

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

IN THE MATTER OF:	
Consolidated PUD & Map Amendment & Tenleytown Metro Station - Albemarle Associates.	Case No. 00-03C

Thursday,
November 2, 2000

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

The Public Hearing of Case No. 00-03C by the District of Columbia Zoning Commission convened at 6:45 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairperson
CAROL J. MITTEN	Vice Chairperson
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida, Secretary, ZC
Gerald Forsburg, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Andrew Altman, Director, Office of Planning
Ellen McCarthy, Office of Planning
Jennifer Steingasser, Office of Planning

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APPLICATION OF ALBERMARLE ASSOCIATES

PHIL T. FEOLA, ESQ.	5
Wilkes, Artis, Hedrick & Lane, Chartered 1666 K Street, N.W. Suite 1100 Washington, D.C. 20006=2897 202/457-7800	

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

(7:00 p.m.)

CHAIRPERSON HOOD: Good evening, ladies and gentlemen. This evening's case is the continuation of Zoning Commission Case No. 003C from October 19, 2000. The hearing will please come to order.

Joining me this evening are Commissioners Carol Mitten, Vice Chair; Commissioner Franklin, Commissioner Holman, and also will be joining us, Commissioner Parsons.

Would all individuals who were not previously sworn in on October 14th -- I'm sorry, October 19, 2000 and who are wishing to testify, please rise and take the oath.

(Witnesses were sworn.)

Okay, we want to proceed. I want to ask if the Applicant can come to the table. Also, if he could have -- okay, people need to respond on the front row, which is good. Also, Mr. Bardin and also Mr. -- let me open my notes here. I'm trying to go from the top of my head and that's not working. DiBiase, yes, I do have it written down.

Mr. Bastida, do we have any preliminary matters before we get back into cross examination?

SECRETARY BASTIDA: No, Mr. Chairman. The staff had no preliminary matters. Thank you.

CHAIRPERSON HOOD: There were a few things that were asked for. At this time I'm going to ask Mr. Feola, do we

1 have it, is it readily available to the Commission and also to the
2 other parties?

3 MR. FEOLA: Yes sir. There were a number of things
4 that were asked for, as you point out, the first of which were a
5 complete set of new plans based on the revised scheme as requested
6 by the Office of Planning and that is the 13 unit scheme as
7 opposed to the 14 unit scheme. Those were delivered to the Office
8 of Zoning, to this record, at the end of last week and served on
9 the parties.

10 Additionally, the Commission asked for supplemental
11 information with regard to the Buyer Retention Facility,
12 specifically with regard to how they work and the cost of
13 maintenance and the like and I'd like to turn those in now with
14 your permission and serve them on the parties as well.

15 Mr. Amatetti who prepared this is able to speak to
16 this if there is further information or questions.

17 There was also a request from the Commission to Mr.
18 Wells and associates on whether or not there was any data that
19 linked Metro ridership to income levels and Mr. Wells has prepared
20 a memorandum which we can turn in now in that regard and he's here
21 to answer questions on that.

22 And finally, the last piece that the Commission
23 asked us to be prepared to talk about was a sample board of
24 materials which Mr. Colbert, the Applicant's architect can bring
25 forward and explain and show and answer questions. So I'm not

1 sure how you want to finish, finish cross examination and do that
2 or not.

3 CHAIRPERSON HOOD: I think what we'll do, Mr. Feola
4 and Mr. Bardin and Mr. DiBiase, if we could finish cross
5 examination and then if it's okay, colleagues, we'll come back on
6 on the back end if we have some questions of the things that were
7 just submitted, kind of give us time to kind of peruse some of it
8 at this time.

9 Also, Mr. Bardin and Mr. DiBiase, may I asked you
10 about how much more time do you think you may need?

11 MR. BARDIN: One preliminary matter, Mr. Chairman,
12 to answer your question, my guess is an hour.

13 I don't know. I've never been in these proceedings
14 before. I don't know how quickly you get answers. I've tried to
15 organize the cross in a way that will speed it up.

16 CHAIRPERSON HOOD: Mr. Bardin, let me just say that
17 I believe at the last hearing you had may 25 or 30 minutes.
18 Colleagues, you may correct me, if I'm incorrect and I think the
19 cross examination should reflect the testimony that was provided
20 by the Applicant, so you're asking for an hour and a half and I
21 believe the Applicant's case was only an hour, so we want to make
22 sure that we balance it, not necessarily that you're presenting
23 your case at this point in time. You will have time to come back
24 up from the ANC standpoint and present your case.

25 This is just to ask questions of the testimony.

1 MR. BARDIN: I understand, Mr. Chairman. I assure
2 you, Your Honor, that I am going to do everything I can to limit
3 that, but I ask you to remember that I was surprised with a whole
4 new set of information by some of the experts from the Applicant
5 who began testifying and materials were handed to me which were
6 dated several days earlier which I'd never seen before, so I don't
7 think I asked cross. I just tried to clarify what it was they
8 were doing. I've since gotten the materials and now I have some
9 questions. They will be factual questions. They will not be an
10 attempt to make our case through the Applicant, but just to
11 clarify for this Commission and its record just what the Applicant
12 is saying. But I will make it as quickly as possible.

13 I do have one preliminary matter.

14 CHAIRPERSON HOOD: Let me just ask my colleagues,
15 Mr. Bardin and the ANC, Mr. DiBiase, I believe together are asking
16 for -- now is this together, an hour and a half?

17 MR. DiBIASE: No, all I'm asking for is about five
18 minutes of cross examination. I don't expect to have much at all.

19 CHAIRPERSON HOOD: So they're asking basically,
20 colleagues, for about an hour and a half. I want to hear from my
21 colleagues. How do you think we need to proceed with an
22 additional hour and a half on top of the 30 minutes that we did
23 previously. Mr. Bardin is saying that a lot of information is
24 new, so I just want to make sure we have a general consensus.
25 He's asking for an hour and a half.

1 If there are no comments --

2 COMMISSIONER FRANKLIN: Well, Mr. Chairman, I
3 suggest we just see how it goes without -- that does seem to me
4 like a very lengthy time for that purpose, but if the cross
5 examination is proceeding in an effective way, I wouldn't want to
6 cut it off.

7 I must say, Mr. Bardin, I just didn't know where
8 you were going in your last session of cross examination and I,
9 for one, would find it helpful if you would sort of lay the basis
10 for your questions.

11 MR. BARDIN: I will try to do that, Commissioner
12 Franklin.

13 CHAIRPERSON HOOD: Colleagues, any other comments?

14 COMMISSIONER PARSONS: Excuse me, Mr. Bardin, are
15 you going to have a series of exhibits like you did last time,
16 entering new information to cross examine with, because I find
17 that highly irregular. We just don't have that kind of proceeding
18 here. Those kinds of exhibits are brought forward in your
19 response to this case rather than trying to get their expert
20 witnesses to testify on your exhibits. If that's what this next
21 hour is about, I think you're out of order, frankly.

22 MR. BARDIN: Commissioner Parsons, I understand
23 your point. I ask you to bear with me. If you feel, as I
24 proceed, that I'm out of order, I will be properly rebuked and cut
25 off or cut myself off. I am going to be dealing basically with

1 the materials that the Applicant has given us and asking them
2 questions about their exhibits. The only new exhibit I've
3 prepared is there was a question of what does "as of right" allow
4 you to do and frankly, I found it difficult and puzzling. It was
5 a question raised by Commissioner Franklin. It was a question
6 that you, Commissioner Parsons, said the Applicant should have
7 come forward with as part of this burden of proof. And I just
8 took the Phase I chart and showed one way in which you can divide
9 it into four lots with a 50-foot frontage apiece with the 5,000
10 square feet or more --

11 MR. FEOLA: Excuse me, Mr. Chairman. Now we're
12 getting into direct testimony on an exhibit that the ANC has
13 prepared.

14 CHAIRPERSON HOOD: Mr. Parsons --

15 COMMISSIONER PARSONS: Well, if his intent is to
16 take his drawing and throw it upon their witnesses to say is this
17 a legitimate subdivision, I think it's out of order. I don't
18 think they're prepared to respond to that and I don't think they
19 should have to respond to that.

20 CHAIRPERSON HOOD: Here's what I think we're going
21 to do. We're going to the advisement of Commissioner Franklin.
22 We're going to move forward. If we see, Mr. Bardin, that we need
23 to cut it off, then we will, but I want you to understand that
24 being a community person myself, I know how it is. I do that
25 often, just as you do, but I also want to make sure that we're

1 fair to the rest of us in here, especially those live in the
2 neighborhood who also would like to come up and speak.

3 So I would ask you to keep in mind, you asked for
4 an hour and a half and I can assure you that it won't go an hour
5 and a half, but let's be fair minded. Let's move as expeditiously
6 as we can. And let's remember that there are others who also want
7 to offer testimony. So with that, I think we've belabored that
8 long enough --

9 MR. BARDIN: May I bring up one preliminary matter?

10 I'd like to correct an error which is my fault. In our second
11 resolution we put a number down which we incorrectly said was the
12 contested hearing fee that the Applicant paid. In fact, the
13 contested hearing fee paid pursuant to the zoning regulations was
14 \$2,500. I regret the error and I want it corrected on the record
15 as I have corrected it by e-mail to various other persons.

16 CHAIRPERSON HOOD: So noted. Let's begin. I have
17 something that I need to do, a procedural matter for the Zoning
18 Commission on another case, so I'm going to recess this in about
19 10 minutes, but we can go ahead and get started. I'll do that and
20 then we'll go right back into this case.

21 SECRETARY BASTIDA: Mr. Chairman, it is the
22 tradition of the Zoning Commission to request that when you come
23 in, all beepers, telephones and so are to be shut off. And the
24 door to your right, please don't use it, because it will set off
25 the alarm. Unfortunately, we haven't been able to get the

1 building to rectify that. So there is a sign saying do not use
2 that door unless there is an emergency.

3 Thank you.

4 CHAIRPERSON HOOD: Okay, with that we're ready to
5 proceed, pretty much where we left off.

6 MR. BARDIN: My first questions, Mr. Chairman, go
7 to Mr. Amatetti, and they deal with the new detailed drainage and
8 grading plan which is Sheet C5 on the --

9 CHAIRPERSON HOOD: Mr. Bardin, we need to make sure
10 that we are on the record, so we can hear you. We do have a
11 microphone that we can attach to you so that we can make sure that
12 you're on the record. For the time being, I'm going to ask you
13 again to speak a little louder, please?

14 MR. BARDIN: Yes sir. Mr. Amatetti, I'd like to
15 make sure the record is clear as to how your drainage plan and
16 your new grading plan would work. And I'll take you building by
17 building and ask you about that. Let me start with Building 2 on
18 Albemarle Street consisting of four units.

19 Where will the roof, the rain that falls on the
20 roof of that building drain to?

21 MR. AMATETTI: I'm sorry, sir, repeat that?

22 MR. BARDIN: Building No. 2, the four units on
23 Albemarle Street --

24 CHAIRPERSON HOOD: Excuse me, Mr. Amatetti, if you
25 could use the microphone and we probably are going to have to pass

1 it back and forth to make sure you're on the record and we can all
2 hear. Thank you.

3 MR. AMATETTI: The Building No. 2 which fronts on
4 Albemarle Street, the rear of those units will drain to the access
5 way in the back and the front will drain towards the front, but it
6 would be picked up by roof leader system and piped around to the
7 back.

8 MR. BARDIN: And where will it end up?

9 MR. AMATETTI: The two units to the west would end
10 up flowing down towards the bioretention area to the west and the
11 two units to the east would flow down to the bioretention area to
12 the east.

13 MR. BARDIN: Now looking at Building No. 3, the
14 units on Nebraska Avenue, where do those roofs rain to?

15 MR. AMATETTI: The rear of those units would flow
16 down to the bioretention area to the east. The front would flow
17 towards the front and a roof leader system would carry those down
18 to the bioretention area to the east.

19 MR. BARDIN: Would those go into the bioretention
20 or directly into the culvert?

21 MR. AMATETTI: More than likely they would directly
22 into the culvert, but in final design we would probably make every
23 effort to try and get the roof leader system to daylight onto the
24 surface of the bioretention area.

25 MR. BARDIN: Now in your new chart C5 shows a long

1 pipe or some kind of line between the two bioretention facilities,
2 the one to the east and the one to the west. Could you explain
3 that pipe or line?

4 MR. AMATETTI: That pipe is to take an underdrain
5 system which is recommended with bioretention facilities in urban
6 areas, would take an underdrain system that would carry excess
7 water off from the bottom of the bioretention bed down towards the
8 outfall on Nebraska Avenue.

9 MR. BARDIN: Where would the other two buildings,
10 Building No. 1 and Building No. 4 in the rear, in the north, drain
11 to?

12 MR. AMATETTI: The rear of Building 1 would drain
13 to the left most building would drain to the bioretention area to
14 the west and the other three buildings would drain to the
15 bioretention area to the east.

16 MR. BARDIN: And where would the interior court
17 drain to, where is the split?

18 MR. AMATETTI: The split that we have planned is
19 more or less in the center of Building 2 with the right portion
20 going to the east and the left portion going to the west.

21 MR. BARDIN: Now in constructing the court and
22 these buildings, would you anticipate cutting, that is to say,
23 removing a good deal of the soil and fill material that's there
24 now?

25 MR. AMATETTI: We would be removing some material

1 of the soil report that indicates that a portion of the southern
2 most portion of the property, in fact, has some fills in it now
3 that were probably put in when the houses were originally put in,
4 but in order to develop the property, strip the top soil, we would
5 be removing material from the existing grade.

6 MR. BARDIN: Doesn't that soil report by Snabel
7 which is Exhibit E to the pre-hearing statement filed by the
8 Applicant, doesn't it indicate a boring in the north as well as
9 borings in the south with fill that might have to be removed in
10 the north?

11 MR. AMATETTI: It had two borings, at B1
12 approximately on the corner, the northeast corner of Building 1
13 and it had a boring that more or less is in the northern building
14 of Building 3. Both those -- the boring in Building 3 indicated
15 no fill and the -- I believe the boring in the other building
16 reported a slight amount of fill.

17 MR. BARDIN: Does the B1 boring report three feet
18 of fill?

19 MR. FEOLA: Mr. Chairman, I don't recall Mr.
20 Amatetti testifying to anything about the Snabel report and if Mr.
21 Bardin wants to testify, take issue with it, he's free to in his
22 direct presentation, so I'm not sure where we're going with this.

23 MR. BARDIN: Mr. Chairman, where are we going?
24 Boring 1 as you will see when you look at the Snabel Report,
25 Exhibit E at Figure 2, boring 1 is within the drip line of a tree

1 we're trying to save, a White Oak, just on the edge. This line of
2 questioning, now that we've clarified the drainage is going to go
3 under the new plan will be what kind of digging number one,
4 removal of soil, number two, and compaction of soil, number three,
5 is part of this plan as prepared by the engineers and so that you
6 can understand later on what kind of impact it may have on the
7 survivability, the chance of surviving of this White Oak. That's
8 the relevance.

9 CHAIRPERSON HOOD: Mr. Bardin, I understand you're
10 trying to prove a point, but I would ask that we get to that point
11 a little faster and so we won't have to go through all that. And
12 then it sounds like we're going another way. I think, Mr. Feola,
13 that he's making a point --

14 MR. FEOLA: The last question he just asked was --
15 he could have saved us 10 minutes by asking that question right up
16 front.

17 CHAIRPERSON HOOD: You just heard me to ask him to
18 be a little quicker and get to the point. So Mr. Bardin, if we
19 can proceed.

20 Thank you.

21 MR. BARDIN: Mr. Feola, I'm sorry, Mr. Amatetti, do
22 you anticipate that whatever amount of fill is located here would
23 have to be removed and replaced because of the soil conditions
24 reflected in the Snabel Report?

25 MR. AMATETTI: No, I would not.

1 MR. BARDIN: Could you explain that?

2 MR. AMATETTI: Well, the only time that soil is
3 removed is under a building pad where you're relying on it for
4 certain bearing capacity for structural reasons.

5 MR. BARDIN: When the building pads are
6 constructed, will there be any need to dig at all north of the
7 building pads?

8 MR. AMATETTI: There are some steps out there that
9 may require some digging, but I will tell you that normally
10 foundations in this area for frost protection are 30 inches below
11 grade, so we'll anticipate that the footings would probably be at
12 -- right at the limit to the fill.

13 MR. BARDIN: Thirty inches below, normal
14 foundations are 30 inches below grade?

15 MR. AMATETTI: In depth.

16 MR. BARDIN: How about extensions? Can the
17 construction take place without digging beyond the pad?

18 MR. AMATETTI: Yes, construction can take place
19 without digging beyond the pad.

20 MR. BARDIN: And can construction take place with
21 no heavy equipment with no construction equipment moving north of
22 these building lines?

23 MR. AMATETTI: Yes, it can. It's quite common to
24 establish a tree protection around trees to ensure that the area
25 around the drip line is not inundated with heavy construction

1 equipment.

2 MR. BARDIN: In the background in this chart and in
3 other charts you have, there are topos and other lines. Was that
4 work done by you or your organization or was that done by Snabel
5 and just copied by you?

6 MR. AMATETTI: It was done by A. Morton Thomas, a
7 surveying firm.

8 MR. BARDIN: Working for you or for Snabel?

9 MR. AMATETTI: Working for the owner.

10 MR. BARDIN: Working for the owner. Did the survey
11 firm locate the Woodrow Wilson High School building --

12 MR. AMATETTI: I have no idea.

13 MR. BARDIN: Did the surveying firm indicate that
14 the stream and ravine went this far north?

15 MR. AMATETTI: To the limits that we show, yes,
16 they did. The outfalls that are indicated were approximated on
17 from a field reconnaissance by wetlands studies and solutions
18 which we were also out there.

19 MR. BARDIN: If in digging 30 inches or so to put
20 in the construction, the contractor encounters tree roots, what
21 will he be able to do to avoid destroying the tree roots?

22 MR. AMATETTI: I'm not qualified to answer that.

23 MR. BARDIN: Do you have any observations with
24 regard to the frequency of flow of water in this ravine?

25 MR. AMATETTI: I don't.

1 CHAIRPERSON HOOD: Excuse me, Mr. Bardin, do we
2 have anyone that's qualified to answer the last question?

3 MR. BARDIN: Yes.

4 CHAIRPERSON HOOD: Would you like them to answer it
5 now as opposed to later?

6 MR. BARDIN: That's all right.

7 CHAIRPERSON HOOD: But I do want an answer myself,
8 so --

9 MR. BARDIN: That's fine. Why don't we do it right
10 now then?

11 MR. ROLEBAN: The first question with respect to
12 the tree roots that I believe Mr. --

13 CHAIRPERSON HOOD: No, we're talking about the flow
14 of the stream, right?

15 MR. BARDIN: Right, yes, Mr. Chair.

16 CHAIRPERSON HOOD: That way we won't have to go
17 back.

18 MR. ROLEBAN: For the record, my name is Michael
19 Roleban. I'm from Wetlands Studies and Solutions.

20 MR. BARDIN: Mr. Roleban, are you the witness who
21 expressed the opinion that the stream was intermittent rather than
22 perennial?

23 MR. ROLEBAN: I did so. The upper half I
24 personally observed I guess about a month or so ago where there
25 was no flow whatsoever. The bottom half had some saturated soil

1 and a minor bit of flow about 40 to 50 feet away from the end of
2 it, the lower end of it.

3 MR. BARDIN: At the lower end, namely that large
4 culvert that goes under Nebraska Avenue, have you ever seen that
5 dry?

6 MR. ROLEBAN: No, I have not.

7 MR. BARDIN: So it would appear, would it not, that
8 there are springs feeding at least a part of this 300 foot stretch
9 of stream.

10 MR. ROLEBAN: You will recall that I testified last
11 time that there was flow during observations in the lower portion
12 of this. This year is a year of extremely above normal rainfall,
13 approximately 15 to 20 percent to date, so that is not an
14 indication of the stream characteristics during the year of normal
15 rainfall.

16 MR. BARDIN: Could you be very precise for us about
17 where you saw -- what stretch precisely you saw that had no flow
18 in it?

19 MR. ROLEBAN: Roughly the upper half.

20 MR. BARDIN: Could you go to the map and point to
21 us where?

22 MR. ROLEBAN: Approximately here. We obviously
23 were not surveying it, but about the middle of the stream reach,
24 there was no more flow.

25 MR. BARDIN: But even there you saw standing water,

1 did you not?

2 MR. ROLEBAN: No sir.

3 MR. BARDIN: Where did you see the standing water?

4 MR. ROLEBAN: We saw standing water in this lower
5 end of the stream, this lower end of the stream. This flat area
6 right here was where there was a little bit of standing water,
7 anywhere from a quarter inch to a half inch.

8 CHAIRPERSON HOOD: Let me just ask, is that
9 microphone on because I can't --

10 MR. ROLEBAN: Is this better?

11 CHAIRPERSON HOOD: I don't think it's ever been on.

12 MR. ROLEBAN: Is this better?

13 SECRETARY BASTIDA: May I have the microphone to
14 change the batteries, might be the problem.

15 (Pause.)

16 MR. ROLEBAN: I honestly forget what the question
17 was now.

18 CHAIRPERSON HOOD: Mr. Bardin, you have more
19 questions? I didn't mean to interrupt. I guess that was my
20 fault. I just wanted someone to ask the question that went
21 unanswered.

22 I didn't know you had a series of questions, but I
23 want you to go back and finish with Mr. Amatetti. Forgive me for
24 interrupting.

25 MR. BARDIN: Mr. Amatetti, I want to turn to the

1 chart you showed us last month of an 8.8 acre drainage area for --
2 I'm not sure exactly for what. I'd like to make sure -- what does
3 that 8.8 acres represent?

4 MR. AMATETTI: That 8.8 acres represents my
5 estimation based on my field reconnaissance of the drainage area
6 to the stream.

7 MR. BARDIN: So when it says drainage area to
8 culvert outfall, you don't mean to the culvert itself, you mean to
9 the 300 --

10 MR. AMATETTI: I mean to the inlet of the culvert,
11 the actual beginning of that culvert pipe.

12 MR. BARDIN: Let's look at the stretch along
13 Chesapeake and Nebraska.

14 You show that the northeast corner is not part of
15 the drainage area, correct?

16 MR. AMATETTI: That's correct.

17 MR. BARDIN: And what do you mean by saying or
18 estimating that it's not part of the drainage area?

19 MR. AMATETTI: That was based on my visible
20 observations in the field of the drainage patterns.

21 MR. BARDIN: Where does the rainwater drain to in
22 that part?

23 MR. AMATETTI: My observations were that that
24 drainage drained to the east towards Nebraska Avenue, and you can
25 even see it with the contours. This is moving this way to the

1 street.

2 MR. BARDIN: And how about the rain that lands on
3 the roof of those two Woodrow Wilson High School buildings along
4 Chesapeake, the gymnasium and the library?

5 MR. AMATETTI: Obviously, I couldn't see where the
6 roof leaders were going. I observed that there were some scuppers
7 up on the roof and some of the discharges were directly on to the
8 ground, but it's impossible to verify precisely where those roof
9 leaders would be going other than I didn't observe any inlets or
10 anything like that in that area and in my professional opinion
11 they drained towards the east towards Nebraska Avenue.

12 MR. BARDIN: You didn't look at the construction
13 plans for the school?

14 MR. AMATETTI: No, I did not.

15 MR. BARDIN: Now, isn't it a fact that the eastern
16 part of the school where you see the track along Nebraska and
17 there's this little stadium there, isn't there a raised wall there
18 about four feet high?

19 MR. AMATETTI: That's correct.

20 MR. BARDIN: And aren't there drainage outlets
21 every 12 feet or so on that wall?

22 MR. AMATETTI: I observed what appeared to be a
23 trench drain of sorts along that wall and did see some pipes
24 coming out of the wall.

25 MR. BARDIN: So wouldn't you expect that the

1 drainage from this -- the southern more part of the stadium would
2 also drain to Nebraska Avenue?

3 MR. AMATETTI: No, the reason why I made the
4 assumption that I did with this plan was that on the southern most
5 portion, there was a drainage inlet of sorts where the entrance
6 way was and it appeared that there was a pipe coming in and
7 connecting to that and that seemed to be consistent with the fact
8 that there was an outfall present right in this position right
9 here which is documented on the plans.

10 MR. BARDIN: Are you saying you thought this
11 outfall down in the ravine was picking up water from the entire
12 south half of the stadium?

13 Is that what you just said?

14 MR. AMATETTI: I'm testifying that I believe that
15 outfall, that 12-inch RCP pipe that's right there is taking water
16 from the north from the track and from the area in the north side
17 of the --

18 MR. BARDIN: Did you inspect the small grated low
19 lying piece of Woodrow Wilson High School where they maintain the
20 rowing shell which has a big grate at the low point right over
21 there, the south end of Woodrow Wilson?

22 MR. AMATETTI: No, I didn't.

23 MR. BARDIN: Going back to your map, Mr. Amatetti,
24 what is the baseline map in the whole area surrounding Woodrow
25 Wilson? Where did you get it from?

1 MR. AMATETTI: From the District of Columbia
2 Department of Environmental Services at Blue Plains.

3 MR. BARDIN: That's the D.C. Water and Sewer
4 Authority, WASA?

5 MR. AMATETTI: Yes sir.

6 MR. BARDIN: But the section for Woodrow Wilson
7 High School and the site that we're talking about here and the
8 National Park Service Park, that doesn't come from the WASA map,
9 does it?

10 MR. AMATETTI: No, that I inserted so that I could
11 represent the buildings which are not on the D.C. map.

12 MR. BARDIN: Did you notice that on the WASA map
13 original map in the northwest corner, there is a note about
14 drainage?

15 MR. AMATETTI: I don't recall that.

16 MR. BARDIN: Let me show you the map.

17 (Pause.)

18 MR. FEOLA: Mr. Chairman, Mr. Amatetti has probably
19 testified at least 10 times now how he believes in his
20 professional opinion that drainage flows on this site. If Mr.
21 Bardin thinks otherwise, he's free to testify to the opposite, but
22 how many times can he ask the same question? He gave his opinion.

23 MR. BARDIN: Very simple, Mr. Chairman. I'd like
24 Mr. Amatetti to comment on a note on the map which says "basin
25 outlets connected to storm water by school building contractor."

1 This is from the WASA map which is the basis for this map. This
2 is the part of the WASA map which VIKA cut out and replaced with a
3 building footprint map and I believe that this note indicates that
4 as a professional matter, Mr. Amatetti made a mistake and I expect
5 that he will tell us what he did and we'll get that issue off the
6 table.

7 MR. AMATETTI: May I respond?

8 MR. BARDIN: Of course.

9 CHAIRPERSON HOOD: Let's just do this.

10 MR. AMATETTI: May I respond to that because I
11 obviously didn't have it in front of me. I didn't recall it. I
12 do recall reading this note and that is why this area right here,
13 although you would think it would probably drain to the city storm
14 sewer system in the street, I have accurately shown as a
15 contributing drainage area down to the culvert. That note led me
16 to believe that these inlets that were up here, even though there
17 wasn't evidence of it in the field, were tied into the school
18 system which was evident to me on the western portion of the high
19 school all along this portion and an outfall here. So I stand
20 behind what I've done here and that's precisely why I did it.

21 MR. BARDIN: We'll present the WASA map at a later
22 time, Mr. Chairman. It's part of our presentation. And it will
23 speak for itself.

24 CHAIRPERSON HOOD: Mr. Bardin, do you have any more
25 questions of Mr. Amatetti?

1 MR. BARDIN: No, I do not.

2 CHAIRPERSON HOOD: At this time I will take a note
3 that it is -- you had 15 minutes left to 30 minutes that I've
4 asked you to try to conclude with, but at this time I need to do a
5 small housekeeping matter. I need to recess this hearing which
6 I'll do at this time, Thursday, November 2, 2000.

7 (Off the record.)

8 CHAIRPERSON HOOD: Good evening, ladies and
9 gentlemen. My name is Anthony J. Hood, Chairperson of the Zoning
10 Commission of the District of Columbia.

11 Joining me this evening are Commissioners Herbert
12 M. Franklin, Kwasi Holman, Carol J. Mitten, who serves as Vice
13 Chair, and John G. Parsons. I hereby declare this hearing open.

14 The first case scheduled for this evening is Zoning
15 Commission Case No. 0012C, the Applicant being the law firms of
16 Wilkes, Artis on behalf of the Giant Food Store Realty and the
17 owner, Friendship Macombs South Carolina SC, Inc., collectively
18 known as GFS. This case is requesting consolidated review and one
19 step approval of a plan unit development and related map amendment
20 from RFA to C1, Macomb Wisconsin Neighborhood Commercial Overlay
21 District for Lots 56, 57 and 58 and Square 1920 located at 3306
22 through 3330 Wisconsin Avenue, N.W. This case has been
23 rescheduled to be heard on February 19, 2001 at the request of the
24 Applicant and the community.

25 Thank you for your patience in this matter. The

1 Commission sincerely regrets any inconvenience this postponement
2 may have caused. Is there anyone here for that case?

3 With everything in order, the meeting is adjourned.

4 That was real quick.

5 Next, I'd like to take up Case No. 00-03C. Mr.
6 Bardin, if you could continue.

7 MR. BARDIN: May I ask Mr. Amatetti one more
8 question about the new bioretention material.

9 Can you hear me? Mr. Amatetti, with regard to the
10 new bioretention facility on the west side, you've designed it, I
11 understand to handle the first half inch of rain flow. Is that
12 correct?

13 MR. AMATETTI: We haven't final designed that
14 facility, no.

15 MR. BARDIN: But it could be designed, could it not
16 to handle the first inch or the first inch and a half if the
17 developer decided to do that?

18 MR. AMATETTI: Typically, a bioretention facility
19 is either designed for the first half inch or the first inch, one
20 or the other.

21 MR. BARDIN: And can you tell us very, very briefly
22 what would be the difference, physically, in designing for half an
23 inch or one inch in this context or is that complicated?

24 MR. AMATETTI: It's somewhat complicated, but it
25 would increase the surface area of the bioretention facility to

1 handle the first inch versus the first half inch. I could break
2 out the information here and leaf through it to see exactly how
3 much, but it would be larger for the first inch.

4 MR. BARDIN: Thank you, Mr. Amatetti. That's it.

5 CHAIRPERSON HOOD: You're finished?

6 MR. BARDIN: That finishes my questions.

7 CHAIRPERSON HOOD: Okay.

8 MR. BARDIN: Now I have questions for Mr.
9 Millhouse.

10 CHAIRPERSON HOOD: Mr. Millhouse, if you could come
11 to the table.

12 MR. BARDIN: Mr. Millhouse, good evening. Do you
13 have any corrections to or changes to the testimony you have last
14 month? Specifically, you identified the tree in the corner as a
15 willow.

16 MR. MILLHOUSE: The tree on the corner is a red
17 oak.

18 MR. BARDIN: Thank you. Now turning to the air
19 spading that you described in your testimony last month, how deep
20 can an air space reach?

21 MR. MILLHOUSE: As deep as you want it to go.

22 MR. BARDIN: Why did you limit yourself to 8
23 inches?

24 MR. MILLHOUSE: We went 8 to 10 inches because that
25 is where we expect to find tree roots.

1 MR. BARDIN: And you found a 12-inch buttress root
2 heading westward according to your testimony?

3 MR. MILLHOUSE: Yes sir, southwestern, I would say.

4 MR. BARDIN: Southwestern. How deep do buttress
5 roots grow? How deep can buttress roots grow?

6 MR. MILLHOUSE: Buttress roots are all on the
7 surface. Those are the roots that flare out at the base of the
8 tree.

9 MR. BARDIN: Are they the roots that give the tree
10 support?

11 MR. MILLHOUSE: They do provide support. They are
12 not the only roots that provide support.

13 MR. BARDIN: How many buttress roots would a white
14 oak have?

15 MR. MILLHOUSE: I've seen white oaks that had two.
16 I've seen white oaks that had 10 or 12.

17 MR. BARDIN: Do you have an opinion as to how far
18 this buttress root and the root mass system at the end of it grow?

19 MR. MILLHOUSE: No sir, I do not.

20 MR. BARDIN: Now you saw some other roots growing
21 southward, is that correct?

22 MR. MILLHOUSE: Yes.

23 MR. BARDIN: Can you assure us or do you have a
24 positive opinion that there are no roots deeper than 10 inches to
25 the west or south of this tree?

1 MR. MILLHOUSE: Anything is possible, but typically
2 tree roots, 90 percent of any tree's roots are going to be found
3 in the top 18 inches of soil anywhere you go. In this part of the
4 country, it's typical to find 90 percent of a tree's roots in the
5 top 8 to 10 inches.

6 MR. BARDIN: How deep was the 12 inch buttress root
7 that you found heading southwestward?

8 MR. MILLHOUSE: It had been covered by a
9 significant amount of fill.

10 MR. BARDIN: Can you tell us how many inches of
11 fill?

12 MR. MILLHOUSE: About 15, probably.

13 MR. BARDIN: So how did you find it if the air
14 spade only went down 8 to 10 inches?

15 MR. MILLHOUSE: Around the base of the tree we went
16 to the bottom of the wall, we went down deeper at the base of the
17 tree when we were exploring for roots we went down about 10
18 inches.

19 MR. BARDIN: So this buttress root was surviving
20 under all that fill?

21 MR. MILLHOUSE: Yes, it was.

22 MR. BARDIN: And there could be other roots
23 surviving under that fill, couldn't there?

24 MR. MILLHOUSE: That is possible.

25 MR. BARDIN: How old do you estimate the tree to

1 be?

2 MR. MILLHOUSE: I don't estimate the age of trees
3 typically.

4 MR. BARDIN: Okay. But this fill is extremely
5 loose fill, is it not?

6 MR. MILLHOUSE: No, I would not say it is loose
7 fill.

8 MR. BARDIN: Have you read the Snabel Engineering
9 Geotechnic Report?

10 MR. MILLHOUSE: I read it, part of it.

11 MR. BARDIN: Did you read their observations about
12 the looseness of the fill and their concerns that it might now
13 have bearing capacity and might have to be removed and compacted
14 and test rolled with a 10-ton truck?

15 MR. MILLHOUSE: I'm not an engineer, but my
16 understanding that those tests are designed to determine whether
17 the soil will support a foundation, they are not appropriate for
18 agricultural purposes. Different tests are used for agricultural
19 purposes.

20 MR. BARDIN: But if there is root mass in the area
21 over which they roll a compacting testing truck, will it compact
22 the earth and impact adversely on the viability of that root mass?

23 MR. MILLHOUSE: I'm sorry, could you run that by me
24 again?

25 MR. BARDIN: Assume for the sake of argument there

1 is a deeper root mass in an area to be rolled over by a 10-ton
2 rolling truck. Could that rolling and compacting adversely impact
3 the root mass?

4 MR. MILLHOUSE: It may or may not, depending on
5 what the soil conditions are.

6 MR. BARDIN: In other words, it could?

7 MR. MILLHOUSE: Anything is possible, right.

8 MR. BARDIN: Did you read the Geotechnic Report's
9 recommendation that the soil be dried out so as to make it more
10 compactable?

11 MR. MILLHOUSE: No, I did not.

12 MR. BARDIN: If the soil is cut out, the fill soil
13 is cut out, for engineering reasons, structural reasons, and if
14 there is root mass in that soil, when will be discover that there
15 is root mass in the soil?

16 MR. MILLHOUSE: When we dig.

17 MR. BARDIN: Will it be too late to do anything
18 about it then?

19 MR. MILLHOUSE: Depending on how far away from the
20 tree you are, perhaps, but probably not, if they dig at the point
21 of the foundation of those buildings, no, I don't think that will
22 have any effect whatsoever on this tree.

23 MR. BARDIN: How deep did you say the air spade
24 could explore that depth?

25 MR. MILLHOUSE: As deep as you want it to go.

1 MR. BARDIN: It could go 2 feet, 3 feet if we
2 wanted it to?

3 MR. MILLHOUSE: It could.

4 MR. BARDIN: Is there any way to determine whether
5 there are any additional buttress roots at or deeper than 15
6 inches below the present grade level?

7 MR. MILLHOUSE: Again, the buttress roots are right
8 at the base of the tree and the entire base of that tree is
9 exposed now. We know where all the buttress roots are.

10 MR. BARDIN: How many buttress roots are there?

11 MR. MILLHOUSE: I didn't count them, but there were
12 three on the side of the -- excuse me, there were three on the
13 side of the development, one running along the wall, about
14 parallel to the wall towards the east and there were several on
15 the side of the stream, at least five.

16 MR. BARDIN: If construction activity, whether it's
17 excavation or compaction, or storage of equipment or storage of
18 materials, adversely affects this tree, how long does it take a
19 tree to die?

20 MR. MILLHOUSE: Well, a tree can die overnight or
21 it can linger for many years. Typically, with construction
22 projects, we think that 7 to 8 years is a benchmark of success, 15
23 years, you feel like you've done pretty well with it.

24 MR. BARDIN: Did you say 8 years to 15 years?

25 MR. MILLHOUSE: Seven to 8 years is a benchmark of

1 success.

2 MR. BARDIN: Fifteen is an outer limit?

3 MR. MILLHOUSE: Fifteen years, you can figure
4 you're certainly all right.

5 MR. BARDIN: Turning away from this old white oak
6 that everybody wants to save --

7 MR. MILLHOUSE: Including I.

8 MR. BARDIN: I take it you believe it's worth
9 saving.

10 MR. MILLHOUSE: Absolutely.

11 MR. BARDIN: And you say so in your tree
12 preservation plan.

13 MR. MILLHOUSE: The tree will be saved.

14 CHAIRPERSON HOOD: Can we do this, can we ask a
15 question? Let's answer it and let's move on. We all can't talk
16 together.

17 MR. BARDIN: Have you prepared a detailed tree
18 preservation plan for your client for this tree?

19 MR. MILLHOUSE: We have talked about what should be
20 done with it.

21 MR. BARDIN: Could you outline for us the elements
22 that should be included in such a tree preservation plan?

23 MR. MILLHOUSE: We would fence off an area to be
24 preserved that no one activity would occur in which would be about
25 the area of fence now, 20 feet or so from the tree. From that

1 fence line out to the foundation of the house would be an area
2 where activity was allowed, but padding would be supplied to
3 prevent construction damage to the soil.

4 MR. BARDIN: Could I interrupt you? Could you
5 explain what you mean by padding?

6 MR. MILLHOUSE: Put down wood chips and then
7 depending on what activity must occur there you can add plywood or
8 chain link fence --

9 VICE CHAIRPERSON MITTEN: Could I just make a
10 suggestion that might make this move along a little quicker is
11 that if you have discussed and could put in writing what you would
12 propose as a tree protection plan for the white oak so that we
13 could review it and we don't have to go through it in detail
14 today, I think that would be helpful for everybody. So could we
15 just agree to do that?

16 MR. MILLHOUSE: Certainly.

17 VICE CHAIRPERSON MITTEN: Thanks.

18 CHAIRPERSON HOOD: Thank you, Commissioner Mitten.

19 MR. BARDIN: Turning to the city-owned trees on the
20 periphery, on the south side near Albemarle Street and on the east
21 side near Nebraska Avenue. There's an American holly tree that
22 you thought might be worth saving. Do you recall that?

23 MR. MILLHOUSE: Yes sir.

24 MR. BARDIN: But you said its life expectancy was
25 only 11 or so years?

1 MR. MILLHOUSE: I said 11 to 25 years.

2 MR. BARDIN: Don't American hollies live a lot
3 longer than that?

4 MR. MILLHOUSE: They have the potential to.

5 MR. BARDIN: Why did you limit it to 25 years at
6 the outset?

7 MR. MILLHOUSE: Because that tree is not in very
8 good condition. It's completely overrun with English ivy.

9 MR. BARDIN: But you recommended cutting the ivy on
10 the ground level and keeping it cut?

11 MR. MILLHOUSE: If that tree is to be kept, I
12 recommended that.

13 MR. BARDIN: Yes, I mean that.

14 MR. MILLHOUSE: I said that tree is marginal and I
15 said consider removing it.

16 MR. BARDIN: I'm not trying to get you to change
17 your testimony. I'm just trying to understand if they decided --
18 if somebody decided to save the tree and if they took your advice
19 on what to do towards saving it, why wouldn't it last 100 years?

20 MR. MILLHOUSE: It might.

21 MR. BARDIN: It might. Thank you, Mr. Millhouse.
22 I have no further questions of Mr. Millhouse.

23 CHAIRPERSON HOOD: Mr. Bardin, could I just ask if
24 you can give me a synopsis of where you are? About how much more
25 time? As I see, you have less than 3 minutes of what I agreed to

1 earlier. About how many more people do you need to --

2 MR. BARDIN: Let me ask Mr. Chairman a question. I
3 have some questions as to what this Applicant is willing to agree
4 to. I don't know if that's cross examination the way things work
5 or you do it other ways. Frankly, I've tried by telephone calls
6 and otherwise to have meetings and it hasn't worked out and I
7 don't criticize anybody for that.

8 We have the principal here, Ms. Bamberger. I could
9 ask her questions on the stand. If you found them interesting,
10 you'd let me do it. If you didn't find them useful, you wouldn't
11 let me do it. I will abide by the norms of this forum. You might
12 get the sense this is my first appearance before you.

13 CHAIRPERSON HOOD: I guess what I'm trying to do is
14 be fair because we have some other parties who do need to come up
15 and ask questions, but also I want to make sure that you just get
16 to the points, get your response so they can be on the record so
17 we can move on. I guess that's why as long as it's in context
18 with what the Applicant presented.

19 COMMISSIONER FRANKLIN: Well, Mr. Chairman, could I
20 make this suggestion? If the thrust of your questions from here
21 on in as to identify those things that the Applicant might be
22 willing to do, I would suggest that in your direct presentation of
23 your case you'd make these points because the Applicant will be
24 required by the Commission if we decide to move forward on this to
25 do certain things and the Commission is in the position to require

1 those conditions to be met.

2 MR. BARDIN: Commissioner Franklin, the Office of
3 Planning issued a report not too long ago with a number of
4 conditions that they recommended. As I understand it, the
5 Applicant accepts those conditions. I want to understand the
6 Applicant's understanding of those conditions and later on the
7 Office of Planning's understanding so we know exactly what it is
8 that's been agreed to here. That's what I want to ask.

9 COMMISSIONER FRANKLIN: If you find there is some
10 ambiguity there that you want to, point it out to the Commission
11 and we're quite capable of asking ourselves.

12 MR. BARDIN: Okay. Let me just run through those
13 conditions and then you'll know what they are --

14 COMMISSIONER FRANKLIN: Are you now going into your
15 direct presentation? Are you finished with your cross
16 examination?

17 COMMISSIONER HOLMAN: Because Mr. Chairman, if
18 they're the ones listed in the Office of Planning Report, we have
19 that report and I think certain clarifications can come about when
20 the Office of Planning presents its report and certainly the rest
21 can come on cross examination, unless there's something that you
22 think might be missed.

23 MR. BARDIN: Let me be very concrete. The Office
24 of Planning recommended taking out one unit, the middle unit in
25 the center of this. The Applicant told you last meeting that they

1 agreed to that and they've come up with a presentation that comes
2 out the unit. But the Office of Planning document when you look
3 at it says this 24 foot spacing between the two sets of units.
4 What the Applicants come forward with is a narrowing down to 18
5 feet instead of 24 feet. Now maybe that's something the Applicant
6 and the Office of Planning agreed to together, but I'd certainly
7 like to understand whether this is a unilateral position of the
8 Applicants or one that's agreed upon. How do I find that out? I
9 can't find that out by making a presentation of our own. I raise
10 it the Commissioners and if you prefer to find out a different
11 way, that's fine. But I think we ought to know whether this is
12 carrying out the condition or not carrying out the condition.

13 COMMISSIONER PARSONS: Mr. Bardin, you see how
14 effective you just were? Seriously, that's the first effective
15 thing you've said all night. I mean that. I don't mean that in
16 disrespect, but now we know there's an issue before us that we as
17 a Commission can explore with the Applicant and so forth. A much
18 more effective direct testimony than trying to get after these
19 witnesses to get to that point. We can cut to the quick here and
20 find out what the issues are that you've discovered in this
21 presentation that's been made, both by the Office of Planning and
22 the Applicant and that's the way this Commission operates. We are
23 active participants when the case has finally been presented to
24 jump in and fix this. That's what we're here for.

25 I don't know if that's helpful or not, but --

1 CHAIRPERSON HOOD: Mr. Parsons, I want to thank you
2 because I've been trying to say that for a while. You can tell a
3 seasoned Commissioner.

4 But again, you've heard my colleague's comments,
5 Mr. Bardin. With all due respect, I know you have a well-planned
6 cross examination from what I see and from what I'm hearing.
7 Again, if we can be specific and on the comments of Mr. Parsons,
8 if we can, let's proceed five more minutes and let's move on, if
9 that's fair. And again, there will be things that we will be
10 addressing and if not, you can always submit it to us in writing
11 or when you do your testimony. And then we take notes up here too
12 and we will ask the Applicant. We will ask OP. And then there's
13 also a time when you will be able to ask the Office of Planning,
14 if we ever get to that point.

15 MR. BARDIN: Considering everything that I've
16 learned and I thank you Commissioners for bearing with me and
17 sharing your teaching with me, why don't I stop now and let other
18 people go forward and I will try it the way your comments suggest.

19 I do want to say in slight self-defense that
20 Commissioner Mitten made a suggestion which I made several days
21 ago by e-mail and phone to the Applicant and I didn't get a
22 response. That's the beauty of having a Commissioner -- your kind
23 of Commissioner rather than my kind of Commissioner make that
24 suggestion. So thank you very much.

25 CHAIRPERSON HOOD: And I do believe that that will

1 be asked, what happened to the response.

2 Okay? Thank you.

3 Mr. DiBiase?

4 MR. DiBIASE: Let me follow up then because I don't
5 believe Mr. Bardin ever got an opportunity ask the last question
6 which I think was well formulated. If someone from Holiday could
7 respond from that, is it a change? The Office of Planning said 24
8 foot gap and it's down to 18. I don't know who the appropriate -
9 - I leave it to Mr. Feola to respond as to who might be the
10 appropriate person on that point.

11 (Pause.)

12 MR. AMATETTI: We're speaking about the gap between
13 Building 1 and Building 2 which is represented right here. The
14 reason why -- what we did was we shifted Building 1 after the
15 removal of the unit, we shifted Building 1 to the east because
16 what we were trying to accomplish was two things. One, to get
17 more separation from the park property and also to match those
18 same drainage patterns that I've testified to and bring the water
19 from this area around and down and over the additional
20 bioretention facility that was expressed to be a desire.

21 MR. DiBIASE: Thank you. My next questions are
22 directed to Ms. Bamberger from the Holiday Corporation.

23 Now Ms. Bamberger, am I correct that the lots that
24 belong to the Bregons are 803 and 804?

25 MS. BAMBERGER: Lot 804.

1 MR. DiBIASE: Just Lot 804, okay. And at the last
2 hearing you told us that there was no contractual agreement
3 between the Bregons and the Holiday Corporation, is that correct?

4 MS. BAMBERGER: That's correct.

5 MR. DiBIASE: And that includes no memorandum of
6 understanding, no oral agreement, that is I don't want to be tied
7 to a strict legal definition of a written contract, but there's no
8 -- as a lay person would use the term, agreement between the
9 Bregons and the Holiday Corporation. Is that correct?

10 MS. BAMBERGER: Correct.

11 MR. DiBIASE: And the Applicant here, I guess is
12 technically Albemarle Associates, is that right?

13 MS. BAMBERGER: Uh-huh.

14 MR. DiBIASE: And Albemarle Associates consists of
15 exactly who?

16 MS. BAMBERGER: Albemarle Associates is simply a
17 limited liability corporation which is what most developers do to
18 do a project. Each project is separated as its own partnership or
19 LLC and that's what this is.

20 MR. DiBIASE: It does not include the Bregons then?
21 It's just Holiday.

22 MS. BAMBERGER: It's just Holiday.

23 MR. DiBIASE: Now at some point Holiday filed --
24 let me get the exact date, a notice of intent to file a zoning
25 application. Do you recall that on December 17th of 1999?

1 MS. BAMBERGER: Uh-huh.

2 MR. DiBIASE: And in that the only mention is of
3 Holiday Corporation denominated at the Applicant, is that right?
4 And I have it here if you want to see it.

5 I'm referring to the first line. So there's no
6 mention there of the Bregons, correct?

7 MS. BAMBERGER: Correct.

8 MR. DiBIASE: Do you recall you came to a meeting
9 in September of 1999 held at St. Columbus Church. Do you recall
10 that meeting?

11 MS. BAMBERGER: I do indeed.

12 MR. DiBIASE: It was a rather hostile meeting I
13 guess to say -- at least you took a lot of heated questions, I
14 guess, that I thought you handled well, but there was a lot of
15 community interest at that meeting, correct?

16 MS. BAMBERGER: Indeed there was.

17 MR. DiBIASE: And is it fair to characterize the
18 meeting as generally negative or against the Holiday proposal?

19 MS. BAMBERGER: I'd say that's a fair
20 characterization, yes.

21 MR. DiBIASE: And at the conclusion of the meeting
22 at that point at September of 1999, Holiday was proposing 22
23 units, is that correct?

24 MS. BAMBERGER: Correct.

25 MR. DiBIASE: And at the conclusion of the meeting,

1 in fact, you said that Holiday might be willing to decrease the
2 number of units by one, possibly two footprints. Do you recall
3 saying that?

4 MS. BAMBERGER: Uh-huh.

5 MR. DiBIASE: And it was then after that meeting
6 that it came out about that there was the Bregons who were
7 interested in being part of the planned unit development process,
8 correct?

9 MS. BAMBERGER: That's correct.

10 MR. DiBIASE: So rather than in fact considering
11 reducing the number of units at that point, you, in fact, went up
12 to 26 units, correct?

13 MS. BAMBERGER: That's correct.

14 MR. DiBIASE: And it was very clear to you, given
15 the sentiment at the meeting that the neighborhood was very much
16 against an increase in units and in fact was supporting a decrease
17 of units, correct?

18 MS. BAMBERGER: That's correct.

19 MR. DiBIASE: Now how long have you been with the
20 Holiday Corporation?

21 MS. BAMBERGER: Five and a half years.

22 MR. DiBIASE: So you don't recall when Holiday did
23 another development along Wisconsin Avenue, 4000 Wisconsin that
24 would have been back in 1986 --

25 MR. FEOLA: I'm going to object. We're so far off

1 the base of the meat of this application that I'm not sure what
2 happened in September of 1999 at a citizen meeting before the
3 application was filed is relevant, but certainly what happened on
4 the rest of Wisconsin Avenue seven or eight years ago is clearly
5 not relevant.

6 CHAIRPERSON HOOD: Mr. DiBiase --

7 MR. FEOLA: If he wants to put something in the
8 record as his direct, that's fine.

9 CHAIRPERSON HOOD: Right, let me just say this. I
10 agree with Mr. Feola. If we can be particularly -- deal with
11 what's in front of us, not the whole avenue.

12 I ask you to rephrase your question.

13 MR. DiBIASE: Sure.

14 CHAIRPERSON HOOD: So it pertains to this specific
15 case.

16 MR. DiBIASE: And I can and I can explain why. The
17 point is part of the planned unit development process is that
18 parties have to work together and the community does have an
19 interest if basically they can't believe something that's going to
20 be said by the developer, e.g., we will consider lowering the
21 number of footprints to then have them turn around and say well,
22 we're actually going to increase it now. That's the point of my
23 question. If they're going to avail themselves of the PUD
24 process, the community should at least have the right to know that
25 there's going to be a good faith negotiation. One of the

1 community's complaints is that there has not been a good faith
2 negotiating process. That's the only import of my question. And
3 I will connect up why I think the previous development on
4 Wisconsin Avenue done by Holiday, 4000 Wisconsin Avenue that I'm
5 referring to is important. The developments on Wisconsin Avenue
6 done by your company --

7 CHAIRPERSON HOOD: Mr. DiBiase, again, when it's
8 time for you to come back and testify, you can bring all that up
9 to this Commission and as Mr. Franklin stated so eloquently
10 earlier, we will deal with that, this Commission here will deal
11 with that. Let's just do some cross examine on this project, this
12 particular -- I understand you're trying to bring something
13 together. You can do that at a later time.

14 MR. DiBIASE: For this project, could you please
15 tell us what properties on Wisconsin Avenue you explored to do any
16 type of development?

17 MS. BAMBERGER: Related to this project?

18 MR. DiBIASE: Yes, did you explore any properties
19 along Wisconsin Avenue to do this development?

20 MS. BAMBERGER: Well, we have talked off and on
21 over the last couple of years to Circle Management Company. The
22 neighbors have expressed the belief that we just should have
23 brought a piece of property along Wisconsin Avenue because that
24 was the boundary line of where higher density residential
25 development should occur. In fact, those properties are not

1 available and I have a letter, if the Commission would like to see
2 it from Circle Management Company --

3 COMMISSIONER PARSONS: What is this? I don't
4 understand this, Mr. Chairman. This is not relevant before us.

5 What you tried to negotiate before they came to us
6 is irrelevant. What they might have looked at is irrelevant.
7 What we're trying to do is nail down what, if anything, will be
8 built on this site.

9 MS. BAMBERGER: I was just trying to answer --

10 COMMISSIONER PARSONS: You're not here to negotiate
11 with them. You're here to tell us what's wrong with this project
12 so we can see if we can make it viable.

13 MR. DiBIASE: With all due respect, Commissioner
14 Parsons, one of the arguments of our group, that is of the
15 community is that they're leap frogging. They are moving over
16 available development -- available properties on Wisconsin Avenue
17 and leap frogging into the neighborhood. So this is, in our view,
18 valid because we are saying why don't you look at properties along
19 here, rather than jumping directly into the neighborhood in an
20 area that's not zoned for it.

21 VICE CHAIRPERSON MITTEN: Mr. DiBiase --

22 MR. DiBIASE: If you don't find it valid, I will
23 move on.

24 VICE CHAIRPERSON MITTEN: Mr. DiBiase, I think
25 that's Mr. Parsons' point which is when it's your turn you say all

1 those things and right now is your opportunity ask any questions
2 that you would like of the Applicant, not towards negotiating so
3 that we can just watch you folks go back and forth, but you're
4 here to help us understand what's good or bad about this project.

5 We understand fully that there are probably opportunities along
6 Wisconsin Avenue, but that's not relevant. It's just what's
7 before us. So if you could really confine your questions to
8 something that is going to help us understand whether this makes
9 sense for this property.

10 MR. DiBIASE: And I guess my point is if I sat up
11 here during my presentation and said Holiday is leap frogging over
12 properties on Wisconsin they could have developed and then they
13 stood up and said yes, but Mr. DiBiase, we approached the
14 following 7 people on Wisconsin. We attempted to buy these
15 properties and we got shut down.

16 COMMISSIONER FRANKLIN: You just described a
17 scenario that we ought to get on with. Put this in your direct
18 testimony. If they're unhappy with what you say, they'll cross
19 examine you.

20 MR. DiBIASE: Yes, but my point is I'm asking the
21 questions. I don't make the argument.

22 CHAIRPERSON HOOD: Mr. DiBiase --

23 MR. DiBIASE: I will move on. Mr. Chairman, I will
24 move on.

25 Now as of now you have paid nothing for the Bregon

1 Property, is that correct?

2 MS. BAMBERGER: Correct.

3 MR. DiBIASE: Have you put an estimate as to the
4 rough amount of the worth of the Bregon Property?

5 MS. BAMBERGER: No, we're not buying it.

6 MR. DiBIASE: And at some point though you would
7 expect to buy it in order to develop it, is that correct?

8 MS. BAMBERGER: No, no. We said at the last
9 meeting that the property was under the direction of the Bregons.

10 That they plan to live there for some indefinite period of time
11 and you heard Mr. Bregon himself testify to that a couple of weeks
12 ago, that he would be responsible or that he might sell it to
13 somebody else.

14 MR. DiBIASE: I guess I'm hoping you can clarify
15 then why it's part of this process when you're saying now that you
16 don't ever have any plans to develop it.

17 MS. BAMBERGER: We didn't -- we said last time that
18 the property made sense to be combined into a PUD and that we
19 expected in some relatively shorter period of time that it would
20 be developed, whether by us or by the Bregons or somebody else.
21 And that it makes sense from a land use planning perspective to
22 have it cohesively planned in this manner.

23 MR. DiBIASE: Do you have a time table set for the
24 project as it now stands? In other words, if you were to get
25 approvals tomorrow, understanding that's impossible, but if you

1 were to get approvals tomorrow, what's the time table in terms of
2 how long would it take to complete the project?

3 MS. BAMBERGER: Well, there's a number of steps.
4 We'd have to get building permit approval and go through all of
5 the administrative approvals separate and apart from the Zoning
6 Commission and once we had all the approvals in hand, then we
7 would start construction and I would imagine that a project of
8 this size would probably take somewhere in the range of about a
9 year to complete.

10 MR. DiBIASE: And what's the total value, estimated
11 value of the project?

12 MS. BAMBERGER: The total estimated value is -- I
13 haven't calculated that recently. The sales value is probably in
14 the range of about \$5 million and it's reasonable to assume that
15 the total construction value is going to be somewhere in the \$5 to
16 \$6 million range.

17 MR. DiBIASE: So clearly over \$1 million?

18 MS. BAMBERGER: Clearly.

19 MR. DiBIASE: And then do you agree with me that
20 D.C. requires an environmental impact study if the project has a
21 value of more than \$1 million?

22 MR. FEOLA: No one testified to that. Certainly
23 not Ms. Bamberger. If Mr. DiBiase wants to put something in the
24 record, again --

25 MR. DiBIASE: I guess that's my question as to

1 whether Holiday understands that given that it's over \$1 million
2 they would need to do an environmental impact study. That's the
3 question.

4 CHAIRPERSON HOOD: I think, Mr. DiBiase --

5 MR. FEOLA: If it's the law, they'll do it.

6 CHAIRPERSON HOOD: Let me say this. I think that
7 again that's another point that you can do in your testimony.
8 This Commission is cognizant of how that operates, so let's move
9 on and ask questions about which they testified, the Applicant
10 testified to, please.

11 MR. DiBIASE: Someone and I don't recall who
12 testified that there were similar townhouse projects nearby. Do
13 you recall that testimony?

14 MS. BAMBERGER: Mr. Colbert did that.

15 MR. DiBIASE: Okay, I guess my question is -- no,
16 it can still go to Ms. Bamberger, I believe. I think she's
17 probably the best person. Could you explain exactly what in your
18 view is the exceptional merit to this project that you are putting
19 up? I know the Commissioners had questions about and I asked at
20 the previous hearing and I guess I'm still not exactly clear.

21 MS. BAMBERGER: I think I -- Ms. Mitten asked that
22 question during the October 19th hearing and I answered it at that
23 time. There's a number of criteria, as you know, for exceptional
24 merit. One of them in and of itself is housing as a criterion.
25 Another is exceptional architecture and urban design.

1 MR. DiBIASE: Let me just stop you on the first
2 one. Housing, how is this exceptionally meritorious housing?

3 MS. BAMBERGER: The standard is for the production
4 of new housing in the District of Columbia and I suppose you would
5 even agree that we're meeting that standard.

6 MR. DiBIASE: So the fact of having housing in your
7 view that meets the housing element of exceptional merit,
8 producing more housing?

9 MS. BAMBERGER: Correct, and that's the Office of
10 Planning testified to that as well in their report, they indicate
11 that housing is an indicator of exceptional merit.

12 MR. DiBIASE: What was the next one? I cut you off
13 before you got to the next one.

14 MS. BAMBERGER: The next one was exceptional
15 architecture and urban design.

16 MR. DiBIASE: And what of this design do you feel
17 is especially exceptional?

18 MS. BAMBERGER: Well, I think we again indicated
19 that these are highly detailed units that are designed to be
20 evocative of the neighborhood. They're based on architecture that
21 you do see around the neighborhood. They're not what might be
22 seen in the suburbs as more of a standard town home. They're
23 designed to have some of the same details with gracious front
24 porches, heavy cornice lines, tiled roofs and they're quite
25 compatible with what we see in the neighborhood. We think that's

1 exceptional.

2 MR. DiBIASE: What was the next element? Were
3 there any other ones?

4 MS. BAMBERGER: Yeah, there were the efficient use
5 of existing infrastructure, the proximity to Metro, site design,
6 urban design and efficient, an efficient use of infrastructure is
7 another criterion. The innovative storm water system that we've
8 been talking about, the bioretention system is another indicator.
9 And there's a series of others. So I think that hopefully
10 answers your question.

11 MR. DiBIASE: Thank you. I think it does and I
12 guess, given the Commission's restraints I will not ask any
13 further cross examination questions.

14 CHAIRPERSON HOOD: Mr. DiBiase, let me just say
15 something about your last statement. It's not necessarily
16 restraints. We're trying to run an orderly hearing here for the
17 best interest of the city as a whole. You have people behind you
18 who also want to testify.

19 There will be a time for you to come up and give us
20 your point of view or your Commission's point of view at which
21 time we will be ask you questions and get more out of you, just
22 you were trying to get out of the Applicant.

23 So I want you to understand that this Commission is
24 balanced and we will hear from both sides.

25 MR. DiBIASE: I do and I didn't mean -- I guess I'm

1 still a little puzzled as to why as a member of the community I
2 couldn't ask if they were planning on doing an environmental
3 impact study. I guess I don't understand. Is there some other
4 point where I will be permitted to ask that?

5 CHAIRPERSON HOOD: You can come back up -- I
6 believe you're going to be testifying, right?

7 MR. DiBIASE: Yes.

8 CHAIRPERSON HOOD: At that point you can mention it
9 to us and you better believe that we will ask that because I have
10 it written down.

11 MR. DiBIASE: I guess to me seems maybe elevating
12 form over substance because you're basically saying you'll ask it
13 instead of me asking it as long as I have some assurances that by
14 the end of tonight we will know whether they plan to do an
15 environmental impact study, I will be happy.

16 CHAIRPERSON HOOD: Well, let me say this, you will
17 provide that in your testimony when the ANCs come up and present
18 their case. They will also ask, have an opportunity to cross
19 examine you and that may come up at that point.

20 MR. DiBIASE: Right, although -- I don't believe
21 you literally mean cross examine me. I believe you mean the
22 representatives, because as Mr. Feola made a point, I don't cross
23 examine Mr. Feola. I'm here representing the community. I
24 believe they would actually cross examining Tenley Neighbors and
25 things like that.

1 CHAIRPERSON HOOD: The ANC is a party.

2 MR. DiBIASE: I understand that. And I'm here as a
3 representative of that party.

4 CHAIRPERSON HOOD: I won't belabor the point.
5 We're going to move on because I can assure you -- Mr. Bardin,
6 please, we need to move on. We need to offer -- let the
7 Tenleytown Neighborhood Association come and cross examine.

8 MR. BARDIN: I just have a simple question, Your
9 Honor. I just heard a statement by Ms. Bamberger and Mr. Feola
10 that the Applicant doesn't include the Bregons. The very first
11 sentence --

12 CHAIRPERSON HOOD: Hold on, hold on. Wait a
13 minute.

14 MR. BARDIN: The first sentence in their statement
15 says it does.

16 CHAIRPERSON HOOD: Mr. Bardin, you're out of order.
17 We've heard that and we will deal with it.

18 I think one thing that we all need to understand is
19 a respect factor, that we all need to respect each other
20 regardless of what side of the issue you're on and this
21 Commission, I think, is definitely well balanced from when I used
22 to come down and testify, I've been there too. I know. So trust
23 me.

24 MR. BARDIN: We do.

25 CHAIRPERSON HOOD: Thank you.

1 MR. HITCHCOCK: Thank you, Mr. Chairman, Cornish
2 Hitchcock, representing the Tenleytown Neighborhood Association.
3 I have several questions for several of the witnesses. I don't
4 believe it will duplicate anything that has previously been the
5 subject of examination.

6 Ms. Bamberger, I have a few questions for you. You
7 testified last time about the parking spaces on the site for
8 visitors. There are seven spaces.

9 MS. BAMBERGER: Correct.

10 MR. HITCHCOCK: Are there any of them that are
11 dedicated or located in a place they could be used only for
12 visitors and not blocking any of the garages or driveways?

13 MS. BAMBERGER: Are there any that could be used
14 only for visitors?

15 MR. HITCHCOCK: Correct, that don't block access to
16 one's garage?

17 MS. BAMBERGER: Yes, there's one.

18 MR. HITCHCOCK: There is one. So in other words,
19 as I understand it, users, residents of this particular site might
20 come home and find visitors parked in front of their garage?

21 MS. BAMBERGER: No, presumably the people who are
22 parking in the extra spaces that have been provided would be
23 visiting those people whose spaces they're in front of.

24 MR. HITCHCOCK: Why do you presume that?

25 MS. BAMBERGER: Well, because that would be logical

1 and in terms of where they're located on the site.

2 MR. HITCHCOCK: Let's suppose I invited my bridge
3 club over. All seven people came over and all parked in the site.

4 That would be more than in front of my building, wouldn't it?

5 MS. BAMBERGER: That's correct.

6 MR. HITCHCOCK: So isn't it really likely that
7 people coming home from work not wanting to find other people
8 parking in front of their garage would encourage parking of
9 visitors on the street?

10 MS. BAMBERGER: That's true.

11 MR. HITCHCOCK: So isn't it therefore likely this
12 development may increase the demand for street parking for
13 visitors?

14 MS. BAMBERGER: It may.

15 MR. HITCHCOCK: Thank you. One other question.
16 Last week in talking or last month in talking about the
17 exceptional merit, you talked about an effort to attract younger
18 persons to the neighborhood. Is that correct?

19 MS. BAMBERGER: I said that was one of the market
20 segments who would typically buy a town home.

21 MR. HITCHCOCK: So you were talking about twenty
22 somethings buying \$450,000 to \$500,000 townhouses?

23 MS. BAMBERGER: I never said twenty somethings.

24 MR. HITCHCOCK: Okay, what did you mean by young
25 people?

1 MS. BAMBERGER: Well, I don't know. I guess it
2 depends on how young you feel --

3 MR. HITCHCOCK: Well, you don't want college
4 students, that's correct?

5 MS. BAMBERGER: Correct.

6 MR. HITCHCOCK: So the next step up is twenty
7 somethings.

8 COMMISSIONER PARSONS: Mr. Hitchcock, I recall her
9 saying empty nesters and younger people.

10 MR. HITCHCOCK: Correct. And the point that I'm
11 driving at, Commissioner Parsons, is whether there is a need or an
12 unmet need that this is fulfilling, younger people needing access
13 to \$450,000 houses, if that's the argument as to why the
14 exceptional merit is.

15 MS. BAMBERGER: I didn't say it was exclusively
16 younger people. As Mr. Parsons just commented, there's a whole
17 range of people who buy townhome. Not everybody wants a single
18 family home. And while the Tenleytown Neighbors may think that,
19 there is certainly evidence of demand not just in Washington, but
20 throughout the metro area that people like alternative housing
21 choices. There may be some younger people. They may be 20. They
22 may be 30. They may be 40. There may be some 50 year olds
23 stepping down whose children have left the nest who want the
24 convenient lifestyle of a town home. It could be a whole cross
25 section.

1 MR. HITCHCOCK: So there's no guarantee then that
2 the people, the younger people without children would necessarily
3 buy these houses?

4 MS. BAMBERGER: Not unless we run into a problem
5 with the Fair Housing Act. We're not allowed to discriminate in
6 terms of who buys our homes.

7 MR. HITCHCOCK: Okay, I understand. Thank you.

8 Mr. Chairman, earlier this evening we were handed a
9 one-page statement from Mr. Wells dealing with Commissioner
10 Mitten's question about Metro usage. I could cross examine him.
11 What I would like to request as an alternative is that we get a
12 copy of this 1989 report submitted for the record in a manner that
13 we could study and submit comments during this part of the
14 findings of fact. It's difficult to cross examine an 11-year-old
15 report that purports to say certain things that may, in fact, not
16 be accurate if one reads the entire report.

17 I would ask the Commission to direct that it be
18 filed and served on the parties within any period of time such
19 that we can analyze it and digest it in the comments in the
20 proposed findings.

21 MR. FEOLA: My only comment, Mr. Chairman, is
22 that's not Mr. Wells' report, that's a WMATA Report that's
23 available in every public library. He looked through that report
24 to see if there were any studies done based on income levels.
25 We'd be happy to share our comments with Tenleytown Neighbors.

1 MR. HITCHCOCK: But he also -- it is a memory --
2 the document I'm referring to is a one-page memorandum signed by
3 Mr. Wells that refers to a 1989 report entitled "Development
4 Related Ridership Survey" which Mr. Wells goes beyond the question
5 of income levels to make the assertion that a higher number of
6 transit mode is within the residential areas and 500 feet. I'd
7 like a chance to examine that. If Mr. Feola had put this in the
8 record some time before I could have gone to the library and
9 looked at it, but I can't cross examine something that I got 15
10 minutes ago or an hour ago.

11 MR. FEOLA: You can't cross examine my witness on a
12 WMATA report that he didn't prepare so it doesn't matter.

13 MR. HITCHCOCK: I would repeat my request that it
14 be put in the record so that we can all look at it and draw our
15 own conclusions whether it supports the assertions.

16 MR. FEOLA: Fine. We'll be happy to do that.

17 CHAIRPERSON HOOD: Thank you.

18 MR. HITCHCOCK: Thank you. My final questions go
19 to Mr. Doggett, the planning expert.

20 Mr. Doggett, I have some questions on your prepared
21 statement. Do you have a copy with you?

22 MR. DOGGETT: Yes.

23 MR. HITCHCOCK: Mr. Doggett, I have some questions
24 for you on planning issues and also with reference to the
25 comprehensive plan which I have a copy of here if you'd like to

1 consult it.

2 In your written statement you say that this area is
3 and I quote "well located for
4 single-family attached townhouses."

5 My question is where is this goal specified in the
6 comprehensive plan?

7 MR. DOGGETT: I think the area refers to housing
8 opportunity areas which talks about diverse housing. It talks
9 about new housing and by implication slightly higher density
10 housing than maybe single housing.

11 MR. HITCHCOCK: What are the boundaries of the
12 housing opportunity area in which you believe that this property
13 is included?

14 MR. DOGGETT: I don't know the extent and I don't
15 think it's spelled out. It is certainly the symbol in the policy
16 plan is directly over the sight so it obviously applies to that
17 particular area too.

18 MR. HITCHCOCK: Okay, well, let me ask you this, I
19 mean are there any provisions in the comprehensive plan text upon
20 which you are relying for your testimony that this area should be
21 considered a part of the housing opportunity area?

22 MR. DOGGETT: The criteria applies to an area. It
23 applies to I believe about six criteria. The site is never
24 specifically referred to in the comprehensive plan. It refers to
25 a larger area which means one of the main things it's near a Metro

1 station, if there's vacant land. These are just two of the actual
2 six occasions. The other ones are joint development of private
3 and public areas which obviously would not apply to this site, but
4 could apply to the larger area. We see many scores going into
5 with joint private possibilities.

6 MR. HITCHCOCK: Let me ask you this question, so
7 the answer to my question is no, you can't cite any specific text
8 provision that identifies this areas as a housing opportunity
9 area?

10 MR. DOGGETT: No text.

11 MR. HITCHCOCK: Thank you. Let me ask you this, in
12 the course of preparing your testimony, did you have the
13 opportunity to consider the Ward 3 plan as part of the
14 comprehensive plan beginning at Section 1401 through 1409?

15 MR. DOGGETT: I looked at the Ward 3. I can't
16 specifically remember the sections.

17 MR. HITCHCOCK: Okay, would you agree with me with
18 my characterization that when the Ward 3 plan discusses housing
19 opportunity areas it does so in connection with commercial
20 development as part of the housing opportunity areas?

21 MR. DOGGETT: My understanding of the Ward 3 and I
22 might be general about this because I cannot remember the
23 specifics is that it talks about a general area which includes
24 commercial.

25 MR. HITCHCOCK: It talks about the general area,

1 all right.

2 MR. DOGGETT: Yes.

3 MR. HITCHCOCK: Mr. Chairman, there are at least
4 five provisions of the Ward 3 plan that we submit suggest that
5 housing opportunity areas should be strictly in commercial zones
6 and unless the Applicant is saying that this area should be
7 commercial have commercial uses, we believe that the text is
8 inconsistent. I can cross examine him section by section or
9 proceed in another manner if the Commission prefers.

10 MR. DOGGETT: If I can say --

11 MR. HITCHCOCK: Excuse me, there's not a question
12 pending.

13 CHAIRPERSON HOOD: We can just take note of that.
14 I think you've already submitted -- have you submitted that to us?

15 MR. HITCHCOCK: I believe it is in the testimony.

16 CHAIRPERSON HOOD: Okay, we'll take note of it.

17 MR. HITCHCOCK: I would like -- I mean I can state
18 them there. I can cite the provisions. He has not indicated a
19 familiarity with them and so I will move on.

20 Your statement states that page 2 that one of the
21 amenities here is innovative housing. In what way is the housing
22 innovative?

23 MR. DOGGETT: It's innovative in terms that it
24 gives a greater number of people a quick access in terms of my
25 pace is 135 paces to the entrance of a Metro. It's also next to

1 the WMATA bus stations. It's innovative in that sense, that you
2 create more than single families. It is a transitional density in
3 my mind because not 40th Street, but Nebraska Avenue is very
4 apparently the break line between the two which I think the
5 comprehensive plan pretty well shows.

6 MR. HITCHCOCK: Well, let's get back to --

7 MR. DOGGETT: May I finish?

8 MR. HITCHCOCK: I'll let you finish. I'm sorry.

9 MR. DOGGETT: It's innovative in terms of the way
10 it is laid out. You have a setback which is typical of other
11 houses in the area. It is innovative in terms of blocks which is
12 compatible with other houses. The break up permits views for
13 pedestrians, from people in the houses and people going in the car
14 to look through the open spaces into the open space to the west
15 and the north. It has underground utilities. These are but a
16 few.

17 MR. HITCHCOCK: And is it your testimony that no
18 other site in the city has any of those features in areas zoned
19 for townhouses?

20 MR. DOGGETT: No, I'm not talking about other
21 sites.

22 MR. HITCHCOCK: Okay, so it's not innovative as far
23 as the design elements are concerned, is that right?

24 MR. DOGGETT: It's innovative as far as the site.

25 MR. HITCHCOCK: It's innovative -- okay, but under

1 your argument then wouldn't it be true that any time a rezoning
2 was proposed that it could be approved on the grounds that the
3 housing was innovative because it wasn't permitted under the
4 previous matter of right?

5 MR. DOGGETT: In every request, it has to be
6 innovative, okay? It's more innovative the way it is than by
7 right when you have single family sites.

8 MR. HITCHCOCK: Okay, but any proposed zoning
9 change would be innovative by your criteria, isn't that correct?

10 MR. DOGGETT: That's not true. I didn't say that.
11 I said in this particular case, the use of houses in a cluster of
12 fours which are also very apparent in this particular area permits
13 you to do a lot of these things.

14 MR. HITCHCOCK: Let's move on. Page 2 also you
15 state and I quote, "The site is a transitional use."

16 MR. DOGGETT: Yes.

17 MR. HITCHCOCK: On what analysis do you base that
18 conclusion?

19 MR. DOGGETT: I would say coming from Wisconsin
20 Avenue where you have the rapidly growing commercial stretch you
21 then have east of Nebraska a very busy four-lane road. You have
22 the R-1-B housing, single family which is very organized and very
23 apparent as a single family area. To the west of Nebraska you
24 have a mixture of institutional. You have recreational. You have
25 housing. It's a wholly diverse thing. You have two schools. You

1 have the Reno facility. This is not single family housing.

2 MR. HITCHCOCK: Okay, well, Mr. Doggett, your
3 testimony rather significantly here as before omits the uses on
4 the south side of Albemarle Street, the three properties in
5 question. Is there a principled argument you can offer the
6 Commission as to why if the subject site here is rezoned the south
7 side of Albemarle Street should not also be rezoned?

8 MR. DOGGETT: No --

9 MR. HITCHCOCK: No, you can't think of a principled
10 argument?

11 MR. DOGGETT: Please, let me finish.

12 CHAIRPERSON HOOD: Let me just say let's give him a
13 chance to respond.

14 MR. DOGGETT: The three houses there would
15 obviously be, as I answered Ms. Mitten on the last occasion would
16 be considered presumably for townhouses too. They could be. They
17 do not have to be if the people don't want -- I hesitated when I
18 responded to Ms. Mitten because I think those houses in long term
19 are complex homes, so they -- as you go down Wisconsin Avenue
20 between Brice Park and the Cathedral, apart from the playing
21 fields of -- the tennis courts of Sidwell and no open space. All
22 of a sudden you come to an open space with a church on one side
23 with a lot of potential. I've lived in this area for 32 years. I
24 pass that space and it needs something done. So I'm saying in
25 answer to that, there is an extra ingredient of design.

1 MR. HITCHCOCK: There's an extra ingredient in this
2 particular plan?

3 MR. DOGGETT: Especially in this plan if you look
4 at the entire complex, yes, I believe of Wisconsin Avenue.

5 MR. HITCHCOCK: And if somebody throws that extra
6 ingredient into a PUD plan to redevelop the south side that could
7 be redeveloped too, correct?

8 MR. DOGGETT: I could say so.

9 MR. HITCHCOCK: You mentioned earlier the phrase
10 "increasing intensification of commercial uses on Wisconsin
11 Avenue." Which specific uses that have taken place are you
12 referring to?

13 MR. DOGGETT: Oh, I think as you're getting -- I
14 think maybe the Donahue property is going up near the old
15 Hechinger or the Sears site. 4000 Wisconsin --

16 MR. HITCHCOCK: 4000 Wisconsin is how far away?

17 MR. DOGGETT: I can't say.

18 MR. HITCHCOCK: Let's talk about the block between
19 Albemarle -- let's talk about the block right near the subway
20 station not several blocks away since the Commission doesn't want
21 to hear that, I don't believe.

22 MR. DOGGETT: I don't think so.

23 MR. HITCHCOCK: Which specific ones immediately in
24 that block are you talking about. You mentioned Donahue?

25 MR. DOGGETT: Donahue.

1 MR. HITCHCOCK: Which property is that for the
2 record?

3 MR. DOGGETT: The one just beyond the old Sears
4 building going north. You want discussion as to what should
5 happen to the site that Home Depot was interested in in one stage,
6 these are some of the properties that are increasing. It is also
7 the area of the Metro special study area which is adjacent to the
8 site and which the comprehensive plan says, as you might know,
9 that those areas contiguous to the development area of the Metro
10 site should be considered for other use as well.

11 MR. HITCHCOCK: Well, let me ask you this, if there
12 is already a transition there, why do you say that there will be,
13 you need some other additional form of transition?

14 MR. DOGGETT: I think if you stand on the site and
15 you look west, you look over a road and you see the video place.
16 You see Fresh Fields. You are very aware of a commercial area on
17 the left. There's a Metro station there, there are people going
18 into the Metro. You have a bus stop there.

19 On the other side on the east side of Nebraska you
20 have single family housing and to me a townhouse is an ideal
21 transitional use.

22 MR. HITCHCOCK: Let me ask you this, you mentioned
23 I think a moment ago if I heard you correctly the Metro special
24 treatment area?

25 MR. DOGGETT: Yes.

1 MR. HITCHCOCK: And this property is not in that
2 area, is it?

3 MR. DOGGETT: It is not in that area --

4 MR. HITCHCOCK: Thank you. The boundary is 40th
5 Street, is it not? Eastern boundary?

6 MR. DOGGETT: The recommendation, as I said, it is
7 not in the area. The sentence that follows the definition of the
8 area says contiguous areas to the Metro may be considered part of
9 the area.

10 MR. HITCHCOCK: Which stops at 40th Street.

11 Let's talk a little bit about smart growth which is
12 the phrase you used several times in your testimony.

13 When you used that phrase, what does it mean?

14 MR. DOGGETT: To me it means that you use basically
15 the infrastructure, you take advantage of the transportation
16 system, in this cases WMATA buses and especially the Metro and you
17 produce a diversity of housing.

18 MR. HITCHCOCK: Well, let me ask you this, what --
19 are there any Metro rail stations around in this metropolitan area
20 around which there's development that you would consider to be
21 smart growth that's going on right now? Any Metro stops that are
22 being developed according to the smart growth principles that
23 you're supporting?

24 MR. DOGGETT: The one that comes to mind is the
25 planning that's going on at Tysons Corner that I worked on 20

1 years ago and I worked on 2 years ago that is almost certainly to
2 be a Metro stop there. Twenty years ago the very people that
3 objected and you had a complex, I believe, larger than the top --
4 within the top 10 commercial areas of the country, a Metro was not
5 put there. They are doing it there. It is smart planning, smart
6 growth.

7 MR. HITCHCOCK: What about some of the developments
8 going on in suburban Virginia, such as Ballston, Clarendon,
9 Courthouse, would those be considered smart growth?

10 MR. DOGGETT: I would say Ballston takes advantage
11 of the transportation, yes.

12 MR. HITCHCOCK: And in the Ballston area or any
13 existing Metro rail stations, did the smart growth development,
14 did any of those sites have stable, existing low density uses as
15 close to the Metro rail site as this property?

16 MR. DOGGETT: I don't know of -- I do not know of
17 Arlington. I do know of the Fairfax ones. I think one outside of
18 Vienna was one that had some single family housing that has since
19 been replaced. That's all I can think of. No Metro station in
20 Fairfax that has planned single family housing, 400 feet from the
21 entrance of the Metro.

22 MR. HITCHCOCK: But there may have been existing
23 planning there as opposed to planned housing. Existing housing as
24 opposed to planned housing?

25 MR. DOGGETT: One station might have had a half a

1 dozen, that's all.

2 MR. HITCHCOCK: Let's get back to the Ballston
3 Station for a moment. The residential uses there, would it be
4 fair to say there are high rise buildings that are going up?

5 MR. DOGGETT: Some are those. I would think more -
6 - I think an association of very high intense townhouses, 16 units
7 per acre, something like that. Again, I am not that familiar with
8 Arlington.

9 MR. HITCHCOCK: I guess the question in terms of
10 smart growth, as I understand your definition, wouldn't smart
11 growth principles justify rezoning just about any area around a
12 Metro Station?

13 MR. DOGGETT: No, it would justify looking at an
14 area around a neighborhood to see whether to preserve to whether
15 to increase.

16 So in this particular case, we're talking about 13
17 townhouses. We're not talking about the Empire State Building.
18 It's a modest increase.

19 MR. HITCHCOCK: Yes, but as you -- but you
20 testified on that point last month that this development itself
21 might not make much of an impact, but in your words "a compilation
22 of several of them" could make a difference. Do you remember
23 saying that?

24 MR. DOGGETT: I said that because in Washington you
25 don't have large sites. You have very small sites and the impact

1 is going to be addressing those small sites, not a large site.

2 MR. HITCHCOCK: In your view, would it be
3 appropriate to apply the smart growth principles you've described
4 here for rezoning west of Wisconsin Avenue in the vicinity of this
5 Metro Station?

6 MR. DOGGETT: I would say -- west of Nebraska, you
7 mean?

8 MR. HITCHCOCK: West of Wisconsin Avenue in the
9 area that's now an R-1 zone west of Nebraska.

10 MR. DOGGETT: This is zoned R-1. Yes, I would say
11 in that particular -- certainly I would draw the line east of
12 Nebraska Avenue.

13 MR. HITCHCOCK: So let me make sure I understand.
14 You believe -- in your view, there should not be this higher
15 density east of Nebraska Avenue, but west of Nebraska Avenue --
16 I'm sorry, west of Wisconsin Avenue would be appropriate for
17 rezoning?

18 MR. DOGGETT: I would say between Wisconsin and
19 Nebraska, okay and those areas that have a potential for smart
20 growth, you have to look at and define whether you needed to go
21 that way. I would say it is very, very much less apparent on the
22 east side where you have a very stable residential area.

23 MR. HITCHCOCK: Are there any limiting principles
24 you could suggest in terms of how far development should go
25 generally around a Metro Rail Station and the reason why I ask it

1 that way is you make much of the fact that this one is only one
2 tenth of a mile away.

3 MR. DOGGETT: Normally, I believe it varies. The
4 area that you look at and that's not to say you make changes.
5 It's something like a quarter of a mile walking distance. A half
6 a mile is something that is looked at more in suburban areas.

7 MR. HITCHCOCK: So in your judgment then would it
8 be appropriate to consider or for the Commission to look favorably
9 upon rezoning requests within a quarter mile of this particular
10 subway station?

11 MR. DOGGETT: No, no. I said you evaluate that as
12 a planner.

13 MR. HITCHCOCK: Help me on that. Isn't it
14 customary for there to be planning guidance provided before the
15 zoning cases move forward in terms of where smart growth ought to
16 occur?

17 MR. DOGGETT: I think that is provided in the
18 comprehensive plan at the moment. They have a policy plan with a
19 housing opportunities area on the map and certainly it refers
20 again and again to the Metro area.

21 MR. HITCHCOCK: Which has not been -- which this is
22 not a part of and which we've discussed already and which I will
23 not pursue in the form of argument.

24 If the Commission will indulge me one second, let
25 me see if I have any other questions.

1 Oh, you were here last month when Council Member
2 Katanya testified, I believe, that approval of this PUD would only
3 have a minimal impact on Metro ridership.

4 Do you share his assessment?

5 MR. DOGGETT: I don't share that. Obviously, there
6 are not going to be thousands of people going into there, but as
7 you look at the planning approach, we take advantage of these
8 smaller sites and you combine them with commercial. They provide
9 more people to the offices and the retail. It's not just the
10 Metro and the housing. There's the retail and everything. It
11 makes a viable community.

12 MR. HITCHCOCK: So in this case we're adding, if we
13 go from matter of right for single family houses to 26, we're
14 adding a dozen, two dozen people max?

15 MR. DOGGETT: It is better than four people.

16 MR. HITCHCOCK: It is better than four. Okay.
17 Well, let me ask you this and this is the final --

18 MR. DOGGETT: I disagreed, incidentally, with Mr. Katanya's
19 contention about the -- you have reached the limit of passengers.

20 That is not --

21 MR. HITCHCOCK: I didn't ask that question. But
22 let me ask you this and this is the final question that I had
23 about this subject area.

24 Your testimony, I take it, contemplates that there
25 would be gains if there was the additional development beyond this

1 window. Is that correct, gains in terms of smart growth policy?

2 MR. DOGGETT: Yes, it doesn't mean to say the
3 development would happen. You look at it and you use the
4 infrastructure to its fullest.

5 MR. HITCHCOCK: Well, let me ask you this, don't
6 you think as a planner that you take an area -- you take this area
7 that's been R-1-B. It's been single family home for years. You
8 rezone it to R-5-B. You put in the extra units. Don't you
9 suggest the property to the south may be appropriate for rezoning
10 as well? Don't you think that a rezoning here would have a rather
11 destabilizing effect on the neighborhood?

12 MR. DOGGETT: Absolutely no. You have a school on
13 one side. You have commercial the other. You have two busy
14 roads. I don't see any destabilization.

15 It is as the Planning Office said, a unique site in
16 that sense.

17 MR. HITCHCOCK: Well, yes, unique, but not unique
18 compared to -- but so by that definition, the one immediately to
19 the south, correct?

20 MR. DOGGETT: Yes.

21 MR. HITCHCOCK: Okay, so it's not unique. Okay.

22 MR. DOGGETT: I've also explained there's another
23 complication.

24 MR. HITCHCOCK: And it is possible, is it not, in
25 the future that some may argue for jumping Nebraska Avenue and

1 having additional development there?

2 MR. DOGGETT: Yes, it is possible, but it's poor
3 planning. If the area is stable, then you would retain it that
4 way.

5 MR. HITCHCOCK: Okay. I have no further questions,
6 Mr. Chairman, Commissioners, thank you.

7 CHAIRPERSON HOOD: Thank you, Mr. Hitchcock, Mr.
8 Doggett.

9 Colleagues, what I'd like to do at this point
10 before we hear from our other two parties is to do an assessment.

11 I was kind of hoping that we would at least get to the Office of
12 Planning Report, but it doesn't seem like that may happen tonight,
13 but we have to keep proceeding to see what happens.

14 But I was again, for the convenience of the
15 audience, about what time do we plan on stopping. Also, Mr.
16 Bastida, it looks like we're going to need another date. I guess
17 we can go to 11 again or -- let me hear from my colleagues.

18 Now we have gone to 12, so I guess I'll hear now.

19 VICE CHAIRPERSON MITTEN: I would prefer that we
20 stop no later than 11.

21 CHAIRPERSON HOOD: Is that the sentiment?

22 COMMISSIONER PARSONS: Well, we said that last time
23 and was 6 after. I'm leaving at quarter of.

24 CHAIRPERSON HOOD: Okay, quarter of. Was it 6
25 after or was it 11 o'clock. We'll check the transcript.

1 (Laughter.)

2 We'll check the transcript. We'll stay until
3 10:30. We'll shoot for 10:30 so we will be out of here at 10:25 -
4 -

5 (Laughter.)

6 MR. HITCHCOCK: Mr. Chairman, may I ask a
7 procedural question? Would the Chair or the Commission be in a
8 position to opine as to whether it's likely we would get to our
9 case tonight, Neighborhood Association? We've got Office of
10 Planning. We've got two ANC reports, parties and persons in
11 support. The reason why I ask is if we're not going to get to it,
12 some of the witnesses may find it easier to come back next time.

13 CHAIRPERSON HOOD: That's why I wanted to do an
14 assessment.

15 MR. HITCHCOCK: Sure.

16 CHAIRPERSON HOOD: I would actually like to get to
17 that point, but the way things have gone last time and this time,
18 I just don't see so. That's why we wanted to -- why don't we do
19 this, let's see how it goes for another 45 minutes and we'll
20 reassess the situation because I'm sure a lot of people have other
21 things they need to do tonight and tomorrow morning.

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

23 CHAIRPERSON HOOD: Okay, moving right along we have
24 two other parties. Let me see, Ms. Barbara Gunning and also Mr.
25 Matthew Pavik.

1 MS. GUNNING: I have a very quick question.

2 CHAIRPERSON HOOD: Come forward, Ms. Gunning.

3 MS. GUNNING: It's for the architect.

4 CHAIRPERSON HOOD: Mr. Colbert.

5 MS. GUNNING: Since I will be facing --

6 CHAIRPERSON HOOD: Could you please identify
7 yourself for the record?

8 MS. GUNNING: My name is Barbara Gunning. I live
9 at 3822 Albemarle Street, N.W.

10 Since I will be facing the property in question, in
11 particular, the vortex, what is the materials that will be used
12 that face Albemarle and Nebraska.

13 MR. COLBERT: I've prepared a board here which I
14 will show you later, but we have wonderful, some very upscale
15 brick samples. We're not only going to use Spanish tile on one
16 roof, houses on the roofs, but we're going to use slate on the
17 others and the porches will be painted wood, just like the old
18 porches in the area and we'll have painted wood trim and shutters.

19 MS. GUNNING: Will there be vinyl siding?

20 MR. COLBERT: No.

21 MS. GUNNING: Okay, so I will be facing two brick
22 walls?

23 MR. COLBERT: Yes.

24 MS. GUNNING: And the second question I have is
25 the floor to floor measurements for each floor and how many floors

1 will there be, including the attic space and basement.

2 MR. COLBERT: I have an exhibit on that.

3 CHAIRPERSON HOOD: Was this presented at an ANC
4 meeting or a meeting or something? Was this presented previously
5 or is this the first time --

6 MS. GUNNING: I hope it's in the record.

7 MR. COLBERT: Yes, you have this in your packet.

8 CHAIRPERSON HOOD: So I guess, Ms. Gunning, you're
9 making a point?

10 MS. GUNNING: I want to know the height on the
11 floor to floor and all the spaces, so that way I can tell what the
12 height of this building is.

13 CHAIRPERSON HOOD: Proceed.

14 MR. COLBERT: I think there are a lot of dimensions
15 on here, but in terms of -- I can just go one by one. In terms of
16 clear ceiling height the lowest level will be 8.5. The main level
17 with the main living and dining area will be 9.5. The second
18 level above that, the next level above that will be 9 clear
19 ceiling and then the top floor will have an 8.5 foot ceiling. And
20 the first floor will be approximately 4.5 feet above the front
21 yard and the strong corner sign that we've created which is very
22 similar to other houses in the neighborhood that I pointed out in
23 the last meeting will be 27 feet above the front yard, so that
24 there will be a very strong --

25 MS. GUNNING: I just wanted to know what the floor

1 to floor, as that term is used, within the architectural
2 community, including the attic space.

3 MR. COLBERT: Okay.

4 MS. GUNNING: So it's those four dimensions that
5 you gave me and there's nothing in between? That will be the
6 total height?

7 MR. COLBERT: No, that was the clear ceiling.

8 MS. GUNNING: What's the floor to floor as that
9 term is used in the profession?

10 MR. COLBERT: Well, normally you would add probably
11 another foot to that for the structure, but

12 --

13 MS. GUNNING: Per floor or all four floors?

14 MR. COLBERT: No, per floor.

15 MS. GUNNING: So it's an additional four feet, is
16 that correct?

17 MR. COLBERT: No, because we only have three floors
18 intermediate.

19 MS. GUNNING: Does it include the attic?

20 MR. COLBERT: Yes.

21 MS. GUNNING: So the roof line does not go above
22 the floor to floor on the fourth floor?

23 MR. COLBERT: This drawing shows all the dimensions
24 clearly and the roof is sloping, so --

25 MS. GUNNING: There's no space between the roof and

1 the ceiling?

2 MR. COLBERT: There would be space for structure.

3 MS. GUNNING: So how much more does that add to the
4 height?

5 MR. COLBERT: Well, again, it depends on structural
6 engineering, but probably about 8 inches.

7 MS. GUNNING: Thank you. The point I was trying to
8 make is the actual height here is as I do my quick math.

9 VICE CHAIRPERSON MITTEN: Have you all provided
10 this packet of drawings to Ms. Gunning as a party?

11 MR. COLBERT: I'm a little confused because Ms.
12 Gunning is also listed as one of the persons that's part of the
13 Tenleytown Neighborhood Association and part of the reason they
14 have status as party as an organization is they listed the people
15 across the street, Mr. Pavik and Ms. Gunning. so I'm not sure why
16 her questions couldn't have been asked by counsel, but I believe
17 she got copies of the --

18 VICE CHAIRPERSON MITTEN: I believe that we
19 discussed her status and the Pavik's status individually as well.

20 MR. COLBERT: So they are representing themselves
21 as well as being represented by counsel?

22 VICE CHAIRPERSON MITTEN: That was my
23 understanding. So if you had an extra set, then it probably would
24 help her.

25 MR. COLBERT: She was delivered a set of those.

1 MS. GUNNING: But it didn't show the dimensions in
2 between. That's what I was trying to find out, the additional
3 foot.

4 VICE CHAIRPERSON MITTEN: This is the last -- the
5 8/8 is the last drawing and that's it right there.

6 MS. GUNNING: Right, but it doesn't -- on the
7 drawing it doesn't show the difference.

8 VICE CHAIRPERSON MITTEN: I see. Okay.

9 MS. GUNNING: Thank you.

10 CHAIRPERSON HOOD: I think we have finished all of
11 our cross examination of all of our parties.

12 Next we'll move to the Report of the Office of
13 Planning.

14 DIRECTOR ALTMAN: Members of the Commission, we're
15 just getting set up for one second.

16 (Pause.)

17 I think we're set. Members of the Commission, my
18 name is Andy Altman, Direct of the Office of Planning. Making the
19 report this evening will be Ellen McCarthy, the Deputy Director of
20 the Office of Planning and Jennifer Steingasser who has been the
21 project planner for this case who will walk through the body of
22 this, of our recommendations and report this evening.

23 I only wanted to say a couple of comments. I
24 believe that you've heard much of the testimony and read our
25 report. But I thought it was important that there is some -- the

1 way that we frame the discussion, the first is the balancing
2 between the city-wide objectives and the neighborhood's specific
3 objectives. When the Office of Planning is presented with a case
4 such as this, our goal really is to try to look at the balance.
5 The balance on the one hand between the city-wide goals and
6 objectives and the other hand, the specific character and needs of
7 a community and the way that the city-wide objectives either fit
8 or are compatible with neighborhood context. And we start from
9 that premise so that we can really understand those two
10 perspectives through a balance of both analysis, through working
11 with the community, through working with the developer and trying
12 to get a sense of all of the comprehensive set of issues that
13 affect development both city-wide and at a neighborhood level
14 which is really what the goal of the comprehensive plan is and of
15 course the ward plans which more specifically delineate the
16 comprehensive plan and particularly neighborhoods and city.

17 The broad context you've heard much about which is
18 I think both from a regional perspective related to smart growth
19 which is very important, as you know, at the national level and at
20 the regional level which is how we balance the need to focus
21 investment and development around transit development, around
22 transit oriented investment so that we will maximize our
23 infrastructure and on a larger level, this is beyond the city, but
24 really at the regional and the national level, what we're trying
25 to accomplish in terms of conservation of scarce resources, scarce

1 land, that you have greater concentration of density, particularly
2 in urban areas and particularly around transit stops within urban
3 areas, so that one can balance overall the needs for population
4 growth and environmental conservation.

5 That sets a much, obviously, broad, philosophical
6 context. When you move at the city-wide level, we really have to
7 look in the context of how in the past, really in the past 10
8 years the city has lost significant population. We have only now
9 frankly, the hemorrhaging of population has abated. We're
10 starting to see some upturn now in terms of housing construction
11 in the city and population coming back to the city, but it's not
12 that long ago that we lost over 80,000 to 100,000 people in this
13 decade. We were once, as you know, a city of 800,000 people.
14 We're now a city of approximately 530,000 and frankly, the key to
15 the survival of the city ultimately will be attracting more people
16 and more population.

17 However, having said that, it is very important
18 that we not simply have a blind eye to the management of that
19 growth, that it is very positive that the District is now seeing
20 an upturn in growth, but that must not be at the expense of the
21 neighborhoods and therefore that's where the balancing comes in.

22 As you can see, when we didn't simply accept that
23 when a project is presented to us that we accepted it as is.
24 You'll hear more detail than you've heard from the Applicant, but
25 we did go through a lengthy process with the developer and

1 listening to the community to try to balance the city-wide and
2 neighborhood objectives and frankly, sought significant reductions
3 in a number of units since the time it was presented to us as well
4 as changes in the site plan and conditions that would be attached,
5 so that we could find a way that a project that the need for
6 overall housing in the city could be balanced with how that
7 housing fits into the specific context of this particular
8 neighborhood.

9 And so we worked very hard over these past few
10 months on how to strike that balance and, as I said, there are a
11 couple of issues and we'll get into more detail about how we did
12 that, but that we did seek substantial reduction in the overall
13 number of units at this site which is, as we said, in very close
14 proximity to a Metro.

15 It's important though that I believe, and you've
16 heard a lot of discussion, you'll hear more that it is important
17 to have clear neighborhood protections. The concern about how the
18 housing opportunity area is defined, the concern about what
19 constitutes a transition area are very important and serious
20 concerns and we take those seriously.

21 We looked at this and you'll see the maps as being
22 clear, what you would call transition area. And that the area, on
23 the side of Nebraska which is clearly single family, clearly needs
24 protection. We need to define that very strongly so we can
25 provide protections to the community so that the concerns about

1 speculation, the concerns that this is frankly a slippery slope
2 and that once this project goes in means that all of the area will
3 be converted to
4 multi-family which, frankly, would not be appropriate in the
5 broader scale of Tenleytown and be destructive to its character,
6 does need to be clearly demarcated, clearly controlled and clearly
7 managed by having strong protections related to the housing
8 opportunity area and we'll speak to that soon.

9 And we're very committed to that and we're
10 committed to a planning process, frankly, that establishes that
11 and we will be doing ward by ward plans over this next year with
12 the new ward planners that we have been able to bring on so that
13 we can do the kind of comprehensive planning that's before us.
14 However, as you know, we often can't wait -- we can't always wait
15 for the plan when an opportunity presents itself, so therefore
16 when you have a project one tries to balance those interests with
17 what's presented to you.

18 So having said that, Jennifer Steingasser is going
19 to actually walk through how I think we tried to strike this
20 balance between the city-wide, between the neighborhood
21 objectives, to come up with what we believe is a reasonable
22 approach to this. There is through this hearing we're getting a
23 lot of input and room for discussion, but I think it was important
24 that we lay out the context within which we analyze this to bring
25 this forward to the Commission. So with that -- you have a

1 question?

2 CHAIRPERSON HOOD: Let me just interject before Ms.
3 Steingasser starts.

4 I just wanted to say, Mr. Hitchcock, in response to
5 what we spoke about earlier and I'm looking at the bewitching
6 hour, I would ask that we're going to try to attempt to get to the
7 report of other agencies. That's as far as we may get this
8 evening which would start us at the next meeting, depending upon
9 how cross examination and Office of Planning report goes, would
10 start us at the report of the Advisory Neighborhood Commission's
11 testimony at the next meeting.

12 And let me ask Mr. Bastida the date of the next
13 meeting. We have a date. We're doing this for those who may need
14 to leave.

15 SECRETARY BASTIDA: Mr. Chairman, I was going to
16 suggest to have the continuation hearing on Monday, November 27th
17 since we have a public meeting, special public meeting for that
18 day and what we could have is have the special public meeting at
19 6:30 and then follow with a hearing at 7 o'clock.

20 CHAIRPERSON HOOD: Is that agreeable with all
21 parties and also the residents of the Tenleytown neighborhood and
22 community and Applicant?

23 Mr. Hitchcock?

24 MR. HITCHCOCK: Yes sir, can we just see if we can
25 at least get to the ANCs tonight?

1 CHAIRPERSON HOOD: Let me just say this, if cross
2 examining goes like it did previously, and that's why I wanted to
3 do that so that the folks that needed to leave could go instead of
4 holding them up.

5 MR. HITCHCOCK: I understand the Tenleytown
6 Neighbor personnel, I think we will never get to them tonight, but
7 --

8 CHAIRPERSON HOOD: In all fairness, I think we're
9 going to have to stop at that point so those people who need to
10 leave, I assure you that you will have an opportune time to
11 testify at the next meeting.

12 I will ask Mr. Bastida if there is an alternative
13 date?

14 SECRETARY BASTIDA: Excuse me, Mr. Chairman, the
15 27th is not a good date?

16 CHAIRPERSON HOOD: I see some hands in the back, I
17 believe community, and I want to make sure that we try to be fair
18 among all.

19 MR. HOLMAN: Mr. Chairman, I think we're kind of
20 getting into that time of year where dates are going to be hard to
21 come by that are going to be agreeable to everybody, so I just
22 caution you about that. And we could push this into next year,
23 but I'm just pointing that out.

24 CHAIRPERSON HOOD: Thank you.

25 COMMISSIONER FRANKLIN: Mr. Chairman, November 27th

1 had been previously discussed as a hearing date and I have it on
2 my calendar, so I would hope that we could proceed with that
3 because when we depart from that, we're going to be in a sea of
4 trouble.

5 There won't be everyone satisfied.

6 CHAIRPERSON HOOD: Let me just say this, as long as
7 all parties and I would ask those who may have a conflict to
8 please submit something in writing and let us know that you wanted
9 to be here to testify, but were unable to. So hopefully we can
10 work that and that's suitable.

11 MR. HITCHCOCK: Two of our witnesses, I'm advised,
12 are not available on the 27th in the evening.

13 MR. FEOLA: Are they your experts?

14 MR. HITCHCOCK: One is, I believe.

15 VICE CHAIRPERSON MITTEN: Mr. Bastida, do you have
16 an alternative date that we could at least be batting around in
17 this conversation?

18 SECRETARY BASTIDA: Excuse me, the tentative date
19 is the week before Thanksgiving, so that takes care of that. The
20 week of the 11th and the 12th is taking -- we have a meeting on
21 the 13th and a meeting on the -- a public hearing on the 16th. So
22 that pushes us into December. The December calendar seems quite
23 full because we have the 7th, 11th and then we could do it on the
24 14th or then we have the meetings on the 18th and 20th, also, the
25 hearings. And then it --

1 CHAIRPERSON HOOD: Okay, we have a consensus and
2 again, sorry for the inconvenience. So we will go on the 27th,
3 but again, be mindful if we ask our questions and move
4 expeditiously, then we do have others who want to testify and
5 again, as Commissioner Holman has said, these dates are going to
6 get very, very tight in the next two months. So let's work
7 together to get the issues on the table and deal with them.

8 With that, if everything is in order, again Office
9 of Planning, I apologize. We're going to try to get to the other
10 reports from other agencies. That's the goal.

11 DIRECTOR ALTMAN: As I was concluding before and
12 I'll turn this over to Jennifer Steingasser at this point, but
13 again, the overall, keep in your mind and we're keeping in our
14 mind was the overall city-wide objective of trying to attract
15 people to the city, increasing our population base and in trying
16 to do that in a way, as you look across the city in areas such as
17 Metro stops that can still protect the interior of neighborhoods
18 while focusing density appropriately, but then even to go further
19 by trying to strike that balance by looking at the neighborhood
20 context and Jennifer will walk through how we've worked with the
21 Applicant and in meetings with the community about how we've tried
22 to do that at this site and try to provide strong protections that
23 would manage growth within this particular context.

24 So Jennifer?

25 MS. STEINGASSER: When we first got the application

1 or when I first got the application we took the approach of some
2 overarching guidelines. We looked at a city-wide policy. We
3 looked at smart growth, housing, housing opportunity areas and the
4 city-wide environment and we looked at the site specific
5 considerations being the uniqueness of the site, the proposed site
6 plan and the site and immediate environment.

7 With regards to smart growth, the overall goal of
8 smart growth, we believe, is to help reduce the regional pressures
9 of urban sprawl in and out of Washington, to use the land
10 efficiency within the city and within the neighborhoods. It also
11 is to maximize existing city utilities and by that not requiring
12 new construction of roads and extension of utility lines to serve
13 the further outgrowing developments. We believe smart growth goal
14 is also to help reduce traffic congestion.

15 When we looked at this project, we felt that the
16 project helped meet these goals by providing multiple units near
17 the public transportation, being the Metro Station as well as the
18 WMATA bus. We felt this proximity also helped reduce car
19 dependency which had environmental air quality benefits as well as
20 fossil fuel preservation.

21 We felt that it provided innovative bioretention
22 systems which the developer is now up to two.

23 We moved on to look at the city housing stock and
24 the goal there, we looked at -- did the project add to the city
25 housing stock. Did it diversify local housing stock? Did it

1 create housing alternatives for the area and the city? We felt
2 that the project did this and by doing so it provided new
3 townhouse units and through those townhouse units it helped
4 diversify the housing options in the area. In this particular
5 census area, 75 percent of the houses are either single family
6 detached or in buildings with 50 units or more. And we felt that
7 option of townhouse development did, indeed, provide diversity.

8 In housing, why is housing important to Washington?

9 In the mid-1990 to mid-2000, D.C. housing values increased 13.2
10 percent and the rental rates rose between 8 and 15 percent. The
11 vacancy rates for larger apartment buildings are below 1 percent.

12 These are the kind of data that we use when we look at housing
13 stock and they tell us that there is a demand for housing in
14 Washington as well as the Northwest area.

15 Then we looked at the housing opportunity area.
16 The housing opportunity area is shown on the general land use map
17 number 2. The area expects and encourages new and rehabilitated
18 housing in these housing opportunity areas and they encourage
19 housing near the Metro areas. This project is identified, as I
20 stated as a housing opportunity on the land use map and when OP
21 looked at the site, we found that Nebraska Avenue served as a very
22 strong demarcation of the housing opportunity area, along the
23 western edge.

24 We then went on to look at the environment and we
25 got that we looked at the goal of regulating the land development

1 activities to protect the natural environment. This is one of the
2 issues we looked at when we reviewed the site plan as well as the
3 development proposals.

4 We felt this project met that goal by protecting
5 the white oak which the neighborhood had expressed great concern
6 over. We felt that it met the goal through providing stream
7 restoration, even if it is just cleaning the stream, removing some
8 of the debris that's in the stream, stabilizing some of the
9 erosion from the outfalls that feed into the stream. They provide
10 water quality improvement through an innovative bioretention
11 system, both now at the east end, the northeast end, northwest
12 corner of the track, as well as reduce dependency on the auto,
13 they helped improve the air quality.

14 Then we went on to the site specific
15 considerations. We looked at the uniqueness of the site and we
16 felt this site was indeed unique in that it separates the high
17 intensity uses of the commercial institutional areas to its north
18 and west from the low single family neighborhood to the east.
19 This is illustrated on the land use map, the colored land use map
20 where you can see the large yellow on the east side of Nebraska
21 and the commercial institutional areas on the western side.

22 The area was in a housing opportunity area.
23 There's some discrepancy over whether the housing opportunity area
24 and the special transit area are the same. We feel that the
25 housing opportunity area is not defined by the special transit

1 area. We feel its proximity to the Metro as well as the bus
2 systems is a very unique opportunity for the site.

3 This image here shows the site and shows the 400
4 and 500 foot criteria that we used when looking at the site's
5 proximity to the Metro station. And as show this site to help
6 ease the worries that this housing opportunity area is unique and
7 using the standards that we use to evaluate the site -- thank you
8 -- which is right here, excuse the shaky hand, using that same
9 criteria and that same radius, there are no other areas that are
10 directly threatened. This area being Nebraska here, this
11 neighborhood, we do not believe would be endangered or
12 destabilized by this rezoning.

13 Then we looked at the proposed zoning, the existing
14 zoning and the proposal, development proposal. We looked at the
15 height comparisons and the by right height in an R-1-B which is
16 the existing zoning is 40 feet.

17 Under the PUD, the maximum height would be
18 permitted at 60 feet. The developer, however, is proposing 38 to
19 40 feet as his maximum height. The lot occupancy also shows
20 similarities between what's proposed to be actually developed and
21 what's allowed by right and what would be allowed as a maximum
22 development under the PUD R-5-B. And similarities, again, with
23 the FAR.

24 We felt that the developer had not proposed a high
25 rise, a high intensity or even a medium intensity, but had indeed

1 kept with the moderate intensity that would serve as a respectable
2 transition between the commercial and institutional uses in the
3 single family zone.

4 We looked at the site plan elements and in this
5 case our recommendation was for the alternate site plan that
6 provided an open corner and we felt this open corner lot at being
7 the corner of Nebraska and Albemarle provided a superior
8 streetscape, reduced the mass of the buildings as the buildings
9 turned the corner. It reduced the impervious cover and created a
10 somewhat park corner there. It increased the environmental and
11 aesthetic treatment of the site through the reduction of
12 impervious cover and the reduction of the mass at that building.

13 We also recommended that the rear lot, that the
14 rear units, the center unit of the rear group be removed and this,
15 we felt, reduced the number of the residential units which we knew
16 was a concern to the neighbors. There was some concern over the
17 FAR density versus the dwelling units per acre density and we felt
18 this addressed that. We further reduced the impervious cover of
19 the site. It allowed a green space for the tree roots and the
20 surface water flow which has been testified to as very important
21 to the neighborhood. We felt that helped with the treatment of
22 the stream and the tree. It increased the aesthetic treatment of
23 the site by providing more greenspace and created a courtyard for
24 those rear units, again, reducing the bulk of that larger
25 structure back there.

1 And then we went on to address the community
2 responses. And through dealing with the community and hearing
3 what the community had to say and we did hear what the community
4 had to say, and they were concerned about the development. They
5 were concerned about what it meant for their neighborhood. They
6 were concerned about it being a spot zoning that could destabilize
7 and expand further and it is not our intention at all that this
8 housing opportunity threaten anything west of Nebraska. We worked
9 with the developer to address the community concerns as well as
10 OP's concerns and then Ellen will address the particulars.

11 MS. MCCARTHY: What I'd like to do now is go
12 through the major concerns that we heard from the community in our
13 meetings and in the numerous pieces of correspondence that we
14 received from the neighborhood and I suspect which you will hear
15 at the next hearing as well.

16 Obviously, one of the key criticisms was that the
17 density that was proposed was inappropriate. We felt instead that
18 if you look at the area -- if you look at the kind of commercial
19 activity, the kind of economic boom that exists along the
20 Wisconsin Avenue corridor from the Cathedral all the way to
21 Friendship Heights, it seems virtually certain that in less than
22 10 years there will be a large increase in commercial intensity on
23 Wisconsin Avenue in the Tenleytown neighborhood, that the
24 commercial area is zoned C-2-A. Some of it is zoned C-3-A and
25 that in fact, having these townhouses there provides an excellent

1 kind of buffer between the sort of higher intensity commercial
2 that will be in existence that is somewhat now, but certainly will
3 increasingly be true along Wisconsin Avenue if Home Depot goes in
4 to the Sears building or some similar type of big box retailer and
5 that this provided an excellent transition between that kind of
6 intensity of use and the low density residential on the other side
7 of Nebraska Avenue.

8 The neighborhood also felt as part of -- related to
9 what they thought was the appropriate density, that the site
10 should hold no more than four single family townhouses, single
11 family houses. We felt, instead, that the site was actually more
12 suitable for townhome. It was not a site that really was
13 appropriate for R-1-B type of housing. For one thing, there is
14 what appears to be just about a 40 foot blank wall of the Wilson
15 High School pool that is in the rear of this property. There are
16 lights from the stores, Hollywood Video and the Fresh Fields
17 Market as well as the bus stop areas that are quite visible, at
18 least on the portion of the site in the evening.

19 There is a major bus stop along 40th Street that
20 not only has Metro buses that connect with the Tenleytown Metro,
21 but also has buses, full-size buses that service American
22 University. It's quite a busy bus stop.

23 And there is a major arterial road which runs along
24 one side of the site, Nebraska Avenue, and even Albemarle which is
25 not exactly a minor collector street.

1 In terms of the neighborhood's concerns about
2 traffic, research that existed seemed to indicate that people who
3 locate by Metro locate there because of an interest, at least a
4 substantial portion, an interest in using Metro so that in terms
5 of rush hour traffic, some of the key concerns were that a
6 substantial portion of the residents would be using Metro and then
7 remember, in terms of what we were talking about in terms of
8 traffic comparisons, if the neighbors are correct about even in
9 Mr. Oberlander's testimony he points out that you could do five
10 housing units there as a matter of right. We are talking about
11 13, so you're talking about a total increase of 8 units over what
12 could be permitted there. But we suspect because of the
13 townhouses, smaller housing units and people who would be much
14 more likely to use Metro in rush hour.

15 In addition, the Department of Public Works
16 concluded that the amount of traffic generated by this project
17 would not affect the level of service at the major intersections
18 that would be affected by the project.

19 In terms of the neighborhood's concern that the
20 project would jeopardize safety of pedestrians, in fact, we find
21 this project to be a major advantage in that score because if you
22 did have four or five houses whose driveways were off of Nebraska
23 Avenue or Albemarle Street and with sites not large enough to do
24 circular driveways, seemingly, from what we could tell and try to
25 balance out all the rest of the space, you were talking about cars

1 that would be fronting in from the street and then backing out,
2 backing into traffic, backing over a sidewalk with people
3 traveling to the Metro, traveling to the schools that are in the
4 area. So, in fact, we find this to be an improvement in terms of
5 pedestrian safety.

6 Another neighborhood concern was insufficient
7 parking, but we felt that the study seemed to indicate first of
8 all that car ownership was lower by Metro stations. In addition
9 to that, each unit has two garage spaces, plus an additional space
10 that can be platooned and done in tandem outside those garages and
11 that there is on-street parking available not on Nebraska Avenue,
12 but on the 40th Street that's available nights and weekends. In
13 fact, even during the day time there was recently a support by the
14 ANC to an interest that had been expressed by Wilson students and
15 faculty that they be permitted to use some of the metered spaces
16 that are along there, because they did a study and showed that
17 there was sufficient vacancy on those metered spaces during the
18 day time and there was support in them being able to use the on-
19 street metered parking spaces.

20 In terms of neighborhood concerns about the
21 environmental impacts, both the environmental impact on the street
22 and the adverse impact on the large oak tree on the property. We
23 felt that the bioretention pond would protect the water quality
24 and deal with the storm water drainage from the site and that the
25 developer's commitment to special tree protection was such to

1 protect the large oak tree, both from damage during construction
2 and from encroachment by pervious surface or by the housing after
3 the project was done.

4 In terms of the concern about the insufficiency of
5 amenities and I'll deal with that a little bit more in my summary,
6 but basically we felt that the amenities were sufficient in this
7 area, the stream stabilization, the clean up, removal of nonnative
8 vegetation from the stream, the bioretention pond, the 25
9 additional trees, plus the street trees that have been promised,
10 the undergrounding of the utilities which would not take place if
11 it had been matter of right development, and the very high level
12 of manicured landscaping as opposed to the overgrown state of the
13 landscaping that had been on the site previously.

14 In terms of the neighborhood's concern about the
15 proposed new trees do not compensate for the loss of mature trees,
16 you know, it's certainly true that losing some of the very large
17 trees that are on the site is really a substantial loss. There's
18 no making up for the kind of, the size of some of those trees.
19 But we thought realistically if you look at matter of right use on
20 that site, if you are talking about four or five houses, given the
21 building styles that are common, that we've seen even on projects
22 we've looked at say on Chain Bridge Road where you're talking
23 about very high end developments, where you're talking about a
24 heavily treed environment, that there would be a substantial loss
25 of trees even with matter of right, single family houses on the

1 site. And we felt the fact that the developer was providing 25
2 replacement trees in addition to the 18 street trees helped
3 mitigate that to whatever extent it was possible to mitigate that
4 loss.

5 The neighborhood had also expressed a concern that
6 the amount of open space on the site was too limited and that is
7 why the Office of Planning recommended an increase in open space,
8 both in terms of opening up the corner and in terms of removing
9 the additional unit in the rear.

10 To the concern that townhouse design was not
11 compatible with the neighborhood, we felt, in fact, that the
12 developer had made an extraordinary effort to find design that was
13 similar in materials and in the treatment to several houses that
14 are in the neighborhood and we contrast that, for example, not
15 attempting to be critical, but if you look at some townhouse
16 projects in that general vicinity and I was thinking particularly
17 of the project at the rear of Chevy Chase Pavilion, you're talking
18 about something that is very federal in design, it's very cookie
19 cutter. It would look far more at home in Georgetown than it does
20 in the Friendship Heights neighborhood and that, in fact, it was
21 done by the architect that I believe Holiday was first planning on
22 using. I think by going out and getting an architect from the
23 neighborhood who really did respond as much as possible to the
24 porches and materials and the design, that you see on these
25 streets, they definitely made an effort to find a townhouse design

1 that was compatible with the neighborhood.

2 Now are there differences between that and what
3 you'll find west of Nebraska Avenue? Certainly, because we are
4 not talking about replicating that. We're talking about something
5 that's compatible, that is not jarring with the neighborhood, but
6 something that is a transition between large, single family houses
7 that you find west of Nebraska and the more intense commercial
8 development that you see in the area around the Metro stop.

9 With regard to the domino effect, we understand
10 that this is one of the major concerns of the neighborhood, the
11 fact that additional rezoning requests will encroach in single
12 family neighborhoods, that the sense that this was going to be
13 open season on a single family neighborhood west of Albemarle.
14 That is why you will find strong language in our report that
15 points firmly to the combination of factors that we thought
16 existed on this site, that we do not see existing any place else
17 in that neighborhood. The distance from the Metro, the existence
18 of the housing opportunity area, the fact that the neighborhood
19 west of -- I'm sorry, on the other side of Nebraska is so
20 substantially different in density and character and we have also
21 committed in the next comprehensive plan update to codify that
22 opinion and to make the Office of Planning's opinion in that
23 respect clear, that we do not see the neighborhood on the other
24 side of Nebraska Avenue as being one where the Office of Planning
25 would entertain this type of project.

1 So our conclusion was that we felt, although there
2 were certainly pros and cons, that overwhelmingly on balance this
3 project will not adversely impact the neighborhood. There was
4 support, as you see in the Office of Planning report from several
5 agencies including the Department of Public Works and the
6 Department of Health that deals with the storm water and water
7 quality issues. I don't see representatives from those agencies
8 here tonight and it's not because we haven't asked for them to
9 appear. Hopefully, at the next hearing date they will be able to
10 come. We will certainly try again to make sure that they are
11 here. I know that the main person from the Department of Public
12 Works who would have testified, Ken Laden, is on leave all of this
13 week. We had tried to find a substitute, but we were hoping to
14 see them here and they're not.

15 The Office of Planning concludes, therefore, on the
16 basis of the testimony we've given tonight that the project has
17 exceptional merit and is in the best interest of the city which,
18 as you know, is the test about the waiver of the planned unit
19 development minimum area requirements, and that it is superior to
20 what would have been achieved as a matter of right or through a
21 map change.

22 And let me just, for purposes of summary, briefly
23 run down the amenities that we see as the key to the project and
24 those which would not have been available in a matter of right.

25 I just want to deal briefly which what would have

1 not have been achieved as a matter of right or with simply a map
2 change and not a PUD and that is the bioretention pond, the creek
3 cleanup and restoration, stabilization at the outfalls, the 25
4 trees, in addition to the street trees, the prohibition of
5 chemical fertilizers, the tax revenue that we will get from the 13
6 townhouses and the 13 sets of new residents, the first source
7 hiring agreement that 51 percent of the jobs would go to local
8 residents, the local business opportunity agreement that 35
9 percent of the business opportunities will go to local firms, the
10 undergrounding of the utilities which certainly does not occur at
11 most single family housing construction in that neighborhood and
12 in terms of comparison to the map amendment or matter of right you
13 have the absence of curb cuts on Nebraska Avenue which would
14 otherwise have been the case, the tree preservation where there
15 would be no protection under a matter of right development on the
16 site, the minimization of paving, you will not have the single
17 family houses with the decks, the patios, the drive walks, the
18 additional side walk space. You've got the storm water run off
19 protection, the bioretention pond where there is no requirement
20 for that under matter of right development, the design controls
21 and the emphasis on trying to find a compatible design, the level
22 of community involvement and opportunity to -- for the community
23 to have input into the project which would not have been the case
24 with matter of right. The fence, which the National Park Service
25 requested will be there, but unlike what would happen probably

1 with single family development on this site, you will not see that
2 green space fenced off with each individual house having large
3 stockade fences as you frequently find in the neighborhood. You
4 will see the green space. You will still be able to see the oak
5 from the -- at least from the side other than the Park Service.
6 You will have innovative design and not cookie cutter kinds of
7 townhouses. You will have housing choice for those that don't
8 want large, single family houses and large yards to maintain. You
9 will have a buffer for the single family neighborhood from the
10 development pressures along Wisconsin Avenue. In short, the
11 Office of Planning finds that this is a project that we are quite
12 comfortable in recommending that the Zoning Commission support and
13 grant approval to.

14 Thank you.

15 CHAIRPERSON HOOD: Does that conclude the Office of
16 Planning's report?

17 Ms. McCarthy, does that conclude --

18 MS. McCARTHY: Yes, it does.

19 CHAIRPERSON HOOD: Okay, thank you. Colleagues,
20 any questions of the Office of Planning at this time?

21 Commissioner Mitten?

22 VICE CHAIRPERSON MITTEN: I have a few questions.
23 In your report under Agency Referrals and Comments it said the
24 National Park Service comments were going to be submitted
25 separately. Is that something that you have for us or have been

1 on contact with them?

2 MS. STEINGASSER: I believe a representative from
3 the Park Service is in the audience.

4 VICE CHAIRPERSON MITTEN: Oh, okay, so that will be
5 later.

6 There's a letter or a series of letters in the
7 material, in the record and from Council Member Patterson and she
8 raised several issues including the Park Service's reaction to the
9 development which we'll hear.

10 I guess one of the areas that was of great concern
11 to the Council Member was the issue of traffic and the issue of
12 this development or proposed development notwithstanding that
13 there seems to be a very serious problem with the traffic patterns
14 at Albemarle and Nebraska and in that whole area and I was
15 wondering if you had given any further consideration or have
16 pressed the Department of Public Works to give more detailed
17 consideration to the issues that were raised by the Council Member
18 and the community?

19 MS. STEINGASSER: I can't speak for Public Works,
20 but we did talk to them after we received the letter on two
21 occasions and I believe Mr. Laden stood by his original
22 recommendation.

23 VICE CHAIRPERSON MITTEN: I want to understand the
24 idea as a goal of the comprehensive plan the notion of housing
25 diversity and is it merely physical difference in the type of

1 housing product or is it an economic diversity, to cater to
2 different income levels?

3 MS. STEINGASSER: It would be both. It talks both
4 about low and moderate income housing as well as diversity of
5 housing stock.

6 VICE CHAIRPERSON MITTEN: And this project
7 accomplishes one or both of those kinds of diversity?

8 MS. STEINGASSER: This would be primarily housing
9 stock diversity.

10 MS. MCCARTHY: When we first were looking at this
11 project, when it was going to be 26 units, it was going to be
12 actually 2 over 2 apartments in effect within the townhouses and
13 then we were talking about substantially lower prices and more
14 economic diversity, but there was such concern on the part of the
15 citizens about that amount of density on the site that that's when
16 we told the developer that we thought they needed to reduce the
17 number of units on site to see about dealing with neighborhood
18 concerns. So we did end up sacrificing that part of the balance.

19 VICE CHAIRPERSON MITTEN: Part of this case has
20 originated because the generalized land use map is wrong for this
21 property and it's also wrong for the property that's due south, so
22 it seems to me that we're sort of at a juncture where you're doing
23 the equivalent of recommending what the generalized land use map
24 should say for this property and I would think you should be
25 prepared to also say because the community is interested in

1 knowing the direction that things are going, so how would you
2 recommend that the designation of the property that's on the south
3 side of Albemarle that's directly facing this is also west of
4 Nebraska, what land use designation would you be recommending?

5 MS. McCARTHY: That actually raises a good point
6 and let me answer it in a slightly broader context because it also
7 deals with some of the other issues that were before you.

8 When the community first came to us and expressed
9 concern about the project and we looked at it, one of their
10 concerns obviously had been here was a site, it was zoned R-1-B,
11 you're knocking down that house, you're coming back and proposing
12 something that is substantially greater density, but the more that
13 we looked at the site, we felt we just couldn't justify in an R-1-
14 B zoning density on that and had we had a staff over the years and
15 been able to do zoning consistency and look at housing
16 opportunities and how they should have been zoned, we would have
17 anyway looked at a higher density on the site, probably at least
18 an R-3, R-4 density on that site and I assume probably on the site
19 on Grant Road.

20 But when the community raised the objection to the
21 fact that the site did not meet the minimum area requirements, we
22 tried to point out to them that they were going to be getting
23 greater control through doing this through a planned unit
24 development, that if we had gone ahead and done a map consistency
25 project and translated that into R-4, that they would end up

1 having so much less input and so much less design control, so we
2 thought that a planned unit development was the way to go.

3 We are mindful though of the fact that the houses
4 on Grant Street have some substantial historic character and we
5 had also indicated to the neighborhood that if they wanted to go
6 ahead and do an historic district designation on that site that we
7 were certainly prepared to assist with that to preserve those
8 houses.

9 VICE CHAIRPERSON MITTEN: And then in that context
10 would you, if we were sort of perfecting the map and we were not
11 interested in creating nonconforming uses and things like that and
12 creating excess pressure where -- for development of historic
13 properties that would be incompatible with preservation, what
14 would you be recommending on the south side of Albemarle, the low
15 density that exists or the moderate density that's being proposed
16 for this property?

17 MS. McCARTHY: In terms of what would be consistent
18 with the comprehensive plan policies, it would make more sense to
19 have a more moderate density designation on that site. That's one
20 of the reasons, but -- but for the fact that that then ends up
21 creating nonconformity and so that's partly why the notion of
22 designating it as part of a historic district sort of got around
23 that problem. If it were designated, it would be protected by the
24 historic -- by the historic preservation law and we would not have
25 to deal with the fact that there are existing houses there,

1 they're at a very low density. It's an area even closer to higher
2 density commercial -- or higher commercial development than is the
3 case with this project. And not all the units there are well
4 maintained either -- I guess we have some pictures of the site
5 that shows railings falling down and not great maintenance on all
6 of those houses, but if the historic district designation doesn't
7 come through, we'll have to face that and I can't tell you for
8 sure right now what designation we would come up with for that
9 site.

10 VICE CHAIRPERSON MITTEN: Okay. My final question
11 relates to this issue of exceptional merit because I think in
12 terms of precedent setting this has the most potential for
13 precedent setting.

14 At the conclusion of your presentation you said
15 therefore, we believe the project has exceptional merit and yet
16 when you -- in your report when you enumerate the amenities
17 they're presented in a traditional context of what we would expect
18 to see in a PUD and the way that you characterize the amenities
19 tonight is that relative to the community's concerns is that you
20 characterize the amenities as being sufficient. So if the
21 amenities are sufficient to satisfy the PUD requirement, what is
22 there left to go above and beyond to qualify for exceptional
23 merit?

24 MS. MCCARTHY: Well, first of all we note that the
25 standard is exceptional merit and in the best interest of the city

1 and we think --

2 VICE CHAIRPERSON MITTEN: Not "or" just to point
3 that out.

4 MS. McCARTHY: Right, I know. The best interest of
5 the city part, we think, is pretty clear in terms of the higher
6 density, the tax revenue, the kinds of things we were talking
7 about on the site.

8 I said sufficient because when you're dealing with
9 amenities you're always dealing with do you have something that
10 balances the amount of zoning flexibility that you're being
11 granted. Do you have a set of amenities that make this greater
12 than what could be achieved as a matter of right.

13 I think in terms of exceptional merit and I know
14 Jennifer has some rationale on this as well, so please feel free
15 to chime in after me. In terms of exceptional merit I think, for
16 example, the bioretention pond, as our water quality experts
17 testified that's not something that would be typical of a
18 development this size. It is something that's important, given
19 the headwaters, given what this is the headwaters of, given the
20 fact that this creek is one that has sustained aquatic life that
21 is healthy compared to what we see in a number of streams around
22 Northwest Washington, the fact that it's not only cleaning up the
23 stream and restoring it, stabilizing the outfalls, getting rid of
24 the nonnative vegetation, the number of additional trees that
25 they're providing, not to the benefit of their own site, but trees

1 to be planted elsewhere in the neighborhood, the -- I think those
2 are aspects on the undergrounding of the utilities, I think those
3 are aspects that make this project of exceptional merit and let me
4 see, Jennifer, did I leave out --

5 MS. STEINGASSER: Well, one of the things that we
6 thought qualified as exceptional merit is not so much that it
7 stands out, but that it is compatible, that there was
8 compatibility in the architecture and they put efforts into
9 picking up some of those architecturally historical elements and
10 incorporating those back into their architecture. So it wasn't as
11 much outstanding visually as the compatibility issue, that we felt
12 they also reached out, as well as we felt their heavy interest in
13 the environmental aspects of the site.

14 VICE CHAIRPERSON MITTEN: Well, I mean I guess I
15 keep emphasizing this point and maybe some day obviously Mr.
16 Parsons had mentioned that this has been debated, the whole issue
17 of having minimum lot areas for PUDs, but the fact is is that we
18 have them and we're being asked to make a significant waiver and
19 once we do that, then it's really open season in terms of people
20 being interested in the waiver, particularly with the level of
21 pressure for development that we have right now.

22 So I want to be real clear about what's exceptional
23 and saying things like -- a discussion of the bioretention
24 facility, just to emphasize why it's important that the Department
25 of Health or someone should be here is we don't know what they

1 would permit otherwise. We don't know if they would oh sure,
2 pollute the Soapstone Creek, that's not a problem, so that this is
3 really something that's of substantial benefit. Or, hey, you'd
4 have to do something that looks almost like this anyway. We
5 really can't get our hands on that. So anything that anyone could
6 do to really capture what makes this exceptional I think is going
7 to help us (a) make this decision and guide us in the future if as
8 I anticipate will have other cases requesting similar waivers.

9 MS. McCARTHY: Right and I should add, I'm sorry, I
10 forgot before that I know when this issue was first raised by the
11 community which was February or March of last year when we met
12 with them for the first time, we did review some of the past cases
13 in which those waivers had been granted and felt that what we were
14 talking about was something that was in the same realm as the
15 merits that had existed in those cases. Unfortunately, that was
16 so long ago I can't summon to mind some of the specific cases that
17 were cited. I know that there were some that were cited by -- the
18 cases we looked at were some of the same ones that Mr. Feola cited
19 in dealing with the motion that was made to dismiss and if the
20 Board would like we'd be happy to go back to them and say why we
21 felt those were applicable in this case for your purposes of
22 trying to deal with setting --

23 VICE CHAIRPERSON MITTEN: That would be very
24 helpful to me if you could do that.

25 I'm done now, thank you.

1 CHAIRPERSON HOOD: Who wants to ask questions next?

2 No more questions?

3 Mr. Parsons.

4 COMMISSIONER PARSONS: I'm having a bit of trouble
5 with the rationale that you expressed on one of your exhibits
6 about why this site is more suitable for townhomes and it's
7 because of a blank wall of a pool, lights of stores, major bus
8 stop, major arterial road. And it seems to me we're saying
9 something about people, that is people who live in townhouses
10 somehow are more tolerant of these environmental blank walls,
11 lights of stores, bus stops and arterial roads. Is that the
12 difference here? Why is it that somebody living in a single
13 family home as a matter of right is somehow different or less
14 tolerant. You get my drift?

15 I don't understand this rationale at all. I
16 understand the architectural transition between commercial and
17 lower end residential, but this rationale implies there's
18 something about people.

19 MS. MCCARTHY: I think there are two aspects to
20 that. One is yes, in terms of market niches when you are talking
21 about townhouse -- when we looked at it our consideration was that
22 townhouse, the kind of people that are interested in buying
23 townhouses are more interested in an urban experience. They're
24 not looking for something that's more the big yards, the trees,
25 the quiet neighborhood of the type of housing that you would find

1 say on the other side of Albemarle and that that -- you're looking
2 at a more urban kind of person that's looking at that sort of
3 unit, especially a unit like this located in that vicinity. And
4 the reason that we -- the reason that this came up in some
5 respects is because the neighborhood had argued to the developer
6 and to us look, you paid whatever it was \$800,000 for the site,
7 instead of -- you can make as much money just put in four or five
8 really nice single family houses here and you'll get the same
9 return on your investment and we'll be happy because it will only
10 be four or five houses on that site. And we just felt if you were
11 going to take that argument and say yes, let's look at a
12 comparable return on investment which is I'm not saying that's a
13 standard the Office of Planning imposes, say well, let's make a
14 developer whole, let's look at what the alternatives are. But
15 that was an argument that was made by the community and when we
16 look at that we thought it just wasn't realistic to make that
17 argument because the income level and the person likely to be
18 interested in purchasing a house for what it would cost to be the
19 equivalent to this level of development on the site was not going
20 to be interested in a site that had the blank wall, that had the
21 major traffic out front, that did have the lights of Potomac Video
22 and the traffic coming and going to Fresh Fields and AU and the
23 bus stop and all of that.

24 COMMISSIONER PARSONS: So you think somehow single
25 family is less marketable here?

1 MS. McCARTHY: I think it would be less marketable
2 at this site, yes.

3 COMMISSIONER PARSONS: Now earlier I think I heard
4 you say in response to -- I want to say Carol's questions, that
5 you would recommend R-4 for this area? Is that -- if it was to be
6 a matter of right, not matter of right, simple map change, in
7 response to the guidance from the comprehensive plan that it would
8 be R-4?

9 MS. McCARTHY: I think I said at least
10 R-3, R-4 for that site.

11 COMMISSIONER PARSONS: But somehow you left R-5?

12 MS. McCARTHY: If I were looking at it and I were
13 saying what seems to make sense around the Metro, I'd probably
14 look at areas like Van Ness. I'd look at Woodley Park. I'd look
15 up and down Connecticut Avenue and I would find the kind of
16 apartment buildings that exist along Connecticut Avenue to be
17 certainly not incompatible with single family neighborhoods
18 because they exist with single family neighborhoods right now.
19 Very consistent with smart growth because they concentrate the
20 density along the transportation corridors. They act as buffers
21 for the single family residential behind them. So I'm not -- I'm
22 not sure what we would end up with because we weren't faced with
23 that open-ended choice, but when we looked at R-5-A as an
24 alternative and we looked at the project within the context of R-
25 5-A, the chart that Jennifer showed in terms of comparing

1 R-5-A, what's on the site, what could be achieved as a matter of
2 right, we thought that that was not at all an unreasonable zoning
3 designation for the site.

4 COMMISSIONER PARSONS: All right. Now there's been
5 some questions here tonight from the citizens about an
6 environmental impact --

7 MS. McCARTHY: Right, and I guess should add it was
8 not an unreasonable density for site in particular since it's a
9 PUD, since it depends only on that this project and the amenities
10 of this project and the design of this project and the kind of
11 specific controls that we have over this site, that we wouldn't
12 have if we were just changing to R-5-A without any kinds of other
13 guarantees or protections.

14 COMMISSIONER PARSONS: And what kind of density
15 would there be if it was an R-4 PUD? If somebody brought us an R-
16 4 category with a PUD, what would result?

17 MS. McCARTHY: I don't have my zoning cheat sheet
18 with me to remember exactly what the PUD guideline say --

19 COMMISSIONER PARSONS: All right, let me go on to
20 my next question then. There has been some discussion here
21 tonight of citizens asking questions of the developer about
22 environmental impact study that seems to have a threshold of \$1
23 million.

24 Could you tell us about that?

25 MS. McCARTHY: The city is in the process of

1 revamping, revitalizing, retooling, clarifying it's environmental
2 impact statement process. And it still is a work in process, but
3 what the city has begun to do for all major development projects
4 is circulate something called an environmental impact screening
5 form which goes to the Department of Health, Department of Public
6 Works, Department of Consumer and Regulatory Affairs and the
7 Office of Planning and we all review that based on several
8 criteria that were published in the register describing things
9 like community impact, environmental, storm water runoff, various
10 aspects of what you would typically consider as part of the
11 environmental impact statement. And each agency does that review
12 based on the screening form. If they indicate they think that
13 there is more than a low to moderate impact and if they feel that
14 it's not mitigated by the project as designed, then a full
15 environmental impact statement can be required.

16 COMMISSIONER PARSONS: But that would be particular
17 -- that impact study would be particular to the complaint of the
18 agency that was -- in other words, if DPW said we don't see any
19 problem with traffic, but then somebody else said well, we see a
20 health problem here with soils or storm water, the environmental
21 impact statement would go to that, not traffic, visual. I mean
22 would it be a broad environmental impact study or just specific to
23 the concern of the agency? Or is it still a work in progress?

24 MS. MCCARTHY: I was going to say up until this
25 point, the District over all these years has required only one

1 environmental impact statement so -- and that was before this new
2 process started, so I think that there is a still working group
3 meeting. They're still working out a lot of aspects of this.
4 They just thought that they'd at least begin the screening form
5 and so I don't know if there's necessarily an answer to that.

6 COMMISSIONER PARSONS: And the \$1 million threshold
7 --

8 MS. MCCARTHY: That's right, and I guess I should
9 say although each individual agency reviews the environmental
10 impact screening form based on their particular area of expertise,
11 it is the Department of Consumer and Regulatory Affairs which is
12 the major permitting agency that is the lead agency on that. So
13 in the end, it's their call about the environmental impact
14 statement.

15 COMMISSIONER PARSONS: And the \$1 million
16 threshold, you know nothing about?

17 MS. MCCARTHY: That is the threshold. Projects
18 below \$1 million don't go through the environmental impact
19 statement screening process.

20 DIRECTOR ALTMAN: Just to clarify, what it means is
21 that if it's over \$1 million it doesn't mean that it's mandatory
22 that EIS be completed which is, I think, what you're question is.

23 It goes through the check list process and if it is determined
24 that there is a potential impact, then at that point, the DCRA can
25 determine whether it can conduct an EIS or not. So it's not

1 specifically a mandate.

2 COMMISSIONER PARSONS: Now I want to talk about the
3 missing tooth, that is the unit that you suggested or somebody on
4 your staff suggested be removed. My term is a missing tooth, I
5 must confess.

6 Why did you select the center unit to be removed.
7 The Applicant suggested that it was somebody on your staff that
8 did that?

9 MS. STEINGASSER: Yes sir, it was me.

10 (Laughter.)

11 MS. STEINGASSER: When we looked at the plans and
12 we took into consideration many of the comments we heard from the
13 community, one of the comments was that center unit did not have
14 full access to the garage and that the units were so large and
15 massive that they created a wall effect towards the park and they
16 impacted the ground and created too much pervious cover for the
17 tree. So as I was tinkering with the site plan, it just seemed
18 that removal of that unit would address many of the concerns the
19 neighborhood had including the number of dwelling units in the FAR
20 site and that particular unit just seemed to provide a center path
21 for storm water surface flow and pervious cover for the tree.

22 COMMISSIONER PARSONS: So did you consider removing
23 the unit at the end next to the national park as a public amenity,
24 if you will, to setting back from that park versus the opening to
25 the stream valley?

1 MS. STEINGASSER: No sir, I wasn't trying to be a
2 site designer. I didn't feel -- that particular unit just seemed
3 to answer most of the questions and it addressed the tree fairly
4 directly. I think moving the end unit though, it pulled it back
5 from the park property at that end, didn't really address the
6 concerns over the tree.

7 COMMISSIONER PARSONS: So you feel that this middle
8 unit somehow would have less impact on the tree roots?

9 MS. STEINGASSER: By its absence, yes.

10 COMMISSIONER PARSONS: Even though there's a storm
11 water line that would appear to sever the roots with its
12 installation anyway along the back of all these units?

13 MS. STEINGASSER: Well, I'm not quite sure. I
14 can't address the storm water line. I'm sorry.

15 COMMISSIONER PARSONS: Well now, it seems now to
16 have decreased in size from 24 to 18. Does that trouble you at
17 all?

18 MS. STEINGASSER: Yes sir, it does.

19 COMMISSIONER PARSONS: Why is that?

20 MS. STEINGASSER: Well, when we were looking at the
21 plans the dimensions were the same and the center unit was 24
22 feet. With the removal of the center unit, the distance reduced
23 to 18 feet and we're not quite sure how that math happened.

24 COMMISSIONER PARSONS: Well, it seems as though
25 it's set back from the national park as a result of the swail

1 that's been introduced along that fence.

2 You may recall the last sheet, that unit was much
3 closer to the fence and property line. As a matter of fact, I
4 think that wall -- and I'm looking at Sheet C-5 was right up
5 against the property line in the last iteration and now has been
6 moved. That seems to be the reason it's moving away from the park
7 and shrinking the missing tooth.

8 I'm urging you to consider pushing a little
9 farther.

10 (Laughter.)

11 MS. STEINGASSER: I guess -- when I'm looking at
12 Sheet A-1, the architectural site plan and then I look against
13 Sheet A-9 on the alternate provided in the pre-statement hearing,
14 we see that distance to be --

15 COMMISSIONER PARSONS: A-1 was last time?

16 MS. STEINGASSER: A-1 is the one that was submitted
17 -- the one we got today. And A-9 is the alternate plan shown in
18 the pre-hearing statement.

19 COMMISSIONER PARSONS: Well, we got a problem, I
20 guess.

21 MS. GUNNING: I don't have an A-9.

22 COMMISSIONER PARSONS: You take a look at A-1 and
23 you see that retaining wall right up against or some kind of a
24 wall, appears to be, right up against the property line on Unit C?

25 MS. STEINGASSER: Yes.

1 COMMISSIONER PARSONS: If you look at C-2, the wall
2 has moved and I thought the unit with it, unless I'm making a
3 mistake.

4 MS. McCARTHY: C-2 of the plans that we got
5 tonight? No, those are all A.

6 I'm sorry, Mr. Parsons, are you talking about C-2
7 from the pre-hearing statement?

8 COMMISSIONER PARSONS: No, today's series seems to
9 have moved the townhouse farther to the east.

10 MS. STEINGASSER: That would probably account for
11 it.

12 COMMISSIONER PARSONS: Now that I'm flipping back
13 and forth I think Building 4 has slipped to the east too as it
14 seems to be closer to the property line at the other end.

15 Well, maybe we can ask the Applicant which sheet is
16 the real sheet or which drawing.

17 MS. STEINGASSER: The Applicant did mention to me
18 that they had shifted the unit slightly in order to accommodate
19 the second bioretention system.

20 COMMISSIONER PARSONS: Ah ha. I see. Okay.

21 DIRECTOR ALTMAN: Mr. Parsons, this might be out of
22 order, but we could have the engineer explain it.

23 COMMISSIONER PARSONS: I think that would be
24 helpful because we left this hanging here.

25 MS. STEINGASSER: I would qualify that in

1 recommending that the center unit be removed, the intention was to
2 improve the environmental treatment of the lot if bringing those
3 two groups together and reducing 24 to 18 feet and adding the
4 storm, the second bioretention system with the impervious cover
5 meets that end. We certainly have no objection.

6 COMMISSIONER PARSONS: Okay.

7 MR. AMATETTI: As I testified before and I need to
8 make myself clear, we shifted -- when the unit was removed from
9 the middle, the missing tooth, we did shift what we are now
10 calling Building 1 which is the western two most units to the east
11 to accommodate what we felt was a more beneficial drainage pattern
12 to bring the water from the eastern portion of the -- from the
13 western portion of the site around towards the additional
14 bioretention facility which we felt was a positive environmental
15 improvement. It allowed us to match the existing drainage
16 patterns closer. It allowed us to introduce and break up the
17 impervious areas into the two bioretention facilities in a more
18 even format and also helped to improve, maintaining the hydrology
19 in that area, thereby improving the conditions around the tree
20 that was to be saved.

21 COMMISSIONER PARSONS: Well, how important is the
22 drainage between the two buildings?

23 In other words, if the two buildings were slid back
24 together again to achieve some other goals, what would happen from
25 your standpoint?

1 MR. AMATETTI: If we slipped the Building No. 1 all
2 the way to the east so that it touched Building 4, again, and just
3 moved in completely?

4 COMMISSIONER PARSONS: Exactly.

5 MR. AMATETTI: I think that it would not have -- it
6 would not as even a split of drainage, but it would still
7 accomplish what my primary goals was which was to have the water
8 recharged in an area further to the west to maintain the
9 survivability of that tree so that it would still accomplish that
10 goal, I think, maybe not quite as evenly as would exist today, but
11 it would probably still accomplish that goal.

12 COMMISSIONER PARSONS: Thank you. Ms. McCarthy, I
13 wanted to talk about the Building 5, that is the other property
14 and wondered what you felt about that density and certainly now
15 it's occupied by a single family home which is lower in scale and
16 what could be built as a matter of right there if it remained 1-A?
17 Certainly not a building of this size.

18 MS. MCCARTHY: You mean if someone bought that
19 property would they keep this house or would they likely tear it
20 down and build another larger one?

21 COMMISSIONER PARSONS: I'm trying to see what the
22 impact is on the park by these two townhouse units versus what
23 would be built as a matter of right on this site if it was left in
24 an obvious spot zoning, but in an R-1-A.

25 MS. MCCARTHY: It's R-1-B now.

1 COMMISSIONER PARSONS: Excuse me, I'm sorry, yes.

2 MS. MCCARTHY: Which means a minimum lot size of
3 5000 square feet and there are no FAR restrictions on houses.
4 There is, I believe, a
5 40-foot limit, so there would be -- there would need to be, I
6 believe, a 25-foot rear yard and two 8-foot side yards and other
7 than that, there would be no restriction on the amount of
8 impervious surface because it's not like the tree and slope
9 overlay where you'd have a 50 percent limitation or anything like
10 that. There would be no limitation on pervious surface and no
11 limitation basically on the amount of square footage of the house.
12 Or of the lot coverage as long as the rear yard and side yards
13 were left, met the zoning requirements.

14 COMMISSIONER PARSONS: So what we have here is an
15 11-foot -- in the case of a single family unit coming off of
16 Albemarle Street, you certainly wouldn't have the 6 to 8 foot rear
17 yard that's shown here if you were coming in off -- that's
18 Albemarle Street. You'd have a much smaller structure, wouldn't
19 you? It might be as tall, but it certainly would not be of this
20 size.

21 MS. MCCARTHY: The quality of this reproduction
22 isn't very good so it's hard for me to see exactly which of these
23 lines is the lot line.

24 COMMISSIONER PARSONS: It's pretty clear on A-1, I
25 think.

1 MS. McCARTHY: Okay, I'm sorry, I was looking at C-
2 2. Let me try A-1.

3 (Pause.)

4 Okay, so the eastern lot line is there at the right
5 hand side of Phase 2?

6 When I look on C-2 which is the site plan, it's
7 very hard to tell which one is the property line and when I look
8 on A-1 I'm not sure that any of those lines are the existing
9 property line.

10 COMMISSIONER PARSONS: Well, maybe I'm dragging us
11 down in detail here, but -- too much detail -- but it certainly
12 seems to me as a neighbor to the park as opposed to what is there
13 now, what is a matter of right, that this from my perspective is
14 not an amenity of any kind to this park, to allow two units to be
15 built here and I'm trying to find a way to correct that in the
16 PUD.

17 Obviously, one unit would be better than two, but
18 I'm groping and would ask for you to take a look at that.

19 MS. McCARTHY: I'm trying to figure out, it's hard
20 from these plans. I'm trying to figure out if it's even a
21 conforming lot because I don't have the zoning regs right here,
22 but I believe the dimensions for R-1-B are typically 50 feet wide
23 and 100 feet deep and it doesn't look like it meets that
24 requirement.

25 DIRECTOR ALTMAN: Mr. Chairman, maybe between now

1 and next time we could take a look at this and --

2 MS. MCCARTHY: I would be happy to do an analysis
3 of matter of right, what could be constructed there and what the
4 comparison would be and see whether this is actually a conforming
5 lot or not.

6 COMMISSIONER PARSONS: At least from my
7 perspective, the amenities of this particular proposal have little
8 to do with Fort Circle's park. There's been little attention paid
9 to the impact in your analysis or anybody else's of the visual
10 impact of these units. The end unit that we talked about before
11 and these two units and their impact on this resource.

12 I'll stop at that point. Thank you, Mr. Chairman.

13 CHAIRPERSON HOOD: Okay, any further questions?

14 COMMISSIONER FRANKLIN: Yes, Mr. Chairman.

15 CHAIRPERSON HOOD: Commissioner Franklin.

16 COMMISSIONER FRANKLIN: Ms. McCarthy, I want to
17 just expand a little bit on the domino effect and slippery slope
18 issue. Under the comp. plan as it presently exists and the Ward 3
19 plan as it presently exists, do you see any other rezonings or
20 waivers in the single family area west of Nebraska Avenue that
21 would be consistent with either one of those plans as they now
22 exist apart from what you've already said about the parcel just
23 south of the site?

24 MS. MCCARTHY: No. We tried to do the three part
25 test and look at the 400 to 500 feet radius and there was -- other

1 than the houses on Grant Road, there were no other residential
2 properties within that radius. We saw no other properties that
3 were within the vicinity of a housing opportunity area and a metro
4 stop in this general neighborhood. In Friendship Heights, that's
5 more of an issue, but the densities that we're talking about in
6 Friendship Heights are substantially different.

7 CHAIRPERSON HOOD: Excuse me, Commissioner
8 Franklin, if I might just interrupt. I've been meaning to do this
9 every time we kind of got a break. At-Large Council Member, we've
10 been joined for about an hour and a half or so by At-Large
11 Council Member Phil Mendelsohn and I believe he'll be testifying
12 at a later date, but I wanted to acknowledge the Council Member.
13 Thank you. Excuse me.

14 COMMISSIONER FRANKLIN: No problem. So therefore,
15 to ward off any domino effect would not require further
16 clarifications of the existing plan?

17 MS. MCCARTHY: No, I mean I think that's one reason
18 why we tried to be very firm about that in our report.

19 COMMISSIONER FRANKLIN: Okay. Different subject
20 and maybe this ought to really be addressed to my colleague, Mr.
21 Parsons. There's a constant reference to this as a national park.
22 On the map it's called a U.S. reservation. How would you
23 describe the amenity that exists in this park? Is it used for
24 active recreation, passive recreation? Is it basically a visual
25 buffer? How would you characterize this land at present? Is it

1 well maintained?

2 COMMISSIONER PARSONS: Unaccustomed as I am to
3 testifying before this panel --

4 (Laughter.)

5 COMMISSIONER FRANKLIN: I thought I'd get a rise
6 out of you.

7 COMMISSIONER PARSONS: I understand the National
8 Park Service will be ably represented later to deal with that very
9 issue.

10 COMMISSIONER FRANKLIN: Okay, fine. Then I'll
11 reserve my questions for the representative of the Park Service.

12 Final question, the nature of the architecture in
13 this proposal, I had asked this question earlier and I frankly
14 didn't think I got a very informative response. The proposal here
15 is to have the townhomes raised up above grade with a porch and
16 steps on the ground that this is resident with the character of
17 similar housing in the neighborhood. If one were not to be
18 concerned about residence with that style housing in the
19 neighborhood, is it your opinion that these would have been
20 developed more or less at grade?

21 MS. MCCARTHY: Probably because there would not
22 have been as much emphasis on trying to fit in with housing in the
23 neighborhood. So it would probably be simpler to just do it at
24 grade.

25 COMMISSIONER FRANKLIN: There was another question

1 that I did want to ask and that had to do with the parking. If
2 this were to be developed under matter of right for four or five
3 single family homes, do you have an opinion as to what kind of
4 visitor parking impact there would be on street parking in the
5 vicinity?

6 MS. McCARTHY: That's right, you actually remind me
7 of a point that I had intended to make in terms of the comparison
8 to matter of right, that unlike the visitor spaces which are
9 permitted here, typically the house would have a driveway,
10 possibly a garage that would accommodate one to two cars, maybe
11 another car in the driveway, but no parking for visitors as well,
12 so there would be even more reliance on the on-street parking
13 along 40th Street and Fort Circle Drive.

14 COMMISSIONER FRANKLIN: No further questions.

15 CHAIRPERSON HOOD: Commissioner Holman?

16 COMMISSIONER HOLMAN: Just one or two questions. I
17 guess this is for Ms. McCarthy. So I guess when I was listening
18 to what you were indicating earlier, would it be unfair to say
19 that you were saying that the design is kind of exceptional in its
20 conformity to the neighborhood? Is that a fair characterization?

21 MS. McCARTHY: Right, and in particular --

22 COMMISSIONER HOLMAN: I don't mean to be humorous,
23 but I'm trying to --

24 MS. McCARTHY: Yes, particularly as townhouse
25 projects in the District, modern townhouse projects that we see at

1 the Office of Planning that have been proposed for other sites in
2 proximity to the Metro, I would say this one in particular is much
3 more tailored to the neighborhood than typically is the case.

4 COMMISSIONER HOLMAN: I also seem to recall that
5 when you were asked about the waiver of the minimum land area for
6 a PUD you were saying that this was -- that it had been done
7 before. But would you say this is very unusual, somewhat unusual
8 or I'm just trying to get an order of magnitude as to whether in
9 your recollection the Commission has made this waiver often or
10 this is really as unusual as I seem to be gathering from some of
11 the letters. In other words, are we setting a precedent here with
12 this particular case that differs widely from any that we've done
13 in the past?

14 MS. McCARTHY: I seem to recall there were at least
15 three cases that we looked at and while in some ways that seems
16 like it's not a very big number, most of the plan unit
17 developments that we see are in downtown commercial areas where
18 the zoning, the density is already at a level that's -- you may be
19 going from C-3 to C-4, but the size of the parcel is unlikely to
20 be a major element of that. The size requirements for parcel in
21 higher density zones is much smaller, so the issue of not making
22 the minimum size is less likely to be the case in most of the
23 places where you would typically see a planned unit development.
24 So it's -- it does not -- in terms of does this constitute a
25 really substantial precedent, I don't see that being a case. I

1 think the other cases show that that's -- this is an
2 interpretation of the zoning regulations which has been one made
3 by the Commission in the past that one goes by the prospective
4 zoning. That's why it's done as a one step process and so, I
5 don't see it as that exceptional.

6 COMMISSIONER HOLMAN: I guess that last question is
7 kind of related to that. Do you see a need for some mechanism to
8 give special treatment to sites of a smaller land area than one
9 acre that we might need to consider or is this just an anomaly?

10 MS. MCCARTHY: No, I think that that's a very good
11 question because one of the things that we've discussed internally
12 at the Office of Planning is the need, in light of smart growth,
13 in need of the demand for -- in light of the demand for housing in
14 the city and in light of particularly the interest in the city and
15 in developers and in Metro of seeing many of those vacant parcels
16 around Metro stations that are owned by Metro, developed and in
17 looking at some station areas where redevelopment is necessary
18 this case brings to light, first of all, that we ought to take
19 another look at the land uses in zoning there, in general, and we
20 are talking about making that a priority with our small area
21 planning, but secondly, looking at a smaller minimum lot size.
22 Maybe only in those instances where certain other conditions are
23 met like proximity to a Metro or like proximity to a major
24 commercial corridor or housing opportunity area, then I think that
25 would be a good balancing. We don't want to send a signal that

1 would encourage willy-nilly by shrinking the size of the minimum
2 area. We don't want to encourage that to happen every place, but
3 if we outline some criteria that made sense in places where we
4 wanted to see more selective upgrading of the areas and
5 particularly if we tried to get, if we were able to do more small
6 area plans in conjunction with that, I think it would make a lot
7 of sense.

8 COMMISSIONER HOLMAN: Okay, this is the last, last
9 question.

10 DIRECTOR ALTMAN: To just add to that I was going
11 to say even in the Ward 3 plan there is some emphasis on language
12 that there are, in fact, it's underutilized land within the ward
13 that could be beneficial for new housing opportunities if there
14 are undersized parcels. Obviously, that has to be done
15 sensitively and appropriately as pointed out in the ward plan, but
16 that these parcels do exist and I think in particular we're
17 looking at what is a housing opportunity area, what is proximity
18 to Metro, starts to give you the criteria that really truly makes
19 this exceptional and an anomaly, rather than the rule.

20 COMMISSIONER HOLMAN: Yeah, because that was the
21 point I was getting ready to make. Perhaps one of the problems
22 we're having with the exceptional merit criteria here may relate
23 to the size of the parcel and the lack of being able to put, for
24 lack of a better term, other bells and whistles on it because of
25 just the constraints of the site and all that, so maybe that's

1 something you want to look at.

2 That's all, Mr. Chairman.

3 CHAIRPERSON HOOD: Thank you. I just have a few
4 questions. First, how many community meetings did the Office of
5 Planning have with the community?

6 You don't have to be exact. I just want a number.

7 MS. STEINGASSER: I attended two ANC meetings in
8 the last two months. Chairman Bardin met in my office.

9 MS. MCCARTHY: I met with Tenleytown Neighbors in
10 the office I think twice before you came. I know Mr. Altman has
11 been to the Ward 3 ANC meetings in that area to talk about the
12 project.

13 CHAIRPERSON HOOD: Let me just ask, other than the
14 two or three letters that I saw in the packet, as far as each
15 meeting that you attended, was there a mixture of like some were
16 for, some against, the majority against? How did it -- what was
17 the unevenness of it? I guess my question is -- it's late, bear
18 with me, but the majority of people who attended those meetings
19 were in support or against?

20 MS. STEINGASSER: ANC 3-E which was one of the
21 three meetings I attended had a divide and I believe their vote
22 showed that and they provided a letter from the minority opinion
23 supporting the project and I believe that vote was 3 to 2.

24 CHAIRPERSON HOOD: Okay.

25 MS. STEINGASSER: ANC 3-F was a little more unified

1 in their opposition.

2 CHAIRPERSON HOOD: And that leads to my next
3 question, what did the community say -- why they were supportive
4 of four single family homes as opposed to the 13 townhomes?

5 What was the rationale?

6 MS. STEINGASSER: It was the by right development
7 of the property. I don't want to speak for them because they --

8 CHAIRPERSON HOOD: I will ask them too. I just
9 want to know what you got out of that meeting.

10 MS. STEINGASSER: What I got out of it was that
11 they felt the pressure of the slippery slope. They were concerned
12 about destabilization by a rezoning so close, that they were
13 concerned about a radical change in land use patterns.

14 CHAIRPERSON HOOD: Okay, the retention facilities,
15 I know that's new and up and coming and a lot of sites now that
16 are being built are required by law to place those retention of
17 facilities on them. Do we have any existing ones here in the
18 District of Columbia and if we do what has been the track record?

19 MS. STEINGASSER: It's our understanding that this
20 will be the first.

21 CHAIRPERSON HOOD: I would encourage you to look at
22 Woodridge Place. There's one going in over there. If you could
23 look at that and find out some information and if you could bring
24 it back to us and let us know how that's working. I believe that
25 is the first one.

1 MS. McCARTHY: Right, that's the first one in the
2 District. My understanding is that locally this approach has been
3 pioneered by Prince George's County and I believe they have
4 considerably more experience.

5 CHAIRPERSON HOOD: I do know that we were given a
6 handout. I haven't had an opportunity to read it, some of the
7 questions I asked last and I will, but that is an avenue that I
8 would like for us to see what's happening over there at Woodridge
9 Place.

10 My next question is environmental assessment and
11 into this thing about the EIS. Was there an assessment done? I
12 believe there needs to be an assessment before we get to the EIS.

13 MS. McCARTHY: No, actually, the way that the
14 process works now and it's one of the things that we would like to
15 change so there is more simultaneity of the process. Instead of
16 it being so sequential, is right now that process doesn't kick in
17 until a developer comes in and files a building permit. As part
18 of the building permit form itself is the application and if on
19 the -- on the building permit if they indicate the project is more
20 than \$1 million, then they're told they have to fill out this
21 screening form or this application form which lists some basic
22 questions and based on that, the screening process gets kicked in.

23 CHAIRPERSON HOOD: So the city has done away with
24 the environmental assessment?

25 MS. McCARTHY: That's right, this process takes the

1 place of what had been a much more rudimentary assessment form
2 that had about 10 boxes to check. This attempts to be a more
3 detailed review of environmental impact.

4 CHAIRPERSON HOOD: Okay. I guess that's all I have
5 at this time.

6 What I'd like to do now -- any further questions?

7 Thank you, Office of Planning. Now we're going to
8 do our cross examination. I'm going to ask if all parties could
9 come to the table.

10 Applicant, do you have anything you'd like to cross
11 examine Office of Planning?

12 MR. FEOLA: No sir.

13 CHAIRPERSON HOOD: Okay. Let me see if I can get
14 all the parties to the table, Ms. Gunning and Mr. Pavik. Mr.
15 Pavik, do you have questions for Office of Planning? O kay.

16 Let me do this, is there anyone who has a short
17 view of questions they would like to ask the Office of Planning?
18 Mr. DiBiase?

19 MR. DiBIASE: I promise mine are short.

20 (Laughter.)

21 CHAIRPERSON HOOD: I'm trying to weigh it out. I
22 know that Mr. Hitchcock and Mr. Bardin are probably going to be a
23 little extensive, so I was trying to -- if Mr. Bardin and Mr.
24 Hitchcock, if you don't mind, can we go with the brief first, and
25 then we can get started with you guys afterwards?

1 Ms. Gunning, I'm sorry, the ANC, Mr. DiBiase.

2 MR. DiBIASE: That's okay, Ms. Gunning can go.

3 CHAIRPERSON HOOD: He yields to Ms. Gunning. Thank
4 you.

5 MS. GUNNING: The first question, I believe the
6 woman on the far right, I don't know your name, I apologize.

7 MS. STEINGASSER: Jennifer Steingasser.

8 MS. GUNNING: Okay, I just want to clarify one
9 point. You said at the ANC meeting you intimated that the
10 community sentiment that was pro and con was reflected in the 3-2
11 vote of the ANC. And I was at the ANC meeting. Did you hear one
12 citizen speak in favor of the project?

13 MS. STEINGASSER: I believe at that ANC meeting
14 they were not taking testimony. It was a voting meeting.

15 MS. GUNNING: Okay, at any of the meetings with the
16 community, did you ever hear a person speak in favor of the
17 project?

18 MS. STEINGASSER: Yes. I heard Mr. McNamara and
19 Ms. Disken speaking.

20 MS. GUNNING: No, citizens who lived in the
21 Tenleytown neighborhood?

22 MR. DiBIASE: I'm sorry, I'm not a citizen?

23 MS. GUNNING: You don't live in the Tenleytown
24 neighborhood.

25 MR. DiBIASE: Right.

1 MS. GUNNING: You live in American University Park.

2 CHAIRPERSON HOOD: Excuse me, first of all, the
3 parties can only respond. Let's try to keep some order.

4 MS. GUNNING: Okay, my question was I understand
5 the ANC vote was 3 to 2, but you intimated that that reflected the
6 community and I was trying to find out how that 3 to 2 vote
7 reflected the community.

8 MS. STEINGASSER: I would presume to speak for
9 Commissioner Disken or Commissioner McNamara, but they represent
10 their ANC and they voted and what I reported to Mr. Hood was how
11 the vote that I witnessed.

12 MS. GUNNING: Okay, so it wasn't based on your
13 observation of the community's input?

14 MS. STEINGASSER: No, that was not --

15 MS. GUNNING: I just wanted to clarify. that was
16 the first question. My second question is do all of your figures
17 and the analysis that's contained in the Office of Planning
18 report, does that contemplate the Bregon property as part of this
19 project or are you excluding that?

20 MS. STEINGASSER: No, the Bregon property was
21 included as part of this project.

22 MS. GUNNING: Well, in light of the testimony
23 concerning the absence of the relationship between Holiday and
24 Bregon, does that have any impact on you at this point? For
25 example, there will be a single family dwelling remaining between

1 the proposed site and the U.S. Park Service land. Does that
2 change your analysis in any shape or form?

3 MS. STEINGASSER: No, it doesn't. The Bregons
4 listed themselves as an Applicant and as far as we know they have
5 not withdrawn themselves as an Applicant.

6 MS. GUNNING: So your analysis not affected at all
7 by the fact that that remains as a single family dwelling perhaps
8 in perpetuity?

9 MS. STEINGASSER: It would be considered part of
10 the planned unit development in its form until it became a
11 townhouse.

12 MS. GUNNING: Thank you.

13 CHAIRPERSON HOOD: Mr. DiBiase?

14 MR. DiBIASE: Thank you, Mr. Hood. Let me just
15 follow up Ms. Gunning's question. Did you attend -- Ms.
16 Steingasser, is that correct?

17 MS. STEINGASSER: Yes.

18 MR. DiBIASE: Did you attend the meeting at Wilson
19 High School?

20 MS. STEINGASSER: Yes, I did.

21 MR. DiBIASE: Did you hear any citizen at that
22 meeting, other than Mr. McNamara or Mr. Disken who are, of course,
23 citizens, did you hear any other citizens speak out in favor of
24 the project at that meeting?

25

1 MS. STEINGASSER: No, I did not.

2 MR. DiBIASE: I wanted to ask and I guess this may
3 be best directed to Ms. McCarthy, if I have that right. You had
4 stated at one point, I believe during your presentation, that this
5 parcel, this property here is unique in terms of its location near
6 a Metro and being nearer the intersection of these major streets
7 and you had also said at one point, let me just quote it
8 correctly, no, I can't find it, but you had said nowhere else in
9 the neighborhood was there another location like this. Do you
10 recall saying that? Is it fair to say though that you'd agree
11 with me that the property south of Albemarle is also unique in
12 that it is in your view arguably could be zoned for much higher
13 density in that absent a historic designation on that property it
14 could arguably be zoned R-1-B, correct? I'm sorry, R-5-B?

15 MS. MCCARTHY: That's correct.

16 MR. DiBIASE: And I don't know -- let me just
17 describe this parcel that I'm talking about. I want to just point
18 your attention to the parcel just west of Nebraska. It's sort of
19 surrounded by Altan Place, Nebraska and also 39th Street -- I'm
20 sorry, east of Nebraska between Altan Place and 39th Street. It's
21 a parcel that looks like it has four houses on it. It's basically
22 the next property due east of the one I just asked you about.
23 Thanks, Phil.

24 Do you see which one I'm referring -- maybe Mr.
25 Feola would be kind enough to just point out. I think he knows

1 which one I mean. Yes, exactly.

2 Do you agree with me that that is also in a bit of
3 a unique location. It has a church to the south of it. It has a
4 major road, the major road we've been talking about Nebraska on
5 one side of it has a street on the other side of it and that in
6 looking at it one could make the argument, do you agree, that that
7 is also somewhat isolated from the residential neighborhoods to
8 the east of it?

9 MS. McCARTHY: I believe what I said in terms of
10 what we considered made this site unique that it was a combination
11 of factors including it being between 400 and 500 feet from the
12 Metro which that site is not, that it was adjacent to a major
13 arterial which that site is, and that it was in a housing
14 opportunity area which that site is not.

15 MR. DiBIASE: But that site would be just outside
16 the housing opportunity area, correct?

17 MS. McCARTHY: Yes, it's on the other side of
18 Nebraska Avenue and I think we said we felt that the character of
19 the neighborhood on the other side of Nebraska Avenue was
20 substantially different and was outside of the housing opportunity
21 area was definitely further than 500 feet from the Metro.

22 MR. DiBIASE: Okay, but if the one south of
23 Albemarle is within 500 feet from the Metro would you agree with
24 me it is, the property --

25 MS. McCARTHY: The property on Grant Road?

1 MR. DiBIASE: Yes, Grant Road, Albemarle?

2 MS. McCARTHY: Yes.

3 MR. DiBIASE: Then the one that I'm referring to
4 now is probably only what, the width of Nebraska, another 550 feet
5 away then?

6 MS. McCARTHY: Actually, we have a map with the --

7 MR. DiBIASE: With the radius.

8 MS. McCARTHY: With the radius drawn.

9 MR. DiBIASE: I guess my point is it doesn't show
10 exactly how many feet is is from the Metro, but you would agree
11 it's probably within 600 feet of the Metro.

12 MS. McCARTHY: Well, that outer ring is 500 feet.
13 The inner ring is 400 feet.

14 MR. DiBIASE: Okay.

15 MS. McCARTHY: So it looks to me like it's more
16 than that.

17 MR. DiBIASE: More than 600 feet, you think, from
18 the metro?

19 MS. McCARTHY: I guess so. I think --

20 MR. DiBIASE: But you would agree with me though
21 that in terms of if you look at it on the map it does appear to be
22 somewhat isolated from the more closely packed dense housing north
23 of it along Nebraska Avenue and the more densely and closely
24 packed houses further east of it and further away from the Metro?

25 MS. McCARTHY: If we are getting to the slippery

1 slope issue, I think what I said was we saw the convergence of
2 those three factors as the important distinction on this site. I
3 don't see those three factors any place else. Do I see other
4 places in the neighborhood that have different characteristics
5 than some of the other housing and some of the other blocks on the
6 other side of Nebraska? Yes. Do I think that that in and of
7 itself would qualify it to be considered as a place for housing
8 opportunity when it's not designated as such on the comp. plan?
9 No.

10 MR. DiBIASE: I guess my question then is that is
11 the line that you all have driven -- that you all have drawn but
12 you don't disagree with me that someone else, especially once
13 those parcels are potentially developed as R-5-B, someone else
14 could certainly draw a different line and say well, I think this
15 parcel is close and could be built with greater density?

16 MS. McCARTHY: Except they also will be looking at
17 the land use map. They will have to come to the Office of
18 Planning.

19 One of the reasons that we were as clear as we were
20 in our report about how we considered this site to be one suitable
21 for higher density and how we did not consider that to be the case
22 across Nebraska was so that anybody who was contemplating looking
23 at that as a higher density would know that was not something the
24 Office of Planning was looking to entertain on any other site in
25 that general vicinity.

1 MR. DiBIASE: But what assurances do we have that
2 once you all have gone on, you talked at some point or someone did
3 about codification. Could you tell us what exactly you mean? In
4 other words, when you all are gone, not that I'm wishing for you
5 to leave, but at some point, of course, obviously you will have
6 moved on and 20 to 25 years down the road someone else is going to
7 look at that and the neighborhood may be different. What sort of
8 codification were you talking about?

9 MS. McCARTHY: I'm talking about the comprehensive
10 plan. The comprehensive plan has a generalized land use element,
11 Title 11 and the comprehensive plan will be up for amendment
12 within a year to two years and in that process I'm saying that the
13 Office of Planning will certainly consider at that point putting
14 in a specific amendment that addresses the land use in the
15 vicinity of the Tenleytown Metro that codifies, that makes clearer
16 what our recommendation is.

17 Now the comprehensive plan is a process that's done
18 through participation with the citizens and in the end it has to
19 be adopted by the City Council, so we may make that
20 recommendation. It will then have to go through a number of
21 reviews, public hearings. I can't say for sure what will come out
22 on the other side. But that -- I'm saying that's going to be one
23 of our recommendations.

24 We have heard the concerns of the people about this
25 site. We, in our very best professional judgment and I mean

1 really our very best professional judgment, I mean hours, looking
2 at this, assessing it, trying to understand why this has generated
3 such deep community concern. Our major conclusion from that is
4 the fear that many people expressed about the fact that they could
5 find themselves suddenly with a house torn next door and looking
6 at a townhouse development.

7 MR. DiBIASE: I don't disagree with you.

8 MS. McCARTHY: And so that's why --

9 CHAIRPERSON HOOD: Mr. DiBiase, could you let Ms.
10 McCarthy finish and then ask her the next question once she
11 finishes?

12 MR. DiBIASE: Sure.

13 MS. McCARTHY: We don't take those fears or
14 concerns lightly at all. That is why we have tried to be as clear
15 as we were in our report. That's why we've offered to do the
16 comprehensive plan amendment. We take very seriously the need to
17 protect stable neighborhoods.

18 I've worked on overlays to protect Dupont Circle,
19 tree and slope overlay on Chain Bridge Road and that's why we've
20 offered to assist on the historic district on Grant Road on both
21 sides of Nebraska Avenue. But I'm saying in our best professional
22 judgment, we did not see that this site was a problem -- that
23 there was an adverse impact from development on this particular
24 site and that's what we're trying to address.

25 MR. DiBIASE: But you can offer no guarantees, of

1 course, that the line that you have professionally decided is
2 where any developmental changes might stop or where development
3 can be done, that that's going to be a permanent line, correct?
4 You've said you can't guarantee that. It's -- the comprehensive
5 plan --

6 MS. McCARTHY: Nobody can guarantee the future. I
7 can't guarantee what changes will be made to the comprehensive
8 plan, but there is a requirement that zoning not be inconsistent
9 with the comprehensive plan.

10 MR. DiBIASE: All right, now someone, I don't
11 remember who was speaking at that point was talking about this
12 area as being a transition location and I wasn't sure if they were
13 referring to -- it's a transition area now or it's going to become
14 a transition area because of the increased development on
15 Wisconsin Avenue. I didn't understand exactly what that argument
16 was. Is it a transition area now or is it going to become one
17 because of increased development on Wisconsin Avenue?

18 MS. McCARTHY: I think both our initial report and
19 this one identified this as a transition area between what we felt
20 was already a commercial -- here's the land use map and there is
21 this area which is commercial and mixed use and institutional and
22 then there are the bright yellow areas which are low density
23 residential. And we felt that this area, erroneously identified
24 as public facility on the map, but that still that area
25 represented a transition between those uses and then we said in

1 terms of the future we anticipated an increasing densification --
2 if that's a word -- of the Wisconsin Avenue corridor around Tenley
3 and where this would serve as a buffer between the commercial
4 development along Wisconsin Avenue and the residential -- lower
5 density residential development.

6 DIRECTOR ALTMAN: And again, that was meant to --
7 just goes to your previous question which was to define as
8 precisely as we could what makes this site truly unique and by
9 saying that Nebraska Avenue, in fact, becomes a significant line
10 of demarcation, by defining the distinction between the character
11 of the neighborhood on one side of Nebraska and the other and
12 saying that this is truly unique and that's what I think was
13 intended by transitional because when you look at development what
14 you're trying to do is step down the density, greater density
15 along corridors such as Wisconsin or Connecticut and then less
16 dense as you move to the single family neighborhood which is why
17 we were so frankly, when the project came to us we didn't simply
18 accept it and say this is the number of units, this is how it
19 should be, but actually insisted on further reductions in the
20 number of units because we felt that greater transition, greater
21 buffering was needed to be more consistent with the neighborhood
22 character. Hence, the idea of the transition from Wisconsin to
23 Nebraska.

24 MR. DiBIASE: And it's the Office of Planning's
25 expectation that densities on Wisconsin Avenue will increase, I

1 guess that was the part I didn't quite understand.

2 MS. MCCARTHY: Right, it's part of the special
3 treatment area. It's got a C-3-A.

4 MR. DiBIASE: That's fine. I just want a yes or
5 no. I understood.

6 Ms. Steingasser, I guess said that people who own
7 townhomes are more likely to use Metro and I wanted to know the
8 basis of that. I guess it sort of follows up Commissioner
9 Parsons' point about what is the rationale behind that?

10 MS. STEINGASSER: I believe the source is cited in
11 the staff report. If you wait just a moment I will find that
12 again for you.

13 (Pause.)

14 I believe it was the Council of Governments study
15 and possibly a WMATA. Yes, a WMATA study. That's going to be
16 updated next year and the Council of Governments study from 1995.

17 MR. DiBIASE: And that's in your report?

18 MS. STEINGASSER: Yes, it is, page 11.

19 MR. DiBIASE: I want to go back to environmental
20 impact study because I'm not an environmental lawyer so I don't
21 know, but is it your understanding and by that I mean the Office
22 of Planning that if a project is over \$1 million in value that
23 that does not necessarily mean under the 1989 DCEPA Act that an
24 environmental impact study is required? What's the triggering
25 point and I don't want to talk about what's practically done. I

1 know what's practically done is often very different than what the
2 law says and I'm not -- I just want to know as to your line
3 reading of that law what that means.

4 MS. McCARTHY: There's a -- I think what I already
5 explained is that it's -- the screening form asks about impacts in
6 a number of areas and there are various categories of impact, low
7 to moderate, medium density, serious or medium and serious, I
8 believe. I can't picture it right in front of me right now. And
9 then there's a separate column that asks whether that impact is
10 mitigated or can be mitigated or is mitigated by the present
11 project.

12 MR. DiBIASE: I guess that's something that's in
13 the 1989 EPA law, DCEPA law? I guess that's my confusion.

14 MS. McCARTHY: Yes. One of the reasons that so
15 little was done for a long time is because the regulations
16 implementing that law had not been written.

17 MR. DiBIASE: Right.

18 MS. McCARTHY: Finally, those regulations have
19 been written and so the screening form has been developed and the
20 specific questions and the phrasing of the questions on the
21 screening form is taken from the regulations themselves which are
22 then, in turn, based on the act.

23 MR. DiBIASE: My last question is I believe Ms.
24 McCarthy at one point you talked about precedent. Are you aware
25 of any case that is directly on point, that is moving from R-1-B

1 to R-5-B and then a waiver of the PUD lab requirements?

2 MS. McCARTHY: You know, as I said, the cases that
3 I reviewed when that point was first raised by Tenley Neighbors
4 were back int eh spring and I don't -- I'm sorry, I just don't
5 remember the details about what the specific zone it went from and
6 to or --

7 MR. DiBIASE: Were those the cases that were
8 submitted by Mr. Feola or are you thinking of different cases?

9 MS. McCARTHY: I know that at least one or two were
10 the same, but I'll just have to go back to our files and see.

11 MR. DiBIASE: Okay, thank you.

12 CHAIRPERSON HOOD: Thank you, Mr. DiBiase.
13 Colleagues, I know we asked, should we stop at 10:30? Stop at
14 10:30, so we can finish at 10:45.

15 But I do want to ask, with all due respect, Mr.
16 Bardin and Mr. Hitchcock, do either one of you think you could
17 finish your cross examine of Office of Planning in maybe about 10
18 minutes?

19 MR. HITCHCOCK: Yes, Mr. DiBiase asked a number of
20 questions that I was going to cover about uniqueness of the site
21 and precedence, so I can try to deal with those that were not
22 addressed.

23 CHAIRPERSON HOOD: Mr. Bardin?

24 MR. BARDIN: I could not do it in 10 minutes, but I
25 could --

1 (Laughter.)

2 -- but I have no objection to Mr. Hitchcock going
3 first and if there's a minute to ask a question at the end I will
4 and if not.

5 There's one question I'd just like to leave
6 hanging, if I might and that is can I have a chance to meet with
7 Ms. McCarthy and Mr. Altman as I have with Ms. Steingasser because
8 your next hearing in their office to discuss this case, not here,
9 but there? They'll answer me later on, but I think it might be
10 helpful.

11 CHAIRPERSON HOOD: Okay, good. I want to thank
12 you, Mr. Bardin, I want to thank you for letting, yielding to
13 everyone else and letting them go forward because I figured you
14 may be a little longer, so I was trying to find a nice way to do
15 it.

16 So Mr. Hitchcock, if you can start. Mr. Bardin,
17 you're going to ask your one question.

18 MR. HITCHCOCK: He did.

19 CHAIRPERSON HOOD: Did he get a response?
20 He got a response, okay.

21 MR. HITCHCOCK: Mr. Chairman, if I may make a
22 proffer at the outset, there was questioning I think from
23 Commissioner Mitten about the housing opportunity area and the
24 alleged miszoning of the area. To save time in our case we will
25 present expert testimony that this is not inappropriately zoned or

1 incorrectly zoned so I just want to leave on the record our
2 position at this point, that by not asking questions or getting
3 into that in depth, we do not accept that characterization by OP
4 that Nebraska Avenue is the boundary line and 40th Street is.

5 I would like to ask, to go in the order that it
6 came, Ms. Steingasser, you talked about this project will add to
7 the housing stock, diversify local housing stock and create
8 housing alternatives. Couldn't that be said from one residential
9 zone to another?

10 I mean wouldn't that be true if this went to R-3?

11 MS. STEINGASSER: If indeed that's what they were
12 doing, yes.

13 MR. HITCHCOCK: So essentially the arguments that
14 you're making here for as part of the amenities could be applied
15 in other situations?

16 MS. STEINGASSER: If they were doing a similar
17 project in a similar manner?

18 MR. HITCHCOCK: Uh-huh.

19 MS. STEINGASSER: I would probably draw a similar
20 conclusion.

21 DIRECTOR ALTMAN: May I just clarify one point?

22 MR. HITCHCOCK: I've got limited time and I'd just
23 like to ask the questions.

24 I'd like to ask Ms. McCarthy, you did refer to Mr.
25 Oberlander's testimony about wherein he talks about 40th Street,

1 Fort Drive and Park Services providing a boundary. I take it OP
2 disagrees with that when it says Nebraska Avenue is the boundary,
3 is that correct?

4 MS. McCARTHY: The boundary of?

5 MR. HITCHCOCK: Where the appropriate buffer is
6 between the Wisconsin Avenue corridor and the residential areas in
7 which this property is located?

8 MS. McCARTHY: I believe that was my statement
9 regarding the special treatment area of the Metro station and the
10 housing opportunity area, yes.

11 MR. HITCHCOCK: And this property is not in the
12 treatment area, of course?

13 MS. McCARTHY: The Tenleytown Special Treatment
14 Metro Area is geographically defined very specifically in the
15 code.

16 MR. HITCHCOCK: But 40th Street is the boundary for
17 special treatment, okay.

18 A couple of questions to Ms. McCarthy. You
19 mentioned the 500 foot radius. What was the basis upon which 500
20 feet was selected?

21 MS. McCARTHY: Partly as we defined where we would
22 entertain higher density housing and where we would not. We
23 wanted to be sure to set that boundary where it would not include
24 any additional residential property. If we were going to send a
25 signal to the development community we wanted to be sure we sent a

1 signal that was unambiguous and did not include any other housing
2 other than the houses on Grant Street that back up to this
3 property.

4 MR. HITCHCOCK: So you started in an area where you
5 wanted to confine it and then chose a number that was consistent
6 with the boundaries?

7 MS. McCARTHY: No, we looked at the Tenleytown
8 Metro area and we looked at what we thought was really -- the
9 library, Sears, Payless Shoes, St. Anne's, those were all so
10 different in character from single family residential that that's
11 what we looked at first. And when we said gee, can we find a way
12 to make a real clear signal so that we don't have the slippery
13 slope problem, so that we can allay the fears of the neighbors we
14 said well, let's see, the area that we're talking about that we
15 think is so clear, how can we demarcate that and it just happened
16 that the area that we thought was so different in character was
17 400 to 500 feet from the Metro.

18 MR. HITCHCOCK: You're familiar that in the current
19 literature and commentary on smart growth development that areas
20 near subway stops are referred to as targets for bull's eye
21 development?

22 MS. McCARTHY: I'm --

23 MR. HITCHCOCK: Are you familiar with that phrase?

24 MS. McCARTHY: I'm not familiar with that phrase.

25 MR. HITCHCOCK: Okay, assuming that that was a

1 characterization would that assist your understanding of why
2 people who live so close are concerned about so-called bull's eye
3 development?

4 MS. McCARTHY: No.

5 MR. HITCHCOCK: I'll withdraw the question. The
6 arguments you're making about increasing intensification of
7 commercial uses on Wisconsin Avenue and so forth, even though you
8 have drawn a line that you're comfortable with, isn't it likely
9 that the hydraulic pressure for development and for more dense
10 uses in the city would prompt others in future cases to look at
11 areas like on the western side of Wisconsin as well?

12 MS. McCARTHY: At the library?

13 MR. HITCHCOCK: With the 500 foot limit.

14 MS. McCARTHY: It's Janney's School, it's
15 Sears/Home Depot or whatever it becomes.

16 MR. HITCHCOCK: But the slippery slope --

17 MS. McCARTHY: Sears is a designated historic
18 landmark. The library is an important municipal facility. Janney
19 is a very successful public school. I don't see the likelihood of
20 any of those institutions going away. And St. Anne's has the
21 protection of the Catholic Church so I don't think that's likely
22 to be going away.

23 MR. HITCHCOCK: If someone accepts your premise
24 that 500 feet is the appropriate marker, correct?

25 MS. McCARTHY: I'm sorry.

1 MR. HITCHCOCK: If someone accepts your premise
2 that 500 feet is the appropriate radius, correct?

3 MS. McCARTHY: Right.

4 MR. HITCHCOCK: And somebody didn't accept that
5 presumption then all bets are off, correct? If a future of Office
6 of Planning --

7 MS. McCARTHY: You mean if someone else in the face
8 of clear guidance from the Office of Planning saying we would only
9 look favorably upon higher density within that area were still to
10 go ahead and look?

11 MR. HITCHCOCK: No, that's not what I'm saying.
12 What I'm saying is that if the comprehensive plan were to be
13 changed or policy recommendations were to differ. You've adroitly
14 gerrymandered this boundary some 500 feet, hits Nebraska Avenue,
15 but that's not the only limit, is it?

16 MS. McCARTHY: But I'm telling you we didn't
17 gerrymander it. We looked at the character of those blocks and we
18 said that it was primarily institutional and commercial. There
19 was only two little narrow strips of housing within that area, so
20 it's a very natural boundary. It's not a gerrymandering at all.

21 And again, we looked at the land use, the
22 generalized land use element.

23 MR. HITCHCOCK: Let me move on to the amenities in
24 the remaining time. Page 10 of your prepared statement, one of
25 the factors you talk about is the restoration of the creek and the

1 fact that the Applicant will and I'm quoting now, "clean the creek
2 of inappropriate organic material, debris and trash." Is it OP's
3 testimony if they pick up the trash that makes exceptional merit?

4 MS. McCARTHY: On property that's not theirs?

5 MR. HITCHCOCK: Is it -- you're assuming
6 -- well, what do you mean -- I'm not sure I understand. They own
7 the property. They're the Applicant.

8 MS. McCARTHY: Right, but --

9 MR. HITCHCOCK: Wouldn't they likely clean it up?

10 MS. McCARTHY: They don't own the banks of that
11 creek.

12 MR. HITCHCOCK: But they've got the capability of
13 cleaning it up as it is. And they could offer to do so as a
14 matter of right, couldn't they?

15 MS. McCARTHY: I mean the Boy Scouts could offer to
16 clean it up as a matter of right. Anybody could offer to clean it
17 up as a matter of right, but a one time clean up is very different
18 than a condominium association that has a budget for property
19 management that will continue to remove debris and material there.

20 MR. HITCHCOCK: And you don't think that would
21 likely happen if this were developed matter of right?

22 MS. McCARTHY: No. Have you been down to that
23 creek? It was developed matter of right. There were houses
24 there. I have been down to that creek. We are not talking
25 pristine. Despite the fact that supposedly there have been clean

1 ups there. The last time I was there there was a shopping cart
2 when I first went. So no, I don't think that that's something
3 that happens as a matter of course.

4 MR. HITCHCOCK: Okay, I understand your position.
5 With respect -- on page one of the testimony, you endorse the use
6 of a covenant to protect accessory apartments on this property,
7 correct? And a covenant could be renegotiated and could be
8 amended if somebody comes back before the Commission and asks for
9 it, couldn't it?

10 MS. MCCARTHY: A covenant that is part of the
11 planned unit development conditions?

12 MR. HITCHCOCK: Yes. Conditions can be amended,
13 can't they?

14 MS. MCCARTHY: If somebody came back to the Zoning
15 Commission, yes.

16 MR. HITCHCOCK: So this is one other protection
17 that might change over time?

18 MS. MCCARTHY: It could. There would be a public
19 hearing and there would be opportunity for public input into that
20 and if -- but it's going to run with the land --

21 MR. HITCHCOCK: Where does it say in your report
22 it's going to run with the land?

23 MS. MCCARTHY: As any PUD covenant would. It's
24 runs with the land.

25 MR. HITCHCOCK: Can you give an example?

1 MS. McCARTHY: They're filed with the recorder of
2 deeds. They're part of --

3 MR. HITCHCOCK: Okay.

4 MS. McCARTHY: Okay.

5 MR. HITCHCOCK: Thank you.

6 CHAIRPERSON HOOD: Thank you, Mr. Hitchcock.

7 Mr. Bardin, if we could at the next November 27th,
8 if we could start with you, we'll come back and have your cross
9 examination of Office of Planning.

10 MR. BARDIN: If I may just ask two questions, it
11 may save us time.

12 CHAIRPERSON HOOD: You say it may save us time?
13 Turn your mike on, please.

14 MR. BARDIN: Well, I think so. Ms. McCarthy, you
15 testified that the Department of Health is supporting this
16 application. You have attached to Director Altman's report a
17 letter from Mr. Carrie of the Department of Health dated October
18 4th. As I will explain in my testimony I don't think that's a
19 letter of support, but be that as it may, do you have a subsequent
20 letter from Mr. Carrie Carrie?

21 MS. STEINGASSER: I have a subsequent letter that
22 was addressed to me where he voiced his desire that the Applicant
23 treat the property with sensitivity.

24 MR. BARDIN: Are you planning to share that
25 subsequent report with the Zoning Commission and the parties?

1 MS. STEINGASSER: Yes.

2 MR. BARDIN: May I request be done by mail before
3 the next hearing?

4 MS. STEINGASSER: Sure.

5 MR. BARDIN: There are tree issues with regard to
6 this property. There are three kinds of tree issues. One, the
7 white oak that we're all aware of. Two, the 18 to 20 mature trees
8 on the private property that were cut down by Holiday Corporation.
9 And three, the city-owned street trees along Albemarle and
10 Wisconsin, I'm sorry, Albemarle and Nebraska.

11 Has the Office of Planning in preparing its report
12 dated October 11 consulted with the trees and landscape division
13 of the Department of Public Works with regard to any or all of
14 these tree issues?

15 MS. STEINGASSER: Yes. I believe I talked to them
16 a day or two after you met with them and at that point they
17 informed me that their natural pattern of review was during the
18 building permit process.

19 MR. BARDIN: I met with them, Ms. Steingasser,
20 after your report had come out.

21 MS. STEINGASSER: Right.

22 MR. BARDIN: So my question was did you talk with
23 them before preparing this final report for the Zoning Commission?

24 MS. STEINGASSER: No sir. And as I explained --
25 when I talked to them after you had informed me of them, they said

1 their natural process for review was during building permit
2 review.

3 MR. BARDIN: I received a letter this morning or
4 afternoon, today, from the Trees Division, Mr. Chairman and I will
5 share it with the Commission, if I may. I'll serve it on the
6 parties and supply the Office of Planning in that case.

7 And finally, Chairman Hood asked a question about
8 citizen input which I thought perhaps you misunderstood Ms.
9 Steingasser, but in any event, when you attended that meeting at
10 Woodrow Wilson High School which was a joint public participation
11 meeting of the two ANCs, there were about 70 people in that
12 auditorium, weren't there?

13 MS. STEINGASSER: I'll go on your word.

14 MR. BARDIN: A large number of those people spoke,
15 did they not? A large percentage of them?

16 MS. STEINGASSER: Yes, yes.

17 MR. BARDIN: Several dozen?

18 MS. STEINGASSER: I believe I answered the question
19 that no one spoke in favor at that meeting.

20 MR. BARDIN: So almost everybody there spoke
21 against it?

22 MS. STEINGASSER: Right.

23 MR. BARDIN: Thank you.

24 MS. STEINGASSER: I believe I was asked if -- what
25 my interpretation of the concerns were.

1 MR. BARDIN: I understand and I'm not trying to put
2 words in your mouth. I just want to make sure that the Chairman
3 had an answer to his question. I think we're all on the same
4 page.

5 MR. FEOLA: I'm going to object. The Chairman can
6 ask the question, if he didn't understand the answer, he can ask
7 it again. You don't have to help the Chairman ask his questions.

8 MR. BARDIN: And you don't have to help me, Mr.
9 Feola, ask my questions either.

10 MR. FEOLA: You can cross examine --

11 CHAIRPERSON HOOD: Let me just say this, hold on,
12 everyone is out of order. Everyone is out of order.

13 MR. BARDIN: Yes sir, thank you.

14 CHAIRPERSON HOOD: It's getting late. Let me just
15 ask a question, Mr. Bardin. Have you finished your cross
16 examination of Office of Planning?

17 MR. BARDIN: I have not, but I'm going to take --

18 CHAIRPERSON HOOD: I just wanted to ask that
19 question so I know where we're going to start on November 27th.

20 SECRETARY BASTIDA: That's correct, Mr. Chairman,
21 at 7 o'clock.

22 CHAIRPERSON HOOD: Let me just ask also, I hope
23 we're going to be getting to the witnesses. We do have a sign in
24 sheet of witnesses. Do we still have that?

25 SECRETARY BASTIDA: Yes, Mr. Chairman.

1 CHAIRPERSON HOOD: Can we provide that in the order
2 that we have it and make a list to put back at the table so people
3 coming in can kind of get a feel of where they're going to be?

4 SECRETARY BASTIDA: We'll type it and put it on the
5 table with the witness cards.

6 CHAIRPERSON HOOD: Colleagues, any other comments?

7 Okay, if everything is in order --

8 VICE CHAIRPERSON MITTEN: There were a few things
9 that people had agreed to provide that hopefully they will provide
10 by the next --

11 CHAIRPERSON HOOD: Commissioner Mitten, so we can
12 make sure we have our 10:45 deadline, if you could just go over
13 those so we're all on the same page and Mr. Bardin, I will
14 entertain your question after that.

15 VICE CHAIRPERSON MITTEN: Okay, the Applicant is
16 going to submit a proposed tree protection plan that Mr. Milles
17 was starting to enumerate. The Applicant is going to provide the
18 1989 WMATA report on ridership that was prepared by JHK and
19 Associates. The Office of Planning is going to provide some
20 information about the other projects where the area waivers were
21 granted and the exceptional merit standard was achieved and Ms.
22 Steingasser is going to provide the subsequent letter to what we
23 have in the record already from Mr. Carrie from the Department of
24 Health.

25 MS. STEINGASSER: Yes, and I would apologize for

1 that. I was unaware that the Commission did not get a copy.

2 SECRETARY BASTIDA: Mr. Chairman, there was a
3 further request from the Office of Planning requesting the
4 comparison of other PUDs to the area requirements and the waiver
5 that the Commission has done on the other three cases.

6 VICE CHAIRPERSON MITTEN: I think I said that.

7 SECRETARY BASTIDA: You did? I apologize.

8 VICE CHAIRPERSON MITTEN: But I think there was
9 also -- Mr. Parsons asked for us to look at what could be built as
10 a matter of right on the Bregons' property and how that compared
11 in terms of its impact on the park and Mr. Hood asked us to look
12 at Woodridge Place, the bioretention pond.

13 SECRETARY BASTIDA: I had forgotten. Mr. Chairman,
14 you would like that to be submitted by a time certain?

15 CHAIRPERSON HOOD: If we can have it -- it would be
16 nice to have it before the meeting on the 27th, but if not, I
17 guess we can do like we've been doing thus far, is dealing with it
18 here at the meeting.

19 Is that okay colleagues? We would rather -- let me
20 just say this. Our intent, we would rather have it before, but so
21 far it hasn't worked out that way, so we will deal with it the day
22 of the meeting if no one can get it. Hopefully, we can get it
23 sooner than later.

24 VICE CHAIRPERSON MITTEN: And could I ask one
25 additional thing? I know we've been given some samples or

1 whatever you call it of the materials. Is there any accompanying
2 drawing that is labeled with the materials because the drawings
3 that we have don't have that.

4 MR. FEOLA: I'll take a photograph of the sample
5 boards that I brought tonight.

6 VICE CHAIRPERSON MITTEN: I don't think you
7 understood what I just said.

8 MR. FEOLA: We can produce that as well.

9 VICE CHAIRPERSON MITTEN: Great, thanks.

10 CHAIRPERSON HOOD: Okay, last, but not least, Mr.
11 Bardin. We have one minute.

12 MR. BARDIN: Would it be improper for me to give
13 the staff 10 copies of the Trees Division letter now and let that
14 be distributed and I'll give it to the parties?

15 And am I allowed to file with the Commission the
16 questions which are concerning me. I was told I'm not supposed to
17 file anything with you. Maybe I'm mistaken about that and share
18 it with the parties?

19 CHAIRPERSON HOOD: Who said that? I don't think --
20 okay. I think that can be done -- into the record. I don't know
21 where that came from, but that can be done. You can file it --

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

23 CHAIRPERSON HOOD: Okay. With that we'll recess
24 until November 27th at 7 p.m.

25 Thank you.

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(Whereupon, at 10:48 p.m., the public hearing was recessed to reconvene Monday, November 27, 2000 at 7:00 p.m.)