THE WITNESS: A pedestrian pathway could cross over, yes. There would be, I believe, two or three manhole covers that would come to the surface but the rest of it would be below grade and could have planting on top of it, not trees but trees nearby. And as I was mentioning how it could connect to the path on Edgemoor at Arlington North potentially --
MS. ROBESON: Yes.
THE WITNESS: -- that wouldn't restrict that.
MS. ROBESON: That's kind of speculative at the moment. I was just, I just didn't know what could be put on top of that, so go ahead.
MR. KNOPF: Either did I actually.
THE WITNESS: It will be viewed as a landscaped area.
MS. ROBESON: Okay.
THE WITNESS: Other than the transformers, and they would be screened.
BY MR. KNOPF:
Q Now, let's look at what we know if this is approved. We have a garage entrance. Would it be fair to say the garage entrance wall would be the wall that would

join this 15 feet?
A Yes.
Q Okay. And I presume there would be no windows. Certainly wouldn't be any residents there.
A Correct.
Q Okay. And then the building goes up at this point about 70 feet, is that correct?
A Correct.
Q Okay. Now, if we go across the 15 feet and we're next to the Village of Bethesda, there's a wall --
MS. ROBESON: Norman, can you move to the right a little bit?
MR. KNOPF: Sorry.
BY MR. KNOPF:
Q There's a wall on the north side of this space.
A Yes. The Villages of Bethesda are at a higher elevation.
Q High elevation. And do you know what the height of that wall is measured from the ground level on the 15 feet?
A We probably have it in the file somewhere. I don't recall if I --
Q Could you roughly estimate? I mean, are we talking a 5 foot wall, a 50 foot wall?
A No. It's maybe five.

Q Maybe five. I'm just looking for, where is the aerial photo?
(Discussion off the record.)
BY MR. KNOPF:
Q I'm looking at Exhibit 106F duplicate. Is this the wall? I'm pointing at a wall. Is that the wall we're talking about?
A No. That's the side of the building.
Q Side of the building.
A I, I was referring to the grade of this courtyard in front of the, between the townhouses being a little bit higher than the grade at the, at the back of the subject property. And I believe at least for some distance there, there's a wall that holds the villages up.
Q But what would your estimate be of the height of the building in that area that this, pointing to a brown structure that faces east?
A Well, this brown edge of the building is the end of a townhouse and I believe they're three stories so if you want to go to the peak, you're probably 35 or 40 feet.
Q And that's on top of a wall, I mean, the townhouses are on an elevated structure which is a wall holding the dirt for the elevation, correct?
A Yes.
Q So if we're, if we're behind the building, the

subject building in that 15 sort of area, we have a 70 foot wall, so to speak, building on one side and at least a portion on the other side of roughly 30, 40 feet of masonry there too, is that correct?
A That's correct.
Q Okay. Thank you. Let me quickly run -- let's see. The exhibit that we had with the loading, this, I guess, well, we had the -- and the one that we've been using, well, we can use this one, the marking. Okay. For simplicity's sake, I'm going to refer to surface locating areas, meaning the one that doesn't go to the garage.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q And garage loading area. Does that make sense?
A (No audible response.)
Q Now, first let me understand. There is a lay-by. I'm trying to understand how this system works. I understand trucks a certain size might have three choices. They can go to the loading garage at the garage loading area, the surface loading area or they can go in the lay-by, is that correct?
A That's correct.
Q Okay. Now, the Federal Express type truck, UPS, Federal Express, you've given us an Exhibit 115. Is that -- how would you describe that? I know they come in different

sizes but the most common size UPS or Federal Express. Is that one of these that you've given us on 115A or B, or that's not.
A No. That's, that AASHTO vehicle, the SU-30 that's on 15A or B, whichever, one is a WB-40, one SU-30. Those vehicles are larger than anything we would need to serve the project.
Q No. I'm asking what size is a Federal Express or UPS truck in terms of is it, is it this SUV30, is that the typical size?
A No. It would be smaller.
Q Smaller.
A If you give me a moment, I'll -- I thought I had it in my testimony but if not, either way, I can easily read it again. We actually measured a FedEx truck and a U-Haul truck that delivers to our office, an approximately 80,000 square foot office building. The -- let's see. Let me find it on there. And I, and I believe this is already in the record but the, the FedEx box truck that delivered to our office we measured at 8 feet wide, 23 feet long, whereas your SU-30 is 30 feet long and 9 feet, 8 inches high where the SU-30 is 13-and-a-half feet, 13.5 feet high.
Q So 8 feet by 23 feet, 8 feet wide, 23 feet long?
A And 9 foot, 8 inches high.
Q Nine foot, eight inches high.

A And that vehicle will fit in the, certainly the lay-by.
Q Right.
A And it will also fit in the surface loading dock.
Q Now, and the lay-by is how many feet wide? Is it six feet?
A It's still six.
Q That's what I thought. And I believe you mentioned the one at, by Edgemoor was seven feet.
A I did.
Q So if we have an eight foot wide just standard vehicle, UPS or whatever, that vehicle, assuming they pull right up to the curb, is still going to stick out into the travel lane.
A When I described the Edgemoor, I said that the, the curb dimension is about 18 feet in some areas, even if you say it's 20 feet, right, I'm being generous, along Montgomery, I'm sorry, 18 feet is what's on West Lane, 20 feet on Montgomery. With a seven foot lay-by would give you 27 feet of pavement from the south curb to the lay-by.
Q I thought we had six feet lay-by on West Lane.
A I'm talking in front of the Edgemoor.
Q Well, I --
A I'm trying to explain the difference.
MS. ROBESON: Just, just a second. Okay. Go back

to 112. And, Mr. Knopf, you point to him the dimensions that you want to, him to compare. Okay.
MR. KNOPF: I'm not -- let me restart. I'm interested in the lay-by on West Lane.
MS. ROBESON: I know that.
MR. KNOPF: Oh.
MS. ROBESON: But are you comparing, are you trying to compare it to Edgemoor?
MR. KNOPF: No. Well, no. First, I wanted to establish whether the one on West Lane would result in the vehicle sticking out into the travel lane, and I guess --
MS. ROBESON: Oh, okay.
MR. KNOPF: I guess you would --
MS. ROBESON: I think he testified yes.
MR. KNOPF: He would agree. He would agree it would stick out two feet.
BY MR. KNOPF:
Q Wouldn't it?
A What I testified to was that there will be 22 feet of paving curb to curb on West Lane where there isn't a lay-by and when you add six feet for the lay-by, you have 28. So if you have an eight foot vehicle in the lay-by, then you've got 20 feet of pavement left which is more than ample for vehicles to pass one another.
Q That's not my question.

MS. ROBESON: Wait. I'm -- okay. It's going to stick out. If it's parked in the lay-by, it's going to stick into the travel lane, right?
MR. KNOPF: That was my question.
THE WITNESS: That's correct.
MS. ROBESON: Okay. That's what I think he's trying to know.
BY MR. KNOPF:
Q That's all I wanted to know. Thank you.
MS. ROBESON: I would be helpful if you could, I know you're, you want to argue your case and you're doing a great job. I just need you to answer his question because one of my jobs is to get through the hearing so.
MS. HARRIS: And ours too but in fairness, Mr. Knopf actually referenced the lay-by in front of the highrise Edgemoor.
MR. KNOPF: No. I was --
MS. ROBESON: I'm not -- I know. I'm not criticizing anybody. It's been a long number of days but let's just stick -- so it will protrude into the travel lane by two feet approximately depending on how close it is to the curb, correct?
THE WITNESS: Right. And of course the width of the vehicle.
MS. ROBESON: Yes. Correct.

THE WITNESS: The FedEx truck that I was describing was eight feet wide so it would, if it parked against the curb, it would project into the southbound lane approximately two feet.
MS. ROBESON: Okay.
MR. KNOPF: Thank you.
BY MR. KNOPF:
Q And we did say, now switching to front of Edgemoor, the Edgemoor has a seven foot width lay-by, is that correct?
A Correct.
Q Is there some reason why we don't have a seven foot or eight foot lay-by established on West Lane so that we don't protrude into the travel lane?
A Well, there's several reasons. I'm a lead accredited professional and interested in green rather than non-green so we don't want to make, put anymore pavement down than we have to and when we -- the seven foot lay-by for the Edgemoor creates a total pavement width of 27 feet. The six foot lay-by in front of West Lane creates a total pavement width of 28 feet. I don't think it's warranted to have a wider lay-by there. Certainly could be done but it's not necessary.
Q All right. Just let me, on the SUV, SU, SUV, I'm sorry, 30? How do you, what's the --

A SU.
MS. ROBESON: The one on 115A?
MR. KNOPF: Right.
BY MR. KNOPF:
Q What's the width of that truck? I know the height's 13.5 feet. I wrote that down. I didn't write down the width.
A Let me see yours. Yeah. The 115A or B.
MS. HARRIS: Oh, yes.
THE WITNESS: I'm sorry. I don't see that dimension on there either, but I, I probably should have copied this table for you. It has more dimensions. The --
BY MR. KNOPF:
Q Well --
A -- SU-30 has a width of eight feet.
Q Eight feet also. Okay. Thank you. Now, the lay-by that I was just referring to on West Lane, that is also to be used by, excuse me, visitors to the building for drop-off or pick-ups, regular vehicles, regular cars rather than deliveries. Just people that are picking up or dropping off people associated to that building would be using that lay-by.
A Among other places, yes.
Q What are the other places?
A Just some extra spaces in the garage.

Q If I were going to pick up somebody, I would go down into the garage to pick them up?
A If you were coming to visit someone. I'm sorry. Maybe I misunderstood you.
Q No. I meant I'm coming to pick up someone or I'm going to drop off someone, not stay.
A Sure. They could use the lay-by for that.
Q Because the, there isn't any other alternative, is there, as a practical matter unless they double park or park illegally, stop illegally on Montgomery Lane?
A I don't know that there, you would prohibit stopping adjacent to the curb on Montgomery Lane to let somebody out.
Q Okay. Fair enough. Now, if there is a Federal Express truck parked in a lay-by -- let me rephrase that. If you have a Federal Express truck parked in the lay-by, I believe you said that's 23 feet in length.
A Yes.
Q And am I correct that a parking space in Montgomery County, if you have a garage or a parking lot, is supposed to be 18 feet long for a car?
A Any perpendicular space is 18 feet long.
Q Right. So if we had a 23 foot truck parked in the lay-by and a car wanted to park 18 feet and 23 feet, we've already hit tilt, haven't we, in terms of a 40 foot lay-by

length? We've already gone over that?
A Eighteen plus twenty-three exceeds forty.
Q Right.
A There are plenty of vehicles that would still fit in there.
Q I understand. Do you agree with me even less would fit in there if the, if the UPS truck didn't exactly pull all the way up and sort of just --
A Sure.
Q Right.
A I would agree with you.
Q Okay. So would you agree with me if we got two vehicles, such as the mailman or the UPS, they both couldn't fit in the lay-by if they came at the same time.
A Depending on the size of their vehicles.
Q I see. All right.
A I mean, my mail truck is shorter than my car.
Q All right. Let's say two UPS vehicles, or one UPS and one Federal Express, they both couldn't fit through at the same time, could they?
A That's correct.
Q And would you agree with me that if someone had a van, say a painter or electrician, and they parked in the lay-by, that would preclude having a, and they didn't park exactly up front but left a little room, it would preclude

the UPS truck from doing that, from parking here also?
A If they park closer than this dimension, yes, it could.
Q Now, you said there was going to be spaces in the basement that visitors could park. Your understanding there's going to be spaces in the basement that service vehicles could park?
A Yes.
Q And do you know that there will be extra spaces? How many spaces is it your understanding are being provided totally in the garage?
A I, I don't know the total number, didn't finally determine it.
Q I see. Do you know the total number of units that they're planning on?
A A maximum of 120.
Q But you don't know the total number of units but you're still sure, parking spaces, but you're still sure there will be spaces for visitors?
A It's the applicant's intention to have spaces there that visitors could use.
Q It's the applicant's intention to have spaces where all the service vehicles can use?
MS. HARRIS: Objection. Mr., two things. One is we covered this ad nauseam yesterday I believe with the

traffic consultant and the architect previous, the traffic consultant. And second of all, Mr. Irish did not at all testify to the number of parking spaces in the building.
MS. ROBESON: Well, I recall -- no he didn't. I recall, however, that some of the questions on parking were deferred to the civil engineer, and I think that's what you're responding to. I, I think you've, you know, I don't think we need to get too much more into this because I think you've made your point unless you have another series of questions.
MR. KNOPF: I just want to ask -- yes. I'm going on.
MS. ROBESON: Okay.
MR. KNOPF: I'm almost done here.
BY MR. KNOPF:
Q When a truck, assume a truck of the proper size goes into the garage to use the loading facility or unloading facility in the garage. Am I not correct, we had testimony from the architect and I thought he deferred somewhat to you that the truck would have to go from the garage entrance pretty much the length of the building to get to where the elevator unloading area is, and I was trying to understand how that's to be accommodated in a garage where a truck path, where the truck would have access to the elevator and then how would the truck turn around to

get out? I'm trying to understand. This, is this in theory or in fact there's going to be a way for him to get in and out. You wouldn't, you wouldn't have him back out, would you?

A In fact, there will be a way for the, the vehicle to pull head first into the garage and head first out of the garage.

Q And that's how I'm wondering. How, how will that be provided that circulation area? Would that not take up quite a bit of room where, that normally would be assigned to parking?

A No.

Q Do you have a floor diagram of the garage that this --

A The kind of vehicle we're talking about is a large van or a pick-up truck. They typically can fit in a, basically a standard space. As I understand it from the architect, he's allocated a wider space to, to that loading area and allowed for an appropriate height. One of the requirements by law that we have to comply with is we have to allow a wheelchair van to go into the garage and park in one of the handicap spaces. The constraints that you have on a handicap van are similar to what you would have on, on some of the smaller trucks.

Q I didn't understand that. So we're talking about

pick-up trucks or vans rather than box trucks or UPS type trucks going into the garage.

A Well, the UPS truck wouldn't go into the garage but U-Haul has a vehicle that's a 10 foot box truck whose height is comparable to that of a handicap van. And in their, you can look it up on line, they advertise this vehicle as adequate to serve studio/apartment, so a small studio or a small apartment. So that vehicle would have three opportunities for places to unload, the lay-by, the loading space at grade or down in the garage.

Q And if I'm not mistaken, you testified that with regard to the, I refer to it as hammerhead turns, I don't know if that's the proper term. Where you have to go one direction and back up to make a turn, is that proper to say hammerhead or is there some other --

A It's a three-point turn.

Q Three-point turns. Thank you. I believe you testified that something to the effect that that is a very, that's a good, it's a good circulation system, it's the best you can get for this area or something like that.

A What I, what I believe you're referring to is I was comparing how you would back into our loading space at grade as to how you would back into pretty much any loading space. You drive along the street, you back in and then you pull out. This is, is very, is very similar. You drive in,

you back in and then you pull out.

Q Well, would you agree with me that an even better way for unloading such as you have a lot of unloading using the, possibly using the lay-by, correct? The trucks could come in there and make deliveries or unloading by going into the lay-by, is that correct?

A It's one of three opportunities.

Q Right. Would not be even more efficient or better way if this happened to have an arrangement where a truck could go around the block so that it would come in, go around the building. If this were open, the west way were opened, just came down west way and then pulled into that spot without having to back up, wouldn't that be a superior way to do that?

A That would improve the circulation to back into the lay-by. It wouldn't improve the movement into the garage or into the loading space at grade.

Q Would you agree with me that this is an unusual site since there seems to be very limited ability to access the building if you can't come in from Montgomery Lane and the West Lane was the only access point and that's a dead end, no outlet street? Sort of an, a difficult situation, isn't it?

A Well, I don't think it's difficult. It's, it's fortunate.

Q Oh, fortunate. Because?

A There's a lot less traffic on West Lane than on Montgomery Lane.

Q All right.

A Less interactions.

Q I see. One of the, one of the findings that the Hearing Examiner has to make is that the development would provide for the, quote, maximum safety, unquote, and that the proposed vehicular access would be safe, adequate and efficient. Do you think that this access points provided here, I understand it's been constrained by the site, do you think they provide for the maximum safety and efficiency?

A Yes. I do.

Q That's your -- you do. And that the, would you agree with me that if there were less deliveries, less move-ins because there were less units, that would also increase the safety and efficiency at this site by having less, lesser units so you have lesser, less traffic?

A I don't necessarily agree with that.

Q No. Okay. Well, you would agree that if you have less units, you're apt to have less traffic and less deliveries, aren't you?

A Yes. We're already at almost at de minimis level so reducing it by a couple is not that big of an improvement.

Q All right. I have no further questions.
MS. ROBESON: All right. Redirect, Ms. Harris?
MS. HARRIS: Thank you.
REDIRECT EXAMINATION
BY MS. HARRIS:
Q You testified that the project meets all the development standards.
A Yes.
Q Does it also meet the building frontage requirement?
A There is no building frontage requirement in the TS-R Zone. There is a frontage requirement in some of the residential zones but the TS-R does not have a frontage maximum.
Q So that the 172 foot wide, long I should say, excuse me, long highrise Edgemoor is in compliance with the zone, is that right?
A Yes.
Q As is the 78 foot wide West Lane project, subject property?
A Yes.
Q As are all the other ones on the block.
A Yes.
Q Thank you. In terms of the -- well, there's a lot of discussion immediately after lunch about the public use

space in the front of the building and I just have a few questions on that, but can you please read the first two sentences on page 82 of the Sector Plan regarding, let me show it to you, regarding what the objective --
A This?
Q Exactly. What the objective, one of the objectives is in the Sector Plan in terms of open space and greenspace.
A One possible resource for publicly oriented open space within the TS-R District is the area in front of new apartment structures along Montgomery Lane. Streetscape and special seating areas could be provided in the setback from the sidewalk to the building face creating an outdoor community space.
Q Would you agree that it almost sounds as if the applicant took that sentence and defined a space to meet the sentence?
A Think they did.
Q Thank you. In terms of the public, in terms of the public use space definition in the Zoning Ordinance --
MS. ROBESON: Yes. Go ahead.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q Are you aware of any requirement or distinction between how much hardscape and softscape can be provided?

A No. There isn't one.
Q So that a public use space could be primarily hardscaped?
A It can be and in many cases is. Generally, the more urbanized areas have more hardscape than softscape or green area.
Q Okay. In terms of the, moving onto the roof because there seems to be a lot of confusion about what's happening up on the roof, so I just want to better understand. When, when the green roof, which is a major component of the roof obviously, when will the details of that be worked out?
A I believe my earlier testimony reflected a three stage process for the design of storm water management and we're actually a little bit ahead of the game with what we have at this point. Typically, at a preliminary plan stage, you would be required to have submitted a concept storm water management plan prior to submitting a preliminary plan. You have to have that concept approved prior to preliminary plan approval. That plan is then updated, further embellished, more details provided at site plan. Similar process, has to be submitted prior to submittal and approved prior to the Planning Board acting on the site plan. After that second stage is approved, then the final construction plans for the storm water management system

would be detailed and provided permanently.
As it relates to a green roof, we're at a stage where we've determined, between us and the architect, approximately how much area in the roof could be devoted to a green roof for storm water management purposes, and that's the 6, 6,000 feet. In terms of specifically where on the roof it would be and what type of plants would go in, we're not at that point. The landscape plans that would be prepared as part of the site plan would should a lot more detail on that and then obviously, the construction plans would.
MS. ROBESON: I understand. I guess my question is if the green roof ends up being counted as open space, are you going to reduce the amount of green area or open space shown on this plan?
MS. HARRIS: No, and maybe the first -- we'll answer that in detail but maybe it's good to explain the difference between the public use space requirement and the, and the open space requirement.
THE WITNESS: Well, the, the TS-R Zone has two requirements.
MS. ROBESON: Right.
THE WITNESS: One is for public use space which we had a lot of discussion about. The other is active/passive recreation space. Public use space is required to be 10

percent of the net lot area. Active/passive recreation space, the quantity is supposed to be a minimum of 20 percent of lot area.

MS. ROBESON: Right.

THE WITNESS: But active/passive recreation space does not have to be exterior space. The amount of space that we have available outside the building that we've not counted for other things, not even counting the 15 foot strip at the north, exceeds the 20 percent requirement.

MS. ROBESON: I understand that but I guess my question, for compatibility reasons is, well, maybe it's a question for the applicants, if, if the green roof ends up counting toward one of these, well, it wouldn't be public use space, but one of these spaces, is that going to reduce the space on the exterior that's counting toward open space?

THE WITNESS: I think I can answer that.

MS. ROBESON: You can?

THE WITNESS: And the answer is no. What's going to be on the roof is going to be on the roof. We meet the requirements in the zone without counting the roof for any of those spaces.

MS. ROBESON: I know that but my question is if you could count it, all right --

THE WITNESS: Would we reduce the space.

MS. ROBESON: -- would you reduce the exterior of,

of what's showing on the plan?

THE WITNESS: No.

MS. ROBESON: That's my question.

THE WITNESS: No. That space is designed for, for its purpose and there's no need to reduce that.

BY MS. HARRIS:

Q And actually, that reminds me of another question that I failed to -- sorry. In terms of the corner parapets, there was a suggestion that what we see on Exhibit 76 isn't exactly what will be, what will be constructed and we have, as you noted, a 10 percent public use space requirement.

A Yes.

Q And so just mathematically, because we have a 10 percent public use space requirement, is it correct to say that the rough dimensions of that space will absolutely be as shown on the plan because we have to satisfy the 10 percent requirement?

A Yes.

Q Thank you.

MS. ROBESON: Are your setbacks a binding element?

THE WITNESS: The setbacks that I believe we have as binding elements are the 12 feet from the west property line, 10 feet from the Montgomery Lane property line after dedication and 15 feet from the north property line.

MS. ROBESON: Okay. All right.

BY MS. HARRIS:

Q In terms of loading, you're aware that the recommendations of DOT are that a building such as this should have one loading space, correct?

A Yes.

Q And how many are we providing?

A We're providing three separate loading opportunities.

Q So three times the requirement, is that correct?

A Yes.

Q And you mentioned, and I think it was helpful to identify the U-Haul, the size of the U-Haul truck that could fit into the garage space below grade.

A Yes.

Q Is there anything else that would -- can you please just reiterate what size, sorry, what size truck would fit into the loading bay at grade?

A Yes. The best way to answer the question is to describe the process I went through. I researched U-Haul for lack of a, could have picked Ryder or whoever but U-Haul was the first website I went to, and they very conveniently had dimensions of their trucks as well as a description of the type of unit that they could serve.

So I, I started with the 10 foot box truck. They have a smaller vehicle that's a large van that frankly, I

think some people would probably use as well. But the 10 foot box truck is what we were discussing with Mr. Knopf's questions which has a height that would allow it to go into the garage and use that space. And it is labeled as perfect for studio/apartment, so that's a 10 foot box truck.

I then looked at 14, 17 and 20 foot box trucks. The 14 foot box truck is perfect for apartment up to two bedrooms, which is our maximum, and 17 foot truck is perfect for a home up to two bedrooms. Both of those vehicles have a height that would allow them to fit into our surface loading space, back into that space. The 20 foot truck is only about two inches taller so depending on whether, how tightly that space is designed, he may or may not fit.

MS. ROBESON: What space?

THE WITNESS: The loading, surface loading space.

MS. ROBESON: Yes.

THE WITNESS: It may or may not fit.

MS. ROBESON: So it would have to go in the lay-by?

THE WITNESS: Right. However, it is perfect for home up to three bedrooms. We don't even have a three bedroom apartment so.

MS. ROBESON: What's the length of that third truck?

THE WITNESS: The 20 foot box truck. So the

dimension of the box itself is 16 foot, 8 and then has a, about a 4-and-a-half foot area that overhangs the cab and then the cab projects a little bit forward from that.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q And then just one final question to clarify because I think there was some concern yesterday that we were going to make people do their own manual labor moving in here. The fact that it's U-Haul doesn't necessarily suggest. That was just by way of example and obviously, a private mover would have trucks comparably sized, is that correct?
A Sure.
Q That's by way of -- okay.
A I was just trying to find a truck that would illustrate.
MS. ROBESON: Oh. I wasn't even thinking about --
MS. HARRIS: Well, someone else made a comment.
MS. ROBESON: -- the manual aspect of --
MS. HARRIS: Someone else made that comment and suggestion --
MS. ROBESON: Oh.
MS. HARRIS: -- and I just wanted to clarify that.
THE WITNESS: But to finish, the 20 foot truck, even though we don't expect them to need one that large,

would fit in, that would be limited, most likely limited to the lay-by.
MS. ROBESON: Okay.
THE WITNESS: The, but the vehicles, it would accommodate a single-family home up to two bedrooms. The 17 foot truck itself could back into the surface loading space.
MS. ROBESON: But you couldn't accommodate on the site a tractor trailer. That was really the question.
THE WITNESS: The --
MS. ROBESON: Yesterday.
THE WITNESS: The tractor trailer, we showed that it could pull in and turn around. Let me double-check the --
MS. ROBESON: Well, wait. I don't want to rehash yesterday. Really, I don't. So, you know, I'll withdraw that. I think you did answer, answer that question, so let's not go there. Okay. Keep going.
MS. HARRIS: Can I have one moment? That concludes our questioning for Mr. Irish.
MS. ROBESON: Recross?
MR. ABRAMS: Just one question.
RECROSS-EXAMINATION BY MR. ABRAMS
BY MR. ABRAMS:
Q I'll try to make this real simple, Mr. Irish. The original plan, up to the time it went through the first

meeting at the Planning Board, had public open space of 4,092 square feet, correct?
A Yeah.
Q When the plan was revised -- and that was 14 percent of the area.
A Correct.
Q Okay. When the plan was revised, it was reduced to 2841 square feet, down to 10 percent minimum, correct?
A Yes.
Q Okay. If my math is correct, that is a difference of 1251 square feet between those two numbers. Do you agree with that?
A It sounds about right. I haven't run it through a calculator but I'll give you the benefit of the doubt.
Q Thank you. Now, even considering the new cut-out area which I think you said contains 618 square feet in the quarter circle, isn't there still a net deficit of 1251 square feet of public use space between what was in the original plan and what was in the current plan?
A Yes.
Q Okay. Now, is there space on site to provide additional frontage of public use space?
A Well, you could get back above the original submittal by just counting the space that was counted on the north side of the building.

Q Well, assuming that space is not going to be public use space in terms of the frontage area, could not --
MS. HARRIS: Object.
MS. ROBESON: I'm going to let him answer.
BY MR. ABRAMS:
Q -- could not the difference, the 1251 square foot difference, be included in the frontage along Montgomery Lane?
A We've counted all of the frontage on Montgomery Lane now and haven't picked up the 1200 feet that you're referring to. There's no more space there.
Q Well, that's the way the building is currently configured, correct?
A Yes.
Q Okay. If the building were slightly reconfigured to pick up 1251 square feet in the front of the area, what type of additional footage or setback would that require?
A If you had 1251 feet divided by the 78 feet of frontage, it would require 16 feet, half an inch of, over, slightly over 16 feet of setback to pick that up, additional setback.
Q Additional setback. Okay.
A So it would go from 12 feet to 28 feet from the sidewalk.
Q So that would be a maximum number for the

frontage. It could be something less than that and the other areas could be expanded in terms of public use space either along West Lane or some other portion of the site.
A Design it however you want hypothetically.
Q Well, what we're obviously trying to see is whether there could be any further depth associated with the public use space, the green portion of the public use space in the, in the plans that have been submitted as well as what can be redeveloped or recalculated or redesigned on this project.
A Well, not without changing the building. I feel like you're trying to say because we offered more than the minimum and then everybody said that's not really the best space, so we said fine, we won't count that area. Now that we're providing only the minimum, now we're saying we'll make that area up. There's no requirement that we provide 14 percent.
Q Well, if it was good enough to begin with, why isn't it good enough now?
A Well, I still think it is, is as good as many of the other spaces on Montgomery Lane that have been counted.
Q You're working with a blank slate here which can be designed any way you want to as long as it meets the minimum requirements of the Zoning Ordinance. Therefore --
A We have that.

Q Huh?
A We have that.
Q I know. That's the current design. My question is is it impossible, infeasible to redesign the building to acquire the original amount of public use space?
MS. HARRIS: Objection.
MS. ROBESON: Well, just -- I think it would be better if you just answered the question.
THE WITNESS: To answer your question, it's not feasible without reducing the --
MS. ROBESON: No, no.
THE WITNESS: -- square footage of the building.
MS. ROBESON: That's not the answer. His question is can you reconfigure the building to have more additional setback. That's his question. And the answer's got to be yes because you could reconfigure it. So if it isn't yes, you know, tell me but if you were starting with a blank state, could you redesign the building in a manner with additional setback?
THE WITNESS: Well, it's like that proverbial water balloon. You push one place, it comes out somewhere else.
MS. ROBESON: I know, but could you do it?
THE WITNESS: Well, you could -- sure. You could draw a much smaller building on the site.

MS. ROBESON: Okay.
MS. HARRIS: May I ask a point of clarification?
MS. ROBESON: Yes.
MS. HARRIS: Is the purpose, once the applicant crosses, redirects, isn't the purpose of any additional questioning only to clarify things that came out on redirect which is what the basis of my objection was going to be because we --
MS. ROBESON: Well, I thought --
MS. HARRIS: -- certainly didn't get into that.
MS. ROBESON: Okay. I thought your redirect had information on the amount of public use space.
MR. ABRAMS: That's what I thought.
MS. HARRIS: I think we were --
MS. ROBESON: Okay. We'll --
MS. HARRIS: Just, I'm noting my concern.
MS. ROBESON: I understand, and you can --
MS. HARRIS: Okay.
MS. ROBESON: -- note your objection.
MS. HARRIS: Thank you.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Okay. Mr. Knopf.
MR. KNOPF: No questions.
MS. ROBESON: All right. Is that your last witness?

MS. HARRIS: Yes.
MS. ROBESON: Until rebuttal. Don't forget. You have rebuttal.
MS. HARRIS: I know. I realize that.
MS. ROBESON: Okay.
MS. HAY: May we take a five minute break?
MS. ROBESON: Yes.
MR. KNOPF: Well, before you break, I have one question. Am I correct that because you have now ended your case in chief that you will, you are not accepting any of the recommended binding elements that the Planning Board's opinion suggested that haven't already been adopted?
MS. HARRIS: No. I think what the Hearing Examiner had said that prior to rebuttal, we need to provide to the Hearing Examiner and Counsel --
MS. ROBESON: Yes. There's no rule that they have to do that on, on, in their case in chief.
MR. KNOPF: Okay.
MS. ROBESON: And we do have it quite often to address concerns that have been raised. She hasn't heard your testimony yet so I think she said she would share, she did, they were considering some and they would provide them in advance of --
MR. KNOPF: I missed that. sorry. I didn't mean --

MS. HARRIS: And just to clarify, after our rebuttal, then closing argument and that's it, correct?
MS. ROBESON: That's it as far as I'm concerned.
MS. HARRIS: It better be. Otherwise --
MS. ROBESON: Yes. Okay. So we're ending, we're going to take a 10 minute or 15 minute break and then Mr. Abrams, your first witness is on.
MR. ABRAMS: Okay.
MS. HARRIS: And is it, just for timing purposes, are we going to try to complete Mr. Abrams' case this afternoon?
MS. ROBESON: Well, how many people do you have?
MR. ABRAMS: Today, we have actually three.
MS. ROBESON: Three.
MS. HARRIS: And is that all of them?
MR. ABRAMS: Huh?
MS. HARRIS: Well, you said today we have three.
MR. ABRAMS: There is one that could not make it today and one that's going to come on Friday, that will be here Friday.
MS. ROBESON: Okay. Well, we will try, I mean, we will attempt --
MS. HARRIS: So he can't complete his case anyway today.
MS. ROBESON: No. But we can get as much of it

done as possible and then --
MR. ABRAMS: That would be a good idea.
MR. KNOPF: Because if we don't make Friday with my case, I've got problems with witnesses. They're all, they're all available.
MS. ROBESON: We're going to, we're going to do it all. Now, we may go past, if we want to get, depending on cross-examination, if we want to get the three witnesses in today and stay on schedule, we may go past 5:00.
MR. ABRAMS: Okay. The Examiner has received, when this application was refiled, a motion from me. It's Exhibit 57A.
MS. ROBESON: I remember that motion, yes, about how they couldn't file this --
MR. ABRAMS: Right.
MS. ROBESON: -- as a development plan amendment.
MR. ABRAMS: That's right. And I was advised, I think by response of either e-mail or letter, to raise it and re-raise it.
MS. ROBESON: Yes. I remember it.
MR. ABRAMS: So it's my intention to re-raise it. It's not going to be long. You've got the substance of the memorandum.
MS. ROBESON: Yes, I do.
MS. HARRIS: If I recall correctly, that was

raised on January 11th and you indicated that you, I mean, you didn't accept the argument that Mr. Abrams was putting forth.
MS. ROBESON: I, what I said is there wasn't enough for me at the time. If he wanted to re-raise it, he could with additional, you know, legislative history or information.
MR. ABRAMS: I do not have any additional legislative history so if you're going to rule on the motion --
MS. ROBESON: Yes.
MR. ABRAMS: -- it's in here. I need not, I guess, repeat the motion.
MS. ROBESON: No.
MR. ABRAMS: Okay.
MS. ROBESON: No.
MR. ABRAMS: All right. But I just want you and the record to be clear that it has been re-raised according to your prior --
MS. ROBESON: Re-raise noted, but I'm not, my actions are going to be -- are you re-raising it now?
MR. ABRAMS: Yes.
MS. ROBESON: Okay. Then my actions are without the additional legislative background, I'm going to deny it.
MR. ABRAMS: Good.

MS. ROBESON: But the, but it's noted for the record.
MR. ABRAMS: Thank you.
(Whereupon, at 3:18 p.m., a brief recess was taken.)
MS. ROBESON: Mr. Abrams.
MR. ABRAMS: Yes. At the beginning of the proceedings, we deferred any opening statement until our case.
MS. ROBESON: Yes. I remember that.
MR. ABRAMS: I'm just going to give you a short synopsis of what our issues are and what we intend to show. Let it be understood, first of all, I'm representing a community of 29 townhouses which are across the street and they've been identified as City Homes. And the people and the organization within that area had been involved with the prior application on this property which has been identified as Holiday Corporation or G-843 I believe it was.
Now, the application was subject to hearings for the development plan and as I think it's also been testified and in exhibits, there was a two-level building proposed to go on three of four lots, and that was four stories and six stories. This application currently, G-954, picked up a fourth lot and made it sort of the rectangular piece. But back then, and I'm talking about 2007, the community

supported the Holiday plan and they perhaps supported it, you know, to the man and woman.

And then comes along this application and what has I guess upset them are things that they relied upon in terms of the prior application being approved because what we have currently is an application which is almost two-and-a-half times the approved density for Holiday, it's got significantly more parking, 58 more parking spaces, it's got a density increase from 73 dwelling units to the acre to I think the latest count is somewhere between 127 and 135 dwelling units to the acre, so that's about a 40 some percent increase, and the height has increased from four to six stories up to, you've heard seven stories without a, the 10 feet or the penthouse. So they got something very different than what they originally thought that they were getting.

Now, their concern is not that something, you know, doesn't get developed on this property. They're concerned with what gets developed on this property. And basically, what they're looking for is a project which conforms to the Sector Plan in terms of building height, densities, you know, providing public use space, the transition going from Woodmont Avenue down to Arlington Road and seeing that the elements of the Sector Plan are adhered to as much as possible. The fact that the area has not

developed to maybe the high density that was envisioned is something that goes to the second element that they would like to see and perhaps it's even more important than the, than the Sector Plan element, and that is compatibility with what is immediately surrounding them.

And as the Hearing Examiner, your office, whether it's yourself or other examiners, has made the comparison of what happens in terms of compatibility. You have a piece of property in the center of say in a circle and those most affected are the people and the development which is immediately adjacent, immediately embodied and as you go further out from this center, the issue of compatibility becomes I say less and less acute to those people. So it's like a stone in a pond, you know, the biggest waves are closest to where you throw the stone in and that, I think, is the way floating zones such as this have been handled and that is the way I think the development plan amendments also have been handled with those, those cases.

When this case went back to the Planning Board, there were two issues. In other words, the massing and scaling, scale of the building, whether it had been adequately broken up, and the change in the public use space from the rear of the building to some other place. Basically what the community was looking for was additional public use space in the front. Well, they got it but they

got it in a different configuration. Now, we're not saying that they configuration that they have provided is, you know, inappropriate. It's just that we didn't get what was originally there.

They're still very early in the process. The ability to get what they originally came in with, and that's 4,092 square feet or somewhere close to that, in public use space. And it's particularly important in this area because of the mixed street concept which we have all heard a lot about. It's pedestrian-oriented and, you know, it seems to me the more green, the more shade, the more benches, it keeps, things like that all make it more inviting to the pedestrians. We see an awful lot of this hardscape stuff up on Wisconsin Avenue associated with the tall highrise office buildings, some of the apartments, you know, and that's recognized as public use space but here, we have a different type of street than what is associated with those other buildings which use an enormous amount of hardscaping to fulfill their responsibilities.

Now, we could have brought out, you know, a lot of people. Basically, what we're going to do is present a few residents, two of which today, if we get that far for the second one, have prepared statements. And I'm going to ask some questions leading into the prepared statements, I may ask some questions further on after they have completed

their statements. So I just want you to know that there's not going to be a strict examination, cross-examination, at least from our standpoint, and they will present their own views as to those issues which I have identified in terms of the compatibility, Sector Plan, and there will be some issues dealing with traffic and parking. So the first witness I'd like to call, if she will stand up, is Susan Turnbull. Yes. Raise your right hand.

MS. ROBESON: Well, you can sit.

MR. ABRAMS: Well, I just want her to show you the proper respect.

MS. ROBESON: You're obviously -- well, never mind. I wish you were my teenagers. Please raise your right hand.

(Witness sworn.)

MS. ROBESON: Okay.

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Ms. Turnbull, please relate to the Examiner your name, your address and your professional occupation.

A Sure. My name is Susan Turnbull. I live at 4838 Montgomery Lane which is in the City Homes condominiums, townhomes. I have, I am currently an interior designer and specialize in, in commercial design.

Q Now, have you had any public service which is

associated with land use?
A Yes.
Q All right. Can you fill the Examiner in on what that public service was?
A For four years, I sat in that chair as Chair of the Board of Appeals. I served as Chair for three years and as a member for one year.
Q And in the course of your -- so how many years did you say?
A Four years.
Q Four years. And in the course of your four years on the Board of Appeals, did you have occasion to evaluate the issue of compatibility and compliance with the Sector Plan in performing decisions on special exceptions?
A Yes. When I was Chair of the Board of Appeals, all special exceptions came before the Board of Appeals, and I also dealt with compatibility on variance issues.
Q And you have reviewed site plans associated with those cases?
A Yes. And I've received recommendations from the Planning Board.
Q And have you been present for all of the hearings in this case?
A Yes, I have been.
Q Have you been present for the meeting at the

Planning Board, the two meetings?
A I've attended the meetings of the Planning Board.
Q Now, in evaluating the development plan in this case, did you examine the issues of compatibility and compliance with the Sector Plan?
A Yes. That's exactly what I did.
Q And could you relate to the Examiner what you believe your findings were?
A Sure. But first I also would like to add that I, in addition to my degree in interior design, I have two separate degrees. I have a degree, I have two. I have a master's degree and a bachelor's degree in urban planning and urban studies which I think is relevant to this process but I am not putting myself before this Board as an expert today.

I oppose several elements of this project because I believe the proposed development fails to conform with the Zoning Ordinance in the Sector Plan with resulting detrimental effect to the neighboring community. Throughout this process, I've actually been pretty distressed about the specific issues of compatibility because they've been, I think, dismissed by the developer but also misconstrued and incorrectly represented.

First of all, the topography of the zone in the as-built conditions in the area have been downplayed,

inaccurate and/or ignored in the presentation of the height and mass of the structure, especially in relation to the other neighboring buildings. Significant errors have occurred not only in the testimony but also in the applicant's submitted exhibits. We actually saw that earlier today when there was an attempt to, when an exhibit was corrected.

It's sort of like the Washington Post Magazine puzzle on Sundays where there are two pictures on top of each other where there's been minor changes in the lower, in the lower picture and you're trying to find the changes. Well, unfortunately, I found way too many changes, many more than 12 in the regular Sunday puzzle. And so my argument, hopefully, will show that the applicant's proposed building flies in the face of the zone's purpose by being substantially detrimental the adjacent properties and surrounding neighborhood.

In determining compatibility in the TS-R floating zone, it is the case that the immediate vicinity is the most important determinate, as Mr. Abrams has just said, in compatibility. City Homes residents and the pedestrians and cyclists using Montgomery Lane as a mixed street are who should be considered as those with the most relevant standing with regard to compatibility. I'm going to show my house to really situate us in this and to show why I am

concerned about this building. Okay.
Q What exhibit are you referring to?
A I'm referring to Exhibit 106F which is a duplicate. I live in this house.

MS. ROBESON: Okay. So you're in the middle --

THE WITNESS: I am, I am in the third section from the west at the, in the unit closest to the HOC building and 4901 Hampden Lane.

MS. ROBESON: Okay.

THE WITNESS: Okay. The back of my unit is a series of, is a driveway with a series of garages and balconies. The windows facing the driveways in all of these units, these three driveways, the windows of the driveway are limited. There is a garage on the first floor in a typical unit, and mine is a typical unit from that standpoint, a garage, the kitchen, a bathroom, and there are two windows on the floor above that. In some instances, it's a guest bedroom. In another instance, the other window is for the internal HVAC system which has a grate over it. You can't see out the window, you can't see the unit, the HA, HVAC unit.

On the other side facing the mews, the parkland, the garden area, the first floor window is the office, the second floor window is the living room, the third floor window is the master bedroom with a bay window, as is the

second floor window a bay window, and the fourth floor is a family room which currently has vistas to the park on over, because this building doesn't exist, to the park here on Arlington Boulevard.

And one of the points that you made in, after walking this area, you had made a comment about how City Homes was about to be surrounded. Well, my house is probably the one that is, is going to be surrounded the most. Currently, I don't have a problem with the HOC building. First of all, it was there before I moved there but also because that wall is a, the wall facing the HOC building is a solid wall and I can't see the HOC building from my windows. This building is lit at night and on the, and actually provides lighting in the back in an odd way and so it is what it is.

This building on this exhibit, which is going to be the Hampden Lane building, is actually shown wrong. This building has, has cut-outs at the gardens, and this is one of the examples of how, how frustrated I've been throughout these proceedings because this isn't the way it is, and there are three --

MS. ROBESON: When you say gardens, you mean the mews --

THE WITNESS: The mews.

MS. ROBESON: -- are the cut-outs?

THE WITNESS: I'm going to call them mews.

MS. ROBESON: Okay.

THE WITNESS: The mews and the two driveways. This one is like a mews. It's not --

MS. ROBESON: It's like half a mews.

THE WITNESS: It's not a driveway. It's half a mews. This is a mews and this is a driveway and a driveway. There are -- this building has several levels and also has several cut-outs. There's a cut-out at the front end of this building, at the, let's see, the northeast corner directly behind the mews. So this is a misinterpretation of this building, and it also doesn't show the viewpoint, vantage point from City Homes. So that's just one aspect of this exhibit but it places me.

In a contrast to what other people have said, not only --

MS. HARRIS: Can you move, I'm sorry, just a little bit --

THE WITNESS: I'm sorry.

MS. HARRIS: -- to the right or left?

THE WITNESS: Okay. Not only can I see out my front windows and walk in my door at the front windows, I mean at the front door, I can see this building, and I am here today because my light and my vantage point is going to change dramatically with this structure. So that's --

MR. KNOPF: By this structure, you're referring to the subject structure.

THE WITNESS: The subject structure.

MR. KNOPF: Thank you.

THE WITNESS: West Lane. Okay. As a matter of fact, yesterday, there were questions about, you actually asked a question about what about that unit, and it was my unit you were talking to, talking about. So when I woke up this morning, I took pictures outside of my unit and I took, I took them from both the front and the back.

MS. HARRIS: Objection. All exhibits were supposed to be in on March 7th.

MR. ABRAMS: This is cross-examination of a witness put on yesterday, plus the fact that we have had introduction of essentially new exhibits on behalf of the applicant throughout the day today, marking up prior exhibits, offering them in evidence, which weren't offered before, so, you know, I think in fairness, this specific issue was brought up and we ought to have a chance to rebut the testimony which wasn't raised basically until yesterday.

MS. ROBESON: Ms. Harris, your position is no new exhibits?

MS. HARRIS: That was, that was my understanding, that there was no new exhibits. I mean, those were the ground rules that were established.

MR. KNOPF: I'd like to comment that I know when the Hearing Examiner announced the procedures, I raised at that time --

MS. ROBESON: I remember that.

MR. KNOPF: -- that it was very difficult to, not hearing the applicant's case, then be bound by all exhibits when you haven't seen half the case yet to respond to it.

MS. ROBESON: What I'm going to do is let the photo, non-expert exhibits in. In other words, the photographs. It was, I believe, the expert photographs or expert exhibits that I think I wanted the parties to have the ability to take a look at so I'm going to let the photographs in.

MS. HARRIS: Well, for clarification purposes, when we come back on rebuttal, will the applicant have an opportunity, based on what we hear today and, and the next couple of days from opponents, that we will have the opportunity to submit additional exhibits to respond to things that we are now hearing in cross, in the opponent's case?

MS. ROBESON: Well, this isn't, this isn't something -- this has been their claim, I thought, all along. I don't see their claim changing but of course, you will get the opportunity to rebut these photographs.

MS. HARRIS: Okay. But it does seem to me since,

as Mr. Abrams said, their concern all along, and he had said it very eloquently in his opening statement, he established what their concern has been all along, it would seem to me that photographs from the vantage points where they seem to be most concerned could have been submitted at the time that all exhibits were requested.

MS. ROBESON: Why did you take the photographs yesterday?

THE WITNESS: Because -- well, I took them this morning. And the reason --

MS. ROBESON: This morning.

THE WITNESS: -- I took them this morning was to rebut the comments yesterday that basically said I wouldn't be able to see out, that unit would not be able to see.

MS. ROBESON: Why don't -- okay. Okay.

THE WITNESS: And also, and the other thing was to rebut the -- this morning, we heard a lot of testimony about heights, and some of this is about that testimony from this morning.

MS. ROBESON: Well, let's do this. Hold off on your photos --

THE WITNESS: Okay.

MS. ROBESON: -- and just testify to what you experienced and what you saw this morning.

THE WITNESS: Okay. I will. Okay. After Hampden

Lane is built, the only sky views from all rooms, in the front rooms in my home will disappear at the proposed height, at the proposed setbacks. The unit, these rooms are my office, living room, bedroom and family room. And understand that my house is like others in City Homes, a four-story townhouse with a rear garage, not a three-story home over a garage described by the applicant's land planner.

MS. ROBESON: So can I ask you a question?

THE WITNESS: Sure.

MS. ROBESON: When you're in your front windows, can you describe for me what you see now?

THE WITNESS: Okay. What I see now --

MS. ROBESON: I just don't want it to get lost.

THE WITNESS: Okay. Because it's a bay window, I see in three directions out of my front windows. I mean in my living room and in my master bedroom. What I see from my, from either or those rooms to the, to the south is, on the second and third floors is, are the existing houses on Hampden Lane which are below, which are below my view.

MS. ROBESON: Okay.

THE WITNESS: They go downhill, so it's below my view. What I -- I don't typically look, sit in my house and look out straight because you wouldn't put furniture in front of a bay window like that typically. So I don't look

in that direction but if I do look, I'm looking at a townhouse that mirrors mine across a garden with trees in between and benches and green space. Okay. What I look when I look out my window towards the subject property is, is the driveway, the greenspace and the benches and the street and the, about half of the Wolf property, lot 26, and sky behind and above the Wolf property.

MS. ROBESON: Wait. We need --

THE WITNESS: I mean above, above the Wolf property.

MS. ROBESON: Okay. I need to know what the Wolf property.

THE WITNESS: Okay. The Wolf property is --

MS. ROBESON: Is that the subject property?

THE WITNESS: It's the subject property on the development plan which is --

MS. ROBESON: Why don't you get 108. Do we have 108 over there?

THE WITNESS: Which one's 108?

MS. ROBESON: It's the marked up development plan.

MS. MAR: I think it was on a board by itself. It may be behind that.

MS. ROBESON: There it is. Can you --

THE WITNESS: 108, okay.

MS. ROBESON: Okay.

THE WITNESS: This is Lot 26.

MS. ROBESON: Okay.

THE WITNESS: Oh, wait a second. I'm sorry. Lot, the borders of Lot 26 are the, are the, let's see, southeast corner of the property is Lot 26. It is this area right here. This is actually the subject of the amendment because it is to put this in the TS-R Zone.

MS. ROBESON: Right.

THE WITNESS: So this is at that area. The existing house is shown, the Wolf building is shown --

MS. ROBESON: On Lot 26.

THE WITNESS: -- on Lot 26. And the building, and I see basically up, I'm showing on a, from a pen standpoint, up to here of the lot. So I will see, from my window, my pen is showing an angle that ends at that, the E in the FFE.33450.

MS. ROBESON: Okay. Let's do this. Just mark approximately what portion you can see. Just mark that pen angle.

THE WITNESS: Okay.

MS. ROBESON: And is it to the west of that that you can see?

THE WITNESS: I can see to the east of it.

MS. ROBESON: East of it. So if you could put your initials. Okay. You don't have to go all the way up

but --
THE WITNESS: Oh, that's fine. But I might as well just show.
MS. ROBESON: Oh, oh, okay.
THE WITNESS: That's where I can see.
MS. ROBESON: You're saying you have a vista.
THE WITNESS: I have a vista that goes there.
MS. ROBESON: Right.
THE WITNESS: Okay. And that's SWT.
MS. ROBESON: Okay.
THE WITNESS: Okay. So that's what I can see now and this, on the aerial photo, it would be approximately, let's see, from here, it would be approximately like this.
MS. ROBESON: Okay.
THE WITNESS: And that, and that is the same representation as the, like immediately past the concave area so the, probably the second, up to the second window and then over --
MS. ROBESON: To Villages of Bethesda.
THE WITNESS: -- to Villages of Bethesda basically and beyond.
MS. ROBESON: Okay.
THE WITNESS: And there is nothing beyond this building at the height of what this building will be. That sort of lays out for that. My, because I live at the

farthest unit, the farthest unit, the, these -- all of our townhomes have been described as sticks. If you move north on the stick, each of those units in their upper stories, second, third and fourth, will have even greater views because of the same angle. So in fact, the second or third unit would probably see almost to this like corner.
MS. ROBESON: Okay. When you say second or third unit, you're talking about the second or third unit south of Montgomery Lane.
THE WITNESS: Yes.
MS. ROBESON: In this stick.
THE WITNESS: In this stick.
MS. ROBESON: Or in your, in your row.
THE WITNESS: In my, my particular row.
MS. ROBESON: Okay.
THE WITNESS: So there are, and there are five units in my row as opposed to six units in some of these other rows.
MS. ROBESON: Okay.
THE WITNESS: Okay? So that's, so that's, so all of these residents. These residents, this is the back, however, they do have --
MS. ROBESON: Wait. The back. Are we talking --
THE WITNESS: The second stick and --
MS. ROBESON: -- the second row?

THE WITNESS: -- the first stick.
MS. ROBESON: To the east.
THE WITNESS: To the east. Both of them have kitchens and balconies and, across from the building.
MS. ROBESON: Now, have you ever stood on those balconies? Can you --
THE WITNESS: These balconies I have not stood on. However, I have walked the driveway.
MS. ROBESON: The alley, okay.
THE WITNESS: The alley between them to confirm it, and at, and at street level, back here in the alley, you can see, you can see going back at least three units, you can see into this, into the --
MS. ROBESON: The southwestern edge of the --
THE WITNESS: The southwest corner edge of the property. Okay. So that gives -- so you're talking about -- and then from this side, obviously, you would see, the orientation would be different.
MS. ROBESON: Okay. So the westernmost row in the front facing the mews, or is that the alley?
THE WITNESS: This is an alley.
MS. ROBESON: Okay. So from the rear facing the alley, you're saying you can see the building.
THE WITNESS: Yep. So you have one, two, three -- so there's, and from the back -- because the balconies are

parallel to each other, if you are on any of these balconies, you look directly into this building, and so there are 6, 12 and 5, 17 units that, whose views will be obstructed by this building. There is an additional unit here which is at the corner of the fourth unit facing Edgemoor, facing 4825 that has window, and that has windows on the rear and on the sides, bay windows, so they will be facing this property as well even though it is beyond the --
MS. ROBESON: So you're saying the fourth row, the end, the northernmost unit on the fourth row from the west.
THE WITNESS: Uh-huh.
MS. ROBESON: Okay.
THE WITNESS: So there's, so there, 18 of our 29 units directly face this, will have vistas with this building. It's also the case, just to clarify at this point, these five units, which are the end units of the five sticks, face forward, face Montgomery Lane. The others are oriented in the other direction. The roofline for these five units is different than, than the other 24 units. This is higher as an architectural element. On none of these units is there any HVAC, is there anything coming over the unit. Okay. So now it's, I think to orient --
BY MR. ABRAMS:
Q While you're up there, stay up there at the aerial photograph. In terms of the views that you all have, does

the impending construction of the Hampden Lane building somehow make it more critical in terms of what happens on the subject property?

A Oh, absolutely.

Q Explain that.

A Which is why I almost had a nervous breakdown when I saw these, these exhibits not showing the cut-out here because the, the actual instance will be, it will have a setback in the mews, approximately the same north-south position as the HOC building.

First, it will, it will abut the property line and then at the cut-out for the mews, it will go back just a portion of the space beginning at the second level, the second floor. The open space will be the top five floors on this side which is, which is significant because there will be windows facing into my windows and my neighbor's windows from these two wings facing towards the center and then from the wing creating the U at the, what will be the southern part of the U division at the, at this place. So my, my view, vantage point from towards Hampden Lane is going to be completely diminished with immediate adjacent apartment views.

Q Now, we'll come back.

A Okay.

Q The HOC building, how tall is that?

A Okay. This is the other thing that's been fairly interesting. The HOC building, according to all of the as-built drawings, the proof plan and the building, is 48 feet high. While this aerial photo with a rendition of the building shows it to be below my home and the home directly across from mine, that is not the case. They are level. And there's actually an exhibit, one of the applicant's exhibits which shows a photo of that, showing them to be at the same height.

Well, the interesting part about that is that if this building is 48 feet, and there's no reason not to believe that it's 48 feet because everything says it's 48 feet, and it is in fact five feet below the wall, there's a wall five feet behind the City Homes ground, ground level, then this building to be the same size of, as, to get to the roofline of City Homes would mean that if they're the same size, City Homes is 43 feet, you take five feet down plus 48 and, which would make this 43. On the other hand, every exhibit proffered by the applicant shows our buildings to be 53. There's no evidence whatsoever that they are 53. The HOC building, as built, proves that not to be the case. And this morning, because I wanted to make sure that that was the case, I took photos from my third floor windows, opening the door on my third floor, and the fourth floor to confirm it looking at the relationship between the second stick of

townhouse end unit and the HOC building, and they are level. Okay.

The other thing is that while, while I'm standing up here, while this has been said to be 53 feet --

Q The City Homes?

A The City Homes have said to be 53 feet with nothing, even if you take the roof from the very front of the building, which someone might do, that's not the building height of this building. You have, you have to compare apples to apples. The 50 -- if you would do that, then you would have to include the mechanicals on West Lane, the mechanicals on the other buildings, the mechanical on this which isn't shown which is the Hampden Lane building, the mechanicals on that 4901 Hampden Lane building, and you would have to take off the mechanical on top of the 4825 building which doesn't, it where, there is no evidence, actually, there's evidence to the contrary that there is no mechanical in view, with a vantage point from anywhere on 4825.

Q Now, does Montgomery Lane go downward from West Lane?

A Yes. And actually, I'd like to refer to my notes and stuff to, to explain that. And to help go on with this, I would like to refer you to the exhibit. I think it's this exhibit. It's a chart that --

Q It's 101I.

A Okay. It's Exhibit 10I.

Q It's two pages.

A 101I.

Q Two pages.

A Which might make this easier to follow. Okay. I also want to make clear that my husband and I did review the Master Plan and actually, more relevantly reviewed the plans for the approved projects. What was existing and approved since 2008 at the applicant's site was the existing home on Lot 26, which is described as the Wolf property, and the Holiday project next door which would face, which was on Montgomery Lane at 48 feet high. But with the proposal before us, what it seems like is that we're going to be surrounded, West Lane is last in line. It is the point where the water is going to overflow the cup. The proposed project is the last piece of what has previously been accepted by the District Council as an appropriate mosaic.

So here's Exhibit 101. This is a chart we prepared to describe the detail of the actual heights and various elevations of the structures in the surrounding community.

MS. ROBESON: Okay. Which 101 is it? I'm sorry.

THE WITNESS: 101I.

MR. ABRAMS: 101I.

THE WITNESS: 101I.
MS. ROBESON: Okay.
THE WITNESS: Okay.
MS. ROBESON: Sorry.
THE WITNESS: As was evidenced in earlier, as was described in earlier testimony and was evidenced in your walking tour of the vicinity, Montgomery Lane and West Lane are extremely narrow pedestrian and cyclist friendly roadways. It's the only two-lane road with access from Woodmont and Arlington in the area, and the, and the two directions in one direction segments with a dead end route intersecting makes it unique and complicated.
So in contrast, what you have too, because I want to sort of demonstrate the tightness of this. So this road is, goes west to east stopping immediately after West Lane is two lanes and then it is directional, is one directional from Woodmont to right, to West Lane and is, and so is the only two-lane road between Arlington and Woodmont. Hampden Lane is a four-lane road where the 72 foot building, and I'm going to talk more about that, is facing 100 percent commercial properties. A commercial parking garage with a building behind it, I mean commercial building, commercial parking garage with a building behind it, a parking lot behind, and a parking lot on Hampden Lane. On Edgemoor, which is also a four-lane road that goes from Arlington to

Woodmont, you have the Villages of Bethesda, which are townhome communities, you have two swimming pools and the tennis court, and a highrise building with a significant setback leading up to the Chase which is on Woodmont Avenue.
So this is a really unique situation because it's only two lanes but also, because unlike Hampden, which is a commercial, has commercial opportunities opposing on the south side of Hampden Lane, Montgomery Lane is exclusively, that with the approval of this project, will be an exclusively residential street. Edgemoor is also a residential street with wide vistas and wide and low lanes. Let's see.
MS. ROBESON: Can I --
THE WITNESS: Sure.
MS. ROBESON: Did your community oppose 4825 Montgomery Lane?
THE WITNESS: No, we did not.
MS. ROBESON: And do you know why not?
THE WITNESS: I think for a few reasons. First of all, it's a rectangular lot that faces pretty much driveways and that it is not above the, either -- well, first of all, the density is four units and then secondly, the, the height is within the confines and the compatibility architecturally is very much in keeping with the other buildings. Okay.
To discuss compatibility, it's necessary to

discuss the previously approved Holiday project on Montgomery Lane. Over the last few weeks, there's been a great deal of discussion about the Holiday project. The applicant has repeatedly stated this is not that project. That's true. The other was approved and was not opposed by my neighbors because it adequately answered issues that are the biggest concerns that this project has raised. The comparisons were to Holiday as it is the existing approved development for three of the lots.
Holiday is not just City Homes' standard of what is good planning. It was the universal standard, the Planning Board Hearing Examiner and District Council. And I don't dispute that the West Lane project is now a more efficient site because it's rectangular in shape but because it's more efficient and interestingly, according to previous testimony, the West Lane project actually costs less than the, than the site was, than the Holiday people paid for the same site so you would think that it would, the applicant would be in a better position than Holiday to make the adjustments to be more compatible but we haven't seen that. Instead, it is a project of 120 units as opposed to 48. Holiday was approved at 93 units per acre despite the maximum allowable density of 150 and for 48 units as opposed to the maximum allowable unit of 78 units, so it went below the maximum. That's part of the reason why I view this as

something compatible.
The relevancy of Holiday is that it is the existing planted street and it has been sited repeatedly in all the approvals to the projects currently in the pipeline ahead of West Lane. So what I won't accept is that when 4825 was approved, the approval was based on a 48 -- I'm going to refer to Exhibit No. 85. Okay. 4825 -- and this is, this exhibit was, shows the Holiday plan, the previously proposed plan and the current proposed plan.
When 4825 was approved in December of this year and when the, when the site plan was just approved, it was approved saying it was compatible with the Holiday project. The Holiday project at four stories for this portion of the building, which is the, the western, yeah, the western section of the building, a very large rectangle, and six stories for the rear portion of the building that faces West Lane. I think that's important to note because it wasn't based, it was expecting, through the language of the report, that this was going to be 65 feet and this was going to be, I believe, 48 feet, and that was a few months ago. It was also the case that when this building, which is Arlington North, was approved, it was based on Holiday again at 65 and 48. When this building, Hampden Lane --
MS. ROBESON: 4901.
THE WITNESS: -- 4901 Hampden Lane was approved,

it also is referencing a 65 foot building at West Lane when Hampden Lane was built. This is post-Holiday as well. So the approvals of the project site the Holiday project and the West, this project, the West Lane project does not meet the same standards of the projects, the other projects because they were deemed compatible with the Holiday building and now we're talking about a completely different building.

The three key elements of compatibility, three of the key elements of compatibility are height, mass and density, and some of our other, some of my other neighbors are going to be discussing a lot of the operational aspects of the density but I, I must say a couple of quick things. When I moved into this, this townhouse, which is a three, a four-story building, I had two trailers, okay? Now, I realize that's a little excessive and my garage is filled to the gilt, but that isn't the only truck that helped me settle in my house. I ordered a little table from Crate & Barrel. It doesn't come from FedEx. It comes from Crate & Barrel, and Crate & Barrel doesn't use a U-Haul sized vehicle. It has a big truck. Another big truck that came to my house was with a dining room table. A third was with a couch.

People moving into apartment buildings are going to be moving constantly because leases change but in

addition, they'll get deliveries that aren't regular deliveries, so the notion that we shouldn't worry because the UPS guy and the FedEx guy know to go to the back says nothing about the other gigantic trucks that try to get down a 20 foot street, don't know what to do when they reach a dead end and wind up driving up and down West Lane. And there are actually pictures that were submitted as exhibits from our neighborhood earlier to describe that. So three key elements of compatibility are height, mass and density and I don't believe that the building, as suggested, meets the criteria. Okay.

Here is the Bethesda, the Exhibit No. 53 that came in from the applicant. Now, interestingly, this is one of those exhibits that has some problems. For example, for City Homes, it says the average unit size is 2460 square feet. Well, we calculate it to be 2,203 which is about a 250 foot difference. This shows 4901 as approved and pending and it, again, it's been, it's not pending anymore. It's approved at this lower level so let's look at this, this size. This also doesn't show the --

MS. ROBESON: What is the number of the exhibit, did you say?

THE WITNESS: 53.

MS. HARRIS: Objection because, or I would just like to note that an up-to-date exhibit was provided on

February, hold on one moment, with one of the filings and we made that point actually at the beginning of the hearings last week.

THE WITNESS: About, about the pending?

MS. HARRIS: Yes.

THE WITNESS: Okay. Did you change the City Homes?

MS. HARRIS: I need to --

MS. ROBESON: What exhibit was it?

MS. HARRIS: Hold on just a moment.

MS. ROBESON: Is it in the 70 to 80 range?

MS. HARRIS: Yes. I think that's where it came in.

(Discussion off the record.)

MS. HARRIS: It was 80 --

MR. ABRAMS: Is it 84? That was formally DPA 53.

MS. HARRIS: Yes. That's it. Thank you.

MS. ROBESON: So 84.

MR. ABRAMS: 84.

THE WITNESS: Okay. I, the only -- well, I'd like to see the --

MR. ABRAMS: Here.

MS. ROBESON: Yes.

THE WITNESS: Okay.

MS. ROBESON: Does she have it? Do you have it?

MR. ABRAMS: Yes. I just handed it to her.

MS. ROBESON: Oh.

THE WITNESS: Okay. So the differences -- okay. The only difference really is that 4901 pending but it doesn't change the City Homes. The City Homes, I would say on Exhibit 84, that City Homes is described inaccurately. I also would suggest that Sandy Springs --

MS. ROBESON: Which is 48 --

THE WITNESS: Which is 4825 Montgomery Lane, is described at 33 average unit sizes, 3300, and that is also too high because that would not include the, the non-usable space in the unit that -- it would not be marketed at, it is not going to be marketed at 3300 square feet. It will, it is going to be marketed at approximately 2400 square feet according to the filings on it. Okay.

So and what none of this talks, what this Exhibit 84 and 53 don't show are the MPDUs that are in the zone. If you can, if you're using that Hampden Lane associate building and the 4901 Hampden Lane building, then you have to include the HOC building because then it's apples to apples, and that would add an additional 12 MPDU units to this area. If you're going to use the area for one thing, you've got to use it for everything. So that was, that was another concern that I had.

The issue of appropriate height and density on

this parcel was adjudicated in the approval of the Holiday project consistent with the Sector Plan which recommends a three to six-story building with a height of no more than 65 feet. What has been lost in the discussion a lot of time too is that it wasn't just a 65 foot building. As I, as I mentioned before, an entire section of this building was four feet, four stories and the other section was six stories. That was compatible. That was in line with the Master Plan. Neither of the two lots in this, this section facing Montgomery Lane, was, two separate lots, neither of those two lots was at 65 feet. Both of those were at 40, approximately, was 48 feet which was the four stories. So the entire frontage of Montgomery Lane, because the Wolf property is an existing property that is here --

MS. ROBESON: That's Lot 26.

THE WITNESS: Lot 26. Was, was first of all, five feet back from what the, the West Lane project is proposed from, from Montgomery Lane, that had a five foot greater setback, but more importantly, it was all four stories with a fifth story penthouse on part of this, this property. The proposed property has 78 feet as we would, as just described, with all but 12 units at 70 feet. This is at the base, and I'm going to explain why 70 feet isn't 70 feet. It's 70 feet at the base for all but 12, and that this part was 50 feet but a longer stretch, 78 versus a, because the

different measurement here but clearly, not 78 feet.

MS. ROBESON: When you say here, you mean the --

THE WITNESS: I mean on the --

MS. ROBESON: -- Holiday project.

THE WITNESS: -- on the southern elevation of the Holiday project. Okay. It's also shown in Exhibit 56B, I believe --

BY MR. ABRAMS:

Q B1.

A B1 which is a 3-D massing diagram. Okay. I don't know where that is. That one will show you a couple of other things in massing. In order to be compatible, the Holiday project -- and does anyone have that massing diagram?

MS. ROBESON: Do you know if it's a large exhibit or a small exhibit?

MR. ABRAMS: It's a small exhibit --

MS. ROBESON: Oh.

MR. ABRAMS: -- which was part of my, well, it was submitted several times. Exhibit 56 --

MS. ROBESON: Oh. I, I think I'm getting there.

THE WITNESS: It's not on any of the other ones?

MS. ROBESON: I have it.

MR. ABRAMS: Could you show it to the witness?

MS. ROBESON: Is this -- well, let me ask you.

THE WITNESS: Yes. That's what I'm talking about.

MS. ROBESON: Is this it?

THE WITNESS: Yes.

MS. ROBESON: Well, there's also this one. This is marked 56B1.

THE WITNESS: Okay. So 56B1 will show, will demonstrate, and I'll show it on the plan, on the plan view, a couple of other things. First of all, not only was this a six-story building, section of Holiday, which is the rear section of Holiday, the northern exposure had a, had a stepdown facing Villages in Bethesda that was down to five stories, it had a stepdown facing what will, the future Edgemoor at Arlington North at five stories and I believe it had additional stepdowns on the -- it didn't have a stepdown. It had various level changes in the front elevations, in the front portion of the Holiday project. But the more important is there was a stepdown in the rear facing the Villages of Bethesda and a stepdown to the west facing Villages of, Edgemoor at Arlington North.

It also shows that there was a 12, approximately 12 foot or very narrow setback from Edgemoor at Arlington North and what appears to be even a larger setback than the new proposed setback to the north on the West Lane project and the public, the private passage space was to the, in the northwest corner, approximately, of the building versus the

center area of the new West Lane project bringing the setback from Arlington North not at the 12 feet that is in the binding element but a, a very large area in the rear only to be used by the tenants of the building. Okay.

What surprised me was when -- and because I'm who I am, I overlayed the Holiday project and the West Lane project and there is not a place in, except when you talk about penthouse space which is not included in the height requirement in the four-story section of Holiday, that is the only place, and it is only for the maybe one little corner of the West Lane project were they're even the same height at any location in, in the building.

On top of it what has happened is you can see this, is that the orientation of the building has shifted to certainly take in Lot 26 in the southeast corner of the lot but to overbuild on it. The only way this building, West Lane, makes the FAR is by overbuilding on the new lot because otherwise, it, the, because if you look at it, they've shifted, you can see from this exhibit, Exhibit 85, that the building has, that the core of the building has shifted almost entirely to the most trafficked corner and most congested area of, of the property. So that, that was sort of an eye opener to say the least.

So to be clear, Holiday was approved. It was for a multi-family building containing 48 dwelling units, and

this is where this chart comes in.
MS. ROBESON: And what, what exhibit is this?
THE WITNESS: Chart 101I.
MS. ROBESON: Okay.
THE WITNESS: Okay. So this building, Holiday, was 60, was, was 65 feet up here.
MS. ROBESON: At the northern part.
THE WITNESS: At the northern part of it. Yet, that 65 feet was sited at eight inches lower ground elevation than this building. This one --
MR. KNOPF: This building being --
MS. ROBESON: Wait.
THE WITNESS: The new building. Now, that's --
MS. ROBESON: Can I stop you for a minute because I'm still trying -- what exhibit are you referring to?
THE WITNESS: I'm referring to 84.
MS. ROBESON: No, no.
MR. ABRAMS: 101I.
THE WITNESS: Oh, 101I.
MS. ROBESON: I'm sorry.
THE WITNESS: 101I which is the chart, and I think you took it out
MS. ROBESON: No, I didn't. Give me one moment to get there. Okay. Now, could you tell me again what you're saying about this?

THE WITNESS: Okay. If you look at the chart and you look at Holiday on the chart, approved Holiday at Montgomery, there's a six-story portion and a four-story portion. Both of them were sited at 335 feet .2 elevation.
MS. ROBESON: Right.
THE WITNESS: Okay. And the proposed West Lane project, on this chart it says 335.5 which is what it said on the original plans but it now says on the new development plan 335.8, so it picked up a couple of inches during this process but it's eight inches higher than what Holiday was, okay?
BY MR. ABRAMS:
Q The ground level elevation.
A Yeah. The ground level --
MS. ROBESON: Is this --
THE WITNESS: That's --
MS. ROBESON: Is this the elevation where they measured height?
THE WITNESS: Yes.
MS. ROBESON: Is that what you're saying?
THE WITNESS: The elevation. The ground elevation.
MS. ROBESON: Okay.
THE WITNESS: The reason I want to show why the ground elevation is important is, and I'll show you

something very simple. Two cups. These cups --
MS. ROBESON: These are not in the record.
THE WITNESS: These are not in the record. These cups are 70 feet. They're equal, 70 feet. Are these cups the same height now? No. They're not the same height. They are the same height --
MS. ROBESON: Wait. What --
THE WITNESS: Okay.
MS. ROBESON: For the record --
THE WITNESS: Okay. For the record --
MS. ROBESON: -- what she's doing is taking one --
THE WITNESS: One of the --
MS. ROBESON: -- of them off the table and lowering it.
THE WITNESS: And the reason that I'm suggesting, showing this is because I'm going to show you how West Lane, by being at the top of a crest of West Lane, that the site marking point for their height is at the highest point on West Lane and that as opposed to the other approved projects at that height, the 70 foot height, where the other approved projects adjacent to City Homes are at a different height. Significantly different height. For me, it's incredibly important that 49, that the Hampden Lane project is at a lower elevation because it really does change my vantage point, like in my face, but it also matters to my neighbors

who face 4901 and for the entire streetscape as well, including for, for pedestrians.
So the Holiday project, so if you take 65 feet, which is the northern part of the Holiday project, and add that to the height that the, at the elevation height at 33, 335.2, we get to 370, well, to the -- I'm sorry. You take the 65 and add it to 335.2, get to 400.2 feet. That's the actual height, okay? And you compare that to the proposed West Lane which is really at, which is --
MS. ROBESON: Wait, wait. What -- you mean 4825 Montgomery Lane?
THE WITNESS: No. The West Lane.
MS. ROBESON: This project.
THE WITNESS: I was just talking about Holiday.
BY MR. ABRAMS:
Q Give her the column numbers.
A Okay. Holiday column --
Q Six.
A -- six which is --
MS. ROBESON: Okay. I'm with you now.
THE WITNESS: Which is the 65 foot height.
MS. ROBESON: Yes.
THE WITNESS: Gets to 400.2.
MS. ROBESON: I, I'm with you.
THE WITNESS: Okay. But what was approved on

Montgomery Lane was not Holiday six stories, it was Holiday four stories. And four stories was, was 335.2 height and then 41 feet of the four stories, taking you to 376. So that's column 7. If you look at proposed West Lane and you correct the base elevation to be 335.8, which is what is represented on the development plans now, having changed from 335.5, you get to 405.8. That's the actual measure.

MS. ROBESON: Okay. Give me what column number that is.

THE WITNESS: One.

MS. ROBESON: One, okay.

THE WITNESS: Yep. And all of the citations for this exhibit are, are listed in the data source. Okay. So the approved Holiday on Montgomery Lane was the 41 foot high Holiday, which would bring you to 376.2, and what West Lane is asking for is 405.8. Now, we heard from Mr. Irish earlier that height doesn't tell us --

MS. ROBESON: Elevation.

THE WITNESS: Elevation doesn't make a difference. Elevation makes a difference.

MS. HARRIS: Objection. Just for the record, I think it's important to note that the relative example in terms of the cups represented, if this is a 70 foot building, it represented a 70 foot height differential and certainly, what we're talking about is a matter of feet so

the differential really looks like that just for the record so that there's no misunderstanding.

MS. ROBESON: Well, we don't -- no. You're not -- I agree that it's not to scale so to speak or to proportion. We don't know what, I don't have in the record what the actual differential is except these different elevations so, so I understand.

MS. HARRIS: Okay. Thank you.

THE WITNESS: Okay.

MS. ROBESON: The transcript can't see the cups.

THE WITNESS: Okay.

MS. HARRIS: Right, but you can and I just wanted to make sure that you understood --

MS. ROBESON: Yes.

MS. HARRIS: -- that that was not exactly accurate in terms of its representation.

THE WITNESS: And I think that, that's fair. It was basically a representation of what, to show that these built elevations --

MS. ROBESON: Elevations matter.

THE WITNESS: -- matter and that we're not talking about a flat table. We're talking about an elevation. And for someone walking, particularly someone walking on that street in heels, which is a good proportion of the people walking on that street to go to work for the, at the, and

get on the Metro, there is an elevation to that street and there is an elevation from on Arlington Road and there's elevations all the way around here. So a 20 foot difference is a difference, or more than 20 feet difference.

MS. HARRIS: But when you --

MS. ROBESON: Yes.

MS. HARRIS: Sorry.

MS. ROBESON: Let her keep going.

THE WITNESS: Okay. So in quoting, in talking about Holiday, what was said was that there were, there were different sections, different facades as to compliment the existing and adjacent uses, and I'm saying this doesn't do it. The terrain works against the approval of West Lane. The West Lane proposal is located on the crest of the hill that's going west to east. In addition, the north side of Montgomery Lane is higher than the south side of Montgomery Lane and the grade continues to slope up as you head north on West Lane.

I'm going to go back to the aerial exhibit because although the aerial exhibit really doesn't show the elevation shifts, it's probably easier to talk about this. Okay. So the West Lane property was sited about here which is about --

MS. ROBESON: And by about --

THE WITNESS: Which is way back.

MS. ROBESON: You're saying about three-quarters of the way north of the intersection of Montgomery --

THE WITNESS: Yes.

MS. ROBESON: -- and West Lane.

THE WITNESS: Right. Three-quarters of the, from up West Lane from the corner of Montgomery and West Lane. And the slopes are up Montgomery Lane from Arlington to just at, just past West Lane and then up West Lane.

MS. ROBESON: Moving north.

THE WITNESS: Moving north. Okay. At a projection, at a height of 70 feet and above that projections that have been totally unspecified but typically described to be about 10 feet high, at the forward portion of the structure sited at 335.8, the building's going to be 405.8. That height is the entirety of the structure with the exception of the 12 foot stepdown at the curb portion and the southern elevation. But to be clear, since the elevation on Montgomery Lane in front of the building is actually 328 feet, not 335.8, the height of this building at, from the curb on Montgomery Lane is 77.8 feet high. This does not compliment the existing and adjacent uses.

In fact, not only would a 70 foot construction height be well above the other existing structures under normal circumstances but simply because they chose to site the project at the highest possible elevation, it makes it

even higher. It's not that it's just going to appear to be higher. It will be higher. Even taller as compared to the adjacent structures. Okay. They're entitled to site the building wherever they choose and I completely understand that, but what they're not entitled to do is to build a building that's incompatible by being too high relative to the other approved projects.

Based on the submitted plans for a lot of these projects and due to the street's topography, both east-west and north-south, this building, the West Lane building, at 405.8, would be 9.8 feet taller than the 4901 Hampden Lane, and you can refer to column 5 to get the figures there, okay? It's nine here. But the Montgomery Lane portion of 4901 includes a cut-out in the north --

MS. ROBESON: West.

THE WITNESS: -- west corner that is 10 feet lower. So instead of being just nine feet, eight feet lower than West Lane, in fact, the corner on Montgomery Lane is 19 feet taller, is 19 feet lower than West Lane. Let's see. Keep in mind that Woodmont is supposed to be the top of the tent. This building at the corner of Woodmont and Montgomery Lane s both 9 feet and 19 feet lower than the West Lane property. Okay.

And it's also, West Lane is also going to be 12 feet taller than the approved structure at 4921 Hampden Lane

which we describe as Hampden Lane, and it's at a parallel distance from Arlington Road in Woodmont as this structure, as the West Lane structure. The difference of 12 feet is about a story, is at least a story, so this seven foot story building with cut, with stepdowns throughout the entire building and cut-outs at this building is in fact a full story taller, I mean, lower than the equivalently, equivalent seven story building on West Lane, and that doesn't even include the penetrations on either of these buildings or --

So clearly, if you exclude Edgemoor, and this building was approved, the big Edgemoor on the north side of Montgomery Lane was approved with the understanding that it was not precedent setting. It was a complicated transaction that included the HOC building and City Homes. So the bookend for the tent is shorter than the, than the proposed building.

From where I sit, it's also been sort of oddly portrayed as to the comparison between structures. While it's depicted on the plans as being simple sticks facing courtyards, City Homes has five units facing Montgomery Lane and the other 24 facing each other. So the 53 foot height at this one point, which is not the building height of the structure but is being portrayed as the building height of the structure by the applicant, is the, is the comparison

that needs to be made. This 53 should -- even if you say it's a 10 foot roof, you really get down to 46 feet, not 53 feet, so it's 46 feet as opposed to the 40, it's a, it's totally lower. It's significantly lower than West Lane. And we could do the math, and the math that we have done is we put it -- City Homes is sited at 332.1. Even if you add, and if you add 4 which is more than, than what I would say this building was built at, you get to 380 as opposed to 425 across the street. Okay so.

MS. ROBESON: How are you measuring height when you use 46?

THE WITNESS: Forty six? We're taking it from the site plan, the site plan for City Homes.

MS. ROBESON: And is that the eave height?

THE WITNESS: And the site plan basically says, the site plan says a 40, the plans use, I'm using 48 as a conservative height.

MS. ROBESON: Yes.

THE WITNESS: Even if you take the 53, it's to the --

MS. ROBESON: The peak of the roof.

THE WITNESS: -- peak of the roof and so you could take a 10 foot roof, and we don't have 10 foot roofs, it makes it 46. And so I'm still, even if I put on this 48, which is conservative, which that puts us at 380 as opposed

to the key number, which is 405.8, so it's 20.8 feet taller. Okay. And then the other reason that I take 48 is because the as-built 48 feet high HOC building, five feet lower, which would really make it 43 feet on the City Homes side, is visually, according to every photograph, including the applicant's, at an equal height, so this, that's how you would place that as well. Place the City Homes height. Okay.

So then, so it's also, it's also the case that the other -- one second. Okay. So then you have this building

MS. ROBESON: Which is?

THE WITNESS: -- which is Arlington, Edgemoor at Arlington which is 46 feet high at a lower elevation, and that is column 7, column 10, I'm sorry. That's at 325.5 feet elevation, base elevation ,with 46 takes you to 371 feet .5 as opposed to West Lane at 405.8. Okay.

It's also the case that the other multi-family projects built and proposed for Montgomery Lane have significantly responded to the urban village because while this is at 46 at its peak, there are stepdowns.

MR. KNOPF: By this, you're referring to?

THE WITNESS: This meaning --

MS. ROBESON: Edgemoor

THE WITNESS: -- Edgemoor at Arlington as well as Edgemoor North.

MS. ROBESON: At Arlington North.
THE WITNESS: At Arlington North. Both of them have varying heights, Hampden Lane has varying heights.
MS. ROBESON: 49 --
THE WITNESS: 4901 Hampden Lane has varying heights. The only building that doesn't have varying heights is the 4825 --
MS. ROBESON: Montgomery.
THE WITNESS: -- Montgomery Lane. But the height of Montgomery Lane property was described as 65 plus 4, and the site plan shows that it is going to be built at 60 plus the 4, so 64. So again, as far as the tenting is concerned, the tent is going down from --
MS. ROBESON: From the highrises.
THE WITNESS: -- from the highrise building and then would go back up, and the back up isn't just a couple of feet as has been described. The, the back up is seen in column 4. We were showing it originally at 397.9, but we would change this to the correct height which would be a building beginning at, even, this is at 332.9 and going up to 394.7, so it's 394.7 versus 405.8. This is a 10 foot drop down from West Lane meaning --
MS. ROBESON: This is the 4825.
THE WITNESS: -- the 4825. Okay. So it's all, so it's all relative. So in fact, elevations really do make a

difference. So those are pretty much height issues as far as, as relative compatibility, and I would venture to say that County Council Resolution 16-246 in Holiday says that the original approved building heights were consistent with development across the street, City Homes and Edgemoor, which reflects townhouses and low-rise structures. If the Holiday design was consistent, it's illogical to believe that this new project is consistent. The proposed building is going to dwarf all of our neighborhood structures with height and bulk.
The West Lane applicant has also tried to justify the appropriateness of the height and density by referencing the site plan for Hampden Lane, and that is the building that shares a significant perimeter with the southwest corner of City Homes of Edgemoor. You can -- let's see. Exhibit 101H is a section view of the property. It's a multi-unit building that has been approved at only 60 units which is half of what West Lane has been approved at. The property sits on a site that is 83 percent the size of the West Lane property, yet only 60 units is what --
MS. ROBESON: Which, I'm sorry, which project?
THE WITNESS: The Hampden Lane property.
MS. ROBESON: Okay.
THE WITNESS: Is 83 percent the size of the West Lane property but has been approved with only 60 units, half

of what West Lane is proposing. Additionally, while that building is approved at 71 feet at its maximum height, I've shown that it's significantly lower and, with the multiple stepdowns, below that height. And this building was approved saying it was consistent after the Holiday project and noted to be compatible with the neighborhood.
The other thing about it is that in the testimony for the Hampden Lane project, the height, the siting of the Hampden Lane project was at approximately the center of the building and due to the different measuring points and that developer's choice of the measuring point, there was testimony in that case saying that you cannot measure 71 feet at the face of any point of the building. The building height is actually 68 feet high at its tallest point. I know that's complicated but the measuring point was taken midpoint. So if that project is, so that project is even three feet shorter than what it's been --
MS. ROBESON: Oh, okay. I see what you're saying.
THE WITNESS: -- than what the proposal as to what's really going to be 15 feet shorter because of the difference in the, because of the measuring point of the building. So if that building was, it was compatible, how can a building without proportional stepdowns and a significantly less, greater density meet that same standard.
The Hampden Lane project approval also addressed

the potential conflict the building would have with the adjacent City Homes, and that's why there are cut-outs. Okay. This is, this is where it gets a little crazy because the exhibits vary on whether or not they show those cut-outs and because they're very important in my life, I want to just present this. This is one of the exhibits, 106C, which shows no cut-outs.
MS. HARRIS: Objection. Two things. One is in terms of the aerial, it was noted through testimony that the aerial was not intended, and in fact, there's a note on the aerial regarding the set, that it wasn't intended to, for setback relationships, and the architect testified what the purpose of it was. This exhibit, while it was identified simply for height purposes, it was not intended to show the wells in the HLA building. And in fact, there is an exhibit that does accurately show the wells.
MS. ROBESON: Well --
MS. HARRIS: So I would suggest that we, if we're going to talk about the wells and the relationship, we might as well be using the correct exhibit.
MR. ABRAMS: Which exhibit?
MS. HARRIS: 106B.
THE WITNESS: Okay. Well, what I'm saying is -- I think this is 106B. Here's 106B.
MS. HARRIS: Right.

THE WITNESS: And quite honestly, thank God for 106B because it is the only one that is accurately showing the, the relationship. So let's look at 106B which shows that there are courtyards, three courtyards in the Hampden Lane project which directly responded to City Homes. That was in a direct response to City Homes. There is no significant response in, in the West Lane property. And this property, the Hampden Lane property, as you will see, is one lot deep and four lots long so that if they would have attempted to have an additional setback at City Homes, it would have been an unbuildable lot. That circumstance does not exist anywhere on the West Lane property.

West Lane has been described as a water balloon. You push it one place, you push it someplace else. Well, my question is why haven't they pushed it towards Edgemoor at Arlington North where there's been a lot of discussion about the 15 feet in the --

MS. ROBESON: Villages of Bethesda.

THE WITNESS: -- Villages of Bethesda and the 12 feet here at Edgemoor at Arlington North, but the space that is reserved just for tenants with no public use is a significant space and is very different from the original setback approved for Holiday. So the, so the massing of the buildings are significantly different, and you can see that here is a building that has significantly responded to a

massing potential problem by having cut-backs and setbacks and stepdowns. Okay.

In fact, the approval for the Hampden Lane project I will quote, and the -- or no. I won't quote that. This is the approval for 4825. But proving that all of these are going along the same lines is the property to the north and west of the site. Holiday is approved for development of a multi-family building that will vary from four to six stories. Thus, the proposed building will be compatible with the existing and approved adjacent development in terms of height and use.

The last thing I want to go, do one more thing about Hampden Lane as regards to compatibility. The Hampden Lane building across the street, as I described earlier, from on-street parking, parking lots and a parking garage, has a 1.48 space per unit as opposed to the one parking space per unit at West Lane. And, yes, I know that West Lane people can park in the library parking lot. That's what I tell my guests, but it is also a lot laden with signs saying you're only supposed to park there if you're actually using the library. So there is a --

MS. ROBESON: I did use the library.

THE WITNESS: I do too, and I urge my guests to use the library. It's clear, based on Lot 4825 height, four to six stories, Edgemoor at Arlington, Edgemoor at Arlington

North, Hampden Lane, Hampden Lane facing Montgomery Lane, those, those things are showing what's compatible. The Sector Plan advocates for a low-rise, high-density urban village with buildings that appear to be townhouses but are actually three to six-story buildings. That's page 82, it's a clear statement. The maximum six stories, not seven, and appear like townhouses, not a uniform seven-story height topped by a mechanical unit over Montgomery Lane.

With, with regard to density and mass, the Holiday project also demonstrates appropriate design standards of compatibility. The binding elements of Holiday included protections for the community to ensure this compatibility. The proposed changes eliminate key elements of those protections.

The plan would produce a density nearly twice that previously approved and substantially higher than the recommended level. The Bethesda Sector Plan recommends residential uses for the site as a density of 45 to 100 dwelling units per acre. The subject plan proposes a maximum proposed density of 135 units per acre, and remember that Holiday was 93. This is -- no. The original was 73 dwelling units per acre. And I just want to note that the Holiday project shows that you can approve a project below the maximum allowable, and I think that is, is a way to demonstrate the compatibility, by showing that there are

elements of Holiday that were below what was allowable in order to make it compatible.

We've not heard any justification other than it is allowed. It is -- for the West Lane project. It is not allowed if it's not compatible. It is also the case when in determining compatibility, the closest surrounding area and future homeowners on Montgomery Lane and the Villages of Bethesda who reside in approved units of lower density are the most affected people. We are the most affected at City Homes because we share the street that holds the entrance to the property. We will be the recipients of the additional traffic, sound, light because of that so the -- and none of the closest adjacent and confronting properties have exceeded a 2.5 FAR and comparisons must be made giving greater weight to these neighboring properties.

And it is the case very clearly. The District Council, the Planning Board, the Hearing Examiner approved those properties at that density. They're there. We are not going to be changing the density at City Homes and nor are we at Edgemoor or the new, or any of the other properties that have been approved, but we can recognize them to be important when you deal with density. The only justify, justification for more than doubling the density, the numbers of units in exceeding that 2.5 FAR has been that this is a different project and that it has MPDUs. There's

no testimony to the effect that the MPDUs are affected, cannot be accomplished without the increased FAR or that they must be accomplished using the additional FAR. And I, as I stated, because of the overbuilding on Lot 26, Lot 26 has, in its own right, would have a higher than 2.5 FAR.

The density that is the subsequent result not only affects congestion but also light, air, conflicting design and traffic on Montgomery Lane, Lane, so I'll talk a little bit more about the general project as lined. The recommended binding elements for the original project approved by County Council included specific details of design which have been deleted from this project.

What is notable is that the proposed design moves the building closer to Montgomery Lane for an additional 25 feet and to explain that, it's the difference between this 78 feet and which is the --

MS. ROBESON: And you're referring to 85?

THE WITNESS: Referring to the Exhibit 85, the southern elevation is 78 feet versus a 25 feet less on Montgomery Lane in the Holiday project at the same elevation but, and that in contrast to Holiday with half of its frontage 100 feet back, and I understand that it, that it didn't include the Lot 26 but it, the case is that it was 100 feet back from Montgomery Lane and the entrance was 100 feet back from the corner of West Lane and Montgomery Lane.

The lobby entrance is now located at the corner of Montgomery Lane and West Lane. I'm pointing to that on Exhibit 85 at the entrance which is, which is also located directly across from four driveways that have now been approved for 4825 Montgomery Lane.

Operationally, and others will talk about this, having this entry at this point is a magnet for illegal parking. There's just, and we, and there's been a lot of testimony about lay-bys and stuff but the bottom line is on Montgomery Lane, one truck trying to pass, trying to, one truck stopped at any point, even if it's just stopped, not parked on Montgomery Lane, impedes passage on Montgomery Lane.

There are few design details that replicate the existing structures in the neighborhood, and I will go to the aerial photo on this one. There are bay windows on this building. There are insets and -- on the Edgemoor.

MS. ROBESON: Highrise.

THE WITNESS: I'm looking at highrise, Exhibit 106F. Those aren't planned or anything. They're existing. Multiple rows of, of bay windows. On West, on 4825, the masonry mimics the, masonry mimics the Edgemoor property. The --

MS. ROBESON: The Edgemoor highrise.

THE WITNESS: The Edgemoor highrise. The

fenestration on, while this is a, while the Edgemoor is a Georgian building and the City Homes are a Federal building, West Lane is a contemporary building and that, again, is a very different place as opposed to the 8, 4825 which combines the elements of a Federal building.

The Edgemoor North and Edgemoor at Arlington both are almost, are heavily masonry and their fenestration makes it, makes it clear that these are both residential buildings. The, the accent of glass in the, in the concave area, which may be a lovely design element, does not make it conform with the other residential-appearing fenestration in the other buildings.

It is also the case that all of the mechanical from the Edgemoor building is hidden. The mechanical for City Homes is hidden. The mechanical for 4825 is hidden whereas on West Lane building, the mechanical is forward and is not, and if it is hidden, it is only hidden by another structure.

No significant design elements break the building elevations on either West Lane or Montgomery Lane to create multiple views and this, the views, multiple views and depth are advocated in the Sector Plan and were required in all of the previously approved projects in this vicinity. That was all the stepdowns on this -- on all of the other development, you can, you can see stepdowns.

The other thing I wanted to say, okay, all, everything -- public use open space is at the bare minimum required and less than the 14 percent originally submitted, including a thin, unusable strip along West Lane that leads only to a garage, a garage entrance and a dead end. So this is part of the public space which is the eastern edge of the project property. Okay. The public -- so that, so I wanted to point that out.

Also, and I hadn't prepared this but having listened to the testimony all day today about the cut-out area, there was a comparison, and I'll go to Exhibit 112, there was a comparison of the steps of City Homes and the handicap ramp of Edgemoor as reading as not public space. Well, if those areas are not public space, then the notion of the park that is immediately adjacent to the entrance of a 120 unit apartment building as being public space is a -- to me, it's a silly notion.

It is also the case that all throughout the testimony, the, and throughout these proceedings, the applicant has made it very clear that the entrance on West Lane was important to give a face to the building. The reason that that is important is really because the Sector Plan is ask, requires you to have, or recommends that there, it appears like a townhouse, which clearly, this isn't going to do, but also, has frontage on Montgomery Lane that has

individual entries. This does not exist on West Lane so the only entry is, is in this park.

Well, if this is pedestrian-friendly and there are steps, if West Lane is pedestrian-friendly and there are steps from Montgomery Lane to get into West Lane, what about handicap accessibility? The handicap accessibility is from a ramp halfway down West Lane so any handicapped person who needs the ramp has to be dropped off at the lay-by and to the, and moved all the way up West Lane, down West Lane to get into this building meaning that no one on Montgomery Lane needing accessibility can enter this building, and I think that is contrary to the Sector Plan completely. And the notion that the steps adjacent to West Lane would be viewed as public property but the steps and the planters next to the steps on, on the City Homes properties wouldn't be used as public space is just an unfathomable comparison as far as I'm concerned, but that's just as far as I'm concerned but I think it's fact.

So those are the key, these are key elements about compatibility. This building isn't compatible, it has numerous failings, it's not compatible with the community, it fails to meet the recommendations of the Sector Plan and equally important, it's not compatible with the as-built conditions on Montgomery Lane and West Lane and approved projects ahead of it in the pipeline. The approval of this

project and its current configuration would mean that a road designed and used daily as a local pedestrian route and in a biker-friendly area will be dominated by a building that does not contain the recommended and existing design elements of the streetscape and is inconsistent with the aesthetic quality of the other developments on the block.

I strongly urge you to deny this application unless major conditions are included to make this a compatible building. Recommended conditions should reduce the height, bulk and density of the building by modifying the design elements and setbacks and stepdowns of the building, and by providing more usable open space, what will be used by pedestrians and benefit the adjacent and confronting neighborhood. Happy to answer any questions.

MS. ROBESON: Thank you

MR. ABRAMS: We're not finished yet.

MS. ROBESON: I'll let Mr. Abrams follow up.

BY MR. ABRAMS:

Q Does conformity with the Sector Plan for the area enter into your analysis of compatibility?

A Absolutely.

Q And why is that?

A Because the Sector Plan, first of all, the Sector Plan has had governing authority of all the previous projects approved in that, in the community and that the

Sector Plan is requiring an urban, an urban village with mixed heights and varied sizes of buildings.

Q Now, in terms of evaluating compatibility, you've listed some factors. I believe height, density, a transition type of fact. And is there anything else, possibly architectural I think you, you also listed.

A Mass.

Q Mass.

A I think the mass, that's, I think, to me, the biggest problem. Well, the height and the density.

MS. ROBESON: Well, let me, let me just ask you as to the height. What is your response -- what I hear the applicant saying is that when the Council amended the TS-R Zone, they essentially amended the height limits in the Sector Plan if you provide MPDUs, so what's your answer to that argument?

THE WITNESS: And I think that is the case, that they, that's what the Council did. But the Council also recommends and approves projects on a case-by-case basis so the MPDUs would be fine if the building was compatible. The building is not compatible at that FAR largely because of the density.

MS. ROBESON: Okay. I'm sorry to interrupt, Mr. Abrams. Go ahead.

MR. ABRAMS: Oh.

MS. ROBESON: Oh, do you have any other?

MR. ABRAMS: Yes, I do.

MS. ROBESON: Okay.

BY MR. ABRAMS:

Q If this project were approved in its current density, height, configuration, what incompatible and adverse effects will affect the immediate neighborhood?

A Okay. Well, the incompatibility, clearly, the design elements and the height I talked about. And the height, the affect of the height is really vantage points. In contrast to the south side of Montgomery Lane, which is broken up, which has a definite rhythm, the north side of, of Montgomery Lane is not going to have the equivalent rhythm so a, a building that's 78 feet long at this location will in fact mirror a problem that I don't think anyone will deny in front of the, exists in front of the Edgemoor.

As like my, I tell my kids and my mother told me, I don't care what they did. What's right is right and what's wrong is wrong. And this is 78 feet opposite a rhythm that is pedestrian-friendly. This is not going to be pedestrian-friendly. So it's not only the vantage points for the people living in these buildings with a big mass. It's also what happens to the people walking up and down the street. And because of the elevation shifts, this is going to be big, bigger than one expects it to be, for a very long

part of the road in the, in the pedestrian experience on Montgomery Lane.

And the density and massing affect the operation and the operation of the street may not be a problem at 8:30 in the morning but is a problem the rest of the day when deliveries are made, when the mailman, the postman parks on Montgomery Lane illegally every single day, when, which is not the fault of the applicant but is an existing condition which they are going to exacerbate. And to say that 120 units is going to have no more impact than 48 units, which is what was approved, is, is not a logical conclusion.

Q Okay. You've given some testimony as to the Holiday project, Application G-843.

A Uh-huh.

Q Did you have an opportunity to review the Hearing Examiner's report --

A Yes, I did.

Q -- in that case?

A Yes, I did.

Q I want to direct the Hearing Examiner to page 41 of the report, and it is the paragraph above the section entitled Shadow Studies. And this is the quotation of a letter from the applicant's counsel in rebuttal to certain comments that were received in that case, and I might add not by our clients. Now, this, again, is the applicant's

letter in that case, and the entire letter is quoted verbatim so you can, you can read the entirety of the letter. It says a critical component in evaluating the compatibility of the project is the applicant's commitment through binding elements on the development plan, through various design elements of the project including those discussed above. Is that something that you agree with?

A That -- this?

Q No. That as a general proposition, a critical component in evaluating the compatibility of the project is the applicant's commitment through the binding elements on the development plan and various design elements of the project including those discussed above.

A Yes.

Q Okay. In terms of your review of the subject application, have you reviewed the binding elements on the current plan?

A Yes, I have.

Q And do you believe that those binding elements provide a commitment which will ensure compatibility of this project?

A No. I don't believe that the binding elements do. A couple, one in, specifically is that the binding element regarding deliveries because I think that is, that it is unenforceable and if, it is isn't even stated in a way that,

that could make it enforceable. That's one binding element. The other binding element which are about having to do with the setbacks, the setbacks were not, I do not believe are sufficient. Okay. Thank you. I do not believe the setbacks are sufficient. I'll go down the binding elements.

I think that the element with a maximum height at 70 feet as measured from 335.8 and is shown on the development plan is not consistent, is not compatible. The development will have a maximum density of 3.05 FAR, no. 2, is not compatible. The development will provide 15 percent of the units ultimately committed for construction as MPDUs. That actually is compatible.

The development will provide a minimum of 10 percent public use space. I do not believe that is compatible because of the massing of the building and the fact that the Sector Plan actually calls for public use space to be in usable section, usable chunks. I don't know, I don't have the exact wording here but in usable places, and I, I would contend that the West Lane portion of the public space will only be used for dog walkers.

The development will provide a minimum of 20 percent active and passive recreational space. I think that's, that the 20 percent, as a maximum, as a minimum is compatible. The 20 percent provided is compatible, is -- actually, if there is going to be roof passive space, then I

think that it will be overly generous in some respects due to the fact that we live within walking distance to several gyms and several recreation facilities. We have movie theaters, we have restaurants, we have, so you don't need to do anything more than the minimum there. Okay.

The next binding element, the western facade of the development will include a minimum of 20 percent windows. Totally agree. That does not affect my view but I believe that's compatible. I think not having a binding element with a construction agreement with City Homes and concluding crane-swing provisions and pre and post-construction evaluations I think is not a compatible element. I think that we would want a construction agreement.

I think dedicating two-and-a-half feet of frontage I think is appropriate. That's no. 8. In connection with the development -- let's see. I don't have, I don't have a statement on 9. No. 10 is compatible. Approving lead rating system is definitely compatible. I don't think flat roofs are actually compatible based on the fact that so many of the buildings have some articulation.

The number -- this is another one. No. 13 says either, whether rental or condominium, this is, the management entity will require that all service deliveries occur through the service entry located on West Lane. This

is one which I don't believe is enforceable and, in its, in its current wording, and one would almost need someone standing outside of the building to guarantee that service deliveries occur through the service entry located on West Lane. And the other thing that is, is concerning in that binding element is it says whether rental or condominium because there are tremendous differences in the representations made about this project as to whether or not it is a rental or condominium and lifestyles, there's a difference and partially because rental units will have a greater turnover than condominium units.

Fourteen, yes. Compatible to screened transformer units. I think it's interesting that the applicant is going to enter into a construction agreement with 4828 West Lane here, which is across the street, but not across Montgomery Lane, City Homes, so I think that's an interesting element and so it's not compatible unless City Homes is added. I think that 15 feet from the northern property line is more than generous against a brick wall over a brick wall. The outdoor private amenity space in keeping with the size and dimensions of the development plan, I don't see how that makes it more compatible. I would -- by providing private space rather than public space.

The sixth and seventh floors of the building will incorporate a 12 foot stepback. I would say that 12 foot is

not compatible because it, the, it's still -- first of all, that stepback starts a full story higher than what Holiday was and it is also 12 feet as opposed to the 100 feet stepback at that height and Holiday, so it's not compatible. The height of the landscape lighting and the private outdoor amenity space to a maximum of 24, that's probably compatible. And the public use space concept will substantially conform. I think the word substantially conform is, is a subjective term and I don't think that there is anything here that literally ties us to, to the representations that have been made. That's no. 20.

Q Now, also with respect to the Hearing Examiner's report in, in that case, and I'm specifically --

A You're talking about Holiday.

Q Yes. Holiday. And I'm specifically referring to page 43. There's a paragraph which is labeled community outreach. I'm wondering if you could read that short paragraph into the record.

A This is on page 43. Community outreach. Since the beginning of the proposed project, the applicant has worked diligently to reach out to the surrounding neighbors, to solicit their comments and to respond to their concerns. The applicant's commitment is reflected in many of the binding elements which incorporate the design standards and requirements specifically requested by surrounding

neighbors. The applicant's responsiveness to the surrounding community to ensure that the project is compatible with the existing development is perhaps best illustrated by the fact that only three residents testified at the public hearing and these individuals submitted limited final comments. As Mr. Fishken (phonetic sp.) indicated at the public hearing, the applicant has developed a positive working relationship with the surrounding property owners. We look forward to the opportunity continuing to work with communities to assure a successful compatible project.

Q Now, you've been involved with meetings with the applicant?

A Yes.

Q Would you characterize those meetings as being responsive to concerns and requests of the community?

A No.

Q In what way? What did the community basically discuss and what was --

A The community's concerns have really been both, largely density. Density is a big concern because of the traffic concern, the internal circulation patterns and traffic concerns, but it's also been the massing. And the massing of this project has been, has obviously shifted from the western -- well, it shifted from just being narrow and

low in the front to being just a big rectangular structure with a, a cut-out on the full lot. The -- we have requested a greater stepdown at the front elevation and also, throughout the building so that the, in addition to a stepdown on Montgomery Lane, a stepdown on West Lane. We did not request the pocket park. However, I would say that -- and that came as a surprise to use quite honestly, but it has not in fact changed either the density or the mass of the building.

We have made it very clear that we are concerned about the height multiple times, and in fact, we see no change of that. And we also have made it really clear that we think that the rear, the northern space could easily have been transferred to the Montgomery Lane side of the property with a greater setback on Montgomery Lane. And then lastly, we had requested multiple times that the lobby not be put on Montgomery Lane and that more articulation be made in the building to make it, make the design more compatible with existing structures.

Q Did you also request that the way-by, or the lay-by be increased in size?

A Yes, we did. We requested the lay-by because, because of the lack of parking on the streets.

Q Okay. In terms of the public use space, in those meetings which occurred before the first Planning Board

meeting, did you make the suggestion to the applicants to take that public use space and bring it to the frontage on Montgomery Lane?
A Yes, we did.
Q And did the applicant respond to you before the public hearing or the public meeting of the Planning Board? Did they do that?
A No.
Q Okay. And do you believe that it was the suggestion of the Planning Board, after testimony at that public meeting as opposed to your meeting with the applicant and voicing your concern over the location of that public use space, that created the cut-out portion in the front of the building?
A Yes. That came as a surprise to us.
Q And in terms of the number of neighbors who were opposed, the letter indicates that there were only three people that opposed the Holiday project. Did anybody from City Homes oppose the Holiday project to your knowledge?
A No.
Q And has --
A Supported the Holiday, only three people supported the Holiday project is what was --
Q Correct. Now, in terms of the, the 29 units, how many oppose this project?

A Twenty-nine.
Q How do you know that?
A Because 29 letters were, individual letters, were sent, composed and sent by each unit of City Homes.
Q Okay.
A To the Planning Board prior to the Planning Board hearings. And a number of, of my neighbors actually appeared at the Planning Board hearings to voice their concerns and testify.
Q Okay. Were there numerous letters in opposition from the what I call big Edgemoor building units?
A Yes. To the best of my knowledge, but I believe they'll testify about that. But as far as City Homes is concerned and our neighborhood association, it was rather remarkable but there were 29 out of 29.
Q That's all the questions I have.
MS. ROBESON: All right. Mr. Knopf, do you have any questions or cross-examination questions?
MR. KNOPF: My question is what am I going to do this Friday when they come in here, that's --
MS. ROBESON: I know. I'm thinking about that too.
MR. KNOPF: No. I just compliment the witness for very excellent testimony. I have no questions.
MS. ROBESON: Ms. Harris?

MS. HARRIS: Numerous as to be expected.
MS. ROBESON: I figured. Let's take a, I need to get my keys so let's take a five minute break and then we'll start your cross-examination. You have three other witnesses?
MR. ABRAMS: I have, let's see, one, two are my witnesses. The gentleman in the slacks and green shirt here is a resident but he's not part of my case.
MS. ROBESON: Okay.
MR. ABRAMS: He wants to testify also.
MS. ROBESON: Okay.
MS. HARRIS: And I probably have about an hour-and-a-half worth of cross.
MS. ROBESON: Okay. Well, we can stay here overnight or we can add another day. It's up to you.
MS. HARRIS: We should add another day.
MS. ROBESON: Now --
MR. ABRAMS: Don't we have Friday this week?
MS. ROBESON: Yes, but that's -- what I'm hearing is Mr. Knopf, how many days do you have? I mean, how many witnesses?
MR. KNOPF: We have, there are three witnesses plus our expert, plus there's one person I don't represent that said they wanted to come and testify. And on the lay witnesses, I think, you know, an hour, hour-and-a-half

total.
MS. ROBESON: But on Mr. Doggett.
MR. KNOPF: We're talking an hour of his testimony and then whatever the cross-examination is. We thought for sure we would get done half a day, three-quarters of day on Friday. My problem is I only nailed down all the witnesses for Friday because that's when we thought it was.
MS. ROBESON: Right.
MR. KNOPF: And I don't know what's going to happen once they get released or told they can't come. I do know that one of them on Friday can only be in the morning so that, that's where we are.
MS. ROBESON: Well, let's do this. Well, I do have to take, I'm going to take the gentleman, I don't know your name, in the green shirt --
MR. POLKES: Thank you.
MS. ROBESON: -- tonight.
MR. POLKES: I'll answer to that.
MS. ROBESON: All right. I do -- let's take a five minute break because I can't get locked out, and then we'll figure out the rest of it but I'm not seeing -- how long do you think you'll have in -- well, you haven't heard his case, Mr. Knopf's case, so do you have an estimate of rebuttal at this point? No.
MS. HARRIS: No.

MS. ROBESON: Okay.
MS. HARRIS: I mean, half a day maybe or less. I haven't, I don't know at this point.
MS. ROBESON: Well, let's do this. We'll just, we can find a reserve date and hopefully won't need it, okay?
MR. KNOPF: Well, I don't know that --
MS. ROBESON: Not for your witnesses. I'm going to try to stay -- Mr. Abrams, do you have the ability to, you know, I don't want to split up your case but can you accommodate Mr. Knopf's witnesses on Friday?
MR. KNOPF: Well, that --
MR. ABRAMS: No.
MS. ROBESON: No.
MR. KNOPF: No. That would be --
MS. ROBESON: No.
MR. ABRAMS: No.
MR. KNOPF: I'll have to contact my witnesses to see if they're available on the 29th.
MS. ROBESON: That's what I think you need to do.
MR. KNOPF: Yes. I --
THE WITNESS: I am not available on the 29th.
MS. ROBESON: No. I don't think we'll need you on the 29th.
THE WITNESS: Okay.
MS. ROBESON: I would like to get the gentleman in

the green shirt tonight.
MR. POLKES: Brent Polkes.
MS. ROBESON: Like the man in the yellow hat. And then, yes, tomorrow, how about this, somewhere here I still have, had the dates that were available. I would see, you know, if you only need a half a day, we may not need extra dates but --
MS. HARRIS: Yes. I mean, I was expecting to be able to be, to be able to give you a better idea after I heard the completion of their --
MS. ROBESON: All the testimony.
MS. HARRIS: Yes.
MS. ROBESON: Well, just think about Friday May 3rd, okay? That's what I know is available now as a --
MR. DOGGETT: That is -- hopefully, I'll be done before then.
MR. KNOPF: No, no. You might not be.
MR. DOGGETT: I have my daughter's graduation to get her master's --
MS. ROBESON: Wow.
MR. DOGGETT: -- in documentary filmmaking.
MS. ROBESON: Very nice.
MR. DOGGETT: And right at my beginning, I said I'd never put work in front of my children.
MS. ROBESON: And that's a wise philosophy.

MR. DOGGETT: Yes.
MS. ROBESON: And does that mean, do you have to be out of town May 3rd?
MR. DOGGETT: May 3rd and May 4th, yes.
MS. ROBESON: Okay. Well, I will try to get additional dates. Yes, Ms. Harris.
MS. HARRIS: And let me just note my client is out of town May 2nd through the 10th.
MS. ROBESON: Oh, so she's out of town too.
MS. HARRIS: She couldn't do it anyway. Right. From 2nd, May 2 through 10.
MS. ROBESON: Okay. Well, let me go get my keys and then I would like to take the gentleman in the green shirt. And then we will pick up Friday morning with cross-examination of Ms. Turnbull and then we will discuss possible dates on Friday.
MS. HARRIS: Thanks.
MR. KNOPF: I don't want to hold you up now but we can discuss it when you come back. I just don't know what witnesses am I to have available on Friday. We're going to have to try to work that out.
MS. ROBESON: Well, that's why I think it's more productive to discuss it Friday. Friday, give you time to reach some of your witnesses about the 29th.
MR. KNOPF: Right, but I mean, I'm going to have

them come on Friday. That's what I'm getting at.
MR. ABRAMS: Well, yes. I mean, he ought to have some of his witnesses here.
MS. ROBESON: Yes. I mean, I can't guarantee a particular date and time. We're trying to get through this hearing so I don't know what order your witnesses are in. I can only, you know, I'm going to keep going as long as we have witnesses coming.
MR. KNOPF: Okay.
MS. ROBESON: I know there's expenses involved with witnesses who are here.
MR. KNOPF: I understand. I also have a personal problem meeting, reaching people. I am at the Planning Boar tomorrow from 9:00 until 5:00. I have two major hearings all day so I will try my best tonight to reach people.
MS. ROBESON: Well, what I'll do, I will do this tomorrow. I will try to get some dates to you tomorrow which is the Planning Board day but do you have a secretary that could disseminate those dates?
MR. KNOPF: Yes. We can, we can do that.
MS. ROBESON: Can Joy do that?
MR. KNOPF: I would -- yes. I would assume between this Friday and the 29th if they're available, we will accomplish all my witnesses for sure. You'll have this Friday, presumably, I might --

MS. ROBESON: I mean, I can't give you that assurance because there's a cross-examination, you know.
MR. KNOPF: You're absolutely right.
MS. ROBESON: Ms. Harris has an hour, you all have had an hour, so it's hard for me to tell you that.
MR. KNOPF: You're absolutely right. Sorry. Okay.
MS. ROBESON: I understand your, your concern. So let me go get my keys because I really have to do that, and then we're going to take one more witness. And we're going to reserve your cross-examination for Friday, okay? We'll be off the record for five minutes.
(Whereupon, at 5:57 p.m., a brief recess was taken.)
MS. ROBESON: So sir, whose name I don't know yet, would you raise your right hand?
(Witness sworn.)
DIRECT EXAMINATION
MS. ROBESON: Please state your name and address for the record.
THE WITNESS: My name is Brent Polkes and I reside at 4808 Montgomery Lane, Bethesda, Maryland 20814.
MS. ROBESON: Okay. And do you mind just telling us where you live on -- are you part of City Homes?
THE WITNESS: Yes. I reside in City Homes.

MS. ROBESON: Okay. All right.
THE WITNESS: And I live in the westernmost row of houses.
MS. ROBESON: Okay.
THE WITNESS: The second one in from the street.
MS. ROBESON: Okay. Thank you.
THE WITNESS: You're welcome.
MS. ROBESON: Go ahead.
THE WITNESS: First of all, I'd like to compliment my neighbor and my colleague on an absolutely wonderful presentation. I pride myself in being articulate but I would confess to all of you that following Susan is an act I would prefer not to do at any point in time. And given the fact that she was as thorough and articulate, I'm going to limit my comments as much as possible to the things that have been a concern to my wife and myself.
MS. ROBESON: That's wonderful. I would like to hear. No. I don't, I don't mean that sarcastically --
THE WITNESS: I thought that might be well received. No problem.
MS. ROBESON: -- but I would like to hear, you know.
THE WITNESS: This is my first opportunity to be present. Fortunately, I run a thriving business and I am otherwise engaged with our six children and nine grand-

children with two additional ones on the way --
MS. ROBESON: Wow.
THE WITNESS: -- and the fact that we are blessed by virtue that they all live within 20 minutes of Bethesda leaves me in a position where I am not yet ready to retire. You know, I've been filled in on some of the expert testimony, I heard some of it today, and what strikes me is that all of these people are well-meaning, well-intentioned, possibly truly expert in everything that they say they are but you know what? If you don't live on the street, you really don't know what you're talking about.
Lay-bys? That lay-by is going to attract illegal parkers and I assure you just as the lay-bys in front of the Edgemoor are filled every day by people who choose to park there illegally, the same will be true on West Lane which means that while it may be the intent of the developer and all of those involved to preserve this area for deliveries and for others, I absolutely guarantee you that that will not function much of the time for its intended purpose. And just as people --
MS. ROBESON: Do you, okay, so do you observe illegal parking on Montgomery Lane or is it just the lay-by or --
THE WITNESS: Well --
MS. ROBESON: -- at Edgemoor highrise or --

THE WITNESS: The illegal parking on Montgomery Lane is pervasive. There are approximately three to four legal spaces on Montgomery Lane which are across the street from the first of two lay-bys, the westernmost lay-by in front of the big Edgemoor. Behind the area which is legal, there's room for three or four cars to park, and they are routinely filled. The delivery trucks, when the lay-bys are filled, just park wherever and it creates an obstacle course, and that obstacle course is challenging enough but because the street and the traffic flow from Woodmont towards Arlington Road, which would be I guess east to west, has only one way traffic, yes, it's a hazard and, yes, it's a life safety issue because it obscures your view when you're pulling in and out of driveways. It's manageable.
But the area on Montgomery Lane running east to west from West Lane to Arlington Road is a two way street that I'm told is 20 feet wide. If, as will absolutely be the case, FedEx trucks, UPS trucks, people dropping people off, people who just decide to park illegally, continues to be as it currently is, that will require that vehicular traffic move into the oncoming traffic lane in order to access either a left or right turn on Arlington Road.
I'm not certain exactly what the statistics would be but I assure you that this type of traffic flow will dramatically increase the probability of accidents. It will

also serve to hamper one of the principal uses for which Montgomery Lane was intended, and that was as a pedestrian and biker-friendly street. I mean, when the Master Plan was, or the Sector Plan was laid out, this street was specifically designated for that purpose and with the increased flow of traffic and the amount of illegal parking and the vehicular traffic with FedEx, UPS, whoever it may be, is going to create a very difficult traffic situation.

Now, the traffic studies at 8:30 in the morning may have said that well, X number of cars in or out isn't going to hamper or create a situation that puts it outside of the acceptable traffic patterns. The fact of the matter is that they left and they weren't there at the height of the day when you've got all this additional activity going on, and the street traffic will be unbearable if this project is allowed to be built to the density that is presently proposed.

And anybody who thinks that the people who live there aren't going to have cars, they're going to be urban dwellers, that's just not the case. You're out on the streets. We're supposedly an urban area. People don't give up their cars. I mean, human nature is human nature and to suggest that people are going to change just because they live in that particular building is totally unrealistic. And so we have great concerns about vehicular traffic, life

safety issues, the ability of emergency vehicles to potentially get up or down the street because of the narrowness of the street and the fact that there will be this additional traffic flow and illegally parked cars.

When my wife and I decided to move from further out Bethesda, out Bradley Boulevard into Bethesda, we did so because each of us had grown up in an urban area. I grew up in New York and lived in the city. She grew up in Pittsburgh. We moved to Bethesda because we sought a lifestyle that was going to permit us to have the opportunity to walk to places and to be surrounded in an urban environment. We absolutely understood without question that additional development was in fact planned and anticipated and from our standpoint, quite welcome, but we were also given the Bethesda CBD Sector Plan as part of our documents when we were considering purchasing at City Homes and we read through this document.

The copy I got back then is long gone and I just purchased this copy so that I could in fact have it as a frame of reference, and I'm not sure legally or morally what the obligations are when the planners outlined their projections for what the Bethesda CBD Sector Plan was going to be but I know as taxpayers and as homebuyers, we assumed that the information that was provided in this document was information that we could reasonably and realistically count

on. Perhaps not 100 percent but certainly to a very great degree in making the decision we did which was that moving to City Homes was in fact going to give us the lifestyle that we expected and for the most part, things have played out pretty much as we anticipated.

We supported the Holiday program. We supported other properties that have been built and in the instances when I have felt unhappy about the development, it hasn't been because of what the developer intended to do but rather, the fact that we were operating in an environment and with a system that seemed to be one that could be manipulated.

Now, surely when the Sector Plan was written in 1994, it was understood by those who authored and subsequently took the plan through the public hearings and everything else that MPDUs were a part of the process and so when the Sector Plan specifically lays out a maximum FAR of 2.45 and a maximum 100 acre, 100 units to the acre, we assumed that that was going to be the cornerstone of how the density would be and what we could expect in our neighborhood. And in fact, until the amendment was filed -- and by the way, we have a real problem with the fact that a plan that's been approved and is now going to be so radically altered so that it bears no relationship to what was initially proposed and approved at all levels and

supported by the neighborhood could in fact be addressed as an amendment rather than a totally new plan because in fact, it is a new plan. Everything about it is new.

You've added 25 percent more lot size when you added Lot 26, known as the Wolf property, but yet, you've taken a 48 unit or a proposed 48 unit property and increased the density by more than two-and-a-half times. And you did it in a way where instead of taking the well spread out Holiday plan that in fact proposed a four-story set, unit closest to Montgomery Lane with 100 foot setback before you went to the second story, so you had the bulk of the density in the Holiday project going further back on West Lane and you're now moving almost all of that density up towards Montgomery Lane so that not only did you take 25 percent of the space on Lot 26 and add it to the total parcel size, you actually moved 60 percent of the density up front towards Montgomery, Montgomery Lane. And that in and of itself totally destroys the integrity of what is compatible and what is consistent with the quality of life that we bought into.

And I would suggest that it's not the development. It's the massing, it's the density and it's the lack of compatibility. I mean, I can't tell you what is going to be finally approved in terms of the structure but if we put up the one exhibit that shows the modern building that I have

to assume is what they're proposing, it bears no resemblance to anything else on Montgomery Lane and certainly, there isn't any way to look at that and describe it as being compatible with the surrounding buildings, and it's just unacceptable to be in a position where we're told well, we can do this so we will, and that's essentially how it's been presented to us. We can do this so we will. I'm finished.

MS. ROBESON: Okay. Mr. Abrams, any follow-up questions?

MR. ABRAMS: I have no questions other than to thank Mr. Polkes for taking the time to come out.

MR. KNOPF: No questions.

MS. ROBESON: Okay. Ms. Harris?

MS. HARRIS: Can you give me two minutes?

MS. ROBESON: Yes. And I thank you for coming out and staying as long as you have.

THE WITNESS: You're welcome.

MS. HARRIS: I just have a few questions.

MS. ROBESON: Okay.

CROSS-EXAMINATION BY MS. HARRIS

BY MS. HARRIS:

Q Mr. Polkes, you stated I think something to the effect that generally, you've been happy with all the development that's occurred thus far in the neighborhood, is that correct?

A I said that I was happy with the development but not always happy with the process.

Q So perhaps that goes to my next question which was were you involved in an appeal of the 4901 Hampden Lane case?

A I was.

Q And were you also involved in the appeal of the Hampden Lane Associates, the Hampden Lane project by City Homes?

A Yes. And the circumstances were the same in both cases.

Q Okay. All I wanted was a yes or no. Thank you.

MS. ROBESON: Well, I let Mr. Irish more debate.

THE WITNESS: Thank you.

MS. ROBESON: But maybe I'll make a note to follow-up, so go ahead, Ms. Harris.

BY MS. HARRIS:

Q Were you aware that at the time of the Sector Plan, at the same time of the 1994 Sector Plan was adopted, that the TS-R Zone provided for additional density in the TS-R Zone to accommodate MPDUs?

A I'm looking at page 82.

Q No. Not of the -- I'm talking about of the Zoning Ordinance. Hold on. Let me rephrase that question. Are you aware that 59-C-8.4 reads as follows, and this is the

development in the TS-R Zone. The density of development must not exceed the FAR, the dwelling units per acre allowed by the zone except that the maximum density permitted may be increased to accommodate the construction of MPDUs as required by 25A.

MR. ABRAMS: When was that adopted? I think he's referring to the Sector Plan of 1994 and you're talking about an amendment to the Zoning Ordinance, so is that 1994 or before?

MS. HARRIS: I need to get --

MS. ROBESON: It's my recollection your witness testified that it was a couple of years after. I can't remember which witness, but I could be wrong. I don't have the transcript yet.

BY MS. HARRIS:

Q When did you buy your house, Mr. Polkes?

A 2000.

Q So you bought your house at the time that the provision that I just read was in effect, is that correct?

A I have no way of knowing when it was in effect. It wasn't provided to me when I was considering the purchase. At least it wasn't amongst the documents that were given to me.

MS. ROBESON: When did you buy your house? I'm sorry.

THE WITNESS: 2000.

MS. HARRIS: I have no other questions. That concludes my questions.

MS. ROBESON: Okay. Thank you --

THE WITNESS: You're welcome.

MS. ROBESON: -- for staying late. Okay. With that, what we'll do is this hearing's going -- I'm sorry. Oh. We will, this hearing is going to be continued to this Friday the --

MR. KNOPF: 19th?

MS. ROBESON: When is this Friday, the 8 --

MR. KNOPF: 19th.

MR. ABRAMS: 19th.

MS. ROBESON: 19th. Got the wrong calendar again. It says pay day. Friday the 19th at 9:30. I'm going to have our administrator send all the parties some dates for a reserve hearing after May 10th, and if there's, you know, I encourage you to coordinate amongst yourselves as to witness schedules and who can be here when.

MR. ABRAMS: The April 29th date that we discussed the last time --

MS. ROBESON: We're having that.

MR. ABRAMS: So we're having this Friday the 19th.

MS. ROBESON: And the April 29th.

MR. ABRAMS: And the April, okay.

MS. ROBESON: And then I'm just asking for reserve because we're running a little behind where I thought we'd be or we are, so we may or may not use that last date.
MR. KNOPF: If I could just do this off the record, I just want to inquire --
MS. ROBESON: Wait. Are we off the record?
MR. KNOPF: Okay. I'm just talking scheduling matters. It could be off the record.
MS. ROBESON: Okay. We can go off the record.
(Whereupon, at 6:29 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Josephine Hayes, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC **LOCAL MAP AMENDMENT G-954**	:	**Case No. G-954** **DPA 13-01**

A hearing in the above-entitled matter was held on April 19, 2013, commencing at 9:45 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

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* * * * *

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Linda Skalet		28		--
By Mr. Abrams:	23		48	
By Mr. Knopf:	11		49	
Susan Trunbull		52		154
By Mr. Abrams:	7		132	
By Mr. Knopf:	--		147	
Daniel Joseph		184		--
By Mr. Abrams:	169		--	
By Mr. Knopf:	--		203	
Richard Lawch		--		--
By Mr. Abrams:	210		--	
By Mr. Knopf:	--		--	
Louis Pohoryles		285		--
By Mr. Abrams:	283		--	
By Mr. Knopf:	264		--	

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Local Map Amendment No. G-954, filed by 4831 West Lane, LLC, which requests rezoning from the R-60 zone to the TS-R zone of property located at 4901 Montgomery Lane in Bethesda. It's also a continuation of the public hearing in, I'm sorry, Development Plan Amendment No. DPA 13-01 filed by 4831 West Lane, LLC, which requests and amendment to the development plan approved by the District Council on July 10, 2007, in Zoning Application G-843.

All right. We have all the parties here and I understand there's at least one preliminary matter.

MR. ABRAMS: Two.

MS. ROBESON: Two? Okay. Mr. Knopf, you got in there first.

MR. KNOPF: Madam Hearing Examiner, as you know, we represented that we would be -- that I represent three individuals, plus the association and our witnesses will be those three individuals, plus the Hearing Examiner. Someone else who lives in the building that I don't represent wants to testify and is here this morning and this is the only time they can testify. They have a serious health situation in the family and I was wondering if we could be kind enough to let her go first and then we continue with --

MS. ROBESON: Any objections? We do try to accommodate individuals. Okay. That's fine. Mr. Abrams?

MR. ABRAMS: Yes. Yesterday you wanted a copy of -- I tried to get into the technical appendix to the sector plan.

MS. ROBESON: Okay.

MR. ABRAMS: This is not the entire technical appendix.

MS. ROBESON: Yes.

MR. ABRAMS: This is only the cover sheet, plus the page which refers to the TS-R district. So it's not the complete technical appendix.

MS. ROBESON: Well, let me do this. Can anybody obtain the -- can you obtain the technical appendix?

MR. ABRAMS: A 1994 sector plan? I don't know.

MS. ROBESON: Okay. Let me ask this. We have, I have the, I believe we have the technical appendix in our library. I can take official notice of that document.

MR. ABRAMS: That's fine. I just wanted to point out that we were representing --

MS. ROBESON: We can put this in the record and then I'll take official notice of the entire -- oh, I think I have it right here.

MR. ABRAMS: Well, that's, I just handed -- that's what I wanted to make an exhibit today.

MS. ROBESON: Okay. That's fine. It's, we can do this as an exhibit so the parties can use it and then if anyone --
MR. ABRAMS: I have not given copies to counsel.
MS. ROBESON: Yes. That's fine.
MR. ABRAMS: Is this Exhibit 119 or --
MS. ROBESON: Yes. So 119 is excerpt of technical appendix to the Bethesda CBD sector plan.
MR. ABRAMS: Actually it's page 8, but the whole appendix.
MS. ROBESON: Okay.
MR. ABRAMS: The second point is before I release Ms. Turnbull to cross-examination, I did not have with me the large exhibits which were referenced and submitted as page-size exhibits.
MS. ROBESON: Right.
MR. ABRAMS: And I'd like her just to identify those for admission purposes and --
MS. ROBESON: These are duplicates of this?
MR. ABRAMS: These are duplicates --
MS. ROBESON: But --
MR. ABRAMS: -- I think from the prehearing submission as well as the submission, I call it rebuttal submission.
MS. ROBESON: Right. That's fine.

MR. ABRAMS: Okay.
MS. ROBESON: We can -- let's do this. Okay. So these are large versions of what --
MR. ABRAMS: That are photographs in --
MS. ROBESON: Yes, I recognize them.
MR. ABRAMS: -- in Exhibit 40. There's two boards. Are you --
MS. TURNBULL: I'm over here.
MR. ABRAMS: Where are you?
MS. TURNBULL: Okay.
MS. ROBESON: You can come forward.
MS. TURNBULL: Probably just come forward.
MS. ROBESON: You can sit in his chair.
MS. TURNBULL: Yes.
MS. ROBESON: And you're still under oath. Can you see?
MR. ABRAMS: I think you look like Susan Turnbull.

DIRECT EXAMINATION

BY MR. ABRAMS:
Q Did you take these photographs?
A Yes.
Q Approximately or precisely when?
A Okay.
MS. ROBESON: Let me mark, can you mark those because I'm just going to put them, I hate to do this --

MR. ABRAMS: Do you want this as a separate exhibit --
MS. ROBESON: Yes.
MR. ABRAMS: -- because I just put Exhibit 40, which is a duplicate of what's in -- I can mark it separately.
MS. ROBESON: All right. That's fine. We'll do that.
MR. ABRAMS: Okay.
MS. TURNBULL: Okay. Those two photographs were taken in the fall. They were taken approximately the end of November and I have the duplicates of them on my cell phone, so I could, I can date them that way, but right now looking at them those were taken in the fall because the, our house delivery truck was a delivery truck coming to my house.
MS. ROBESON: Okay.
MS. TURNBULL: Not their house, our house.
BY MR. ABRAMS:
Q And the second board, was that taken at the same time?
A No, those were taken on December 1st in the morning at 10:00 a.m. It was a Saturday morning.
MS. ROBESON: Okay. Hold on one second. The second board is, what is that marked? Is that the same --
MR. ABRAMS: It's marked parked cars on Montgomery

Lane. The first board is marked traffic jam on Montgomery Lane.
MS. ROBESON: And these are all part of the same exhibit?
MR. ABRAMS: Yes.
MS. TURNBULL: Right.
MS. ROBESON: Okay. Go ahead.
MS. TURNBULL: The first ones were on a weekday afternoon. The second ones were on a Saturday morning at approximately quarter to 10:00, 9:45 a.m. on December 1st.
MS. ROBESON: Okay.
MR. ABRAMS: Okay.
BY MR. ABRAMS:
Q Do these accurately reflect the divisions on the street at the time you took these photos?
A Yes, they do.
Q Okay. Now there are two other boards and this is part of Exhibit 110 which is the sector plan exhibit pages from that and basically is that what you did in terms of reproducing these on the boards, just take the sector plan pages?
A That's what they are.
Q That's what they are?
A They were a production of the sector plan.
Q And these are part of, again, prehearing

submission Exhibit 40(a) and 40(b)?
A Uh-huh.
Q Which is part of our prehearing submission. And these show the massing diagram of the Holladay project and this is --
A It's the original --
Q The original building, correct.
A Original plan submitted by West Lane.
Q Yes.
A Their rendering of the original.
MS. ROBESON: The applicant's?
MS. TURNBULL: The applicant's.
MR. ABRAMS: Okay. That's all.
MS. ROBESON: Any objection to admitting these?
MS. HARRIS: No objection.
MS. ROBESON: All right. They will be in the record as large duplicates of the pre-existing exhibits. Thank you. Anything else? All right. Please raise your right hand.
(Witness sworn.)
MS. ROBESON: All right. Please state your name and address for the record.
MS. SKALET: Is the mic on or --
MS. ROBESON: The, yes, it is. The mic is a recording mike.

MS. SKALET: My name is Linda Skalet and I reside at 4821 Montgomery Lane.
MS. ROBESON: And can you spell Skalet?
MS. SKALET: S-K-A-L-E-T.
MS. ROBESON: Okay.
DIRECT EXAMINATION
BY MR. KNOPF:
Q Can you identify which building 4821 Montgomery Lane?
A Yes. No, I'll say that --
Q Okay.
A -- the Edgemoor condominium. And I really appreciate you taking me out of order. It's unusual. I have some images. Should I hand a copy of them to you so you can see while I speak?
MS. ROBESON: I --
MS. HARRIS: Objection given the rule of evidence. Is it in?
MS. ROBESON: Well, that applies -- you aren't here as --
MS. SKALET: Yeah.
MS. ROBESON: Okay. That --
MS. SKALET: And as I speak, you can decide to look at them.
MS. HARRIS: Are there copies for everyone else so

that I can evaluate as well please?
MS. SKALET: Well, I'll give you a copy at the end. Yeah.
MS. HARRIS: No.
MS. SKALET: I just --
MS. HARRIS: Well --
MS. SKALET: I have two full sets at the moment.
MR. KNOPF: Let her look at them.
MS. SKALET: Okay. Sure.
MS. ROBESON: Let her have a set. And then let me mark that and then I'll give it back to you as long as --
MS. SKALET: Okay.
MS. ROBESON: -- one time I gave it back to somebody and they lost it during the hearing, so --
MS. SKALET: Okay. All right. I --
MS. ROBESON: I'll give it back to you as long as you can keep track of it.
MS. SKALET: Okay. It would just help me to know the numbers. I have to think a moment.
MS. ROBESON: Okay. Well, what I'm going to do is mark this as Exhibit 120 and then each page I'm going to number. So 120(a) has 2004 design, 4901 Hampden. 120(b) is elevations of 2006 revision, 4901 Hampden. 120(c) is 2006 4901 Hampden/Woodmont Avenue facade. 120(d) is 2012 design, 4901 Woodmont facade, Hampden facade. And 120(e) is north,

2012 design, 4901 Montgomery Lane facade. Okay. So if you need this, I'm going to -- if you can give me a moment.
MS. SKALET: It's okay. Pat is going to let me look at the copy that --
MS. ROBESON: Okay.
MS. SKALET: -- I passed to her.
MS. HARRIS: Excellent.
MS. SKALET: We can get along.
MS. HARRIS: We share.
MS. ROBESON: Okay. Go ahead.
MS. SKALET: Okay. My name is Linda Skalet and as I said I live at the Edgemoor condominium on Montgomery Lane. My husband and I are original owners and have lived in the building for nearly 10 years. In addition to my experience as a resident of Montgomery Lane, I bring to the issue at hand some professional expertise on the subject of urban design and city planning. I have a Ph.D. in art history from Johns Hopkins University and I've taught numerous courses on architectural history.
Most pertinent to today's discussion, a course at Johns Hopkins entitled, "The Architecture of the City, Urban Environments from Antiquity to the Present." One of the major points of the course is that great cities don't just happen. They are the result of careful planning both at their inception and as they expand. You have to start with

a good plan that allows for growth and then you have to adhere to it.

Our sector plan for the CBD is such a plan. It provides rules and limitations for the height and density and specifies areas with differing urban characteristics. Montgomery Lane is one of those areas very clearly described, a 20-foot wide mixed street in the urban village designed for residential buildings no higher than 65 feet with picturesque architectural details, bays, gables, turrets, balconies, et cetera.

It was envisioned as a pedestrian route from Metro to the library and other facilities, businesses and neighborhoods along Arlington Road. The proposed building that we're talking about today on Montgomery Lane at West Lane is in no way in conformity with the sector plan or with the character of the street as it was first set by the traditional brick and masonry architectural style of the City Homes and continued in the design of the Edgemoor and the Edgemoor at Arlington. That traditional style will also be evident in the structures at 4825 Montgomery Lane, the Sandy Spring project, and 4901 Hampden, whose north facade is on Montgomery Lane.

The history of the current design of 4901 is especially pertinent to today's discussion and I would like to summarize it briefly for you. It was originally proposed

in 2004 as a 100-foot high, minimalist glass tower and that's my number one. This is the original --

MS. ROBESON: It's 120(a) of, it's marked as 120(a).

MS. SKALET: 120(a), okay. It's, there are views that were actually taken to be shown to the residents of the Edgemoor, so that's why one says view from the 8th floor and one says view from the 4th floor, but you can put it all together and see that it is --

MS. ROBESON: Right.

MS. SKALET: -- sort of a U, a monolithic mass that goes up with lots of glass. I was one of a group of homeowners in the CBD who organized to oppose this design because it was inconsistent with the character of the street called forth in the sector plan. In short, it was too tall and it looked like an office building. The County Council agreed and rejected the design for its lack of residential character and its excessive height, thus, reversing the Planning Board's decision.

Triumph Corporation, the developer, redesigned it. Those are 120(b) and (c), I guess, the next image is (b), is that correct in your --

MS. ROBESON: Okay.

MS. SKALET: Okay. And what you see is an image you haven't seen before because the one that keeps being

introduced is the facade of Woodmont Avenue. But what you're looking at here, the upper portion of the page --

MS. ROBESON: On 120(b), the upper part --

MS. SKALET: The upper part. It says view from --

MS. ROBESON: I see it, Montgomery Lane.

MS. SKALET: You see it? You're looking down Woodmont and you see that sort of wall of glass that's the Woodmont part of it.

MS. ROBESON: Right. And then --

MS. SKALET: This is --

MS. ROBESON: Let me stop you one second --

MS. SKALET: Sure.

MS. ROBESON: -- for the record. This is 120(b). Is this what you're referring to?

MS. SKALET: Yes.

MS. ROBESON: Okay.

BY MR. KNOPF:

Q May I just interrupt for a second? You said traditional view. I'm showing you --

A Yes.

Q -- I'm showing you what's Exhibit 106(g).

A Right. And it's my 120(c) actually but, yes.

Q You were saying that what's been shown to the Hearing Examiner, was that --

A Uh-huh.

Q -- referring to 4901 Hampden Lane and 106 --

A Uh-huh. Uh-huh.

Q And this is the portion that faces Hampden Lane, is that it?

A No.

Q I'm sorry.

A The glass is Woodmont.

Q Woodmont, I meant Woodmont.

MS. ROBESON: Okay.

MS. SKALET: Where it turns the corner and becomes brick is Hampden. But what I want you to see is what they did for Montgomery Lane. And in the upper image on this page you see the facade as it faces Montgomery Lane and it includes very little glass, projecting bays and setbacks and balconies and a varied residential appearance in terms of its detailing. And, yes, the lower ones -- this is just a view on the left of a roof terrace, but that roof terrace is visible from the Edgemoor, from 4821. And then the lower view to the right -- oh, this is significant too. This is Montgomery Lane and then the west facade of 4901 as it is visible to the City Homes.

MS. ROBESON: Okay.

MS. SKALET: Okay? So --

MR. KNOPF: Excuse me.

MS. SKALET: Yes.

BY MR. KNOPF:
Q You talked about, are you going to be addressing height or is this a good time to ask?
A I'm going to be talking about it.
MS. ROBESON: Well --
MR. KNOPF: Never mind. Never mind. Go ahead.
MS. SKALET: I'm going --
MR. KNOPF: Okay. Go on.
MS. ROBESON: So she needs to just do her own thing.
MR. KNOPF: Continue.
MS. ROBESON: Yes. I have faith --
MR. KNOPF: I apologize.
MS. ROBESON: -- that you can do it.
MS. SKALET: Yes. Okay. So the, I said that, you know, the County Council rejected the design and, you know, reversed the Planning Board's decision. Triumph went back and redesigned it, so that's what we were just looking at. The revised building approved by the County Council in 2006 varies in height from 70 to 60 feet on Montgomery Lane, started at 100 with the first design and was brought down to 70 and then, you know, diminishing in height as it goes westward down the lane.
And it reads like a residential building with balconies and projecting and receding bays enlivening its

brick and masonry facade. Triumph ultimately did not build it, but a new developer got the Council's approval in December of 2012 to go forward with the design. The point of this story is that the sector plan is still being upheld by the Council. The nine to nothing 2004 ruling by the Council still stands and the building will be built in accordance with it and the sector plan.
MS. ROBESON: Are you saying this is 120(b), which is the Montgomery Lane views?
MS. SKALET: Uh-huh.
MS. ROBESON: Are you saying that the current developer is developing in accordance with these?
MS. SKALET: What, well, I'll show you. You have the picture of Montgomery Lane which, unfortunately, he doesn't have in color for us yet. But so that would be 120(e), the 2012 design 4901 Montgomery Lane --
MS. ROBESON: Oh, I see.
MS. SKALET: -- facade.
MS. ROBESON: Okay.
MS. SKALET: Okay? So is it exactly the same? Well, it is in terms of its massing. You can't really see the projections and recesses very well because it's black and white, but if you look, you know, you start at the Woodmont Avenue side and then the building, you know, there's a little setback there. It steps forward. It steps

back again, you know, with this kind of interplay of projections and bays. And then we have balconies on that last portion to the west which is what really, you know, it faces the Edgemoor, right? The buildings overlap for, I don't know what the dimension exactly is, but perhaps 10 feet, 12 feet, so very respectful of the residential neighbors across the street. And as I've said, if this were colored in, you know, with brick and green trees, it would look very like 120(b), the upper part of the design. So, you know, it is following that guideline.
Okay. There is, however, one more very important fact in the architectural history, and that's what I do, of 4901 as it pertains to the proposal we are discussing today. In addition to approving the new developer's proposal for a building with the same height, massing and basic design as the 2006 Triumph provision, the Council approved a reduction in the number of units from an original 50 to 70 units approved in 2006 to 40 to 50 units approved in 2012. Along with this reduction in the total number of units, a proportional reduction in the number of MPDU's was also approved.
This reduction was found to be in compliance with the sector plan. The current applicant, intents of the sector plan, says that he must maximize the number of dwelling units so as to be able to maximize the number of

MPDUs. That was not the Council's interpretation of the sector plan as it pertains to Montgomery Lane just four months ago.
We are now confronted with an even more dramatically inappropriate building, a massive, commercial-looking structure on the west end of Montgomery Lane where according to the tenting set forth in the sector plan, buildings should not be as tall oh, I'm sorry, on the west end they shouldn't be as tall as they are on the east end. The sector plan specifies that buildings on Montgomery Lane should decrease in height from Woodmont Avenue moving westward to Arlington Road starting at six stories and going down to three stories on Arlington Road.
On the south side of Montgomery Lane, that is just what they do. The currently approved design for 4901 begins on Woodmont at 70 feet in height and declines to 60 as it goes down Montgomery Lane. The City Homes vary in height from 48 feet to 52 feet at the peak of their roofs. The Edgemoor at Arlington is 48 feet high on its eastern end on Montgomery Lane and declines to 35 feet on Arlington Road. On the north side of the street, buildings begin at a height of 100 feet with the Edgemoor condominium. A number that was approved and this is very important, with the pro viso that it not be presidential, precedential, precedential, C.
MS. ROBESON: Not presidential.

MS. SKALET: Precedential for future development on the street. That is a very important fact. Next to the Edgemoor is the Sandy Spring project which is going forward, approved at 60 feet with a 4-foot parapet and at the end of the street the approved design at the corner of Montgomery Lane and Arlington, which like the Edgemoor at Arlington across Montgomery Lane from it starts at 48 feet on Montgomery Lane and declines to 35 feet on Arlington Road. The applicant wants to put a massive 70-foot building without residential detailing between these last two, so between the Sandy Spring project and, you know, the one that will be built at some point up in the corner of Arlington and Montgomery Lane.

It is totally out of character with the rest of the street and will loom aggressively over the streetscape of Montgomery Lane and the properties adjacent to it on the east and west. It will dominate the streetscape with an entry feature that is commercial in appearance and its excessive use of glass. And it's, in fact, reminiscent of the first design for 4901 that was rejected because it was too glassy. I mean that sort of glass wall doesn't given privacy, you know, it reflects light and heat and it simply doesn't belong on a street that was designed to be specifically residential and have this very special character.

Vast expanses of glass belong on Woodmont Avenue, but not on Montgomery Lane. This project needs to be redesigned. It should be less tall, less massive and more residential in appearance. And it should contain fewer units of the quality of life on our 20-foot lane is to conform to the concept of the urban village as set forth in the sector plan. This can be done and has been done on the east end of the lane, and as I have already said, determined by the Council just months ago to be in compliance with the requirements of the sector plan, which the building as currently designed is not.

We, and, or I, and I'm really referring to myself and my husband and our neighbors, look forward to working together with the developer as we've done before with the 4901 project to produce a building that is appropriate to the urban village design. Thank you. Respectfully submitted.

MS. ROBESON: Thank you. Any questions, Mr. -- I'm going to take them and then --

MS. HARRIS: That's fine.

MS. ROBESON: -- I'll come back to you. Mr. Abrams, do you have any questions?

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Yes. Just one question, Ms. Skalet.

A Uh-huh.

Q In terms of your background and your experience, if a building is out of character with the street for the reasons that you've suggested in your testimony or is incompatible with existing development in the surrounding neighborhood, should that condition be subordinate or subordinated to another public purpose such as the provision of MPDUs?

A I think that there are rules about percentages of MPDUs that are supposed to be built in buildings today and that it's consistent, you know, to follow those rules and guidelines. My understanding is that 4901 is supposed to have 15 percent of its units as MPDUs and, you know, the first design had that, the second design had that and now this third application has it too.

Q Are you aware of the provision in the zoning ordinance enacted after the sector plan which indicates that the height recommendations and the density recommendations in a sector plan tend to exceed it with the provisions --

A Yeah.

Q -- of MPDUs?

A I am aware of that, but I go back to my original point, which is that you've got to plan a city and you've got to do that with wisdom and vision and once you have a plan, then as I said, Montgomery Lane is a very specific

street with constraints and also with recommendations. You can't just change it because something else is at the moment seemingly more important. I think there are other places that density could be achieved where taller buildings already exist and I think Montgomery Lane is just the wrong place to try and achieve that goal.

MR. ABRAMS: That's all the questions I have.

MS. ROBESON: Thank you. Mr. Knopf.

MR. KNOPF: I just have two.

BY MR. KNOPF:

Q In your testimony, you indicated that the Sandy Spring building had, it was your understanding it had a height of 60 feet plus a 4-foot parapet?

A Yeah.

Q If, there seems to be come confusion in the record. Just assume it has a 65, it was approved at a 65-foot height --

A Uh-huh.

Q -- with 4-foot parapet. Would that change in any way your testimony?

A It was approved, so we have the wrong numbers?

Q No, I believe, I believe there was an approval up to 65-feet --

A Uh-huh.

Q -- plus 4-foot parapet, but the actual development

is going to be, as you said, 60 feet further.
A Oh.
Q And I'm wondering whether that five feet would make, would lead you to a different conclusion in your testimony?
A No.
Q Okay. That's what I wanted to know. Thank you. And just one other question, you indicated that there should be less units. Did I understand you to say --
A Yes.
Q -- fewer units, yes. Was that apart from architectural features that other considerations --
A Yeah. Yeah.
Q You could explain that a little bit?
A Yeah, I think there should be fewer units, you know, because I think there's already been testimony about, you know, how unsuited Montgomery Lane is to lots of trucks and repair vehicles. We frequently have the gas company, Verizon, Comcast sometimes digging holes. We have move-ins and move-outs. Unfortunately, the Edgemoor at 4821 was not designed with enough pull-in bays for service trucks.
MS. ROBESON: When you say Edgemoor, that's your building --
MS. SKALET: That's my building.
MS. ROBESON: -- the high rise?

MS. SKALET: Yes.
MS. ROBESON: Okay.
MS. SKALET: But we, that's, we've got that, you know?
MS. ROBESON: Yes.
MS. SKALET: There's nothing we can do with that. And I have been on the street when, you know, it was congested. There were several days in the past few weeks when you had to come the wrong way down the street to get into the Edgemoor because there was work being done and also a move going in. So I can only imagine what it would be like when we have, what, 120 units or whatever exact number the proposal is, particularly if it's a rental building and people are frequently moving in and moving out. I don't know what the average is in a rental building with smallish units, but I would think the frequency of move-ins and move-outs is far in excess of what it is in a building like the Edgemoor.
And in addition to that, if it's not a condominium, it means that there will be more private contractors coming in, you know, to do plumbing, to do repairs, to, you know. I see it as a potential disaster and totally destroying this so-called, you know, mixed use street.
MS. ROBESON: Okay.

MR. KNOPF: I have no further questions.
MS. ROBESON: Okay. Ms. Harris.
MS. HARRIS: Thank you.
CROSS-EXAMINATION
BY MS. HARRIS:
Q Now, you indicated that you've lived in the Highrise Edgemoor since it's --
A Uh-huh.
Q -- construction?
A Uh-huh.
Q Could you identify Exhibit 106(g) where your unit is --
A Yes.
Q -- approximately?
A Do you want me to go point?
Q Yes, please.
A I am up here on the ninth floor.
Q Okay. And the approximate size of your unit?
MS. ROBESON: I'm sorry. When you say up here --
MS. HARRIS: Okay.
MS. SKALET: Well --
MS. ROBESON: You're on the 9th floor. How many --
MS. SKALET: At the corner.
MS. ROBESON: -- units -- at the corner? Okay.

MS. SKALET: Yes.
MS. ROBESON: Okay. All right.
BY MS. HARRIS:
Q Approximate size? Are you on the top floor or the one below, the --
A Yes, on the one below.
Q The ninth? Okay. Approximate size of the unit?
A Approximate size, 3,000 square feet.
Q Okay. And do you many neighbors in your building?
A Of course, I know all the neighbors in my building.
Q You do? Oh, okay. That's nice --
A It's a small building.
Q -- it's a nice neighborhood. And so --
A And I know my neighbors across the street and, you know, it's a neighborhood.
Q That's the way my street is. Do you -- so then you're familiar or you're aware of -- you know the neighbors that live on the southern facade of the Edgemoor Highrise?
A Yeah.
Q Okay. And so are you -- are you aware of the distance between recently approved Sandy Spring building and --
A I don't recall the exact dimension.
Q The composite plan which was based on the

development plan that was recently approved shows a distance of 23 feet.
A Uh-huh.
Q And did your neighbors -- it looks like you have the advantage of your window not being blocked by that building, but your neighbors that are below that obviously, that building goes to 65 feet.
A Uh-huh.
Q Did they find that building to be compatible with the surrounding neighborhood?
A They would have preferred that the building be lower still and farther away, but they understood when they bought, I think, that, you know, that lot would be developed one day.
Q And that there could potentially be a setback of approximately 23 feet?
A I don't know if they were aware of that, you know, I would not say that they were aware of that.
Q But they were aware that --
A But I don't --
Q -- there was a single-family home next door and that obviously --
A Absolutely.
Q -- that could be developed and --
A Absolutely.

Q -- to the height of 65 feet?
A Absolutely. Yes. And, no, not up to 65 feet, no.
Q No, the sector plan says --
A Correct.
Q -- 65 feet.
A Well, the sector plan doesn't. I mean it describes Montgomery Lane as starting at six stories and declining to three and according to the tenting, then each building going from east to west should decline in height relative to the one --
Q Well, I'm going to refer to page 39 --
A -- east of that.
Q -- of the sector plan, which I know we have a blow-up of that, but hold on. The old sacred page 39.
A Well, I don't know that's --
Q Okay. Well, page 39 of the sector plan. Can you identify the height that's identified on page 39 as recommended for this area of --
A Good Lord.
Q If I could assist you? This is the TS-R district.
A Yes.
Q And it extends over here. So the --
MS. ROBESON: Let her --
MS. HARRIS: Okay.

MS. SKALET: I --
MS. ROBESON: Take a moment and you can assimilate it.
MS. SKALET: I see a number that says 65 toward the center of it.
BY MS. HARRIS:
Q Okay.
A Now that may be true, but it is also true that the way that the street was supposed to be designed was with buildings of declining height.
Q Do you see in other areas of page 39 here they have other suggested heights that in very small areas which jump from, we'll go over here to the east side of Connecticut Avenue and go --
A Connecticut?
Q I'm sorry, Wisconsin Avenue --
A Yeah.
Q -- that go, for instance, from 35 to 45 to 97 and very, with small lot areas.
A And we are at Wisconsin and what?
Q Montgomery Lane, south of Montgomery Lane now.
A Well, that is not a, you know, that's --
Q The town of Chevy Chase isn't residential?
A No, but along Montgomery Lane, you know, we have a lot of very tall buildings that were built long ago.

Q But my point is on other, in other areas on page 39, certainly the planners found that they had the ability to indicate very small areas of identified height. So if, in fact --
A And they're not --
Q -- they --
A -- 25 streets.
Q Can I ask my question? If, in fact, they wanted Montgomery, the 65-foot zone of the TS-R --
MS. ROBESON: Let her ask -- I'm sorry.
BY MS. HARRIS:
Q -- district to have varying heights, why wouldn't they have done just what they did on other areas of page 39 and put the height of 65, a height of 50, a height of 42 --
A Uh-huh.
Q -- a height of 35, all of which are heights that appear on page 39?
A Yeah. I don't know why they did it there, so --
Q Okay. So --
A -- I can't, I can't talk to that.
Q -- but you will agree that that shows --
A But --
MS. ROBESON: No, just let --
MS. SKALET: Yes.
MS. ROBESON: This is your time --

MS. SKALET: Sorry.
MS. ROBESON: -- to answer questions.
MS. SKALET: Sorry.
MS. ROBESON: You're going to get another chance --
MS. SKALET: Sorry.
MS. ROBESON: -- based on what she's asking you --
MS. SKALET: Okay.
MS. ROBESON: -- to make any additional points you want to make. Go ahead, Ms. Harris.
BY MS. HARRIS:
Q Okay. But just to clarify, the area in question of the, where the subject property is located, it indicates that the height is 65 --
A Uh-huh.
Q -- is that correct? Are you aware that 4901 Hampden Lane has not yet received site plan approval?
A It has received some form of approval, at least when a developer came to talk to us, Larry Godwin came and spoke to residents of the Edgemoor --
Q Okay.
A -- with, I understood and there are others here who were at that meeting, to, yeah, I understood that he indicated, District Council --
MS. ROBESON: Okay. There's no --

MS. SKALET: -- District Council.
MS. ROBESON: -- prompting from the audience.
MS. HARRIS: Right. Okay.
BY MS. HARRIS:
Q And if you understand the distinction between the zoning approval, which is what we are in --
A Yeah.
Q -- though it's not necessarily as representative of a zoning hearing, but the difference between a zoning hearing and a site plan hearing in terms of what gets determined at site plan?
A Well, I'm undoubtedly not as aware of the details of that as you are.
Q Would it surprise you to learn that from the time of zoning approval to the time of site plan approval much can change in the architectural style of the building?
A It doesn't surprise me.
Q Okay. And are you aware that the image shown on Exhibit 106(g) was obtained from the developer in 2008 subsequent to the zoning approval?
A I am aware of that.
Q Okay. Thank you. That was the only question I had on that. You indicated that 4901 has a variation in height of 70 feet to 60 feet, is that correct?
A Huh-huh.

Q And is that 60 feet as what we've calling it for the benefit of having been here for the last --
A Yeah.
Q Week and five days?
A Yes.
Q But are you aware -- is that 60-foot portion a step back which is set back consistently on Montgomery Lane?
A It's steps down as it comes down Montgomery Lane and, you know, it shows on -- well, here, I think you'll want to see.
Q Uh-huh.
A You see, it goes like this.
Q Okay. Are you referring to 120(b), which I'm holding in my hand?
A I am referring to 120(b) at the top where you can see about two-thirds, about three-fifths of the way in, down Montgomery Lane. It steps down to 60 feet.
Q And that portion where it steps down, it looks like the building also jets out further onto Montgomery Lane?
A No, it doesn't.
Q No?
A There is a bay that does and then this comes back.
Q Yes.
A That's not, that's the corner of --

Q No, that's --
A Oh, no, this? Yes. This is, this is the west facade, so that is this and this --
MS. ROBESON: Wait.
MS. SKALET: I'm sorry.
MS. ROBESON: It's okay.
MS. SKALET: I'm trying to tell half.
MS. ROBESON: No. I know with the -- we have a transcript that --
MS. SKALET: Yes.
MS. ROBESON: -- the County Council sees --
MS. SKALET: Okay.
MS. ROBESON: -- and they don't know where this is.
MS. SKALET: All right. So what do you want? Point to the --
MS. ROBESON: So --
MS. SKALET: -- compass and the --
MS. ROBESON: No, if you could just tell us what picture.
MS. SKALET: 120(b).
MS. ROBESON: B?
MS. HARRIS: And that was the bottom right?
MS. SKALET: The lower right, the bottom right image --

MS. ROBESON: Yes.
MS. SKALET: -- shows in the corner portion where there is, you know, a lot of windows that is the portion that has stepped down to 60 feet and the rest of that facade that you are looking at is what the City Homes look at across their driveway.
BY MS. HARRIS:
Q But the question was is that portion where the 65-foot --
A Yes.
Q -- step down, that's, that projects out further to the north than the rest of the facade, would you agree with that?
A I think it goes out and it comes back in a little.
Q Okay.
A Yes.
Q And would it surprise you that I think that Mr. Irish, the other --
A Yes, I --
Q -- that he testified and admitted that --
A Just let her finish.
Q -- that that portion of the building is only three feet from the property line?
MS. ROBESON: Was it three feet from the property line or three feet --

MS. HARRIS: It was three feet, I'm sorry, three feet from --
MS. ROBESON: -- you say --
MS. HARRIS: Yes, because it was three feet from the back of the sidewalk.
MS. ROBESON: Okay. So it's three feet just in colloquial terms, it's three -- three feet from the back --
MS. SKALET: From the property line --
MS. HARRIS: From the property line.
MS. SKALET: on --
MS. HARRIS: Montgomery Lane.
MS. SKALET: -- on Montgomery Lane.
MS. ROBESON: To the closest edge of the sidewalk.
MS. SKALET: Uh-huh. Would it surprise me? I don't know.
BY MS. HARRIS:
Q The Planning Board, you noted that 4901 recently came in and was approved by the District Council for reduction in its number of units?
A Yes.
Q Were you aware that the acting chair of the Planning Board when considering this case expressed concern over the fact that the number of units were being reduced because of the sector plan recommendation for trees and density at the Metro station?

A Was I aware specifically?
Q You didn't intend to follow --
A I didn't follow, no --
Q -- follow that proceeding?
A No.
Q And do you have any reason to think that if the applicant of 4901 actually had decided to come in to increase the number of units that the County Council wouldn't approve that as well?
A I'm sorry, phrase that again.
Q Do you have any reason to believe that if the applicant of 4901 had decided to increase the number of units consistent with what the sector plan recommendation is as opposed to decreasing the number of units, that the County Council would have done any -- that the County Council would not have approved that application?
A I don't know what they would have done.
MR. ABRAMS: Objection. I think it's speculation.
MS. ROBESON: Yes.
MS. SKALET: Yes.
MS. ROBESON: Yes, that is and she's not an -- she, at least hasn't been --
MS. SKALET: I only know what they do.
MS. ROBESON: -- technically qualified as an expert.

MR. KNOPF: I think the Hearing Examiner can take judicial notice that no one can predict what the County Council is going to do.
MS. ROBESON: Yes. Right. Well, okay. Go ahead, Ms. Harris.
BY MS. HARRIS:
Q You, in connection with the Highrise Edgemoor, you noted that the, I believe it was in the resolution as opposed to the ZHE report, but in any event notes that it should not be used as precedent, is that correct?
A Uh-huh.
Q And what's your definition of precedent?
A The fact that it did not decline from --
Q No, no, no.
A Okay. The --
Q Just generally if you were to look up precedent in the dictionary, what would it say?
A It should not be used as a reason to go against the guidelines of the plan in the future.
Q That's what the definition of sector, precedent would say in the dictionary?
A Well, it should be, not be used as an argument.
Q Or as a model to do, to --
A Yeah.
Q -- replicate something?

A Yeah.
Q Okay.
A A model.
Q Right. That, Webster's would approve of that definition. If you look at Exhibit 112, can you tell me the length of the Highrise Edgemoor?
A It's 172 feet.
Q Plus or minus that size?
A Oh, I -- yes --
Q Okay.
A -- by percentage, yes.
Q And then can you please tell me along the front edge of Montgomery Lane the length of the subject building?
A 78 feet.
Q Yes. And so in your mind would 78, would be, would 172 be setting a precedent for a 78-foot width, length? In other words, is 78 precedential, similar to 172?
A I don't think so. I mean I don't --
Q I mean --
A -- I don't think anything. I don't really know what, you know --
Q Okay.
A -- we have different size lots. I don't know.
MS. ROBESON: I'm going to give you leeway, but she really didn't testify as to widths.

MS. HARRIS: No, but she did, she did testify that Highrise Edgemoor should not be used as precedent.
MS. ROBESON: That's true.
BY MS. HARRIS:
Q So, what does that mean?
A Well --
Q In connection --
A -- I think --
Q -- with our building? So I think it's important to establish that, in fact, the subject building --
A I was talking about height.
Q Oh, okay. So what percentage is 70 of 100 approximately?
A Well, I think it's 70 percent.
Q Okay. And 70 percent -- is 70 percent, if you have the 70 percent approval rating versus 100 percent approval rating, are those similar?
A I don't know what you're talking about. I'm sorry.
Q Is 70, in the realm of zero to 100 --
A Yeah.
Q -- think of it on a scale --
A Yeah.
Q -- is 70 similar to 100?
A No, 70 isn't similar to --

Q Right. I didn't think so.
A -- 100.
Q And is 70 similar to 50, which is actually the setback along Montgomery Lane? 50 is what of 100?
A I don't know where you're going.
Q I know.
A I don't know what you're saying, I really --
Q I'm sorry.
MS. ROBESON: I'm not sure where you're --
MS. SKALET: 50 is out of 100.
MS. ROBESON: -- going.
BY MS. HARRIS:
Q The fact is, that a height of 50 feet --
A Yeah.
Q -- along Montgomery Lane --
MS. ROBESON: A height? Okay.
MS. HARRIS: -- 50 feet is half of what the height of Highrise Edgemoor is along Montgomery Lane.
MS. ROBESON: Okay.
MS. HARRIS: Therefore, I would argue --
MS. ROBESON: Okay. Well, you don't have to argue now. I just wanted to know where you're going.
MS. HARRIS: This is not following --
MS. ROBESON: Yes, don't argue
MS. HARRIS: -- relying on --

MS. ROBESON: Please.
MS. HARRIS: Okay. Sorry. West Lane --
MS. ROBESON: Don't argue.
MS. HARRIS: Okay.
MS. ROBESON: Just ask --
MS. HARRIS: Okay. That's fine.
MS. ROBESON: Ask her questions.
MS. HARRIS: That's fine.
MS. ROBESON: And you will argue at the end or during.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q One last question regarding the issue of precedent. The Highrise Edgemoor when taken, this is a density of approximately 6.05 FAR?
A Uh-huh.
Q And the density of West Lane is 3.05.
A Uh-huh.
Q Again, I, is that precedential?
A It's not supposed to be precedential.
Q Okay.
A If it's too tall, then it shouldn't have been built --
Q Thank you.
A -- the way it was built.

MS. ROBESON: I think what she's getting at is --
MS. SKALET: It's too close to the Chase, by the way. I mean --
MS. ROBESON: No, no, no, no.
MS. SKALET: It's --
MS. ROBESON: Just a second.
MS. SKALET: Now --
MS. ROBESON: Just a second.
MS. SKALET: No, I --
MS. ROBESON: No, just stop talking. Just stop for a minute.
MS. SKALET: Okay.
MS. ROBESON: Is what you're -- I think what she's asking is is the height of this building really following the precedent of Edgemoor?
MS. SKALET: In not being --
MS. ROBESON: Is that what you're asking?
MS. SKALET: -- in compliance with the sector plan, yes, it is.
MS. ROBESON: Okay. Ms. Harris, you can, if --
MS. HARRIS: I won't go there.
MS. ROBESON: I did get your point.
MS. HARRIS: Okay. Thank you. I thought you did.
MS. ROBESON: I did get your point.
MS. HARRIS: Okay. And I think that concludes my

questions. Thank you.
MS. ROBESON: Okay. Now based on her questions, is there anything that you would like to clarify, expand on, any other points you'd like to make?
MS. SKALET: Well, just, you know, I guess Pat was asking about setbacks that, you know, and I think that the design ultimately of 4901 was compromised, you know? They may have taken a little more of the frontage, but they reduced the height and they tried to make things more aesthetically pleasing and to work for the community and there's some give and take. That's what you have to do. It's a process of compromising.
MS. ROBESON: And what about this project? How does what you're saying about 4901, how does that --
MS. SKALET: I mean I think there's --
MS. ROBESON: -- what you just said with --
MS. SKALET: -- a long way to go. I think we have a lot of things that other people will talk about later and ask for, you know? I was confining myself to this one sort of history because I was a part of that and my experience on the street, which is that more residents with their daily needs are going to wreck havoc on the quality of life.
MS. ROBESON: Okay.
MS. SKALET: And --
MS. ROBESON: Any recross? Yes, Mr. Abrams?

MR. ABRAMS: Okay.

REDIRECT EXAMINATION

BY MR. ABRAMS:

Q You were shown a Bethesda soon-to-be sector plan, page 39, an area which indicated a 65-foot height, correct?
A I was shown that, correct.
Q Okay. Now within the sector plan, there are urban design guidelines for the transit station --
A And --
Q -- residential district?
A Uh-huh.
Q Okay. I want you to read on page 85, urban design guideline No. 3.
A Maintain low-rise building heights which step down to three floors along Arlington Road. Heights up to six floors are preferred near Woodmont Avenue to achieve the desired urban form.
Q Now the six floors, does that represent 65 feet normally?
A It's -- well, maybe with, with -- yeah, I would say with, you know, mechanical things and stuff, yeah.
Q Okay. With reference to the subject property, is it located closer to Woodmont Avenue or is located closer to Arlington Road?
A Arlington Road.

MR. ABRAMS: I have no further questions.
MR. KNOPF: I just have a couple clarification. Excuse me.

REDIRECT EXAMINATION

BY MR. KNOPF:

Q Ms. Harris asked you questions about buildings along Montgomery and I think we had, you, she or you referred to Montgomery on both sides of Woodmont. Am I correct that when you cross Woodmont, Montgomery is not Montgomery Lane, but Montgomery Avenue?
A Exactly.
MS. ROBESON: Okay.
MS. SKALET: Yes. And I think that's an important point. It's called a lane for just that one block.
MS. ROBESON: Okay.
MR. KNOPF: Okay. Thank you.
BY MR. KNOPF:
Q And this is my last question. She had mentioned the possibility of site plan review for 4901 could result in architectural changes.
A Uh-huh.
Q Now that you know that fact, does that change your opinion as to what the County Council found acceptable when it approved --
A No.

Q -- this plan?
A No.
Q Thank you.
MS. ROBESON: Okay. And any recross?
MS. HARRIS: No, thank you.
MS. ROBESON: Okay. Well, thank you very much, Ms. Skalet. I appreciate your coming in and your information and you may be excused.
MS. SKALET: Okay. Do you want this other --
MR. KNOPF: I want that. She has one.
MS. ROBESON: Yes, I have yours and it was very illustrative, thank you.
MS. SKALET: Okay. Thanks.
MR. KNOPF: Thank you very much.
MR. ABRAMS: Can we --
MS. ROBESON: We can proceed now with Ms. Turnbull now that we have big pictures to look at.
MS. HARRIS: Actually, can we take a 2-minute break?
MS. ROBESON: Absolutely.
MS. HARRIS: Thank you.
MS. ROBESON: Actually, five -- I don't like to leave two minutes, but five minutes is okay because --
(Recess)
MS. ROBESON: Okay. We're back on the record.

Mr. Abrams, just before the cross-examination starts, which exhibit was the exhibit with the elevations that you submitted that she testified to just so I can -- I think it was 101-something.
MS. TURNBULL: Oh, no, that's not what you're talking --
MS. ROBESON: No, it's a chart.
MS. TURNBULL: Is it a chart?
MS. ROBESON: It's a --
MS. TURNBULL: Yeah. It's 101(i)
MS. ROBESON: Okay. If you can just let me find that.
MR. ABRAMS: I'm looking for the large exhibit.
MS. TURNBULL: We don't have it in a large exhibit. We just have paper.
MS. ROBESON: Yes, that wasn't one of the large exhibits. I just want to find it in --
MR. ABRAMS: Well --
MS. ROBESON: -- my file before cross-examination.
(Off record discussion.)
MS. ROBESON: And, Ms. Turnbull, I think I already reminded you, but you're still under oath.
MS. TURNBULL: Yes, thank you.
MS. HARRIS: Okay. Can we proceed or --
MS. ROBESON: Yes.

MS. HARRIS: Okay. Thank you.
MS. ROBESON: Thank you.
CROSS-EXAMINATION
BY MS. HARRIS:
Q Ms. Turnbull, Exhibit No. 40 --
A Uh-huh.
Q -- can you identify whether there are any cars parked on that, shown in that photo that are parked illegally?
A Yes. There are two cars parked illegally. There is the --
MS. ROBESON: And the photo is the photo to the left as you're facing the large Exhibit 40?
MS. HARRIS: Correct.
MS. TURNBULL: The, on the left-hand photo, the mail truck is parked illegally. There is a truck, a pick-up truck.
MS. ROBESON: A white pick-up truck?
MS. TURNBULL: Yeah, a white pick-up truck that is parked illegally. Those are the two cars that --
MS. ROBESON: Okay.
MS. TURNBULL: -- parked illegally.
BY MS. HARRIS:
Q And then on the right-hand picture?
A There is a Federal Express truck that doesn't fit

into the way by --
Q Okay.
A -- so it's parked illegally.
Q And then on your left-hand side?
A There's probably a -- no, I think the other ones are illegal because I don't see the sign, so there's nothing to tell me that they're not illegal.
Q You're not familiar with the fact that along the east, once you get past on the east side, I'm sorry, on the south side of Montgomery Lane, there's no parking signs?
A No, there are, there are three spaces.
Q Right. Okay.
A And what I'm seeing are three cars.
Q Okay. Do you, were you aware that in the Highrise Edgemoor case, one of the neighbors in that case, there was discussion about the, about some of the traffic situations and the person testifying from the Highrise Edgemoor indicated and acknowledged that there's an enforcement issue, a lack of enforcement issue?
A I don't which -- what case are you talking about?
Q The, I'm sorry, the Sandy Spring Builders case.
A I'm --
Q 4825, but they --
A I am not aware.
Q -- acknowledged that there is an enforcement issue

that occurred on Montgomery Lane.
A I am not aware.
Q Okay.
A I'm not -- I'm saying I'm not aware of someone testifying that in the case.
Q Then I want to move to Exhibit 40(a). And I also want to reference a prior exhibit that was submitted -- it's going to be hard to find this exhibit -- but it's --
MS. ROBESON: Who submitted that?
MS. HARRIS: The applicant did. It's a previous one, never mind. It's -- I'm not --
MS. ROBESON: Okay.
MS. HARRIS: I'm not going to submit this as an exhibit; I just want to use it for reference. Can you indicate the relative shape of the architect's logo on the bottom, right-hand corner of that, that exhibit?
MS. ROBESON: Wait.
MR. ABRAMS: Yes, she's referring to something which is not an exhibit.
MS. ROBESON: Is it --
MR. ABRAMS: Don't we have an exhibit that shows --
MS. ROBESON: Is it in the record? I think, I think there is an exhibit like that in the record.
MR. ABRAMS: Yes, you've got a couple of them.

MS. HARRIS: That show the logo?
MS. TURNBULL: Are we talking about the designer's logo?
MS. HARRIS: Yes, the designer's logo.
MS. ROBESON: Not the aerial photo? Does 106(f) help you where you want to go?
MS. HARRIS: No. Okay. We'll come back to that question.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q During your testimony, you noted that the, upon the construction of the Hampden Lane project, that your light and air will dramatically change, I think you noted something to that effect?
A Yes.
Q And then you also noted that you, that nonetheless that because of the, I think they're identified as courtyards on 106(g), that I think you may have referred to them as courtyards or light wells, that the Hampden Lane applicant had been immediately responsive to the concerns of the City Homes, is that correct?
A Yes.
Q If Hampden Lane had been immediately responsive to the concerns of the City Homes, why then did the City Homes appeal the District Council approval of the Hampden Lane

project and noting such things as the, that the building was completely incompatible with the surrounding development, that the maximum height of the building in the middle of the box should be substantially less than six stories and that there was a total disregard for the step down from Woodmont Avenue?
A I have no idea. I was not a resident of City Homes at that time and my information is garnered from the public record.
Q So are you testifying this afternoon, this morning as an individual or as a representative of City Homes?
A Oh, well, I was not part of City Homes --
Q Okay.
A -- at that point.
Q Okay. I --
A I can't give you the history of a discussion from that point.
Q I will reserve that question for Mr. Walsh. Now I want to refer to the page 82 of the sector plan.
MS. ROBESON: No, you have to wait for her question.
MS. HARRIS: Hold on.
BY MS. HARRIS:
Q Actually, I have an exhibit that we're looking for. But can you please read the highlighted portions of

page 82 of the sector plan?
A One possible resource for publicly oriented open space within the TS-R district is the area in front of the new apartment structures along Montgomery Lane. Streetscape and special seating areas could be provided in the setback from the sidewalk to the building face, creating an outdoor community space.
Q Referring to Exhibit 76, the applicant is, in fact, including this as part of a public open -- the plaza in front of the building as part of their public open space, correct?
A Yes.
Q MS. HARRIS: And this is a potentially new building whether apartment or condo on the one building, correct?
A Yes.
Q And are there seating areas along Exhibit 76?
A Actually, there are no seating areas along Montgomery Lane. The seating areas --
Q Oh, they're setback from the building?
A They're set back from Montgomery Lane. There are no seating areas on the 78-foot length --
Q And is this a bench?
A -- with setbacks, which is what this is saying. On the opposite side of the street there was discussion

about the stairwells. Next to the stairwells --
Q We're not talking about the stairwells. We're focusing on the public use space in front of the building.
MS. ROBESON: Well, okay. This is -- okay. You can respond to her question. Mr. Abrams, you can bring up what any additional points you want to bring up on redirect, okay?
MS. TURNBULL: So in response --
BY MS. HARRIS:
Q Okay. I'm sorry, let me read this again. Special seating areas, pick out the word special for a moment, seating areas could be provided in the setback from the site. Is that setback from, is the seating areas that you see in Exhibit 76 set back from the sidewalk?
A No. That's not --
Q That's not set back from --
A -- set back from the side, well, not on Montgomery Lane. That setback, that seating area is from the sidewalk adjacent to West Lane.
Q And how -- if you're saying, and you're facing Montgomery Lane, that's not a set back from Montgomery Lane?
A The seating area location is set back from West Lane. If there was a seating area setback from Montgomery Lane, it would be the steps in my opinion.
Q Okay. Well --

MS. ROBESON: And that she's, she's given her opinion.
MS. HARRIS: Right. I was moving on.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q So the, you may recall, I believe, as a landscape architect you identified the steps, and I think you may have referred to them as stadium seating along the frontage of Montgomery Lane. Are those oriented toward Montgomery Lane?
A Even if there are steps or they, for access or they are seats, they can't, they can't be, first of all, they can't be both and if they are just seats, then there are no, then there's no access into the building.
Q That's not the question. The question is is there seating oriented toward Montgomery Lane in the setback?
A No, I see steps.
Q Do you see a difference in the height of the risers to the right of the railing versus to the left of the railing?
A Actually that was described to me as just a possibility of what it looked like.
Q No, I believe one of the experts testified that they were designed specifically --
A Okay.
Q -- like that --

A I do --
Q -- to provide seating.
A Yes, I do see it.
Q Thank you. And then there's, moving further down, there's benches along Montgomery Lane, correct?
A Yes.
Q And are those set back from the property line?
A Yes.
Q Thank you. And, finally, does that -- this is an outdoor space, would you agree with that comment?
A Yes.
Q Thank you. Exhibit 7, which is the public use space -- I know, sorry, this is all --
MS. ROBESON: You can move the upper ones, you can move them, fold them in so it rests on the lower one --
MS. HARRIS: Thank you.
MS. ROBESON: -- if you want it that way.
MS. HARRIS: I think that makes sense. Okay.
BY MS. HARRIS:
Q Can you please, are you aware of, that the Highrise Edgemoor is providing 10 percent public use space?
A Yes.
Q And are you aware that 4901 is providing 10 percent public use space?
A Yes.

Q And are you aware that that Hampden Lane is providing --
A Yes.
Q -- 10 percent? And are you also aware that City Homes has provided 10 percent public use space?
A Yes.
Q And are you aware that applicant is proposing 10 percent public use space?
A Yes.
Q Thank you. In assessing impacts of light and air, some jurisdictions actually require shadow studies. Do you have any idea why this could be, why this would be?
A Because it would, just to demonstrate where the sun would be hitting the building and actually there was a shadow study done on, on the Hampden Lane building.
Q Okay. And to assess how the buildings may cast shadows because that may have some relevant impact --
A Sure.
Q -- on other buildings? I'd like to show you the shadow study from the staff report from the Hampden Lane Associates preliminary plan and I request that judicial notice be taken of this, which is a matter of public record.
MR. ABRAMS: Well, was it offered?
MS. HARRIS: No, and I believe we've taken judicial notice of other things that are in the public

record.
MS. ROBESON: We, no, because I don't think we have because I think, Mr. Knopf, you objected to Mr. Knopf trying to introduce a picture from a staff report and he found it in the resolution that was already in the -- so I'm going to exclude it.
MS. HARRIS: But I believe I, I believe before he found it he said, well, it's in the public record and we would accept it and he said, oh, here it is.
MS. ROBESON: Well, I don't recall --
MS. HARRIS: I think that's --
MS. ROBESON: -- exactly and I haven't read the transcript, but they haven't had the opportunity to look at --
MS. HARRIS: Well, can I distribute these and show them and it doesn't need to be exhibited, it does not need to be submitted to the record?
MS. ROBESON: No, if you're going to refer to it, it has to be in the record. So, can you ask the question without using that?
BY MS. HARRIS:
Q Given the, well, first of all, the sun is oriented in what portion of the sky? Some people don't know that.
A Okay.
MS. ROBESON: Well, I didn't until I heard.

MS. TURNBULL: It tends --
MS. HARRIS: Right. Exactly.
MS. ROBESON: So go ahead.
MS. TURNBULL: It depends upon the time of day --
BY MS. HARRIS:
Q Right.
A -- and it's going from the east to the west.
Q Okay. And so you would agree with me that --
A Yes.
Q -- east is here, west is here?
A Yeah.
Q And given, given that we live in North America in the Mid-Atlantic, would you agree that as an orientation in the southern sky?
A Oh, yes.
Q Okay.
A Yes, I would.
Q So on December 21st when the sun is at its lowest point in that sky, would you agree that the shadows cast from the City Homes would be approximately due north?
A Yes.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q And then would you also agree that in, during the fall and spring solstice, March 21st and September 21st,

that the, when the sun is higher up in the sky that, in fact, and you probably know this just from living in the City Homes, that the City Homes cast shadows on one another?
A True, and I can short-circuit this. I am not saying that West Lane is casting a shadow --
Q Right. I understand.
A -- on City Homes.
Q Right. But I did ask what was the reason when jurisdictions are evaluating light and air that they make you do shadow studies because it's a good relative indicator of light and air --
A It was one --
Q -- impact?
A I believe it's one indicator.
Q Okay. And will your, will City Homes be casting any shadows, I'm sorry, will the subject property be casting any shadows on City Homes?
A I do not believe it will be casting a shadow on City Homes.
Q You testified that you were at the Board of Appeals for how many years?
A Four.
Q And so when you, would you agree with this statement that the County holds the neighborhoods, especially the single-family neighborhoods in Montgomery

County, in fairly high regard, an area to be protected, would you agree with that general statement?
A Yes, I would.
Q Okay. And you're familiar with the County generally I assume? You've been here --
A Yes, I --
Q -- for a number of years. And --
A I've lived in the County since 1979.
Q Okay. And would you agree with me that in some areas of the County there's fairly steep topography in places?
A Yes.
Q Okay. And in some of those places are actually single-family neighborhoods, known R-60 or R-90, is that correct?
A Possibly, yes.
Q Well, like Banner Grove for instance?
A Okay.
Q Okay. That's --
A Banner Grove I'm familiar with.
Q Okay. I thought you were. Okay. And the height limit in the zones of R-60 and R-90 are generally 35 to 40 feet, generally 35 feet in height sometimes with exception to 40 feet in height, is that correct?
A Yes.

Q Okay. And is there any differentiation in the zoning ordinance for the height of a house in those steeply sloped areas or does the height guideline of a 35 foot max control?
A The 35 foot max controls, however --
Q That was all I wanted to know.
A I want to finish my sentence if I can.
MS. ROBESON: Well, you have an attorney --
MS. TURNBULL: Okay.
MS. ROBESON: -- that will -- Mr. Abrams, are you taking notes on this?
MR. ABRAMS: I will on this.
MS. TURNBULL: It sounded like a prompt.
MS. ROBESON: Go ahead.
BY MS. HARRIS:
Q So that, in fact, on a hill you could have one, one house that's higher than the house immediately next to it, is that correct?
A It's totally dependent on the measurement and the way the measurement was, at least in variance cases and I --
Q I know I wasn't talking about height variance cases, I'm just talking about --
A No, but that's my, that's where my knowledge base is coming from and height, and --
Q Does Montgomery County have a height variance

provisions?
A There were provisions having to deal with sheds, having to do with fences.
Q No, but is there --
A Dealing with, and with additions to houses when we were looking at that, we were putting it in the context of the street.
Q Okay. Thank you.
A And I did that in a case in Kensington.
Q Thank you. And would you agree that given that there's consistent height regulation that applies to an entire area, that you would end up and, in fact, you could just look out the window and determine this, you end up with a varied height? That if you look at any residential neighborhood --
A Yes.
Q -- it is the, skyline is not flat like a pancake, there is height variations?
A Right.
Q Thank you. Okay. I want to go back to the composite plan. Did you find the exhibit? Okay. I want to walk through for a moment, there was a lot of testimony yesterday about one, what one could see from the various vantage points within City Homes, though I think we all acknowledge that there's no requirement in the zoning

ordinance, no preclusion in viewing other buildings, that's not a sign of compatibility, the fact that you can see another building.
MS. ROBESON: Is there a question there?
MS. HARRIS: Yes.
BY MS. HARRIS:
Q On the eastern sticks of the City Homes --
A I'm sorry, the eastern sticks?
Q We're moving, we're on Exhibit 106(b) and we're reviewing the -- we're discussing the vantage points from the eastern sticks of the City Homes.
A Uh-huh.
Q Do, is it your opinion that most of the units in this eastern stick have a view of the Highrise Edgemoor?
A Yes.
Q And that that situation has existed since both the Highrise Edgemoor and the City Homes have been constructed, correct?
A Yes, they were constructed simultaneously.
Q And in approving those, did that relationship, did the County Council have to make a finding of compatibility that the Highrise Edgemoor was, in fact, compatible with the City Homes?
A It was one project, City Homes and Edgemoor were put, what was one case.

Q Correct, but is there a finding of compatibility?
A You don't have a compatibility within the -- it's the same case, so one does not have to be compatible with the other because they're the same thing.
Q The Highrise Edgemoor is the same thing as the City Homes?
A It was the same case.
Q Okay. I agree it was the same case.
A And if, so it's the same -- well, okay, it's --
Q And so there's significant views from this eastern road to the Highrise Edgemoor and then the City Homes, the most eastern row, they have windows along their eastern facade, is that correct?
A Yes.
Q And we previously, Mr. Irish previously identified that the distance between those buildings is 48 feet, correct?
A Yes.
Q And would you also agree that if you're looking out your window that you, what you're most and, in fact, I think you testified to this, that the most obvious vantage point or the most visible thing is what's directly across from you?
A No, I didn't, I did not testify to that.
Q I think you did.

A Mr. Irish testified to that.
Q Okay. I thought when you were explaining your views, you said when I look out my window straight, what I see is the stick beyond my house --
A I didn't --
Q -- with --
MS. ROBESON: No, I have to say I think what she testified to is that she doesn't normally look straight out the window, she looks to the, at -- yeah.
MS. HARRIS: You look at an angle every time you're looking out?
MS. ROBESON: Well, I remember that.
MS. TURNBULL: Yes, and I, and I said --
BY MS. HARRIS:
Q That's interesting.
A -- well, first of all, I said that in light of the fact that most of the windows in my house are bay windows and so furniture placement inside a house directs you to the sides --
MS. ROBESON: That's what I --
MS. TURNBULL: -- of the windows.
BY MS. HARRIS:
Q So that under that theory then, in fact, the fact that the two City Homes units which are closest to the subject property who have a direct view won't be so impacted

because they'll be looking sideways?
A Actually --
Q Is this --
A -- the one directly in front of it, the one directly in front of it will have windows that will, at a bay in the front that do look at the building and they will not be looking -- well, they'll have two choices. They will have the choice of looking towards West Lane, the, the West Lane building or they will be looking at the 78-foot portion of the building. If they're standing, if they're standing, looking or sitting, looking out a bay window in the front and I, I will have to say in that instance I can't testify to if they have a bay window even on the front. But the house -- and you're also going to be hearing testimony from someone who lives in one of the end units, so he could talk about the view across the street.
Q So we may hear that people that live in the units that are perpendicular to Montgomery Lane have a tendency to look sideways out their windows, but we may also hear that the people that live in the end units, their behavioral pattern is totally different and they look straight out their window?
A No, there's different windows and it's a different orientation. I mean it's -- some of them have, some of the people have bay windows and when you're looking at a bay

window, you're looking in a different direction. Some of the people don't have bay windows and are facing a different. There's a difference, also there's a difference between whether you're going to look out your window and look at a mews or you're going to look out your window and look at a driveway. So people are -- and what those windows represent.
Q And, again, there is no requirement within the zone about whether you see another building, a proposed building or not see another building, correct?
A No.
Q And just one last -- the distance between these two buildings is 48, between the eastern row of the City Homes and 4901 is 45 feet, correct?
A Uh-huh.
Q The distance between the City Homes and the subject, the minimum distance is 73, although it is, it's 73 to the face of the building and it's, excuse me, and with the additional 12-foot setback is 84 feet, I'm sorry, 85 feet from the City Homes up where the first, at the sixth and seventh floor intervals?
A I don't, I'd have to see the map to say that it's --
Q Okay. I'll let you see it. The place of the building of the City Homes, the face of the building --

MS. ROBESON: Okay. Can you --
MS. HARRIS: -- west --
MS. ROBESON: Just, I'm sorry, Ms. Harris. Can you not pass notes to the witness while she's testifying? Okay. Go ahead, Ms. Harris.
MS. TURNBULL: Okay. Sorry.
BY MS. HARRIS:
Q The distance between the face of City Homes to the face of West Lane, Mr. Irish testified that it is 73 feet for the first five floors. We established and, in fact, there is a binding element that says that four, six and seven are going to be set back an additional 12 feet.
A Right.
Q So 73 plus 12 is 85, correct?
A Yes.
Q Okay. So there's an 85-foot setback along the upper floors versus as 45 setback that we --
A But it's also at a different height at the, on the Hampden Lane place versus where that step down and step back is.
Q But, okay, now --
A 85 -- 85 has to compare to the 85. The 48 --
Q Okay. Well, let's compare the 48 --
A Uh-huh.
Q -- to the 73. Is 73 greater than 48?

A Yes.
Q Absolutely. Thank you. Would you agree with Exhibit 113 --
Q Uh-huh.
MS. ROBESON: You have to put --
MS. HARRIS: I know, the thing --
MS. ROBESON: Fold the top ones down.
MS. HARRIS: -- this is --
MS. TURNBULL: Or you can put it on the top one.
MS. ROBESON: They give us the most modern equipment, so --
BY MS. HARRIS:
Q Would you agree looking at Exhibit 113 that the Chase probably isn't as relevant in determining the surrounding capability --
A No.
Q -- from the project?
A No, I wouldn't agree and the reason I wouldn't agree is because in all of the exhibits that we've seen so far, it has only been, it's only been used for height. When I think it, if it's going to be used for height, it should, therefore, also be used for unit size or numbers of units, numbers of MPDU's. So the relevance, I mean either it's got to be, it's either relevant or not relevant.
Q Except that I, would you agree that the Chase was

constructed before the adoption of the 1994 sector plan?
A Yes.
Q So that if you're evaluating projects in accordance with the 1994 sector plan, that could exclude the Chase when you're discussing relevancy --
A Oh.
Q -- with the sector plan?
A With the sector plan, but relevancy with the sector plan, yes, except, well, but one has to keep the Chase into consideration as it applies to what the impact is on the sector plan.
Q Okay. That's -- but I also think you stated yesterday that in assessing compatibility, the properties closest to the subject property are the most relevant, is that correct?
A Absolutely. Absolutely.
Q So, therefore, I'm surprised that you said that the Chase is also relevant with respect to that, but --
A But not --
Q -- well except --
A -- not the most relevant.
Q Okay.
A The most relevant are the properties --
Q Are the -- closest?
A -- the closest.

Q Is the Villages of Bethesda closer to the subject site than the City Homes?
A Yes, but there's no direct access.
Q Yes or no?
A Okay.
Q Yes?
A Yes.
Q And is Randy Rothstein's property closer to the subject site?
MS. ROBESON: Okay. That's the edge of Arlington --
MS. HARRIS: I'm sorry.
MS. ROBESON: -- Boulevard?
MS. TURNBULL: Edgemoor at Arlington North, yes.
BY MS. HARRIS:
Q And is 4825 closer to the subject property than the City Homes?
A Yes.
Q And is Mr. Chipouras, which is 4828 West Lane, closer to the property?
A Actually I'm not -- it may not be. I'm not sure how far is that, is their property line.
Q Their property?
MS. ROBESON: Well, if you don't know, you just say --

MS. TURNBULL: I don't know.
MS. ROBESON: -- you don't know.
MS. TURNBULL: I don't know.
BY MS. HARRIS:
Q Okay. Have you ever visited the Villages of Bethesda?
A Yes.
Q And you've been inside some of their units?
A No, I have not been inside a unit.
Q Well, have you been there since the, besides the walking tour, have you had an opportunity to visit the Villages of Bethesda?
A Yes.
Q Okay. And from your, from your unit, are you able to see the northern facade of the proposed building?
A No.
Q Will you, say if you wandered out onto on the street and you're walking along Montgomery Lane, would you be able to see the northern facade of the proposed building?
A No.
Q But, nonetheless, in your testimony you're really concerned about that northern facade of the proposed building, correct. and that the minor setback of six feet that was proposed during the Holladay case has been eliminated, I believe you testified to that?

A I testified, yes, I did testify to that and that was for the purpose of varying heights.
Q I see. Okay.
A So that the top of the building would not appear to be a square, that there would be up and down in the building.
Q Okay. So, again, with a minor six foot setback would you have been able to see that from your home in City Homes?
A I would not be able to see the northern elevation.
Q Given the proximity of the City Homes to the subject property, would you agree that several residents of Villages of Bethesda likely will have more of a direct view of the subject property than the City Homes --
A No.
Q -- given that it's closer?
A It may be closer, except the southern -- yes, the southern elevation of that has no windows.
Q And are you familiar with the fact that these are bay windows?
A Oh, those, yes.
Q And so given our earlier discussion --
A Yes, some of those --
Q -- about people's tendencies to look out bay windows --

A Right.
Q -- wouldn't you suggest that they will be able to see the southern facade?
A Yes, they will see the northern facade.
Q Thank you. We're all friendly here. And the distance from -- and if you move over to this cluster from the most western cluster, the Villages of Bethesda, would you agree that they have a vantage point of the building as well?
A Yes.
Q Okay. And I assume you're aware, and if nothing else based on this Exhibit 106(d), that Villages of Bethesda is, in fact, supportive of the project?
A I can't speak for Villages of Bethesda.
Q So you're not familiar with the --
A But I am aware of the -- I have seen, yes, I am aware that that is the case, however, I can't speak for their community.
Q Okay. Then you're aware that they've written a letter of support and it's part of the record, I don't know the exhibit number off hand?
A Yes.
Q Okay. But given the proximity, would you agree that that 15-foot setback that is a binding element is probably reasonable and important to the residents of the

Villages of Bethesda given their proximity and the fact that they can see our project?
A I can't comment on what they think.
Q Are you aware that their letter states that they're supportive of the project if, in fact, there's a 15-foot setback, that that's maintained?
A I am aware of that, but the reasoning for that I can't comment.
Q I'm just having a hard time understanding why, what is it about the City Homes that merits a set back greater than 73 feet and that there's been suggestion that the setback in distance between Villages of Bethesda and the subject should be less than 15 feet and also given, as we went through our sun orientation previously, that the West Lane project, the subject property is located to the north of the City Homes and the Villages of Bethesda is located north of the West Lane project?
A Well, it's sort of interesting. I don't think that -- there's a couple things. First of all, I don't think that the -- I don't know what the conversations were with the Villages of Bethesda, but if there was a step down on the northern exposure, it would change their shadowing on the Villages of Bethesda because it, because your, it would be back.
Q True, but --

A But, so that's -- I'm just saying that having seen that.
Q Would you agree that --
A The difference --
Q -- obviously if that were of import to the Villages of Bethesda, they probably would have included such a requirement in their letter of support?
A Well, there's a couple of things. One is the -- I don't know what they would have put in their letter of support, so I can't speak to their letter of support. But I think the, in answer to your original question which is the difference, that's the rear of the property. There is no access behind the property. What we're talking about is setback for is both visual setback, but also because Montgomery Lane is a unique mixed use street and it is having to do with the mixed use street that I'm, that at least my point is of the reasoning for the setback.
Q Oh, so that the people walking down the street, while the consistent sidewalk and setback which is narrower along the Villages of Bethesda at 4825 and Edgemoor at Arlington North, that's acceptable, but for some reason when the pedestrians walk along West Lane, they should be, allow for --
A And that actually --
Q -- a wider setback?

A Actually it is not acceptable and I think there's been a lot of discussion about feeling that what is at the, the svelte over the high rise is too tight and that what we're saying is that you don't continue a mistake and that this, and there is also a difference between a 46-foot area and a 78-foot area expanse.
Q This project was approved in approximately 2000, I believe, is that correct?
MS. ROBESON: When you say, I --
MS. HARRIS: I'm sorry, the Highrise Edgemoor --
MS. ROBESON: All right.
MS. HARRIS: -- was approved in approximately 2000?
MS. TURNBULL: I believe before that.
BY MS. HARRIS:
Q Okay, so before -- it was somewhere around 2000?
A Oh, no, Highrise Edgemoor?
Q The Highrise Edgemoor.
A It had to be before that. I think it was before that, but I don't know.
Q Okay. And you're familiar with the fact that this was just approved in 2012?
A Yep.
Q And so you're suggesting that the County Council made a mistake in 2000 or whenever the Highrise Edgemoor was

approved and then just recently in December 2012 they made another mistake, the same exact mistake?
A I think that, I think that Highrise Edgemoor was a mistake, that the continuation of a, of the building line would be a mistake on the other side of West Lane.
Q And when, the Edgemoor at Arlington North came in, and I believe that was 2008, that was, continued to be another mistake in terms of the setback of the street?
A I think it's -- what I'm saying or what I believe is, and I may not be explaining it right, is that I think that Highrise Edgemoor is a mistake and I think that it's a, it's a false argument to say that it is more important to hold the building line than it is to provide a greater setback because of what has occurred on that street and because of the added benefit to pedestrians and to City Homes.
Q And I respect your opinion about that, but the Planning Board, which is charged at site plan with determining setbacks, has determined not just in this case, but in 4825 and Edgemoor at Arlington North further recommendations of the sector plan that a continuous building line is important. But you're just saying in your personal opinion the Planning Board and their theories on urban design is wrong?
Q No, I'm -- this is the instance and, in fact, the

Planning Board in this case did state that additional setbacks on Montgomery Lane, additional public space on Montgomery Lane was a plus.
A Absolutely. And that's why the pocket park was provided and I believe --
MS. ROBESON: Okay.
MR. ABRAMS: Objection.
MS. ROBESON: Is there a question here?
MS. HARRIS: Yes.
BY MS. HARRIS:
Q Didn't the staff acknowledge the fact that the public use space that is provided actually somewhat admitting this word, innovated publicly, but creatively addressed the requirement for providing the public use space on the front at the same time respecting the sector plan recommendation approving the building line?
A The planning staff has wanted to maintain the building line.
Q And did the Planning Board approve the project with the setback as it, as is established?
A Yes.
Q Thank you. I'm going to --
MR. ABRAMS: Can we have the same instruction on the other side as you gave previously --
MS. HARRIS: Well, except that I would note that

during cross-examination of my witness for this entire hearing, notes were going back and forth.
MR. ABRAMS: Well, and she explained don't do that.
MS. HARRIS: No, I think, I think it was a little different.
MS. TURNBULL: Wait. Wait. I didn't see that note.
MS. HARRIS: My client was handing me something and just gave me an exhibit that I had asked for her to look at, look for during the break and she finally found it.
MS. ROBESON: Okay. It's notes to the witness that is the issue, not notes --
MS. HARRIS: I know the rule. I think Mr. Abrams was confused.
MS. ROBESON: I wasn't saying anybody didn't know the rule, but it's notes, prompting of the witness that's problematic.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q So we now have found that exhibit, let me just briefly turn to Exhibit 40.
A Is it 40(b)?
Q 40(b), (a) and (b) it says.
A Uh-huh.

Q And then also, and all I can tell you is this is in the record, but I'm not going to be able to tell you what exhibit. It is exhibit, it's Mr. Abrams's December 12th letter submission and it, there's an Exhibit D.
MS. ROBESON: Okay. Wait a minute. For the record, the -- let me just take a minute. It must be 101 -- is it, oh, December 12th letter submission.
MS. TURNBULL: It is --
MR. ABRAMS: My prehearing submission is dated December 27th. Is that my --
MS. HARRIS: It's a letter to Francoise Carrier, which is then attached to your, it was either that letter or one of your submissions.
MS. ROBESON: Okay. I don't see December 12th. Okay, 40, Exhibit 40.
MR. ABRAMS: No, it's not Exhibit 40.
MS. ROBESON: 40(b)? Is it a design comparison?
MS. HARRIS: No, it is -- it just says Exhibit F and then it says Exhibit B in the bottom, right-hand corner.
MS. ROBESON: I have 40 as a 12/12/12 letter from Abrams to Francoise Carrier --
MS. HARRIS: Yes.
MR. ABRAMS: Before it --
MS. ROBESON: -- with attachments. And I'm looking at G-954.

MS. HARRIS: Okay.
MR. ABRAMS: And that's exhibit what?
MS. HARRIS: It's, there's, in the bottom, right-hand corner it says Exhibit D in large letters.
MR. ABRAMS: No, but what is that? I'm not questioning that I sent a copy to the Hearing Examiner's office, I just want to know what exhibit number was placed there.
MS. HARRIS: That's what it looks like --
MR. ABRAMS: That's my exhibit.
MS. ROBESON: Hold on. Let me see if I can find it. Okay.
MR. ABRAMS: Is that 56?
MS. ROBESON: Can I see what you're trying to -- referring to?
MR. ABRAMS: Yeah. Exhibit 56(a).
MS. ROBESON: I have it as 40(d).
MR. ABRAMS: Well --
MS. ROBESON: It may be two places.
MR. ABRAMS: It is.
MS. ROBESON: Okay.
MR. ABRAMS: 56(a) says copy of his, meaning me, letter dated 12/12 with attachments, parens, "See Exhibit No. 40," closed parens.
MS. ROBESON: Okay. Well, it's both 40(d) and 56.

MS. HARRIS: Okay.
MS. ROBESON: So now that we've identified it --
BY MS. HARRIS:
Q That's a lot of scrambling for the point we're about to make, which is can you please go back to your 4th grade geometry and identify the shape of the SK9 logo on the bottom, right-hand corner?
A The rectangle.
Q A rectangle?
A Uh-huh.
MS. ROBESON: Okay.
MS. TURNBULL: A rectangle.
BY MS. HARRIS:
Q Okay. Let's get a little more precise.
A Okay.
MS. ROBESON: It's either a rectangle or --
MS. TURNBULL: Or a square.
MS. ROBESON: -- or a square.
MS. TURNBULL: And I believe that this particular one --
MS. ROBESON: Without a scale --
MS. HARRIS:
BY MS. HARRIS:
Q Okay. Why don't you scale it off, and if you need a real scale, we can provide you one and then you can

pinpoint whether it's a rectangle --
A Okay. I have --
Q -- or a square.
A I have -- okay, I will look at it. Okay. Yes, it's a rectangle.
MS. ROBESON: There may --
MS. TURNBULL: Okay. Let me --
MS. ROBESON: Is there another way to get at this?
BY MS. HARRIS:
Q I, can you compare, just simply compare the logo on Exhibit D to the logo on Exhibit E and explain to me the difference in the shape of the square of the logo?
A Okay. There are -- that is a rectangle that is, looks more like a square than the other one, than the other rectangle.
MS. ROBESON: So what you're saying is --
MS. TURNBULL: They're both rectangles.
MS. ROBESON: -- it's more elongated than the one on --
MS. TURNBULL: Right. Yeah.
MS. ROBESON: -- 40(d)?
MS. TURNBULL: Right.
BY MS. HARRIS:
Q And if the logo on 40(a) is elongated, in the Hearing Examiner's words that means stretched --

A Uh-huh.
Q -- from top to bottom, wouldn't you believe that that could actually reflect a distortion in this image which I would note is reproduced?
MS. ROBESON: The image on --
MS. HARRIS: On 40(a).
MS. ROBESON: -- the upper-right image?
BY MS. HARRIS:
Q The upper-right image?
A No, I would not say that because I'm, I actually am familiar with many organizations, offices that have multiple logos. So some of them are rectangular and some of them are squares and some of them might be circles. It's dependent on what piece of material it is attached to.
Q Well, let the record reflect that this is a distortion --
MS. ROBESON: No, no, no, you can't say that.
MS. HARRIS: Let me just note that the logo --
MS. ROBESON: On one is more --
MS. HARRIS: Elongated than the other.
MS. ROBESON: Yeah.
BY MS. HARRIS:
Q And you can draw your own conclusions. Okay. We've -- I think everyone has established that there is no requirement about not, about concluding being able to see

another building and you have stated, in fact, that the residence of City Homes will be able to see the subject building, correct?
A Yes.
Q And then you also testified that in response to the Hearing Examiner's question that one reason that the residence did not oppose 4825, that is, that was approved with the height of 65 feet at the street is because it's across from a parking meter, correct?
A Well, there are a couple of things.
Q No, I'm just concerned about the relation of the parking mews to the building. Is there parking mews across from 4825?
A Right, except that you said that the building was 65 feet. The building isn't 65 feet, so --
Q Excuse me. At the beginning of your question is --
A Okay.
Q -- at the time of zoning, the application was --
A It was approved --
Q For?
A It was approved for 65 feet.
Q And at the time of a determination of whether the City Homes was going to object or in any way oppose 4825, what was the proposed height?

A 65.
Q Thank you. And what is immediately across the street, across Montgomery Lane to the south from --
A The driveway.
Q The driveway? And --
MS. ROBESON: From 4825?
MS. HARRIS: From 4825.
MS. TURNBULL: 4825, a driveway.
BY MS. HARRIS:
Q And what is immediately across the street, there are two, we established there are two sticks of City Homes and then there's also a parking mews across from West Lane, from the subject property, correct?
A Yes, there is someone, yes.
Q Okay. And if I could refer to Exhibit 61? It is an old exhibit which is a photo taken of the parking mews across from 4825 Can you identify for me the number of these? Which of those units have bays and which ones do not have bays?
A One, two, three, four, five, six have bays and eight have bays.
Q Okay. And I think in your testimony you said, well, one of the reasons we didn't object to the Sandy Spring Bank, Sandy Spring, 4825 was because it was across the street from the parking mews, but would you not agree

that those bays would provide views of 4825 given that, as we discussed before --
A Right. They --
Q -- with bays, you're looking out sideways?
A They would provide views.
Q Okay. Well, let's move over to 48, to the parking mews across the street from the subject building.
A Uh-huh.
Q And I believe yesterday you testified that, I mean the City Homes there's a variation of design that only one of the units on either side of this parking mews has a bay, is that correct? And we have an exhibit to show that if you need your memory refreshed.
A I would need to see the exhibit.
Q Well, here's a photo, but in the meantime I'll give it to you as a separate exhibit.
A One has a bay. They all have balconies.
Q Right. Okay. But I think the discussion has been about views from inside the house. The discussion this morning --
A The discussion has been --
Q -- and the testimony --
A -- about from inside of the house.
Q Correct.
A But it, I also did have testimony of standing at

my front door.
Q Correct, but this is, well, this is a front view.
A Standing at my front door is outside my house. These balconies --
Q Correct.
A -- are --
Q Oh, it's non-disputable that if you're on the balcony you'll be on the stairs. I don't think we're arguing, we're not discussing that it's the views from inside the house.
A Okay.
Q So given that there's -- so given the fact that there are bays across the street from the Sandy Spring Builders project and there is only one bay across the street from the subject property. Which row of units would you, do you think have a more visible view of the buildings?
A Well, the difference is that the only view from the, from those two, from the second and third units, sticks from the east of the building is the rear view. That's the only view. And from the other buildings, there is a combination of rear and front views.
Q Okay. So moving along to the furthest stick to the west, looking out their front windows, they have views of the building?
A No, they don't.

Q Okay. And moving to the second from the west, looking out their front windows, do they have views of the building?
A Just the end units in both of those actually.
Q And, in fact, what do they see primarily, the pocket park which is set back 28 feet, correct?
A No, I don't think that's correct because the two units in the front, the unit in the front is facing, is facing the whole building. It's -- you're not just going to look out at the parking, at the pocket park, you see the whole, you can --
Q So this unit, the second row in looking --
A No, I'm not talking about the second --
Q When you views east, they have, they can --
A What are you talking about? I'll show you. This unit --
MS. ROBESON: This unit --
MR. ABRAMS: Describe what this is?
BY MS. HARRIS:
Q This unit which is the third building, no, it's the second building --
A Oh, I'm sorry, the second building --
MS. ROBESON: From the west.
MS. TURNBULL: -- from the west has a view out, from their front door --

BY MS. HARRIS:
Q Okay.
A -- and the windows adjacent, they can see the building --
Q Okay.
A -- and --
Q Right, of course, they can.
A -- the same building. That's the first unit --
Q Okay.
A -- in each one.
MR. KNOPF: Let the record reflect she's pointing toward the entire width of the building.
MS. TURNBULL: The first unit in this building also looks at the building --
MS. HARRIS: Right.
MS. TURNBULL: -- from the front, their primary view. From the third stick, every --
MS. ROBESON: From the west?
MS. TURNBULL: -- from the, basically the middle stick, this building, this, the first house has a view of West Lane this way.
BY MS. HARRIS:
Q Right, but they also have a view of Sandy Spring, correct?
A They do have a view of Sandy Spring.

Q And what's the height of that -- how, what was the height when that building was approved at zoning?
A Sixty-five.
Q And what's the height of this building at the street line?
A At the street line it's 50, I believe.
Q Right. Okay. So they can see that building at 65 and they can see that building at the street line, it's 50 and then it steps back to its maximum height of 70?
A Correct.
Q Okay.
A And that's assuming that the height, right, the -- and for these purposes we're talking about the heights as the building height, not the actual viewing height.
Q Can you repeat what you just said please?
A Yes. Because City Homes is lower than the other side of the street, when you say 50, 50 is not 50, 50 is 50 plus.
Q Right, 50 --
A And the same thing goes for the 70 is the 70 plus.
Q And --
A So the, and, in fact --
Q Right. So an elevation difference of three feet viewed 70, from a distance of 73 feet is apparent to anyone's eye?

A I think it will be.
Q That's interesting.
A I think it will be.
MS. ROBESON: Okay. Let's --
MS. TURNBULL: Because I'm now focusing on it obviously.
MS. HARRIS: Okay. And the view, assume for a moment that what was developed like the Sandy Spring, excuse me --
MS. ROBESON: Edgemoor at Arlington.
MS. HARRIS: The right-hand corner, the northwest corner of West Lane, Montgomery Lane --
MS. ROBESON: Oh.
MS. HARRIS: -- it's the lot that's the subject of the rezoning in this --
MS. ROBESON: Lot 26.
MS. HARRIS: -- in this case.
BY MS. HARRIS:
Q If that were approved with a building comparable to the Sandy Spring building, would you not, would you agree that there could be a building at that corner that's 65 feet in height placed on that lot?
A There's no support to say that a building on 65 feet would, high would be approved at that intersection.
Q But one could reasonably assume that since a

similar single lot immediately across West Lane was approved for the exact same --
A Except, except what was already approved on that corner basically, next to that corner. The adjacent lot on the other side was approved at 41, 43, I don't know, a 4-story unit on Montgomery Lane next to it.
Q Was --
MS. ROBESON: But I'm confused about --
MS. TURNBULL: Okay. I'll explain.
MS. ROBESON: -- what property you're talking about.
MS. TURNBULL: Okay. What I'm talking about is the Holladay property which was everything facing Montgomery Lane --
MS. ROBESON: Except Lot 26?
MS. TURNBULL: -- except for Lot 26 was approved at 48, I think 43 or 48 feet, four stories on the Montgomery County, Montgomery Lane face.
MS. ROBESON: Right.
MS. TURNBULL: So there's no reason for me to believe that because of the tenting that is being required from Woodmont to Arlington, that a 65-foot building would be acceptable next to a 41-feet building which is next -- you don't know.
MS. ROBESON: I understand.

BY MS. HARRIS:
Q Yes, I can see that you don't know, except that as recently as December 2012, the County Council approved a 65-foot building next to a 100-foot building.
A Except --
Q So why wouldn't they approve a 65-foot building and actually one could argue that it would mirror the, it would create a nice bookends for the entrance to West Lane to do a duplicate building.
MR. ABRAMS: I'll object to --
MS. ROBESON: Wait. Wait. You need to ask her questions.
MS. TURNBULL: You can -- but --
MR. ABRAMS: There's no question.
MS. TURNBULL: Okay.
BY MS. HARRIS:
Q Are you aware that there were pop-ups along the --
A Yes.
Q -- the Holladay project that, in fact, were higher, that that, that reached the height of 48 feet?
A Yes.
Q Yes? So the maximum height was plus --
A Yes. Yes.
Q -- 48 feet and we're proposing two?
A Yes, but --

MR. KNOPF: Excuse me.
MS. TURNBULL: You're opposing 50, but where the pop-ups were actually you are opposing 70? You are --
MS. HARRIS: I didn't --
MS. ROBESON: Okay.
MS. HARRIS: I didn't ask that question.
MS. ROBESON: Just let her ask --
MS. TURNBULL: But where she's pointing to where the pop-ups were, they weren't 50.
MS. ROBESON: Okay. All right. I understand.
BY MS. HARRIS:
Q But you agree that if you take Lot 26, the sector plan recommends a maximum height of 65 feet on, for Lot 26?
A Uh-huh.
Q Or recommends a height of 65 feet? Thank you.
A No, a maximum height of 65 feet, but a three to six-story structure.
Q Okay. Let me, I want to refer to our County diagram if I can find it.
MS. ROBESON: I'm sorry. Can you hold that conversation? When there's two parties cross-talking, it's hard for me.
BY MS. HARRIS:
Q So, do you start the tenting concept from the urban, the Metro core which is what the sector plan

recommends and what's illustrated by this higher line on Exhibit 79?
A We do not and I note --
MS. ROBESON: Well, you've got to ask a question.
MS. HARRIS: Okay.
MS. ROBESON: I'm not sure --
BY MS. HARRIS:
Q If a building, the height of the Sandy Spring building were constructed at approximately the location of where the pocket park is on the subject property, would you not, would you agree that that falls within the line of that tent?
A Well, it's how you have drawn this down.
Q Okay. Let's stay conservative and draw the tent from the Highrise Edgemoor, but again the tent, would you not, you just --
A Right.
Q -- let me back up.
A Okay. But basically --
MS. ROBESON: No, stop.
MS. TURNBULL: Okay.
MS. ROBESON: There's too much cross-talking. You let, have to let her --
MS. TURNBULL: Okay. I'll have to let --
MS. ROBESON: -- finish and then you can answer.

MS. HARRIS: Okay.
MS. ROBESON: Okay? Go, Ms. Harris.
BY MS. HARRIS:
Q I'm going to back-up for a moment. We previously established, and you agree, and I think the number of people have said tenting is provide tenting from the urban, from the Metro core is the term to the edges of the sector plan area, correct?
A Yes.
Q Okay. So that would suggest that you start your tent, you start from the Metro core and that is illustrated by this top line on Exhibit 79?
A But --
Q The question is --
A Okay.
Q -- if one were to construct a similarly a building with a similar height as 4825 and across to the west of West Lane, would it not fall within that tent line, that's the question?
A I actually believe it would not fall in within that tent because I do not believe that that line is starting at the proper place in the urban core because you can see a building in front of it which is really the building on Montgomery Lane. That building that you're showing is not on Montgomery Lane.

Q No, in fact, and I can understand your confusion, but just like using differential in colors or what's inside of these other buildings, that's the facade illustration of the building that sits at the corner of Montgomery Lane and Woodmont.
A Okay. So the building that sits at the facade location on Montgomery Lane is the lower level, is that what you're saying to me? That's my question.
MS. ROBESON: No, wait. Okay. Back up.
MR. KNOPF: Yes.
MS. ROBESON: There, I think that there are too many assumptions in your question and it's yielding --
MS. HARRIS: Well, I've tried not to do it --
MS. ROBESON: -- argument. I do, but you can simply say does it fall within those two lines and then you can argue that those are the applicable endpoint and start points of the lines. I'm not --
MS. HARRIS: Does it say anything --
MR. KNOPF: Excuse me, I have an objection. I believe the, Ms. Harris is inadvertently mistaking something and I think the record needs to reflect that. You keep referring to that large building as being on Montgomery Lane. I think we established --
MS. HARRIS: Oh, Montgomery Avenue, excuse me.
MR. KNOPF: -- it's Avenue. And it's very

important.
MS. HARRIS: I think that's a distinction without a difference, but duly noted.
MR. ABRAMS: It's a four lane wide road.
MS. ROBESON: Well, okay.
MS. HARRIS: Montgomery Avenue and Woodmont Avenue.
MS. ROBESON: Right. What you're referring to, what Exhibit is that?
MS. HARRIS: Exhibit 79.
MS. ROBESON: Is -- you're pointing to a line from the white building on the furthest right down to Arlington Road --
MS. HARRIS: Correct.
MS. ROBESON: -- Woodmont Avenue and Montgomery Avenue. Okay. So --
MS. HARRIS: I'll simply the question.
MS. ROBESON: Yes, I think there, it's --
BY MS. HARRIS:
Q Do you agree that the Sandy Spring, 4825 is lower than either red line established on Exhibit 79?
A Yes.
Q And if one were to duplicate 4825 on the west side of West Lane, so essentially put another building with a similar height on the other side of 4825 where my finger is

indicated, is that below both red lines on Exhibit 79?
A At 65 feet, it is below both lines.
Q Thank you. Thank you. The Edgemoor at Arlington North -- the Edgemoor at Arlington North and the Edgemoor at Arlington as shown on Exhibit 106(c) are recommended, as we noted, the purpose of this exhibit is to reflect where these zoning height recommendation line is in the sector plan. These, the two buildings I referenced are in what, in what height --
A 35.
Q -- recommended then? And if I refer to Exhibit 106(b), well, actually we can keep the same exhibits because the information is the same. If you refer to this exhibit, the indicated heights of those two buildings -- you may want to come up here to read this. The height at, the maximum height at Edgemoor at Arlington North is --
A The max is the maximum height --
Q Right.
A -- not the only height.
Q No, that's correct.
A And the maximum height, not the only height, is 46.
Q Similarly, the maximum height of this building is 78, but it's not the only height, would you agree with that?
A Uh-huh.

Q Okay. And are you familiar with the, and I'm going to refer to the Edgemoor at Arlington North because we have the benefit of the plans for that site, but are you familiar with the step back of that, of that appears at Edgemoor at Arlington North along Arlington Road --
A Actually --
Q -- the depth of it?
A Actually I'm not familiar.
Q Would you be surprised to hear that it's 10 feet?
MR. ABRAMS: Objection. She said she's not familiar with it.
MS. TURNBULL: I'm not familiar with it.
MS. ROBESON: Okay. All right. She can ask would you be surprised to hear, but --
BY MS. HARRIS:
Q Okay. Were you aware that the step down along Montgomery Lane is a depth of 15 feet?
A The step down, because I --
Q You were not aware of that?
A I didn't concentrate on those facts.
Q And what is the step back of the proposed?
A 12.
Q 12? Thank you. How would you describe the FAR?
A How would I --
Q Are you familiar with the term FAR, floor area ratio?
A Full area ratio. It is the, it is a mathematical computation of the plan what, at plan and then elongated into the -- it's what the building density is. It's a building density compilation.
Q Okay. And it's -- would you agree that it's the relative square footage within a building as it relates to the size of the lot I want you to --
A Yes.
Q -- locate?
A I --
Q So it is the measure of density in the County, is that correct?
A Yes.
Q Okay. And what is the FAR, proposed FAR 4901 Hampden Lane?
A 3.05.
Q Correct. And is the proposed density of Hampden Lane 3.05?
A Yes.
Q And the, similar to at least two projects, oh, and is the -- and the density within the Highrise Edgemoor is --
A Significantly more --
Q Okay.
A -- but the, it --

Q All I'm worried about is building mass and FAR.
A Okay. But the FAR with --
Q Right. We all know it was a combined application.
A It was a combined application and so --
Q Absolutely.
A -- was the total, the FAR --
Q Yes.
A -- the whole project.
Q And the FAR of the West Lane building proposed --
A Your proposal --
Q -- is 3.05?
A -- is 3.05.
Q So really the proposed density is no different than 4901 or Hampden Lane, is that correct, they're all 3.05 comparable density? Or I should say exact same identical density?
A They are for buildings not entering on Montgomery Lane.
Q Though, then, and does 4901 have frontage on Montgomery Lane?
A It does not have an entrance on Montgomery.
Q It has frontage?
A It has frontage.
Q Thank you. And all those projects, another similarity in addition to the density is the fact that

they're all proposing to provide 15 percent MPDU's, correct?
A Yes.
Q I want to go back just for one second about the setbacks. So just to -- so you were not aware of the distance, the depth of the setback for the Edgemoor at Arlington North. Are you, were you familiar with the step back at Edgemoor at Arlington?
A I don't know the exact measurement, but I'm familiar from walking it.
Q And do you think when there's a building that's 48 feet in height versus a building that is 50 feet in height, that you would be able walking down the street to note that one has a step back of 12 feet versus a step back of 15 feet?
A Walking down the street? No, I probably would not.
Q Okay. You noted, and we touched on this, but I just want to go back for a moment. You noted yesterday, and you said it again today, that the Highrise Edgemoor was probably a mistake, correct?
A Uh-huh.
Q A big mistake.
A A big mistake.
Q And so was it a mistake --
A No offense to my neighbors, of course.

Q Was it a mistake that the County Council approved 4825 which sits just 23 feet from the 100-foot high Edgemoor?
A I thinks it's very different from the sampling of the, to build on 4825 Montgomery Lane there are very few options and I think that they did what they could on that lot.
Q Okay. And was it a mistake when the County Council approved 4901 and then reapproved it in, 4901 Montgomery Lane and then reapproved it just several months ago and it sits back 48 feet from the City Homes?
A I think you have to look at it in context of the whole, the whole design and the whole element.
Q And, similarly, is it a mistake that there's zero setback between the City Homes and the Hampden Lane project?
A Do I think that's a mistake? Yes, I do think that's a mistake. And actually the Hearing Examiner thought it was a mistake and it's in his recommendation --
Q Okay. Right.
A -- to the --
Q And did the District Council think it was a mistake?
A The District Council was acting in 2006. Today we're sitting in 2013.
Q Okay. Did the Circuit Court think it was a

mistake?
A I guess not.
Q And did the Court of Special Appeals think it was a mistake?
A I guess it didn't.
Q Okay. If, in fact, this were a mistake, then why --
MS. ROBESON: This is --
BY MS. HARRIS:
Q I'm sorry, the Highrise Edgemoor in that it, I guess in assuming, in noting that it's a mistake, I guess I would suggest that it may be not compatible, it may be offensive to some, would you agree with that?
A I don't think it would be.
Q Well --
A No, I wouldn't agree with that.
Q So what makes it a --
A I would --
Q -- mistake?
A That the first, that what is a mistake to me, it, because it was a built, it was a planned decision to do that and I think if they would have looked at it again, they may have not allowed that building to be as big.
Q Because it goes to compatibility?
A Because it, because it goes to compatibility from

the, only from the standpoint of the, as far as I'm concerned the setback.
Q From --
A Yeah.
Q -- the street?
A Yes, from the street and the number of units because the street is clogged by the constant movement of all of these units.
Q Were you -- the 52 units that are in there today, correct?
A The combination of 52 --
Q Okay.
A -- plus 29 right now is a lot of units.
Q Okay. That's interesting, because I assume you're aware that the Highrise Edgemoor was actually approved for 149 units? Were you aware of that?
A Actually, and I think that would have been even a bigger mistake.
Q Apparently the County Council didn't think so.
A I think they're making a huge mistake.
Q So if this were a mistake, why do, why are homes in, that are for sale in City Homes continuously sell for --
MR. ABRAMS: Objection.
MS. ROBESON: Yes, that is beyond the scope of what she's testified to.

MS. HARRIS: Okay.
BY MS. HARRIS:
Q Were you aware that, actually you mentioned this and I'm sure you're aware of this, that the City Homes application was actually amended to include the Highrise Edgemoor?
A Uh-huh.
Q So it was an amendment of an existing application that had more land area? Okay. And the Edgemoor at Arlington North, were you aware that that actually was an amendment to add more land area?
A Yes.
Q Can you please read number on page 85 of the sector plan, recommendation No. 1?
A Okay. "Permit projects with a minimum lot size of 18,000 square feet to encourage smaller scale projects. Projects should not leave isolated parcels."
Q Absolutely perfect. Okay. And you testified yesterday that people along the street have an expectation of what's going to happen, had an expectation about what was going to happen on the subject property, correct?
A Uh-huh.
Q And yet we just acknowledged the fact that we were aware, and you moved in fairly recently, correct, and you are even aware that this had an amendment to add more land

area and that the Edgemoor at Arlington North had land area to, amended its application to include more land area?
A No, I, well, no. And actually I wasn't --
Q You discussed a bunch of that.
A You just -- I wasn't, I am aware now. I wasn't aware when I purchased the property.
Q No, of course.
A But you just asked me if, when you --
Q How long have you lived in your house?
A I've lived in my house a year, approximately almost a year.
Q A year? So if someone has lived in their house a year knows that information, presumably people that have lived here and longer probably also know that.
A Right, but the information that I also knew was that --
MR. KNOPF: That's --
MS. ROBESON: That's calling for speculation.
MS. HARRIS: Okay. Okay.
MR. ABRAMS: Yes.
MS. ROBESON: Save that for argument.
MS. HARRIS: Okay.
MS. TURNBULL: She -- okay.
MS. HARRIS: Okay. So --
MS. ROBESON: Just don't answer.

BY MS. HARRIS:
Q Given the layout of the Holladay project, which we all acknowledge left the isolated Wolf project --
A Uh-huh.
Q -- and --
MS. ROBESON: Is this Lot 26?
MS. HARRIS: Lot 26, sorry.
MS. ROBESON: That's okay.
BY MS. HARRIS:
Q Lot 26, and if one were to have read the sector plan, wouldn't one have a reasonable expectation given what else has happened on this street to assume that perhaps the Holladay approval could be amended to include that isolated project?
A I don't know. I don't know if one would have the reasonable expectation that it would be because actually the opposite. One would, I would think one would look at it, and I did certainly, thinking, okay, these people at the Lot 26 probably could have been going into the other project and when the other parcels were combined --
MS. ROBESON: What other project?
MS. TURNBULL: The Holladay project.
MS. ROBESON: Oh.
MS. TURNBULL: It could have been part of that then and chose not to. They may had, they could have had a

living trust saying that they couldn't do it. They could have had a decision that they wanted to keep the parcel for historic purposes. I mean I --
BY MS. HARRIS:
Q How many years were you on the board of appeals?
A Four years.
Q And you've lived in Montgomery how long, Montgomery County how long?
A Well, because --
Q Wait. How long have you --
MS. ROBESON: Just --
BY MS. HARRIS:
Q -- lived in Montgomery County?
A Since 1979.
Q And so you're telling me that one would have driven down that street and looked at the Wolf house and think that it would have been registered, that it had potential for historic designation?
A No, I'm not saying historic designation. I'm saying for a family, historic viewpoint. I mean I --
Q It's used for an office, correct?
A It is used for an office, but regardless you don't know what kept it from the assemblage in the first place. And so you, you don't, you can't speculate on what, what's going to come.

Q No, but I think it's safe to --
MS. ROBESON: Well, it's not about what you think.
MS. HARRIS: Okay.
MS. TURNBULL: No.
BY MS. HARRIS:
Q Okay. Okay. Okay. Even if one, even if one were to think, no, that it potentially may be, it wouldn't be amended to include that, don't you think that there would be a reasonable expectation that that property could be redeveloped just as the Sandy Spring 4825 had been redeveloped?
A No, because the other property, the Holladay property, which was the approved property had been approved with a plan where the entrance to the building was farther back and so it would have been unlikely that a building the size of Sandy Spring would be in front of it.
Q That's interesting.
A But it's --
Q That's your opinion. I understand that.
A Okay. Okay.
Q What, and do you recall --
A I have to say I haven't thought about that before, but you, you raised the question and that's my answer.
Q What is the -- you testified yesterday as to the Hampden Lane right-of-way, do you recall Hampden Lane?

A Yes.
Q What's the right-of-way on Hampden Lane?
A What? What is it?
Q Yes, the main one.
A I said that it, it is four lanes at a certain point, portion in front of the parking lane.
Q And then I think you gave a dimension, do you recall?
A I never gave any dimension.
Q Can you review your notes?
A I never gave a dimension.
MS. ROBESON: I don't have the transcript.
MS. TURNBULL: I said four lanes. I did not give a dimension.
MS. HARRIS: I believe --
MS. ROBESON: Well, it's no --
BY MS. HARRIS:
Q Do you recall stating that the Hampden Lane right-of-way was approximately 70 feet?
A No, I did not say that. I said --
MS. ROBESON: I don't, I don't --
MS. HARRIS: Okay.
MS. ROBESON: -- recall it, but --
BY MS. HARRIS:
Q Are you familiar with the sector plan that

recommends a 60-foot right-of-way for Hampden Lane?
A Yes.
Q Okay. And I also believe that you testified that across the street there would never be any residential area, is that correct?
A I testified that across the street there is commercial. I did not testify that across the street would never be residential.
Q Are you familiar with the fact that the zoning ordinance would, in fact, permit residential across the street?
A Sure.
Q You are familiar with that?
A But what is existing --
Q Right.
A -- across the street.
Q What's existing, but --
A And --
Q -- the --
A But what is existing is exclusively commercial, so --
MS. ROBESON: Okay.
MS. HARRIS: Okay.
MS. ROBESON: She --
BY MS. HARRIS:

Q I want to refer to the Hampden Lane elevation. Are you aware of the fact that the penthouse for Hampden Lane is located right along the street front?
A Yes, I am.
Q And are you aware that it's a 15-foot penthouse?
A Yes.
Q And the building, are you aware of what the building height was approved for?
A Yes.
Q And that was?
A That was 71, but in the testimony of the --
Q No, I think that's all I wanted to know, that it was approved for 71 feet. And the penthouse is 15 feet?
A Yes.
Q So the total building frontage along Hampden Lane is what, 71 plus 15?
A No. It's 71.
Q No, plus the height, the approved height for the Hampden Lane building is 71 feet? There's additional information in the record that indicates that the penthouse is an additional 15 feet.
MS. ROBESON: Oh, you said frontage.
MR. ABRAMS: You said frontage.
MS. ROBESON: You mean height.
MS. TURNBULL: You said frontage.

MS. HARRIS: I'm sorry.
MS. TURNBULL: Yeah.
MS. HARRIS: My --
MS. ROBESON: So the actual --
MS. HARRIS: Height.
MS. ROBESON: -- what you're getting at is the actual height?
BY MS. HARRIS:
Q Height is 86 feet at the building line?
A At the building line.
Q Correct. And what is the height of the subject building at the building line?
A 70 --
Q At the building line?
A At the building line?
Q The applicant's project --
A Uh-huh.
Q -- at the building line is what height?
A 70 feet.
Q No, I'm sorry, at the building line. Standing at the --
MS. ROBESON: What is the building line? The building measuring point?
MS. TURNBULL: Oh, oh, you're talking at the street?

MS. HARRIS: At the street line. If you're standing, where the building line intersects with the ground and you go straight up --
MS. ROBESON: On Montgomery Road.
MS. HARRIS: -- on Montgomery Lane and --
MS. TURNBULL: Montgomery Lane is 50.
BY MS. HARRIS:
Q Is 50? And what did we say that was, 86? At the --
A We, is --
Q Is it correct that we just established --
A Well --
Q -- that the height --
A Actually --
Q -- of Hampden Lane to the top of the penthouse is 86 feet?
A If the penthouse is at the building line. Is the penthouse --
Q Yes, it is.
A -- at the building line?
Q Yes. And the --
A It doesn't look that --
Q -- record reflects it and there's information in the record.
MS. ROBESON: Well, okay, but this is your time to

ask questions --
MS. HARRIS: Okay.
MS. ROBESON: -- not --
MS. TURNBULL: I, okay. And basically looking at that drawing, I do not believe that it is 86.
MS. HARRIS: If you give me a moment, it would be helpful to refer to the sections in the record that state that.
MS. ROBESON: I mean if you need to --
MS. HARRIS: I can provide that later for --
MS. ROBESON: Yes.
MS. HARRIS: -- efficiency purposes.
MS. ROBESON: I mean --
MS. HARRIS: That's fine.
BY MS. HARRIS:
Q Do you have one of the, do you have the largest home in the City Homes?
A I have one of the two largest homes, yes.
Q And you live at 48 --
A 38.
Q And can you please identify for me on the -- what's the approximate square footage of your house, your home?
A 3,000.
Q And you noted that there was one other in the City

Homes that is also 3,000?
A Right.
Q Would it surprise you to hear that the state records indicate that approximately, that 14 of the 29 units in City Homes are 2,400 --
MR. ABRAMS: Objection. There was no testimony relating to that issue.
MS. ROBESON: What is the relevance of your line of questioning to her direct testimony?
MS. HARRIS: It has to go to the issue of non-conformance with the sector plan, which I think we heard lots of testimony on that, that the subject property, the subject application was not consistent with recommendations of the sector plan.
MS. ROBESON: In what way? I mean I don't recall size of units.
MR. ABRAMS: Yes, I don't --
MS. HARRIS: No, no, I think I heard in terms of diversity. That's a recommendation of the sector plan.
MS. ROBESON: Was that her testimony? I don't recall --
MR. ABRAMS: Not her testimony.
MS. ROBESON: -- her testifying. There was testimony, I do recall that, but I don't recall it being her testimony.

MS. HARRIS: Okay.
BY MS. HARRIS:
Q I want to show you a number of images from applicant's original filing and note whether, and you can answer yes or no to these. And actually I'd like to refer to the anticipating three of them, I would like to refer to the May, the original filing in this case which was in May of this year and then their applications had to be refiled.
MS. ROBESON: You mean to the prior application --
MS. HARRIS: Yes.
MS. ROBESON: -- G-912? Okay.
MR. ABRAMS: I don't know. What relevance does that have? This is a new application.
MS. ROBESON: That's my question as well.
MS. HARRIS: Because it goes to the fact of the number -- there was testimony that the applicant has not been responsive to the community. And when this process started back in April, and probably before that, I want to identify the proposal as it existed when the application process started versus how it has transformed and evolved in the course of almost 10 months, or 12 months.
MS. ROBESON: Okay. Can, before we go there, I know there's been testimony on that, but the responsive, the responsiveness of the applicant to the community concerns is not going to influence my decision. My decision is going to

be based on the criteria in the code. And even though we have some testimony, I mean normally I let it in because, you know, once in awhile it happens for impeachment purposes, but I don't want to get into an extensive cross-examination on it. I don't think it's relevant.
I can see how the design has changed from, you know, the original application to here. Whether it's as the result of the community or the Planning Board, my concern is does it meet the master plan.
MS. HARRIS: My concern is that there were suggestions throughout the testimony that the applicant, in fact, has not been cooperating with the community.
MS. ROBESON: I heard those.
MS. HARRIS: Exactly.
MS. ROBESON: But it's --
MS. HARRIS: That's my concern.
MS. ROBESON: What?
MS. HARRIS: That's my concern, that I wanted to introduce evidence to indicate how, in fact, the applicant has been responsive to the community.
MS. ROBESON: But you would do that, if you want to do that, you can do that affirmatively on rebuttal. Do you need to do it on cross, because I don't want to spend a lot of time -- I'm not trying to shut you down --
MS. HARRIS: Okay.

MS. ROBESON: -- from your case. I just am trying to figure out where to get the most bang for the buck given that, you know --
MS. HARRIS: I understand.
MS. ROBESON: -- we only have one more day of hearing. So, and I --
MS. HARRIS: Actually, we may have --
MS. ROBESON: -- will tell --
MS. HARRIS: Go ahead.
MS. ROBESON: Two more, right. And I want to get through this case.
MS. HARRIS: I understand. I can agree with that.
MS. ROBESON: And if, you know, sometimes it does influence me as far as -- but this is not one of those times that it's going to influence me a lot so far.
MS. HARRIS: So can I, then I'll summarize -- I'll ask one summary question.
MS. ROBESON: Well, as long as you're not testifying, because I just --
MS. HARRIS: No, it's a summary question.
BY MS. HARRIS:
Q Could you please review Exhibits 13 through 20 of the binding elements on the current sector, on the current development --
MR. ABRAMS: Do you have a copy?

MS. HARRIS: -- plan?
MS. ROBESON: Here, you can use mine. Mine is 106(a).
MS. TURNBULL: I actually went through these one by one.
BY MS. HARRIS:
Q Right. You can -- are you, let me just ask. Are you aware that binding elements 13 through 20 were proffered by the applicant only in response to communications, concerns and discussions with surrounding neighbors or concerns expressed by the Planning Board?
A One or the other, or both --
Q Correct.
A -- is what you're saying? I believe it is one or the other or both.
Q Thank you. Okay. That's fine.
MS. ROBESON: Okay.
MS. HARRIS: And then I will ask --
MS. ROBESON: If I could just get that back, that original please?
MS. HARRIS: We're almost --
MS. ROBESON: Thank you.
MS. HARRIS: The only other final question I have, if I could confer with my client --
MS. ROBESON: Sure.

MS. HARRIS: -- just briefly, but after this question. Let me get my notes.
BY MS. HARRIS:
Q On Exhibit 110, which shows a picture of the sector plan, the before and after view, can you please, starting at the northwest corner of Woodmont Avenue and Montgomery Lane, can you please describe the building, the first building that we see?
A I see a one, two, three, four-story building with multiple penetrations and unusual fenestration.
Q Okay. And what four story? And do you know how many stories the Highrise Edgemoor has?
A I believe it's 10.
Q Okay. So in your mind is the image shown up in the right-hand corner, 110, with respect to that corner unit?
A But this isn't that number. That building would be located at this corner and right now there's a small park, so the building would be here. It wouldn't be here.
Q Okay. Well, then let me refer, that's -- can you please refer to Exhibit 106(b)?
MS. ROBESON: And which building are you at? I --
MS. HARRIS: We're at the Highrise Edgemoor.
MS. ROBESON: Okay.
MS. TURNBULL: Oh.

BY MS. HARRIS:
Q So there's a park.
A Okay, there is a park.
Q Wouldn't you agree that the park shown is --
A Okay.
Q -- comparable in that space?
A And that looks --
Q Yes.
A -- comparable. I, from looking at this --
Q Okay.
A -- it looked like, well, there's a difference. This is a plan drawing and this is a prospective drawing. And a prospective drawing, this corner would appear closer.
Q Would you agree that what is built there now, the 10-story Highrise Edgemoor, is not --
A There is no 10-story shown here.
Q Not yet. And then how many stories does the approved 4901 have or what's the height of 4901?
A The height is, well, there's --
Q The maximum height and --
A The maximum building height, I know it's not the height, is 70 feet.
Q And how many stories on this line?
A This is showing the stories.
Q Right. And this -- can you read what it says

after --
A After.
Q Can you read the --
A After proposed low-rise, high-density housing on a mixed street.
Q So would you agree that the after view of what the sector plan envisions this street to look like isn't really representative of what exists there now?
A Yes.
MS. HARRIS: Okay. Thank you. Excuse me one moment. That concludes my cross of this --
MS. ROBESON: All right. Redirect, Mr. Abrams.
REDIRECT EXAMINATION
BY MR. ABRAMS:
Q Do you have any further comment on your testimony relating to the comparative building height of the building on Hampden Lane versus the building height of the proposed building?
A Yes. I want to --
MS. HARRIS: Can you, I'm sorry, can you please repeat the question?
BY MR. ABRAMS:
Q Can she elaborate on her testimony comparing the building height of the building at Hampden Lane versus the building height of the subject building?

A Sure. The, according to testimony that is referenced in the, on page 60 and 61 of the, of -- let me find it. I'll tell you what is it, which I believe is in the public record, well, was definitely in the public record and I believe may be in as an exhibit, but I'm not sure, which is the --
MS. HARRIS: Was that an exhibit that we, that was presented during cross-examination that you're referring to?
MS. TURNBULL: It may be. I mean what this is --
MS. ROBESON: Wait. Let --
MS. TURNBULL: -- is, this is the County Council sitting as the -- it's the opinion for that.
MS. ROBESON: For what?
MS. TURNBULL: For Hampden Lane.
MS. ROBESON: Okay. That is in the record.
MS. TURNBULL: Yes.
MS. ROBESON: Okay.
MS. TURNBULL: It's the opinion and on page 59 of that opinion I read what is, what --
BY MR. ABRAMS:
Q Well, you're talking about the Hearing Examiner's report or the Council opinion?
A This is the Council opinion. The Council opinion. And what the Council opinion, the Council opinion draws on the testimony and the testimony is from Guyman Martin

(phonetic sp.), who testified as an expert in architecture. And I'll just read, read --

MS. HARRIS: That's irrelevant what the architect in the case testified to on a case --

MS. ROBESON: Well, I --

MS. HARRIS: -- of, on the Hampden Lane case.

MR. ABRAMS: Well, it goes to the Hampden Lane case.

MS. HARRIS: No, I referred to the height, I didn't refer to --

MS. TURNBULL: Okay. This is --

MS. ROBESON: Just a second.

MS. TURNBULL: All of that --

MS. ROBESON: Stop. I can't have three people stopping, starting at once. Okay. Mr. Abrams, what your question is, what are you trying to get at?

MR. ABRAMS: The comparative variances or differences or commonality between the questioning that was asked of her of the building height of the Hampden Lane building versus the building height of the subject proposal.

MS. ROBESON: And how does the architecture impact that?

MR. ABRAMS: Well, the height limit for each, she previously testified that there was a height differential, an elevation differential --

MS. ROBESON: Correct.

MR. ABRAMS: -- on Hampden Lane.

MS. ROBESON: Right.

MR. ABRAMS: So I want her to elaborate on what other differences there are with respect to building height on Hampden Lane vis-à-vis the building height of the subject property.

MS. ROBESON: Okay. Yes. What were you going to say?

MS. HARRIS: It's been established that the building height of Hampden Lane is 71 feet, the building height of the subject is 70 and we heard extensive testimony regarding the various heights of the buildings in the surrounding area on Ms. Turnbull's direct testimony.

MS. ROBESON: But you did cross-examine on height. So if you have anything to say about height, but not necessarily architecture --

MS. TURNBULL: Okay. This -- he was the architect and he's talking about the height. I'm only going to talk about height.

MS. ROBESON: Okay.

MS. TURNBULL: Okay. And I'll read this. "The proposed building at the point where you actually would enter the building relative to the grade at that point is 65 feet tall, but for the purposes of measurement it's 71 feet

tall. At the peak height, the area from the peak height of the structure to the ground that's immediately below that point would be about 68 feet. At no point can you stand next to that building and take a tape and measure 71 feet from grade to the roof."

So my, what I'm saying there is that you can say this is going to be 70 and this is going to be 70, but this building according to the building architect is not 71 anywhere at the, he is saying --

MS. ROBESON: On the frontage you mean?

MS. TURNBULL: -- on the frontage it's 68. That's number one. As opposed to in contrast because of the selected point of the building where the building --

MS. ROBESON: Height measurement?

MS. TURNBULL: -- height measurement on West Lane, the compare should, comparison of that is that that building height is 78 feet --

MS. ROBESON: I understand.

MS. TURNBULL: -- approximately at a 12-foot higher elevation than this --

BY MR. ABRAMS:

Q This being Hampden?

A This, than the Hampden Lane building which really isn't even 71, it's 71 minus they're saying three because of where they selected that building measurement point.

MS. ROBESON: Okay.

BY MR. ABRAMS:

Q Now my next question is relating to the inquiry dealing with incorporating Lot 26 into the Holladay project. Do you recall --

A I do.

Q -- that testimony?

A I'm sorry?

Q Lot 26 was excluded from the Holladay plan. I think you were asked questions regarding incorporating Lot 26 into the Holladay project?

A Uh-huh.

Q I think it was proposed at that time. I want you to read -- and that was application G-843. Can you read that section of the zoning ordinance?

A Sure. This is --

Q That's Section --

A -- Section 5H 2.24 of the County Zoning Ordinance states, "After acceptance for filing, an application for a map amendment shall not be modified or amended so as to increase the area proposed to be --

MS. HARRIS: Objection. This goes to the whole issue of Mr. Abrams's motion that the Hearing Examiner already ruled on.

MS. ROBESON: No, I think he's, it goes to your

question about what did she expect to happen in the area. I think that's -- am I incorrect on that?
MR. ABRAMS: No, that's good.
MS. HARRIS: But it's based on Mr. Abrams's, according to the Hearing Examiner's ruling, misinterpretation of that section.
MS. ROBESON: I know what the section --
MS. HARRIS: Okay.
MS. ROBESON: I -- she can read it.
MS. HARRIS: Okay.
MS. TURNBULL: Okay. "After acceptance for filing, an application for a map amendment shall not be modified or amended so as to increase the area proposed to be reclassified as to the class of zone requested."
BY MR. ABRAMS:
Q If Lot 26 were incorporated into the Holladay Corporation project under application G-843, would it increase the area of that application?
A Yes.
Q And under that section as you read it, would that be permitted?
A No.
Q Now can you go up to the, I guess it was tenting line of site flooring?
A Uh-huh.

Q And that is Exhibit 79?
MS. ROBESON: What exhibit number?
MR. ABRAMS: Is that 79? Okay.
BY MR. ABRAMS:
Q If you take and start the line from the high rise building directly to the east and you come down to this building here --
MR. KNOPF: This building being?
MR. ABRAMS: This building being --
MS. ROBESON: 48 --
MR. ABRAMS: -- 4825.
BY MR. ABRAMS:
Q Doesn't that create a, rather than a straight line image, an image of somewhat of a jagged line between that building and the subject property?
A Yes. The West Lane building is higher than the Sandy Spring building, changing the tent. If one goes to, includes the Sandy Spring building in the tent, the tent has to go back up.
Q Okay. And if you did that from the big Edgemoor building, does the same --
A Yes.
Q -- response call it?
A Yes.
Q If you can come back? At the beginning of your

cross-examination, there were certain examples of a 35-foot height limit in the R-60 and R-90 zone and the building heights that you wanted to elaborate at that time in comparison to, you know, what is being proposed here. Do you recall what you wanted to elaborate before you were cut-off --
A The --
Q -- with a yes or no answer?
MS. HARRIS: Objection. That's -- there's no question there. It's somewhat of an open question.
MR. ABRAMS: Yes.
MS. ROBESON: Well, that's good. It says he's not leading the witness and he can ask that.
MS. HARRIS: Okay.
MS. ROBESON: I think it's where I said make a note.
MR. ABRAMS: Right.
MS. TURNBULL: Let me see if I made a note. Well, I know I wanted to present the, yes, I'll give you one more piece on the heights. Again, drawing from all of this, the, that, the Hampden Lane application also stated that --
MS. HARRIS: Objection. She can't -- Mr. Abrams asked about heights in the residential zones.
MR. ABRAMS: Yes.
MS. TURNBULL: Oh, okay.

BY MR. ABRAMS:
Q Let me try to jog your memory. When there's discussion about height limit at 35-foot height limit in the R-60 and the R-90 zone, was there not several years ago a contest as to how you measure height, particularly down Chevy Chase and areas such as that?
A Oh.
Q There's R-60 and R-90.
A Right. The, actually there's a famous Edgemoor case where the determination was really where it was in the -- there were two --
MS. ROBESON: Where what was?
MS. TURNBULL: Where, what was at 35 feet high that the determinate that it went for, it was, it preceded me on the Board of Appeals as a decision of the Board of Appeals and then only came back to me once, but it, but height was not the determination at that point. The case was, the case in Montgomery County was, was, was, was where is 35 feet and do you measure it from your house or your next door neighbor's house and what is the ultimate height? I did rule on a case of that sort in Kensington where a house was being built on a, on a street that had an incline and, again, the question was where along the face of the street are you determining the, determining the height because it could not go above the 35.

BY MR. ABRAMS:
Q Okay. And does that relate to how measurements are being done in this case with this project?
A Absolutely, because comparisons of height are very different. As Exhibit 101(i) shows, we vary from Edgemoor at Arlington North, which is built at, or Edgemoor at Arlington which is at 325.5 to West Lane, which is well at 335.8, which is approximately 10 feet. It's 9.2 feet, 9.8 feet difference, which is 9.8 feet. If a table is three feet, nine feet is taller than this room.
Q Now can a building that is at the height limit as measured by Montgomery County Zoning Ordinance standards, be incompatible and detrimental to adjoining properties?
A Absolutely. That's why it is called a limit, not necessarily a right. One of the things that has been clear is that through all of this that each project has to be considered on a case-by-case basis to determine compatibility.
Q Okay. In special exception and in zoning cases, is compatibility measured internally or is it evaluated against surrounding properties and communities?
A It's evaluated against surrounding communities and surrounding properties and which makes it most relevant in this case because this case is a street where there have been approval, that there is existing and there is a

significant amount of approved properties that are going to be as built. So the decision on compatibility is based on what's there and what is approved going to be there.
Q Now there was certain questions asked of you dealing with the property directly to the west of the subject property which was described as the Rothstein property --
A Yes.
Q -- as well as the Villages of Bethesda?
A Yes.
Q And I think you were asked whether they were closer to the subject property than the subject property is to City Homes. And when you attempted to explain or elaborate, you were cut off. Is there any elaboration you wish to give at this point?
A Yes. There's a big difference. There's -- in the same token as -- this building on Hampden Lane is facing, is closer to City Homes than West Lane. The Hampden Lane building unit number and the operational aspects of this building will have, won't have the same kind of impact as the West Lane building does to City Homes because of Montgomery Lane and West Lane. In addition, the contrast to the Village of Bethesda and Edgemoor at Arlington, the Edgemoor at Arlington actually will be adding an already -- we haven't discussed this much but, in fact, the Edgemoor at

Arlington has a driveway between Edgemoor at Arlington North, that I really need to say, and West Lane which will, again, where it hasn't been discussed will be bringing more traffic onto Montgomery Lane. And so there --
MS. HARRIS: Objection. Nothing in the cross-examination had -- there were no questions relevant to traffic on Montgomery Lane.
MR. ABRAMS: She introduced photographs that showed parking and traffic conditions.
MS. HARRIS: Not on cross --
MS. ROBESON: But this is redirect, so she's correct.
MS. TURNBULL: Okay. So I want --
MR. ABRAMS: Okay.
MS. TURNBULL: So in answer to the question of the difference between Villages of Bethesda and Edgemoor North and West Lane, first of all, there are no residents in Edgemoor at Arlington North currently, so why Edgemoor at Arlington North would be agreeing to the West Lane property is a subjective question as opposed to the real people who live in City Homes and Edgemoor, the real neighbors and people who are living it and experience. But the biggest difference, I think, is really that the entrance of West Lane building is on, is on Montgomery Lane --
MR. ABRAMS: Okay.

MS. TURNBULL: -- next to the street.
BY MR. ABRAMS:
Q Let me just follow-up in this last set of questions. There was questions directed to you as to what merits a larger setback or the, for the City Homes than would merit for the Villages of Bethesda. Now let me continue that. That's a foundation. In comparing the two surrounding projects, City Homes, Villages of Bethesda, is there any proposed traffic that's going by --
MS. HARRIS: Objection. You just ruled that traffic was not raised on --
MS. ROBESON: Where are you going with --
MS. HARRIS: -- cross.
MR. ABRAMS: No, she's, I'm asking her to respond to what merits a larger setback --
MS. ROBESON: Yes, it was why the setback --
MR. ABRAMS: Right.
MS. ROBESON: -- didn't matter.
MR. ABRAMS: And now I'm trying to elicit as to are there elements which justify a larger setback from City Homes than has been --
MS. ROBESON: I think that's a fair question.
MS. HARRIS: Thank you.
MR. ABRAMS: Okay.
MS. TURNBULL: And the answer is partially of what

I just said, this is the entry to the building versus the rear of the building. This building -- in addition, this area here is, right here, is a wall, an elevated wall. This building is sitting below this elevated wall. You cannot see -- you basically can't see this space from this vantage point and you can barely see it from this vantage point. That's number one.

The second thing is there is testimony, and there's been a lot of testimony, that all about Montgomery Lane is the use for pedestrians. Pedestrians are never going to be using this, this property here. There could be as much conversation about how this could be a walkway to the transformers, which is at the end of the property, but it's illogical to assume that that will be ever used because there's also a brick wall at the end of West Lane and brick walls in every direction to get to the subway. Many pedestrians walking, and there are plenty, will walk on Montgomery Lane. And what we're talking about is making this an even more pedestrian-friendly area which is by adding more space in the front.

BY MR. ABRAMS:

Q Would there be any parking in that 15-foot setback between the subject building and the Villages of Bethesda?

A Would there be any parking?

Q Yes.

A Well, there wouldn't -- no. There's no parking.

Q Okay. Would there be any parking between the Villages of Bethesda and the Edgemoor at Arlington North, other than that driveway you previously described?

A No.

Q Okay. Now so we have traffic activity, physical activity in the form of pedestrian walking, parking conditions, are they the major differences between the merits of a larger setback for City Homes than would be applicable to the Villages of Bethesda for the project to the west?

A Absolutely, yes.

Q Okay.

MR ABRAMS: That's all I have.

MS. ROBESON: Okay.

MR. KNOPF: Very, I'll be very brief.

MS. ROBESON: Okay.

REDIRECT EXAMINATION

BY MR. KNOPF:

Q Would you just stand there? There's some confusion. Montgomery Lane and Montgomery Avenue, can you point out on the chart there as where, where is Montgomery Avenue?

A Montgomery Avenue is to the east of Woodmont Avenue.

Q And could you describe how that avenue has improved, differs from Montgomery Lane --

A There --

Q -- it's the same narrowness or --

A No, this varies. It has a rapid turn lane at, from Woodmont, which is, it has -- I don't know what the speed limit is, but --

Q In terms of width --

A And then this, that while Montgomery Lane is two lanes. This portion of Montgomery Avenue that is not evident, Montgomery Avenue beyond Woodmont begins at four lanes and continues and at one point is five lanes.

Q Thank you. There was some confusion about the testimony you, by Ms. Harris about who was seeing what from the townhouse windows. And I believe you can clarify some of that. When you were referring to what views were from some windows, am I correct that some townhouses have views that look from one stick to the other so to speak and that's where the windows are, but some townhouses at the end have windows that look out onto Montgomery Lane?

A Oh, yes. There are -- all of the end units face Montgomery Lane and, so there will be one unit facing Montgomery Lane and five units facing the opposing strip in the orientation of this structure.

Q Now you --

A And all of, all of the windows of the units, well, not all of, the majority of the windows of the units are facing Montgomery Lane on those documents.

Q Now you were asked questions about the differing visual impact -- I'll use that term -- of the 4825 structure which is, let's assume 65 feet in height, and the proposed project here which is 70 feet in height and I want to ask you in terms of the visual impact, is it your opinion or comment as to the impact of say even identical height buildings where one is much narrower than the other?

A Okay. Well, there's a couple of things. Even comparing the buildings, even if you would call this 65, this is 65 with no visible mechanical above the building, above the parapet. So even if you're saying it's 69, this is 70 feet with a very visible projections of it and there hasn't been clarity, but it could be at least 10 feet or around 10 feet. So you're comparing to the top of the parapet, 59, versus to the top of the parapet, 80. So that's 11 feet. Plus, in addition to that, again, because of the siding, this building is -- I don't have the chart in front of me, but this building is sited at a high point back here as opposed to this building on Montgomery Lane. So that's one thing.

The second thing is there is visual difference. As I testified the other day, a vantage point of, from

walking down the street or being in any place or being in your courtyard or anything else, on your porch, you're seeing -- this is a 78-foot length as opposed to what is --
MS. ROBESON: What is this? What is --
MS. TURNBULL: Oh, the frontage on Montgomery Lane --
MS. ROBESON: Okay.
MS. TURNBULL: -- of the West Lane building is 78 feet.
MS. ROBESON: Of the subject building?
MS. TURNBULL: Of the subject property.
BY MR. KNOPF:
Q And do you know the frontage from the number of feet from where you stopped measuring at 78 to West Lane?
A It's at least another 28 feet, is that correct, because the radius is 28 feet, so --
Q Thank you.
A -- so it's 28 feet. So the max of this is 78 plus 28, okay, which is 106, I guess.
MS. ROBESON: Well, you don't have to add.
MS. TURNBULL: So, but, so, but it's 106 feet of building, of building mass as opposed to less than half of that for City Homes broken up by 30 feet minimal air space and no air space between the properties directly across.
BY MR. KNOPF:

Q And you, excuse me, you mentioned the width of the mass of the City Homes. Do you know what the width of the mass is of 4825 is compared to the 100 some feet you mentioned on the project?
A I think we had seen --
Q Would you agree with me it's considerably less than the 100?
A Yeah, it's approximately half.
Q Okay. Thank you. You mentioned, excuse me, you were asked a question regarding the R-60, R-90 single-family homes and the fact that their elevation differences may result in the homes not being of a uniform height that could pop up and down, do you recall that question?
A Yes.
Q To your knowledge, does the zoning code provide requirements of compatibility in order to get a building for an R-60 and R-90 home?
A Yes.
Q It has to be compatible?
A Oh, no, for 60 there is no compatibility --
Q different --
A -- which is actually what became the case in Edgemoor because it was really, was more based on compatibility.
Q Okay. Thank you. You had had some discussion

when you had mentioned with Chase --
A Uh-huh.
Q You can sit down if you want.
A Okay.
Q In Chase and the Christopher buildings, you were asked if there was any relevance to those in terms of the current sector plan, there was some discussion, do you recall that?
A Yes.
Q You had said they were relevant? Excuse me. Would you agree that the, the sector plan calls for in the TS-R zone a certain number of dwelling units in the average FAR, do you recall that?
A Yes.
Q Yes. Does, and the Chase and the Chases I should say, I understand there's a Chase 1 and Chase 2, and Christopher, they were built, I think you agree, prior to the current sector plan?
A Yes.
Q And they are taller and much larger than what would be allowed under the current sector plan?
A Yes.
Q They have lots of units, do they not?
A Yes, they do.
Q And they're in the TS-R zone, are they not?

A Yes, they are.
Q Do you believe that, therefore, that is something to consider when one is considering the average number of units in the TS-R zone --
A Yes, I do.
Q -- to take those into --
A I do.
Q Thank you. My last question is --
A Can I answer further?
MS. ROBESON: Yes.
MS. TURNBULL: Okay. In addition, it is the case that there are other buildings in the vicinity. There's the Edgemont, I believe, which is on the other side of the street of, on Edgemoor, which is also a large building.
BY MR. KNOPF:
Q Okay. Thank you. That -- my last question is I'm trying to get somebody to clarify, you spent a great deal of time answering questions with Ms. Harris about what I would say your objection, I guess, or criticism regarding bulk and height and mass in this building. I want to make clear, was that your only concern or did you have concerns regarding design of the building?
MS. HARRIS: Objection.
MS. ROBESON: Yes, that wasn't the subject of cross-examination. That's sustained.

MR. KNOPF: Yes, I have no further questions. Thank you.
MS. ROBESON: Okay. Recross?
MS. HARRIS: Very briefly.
RECROSS EXAMINATION
BY MS. HARRIS:
Q You noted in response to Mr. Abrams's questions about the possible, the possible incorporation of Lot 26 into the Holladay project, that based on the zoning ordinance provision that he read that one, one would have read that and thought, no, that can't occur, correct?
A Yes.
Q So then along with the other mistakes that we've identified, I put that in quotation marks, that the County Council obviously have made throughout this neighborhood, are you also suggesting that when the County Council approved the amendment of the City Homes application to include the Highrise Edgemoor that that was a mistake?
A I don't know if that provision existed in that zoning ordinance at that point.
Q And, similarly, the Highrise Edgemoor North, which just was amended in 2008 when that provision did exist, was that a mistake?
A I believe that the Edgemoor North property is compatible.

MR. ABRAMS: Well, I think you're asking her for --
MS. HARRIS: No, the question is --
MR. ABRAMS: -- a legal conclusion --
MS. TURNBULL: I don't know. Yeah, I'm not aware.
MS. HARRIS: Well, I think you --
MR. ABRAMS: -- on projects which --
MS. HARRIS: I think you started it by asking her --
MS. ROBESON: No.
MS. HARRIS: -- legal conclusions.
MS. ROBESON: Just a second. You don't need to go there because I heard what she answered. It is a legal question --
MS. HARRIS: Okay.
MS. ROBESON: -- except factually. She just said she thought it was compatible, but we really don't need to go beyond that because nothing here has changed my decision on my earlier ruling, all right? That the motion, that the development plan amendment can, may be an amendment.
MS. TURNBULL: No, I recognize that, but I think the line of questioning that Mr. Abrams was pursuing went to someone's expectation of what could occur on the street, not the legal question and so I think there's a distinction.
MS. ROBESON: Okay. Then you can answer it. I

understand what you're saying.
MS. HARRIS: Well, I think she already, she did answer it --
MS. ROBESON: Yes.
MS. HARRIS: -- when she said that -- well, let me ask again.
BY MS. HARRIS:
Q Did the County Council make a mistake when they, in 2008 when they amended the Highrise Edgemoor, excuse me, the Edgemoor at Arlington North to include additional land area?
A I don't think I can answer that. I don't think I, I don't think --
MS. ROBESON: Well, you're asking did they make a mistake. What you're saying is relevant is did she reasonably, you know, expect --
MS. HARRIS: Then let me, yes, let me -- if, let me rephrase it.
BY MS. HARRIS:
Q Given that you were aware that there are two examples in the immediately surrounding neighborhood of applications being amended to include more land area, could one reasonably expect, even not considering the specific property, could one reasonably expect that that could occur again?

A I don't know. Honestly, Pat, I don't know.
Q That they're --
A That part of it was what I did know as early, as late as a year ago was that the Holladay building was going to be built on --
Q That wasn't the question.
A -- the property.
Q The question has to do with the provision, the allowance of amending existing applications to include more land --
A Well, if --
Q -- area and I said irrespective of this property, as it's happened twice in a given area, and one is aware that it's happened twice, is there anything, is there any reason for one not to conclude that it could potentially happen again? That's the question.
A That's, there's a lot of if you knew A, B and C and I don't think I -- I don't think there's a reasonable expectation that anyone or most people would have any understanding of every element of the zoning ordinance.
Q Not everyone, but you --
A Uh-huh.
Q -- you indicated that you --
MS. ROBESON: Okay. I think --
MS. HARRIS: -- had knowledge.

MS. ROBESON: I think that there is no blood from this.
MS. HARRIS: But she's taking lessons from Mr. Irish.
MS. ROBESON: I'm not calling you a turret, but --
MS. HARRIS: Okay.
BY MS. HARRIS:
Q Were you aware, you noted a number of times that part of the issue with respect to the setback of this, the, your issue with the proposed setback of the building has to do with the fact that the entrance is located on Montgomery Lane, correct?
A Uh-huh.
Q And are you aware that one of the conditions of approval for 4825 was, in fact, that staff, or the Planning Board wanted the entrance of the building on Montgomery Lane?
A I am aware of that.
Q And are you aware that in connection with the subject building, as evidenced by the Planning Board's recommendation of approval, that they wanted the entrance on Montgomery Lane?
A I am aware of that.
Q Thank you. And then just one last question which has to do with the Villages of Bethesda setback.

A Can I just, can I --
Q No, that was adequate. Thank you. In terms of the Villages of Bethesda setback, you testified as to the ability to see the green strip, the 15-foot buffer, the actual ground, correct?
A Uh-huh.
Q But don't you agree that the point of setback isn't necessarily to see what is on the ground plain, but could be to provide distance between two structures?
A Uh-huh.
Q And that the point of setting the building back 15 -- that the reason that the Villages -- one point of setting the building back 15 feet from the property line was, in fact, to provide that distance between the Villages of Bethesda and the setback building, irrespective of whether they could see the ground or not?
MS. ROBESON: If you know?
MS. HARRIS: But to provide some visual depth?
MR. ABRAMS: If you know?
MS. TURNBULL: I don't know.
MS. HARRIS: If you know? Okay. And then actually, I do have just one last question.
MS. ROBESON: Okay.
MS. HARRIS: Only one.
BY MS. HARRIS:

Q For sake of argument, would you agree that ceiling tiles are approximately two feet long, do you know that?
A Two feet by two feet?
Q Yes.
A These ceiling tiles --
Q Yes.
A -- yes.
Q Okay. So there's 12 of them across this -- so this room is approximately 24 feet? So if you were standing at that wall looking at the far wall and at the depth of 24 feet, would that, would that depth look different to you than if the wall, than if the wall was one foot away from you?
A Absolutely.
Q And the depth of the scallop is a maximum of 28 feet, is that correct, of the setback of the building on Montgomery Lane?
A The scallop is 28 feet.
Q Yes. Okay.
MS. HARRIS: Thank you. That's all. Thank you.
MS. ROBESON: Okay. Let me just say one thing based on my, the public hearing that was the site visit and it just came to mind through cross-examination of Ms. Turnbull. The reason -- one reason that I was less concerned about the northern 15-foot setback vis-à-vis the

eastern-most villages of Bethesda is that they have a rare privilege of overlooking a tennis court that nothing is going to be built on and that -- so I don't know how much it's going to influence it, but out of an abundance of caution I did garner that on the site, on the public hearing where we walked the neighborhood. So I'm just putting it in the record for what it's worth so if anybody needs to address it, they can.
Okay. With that, yes, Mr. Knopf?
MR. KNOPF: Before we adjourn, I presume we're going to adjourn for lunch, I have --
MS. ROBESON: I am. You can stay. No, go ahead.
MR. KNOPF: I have my three witnesses, lay witnesses that have been here all morning, I mis-estimated the time this was going to take, and they're asking if, should they go home or will they get on this afternoon?
MS. ROBESON: Well, we can put them first if you would wish to. I mean -- or, Mr. Abrams, it's your case right now. My inclination is to continue with Mr. Abrams's case.
MR. KNOPF: But I'm just trying to ascertain maybe these witnesses --
MR. ABRAMS: Well, no, my witnesses --
MR. KNOPF: -- there's a good chance they'll be finished this afternoon?

MR. ABRAMS: -- want to testify today.
MS. ROBESON: Today?
MR. ABRAMS: They have been, at least Mr. Lawch has been here --
MS. ROBESON: Yes, I've seen him.
MR. ABRAMS: -- for every hearing.
MS. ROBESON: Yes.
MR. ABRAMS: And --
MR. KNOPF: Well, I was just asking do you anticipate -- I know it's hard to anticipate -- but more than an hour --
MS. ROBESON: Yes, I wouldn't even try --
MR. KNOPF: -- or two?
MS. ROBESON: -- to anticipate. And I'm going to guess, well, I'm going to guess more than an hour or two. So --
MR. KNOPF: Did you have in mind sometime you're going to be adjourning today? Before midnight I understand, right?
MS. ROBESON: Yes. But I did not want to go much past 5:00 today. And so I think we need to stick with Mr. Abrams's program and we'll continue - hopefully we'll get Mr. Abrams's witnesses done today and begin your case on the 29th.
MR. KNOPF: Well, maybe -- if that would be all

right, then I'll tell them, if it's all right, if they finish a little early, I might not have a witness, that I'd like to let them go home.
MS. ROBESON: Well, that's up to you. I don't want to go past 5:00 tonight. I will say that. Mr. Abrams, how many witnesses do you have?
MR. ABRAMS: Two.
MS. ROBESON: Two more?
MR. ABRAMS: Yes. One, I think, is going to be relatively short, depending on cross-examination and then the final witness would be Mr. Lawch and that depends upon cross-examination too.
MS. ROBESON: So that's -- okay.
MR. ABRAMS: I mean basically what they're going to do is submit or read statements similar to what Mrs. Turnbull did.
MS. HARRIS: How long are the statements? That can influence the timing.
MR. ABRAMS: Rather than question and response.
MS. ROBESON: Okay. Well, what I'm going to do is we're going to get Mr. Abrams's case done today. If you want to -- I mean I have no problem excusing your witnesses as long as we have another hearing date in reserve in case we can't finish your witnesses in rebuttal on the 29th. So we can look at, I think that our aide -- I keep picking up

the wrong calendar -- I think our aide or our administrator emailed you. We have 5/13 and 5/31. Had you had a chance to look at those cases?
MR. KNOPF: You mean those dates?
MS. ROBESON: I mean those dates. Yes.
MR. ABRAMS: I responded, I think.
MS. ROBESON: You did, yes, I got yours, the 13th.
MR. ABRAMS: 5/13 is the available date for me.
MS. ROBESON: Right. So if we want Mr. Abrams here, which we do --
MR. KNOPF: Did we have, did we have, excuse me, I think we had a 5/3 date, but that Mr. Doggett said he couldn't continue it that --
MS. HARRIS: The two dates are 5/13 or 5/30?
MS. ROBESON: I think Ms. Wiltshire can't be here --
MR. KNOPF: Oh, that's what it -- okay, sorry. Because Mr. Doggett advised me --
MS. ROBESON: -- after 5/2.
MR. KNOPF: -- he checked his dates and it wasn't the 3rd, it was the 12th, whatever that week, whatever you're suggesting the 13th.
MS. HARRIS: Well, the applicant --
MS. ROBESON: Okay. Well, then the other option is I have, I can schedule it on a Tuesday or a Thursday with

the, you know, with the -- I don't want to have to break for the County Council or the Planning Board.
MR. KNOPF: No, I understand, but what I'm thinking is that assuming, which I think is a fair assumption, Mr. Abrams will be done this afternoon, but we have another date on the 29th.
MS. ROBESON: Yes.
MR. KNOPF: And I --
MR. ABRAMS: Of this month?
MR. KNOPF: Yes.
MR. POHORYLES: I'm not available on the 29th, but I'll hang around and testify today if necessary.
MR. KNOPF: We could do that. And then the 29th I would assume Mr. Doggett and the two remaining witnesses we can get through at least and I, frankly, didn't ask for other dates from Mr. Doggett because I thought for sure we would be finished by the 29th.
MS. ROBESON: Yes.
MR. KNOPF: So --
MS. ROBESON: This is the case of cross-examination. So, Mr. Abrams, so the only date right now that's not conflicting with the witnesses is the 13th, but you're saying Mr. Doggett cannot make it on the 13th?
MR. KNOPF: That's right.
MS. ROBESON: Well, the other --

MR. KNOPF: Hopefully we'll be done on the 29th, but --
MS. ROBESON: The other option, I know Ms. Harris is in Costco, I have two Tuesdays and two Thursdays, one on Thursday the 9th and one on Thursday the 16th.
MS. HARRIS: What was wrong with the 13th?
MR. KNOPF: Mr. Doggett, it turns out that's the date of the daughter's graduation, not the 3rd. He -- whatever --
MS. HARRIS: Okay.
MR. ABRAMS: And you won't get to him on the 29th?
MR. KNOPF: No, I'm hoping we're going to be finished with him and then we won't care.
MS. ROBESON: Well, if we fit -- can we do this? If we finish, if we --
MR. ABRAMS: Why don't you put him on the --
MS. ROBESON: -- fit, I mean it sounds like we're going to --
MR. KNOPF: Are you guys available on the 3rd, 13th? What they're suggesting is I put Mr. Doggett on first and then --
MS. ROBESON: That's what I was just getting to.
MR. KNOPF: Yes.
MS. ROBESON: So then we could keep the 13th.
MR. KNOPF: Yes, that sounds --

MR. POHORYLES: Can I hopefully be done by the end of the day if I'm the sole witness on our side? My concern is on the 29th I have a very important commitment, I'm sorry, the 13th with my grandkids. I'm not --
MS. ROBESON: You cannot break those, absolutely. We will do everything we can to accommodate your. I think what Mr., what I hear Mr. Abrams saying is there's one witness that you don't think there's going to be extensive cross-examination on.
MR. ABRAMS: Correct.
MS. ROBESON: So I think that if you're willing to stay until 5:00, we're going to, or even I have a commitment tonight. So we're going to do everything we can to fit you in.
MR. POHORYLES: Thank you.
MS. ROBESON: All right. So --
MR. ABRAMS: So the 13th?
MS. ROBESON: -- the reserved date will be the 13th.
MR. KNOPF: We have the 29th and 13th?
MS. ROBESON: Yes.
MS. HARRIS: And not to complicate matters further --
MS. ROBESON: Oh, don't. Go ahead. I'm teasing you.

MS. HARRIS: Is it -- because one of our rebuttal witnesses is not available on the 29th, so can we assume that rebuttal and close will be on the 13th?
MS. ROBESON: I'm going to assume you have some spillover of rebuttal on the 13th, but they can go, they can go first.
MS. HARRIS: No, I mean they can't do the 29th, they can do the 13th.
MS. ROBESON: Oh, so what we're saying, what you're saying is we're definitely going to have to do the 13th date? Any objections?
MR. ABRAMS: No objection.
MR. KNOPF: No objection.
MS. ROBESON: All right. We'll do that then. All right. So we have that done. So we'll come back from lunch at 10 after 2:00.
(Recess)
MS. ROBESON: We're back on the record. Are you ready? I'm sorry. We're back on the record. And, Mr. Abrams --
MR. ABRAMS: Yes.
MS. ROBESON: -- this is your next witness?
MR. ABRAMS: Yes. Please state your full name.
MS. ROBESON: No, wait, let me just -- please raise your right hand.

(Witness sworn.)
MS. ROBESON: Thank you. Go ahead, Mr. Abrams.
MR. ABRAMS: Okay.

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Please state your full name and your residence address.
A My name is Daniel Joseph and my address is 4828 Montgomery Lane.
Q And is that within the City Homes --
A Yes.
Q -- townhouse community?
A Yes, it is.
Q And how long have you resided there?
A About 12 1/2 years.
Q If you could, just for a moment, go to Exhibit 106(f), which is the aerial photograph, and point out your unit where you reside?
A My wife and I live in the unit that is at the end on the street --
MS. ROBESON: So the second unit --
MR. JOSEPH: -- of the --
MS. ROBESON: -- from the east?
MR. JOSEPH: From the east, that is correct.
MS. ROBESON: And it's a very end unit --

MR. JOSEPH: Yes.
MS. ROBESON: -- on Montgomery Lane?
MR. JOSEPH: Yes, it is.
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q And do you have a full view of the proposed project?
A Yes, we do, from -- and I would say from every window that faces the street with the exception of one on the first floor that is blocked by the masonry work for the entrance.
Q Well, are you familiar with the 1994 sector plan for the Bethesda central business district area?
A I have studied in particular the part about the TS-R zone and I have read some of the rest of it too.
Q Okay. In terms of the TS-R, are you talking about the TS-R district, as well as the zones?
A Yes.
Q Okay. And among the things that you review, are those the objectives and guidelines which are within the sector plan for the TS-R district?
A Yes.
Q Okay. And are you familiar with the subject application and the project which has been proposed here?
A Well, I have tried to be. It's hard to stay

completely up-to-date on things.
Q Okay. Are you familiar with the current proposal which is before the Hearing Examiner?
A Yes, I am.
Q Okay. And were you familiar in, with reference to the 2007 Holladay project approval on this project --
A I know --
Q -- this property?
A I know that the basics of the Holladay proposal and I know the shape of the building and in particular the design of the part or the overall design of the part that fronted on Montgomery Lane.
Q And did you take a particular position at that time with reference to the Holladay project?
A Well, I -- I didn't find anything objectionable with respect to the Holladay design and thought as far as I understood it at that point that it was a good attempt to meet the requirements of the sector plan.
Q Okay. Now did you also analyze this particular project which was before the Examiner today relative to conformance with the sector plan and compatibility with adjacent development?
A I have tried to do that, yes.
Q Okay. Do you have a statement to make with respect to your findings and conclusions?

A Yes, I do.
Q Would you do so?
A Edited from this morning, hopefully it will be shorter. I think that the SJG project represents a departure, a complete departure from the provisions of the sector plan. It would produce a massive building that I think is inconsistent with the plan and inconsistent with the neighborhood. The Hollday and the SJG projects are quite different. The SJG design, as you are, of course, probably painfully familiar now is a seven stories on Montgomery Lane whereas the Holladay design had a 4-story section that fronted on Montgomery Lane with individual entrances, I believe, with 30 percent more land than the Holladay project had. The SJG design has doubled the number of dwelling units with a 50 percent increase in off-street parking.
But looking at the sector plan in particular, and that's what I tried to do, the goal, its goal for the transit station residential district, and I'm quoting here, but words that I think are familiar to everybody, "To achieve a low-rise, high-density urban village pattern," that's from page 80. Now I think it's very important that this was not a plan to increase density. The sector plan itself points out that the earlier plan from 1976 imposed more generous height limits, and I'm quoting here from the

current sector plan characterizing the '76 plan. Quote, "From 12 floors along Woodmont Avenue to five floors along Arlington Road." And that's also on page 80.
The current sector plan reduced the open space requirement that the 1976 plan imposed, but this was done to allow lower rise buildings to be economical. And I would like to quote three sentences from the 1994 plan, the current plan, at page 82 to describe that. It says, quote, "A reduced green space requirement would allow lower building heights, a more spread-out building and, therefore, a less expensive structure since construction of low-rise development can be less costly than high-rise. This type of housing should appear to be townhouses, but actually be from three to six-floor buildings with apartments at each level. This form of development can create a high-quality environment in a market not currently being served in Bethesda." Again, that's page 82.
Thus, there was a deliberate trade-off in the plan between building height and open space. For a reduction in the open space requirement, building developers worked to reduce the height of buildings to attain this urban village pattern. Now I think it was, perhaps, predictable that developers would be attracted by the idea of defeating this trade-off by achieving greater building heights while not having to provide the additional open space that was

required when those greater heights were permitted under the previous plan. And I think that's what's happened here.

And let's look at the specific height requirements that are in the plan. First of all, as I quoted, building heights were to be from three to six floors. Second, buildings were to be stepped down from the greatest height closest to Woodmont Avenue to the lowest along Arlington Road where residential scale is to be maintained. And now I'm again quoting from the, from page 85 of the sector plan. "Heights of up to six floors are preferred near Woodmont Avenue to achieve the desired urban form." The step down that was to occur from those six floors near Woodmont was to be gradual and to avoid dispersed high buildings, in other words, to avoid situations where an individual building would step above its surroundings and that is shown on, in the comparative illustrations on page 42 of the plan. There are sets of like, not before and after, but the good thing and bad thing. And the first two rows of those show, illustrate what I've just been talking about.

Fourth, rooftops are to be designed, and again I'm quoting, "To achieve a residential image by using hip roofs, gables, turrets and other kinds, other types, sorry, of pitched roof lines and this, and that's the end of the quote. And this is done intentionally, quote, "To improve character and reduce the sense of bulk." That's page 85.

Fifth, locate -- and again I'm quoting -- "Locate front unit entrances along the street when residences are provided on the first floor to encourage street life." Page 85. And there's a sketch that was displayed this morning that's an exhibit, a blown-up version of it is an exhibit, the after drawing from page 84 that is an approximation of what they expected.

I think it's a fair conclusion looking at the plan restrictions that the sector plan does not contemplate a large apartment building taller than its immediate neighbors on all sides on Montgomery Lane to the west of West Lane, which is more than half of the way to Arlington Road from Woodmont Avenue. It doesn't belong there. And I'll have a little bit more to say about that when I discuss the restrictions in the sector plan that applied on Montgomery Lane itself.

I think that the, the SJG project would violate every one of the sector plan provisions that I've listed. It would be seven stories tall, higher than 6-story maximum. I do think whether intentionally or not that this, that this is a plan by the developer that upsets this balance that I am talking about where the green space that used to be required is reduced in favor of lower buildings. When you have a trade-off like that, it is not in the public interest to allow buildings taller to be built again, but with the

reduced green space requirement.

Also, it's a violation of the step down requirement and I would point out that, that this exhibit here which is No. 709 doesn't really illustrate the step down requirement because it starts with a building that is on the other side, the east side of Woodmont which is not in the TS-R district. They were clearly talking about stepping down from six to three, not stepping down from a much, much taller office building.

Now I'd also like to say in connection with the height and the step down requirements that it appears to be being argued by the developer that other buildings have violated this, these requirements and gotten away with it and that, therefore, this project should be able to violate the 6th floor limit and the, and the step down limit. I think there are two answers to that. First, other witnesses have talked about and other than to identify this, I'm not going to talk about it, that the comparative heights of the buildings are affected by the elevation of the land that they stand on. It is not my point to discuss that.

But I'd also like to make the point that I think it's wrong to say that when some people violate the law and are not stopped, that that means that others are free to violate it. The sector plan still says what it says, it still should be enforced. If somebody very slick robs a few

banks and isn't caught or is arrested, but gets off at trial, that doesn't mean that it's legal to rob a bank now for somebody else. The law still applies. And in our view, the sector plan still applies and should be enforced.

The building frontage on Montgomery Lane of this SJG project most emphatically doesn't have a townhouse-like appearance. The developer is saying now, I think the number is, that there will be a 12-foot setback above the 5th floor. Previously after, I think after Planning Board staff comments, a 9-foot setback in that place was added and that was criticized by the Planning Board staff as -- they used the word slightly. They said it slightly changed the building and I think that was an over-statement.

And increasing that setback from nine to 12 feet is an insignificant addition to that, plus this setback would occur on the 6th and 7th floors and there aren't any 5-story townhouses, at least in Bethesda, and it doesn't make the lower five stories look like, look like townhouses. The chair of the Planning Board suggested a 30-foot setback at the Board's hearing, but that was rejected by the other board members.

Now as I mentioned, the previous Holladay proposal had a 4-story townhouse-like section that fronted on Montgomery Lane and the taller part of the building was actually set back approximately 100 feet from the street and

I can say that the chief reason why I found -- I personally, I'm speaking for myself, personally found the Holladay project quite acceptable was that fact.

Fourth, the building design violates the roof design requirement that is intended to reduce the building's bulk and the appearance of its bulk. The mass of this building is one of its most objectionable features, but nothing has been done to comply with the plan requirement that was aimed at this particular issue.

Ad, fifth, as I suggested, there aren't any front entrances along Montgomery Lane in this proposal. There is an entrance that most favorably stated for the developer is at the corner. It's actually kind of around the corner a little bit. But it doesn't improve the street life. That's why I quoted that phrase about the street life that comes from the sector plan because clearly they had a vision of people coming in and out of townhouse-like buildings like we do across the street, I do that myself, and that is, you know, for a single apartment house entrance, it just doesn't, it doesn't have that impact. The Board staff said that there were no entrances, but said that the addition of balconies would make up for that, but that's not true. The Chase has been mentioned extensively. It's got a lot of balconies and it doesn't look like a townhouse.

I want to say something finally about the legal

status of Montgomery Lane under the sector plan. It's not simply a narrow street. It was the special status under the sector plan of being called a mixed street and it's one of the -- there are only three such mixed streets in Bethesda, two, one of them being these couple of blocks or block of Montgomery Lane is one of the two and then there is another one that is half driveway, half street that leads behind the CVS drugstore off of Bradley Boulevard if you've ever been over there. So there's only three.

Now the sector plan says that a mixed street is one and, again, I'm quoting, "That emphasizes pedestrian circulation while allowing limited, slow, vehicular traffic." Pedestrians, and that's the end of the quote, pedestrians are supposed to be able to inter-mix with vehicular traffic. That's page 189 of the sector plan.

Now Montgomery Lane got this designation because it links the Metro core to the Montgomery County Library and surrounding neighborhoods and is used, they say, by employees and residents alike. Now I can testify on the basis of living in a house on Montgomery Lane that fronts on the street that in this it is largely a success, large numbers of pedestrians use it and you see that in sort of two different appearances. First of all, in mornings and evenings there are lot of people, myself included, who are walking to and from the Metro and you, if you walk at the

same time you, you know how that is, you tend to see some of the same people both in, like in front of my house and then I'll see them in the Metro and so I mean it is extensively used for that.

And then at other times and, of course, particularly now that spring seems finally to be here, there are also many pedestrians that are just out walking. You see a lot of people out walking with their families and you see bicyclists and others using the street. Now when City Homes residents first understood the dimensions of the SJG proposal, our immediate concerns included the impact on Montgomery Lane that seemed to us to be threatened. Even though this wasn't discussed, I think at the Board, well, I think the first problem is or the first thing to recognize is that the sector plan doesn't even appear to contemplate that a building of the size of the SJG project would appear on that part of Montgomery Lane. I think that they thought that that was close enough to Arlington Road that the buildings would be a lot smaller and that demands on traffic at that location would not be as great. There would be extensive truck and automatic traffic generated by this building. Those of us who live there now know how much is generated on our -- I live on the east part, just to the east of West Lane.

Now there the street is one way and if, or I

shouldn't say if, when a lane is blocked, it's not really a disaster because you can only go one direction, so you can get around the parked vehicle. On the west side of West Lane, Montgomery Lane is two lanes. It is two ways. And if anybody parks, then that means that the traffic in that direction has to cross the double line and face, and face opposing traffic and this exhibit that's just been put up which is No. 90 --

MS. HARRIS: 40.

MR. JOSEPH: 40.

MR. ABRAMS: Exhibit 40.

MR. JOSEPH: That shows you how good my vision is, shows an example of that in the lower of the two photographs, a car is --

MS. ROBESON: And that's the photograph passing cars on Montgomery Lane?

MR. JOSEPH: Yes. That was taken west of West Lane where the street is two-way. There is a double line down the middle of the street. In the higher photograph, you can see there is, I think, gardener's vehicle, plus a station wagon parked on the north or eastbound side of the street and a car has had to cross the double line in order to get past him and is now returning to its proper lane. And so our concern was that the same types of traffic obstructions would occur, but that they would be much more

dangerous where the street is two-way than on our side of it, on my side of it its a tremendous annoyance, but I -- and it's very unsightly when it happens. But on the part of the street that is two-way, it is going to be much more dangerous, it's going to be dangerous for bicyclists and have somebody suddenly jump into the lane and so on.

And there is a lot of -- one of the things that happened is that the cars and trucks start going eastbound on Montgomery Lane and get to West Lane and see the do not enter signs where it is one-way and find that they have to make a K-turn and turn around. So those aren't even people that have business there, they just come in and so this is, it is -- I think the success of the mixed street status has, is challenged by this project. Pedestrians and cars are actually to have equal access. It's a very unusual concept and, in fact, if you look at the sector plan, it says that instead of curves, there could be ballards there because people are expected to walk across the street much more than an ordinary street.

So any kind of significant increase in traffic is very troublesome and I, I submit that that's, that that's an issue that the Hearing Examiner can't approve this project unless, unless you're able to find that the mixed street character of Montgomery Lane would be threatened by it. Thanks.

BY MR. ABRAMS:

Q Mr. Joseph, do you have an opinion as to whether the proposed development of the subject property is compatible or is not compatible with the existing and approved development in the surrounding neighborhood?

A Well, I don't, I don't think it's compatible with what, with what is planned and I, with what is supposed to be possible under the plan and I don't think it's compatible with the existing buildings because it would be a step up from the Sandy Springs building that is directly across from my house, which is shorter.

Q You're talking about height?

A Yes. Yes. And it is also not a -- on our side of the street we're all townhouses and we have that street entrance and relatively low-rise and we have the roofs that we all paid for that were very expensive, but are very nice, architecturally are very, very nice that break even our houses up and make them much more individualized and it doesn't have those features and would be inconsistent I think with those.

MR. ABRAMS: That's all the questions I have.

MS. ROBESON: All right. Mr. Knopf?

MR. KNOPF: I have no questions other than to thank the witness and compliment him on his testimony. I happen to know Mr. Joseph and would be very surprised if it

wasn't such excellent testimony.

MR. JOSEPH: Mr. Knopf and I used to work together many years ago.

MS. ROBESON: Okay.

MR. JOSEPH: He's an old friend.

MS. ROBESON: Ms. Harris.

MS. HARRIS: Thank you.

CROSS-EXAMINATION

BY MS. HARRIS:

Q You noted that where you live you have a full view of the subject property?

A Yes.

Q The term that --

A Yes.

Q And you didn't weave into your testimony this point. Do you also have a full view of the Sandy, the 4825?

A Well, it's -- as you can see from that photograph, it's almost directly across the street from --

Q And do you also have a full view of the Highrise Edgemoor?

A Yes, we do.

Q Okay. And are you aware -- what's the height of the Sandy -- the 4825?

A I don't know.

Q Would you be surprised if you heard that the

zoning hearing, the zoning approval was approved for 65 feet?

A No.

Q And you sat here through the long, boring, cross-examination and so you're aware that the building, the subject building is 55 feet at the front?

A Yes.

Q Correct?

A Yes, but -- but it is, but it is a much more massive building.

MS. ROBESON: All right. You can answer her questions.

MR. JOSEPH: Okay.

MS. HARRIS: Okay.

MR. JOSEPH: All right.

MS. ROBESON: And make a note to yourself to raise that on -- you get another chance to add comments and things like that.

BY MS. HARRIS:

Q So and you, in fact, noted that the subject building was seven stories along Montgomery Lane, but as you --

A Yes.

Q -- as you're aware, there's a 12-foot setback along Montgomery -- in fact, it's only five stories along

Montgomery Lane, correct?
A I don't agree that a 12-foot setback would even be visible for somebody walking on the street. I don't think -- are you talking about setback or step back?
Q Step back, sorry. It's my term. It's a step back.
A That's the fact that the --
Q The upper-story --
A -- 6th and 7th floor --
Q -- step back is --
A Yeah. To me that's a minor change that does not have a significant impact. And that's what the Planning Board staff --
Q You must disagree with your neighbors who --
A -- too, so --
MR. ABRAMS: -- know that the step back, the potential step back along the Edgemoor buildings and the 15-foot step back was, in fact, significant and made those buildings --
MR. JOSEPH: Well, I --
MS. HARRIS: -- compatible?
MR. JOSEPH: I don't know, I don't know what other people -- I'm not familiar with their testimony. I very emphatically feel that a 12-foot setback is almost invisible from the street. I imagine that I will be able to see it on

the fourth floor in my house.
BY MS. HARRIS:
Q Well, let me show you the prospective. I think that would be helpful, because actually I don't think you were here during the days when those were presented. This view is taken from Arlington Road looking east.
A Okay.
Q That's not -- you can perceive the distinction in the depth of the building with the high, with the step back shown on Exhibit 72? And I know you noted that your eyes are getting bad, so if you need to get up closer --
A Is this -- is this from the street level? In other words, is --
Q It is taken from the street on the west side of Arlington Road.
A So this is the height that a person's head would be?
Q It is taken from approximately the vantage point of a person on the west side of the building.
MS. ROBESON: Well, wait, do we have that in evidence?
MS. HARRIS: I believe our architect testified to that.
MS. ROBESON: I think he said it was from a photograph, but I'm not sure he said --

MS. HARRIS: But how do you take a photograph if you're not on the street?
MR. ABRAMS: Get down on your knees.
MS. ROBESON: Anyway, okay.
MR. JOSEPH: When I, let me say this.
BY MS. HARRIS:
Q Okay.
A When I said it would be invisible from the street, I didn't mean from this, from across Arlington Road. I meant if you were walking on Montgomery Lane looking up, you would not --
Q Exactly.
A -- see much.
Q You're right. You wouldn't. You wouldn't see that. You -- that's just the point.
A No, it wouldn't look like --
Q You wouldn't see the step back --
A No.
MS. ROBESON: Is there a question there?
MS. HARRIS: Excuse me. Yes.
BY MS. HARRIS:
Q I believe if I could clarify what you just said, if you're walking along the north side of Montgomery Lane and you look up, you wouldn't see that at all?
A I don't think so. I think exactly the opposite.

I think you would see it and you wouldn't see a setback, you'd just see like a line and stuff of a different color. I don't think it makes much of a difference.
Q I refer you to Exhibit 80. What --
MS. ROBESON: Which exhibit --
MR. ABRAMS: What, what number?
MS. ROBESON: -- was that, Ms. Harris?
MS. HARRIS: Exhibit 80.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q This is a section showing you Montgomery Lane with the subject property on the left-hand side of the page and City Homes on the right. So these individuals, and this is to scale, are walking around the north side of Montgomery Lane. And you indicated that you, those individuals would be able to see the upper story step back?
A Well --
MS. ROBESON: Please, no talking in the --
MR. JOSEPH: -- perhaps -- I can't, I can't tell. What I would say is it doesn't make it look like a townhouse and it's supposed to look like a townhouse --
BY MS. HARRIS:
Q Okay.
A -- number one. And, number two, the drawings of City Homes are done in a way that you cannot see the roof

line features that I was just talking about that have an exceptionally pleasing -- they are very --
Q The question --
A -- articulated and --
Q Okay. That wasn't the question.
A -- a very pleasing view. So it's not a good --
MS. ROBESON: Right. But the question --
MR. JOSEPH: -- comparison.
MS. ROBESON: -- was the site line. So if you, I think you answered that.
BY MS. HARRIS:
Q Okay. So you mentioned that the Holladay project was approved to look like townhouses and this is an approved site, certified site plan from the Planning Board which, as we noted this morning, well, can you please identify on here what, where the entrances are on the street?
MS. ROBESON: And what exhibit is this?
MS. HARRIS: And, I'm sorry, this is Exhibit 90.
MR. KNOPF: Excuse me, have we had testify about this as to what --
MS. HARRIS: Yes.
MR. KNOPF: -- that is?
MS. HARRIS: He indicated that the Holladay project, unlike this project --
MR. KNOPF: No, I'm talking about from this

exhibit.
MS. HARRIS: Well, it's exhibit --
MR. KNOPF: I'm wondering who, if somebody identified --
MS. HARRIS: It's in the record. It's Exhibit 90 in the record. It's a certified site plan.
BY MS. HARRIS:
Q But is it -- what I'm trying to get at is it a report to show the streetscape --
A I would say --
MR. ABRAMS: There's no question.
MR. KNOPF: -- the facade?
MS. HARRIS: Wait.
MS. ROBESON: Hold on one second.
MR. KNOPF: And she's --
MS. ROBESON: What's the objection?
MR. KNOPF: There are lots of exhibits and renderings and so on that become part of the site plan and I'm trying to say have we had anybody identify this as one which is to show the features of the building along Montgomery Lane? I don't know what this was put in for. It could be just for height purposes or something.
MS. ROBESON: Well, it's in the record. Is it -- did you say it was a certified copy?
MS. HARRIS: Certified site plan as you can tell

from the stamp and the signature.
MS. ROBESON: So if you can tell from, it's a certified public record, so I'm going to allow you to testify from it and if you know based on examination of this, you can say so. If you don't, based on your examination of this, you can say that.
MR. JOSEPH: Well, I can't see enough detail in these drawings to identify what's going on.
BY MS. HARRIS:
Q Would it surprise you --
A It's --
Q -- if I told you that there's only one entrance on this property, that there are not individual entrances?
A Yes.
Q That would surprise you? And it may -- yes, okay. You can have it.
MR. ABRAMS: He's answered.
MS. ROBESON: You can have that conversation outside, yes.
BY MS. HARRIS:
Q And you did just note that your, that, you kind of note that your, that the City Homes property looks like townhouses? And I'm referring to Exhibit 106(g). And do the Highrise, does the Highrise Edgemoor look like townhouses?

A No.
Q And does 4825 and Montgomery Lane look like townhouses?
A It -- no.
Q Does 4901 Hampden Lane?
A No.
Q And does Hampden Lane, the other project?
A I don't know what project that is that you just referred to.
Q Hampden Lane is the project that was recently approved along the, in the northeast corner of Arlington Road and Montgomery Lane, does that look like --
A You're their counsel. I wouldn't expect it to look -- it doesn't look like townhouses.
Q Because I'm their counsel? The other thing you noted is that the sector plan recommends entrances along the first floor going, first floor?
A Yes.
Q How many -- can you approximate, since you live in the City Homes, how many steps it takes to get to the door on the cap units of the City Homes?
A Well, the City Homes I have to give an answer that is not simply a number. City Homes were built in two phases as you may know.
Q Yes.

A There are a total of five rows.
Q Okay.
A On two of the rows, the more recent two, the one that I live in is like four steps or something. And on older ones you have to go up half a story.
Q Yes, I think I counted 15 or 16 steps --
A Yes.
Q -- which would be not at the street level, unless you count the, well, well, the door to the shed.
A It's, it's true that that entrance is not at street level, but it is on the street. And when people --
Q That's correct, but --
A -- use those entrances --
Q -- my question was whether --
A -- they come out on the street.
Q -- they're at street level. Thank you. You noted -- were you aware, and I don't think you were -- did you attend one of the first meetings the applicant had with the City Homes?
A I attended a meeting.
Q It was in Mr. -- it wasn't the first one because the first one was -- it was the second or third one in Mr. Abrams's office.
A I don't remember.
Q Okay. So you may not -- would it be a surprise to

you that that time Mr. Abrams and members of the community verbally communicated to the applicant that they would like flat roofs on the subject property?
A I don't know what was said during the -- I wasn't at the meeting and I don't know what was said.
Q Or that it was so important that it was followed up in writing by Mr. Abrams to the applicant that they wanted flat roofs?
A Well, I'm not sure I -- I don't really understand the question because --
Q But you --
MS. ROBESON: Well, just --
MS. HARRIS: -- testified --
MS. ROBESON: -- a second. Just a second. You can answer if you know or just say you don't know. Ms. Harris, can you clarify which meetings you're talking about or --
MS. HARRIS: There are many. I would need to go back and look at my log and I don't have it available.
MS. ROBESON: Okay. Well, then ask your question again and -- but you can't ask her what the purpose of the question is.
MR. JOSEPH: Well, my, my --
MS. HARRIS: Well, I can actually, I can set it up, lay a foundation --

MR. JOSEPH: Ask the question again and --
MS. HARRIS: -- so he can understand it.
MR. JOSEPH: -- and if I have the same difficulty, I'll explain it.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q You testified that the project was out of compliance with one of the recommendations of the sector plan because we weren't providing pitch roofs and the other descriptive characteristics of the roofs, correct?
A Well, I did read off that, that trace, yes.
Q So I'm confused because in the applicant's attempt to be responsive to the community, there's a flat roof as was requested in writing.
MR. KNOPF: Just a minute. I'd like to please --
MS. ROBESON: Wait. Wait.
MR. KNOPF: -- preclude such testimony. I object.
MS. ROBESON: Yes, I'm not --
MS. HARRIS: Okay.
MS. ROBESON: -- going to let that --
BY MS. HARRIS:
Q Are you aware that the, that your counsel submitted in writing to the applicant that they wanted to see flat roofs on their property?
A I am not aware of that, but it doesn't change my

view.
Q Okay. Thank you.
A And I would --
MS. ROBESON: No, just wait for her --
MR. JOSEPH: -- explain something.
MS. ROBESON: -- to ask -- you can explain, you can explain in a minute.
BY MS. HARRIS:
Q I would like you to read page 7 of the sector plan and actually just the portion, VII, not 7. So this sentence where it says, "It should be noted." Read it out loud. I'm sorry.
A "It should be noted that master plan recommendations and guidelines are not intended to be specifically binding on subsequent actions, except in certain instances where an ordinance or regulation requires a specifically defined linkage to be established."
Q And are you also familiar that in the TS-R zone the ordinance requires substantial compliance with use and density, and only --
A No.
Q -- use and density? So would that not suggest that all of the other --
MR. ABRAMS: He answered the question; he's not familiar.

MS. ROBESON: Yes.
MR. ABRAMS: So how can you ask him a follow-up?
MS. ROBESON: Plus --
MS. HARRIS: For clarity.
MS. ROBESON: Because it's, and it's a legal issue too. I don't think we need --
MS. HARRIS: Okay.
MS. ROBESON: -- to cross-examine --
MS. HARRIS: Okay.
MS. ROBESON: -- on it.
BY MS. HARRIS:
Q You testified that the planning, well, did you after, I believe, did you attend the first public hearing at the Planning Board in December?
A Yes.
Q And did you re-listen to the transcript of that Planning Board hearing?
A No.
Q You did just testify, however, that the chair recommended a 30-foot setback?
A I thought she did, yes.
Q Could you potentially be confusing that with what a witness for the Highrise Edgemoor testified to?
A No, I, I remember a, the chair asked the other board members whether they would agree to a 30-foot setback

and there was, an objection may be a legal term, there was a question from one of the board members, "Where did you get the 30-foot number from?" And the chair said that the number had come from some expert. I remember that very, very well.
Q And so --
A And that was a board vote and the board out-voted her.
Q Right.
A She voted for it --
Q Right.
A -- and the others voted against her.
Q Well, did the chair vote for it or was she throwing it out there as the expert to test the waters so to speak?
A It sure sounded to me like she was for it.
MS. ROBESON: We can argue this all day.
MS. HARRIS: We don't need to.
MS. ROBESON: So we don't need to cross-examine.
BY MS. HARRIS:
Q Okay. On page 188 of the sector plan is the streetscape plan and you indicated that there are three mixed streets on, within the Bethesda sector plan area?
A Right.
Q And I believe you mentioned one near CVS. Can you

please identify that?
A I'm talking now --
Q Page 80, I'm sorry, 188.
A I'm talking now frankly from memory. This was a mixed street that existed before the sector plan. They added, as I recall, they added two, subject to being, to being corrected, of course, they added two and the one that sticks in my memory because it was so bizarre was on Bradley Boulevard at the, near the intersection with Arlington Road and nothing is shown on here, so maybe my memory is incorrect, but --
Q Are you familiar with the only other mixed street that --
A No.
Q -- that, are you familiar with the mixed street on Fairmont Avenue?
A No. I know that it's called Fairmont Avenue, but I --
Q Okay.
A -- don't know.
Q And are you familiar with the fact that the Planning Board just approved 170-foot tall building on that mixed street?
MR. ABRAMS: Objection.
MR. JOSEPH: Is it allowed to say --

MS. ROBESON: Yes.
MR. JOSEPH: -- so what?
MR. ABRAMS: I apologize.
MS. HARRIS: Okay.
MS. ROBESON: That's Fairmont Avenue, which is different from --
MS. HARRIS: But the witness was trying to make --
MS. ROBESON: I know. I understood. He didn't know that there --
MS. HARRIS: Okay. One final question --
MS. ROBESON: -- were --
BY MS. HARRIS:
Q You noticed that the importance of the mixed street, of -- in discussing mixed streets, you noted the importance of pedestrian, emphasis on pedestrians?
A Yes.
Q Can you please on this Exhibit 40, can you please count for me the number of pedestrians on that?
A Well, I don't see -- that might, is that a gardener on the left? I can't see well enough from here.
Q Someone with a take home stuff. So --
A I can't --
Q -- pick your occupation.
A I don't see any.
Q Okay. Thank you.

MS. HARRIS: That concludes my cross-examination.
MS. ROBESON: Okay.
MR. ABRAMS: No further questions.
MS. ROBESON: Mr. Knopf?
MR. KNOPF: Yes.
MS. ROBESON: Oh, I can say, can you, yes, you can talk to him, but you had a comment about the flat roof.
MR. JOSEPH: Right.
MS. ROBESON: I wrote down explain flat roof.
MR. JOSEPH: Right.
MS. ROBESON: Okay.
MR. JOSEPH: My answer to that is that the list of, in the sector plan of possible roof details doesn't say that you have to have all of them. It says that you have to work on the roofs to have turrets and things of that nature. Some of those could be with a flat roof. The point is to use architectural details to reduce the bulk of the building. Now that can be in, on the City Homes houses. The use a steeply pitched roof as one of the details and if we ask for a flat roof, that would have been because we didn't want the extra height, but there are still plenty of roof architectural steps that could be taken to bring about that goal that the sector plan is seeking. Therefore, it is not inconsistent with that to say we'd like to have a flat roof.

MS. ROBESON: I see. I see. Mr. -- anything else you'd like to say?
MR. JOSEPH: That's too wide open. I'll --
MS. ROBESON: Okay. All right.
MR. JOSEPH: I'm not going to --
MS. ROBESON: Mr. Knopf?
MR. KNOPF: Yes, I have a couple, just a couple things.

REDIRECT EXAMINATION

BY MR. KNOPF:

Q Just so you don't lose any sleep tonight, refer to page 189 of the sector plan. You were saying you weren't sure where you got the idea of the mixed street behind CVS pharmacy?

A Thank you very much. Yes, there is a, there are four bullets near the top of the page. The bottom bullet says mixed streets and the last sentence in that bullet says --

Q You know it's nice to have a friend?

A , Bethesda has only one mixed street, a private driveway serving the office development behind CVS pharmacy on Arlington. So I did remember it is a very odd, little area because there's a lot of cars that move through there, but there's also a lot of stores that have like pedestrian frontage and the cars and the pedestrians are mixed.

MS. ROBESON: Okay.
MR. JOSEPH: That's where that -- there's an Apple McIntosh store there, not the Apple store, but another one that I used to go to and you walk among the cars to get there. It's very interesting.
MS. ROBESON: Okay.
MR. KNOPF: Thank you. Just --
MR. JOSEPH: Thank you.
MR. KNOPF: -- a quick question. Okay. Could we have Exhibit 72 put up there? That was the one where you were asked questions about what, whether the 6th, the 7th floor, the 12-foot setbacks would be meaningful to you. So you had a -- that was the view from the road.
MR. ABRAMS: With all the little people on the side.
MR. KNOPF: With the birds flying on top, I believe.
MS. HARRIS: Wait, that's two different --
MR. KNOPF: No, I think that, oh, it's a different set of --
MS. HARRIS: Well --
MR. KNOPF: I'll take both.
MS. HARRIS: Which one do you want?
MR. KNOPF: I'll take both, both. I have 72.
MS. HARRIS: Well, I don't have both at the same

time --
MR. KNOPF: Whichever --
MS. HARRIS: -- because they're both on the same one.
MR. KNOPF: That's --
MS. HARRIS: That one?
MR. KNOPF: Yes, let me -- that's fine.
MS. ROBESON: Which number is that?
MS. HARRIS: 72.
MS. ROBESON: Okay.
BY MR. KNOPF:

Q I just wanted you to explain a little bit more, first of all, let me clarify something. You're unit, you said, faces Montgomery Lane?

A Yes.

Q And you have windows that, from which you look out on Montgomery Lane and you can see the subject building?

A Yes.

Q And are, is your window just --

A Not yet.

Q Well, is your window on just one level or do you have more than one window?

A Well, we have -- those houses have four levels. On the first level is a garage and a room and that's, and that's the room that I mentioned. There's masonry on the

entry staircase that I think would block the view. But on the other three floors, I went around and checked one day, you could see that.
Q MR. KNOPF: Okay. And when you were referring to -- you didn't think it would make a, make a difference, I'm not trying to put words in your mouth, but the setback of the 12 feet --
A Right.
Q -- on the six --
MS. ROBESON: The step back?
BY MR. KNOPF:
Q Step, excuse me, step back on the 6th and 7th floors, first of all, you had some questions about equivalent step backs on buildings on Arlington. I believe she asked you some questions about that.
A Well, I don't -- I think I said I don't know anything about it.
Q Right. But I wanted to ask you do you have a -- would you have a different view for the equivalent set back if it was on the first or second floor as compared to something on the 6th or 7th floor in terms of the impact that they have?
A Oh, sure. Sure, because the angle is different and it's much closer to the human scale. The lower it gets, the closer to a human scale it is and so the lower it is,

the more visible it becomes, yeah.
Q Now as you walk down Montgomery Lane coming from the east, walking toward the subject property, and you're facing as you approach, you're facing the building and you see it along West Way, the portion on West Way. What's your understanding of the effect that the 12-foot setback would have on that? Do you understand whether it's set back 12 feet on West Way or not, West Way, Lane? Well, I think you can use the one -- you can use the one on the left that's already up. Let me just ask her to get them. Your understanding -- well, why don't you come over here? Okay. let's do that. According to the building, what's your understanding of where they're proposing to put the 12-foot setback, step back? Is it along West Way Lane or just along Montgomery Lane?
A I have -- it looks like it's along both streets here, but I, but I -- my real concern has always been with Montgomery Lane because that's the street I live on and that's the one that has this mixed street designation and that's where the townhouse-like frontage is supposed to be.
Q And as you walk along West Lane, along, excuse me, Montgomery Lane from the east going toward the west, is it your testimony that the 12-foot setback would not be meaningful to you as you saw --
A Well, you wouldn't see it until, until you got

past this --
Q Is that --
A -- building here.
Q Right.
A So I don't think it would be particularly significant.
Q Okay.
A That's just --
Q And do you have an opinion as to whether you would see the 6th and 7th floors from your windows from your townhouse?
A Well, they are -- since we're, I'm thinking particularly of my wife's office on the 4th floor. I think from there it would be visible. So if I wanted to feel good about it, I could go in and go upstairs and look out of that window I guess.
MR. KNOPF: I have no further questions.
MS. ROBESON: Okay. Ms. Harris?
MS. HARRIS: No further questions.
MS. ROBESON: Okay. Thank you, Mr. Joseph.
MR. JOSEPH: Thank you.
MS. ROBESON: Your next witness.
MR. ABRAMS: Mr. Lawch, yes.
MS. HARRIS: May we take a -- your testimony is going to be fairly lengthy, correct? Can we take a two

minute --
MR. LAWCH: Yes.
MS. HARRIS: -- break?
MR. LAWCH: And would it be all right --
MS. ROBESON: Well, let's --
MR. LAWCH: -- if I sat here because I am going to refer to --
MS. ROBESON: Sure. There's a chair at the end and we'll take a 10 minute break. I'm feeling generous because it's only 10 after 3:00, but we do want to get -- I don't know the gentleman's name. So let's take a 10 minute break and then we'll try to go straight through and finish, all right?
MR. ABRAMS: Good.
(Recess)
MS. ROBESON: Is everyone ready?
MS. HARRIS: Yes.
MS. ROBESON: Mr. Frankel (phonetic sp.), please raise your right hand. Do you -- oh.
MR. ABRAMS: Lawch.
MS. ROBESON: Lawch? I'm sorry.
MR. LAWCH: That's all right.
MS. ROBESON: I don't know where I got that.
(Witness sworn.)
MS. ROBESON: Thank you.

DIRECT EXAMINATION

BY MR. ABRAMS:

Q Mr. Lawch, state for the record your residence address, please.

A It is 4810 Montgomery Lane.

Q And how long have you resided there?

A Since 2007.

Q Okay. Going to Exhibit 106(f), which is the aerial photograph behind you, could you point out to the Examiner where your residence is located?

A My residence is the, on the east-most side, three in, right here.

MS. ROBESON: Okay. So it's the east-most row of the City Homes townhouses, the third unit from Montgomery Lane. Okay.

MR. LAWCH: Yes.

MS. ROBESON: Thank you.

BY MR. ABRAMS:

Q And are you an officer with the City Homes association?

A I am president of City Homes.

Q Okay. And have you been active on behalf of City Homes in this application and in other applications for development approval?

A Yes.

Q Okay. Now has -- do you have any knowledge, how many units are in City Homes?

A 29.

Q And of the 29 units, do you know how many have taken an active position one way or the other on this application?

A Yeah. We have 29 out of 29 of our residents have written letters to both the Planning Board and to Madam Examiner.

Q Okay. Now could you give the Examiner a little bit of your background of professionally, educationally?

A Sure. I was originally trained as a lawyer, didn't practice very long.

MS. ROBESON: Why?

MR. LAWCH: I wasn't disbarred or anything. I became a real estate investment banker and then in the last 18 years I spent at Fannie Mae and I ran their multi-family division which provides affordable housing financing.

BY MR. ABRAMS:

Q Okay. Did you or have you attended all the hearings before the Hearing Examiner?

A Yes, I have. I might have missed a couple hours here and there, but basically yes.

Q How about the two meetings before the Planning Board?

A Yes.

Q Okay. Have you reviewed basically all the exhibits which have been offered in evidence in this case?

A Yes.

Q Now --

A Whether I remember them is another story.

Q In terms of -- are you familiar with this application first of all?

A Yes.

Q Okay. And are you familiar with the sector plan?

A Yes, I am.

Q '94 sector plan? And are you familiar with the Holladay Corporation approved development plan for this project?

A I don't know if it was a corporation, but what is referred to as the Holladay --

Q Project.

A -- project, I am familiar.

Q Okay. Now with all this background information, have you formed any opinions and conclusions with respect to this application?

A I have many conclusions about this application.

Q MR. ABRAMS: Okay. Would you begin to relate those conclusions to the Examiner please?

A I can sort of give you an over-arching one, but I

think probably my testimony will get into that.

Q Okay. And please get into your testimony.

A Okay. Just, yes, two housekeeping matters before I start that don't really fit into my application. Could I, could somebody help me with the exhibits? I think I know the numbers, but damned if I can find -- so I'm looking for Exhibit 70. Oh, it's right here. Sorry. I'm sorry. It's Exhibit --

MS. HARRIS: 73?

MR. LAWCH: I'm sorry, it's Exhibit 40, sorry.

MS. ROBESON: Okay. That's fine.

MR. LAWCH: Okay?

MR. ABRAMS: No, that's --

MR. LAWCH: So Ms. Harris had interviews, had crossed one of our witnesses with regard to this exhibit which we prepared and I was part of that preparation. And I think the inference was that we had somehow inflated, elongated this presentation. All I can tell you is that the way this was prepared was that we took several pieces of Xerox paper, either from the sector plan or from some of the Holladay documents. One of our residents was nice enough to take those documents to a --

BY MR. ABRAMS:

Q Board?

A Yes, a --

MS. HARRIS: We --
MR. LAWCH: Yeah and --
MS. ROBESON: Oh, wait, I couldn't --
MR. LAWCH: A copy center --
MS. ROBESON: Oh.
MR. LAWCH: -- that prepares, you know, boards and things like this and simply gave them those documents and they did what they did.
MS. ROBESON: Okay.
MR. LAWCH: There was no intention to elongate them. Second housekeeping matter was -- let me, let me try and clarify 4825 for you because --
MS. ROBESON: That's 4825 West Lane?
MR. LAWCH: Yes, Montgomery Lane.
MS. ROBESON: Montgomery Lane.
MR. LAWCH: There's a couple of things that come out of, I believe it's the Exhibits 116 through 118 and that's the site plan submission of 4825 to, I guess it's the Planning Board, correct? And from that document there are some things that come out very clearly. Well, let me start out with the penthouse. There is a, there are two significant protrusions from the roof. One is a --
MS. HARRIS: Excuse me. Can you move a little bit so I can see --
MR. LAWCH: Sure.

MS. HARRIS: -- where you're pointing to? Thank you.
MR. LAWCH: One is for the top of the elevators and one is a hatch. And then there are some mechanical, there is some mechanical equipment on the roof. But I have, and we can enter into evidence, I got an email from Mimi Kress, who is one of the principles of Sandy Spring, and what she indicated was that the elevator protrusion would be no more than three feet and you remember there's a 4-foot parapet here and that there was a hatch that was literally a hatch that was not more than de minimus amount above the roof.
So the question as to whether there is a penthouse, there are protrusions that are at most three feet and none of them appear above the level of the parapet. The second thing that is clear in the site plan is that the building itself is 60 feet. The parapet is 4-foot. But I think some of the confusion with regard to this building is they chose to start the platform of the building at 1.7 feet above what their maximum elevation, starting point is.
So if from that starting point there is 60 plus four plus 1.7 feet, so you could say that in addition to the 60 and four, there's another 1.7, but that 1.7 is land. And so I don't know quite how to categorize that, but I can say definitively that what she plans to build there is a 60-foot

building with a 4-foot parapet and then there's some question as to the level that they started the building.
BY MR. ABRAMS:
Q Mr. Lawch, from Exhibit 106(g), I show you the No. 3 representation on that board. Is that the 4825?
A That is 4825.
Q Does this help you at all in explaining to the Examiner --
A No, just that, that probably that 1.4 is because they have to choose a maximum elevation starting point. I don't know quite where that is, but they decided because of the nature of the construction, they're doing it on pilings, they're not going down in any way. Probably the pilings lifted that building up slightly beyond the maximum point which gets you the 1.7 feet.
MS. ROBESON: Okay. So you're saying it's 1.7 feet from --
MR. LAWCH: Above their maximum elevation --
MS. ROBESON: Okay.
MR. LAWCH: -- measuring point.
MS. ROBESON: All right.
MR. LAWCH: And then building is 60 plus four.
MS. ROBESON: Okay.
MR. LAWCH: Thank you. Okay. So as I have previously testified, I am the president of the association

and probably because no one else wanted the job. And in a way it's a thankless job, but I took it because of all of the construction activity and my feeling as a homeowner was that I didn't want to let what was going on around the neighborhood dictate, dictate the environment in which we were going to live. So I felt it was important to take that on and some of the responsibilities that we talk on were things like negotiating a construction agreement with 4825. We're also in the middle of working with 4901 Hampden Lane on both the construction agreement and in order for them to build efficiently, they need a tieback and a crane agreement from us. A tieback agreement, I just learned this myself, basically allows 4901 to stick rods under our property in order to give their foundations more support.
We're willing to do that. We're willing to cooperate with 4901. We think it makes a, it will help the construction end quicker. It will make for a safer environment for everybody on the street. We're okay doing that. We didn't originally like 4901, but now that it is what it is, we're cooperating with them going forward.
I also -- Mr. Abrams also elicited from me the fact that 100 percent of the City Homes residents wrote letters to both you and the Planning Board. And in the Hearing Examiner's report on the Holladay application, that's Exhibit 101(d) on page 5, I actually quoted from a

letter submitted by Ms. Harris and I think this is, part of this has been read by one of our attorneys. And what it says is the applicant's responsiveness to the surrounding community to assess that the project is compatible with the existing development is perhaps best illustrated by the fact that only three residents testified at the public hearing and these individuals submitted limited comments.

The public hearings on West Lane, on the other hand, had many participants in opposition, not just three, and the hearings have been quite contentious. I think you've seen some of that. You have two association groups, each with separate counsel.

MS. HARRIS: Objection. When we tried to get this information in during cross-examination, you noted that the level of -- the issue of cooperation was essentially irrelevant and the witness is now going on and on about that very same subject.

MS. ROBESON: Yes. You do -- I'm going to give you the opportunity to address it at length in rebuttal. I'm going to let it in for the weight it deserves and I'm going to allow you to cross-examine him on it definitely because that's the main point of his testimony and address it on rebuttal.

MS. HARRIS: Okay.

MR. LAWCH: Okay. So the applicant's

responsiveness to the surrounding community, I'm sorry, so we think that's a pretty good indication as to, quote, "The applicant's responsiveness to the surrounding community." In addition to the responsive, or the lack of responsibility of the applicant, residents of City Homes were particularly disturbed by SJG's supposed amendment that in reality was really quite a different development plan than the Holladay plan.

Now to people in the land use community, it's one thing, but I think it goes to the state-of-mind of our homeowners who find it hard to understand how a developer can buy a parcel and associated development rights and then completely ignore the previously approved development plan and the binding elements on those parcels. Now it may or may not be the law, but to our residents it's very hard to comprehend and understand.

By the time SGJ filed its amendment, the future development of land on Montgomery Lane is pretty much set -- this is very convenient. So what we have here is already approved before SJG filed its amendment was 4825 was Arlington --

MS. ROBESON: Edgemoor at Arlington.

MR. LAWCH: Edgemoor -- thank you -- at Arlington. The Hampden Lane property at 4901. So we have four already approved projects. Holladay, obviously, was also approved

and then, so where we were just prior to the application was what we thought was a completely settled arena. SJG then came along and completely changed what we think is the dynamics of Montgomery Lane.

Further comment is that with the exception of this project, but Mr. Rothstein --

MS. ROBESON: Wait, which project is that?

MR. LAWCH: The --

MS. ROBESON: Edgemoor at Arlington North?

MR. LAWCH: Yes. All of these projects are hot. The developers are apparently ready to go as soon as they can with this development, so this is not something where the developers are sort of warehousing these properties. We assume to have four very active development sites around the perimeter of 4810, or all of City Homes.

You've heard us testify before, Madam Examiner, that many of our residents have purchased these units at City Homes specifically relying not only on the sector plan's vision of Montgomery Lane, but also on the implementation of the sector plan. And, again, as we look at it as lay people, and I think Daniel's testimony, although he is an attorney, is pretty much, pretty much reflects our constituency in that the sector plan when you read it is very straightforward with regard to how Montgomery Lane is supposed to be developed and the fact

that it's supposed to provide townhouse communities, it's three to six stories, et cetera, et cetera.

I'm laying out all of this background, Madam Examiner, not to whine, but rather to give you a better appreciation of why we are here and a better understanding of how important this is to City Homes. Now when each of these five projects were approved, they were all being to be compatible with the sector plan and that's important because as I bring in further evidence as I go forward, it's important to realize that the projects that were approved and proceeded the FJG project were all deemed to be in compliance with the sector plan and mostly importantly they were also compatible with each other.

So, for example, when the Holladay project was approved, it specifically said, and I'm now in Exhibit 101(c), it specifically stated, quote, "That the Holladay project was," I'm sorry, quote, "Composed of a 4-story and 6-story wings," unquote and the 4-story portion obviously being on Montgomery Lane.

MR. ABRAMS: Which exhibit are you looking at?

MR. LAWCH: I was just looking for the Montgomery, the Holladay --

MS. HARRIS: Do we have them?

MR. LAWCH: Yeah. So the Holladay project started with a 4-story portion and then went back and then,

quote, "Was consistent with development across the street and the reference there is to City Homes which reflects townhouses and low-rise structures." The Council also indicated that the northern portion of the Holladay project with it's 65-foot height was, quote, "Appropriate for the area of Bethesda with step down and building heights toward the Arlington Road corridor. Setbacks and other amenities will alleviate any compatibility problems with the neighbors," unquote.

If you track the staff and Hearing Examiner reports and City, County Council resolutions on all the previous projects, they all triangulate into each other and show approvals referenced with compatibility to each other.

BY MR. ABRAMS:

Q Now you put up a board. Is that the board which you were looking for?

A Well, that board -- it's not worth spending time. Don't worry about it. In the past, residents of City Homes have had to intervene in the development process, so this is not the first time for us at these hearings. It is the first time for me. But other residents have appeared before the land use, the Planning Board and the Council before, but on the other hand we have been supportive of the Holladay project outright. We have been supportive of 4825 Montgomery Lane outright. And even we've been cooperating

with 4901 Hampden Lane, although at times we certainly have, we took part in the testimony or some of us did in helping to reverse the height decision from 100 to 70 feet.

You had, Madam Examiner, you had asked Ms. Turnbull about why we supported 4825 and if somebody could find Exhibit 71? I was looking for it, but it was helpless. What 71 shows is how compatible the exterior of 4825 is to --

Q That's the streetscape?

A Yes, that's correct. So the only point, I'm not going to get into the differences right now, but you can see the masonry, you can see the light. You see how the building is at least trying to fit in. Dan had indicated that it doesn't look like a townhouse, no, not exactly, but you can see from the masonry, the windows, the balcony work that there's an attempt by the developer to fit into existing uses.

Also, the, that project is small in scale, 2.5 FAR, 65 maximum in height. And I as I just explained, it's really 40 plus, sorry, 60 plus four. We also had a cooperative developer who signed a construction agreement with us, was forthcoming with documents. It also replaces a run-down eyesore in the neighborhood and the developer was limited in what they could do and for them to build any sort of building that would be advantageous to the neighborhood

as a whole, you had to cut them some slack. And, finally, we had bigger fish to fry, quite frankly and that would be SJG.

So in addition to what I had just referenced above, we have had several, what I would describe as unproductive meetings where our association attended with our counsel and with the applicant and its counsel. During those meetings, and it is my opinion and I think you heard the opinion of some of our other homeowners, that the applicant had little, if any, interest in making any of our suggested changes and even more disturbing had even less concern for the neighborhood or its residents and I will explain that by certain specific facts in a moment.

The association's recommended changes which are similar to the ones we're advocating today were certainly dismissed when we met with them and to date the only concessions that SJG have made have been reluctantly made at the request of the Planning Board and its staff and have been willfully inadequate. There is no attempt really at all whenever they decided to make any of the changes that I am sure Ms. Harris will cross-examine me on, there was no attempt to come back to us and say, gee, is a 9-foot setback adequate or is a 12-foot setback? It was done and presented to us as a fete comple. I do need Exhibit 71.

MS. HARRIS: It's right there.

MR. LAWCH: There we go. Thank you. After, in response to the Planning Board staff, the applicant had originally indicated no setback. So the first plan with a, submitted had, I'm sorry, no step down at the top. Then the applicant first authored a 9-foot setback. And for some reason, I don't know why, that nine came into a 12, I guess the Planning Board pushed back and said you can't see a nine at all, I can't see the 12, but you can see here and I don't know if that is a 9-foot setback or 12-foot setback, but this is their perspective and this is what somebody sees in this building as you come up walking towards the library or westward, this is what you see of that setback. Not a very dramatic setback when you compare the bulk and height of that building.

So, again, at the request of the Planning Board, the applicant agreed to provide an internal bay for delivery trucks which is fine, but and was one of our recommendations, but again a little late, a little smaller than we want because it doesn't accommodate moving vans and other large trucks and, again, without any sort of consolation with, conversation with us. The applicant also cut out an approximate 600 square foot of semi-circular, of a semi-circular portion of the building on the corner of Montgomery Lane, however, even that improvement, and I do think it's an improvement, came at a price. The Planning

Board's original instruction to the applicant were to, quote, "Meet the public use space requirement for the project in the front of the building along Montgomery Lane and West Lane." We were excited when the Planning Board gave those instructions to the applicant because we thought we were going to make progress and that a major portion of what is now the much aligned 15-foot strip in the back of the, of the applicant's property --

MS. ROBESON: On the north side?

MR. LAWCH: -- on the north side was going to be put back onto Montgomery Lane where we think the public would actually use it and that City Homes might actually get some relief from the building's bulk and height. Instead, the applicant reduced the amount of public space and created the cut-out.

BY MR. ABRAMS:

Q Let me stop you there. Put your finger where you want to continue because I want to ask a couple of questions. First of all, was it the association's, community association's intent when the requested 15 feet wanted public use space to the north of the building was requested to be put in the front of the building along Montgomery Lane, was it the intent of the community association that that 15-foot space be reduced to any smaller size or maintained at 15 feet as a separation at the

Villages of Bethesda?

A I'm not quite sure of your -- I think what we wanted was certainly some sort of setback in the back. We weren't demanding necessarily 15 feet, but we were suggesting that something be done up front and we also felt that there was no reason it had to be a win for us and a lose for VOB, Villages of Bethesda. It could very well have come out of the mass of the building itself or the footprint of the building itself since we're arguing for a reduction in mass of the building, there's no reason why they can't have their 15 feet and we can have some manageable setback of the building on the south side or on Montgomery Lane.

Q So you aren't advocating any necessary reduction in the setback on the north side and possibly whatever was transferred to be transferred to the park?

A I think to be fair we figured something would come from here and perhaps something would come from the size of the building.

Q Which would have meant either the front or one of the sides of the building would be compressed slightly?

A Yes.

Q Okay. Also, before you start again --

A No, it didn't necessary mean the footprint, but somehow the total usable square footage to build would somehow be reduced.

Q Okay. Now when you were made aware of the plan with the scalloped corner and it notes on the plan that a reduction in public use open space from 14 percent from the old plan to 10 percent on the current plan, did you make any calculations as to whether that 14 percent was somehow recaptured along the front within the circular area?

A Well, again, we were not consulted on, gee, is this an idea that you would like? We were presented with this at a hearing, okay, and we scrambled to find, you know, well, where did they take the square footage from? You know, where did this come from? You've heard testimony that it's a balloon and you squeeze it one place and it goes somewhere else when we were trying to find out where it went.

Q And how much it was?

A And how much it was.

Q Okay. Is this a copy of the computations which you prepared?

A Yes.

MS. ROBESON: Wait, is this in the record?

MS. HARRIS: No.

MR. LAWCH: Yes.

MR. ABRAMS: This is not in the record, but it's the same thing as Mr. Irish standing up there and doing his own computations on a sheet of paper that he did the other

day.

MS. ROBESON: Marking it, you mean marking the exhibit?

MR. ABRAMS: Yeah. I mean I could put a sheet of paper up on the board and he could do the same thing --

MR. LAWCH: I can also --

MR. ABRAMS: -- and take the time to do it.

MR. LAWCH: It's also math. I can do it if you give me the numbers.

MS. ROBESON: Okay.

MR. LAWCH: I don't even need this if --

MS. ROBESON: Well, you can refer to it for your testimony, but it doesn't come in.

MR. ABRAMS: Go ahead.

MR. LAWCH: Do you have a question outstanding?

MR. ABRAMS: Well, the question is --

MR. LAWCH: I'm happy to keep talking, but --

MR. LAWCH: -- did you previously consider for public use space --

MS. ROBESON: Hold on one second.

MR. LAWCH: I'm very sorry. I thought I turned this off. That's embarrassing.

MS. ROBESON: Okay. Go ahead.

BY MR. ABRAMS:

Q What was the measurement of the area, the public

use space in the rear?
A The area of the -- so it's a 15-foot strip and if you are conservatively look at it, it's at least 80, but it's actually longer than 80. So just for the sake of being, keeping it simple, I took 80 feet, multiplied it by 15 feet. That total area was about 1,200 square foot. It is more, but --
Q This was the area directly behind the back wall of the building, is that correct?
A To the north, yes.
Q All right. Now in adding the area to the semi-circular portion to the front of this project, how many square feet did you calculate that to be?
A So in this particular example I used 27.5 feet. It may have been 27.5 feet at some point or maybe my ruler was off, but it was testified to, I think, by the architect that that radius is 28 feet. So if you use your old geometry of pi R squared, okay, and the R is he radius, you get somewhere around 2,400 square foot. In this case I had 2,375 because I had a radius of 27.5. That's the whole circle. One quarter of that, which would be the scallop, would be around 519. If you use 28 feet, round it up to somewhere around 600, which is the number I used in my presentation.
Q Okay. Did you exempt out from that the area that

had been previously part of the 10-foot setback in front of the now circular area?
A I took out 28, I -- it does not, that number would not include the public area and it also would have had a little reduction. The old plan had this little cut-out just at the edge of the property. So the -- where the north, the east face of the building and the south face met, there was a little something cut out and I probably reduced it by -- I don't think that was more than 70 or 75 feet.
Q And what was the square footage that you determined to be added by the applicant in this front circular area over and above where it is accepting what had previously been part of the public use space to begin with in the original plan?
A Well, the whole, the net of the public space after the semicircle actually went down. So the total public space was 14 percent to start with, which included some of the, well, it included the 15 feet in the back, became 10 percent after the cut-out, but excluded the 15 feet in the back.
Q Did you come to a determination as to what we call the missing space from the rear area which was transferred supposedly to the front area as part of the public use space?
A There were too many moving pieces for me because

at the same time there were too many -- no.
Q When you say moving pieces, what are you talking about?
A Well, there were, there were changes on the edge of the building. There were changes on the front of the building. There was the scallop. This was taken out, that was, so you've exceeded my pay grade.
MS. HARRIS: Objection. And I would like to note, can we just stipulate that the public use space was, went from 14 percent to 10 percent. I think that's been well-established throughout the course of the seven days of hearings.
MS. ROBESON: Mr. Abrams.
MR. ABRAMS: Well, yes, we could stipulate to that. The question is what happened to the 4 percent? Where did it go? Did it go inside the building?
MS. ROBESON: No. She's saying the 4 percent isn't there any more. Is that what you're saying?
MS. HARRIS: I'm saying that the 4 percent, which makes up the 15, the strip in the back is not classified as public use space. It's the exact same thing we've been saying the entire time. I just feel that, this is --
MS. ROBESON: Yes, I tend to agree because I mean they've admitted they've reduced the public use space. I think the one question that was remaining was why did GFA,

if the footprint is 87 square feet smaller, you know, why didn't the GFA change?
MR. ABRAMS: Right.
MS. ROBESON: But I don't think we need to go into the calculations of the differences between the spaces.
BY MR. ABRAMS:
Q Did you also receive notification of a hearing currently on site plan for 4825 Montgomery Lane?
A I did.
Q Okay. And was a copy of the site plan submitted along with that notification?
A Yes.
Q Okay. Was that the same notification and site plan which has been submitted in evidence in this case?
A It is.
Q I'm sorry. Please go on with your testimony. I told you to stop at a specific point, so --
MS. ROBESON: Well, wait a minute. I think I -- we, I ruled that you were not going to go into any more of the measurements as far as the difference between the old plan --
MR. LAWCH: I'm not doing any more, I'm not doing any measurements.
MS. ROBESON: Oh, I just, I wasn't sure what --
MR. LAWCH: It was kind of a non sequitor, but --

MS. ROBESON: Oh, well, go ahead.
MR. LAWCH: Okay. So I think we were talking about the applicant and what it has and hasn't done and we were talking about the 15-foot public setback and that's where we got to the scallop, that we were hoping -- I'm like I'm trying to get into this thing too now -- we were hoping to get some square footage, some setback of the building. Instead, we got a scallop.
With regard to the scallop, and how I need Exhibit 76, which is the streetscape and the -- it's the Audi picture.
MS. ROBESON: The convertible?
MR. ABRAMS: Yes.
MR. LAWCH: Our team has made a lot about the pocket park here and I just want to spend a quick minute on it and only want to say a couple of things. One is that we all in Bethesda live with these pocket parks and in many cases they are failed pocket parks for a variety of reasons and for example here you see a pocket park where if you come in from here, you have to either climb steps or come all the way around. And then let's say you -- it's a nice, sunny day and you want to sit down and read a book. If you look at this supposed park, look at the width of this seat which is not really a seat, it's a wall. If I want to sort of sit and read a book, I sure as heck don't want to sit on a hard,

cold bench without any sort of back support.
It's a very uninviting environment for anybody coming from the street. It's more ornamental and oriented towards the occupants than it would ever be for people walking the street. Personally, we like good, old benches. And if you look at on City Homes, we have two specific public areas which are not large by any means, but all have benches and all have shades and are all used by the public and are absolutely delightful spaces for people to use and add to the streetscape environment, not detract from it.
The final concessions that SJG made and please, Ms. Harris, I'm not saying these are -- I've been exhausted of the concessions that you've made, these are illustrative -- was a binding element restricting deliveries to the service entrance for the rear of the building. This will certainly help reduce the, what I'll consider the traffic mayhem that will occur at Montgomery and West Lane. But even the binding element is poorly drafted and probably needs rewording to make it crystal clear that it's the applicant's legal responsibility to enforce the regulations and not just post regulations. If they just post regulations, they will be ignored. They really needed to be enforceable and the neighborhood needs to be able to hold the applicant accountable, that they will indeed be enforced.

So the City Homes residents feel at this point that every change is a battle with concessions given grudgingly and often in the way that minimizes their value. So if the applicant really had concern for the neighborhood at all, why would they have initially put most of the useful public space in the back of the project on the north side in an alleyway with a brick wall? The suggestion that ultimately a cut through might be created to Arlington creating a useful urban feature also in my mind questions their sincerity and their willingness to cooperate.
MS. ROBESON: Okay. Let me stop you for just a second. My job is, it sounds as if there's been friction, right or wrong, between the developer and you or City Homes, but my job is to evaluate this based on the zoning standards, the standards for approval of the rezoning. So to the extent we can focus on that, that would be better. Ms. Harris, let me explain also my prior ruling. You're entitled to reasonable cross-examination. In my mind, the conflicts between the developer and -- were tangential to his testimony and the prior witness's testimony and in the interest of moving on or managing the hearing and moving on, I stopped you. This is clearly not the case here. So I'm going to let you cross-examine.
But I will tell you to the extent that you can focus on the standards for approval --

MR. ABRAMS: I am getting there.
MS. ROBESON: Okay.
MR. ABRAMS: I am trying to patiently establish a foundation.
MS. ROBESON: You're setting the seat?
MR. ABRAMS: I am.
MS. ROBESON: Okay.
MR. ABRAMS: And I also think --
MS. ROBESON: So when you set the scene --
MR. ABRAMS: -- it goes, I'm sorry.
MS. ROBESON: Okay. Go ahead. When you --
MR. ABRAMS: I think it also goes to impeachment. Since you're also hearing testimony from the applicant that they're going to put in all these great MPDUs and the small units and are really pro-neighborhood and total affordable housing, I think that impeachment is perfectly appropriate under these circumstances.
MS. ROBESON: Well, you're not impeaching -- okay. In the context of this hearing, they're going -- I have to base my decision on the binding elements and what's going, you know, what is binding in the application. So they will be required, whatever happens, to put in the 50 percent MPDU's, you know? If there's other representations relating to this project that are technically binding, you know, perhaps that's relevant, but I think it's far better to

focus on whether you think this project meets the zoning standards, okay?

MR. ABRAMS: Be there in a moment.

MS. ROBESON: Okay.

MR. LAWCH: Let me say one other thing about my current line of testimony. If the applicant had any concern, real concern for the neighborhood -- and by the way, I think you mentioned one of the other reasons why I'm taking this line of attack and that is I think we've got to be very sure that anything that you do ultimately agree on be in binding elements because what we found is it is very difficult for the association to monitor the activities of the applicant.

MS. ROBESON: I understand.

MR. LAWCH: Thank you. Okay. So one other thing, the -- with regard to the building step down, first it was, first, the applicant delivered an amendment that had no step down. Then it was nine and then it was 12. Then the applicant had its architect testify that the step down is now a critical feature which makes the project compatible with the existing uses.

Okay. Now let me find -- let me get rid of some of the other stuff and okay. Okay. The applicant's witnesses have made a big deal out of differentiating the old Holladay deal from the West Lane amendment. They've

argued that --

MS. ROBESON: Thank you. Can you keep your conversations -- okay, go ahead, I'm sorry.

MR. LAWCH: No problem. They've argued that both projects are quite different and I agree with them, both projects are quite different, but I think they're different in a way that is not helpful to the applicant. If I could get Exhibit 85 now? And that's a comparison of Holladay and West Lane. There it is.

Okay. So compared to the Holladay group, SJG pays substantially less money than Holladay for four lots versus three lots. So we obviously know that the old Holladay was only three lots. That fourth lot was acquired by --

MS. HARRIS: I'm going to object.

MR. LAWCH: By SJG.

MS. HARRIS: I believe the Hearing Examiner early on said that the financial issues are relevant in a zoning case.

MS. ROBESON: Where are you going with this testimony?

MR. LAWCH: I'm going to assert that the more efficient rectangular shape of that lot makes it, makes it easier for SJG to actually grant concessions versus Holladay which had a very tight sight, but also managed to do more for the neighborhood than SJG.

BY MR. ABRAMS:

Q Mr. Lawch, why don't we continue on and as the Examiner has indicated, try to get to --

A Okay.

Q What the community wants in the way, in a way that the community feels this application would be compatible to the --

A Sure. Okay.

Q -- association's master plan.

A So let's look specifically at some key elements of the West Lane project and compare them to the sector plan and the existing or approved projects and see why we think each key element of the project fails compatibility and compliance. We heard testimony during the hearing that 4901 Hampden Lane project was ultimately reduced in height from 100 feet to 70 feet. We've also heard testimony that the big Edge moor's 100-foot height and other attributes are not precedent for determining future development on Montgomery Lane.

I think most people who understand the nature of Montgomery Lane would also acknowledge that under the current sector plan this project would never have been built, meaning the big Edgemoor. I think it's obvious from the County Council's decision in 4901 Hampden Lane where they said 70 was the benchmark and not 100. So the question

becomes why does the applicant on so many comparisons of their project to the Edgemoor, why do they compare to the Edgemoor rather than some of the more comparative projects that exist on Montgomery Lane. The Edgemoor is kind of a dinosaur and what we're trying to avoid is to repeat the mistakes of West Lane.

Now we have heard testimony concerning the tenant requirements in the TS-R district and that Woodmont is an important border. It's the eastern boundary of the TS-R district or the point at which the tallest buildings and the most massive buildings in the TS-R zone should be located. So if the Edgemoor is not the benchmark, it shouldn't be, and it shouldn't be considered precedent. And what that leaves on Woodmont is 4901 Hampden Lane as an important benchmark for Montgomery Lane.

What a reasonable person thinks of all this logic is that 70 feet then becomes the benchmark and the 4901 Hampden Lane on Woodmont should be the tallest building on Edgemoor, on Montgomery Lane, have the highest FAR and the highest density. So the issue regarding 4901 Hampden Lane's height was heavily contested and vetted at the Planning Board, the courts and the County Council with that proposed height being dramatically reduced, so it's very deliberate decision that was made in the relatively recent past that 70 feet on Woodmont is the right height and logically the

maximum height for Montgomery lane.
On the other hand, the West Lane project is located closer to Arlington Lane than it is it to Woodmont and it's supposed to be part of this transition or reduction of mass and density as it moves from Montgomery to Arlington.
MS. HARRIS: Excuse me, Richard, can you move again --
MR. LAWCH: Sorry.
MS. HARRIS: -- one way or another? Thank you.
MR. LAWCH: Sorry. So common sense, again, would tell you that if this building is 70, and by the way part of the frontage of Montgomery Lane is actually 60, if this is 70, how can a building all the way down Montgomery Lane also be 70 feet?
Now what's even stranger is that if the West Lane's project maximum height of 70 is approved, that the West Lane project will actually be taller by 9.5 feet than the 4901 Hampden Lane project. So, again, we have the cups, okay? We have two 70-foot --
MS. ROBESON: Okay. For the record, the witness is showing two different paper cups that -- okay, go ahead.
MR. LAWCH: Okay. So if they were on level ground, the 70 feet buildings would be the same height. 4901 is on a lower elevation and has that maximum elevation

starting point lower than the elevation of the West Lane property and so the comparison is like this.
MS. ROBESON: Okay. And the comparison is a ruler on what is --
MR. LAWCH: On top of --
MS. ROBESON: -- supposed to be --
MR. LAWCH: Thank you.
MS. ROBESON: -- this project that overhangs the cup that is supposed to represent 4901 Wood, Hampden Lane.
MR. LAWCH: And, Ms. Harris, these cups are drawn to scale. One cup equals 70 feet.
MS. ROBESON: Yes, but the difference is how much you're holding it lower. Okay. Go ahead.
MR. LAWCH: Okay. So as my colleague, Susie Turnbull, indicated, 4901 Hampden Lane's building height measurement point is 326 feet on a lower, which is a lower starting point on West Lane whose starting elevation is 335.5. So the delta between the two, we learned what delta was the other day, is the 9.5 feet. So when, if 4901 and if West Lane are built at the 70 feet maximum heights, what will happen is that the 4901 property that's supposed to be the benchmark that is on the eastern portion of Montgomery Lane will be 9.5 feet, almost 10 feet smaller than the West Lane property which will be the tallest property on Montgomery Lane absent the big Edgemoor.

MS. ROBESON: Okay.
MR. LAWCH: That is an astounding finding, I think, and contrary to the sector plan. Now the applicant's argue that they're legally entitled to pick the most advantageous maximum building height measuring point and I guess they are, but the applicant has made a lot of voluntary choices and when it comes down to compatibility, they've got to live with the decisions they've made to date. So they've chosen a property that happens to sit on one of the highest elevations of Montgomery Lane. They chose to request approval of maximum building height that exceeds the sector plan recommendation and they're on a street where many of the properties are at lower and in some case considerably lower maximum elevations. The sum total of the applicant's choices, however, result in a project that's clearly incompatible and that is it's a violation of the tenting and it's a violation of compatibility.
Now there's another shocker and this shocker is from the perspective of the neighbors, the pedestrians, City Homes, the bikers, all standing in the street, on the sidewalk in front of West Lane. And if West Lane is approved, West Lane will not be 70 feet tall, it will be 77.5 feet tall.
MS. ROBESON: When you say West Lane, are you talking about the subject property?

MR. LAWCH: The subject property.
MS. ROBESON: If you're standing on West Lane?
MR. LAWCH: If you're standing here, the elevation is approximately 328 feet at about this point.
MR. KNOPF: Excuse me, what's -- can we identify this point for the record?
MR. LAWCH: Well, about here.
MR. KNOPF: No.
MS. ROBESON: No. Your, when you, is it at the curb or -- if you look at --
MR. LAWCH: If you're standing basically in the street let's say or you're on the curve.
MS. ROBESON: Okay. All right.
MR. ABRAMS: Do you have the development plan?
MR. LAWCH: Yes.
MR. ABRAMS: Okay.
MS. ROBESON: I have a recollection suddenly that I handed my development plan to somebody for review, so whoever it was, can they remind me that they gave it back just checking? Okay. Go ahead.
MR. LAWCH: So --
MR. ABRAMS: I gave it to Mr. Knopf to take up to you.
MS. ROBESON: Oh, you did? Okay. I'm sorry. I'm sorry. Okay. Go ahead.

MR. LAWCH: Okay.
BY MR. ABRAMS:
Q This is Exhibit 108.
A Thank you. So if you look at the typo markings, the typographical markings here, you'll see that there's a 326 here and I believe this is 328. So that's the actual elevation and then the measuring point for the building is 3358. So when you build, when you put 70 feet on top of this 335.8, you get an altitude or the top of the building being 405.8 versus the 326 or the 328, depending on where in front of the building you're measuring.
And what that means is to people standing here --
MS. HARRIS: Wait, can you please move to one side?
MS. ROBESON: Wait, when you say -- why don't you try coming all the way over to this side of the exhibit?
MR. LAWCH: Okay. So --
MS. ROBESON: -- more there and we have to make, position people here and then describe on the plan where your pointing?
MR. LAWCH: Sure. So 320, 326 is here, 328 is here and the delta between these two points and here --
MS. ROBESON: Okay. The delta between -- the elevations 326 and 328 on West Lane?
MR. LAWCH: And 405.8 --

MS. ROBESON: Okay. Which is --
MR. LAWCH: -- which is the height of the building --
MS. ROBESON: Okay
MR. LAWCH: -- means that the building here is not 70 feet, but --
MS. ROBESON: Oh, on Montgomery Lane?
MR. LAWCH: On Montgomery Lane --
MS. ROBESON: Yes.
MR. LAWCH: -- is not 70 feet, but rather 77.5 or I could be off here, or 79.5 feet.
MS. ROBESON: Okay. Which is what Ms. Turnbull --
MR. LAWCH: Precisely.
MS. ROBESON: -- presented the -- okay.
MR. LAWCH: Precisely. Okay. Besides being too tall, the proposed West Lane project is also way too massive and has way, and has many, too many units relative to other projects in the neighborhood. As the applicant has proposed the maximum height, the applicant is also proposing the largest FAR and the largest number of units potentially allowable. The project was obviously built with one design notion in mind and that's to maximize every square foot of buildable space possible. That's what a rectangular box design does and that's what the rectangular parcel does.
Now, Madam Examiner, the height, the mass and the

density is extremely important to City Homes. Other neighbors like the Villages of Bethesda are certainly affected, but they are caddy-corner to this project. We over on City Homes face the full brunt or the full Monty, if you will, and I apologize, I'm blocking your view again, of --
MS. ROBESON: As long as it's not the real Monty. Okay. Go ahead.
MR. LAWCH: The full Monty of the SJG property.
MS. ROBESON: Well, let me -- I'm sorry to stop you there. It's 4:30. So the gentleman that's asked, I mean we've got two choices. I can -- see, I think his testimony is going to fill out until 5 o'clock. Do the parties have a preference if we can get the Edgemoor witness in, we'll do it, but I don't think it's going to happen by 5 o'clock. So I don't even think we're going to get to cross-examination of Mr. --
MR. LAWCH: Lawch.
MS. ROBESON: -- Lawch, sorry about that. So --
MR. POHORYLES: I have no commitments this evening.
MS. ROBESON: I do.
MR. POHORYLES: This afternoon, however, I have unbreakable commitments on both the 29th and the 13th.
MS. ROBESON: Okay. Does anyone have an

objection, Mr. Abrams, to allowing this gentleman to testify?
MR. ABRAMS: Would you --
MR. LAWCH: Well, I, you know, I don't -- I'd like to be cooperative, but I'd also like to finish my testimony. I've had this thing hanging over me for --
MS. ROBESON: Okay.
MR. LAWCH: -- months.
MS. ROBESON: All right. Well, we're going to proceed and I may have to make a quick phone call. Go ahead.
MR. LAWCH: Okay. So the objective of the West Lane property, project has been to maximize out everything they can possibly do. It's also interesting that even after the few concessions that we have gotten out of the applicant, that the number of units have remained the same, the FAR of the project has remained the same, and the maximum gross floor area has not gone down. That is, the applicant has not made any concessions with regard to the FAR or the number of units.
In fact, the application is, the applicant has taken the approach to the extreme in the case of something like the bay windows. So when asked why the applicant was using bay windows to articulate the West Lane, the east side of the building, but not the front of the building, the

applicant responded that it would mean that they couldn't maximize the gross floor area because of the projections that were created by the bay window.

So what that meant was over here, Madam Examiner, you have bay windows, but here you do not because the bay windows would have, would have effectively been a movement back of the building to the extent that there were projections from the bay windows. Yet to us, bay windows would be one of those very important articulations on the side of this building that would make West Lane a little more presentable and acceptable to us at City Homes.

If you look at the 3.05, yes, the land use laws permit when you --

BY MR. ABRAMS:

Q 3.05 FAR?

A Yes. Yes, the land use laws permit a bonus for MDPUs, but it also requires that the project be in conformity with the rest of the neighborhood. When you look at the rest of the neighborhood --

MS. ROBESON: What exhibit is that?

MR. LAWCH: I'm not going to use it quite yet, but --

MS. ROBESON: Oh, okay.

MR. LAWCH: -- I will in a minute. When you look at the rest of the neighborhood, the City Homes, you have an

FAR of 1.8. Edgemoor at Arlington North, you have 1.8. At 4825, you have 2.5 FAR. And I think I missed one. This would be 1.8. This would be 1.9. And then we have --

MS. ROBESON: Okay. You have to identify the building you're pointing out.

MR. LAWCH: Sure. Okay. So for City Homes, it's 1.8. For Edgemoor at Arlington North, it's 1.8. For Edgemoor at Arlington, it's 1.9. And for 48.25, it's 2.5. And now I also acknowledge that this is 3.05. We'll deal with that in a moment.

The 4901 Hampden Lane project, the poster child is, has the mass and density of Woodmont, on Woodmont has been approved at 3.05 but, again, is located on Woodmont. So you have all these projects on Montgomery Lane that are substantially less than the FAR that's being sought for the applicant. And then you have 3.05 here as well but, again, on Woodmont, not in the middle of the block on Montgomery Lane.

In addition, there's some interesting facts about 4901 and that is it's a much smaller project than this by about 25 percent. I wouldn't bore you with the comparison of the gross tract area, but it is about 25 percent less mass than that. So, again, the side --

MS. ROBESON: 4901 is less mass than --

MR. LAWCH: Yes.

MS. ROBESON: -- this development?

MR. LAWCH: Correct. So, again, it's supposed to have the most mass compared to these other uses. Again, if you're ignoring the big Edgemoor as being, as not setting precedent, then if you look at the rest of Montgomery Lane, this becomes more of the benchmark and although it has 3.05 FAR, it's also a smaller building than this and it's located on Woodmont where more density and more mass is more appropriate.

The West Lane project, if approved in its current configuration, would also have the highest ratio of units per acre.

BY MR. ABRAMS:

Q What exhibit is that?

A This is Exhibit 53. So we've established absent the Edgemoor, that it's the tallest building on the block. We've established that it has, it is the most massive building, again, excluding the big Edgemoor. And it also has the most units per acre compared to all of the other properties here. Again, with a vast number of them having units per acre as low as 20 and 30 units per acre.

Now units per acre, it's, I understand the position of the applicant. Obviously, it's trying to do, create smaller units, but it's, but it also has to, again, it has chosen to be on Montgomery Lane and Montgomery Lane

is simply not densely populated with units per acre and that is an existing condition that if the applicant wants to conform to the neighborhood, be compatible with the neighborhood, its ratios have to be in line with the neighborhood.

Reducing the number of units, regrettably reduces the number of MPDUs, but also reduces the traffic issues, helps preserve the pedestrian, bike-friendly nature of the Montgomery Lane and has other very significant reduction and impact that the project would have on the neighborhood. I'm trying to speed up.

MS. ROBESON: That's okay. It's important to get all your points in.

MR. LAWCH: One comment about traffic and I will not set the foundation for my comment is that Montgomery Lane is not a high-traffic street, but it's not intended to be a high-traffic street. But one of the things that was done on the street which was actually quite clever that DOD did it and it created that two-lane, one-lane, one-way, two-way situation and it helps control traffic flow and actually I'm very supportive of it, but the Achilles heel of that configuration is the, what I call the one vehicle rule. And the one vehicle rule is if somebody does something stupid in a vehicle along Montgomery Lane, it has very serious consequences. Either on the east side it's going to totally

block traffic or on the west side could cause a very serious vehicular accident.

MS. ROBESON: Okay. When you say east side, that's east of the do not enter signs of West Lane?

MR. LAWCH: Yes, correct.

MS. ROBESON: Okay.

MR. LAWCH: So here on the one --

MS. ROBESON: Are you okay?

MR. LAWCH: Yes.

MR. ABRAMS: That was a great dance step.

MR. LAWCH: Yes.

MS. ROBESON: 106(f)?

MR. LAWCH: Okay. So, okay, what -- okay. So here the one-way, because of the parking --

MS. ROBESON: You're showing the portion east of West Lane?

MR. LAWCH: Yes.

MS. ROBESON: Okay.

MR. LAWCH: So because of the parking on both sides of the street with the lay by and the parking on the south side, there's only room for one vehicle. If there's a problem with that vehicle or a car is coming down the wrong way on that portion of Montgomery Lane, the traffic pattern is completely disrupted. I don't know if you noticed when you were on your tour, when you were on the north side of

Montgomery Lane right in front of the Edgemoor, you stepped off the curb --

MS. ROBESON: Which Edgemoor?

MR. LAWCH: The big Edgemoor.

MS. ROBESON: The big one? Okay.

MR. LAWCH: Right about here, you stepped off the edge and had to stop because the car came down the wrong way right in front of you. That happens with surprising regularity. And then as Dan Joseph testified, when you get out here, you now have two-way traffic, but no room for anybody to double park or start if they're making K turns, whatever it is. Obviously it disrupts that traffic.

So what are the residents of City Homes asking for? We understand that the development of the West Lane project is inevitable. We want the development to go forward. We have no problem with a development being completed there, but what we want to see is a development that is in balance with the neighborhood. We understand that it's give and take. We understand that the principles of really this kind of zone are relatively flexible and the question comes down really to what, what is in the best interest of all parties and how can we develop something that is, in effect, reasonable growth.

So what we are suggesting and, again, we think it's important that anything be, anything that you, Madam

Examiner, are recommending be recommended as binding elements are 2.5 FAR, that the number of units be limited to no more than 100 units, that the building be pulled back from Montgomery Lane by an additional eight feet. That will restore most of the lost public space. And if you reduce the FAR, obviously that balloon, you get a lot more flexibility and the applicant is better able to do setbacks and bay windows and what have you because they are not maxxed out by the 3.05.

Maximum height of 65 feet, since even 65 feet is a stretch in our judgment, we should still have a step down, but rather than 12 feet, we think 20 feet is more appropriate. If the maximum height is kept at 70, which of course we don't suggest, we do, we would then suggest that that step back be extended around the east side of the building.

MS. ROBESON: Along West Lane?

MR. LAWCH: Along West Lane. We are concerned about the penthouse height. We think it should, the penthouse should be moved away from the property even away from the south side of the front of Montgomery Lane and further back in the property. We realize that that may require the elevators to be moved back, but we think that that is a pretty reasonable request given the size of the building.

We think that the building should have more of an architectural look in keeping with the neighborhood. I think we discussed some of that before. I think, again, something like 4825 where there is that brick and the concrete that at least tries to mimic existing compatible projects would be helpful. Independent unit entrances would be useful. A public area along Montgomery Lane with seating and shade would be useful. Bay windows in the front would go a long way so it's breaking up and not of that front and a mass on the front.

And we think that, Madam Examiner, that all of these factors are related so that it's, it would be difficult if, for example, a decision came down that said, okay, just take off, you know, make the maximum units 100 without also focusing on the FAR or the mass because, for example, if the number of units were reduced, you could still fill up the FAR with larger units. So that we think that it's important that height, mass and density all be dealt with together.

MS. ROBESON: Okay.

MR. LAWCH: We think that if our suggestions are incorporated, what you really do get is a project that on page 82 which describes what should be built on Montgomery Lane wouldn't be everything that the sector plan anticipated, but it would sure go a long way to being a

project that was more in keeping with the sector plan, with the mixed street of components and would be something that City Homes and I'm sure the big Edgemoor and others would then think would be a compliment to the neighborhood instead of a detriment.

I think with that, I've concluded my remarks.

MS. ROBESON: Thank you. I am not going to do cross-examination of Mr. Lawch tonight. We'll resume that on April 29th. What I'd like to do -- thank you, Mr. Lawch. What I'd like to do is take the gentleman, I'm sorry, I don't know your name, here since you can't be here on either day. Mr. Lawch is your last witness, correct --

MR. ABRAMS: Yes.

MS. ROBESON: -- Mr. Abrams?

MR. ABRAMS: I just had a few more questions for him.

MS. ROBESON: Oh, I'm sorry.

MR. ABRAMS: But, you know, do you want to reserve that for the next time?

MS. ROBESON: Yes, I would like to so we aren't ending on cross of Mr. Lawch. We're --

MR. ABRAMS: It's not going to take long.

MS. ROBESON: Okay.

MR. ABRAMS: It's not. Sir --

MS. ROBESON: Well --

MS. HARRIS: Should he just complete now or --

MS. ROBESON: Yes, why don't -- I was just thinking why don't we -- you finish your questions and then I'll know where we started, but stay up at the seat.

MR. LAWCH: Thank you.

BY MR. ABRAMS:

Q Mr. Lawch, the three projects that you pointed out, 4901 Hampden Lane and the Hampden Lane building on Hampden Lane and Arlington Road, are they on smaller size lots than the subject property, if you know?

A So you're referencing this project? This project?

Q That project.

A Those two, yes. This one I'm not quite sure. I don't think I've ever looked at the total square footage on that.

Q What is the relationship between the West Lane building and the other two buildings in terms of the size?

A The relationship? The West Lane building to these two buildings?

Q Yes.

MS. ROBESON: Wait. Which -- I can't see where you're pointing.

MR. ABRAMS: 4825 --

MS. ROBESON: There's nowhere to stand in this room. 4825 to 4901 and to the subject development?

MR. LAWCH: And the question is, may we have the question please?

BY MR. ABRAMS:

Q The buildings that are represented on that aerial photograph, do they look bigger than they actually are in terms of the size comparison with the subject property and the subject --

A Well, as I've testified, this building is 25 percent smaller than this building --

Q Correct.

A -- and for, then --

Q The subject property?

A -- the subject property.

MR. KNOPF: Compared to 4901?

MR. LAWCH: Compared to 4901. Compared to 4901. And this building is certainly smaller than this --

MS. ROBESON: 4825?

MR. LAWCH: 4825, although I don't know the exact dimensions, but I think we can all concede that fact.

BY MR. ABRAMS:

Q Is the Hampden Lane building also smaller?

A Yes.

Q By how much do you know?

A I think it's about 25 percent. If you give me --

MS. ROBESON: When you say percent, what --

smaller of what measurement?

MR. LAWCH: Buildable square footage or what the FAR ratio --

MS. ROBESON: The FAR?

MR. LAWCH: -- applied to the footprint would generate.

MS. ROBESON: Well, the FAR is the ratio of --

MR. LAWCH: Right. So that's 3.05. If you apply that ratio to the, what do they call it, the --

MS. ROBESON: The tract area?

MR. LAWCH: Yes, the gross tract area.

MS. ROBESON: Gross tract area.

MR. LAWCH: We create an envelope of buildings.

MS. ROBESON: I see.

MR. LAWCH: And that is, I believe 25 -- and I can get the measurements in a second.

MS. HARRIS: And can I just ask for a clarification of Mr. Abrams's last question? He said it was the Hampden Lane. I'm assuming you mean 4901, correct?

MR. ABRAMS: No.

MR. LAWCH: No.

MS. HARRIS: Well, I think that's what Mr. --

MR. ABRAMS: We're not on Hampden Lane.

MS. HARRIS: -- Lawch was asked.

BY MR. ABRAMS:

Q You already answered with reference to 4901 is at 25 percent.
A Yes. I do not know the square footage of this building, but I do know that with regard to City Homes's height, that it appears as a much more massive building than it is relative to City Homes. So it appears to be taller than it should be. I can't tell you about the mass. And I will also note, and I know that Ms. Turnbull has testified there are also cut-outs in this building, but there is another exhibit that shows those cut-outs.
Q Now the items that you testified to the Hearing Examiner that you believe should be binding elements of 2.5 FAR, the 100-unit limit and so forth, is that because you believe that those features are the features that are contained in a sector plan or for some other reason?
A I think those features would then make the building compatible with the sector plan and compatible with the existing surrounding buildings. It would still be in many cases larger or more dense, but still within the range of reasonableness.
Q And the final question I have is, do you believe that City Homes would benefit from a crane swing and construction agreement?
A I think that, you know, the expression good fences make good neighbors, good construction agreements are very

helpful with neighboring properties to ensure that everybody knows what they're supposed to do and what their responsibilities are.
Q In terms of crane swing, is it possible, likely, that a crane could swing over --
A A little --
MS. HARRIS: Objection. That's speculative.
MS. ROBESON: Overruled.
MR. LAWCH: I'm no crane swing expert, but it's certainly possible and it often occurs that the, certainly the outer limits of the crane will get into the street, could possibly be over City Homes's property, in which case one would definitely be required.
BY MR. ABRAMS:
Q And a construction agreement would, you'd be looking for provisions dealing with noise and traffic control, hours of operation for construction, things of that nature?
A And liability.
Q And liability.
A Meaning that if during the cost of construction the applicant did something to our property, we would have something to point to and a better basis to demand compensation.
Q Okay.

MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Thank you. Thank you, Mr. Lawch.
MR. LAWCH: Thank you.
MS. ROBESON: Mr. Knopf, is this your witness or --
MR. KNOPF: Yes, it is.
MS. ROBESON: Okay. Please raise your right hand.
(Witness sworn.)
DIRECT EXAMINATION
BY MR. KNOPF:
Q Mr. Pohoryles, would you state your name and address for the record?
A Excuse me. My name is Louis Pohoryles. I live at the Edgemoor, 4821 Montgomery Lane in Bethesda. I am here in a representative capacity. I am vice president and a member of the board of directors of the Edgemoor condominium association. I have been living in that building for 10 years now. I was on the original founding board of directors serving two years. I stepped off the board and just rejoined the board about a year ago and I am very familiar with what goes on on Montgomery Lane as I am semi-retired. I spent most of time around Montgomery Lane to the extent I do any work on the retired, semi-retired lawyer and I generally do it in my own den.
Q Okay. Just --

A Our association, I'm sorry?
Q I just want to tell the Hearing Examiner that while he's talking we can save time. He will be using Exhibit 102(a).
A Well, there's a change in that --
Q Okay.
A -- counsel. Out of deference to the board's, your time --
MS. ROBESON: Yes.
MR. POHORYLES: -- I had prepared with my colleague, Andrew Niebler, who will be testifying on another day, an extensive photo exhibit of traffic situations on Montgomery Lane. I --
MS. ROBESON: Is that in the record already?
MS. HARRIS: Yes.
MR. POHORYLES: It is in the record. It's Exhibit 102(a).
MS. ROBESON: Okay.
MR. POHORYLES: With respect to that exhibit, I prepared with Andrew the whole exhibit. I took about half of the pictures and Andrew took the other half. I am authenticating by this testimony my having prepared the exhibit and taking those pictures --
MS. ROBESON: Okay.
MR. POHORYLES: -- and since Andrew was able to

come back on another day and the exhibit may take significant amount of, or some amount of time, I will defer to Andrew to talk about the whole exhibit, including the photos that I have prepared. But the photos are generally self-explanatory.

MS. ROBESON: Okay. Do you have any objection --

MS. HARRIS: No.

MS. ROBESON: -- to accepting his photos as a fair and accurate representation of the property?

MS. HARRIS: Well --

MR. POHORYLES: You've seen this before I think.

MS. HARRIS: -- I don't know the dates on which they were taken.

MR. POHORYLES: I will testify to that right now. They were taken on a random basis as I happen to have a camera or a cell phone ready. In the fall of last year, we prepared it -- I did not note in my camera, though it does have the dates on it, I didn't bring them, I didn't think it was necessary, I prepared this exhibit for the Planning Board hearing and submitted it to the Planning Board. It has been resubmitted to your record. They were prepared on various days as occurrences happened on Montgomery Lane that we thought we should photograph for the purposes of the Planning Board hearing.

MS. ROBESON: Okay. Generally what time frame?

MR. POHORYLES: They were generally prepared sometime in October and early November of last year.

MS. ROBESON: And do they fairly and accurately depict the property on the properties or depict --

MR. POHORYLES: The traffic situations?

MS. ROBESON: Yes.

MR. POHORYLES: They certainly do.

MS. ROBESON: Okay. Are you going to object if he is not here to lay a foundation?

MS. HARRIS: I think he just noted that he took pictures as occurrences happened and I accept that. So I have no issue with that.

MS. ROBESON: Okay. Do you have any issue with it, Mr. Knopf?

MR. KNOPF: No, I'm just trying -- I think that helps to move things along. As long as --

MR. POHORYLES: Mr. Knopf really passed me a note to be sure to leave nothing out and I'm saying Andrew and I, Andrew Niebler and I have agreed previously that he's equally capable of discussing these. He's very familiar with them.

MS. ROBESON: Well, she has a question on particular pictures that he can't answer. I mean I'm willing to hear your testimony while you can't be here.

MR. POHORYLES: No, my problems are twofold. On

one day I'm committed to a grandparent's day at my --

MS. ROBESON: Yes.

MR. POHORYLES: -- my grandkids'

MS. ROBESON: We've already agreed.

MR. POHORYLES: On the other day, I'm committed to participate in a Holocaust remembrance day at the Holocaust Memorial Museum. I am a survivor and one of the honorees.

MS. ROBESON: Okay. Well, your -- oh, congratulations. You're welcome to proceed on this basis and if counsel, you know, if you strongly feel after at some point that you need cross-examination, we'll have to schedule a date.

MS. HARRIS: Okay.

MR. POHORYLES: And I'm happy to pass these over to you to read through.

MS. HARRIS: I've seen them. I've seen them.

MR. KNOPF: She has them already.

MS. ROBESON: She has them in the record.

MR. KNOPF: You keep your, make sure you keep your copy, so --

MR. POHORYLES: Well, give this to Andrew. He needs it.

MR. KNOPF: Best laid plans --

MR. POHORYLES: That said --

MS. ROBESON: Well, we're trying.

MR. POHORYLES: And I'm doing this in order to --

MS. ROBESON: I understand totally and --

MR. POHORYLES: -- to help you with your time commitments.

MS. ROBESON: -- and I really appreciate your concern.

MR. POHORYLES: I'm also going to incorporate by reference a lot of the testimony of the prior two witnesses. I did not hear Mrs. Turnbull's testimony, so I can't do that, but certainly our association opposes the current iteration of this building for a number of reasons. Essentially, we are concerned that the applicant is trying to shoehorn a relatively large building onto the site. The proposed building in our opinion is too tall, too deep, too wide for this relatively small site.

The site is too narrow to accommodate all that applicant wishes to do. We object to a step back of 12 feet above the 5th floor. It doesn't do much to diminish the bulk of the building. Again, that's been testified to. If the building were to exceed four stories, it should step back immediately above the fourth story, not the fifth story, and for at least 30 feet.

We object to making it inviting for traffic, principally delivery vans and food deliveries, to make, to have it convenient to step into the building on that corner

entrance. We think that all traffic should be, into the building should be on Montgomery Lane. Montgomery Lane has been previously noted as a narrow, walkable street. There are only five legal parking spaces along Montgomery Lane today, while each of those five spaces has 2-hour restrictions on it.

There is a lay by in front of our building that makes up two of those parking spaces. There is another lay by that has no standing, no stopping posts on it, but into which there is all sorts of traffic that's not adequate to be policed, granted, but pulls in and stays there much more than the drop-off and pick-up people.

There is an awful lot of illegal parking and stopping on Montgomery lane as is. A moving truck in the lay by in front of our building generally protrudes into Montgomery Lane, other people need to be dropped off, packages need to be dropped off, totally clogs our street. The photo exhibit, which is 102(a), will amply demonstrate several occurrences when there is extreme traffic projections.

We believe that the same situation that applies to us will apply to the applicant's proposed building on West Lane and we do not have enough parking within our building to accommodate more than just a few guests. All of the rest of the parking spaces are spoken for. Our parking entrance,

and I believe most entrances, will not accommodate service vehicles, small trucks with ladders on them and other kinds of service providers, delivery vehicles, into our building. It truly clogs our street. There are numerous times when the no parking area directly in front of our building adjacent to City Homes and to where the 4901 building will be built is totally clogged with service vehicles.

Our 54 units, City Homes's 25 units and Sandy Spring's four units all have or will have individual HVAC systems, individual responsibility for interior, electrical and plumbing and light. There are numerous -- there are also common systems in all the, the building. There are numerous service providers that need to come to our street, need to pull over and need to park.

Landscapers come fairly frequently to all of the properties along the block. They generally come with trucks and trailers towing mowers. They take if they can the existing legal parking spaces, but quite as often they park illegally. The photo display will show some of that.

There are postal trucks, movers, delivery services for pizza and food, packages, flowers, upholsterers, drycleaners and installers of home improvements that are constantly parking on the street. The only reasonably available other parking to our street is the large garage adjacent to the Bethesda Metro. That is generally during

the business day fairly crowded and it is difficult for people to find parking in there, except in the lowest levels. It's very difficult for service providers. The only other public parking is at the library and that is by law restricted to library patrons.

I know that when you made your site visit you did not see all of this. This doesn't happen every day. This happens often enough to be a total annoyance and the street is often clogged because there just isn't enough parking and stopping spaces.

Frequently, UPS, Fedex drivers, not only do they not park adjacent to the curb, they leave their trucks several feet from the curb, motors running and they run in ignoring traffic rules just to quickly drop-off packages. Well, this happens often enough to totally clog our street. I witnessed that on numerous occasions. That's only going to be our problem. I believe the applicant's building will suffer similar situations and our hope is that those situations will by virtue of no entrance along Montgomery Lane occur on West Lane and not further clog our streets.

Within that exhibit that I just cited, 103(a), 102(a), the last page is an enumeration of units having direct access on Montgomery Lane. Now when you leave out of it 4901, which does not access, will not access Montgomery Lane, presently there are under 100 units existing or

permitted if we talk about the other Villages of Bethesda building, it's under 100 units that have or will have direct access to Montgomery Lane. With those under 100 units, the street is constantly having traffic issues.

Imagine allowing another, doubling the size and providing for a building that has all of its access through Montgomery Lane as well. It is principally for that reason that many of us are strongly opposed to the large building that's trying to be, the applicant is trying to shoehorn into a relatively modest size. Unlike City Homes, our issues are not views. Our issue is an overtaxed street.

Montgomery Lane is also the first street one encounters when one leaves the Metro parking lot and wishes to go west. In late afternoon there is seemingly never-ending streams of cars going west on Montgomery from the Metro garages as well as other traffic coming off Woodmont. All of this makes it very unpleasant for residents and others along this mixed street that was intended to be pedestrian-friendly. On occasion, bike riders are forced out of the roadway and made to use the sidewalks because of the congested roadway, creating an unsafe situation for both walkers and bikers. Many walkers are seniors, a bit hard of hearing as I am, and you, I guess, can tell that form how loudly I'm speaking.

MS. ROBESON: No, it didn't occur to me.

MR. POHORYLES: And don't hear warnings by bikers of the seek to pass. You know, a biker will come up behind you and say to your left or to your right. Well, I'm not going to hear that. We're not against development. We, indeed, we are satisfied with and supported the Holladay plan. We would welcome this building as an in-scale, friendly neighbor on the street. We strongly oppose this very large, very bulky, traffic-intensive building where enough thought has not been given, we believe, to how to mitigate the great need, the great pressure that the traffic coming out of the building will create.

Also, there's been some talk that there are studies within this area that only 68 percent or 62 percent of the people living in rental apartments in this area will have cars. Well, you know, that's okay when you take buildings of more modest rental expersions than this building likely has. When you have a more upscale building, most of the residents will have cars. Indeed, many of the units will have two cars where there are couples living and commuting in two directions. Indeed, there will be others that come to visit and even if everybody is single, they will have, some will have overnight visitors with cars. So we think there's a major fallacy in saying that the traffic, the garage is 120 spaces and it's not going to be used because people just don't have that many cars. Well, that's

a conjecture. I'm willing to conjecture on the other side.

I've significantly abbreviated my presentation, but I think that I can safely incorporate by reference most of the comments we've heard from City Homes. And with that, I'll rest.

MS. ROBESON: Okay. Thank you.

MR. KNOPF: Yes, I had a few questions because I think you were a little bit too abbreviated, but I'll be very quick.

MR. POHORYLES: I know.

MS. ROBESON: You're too nice, in other words.

MR. KNOPF: Yes, that's right.

BY MR. KNOPF:

Q If I understand the Edgemoor has insufficient parking spaces for visitors in the garage?

A That is correct. We have nine guest spaces or nine Edgemoor owned spaces, two of which are used by staff, that leaves seven. Four of these are used for short-term parking by visitors, two of them are dedicated to longer term parking if people have relatives coming and one is inadequate for use in parking and we allow, those that rent have motor bikes and motorcycles to use that because you can't fit a car into -- all of our spaces are very modest in size. They're built, other than the four handicapped spaces, they're all built to minimum parking space standards

of Montgomery County.

Q And do I understand you correctly, you have, the building has no in-house or in-garage facility to permit a loading and unloading for moving?

A We have a loading dock that is adjacent to our entryway in the garage and that loading dock handles both moving vans and trash trucks and when we have a mover move in or move out, we try to -- our staff tries to put pylons in the lay by. The moving truck will pull into the lay by and in order not to impede trash pick-up and the like, will, the movers will carry the furniture and what have you into the building, but they will not block that loading bay and I think that you will see in the photo array one day when there was a moving truck in the lay by and another moving truck illegally parked on Montgomery Lane waiting for the first one to be unloaded. Fortunately, we only have 54 units. Fortunately, we are condominiums with only about six or eight rental units there. So there isn't as much moving as I think would be experienced by a rental building such as the applicant's building. And with 100 units or 130 units or 90 units, every move-in and move-out is going to create a major problem along West Lane in my opinion based on our experience.

Q And based on your experience, do I understand that the UPS truck or Federal Express truck, could that go into

your garage to make deliveries?

A No, they can't and they don't. In fact, they don't even pull up to the curb.

Q And I was trying to understand what, the service vans that might consent, painter, plumber, electrician --

A No room for them. Our headroom is too small and our entries are too narrow. Indeed, when people come in with large SUV's or trucks, they have to get out, retract their mirrors, or if they have modern ones that they can retract their mirrors automatically in order to fit through the entrance into our garage. Service trucks and vans would not do that.

Q Now you mentioned there was a nearby, a Metro garage nearby. Does that Metro garage service commuters for parking?

A Yes, it does. It's the garage on Edgemoor Lane, one block north of Montgomery Avenue, that is adjacent to the entrance to the Bethesda Metro.

Q And is it your experience -- what does your, Edgemoor's experience then, when I say Edgemoor, I'm always referring to the big Edgemoor, Edgemoor experience with visitors that do not have a space to park in the building, do, is it your experience that they commonly park in the library parking area?

A Not really. We -- at least my wife and I

discourage them from doing that. We don't want our friends to get tickets.
Q I see. So -- okay. I'm glad to hear that.
A What we do, though, is we use the phone an awful lot and we have a listen in the building and we post something in it, who has got a parking space available for Monday night and generally somebody says, you know, I'll be out of town or I only have one car now and I have two spaces, you can borrow my space. We do that an awful lot.
Q And we had testimony regarding the adequacy of the pick-up and drop-off at this proposed project which seemed to indicate that people could, assuming there's a space at lay by, just pop into the lay by, drop the person off and then leave and it would be a very quick operation. Is that your experience at Edgemoor with letting off people?
A Well, we have a real problem at Edgemoor with pick-ups and drop-offs when the lay bys fall and the person being dropped off is either elderly with mobility problems or handicapped. We have a ramp on the side of our entrance. It's beyond the lay by and it really takes time and is difficult to discharge a passenger and get the passenger to walk up the ramp or be wheeled up the ramp. And, of course, if the caretaker or the friend who drops off that person does the dropping off, you know, does he or she leave the car with blinkers going, parked illegally and help the

person get up?
Generally, when we expect such people and my sister-in-law is such a person, she's elderly and needs a wheelchair on occasion, I'm going down and meet her so her caretaker or caregiver can just pull up and go in and I'll wheel her up. Well, I happen to be a senior, but I'm relatively mobile. We have a lot of seniors that are less mobile than I am.
Q Well, if the, I'm trying to understand something. If the lay by is occupied by service vans and then where does someone that wants to drop someone off and the rest of the legal is taken, where?
A Illegally. Either --
Q They sit in a traffic lane, is that --
A Yeah. Yeah.
Q All right. I'm just trying to understand this. Well, similarly, if someone is in the lay by to drop off and the service van comes or UPS truck comes, does that then mean that service van or truck --
A Well, what happens if --
Q -- parks?
A If somebody is in the drop-off and a service van pulls up, they won't worry about whether there's a space or not. They'll double park and him and that car, until they run in, deliver their packages and come out, you know where

it's -- we've become a significantly more delivery-oriented society. We have dozens and dozens of packages delivered every day to our building for only 54 units, especially on holiday time, from UPS and Fedex and sometimes twice a day.
Q Well --
A And, frankly, a lot of us are so old that we still go shopping. Think of a building of young people being built on West Lane where everybody is working and everybody uses Amazon.
Q Well, I wanted to ask about that. If -- you had mentioned that you heard testimony or were advised of testimony that a rental building, that many people may not own cars. Is that in your, to your mind, would you comment on whether you think that may increase or decrease the amount of deliveries to people who don't own cars?
A I don't think it's going to increase or decrease deliveries. They're just going to be a lot. There are going to be a lot of deliveries no matter what.
Q I see.
A Frankly speaking, I don't know, I'm very computer conversant. My wife goes shopping. She hates computers. I buy her cosmetics on Amazon.
Q One more thing. You mentioned that you thought people in leased buildings, particularly with high rents, would tend to have cars, I believe that was your testimony?

A That's, my conjecture, equally as good as the applicant's conjecture that there will be fewer cars.
Q Well, of your conjecture or your actual experience, are you, have familiarity with or know of where a common practice in high rental units is that there may be two people that share rent that may be unrelated and each could have a car?
A Oh, we have that in our building. We have six or eight renters in our building. They've got cars.
Q And do the, are there renters that --
A I don't, I really don't know their --
Q Okay. Living arrangements are --
A All I can tell you is the people that rent in our building for the most part have cars --
Q Have cars?
A Single owners in our building, even senior ones and even the -- I have a space right near a handicapped space, there is a woman who is handicapped who walks with a cane and she drives every day.
Q Just one second please.
A I tried to shorten it for you.
MS. ROBESON: You're doing wonderfully, thank you.
MR. KNOPF: I'd like the record to reflect we raced through this and we --
MS. ROBESON: No, no.

MR. KNOPF: -- have, we're finished.
MS. ROBESON: You need to say what you want to say and not --
BY MR. KNOPF:
Q I know you had one other thing, but just, can you tell me if you think Mr. Niebler is going to address this or not. You talked about the congestion on the street and the problems. Have you observed some problems arising from that congestion in terms of emergency vehicles?
A Oh, absolutely. The photo display that I -- the part of it that I prepared will show very clearly parked in front of our building the photographs were taken by me from our unit initially, a large emergency vehicle, a fire department rescue vehicle parked in front of the building and it totally congested the street. There are photos showing a car exiting our garage which could not turn the one way that is permitted to the right after she exited our garage. So she exited our garage, turned left the wrong way, created a traffic hazard, created an unsafe situation, proceeded to the left on a one-way street and exited Montgomery Lane illegally, but that was the only way she could get out. I'm not going to fault her.
Q Okay.
A I would have probably done the same thing.
MR. KNOPF: I have no further questions.

MS. ROBESON: All right. Mr. Abrams, do you have any questions?
MR. ABRAMS: Just one question.
DIRECT EXAMINATION
BY MR. ABRAMS:
Q The traffic circulation and the parking problems that you testified to just a few moments ago, in your opinion are they caused and created by inadequate enforcement of existing traffic restrictions or is it more a function of the size and traffic pattern for Montgomery Lane?
A You know what, I'll say yes and yes. The parking -- certainly the parking can be cleared up by strong traffic enforcement and tickets, but that will only alleviate a very small portion of the congestion and problems. People will get tickets and people will, other people will replace them and they'll get tickets. But the real problem is there is no place to put a service vehicle. When I have my air conditioner serviced or when I need an electrician to come by, he can't park in front of the building --
MS. ROBESON: Okay.
MR. POHORYLES: -- unless he comes at 7 o'clock in the morning before the five legal parking spaces have filled up and grabs a space.

MR. ABRAMS: That's all I have.
MS. ROBESON: Okay.
MR. KNOPF: I forgot to ask just one question.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q There was testimony from the traffic expert of the applicant that service vehicles tended not to come during rush hour, but to try to come after rush hour and stay mid-day and got caught up. Has your experience been the service --
A Well, I'll tell you my experience.
Q May I finish the sentence?
A Yes.
Q Has your experience been that most service vehicles or many come during the in between rush hours to --
A Absolutely not. Absolutely not. Pick any service provider whether it's an electrician, a plumber, a Comcast installer, a Verizon installer, they'll tell you have a window from you from '91 or from one to five and these guys have a list of stops they need to make and if my street is convenient for them to come at 8:30, they'll come at 8:30 in the morning during high traffic or if they're running late, they'll come in at 5:30 and 6:00, even though I expected them at 1:00. And I'm sure everybody else has the same experience.

MR. KNOPF: Thank you. No further questions.
MS. ROBESON: Okay. Ms. Harris?
MS. HARRIS: Thank you. I'll try to be quick in light of the time.
MS. ROBESON: No, that's okay.
CROSS-EXAMINATION
BY MS. HARRIS:
Q Actually just thinking we'll start with, we'll go backwards a little bit, start from the end. So you indicated that the service vehicle providers do come in the morning rush hour sometimes and in the evening rush hour sometimes?
A Absolutely.
Q So those numbers would have, in fact, been picked up on the applicant's traffic consultant's report that studied the a.m. rush hour and the p.m. rush hour, correct?
A I don't, I don't know that to be a fact because they don't come all on one day. I don't know what days you did it during -- was it during the summer where there's a lot less activity, people are away at the beach now? Was it during -- I just can't tell you what you're --
MS. ROBESON: I think your answer is you don't know, right?
MR. POHORYLES: I have no way to guess.
MS. HARRIS: Okay.

BY MS. HARRIS:
Q Are you aware that traffic counts, in fact, cannot be rendered in the summer for the very reason that you just stated?
A I have, no, I'm not aware of it.
Q Okay. It sounds like you're somewhat frustrated with your parking situation in your building. If you had your druthers, would you have redesigned the building to be more accommodating?
A Absolutely. I would set it back from that Montgomery Lane a few feet.
Q Okay.
A I would make it a smaller building. I would make it probability a lower building.
Q No, I'm talking about the -- so the, with respect to the loading situation, would you have redesigned the loading and summary spec?
A I don't know how it could be redesigned because it's a relatively small site for the size of building we have. That building probably should have been smaller. It should have had more public space, fewer units and, therefore, the parking would have been more easily able to accommodate all of us.
Q Just smaller by say half?
A No, but about 25 percent I would guess.

Q So taking the 6 FAR to 4.5 FAR?
A For that size? Taking into account the FAR that was transferred to our building by City Homes, yeah, 4.5 --
Q Okay.
A -- would be better than 6.
Q If --
MS. ROBESON: Mr. Pohoryles, did you do litigation?
MR. POHORYLES: No, ma'am, I'm a real estate lawyer.
MS. ROBESON: Real estate lawyer?
MR. POHORYLES: I did this work. I represented, very early in my career represented Prince George's County's Board of Appeals.
MS. ROBESON: Okay. I'm sorry, Ms. Harris.
MS. HARRIS: That's okay.
BY MS. HARRIS:
Q Would you have preferred for the building to have been built in such a manner that the Fedex truck could have been accommodated in your loading bay?
A Absolutely.
Q Yes. And would it have made sense if there, in that loading bay there was a door that would have led so the Fedex truck could park in the loading bay and then going through a door to come to make the deliveries?

A Probably. The problem I have is not the Fedex truck or the building, it's the drivers. In my experience, the drivers can have a wonderful, large parking area in a lay by. They'll park four feet away from the curb to the lay by, into the roadway and, quote, "Run right in."
Q Right, but I was asking about the loading dock.
MS. ROBESON: Yes.
BY MS. HARRIS:
Q If there was a loading dock large enough to accommodate the Fedex truck, that obviously would be a desirable situation?
A Not -- not if the Fedex driver didn't use it.
Q But if there was a requirement that the Fedex driver had to use it, would that be preferable?
A If you can enforce it, sure.
Q Good. Thank you. You noted that the Highrise Edgemoor, that your, the Highrise Edgemoor opposes the subject property for a number of reasons. You noted that it was too tall, the subject property is too tall?
A Yes.
Q And how tall is the subject property?
A Is it, what, 75 feet?
Q 70 feet.
A Okay.
Q And 50 feet -- I'm not supposed to say.

MS. ROBESON: No.
BY MS. HARRIS:
Q Do you know how tall it is at the building line that it steps --
A I heard it, but it went in my one good ear and out the same ear.
Q Does 50 feet, should I be on that side? Does 50 feet sound familiar?
A Yeah, it sounds familiar.
Q But you -- you're aware of the fact that the Highrise Edgemoor is taller, deeper and, than the subject property?
A It's not -- it's taller. It's not deeper. It's wider, but not deeper.
Q Wider? I'm sorry. I did that the other day, wider.
A Yes.
Q Longer. Right. Thank you. Have you ever seen a -- you testified that you, that the Highrise Edgemoor, well, you indicated that the Highrise Edgemoor issue isn't about views, it's about the congestion on the street, but then at the same time you noted that you would like to see the building set back 30 feet, right?
A Absolutely. I'm a walker. I walk to the library, I walk to the Giant, I have been forced off the sidewalk by

bikes having to be on the sidewalk. I find the street is, even as is and with the single-family homes where your building is going to be, the streets, the sidewalks are crowded. When the roadway is crowded, the bikes take to the sidewalks.
Q Were you here when I showed the picture of and, again, these are random and maybe this photo that showed that there were pedestrians on the street, do those sidewalks look crowded to you?
A That picture was, I would take not, I would guess not taken when people are walking from and to Metro.
Q And how about at 10 o'clock on a Saturday morning in October, would people be walking too and from outside, not necessarily the Metro, but --
A I can't guess when they walk. I know when I walk. I don't think, you know, I don't think a random snapshot of no people on the sidewalks is representative of a street.
Q But our random --
A My living experience on the street is much more representative than --
Q And are random snapshots of episodic traffic representative of what occurs on the street?
A Because it occurs, yeah.
Q But random snapshots --
A Well, you're trying to prove something negative.

Q -- don't necessarily --
A I'm trying to prove something positive.
MS. ROBESON: Okay.
MR. POHORYLES: There's a difference.
MS. ROBESON: Okay. You can't ask her questions. If you could just answer her.
MR. POHORYLES: No, the answer is I can't disprove something negative. I can testify to something positive. The traffic occurrences that I testified to and the photo display are actual occurrences that were witnessed and that were photographed. As to a random photo that doesn't show a lot of people walking on Montgomery Lane, I can't testify to that. That's --
BY MS. HARRIS:
Q Correct. But you did testify that you snapped randomly when occurrences occurred?
A And I happen to have a camera.
Q Okay. And it would seem to me if you're focusing on the fact that there are cars on the street and you took the picture, it would be even more representative of the fact, it would show randomly whether there are, in fact, pedestrians on the street as well.
A I can't testify to other pedestrians.
Q Okay.
A I can only testify to my own walking.

Q Okay.
A And within my experience walking, sometimes the street is empty, sometimes the street is crowded and on occasion the street is, the pedestrians are challenged by bicycles on the sidewalk.
Q Okay. Have you ever seen a building with a 30-foot step back?
MR. ABRAMS: Setback or step back?
MR. POHORYLES: Step back up on top?
MS. HARRIS: Step back. He testified that he wanted a 30-foot step back.
MR. ABRAMS: Same thing.
MR. POHORYLES: To tell the truth, I haven't, but then again I was -- in suggesting this 30-foot step back, I was trying to work with you and give you your 6-story building, mind you not seven, six story. But if you want to stick to the 4-story building, absolutely, no step back.
MS. ROBESON: The answer is you haven't?
MR. POHORYLES: I haven't.
MS. ROBESON: Correct.
MR. POHORYLES: No, I haven't.
MS. HARRIS: Okay. Thank you.
MS. ROBESON: Just, if you could just confine yourself to answering the question, that would be, get us through this.

MS. HARRIS: And better for --
MR. POHORYLES: Thank you. I understand.
MS. ROBESON: I'm not sure you do, but --
MR. POHORYLES: Until the next time.
BY MS. HARRIS:
Q How many parking spaces, do you know how many parking spaces there are in the Highrise Edgemoor?
A No, I don't know.
Q Do you have a --
A There are not enough for two spaces for every apartment. That I can tell you. There are 54 apartments. What the developer did was they sold two spaces to the larger apartments, one space to the mid-sized apartments and no spaces to the many smaller apartments.
Q Okay. And how many cars do you personally own?
A Two.
Q And you testified, or you questioned the Census tract information with respect to the finding that if, in fact, it's partly your rental, approximately 38 percent of the renters would not own cars, correct?
A I testified to that as a good conjecture.
Q And your basis for that was because you questioned the socio-economic group of the people that would live here versus in the Census tracking area, correct?
A Correct.

Q And, I'm sorry, you're questioning the Census track data?
A No, I'm questioning the application of the Census track data to your building.
Q And you're aware that Census track data is based on immediate geography, correct, within the, it's within the approximate geography and --
A Yes, but not necessarily, but, yes, but not necessarily comparable, upscale buildings.
Q But do you have any, do you have any knowledge as to what the merits of this building are going to be compared to the rents of the rental properties anywhere else?
A I can tell you they're high. They're going to be high.
Q And what is your basis for that?
A Because the developer would be foolish not to make them high.
Q And --
A It's a desirable street.
Q And is the developer providing 18 percent MPDU'?
A Those are all -- my guess is they're going to be --
Q 18 MPDUs?
A And my guess is --
Q 15 percent?

A 15?
Q Yes. A total --
A My guess would be that the County would extort from the developer the making of those MPDUs, mostly two bedrooms, and in which case there would probably be two breadwinners in each family, so you're going to have a significant need for parking in those MPDU's.
Q Are you aware of the fact that the parking calculation in and of itself for MPDU's is half of the general requirement because the County has determined that, in fact, MPDU owners or renters typically have, their car ownership is less?
A I understand that, but I also know that work force people need cars.
Q Work force people that live within 800 feet of a Metro station?
A It depends on where they work.
Q How often do you see enforcement, traffic enforcement on the street?
A I'm sorry?
Q How often do you see traffic enforcement on the --
A I see tickets on windows.
Q Okay.
A Whenever, you know, or sometimes our neighbors across the street in City Homes used to have a very diligent

lady that owned a unit there and she would call whenever somebody was parked illegally she would call. I think she's moved since.
MS. HARRIS: Thank you. That concludes my questions.
MS. ROBESON: Redirect, Mr. Knopf?
MR. KNOPF: None, thank you.
MS. ROBESON: Mr. Abrams?
MR. ABRAMS: None. No, thank you.
MS. ROBESON: Okay. Then --
MR. POHORYLES: And I really appreciate you working me in. Thank you.
MS. ROBESON: I'm sorry. I appreciate your consideration and thank you. With that, this hearing is --
MR. KNOPF: I just --
MS. ROBESON: Oh, sorry.
MR. KNOPF: Yes. I now have some scheduling concerns.
MS. ROBESON: Yes.
MR. KNOPF: I had Mr., I thought for sure Mr. Doggett would be on --
MS. ROBESON: That's what I keep thinking.
MR. KNOPF: I thought he would be on the 29th and definitely finished.
MS. ROBESON: Okay.

MR. KNOPF: I, now I'm not so sure because we have cross-examination and I have three other witnesses and some things that I need to present. So what I'm worried about is where we go from the 29th. I want to make sure, because Mr. Doggett can't do it on the 13th which we were ignoring because I didn't think he would have to testify that day.
MS. ROBESON: Yes. I think that, you know, we will --
MR. KNOPF: What I just mentioned is that we were originally, and I forgot, maybe this was wrong, originally I suggested the 3rd and he said he was not available, but he is available the 3rd, so I want to know whether that's probably, possibly an overflow day --
MS. ROBESON: I think Ms. Wiltshire is in here --
MS. HARRIS: Is out of town on a pre-planned vacation.
MR. KNOPF: But she needs to be present for his testimony, Mr. Doggett's?
MS. HARRIS: Of course.
MR. KNOPF: Okay. I'm just raising this now --
MS. ROBESON: I know. I understand. I think that we have cross-examination of one, just the last of Mr. Abrams's witnesses. So Mr. Doggett could go first witness on the 29th.
MR. KNOPF: And then, okay. Now are you -- you

guys are available the 13th, because Doggett could well take, the testimony, the cross-examination, the cross-examination of Doggett might take up the whole --

MS. ROBESON: Yes, I understand.

MR. KNOPF: So I --

MS. ROBESON: You're right.

MR. KNOPF: -- just want to make sure you guys are available on the 13th.

MS. ROBESON: This has been a hard to, hard to anticipate.

MR. KNOPF: Thank you for letting me plan that.

MS. ROBESON: Okay. I do appreciate it, and the hearing is continued to April 29th at 9:30.

(Whereupon, at 5:40 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Tracy Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
MONTGOMERY COUNTY, MARYLAND

4831 WEST LANE, LLC	:	**Case No. G-954**
Local Map Amendment No. G-954	:	**DPA 13-01**

A hearing in the above-entitled matter was held on April 29, 2013, commencing at 9:42 a.m. in the Rita Davidson Memorial Hearing Room, 100 Maryland Avenue, Rockville, Maryland.

Lynn Robeson

Hearing Examiner

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C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Ken Doggett				
By Mr. Knopf:	28		136	
By Mr. Abrams:	80		148	
By Ms. Harris:		86		149
Richard Lawch				
By Mr. Abrams			203	
By Mr. Knopf:				207
By Ms. Harris:		154		214
Jon Weintraub				
By Mr. Knopf	220			
By Mr. Abrams:		234		
By Ms. Harris:		236		
Andrew Niebler				
By Mr. Knopf:	244		290, 308	
By Mr. Abrams:		291		--
By Ms. Harris:		294		--

E X H I B I T S

Exhibit No.		Marked/Received
121	Color Copy of 102(a)	263

P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Local Map Amendment No. G-954 filed by 4831 West Lane, LLC, requesting rezoning from the R-60 to the TS-R zone of property known as 4901 Montgomery Lane, Lot 26, Block 13, in the West Lane right-of-way associated with Lots 24, 25 and 26 Edgemoor subdivision, Bethesda. It's also a continuation of the public hearing in Development Plan Amendment No. DPA 13-01 filed by 4831 West Lane, LLC, which requests an amendment to the development plan approved by the District Council on July 10, 2007, in Zoning Application No. G-843.

Other than the temperature, are there any preliminary matters? I understand we have Mr. Doggett that's going to testify this morning because Mr. Lawch had a funeral to attend and I appreciate everybody working together to get through as much as we can today. Anything else before we start?

(No response.)

MS. ROBESON: All right. Yes, sir?

MR. KNOPF: Before we -- Norm Knopf for the Edgemoor Condominiums.

MS. ROBESON: Yes?

MR. KNOPF: I was giving thought to how we could shorten the testimony. I'm sure everybody would agree with

that.

MS. ROBESON: Yes.

MR. KNOPF: And before Mr. Doggett testifies, I would like to flag exhibits in the record so then he doesn't have -- some information that's in the record by exhibits, namely the counsel decisions and the Hearing Examiner decisions, I want to flag certain portions that --

MS. ROBESON: Oh, okay. I see what you're saying.

MR. KNOPF: And then he can testify. It's something that we all have in mind, he has in mind when he testifies and I think in fairness both the Hearing Examiner and the other side, rather than having huge documents in the record, I want to flag what we thought was most relevant.

MS. ROBESON: Okay. That's fine.

MR. KNOPF: So, if we do that, then we would follow with his testimony and then I, assuming by that time after cross-examination and so on Mr. Lawch will be back. And if he finishes so there's more time, we do have our last two witnesses that are --

MS. ROBESON: Okay.

MR. KNOPF: -- for later this afternoon or if they have to, they can be on the 13th.

MS. ROBESON: Okay. Fine. All right. So what did you want to flag?

MR. KNOPF: Well, I, yes, I can just, I just want

to read a few sections of the various exhibits. I'm referring not to Exhibit 102(f), which is the Edgemoor building and City Place Hearing Examiner report recommending approval in 1998 of Edgemoor and City Place.

MS. ROBESON: Okay.

MR. KNOPF: I don't know -- people can follow along or I'm just going to read it, whatever.

MS. ROBESON: Go ahead.

MR. KNOPF: Okay.

MS. ROBESON: Just read it. I'm just going to find it.

MR. KNOPF: Sure. They're all, all that I'm reading is in 102. That was my submission.

MS. ROBESON: That's fine.

MR. KNOPF: There all Exhibit 102 right down --

MS. ROBESON: Perfect.

MR. KNOPF: -- each exhibit.

MS. ROBESON: Thank you.

MR. KNOPF: Page 1 of the report states,

"These properties are subject to common ownership in a single, comprehensive development plan which seeks to merge all four properties into an integrated development project under the TS-R zone."

That's on page 1.

MS. ROBESON: Wait, which, I'm sorry, which --

MR. KNOPF: 102(f).

MS. ROBESON: (f)? Okay. And that was rezoning case what?

MR. KNOPF: That is the Edgemoor building and City Place combined.

MS. ROBESON: Okay.

MR. KNOPF: It's G-763, which is Edgemoor, and G-769, which was City Place.

MS. ROBESON: Okay. Great. Thank you.

MR. KNOPF: Right. Now on page 3 and 4, it explains what was merged. One was the Edgemoor Highrise, the other was the City Place townhouses, and the third was Hampden Lane property, which I believe the record then shows that's where HOC units went. But these were the properties that were the subject of that rezoning.

On page 4, footnote 1, it states that the townhouse development achieved a density of 27 dwelling units per acre. On page 4, it continues that, quote,

"The approved TS-R zone properties do not achieve the minimum density level recommended by the Sector Plan."

They're referring to the townhouses.

MS. ROBESON: Right.

MR. KNOPF: "The DPA seeks to transfer the unused

density to the G-763 application." That is the Edgemoor Highrise.

MS. ROBESON: Highrise.

MR. KNOPF: Page 8,

"The overall proposal for the entire site, including the MPDU's, is for a density of 98.26 dwelling units per acre for market rate units and 110.6 dwelling units when the MPDU's are included."

Now on pages 5 and 6,

"Located to the north of the subject property,"

that's the Edgemoor Highrise that's being referred to here,

"Are the Chase residential high rise apartment buildings. The Chase comprises about 340 apartments located in two buildings which extend about 90 and 120 feet in height and were developed under the TS-R zone. Located further north is the Christopher Condominium, a high rise residential complex which contains 200 units. The Christopher extends about 122 feet in height and also developed under the TS-R zone."

Page 7,

"The area located along the east side of Woodmont Avenue contains several high rise office

buildings developed under the CBD zones, including a 17-story Newlands (phonetic sp.) office building currently under construction at the corner of Woodmont and Montgomery Lane, and a 12-story Hampden Square office building."

They're obviously describing the area --

MS. ROBESON: No, no. You can read, just don't --

MR. KNOPF: Okay. Sorry. Okay. Page 12 and 13, pages 12 and 13.

‘‘The 1976 Sector Plan encouraged high rise buildings along Woodmont Avenue at a building height 12 stories, or 143 feet. Under this plan, three existing high rises were developed, including the Christopher and the Chase I and Chase II buildings. The plan recommended that buildings located closer to Arlington Road be limited to five stories or 55 feet. However, the 1994 Sector Plan provisions replaced the higher building heights for this area with a concept for a lower rise urban village with urban heights ranging from three to six stories with structured parking. Within the area where the subject property is located, the recommended maximum building height is 65 feet."

And the page is 13 and 14 there.

"The subject property is located at the northeastern edge of the 65-foot height limit adjacent to areas where the building heights are much greater. The proposed high rise will be located in the same block with a taller building and will confront much taller buildings across Woodmont Avenue. The site is uniquely situated so that it will not constitute a precedent for deviation from the height limits as it can be easily distinguished from other locations."

Page 8,

"The high rise, is,"

excuse me,

"The high rise is proposed as a signature building patterned," excuse me, by high rise I meant Edgemoor Highrise, that's -- "The high rise proposed is a signature building patterned after the prominent Dakota apartment building located in New York City's upper west side and the Saratoga apartment building located on Connecticut Avenue in Washington, D.C. The building will contain a classical division in its facade with a 2-story base, main body and shaped roof. A cornice line is proposed at the 8th floor. The building will include three pavilions on the front facade and

archways at the ground level."

That completes the discussion of 102(f).

MS. ROBESON: Okay.

MR. KNOPF: And I shouldn't say discussion, the reading.

MS. ROBESON: The reading.

MR. KNOPF: All right. And that's the longest one that we have.

MS. ROBESON: Okay.

MR. KNOPF: Going now to Exhibit 102(h), which G-908, the 4825 Montgomery Lane Council approval in December of 2012. I believe we've been referring to that as the Sandy Spring development or --

MS. ROBESON: Yes.

MR. KNOPF: -- 4825. This is from the Council approval just within the year. Actually it was within a half a year. I'm reading from page 5, quote,

"The building is designed primarily in a more traditional residential style because that is typical of the neighborhood. It will have double-hung windows, a porch on the corner and covered porches which is a very residential feature, typical of a lot of older, smaller apartment buildings. The building will be articulated with a base, a middle and a top, which is a traditional

way of detailing a residential building."

Page 5 continued, quote,

"Technical staff agreed that the design of the building successfully communicates a, quote, "Residential character," unquote, including features similar to those of residential townhouses directly across Montgomery Lane.

Page 6, quote, "Staff noted that the proposed height provided a transition between the taller TS-R development abutting to the east and that of townhouses to the west along Arlington Road and it is consistent with, quote, "Step down building heights," unquote, "Illustrated on page 42 of the plan." End of quote. Page 6, it's the last quote for this one. Quote,

"Although the proposed building fails to achieve the density of at least 45 dwelling units per acre recommended in the Sector Plan, technical staff found the density of 27 dwelling units per acre proposed here to be acceptable because the building will be consistent with the nearby residential uses of comparable heights less than 45 -- less than 45 feet that have been developed with densities between 24 to 36 dwelling units per acre."

That is the last of those quotes.

MS. ROBESON: Now what was the last -- where were you reading from --

MR. KNOPF: Page 6.

MS. ROBESON: Okay. I have it. Okay. Thank you.

MR. KNOPF: Sorry. I can read faster than anybody can find anything.

MS. ROBESON: No, no, that's fine.

MR. KNOPF: Okay. I now want to read from Exhibit 102(g) which we've been referring to as 4901 Hampden Lane.

MS. ROBESON: All right.

MR. KNOPF: But it's not so referred to in that exhibit. I think it's G-819.

MS. ROBESON: Okay.

MR. KNOPF: This is the amendment to the Triumph, which is 49 -- that's the predecessor name of 4901. It's the building opposite the high rise.

MS. ROBESON: Okay. All right. You can read it then.

MR. KNOPF: Okay. Sorry. This is from the July 25, 2006 Council decision.

MS. ROBESON: All right.

MR. KNOPF: There are multiple decisions, so it's important to keep that in mind. At page 2, quote,

"The Hearing Examiner recommended approval of the original application as did the Montgomery

County Planning Board. The Planning Board's technical staff recommended denial of the application on the grounds that it would not be consistent with the recommendations of the 1994 Bethesda CBD Sector Plan."

Page 2 continues.

"On April 25, 2005, the district,"

-- and that's the year before this decision that we're talking about,

"On April 12, 2005, the District Council voted 9 to 0 to deny the application, finding that the application was inconsistent with the recommendations of the Sector Plan due to the 100-foot height proposed for the building and would not be compatible with surrounding development."

And I call the Hearing Examiner's attention to Exhibit 120(a), which is the photograph, remember Ms. Skalet gave a photograph of --

MS. ROBESON: Okay.

MR. KNOPF: -- the original building. I just --

MS. ROBESON: I just need you to read.

MR. KNOPF: Okay. Well, I just wanted --

MS. ROBESON: I know, but --

MR. KNOPF: Okay. Well --

MS. ROBESON: -- it's not argument yet.

MR. KNOPF: No.

MS. ROBESON: So --

MR. KNOPF: Well, I'm just saying in the record at 120(a), there's a --

MS. ROBESON: Okay. But I don't want you to --

MR. KNOPF: That's --

MS. ROBESON: -- say that.

MR. KNOPF: Oh, I'm sorry. Okay. Pages 2-3. I mean if I made an opening, I could --

MS. ROBESON: What?

MR. KNOPF: If I made an opening, I could get that, I just --

MS. ROBESON: Yes, but --

MR. KNOPF: Okay. I'll just keep reading.

MS. ROBESON: We're giving you leeway --

MR. KNOPF: Okay.

MS. ROBESON: -- to point out in advance of your --

MR. KNOPF: Okay. Thank you.

MS. ROBESON: -- your expert.

MR. KNOPF: Okay. Pages 2 and 3, quote,

"Following the counsel's remand to the Hearing Examiner, the applicant submitted revised plans that proposed a maximum building height of 70 feet. Technical staff recommended approval of

the revised application, finding that it was much closer to the Sector Plan recommendations and in light of the Planning Board's earlier recommendation of approval, would be appropriate for the site."

And skipping a little bit and going on,

"The Planning Board concurred with this finding and recommended that the proposed development be approved with a maximum height of 70 feet. Following a public hearing, the Hearing Examiner recommended approval of the application on grounds that it satisfies the requirements of the zone, it would be compatible with land uses in the surrounding area and would serve the public interest. The District Council agrees with the Hearing Examiner's conclusions."

Okay. Page 9, "The subject," quote, sorry, I'm always quoting in case I forget to say that.

"The subject property is located in an area identified in the Sector Plan as the TS-R district. The Sector Plan's basic vision for the TS-R district is set forth below." Quote, "The plan recommends creation of a high-density, low-rise, urban village that steps down in height from six floors along Woodmont Avenue to three floors

along Arlington Road and provides from 45 to up to 100 dwelling units per acre. The plan retains and revises the TS-R zone to achieve this vision."

Now continuing with the quote on the same page. "The urban village concept was described in detail with written objectives, extensive written recommendations, urban design guidelines and several maps and drawings. These elements taken together are clearly designed to carry out the high-density, low rise, "urban village," concept. The District Council agrees with the Hearing Examiner and the technical staff that the Sector Plan recommends a development of the subject property for multi-family, residential use under the TS-R zone. Thus, the development proposed here is consistent with the use recommended in the Sector Plan."

Page 9, quote,

"With regard to the residential density, the Sector Plan recommends a minimum of 45 dwelling units per acre everywhere in the TS-R zone except on lots facing Arlington Road and states that higher densities with 2.5 FAR,"

and quote, "About 100 units per acre," unquote,

"Would be allowed elsewhere in the district.

See Sector Plan at 82. The range of 50 to 70 units proposed in this application would not necessarily produce a unit density approaching 100 units per acre. However, the proposed development would produce between 70 and 99 units per acre in the top half of the range the Sector Plan recommends. Moreover, the present proposal would provide for the maximum floor area, FAR, recommended in the Sector Plan which is another important measure of density. For all these reasons, the District Council finds the proposed rezoning substantially complies with the density recommended in the Sector Plan."

Pages 9 and 10. This is the last quote for this one.

"Turning to the Sector Plan's goal of achieving a," quote, "Low-rise, high-density, urban village," unquote, "For development in the area of the subject site, the District Council agrees with the Hearing Examiner that the proposed development would support this goal. The building is proposed with seven stories rather than six recommended in the Sector Plan, but the maximum height of the building would be 70 feet, just five less, just five feet (less than 10 percent) above

the height limit recommended in the Sector Plan. In addition, one corner of the building would drop to 60 feet, reducing the overall mass of the building and its impact on adjacent properties. Moreover, the 70 foot height limit requested is consistent with the Sector Plan's scheme of greater heights along Woodmont Avenue and would provide a significant step down in height from adjacent high rises to the north and the east as called for in the Sector Plan. For all of the above reasons, the Council concludes the proposed development would substantially comply with the Sector Plan."

Okay. Now I'm getting near the end of the document.

MS. ROBESON: Okay.

MR. KNOPF: I'm now going on to Exhibit -- one second. I just -- I guess that's what I did. I -- in my haste, I just want to mention something because in my effort to cut back, I think I cut back too much. We have -- I just want to note for the record, in the record and also submitted by me is the follow-up to what I just read. There is another --

MS. ROBESON: Okay. There's, I know.

MR. KNOPF: Another 4901 where it was reduced, the

units were reduced further.

MS. ROBESON: That's -- I'm, it's a DPA amendment.

MR. KNOPF: Right.

MS. ROBESON: Yes.

MR. KNOPF: And Ms. Skalet testified about that and I thought I, I didn't want to repeat.

MS. ROBESON: That's fine.

MR. KNOPF: Oh, maybe I didn't hold them there.

MS. ROBESON: Okay.

MR. KNOPF: No, I take it back. I do have the next page with me.

MS. ROBESON: Okay.

MR. KNOPF: For Exhibit 102(k), which is the 4901 Hampden Lane DPA 12-02, the --

MS. ROBESON: Yes.

MR. KNOPF: -- November 13, 2012 Council approval. And I just briefly, at page 1, this is the 2012. At page 1,

"The LMA G-819 permitted a multi-family residential building with a minimum of 50 and maximum of 70 dwelling units. This DPA seeks to reduce the minimum number of dwelling units from 50 to 40 dwelling units and clarify that at least 15 percent of the dwelling units will be MPDU's. The lower minimum number of dwelling units reduces the potential of MPDU's from eight to six."

Now page 2, quote,

"The Sector Plan designates the subject property as part of the transit station residential district and recommends a density between 45 and 100 dwelling units. This DPA proposes densities between 56 to 99 dwelling units per acre. Technical staff also concluded that the application meets the requirements of the TS-R zone."

I'm skipping sections.

"Technical staff concluded that the reduced number of dwelling units proposed in this amendment continues to fulfill the purpose, this purpose, as it is within the density recommended by the Sector Plan. At its regularly scheduled meeting on September 27, 2012, the Planning Board voted four to zero to recommend approval of the DPA as submitted."

So I guess what I left out was the Council did approve this. I left it out, the bottom part. Going on to, let's see what I've left off -- I just have Exhibit 102 because I left off the number, the G-865, it's the Rothstein development. G-865 and DPA 073 and I can --

MS. ROBESON: By the way --

MR. KNOPF: I think it's J. I think it's J.

MS. ROBESON: -- we will have an updated exhibit list. Our servers are down. So we couldn't print, but we expect them some day to come back up. So --
MR. KNOPF: I believe it's 102(j).
MS. ROBESON: Okay.
MR. KNOPF: 102(j). Okay. It's just one quote on page 5.
MS. ROBESON: Okay.
MR. KNOPF: "The applicant proposes to construct a single building on the combined subject site, a multi-family building with approximately 68,000 square feet, a maximum of 31 dwelling units, underground parking and a rooftop terrace. This building would have three stories and a maximum height of 35 feet in its height along the Arlington Road facade, stepping up to four stories and a maximum height of 48 feet, 10 feet back from the facade. The fourth story would be stepped back five feet farther on the north and south sides of the building, providing a cascading effect at the top floor. The maximum FAR would be 2.0, although the current design calls for an FAR of 1.8." End quote.
Now the last quote. This is Exhibit 102(i) in G-843. This is the original Holladay approval --

MS. ROBESON: Okay.
MR. KNOPF: -- of July 10, 2007 --
MS. ROBESON: Right.
MR. KNOPF: -- by the Council. Just -- okay. At page 3, quote, "The site," this is the Holladay site, the original Holladay site.
"The site rises to a high point at the northeast corner at 338 feet above sea level. From this point, the property slopes downward in a southwest direction about four to five percent to a low point of 328 feet above sea level.''
MS. ROBESON: Wait. Where did we find that? Where --
MR. KNOPF: Page 3.
MS. ROBESON: We're at 102(i) what page?
MR. KNOPF: Three. Let me see if I can find the original.
MS. ROBESON: It is in the --
MR. KNOPF: No, I'm sorry, I see here it's on page 2. I apologize.
MS. ROBESON: Okay.
MR. KNOPF: Page 2.
MS. ROBESON: I see it. Okay. I'm with you. Go ahead.
MR. KNOPF: Let me make sure I've got the next

quote right. Yes. The next quote is on page 3, sorry.
MS. ROBESON: That's okay.
MR. KNOPF: ''The land use and zoning pattern of this area reflects a predominantly residential character. Although high rise office uses are located in the eastern portion of the area and retail services located at the southern end. The area is comprised of a number of multi-family and townhouse projects approved under the TS-R zone after the adoption of the 1994 Sector Plan."
Pages 3-4.
"Located northwest of the site are 22 townhouses built to a 3-story height with below-grade parking. This project was developed under the TS-R zone as the Villages of Bethesda approved under LMAG-720 on October 10, 1995. The Chase high rise is located east of the site along Woodmont Avenue and is developed under the TS-R zone in two buildings, 90 and 120 feet in height, with a density of 340 dwelling units. Located further north along Woodmont is another TS-R zoning project known as the Christopher which is developed to a height of 122 feet with 200 dwelling units."
Now page 5. "The proposed building," again I'm

back to Holladay,
"The proposed building will be composed of a 4-story and 6-story wings. The 4-story wing will extend along the southern and western portions of the site. The 6-story wing will extend along the northern end of the site. The building mass projects the 4-story height to Montgomery Lane and will be made up of townhouses. The building height is consistent with development across the street which reflects townhouses and low-rise structures."
Page 6. Quote,
"Testimony indicated that the southern end of the building will contain a townhouse type facade that will be compatible with development along Montgomery Lane."
Page 7.
"The density proposed is at a 2.5 FAR, which is the maximum standard. The proposed density is well below the maximum of 150 dwelling units per acre in the zone."
Page 7.
"The project," quote, "Will contribute to a range of densities in the area," unquote.
And you will not allow me to tell you where

exactly in terms of the DU's, but okay.
MS. ROBESON: I will tell you, though, for some reason I don't have a page 7 --
MR. KNOPF: Oh.
MS. ROBESON: -- in our official record. So you may want to, you know, it's a zoning decision, so I'm not -- you may want to just submit that at some point.
MR. KNOPF: Absolutely. I --
MS. ROBESON: Whenever we can update our exhibit list.
MR. KNOPF: Let me see if I have -- I think, well, we're consistent. I don't have one in mine either, so that explains why you didn't get it.
MS. ROBESON: Okay.
MR. KNOPF: But, obviously --
MS. ROBESON: I'm just saying --
MR. KNOPF: -- I'll get the whole thing.
MS. ROBESON: -- just when you get the opportunity.
MR. KNOPF: Okay. Sorry. Thank you.
MS. ROBESON: That's all right.
MR. KNOPF: Okay. I just thought -- that completes what I wanted to do.
MS. ROBESON: All right.
MR. KNOPF: I just thought that would be helpful

rather than saving it for summation at the end.
MS. ROBESON: Well, I agree with you.
MR. KNOPF: And Mr. Doggett will have these things in mind, so it will --
MS. ROBESON: I --
MR. KNOPF: -- be helpful.
MS. ROBESON: I understand. Enough. That's fine. Okay.
MR. KNOPF: Okay. Thank you.
MS. ROBESON: That's not a projecting mike. Mr. Doggett, please raise your right hand.
(Witness sworn.)
MS. ROBESON: Mr. Knopf.
MR. KNOPF: Okay. If you'd give me a minute because I have to find -- okay. I would point out that Mr. Doggett's resume is in the record as Exhibit 50.
MS. ROBESON: And are you, what is the expertise? Are you qualifying him as an architect or a --
MR. KNOPF: No, as a land planner, urban designer.
MS. ROBESON: Oh, an expert in what?
MR. KNOPF: Land planning and urban design.
MS. ROBESON: Okay. Does anyone have an objection to admitting Mr. --
MS. HARRIS: No.
MR. ABRAMS: No.

MS. ROBESON: No?
MR. ABRAMS: No.
MS. ROBESON: Okay. Then I'm going to qualify him as an expert in land planning and urban design.
MR. KNOPF: I guess I have the right to brag a little bit.
MS. ROBESON: Well, we do have his resume in the file and --
MR. KNOPF: Right.
MS. ROBESON: -- he has testified here numerous times as an expert and, okay.
MR. KNOPF: But I would like to just ask him one question along those lines.
MS. ROBESON: That's fine. Go ahead.

DIRECT EXAMINATION

BY MR. KNOPF:
Q Does land planning and urban design involve a consideration of location and design of buildings?
A Yes.
Q And do you have any training that might not normally be associated with land planning design regarding design of buildings?
A Yes. I went to a school of architecture and got a master's in urban planning and urban design, worked for the dean for several years as an architect, a registered

architect. I came to the States, and as you know from my resume, I lectured in urban design at Virginia Tech. And I've done several buildings for the British Parliament. These are big land owners there. You don't have liens on that property. That is a relationship. I do, I am in partnership with Tom Camster (phonetic sp.) who is a registered American architect. We've been for 30 odd years together. But usually the buildings I do now are almost entirely are for British Parliament.
They include Lachin Douglas (phonetic sp.) and Washington Bullfinch and McKinley in New York, those kind of things.
MS. ROBESON: Okay.
THE WITNESS: Robin Leady (phonetic sp.) colonials got hold of the good builders.
MR. KNOPF: Okay.
MS. ROBESON: Luckily, we, hopefully we put that behind us.
THE WITNESS: I hope so.
BY MR. KNOPF:
Q Mr. Doggett, for, in preparation for your testimony today, you reviewed the application and exhibits associated with this application?
A Yes.
Q And have you sat in on various hearings before

this Hearing Examiner on this application?
A Yes.
Q Did you attend one of the Planning Board hearings on this application?
A Yes, the second one, yes.
Q Are you familiar with the Bethesda Sector Plan provisions relating to this application?
A Yes.
Q And are you familiar with the TS-R zone and other County zoning requirements?
A Yes. Uh-huh.
Q And have you visited the Montgomery Lane and the site of this property at all?
A Yes. Yes.
Q On a number of occasions?
A Yes.
Q And did you have a prior matter that dealt with development on Montgomery Lane that made you more familiar with this area?
A Oh, yes, the original, the Highrise Edgemoor as an expert witness.
Q Across the street?
A Yes, across the street. Oh, and we, it was, that was the client. It was for what we call the Triumph building then, the 4900 block.

MS. ROBESON: So were you the --
THE WITNESS: I was the expert witness against that, yes.
MS. ROBESON: Against it? Okay. All right.
MR. KNOPF: Thank you.
BY MR. KNOPF:
Q Okay, Mr. Doggett, I'm going to ask you a number of questions which I would characterize as bottom line and then you will get a chance to explain your bottom line.
A Yes.
Q But when I started out, I thought -- in your opinion does the proposed project comply with the Sector Plan provisions applicable to Montgomery Lane regarding the urban village concept?
A It doesn't conform, no.
Q It is, in your opinion does the proposed project comply with the Sector Plan provisions applicable to Montgomery Lane regarding the mixed street concept?
A No.
Q Is it -- I'll shorten this if I may -- is it applicable, in your opinion does the proposed project comply with the Sector Plan provisions application to Montgomery Lane regarding building height?
A No.
Q Regarding the number of stories?

A No.
Q Regarding the number of dwelling units?
A No.
Q Okay. In your opinion, does the proposed project comply with the Sector Plan provisions applicable to Montgomery Lane regarding density?
A No.
Q In your opinion, does the proposed project comply with Sector Plan provisions applicable to Montgomery Lane regarding the character of the buildings called for on this?
A No, they're not in character.
Q In your opinion, does the proposed project comply with the Sector Plan provisions applicable to Montgomery Lane regarding the design and design elements of the buildings on Montgomery Lane?
A No.
Q Now I want to ask you a question as to whether the proposed development meets the following statutory requirements. Section 59B 1.61(b) provides that the Council needs to find that the proposed development, quote, "Would be compatible with adjacent development," unquote. In your opinion, is this proposed project compatible --
A No.
Q -- with adjacent development? Okay. And my final question, in your opinion, does the proposal comply with the

purposes of the TS-R zone? And I'm going to advise you that the purpose set forth in 59C 8.22(i) provides that one of the purposes of the TS-R zone is, quote, "To prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood," unquote.
A No, it is not compatible as a negative impact.
Q Okay. Thank you. Now I will now ask whether -- you stated that you're familiar with the Sector Plan?
A Yes.
Q Would you explain your understanding of what the Sector Plan provisions provide for development at this site and along Montgomery Lane?
A The Sector Plan as far as this building is concerned, the Montgomery Lane recommendations and the association recommendations with that lane, it -- Montgomery Lane is a unique road. It's the only road in the entire that favors pedestrian and it gives a break from the, among the office buildings along around by the Metro. That's a personal opinion. But the, it gives, it should give a pleasant walk from the higher buildings associated with the Metro down Montgomery Lane to the library, the very nice park and even the school. People actually in the high rise will actually use, their kids use that for that particular walk.
This is, this, when you have something that's as

specific as this in planning, all right, and I suppose 40 years of planning, you have your general goals which are quoted a little further up and then you have the specifics. The specific is something you take care of. First of all, you don't, it's a nice thing to do, you try and get the goals to fit in and to absorb that, but you do not ignore that. That is the binding element, but you, as the perils of the over planner.

In general terms, I would like to make a couple general comments before going onto the items in the plan, the Sector Plan. It's been said that it's rather oldish plan. It's not an oldish plan, first in 20 years. 20 years is not a long time. 20 years is the maximum. You can have 10-year plan if you want, an outer term plan amendment, plus I assume you could have. There has been no action as far as I can see to do any change to the strong recommendations of the Montgomery Lane Sector Plan, the Sector Plan that deals with Montgomery Lane.

The other thing that came out I think in the, somebody said -- referring to some of the details I recommended as being rather outdated, that is not the actual traditional appearances, that they are very contemporary, traditional appearances. And I don't want to be a professorial, but before this report was recommended for, you had a movement. Phillip Johnson and people like that,

Robert Stone, the dean of Yale, in terms of bringing the traditional forms back into buildings, you had Seaside, and then -- which was the development that started general thing. You had Kentlands from that, which is the show piece development.

To me, City Place is the perfect example of that. The architects, the other side probably --

MS. ROBESON: Wait, City Place or City Homes?

THE WITNESS: City Homes. Oh, I keep getting it mixed up.

MS. ROBESON: No, that's okay.

THE WITNESS: Yes, City Homes is a perfect example, I think, of that in terms of scale, and I'll go into that in a few minutes. But those are two points that I would, have been brought up that I really felt had to be rectified.

The plan itself calls for a pleasant pedestrian walk with landscaping, textured sidewalks and buildings of a human scale starting at six floors on Woodmont and Montgomery, not in Woodmont at that particular point, going to three stories at Arlington and most of the buildings that are being built or approved, apart from the original building Edgemoor which was, I believe, the District said that this was not to be taken as an example. It was there. It was the first one and it was near the Metro.

But since then, most of those buildings, they build them at six to three story system. You can measure two foot here and one foot here, but, well, fuck a duck, in fact, it's a duck. And it's a three story, plus a setback at the end and it's the old Triumph building, the one opposite -- it is basically, you know, six stories. I, the idea of the setback is not, to use the setback necessarily to justify the help with things, consistent to bring it down, it is one of many features.

The adopted plan does not do it. It's a 7-story building to begin with. Two-thirds of the way down from Woodmore, it's a 7-story building --

BY MR. KNOPF:

Q Excuse me. By adopted plan, you meant the proposed plan?

A Yes, the proposed plan. Sorry, I meant the proposed plan here is seven stories, five at the front and on the high, one of the high parts of the Montgomery Lane and I think the drawing, the prospective there shows --

MS. ROBESON: And that's Exhibit --

THE WITNESS: 72, I think.

MS. ROBESON: Okay.

THE WITNESS: Shows the bulk, the massing of it, the intruding bulk, I think, of the building. And the 12-foot was not really justified, putting another two stories

on, plus you have a --

BY MR. KNOPF:

Q By 12 feet, you're referring to the 12-foot --

A The 12-foot setback, yes.

MS. ROBESON: The -- I think we're calling it step back --

THE WITNESS: Step back, okay.

MS. ROBESON: -- just for consistency.

THE WITNESS: And then, of course, on top of that you have the utility roof, mechanical penthouses, and I think the bulk is just too high. The key paragraph that really I, jumped to my mind -- if I can find them in my notes here -- is on page 82 of the, of the plan. It talks about the kind of housing, the urban village housing and things like that. It should be low-rise, high-density, urban village housing, okay, urban village. And it says the type of housing should appear to be townhouses, okay, a new urbanization if you want, but actually the three to six buildings with apartments at each level.

This form of, would create a high-quality environment in a market currently being set in Bethesda. Having looked to that, I then -- this is looking halfway up.

MS. ROBESON: What is?

THE WITNESS: This building here, the former here.

MS. ROBESON: What exhibit is that?

THE WITNESS: That's 76. What you see there is a commendable effort to cut it out. It's a 600 feet starter. It looks like a 2,000 from sidewalk to sidewalk and you have the ramp going up. There's only one minimum, one in 12 ramp going up to the entrance and then the steps coming down, the steps, some of the steps you use for seats. But, anyway, it is normally usual, well, you wouldn't go up a ramp and then steps. But it gives at least some kind of feature, but the island here is one way, the very thing it hopes to do, and you have 80 feet coming one way, 20 where the scallop is.

BY MR. KNOPF:

Q Now, wait, excuse me. For the record, 80 feet, when you say one way --

A All right.

Q -- it may be clear to you, but they --

A I believe it's 80 feet on the flat front. I think --

MS. ROBESON: On the Montgomery Lane --

THE WITNESS: Yes. Yes.

MS. ROBESON: -- frontage?

THE WITNESS: And then I think it's 28 feet or something like that going into the --

MS. ROBESON: Okay.

THE WITNESS: -- it's roughly that. But the point is once you see that and you look at that and it's only

halfway up, but it's glass fronted and it's, it emphasizes the mass and the bulk in this. It's certainly not the type of housing program that should appear to be townhouses, but actually a three to six floor building with apartments. It's not meeting the most important element of that plan, which is produce that kind of low-level entry scale that we wanted and which they did so successfully in City Homes. City Homes is -- it varies people say from 48 to 53. It's 48 feet. If you walk down on the lane and you look up, you will see -- and I have photographs --

MR. KNOPF: Let me get the photographs.

MS. ROBESON: Are these in the record already?

MR. KNOPF: Yes, they are. They are in --

THE WITNESS: These are, yes.

MR. KNOPF: Well, they're in 102. Everything is --

THE WITNESS: Yes.

MS. ROBESON: Okay.

MR. KNOPF: It will be 102(d) as in dog.

MS. ROBESON: Okay.

THE WITNESS: The one I'm looking at is the one looking inside the courtyard. Oh, I see.

MR. KNOPF: I believe, I could --

MS. HARRIS: Excuse me.

MR. KNOPF: Yes, they all, they all have them.

THE WITNESS: They all have it. Thank you.

MR. KNOPF: But I believe that the way they were filed, there is no subpart C.

THE WITNESS: Yes.

MS. ROBESON: Yes. So can you show me --

THE WITNESS: Yes.

MS. ROBESON: -- which one you --

THE WITNESS: There are two or three like that and it may --

MS. ROBESON: Okay.

THE WITNESS: -- maybe any of those would be it.

MS. ROBESON: If the parties could go to 10D?

MR. ABRAMS: 102.

MS. ROBESON: I'm going to -- 102(d). I'm going mark them in our record in chronologic, or in numerical order. So it would be 102(d)(1).

MR. KNOPF: Can you just hold it?

MS. ROBESON: It's the order that's in the record.

MR. KNOPF: Yes, I'm getting him to arrange his in that --

MS. ROBESON: Yes, that's fine.

MR. KNOPF: Yes, he didn't have them necessarily in that order.

MS. HARRIS: Are we starting with --

MS. ROBESON: Let me, I can show them to you if

that makes this simpler. This I have as 102(d)(1). Do I have that right?

THE WITNESS: Yes, that's right, yes.

MS. ROBESON: Okay. Then this one I have as 102(d)(2). And I guess I'll call that courtyards of City Homes?

THE WITNESS: Yes.

MS. ROBESON: Okay. Then this one I have as 102(d)(3).

MR. KNOPF: Right.

MS. ROBESON: I don't know what, how to describe this except another --

THE WITNESS: It's the, it's, no, no, yes. Well, it's the, I think the first one was on top of the, this one, and --

MS. ROBESON: Well, we'll just mark it and I'll say --

THE WITNESS: Yeah.

MS. ROBESON: -- different view --

THE WITNESS: Yes.

MS. ROBESON: -- courtyards of City Homes.

THE WITNESS: Yes. It shows the road and the sidewalk types of things.

MS. ROBESON: Okay.

THE WITNESS: Yes.

MS. ROBESON: Okay. And then I have this one --
THE WITNESS: Showing both sides, yes. Uh-huh.
MS. ROBESON: -- 102(d)(3).
MR. KNOPF: It's (4), isn't it?
MS. ROBESON: Yes, I'm sorry, (4). And that's this one here showing both rows of town homes of City Homes.
MS. HARRIS: Can you show that one again please?
MS. ROBESON: Sure. Okay. Then I have 102(d)(5) and this shows, is looking north from City Homes toward, I mean east from City Homes toward Woodmont, correct?
THE WITNESS: Yes. Uh-huh.
MS. ROBESON: So (5) is view from City Homes looking east.
MR. KNOPF: And which one is that?
THE WITNESS: Do I still have it?
MS. ROBESON: 102(d)(5).
MR. KNOPF: Yes, (5), right. Yes, you just did that. Okay. I --
MS. ROBESON: Just checking.
MR. KNOPF: -- think we're on the next one, right?
MS. ROBESON: And then 102(d)(6) will be -- this looks like the view of Montgomery Lane looking west toward the library, is that correct?
THE WITNESS: Yes. Yes. Yes.
MS. ROBESON: Okay. And then 102(d)(7) is view

looking west from City Homes?
THE WITNESS: Yes. Yes.
MS. ROBESON: Okay. Okay, 102(d)(8), that is, am I correct that that is a view of the, a view of an existing view of the Edgemoor Highrise?
THE WITNESS: No, this part.
MR. KNOPF: Which one are you looking at?
MS. ROBESON: (d)(8).
THE WITNESS: This one, I don't know why this -- okay.
MS. ROBESON: Is that a view of Edgemoor Highrise?
THE WITNESS: Yes, it is, yeah. Uh-huh.
MS. ROBESON: And then 102(d)(9) is, you'll have to tell me what this one is.
THE WITNESS: The pocket park at Woodmont and Montgomery Lane.
MS. ROBESON: Okay. Pocket park --
THE WITNESS: Just outside the Edgemoor.
MS. ROBESON: Woodmont and Montgomery Lane. Okay. Okay, yes, it's hard to get a chance to talk in here.
THE WITNESS: Okay.
MS. ROBESON: Go ahead.
THE WITNESS: Okay. I think the, No. 1 of the photographs shows --
MS. ROBESON: And that's 102(d)(1)?

THE WITNESS: Yeah, 102 -- as I go, I'll just say photograph 1, 2, shall I?
MS. ROBESON: Okay. That's fine.
THE WITNESS: Yeah. Shows the landscaping, shows the height, the 48 feet height. Shows the major rooms looking at one another, I gather, from the ladies, people that work there, the lady that worked there whose name I can't remember now said that, you know, her main rooms were the living room, master bedroom and family room. It should be noted most of the units, and even the last unit going towards Woodmont, which has a small strip of landscaping, is based on the fact that your main rooms look at a landscaped pedestrian area and your back rooms look at the accessory parking that might be in the mews. And those rooms seem to be with most people the kitchen, the bathroom and the spare room, using that kind of thing.
They all have balconies that go and one, and the last set of exhibits, I think, show the balconies project out about six feet from the right back. So when you're above, you visually do not see what happens below. But the, as a purely interesting feature, it's called the mews, I mean the mews is the road and that's not the building. It's where the carriages used to go, so --
MS. ROBESON: Oh, it's -- so the courtyards are not the mews?

THE WITNESS: No, it's really the --
MS. ROBESON: The alleys?
THE WITNESS: Yes, the alley. Exactly, but I don't think they're alleys. Are they expensive? In London they maybe go for about $20 million.
MS. ROBESON: Okay.
THE WITNESS: But they, the idea is basically that you drive in, you use the access there and the other side of that building traditionally is where you looked at the garden of a big house. You had the big house, the orchard house, the garden, and the mews where the carriages and the cars would be. So actually it's an extremely thoughtful design.
The other one, No. 2, is pretty much the same, but it shows the edge of the road and it shows the connection on the road. Again, the landscaping there is, you see the grass buds, the pedestrian walk. Again, it's the four stories -- the 53 comes from a base shallow roof that goes back. It makes no impact at all.
It has very articulated structure. It has stone at the bottom. It has brick. It has, as you walk down on that side of the street, it has a very strong cornice that comes out of the three stories, which means you don't see actually much of the courtyard at all. What it does, it breaks the level down. The windows are what I could call

residential windows. There were entries, residential entries. The windows and the doors aren't articulated. The stone work does the articulation and you have rather pleasant formas at the end, terminating the height.

It's marked, is, in anybody's language a very residential human scale building and that is what I think that, although a lot of the other buildings have not done that, the other buildings have largely stuck with the density and the height and the scale for lack of bulk. Going on to No. 3 is just another one showing the more details that you see there more closely up, the seats inside and the heavy plantings, the bay windows come out very nicely, which are a feature asked for in the plan.

BY MR. KNOPF:

Q But you say a feature in the Sector Plan asked for?

A The sector Master Plan. At the end, maybe I'll go through that comment a little bit. I'd probably go outdoors. And, again, this is another shot. No. 4 inside seeing the balconies coming out. Very nice articulation of the stone at the bottom, bay windows, pleasant brick work, residential scale doors and windows. Actually what they're doing is in many respects you're taking a front facade and putting it on the side. You see doors on the front of the end of townhouses and you see the doors and the windows on

the side. You never look at -- you always look at an angle. When you're walking or driving, you look at angles of things, you know, you don't stand at the back of one and look out the proposed buildings or measure the height. It's the angle you see. And I think that Exhibit 42 shows how that dominates.

Q You mean Exhibit 42?

A Sorry, 72, the one with the large prospective, the one before that one.

MS. ROBESON: Yes.

BY MR. KNOPF:

Q You're referring to the proposed driveway?

A To the proposed, yes.

Q The curve place and --

A Yes. No. 5 shows the relationship much more to the sidewalk with the steps and the planting. It doesn't worry, the steps are private coming into a public. It's a pleasant feature and breaks up the facade. The facade -- the proposed way -- the architect made a big deal of having a straight line facade. I don't know --

Q Straight, so what do you mean by a straight line facade?

A That the buildings would be in roughly the straight line of one another on the other side of the road. The proposal lined up with Sandy Springs and the other

buildings. It's roughly lined up. You don't actually need to line up when all the buildings are somewhat different, you know, how they're expressed. I'd say these and the Edgemoor, it's an Edwardian. He's called them classical. I don't see classical.

I think when you have a straight line is when you have something, a judge in a Federal building, regency, stucco building and your changes are made in the building's, the house itself, so your doorway is different as you go from one to the other. Your continuity is in the design.

When you have a variety of buildings, you don't have any need to try to keep the building to a straight line. And the reason I'm saying that is that it's, it seemed to me at the time that the rear space, private space, is somewhat wasted space and it could have been used into the front of the building. So it's three to five feet is the, but it's at least an additional amount of area needed there.

Q Mr. Doggett, you've been using the term straight line.

A Yeah,

Q I want to clarify something. I think during the hearing, other people had used the term, and I want to see if it's the same term we're referring to, of a straight edge.

A Straight edge.

Q A --

A A uniform --

Q A uniform --

A A uniform edge.

Q Yes, that's what you're referring to?

A Yeah. Yeah. Obviously, City Homes has these ins and outs the whole time, but --

Q So City Homes is not a uniform --

A I wouldn't say so, but it's nice having the breaks of the scale and you'll -- the landscape is inside there. As soon as we pass by, you're conscious of that landscaping in there. The -- so I don't know that -- the little bit of the history of the straight line, it probably came from the design manual which was written by a lady that to Fairfax County and we took, and she worked with me and I wrote the Fairfax design manual and Rockville City then had their -- is sort of an incestuous school of thought. And we left it out of the Fairfax. It's, I'm just saying that there is that flexibility that you can have with buildings of this type. If they were Federal buildings, I would say no. Okay.

So here again you have the nice, articulated doors, there's sort of our six, two dormers, four windows, no, six windows, again, all residential scale.

Q You're referring to five?
A To No. 5 still. And as I say, you're not talking about a setback there, you're talking about a setback for a portion of the building, then you're going into the garden, to the much greater setback. The, No. 6 is really just for my own memory when I earlier was looking at the library and the public space and the school there. Traditionally, it's a rather nice street to walk from before those buildings go.
And then No. 7 is showing how the buildings, the end building is ending after essentially a 3-story building with a setback going 48 feet. And that setback goes around Arlington Road to the balcony, the wrought iron balcony.
Q I believe for the record, I think we're referring to the, refer to the little Edgemoor.
A The little Edgemoor, the other one is Arlington North. The little Edgemoor?
MS. ROBESON: This is Edgemoor at Arlington.
THE WITNESS: Yeah, Edgemoor at Arlington.
MR. KNOPF: Sorry.
THE WITNESS: But materials and the bricks are the same and I think the heights and the density are very comparable. But I think this shows how looking at that, the setback actually does create a sense of going down to three stories. The last, oh, the No. 8, I could have a better photo. It shows the details to the Baroque and the strips

of stone, the articulation of the projecting balconies. And as you go, as you go up those, you know, as you walk down, you probably remember they had gables and pictures giving that --
BY MR. KNOPF:
Q Let me ask you at this point, can you tell me -- I don't mean to break up where you're coming from.
A Yes.
Q We do have a photo which I can put an exhibit in --
A Yes.
Q -- which shows the entire building --
A Yes.
Q -- with the architectural features. Would this be a good time to discuss that or would you like to do it at another point?
A I, if you're knowledgeable about it, it's okay with me.
Q Let me know -- let me find, let me find --
A Okay.
Q -- that because you had mentioned that the Sector Plan --
A Yes.
Q -- referred to various architectural treatments?
A Yes, yes, okay, yes, all right.

Q And does the Edgemoor --
A Yes.
Q -- embody those?
A Yes. Yes.
Q If you could just give me a minute and I'll -- I believe it's 106. You have --
A Yes.
Q -- photos.
MR. KNOPF: Will this one do? It --
MS. ROBESON: Oh, the comparative architecture?
MS. HARRIS: Or --
MR. WILTSHIRE: Yes, I think they go down there to the left.
THE WITNESS: It's the long way, you have the aerial of the whole group.
MR. KNOPF: Isn't it in there?
MS. WILTSHIRE: This one?
THE WITNESS: Yes, I think it's the Sandy Spring. I have some there over Sandy Springs. Oh, that's the one, yes.
MS. HARRIS: I think that's the only other one.
THE WITNESS: Yes, that's the one.
MS. ROBESON: 106(g), is that what it is?
MS. HARRIS: Yes.
MS. WILTSHIRE: Yes.

MS. ROBESON: Okay.
MR. KNOPF: This one is 106(g) and it's back here also.
MS. ROBESON: Oh, no, I'm fine.
BY MR. KNOPF:
Q Mr. Doggett, I don't know if you want to come up here and talk about it or whatever is more convenient for you. There's two, several different pictures. The -- let me just, just one second here. I want to, if you just give me a chance --
MS. ROBESON: You can move that back if it helps you.
MR. KNOPF: Just one minute here while I find it.
BY MR. KNOPF:
Q Okay. I want to just read something because I think that you mentioned the Sector Plan has some design criteria for buildings?
A Yes.
Q I'm reading from page 40. Among the things that they mention here are, let's see, scale, it says,
"Achieve compatibility with nearby residential areas through techniques such as step down height, articulate the buildings, facade treatments and other architectural treatments."
I believe they also call for, let's see, I'm

trying to find it. Do they not call for turrets and peak roofs and --

A Yes, I --

Q -- all those kind --

A You're talking about -- I think that, it comes out and also they gave me five or something, the urban design.

Q Let's look at that. I'm trying to find it.

A But you're reading from urban form and the zoning design.

Q Yes, here it is.

"Design rooftops to achieve residential images by using hip roofs, gables, turrets and other type pitch uses. This varied roof line is desirable to improve character and reduce the sense of both."

I just make that, raise that because I want you, if you could, to talk about the Edgemoor and whether it incorporated any of those features as contrasted with the proposed project?

A Yes. They, but back to the new urban, it's trying to produce on the street, which is an intimately scaled open scale and the way you do it is to use far side articulation you saw in City Homes, windows and doors defined, rather than the large sort of scale facade of the proposed building. I'm not saying it's a bad building. I'm saying

that it is not the specification recommendation, that nobody receives a lump of change, but it takes up a lot of the Sector Plan language, the drawings and words.

In this case, you see the gables. You see the projecting balconies, canopies at the top, the residential style windows of various forms, stone, the articulated entrances at this particular level, stone along here with the open space in the cut out for the parking, which is allowed there in the referenced way it's done. It's not recommended as a hallway. There's a street. It's quite narrow and I'm not, I wasn't -- I'm not a traffic specialist, but it seemed to me that the street, once you double park, you're having problems there and I did an illegal drive in, this is -- and I showed my handicap sticker right away, but --

Q Mr. Doggett, you may want to use this other exhibit here, which is duplicate 106(f) --

A Okay.

Q -- talking about the roof features. I think that shows a little bit better than --

A Okay.

Q -- this one. Do you want to stand on this side --

A Yes, sure.

Q -- so you can see?

A Well, I think the point is made you get the cable,

the bay windows, you've got the high-pitched roofs, the cornices, the balconies, the residential scale wall units there and I think that was one of the things that they do request and that is part and parcel, one of the dominant, one of the dominant themes, the three to six stories and details of those to break it down and the landscaping that might be associated with it. These are the things that make the urban design and that is what they seem to want.

If you don't get the maximum of that affordable housing, then it can be done elsewhere, but you don't destroy the plan. You're still going to get affordable housing but, you know, we're recommending here at City Homes, they actually are town homes, they're recommended to look like that, but with apartments on each floor. You're getting the same visual effect is what they want, I think.

The setbacks are being handled, I think, quite nicely here and here.

Q By here, you're --

A -- and even, even this --

MS. ROBESON: Is he referring to Edgemoor at Arlington North and --

THE WITNESS: Edgemoor North, Edgemoor, little Edgemoor --

MS. ROBESON: -- Edgemoor at Arlington?

THE WITNESS: -- Edgemoor. Sandy Springs goes up

one floor, then --

MS. ROBESON: 4825.

THE WITNESS: -- and then goes at five feet and I, so those are quite nicely done. The -- I'll go back to this one now.

MR. MELEHY: Meaning Exhibit --

THE WITNESS: Exhibit --

MS. ROBESON: 106(g).

THE WITNESS: Yes. Okay. And here, we already pointed out there, you'll see the characteristics here which I think Sandy Springs is, it's not a bulky building. It's only four stories. Again, it's residential. It's got a residential scale and all articulated. The cornice articulate there. There are one, two, three, four types of residential windows going at one, two, three, four, to the heavy corners, again, in the fifth floor there. And I will point out that is about halfway down Montgomery Lane. And that's 60 to 64 feet. I was never quite sure which, there it goes up, but certainly this project should not shoot up to 70 feet. My own feeling is that 12 feet is totally inadequate for a building of that height.

MR. KNOPF: Well, 12 feet --

THE WITNESS: 12-feet setback.

MS. ROBESON: Setback?

MR. KNOPF: Setback?

THE WITNESS: I think the Planning Commission chairman recognized that, but when I -- I suggested a minimum of 30 feet. I'm not designing it. I don't think I, I've done enough architecture to know that elevators are very important to a particular plan. They don't dictate a project. Some people, though I think the drawing I looked at they were set back about 30 feet. But the point is when you come into a building, some buildings have elevators at the entrance.

I was in one on Lincoln Square in New York and the only thing -- you'd go back about 50 feet for the, 100 feet to get to the elevator, but normally I'd say most of the elevators are set back beyond the reception area. That seems to be -- and that's your third way into the apartment building. You come in, you have a reception and then you go to the elevator. But you shouldn't be dictated by that comment. It was made, I think, about only four.

MR. KNOPF: Mr. Doggett --

THE WITNESS: So there is nothing sacred about 30 feet, but you have to make an impact if more than one is being made.

BY MR. KNOPF:

Q When you said you didn't think that 12 feet was sufficient, could you explain? Are you talking about aesthetically? What --

A Aesthetically I think it's -- the main thing, my main objection with the proposal again is when I looked at what the plan is asking for is the bulk. It's very bulky and intrudes and on a pedestrian walk you want human scale; you don't want that. My only feeling is at that particular stage, and I did a picture of it, would be something like four stories high, City Homes, with possible two stories set back. The original project, I believe it was set back something like 100 -- I mean it was set back, but you're in an area of not seven story buildings. And it --

Q The --

A Wait.

Q Let me just ask you --

A They --

Q -- would set backs of 30 feet be consistent with the Sector Plan recommendations of having some setbacks?

A Yes, I think so, yes.

Q Does the Sector Plan also call for possible rooftop terraces for people?

A Yes. Yeah.

Q Are these consistent with --

A Yeah, something like 30 feet you could make a usable rooftop, you know, people could use it and feel comfortable out there. That's my own feeling of buildings I've worked on. The Triumph building, as I recall it --

MS. ROBESON: And that's Edgemoor Highrise?

THE WITNESS: No, the 4900 block.

MS. ROBESON: Oh, no, that's --

MS. HARRIS: 4901.

MR. KNOPF: 4901?

THE WITNESS: Yeah. Is, this is shown, I believe, on the Woodmont side. Apparently the elevations have been revised and most are residential. And Mr. Knopf sort of mentioned, you know, the Planning Commission recommended 100 feet and was sent down to 70 feet, which is about six stories, going down to 60 feet on one side and the density was much less in numbers. There was not the cliffhanging thing with that building.

BY MR. KNOPF:

Q Mr. Doggett, when you're referring to 4901, are you referring to Exhibit 120(b)?

A Yeah, uh-huh.

Q This is the --

A Yes.

Q -- scalloped, this is the --

A Yes. Yes.

Q -- top?

A Yes, that is the one.

MS. ROBESON: Okay. So you're pointing to the image, elevation in the lower --

THE WITNESS: Yes.

MS. ROBESON: -- left, or lower right --

THE WITNESS: Lower right side, yes.

MS. ROBESON: Okay.

BY MR. KNOPF:

Q Is that where it's a 60-foot height?

MS. ROBESON: Can you show Ms. Harris?

MS. HARRIS: Yes. And I was going to note actually, Norman, I thought you were going to distribute those?

MR. KNOPF: I did submit it to you by email. Did you -- I sent it to Mr. Abrams. Did you get it? I sent --

MR. ABRAMS: Let me see what you're talking about.

MR. KNOPF: Yes, I did send it. I sent it last week.

MS. HARRIS: I could have missed it. I'll double-check. I don't recall that.

MR. ABRAMS: Yes, I saw it.

THE WITNESS: Yes, so --

MR. KNOPF: You're on the same thing?

THE WITNESS: Fine. I'll just move quite a bit along. Take a moment, I'm running late. Woodmont or even the street behind that, the -- it's Montgomery Lane, is dictating this design. Okay. If --

BY MR. KNOPF:

Q Now that I've disrupted your train of thought, you can find where you left off. I wanted to deviate slightly, but this -- you heard the testimony by some of the applicant's witnesses that the Sector Plan, in their view the Sector Plan goal was to maximize the number of units because that would also maximize the number of MPDU's --
A Yes.
Q -- you heard that testimony?
A Yes.
Q And did you also hear the testimony, and I just read some things, that the 1976 Sector Plan, the previous Sector Plan, permitted higher heights --
A Yes.
Q -- in this area in the Chase and the Christopher with development?
A Christopher building, uh-huh.
Q So am I correct, one couldn't build buildings of that height, that many units under the 1994 Sector Plan along Montgomery Lane?
A No. No.
Q So is that consistent or inconsistent in your opinion with the statement that the County's policy was to maximize the number of units along Montgomery Lane?
A No, not the building, no, no, no.
Q It's not consistent? Okay. And did I hear you

say, I want to get clear, that any of the provisions in the Sector Plan such as the maximum --
A If I can --
Q Please.
A I think that the second, so many planners and architects, the second land planner --
Q Mr. Berman, I think.
A Yes, I think, did admit, saying that the plan should not, that the changed plans should still be carried through in spite of trying to get most number of units --
Q Right. So, in other words, if the Sector Plan on Montgomery Lane called for six to three, three to six stories --
A Yeah.
Q -- that's inconsistent with the idea of trying to get as many dwelling units --
A Yes.
Q -- as possible?
A You don't ignore the plan, no.
Q And the Sector Plan provisions, I want to have you clarify something, the Sector Plan provisions call for an average of 100 dwelling units in the, 50, 45 minimum --
A 45 to 100, yes.
Q To 100, yes. They were referring, were they not, there to the entire TS-R?

A Yes. Yes. Uh-huh.
Q But when it got down to Montgomery Lane, you're saying the specifics of Montgomery Lane were to govern than the general?
A Sorry, yes, that was the point I made, right.
Q Thank you. And in terms of the density which talks about a 2.50 density FAR --
A Right.
Q -- that, again, is referring to the entire TS-R area --
A Yes. Yes.
Q -- is it not? And in your opinion, again, with the Sector Plan by having a, this urban village concept, mixed street concept and certain height and story limits, would those criteria govern the density so one has to be compatible with those criteria --
A No.
Q -- when they're doing density?
A Yes, they, the height, the bulk, the setbacks, these things would cover how many number of units.
Q Would cover the minimum number of units?
A Yes.
Q And the density? So you're again saying that specific for Montgomery Lane would control or should regularly govern --

A Absolutely. Yes.
Q -- over the generic --
A Yes.
Q -- for all the TS-R zone?
A Yes.
Q Okay. Thank you. Now let me --
MS. ROBESON: Do you need a minute, Mr. Doggett? I can see that --
MR. KNOPF: Can we --
THE WITNESS: Yes.
MS. ROBESON: Let's take a 5-minute break.
THE WITNESS: Okay.
MS. ROBESON: Okay? And you can -- I can see you trying to, struggling to --
THE WITNESS: Trying to get rid of that --
MS. ROBESON: -- keep it down.
MR. KNOPF: And I keep asking questions to choke him, but --
MS. ROBESON: It's okay.
(Recess)
MS. ROBESON: Are you ready, Liz? We're ready to go back on the record. I did check during the break to see if our shared drive was up and it's still not, so we will produce an exhibit list as soon as we are able. All right.
MR. KNOPF: Okay. Let me ask some questions here.

MS. ROBESON: We're continuing with Mr. Doggett.
BY MR. KNOPF:
Q Now, Mr. Doggett, you spend a lot of time talking about the townhouses on Montgomery Lane. Does the site occupied by those townhouses, the amount, the size of the site occupied, does that play a role in setting the tone --
A Yeah, aesthetically.
Q -- and character of the street?
A Yes, aesthetically that does set the character of the street.
MS. ROBESON: The City Homes?
THE WITNESS: City Homes, yes. It's, it fills the plan requirements and in terms of the sheer size of the area that it covers, yes.
MR. KNOPF: So in --
THE WITNESS: I --
BY MR. KNOPF:
Q I just want to, come out here. Am I correct that the City Homes covers the entire south side of the street --
A Yes.
Q -- the corner, the corners at Arlington and Woodmont?
A Yes. Yes.
Q And can you --
A Yes.

Q And you testified regarding the residential character of the building at the corner of --
A Yes.
Q -- Arlington and Montgomery --
A Yes.
Q -- and also the Triumph at 4901?
A Those buildings in scale, yes.
Q Right.
A And actually the Triumph, as we call it, has actually modified that design a bit.
Q So is that supporting your view that the tone of the street as developed under the current Sector Plan --
A Yes.
Q -- is, sets a residential character?
A I think it set a residential character with that and --
Q And, similarly, the north side of the street, the, you mentioned the Sandy Spring --
A I think that's in character. It also -- Sandy Spring, it's not bulky, but it's not a heavy building. When I articulated, I said it's residential. It's five stories from the Edgemoor going down to what I would say to be four stories, ideally set back to six stories like the original plan, the original proposal by Holladay had, I believe, some of that. But if you go on the tent there, you know, you

come down to --
Q Excuse me, by tent theory you mean?
A Yes, from high, high, there are two tent theories here. One is from when the plan was done from the Metro buildings coming down towards Arlington. It's a sweep. The second one is the tent theory or the angled theory if you want -- I don't use the word tent -- means that it steps down from six stories to three stories, in essence, and --
MS. ROBESON: So there's one -- you're saying there's one tent from the Metro --
THE WITNESS: Yeah.
MS. ROBESON: -- and there's another tent --
THE WITNESS: Yes.
MS. ROBESON: -- from Montgomery Lane?
THE WITNESS: They mention it in the, in the --
MS. ROBESON: Colloquially.
THE WITNESS: -- in my report plan about being a tenting kind of --
MS. ROBESON: Yes.
THE WITNESS: -- somewhere it comes down I mentioned, but the main one that we're impacted by is, I think, the one from Woodmont down to Arlington. And you come down. You have the high building at the little Edgemoor. You have Sandy Springs. And then if you build according to proposal, you don't go down as you should be,

you go up, you go up beyond the height of that with, next to the very residentially articulated Sandy Springs, so you've got large, curved glass of the entryway which, yes, I think the small amount, the 600 square feet you get cut out of the building print does certainly not justify the -- you lose more than you gain, believe it or not. It really does not in any way give you a residential feeling.
The -- I rather, and I didn't mean to be sarcastic when I first, when I said it at the Planning Commission, that reminded me of a Barnes and Nobel up by Columbia University. But, no, the point I'm trying to say, it can be a nice building. It is not what is asked for.
MS. ROBESON: Well, may I ask a question --
THE WITNESS: Yes.
MS. ROBESON: -- just for a moment? I guess one of the struggles I have is, say what you like about the plan, you know, one could argue -- okay, I'm sorry. I'm still on the weekend. City Homes, to say, one could argue in a sense that City Homes is not consistent with the plan because if the plan had been implemented in its purest form --
THE WITNESS: Uh-huh.
MS. ROBESON: -- all right, City Homes would have, might have been bigger --
THE WITNESS: Yes.

MS. ROBESON: -- and it was only this trade-off with the Highrise Edgemoor that justified the density of the City Homes. So if this had truly to a tee been implementing the plan, City Homes may have been larger. And so is it, is it proper to have City Homes kind of be the tail wagging the dog --

THE WITNESS: I --

MS. ROBESON: -- so to speak?

THE WITNESS: -- think it's a reasonable argument to say that I came in late on the project and I immediately said, I don't know, I could see it in the air, but I could see what was really said. I saw the six to three and I thought it was very hard. It could have been, the so-called Triumph, the 2900 building, is being reduced to 1760 feet from the hundred.

MS. ROBESON: Oh, 4901?

THE WITNESS: 4901.

MS. ROBESON: Yes. Okay.

THE WITNESS: So that was a move there. You know. And so we have a 6-story building. We have towards Arlington, you get on both sides, and they're all essentially a 3-story building with a setback down to 48. So that is being --

MS. ROBESON: Oh, I see what you're saying.

THE WITNESS: -- stubborn, but I see nothing wrong

with that, the scale that I think is excellent.

MS. ROBESON: All right. I understand.

THE WITNESS: Yeah.

BY MR. KNOPF:

Q Well, that -- I'm sorry, Hearing Examiner.

MS. ROBESON: I -- that was my question.

BY MR. KNOPF:

Q Let me follow-up on the question. Is it your understanding that if the zoning code requires a consideration of compatibility of the project and that that compatibility you have to weigh what's already existing --

A Yes.

Q -- to see if it's compatible with what's on the ground so to speak?

A Yes. I don't think the plan is compatible.

Q With what's there?

A The bulk and the height, no.

Q Well, let me ask a couple of questions --

A And no --

Q -- in no particular order. You mentioned the elevator 30, didn't have to be 30 feet?

A No.

Q If the, would one of the -- was it your understanding that the rooftop structure is close to, is located where it is because that would contain the elevator?

So if the elevator were moved, the rooftop structure containing the elevator would move back also?

A Yes. Yes.

Q And from, as a --

A Yeah.

Q -- would that, would that help to reduce the bulk of the building to move that back?

A I think so, yes. Yes.

Q Okay. The -- you referred to the mixed street is supposed to be a pleasant walking environment --

A Yes.

Q -- and you mentioned the character of the proposed building. One thing you didn't mention, do you have a view on at night when one would be walking down the street, what the light effect would be of the curved entrance?

A It would be a very highly-lit light. It would not be required pedestrian street.

Q Would that appear to be more of a commercial or residential character?

A It could well be more of a commercial, commercial. It would be more intrusive, let's put it that way.

Q And now --

A The mixed street is a unique street. A residential, mixed street is the only one where the other one is commercial, this is -- and it has that tremendous

walk, it would be a pleasant walk from the higher to the communities, of the library and parks.

Q Well, speaking of the unique feature of this mixed street, the applicant spent a lot of time reviewing buildings that were on this street, particularly those on Hampden Lane --

A Yeah.

Q -- in terms of height and what they looked like and so on. In your opinion in determining compatibility of this project, is it appropriate or important to look at what's on other streets?

A It's not really, no. I think the commercial buildings are on them. It does not address that sector recommendation and I am, that's why I am holding onto that recommendation.

Q On Montgomery Lane?

A It would be nice to -- I mean I think what is done on Hampden Lane is not particularly attractive unnecessarily. I think it would be nice to sort of quote the Villages of Bethesda, but I haven't done that. I haven't done that, deliberately have not done that --

Q So --

A -- because it's outside the parameter and --

Q The Montgomery Lane. So you're looking at Montgomery Lane --

A Yeah.
Q -- the Sector Plan of Montgomery Lane provisions and what's on the --
A Yeah.
Q -- what's built --
A Yeah.
Q -- already --
A Yeah.
Q -- and/or approved on the street?
A It's essential, it is a pedestrian street and as you walk down it, what do you see? How does it affect you?
Q All right.
A Is it a pleasant street? Is it overbearing?
Q Well, along those lines, what recommendations do you have -- expand on what you already said --
A Uh-huh.
Q -- but maybe go back over what you said also, as to how you think this building could be made more compatible, the proposed building could be made more compatible with existing development and approved development?
A Well, I --
Q You mentioned already --
A Yeah.
Q -- a 30-foot setback?

A Yeah. I was trying to, I could probably give you an idea, but I don't like getting in the role of criticizing other architects. No, I'm just saying it's -- I'm looking at the plan, you know. The plan would have a more modest height, I would say a 4-story. The flexibility would be coming and giving an additional two stories, set back at a reasonable height so that you would not be, have an intruding fifth and sixth floor. You could have a usable public open space where people could use it. You could have like they have at the Marriott in Arlington where you have sort of planters coming over the edge, reducing a heavy relationship down below. You could have --
Q Well, let me just pause you a minute. You say setback a reasonable amount. Is that, is the setback for the purpose of when you walk along the street that you wouldn't see --
A You would not see, no --
Q -- see the 4th, the 5th --
A No.
Q -- and 6th floors, is that it?
A The railing --
Q And in your opinion at 15 feet by 12 feet wouldn't push that back?
A I don't. I think, no, I think the, that sample showed that coming looking from Arlington and --

Q Right.
A -- coming from the other side. Yes, you do see that. I've looked up and down just to measure that. And the penthouse is not out right away.
Q So let me mention also, you would push the penthouse back?
A I would, though, yes. Yes.
Q Okay.
A It's interesting that Sandy Springs, the penthouse is pretty near the back of the building --
Q Now --
A -- away from Montgomery Lane.
Q Now just, sorry to interrupt, but as things occur to me, I don't want to forget them. We've had testimony from the applicant that they had faux bay windows --
A Yes.
Q -- and that they couldn't have real bay windows because that would stick out beyond the building line since the building, they were close to the building, to the property line. What's your thought and recommendations on having features in the building to make it residential that might require the building to step back a little bit?
A Well, if you had a projecting balcony such as the faux -- if you had balconies, you have that space at the back where you have the two feet to play with. You don't

have to go all the way to the back. You could probably do enough to project out.
Q The balconies or bay windows create a more residential appearance?
A Yes, I think so. I think the bay windows in City Homes look very nice and you could have quite a, even a small balcony or a couple feet coming out. You know, but, you know, a barbeque place or something like that. But that could be done because I really think it's --
MS. ROBESON: Would that require --
THE WITNESS: It's a waste of --
MS. ROBESON: -- moving the, reducing the setback on the north side?
THE WITNESS: Yeah, in the --
MS. ROBESON: On the north side?
THE WITNESS: Yes.
MS. ROBESON: Okay.
THE WITNESS: Your Honor, I realize, as I said, I don't know what kind of activity, nighttime activity you expect back there, but it's not very endearing.
BY MR. KNOPF:
Q Let me ask something that's sort of obvious, but I keep overlooking. In lieu of moving the building back from the rear, one could shrink the building a little bit --
A You could do it. You could do it.

Q -- and move it back in the provide the same --
A You could do that, yeah.
Q -- amenities, balconies and windows.
A Yes. Yes.
Q Bay windows. All right.
A Yes. I don't know about the building going towards Arlington from the proposed building, but I think a setback would certainly maybe help light lying into that other building too. That would be, you know, you have the 15 and it goes to 12 and then setback a little bit more. It would be more of a -- it would be a courtesy anyway.
Q Mr. Doggett, you've heard much testimony by the application, I believe you heard, that these, there are going to be a lot of units up through, they're asking for an equivalent of, up to 135 dwelling units per acre.
A Uh-huh.
Q They are going to rental and they're going to be, so it provides a diversity and there's going to be the MPDU's that are based on the total number of units.
A Uh-huh.
Q And, therefore, they're saying this building fulfills the Sector Plan and meets the County's policies of having MPDU's and more dwelling units. As a planner, what is your recommendation as to whether the Hearing Examiner should rely on that because none of these have been made

binding elements?
A Well, it's true enough. I don't think you can rely on the recreation of a number of units. I, my experience at Fairfax, people that have moderate income units have children too. They like to go to the movie houses, they like to go to the park and they like to have a nearby school. It's not just another, of single professionals that come in. They're a big demand. There was also a lack of demand and the plan mentions twice the Board is being recommended from the two to three townhouse is, and there are not many, there are not many units like that that you can get in any buildings like that in Bethesda.
Q But the, in terms of meeting the goals of the Sector Plan, would you agree with me that because these are not -- they're purported goals of the County policy?
A Yeah.
Q One cannot rely on this because they're not binding elements. They could convert this to condo or larger units --
A They could go to condos. Yes, I don't know, condo rental.
Q Right.
A They could be smaller, larger, yes.
Q Okay. Thank you. Just one minute please, okay?

I keep forgetting, toward the end, is there something more you would like to say? I'll give you an open-ended question.
A No, I think we go back to my earlier statement of, well, what the goals go towards some of them in terms of housing. They're not, me and you remove the recommendations of this, we meet the recommendations. It's a unique street and the reason is unclear behind it. It's a pleasant way to walk and I don't think the bulk of the proposal, the detail of the proposal answers that. All the numbered units, clearly, which would increase the density along the street are an answer to that. I'm not a transportation, I'm not transit person for that.
MS. ROBESON: All right.
THE WITNESS: Okay.
MR. KNOPF: Thank you. Thank you very much.
MS. ROBESON: Mr. Abrams, do you have any questions?
MR. ABRAMS: Just a couple.
BY MR. ABRAMS:
Q Mr. Doggett, would extending the step down along West Lane be in your opinion a recommended design element to mitigate the mass and bulk of this building?
A Absolutely.
Q And would providing more depth of public open

space in a green variety -- this is natural plantings as opposed to --
A Uh-huh.
Q -- hardscape --
MS. HARRIS: Objection. I don't think Mr. Doggett said anything about the public use space.
MR. ABRAMS: Yes, he did.
MS. ROBESON: Yes, he did. Yes, he testified --
MR. ABRAMS: Yes.
MS. ROBESON: -- about not having it all necessarily aligned. He testified about that open arc and he testified --
MS. HARRIS: Okay.
MS. ROBESON: Go ahead.
MR. ABRAMS: Okay. Let me repeat this.
BY MR. ABRAMS:
Q Would providing more depth of public open space of a green variety along Montgomery Lane in accord with the Sector Plan recommendations?
A I think so. You have the mini park right at the end of -- which really starts that open space going in with the, yes, it would be an improvement.
Q In terms of hardscape usage such as recommended here along the corner of the building, the street frontage, is hardscape usage such as combined with entry elements more

prevalent along busier streets and roads than may be prevalent along a mixed street?
A It's scandalous, but yes.
Q Okay. Is that --
A The amount of traffic going to the buildings --
Q All right.
A -- yes.
Q And is that not a common element in areas such as along Wisconsin Avenue?
A Yes.
Q Along what is to be known as Fairmont Avenue --
A Yes.
Q -- redevelopment?
MS. ROBESON: Was that a question? I'm sorry.
MR. ABRAMS: Yes.
THE WITNESS: Yes.
MR. ABRAMS: And I think he answered.
MS. ROBESON: I'm sorry.
THE WITNESS: Yes. I said it was common -- yeah.
MS. ROBESON: Okay.
THE WITNESS: Yes.
MS. ROBESON: Sometimes I can't --
THE WITNESS: Yes.
MS. ROBESON: -- quite hear whether you said --
THE WITNESS: Okay. Yes.

MS. ROBESON: -- yes or no. Okay.
BY MR. ABRAMS:
Q Now in terms of the 12-foot step back, I think you indicated that this is insufficient for this project. Would the amount of the step back be dependent upon the height and mass of the building that it's --
A Yes.
Q -- integrated into?
A Yes.
Q And so that I'm absolutely clear, what is your recommendation in terms of the step back for this project in terms of its mass and bulk and to make it more compatible?
A I have recommended, again, Ms. Carrier has sort of, kind of agreed with it as being a bit bigger, 30 feet middle.
Q I see.
A That's not setting a rigid line.
Q Is that in any way based upon the Holladay project?
A To a degree. The Holladay project was much deeper than 30 feet. It was bulking and sort of directly on a height, transferring what visually, I can do that quite well, what 30 feet would look like.
Q Now in terms of the planning over design profession, in developing Sector Plans and in working on

individual development projects, would you recommend exceeding the density or the height limits which are recommended in a Sector Plan in order to achieve more public, moderate-priced dwelling units?
A No.
Q Well, would you have essentially a planning policy as opposed to possibly an economic and political policy and in terms of weighing those in the process of developing a community, which do you believe should have more impressive?
A The sector, as I said the light in the sector is specific than possible.
Q And I believe you said compatibility is evaluated against the existing conditions --
A Yeah, uh-huh.
Q -- in the neighborhood? In terms of compatibility, would it be your opinion that those properties closest to the proposed project would be more or less affected than other properties in the general TS-R zone?
A Absolutely, yes.
Q Do you, sir, have an opinion as to where the entrance of the building should be in terms of the step down effect and the location of the elevators considering the issue of compatibility?
A I haven't gone into that. It's not usually in

urban design a good feature to have, an entry of four feet up from the sidewalk and certainly there are steps going up and needing a ramp. That's going to be quite a long ramp to go up. Certainly, the entry, if it went down on the west side rather than there, it could be, it could be, it could help getting the elevator location better. There is, and also with fifth and sixth story easily handle it, but that's going into the --
Q Okay.
A But, yes.
Q And was the West Lane to be the entry point for the Holladay project?
A Yes, uh-huh.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Okay. Thank you. Ms. Harris?
MS. HARRIS: Yes, thank you.
MR. KNOPF: Do you want a break or are you ready to -- do you want a five minute break?
MS. ROBESON: Can you wait --
THE WITNESS: Can we have a five minute break? I don't --
MS. ROBESON: Anyone have any problems with that?
THE WITNESS: No. No.
MS. ROBESON: Okay.
THE WITNESS: I don't mind you going.

MS. HARRIS: No, go ahead, five minutes is fine.
MR. KNOPF: She's probably going to be a long time, so I --
MS. ROBESON: No, that's fine. We'll take a five minute break.
(Recess)
MS. ROBESON: All right. We are back on the record. Ms. Harris.
MS. HARRIS: Okay.

CROSS-EXAMINATION

BY MS. HARRIS:

Q Mr. Doggett, you made, testified to the fact that the 4901 has a notched out area of 60 feet along Montgomery Lane, is that correct?

A Your proposal?

Q No. 4901, that's --

MR. KNOPF: The Triumph.

THE WITNESS: The Triumph? No, I --

BY MS. HARRIS:

Q The Triumph building, that it was, I believe you noted that it has --

A Oh, I said, no, I said the roof heights. I didn't say anything about a notch.

Q No, I believe you made a point to note that there was a step back --

A Step down I said.

Q A step down --

A Yeah.

Q -- to 60 feet?

A Yes, I think I said that, yes.

Q Okay. And does that step down extend the entire length of Montgomery Lane?

A No, not to my knowledge, no.

Q It's just a notch?

A Yes.

Q And yet a step down to 60 feet was actually, I believe you said, significant in terms of reducing the mass of the building on Montgomery Lane?

A I think actually my testimony was the reduction of the design features reduced the effect of a mass.

Q Okay. I think you said one corner will drop to 60 feet --

A Yes. Yes.

Q -- and, therefore, it decreases the mass --

A And I also said --

Q -- does that sound familiar?

A -- 70 feet was okay, it met the condition of the plan approximately.

Q All right. So if a 60-foot notch, and you recognized it doesn't go all the way across on Montgomery

Lane, extend to the length of the building --

A Yeah.

Q -- helps to decrease the mass of a building, would not a 50-foot step back that extends the entire width of the building also decrease the mass of the building?

MR. KNOPF: Excuse me, did you say 50?

BY MS. HARRIS:

Q Yes. A step back, which is located at 50 feet versus a 60-foot notch, would that not go to decreasing the mass of the building?

A Yes.

Q Okay. Thank you. You also noted that the 4901 was recently, or maybe at the moment, are you aware that when 4901 recently was approved for 40 units, a maximum of 40, or a minimum of 40 units --

A Yes.

Q -- but there was concern expressed at the Planning Board because of the issue of decreasing density near the Metro station?

A I was, I don't --

Q You didn't follow the --

A -- I didn't follow that, no.

Q -- Planning Board proceedings in that? Okay. And is there any reason to think that if 4901 came in and actually wanted not 40 units, a minimum of 40 units, but in

fact they wanted to decrease the size of their units and say, make a minimum of 80 units, do we have any reason to think that the Council wouldn't have granted that?

A I have no idea what the Council would recommend.

Q Would --

A No, I'm not being facetious. How many factors would come into that?

Q Moving on for, you spent a long time discussing the rooftops of --

A Yes.

Q -- the rooftop of the Highrise Edgemoor. When was the Highrise Edgemoor constructed?

A I can't remember when that was.

Q Approximately?

A 10 years ago?

Q Early 2000's, does that sound about right?

A Yes, something like that, yeah.

Q And, similarly, when were the City Homes constructed?

A About the same time.

Q And you noted that the details of the plan are not outdated?

A Yes, uh-huh.

Q Are you aware when 4901 was approved?

A Yes.

Q And how recently?
A Well --
MR. KNOPF: Wait. Excuse me. Can you clarify which approval you're talking about?
THE WITNESS: Yes.
BY MS. HARRIS:
Q 4901, the most recent approval for, well, actually go back to 2006. From 2006 until present.
A When it was known as the Triumph building --
Q Okay.
A -- I would say --
Q But the earlier approval for 4901 was 2006? Are you aware of that?
A I don't know. I don't know. I know there were strong modifications being made.
Q Okay. Let me make, let me ask it a different way.
A At that stage I ceased to be involved.
Q Was 4901 approved after the Highrise Edgemoor and the City Homes?
A Yes.
Q And does it have a flat roof?
A I don't think -- I don't know about the modification. I don't know.
Q You don't know? Okay. And how about Hampden Lane? Was that approved after the Highrise Edgemoor and

City Homes?
A Which one was that, do you know?
Q The one at the corner and Hampden.
MS. ROBESON: Can you show him on the --
MS. HARRIS: I'm sorry.
MS. ROBESON: What's that exhibit next --
MS. HARRIS: This one?
MS. ROBESON: No, that one right there.
MS. HARRIS: 106(b).
MS. ROBESON: 106(b).
THE WITNESS: I don't know. It was an indifference to me when it was done.
BY MS. HARRIS:
Q Well, you know what, actually maybe it would be better visual --
A Yeah. Yeah.
MS. ROBESON: And that --
MS. HARRIS: This is 106(f).
MS. ROBESON: 106(f). All right.
BY MS. HARRIS:
Q Okay. Does that look like it has -- does not Hampden Lane building --
A Uh-huh.
Q -- look like it has a flat roof?
A I made the point that the --

Q No, I was just curious about the flat roof.
MR. KNOPF: Well, excuse me. I'm going to object because I don't know that that directly reflects what's on the roof. We had testimony that this was some plug-in and we already know that --
MS. HARRIS: Okay.
BY MS. HARRIS:
Q Is there a dormer on --
MS. ROBESON: You will have redirect on that, so to your knowledge does Hampden Lane have a flat roof?
THE WITNESS: I don't know.
BY MS. HARRIS:
Q And does 4901 have a flat roof?
A On the latest plan, I don't know whether it's done or not exactly.
Q And does the Sandy Spring Builders building --
A That has a flat roof.
Q -- have a flat roof?
A Yes.
Q And does Edgemoor at Arlington North have a flat roof?
A It has a 3-story flat roof and a 4-story flat roof.
Q And how about the --
A The other one has a 3-story --

Q -- Edgemoor at Arlington?
A -- flat roof with a balcony and a 4-story penthouse apartment.
MS. ROBESON: And that, and you mean the Edgemoor at Arlington?
THE WITNESS: Edgemoor at Arlington.
MS. ROBESON: Okay.
THE WITNESS: That's what she was pointing at, yes.
BY MS. HARRIS:
Q So is it correct to say that everything that's been approved since the Highrise Edgemoor, one variation or another, does, in fact, have a flat roof?
A Since the, from the Edgemoor, City Homes was actually at the same time. I mentioned it because there was criticism of being traditional and out-of-date and I don't think it is out-of-date. The plans still in terms of bulk and the density, those buildings --
Q Would you think the --
A Not the one on Hampden Lane. I'm not interested in that building there.
Q Are you familiar with the lead requirements and changes in storm water management that require --
A Some, yes. Some to a degree, yes.
Q -- green roof?

A Yes, to a degree.
Q Would it be difficult to put a green roof on the Highrise Edgemoor?
A No, probably not, no.
Q Oh, it wouldn't be difficult?
A No. You could probably put solar panels on it if you did it again.
Q No, no, a green roof with sedum?
A No. No.
Q We heard that you have --
A Yeah, I know. I know.
Q And that would not be difficult?
A No.
Q That's interesting.
A It is, yes.
Q Newton's law.
MS. ROBESON: Is that a question? You need a question.
MS. HARRIS: Okay. I don't think I need a question.
THE WITNESS: If I can answer some of the --
MS. ROBESON: Well, your attorney will. Right now you're just answering her questions.
BY MS. HARRIS:
Q You noted, you emphasized the pedestrian nature of

Montgomery Lane --
A Yes.
Q -- and given that it was a mixed street?
A Yes.
Q Are you aware that 170-foot tall buildings are also approved on that other mixed street --
A The other --
Q -- in Bethesda, the Fairmont Avenue?
A Isn't that mainly commercial buildings too, commercial in mix?
Q It's --
A It --
Q The Sector Plan go to the point -- in the discussion of mixed streets on, in the Sector Plan, does it not emphasize the pedestrian environment?
A Yes. There's a sketch of the other plan that doesn't come up, but it's in the planning report, I laid it there, that shows the restaurants along the side, okay?
Q I know. But my point is that a mixed street, according to your testimony, one of the purposes of it was to promote pedestrian environment?
A I said a residential and mixed street.
Q Let me get that section of the code. Actually, I think maybe you could just read the first sentence of page 189 under mixed street.

A Okay. Thank you. "Mixed street emphasizes pedestrian circulation while allowing limited, slow vehicular traffic."
Q Thank you. Okay. So it does emphasize pedestrian circulation, correct?
A Yes.
Q And are you aware that on Fairmont Avenue there are heights of 170 feet, going to 170 feet?
A No, I've never measured, measured them on that. They're not part of my--
Q Excuse me?
A No, I haven't measured -- I don't know how high they are.
Q Well, one would assume that --
A They are high, but -- they are high buildings.
Q Okay. And yet it was mixed street with 175 feet approved, here we have a mixed street with 100 feet with the Highrise Edgemoor and then two buildings of 70 feet?
A It doesn't surprise me in the bit when you have a residential mixed street which is very different. That's the point I'm making.
Q And then also on page 180, it may be helpful to read that first sentence too of the traffic movement on mixed streets, the first sentence. If you could read that aloud?

A "Fairmont Avenue between Norfolk Avenue and Old Georgetown Road, Montgomery Lane, are recommended as mixed streets to accommodate the anticipated higher level of pedestrian activity."
Q And so it doesn't --
A And --
Q Is there any differentiation in that street, I mean in that sentence in the plan --
A No.
Q -- between commercial and residential?
A No. No. No, that's about it, close of hearing. Sorry.
Q I want to turn to the zoning hearing, the zoning report. It's 102(f) in the Highrise Edgemoor case. The Highrise Edgemoor. Oh, here it is, sorry. Did you do work for Montgomery County when Pat Baptise was a member of the Planning Board?
A No.
Q Okay.
A I, Jack Carter is my old buddy from many years ago. John Carter, from Star, and I met him --
Q John Carter?
MR. KNOPF: John?
THE WITNESS: John Carter, yes, well --
BY MS. HARRIS:

Q Okay. But you didn't do any work for Montgomery County when Pat Baptiste was on the Planning Board?
A No, I left -- I did a lot of work for, no, I knew --
MR. KNOPF: You should just say yes or no.
THE WITNESS: No. No.
MS. HARRIS: Okay.
THE WITNESS: No.
BY MS. HARRIS:
Q Can you please read the highlighted portions of page 21 and 22? This is from the zoning hearing examiner report of the Highrise Edgemoor case.
A Okay.
"Patricia Baptiste is a Chevy Chase resident and previously served on the Planning Board at the tine of the 1994 Bethesda Sector Plan was drafted. She participated in discussions and ultimate decisions about building height limitations contained in the Sector Plan. The Planning Board had two goals in providing Sector Plan design guidelines. The first goal is to achieve appropriate density near the CBD core and Metro. The second is to protect residential neighborhoods in Edgemoor from excessive heights. The urban village concept contained in the sector represents

a nice design that will not be achieved in this area. The applicant attempted to implement the urban village concept with an earlier application, but it was withdrawn was economically infeasible.
Instead, townhouses had to be built at lower level densities anticipated which required the Sector Plan, the minimum density provisions to be waived. With the approval of the townhouses, greater densities near Metro were not achieved. She concluded that the height limitation would be waived in this case in order to achieve the density goals of the plan.
The proposed development was an attractive design, an existing town home with a, the Edgemoor residential community, given the existing development plan with such application, the Sector Plan's height limit --
Q I'm sorry, read, you missed a word.
A Oh.
"Given the existing development pattern, split application or the Sector Plan's height limits will work against the objective of the plan."
Q And so this was in connection with, thank you, the zoning hearing examiner report for the Highrise Edgemoor?

And are you aware that at that time that what was being proposed in the Highrise Edgemoor was 147 dwelling units, not, was 147 dwelling units?
A I know roughly about it. I -- my memory does not go back that far.
Q And are you familiar with the --
A That was the, what you just quoted was the opinion of one person over there.
Q It's the, it's in the zoning hearing examiner report. Would you -- are you familiar with the residential neighborhood in Edgemoor, of Edgemoor?
A Can --
Q The passage you just read --
A Yeah.
Q -- and quoted that the height, the height limit in the TS-R zone were intended to protect the residential neighborhood of Edgemoor?
A Yeah.
Q And so my question to you, do you, are you familiar with the Edgemoor neighborhood and are you aware of the fact that it's located on the west side of Arlington Road?
A Yes, I passed it by, yes.
Q Okay. And as far as you know, has any member of the Edgemoor Civic Association been a party to this case or

entered any opposition?
A Any member of the --
Q Edgemoor Civic Association.
A I have mainly spoken to people, you know, lawyers, clients. I don't know whether -- I don't know the --
Q That live in the Highrise Edgemoor?
A Yeah.
Q But they don't live in the single-family neighborhoods over here that were, was the neighborhood with the height limit was intended to protect?
MS. ROBESON: Okay. There's a question.
MR. KNOPF: I believe, but -- I was confused because everything has been named Edgemoor.
MS. ROBESON: Yes.
MR. KNOPF: It's mixing up Edgemoor Condominiums with a single-family, single, single-family --
MS. ROBESON: I think --
MR. KNOPF: -- residential neighborhood called Edgemoor.
MS. ROBESON: I think the question is the neighborhood across to the west of Arlington Road, are you aware of any opposition from them?
THE WITNESS: I'm not aware. The opposition probably will come.
BY MS. HARRIS:

Q And did you, are you aware of the Federal Realty project further south on Arlington Road that's 65 feet called, upstairs at Bethesda Row?
A I'm aware of it, but it's not factor, I think.
Q No, I realize that.
A Yes.
Q But were you aware that the Edgemoor Civic Association did actually vehemently oppose that project?
MR. ABRAMS: Objection. What relevance has that got to do with this?
MS. ROBESON: Yes.
MS. HARRIS: Well, it has to do with the intent of what the height, what the 65-foot height, what the intent of the height of it was.
MR. ABRAMS: It's outside of the TS-R district.
MS. ROBESON: Well, A, he didn't really testify as to what the neighbors did or didn't so and I think it's beyond the scope.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q I want to go back to the ZHE report on the Highrise Edgemoor.
MS. ROBESON: What exhibit is that?
MS. HARRIS: 102 --
MS. ROBESON: 102 --

MS. HARRIS: 102(f).
MS. ROBESON: Okay.
BY MS. HARRIS:
Q Can you read please the highlighted portion on page 25 and 26, at the very bottom of 25 and 26?
A "The proposed development will provide housing within easy walking distance of Metro. Moreover, the housing will include a diversity of housing types, of upscale townhouses, rental apartments and MPDU's.''
Q Okay. Is that report referencing the Highrise Edgemoor or is it referencing the subject property?
A I'm assuming this is the Edgemoor.
Q Okay.
A Yeah.
Q And is the Highrise Edgemoor a rental?
A No.
Q And are there MPDU's in the Highrise Edgemoor?
A No, I think there is some arrangements to make out, in the building outside on --
Q Hampden Lane?
A -- Hampden Lane, yeah.
Q Okay. And just one more position from this report and that is on page 29, the second full paragraph. Can you please read that?

A Yeah.
"The staff neglects to acknowledge the setback and open space proposals are in conformity with the design specifications of TS-R zone. Why these setbacks are not being made clear by the staff, given the fact that the entire area is recommended for TS-R but for the TS-R zone and the setbacks are from the system, the setbacks are other TS-R zone sites.
Moreover, adjacent property owners who would be the most threatened by the proposed setbacks did not object. The TS-R zone does not establish specific setbacks and often carried even though they didn't create the zone."
Q Are you aware that the subject property has greatest setbacks, I refer to Exhibit 106(b), at the setback of 73 feet from the City Homes to the subject property is the greatest setback in the entire TS-R zone along Montgomery Lane?
A Yes, it could be. I don't know. The, as I said earlier on, to me it was a pedestrian moving or a vehicle by foot and you could see the bulkiness of the building. I can only point you to perspectives.
Q And one of the things you noted toward the end of your testimony was that in evaluating compatibility, one

needs to pay most attention to the buildings closet to the subject property, correct, which is why we didn't, in your opinion we shouldn't look at Hampden Lane or -- okay. Are you aware that the building immediately to the west, the Edgemoors at Arlington North, are, in fact, supportive of the proposal?
A I have not approached them and, frankly, I don't know what their opinion is.
Q And are you aware that the owner of 4845 is also supportive of the proposal?
A He must be.
Q And how about the owner of 4828 West Lane?
A I don't know what -- this looks like an apartment of developers that are in support of it, yes.
Q Are you familiar with Randy Rothstein that owns the Edgemoor --
A No, I don't know --
Q -- of Arlington North?
A -- him. No.
Q So you're not aware whether Mr. Rothstein is a developer or happens to be an attorney?
A He's more of an attorney than a developer, yes.
Q Yes. And Villages of Bethesda, are you aware that they're supportive of the project?
A I said I did not go into the Village deliberately,

okay?
Q And are the individual homeowners of the Villages of Bethesda developers?
A I've already said I did not --
MS. ROBESON: Well, okay.
THE WITNESS: -- I did not --
MS. ROBESON: I'm not, he didn't, I didn't hear him testify on direct as to who was in support and who was against. So, you know, I'm not sure that's a fair -- it's outside the scope.
MR. KNOPF: Or relevant.
MS. HARRIS: Well, I think it is relevant.
MS. ROBESON: Well, no arguing now. I know. No comment.
MS. HARRIS: Okay. You're right. You're right.
MS. ROBESON: No editorial --
MS. HARRIS: Sorry.
MS. ROBESON: -- comments and no editorial responses. You can argue this.
BY MS. HARRIS:
Q I want to go back -- you made a big deal over the urban village and townhouse --
A Yes.
Q -- look. I want to go through step by step the concept of the townhouse and a couple other provisions that

the Sector Plan recommends. So one of the things that Sector Plan recommends is that there should be, that buildings should have a townhouse appearance.
A Yes.
Q Does, in your opinion, does 4901 have a townhouse appearance?
A It's, it's more so -- I don't think that is a particularly good spec. I think that's been changed a bit.
Q Now, in fact, well, can you note the date that's on the bottom of that?
A May the 1st.
Q Wait, no, not that.
A Well, that's the --
Q May I see this?
A Yeah.
Q Can I have a copy of it?
MR. KNOPF: I'm handing her --
MS. ROBESON: What is, you, what is, what are you handing --
MS. HARRIS: It's Exhibit --
MS. ROBESON: 102 something, correct?
MS. HARRIS: Right.
MR. KNOPF: No.
BY MS. HARRIS:

MS. ROBESON: No, hold on. I'm sorry.
MS. HARRIS: I'm sorry.
MS. ROBESON: Hold on one minute. What is that exhibit?
MS. HARRIS: 120.
MS. ROBESON: 120? Okay.
MR. KNOPF: This is Ms. Skalet's testimony.
MS. ROBESON: Okay. Thank you.
BY MS. HARRIS:
Q Are you familiar with that 120, No. 2, that the images shown here which are also set forth in the most recent approval of this property in the hearing examiner report actually note that this is the design for 2006?
A I don't know.
Q Well, in any respect, whether it's the 2006 design or the current design, does that property look like a townhouse to you?
MS. HARRIS: Norman?
MR. KNOPF: I'm showing him, turning the page.
THE WITNESS: I'm just looking.
MS. ROBESON: I was looking down here. And it's 120(b).
THE WITNESS: Yes. I suppose I'm saying that the elevation on Montgomery Lane is not it in terms of height, number of units --

BY MS. HARRIS:
Q No, I was asking about 4901.
A Well, let me --
Q Does 4901 look like a townhouse?
MS. ROBESON: Are we looking at 120(b)?
MS. HARRIS: We can look at 120(b) or actually 106(b).
MS. ROBESON: Okay.
MS. HARRIS: Norman --
THE WITNESS: No, it's --
MS. HARRIS: I'm sorry, he's coaching his witness.
THE WITNESS: No, he's not. We're trying to work out which elevation it is now.
MS. ROBESON: Well, okay. Which elevation -- what she is asking you about 120(b) or 106 --
MS. HARRIS: 106(g), let's focus on 106(g).
MS. ROBESON: Let's just answer the question whether that looks like a townhouse?
THE WITNESS: No.
BY MS. HARRIS:
Q 106(g), does it look like --
A No.
Q -- a townhouse?
A No.
Q Okay. Does Hampden, 106(g), the Hampden Lane

building, does that look like a townhouse?
MS. ROBESON: Just, just --
THE WITNESS: No, I'm sorry, it has a residential look about it, yes.
BY MS. HARRIS:
Q Townhouse?
A Yeah.
Q But the --
A Not a --
Q Not a townhouse? And does the Sandy Spring Builders' building look like a townhouse?
A Oh, yes.
Q And the Highrise Edgemoor --
A It's --
Q -- does that look like a townhouse?
A No, we've established that was a special exception and that was not to be a guidance to the developer. The Sandy Springs is, I'm very familiar with the kind of houses he gets, certainly -- I grew up in Liverpool in London. They mold to that character. They switch the windows. You have a stone base and then you have windows above them, yes, it's a townhouse appearance.
Q I want to refer to Exhibit 106(j), which was a transcript from the Planning Board hearing. If you could just read the top portion, the top paragraph please? This

is from Cher Carrier.
A Oh. Oh, the 2013?
"I feel the need to comment on one of Mr. Doggett's, part of Mr. Doggett's testimony which was that the building proposal, it doesn't look like townhouses. And while that may be true, neither does the Edgemoor Condominium building, neither does the building approved across the street from the other corner of Montgomery Lane and Arlington."
And then if you go beyond it, of course,
"You are so full of buildings that you don't look anything like a town home, so you know that there's been, the Sector Plan recommends largely they're not followed and so I, I can't -- we discussed this the last time, I don't want to rehash it. We, you know it is, the densities were not followed, the forms were not followed, the extent which density was allowed to be transferred from one to another changed the character of Montgomery, the address in a different situation from the Sector Plan itself, the Sector Plan anticipated."
Q So did -- you were at the March Planning Board hearing?

A At the second meeting, yes.
Q And did you get the impression that the Planning Board also agreed that there, most of the projects on Montgomery Lane and the TS-R zones don't, in fact, look like townhouses as indicated by that quote?
A I don't know that I follow all that much on that. I don't necessarily have to agree with the Planning Board, but to a certain extent has certain goals it wants to achieve. I certainly don't agree with, you know, Sandy Springs and things like that or the buildings down on, along the, on Arlington.
Q But moving through a couple other Sector Plan recommendations, the Sector Plan recommends that there be parking underground or in rear decks.
A Yeah.
Q Do the City Homes have parking underground or on rear decks?
A They could have underground, yes, or rear rather, yeah.
Q Is there parking underground?
A There is at one end I thought they would use at Edgemoor Arlington.
Q Does this look like underground to you on Exhibit 106(g)?
A No, no, no, no, that mews is parking, no, as I

said at the beginning.
Q And are all of the unit of the City Homes facing Montgomery Lane?
A Yes.
Q All the units of City Homes, the ones, you have flag sticks.
A Yes.
Q And you have five sticks that face Montgomery Lane, correct?
A Yes. Yes.
Q How about all of the other additional units to the south of those initial cap units, do those face Montgomery Lane?
A No, I -- I pointed out that it was an advantage, it broke up the --
Q No, I --
A No, they didn't.
Q Okay. Thank you.
A Unless you're walking, of course.
Q And are -- as you, you noted that the Sector Plan requires a minimum density of 45 dwelling units, right?
A Yes. Yes.
Q Were the City Homes brought to a recommendation of 45 dwelling units per acre?
A No. No.

Q Was the Edgemoor at Arlington?
A No.
Q And the Edgemoor at Arlington North?
A No.
Q So based on things such as minimum density, parking, whether it looks like a townhouse, whether it's a flat roof or a gabled roof, would you agree that there's not absolute consistency in terms of every project following every recommendation of the Sector Plan?
A There's no absolute. There is a consistency is what I'm saying.
Q And then I want to turn to page, excuse me one second, sorry. Excuse me one second. Okay. So you just testified that there wasn't complete consistency with those various recommendations, correct?
A Correct.
Q Okay. Then could you please turn to page 86 of the Sector Plan, which is the building line, Urban Design Guideline.
MR. KNOPF: Are you sure it's --
THE WITNESS: 85?
MS. HARRIS: 86. It's a plan.
THE WITNESS: Oh, okay.
MS. HARRIS: Plan, Figure 4.16.
THE WITNESS: Yeah.

MS. ROBESON: Is it the building title?
MS. HARRIS: It's, no, it's the building --
MS. ROBESON: Oh, okay.
MS. HARRIS: -- plan.
BY MS. HARRIS:
Q So I just want to take a walk around the neighborhood just to determine which if any of these buildings on Exhibit 106(b) don't, in fact, comply with this building edge, Urban Design Guideline? So is Hampden Lane built to the building edge recommended on --
MS. ROBESON: 4901 Hampden Lane?
MS. HARRIS: I'm sorry, yes, 4901?
THE WITNESS: They have substantial compliance. The latest design show balconies at least. They scale --
BY MS. HARRIS:
Q No, I'm talking about the building, as a ground plain, is it --
A Oh.
Q Does it, does the building --
MS. ROBESON: You're talking about the setback of the building facade --
MS. HARRIS: Yes.
MS. ROBESON: -- from the curb line?
MS. HARRIS: Correct.
MS. ROBESON: Okay.

BY MS. HARRIS:
Q And is there a consistent building setback to the curb line along Hampden Lane as it faces Woodmont, taking into account that there's very little indication throughout?
A There is little indication, yeah.
Q All right. Okay. And along Montgomery Lane?
A Yes.
Q And then if I were to draw, if I would hold this paper up to hold the frontages of City Homes, would you agree that that forms a continuous edge?
A Every other building calls a -- you have the terrace or a mews --
Q No.
A -- in between.
Q No, but at the building, in its relationship to the curb --
A Well, yes.
Q -- it creates a continuous edge?
A A ledge.
Q And, in fact, if I draw, if I take that and extend it down, it looks like that continuous edge is almost exactly --
A Yeah.
Q -- similar to our edge at Arlington North? And then --

MS. ROBESON: That was Edgemoor at Arlington.
MS. HARRIS: Edgemoor at Arlington. Sorry. Then if you go to the north side of the street, you have the Highrise Edgemoor and I believe we had testimony suggesting that, in fact, the Sandy Spring building actually juts out a little bit?
THE WITNESS: Yes.
MS. HARRIS: That it's --
THE WITNESS: That is about five or six feet.
BY MS. HARRIS:
Q So it narrows the pedestrian experience?
A Yes. Uh-huh.
Q And then if you look at the subject building in Edgemoor at Arlington North, does that create a continuous edge?
A Yes.
Q So in general would you agree that every building on 106(b) actually complies with the Urban Design Guideline of creating a continuous edge by placing the building line as recommended by the Sector Plan?
A No, I don't. I -- a building line and I recommend from the plan two totally different things because of the spaces in between on City Homes. I, you are then permitted to do that. What I am saying is that there is nothing necessarily wrong with having a straight line, but there's

nothing written in stone. And if you --
Q I didn't say it was written in stone.
A All right.

Q It was written in the Sector Plan, correct?
A No.
Q It's not or --
A No.
Q -- maybe I should refer you to the text?
A Yes, let's look at the text.
Q Well, for instance, refer to page 83, the bottom right-hand corner, the first bullet under that image. Can you do that please? The bottom, right-hand corner and it's the first bullet.
A Yes.
Q What does that say?
A "Good relationship to the street with continuous building line,"
but I think that's talking about an internal area too where you have townhouses out of shape. And it is not a bad thing usually, but it's not, it's something that you can break away with if something is strong enough that you do.
Q But why is -- if every building in the street essentially complies with that and you said that it's okay to ignore that and yet all these other examples of recommendations that you just went through and indicated

that there's lots of deviation from those, why is, why do those suddenly have an elevated status in terms of compliance?
A Well, for one thing, City Homes I'm saying there is a very strong justification. I'm saying that it might well be economically feasible to do this. I don't know. I haven't gone into that. I suspect that comes into it a bit.
Q Moving on. I think the discussion we just had did indicate that there's a lot of deviation and variation on the various buildings and area, would you agree with that?
A The deviation variation, but there's a substantial recognition of adherence to the plan.
Q Can you please read page 63 of the second report of the 4901 Hampden Lane and it's just scratched pink.
MR. KNOPF: Excuse me, could you clarify what you mean by the second, when you say --
MS. HARRIS: Well, it says the second supplemental report. It believe it says it right there at the top.
MS. ROBESON: What, do you --
MR. KNOPF: Because they're --
MS. ROBESON: -- have the exhibit number?
MR. KNOPF: Yes, because I, there were three Council actions. I only put two into the record and so I'm not quite sure what you mean when you say --
MS. HARRIS: Yes, well, we put one in. We put the

one from -- I'll get it for you.
MR. KNOPF: Well, I just need the number. I'm not sure which one you're referring to.
MS. ROBESON: For which building?
MS. HARRIS: 4901 Hampden Lane.
MS. ROBESON: I have one -- okay. I think that was G-819.
MS. HARRIS: Correct.
MS. ROBESON: And I think 106(p) is one of them, but I don't know if it's that one.
THE WITNESS: Yes, this one.
BY MS. HARRIS:
Q Can you read that please, 106(p)?
A Oh.
MR. KNOPF: What is it, 106(d)?
MS. HARRIS: P.
MR. KNOPF: P?
MS. ROBESON: P.
MR. KNOPF: I'm sorry.
MS. ROBESON: Is that the report dated 7/14/06?
MS. HARRIS: Hold on one moment. Yes, well, July 14, 2006?
MS. ROBESON: Yes.
MS. HARRIS: Yes.
MS. ROBESON: So it is 106(p)?

MS. HARRIS: Yes.
BY MS. HARRIS:
Q So the second full paragraph that begins, a hearing examiner.
MR. ABRAMS: What page is it?
MS. HARRIS: 106, oh, I'm sorry, 63.
THE WITNESS: The hearing examiner said, "The surrounding neighborhood in this case contains buildings of widely varying age, height and bulk, including very small single-family residential buildings."
MR. KNOPF: She just wants you to read it.
THE WITNESS: Okay.
"Townhouses of different sizes, multi-family housing high rise and low-rise buildings, and buildings both large and small contain office, commercial and retail uses. In many cases, completely different with respect to the juxtaposed against one another, much the way the City Home townhouses confront the Edgemoor Condominiums and right next to the building, small two or three story residential structures that have not yet been really developed."
BY MS. HARRIS:
Q Wouldn't you agree that the Hearing Examiner

acknowledged the fact that this is an eclectic neighborhood of high and low-rise buildings with variations in the designs, recommendations of the Sector Plan based on that?
A I do. She's talking about an area. I don't know if she's talking -- I would say about single-family houses it's going to be redeveloped. She's talking about other retail uses. This goes beyond my looking at the Sector Plan myself, Ms. Harris. You know, I'm getting page 63 and I don't know really what the background was.
Q Okay. Just for clarification, was the Hearing Examiner's report from 2006 approving 4901 Hampden Lane at the height of 70 feet?
A I --
Q I want to turn now to the Edgemoor at Arlington.
MS. ROBESON: And that would be the --
MS. HARRIS: Edgemoor at Arlington North and the --
MS. ROBESON: Okay.
MS. HARRIS: -- Edgemoor at Arlington. And --
BY MS. HARRIS:
Q Mr. Doggett, I think you were here when we introduced originally Exhibit 106(b) and noted that the line, the dotted line to the left of the page indicates the 35-foot height zone, recommended height zone versus the 65-foot height zone you --

A I don't know that I was here then, but I've seen it, yeah.
Q And --
A I don't think I was here.
Q Are you familiar with page 39 of the Sector Plan that delineates the various height zones in the area?
A Yes.
Q Okay. So would you -- in looking at that plan, would you agree that the line shown on 106(b) is reflective of where the 35-foot zone versus the 65-foot zone would be?
MR. KNOPF: I need a magnifying glass.
MS. HARRIS: Well, let me ask you this --
THE WITNESS: Well, let me --
BY MS. HARRIS:
Q Could you look at --
A It looks, if I had to scale it off, but it's, well, it's very hard to say, but assuming it is, I don't, I don't think I would agree with that.
Q Well, assuming that it is --
A Yeah.
Q -- you testified that maximum height of the Edgemoor at Arlington North is how tall?
A I think it was 48 feet. The lower level was three stories, 30 odd feet.
Q And are you aware of the fact -- so referring to

106(f), the 48-foot height is this lower, the second tier, if you will, on this plan 106(f), correct?
MR. KNOPF: If you want to go up a little closer, you can.
BY MS. HARRIS:
Q That it went -- you just testified that it went 35 feet --
A Yeah.
Q -- the 35 feet?
A Yeah. I meant 48.
Q Right.
A There was an aisle on --
Q Right. And then how about the highest one, are you aware that that's the penthouse?
A Yeah, about 10 feet or so.
Q And 48 plus 10 is 58?
A Yeah.
Q And what was the zone that this is --
A 35.
Q Right. Okay. And even forgetting the --
A Right.
Q -- ignoring the penthouse for a moment, but 48-foot, would you agree that this building has a 48-foot height in a 35-foot zone?
A Approximately.

Q And are you aware of how far back the step back along Montgomery Lane is?
A I'm not, I'm not sure about the step back.
Q Would you be surprised if I told you it was 15 feet?
A Not from this drawing. I would be very surprised.
Q There, well, this drawing --
MS. ROBESON: Okay. Don't --
BY MS. HARRIS:
Q Are you aware that this building --
A Yeah.
Q -- that the building was derived from the zoning hearing examiner report --
A Uh-huh.
Q -- approving this building?
A Uh-huh.
Q And it recommended a 35-foot --
A Uh-huh.
Q -- it showed a 35-foot step back?
A Uh-huh.
Q And what is the step back of the subject property?
A 12 feet.
Q 12 feet? And --
A Now I could not tell you what a step back is there.

Q No, I understand.
A It could be one foot, it could be 20 feet. They're certainly not married; it's just like a band there.
Q And what zone is the subject building in?
A It's in the 65 feet.
Q And can you identify for me of all the other properties in the 65-foot zone, which ones have continuous step backs along the frontage of their buildings? Does Sandy Spring?
A Yes, just a second.
Q It has a step back?
A Did you say --
Q Step back, upper-story step back.
A Oh, not upper, a lower story step back.
Q Right. But it has a setback?
A Yes.
Q But an upper story step back?
A It doesn't, no.
Q And does the Highrise Edgemoor have an upper-story step back?
A No.
Q And we indicated previously that the 4901 has not a continuous upper-story step back --
A Right.
Q -- but instead a --

A Yes.
Q -- a notch?
A Yes.
Q So wouldn't you think that the subject building that steps back at a height of 50 feet, 12 feet, is more compatible with the other buildings on the street than these other buildings that have no step back at all?
A No, not necessarily. This is -- the bulk, this is a 4-story unit. It's residential in spec. It does not need a setback. It sets back one story required -- it probably fulfills its purpose.
Q Wait, when you say it steps back one story --
A One story, it goes back about five or six feet. This, Sandy Spring --
Q Yes.
A -- this point goes back. There's a balcony there.
Q Okay. But the building edge, I grant it it has --
A Okay, the building edge, no, it doesn't there. Going down Montgomery Lane, the answer is you've got a 48-foot building. When you get to this point, you're down visually to three stories. There you're going up five stories.
Q Okay. Let me stop you for a moment. You do -- you're correct that you have a 35-foot --
A Yes.

Q -- portion.
A Yes.
Q Are you familiar with the step back for that 35-foot portion?
A No.
Q Would you be surprised if I told you it was 10 feet?
A Well, I would be surprised, yeah.
MS. ROBESON: Wait. Wait. Okay. Go ahead.
THE WITNESS: If I, if I let --
MS. ROBESON: You mean that exhibit isn't showing the right setback, step back?
MS. HARRIS: This one?
MS. ROBESON: Yes.
MS. HARRIS: No, it does. That's only 10 feet.
MS. ROBESON: Well, if that's only 10 feet, then something not to --
MS. HARRIS: But you're looking at this one head on. I mean you get the section. This one you're looking at face on.
MS. ROBESON: Okay.
THE WITNESS: It's this totally is unreliable. This on West Lane, your building, does that look like a realistic setback from the road? It looks like there's sort of, it shows the leasing going up.

BY MS. HARRIS:
Q And can you please read that note?
A What number am I on?
Q We're back to this one.
A Yes. Yes.
Q Okay.
A Why do I, why are you pointing out the notes?
Q This one.
A This note? Okay. We have --
MS. ROBESON: Now that is what?
MS. HARRIS: Exhibit 72.
THE WITNESS: 72.
BY MS. HARRIS:
Q And you, we previously agreed that this was a step back of 15 feet --
A Okay, 15.
Q -- and then it rises to a height of 48 feet, correct, and then it steps up and then you have the penthouse. And do you think the penthouse is visible?
A I don't know. I was saying on --
Q Is it visible in this rendering?
A You're pointing out my argument. There's a 3-story building with a setback here at the end of the road. You have a 5-story with a 12-foot setback, two stories on top of that and a 10 or 15-inch --

Q Correct.
A -- on the top.
Q And where is that line differentiating the 35 feet from the 65-foot zone?
A It's in the -- it's -- I don't know because your Sector Plan tells me you cannot do that. It doesn't tell you they're seven stories at the building there. But you're saying --
Q You --
A -- that on your property you can building seven stories and so read the Sector Plan. You cannot build seven --
Q What's the height of the Hampden Lane building?
A I don't know.
Q Would you be surprised to hear that it's 71 feet?
A We've already --
MS. ROBESON: Just, just a second.
MR. ABRAMS: He said he didn't know.
THE WITNESS: I said I don't know. I said that before.
MS. ROBESON: Okay. But you can just say you don't know.
THE WITNESS: All right. Okay.
MS. ROBESON: You don't start arguing.
THE WITNESS: All right. I'm sorry. I beg your

pardon.
MS. ROBESON: You can say your piece on redirect.
THE WITNESS: Yes. Okay. Yes. I'm agreeing with you.
BY MS. HARRIS:
Q That it's 71 feet to the height, top of the building, you're agreeing with me?
MS. ROBESON: If you know?
MR. KNOPF: He said --
THE WITNESS: I don't know. I don't know.
BY MS. HARRIS:
Q So do you, are you familiar -- do, are you aware that the penthouses in the Hampden Lane building extend another additional 15 feet at the street line?
A I don't know.
Q From Exhibit 106(e), does that seem readily apparent given that there are no windows?
A Yes.
Q You noted that the dwelling, that the Sector Plan, despite the fact that it says a minimum dwelling units of 45 dwelling units --
A Yes.
Q Well, let me ask you two questions with respect to that. Let's go to that page 82. 82, the third paragraph.
A Yes.

Q And you would agree that the first, even just the first line of that paragraph, the plan recommends a minimum of 45 dwelling units per acre. I think everyone agrees that the minimum dwelling units per acre is 45, correct?
A Yes, uh-huh.
Q And then if you go further down in that section where it talks about a full 2.5 FAR, but it says parenthetically, about 100 dwelling units, --
A Yes.
Q -- is the about 100 dwelling units a recommendation or an estimation?
A By, being about, it would be an estimation.
Q Okay. That's what I -- okay. Now going back to the beginning of the sentence, you earlier testified that Montgomery Lane, that the unit recommendations shouldn't control what happens on Montgomery Lane because the, I think you said the specific detail should control, is that correct?
A The recommendations of -- Montgomery Lane have a set of recommendations. They should be the controlling --
Q Okay. Well, then why -- read the first full sentence of that paragraph please.
MS. ROBESON: Which paragraph?
MS. HARRIS: The plan, the third paragraph on page 82 that starts with, the plan recommends.

THE WITNESS: "The plan recommends a minimum of 45 dwelling units per acre everywhere except on lots facing onto the road where there would be no minimum density in order to allow townhouse development with lower densities. The plan" --
BY MS. HARRIS:
Q Okay. No, that's good. So it says everywhere and then it specifically exempts one area, correct?
A Uh-huh.
Q It says except.
A Except, yeah, on lots facing Arlington Road.
Q So despite the fact that that sentence makes it very clear of that provision that the density, the density recommendation should apply to the entire except Arlington Road, you argument is, but there's actually been another exception, but they just didn't specify it?
A Repeat that again. There are exceptions --
MS. HARRIS: Norman.
THE WITNESS: Yes, okay, there's no, well, there's no minimum density, yes. Okay. There's another exception.
BY MS. HARRIS:
Q So that, in fact, the recommendation of a minimum of 45 dwelling units and then that estimation of 100 dwelling units would, in fact, control Montgomery Lane, right, I mean unless it's specifically exempted, they, the

drafters took the time to specifically exempt the properties along Arlington Road. If they hadn't meant Montgomery Lane, wouldn't they have exempted that as well?
A It says the plan anticipates that some projects, they incorporate higher densities in the 42.5 FAR. It doesn't say everything will be on that.
Q And the Hampden Lane --
A It talks about the plan, the plan, but not just Montgomery. This is not just to talk about Montgomery Lane I don't think. I talks about the area itself, yes.
Q And are you aware that the density proposed on West Lane is the same density opposed at 49101 Hampden Lane in the Hampden Lane project at 3.05 FAR?
MS. ROBESON: When you say West Lane, are you referring to the --
THE WITNESS: Well --
MS. HARRIS: I know, I'm sorry --
MS. ROBESON: I can't see.
MS. HARRIS: -- because it says West Lane. That's why I said that. The subject --
MS. ROBESON: Okay.
MS. HARRIS: -- property --
MS. ROBESON: Okay.
MS. HARRIS: -- is 3.05 FAR as is the approved Hampden Lane project --

THE WITNESS: Yes.
MS. HARRIS: -- and the 4901 project? Thank you.
BY MS. HARRIS:
Q You noted that you seemed to have some concern about the windows along the scallop of the building and you noted that the night light would, that the light would come in or that it would be too much light?
A Actually it was a separate consideration. The general thing is the bulk and the mass and the glaze of the glass.
Q Were you here when the architect testified that, in fact, actually they would be traditional windows?
A No, I don't --
Q And are you also aware that details such as the exact window specification would occur during the site plan process?
A You mean the elevation, the prospective shows a completely different picture than what he anticipates?
Q No. Do you remember what exhibit that was?
A It was 76, I believe.
Q Okay. Thank you. The point is that were you aware that these are punched windows and that, in fact, these would not provide a Florida saline window that would luminate the entire area that you see, for instance, from that point to that point?

MR. KNOPF: Are we testifying?
MS. ROBESON: Okay. You -- she asked is he aware.
THE WITNESS: No.
MS. ROBESON: Okay.
MS. HARRIS: Then the rest -- can I confer with my client just for one moment? One moment?
MS. ROBESON: Yes.
MS. HARRIS: I think it's the last question.
MS. ROBESON: Okay. Then absolutely. No. I mean not to denigrate your cross-examination, just to move --
MS. HARRIS: That concludes my questions.
MS. ROBESON: All right. Redirect, Mr. Knopf?
REDIRECT EXAMINATION
BY MR. KNOPF:
Q Mr. Doggett, you were asked a number of questions about, I guess what you called a straight edge or the setback of the building.
A Yes.
Q And could you explain whether you believe there's a straight edge or not a straight edge with regard to the townhouses, the sticks of the townhouses?
A No, I don't think it's a straight edge. We're talking about the visual of this. And when you look up townhouses, as the photograph shows, you'll see -- your main elevations are the imperial ones really and I think you have

the landscape of the building from the sidewalk right into those particular areas.
Q So in your view that's not a straight edge?
A Yeah.
Q Okay. Now I'm referring now to page 85 of the Sector Plan. You can look at this.
A 85? Okay.
Q Yes. Look at paragraph 4.
A Yeah.
MS. HARRIS: What page are you --
MR. KNOPF: 85.
THE WITNESS: 85.
MR. KNOPF: 85, paragraph 4, it's under the Urban Design --
MS. ROBESON: Guidelines?
MR. KNOPF: -- Guidelines. Thank you. Yes.
BY MR. KNOPF:
Q Could you read that paragraph 4?
A "25-foot building setbacks from the curb, 15 feet from the Sector Plan right-of-way along Arlington Road. Setbacks in the remaining portion of the TS-R district will be decided on a case-by-case basis as development proceeds through the Planning Board approval process.''
Q And is this property located in the remaining

portion of the TS-R zone?
A Yes.
Q Thank you. Let's see. Oh, on the -- sorry, I just lost it. You were asked questions about the mixed concept of the mixed street and referred, referred to Fairmont for -- you were asked questions regarding what was happening --
A Yeah.
Q -- at Fairmont. On page 82 of the Sector Plan --
A Yeah.
Q -- on, yes, does it expressly state with regard to Montgomery Lane that this is the street that's to provide pleasant pedestrian linkages between the public library and Arlington Road?
A The public library and park on Arlington Road and the proposed urban space it would not.
Q Right. To your knowledge is there such language with regard to the Fairmont?
A No. No.
Q No? So this is a unique characterization of whether it's going to change?
A I think this is a, this is a unique street, you know it has a very specific function.
Q Thank you. And is, to your knowledge is this Montgomery Lane the only one in the Sector Plan that calls

for the urban village concept?
A I think, yes, I think so, yes.
Q That's not located on the --
A No, no, no.
Q -- on Fairmont, is it?
A No, no that might be other mixed streets that have different goals, but there's only one urban village street which have gone condo.
Q Okay. Thank you. Now I'd like to show you, if I can, you were asked questions about the Sandy Spring development.
A Yes.
Q You were shown an exhibit where you were sort of from West Lane looking --
A Yes. Yes.
Q -- toward the building? But I'm asking you to look at Exhibit 106(f) duplicate --
A Yes.
Q -- the portion that fronts Montgomery Lane.
A Yes.
Q And you were explaining why in your opinion you thought Sandy Spring looked, had townhouse features already --
A Yes.
Q -- integrated?

A Yes.
Q And would that Exhibit 106(f), you may want to get closer to it or you may be familiar with it, if you would help explain your testimony as to why it's residential in appearance?
A It's, as we saw from the latter drawing, it's, it doesn't have a mass. It's four apartments. It does have a flat roof, but the penthouse, as you can see there, is set back. It has, I believe balconies on the corner. There's a setback with the balconies there. Windows on the corner, a different type of window with coins on both corners of the brick work. So you have limestone, it's, or Indiana lime going -- I use that a lot in the embassy. And then you have another type of window and then you have the circular window with the coins around it.
You have a cornice and that heavy line over the first -- it's residential in scale and it's -- I came from Liverpool. It's a Liverpool townhouse.
Q Does it have indentation to or a line --
A Yes, it has indentation and setback, yeah, or, yes, it has indentation. I have to get that word right.
Q Thank you. Now you -- were you at the --
A It also, sorry, you know, dictates the line going down from the six to three. You don't want to go above that. Okay.

Q There was testimony -- or she had you read a transcript reference from the chair of the Planning Board. Is it your understanding that the chair and the recommendations on this project recommended a greater setback than 15 feet?
A Yes.
Q -- to 12 feet? Excuse me.
A Yes.
Q Yes? And to your knowledge did you see anything where the chair changed the view?
A No, I remember what she said on the first one. She mentioned me by name. It was at least 30 feet. And also on the second one, and we're kind of mad at that stage, she recommended looking at the elevations again.
Q Now there's been a lot of talk about questions about how much setback there should be and what's appropriate. And you were referred to other buildings by Ms. Harris that had less of a setback than 30 feet. In your opinion, does the amount of setback that you might recommend depend in part on the height and bulk and massiveness of the building?
A Yes. Yes. Yes. Uh-huh.
Q So on a smaller building, in a smaller setback like --
A Yes, you have less setback. The more bulk you

need, the big thing about the proposal is the bulk, the heavy bulk, which I think is -- it's alien to what the concept calls for.
Q Yes.
MR. KNOPF: And let the record reflect I've been using the term setback, but I believe it should have been step back is what we tried to refer. When I said setback --
A That's the roof --
Q -- we're talking about the roof --
A Yeah.
Q -- not footprint, but --
A Okay.
Q -- is that what your understanding when I ask those questions?
A Yeah. Yes, it was.
Q Thank you.
MR. KNOPF: You have to read the transcript. That's --
MS. ROBESON: I know by the number.
MR. KNOPF: Oh, okay. Well --
MS. ROBESON: 12 is the step back and go ahead.
BY MR. KNOPF:
Q Okay. Now you were asked questions about 4901 Hampden, which is also known as the Triumph referred to --
A Yes.

Q -- from time to time. And you said you worked on that building?
A Yeah. As --
Q I'm sorry, as --
A Yeah.
Q Opposing the original design?
A Yes. Yes. Yes. Right.
Q I'm referring to 120, Exhibit 120(a).
A Yes.
Q And is that the original design --
A Yes. Yes.
Q -- that the Council rejected?
A Yes.
Q Then we referred you to -- or you referred to 120(b) and, by the way, I want to reflect, if you could put up on the board -- your understanding that the building that was approved, approved, there was a 60-foot, you testified there's a 60-foot height limit on a portion of Montgomery Lane, is that correct?
A Yes.
Q And is -- does this depiction on Exhibit 106(b) reflect that lowering of the --
A No, no, no.
Q No?
MS. HARRIS: Objection. That's a distortion of --

that's a ground client plan. So it doesn't show any of the step backs on any building.
MR. KNOPF: Well, I notice a setback, a step back as you to Woodmont and it should be at the other end.
MS. ROBESON: No, wait. Wait. You can't --
MR. KNOPF: Well, I thought -- all right. Let me ask --
MS. ROBESON: Do you want to use -- which one is this, the aerial for your question or --
MR. KNOPF: Yes, this may be the aerial, so the, I guess 106(f), does that reflect the lowering of the corner, 60-foot corner on the south, the northwestern corner?
THE WITNESS: Yes. Yes.
BY MR. KNOPF:
Q Okay. That reflects this?
A Yes.
Q What you're referring to? Okay. And you were -- you were asked to read a portion of, I think it was one of the opinions in 4901 where it referred to an eclectic neighborhood and there were townhouses for commercial things referred to?
A Yes. Yeah.
Q And is your understanding that that was referring to what's along Montgomery Lane or some other portion of it?
A That was a wider area.

Q Wider area?
A Yeah.
Q And so you say your concern is with Montgomery Lane, is that correct?
A Yes, it's my concern, yes.
Q Okay. Now, similarly --
A I think that's what the Sector Plan is concerned about.
Q You were asked questions about the, I don't know what name you gave it, the Hampden Lane building that isn't 4901, the one that goes toward Arlington that's --
MS. ROBESON: On the northeast corner of Arlington and Hampden Lane, that one?
MR. KNOPF: Right, the northeast corner and Hampden Lane.
BY MR. KNOPF:
Q You were asked questions about height and appearance and so on. In your mind, is that building of great relevance in terms of what's compatible along Montgomery Lane?
A Yes, it is because at this level you're three stories.
Q No, I'm sorry. I'm referring not to the one on the corner, on this --
A Okay.

Q -- I'm referring to the, I'm referring to the large building along Montgomery Lane --
A Yes.
Q -- that is not on the --
A Oh.
Q -- sorry, excuse me, on Hampden Lane.
A Okay.
Q The one on Hampden Lane, she asked you about heights and what it looked like as compared to what's called the Arlington --
MS. ROBESON: Edgemoor at Arlington.
MR. KNOPF: Edgemoor at Arlington. The, is the building on 106(f)?
THE WITNESS: Yes.
BY MR. KNOPF:
Q Right. In your opinion, with the height and design of that, is that of great importance in terms of what I --
A No, it's not related to the --
Q It's not on Montgomery Lane, is that correct?
A No. No. No.
Q Okay. Thank you. Oh, on P-82 of the Sector Plan, you were asked to read the provision, that the plan recommended 45 dwelling units per acre everywhere except on lots facing Arlington Road.

A Yes.
Q So would it be fair to say that 45 units per acre is required in the whole TS-R plan area except on Arlington Road?
A Yes, I suppose, yes.
Q But it goes on to talk about 100, that 100 dwelling units per acre, or 2.5 density, does that in the plan there say that every parcel or area in the old TS-R plan must have that amount?
A No.
Q It talks about some projects, correct?
A Yes. Yes.
Q And is it your testimony that Montgomery Lane is not, development on that is not appropriate to squeeze any more, shall I say?
A No. No.
Q Or even the reach the 100?
A Because things have been told about the heights and the mass is --
Q And the concept, they're seeking to --
A Yes, concept, yes.
Q -- they're seeking to achieve? Okay. Thank you. Just one second.
MR. KNOPF: I have no further questions. Thank you.

MS. ROBESON: All right. Mr. Abrams.
BY MR. ABRAMS:
Q Mr. Doggett, in cautions relating to the concept of mixed street, it was pointed out that there was a mixed street known as Fairmont Avenue.
A Uh-huh.
Q Do you recall that?
A Yes.
Q And Fairmont Avenue is in an area, is it not, which was subject to a later subSector Plan known as the Woodmont Triangle Sector Plan?
A Yes. Yes.
Q Okay. And in that area along both sides of Fairmont Avenue between Old Georgetown Road and I believe it's Norfolk Avenue, is it zoned in the CBD zones or is it zoned in the TS-R zones?
A I think it's -- I'm not sure I think a business district plan is.
Q Okay. And in terms of the zoning, with a zone CBD-2, CBD-2(r), is that a more intensive zone which would allow higher and higher density focus?
A It would seem to be, yes.
Q Okay. And does that coincide with what you understand is going to be the bulk in terms of what has been approved as site plan for some major projects along that

street?
A Yes. I'm not all that knowledgeable, but basically that would be --
Q Okay. Are --
A -- undeterminative.
Q Okay. And comparing that mixed street with Montgomery Lane, is that a comparison of apples to apples or apples to watermelons?
A Apples to pineapples.
Q Okay. All right. Do you want to explain?
A No, no, there's no comparison.
Q Okay.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Thank you. Ms. Harris, recross.
RECROSS EXAMINATION
BY MS. HARRIS:
Q Turning to page 85, which Mr. Knopf asked you to read, point No. 4, which said that the Planning Board, that TS-R district will be decided on a case-by-case basis as a development proceeds through the Planning Board approval process.
A Yes.
Q So are you aware that site plan, that the site plan requires Planning Board approval?
A Yes.

Q So that would suggest that the setbacks are determined at site plan by the Planning Board, correct?
A Yes.
Q And has the planning, did the planning staff in its staff report twice indicate that the staff thought that the setback was appropriate?
A I can't recall what they said.
Q And do you recall that the Planning Board in approval of recommending approval of this plan approved the proposed setback?
A Yes.
Q So the Planning Board has spoken twice. The staff report has spoken twice, but we agree that ultimately we'll have to revisit it again at a site plan?
A Yes, I, we --
Q But if they've spoken, if they've had two opportunities to say that the setback was appropriate, why would we think going back a third time, was it just third time is a charm, would you ask the question a third time? Are we going to get a different answer?
A They will have the evaluation at the Hearing Examiner's time, maybe a little more knowledgeable input. The fact that they come to one opinion doesn't mean that they have agreed with it. It does not -- when it goes against the specific recommendations, I oppose it. It's a

disagreement we have.
Q At the Planning Board, you had noted, as you noted here, that you thought that a setback of 30 feet would be appropriate?
A I thought that, yes, and Ms. Carrier agreed with that, too.
Q Well, that leads me to my next question.
A Okay.
Q If someone says I think a setback of 80 feet would be appropriate and then the chair says does anyone else support 80 feet, is that an indication that the chair supports 80 feet?
A No, because --
MS. ROBESON: Do you --
THE WITNESS: -- 30 feet was a figure that at least we needed. You have a Planning Board making a green up and believing what was said about a elevator, making it impossible, that was where my comment came from and where Ms. Carrier's came from.
Q No, and --
A And I'm denying that --
Q What I'm asking you for is the context of what she said, was anyone else supporting 30 feet, because I believe --
A She, no, I --

Q In fact, that was pretty much verbatim what she said?
A Yes, it was actually, yes.
Q And is that in the context of English language suggest an affirmative support for 30 feet or more just an inquisition of whether anyone else agrees with the --
A In the previous hearing, our focus, as I have and my name came up and somebody mentioned the 30 feet, she said, Mr. Doggett, in English, said -- and I listen to him a lot and suggested 30 feet. I don't see anything wrong with word to that effect. That was in the first hearing. I did not go there, but I did read it, the section gave me. So my understanding, she was very sympathetic to that idea and the idea of looking at the elevations again in the second one which she said.
Q What, would you be surprised if I suggested to you the context in which she posed the question 30 feet was, in fact, just to see whether anyone else was fighting the 30 feet?
A I didn't get that sense of that.
Q I'm trusting you made --
A Okay.
MS. HARRIS: That ends my questions.
THE WITNESS: Okay.
MS. ROBESON: All right. We are going to --

MR. KNOPF: We'll break lunch, but I need to know the plan for this afternoon. I have, we're going to go on with witnesses. I need to call them. I just don't know the time sequence of whether they'll be on this afternoon.
MS. ROBESON: Well, I think we're going to take Mr. --
MR. ABRAMS: Lawch.
MS. ROBESON: -- Lawch and then if, you know, as long as we have time left --
MR. KNOPF: Do you have any idea of roughly how long -- you won't be taking more than two hours with him?
MS. HARRIS: With Mr. Lawch?
MR. KNOPF: Yes. Oh, okay. So I'll plan Victor.
MS. ROBESON: All right. On that note, we're going to go get food in our stomachs and --
MS. HARRIS: In fact, it will take, I mean maybe an hour max.
MR. KNOPF: Yes, so there sounds like there's time to get my -- we have two more witnesses that together will be --
MS. HARRIS: Who are your other witnesses besides Niebler and --
MS. ROBESON: Are they --
MR. KNOPF: Niebler -- one is here and one is on call. I have to call at lunchtime to tell him he's got to

come.
MS. ROBESON: Okay.
MR. KNOPF: So I think I will.
MS. ROBESON: Yes. Sounds good.
MR. KNOPF: I just wanted to know I had a plan. He's been here before and he's got tired of coming and waiting.
MS. ROBESON: I understand. All right. With that, it's 1:05. We'll be back at 2:05.
MR. KNOPF: Thank you.
MS. ROBESON: Thank you.
(Recess)
MS. ROBESON: Ready?
MR. KNOPF: Yes.
MR. ABRAMS: Yes.
MS. ROBESON: And you're ready? This -- we're back on the record in G-954 and DPA 13-01. And I believe it's time for cross-examination of Mr. Lawch based on his testimony at the end of the last hearing. Go ahead.
MS. HARRIS: Correct. Thank you.

CROSS-EXAMINATION

BY MS. HARRIS:

Q Mr. Lawch, you had testified to the City Homes' position with respect to the prior Holladay project, correct?

A I think what I indicated was we were generally supportive of the Holladay project.
Q And did you participate in any meetings that City Homes had with the Holladay Corporation?
A No, I did not.
Q And are you aware that City Homes didn't transmit any type of letter of support with respect to that project?
A Don't know yes or no.
Q And do you know whether they testified at the Planning Board, this Planning Board or the ZHE in support of that project?
A No, I don't.
Q Do you have any sense that they in any way affirmatively demonstrated support for that project?
A No.
Q Would it surprise you if I told you that they didn't issue a letter of support, didn't testify at a hearing and did not affirmatively show any active support?
A No.
Q Assuming that that is the case, wouldn't you agree that that's not really supportive, it's just that they didn't actively oppose it? And I think you noted that they had bigger fish to fry. That may have been one of the reasons that they didn't oppose it, is that correct?
A No, that was in reference to 4825.

Q I had understood you to say that the reason you didn't oppose the Holladay project is because you had bigger fish to fry --
A That was a reference --
Q -- at the time which was --
A -- to 4825.
Q Okay. Thank you for clarifying that. And you are aware that the City Homes did, in fact, oppose the Hampden Lane Associates's project, the district council and then when the district council approved that project, then they also appealed it to the Montgomery County Circuit Court?
A I know that at time they opposed it. I don't know, you know, at what stages.
Q Did you live in City Homes at the time once the Circuit Court came out and determined that, in fact, the District Council was correct in approving that project?
A I don't believe so.
Q So you don't know when, in fact, they, who was -- you weren't involved then in the appeal from the Circuit Court to the Court of Special Appeals as well?
A No, I was not.
Q And do you know whether the appeal of the Hampden Lane project by City Homes occurred before or after they appealed the 4901 approval?
A No, I don't.

Q Would it -- based on these various concerns about the projects of the neighborhood, would you agree that City Homes certainly has had issue with the number of the projects surrounding them?
A Yes.
Q Then I want to move into a little bit about -- you testified about what the, what was approved in connection with the Holladay approval. Did you, have you, did you ever work for Holladay, the Holladay Corporation?
A No.
Q Were you ever hired by them as a consultant?
A No.
Q So you have no internal information regarding the decisions of that company?
A Correct.
Q So would you agree that there could be a host of reasons why Holladay decided not to build the project that was approved?
A I don't think I testified as to why they did or didn't.
Q No, I know why. I'm asking though that, I mean we, you did testify that the project was approved and that, and why can't this project be built and look like the Holladay project, correct?
A I'm sorry, there was two questions there. What

was the first one?
Q You did testify that the, you testified that the Holladay project was approved, correct?
A I certainly wouldn't deny it.
Q Okay.
A I testified.
Q And then in your testimony did you not suggest that why can't the subject building be similar to the Holladay project?
A I believe I did.
Q Okay. So I'm trying to, so I'm -- but we all know that the Holladay project was, in fact, not, did not go forward and be constructive?
A That's correct.
Q And it could have been because the Holladay Corporation may have decided to get out of the residential market or maybe they decided that they wanted to get out of the Montgomery County geographic market?
MR. KNOPF: I'm going to object.
MS. HARRIS: Correct?
MR. KNOPF: This is all speculation.
MS. ROBESON: Why don't you -- is this going -- where is this going?
MS. HARRIS: It's going to the fact -- well, let me ask my next question.

MS. ROBESON: Okay.
BY MS. HARRIS:
Q Could the project have been denied because it was economically infeasible to construct that project?
MR. KNOPF: I again objection.
MS. ROBESON: What's the basis?
THE WITNESS: I can answer. I have no knowledge.
MR. KNOPF: She's asking him to speculate.
MS. HARRIS: No, but I think it's relevant if, in fact, you're asking us to build something that --
MS. ROBESON: Just a second. I would rephrase -- can you rephrase the question as would one possibility --
MS. HARRIS: Yes.
MS. ROBESON: -- be?
BY MS. HARRIS:
Q Assuming for a moment that the building did not get built because of economic reasons, is it not highly irrelevant during proceedings on the subject application to compare the subject application to the Holladay project?
A You've got to rephrase that one, sorry.
Q Assuming for a moment that Holladay did not get built because of economic reasons, making it an economic impossibility to construct it, is it not highly irrelevant during the subject proceedings to compare the SJG project --
MR. ABRAMS: I would object.

MS. HARRIS: -- to the Holladay project?
MR. ABRAMS: It calls for a legal conclusion --
MS. ROBESON: Yes.
MR. ABRAMS: -- whether it's relevant or irrelevant.
MS. ROBESON: I know what you're getting at, but I'm not sure it's -- it doesn't go to any basis that I can think of of impeachment. If you want to -- or unless you have one that I don't see.
MS. HARRIS: I'm not, well, I don't know if I'm trying to impeach him. I'm trying to discredit the comparisons that were made throughout his testimony of the subject project to the Holladay project.
MS. ROBESON: I understand that, but I'm not sure he's the person to ask about the economic feasibility of the Holladay project because he doesn't know about it.
BY MS. HARRIS:
Q Okay. Let me ask a different question. If for whatever reason, pick your reason, it was impossible to construct the Holladay project, is it -- what's the, isn't it irrelevant to compare the SJG project to the Holladay project?
A I'll try and answer as best I can. The Holladay project in my mind was in more in conformity with the neighborhood and the Sector Plan. And the reason I pointed

out was for that purpose. I didn't testify as to its feasibility --
Q Even --
A -- or anything else.
Q Even though the building itself could have been a fictional, could have been fictional because it never could have been built?
MR. ABRAMS: Objection. Again, it's speculation on his part and the question is asking him to speculate.
MS. ROBESON: Okay. He is a fact witness.
MS. HARRIS: Okay.
MS. ROBESON: I did have a question during your testimony, Mr. Lawch, that, you know, the standard here is not to go back to the Holladay project. The standard here is -- I can't remember if you used the term precedent now or the baseline, but it's not really the baseline and the standards here are solely whether a new project would meet the zoning ordinance in the Sector Plan requirements.
THE WITNESS: Well, for some reason, Madame Examiner, I think I was trying to make one point that to lay people who are, who are, you know, who have gone through a process where there's been an approval, and then there was an amendment to that approval, to us that, an amendment means that it's a change to the previous project, but not a complete change and amendment, a partial change. And I

think I was indicating that the Holladay project wasn't anything like the now amendment for SJG. And that was the point I was --

MS. ROBESON: Okay.

THE WITNESS: -- testifying to.

MS. ROBESON: I understand that point, but my job is to say whether this current proposal meets the Sector Plan and the standards in the zoning ordinance.

THE WITNESS: Understand I'm not --

MS. ROBESON: Okay.

THE WITNESS: -- an expert. I'm just --

MS. HARRIS: Okay. I'll move on.

MS. ROBESON: Go ahead.

BY MS. HARRIS:

Q We had several meetings regarding this project. At least one of them was held in my office, I believe, is that correct or you've been in my office before, is that correct?

A Yes.

Q Can you indicate --

MS. ROBESON: Which one is that?

MS. HARRIS: 106(f).

MS. ROBESON: Okay.

BY MS. HARRIS:

Q Would you agree that that's my office?

MS. ROBESON: And you're pointing --

MS. HARRIS: Oh, I'm sorry --

MS. ROBESON: -- to?

THE WITNESS: No, no, no, I don't think it is your office.

MS. ROBESON: Is that 3 Metro Center?

THE WITNESS: Oh, is it --

MS. HARRIS: Yes, it's 3 Bethesda Metro Center.

THE WITNESS: Oh.

BY MS. HARRIS:

Q Are you aware that this is 3 Bethesda Metro Center?

A It's 1, 2 or 3.

Q Okay. I'll save you. That's 2.

A Okay.

MS. ROBESON: Okay.

BY MS. HARRIS:

Q Can you please read the highlighted portion that I have on page 40 of the Sector Plan, .2?

A "Step down building heights from the Bethesda Metro Center properties to achieve desirable and compatible transitions to adjacent area.''

Q Thank you. And then using the same diagram that we just pointed where the Metro Center is, the Metro Center project, where, north, south, east, or west, where would you

say that 4901 is from that Metro Center, from the Metro Center project?

A It is southwest.

Q Okay. And then I believe in your tenting analysis, however, that you suggested that, in fact, the tent should be drawn not from the Metro core, but instead from a point southwest of a Metro core and then, if I understood you correctly because you wanted to bring in the subject project, draw a line that would be going in a somewhat northwest direction, is that correct?

A What I testified to was that since 4901 Hampden Lane is one Woodmont, that it was a benchmark of sorts for gauging what other distances would be used down the block, that one being at 70 feet, it's hard to understand how any tenting concept as you go down the street could result in a building that is closer to Arlington being taller than a building that is closer to Woodmont. That's basically what my testimony was.

Q But you would agree that per the Sector Plan, the pole or the fence, so to speak, is at the Metro Center project per what you just read?

A Whatever I read was read. I'm not an expert on the Sector Plan.

Q Would you also agree that the HOC building, again I'm referring to 106(f), is shorter by however many feet

than the Hampden Lane project?

A Sorry, try that again, I'm sorry.

Q Is the HOC building shorter than the approved Hampden Lane project immediately to the west?

A Certain parts of it, yes.

Q And is the HOC building shorter than the two buildings immediately to its east?

A Yes.

Q So even accepting for a moment your point of a tent drawing this line, couldn't drawing a line from 4901, how do you reconcile the fact that the Hampden Lane project is taller than anything in between the 4901 and the Hampden Lane project?

A Okay. I can attempt to do it. I think that when you, I mean practically speaking, I mean look at these buildings and you're deciding what's going to be put and what's going to be approved on a particular lot. You look at the characteristics of the particular building. So in the case of Hampden Lane, the Toll Brothers project, that's kind of an odd duck, but first it's not on Montgomery Lane, it's on Hampden Lane which is a commercial, a more commercially oriented project, not the mixed street, not the 20 feet wide Montgomery Lane. I believe Hampden Lane is 36 or 40 feet wide.

So it's addressing a different street and then the

characteristics of the building are rather interesting also. The -- I'm just looking, I had a reference to it in my -- the, if you don't mind --

MS. ROBESON: You can move that back. Go ahead and move it back if it makes it easier --

THE WITNESS: Okay.

MS. ROBESON: -- to get around. Can you see, Mr. Knopf?

MR. KNOPF: Oh, yes, that's all right.

THE WITNESS: So I was just trying to reconcile in my mind what the County Council must have been thinking when they approved this and, again, this project looks out on Hampden, which is commercial in nature. Then the height of this building or the elevation of this building, because it's 11 or 12 feet lower than City Homes, actually its height relative to City Homes is relatively modest. So --

BY MS. HARRIS:

Q When you say modest, 10, 12 feet difference?

A There's an 11 or 12-foot difference.

Q Okay. And are the, and the Hampden Lane building immediately abuts the City Homes, correct?

A That is correct.

Q Okay.

A But getting to that is an interesting story because, first of all, it has cut outs --

Q Uh-huh.

A -- at each point and that gives, obviously, City Homes more room. And then the whole building is oriented to the south, meaning most of the bulk of the building is pushed part to Hampden and away from City Homes. So there are some, well, down below the building's footprint is about, I don't know, 15 or 16,000 square feet per floor, roughly similar to here. But by the --

MR. KNOPF: By here, you mean?

THE WITNESS: Well --

MS. ROBESON: The subject proposal?

THE WITNESS: The subject property. But by the time it gets up to the 7th floor, it's only like 7,000 or 8,000 square feet.

BY MS. HARRIS:

Q I'm sorry, I was, we were talking about the tenting requirement.

A Well, I'm getting to the, I'm mean you asked me why --

Q No, what I asked is that whether the Hampden Lane project at 71 feet, the two, three intervening shorter buildings and then having the 4901 building, which is also 71 feet, was that complying --

A Sure.

Q -- with the tenting requirement?

A Sure. I think the elevation of this building being 12 feet below effectively makes this building much lower than this building or the City Homes building.

MR. ABRAMS: Wait, when you say this building, which --

MS. ROBESON: You mean the Hampden --

THE WITNESS: I'm sorry.

MS. ROBESON: -- oh, go ahead.

THE WITNESS: The 4901 Hampden.

MS. ROBESON: No, wait.

THE WITNESS: 4901 Hampden --

MS. ROBESON: Yes.

THE WITNESS: -- is at a higher elevation also for determining --

MS. ROBESON: Oh, I see.

THE WITNESS: -- its maximum height. And then this building is a good 11 or 12 feet lower than the back of City Homes. So, you know, again, you asked me to conjecture, but the County Council might have considered those factors in approving the height.

MS. HARRIS: And --

THE WITNESS: Oh, and these two, I mean, you know, they're likely buildings that are going to be replaced with taller buildings in the future.

BY MS. HARRIS:

Q But is that not speculative?

A Yeah, I -- yeah, I, you know, those are two existing, underused parcels.

Q Okay.

A I assume they're going to change.

Q But the height of, as measured by the zoning ordinance requirement, is the height of 4901 Hampden Lane the same as the height as the Hampden Lane building?

A Again, I'm not an expert in Sector Plan. To me I look at ultimate elevation. This building's elevation is going to be substantially lower than this building, meaning the subject property, and I believe this building as well. Can I -- should I sit down?

Q Yes, you may sit down. I want to check one thing before I go on. In terms of the FAR and density, what's the FAR of 4901 that was approved?

A The FAR is 3.05 and the total square footage --

Q No, I've got, I have -- actually this is a question about density, FAR. So I don't need to get into the square footage of the --

A No.

Q And then what's the FAR of the Hampden Lane building?

A Can I answer the question?

MS. ROBESON: No, no, let -- you did answer the

question, so let her ask the next question.
BY MS. HARRIS:
Q And the FAR of the Hampden Lane building?
A 3.05.
Q And the proposed FAR of the subject building?
A 3.05.
Q And we do agree that the FAR is a relationship between the square footage within the building to the lot area, correct?
A That's correct.
Q So the proportion of the square footage on the site to land area is actually the same for those three projects, is that not correct?
A I don't think that I -- I think the answer to that is no or what I do know is that the total square footage permitted by the 3.05 ratio results in the total square footage of the Hampden Lane project to be 20 percent less than the subject property.
Q Which would then suggest that the building, the lot area of the subject is 20 percent greater, correct?
A I don't know that to be the case. It is four months.
Q Well, let's, okay, should we walk through this mathematically? If you have a total square footage within the building area and then you divide that by the size of

the lot for each of these projects, would you not get 3.05 FAR?
A Yes, but I don't know how they measure the different sites, the square footage, what's allowed and what's not.
Q But would that not indicate that the mass of all three buildings, and I agree with you that the three buildings, some have more square footage in them than another, but the FAR is identical and so, therefore, is not the mass, mathematically isn't the mass the same for all three buildings?
A To me, mass is the bulk of the building. To me that's measured in square feet. And as I just testified, the square footage of the Hampden Lane property is 20 percent less than the subject project and I believe the mass on 4901 is similarly 20 to 25 percent less than the subject property.
MS. ROBESON: I think her question is --
THE WITNESS: She asked me about, Madame Examiner, she asked me about the square footage.
MS. ROBESON: You don't have to explain to me. I'm just kind of rephrasing her question and I think her question is building density as in the rate, the comparison, the relationship between building density and lot area would be the same.

THE WITNESS: A ratio, I assume, again I'm not an expert, that 3.05 ratio is applied to some square footage number relating to the lot. I don't know how that's configured, but that's certainly correct.
BY MS. HARRIS:
Q Would it surprise you if I told you that the lot area is determined by the gross tract area of each of those lots?
A I believe I've seen that expression, that term used.
Q And you would agree that the FAR, those three projects involved, is identical, correct?
A Identical to what?
Q To each other, all three are identical, 3.05?
A They're all 3.05.
Q Correct. Can you please -- I want to talk about the setbacks for a moment. Referring to page 86 of the Sector Plan, here's a copy, can you -- this is, again, the building line exhibit. Can you please identify which existing or approved project deviate from the image on page 86 regarding maintaining a continuous building line and we can focus primarily on Montgomery Lane?
A I cannot, I'm sorry, I can't tell anything from this thing. I'm supposed to do what? Can we use that? I just --

Q Would you agree that the purpose of this urban design guideline and the highlighted portion says building line, and that this exhibit is intended to show where a building should be situated in relation to the street?
A Oh, I got it. Thank you.
Q Okay. So starting on Montgomery Lane with the Highrise Edgemoor, does the Highrise Edgemoor conform to this exhibit in terms of its building being situated to the street?
MR. KNOPF: Excuse me, what is this exhibit though?
MS. HARRIS: 106(f).
MR. KNOPF: Because you left off at the Sector Plan.
THE WITNESS: I'm sorry, I might be dense here, but I just don't understand what you're trying to get at.
BY MS. HARRIS:
Q Okay. Let's start at the south, let's start at the northwest corner of Montgomery Lane and Woodmont Avenue, with the first solid, black line that looks like a U.
A Yeah.
Q Do you see that?
A Uh-huh.
Q Does that suggest that that building should be built up to a certain line along Montgomery Lane, that it

should be oriented toward Monday Lane?
A Yes, I guess.
Q Okay. And then moving next to it, the Sandy Spring building, is that building built pretty much in, to maintain that continuous building line? Is it approved in such a manner that it would maintain that continuous building line?
A Am I referring to this or am I referring to --
Q Oh, I think you could refer to 86 and then take a look at Exhibit 106(f) to refresh your memory in case you're not clear on whether this building was built up to be oriented toward Montgomery Lane.
A Now are we talking about distance from Montgomery Lane or --
Q Distance.
A -- orientation or --
Q Distance from back of curb.
A Oh, okay. So 4825 is a little more forward than the Edgemoor building. I think the testimony was five or six feet.
Q Okay. And then moving to the west side of West Lane, what does the -- page 86 of the Sector Plan suggest?
A Well, it looks from the Sector Plan that all these black lines, well, not all of them, it does go in a little bit, but there is an attempt to keep a certain line going.

Q A straight line? Okay. And I'll make this easy. And then if you take a look at 106(f), would you agree that where my, all those buildings, in fact, maintain that building line that page 86 recommends?
A Well, they all differ somewhat. Some by a little, some by five or six feet.
Q But within the realm of five feet or so?
A I think that's, I think that's accurate.
Q And, in fact, if any of them differ, if any of them deviate, it's the subject building which is set back further than any of the others, correct?
A It depends on how you measure, if you measure the Edgemoor --
Q Here, why don't we -- well, we can use this.
A Yes. Yes. Measure the, I think your --
Q This being --
A Excuse my
Q -- Exhibit 1?
A I think your experts testified that you with 73 feet back and this was 71 foot back, but your measurements were taken from a projection on this building that projection was about two feet. So actually this building and this building are pretty much the same and this one protrudes a little bit.
MS. ROBESON: When you say this one protrudes a

little bit, which one were you referring to?
THE WITNESS: Oh, I'm sorry.
MS. ROBESON: 4825 --
THE WITNESS: I keep on forgetting we're trying to build a record.
MS. ROBESON: -- Montgomery Lane?
THE WITNESS: 4825 was approved with a distance from the curb a little less, I think.
BY MS. HARRIS:
Q Let's add up the numbers. Six plus six plus seven is?
A Well, could we use --
Q That's --
A -- the --
Q I think it's good to use this because this is dimension and --
A Well, this is also somebody else's testimony, so I don't know if it's accurate or not.
Q The setback of the --
A I think we can all see that this is somewhat closer to the street than these two buildings.
Q Right. And the relationship between the Highrise Edgemoor which from the back of curb is, from the back of the lay by is how much?
A I know that the distance from here to here --

MS. ROBESON: If you know?
THE WITNESS: The elbow --
MR. ABRAMS: Just say you don't know.
MS. ROBESON: Yes. Don't --
THE WITNESS: Yes, I don't.
BY MS. HARRIS:
Q Okay. But you testified that they're somewhat comparable and you did hear testimony that, in fact, the Wes Lane building was set back further than any of the other buildings, correct?
A Well, I heard my testimony --
Q Okay.
A -- but I disagree with it. What I said was I think these are two, these two are set back about the same distance from City Homes and that this one is closer to City Homes than the -- I think that's accurate.
MS. ROBESON: Okay. What you just said is the two you are referring to that are about the same distance are?
THE WITNESS: West, the subject property and the Highrise Edgemoor.
MS. ROBESON: And the one that's slightly closer?
THE WITNESS: Is 4825 Montgomery Lane.
MS. ROBESON: Okay.
BY MS. HARRIS:
Q And as we determined this morning on page 85 of

the Sector Plan, there's language that says that the Planning Board will determine the setbacks. Were you here during that testimony, if you look at page 85?
A I don't know. If you want to read it to me again or show me?
Q No, I think we can -- and that you're familiar with the fact that the staff twice has determined that the setback, that the proposed setback was appropriate of the subject building? Do you recall that there's language in the staff report support this, the proposed setback?
A I think so, but I don't know so for sure.
Q I'm pretty sure that I would because it was --
MS. ROBESON: Well, you don't -- if you don't know --
THE WITNESS: Okay. I probably should know, but and I think it is --
MS. ROBESON: That's okay.
THE WITNESS: -- but --
BY MS. HARRIS:
Q And at the same time the Planning Board, because we had the, we -- actually I'll refer you to page 5 of the staff report. Let's pull that -- that's Exhibit --
MS. ROBESON: Which staff report?
MS. HARRIS: The planning, the staff report from March, the March hearing.

MS. ROBESON: Okay.
MS. HARRIS: Let me find my copy.
MS. ROBESON: I think it's attached to 105. I don't have the current, most, exhibit list, but I think it's 105(b).
BY MS. HARRIS:
Q Okay. Well, let me, I will quote from it and you can tell me if this, if you recall reading this in the staff report. As previously recommended in the initial review of the application, staff believes the building edge located along Montgomery Lane as proposed is appropriate to maintain a cohesive building edge along Montgomery Lane. Do you recall that being in the staff report from the March proceeding?
A Oh, okay. So what, I'm sorry. We're talking about the distance of the footprint of the building to --
Q To the, yes.
A -- I'm thinking the set --
Q No.
A The step down.
Q No, we're talking --
A Sorry. Sorry.
Q That language doesn't surprise you given the proceeding and that they supported the building orientation --

A If you tell me that from the report, I'll --
Q Okay. So if the Planning Board is charged with determining the setbacks and they've twice indicated their support for the setback and the staff certainly in this, as just read, they support the setback. And, in fact, it's the Planning Board's job during site planning to determine the setback, why would we be further discussing what the setback of the building should be? Hasn't the Planning Board already opined what they thought was appropriate?
A Well, I think the position of City Homes is that we don't agree with that conclusion and we think that the building should be set back at least seven or eight more feet.
Q So you disagree with the staff and the Planning Board with respect to their planning on that?
A Well, when the -- it was my, it was my opinion that when the Planning Board had indicated to the applicant to take the public space in the north of the building and move it up along Montgomery Lane, that that meant that the building should be pushed back. That was my initial opinion as to what the Planning Board was doing when it remanded back to the applicant.
Q So you were somewhat surprised that the Planning Board then determined that a scallop which sets back at its largest point, 28 feet, was an acceptable solution?

A I thought it was countered to what they, what you were asked to do.
Q From what you understood then --
A Yeah.
Q -- to request?
A Correct.
Q You indicated that you are president of the City Homes, is that correct?
A Yes, I did.
Q And that all 29 residents submitted letters of, in opposition to this project?
A That is correct.
Q Can you please read the correspondence to the Hearing Examiner dated December 3rd from Mabel Reynolds? And you can just read the highlighted portions, including the ones that are --
MS. ROBESON: What exhibit is this?
MS. HARRIS: It was an email sent on March 3rd to Mr. Grossman.
MS. ROBESON: I don't -- what is the name in it?
MS. HARRIS: Reynolds, Mabel Reynolds.
MR. ABRAMS: I don't recall seeing it in this file.
MS. HARRIS: I don't know that I see her name here specifically, though. I was picking up on the fact that

they testified that all 29 members had, in fact, written letters of opposition.

MS. ROBESON: Well, I don't see that in the record, but you can ask him if he's aware.

MS. HARRIS: Okay.

BY MS. HARRIS:

Q Are you aware that Ms. Mabel Reynolds on December 3rd sent a letter, an email correspondence to the Hearing Examiner noting that the building, that to build an architecturally and incompatible block of 113 rental units, mostly efficiencies, it cheapens the neighborhood by offering 113 tiny rentals which will house transient people which have no stake in our community, are you familiar with this correspondence?

A No.

Q But you are aware that all 29 members of the community supposedly registered their opposition?

A I, when we solicited all of our members to send in letters, when we got the letters, we put them in a big book by address and by --

MR. KNOPF: I'd like the record to reflect he's holding up a big book.

THE WITNESS: Big book, and each is done by address and in each case there is a letter, or letters, letter or letters in certain cases, residents wrote more

than one letter, and then these letters were sent to the Planning Board and to Madame Examiner and that -- I have read all of the letters and that letter is --

BY MS. HARRIS:

Q Is there a letter from the resident of 4821?

A No, there is not 4821. It's across the street.

Q It's at Highrise Edgemoor. Well, my apologies. My -- I'll save that question then.

MR. ABRAMS: Well, I'd like to hear it.

MS. HARRIS: Hear what?

MR. ABRAMS: Nothing. That's facetious.

THE WITNESS: It's also the position of City Homes is, never mind.

BY MS. HARRIS:

Q Oh, so that's not the position of City Homes, the rentals, or transients, that's not an issue for City Homes?

A Well, rentals are probably less, more transient than condos and because the entire neighborhood is condo, it would certainly be a preference that the buildings be condos.

Q Because the entire neighborhood is condo, would adding a different housing type like rental be, add to diversity?

A Sure.

Q I want to go on and discuss the comparison of the

subject property to other projects. You had testified that the subject SJG property is using the Highrise Edgemoor to justify, for, excuse me, justification to construct its property, is that correct?

A I'm sorry --

Q I believe you indicated that the subject property was looking to the Highrise Edgemoor and, in fact, perhaps because of its height to try to justify its 70-foot height.

A Well --

Q I believe you testified to that.

A What I testified to is I said that the big Edgemoor was not supposed to be a precedent through our huge development on Montgomery Lane and that your experts constantly referred to the big Edgemoor as comparing it against West, I'm sorry, comparing it to the subject property.

Q But in, okay. Then in terms of comparison, didn't -- that's interesting you use the word compare versus distinguish, but isn't that the Highrise Edgemoor 100 feet?

A 100 feet?

Q Tall.

A I believe the testimony did indicate that.

Q And the subject property is 70 feet, is that correct, tall?

MR. ABRAMS: The proposed --

BY MS. HARRIS:

Q The proposed subject property is proposed to 70 feet?

A Well, I think I testified that I think it's more like 78 feet at the front of the building, but the maximum according to the approval is 70 feet.

Q And is the width of the Highrise Edgemoor per Exhibit 112 a 172 feet in width?

A If your experts' measurements are correct, that's what the exhibit says.

Q And that the width of the subject at the building face is 78 feet?

A Well, at that measurement, if you move back beyond the curvature of the building, it's 108 feet, well, close to that anyway.

Q But the building, the 108 feet, I, okay. But at the face it's, does it indicate 78 feet? Even assuming for a moment if you measured back beyond the building face and it's 108 feet, is 108 feet distinguishable from 172 feet?

A It's certainly different.

Q Yes. And the FAR of the subject is 3.05, as you previously testified, and the FAR of the Highrise Edgemoor based on the lot on which it is located is 6.05, correct?

A I don't know that for sure.

Q Okay. And what's the -- and what is the height of

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the subject building at the building place, at the building place? It -- the step back, the 12-foot step back starts at 50 feet, correct?
A Again, as you would measure it, yes.
Q As I would measure it, as Montgomery County DPS would measure it?
A That is correct.
Q Okay. And what's the FAR of 4901?
A 3.05.
Q And its height?
A 60 to 70 feet.
Q And what's the FAR of the Hampden Lane project?
A 3.05.
Q And its height?
A I think we heard some testimony that it was 68, but I think according to the approval, it's as much as 71.
Q So in terms of the height and the FAR, 4901 and Hampden Lane are much more comparable to the subject property, wouldn't you agree?
A I think I testified that I disagree.
Q So 3.05 is different than 3.05?
A You're -- 3.05 --
Q In terms of it, the FAR --
A -- is --
Q -- and the height is not Hampden Lane more

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comparable, isn't the subject property more comparable to 4901 and Hampden Lane than it is to the Highrise Edgemoor?
A Could you define, if the question is as the, do they all have 3.05 FAR's, the answer to that is yes. And if they all are designed to have a maximum height of 70 feet, the answer to that is yes. Your other characterizations are not correct.
Q My other -- it was height and density that you're basing your comparisons on. In terms of height and FAR, they're comparable?
A Again, the 70-foot and 3.05 designations are the same. I disagree with you that the heights are the same because they don't end up with the same elevations. And the FAR's aren't the same because their masses are quite different.
Q The FAR's are not the same?
A The total mass of the building --
Q Of the FAR?
A -- is different. The FAR --
Q The FAR's --
A -- the designated ratio is the same.
Q So the point, you had made the point earlier that because of the subject's, because of the Highrise Edgemoor's non-compliance in terms of its 100-foot height and 6.0 FAR, we shouldn't rely on that to justify development, I think

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you would agree with that, correct?
A I think that's a fair statement.
Q Okay. And then if we could refer to Exhibit 55, which is the Sector Plan comparisons? This may take a little bit of digging. So on Exhibit 53, can you please read the unit per acre for the low-rise Edgemoor? Can you please identify what that says?
A 27?
Q And for the City Homes?
A 27.
Q And for the Sandy Spring building?
A 27.
Q Okay. And then on page 82 of the Sector Plan, and we probably know this by heart now, what's the minimum minutes per acre --
A Sorry, I --
Q -- that's recommended? You don't know that by heart?
A Some things stick in my --
Q You've been doing it for the last --
A -- head and some things don't and that doesn't.
Q Okay. Well, if you could refer to page 82 of the Sector Plan? What's the minimum density recommended?
A The plan recommends a minimum of 45 dwelling units per acre.

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Q Okay. So based on the unit per acre density that you just read which were coincidentally 27, 27 and 27, would you agree that those don't comply with the Sector Plan recommendation of 45 dwelling units per acre?
A Again, I'm not a, you know, an architect or a civil engineer or -- if that sentence says, means that to you, that's great. I just don't know.
MS. ROBESON: Well, her question is -- why don't you, you need to answer her question if you know. So go ahead and re-ask that question.
BY MS. HARRIS:
Q Based on the fact that the Sector Plan says there should be a minimum density, unit per acre density of 45 dwelling units per acre and based on the fact that the low-rise Edgemoor, the City Homes and the Sandy Spring building are all 27 units per acre, wouldn't you agree that they don't comply with the Sector Plan? Let's put it this way. Is 27, well, let me do one -- and the Edgemoor Arlington North, that says 35 units per acre, right?
A No, I'm not trying to quibble.
Q Is 27 and 35 less than 45?
A That I can answer.
Q Oh, good.
A Yes.
Q Okay.

A Yes.
Q Okay. So you used something that Norman often says, I'm confused. On the one hand it sounds like, well, on the one hand you want us to follow -- you say that we shouldn't be following the Highrise Edgemoor because it's too high, it's 100 feet high and it's 6.05 FAR and we don't dispute that that's high and we would say we're not following that, but on the one hand you're saying you can't use the Highrise Edgemoor to justify this building because it doesn't comply with the Sector Plan and then on the other hand you take other projects that also don't comply with the Sector Plan and say that's what this project should be doing?
A Well, when four or five or actually all the other projects along Montgomery Lane have similar low densities, at some point you have to indicate, you have to accept the fact that that's an appropriate density for that street.
Q Okay. You -- I want to turn to Exhibit, I think 102(f). Just a moment. Yes. No. Yes, that one. Bear with me one moment again.
MS. ROBESON: Which exhibit are you looking for?
MS. HARRIS: I'm looking for the --
MS. ROBESON: Because I think (f) is the aerial.
UNIDENTIFIED SPEAKER: 819.
MS. HARRIS: Oh, it's the supplemental ZHE report

at 819.
MS. ROBESON: Okay.
MR. KNOPF: Which is that for?
MS. HARRIS: I think I have it now.
MS. ROBESON: 106(p)?
MS. HARRIS: Yes.
BY MS. HARRIS:
Q And so you just said that, if I understood you correctly, well, despite what the Sector Plan says, because all these buildings were built to the lower, that provides some justification for why the subject building should be revised, correct?
A I made the observation that when everything else in the neighborhood is of lesser, lesser units per acre, that should give one pause because, you know, building, other buildings should more closely resemble that.
Q Okay. Could you please read page 62 of Exhibit 106(p)?
MS. ROBESON: I'm sorry, what page?
MS. HARRIS: Page 62 at the very bottom where the -- right where it begins, the unease. And this, let me put this in context for you. This is the City Homes opposing the 4901 project. And so the hearing examiner goes on to say --
THE WITNESS: "The unease felt by residents of the

City Homes townhouses in the face of multiple rezoning requests on three sides of their community is understandable."
Keep reading?
MS. HARRIS: Yes.
THE WITNESS: "However, any expectation on their part with the neighborhood would not change over time or that all future development would follow their lead in terms of height and density rather than the recommendations of the Sector Plan was unrealistic."
BY MS. HARRIS:
Q Thank you. So, in fact, that does suggest that the Sector Plan is a guide and not what's existing on the street, correct, at least the zoning hearing examiner in 3901, who is now the chair of the Planning Board, felt that way and the District Council approving 4901 must have felt similarly?
A I think what that says is they were referring to City Homes in particular, but it does, would indicate that with regard to City Homes that we should expect --
Q Everything, shouldn't expect?
A The similar density.
Q Thank you. I want to move on to the question of compatibility. Do you ride the Metro?

A Yes.
Q And when you ride it, how do you get there?
A I walk.
Q And then you go to the Bethesda station?
A I walk, yeah.
Q Okay. And do you think it's commonplace for some of your neighbors to ride the Metro as well?
A Yeah.
Q And do you think they also walk there?
A I would certainly hope so.
Q That would have been my answer. Okay.
A It's only 100 yards up the road.
Q Right. And so we do expect residents of the subject building to walk to the, to ride the Metro?
A Sure, if they happen, you know, where they're going is on the --
Q Okay.
A -- on the line.
Q So you would agree that the building, that building a residential project on this site, in fact, promotes the use of Metro?
A I'm not quite sure --
Q Well, let me ask it a different way.
A Yes.
Q If you were to build a building --

A Give me a little help there.
Q If you were to build a building within close walking distance of the Metro, which you've just established this project is, would you be, would you be utilizing the Metro system? Would it be encouraging people to take --
A People, people --
Q Metro?
A -- will certainly use the Metro from that location or should.
Q Okay. And, in fact, that's why the County has a push to provide housing in, within walking distance of the Metro, correct? In fact, I believe the Sector Plan even says that.
A I think that's true.
Q And would you agree that providing both MPDU's on the subject property, as well as smaller units, will providing housing opportunities for people that may not be able to take advantage of the housing offered by the City Homes where the average size is 2,200 or 2,500 square feet?
MR. KNOPF: May I ask if this line of questioning is a, was this covered in his main testimony? I don't remember talking about --
MS. HARRIS: Compatibility was, in fact, covered.
MR. KNOPF: Well, I'm not sure --
MS. HARRIS: It goes to the question of

compatibility.
MR. KNOPF: Well, I'm not hearing compatibility questions. I'm hearing promote the use of Metro and the number of MPDU's.
MS. HARRIS: Yes, I have a couple more questions and you'll see that it's going straight to compatibility.
MS. ROBESON: Okay.
THE WITNESS: I was afraid -- yes, please, just repeat the question.
BY MS. HARRIS:
Q Will the provision of MPDU's and smaller units at the subject property provide housing opportunity, a different kind of housing opportunity than what currently exists on Montgomery Lane?
A I think I answered and, yes.
Q Okay. And the project will expand the range of densities readily available on Montgomery Lane, is that correct?
A Just, you mean number of units per acre, is that --
Q Units per acre increase the capacity.
A Yes, the, yes.
Q So are you aware that all of the questions -- so you'd agree that the project actually does further the purpose clause of the TS-R zone, it goes to those very

points?
MR. ABRAMS: I think I'd object to that --
MS. ROBESON: It calls for a legal conclusion.
MS. HARRIS: Okay. Okay.
BY MS. HARRIS:
Q If you could, I'd just like you to read one --
MS. HARRIS: This is not in the record. Can he still read it?
MS. ROBESON: What is it?
MS. HARRIS: It's a page out of Mr. Abrams's esteemed book.
MR. ABRAMS: I would object.
MS. HARRIS: On what basis?
MR. ABRAMS: It's not accurate.
MS. HARRIS: Let me just ask the question, how about that?
MS. ROBESON: Yes, that's good.
BY MS. HARRIS:
Q Are you aware that the esteemed Mr. Abrams has stated in his book, the fourth edition, that demonstration of compliance with the purposes of the zone indicate evidence of compatibility since the purpose provisions are designed to ensure that the flooding zone is compatible with other existing uses in the general neighborhood?
A I have no idea what you just said.

MS. ROBESON: You can say -- I think you're getting too much into the legal --
MR. ABRAMS: Yes.
MS. ROBESON: -- aspect.
MS. HARRIS: Okay.
MS. ROBESON: I think that's a great argument --
MS. HARRIS: To be made.
MS. ROBESON: -- in your closing argument.
MS. HARRIS: Okay. Okay.
MS. ROBESON: Without denigrating Mr. Abrams's --
MS. HARRIS: I was giving him accolades.
MS. ROBESON: Props, true.
BY MS. HARRIS:
Q Okay. You noted earlier in your testimony that the City Homes opposed the 4901 second proposal which was when they proposed the 70 feet height, correct?
A Again, I don't know for sure, but I assume that we, I'm not exactly sure.
Q Well, not sure whether they appealed the City --
A Oh, they appealed?
Q Right. Right. Let me back up. That they -- at the zoning hearing level, that they opposed the 4901 because of, because they didn't think it was --
MR. ABRAMS: Which year?
MS. HARRIS: The second proposal, the July, the

hearing that's reflected in the July 2006 hearing examiner report.

THE WITNESS: See, I don't know. I know there are a bunch of different hearings and that some of our folks took different views, but I don't know when and where and why.

BY MS. HARRIS:

Q Okay. Would it surprise you if I told you it was because of the 70 feet height in relation to the setbacks that were being proposed?

A I just don't know.

Q Okay. Previously when we were talking about the build two lines, and I believe our engineer testified to this, the 4901 on Exhibit 112, you would agree that just even visually, without coming up here and look at the numbers, that that 4901 actually is set back much less, much closer to Montgomery Lane than the rest of the projects on the south side of the street?

A I think that is correct.

Q And that, in fact, according to this, it's set back from the back of the sidewalk just three feet?

A Don't know the distance.

Q You don't know? Okay. Can you please read the highlighted portion, this is from, again, 106(p), which is a hearing examiner report regarding 4901.

A The highlighted one?

Q Yes.

A The applicant has revised its application by, among other things, lowering the proposed maximum height from 100 feet to 70 feet, producing the setbacks on the street frontages to achieve a height decrease without sacrificing density.

Q And what is that last part, without sacrificing density? Okay. Then read the remaining highlighted portion.

A I think I read it wrong.

"The applicant has revised its application by, among other things, lowering the proposed maximum height from 100 to 50, to 70 feet, producing the setbacks on the street frontages to achieve a height decrease without sacrificing density."

I don't understand it, but I've read it.

"The Planning Board, in the alternative, review may have found that the proposed development would not be financially feasible with MPDU's on a site within the constraints of the 65-foot height limit recommended in the sector plan."

Q So the fact that the ZHE and then the District

Council determined that it was important enough to maintain the original density that they sacrificed the street setback, would that suggest to you that as noted in the statement that it was important to preserve the 3.05 density that they were seeking?

MR. KNOPF: Objection. I didn't hear anything about sacrificing coming -- here's an awful lot written into that.

MS. HARRIS: I'm sorry. It says, a height decrease without sacrificing density.

THE WITNESS: I don't understand that first sentence. I've read it now twice and I still don't understand what it means.

MR. KNOPF: The question --

MS. ROBESON: Okay. Just a second.

MR. KNOPF: -- means, that's my objection.

MS. ROBESON: Do you have an objection?

MR. KNOPF: Yes.

MS. ROBESON: What's your objection?

MR. KNOPF: She's reading into the -- she's interpreting what was just reads and attributing the counsel's motives in that question and I don't think that statement can --

MS. HARRIS: And, in fact, I'm not. I think I'm taking the literal language. I don't think you need to

interpret anything.

MS. ROBESON: Okay. But I think that this witness isn't really qualified to say, I mean --

MS. HARRIS: Okay. Let me ask a different question. Are you --

MS. ROBESON: He is a fact witness.

BY MS. HARRIS:

Q Are you aware that the fact that the 4901 was reduced to 70 feet, that they were still able maintain their original 3.05 FAR?

A I know that the plan, the site plan says 3.05, but that's the only thing I know.

Q And are you -- you're aware of the fact that that building is providing 15 percent MPDU's, correct?

A Yes, I think so.

Q And that the setback of that building from Montgomery Lane certainly is much, much less than any other building on the entire street on the north or south side?

A That I don't know, but if that's -- I mean you guys can testify to that.

Q But this building doesn't look like it has a minimum amount of setback compared to every other building on the street?

MR. ABRAMS: Is that a question?

MS. HARRIS: Yes, I'm sorry.

BY MS. HARRIS:
Q Does 4901 look like it is closer to the street than any other --
A It looks like it's closer to the street on City Homes, but I can't tell on Hampden, whatever that one is on the far left side.
Q Based on the fact that the 3.05 FAR was maintained, based on the fact that they narrowed their, they decreased their setback and based on the fact that they continued to provide 15 percent MPDU's, could you conclude that it was important for the Council to preserve the original density in order to get the additional MPDU's?
MR. ABRAMS: Objection.
MS. ROBESON: Yes, I --
MR. ABRAMS: There's no way of knowing that.
MS. ROBESON: I'm going to --
MS. HARRIS: Okay.
MS. ROBESON: -- sustain that.
MS. HARRIS: Okay. Just one moment if I could?
MS. ROBESON: Okay.
MS. HARRIS: I don't have any other questions.
MS. ROBESON: All right. Mr. Knopf, I think you did not have any cross-examination questions of Mr. Lawch the last time.
MR. KNOPF: Probably. Probably. But I do have a

couple minutes if I may?
MS. ROBESON: Well, you can do that on --
MR. KNOPF: I mean, I mean on, based on her --
MS. ROBESON: Right, just now.
MR. KNOPF: Just now.
MS. ROBESON: Okay. Well, let me let Mr. Abrams do redirect --
MR. KNOPF: Sure.
MS. ROBESON: And then you can do recross. Okay. Go ahead, Mr. Abrams.
MR. ABRAMS: Thank you.

REDIRECT EXAMINATION

BY MR. ABRAMS:
Q At the beginning of your cross-examination, you were discussing the tenting concept, lowering down in heights from a certain point to another point. Now in terms of its relevance to the TS-R district, what points were you taking it from at the highest point and what points were you taking it from at the lowest point?
A I was referencing Woodmont Avenue and 4901 as being the furthest east on the tenting going down to Arlington being the furthest west.
Q Okay. And 4901 Hampden Lane, is that closer to Woodmont Avenue than the subject property?
A It's right, smack on Woodmont whereas the subject

property is closer to Arlington.
Q Okay.
A Closer to Arlington than it is to Woodmont.
Q Now the building on diagram which is on page 86, which you testified to, and in terms of the building line along Montgomery Lane, are there not indentations? Do many of the buildings on the south and some of the buildings on the north so that there is not exactly a straight edge?
A Yes.
Q So this representative of one scheme which is proposed in the Sector Plan to your knowledge?
A Yes.
Q Okay. Now in terms of what effects a person's percentage of mass and bulk, does the siting of the building affect the perception of mass and bulk in terms of say setbacks?
A I'm sorry, give me one --
Q In terms of your perception, a person's perception of mass and bulk, does the siting of a building affect that perception of mass and bulk? One example might be the setbacks.
A Yes.
Q Okay. And does architectural design also affect one's perception of mass and bulk such as the step down effect and the extent of that step down effect?

A Yes.
Q Okay. Did those two elements affect City Homes's perception of the mass and bulk, among others, in this case, siting and architectural design?
A Certainly. If I can elaborate?
Q Go ahead.
A I mean, you know, discussing the quality aspects of the Sector Plan are fine, but from a layman's point-of-view, you know, it's like people go on safari, they say they love to take five, well, I kind of look for three, maybe four elements which is, you know, the height, the number of units and the number of square footage, the fourth being architectural. And in this case the subject property tops out on those big three. And as we've testified with regard to architecture, we think it's a little out of character of the neighborhood.
Q Now in terms of your testimony about disagreeing with the staff of the Board about the setbacks in this proposed building, are any of these specific setbacks self-imposed requirements on the development plan? In other words, can -- if the Planning Board has the ultimate say, can the applicant walk in to your knowledge and propose something else? Are they illustrative as opposed to binding elements, if you know?
A Well, I know there is a binding element with

the -- I'm sorry, this is setback, not step down?
Q Right.
MS. ROBESON: Step back. That is a step back.
THE WITNESS: I assume onsite plan, they can change it.
MR. ABRAMS: Okay.
MS. ROBESON: Was your, I'm sorry, was your question on setbacks?
MR. ABRAMS: Setbacks.
MS. ROBESON: Okay.
BY MR. ABRAMS:
Q Now you're a resident of this affected area, correct?
A Yes.
Q Okay. As a resident of this affected area, are you more concerned about other projects exceeding the height limits and density in the relevant Sector Plan than you would be them falling below the height limits or density recommended in the Sector Plan?
A Yes, I am more concerned with overdoing the density than underdoing the density.
Q Okay.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: All right. Mr. Knopf?
MR. KNOPF: I just have a few.

RECROSS EXAMINATION
BY MR. KNOPF:
Q You testified in response to Ms. Harris's questions when she asked the building height at 70 feet for the proposed project and you indicated that you thought it was, the way you would measure it was higher because of the elevation, is that correct?
A Yes.
Q I want to read you, I don't know, were you here when I read the following from Exhibit 102(i), which the original Holladay decision, and quoting from page 2, quote,
"The site rises to a high point at its northeast corner of 338 feet above sea level. From this point, the property slopes downward in a southwest direction about four to five percent to a low point of 328 feet above sea level," unquote. Is that what you were referring to in the higher elevations at this location?
A Yes, so the important thing to recognize on the subject property is the point where they start to measure the 70 feet.
Q Okay.
A Is that point which the --
MR. ABRAMS: Which exhibit are you referring to?
MS. ROBESON: 112?

THE WITNESS: Here I go ahead, 112. The point is up here somewhere.
MS. ROBESON: And that's about three-quarters the way --
THE WITNESS: Up West Lane north.
MS. ROBESON: Okay. North on West Lane.
THE WITNESS: So if, and the topography is such that the lowest point is down here as --
MS. ROBESON: Down here as Arlington --
THE WITNESS: Arlington Road. I'm saying I'm never going to get this.
MS. ROBESON: That's okay. Arlington Road and Montgomery Lane.
THE WITNESS: And then it goes up and reaches a peak somewhere in, like a, at West Lane, somewhere in the middle of West Lane, I think, and then goes down, but not as a dramatically towards Woodmont. Then the property also goes up from south to north, is higher in the back here. So by picking this point is actually a much higher elevation than any of these points along here and then --
MR. ABRAMS: Over here being along --
THE WITNESS: Along Montgomery Lane.
MR. ABRAMS: -- Montgomery Lane?
THE WITNESS: So when you add that 70 feet to that measurement here, you actually get a height here that --

MS. ROBESON: From the front facade along the --
THE WITNESS: From the front side.
MS. ROBESON: -- Montgomery Lane?
THE WITNESS: So this elevation is, I'm going to have to get the actual numbers.
MS. ROBESON: No, well, I --
THE WITNESS: The numbers are in the testimony.
MS. ROBESON: Right. But you're saying it's a higher height. It appears to be a higher height from Montgomery Lane.
THE WITNESS: Not appears, it is.
MS. ROBESON: It is?
THE WITNESS: Because a building is level and if it's built out at that higher elevation, when you calculate that elevation and you're standing in the street, which is that, as was indicated in that statement, it's about 328 right here according to the top and so if you subtract those two elevations, you get something like 77 or 78 feet. And that's real building as you stand on the street.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q And did you say, you can stand there. Did you say as you went down toward Woodmont on Montgomery Lane the elevation where 4901 is --
A Yes.

Q -- that that would be a lower elevation than at the subject site?
A Yes, and if you look at my --
Q Now is the -- so would it be fair to say that a 70-story, 70-foot building at 4901 in height and a 70-foot building at the subject site in height, if somebody were to observe those buildings, one would appear higher than the other, even though they were both 70-feet tall due to elevation differences?
A They would not appear to be. This would be a taller building than this --
Q Thank you.
A -- as to elevation.
Q Okay. Thank you. And --
A Can I sit?
Q Yes. Thank you. And just one other thing I want to make clear. You were asked -- Ms. Harris asked you a number of questions to the effect that since the FAR of buildings might be the same and the height may be the same, she asked you questions regarding weren't they then comparable or compatible with each other. And I want to ask you to develop, because I think we need to have on the record a little bit, are you saying that, and I believe you were, that there are other factors than height and FAR that determined aesthetically how they, how a person reacts to

the building in terms of mass or bulk?
A That is correct and I was also making another point that to a lay person or, for that matter, somebody who is looking at this building is not going to see 4901 as 70 feet and the subject as 70 feet. They will appear to be quite different in height and they are, excuse me, quite different in elevation and they are.
Q Yes, but assuming -- and this is just a hypothetical -- assuming two buildings of identical height, identical FAR on the identical elevation, would in your, is it your understanding that depending on how those buildings were designed, whether one had balconies, one didn't, one had bay windows, one didn't, had indentations, setbacks, step downs, whatever you want to call them, the two buildings would impact the person aesthetically different even though they were the same height and the same FAR?
A That's correct. I think particularly if a building is bulkier and taller, it's more incumbent upon the architect and the designer to mitigate that height and mass.
Q Okay. Now if you could read the first sentence, the third paragraph of page 82?
A Third paragraph?
Q Yes, it starts with the plan.
A "The plan recommends a minimum of 45 dwelling units per acre everywhere except on lots facing

Arlington Road where there would be no minimum density in order to allow townhouse development at lower densities."
Q Now Ms. Harris asked you, and I thing you agreed, that because, I think it was the Rothstein property she referred to, had less than 27 units per acre, that that was not compatible with the Sector Plan's density requirements. Is that your testimony or --
A No, that would be leading this. It does indicate an exception for properties facing Arlington and, of course --
Q So we could have less than 45 and still be in accordance with the Sector Plan?
A That is correct of my reading.
Q Right. Okay. Now, similarly, with regard to the townhouse, townhouses along Montgomery Lane, she asked you whether -- I think you agree that that was less than 45 dwelling units per acre for the townhouses and she asked you whether that was compatible, excuse me, consistent with the Sector Plan's minimum dwelling units. Are you aware that the townhouse development and the Edgemoor Highrise were part of a combined development approval that merged or melded the dwelling units for both projects?
A Yes, I am.
Q And do you know whether so merged, whether the

development, the dwelling units exceeded 45 on the average, 45 dwelling units per acre?
A I don't know the answer to that.
Q Okay. Thank you. If they did exceed 45, would you agree that the townhouse project then met the Sector Plan's minimum dwelling unit?
A With regard to that specific --
Q Yes.
A -- requirement?
Q Yes.
A Yes.
Q Right. Thank you. Okay. You were asked questions regarding the promotion of Metro and the diversity of housing by this project. Is it your understanding that the representations of diversity in terms of rental and the representations in terms of the number of dwelling units that are going to be built here, that those representations are binding elements or they're merely illustrative that can be changed?
A My understanding is they're illustrative and subject to change.
Q I see. Would you agree with me that any building on this site that would be inhabited by people would promote use of Metro to the extent that this building promotes the use of Metro by having occupancy?

A Sure.
Q Okay.
A Everybody uses the Metro.
MR. KNOPF: I have no further questions.
MS. ROBESON: All right. Ms. Harris?
MS. HARRIS: Yes.
BY MS. HARRIS:
Q You indicated that because of elevation differences, the subject building would be higher than the 4901 building, that the elevation, because of elevation difference, the top of roof would be different?
A That is correct.
Q Can you, using the aerial, I guess -- well, from your City Homes site or from anywhere in the City Homes, is there ever a point where you can view both the 4901 project and the subject property at the same time?
A From my side, I can't see either one of them.
Q And could anyone --
A Oh, I'm sorry. I see 4901 out of my back window.
Q Okay. And would anyone in the City Homes ever be able to see the 4901 and the West Lane project at the same time anywhere from their property?
A Anybody walking down the street could see it.
Q They could see both properties?
A Sure.

Q And you, so where would you be that you would be looking -- can you show me on this plan where you would be that you could actually see both properties at the same time?
A Anywhere along Montgomery Lane.
Q So if I'm in front of the second row of City Homes facing west, I can see the West Lane property? Am I also at that point, with 4901 in my vantage point, view?
A Yeah, because it's taller than City Homes.
MS. ROBESON: No, she's, she's, in her scenario --
THE WITNESS: Oh, I'm sorry.
MS. ROBESON: -- she's facing west.
BY MS. HARRIS:
Q I'm facing west and I'm looking at West Lane, right? I'm standing right in front of the second row from the east --
A Uh-huh.
Q -- and I'm looking west. I can see the subject property, correct?
A Yes.
Q Can I see 4901? Right, I have to --
A It you turn around, yes.
Q -- turn around. So the fact that there is a 3-foot, 5-foot, 7-foot difference in the top of roof elevation, how does your mind perceive that? You see it,

then you turn around and you say ding, ding, seven feet taller?
A I walk up and down a street and I see a building that's 10 feet taller than the one --
Q Where would you need to be at that point where you would see both of them at the same time?
A You could walk from the library to anywhere up the street you see --
Q Okay. Let me show --
A -- a building.
Q Let's, that's a good -- and you're walking from the library and what do you see?
A Well, the building isn't built yet.
Q No, this, we already established that the subject, that Exhibit 72 is an accurate depiction of what the building is going to look like.
MS. ROBESON: Of your building?
MS. HARRIS: Of this, yes.
MS. ROBESON: Is 4901 on there?
MS. HARRIS: Yes. You can't see it. Why can't you see it?
MS. ROBESON: Well, wait. You -- okay. Hold on. Okay. You can't testify and so if you can answer, do you know if 4901 is on there?
THE WITNESS: That may be it there. I'm not -- I

have no idea, but --
BY MS. HARRIS:
Q And can you see the top of the roof from there?
MS. ROBESON: Looking at --
THE WITNESS: I don't even know if it's the building, so --
MS. HARRIS: Yes.
MS. ROBESON: Is that 76?
MS. HARRIS: Two.
MS. ROBESON: Two?
BY MS. HARRIS:
Q So does that suggest to you that one reason that the County has identified a measuring height based on the definition that they do is because it's only when you're in front of an actual building that you're experiencing that height?
A No. I would think that for a normal human being standing outside of the West Lane project, that that building is supposed to look 70 feet is really closer to 80 feet.
MS. ROBESON: What?
THE WITNESS: Counting the penthouse and the fact that its mass is 20 percent to 25 percent greater than anything else in the neighborhood, but also tend to mean that this thing is looming on Montgomery Lane. That's the

objection.
BY MS. HARRIS:
Q And are you -- have you ever been anywhere in Bethesda that you've been able to view the heights from this vantage point which does show --
MS. ROBESON: When you're talking --
MS. HARRIS: I'm sorry.
MS. ROBESON: -- 106(f)?
MS. HARRIS: 106(f).
MS. ROBESON: Which is the aerial?
THE WITNESS: I have no idea what that sentence means.
BY MS. HARRIS:
Q Wouldn't you agree that there's very, very few situations, if any, that you're going to be able -- that we have the advantage here of looking down on an aerial, when would we ever, when would any of the residents or visitors to this area ever have the vantage point that is shown in 106(f)?
A That's your vantage point. I was talking about standing on the street, which is everybody's vantage point.
Q And from standing on the street, wouldn't you agree that 72 is a depiction of that?
A That's your testimony, not mine.
Q So you're calling into question whether that is an

accurate depiction?
A Well, we know that that's the case, but we also know that if you walk up Montgomery Lane --
Q Okay.
A -- at various --
MS. ROBESON: Can you not have that discussion back there because I'm having trouble --
THE WITNESS: -- at various points, you will see both buildings. And even if you don't, standing right in front of West Lane, you will see a building that is 80 feet tall and that's not perception, that's reality.
BY MS. HARRIS:
Q I'm sorry, what's the height from the ground plan to the step back?
A That's about 60 feet.
Q No, it's 50 feet.
MS. ROBESON: No.
THE WITNESS: No.
MS. ROBESON: You can't argue.
MS. HARRIS: Sorry. All right.
MS. ROBESON: He's going from elevation.
MS. HARRIS: Okay. Okay.
MS. ROBESON: You're going from the zoning ordinance measurement.
MS. HARRIS: Okay. I don't have any more

questions.
MS. ROBESON: Okay. All right.
MR. KNOPF: Can I clarify something?
MS. ROBESON: No. All right. You may be excused, Mr. Lawch.
THE WITNESS: Thank you.
MS. ROBESON: Thank you. Now is that the -- those are the conclusions, that's the conclusion of your witnesses, correct?
MR. ABRAMS: Yes. Yes. Correct.
MS. ROBESON: Okay. Mr. Knopf?
MR. KNOPF: We have two witnesses and I would estimate a total of a half an hour for both. Does that sound -- a little more? Well, I'm not talking about questions.
MS. ROBESON: Well, let's go take one and then we'll take a break and let's then another one. Please raise your right hand.
(Witness sworn.)
MS. ROBESON: Okay. Mr. Knopf.
DIRECT EXAMINATION
BY MR. KNOPF:
Q Okay. Would you state your name and address for the record please?
A Yes. My name is Jon Weintraub and I live in the

Edgemoor condominiums at 4821 Montgomery Lane.
Q Mr. Edgemoor, before I ask you any questions, do you have a statement you wish to make?
A Yes. I live in the Edgemoor condominiums in close proximity to West Lane on, or off of Montgomery Lane. My wife and I moved into this mixed use street in November of 2003 when it first opened. So we've been a resident and owner in the Edgemoor and have watched the street develop into a community.
Since then, I've served in the past on our condo board for six years and three years as president. I've also served on the Bethesda Urban Partnership Board and was chair of that wonderful organization. I have organized and chaired the downtown Bethesda condo association whose members include 11 buildings and more than 835 condos. Those 11 buildings include City Homes, VOB, the Edgemoor, the Chase, the Christopher, Lion's Gate and others. I'm also an active member, sorry, I've been fighting a cold, I'm an active member of the Bethesda Metro Task Force and I'm quite aware of what's happening with Metro.
I also currently serve on the Woodmont Triangle Action Group which was appointed by the Planning Board to review development projects in the downtown and more specifically in the Woodmont Triangle. I am on the board of college tracks, which works with first generation young

people at BCC and Wheaton High Schools and help them get into college with financial aide and I'm on the board of Bethesda Green. So I'm serving on a diverse group of Bethesda organizations.

I give you this background only to say that how deeply I am committed to the downtown and its success. Professionally, I'm retired. I happen to have been a professor of physical organic chemistry who was put in jail in the early '60's during the civil rights movement and switched fields down in southern Alabama and then worked in public policy all my life.

And I only mention -- I was staff director in the House of Representatives of the larger subcommittee and we reported, I worked on family medical leave for 13 years, the Clinton healthcare bill, so I think I know what negotiations are. It was a time in the House of Representatives when members and staff talked to each other and nothing was personal and I wish we could have that back again. It would be good for the country.

I'm here today to speak to the issue of lack of compatibility of this project with its surroundings. We in the Edgemoor supported the previous Holladay project with 48 units with it's compatible design at the site, but we do not support this amendment and let me tell you why. One, this project adds just a small parcel, Lot 26, I believe, to the

building, yet more than doubles the number of units and parking places in the building when compared to the approved Holladay project. Using the comparability scale, this project would increase the size of the project to 65 units, not the 120 or 130 requested which more than doubles the number of units in cars on the only unique mixed street, the narrow Montgomery Lane in Bethesda. It claims a necessity to grow from four stories in part to seven plus stories, except for a very small step back at the top of the building.

Lowering the building by a floor, as our planner suggested, in creating a real step back of 30 feet would decrease its mass and make it much more compatible with its surroundings. Number two, the frontage of the previous project mirrored the townhouses across the street. This box-like building makes no attempt to integrate itself with its surroundings. Its glass and pocket park is not really compatible with the buildings on the block or within a block of Montgomery Lane.

Three, there should be more public amenity space in front of the building. This could easily be achieved by moving the building north on the lot and using at least half of the 15-foot back alley behind the building. We are also concerned that this back alley, so to speak, especially if it's continued by the Edgemoor North at Arlington as a way

to get all the way through would be a public hazard.

Given the north end of the building faces a windowless brick wall and tennis courts, there's absolutely no reason not to improve the public space in front of the building for the majority of Bethesda citizenry who walk this block to and from the library and Metro. The green space behind the building is a wasted resource to the walking and biking public using Montgomery Lane. Moving the building back seven or eight feet would also abandon the straight edge look, making it a more pleasant walk from the library to the Metro.

We reject the pocket park corner entrance as an improvement to the compatibility quotient for the project. The only entrances to the building should be on West Lane with the elevator centered at the top of the building. This would encourage behavior of delivery trucks to turn onto West Lane and park in those lay bys to make their deliveries and not block traffic by double-parking on Montgomery Lane. Once these hearings are over and the project moves forward, regardless of a binding element, no one will police parking for these deliveries.

Watching the behavior of delivery people on the block, they believe in geometry, that is, the shortest distance between two points is a straight line. Online ordering for food, books, clothes and other products means

multiple, daily visits by UPS and Fedex, in addition to the Postal Service, not envisioned in the Bethesda Master Plan. Keeping, keep the process simple with the main public entrance to this building on West Lane and have that as a binding element.

Five, previous Planning Board decisions, as well as the designers of Montgomery Lane, thought this lane was for walkers and bike riders heading to the library or commuting via Metro. One can't go back and say, whoops, that our predecessors made poor decisions in the design of the lane or that the Planning Board did not approve density for this lane, enough density for this lane. I assure you from my work on the Woodmont Triangle action group there is plenty of density coming to downtown Bethesda.

There are 3,000 plus units being added on Woodmont, between Woodmont and Wisconsin Avenue north and south of Old Georgetown Road in Bethesda and massive buildings more suitable to those locations. Excuse me. There is no doubt that the Bethesda Metro will become more utilized, albeit it's one of the most utilized stations now and more crowded as a result. We hope that Metro itself will continue to work.

Subtracting the, an additional 50 units that were added by my math on our narrow lane will not make a big difference to the density equation since they're already

3,000 that will be added in the next two to five years. However, it will make a big difference in the lives of homeowners of the Edgemoor and the townhouses, the VOB and the Villages of Bethesda and the Chase. We have to ask ourselves why the Lauren, or 4901 Hampden, received approval to lower the number of units. Could it be that there was a desire for compatibility so absent in this project?

In addition, the Edgemoor approves and thanks you for your suggestion on April 16th to eliminate the possibility of a lay by and making that a binding element. This lay by would have created far more problems than it would have solved. We ask you not to approve the application in its current form. We remain willing to work cooperatively with the developer and actually negotiate to achieve a better project for Montgomery Lane that everyone can support.

I wanted to add that we, that I was involved several years ago in negotiating the current agreement on the Hampden Lane 4901 building. That occurred after District Council removed the entrance to Hampden Lane, as well as the driveway because of the perceived problems of additional traffic on Montgomery Lane. Thank you.

MS. ROBESON: Can I ask you a question? Were you to negotiate on this, what would you be asking for just out of curiosity?

THE WITNESS: I think I stated that in my testimony, that --

MS. ROBESON: Well, what I hear from --

THE WITNESS: -- we would ask for a more significant setback.

MS. ROBESON: Step back?

THE WITNESS: Step back.

MS. ROBESON: Wait, the rooftop step back?

THE WITNESS: Yes.

MS. ROBESON: Okay.

THE WITNESS: Right. We would ask to move the entrance to West Lane and put the elevator in the middle so that bulking and massive look of the front of the building is pushed back. We would prefer a, as our planner suggested, a one-story lowering of the building but, you know, again, if we were to negotiate, we would work things out and try to give and hopefully get something as a true negotiation.

MS. ROBESON: So you're not saying you're holding out for the Holladay project again?

THE WITNESS: No, this is, there was an additional property added to this. As I suggested mathematically, that would have increased the number of units to 65, not 120. We, you know, would support something somewhere in between. A good negotiator doesn't give up things before he negotiates.

MS. ROBESON: Okay. Mr. Knopf.

BY MR. KNOPF:

Q Okay. Let me just clarify in following up on the Hearing Examiner's questions. You say you favor what the planner recommended, the removal of one story?

A Right.

Q The sixth?

A Correct.

Q Do you favor the recommended on the 4th and 5th stories that there be a step back --

A Step back.

Q -- step back of at least 30 feet, is that something that you approve of?

A Yes.

Q Okay. He also made recommendations that the building design, be made more residential in nature. Is that something you also approve?

A That certainly goes to my compatibility statement.

Q Okay. Now the -- and I understand you're also recommending some other things --

A Right.

Q -- the entrance and so on. Is the total number of units here recommended is 120.

A Right.

Q Do you know what that means in terms of increase for the total number of units already existing on Montgomery Lane in existing buildings or those that have already been approved?

A I think I may have mentioned that in my testimony, but it more than doubles the existing number of units on the block or proposed for the block and more than doubles the number of cars being exited onto the block.

Q Okay. Now you mentioned that you were part of the persons who negotiated with regard to 4901 --

A Yes.

Q -- sometimes here referred to as the Triumph, and I want for the record to say is it currently now referred to as the Warren?

A Yes.

Q I've got to keep it straight.

A Everyone has their favorite names.

Q Now is the, you negotiated the original building proposed for development on 4901. You and your condo association opposed that, is that correct?

A We --

Q The original proposal.

A Actually at that point in time our condo building did not take a position, but Bethesda Civic Coalition, which was formed, which was a group of citizens both in the

Edgemoor, as well as in the neighborhood, opposed it and we raised our own money. We did not use condo dues to oppose that property.
Q You were one of the people living in the Edgemoor condo that joined that opposition?
A Yes.
Q Okay. And --
A Along with Linda Skalet, who spoke earlier.
Q And the Council agreed and rejected that proposal in terms of specifying height and lack of compatibility?
A Right, by a 9-0 vote.
Q And is Exhibit 120(a) a rendering of what was originally proposed?
A Yes. This super glass structure that was not at all compatible with its neighbors.
Q And the, there were negotiations and then the developer came back with a revised plan that was adopted by the Council, is that correct?
A Correct.
Q And was that a 70-foot height one with a 60-foot height on one corner?
A It was a 60-foot step down, if you will, on the west most corner of the building on Montgomery Lane.
Q And is that Exhibit 120(b) as in boy?
A Yes, it's the, it's the, the visual facing

Montgomery Lane is the top picture.
Q Mr. Weintraub, now I'm going to make it --
A With the step --
Q -- confusing.
A With the step down to 60 feet.
Q I'm going to ask you to clear up a great mystery that we had throughout this case. I want to show you, if I can find it, the 4101 picture with all the glass that faces Woodmont.
MS. ROBESON: That's 120(c) and which is Exhibit is that?
MR. KNOPF: This is 106 --
MS. ROBESON: (g)?
MR. KNOPF: -- (g), which if you can recall in the lower right-hand corner says that, well, 4901 and I want you, if you can reconcile that with the 102(b) and explain the, well, let me ask you this. What you're holding in your hand is 102(b) and what's on 106(g), at first blush, doesn't look consistent, does it?
THE WITNESS: No, it doesn't, but --
MR. KNOPF: Can you explain --
THE WITNESS: -- from our conversations with Larry Goodwin, who is the developer, what's now called the Lauren, there were new renderings to come, so this is kind of a floating bunch of pictures that are changing.

BY MR. KNOPF:
Q Okay. And now 102(b), which you're holding in your hand is to the -- on the upper corner does the glass toward the back, toward, away from Montgomery, does that reflect what's in 106(g)?
A It's hard to tell. It could. I mean both are glass. This shows a straight-edge corner as opposed to a rounded corner on Hampden Lane with the entrance on Hampden Lane. It's, it's really hard to tell by these characterizations.
Q Thank you. Oh, there was some reference by Ms. Harris to the last witness reading from, I think it was 106(p). To the effect that the Hearing Examiner took into effect not only what was compatible with existing development, but it indicated that she would take into consideration what future development may have and I wanted to ask you, I think she was referring, you were asked to quote from an earlier opinion in 4901. Recently with the approval of Sandy Spring, the approval of 4901, the approval of the Rothstein property, have there now, has it now become a clearer as to what will be existing on this street so that compatibility has to take into account those particular projects?
A Up to a point. I mean I say that only because until these buildings are built, any one of them can be

flipped or sold as we've seen 4901 being sold twice since -- and the current buyer hasn't completed the deal yet, but he's continuing to advance and change things. So it's --
Q Well --
A -- yes, maybe, is the best answer I can --
Q Well, that's fair enough. Well, let me ask you my last question. Are you similarly concerned that what is being represented here by the applicant as to what might be built in terms of rental versus condo, number of units, number of MPDU's, the design of the building, that may also greatly change from what actually gets built because they're not binding elements?
A Anything can happen. I mean as to the number of units, until it's built, we've seen it too often, you know, as someone who has given up his own time and worked on these things and tried to learn. We're the average citizens as an extreme disadvantage in the process, but that's my opinion.
Q Would you prefer what project it is such as if you went through negotiations and you arrived at a satisfactory project, would you prefer that the features of that building, characteristics would be nailed down by a binding element?
A Absolutely and that the building then be built with the support of its neighbors.
MR. KNOPF: I have no further questions.

MS. ROBESON: Mr. Abrams.

CROSS-EXAMINATION

BY MR. ABRAMS:

Q Mr. Weintraub, I think you testified about there being approximately 3,000 units that are coming online --

A Yes.

Q -- in the Bethesda Sector Plan area?

A Right.

Q Okay. Are you familiar with most of these projects?

A Yes.

Q And --

A I could have brought the diagram off my computer, but I didn't.

Q On many of these projects, or do you know, whether these projects are rental projects or condo projects and if you can break it down into percentages?

A I would say as of now, since it could change, a large, a very large majority are rental. I would project maybe 2,800 of the 3,000, but don't hold me to the exact number. That's a ballpark estimate.

Q And based upon your participation in this entire process throughout the planning process for these projects, approximately how many are coming online within --

MS. ROBESON: Just a second. You can't talk to

your attorney --

THE WITNESS: I'm sorry.

MS. ROBESON: -- while you're testifying.

THE WITNESS: Sorry.

MS. ROBESON: So go ahead, Mr. --

THE WITNESS: I did not know.

MS. ROBESON: I'm sorry to interrupt, Mr. Abrams.

MR. ABRAMS: Okay.

BY MR. ABRAMS:

Q With respect to these projects that are coming online, how many are coming online each year for the next three or four years?

A All those that I mentioned should be coming online in the next two to four years.

Q And are they equally split between projects which are, I guess, north of Old Georgetown Road and those which are south of Old Georgetown Road, or is there more in one area than the other?

A There is far more in the larger buildings that are being contemplated north of Old Georgetown.

Q And --

A When I say that, I mean 500-unit high-rise buildings, or 350-unit high-rise buildings, all of which will participate in using the Metro.

Q And is that basically a conscious effort on the

part of the Planning Commission to sort of concentrate residential, high-density residential north of Old Georgetown Road and more on the order of retail or office south of Old Georgetown Road, if you know?

A The simple answer would be yes, but it's also a function of the fact that larger buildings can be built on those sites and that it's more appropriate to combine those with a nice grocery store or other items that would attract the purchasing power of Montgomery County to Bethesda.

Q So mixed use, is that what you're talking about?

A Mixed use, at least on the first several levels.

MR. ABRAMS: That's all I have.

MS. ROBESON: All right. Ms. Harris.

MS. HARRIS: Thank you.

BY MS. HARRIS:

Q You noted that the north end of the project, this is in connection with the Villages of Bethesda --

MS. ROBESON: And we're looking at 106(f)?

MS. HARRIS: At Exhibit 106(f).

BY MS. HARRIS:

Q You noted that the 15-foot distance, none of the 15-foot distance between the Villages of Bethesda and the subject site and you noted that there's a blank wall and a tennis court?

A Right.

Q Now if, in fact, the building were pushed back as you recommended, would they not be closer to the Villages of Bethesda units, including the units that face, and I'm pointing here, that face directly south and also face east?

A Certainly, but only at an angle. I mean the angle is obvious in that the picture --

Q Uh-huh.

A -- that you're pointing to.

Q Were you here earlier in the proceedings when we had lots of discussions about the angles of the vantage point from the City Homes to the subject property?

A For some of it.

Q So angle matters when you're 73 feet apart, but it doesn't matter when you're zero feet from the adjacent property line?

A I'm sure that the proximity matters to the people closest to your building. That's only natural.

Q Were you aware that the Villages of Bethesda actually, in their reasonableness, supported the 15-foot setback and subject to a couple of conditions. And this is Exhibit 99. If you could just read, you can read the Board supported and just read one and two please.

A "The Board support is subject to the following understanding that the applicant agreed to submit a binding element that the facade of the building

will be a minimum of 15 feet."
Q The facade. Well, just --
MS. ROBESON: He can read it.
THE WITNESS: I can read it.
"Facade of the building will be a minimum of 15 feet from the northern property line. The applicant agrees to submit a binding element that the outdoor amenity space located on the western portion will be substantially in keeping with the overall size and dimensions of the development plan submitted February 2013."
If I were Peter Locker, the president of that homeowner's, I would probably say the same thing. That's in his interest. It may not be in the interest of the greater population of the block or of the downtown.
Q So the -- and the reason that it's not in the greater interest is because an extra of 15 feet in the front would be so much more beneficial than to the people that have invested in the Villages of Bethesda and lived there as their homes?
A A number of those people are my friends. Of course, it would be, you know -- well, you know, we also have to have a greater public good here and the greater public good is by sharing some of the public space whether it's seven feet or eight feet back and putting it in the

front of the building. That was my proposal.
Q You talked about, one of your items on your wish list so to speak was that the entrance to the West Lane.
A Yes.
Q Are you familiar or are you aware that in connection with the Sandy Spring builders, they have a binding element requiring the entrance to be on Montgomery Lane?
A Requiring their --
Q Their entrance to be on Montgomery Lane?
A Yes, I think from my conversations with Sandy Cress, who was the developer of that, that was a Planning Board or planning staff request by someone's notion that it would be better to have all the entrances on Montgomery Lane. Beyond that, I don't know the specifics of the reason.
Q Could it be that it's consistent with the Sector Plan recommendation about entrances on Montgomery Lane can approach street life?
MR. KNOPF: If he doesn't know, he doesn't know. She's asking him to speculate.
THE WITNESS: I don't know what the Sector Plan says --
MS. ROBESON: Well, yes.
THE WITNESS: -- for entrances, --

MS. HARRIS: Okay.
MS. ROBESON: He can say that.
THE WITNESS: -- on Montgomery Lane.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q You noted that, I believe if I heard you correctly, you said that the parking, the number of parking spaces in the subject proposal is double that of the Holladay?
A No, I think I said double that of what was on the, what is currently on the block. I can go back and look. I don't --
Q Well, let me just ask you a different way. Are you aware that the subject property is only proposing 39 more parking spaces than what the Holladay project was approved for?
A And how many did the Holladay project, how many were they approved for?
MS. HARRIS: Am I allowed to answer.
MS. ROBESON: No. You just have to ask, answer the question.
THE WITNESS: All right. Then, no, not exactly, but I trust your math is accurate.
MS. ROBESON: Okay.
BY MS. HARRIS:

Q In terms of the additional 3,000 units, that number, do you know if a number of them are in the Woodmont triangle area?
A Yes.
Q And is the subject property closer to the Metro than Woodmont triangle area?
A Yes, but the --
Q That's all I wanted to know. Thank you. And how does increasing the density north of Old Georgetown Road further the recommendation of the TS-R zone to encourage high-density in the TS-R zone?
A To be honest, I do not know where the TS-R zone begins and ends.
Q But you did testify that those projects were in CBD, I believe?
A Right.
Q Okay. So they're not in the TS-R, correct?
MR. ABRAMS: Well, he testified --
THE WITNESS: I --
MS. HARRIS: Okay. He's --
THE WITNESS: I said they were in the central business district.
BY MS. HARRIS:
Q Okay. Let me ask it a different way. Is adding additional units in the CBD zone in any way going to

increase the number of units and density in the TS-R zone as encouraged by the Sector Plan?
A No, but there's also a factor of compatibility with the number of units on the block.
Q Okay. And then, finally, there seems to be amongst everyone a lot of confusion in regard to the ultimate aesthetic of 4901, would you agree with that, in terms of what the building is going to ultimately look like?
A That's true in that it has changed and may continually change.
Q And 4901 has its zoning approved, correct?
A Correct.
Q And they still need to go to the Planning Board for site plan approval, correct?
A Correct. They can also resell the property between now and then.
Q All right.
MS. ROBESON: Okay. But just try to confine yourself to what she asked.
BY MS. HARRIS:
Q And during the site plan process, the ultimate, the ultimate aesthetic of the building, the potential zone will be reviewed by the Planning Board, correct?
A Correct.
Q And so doesn't it strike you that maybe one reason

there is a lot of discussion now about what it's ultimately going to look like is because they haven't gone through site plan approval and that those issues really are never determined at zoning?
A It's true that they haven't gone through site plan approval.
Q So to the extent that, we've heard today that there's some issue about the architectural design of this building because it doesn't look residential. Has the building, and as we proceed through the process, certainly a site plan approval and under the Planning Board's watch there could be requirements to do things to make it look more residential, correct?
A Possibly. We met with them and they spoke to 34 units, plus six MPDU's and looked at their design and we were quite comfortable with the direction they were going.
Q With respect to 4901, correct? Okay.
A Yes, I'm sorry.
MS. HARRIS: I have no other questions for him. Thank you.
MS. ROBESON: All right. Thank you.
THE WITNESS: Thank you.
MR. KNOPF: Five minute break and then start the last witness?
MS. ROBESON: Yes.

(Recess)
MS. ROBESON: Is everyone ready?
MR. ABRAMS: Yes, ma'am.
MR. KNOPF: Yes.
MS. ROBESON: All right. We're back on the record and Mr. Knopf, this is your last witness?
MR. KNOPF: Believe it or not.
MS. ROBESON: Please raise your right hand.
(Witness sworn.)
DIRECT EXAMINATION
BY MR. KNOPF:
Q Would you just state your name and address so we can locate where you live?
A Yes. My name is Andrew Niebler. I've been a resident of the Edgemoor condominiums at 4821 Montgomery Lane.
Q Okay. I understand you have some prepared remarks, but before you give those, I just want to ask you a question to follow-up on what we've been listening to. You've heard Ms. Harris suggest that there would no point on Montgomery Lane or in the area where one would see both the proposed project and the 4901 building. When you're exhibits that are up, 72 and --
MS. ROBESON: 106(f).
MR. KNOPF: Thank you. Could you say whether you

agree or disagree with that?
THE WITNESS: Yes, sure.
MR. KNOPF: Thank you.
THE WITNESS: I actually work at the Air Ranks Tower, so that is way over here. So I --
MS. ROBESON: No. You have to tell me --
THE WITNESS: Sorry. Okay. Okay. So this is my building here, 4821.
MS. ROBESON: Right.
THE WITNESS: This is Montgomery Lane.
MS. ROBESON: Going east?
THE WITNESS: Going east, exactly, exactly, and --
MS. ROBESON: Crossing Woodmont?
THE WITNESS: If we kept going, we would cross Wisconsin and then you get to the police station.
MS. ROBESON: Right.
THE WITNESS: And then you would walk past the police station to Waverly and at the corner of Waverly and Montgomery Avenue is where I work, that's the Air Ranks Tower.
MS. ROBESON: Okay.
THE WITNESS: So for the last seven years I've walked that distance and so coming down, you would be --
MR. KNOPF: Like down --
THE WITNESS: Coming, walking west --

MR. KNOPF: -- heading west?
THE WITNESS: -- from the corner of --
MS. ROBESON: From your work?
THE WITNESS: -- of my work space or work office. You would be able to walk down and you would continue on -- you would see this building here.
BY MR. KNOPF:
Q This building is 4901?
A 4901 Hampden. That's where I'm pointing. And as you continue to walk, you would be able to see the subject property and you would be able to see both at the same time if you're moving along, I don't think it makes a lot of sense to sort of pick a spot because I never stand in the street and observe a certain spot. I observe a lot.
So I'm walking. And, similarly, similarly I think my children frequently use the library which is over here and they come from Bethesda Elementary, which is all the way up here.
MS. ROBESON: Northwest?
THE WITNESS: Northwest, right. So we frequently do this walk coming this way --
MS. ROBESON: And this walk is south on Arlington?
THE WITNESS: Is from, south on Arlington and then east on Montgomery Lane. And, similarly, I think at that point you would be able to see, as you turn the corner, and

I'll get to that picture in a second, as you turn the corner you will be able to see the subject property. And then as you walk down the street to where I live, you'd be able to see 4901 Hampden Lane.
MS. ROBESON: Okay.
THE WITNESS: And the interesting thing about that picture --
BY MR. KNOPF:
Q Now that picture is Exhibit 72 you're referring to?
A Yes. And so that picture is taken sort of from the vantage point. The library is kind of here. And it's taken from a vantage point where the Edgemoor on Arlington is essentially sort of blocking out the 4901 Hampden. So if you were to move to your left in that, from the prospective of that picture, which would be this way --
MS. ROBESON: Which would be north?
THE WITNESS: Which would be north, is that right?
MS. ROBESON: Yes.
THE WITNESS: Yes? Okay. Sorry. Thank you. You would be able to see the subject property, as well as 4901 Hampden Lane. So that's --
BY MR. KNOPF:
Q Thank you very much. Now if you have some prepared remarks, if you would state those and then you may

get further questions.
A Sure. I have lived at the Edgemoor condominiums with my family since August 2004. I also served on the board of directors of the Cunningham and was the condominium treasurer for the first four years after the building was completed. More recently, I helped to form a citizens group that is seeking to improve pedestrian safety in the Bethesda central business district.
Living in a pedestrian-friendly community is very important to my family. My wife does not drive, so she walks or takes the Metro to many of the places she needs to go and frequently walks past the lots on which the subject property is proposed to be built. My wife and I, and one or both of my children have walked past these lots on our way to Bethesda Elementary School, the Giant supermarket, the Bethesda public library and numerous other destinations within Bethesda for the past nine years.
Beginning next year, my son will walk to Bethesda-Chevy Chase High School. Both of my children also frequently walk to their sports practices after school. And for the past seven years, as I just indicated, I've walked to my office which is located in the Air Rights Tower on the corner of Waverly and Montgomery Avenue.
Before moving to Bethesda, we lived in Arlington, Virginia, a city that has been recognized as the gold level

walk friendly community by Walk Friendly Communities, which is a national recognition program developed to encourage towns and cities across the U.S. to support the establishment of safer walking environments. In Arlington, we thoroughly enjoyed walking on broad sidewalks and would regularly walk from our home in the courthouse area to Ballston, Rosalyn and Georgetown.
When my family outgrew our Arlington condominium, my wife and I started thinking about schools for our young children and we were naturally attracted to Montgomery County. As we started looking at our housing options, we knew we wanted to live in a condominium located in a safe, residential and pedestrian-friendly neighborhood. When we came across the empty lot on which the Edgemoor would eventually be built and saw the pictures of the proposed building, we were immediately hooked. In fact, we bought a condominium on Montgomery Lane not once, but twice because the original condominium building was abandoned by the developer in favor of developing an apartment building and that was, in turn, abandoned in favor of developing a newly designed condominium building.
Montgomery Lane was unlike anything else that we had seen. It was a quiet, residential street in an urban environment that featured housing modeled on urban village concept. The narrow street and the quirky dead-end in the

middle of the street prevented fast vehicular traffic. The low-rise townhouses and the open areas between the townhouses offered a sense of openness and spaciousness in downtown Bethesda. And on top of all that, the Metro, the public library and the elementary school were all within walking distance. My wife and I were certain that this was the place that we wanted to raise our children.

After my family moved into 4821 Montgomery Lane in 2004, it didn't take long for my wife and I to realize that the narrowness of Montgomery Lane had its downsides, predominantly with respect to the inability of the street to accommodate the volume of the delivery vehicles, moving vans, cable and phone installation vehicles, in-home health care and service providers, vehicles for personnel to repair refrigerators, dishwashers, washing machines, dryers, televisions, flooring, carpeting, computers, printers and monitors and vehicles for landscapes, window washers, trash collection and repairs to the exterior of the buildings to name just a few.

Not only do these vehicles cause congestion on Montgomery Lane due to its narrowness and lack of adequate parking, they add visual clutter to the street and undermine the pedestrian experience, especially when they are parked in such a way that the sidewalk is blocked or when traffic has to navigate around illegally and double parked cars or

trucks or when frustrated drivers aggressively blow their horns. The traffic situation on this street can best be described as tense and that tension affects the pedestrians on the sidewalks as well.

The applicant would have us believe that the vast majority of its 120 parking spaces will go unused and will, therefore, not adversely affect Montgomery Lane. There is no way to guarantee that outcome and it does not resonate with my experience living in two different condominiums where there was not enough parking. While many residents in the applicant's proposed building may not have two cars, it seems likely that they will have at least one car. And to the extent that units in the applicant's building are shared among roommates, it is reasonable to expect that each roommate will have a car. However, even if we accept the applicant's assertion on this point, the fact is that those residents without cars will simply schedule more deliveries to the street as they go about living their lives whether it's in the form of 120 more cars or a higher than average number of deliveries per resident, Montgomery Lane will pay the price in the form of increased congestion, a less walkable environment and diminishment of the mixed street concept.

Notwithstanding the inability of Montgomery Lane to accommodate the daily routines of the current residents

living on the street, when Holladay Corporation proposed to build a building on lots 24, 25 and 27, it received widespread praise from the community for its balanced approach to development on Montgomery Lane and to the best of my knowledge there was no community opposition to that building. I agreed with the County Council when in Resolution 16-246 it lauded the Holladay building and concluded that, quote,

> "The development's location and density will encourage effective use of Bethesda's transit station development area. It will provide a residential use within walking distance of the Metro, will contribute to the range of densities in the area, will not have detrimental effects on the use or development of adjacent properties or the surrounding neighborhood and will continue to have to, and will contribute to housing for persons of all economic levels,"

unquote.

In approving the zoning change for the Holladay building, the County Council was not focused on maximizing density, dwelling units or MPDU's, but instead was very concerned with compatibility of a building with its surrounding area and the impact that the building and its residents would have on issues directly affecting the

pedestrian-oriented quality of life on Montgomery Lane, as well as all users of the Bethesda Public Library. Resolution 16-246 recognized that it is possible to balance the many different competing interests that are affected by development in the middle of Montgomery Lane by approving a building that has only 40 percent of the number of units of the applicant's proposed building. The Holladay building was also preferable to the applicant's proposed building because it had a more residential appearance that blended in with the surrounding buildings. By contrast, the applicant's building looks like it will have a lot of glass that will give it a much more office-like appearance. This will alter the look and feel of the pedestrian environment on Montgomery Lane.

When SJG acquired, I'm sorry, okay. Thank you. When SJG acquired the project and added Lot 26, a reasonable approach similar to that taken by Holladay Corporation would have sought to increase the size of the building and a number of units in direct proportion to the amount of additional gross tract area that was added by Lot 26. Such a proportional increase would have increased the number of units of the building to about 65. Unfortunately, the applicant chose to take a different path, a path that seeks to increase the number of units by about 135 percent, even though Lot 26 increased the gross tract area by only 36

percent, a path that is based on the applicant seeking to maximize density and exceed allowable building heights instead of seeking a balanced approach, a path that pays lip service to Montgomery Lane's unique mixed street designation in a TS-R zone.

Montgomery Lane's mixed street designation in the Sector Plan, the only street with that designation in the TS-R zone is really the key issue in this hearing. Montgomery Lane was a deliberate and an intentional attempt by urban planners to create a little oasis in the middle of the TS-R zone to provide a pleasant pedestrian corridor connecting the Metro and the Bethesda Public Library. In order to facilitate the pedestrian character of the street, the Sector Plan specified that Montgomery Lane, quote,

"Should be developed with 20 feet for travel lanes within a 52-foot right-of-way,"

unquote. So in 1994 when the Sector Plan was approved, the Planning Board and County Council had an opportunity to widen Montgomery Lane in order to enable a street to handle the demands of the higher density TS-R zone, but instead they intentionally and purposefully chose not to widen the street in order to enhance the quality of life for the eventual residents of Montgomery Lane, as well as all the users of the Bethesda Public Library.

Montgomery Lane was specifically created as a

narrow street and we cannot now ignore this fact. It is too late to widen the street and pretending that it is the same width as every other street in the Bethesda central business district and that it should be subject to the same rules as every other street in the TS-R zone makes absolutely no sense.

Page 84 of the Sector Plan includes a concept drawing of Montgomery Lane as it was envisioned in 1994 with low-rise buildings. The interesting thing about that drawing is how close we have come to realizing that vision. The south side of Montgomery Lane looks very similar to the drawing with City Homes and Edgemoor at Arlington being low-rise buildings. On the north side of Montgomery Lane, the Sandy Spring building and the Edgemoor at Arlington North are both approved as low or mid-rise buildings. The only buildings that deviate from the concept drawing are the applicant's building, 4901 Hampden Lane, and 4821 Montgomery Lane.

4821 Montgomery Lane was built at a height of 100 feet to promote a linkage to the tall office buildings on Woodmont Avenue, to the low and mid-rise buildings along Montgomery Lane and based on the approvals for that building, it is specifically not to be used as precedent for other buildings on Montgomery Lane. 4901 Hampden Lane at a building height of 70 feet and a penthouse height of 80

feet, fills a similar role with respect to linking the office buildings on Woodmont Avenue. That leaves only the applicant's building as being inconsistent with the concept drawing and not providing a linkage to adjacent, taller buildings.

The applicant argues that it needs to build to seven stories to get the full benefit of all of the MPDU's and it is proposing to build, I'm sorry, that it is proposing to build. While MPDU's are a social good and the objectives of the MPDU program are laudable, rather than starting from the premise of the applicant will build X or Y MPDU's and then determine how massive the building needs to be to accommodate that, I propose that on this street, this unique, mixed street we should determine the appropriate size of the building first and then work backwards to see how many MPDU's that building can accommodate.

As it stands, the massiveness of the building will not be meaningfully mitigated by the 15-foot step back of the 5th floor because at that height the step back is too removed from a human scale which is discussed in the fourth urban design objective in the Sector Plan and will, therefore, not meaningfully enhance the experience the pedestrian on Montgomery Lane experiencing such a massive building.

In addition, from a pedestrian's perspective,

there's a very fine line between having a sidewalk activated by a building and having a sidewalk that is oppressed by a building. In my view, the massiveness of this building will be more oppressive than activating unless it is significantly set back from the sidewalk to provide more open space and significantly reduced in height. The pocket park does not meaningfully address the problems associated with the massive building.

Although he concept drawing on page 84 of the Sector Plan, identifies the buildings as high-density, over the course of the last nine years the projects that have been built on Montgomery Lane have provided 94 total units and Sandy Spring will add another four units. Perhaps this number of units has been built out of recognition, but the narrowness of Montgomery Lane simply cannot handle the daily demands of the people living on this street. Whatever the reason, the development pattern on Montgomery Lane has evolved where following the construction of the Sandy Spring building, eight separate buildings will have provided a total of 98 residences. That development pattern is important because one of the Sector Plans' six urban design objectives specifically provides that, quote,

"In general, new development should respect established patterns of development,"

unquote.

In this case, the applicant has proposed a massive, new development that will add as many as 120 units in a single building. And since much of what has been presented in this hearing are not specified in binding elements, we don't know what we'll wind up with. In the final analysis, if the Sector Plan stands for anything, it must at the very least stand for the proposition that a building that might be perfectly appropriate elsewhere in the TS-R zone may not be appropriate on Montgomery Lane. That business as usual on the only street designed as a mixed street in the TS-R zone is simply not consistent with the intent or the words of the Sector Plan. Any other conclusion would require Montgomery Lane's mixed street designation to be simply disregarded.

For all the foregoing reasons, we ask you to reject the applicant's proposed building in its current form. We remain willing to work cooperatively with the developer to achieve a reasonable project for Montgomery Lane that strikes an appropriate balance between the various competing interests affected by this project, one that recognizes and respects the unique and limiting nature of Montgomery Lane as an extremely narrow mixed street.

In addition, I took some photographs that were entered into, as an exhibit, as 102(a). I'm perfectly happy to discuss these photographs. I can flip pages or do

whatever, but in the lateness of time, I just don't know how best to proceed with this --

MS. ROBESON: No, if they're --

THE WITNESS: -- you know?

MS. ROBESON: -- in the record, we can look at them --

THE WITNESS: Okay. Okay. It's --

MS. ROBESON: -- in the record.

THE WITNESS: It's 102(a).

MS. ROBESON: I have them.

THE WITNESS: Okay. So this was previously discussed by Lou Pohoryles. He took some of these pictures and I took some of them with a different Blackberry.

MS. ROBESON: Okay. You're the partner?

THE WITNESS: Right. Exactly.

MR. KNOPF: The other half.

THE WITNESS: Exactly. So all the pictures show actual events. I didn't do anything unique with my Blackberry, I just picked it up and pointed it and I usually took more than one angle to provide some context. So I can flip pages. The first one is an emergency vehicle taken from Lou's unit, so looking down on the street. That's a fire truck there. And then the same fire truck is taken from the street vantage point on the next page. I didn't take these pictures that I'm testifying to, but Lou already

said how he --

MS. ROBESON: Right.

THE WITNESS: -- how he took these pictures. Again, we have more of a fire truck, again, obstructing the whole street here. So -- and as you can see in the second picture on page 3, there's a car right to the, at the end of the fire truck that's turning left out of the driveway to 4821 Montgomery Lane, which is the wrong direction to turn. You would normally need to turn right, but the street is so narrow that the car couldn't get past the fire truck in this case.

Moving past the fire truck, we see some moving trucks and a service --

MS. ROBESON: And is this on the bottom of page 4?

THE WITNESS: The bottom of page 4, yes, the blue moving van.

MS. ROBESON: Is the same day or a different day?

THE WITNESS: I believe this is a different day.

MS. ROBESON: Okay.

THE WITNESS: I believe --

MS. ROBESON: Oh, it says taken on another day.

THE WITNESS: Yes. Yes.

MS. ROBESON: Okay.

THE WITNESS: So here we have two moving trucks. This actually is a situation that I recall where one moving

truck, the blue one, was actually waiving for the first moving truck to get out of the way because it didn't make, it couldn't really unload.

MS. ROBESON: Which one, I only have a black and white. Which one is blue?

THE WITNESS: So the blue is the one that's bigger on the side of the picture?

MS. ROBESON: In the forefront of the pictures?

THE WITNESS: Yes, exactly. So that truck was waiting for the other truck to finish unloading and obviously the move, it takes a little while, but where the other, where the truck right in front of the building is located is typically where moves get done for our building because they usually can't fit in the loading dock to make sure of that. So what they do is they unload from that spot and then they walk materials through the loading dock and then toward the elevator.

MS. ROBESON: Now is the one at the bottom of 4, is that taken from -- can you describe the perspective, like where would I be standing?

THE WITNESS: Yeah. You would be standing -- so you have a black and white, so you can't really see, but you'd essentially be standing pretty close to the northwest corner of 4901 Hampden Lane. So --

MS. ROBESON: Okay.

THE WITNESS: -- so I could go and point to that if that would help?
MS. ROBESON: No, I understand.
THE WITNESS: Okay.
MS. ROBESON: The northwest corner. Okay. I understand --
THE WITNESS: Yes.
MS. ROBESON: -- where you are.
THE WITNESS: Yes.
MR. KNOPF: Excuse me one minute.
THE WITNESS: Yes.
MR. KNOPF: I don't know how I ended up with the color and you have a black and white. I would be happy to place in the record my --
MS. ROBESON: Does anyone --
MR. KNOPF: -- color copy of --
MS. ROBESON: Does anyone have an objection if I take --
MR. ABRAMS: No.
MS. ROBESON: -- the color copies into the record?
THE WITNESS: The color is really much more useful.
MS. ROBESON: Okay.
THE WITNESS: I mean I'll give you mine if you want it. Okay. Okay.

MS. ROBESON: So I'm just going to -- I'll make this a new exhibit. I think we're on -- our server is still not working, so 121.
(Exhibit No. 121 was marked for identification.)
MS. ROBESON: But I just want the pictures. So if you can take that off? But I have that in this one.
MR. KNOPF: You can --
MS. ROBESON: -- in this one, yes. So 121 is color versions of, color versions of 102(a), colored photos of 102(a).
THE WITNESS: So the other thing, the other thing to observe about the picture we were just discussing is the service vehicle that is actually using our loading dock in on that day, I can't read the writing on the car, but it has ladders on it and it's providing some service in our building and the interesting thing about that which, again, happens from a pedestrian's perspective is that it's blocking the sidewalk.
So moving to what I think is now page 5, flipping the page, this is a picture again that Lou took. It's a picture showing multiple, illegally parked cars on the south side of Montgomery Lane and west of West Lane.
MS. ROBESON: Is that, okay, wait. Where, what perspective am I looking at here?

THE WITNESS: So this is, this is, you're basically looking at --
MS. ROBESON: Where am I standing?
THE WITNESS: You're standing, well, you're in the middle of the road --
MS. ROBESON: Yes.
THE WITNESS: -- in front of our, I'm sorry, in front of 4821 essentially, yeah.
MS. ROBESON: The Edgemoor Highrise?
THE WITNESS: Yeah.
MS. ROBESON: And am I looking west or --
THE WITNESS: You're --
MS. ROBESON: -- west?
THE WITNESS: You're looking west at that point.
MS. ROBESON: Okay.
THE WITNESS: Okay. So flipping -- so now you can see that that -- on that page, page 5, it says the remaining pictures were taken with my Blackberry, so --
MS. ROBESON: Okay.
THE WITNESS: This is a picture just showing --
MS. ROBESON: And this is the picture shown on page 6?
THE WITNESS: Page 6, exactly.
MS. ROBESON: Okay.
THE WITNESS: So, okay. So this shows, as I

describe here, a typical day outside the Edgemoor. The truck in the lower, right corner of the picture is a service vehicle and it's parked in a no parking lay by, so we have two lay bys, one that allows for 2-hour parking and one that does not allow for -- it's basically the short-term unloading lay by.
MS. ROBESON: And where were you?
THE WITNESS: I was standing right next to that truck. I'm in the middle, I'm in the street --
MS. ROBESON: In front of the Edgemoor?
THE WITNESS: In front of the Edgemoor standing next to that truck.
MS. ROBESON: And what way were you looking?
THE WITNESS: And I was facing, I was facing west on --
MS. ROBESON: Okay.
THE WITNESS: -- toward the library on this street.
MS. ROBESON: All right.
THE WITNESS: So, again, it shows multiple, illegally parked cars. It's not unusual to have that situation happen. The next page shows, again, like I said, I tried to take multiple pictures just to offer a slightly different vantage point. I didn't move too far here on the next one. It's pretty similar. But --

MR. KNOPF: Page 7?
THE WITNESS: Page 7, right, but I did move back. So the next two, page 7 is the same situation that I just described, but it's through two different vantage points.
MS. ROBESON: And what's the vantage point here?
THE WITNESS: I just moved back so the --
MS. ROBESON: Oh, I see. You moved east?
THE WITNESS: Exactly. I moved east and a little into the street on the top part.
MS. ROBESON: And which cars are illegally parked?
THE WITNESS: So the silver car, I'd say, let's see, on the --
MS. ROBESON: On the left?
THE WITNESS: -- on the left side of the picture, right, the silver cars will be illegally parked. And one, two, you can typically fit four, yeah, you can fit four cars between the no parking sign, between the arrows on the south side of Montgomery Lane at that point. So one, two, three, four, so you see there's five cars there, so that last silver car is illegally parked. And then white, if you look right in the middle of the picture, if you look up the street, there's a white car up there that looks like a kind of a SUV type car. You can see the back of it
MS. ROBESON: With the spare tire on the back?
THE WITNESS: It does not look like a spare tire.

It's right here in the middle of the street.
MS. ROBESON: Oh, okay. Wait. Which one are those?
THE WITNESS: I'm on page 6.
MS. ROBESON: Oh, I'm sorry. Okay. I see.
THE WITNESS: That car is ultimately --
MS. ROBESON: Wait. That's not what my --
MS. HARRIS: I think it's the same page.
MS. ROBESON: -- page --
THE WITNESS: Sorry, that's 8? Okay. So hang on. One, two, three, four, five, six. So maybe you have, did you have other, some --
MS. ROBESON: Okay. Well, let's --
MS. HARRIS: That could be on the bottom.
MS. ROBESON: -- let's go back --
THE WITNESS: Okay.
MS. ROBESON: -- okay. I need to --
THE WITNESS: Okay.
MS. ROBESON: Hold on one second.
THE WITNESS: Okay.
MS. ROBESON: So I'm looking at this picture which I have marked on page 7.
THE WITNESS: Page 7, okay. So that's, is that this? No?
MR. KNOPF: No.

THE WITNESS: No?
MS. ROBESON: No.
THE WITNESS: No? That's this?
MS. ROBESON: Yes.
THE WITNESS: Yes. Okay. So that's --
MS. ROBESON: No, no, I don't think so.
THE WITNESS: No? It's different writing.
MS. ROBESON: You go back one page.
THE WITNESS: Okay. So let's get this squared away. Okay.
MS. HARRIS: I think everyone has -- my pages are different than yours that are different from his.
MS. WILTSHIRE: Mine are the same as yours.
THE WITNESS: She has this one, okay, she -- you're looking at this one? Yes. Yes.
MS. WILTSHIRE: Yes.
THE WITNESS: Yes? Okay. What page is that?
MS. ROBESON: That for me is seven.
THE WITNESS: Seven?
MS. ROBESON: Now where are you standing on this page?
THE WITNESS: On this page, again, I -- for me, most of these pictures were taken right outside 4821 Montgomery Lane.
MS. ROBESON: Okay.

THE WITNESS: So, but I haven't gotten to this page yet, so --
MS. ROBESON: Okay. So we're on this page?
THE WITNESS: I was back on --
MS. ROBESON: Okay.
THE WITNESS: -- on here.
MR. KNOPF: Maybe, why don't I take this and put the two together and just number them so we'll both be on the same page?
MS. ROBESON: Well, show me the picture again where you are.
THE WITNESS: Okay. It's -- this is a distinguishing page because it has a little picture, so --
MS. ROBESON: Yes.
THE WITNESS: -- I'm on the page after this page.
MS. ROBESON: Okay. Now let me see picture after that page. Okay. I'm not sure it's the same --
MS. WILTSHIRE: I think it's your page 7, because I think yours is the same as mine.
MS. ROBESON: Seven?
MS. WILTSHIRE: That's right.
THE WITNESS: No, this has different text on it, so --
MS. ROBESON: It's not the same page, so --
MS. HARRIS: Maybe we should start --

MS. ROBESON: Why don't you?
MR. KNOPF: Just pull this apart and put it in the same order?
MS. ROBESON: Yes.
MR. KNOPF: Everybody else seems to be in the same order.
MS. ROBESON: Yes. So --
MR. KNOPF: May I approach you and --
MS. ROBESON: Sure.
MS. HARRIS: Well, can I come up there too --
MS. ROBESON: Sure.
MS. HARRIS: -- to make sure mine are the same?
MS. ROBESON: Everybody can come up.
MS. HARRIS: I would suggest we start at the beginning of the --
MS. ROBESON: Wait, that's where it was different. This is my five.
MR. KNOPF: Here it is, it's on the back. That's the --
MS. ROBESON: We'll turn this -- this is, is this what I have as five? Yes. No. Yes. This is five.
MS. HARRIS: This looks like this one is right because that's double copies.
MS. ROBESON: Yes, this is --
MS. HARRIS: This is the order.

MS. ROBESON: This is five.
MR. KNOPF: It's this one?
MS. ROBESON: Yes, that's what I'm saying. It's on --
MR. KNOPF: This one is five and then this one would be six?
MS. HARRIS: Yes.
MS. ROBESON: Okay. Now this one is seven.
MR. KNOPF: Seven. Well, wait a second, you have seven?
MS. ROBESON: Seven, okay. Are you on board with me?
MS. HARRIS: Yes.
MS. ROBESON: Okay. You're okay? Now do you have one that I don't have?
MS. HARRIS: Just, there was this one, I think. Actually I have a bunch more.
MR. KNOPF: I have a bunch more. Oh, he has a bunch. Maybe I didn't put those --
MS. ROBESON: Hold on. Hold on. Maybe I -- this is 102(a). I -- ah-hah, wait, I do -- I don't -- he didn't have them in color. This is what he gave me. This is what I have in the record. This is the original --
MR. KNOPF: The original --
MS. ROBESON: But my color photo versions only go

up to 10 and you should, what I have in the record is one more paragraph.
MR. KNOPF: This one house, is that the paragraph you said --
MS. ROBESON: That's the last paragraph I have in Exhibit 102. Two houses.
MR. KNOPF: This says one house. You have two at home.
MS. ROBESON: I have a feeling that some of this has to do with copying both sides, but -- so what do you want to do? Ms. Harris, are you going to object if he submits the balance of the --
MS. HARRIS: No, I -- not at all. I just want to make sure that we all have the same numbering for them --
MS. ROBESON: Right.
MS. HARRIS: -- because it's --
MS. WILTSHIRE: Would it be helpful if you had my copy?
MS. HARRIS: No, I'm good. I think it's the --
MR. KNOPF: Here is the last --
MS. ROBESON: So am I. I don't need them, no, I'm teasing.
MS. HARRIS: Should we make black and white --
MS. ROBESON: These aren't these, are they?
MR. KNOPF: No, no. Those are different.

MS. ROBESON: Okay. Let me -- why don't you give me the pages that I don't have, which are --
MS. HARRIS: We don't have that. We don't have that.
MS. ROBESON: No, I don't.
MR. KNOPF: Let's put them in the same order. This one -- no.
MS. HARRIS: No, we finished up at 10 and everyone was in agreement --
MS. ROBESON: We can do this.
MS. HARRIS: -- until page 10.
MS. ROBESON: Now we have a --
MS. HARRIS: Right.
MS. ROBESON: Or I have 11 as this paragraph.
MS. HARRIS: Yes, you know what, why don't we do this. Why don't we just go make copies of the rest of this?
MS. ROBESON: Okay. We'll go off the record for two minutes then I will make -- is this your --
MS. HARRIS: That's mine.
MS. ROBESON: Is it --
MS. HARRIS: Do you agree with that order --
MR. KNOPF: No, that --
MS. HARRIS: -- that we have it in?
MR. KNOPF: No, that, no I don't -- here, that's, doesn't matter, but I just want to get this set in that

order.
MS. HARRIS: Okay. So take that one.
MR. KNOPF: I'm not sure if I even have that one. That's -- let's make sure we all have the same -- do you have this one? Apart from all others, let's make sure we have the same one.
MS. HARRIS: I don't think I have that.
MS. ROBESON: Okay. Well, then let's do --
MR. KNOPF: Yes, you do. She has that.
MS. HARRIS: All right.
MR. KNOPF: Do you have this one with a red truck? I'm going by colors.
MS. HARRIS: Yes.
MR. KNOPF: Yes? Okay. You have this one?
MS. HARRIS: Wait, that one? No, I don't have that one. Which one? Yes, that one we have as 10. Everyone has that one.
MR. KNOPF: Oh, let's mark it 10. Oh, I have that, no, no, I have 10 as this one.
MS. ROBESON: Okay.
MR. KNOPF: This is the one.
MS. ROBESON: You know what, we're going to go off the record. How much more does he have?
MR. KNOPF: This is it.
MS. ROBESON: Okay. We're going to go off the

record for three minutes and you can decide how to order these together and then I'll make a copy of them.
MS. HARRIS: And we're good through 10?
MR. KNOPF: Yes, we're good through 10. Let's just stay with the second -- this is 10?
MS. HARRIS: This is 10.
MR. KNOPF: This is 10?
MS. HARRIS: Yes.
MR. KNOPF: No.
MS. HARRIS: No, that's a different 10.
MS. ROBESON: Would it help to have Mr. Niebler come up and --
MR. KNOPF: Yes.
MS. HARRIS: And then we have these that we -- sorry, this is 11. That is 10 and 11. Make this one 12. I assume it would --
MR. KNOPF: No, I --
MS. HARRIS: Make 13 the orange truck. Make 14 the red truck. I'll take 15 back.
(Recess)
MS. ROBESON: So I don't have to make another exhibit?
THE WITNESS: I'm not going to go quickly back through this, so I wanted to --
MS. ROBESON: Okay. Now wait.

MR. KNOPF: This is --
MS. ROBESON: First, I need to know what I don't -- I don't have this. Okay. Now do you want the colored ones in the record or --
MR. KNOPF: The colored ones go in the record.
MS. ROBESON: Okay. We're going to stay off the record and I am going to go copy these and I will be right back.
(Recess)
MS. ROBESON: Back on the record.
MS. HARRIS: Madame Hearing Examiner, if I could note, it appears in preparing the exhibit to what was originally submitted --
MS. ROBESON: Yes.
MS. HARRIS: -- that pages 11 through 14, in fact, were not in the original submission. So there were no -- I want to note that. We don't necessarily object in them adding, but I would note that these are more exhibits.
MS. ROBESON: Okay. All right. Thank you. And so this will be Exhibit 121, which is the color photos of 102.
THE WITNESS: Okay.
MS. ROBESON: A, with the additional photos of 11 through 13. Thank you. All right. Let's go.
THE WITNESS: Okay. With that sorted out, having

looked at this again, I believe my testimony previously addressed pages 1 through 6. Actually, yes, 1 through 6 and so I was going to start on page 7.
MS. ROBESON: Okay.
THE WITNESS: Okay? This picture was taken, again, with me in the street looking west in front of 4821 Montgomery Lane. Here we have an air conditioning and heating van illegally parked in the no parking lay by. We have, on the left, on the right side, sorry, of the picture. On the left side, we have an illegally parked blue sedan.
MS. ROBESON: Okay.
THE WITNESS: And then looking up the road past the air conditioning, heating, plumbing, looking west, you can see a, a van, a minivan that's parked with, half hanging out in the street and that, again, is not an uncommon occurrence on our street.
MS. ROBESON: And when you say not uncommon, can you give me an idea of frequency?
THE WITNESS: Yes. These kinds of events happen on a weekly basis, sometimes multiple times a week, but it's fair to say on a weekly basis.
MS. ROBESON: Okay. And why, what do you mean by no parking lay by? Isn't the, is the lay by for temporary stopping, is that what you're saying?
THE WITNESS: Yes, it's the lay by that's directly

in front of the door for 4821 Montgomery Lane.
MS. ROBESON: So that's your loading area?
THE WITNESS: It's, yeah, and initially the two lay bys were actually, when we first moved in, both no parking. So you weren't allowed to park in either one and the one that is further west in the street was changed to be coming, provide more parking that was changed to two hour parking.
MS. ROBESON: Okay.
THE WITNESS: So there's a two-hour parking lay by and then there's a sort of, taxicab pulls out, you get out, whatever, you know, somebody is talking and gets out --
MS. ROBESON: Fedex?
THE WITNESS: -- runs in. I'm sorry?
MS. ROBESON: Fedex?
THE WITNESS: Fedex will sometimes use that, but as we'll see in the next picture --
MS. ROBESON: Okay. So we're moving --
THE WITNESS: Yes, this picture is coming up. Then you'll see where they sometimes park as well.
MS. ROBESON: Okay.
THE WITNESS: So let's go to page 8. Page 8 is, what I was talking about previously, so let's just go through this one more time. So I'm in the middle of the street facing west in front of 4821 Montgomery Lane standing

next to, again, an illegally parked service vehicle of some type on the right-hand side. On the left-hand side there's an illegally parked silver sedan or coupe and then if you look straight in the middle of the picture, up Montgomery Lane, you can see a person in a red shirt in front of a white SUV type car. It's a little bit more clear in the bottom picture.
MS. ROBESON: Right.
THE WITNESS: That car is also illegally parked and that is probably in front of the proposed Sandy Spring building I think. It might be on the other side of West Lane. I can't really tell from here. So it's probably, I think it's in front of the Sandy Spring building.
MS. ROBESON: Okay.
THE WITNESS: And that person in the red shirt is walking towards us in the meantime. So turn to page 9 to answer your question about Fedex or SUV, I'm sorry --
MS. ROBESON: You know what, first tell me where we are --
THE WITNESS: Okay. Okay.
MS. ROBESON: -- and where we're looking?
THE WITNESS: Okay. So here I'm standing in the entrance, yes, the entrance to, the driveway entrance to 4821 Montgomery Lane. So I'm further east than in the other two pictures, on the sidewalk, standing more or less right

in front of where the cars enter out of 4821 Montgomery Lane garage.
MS. ROBESON: Okay.
THE WITNESS: Again, face --
MS. ROBESON: Now can you show me where that is --
THE WITNESS: Yes.
MS. ROBESON: -- in 106(f) because -- is it right after that little --
THE WITNESS: So that picture would be taken from -- this is our loading dock right here with the big door and --
MS. ROBESON: Okay. The big, the garage door is showing on --
THE WITNESS: Yes, there's three doors when you look at 4821 Montgomery Lane. There's a big one and then two little ones next to it.
MS. ROBESON: Okay.
THE WITNESS: The big one is our loading dock. That's --
MS. ROBESON: Okay.
THE WITNESS: -- okay? The smaller ones are where cars enter and exit. Cars enter from the one that's further east --
MS. ROBESON: Yes.
THE WITNESS: -- and they exit from the one that's

one, further west.
MS. ROBESON: Okay. All right. Thank you. So this is in the entrance --
THE WITNESS: This is the entrance to --
MS. ROBESON: -- the parking garage?
THE WITNESS: Right. Right. Again, looking west, and her again we have a service vehicle of some type with a ladder on top of it blocking the sidewalk. To answer your question now about Fedex and UPS, even though the lay by for delivery vehicles is empty in this picture, you can -- it's the first lay by past the white truck that I just referred to. There's nothing there. So the UPS truck could have pulled in there, but it didn't. It parked instead on the -- now it's shown on the left side of the picture -- in front of what would be part of 4901 Hampden Lane and it's parked there.
Now maybe, I don't know, I can't -- I don't know if the lay by was full when it stopped or, you know, I just don't know that. So now the interesting thing about this picture is it showed so many other things which is what caused me to stop and take this picture. We have the pylons circling a lawn care company's trailer.
MS. ROBESON: You mean the orange cones?
THE WITNESS: The orange cones, yes.
MS. ROBESON: Okay.

THE WITNESS: Yes. So that, by the way, is illegally parked as well because that's a no parking area that doesn't extend that far down. And then if you look again sort of in the middle, sort of in the middle of the picture up here in the distance, on the color copy you'll see a blue moving van. So if you see the one-way sign, right below the one-way sign --

MS. ROBESON: I don't see that.

THE WITNESS: Okay. I'm just going, a copy, show it to you?

MS. ROBESON: Oh, I think, well, I'd like you to show me --

THE WITNESS: Okay.

MS. ROBESON: -- and see if I have it right.

THE WITNESS: Okay. I would point you to this blue moving van and that vehicle.

MS. ROBESON: Oh, this?

THE WITNESS: Yes.

MS. ROBESON: Okay.

THE WITNESS: Yes. Yes.

MS. ROBESON: Okay. I do see that.

THE WITNESS: And that's an illegally parked moving van.

MS. ROBESON: I'm going to mark on this blue moving van to show a higher, where it is.

THE WITNESS: So so that's -- so we have four violations in this one picture alone. Okay. So that was page 9. Moving to page 10, this vantage point -- so this is now across the street from 4821 Montgomery -- oh, this --

MS. ROBESON: No, wait. I have two No. 10's.

THE WITNESS: Okay. Okay. You know what --

MS. ROBESON: I'm just calling this 10(a).

THE WITNESS: Okay.

MS. ROBESON: The one you're about to talk about --

THE WITNESS: Yeah.

MS. ROBESON: -- how I can see --

THE WITNESS: But the interesting thing about 10(a) --

MS. ROBESON: Let me see it. Yes, that's what I have as 10(a).

THE WITNESS: Okay. Okay. The interesting thing about 10(a) is that it's really another vantage point, this is what I was trying to do, take different vantage points --

MS. ROBESON: Right.

THE WITNESS: -- of page 7. So if you look back at page 7 --

MS. ROBESON: Okay.

THE WITNESS: -- you can see the same blue minivan --

MS. ROBESON: Yes.

THE WITNESS: -- parked in the same posture on the street and this 10 or 10(a) that I was just talking about is just across the street from 4821, whereas the initial picture was taken standing next to the service vehicle.

MS. ROBESON: Okay.

THE WITNESS: Okay. So --

MS. ROBESON: Now we're on 10(b).

THE WITNESS: Okay. So now we're on 10 --

MR. KNOPF: 10(b)? Which one is that?

MS. ROBESON: I have two 10's.

MR. KNOPF: Oh, you did the first one as 10(a)? Okay. So this is --

MS. ROBESON: Or, no, I don't. Never mind. I've got two 10's, but they're the same picture, so -- okay.

THE WITNESS: Nine, okay.

MS. ROBESON: 11.

THE WITNESS: Okay. Let me just get 6 back in my order here. Okay. So, no, okay. So now we're onto 11. So 11, actually now where I am is I've moved west towards the library, so I am standing near where the Edgemoor II North or the Rothstein property would be located.

MS. ROBESON: The Edgemoor at Arlington North?

THE WITNESS: Edgemoor at Arlington -- yes, at Arlington North.

MS. ROBESON: Okay.

THE WITNESS: And now I'm facing east, so the Edgemoor, the currently built Edgemoor is to our right in this picture --

MS. ROBESON: The Edgemoor at Arlington?

THE WITNESS: Edgemoor at Arlington, exactly.

MS. ROBESON: Right.

THE WITNESS: This shows a number of interesting things going on with both vehicles in this picture being illegally parked and that car with the door open, it seems like maybe they were just letting someone out. That car stayed there a really long time because my kids were in the library and I was just hanging out. So --

MS. ROBESON: Okay.

THE WITNESS: So that didn't, it wasn't just like a two second thing. The, then if you look straight in the middle of the picture, you'll see a service vehicle blocking the sidewalk that is east of Edgemoor at Arlington and just west of the City Homes.

MS. ROBESON: Okay.

THE WITNESS: And, by the way, that same situation was present when you did your walk through. That --

MS. ROBESON: Okay.

THE WITNESS: -- that same exact same set-up with a truck blocking that area of the sidewalk. Okay. To

the -- page 12 now, the purpose of the top picture was to show an illegally parked truck. Again, this truck looks like it's turning. It wasn't turning. It's parked on West Lane. So here I am sort of the in the middle of Montgomery Lane facing east. West Lane is where you see it off to the left and that truck is parked in that spot right there. And I'm pretty sure, it says two legally parked cars, vehicles, so I did check it. So on the left side, so the Chevy truck is illegally parked on West Lane. On the right side, a white truck, and it's just on the very edge of the picture --

MS. ROBESON: I see it.

THE WITNESS: -- is illegally parked outside the City Homes. So I did check that at the time I took the picture. I walked down there and checked where it was parked.

The purpose of the lower picture is just to show the service vehicles that are required to maintain an 11-unit building because that's the driveway for Edgemoor at Arlington. And it's not unusual that they have service vehicles lined up in that spot. In this day they had three and it's only 11 units. So it just, it takes a lot of service vehicles to maintain a building.

Moving to page 13. We have illegally parked service, so, okay, so here I am. This would be --

MS. ROBESON: The top picture?

THE WITNESS: The top picture is between the two lay bys in front of 4821 Montgomery Lane. So I'm basically right between the -- the no parking lay by is off the picture behind me and the 2-hour parking lay by --

MS. ROBESON: 2-hour --

THE WITNESS: -- lay by is in front of me.

MS. ROBESON: And you're looking west?

THE WITNESS: And I'm looking west, right. And so the second picture, sorry, the first picture shows an illegally parked service vehicle in the distance, right. So the reason I took this one is the white truck sort of in the center of the picture off in the distance. I was just trying to give context of the other --

MS. ROBESON: I see.

THE WITNESS: -- other cars --

MS. ROBESON: By City Homes?

THE WITNESS: Right, they were on the street, exactly.

MS. ROBESON: Okay.

THE WITNESS: So that's an illegally parked, that's, again, a lawn care vehicle with a trailer. The bottom one is a large, illegally parked delivery flatbed. Again, here I am in the middle of Montgomery Lane facing west and so this truck is --

MS. ROBESON: And where are you?

THE WITNESS: I'm in front of 4821 Montgomery Lane.

MS. ROBESON: Okay. The first, the --

THE WITNESS: Yes.

MS. ROBESON: The no parking --

THE WITNESS: The no parking lay by, exactly. And, okay, right. And what I was trying to do here is actually this, so I was, again, trying to provide two different vantage points. So the bottom picture is just a different vantage point of the top picture and if you look in a distance, you can see again that same white vehicle --

MS. ROBESON: I do see it.

THE WITNESS: -- so on that day, you had both the lawn care illegally parked vehicle outside of City Homes, as well as this illegally parked delivery truck. I don't know what it was delivering.

MS. ROBESON: I also see, isn't there, that's, is that the library windows in the back?

THE WITNESS: Yeah, yeah, that is the library windows in the back, yeah, exactly.

MS. ROBESON: All right.

THE WITNESS: Exactly.

MS. ROBESON: 14.

THE WITNESS: Okay. 14, this is now a picture

of -- now to the, essentially the western-most point of 4821 Montgomery Lane, I believe, because that is the -- yes, that is the driveway, yes, that is the driveway to where that Sandy Spring building is going to be built. So that's right to the right there.

So across the street in front of City Homes, I honestly don't know what these trucks were. It looks like some kind of sanitation kind of trucks, but they, they took up the whole, occupied the whole street going one way, so cars could obviously not get around it and obviously they were there for quite awhile. They went out and put out those pylons, the orange cones. Okay. And I think that brings me to an end.

MS. ROBESON: Okay. Do you want to explain what this diagram is?

THE WITNESS: That diagram really goes to the point that I testified to about the number of different buildings and the number of units that are on the street essentially.

MS. ROBESON: Oh, I see. Okay.

THE WITNESS: And it doesn't show the buildings as well, it just shows the developments.

MS. ROBESON: Yes.

THE WITNESS: My finer point that's not shown on the diagram is that if you look at, if you actually take the

number of units that are reflected on that diagram and look at the number of buildings that they're spread over, they're spread over eight different units, buildings, including Sandy Spring.

MS. ROBESON: Okay.

BY MR. KNOPF:

Q I just have one clarifying question. In your main testimony, you referred to Montgomery Lane as having, I think you said quirky dead end?

A Quirky dead in the middle. That's true, yes.

Q Could you -- oh, in the middle of the street?

A In the middle of the street.

Q I don't know that I heard the middle of the street. Can you explain what you mean?

A Yes. Yes. I just, I just mean basically you can drive west from Woodmont all the way through to Arlington because that is permitted, but if you're coming from the library and driving east on Montgomery Lane, there is a -- it dead ends at West Lane. So --

MS. ROBESON: Well, there's two do not enters.

THE WITNESS: Right. Yes. Yes, whatever, yes. Correct.

MS. ROBESON: If that's what you're wondering?

THE WITNESS: Yes, that's what I was referring to.

MR. KNOPF: Thank you. I have no further

questions.

MS. ROBESON: Okay. Mr. Abrams.

MR. ABRAMS: Yes.

CROSS-EXAMINATION

BY MR. ABRAMS:

Q Yes. Is it Mr. Niebler?

A Niebler.

Q Niebler? Does your condo association have rules and regulations as to control deliveries, service vehicles and moving vans?

A I believe so.

Q Do you know what they are?

A I did at some point.

Q Do you have a lobby area manned by a concierge --

A Yes.

Q -- or a clerk?

A Yes, we do.

Q And does she accept the deliveries or he accept the deliveries?

A Yes.

Q And service vehicles?

A Yes. We have a manned staff, a front desk. It's a 24-hour desk that's required by our bylaws.

Q Okay.

A And when deliveries arrive, they go, they will

park their vehicle, they'll take whatever they need to take inside and it will be logged into a log that, and recorded and it will be distributed within the building.

Q Now I think it's been previously testified by the applicant that there would be on the proposed project controls at the desk as you enter in terms of the deliveries and service vehicles and things of that nature. Have you basically been able to control the parking situation by having somebody at a front desk controlling the deliveries that are made to your building?

A No.

Q And does your condo association have a management company?

A Yes.

Q And is that management company, do they staff it personally?

A In part. We have -- our, the person who works from 7:30 to 3:00 or 3:30 is an employee of the condominium directly. And the people who work outside of those hours are employees of a staffing agency that was hired by the board of directors. So to answer your question, the management company itself actually does not provide anybody other than a remote management person who kind of oversees the whole building.

Q The parking and circulation problems, in your

opinion are the problems associated with a lack of reasonable enforcement or are they associated with inadequate street and parking infrastructure?

A Yes and yes. I think predominantly they are associated with a, what -- the street is just really at its capacity for what it was, for how it's designed, but could you solve some of the problem with better enforcement? Yes. Could you make it all go away? No.

Q Have you attempted to work things out in terms of a regular police drive by to determine, you know, whether there's parking enforcement problems and ticketing and things like that?

A I have, since I walk by the Bethesda Police Station, I have periodically over the course of my time walking past it either stopped a policeman on the street or whatever and not specifically for the parking, but because many, many cars drive the wrong way past the do not enter signs --

Q All right.

A -- that were described. And it's really a pedestrian danger zone at that point and I've asked for better enforcement of pedestrian, for pedestrian safety purposes and have received little response. We, I think I can recall two times in the time that I've been living here that police have shown up and ticketed cars, you know, it's

a noteworthy event because usually an email goes out in the building, you know, everyone pay attention, you know? So --
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: Ms. Harris.
MS. HARRIS: Thank you.
BY MS. HARRIS:
Q You noted that the concierge receives packages, that's one of her jobs, correct?
A Yes, his.
Q And is it also one of her jobs, his or her job to monitor the parking in the lay bys?
A To make life easier for residents. I don't know if it's a job or not. I think he does try to do that a little bit, but the level of success he has, he has other things going on --
Q Uh-huh.
A -- and he's only one person, so I don't really know if it's his job or not.
Q And given what -- I've been in your building numerous times for meetings that we've had -- in fact, they don't even really have a good vantage point to the street from where the concierge desk is located, isn't that correct?
A They are not looking out the door where the desk is, yes.

Q Okay. And did you say that they do or, I'm unclear in your answer, do they manage move-ins or do they not?
A They definitely manage move-ins because you have to pay a fee for a move-in and so they know, it's on the calendar, they know it's coming and it's not an ideal situation in any event, so they try to make sure that, you know, a parking lay by is available for another truck that's supposed to arrive and they do make sure that the loading dock is open so that materials can be moved in.
Q Mr. Pohoryles noted, and I think you did as well, that in terms of the pictures, that he snapped when an event occurred. I mean obviously, and you can tell from the pictures, you didn't snap when there wasn't an event, correct?
A That's true. I did not snap absence of --
Q So then it's really only representative of when something was happening versus the majority of the time when something isn't happening?
A It's representative of things that struck me as having multiple violations around the same time.
Q Okay.
A I didn't photograph just sort of regular, every day traffic on the street.
Q Okay. And if you look at page 5 and 7, and

hopefully we have our numbers now correctly --
A I think.
Q Well, first of all, let me just -- well, if you looked at pages 5 and 7, would you not agree that if, in fact, the Sector Plan recommendation of no parking on the south side would have been enforced that a lot of the, what you see on this picture would be eliminated?
A No, I don't agree with that.
Q Because people would be continuing to park illegally?
A You question was whether parking was eliminated on the south side. The south side is one silver coupe or sedan, but there are two other --
Q No, the entire -- on page 5? I think now we'll see if our numbering -- is that what you got for page 5?
A Yes.
Q All right. How many cars -- let's start a different way -- how many cars on this south side of the street?
A There are five cars total I count on the south side of the street.
Q Okay.
A And one of them is illegally parked.
Q No, but the Sector Plan in its recommendation of no parking on the south side --

A Okay.
Q -- how many cars would be eliminated from this side? If no parking were --
A If there was no parking -- if no parking was permitted on that street, then --
Q On the south side?
A -- on the south side --
Q Okay.
A -- of Montgomery Lane and those cars were there, five would be illegally parked.
Q Okay. And if there was strict enforcement and, in fact, then potentially none of them would be because they know they'd continually get tickets, correct?
A Potentially.
Q You noted on, I think it was one of these pages, page 5 or 6, that the truck was parked in the lay by because there was no other place? That's one of the notes.
MS. ROBESON: Which truck? The white one?
BY MS. HARRIS:
Q The white one, sorry, 4.
A 4?
Q 4.
MS. ROBESON: Which, the blue, the bright blue or the dark blue?
MS. HARRIS: It says the image below was taken on

another day when a mover was unloading in the lay by.
MS. ROBESON: Oh, okay.
BY MS. HARRIS:
Q Why was the truck not in the loading dock?
A Because we had a service vehicle at that time as you can see that that, with the ladders on top, is in our, is in our loading dock at the same time.
Q In your -- how many loading docks do you have?
A One.
Q So if you had two or three, that may help the problem?
A If we could rebuild the building, sure.
Q So if your building were like the subject building, providing three times the amount of loading required, it could mitigate the problem potentially?
A Potentially.
Q How many loading, well, actually let's start with page 1. Can you note for me on each one of these pages how many cars you actually see driving? Let's start with page 1.
A Page 1, I don't know because I didn't take the picture.
Q Does it look like any are driving?
A If I had to guess, it looks like the car on the far left of the picture is waiting --

Q Okay.
A -- to pass the fire truck.
Q And then page 2?
A I see in the top picture, I don't believe any of those are driving because those look like they're parked on the right. On the bottom picture, I believe I see two waiting to pass the fire truck.
Q Okay. And then on page 3?
A I believe I see the same two vehicles waiting to pass the fire truck.
Q How do you know those aren't parked and that they're waiting?
A Because they don't look like they're close to the curb to me.
Q That doesn't look close the curb, the one in the top picture?
A No, it doesn't actually. I'm quire sure those were driving.
Q Okay. And then on page 4?
A Sorry. The last answer, by the way, should be three on the bottom picture because there is one driving --
Q Okay.
A -- turning left. Page 4, there are three, I'm sorry, three vehicles driving. In fact, this picture proves that the other one was driving because the van now, the

first truck is in a different position, it's backing up to make room for the legally turning car out of our building.
Q So one of your own residents is making an illegal turn out of the building?
A Yes, because the road is blocked by the fire truck.
Q Okay. Which is a situation that could occur on any street at any time, correct?
A It's more likely to occur on this street because it's 20 feet wide.
Q And how many cars on the bottom picture on page 4 driving?
A I see, I believe I see one in the distance probably.
Q And on page 5?
A I do not see any in this picture that I think they're driving.
Q And 6, beside your car?
A That's not my car. That's Mr. Pohoryles's car.
Q Sorry.
A But I believe that would be -- I see one.
Q One?
A Well, hipped -- he's --
Q Hipped? Okay.
A I don't know if he was driving when he took the

picture, but --
Q Okay. And then --
A -- I hope he wasn't for his own safety but, you know --
Q Okay. 7 and 8, we can go through this quickly, how many driving?
A I don't believe I see any in that one.
Q 8?
A 8, I don't believe I see any in that one.
Q 9?
A I believe, actually, there's -- in the very far distance --
Q Yes, I see it.
A -- next to the blue truck I think there's --
Q Yes.
A -- I think there's one driving.
Q And 10?
A 10 is the same thing, so whatever that car was driving, no, I'm sorry. 10 I think there's none on that picture.
Q And 11?
A 11, like I said, you know, I'm not sure what you want to call -- the one on the left is probably parked because it was there for a really long time, so -- so probably none driving there.

Q 12?
A 12, I don't see any driving at that point.
Q 13?
A 13? None.
Q Okay. 14?
A 14, none. And I'm glad there weren't many because I was in the middle of the street taking pictures.
Q Right. Well, the times I've been down there there were kids playing soccer in the middle of the street. When you, I mean based on that, when you say that, what, to the extent you feel there's a problem going on, it's a parking and loading problem, would you agree with that?
A Uh-huh.
Q And based on the few number of cars that we pointed out in these pictures?
A No, I mean I don't entirely agree with that. I think there's been previous testimony that at rush hour times there's a great deal of traffic that goes out of the parking garage on Woodmont and turns right onto Montgomery Lane to get to Arlington and there's a steady stream of cars at that point --
Q And --
A -- and --
Q -- just --
A -- they stack up at Arlington Road at the light

there.
Q And what is your definition of rush hour?
A When people leave work.
Q No, I -- and what hours would those be approximately?
A I don't know. When people leave work. I mean all I can tell you is I come around, if I leave work at 5ish or so, or 5:00 or 7:00, I guess, is probably when I --
Q Okay.
A -- most likely see those kinds of --
Q I don't know if I can ask this, but I'm going to ask it. When I -- why, based on what you just said, why is it for as long as this case has been going on every time I've driven down Montgomery Lane and I go down there a lot between 5:00 and 7:00, especially when I had meetings in Rockville, I have never once, not once ever experienced a situation her --
MR. ABRAMS: Objection. Objection
MS. ROBESON: You can't --
MR. ABRAMS: If she wants to testify --
MS. HARRIS: I can't ask that?
MS. ROBESON: Yes.
MR. ABRAMS: -- raise your right hand and you'll be subject to cross-examination.
BY MS. HARRIS:

Q How many loading spaces does the City Homes have?
A I have no idea. I think -- I really don't know.
Q And if they had -- I think that's probably right -- if they had more loading spaces, do you think some of the situations that you showed -- I'm assuming, would you agree that some of the issues on the street were probably not vehicles servicing the Highrise Edgemoor, but likely, for instance, on page 9, servicing City Homes?
A Not necessarily. I think, actually I believe that we have a common landscaper, so that landscape vehicle may have been servicing both ours and theirs. I'm not sure --
Q So where --
A -- I'm not sure about that.
Q Where do you think, where do the City Homes's service trucks and such park?
A I honestly don't really know --
Q Okay.
A -- where they park. I mean they park wherever they can because --
Q Okay.
A -- because there is not a lot of space.
Q And how many parking spaces are in the Highrise Edgemoor?
A About, around 100, I believe.
Q Were you aware, and you may be aware since you

said you had two contracts on the property, that when it was originally approved, that the property was actually approved for 188 parking spaces?
A No, I was not aware of that.
Q Okay. Referring to page 8 for a moment, you noted that that car in the top right-hand was parked. Is it just my eyes or it looks to me like they actually have brake lights on, especially in that bottom picture. Would you agree with that?
MS. ROBESON: Which page are you on?
MS. HARRIS: Page 8, the one that has a person in a red shirt walking on the right-hand side of the road.
THE WITNESS: Well, I mean, clearly the person with the red shirt has walked however far he's walked and the car hasn't moved, so I don't know if he happened to snap the picture of the building that the person started up the car and was going to drive away or whatever, but --
BY MS. HARRIS:
Q But in the bottom picture, the bottom picture is taken from further away --
A Yes.
Q -- correct?
A Yes.
Q And wouldn't you agree with me that the car in that picture looks closer than in the picture at the top

where he's actually closer to the car?
A He doesn't look that much closer to me, no. I mean I do agree with --
MS. ROBESON: What's the relevance of this?
MS. HARRIS: Well, he was talking about all the congestion on this street and, in fact, I mean I would note that, I don't, I think that car is --
MS. ROBESON: Oh, okay, I get it.
MS. HARRIS: -- just driving down the street. It's not parked there. It was only relevant.
THE WITNESS: Well, I don't, I'm confident that at the time that I took the picture that that car was parked because I walked there to make sure it was parked. I'm confident it was, but, as I testified, I checked out each of these pictures to make sure that, in fact, what we were testifying to is accurate.
BY MS. HARRIS:
Q Okay. And then on page 3, do you see the woman standing there watching the fire truck?
A I'm sorry, which page?
Q Page --
A 3.
Q -- 3. And the man?
A Yes.
Q And so based on the way she's dressed, what would

you say about the weather?
A I honestly don't know, but it looks sunny but, you know --
Q And warm --
A -- and she doesn't have --
Q -- somewhat warm?
A And somewhat on the warm side, yeah, probably.
Q Can you do me a favor and go through all these pictures and count for me how many pedestrians you see in any of these pictures?
A Let's see, in the first picture I see one. In the second picture, I don't see any, or either of those pictures. I see two.
Q Are those pedestrians or bystanders?
A They look to be walking at the bottom picture of these.
MS. ROBESON: I'm not --
MS. HARRIS: Okay.
MS. ROBESON: Let's just
THE WITNESS: In the next page, page 4, I see the same one. By the way, that's Mabel Reynolds, in case you didn't know.
BY MS. HARRIS:
Q Oh, the one that doesn't, who made the comment about transients?

A Yes. In page 5, I see one I guess.
Q You do?
A I see, well, yes because that person in the red shirt --
MS. ROBESON: Who allegedly made the comment --
MS. HARRIS: Oh, the red shirt? Okay.
THE WITNESS: -- is walking.
MS. ROBESON: -- about transients?
THE WITNESS: I think there, on page 6 there's a pedestrian next to the white truck, but it's hard to tell. I don't see any on page 7. Page 8, I see one with a red shirt.
BY MS. HARRIS:
Q The same man?
A Yes, it's a person. Page 9, that might actually be a stroller sticking out by the benches off to the right, right above the hood of the white truck, it looks like there's a stroller. So I'm guessing there's a pedestrian there, unless they just left their baby.
Q Where?
A Right above the hood.
MS. ROBESON: Okay. You know what, I -- okay. I don't want to argue about the stroller.
MS. HARRIS: Okay.
THE WITNESS: Okay.

MS. ROBESON: Let's move on.
THE WITNESS: Okay. Page 10 I don't see any there. Page 11, it's hard -- these are black and white so, honestly, I can't --
MS. HARRIS: Oh, here's one here.
THE WITNESS: -- I can't really tell from here.
MS. ROBESON: Well --
THE WITNESS: It doesn't look like anybody on page 11. Page 12, I don't see anybody. Page 13, I see one person off to the very -- actually two, one to the right and another person all the way on the left, I'm sorry, on the left by the blue vehicle. It looks like he's walking east.
BY MS. HARRIS:
Q And, finally, that's okay.
A I'm sorry. Sorry. Sorry. Sorry. There might be some. I can't really tell. There looks like there might be a person or two behind that red truck, but --
Q Excuse me?
A Behind, on the left, there looks like there's possibly a person to the side of that truck.
Q Okay. But, certainly -- I have no other questions for the witness.
MS. ROBESON: Okay. Redirect, Mr. Knopf?
REDIRECT EXAMINATION
BY MR. KNOPF:

Q In terms, you were asked a question in terms of what the implications are for having cars parked on the street regarding traffic congestion. Is -- what are the implications for pedestrians in terms of a pleasant walk on a local street to have cars parked or double-parked, whatever your photos --

A Well, there's a couple different implications. One is that many of the photos show that there are often vehicles that are parked across the sidewalk. So pedestrians walking down the sidewalk would have to navigate either around them or potentially even into the street to get around them as they're walking. That's one issue. The other issue is all of these pictures show is the visual clutter of having this, all these vehicles parked there and so, you know, in terms, to the extent that this street was designed as a mixed street to enhance pedestrian qualities, having all these vehicles there, it certainly doesn't, doesn't facilitate that objection.

Q Thank you. When you were taking the photos that you did of the street, were you also looking for, to take photos of any pedestrians walking along the street or were you focused on the street?

A No, I was focused solely on the street and parking violations. I would note that in the law school I attended they told me that you can't prove a negative by taking

pictures that don't show things, so --

Q I see.

MR. KNOPF: Okay. Thank you very much. I have no further questions.

MR. ABRAMS: Nothing further.

MS. HARRIS: No.

MS. ROBESON: All right. I do have one question. Is, did any of the parties submit the, either the hearing examiner's report or the resolution for the, what we've been calling the Hampden Lane project, not 4901, but the one at the corner of, the northwest corner of Arlington and Hampden Lane?

MS. HARRIS: I believe I did.

MS. ROBESON: I don't know the zoning case number.

MR. ABRAMS: What's the number?

MS. WILTSHIRE: It's 15617. It's sad that I know that, but I think that's the case number.

MS. ROBESON: Resolution number?

MS. WILTSHIRE: Yes.

MR. KNOPF: That's impressive.

MS. WILTSHIRE: I've been reading too much.

MS. HARRIS: It is 1060. Well, are you looking for the -- and the hearing examiner report or the --

MS. ROBESON: No, either one.

MS. HARRIS: -- that's the Council resolution.

MS. ROBESON: Either one.

MS. HARRIS: The Council resolution is 1060.

MS. ROBESON: I see. Okay. G-842. Okay. That's what I wanted to know. All right. With that, we will hear -- is that your, does that conclude your case --

MR. KNOPF: Yes.

MS. ROBESON: -- Mr. Knopf?

MR. KNOPF: Yes, it does.

MS. ROBESON: Okay. So with that, we will hear the applicant's rebuttal on May 13th beginning at 9:30 and this case is continued to them.

MR. ABRAMS: May we inquire as to how many witnesses and who they are in rebuttal?

MS. ROBESON: Yes, you may.

MS. HARRIS: You may, but I don't know with certainty that I can tell you that likely at least two witnesses, Mr. Irish and Mr. Radelescu are potentially, Mr. Irish and then potentially Mr. Kabatt, but I don't want to be held to that because --

MS. ROBESON: Mr. Kabatt was the traffic --

MS. HARRIS: The traffic engineer.

MR. KNOPF: So is it fair to say that we should be finished on the 13th then?

MS. ROBESON: It sounds to me like we're going to finish, exclusive of cross-examination.

MS. HARRIS: Right.

MR. KNOPF: Will there be, will the Hearing Examiner want closing arguments or what?

MS. ROBESON: I was going to see what the parties wanted to do as far as what time we finished on Monday and whether you prefer written or verbal oral closing statements. I don't feel the need in this case that there's a lot of legal issues that, well, there's legal issues, but I think you framed them in the testimony pretty well. So I'm not going to require closing, but if you would like to, for some reason you feel like you need to do written closing statements, I'll be open to hearing that.

MS. HARRIS: Does that mean that if -- how about verbal closing statements?

MS. ROBESON: Yes, I would like that.

MS. HARRIS: Right. Okay. But you're just saying the option is to also submit a written statement?

MS. ROBESON: Yes.

MS. HARRIS: Okay.

MS. ROBESON: And you can decide that when, you know, we can make a final decision at the end of the hearing.

MS. HARRIS: Oh, so it could be the hearing --

MS. ROBESON: I'm not going to require a written -- okay. I'm not going to require a written closing

statement at the close of the Monday the 13th hearing. So the other thing is I'm not entirely sure you'll have the last transcript. You will just barely have the last transcript available by that hearing and some people prefer to submit written closings because they have the transcript to refer to.

MS. HARRIS: Okay.

MS. ROBESON: So, but I'm not going to require --

MS. HARRIS: But if a party requests it, you'll keep the record open in order to seal that.

MS. ROBESON: I will.

MS. HARRIS: Okay.

MS. ROBESON: I will

MS. HARRIS: Okay

MR. ABRAMS: I just want to advise the Examiner that I'm leaving the country on the 24th.

MR. KNOPF: And never coming back after this case?

MR. ABRAMS: Never coming back. So --

MS. ROBESON: Well, that's great.

MR. ABRAMS: So if you want to schedule any oral argument, either do it before then or feel free.

MS. ROBESON: Okay. All right.

MR. KNOPF: Well, I presume oral argument would be on the same day?

MS. HARRIS: Wait, oral argument? You mean your

closing arguments?

MR. ABRAMS: Closing argument, yes.

MS. ROBESON: If we want to schedule, if we want to have written closing arguments.

MS. HARRIS: No, I think his point was verbal.

MR. ABRAMS: Verbal.

MS. ROBESON: Oh, I wasn't going to have you all come back simply for oral argument. I definitely --

MS. HARRIS: No, I --

MR. ABRAMS: So there will be no verbal closing statements?

MS. HARRIS: No, they will be, but if they occur --

MS. ROBESON: If we have --

MS. HARRIS: -- it will be May 13th.

MS. ROBESON: If we have time on the 13th --

MR. ABRAMS: Okay.

MS. ROBESON: -- we'll do that. We'll have verbal closing arguments or if the parties would prefer to do written statements, because, as I said, some people like to have the transcript before they do their closing, it's up to you. So, but I'm not going to require written closing statements in this case, all right?

MR. ABRAMS: Okay.

MS. ROBESON: With that, we will adjourn until

Monday, May 13th at 9:30.

MR. KNOPF: Thank you very much.

MS. HARRIS: Thank you.

MR. ABRAMS: Thank you.

(Whereupon, at 5:50 p.m., the hearing was adjourned.)

. Digitally signed by Tracy M. Hahn

ELECTRONIC CERTIFICATE

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 in the matter of:

4831 West Lane, LLC
Local Map Amendment No. G-954
4831 West Lane, LLC
Development Plan Amendment No. DPA 13-01

By:

Tracy M. Hahn, Transcriber

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OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS

FOR MONTGOMERY COUNTY

4831 WEST LANE, LLC **LOCAL MAP AMENDMENT G-954**	:	**Case No. G-954** **DPA 13-01**

A hearing in the above-entitled matter was held on May 13, 2013, commencing at 10:00 a.m., at the Stella B. Werner Council Office Building, 100 Maryland Avenue, Second Floor, Rockville, Maryland 20850 before:

Lynn A. Robeson

Hearing Examiner

A P P E A R A N C E S

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* * * * *

C O N T E N T S

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Chris Kabatt				
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E X H I B I T S

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P R O C E E D I N G S

MS. ROBESON: This is a continuation of the public hearing in the matter of Local Map Amendment No. G-954, filed by 4831 West Lane, LLC, which requests rezoning from the R-60 to the TR-R zone, a property known as 4901 Montgomery Lane. It's also a continuation of the hearing in Development Plan Amendment No. DPA 13-01 filed by the same applicant which requests an amendment to the Development Plan approved by the District Council on July 10, 2007, in zoning application G-843. Yes, Mr. Knopf?

MR. KNOPF: I believe you read a wrong number.

MS. ROBESON: I did?

MR. KNOPF: I heard 4901.

MS. ROBESON: That's for the rezoning, which is a smaller -- oh, and the West Lane right-of-way associated with lots 24, 25 and 26 Edgemoor subdivision.

MR. KNOPF: It's 4901?

MS. ROBESON: I will check.

MR. KNOPF: I thought 4901 was the, is the property at the corner of --

MR. ABRAMS: Hampden Lane.

MS. ROBESON: That's 4901 --

MR. KNOPF: Oh, Hampden Lane?

MS. ROBESON: Yes.

MR. KNOPF: I'm sorry. I'm sorry. I got the

wrong 4901.

MS. ROBESON: All right. I believe -- is there any other preliminary matters?

MS. HARRIS: I have two --

MS. ROBESON: Yes?

MS. HARRIS: -- preliminary matters.

MS. ROBESON: Yes?

MS. HARRIS: One was we had submitted a letter last week regarding additional binding elements.

MS. ROBESON: Yes. I saw that.

MS. HARRIS: And what I'd like to do is introduce the new Development Plan that reflects those binding elements.

MS. ROBESON: Okay. Well, we can do that as part of your rebuttal case.

MS. HARRIS: Okay. That's fine.

MS. ROBESON: All right?

MS. HARRIS: And then the second preliminary matter was I understand that a representative, actually the president of the association of the Villages of Bethesda, after learning of the testimony of opponent's case two weeks ago, would like to testify as well and so they want to -- they would like to testify and we're fine with them doing that before our rebuttal testimony.

MS. ROBESON: The only thing is, is he

representing the Villages of Bethesda?
MS. HARRIS: Yes.
MS. ROBESON: The only thing is that they have to give 10 days' notice of, if you testify on behalf of an organization. He could testify as an individual.
MS. HARRIS: As an individual? And then he can --
MS. ROBESON: But he can't represent that he speaks for the association or, you know, I could leave the record open for 10 days and allow you the opportunity to respond. Opposing --
MR. KNOPF: I thought this hearing was reserved for rebuttal? I thought everything was on rebuttal?
MS. ROBESON: Well, it was --
MR. KNOPF: If he wasn't a party, is, he wasn't an interested party. Did they --
MS. HARRIS: No, and I believe his testimony will explain the reason why they hadn't and it was only after learning of opponent's case that they decided that they needed to have their voice heard as well.
MS. ROBESON: I'm going to let him testify. The only issue is whether you would prefer to keep the record open. We usually keep the record open 10 days. Whether you wish to allow him to testify on behalf of the Villages or whether you, whether he should testify as an individual.
MR. ABRAMS: Well, we obviously don't have the

opportunity to have considered what his testimony would be. If they want to submit a letter and we have an opportunity to respond to that letter, I guess I don't --
MS. ROBESON: So you would prefer to keep the record open for a, for him to submit something in writing and give you the opportunity to respond?
MS. HARRIS: But, I mean Mr. Abrams's comment about not knowing what he was going to say, similarly, we, we didn't know what the individuals of the Highrise Edgemoor or the City Homes or their association representatives were going to say until they said it.
MR. ABRAMS: But this is rebuttal.
MS. ROBESON: No. This -- they filed a prehearing statement on behalf of the homeowner's associations. They're the entity. And the question here is whether he can speak on behalf of the association. He can speak as an individual, but I hesitate to do that because, you know, it's very difficult when somebody comes on behalf of an association and has to change everything to I at the last minute. Is -- do you have an objection if he submits, if the association submits something in writing while the record is open and allows the other parties an opportunity to respond?
MS. HARRIS: I would prefer for him to be able to testify to what, to it. He submitted -- and, in fact, he

did submit a letter into the record early on. I mean the letter from -- and I don't --
MS. ROBESON: No, I remember the letter.
MS. HARRIS: Okay.
MS. ROBESON: But he hasn't been a party at the public hearing.
MS. HARRIS: Well, how about if I then call him as my, one of my rebuttal witnesses as an individual?
MS. ROBESON: This --
MR. ABRAMS: She identified who her rebuttal witnesses were supposed to be at the end of the last hearing.
MS. HARRIS: No, I think you said do you have --
MR. ABRAMS: Mr. Irish --
MS. HARRIS: -- no.
MR. ABRAMS: -- and Mr. Kabatt.
MS. ROBESON: Let's do -- what I'd like to do is this. I'd like to hear from citizens, but it is a critical issue in the case and if -- I would prefer to hear from the associate, the official position of the association rather than him as an individual because I think that carries more weight. So what I'll do is leave the record open and allow for a certain period of time and allow Mr. -- the --
MS. HARRIS: Blocher?
MS. ROBESON: Yes, thank you, the representative

to submit something in writing on behalf of the association. And then I'll allow opposition an opportunity to respond and then if you wish to have additional opportunity to respond to their response, you know, we can do it that way.
MS. HARRIS: Okay. May I just suggest one variation of that --
MS. ROBESON: Okay.
MS. HARRIS: -- and that is hold the record open and then hold one last hearing date --
MR. ABRAMS: No.
MS. HARRIS: -- in 10 days to allow Mr. Blocher to testify and then we can take care of it at that moment?
MS. ROBESON: Why -- I don't see why that would be necessary unless Mr. Abrams wants cross-examination.
MR. ABRAMS: No, I don't want any cross-examination, plus the fact that I'm going to be out of the country starting May 25th. And if we have a letter resubmitted, that would give me an opportunity if they submit it within, you know, five days or seven days or whatever to respond and cut it off at that period of time.
MS. ROBESON: Okay. We would do that, sorry. I would prefer to hear from the association and if there's no need for cross-examination, then I would prefer to hear in writing and it can be detailed. It's not that I want to shut anybody down from testifying, it's simply that it's

cleaner and better if I hear from the association itself, okay?

MS. HARRIS: And so, just to be clear, once Mr. Blocher submits his letter on behalf of the association, then opponents will have how many days to respond? I just want to make sure we're all aware of what the schedule would be.

MS. ROBESON: Well, let's hold off on that until we get through this hearing --

MS. HARRIS: Okay.

MS. ROBESON: -- just to make sure that there's nothing else that -- once in a while there's some things that need to be cleaned up.

MS. HARRIS: Okay. Certainly.

MS. ROBESON: So let's hear, let's hear from at the end of the hearing -- I'm going to make a note. Okay. So with that, if you could launch your rebuttal?

MS. HARRIS: Proceed with our rebuttal? Yes. Okay so our first rebuttal witness is going to be Mr. Chris Kabatt and we will be calling Mr. Kabatt, Mr. Irish, Mr. Radulescu and Ms. Wiltshire as our rebuttal witnesses this morning.

MS. ROBESON: Okay. Thank you.

MS. HARRIS: And hopefully the imperative word is this morning.

MS. ROBESON: Mr. Kabatt, you're still under oath.

MS. HARRIS: Thank you.

DIRECT EXAMINATION

BY MS. HARRIS:

Q Mr. Kabatt, you previously testified as to the peak hour trips that the proposed building will generate. Can you please remind the Hearing Examiner of what those were?

A Yes. The 120 units proposed would generate 36 a.m. peak hour trips and 36 p.m. peak hour trips. I will remind you that the existing uses on this site generate 16 a.m. peak hour trips and 11 p.m. peak hour trips. So that is an increase of 20 trips in the a.m. and 25 trips in the p.m. peak hour.

Q And if the proposed project were reduced to 100 units, how would these numbers change?

A Well, 100 dwelling units would generate 30, excuse me, 30 a.m. peak hour trips and 30 p.m. peak hour trips. Using those same existing numbers, the additional trips would be 14 trips during the a.m. peak hour and 19 trips during the p.m. peak hour.

MS. ROBESON: I'm sorry, the gross new trips, what was your p.m. peak hour, not net of the existing trips?

THE WITNESS: For the 100?

MS. ROBESON: Yes.

THE WITNESS: For 100 dwelling units, it's 30 p.m. peak hour trips.

MS. ROBESON: Oh, and how many a.m.'s?

THE WITNESS: 30.

MS. ROBESON: Oh.

THE WITNESS: The rate is the same for a.m. and p.m.

MS. ROBESON: I thought I missed -- and then net of the existing trips is 14 a.m.'s and how many p.m. trips?

THE WITNESS: 19.

MS. ROBESON: 19? Okay.

BY MS. HARRIS:

Q And in your professional opinion, is this a significant change between 120 units and 100 units?

A No, the -- just as a reminder, the number of trips that would be generated by the 120 units is insignificant and that, the 120 units as talked about in my previous testimony equates to about one car every 2 1/2 minutes on Montgomery Lane. And any reduction in the number of units would obviously reduce this number further. But, again, it's already a very low number on the street that has a limited capacity for traffic.

Q So just to be clear, the existing, the proposed would generate 2 1/2, one trip every 2 1/2 minutes, correct?

A Yes.

MS. ROBESON: During the peak hour?

THE WITNESS: During the peak hour.

BY MS. HARRIS:

Q And then if you were to reduce the number of units, does that 2 1/2 minute span where an additional new car goes by, does that increase?

A Yes.

Q Okay. Do you have any -- and your opinion about that new car every 2 1/2 minutes is what?

A It's insignificant.

Q Thank you.

MS. HARRIS: That's, those are our only questions for Mr. Kabatt.

MS. ROBESON: All right. Any questions, Mr. Abrams?

MR. ABRAMS: Yes.

CROSS-EXAMINATION

BY MR. ABRAMS:

Q Mr. Kabatt, was one of the critical intersections that you examined, but it was studied, Montgomery Lane and Arlington Road?

MS. HARRIS: Objection. He just testified to the number of new trips on Montgomery Lane. He didn't get --

MS. ROBESON: Sustained, unless you can tie it into the trip generations.

MR. ABRAMS: Well, I think it is tied in. He has to determine the number of trips going through critical intersections and what he's done is to determine on two levels what that would be. My question is was one of the intersections that he's talking about, this traffic going through, Arlington Road and Montgomery Lane?

MS. HARRIS: But that's not what he testified to.

MS. ROBESON: No, he -- I agree. So I'm going to sustain. Do you have other questions?

MR. ABRAMS: No.

MS. ROBESON: Mr. Knopf?

BY MR. KNOPF:

Q What -- how do you arrive at the figures that you arrived at as to how many new trips would be generated?

A The trip generation rates are -- we used the rates that are published in the local area transportation review guidelines. It's for this use -- in Bethesda it's CBD. It's .3 trips per unit.

Q And you said --

A And that's for the -- so that's what we used for the estimate of the 120 units and the 100 units and then the existing trips were based on driveway counts.

Q And is the .3 units, is there a separate figure for whether it's rental as compared to condo?

A No.

Q Or is it the -- it's the same?

A It's the same.

Q Would you agree with me that on rentals in a high-price rental area it's not uncommon that people, unrelated people share an apartment to pay the rent and each has a car?

A I would not agree with that.

Q You wouldn't? Do the point, does the .3 figure, is that based on people living in the unit driving alone or does that include deliveries?

A It includes all trips using the driveway.

Q In the driveway?

A Well, it includes all trips coming to and from the site. I -- there were several sites that the Commission had used and gathered data over years to come up with these rates.

Q And do you know if it limits deliveries of, whether moving goods or food delivery or cleaners or what have you, it's, or it's based on the number of trips a person living in the apartment is apt to make?

A It's all trips coming to and from the site.

Q And are there different trip generation needs depending on the location of the building, are you talking about in Montgomery County like if it's in the CDD, if it's a Metro, if it's not near a Metro and so on?

A The guidelines, the LATR guidelines, they have rates for the general County, they're called county-wide rates and then they have specific trip rates for the Bethesda CBD, Friendship Heights CBD and Silver Spring CBD.

Q And which trip did you use the CBD from?

A The Bethesda --

Q Bethesda CBD --

A -- CBD rates.

Q And this is for -- there's no distinction -- let me make clear, no distinction between rental and condo?

A Correct.

Q Just one moment. Excuse me. Is this property located within the CBD?

A Yes.

MR. KNOPF: I have no further questions.

MS. ROBESON: All right. Any redirect?

MS. HARRIS: No, thank you.

MS. ROBESON: All right.

MS. HARRIS: You're good to go. Thank you. Our next witness is Mr. Morris Radulescu.

MS. ROBESON: Mr. Radulescu, you're still under oath.

DIRECT EXAMINATION

BY MS. HARRIS:

Q Mr. Radulescu, there's been extensive discussion

on the tenting concept. Based on your review of the Sector Plan and the surrounding existing approved projects, can you please state in your opinion what the intent of the tenting concept is?

A First of all, tenting is referred to, a general term meaning that there is a concentration of height, in our case close to the Metro or around Wisconsin Avenue and the general transition to a lower height on Arlington Road. The tenting is not a physical tent that needs to span to points, but is a general idea that the overall skyline needs to gradually move down from the higher edge from Wisconsin or on a business, on the business core towards Arlington Road.

Q In your opinion, if there are variations within that tent, so you may have one building that's higher than another on either side of it, architecturally what's your opinion about that kind of situation?

A I think that the tenting has to be tied up to the overall guidelines in which the desire is to form a variety of skyline in order uniform reading and we just need to look at what has been approved on Hampden Lane in which, yes, there is a general tenting, but there is not a little tent actually that unifies all these roofs and you can see how on the east side of Arlington, of Hampden Lane, there's a building of 71 feet or something like that. And then there are buildings which are lower than the 4901 Hampden Lane.

It's high and then it goes low again. But there is an overall skyline that generates this gradual transition from high to low.

Q And just to confirm one thing, you just mentioned 4901. Were you, in fact, referring to the building that's been referred to as Hampden Lane at the corner of Hampden and Arlington?

A Yes. Yes, on the --

Q That's the one that steps down?

A -- northwest corner of Arlington and Hampden Lane.

Q Thank you. And just to be clear, on the Exhibit 106(f), can you just point to the one you were just referring to?

A Yes. I'm referring to -- this is 4901 Hampden Lane.

MS. ROBESON: Well --

THE WITNESS: The building --

MS. ROBESON: -- in the southwest corner, I think that's just Hampden Lane. I think 4901 is the building --

THE WITNESS: Oh, yes, Hampden Lane, yes. I was referring to the building --

MS. ROBESON: So that's what we --

THE WITNESS: -- on Hampden Lane --

MS. ROBESON: Yes.

THE WITNESS: -- and Arlington Road.

MS. ROBESON: So you're -- okay.

THE WITNESS: So I'm referring how this overall, these are transitioned from high on Wisconsin on a business core to Arlington Road, but there is a variation in height and I think that that's the goal of the Sector Plan.

BY MS. HARRIS:

Q Thank you. There's been many suggestions from opponents of how the boning could simply be set back here and shortened there. I think it's important to explain the practical considerations behind how the design of the building, or any building for that matter, is achieved. Can you please explain the various parameters that mandate how you derive a design, how you derive the design of the building?

A First of all, our building is not an empty shell. It's not like an office building or even, let's say a shell of a mall or retail. There is a precise program that you need to respond. There's a precise code, a precise regulations and then also a need to respond to the market rates. So when you put all these things into consideration, let's say the size of a bathroom that you need a wheelchair to go in and out of, the clearance is -- a kitchen and so on and so forth. So when you build all this stuff up, you end up with a pretty much an optimal dimension for the building. So it's not, it's just moving here and compensating there is

going to generate a building. It's not really -- I mean there are flexibilities but, again, it's generated by pure functional and code and market issues.

Q And can you explain what was the effect of the increase of the step-back from nine feet to 12 feet?

A Yes. First of all, we, that increase accomplished one thing, is it made that nine foot step-back a more functional terrace if you have 12 feet. But then it pinches the units up to a point that you can no longer functionally develop them into something that you can rent or meet the code or -- so there are also considerations coming from inside the building towards the outside. There's forces outside, a lot of them actually, trying to push the building in. So that was a blend, an optimal, again an optimal solution to meet the criteria.

Q And is there an actual linear dimension in terms of what that ideal modular may be?

A Well, the linear meaning on the facade on, the linear optimal dimension is about 24 foot along the facade. That's an optimal. And then there's an optimal depth. Of course, you can pinch a few inches, but it's not that you can actually shove the building in. That optimal dimension would be 65 feet, around that number.

MS. ROBESON: Wait, which dimension is 65?

THE WITNESS: Well, I would just explain on the

exhibit 106(f).

MS. ROBESON: Okay.

THE WITNESS: So let's say along the street there is a ring of units and the dimension of the unit is about 24 feet for a 1-bedroom.

MS. ROBESON: Oh, I see what you're saying.

THE WITNESS: And then the depth of the building, so, is one or cut the building --

MS. ROBESON: Right.

THE WITNESS: -- that dimension will be, depending on what's inside, but there are just two units in the corridor, that would be around 65 feet. So as you know, the building, you have to find other ways and there only that many things you can -- again, if you think of a, the elements that you cannot really change is the bathroom and the kitchen and it's only that many stuff that you can do and then you end up with a unit. So you can look most of the buildings are that initial for a reason, it's not that we don't want to change them.

BY MS. HARRIS:

Q Mr. Irish noted that the footprint of the building decreased by 87 feet and there was some interest, including from the Hearing Examiner, in terms of how did that reduction in the footprint translate in terms of FAR. Can you please explain that?

A Yes, I remember actually, yes, the questioning about the discrepancy of a 87 square foot. I just want to point out for comparison that 87 square feet is the size of a walk-in closet or the size of a bathroom. So if you distribute that over the overall 120 units, that's -- that's a minute detail. Now there are a lot of things that contribute to how we calculate the FAR, the GSF, the gross square footage of the building. And, but I want to say that there is a starting point, sorry, and the starting point that we have a maximum FAR and that one is fixed. Then we have various setbacks. So we have, in effect, in a fixed angle or a fixed volume in which you can put this building.

Now 87 square foot, just to give an example, the perimeter of the building is around 450, maybe 470 square feet. So if I change from metal to brick, the building moves in, I don't know, an inch. So that, an inch is what, .8 of a foot, multiplied by the perimeter, you end up with 40-something feet by two floors. That's 80 feet. So there are these minute things that at the end, they end up with the number, but then 87 foot over the overall size of a building is just -- so that's the difference. That's why we have a difference and we're not going to know the precise number until we finish detailing the building. But, again, we have a fixed sample. We have a limited height. We have a limited FAR that generates your limited gross square

footage and we have various setbacks. So that's the part I'm making the opinion toward.

Q Thank you. Another subject that received a lot of attention was the architectural compatibility. As you know, the TSR zone requires site plan approval. What level of architecture does the Planning Board review at site plan?

A Well, generally at this level we, it's not the detail of architecture is not the intent of the site plan, it's just to get the general zoning issues which are the density, the height, the setbacks in compared to what has built around. So it's not really minute details of architecture.

Q And at the time of site plan, does the, do you know whether the site plan requires schematic level design for architecture at site plan?

A I think it's the level that we already presented, so it's --

Q Okay.

A -- the level of --

Q At this point, do you have a general level of what -- do you have a general sense of the schematic design of the building?

A Yes. It's the level that we already presented. When we look in the context of the surrounding area and we saw a variety of styles, a variety of languages, but there

is some unifying feel which is probably, let's say, there's the brick overall in the residential feel and we designed the building in that context. We, as I probably mentioned already in my previous testimony, is that we designed the building to be a contemporary interpretation of traditional composition which is the middle, is a base, a middle and a top and there are different elements into that, but there's a residential feel to it, the fenestrations, the color of the brick, the texture, they all contribute to this unifying element.

Q Can you explain the top two floors of the building and why you chose to treat them differently than the base or the middle of the building?

A Yes. We wanted the building, the top of the building to feel a little lighter and I think that the change of material was a best way to do it. Why? Because the brick has, I mean not only the physical weight to it, but it has a texture, it has a -- it doesn't reflect light. So it makes for a heavier, a heavier reading, while the top being metal, it will reflect to some extent the color of the sky. If you have a cloudy day, the metal looks different than on a sunny day. Sunsets and sunrise and, so the building will appear different. It will appear lighter. So that was the reason for adding or for designing the top differently than the middle.

Q And can you please explain in your opinion would a setback along Montgomery Lane, I'm sorry, along West Lane, and a step-back, what, in your opinion what, if anything, would that achieve? And I'm referring to Exhibit 75.

MS. ROBESON: Can you refresh my memory and what aspect, what are we looking at in 75?

THE WITNESS: This is the West Lane elevation.

MS. ROBESON: Okay.

THE WITNESS: So is the east elevation of the view. Montgomery Lane would be --

MS. ROBESON: Okay.

THE WITNESS: -- on the left-hand side of the right-hand side image.

MS. ROBESON: All right. Thank you.

THE WITNESS: And on the left-hand side image of the exhibit is a detail of, a blown-up detail of the West Lane facade. So this one has the base which shows the justification of the, a middle portion which has a vapor ejection and the top that is here.

Now we talk about Montgomery Lane and why what we have is enough in terms of architecture reading. If you just look at the context, the building across the street has the same reading. The windows, of course, have been --

MS. HARRIS: When you say --

THE WITNESS: -- I forgot the name of the

building --
MS. ROBESON: 4825 West Lane?
THE WITNESS: Yes.
BY MS. HARRIS:
Q Well, why don't you point to it on Exhibit 106?
A Yes, it's this.
MS. ROBESON: Oh, 4825 Montgomery Lane?
MS. HARRIS: Yes. It's the two-week gap in the hearing.
MS. ROBESON: That's right.
THE WITNESS: So that building, again, has a base, a garage base, a middle and a top, but it's just an extrusion. So they built this building of different elements but, again, the building goes straight up. We actually have indentation, our facade is not flat. In fact, for more than half of it is different. We have a start point or the intersection of Montgomery Lane and West Lane where the building carves in. Then we have the middle portion would have this three-bay projections so the, again, the facade is not just a straight line.
And then as you go towards the end of the property on the north end, there's also a projection that starts about four foot on the south side and then the northeast corner is about eight foot. So you have all these indentations in the building to give you the residential or

a scaled-down facade. Doing anything else would be -- I mean it will not achieve anything else that the building doesn't achieve already.
MS. HARRIS: Can, in, can you --
MS. ROBESON: What do you mean a scaled-down facade?
THE WITNESS: Well, instead of having a continuous wall, we have a wall that -- and if I can point to Exhibit 106(b), you can see how the facade on West Lane is not a straight line. It has a zigzagging indentation so there are years that as you walk down the street or up the street, and if you look on an oblique, you see these over-sized townhouse buildings. So that was the elements --
MS. ROBESON: How far does that project?
THE WITNESS: The projection is a foot.
MS. ROBESON: Okay.
THE WITNESS: And also, and this reading is different than, than the spacing between in which we have this, again, a bay-like, a bay projection, but the bay reading with French balconies. So it's not monotonous. It's a series of paths.
BY MS. HARRIS:
Q And -- go ahead.
A Yes?
Q Well, you indicated that it projects a foot and

then can you, all the way on the northern side, what's -- can you see what that projection is?
A On the northern side, because the, we have a, an element, the projection here on the north end is about four foot on the south side of this projection and on the north end is about eight feet. So again, with a curve and with the zigzagging, this is not a straight facade. So it does a lot.
MS. ROBESON: Now what is -- I'm sorry, I'm not recollecting the Montgomery Lane facade. Does that have the same kind of projections or not?
THE WITNESS: The Montgomery Lane has other elements. First of all, for --
MS. ROBESON: Do you have an elevation of Montgomery Lane?
THE WITNESS: Yes. That would be Exhibit --
MS. HARRIS: That's, no, that's not it.
THE WITNESS: Oh, that's not --
MS. HARRIS: It's the one before that one, I think.
THE WITNESS: That's Exhibit 73.
BY MS. HARRIS:
Q On which side of it is Exhibit 73?
MS. ROBESON: On the left.
THE WITNESS: The left. Yes.

MS. ROBESON: It's hard. It's --
THE WITNESS: So the left-hand side has the Montgomery Lane facade. And I'm pointing to this bay reading, so we have the same higher window with finished balcony's reading and then French windows. So we have the same reading. And then for two-thirds of the facade we have this curve corner element. So in a small linear footage, again, we try to make, to introduce architectural element to make the facade as interesting as possible.
MS. HARRIS: Now --
MS. ROBESON: Can I ask one question? I don't know if you were here for -- I can't remember the name of the woman, I think she lived in Edgemoor who was --
MS. HARRIS: Linda Skalett?
MR. KNOPF: Skalett, Linda Skalett?
MS. ROBESON: Yes. And she noted that the exhibit you had with all the different, you had different buildings, areas. She noted that the other, the elevations that you showed of those buildings didn't front on Montgomery Lane and, therefore, perhaps shouldn't be given as much weight architecturally as -- do you know --
MS. HARRIS: Yes. Can we get the exhibit?
MS. ROBESON: Yes.
MS. HARRIS: It's the one.
MS. ROBESON: It's this one.

MS. HARRIS: Very good.
MS. ROBESON: That's the one. Okay. Her point was that I think the one in the lower right is 4901 Arlington and the one in the lower left is what we've been referring to as the Hampden Lane project. And I think what she was saying is that those, using those as part of the area isn't as persuasive because they don't front onto Montgomery Lane. Which -- what is your response to that?
THE WITNESS: Well, the case is, you know, there is some persuasion, but not as persuasive as probably one would desire. Now currently this building is, doesn't face at all Montgomery Lane, but this one does. In fact, when you turn the corner, and I'm referring to 4901.
MS. ROBESON: 01. Well, her position was, and I'm really just asking because I want to know, her position was that the corner facing Montgomery Lane has a different architecture than that, it's more traditional.
THE WITNESS: Yes, as far as I know, this really has a consistent reading throughout. It doesn't -- I'm sure it doesn't have a statue on the corner or a Greek capital --
THE WITNESS: Well, she, she said that that design has changed, that that is no longer the current design of that building.
THE WITNESS: But even leaving this aside --
MS. ROBESON: Yes.

THE WITNESS: -- in fact, at the top of the exhibits we are using --
MS. ROBESON: Okay.
THE WITNESS: -- the buildings that are facing, so in a way I can point to several elements, especially, probably in a larger scale that we have the same type of readings with this, or this outline I'm pointing to, the Edgemoor.
MS. ROBESON: Okay.
THE WITNESS: And, in fact --
BY MS. HARRIS:
Q Can you explain that a little bit more for those that --
A So --
Q -- pretend we don't know anything about architecture.
A So --
MS. ROBESON: Yes, please.
THE WITNESS: -- what, what --
MS. ROBESON: You don't have to pretend.
THE WITNESS: So what the building does, I mean it has a brick wall, but you do some detailing on how you lay out the brick, you know, you set it out such that the brick wall has more texture in here and, therefore, it grounds the building. So it forms a base. So this is, we are doing the

same thing. Then here's a series of stacked, large windows with balconies and then you have French windows with pretty much the, we have the same type of reading.
If you look at the other two exhibits, other two images and one is City Homes and the other one is --
MS. ROBESON: 4825 Montgomery Lane.
THE WITNESS: Yes. That building. Again, they are doing base, middle and top, base, middle and top, same French windows, same spec, larger element. The overall is brick at least in these images. So we are within the same -- we are not trying to reproduce them by design. I'm not trying to reproduce any of these buildings. Our market is different.
MS. ROBESON: Yes.
THE WITNESS: But I think that very, what we did very well blends in with overall residential character of the street.
BY MS. HARRIS
Q Do you happen to know whether the building, 4901, whether that has site plan approval?
A I think it does, site plan, but I'm not sure.
Q Okay.
THE WITNESS: Wait --
THE WITNESS: Maybe I --
MS. ROBESON: -- 4901 is the one, at the lower

right?
THE WITNESS: Oh, this one? I was --
MS. HARRIS: No.
THE WITNESS: This one I don't know. I was --
MS. HARRIS: Okay. Okay.
BY MS. HARRIS:
Q Are you also aware in terms of the, well, I think you touched on this, but is there anything else you want to explain in terms of the building design and in terms of its compatibility with the surrounding area?
A Yes. Again, maybe we should go to the definition of compatibility. Compatibility doesn't mean sameness, it means that it has, overall its size, scale, function goes into this dialogue with the neighborhood and obviously this building does, I mean our design.
Q Thank you. And then, finally, can you please read the highlighted portion of Exhibit 106(j) which is the transcription from the Planning Board hearing?
A Okay.
MR. ABRAMS: Objection. I mean it's in the record.
MS. ROBESON: Yes.
MR. ABRAMS: Why do have to waste more page space?
MS. ROBESON: He doesn't have to read it. I mean --

MS. HARRIS: Okay.
BY MS. HARRIS:
Q Do you have anything else to add in terms of the architecture of the building?
A It's, I'm just, again, looking at the building that we designed and I think that the fact that we incorporate a lot of residential elements into it, I mean not, we incorporated residential because it has to function as residential, not necessarily because we have a laundry list. We did it because we feel that that's the right thing to do because of scaling in front of its proximity to a Metro station and its location on a residential street, on a small scale residential street, I think that we incorporated all the elements necessary for the building to be successful.
Q Thank you.
MS. HARRIS: No further questions.
MS. ROBESON: Okay. Cross-examination, Mr. Abrams.
CROSS-EXAMINATION
BY MR. ABRAMS:
Q Let's start with your last statement, you incorporated a lot of residential elements into the building. Why did you eliminate or why did the applicant eliminate bay windows on the front?

A We have a bay reading on the front. The fact that you have a physical element or not, the idea is to incorporate elements that will blend into the overall architecture. How we did it, in fact, we project, we don't project, we can go back to that exhibit and look at it. It has what it takes to read as that. We have French balconies. We have stacked windows. We have larger windows. We have out in-between large windows and bunched windows, so it achieves what the bay window needs to achieve.
Q But it's not a bay window?
A No.
Q In fact, wasn't a bay window a binding element of one of the earlier designs?
A I don't know.
Q Didn't you make, didn't you design this project?
A Designing and binding elements are different things. In other words, we, as we start designing, the building evolves. So I don't know if the first sketch we did had the binding element or not.
Q Now would the, would the bay windows be an element more associated with a residential design than an office building or commercial design?
A I think that the architecture has to be judged in its totality. You cannot say that a gutter or a gargoyle or

a fireplace makes the building residential or not residential. I think the building has to be judged as a whole.
Q Do you know of any office buildings or commercial buildings that you did bay windows in Bethesda?
A There are very few buildings in Bethesda to make an overall description of that overall direction of architecture, but I can point to several buildings within the Beltway that have them for different reasons.
Q Okay. At the beginning of your testimony, you discussed the tenting concept. In terms of the TSR district, doesn't the Sector Plan really address the tenting concept from Woodmont Avenue down to Arlington Road?
A We have, but then we have from Wisconsin Avenue to Arlington Road.
Q No, I'm, I asked you about the TSR zone or the TRS districted as it's described in the Sector Plan.
A Right. And I believe it's --
Q Doesn't it describe the higher densities, higher heights along Woodmont Avenue transitioning down to 35 feet along Arlington Road?
A I do not recall the exact --
Q You don't recall?
A -- language.
Q Thank you. In terms of the tenting concept

overall, you have the higher buildings closer to the core of Metro, correct?
A Yes.
Q And how high are those buildings?
A I do not -- probably we have an exhibit. I do not know numbers or anything.
Q Well, how can you testify as to tenting if you don't know how high the buildings are?
A Because we have an exhibit that incorporates the height of the building and I can --
Q Well, why don't you address the exhibit and we can testify to that?
A One second. I have to find it. It's a 79.
Q Is that from the Metro core?
A This is through Montgomery Lane.
Q Well --
A So the Metro core will be --
Q Okay.
A -- on the right-hand side of the page.
Q Now the Metro core has higher buildings than what was associated along Montgomery Lane between Woodmont Avenue and Arlington Road, is that correct?
A I don't know. I can refer to this exhibit.
Q Okay. The building to the right --
A Yes.

Q -- all the way to the right, that's higher than any building in the TSR district, is that correct?
A It's higher on this exhibit, yes. I don't know -- in fact, the building, it refers to only this building. So what we did, we took an exhibit through Montgomery Lane because this is where we want to design the building, so --
Q When you come down from that higher building on the other side of Woodmont Avenue that you showed on the right-hand side of that exhibit --
A Okay.
Q -- you come down to, as shown on that exhibit, the big Edgemoor, is that correct?
A This is the Edgemoor, yes.
Q Okay. Then you come down to what, what's the next highest building?
A Sandy Spring.
Q Okay. And that's lower, is it not, than the subject property?
A Yes, theoretically, yes.
Q Okay. So in terms of a tenting concept in a layman's terms, it really is not a straight, diagonal-type line, it's sort of a high, low, high line?
A Right.
Q Okay.
A And I testified how that is beneficial to the

overall skyline.
Q Now you also testified as to the Hampden Lane building being the building down on Hampden Lane and Arlington Road, correct, in terms of this overall tenting concept?
A Yes.
Q Now that building has several heights receding from the west going eastward, does it not?
A Yes, it does.
Q Okay. And the highest one I think you said was 71 feet?
A Around that number, I don't know.
Q And are you aware that there's approximately a 12-foot height differential between Hampden Lane and Montgomery Lane?
A Well, what I'm aware of is that the portion of this building --
Q Well, can you answer yes or no?
A What is the question?
Q The question is, are you aware of the approximate 12-foot height differential between Montgomery Lane and Hampden Lane?
A 12-foot difference between what and what, I'm sorry?
Q Between Montgomery Lane's elevation and Hampden

Lane's elevation?
MS. HARRIS: Objection.
MS. ROBESON: I think he's referring to the ground elevation.
MR. ABRAMS: Ground elevation.
MS. HARRIS: He --
THE WITNESS: Probably somebody who did the site plan is qualified to talk about it.
MS. ROBESON: Well, you can answer if you're aware of it.
THE WITNESS: I am aware of a height. I don't know the number.
MS. ROBESON: Okay.
BY MR. ABRAM:
Q Okay. If you took the difference between -- and let's just use these numbers as an example, if you took the elevation of Hampden Lane and that was 12 feet lower than the ground elevation of Montgomery Lane on the same parallel Plane, wouldn't that effectively reduce the effect of the height of Hampden Lane to 71 minus 12, 59 feet?
A Well, it's difficult to answer. Why? Because you're asking me about a project that we didn't design. So I understand you throwing numbers at me and wanting me to respond, but it is beyond what I prepared for, they are not, you know --

Q Well, you testified as to the overall concept, the skyline, what that would be in terms of the tenting concept?
A Yes.
Q Okay. If you look down from Woodmont Avenue and you're standing on Woodmont and Montgomery Lane --
MS. ROBESON: If it helps, why don't you put that exhibit on the -- what exhibit is that?
THE WITNESS: That's Exhibit 106(f).
BY MR. ABRAMS:
Q If you're standing on Woodmont Avenue and Montgomery Lane, and you want to get the overall view of how this tenting concept works in the TSR district and you're focusing on the Hampden Lane building on Hampden Lane and Arlington Road, and this street, Hampden Lane, is approximately 12 feet below this street, which is Montgomery Lane, okay, in terms of the elevation of those streets. Now when you look down in that direction, doesn't the building appear lower than 71 feet, first of all?
A 71 feet will be measured from a point relevant to the site of this building. So if you, just to give an example, if you sit on Mount Everest, yes, the building would be lower. So, of course, if you sit on a higher ground or a lower ground, the building would be lower. But I just want to point out that if you are sitting where the intersection of Montgomery Lane and Woodmont, your view will

be blocked, so the building will be irrelevant for this particular intersection.
Q Okay. Move down so that this building doesn't block you, move down westward on Montgomery Lane.
A Yes.
Q Doesn't the appearance of this building lower than 71 feet?
A Well, again, the building is on a different block. Let's concentrate on this block.
Q But we're talking about the TSR district?
A Right.
Q And the TSR district Sector Plan recommendations has a tenting concept for the entire street?
A Okay. The tenting -- let's point to the tenting that's on West Lane.
MS. ROBESON: Okay. Okay. You need to answer his question.
THE WITNESS: Yes, but the questions are not --
MS. ROBESON: Just --
THE WITNESS: Okay. The --
MS. ROBESON: I know your pain, but --
THE WITNESS: I hear fine, believe me, but --
MS. ROBESON: No, I know you hear fine, but what I'm telling you is this is not the time to argue with Mr. Abrams. You have to answer his question which is if you

were standing slightly west from the intersection of Montgomery Lane and Woodmont and that building, 4901, was not blocking your view, isn't effectively the Hampden Lane project, which is in the southwest corner, isn't it effectively lower than 71 feet because of the --
THE WITNESS: No.
MS. ROBESON: -- elevation difference?
THE WITNESS: Because 71 feet is not measured from an absolute point on the earth. It's measured from the point --
MS. ROBESON: I understand, but what he's saying is if you had a 71-foot building located at 4901 --
THE WITNESS: Yes.
MS. ROBESON: -- all right, and you had a 70-foot building locate at Arlington and Hampden and they're both 71 feet, wouldn't the one at Arlington and Hampden appear lower?
THE WITNESS: If one would be able to see, which it would be not.
MS. ROBESON: And why wouldn't you be able to see it --
THE WITNESS: Because, because from Montgomery Lane your view --
MS. ROBESON: No, well, first just answer the question. Assume there's nothing there. I really --

THE WITNESS: Yes, but the question has no answer.
MS. ROBESON: I really --
THE WITNESS: Yes, but the question has no answer. That's what I'm trying --
MS. ROBESON: No, it does have an answer, it does because I think the answer is, yes, if you, if you can see the building. So --
THE WITNESS: I'm sorry, but I'm dealing in reality, not in this --
MS. ROBESON: No, I -- well, he can ask you hypotheticals and he's talking about the tenting effect in the district and he's trying to get to the fact that the ground elevation is going to render from a tenting standpoint, a 70-foot building at Woodmont Avenue is going to be higher than a 70-foot building at Arlington and Hampden.
THE WITNESS: Then it seems that there is already an answer for you.
MS. ROBESON: No, there isn't. I'm just -- I don't want to deal with -- you can deal with it later, but first I just want the answer to his question.
THE WITNESS: Right, but as I said, there's already a pre-made answer.
MS. ROBESON: What's the pre-made answer?
THE WITNESS: The pre-made answer is probably the

answer that Mr. Abrams wants to hear.
MS. ROBESON: Well, then give it to him.
THE WITNESS: But is it my answer or his answer? I mean --
MS. ROBESON: It's your answer.
THE WITNESS: And my answer cannot be answered the way he asked the question.
MS. ROBESON: No. No.
THE WITNESS: It is my answer.
MS. ROBESON: You don't understand --
THE WITNESS: Maybe I don't.
MS. ROBESON: -- how cross-examination works and maybe you shouldn't and hopefully maybe you never have to. But when he asks you a question like that, you need to answer his question even if it looks bad, you have to answer truthfully even if it looks bad for your, if you think it looks bad for your case. Your attorney is going to let you put in all the qualifications to your answer, but right now you just need to answer his question.
THE WITNESS: That, honestly, I don't understand what answer you, I mean --
MS. ROBESON: You don't understand what I just explained?
THE WITNESS: No, I understand. No, I understand the procedure now, but the question itself that one, if

we're standing here this building will be lower --
MS. ROBESON: Well, let me ask. Then let me ask the --
THE WITNESS: -- yes or no lower.
MS. ROBESON: -- question. Let me ask the question. Say nothing else is there, okay, nothing is on the ground and you have a 70-foot building located at Woodmont and Montgomery Lane and you have a 70-foot building located at Arlington Road and Hampden Lane. From a tenting standpoint, would the building at Montgomery, Woodmont and Montgomery be higher than the building at Arlington and Hampden?
THE WITNESS: If those two buildings are the same, say measuring 71 foot --
MS. ROBESON: No, no, no. In, if you're viewing it, if you're viewing the two buildings, I already know based on the zoning ordinance definition that they're the same height, okay? So we know based on the zoning ordinance, but if you were viewing those two buildings, wouldn't the one on Arlington be lower?
THE WITNESS: It will appear lower, yes.
MS. ROBESON: All right. I know you're doing -- don't worry, it's just you really do --
THE WITNESS: No, I won't.
MS. ROBESON: Okay. Keep going.

MR. ABRAMS: Okay.
BY MR. ABRAMS:
Q Let's go to the big Edgemoor. If we confine the tenting concept just to the TSR district, okay, Woodmont Avenue on one side and Arlington Road on the other side, the tallest building within that district is the big Edgemoor, is that correct?
A Yes.
Q Okay. And in terms of the tenting concept, and in terms of the Sector Plan, aren't the tallest buildings supposed to be closest to Woodmont Avenue?
A Yes.
Q Okay. And in terms of the tenting concept as it relates to the Sector Plan for the TSR district, doesn't this building, the big Edgemoor, basically raise the pole area, or this area of the tenting concept, going down to Arlington Road?
MS. HARRIS: Can you move back a little bit please? Thank you.
BY MR. ABRAMS:
Q Isn't that what that line on Exhibit 79 shows? Isn't that what that line on Exhibit 79 shows?
MS. ROBESON: The lower line.
THE WITNESS: Right, the lower line --
MR. ABRAMS: The lower line.

THE WITNESS: -- yeah, the lower line is a line that we made just to see where we are in terms of tenting.
BY MR. ABRAMS:
Q Okay. In terms of the tenting concept, as we speak of it in the Sector Plan, the highest buildings are supposed to be where the pole is, isn't that correct?
A Yes.
Q Okay.
A It should be this many or in this case that --
Q Now in the case of the broader tenting concept of the Sector Plan where you go back, or where you went back to the Metro area, the Metro Center area, the fact that big Edgemoor is, it's existing height, doesn't that also mean that the big Edgemoor is part of the tenting concept and in accordance with the Sector Plan?
A The big Edgemoor, yes, is part of the overall existing fabric of the --
Q But it's part of the tenting concept, correct, when you have the tallest buildings --
A Yes.
Q -- at the Metro core, the pole area is the Metro core and you're extending out in this direction toward Arlington Road. Isn't the big Edgemoor part of that tent that is described in the Sector Plan?
A If this is the tent, all the buildings are part of

the tent or under the tent. Is that the question?
Q The tenting concept goes from a transition point, a high point, down to a low point?
A Right. Right.
Q Okay. Is this part of that transition?
A Yes, it's part of the transition --
Q Okay.
A -- as the exhibit shows.
Q Now in terms of your testimony as to how you come up with the building design, you basically start off with a blank sheet, don't you?
A Yes.
Q And I think you testified to the effect that the first step was to create, let's see, the number one aim of design was to maximize the FAR and the number of units when you're doing multi-family residential?
A The corner, the design is to respond to the program.
Q Well, in this case the program was to maximize the FAR and the number of units for this site, is that correct?
A We had the program. In other words, we had the target given by the site and by the program itself.
Q Okay. To maximize those two elements, that's what you were looking at to begin with?
A I can't -- I don't think that, if I start with a

blank piece of paper, the word maximize is part of it, but it's a program. In other words, we have a program that we can respond to. Whether the word maximize is in that --

MS. ROBESON: What's the program?

THE WITNESS: The program is --

MS. ROBESON: Is it number of units?

THE WITNESS: It's, well, a number of units would be that. The zoning is part of the program, what you're allowed to do, what the code says, what the market -- is this going to be a school or a residential? Is it going to be a certain age group? Or there's a lot of --

MS. ROBESON: Okay.

THE WITNESS: But the word --

BY MR. ABRAMS:

Q To try to achieve the largest number of units?

A We are trying not to be wasteful of it. I think that would be an accurate transition, but is it to achieve the maximum? There is no -- maximum has to work, in other words, 200 units, let's say even if we can put 200, would anybody want to live there? So it's not just numbers for the sake of numbers.

Q Didn't you create basically a footprint for this property based on FAR and not the unit sizes?

A The FAR is obviously a component of how to design the building. The footprint is more than just an FAR, it's

the setback, access, slopes, entrance, visibilities.

Q Based on all those development standards, again, the question is didn't you create a footprint taken into a setback and all those other standards based on FAR and not on unit size?

A The FAR is integral part of how we design the building, yes.

Q So what FAR did you start with?

A I believe it's the 3.05.

Q You started with 3.05? Now could you have designed a building less than 3.05, but say 2.5 FAR which was an attractive building, fit into the community and met the program that was provided to you?

A We can design any building that is attractive and fits into the neighborhood, that's -- I have no doubt about it. In terms of meeting the program requirements, probably not because the program requirement was to design a building within that 3 FAR.

Q If you had a 2.5 FAR, could you not design a building with the same number of units that you had at 3.05 FAR?

A Oh, that's, .5 FAR is quite a lot actually. If you design, theoretically, only studios, yes, but then that won't be a building that in my opinion that will function well. I mean it will --

Q You're saying that that building would have to be composed solely of studios?

A Well, what I'm saying is that if you take .5 FAR from a building and you want to squeeze more units, obviously you have to design what is called today actually micro-units, you know, the one you see perhaps in Manhattan or you start to see them downtown D.C. So, yes, you can make tiny, tiny units, but to what extent that is going to be a successful project, what kind of -- who is going to live there, you know? I mean it's --

Q Is that what would have to happen on this property?

A Well, just theoretically if you take .5 FAR and you keep the same amount of units, it's just math. It's not, it has nothing to do with architecture. It's just dividing the set square footage into more elements. So you end up with smaller elements. To that extent, the question is to that extent that is feasibly resolved, who is going to live there, you know, what type of program are you going to meet? That's all.

Q Well, you can reduce also the number of units that you have to create the mix that you want?

A The first part is correct, I can. It is a number of units. The second part to do whatever mix you want, that doesn't, that doesn't work because the mix is actually what,

is part of the program. So if you want smaller units, the mix is gone. So that means that you start with, you have to trash it basically.

Q And you spoke about the Planning Board, normally a site plan review takes them to question more of a design elements of a project than occurs now at this --

A No, I think that I was saying that what we have right now is, in terms of historical detail is the site doesn't need more detailing because of architecture than what we already show.

Q So when you go to site planning, you're saying that you don't believe that there's going to be any changes in the design of this building?

A Not that I can think of any.

Q And most of the elements in terms of the design were illustrative in prior plans, is that correct?

A Illustrative, but based on reality. In other words, they are not just -- I mean the windows are, where the windows need to be is not going to be a closet or a bathroom behind a large window. You know, the entrance is where the entrance needs to be. So it's not just a drawing for the sake of drawing.

Q Well, as an architect, what do you think the Planning Board is going to do when a site plan is presented to them? I mean --

A Well, I just can speak of the elements that we usually bring to the site plan which is, in terms of the detailing and the number of exhibits and how much thought was put into the building. What we have right now is, in my opinion, what is needed. It's, we don't get into more details than that.
Q So you think that the building that has been presented to the hearing examiner today is the building that will be presented to the Planning Board at site plan?
A It could be. I mean I don't know. I mean I cannot be 100 percent sure.
Q And is this one of the reasons why the applicant, if you know, has offered to have many of the elements as binding elements in this Plan, or did you know that at all?
A I know there are binding elements.
Q Did you know that the latest change in the last Plan has more binding elements than any of the previous Plans?
A I'm aware that we have a new set of binding elements.
Q And are those binding elements, are you aware of any changes in terms of the design functions that you had overseen?
A At this time, no, I don't know.
Q Now in terms of the semi-circular curve at West

Lane and Montgomery Lane, was that your idea in terms of the use of open space?
A It was the team idea.
Q The team?
A Yes.
Q The architectural team?
A The architectural team, yes.
Q Okay. But you're part of that team, correct?
A I am part of that team, yes.
Q Now in terms of the design of this building, aren't there going to be spaces allocated to active and passive recreation?
MS. HARRIS: Objection. The witness did not testify in terms of the active and passive recreational space, nor the public use space.
MS. ROBESON: Where are you going with this, Mr. Abrams?
MR. ABRAMS: Well, based on --
MS. ROBESON: She's correct, he did not. He testified primarily as to the architecture.
MR. ABRAMS: Well, I'm trying to get whether they are Planning green space on the roof and that's part of the architecture --
MS. ROBESON: Well, that's --
MR. ABRAMS: -- of this building.

MS. ROBESON: Well, he didn't testify to it. Perhaps another witness is going to.
BY MR. ABRAMS:
Q Do you know where the penthouse is located on the Hampden Lane building?
MS. HARRIS: Objection.
MR. ABRAMS: Where it's to be located?
MS. HARRIS: He didn't testify about penthouses either.
MS. ROBESON: Well, I want to see where --
MR. ABRAMS: He testified about the building height.
MS. ROBESON: Yes, exactly.
MS. HARRIS: Okay.
MS. ROBESON: So I'm going to let it in.
BY MR. ABRAMS:
Q Do you know where the penthouse is going to be located in that building?
A On which one, 4901?
Q No, Hampden Lane down at Arlington and Hampden.
A No, I don't know.
MR. ABRAMS: Your indulgence for a second.
BY MR. ABRAMS:
Q The Hampden Lane building, are you aware that there are cut-outs in that building on the area facing City

Homes --
A Yes.
Q -- properties?
A Yes, I am.
Q Do you know how large those cut-outs are?
A The precise dimension, no, but I have a vague idea.
Q You have a what?
A A vague idea. In other words, I had seen the documents that everybody have seen, so based on that.
Q In terms of the Hampden Lane building, the top floor, the element that's 71 feet, isn't that half the size of the floors below, the top floor?
A The area that is 71 feet is half the size of this? Actually based on this exhibit, it's probably 60, 40 percent.
MR. ABRAMS: That's all the questions I have.
MS. ROBESON: All right. Mr. Knopf?
MR. KNOPF: Yes, I do. I'd like to have a few exhibits here. I need just one minute --
MS. ROBESON: Okay.
MR. KNOPF: -- to see we can -- you had one before where you talked about the Edgemoor, it was down on your left-hand --
MR. ABRAMS: This one?

MR. KNOPF: No.
MR. ABRAMS: Oh --
MR. KNOPF: Yes, it was down in the left-hand corner. And then --
MR. ABRAMS: Do you know the number?
MS. ROBESON: Which exhibit are you looking for?
MR. ABRAMS: This one?
MR. KNOPF: This one. Yes.
MR. ABRAMS: Okay.
MS. ROBESON: That is?
MR. KNOPF: 81.
MS. ROBESON: Okay.
MR. KNOPF: And also do you have one, I don't know the exhibit number, which shows the rendering of your building with the pocket park and the curved glass?
MS. HARRIS: I think it's --
MR. KNOPF: You have a big --
MS. HARRIS: -- 76 or something on that, but I'm not sure. I mean it's back a couple pages. Is that what you're looking for?
MR. KNOPF: Well, I guess I was looking for one where you could see the, from top to bottom.
MS. HARRIS: I think it's right --
MR. ABRAMS: This one?
MR. KNOPF: No. You're looking right at it when

you're walking west on Montgomery Lane.
MR. ABRAMS: This is walking west.
MR. KNOPF: But you're looking into --
MR. ABRAMS: This is off the record, I assume?
MS. ROBESON: No, it's not.
MR. ABRAMS: It's not? Well, then you have to keep your voice up.
MR. KNOPF: Oh. Sorry.
MS. ROBESON: Okay. Do you need five minutes to find the exhibits that you want to rely on?
MR. KNOPF: Well, we'll use this one, okay?
MS. ROBESON: Okay.
MR. KNOPF: Now we've lost it. Did you put that under your -- here we are.
BY MR. KNOPF:
Q All right, 77, I'm going to guess on that. 75, 76, 77. Well, let me just ask a question on this. You had talked about the design, including the height and rooftop structure. I just want to ask does this, Exhibit 75, accurately reflect the location of the rooftop structure as presented in the latest binding elements where it listed a certain setback and I was wondering if that is the same setback as you've been showing us all along or has that set-back been moved?
A I think it is fairly accurate. There is like two

meters left and right, but this was done by hand.
MS. ROBESON: Wait, I think what he's asking, because I have the same question, is the 25 feet set-back that's in the most recent, is it, I think it was --
MR. KNOPF: I think it was 30, I think it was 30 feet?
MS. ROBESON: No, I --
MS. HARRIS: It's 25.
MR. KNOPF: 25, sorry.
MS. ROBESON: -- think it's 25. Is that what's shown on that drawing --
MR. KNOPF: That's --
MS. ROBESON: -- a 25-foot setback from Montgomery Lane?
THE WITNESS: I would assume it is fairly close. I mean I cannot tell because this was done, I mean the latest drawing probably was done after this one. But I think that when we did the latest drawing, we just showed dimensions. We didn't push anything. So without having the files with me --
MS. ROBESON: Right.
THE WITNESS: -- it --
MS. ROBESON: I understand.
THE WITNESS: -- visually looks the same.
BY MR. KNOPF:

Q So the proposed binding element that was recently submitted was not purported to be some changes to what was previously presented to us in terms of a location?
A I think that package is consistent.
Q It just was not clear to me. Thank you. All right. Now looking at both of them, looking at 81 where you, I believe, I don't want to put words in your mouth, you said that the big Edgemoor, the design of your building sort of read the same. Could you explain how looking at this glass and maybe on Exhibit 76 --
MS. ROBESON: On?
MR. KNOPF: -- and I'm also looking at duplicate 106(f), which the Hearing Examiner now can't see, but I --
MS. ROBESON: I know it well.
MR. KNOPF: Yes.
BY MR. KNOPF:
Q Could you explain, I'm looking at the glass, the curved glass facade and this glass --
A First of all, I --
Q -- could you explain how that reads, like the Edgemoor?
A Before, before I answer that, I think that we went into what compatibility means and I think that I said that compatibility doesn't say same. When I compared the various buildings with what we are designing, what I said, I think,

was that we are incorporating elements. We are not, we never tried, we never had the objective of copying any of the existing buildings.

MS. ROBESON: Okay. Now answer his question which was --

THE WITNESS: So, so now I'll draw the parallel.

MR. KNOPF: Well, his question was does the glass area --

THE WITNESS: There is glass.

MS. ROBESON: -- can you either read it back or?

THE WITNESS: It's the curved --

BY MR. KNOPF:

Q Would you explain how the curved glass area going from the ground floor up to the top, it reads the same as the Edgemoor windows and the facade?

A The glass curved area, as I pointed out, well, I didn't point to the glass area. The glass curved area was not intended to mirror any of the existing buildings. It was a response of, to the creation of a public space and to enhance the appearance of the building and it has its presence on the street.

MS. ROBESON: So the question is does it relate to the Edgemoor? How does it relate -- or what was your question again?

THE WITNESS: The -- actually the first question

was --

MR. KNOPF: I think he said --

MS. ROBESON: No, I --

MR. KNOPF: -- he said he read the same, I believe your testimony was the Edgemoor and his building read the same as you, if you looked at the buildings.

MS. ROBESON: Okay.

MR. KNOPF: And I was asking him to explain how the glass facade there reads the same as the Edgemoor facade.

THE WITNESS: We don't have a picture of both, so that, ours doesn't relate to Edgemoor. It's not, as I said, was not an intention to copy any of the stuff. It's an overall feel of a residential grounded more in a, design in a more traditional way.

MS. ROBESON: Just, all right. Okay. Let him ask the questions now and, Ms. Harris, you can have him explain on redirect.

BY MR. KNOPF:

Q Would you agree with me, you said traditional way, that the Edgemoor windows are a more traditional, residential window than the glass facade windows on the corner of Montgomery Lane and West Lane?

A So the question is, let me just understand, that the windows on Edgemoor are more residential than these

windows?

Q The traditional, aren't they, would it be fair to say they are traditional, residential windows in terms of style?

A Will it be fair to say that? Overall, Edgemoor is a traditional building.

Q A traditional, residential building?

A Well, traditional architecture. Let's call it that. All of them are residential, so --

Q And would it be fair to say that the glass curved area is not a traditional, residential window treatment?

A It is a residential treatment. It was not our intention to be traditional.

Q I see. Would it also be fair to say that solid glass curvature is something that is commonly associated with commercial office buildings?

A No, that would be a mistake to say that.

Q It would be a mistake?

A Yes.

Q Now you mentioned there are certain designs, as Ms. Harris said before, I am architecturally challenged, so bear with me I guess.

MS. HARRIS: I didn't say that.

MR. KNOPF: You said we were, did not have knowledge or something like that.

BY MR. KNOPF:

Q As I remember, your building had faux bay windows, was that, you talked about those things?

A I didn't use the word faux.

Q Oh, I'm sorry. Well, you had bay -- what word would you use to describe?

A We had, yes, we had bay projections on Montgomery Lane and bay readings on, I'm sorry, bay projection on West Lane and bay reading on Montgomery Lane.

Q That's what I was trying to -- what is a bay reading? Does something stick out from the building?

A No, it's something to suggest a picture similar to a bay in which you have a larger window and probably you have a French balcony. So it's something that is not your typical punch window reading.

Q And a traditional or typical bay window would protrude from the facade of the building from the, from the wall of the building?

A A bay definition is something that projects out, yes.

Q Now pardon my English, but what is a French balcony as you use that term?

A In this vernacular it is also referred to as a Juliet, which --

Q Okay. That still doesn't tell me --

A Okay. A French balcony is, well, it's a very shallow balcony in which you can open the windows and feel that you are outside, that probably you can step outside, but not actually. You cannot put a table, you cannot put chairs. It's a shallow projection, so you can step out, see if it's raining or, you know, smoke if you smoke, whatever, be outside, but not have a full balcony.

Q And how much of a projection is actually provided? I mean are we talking about three feet, three inches?

A No, no, no. It's probably, because of the code, it's probably 20, at most 20 inches.

Q Can you show us where one of those are in your building?

A Yes. And I point to Exhibit 76. And I'm pointing to --

MS. ROBESON: The window directly above the street light that's shown, is that --

THE WITNESS: So every --

MS. ROBESON: -- a French balcony?

THE WITNESS: Yes. Every other window are the large expanses of glass that show a railing and that railing is, it goes totally over French balcony.

BY MR. KNOPF:

Q So and that would stick out at 20 inches?

A No, to meet the code it cannot stick out more than

20 inches, so it could stick out eight inches, 12 inches, but not more than 20 because after that there's a difference.

Q I think the building was located, refresh my recollection --

A Okay.

Q -- but I thought the building was built right up to the line and nothing could protrude out?

A That, I said, is -- you ask about what the difference is between a balcony and French door balcony. At most the French balcony could project, and it's because of the code at most 20 inches. What we intend to do is, again, the French balcony, you don't have a roof or a table. You just open the door. Buildings in Paris are like that. That's why they're called French balconies. They probably invented it. So you have, you don't have a balcony, you have a ledge or a railing or some sort of thing to hold things up to allow you to open the window, feel that you are outside, but you don't actually have room to go outside.

Q So let me try again. How much of a projection, if any, does the balcony stick out from, protrude from the wall of the building, if that's the right terminology? Do you understand my question?

A Well, it could be to half, from half an inch to 20 inches in in terms of --

MS. ROBESON: You -- okay. I think what he's asking is how far are the French balconies on this building going to stick out?

THE WITNESS: Oh, these balconies? The railing --

MR. KNOPF: Thank you.

THE WITNESS: The railing is right against the building, so it's probably the thickness of the railing.

BY MR. KNOPF:

Q All right. And would that be the same thing then for the bay window?

A No, the bay window is on the Montgomery --

Q I'm talking about Montgomery Lane, yes.

A Montgomery Lane is a foot. The bay projects a foot.

MS. ROBESON: Wait, what bay?

THE WITNESS: Oh, I'm sorry, on West Lane, not on --

MS. ROBESON: Okay.

MR. KNOPF: On West Lane? Oh, oh, no, I'm talking about Montgomery Lane.

THE WITNESS: Okay. On Montgomery Lane, just the railings --

MR. KNOPF: Is it just railings?

THE WITNESS: -- attached to the facade.

BY MR. KNOPF:

Q Okay. Now, just making it clear. Now I understand what the French, quote, balcony looks like. Where is the bay window?

A There is no bay window on Montgomery Lane --

Q Oh.

A -- as I --

Q Okay. I didn't understand. Thank you. That clears that up. I was just a little confused. Now you said there were one, or I may have the wrong term, articulations or something, indentations of one foot on the facade. I'm focusing on Montgomery Lane now. Is that, or I did not understand it correctly.

A No, on West Lane.

Q On West Lane?

A Yes.

Q So the facade along Montgomery Lane does not, there's not indentation?

A Well, on this rendering, yes, it shows a reveal. I mean it has architectural element, I mean between this Plane of the curve and the brick, there is a gap if you want and there is a setback there.

MS. ROBESON: So you're saying where the brick starts along Montgomery Lane, are you saying the brick projects out?

THE WITNESS: No, the, this is one facade I say,

one --
MS. ROBESON: Okay.
THE WITNESS: -- but we have an area where the building steps in just for architectural, just to make it --
MS. ROBESON: And where is that area?
THE WITNESS: Well, that's right in between the metal and the brick. So we have a --
MS. ROBESON: And how far does it, what did you call it --
THE WITNESS: Reveal or --
MS. ROBESON: Yes. In other words, is there an additional projection --
THE WITNESS: No, no, there's not. So let's say this is the face of the building --
MS. ROBESON: Okay.
THE WITNESS: -- and we are pushing these windows on this area just to create more interest to the facade, by this --
MS. ROBESON: What does it mean pushing? I mean --
THE WITNESS: How shall I explain? I mean instead of these windows being flush or being at the same plane with the brick, they are pushed in to create a --
MS. ROBESON: I --
THE WITNESS: -- a little gap --

MS. ROBESON: Now I understand.
THE WITNESS: -- at little --
MS. ROBESON: Okay. That was --
THE WITNESS: So the way this door behind you is set in just --
MS. ROBESON: Okay. I understand.
MR. KNOPF: So, I'm sorry. Are you finished, Madame Examiner?
MS. ROBESON: No, I'm finished.
MR. KNOPF: Okay.
BY MR. KNOPF:
Q When, after that, that you just addressed there where the glass and the brick meet, if we walk down toward Arlington --
A Yes.
Q -- the rest of the facade of the building then doesn't have any pushes or anything?
A No.
Q Okay. That's what I want to know. Thank you. And how many feet is that roughly in length?
A Well, I think that --
MS. ROBESON: 68? No.
THE WITNESS: I can go back to --
MS. ROBESON: You have to take away the corner there. 80.

MS. HARRIS: Yes, 78.
THE WITNESS: 78.
MR. KNOPF: Thank you.
THE WITNESS: On Exhibit 77.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q Just one more question.
MS. ROBESON: The Edgemoor in the lower left?
MR. KNOPF: The big Edgemoor.
MS. ROBESON: That's 81, I believe.
BY MR. KNOPF:
Q I'm referring now to the building on the right-hand corner, on the lower right-hand corner which is 4901 Hampden.
MS. ROBESON: Hampden.
BY MR. KNOPF:
Q And you had mentioned that you were, in terms of your compatibility discussion, you were mentioning that your building was compatible. From hearing that, I would like you to refer to Exhibit 120(b) and are you aware that this gives the --
MS. HARRIS: Which is 120(b)?
MS. ROBESON: I believe it's the one that Ms. Skalett may have --
MR. KNOPF: That's correct. And it's the 2006

approved site plan for 4,000 feet.
MS. ROBESON: For 4901?
MR. KNOPF: 4901, 4901.
BY MR. KNOPF:
Q And I refer you to -- this is the Montgomery Lane view. Did you have that in mind when you were talking about compatibility? That's quite a difference between that and what's shown on the Exhibit 81, is it not?
A No, but what is interesting about this exhibit, the core element shows striking similarity to what you proposed the first time just as a note. Before we carved the building, we had almost an identical glass corner.
MS. ROBESON: Okay. But what is your question about that exhibit?
BY MR. KNOPF:
Q My question was when you were talking about compatibility of other projects on the street on Montgomery Lane approved or built, did you have in mind 120(b), the elevation shown from Montgomery Lane?
A I did not have this exhibit, although, as I said, this actually reinforces what we've done.
Q All right. Now you had mentioned to Ms., in response to Mr. Abrams's questions that the, reducing the FAR would result in your having to put in micro-units, I think you mentioned that?

A No, it isn't the FAR that changes the building.
Q Right. But you said that you'd have to end up with studios or micro --
A No, it was a theoretical measuring. If you divide a smaller number by the same number of units, you end up with smaller elements. Yes.
Q Well, I guess --
A In other words --
Q -- Mr. Abrams, he was asking whether you could have the same number of units in the building that you now are proposing either with the smaller FAR and in that respect I want to refer you to, I guess you probably know this, I'm looking at Exhibit 106(a) where there is the, there is, it's set forth in number of efficiencies, one bedroom and so on units proposed. I notice that 26 units are proposed for two bedrooms and 42 units are proposed for one bedroom and den. If you remove the den and had less 2-bedroom units, more 1-bedroom units, couldn't you pretty readily end up with the same number of units that you have here without going to micro-units or studio units?
A Again, if you have an analogy of a cake or a pie, if you have a smaller pie, you cut the number of slices, the same number of slices, you end up with smaller slices. Would that be sufficient to satisfy the market? So it's not a question that can the units be, you know, like a

Manhattan-size unit. The question is would that respond to the problem? That's the question to us.
Q I see. So it's the market that's driving this rather than architecture?
A Well, the building has to be successful in all respects, including financial success, otherwise will not build that building.
Q By the way, the units that I've read, the unit breakdown, that's illustrative, isn't it, you reserve the, the applicants reserve the right to change that mix, am I correct?
A I don't know.
Q One other thing, what, you mentioned -- what is the, in terms of getting the number of units, a different number or the same number, what's the dimensions of this lot again, of the lot in which the project is sitting on?
A I think it's in the records, no?
Q No, I understand, but I mean how many -- what's the width and what's the length?
A The overall --
MS. HARRIS: Is the question building or lot?
MR. KNOPF: Lot.
THE WITNESS: Approximately 224, 234, approximately -- again, I don't have a --
BY MR. KNOPF:

Q I'm not trying to get exact, just a rough estimate.
A Let's say the, so from Montgomery Lane to the back is probably 235 feet. The lot has sort of an L-shape, so on the Montgomery Lane is 90, 108, plus another 115, 120. And in the back is narrower by about 15 feet. So it's 105 let's say.
Q I got a little confused. What do you mean in the back?
A Well, the front, the lot --
Q Yes.
A -- is not a rectangular, hence --
Q Okay.
A -- you know, it has a little kink in the back.
Q So would it be fair to say that on that size lot it's not, that you could build a building of say 100 dwelling units of an FAR of 2.5, and no greater than that, but you could build it, but it's the market conditions which is governing in your opinion what number of units and what the building should look like?
A So the question is can you the smaller building on the same lot, is that the question?
Q With having the same number of units?
A Well, that would, that would change the program, the unit mix and the size of the units. So whether that

is --
MS. ROBESON: But the -- okay.
THE WITNESS: Yes.
MS. ROBESON: The question is, ask the question again.
BY MR. KNOPF:
Q On this size lot, could you build a building containing 100 units and not exceed a 2.5 FAR?
MS. ROBESON: Is it possible?
THE WITNESS: It is possible.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q And do you know for a fact, well, have you in preparing a design and so on, have you ever considered or ever tried design or sketch out or use computers or whatever to determine whether you could, what such a building would look like or what size units would look like if you limit yourself to 2.5 units?
A I don't think that we'd be that theoretical.
Q Well, okay.
MR. KNOPF: I have no further questions.
MS. ROBESON: All right. Ms. Harris --
MS. HARRIS: Thank you.
MS. ROBESON: -- redirect?
REDIRECT EXAMINATION

BY MS. HARRIS:
Q Mr. Radulescu, on page 40 of the Sector Plan, point No. 2, can you just please read that first sentence?
A The one with the step down?
Q Just the first sentence.
A "Step down building heights from Bethesda Metro Center properties to achieve desirable and compatible transition to adjacent areas."
Q So is that the first sentence?
A Yes.
Q And so from where does it say that the step down is supposed to start?
A Bethesda Metro Center.
Q Okay. So with Mr. Abrams' question regarding assuming tenting starts at the TSR, within the TSR zone, was that somewhat of a hypothetical based on the Sector Plan recommendation?
A It seems that it was.
Q There was -- can you explain, and I, why the question having to do with the elevations of 4901 and Hampden Lane and the question was if all the buildings weren't there, would you be able to tell a height difference? We know that the buildings are there when we look at Exhibit 106(f), so can you just walk around that block on which those two Hampden Lane buildings are located

and explain to me where in your opinion you would ever be able to have a vantage point of both buildings at the same time?
A You can see both buildings on Hampden Lane at the same time if you are somewhere on Hampden Lane.
Q And if you're over on Montgomery Lane?
A If you would be on Montgomery Lane, I don't -- unless you are on the roof or the top units of the Edgemoor, but from the street I doubt that there's any point that you can actually see at the same time.
Q And would anyone from the City Homes looking out one of their windows be able to look at both buildings at the same time?
A Absolutely not.
Q Okay. And why in your mind, why is it -- do you know or do you have a sense of why the zoning ordinance measures height as it does as opposed to this concept of elevation?
A If you are to use an absolute number of elevation, then it would be impossible actually to determine how to measure a building. I mean you -- I just, the, I don't see how you would be able to determine where your buildings are. If you measure from let's say an absolute Montgomery County or absolute Bethesda.
Q And to your knowledge that's never occurred?

A I don't know any jurisdiction where you measure from an absolute point. On all the jurisdictions that I worked, when you measure within the lot, there are different definitions for the particular lots, but they all refer to where you build your building.
Q And is that because that's really where you experience that height?
A It's where you experience that and physically it would be impossible to compare and to have an accurate sense of what the overall buildings will be at the end or what the relationship would be to the other buildings.
Q Thank you. Within the proposed 3.05 FAR of the building, how many units are we proposing?
A I think it said up to 120.
Q Okay. And physically could we have fit in more units within that 3.05 FAR?
A It would be difficult. I mean it will be, with all the geometry of the site and the fact that we have restrictions in terms of setbacks.
Q That you couldn't have reduced the size of some of the units to fit more units within there?
A On a theoretical aspect, what, we already went to an exercise and I don't think that --
Q Okay.
A -- you can exclude.

Q And are you aware of the percentage of MPDU's that are being provided with the 3.05 FAR?
A Yes.
Q And what is that?
A I believe it's 15.
Q Thank you. What's the proposed unit mix?
A The proposed unit mix, I don't have it on hand, but I think it is, off the top of my head, but we have two bedrooms, one bedroom, one bedroom den and we have a few studios.
Q And you've worked on other residential projects within Montgomery County, is that right?
A Yes.
Q And how does this unit mix compare to other projects that you're working on?
A It is, we worked on a project that has also 3-bedroom, but just a few. But most of them have this type of range.
Q So that the range of unit mix is typical of what's being offered?
A It's typical for this area, however, it would not be typical for downtown, but it would be typical for the project that we are working in this area.
Q And do you, if you know, why is getting that balance of unit mix important?

A I think that this, you look at who the potential customers are and where the building is located. If you are located to an area that is more densely populated, more, it has, it's more busy, it's like a, let's say a 24-hour lifestyle, is close to a commercial area, close to Metro, you create a different mix. You tend not to do three bedrooms or duplexes or stuff like that. On the other hand, this is not downtown, edgy area, so you don't have too many studios or too many efficiencies because the market is not going to be there for that.
Q So you would say that the unit mix being proposed is reflective of --
A So it's reflective --
Q -- the customer?
A It's reflective of, yes, the potential, yes, marketability.
Q Okay. Turning now to the question of some of the design questions on Exhibit 113, you noted that along the Montgomery Lane frontage facade of the building there are not, I'm going to use the word undulations on the subject building, is that correct?
A That's correct, yes.
Q Okay. And can you compare that fact with the other buildings that front on Montgomery Lane in terms of does the Edgemoor at Arlington North have any undulations?

That's the building to the left of --
A Well, I don't know --
Q -- along Montgomery Lane?
A There's no, it's a flat facade. But also we look at the undulations in terms of the length of the facade --
Q Okay.
A -- and we don't have a very long facade, besides on one side on the east side of the facade we have this public space which is a very small architectural element, so we do not want to do too many.
Q And across the street, the Edgemoor at Arlington?
A Across the street is also -- it has a very flat facade.
Q Okay. And the City Homes?
A City Homes, yes, is a flat facade.
Q And then the 4825 and Highrise Edgemoor?
A The 4825 has a setback where they have the entrance. And the Edgemoor has on the two ends has two, otherwise it's flat on its base, probably reflective in these bump-outs.
Q And your firm designed the Highrise Edgemoor, correct?
A Not personally.
Q But the --
A SKI has designed this and the City Homes, so

Edgemoor and City Homes.
Q And the length of the Highrise Edgemoor facade, which has mild undulations, how does that compare with the subject building? The length of the Highrise Edgemoor, what is it?
A 172 feet more or less.
Q And in your architectural opinion, is the fact that that has undulations, does that, in any way is that related to the fact of the length of that building?
A Well, when you have a very long facade on a residential building, you try to -- how much taller is that in this particular context probably was a good idea to break it.
Q Okay. Do you know whether there's a zoning ordinance requirement regarding bay windows?
A No.
Q No, you don't know or is there not one?
A I don't think that there is one because --
Q Okay.
A -- requesting.
Q And is there a Sector Plan recommendation regarding bay windows?
A Not that I know of.
Q And referring to Exhibit 76, the floor to ceiling windows that, the windows along the curve of the building,

are those floor to ceiling windows?
A Yes, they are floor to ceiling windows.
Q And could they have -- explain what a spandrel is.
A A spandrel is an architectural retaining element that spans the slab area. For instance, if this is a slab area, anything that will cover that gap will be called a spandrel. Also, a spandrel could cover a column. So it goes both ways, but usually it's referred to the space adjacent to the slab.
Q So could there be spandrels that would reduce the window exposure on that, on the curve of the building?
A Yes, you could, but the ceiling is not that big. If you don't have a -- the floors are not, not very tall because of the height limit.
Q Okay.
A So it's not a lot of, a lot of waste.
Q Okay. And can you please compare the windows on the rest of the building to the windows that appear on the street, on the buildings on the street?
A Yes. On the rest of the building, so left and right of the public space in this architectural element, we have larger windows for the living room and there's a similar reading of the corner of the Edgemoor. They have the same, same floor to floor glass.
MS. ROBESON: And that's the southwest corner?

THE WITNESS: That's the southwest corner.
MS. ROBESON: Where the balconies are?
THE WITNESS: And it will be the same --
MS. ROBESON: Are they balconies on the southwest corner?
THE WITNESS: Those are balconies, but I think that as you move towards the center of the building, those are shallow. I think that at that time you could go away with that dimension, that they will not be possible. And then the same floor to ceiling glass appears on the east side of the facade.
MS. ROBESON: Oh, the east corner?
THE WITNESS: On the east corner.
MS. ROBESON: The southeast corner?
THE WITNESS: The southeast corner. The building is cement and so both sides. And then the bedrooms, right, I mean I don't know, but on our side, on the bedroom side, we have punched windows, the same type of reading that everywhere. We have a different window type, but it's the same smaller window and we tried to have my ends as to the, as a smaller window.
BY MS. HARRIS:
Q Thank you. To your knowledge, is there any requirement in either the zoning ordinance or the Sector Plan requiring the buildings on, in a given area to look the

same?
A No. No, they're not really done for sameness.
Q And to your knowledge are there any architectural covenants applying to Montgomery Lane similar to what you would see in a Planned community suggesting that the building should look alike?
A No, not at all, not -- no.
Q And in your opinion in terms of the organic development of an area, what's your opinion in terms of how buildings evolve and how they look?
A What makes a city attractive, why is that? You have a variety of buildings that work together and Washington is the perfect example because of the way the city was designed. You have a certain characteristic, but the buildings are not the same. As you walk any street, I mean in Bethesda included, you don't see, in fact, even in the neighborhoods you don't see houses that are two alike. But overall there's, the overall feeling if you want, that binds it in together, but no two buildings are the same.
Q Thank you.
MS. HARRIS: I have no other questions.
MS. ROBESON: Okay. Recross, Mr. Abrams?
MR. ABRAMS: Yes.
RECROSS EXAMINATION
BY MR. ABRAMS:

Q Yes, let's get back to the tenting concept, okay? So I think you quoted from page 40, item No. 2 --
MS. ROBESON: Of the Sector Plan?
MR. ABRAMS: What?
MS. ROBESON: Of the Sector Plan?
MR. ABRAMS: Of the Sector Plan, yes. Item No. 2, where it says step down building heights from the Bethesda Metro Center properties to achieve desired and compatible transition to adjacent areas, was that the, Pat, was that what you had cited before?
MS. HARRIS: No. 2, correct.
MR. ABRAMS: Yes, okay.
BY MR. ABRAMS:
Q Okay. That recommendation, was that a general recommendation throughout the geographic confines of the entire Sector Plan or was that a specific recommendation as it relates only to a specific area such as the transit station district?
A I mean it definitely finds the starting point to the Bethesda Metro Center, at least on these two paragraphs.
Q Well, it's in Chapter 3, is it not, and --
A Yes, it was in Chapter 3.
Q -- if you look back on page 27, that deals with certain land use objectives?
A What is the question, I'm sorry?

Q The question is on page 27 of the Sector Plan, does that deal with certain general land use objectives applicable throughout the Sector Plan areas?
A I would have to read that page. I mean it talks about jobs actually.
Q It talks about, in, on page 27, it talks about --
A Yes.
Q -- employment growth?
A Right. Right.
Q Page 28, household neighborhoods and --
A Yes.
Q -- goes over to retail on page 31, and it talks about certain general objectives --
A Yes.
Q -- throughout the Sector Plan area? It doesn't focus necessarily on the transit station district, does it?
A Well, first of all, on page, the page you just went to, pointed to, I mean it's, actually there's a reason for mentioning that as a starting point.
Q All right.
A I forgot what it was, what page.
Q You're talking about page 40?
A Page 40, yes.
Q And, but you're talking about that among the general objectives of the Sector Plan?

A Yes.
Q Okay. Now on page 51, and following, that starts certain, specific recommendations --
A Yes.
Q -- as to specific districts, does it not?
A Yes, on page 50, yes.
Q Okay. Now when you have a general objective and when you have a specific objective, do you try to interpret that so that both objectives mean something and they don't conflict with one another?
A When we, as an approach to designing a building, yes, we look at what's required, what the general, what's required, I would say that, and we try, well, we have to incorporate whatever the zoning guidelines, ordinances, regulations are.
Q Okay. But you try to read them as in the context of the overall objectives which apply throughout the Sector Plan area, is that what you mean?
A Yes, we are trying to incorporate, yes, I mean I suppose the answer is yes.
Q See, you're trying not to create a conflict between a general objective and a specific objective, say in the transit station district?
A I mean it seems more like a political question than an architectural one but, yes, suppose that we are not

trying to go against any of the objectives, for sure.
Q All right. Calling your attention to page 85 under section, of the Sector Plan under Section (d)(3), can you read that into the record?
A (d)(3)?
Q Well, first of all, start with the portion of the paragraph just below (d).
A "In addition to the general objectives and principles of in Section 3.2, the following guidelines apply to the TS-R district --
Q Okay.
A -- specifically at 4.16."
Q All right. Stop right there. It is not the section quoted by Ms. Harris in Section 3.2?
A Yes.
Q So what is under here is in addition to the general guidelines, is that how you interpret it?
A Yes, it's the overall collection of --
Q Okay.
A -- rules and guidelines that we need to --
Q Now look at 3 and read 3.
A "Encourage low-rise buildings to fill out the parcel."
Q No, 3.
A Oh, 3, sorry.

"Maintain low-rise building heights which step down to three floors along Arlington Road height up to six floors up before near Woodmont Avenue to achieve the desirable floor."
Q Okay. Now there really isn't any inconsistency, is there, in where the tenting concept begins under the general objectives and where the tenting concept might begin when you read the specific paragraph?
A It looks like No. 3 could work with the tenting, yes.
Q Okay.
MR. ABRAMS: No further questions.
MR. KNOPF: I just have one thing.
BY MR. KNOPF:
Q I believe you stated in response to Ms. Harris's question that there's no requirement in the Sector Plan for bay windows?
A Yes, I don't remember seeing any.
Q Let me ask the question. I'm reading from the Sector Plan in 40, paragraph 7. It says, quote, achieve compatibility with nearby residential areas through techniques such as, one, articulated building walls, facade treatments and other architectural means. Would bay windows be one of those treatments that you would try to achieve with compatibility?

A You can have any number of elements, yes, including bays, any -- I mean you have a large collection of elements that one can employ to achieve compatibility.
Q All right. This last question here on page 85 of paragraph 5,
"An urban design guidelines, design rooftop to achieve a residential image by using hip roofs, gables, turrets and other types of pitched roof lines. The varied roof line is desirable to improve character and reduce the sense of bulk," unquote. We don't have any of those on your building, do we?
A Yes, but -- I like this question actually. For --
Q Do you have pitched roofs on --
MS. ROBESON: Well, sir, answer the question. Do you have any?
BY MR. KNOPF:
Q Do you have pitched roofs, gables, hip roofs?
A No, not at all.
Q Gables, turrets?
A No.
Q Thank you.
MR. KNOPF: And no further questions.
MS. ROBESON: All right. With that, Ms. Harris, how many more questions, I mean how many more witnesses?

MS. HARRIS: We have Mr. Irish and Ms. Wiltshire.
MS. ROBESON: Okay. How long do you think their -- are they basically limiting, or are they here to show the changes to the --
MS. HARRIS: Ms. Wiltshire is going to do that. I think Mr. Irish is, of course this is dependent on the cross situation, I would expect probably an hour total for Mr. Irish.
MS. ROBESON: Okay. All right.
MS. HARRIS: And then --
MS. ROBESON: All right. Let's take -- why don't we take 45 minutes for lunch so we can be back at 12:45. We'll continue the case until then.
MR. KNOPF: Thank you.
MS. HARRIS: Thank you.
(Recess)
MS. ROBESON: All right. Are the parties ready?
MS. HARRIS: Yes.
MR. ABRAMS: Yes, ma'am.
MS. ROBESON: We are back on the record. I see Mr. Irish will be the next witness?
MS. HARRIS: That's correct.
MS. ROBESON: Mr. Irish, you're still under oath.
MR. IRISH: Yes, ma'am.
MS. ROBESON: I just have one request. When Mr.

Abrams and Mr. Knopf ask you a question, just answer it, okay, and we'll get through this hearing --
MS. HARRIS: Today.
MS. ROBESON: -- much more quickly, all right?
MR. KNOPF: Understood.
MS. ROBESON: Thank you. Okay. Go ahead.
MS. HARRIS: Thank you.
MS. ROBESON: I'm sorry, Ms. --
MS. HARRIS: Okay.
MS. ROBESON: -- Ms. Harris.

DIRECT EXAMINATION

BY MS. HARRIS:

Q Mr. Irish, can you -- there's been a lot of discussion regarding the measurements of heights. Can you please state how height is measured pursuant to the zoning ordinance?

A Yes. The zoning ordinance has a lengthy definition of height because it accommodates various conditions. But as it would relate to any of the, relate to this building, for example, it states that the height is defined as the vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of the roof or a flat roof to the mean height between the eaves and ridge of a gable, hip, mansur or gambrel roof. On a corner lot, exceeding

20,000 square feet where the height of the building may be measured from either adjoining curb grade. And it's the same condition for, if the lot has frontage on two streets, but it isn't a corner lot. In other words, if you have one frontage, you measure from the center line of the approved street grade at the center of the building of the center of the street. But if you have more than one street frontage, you're allowed to pick any point along the curb in front of your lot to use as your building height measuring point. And this has been confirmed by DPS numerous times, including this instance. So the selection of the measuring point that we've used here, it has been confirmed as appropriate.

Q And based on your experience, why are, why are heights calculated in this manner?

A You mean as opposed to elevation?

Q Correct.

A I, because it's the way, this way it makes more sense. I mean to calculate height based on elevation, I just don't understand. I've never seen it done that way anywhere. It really doesn't seem to make any sense. Your mind visualizes the height when you're close to the building, not when you're far away. I think if you were to have a 4-story, say a 40-foot building on the top of a hill and if you were walking up from about 12 feet, an elevation lower and you had a 50-foot building next to you, that 50-

foot building would be, appear to be higher to you and it is, but it's -- I guess what I'm saying is the image of a 40-foot building up on a hill, you don't get the benefit of it being on a hill to seem like it's a higher building. I mean you were out at the street, you were out at the site. The street is relatively flat. I mean the street grade along Montgomery Avenue is about 3 percent, which to put that in perspective, from that wall to your door it would drop about 4 1/2 inches. That's pretty flat. So you're really experiencing the buildings as you come to them and the fact that, you know, over the length of the street a building might, the measuring point might be a few feet higher than somewhere else. So is the ground around it. So visually you're really, your sense of the height of the building is really what it looks like in its location and not trying to stand back in the distance somewhere.

I mean to carry that concept to the absurd, the elevation, the height of the U.S. Capitol all the way to the top of the Statue of Freedom, or the top of the dome, is 288 feet. And the ground elevation is 88. So that would say that the elevation at the Statue of Freedom, at the top of it is 376. That would imply that City Homes was taller, which was capped -- we all know that's not the case. But, you know, it's just -- the concept -- I've never seen it done that way and we work in a lot of different

jurisdictions.

Another reason it would be silly is if he said all the buildings had to stop at elevation 385 or whatever. It would look like a flat top. I mean then you, you know, if everything was mono-elevation like that, it wouldn't look right. So there's -- my feeling is there's enough variation along the street that the height we're recommending is easily appropriate.

Q Thank you. Having said all that, what is the elevation difference between Hampden Lane and Montgomery Lane? There's been a lot of discussion on that. I want to just make sure we're clear.

A Well, yeah, I listened to counsel say that there was 12 feet of elevation difference between Hampden and Montgomery and I don't see it. The -- it varies obviously. It depends on where you measure it. But if I could refer to Exhibit 113, and let me know if you want to write these on here, the elevation at our western edge in the middle of Montgomery --

MS. ROBESON: Southwestern edge?

THE WITNESS: Yes, southwestern edge --

MS. ROBESON: Oh.

THE WITNESS: -- at the middle of Montgomery Lane is approximately --

MS. ROBESON: Oh.

THE WITNESS: -- 327. If you were to take that straight down to Hampden Lane, the elevation there is about 320. So about a 7-foot difference. And that's where the largest difference is. If you go to our southeastern corner, the road elevation there is about 31 on Montgomery Lane and if you continue that --

MS. ROBESON: Due south?

THE WITNESS: Due south --

MS. ROBESON: You're saying due south?

THE WITNESS: -- to Hampden, that elevation would be about 23, 28, so a difference of three feet in this location. And the high point of Montgomery Lane is about opposite the entry to 4825. That elevation is about 32, 332. You carry that south, the road elevation there is about 330. So, you know, it's anywhere from two to, two feet to seven feet difference, not 12.

MS. HARRIS: Thank you.

MS. ROBESON: Is the 7-feet difference, is that at the west, southwestern most corner or due south --

THE WITNESS: Yes.

MS. ROBESON: -- of your corner?

THE WITNESS: If you take our western property line and extend it to the center line in the road --

MS. ROBESON: Due south?

THE WITNESS: -- south to the center of

Montgomery --

MS. ROBESON: Okay.

THE WITNESS: -- and continue that due south to the center of Hampden, you --

MS. ROBESON: Okay.

THE WITNESS: -- that's where you get about a 7-foot clearance.

MS. ROBESON: Okay.

BY MS. HARRIS:

Q Thank you. Approximately how many rezoning and development cases have you been involved in in Montgomery County?

A Wow, I've been doing this since 1973, so I don't have a good record.

Q You lost count?

A I lost count. But in that 40-year period, my focus has really been Montgomery County. My firm has done work in Fairfax, Loudon, Prince William, Prince George's and so forth, but I've really been the one that has focused on Montgomery County the entire time. And I would say for the last 20 years or so we focused on smart growth, urban development/redevelopment. So I'm very familiar with this type of development. In terms of rezonings and Development Plans, my resume that I believe you submitted in the record includes seven relatively recent cases, 7001 Arlington Road,

Metro Pike and White Flint for Holladay, and prior cases for this for Holladay, West Lane, National Park, Seminary and Euro Motor Cars in Germantown, the Monterey property in White Flint on Old Georgetown. In my resume it's listed as the Gallery at White Flint Place, White Flint station, and in Sterling because it got built as three projects, Rock Spring Center and Avalon Fields. So those are all the zoning cases that I, you know, provided expert testimony on. I've certainly been involved in others.

In terms of Bethesda, in terms of Bethesda, I've worked on enumerable projects, some that have been built, some that haven't, but we've been carried through the project Plan, the preliminary Plan or site plan or rezoning Plan process. They include one at the corner of Auburn and Norfolk and two on Rugby Avenue, none of which have been built yet, or Bethesda Metro Center which, unfortunately, got denied, Bethesda Gateway, Hampden Lane Associates, 4900 Fairmont, 7900 Wisconsin, Pearl Street Office building where the McDonalds site is, Woodmont East/7200 that we worked together on, 4500 East-West Highway, the Apex building where the theaters are at Elm Street, the Bethesda theater and the Whitney behind it, Chase Bethesda 1 and 2, the Christopher, Chevy Chase Bank.

MS. ROBESON: I believe you.

THE WITNESS: Okay.

BY MS. HARRIS:
Q Can you -- that's quite a list. Can you explain briefly what your involvement was in connection with those cases?
A In all the cases it's, when we started the company I was a principle and so in all cases I've been the principle in charge of the project, but we're practicing principles and to this day I'm still very hands on with all our projects. I'm certainly responsible for the basic civil engineering and survey, but also involved in the entitlement process and making sure that the design is consistent with the Sector Plan, the zoning ordinance, other regulations, compatible with the surrounding area and a lot of experience with staff and what their particular subjective desires might be. So I factor that into the project knowing what the approval process would be, certainly setbacks, heights, orientation of the building, public use space and stay involved during the design process to make sure that we continue to meet that criteria.
Q Okay. Thank you. With respect to the subject case, what would you say, and you've been here for a good part of the hearings, what is the, what are the most important components of this case?
A Well, there's several. I think the project boundary, the street edge rhythm, the relationship to

adjacent properties, height and the design of the space between the sidewalk and the building are several that are important to go into detail.
MS. ROBESON: Okay. I'm sorry. Can you -- I just have not given you enough time for lunch. If you could not do that because for some reason I'm having trouble hearing what he's saying. Okay. I'm sorry, can you back up and tell me --
THE WITNESS: Sure.
MS. ROBESON: -- what the most important aspects of the project are?
THE WITNESS: The zoning process.
BY MS. HARRIS: Can you break that down a little bit?
MS. ROBESON: Yes,
THE WITNESS: Several come to mind, the project boundary, the street edge rhythm, relationship to adjacent properties and I'll go into -- I'll just summarize it. The height and the design of the space between the sidewalk and the building, the public space.
MR. KNOPF: Excuse me, but may I ask --
MS. ROBESON: I know what you're going to say.
MR. KNOPF: Yes, I'm not quite sure what relevance this is to your area of expertise.
MS. ROBESON: And we had this argument before and

I think the ruling was that he would confine himself as a civil engineer because you have had an architect, two land Planners.
MS. HARRIS: And I think Mr. Irish's extensive experience indicates that he is very, has practical experience, not just educational experience, on all the components that he just identified. What we didn't do is bring back every one of our witnesses to emphasize some of these points since he has been involved in the entire process and actually his direct testimony touched on all the things that he just identified. It's our intent just to highlight again what those most important components are.
MS. ROBESON: Well, I think he needs to confine himself to civil engineering --
MS. HARRIS: Okay.
MS. ROBESON: -- otherwise I would have qualified him as a land Planner.
MS. HARRIS: Well, then I would like --
MS. ROBESON: And it's too late to do that now because we haven't given them notice of it.
MS. HARRIS: Well, for the record, I want to state my objection because I believe we stated our objection back previously that, in fact, he should have been qualified as a, I believe it was a site planner that we were trying to get him the qualification.

MR. ABRAMS: Yes, but if you follow the rules of procedure, which we have attempted to do, he should have been identified as a land Planner provided the Examiner and other parties with his resume --
MS. HARRIS: Which were?
MR. ABRAMS: Which --
MS. ROBESON: As a civil.
MR. ABRAMS: As a civil, yes.
MS. ROBESON: As a civil engineer.
MR. ABRAMS: Which was not done and, you know, to bring him back because, you know, there was a tactical thought on the part of the applicant not to bring these other witnesses back to testify and try to use him as the sort of --
MS. HARRIS: But the components of civil engineering, it's not evaluated in a sheer vacuum.
MS. ROBESON: Well, anyone -- can you proffer what you want him to testify to?
MS. HARRIS: I want him to proffer in terms of the importance of the street edge that we're establishing.
MS. ROBESON: In what sense?
MS. HARRIS: How our, how this project is perfectly consistent with all the other properties on the street and why --
MS. ROBESON: We --

MS. HARRIS: -- it's important to maintain that rhythm.
MR. ABRAMS: We could ask --
MS. ROBESON: Well, that's land Planning realm. I really don't see that. I do accept that he, Mr. Irish, has a lot of experience, but part of it is notice and we did not accept him as a land Planner before and I want to limit him. We have the exhibit that he, which was very helpful that he marked up. So --
MR. KNOPF: If I may add, I don't think anyone is challenging the calculations that he did, how far back it is --
MS. ROBESON: What I don't --
MR. KNOPF: -- or how high it is. He's just opining as to what the importance is in a compatibility land Planning sense.
MS. ROBESON: That's -- I agree. So I'm going to keep him to civil engineering testimony.
BY MS. HARRIS:
Q You testified previously about the distance between the subject building and the City Homes. Can you -- and I believe distances, measurements are certainly something a civil engineer would be --
MS. ROBESON: Yes, and we have the account -- I don't, I can't remember the name. It's the one right at

your feet, one --
THE WITNESS: 12, 112.
MS. ROBESON: Okay. So is there anything -- are there any distances that you want to add to that?
MS. HARRIS: Just a moment. Let me -- actually I don't know that we focused on the setbacks with regard to, wait a minute, hold on.
MS. ROBESON: May I ask him an engineering question? I saw -- are you familiar with the new binding elements that have been submitted?
THE WITNESS: Yes.
MS. ROBESON: There's one distance there that --
MR. ABRAMS: We don't have it in as an exhibit yet, do we?
THE WITNESS: No.
MS. ROBESON: No.
MS. HARRIS: Okay. Actually what --
MS. ROBESON: Who is going to introduce --
MS. HARRIS: It was Ms. Wiltshire, but I will bring it in because Mr. Irish's firm prepared it.
MS. ROBESON: Okay.
MS. HARRIS: I'd like to enter as the next exhibit the revised Development Plan which was dated May 10, 2012, revised binding elements.
MR. ABRAMS: Is this 124?

MR. KNOPF: We also have a 122 is your letter summarizing it.
MR. ABRAMS: Yes, and did you get the latest --
MS. ROBESON: Yes.
MR. ABRAMS: Yes, we got that.
MR. KNOPF: Oh, no, I didn't get that. No, but I'm, because that's what has an issue, I think we're both on the same wavelength. There's --
MS. ROBESON: We, okay, this would be 124. Is that what you said, Ms. Harris, 124?
MS. HARRIS: I actually didn't, but I think Mr. Abrams said --
MR. ABRAMS: I did.
MS. ROBESON: Yes. That's -- so this will be the revised Development Plan.
MR. ABRAMS: Now do we have copies for counsel?
MS. HARRIS: Yes, you do.
MS. ROBESON: And what date is this? I apologize.
MS. HARRIS: It says Revision No. 4 and it says May 10, 2013.
MS. ROBESON: Okay. So I'll call it revised Development Plan, May 10, 2013, just so nobody can be confused.
(Exhibit No. 124 was marked for identification.)

THE WITNESS: Would you like a copy up there?
MS. ROBESON: Yes, thank you.
MR. ABRAMS: To save time, is there a way of sort of circling the numbers that we're talking about as being binding elements?
MS. ROBESON: Well, let me do this. Can -- is it, if this is all right with you, can we have him explain the changes to the -- or are the changes only in the text?
MS. HARRIS: Yes. Five, the binding elements text were added. There was no change --
MS. ROBESON: To the site plan itself?
MS. HARRIS: Correct.
MS. ROBESON: Okay.
MS. HARRIS: But Mr. Irish can walk through those if that would, if you --
MS. ROBESON: Is that acceptable to you?
MS. HARRIS: And it --
MR. ABRAMS: Yes, so all 26 are binding elements now, is that what we said?
MR. KNOPF: Yes.
MS. ROBESON: 124?
MR. ABRAMS: No, 1 through 26 --
MR. KNOPF: Is a binding element.
MR. ABRAMS: -- are all binding elements.
MS. ROBESON: Oh, oh, oh, yeah. Okay.

MR. ABRAMS: Okay.
MS. ROBESON: All right, Mr. Irish, if you would be so kind as to take us through some of these changes?
THE WITNESS: Certainly. In the, in order to have full disclosure, that's what you asked for the truth, the whole truth? There was one change in the Plan view. I'm pointing to a manhole that's at the corner of West Lane and Montgomery.
MS. ROBESON: Yes.
THE WITNESS: And there's a small leader that I would call artifact that, a line that goes kind of southwesterly from there, about an inch long.
MS. ROBESON: Yes, I see it.
THE WITNESS: That, with CAD, that's a line that was used on the concept storm water management to number that structure. It's not needed here and should have been frozen in the original Plan. So I furnished that before we did, spotted this. Other than that, the table, the drawing, the legend, everything stayed the same. The sustentative changes --
MS. ROBESON: Yes?
THE WITNESS: -- were the condition, the binding element No. 3 was reworded so that it made it clear that it's our intent to provide 15 percent MPDU's if we get the bonus density.

MS. ROBESON: I see.
THE WITNESS: So we're not proposing to do that if we just get a, if we don't achieve the bonus density. And then the binding elements would be added for 41 through 26 which came from your letter.
MS. ROBESON: But then you have no binding element for -- are you just relying on the zoning ordinance requirement that you provide, 12.5 percent MPDU's?
THE WITNESS: We have to by law.
MS. ROBESON: Yes, that's what I was asking. Okay. Go ahead. 21.
BY MS. HARRIS:
Q So do you, yes, do you --
A So we added binding elements 21 through 26 and they, everybody has seen them before, they were in your letter and we were asked to put them on the drawing. I can read them if you'd like?
Q No. So as to 22, is that where the -- 22 is the mechanical penthouse. Is that where it's been shown on, roughly where it's been shown on elevations to your knowledge?
THE WITNESS: I can only rely on what my friend, Morris, the architect, said earlier. He said, yes.
MS. ROBESON: Oh, okay.
THE WITNESS: So --

MR. ABRAMS: Is that 25 feet from the step-back at the 6th and 7th level or 25 feet from the face of the building below that?
THE WITNESS: 25 feet from the ground, the face of the building at grade. So you have --
MR. ABRAMS: Okay.
THE WITNESS: -- 15, the step-back is 12 --
MS. ROBESON: 12.
THE WITNESS: -- and then you have an additional 13 to the penthouse.
MS. ROBESON: Okay. Now let me -- I'm sorry.
MR. KNOPF: One thing that I'm missed, I wanted to know, maybe I remember wrong, whether there's an area. I thought the original Plans, I'm looking at 25, called for a 36-feet setback and this says 35 feet. Was that a change or I just remember things wrong?
THE WITNESS: I don't know where you get the 36 from.
MR. KNOPF: It was marked on the Plan that's behind you, or one of the Plans that marked the street from the center street to the building. I thought it said 36 feet. I don't want to argue, I just, it was not on purpose --
THE WITNESS: We didn't intent to change anything.
MS. ROBESON: May I ask you one more question?

Can you point out the center of the street, the center line of the street on the Plan?
THE WITNESS: Which Plan?
MS. ROBESON: The new one. There's a line down the center of Montgomery Lane that is a long dash with a short dash --
MS. ROBESON: Right.
THE WITNESS: -- and another long dash.
MS. ROBESON: Okay.
THE WITNESS: It starts, well, it's -- if you were to extend it, it's just below the words Montgomery Lane on the left side of the drawing. There's a --
MS. ROBESON: Okay.
THE WITNESS: The dimension says it's 20-foot existing paving. It goes right through the middle of the --
MS. ROBESON: That's what I thought. I just wanted it on the record so everybody and the counsel knows where we're measuring from.
MR. KNOPF: Not be argumentative, but just to clear this up, using just what you referred to, I find the building 36 feet back as shown here and yet the binding element says 35 feet. I just want to know if that's purposeful, it's inadvertent? I'm not trying to be argumentative.
THE WITNESS: Well, I think they're consistent.

If you have a minimum of 35, 36 would comply. It was not purposeful and --

MR. KNOPF: It's purposeful to be 35, that's all I wanted to know, it wasn't inadvertently meant to be --

THE WITNESS: As an absolute minimum.

MS. ROBESON: Okay. And, Ms. Harris, I appreciate kind of taking this out of order. Do you want to --

MS. HARRIS: I have just several more questions --

MS. ROBESON: Okay.

MS. HARRIS: -- for Mr. Irish.

BY MS. HARRIS:

Q One is the project boundary, as part of your responsibilities, you evaluated the project boundary, correct?

A Yes.

Q And did you also evaluate the project boundary of the prior case, the Holladay case?

A Yes.

Q And can you please tell me what went into the considerations with respect to the project boundary and the ultimate project that was recommended that is being proposed?

A I could probably point to their Exhibit 24, but the difference between the two applications is that the one lot at the actual corner of West Lane and Montgomery, the

northwest corner, was not included in the Holladay application. They wanted to include it, but they were unable to get that lot under contract. When we went through the Plan review and everything, virtually everybody said can't you get -- it would be so much better if you could get that lot added to the mix, if you would. So once this applicant was able to do that, it made for a better project boundary.

Q And what would have been the -- if they hadn't done, been able to obtain it and assume for a moment that the Holladay project would have gotten developed, what could be developed on that Wolf property?

A Well, I think you've got a pretty good example of it, the County Council just approved 4825, so I think you take a mirror image of that and there you go, that's what would be in that corner. And, you know, this building, 4825, that corner, the southwest corner of that building is only five feet from the intersection of those two lighter lines. It's very, if you take the arch that we've got set-back, if you intersect the two right-of-way lines, we're about 33 feet back. And we created a, you know, if you picture the image of the book ends of this building where you're looking at -- on Exhibit 114, put your bookends of this, put your bookends of the 4825 building in the upper-right corner of Exhibit 114 versus at least one side of the

intersection looking like Exhibit 76.

Q Thank you. Have you been involved in any recent cases where you were required to push, to respect the continuous building edge concept and if so, can you please explain that?

A Yes.

MR. ABRAMS: Objection. It's a Planning testimony.

MS. ROBESON: Sustained.

BY MS. HARRIS:

Q In the case of the Wheaton Safeway, the case that I believe you are involved in, do you recall how far the building was set back from the back of curb?

A I don't recall the distance. The applicant's original Plan had a large strip of public use space along the entire front of the --

MR. ABRAMS: Madame Examiner, this is rebuttal testimony. I don't know what this is rebutting in terms of the Safeway application.

MS. ROBESON: Do you want to proffer what it's rebutting?

MS. HARRIS: It has to do with the distance from the back of curb of the subject building to, the distance from back of curb to the subject building and the maintenance of that continuous building edge and experience

based on other cases where that's, in fact, been determined to be an important component.

MS. ROBESON: Well, he's here as a civil, so that's getting into the land Plan.

MS. HARRIS: But I believe as a civil he was in charge of the actual determination of the measurement.

MS. ROBESON: Well, he can testify to the measurements, but not as --

MS. HARRIS: Okay.

MS. ROBESON: -- to the importance.

MS. HARRIS: Okay.

BY MS. HARRIS:

Q Mr. Irish, in the case of the Wheaton Safeway, originally, as originally proposed, how far back was that building located from Georgia Avenue, do you recall?

A I don't recall the distance. The point was that the public use space was located in front of the building on the original application and the Planning Board wanted the building moved up closer to the street so that it would get --

MR. ABRAMS: Objection. Relevance and --

MS. ROBESON: Yes.

MR. ABRAMS: -- Planning testimony. Everything is not supposed to --

MR. KNOPF: It's not even relevant. This wasn't

in the TS-R zone or in the Bethesda --
MS. ROBESON: The objection is sustained, so --
MS. HARRIS: Okay.
MS. ROBESON: -- please, please don't try to slip it in through the back door.
MS. HARRIS: That wasn't my intent.
MS. ROBESON: I mean -- okay.
MS. HARRIS: I believe there was a letter -- the ZHE received an e-mail from a Gail Kauffman. I don't know if that made it into the record?
MS. ROBESON: Yes, it did. It's 123, I think.
MS. HARRIS: Okay.
BY MS. HARRIS:
Q Mr. Irish, did you review the e-mail that was Exhibit 123 from Gail Kauffman dated May 7, 2013?
A Yes.
Q Can you briefly summarize or what, in your, from your --
MS. ROBESON: Before you go there, the e-mail is on -- if I recall the e-mail, but I'll double-check, I think it's on compatibility.
MR. ABRAMS: That's what it indicates in the --
MS. ROBESON: Hold on one second.
MR. ABRAMS: -- exhibit list.
MS. HARRIS: No, I believe it also had to do with

this.
MS. ROBESON: I'm sorry, I --
MS. HARRIS: Or it was sent electronically.
MS. ROBESON: I don't have the file with that e-mail here. Can you keep it to distances?
MS. HARRIS: Certainly.
BY MS. HARRIS:
Q Mr. Irish, what's the distance of the subject property from the TS-R, excuse me, from the Metro?
A It's, excuse me, it's less than 1,000 feet. I believe it's about 940.
Q And are there any other projects listed on that correspondence from Ms. Kauffman that are located within the TS-R district?
A Within the TS-R district is the 4901 Hampden Lane project.
Q And that's the only one, is that correct?
A I believe so.
Q And are --
A I think Lot 31 is TSM.
Q Correct and --
MS. ROBESON: Well, you're not answering.
MS. HARRIS: Right, I'm sorry. I didn't mean to do that. My apologies.
BY MS. HARRIS:

Q What is -- can you summarize what the distance of the rest of those projects are from the Metro station?
A They range up to approximately 3,000 feet.
MS. ROBESON: The distance of which project?
MS. HARRIS: The projects identified in Ms. Kauffman's correspondence --
MS. ROBESON: Okay. Okay.
MS. HARRIS: -- and their proximity to the Metro station.
MS. ROBESON: All right.
THE WITNESS: In fact, only one of them is less than 1,000 feet and that, well, I mean 4901 Hampden Lane is close. It's about 700 feet, obviously closer to the Metro than any of them. The Woodmont East project, which is in the CBD zone, is about 950 feet. All the rest of them are, let's see, the next closest were lot 31 is 1,350 feet. You got several at 1,400 feet, 2,000, 2,500, 3,000, 2,900, 3,000, so quite a distance away from the Metro.
BY MS. HARRIS:
Q And did you -- and can you reiterate how many of those are within the TSR district?
A Just --
MS. ROBESON: How many of the ones in her letter?
MS. HARRIS: Yes.
THE WITNESS: Just the, just one, the 4901 Hampden

Lane project.
MS. HARRIS: Thank you. Hold on. Can I -- just a moment. I have no other questions.
MS. ROBESON: All right. Cross-examination, Mr. Abrams?
MR. ABRAMS: Yes.
CROSS-EXAMINATION
BY MR. ABRAMS:
Q Mr. Irish, what is the building height point on West Lane for this building?
A The building height point?
Q Yes, from which you started to measure?
A The building height measurement point?
Q Yes. And what is the elevation there, that's basically what I asked you?
A There's a point where I'm pointing with my pen. It's a little target symbol which is building height measuring point 2(c), 335.8.
Q 335?
A Yes, sir.
Q Okay. And what is the building height measurement point for the Hampden apartments on Hampden Lane and Arlington Road?
A Hampden Lane Associates?
Q Yes, the one that's going down on Arlington Road.

A I believe it's 321.
Q And my pre-calculus is 14 feet difference?
A Yes, sir.
Q Okay. Now let's take the measurement. The midpoint, I guess, let's say the midpoint at the intersection of West Lane and Montgomery, what is the ground elevation there?
A It's about 31, 331.
Q 331? And what is, so the midpoint of the highest portion of the Hampden Lane apartments, the ground elevation there in front of the apartment on Hampden Lane?
A I don't understand your question.
Q The 71-foot section of Hampden Lane apartments faces Hampden Lane. What is the elevation there?
A The midpoint of the 71-foot section?
Q Yes.
A It would be approximately 324.
Q So that's where we have the 7-foot that I think that you measured, correct?
A If it works out that way, yes.
Q All right. Now were you at the site visit with the rest of --
A With the Hearing Examiner?
Q Yes.
A No, sir.

Q You weren't? Have you ever stood in the back of where they're going to construct the Hampden Lane apartments and looked north toward the City Homes and toward the subject property?
A No.
Q Well, will it surprise you to know, sir, that if you stood at sections of that wall you have to be over seven feet to see over that hill?
A It doesn't surprise me at all. The driveways for City Homes slopes up from Montgomery Lane, so you would expect those to be higher in elevation.
Q So you're basically comparing, are you not, ground elevations which really don't give you a visual perspective?
A Well, I think that's what you were doing in all due honesty.
Q Now you also talked about, and I think I got this right, maybe I'm wrong, your mind visualizes height from up close, does that sound right in terms of your testimony?
A I don't think those were the words I was using, but I think --
Q Well, what words did you use so I can sort of --
A Well --
Q -- digest those?
A Let me restate it so I don't have to remember my exact words.

Q Yes.
A The point I was trying to make was that the further away you are from something, the more difficult it is to visualize the height of that relative to where you are. So if you're right on top of something -- the closer you get to the building, the more obvious the height of that building is going to be to you. And primarily what I was trying to dispel was the image that if the road slopes up a couple feet, then the building ought to be a couple feet shorter so it would appear the same height. To me that building would appear lower because it would actually have a lower height even though the elevation might be the same.
Q In terms of somebody trying to gain a perspective of building mass and bulk and height, if you stood further away from the building, wouldn't you get a better perspective than if you're standing right up next to the building?
A Not -- I mean the further away you get, the building is going to appear smaller because as, through just the distance away.
Q No, in terms of compatibility, you're comparing a building with what's in the area around it, is that right, various elements?
A If I can answer a compatibility question, yes.
MS. HARRIS: Oh, was he asked --

MR. ABRAMS: He presented his testimony and apparently it wasn't stricken.
THE WITNESS: The height should be relative to the buildings immediately around it, yes.
MR. ABRAMS: Okay. No further questions.
MS. ROBESON: All right. Mr. Knopf?
BY MR. KNOPF:
Q I would like to try to clear up something which is my confusion here. You did the measurements to show how far back from the center of the street the building was, correct?
A Yes, sir.
Q Okay. And I'm correct that we went through this before on Exhibit 124 on the Plans, the revised Plans, it shows 36 feet back, correct, from the center of the street?
A Which Plan shows 36?
MS. ROBESON: The one --
MR. ABRAMS: 126.
MR. KNOPF: 120 --
MS. ROBESON: Four.
MR. KNOPF: 124, the one that we just --
MS. ROBESON: That's what I was -- because if you take 10 feet --
THE WITNESS: That's correct.
MS. ROBESON: -- it's 10 feet and then 26? No.

MR. KNOPF: Yes, it's 10, 26 feet, excuse me, 26 feet to the center.
MS. ROBESON: Oh, yes, you're right and then there's a 10-foot dimension from the, I guess it's the curb line to the building face.
MR. KNOPF: Right.
BY MR. KNOPF:
Q So what I'm asking is, on the Exhibit 124, it says on the new binding element proposed, the building will be set back a minimum of 35 feet. So my first question is if they did do the minimum that the new binding element has, does that affect the calculations for the public space? I thought there was public space counted along Montgomery Lane.
A I mean if the building were set back 35 --
Q 35 feet instead of 36 feet --
A -- from center, would that alter the public use space calculation?
Q Yes.
A Yes.
Q And do we still meet the public use space requirement?
A The project will meet the public use space requirement.
Q We would lose, what, 70, 80 feet?

A We wouldn't lose anything. The project would meet the public use space requirement.
Q No, but I mean if you give up one foot --
A Then you put the foot somewhere else.
Q -- running the whole length of --
A You're trying to --
Q I'm trying to just figure out what this means.
A You're trying to apply a level of precision to a conceptual Development Plan that doesn't exist.
Q Well, could we have the same level of precision if we said that has to be set back a minimum of 36 feet?
A You could say it can be set back a minimum of 36. You could say 35, whatever you want to say. I mean the fact that we're saying a minimum of 35 and we have a dimension that shows 36, the Plan right now shows the building to be 35, I'm sorry, 36 feet from the center line. The binding element says, basically says that as you go through the design process and things happen, like we all know they do, between now and building permit, at an absolute you can't move the building any more than one foot closer than is drawn right here.
Q And what I'm trying to figure out what could happen. One was we would lose, assuming it was 35 feet, we would lose how many square feet of open space?
A Zero.

Q Why? Along Montgomery Lane, along Montgomery Lane. Are you saying if we lose that amount, we have to make it up someplace else?
A It would be made up somewhere else.
Q Is that because we're right at the minimum that the code requires now?
A The Plan as currently drawn, yes, is at 10 percent minimum requirement.
Q So one of the changes is possibly we ended up with that amount of public space someplace else unknown?
A Yes, I mean, the one --
Q Another --
A -- foot doesn't mean that that whole face would be one foot. That could mean one little projection might stick out a foot. So, you know, like I said, you're trying to apply a great deal of precision --
MS. ROBESON: Well, your, but your burden of proof is to show that you're going to have, since you're at the very minimum, and I think one of the issues in this case is the open space being along the street frontage, so I guess the question is, yes, it's not precise at this stage, but are you going to be able to provide it within that Montgomery Lane frontage?
THE WITNESS: We can, yes, we could provide it there. The building will be -- we can't get a Plan approved

without doing so. The project will --
MS. ROBESON: But the question is would it be -- do you have the capability of providing the additional square footage in that area?
THE WITNESS: Sure you do.
BY MR. KNOPF:
Q Can you explain how?
A This is a straight line and an arc. If you move things just a -- number one, where is that one foot? If it's a 1-foot by 1-foot projection into there for an architectural embellishment of the building, then we've got one square foot to pick up.
Q But we just had testimony that there's no embellishment sticking out because they were right at the minimum line, that's what I'm trying to understand this. And that facade did not articulate after you got past the glass at the corner, so I'm just -- I have another question you can answer, the same thing, doesn't it also affect the landscape Plan? We had testimony that, how you reached the minimum width in that area in order to Plant trees and so on. So taking back a foot has major implications, does it not?
A Well, it is not, as I said before, it is not our intent to take back a foot.
Q Well, then wouldn't it be better if it's not your

intent to change the binding elements so that you have to have a minimum of 36 feet path? So if there's some wiggle room, it goes back, not forward.
MS. ROBESON: Or to the side --
MR. KNOPF: Or to the side.
MS. ROBESON: -- in the amenity area, unless you're at the active/passive -- you've got 26 percent of the active/passive use.
THE WITNESS: To address your question in terms of where could it be, I believe the Exhibit 76 shows, and the architect this morning testified to a brief, a slight step-back at this corner where the scallop is for the park --
MR. KNOPF: Yes.
THE WITNESS: -- but if you look at our drawing for the Development Plan, it goes straight and then the arc. We don't have that little probably two square foot area cut out of the public, cut out of the building footprint there.
BY MR. KNOPF:
Q You're not saying that's a 70-foot indentation?
A What I'm saying is, you asked me how I could pick up a square foot if we had a 1-foot embellishment here and I'm saying you've already got a foot or two in this corner that I'm not showing. I mean the --
MS. ROBESON: So that's, so now you're down to --
MR. KNOPF: 68 feet or something?

MS. ROBESON: No, 72.
MR. KNOPF: 76? Oh.
MS. ROBESON: If you've got four square feet --
THE WITNESS: Only if you run it straight across the --
MS. ROBESON: No, 74. Well, let me ask this and maybe he's not the witness to ask, is that 35 feet set in stone and maybe he's not --
THE WITNESS: Yes, I could answer --
MS. ROBESON: -- is there a reason, okay, is there a reason you said 35 instead of 36?
THE WITNESS: It was truly a rounding. When we prepare Plans, recognizing how the level of precision increases as you go from where we are today to building permit --
MS. ROBESON: Yes.
THE WITNESS: -- things happen whether it's code comments or just design evolves or whatever.
MS. ROBESON: Okay.
THE WITNESS: Things happen, so if I were to take -- unfortunately with CAD, the computers at this point, you can measure to the thousandths of an inch right now where a certain line is, but we're not trying to imply that that, we know where that line is to the thousandth of an inch. So if in a drawing it might measure 36 feet, we

typically would round down and call that a minimum, not intending to slide the building to that point, but so that if something happens in the ultimate design, we could still comply with an absolute that we have to issue at this point.
MS. HARRIS: May I ask for a 5-minute recess so we can confer about this issue?
MS. ROBESON: Absolutely.
MS. HARRIS: Thank you.
MS. ROBESON: Go ahead. We'll be back. Why don't you take 10 minutes?
MS. HARRIS: Thank you.
MS. ROBESON: We'll be back at 10 until 2:00.
(Recess)
MS. ROBESON: Are you read? Okay. We're back on the record. It's --
MR. KNOPF: Oh.
MS. ROBESON: -- you had -- we're still at --
MR. KNOPF: I thought we were taking a break for some purpose but, okay, I can keep going.
MS. ROBESON: Okay.
MS. HARRIS: Well, I think we were in the middle of Mr. Irish trying to explain and I think he, I mean if we can afford him the opportunity to explain what the decision and the basis for the decision regarding the --
MS. ROBESON: Of the 35 feet?

MS. HARRIS: Yes.
MS. ROBESON: Okay.
MR. KNOPF: Let me ask another question.
MS. HARRIS: Wait, I thought --
MS. ROBESON: Wait.
MS. HARRIS: Just a minute.
MS. ROBESON: He, you --
MS. HARRIS: He needs to respond.
MS. ROBESON: -- finish. Let's see. You had finished your direct and we were on cross-examination.
MR. KNOPF: Right. I asked --
MS. ROBESON: So it's his question.
MR. KNOPF: Right.
MS. ROBESON: Do you -- so go ahead.
MR. KNOPF: Well, I had one. I now have, I guess you conferred during the break with him, with the witness?
MS. HARRIS: There was a discussion about whether it should be 36 or 35 feet.
MR. KNOPF: Right. And --
MS. HARRIS: And then the Hearing Examiner asked questions about it and we asked whether we could take a break to resolve the issue of whether it's 35 or 36. The direction was, yes, I think that we should --
MS. ROBESON: Okay. Did you --
MS. HARRIS: -- hence the break.

MS. ROBESON: Is it 35 or 36?
THE WITNESS: The binding element currently shows 35, but we're willing to change it to 36 --
MS. ROBESON: Okay.
THE WITNESS: -- to be consistent with the dimensions on the Plan.
MS. ROBESON: Okay.
THE WITNESS: The intent was not any smoke and mirrors or sleight of hand or anything, it's as I explained, when you're preparing something, we're not at the level of precision that, I don't know that the architect might have a pilaster or two in the middle of that face of the building and we end up with 35 1/2 feet.
MS. ROBESON: Right.
THE WITNESS: And in order to --
MS. ROBESON: But you're willing to change it to 36?
THE WITNESS: We're willing to make it 36.
MS. ROBESON: Okay. Mr. Knopf, do you have any other questions?
MR. KNOPF: Excuse me, yes. I'm definitely prepared.
MS. ROBESON: Okay.
BY MR. KNOPF:
Q It says the, and I didn't, the new binding element

23, it says that the landscape Plan to be included in the site plan application shall include proposed landscaping for the common areas on the rooftop.
MS. ROBESON: Wait, what are you doing to that, Mr. Irish?
THE WITNESS: Do you want me to change it to 36 instead of 35 in the binding element for --
MS. ROBESON: Oh, in the 136, or 124?
THE WITNESS: The 124, No. 25.
MS. ROBESON: You're going to have to submit a new one --
MS. HARRIS: Okay.
MS. ROBESON: -- for the counsel because we have to have the exactly what you're proposing.
MS. HARRIS: Okay.
THE WITNESS: Right.
MS. ROBESON: So why don't you not mark that up --
THE WITNESS: Okay.
MS. ROBESON: -- and when you can resubmit a new one with the 136. I'm sorry, Mr. Knopf.
MR. KNOPF: No, that's quite all right. I thought he was answering my question.
BY MR. KNOPF:
Q Going back to binding element 23, the new binding element on Exhibit 124, the landscape Plan to include a site

plan application shall include proposed landscaping for the common areas on the rooftop and then I believe there is a square footage for the rooftop someplace, the total square footage or is there not? What I'm trying to get at is where, what's on the rooftop in terms of square footage and where is it?
MS. HARRIS: Objection. That has nothing to do with the binding element regarding landscaping on the rooftop.
MR. KNOPF: It doesn't?
MS. HARRIS: No.
MR. KNOPF: Well, I'd like to know how much it is and where it is. I thought that --
MS. HARRIS: The witness didn't testify to that.
MR. KNOPF: But this is a brand new --
MS. HARRIS: Well, if he, he is testifying to the binding element, so if he knows or if there's a set square footage, just, you know, if there isn't a set square footage, there isn't. So --
THE WITNESS: I'm not aware of a set square footage. The binding, the intent of the binding element is to say that that area, whatever it is, will be designed in the site plan.
BY MR. KNOPF:
Q And is, just, let me just clear up, and is that,

whatever it is on the roof, is that in, is that in addition to and beyond what is required in terms of total square footage for active/passive space?
MS. HARRIS: Objection. The -- the binding element doesn't talk about active and passive space, it goes to the fact that the rooftop will be landscaped.
MR. KNOPF: Well, that's what I'm trying to understand. So that's not being counted as part of --
MS. ROBESON: Well, I guess I think it's a fair question because it refers to common area and I don't know -- he's trying to figure out, and I am too, to say how much of the -- usually when people come in they say, well, this is how much active/passive space we have and that's if you, if you are saying we're guaranteeing 7,421 square feet, but we're not sure where, that's, you know, that's one thing. I think it's a fair question to ask.
So is, I guess my question is, when you say landscaping and common area on the roof, is that going to be in addition to the, if you know, is that going to be in addition to the 7,421?
THE WITNESS: It could be. I mean we're not at the level. The Planner that we have now, there is at least 7,421 square feet of active/passive space that includes exterior space, basically a grade, and it also includes spacing inside the building. I don't have the architectural

dimensions --
MS. ROBESON: No --
THE WITNESS: -- with me to know --
MS. ROBESON: -- I understand.
THE WITNESS: -- how much, how large the community room is and so forth, but there would be, there will be space on the roof and there is green roof, so you can call that common area. Now is it designed to be a recreation area? We're not at that level of detail. I think the intent of the --
MS. ROBESON: I guess my question is what's the point of putting that binding element in here?
THE WITNESS: I think the point was that there are a lot of questions asked about what's happening on the roof and we're trying to say that we don't know at this point, but we will know at site plan which, frankly, is the appropriate time for it. So it's usually determined.
MS. HARRIS: May I respond to that?
MS. ROBESON: Yes.
MS. HARRIS: There was also a discussion, if we understood it correctly, about, and I believe it came from the opponents, well, was there going to be landscape up there or is there not and just as one of the exhibits showed some landscaping on the terrace area, it sounded like what they were asking was they wanted to see landscaping on the

roof, so we decided, okay, we can be responsive to that and we will providing landscaping on the roof.
MS. ROBESON: That's what I thought it was, but I wasn't sure because it doesn't say landscaping will show or, you know, I -- okay. So basically --
BY MR. KNOPF:
Q Let me explain what my concern is and you can tell me why I shouldn't be concerned. What I am concerned is that based on the binding elements that are here, should I be concerned that the building footprint such as to the west might change somewhat going more to the west so there's less open space there and that loss there be made up on the roof, for example, by landscaping the roof?
A I don't think so. We need to achieve a certain amount of public use space.
Q That's not public use space on the west side.
MS. ROBESON: Well, wait, aren't there setbacks in the binding elements already?
MR. KNOPF: It's 12 feet, but as you can see as it opens up, there's more than a 12-foot area.
MS. HARRIS: There's also other binding elements with respect to that space.
MR. KNOPF: Is that, I didn't see that.
MS. HARRIS: It's like the space will be substantially as shown on the Plan.

MR. KNOPF: Substantially shown on the Plan, yes, that's what my concern is.
MS. ROBESON: Okay. All right. Do you have any other questions?
MR. KNOPF: Just one more.
BY MR. KNOPF:
Q Did you as part of your professional duties with other projects or even in this project, do you measure the distance of the project from the Metro station to determine how far it is from the Metro station?
A Sure.
Q And why do you, why is the distance from the Metro station important?
A Why is it important?
Q Yes. Are they not special features if you're within a certain proximity of the Metro station, you need less parking or get some other benefits in terms of your building?
A Do I have to answer that question?
Q Yes. I mean --
MS. HARRIS: Actually, objection. Isn't that a land Planning question --
MR. KNOPF: No, you --
MS. HARRIS: -- outside the realm of the expert's expertise?

MR. KNOPF: He testified as to existence --
MS. HARRIS: He measured the distance.
MR. KNOPF: Measured the distance, yes.
MS. HARRIS: And that's all he did was note the measurements.
MS. ROBESON: Hadn't he measured the distance?
THE WITNESS: Yes.
MR. KNOPF: No, he testified on Exhibit 124 the various distances.
MS. ROBESON: Okay.
MR. KNOPF: And then he made some conclusions about some were too far away, some were closer.
MS. HARRIS: No, he didn't. He just --
MS. ROBESON: No, stop.
MR. KNOPF: That's why I'm just saying --
MS. ROBESON: Stop. Stop. Okay. We are going to get through this case. So can you skip to the next or what is your --
BY MR. KNOPF:
Q My last question is I just wanted to know are there, you had mentioned some were a thousand feet, some were more than a thousand feet. I believe you said this project, the instant project --
MS. ROBESON: Oh, you're talking --
MR. KNOPF: -- was a thousand feet.

MS. ROBESON: Okay.
MR. KNOPF: The distance from the Metro station.
MS. ROBESON: Right.
BY MR. KNOPF:
Q Do I remember correctly you said this was a thousand feet from the Metro station instant project?
A I had measured -- there were 12 projects listed in the memo and --
Q How many were within 1,500 feet?
A How many were within 1,500? One, two, three, four.
Q Four projects?
A Yes.
Q And is the County policy in that, within 1,500 feet, are they deemed as being walkable to Metro? That's a normal, walkable distance --
MS. HARRIS: Objection.
MR. KNOPF: -- if you know?
MS. HARRIS: All the witness did was measure. He was under strict orders to limit his testimony --
MS. ROBESON: All right.
MS. HARRIS: -- to civil engineering.
MS. ROBESON: All right.
MR. KNOPF: No further questions.
MS. ROBESON: All right. So do you have redirect

or is it so confused by this point that no?
MS. HARRIS: No.
MS. ROBESON: Okay. So no recross.
MS. HARRIS: No, thank you.
MS. ROBESON: Thank you, Mr. Irish.
THE WITNESS: I'm sorry, I was trying to be cooperative.
MS. ROBESON: You're fine. And then, finally, we have Ms. Wiltshire?
MS. HARRIS: Correct.
MR. KNOPF: We're saving the best for last.
MS. ROBESON: Okay, Ms. Wiltshire, you're still under oath. Do you have a chair?
THE WITNESS: Yes, I just wanted to find one that, that one exhibit, the 106(b) just in case I need to --
MS. HARRIS: Actually, you know what I'm going to have you read --
THE WITNESS: Oh, the same, yeah, same purpose basically. Okay.
MS. HARRIS: Thank you.
DIRECT EXAMINATION
BY MS. HARRIS:
Q Ms. Wiltshire, can you please explain the outreach efforts that SJG undertook with respect to the neighbors throughout this process?

A Sure. I'd be happy to. We met with the neighbors on many occasions. SJG actually --
MS. ROBESON: Why are we going here?
MS. HARRIS: Because it --
MS. ROBESON: Okay. Just go.
MS. HARRIS: Because I believe there was a lot of, there was a lot of testimony in terms of the applicant not being responsive to --
MS. ROBESON: Okay.
MS. HARRIS: -- the neighbors and --
MS. ROBESON: All right. There was. Go ahead.
THE WITNESS: We've actually done a lot of urban infill projects, most of ours actually abut other properties in the District, so we are actually very extremely sensitive to the happiness of our neighbors. We're long-term owners. Most of our properties we've owned for 30-plus years, so we don't build and leave, we stick around. And in this case in terms of our outreach with the neighbors, I just want to talk a little bit about what we've done in the process, again, to address some of what we've heard here. And I guess I'll start with --
BY MS. HARRIS:
Q You're referring to Exhibit 113?
A I'm sorry, Exhibit 113 I guess is the latest? To the north of us is the Edgemoor at Arlington North, which we

have discussed extensively which is owned --
Q To the north? Can you --
A I'm sorry, to the west.
Q I'm sorry.
A Which is owned and actually occupied by Randy Rothstein who has offices here. We met with him on a number of occasions. He expressed some concern about the public space, well, actually I should say the private amenity space in the rear, so we met with him, he didn't have any issues, as you know, with the massing, the height, the density, but his one concern had to do with the light that could be generated and I guess potentially noise, also the cut of curb between the properties because of the distance. So we actually agreed with him that we would bind, have a binding element which is binding element No. 19 on the Plan that we would keep the light levels to 24 inches in that landscape area. So, as you know, he supported the project which is shown in blue.
In addition, we met with the Villages of Bethesda who previously had opposed the project under Holladay. They had some concerns in that along the northern property line the project previously was actually 20 feet, but we are now proposing 15 feet, but they were pleased with the fact that the driveway and the loading was no longer along the property line, but there would now be a green area that

would be landscaped and we would actually have the garage entrance inside the building. But they did ask us to, asked us to do a number of things. One was to submit a binding element that would agree that that area above grade would remain 15 feet from them and, quite frankly, understandably so because as you saw I believe when you were there, some of these units do look out into the property and they're all patios here and there actually are shadows cast given that we are on the south of them. So they were very concerned about keeping that distance. So we agreed to binding element, I believe that one was 16 and then also No. 17 in that we would keep the general dimensions and this private space area would remain the same since their view shed would remain open. Previously, the building was pushed much back, much further back so, again, those two things were very important to them.

And we also, they asked not to have any balconies on the northern facade, which we agreed to and they had asked us to, it was a binding element from the Holladay project that there would be a construction agreement between the two properties which is very customary for abutting properties. So we agreed that that would remain as well. And there's a binding element, I believe that was binding element No. 7.

We also met with Mr. Chipouras on a number of

occasions. He is at 4828 West Lane. He also had a number of concerns that we addressed. There are some transformers that had been proposed that are along the northern property line. We agreed that we would screen those transformers. That is binding element No. 14. He asked that we provide him a construction agreement. That customarily in my history of being in this business for 20 years, I've never given a construction agreement to someone who is across the street because normally it's not necessary. In this case, though, because this road has to be completely torn up, widened, repaved, you know, he wanted to have some certainty that we would be dealing with those issues. So this is an unusual circumstance, but one that we thought appropriate given the work that needs to be done on the road.

He also requested that he would like to have us put in two driveway aprons that were 20 feet in width to end on his property which we have agreed to do and he asked if we would consider moving the layby closer to Montgomery Lane, which we also said we would talk to DOT about. We have not made any commitments to it, but we would be happy to consider and see if we could accommodate his concerns. He, as well, has provided us a letter of support in this project.

We met with 4825 Montgomery Lane, which is owned by Sandy Spring Builders. They didn't have any requests of

us, but they as well agreed to issue a letter of support. So, what I'd like to notice, the most, the neighbors that are most affected in our opinion abutting our property are all supporting the density, the height, and are all supportive of this project. I'll move on to the discussions that we've had with both the City Homes and the Highrise Edgemoor.

We met with them on numerous occasions and have tried our very best to address their concerns. We've made a lot of modifications. We have introduced many binding elements, tried to do the best we can to ameliorate any concerns that they have. The original building as we proposed it did not have any step-back on the Montgomery Lane facade and, quite frankly, the reason for that is neither do any of the other projects that are in the 65 sector along Montgomery Lane. Sandy Spring Builder, 4825 Montgomery Lane does not have any step-backs. The Highrise Edgemoor at 100 feet does not have any step-backs. 4901 Hampden Lane does not have any setbacks, has a very small cutout which we've discussed, but in my opinion that is not a step-back and it does not reduce the massing and the density along the entire facade of the building. And the City Homes as we know it doesn't have any step-back.

So we looked at the project. We added a 9-foot step-back after -- I don't remember specifically at what

juncture a lot of these happened. I do know, or I'm pretty certain that that step-back was added to the project prior to going to the Planning Board. So before we went to the Planning Board for the first time, we added a 9-foot step-back to try to address the concern of the massing along Montgomery Lane. We later increased that step-back to 12 feet and the 9-foot step-back at 50 feet, as you know, basically makes the two projects between the City Homes and the facade of our building approximately the same height. And, again, as we've discussed on many occasions, there are 73 feet between these buildings.

So we add the 9-foot step-back, we increase that to 12 feet which we have added as a binding element, binding element No. 18. We also had a meeting I remember specifically with the Highrise Edgemoor and there was discussion about whether or not we would be willing to put some greenery in that step-back, some landscaping Planners, whatever it may be, we have agreed that we would add greenery to that landscaping.

MS. ROBESON: Okay. So that was the purpose of that binding element then?

THE WITNESS: That wasn't necessarily binding. I can make it binding.

MS. ROBESON: Oh.

THE WITNESS: That was really the rooftop. But

the general idea is to provide, and we're happy to, and we do do this, is to provide greenery, Planners, landscaping in those areas. We can add it to the step-back as well, but I mean that's why we showed it, quite honestly, in the rendering --

MS. ROBESON: Okay.

THE WITNESS: -- because that was, we were trying to address their expression of desire to see green there. We listened extensively to the neighbor's concerns about the loading. As I think you're aware, DOT approved the Holladay project and only requires the layby in terms of loading, but we wanted to address the concern, so we added, as we have discussed on a number of occasions, an outgrade loading bay which is large enough, as was testified to by Mr. Pavot (phonetic sp.), to accommodate a 30-foot truck which U-Haul claims is used to move a three to 4-bedroom house, which obviously is excessively more than what we need in this case.

We additionally agreed to add another loading area in the garage that could service panel trucks and other things of that nature. But, again, we have now provided three times as much loading as is required in an attempt to address any of the concerns that may exist. We offered to go ahead and extend the layby along West Lane if that would help and what we offered up in these hearings thinking it

was possibly addressing some of the concerns of the neighbors was that we would go ahead and offer to put a layby along Montgomery Lane not because we think there's any need for a layby on Montgomery Lane, but because we keep hearing about deliveries and trucks and deliveries and trucks. So that turned out they actually -- now we're agreeing to not, to find the fact that we will not provide a layby on Montgomery Lane which is also fine with us again. It was an attempt to try to address the continuing concerns that we have heard throughout these hearings.

Oh, I did want to address one thing that's been discussed on a number of occasions. In terms of the loading, we added binding element No. 13 that ensures, discusses the deliveries, that the deliveries will occur through the service quarter and through the loading, that no deliveries will come through the front of the building. And there's been a lot of discussion as to how that will be enforced.

That, quite candidly, is a very, very typical issue, not issue, it is very typical that both in residential and office buildings that deliveries are not allowed in the front lobby. People, landlords and management companies don't want them coming to the front lobby. You see signs up all the time that say, service, deliveries must go through the service quarter. And in

terms of enforcement, particularly in this case it's quite simple, all the exterior doors of these buildings are locked. They're monitored with cameras and intercoms.

In this case, there will actually be someone sitting at the front desk who will actually have a line of sight. But if someone comes to delivery something to the front door, they can't just open the door. So if they come, again, there will be someone at the desk but, in addition, there are cameras, there's intercoms, there's buzzers and they will be told you need to go to the service quarter, you cannot deliver through the front of the building.

Again, this is, happens, this is a normal occurrence in these type of buildings. So I don't see any issue with the enforcement of not having deliveries occur through the front lobby.

Oh, another big change that we made was the curvature in the facade. We originally had a square building, as I believe has been testified to, and there were a number of concerns or inputs that we heard that we wanted to think about how we could address. First of all, we were told that the building was a box-like building in some of our meetings and it was ugly. I mean we were very directly told that. We heard the concerns about the public space being on the northern part of the property even though, quite candidly, the Planning staff supported that, but

anyway, we went and we thought about how we could modify this building to try to address the number of the concerns we heard about the bulk and the mass. So basically we came up with the idea, the entire team, that we, a way to address a number of these concerns, bulk and mass, moving the public space, as well as adding a feature to the facade of the building and changing the box-like structure, we decided that this idea, this curved facade, and adding a pocket park, there was also discussion that they would like a park-like setting in the front of the building. So we took a number of the concerns and thought we were addressing them by now setting the building back to 28 feet from the corner of West Lane and Montgomery Lane, both on the Montgomery Lane facade and on the West Lane facade and that served to reduce the frontage along Montgomery Lane by 30 percent which, again, should address the bulk and the massing, create a park-like area along the corner and also change the architecture of that to make it more of a feature at the corner of the building. We also added, we heard the concerns about benches, and I believe Ms. Lawtch testified to liking wood benches, but we added benches along not only in this area, but we added benches along Montgomery Lane, West Lane and bike racks to try to make it more pedestrian-friendly.

Oh, and then I think Marius testified to some of

these articulating elements that we added and he talked about, you know, the ins and outs and trying to create the undulations along the facade. We do have balconies and just that we try to add some more detail into the structure themselves to try to break it up. And I think those are basically the modifications that we've made along the way.

MS. HARRIS: Thank you. Quite extensive. If I could, I want to turn to the traffic and loading, which is going to be the remaining of Ms. Wiltshire's testimony. I want to note that we had originally submitted videotapes with which the Hearing Examiner had noted that typically you don't accept videotapes, but we also did submit photos that were stills of that videotape that's Exhibit 106(r). So we'll be speaking to those. But in speaking of those, you have to understand that they were derived from the tape. So we're going to have some questioning about the tapes in order that we can get to these photos.

MS. ROBESON: Who took the tapes?

MS. HARRIS: That's one of the questions.

MS. ROBESON: Okay. Keep going.

BY MS. HARRIS:

Q Were you responsible for having the traffic tapes that were submitted on March 5th, excuse me, February 15th and March 22nd which are in the record as Exhibits 93 and 106(s) prepared?

A Yes.

Q And then were you also responsible for having the photos which were derived from those tapes prepared?

A Yes.

Q Was a camera posted to produce the tapes?

A Yes, actually --

Q Can you explain --

A -- three cameras were posted.

Q Can you explain using any of the Plans --

A Actually --

Q -- which, where the cameras were actually posted?

A I can. One of the cameras, two of the cameras were posted on lot 26, which actually is not shown here, but I can give you an approximation of --

MS. ROBESON: Okay. So --

THE WITNESS: -- where it is shown.

MS. ROBESON: -- you're pointing at Exhibit 113 and you're pointing somewhere in the semi-circle --

THE WITNESS: Yes, where I'm pointing --

MS. ROBESON: -- approximately?

THE WITNESS: -- to would be, and I think we have, I'm just trying to see, there was two cameras posted on the corner of the actual structure, oh, okay. I'm sorry. Here we go. This should be better. Exhibit 124 and the building that currently sits on lot 26 --

MS. ROBESON: Okay.

THE WITNESS: -- we had two cameras posted on the corners of the building in order to produce the view that you see or the views that you see in exhibits --

MS. HARRIS: It's 106(s).

THE WITNESS: -- 106(s), so --

MS. ROBESON: So on 106, so back to --

THE WITNESS: 124?

MS. ROBESON: -- 124, was one camera on the corner of the building that faced West Lane and one camera facing Montgomery Lane or did you have two facing -- I didn't understand that.

THE WITNESS: There are two cameras that were facing. One is facing towards -- one just facing in different directions, so one was looking --

MS. ROBESON: Oh.

THE WITNESS: -- down towards Arlington Road, so that would be down to the west.

MS. ROBESON: Okay.

THE WITNESS: And then the other one was facing to the east so that you have a view.

MS. ROBESON: Okay.

THE WITNESS: Both sides --

MS. ROBESON: I see.

THE WITNESS: -- of Montgomery Lane.

MS. ROBESON: Okay.

THE WITNESS: And then additionally there was a camera that was posted on 4804 Montgomery Lane. And this is Exhibit 106(r). And --

MS. ROBESON: Can you just mark that 106(r) --

THE WITNESS: Sure.

MS. ROBESON: -- a duplicate so we know what we're, and can you mark the other one --

THE WITNESS: 106(s)?

MS. ROBESON: Yes, thank you.

THE WITNESS: Duplicate or --

MS. HARRIS: I'm sorry, that's 93. That one is 93.

MS. ROBESON: Okay.

MS. HARRIS: I believe, hold on. Let me just double-check that. No, we only, we submitted all the photos at the end together, right?

THE WITNESS: Yes.

MS. HARRIS: Yes, okay. I'm sorry. It's 106(r). You're right. All the pictures are 106(r).

THE WITNESS: So these are all 106(r)?

MS. HARRIS: Yes.

THE WITNESS: Okay.

MS. HARRIS: My apologies.

THE WITNESS: So on 4804 Montgomery Lane, there

was a camera posted again, the second, basically on the second story looking east so you could see, no, is that right, looking west so you could see what's happening in front of the Highrise Edgemoor.
MS. ROBESON: Okay.
THE WITNESS: And sort of at this corner and if there was any congestion.
MS. ROBESON: Wait, wouldn't that be looking -- okay.
THE WITNESS: West.
MS. ROBESON: West? Okay.
BY MS. HARRIS:
Q It may be helpful. Can you take that --
A Sure.
Q -- Development Plan and just generally point where the camera was posted?
A It was posted, I would say, approximately --
MS. ROBESON: Oh, I see. Okay.
THE WITNESS: -- here looking to the west.
MS. ROBESON: Here is --
THE WITNESS: This is about a third of the way --
MS. ROBESON: To the west of 4901?
THE WITNESS: A third of the way down the facade of --
MS. ROBESON: Of 4901.

THE WITNESS: -- 4901.
MS. ROBESON: Yes. Okay. And --
BY MS. HARRIS:
Q When were they posted?
A The 4901 Montgomery Lane, which is, well, they're both 106(r), but that was posted on January 3rd and the other on 4804 Montgomery Lane was posted on January 28th.
Q Okay. And for how long were the cameras running?
A They were running for approximately, I think, eight days a piece.
Q And did they run continuously throughout the day?
A Yes, they ran from I would say approximately 8:00 in the morning until about 6:00 p.m. in the evening. Basically the reason why we posted these cameras is we, we had done, seen the studies that had been done by Mr. Kabatt and their firm who had looked at what was required in terms of the traffic studies that showed very little traffic along the street, an insignificant amount of capacity as they determined. We also had them do the queuing analysis to look at what occurred at the intersections which, again, showed that what existed and what we were proposing would still be at very limited amount of capacity on the street, but in addition we did see the video, I mean the photos that had come from a number of the residents in the area and we, frankly, don't have any interest in exacerbating a problem

that exists or building into a problem that exists. So for our own clarification, what was occurring on the street, we decided that it would be beneficial for us to go ahead and take a look at what the occurrences were and that's why we posted the cameras.
Q And so the photos that are 106(r), were those produced from images from the tape.
A Yes, basically what we did was we figured no one was going to want to watch 120 hours of tape, which I had the luxury of doing myself, but we wanted to take a look at what we determined an appropriate amount of time, which would be a week's worth of tape and we basically picked ours in the morning, in the mid-day and afternoon, and we randomly chose 8:30, 12:30 and 4:30 and those are exactly 8:30, like 8:30 and zero seconds, 12:30 and zero seconds, 4:30 and zero seconds.
MS. ROBESON: But the tape ran continuously?
THE WITNESS: The tape ran continuously.
MS. ROBESON: Okay.
THE WITNESS: And I watched the tape continuously, but we basically decided to give a snapshot of what was going on every day. We just picked three times. And these were a little bit, you know, they had done the traffic studies at the certain hours, but we thought in addition we wanted to show, again, the concerns about deliveries and

congestion and everything.
MS. ROBESON: Daytime hours.
THE WITNESS: So we just picked these hours to pull the photos. So we pulled the photos directly from the tape and produced these pictures.
BY MS. HARRIS:
Q And before we get into the pictures because I want you to walk through those, can you describe generally, and what did you say, there was how many hours' worth of tape that you watched?
A 120 hour's worth of tape.
Q And can you describe generally what those, what the tape showed and then we'll walk through the photos?
A Sure. I mean I think the photos are reflective of generally what the tape showed. I can -- I mean one of the concerns was the deliveries, the UPS, the FedEx, so I actually did pay particular attention to that. You will see in one of the photos I believe there is a UPS truck. Generally this is what you see. You see some cars go by. You do not see -- I never saw an instance anywhere similar to what was produced in Exhibit 102(a) in these photographs, which I --
Q The photographs that Mr. Niebler and Mr. --
A Yes, I believe Mr. Pohoryles had submitted these and I will also note that in three different places he notes

that these are pictures of a typical day outside the Edgemoor and this is everyday life on Montgomery Lane which, again, is what had us concerned if this is everyday life, we need to understand what everyday life is like. But, anyway, I did not witness any of that. We actually even looked, and we looked specifically at the deliveries of the UPS and FedEx and I have a table which I think helps explain a little bit more about the delivery. Should I --

Q Is the table a demonstrative of the --

A It's what came out, it came right out of the tapes that --

MS. ROBESON: Based on the tapes?

THE WITNESS: Yes.

MS. ROBESON: Okay.

THE WITNESS: Based on the tapes. So

MS. ROBESON: This would be 125. I'm just going to say delivery truck stops on Montgomery Lane.

(Exhibit No. 125 was marked for identification.)

THE WITNESS: And my objective in producing this was just, again, to look at the delivery stops of the FedEx and the UPS trucks. And what you'll see here is basically there is an average on the street. The average amount of time a UPS or FedEx truck stops is three minutes. The average number of deliveries per day is 4.67 deliveries,

which would mean if you round it to five that UPS and FedEx trucks are on the street for an average of 15 minutes per day.

BY MS. HARRIS:

Q And just to clarify, is that the UPS truck for 15 minutes and the FedEx truck for 15 minutes or is it --

A No, that's --

Q -- both of them?

A -- the aggregate of all of the deliveries that occur is 15 minutes --

Q Thank you.

A -- a day on the street. And that's along the entire street, so that includes both sides, the one-way portion, as well as the two-way portion.

Q Thank you. Okay. Now can you go through the pictures?

A Sure.

MS. ROBESON: Wait a minute, I'm sorry.

THE WITNESS: That's okay.

MS. ROBESON: What is the Wolf 2, what is Wolf?

THE WITNESS: I apologize. That is the view from, I should have labeled it 4901 --

MS. ROBESON: Okay. So Wolf is --

THE WITNESS: -- Montgomery Lane. That's lot 26, so it would be 4901 Montgomery Lane.

MS. ROBESON: Okay. And then the one facing the Edgemoor is the one --

THE WITNESS: 4804, I apologize --

MS. ROBESON: Okay.

THE WITNESS: -- Montgomery Lane.

MS. ROBESON: Okay. Thank you.

THE WITNESS: And, basically, I just thought I would flip through these photographs. This is January 24th at 8:30. You'll see there's --

MS. ROBESON: And this is all 106(r)?

THE WITNESS: 106(r).

MS. ROBESON: Okay.

THE WITNESS: Yes. I believe all of these are 106(r).

MS ROBESON: Okay.

THE WITNESS: So if you look to the west, the camera to the west, you'll see there's nothing happening on the street.

MS. ROBESON: That's the January 24th photos?

THE WITNESS: January 24th. This is 8:30. And then you see 12:30. Again, there's not much happening. And then you see 4:30. Again, there's not much happening. On January 25th, you have 8:30. There's not much happening; 12:30, not much happening; 4:30 and not much happening.

January 28th, 8:30, there's nothing that you can

see out of the ordinary. 12:30, nothing to be seen out of the ordinary. 4:30, there actually is a delivery, a mail truck is here making his stops, I assume, in this instance he's delivering probably to the low-rise Edgemoor or the Edgemoor at Arlington, I guess, technically --

MS. ROBESON: Yes.

THE WITNESS: -- classifying it. On the 29th at 8:30, you will see there is not much happening. At 12:30 on January 29th, there is a truck driving down the road which is caught driving. And at 4:30 there is actually, and this does occur a little bit on occasion, there is a truck parked here that shouldn't be parked here and because I viewed the video, I know a little bit about what the truck was doing. It's accessing this area underneath the City Homes, I assume, doing some work there, but is parked illegally. Again, not blocking the road, the traffic can still get through which is generally what I saw. If someone did park illegally, it would be like parking illegally anywhere else along the side of the road, but the congestion, there was no blockage of traffic that occurred.

On January 30th at 8:30 in the morning you see a car driving down Arlington. January 30th at 12:30, not much happening. January 30th at 4:30, you actually do see, I guess, the postman delivers at 4:30 because we've seen him twice now at 4:30 and he is parked on the side of the road,

gain, not much different than you see in any residential neighborhood when the postman goes to deliver the mail.

January 31st, at 8:30 in the morning, there is not much happening. 12:30, we don't really see anything in the street. And at 4:30, you don't see anything in the street. So now we will move over to the camera or the photographs that were produced from the tape that was at 4804 Montgomery Lane showing when those occurred.

MS. ROBESON: And those are the ones they have three photos on it?

THE WITNESS: Yes, this is just all on one page.

MS. ROBESON: Okay.

THE WITNESS: Unfortunately we couldn't because we had the two cameras, we couldn't get it to work that way. What I will note about this, what occurs in front of the Highrise Edgemoor is that you very rarely see the loading dock being utilized and you also see that in almost all instances this layby actually is free. So there seems that there is space for people to come and utilize both the loading dock and the layby, but you'll see at 8:30 on, this is February 14th, the loading dock and the layby are free. There's someone parked in this, I believe this is allowed parking layby. At 12:30 there's actually nobody parked at all. And at 4:30, there's nobody parked in any of those areas.

On January 15th, again, the loading and the layby at 8:30 is open. At 12:30, it's opened. At 4:30, both the loading dock and the layby are open. On the 18th, again, you see the loading dock and the layby are opened. Actually at 12:30 there is a UPS truck who is delivering who is parked in the layby, the Edgemoor and per, unless he probably stayed there about three minutes before he left.

In this case there actually is a, what appears to me to be about a 30-foot moving truck who is parked in the layby. And I'm not, they didn't seem to use a loading dock for it, but it doesn't seem to be, there doesn't seem to be anything occurring that would mean that you would have to use the loading dock for that.

On Tuesday, the 19th of February, again, you see the loading dock and the layby are free. The loading dock and the layby are free at 8:30 and at 12:30 and at 4:30 the loading dock and the layby are also both free. On Wednesday, February 20th, you see the loading dock and the layby at 8:30 are free. There actually is a car parked here at 12:30.

BY MS. HARRIS:

Q When you say here --

A I'm sorry, in the loading dock space not actually pulling into the loading dock, but just pulling into the drive of the loading dock there is, the layby is completely

opened and at 4:30 on the 20th the loading dock and the layby are both free.

On the 21st, at 8:30, you have the loading dock and the layby are free. At 12:30, the loading dock and the layby are free. And at 4:30, the loading dock and the layby are free. And that may be the end of the photos.

Q Thank you.

MS. HARRIS: That concludes our questioning of Ms. Wiltshire.

MS. ROBESON: All right. Mr. Abrams.

MR. ABRAMS: Okay.

CROSS-EXAMINATION

BY MR. ABRAMS:

Q All of the agreements that you need with property owners to the west --

A Uh-huh.

Q -- and to the north as well as, I guess it's to the east --

A Okay.

Q -- that you've described --

A Yes.

Q -- okay, did any of those involve any concessions which would have required you to reduce the height of your building, the FAR, the density?

A I mean we set the building back as was requested.

It depends on how you look at what would require us to reduce the height and the density.

Q Did they request that or did City Homes request that?

A No, they, the Villages of Bethesda asked us to agree to the --

Q The 15-foot setback?

A Yes. Yes.

Q Okay. You had a 15-foot setback in your first drawings, didn't you?

A I think we had approximately a 15-foot setback.

Q Okay. Again, the question is in terms of the Villages of Bethesda, the property owners to the west, the property owners to the east, was there anything that they requested or that you gave as a concession which would have affected your density, your height or your FAR?

A No, only to the City Homes, we gave, we added a setback on the front of the building, but the other property owners were content with, found appropriate and compatible the massing that we had proposed.

Q Which you gave to City Homes, would that affect the density, the FAR or the overall building height?

A Yes, in fact, the height at the front of the building.

Q The front of the building?

A Yes.
Q Okay. City Homes, when they met with you, requested the height to be reduced from 70 feet to 65 feet, did they not?
A They did.
Q They requested that twice in two meetings with you?
A And they requested a lot of other things as well, yes.
Q Okay. Which you did not grant?
A We feel like we did the best we could and we met a lot of the --
Q Okay. And they requested --
A -- requests.
Q -- that you reduce the FAR and density to 2.5 and 100 dwelling units to the acre?
A I don't remember about the dwelling units but, yes, they requested 2.5.
Q And they requested that because that was built, was in the Sector Plan?
A I don't know why they requested it.
Q Didn't they tell you that's why they requested it?
A I don't recall.
Q Didn't they request that the, in the first meeting that you had with them, that the area to the rear of the

building which was then open space, public open space, didn't they request that the public space be shifted to the front of the building?
A To be quite candid, I don't remember what was requested when. There have been a number of requests over the time frame and I'm not sure why it's relevant when what has occurred. We've done our best to address the concerns and we've moved the public space, but in all honesty I don't remember what was requested at what point.
Q And wasn't it, in fact, the comments from the Planning Board and not the request from City Homes that you responded to when you finally moved the public open space from the back to the front?
A I can't agree with that. I don't know. I mean we took the space. We moved it, as I testified to. We looked at a number of the suggestions that were made and we came up with a Plan that we thought addressed the concerns and it addressed many of them. It addressed the public space, it addressed the architecture and I do want to mention that we actually even hired the same architect that designed the City Homes and the Highrise Edgemoor to try to make sure that we were providing a building that was consistent and compatible and that the neighbors would find, worked with the street. We hired the same firm. So, again, we took a number of the complaints or suggestions and we modified the

building how we felt would be effective to address as many of those concerns as we have.
Q Didn't City Homes want you to increase the size of the green portion of the open space along Montgomery Avenue above the 10 feet that you originally provided?
A Yes, they asked for a park in the front of the building is what I recollect.
Q They asked for more space, did they not?
A And we've provided it.
Q They provided, you provided it in the form of a cutout of concrete?
A It's not concrete.
MS. ROBESON: Okay. Okay. Just --
THE WITNESS: We've provided it, yes.
BY MR. ABRAMS:
Q You provided a cutout of concrete, not additional green space, in the front of the building?
A I don't agree with that.
Q Where is the additional green space over and above the 10 feet that you originally had?
A It's right here. This is a landscaped area. This is not, does not look to me like it's all concrete.
Q But you did not provide any additional green space on the 80 feet outside of the circular area along Montgomery Lane, did you? I mean it's not that difficult a question I

ask.
A I don't agree with that. I mean we had a square building. We took a 28 by 28 portion and cut it out and added green space.
Q Let me rephrase. Outside of that 28 by 28 portion that you converted into a circle, if you take the rest of the space, approximately 78 to 80 feet according to your witnesses --
A Okay.
Q -- down toward Arlington Road along the frontage, you did not increase the green space in that area, did you?
A I don't know. Maybe there was a foot or so, but it was not a significant increase in space. Whether or not at the time this was going to be all pavement or actually have green in it, we hadn't even determined, but we've made it green.
Q Nonetheless, City Homes requested that that area be expanded, did it not, in terms of the amount of green space?
A I didn't know that that specific area was requested. We added this area along here --
Q Oh.
A -- thinking we were addressing it.
Q In other words, in two meetings, plus us handing you a listing of what we would like to see, you don't recall

that request being made?
A I recall a request that there be a park in the front of the building which I believe that we have done our best to incorporate into our Plan.
Q Now we further requested that you move the entrance of the building around to West Lane and you haven't done that, have you?
A No, we have not.
Q And we further requested that the layby space be enlarged or a second one be incorporated along West Lane. That hasn't been done either?
A We have agreed that we will be happy to pursue that with DOT when we get through this portion of the zoning hearing and we have discussed that and agreed and I testified that we will address that with DOT. We're happy to enlarge the layby and, again, we offered up the layby on Montgomery Lane in an attempt, you just mentioned a second layby. We are trying to address those concerns and, again, we have three times as much loading as required, but we will look into extending and enlarging the layby along Montgomery Lane.
Q West Lane.
A West Lane, I'm sorry.
MS. ROBESON: Okay. Well, I knew what she was talking about, but don't prompt her.

BY MR. ABRAMS:
Q The pictures that you've shown, did they cover the dates of January 24th and 28th?
A Yes, January 24th.
Q You did?
A Yes.
Q Did you know that the schools were closed on January 24th?
A No, but that's why I provided a week because I wanted to be reflective as I could be and I've also provided a different week in February, again, so that we covered as much area as we could in looking at what happens every day on Montgomery Lane.
Q Did you know that January 28th, the schools opened two hours late?
A Again, that's why we've provided as much, as many photographs as we have.
Q And, actually, how many hours were you out there to view what was going on in terms of videotape?
A I wasn't actually out there. I viewed the videotape and I actually park over there. I live a mile from the site myself in Montgomery County, so I actually -- but I am over here on probably two or three times a week parking in the lots and actually can see regularly what occurs, but that is outside actually watching this tape. I

was not out there standing on the corner watching throughout this tape what was going on.
Q Who was?
A The cameras were.
Q Nobody there was watching the camera?
A No. There is --
Q Nobody to testify as to whether these were actual representations?
A It's all date-stamped. You are welcome to watch it. The video goes and the cameras, it's the same -- we had a security system called Krimko (phonetic sp.) who installs in our sites all of our surveillance and when we have incidences in our cameras around our buildings, we pull the same tape and that is the same process that was used here. It is all date and time-stamped down to the second.
Q Dealing with the public use space, originally the Plans called for more public use space than the current Plans called for, correct?
A That's -- there was more provided, but not required.
Q Yes, that's my question, there was more provided in the earlier Plan --
A Yes.
Q -- than what's provided now?
A Yes.

Q Why did you feel that it was useful and advantageous to the public for you to provide the same percentage of public use space with your current Plans?
A It is what is required by code and, additionally, it is what everyone else has provided on the street and we feel that the quality of the public use space now provided is superior to what was provided before and is sufficient and meets the code requirements.
Q Well, when it meets code requirement, the code requirement is for a minimum, isn't it?
A Yes, it is.
Q So you're meeting the minimum code requirement?
A As is City Homes, the Highrise Edgemoor and everybody else along the street.
Q In terms of the way the case has progressed to this point, is there any potential that the applicant will reduce the height of the building voluntarily, will reduce the FAR of the building voluntarily, will provide additional setback in the front where the green area is voluntarily?
A We feel that this building is compatible and we, besides this project, we looked at what exists within this neighborhood and we feel that what we have provided here is compatible with what exists, again, as do our neighbors surrounding us. We are providing the --
MS. ROBESON: Well, wait --

BY MR. ABRAMS:
Q Wait. Can we just have a yes or no?
A We at this time are not considering changing the height or the density.
Q Or the setback on the front?
A Or the setback on the front.
Q Or extending the step down along West Lane?
A No, we don't feel given the architecture of the building and what's been testified to that that's necessary.
Q Okay.
MR. ABRAMS: No questions.
MS. ROBESON: Thank you. Mr. Knopf?
MR. KNOPF: Just one second.
BY MR. KNOPF:
Q You had mentioned that your photos, you mentioned that your photos differed from those of Mr. Niebler and Mr. Pohoryles in terms of the street vehicles and clogging?
A Yes.
Q Are you suggesting that Mr. Pohoryles and Mr. Niebler staged those?
A No, I'm not proposing that at all. I'm saying that that raised some concern and that is the response of why we posted these cameras. In addition to having done the other two studies --
Q No.

A -- we wanted to make sure that this was not an everyday occurrence on Montgomery Lane and that's why we requested it.
Q And so you picked days on which -- don't both of those photos have snow on the ground?
A Yes. This --
Q Some of them do.
A -- there was a couple days that do, but in this photo there's no snow on the ground. We posted the cameras and we posted them --
Q These are January and February dates, correct?
A Yes.
Q And you did not check to see if the schools were closed or delayed opening on those days?
A No.
Q Did you check the temperatures outside to compare whether it was walking weather or not? Do you know what the temperatures were on the days that you --
A I do not know what the temperatures were. I could find out I'm sure, but --
Q And would you agree with me that it certainly would be a less friendly to pedestrian walkers in January and February than say during the summer --
MS. HARRIS: Objection. She didn't testify to pedestrians. It was all about, they were submitted for

purposes of vehicular situation.
MR. KNOPF: I thought she mentioned also there were no pedestrians?
THE WITNESS: I didn't say anything about that.
MR. KNOPF: I take that back. Sorry.
BY MR. KNOPF:
Q You mentioned that -- you talked about some selective photos of the loading dock area for the Edgemoor.
A I don't --
Q And think you had photos of 8:30, 12:30 or 4:00.
A I don't know that they were, I mean they are photos that exist in Exhibit 106(i)
Q Right. But you selected the hours to show us the photos?
A I randomly selected the hours. I did not view, I did not view these tapes before I selected the times 8:30, 12:30 and 4:30.
Q But you said that your company manages, owns many buildings. Do you manage the buildings?
A Yes, we do.
Q And would it be fair to say that when it comes to moving vehicles, for example --
A Uh-huh.
Q -- the movers try to avoid coming during the rush hour such as 8:30?

A What I -- well --
Q Just yes or no, ma'am.
A I will say that the moving vehicles are scheduled on a regular occurrence, so moving vehicles don't just show up and they come when they are scheduled with the management company.
Q And aren't they, don't the moving companies themselves, you try to not schedule so they have to travel during rush hour, that they come mid-day?
A Quite candidly, I don't schedule those, so I don't know. But I do know that they are scheduled on a daily basis.
Q And don't they similarly try to leave before the 4:30 rush hour?
A I don't know.
Q You don't know?
A But I mean there are, I see moving vehicles outside our properties at 4:30 for sure. So I don't know that that's the case, no.
Q But one has to just randomly select certain times, would you agree --
A I --
Q -- I mean that 8:30 is not an accurate or typical time to see whether moving vehicles are there?
A No, it was also, but it was also to look at the

FedEx and the other deliveries and we felt that, I felt that 8:30, 12:30 and 4:30 were representative of what happened throughout the day.
Q Let me ask about that. I'm looking at Exhibit 125.
A Uh-huh.
Q And, I'm sorry, I must have missed some testimony. I don't see any dates on here as to what days --
A Oh.
Q -- I see Thursday, Friday and so on, but I didn't know --
A I think we submitted it. It's the dates reflected up there, but I can certainly put the dates.
Q So it's the same dates that you were --
A It's the same dates.
Q Okay.
A And, again, I can resubmit this. I apologize. I thought that the actual dates were on there.
Q But I notice that, is it fair to say that you, this, excuse me, Exhibit 125 compiles the list as you understand it of UPS and FedEx deliveries, but does not include all other deliveries such as mail or groceries or cleaners or repairmen or maintenance people and so on, that is not captured on this exhibit?
A No, this actual exhibit I just looked at because

that was what I kept hearing concerns about, so that's what I captured on this video.
Q I see. Now you say you have other properties that you manage. Do you have any other property where a residential property --
A Uh-huh.
Q -- where the pick-up and drop-off for people using that building is not at the front door and actually precluded to use the front door for pick-up and drop-off?
A Yes.
Q You do?
A Uh-huh.
Q And is that in D.C. or in Maryland?
A In D.C.
Q D.C.? And --
A And I will note there's no loading dock there and it's two blocks from the White House, so it's a lot more -- 200 units with 11,000 square feet of retail, so it's actually a lot more complicated than this project is in terms of managing.
Q I'm not referring now to retail, there's 200 dwelling units?
A Uh-huh.
Q And when somebody wants to drop off someone, they, you had never seen anyone being dropped off at the front

door, although they're not permitted?
A I don't think the discussion has been a person cannot be dropped off. It is that deliveries will not occur through the main entrance.
Q Oh, I'm sorry, I didn't make myself clear. I'm now switching from deliveries to actual drop-off and pick-up of persons. Let me go back and re-ask that question. Do you manage any buildings, any experience with buildings where people to be picked up or dropped off cannot have that occur at the front door, but it has to be, or in the vicinity of the front door, it has to be at some other location?
A No.
Q You do not?
A And I, can I, well, clarify that I watched drop-offs occur on the street and the average amount of time it takes to drop somebody off is eight to 10 seconds. That's how long it takes a car to stop and a person to exit the vehicle.
Q And you've actually timed that?
A Yes.
Q Including the elderly and the handicapped and people that may live in the area that are older?
A I would think they would go to the layby because it would be a more extensive drop-off. So my guess is that

if you had to park the car, get out and help somebody out of the car, that you would be in a more permanent space. You wouldn't be letting them off as you went down the street.
Q And how many hours and what days did you stand there and time this?
A I watched all this video, so I would say it occurred probably 12 to 15 times here, people being dropped off.
Q And they were all dropped off at the front doors of these places?
A They were dropped off at various places along the street.
MR. KNOPF: I have no further questions.
MS. ROBESON: Okay. Redirect, Ms. Harris?
REDIRECT EXAMINATION
BY MS. HARRIS:
Q Your chart, Exhibit 125, shows FedEx and UPS, correct?
A Yes.
Q And it didn't include moving?
A Yes.
Q But your sample photos, do you recall when you walked through there, and I don't want you to walk through them all again, how many moving trucks you saw during that period of time in those photos?

A In the ones --
Q Or how many, actually how many trucks or deliveries other than UPS or FedEx did you see in your photos?
A One in front of, I took this at 4804 Montgomery Lane and the truck was in the layby.
Q Thank you. And in determining --
MS. HARRIS: That's it actually. No further questions.
MS. ROBESON: Okay. Recross?
MR. KNOPF: No.
MS. ROBESON: All right. Mr. Abrams, no questions?
MR. ABRAMS: No questions.
MS. ROBESON: All right. Is that your last witness?
MS. HARRIS: Yes, it is.
MS. ROBESON: Okay. Are you ready to go right into -- yes?
MS. HARRIS: Five minutes?
MS. ROBESON: Five minutes. Okay. That's fine.
(Recess)
MS. ROBESON: All right. Is everyone ready?
MS. HARRIS: Yes.
MR. KNOPF: Yes.

MS. ROBESON: You ready? Okay. We're back on the record and it is time for closing argument. Ms. Harris, you get to go first.
MS. HARRIS: Thank you. The strategy of the opponents in this case has been quite clear from the beginning. They live on a street with $1.5 million homes, many homes that are 2,000 square feet or more. They do not want smaller units and nor do they want what may likely be rentals. And, as you know, and we've testified to, there are currently no MPDU's on Montgomery Lane and the subject project offers 18 MPDU's. This case has been the proverbial example of throw everything, every issue possible up against the wall in hopes that something will stick. And if something does stick, what will the consequence be?
The opponents hope that the consequence will be that the ultimate approval of this project will involve a reduction in its size, small enough so that it no longer make sense to do affordable units, that it no longer makes sense to do smaller, more affordable units which will provide a diversity of housing. Instead, it's the opponent's hope that the property will convert to something that's more familiar to them, just like 4901 Hampden, which has larger units which will now sell for the several millions.
From one, from day one, applicant has thought that

they were doing the right thing in furthering the Sector Plan recommendations and the important County recommendations. They're introducing smaller units, an opportunity for rentals and 18 MPDU's to a street which currently has none of this. The conclusion that the project was consistent with the area is based on a number of things. First, the zoning ordinance; the Sector Plan, which recommends high-density housing near Metro and which also recommends promoting affordability by providing MPDU's. It's also consistent with the housing element and the project head-on meets the four specific housing objectives which are housing and transit locations, range of units of sizes and affordability, sustainability and creating walkable communities.
The opponents have attempted to cast doubt on every single component of this case. Despite nine days of hearings and testimony and issues ranging from the design of the public use space, including such things as will our benches have backs, are the seats wide enough on the benches, the provision of 10 percent public use space, whether the building looks like a town home or whether the Federal Express truck spends a total of 15 minutes on the street will actually cause an issue.
Despite all of this, this is actually a simple case. The issues before the Hearing Examiner are does the

project meet the zoning ordinance, is the project consistent with the Sector Plan and is the building compatible with the existing improved development? The zoning ordinance requirements for Development Plans, Section 59D 1.61(a) makes it clear that what's required is substantial compliance with the Sector Plan recommendations with respect to only use and density. Clearly, the use is not an issue here. In terms of the density, the proposed 3.05 is clearly permitted as evidenced by two of the other projects in the surrounding area, the Hampden Lane project and the 4901 Hampden Lane project, both of which an FAR of 3.05.
The remaining Sector Plan recommendations are simply a guide and despite what opponents attempted to allege, the Sector Plan is not a statute, it is a Plan that is supposed to be interpreted. As the applicant through its witnesses has pointed out throughout the hearing, the existing and approved project on Montgomery Lane have followed the Sector Plan recommendations selectively at best with each building providing some of the recommendations, but then really blatantly disregarding the remaining recommendations.
For instance, you have the 10-story Edgemoor high rise. That doesn't look like a townhouse. It's 100 feet in a zone that suggests 65 feet. It's not a three to six story building. The Edgemoor at Arlington has a single entrance

in the center of the property rather than multiple entrances on the street. It's 46 feet in a recommended zone of 35 feet. It doesn't appear as a townhouse and it has a flat roof, not a hip or a gable roof. Similarly, the Edgemoor at Arlington North, single entrance, 46 feet, doesn't appear as a townhouse. It also has a flat roof.

4901 Hampden Lane is 70 feet in a recommended area of 65 feet. It doesn't appear as a townhouse. It's not a three to six story building and, again, a flat roof. The City Homes, on the other hand, they are townhouses, but they don't have apartments at every level, which is what the Sector Plan recommends, they are 27 dwelling units per acre instead of the minimum recommendation of 45 dwelling units an acre and they only have end units on the face with the remaining units located within the project. It's not a closed block configuration as recommended by the Sector Plan and their parking is not concealed.

The Sandy Spring Bank building, Sandy Spring Builders, 4825, it's not 45 dwelling units an acre. Their parking is not concealed, it's very apparent from West Lane. They don't look like townhouses and they also have a flat roof. And then, finally, the Hampden Lane project is 71 feet in an area which is partially recommended for 35 feet, so there you have an example where it exceeds the recommendation by 100 percent. The remaining portion of the

building is 71 feet in an area that's recommended for 65 feet, again, not a townhouse and with a flat roof.

There's several lessons from this. First of all, the buildings don't march in lock step down Montgomery Lane in an inflexible and predetermined design. And, second of all, except for the Edgemoor at Arlington and the Edgemoor at Arlington North, there's no consistency at all in any of these projects. The compatibility should be determined based on the surrounding neighborhood, not just the property which is 73 across Montgomery Lane to the south, i.e., the City Homes. This is especially true because the City Homes itself doesn't comply with the Sector Plan recommendations.

Just as in an established building line analysis, you take out the non-conforming buildings. When you're evaluating consistency, the analysis should not be based on a project that doesn't meet the standards and recommendations of the zone. The City Homes provides low-density housing type not recommended by the Sector Plan, i.e., the townhouses. Its orientation is a much more suburban orientation with its perpendicular positioning to Montgomery Lane and its design, its design is more suitable for single-family townhouses that you would see in the suburbs, not in the urbanized area like downtown Bethesda. To base an evaluation of compatibility on the design which does not comply with the Sector Plan simply invalidates the

analysis.

The Sector Plan makes it clear that high density, multi-family units, not townhouses, were intended to be developed in the TS-R zone within a quick walk of the Metro station. In allowing townhouses, the Council did not intend that they would then change the standard for all future development in the area. The Council, in other words, did not de facto in approving the City Homes decide to amend the Sector Plan and change the threshold for evaluating compatibility. And to suggest this would result in an absurd result. It would to some extent have a domino effect where you would be requiring all future projects to be compatible with the project which in and of itself is not compatible. This, at the end of the day, prevents the ultimate goals of the Sector Plan from being achieved, the desire for density and affordable housing in an urbanized environment.

In evaluating the compatibility, the opponents are asking the zoning hearing examiner to ignore two important factors. First, all the neighbors immediately adjacent to the project have indicated their support for the project. This in and of itself is evidence of compatibility. Secondly, the surrounding area is not just the City Homes and the Highrise Edgemoor. Within the surrounding area, and if you focus on the block on which the project is located

and the block to the south, includes two buildings that are over 100 feet in height and two buildings that have been approved for 70 feet in height.

Instead, the opponents are suggesting that they themselves, that the City Homes should determine whether, in fact, this project is compatible. And, in fact, it was ironic that the counsel for the Highrise Edgemoor really didn't focus on the compatibility relationship between the Highrise Edgemoor, his client, and the subject building. He focused on the City Homes and our building. There was a reason for that.

Nonetheless, having noted this, if you look at the height compatibility of the project with just the City Homes at the street line, the subject property is approximately the same height as the City Homes. When you move back 12 feet beyond the step-back, there's a 20-feet difference between the subject and the City Homes. The Sector Plan itself, Figure 3.2, which is page 39 of the Sector Plan, is replete with examples where you have a suggested zone where the difference is much more than 20 feet all along Wisconsin Avenue, well, not all along, but in the northern and southern portions of Wisconsin Avenue you have a recommended height of 75 feet and then immediately to the east, to the east of that you have a recommended zone of 35 feet. That's a difference of 40 feet. Similarly, on our block alone, you

have a 35-foot zone and then you have a 65-foot zone, again, a difference of 30 feet.

In evaluating compatibility, it's also important to note what must be evaluated. This is not a site plan where a schematic level of design is required. It's a zoning case. So, therefore, what does compatibility mean? It means an evaluation in terms of the height, the density and the massing, not the details of the building that we got into, that we've heard much about, including window design.

As our architect today testified, and as he said earlier, compatibility does not mean comparability. And just because the neighbors do not like the building, that doesn't make it non-compatible. The Council understood that in adopting the ZTA's for the MPDU's, which allow for higher densities and heights in excess of the Sector Plan to allow MPDU's, they knew that in allowing a building of 3.05 in a 2.5, for properties that otherwise allowed 2.5, they knew that it was going to look different, of course they did. Similarly, when they said you could exceed the recommended height of a Sector Plan, whether it's to 70 feet or 75 feet, and by the way, there's nothing in that ordinance that says you can only exceed it by five feet, what it says is you can go above the recommendation, the Council knew that a 70 or 75-foot building was going to look different than a 65-foot building.

The opponent spent hours pointing out that the subject building is taller than the City Homes. We acknowledged that. We -- the applicant acknowledged that from day one that the building is higher than City Homes and higher than some of the surrounding buildings, but a simple mathematical difference doesn't make it not compatible. The only testimony that we heard that even approached how that additional height may somehow affect the opponents was from Susie Turnbull. And what we heard there was from her home, which is 160 feet away from the subject building, when she looks out of her window at a certain angle, a portion of the sky may be taken up by the additional five feet of building. Now I ask you, next time you're walking down the street, put your eye at something 160 feet down the road and imagine that it's five feet taller and try to really articulate what that impact is.

In approving Hampden Lane, the Hampden Lane building at the corner of Hampden and Arlington with a maximum height of 71 feet, which also has no setbacks for its three adjoining properties, the three properties that it abuts, there are no setbacks and it also has a 15-foot penthouse right on the street. The District Council found that that was compatible. And in finding that, what they, what the District Council noted was, quote,

"Although the building proposed by Hampden Lane would be taller than the adjacent developments, it would generally be compatible with uses and structures in the surrounding area."

Moreover, the District Council also noted the public interest in providing MPDU's in that case by stating, quote,

"The compatibility issue must, however, be considered in conjunction with the County's policy of encouraging construction of moderately provided housing."

I think it's important to note that the subject property is not compromising compatibility to provide the MPDU's. It is compatible and it happens to be providing MPDU's.

Finally, in terms of the compatibility issue, the project furthers the purpose clause of the TS-R zone in that it will, one, promote the effective use of transit; two, it provides residential uses within walking distance of a transit station; three, it provides a range of density to provide choice; and, four, it stimulates the harmonious and systematic development and will not be detrimental to the adjacent developed properties or surrounding neighborhood, it will expand housing choices for persons of varying economic levels.

As the Maryland courts in citing Avenel v. Louis found, and as Mr. Abrams in his own treatise has pointed out, quote,

"Demonstration of compliance with the express purposes of the zone indicates evidence of compatibility since the purposed provisions are designed to ensure that the floating zone is compatible with other existing uses in the general neighborhood."

You heard a lot about tenting, probably more than you've ever heard in any other case.

MS. ROBESON: I wouldn't say that, but go ahead.

MS. HARRIS: You would agree? The intent of the Sector Plan is to achieve tenting in a general sense. That means that there is a consolidation of height and density at the Metro core and as you move away it decreases as you move away from the periphery of, toward the periphery of the CBD. But it implicitly allows variations in the height within the Plane of the tent. And one of the zoning hearing reports that opponents provided to the record actually had a quote in it from the former Planning Board member, Pat Baptiste, who noted that the reason for that tenting effect was to protect the people in the single-family homes in Edgemoor which was across Arlington Road. And if nothing else, I would note that there were, which is a very active community, and I would note that obviously they had no issue with this project.

The opponents contend that the goal of tenting is a matter of rigid triangulation instead of a guide to help develop the urban form. And they don't see that there could be some variations within the Plane of the tent. However, nowhere in the Sector Plan has the concept that opponents are putting forth that you have one building closer to the core and that each one should sequentially step down lower and lower has been achieved. And you don't have to go far to see that that has not been applied that way. You go to the block immediately to the south, you have the 71-foot building on one end at Montgomery Lane, excuse me, at Woodmont Avenue, you have a 71-foot building at the other end. So there are two bookends of 70, 71 feet and in between you have the HOC building and two other buildings of varying heights.

If you took a literal, if you took the opponent's interpretation literally, you would just come up with an absurd result. What it would mean is any lower building that were constructed, so if you happened to construct a 50-foot building on Woodmont Avenue for whatever reason, that it would automatically preclude any other building east, excuse me, west of Woodmont Avenue from being taller than that 50 feet.

That's not -- it would also, that literal interpretation, prevent two buildings from the exact same

height from being located next to each other. As the County attorney successfully said, argued in the City Homes appeal of the Hampden Lane case, he noted that the fact that a building further from the Metro core is, quote, taller than one closer to the core hardly constitutes a violation of the Sector Plan. This argument is a red herring and it should be ignored.

And then speaking of red herrings, there are a number of other ones that I just feel compelled to mention. One has to do with the traffic and loading. The LATR conclusively showed that Montgomery Lane and West Lane will operate well under capacity. The peak hour trips for the additional, for the peak hour additional trips is 25 trips. That equates to one car every 2 1/2 minutes. And I'm not going to sit here and make us wait 2 1/2 minutes simply every time a car goes by, but you can just imagine that that's an imperceptible difference.

Even if one, for whatever reason, doesn't think that the LATR is enough, the testimony that you heard just moments ago from Ms. Wiltshire proved, is evidence from the photos that were based on the tape. There were many hours of testimony regarding the deliveries and the loading. In the end, what was shown from the photos and is that the FedEx truck and the UPS truck spent a total of 15 minutes a day on Montgomery Lane. To the extent this is ever an

issue, and we don't think it is, the applicant has made sure that it's not an issue with respect to their property by providing three times the required parking. In comparison, the City Homes, excuse me, three times the amount of loading required. The City Homes has no extra loading spaces for deliveries and the Highrise Edgemoor has only one.

Another red herring had to do with the amount of the public use space. The opponents' counsel went on exhaustively over the fact that the public use space it had originally proposed was 14 percent and now what is being proposed is an amount comparable to every other project in the TS-R zone and the surrounding area. And I would also note that it didn't overall change the amount of green space because, as you heard, that 15-foot strip in the back of the building still remains, it's just not being counted as public use space.

After hours of questioning, was any justification provided as to why this project should be providing more public use space than any other project? No, because there is none. Similarly, the whole issue of the project setback along Montgomery Lane, this project provides more setback from back of curb than any other project on the north side of this street. We're providing 26 feet from back of curb free and clear. In comparison, the Highrise Edgemoor provides 16 feet and we've taken it from the back of the

layby free and clear.

The staff and the Planning Board twice has looked at this issue and twice has determined that the amount of the setback of the building is acceptable. As the Sector Plan states, the issue of setbacks is ultimately to be determined by the Planning Board at the time of site plan. And the Planning Board has made it perfectly clear not only on Montgomery Lane as can be evidenced by what's approved and what's existing, but in other areas of the County that there's an importance to providing this continuous building edge. There's just no legitimate justification for pushing this building back further than any other building on the street.

The Planning Staff and the Planning Board both determined the project was compatible. The Planning Board is the author of the Sector Plan and they're best able to interpret what is consistent with the Plan and to determine compatibility within the context of the Plan. There is no substantive evidence in the record suggesting that the building is incompatible. There's only concerns expressed by neighbors, who for whatever reason do not want this building built 73 feet distance from the City Homes.

To the extent the City Homes or the Highrise Edgemoor are burdened by other projects or, in fact, may be burdened by themselves by not providing enough loading for

themselves, that is not the applicant's burden to bear. If the City Homes light and air is decreased by the Hampden Lane project and it is not the applicant's obligation to somehow mitigate the fact that the building to the south of City Homes is going to block some of their light and air. Having said that, there's nothing they could do anyway to try to remedy that problem. The applicant, through design and numerous binding elements, has provided assurance that the project will be compatible and cause no detrimental impacts on surrounding properties.

I have to give the opponents credit, however. In nine days of hearings, they have used every opportunity to say how the District Council got it wrong and not wrong once, but if you listen carefully to what they said, they have said that the District Council got it wrong every time they approved a project on Montgomery Lane, they got it -- or in the surrounding area. They got it wrong when they approved 4901 for 3.05 FAR at 70 feet; similarly for the Hampden Lane project, 3.05 at 71 feet. They got it wrong when the Hampden Lane project was approved with no setbacks along the three adjoining properties that it immediately abuts and then just six months ago they must have gotten it wrong with the Sandy Spring building when they approved a setback of only 18 feet from back of curb, placing it only 67 feet from the City Homes property, as opposed to the 73

feet that the applicant is proposing.

Again, they got it wrong when the Highrise Edgemoor was approved for 100 feet and they got it wrong when the Hampden Lane project was approved to be taller than the HOC building immediately to its east. And the District Council also got it wrong in approving 4901, which is set back only 18 feet from Montgomery Lane and in the approval for that project they noted that they had decreased the setback along Montgomery Lane to make sure that they would not sacrifice or compromise density that was originally proposed for that project, that the 3.05 density was clearly critical to the District Council.

Let me summarize this issue by noting that the unease felt by the residents of the City Home townhouses in the face of multiple rezoning requests on three sides of their community is understandable. However, any expectation on their part that the neighborhood would not change over time or that all future development would follow their lead in terms of height and density rather than the recommendations of the Sector Plan is unrealistic. The surrounding neighborhood in this case contains buildings of widely varying age, height, and bulk, including very small, single-family residential buildings, townhouses of different sizes, multi-family housing and high rise and low rise buildings, and buildings both large and small containing

offices, commercial and retail uses. In many cases, completely different types of structures are juxtaposed against one another, much the same way that the City Home townhouses confront the Edgemoor condominiums and right next to that building small, two or three story residential structures that have not yet been developed.

I wish I could take credit for this statement, especially, again, reiterating the fact that any expectation that the area would not change was unrealistic, but those aren't my words, those are the words that the Hearing Examiner said in 2006 in recommending approval for the 4901 Hampden Lane project. Thank you and I'd like to reserve the right to submit any written statements -- thank you -- and any written testimony in response to any closing remarks that the opponents' counsel may have.

MS. ROBESON: Okay. Mr. Abrams.

MR. ABRAMS: Yes. Well, Madame Examiner, I want to thank you for having the fortitude to sit up there and listen to all this wind blowing in the room. I think one thing that's been clear is that unlike these other projects which surround this property, City Homes and Edgemoor represent the only really existing projects on Montgomery Lane. So that's why they're in here, having made attempts to resolve certain issues with the applicant unsuccessfully, but keep in mind that these are real people with real

issues.

I find it somewhat unfortunate that counsel has to refer to my clients and Mr. Knopf's clients as living in a million and half dollar homes. Economic class is not an issue in this case, any more than race or religion or national origin is at issue in this case. Furthermore, MPDU's are not an issue in this case. The number of MPDU's beyond the minimum is totally up to the applicant. It's not up to the opposition. And the issue is not rental versus condo. So that's not an issue.

I think from the beginning of our opening in terms of the opposition case, we told the examiner that we don't oppose development of this property. In fact, we supported the Holladay project in G-843. However, we are compelled to oppose this project for a variety of reasons which you've heard through over these seven or nine or however long days of hearings.

First of all, the project doesn't substantially conform to the Sector Plan. And I'm not merely talking about one or two of the Sector Plan elements either in a general, broad portions of Section 3 or in the specific portions of Section 4 which relate to this specific district. The first thing that we pointed out is that the Sector Plan limits height in the TS-R district to 65 feet or recommends a height of that. The application, as it's well-

known here, opposes a building 70 feet with a 10-foot high penthouse. I think the evidence also reveals that from a perspective of what you really see from the street or across the road is a building along Montgomery Lane of approximately eight feet higher due to the differences in elevation where the building height measurement was taken as opposed to where people pass this building or view this building.

And this is important because height can affect the scale and bulk as it relates to the issue of compatibility. So height is an important issue from the standpoint of lack of conformance with the Sector Plan. Another area where the application has failed to comply with the Sector Plan is this much heralded tenting concept. And that calls for higher buildings closer to Woodmont Avenue transitioning down to 35 feet along Arlington Road. This property is two-thirds of the way down Montgomery Lane from Woodmont Avenue closest to Arlington Road. However, it's taller than the intervening Sandy Spring building and that sort of throws an unfortunate bump into this higher tenting concept.

The big Edgemoor development is tied into the approvals of both the City Homes townhouses and the HOC building. However, that doesn't destroy the tenting effect whether you look at it from the Metro Center as the core or

whether you look at it from Woodmont Avenue as being the core or the transit station district in the tent because all it does is along Woodmont Avenue, as was called for in the Sector Plan, it makes the peak of the tent that much higher. The Hampden Lane building as we have indicated has significant elevation differences, upwards to 12 feet, and it faces commercial development. It's hardly even within the transit station district. If anything, probably it should have been due to the elevation differences and how it is, faces the commercial area, probably been in another district rather than a transit station.

It has a step down and height design and the tallest segments due to the elevation differences we suggest are only 59 feet above the elevation of Montgomery Lane. And I get that, again, by arithmetic, 71 feet is the elevation of the building, minus 12 feet elevation difference between Hampden Lane and Montgomery Lane. I think even when the Examiner was out there, this is one of the reasons why we request that the Examiner walk behind that area and view City Homes when she did it because unless the Examiner is Wilt Chamberlain, you can't see over that wall, okay? I can't see over that wall that separates the two properties.

The third thing that is violated in terms of the Sector Plan is the urban village and the mixed street

concept. I think it's pretty clear that what the Planners were looking for, what the District Council was looking for was a residential appearance, a townhouse style. Well, this is possible even with a multi-family building. It's been done elsewhere in the County and it could have been done here, but not so with the applicant.

In terms of the mixed street concept, this is a pedestrian-oriented area with narrow streets, open public use space and it's supposed to be attractive and functional. Now here what we have is a narrow, 10-foot green strip along the frontage with predominantly public use space in a corner of a building which is hardscaped and looks very much like the buildings along Wisconsin Avenue, many of which are office buildings and in much higher traffic areas than this area along Montgomery Lane.

Also, the public use space argument which we have made I think shows a violation of the Sector Plan intent. The original Plan called for public open space in the rear. The Sector Plan called for it to be shifted around to the front and it wasn't until after the Planning Board almost directed that the Plan be changed to provide more space in the front as public open space did that occur. It didn't occur when we asked them to do it, it only occurred when the Planning Board in their recommendation requested it.

However, in the process, approximately 600 to 680

feet of public use space was lost. Well, the applicant's response to that is so what, we meet the minimum requirement. Well, public use space is a public benefit and to take away something that they originally said that they could provide and not provide it, yet expand the foot base of the building to the west, this shows a total disregard for trying to make this a compatible project in this neighborhood.

The applicant is also trying to tell us that, well, the 15 feet would be, which we retained in the back which they had to do apparently by agreement with the Villages of Bethesda, well, that can be used for public use space. Well, it couldn't be used before and it can't be used now because it's just not viable in terms of people knowing it's there or having any accoutrements of a public use area.

I would also notice that the applicant is not suggesting that the scalloped corner for public use space is superior for any environmental reasons such as less impervious area or more natural green area than if they had continued to put this feature further back in the 10-foot along the frontage.

It also does not comply with the Sector Plan's recommendations for density. Page 82 of the Sector Plan recommends and I quote, full, end quote density of 2.5 FAR.

The word full has some meaning and I believe it was put in there to suggest that no matter what MPDU's an applicant was entitled to, this is what they wanted in terms of the FAR for those particular buildings in that particular district. The applicant here seeks 3.05 FAR with up to 120 dwelling units. Now I think the Sector Plan limits include the MPDU's, and I say this because if we look at the chairman's, the Planning Board chairman's comments, excuse me, in the first letter, it seems to say that Mr. Landfair's report in G-843 seems to say that and in both of those cases the use of the word full density intended to set a density cap including MPDU's.

The final area where the application does not comport with the Sector Plan is on page 85 where it is encouraged in the Plan to have low rise buildings to fill out this particular parcel. This is a step down effect with six stories near Woodmont Avenue transitioning down to three stories at Arlington. Well, as I just said, the property is closer to Arlington Road than Woodmont Avenue. There are lower rise buildings on all sides of this property. The downward height transition just does not occur here because you have a 70-foot intervention between 60 feet and 45 feet on either side of this property. The minimal step down on Montgomery Avenue frontage above the 5th floor is really insignificant in terms of not only the building mass, but

sight lines from the street and the surrounding area.

Now the second, and probably the most important, reason why City Homes opposes this application deals with the fact that it is not compatible with existing approved or Planned development in the neighborhood. Compatibility and adverse impact was more important and more pronounced with immediate surrounding properties and basically lessens as you proceed further from the site. This is the stone in the pond, pebbles with the waves getting less and less as you reach more distance.

Now compatibility in floating zone cases considers a number of factors and this is a floating zone case, as well as a Development Plan which is part of the floating zone case. Use is not an issue here. I mean it's residential, called for residential and the Sector Plan and there's residential just all around. However, in a floating zone case you not only look at the use, but you look at other factors. Height, it's higher than surrounding properties and this is particularly important from the Montgomery Lane elevations. Density, it is higher in terms of density that all of the immediate surrounding properties and none of those abutting properties exceed the Sector Plan density in terms of height or density. Mass and bulk, it's not nearly addressed with a minimal step down effect in the corner cutout of the building. What we had suggested was

that perhaps it should be brought around to the West Lane side to further address mass and bulk, but I'll talk about that in a moment.

It's not compatible in terms of visual design and appearance. It certainly doesn't look like the other buildings on that street. It's got a massive glass facade in the front which is uncharacteristic of the architectural style. It has an impact, or will have an impact, on the infrastructure, particularly the streets, and another element that you look for in compatibility is does it conform to the relevant Sector Plan which we've just been through and we suggest does not. So those are elements of compatibility which you would consider.

Then the question is compatible with what? And we suggest that it has to be compatible with existing uses and the existing neighborhood character and these are the most important considerations that you look at. Then you look at what has been approved or Planned for development in the area. That's the next most important. We have ranges, elevations in terms of what is most important down to the least important. There is little relevance to compare this to the big Edgemoor on Woodmont Avenue because the big Edgemoor is on a road or street which is designed for the highest and most dense areas both in the transit station district, as well as those high buildings which are right

across Woodmont Avenue.

The Hampden Lane, we've talked about the orientation and the elevation difference. The point is that this project outside of the big Edgemoor produces bigger heights and more units than any other project along Montgomery Lane and that's the key focus here. Montgomery Lane is the spine to this whole community and this whole district.

Now what is the significance of the MPDU's in determining compatibility? Compatibility is a statutory requirement. You can't grant this rezoning, you can't approve the Development Plan amendment without demonstration that it is compatible with the existing and Planned uses in the surrounding area.

Now provisions of MPDU units are statutory up to a point, in other words, you have to provide a minimal or a minimum number, but beyond that when you get into density bonuses, that's not a statutory requirement anymore, it is a statutory allowance that is totally up to an applicant. Now if achieving a bonus density creates incompatibility either in terms of height or FAR, then the overall density, we suggest, should be scaled back.

Okay. What can be done in our view to achieve compatibility? This, first of all, is a function of binding elements and conditions for approval. So we would ask that

if the examiner has any variance in terms of the conditions for approval as part of its recommendations that they also be suggested as binding elements.

First of all, we would like to see the height of the story, the height limited to six stories or 65 feet. This is what the Sector Plan suggests. This is what we have relied upon. We would like 2.5 FAR which would include the MPDU's because this also relates to the mass scale and size of this building. We would request an increased building setback along Montgomery Lane by an additional 10 feet to re-establish the original amount of public use space and make the area more attractive and reasonable for pedestrians and the neighborhood.

We would request that to deal with the mass and bulk can make the building step down or back meaningful. It should be lower to begin with and we suggest that it be reduced to the 4th floor in terms of the step down and increase the depth back to 20 feet from the hedge of the building. This is along the frontage on Montgomery Lane.

We would request that you suggest that the length of the layby on West Lane be expanded and more, or whether in lieu of that there should be more right-of-way taken to widen West Lane if the layby cannot be provided. We would request that there be more building articulation to soften the design and achieve a more residential appearance. We

heard a lot of testimony about French balconies, fake balconies, but the building essentially does not have the residential appearance. The binding element that they had with page numbers, that was taken out. That would have increased the residential appearance, particularly along Woodmont, particularly along Montgomery Lane.

Now another area which has been the subject of discussion is the traffic and parking operations. You've heard from the people that live out there. At times it is a mess. We've shown you photos. We've shown you the fact that it's a function of the street size, the design, circulation and the restrictions in terms of how you enter that street and leave that street. There really isn't going to be any achieved result by higher enforcement. That's just not possible to devote that kind of police enforcement to that problem.

Trucks and cars will have and create a turnaround problem. They're going to be using the driveways if they can and those driveways are the Sandy Spring building, Builders building, my client's driveways, anything that is close enough to use in terms of a turnaround. There really isn't much of a turnaround which is being provided for this quite intensive project at the end of West Lane. That certainly should be looked into.

The increase in population creates more need for

an on-street parking and that creates more need for stopping and standing to allow the drivers and pedestrians to negotiate this area without conflicts and without safety problems. Essentially what we're talking about when we're talking about the parking and the traffic circulation is do no harm, you know, just like a doctor, do no harm. So if you have to limit density, then do so so that it doesn't do harm in this area.

There are some just general observations that we have. First of all, the applicants have the burden of proof, okay? The opposition has no burden whatsoever. Many of the exhibits which were submitted by the applicant we believe were misleading, they were not to scale or the exhibits failed to show complete information or state complete set, state a fact. Let me give you a couple of examples.

Exhibit 106(f), that's the enhanced aerial photograph. Well, anybody can see that there's not the amount of separation as indicated on the aerial photograph between West Lane and the subject building, between West Lane and the other building from Sandy Spring Builders on the other side of the road. The same goes for the setbacks in many of the buildings that are shown in that enhanced aerial photograph. It doesn't show the cutouts of many of the buildings in terms of the downward transition in height

of the building.

Exhibit 106(h), the height and density exhibit left out certain relevant buildings. Exhibit 106(i), the proposed Hampden Lane building elevation which is next to the City Homes is misleading in height, et cetera.

Exhibit 106(c), again, building heights. It didn't show or describe the lower heights of some of the buildings with the step down designs. Exhibit 91, building heights exhibit was missing the HOC building. Exhibit 79, the tenting exhibit, the tenting effect exhibit, again, left out intervening buildings. Exhibit 52, the density chart showing the number of units and MPDU's, it left out the HOC building by some odd reason and overstated the size of the City Homes units. Now one of the biggest things is the Master Plan compliance chart. That is so erroneous, objective and misleading that we would object to it even being accepted as part of the record in this case.

Now the expert testimony really didn't shore up anything in the applicant's case either because their opinions, you know, can only be as strong as the factual basis that they recite to support those opinions now specific with reference to issues of compatibility and conformance with the Sector Plan. So when you review the hearing transcript, some of the direct testimony was contradicted on cross-examination, particularly with the

heights of buildings in terms of the Sandy Spring project, compared to the building height of the proposed project and other orientations.

Some responses were basically just evasive and non-responsive at all. I'll leave you to decide, you know, which group were of those categories, but certainly sitting here it was a trying time to try to get a response whether it was a yes or no or anything else. And I ask you to review the transcripts very carefully. If you recommend conditions for approval, as I said, that you also recommend that those conditions be binding elements.

This is the last really significant property in the TS-R district and it's going to be developed, but the only thing that we can request of the Examiner and County Council is let's do the best job that we can with developing this area. I was going to end it there, but based on one comment that was made by Ms. Harris, let me end it on this. The 15-foot space in the rear which was to protect the Villages of Bethesda is now private use space. Well, private use space in this application exceeds the minimum requirements.

What we would suggest that the Examiner consider is that in order to give us more public use space in the front, that the 12-foot setback from the west or the private use space be a uniform setback all the way down the west

side of the building. Take that space and as much as you can to keep it within the 20 percent minimum, move it to the front. Make it useful. Make it attractive. Make it an asset to the community because there's a lot of area, including the roof area, that can be made up in terms of where that private recreational use space can go. But the public use space right now is, it's really not meaningful. It does not fit into the vision I think that the Sector Plan had for this particular area. It's another area where you should, again, do no harm, try to make this project the best project you can with the appropriate conditions. I thank you for your time.

MS. ROBESON: Thank you. All right, Mr. Knopf.

MR. KNOPF: I think I have the hardest job because everybody is looking at the clock and saying after this, we're almost finished. Let's go. And I think I can shortcut an awful lot by saying I doubt that Mr. Abrams and, the applicant and Mr. Abrams suggested and with that we'll cut back a little bit.

I'm thinking that you have certainly heard enough. I'm going to try to step back a little bit and do a little global rather than nitty-gritty, but speaking of nitty-gritty, before I forget, which I know I will, there's something I heard today that I have to put on the record. It's to correct it.

I point out to the Hearing Examiner that the TS-R zone is a zone which is not permitted in the CBD. So, therefore, the testimony we heard about a traffic based on CBD studies is not exactly relevant. With that, let me go on. I'm trying to take us back to see if we could remember the big picture when we all started out and the key thing here is the Sector Plan has tried to create a unique feature in downtown Bethesda that is this street. It's a mixed street and it's supposed to be an urban village concept.

There is nothing else like that in the Plan. There is nothing like that, I don't think, in the County. But we are here to, we believe, to seek the implementation of that. And this, the project basically undermines that whole concept, if not destroys it. And the question is, is this concept to be implemented, is it to be strengthened, or is it to be really eliminated through this project? And I'm getting into a little bit of those details.

But keeping in mind the unique nature of this street as called for in the Sector Plan, we have to remember two things. One is we're looking at this street and we're looking at the provisions of the Sector Plan for this street, not for all of Bethesda, not for the CBD and not for anyplace there's TS-R, but what did the Sector Plan say for this street? And sometimes there's traffic in it. The second is when we're looking at compatibility, we believe we

look at this street and all the information we had about what's going on in Hampden Lane which you might not be able to see from this street, it's interesting to know, but we don't believe very relevant.

Now why do we have this, what I would consider a threat, my clients would consider a threat to the concept? We are told, you know, it's for the greater good. As the Hearing Examiner well knows, the Council has to find something is in the public interest in order to approve the rezoning. And what are we told is the public interest here? We are told ad nauseum, more units, more MPDU's, rental. That sounds good. There is no binding element for rental, gone tomorrow if the applicant decides to do it.

More dwelling units for MPDU's? Well, let's take a look at what we're sacrificing for more MPDU's. If this were a 12.5 percent MPDU, because we're using 2.50 FAR rather than the bonus point, and you had 100 units, you get 12 1/2 MPDU's, or 13. If you had 120 units, you get 15. So we're getting two more MPDU's possibly out of this by having so much more, more units with circulation problems which we believe are important or let's go to the 15 percent MPDU's. But I just want to point out, 15 percent MPDU's at 100 units, which they could decide to do because the minimum is 100, the rest is illusory, so let's -- so maybe their wish list, 15 at, 15 percent out of 100 is obviously 15 versus 13

at 2.50. So this whole battle, arguably, is over rental, which we may not get, and we could possibly get two more MPDU's.

Well, needless to say, my clients are not prepared to sacrifice so much movement to get two more MPDU's and we don't think the Council has that in mind either. Let me point that out that the remarks made that it's current policy to have more MPDU's and also the suggestion was, well, you know, all that stuff in the Sector Plan, that's gone. Kiss that goodbye. That was a long time ago. Well, let's look at what's in the record. We know at 4901 Hampden Lane, that was straight, we know that in 2006 the Council rejected a non-residential appearing building that was 100 feet tall and said it doesn't fit the urban village concept and they came back with one that was lower, more residential in appearance and they approved it. That seems to me that the Plans in terms of height, in terms of residential design, is alive and well.

In 2012, the 4825 Sandy Spring, only four units, five stories and we quote, the building is designed in a more traditional, residential style because that is typical of the neighborhood, unquote. I'm quoting from the 102(h) exhibit. The Council is still looking at this to achieve the original concept.

Even the staff said that it, quote, successfully

communicates a residential character, unquote. The Holladay project, the precursor of this, 2007, it was found, quote, consistent with the development across the street which reflects townhouse and low structures, unquote. We don't think it's bad. In fact, it's quite alive and the Council has repeatedly, as the Planning Board and the staff in other cases except this one, has required residential character in the way of the buildings. The urban design concept was still alive and well.

Now addressing specifically the maximum density, which is a big issue, the Sector Plan says generally for the TS-R area 100, full 100 dwelling units. Now we're saying, well, that's for all over the TS-R zone. That doesn't necessarily mean Montgomery Lane because that's probably the last street you want to put since it's a street of six stories, you want to start loading it up even with what the average is. But let's take the average and I'll give you the average.

If you do an average of 100, this property is not, this property is about close to 85, 90 percent of an acre. So their 100 units, their low number, comes out to 111 dwelling units per acre and if you do 120, which is the maximum we're suggesting, you come out 133 per acre which is over the Sector Plan's recommendation for generally in the TS-R zone, no less than Montgomery Lane which we submit they

would have less.

As you know, 45 is the minimum. So we are well over what the Sector Plan generally and specifically for Montgomery Lane is talking about. And we have to reject -- we think the record reflects this -- the idea that the goal of the Sector Plan and the current policy is pack them in there. That's technical. We remember, and it's not disputed, the prior Sector Plan gave use the Chase, the Chase, the two Chases and whatever the other one is behind the Chases, anyhow, much larger buildings in terms of height and density than is allowed under the current Sector Plan in the current zone. This to me, and I think to common sense, reflects that when the Council adopted the new Sector Plan, they didn't have in mind to pack it in there as much as you can or they wouldn't have down zone so to speak. What was previously allowed, into allowing lesser density and lesser homes.

So the goal of the Council in the Sector Plan was not to see how much you can squeeze in but, yes, to have dense units, but to have it according to a certain design and that design for Montgomery Lane was an urban village with special concept that they were trying to develop and a special street they were trying to develop.

And this has been implemented. Look at the Sandy Spring development at 482, 488.5, 27 dwelling units per

acre. That's not even the 45 minimum and yet the staff and the Planning Board and the Council okayed it. 4901 Hampden Lane, 2012, the Council approved lowering it from 50 to 70 units originally authorized at 15 percent MPDU to 40 to 50. It lowered, of course, the number of MPDU's, as well as lowering the number of units. And guess what, everybody approved it.

So we think it's a little bit simplistic to say, oh, you've got to pack it in there and everything is driven by MPDU's. Similarly, the Holladay project, 2.5 FAR with 48 units and six MPDU's. It was in the 70's per acre. And it was said, quote, we contribute to the range of densities of the area, unquote. Well, we would like to contribute to the range of densities, but not quite as much they want to have the range of densities.

So the bottom line, what I'm trying to say is, there's a unique concept that was put in gear, something they were trying to develop and it's not to be sacrificed so you can get two more MPDU's or it should not be sacrificed on the altar of you're going to have rental apartments when we may not have rental apartments. In fact, we may not even have 120 units. We may only get 100 units. As far as my client is concerned, that's what we would like, only 100 units at the most.

In terms of the Sector Plan standards being

inconsistent, inconsistent with the design and we talked about the townhouse design, it's inconsistent with the density. It's inconsistent with the height and we'll repeat all that with the tenting and so on. I think the Hearing Examiner is well aware of this.

The height problem is made worse because of the elevation differences which Mr. Abrams has addressed. It also ignores the mixed street idea of safety and pedestrian orientation and it ignores the architectural standards or urban design guidelines which are set forth in the Sector Plan ranging, you know, from the turrets to the peaked roofs to so on. It's a whole laundry list of things that can make something appear residential. This doesn't appear residential.

We don't think it's compatible with the existing development or the approved development. And one thing perhaps we all forget, the tone of this street is set by the biggest project on the street in terms of geographic area and that's the City Homes. That goes on and on and on and you have alleys and you have row, I should say have mews, parks mews, you have low rise, you have a townhouse feel. You have the urban concept which they were trying to implement and that sets the tone.

Now the Edgemoor is taller. There is no question about that. And as the opinion says, it's not to be taken

as a precedent because it had very unusual conditions. But even the Edgemoor tried to appear residential. And what we're saying is that the -- plus in terms of height, the, it comes down as you go down like it's supposed to from the Edgemoor down to Arlington, it comes down, and even along Arlington they met the same height limit. It starts out at 34, 35 feet or along Arlington and goes up and goes up to what, 48 feet max as it gets going toward Woodmont.

But they're following the Sector Plan and they're trying to be compatible with it. And this is totally different with a huge, non-residential appearance building in terms of whether it's the windows or just all that glass. It looks more like an office building. The architect can see that it's not your traditional residential building and maybe elsewhere in the County the Hearing Examiner can say to the Council, oh, I wish we had a more traditional building, but that's not for me to say. But it is for the Sector Plan to say and the Sector Plan clearly spells that out, that this is to be an urban village with certain three to six stories and be like a townhouse.

So this is really a unique situation because in any other situations the Sector Plan is sort of silent on what they would look like. They do talk about what the height should be and what the setback should be and if there's some special feature, but this is different in that

it spells out in great detail exactly what they want.

I would also like to add on to the fact that the rooftop structure, we don't want to forget about the rooftop structure. We have that as, we were told it's 25 feet back, but that means 25 feet back we were told today from the footprint. So if they're going back, which they've offered here, at 12 feet for the setback, that leaves only 13 feet. It's really towards the edge of the roof right along Montgomery. And we think that compounds the bulkiness and the height on this.

What do we recommend? We recommend ditto, as Mr. Abrams said. We were slightly different. We were willing to go back 30 feet on the 5th and 6th floors after the 7th floor was removed, but I think he's saying the same thing because he was moving the building back 10 feet and then going back 20 feet. So we're back 30 feet. We'll take it either way.

But the important thing is we're trying, both trying to break up the bulk of the building and we think that could do it. We think the building cries out for residential features, whether it's windows, real bay windows, balconies, articulations, things that can make the building look more residential and fit in with the various architectural features on the street, even on the Edgemoor or with the City Homes. We would like to see a 2.5 FAR and

no more than 100 units. This would bring the building, with one, help cut back on the circulation problems, and also would help on the bulk problems of the building and the massiveness.

In terms of the circulation problems, we continue to believe that notwithstanding, assuming the very best efforts by the applicant or the applicant's management firm or whoever is there, people will be dropped off on Montgomery and picked up on Montgomery. I'm talking about individuals. People are not going to go turn into West Lane, go down, make a U-turn, come back, drop them off in the layby and have them walk up to their front door. It's human nature. It's the -- it's the straight line, the shortest distance between two points. And this is going to cause problems, continue to cause problems and more problems on the street.

Similarly, we expect deliveries and the same thing to happen whether it's not regularly from UPS or FedEx, but the mailman, nobody can control the mailman, but what about the deliveries for food and cleaners and so on? It's going to cause a clogging on the street, further exacerbating the situation. No, it doesn't happen every minute, but it happens enough so that it destroys the very concept we're trying to achieve here as a safe, pleasant environment on a mixed street for people to walk up and down and not be

confronted with double-parked cars and people waiting to go around parked cars.

In terms of the findings, and I don't want to bring to you, counsel, and the Hearing Examiner as well, where these things, but just remember that the Council must find that the proposed development complies with purposes of the zone and that it would provide for the maximum safety and would be compatible with adjacent development. And the purpose of the zone, the TS-R zone, is to prevent detrimental effects to the use or development of adjacent properties or surrounding neighborhood and to provide for the safety of people in the area.

And the finding has to be that it complies with the use and density. There's a question of use. We say the density is much too great and does not conflict with the general Plans and other County policies. County policy here is spelled out so clearly in the Master Plan. They want an urban village concept.

The final finding is that the proposal has to have an internal vehicular and pedestrian circulation points, circulation systems and points of external access are safe and efficient. We don't think that they have met their burden at all.

Lowering the building in terms of a number of units might perhaps help. Lowering the building in terms of

size, massiveness and design would help make it more compatible. And as I tell my clients and I am embarrassed to tell the Hearing Examiner, but I do want to remind her, what you see on all the wonderful illustrations is not necessarily what you get unless it is nailed down by binding elements and we find the binding elements few and a lot of wiggle room. With those, I'll stop and thank you, Hearing Examiner, again for her patience.

MS. ROBESON: Thank you. Ms. Harris, do you want to respond?

MS. HARRIS: Yes.

MS. ROBESON: Now I'm not going to go for a written response because I feel that I have to treat everyone the same way, so you, you're welcome to do rebuttal now.

MS. HARRIS: Okay. Let me -- I think I want to start off with what Mr. Knopf pointed out, that the City Homes in his mind controls because it's such a large project that it controls the tone of the street. Reality is it's built at 27 units per acre. It's not the recommended FAR. It provides no MPDU's. The parking is visible. It doesn't provide the continuous street edge. The buildings are perpendicular to the street. Is he really suggesting that what the Council had in mind is if because of the economic times when the City Homes was built, and that's why it was

approved as townhouses, that that then should set the tone and the benchmark in the standard by which all other projects in the area should be judged in terms of compatibility? That absolutely makes no sense.

In terms of Mr. Abrams, the factor that he still tried to argue that the Sector Plan allows for a full FAR, that the density should be a full FAR and that the 2.5 -- I mean I, you know, originally we were thinking, oh, maybe we need to push that point home further and then really we thought, well, wait a minute, the Council approved 3.05 FAR both with the Hampden Lane project and 4901. So, again, I go back to my point. Is the District Council wrong when they approve that, the density of 3.05? No. Clearly, the Sector Plan and the subsequent MPDU legislation contemplated that additional density would be permitted and would be allowed to exceed the 2.5.

In terms of the 100 units per acre that Mr. Knopf noted, again, I ask the Hearing Examiner to carefully examine the way that is worded in the Sector Plan. What the Sector Plan says is, one, that a minimum requirement of 45 dwelling units per acre and then it says a maximum which, of 2.5 and then parenthetically it says about 100 units per acre. Last time I checked, a statement that says about 100 units per acre is hardly a requirement. It was merely an estimation of what the maximum could potentially yield and,

again, that's not taking into account the allowable additional density that's committed by the 3.05 FAR.

The fact that the Council recently approved projects which are less than the 45 dwelling units per acre does not suggest that in their wisdom and in their policy of trying to promote density at Metro, in trying to support affordable housing units, that just because they did approve a reducation or a reduction in the number of the units in 4901 or that they approved the 4825 building with just four units, that they somehow would not approve a project that is, that furthers the goals that were originally established in the Sector Plan. It was more merely a situation where those were the projects that were before the Council at the time the owner came in and said, you know, for whatever reason I don't want to do 50 or 60 dwelling units at 4901, I want to do 40 or 50 and the Council said okay. The fact that in creating larger units, which are now selling in the several millions, does that really further the goal of providing more economic choices in diversity in housing? I don't think so.

In terms of the urban village, there was a lot of discussion about, just now about the discussion of urban village, but the reality is if you look at every project on there, I'd be hard-pressed to say what looks like an urban village and as Pat Baptiste said in connection with the

approval of, with the Highrise Edgemoor, and I'm going to quote,

"The urban village concept contained in the Sector Plan presented a nice design, but it will not be achieved. The applicant attempted to implement the urban village concept with an earlier application, but it was withdrawn as economically infeasible."

She concluded that the height limitation should be waived in this case in order to achieve the density goals of the Plan. And then,

"Given the existing development pattern, strict application of the Sector Plan height limits will work against the objectives of the Plan."

That was her statement in regard to the Highrise Edgemoor.

Now I grant you, maybe the City Homes which, again, and I went through the list of how that doesn't comply with the Sector Plan, maybe that approach is the concept of urban village, but if you walk around and look at every other project on that street, I think it would be hard-pressed to reach the conclusion that they meet that amorphous concept of urban village.

I thought that the suggestion by opponent's counsel that somehow the public, the private use space in

the back of the property should be reduced in size in order to provide the City Homes with more, with more, provide the project a greater distance from the City Homes, that goes to every other suggestion that we've heard in this case which is we want more, burden someone else. We want more distance. We want more than 73 feet from our, the base of our building to the City Homes, to the subject property, so push it back, push it against the Villages of Bethesda. We want more public use space on the front, so you know what, decrease the private outdoor space that you residents could enjoy. I mean it baffles me, quite honestly, that, those suggestions.

I would also note that the suggestion of Mr. Kabatt's calculations in terms of the traffic calculations, the reality is that staff reviewed his traffic report and found it to be acceptable and the rates that were applied were the exact same rates that have applied in every project which is within the Sector Plan boundaries. If staff, transportation staff had issue with the ITE calculations that he used, I'm sure that would have been brought out in connection with their review.

Give me a minute just to go through the rest of my notes. Going back for a moment to the City Homes and the fact that that should be a benchmark, imagine for a second if the City Homes had, in fact, been built in accordance

with what the Sector Plan recommended. So imagine that there's 65, and I'm not suggesting one building along that entire face, but imagine two separate buildings at 65 feet in height. What we would be discussing here then is a difference of, a 5-feet difference between the City Homes and the subject property and we would be talking about actually a difference of 65 feet with a building that at the street line has a height of 50 feet. So, again, I urge you, and I, and all you need to do is take a look at the other, at the Hampden Lane zoning hearing examiner report and the District Council report that the fact that the City Homes was built below what the Sector Plan recommended should not then become the benchmark by which compatibility for the rest of the area should be judged.

In terms of Mr. Knopf's discussion about the MPDU's, the reality is the project is providing 18 MPDU's and while, yes, it may be more than the 15 that would be permitted at 120 units, the reality is there are no MPDU's currently on the street. And while we, you and I may sit here and think that a second or, a first, a second or a third more additional MPDU's is not meaningful, I grant you that it's very meaningful for the person that wants to live within walking distance of the Metro, so they don't need a car, who can't afford affordable housing somewhere else in the Bethesda CBD. I think that's it. Thank you.

MS. ROBESON: All right.

MS. HARRIS: And I would like to thank you too because I know this has been an unusual, enduring process.

MS. ROBESON: No.

MS. HARRIS: So thank you for your patience.

MR. ABRAMS: I would like to clarify one thing for the record because it was misrepresented by counsel and in terms of my statement. So that it's on the record and it's clear to everybody and the Villages of Bethesda don't get in a panic, what I suggested was that the 15 feet remain a setback and private use space, that the area on the west side of the building be a uniform --

MS. ROBESON: Right.

MR. ABRAMS: -- 12 feet back and that be transferred to public use space and that other areas such as the roof or other interior areas make up the 20 percent. So I don't want it to be mis-represented in the record that we are trying to reduce the 15 feet in the rear.

MS. ROBESON: No, I understood that.

MS. HARRIS: And can I just make a comment to that which I had noted?

MS. ROBESON: Sure.

MS. HARRIS: That the 12, think about a 12, think about the last time you were in a private garden space that was 12-foot in depth and how enjoyable that was. That,

essentially what Mr. Abrams is suggesting, is to eliminate the private outdoor space for the residents of this building.
MS. ROBESON: All right.
MS. HARRIS: Thank you. And that space was also provided in order to provide VOB with its U-corridor. So I mean there were two things going on, the northern setback requirement and that private space on the west.
MS. ROBESON: Okay. It's noted.
MS. HARRIS: Thank you.
MS. ROBESON: All right. Now we still have the letter from the Villages of Bethesda.
MS. HARRIS: Yes.
MS. ROBESON: So I was -- is that, is the gentleman -- he's not here?
MS. HARRIS: He's not here.
MS. ROBESON: Is 10 days enough for him to get the letter in?
MR. ABRAMS: Well, again, I'm leaving on the 25th, so if --
MS. HARRIS: I mean I would think, and in respect to Mr. Abrams's schedule, I am -- I'm assuming that he can probably get it in in the next two or three days.
MS. ROBESON: Okay. The, I mean the 16th?
MS. HARRIS: What day is that?

MS. ROBESON: Thursday, or the 17th. And then that gives Mr. Abrams six days to respond.
MS. HARRIS: And then just to be clear, and then I have --
MS. ROBESON: Let's do it a week -- if he can get it in by the 16th and Mr. Abrams can respond by the 23rd.
MS. HARRIS: And then do I have an opportunity to respond to Mr. Abrams's response?
MS. ROBESON: Yes. How long do you think you're going to need for that?
MS. HARRIS: How much -- you afforded him a week, is that right?
MS. ROBESON: Okay. That would be the 30th.
MR. KNOPF: Yes, I think we hit Memorial Day somewhere along there.
MS. ROBESON: What?
MR. KNOPF: You may have hit the Memorial Day holiday somewhere in there.
MS. ROBESON: No, no, the 30th is -- Memorial Day is the 27th.
MR. KNOPF: That's what I said, you're getting into the 27th, or did I hear that?
MS. ROBESON: Well, do you --
MR. KNOPF: No, I'm just saying pick a date that's, you know, with mail.

MS. ROBESON: Oh, there's mail on the 30th. So the Villages of Bethesda letter will be here by the 16th. The applicants, or the oppositions' response will be due on the 23rd and then the applicant's, wait, the oppositions' response on 5/23 and the applicant's response to the oppositions' response would be 5/30. And the other thing I need is the revised Development Plan with the 36 instead of the 35.
MS. HARRIS: Yes. We can have that to you in two days.
MS. ROBESON: Okay. Whenever, it's, the record is going to be open until the 30th, so whenever -- as soon as you can get that in.
MS. HARRIS: And can we also clarify, I am assuming that the only things to be submitted to the record are the Lockard (phonetic sp.) letter, opponents' response, my reply and the --
MS. ROBESON: Yes, I'm not --
MS. HARRIS: -- Development Plan?
MS. ROBESON: And the transcript.
MS. HARRIS: Right.
MS. ROBESON: I'm not holding the record open for additional testimony.
MS. HARRIS: Thank you.
MR. ABRAMS: Can we make sure that we get a copy

on time of the Villages of Bethesda?
MS. HARRIS: I will make sure that, like I've done thus far, I'll make sure that you get e-mailed it on the day --
MR. ABRAMS: Okay.
MS. HARRIS: -- that we submit it.
MR. ABRAMS: Okay.
MS. ROBESON: All right. And with that, this hearing is adjourned.
MS. HARRIS: Thank you.
MR. KNOPF: Thank you.
MR. ABRAMS: Thank you.
(Whereupon, at 4:41 p.m., the hearing was concluded.)

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, LLC
LOCAL MAP AMENDMENT G-954, DPA 13-01

By:

Tracy Hahn, Transcriber

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