

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

IN THE MATTER OF :
 :
FRIENDSHIP-MACOMB SC Inc.: Case No. 08-15
 :

Monday,
May 4, 2009

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

The public hearing in the above-entitled matter was convened, pursuant to notice, at 6:30 p.m.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
GREGORY JEFFRIES, Vice Chairman
WILLIAM WARREN KEATING, Commissioner
PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

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OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS
JOEL LAWSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

The transcript constitutes the minutes from
the Public Hearing held on May 4, 2009.

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1 of the April 23rd, 2009 hearing.

2 Notice of the day's hearing was
3 published in D.C. Register on January 2nd,
4 2009, and copies of that announcement are
5 available to my left on the wall near the
6 door.

7 The hearing will be conducted in
8 accordance with provision of 11 DCMR 3022 as
9 follows: preliminary matters; parties in
10 opposition; organizations and persons in
11 opposition; rebuttal and closing by the
12 Applicant.

13 The following time constraints
14 will be maintained in this meeting. Parties
15 in opposition, we will be starting with
16 Cleveland Park Citizens Association, who will
17 have 13 minutes. Ordway Street Neighbors
18 Association, seven minutes; and WNNC, 16
19 minutes. Organizations five minutes;
20 individuals three minutes.

21 The Commission intends to adhere
22 to the time limits as strictly as possible in

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1 order to hear the case in a reasonable period
2 of time. All persons appearing before the
3 Commission are to fill out two witness cards.

4 Those cards are located to my left on the
5 table near the door.

6 Upon coming forward, we ask that
7 you turn your microphone on, speak into the
8 microphone, identify yourself, your name and
9 your address. Upon completion of your
10 testimony, please turn your microphone off so
11 as not to pick up background noise.

12 The decision of the Commission in
13 this case must be based exclusively on the
14 public record. To avoid any appearance to
15 the contrary, the Commission requests that
16 persons present not engage the members of the
17 Commission in conversation during any recess
18 or at any time.

19 Please turn off all beepers and
20 cell phones at this time so as not to disrupt
21 these proceedings.

22 Ms. Schellin, I'm not sure if we

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1 need to take -- everyone should have been
2 sworn in, but anyway, let's just do this
3 again.

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

6 Ms. Schellin, would you please
7 administer the oath?

8 MS. SCHELLIN: Please raise your
9 right hand.

10 (Whereupon, the witnesses were
11 duly sworn.)

12 CHAIRMAN HOOD: Okay. At this
13 time the Commission will take up any
14 preliminary matters. Does the staff have any
15 preliminary matters?

16 MS. SCHELLIN: No, sir. Staff
17 does not have any.

18 CHAIRMAN HOOD: Okay. I'm going
19 to ask Mr. Espenschied if you would come up
20 and begin your presentation, and Mr.
21 Espenschied has 13 minutes, or his party.

22 MR. ESPENSCHIED: Can we check the

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1 sound levels before we get started? I know
2 the clock will keep running and I don't want
3 to waste any time.

4 CHAIRMAN HOOD: Okay. Let me
5 check with Commissioner Keating and May. I
6 think you're fine.

7 MR. ESPENSCHIED: Am I okay?

8 COMMISSIONER MAY: Just back off,
9 back the microphone off a little bit. That's
10 fine. Did you turn it off?

11 CHAIRMAN HOOD: Mr. Espenschied,
12 yours is not on. Mr. Idelson, I think you're
13 okay.

14 COMMISSIONER MAY: Okay. That's
15 good.

16 CHAIRMAN HOOD: And, Mr. McGrath,
17 I think -- okay.

18 MR. ESPENSCHIED: Is Mr. Jeffries
19 going to be here? that's what I have to
20 worry about.

21 CHAIRMAN HOOD: Well, we're going
22 to punish him for being a little bit later.

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1 CHAIRMAN HOOD: We're going to
2 give it to him. I want you to speak right
3 into that mic. He won't know I said that,
4 but I'm sure he's going to read the record.

5 Are we all ready? You may begin.

6 MR. IDELSON: I'm George Idelson,
7 president of the Cleveland Park Citizens
8 Association.

9 Contrary to misrepresentation
10 spread about our position, we ardently
11 support an improved Giant. When Giant
12 abandoned plans to build a new store as
13 agreed in 2002, we did more than any other
14 group to bring them back into the game.

15 MS. SCHELLIN: I'm sorry. I
16 stopped the clock. I believe Mr. McGrath is
17 being proffered as an expert, if I'm not
18 mistaken; is that correct? So you guys do
19 need to take that up.

20 COMMISSIONER MAY: Is that
21 preliminary?

22 CHAIRMAN HOOD: Yeah, that is a

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1 preliminary matter. If anyone has it handy,
2 I just don't feel like going through all of
3 this.

4 What is he being proffered as?
5 Mr. McGrath, you could help me.

6 MR. McGRATH: I'm being proffered
7 as an expert on planning and zoning in the
8 District of Columbia, sir.

9 CHAIRMAN HOOD: Mr. Fiola, do you
10 have a problem with that?

11 MR. FIOLA: No, sir.

12 MS. SCHELLIN: And if I recall, he
13 has testified before us before as an expert;
14 is that correct, Mr. McGrath?

15 MR. McGRATH: Yes, ma'am, that's
16 correct.

17 CHAIRMAN HOOD: Okay. No problem.
18 We will accept Mr. McGrath as an expert.

19 MR. IDELSON: May I start over?

20 CHAIRMAN HOOD: Yes, you may, and
21 why don't we just go back to 13?

22 MR. IDELSON: Okay. I'm George

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1 Idelson, president of the Cleveland Park
2 Citizens Association. Contrary to
3 misrepresentations spread about our position,
4 we ardently support an improved Giant.

5 When Giant abandoned plans to
6 build a new store as agreed in 2002, we did
7 more than any other group to bring them back
8 into the game, but we have some serious
9 concerns with this proposal and believe it
10 appropriate under Commission rules to present
11 them, albeit reluctantly, as opponents.

12 One, the site of the PUD is
13 defined by the comprehensive plan to be low
14 density commercial. The future land use map
15 says so. That's the law. You can't just
16 ignore it.

17 Two, according to a 2002
18 contractual agreement signed by Giant, CPCA,
19 and OP, the parties should enter into
20 meaningful discussions to resolve differences
21 on any new development, and OP should be
22 brokering those meetings. That's a find in

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1 legal agreement. It can't just be ignored.

2 CPCA has been an advocate of the
3 overlay to insure a balanced mix of
4 neighborhood serving stores. The comp plan
5 says we should have more such overlays. We
6 maintain that an improved new Giant can be
7 achieved without killing the overlay.

8 As president my responsibility is
9 to help preserve the character of our
10 neighborhood. Here's what the comp plan
11 says. Many district neighborhoods possess
12 qualities that make them unique and desirable
13 places to live. These qualities can lead to
14 redevelopment pressures that threaten the
15 very qualities that make the neighborhood
16 attractive. These pressures must be
17 controlled to insure that neighborhood
18 character is preserved.

19 That's our concern, and that's
20 what the plan says. You can't just ignore
21 it.

22 The OP report says the PUD area is

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1 an under utilized neighborhood center along a
2 major mixed use corridor. These
3 generalizations are misleading if not
4 outright false. Yes, Giant's part of the
5 south block is under utilized, but only
6 because Giant has kept all of their south
7 block retail space vacant and allowed their
8 store to deteriorate.

9 Meanwhile the north block is fully
10 utilized and neighborhood serving. Judged by
11 very low store turnover, it is prosperous.

12 Further, describing Wisconsin
13 Avenue as a major mixed use corridor surely
14 does not apply to the C-1 low density
15 designation of the PUD site. Perhaps OP
16 confused our Friendship shopping center with
17 Friendship Heights, which is, indeed, mixed
18 use.

19 The low density designation is not
20 a mistake or an artifact of a bygone era.
21 Nearby taller residential buildings are
22 consistent with their defined zoning. The

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1 comp plan especially commends Connecticut
2 Avenue an exemplar of such lower profile,
3 commercial next to highrise apartment
4 buildings.

5 Averaging out the zoning may be
6 superficially appealing, but defeats an
7 important goal of the comp plan. Yes, we
8 have concerns about the PUD as proposed, but
9 we are open to finding common ground and
10 deeply regret that our continued efforts to
11 do so right up to the Commission's February
12 19th hearing were rebuffed by Giant.

13 MR. ESPENSCHIED: I am Peter
14 Espenschied, Vice President of the Cleveland
15 Park Citizens Association.

16 This PUD with support from OP
17 treats the comprehensive plan with contempt.

18 The plan's future land use map with the same
19 legal weight as the plan text says that low
20 density commercial is comprised primarily of
21 one to three story commercial buildings.

22 The new plan, like its

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1 predecessor, designates the Macomb-Wisconsin
2 strip as low density neighborhood commercial.

3 The existing C-1 zone plus the neighborhood
4 commercial overlay accurately implement this
5 designation.

6 Although C-2-A zoning is arguably
7 consistent with an area designated low
8 density neighborhood commercial, especially
9 at a Metro rail station, here the conversion
10 to C-2-A zoning via a PUD would be unlawful
11 because it would be done specifically to
12 facilitate a project that is barred by the
13 plan.

14 Zoning regulations say, "The PUD
15 process shall not be used to result in action
16 inconsistent with the comprehensive plan."
17 That is reason number one for rejecting this
18 PUD application. The developer would
19 displace the city's own vision for this low
20 density commercial area by inserting a mixed
21 use residential project. A five story
22 building that is 80 percent residential

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1 cannot rationally be classified as low
2 density commercial.

3 My prepared testimony addresses
4 economic issues also, which I don't have time
5 for here, but I do want to note that it is
6 likely that the 2002 contracts issues will
7 need to be resolved as a condition of
8 financing for the project.

9 A PUD is supposed to provide
10 results that are superior to what could be
11 done as a matter of right. This application
12 turns that formula on its head. The South
13 Block plan provides the needed large grocery
14 store, but with such overreaching baggage as
15 to create a host of serious and completely
16 avoidable problems.

17 The North Block plan is patently
18 unlawful.

19 I would be remiss if I did not
20 also mention my deep concern about the
21 misstatements made last time by Ellen
22 McCarthy. She said that the Cleveland Park -

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1 - excuse me -- that the comprehensive plan
2 says C-2-A is consistent with low density
3 commercial, unquote. The fact is that C-2-A
4 can be used to implement low density
5 commercial or moderate density commercial.

6 When moderate density commercial
7 is mapped as C-2-A, you can, indeed, go to
8 five stories, but low density commercial is
9 limited by the plan to, quote, primarily one
10 to three stores, unquote, whether mapped as
11 C-1 or as C-2-A. In other words, you can't
12 use the zone map to override the plan's
13 future land use map.

14 It is obvious that in a block with
15 several buildings the word "primarily" would
16 allow some, albeit minimal, variation outside
17 the three story limit. But it is equally
18 obvious that where the plan will be covered
19 by just -- I'm sorry -- where the block will
20 be covered by just one building, that
21 building must be whatever is primarily
22 required. In this case that means the

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1 building must be one to three stories high.

2 It used to be the case in former
3 versions of the comp plan that the density
4 categories were indicated in so-called soft
5 brush strokes on the plan maps, allowing room
6 for much subjectivity and approximation. In
7 recent years that has changed, but the myth
8 of subjectivity persists.

9 If you look at the current edition
10 of the future land use map adopted by the
11 city council in 2006, you will see the colors
12 do not cross streets. Each block is
13 separately outlined. It is quite clear that
14 each block is separately designated on its
15 prescribed -- I'm sorry.

16 It is quite clear that each block
17 is separately designated as to its prescribed
18 land use category, and the plan requires that
19 the Zoning Commission "insure that the zone
20 map is not inconsistent with the
21 comprehensive plan future land use map."

22 That condition is now met, but it

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1 won't be if you make the changes requested by
2 the Applicant.

3 Thank you.

4 CHAIRMAN HOOD: Go right ahead.

5 MR. McGRATH: Is this too loud?

6 Am I okay? Thank you.

7 Mr. Chairman, members of the
8 Commission, I am Dorn McGrath, Jr. I'm FAICP
9 testifying as an unpaid volunteer expert
10 witness for the Cleveland Park Citizens
11 Association. I'm a Fellow of AICP, the
12 American Institute of Certified Planners, now
13 a professor emeritus of urban regional
14 planning at the George Washington University,
15 and for seven years I served as chairman of
16 the Committee of 100 on the federal city
17 here.

18 The proposed PUD, in my opinion,
19 is not in conformance with the comprehensive
20 plan, very simple. I know quite a lot about
21 the comprehensive plan, having worked on it
22 for about 20 years.

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1 The application presented by the
2 Giant Friendship-Macomb SC, Inc. fails to
3 show that they cannot build what the project
4 seeks under the existing zoning. They could
5 do it under existing zoning, but they have
6 chosen not to.

7 The current comprehensive plan
8 adopted by the council in 2006 is the law.
9 It just is. The plan became effective March
10 8th, 2007, which anyone can read on the
11 Website.

12 The Home Rule Act provided the
13 mayor should prepare and implement a
14 comprehensive plan, and required that zoning
15 should not be inconsistent with the
16 comprehensive plan. It supports the concept
17 of the overlay and cites as a model for other
18 neighborhoods. I have one in my own
19 neighborhood, to tell you the truth.

20 It supports the Office of Planning
21 should not be playing, in my opinion, fast
22 and loose with the zoning ordinance, period.

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1 And they should not be playing fast and
2 loose with the comprehensive plan either.

3 Since 1985 when the land use
4 element was added to the comprehensive plan,
5 Macomb-Wisconsin commercial area has been
6 designated as a low density, low local
7 neighborhood shopping center. Amendments to
8 the comprehensive plan have not changed that
9 designation. It was done by the city
10 council; had this opportunity.

11 It remains a low density shopping
12 center. It is certainly not a mixed use
13 moderate density center appropriate for some
14 Metro rail served places.

15 The Commission in 1989, this
16 Commission, changed the previous C-2-A zoning
17 to C-1 and adopted the neighborhood overlay
18 zone regulation, recognizing the 1989 zoning
19 could lead to large scale development
20 inconsistent with the comprehensive plan.

21 The Commission also adopted two
22 separate sections to provide for review of

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1 large developments, including the scale and
2 massing, and this was adopted to insure
3 compatibility with an enhancement of the
4 primary neighborhood retail function of the
5 commercial area, unquote.

6 Now, with this proposed
7 development, the Applicant seeks to have this
8 Commission overturn its own wise decision. I
9 don't understand this. The proposed PUD
10 backs up brutally against existing commercial
11 and residential uses on Macomb Street.

12 I don't know how many of you have
13 been up there, but it's pretty bad. I'll
14 tell you it's a hair hitch of the
15 inappropriate development of that site. This
16 PUD ignores all of that, completely ignores
17 it. And all of these areas now are badly
18 served by loading docks, may not be the
19 Applicant's specific problem, but it forces
20 the neighborhood to accept air and noise
21 pollution --

22 CHAIRMAN HOOD: I think you hit

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1 your microphone. There you go.

2 MR. McGRATH: Are we on now?

3 CHAIRMAN HOOD: Back on.

4 MR. McGRATH: Thank you, sir.

5 The point that I want to make is
6 that I don't know how many of you have
7 actually seen that alley, but it's pretty
8 bad, and the two industrial strength
9 dumpsters at the end of the alley, and they
10 are accompanied by five or six commercial
11 scale dumpsters, several, like three,
12 residential scale dumpsters, quite a few
13 empty milk crates, and a rat trap or two.
14 This is hardly in keeping with our fair city,
15 the National Capitol, in my opinion.

16 The PUD with an inadequate truck
17 loading situation would compound this
18 problem, not address it at all.

19 The Zoning Commission is required
20 to promulgate regulations in accordance with
21 a comprehensive plan to lessen congestion in
22 the street, and blah, blah, blah, and

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1 efficiency in the provision of public
2 services.

3 If you approve the proposed PUD,
4 the Zoning Commission would be violating its
5 own mandate. I don't understand that either.

6 I understand having learned from a DOT or
7 DDOT study only five years ago that the
8 traffic from further development on Wisconsin
9 Avenue is expected to rise to Level F or
10 Levels D, C, and E without any intervention
11 at all.

12 Under the full PUD development
13 proposal, development on the Wisconsin Avenue
14 for the entire segment from Fessenden all the
15 way down to Whitehaven would be Level F,
16 which is failure. How could this have been
17 overlooked by the OP?

18 CHAIRMAN HOOD: Mr. McGrath, I'm
19 going to ask you to finish up your statement.

20 We do have your testimony in front of us.

21 MR. McGRATH: Okay. My final
22 question is this: will the Zoning Commission

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1 be led into approving this artificially
2 contrived proposal to exploit the Wisconsin
3 Avenue corridor, or will the law prevail?

4 That's my final question, sir.
5 Thank you very much for this opportunity to
6 be heard.

7 CHAIRMAN HOOD: Thank you very
8 much. We appreciate your testimony.

9 Colleagues, do you have any
10 questions of Cleveland Park Citizens
11 Association and this party? Any questions?

12 Okay. Not hearing one, -- oh,
13 hold up. Mr. Fiola, do you have any
14 questions?

15 MR. FIOLA: No, sir.

16 CHAIRMAN HOOD: Ms. Bairstow?
17 Okay. Mr. Davis? Sure, come forward.

18 COMMISSIONER MAY: Sir, could you
19 please identify yourself before you --

20 MR. DAVIS: Yes. My name is
21 Jeffrey Davis. I'm with AWARE, a party in
22 support.

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1 Just two quick questions for
2 Professor McGrath. Professor, are you a
3 member of the Cleveland Park Citizens
4 Association?

5 MR. McGRATH: Yes, I am a member.

6 MR. DAVIS: And what is your
7 current residence?

8 MR. McGRATH: In Brandywine
9 Street, N.W., 2710 Brandywine Street, N.W.

10 MR. DAVIS: Is that within the
11 boundaries defined for the Cleveland Park
12 Citizens Association?

13 MR. McGRATH: Of course it is.

14 MR. DAVIS: Really? I have a map
15 of the Cleveland Park Citizens Association
16 defined boundaries. It does not appear to
17 include Brandywine.

18 MR. McGRATH: Well, but the
19 Cleveland Park Citizens Association includes
20 many interesting programs, and I have
21 voluntarily associated myself with that
22 organization well before this event occurred.

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1 MR. DAVIS: Okay. That's fine.

2 Mr. Espenschied, you have been
3 critical in the past of the Cleveland Park
4 listserve poll in which only six percent of
5 the 265 respondents said that they opposed
6 the Giant PUD; is that right?

7 MR. ESPENSCHIED: Yes.

8 MR. DAVIS: Now --

9 MR. ESPENSCHIED: I didn't say
10 anything about that in my testimony.

11 MR. DAVIS: No, just on cross-
12 examination.

13 MR. ESPENSCHIED: Or in my
14 testimony, but I'll be happy to answer any
15 questions.

16 MR. DAVIS: How many members does
17 CPCA have?

18 MR. ESPENSCHIED: About 425 or so.

19 MR. DAVIS: And do you know how
20 many of them --

21 MR. ESPENSCHIED: At last count.
22 It's larger now, as you know.

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1 MR. DAVIS: Yes. Do know how many
2 of them live within the defined boundaries
3 posted on the Cleveland Park Citizen
4 Association Website?

5 MR. ESPENSCHIED: I don't know
6 exactly, but it is more than 350 of them, and
7 I'm pretty sure it's more than 375 of them,
8 and if you'll allow me, I'd like to
9 supplement the answer that you attempted to
10 put Mr. McGrath on the spot about the
11 executive committee --

12 MR. DAVIS: If we could come back
13 to that, Mr. Espenschied, it will be fine.

14 Now, did Cleveland Park Citizens
15 Association ever conduct a poll of its
16 members to see how they felt about the Giant
17 PUD application?

18 MR. ESPENSCHIED: Well, that
19 depends on what you call a poll. I mean, you
20 know, that we had a long series of public
21 meetings at which people were invited to
22 express opinions and get information, and

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1 then we had a meeting, a well announced and
2 very well publicized meeting, at which we
3 approved a resolution, which you're aware of.

4 MR. DAVIS: Well, by a poll I mean
5 has CPCA ever mailed a survey to all of its
6 members.

7 MR. ESPENSCHIED: No, and neither
8 has the listserve.

9 MR. DAVIS: How many people voted
10 for the CPCA resolution by which it became an
11 opponent to this PUD application?

12 MR. ESPENSCHIED: If I recall
13 correctly, there were either 36 or 38 member
14 voting, and all but four of them voted for
15 the resolution.

16 MR. DAVIS: So of the 425 or so
17 members you claimed you had 36 people voting
18 on the resolution or less than ten percent of
19 your membership?

20 MR. ESPENSCHIED: Yes. But they
21 were all aware of the vote to be taken.

22 MR. DAVIS: Do you know how many

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1 of those 32 people actually live within the
2 boundaries of the CPCA?

3 MR. ESPENSCHIED: I don't know
4 offhand, but I am fairly certain that either
5 all of them do or all of but one or two.

6 MR. DAVIS: How did CPCA come to
7 become a party opponent of the PUD
8 application? By what process?

9 MR. ESPENSCHIED: Well, the story
10 originates with the contract. Well, even
11 that isn't the original origin, but the
12 contract negotiations with Giant in 2002 --

13 MR. DAVIS: I'm sorry, Mr.
14 Espenschied. Rather than go through the
15 history, I was asking --

16 MR. ESPENSCHIED: I'd really like
17 to answer your --

18 CHAIRMAN HOOD: Wait a minute.
19 Let's do this, Mr. Davis. Ask a question.
20 Mr. Espenschied, answer to the best of your
21 ability. If you don't know, just say, "I
22 don't know."

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1 MR. ESPENSCHIED: I do know. I'm
2 trying to answer it.

3 CHAIRMAN HOOD: Just let him
4 answer your question. So why don't we do
5 this?

6 MR. DAVIS: I'm sorry.

7 CHAIRMAN HOOD: Since we all were
8 talking at the same time, Mr. Davis, repeat
9 your question, and then once you end it, let
10 Mr. Espenschied answer.

11 MR. DAVIS: I'll try to phrase it
12 more carefully to get to the point.

13 How did CPCA decide to become a
14 party opponent to the current PUD
15 application?

16 MR. ESPENSCHIED: The contract
17 that we have with Giant and with the Office
18 of Planning, which they seem to have
19 forgotten, provides for an enlargement and
20 reconstruction of the store according to
21 certain adopted constraints, which everybody
22 agreed on at that time.

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1 When Giant -- and Giant was for
2 quite a while, for a few years, acting in
3 accord with that in attempting to bring us
4 plans which would work.

5 But one of the things that that
6 plan calls for is reconstruction and
7 enlargement of the building within the
8 existing zoning. When they elected to
9 abandon that and apply for a PUD that would
10 require a change of zoning, that put us in
11 the position of trying to keep them within
12 the contract, and we're opposed automatically
13 to that PUD.

14 MR. DAVIS: I'm sorry. I don't
15 think you answered my question. How did CPCA
16 decide to become a party opponent? How did
17 it actually decide to become an opponent?

18 You could have registered as a
19 supporter. CPCA could have been a supporter.
20 How did you decide to become an opponent?

21 MR. ESPENSCHIED: Well, it would
22 have been kind of strange for us to be a

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1 supporter of something which we had a
2 contract to do in an extremely different way.

3 Look. The basic answer to your
4 question is that the Zoning Commission rules
5 require that you be either a supporter or an
6 opponent. We had some problem with that. We
7 wanted to be in the position of supporting
8 the store because that's where we are, but
9 nevertheless opposing the baggage attached to
10 that, and how do you represent that to the
11 Zoning Commission?

12 MR. DAVIS: CPC -- I'm sorry.

13 MR. ESPENSCHIED: We had to
14 choose. There are lots of people who are
15 saying, "Yes, but...." There are lots of
16 people saying, "No, but...." And there's a
17 middle ground where those are pretty similar.

18 MR. DAVIS: CPCA's Executive
19 Committee decided to register as a party
20 opponent, didn't it?

21 MR. ESPENSCHIED: Yes.

22 MR. DAVIS: Who is on the CPCA

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1 Executive Committee?

2 MR. ESPENSCHIED: Well, I know you
3 know the answer. It's defined in our
4 constitution and bylaws. It's the officers
5 and the committee chairmen.

6 MR. DAVIS: And who were they?
7 Who were the executive committee that decided
8 to register as party opponents? Can you name
9 them?

10 MR. ESPENSCHIED: I have to think
11 about that because I don't remember exactly
12 when it was, but it was certainly George
13 Idelson as president and me as vice
14 president. And I'm sorry. Let me ask
15 permission. Do I need to reconstruct the
16 officer list and so on?

17 CHAIRMAN HOOD: Well, if you don't
18 know just say you don't know.

19 MR. ESPENSCHIED: I don't.

20 CHAIRMAN HOOD: Okay. That's all.

21 MR. DAVIS: You said Mr. Idelson
22 and yourself?

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1 CHAIRMAN HOOD: He named two
2 people. He said he didn't know. So, Mr.
3 Davis, let's go to the next question.

4 MR. DAVIS: Did Ms. Olander vote
5 as part of the executive committee?

6 MR. ESPENSCHIED: I do not
7 remember.

8 MR. DAVIS: Did Ms. Goff vote as
9 part of --

10 CHAIRMAN HOOD: He already said --
11 here's what you're doing now. You're telling
12 who they were. Obviously you know who it is
13 or who you believe it may be. So he's
14 already said the two people he remembers. I
15 think that line of questions is going down
16 the wrong line. He already answered that.
17 He dealt with that.

18 MR. DAVIS: Okay.

19 MR. ESPENSCHIED: I mean, the
20 problem is you're asking about when --

21 CHAIRMAN HOOD: Ms. Espenschied,
22 Mr. Espenschied, he didn't ask you a question

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1 that time. So okay.

2 MR. ESPENSCHIED: Thank you.

3 MR. DAVIS: CPCA filed to become a
4 party opponent of the PUD on February 4th;
5 isn't that right?

6 MR. ESPENSCHIED: I can't confirm
7 that. It may be right. You seem to have
8 followed these things very closely.

9 MR. DAVIS: I'm looking at Exhibit
10 No. 67, a letter from CPCA to become a party
11 opponent dated February 4th. I'm happy to
12 give you a copy.

13 MR. ESPENSCHIED: Oh, this is the
14 response to the forum that the Zoning
15 Commission wants for parties. Yes, I mean,
16 this looks like a true copy.

17 MR. DAVIS: And then CPCA voted 32
18 to four on February 15th to ratify that
19 decision; isn't that right?

20 MR. ESPENSCHIED: Well, I can't
21 confirm the date, but it was after we filed
22 as a party, yes.

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1 MR. DAVIS: Right. And you've
2 already told us CPCA didn't attempt to do a
3 survey of its members, other than conducting
4 these meetings as you said.

5 MR. ESPENSCHIED: Well, you're
6 trying to characterize what we did. You
7 know, we followed our general and long-term
8 procedures.

9 VICE CHAIRMAN JEFFRIES: He asked
10 you a direct question. Just respond.

11 MR. ESPENSCHIED: We didn't do a
12 survey. Nobody did a survey.

13 MR. DAVIS: Does CPCA have a
14 mailing list with its members' addresses?

15 MR. ESPENSCHIED: Of course.

16 MR. DAVIS: Is that mailing list
17 available, that membership list available to
18 its members?

19 MR. ESPENSCHIED: No, it is not.
20 It is considered a private document, as are
21 most organization's membership lists.

22 MR. DAVIS: Do you know how many

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1 people live within a one mile radius of the
2 PUD application at Wisconsin and Newark?

3 MR. ESPENSCHIED: Certainly not
4 offhand, no.

5 MR. DAVIS: I have a document
6 based on Census data that says that the --

7 VICE CHAIRMAN JEFFRIES: Do you
8 have a question?

9 MR. DAVIS: Yes. It says that the
10 population within a one mile radius is over
11 40,000, slightly over 40,000. Do you have
12 any reason to dispute that?

13 MR. ESPENSCHIED: Say that again
14 more carefully.

15 MR. DAVIS: I have a document
16 which I'm happy to share with you that says
17 that the population within a one mile radius
18 of -- I'm sorry. Would you share that with
19 the witness? Thanks.

20 Within a one mile radius of the
21 PUD is 40,000 individuals. Do you see that
22 on the first page?

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1 MR. ESPENSCHIED: Yes, I do. Yes,
2 I do.

3 VICE CHAIRMAN JEFFRIES: Was this
4 part of his testimony? Where is this coming
5 from? Did you testify to this?

6 MR. ESPENSCHIED: No.

7 MR. DAVIS: I just have a couple
8 more questions.

9 VICE CHAIRMAN JEFFRIES: Okay, but
10 let's just keep it -- listen. We have got a
11 few more hours here tonight. So, you know,
12 can we make the questions really direct and
13 try to keep them focused on exactly what he
14 has testified to.

15 MR. DAVIS: The 425 members of
16 CPCA represent approximately one percent of
17 the population within a one mile radius of
18 the PUD application; isn't that right?

19 MR. ESPENSCHIED: Well, that's
20 your assertion, and I think that's open to
21 question. For one thing I noticed that the
22 thing you've just handed me is total

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1 population, including babies and so on, which
2 are not eligible to be members of our
3 organization. Possibly we have some by
4 mistake.

5 VICE CHAIRMAN JEFFRIES: What was
6 the question and what was the answer?

7 MR. ESPENSCHIED: He's trying to
8 find out --

9 VICE CHAIRMAN JEFFRIES: No, no,
10 no, no. What was your question, Mr. Davis?

11 MR. DAVIS: My question was I was
12 asking him to confirm that the population,
13 the membership of CPCA is one percent of the
14 total population that lives within a one mile
15 radius of the PUD application.

16 VICE CHAIRMAN JEFFRIES: And you
17 want to know will he confirm that?

18 MR. DAVIS: Yes.

19 VICE CHAIRMAN JEFFRIES: Are you
20 confirming that?

21 MR. ESPENSCHIED: I can only
22 confirm that our membership is definitely

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1 smaller than the population shown on this
2 chart.

3 VICE CHAIRMAN JEFFRIES: Okay.
4 That's your answer. Next.

5 MR. DAVIS: And the number of
6 people that voted in favor of the CPCA
7 Resolution 32 about be 8/100 of one percent
8 of the total population of 40,000 people.

9 MR. ESPENSCHIED: We're really
10 getting into the weeds here. That's your
11 computation. I'm not going to try to confirm
12 it.

13 MR. DAVIS: That's fine. that's
14 all I have.

15 CHAIRMAN HOOD: Okay. While Mr. -
16 - oh, I'm sorry. Is Ms. Scalafani (phonetic)
17 -- Mr. O'Sullivan, you switched up on.

18 Let me just ask this, Mr.
19 Espenschied. You mentioned 425 members.
20 That's paid members of your association,
21 correct?

22 MR. ESPENSCHIED: Yes. People are

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1 considered members when they pay.

2 CHAIRMAN HOOD: What is the quorum
3 before you can take a vote?

4 MR. ESPENSCHIED: We do not have a
5 quorum requirement. Like most civic
6 associations, you can't expect that most
7 members ever come to any particular meeting.

8 You couldn't do any business if you had a
9 quorum requirement.

10 Our requirement is that there is a
11 regular schedule of meetings and an
12 announcement that goes to every member in
13 advance so that people are aware of the
14 meetings. That's the procedure for making
15 sure that it's a democratic procedure.

16 CHAIRMAN HOOD: So if four people
17 show up, that's a quorum.

18 MR. ESPENSCHIED: Well, yes and --

19 CHAIRMAN HOOD: As long as you do
20 proper notice.

21 MR. ESPENSCHIED: Yes. We would
22 certainly not do business of any importance

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1 under those circumstances.

2 CHAIRMAN HOOD: But you just said
3 you didn't have a quorum requirement.

4 MR. ESPENSCHIED: That is true.

5 CHAIRMAN HOOD: So I asked you if
6 four people showed up, you wouldn't transact
7 business with four. I'm just trying to
8 figure out where that comes from. How do you
9 get to the quorum? Because if you don't do
10 it with four, you have a quorum requirement
11 somewhere.

12 MR. ESPENSCHIED: I think it's
13 largely a matter of common sense and
14 practice. We have a common amount of people
15 who come to meetings, which is typically 30
16 to 60 or 70, depending on the subject matter
17 of the meeting. It's certainly not the same
18 people every time. It's fair to say that
19 there are more than 100 people who show up at
20 some meeting in the course of the year, and
21 the thing is that our meeting time, meeting
22 place is well known. So people come to the

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1 things they care about, and that enables us
2 to have you might say a workable quorum.

3 CHAIRMAN HOOD: I will tell you --

4 VICE CHAIRMAN JEFFRIES: I think
5 the Chair is --

6 CHAIRMAN HOOD: I'm the president
7 of a civic association, and if I walked in
8 there tomorrow night with that idea, I
9 probably would not be the president much
10 longer. I'm just trying to get a feel for
11 what you're talking about a quorum because
12 obviously there's no quorum requirement. So
13 if you've got six people to show up, you can
14 conduct business.

15 And I think where Mr. Davis was
16 going, and that's why I let a lot of it go
17 on, because I wanted to hear what would go on
18 with this quorum count, because if you've got
19 425 paid members and you have 36 members who
20 voted or 32 who voted and four who didn't,
21 you have not reached a quorum.

22 But you don't have a quorum.

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1 MR. ESPENSCHIED: You've telling
2 me that in your civic association you do have
3 a quorum.

4 CHAIRMAN HOOD: We have a quorum.

5 VICE CHAIRMAN JEFFRIES: He's
6 asking about your civic association.

7 CHAIRMAN HOOD: Oh, oh, he was
8 asking. I may present mine tomorrow night,
9 but, no, we do have a quorum.

10 VICE CHAIRMAN JEFFRIES: I think
11 what we want to know is how are you
12 conducting business. I mean, you know, how
13 are you getting a fair sample of the
14 organization? How do we know in terms of
15 when you're taking votes it really represents
16 the goals and wishes of the organization?

17 Because, as the Chair said, is it
18 four? I mean, I understand when you say
19 common sense. I mean 30 people show up or
20 whatever, but I'm just trying to get you to
21 let us know how it's working, and it's no
22 judgment here. We just want to understand.

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1 MR. ESPENSCHIED: Well, it's a
2 fair question. It's not one we've ever had
3 to deal with. I suppose that a member could
4 suggest that we adopt a quorum rule. I'm not
5 sure how that would work, but, yes, it's a
6 possibility, but you have to understand the
7 situation on the ground. We have a
8 tremendous amount of communication among
9 members. People know each other. It is a
10 community. So this isn't just off the wall
11 that, you know, 30 people get together and
12 decide something.

13 Four hundred-some people are aware
14 of the meeting, in addition to those who see
15 it posted. The meetings are public. They
16 are listed in the local paper, the Northwest
17 Current. They are posted in the library and
18 other places. WE make an effort to make sure
19 that people in the community know what's
20 going on, know what we're doing. They are
21 welcome to participate.

22 VICE CHAIRMAN JEFFRIES: Well, I

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1 think we're comfortable with your notice, you
2 know, you providing notice. I think we've
3 got that down. I think the question really
4 from the chair is what constitutes, you know,
5 a decision from your organization. I mean,
6 is it a certain number of people?

7 I mean, you can just take if it's
8 30 people there, the majority of the people
9 vote and that represents the organization.
10 You might say that. You might say something
11 else. We just want to hear what it is or we
12 just don't know. I mean, we're asking the
13 question.

14 MR. ESPENSCHIED: Okay. Well,
15 first of all, no resolution of any
16 consequence would be brought up at a meeting
17 without the subject matter being known to
18 people in advance. So anybody who wants to
19 vote on it isn't going to be taken by
20 surprise.

21 I'm not sure if there's anything
22 more to be said about it.

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1 CHAIRMAN HOOD: Let me help you,
2 Mr. Espenschied, where I'm going, and I
3 appreciate the Vice Chair. I don't think I
4 could have stated it any better, but I'm
5 looking -- and it's not a popularity contest.

6 What we do, we deal with the merits and the
7 zoning law.

8 But what I'm looking at as far as
9 what people like to see in the neighborhood,
10 when I look at 36 members pro or con, voted
11 up or down, and you have a total of 425, I
12 just, as the Vice Chair said, I'm looking for
13 a fair representation of exactly what's being
14 presented to us when there's a group that
15 comes down to oppose this. That's kind of
16 what I'm looking for.

17 I'm balancing that. I know we're
18 all split up and maybe some of the other
19 members or some of the other parties may be a
20 member of CPCA. I'm not sure, but I'm
21 looking for a fair representation, and I will
22 tell. I will be frankly honest. Thirty-six

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1 is not a fair representation to me.

2 MR. ESPENSCHIED: And I'd have to
3 agree with you if that was the whole story.
4 I mean if 36 people got together in a room
5 and took a vote on something and put it out
6 as the community's opinion, that would
7 certainly be very unfair.

8 But the fact is if you'll allow me
9 to say, that we not only had a lot of
10 meetings about this, but we've conducted
11 panels. Giant came to our panels and made a
12 presentation. We've been very fair about
13 this and tried to get all opinions.

14 We've had people from a variety of
15 sources come and talk, and so people have had
16 an opportunity largely because of CPCA, and
17 CPCA in conjunction with ANC sponsored a big
18 meeting in a school auditorium which was a
19 very crowded affair, where again we brought
20 out all the issues, lots of discussion, lots
21 of questions.

22 So we've been bending over

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1 backwards to be fair and representative about
2 this.

3 CHAIRMAN HOOD: My last question
4 is if 36 came to vote, to oppose this
5 project, and again, this is not a popularity.

6 I'm just trying to get a representation of
7 what's going on. What happened to the other
8 members? Could it possibly be they were
9 supportive?

10 MR. ESPENSCHIED: I think that
11 anybody who was supporting the project, and
12 as you saw there were a few people who voted
13 against our resolution, not all of whom
14 supported the PUD; there are varieties of
15 opinion about this. But people who were
16 opposed to it certainly would have been
17 motivated to come and express themselves, and
18 I think it's very fair to say that if the
19 community were opposed to the position we
20 were putting forth, in other words, were
21 supporting of the PUD, we would have had an
22 avalanche of members come out and vote

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1 against this proposed resolution, and that is
2 not what happened.

3 This is to be contrasted, if I may
4 add, with the representations made about
5 AWARE's polling and the listserve's polling
6 which asked extremely biased questions
7 without providing information and don't tell
8 you who are the people in the case of the
9 petition you got from AWARE how many people
10 declined to sign it.

11 VICE CHAIRMAN JEFFRIES: You know,
12 you were very effective then before when Mr.
13 Davis came up, and so that was very much
14 noted. I just want you to understand. I
15 don't think anyone up here -- I don't want
16 you to get defensive. I mean, I'm pretty
17 certain that CPCA is very committed and
18 you've worked very hard. I think the
19 questions from us are really just around
20 structure and logistics and so forth. It's
21 not really speaking about your commitment.

22 I mean, clearly, you love your

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1 neighborhood and you work very hard and no
2 one here is saying that. We just want to
3 understand what's the representation. what's
4 a fair sample? What sort of makes sense?
5 And that's all.

6 MR. IDELSON: May I make a
7 statement? About 50 people showed up at that
8 meeting. A number left before the vote was
9 taken. If you take four out of 36 voting
10 against and project that number, then I would
11 say a huge number of people would have voted
12 for the resolution, and a very small number
13 would have voted against it.

14 And it's speculation, and my
15 speculation is as good as anybody's.

16 CHAIRMAN HOOD: Well, we all can
17 make a hypothesis, and I think that was a
18 good guess, but we don't really know what's
19 going to happen, and that's the end of my
20 line of questioning, Mr. Espenschied.

21 And as the Vice Chair said, we're
22 not questioning. I know the work you do over

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1 there. Even before I got here, I know the
2 work you're doing in Cleveland Park.

3 Okay. Any other questions?

4 Mr. O'Sullivan, you moved on that
5 side of the room. I can't ever predict. I
6 thought you sat on that side of the room, but
7 you're over here. Oh, no seat? Oh, that's
8 what it is.

9 Okay, Mr. O'Sullivan, and that is
10 the Wisconsin Neighbors.

11 MR. O'SULLIVAN: Right, thank you.

12 For Mr. Espenschied --

13 PARTICIPANT: Sir, could you
14 identify yourself?

15 MR. O'SULLIVAN: John O'Sullivan.

16 I'm sorry.

17 If the overlay is removed from the
18 PUD, what impact will it have within the PUD
19 area?

20 MR. ESPENSCHIED: Are you
21 questioning whether I testified about that?
22 Because I didn't. I'm sorry.

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1 CHAIRMAN HOOD: Well, go ahead. I
2 may not have heard you.

3 MR. ESPENSCHIED: I'm sorry. I
4 was interpreting. I shouldn't have. The
5 answer --

6 MR. O'SULLIVAN: You did make a
7 statement about the overlay, and I'm trying
8 to follow up.

9 MR. ESPENSCHIED: Well, the answer
10 is that the overlay does a number of things
11 which are intended collectively to protect
12 the character of the small neighborhood
13 serving shopping area, and if you took it
14 out, a number of things would occur.

15 The Applicant wants to move the
16 zoning up to C-2-A, which has a very
17 different list, has a very different list of
18 uses that it permitted, and under that list,
19 the kinds of neighborhood serving retail that
20 is permitted in the overlay or that is
21 encouraged in the overlay would probably not
22 be able to survive.

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1 The Applicant has told us, well,
2 you can still have all those prescribed uses,
3 but you'd have more that C-2-A allows, but
4 the fact is that the reason for the overlays
5 making that distinction is that those C-2-A
6 heavier uses, you know, like automobile and
7 truck sales, a variety of things that you
8 can't do in C-1 are heavier duty kinds of
9 things. They can pay a landlord more rent.
10 They are heavier use of the neighborhood in
11 the sense that I think everybody understands
12 intuitively, and they will tend to
13 economically crowd out the shoemaker, the
14 barber shop, the dry cleaner, the kinds of
15 places that depend --

16 CHAIRMAN HOOD: You know what?
17 The issue is -- and that's why I asked. I'm
18 actually asking is this helpful, and by no
19 means are we trying to cut your cross-
20 examination, but what we don't want to do is
21 you provide a venue or avenue for him to
22 continue to testify because I will tell you

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1 that's not doing us any good, and what we're
2 going to do is work our way to a fifth night.

3 So we want to have something
4 that's going to help us tonight.

5 MR. O'SULLIVAN: Nobody wants
6 that.

7 CHAIRMAN HOOD: I've been informed
8 it ain't happening, a fifth night, already
9 unless just I'll be here, but I'm just saying
10 that construction of cross examination or
11 whatever has been planned, we see it. We
12 understand it. You've already given your
13 testimony. Your questions are giving him
14 more time to elaborate and testify.

15 So what I would ask you to simply
16 do, ask a question if you really have one.
17 If you don't, we can move on.

18 MR. O'SULLIVAN: Okay.

19 CHAIRMAN HOOD: And then answer it
20 specifically, not a dissertation, but just
21 one or two sentences. That's helpful to us
22 because we have quite a bit to read. There's

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1 quite a bit to read. So that's not helping
2 us. Okay?

3 MR. ESPENSCHIED: Well, is the
4 answer I gave sufficient to be helpful?

5 CHAIRMAN HOOD: Yeah, yeah, yeah.
6 It's helpful. The first two sentences were.

7 MR. O'SULLIVAN: It was not clear
8 to me from your testimony, Mr. Espenschied
9 whether it would be possible -- and I know
10 you're not a lawyer -- but would it be
11 possible for the Commission to --

12 VICE CHAIRMAN JEFFRIES: You know
13 he's not a lawyer.

14 MR. O'SULLIVAN: Right. He does
15 pretty good cross.

16 VICE CHAIRMAN JEFFRIES: Go on.

17 MR. O'SULLIVAN: He analyzes these
18 things. You don't have to be a lawyer to
19 understand certain laws. I hope they don't
20 drum me out of the Bar for admitting that.

21 The question is whether it would
22 be possible for the Commission to give some

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1 flexibility on some aspects of the overlay
2 while preserving other aspects that CPCA
3 think are important to the community.

4 MR. ESPENSCHIED: I'll have to
5 admit that's a complicated question.
6 There's --

7 VICE CHAIRMAN JEFFRIES: If you
8 can't answer it, then don't go on.

9 CHAIRMAN HOOD: If you can't
10 answer it, let me just answer it for you.
11 We'll handle our business. Okay? We'll take
12 care of that. So let's move to the next
13 question.

14 VICE CHAIRMAN JEFFRIES: Let it
15 go.

16 MR. O'SULLIVAN: Finally, you had
17 a colloquy with Ms. Steingasser and with the
18 Commission over whether setting aside
19 restaurants and bars and financial
20 institutions, whether some aspects of the
21 overlay's use restrictions might continue if
22 the height and density were waived.

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1 MR. ESPENSCHIED: Well, the Office
2 of Planning gave us different answers about
3 that at different times, and in fact, I
4 thought we were awaiting an opinion from the
5 Attorney General about it, and I don't know
6 what's happened to that.

7 MR. O'SULLIVAN: My question was
8 whether anything had taken place with OP or
9 the Attorney General.

10 VICE CHAIRMAN JEFFRIES: Who's the
11 question for?

12 MR. O'SULLIVAN: Mr. Espenschied,
13 who is the one --

14 MR. ESPENSCHIED: I'm answering, I
15 guess, to --

16 VICE CHAIRMAN JEFFRIES: So you're
17 saying that OP has to address that?

18 MR. ESPENSCHIED: Well, I remember
19 correctly, the Zoning Commission decided at
20 least two hearings ago to ask the Attorney
21 General for an opinion about that, and I
22 don't know whether --

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1 CHAIRMAN HOOD: Let me just say
2 this. When we get ready to deliberate, we'll
3 deal with that, and we have not forgotten
4 that. We have not lost sight of that, but
5 right now Mr. O'Sullivan presumably has some
6 questions for you or the questions are
7 tailored to the point where you can given
8 more testimony.

9 MR. O'SULLIVAN: I'm trying to
10 find out if anything has happened on that
11 point.

12 CHAIRMAN HOOD: No, that's for us
13 to deal with. We'll deal with that.

14 MR. ESPENSCHIED: Well, I mean, I
15 can answer with our opinion about it, but
16 that's all I can give.

17 CHAIRMAN HOOD: No. I think we
18 have your opinion, but we'll answer that
19 because if we ask for it, we'll get that when
20 we deliberate.

21 MR. O'SULLIVAN: Okay. Thank you.
22 No more.

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1 CHAIRMAN HOOD: Okay. Thank you.

2 Okay. Mr. Montanto.

3 MR. MONTANTO: I have two
4 questions. One for Mr. McGrath.

5 Mr. McGrath, you spoke about the
6 Macomb dock. How would the PUD compound the
7 crowding and congestion that the Macomb dock,
8 the Macomb loading docks -- how would the PUD
9 compound the problems there?

10 MR. McGRATH: The PUD would seal
11 off the end of the only access to some of the
12 businesses on Macomb Street. It would seal
13 them off at the blind end of an alley that
14 has no turn-around, has a big drop in grade
15 on the south side, and it would simply seal
16 off that.

17 Now, that means you'll have
18 traffic waiting in the streets to get into
19 this one-way alley, and because you have a
20 lot of the interference in that alley posed
21 by the dumpsters of one size or another in
22 that alley, you can't get a truck to turn

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1 around in there at all, and therefore, people
2 are going to have to put up with the noise
3 and the confusion and the dropped garbage and
4 the rest in that alley, and that's what the
5 PUD would do.

6 It ignores the reality of that
7 location, which I don't think this Commission
8 is supposed to do.

9 MR. MONTANTO: Thank you.

10 I have a question for George
11 Idelson regarding the pointed questioning
12 that you both have received on CPCA. It
13 appeared the legitimacy of the board is being
14 questioned. Can you tell us has CPCA
15 operated any differently in polling and
16 receiving a vote from their membership? Have
17 you acted in any different way from any other
18 times in its history perhaps or substantially
19 differently?

20 VICE CHAIRMAN JEFFRIES: Excuse
21 me. You said legitimacy.

22 MR. MONTANTO: Yes.

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1 VICE CHAIRMAN JEFFRIES: Who
2 questioned the legitimacy?

3 MR. MONTANTO: So there is
4 certainly implied in the questioning --

5 VICE CHAIRMAN JEFFRIES: But by
6 whom? By whom?

7 MR. MONTANTO: The gentleman that
8 came before me.

9 VICE CHAIRMAN JEFFRIES: Oh, okay,
10 okay. Go on.

11 MR. MONTANTO: Yes. Questioned
12 how the poll were taken and how the executive
13 board --

14 VICE CHAIRMAN JEFFRIES: I just
15 wanted you to use, you know, a proper noun.
16 That's all. Because it's too general. I
17 didn't want that on the record. So but go
18 on.

19 MR. IDELSON: We've been doing
20 this for 100 years, and to the best of my
21 knowledge nobody has ever questioned the
22 democratic way that we go about making these

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1 decisions. This has never been challenged
2 before. I'm proud of the way we do it.

3 CHAIRMAN HOOD: Okay. Thank you.

4 MR. MONTANTO: Thank you.

5 CHAIRMAN HOOD: Okay. Thank you.

6 Mr. Hecker.

7 MR. HECKER: Okay. I'm Daniel

8 Hecker with Waystreet Neighbors.

9 I have one question for Mr.
10 Idelson. You say your position on the Giant
11 has been misrepresented. Could you explain
12 that?

13 MR. IDELSON: Well, they say we
14 oppose redevelopment and oppose new
15 restaurants. We not only support a robust
16 Giant redevelopment. We have done more than
17 any other community organization to revive
18 the project.

19 As for restaurants, as this
20 Commission knows, we have been seeking for
21 years to get the overlay simpler and more
22 transparent and have been fighting with the

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1 current Zoning Administrator to admit more
2 restaurants, actually more restaurant on
3 Connecticut Avenue. We disagree heartily
4 with this current ruling.

5 They make these claims over and
6 over again, and some have gained traction.
7 It's a little bit like fighting the big lie.

8 MR. HECKER: Okay. That's all I
9 have. Thank you.

10 CHAIRMAN HOOD: thank you very
11 much.

12 Okay. I think we have finished
13 everyone in cross-examination. I think we
14 have. Let's see. Where am I?

15 Okay. Thank you all for your
16 testimony. We appreciate it.

17 MS. SCHELLIN: Chairman Hood, if
18 we could just remind all of those who have
19 come to the table if they have not done so
20 yet to turn in two witness cards to the court
21 reporter. That includes those who have come
22 to the table for cross-examination.

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1 CHAIRMAN HOOD: Okay. Ordway
2 Street Neighbors Association, you have seven
3 minutes, and when you get settled we're going
4 to start and you may begin.

5 MR. ISAACS: Good evening. My
6 name is David Isaacs and I live at 3610
7 Ordway Street, and I'm testifying on behalf
8 of Ordway Street neighbors that live on the
9 3600 block directly across from Wisconsin
10 from the PUD north block.

11 And as other neighbors have
12 explained, we also support a modernized
13 supermarket, but we also share the concerns
14 that have been expressed by others regarding
15 inadequate parking, increased traffic,
16 elimination of the overlay, the overall size
17 and density of the site, and the loading
18 issues.

19 And we fear that these impacts can
20 give rise to significant adverse impacts on
21 local residential streets in the surrounding
22 area, including Ordway Street, and we believe

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1 that now is the time during the design and
2 approval stage to address these concerns, and
3 we are looking for the Zoning Commission to
4 condition any project approval on mitigation
5 of these adverse impacts.

6 So for starters, just related to
7 parking, as has been expressed previously,
8 for the north block the current zoning
9 regulations would require 93 parking spaces
10 in the north block to accommodate the
11 commercial patrons of the north block
12 commercial establishments.

13 Unfortunately, the PUD provides
14 zero parking spaces. All the parking in the
15 north block would be dedicated to the
16 residents of the large apartment building,
17 none for the commercial patrons.

18 So the Applicant would require the
19 north block commercial patrons to use the
20 parking lot in the South Building a block
21 away going underground, taking an elevator
22 up, et cetera, whereas over half of Ordway

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1 Street is closer than the south block parking
2 lot, and in our own experience we all know
3 that people park in the closest most
4 convenient location, and we fear that Ordway
5 will become a commercial parking lot for the
6 development.

7 So we believe that it's very
8 important that as required by the ANC
9 resolution, Condition No. 4, that in order to
10 protect local streets like Ordway Street,
11 that at minimum the north block include 93
12 parking spaces.

13 Moving on now to traffic, our
14 concerns about traffic, again, have been
15 raised throughout this proceeding, but as you
16 can see from the chart, the intersection here
17 is an odd, five-way intersection. There's
18 currently some plastic strips that attempt to
19 limit access from Ordway Street on to
20 Wisconsin Avenue and vice versa, but that is
21 often ignored, and we fear that certain
22 changes proposed in the intersection could

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1 lead to Ordway Street becoming a cut-through
2 access road.

3 The Applicant proposes three
4 changes. One is to make the Idaho Avenue
5 west of Wisconsin a two-way street, to add a
6 new traffic light to that intersection, and
7 to reconfigure the intersection to
8 accommodate, among other things, buses and
9 trucks.

10 So, again, we fear that Ordway
11 Street might become a cut-through. For
12 example, traffic going east from the site
13 could avoid a traffic light and two stop
14 signs by cutting through on Ordway Street
15 instead of taking Porter Street.

16 This traffic light will make it
17 very easy for people to park across on Ordway
18 Street and then just go to the north block,
19 and I would add that our concerns about
20 traffic are shared by the vast majority of
21 neighbors on Ordway Street. We wrote a
22 letter that's included in my written comments

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1 to Councilwoman Cheh, and we copied DDOT and
2 OP and the ANC, and it was signed, just so
3 there's no mistake about silent majorities
4 and quorums by 72.9 percent of the resident
5 of the 3500 block and 3600 blocks of Ordway
6 Street expressing concern about the traffic
7 problems that this project might pose.

8 So we would request mitigation
9 measures to address these concerns. One, we
10 would request that traffic on Idaho going
11 northeast towards Wisconsin Avenue from the
12 project site be required to turn either left
13 or right onto Wisconsin and not go directly
14 across Wisconsin to Idaho and Ordway Street.

15 Second, we would request that the
16 existing temporary barrier be redesigned and
17 upgraded to be permanent and to prevent
18 access from traffic on Wisconsin or Idaho to
19 access Ordway Street.

20 And finally, we think there should
21 be measures to prohibit trucks and buses from
22 accessing Ordway Street as well.

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1 Once again, we think that now is
2 the time to address these significant
3 concerns during the design and approval stage
4 rather than waiting until after the project
5 is constructed, and we respectfully request
6 that the Commission consider these measures
7 as part of any project approval.

8 Thank you.

9 I'm giving you back time.

10 CHAIRMAN HOOD: Okay. I think we
11 might need it.

12 Let me ask colleagues: any
13 questions? Commissioner May.

14 COMMISSIONER MAY: Yes. Can you
15 bring back the other slide? Yeah, there we
16 go.

17 Can you park on both sides of
18 Ordway Street right now?

19 MR. ISAACS: Yes, sir.

20 COMMISSIONER MAY: And is it zoned
21 parking?

22 MR. ISAACS: Zoned residential,

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1 yes.

2 COMMISSIONER MAY: Residential
3 parking permit required.

4 MR. ISAACS: Yes.

5 COMMISSIONER MAY: Okay, and do
6 most of the homeowners have to park on the
7 street or do most of them have --

8 MR. ISAACS: I don't know exactly,
9 but it's about 50-50.

10 COMMISSIONER MAY: About 50-50.
11 Is there --

12 MR. ISAACS: There's semi-
13 detached houses that don't have driveways, as
14 well as single family houses, and I believe
15 most of the do have driveways, but --

16 COMMISSIONER MAY: Is there a
17 problem right now with the amount of parking?

18 MR. ISAACS: No, there's not a
19 problem right now.

20 COMMISSIONER MAY: Even during the
21 peak of when people are going to restaurants
22 and stuff on Wisconsin people don't park

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1 there?

2 MR. ISAACS: I don't believe so,
3 but I think that's in part because of the
4 difficulty and danger of crossing Wisconsin
5 Ave., as I think was mentioned earlier in the
6 hearing.

7 COMMISSIONER MAY: Is that danger
8 going to go away?

9 MR. ISAACS: With a traffic light
10 I think it probably would.

11 COMMISSIONER MAY: Oh, okay.

12 MR. ISAACS: Right now there is no
13 traffic light, and there's those signs that
14 say traffic must yield, but someone got hit
15 and died a while back, and it's not
16 respected.

17 COMMISSIONER MAY: And tell me
18 again about the barrier. You referred to
19 some sort of plastic.

20 MR. ISAACS: Yes, my apologies. I
21 thought we had a photo of that, but it's not
22 included here.

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1 COMMISSIONER MAY: Where it is?

2 MR. ISAACS: It's plastic strips
3 at the edge of Wisconsin and Idaho. Right
4 there, where the gentleman is pointing to
5 beam.

6 COMMISSIONER MAY: Okay.

7 MR. ISAACS: Are some plastic
8 strips that attempt to prevent traffic from
9 Ordway Street traveling west from accessing
10 Wisconsin Ave., and presumably from
11 preventing cars going south on Wisconsin from
12 making the left turn onto Idaho and Ordway,
13 but again, that's really not well observed.

14 COMMISSIONER MAY: Is it illegal
15 to make a left onto Idaho from Wisconsin? I
16 mean, is there a break in the double yellow
17 line? Is there a no left turn sign?

18 MR. ISAACS: No, I don't believe
19 there's a sign.

20 COMMISSIONER MAY: Okay. And you
21 can make a left from Ordway onto Idaho?

22 MR. ISAACS: No, no. You need to

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1 make a right onto Idaho.

2 COMMISSIONER MAY: Because I know
3 it's one way in the other direction.

4 MR. ISAACS: Yes.

5 COMMISSIONER MAY: Okay.

6 MR. ISAACS: Yes, I'm sorry. It's
7 one way. Currently the arrows show it's one
8 way going northeast and it's one way going
9 southwest at the current time on the other
10 side of Wisconsin.

11 COMMISSIONER MAY: Got it. Okay.
12 Thanks.

13 COMMISSIONER KEATING: Just a
14 quick question. Is there truck and bus
15 traffic on Ordway now?

16 MR. ISAACS: Limited. I have
17 personally observed trucks and either school
18 buses or on occasion Metro buses on Ordway.

19 COMMISSIONER KEATING: Okay. I do
20 recall DDOT, I think, saying that that was a
21 -- I'm not sure what the term they used --
22 for a secondary street, a street where a bus

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1 and truck traffic wasn't allowed effectively;
2 is that correct?

3 MR. ISAACS: That's correct. It's
4 classified as a local residential street.

5 COMMISSIONER KEATING: Okay.

6 MR. ISAACS: And DDOT, we've
7 raised this issue in public meetings with
8 them, and they've expressed, you know,
9 sympathy, but again, in their written
10 reports, they make no mention of addressing
11 these concerns.

12 CHAIRMAN HOOD: Can we put the
13 other slide back up, one previous? Do we
14 have that, with the items to the right? Is
15 that in ours?

16 MR. ISAACS: Oh, I did not make
17 copies.

18 CHAIRMAN HOOD: Okay. No, no. I
19 just --

20 MR. ISAACS: We can certainly. I
21 apologize.

22 CHAIRMAN HOOD: -- am trying to

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1 break down the issues, but help me. You may
2 have done some of this with Commissioner May.

3 So forgive me. Do you have a highlighter
4 pen? Somebody has one.

5 Okay. I want you to walk me
6 through each one of those and show me what
7 you're saying there in relationship with the
8 diagram. And we're doing number one first,
9 the first bullet.

10 MR. ISAACS: Yes. Currently there
11 is a temporary barrier of plastic strips that
12 prevent westbound traffic on Ordway from
13 entering onto Wisconsin Avenue, and as
14 indicated in the last bullet, we would like a
15 permanent barrier to further restrict traffic
16 from Ordway Street onto Wisconsin Ave., and
17 from Wisconsin onto Ordway.

18 CHAIRMAN HOOD: I think it was
19 already asked. So what's there now? Is it
20 not doing the job? I'm just asking.

21 MR. ISAACS: No, it's not, and
22 it's these plastic strips that stick up

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1 about, you know, three feet or so, and have
2 reflectors on them, but again, cars often go
3 around them.

4 CHAIRMAN HOOD: Oh, they can go
5 around them. It's not across the whole
6 street or do they go in the ground?

7 MR. ISAACS: That's right. They
8 go in the ground, but from Wisconsin, you can
9 turn right onto Ordway and on Wisconsin going
10 south you can turn left onto ordway because
11 the barrier only goes, let's say, about
12 halfway across the street.

13 CHAIRMAN HOOD: Okay. I've got
14 you. Okay. Let's go to the next one. We
15 did the last one first. Let's go to the
16 first one if you don't mind. No, no, that's
17 not -- okay. The second one then.

18 MR. ISAACS: So the middle one.
19 Now under the proposal of the Applicant
20 Idaho, which now goes one way southeast --
21 southwest -- I'm sorry -- they would propose
22 making that two way to allow to allow the

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1 trucks and other traffic to go both ways.

2 What we are requesting is for
3 traffic to be required to turn either right
4 and go south on Wisconsin or left and, you
5 know, north on Wisconsin, but not go across
6 to Idaho and Ordway.

7 CHAIRMAN HOOD: Okay.

8 MR. ISAACS: And I would add that,
9 you know, just a couple of blocks away at
10 Upton Street is an example of that where
11 traffic is required to go right or left on
12 Wisconsin and not straight across.

13 CHAIRMAN HOOD: That slide, if we
14 don't have that, that actually would be very
15 helpful at least to me.

16 This one, do we have this?

17 MR. ISAACS: No, I don't believe I
18 included it in my materials. I apologize for
19 that oversight and I'll get that to you
20 tomorrow.

21 CHAIRMAN HOOD: Okay. Yeah, we'll
22 we'll leave the record open for that.

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1 VICE CHAIRMAN JEFFRIES: Just a
2 quick question.

3 Were you finished?

4 CHAIRMAN HOOD: Yeah, I'm
5 finished. Thank you.

6 VICE CHAIRMAN JEFFRIES: When you
7 say a permanent barrier, what does that look
8 like? I mean, what --

9 MR. ISAACS: Well, again, I wish
10 DDOT was here because we've talked about
11 that, and this is their proposal, but they
12 believe that there needs to be some sort of
13 structure, you know, whether it was a
14 concrete curb or --

15 VICE CHAIRMAN JEFFRIES: A
16 bollard?

17 MR. ISAACS: -- something like
18 that that would replace these plastic strips
19 that, you know, don't fully do the job.

20 VICE CHAIRMAN JEFFRIES: But it
21 would be permanent.

22 MR. ISAACS: Again, that's what

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1 DDOT has suggested to us in conversations,
2 and we think that's the right approach, but
3 again, in their written reports on the
4 project, they make no mention of these
5 modifications.

6 VICE CHAIRMAN JEFFRIES: Okay.

7 COMMISSIONER MAY: Commissioner
8 Jeffries, there are some instances where DDOT
9 has installed basically like a curb that
10 breaks one part of a street from another. It
11 doesn't have to be anything that's very tall
12 or anything like that, but you know, a curb
13 with a fence or a shrub or something, an
14 island, something like that.

15 VICE CHAIRMAN JEFFRIES: So that
16 it forces traffic to go right.

17 COMMISSIONER MAY: Yes.

18 VICE CHAIRMAN JEFFRIES: Okay, but
19 it's not something that's like some sort of
20 projectile.

21 MR. ISAACS: I hope not.

22 COMMISSIONER MAY: Nothing that

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1 projects, not like bollards or anything like
2 that.

3 VICE CHAIRMAN JEFFRIES: Okay.
4 I'm still thinking about St. Louis, and I get
5 nervous when I hear these things. Okay.

6 COMMISSIONER MAY: Can I ask a
7 question? Can you point to where the
8 permanent barrier at Ordway-Idaho West on
9 Wisconsin?

10 MR. ISAACS: Again, it's hard to
11 do it precise, and I don't think I can hold
12 my hand still long enough.

13 COMMISSIONER MAY: Yeah, it's
14 where the red diamond is.

15 MR. ISAACS: Yes.

16 COMMISSIONER MAY: That's east of
17 Wisconsin.

18 MR. ISAACS: But, again, the
19 current area only goes part way jutting out
20 from this corner at Idaho and Wisconsin and
21 cars can go onto Idaho.

22 COMMISSIONER MAY: That's fine.

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1 I'm just trying to clarify that you mean east
2 of Wisconsin and not west of Wisconsin.

3 MR. ISAACS: That's correct.
4 That's correct.

5 COMMISSIONER MAY: Yes, right.
6 Okay.

7 CHAIRMAN HOOD: Any other
8 questions, colleagues?

9 Okay. Mr. Fiola.

10 MR. FIOLA: Just one for Mr.
11 Isaacs.

12 The installation of a permanent
13 barrier, would that satisfy the traffic
14 issues that you raise?

15 MR. ISAACS: Well, not entirely.
16 We do believe that there will be increased
17 traffic from the site, and this is just a
18 mitigation measure that we think will help
19 address some of our concerns, but it won't
20 completely address all of our concerns.

21 MR. FIOLA: What other traffic
22 concerns?

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1 MR. ISAACS: Well, we think that
2 the parking will --

3 MR. FIOLA: Not parking. Traffic.

4 MR. ISAACS: No, no, but we think
5 obviously people who are parking on the block
6 have to drive on the block, and so they're
7 sort of one and the same, and we think that
8 the project as a whole needs to be addressed
9 as a whole, and our concerns with traffic --

10 MR. FIOLA: Let me ask a question
11 more directly. Would the installation of
12 permanent barrier that you're suggesting the
13 Zoning Commission make a part of this order,
14 I assume, prohibit westbound traffic on
15 Ordway from entering or crossing Wisconsin
16 Avenue?

17 MR. ISAACS: Well, again, I'm not
18 a design engineer, but I would think that it
19 would as the current barrier attempts to do,
20 yes.

21 MR. FIOLA: Thank you, and would
22 it prohibit eastbound traffic on Idaho from

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1 crossing Wisconsin Avenue onto Ordway Street?

2 MR. ISAACS: That's what we're
3 requesting, yes.

4 MR. FIOLA: Okay. Thank you.

5 CHAIRMAN HOOD: I'd like to
6 acknowledge I see former Chair of the Board
7 of Zoning Adjustment Ruth Ann Miller sitting
8 in the back being quiet. She has served the
9 city well. I just wanted to acknowledge her.

10 Okay. Mr. Bairstow -- I'm sorry -
11 - Ms. Bairstow.

12 Okay. Mr. Davis.

13 Is Ms. Scalafani here? Okay. Mr.
14 O'Sullivan. Mr. Espenschied.

15 MR. ESPENSCHIED: A question for
16 Mr. Isaacs. Is your view of the effect on
17 Ordway Street of the presence of the south
18 block parking garage influenced by whether
19 that parking is going to be free to all
20 comers?

21 And has the ambiguity that we've
22 had about whether it is intended to be free

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1 been clarified by the developer, to your
2 knowledge?

3 MR. ISAACS: No, not to my
4 knowledge, and I think we all know from our
5 own experiences, I tried to indicate there
6 are blocks near commercial development that
7 we know can be quick access to parking and
8 can avoid either paying for parking or
9 dealing with an underground parking lot, and
10 we strongly believe it should not be the
11 conscious policy of the Zoning Commission to
12 approve projects that encourage that result.

13 MR. ESPENSCHIED: I know that
14 presumably you want them to install a traffic
15 signal at Idaho, Ordway and Wisconsin Avenue
16 for reasons that have been discussed, but is
17 it your --

18 MR. ISAACS: Actually I don't have
19 any opinion on that, and I'm not of the
20 strong believe that there's a need for a
21 traffic light and would be perfectly content
22 if there was none, no addition of a traffic

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1 light.

2 MR. ESPENSCHIED: Okay. Well, my
3 question nevertheless that I was going to go
4 to is do you think that if a traffic signal
5 is installed, which I believe the Applicant
6 intends to pay for or provide, would that
7 accentuate the problem of people parking on
8 Ordway Street and crossing Wisconsin Avenue
9 to get to the commercial entities there.

10 MR. ISAACS: Yes, absolutely, and
11 that's really one of the main reasons we're
12 here, is that the addition of that traffic
13 light will greatly change the dynamics of our
14 quiet local residential street and encourage
15 cut-through traffic and encourage parking
16 because it's very easy to go just directly
17 across Wisconsin Ave., which is, as I
18 mentioned, most of our block is closer than
19 the south block to the north block commercial
20 establishments.

21 MR. ESPENSCHIED: Okay, and just
22 one further question about that. If the

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1 entry and exit for Ordway Street is cut off,
2 as you propose, from Wisconsin Avenue, would
3 you expect that over time people who are
4 patronizing the north block commercial
5 establishments would nevertheless come around
6 from 36th Street or 35th Street to get onto
7 Ordway in order to be able to park there and
8 conveniently walk across the street?

9 Do you see that configuration as a
10 problem?

11 MR. ISAACS: You know, I'm not
12 sure I see any great solution here for us,
13 but, you know, we do want to see development
14 of a new supermarket, and under any
15 circumstances that will result in increased
16 parking and traffic, and we can accept
17 certain amounts of increases, but we think
18 that under current circumstances with the
19 addition of a traffic light, with inadequate
20 parking on the site and with the current
21 traffic configuration, it just makes it very,
22 very appealing to have this local residential

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1 street become both a major thoroughfare and a
2 parking destination.

3 MR. ESPENSCHIED: Thank you.

4 CHAIRMAN HOOD: Okay. Mr.
5 Montanto. Can you turn your microphone on?

6 MR. MONTANTO: You mentioned
7 traffic not -- actually cars not parking on
8 Ordway on the east side of Ordway. Can you
9 venture to guess where they're parking today?

10 MR. ISAACS: I'm sorry. I don't
11 follow the question.

12 MR. MONTANTO: You venture that
13 it's dangerous and, therefore, you don't see
14 a lot of traffic parked on the east side of
15 Ordway. Can you venture where those patrons
16 are parking today?

17 MR. ISAACS: Well, I would assume
18 that they are parking in the current surface
19 parking lot behind the bank and the Starbucks
20 or on the existing parking on the street on
21 Idaho and adjoining neighborhood streets.

22 But you know, again, with a

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1 traffic light it makes it very easy to park
2 and wait for a green walk signal and walk
3 across and park on the surface.

4 MR. MONTANTO: Thank you.

5 Last question. In the issues that
6 you've had with the entrance and with the
7 strips, have you raised that to agencies, to
8 anyone to get attention, and did you receive
9 any response back? The issues that you
10 described, the concerns that you described.

11 MR. ISAACS: Yeah, my written
12 testimony, as I mentioned, includes a letter
13 that we wrote in July 2008 to Councilwoman
14 Cheh, and we copied OP and DDOT and various
15 ANC members, and as I mentioned it was signed
16 by the vast majority of neighbors between
17 Reno and Wisconsin and Idaho, and
18 unfortunately we did not receive a response.

19 CHAIRMAN HOOD: Okay. Thank you.

20 Okay. Now we're going to persons
21 -- oh, wait a minute. Hold on. I'm sorry.
22 Mr. O'Sullivan. I definitely want to forget

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1 Wisconsin Neighbors. This is the last party.
2 We're done with you. Thank you very much on
3 Ordway Street.

4 MR. O'SULLIVAN: Mr. Chairman, may
5 I make a request?

6 Mr. Court. I'm going to go first.

7 Mr. Pickman is going to go third. I'm going
8 to use some PowerPoint. He's using nothing.

9 Mr. Korbel is going in the middle,
10 and he is going to use PowerPoint, then a
11 video and then PowerPoint, and we're not
12 technical geniuses and we can't afford to
13 hire technical staff. I wonder if we could
14 turn off the clock, suspend the clock while
15 we're changing from one technology to
16 another.

17 CHAIRMAN HOOD: Mr. O'Sullivan, I
18 was thinking to myself I wonder how he is
19 going to try to get some more time. I was
20 just trying to figure that out.

21 (Laughter.)

22 CHAIRMAN HOOD: And I really did.

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1 Actually I just had the discussion. I said,
2 "He's going to try to get some more time." I
3 actually said that.

4 MR. O'SULLIVAN: But we're not
5 going to be talking.

6 CHAIRMAN HOOD: You and I are
7 getting to be very good friends. I'm
8 starting to be able to predict it.

9 MR. O'SULLIVAN: We're not going
10 to be talking or showing pictures while we're
11 having the extra time. So it won't do us any
12 good. We're just going to switch back and
13 forth.

14 CHAIRMAN HOOD: Do you know what,
15 Mr. O'Sullivan. You had that crafted so
16 well, I can't do nothing but agree.

17 (Laughter.)

18 MR. O'SULLIVAN: I should have
19 worked harder on some of my other questions.

20 CHAIRMAN HOOD: Ms. Schellin, I'm
21 not sure who's going first. You guys just
22 take it.

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1 VICE CHAIRMAN JEFFRIES: We only
2 have hard copies for Korbel.

3 MR. O'SULLIVAN: Yes. Do you want
4 me to hand in written copies now?

5 Good evening. My name is John
6 O'Sullivan. I live on Newark Street. I've
7 submitted written comments.

8 I'm going to make five points
9 about the traffic impacts of the proposed
10 PUD.

11 First, the PUD area is already
12 impacted by significant traffic. The
13 neighborhood surrounding the PUD are
14 characterized by some of the highest cut-
15 through traffic on residential streets in
16 northwest Washington. Major arteries connect
17 downtown D.C. with Maryland and Northern
18 Virginia suburbs and intersecting residential
19 streets carry essential traffic between them.

20 Significant traffic on and between
21 or avoiding Connecticut, Wisconsin, Mass. and
22 34th Street-Reno Road crosses our

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1 neighborhoods. Additionally, many
2 institutional uses draw traffic onto
3 residential streets.

4 There are 12 public and
5 independent schools within walking distance
6 of the PUD. Most of their 5,000 or so
7 students and staff come in cars.

8 We have the National Cathedral, a
9 huge tourist attraction in our neighborhood,
10 and Fannie Mae next door. Neither the
11 Applicant nor the city agencies have
12 considered these facts.

13 Second, the PUD will generate
14 increased traffic on already burdened
15 neighborhood streets. DDOT's 2005 upper
16 Wisconsin corridor study found the traffic
17 from future development along Wisconsin is
18 expected to rise to almost intolerable D, E,
19 and even F levels of service, and that is
20 based on the assumption of no PUD or up
21 zoning at the project site.

22 In fact, OP said in that study

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1 only four years ago that there should be no
2 up zoning in the PUD site.

3 Third, Applicant's traffic
4 submission is undercut by other traffic data.

5 This slide shows significant disparities
6 between Giant's estimates, two other
7 independent traffic counts, and publicly
8 reported DDOT data.

9 To cut to the chase, the
10 independent study by PSI, which was discussed
11 in more detail last time, predicts over 4,000
12 additional trips a day generated by PUD,
13 twice the current level generated from these
14 blocks.

15 The impacts on Macomb Street, a
16 local collector that connects Massachusetts,
17 Wisconsin, 34th Street, and Connecticut and
18 is already very heavily traveled both east
19 and west of Wisconsin, and on Newark, which
20 runs down the spine of the PUD and already
21 has unacceptably high traffic levels for a
22 local street, will be drastic.

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1 Fourth, Applicant has used suspect
2 data. In order to reach its conclusion that
3 the PUD won't negatively affect level of
4 service ratings, the Applicant uses a growth
5 rate of .25 percent annually for all but one
6 intersection. While the Washington Council
7 of Governments' traffic model projects growth
8 in northwest D.C. of .7 percent a year,
9 almost three times as high, and other
10 professionals recommend one percent a year,
11 four times as high, and where the Applicant
12 has not assumed traffic problems away on the
13 basis of low estimates of current traffic,
14 unsupported low growth rates, and the magical
15 pixie dust effects of signal retiming, they
16 have simply changed data.

17 The intersection right near my
18 house at 34th and Newark was predicted to go
19 to F level of service according to the
20 Applicant's Website. This was then
21 inexplicably changed to C. OP and DDOT
22 haven't caught these discrepancies and

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1 flagged them for you.

2 Fifth and finally, OP and DDOT
3 have more work to do. As you know, the comp
4 plan requires traffic mitigation and calming
5 measures to reduce the present impact be
6 adopted before the PUD can be approved. DDOT
7 has ignored this requirement.

8 The comp plan also requires the
9 traffic studies consider the impact of nearby
10 projects in the pipeline, such as the 100 new
11 units under construction just across the
12 street from the PUD, which have also been
13 ignored.

14 The performance of city agencies
15 on these matters is not complete. We expect
16 them to follow the law and their own
17 requirements and to advise the Commission in
18 a manner that is consistent with both. They
19 haven't done so.

20 Perhaps the apparent support of
21 DDOT for both the low estimates of impacts
22 and the absence of mandated traffic

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1 management and calming measures arises out of
2 a confidence that post construction measures
3 can address any problem. If that's their
4 view, we disagree. More likely it arises out
5 of a recognition that these problems can't be
6 effectively mitigated for a project of this
7 size so far from Metro rail.

8 We urge the Commission to ask OP
9 and DDOT to do the following: undertake the
10 kind of rigorous analysis the Commission and
11 city residents deserve consistent with the
12 comp plan.

13 Second, determine the size and
14 uses for which mitigation measures would be
15 adequate and advise the Commission what
16 changes in size and uses are necessary to
17 reach this level.

18 And finally, recommend specific
19 mitigation measures to deal with any
20 remaining problems caused by the modified
21 project.

22 Thank you.

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1 CHAIRMAN HOOD: Mr. O'Sullivan,
2 did you give us your testimony?

3 MR. O'SULLIVAN: We have it here.

4 CHAIRMAN HOOD: Oh, okay.

5 MR. O'SULLIVAN: I'll hand it in
6 with the slides.

7 CHAIRMAN HOOD: Okay. It's always
8 good to give it to us because we make little
9 notes. Well, for me, I make notes.

10 MR. O'SULLIVAN: I'll do it again
11 if you want.

12 (Laughter.)

13 CHAIRMAN HOOD: I was going to
14 comment, but I won't get myself in trouble.

15 COMMISSIONER MAY: We can always
16 just download it and watch it again off the
17 Website.

18 MR. O'SULLIVAN: Please don't.

19 MR. KORBEL: Good evening,
20 Chairman Hood, Commissioners. My name is
21 John Korbel. I'm here this evening to
22 comment on the adequacy of the Applicant's

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1 parking plan to support the PUD and the
2 community.

3 My written testimony provides the
4 details of my analysis. If implemented, the
5 Applicant's parking plan will adversely
6 impact the immediate community because of the
7 current parking situation, size of the
8 development, limited transportation
9 alternatives, and other development in the
10 area. I will comment in a moment on each of
11 these areas.

12 Based upon my analysis, the
13 Applicant should provide more spaces than
14 required by zoning regulations, not fewer.
15 But what does the Applicant actually propose?

16 The Applicant suggests their
17 parking is 23 spaces more than required by
18 Zoning, but this surplus is misleading.
19 There are actually 47 fewer commercial spaces
20 than are required and 77 fewer if the you
21 count the 30 spaces set aside for the
22 community.

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1 What is the real parking need? RA
2 is not a vacant lot, an empty development
3 site. Let's look at a brief video of the
4 area.

5 If you could please stop while I
6 switch to the video. Thank you.

7 (Pause in proceedings.)

8 MR. KORBEL: I hope this works.

9 This is taken on May 1st, 2009 at
10 the Giant store. This is the parking lot
11 looking into the parking lot from the north
12 side of the parking lot. As you can see, the
13 parking lot is entirely full, except for a
14 couple of spaces for handicapped parking.

15 This is the north side of the
16 Giant store looking east.

17 This is the Giant store, and you
18 can see there's some activity there.

19 This is the 38th Street entrance
20 to the parking lot. You can see people
21 walking to the parking lot and you can see
22 people coming out of the parking lot, and

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1 they are turning to go east on Macomb Street.

2 This is 38th Street looking south.

3 You can see that the street is completely
4 full of cars.

5 This is Macomb Street looking
6 west.

7 This is Macomb Street looking
8 east, and you can see the restaurants on the
9 north and south sides of the street.

10 This is 2 Amys. You can see this
11 is the alleyway with the dumpsters at the
12 end. You can see there are people in front
13 waiting to go in. Having a little trouble
14 here with the technology.

15 This is now 2 Amys, as I said.
16 this is now looking at Cafe Deluxe and
17 Enology. You can see there are people now
18 waiting to go into Cafe Deluxe. This is the
19 Giant.

20 This is the corner of Macomb
21 Street and Wisconsin Avenue, seven o'clock on
22 a Friday night. You can see a little bit of

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1 traffic there. In fact, the traffic is so
2 dense here as you'll see, a taxicab has to
3 make a U turn right in the middle, right
4 here.

5 This gives you an idea of the
6 density in the neighborhood and the activity
7 in the neighborhood.

8 This is the Giant, and this is,
9 once again, looking south and you can see
10 this is Cactus Cantina on the right, and this
11 is the Giant. This is Murphy's. This is the
12 blighted area in our neighborhood.

13 Thank you. I'm going to now go
14 back to my PowerPoint. Thank you. Just one
15 moment.

16 CHAIRMAN HOOD: I think, yeah,
17 that's fine. We can stop, but I think if you
18 can say -- I'm actually going to ask
19 questions about that. Things are moving kind
20 of fast for me.

21 MR. KORBEL: Do you want me to --

22 CHAIRMAN HOOD: No, not right now,

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1 but when you finish.

2 MR. KORBEL: I won't be able to
3 slow it down, but I'll be able to show it to
4 you again if you like, sir.

5 CHAIRMAN HOOD: Oh, I thought you
6 were making it go fast.

7 MR. KORBEL: No, I really needed
8 to get to the --

9 CHAIRMAN HOOD: So you planned it.
10 Okay. All right. Well, anyway, we want to
11 go back to that.

12 MR. KORBEL: I didn't plant the
13 cars there, sir.

14 CHAIRMAN HOOD: No, I said you
15 planned it to go fast.

16 MR. KORBEL: Yeah, I planned it
17 that way, yes.

18 CHAIRMAN HOOD: All right.

19 MR. KORBEL: It's difficult to
20 show in the couple of minutes I have, but
21 thank you.

22 Okay. Let me continue. If you

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1 could skip to page 12 of your testimony, skip
2 to the slide, Applicant's parking, occupancy
3 count. The Applicant's own traffic study
4 illustrates the problem on a Thursday in
5 January of 2008. There are two peaks, the
6 first around 1:00 p.m. and the second at 7:00
7 p.m.

8 At its peak, the lot is filled
9 beyond its practical capacity. The count on
10 the following Saturday inextricably stops at
11 5:00 p.m. It doesn't show the much higher
12 evening peak.

13 These numbers are shocking,
14 particularly given that almost half the
15 retail space is vacant or closed when the
16 parking lot peaks occur. Obviously it's
17 restaurants outside the PUD, neighbors and
18 visitors to the community that fill the lot.

19 The Applicant provides only 80
20 more spaces than exist today to support
21 larger and more vibrant retail in the PUD.
22 In other words, the Applicant is doubling the

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1 amount of active retail in the PUD, while it
2 is adding only 29 percent more parking
3 spaces.

4 The Applicant contends that the
5 PUD would provide parking to support the
6 proposed retail, supermarket, and other
7 commercial use. I could not disagree more.
8 The PUD proposal has 86 fewer spaces than
9 required to meet PUD demand, and absence of
10 commercial parking on the north block is
11 unacceptable.

12 Moreover, the PUD and surrounding
13 businesses will attract patrons from outside
14 the immediate neighborhood. It's unrealistic
15 to expect the transportation alternatives to
16 significantly address this enormous parking
17 deficit.

18 Also, the PUD application did not
19 consider the impact of other development in
20 the area like the new condos across the
21 street from the Giant. However, the PUD
22 process requires the Zoning Commission and OP

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1 to consider these impacts, particularly when
2 the Applicant seeks zoning relief.

3 The Applicant should provide
4 significantly more parking spaces. Reducing
5 the number of north block residential spaces
6 could free up spaces for commercial parking.

7 Limiting restaurants and bars and
8 prohibiting RPP for PUD residents could also
9 help.

10 Finally, parking management must
11 be detailed by the Applicant to insure
12 effective shared use.

13 To conclude, the surplus of
14 parking claimed by the Applicant is
15 misleading. The applicant has actually
16 shortchanged the commercial parking
17 requirements to benefit its housing project.

18 Our parking recommendations would
19 mitigate in part the adverse impact of the
20 PUD on the community and promote the economic
21 vitality of existing businesses in the area
22 and those in the PUD.

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1 I can see my time is up. Thank
2 you.

3 MR. PICKMAN: I am James Pickman.

4 I reside on Macomb Street two blocks from
5 the proposed development.

6 I would like to sum up most of the
7 issues raise by opposition parties and by
8 some supporters and suggest a way to
9 expeditiously resolve our differences with
10 the Applicant.

11 From early on we have been deeply
12 concerned with the Applicant's positioning of
13 its position as all or nothing. Either
14 accept the project as proposed or you're
15 characterized as obstructionists and against
16 the new supermarket.

17 The developers and their
18 publicists have excelled in propagating this
19 sharp dichotomy, but in reality that's not
20 the case. Everybody is for an improved
21 supermarket and the return of a vibrant
22 Wisconsin Avenue streetscape.

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1 However, legitimate and serious
2 concerns have been expressed by both
3 opponents and proponents of the project,
4 particularly about parking and loading
5 deficiencies, as well as traffic impacts, and
6 the public benefits and amenities Applicant
7 describes are not significantly greater than
8 a matter of right plan would provide, nor
9 proportional to the zoning changes requested.

10 These are all concerns that you,
11 the Zoning Commission, can fix or can order
12 the parties to resolve under a tight time
13 frame.

14 Here's what we believe is the
15 appropriate framework for a development that
16 will receive overwhelming community support
17 and quickly achieve a new supermarket.

18 Point one, the south block plan
19 for a large, new Giant and new street front
20 commerce should proceed, but only with
21 modifications to fix the severe loading and
22 delivery problems by (a) moving the Idaho

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1 loading facilities north towards or onto
2 Newark Street away from the Idaho Avenue
3 home; and (b) expanding this relocated
4 delivery area to accommodate all new south
5 block loading.

6 Point two, spillover onto
7 residential streets and adverse traffic
8 impacts can be prevented with additional
9 parking, better loading, effective traffic
10 mitigation, and less residential density.
11 This can be accomplished by (a) removing two
12 floors of north block apartments to free up
13 parking for that block's commercial customers
14 and employees. The resulting three story
15 building will assure that the project is not
16 inconsistent with the comprehensive plan and
17 can still include affordable housing;

18 (b) By providing adequate locating
19 and delivery space on the north block to
20 prevent use of public space by delivery
21 trucks;

22 (c) Excluding new apartment

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1 residents from residential parking permit
2 eligibility to prevent additional parking on
3 already congested local streets;

4 (d) Providing for substantial
5 community parking, considerably more than the
6 30 spaces Applicant has offered, especially
7 for existing businesses whose customers and
8 employees have depended for years on Giant's
9 parking lots; and

10 (e) Requiring an effective plan
11 for traffic mitigation before any new project
12 is approved and escrow of at least \$500,000
13 for mitigation of unanticipated impacts as
14 stated by the ANC as one of its conditions.

15 Point three, it is important to
16 maintain the neighborhood shopping center.
17 The possibility of six or seven new
18 restaurants, as Applicant's proposal would
19 allow, added to the five already existing,
20 would transform the area into a restaurant-
21 entertainment district, causing even more
22 parking and traffic problems. The local

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1 neighborhood character can be maintained by
2 (a) retaining the Macomb-Wisconsin overlay,
3 but allowing up to two additional restaurants
4 in the new development, each roughly the size
5 of Cafe Deluxe; and (b) requiring the
6 Applicant to develop and implement a plan to
7 attract neighborhood serving businesses,
8 including long-term affordable rents and
9 appropriately configured spaces to assure
10 that existing and other local businesses will
11 be able to locate in the commercial space
12 when the development is completed.

13 We believe this package of
14 modifications will solve the loading and
15 parking problems, address likely spillover,
16 mitigate traffic impacts, and maintain the
17 local neighborhood shopping center. The
18 result will be a development we can support,
19 one that would become a welcome and fitting
20 addition to the community and the city.

21 Commissioners, this is in your
22 hands. You can fix the application by

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1 Commission order or you can direct the
2 parties to fix it, but what you shouldn't do,
3 if I may respectfully request, is to approve
4 the application as proposed.

5 Thank you.

6 COMMISSIONER MAY: Do we have your
7 testimony?

8 MR. PICKMAN: Yes, sir.

9 CHAIRMAN HOOD: Yes, it's dated --
10 we just got it -- May 4th.

11 Okay. Mr. O'Sullivan, you have 15
12 seconds. Are you finished?

13 MR. O'SULLIVAN: Yes.

14 CHAIRMAN HOOD: Oh, okay. All
15 right. Any questions?

16 VICE CHAIRMAN JEFFRIES: Yes, I
17 have a question. Mr. Pickman, so what you
18 proposed here you have proposed to the
19 Applicant on several occasions.

20 MR. PICKMAN: Not this list, no.
21 We have not done that yet.

22 VICE CHAIRMAN JEFFRIES: Any part

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1 of it or --

2 MR. PICKMAN: Yes. Can I ask Mr.
3 O'Sullivan? Because he was part of a meeting
4 with the Applicant back in February where
5 they raised a number of these issues.

6 MR. KORBEL: Excuse me. I was
7 also at that meeting. We met with the
8 Applicant, and we went over a number of the
9 issues, including the density of the building
10 on the north block and perhaps the ability to
11 reduce its height; the need for parking on
12 the north block. We discussed that with the
13 Applicant.

14 We also spoke about the need for
15 more community parking. We discussed the
16 loading dock situation, and frankly,
17 presented the alternative that I believe the
18 Idaho group presented of moving the loading
19 facility and the access to the loading dock.

20 We thought it was a productive
21 meeting, but as I believe Mr. O'Sullivan
22 indicated or one of our party indicated, the

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1 meetings were suspended following the first
2 hearing.

3 We were not the only ones there.
4 CPCA was represented, as well as all the
5 parties that were concerned about the issues.

6 VICE CHAIRMAN JEFFRIES: So in
7 terms of the parking, the recommendations
8 around parking, was there any movement, any
9 changes from the Applicant after you made
10 those suggestions?

11 MR. KORBEL: Well, you may want to
12 ask the Applicant again. My recollection of
13 that meeting was that there was no
14 willingness to adjust on the parking issue,
15 particularly in parking on the north block;
16 that that was the proposal, take it or leave
17 it, was my recollection of that meeting.

18 MR. O'SULLIVAN: Commissioner
19 Jeffries, if I may, the CPCA was there. The
20 Idaho Street parties were there. Some of the
21 Ordway Street people were there. We weren't
22 trying to, you know, whittle them away one at

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1 a time, and CPCA in particular asked them to
2 tell us what parts of the overlay they needed
3 flexibility on in an attempt to preserve the
4 overlay. They said they wouldn't answer that
5 question.

6 As Mr. Korbelt indicated, the Idaho
7 Street parties sent, actually sent a
8 redesigned loading configuration to them for
9 their configuration, and we asked them to
10 consider some other possible changes. We got
11 no response to any of them.

12 The day after the hearing when we
13 indicated to Street Works at the February
14 19th hearing that we hadn't heard from them,
15 they sent me an E-mail the next day saying
16 they weren't going to talk to us anymore and
17 they were sticking with their application as
18 fine.

19 VICE CHAIRMAN JEFFRIES: Okay. So
20 let me see if I can get some level of
21 prioritization here in terms of the issues.
22 I mean, obviously there's seriously a parking

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1 issue. It comes up and up again,
2 particularly in the north parcel. Loading
3 zone, you know, being close to the Idaho
4 homes, being closer to Newark. Also density.

5 If you had to name your top two
6 things, what are the two most critical items
7 that are just complete deal breakers?

8 MR. O'SULLIVAN: I don't think we
9 can answer that because we represent, you
10 know, different people with different
11 interests.

12 VICE CHAIRMAN JEFFRIES: Okay.

13 MR. O'SULLIVAN: But let me tell
14 you we think they're all interrelated, that
15 most of them are interrelated. That is, the
16 parking and traffic becomes more of a problem
17 if there isn't a restriction on restaurants.

18 The parking becomes more of a problem if
19 there are extra apartments.

20 So we see them all as sort of
21 susceptible to some consolidated, unified
22 solution that's less than they've asked for

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1 and more than we might want.

2 VICE CHAIRMAN JEFFRIES: Mr.
3 Korbel.

4 MR. KORBEL: Mr. Jeffries, in my
5 testimony, I made the statement that
6 basically the developer, the Applicant, has
7 shortchanged the commercial parking because
8 of the housing project, and what I mean by
9 that is that if you eliminated two floors of
10 the building on the north block, there are
11 124 parking spaces there on the north block.

12 So you eliminate two floors and keep the
13 parking that is proposed by the Applicant and
14 you would pick up 62 parking spaces.

15 If you then enforced the zoning
16 requirement for parking for apartments, which
17 is one parking space for every two residents
18 as opposed to one for each resident, you
19 would pick up another 31 spaces. Thirty-one
20 plus 62 is 93. Those are the number of
21 spaces that zoning requires to be on the
22 north block.

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1 So that's to show how they are
2 interrelated.

3 VICE CHAIRMAN JEFFRIES: Mr.
4 Pickman.

5 MR. PICKMAN: I'm going to give a
6 personal opinion on this. I mean, the point
7 is they are all intertwined, and it's
8 difficult to pick one without the other, but
9 I'd have to say that we need to solve the
10 Idaho Avenue loading. It is just outrageous
11 how close it is to those people's homes, and
12 so that has to be one.

13 And I think the second one is to
14 take two stories off of that apartment house.

15 The north block is the real problem here.
16 We want the supermarket. As proposed, it's
17 fine except for the loading. They've got to
18 fix that. So that's the south block.

19 The north block here is the big
20 problem, and if we can knock two floors off
21 of that apartment house and then do as John
22 suggested, use some of the freed up spaces in

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1 the garage for commercial parking, that will
2 relieve some of the strain on loading. It
3 does a number of things.

4 VICE CHAIRMAN JEFFRIES: Well, how
5 many units are we talking about if you take
6 off two floors? I got the parking relief
7 pieces, but what else?

8 MR. PICKMAN: They've got 124-ish
9 in that building, and so take off two of the
10 four. I don't know whether it's -- it's not
11 quite half because the building goes up a
12 little bit. It might be 50-plus out of the
13 124 units.

14 VICE CHAIRMAN JEFFRIES: I'm just
15 trying to get at are you going to get a real
16 bang for your buck, I mean, beyond just the
17 relief of the parking spaces that Mr. Korbelt
18 is speaking of. I mean, is it going to make
19 that much of a dent in terms of really
20 helping mitigate some of the traffic concerns
21 and so forth.

22 MR. PICKMAN: Well, I in my

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1 testimony, I estimate that the developer, the
2 Applicant would need to add about 230 parking
3 spaces in order to address that picture that
4 I showed you in the video where the Giant
5 parking lot was completely full, to address
6 that need; to address the need for -- if you
7 will just bear with me for just one second.

8 VICE CHAIRMAN JEFFRIES: Again,
9 how close is the Metro station?

10 MR. PICKMAN: A mile away.

11 VICE CHAIRMAN JEFFRIES: A mile?

12 MR. O'SULLIVAN: There are two,
13 each about a mile.

14 MR. PICKMAN: I did one other
15 piece of information that I think might be
16 useful. I went through the parking lot last
17 Friday night, and I counted out of District
18 license plates in that parking lot.

19 VICE CHAIRMAN JEFFRIES: This is
20 what you're doing on a Friday night?

21 (Laughter.)

22 MR. PICKMAN: This has been my

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1 project. I am concerned about these issues.

2 So I have gone through that parking lot, and
3 I counted out of the -- it wasn't full at the
4 point that I was there. I think there were
5 about maybe 260 cars in the lot. One hundred
6 and 60 of those cars did not have D.C. tags.

7 So you tell me where those cars are coming
8 from. they don't feel like they are
9 neighborhood cars.

10 But if you would indulge me, what
11 I believe they need, the 231 actually that I
12 recommend, they need 95 spaces for current
13 users of the Giant parking lot. That's
14 including the 30 space community set-aside
15 that they've identified. I believe they need
16 56 spaces just to satisfy PUD demand, in
17 other words, just the new grocery store and
18 the new retail that's going into the PUD. I
19 believe that they need 50 spaces for resident
20 visitors and for the loss of on-street
21 parking as a result of the PUD because there
22 will be lost parking spaces on the street,

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1 some on Idaho Avenue.

2 And then finally, and this may be
3 viewed as controversial, I think there there
4 should be 30 spaces because of the nursing
5 home conversion to condos on Wisconsin
6 Avenue. The condos, they've advertised. We
7 understood to be 93 condos that would be
8 going in. They're advertising 107. They
9 only have to provide 37 parking spaces. So
10 that's going to put another 70 cars on
11 already crowded streets, and as I said
12 before, they're asking for relief from a good
13 deal of the zoning requirements, and my view
14 is they should give something back to the
15 neighborhood.

16 VICE CHAIRMAN JEFFRIES: Just one
17 last comment, Mr. Chair.

18 Mr. Pickman, I do appreciate you
19 laying this out. This was very helpful to me
20 in terms of, you know, the points and so
21 forth. Given that it's almost the 11th hour
22 as relates to this project and where we are

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1 and looking at the things you have here,
2 there seems to be some distance, and I'm just
3 concerned.

4 I mean, I was sort of happy to
5 sort of see this initially. Then I started
6 thinking about it, and clearly there's a few
7 things that can happen here that the
8 Applicant can work on, but there are some
9 other things that just seem to be, you know,
10 would be somewhat difficult for the Applicant
11 in cutting off two floors of the residential,
12 you know, providing additional parking. Some
13 of these things I'm just concerned.

14 So my question for you is because
15 at some point obviously this Commission is
16 going to have to, you know, rule on this, and
17 obviously we'd like this to be sort of worked
18 out between the community and the Applicant,
19 but the hour is getting late, and I'm just
20 wondering if there's a way that your list can
21 somehow -- you can sharpen your pencil a
22 little bit here in terms of some of the

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1 things you absolutely need.

2 And I know it's different parts.

3 You know, there's different groups and so
4 forth here, but this looks like a list that
5 would have started out several months ago or
6 a year ago.

7 MR. PICKMAN: Indeed, it was a
8 list that started out several months ago.

9 VICE CHAIRMAN JEFFRIES: Okay, but
10 my question was, was this the first time, and
11 you said --

12 MR. PICKMAN: I'd like to respond
13 on that.

14 VICE CHAIRMAN JEFFRIES: Yeah.

15 MR. PICKMAN: First of all, if you
16 count the bullets there are nine. The ANC
17 had 11 conditions. So it's --

18 VICE CHAIRMAN JEFFRIES: So you're
19 moving, huh?

20 MR. PICKMAN: We're moving. It's
21 not that long.

22 VICE CHAIRMAN JEFFRIES: Okay.

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1 MR. PICKMAN: Secondly, you asked
2 the question. I want to respond two things.

3 One is you asked how come we haven't laid
4 this out to the Applicant, and I have two
5 reasons for that.

6 One is what Mr. O'Sullivan and Mr.
7 Korbelt said. We were cut off on that. We
8 tried to. They said they weren't interested
9 in making a change.

10 And then let me be very frank with
11 you. The way these hearings have gone all of
12 these three-plus nights or maybe let's just
13 cut it after the first three; we'll leave
14 tonight open. As an opponent, as forced
15 opponent because we're all for this with a
16 "but," but as a forced opposition party here,
17 there wasn't much cause for optimism. I
18 mean, the proponents seemed on a roll. Our
19 cross-examinations weren't getting anywhere.

20 I respect what you said about the
21 effectiveness of cross, and the scuttlebutt
22 around the community on the listserve is it's

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1 a slam-dunk. It's over. The PUD is going to
2 be approved.

3 So for you to ask me have I
4 presented this, I would feel like a fool to
5 go to the proponents now, to the Applicant at
6 this time and say, "Oh, we have this list
7 here. We'd love to talk with you."

8 So the answer is, no, we didn't
9 because it would just be futile. If you, the
10 Commission, said, "We want you parties to sit
11 down and go seriously over this and come back
12 to us in two weeks," that would be terrific.

13 VICE CHAIRMAN JEFFRIES: I thought
14 we have been -- wait a minute.

15 CHAIRMAN HOOD: It might have been
16 another case, but I thought we -- it was a
17 different case? Oh.

18 VICE CHAIRMAN JEFFRIES: Okay.
19 Well, first of all, I just said it, and my
20 suspicion is, first of all, slam-dunks, you
21 know, this community, you should really be
22 careful about walking out of this room and

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1 making assumptions about what's going on up
2 here. I mean, I have seen a number of
3 communities come in here and turn these cases
4 around.

5 You know, we have an Applicant
6 that has a very savvy land use attorney, and
7 I've seen communities come around and turn
8 this Commission around. So do not make
9 assumptions that this is a slam-dunk. This
10 is not a slam-dunk.

11 MR. PICKMAN: Well, I'm delighted
12 to hear that.

13 VICE CHAIRMAN JEFFRIES: Okay, but
14 quite frankly, to be honest with you, I mean,
15 I've heard some testimony today that's, you
16 know, somewhat compelling, but I just want to
17 make certain before we have to start making
18 decisions up here that we've all exhausted,
19 this community here has exhausted, you know,
20 all avenues in terms of trying to work
21 through some changes.

22 And my only concern is, again,

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1 this is a list that doesn't seem like an 11th
2 hour list. It seems like a third hour list,
3 and I'm just sort of concerned that if you
4 haven't really presented something this
5 comprehensive to them in the past for them to
6 respond to, certain people tell me you have,
7 but I just want to make certain that I'm
8 clear about what's been accomplished because
9 if you presented this to the Applicant and
10 they just told you flat out, "No, we can't
11 get any of this done," and they've been
12 saying that consistently, then that sort of
13 informs me as to sort of where things are.

14 MR. PICKMAN: I appreciate.
15 Pretty much that's in essence what they did.

16 I mean, we didn't give them this precise
17 list, but many, many of the things that are
18 on this list now were, in fact, discussed
19 with the Applicant in February.

20 Let me just, if I may, add one
21 more thing because you said two things at the
22 top of the list. We all said it's a package,

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1 but let me give you another one that I think
2 is really important to us here, and that has
3 to do with the overlay and the preservation
4 of the neighborhood serving uses and not to
5 accept what the Applicant wants to do, which
6 is actually to throw away the overlay and to
7 allow restaurants up to 25 percent of the
8 linear footage of the new commercial space
9 because that could add up to seven
10 restaurants, and we've got five already.

11 So that's a biggie. I mean, if,
12 in fact -- again, it's an "up to." So who
13 knows? -- but it's possible up to 25 percent
14 of that linear feet that there could be seven
15 more restaurants in this area, and I can
16 assure you, sir, that would transform the
17 area into something it is not intended to be
18 under the overlay and the comprehensive plan,
19 and talk about parking and traffic to have
20 seven more restaurants here. So I would put
21 that up in the high level of --

22 VICE CHAIRMAN JEFFRIES: Okay.

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1 Well, I'm done, Mr. Chair. I just wanted to

2 --

3 MR. O'SULLIVAN: May I supplement
4 that answer a little bit?

5 I think it's artificial to say
6 whether you'd do this. I mean, we have been
7 going to lots and lots of meetings. Mr.
8 Heaps told you about all of the meetings they
9 had. Well, we were at all of those meetings,
10 too, and we made comments and asked questions
11 and made suggestions and did the same with
12 DDOT, and nothing that was high on our list
13 changed.

14 And then we finally set up this
15 meeting with, as I said, all four groups
16 represented, and we came in, and we thought
17 we were starting a process.

18 You know, I do a lot of
19 negotiations. You've got to be careful not
20 to negotiate against yourself. You've got to
21 be careful not to look so uninviting or so
22 rigid that it's not going to go anyplace.

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1 So we tried to give that signal
2 that we were flexible and open, but we
3 weren't pushovers, and we started that
4 process on four or five of the big issues,
5 and we thought they would come back and say,
6 "Well, maybe we can do this or maybe we can
7 do that."

8 We said, "Maybe you don't do
9 frontage. Maybe you do number of seats,"
10 because that really affects the number of
11 cars more. So we were, I think, showing our
12 flexibility to deal with different issues,
13 and they just never came back to us except to
14 say that they were going to play their hand.

15 The list that Jim read and Jim's
16 entire presentation was very controversial
17 within our group because we didn't want to
18 bargain against ourselves. We had been just
19 rejected the first time we tried. So why
20 should we go back with more?

21 VICE CHAIRMAN JEFFRIES: Okay, and
22 I'm going to hand this over to my colleagues

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1 here, but you know, I am sympathetic, you
2 know, to this parking issue and the traffic,
3 particularly given the fact that the Metro is
4 like a mile away. It's not like it's two or
5 three blocks away, and you know, Mr. Korbel's
6 comment about, you know, exactly what's
7 happening here, I don't think your words are
8 a shell game, but you know, just given how
9 much parking you're actually picking up on
10 the north parcel, you know, with the
11 inclusion of the apartment building, you
12 know, I'm getting some things. Some things
13 are making some sense to me here.

14 But, again, I really want to
15 caution people. You know, keep moving.
16 Decisions haven't been made up here. This is
17 why we have these hearings, you know, and as
18 I said earlier, the cross generally doesn't
19 help me. I like to have people get right to
20 the crux of what they're trying to say and
21 then that's more clarity for me. So anyway.

22 MR. O'SULLIVAN: We decided to

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1 take the chance to go in that direction by
2 having Jim's testimony.

3 CHAIRMAN HOOD: Okay. Any other
4 comments, colleagues?

5 You know what I would like to do?

6 Let's go back to that. It's not too late.
7 So we can turn our lights out. I'd like to
8 go back to the rendering, you know, your
9 video and how you have things run.

10 MR. KORBEL: Sure.

11 CHAIRMAN HOOD: And I'd just like
12 to look at it.

13 MR. KORBEL: And let me just
14 explain one thing, sir, on the video. It is
15 speeded up, but it is speeded up for every --
16 can you turn the light on? I just can't see
17 what's going on. I think you can see the
18 video well enough.

19 CHAIRMAN HOOD: Okay. We'll leave
20 the light on.

21 MR. KORBEL: If it's okay with
22 you. Well, I'll try.

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1 CHAIRMAN HOOD: But what I need it
2 for, because we're not going to look at the
3 whole thing, what I need it for, I just want
4 it to run.

5 MR. KORBEL: I've got the video
6 started, and you're going to have to bear
7 with me, but this was done on May the 1st.

8 CHAIRMAN HOOD: Now, let me just
9 say something to you. I heard you talking to
10 the Vice Chair about you went to the grocery
11 store. Well, I don't know if you went to the
12 grocery store, but you were out in front of
13 the grocery store monitoring.

14 MR. KORBEL: Yeah, we did not go
15 on the property.

16 CHAIRMAN HOOD: On Friday you were
17 there. I will tell you it's the first of the
18 month. A lot of things go on on the first of
19 the month. I, too, was in the grocery store
20 a lot of times on Friday evening. I'll never
21 do it again.

22 So, you know, when you take --

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1 well, I'm not going to never say what I'll
2 never do, but you take those things into
3 consideration. We've had applicants come
4 down here and have a parking issue, and
5 somebody come down with the same exact street
6 and there are no cars, and I was sitting
7 there trying to figure out was it trick
8 photography.

9 But I will tell you it's all in
10 when you go. I mean, if you went there on
11 Friday evening, I mean, let's be realistic.
12 Is that a fair assessment of what actually
13 goes on?

14 MR. KORBEL: That's a fair
15 question, sir. Some of my neighbors and my
16 wife would say that I'm totally obsessed with
17 parking, but I have gone up to that parking
18 lot on numerous occasions. I can just simply
19 point out to you the Applicant's own study,
20 which basically looked on I think it was
21 January the 24th. I can show you that chart
22 where they did a count of parking in the two

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1 Giant parking lots, and they show on a
2 Thursday night in January that that parking
3 lot is beyond its practical capacity, and
4 they stop at seven o'clock. Probably if they
5 went to 7:30 it would be at 278 spaces.

6 So it isn't just what I was
7 showing visually, and admittedly, Friday
8 night is a busy night. So is Saturday.
9 Frankly, most nights of the week, sir, if you
10 go up to that area and you go look at the
11 lots, you'll see they're full on both the
12 north and the south blocks. It's not just
13 the south block. So it is full, sir.

14 And the other thing that I did
15 when I went up to Cafe Deluxe with my wife,
16 we were waiting for about 20 minutes. So I
17 walked over to the grocery store, and I
18 counted 20 people in the grocery store.

19 So they aren't shopping in the
20 grocery store there on Friday night. All of
21 those people are going to neighborhood
22 businesses.

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1 CHAIRMAN HOOD: Okay, okay. Let
2 me say this, Mr. Korbelt. I think as the Vice
3 Chair had mentioned, I do take a lot of what
4 you have under consideration. I'm looking at
5 page 16, and I want to see that just right
6 quickly in a moment.

7 MR. KORBEL: Sixteen of my
8 testimony?

9 CHAIRMAN HOOD: Page 16, right.

10 MR. KORBEL: Just one second.

11 CHAIRMAN HOOD: Now, you have
12 recommendation, because you have this title,
13 "Recommendations."

14 MR. KORBEL: Yeah, sure. Let me
15 just get to it, please. Sorry. So page --

16 CHAIRMAN HOOD: Excuse me one
17 second.

18 (Pause in proceedings.)

19 MR. KORBEL: Sir, just in the
20 interest of abbreviations, yours is 16. It's
21 page 10 in mine. Is this the slide you're
22 talking about?

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1 CHAIRMAN HOOD: Yeah, this is it.

2 Sop if I was trying to capture everything,
3 can I capture it off -- can I look at this
4 when I maybe ask the Applicant or something;
5 can I look directly at this page?

6 MR. KORBEL: Yes, sir.

7 CHAIRMAN HOOD: Okay. That's all
8 I need to know.

9 Let's go back to the --

10 MR. KORBEL: To the video?

11 CHAIRMAN HOOD: And I only need to
12 see just a little bit of it.

13 MR. KORBEL: Okay. So this is the
14 parking lot, and I'm looking south into the
15 parking lot. So all of the restaurants are
16 beyond the parking lot going south.

17 CHAIRMAN HOOD: Okay. You know
18 what I would like? I would like to speed it
19 up to the street. Okay. This is where I
20 wanted.

21 MR. KORBEL: This is about -- do
22 you want me to stop it here?

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1 CHAIRMAN HOOD: No. This is where
2 I want to see.

3 MR. KORBEL: Okay. This is the
4 entrance to the grocery store.

5 CHAIRMAN HOOD: No, I want you to
6 slow it down.

7 MR. KORBEL: I just can't slow it
8 down, sir.

9 CHAIRMAN HOOD: Oh, you can't?
10 Okay. Well, okay.

11 MR. KORBEL: This is now the
12 entrance to the parking lot from 38th Street,
13 from Macomb Street. Well, this is 38th
14 Street. They're going in at 38th.

15 And now this is the neighborhood.
16 These are just right adjacent --

17 CHAIRMAN HOOD: What street is
18 this I'm looking at here now?

19 MR. KORBEL: This is Macomb Street
20 looking east. So on the left-hand side
21 towards the tall building up by Wisconsin,
22 that's where Cactus Cantina is, and that's

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1 where 2 Amys is on that side.

2 CHAIRMAN HOOD: Okay. Let's do a
3 little more and then we're going to stop it.

4 MR. KORBEL: Tell me when to stop.

5 CHAIRMAN HOOD: Well, just keep
6 going. Now, is there a stop sign at that
7 corner?

8 MR. KORBEL: There's a stop sign
9 there, yeah. That gives you an idea of how
10 fast it is. I don't think they usually run
11 the stop sign.

12 That's the grocery store, the
13 same --

14 CHAIRMAN HOOD: They just touch
15 the brake and keep going. Okay.

16 MR. KORBEL: The same speed.
17 That, by the way, that's the 2 Amys. That's
18 the loading dock entrance. That's the Macomb
19 loading dock entrance right there, that
20 alleyway right there, just so you can get a
21 sense of what that looks like.

22 And a lot of people walk through

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1 there into the Giant parking lot.

2 CHAIRMAN HOOD: Okay. Let's go a
3 little more and then I think I'm good.

4 That's good. Thank you, Mr.
5 Korbelt.

6 We're going to probably say this
7 towards the end. We have a number of things
8 going on. We do not want to come back down
9 here a fifth night. So we're going to move
10 forward with the agenda unless my colleagues
11 have a question, but what I would suggest, as
12 the Vice Chair, and I'm going to say this; I
13 think we're going to reiterate this again; I
14 thought this was actually the hearing where
15 we encourage the Applicant and the parties to
16 be and the ANC and whoever we have to try to
17 work together to try to come closer because
18 at the end of the day, realistically, you all
19 are the ones who are going to be impacted. I
20 might come up there sometime. It's got too
21 much traffic for me. So --

22 MR. BLACKWOOD: And I like Cafe

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1 Deluxe. I go there.

2 CHAIRMAN HOOD: I'm not going to
3 always be coming up there. So I can tell you
4 at the end of the day, you want to co-exist.

5 You want a place to do your shopping. You
6 also want to be able to have some input
7 because you all are going to be the ones who
8 are going to be living around there.

9 So to come down and say, Mr.
10 Pickman --

11 MR. PICKMAN: Yes, sir.

12 CHAIRMAN HOOD: Yeah, to come down
13 and say that on a listserve -- don't believe
14 what you read. Trust me. I've been here a
15 long time, and sometimes sitting up here I
16 don't know which way it's going. So don't
17 believe everything you read.

18 And you don't have to comment.
19 I'm just saying, going back to what you said
20 to the Vice Chair.

21 Okay. Colleagues, any other
22 questions?

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1 VICE CHAIRMAN JEFFRIES: Just one,
2 Mr. Korbel. Can we go back to page 12 of
3 your --

4 MR. KORBEL: What's the page
5 because I reordered a few things?

6 VICE CHAIRMAN JEFFRIES: Oh, the
7 parking, commercial parking at Giant, the
8 278 parking spaces today.

9 MR. KORBEL: Yes.

10 VICE CHAIRMAN JEFFRIES: So you're
11 saying the Applicant provides only 80 more
12 spaces than exist today to support larger,
13 more vibrant retail in the PUD. So your
14 point is that they're enlarging this
15 envelope. You know, they're doubling the
16 envelope, but they're only adding 29 percent
17 more parking spaces.

18 MR. KORBEL: Well, to be very
19 clear, in the PUD today, with the exception
20 of their grocery store on the south block,
21 all the rest of the retail on the PUD is
22 vacant. It's abandoned. It isn't being

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1 used.

2 So when I say that they're
3 doubling the amount of retail, of active
4 retail, I'm talking about the 18,000 square
5 foot grocery store that's there right now,
6 plus the retail that's on the north block
7 including the bank. So that's the active
8 retail that's on the two blocks today.

9 And when you triple the size of a
10 grocery store, which is what they're
11 basically doing, and many people in the
12 community want that, and you add vibrant
13 retail, which they intend to add, then what
14 I'm saying is that they're doubling the
15 amount of retail, active retail in the area,
16 and they're only adding 80 spaces. That's
17 after the 30-space set-aside, which
18 ostensibly is to support businesses outside
19 the PUD.

20 So that's the point I was making
21 with those numbers.

22 VICE CHAIRMAN JEFFRIES: I'll just

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1 wait for the Applicant to rebut or respond to
2 that, okay, because something -- anyway, Mr.
3 Chair, I'm done.

4 CHAIRMAN HOOD: Any other
5 questions?

6 Did we do cross-examination or no?
7 Okay. Mr. Fiola.

8 MR. FIOLA: Thank you, Mr. Chair.
9 Phil Fiola, for the record.

10 Just I think one or two questions
11 for Mr. Korbel.

12 Mr. Korbel, you indicated in your
13 testimony, I believe, that you observed 260
14 spaces occupied at this latest time you
15 looked at the lot Friday night; is that
16 correct?

17 MR. KORBEL: No. I went over it
18 was probably either Thursday or Friday --

19 VICE CHAIRMAN JEFFRIES: Mr.
20 Korbel, can you just move back from the mic?

21 MR. KORBEL: Sorry.

22 VICE CHAIRMAN JEFFRIES: Okay.

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1 MR. KORBEL: I had the video done
2 of the lot. I did not do it myself, but I
3 had the video done of the area on Friday
4 night. I went over there either Thursday
5 night or maybe it was even early, like six,
6 6:30 on Friday, and I just went through the
7 lot with a visitor from out of town and
8 simply counted out-of-state license places.

9 MR. FIOLA: And how many --

10 MR. KORBEL: I just wanted to know
11 how many out-of-state plates were in that --

12 MR. ROSE: MR. FIOLA: Okay. How
13 many?

14 MR. KORBEL: About 160.

15 MR. FIOLA: And how many
16 approximate other cars were in that lot?

17 MR. KORBEL: I think that you are
18 probably talking about 260. I think there
19 were about 18 spaces that were not filled at
20 that point in time.

21 MR. FIOLA: So that's about 260
22 filled spaces?

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1 MR. KORBEL: Yeah, and it was
2 about -- so I would say about two-thirds of
3 the cars in the lot were from out of state.

4 MR. FIOLA: And your observations
5 of that lot were the majority of those people
6 in the Giant or any of the retail in the
7 north block?

8 MR. KORBEL: Excuse me. what's
9 the question again?

10 MR. FIOLA: Where did these
11 parkers patron?

12 VICE CHAIRMAN JEFFRIES: I like
13 that, "parkers patron."

14 MR. KORBEL: Where did these
15 parkers patron?

16 MR. FIOLA: What retail
17 establishments were they going to? You
18 mentioned before there were 20 people in the
19 Giant. So they couldn't have been going to
20 the Giant.

21 MR. KORBEL: I can't -- I did not
22 do it on this trip, but on several trips at

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1 around seven o'clock at that time, I have
2 gone into the grocery store and I have
3 literally walked won the aisles, and I
4 counted the number of people in the grocery
5 store.

6 At one time I think there were
7 more employees than shoppers in the grocery
8 store.

9 MR. FIOLA: So it's safe --

10 MR. KORBEL: So my conclusion, Mr.
11 Fiola, was that if they weren't in the
12 grocery store and they were in that lot, they
13 were in one of two placed. They were either
14 frequenting the business establishments
15 outside of the PUD and maybe some of the
16 business establishments on the north block,
17 and they were -- or they may be individuals
18 in the community who are parking there
19 overnight.

20 I know that the ANC Commissioner
21 for McLean Gardens has identified that as a
22 serious problem, and perhaps they are also

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1 residents in the area who are taking
2 advantage of the Giant parking lot.

3 MR. FIOLA: So Giant is allowing
4 people to park on their property for no
5 charge to service restaurants and retail uses
6 outside of their property limits and some
7 residents that live there, and you're
8 suggesting that they should continue that as
9 part of the PUD; is that correct?

10 MR. KORBEL: yes.

11 MR. FIOLA: Thank you.

12 CHAIRMAN HOOD: Okay. Ms.
13 Bairstow? Okay. Mr. Davis.

14 MR. DAVIS: Thank you,
15 Commissioners.

16 I just have a few questions
17 because I appreciate that you were -- I
18 understand you were surprised by this list of
19 11th hour demands, and I just am concerned
20 you think it is a list of demands that the
21 community at large favors. So I just want to
22 ask a couple of questions about that.

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1 I don't know who to ask.

2 MR. O'SULLIVAN: He's testifying,
3 Your Honor.

4 MR. DAVIS: I'll keep it brief.

5 CHAIRMAN HOOD: Mr. O'Sullivan.
6 When you say it and when you do
7 it.

8 MR. DAVIS: I guess I should ask
9 Mr. O'Sullivan.

10 Mr. O'Sullivan, it appears from
11 WNNC's application to be a party that you
12 have six members; is that right?

13 MR. O'SULLIVAN: We're not a
14 formal membership organization unlike CPCA.
15 We have probably ten people. We worked very
16 hard on this with an umber of other people.
17 Dozens who have signed our petitions follow
18 what we do. I don't know what a member
19 means.

20 MR. DAVIS: Well, on your
21 application for party status, you list
22 Margaret Lenzner, Lennie Constantine, Diana

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1 Olsson, John Korbel, Ann Hamilton and John
2 O'Sullivan, right?

3 MR. O'SULLIVAN: As people who
4 might give testimony.

5 MR. DAVIS: Okay, and so you're
6 saying that the other people that support the
7 WNNC position are the people that signed the
8 petition?

9 MR. O'SULLIVAN: Some of them.
10 Some of them probably signed yours, too.
11 It's just not that formal.

12 MR. DAVIS: Okay. The petition
13 that you all submitted was filed on October
14 14th; isn't that right? I have it with me.
15 October 14th is when it was dated. Let me
16 see. I think I have the exhibit number.
17 It's Exhibit No. 68, Commissioners.

18 The Giant filed its pre-hearing
19 submission on October 14th; isn't that
20 correct -- October 24th, ten days later;
21 isn't that correct?

22 MR. O'SULLIVAN: I'll take your

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1 word for that, too.

2 MR. DAVIS: So if the WNNC
3 petition was submitted on October 14th and
4 Giant filed its pre-hearing submission on
5 October 24th, the people who signed the
6 petition could not have seen what the Giant
7 was actually proposing.

8 MR. O'SULLIVAN: That's true.

9 MR. KORBEL: No, that's not true.
10 Excuse me. That is not true.

11 MR. O'SULLIVAN: We knew they had
12 proposed in the summer, and we knew what they
13 were proposing that was in the set-down.

14 CHAIRMAN HOOD: But the question -
15 - you answered the question, Mr. O'Sullivan,
16 and I think --

17 MR. O'SULLIVAN: I'm reconsidering
18 my answer.

19 CHAIRMAN HOOD: Okay. You're
20 reconsidering. You have a right to do that.

21 MR. O'SULLIVAN: In fact, if they
22 had seen it, there were a number of things

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1 that got less desirable about the final
2 application and very little that was changed
3 in our favor. So I don't think anybody would
4 have signed or not signed based on that
5 difference.

6 MR. DAVIS: The petition was filed
7 before Giant submitted its supplemental
8 filing on January 30th; isn't that correct?

9 MR. O'SULLIVAN: Yes.

10 MR. DAVIS: There were a number of
11 other developments. The petition was filed
12 before the ANC held its two meetings to
13 address the PUD application; isn't that
14 correct?

15 VICE CHAIRMAN JEFFRIES: Could we
16 get to the point of this? I mean, if you're
17 going to --

18 MR. O'SULLIVAN: Did I testify to
19 any of that?

20 CHAIRMAN HOOD: Yeah, Mr. Davis,
21 just get to the crux of your questions. Get
22 to the point and let's move on. Ask the

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1 question and let's move on because right now
2 that piece about the legitimacy of them, it
3 was another reason for Cleveland Park. I
4 don't think you're going down the right line
5 of questioning in this case.

6 MR. DAVIS: Okay. Well, I may be
7 done then.

8 Have you seen Exhibits 215 and 214
9 that were filed with the Commission today?
10 I'm sorry. Two hundred and twelve and 215.

11 One is a letter from Leah Thayer,
12 who signed the WNNC petition, and the other
13 is a letter from Barry Hooden, who also
14 signed the WNNC petition.

15 MR. O'SULLIVAN: No, I haven't.

16 MR. DAVIS: Both of those letters
17 say that they -- excuse me.

18 VICE CHAIRMAN JEFFRIES: He didn't
19 testify about it.

20 MR. DAVIS: I didn't testify about
21 it?

22 CHAIRMAN HOOD: We actually have

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1 those letters. We got them tonight, too. So
2 we're well aware. From what we speed read
3 and read, we'll well aware of what it says.

4 MR. DAVIS: Okay. We expect there
5 will be a number of other letters who signed
6 the WNNC petition who retract their support
7 for it.

8 CHAIRMAN HOOD: Are you doing a
9 campaign to get people to send us letters?
10 Because I can tell you we got the gist of it
11 with these two. We don't need 30 more.

12 MR. DAVIS: Okay.

13 CHAIRMAN HOOD: Unless you just
14 want to prove a point.

15 MR. DAVIS: Well, the point is
16 that the petition sort of overstates the
17 support for WNNC's position.

18 MR. O'SULLIVAN: Sir, we didn't
19 testify in the petition. Unlike Mr. Davis,
20 we don't think this is a popularity contest.

21 MR. DAVIS: As I said, i was
22 concerned that Your Honors thought that the

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1 community supported this.

2 COMMISSIONER MAY: Clearly there
3 are members of the community who do. Let's
4 move on. It's not a popularity contest.

5 CHAIRMAN HOOD: We've done quite a
6 few of these. So trust me. We've got it.

7 MR. DAVIS: Okay. I trust you.
8 No more questions.

9 CHAIRMAN HOOD: Thank you.

10 And I don't me trust me that it's
11 going to go your way. Just trust me. We got
12 it. All right? All right.

13 Okay. Ms. Scalafani. I'm still
14 going to call her name even though I don't
15 think she's present.

16 Mr. Espenschied.

17 MR. ESPENSCHIED: I have a --

18 VICE CHAIRMAN JEFFRIES: You know,
19 this is live. Okay. You're fine.

20 MR. ESPENSCHIED: I was going to
21 ask a few questions of Mr. Korbel.

22 This is about your parking

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1 expectations. The Applicant and DDOT believe
2 that the PUD's parking plan will be adequate
3 because the parking will be shared. You
4 obviously disagree with that. Could you
5 explain your disagreement?

6 MR. KORBEL: I preface my comment
7 that I was afraid that I would be questioned
8 by the Grim Reaper, but I'll -- we've
9 affectionately named him that.

10 CHAIRMAN HOOD: What was that name
11 again?

12 MR. KORBEL: Grim Reaper.

13 CHAIRMAN HOOD: Grim Reaper.

14 MR. KORBEL: Friday the 13th, one
15 of the two.

16 PARTICIPANT: He doesn't think
17 this is funny.

18 MR. KORBEL: I shared parking, and
19 I believe the Commissioners know what shared
20 parking is, but it's to make spaces work more
21 efficiently, but the reality is the parking
22 plan in their plan isn't shared. Actual 140-

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1 some of the parking spaces in that area are
2 strictly for residential use.

3 If you go on the north block, the
4 whole 124 spaces are not shared. So I do
5 believe -- but the concept of shared parking
6 is to make those parking spaces that are
7 there work efficiently, and I don't believe
8 that the Applicant nor DOD did their due
9 diligence around this.

10 I have enormous respect for Mr.
11 Wells. He's a very good professional, but
12 the point I want to make on this --

13 CHAIRMAN HOOD: Mr. Korbel, did
14 you answer?

15 Has your question been answered,
16 Mr. Espenschied?

17 MR. ESPENSCHIED: Well, I think
18 it's being answered.

19 (Laughter.)

20 CHAIRMAN HOOD: How long did you
21 all rehearse this?

22 (Laughter.)

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1 MR. KORBEL: Mr. Chairman, you
2 won't believe this, but I didn't know that he
3 was going to ask me this question.

4 But I've been pretty clear in my
5 testimony about the issue of shared parking.

6 Excuse me.

7 First of all, I do believe that
8 the building of a large, modern grocery store
9 is going to extend the peak hours for the
10 grocery store, and the addition of
11 restaurants is going to increase the demand.

12 And the idea of shared parking is that peaks
13 of some retail occur at one time, whereas
14 peaks of another use may occur at another
15 time and that, for example, an apartment
16 house may peak at one or two in the morning
17 when everybody is there.

18 But what I do believe is when you
19 make this a destination shopping center,
20 which is really what it is, people will go
21 there for multiple uses. As Karina Ricks
22 testified in her testimony, someone can go to

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1 Cactus, have dinner and then go shopping at
2 the Giant grocery store, and Cactus actually
3 is outside the PUD.

4 But that makes the point. People
5 go there. They'll go there for multiple
6 purposes. They'll stay there longer, and
7 they're going to increase and broaden what I
8 would call peak demand.

9 MR. ESPENSCHIED: Thank you.

10 You said some things about the
11 parking management plan or lack of an
12 adequate plan. Didn't the Applicant supply
13 one in their submission that you considered
14 to be a realistic plan or what do you --

15 MR. KORBEL: Well, I won't go
16 through the plan, but there are about ten
17 different items there. One of the items is a
18 \$20 smart card initially for each of the
19 residents of the apartment house. That's
20 \$2,400. That's one element of the parking.

21 The 30 parking spaces is an
22 element of their parking plan. In my

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1 opinion, and I'm not an expert on parking
2 management, in my opinion, a parking plan
3 would include how they would control access
4 and use of the lot.

5 CHAIRMAN HOOD: Mr. Espenschied,
6 what was your question? Did you ask him to
7 list each issue that was on the plan or what
8 was the question? I'm sure you're going to
9 say yes, but I'm --

10 MR. ESPENSCHIED: No, I was asking
11 him to evaluate, give some evaluation of the
12 realisticness, the realism of the Applicant's
13 parking plan.

14 CHAIRMAN HOOD: Okay. He gave us
15 one. I think that's all we need. So next
16 question.

17 MR. ESPENSCHIED: Okay. What do
18 you think is going to be the impact of the
19 PUD on local businesses in the PUD area?
20 You've said a little about that, but not
21 much.

22 MR. KORBEL: I'm not an urban

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1 planner. So let's be very clear on that, but
2 what I think I have demonstrated is the
3 parking that's on that site is not adequate
4 to support the current uses of that lot.

5 CHAIRMAN HOOD: Okay.

6 MR. KORBEL: Can I finish, sir?

7 CHAIRMAN HOOD: No. I think
8 you've finished.

9 Did he answer you question?

10 MR. ESPENSCHIED: Well, actually I
11 don't think I said clearly that I'm talking
12 about the businesses outside the PUD. What's
13 going to be the effect on those?

14 MR. KORBEL: That's what I thought
15 he meant. That's what I was answering.

16 CHAIRMAN HOOD: Give us a shorter
17 answer.

18 MR. KORBEL: Very short answer.
19 The five restaurants that are in that area
20 today at peak hours generate about 300
21 automobiles that will either park on the
22 street or park in the parking lot. The

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1 streets are already congested. If they're
2 not allowed to park in a parking lot, then
3 they'll do one of two things. They will try
4 and park somewhere on the streets or, more
5 likely, as Karina Ricks suggested at one of
6 our meetings, they'll go somewhere else.

7 And the bottom line on that is
8 that will hurt those businesses outside the
9 PUD.

10 MR. ESPENSCHIED: Okay. Well, my
11 last question is that in light of all this,
12 of what you've said, to the best of your
13 knowledge is there any other location in the
14 general area where public parking is provided
15 or could imaginably be provided off street
16 other than the property owned by Giant?

17 MR. KORBEL: Well, the only I
18 guess you could call it public parking that
19 is available off street is -- I don't know --
20 it about five, six blocks away in the
21 Cathedral. There's a parking lot there.
22 That's the only parking lot that I'm aware

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1 of.

2 MR. ESPENSCHIED: Okay. Thank
3 you.

4 CHAIRMAN HOOD: Thank you, Mr.
5 Espenschied.

6 Mr. Montanto.

7 MR. MONTANTO: A question for Mr.
8 Korbel.

9 What do you mean that the
10 commercial parking is shortchanged by
11 residential parking provided for dense
12 housing?

13 MR. KORBEL: I think I answered
14 that question during my testimony. The point
15 I only made by that was that the Applicant
16 has asked for zoning relief on parking for
17 commercial and providing less than is
18 required by zoning, while it is providing
19 more parking than is required by zoning for
20 residential. So that's what I meant by the
21 commercial parking has been shortchanged by
22 the housing project.

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1 MR. MONTANTO: A question
2 for Mr. Pickman regarding the adequacy of the
3 amenities provided, and you indicated not
4 adequate. Can you expand on that?

5 MR. PICKMAN: Well, as I said in
6 my testimony, the standard is are these
7 benefits, are they superior features and do
8 they provide significantly greater benefits
9 than would likely result from a matter of
10 right project, and what I said was they
11 don't. Because if you look at the benefits
12 that they give, a first class grocery store,
13 a first source employment agreement,
14 exemplary design, those should all be part of
15 a matter of right project.

16 Let me give you just two quick
17 examples: housing, affordable housing.
18 They're using this as an amenity, and at the
19 same time they're asking that the lot
20 coverage on the north block be increased from
21 60 percent to 75 percent because of the
22 affordable housing.

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1 So there's a two-for there. A is
2 we want to use it to get more lot occupancy
3 and, two, they want to have it count as a
4 benefit. I don't know if that's appropriate.

5 And one other thing. If you look
6 at the environmental checklist, which they
7 all fill out and it talks about housing, they
8 talk about the affordability only being for
9 15 years. So not perpetuity; 15 years. So
10 that's an example.

11 And I can go through if you'd like
12 me to more of the alleged benefits, but I
13 will stop if you'd like me to.

14 MR. MONTANTO: Last question. You
15 mentioned seven restaurants, possibility of
16 having seven restaurants. How did you come
17 up with that number?

18 MR. PICKMAN: Well, it's 25
19 percent of 1,500 feet. That's at least our
20 calculations of the linear commercial
21 footage, and that comes out to 375 feet, and
22 then we've looked at like Cafe Deluxe has

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1 expanded, is roughly 50 feet. So divided 50
2 into 375 and came up with that number, which
3 is longer than a football field, and if you
4 looked at Wisconsin Avenue from Idaho to
5 Newark and went around the street a little
6 bit, that could be all restaurants. That's
7 375 feet.

8 MR. MONTANTO: Thank you.

9 VICE CHAIRMAN JEFFRIES: Cave
10 Deluxe has expanded?

11 MR. O'SULLIVAN: It has, yes.

12 VICE CHAIRMAN JEFFRIES: When did
13 it expand? I haven't been there in two
14 years.

15 MR. O'SULLIVAN: It look over the
16 consignment store next door.

17 MR. KORBEL: It has been about a
18 couple of years.

19 VICE CHAIRMAN JEFFRIES: Oh, okay.

20 MR. KORBEL: They've expanded as
21 has -- no, it's been about a year. It's been
22 about a year.

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1 VICE CHAIRMAN JEFFRIES: Oh, okay.

2 MR. KORBEL: But not only they
3 expanded, but so has Cactus Cantina and so
4 has 2 Amys in terms of adding additional
5 space. I sense that there isn't particular
6 concern for these businesses, but the reality
7 is they expanded their businesses for a
8 couple of reasons. They knew there was an
9 overlay there that would prevent additional
10 restaurants in the area, and they did come to
11 rely upon the ability for their customers to
12 get reasonable parking and to come to their
13 establishments, and they generate tax
14 revenues for the city.

15 CHAIRMAN HOOD: Okay. Are you
16 finished? Thank you.

17 Mr. Hecker.

18 Vice Chairman.

19 MR. HECKER: Have we clearly
20 established that a large number of the
21 parking lot spaces are used by restaurants?
22 Because i have a couple of questions

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1 regarding that.

2 MR. KORBEL: Well, I believe the
3 evidence I provided is pretty compelling.

4 MR. HECKER: Did the film show
5 lots of people walking from the lot to the
6 restaurants?

7 MR. KORBEL: Many, many more
8 people from the lot to the restaurants than
9 to the Giant store.

10 MR. HECKER: Have you ever been to
11 the lot when cars are clustered at the end of
12 the lot closest to the restaurants rather
13 than at the supermarket?

14 MR. KORBEL: When the lot does
15 fill up, they fill up initially closer to the
16 restaurants, and then eventually as no more
17 space is available, they move closer to where
18 the Giant store is.

19 MR. HECKER: How full are the
20 streets on Newark, Macomb, Lowell during the
21 day and evening? I mean how many spaces are
22 available on the streets for restaurant

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1 parking?

2 MR. KORBEL: Well, during peak
3 hour, my --

4 VICE CHAIRMAN JEFFRIES: Wait,
5 wait, wait. I mean, for that Friday? I mean
6 when he testified? Is that your question?

7 MR. HECKER: Well, at that time or
8 any time. Are there ever any open spaces on
9 the street around the project that could be
10 used for restaurant patrons?

11 VICE CHAIRMAN JEFFRIES: I mean,
12 how would he -- well, continue. I mean, I
13 don't know how you could answer that.

14 MR. KORBEL: Visuals or casual
15 observation would say that in general, the
16 streets certainly on the first block on the
17 east side of Wisconsin and probably one and a
18 half blocks, maybe two blocks on the west
19 side of Wisconsin in the vicinity of the
20 restaurants are full, and if you also looked
21 at the streets in McLean Gardens on any
22 evening of the week, you'll see that there

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1 isn't a parking space.

2 I recall that ANC Commissioner
3 Trudy Reid said that people are afraid to
4 leave their parking space because they'll
5 lose it. So that will give you an idea of
6 the congestion of the streets that are
7 adjacent to the parking lot.

8 MR. HECKER: In your numbers for
9 parking, how many restaurants did you assume?

10 MR. KORBEL: For which numbers?

11 MR. HECKER: When you said the
12 total. You said there was a certain number
13 of spaces that would be desirable to fill the
14 parking, meet the parking needs.

15 MR. KORBEL: Well, the restaurants
16 I assume to meet the community needs were the
17 restaurants that are there today, the five
18 restaurants that are in the area today. As
19 my written testimony indicates, they do
20 generate roughly 300 cars during peak hours.

21 I think the sad thing is that the
22 Applicant has refused to really identify --

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1 VICE CHAIRMAN JEFFRIES: Whoa,
2 whoa, whoa.

3 MR. KORBEL: -- exactly how many
4 restaurants they'll have in the PUD.

5 VICE CHAIRMAN JEFFRIES: You
6 respond to his question.

7 MR. KORBEL: Okay. I guess I
8 responded.

9 MR. HECKER: Okay. That's all I
10 have. Thank you.

11 CHAIRMAN HOOD: Okay. Thank you.
12 We have finished our parties in opposition
13 and cross examination.

14 Okay. Now we're going to our
15 persons in opposition, and I'm going to do my
16 best to pronounce the names.

17 MS. SCHELLIN: If we could get
18 them to remove their laptops.

19 CHAIRMAN HOOD: Okay. Whose
20 laptop? Okay. If you could just unhook it,
21 and we'll go ahead and continue. The hour is
22 getting late.

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1 Rudolph Burtrain, Alfred Friendly,
2 Ninetta Feldman, Alicia Powers -- I'm sorry -
3 - Alice Powers; Rudolph Burtrain, Alfred
4 Friendly, Ninetta Feldman, Alice Powers.

5 VICE CHAIRMAN JEFFRIES: How many
6 people?

7 CHAIRMAN HOOD: I just called
8 four. We can get six. I'm going to call two
9 more.

10 Peter Pastan.

11 VICE CHAIRMAN JEFFRIES: He's back
12 there.

13 CHAIRMAN HOOD: Okay and Mark
14 Rosenman. That should be six people, if I'm
15 not mistaken.

16 THE REPORTER: Mr. Chairman, can
17 you make sure the witnesses bring their cards
18 to me and identify themselves?

19 CHAIRMAN HOOD: Actually let's do
20 this. If you know you're coming up to speak
21 and your name is on the list, you know you
22 signed up. Let's do the cards before you

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1 even approach the table. Then that way when
2 I call your name, you can go over to Matt and
3 give him your cards and then you come right
4 to the table.

5 VICE CHAIRMAN JEFFRIES: And
6 there's only four of you.

7 CHAIRMAN HOOD: Mr. Montanto, are
8 you helping us? You're helping us, aren't
9 you?

10 MR. MONTANTO: I am.

11 CHAIRMAN HOOD: Okay, okay. Have
12 a seat. Ms. Feldman, I sure did. Come right
13 on up.

14 I called a total of six. Let me
15 see.

16 VICE CHAIRMAN JEFFRIES: I think
17 people are not here.

18 CHAIRMAN HOOD: Alice Powers?

19 Okay.

20 What about Mr. Burtrain, Rudolph
21 Burtrain? Okay. No Rudolph Burtrain.

22 Alfred Friendly.

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1 MR. FRIENDLY: Yeah, right here.

2 CHAIRMAN HOOD: Okay. Ms.

3 Feldman, Ms. Powers. Peter Pastan?

4 MR. PASTAN: Yes.

5 CHAIRMAN HOOD: Okay. Mark

6 Rosenman. Okay. Absent.

7 I think this is Judith Nelson.

8 Judith Nelson?

9 MS. NELSON: I'm here, but I'm not
10 testifying.

11 CHAIRMAN HOOD: Okay, but you're
12 not testifying. That's all I need right now.

13 Okay. Thank you very much.

14 The record reflect she's not
15 testifying. I need one more person. Let me
16 see if I can get Margaret Lenzner.

17 What I'm going to do to make
18 things easier, we're going to start with Ms.
19 Lenzner to our left, and we're going to work
20 our way down.

21 Identify yourself. If you can
22 identify yourself, Ms. Lenzner, we're going

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1 to go ahead and get started. Turn your
2 microphone on, please.

3 MS. LENZNER: My name is Margaret
4 Lenzner. I live at 3530 Newark Street.

5 I grew up on Porter Street in
6 Cleveland Park and have lived two blocks east
7 of the Giant since 1969. I shop at the
8 Giant almost daily and regularly use the
9 other retail there.

10 The residential community around
11 the giant has single family homes, apartment
12 buildings, neighborhood commerce, parks, and
13 playgrounds, two landscape conservancies, 13
14 schools, and the Cathedral. Balancing these
15 diverse elements is vital to our community's
16 well-being.

17 I've worked with my neighbors to
18 respond to many development and zoning
19 issues, often involving the many schools in
20 this area. Other notable efforts established
21 firm land use. For example, in the '70s we
22 protected McLean Gardens when it was

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1 threatened with demolition and highrise
2 development. We created the Cleveland Park
3 Historic District. We sought to protect our
4 small neighborhood shopping center. It
5 became part of the Macomb-Wisconsin overlay
6 and was zoned C-1 in 1989.

7 We succeeded in these and other
8 efforts with D.C. officials and political
9 representatives as helpful allies. Given
10 this, I hope you will understand why many of
11 us are alarmed by the large scale
12 redevelopment now proposed and the rezoning
13 and waivers requested.

14 Most distressing to me is that OP,
15 DDOT, and some of our elected representatives
16 have not been interested in our concerns.
17 You and ANC-3C received a petition last
18 October from 171 neighbors of the project
19 expressing the same concerns that you have
20 heard tonight. No one replied or asked for
21 any more information.

22 It took the ANC a long time to

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1 recognize at least some of the plan's
2 deficiencies, but OP and DDOT blatantly
3 ignore many facts and major concerns that we
4 have expressed numerous times at every
5 opportunity that we've had.

6 Many letters were sent to Ms. Cheh
7 also. So I was particularly shocked by her
8 appearance here on February 19th. Her
9 simplistic advocacy for the project was in
10 stark contrast to what she promised on
11 November 1st, 2006, the day before her
12 election. In a posting on the Cleveland Park
13 listserve in which she said, "For Ward 3, the
14 main corridors of Connecticut and Wisconsin
15 are already developed and/or have zoning
16 overlays, such as historic and commercial
17 overlays which I fully support."

18 She also said the council member
19 has no direct role that can serve to bring
20 residents and government together to forge
21 consensus. Had she heeded this advice, all
22 the concerns you have heard could have been

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1 addressed long ago. The Applicant appearing
2 only through the project's lawyer, designer
3 and public relations firm asserts that to get
4 a better Giant the community has to accept
5 the entire development. Many seem to have
6 fallen for this implied threat. I can only
7 hope that you Commissioners who are expert at
8 assessing the details and development
9 proposals will not be so easily seduced and
10 will heed Mr. Mendelson's warning about end
11 runs around overlays and zoning law.

12 CHAIRMAN HOOD: Thank you very
13 much.

14 MS. LENZNER: Thank you very much.

15 CHAIRMAN HOOD: Next?

16 MR. FRIENDLY: I'm Alfred
17 Friendly. I live at 3506 Macomb Street and
18 have for 37 years.

19 Mr. Chairman, members of the
20 Commission, can I just say your patience is
21 terrific. I am really impressed.

22 I'm also impressed --

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1 CHAIRMAN HOOD: I'm so glad it's
2 coming across that way. We do our best.

3 (Laughter.)

4 MR. FRIENDLY: Well, I've also
5 been impressed by the expertise of both the
6 opponents and the proponents, and I can't
7 really add anything to that. I am a writing
8 and an editor, and I do have a little
9 expertise on the use of words, and the word
10 I'd like to talk to you about is "vibrant."
11 You'll find it on the introductory page of
12 the Giant's presentation of the PUD. You'll
13 find it in Mary Cheh's testimony to you. You
14 heard it a couple of times here tonight.
15 You've heard it from proponents and
16 opponents.

17 It's a word that should be applied
18 to color, music, and maybe a quality of life,
19 the way somebody lives, but it isn't a word
20 that goes, that is applied to a shopping
21 center, and that's really what we're talking
22 about. It's a shopping center, and a

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1 supermarket is a supermarket, is a
2 supermarket. It is not a catalyst for some
3 kind of terrific, vibrating vibrance in our
4 neighborhood. It just isn't, even with what
5 is a very attractive addition to it in some
6 ways in the north block.

7 If you want vibrant in our
8 neighborhood, you go to the playground on
9 Macomb Street, and if they want to put a
10 playground on the green roof, that would be
11 vibrant. A merry-go-round up there would be
12 vibrant.

13 But it's not going to make this
14 peculiar little enclave into something that
15 is a paragon excitement and so-called smart
16 growth. If you want smart growth, you have
17 to go down, I think, to Connecticut Avenue
18 and look at the ingredients, which is the
19 Metro Station, which was a terrific catalyst
20 for changing that place, and you have to look
21 at the fact that Connecticut Avenue has
22 commercial on both sides.

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1 Wisconsin Avenue on the east side
2 from Calvert Street basically to Van Ness is
3 either purely residential or things like the
4 Post Office and the Cathedral.

5 On the west side where the PUD is
6 there are between Calvert and Upton these two
7 and a half blocks of commercial a block deep.

8 Now, that's just not enough to set off
9 fireworks, and when you consider the
10 proposal, all I'm asking is don't be taken in
11 by the idea that this is all going to be
12 vibrant.

13 One other point. In the Giant's
14 presentation on the Website they talk about
15 Wisconsin Avenue as a commercial zipper.
16 Zippers have to have two sides. Wisconsin
17 Avenue only has one.

18 CHAIRMAN HOOD: Okay. Next, Ms.
19 Powers, I believe.

20 MS. POWERS: My name is Alice --

21 CHAIRMAN HOOD: Turn your -- hit
22 your --

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1 MS. SCHELLIN: Excuse me, Mr.
2 Chairman. Before we do, could I just remind
3 the audience that there's no eating in the
4 hearing room, please.

5 CHAIRMAN HOOD: Especially if
6 you're not sharing, definitely.

7 (Laughter.)

8 COMMISSIONER HERIOT: Okay, Ms.
9 Power.

10 MS. POWERS: My name is Alice
11 LaCesse Powers, and I live at 3212 38th
12 Street, half a block from the 38th Street
13 entrance to the proposed Giant garage and a
14 block and a half from the proposed loading
15 dock on the Macomb Street alley.

16 Except for residents of Idaho
17 Avenue adjacent to the main loading dock, my
18 neighborhood will bear the greatest impact
19 from the development of the Giant project.
20 Potentially we could become a thoroughfare
21 for traffic entering and exiting the garage.

22 In addition, our two interior

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1 streets, 38th Street and Woodley Road would
2 absorb the overflow parking for customers
3 going to the Giant properties, as well as to
4 popular restaurants.

5 First I'd like to describe our
6 neighborhood, as it is quite different from
7 Cleveland Park. The four square blocks known
8 as Cathedral Heights are bounded by Macomb,
9 Wisconsin, Massachusetts and Idaho. Boxed in
10 by these busy streets, we are geographically
11 restricted and contained. Several multi-
12 story apartment buildings without parking for
13 their residents form our eastern border. Our
14 two interior streets, 38th Street and
15 Woodley, are often completely filled with
16 parked cars even during the day.

17 In addition, we get overflow
18 patrons from people going to the restaurants.

19 With the exception of a few turn
20 of the century farmhouses, Cathedral Heights
21 is a very modest neighborhood of brick,
22 detached, semi-detached and rowhouses. Most

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1 were built in the early 1920s for merchants
2 who moved from downtown apartments to homes.

3 In their original configuration, most houses
4 had three bedrooms and one bathroom.

5 Backyards are either tiny or nonexistent.

6 The houses simply end in an alley.

7 The architecture of the
8 neighborhood has a bearing on the current
9 debate. Originally, most of the houses had
10 very small garages for old fashioned cars.
11 Some garages were free standing structures
12 and some were incorporated into the house
13 itself. Very few of those old garages can
14 accommodate residents' cars today. The
15 garages are either too small, uninhabitable,
16 or have been torn down or fallen down. Most
17 of the residents who had garages in the lower
18 level of their homes have made them into
19 living space.

20 In comparison to other
21 neighborhoods where there is plentiful
22 parking in one or two garages, our residents

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1 have little recourse but the already
2 overparked street.

3 Although we are on a major bus
4 line, Cathedral Heights is not served by
5 Metro. We are equidistant from two stops, as
6 has already been mentioned.

7 Unlike the new shopping area in
8 Columbia Heights, customers would not be
9 arriving at the Giant development by subway.

10 Most of the potential traffic would come
11 from neighborhoods to our west, American
12 University and Spring Valley, and almost all
13 of those customers would come by car.

14 Cathedral Heights is a very stable
15 community, and families move there for
16 convenience, relatively modest housing, and
17 small town atmosphere.

18 I did a survey of the 14 houses on
19 my block, the west side of 38th Street
20 between Woodley and Macomb, and two of the
21 houses are large frame structures, six are
22 semi-detached, and six are rowhouses. One

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1 house is empty, but of the other 13, the
2 average length of occupancy is 26 years.
3 That includes two young families who have
4 lived in their homes for two years -- sorry?

5 CHAIRMAN HOOD: Please finish your
6 statement.

7 MS. POWERS: Oh, just finish up?

8 CHAIRMAN HOOD: Yeah, just finish
9 your statement.

10 MS. POWERS: Okay.

11 CHAIRMAN HOOD: The last sentence.

12 MS. POWERS: Well, only to say
13 without a doubt parking will increase, and
14 though the Giant claims not to know exactly
15 how much and we'll continue to be pressured
16 by parking because the spaces allotted to
17 non-Giant customers will not be sufficient
18 for the demand for the existing restaurants.

19 CHAIRMAN HOOD: Okay. That's
20 good. Thank you very much, and we have your-

21 -

22 MS. POWERS: You have my

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1 testimony.

2 CHAIRMAN HOOD: We have your
3 testimony.

4 Next, Ms. Feldman.

5 MS. FELDMAN: My name is Ninetta
6 Feldman. My husband and I jointly own the
7 semi-detached house at 3319 Idaho Avenue,
8 which is adjacent to the proposed loading
9 dock of Giant.

10 Our interests, as well as the
11 interests of all the homes on the 3300 block
12 of Idaho Avenue, are more significantly
13 affected than those of the general public
14 because of the close proximity of our
15 properties to the loading dock. It is
16 estimated that five to six tractor trailer
17 trucks and an additional number of 25 to 30
18 smaller trucks per day will enter and exit
19 the loading zone. This means that
20 approximately 60 times a day a truck would
21 either enter or exit the loading zone and
22 drive on Idaho Avenue.

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1 I'm not an architect or an
2 acoustical engineer, but common sense tells
3 me that there is no way one can block the
4 unsightly daily parade of trucks on Idaho
5 Avenue or eliminate the noise generated by
6 them.

7 Fortunately, there are
8 alternatives that should be considered,
9 alternatives to the location of the proposed
10 loading dock. One of those alternatives is a
11 plan proposed by Dr. Thomas Haynes that will
12 move the entry point of the loading operation
13 away from the existing residences, as well as
14 the future townhouses. We strongly support
15 this plan because:

16 Number one, it would eliminate the
17 unsightly flow of trucks on Idaho Avenue; it
18 will eliminate the noise generated by the
19 trucks; it will bring the proposed townhouses
20 closer to the existing houses; and it will
21 preserve the residential character of Idaho
22 Avenue.

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1 We are in support of the
2 revitalized shopping and commercial center, b
3 ut at the same time, the Applicant should
4 consider the concerns of the residents of the
5 area and impact their development is going to
6 have on them.

7 Thank you.

8 CHAIRMAN HOOD: Thank you very
9 much.

10 Next.

11 MR. PASTAN: Hi there. My name is
12 Peter Pastan, and I live on Jocelyn Street,
13 but I'm the owner of 2 Amys on Macomb Street.

14 I know I was a little flaky, but actually
15 was like the Washingtonian Restaurateur of
16 the Year once, and I've had one of the top
17 Italian restaurants in the city for the past
18 22 years as well as 2 Amys for the past
19 seven.

20 The first time I thought about
21 opening a restaurant on Macomb Street was
22 when a guy I knew bought the property and

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1 called up and said, "There's this great
2 space. It's really cute and one thing that's
3 super about it, it's got tons of parking."

4 My business is viable because of
5 the parking on the Giant lot. We have a
6 really diverse family restaurant. It is full
7 of kids and minivans and toys and strollers.

8 They're multi-generational families.
9 They're 20-something foodies that come for
10 the Pig's Head Salad. There are empty
11 nesters like myself who sit upstairs where
12 it's quiet, but the one thing they all have
13 in common is they come to 2 Amys and they
14 drive there.

15 In seven years of answering the
16 phone, nobody has ever called to ask me what
17 bus line we're on. They just want to know
18 where we're located.

19 Presently, there are 56 spots in
20 the Giant lot that are designated three-hour
21 parking for neighborhood businesses and 28
22 spaces that are for employee parking. One of

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1 the amenities is to condense those into 30
2 spaces, as the plan suggests, as opposed to
3 the 84 that are overused. At this point I
4 really don't understand how that could be
5 considered an amenity because they're
6 actually wiping out most of what they've
7 provided up to this point.

8 On weekends and evenings, as
9 everybody knows, the lot is packed, and the
10 idea that DDOT had of somehow not providing
11 enough parking as somehow some traffic
12 control means seems to me to make as much
13 sense as closing down the police station to
14 deter crime in the neighborhood.

15 (Laughter.)

16 MR. PASTAN: I made a business
17 decision to open 2 Amys based on the zoning
18 overlay. There's a pizza place down in upper
19 Georgetown that was at that time Faccia Luna
20 and the next one north was Armand's, and I
21 knew if I opened a place there, there was a
22 limited number of restaurant spaces, and

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1 other restaurants wouldn't be able to open
2 there to compete with me.

3 So I put a lot of money into the
4 place knowing that that was the deal. It
5 seems that since obviously there's going to
6 be an enormous impact if there's no parking
7 that's going to incredibly affect my
8 business, I don't know how the Office of
9 Planning came to some notion that everything
10 was good and no local businesses are going to
11 be affected.

12 Nobody from either Giant or Office
13 of Planning has contacted me or any other
14 businesses in the neighborhood that I know of
15 to discuss what impact the PUD might have on
16 us. I don't know that they've done any
17 studies to see what effects this might have
18 on the local business community. I don't
19 think anybody who works in the offices are
20 small business people, but it's clear from
21 all of the testimony over all of these many,
22 many days that if there's no place to park

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1 there that nobody is going to come to my
2 restaurant, and if people can't come to my
3 restaurant, it's going to adversely affect my
4 business.

5 And one of the first claims that
6 they have to make is that local businesses
7 won't be affected for this to go forward.

8 I'm very concerned about the
9 future. I have over 60 employees that I'm
10 responsible for. I have a lot of students
11 that I employ. I have some single parents
12 that I employ. I take care of my own family.

13 I have two kids in college, and if this goes
14 ahead and in a few years my business is
15 adversely affected, what am I supposed to do
16 at that point?

17 You know, I don't see any escrow
18 accounts being set up to support local
19 businesses in case some disaster happens, and
20 I do know there's a whatever, \$96,000 fund to
21 study what effects might happen in the
22 future, but if the building is built and a

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1 study is made and they determine that 120
2 more parking spaces are needed to control the
3 chaos that has been brought forth because of
4 this, what's going to happen then, right? I
5 mean, who am I supposed to call? What am I
6 supposed to do about this?

7 My property line abuts the Giant.
8 Nobody from Giant has ever called to talk to
9 me about how we should get along and make
10 things work here. I couldn't build a deck in
11 my backyard without getting the permission of
12 all my neighbors. You know, that was like
13 the first thing required of me because I have
14 a five foot side yard and you need -- well,
15 you don't need a variance -- you need a
16 special exception, but the first thing
17 everybody says is you need to get everybody
18 who can see your yard to get on board with
19 you.

20 Nobody has ever tried to get on
21 board with me from Giant or any of the
22 developers, and I don't want to live in

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1 Bethesda.

2 CHAIRMAN HOOD: I should think you
3 need a variance, but anyway, that's not
4 before us tonight.

5 Let me do this. Any questions,
6 colleagues? No questions?

7 COMMISSIONER KEATING: I just want
8 to be clear. No one has ever reached out to
9 you from the Applicant to discuss --

10 MR. PASTAN: Nobody has ever
11 reached out to me from the Applicant, no sir.

12 COMMISSIONER KEATING: And where
13 do you put your trash currently? Are those -
14 -

15 MR. PASTAN: Those are my
16 dumpsters.

17 COMMISSIONER KEATING: Those are
18 your dumpsters that are there --

19 MR. PASTAN: Yeah.

20 COMMISSIONER KEATING: -- at the
21 end of the alleyway.

22 MR. PASTAN: I'm not worried about

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1 the dumpsters. I mean, if I have to move my
2 dumpsters, I move my dumpsters, but I think
3 that's a big pain in the ass for everybody,
4 but I don't think that's the major issue
5 here.

6 COMMISSIONER KEATING: Well, where
7 exactly would you move them?

8 MR. PASTAN: I'd get a gazillion
9 little ones and I'd put them behind my deck.

10 It would be a nightmare to have them pick up
11 because even the way the alley works now, you
12 know, I get ten deliveries to my restaurant
13 every day. Cactus gets a whole mess of
14 deliveries. There are trucks everywhere, and
15 you know, if somebody goes to the clothing
16 store upstairs and parks the car in the
17 alley, there are just trucks idling all over
18 the place who can't do a thing.

19 So I don't think the dumpster
20 problem is as big an issue as just that.
21 It's a really small alley, and how another 80
22 deliveries are going to go through that alley

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1 the way it is, I mean, it's already a
2 nightmare the way it is. That worries me
3 more than, you know, finding 15 toters to put
4 my trash in.

5 CHAIRMAN HOOD: Any other
6 questions?

7 Mr. Fiola?

8 MR. FIOLOLA: No, thank you.

9 CHAIRMAN HOOD: Ms. Bairstow?
10 Okay. Mr. Dais. Ms. Scalafani, who is not
11 here. Mr. O'Sullivan? Mr. Espenschied?

12 MR. ESPENSCHIED: No.

13 CHAIRMAN HOOD: Mr. Montanto? Mr.
14 Hecker?

15 Okay. Thank you.

16 MR. FRIENDLY: Could I just say on
17 behalf of all of us, I hope you do come up to
18 the neighborhood and take a look at it, and
19 you'll see the interesting signs at the
20 entrance to the parking lots on Newark Street
21 that say "Friendship Village." It's a
22 village.

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1 CHAIRMAN HOOD: Okay. Thank you
2 very much for that. We don't usually get
3 invited many places.

4 MR. FRIENDLY: Come on.

5 CHAIRMAN HOOD: But thank you. We
6 appreciate it.

7 MR. FRIENDLY: You get very good
8 pizza at 2 Amys.

9 CHAIRMAN HOOD: All right. Okay.
10 Thank you all very much.

11 John Patton.

12 Let me finish with all of that and
13 then we'll come to a procedural question. It
14 has nothing to do with people who are
15 testifying, right? Okay. We'll take it up
16 at the end.

17 Mr. Patton, John Patton.

18 Pam Korbel, Pam Korbel. Okay.

19 And this next one -- who? Yeah,
20 she just testified. So I just got her --
21 Patrick McQuicken (phonetic), 3300 Idaho.
22 Okay. If your address is 3300 Idaho, I just

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1 can't make out the name, but the first name,
2 I think, is Patrick, Patrick McQuicken, 3300
3 Idaho, going once.

4 Okay. Former Chief Judge Rufus
5 King.

6 Jay Etta Hecker, Ms. Hecker.

7 Melanie Shelton or Slaten,

8 Sletten. Melanie, Melanie Sletten.

9 And Rochelle Kainer.

10 Ann Hamilton.

11 Gene Ivery or Ivory, Emory. You
12 make me think I need glasses.

13 Let me see. How many did I call?

14 Do I have enough? Okay. That's six. So

15 the last person I have is Ms. Hamilton.

16 You're the last person that I have. Oh, no,

17 I'm sorry. Ms. Emory. Ms. Emory, you're the

18 last person I have. Okay.

19 PARTICIPANT: I don't hear very
20 well (speaking from an unmiked location).

21 CHAIRMAN HOOD: We'll work with
22 you. No problem. Okay.

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1 Mr. Ives is going to testify.

2 Okay. Both of you will testify?

3 PARTICIPANT: No. I'm just deaf
4 and I need help.

5 CHAIRMAN HOOD: That's fine.

6 Okay. We'll work with that.

7 Okay. Let's start to my left and
8 work our way down.

9 MS. HECKER: Good evening,
10 Commissioner Hood and other Commission
11 members. My name is Jay Etta Hecker, and I
12 am a resident concerned about the absence of
13 rigorous or complete review of the PUD
14 proposal today or the effectiveness in
15 identifying appropriate mitigation measures.

16 I speak not only as an affected
17 community member, but actually I'm a
18 professional transportation economist. I
19 just retired from 40 years' service with the
20 federal government. I was a senior director
21 of transportation issues advising the
22 Congress and the administration for the last

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1 15 years of U.S. transportation policy, and I
2 continue to work in the area. I've actually
3 attached a bibliography of reports that I've
4 worked on that relate to the issue before you
5 today and the biography of my own background.

6 There's two main issues I'd like
7 to very briefly cover. One is the
8 substantial design issues that really remain,
9 as well as the unreliable transportation
10 planning and review that has mostly been the
11 topic of discussion today.

12 The design issues are really
13 important because of the significant historic
14 element of the community and the landmark
15 areas and those details have only recently
16 come to the public's attention with the
17 January filing.

18 The first issue is that the north
19 block design is not compatible with the
20 neighborhood. It's massive, far more massive
21 than anything that's really in the area. It
22 has no setback. The facades are extremely

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1 busy. The granite wall base is not typical
2 of the area. The ground floor heights vary
3 continuously across all of the elevations if
4 you look at them, and the roof structure are
5 alarmingly prominent and more visible than
6 they need to be, particularly with no setback
7 as is required.

8 The second issue after the north
9 block is the south block architecture is more
10 successful, but still needs some refinement.

11 There's a tower element that is very
12 awkward. The roof sign, if you've ever
13 looked at the detail of this, of the Giant,
14 there's three signs, and there's one that's
15 nearly a story tall.

16 Let me briefly turn to the
17 planning issues. As we've heard about today,
18 Applicant is looking for a wholesale
19 elimination of planning and zoning
20 protections. At the same time they're
21 seeking relief they're actually seeking
22 reductions of the required parking and

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1 loading and traffic requirements.

2 DDOT has really focused to date in
3 the planning on having the community rely on
4 after the fact protections, and that is no
5 way to build in the response to these issues.

6 Finally, to date Giant has been
7 holding the community hostage with its
8 intentional degradation of the property and
9 the unwillingness to negotiate on any
10 substantive issues.

11 That concludes my remarks, and
12 thank you very much.

13 CHAIRMAN HOOD: Thank you very
14 much.

15 Chief Judge King.

16 JUDGE KING: Mr. Chairman, members
17 of the Commission, thank you.

18 I live on 34th Place, N.W., which
19 is about two and a half blocks from the site.

20 My wife, Barbara Stevens, and I submitted a
21 letter. Let me ask: does the Commission
22 have it? If there's any question, I'd be

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1 happy to submit a copy again if you'd allow
2 me, but you may have it already.

3 CHAIRMAN HOOD: I will tell you
4 that I can't put my hand on it right now. We
5 had one or two more letters.

6 JUDGE KING: I'd be happy to
7 submit some more copies.

8 CHAIRMAN HOOD: Do we know what
9 exhibit it is?

10 MS. SCHELLIN: It would take me a
11 few minutes as we're up to Number 228. We're
12 at Exhibit No. 228. I'm sure we have it, but
13 it will take a few minutes to find it.

14 JUDGE KING: I submitted a letter.
15 I'm not going to go over the length of that.

16 I really want to make one point.
17 My concern here, and I understand we've moved
18 along quite a ways down the road, but we're
19 starting with an area that was a quiet, very
20 close in, urban neighborhood that would be
21 the pride of any city anywhere in the world.

22 It was designed to be served by a local

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1 commercial area serving the neighborhood.
2 This project takes it to a destination
3 shopping area, and my own preference would be
4 that the project be done within a matter of
5 right configuration.

6 If it goes beyond that, and I can
7 smell the tea leaves, although I appreciate
8 the openness with which the Commission has
9 listened to the testimony, there ought to be
10 a great deal of care given to deciding to
11 allow any expansion of this activity. By my
12 calculation, the non-commercial vehicle
13 traffic would at least double from this
14 project as it is now designed, and the
15 commercial traffic, because presumably these
16 areas would also serve some additional foot
17 traffic, would more than double. That would
18 have a huge impact on this area, on all the
19 streets around Idaho Avenue, Newark, Ordway,
20 my own street, 34th Place, all of them.

21 And so my urging to the Commission
22 is I would prefer matter of right, but if

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1 you're not going to do that, be very, very
2 careful because once you give it away it's
3 gone. We'll never have it again.

4 CHAIRMAN HOOD: Okay. Thank you.
5 Next.

6 MS. KAINER: Thank you,
7 Commissioners. Actually, I don't know why
8 I'm having a very good time tonight.

9 I'm Rochelle Kainer. I live and
10 work on Ordway Street. I'm in exile here
11 from New York City where I wheeled a baby
12 down Madison Avenue. So I know good little
13 stores to look into. Never had another baby,
14 but maybe not enough good stores to look
15 into.

16 That baby went all through the
17 public schools of the District, got her
18 doctorate as a musicologist, and is an
19 ombudsman in the Philadelphia Public School
20 now.

21 It has been a wonderful life in
22 Cleveland Park. We're the last house on the

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1 left on Cleveland Park. I spend a good deal
2 of my time telling people on this part of
3 Idaho, "No, you're going the wrong way."
4 "No, you can't get out to Wisconsin Avenue."
5 "Slow down."

6 The traffic that is there now and
7 even with the barriers, the partial barriers
8 so we can't get out to Wisconsin Avenue, even
9 that is not quite sufficient.

10 I think what's more important, and
11 I was struck dumb the other day going down
12 Newark Street. We now have a speed bump on
13 Newark Street. Did you know that? I didn't
14 know it either and I've been living there for
15 40 years, but it's recent. It's so recent I
16 didn't know it, between 36th and Wisconsin.
17 It's already packed. Macomb is already
18 packed.

19 What's going to happen to my
20 gentle Ordway Street if these things, if the
21 overbuilding -- and I speak mostly of the
22 section that is going to have apartments and

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1 townhouses -- if that goes through, I think
2 the neighborhood that I knew and love with
3 one little child and three little Chihuahuas
4 is no more.

5 I'm used to for 40 years turning
6 up the block, parking in front of my house.
7 I do see -- I'm an analytic psychologist -- I
8 see patients there. They're used to coming
9 and parking. It's not just about me. It's
10 about a neighborhood that is so wonderful,
11 such a combination of old and new. It's so
12 beautiful. It is very cherished, as you can
13 see from most people.

14 I hope you do get up there. It's
15 the Giant plan, and we love Giant. We've
16 been there for years. We go three nights a
17 week or whatever. It's too big. It's a very
18 small parcel of land with a lot of I hope
19 it's not greed, greedy ideas, because they
20 won't pan out.

21 So I hope that you exercise your
22 judgment to get both parties to work the way

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1 we need it to work.

2 Thank you so much.

3 CHAIRMAN HOOD: Thank you.

4 Next.

5 MS. HAMILTON: Good evening. My
6 name is Ann Hamilton, and I live at 3518
7 Newark Street.

8 I'd like to start by noting that
9 the Applicant listed some 40 meetings with
10 members of the community. Some of those were
11 broad based and inclusive. Others must have
12 been limited to the project supporters.

13 I was personally present at at
14 least a third of those to which people with
15 concerns were invited. The representatives
16 of Street Works and Mr. Wells and Mr. Fiola
17 unflinchingly listened attentively. All of
18 these lovely people right here noted our
19 concerns and promised to get back to us. I
20 left every single meeting feeling better.

21 But I think I can safely say that
22 not a single one of our concerns was really

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1 responded to, not one. The only two positive
2 changes I can think of were moving the
3 loading driveway entrance but not the loading
4 dock by a mere 60 feet and making some
5 changes of a facade.

6 On the other hand, I can recall
7 several areas in which things got worse.

8 The other point I'd like to raise
9 tonight is about the impact of the current
10 economic crisis both here and in Europe.

11 VICE CHAIRMAN JEFFRIES: Pull that
12 mic a little bit in front of you. No, no,
13 no.

14 MS. KAINER: Sorry.

15 VICE CHAIRMAN JEFFRIES: Actually
16 I can't believe I'm doing this, but --

17 MS. KAINER: Oh, boy, oh, boy.

18 The impact of the current economic
19 crisis both here and in Europe, which is
20 where Giant's parent company is
21 headquartered, on the proposed development
22 plans. The developers have told us that the

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1 project would be phased, demolishing the
2 existing space on the south block and
3 rebuilding it and then vacating and
4 demolishing the north block.

5 It would be devastating if the
6 developers were to empty the current Giant
7 space only to run out of money or fail to
8 secure financing before the next steps could
9 be completed. This would mean that Giant
10 would join Murphy's and the Moon Palace
11 Restaurant as buildings providing nothing but
12 shelter for vagrants and rats.

13 It would be even worse if they
14 were to demolish the existing store and then
15 run out of money before they could rebuild,
16 leaving only an empty lot or a hole in the
17 ground, and it would be worst of all if they
18 were to empty out the north block as well
19 before the south block is finished.

20 We've seen variations on this
21 theme throughout the District: Murphy's, the
22 Outer Circle Movie Theater and Restaurant,

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1 Babe's Billiards, and now even Whole Foods
2 has pulled out of its Friendship Heights
3 location, which was a real prime location.

4 I believe there are time limits on
5 a Zoning Commission approval of a PUD, but
6 that extension can be extended for cause, as
7 I understand it. I urge that in this case
8 because the economic crisis situation is
9 known. This will not be a new piece of
10 information two years from now. So I urge
11 that whatever finding you come up with does
12 not permit extensions because the disaster is
13 foreseeable.

14 WE all want a new store, but the
15 existing store is immeasurably better than an
16 empty store or a lot of empty stores or a
17 hole in the ground.

18 So I can hear the beep as well as
19 the next guy. I just urge you to bear this
20 potential in mind.

21 CHAIRMAN HOOD: Okay. thank you
22 very much.

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1 Next. Turn your microphone on,
2 the microphone. There you go.

3 MR. IVES: My name is David Ives.
4 My wife and I live at 3508 Macomb Street, a
5 block and a half from Wisconsin Avenue.

6 I prepared a paper which I've
7 submitted, and it addresses primarily the
8 parking question which has been thoroughly
9 discussed this evening, and I hope you'll
10 read it in any case because my analysis is
11 somewhat different.

12 I assume that the tenants would
13 all be given parking, and on that basis, the
14 number of spaces left for the general use for
15 the Giant store and all the other new
16 facilities less than is presently in the
17 Giant parking lot.

18 My numbers are somewhat different
19 from the ones that were on the screen today,
20 but his numbers make the problem even more
21 disastrous on that basis, and I go through
22 seven reasons why this is bad.

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1 I'm not going to do that now, but
2 I hope you'll read the paper. What I do want
3 to do now is to say this about what the
4 Giant's position is on parking, and that is
5 I'm not clear whether they're going to let
6 tenants stay there or not. I could only
7 partly hear what was said tonight, but I
8 don't think it makes much difference because
9 either the tenant who doesn't have a parking
10 space but does have a car -- and believe me,
11 they all have cars. I mean, maybe a few
12 won't, but even though they walk to work or
13 take the bus, they own cars, and they have to
14 be parked, and they're not going to pay to go
15 to the Alban Towers garage and pay money to
16 park when they can either park in their
17 basement or on the street. They will all get
18 third zone parking, and they can be permanent
19 there.

20 Now, either they park in the
21 basement and fill up the space that's needed
22 for the people who are going to come to work

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1 and buy things in the PUD and so forth, or
2 they won't. If they can't do that, they're
3 going to park in front of my house.

4 If they can park there, the people
5 who come to use the PUD are going to park in
6 front of my house, and that's the problem of
7 deficient parking facilities.

8 Now, this all ties into the --
9 I've got no time left -- but the traffic
10 problem on Macomb Street, which is acute.
11 You know, it's a thoroughfare, and with
12 enhanced parking it's going to be even worse.

13 That parking is almost reaching us already,
14 as I mentioned in my paper, from the
15 restaurants in the neighborhood, and it's the
16 beginning when we have a PUD.

17 Thank you.

18 CHAIRMAN HOOD: Thank you very
19 much.

20 Okay. I think that's it for this
21 panel, if you can just hold your seats.

22 Judge King, your exhibit is 152.

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1 Mr. Ives, we will be reading your testimony.

2 We will just have to find it.

3 MR. IVES: Good. It's there.

4 CHAIRMAN HOOD: Okay. All right.

5 Any questions?

6 Boy, the Capitals won I'm being
7 told. The Capitals won. Okay.

8 MS. KAINER: May I ask a question,
9 sir?

10 CHAIRMAN HOOD: Oh, it's questions
11 for us to ask.

12 MS. KAINER: For you. I'm sorry.

13 CHAIRMAN HOOD: You know, I
14 haven't seen a whole lot down here, but,
15 yeah, ask me a question. Put me on the
16 stand.

17 MS. KAINER: Do you have enough
18 written statements or would you like -- I
19 gave no written statement. Would you prefer
20 one? Would you like to have an additional
21 one?

22 CHAIRMAN HOOD: We always accept

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1 written statements, but if you could do me a
2 favor because of the record; if you could
3 make it a one-pager, that would be very
4 helpful.

5 MS. KAINER: Absolutely. I'm a
6 writer.

7 CHAIRMAN HOOD: Okay. Oh, okay.

8 MS. KAINER: Besides a mother, I'm
9 a writer.

10 CHAIRMAN HOOD: Right. All right.

11 VICE CHAIRMAN JEFFRIES: And a
12 therapist.

13 CHAIRMAN HOOD: Okay. If you all
14 can hold your seats, any questions,
15 colleagues?

16 Okay. Mr. Fiola? Ms. Bairstow?
17 mr. Davis? Ms. Scalafani is not here. Mr.
18 O'Sullivan. Over there and then you're over
19 there and now here. Any questions? Do you
20 have any questions?

21 Okay. Mr. Espenschied.

22 MR. ESPENSCHIED: No, sir.

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1 CHAIRMAN HOOD: Mr. -- they're
2 very well orchestrated, I'll tell you -- Mr.
3 Montanto. Okay, and Mr. Hecker. Where is
4 Mr. -- okay. Mr. Hecker, any questions? Oh,
5 there you are. Okay.

6 Thank you all very much for your
7 testimony. We appreciate it.

8 Okay. That's all I have on my
9 list. Oh, Mr. O'Sullivan, I did tell you
10 could ask at the end.

11 MR. O'SULLIVAN: Sir, I understand
12 that there was no sign-in list this evening
13 so that if somebody hadn't signed in before,
14 there was no way to sign in this evening.

15 CHAIRMAN HOOD: Right. There's a
16 reason behind that.

17 MR. O'SULLIVAN: Well, sir, the
18 proponents who came came only once and only
19 to the third hearing, and they got to go
20 because they had notice. We had no notice
21 that --

22 CHAIRMAN HOOD: But the question

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1 was asked.

2 MR. O'SULLIVAN: -- hadn't
3 notified you.

4 CHAIRMAN HOOD: Okay. Let me just
5 say this to you. The question was asked by
6 Mr. Davis, who was a supporter.

7 See, one thing about it. I know
8 what we do down here. Mr. Davis asked me.

9 MR. O'SULLIVAN: I remember when
10 he asked you.

11 CHAIRMAN HOOD: He asked me could
12 people come down --

13 MR. O'SULLIVAN: Who didn't make
14 it last time.

15 CHAIRMAN HOOD: -- after we took
16 proponents. After we took proponents could
17 they come down for this hearing and we go
18 back to proponents. That's not within our
19 process. Even though it took us four nights,
20 this was all one hearing. Some people have
21 been here from day one and have been here
22 from day one.

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1 So, you know, unless your name is
2 on the list, unless somebody can tell me
3 their name is on this list, then we're not
4 going to go back to opponents. They would
5 have needed to have signed in.

6 But what you can do --

7 MR. O'SULLIVAN: But they were not
8 given -- excuse me.

9 CHAIRMAN HOOD: We're not going to
10 make a big issue. Hold on. I don't want to
11 rule you out of order because we've been
12 doing fine. We're not going to make a big
13 issue over this. What they can do is submit
14 us a one-pager, and we'll provide it in the
15 record and, believe me, believe it or not, we
16 do read it.

17 MR. O'SULLIVAN: That may be, sir,
18 but I have to object to that procedure
19 because the people came down last time.
20 Plenty of them came only for that one night.

21 They knew that the proponents were going to
22 get to go that night. They signed in, and we

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1 brought people and we said, "You'll probably
2 be wasting your time if you come last time,"
3 because we thought the proponents were going
4 to take all night, and we said, "Come down
5 the next time when we get to go."

6 Those people are here now. They
7 are coming, many of them, for the third or
8 fourth time, but they hadn't signed in
9 before. We had no notice that there was a
10 cutoff or we would have faxed in their names.

11 MR. FIOLA: Mr. Chairman, the same
12 thing happened to supporters last time. They
13 were not --

14 MR. O'SULLIVAN: No, no, no.
15 That's not true.

16 MR. FIOLA: They were not
17 permitted to sign up last time.

18 MR. O'SULLIVAN: Yes, they were.

19 MR. FIOLA: No, they weren't.

20 MS. SCHELLIN: Once it was taken
21 up, nobody else was added to the list.

22 MR. O'SULLIVAN: When was the list

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1 taken up?

2 MS. SCHELLIN: We took up the list
3 when we started calling names off the list,
4 was at the last hearing.

5 MR. O'SULLIVAN: Yeah. So people
6 who came in at the last hearing, who came in
7 -- excuse me -- people who came in at the
8 last hearing, who that may have been their
9 first hearing, they were given an opportunity
10 to sign in before you pulled the list.

11 MS. SCHELLIN: As long as the list
12 -- as long as the list was on the table,
13 people could sign up, proponents or
14 opponents, but once the list was pulled, then
15 once the list is pulled we start calling
16 names off of the list, and that's -- you
17 know, we have procedures to go through.
18 There's a certain order, and once the list is
19 pulled, that's why the list was not on the
20 table this evening, because we had already
21 pulled the list and started calling names.

22 MR. O'SULLIVAN: But you were

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1 calling lists for proponents. You were
2 calling people off the list for proponents.

3 MS. SCHELLIN: The list was out --

4 MR. O'SULLIVAN: There was no
5 opportunity for opponents to speak.

6 CHAIRMAN HOOD: Hold on. Let me
7 do this. Let me -- I don't -- here's what
8 I don't --

9 MR. O'SULLIVAN: I only have two
10 or three people.

11 CHAIRMAN HOOD: Here's what I
12 don't want to happen. I don't need all of
13 that from over on that side, and all that. I
14 don't need that. What I need is for you all
15 to let us figure out how we're going to do
16 this. I don't need all of that stuff. When
17 somebody is at the table, let him talk.
18 Okay? You all know how to run -- you all
19 know how to run a meeting. Okay? We don't
20 run it like that.

21 Okay. Now, how many people is it
22 that are down here, and I actually see what

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1 you're saying. I don't need all five or
2 seven people hollering at the same time.

3 How many people do you have
4 tonight that are down here in opposition? I
5 mean that did not sign up.

6 MR. O'SULLIVAN: That did not sign
7 up, that want to speak.

8 CHAIRMAN HOOD: No, that want to
9 speak that were not here for the reason last
10 time.

11 If you think about it, Mr. Fiola
12 and Mr. Davis, a lot of people probably did
13 not stick around because of that very issue,
14 and I just, as far as I'm concerned, I don't
15 have a -- what we're going to do, we're going
16 to spend a lot more time going through --

17 MR. FIOLA: I just note for the
18 record we had supporters that came to talk,
19 but they came later in the evening because
20 they knew they weren't going to get on. They
21 went to Ms. Schellin and asked to be heard.
22 They weren't on the list because the list had

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1 been pulled. They were not allowed to talk.

2 And I think it's fair for one,
3 it's fair for the other.

4 CHAIRMAN HOOD: But, Mr. Fiola,
5 you know at the end of each one we always say
6 last call. Anyone else here, whether their
7 name is on it or not.

8 MR. FIOLA: They weren't allowed
9 to speak last time.

10 CHAIRMAN HOOD: Well, we did that
11 with proponents. The question that was asked
12 of me from Mr. Davis was even though we have
13 bypassed support, would they be able to come
14 back and we be able to go back to support,
15 and that was the question.

16 MR. FIOLA: Well, I'm just talk --
17 I'm just responding to the fact that there
18 were supporters here that didn't get on the
19 list last time and were not allowed to
20 testify.

21 CHAIRMAN HOOD: We were doing
22 proponents.

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1 MR. O'SULLIVAN: My recollection
2 is --

3 CHAIRMAN HOOD: Mr. O'Sullivan,
4 let me do one thing at a time.

5 Mr. Fiola, I do do a call of last
6 call. We've always done it, but I had to
7 think about this issue because it makes
8 perfectly good sense. Do any of my
9 colleagues object to hearing a few more
10 folks?

11 Okay. It's not a major deal. Let
12 me do the last call. How many people --
13 okay. Let me get six up at a time. I don't
14 have your names. Let me ask this. Are your
15 witness cards filled out?

16 PARTICIPANTS: Yes.

17 CHAIRMAN HOOD: All of them are
18 filled out. Okay. Come forward. Let me get
19 six, and then we'll finish up with the other
20 six, and we're going to stick to the three
21 minutes.

22 Okay. Thank you, and you know, I

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1 appreciate the audience's enthusiasm, but
2 just chill out. It ain't that hard, believe
3 me.

4 (Laughter.)

5 CHAIRMAN HOOD: We're going to
6 start to my left. Sir, we're going to start
7 with you to my left. Identify yourself and
8 your address and we'll go from there.

9 MR. KOHL: My name is Will Kohl,
10 spelled K-o-h-l. I've resided for 25 years
11 at 3451 Newark Street, which is a little over
12 two blocks from the proposed development.

13 I'm in favor of the new Giant
14 store and related development with some
15 qualifications meant to preserve the quality
16 of our residential neighborhood and to
17 mitigate undue burdens of additional traffic
18 and parking.

19 I have a number of points, which
20 we'll repeat some that have already been
21 made. So I'm not going to say all of them,
22 but on parking, I am concerned that the

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1 parking provided under the PUD is not
2 sufficient to prevent spillover in the
3 surrounding streets and neighborhood, which
4 is already congested in peak hours.

5 And the plan offered by the Giant
6 does seem to offer much fewer spaces for
7 other local establishments' usage, other use
8 than the current space available.

9 On the north block the PUD, as I
10 understand it, does call possibly for five to
11 six new restaurants in addition to other
12 retail space, and in addition to the
13 residents above in the new apartments. Where
14 will these commercial customers park? There
15 is not provision in the north block for that
16 parking, which means that it is going to
17 spill over into the neighborhood.

18 It seems to me that it is
19 important to preserve the character of the
20 neighborhood. I echo the thoughts of the
21 woman who spoke who I believe lived on Ordway
22 Street. We've had a residential neighborhood

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1 with a certain character. It is not in the
2 middle of a large, commercial part of the
3 city, like Bethesda Row, and we don't want to
4 change toward that.

5 I'll come to recommendations. In
6 the north block, I would hope that we could
7 limit the number of new restaurants and bars
8 to something like two rather than five or six
9 because those are going to attract large
10 scale customers from elsewhere.

11 There should be an effort made to
12 attract neighborhood serving businesses with
13 affordable rents, and I would also echo the
14 recommendation there at the number of
15 residential units in the north block we
16 reduced to provide more parking for
17 commercial customers.

18 In the south block, the Giant
19 should make more parking available for other
20 local customers, and if it's not too late, I
21 would go so far as to say the Giant should
22 reconsider the planned size of the new super

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1 store and reduce it possibly even from three
2 to two times the size of the existing store
3 to make room for more parking.

4 Overall I think the plan for the
5 super store is too large for our
6 neighborhood.

7 CHAIRMAN HOOD: Okay. Thank you
8 very much.

9 MR. KOHL: Thank you.

10 CHAIRMAN HOOD: Thank you.

11 Next.

12 MS. OLSSON: Good evening. I'm
13 Diane Olsson. I live at 3519 Lowell Street,
14 N.W. I'm a lawyer.

15 I shop at the giant. The comp
16 plan has been taking some abuse here. So
17 that's what I want to address. For example,
18 Ms. McCarthy argued low density commercial
19 area can be zoned either C-1 or C-2-A. Giant
20 is asking for C-2-A. Therefore, Giant's
21 proposal is not inconsistent with low density
22 under the comprehensive plan.

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1 The problem with that is Ms.
2 McCarthy failed to say that moderate density
3 zones can also be mapped C-2-A. She admitted
4 that low density is characterized by one to
5 three story commercial buildings, but she
6 failed to point out that moderate density,
7 also C-2-A, refers to buildings that are
8 larger and taller, but generally do not
9 exceed five stories.

10 To paraphrase Ms. McCarthy's
11 conclusion, it's the plan's moderate density
12 definition that totally and perfectly well
13 sums up the Applicant's north block proposal.

14 Ms. McCarthy referred to a
15 generalized land use map, that so rigorous
16 compliance isn't necessary, but the
17 generalized land use map from OP days is
18 gone. Now it's a block-by-block, street
19 grid. The correct title is future land use
20 map. It's not generalized, not in name, not
21 in concept, not in effect.

22 By law, zoning must not be

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1 inconsistent with that map, and no PUD can
2 change the map or avoid compliance with it.
3 Ms. McCarthy's citations of various plan
4 motherhood provisions calling for development
5 and economic vitality can't override the hard
6 facts of the future land use map's specific
7 design for this precise part of the city.

8 This is important. Resident and
9 merchants, like Mr. Pastan, depend on
10 predictability in land use regulation. They
11 need to know that the plan map is reliable.

12 Also, this isn't an in-fill site,
13 contrary to Ms. McCarthy's testimony. Except
14 where Giant pushed out some neighborhood
15 merchants, it's a fine example of a small
16 neighborhood shopping center, just as the
17 future land use map intends it to remain.

18 Finally, this area is not
19 designated for mixed use. Incredibly Ms.
20 McCarthy asked you to believe mixed use is
21 appropriate here precisely because the site
22 is not designated for mixed use and does not

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1 fit any of the situations that the plan
2 identifies as desirable for mixed use.
3 That's upside down logic, and I hope you'll
4 reject it.

5 I don't have time to discuss the
6 Macomb-Wisconsin overlay. We have filed
7 pleadings that contend that it requires BZA
8 review, and that you can't use a PUD to
9 override the overlay. I hope you'll study
10 those pleadings with care.

11 My written testimony which you
12 have before you expands on what I have said
13 here, and I thank you for your consideration.

14 CHAIRMAN HOOD: Thank you very
15 much.

16 Next.

17 Just hit the button. Push.

18 MS. GOFF: Yes. I'm Barbara Goff.

19 I live on 34th Place. I have a very short
20 message tonight.

21 When I came here in 1961, I was
22 very happy to be able to shop at what they

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1 called the Embassy Giant because all of the
2 embassies went there because it had the best
3 produce and other good things.

4 Something has happened along the
5 way, and now this is no place where the
6 embassies would like to shop. So I do
7 believe we need a better Giant. I don't
8 believe we need a giant Giant.

9 It has become deteriorated. It
10 has become derelict. There's a very small
11 amount of a variety of things, and I look
12 upon this as a disrespect for the community.

13 If the Giant really cared about us, they
14 would not try to sell us what they want to
15 sell us, but they would try to sell us what
16 we want, and they haven't done that. They
17 could have done that.

18 They had the Murphy's Five and Ten
19 they could have developed, and so I would say
20 to you since they have been so disrespectful
21 to the neighborhood that you should not
22 reward them by giving them the ability to do

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1 something more and to tear down our zoning
2 status and to get rid of our overlay.

3 And so for that reason I really
4 think you should simply reject the proposal.

5 Don't reward them for bad behavior.

6 Thank you.

7 CHAIRMAN HOOD: Thank you.

8 Next.

9 MR. AIN: Thank you very much, Mr.
10 Chairman.

11 My name is Ross Ain. I've lived
12 on Newark Street for the last 32 years. I'm
13 one and a half blocks from the proposed
14 development.

15 My experience is somewhat
16 relevant. I was in government service, the
17 practice of law, and now I've been a
18 developer for the last 15 years of large
19 electric generating projects around the
20 country. I've appeared before a number of
21 bodies such as yours pleading my case for
22 exceptions, for special waivers, for

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1 variances and the like. I know what it means
2 to have a complete case and do your homework.

3 This proposal before you today, I
4 believe, is fundamentally flawed, built on
5 fundamentally flawed assumptions. Let me
6 speak to them.

7 First, it assumes the location is
8 in a dense urban setting next to a Metro
9 Station where people won't use cars to come
10 and go to the new Giant stores and
11 residences. In fact, the nearest Metro
12 Station is nearly a mile from the Giant.
13 People don't carry grocery bags that far,
14 even if it's downhill.

15 This oversized development should
16 not be permitted so far from a Metro Station,
17 creating traffic and parking problems.

18 Second, the assumption that the
19 oversized Giant and oversized residential
20 development is necessary for the success of
21 this project is not true. There is no
22 economic basis in the record for that

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1 conclusion, only superficial, unsupported
2 assertions without financial backup or
3 economic analysis of any expert testimony.

4 Third, it assumes that traffic
5 congestion and lack of sufficient parking
6 will not adversely affect the success of this
7 project. Wrong again. Not only will it hurt
8 the new grocery store and the new commercial
9 establishments, but it will hurt the popular,
10 established restaurants and stores that will
11 suffer from lack of parking and traffic
12 congestion.

13 Fourth, the assumption that the
14 neighborhood supports this project is wrong.

15 The neighborhood is deeply divided and
16 concerned with all of these issues. Witness
17 the highly conditional support of the ANC and
18 the opposition of the Cleveland Park Citizens
19 Association.

20 Fifth, the assumption that new
21 amenities justifies the project's adverse
22 impact on the community is wrong. The

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1 project is woefully short on new amenities
2 to overcome traffic congestion and other
3 adverse effects.

4 Moreover, the project takes away
5 from the major amenity they're offering the
6 neighborhood: parking lots at the Giant and
7 across the street at the bank.

8 Sixth, the assumption that the
9 project incorporated green standards in the
10 building HVA systems and other energy
11 consuming, pollution causing systems is
12 wrong. The Office of Planning has apparently
13 abdicated its responsibility in this regard
14 not insisting on any thorough compliance with
15 green buildings or energy use standards,
16 truly a lost opportunity to reduce greenhouse
17 gases and ground level pollution in northwest
18 Washington.

19 The project proponents have a
20 burden to show the benefits when asked for
21 approval of a non-conforming project,
22 particularly when the hardship created

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1 claimed is self-created by their shameful
2 current use of the existing site. The
3 Commission has a responsibility to find plans
4 feasible, desirable, and provide an
5 additional benefit beyond what the developer
6 may propose as of right. They have not met
7 the burden.

8 I thank you very much for your
9 patience.

10 CHAIRMAN HOOD: Thank you.

11 Next.

12 MS. ACKALL: Hell. My name is
13 Ghada Ackall, and I live in 3051 Idaho
14 Avenue, at number 317.

15 I'll be very quick. I support all
16 the previous testimonies here, and I don't
17 want to keep repeating the problem with the
18 parking. With everything, you already heard
19 it. It makes sense.

20 The video picture is worth 1,000
21 words. You already saw what it was, and we
22 would love for you to come and see the whole

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1 neighborhood and you would definitely support
2 our words.

3 That's all I want to say.

4 CHAIRMAN HOOD: Thank you very
5 much. We appreciate it.

6 Next.

7 MS. WOODWARD: Thank you for the
8 opportunity to testify. My name is Kate
9 Woodward, and I'm here representing myself
10 and Patty McGill Peterson. We live at 3821
11 Macomb Street, which is on the northeast
12 corner of Idaho and Macomb. Our house is
13 approximately a half a block from the
14 proposed Idaho loading dock and approximately
15 a block, block and a half from the Macomb
16 Street loading dock.

17 The nine households constituting
18 the 3300 Idaho party are all located on a
19 residentially zoned street. The quality of
20 our home life and the value of our properties
21 are dependent upon that zoning
22 classification. For all of us, our homes

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1 represent a principle equity investment, and
2 for some represent their entire life savings.

3 We understand Giant's right to
4 develop its property, and we do not oppose a
5 well designed retail area consistent with the
6 surrounding neighborhood. However, what had
7 first concerned us and now alarms us is the
8 lack of any serious consideration from the
9 developer for the impact that the requested
10 zoning changes will have on us.

11 Placing a delivery truck entrance
12 with all that that entails next to the homes
13 on our residential street will do us serious
14 harm.

15 If there were no alternative
16 location for the loading dock, we would be
17 posing a difficult choice for the Zoning
18 Commission, but this is not the case.
19 Fortunately, there are viable alternatives
20 which have been presented in earlier
21 testimony and presented to the Applicant, and
22 we urge that the Commission recognize this.

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1 The quality of our neighborhood
2 and our investments and our home depend upon
3 the Commission's willingness to seriously
4 consider the alternatives proposed by the
5 3300 Idaho party.

6 The developer claims to have been
7 consulting regularly with the ANC and the
8 neighborhood for three years, but we have not
9 been part of that long term process. It was
10 not until December 15th, 2008 that Street
11 Works met with the residents of the 3300
12 block of Idaho to discuss our growing
13 concerns. At that meeting we were told that
14 our comments and proposed alternatives would
15 be carefully considered, but the result was
16 merely a movement of the truck entrance and a
17 few more buffered plantings.

18 Basically, the developer has
19 become intractable on this subject.
20 Furthermore, as the PUD application has
21 progressed, from our perspective no city
22 agency has demonstrated concern for our

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1 rights and the protection of our interests as
2 citizens and homeowners. The OP and DDOT
3 reports are little more than rubber stamps
4 supporting the PUD as proposed.

5 In placing our concerns before the
6 Zoning Commission, we are asking for a fair
7 hearing of these concerns and for the
8 adoption of one of the alternatives that we
9 are proposing. Doing so will protect equity
10 in our homes, quality of life, and allow
11 Giant to proceed with the redevelopment with
12 minimal disruption.

13 Thank you.

14 CHAIRMAN HOOD: Thank you.

15 Any questions, colleagues?

16 Mr. Fiola?

17 MR. FIOLA: No questions.

18 CHAIRMAN HOOD: Ms. Bairstow?

19 Okay. Mr. Davis. Ms. Scalafani is not here.

20 Mr. O'Sullivan. Mr. Espenschied. Mr.

21 Montanto. Mr. Hecker.

22 Okay. Thank you very much.

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1 Okay. How many more people do we
2 have? Okay. So the remaining, I think we
3 can get all of this. This is the last panel.

4 This is the last panel of opponents. So if
5 you can come forward. If you can come
6 forward quickly.

7 Okay. This is our last panel.

8 Okay. What I'm going to do is ask the
9 gentleman to my right, since we're trying to
10 get this presentation together, if you can
11 start. The gentleman to my right.

12 Turn your microphone on. Hit your
13 button.

14 MR. NASH: Mr. Chairman, my name
15 is Rick Nash. I live two blocks east of the
16 PUD on Newark, a local residential street,
17 which is the continuation of what would be
18 the spine of the PUD.

19 I had not intended to testify
20 tonight, but I would be remiss if I didn't
21 clear up a misimpression that has arisen.

22 When Mr. Pickman presented his list of

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1 concerns, the suggestion was that these were
2 being raised late in the process, and nothing
3 can be further from the case.

4 Going back two years ago, I was
5 part of a group arranged by Mr. Idelson and
6 Ms. McWood, our ANC Chairman, who you'll
7 recall brought Giant to the table. We met
8 with Giant, its counsel and other
9 representatives in an attempt to have an open
10 dialogue to result in what we hoped would be
11 a consensual process and avoid the rancor of
12 so many proceedings.

13 We were impressed and looking
14 forward to a new store and, moreover, found
15 much to like in the proposal: townhouses
16 that respected the residential zone on Idaho
17 Avenue, an attempt to hide the big box store
18 of the shops, but we consistently raised
19 issues of parking and traffic mitigation
20 addressing the external effects of the
21 project, as well as number of units, density,
22 no residential parking permit and the

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1 preservation of the overlay.

2 Applicant listened politely, but
3 during the course of those discussions, the
4 number of residential units went from 50-
5 something to 80-something to the current over
6 140, a kind of one-way ratchet that went in
7 the other direction.

8 We also engage the Office of
9 Planning, and we believe they, too, shared
10 our concerns that the number of residences
11 was too many and that the height was too
12 great. DDOT was slower to engage, preferring
13 to wait until there was a contested
14 proceeding.

15 Ms. McWood I know as recently as
16 last summer sent a list of issues to Mr.
17 Colavolpe of Stop and Shop without getting a
18 response.

19 And when we suggested to Applicant
20 that perhaps the number of units would be
21 cut, the response was always the same. This
22 is what we need to support a store of this

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1 size.

2 When we suggested that a super
3 center, Giant's trade term for a store of the
4 size was perhaps more than what was needed at
5 the site, we were told that this was the way
6 it would be.

7 So these issues have been
8 consistently raised over many years, and you
9 know, again, with the hope of arriving at a
10 consensual process, and I hope that with the
11 Commission's push that we can get Applicant
12 back to the table and reach something that I
13 think would be a benefit for Cleveland Park,
14 McLean Gardens, and the area surrounding,
15 while serving rather than stifling the
16 community surrounding it.

17 Thanks.

18 CHAIRMAN HOOD: Thank you. Thank
19 you very much.

20 Next.

21 MR. OLSSON: Mr. Chairman and
22 Commissioners, my name is Philip Olsson. I

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1 live at 3519 Lowell Street, and I'd like to
2 speak briefly about parking, space for small
3 business, and the need for dialogue.

4 First, as to parking, the project
5 has a neighborhood changing parking impact,
6 and it won't be significantly offset by
7 public benefits as required by the PUD
8 regulations. In fact, the benefits to the
9 neighborhood are going backwards. The
10 Applicant's May 10, 2008 proposal offered
11 open parking for PUD and non-PUD businesses
12 in the south block garage. This was reduced
13 to the flat 30 spaces you've heard about this
14 evening in the October proposal.

15 The neighborhood has been
16 negotiating against itself. Every time they
17 put something out there, it gets ratcheted
18 back. You've heard that from Mr. Nash. The
19 Zoning Commission needs to prevent a parking
20 tsunami in the neighborhood and go for that.

21 Secondly, guaranteeing affordable
22 space for merchants such as Sullivan's Toy

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1 Shop and Luigi, the Barber, should enjoy the
2 same priority that you apply to affordable
3 housing for individuals. Shamali's
4 Delicatessen and a well regarded paint store
5 were pushed out when the Applicant took over
6 and vacated the old Murphy's space.

7 You should insist that the
8 Applicant make written up front commitments
9 to these small merchants that they'll have
10 appropriate affordable space because
11 otherwise they'll just be open promises.

12 Finally, I'd like to talk about
13 dialogue. Mr. Chairman, you indicated an
14 interest in dialogue and a question why there
15 hadn't been more. There have been attempts
16 at dialogue. A number of people in this room
17 have been involved in them.

18 What I would suggest to you, and I
19 have no idea whether it's procedurally
20 possible, but I would suggest that this
21 Commission put Mr. Pickman's six or seven
22 questions to the Applicant and ask for the

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1 Applicant's written responses so that these
2 issues are, indeed, joined in a way that they
3 haven't been joined in these meetings when
4 they've been put forward.

5 The neighbors have negotiated
6 against themselves, and there has been no
7 response, and then as the second stage not
8 only put those for response, but then direct
9 that the parties meet together and seriously
10 discuss those issues and report to this
11 Commission which of those issues they have
12 been able to resolve and which of those
13 issues they will leave to you to resolve for
14 them.

15 Thank you very much.

16 CHAIRMAN HOOD: Thank you.

17 Next.

18 MR. GRAHAM: Good evening,
19 Chairman Hood and fellow Commissioners. My
20 name is Tom Graham. I live about a block
21 away from the proposed plan.

22 I reluctantly raise my voice in

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1 opposition, not as somebody said the other
2 night to stop this, but to actually try and
3 make it better.

4 I have a way forward, and it comes
5 back with everybody negotiating against
6 themselves, and I feel I'm doing that in a
7 bit of a way, but I listened to the last four
8 meetings without anybody really giving you an
9 idea of what they wanted.

10 That changed a little bit tonight,
11 but that's what I'm trying to do. You're
12 well aware of the comprehensive plan,
13 existing zoning, and the neighborhood overlay
14 and what kind of development that would
15 allow. The burden is upon you to determine
16 what can be done within the spirit of these
17 regulations.

18 I believe there is a way forward,
19 and that is for the Commission to, number
20 one, reduce the north building in line with
21 the developer's own presentations, and I'll
22 present that in a minute; reposition the

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1 loading dock in the south building and expand
2 the north building loading dock.

3 And thirdly, address the ANC's
4 remaining concerns.

5 To my first point, the renderings
6 of the proposal put forward by the developer
7 serve as the best illustration of why the
8 Zoning Commission should require
9 modifications to the PUD as currently
10 proposed. Let's look at the first rendering
11 by the developer. Can you all see this?

12 Okay. So the rendering shows the
13 north building looking north on Wisconsin
14 Avenue as a bit lower than the Abbey
15 Apartment. The Abbey Apartment is the one
16 with the red line in it. I don't know if you
17 can see that. Do you see that?

18 Okay, and the actual elevation for
19 this rendering is five stories plus an
20 additional story for mechanical, and that's
21 actually shown in black above the Giant. Do
22 you see that? That's how high it should be

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1 based on the actual elevations.

2 Another rendering, this one
3 looking east on Newark Street. It shows the
4 north building a bit taller than one of the
5 townhouses which are three stories tall. The
6 building rendered looks to be no more than
7 four stories. The actual elevation for this
8 rendering is six stories and is shown against
9 the rendering by a dotted black line showing
10 the actual size of the building in relation
11 to its surroundings.

12 And the last rendering, this one
13 of the north building from Newark, it shows a
14 four story building on the east side and a
15 five story building on the west, and the west
16 would be all the way to your left. The
17 actual elevation for this rendering is five
18 stories plus an additional story for the
19 mechanical to the east and six stories to the
20 west. The actual elevation is shown against
21 the rendering by, again, the dotted line
22 showing the actual size of the building in

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1 relation to its surroundings.

2 The PUD requests five and in some
3 cases six stories. Existing regulations, as
4 you've heard tonight and as you know, is one
5 to three stories. The easy compromise from
6 my perspective, and again, I'm arguing
7 against myself in some ways, is four, and I
8 urge the Chairman and fellow Commissioners to
9 enforce some sort of compromise.

10 One last thing if I could. On the
11 loading dock I've drawn up a mock diagram
12 which you have. You have all of this, and
13 with very, you know, easy cut and paste, you
14 can move this over, put three houses as a
15 buffer, and I think bring a lot more to the
16 plan.

17 And lastly, I would just ask you
18 listen to the ANC. They approve this but
19 with conditions, and there's a lot of
20 conditions, and I think it's incumbent upon
21 you.

22 You are asking people about

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1 parking. Well, you should, you know, be
2 looking at this.

3 CHAIRMAN HOOD: Let me just say
4 this. This is very well done. We have this.
5 It's very easy to follow.

6 MR. GRAHAM: It's getting late.
7 thanks.

8 CHAIRMAN HOOD: No, no, no. It's
9 not getting late. I just want to make sure.
10 We try to be fair even though sometimes it
11 doesn't look that way.

12 MR. GRAHAM: Yeah, I know.

13 CHAIRMAN HOOD: Some people don't
14 think we do, but I think we have the rest of
15 it.

16 MR. GRAHAM: All right. Thank you
17 very much.

18 CHAIRMAN HOOD: Any questions,
19 colleagues? Any questions?

20 Mr. Fiola?

21 MR. FIOLA: No questions.

22 CHAIRMAN HOOD: Ms. Bairstow. Oh,

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1 that's right. Ms. Bairstow.

2 Mr. Davis. Ms. Scalafani, who is
3 not here. Mr. O'Sullivan?

4 MR. O'SULLIVAN: No questions.

5 CHAIRMAN HOOD: Mr. Espenschied.
6 Mr. Montanto.

7 MR. MONTANTO: A question for Mr.
8 Graham.

9 Mr. Graham, I'm Philip Montanto.
10 I wonder have you not been
11 involved with other discussions or chose to
12 stay away from other groups? We're looking
13 for people that are interested in concerns
14 and I just wonder what your experience was in
15 this.

16 MR. GRAHAM: Yeah, I've been to
17 like a lot of the meetings. You've seen the
18 list of meetings that's extraordinarily long.
19 I've been to them. I often leave early just
20 because they're excruciating as everybody on
21 this Commission knows.

22 (Laughter.)

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1 MR. GRAHAM: And I think everybody
2 has done a good job. I think AWARE is good.

3 I think that the neighborhoods -- I've spent
4 five hours canvassing my neighborhood, and I
5 can tell you that, you know, nobody is
6 against this plan, but nobody is for it if
7 they knew that raising some opposition
8 wouldn't can it.

9 I think people are so scared by
10 this gentleman here that, you know, if we
11 voice any opposition they're going to pull
12 the whole project, and that's the way they've
13 dealt with it the whole time. Everybody has
14 told you ad nauseam we've gone, we've talked,
15 nobody has listened. Everybody said it is up
16 to the Zoning Commission, and it really is in
17 a way up to you now to somehow reconcile all
18 of this, and I know it's a huge burden, but
19 it is what it is.

20 CHAIRMAN HOOD: Okay. Mr. Hecker.

21 I don't know. Yeah, I would agree
22 he was pointing at one of the Applicants. So

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1 I guess was that the architect? Who was that
2 you were pointing at? Who were you pointing
3 at?

4 Okay. For the record, he's just
5 pointing at the architect.

6 Okay. Thank you all very much.

7 PARTICIPANT: Thank you,
8 gentlemen.

9 CHAIRMAN HOOD: Mr. Fiola.

10 MR. FIOLA: If I could have a
11 second to set this up, Mr. Chairman.

12 CHAIRMAN HOOD: Mr. Fiola, about
13 how much time do you think you need on
14 rebuttal?

15 MR. FIOLA: Probably 30 minutes,
16 sir.

17 CHAIRMAN HOOD: Okay.

18 MR. FIOLA: Before we start, Mr.
19 Chairman, I'd just like the record to reflect
20 that we had five supporters here last time
21 who did not sign up and were not allowed to
22 testify because they were not on the list.

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1 That's all.

2 CHAIRMAN HOOD: I think you
3 mentioned that to me. It must have been some
4 miscommunication because I think at every
5 hearing, Mr. Fiola, you know we always say we
6 call for anyone who is either in support or
7 in opposition.

8 MR. FIOLA: Yes, I know that.

9 CHAIRMAN HOOD: And actually you
10 probably would have had more, but with Mr.
11 Davis. We understand all that, but again,
12 it's not a popularity. Just because you had
13 five more in support and there was three,
14 we're going to go by the issues, and I didn't
15 say that for your benefit. I said it for
16 everybody else. It's not a popularity
17 contest.

18 (Pause in proceedings.)

19 CHAIRMAN HOOD: All right. Let's
20 take a two minute -- a three minute break.

21 (Whereupon, the foregoing matter went off the
22 record at 10:39 p.m. and went back

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1 on the re at 10:41 p.m.)

2 CHAIRMAN HOOD: Okay. Let's go
3 ahead and get started.

4 Mr. Fiola, we're back on the clock
5 -- I mean back on the record. If you have a
6 conversation, if you could take it outside so
7 that we can go ahead and get through tonight.

8 Mr. Fiola, you can begin on
9 rebuttal.

10 MR. FIOLA: Thank you, again, Mr.
11 Chairman.

12 And for the record, Phil Fiola.

13 I would like to point to three
14 modifications we are proposing to make as
15 part of the rebuttal in response to the ANC
16 and the Office of Planning, slightly
17 modifying some of the conditions that we have
18 proffered as part of our application.

19 The first is, as suggested by the
20 Office of Planning, the Applicant is willing
21 to commit the equivalent of, on
22 sustainability, the equivalent of lead

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1 silver, under lead ND and under lead for
2 homes mid-rise, so that we would meet a
3 silver criteria for that.

4 Secondly, the ANC has requested in
5 their motion one of the conditions that we
6 limit restaurants to 20 percent of the linear
7 footage. Our application proposed 25
8 percent. We will abide by the ANC's
9 recommendation and limit restaurants to no
10 more than 20 percent of the linear footage.

11 And finally, after discussion last
12 week, we will increase the affordable housing
13 from eight percent to ten percent as was
14 discussed a little bit at the last hearing.

15 We just have a couple of things to
16 add in rebuttal in regard to a couple of
17 areas, and we've kind of worked this so we
18 consolidate it. I don't know if the
19 Commission is interested in taking each
20 individual testifier individually and ask
21 questions or let us go through the whole
22 thing.

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1 CHAIRMAN HOOD: Let's do each
2 individual. So I think that will be more
3 efficient if we do individual.

4 MR. FIOLA: Your call, Mr.
5 Chairman.

6 CHAIRMAN HOOD: Yeah, let's do
7 individuals.

8 MR. FIOLA: First I'd like to ask
9 Marty Wells from Wells Associate to address
10 some of the parking, loading, and traffic
11 issues that were raised by the opponents to
12 this project. We have just turned in a full
13 analysis of Mr. Wells' critique, if you will,
14 for the record, but I'd like him to hit a
15 couple of highlights without taking too much
16 time.

17 Mr. Wells.

18 MR. WELLS: Thank you, Mr.
19 Chairman and members of the Commission. I'll
20 be brief and rely mostly on my written
21 remarks.

22 I do take exception to the

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1 opponents' expert, the PSI, regarding their
2 analysis of parking. They've concluded that
3 the retail space needs six parking spaces for
4 1,000 square feet. The office needs eight
5 spaces per 1,000 square feet. These are
6 very, very high.

7 Our analysis is that the
8 commercial uses will require about 2.8 spaces
9 per 1,000. DDOT supports this. shared
10 parking, in part, makes this work.

11 We are not -- next slide -- we are
12 not a Metro rail station site, but there is a
13 transit orientation here. There are 500
14 buses that ply these streets during the
15 course of a day along the heavily traveled
16 Wisconsin Avenue corridor and the cross-town
17 routes. If you don't believe me, go to
18 WMATA's Web page and look at their published
19 timetables.

20 With regard to curb parking, there
21 will be no loss of on street curb parking.
22 This diagram shows the on street parking that

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1 would pertain after the PUD, along with bus
2 stops and on street loading zones.

3 Much has been made in the next
4 slide of possible parking encroachment on
5 Ordway Street. If one measures from the
6 center of the north parcel along the frontage
7 on Wisconsin Avenue to the center of the
8 first block east of Wisconsin on Ordway, it's
9 about 600 feet. And then if you measure from
10 that same point on the north parcel to the
11 entrances, pedestrian entrances to the
12 garage, it's about 375 feet, so the
13 architects tell me.

14 So the walk, it is more
15 convenient, a shorter distance to walk to the
16 garage than Ordway. We think that when one
17 learns about the project, the parking place
18 of choice will be parking in the on street
19 garage.

20 With regard to loading, PSI cites
21 two sources of data for their analysis of the
22 small shops. They cite data from Australia.

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1 I'm sure we can learn a lot from Australia,
2 but I'm not sure we can learn much about
3 parking or loading.

4 They also cite and use Baltimore
5 data. They do not use any local data, retail
6 shops anywhere in the District of Columbia,
7 this site or any other site, and in spite of
8 the statements that they did not do this,
9 they did, in fact, confuse truck trips with
10 truck deliveries. ITE would define one truck
11 trip being the trip into the loading berth
12 and then a second trip exiting the loading
13 berth. So every delivery has two trips.
14 Clearly, they estimated trips and then
15 declared those to be deliveries.

16 And they do not acknowledge that
17 there are two on street loading zones on
18 Macomb Street. And they reach the rather
19 incredible conclusion that about 49,000
20 square feet of retail and office space will
21 generate between 68 and 83 daily truck
22 deliveries.

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1 Our analysis is based on actual
2 observations here, and we did take a look at
3 City Vista, a new project here in town, and
4 considered the actual operations here similar
5 land uses.

6 By the way, the one bit of truck
7 data that PSI did collect was at other Giant
8 supermarkets. They looked at the number of
9 large and tractor trailer trucks and single
10 unit trucks that was generated by, I think,
11 six or seven sites, and that actually
12 corroborates our estimates. In fact, our
13 estimates are a little higher than their
14 when you look at the combined number of
15 tractor trailers and single unit trucks.

16 We do believe our loading is
17 adequate. DDOT has reviewed and approved
18 this. We think the number of trucks that
19 we've estimated can, in fact, be
20 accommodated, and we believe a truck
21 management plan will work as Karina Ricks so
22 testified at one of the earlier hearings.

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1 I won't belabor these points, but
2 we did very carefully look at the ability of
3 trucks to make the turns off of Wisconsin
4 Avenue onto Idaho and Macomb and maneuver in
5 and out of the loading berths. Richard just
6 showed you the in and out paths from the
7 north parcel.

8 Inbound is to the left. A single
9 unit truck would follow the path that Richard
10 just traced, and then the return is shown on
11 the right side of the image.

12 Next slide.

13 There are two berths. The truck
14 access will be, we think, easy. The truck
15 management plan will limit the size of those
16 trucks to single unit trucks, and there is
17 some existing curb loading.

18 Macomb Street, there is a 20 foot
19 alley as you well know. This shows these two
20 images on the left shows the inbound maneuver
21 and on the right shows the outbound maneuver.

22 Inbound, one would turn right off of Macomb

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1 into the 20 foot alley, pull forward into
2 space that would be provided to allow that
3 maneuver, back in, and then pull out as shown
4 in the right side of the image.

5 By the way, that space that's
6 shown for maneuvering into the dock could
7 actually accommodate a single unit truck
8 that's waiting to get to the dock because
9 there's already a truck in the loading berth
10 itself.

11 Shown here on the left side of the
12 image is the 2 Amys. If you have questions
13 about trash removal and whatnot, we can talk
14 about that.

15 As I say, there's one berth off of
16 Macomb plus one waiting space, if you will.
17 A 20 foot alley is a fair luxury here in the
18 District of Columbia, and it only services
19 less than 50,000 square feet of shops and
20 office space. It, too, will be subject to
21 the limits of the truck size, and it has the
22 capacity to accommodate anywhere our

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1 estimates are eight to 16 trucks a day.

2 A final set of slides shows the
3 truck maneuvers, the large tractor trailer
4 truck going into and out of the Giant loading
5 area.

6 Richard has just shown you the
7 inbound path on the top of a 55 foot
8 articulated tractor trailer truck making a
9 left from northbound Wisconsin or right from
10 southbound Wisconsin. If this image were
11 larger, you can see that the curbs have been
12 so designed so a tractor trailer truck can
13 make that maneuver without jumping or hopping
14 onto the curb.

15 And then the bottom part of the
16 image shows the return path from the loading
17 area back to Wisconsin.

18 MR. FIOLA: Mr. Chairman, I think
19 that concludes Mr. Wells' presentation. We
20 can either continue on or --

21 CHAIRMAN HOOD: We're going to ask
22 our questions and then we'll do cross on

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1 rebuttal if we have any. Then we'll do all
2 of that in sequence with everyone.

3 Commissioner May.

4 COMMISSIONER MAY: Just a couple
5 of quick ones. You referred to some existing
6 curb loading on Idaho; is that right?

7 MR. WELLS: Correct, on the north
8 side, not on our frontage, but on the
9 opposite side of the street near Wisconsin.

10 COMMISSIONER MAY: Okay. And it
11 is not anticipated there will be any curb
12 loading on Idaho now under your plan.

13 MR. WELLS: Frankly, the use of
14 the curb space is not our call. That's
15 public space. That's DDOT's call. We would
16 simply note that there is one; there is a
17 loading zone there today.

18 COMMISSIONER MAY: Okay, but in
19 the proposed development, you're not
20 proposing to use any curb loading, right?

21 MR. WELLS: No, our plan does not
22 depend on the existing curb loading.

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1 COMMISSIONER MAY: I just want to
2 make sure.

3 And how is the alley off Macomb
4 going to work with a truck loading at 2 Amys
5 because clearly they don't have their own
6 private space on which a truck can be parked.

7 If it's going to park in the ally, take up
8 ten of the 20 feet or eight, nine of the 20
9 feet? Are you going to be able to get a
10 truck by that?

11 MR. WELLS: The two parties need
12 to work that out, frankly. Maybe Mr. Heaps
13 could.

14 MR. HEAPS: I'm sorry. In the
15 long chain of microphone nonsense, if I could
16 address that, and I'm a little uncomfortable
17 addressing part of it.

18 I'm sorry. Richard Heaps, of
19 Street Works.

20 I'm a little uncomfortable address
21 part of it. In fact, it just tells you how
22 large of an impact my conversations with Mr.

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1 Pastan have been, but I have, in fact, met
2 him at two of our neighborhood meetings. We
3 have called him a number of times, and I will
4 tell you what I told him when we met.

5 Clearly, that loading dock,
6 whether ours is there or not, doesn't work.
7 Basically what has happened is they've filled
8 in the back portion of his site with an
9 outdoor patio, et cetera, making it
10 impossible to keep the dumpsters on their
11 property, hence filling up the alley. At the
12 end of the day I think one of the most
13 compelling arguments for the truck management
14 plan is, frankly, if we don't get that to
15 work, our truck management plan doesn't work,
16 and the two of us have to work together to
17 manage all the trucks in that alley to what I
18 believe are three dumpster locations: his
19 and two or ours.

20 And that's what I told him then.
21 That's what I believe now has to happen. We
22 have left calls. I am perfectly confident

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1 that we'll do that, but I don't know other
2 than that what to say other than that has to
3 become a single loading facility.

4 COMMISSIONER KEATING: A single
5 loading facility. So somehow he's going to
6 use your dock?

7 MR. HEAPS: I don't know what the
8 solution is. One solution is that the dining
9 goes away; the dumpsters go back on his
10 property, and the alley is free and clear,
11 and then it is the management of truck access
12 in and out, hours of the day, et cetera, to
13 accomplish that.

14 That, frankly, doesn't seem like
15 the most neighborly proposal. I think you
16 can manage it in a different way where
17 perhaps his trash, our trash access happens
18 at the same time, allocated in a different
19 way. It needs to be worked out across
20 parties.

21 COMMISSIONER KEATING: So you
22 would share a dumpster or something like

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1 that.

2 MR. HEAPS: Perhaps, and the trash
3 comes at once. There's no reason for the
4 trash to come on a repeating cycle.

5 So there is no doubt that there is
6 the width in the alley and probably the
7 width, depending on his rollout dumpsters, to
8 have dumpsters next to his property and get
9 access. But it has to be worked out jointly,
10 and we're prepared to do that.

11 COMMISSIONER MAY: You know, the
12 image that you show here is a truck pulled up
13 beside his business.

14 MR. HEAPS: Correct.

15 COMMISSIONER MAY: Are you going
16 to be able to get a truck past that?

17 MR. HEAPS: Marginally. It's not
18 going to be the best solution. The proper
19 thing is to have that delivery scheduled with
20 the other deliveries consistently, including
21 trash, including beer, et cetera.

22 Remember, there is an offset

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1 loading space, two of them, in fact, right
2 across the street and adjacent to his store
3 and across the street. So there are two
4 loading facilities on the street, at Macomb
5 and Wisconsin, available for access to his
6 store as well.

7 And in fact, a number of those go
8 through the front of his store in doing that.

9 COMMISSIONER MAY: Okay.

10 CHAIRMAN HOOD: Any other
11 questions?

12 Okay. Not hearing any, Mr. Fiola,
13 can we go to the next witness?

14 MR. FIOLA: Certainly. Mr. Heaps
15 might as well just continue on.

16 MR. HEAPS: If you don't mind, I
17 guess I will call the next topic mitigation
18 of grocery loading, which is beyond truck
19 turning, but all the issues of the design of
20 that loading.

21 To do that, I would quickly remind
22 you the current condition. It has been

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1 stated that, in fact, Idaho is residential in
2 character in this part of the District. I
3 would respectfully disagree with that. You
4 can see, of course, there is the police
5 station.

6 The edge of the parking lot as we
7 know it is at the property line. It is not
8 at a zoning line, et cetera. It is actually
9 facing Idaho the same distance as those
10 residential units that exist today. There's
11 a large setback there.

12 That's important relative to the
13 current character. The small circles do show
14 you that there are a number of loading
15 facilities referencing over the curb loading
16 today, but today there are existing two
17 exterior loading facilities, one on the north
18 parcel, which is coincidentally the same
19 location as our proposed loading, servicing
20 the same amount of retail, and of course the
21 existing Giant loading.

22 What we did not make clear to you

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1 last time is that today most of the trucks
2 are coming in this curb cut and wheeling
3 around the parking lot. Many of them stop
4 here, and wheeling around and essentially
5 circumventing the exterior of this parking.
6 So the impacts of the trucks are not simply
7 here at the loading dock. They are
8 throughout that site in terms of truck
9 maneuvering, stopping and starting, et
10 cetera.

11 I only put that in context of our
12 mitigation of our loading facility. We went
13 through these series of slides last time
14 explaining the location of our dock and the
15 height of a current car top today and our
16 proposed dock which leaves that height and
17 lowers the dock to street level Idaho so that
18 the top of any truck we are proposing this at
19 the same height today.

20 I showed you the section as to the
21 14 foot wall we proposed and how from the
22 second story of the house next door we

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1 believe that would mitigate the visual
2 impacts. We suggested we would study
3 proposing a 20 foot high wall with a higher
4 burn, which would absolutely clarify the
5 visual impacts and we think mitigate the
6 noise impacts.

7 What I'd like to show you now, we
8 just took the application as it is, put it in
9 the computer and modeled it in 3D with the
10 trees where they are shown in the application
11 at 20 feet like you might expect to get from
12 day one, not 50 years from now, and looked at
13 a couple of views. We looked at one view at
14 the property line and Idaho, looking back at
15 this is that view today, you can see with
16 vegetation, undergrowth and trees; that from
17 that view today, that pedestrian, you cannot
18 see any of the parking lot, the store or any
19 of the impact.

20 If you take our model with the 20
21 foot wall, the berm and the trees, this is
22 the same view you would see from that corner.

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1 You do see the townhouses here. You can see
2 the cornice line of the store, and this is at
3 Idaho level behind the wall, which is here,
4 what you would see of the loading dock and a
5 truck standing on the corner today of Idaho
6 and the property line.

7 I did knock on the door. Mr.
8 Montanto was not home, but I did take the
9 liberty to take a photograph from his front
10 porch. this is the view from his front
11 porch. That's his fence. That's the
12 property line. You can see the existing wall
13 of the Giant today. Looking back to the
14 store, a similar condition as to the corner.

15 After our mitigation, you can see
16 there's the wall. There's the store, and
17 this is the location of the trucks in the
18 loading from behind that mitigation. In
19 fact, in the computer if you were to go up 15
20 feet so that you were standing in the second
21 floor, five feet above the second floor, that
22 view would be similar today. Yes, it's true

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1 with 20 foot trees the top of the store does
2 begin to show, but there is the line of the
3 retaining wall and the location of those
4 trucks and the loading.

5 VICE CHAIRMAN JEFFRIES: What's
6 the height of the retaining wall again?

7 MR. HEAPS: It's 20 feet with a
8 berm, and a similar condition as today. It's
9 raised six feet from what it is today.

10 So we are pretty clear in this
11 study that we have mitigated certainly the
12 visual impacts or the adjacent impacts, and
13 according to Mr. Henning report also the
14 noise impacts, but I will let him summarize
15 that for you on this topic.

16 MR. FIOLA: We sort of arranged
17 this by subject matter and so that's why Mr.
18 Henning was going to talk about noise here,
19 but we can stop and ask questions.

20 CHAIRMAN HOOD: Let's go ahead and
21 continue on because that ties it, and then
22 we'll ask our questions.

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1 MR. FIOLA: Mr. Henning.

2 MR. HENNING: Gerald Henning from
3 Henning Associates.

4 The existing conditions have
5 already been visually portrayed, and looking
6 at the area surrounding the loading dock area
7 and the residents that are closest to the
8 turnaround, there's the commercial parking
9 lot that is adjacent to the existing
10 residence. There's also the police station
11 from across the street from the parking lot,
12 and as was pointed out, many of the trucks
13 come in the far entrance to the parking lot,
14 circle around right by the resident that's
15 closest to the parking lot and also closest
16 to our proposed turnaround, and those trucks
17 would actually be visible from the second
18 story window of that residence or, as with
19 our proposed design, those trucks would not
20 be visible.

21 We looked at both average and
22 maximum noise levels in our noise study, and

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1 the average levels are actually the best to
2 use to look at and evaluate because they take
3 into account all of the noise levels, both
4 maximum levels, the number of events, and
5 also the duration of events, and the average
6 has been used and is the standard practice
7 for years and years, but we looked at both.
8 We had both in our report, both the average
9 and maximum.

10 Just to summarize a couple of
11 conclusions from the report, when we're
12 looking at loading, unloading noise, that
13 will take place inside the building with the
14 garage door closed, and so there's going to
15 be a substantial improvement in the control
16 of that noise from the existing condition.
17 And it's also going to be substantially below
18 the background noise level.

19 Looking at the truck maneuvering
20 noise that takes place in the turnaround
21 area, the maximum levels from trucks would be
22 comparable to the maximum background ambient

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1 noise levels, and the average levels of the
2 trucks would be substantially below the
3 background ambient noise levels.

4 And when that takes place what you
5 really sense is the background ambient noise
6 levels because it's all part of that
7 environment.

8 Thank you.

9 MR. FIOLA: Mr. Chairman, that
10 ends our little piece about it. We think
11 with the parking and loading, we think with
12 the management plan and as you've heard much
13 discussion about, we think we have
14 accommodated the needs of this development,
15 and so we can stand for questions on this and
16 then get into the architecture or some of the
17 architecture issues that were raised way back
18 in the first hearing.

19 CHAIRMAN HOOD: Okay. Any
20 questions? Commissioner Keating.

21 COMMISSIONER KEATING: I have a
22 question. I think I'm just a little slow on

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1 this. Would you walk me through again the
2 Macomb alley and how that's going to work?
3 And what you believe is the best solution for
4 working with 2 Amys on making this work.

5 And this is Mr. Heaps. The number
6 of trucks you said could come into the alley
7 range between I think you said eight and 16
8 per day. Were those the numbers?

9 MR. HEAPS: We looked at the
10 number of truck trips and truck deliveries
11 generated by the existing retail uses on this
12 site and looked at the number of square feet
13 of occupied space, came up with a rate, and
14 applied that rate to the larger square
15 footage in this new project.

16 We also did similar observations
17 at City Vista, which is within walking
18 distance of here, and that's why we came up
19 with a range of eight to 16. Sixty-eight to
20 83 is just off the chart and not credible.

21 COMMISSIONER KEATING: Right. But
22 if eight to 16 is just for this project, it

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1 does not include truck traffic from --

2 MR. HEAPS: It does not include 2
3 Amys, and it does not include the -- there
4 are some dumpsters for the adjacent apartment
5 building.

6 COMMISSIONER KEATING: Correct.
7 Okay.

8 MR. HEAPS: By the way, I would
9 add that the dumpsters for the apartment
10 building, those are on an additional eight
11 feet of width. The public alley is 20 feet
12 wide, and there's an additional what appears
13 to be an eight foot setback of the apartment
14 building to provide space for those
15 dumpsters.

16 COMMISSIONER KEATING: And in the
17 answer could you also talk about is there any
18 desire or conversation about dealing with the
19 trash from the apartment building and how
20 they become part of this stock management
21 plan?

22 MR. HEAPS: Right. Why don't we

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1 just walk through the situation a piece at a
2 time?

3 Here, of course, is the Macomb
4 alley here. There's the apartment building.
5 This is 2 Amys. Just as notification, those
6 are the two existing over the curb loading
7 spaces today.

8 You can see even from this shot
9 that the parking along here early in the
10 morning is often occupied by delivery trucks,
11 et cetera, but that's not part of the system.

12 So that truck, for example, is in the
13 loading across from Cactus Cantina.

14 When you look at the alley itself,
15 to Marty's point, it's a little hard to see.

16 There are the two large dumpsters. There's
17 a whole bunch of glorified trash cans.
18 They're not even rollout dumpsters. They're
19 big trash cans that are essentially the
20 dumpsters for the apartment building.

21 Number one, that's a trash issue
22 primarily. They're not taking a lot of the

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1 deliveries other than move in and move out.
2 So they do have a number of rollout trash
3 receptacles that could certainly be
4 consolidated on the site and be serviced by a
5 regular delivery.

6 What gives me confidence in that,
7 the back of their site, you remember the
8 conversation about fire, access, et cetera.
9 There's nothing built other than some
10 landscaping, et cetera, that could be
11 organized relative to containing their trash
12 more efficiently on site. It would certainly
13 make sense to work with them on that.

14 The 2 Amys, of course, and these
15 two parcels have essentially made this not
16 fully utilizable, and they've got a lot going
17 on between the wood for their ovens and trash
18 and deliveries. Those are kind of the three
19 outdoor activities, plus some dining.

20 I happen to believe that once we
21 get access to essentially our two berths, if
22 managed right -- remember we're talking eight

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1 to 16 trucks a day -- so if managed right,
2 there's no reason that there's more than one
3 trash trip for all three of those. So I
4 can't imagine that the apartment building is
5 not easily resolved because that's just
6 trash.

7 And then we come down to trash for
8 2 Amys, the two dumpsters could be put in
9 smaller rollouts. There is a little bit of
10 room here or perhaps the deck can be
11 modified. I don't think we have to propose
12 that that amenity to the neighborhood goes
13 away. It just needs to be looked at.

14 So that could roll out, and what
15 I'm proposing is that the truck manager can
16 obviously schedule the trash trips -- that
17 makes sense -- for all of those entities. I
18 don't think there's anything harmful about a
19 7:00 a.m. to 9:00 p.m. restriction that makes
20 trash impossible. So that it really comes
21 down to loading.

22 I don't know the right answer to

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1 that. It could be staggered hours. Maybe 2
2 Amys has to have their deliveries certain
3 portions of the day. Maybe Giant has theirs
4 other portions of the day, and it's managing
5 of the system. Maybe it's consolidation of
6 who the vendors are. I am sure there are
7 some 2 Amy vendors who are also Giant
8 supermarket vendors. I think those are the
9 kinds of systems that need to happen.

10 Frankly, I'm not a Commissioner or
11 anything else. I know physically it can
12 happen and I know there's a willingness on
13 Giant's part out of just the practical
14 reality of making it work that it has to
15 happen.

16 But there's no doubt that
17 physically managed right, you can get two
18 trucks down there, and the question is how do
19 you manage the pace of those during the
20 course of the day. I think we can figure it
21 out physically.

22 CHAIRMAN HOOD: Let me just say I

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1 really think that we're probably going to
2 have to come back May the 7th. I'm just
3 throwing it out there. We wanted to finish
4 tonight, but I know that there are times for
5 cross-examination, and unfortunately, you've
6 been working on it in the community for some
7 years and five hearings is not going to -- I
8 better not say it like that, but anyway, five
9 hearings is not going to set us back too much
10 further, and the next hearing that I think
11 we're proposing is May the 7th, but anyway,
12 let's keep asking our questions.

13 VICE CHAIRMAN JEFFRIES: I have a
14 question for Mr. Wells. I'm trying to figure
15 out the significance of the 500. Is it 500
16 bus trips? What is it?

17 MR. WELLS: Bus trips, that's
18 correct.

19 VICE CHAIRMAN JEFFRIES: Bus
20 trips. So how does that positively impact on
21 the site as it relates to traffic? Because
22 I'm sort of moved by some of the comments

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1 around this is really going to become a
2 destination. It's not going to become a
3 local neighborhood serving center. It's
4 going to be more of a destination.

5 And given that it's on a bus line,
6 I mean, it's well served by bus lines. I got
7 that, but how does that, you know, mitigate?

8 MR. WELLS: Well, let me tell you
9 what I assumed in our study, and by the way,
10 PSI thinks our trip estimates are high. Our
11 trip estimates are high.

12 We did take credit for transit
13 trips generated by the residential units. In
14 other words, we reasoned that one might own a
15 car but commute downtown, Georgetown, cross-
16 town on a bus. That's what the U.S. Census
17 tells us. So we just took the U.S. Census
18 data and assumed that it applied.

19 We took no credit, no bus credit
20 for shoppers who might take a bus to come
21 here. So --

22 VICE CHAIRMAN JEFFRIES: So you

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1 didn't consider there was a certain
2 percentage of people who would be taking the
3 bus to go to Giant or any of the stores --

4 MR. WELLS: Correct.

5 VICE CHAIRMAN JEFFRIES: -- that
6 are proposed.

7 MR. WELLS: Forgive me, but we
8 were conservative in our traffic analysis.

9 CHAIRMAN HOOD: Any other
10 questions?

11 Let me see. Are you finished, Mr.
12 Fiola?

13 MR. FIOLA: No, we have about ten
14 more minutes.

15 CHAIRMAN HOOD: Okay. Let me just
16 ask the parties. Do you think you may have
17 cross-examination on rebuttal.

18 PARTICIPANTS: Yes.

19 CHAIRMAN HOOD: Okay. So we're
20 going to ask our questions and we're probably
21 going to finish up asking our questions and
22 next time we'll start with that. I will ask

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1 Ms. Schellin if we can try to come up with a
2 date now and then we'll finish our questions.

3 MS. SCHELLIN: Why don't you guys
4 go ahead with your questions? I'm going to
5 have to work on the date. It may take a few
6 minutes.

7 CHAIRMAN HOOD: Mr. Fiola, let us
8 take a five minute break, not that we had
9 that many minutes. I think this is going to
10 be our breaking point. Let me take a five
11 minute break and let me see how the
12 Commission's schedule looks so that we can
13 maybe come back as soon as possible, and I
14 guarantee you the next night is going to be
15 the last night.

16 (Whereupon, the foregoing matter went off the
17 record at 11:17 p.m. and went back
18 on the record at 11:24 p.m.)

19 CHAIRMAN HOOD: Okay. Let's go
20 back on the record.

21 Mr. Fiola, what I think we're
22 going to do right here is park it at this

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1 point, and what we're going to do is we're
2 going to look at -- and I'm hoping everyone
3 can check their schedules and we can make May
4 the 13th, which is a Wednesday, at 6:30.
5 That way we don't prolong it any longer, and
6 we will finish on May the 13th at 6:30.

7 I guess basically what I'm asking
8 is the Applicant and the parties, and we'll
9 welcome anyone else who's able to join us.

10 Everybody is saying yes.

11 (No response.)

12 Mr. Heaps is saying no.

13 CHAIRMAN HOOD: Okay, and we
14 probably need to ask him some questions.

15 Okay. The next date is May the
16 28th at 6:30. Mr. Heaps?

17 The problem we have is the
18 architect, the Applicant's architect will not
19 be here. So we're going to have to move to
20 the 28th. So we just have to come back from
21 the beach a little earlier.

22 MR. HEAPS: I'm all over it, yes,

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1 sir.

2 CHAIRMAN HOOD: The 28th is okay?

3 Mr. O'Sullivan, are you all right? You
4 check it and make sure it's okay. You're all
5 right now, but the 28th is not okay with --
6 do we have another date? It's okay?

7 Cleveland Park is telling me it's
8 not okay.

9 MS. SCHELLIN: How about May 20th,
10 a Wednesday? Oh, no, then we'll be here
11 three nights that week.

12 CHAIRMAN HOOD: May 20th, can we
13 do May 20th?

14 MS. SCHELLIN: I'll be here three
15 nights that week, I guess.

16 CHAIRMAN HOOD: Can we do May
17 20th? Everybody can do May 20th?

18 MS. SCHELLIN: Mr. O'Sullivan is
19 giving the thumbs up.

20 CHAIRMAN HOOD: Okay. May 20th,
21 that's a Wednesday.

22 MR. FIOLA: That's a yes, yes from

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1 the Applicant side, sir.

2 MS. SCHELLIN: Unless June 1st
3 looks better for everybody.

4 CHAIRMAN HOOD: May 20th is good
5 for me. All of us, May 20th, guys? Okay.

6 All right. So May 20th at 6:30,
7 we're going to start Mr. Fiola at rebuttal.
8 The question is whether we start over or do
9 we start where you are. I think we can start
10 where you are. We may have some question on
11 some of what we heard tonight, and then we'll
12 have cross-examination again by the parties,
13 if you have it.

14 And I would ask that we cross on
15 rebuttal and rebuttal only, nothing new,
16 okay, because we're going to try to get this
17 done. We're definitely going to get it done
18 that night. It's just I don't know how much
19 time.

20 Okay. Is there anything else?
21 Are we all on board?

22 Okay. With that, thank everyone

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1 again tonight, and we'll see on May the 20th
2 at 6:30. Good night.

3 (Whereupon, at 11:27 p.m., the
4 public hearing was adjourned, to reconvene at
5 6:30 p.m., Wednesday, May 20, 2009.)
6
7

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