

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA

2 Historic Preservation Review Board

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6 Historic Preservation Review Board Hearing

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Mayor's Agent

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Property Address:

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McMillan Sand Filtration Site

11

Case Number: H.P.A. 14-393

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9:39 a.m. to 5:05 p.m.

14

Monday, October 6, 2014

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D.C. Historic Preservation Office

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Office of Planning

18

1100 4th Street, S.W., Room 4302

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Washington, D.C. 20024

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1 APPEARANCES:

2 JUDGE:

3 J. Peter Byrne

4

5 For Opponents:

6 Andrea C. Ferster, Esq.

7 2121 Ward Court, N.W.

8 Fifth Floor

9 Washington, D.C. 20037

10 202-974-5142

11 aferster@railstotrails.org

12

13 Elizabeth S. Merritt, Esq.

14 Deputy General Counsel

15 National Trust for Historic Preservation

16 2600 Virginia Avenue, N.W.

17 Suite 1000

18 Washington, D.C. 20037

19 202-588-6026

20 emerritt@savingplaces.org

21

22

1 For Applicants:

2 Mary Carolyn Brown, Esq.

3 Holland & Knight

4 800-17th Street, N.W.

5 Suite 1100

6 Washington, D.C. 20006

7 202-862-5990

8 carolyn.brown@hklaw.com

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10 W I T N E S S E S

11		Direct	Cross	Redirect	Recross
12	Martine Combal	14	24	46	-
13	Ronan Gulstone	48	55	-	-
14	Anne Corbett	63	70	-	-
15	Emily Hotaling Eig	81	108	-	-
16		149	154	-	-
17	Kirk Mettam	121	139	-	-
18	Bruce Leonard	174	189	-	-
19	Matthew J. Bell	198	242	-	-
20	Adam C. Weers	262	276	-	-
21	Jair Lynch	285	291	-	-

22

1 W I T N E S S E S (cont.)

2 Direct Cross Redirect Recross

3 Aakash Thakkar 316 336 - -

4 Lindsley Williams 349 358 - -

5 Celia Diane Barnes 364 369 - -

6 - - -

7 E X H I B I T S

8 Page

9 No. 1 - Emily Hotaling Eig Curriculum Vitae 81

10 No. 2 - Kirk Mettam Curriculum Vitae 120

11 No. 3 - Bruce Leonard Curriculum Vitae 171

12 No. 4 - Matthew J. Bell Curriculum Vitae 197

13 No. 5 - Lindsley Williams Curriculum Vitae 349

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1 PROCEEDINGS

2 JUDGE BYRNE: All right, ladies and
3 gentlemen, let's proceed, please. Well, good
4 morning, everybody. I'm Peter Byrne and I'm the
5 designated Mayor's Agent for this matter, which
6 involves a permit application to raze 15 of the
7 remaining 18 filtration cells in the McMillan Park
8 Reservoir at 2501 First Street, Northwest. And the
9 application is assigned Historic Preservation Act
10 Number 14-393.

11 The case is being heard under the authority
12 of D.C. Law 2-144, the Historic Landmark and Historic
13 District Protection Act of 1978. The law requires
14 the Mayor or his agent to review permit applications
15 for demolition, alteration, subdivision, new
16 construction on the site of historic landmarks within
17 historic districts.

18 Prior to consideration by the Mayor's
19 Agent, the law requires that applications be referred
20 to the Historic Preservation Review Board for its
21 recommendation.

22 We've had many hearings here, but on May

1 22d, 2014, HPRB recommended against the issuance of a
2 raze permit on the grounds that it would not be
3 consistent with the purposes of the Historic Landmark
4 and Historic District Protection Act. After the
5 Board made its recommendation, the applicant
6 requested this public hearing, as provided by law.

7 The hearing will be conducted in
8 conformance with the D.C. Administrative Procedure
9 Act and Title 10C, District of Columbia Municipal
10 Regulations, which contain the rules of procedure for
11 the Mayor's Agent, pursuant to the Preservation Law.

12 The procedure this morning will be as
13 follows. First, we'll have a consideration of
14 pending motions and procedural matters, then
15 presentation of the Applicants' case, reports or
16 statements by public agency representatives,
17 statements by affected Advisory Neighborhood
18 Commissions, parties and other persons in support of
19 the application, then parties and other persons in
20 opposition to the application.

21 Then we'll have rebuttal by the Applicant,
22 rebuttal by parties in support of the application,

1 and surrebuttal by parties in opposition to the
2 application.

3 And this morning, we're going to use the
4 second chair here as a witness chair for witnesses
5 who are simply going to testify and the first chair
6 at the computer will be for witnesses who are doing a
7 computer presentation, okay?

8 One of the aspects of the regulations is
9 that all the witnesses who are going to present
10 testimony need to be sworn and it's sometimes most
11 convenient if we just do that all at once.

12 You've all signed in to one of the forms if
13 you're going to be a witness and those who've signed
14 in and are going to be witnesses, I'd ask you please
15 just raise your right hand. A sea of hands, okay.

16 (The witnesses are duly sworn by Judge
17 Byrne.)

18 JUDGE BYRNE: Thank you very much. We'll
19 begin, then, with some procedural matters. There are
20 two applications pending for party status in the
21 case, one by the Friends of McMillan Park and one by
22 the National Trust for Historic Preservation. And is

1 there any objection to those?

2 MS. BROWN: I have no objection to Friends
3 of McMillan Park. I do have a question about the
4 National Trust, if they have witnesses or if there's
5 just -- are you appearing as the attorney or as the
6 -- as you said in your request for party status, or
7 are you going to be a witness?

8 MS. MERRITT: Well, our plan is that I
9 would testify not as an expert, but on behalf of the
10 National Trust, and we're also expecting the director
11 of President Lincoln's Cottage to come and testify.
12 She won't be here for a couple of hours.

13 MS. BROWN: I guess what I'm asking is,
14 then, I will be able to cross examine you and that
15 you are precluded from cross examining our witnesses
16 if you're a witness.

17 MS. MERRITT: It's my expectation that my
18 testimony would be subject to cross examination, but
19 it was also my expectation, because I am a lawyer for
20 the National Trust, essentially, I'm kind of like a
21 pro se party, that I would be able to cross examine
22 witnesses, as well.

1 MS. BROWN: Then I would have an objection,
2 because that does not comport with the Rules of
3 Professional Conduct, Rule 3.7, Lawyer as Witness.

4 JUDGE BYRNE: Can I see a copy of that,
5 please?

6 (Ms. Brown hands document to Judge Byrne.)

7 MS. MERRITT: Well, I guess if I have to
8 choose between the two, I would sacrifice the --

9 MS. FERSTER: You know, if I could just say
10 that I think that Betsy Merritt is a pro se litigant
11 in this case because she is Deputy General Counsel of
12 the National Trust for Historic Preservation. She
13 routinely testifies on the position of the National
14 Trust, you know, and in many hearings with people of
15 the Historic Preservation Review Board.

16 She is not an expert witness, she is simply
17 communicating the National Trust's position on this
18 matter. So I don't see any objection to her being,
19 you know, both a lawyer and a witness representing
20 the National Trust's position on this matter.

21 MS. BROWN: I think it's worthwhile, then,
22 to review Rule 3.7. I don't think she is pro se

1 because she clearly said that she was going to be
2 appearing as counsel for the National Trust. So I
3 just want to make sure we know what the rules are
4 because I don't want her cross examining my witnesses
5 if she's a witness herself.

6 JUDGE BYRNE: And how do you think your
7 client would be prejudiced by that, your witnesses
8 would be prejudiced by that?

9 MS. BROWN: Well, number one, it's against
10 the Rules of Professional Conduct.

11 JUDGE BYRNE: But that would be something
12 that you could take up with the bar, rather than with
13 me, I think.

14 MS. BROWN: Well, secondly, I think it's
15 just that this proceeding should be conducted in
16 accordance with the Rules of Professional Conduct.
17 And I think that it does prejudice our witnesses
18 because we have her acting as an advocate and a
19 witness and we need to pick one.

20 JUDGE BYRNE: So are you going to testify
21 as to facts or are you going to just present the
22 position of the National Trust?

1 MS. MERRITT: Well, it's a mixture of both,
2 because some of the facts involve aspects of this
3 controversy that we've been involved with in the
4 past, so there's a blend of facts in there. I mean
5 if I have to choose between one or the other, my
6 preference is going to be to testify and to forego
7 the right to cross examine.

8 MS. BROWN: And that would be fine by me.

9 MS. MERRITT: I'm not going to forego the
10 right to testify in order to --

11 JUDGE BYRNE: Right.

12 MS. MERRITT: -- cross examine.

13 JUDGE BYRNE: Let me look at this again. I
14 guess what strikes me is that the rules provide by
15 their terms two trials, and a Mayor's Agent hearing
16 is a peculiar blend of an adversarial hearing and a
17 public hearing in which people give opinions on
18 matters. And while everyone is sworn, if we have
19 cross examination, I think that it seems to me that
20 it's acceptable in this context for Ms. Merritt to
21 act in both capacities.

22 MS. BROWN: And I would continue to note my

1 objection for the record.

2 JUDGE BYRNE: Okay, fair enough. Now I do
3 have another matter that relates to the presence --
4 preservation lawyers are a small community and I am
5 currently planning a national preservation law
6 conference with the National Trust. I have no
7 pecuniary interest in it, it's strictly an
8 educational matter, it has nothing to do with
9 advocacy. But I wanted to put that out here to give
10 anyone a chance to question whether I have a conflict
11 of interest.

12 In my own view, I have no concern about my
13 ability to decide the case on the facts and the law,
14 but I thought it was appropriate to disclose that on
15 the record at the beginning. Do you have any
16 concerns?

17 MS. BROWN: No, I have no concerns.

18 JUDGE BYRNE: Okay, thank you, no concerns.
19 All right, good. So let's then proceed with the
20 presentation by the Applicant.

21 MS. BROWN: We qualified that these two
22 will be parties, yes?

1 JUDGE BYRNE: Yes.

2 MS. BROWN: We accepted --

3 JUDGE BYRNE: Yes, I'm sorry, yes, yes,
4 thank you.

5 MS. BROWN: And then I'd like to qualify
6 our witnesses as experts in certain areas --

7 JUDGE BYRNE: Okay, yes.

8 MS. BROWN: Let me get their resumés.

9 JUDGE BYRNE: Do you want to do that
10 individually as they testify?

11 MS. BROWN: Whatever is --

12 JUDGE BYRNE: I think that's probably best.

13 MS. BROWN: Then we can go directly into
14 our opening statement.

15 JUDGE BYRNE: Okay, thank you.

16 MS. BROWN: Actually, I do have one
17 request. The Co-Applicant is the District of
18 Columbia, the Deputy Mayor's Office.

19 JUDGE BYRNE: Yes.

20 MS. BROWN: And we have two representatives
21 from the District here. One is Martine Combal from
22 the Deputy Mayor's Office and the other is Ronan

1 Gulstone from Kenyan McDuffie's office and I was
2 wondering if it's appropriate for them to speak
3 first.

4 JUDGE BYRNE: That would be fine. Please,
5 come here. Actually, the second chair is what we'll
6 try to do here. Good morning. Please state your
7 name for the record.

8 MS. COMBAL: Good morning, my name is
9 Martine Combal, I am the Interim Deputy Director of
10 Real Estate in the Deputy Mayor's Office for Planning
11 and Economic Development.

12 JUDGE BYRNE: Thank you.

13 Whereupon,

14 MARTINE COMBAL
15 having been previously duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 THE WITNESS: Good morning. I am one of
19 the District's project executives overseeing the
20 development of the McMillan Sand Filtration Site.
21 And unfortunately, Deputy Mayor Miller is unable to
22 attend this morning, so I am here to speak.

1 On behalf of the Deputy Mayor and the Gray
2 Administration, I am delighted to be here today to
3 voice our strong support for the partial demolition
4 and overall redevelopment at the former McMillan Sand
5 Filtration Site. In fact, the project has had
6 unwavering endorsement of not only this
7 Administration, but several previous administrations,
8 as well.

9 The City purchased the property in 1987,
10 explicitly for mixed use redevelopment to benefit the
11 community, to develop not just a good project or a
12 great project, but an exemplary project of special
13 merit that would benefit the community-at-large.

14 The City has developed detailed,
15 Comprehensive Plan language for the McMillan site
16 calling for a mixed use redevelopment with
17 significant community benefit, again, a project of
18 special merit.

19 The City selected a mixed use development
20 team, Vision McMillan Partners, VMP, in 2007 with the
21 explicit intent of developing a mixed use project.

22 The VMP plan has received unanimous support and

1 approval of all governmental bodies because of its
2 consistency with the Comprehensive Plan and its
3 significant community benefits.

4 This site has incredible historical
5 significance and natural beauty, though it has been
6 inaccessible to the public. It was built as an
7 industrial site, a water filtration plant, since its
8 opening the early 1900s.

9 The District, together with our development
10 team, has developed a plan that celebrates and
11 preserves the history of the site, truly opens the
12 former facility up to the public and offers a broad
13 and deep array of community benefits to District
14 residents of all ages and more important, all income
15 levels.

16 The District's involvement with the site
17 dates back to 1986, when the Army Corps of Engineers,
18 the owners of the site, declared it surplus and asked
19 the General Services Administration to dispose of it.

20 GSA searched for prospective buyers,
21 insisting on selling the property for mixed
22 commercial development and the District acquired the

1 property for this intent.

2 The District conducted planning workshops
3 for the site in 2000 for potential new uses for the
4 site and several options were considered, including a
5 mixed use residential/retail scenario with a
6 significant park and open space component, as well as
7 historic preservation elements.

8 The site currently appears as an open area
9 of grass and trees, anchored by two service courts
10 with strikingly distinct above-ground features.

11 However, beneath the surface are 20 unreinforced
12 concrete filter cells, each one acre in size and in
13 varying conditions, some severely deteriorated.

14 MS. FERSTER: Objection. Do you have
15 qualifications to evaluate the condition of the
16 underground cells?

17 THE WITNESS: I have been informed by the
18 development community, as well as our contractors.

19 MS. FERSTER: I mean I understand that you
20 will have a structural engineer presenting that
21 issue, so I would object that an unqualified witness
22 talk about the structural conditions.

1 MS. BROWN: She's been seeing the reports
2 of structural engineers for years. She's qualified
3 to report on what she has read for the District of
4 Columbia.

5 JUDGE BYRNE: Overruled. Go ahead.

6 THE WITNESS: Thank you. The McMillan site
7 has been the subject of community discussions for
8 nearly 30 years and some residents have advocated for
9 only a park on the site. Today, the site is in
10 disrepair, unsafe and waiting for a new life, waiting
11 to be opened up to the community.

12 For the District, here is a severely
13 underutilized piece of property that if properly
14 leveraged, could yield a world class community
15 steeped in history and comprised of significant
16 preservation, new mixed income housing, the creation
17 of a medical district to create jobs at all income
18 levels in a ward that has perennially suffered from
19 high unemployment, while creating a mix of retail
20 uses and a grocery store in an underserved community,
21 along with significant parks and open spaces
22 throughout, a development of true exemplary public

1 benefit, a project of special merit.

2 The District set very robust goals for
3 economic development and community amenities for the
4 site and we are so pleased that the various elements
5 have been elegantly integrated into the project.

6 As the owner of the property, the
7 District's specific role is to oversee the
8 entitlement process to ensure that the project
9 maximizes benefits to the community and to the city.
10 These include open space parks and green space,
11 historic preservation and cultural amenities,
12 affordable housing, neighborhood-serving retail, job
13 creation around a health care industry, a strong
14 comprehensive set of community benefits that assist
15 the communities around the McMillan site and positive
16 fiscal and economic impacts.

17 Earlier this year, the District turned to
18 the McMillan Sand Filtration Site as a resource to
19 assess storm water management concerns in Ward 5.
20 Demolition of two cells and an adaptation of a third
21 cell was approved by the Mayor's Agent to allow the
22 site to serve the city. Once again, and on a

1 broader, more impactful way, we are looking to use
2 the site to strengthen the District and the
3 community.

4 I would like to briefly focus on some of
5 the community benefits the project offers. First,
6 the multifamily parcels, which comprise approximately
7 25 percent of the development program, will be fully
8 developed by Jair Lynch Development Partners, which
9 is a Certified Business Enterprise developer, a CBE.

10 Second, our fiscal analysis estimates that
11 3,200 permanent jobs and 3,000 temporary construction
12 jobs will be created by the PUD in over a 30-year
13 period. The project will generate 1.2 billion in new
14 tax revenues.

15 The site is not downtown and it is in a
16 location where jobs across the income spectrum are
17 vital opportunities for local residents. The
18 District needs these jobs.

19 Third, we see an expansion of much needed
20 affordable housing. The site will have affordable
21 units of approximately 20 percent of the total
22 development, total developed units, as well as

1 affordable, plus workforce housing will be
2 approximately 60 percent of the total units,
3 including neighborhood-serving retail for an area
4 that has been deemed a food desert, as well as other
5 community amenities.

6 Fourth, most of the site's most important
7 historic attributes, all 20 silos, all four regulator
8 houses, the plane-like plinths, the service courts
9 and two cells will be not only preserved, but
10 reinvigorated.

11 Fifth, we see what will unquestionably be,
12 at 12 acres, the city's largest new park system. And
13 this park system will be seamlessly woven into the
14 preservation and development program, demonstrating
15 exemplary land planning to go along with the vast
16 public benefits.

17 In conclusion, this is not an easy site to
18 develop; it is complex, to say the very least. As
19 staff noted during the Historic Preservation Review
20 Board process, quote, "The McMillan site represents
21 one of the most challenging sites imaginable to both
22 preserve and adapt for current use. The deteriorated

1 structural condition, the paucity of viable reuse
2 options for the below grade cells, the enormity of
3 infrastructure and site alteration necessary to
4 stabilize the site have made planning for the
5 preservation adaptation of the site unusually
6 difficult," end quote. This is from the Historic
7 Preservation Review Board report in 2012.

8 HPRB noted in its approval of the project
9 that the project retains, quote, ". . . important
10 character-defining features of the site, sufficient
11 to convey its historic characteristics" and
12 represents an "architecturally coordinated and
13 cohesive approach."

14 The District concurs with the HPRB and
15 believes that the development team has struck a
16 symbiotic balance of economic development and
17 preservation of open space and historic structures,
18 of fiscal impact and community amenities and
19 reweaving the urban fabric, while distinguishing a
20 very important historic landmark. Collectively, they
21 have maximized the overall benefits to both the
22 surrounding communities and the District as a whole.

1 This project has gone through a lengthy
2 entitlement process, getting better each step of the
3 way. The HPRB has approved this project, all
4 appropriate District agencies have approved the
5 project. Last Monday evening, the Zoning Commission
6 took proposed action and approved the PUD. Each of
7 these bodies in their own way were looking for strong
8 special merit to approve the project. Each of them
9 ultimately found just that and provided a strong
10 endorsement of the plan and the community benefits.

11 As such, the District believes
12 unequivocally that the exemplary land planning, the
13 strong preservation program and the communitywide
14 benefits of this project greatly outweigh the loss
15 of the 16 cells that need to be demolished for the
16 project to proceed.

17 We believe that this project is exactly the
18 type of project for which special merit should be
19 granted. The Deputy Mayor's Office respectfully
20 requests that the Mayor's Agent approve this
21 application so we may move forward with this
22 exceptional project. Thank you.

1 JUDGE BYRNE: Thank you. Ms. Brown, do you
2 have any further questions?

3 MS. BROWN: No questions.

4 JUDGE BYRNE: Cross examination?

5 MS. FERSTER: A couple of questions, thank
6 you.

7 CROSS EXAMINATION

8 BY MS. FERSTER:

9 Q So you indicated that D.C. purchased the
10 property in 1986. Do you know what the purchase
11 price you paid for the property was?

12 A I do not have that information offhand, but
13 I can defer to our partners at BMP.

14 Q Approximately, does \$9.3 million ring a
15 bell to you?

16 MS. BROWN: Asked and answered.

17 JUDGE BYRNE: Yes, sustained.

18 BY MS. FERSTER: (Resuming)

19 Q Well, I'd be happy to show you a document.

20 MS. BROWN: That was not part of her
21 direct, the price of the property.

22 MS. FERSTER: It's within the scope of her

1 direct, that D.C. purchased the property.

2 BY MS. FERSTER: (Resuming)

3 Q I'm going to show you -- you represent the
4 District of Columbia -- I'm going to show you a cash
5 sale document from 1990 showing a recorded deed. And
6 if you could read that, in Paragraph 2, what that
7 indicates the price paid for this property was.

8 MS. BROWN: Again, she didn't testify to
9 the price.

10 JUDGE BYRNE: I think this is sort of
11 pushing the witness in a place that's inappropriate.
12 I think if you want to present testimony later on
13 about the price paid, that will be fine, but I think
14 not now.

15 BY MS. FERSTER: (Resuming)

16 Q So you work for the Deputy Mayor in
17 Economic Development, so how long have you worked
18 there?

19 A I have worked for the District government
20 for nine years.

21 Q And specifically for the Deputy Mayor of
22 Economic Development?

1 A I worked for the Deputy Mayor's Office from
2 2005 to I believe August 2008, at which point, I went
3 to the Department of Housing and Community
4 Development and worked there for three and a half
5 years, and then came back almost three years ago.

6 **Q And what would you say your involvement is**
7 **in public-private partnership projects similar to the**
8 **McMillan project?**

9 MS. BROWN: And I'm going to object again
10 because that wasn't part of her direct testimony.
11 She's here as a witness and she presented her
12 testimony.

13 JUDGE BYRNE: I'm going to let that
14 question go.

15 THE WITNESS: I have worked on public-
16 private partnerships for the last nine years. I
17 started working on a program called the Home Again
18 Initiative and have worked on neighborhood
19 stabilization projects for the last nine years.

20 BY MS. FERSTER: (Resuming)

21 **Q And those are in the District of Columbia.**

22 A All of them are in the District of Columbia

1 because I've only worked for the District of Columbia
2 Deputy Mayor's Office for Planning and Economic
3 Development.

4 Q Good point. And can you name a couple of
5 those public-private partnership projects that you
6 worked on?

7 A Do you want me to go through all of them?

8 Q Well, I can ask you --

9 JUDGE BYRNE: Can you give us a sense of
10 where you're going with this?

11 MS. FERSTER: I would like the witness to
12 provide -- my next question will be to provide an
13 assessment of the level of benefits offered by this
14 project, compared to other public-private
15 partnerships that you've worked on. So that's not my
16 question, but that's where I'm going.

17 JUDGE BYRNE: I think it would only be
18 relevant for historic preservation cases.

19 MS. FERSTER: Hmm?

20 JUDGE BYRNE: Wouldn't it only be relevant
21 for historic preservation cases?

22 MS. FERSTER: Well, exactly, exactly, and I

1 think the point I would like to make is that the
2 level of benefits offered here is probably similar to
3 other public-private partnerships.

4 MS. BROWN: And you know, she's testifying
5 now.

6 MS. FERSTER: I'm just answering --

7 JUDGE BYRNE: That's not evidence, she's
8 suggesting what she would like to bring out.

9 MS. FERSTER: Yes. And so one would assume
10 that, you know, this project should have a higher
11 level of public benefit because it does involve a
12 special merit project, as opposed to the other
13 partnerships.

14 JUDGE BYRNE: I don't think so, I don't
15 think that's actually a relevant point. I think the
16 question is whether it's special merit for historic
17 preservation, and what the public benefits were in
18 non-historic preservation cases that didn't get
19 evaluated for special merits, it doesn't seem really
20 relevant to me.

21 MS. FERSTER: Well, if I might just
22 elaborate on that point, I think what the decisions

1 of the court and the Mayor's Agent have made clear is
2 that aspects of the project that are common to other
3 development projects that are non-historic
4 preservation projects don't qualify for special merit
5 consideration. So in this case --

6 MS. BROWN: And I think her
7 representational --

8 JUDGE BYRNE: Hold on.

9 MS. FERSTER: So in this case, I do think
10 it's relevant that the benefits that are offered in
11 this case are probably similar to or probably even
12 less than the benefits that are offered in non-
13 historic preservation cases.

14 JUDGE BYRNE: I don't think I want to go
15 there, I think that's a very -- there's a lot of
16 factors there that are very hard to evaluate and I
17 honestly don't -- I mean I understand the point
18 you're making, but I think the fact that there may be
19 other public-private projects that have what I or you
20 may consider to be greater public benefits really
21 doesn't go to the legal question here. So I'm not
22 going to allow it.

1 BY MS. FERSTER: (Resuming)

2 Q So let me ask you just a couple of
3 questions about your testimony about the benefits
4 that you believe outweigh the destruction of the
5 historic resources in this case. You talked
6 specifically about tax benefit.

7 A Mm-hmm (nods in the affirmative).

8 Q Are you aware of the fact that the District
9 of Columbia is assuming that there will be
10 significant tax abatements provided to the developer,
11 the ultimate developer of this project?

12 MS. BROWN: And I'll object to that because
13 I don't think there's been any testimony about tax
14 abatements.

15 MS. FERSTER: I mean, you know, this is the
16 District of Columbia's witness and she claims to be
17 knowledgeable about this particular project, so I
18 think she could testify to the benefits that are
19 being offered. If she is not knowledgeable about
20 that, then her testimony is not --

21 MS. BROWN: No, it wasn't on direct.

22 MS. FERSTER: She did testify about the tax

1 benefits.

2 JUDGE BYRNE: She testified that there'd be
3 tax benefits.

4 MS. FERSTER: Yes.

5 JUDGE BYRNE: So I think a little bit of
6 questioning about the dimensions of the tax benefits
7 would be appropriate.

8 BY MS. FERSTER: (Resuming)

9 Q Well, my specific question, and I
10 understand there's been a Green Door Advisors report.
11 Are you familiar with that report that's been
12 prepared that describes I think the tax benefits that
13 you summarized? And so one of those tax benefits
14 that you're assuming is a property tax benefit, is
15 that correct?

16 A My understanding of the tax benefits are
17 income, sales and property tax revenue that would be
18 coming to the city that make up that overall tax
19 benefit.

20 Q Mm-hmm. And are you aware of the fact that
21 under the exclusive rights agreement with the Vision
22 McMillan Partners, that you have assured Vision

1 **McMillan Partners that you will pursue property tax**
2 **abatement, you, the District of Columbia?**

3 MS. BROWN: And I'm just curious, again, we
4 didn't hear any testimony about the exclusive rights
5 agreement.

6 JUDGE BYRNE: Right, so I guess I would
7 just ask is it contemplated that there'll be tax
8 abatement, property tax abatement for the developers
9 as part of this?

10 THE WITNESS: Not at this time. We haven't
11 discussed that.

12 JUDGE BYRNE: Okay, thank you.

13 BY MS. FERSTER: (Resuming)

14 **Q So let's talk a little bit about affordable**
15 **housing. Is this project going to be subject to an**
16 **affordable dwelling unit agreement with the District**
17 **of Columbia?**

18 A Yes.

19 **Q And are you familiar with affordable**
20 **dwelling unit agreements that the District of**
21 **Columbia has been --**

22 A Yes.

1 Q -- entered into in the past? And isn't it
2 correct that every agreement that the District of
3 Columbia government has been a party to involving
4 affordable dwelling unit programs, both condo and
5 rental, have included the requirement of a maximum 20
6 percent of the units to be affordable?

7 A Sorry, you're saying that every project the
8 District has ever --

9 Q Every project involving affordable dwelling
10 unit agreements.

11 A It's on a case-by-case basis and it depends
12 on the project.

13 Q Are you aware of any affordable dwelling
14 unit agreements that do not require 20 percent of the
15 units to be affordable?

16 MS. BROWN: I'm starting to think we're
17 wandering beyond her direct testimony here.

18 JUDGE BYRNE: Well, I'm going to let it go
19 a little bit longer. Please answer the question.

20 THE WITNESS: I believe there are other
21 projects; however, I do not have that information in
22 front of me, I don't have a list of projects in every

1 ADU covenant that was entered with me today.

2 BY MS. FERSTER: (Resuming)

3 Q And do you believe that it's typical for
4 ADU agreements to have a requirement that the
5 affordable units be spread across different
6 categories of area median income, for example, you
7 know, percentages for 30 percent area median income,
8 percentages for 50 percent area median income and
9 percentages for 80 percent area median income?

10 A Again, that's the policy of the District
11 and it depends on the capacity of the project, the
12 economic capacity, and that's something that's
13 generally negotiated with our development partners.

14 Q Are you familiar with the Justice Park
15 public-private partnership development?

16 A On the edges, but I do not work directly on
17 Justice Park.

18 MS. BROWN: I'd have to ask what's the
19 relevance, I mean I think we have gotten past her
20 direct testimony.

21 MS. FERSTER: I mean the witness did
22 testify that she believes these affordable housing

1 benefits are of a special merit quality. And so I
2 think it is relevant to probe the witness about other
3 affordable housing projects that the District of
4 Columbia has been involved with.

5 MS. BROWN: But again, as the Mayor's Agent
6 director here, we're worried about special merit
7 projects with historic preservation.

8 JUDGE BYRNE: Do you have more on this
9 affordable housing part?

10 MS. FERSTER: Well, I did want to have a
11 follow-up question about the Justice Park project.

12 JUDGE BYRNE: Well, she said she doesn't
13 know that much about it.

14 BY MS. FERSTER: (Resuming)

15 Q Do you know something about it or do you
16 know whether or not it has a hundred percent
17 affordable housing in it?

18 JUDGE BYRNE: There are other cases where
19 there are 100 percent affordable housing projects. I
20 have a case pending with me, so that does exist.

21 MS. FERSTER: Mm-hmm, thank you.

22 BY MS. FERSTER: (Resuming)

1 Q So you would agree that there are public-
2 private partnerships that the District of Columbia
3 entered into that are a hundred percent or more than
4 30 percent affordable housing.

5 A Of course, the Department of Housing and
6 Community Development provides loans and grants to
7 developers and I would consider that a public-private
8 partnership. It's not exclusive to projects that
9 include District land to be considered a public-
10 private partnership.

11 Q You did testify that you had ensured that
12 the entities that were part of VMP are certified
13 business enterprises?

14 A Yes.

15 Q JL Development Partners, is that a
16 certified business enterprise?

17 MS. BROWN: Objection, I don't think she
18 said --

19 JUDGE BYRNE: Yes, she just mentioned Jair
20 Lynch being certified.

21 BY MS. FERSTER: (Resuming)

22 Q Okay, so only one, then, only one of the

1 partners.

2 A Yes.

3 MS. BROWN: Well, she mentioned --

4 BY MS. FERSTER: (Resuming)

5 Q Okay, now you testified that the affordable
6 housing for this project would be 20 percent
7 affordable housing. And how much of that 20 percent
8 is for persons earning 30 percent or less of area
9 median income?

10 A My understanding is that none of the units
11 are currently categorized at 30 percent AMI, there
12 are between 50 and 80 percent AMI. And some of that
13 I think is going to shift on the number of the
14 overall units as to what that exact percentage is
15 going to be.

16 Q And how many of these units are going to be
17 available to persons earning in excess of 80 percent
18 AMI?

19 A In excess, I believe in my testimony, I
20 said that 60 percent of the affordable and the
21 workforce, so that would be 40 percent of the total
22 units.

1 Q 40 percent of the units are available to
2 people in excess of 80 percent.

3 A 80 to 120 percent AMI is generally what's
4 considered workforce.

5 Q Can you just clarify, 40 to 80 percent AM
6 -- how many units are available to people who make
7 between, you know, what you call workforce housing,
8 how many of those units, and what is the area median
9 income for workforce housing?

10 A I think I just answered that question.

11 Q Yeah, I'm sorry.

12 A Can you repeat the question?

13 Q I did not get exactly the number of units
14 that you specified would be available to persons who
15 make I guess what you would consider workforce
16 housing units.

17 MS. BROWN: I think she gave a percentage.

18 JUDGE BYRNE: She gave a percentage.

19 BY MS. FERSTER: (Resuming)

20 Q That was the 40 percent number, so that 40
21 percent number. What is the range of the income that
22 40 percent will earn?

1 A It's between 80 percent and 120 percent AMI
2 and the AMI changes every year, based on HUD's
3 designation, so it will change as HUD updates that
4 number.

5 Q Okay, thanks. So the 40 percent -- let me
6 just get this correct. You're saying that 40 percent
7 of the units will be made available to persons
8 earning between 80 to 120 percent AMI.

9 A Yes, and I would defer to the VMP team to
10 answer more specific questions on the total number of
11 units.

12 Q And do you know currently, what the AMI is
13 for a family of four for this area?

14 A I haven't looked at the AMI number this
15 year. I believe it was around 106, \$107,000.00.
16 It's actually stable over the last few years and it
17 had gone down I think at one point.

18 MS. FERSTER: Is there a witness who's
19 going to be speaking more directly to the tax
20 abatements that are being provided or is this the
21 District of Columbia's --

22 MS. BROWN: You'll find out.

1 MS. FERSTER: Because I did want to go a
2 little bit more, I just want to understand at what
3 point the tax abatement is going to be provided in
4 this proceeding.

5 BY MS. FERSTER: (Resuming)

6 Q Is that you, are you the person who's
7 testifying --

8 MS. BROWN: She can't answer that.

9 JUDGE BYRNE: Yes, she testified.

10 MS. FERSTER: Okay, I think that's it.

11 MS. MERRITT: I have a couple of questions.

12 BY MS. MERRITT:

13 Q Do you know how much the city will be
14 spending to build the community center?

15 A I do not have that information, offhand,
16 and VMP has some more project budget information that
17 they should be able to share.

18 Q Okay, just one more related question. Do
19 you know how much the city will be spending to build
20 the roads?

21 A Again, I would defer to VMP, but my
22 understanding is that those roads will be private

1 roads.

2 Q Yeah, we heard that they're going to be
3 constructed by the city, but if you don't know, we'll
4 ask someone else.

5 Do you know what the total amount of the
6 city's subsidy is for the project in kind of
7 characterizing the big picture of the public-private
8 partnership? What's the total amount that the
9 city --

10 MS. BROWN: Can we get a clarification on
11 that of what you mean by subsidy?

12 BY MS. MERRITT: (Resuming)

13 Q Well, my questions were related to the
14 claims about number of jobs and creation of a new
15 park. And so the question, and I realize you don't
16 know the answers to most of my questions, was
17 designed to explore the relationship between the
18 question of whether this level of construction is
19 necessary in order to achieve those benefits and the
20 city's own funding of elements of the project, in our
21 view, makes the demolition work necessary. So that's
22 why I'm trying to pin down the --

1 MS. BROWN: And I just really -- I mean
2 that's what you meant by subsidy. But I think also,
3 she didn't testify to the budget of the city, as
4 well.

5 JUDGE BYRNE: Is there going to be
6 testimony about the overall economics of the project?

7 MS. BROWN: We will have some testimony to
8 that degree.

9 JUDGE BYRNE: Maybe we'll wait and sort of
10 see what that looks like. They're the Applicant,
11 they have the burden of proof, so --

12 BY MS. MERRITT: (Resuming)

13 **Q You mentioned that you considered some**
14 **alternative scenarios, I think, in your testimony.**
15 **What did those involve?**

16 A Our partners at VMP went through a series
17 of iterations that have played out with the community
18 and I again would defer to them to talk more
19 specifically about the history of those alternatives.

20 But I will say generally, with a site like
21 this and the characteristics of it, it's a balancing
22 act between the benefits and the overall goal of

1 achieving economic development, community benefits
2 and revitalizing that portion of the city.

3 Q Did the City consider any other developers,
4 did they talk to other developers in the process of
5 coming to this public-private partnership
6 arrangement?

7 A I have some history on the project prior to
8 my involvement. Even before I started with the city,
9 there was an RFP that was issued. At the time, it
10 was the National Capital Revitalization Corporation
11 that went out with an RFP and there were several
12 other applicants.

13 Q Do you know how many applicants there were
14 in response to that RFP?

15 A No.

16 JUDGE BYRNE: She wasn't there.

17 MS. MERRITT: I have no further questions.

18 JUDGE BYRNE: Okay, so I have a couple of
19 questions. So tell me about -- first of all, a
20 simple question. A certified business developer, can
21 you tell me what that is?

22 THE WITNESS: A certified business

1 enterprise --

2 JUDGE BYRNE: Yes.

3 THE WITNESS: -- is a designation that is
4 allocated by the Department of Small and Local
5 Business Development, DSLBD. The definition has
6 changed over recent years, but it's essentially a
7 local business that operates out of the District of
8 Columbia.

9 JUDGE BYRNE: I see, a local business.

10 THE WITNESS: There are different
11 categories of that that you can apply for. I'm not
12 an expert in that particular field, in that
13 designation, but --

14 JUDGE BYRNE: Okay, so you offered that as
15 sort of one of the benefits of this.

16 THE WITNESS: Yes.

17 JUDGE BYRNE: Maybe we can hear later on
18 about why that's significant. The other question was
19 just in your experience in the Deputy Mayor's Office
20 and I guess DHCD, as well, about the use of entering
21 into exclusive agreements with particular development
22 teams, as opposed to having sort of a different -- as

1 to having, for example, sort of a proposal for a
2 contest, design contest, that sort of thing.

3 Just tell me a little bit about the
4 practice of working with sort of a selected
5 development team before the project is planned.

6 THE WITNESS: Well, if I could answer
7 generally, an exclusive rights agreement for the most
8 part is an agreement to negotiate in good faith and
9 to sort of work through certain issues that are known
10 at that point in time with the project, but
11 acknowledging that there are other I guess pieces of
12 information, investigations that would need to be
13 done that need to be put in place prior to entering
14 into what we call a land disposition agreement. So
15 that's generally the purpose there.

16 Our office has done that on a couple of
17 projects and for a project of this size, again, I
18 would say there are a lot of complexities to it --

19 JUDGE BYRNE: Yes.

20 THE WITNESS: -- that we don't necessarily
21 know today and that we need to have that document in
22 place to give the development team and the City

1 assurance that we are working in a partnership
2 towards the ultimate disposition.

3 JUDGE BYRNE: So would you say that the
4 complexity of the project is an important factor in
5 entering into one of these exclusive agreements
6 before there's a design developed for the site or
7 some sort of other procedure to get to a desirable
8 outcome?

9 THE WITNESS: I would say yes, the
10 complexity of a project does sometimes beg you to
11 deviate from your processes. We have different
12 tools, different legal instruments in our office and
13 an exclusive rights agreement is one of those tools.

14 JUDGE BYRNE: All right, thank you. I
15 don't have anything else. Do you have anything?

16 MS. BROWN: I do have one quick question.

17 REDIRECT EXAMINATION

18 BY MS. BROWN:

19 Q Are you familiar with the Randall School
20 Project?

21 A Again, just sort of generally, yeah.

22 Q Thank you, that's all.

1 MS. BROWN: Thank you.

2 JUDGE BYRNE: Thank you very much.

3 MS. BROWN: And I just wanted to clarify
4 for the record, I am representing Vision McMillan
5 Partners and the District is a Co-Applicant, so I
6 just wanted to make sure that I am not necessarily
7 the counsel for the District of Columbia in this
8 matter. I'm not sure if that was clear on the
9 record.

10 JUDGE BYRNE: So that they are partners to
11 the project.

12 MS. BROWN: Yes, they are.

13 JUDGE BYRNE: Yes, I understand the
14 difference.

15 MS. BROWN: Thank you. And I understand
16 that Ronan Gulstone from Kenyan McDuffie is here for
17 a statement.

18 JUDGE BYRNE: Second chair, please. Good
19 morning.

20 THE WITNESS: Good morning. How are you?

21 JUDGE BYRNE: Please state your name for
22 the record.

1 THE WITNESS: Thank you, Ronan Gulstone.

2 Whereupon,

3 RONAN GULSTONE

4 having previously been duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 THE WITNESS: Good morning, my name is
8 Ronan Gulstone, I'm the Deputy Chief of Staff for
9 Kenyan McDuffie, councilmember for Ward 5, the
10 councilmember whose ward in which the McMillan Sand
11 Filtration Site is located.

12 On behalf of Councilmember McDuffie, it is
13 my honor and privilege to present this testimony in
14 strong support of Vision McMillan Partners, LLC, and
15 the Deputy Mayor for Planning and Economic
16 Development's application for partial demolition at
17 the McMillan Sand Filtration Site.

18 Pursuant to D.C. Official Code, Section
19 6-1101 and what follows, this body may authorize the
20 issuance of a permit to partially demolish a historic
21 landmark where it finds it necessary to allow the
22 construction of a project of special merit. For the

1 reasons I will testify to, Councilmember McDuffie
2 hopes that the Mayor's Agent will approve
3 application.

4 As way of background and to put some of the
5 comments in this testimony in context, I'll speak
6 briefly about Councilmember McDuffie's relation to
7 this project. Councilmember McDuffie is a third
8 generation, lifelong resident of the District of
9 Columbia.

10 JUDGE BYRNE: Sir, could you speak up a
11 little bit, some of the people in the back can't hear
12 you very well.

13 THE WITNESS: Sorry. In fact, he currently
14 resides in a home on North Capitol Street, which is
15 directly adjacent to the McMillan Sand Filtration
16 Site. The home is the same home he was raised in and
17 was purchased by his grandparents in 1951.

18 Councilmember McDuffie was elected to the
19 Council in 2012. However, his community involvement
20 and leadership surrounding the McMillan Redevelopment
21 Plan did not start there. Councilmember McDuffie was
22 a member of the McMillan Advisory Group, also known

1 as MAG, from approximately 2008 to 2010, when he
2 resigned to run for Council.

3 Additionally, in about 2002 and again in
4 about 2009 to 2010, Councilmember McDuffie served as
5 the Stronghold Civic Association president, which as
6 you well know is directly adjacent to the McMillan
7 site. In both of those capacities and in his current
8 capacity, Councilmember McDuffie has participated in
9 countless open community meetings regarding the
10 proposal to adaptively reuse the McMillan Sand
11 Filtration Site.

12 The result of the years of community
13 meetings and planning by VMP and the District is what
14 will unquestionably be a world class project that
15 achieves all of the objectives of the District, the
16 Comprehensive Plan and the community, including open
17 space, historical preservation, mixed income housing,
18 jobs, a new tax base, and the opening of the
19 wonderful historic asset to the city and its
20 residents.

21 The plan before you is a balanced plan,
22 worked on for seven years by VMP, the District and

1 the community. Most importantly and what
2 Councilmember McDuffie has fought to ensure since at
3 least 2000, and why he is such an ardent supporter,
4 this project will have significant communitywide
5 benefits for Ward 5 and the District.

6 As has been known to Councilmember
7 McDuffie. his parents and grandparents, the McMillan
8 Sand Filtration Site has always been an industrial
9 site. It was created to provide and to clean the
10 city's water supply. It has been fenced off and
11 inaccessible to the public for decades. Thus,
12 Councilmember McDuffie, his family, neighbors and the
13 rest of the District have not been able to enjoy the
14 use of the McMillan site for at least the last 60
15 years.

16 The site was not created for human
17 occupancy and use and is only known as a park in
18 name, due to its renaming from the Washington City
19 Reservoir to McMillan Park Reservoir as a tribute to
20 Senator James McMillan in 1911.

21 Today, the District has the opportunity to
22 adaptively reuse this long vacant property, but with

1 an appropriate, in fact significant preservation of
2 the site's historic context.

3 The proposal presents a unique opportunity
4 for Ward 5 and the District as a whole to redevelop
5 a large parcel with no displacement. Moreover, the
6 project will include the following critical community
7 benefits:

8 A first class community center;

9 Mixed income housing, including affordable
10 senior housing, which is extremely important to Ward
11 5, given that it is home to one of the largest
12 populations of senior residents in the city;

13 The city's largest new park at
14 approximately 6.2 contiguous acres, in addition to
15 two smaller pocket parks;

16 Preservation of historical aspects of the
17 site, including the rehabilitation and restoration of
18 all of the sand storage bins and regulator houses,
19 one complete underground cell and a portion of
20 another cell and a walking museum, which will
21 preserve the history of the McMillan site and for the
22 first time, allow our children to interactively learn

1 about and share in that history;

2 Workforce development and employment
3 opportunities; and

4 A new tax base derived from previously
5 nontaxed land.

6 The project has received support from
7 Advisory Neighborhood Commissioners and has been
8 approved by the Historic Preservation Review Board
9 and now the Zoning Commission.

10 Additionally, it is Councilmember
11 McDuffie's understanding that on September 15th, the
12 National Capital Planning Commission indicated that
13 they have no objection to the project.

14 It should also be noted that given the
15 current condition of the site and its only prior use,
16 it is Councilmember McDuffie's opinion that any new
17 use of the property, short of denying public access
18 and retaining the chain link fence which borders the
19 property will require partial demolition of the
20 structure.

21 In conclusion, Councilmember McDuffie hopes
22 that the Mayor's Agent will approve this application.

1 As stated previously, the project will provide Ward 5
2 and the District with significant benefits for its
3 residents, will allow a decades old, shuttered
4 property to be opened to the community, will provide
5 sorely needed mixed income housing and affordable
6 senior housing and additional committee amenities.

7 Councilmember McDuffie would also like to
8 note the opportunity for the expansion of health care
9 services through the additional medical office park
10 buildings and the opportunity to secure a large
11 grocer to serve the community.

12 Councilmember McDuffie expects that the
13 Council will soon be reviewing and approving the
14 surplus and disposition resolutions for the site as
15 the McMillan project is becoming closer to reality
16 each day.

17 In short, we need the jobs, we need the
18 retail, we need the housing and we need the park
19 space for our families and children. Councilmember
20 McDuffie is proud, as the Ward 5 councilmember, to be
21 a part of what will be one of the most transformative
22 and community friendly projects in the District.

1 Thank you for allowing me to testify on
2 behalf of Councilmember McDuffie today.

3 JUDGE BYRNE: Thank you. Questions?

4 CROSS EXAMINATION

5 BY MS. FERSTER:

6 Q Yes, I have a couple of questions, going
7 particularly to your testimony about Councilmember
8 McDuffie's strong support for the affordable housing
9 element of this project.

10 So you are Deputy Chief of Staff for the
11 councilmember, so you're familiar with legislation
12 that the councilmember proposes.

13 A Some, that's correct.

14 Q Are you aware that Councilmember McDuffie
15 has proposed legislation called the Disposition of
16 District Land for Affordable Housing Amendment Act of
17 2013?

18 MS. BROWN: Relevance?

19 MS. FERSTER: First, I think it's relevant
20 in that the bill that Councilmember McDuffie has
21 introduced would require District of Columbia land
22 development projects to provide a much higher level

1 of affordable housing than this particular project
2 does.

3 MS. BROWN: And I would object because he
4 has not testified to --

5 JUDGE BYRNE: Yes, I don't think that's
6 relevant to an argument that you might make, that he
7 doesn't need to testify about a bill that's actually
8 been introduced I don't think.

9 MS. FERSTER: Okay, then I do not have any
10 more questions. Thank you.

11 MS. MERRITT: I don't have any questions,
12 thank you.

13 JUDGE BYRNE: All right, thank you very
14 much.

15 THE WITNESS: Thank you.

16 MS. BROWN: Thank you. I'd like to now go
17 into the Vision McMillan Partners presentation and I
18 would like to make an opening statement.

19 JUDGE BYRNE: Yes.

20 MS. BROWN: I'd also like to ask if, I
21 think it might go smoother, but if we could hold our
22 cross examination questions to the end if you want it

1 on a witness-by-witness basis.

2 JUDGE BYRNE: How many witnesses are you --

3 MS. BROWN: We have eight witnesses.

4 JUDGE BYRNE: Eight witnesses.

5 MS. FERSTER: If I could weigh in here, we
6 would strongly prefer that we do individual cross
7 examination, you know, because there are just so many
8 witnesses, it's going to be impossible for us to keep
9 track of that.

10 JUDGE BYRNE: Yes, I can understand that,
11 but on the other hand, I think the other aspect of it
12 is I think that it would be good to be asking the
13 witnesses who actually know something about the
14 things you want to look into.

15 So maybe as we go through, you can help us,
16 telling us, you know, insofar -- you know, which
17 witnesses have knowledge about which of the issues
18 that Opponents are interested in, so we can try to do
19 this as efficiently as possible.

20 MS. BROWN: Okay, great, then I'll proceed
21 to my opening statement.

22 Opening Statement on Behalf of Applicants

1 MS. BROWN: Again, for the record, I'm
2 Carolyn Brown, with the law firm of Holland and
3 Knight, on behalf of Vision McMillan Partners. And
4 we're so thrilled to be here today because in all the
5 work that I have done on historic preservation cases
6 and Mayor's Agent cases, this is one of truly
7 exceptional special merit. It is almost I would say
8 of epic proportions, compared to any other Mayor's
9 Agent case before the Mayor's Agent in this history.

10 We have three new world class health care
11 facilities, two mixed use, multifamily residential
12 buildings with approximately 500 units, 80,000 square
13 feet of much needed neighborhood focused retail,
14 anchored by a full service grocery store,
15 approximately 146 individual rowhouses, a 17,500
16 square foot community center with a swimming pool,
17 approximately ten acres of open space -- actually, 12
18 acres of open space.

19 We have preservation of almost all above
20 grade historic structures and two underground cells,
21 extensive art work throughout the site in
22 coordination with Cultural D.C.

1 We have workforce development programs,
2 scholarships, neighborhood beautification and support
3 for public school STEM programs, job creation that
4 you heard the Deputy Mayor's Office representative
5 testify about.

6 We have affordable housing that she
7 testified about, well beyond the eight percent that
8 is required under zoning. Here, it's almost 20
9 percent, with deeper levels of affordability,
10 particularly those with townhouses.

11 These are exceptional benefits and features
12 of the project and they will accrue the community-at-
13 large, not a subset of privileged persons, not luxury
14 condominiums; it's for the greater good of this city.

15 All these benefits are fully supported by
16 the Comprehensive Plan and the city's goals for a
17 world class medical district at Michigan and Irving
18 Streets, in conjunction with the Washington Hospital
19 Center, Children's and the VA Hospitals.

20 The demolition and subdivision are
21 necessary to allow a project of special merit. As
22 you will hear from our expert structural engineer,

1 the underground cells are not structurally sound and
2 cannot support any significant above grade
3 development.

4 We explored alternatives to demolition and
5 you will hear from our experts any plan for reuse of
6 the underground cells or redevelopment of the site
7 requires such extensive structural intervention that
8 the integrity of the underground cells will be
9 compromised, no matter how they're used. And you'll
10 hear that from our experts in structural engineering
11 and historic preservation.

12 The project before you today is also the
13 result of extensive negotiation, compromise and
14 restudy of numerous alternatives, including
15 relocation of the park from the central location to
16 its current location to the south.

17 Each component has been carefully studied,
18 challenged, reformulated in light of the site's
19 historical significance, its physical constraints to
20 make it truly special and meritorious.

21 I also want to emphasize what this case is
22 not about. It's not about compliance with Section

1 106 of the National Historic Preservation Act, it's
2 not about compliance with historic preservation deed
3 restrictions or the 1990 Comprehensive Plan or any
4 other document that's outdated.

5 I'd like to talk a little bit about our
6 entitlement process. You heard the Deputy Mayor's
7 representative quote extensively from the Historic
8 Preservation Review Board support for this project.
9 We also have had Zoning Commission approval for the
10 PUD, who reviewed extensively the compliance with the
11 Comprehensive Plan.

12 The Office of Planning, we have their
13 support saying that this project fully complies with
14 the Comprehensive Plan. We've had our testimony from
15 the representative from Councilmember McDuffie's
16 office. We've resolved usage issues with NCPC staff
17 for the PUD process. And the Land Disposition
18 Agreement process has been completed and it's on its
19 way to the Council now.

20 So this truly has been an extraordinary
21 project vetted by all sorts of government agencies,
22 and we have an exceptional amount of special merit to

1 this project and the demolition is necessary in order
2 to construct that project of special merit.

3 So now I'd like to proceed to our first
4 witness, Anne Corbett, the project director from
5 Vision McMillan Partners.

6 JUDGE BYRNE: You had said several times
7 the Zoning Commission approved the PUD on
8 this week or allegedly --

9 MS. BROWN: It was last Monday, they
10 proposed action. It will be referred to the National
11 Capital Planning Commission for comment on the
12 impacts to the federal elements of the Comprehensive
13 Plan, the City looks at the District elements of the
14 Comprehensive Plan, and then it will return to the
15 Zoning Commission for final action and a written
16 order thereafter.

17 JUDGE BYRNE: Thank you. All right, good
18 morning.

19 THE WITNESS: Good morning.

20 JUDGE BYRNE: Please state your name for
21 the record. We'll take a five-minute recess.

22 (Whereupon, a brief recess is taken.)

1 JUDGE BYRNE: We're going to begin again,
2 please.

3 THE WITNESS: For the record, my name is
4 Anne Corbett and I'm project director for Vision
5 McMillan Partners.

6 JUDGE BYRNE: Thank you.
7 Whereupon,

8 ANNE CORBETT
9 having previously been duly sworn, testified as
10 follows:

11 DIRECT EXAMINATION

12 THE WITNESS: So again, good morning, and
13 like I said, my name is Anne Corbett. I lead this
14 public-private partnership that involves several
15 private developers, including EYA, our townhouse
16 developer. You'll hear more about their -- from
17 Aakash Thakkar, Jair Lynch Development Partners, the
18 multifamily and grocery-retail developer, and Trammel
19 Crow Company, our health care facility developer,
20 also our retail commercial component.

21 And again, our fourth partner is the
22 District of Columbia, the owner of the property, who

1 in 2007 selected this team after a competitive
2 process and gave us an unprecedented opportunity to
3 partner with them.

4 It's our responsibility to balance historic
5 preservation with economic development. We have been
6 entrusted with a truly unique site that requires the
7 most special care, never mind that it's been dormant
8 for so long as it awaits rebirth. So it commanded a
9 very special dynamic vision, honoring its legacy out
10 front, while remaking it into a truly remarkable new
11 place in our city.

12 That balance again: historic legacy, would
13 help sustainability, job opportunities, and a dynamic
14 new place to live, work, shop, play.

15 Again, even dormant and neglected, its
16 beauty calls out to you, so its new life must be
17 similarly amazing and inspiring.

18 This vision translates into very thoughtful
19 goals. We did not compromise. In fact, we leveraged
20 the public-private partnership to ensure the breadth
21 and depth of these objectives, again, very meaningful
22 preservation, large, inviting open spaces, dynamic

1 neighborhood-serving retail, where there had been a
2 dearth, economic diversification and job creation, as
3 well as an expansion of health care to improve the
4 level of care to our city's residents.

5 Again, back to my objectives. There is a
6 mix of housing types and a mix of affordability
7 levels, the highest quality master planning,
8 architecture and park design. We certainly utilized
9 the D.C. Comprehensive Plan as a guide in order to
10 reconnect the urban fabric to surrounding
11 neighborhoods and ensure meaningful community
12 engagement.

13 Speaking of community engagement, a very
14 collaborative community process followed the
15 selection of VMP as the site developer. There have
16 been over 200 events since 2007. They've been in a
17 variety of formats: charrettes, where residents were
18 involved in shaping those vision principles and
19 guidelines that govern the site; open houses, where
20 people can come and go as they please; as well as
21 your more typical direct presentation and community
22 forums.

1 We've been involved with not one, but three
2 ANCs, 5E, 5A and 1B, at least eight civic
3 associations and the McMillan Advisory Group. And
4 hence, the plan you'll see today is a direct result
5 of that community engagement process.

6 Key community requests that we've heard
7 time and time again and that our plan responds to
8 include improving transportation, managing
9 stormwater, a grocery store, housing senior
10 residents, creating contiguous, large, open spaces,
11 preserving historic resources and distinguishing the
12 landmark.

13 That leads you to an overall benefit of a
14 dynamic \$34 million investment in the Park and
15 Preservation Program by the District of Columbia.
16 And that will create 12 acres of open space, nearly
17 50 percent of the site, and again, expanding health
18 care options for District residents as we create a
19 premier medical district.

20 We're going to make a very strong case for
21 special merit today and it took two slides to cover
22 all -- and I don't even think I've covered

1 everything.

2 It starts with economic opportunity; again,
3 expanded health care service, level of care, access
4 to care, convenience. An employment engine is a part
5 of that, permanent jobs across the spectrum of
6 education levels in the health care industry. Part-
7 time jobs on site for teens and seniors and
8 unprecedented CBE participation.

9 Second, housing. 85 affordable senior
10 units, 50 and 60 percent of AMI, 22 affordable, for
11 sale rowhouses, and then additional rental units,
12 affordable to moderate income and workforce
13 households.

14 Third is the retail component. Full
15 service grocery store, space and funds on site to
16 support local start-up businesses and a commitment to
17 a mix of local and national tenants.

18 Fourth, transportation benefits. Right
19 now, the site is an island. We will improve the
20 street network by creating permeability across the
21 site for both cars, bikes, pedestrians. We will
22 expand the public transit capacity, we will expand

1 the bike network and facilities for cyclists, both
2 leisure and commuter cyclists.

3 Sustainable design is number five. We have
4 low impact design techniques employed throughout the
5 site via retention, rain gardens, permeable pavers,
6 retaining stormwater, reusing stormwater on site, an
7 entirely new stormwater infrastructure. There is no
8 stormwater infrastructure on this site as it
9 presently stands.

10 Parks and preservation, last, but not
11 least. An unparalleled preservation program, the
12 largest new park system in the District. Its 17,000
13 square foot, high quality community center with a 25
14 meter pool, multiple outdoor recreation areas for
15 kids of all ages, an outdoor amphitheater, and what
16 I've dubbed the walking museum, which is an
17 interpretive program to let visitors access the
18 history of the site, free and available every day of
19 the year.

20 Together, we're working to create a new
21 McMillan, a place that will live up to that historic
22 legacy and serve a broad segment of the Ward 5, Ward

1 1 and city, as a whole. Thank you very much.

2 JUDGE BYRNE: Okay, thank you. Do you have
3 additional questions?

4 MS. BROWN: I don't have additional
5 questions.

6 JUDGE BYRNE: Okay, so before we go to
7 cross examination of Ms. Corbett, then, maybe you can
8 just give us a little bit of an explanation about who
9 else is going to speak and what their areas they're
10 going to focus on so that we can direct the cross
11 examination in a way that makes sense.

12 MS. BROWN: Sure. We will have next Emily
13 Eig, our expert in historic preservation and
14 architectural history. We'll have Kirk Mettam, our
15 expert structural engineer from Robert Silman
16 Engineers; Matt Bell from Perkins Eastman, the expert
17 on architecture; Bruce Leonard from -- sorry --
18 that's right, Bruce Leonard from Streetsense, who's
19 our expert in retail design; Adam Weers from the
20 Trammel Crow Company; Jair Lynch from the Jair Lynch
21 Development Company; Lindsley Williams, an expert in
22 planning and zoning; and then Aakash Thakkar from

1 EYA.

2 JUDGE BYRNE: Okay, very good. So really,
3 what we're talking about -- so Ms. Corbett -- I think
4 the cross examination questions would be appropriate
5 about the overall scope of the project and about sort
6 of -- and then we'll just sort of take it from there.

7 I may want to reserve some of your cross examination
8 to witnesses that are better able to answer it, but
9 I'll try to strike a good balance so you have a
10 chance to ask your questions.

11 All right, Ms. Ferster, go ahead.

12 MS. FERSTER: Thank you, just a couple of
13 questions.

14 CROSS EXAMINATION

15 BY MS. FERSTER:

16 Q You indicated that VMP was selected through
17 a competitive process in your testimony. Can you
18 elaborate on that?

19 A I would qualify it by saying that I was not
20 on the team during the competitive process. But it's
21 my understanding that there was a competitive process
22 conducted by the National Capital Revitalization

1 Corporation where there were five applicants to the
2 process and Vision McMillan Partners was the selected
3 team in 2007.

4 Q And do you know anything about the content
5 or proposals in these alternative proposals?

6 A I do not.

7 Q You indicated in your testimony that this
8 project had unprecedented CBE participation.

9 A Mm-hmm.

10 Q Which of your partners are CBEs?

11 A Jair Lynch Development Partners is a family
12 of companies that includes CBE entities.

13 Q So it's your understanding that Jair Lynch
14 Partners is itself not CBE, is that correct?

15 A When I refer to Jair Lynch Development
16 Partners, I am referring to their brand name.

17 Q So --

18 A Not a legal entity. I'm referring to the
19 family of companies that Jair Lynch is the CEO over.

20 Q And you believe that you're partnering with
21 the family of companies, each of Jair Lynch's
22 subsidiaries, then?

1 MS. BROWN: I think she's answered the
2 question as best she can.

3 JUDGE BYRNE: Apparently, Jair Lynch is
4 going to testify, too, so you can ask more about
5 that. Is that the extent of the CBEs, then, within
6 the Jair Lynch Partners?

7 THE WITNESS: Correct.

8 MS. FERSTER: But I think this is the
9 witness who would know who the CBEs you're partnering
10 with are.

11 BY MS. FERSTER: (Resuming)

12 **Q Correct, you are the appropriate witness**
13 **who is testifying with the overall partnership**
14 **because you were the project manager?**

15 A Yes, and so in real estate development, you
16 create a special purpose entity to develop a
17 particular property. That is not uncommon.

18 So Jair Lynch Development Partners is a
19 locally owned minority company that has a variety of
20 special purpose entities, depending on the project
21 that they're involved in. And so they have an
22 advisory company that is part of that family that is

1 a CBE, they don't have a special purpose entity
2 specifically to this site and to this project that
3 will be a CBE. I think you're parsing something,
4 looking for something, I don't know.

5 Q Okay, so you're saying that they will be
6 creating -- because you used the word "will" -- they
7 will be creating a special company that will be a CBE
8 that you will partner with. Was that your testimony?
9 I just want to know whether you are currently
10 partnering with an entity that is a CBE.

11 A We are currently partnering with an entity
12 that is a CBE.

13 Q And can you provide the name of that
14 entity?

15 A I can. I don't have the detail in front of
16 me and I would look to you -- I would suggest that if
17 you want that detail today, that you ask that
18 question of Jair Lynch. Otherwise, I'm happy to
19 follow up with the specifics.

20 JUDGE BYRNE: This is a special purpose
21 entity for this project that you're describing,
22 right?

1 THE WITNESS: It's funny, I can see the
2 legal document in my head because we were just
3 working on it the other day and, you know, it's the
4 detail of I don't want to get it wrong.

5 JUDGE BYRNE: That's fine.

6 MS. FERSTER: Well, I would just ask that
7 Ms. Corbett's testimony is that this project does
8 have unprecedented CBE participation --

9 JUDGE BYRNE: Yes.

10 MS. FERSTER: -- and that she provide the
11 names of the development entities or companies that
12 in fact are CBEs.

13 MS. BROWN: I think this is up to the
14 Applicants to decide how much they want to submit to
15 support the record and we will consult among
16 ourselves to decide that.

17 JUDGE BYRNE: Okay, that's fine.

18 BY MS. FERSTER: (Resuming)

19 Q Okay, you testified about the
20 transportation benefits of this project, the
21 infrastructure that would be created, and the bicycle
22 facilities as part of the special merits, yes?

1 A (Nods in the affirmative.)

2 Q So are you familiar with the Transportation
3 Impact Study that Gorove/Slade prepared that was
4 submitted to the Zoning Commission?

5 MS. BROWN: Relevance?

6 JUDGE BYRNE: The relevance, I assume, has
7 to do with the quality of the transportation
8 infrastructure that's being provided.

9 MS. BROWN: But what I want to make sure
10 that we don't end up doing here is rehearing the
11 whole Zoning Commission case.

12 JUDGE BYRNE: Me, too; me, too.

13 MS. FERSTER: I have no intention --

14 MS. BROWN: We want to be careful.

15 BY MS. FERSTER: (Resuming)

16 Q And as I'll explain in my follow-up
17 question, it will certainly ask that, assuming you
18 are familiar with your expert's transportation impact
19 study, whether or not you believe that the bicycle
20 facilities will reduce the transportation impact to
21 an acceptable level of service for this project and
22 whether you believe that the transportation

1 infrastructure that you are providing will address
2 the failing level of service that your own study
3 indicated would result?

4 JUDGE BYRNE: So this is very difficult
5 because we haven't had, really, testimony about the
6 extent of the transportation infrastructure that is
7 going to be provided, so we don't have that to start
8 with.

9 MS. FERSTER: Is there another witness who
10 will be testifying in more detail about the
11 transportation infrastructure element to the special
12 merit project? If that's so, I would be happy to
13 hold my questions.

14 THE WITNESS: Yes.

15 MS. BROWN: Yes, apparently, we'll have
16 somebody testifying to that.

17 JUDGE BYRNE: All right, because I know
18 that there's Bike Share stuff and whatnot, but it was
19 a very general testimony about the nature of the
20 transportation.

21 MS. BROWN: Right, and I think that those
22 stand on their own, without having to get into this

1 whole transportation infrastructure report,
2 transportation impact report. And again, turning
3 this into a Zoning Commission hearing, which is what
4 I'm afraid of --

5 JUDGE BYRNE: No, that's not going to
6 happen.

7 MS. FERSTER: If I could just clarify, the
8 point I would like to make is that if you're
9 presenting any transportation facilities that you're
10 providing as a component of your special merit, I
11 think I should be entitled to present questions about
12 the fact that these benefits will not even come close
13 to mitigating the severe transportation -- traffic
14 impact of this project.

15 MS. BROWN: I don't know that she testified
16 to mitigation measures.

17 JUDGE BYRNE: I think that's right. I mean
18 I think if you want to put on testimony, if you want
19 to put on evidence about the paucity of the
20 transportation benefits, you're free to do that. So
21 I think we'll leave that there, then.

22 MS. FERSTER: Okay, so that's all that I

1 have.

2 MS. MERRITT: I have a couple of questions.

3 BY MS. MERRITT:

4 Q One is you said, or your slide said that
5 the development is anticipated to create 3,200
6 permanent jobs. And I specifically heard the first
7 witness from the City say that it would create 2,300
8 permanent jobs and that's a 50 percent difference.
9 So I'm just wondering if you could reconcile that.

10 A I don't believe that's what she said.

11 JUDGE BYRNE: She's shaking her head no.

12 MS. MERRITT: Okay, I must have misheard.

13 BY MS. MERRITT: (Resuming)

14 Q I have one more question and it's a follow-
15 up about the question that was earlier asked
16 regarding the selection of VMP after a competitive
17 process and you mentioned that there were five
18 bidders, five proposers I guess, in response to the
19 solicitation that was released. And I'm just
20 wondering if you know who the others were.

21 A I don't have that information at my
22 fingertips.

1 Q What was your role at the time or is this
2 just what you heard?

3 A I already stated that I was not with the
4 project at that time.

5 MS. MERRITT: I don't have any additional
6 questions.

7 JUDGE BYRNE: I have a question or two.

8 THE WITNESS: Sure.

9 JUDGE BYRNE: So I'd like to hear more
10 about the benefits to community health from the
11 medical facilities. I understand, you know, that
12 having -- are we talking about doctors' offices,
13 basically, here or what is envisioned here for that?

14 THE WITNESS: So to start by saying Adam
15 Weers of Trammel Crow Company is going to testify --

16 JUDGE BYRNE: Okay.

17 THE WITNESS: -- later to the details.

18 JUDGE BYRNE: Okay. Yeah, but what do you
19 see as the benefits, just greater capacity within the
20 medical infrastructure of the District of Columbia or
21 is there something more specific?

22 THE WITNESS: Correct, so we're adding a

1 million square feet --

2 JUDGE BYRNE: Yes.

3 THE WITNESS: -- to the medical
4 infrastructure.

5 JUDGE BYRNE: Yes.

6 THE WITNESS: And that magnitude of new
7 growth in the medical industry will undoubtedly -- I
8 mean it adds to the supply.

9 JUDGE BYRNE: Okay, but that's just what
10 you mean is adding to the supply of medical
11 infrastructure. Okay, good, that's all I wanted to
12 ask. Thank you very much.

13 MS. BROWN: Next, I would like to call
14 Emily Eig from the EHT Traceries, the expert in
15 architectural history and historic preservation.
16 She's been previously qualified before the Mayor's
17 Agent.

18 JUDGE BYRNE: Yes, many times.

19 MS. BROWN: And we have her resumé in case
20 you need it for the record.

21 JUDGE BYRNE: Sure. I guess we'll call
22 that Exhibit 1.

1 (Exhibit is marked for
2 identification.)

3 JUDGE BYRNE: So, Ms. Eig, welcome. Can we
4 just qualify her as an expert, without going through
5 any of this?

6 MS. FERSTER: I have no objection.

7 JUDGE BYRNE: Okay, thank you. Ms. Eig,
8 you're qualified. Please just state your name for
9 the record.

10 THE WITNESS: My name is Emily Hotaling Eig
11 and I wish you a good morning.

12 DIRECT EXAMINATION

13 THE WITNESS: I will go through the efforts
14 that we have made, starting actually before 2007, and
15 provide some insight into the approach that's been
16 taken.

17 The sand plant today is the 25-acre site
18 that is abandoned, it's in disrepair, it no longer
19 can be used for its original purpose, nor is it able,
20 but it is definitely a romantic landscape that
21 contrasts with the strict engineering geometry. The
22 evocative ruin is a special place and it is part of a

1 much large historic landmark.

2 The McMillan Reservoir Park landmark, which
3 was designated in 1991 by the D.C. Historic
4 Preservation Review Board, includes 92 acres. And as
5 you can see, this is the boundary of the landmark as
6 designated in 1991 and subsequently was put on the
7 national register in 2013. The site that we're
8 talking about is this 25-acre rectangular site here,
9 as opposed to where the reservoir and the site that's
10 owned, still, by the federal government to the west,
11 whereas, this site is owned by the District of
12 Columbia.

13 We prepared a preservation report starting
14 back in 2005. We looked at the information that was
15 available, which a great deal of work had been done
16 by Anne Sellin and Tony Norman and others that was in
17 preparation for the historic landmark nomination.

18 I should state that our report, which I
19 believe was already admitted into the record, was
20 prepared with the assumption that there would be some
21 level of development. What that level of development
22 would be was not something that we addressed. It was

1 done before there was any plan, it was begun before
2 there was any plan.

3 And the content basically has certain
4 significance of the site as a whole, the landmark
5 site, because it was not separated out in the
6 landmark designation. But then the site description
7 in the resource inventory, which was based, in part,
8 on work that had been done as an aftermath to the
9 1987 sale to the District of Columbia, work which was
10 done when Greenhorne and O'Mara inventoried the site.

11 There was an assessment of historic
12 integrity based on the filtration plant itself,
13 landscape and visual resources. We devised a method
14 for relative level of significance of individual
15 resource types that was based on the landmark
16 application and designation by HPRB.

17 And we devised preservation
18 recommendations, both general and resource specific
19 and we made suggestions for mitigation, knowing that
20 it was highly likely that not all the resources would
21 remain in place, once this development plan was
22 approved and initiated.

1 As I said, the National Register listing
2 was completed in 2013. It had been recommended by
3 the Review Board in 1991, but the actual process of
4 placing it on the Register did not happen until 2013.

5 And what's interesting about this is that
6 the original 1991 designation is as a landmark. The
7 National Register called for this to be a historic
8 district and you'll note it says "Preferred"; that
9 the Preservation officer prefers that it be dealt
10 with as a historic district. And that has to do with
11 our local laws and not where the National Register is
12 concerned. But it would, by today's standards, be
13 considered a historic district.

14 Just a very brief outline of the McMillan
15 Reservoir Park as a whole. They began construction
16 in 1903. It actually started, 1898 was the beginning
17 of the intention and the operations began in 1905.

18 But it wasn't until 1906, '07 that
19 Frederick Olmsted, Jr., was asked to prepare a
20 landscape design. This had been already laid out, it
21 was in operation. So Olmsted, Jr., actually applied
22 like an overlay of landscape and we'll talk about

1 that a little while later. And it operated -- it was
2 completed in 1919, there for many years.

3 Then in 1941, in preparation, or
4 expectation, I should say, of the World War II, the
5 entire site was fenced off, it was all federal
6 property and there was this fence on both sides of
7 First Street.

8 It continued as the water operations until
9 1986, when the federal government built a rapid
10 filter system that is on the west side of First
11 Street.

12 In 1987, the federal government disposed of
13 the property that we are talking about today, the
14 sand filtration plant that is to the east of First
15 Street, for approximately \$9.5 million, with the
16 anticipation it would be for development.

17 In 1988, the site was abandoned and in
18 1991, was listed in the D.C. inventory, then in 2013
19 on the National Register.

20 It's important to understand that the sand
21 filtration plant is -- we're only going to be talking
22 about this area here. It's actually not entirely

1 shown in this space, there's a portion below here,
2 but sand filtration cells go across First Street and
3 they're on the federal government property today.
4 They are no longer operating because they're using
5 the rapid filter system, which is down here, but they
6 are on both sides of First Street.

7 The sand filtration plant probably is the
8 most important aspect as we see, it's a special
9 organization in topography. It's this rectangular
10 shape. The site actually was already subdivided with
11 streets that we're going to correspond to the streets
12 that we have on the east. But this tripartite
13 organization is based on the operations of the
14 facility, not on any previous subdivision.

15 The land, actually the site, \$209,000.00,
16 was purchased from the owners at that time, the
17 private owners.

18 The site also represented a very
19 undulating, let's call it, topography as it moves
20 from the north to the south. There is a drop of
21 approximately 20 feet. And in order to allow the
22 facility to work properly, there was a major cut and

1 fill effort that made everything at grade. But as
2 you can see, at this point, we're one level from down
3 here to 20 feet. So this is a flat plinth that's at
4 the same grade across the site.

5 JUDGE BYRNE: Would you define plinth?

6 THE WITNESS: A plinth, like a plateau,
7 think of a plateau, a flat, rectangular in this case,
8 shape.

9 Other resources that are part of this
10 include the regulator houses, which are these small
11 red brick houses that actually have an openings in
12 their floors so that the manual regulation of water
13 would come through from the underground reservoir
14 that would connect to the above ground reservoir.

15 There were the sand bins, those are the
16 cylindrical concrete structures that you can see on
17 the site, also, today. Sand washer is a very
18 important part of the process because the idea is
19 that sand goes in clean and comes out dirty and has
20 to be cleaned again. So the particles of the
21 filtration would be attached to the sand, the water
22 can run through clearly.

1 And then, of course, these cells that were
2 each filter beds, there are 20 of them on the site
3 we're talking about, and as you can see the grade,
4 all these things that were going on with this to
5 devise a flat surface.

6 This is an original photograph prior to, in
7 this case, prior to the landscaping, you can see the
8 workers, with an industrial site. This is the portal
9 that led down into the cells below and there's some
10 tracks, actually, that are no longer extant where
11 they've moved the large sand, portions at different
12 times, and then these are -- this is a photograph of
13 the underground cells.

14 When Frederick Olmsted, Jr., came into the
15 project, he studied it, as you might imagine, and
16 there are extraordinary documentations of his efforts
17 at the Olmsted Archives in Brookline, Massachusetts.
18 And a lot of this information was not actually
19 available in 1991 when they did the nomination,
20 because they had not indexed it and inventoried it
21 yet, but we were able to get hold of it now.

22 And he devised three areas, A, B and C.

1 Now Area A, which we refer to as The Plains, is what
2 we are talking about today, this slow sand filtration
3 plant. Area B is the reservoir, which had preexisted
4 the plant, it was already there, and additional
5 infiltration cells. And then Area C, which was
6 designed for public recreational use.

7 He, as I said, wrote extensively on this
8 and he explained that, you know, A is the area,
9 including the reservoir, filter bed sand washers and
10 their appurtenances. And then the spacious and
11 impressive open reservoir, enclosing banks and
12 hillside, et cetera.

13 And the southerly part lying in the main
14 below the damn of the reservoir, a separate
15 appendage, so there's no practical function in the
16 operation of the water works presenting a distinct
17 landscape unit. It can be shaped into an agreeable
18 and consistent piece of informal park landscape, with
19 provision at the westerly end for a children's
20 playground.

21 And the reason that I bring this out is
22 because there's been many conversations about the

1 fact that the site that has been referred to as The
2 Plains was the public park. There was public access,
3 as a rule, around the edge of it, but it was not to
4 be accessed here. If anyone was there, they were not
5 invited.

6 C, however, was where there was activity,
7 including the placement of the McMillan fountain
8 because Senator James McMillan, who is the Senate
9 District Committee chairman, he had been the sort of
10 mover and shaker, we would say, behind the McMillan
11 plan and efforts with the park system and all these
12 city beautiful improvements that the city was
13 experiencing at that time.

14 So Olmsted discussed in landscaping A,
15 there was a problem, and I won't read all of this,
16 but essentially, the problem with that it's perhaps
17 inexpedient to the public to the use of The Plains,
18 even upon a fenced path.

19 And the idea that he was thinking about
20 doing a fence, this actually discusses what kind of
21 trees he could do and what would block it. And he
22 was trying to allow for a visibility across the site,

1 but something that would keep people from walking on
2 the site.

3 And he came up with a landscape design of
4 passive shrubbery, trees, that would discourage
5 access to the center of The Plains, but that would be
6 an attractive path for people to walk around that
7 site.

8 And these are some of the drawings from
9 that you can see. It would access each corner of the
10 site, it had steps that were built and here's the
11 path and here's some of his early plans. This is
12 hard to see, but essentially, you can see that he
13 included his landscape around here.

14 He also suggested there be some kind of
15 small trees or plants along each of the two service
16 courts. There had already been some sort of growth
17 of an undesirable ivy and he suggested a different
18 plant that would be more controllable that could be
19 placed there. And this is early, actually before the
20 landscaping, so I sort of think there might be
21 something going on here, but it's very early on and
22 there's a pedestrian walking along this path, but

1 they had not completed the landscaping, by any means.

2 The McMillan Memorial Fountain was in this
3 area here. This is our site and this is the area
4 that we just discussed and the fountain has an
5 elaborate plan and there are some steps to it. It
6 was the site of many activities, including bands,
7 marching bands and many, many things that went on in
8 this park. And go to the next slide, please.

9 Also, it was known that it was a
10 desegregated park and they were not -- it may be the
11 first desegregated park. These are photographs of
12 Lillian Evanti, who was an opera singer, her son,
13 Thurlow Tibbs, at the park, circa 1930. It's very
14 beautiful and here's the reservoir in the background,
15 you can see the fountain here and they're walking
16 along here, really beautiful photographs of that.

17 Unfortunately, the fountain was dismantled
18 and removed. Part of it is there, but parts of it
19 are in other places. And the site of the fountain in
20 actually 1986 is the site of the rapid filtration
21 plant. The federal government put it on that site
22 there at that time.

1 So once again, you know, the landmark
2 today, we have this piece and we have this larger
3 piece and this area is no longer open to the public
4 because it remains fenced, as it was since 1931.

5 The resources, however -- then we're going
6 to focus on this site for the rest of the -- the
7 resources include the service courts. We have the
8 cylinders, the regulator houses, the portals that
9 have access to the underground cells. The fountain
10 is not there; it was there, but it is not there. And
11 the cells, remaining filter beds, both of which are
12 part of a larger one-acre filter bed, and there are
13 20 filter beds.

14 In our work, we identified sites and
15 resources. As I said, in the earlier 1990s,
16 Greenhorne and O'Mara had gone out and done an
17 inventory, but we went back and we actually tried to
18 see what we could find, what was still there, because
19 the site had been abandoned that many more years and
20 there had been little formal access to it, there was
21 no actual use of it. So we had photographs that we
22 compared with photographs currently, using all the

1 drawings and comparing them.

2 We identified site resources, landscape
3 resources and built resources. Because the site
4 itself was so important and the concept of the
5 landscape was not there, but it was so important, it
6 was Olmsted's participation and the built resources
7 that still remain on the site.

8 I think that this is where I should say
9 that I think this is one of the most complex, if not
10 the most complex, resources that we have studied
11 because, one, of its industrial nature, the type of
12 resources that are on it, which are structures,
13 they're not buildings. The National Park Service
14 very clearly defines habitable space versus
15 inhabitable space and these are not meant for people
16 to live in or to work along, you know, as an office
17 like they are structures. Next, please.

18 There are 22 resource types that we've
19 found and we have over 4,000 resources. We are
20 counting, there were 137 of the resources such as the
21 above grade resources, then the cells, the manhole
22 covers going to the larger number.

1 In looking at them, we tried to understand
2 what we were looking at and we went back to the 1991
3 landmark designation. We didn't try to reinvent the
4 wheel, by any means, because this was the designation
5 language. And essentially, it is designated for
6 three main reasons, its association with the history
7 of the water purification system and the triumph of
8 slow water filtration system over advocates of
9 chemical methods.

10 Washington, D.C. was the last city to build
11 a slow sand filtration plant. It was considered to
12 be passe by that time, but Congress, in hearing
13 testimony, decided to proceed with the slow water
14 filtration, and it took until the 1980s for that
15 actually to be replaced.

16 The association with Senator James
17 McMillan. McMillan was such a leader through all of
18 this. He did not have, you know, direct relationship
19 with this particular site. However, he died in 1902
20 and it was an unexpected death.

21 And if you can imagine McMillan's plan,
22 which had been published earlier in the year -- it

1 wasn't called the McMillan Plan at that time, it was
2 called the Plan of 1902. But his association with it
3 was so great that it was decided that there should be
4 a memorial to him and it was associated with that
5 large fountain that was placed on this site.

6 Distinctive public design as a major
7 American engineering resource. It was designed by
8 the Corps of Engineers. A man named Hayden was the
9 designer, working with Olmsted, following with
10 Olmsted, and a public works facility that was of a
11 quality that we do not see today in our public works.

12 To evaluate the relative significance and
13 integrity of these resources, we determined, based on
14 their significance, whether they were key supporting
15 or minor resources. We determined their integrity,
16 based on the National Park Service's Seven Aspects of
17 Integrity. And we identified how many were extant.

18 Now this is actually something that was
19 done in February of 2012, there was one number that
20 was being used by the developer and that had changed
21 in September of 2012 and it's just a way to show this
22 quickly, what was going on.

1 But we took the resource types and we made
2 general recommendations, resource specific treatment
3 recommendations and resource specific mitigation
4 recommendations. As I said before, we did not know
5 what the development was going to look like and we
6 didn't know what was going to stand, but we wanted to
7 make it clear what we thought was important and that
8 if things, you know, how important, if things were
9 going to be removed, that there be mitigation. And
10 this is following a pretty standard Section 106 kind
11 of approach to this as a way, without actually having
12 a plan in place.

13 And these are also in the reports that we
14 handed out and we gave preferred treatment approaches
15 for each of these things. And as you can see, the
16 regulator houses were key and high integrity. The
17 preferred treatment approach was preservation, but if
18 they were not going to be preserved, rehabilitation
19 and mitigation would be appropriate.

20 And only in the supporting things was there
21 any just simply mitigation, there was usually
22 rehabilitation and mitigation. And it had to do with

1 integrity. High integrity only had the preservation
2 or rehabilitation/mitigation; the moderate integrity
3 had rehabilitation and preferred approach and
4 mitigation as an alternate approach.

5 We took these recommendations, and if I can
6 take just a very long process and put it into a few
7 moments, but the process, the report directs that
8 there be a retention of the rectangular form, the
9 plinth, or the plateau, be retained, as this is 20
10 feet higher here than it is here. The berms that
11 surround it, there's a grassy berm that is around the
12 entire site, obviously 20 feet high at this end and
13 it's actually depressed at that end.

14 The tripartite organization, which I will
15 say the city, at first, very much throughout the
16 planning wanted to reinstate the street plan. But
17 the landmark importance, we felt, dictated that it's
18 a tripartite organization.

19 The reciprocal relationship between the
20 service courts, a sense of open space and then that
21 pedestrian walk, which we're now calling Olmsted
22 Walk, that surrounded the entire site.

1 We recommended the incorporation of visual
2 expression, both in form, material, colors, and we
3 recommended a scope of preservation work that
4 included restoring the high level resources to their
5 original appearance, stabilizing and preserving,
6 planning for future maintenance and repair of all
7 preserved resources and following the Secretary of
8 the Interior's standards and guidelines for
9 rehabilitation work.

10 This just gives you a little, quick look at
11 the retention and restoration, rehabilitation. And
12 rehabilitation would include if we take the regulator
13 house and turned it into a little coffee shop,
14 rehabilitation would be appropriate. But we
15 recommend that at least one of the regulator houses
16 would be actually restored to its original appearance
17 so we could understand how it was used. And in each
18 case, there were at least one, if not more, of these
19 resources type that were to be retained and restored.

20 We recommended incorporation and
21 reconstruction in certain places. We felt there was
22 an opportunity for some really creative use of the

1 objects and incorporating, such as the views being
2 incorporated into the design.

3 And we also found that reconstruction would
4 be desirable. The corner stairs, only one existed of
5 the four corner stairs, and the perimeter pedestrian
6 path, for all intents and purposes, just seemed
7 overgrown, so that we wanted those items to be
8 reconstructed.

9 So you will see -- Matt Bell will be
10 following with the presentation of the project, but I
11 just would like to show you how, a quick look, that
12 the proposals that we made did, in fact, retain the
13 rectangular form, the plinth, the berm, the
14 tripartite organization, the reciprocal relationship,
15 a sense of open space and pedestrian walk.

16 We also were trying to find a place that
17 would have an extensive view, because we knew there
18 would be development, we knew there wasn't going to
19 be this entire site open, like it had been. And we
20 saw that the proposed project -- actually, rather,
21 the southern portion of the site we perceived to be
22 very close to what Olmsted's landscape scene called

1 for.

2 It has The Plains, it has the raised
3 elevation associated with the berms, it has a
4 relationship directly with the south service court,
5 the surrounding streets, because it you keeps the
6 rectangular edge and the berm, which you clearly know
7 when you're driving up or even down North Capitol
8 Street, when you have reached this site.

9 It has preservation of a portion of the
10 cell. And these two cells are the ones that have
11 been demolished by D.C. Water, these cells are
12 failing and this is the cell that is going to be
13 incorporated.

14 So all with the intention, the most
15 important thing being retaining a sense of place,
16 that everyone knew that they were at the McMillan
17 Sand Filtration Plant as part of this greater
18 landmark.

19 And last, that there be an interpretive
20 program integrated into the design, strong visual
21 reading of the landmark's unique character, public
22 access. Remember, there was only access to the edge

1 and that was stopped in 1941. And this would allow
2 people to walk and experience this portion of the
3 site with the new streets and the service courts and
4 the pedestrian walk around the entire site.

5 The landscape materials, the inclusion of
6 water, community center, interactive play components,
7 healing gardens, interactive interpretive displays
8 such as the walking museum, all of these things
9 designed to, in fact, relate to the landmark's
10 significance, but also, going back to here, is that
11 we wanted to retain and integrate cells into the
12 development program and reuse of above ground
13 resources.

14 With all of this together, I've been asked
15 to just sort of put this in context of a couple of
16 special merit projects. And there are many, many
17 special merit projects that have come to the Mayor's
18 Agent. But these are projects that have similar or
19 not so similar, I will say, because these are much
20 less complex projects.

21 They all are buildings. They all include
22 either the demolition of the buildings and the

1 incorporation of a facade and new construction around
2 them or portions of the building being demolished.
3 They are various stages of that. But none of them
4 compare to the complexity of what we're looking at
5 today.

6 The closest we might use is the O Street
7 Market, where there is a single building, and if you
8 remember the ice storm of however many years ago it
9 was, 2005 or something, when the roof collapsed, and
10 in order to actually bring the building, the
11 collapsed walls that were removed and then
12 reconstructed.

13 And this large site is a part of the new
14 construction around it, so that it highlights the
15 resource that was technically demolished, but in
16 fact, it was both natural and manmade causes for the
17 demolition to allow this to be rehabilitated and
18 become an active part of the neighborhood again and
19 all of the new construction that went around it to
20 help give it life, what had been a very dismal site.

21 But as I said, there is really nothing that
22 can compare with what we're looking at today and the

1 interest, obviously, in trying to preserve something
2 that is meaningful to so many people on so many
3 levels, which has not been accessible to the public
4 at any time, except along the edge.

5 And that will allow for an extraordinary
6 interpretive opportunity for understanding how the
7 water purification of our city changed our city and
8 kept our city as it moves into the 21st Century.

9 And as I said earlier, the two cells that
10 were demolished, there's also another cell, Cell 14,
11 that's being used as a stormwater retention site by
12 D.C. Water. Because they are, in fact, in process
13 with a major new step, the next century step, of
14 development as they put in new tunnels around the
15 city to provide for water that actually can meet the
16 new demands of our enlarged city more than a hundred
17 years later from the time that this was constructed.

18 So that concludes my presentation. I'm
19 happy, of course, to answer any questions.

20 MS. BROWN: I have a couple of questions
21 that I want to redirect, but I also want to note that
22 I'd like to recall her after the structural engineer

1 testifies to give her expert opinion on that
2 testimony.

3 JUDGE BYRNE: Okay.

4 BY MS. BROWN:

5 Q Ms. Eig, how many Mayor's Agent cases have
6 you worked on, would you say, ten, 20, 30, 50?

7 A 30, I think probably 30, between 25 and 30.

8 Q And based on that slide, how does the
9 special merit of this project compare with those that
10 you have worked on?

11 MS. FERSTER: I would object to that. Ms.
12 Eig's testimony does not go to special merit, it goes
13 simply to the historic significance of the site.

14 JUDGE BYRNE: Proceed, I'd like to hear
15 what you have to say.

16 THE WITNESS: I think that this project is
17 presenting a very special incorporation of the site
18 that allows the site to be accessible to the public
19 at a level that most special merit cases do not even
20 begin to reach, that the special aspect of it, the
21 park that allows both park activities, but also will
22 be interpretive of the history of the city's water

1 system, I think is really quite a remarkable approach
2 in the end.

3 It is very difficult because, as you know,
4 my testimony did not discuss condition, but in my
5 report there is certainly acknowledgement that the
6 condition of the underground cells has affected what
7 can happen at this site. And the opportunity here to
8 bring attention to a public works facility in this
9 way is, I believe, very special merit.

10 BY MS. BROWN: (Resuming)

11 Q You have a slide up about the O Street
12 Market. Do you recall if there was affordable
13 housing required on that site?

14 A Yes, I believe --

15 MS. FERSTER: I object again to Ms. Eig
16 commenting on --

17 JUDGE BYRNE: This is direct testimony,
18 right? I mean she can ask pretty much what she
19 wants.

20 MS. FERSTER: Relevance to her testimony,
21 not within the scope of --

22 MS. BROWN: It's still her direct

1 testimony.

2 JUDGE BYRNE: It's still her direct

3 testimony.

4 MS. FERSTER: Understood.

5 JUDGE BYRNE: She can ask anything she

6 wants.

7 THE WITNESS: I believe it's 20 percent of

8 affordable housing.

9 BY MS. BROWN: (Resuming)

10 Q And was that a City project?

11 A Yes, a public-private partnership.

12 Q And the 20 percent affordable is considered
13 part of the special merit of that project.

14 A Yes.

15 Q And are you familiar with the Randall
16 School Project?

17 A Yes, I am.

18 Q And is that also a public-private
19 partnership with the City involved in that?

20 A I think it's a private development.

21 Q Do you know if there were restrictions on
22 the site for affordable housing?

1 A I know that 20 percent affordable housing
2 was included in that project.

3 Q **And is that considered special merit?**

4 A Yes.

5 Q **Thank you.**

6 MS. BROWN: I think that's all I have for
7 now.

8 JUDGE BYRNE: All right, Ms. Ferster, your
9 witness?

10 CROSS EXAMINATION

11 BY MS. FERSTER:

12 Q **Just a couple of questions about the**
13 **Randall School property that you're familiar with and**
14 **the O Street Market.**

15 **When you talked about the affordable**
16 **housing on the site, how much of that affordable**
17 **housing, what was the area's median income that that**
18 **affordable housing --**

19 A I do not know the answer to that.

20 Q **Okay, for any of these projects that you've**
21 **handled in --**

22 A Off the top of my head, off the top of my

1 head, no. I've participated in the projects and I
2 probably knew the answer to that at one time, but not
3 at this moment, I couldn't say.

4 Q So it's correct that the McMillan Sand
5 Filtration Site is listed in the D.C. inventory of
6 historic sites as a historic landmark, correct?

7 A No, that's not correct. Actually, it's
8 listed as part of a single landmark of the 92-acre
9 site, it is a portion of it.

10 Q A portion, okay, but it is a part of a
11 historic landmark.

12 A That's correct.

13 Q Okay, and it is independently eligible for
14 listing, independently listed in the National
15 Register as a historic district.

16 A The enter 92-acre site, yes.

17 Q Now you testified that one of the benefits
18 of this project is the public accessibility that it
19 will provide. But you also testified, and isn't it
20 correct, you also testified that The Plains site,
21 which is where the sand filtration site is, is not
22 significant for its public accessibility? In fact,

1 **you testified that --**

2 A That is correct, its accessibility, I think
3 it's preferred because it is a site no longer used
4 and therefore, becomes something that can be
5 interpreted. And it's the interpretive value and
6 educational value of being able to understand how the
7 water --

8 Q Okay, so that was part of your view about
9 the special merit of the project, as opposed to the
10 **significance of the site.**

11 A Yes.

12 Q And isn't it correct that a key feature of
13 **the significance of that site is its open space?**

14 A That is correct.

15 Q And it's correct, also, that it's your
16 **opinion that the site maintains a high degree of**
17 **historic integrity, is that correct? I'm quoting,**
18 **actually, from your report.**

19 A Yes, but we wouldn't be here in front of
20 the Mayor's Agent if we were retaining the site as it
21 is. The point of this is it's a special merit case,
22 so there's an acknowledgement on everyone's part here

1 that the landmark as it is today is being proposed to
2 be altered to provide a different purpose.

3 Q And then your report also indicates and
4 your testimony also indicates that you believe the
5 character and history of this site is unique and
6 would be difficult to convey to future visitors
7 because of the level of development proposed.

8 A I think you've got that out of context.
9 The section that you're reading has to do with
10 mitigation and so that depending on the level of that
11 -- remember, this report was written without any
12 development plan in place.

13 So it was a question of where on the scale,
14 on a scale of, say, one to ten, how difficult it
15 would be, the more mitigation would be necessary. It
16 wasn't evaluating what this proposal was going to be,
17 by any means, because there was no proposal to
18 evaluate. Do you understand?

19 Q Yes. And in terms of your recommendations
20 for rehabilitation of the above ground structures in
21 your report, have your recommendations been
22 implemented in the project, is there any specific

1 **rehabilitation and mitigation plan for those**
2 **recommendations?**

3 A There isn't an intention to do that. We
4 actually spent a great deal of time working out a
5 program that would provide for rehabilitation and
6 restoration, as appropriate, of the different
7 resources. As I testified, in some cases, there is
8 an intention that a resource will be restored to its
9 original appearance so we could understand the
10 function. In other cases, it would be adaptively
11 reused and rehabilitated.

12 All of the regulator houses, the sand bins
13 are being retained, most of the portal walls, sand
14 washers are being retained, so the above ground
15 facilities. And the service court is being retained
16 and a lot of the manhole covers are being retained,
17 things like that are being retained.

18 **Q And in terms of the future maintenance of**
19 **the property, is there a plan in place that will**
20 **provide for adequate future maintenance for the site**
21 **and for how long?**

22 A We recommended in the report that there

1 actually be like a BID, a B-I-D, a group of people
2 who represented the owners and represented the
3 occupants and residents and neighbors, to determine a
4 program to make sure that this would happen. But
5 it's somewhat premature for that to happen because
6 we're still waiting to get an approval for a project,
7 but that was in our report, we recommended that, and
8 that was made very clear to the owners.

9 **Q But none of these plans are currently in**
10 **place, then, for the future maintenance or the**
11 **rehabilitation.**

12 A I don't think that's true, I think they are
13 considered as part of it, but I think that it's not
14 something that -- it's not at that stage yet to do
15 that.

16 **Q And what stage is it appropriate for the**
17 **Applicants, in your opinion, to provide for a binding**
18 **commitment to preserve these historic structures and**
19 **maintain them for a period of time?**

20 A Well, I would think that once you have a
21 concept approval, that would be, you know, approval
22 from the Mayor's Agent. Obviously, this has also

1 gone to the Zoning Commission and I believe there are
2 many requirements that the Zoning Commission has
3 already set forward as binding toward the public-
4 private partnership to work out.

5 **Q And is a rehabilitation and maintenance**
6 **plan one of those requirements?**

7 A I don't know the answer to that question.

8 MS. FERSTER: Okay, thank you.

9 JUDGE BYRNE: Ms. Merritt?

10 MS. MERRITT: I just have a couple of
11 questions.

12 BY MS. MERRITT: (Resuming)

13 **Q When you were describing your own**
14 **recommendations about preservation and rehabilitation**
15 **and mitigation, could you elaborate on what you**
16 **intended at the time, what you were thinking in**
17 **reference to mitigation? What sort of mitigation**
18 **measures did you have in mind?**

19 A I think the report includes some of the
20 mitigation. It was our anticipation that the
21 Preservation Review Board or staff, Preservation
22 staff and the Preservation Review Board -- I

1 shouldn't say that.

2 The staff would indicate what kinds of
3 things they would like as mitigation. We cannot say
4 what mitigation would be, it would have to be
5 something that would come from an approval body. And
6 that mitigation developed over time is part of the
7 Zoning Commission case and it's part of this case of
8 special merit. And to have special merit includes
9 amenities that are to be balanced, which is what
10 mitigation is, it's a balancing of the loss against
11 the gains.

12 **Q In your recommendations about what to**
13 **retain, one of the features that you mentioned was**
14 **the reciprocal relationship between the service**
15 **courts. Can you elaborate on that?**

16 A The landmark as it stands today has these
17 two service courts and the relationship between them,
18 the sense of the tripartite, and that was what I
19 thought should be retained.

20 **Q Did you mean a visual relationship?**

21 A Yes, a visual relationship.

22 **Q And do you think that the current plan**

1 **achieves that recommendation?**

2 A The current plan has north-south streets
3 that will allow a visual connection between the two
4 service courts.

5 **Q At the point of the streets, is that what**
6 **you mean?**

7 A Right, as well as there are other points
8 that you'd be able to see that. It's a wide area.
9 If you're walking around the Olmsted Walk, that
10 creates this unity that allows you to see the
11 relationship. It's not the same as it would be if no
12 development took place, but it is a good compromise,
13 to allow the landmark to be retained as its sense of
14 place, as being kept.

15 MS. MERRITT: I don't have any further
16 questions.

17 JUDGE BYRNE: I have just a few. So what
18 was the original function of the regulator houses?

19 THE WITNESS: The regulator houses were
20 where men, it was men, actually manually turned
21 valves to control the water, how fast or slow it was
22 going to come from the underground reservoir into the

1 sand.

2 JUDGE BYRNE: All right.

3 THE WITNESS: And then out again.

4 JUDGE BYRNE: And then there were a number
5 of them because there were different pathways for the
6 water to pass down through.

7 THE WITNESS: Mm-hmm. Now each of the
8 cells in the filter beds are -- I won't say they're
9 stand alone, because they can't stand alone, but
10 they're closed from each other. It's not like a
11 whole, big ocean, it's like lots of sections.

12 JUDGE BYRNE: Yes, mm-hmm. Is there an
13 extant sand filtration system structure elsewhere
14 that you're aware of?

15 THE WITNESS: Well, across the street.

16 JUDGE BYRNE: Yes, okay, right, that's
17 true.

18 THE WITNESS: I can't say I'm prepared to
19 answer that question, per se, but they are --

20 JUDGE BYRNE: Has anybody preserved them,
21 intact as a --

22 THE WITNESS: I don't know the answer to

1 that question, I don't, no.

2 JUDGE BYRNE: Do you view there being a
3 significance or a distinction between this being a
4 landmark or a part of a landmark or a part of a
5 historic district?

6 THE WITNESS: That's a very good question,
7 because as a landmark, certain things from D.C. law
8 had to be followed --

9 JUDGE BYRNE: Right.

10 THE WITNESS: -- which would have been
11 slightly different if it was a historic district.
12 The fact that it was proposed by the historic
13 preservation officer to the Register as a district is
14 in keeping with what the National Park Service, the
15 National Register would identify as a historic
16 district. They would not identify this as a
17 landmark, per se, by their standards today.

18 JUDGE BYRNE: Right, because of the
19 different elements, the preservation elements that
20 are there.

21 THE WITNESS: Right.

22 JUDGE BYRNE: Are you aware of any special

1 merit case that involved the demolition of
2 structures, as opposed to buildings?

3 THE WITNESS: Structures? I have to think
4 about that. Yeah, I mean I'd have to think about
5 that.

6 JUDGE BYRNE: Bridges or --

7 THE WITNESS: Yeah, I --

8 JUDGE BYRNE: You don't know of any.

9 THE WITNESS: No, but if I can get back to
10 you on that. You know, I'm not, off the top of my
11 head, aware of any, I'm going to say that.

12 JUDGE BYRNE: All right, thank you, those
13 are my questions.

14 MS. BROWN: I have no redirect.

15 JUDGE BYRNE: All right, very good. Thank
16 you, Ms. Eig.

17 THE WITNESS: Thank you.

18 MS. BROWN: The next witness -- I'm just
19 looking at the time and I don't know what your
20 schedule is or how you want to proceed.

21 JUDGE BYRNE: Yes, we'll certainly do at
22 least one more witness before we break for lunch,

1 okay?

2 MS. BROWN: Our next witness is Mr. Kirk
3 Mettam of Robert Silman Engineers and I'd like him
4 qualified as an expert in structural engineering. I
5 should have his resumé here. He's been qualified
6 before the Zoning Commission.

7 (Exhibit 2 is marked for identification.)

8 JUDGE BYRNE: Any objection to qualifying
9 this witness?

10 MS. FERSTER: No objection.

11 JUDGE BYRNE: Okay, good. Mr. Mettam, I'll
12 qualify you as an expert in structural engineering.
13 So please state your name for the record.

14 THE WITNESS: Sure. My name is Kirk
15 Mettam, I'm a principal with Robert Silman
16 Associates, structural engineers.

17 MS. BROWN: Go ahead and proceed with your
18 direct testimony.

19 JUDGE BYRNE: Yes.

20 Whereupon,

21 KIRK METTAM

22 having been previously sworn, testified as follow:

1 DIRECT EXAMINATION

2 THE WITNESS: I've included a couple of
3 slides, just giving some background about the firm.
4 We're structural engineers that love historic
5 buildings and all the challenges associated with
6 them, for better or for worse. So we've worked on a
7 number of notable historic buildings, but also, some
8 adaptive reuses of various types of structures, both
9 buildings and nonbuildings.

10 And one of the recent projects we were
11 involved in is the design of the all new park down at
12 the waterfront, but also adapting the use of two of
13 the industrial structures there as new building
14 structures.

15 So what I'd like to do today, we were
16 retained by Vision McMillan Partners several years
17 back to look at all the structures of the site, and
18 so we've investigated the above grade, as well as the
19 below grade structures. But really, I want to focus
20 today on the underground structures because that
21 seems to be the area that is least understood.

22 I've got a lot to cover, so forgive me if I

1 talk a little fast. I know this is very exciting
2 material. So as a means of getting through this, I'm
3 going to talk a little bit about the original
4 structures first and then talk about, introduce what
5 we know about the existing conditions and, lastly,
6 talk about the constraints and opportunities both for
7 preservation and adaptive reuse.

8 So on the lefthand side of this image, we
9 see the entire site. Underlying beneath the site
10 are really three large, continuous, concrete masses.
11 You see these outlined in a bold white line. Each of
12 those bold white lines bounds an area that is a
13 continuous mass of concrete, they are each a
14 structure. That was just a means of construction.

15 Within those structures, there's an array,
16 if you can see, it's a four deep by five array of
17 cells. We use the term "cells" to describe a
18 concrete element that retains a mass of water. And
19 those cells were filled with water and released, as
20 needed, as the operation required.

21 It's very important to note that these are
22 highly constrained, both by the adjacent cells and by

1 the soil around them, and we'll get to that a little
2 bit later. But if you zoom into -- if you'll see my
3 first yellow bubble on the left. If you zoom into
4 one of those cells, Cell 14 which we're paying a lot
5 of attention to -- this is a little bit out of scale
6 --

7 But what you see is there's literally one
8 way into the cell, one avenue in per ramp. It's got
9 concrete walls on four sides. Two of them are
10 bounding the surrounding soil, so they're heavy, mass
11 retaining walls. The interior wall is a lighter
12 wall. And then zooming in again -- I'm sorry, this
13 underground cell has 200 columns, each supporting a
14 vault.

15 So you zoom in again and you start to see
16 the scale of what we're talking about and I'll go
17 into this in more detail. But I really feel it's
18 important for everybody to understand the scale of
19 what we're dealing with here. In all, there are
20 4,000 of these vaults over the ten-acre structure.

21 Just as a brief introduction to the
22 construction, these are unreinforced concrete, and

1 we'll talk more about that later. So a continuous
2 structure. It was never intended for occupancy. I
3 say that for two reasons, one, because of the
4 loading, the type of construction that was used.

5 But secondly, there's no waterproofing, it
6 was meant to house water, so they didn't mind if
7 water got in it. There's no waterproofing on top of
8 it. Water penetrated the surface, the soil on top,
9 penetrated the concrete, got in here. It was mixed
10 with the water that was being treated, ultimately,
11 for drinking water and exited the site. So it's not
12 intended for occupancy, there is no dry space, there
13 is no water barrier.

14 It's also not intended to support added
15 loads. This top surface was meant for access by
16 workers only, not for any sort of vehicular or even
17 heavy pedestrian use. And it's now over a hundred
18 years old.

19 So I'm going to beg your forgiveness and
20 call this Structures 101 because I need to describe a
21 couple of things. These are vaulted structures. You
22 can see that in this section here. Actually, quite

1 beautiful when you get in and look at them locally.
2 Vaulted structures work in compression and
3 compression only, they're a very ancient form of
4 structure.

5 And the reason that works is, as I
6 described before, because they're highly confined by
7 the things around them, whether they're cells or
8 soil, and that represents a fair amount of
9 vulnerability. And what I mean by that is that when
10 something happens that causes the vault to no longer
11 be in compression, it becomes an unstable structure.
12 The things that could cause that to happen would be
13 loading on top, if there was no longer a balanced
14 loading, or if something moved. And we'll see in
15 this structure that a lot has moved.

16 When the soil tends to move below it and
17 whether that movement represents -- if you follow the
18 cursor -- if the movement represents a vertical
19 settlement of the soil or over the edges, a lateral
20 movement of the edge, both of those things create an
21 instability in the structure that cause tension in
22 concrete, then create these vulnerabilities,

1 ultimately, in this unreinforced concrete structure
2 that can lead to a catastrophic collapse.

3 The other thing I wanted to mention is the
4 blessing and the curse of this building, this
5 structure rather, is that it was built of
6 unreinforced concrete. It was a moisture rich
7 environment. They knew that if they reinforced this,
8 that we wouldn't see this structure today, we would
9 have had to tear it down 50 years ago. The steel
10 reinforcement in that kind of constant exposure to
11 moisture would have caused rust. The rust would have
12 what we call bloomed, it would have exploded and it
13 would have been a subject of demolition and no longer
14 here.

15 So there is no reinforcement in this
16 structure. In fact, some of the repairs that were
17 done back in the '40s were done with steel and you go
18 in today and they've exploded.

19 So the other sort of subtlety that I need
20 to raise, it's a serious consideration, because we
21 have these large masses of concrete that have been
22 subject to -- that have been wet, basically, since

1 the day they were built and we're talking about
2 potentially using them as inhabited space. We need
3 to dry them out.

4 And so volume changes occur when you change
5 the moisture of concrete and especially when it's a
6 large mass of concrete of this magnitude. That's a
7 serious consideration as we move forward.

8 One last bit. Unreinforced concrete is not
9 permitted by code today, we don't do it. The only
10 place that we use unreinforced concrete is between,
11 you know, the bottom of our footing and soil and it's
12 for the reasons I just described.

13 When we put reinforcing in buildings, it's
14 to acknowledge that there will be a crack and when
15 that crack opens up, it's carried by the steel of the
16 structure. And before some sort of a collapse
17 happens, there's large deformations, there's time,
18 there are things that allow us to get out of the
19 structure before it becomes unsafe.

20 So I want everybody to be aware that this
21 class of structure is subject to catastrophic
22 failures. In fact, you'll see out at the site, this

1 has happened.

2 The other thing that happens is that in
3 these unreinforced ceilings, when something starts to
4 spall off, there's no reinforcement there to hold it
5 in place. So large chunks of concrete can be
6 precipitated by movement and can create a falling
7 hazard interior to the structure. So unreinforced
8 concrete is very, very vulnerable to loading and
9 settlement problems.

10 So we started our work to identify the
11 existing conditions. There was a report done which
12 we refer to as CCJM, Johnson and Malhorta, in 2000, a
13 very good report. Unfortunately, it was a draft
14 report and never issued in final form.

15 But they performed a condition assessment,
16 they reported on prior assessments that had been done
17 in 1944, in 1967, both of which where they noted
18 extensive cracking and some collapse. They performed
19 a structural analysis and developed several
20 alternatives, both for preservation, as well as
21 vertical additions, and they listed a one- and a
22 four-story addition.

1 They also identified the cost of these
2 scenarios in 2000 dollars and in the year 2000, it
3 was somewhere between two and around \$3 million a
4 cell, just to preserve the cells, in their opinion,
5 so the 40 to \$56 million minimum preservation
6 project.

7 In 2012, we issued a report that was really
8 an update of their report. What we found in the
9 review of their report is that they didn't complete
10 the work and one of the things they were missing was
11 really an analysis of the impact of the soils on the
12 site.

13 We knew that the soils were a problem, so
14 we got more information and started to address what
15 impact the strength of the soils had and what impact
16 the settlement of those soils had on these unique
17 structures.

18 We also updated the condition assessment
19 and performed further analysis and then also revised
20 these various alternatives and we're going to talk
21 more about that. But in essence, this set the stage
22 for the discussion of the reuse option.

1 So we looked at potentially only reusing
2 the topside, what does it take to allow people to use
3 this as a park. We looked at potential requirements
4 for using the interior as an occupied space and we
5 looked at opportunities for overbuild.

6 And the one thing I want to point out is
7 that we did find that the CCJM report, because it
8 wasn't complete, had overestimated the amount of
9 vertical expansion that could be put on this building
10 and we revised that, we reduced that to a two- to
11 three-story light frame construction, as opposed to a
12 four-story office type construction.

13 We've already seen the existing condition
14 layout.

15 Something else that Emily had alluded to
16 and I want to get to more specifics is we did know
17 there was a significant regrading on the site,
18 starting I think right after the Civil War. But this
19 red line represents the division between what was
20 below that required elevation and what was above.
21 There was sort of a peak along here and a valley here
22 and this is the old Tiber Creek underneath the site.

1 So this material was cut, this material was built,
2 we did know that.

3 Then both the CCJM report and our report
4 reported degrees of damage to these concrete cells,
5 the red being the worst, where we've actually had
6 collapses, ranging all the way back to minor.

7 And you can see, if you toggle back and
8 forth, the sort of direct correlation between the
9 fill material on the site and the collapses,
10 specifically, and the damage, so it's telling us a
11 lot of what we know. But the impact on the structure
12 was that there was significant settlement, it was
13 ongoing since '67 or before, it continues today.

14 And the other things very important here is
15 that that explains this red and orange swath. It
16 doesn't explain the yellow. What's happening in
17 these yellow zones is that when confinement is
18 offered by a large retaining wall along its edge and
19 a berm of soil, that tends to move laterally and that
20 lateral movement also compromises the cells. That's
21 a very important point because these areas were shown
22 to be compromised.

1 In any scenario, if you look at this
2 diagram, all three of the structures, this being one,
3 two, three, have been compromised over time. In any
4 scenario where we subdivide and save some of these
5 cells and not the whole structure, we're going to be
6 creating an edge zone. So even though it hasn't
7 necessarily been compromised --

8 So for example, there was a lot of
9 excitement about these three cells. Those cells are
10 uncompromised today, but it's such a sensitive
11 structure that anything that we would do is going to
12 compromise those to some degree later.

13 I think everybody has the picture, but I
14 want to show you directly if you haven't seen this.
15 The safety issues are very obvious when you get out
16 to site. There are gaping holes along North Capitol
17 Street on the high side of the berm. So we've got
18 initially, cracking of concrete right at the apex of
19 these vaults. Then we start to see these hinges and
20 these hinges happen all throughout the structure in
21 many of the vaults.

22 And then ultimately, if you watch my little

1 Fred Flintstone diagram, this reaches a certain point
2 where either the settlement laterally or vertically
3 is such that it just reaches an instability. And
4 that does happen catastrophically.

5 And while it looks kind of trite on my
6 diagram, this is tons of soil, this is a huge mass of
7 material that comes down in the middle of this. We
8 see people walking out there, occasionally, and I
9 warn them, I just say this is not a good idea. This
10 is a very dangerous situation.

11 You know, it's quite striking and beautiful
12 from the inside. Once you open these up, they look
13 quite compelling, but this is a very dangerous
14 situation from the inside. And getting natural light
15 into these cells is not possible.

16 So the first thing that I want to emphasize
17 is -- I'm looking now at Constraints and
18 Opportunities -- these cells cannot be used as is,
19 you can't just take down the fence and start using it
20 as a park. It's great, sounds wonderful; it cannot
21 be done, it's an unsafe condition as is. We've
22 developed scenarios to fix it and we'll talk about

1 that.

2 The other thing you need to know, as I just
3 mentioned, is if we do any work directly adjacent to
4 a cell, we need to also take special measures and
5 stabilize that cell. These are photographs of the
6 work that D.C. Water has been doing in their current
7 operation. This is at the portal, where they had to
8 have -- they took extensive measures to stabilize the
9 portal as the excavation and demolition occurred
10 behind it and these are in adjacent cells to their
11 demolition.

12 So the last thing I'd like to go through is
13 specifically what we investigated. Three generic
14 situations where we used the topside, where we used
15 the interior and accompanied with some topside use,
16 and then the third, an over-build scenario, where you
17 either use the interior down below or you don't.

18 On the topside loading, in theory, we don't
19 have to waterproof this, right? So it would require
20 complete removal of all this soil, replacing it with
21 a new slab that ties the structure together, that
22 provides us a new engineered surface on which we can

1 put light vehicular traffic and people, put soil
2 back, reoccupy it.

3 Unfortunately, that added weight also
4 requires us to reinforce the existing foundations.
5 This could be done probably within the depth of the
6 sand that's there, so that the interior would appear
7 as it does today. And then we'd have to maintain
8 access to this for inspection, but that would be it.

9 The real challenge here is the interior
10 character is maintained, but it's really inaccessible
11 for occupancy, there's really no chance of using
12 this, only maybe access for inspection.

13 It requires, as I mentioned, very careful
14 control of any adjacent construction, it requires
15 control of vehicles and construction activity on the
16 top. And that was the scenario that had been largely
17 priced, at 2,000 dollars, two to \$3 million a cell.

18 Interior use, all the topside requirements
19 I just mentioned. Now we have to put in new
20 drainage, get the water off and waterproof the
21 structure.

22 It's also going to require interior

1 repairs, a lot of the cracking involved mapped out,
2 we know where we need to go. It also requires
3 regular monitoring and maintenance and this is
4 something I need to emphasize, because we're drying
5 them out, because we're not eliminating all of the
6 settlement of the soils.

7 Whoever the user of this space is is going
8 to have to allow us to continue to see the underside
9 of that structure, so that cracks don't start to
10 precipitate and large fragments of concrete don't
11 come down. So it's a specialized use. I call it not
12 a conventional 50-year design life solution, but it's
13 something that could be done in theory.

14 Challenges I talked about, the cracking,
15 the visibility on the underside. But the foundations
16 now, the foundation reinforcement becomes a bigger
17 problem because you really don't have the ceiling
18 height in the majority of these cells that you need.
19 Removing the sand would be a very good idea, but now
20 these reinforced footings start to get in the way.
21 There are lots of other nonstructure considerations
22 which I'll go through in a minute.

1 Lastly, the over-build. The prior report
2 had said reinforce these footings, every other or
3 every third footing and just put new load on top of
4 it, make a huge pier here and put a new building on
5 top of it.

6 We absolutely disagree with that approach
7 and I think that they would, as well. But what we
8 found is that if you take every other one of these
9 columns and subject it to the settlement that that
10 new load would impose, this entire structure would
11 be, in essence, demolished. The distress in this
12 unreinforced concrete would be unacceptable, we'd be
13 throwing the baby out with the bath water, it's not a
14 good situation.

15 We developed an alternative approach, which
16 from a purely structural perspective we think makes
17 sense. We do some limited demolition of the existing
18 foundation slab, we put in some new deep pile
19 foundation and we come in with -- and this is
20 literally through the manholes, probably, but a very
21 sensitive isolation of a new structure.

22 The problem is this can only accommodate a

1 two- to three-story, as I said, light frame
2 construction. And while, you know, it may be an
3 attractive approach to me, putting a new column in
4 the middle of a 14-foot bay is not a very attractive
5 solution for many others.

6 So I just wanted to say we've investigated
7 all three of these, our team has had this
8 information.

9 I'm not going to go through these, but the
10 nonstructural challenges with using this space that
11 is left over, once we do all our work, are very
12 significant because of the ceiling heights, the bay
13 size, sight lines, trying to get mechanical and
14 utilities, that into this very confined space. And
15 then also, you know, we need to connect this for
16 egress; there's only one means into this right now.
17 We have ramping, ADA, all sorts of things.

18 And then, you know, you look at this and I
19 do love the structure, but there's 4,000 of these,
20 and with all the limitations here, the real question
21 is how much of this can we absorb.

22 Just in summary, and I apologize for taking

1 so much time, we've looked at these alternatives,
2 they're covered in great detail in our report. In
3 our opinion, the proposed solution balances
4 preservation and adaptive reuse of a number of these
5 underground cells, with significant preservation of
6 the above-grade structures, with the development of
7 the site. And it seems like a very reasonable and
8 appropriate solution.

9 JUDGE BYRNE: Okay, thank you.

10 MS. BROWN: I just have one quick question.

11 BY MS. BROWN:

12 Q You mentioned that it was over ten acres.
13 The actual area of the site is 25 acres.

14 A Oh, I'm sorry. Each of the cells is one
15 acre, there are 20 of those cells, and then the
16 remainder of the site fills out at 25 acres. My
17 apologies, thanks for the correction.

18 JUDGE BYRNE: Okay, Ms. Ferster?

19 MS. FERSTER: Yes, thank you.

20 CROSS EXAMINATION

21 BY MS. FERSTER:

22 Q So I'm holding your report dated April

1 10th, 2014, the Existing Conditions and Assessment of
2 Feasibility Evaluation, and I have a couple of
3 questions about your presentation.

4 A Sure.

5 Q One question is whether or not everything
6 in your presentation that you have summarized here
7 today is expanded, the detail is in this particular
8 report, or is there additional items?

9 A I believe the only additional items that
10 we've included were in response to testimony, prior
11 testimony.

12 Q And what were those additional items that
13 are not summarized in your report?

14 A There was a lot of focus by you on the CCJM
15 report.

16 Q So going particularly to your discussion of
17 the three reuse options that you laid out here, the
18 sort of park, the interior and the overbuild, are
19 those, that discussion of those reuse options
20 described in more detail in this report?

21 A Yes.

22 Q And can you direct me to which pages of

1 that report?

2 A It's under the Feasibility Study section,
3 Pages 41 through 44.

4 Q Okay, and in particular, you provided some
5 cost estimates for the costs of some of these various
6 reuse --

7 A No, that's not true.

8 Q -- scenarios in that report?

9 A No, we did not provide any cost estimates.

10 Q No, in your presentation, I wrote down you
11 said 2,000 to \$2 million per cell cost and other
12 costs that you mentioned here. Are they set forth in
13 this report?

14 A No, I believe I made it clear that those
15 came from the CCJM report of 2000.

16 Q Okay, so none of those costs are in your
17 report.

18 A Correct.

19 Q And how about the part of your testimony
20 where you talked about the fact that you disagreed
21 with the CCJM report about the overbuild allowing
22 four stories and that you think the overbuild, only

1 one to two stories. Can you direct me to where in
2 your report that's discussed, one to two stories?

3 A Well, there was clarification provided,
4 based on the recent testimony.

5 Q Okay, so it's not in your report.

6 A Our report identifies a two- to three-story
7 vertical expansion and --

8 Q Excuse me.

9 A Our report identifies a two- to three-story
10 light frame vertical expansion.

11 Q And where is that, please?

12 A I don't know, off the top of my head, but I
13 will get that page number and so forth for you.

14 Q Okay, and so this later elaboration where
15 you now think that the overbuild could only allow one
16 to two stories, is there a separate analysis that
17 you --

18 A I don't believe I said that.

19 Q I'm sorry, maybe we should go back to your
20 frame, then, on the overbuild.

21 A Two- to three-story light frame.

22 Q Two to three stories, okay. I don't think

1 it's funny, but thank you for helping me out. So if
2 you could, the overbuild is on Page 43, Option 6, is
3 that the overbuild interior program? So was this the
4 paragraph or the place in your report where you
5 discuss the two- to three-story overbuild?

6 A I'm going to have to review the report to
7 figure out exactly where we say two to three stories,
8 but I imagine it's here. Do you want me to do this
9 now or would you like me to get back to you?

10 JUDGE BYRNE: What's the --

11 BY MS. FERSTER: (Resuming)

12 Q I mean it's really only one page, but if
13 you would like to do it later, that's fine, you can
14 come back.

15 A I would prefer to do that.

16 Q Okay, so are you involved in the
17 preservation of Cell 28, the structural work on that
18 cell?

19 A There hasn't been any work done on that
20 yet, but I hope to be.

21 Q So this is not within the scope of your
22 work as yet.

1 A No.

2 Q And are you prepared to provide the
3 Malhorta report into the record at this proceeding,
4 since it was the basis of some of your analysis?

5 A I believe it's part of the record and has
6 been for years.

7 MS. BROWN: I don't know that it's part of
8 this record and the Opponents are welcome to submit
9 it, as well.

10 THE WITNESS: The request was made by this
11 individual prior, so I imagine you have it.

12 MS. BROWN: It was at the Zoning
13 Commission.

14 THE WITNESS: Okay.

15 MS. BROWN: I'm sorry, I'm speaking out of
16 turn.

17 MS. FERSTER: But you don't plan to submit
18 it into the record as part of the Applicants' case.

19 MS. BROWN: Not at this time.

20 THE WITNESS: I defer.

21 MS. FERSTER: Okay, that's all I have for
22 now.

1 MS. MERRITT: I have just a couple of
2 questions.

3 BY MS. MERRITT: (Resuming)

4 Q Would it be possible to go Slides 12 and
5 13? So Cell 28, I believe, is the cell that's been
6 chosen for renovation, that's the bottom row, second
7 from the right corner. And then on the next slide,
8 13, it shows that it's in a severe damaged condition.

9 A Mm-hmm.

10 Q Do you have any knowledge about why a
11 severely damaged cell was the one chosen for
12 preservation, as opposed to one that's in better
13 condition?

14 A I know that it was a balance between other
15 preservation focused agenda on the site. There was a
16 great interest in the berm and in the preservation of
17 the site lines, which we've just discussed, and so
18 there was an interest on the part of the team to say,
19 "Can that be preserved," and the answer was, "Yes."
20 It probably represents more money and more
21 investigation, but that was the answer.

22 Q Do you have a cost estimate of what the

1 preservation of that cell would involve?

2 A No, I do not.

3 Q Could you put up Slide 21? This is the
4 overbuild slide. Is it your understanding that this
5 is the concept that's being proposed for Cell 28, the
6 overbuild concept, or is it a different concept?

7 A No, this work was done some time ago and
8 this was initial feasibility studies to see what
9 could be done at the site. So this was provided to
10 the team to see what they could -- it's a palette of
11 options. And I do not believe there's any overbuild
12 plan for Cell 28 that's going to be part of the
13 plinth.

14 Q Okay, I guess I stepped over a step in the
15 logic. The location of the community center, is it
16 your understanding that that's going to overlap with
17 Cell 28, or do you know?

18 A No, I believe that's the adjacent cell.

19 Q One more question about Slide 21, though.
20 So in the overbuild scenario, it doesn't say anything
21 about whether or not any access to the underground
22 would be allowed, other than for inspectors.

1 A Yes.

2 **Q And what was your --**

3 A There are many permutations of these, so I
4 tried to address them in isolation. But yes, I did
5 mention rather quickly, I'll admit, that this could
6 be done either with or without access to the
7 underground. If we needed access to the underground,
8 then all of the constraints, all the requirements and
9 the challenges of the first slide would apply, as
10 well.

11 **Q The first slide to --**

12 A I'm sorry, the first option.

13 **Q -- topside loading or --**

14 A Interior use.

15 **Q Could you go back to 12 and 13 with a map
16 of the different cells?**

17 MS. MERRITT: Is there another witness,
18 could I ask, who's going to speak to the location of
19 the community center?

20 MS. BROWN: Yes.

21 MS. MERRITT: Okay, I don't have any other
22 questions.

1 MS. BROWN: You had questions, right?

2 JUDGE BYRNE: I think I have one. Just to
3 go back to the CCJM study and the cost estimates or
4 the prices that were there, and that was just for, as
5 I understand it, the stabilization of the cells --

6 THE WITNESS: Uh-huh.

7 JUDGE BYRNE: -- for people to be able to
8 just traverse across the top.

9 THE WITNESS: Correct.

10 JUDGE BYRNE: That's correct, nothing to do
11 with cost of adding any kind of overbuild or access.

12 THE WITNESS: Two answers. So they did
13 have options for increasing or reinforcing so that
14 the building became a foundation for the overbuild,
15 so within the range of two, it went from two to sort
16 of three million per cell.

17 JUDGE BYRNE: I see.

18 THE WITNESS: We disagree with that
19 approach, fundamentally.

20 JUDGE BYRNE: Fundamentally, about --

21 THE WITNESS: The cell.

22 JUDGE BYRNE: -- the physical possibility

1 of using the cells as the foundation for building.

2 THE WITNESS: Right.

3 JUDGE BYRNE: It's really not a question of
4 increased cost in your mind, it's just the physical
5 feasibility of you doing that.

6 THE WITNESS: Exactly.

7 JUDGE BYRNE: Thank you, that's all I have.

8 MS. BROWN: I realize it's almost 12:30. I
9 don't know if it's appropriate to recall Emily Eig at
10 this point to now --

11 JUDGE BYRNE: Sure, let's do that, because
12 you said you wanted her to comment on the structural.

13 MS. BROWN: I think that would be a good
14 breaking point.

15 JUDGE BYRNE: Let's do that and then we'll
16 take a break for lunch.

17 Whereupon,

18 EMILY HOTALING EIG

19 was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BROWN:

22 Q Ms. Eig, you've have a chance to look at

1 the structural elements, the structural report from
2 Mr. Mettam. In your opinion, can you achieve
3 preservation more than what we're doing on this site?

4 A Preservation?

5 Q Yes. Of the options that he showed, is
6 there any way to use, preserve the cells -- in his
7 first option, he was preserving the cells.

8 A To the Secretary of Interior standards,
9 which would be required --

10 Q Right.

11 A -- by the deed if we were preserving them?

12 Q If you preserve them that way, would you be
13 having a project of special merit? Would you be able
14 to use this site?

15 A I don't think you can be able to use this
16 site. The level of damage that the cells have was
17 not taken into account in anything that was
18 discussed, it was just a raw cell, okay, first.

19 And the interventions that I've seen, like,
20 D.C. Water were so severe when they were actually
21 trying to save things and they were just cracking
22 them -- we saw there's an image of that I think in

1 the slides, so I think it would be very difficult to
2 because the -- I'm not sure I understand your
3 question. Please, so I can make sure I understand.

4 Q Let me ask a different question. Was there
5 a plan at one time to put the park in the center of
6 the site?

7 A Yes, there was.

8 Q And that would have been in the location of
9 the cells that have the least amount of damage --

10 A Right.

11 Q -- is that correct?

12 A Correct.

13 Q And yet, that alternative was not pursued.

14 A Right.

15 Q Why not?

16 A The placement of the park in the center,
17 well, it first seemed like a good idea when it was
18 being brought forward. But the more that it was
19 discussed, it seemed that it did not -- it wasn't
20 optimum in terms of trying to preserve. And below
21 ground, maybe it was better, but above ground, it was
22 not better, because the sense of the openness of the

1 space was gone.

2 The current plan allows that openness of
3 that southern third to keep a sense of place that is
4 so strong for the site.

5 And also, by having the openness in the
6 middle, you didn't get the benefit of the berm, the
7 experience of the berm being high at the southern end
8 and low at the northern end. There was just that
9 sort of equilibrium there, which actually worked
10 against an understanding of what had happened on this
11 site, so that it was cramped and it didn't have an
12 openness that is allowed by the southern section
13 being preserved.

14 **Q If you were to try to preserve more cells,**
15 **would we be achieving the project of special merit**
16 **proposed today?**

17 A Well, we've talked about preserving more
18 cells. The problem with preserving more cells is
19 that either it has a physical impact or a financial
20 impact that is so great on the project. I think
21 using the CCJM numbers from 2000, the two to \$2.8
22 million was just to stabilize so you could walk on

1 top of it. And it didn't take into account any kind
2 of damage that was within the cells, it was just the
3 raw cells that they proposed.

4 I don't think that you could -- you
5 couldn't access it. You don't get anything more than
6 you get right now. I mean it's like you have a
7 situation where we are going to have a park that
8 people can actually walk on, they will be able to see
9 into some cells, with a lot of remediation on our
10 part, they will see and understand it. But if we
11 were preserving more cells, the impact would be
12 almost like no different, it doesn't really gain us
13 anything, if that makes sense.

14 **Q And to reinforce it with another column**
15 **going down through the manholes and the reinforce**
16 **that it would take, is the integrity of the structure**
17 **compromised?**

18 A Yes.

19 **Q And is that good preservation?**

20 A No.

21 MS. BROWN: Thank you.

22 JUDGE BYRNE: Ms. Ferster?

1 MS. FERSTER: Yes.

2 CROSS EXAMINATION

3 BY MS. FERSTER:

4 Q In terms of the last question that Ms.
5 Brown asked you about whether reinforcement was good
6 preservation, isn't it correct that demolition of the
7 cells is probably worse preservation than the
8 reinforcement of the cells?

9 A I don't think that you can compare them
10 that way, because it's -- do you think it's better to
11 reconstruct a building that is lost, is that
12 preservation? No, it's a new construction.

13 Q Well, let me ask you --

14 A You wouldn't have any ability to go into
15 these cells with that construction. I think as Kirk
16 explained, we have a situation that we have to layer
17 on these different approaches in order to get what
18 you're talking about.

19 Q Mm-hmm.

20 A So you would be doing the overbuild with
21 the columns, these columns every seven feet, every
22 seven feet --

1 Q Mm-hmm.

2 A -- and that you couldn't go in that space.

3 Q Okay. Wholly apart from that issue, okay,
4 so I'm looking at your report, Appendix K, which is
5 the Secretary of Interior's standards that outlines
6 four treatments, approaches, and the four are
7 preservation, rehabilitation, restoration and
8 reconstruction.

9 And isn't it correct that a reconstruction
10 means all the elements, you know, contributing
11 elements of the structure are gone and you
12 reconstruct it?

13 A Yes, it's missing, this would be -- yes.

14 Q Right. So if you retained many of the
15 elements, that you reinforced the vaults so that you
16 were not wholly demolishing that, wouldn't that be
17 more like a restoration?

18 A No.

19 Q Okay, what would that be?

20 A You'd be encapsulating, essentially, the
21 cells and you would be preserving them in place, but
22 they would not be visible, they could not be accessed

1 and they would cost tremendous amounts of money.

2 Q Okay, so that would be a preservation
3 option, then, a preservation in place.

4 A That preservation option, the preservation
5 of --

6 Q Well, bad in the sense it would be costly
7 and inaccessible, but it would still be a
8 preservation option.

9 A Depending on how far it went. If you were
10 completely encapsulating damaged materials, because
11 you're not repairing materials first, you are
12 essentially creating this -- I'm trying to think of
13 an equivalent thing. There's nothing gained by it,
14 there's nothing gained by it. You can't go into it,
15 you can't touch it, you can't see it, it's
16 underground and you don't even know what it's going
17 to look like any more because each of the -- that was
18 a very pure situation that you have there.

19 Q Okay.

20 A If you worked with real buildings and with
21 real concrete, you know that they start to fall
22 apart. You could reconstruct them, we could tear

1 them down and recreate them, not preservation,
2 recreate. We would tear them all down and recreate
3 them to look like they looked by using reinforced
4 concrete and having false appearance, which is not
5 Secretary of Interior standards.

6 **Q Okay, so one of these cells is going to be**
7 **preserved so that it will be publicly accessible and**
8 **so there will be an historic record, is that correct?**

9 A We hope that is correct. Do we plan to do
10 that?

11 **Q It's possible.**

12 A No, no, I'm not saying it is possible, I
13 take great deference with that. I am very concerned
14 that it's not possible. I have expressed this to the
15 team, that I think we can do our best to preserve it.
16 I am not convinced that if we actually try to meet
17 all the codes that we have to meet, we're going to be
18 able to do it. I'm not convinced.

19 But I'm not the code expert, I just have a
20 lot of experience with this kind of stuff, so I'm
21 just the warner, I'm warning now. Let's be careful
22 what we say.

1 Q It is theoretically possible --

2 A I'm not sure it is.

3 Q -- to do --

4 A I'm not sure it's even theoretically
5 possible, I'm really not. That's how serious this
6 is. And I'm sorry, I wish I could say yes, we're
7 going to have a pure and perfect cell here for us to
8 all look at.

9 But I have been in many situations where we
10 think we're going to be able to do something and all
11 the experts really try to do it and then it doesn't
12 happen and I am disappointed. And I'm telling
13 everyone I expect to be disappointed.

14 Q So you're aware that part of the benefit
15 that has been touted for this project is the
16 preservation of that cell.

17 A Trust me -- I think you're confusing what
18 I'm saying. Every effort will be made to preserve
19 the cell, but if the cell cannot be preserved, it
20 can't be preserved. I mean, yes, we will do out
21 best. It's not going to be preserved keeping it the
22 way it is, it's going to eventually collapse.

1 Q So assuming you do the best you can and,
2 you know, the measures that you're going to undertake
3 to reinforce the cell in order to preserve it so that
4 the public can view it are possible, but, you know,
5 is this preservation?

6 A If we can, in fact, do that, if we can
7 preserve that cell and we can just do some minor
8 repair so we still have its integrity, that would be
9 great, I hope that's what happens.

10 Q Okay, and if you then went into that cell
11 and you did some more reinforcement so that you could
12 do a modest overbuild, for example --

13 A No, you've already reinforced it so you
14 could go into it and then you're doing the columns
15 every seven feet to the end of the expanded
16 foundation. You will not experience the same thing.

17 Q And I understand you would not experience
18 the same thing, but you know, many elements of the
19 integrity of the vault would be still present, isn't
20 that correct?

21 A Some elements of integrity, but it would
22 not have its integrity.

1 **Q Not the entire --**

2 A It would be so diminished that you would
3 have to have someone explain to you what you're
4 looking at.

5 Integrity implies that the resource can
6 convey its significance. With all of the remedial
7 work that's being proposed here, I doubt there are
8 many cells -- maybe there is a cell that can still
9 have integrity, maybe there are three or four
10 individual cells within the filter bed. Maybe it's
11 more. God willing, it is more. But we have a
12 situation --

13 Cell 14, which was the plan of this project
14 from the beginning to save, is now being used as a
15 water retention plant by D.C. Water. And that's
16 going to happen for ten years. Can you tell us what
17 it's going to look like in ten years?

18 **Q Are you asking me a question?**

19 A Exactly. You can't. It was a rhetorical
20 question. The point is these are structures that
21 have had -- they weren't designed to be habitable,
22 they were designed to do that. And when we start to

1 make them habitable, all kinds of things will happen.

2 Q And have you reviewed the drawings that
3 describe the structural reinforcement that would be
4 undertaken as part of, for example, one of these
5 preservation --

6 A I've read Silman's report; this is the
7 simplification of that report.

8 Q But have you actually looked at drawings
9 that actually depict the reinforcements under those
10 scenarios?

11 A Do you mean have there been actual
12 engineering drawings? No, not yet.

13 MS. FERSTER: I don't have any more
14 questions.

15 BY MS. MERRITT:

16 Q I have just a couple of questions. One is
17 just to make sure I understand what you were saying
18 in answer to Andrea's questions.

19 Is it your position that whatever is done
20 to Cell Number 28, if it becomes accessible to the
21 public, would not comply with the Secretary of the
22 Interior's standards?

1 A No, that's not what I said. I said we
2 don't know -- we would be approaching this with the
3 Secretary of the Interior's standards as the goal, as
4 we would approach every preservation project.

5 But what I was saying is that this is not
6 an easy project where we can say, "This is the wall
7 of a building, we know how it's built, we know what
8 we can do, we've done it 50 times before, it's not a
9 problem, it's a no brainer."

10 This is going to be a difficult project and
11 if everyone doesn't understand that, let me make this
12 clear. This is a very difficult project. And to do
13 what needs to be done is very costly, it's going to
14 take a lot of expertise and a lot of care. And each
15 time we go in, we don't know what the condition is
16 going to be. Every single time, it could be
17 different, it could be all the same. We don't know
18 because it is a great unknown.

19 No one has been through every single cell
20 of these 25 acres of cells and every day, they can be
21 changed. You saw that big hole. One day, that hole
22 wasn't there and then the next day, there is this

1 giant hole.

2 And we don't know, I'm just trying to be
3 realistic here. Our goal is to do it, we're going to
4 do our best, but no one can say, no one can say --
5 and Kirk, you know, with Silman, has done so many
6 very sophisticated projects and he's warning
7 everybody when you read this, you know, "These are
8 the consequences." He's saying with the physical
9 consequences and I'm saying from a preservation point
10 of view is that we will do our best to make sure we
11 can save as much as possible, we will do our best,
12 but there's no guarantee.

13 **Q So is it fair to say that you don't know**
14 **enough now about what kinds of modifications or**
15 **reinforcements might be necessary to know whether the**
16 **Secretary's standards --**

17 A We know what the minimum is, we don't know
18 what the maximum is.

19 **Q And do you have any thoughts about whether**
20 **the minimum would be consistent with the Secretary of**
21 **the Interior standards, in your view?**

22 A Sure, yes. If we can use the minimum, if

1 we can actually go in there and we can fix this one
2 part without much effort, if we know we're not going
3 to be walking on that area, we know how it's going to
4 be integrated into this design, yes.

5 But we just don't know what the condition
6 is for each particular place and we will not know
7 until it's actually done. If we went in today, that
8 isn't good enough, it would have to be more actually
9 proceeding.

10 Q I have two more questions. You were asked
11 a couple of questions about why the middle area was
12 not ultimately selected for the location of the park.
13 And my full question is if the middle area were open
14 as a park in between the two service courts, would
15 that go farther to retaining the reciprocal
16 relationship between the service courts within the
17 current plan?

18 A If this project could be done by
19 eliminating a major portion of the development,
20 allowing that to be there, that would be great. But
21 this project, as you've heard, it's a balancing act
22 of so many different goals.

1 As a preservationist, it's very easy to say
2 we want to do this, this and this. But then you say,
3 well, who's going to pay for that, how is it going to
4 be that, what are we going to do?

5 And there are so many goals that this
6 project has been going through since 1987 and this,
7 right now, is the best balance of all of them and
8 gets us so much more preservation than any previous
9 plan has done.

10 MS. FERSTER: I have a follow-up.

11 BY MS. FERSTER:

12 **Q Based on your answer to that question, I'm**
13 **just so intrigued by your statement that this is**
14 **better than any previous preservation plan. Are you**
15 **familiar with other preservation plans for McMillan,**
16 **I mean other alternative proposals.**

17 A That we have done that have been realistic
18 approaches with actual understanding of what the
19 costs and consequences of them are, we have done this
20 since 2007 and --

21 **Q Just for VMP, though.**

22 A For VMP.

1 Q Oh, I thought you were aware of some other
2 proposals.

3 A I'm aware of other proposals that I do not
4 think can meet those balances.

5 Q And are you aware of alternative proposals
6 by other developers?

7 A No.

8 MS. FERSTER: Sorry to interrupt you.
9 Thank you, I don't have an other questions.

10 JUDGE BYRNE: I don't know if you're the
11 right person to ask this, but given your comments
12 about the fact that the preservation of Cell 28 may
13 not be feasible going forward, is there in the
14 application an alternative or mitigation plan in case
15 that doesn't work?

16 THE WITNESS: I think that what I'm saying
17 is that if you're looking at it from pure
18 preservation, that using the Secretary of Interior
19 standards, that this may be -- our goal is to have it
20 look a certain way, because that will be the
21 experience that people will benefit from the most.
22 And our goal is to preserve as much as possible to

1 make sure we do it. But just everyone be aware that
2 that may take a lot more recreation than we would
3 want to do.

4 JUDGE BYRNE: I see. So you're not saying
5 that you would abandon the idea --

6 THE WITNESS: Correct.

7 JUDGE BYRNE: -- of doing Cell 28, but you
8 mean it would be more of a recreation.

9 THE WITNESS: The balance, yeah, the
10 balance would go through --

11 JUDGE BYRNE: More of a recreation than a
12 preservation.

13 THE WITNESS: Right, right.

14 JUDGE BYRNE: Okay, I understand that. So
15 did you want to --

16 MS. BROWN: I have no more redirect. We
17 have other witnesses.

18 JUDGE BYRNE: I think this might be a good
19 time to take a break. How long do we think we'll
20 need, maybe an hour, less? Less than an hour, 45
21 minutes?

22 MS. FERSTER: We have a number of our

1 witnesses who are under some time constraints and so
2 I guess could we just get a sense at this point of
3 how much longer after the break your case is going to
4 take and what the order of the proceedings will be?

5 MS. BROWN: Without cross examination, I
6 would say 35 to 40 minutes, but I think the cross
7 examination is the unknown.

8 JUDGE BYRNE: So if we're coming back at
9 1:35, then maybe you'd be done with that part of the
10 case by 2:30, even with cross examination? Maybe
11 not.

12 MS. FERSTER: I don't think so, because how
13 many witnesses have you had so far, three?

14 MS. BROWN: The remaining witnesses --

15 MS. FERSTER: Three, and it's already
16 taken --

17 MS. BROWN: -- are Bruce Leonard, Matt
18 Bell, Adam Weers, Jair Lynch, Aakash Thekkar and
19 Lindsley Williams.

20 JUDGE BYRNE: So six.

21 MS. FERSTER: Six.

22 JUDGE BYRNE: So 35 minutes sounds

1 optimistic.

2 MS. FERSTER: And how long do you intend to
3 go for today?

4 JUDGE BYRNE: Yes, that's a good question,
5 too. I can go until 5:00.

6 MS. FERSTER: And just so I can tell our
7 witnesses --

8 MS. BROWN: There's going to be a
9 continuation, essentially.

10 MS. FERSTER: Yes, yes.

11 JUDGE BYRNE: You know, I think there is
12 significant risk -- I don't know how many witnesses
13 you're planning to put on --

14 MS. FERSTER: We have a number of
15 witnesses.

16 JUDGE BYRNE: So I think it's probable that
17 there be a continuation. Nobody wants a
18 continuation, but --

19 MS. FERSTER: Maybe we could reassess after
20 you finish your case about whether or not we want to
21 break up the opposition case into two days, based on
22 time or whether we want to defer it all. Because

1 then I can e-mail or let my witnesses know we're
2 planning to show up after the lunch break.

3 MS. BROWN: May I ask how many witnesses
4 you plan on presenting?

5 MS. FERSTER: Yes. Well, the National
6 Trust has witnesses and then we have -- yeah, they
7 have two witnesses and we have six witnesses.

8 JUDGE BYRNE: Six witnesses and there may
9 well just be people who are here to make a statement.

10 MS. FERSTER: Yes, that's our witnesses,
11 that's not -- you know, that's just for the party.

12 JUDGE BYRNE: Right, so generally, if
13 people are just making a statement, we try to hold
14 them to five minutes or less and that can go fairly
15 quickly. And generally, there's not cross
16 examination, it's not necessary in those cases.

17 So I think we'll just have to come back and
18 we'll finish the Applicants' case and just sort of
19 see where we are. So we'll commence again at 1:35.

20 (Whereupon, at 12:49 p.m., a luncheon
21 recess is taken.)

22 - - -

1 underground cells.

2 JUDGE BYRNE: Specifically to the reuse of
3 the underground cells?

4 MS. BROWN: Potentially.

5 JUDGE BYRNE: Oh, I see.

6 Whereupon,

7 BRUCE LEONARD

8 having been previously duly sworn, testified as
9 follows:

10 VOIR DIRE EXAMINATION

11 BY MS. FERSTER:

12 Q Just a couple of questions. Mr. Leonard,
13 have you been qualified as an expert in retail design
14 before the Mayor's Agent in the past or any other --

15 A Not in the past, no.

16 Q And can you say a little bit about your
17 educational background, the nature of your degrees?

18 A I have two degrees, I have a degree in
19 urban design and master planning and I have a degree
20 in architecture and I'm registered in the District of
21 Columbia.

22 Q But you're not seeking to be qualified as

1 **an expert in architecture for this purpose?**

2 MS. BROWN: It's retail design, which
3 entails architecture.

4 JUDGE BYRNE: So the design of space for
5 retail, that's what the topic is.

6 MS. BROWN: Yes.

7 JUDGE BYRNE: Okay, I see.

8 BY MS. FERSTER: (Resuming)

9 **Q Will your testimony describe a little bit**
10 **about your background in designing retail space?**

11 A (Nods in the affirmative.)

12 MS. FERSTER: So I'll reserve my position
13 on this qualification until after I hear a little bit
14 more about his background.

15 MS. BROWN: I'm happy to have him describe
16 his background right now.

17 JUDGE BYRNE: Why don't we hear more about
18 your background, Mr. Leonard, so we'll get that
19 resolved so we can get to the substance of your
20 testimony?

21 THE WITNESS: Sure. I'm a managing
22 principal at Streetsense. Streetsense is a

1 multidivisional company that has expertise in retail
2 and mixed use. We have 105 employees.

3 I've been registered about 25 years, been
4 in practice almost 30 years. I've been working on
5 probably five of the top ten mixed use projects in
6 the country and have, you know, just a breadth of
7 knowledge about integrating mixed use and designing
8 effective ground plans and stores.

9 So we work on hundreds of projects a year
10 and right now, we have about 245 projects active in
11 our office.

12 DIRECT EXAMINATION

13 BY MS. BROWN:

14 Q And Mr. Leonard, do you have specific
15 information on how retail succeeds and what makes it
16 fail --

17 A Yes.

18 Q -- and how you design around that to make
19 sure that it can succeed?

20 A Yes.

21 JUDGE BYRNE: Okay, very good, please
22 proceed.

1 THE WITNESS: Okay, first slide. So what
2 I'd like to do first, before we get into the cells,
3 is really just talk about good commercial
4 fundamentals for both retail and other commercial
5 requirements.

6 They're really important because
7 essentially, they help establish value to the tenant
8 user. And normally, whether it's a retail tenant,
9 office tenant or other commercial user, they have a
10 series of criteria that need to be matched. And when
11 you stop matching those criteria or checking the
12 boxes, as we used to say, they start to lose interest
13 in the site, you're starting to create barriers for
14 entry and reducing the value and opportunity of the
15 real estate.

16 So we have a whole division that focuses
17 exclusively on doing what we call retail peer reviews
18 and evaluation of space for our clients, so that when
19 their projects are complete, they're fully leasable
20 and they can get the highest and best tenants to
21 occupy their project.

22 So generally, this is kind of a primer.

1 Retailers look for an 18-foot floor to floor heights,
2 typically, as the industry standard. 16 minimum feet
3 clear is preferred. So that's kind of a general.
4 Will they take lower space? Yes, but usually, it's
5 less appealing to them.

6 Office, which is pretty standard in the
7 District, 12-foot floor to floor, nine feet minimum
8 clear. Column spacing in retail -- in a small shop
9 retail, it's got to be greater than 20 feet. For
10 large format retailers, like a Target or a grocery
11 store, 30 feet on center is preferred.

12 So they like spacious column spacing, so as
13 you can see in the top slide, you know, the merchants
14 can kind of display their wares. There you see these
15 large expanses. They like high visibility and ease
16 of access.

17 Basically, on specialty merchants, they
18 like the customer to be able to see, have a lot of
19 transparency, see the merchandise, be able to kind of
20 make decisions about what they want to see and touch
21 and that sort of facilitates the act of shopping.

22 When it starts to get compressed, consumers

1 can't see the merchandise, often miss it or start to
2 check out mentally and then leave the store. So they
3 really focus on having an expansive floor plan.

4 Ground level retail, typically, is really
5 preferred by our clients. So once we start
6 suggesting they go below grade or above grade,
7 usually, we see a rent reduction of about two-thirds.
8 So if it's a \$60.00 rent we're asking on H Street or
9 14th Street, if they're in the basement, you'll be
10 lucky to get 20. And that's because it does affect
11 their operations and usually, the quality of that
12 space is diminished.

13 They have both, whether office or
14 particularly retail and restaurants, they have heavy
15 MEP requirements and high tonnage demand for cooling.
16 Restaurants can get as low as one ton per hundred
17 square feet and I've seen, not in this market, it get
18 as low as one ton per 75 square feet. So that
19 generates the need for heavy cooling equipment, which
20 can be very cumbersome. A 30-ton unit is about the
21 size of a small semi, so you can imagine when you
22 start to extrapolate that.

1 Anchor stores like to be well lighted and
2 have spacious shelving for merchandise. Again,
3 that's kind of obvious, but they like the merchandise
4 to be well displayed and clear and they want ease of
5 use and circulation by the customer.

6 And then office spaces, too, today, if you
7 look at what's current, is they like ample natural
8 light and spacious column spacing. So if you're
9 designing a building downtown, the industry standard
10 is 45 feet clear from the border wall to the
11 perimeter and they like to spread out the columns as
12 wide as possible, if not eliminating them altogether.

13 So when we start to look at the underground
14 cells -- and a lot of this has been described before,
15 but I'll just repeat it -- right now, that column
16 space is 14 foot on center. For commercial purposes,
17 this is extremely tight and marginal, so in the
18 criteria of checking a box, this would be a red flag
19 to most national brands and it would be almost a
20 nonstarter for anchor users because they wouldn't be
21 able to get their shelving in any efficiency.

22 The low ceiling height is well below what's

1 considered a good threshold for retail. And even in
2 restaurants, they prefer high ceilings because
3 they're trying to -- the dining experience is about
4 creating an experience and atmosphere. And if you
5 think about the restaurants you like to eat in, you
6 can kind of, in your mind's eye, kind of visualize
7 what they're like. And most often than not, they've
8 got high, expansive ceilings and lots of romantic
9 lighting.

10 The same thing with specialty retailers.
11 Really, it's the column spacing is a nonstarter for
12 them because it doesn't allow them to effectively
13 display their wares.

14 Limited accessibility. We did an
15 evaluation of Cell 14 and there's quite a lot of
16 challenges to getting ADA access and servicing and
17 loading to it. It's achievable, but it requires
18 extraordinary efforts to do that.

19 And we haven't even delved into the
20 occupancy requirements, egress, stairs, all those
21 components, which will be considerable when you
22 consider for something like a market use, it would be

1 assembly and it would dictate, you know, pretty
2 serious life safety requirements on egress.

3 And then again, the MEP challenges, you can
4 see from the space, with the tight column spacing and
5 the compressed -- you know, typically, you need about
6 two feet, minimum to run duct work and electrical
7 chasers and things like that and lighting. You're
8 really getting low in these cells for any kind of
9 commercial use.

10 If you put the duct work in the slab or
11 below the slab -- and I'll leave that to the
12 structural engineer -- but given the loading nature
13 of this, you could be creating some serious issues in
14 undermining the structural integrity of the slab.
15 They can be overcome. I'm just saying these are
16 significant challenges to the tenant going in here.

17 So kind of to sum up, some of this has been
18 said. I mean one of the issues we have and we'll be
19 wrestling with is, you know, these were really not
20 designed for human habitation, it's kind of unique
21 that way in that, you know, it's a sand filtration
22 bed. So trying to occupy it, you know, it never was

1 intended for human use.

2 The unreinforced concrete is not permitted
3 by code today and it's highly unstable, so we're
4 going to have to overcome some serious life safety
5 issues as we start to occupy these spaces. They're
6 significant and to a certain extent in my mind,
7 unknown, in terms of what the ramifications really
8 will be.

9 They have no light and limited air, which
10 from our standpoint, on other commercial uses other
11 than retail, you start to limit the options. Because
12 you know, whether you're a office space or a market
13 hall, you know, the need for natural light I think is
14 incredibly important. How we resolve that is going
15 to be a significant issue for us.

16 The ADA access, again, is extremely
17 challenging. I think it's resolvable, but it's going
18 to require extraordinary efforts to get people in
19 wheelchairs and with, you know, motor disabilities to
20 access the space.

21 The fact that they don't support
22 construction above for cooling equipment, any of

1 those types of things, that's going to be a challenge
2 for us.

3 And then, you know, the fact that the cell
4 integrity, as the structural engineer outlined, you
5 know, just from our standpoint, looking at it from a
6 retailer or office eyes, it's presenting a lot of
7 challenges and unknowns, which is a risk for anybody
8 that's attempting to occupy the space.

9 So just some final thoughts. You know, to
10 me, this is not a regional site. If you add up all
11 the cells, there's about 870,000 square feet, which
12 would be definitely a regional use for any commercial
13 activity. I mean the density that the site could
14 support is not even close to that. I think it really
15 wants to trade to the local neighborhood and serve
16 the local neighborhood.

17 And the site generally lacks close
18 proximity to Metro, so from an office standpoint and
19 retail, you're not relying on that Metro traffic, per
20 se. You know, the retailer who will look at this
21 site is really having to stand on its own and serve
22 the local community.

1 The retail tenant demand is, again,
2 sustainable at a neighborhood density, which I think
3 the target mentioned of 80 to 100,000 feet is
4 appropriate for this site and I think anything above
5 that would be very aggressive. And when you get
6 aggressive, what you do is you start to run out of
7 the best and highest tenants and you start to run
8 into the more marginal tenants, which affects the
9 tenancy, and you're sort of searching to fill slots
10 and it degrades the project. So I think we try to
11 find that balance of what the real market can
12 support.

13 And then the significant design and cost
14 challenges, I mean we think, you know, in Cell 14,
15 we're going to give a really good effort to get some
16 outstanding users in there, but it's a really
17 restricted supply of tenants that we can put in
18 there. It's going to be a lot of challenges and
19 sales work to convince them to go into the space and
20 you know, it's not going to be an easy and
21 straightforward effort.

22 And I think from our standpoint, too, and

1 we do this on our leasing side -- getting the tenant
2 in there, to me, is one thing. But getting them to
3 have a sustainable business where they're doing
4 enough sales per square foot to pay some kind of rent
5 and operational costs and pay their staff is another
6 thing.

7 So we really have to be diligent in making
8 sure whatever uses we put in there can really sustain
9 themselves in a realistic way. Otherwise, we're just
10 going to put them in at cost and then they'll be
11 vacant in three months when they're not performing.

12 So as we go through this exercise, we're
13 going to have to put a lot of attention to really
14 putting in the right uses, which are extremely
15 limited and making sure that their business can be
16 sustainable at the below grade environment.

17 That concludes my presentation.

18 JUDGE BYRNE: Do you have anything?

19 MS. BROWN: Just a couple of quick
20 questions.

21 BY MS. BROWN: (Resuming)

22 Q So you focused on Cell 14 as the potential

1 retail use. If you had to try to do that for any
2 other cells, what kind of challenges would you face,
3 or multiple cells?

4 A Well, the one thing that would come to my
5 mind is, you know, there's a limited amount of
6 qualified users. And the other thing is what the
7 column spacing says to me and the scale of the space
8 is it's best suited for small scale users. That
9 would be a small restaurant, a small neighborhood
10 service kind of -- maybe a salon, something like
11 that. Those don't have a lot of square footage and
12 when each cell is 40,000 feet, that's the size of
13 almost a pretty big grocer.

14 So the challenge we have of expanding the
15 cells from a commercial standpoint is the cells
16 aren't set up for the bigger format users which will
17 allow you to elevate that project's square footage.
18 So we really are limited to a much more fine grained
19 approach to the tenant mix that I think is best
20 suited, which is limited.

21 I just think I really perceive the site as
22 kind of a neighborhood scale, where the people that

1 live and shop around it are frequenting it, you're
2 not getting people from five miles away and other
3 sections of the city coming here, it's going to be
4 trading much more locally.

5 **Q Thank you. You referred to means of**
6 **egress. Because this only has one way in, could you**
7 **explain what that one way and out --**

8 A Well, the one way in is not really usable.
9 It was designed for an industrial use to get large,
10 heavy loads of sand and carts, probably when they
11 were hauling the sand out.

12 **Q That's that filter bed door?**

13 A Yes, so I don't know what the slope is on
14 that, but it's definitely above ADA standards, it's
15 quite precipitous. So what we have to do is, you
16 know, when you go back to the section, you'll see
17 that to get an ADA ramp, which is something very
18 shallow, I think we estimated it was about a hundred
19 feet to 200 feet a run before we could get -- because
20 you can't just go straight down, you've got to land
21 it for a bit to get it, but it's a lot of distance to
22 get somebody down.

1 We could add an elevator core, but then
2 we'd have to reinforce all the cells. That might be
3 another alternative. But then how does that
4 interface, you know, with this and you know, how is
5 that all functioning.

6 And then we haven't even really examined,
7 as I said, how you get people out. So 20,000 people
8 of assembled use could be quite a few people, say if
9 you tried a market hall. So this would be four or
10 five stairways out of here to meet the life safety
11 code, that's something, and where they're coming up
12 from the street, how that gets treated.

13 And then like I said, for me, how we're
14 handling the heating and cooling equipment for this
15 facility is going to be a problem to solve and it's
16 not going to be insignificant equipment, it's going
17 to be substantial.

18 **Q One final question. Are you familiar with**
19 **the Dupont Circle Underground and if you are, do you**
20 **think there are any parallels to the difficulties?**

21 A Yeah, I think that's a really good example.

22 In fact, you know, I've practiced in the District

1 for almost 30 years and I think the three companies
2 that have been consulted to see if they could solve
3 the problem, most recently Streetsense, brokers
4 toured it last year, internally, I mean they're just
5 not interested in the exterior.

6 And brokers, if you understand them,
7 they're self-employed, they only earn the deals that
8 they close, so they're very focused on things that
9 are achievable and they don't like to waste their
10 time on deals that really won't bear fruit. We had
11 15 brokers that had zero interest in the project at
12 all. It's extremely challenging for the reasons I
13 outlined for the retail tenants.

14 One thing I'll add is a big thing we've
15 seen since the late -- when you're talking about
16 national retail brands is we've done over 500
17 Starbucks in the region. In the heyday, we were
18 doing 52 a year as our record. And the manager was a
19 woman for Starbucks, she blew five locations. She
20 was fine, she had 45 deals to show the committee that
21 she had done a great job. She's doing three this
22 year. So if she blows a location, her job's on the

1 line.

2 So what you're seeing -- and that's why
3 we're spending so much time with residential and
4 office developers, getting the fundamentals right.
5 Because if your ceiling type is not right or you're
6 not getting the right storefront or they don't like
7 the HVAC requirements, they're passing on the site.
8 They're not going to put their jobs on the line to
9 take a risk. And that's Starbucks as an example, but
10 you could go down the list of national brands and
11 they're all the same. So real estate today in the
12 national markets gets a tremendous amount of
13 scrutiny.

14 MS. BROWN: Thank you, that's all I have.

15 JUDGE BYRNE: Okay, Ms. Ferster?

16 MS. FERSTER: Thank you.

17 CROSS EXAMINATION

18 BY MS. FERSTER:

19 Q So in your experience in doing this design
20 and execution of mixed use projects, have you been
21 involved in projects that involve the adaptive reuse
22 of historic buildings or structures to small scale

1 uses?

2 A Yes.

3 Q And would you agree that most historic
4 structures, at least many historic structures, would
5 not satisfy the specifications that you outlined that
6 a large retailer or big box store would require, is
7 that correct?

8 A Well, I'll give you an example of one I
9 did. I did a building years ago in the meat packing
10 district, which was an old warehouse. Originally, it
11 was a meat packing place where they slaughtered all
12 the meat which came in from New York.

13 And basically, we were able to convert that
14 into effective retail space because fortunately, in
15 that building, we did have 18 -- it was designed as a
16 factory, so it had very spacious heights and we were
17 able to effectively reuse it.

18 I mean it was a building that was designed,
19 it always had humans working in it working, so it was
20 fairly straightforward, so it was a commercial
21 building. So it was like converting a kind of
22 factory to -- and I've had success converting

1 investor buildings to apartment lots, things like
2 that.

3 Other buildings, you know, sometimes it is
4 a challenge and when it's a challenge, we feel
5 sometimes it's not an option, you know, and sometimes
6 you just have to say that.

7 Q And in terms of the smaller buildings, for
8 example, historic buildings on a main street that
9 might date to the 1800s that don't have the kind of
10 vertical ceiling, with the other kind of requirements
11 that you --

12 A Yes.

13 Q -- laid out for the larger retailers,
14 wouldn't you agree that many of these historic
15 buildings have, nonetheless, been successfully
16 adapted for retail use, perhaps not by big box
17 stores, but by other users?

18 A Small users will fit. I'll give you an
19 example. Cleveland Park, if you know that building
20 that's on the west side of Connecticut, when you come
21 right out of the Metro -- so when I was with
22 Starwood, we developed that. And it had nine-foot

1 ceilings and marginal tenants that were barely
2 getting by.

3 And what we ended up doing was taking the
4 second floor out of that space and creating this
5 large space and we were able to totally retain the
6 building and upgrade the restaurant significantly.
7 And we put a hair salon in there and some other
8 specialty users, totally were able to upgrade the
9 tenant mix. But it did require intervention on the
10 ceiling heights, they never would have gone in,
11 otherwise. But to answer your question, smaller
12 buildings lend themselves to smaller tenants, very
13 much so.

14 Q And have you been involved in the adaptive
15 reuse of what we might call unusual structures? And
16 I'm thinking particularly of things like the Viaduc
17 des Arts in Paris. I don't know if you're familiar
18 with that, which is an elevated earth, you know,
19 stone embankment, a rail line that's elevated in
20 Paris, where they've actually carved out retail
21 spaces in that embankment.

22 Are you familiar with any of those sorts of

1 creative, adaptive reuse projects where these unusual
2 structures have been adapted for retail uses?

3 A Nothing that unusual. I've seen examples
4 of old industrial buildings, like Granville Island in
5 Vancouver that got converted.

6 JUDGE BYRNE: Granville Island?

7 THE WITNESS: Yes, Granville Island. I
8 went to school there in '87 and it's still a viable
9 market today, it still thrives.

10 BY MS. FERSTER: (Resuming)

11 Q And just to be clear, your testimony -- I
12 didn't hear you say that it was impossible to
13 adaptively reuse these underground cells, for example
14 for small scale users. You just said that there are
15 difficulties, is that correct?

16 A Yes, and I'd say there's a limited supply
17 of tenants that could fill. So one is a technical
18 problem of adapting the space; the other, to me, is a
19 market demand. There's just a limited pool of viable
20 users that could even attempt it. And it's small.
21 And when you're given the square footage of 870,000
22 square feet of cells, I mean you're not -- you have

1 like one percent you could probably occupy.

2 Q And if one had a very special place that
3 one was really trying to adaptively reuse that for a
4 small scale user, how would one go about soliciting
5 those special users who would be interested in having
6 their business in a historic structure? Would you do
7 an RFP? How would you go about that?

8 A First, we'd probably internally try to
9 think of what -- because you know, we deal with
10 hundreds of tenants a year in different formats. I
11 would try to think of what users we feel in our
12 professional opinions would make sense. And we would
13 probably get a story telling package together and go
14 out and try to engage interest and I think it would
15 be a heck of a sales job.

16 We'd also be concerned about the
17 sustainability and we'd have to do a lot of due
18 diligence to make sure -- like I said, it's one thing
19 to get a tenant in the space; it's another thing to
20 keep them in business. You know, we're representing
21 the tenant, we have their interest at heart, and we
22 don't want to just get the commission. We want to

1 make sure that we think they can be successful there.

2 Q And do you know whether there are firms
3 that do this kind of retail design that specialize
4 specifically in the small scale users and, you know,
5 unusual spaces?

6 A Well, we do hundreds of stores a year all
7 over the city. If you go on H Street, probably most
8 of those restaurants, or down 14th Street. So we do
9 do really cool, high end design in funky spaces, but
10 usually, they're at grade and they're in cohesive
11 environments. This is not that case.

12 I think everybody said this is a really
13 unique site with unique issues. It's a problem to be
14 solved that hasn't been solved many times and it's
15 got a lot of challenges.

16 Q So if this were your project and you were
17 specifically told that you wanted to solicit tenants
18 for this unique space, one of the things you
19 mentioned is you'd go out with a story board. And
20 then what are some of the other things that you would
21 do to identify these unusual or unique small scale
22 users who might be interested in a space that didn't

1 **meet big box retail specs?**

2 A Well, to me, since it's going to trade at
3 the neighborhood level, it would have to be relevant
4 to the neighborhood. So you know, say it was an area
5 that -- I'm going to take this area out here. Say I
6 had a problem solver and the demographic was average
7 household income of 45,000, you know, dollars, so the
8 household made -- I wouldn't go out and try to find
9 Tiffany's because that's not going to be relevant,
10 right?

11 **Q Mm-hmm.**

12 A So it's finding that mix that can serve the
13 local market that makes sense is how you approach it
14 because it's going to be trading -- people are going
15 to be walking to the site or driving very short
16 distances, that's who's going to patronize this site
17 and make it viable. So I would be trying any viable
18 tenant mix, making sure that it resonated to the
19 local market, number one.

20 **Q But you've never been asked to do that?**

21 A Uh-uh (shakes head in the negative).

22 MS. FERSTER: That's all I have.

1 MS. MERRITT: I have just one question.

2 BY MS. MERRITT:

3 Q Can you give us a sense of some of the
4 special challenges and problems and issues involved
5 in trying to attract a grocery store to this site, is
6 that within your area of expertise?

7 A Somewhat. I would say, like I said --

8 MS. BROWN: I'm going to object because
9 that really wasn't his scope of his testimony, about
10 a grocery store user here, it was really just about
11 retail and --

12 MS. FERSTER: You'll have another witness
13 on that, right?

14 MS. BROWN: On the grocery store?

15 MS. FERSTER: Yes.

16 MS. BROWN: Right.

17 JUDGE BYRNE: Okay, Mr. Leonard, thank you
18 very much.

19 THE WITNESS: Great, thank you.

20 MS. BROWN: Our next witness is Matt Bell,
21 a master planner and architect for this, and I'm like
22 him qualified as an expert in architecture and master

1 planning. And I have his resumé in my stack here.

2 (Exhibit 4 is marked for
3 identification.)

4 JUDGE BYRNE: Thank you.

5 Whereupon,

6 MATTHEW J. BELL

7 having previously been duly sworn, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. BROWN:

11 Q Mr. Bell, have you testified before other
12 D.C. agencies as an expert in architecture and master
13 planning?

14 A Yes, I have.

15 Q Could you name a couple of them for the
16 zoning commission?

17 A Yes, BZA, Zoning Commission and HPRB, I
18 qualified for all three of those.

19 MS. FERSTER: No objection.

20 JUDGE BYRNE: All right, we will qualify
21 you as an expert in site planning and architecture.

22 Good, thank you. So please proceed.

1 THE WITNESS: Well, good afternoon. My job
2 today is to walk you through the master plan and to
3 talk about the way in which we have provided an
4 exciting synthesis of development and preservation of
5 open space for this project.

6 In the end of the day, when this project is
7 built, through our master plan, people will know it's
8 McMillan. They will always know it's McMillan
9 because of the special features and the careful
10 integration of those three elements into the plan.

11 What I'd like to do first is to walk you
12 through how we got there and talk a little bit about
13 some of the issues relative to the site and then talk
14 about some of the things that we worked through with
15 the Historic Preservation Review Board and the Zoning
16 Commission and some of the things that that means for
17 us moving forward.

18 So Emily has talked about the site's
19 characteristics of the 25 acres, part of the 92-acre
20 landmark. And Kirk Mettam and Bruce have talked
21 about some of the issues related to both the
22 structure and the viability of retail on the site and

1 some of the challenges there.

2 It's my job as a master planner to bring
3 the constraints to bear on the site in a creative
4 way, in a way that deals with making a great place
5 for the citizens of this city and the neighborhood,
6 in a way that makes a viable development program so
7 we can have the activity and the vitality that we all
8 love in great places and great neighborhoods.

9 And the way to address specifically this
10 context, such that the master plan for this site not
11 only embraces the landmark and takes the best aspects
12 of the characteristics of the landmark, but also
13 takes the best aspects and characteristics of the
14 context, which is different on all four sides.

15 On the east side, we have Stronghold, which
16 is a small townhouse neighborhood and the Glenwood
17 Cemetery and further afield, Trinity and Catholic
18 Universities. On the south, we have the Victorian
19 rowhouse neighborhood of Bloomingdale. On the West
20 side we have further afield, the Howard University
21 and some of the neighborhoods to the west, and also,
22 the balance of the rest of the 92-acre landmark.

1 What we also have to the north is the
2 Hospital Center, the Children's Hospital and the
3 Veterans Affairs Medical Center.

4 And what the site sits in is the middle of
5 a context where we have walkable streets and blocks
6 to the south, we have a small rowhouse neighborhood
7 here to the east, and we have really a kind of
8 suburban layout style hospital complex with parking
9 lots and tall buildings, up to 129 feet or so, off to
10 the northwest.

11 There's really no center in this
12 neighborhood, but this site offers us the opportunity
13 to create a great place that will benefit people who
14 work here already, that'll benefit the residents of
15 Bloomingdale, Stronghold and the other residential
16 neighborhoods, benefit people living further to the
17 east or going to school at the universities in those
18 areas, and also have benefit for people over on the
19 west side, as well.

20 And like I mentioned, this plan, one of the
21 reasons it's significant, it is a creative synthesis
22 of preservation, open space and development, and it

1 is appropriate to both contexts, the context of the
2 landmark and the context of the city around it.

3 In developing our master plan, we developed
4 four themes, health, water, preservation and
5 sustainability. Clearly, you've heard about how this
6 site was built as a place to enhance the public
7 health in the beginning of the 20th Century to
8 providing clean drinking water.

9 We take that theme forward with some of the
10 water that we'll be introducing on the site that will
11 be used for other purposes, such as recreation or
12 perhaps treating stormwater. Right now, the site
13 doesn't have stormwater treatment. We're using that
14 as a theme that you'll see.

15 Preservation, Emily has spoken to aspects
16 of preservation in the site, where we're retaining
17 the north and south service courts, the above grade
18 structures and creatively proposing the possibility
19 of reusing cells in the park and in the north court
20 for the retail district.

21 And sustainability, sustainability not only
22 in terms of rain gardens and treating stormwater on

1 site, but sustainability in terms of making a plan
2 that begins with the settlement pattern, begins with
3 making a place where people can walk, shop, recreate,
4 play Frisbee with their kids, walk their dog, go to
5 the community center, where they could work during
6 the day.

7 It's a place where you don't have to move
8 two tons of steel, as in your car, to get a quart of
9 milk. And that will be an important feature of this
10 moving forward, to provide for the possibility of
11 more walkability in our city, which is a very
12 significant benefit.

13 These themes have been developed in the
14 course of our engagement with the community outreach,
15 feedback from regulatory agencies, the Historic
16 Preservation Review Board and lots of community
17 meetings as they incorporate the details. You will
18 know it's McMillan by the themes.

19 Our master plan. We had a very productive
20 and fruitful dialogue with the Historic Preservation
21 Review Board and where we ended up is not where we
22 started, I'm proud to say, and I think we ended up

1 with a much better plan as a result of our dialogue
2 and their feedback. But they haven't been the only
3 ones weighing in, we've gotten feedback, as well,
4 from the Office of Planning and the community and all
5 sorts of folks.

6 And it's very common when doing a large
7 master plan that things change over the course of
8 time, that they're going to change as needs are
9 known, as issues are vetted and understood. And this
10 has been a project that has had, you know, it's had
11 its challenges in terms of getting our arms around
12 all the different issues, because there are
13 significantly unusual issues here. But I think the
14 plan we're bringing to you today is really something
15 that is about McMillan, but adds ever so much more.

16 So the Historic Preservation Review Board,
17 in giving out their approval, challenged us to come
18 up with something special and said, "Tell us what the
19 roots of McMillan are, tell us what the DNA is. Tell
20 us what you understand about the site.

21 So what I want to walk through first are
22 some of the most salient aspects of the master plan,

1 both in terms of how they originated with the
2 original plan and talk about how they're applied to
3 the master plan.

4 So what you see first is the tripartite
5 organization that Emily Eig spoke about, these three
6 land-based, separated by these two service courts,
7 the two service courts, which have the characteristic
8 buildings and features and the service courts.

9 The third is the plinth, the plain.
10 Olmsted called it the plane, our team called it the
11 plinth. As the grade falls around the site, this
12 seems to emerge out of the ground as a sort of -- we
13 likened it to almost sort of an aircraft carrier with
14 this big plane.

15 Next of course, important as well in terms
16 of our understanding of the views across the site,
17 across the site from North Capitol. The first,
18 across the service courts and our park in the south,
19 which I'll talk about in a little bit, memorializes
20 that view.

21 And finally, the Olmsted Walk, this very
22 creative walk that Olmsted invented simply to allow

1 the public to see parts of the plane, without
2 permitting them to go out there. We are remaking
3 that, reestablishing that, using that as a signature
4 element of the master plan.

5 So what are doing? We have a tripartite
6 organization. We have the health care buildings in
7 the north there with Cell 14 and the healing gardens.
8 We have the center part that will be mixed use,
9 residential area, and then we have the park area to
10 the south. So each of these three areas are
11 distinct, in and of themselves.

12 The service courts are maintained and
13 enhanced. The historic features in them will become
14 part of the new landscape of the open design. In the
15 north, it will be a mixed use environment, we'll show
16 some pictures of that. And in the south, part of the
17 eight-acre overall park in the southern part of the
18 site. They'll be enhanced. And these reports are
19 always used for traffic, as well.

20 The plinth I mentioned is maintained and
21 we'll show a slide of that in a second. The Olmsted
22 Walk is remade and reestablished around the perimeter

1 of the site there, so the site pulls back from the
2 edges in order to give space to the walk so you can
3 see it in its continuity, even recall the curvy
4 aspects at the north end.

5 And there are views across, significantly
6 in the north and south service court here, the views
7 across and of course, as I mentioned before, the
8 views across the park in the southern third of the
9 site. It's very important to be able to see across.

10 The underground cells. We have
11 strategically chosen these, so that this cell can
12 play an important roll in the future life of the
13 north service court.

14 Bruce Leonard talked about some of the
15 challenges with retail. We believe that by including
16 retail in the north service court that is designed to
17 market standards, we stand a greater chance of
18 including something unique in Cell 14 in the
19 northeast corner. So we think this is a possibility
20 for that and that's one of the reasons why we located
21 it.

22 The other reason is that we pulled the

1 buildings back from the edge of North Capitol Street
2 so that these buildings wouldn't block the view
3 coming down North Capitol. Because if you know this
4 site, you know that there's a very prominent view of
5 these silos. So the buildings pull back, those silos
6 are exposed and the Cell 14, so there's a sort of
7 pamphlet set of the site right there and allowing
8 those views.

9 And then in Cell 28 in the park,
10 incorporating it as part of the lower level, so
11 you'll be able to be in the community center and see
12 into the lower levels of Cell 28 as part of this
13 large park.

14 One of the challenges, of course, is making
15 decisions about where this sort of strategy is best
16 deployed. We believe that these two places are the
17 places where the experience of that historic aspect
18 of the site will be most profound. We think that
19 that's an important part of the concept of the master
20 plan.

21 We have stormwater management features
22 throughout. Right now, the site is lacking these

1 stormwater management features. In the north service
2 court, rain gardens, Half Street contains a linear
3 rain garden and then the south service court contains
4 a rain garden, as well across, moving east-west. And
5 the southeastern portion of the park will have a
6 stormwater pond and rain gardens, as well.

7 And this is the result of an understanding
8 of the geohydraulology of the site that I'll show in a
9 couple of minutes here. But we have stormwater
10 features throughout and these will be didactic
11 features, people will see them and understand how the
12 site's performing, recalling again the water in the
13 whole master plan theme.

14 Parks, healing gardens with the health care
15 buildings at the north, Cell 14 there, making that
16 signature opening into the site, and then the eight-
17 acre park, including the south service court at the
18 bottom third, located in a way so that this park not
19 only can be part of the plinth and memorialize the
20 reading of the plinth, but also be greater access to
21 the Bloomingdale community and other communities to
22 the south.

1 We had earlier schemes, which I'll show
2 you, that had the park in the center. We felt after
3 some discussion with the community that this would be
4 a park that would be seen as more of an asset to
5 communities, not just surrounding the park in the
6 center, but also communities to the east and to the
7 south.

8 The street network that reconnects McMillan
9 to the city fabric. Oh, we have the north and south
10 service courts. Right now, this dies dead-end here.
11 We'll be introducing ramps so that this will be able
12 to be connected here through to First Street, so that
13 this will be connected all the way across. The south
14 service court will also be a place where vehicles can
15 enter and connect to the street network. There will
16 be access to the community center here from the south
17 service court there.

18 And know this as well. We have Half Street
19 as our main spine, a small set of streets that are
20 drop-offs for the health care buildings. But notice
21 the orientation of the streets. We have streets and
22 sidewalks throughout that allow for greater mobility,

1 but also the orientation of the blocks organized in
2 such a way to refer to the north-south connection or
3 a visual relationship between the north service court
4 and the south service court.

5 Emily Eig talked about the coherence of
6 that relationship. You'll be able to stand -- and
7 I'll show a picture of this -- and see the historic
8 elements if you look north and south on these
9 streets.

10 Health care facilities in the north here
11 and also on the southern side of the north service
12 court. Multifamily buildings located here, this one
13 with a grocery store and, also, these with retail on
14 the ground floor and then rowhouses.

15 What's important is we have buildings that
16 describe the space of the street throughout. So we
17 have what's called positive surveillance, eyes on the
18 street. McMillan will be a place where people will
19 see what's going on. They'll feel good about being
20 in the neighborhood because they'll know that there
21 are buildings close to the definition of the streets
22 and they'll be able to see everything that's

1 happening in the public space.

2 The community center, about 18,000-square
3 foot community center that navigates the change in
4 grade from the upper level of the park to the lower
5 level of the park. And then our retail frontage
6 along the north service court here at the base of the
7 health care buildings and at the base of these
8 buildings, as well.

9 Community focused retail. We worked a lot
10 with the community in terms of listening to what
11 their needs were and understanding how to integrate
12 that into the plan. This sort of DNA will sort of
13 memorialize McMillan, you will know it's McMillan.

14 So this gives you a summary of the program,
15 I won't go through this in detail. But you can see
16 the way in which the park now on the south relates
17 more to the neighborhoods to the south. The health
18 care buildings complex relates to the health care
19 buildings to the north.

20 And it's clear that when these are built,
21 people from these buildings here will walk over and
22 use the retail or maybe perhaps they'll have business

1 in these buildings and will begin to transform what
2 is a very suburban part of Washington with our
3 project here. And then the streets and blocks of the
4 center emphasizing the north-south connection of the
5 north and south service courts, all ringed by the
6 Olmsted Walk.

7 So the berm, an important characteristic
8 here, some historic pictures on top, some pictures of
9 what it's like today. Since the site's been fenced
10 off, it's clear that, you know, most people probably
11 understand the site today by understanding the berm.

12 This is an isometric of our project without
13 most of buildings. There's the south service court,
14 the north service court and the community building.
15 What you can see is the way in which in our design
16 the berm is preserved and memorialized as the
17 perimeter of the site.

18 This was something that was very important
19 to the Historic Preservation Review Board. In giving
20 us their approval, they emphasized the extent to
21 which the legibility of the site from the exterior
22 had to be understood.

1 We have an opening into the park on one
2 part of the berm here. You probably know that the
3 site sinks down into the grade a little bit at Cell
4 14 here, but the aspect of the project emerging and
5 the site emerging out of the ground will be
6 maintained as the city's topography falls away. This
7 will be unique and it will be something that will be
8 an iconic image of McMillan for years to come.

9 I'll talk about the service courts,
10 repurposing them. They have these unique silos and
11 regulator houses that Emily had talked about, some of
12 the sand washers. This is a view of the south
13 service court above North Capitol Street, with the
14 rowhouse district to the right. You can see the
15 walls on either side of the south service court here.

16 What's important to note about this is that
17 right now, because of the grade, you can't get from
18 North Capitol Street up into the south service court.
19 So we'll be introducing public steps, public art,
20 fountains and things to announce the presence of
21 McMillan, to invite people in, to invite them into
22 this wonderful unique public space and also into the

1 park, further beyond the community center, so totally
2 transforming the south service court.

3 The service court walls. In some cases in
4 the south service court we'll be maintaining them,
5 some of them will be used to frame things, such as
6 the entry into the community center there. So we
7 situated the new community center in such a way that
8 it's framed by the existing walls of the south
9 service court and becomes sort of engaged with that
10 in such a way that there's an active dialogue between
11 new construction and the historic resources.

12 I mentioned the Olmsted Walk. This is a
13 picture of its condition today. Clearly, the
14 planting of that will provide for yet another
15 signature piece of the perimeter of the site, as well
16 as for a nice place to walk on a Sunday afternoon,
17 take the dog for a walk or stroll around there. It
18 would be a wonderful place for the neighborhood to
19 use.

20 And also in the north service court, we are
21 transforming this into an exciting mixed use, what
22 Anne Corbett has done, a McMillan Main Street, where

1 we have commercial uses, such as the health care
2 buildings, residential uses, all with ground floor
3 retail.

4 One of the nice things about the north
5 service court is the spacing of the elements between
6 them can be used for perhaps outdoor seating.
7 Regulator houses can be repurposed into restaurants
8 or perhaps public facilities there and it becomes
9 really a vibrant place, hopefully with lot of
10 jaywalking, like these people are doing. Because we
11 know that in really good public environments, people
12 jaywalk a lot and it's a place they can be safe.

13 We'll also be reintroducing the historic
14 paving, historic concrete which was in the service
15 courts there and using that as a way to recall the
16 origins of the site.

17 The Historic Preservation Review Board also
18 said to us, "Look, deal with McMillan in terms of its
19 DNA, both in terms of the broader concepts and in
20 terms of detailed concepts." So we went back and we
21 looked carefully at some of the historic aspects of
22 the site and many of the things that you see in

1 McMillan are quite unique to the site, not things
2 that you necessarily see in many other places.

3 So or example, the storage silos have a
4 kind of beautiful skin pattern that talks about the
5 different concrete lifts, that the poured form
6 concrete was used to make this form. In other words,
7 so you see this sort of pattern of rings of concrete
8 on these cylinders.

9 They also have very simple singular forms,
10 simple arched opening on either side, they're not
11 complex, they're very platonic in a sense, very
12 simple.

13 When Olmsted came on the site, he
14 introduced to some of the service court walls
15 overhanging plants to soften the view of the place.
16 And there are subtle things, like the entries into
17 the underground cells have accented pieces, small
18 dentils, archways that poke up above the walls.

19 Furthermore, things like the raised plinth,
20 the medical office buildings, health care center at
21 the north end has its own plinth and is sort of
22 recalling that with the walls of the north service

1 court that it establishes.

2 Vegetation on places like -- that was
3 introduced on the sand silos and some of the
4 buildings are embracing, this is an idea. Framed
5 openings, simple openings that are framed by the
6 regulator houses or the silos, very simple openings,
7 not very complex.

8 And interesting subtleties here, the
9 service court wall is cantered slightly, the entry to
10 the portals vertical at 90 degrees, the walls
11 themselves cantered, almost like a battered wall.
12 And we are using that thematically, as well, in the
13 north service court to make the retail wall of that
14 court.

15 The concern that the Historic Preservation
16 Review Board also represented to us is how can these
17 buildings and what you introduce on the site have a
18 sense of architectural cohesion. Because what they
19 stressed to us was what you introduce can't look like
20 Bloomingdale, it can't look like the Washington
21 Hospital Center across the street or anything around
22 it, it has to have an integrity all of its own so

1 that the landmark is identifiable.

2 So we came up with a unified palette of
3 materials. Some of them raw, some of them refined,
4 because what we needed to do is to figure out a way
5 that the small buildings, such as the rowhouses, and
6 the medium sized buildings, like multifamily
7 buildings, could seem to be members with the same
8 family of the medical office buildings to the north.

9 And they also suggested to us that the
10 rowhouses really ought to be composed as singular
11 buildings. In other words, instead of every rowhouse
12 having a different facade, composed in such a way
13 that they look as though they have an order that is
14 adding up to a greater kind of sense of the building,
15 rather than just separate, individual buildings.

16 So these are some of the precedents we
17 looked at, these are not buildings at McMillan, but
18 we sort of were drawn to this palette with the white
19 walls and the darker fenestration and accenting
20 colors and some of the darker ocher colored other
21 accents.

22 So what we came up with was this color

1 palette with the primary building color, the
2 fenestration, the secondary color being a charcoal
3 color, and a tertiary color being sort of an orangy
4 ocher color, some aspects of it maybe terra cotta,
5 some maybe a wood color. But this is really the
6 color pattern of McMillan.

7 You will know that it's McMillan because
8 these buildings have a relationship and the rowhouses
9 will have a similar color palette to the multifamily
10 buildings, which will have a similar color palette to
11 the health care buildings.

12 Why is that important? So that they seem
13 as though they belong with each other, and we enjoy
14 the virtues and the benefits of the mixed use program
15 and the vitality that that brings, but we also need
16 to be mindful that McMillan itself is something that
17 has to have a coherent character to it.

18 So the rowhouses are organized in groupings
19 where we have bay windows and small symmetry so they
20 add up to something larger than just an individual
21 building. Multifamily building, this is the building
22 slated for a grocery store at ground level and the

1 multifamily above.

2 And then health care showing the concrete
3 at the lower levels relating to the north service
4 court with the retail store fronts and then an
5 intermediate level that's like a plinth and then the
6 upper levels would probably be larger terra cotta
7 panels, all working together for a coherent harmony
8 on the site.

9 We also have spent time, as you know, with
10 the Zoning Commission, receiving preliminary approval
11 the other night. They reviewed the building heights
12 and we worked very closely with the Zoning Commission
13 and the staff of NCPC to concerns about these.

14 From the beginning, what we heard from the
15 neighborhood was they wanted to make sure that the
16 building heights did not have adverse impacts on the
17 surrounding neighborhoods. So we have smaller
18 buildings stepping up to the corner, to the
19 northwest, where the tallest buildings are located.
20 So these are sympathetic to the scale and size of the
21 buildings on the east and the south and the taller
22 buildings located so that they are closer to the

1 taller buildings at the Washington Hospital Center
2 and Childrens.

3 We also looked at land use with Zoning,
4 talking about the different kinds of uses that will
5 be on the site. I mentioned health care, the retail,
6 the north service court, residential, multifamily
7 buildings there, rowhouses in the center of the plan,
8 the community center there, all of these streets
9 connecting, north-south.

10 This plan is about having a place for
11 people to live, work, play, visit, shop and learn
12 history about this site, it incorporates all of these
13 things. And by including buildings that describe and
14 front onto streets, we're providing a safe place that
15 will have a vitality and a safety for it that will
16 enhance the neighborhoods around it.

17 So let me talk a little bit about the
18 evolution of the plan. Because as I mentioned when I
19 started, all major, big master plans go through
20 evolutions. I've never been part of a master plan
21 that didn't go through some sort of evolution at some
22 point in time.

1 And this is a plan that was done -- we were
2 brought onto the project in 2010, but I want to walk
3 through the evolution of some of the thinking that
4 went into earlier plans and some of things that have
5 evolved and influenced us as we began to craft the
6 plan that we bring to you today.

7 The first plan in 2008 had fewer of the
8 structures in the north and south service courts
9 preserved and you'll notice minimal preservation of
10 underground cells and you'll notice there's almost no
11 park, an important aspect to see across the site.

12 In 2011, we talked seriously and developed
13 a serious approach to preserving the structures in
14 the north and south service court, integrating Cell
15 14 into that plan. And this case I mentioned
16 earlier, the park in the center of the plan. This is
17 the version of that that did that.

18 We also partially restored the Olmsted Walk
19 here on two sides of the site here, which was not in
20 the earlier plan. It includes more preservation, a
21 little bit more of the Olmsted Walk and a park in the
22 center of the site with the community center in

1 there.

2 The plan we bring to you today really
3 includes these yellow bands of adaptive reuse
4 preservation here, Cell 14 in the north service
5 court, the south service court and the park. And
6 what does the park do for us? The park gives us the
7 plinth at its most dramatic location, it gives us the
8 views across. It allows us to display a sort of
9 stormwater area as part of the lower level of the
10 park, and I'll talk about that in a second, and the
11 full restoration of the perimeter of the site, the
12 Olmsted Walk.

13 So this has been an important evolution for
14 us, it's been an important dialogue with lots of
15 different groups. We feel very confident that this
16 is the best version we've done, we think it's
17 significant and special and of very high quality.

18 I'll just talk a little bit more about the
19 evolution of the open space because there was also a
20 very strong sense on the part of the community that
21 the plan needed to include more open space.

22 So this is a December 2008 plan, six acres

1 of open space centered on the north and south service
2 courts. In 2011, nine acres, a little bigger park in
3 the center. There was a sense that this was perhaps
4 not big enough and so by virtue of moving this park
5 to the bottom, we got a larger park, we were able to
6 get the view all the way across, have the piece of
7 McMillan and the plinth where it's most dramatic. So
8 the plan we're bringing you today, as I mentioned
9 before, includes all of that.

10 So that evolution has been an important
11 part of our thinking and an important part of how we
12 weigh different imperatives with the project.

13 So this is Columbia Heights. We are not
14 seeking to make a Columbia Heights. We know McMillan
15 will be a unique place and a unique project and it
16 will be a unique neighborhood. But we thought it
17 might be useful to have a sense of the scale of the
18 McMillan 25 acres and compare it to something that's
19 undergone what we all believe is a very positive
20 transformation recently in Columbia Heights. This is
21 the small plaza at Columbia Heights there. This is
22 USA -- what's it called -- DC USA right there, and

1 this is the park at McMillan.

2 So you can see this is the balance of the
3 25 acres of McMillan.

4 We have a chance with this program, with
5 this project and the vitality that comes with it to
6 be as transformative as Columbia Heights has been.
7 It'll be different, it'll be unique, it will have
8 different aspects to it, but it will have this
9 beautiful park and open space at the southern end,
10 but it will also have development that will bring a
11 vitality to that part of town.

12 Let me walk you around the site a little
13 bit here. This is the north service court, McMillan
14 Main Street here. You can see here the silos and the
15 regulator houses in the center. This is North
16 Capitol Street there with the sidewalk along there,
17 Cell 14, and then you can see our retail sites with
18 the buildings on either side of the north service
19 court.

20 We have pushed the buildings back, we
21 needed to make this a little bit wider in order to be
22 able to accommodate sidewalks and parallel parking

1 and the possibility of having outdoor dining and
2 activities on sidewalks there. So the part of the
3 north service court walls that we're retaining is
4 associated only with Cell 14. But you can see Cell
5 14 and how prominent it is and also the silos and the
6 sandwasher and the entry to the site.

7 You can see as well the way in which the
8 buildings step back above the first floor. This is
9 something that the HPRB was quite interested in in
10 terms of giving historic elements room to breathe,
11 but at the same time, perhaps recalling the wall of
12 the service court with this lower wall of the retail
13 development at ground floor.

14 So the buildings pay respect to the
15 landmarks in the center of the site, they recall the
16 lining of the north service court with retail and
17 they integrate different uses between the cells and
18 the regulator houses, as well.

19 So as I said, we expect this to be a
20 vibrant place with people jaywalking and having
21 dinner and meeting friends and also understanding the
22 history of the site.

1 I should also mention, as I said before, by
2 including Cell 14 in this location, it is our
3 contention that it makes redevelopment and reuse
4 possibilities for this more possible by associating
5 with the active uses here.

6 You can see, as well, the way in which the
7 plinth of the health care buildings to the north are
8 set back, recalling the plinth of the site. And you
9 can't see it so well here, but the architects of this
10 building, Shalom Baranes Associates, are also using
11 vines and screens on the facades of those buildings,
12 recalling some of the vines that Olmsted had planted
13 on the silos in the north and south service courts.

14 I mentioned this before, repurposing the
15 regulator houses, the possibility with retail and the
16 spaces in between for active public use. And of
17 course, this is one of the silos and you can see the
18 ground floor of the residential building with retail,
19 active retail, focusing out on the space in the
20 street.

21 This is a view standing at what we call
22 Half Street, which is a street in the middle of the

1 plan, looking south. And we mentioned before the need
2 to have a coherent and visible connection between the
3 historic resources in the north service court and
4 historic resources in the south service court.

5 This gives you a sense of that view into
6 the park, featuring the silo, here in this particular
7 case rendered with the possibility of a public
8 staircase up and a kind of lookout at the top.

9 Framing the buildings, framing the views
10 into that part, a kind of simple architecture that is
11 designed not to overpower the landmark, but yet,
12 compliment it in terms of its color palette and its
13 form and its well sustainable features integrated
14 into the site.

15 So what you see here is a linear rain
16 garden running up and down Half Street, you can see
17 paving up and down the street here, this will be
18 pervious paving where the cars are parked. So the
19 site, in a way, the design will teach people about
20 the sustainability, they'll be able to see the
21 sustainable elements to treat stormwater in an active
22 way. Our plan here is really to support and

1 distinguish the landmark, but not compete with it.

2 I mentioned the south service court. I
3 just want to talk about the way in which these
4 buildings -- again, they're background, they're
5 simple massing, simple setbacks at the skyline,
6 retaining sort of a double sidewalk condition on the
7 south service court inside it there, so we'll have
8 plenty of ways for the public to circulate and ways
9 to move down into the park.

10 The park system here, I mentioned before
11 the healing gardens, Cell 14 and the park, and also
12 these linear parks as part of the Olmsted Walk up on
13 the north and south sides -- east and west sides,
14 excuse me -- and also, the linear rain gardens in the
15 center of the plan.

16 The hydrology is important. Our landscape
17 architects, Nelson, Byrd, Wolz, worked very hard to
18 design public spaces that are unique for McMillan and
19 to come up with this design for the park, that is of
20 McMillan and no other place. So it's important --
21 Kirk Mettam mentioned Tiber Creek coming down in this
22 location across the southeast corner of the site.

1 This is a sketch that Nelson, Byrd, Wolz
2 did, working with the team, showing how the Tiber
3 Creek coming through here could be memorialized. And
4 then a stormwater area, a lower level of the creek
5 open to North Capitol Street, the small amphitheater
6 focusing towards the east to the upper level of the
7 park and Cell 28, the community center and then this
8 sort of open expanse across that site.

9 And Nelson, Byrd, Wolz has included a plant
10 taxonomy, a list of plants that will be deployed that
11 are based upon the Olmsted planting scheme for the
12 site. Some of them are invasive species, don't ask
13 me which ones, but their plan for the planting of the
14 site includes things like the Hawthorne trees and
15 other things that Olmsted had used in their
16 inventory.

17 The park itself includes different places.
18 There's a bosque that has a play area inside the
19 bosque and I'll show you a picture of that in a
20 second. Further to the east is an interactive water
21 play area that's part of the silos there and the kids
22 will be able to enjoy, families can come when the

1 weather is good and splash around in the water. And
2 then we have open play lawn areas that stretch across
3 a very large portion of the site, east to west.

4 This just gives you an idea of some of the
5 elements that would be in the bosque playground, some
6 of the things that are recalling McMillan from
7 tunnels and ramps and play areas that'll be situated
8 there, places for people of all ages, although I
9 don't think I'll be crawling around in any of these
10 things, but places for kids and passive areas for
11 adults.

12 And then things that are related to
13 McMillan's theme, such as sand and water play and
14 slides, perhaps recalling ramps and even some of the
15 spray jets, the water fountains that will be part of
16 the public space of the south service court.

17 Exterior to this area in the park, going up
18 North Capitol Street, we have a bridge and a sort of
19 portal into the park. The Hawthorne trees of the
20 Olmsted Walk continue across, but on North Capitol
21 Street, you'll be able to see into the park and see
22 the community center building and see the public

1 places that are part of that and the amphitheater.

2 So we really want North Capitol Street to be engaged.

3 This will be a special place, a special experience.

4 But on the other side, the far west side of
5 the park, you'll be able to experience the vast
6 expanse of McMillan, there's the community center,
7 and also see the relationship of the historic
8 elements to the park.

9 So these are the silos and the regulator
10 houses on the south service court as they are today.
11 They will have a relationship to this green space,
12 ringed by the space of the Hawthorne trees and the
13 sort of perimeter walk, very, very much representing
14 the scale of that view across the site. And that
15 view previously was about right here, looking this
16 way.

17 You can see how all that comes together
18 with the entry from North Capitol, the stormwater,
19 the community center situated both to navigate the
20 level here, engage Cell 28, on the lower level, the
21 community center and engage the south service court.

22 I should also mention we are putting back

1 the stairs. There were corner stairs that Olmsted
2 had included to access the Olmsted Walk, so we're
3 putting those back into the plan.

4 So the community center building is
5 conceived of -- by 18,000 square feet -- conceived to
6 be very simple geometry. We don't want something
7 that's so complex that it competes with the
8 landmarks, so it's a simple rectangular form. There
9 will be a pool at the lower level and then changing
10 rooms, the locker rooms opposite that and then also
11 rooms for the community on the second floor so they
12 can see out into the pool and out over into the park.
13 That's that view that we just saw.

14 The community center also frames views up
15 and down, so this loggia, you'll be able to walk up a
16 set of stairs and sort of walk along, see into the
17 community center and see out into the park and upper
18 and lower levels. The entry I mentioned before
19 framing it.

20 This is a little bit of the plan. The only
21 thing I'll point out about the plan, here's the pool,
22 is the major way moving, resolving. The grade is a

1 ramp, which recalls the ramps that exist there today
2 on the site. So a section through the community
3 center, an important public amenity.

4 Here, this is the south service court. You
5 can see the lower level here. You'll be able to see
6 into the cell here from that and there will be
7 exhibits there explaining how that was used and what
8 you could see here. And then this shows the lower
9 level of the park, North Capitol Street, and how the
10 building is a two-story structure that navigates
11 between those two levels.

12 In the lower level here, we'll be using
13 concrete to recall -- this is new construction, but
14 it recalls the form and the lower levels the vaults
15 at McMillan, so it will be of McMillan, you will know
16 it's McMillan.

17 We have the regulator houses. There are
18 several different options available for how these can
19 be repurposed. One is perhaps preserving them in
20 their historic condition. A second would be reusing
21 them, perhaps, as a public restroom and small retail
22 space. They're really nicely sized, beautifully

1 crafted. They're utilitarian, but they have a sense
2 of character all their own. Or they could be used
3 overall as a retail space, as well.

4 So the next slide shows just how it might
5 be a coffee shop or something there that could be
6 reused and we think that that would be a great way to
7 bring back the character into the site.

8 The silos are perhaps a tad more
9 complicated in the sense that they have a structure
10 in the center. The sand sat there and there was a
11 nozzle that the sand came out of. There's a very low
12 ceiling inside there, not to mention the fact that
13 they were poured of a kind of unified concrete
14 structure, so adapting them for other use is
15 something we're still studying. But they could be
16 used for site storage, for other things. They
17 present a little bit more of a challenge than the
18 regulator houses, at least as far as the interior is
19 concerned.

20 But we do think on the exterior, they can
21 be used to go up and stand on top and take a look out
22 over the whole site. And it would be quite a lot of

1 fun to design a stair to have that kind of public
2 feature for the site.

3 Public art is a very important part of the
4 plan for McMillan. We have a fairly robust taxonomy
5 of options from place where we talk about how to give
6 character to the gathering spaces. And these are not
7 specific slides, these are just meant to give a kind
8 of overall approach.

9 But reusing some of the materials on the
10 site, placements for contemporary art, placements for
11 integrated streetscape design. These will all be
12 integrated as we develop the public art plan.

13 When you look at the site, as well, and all
14 of the different possible opportunities for artistic
15 intervention, you can see certainly the opportunities
16 related to the north and south service courts and how
17 one would memorialize various ideas, but all the
18 different places that we've listed, at least
19 initially, that show opportunities for that kind of
20 narrative explanation of what McMillan was about.

21 The lighting plan. There's a lighting plan
22 that is of McMillan. You will know you're in

1 McMillan by the lighting plan. We have uplighting on
2 the Hawthorne allee on the upper level of the berm.
3 We have lighting that lights the berm here and
4 highlights that and we'll show you a picture of that.
5 It's designed specifically to highlight the historic
6 features, but we also want it to be a safe place with
7 the lighting plan.

8 And then it's important to get the lighting
9 right for the historic elements, so we have lighting
10 -- we've been studying lighting fixtures that could
11 be installed to wash light around the cylindrical
12 shape of the silos and highlight them as historic
13 features.

14 So Anne showed this before, it's one of our
15 characteristic images of McMillan during the day. We
16 have a nighttime shot as well here. This is a view
17 showing the highlighting of the Hawthorne trees
18 around the perimeter and of the berm there and how
19 that will be experienced at night.

20 And then recalling the roof of the
21 community center and skylight configuration,
22 recalling the pattern of skylights and bringing light

1 into some of the underground cells and really
2 lighting it in such a way that it will be a beautiful
3 place, a place that's active and useful, a place that
4 memorializes history and a place that brings new
5 vitality to this part of the city, not citywide.

6 So we just want to close with a short video
7 that gives you a sense, three-dimensionally, of what
8 the master plan entails.

9 (The witness plays a video.)

10 THE WITNESS: You're over North Capitol
11 Street here, North Capitol and Channing. Looking
12 into the park, moving up North Capitol, the south
13 service court. Creating access, visibility.

14 A little further north, the multifamily
15 buildings and the retail there, the buildings pushed
16 back to give you a view into the historic elements,
17 the north service court. Moving into the north
18 service court, the retail district on a snowy day.
19 The way in which the setback gives more space to the
20 historic elements.

21 Now we're turning to go down Half Street
22 and you'll see the rowhouses picking up and the way

1 the rhythm of the rowhouses focuses your eye down
2 towards the historic elements.

3 A possible use of the south service court
4 for either artistic fairs or farmers markets. It's
5 the kind of place that can be managed and purposed
6 for many different things, really a place that would
7 become an important part of the community.

8 And then a view into the community center
9 and the pool and the glass of the community center
10 engaging the park outside. And a view out over the
11 terrace amphitheater and a view across the park from
12 the west.

13 So our master plan is unique, it's
14 cohesive, it's of the place, it's transformative, it
15 brings the vitality and the benefits of mixed use
16 development and opportunity to the city, repurposing
17 the landmark. It brings it also to the neighborhood.
18 It's high quality and it's uniquely McMillan. You
19 will know you're at McMillan. Thank you.

20 JUDGE BYRNE: Thank you very much.

21 MS. BROWN: Just a couple of quick
22 questions.

1 JUDGE BYRNE: Sure.

2 BY MS. BROWN: (Resuming)

3 Q Mr. Bell, you went through a couple of the
4 alternatives that you studied prior to the current
5 plan and the earlier plan had more demolition of
6 historic structures, correct?

7 A That's correct.

8 Q The berms --

9 A Yes.

10 Q -- the Olmsted Walk.

11 A That's correct.

12 Q Now that we are where we are, do you think
13 this project of special merit could be accomplished
14 if we demolished even fewer cells, underground cells?

15 A I think in a project like this, what you're
16 trying to do is to balance the benefits of three
17 things, preservation, open space and development.
18 And it is that equilibrium that makes this a special
19 plan.

20 And by locating and putting the cells and
21 locating them where we have in the master plan, it
22 gives them a very important role to play in telling

1 the story about McMillan. So we think it's
2 appropriate and the right size for McMillan.

3 MS. BROWN: Thank you, no more questions.

4 JUDGE BYRNE: Okay, Ms. Ferster?

5 MS. FERSTER: Yes, I have some questions.

6 CROSS EXAMINATION

7 BY MS. FERSTER:

8 Q Sir, would you mind going to slide 32?

9 A I don't mind, but the computer seems to be
10 having issues.

11 Q While we're waiting, you did have some
12 mention of the preservation of Cell 14 and then
13 there's parts of Cells 28 and 29 that are being
14 preserved, is that correct?

15 A Well, Cell 28, portions of it, is part of
16 the experience of the lower level, the community
17 center. Cell 29 is part of the lower level park, of
18 the southeast corner.

19 Q And Cell 14 is the cell that's going to be
20 preserved intact?

21 A Well, you know, as people have said
22 previous to me, our intention is to repurpose and

1 reintegrate it with what we're designing. So I'm not
2 quite sure what you mean by intact.

3 Q Well, I guess my question is as an
4 architect, is it your intention to preserve Cell 14?

5 A Yes, we would like Cell 14 to be able to
6 tell the story of McMillan, whether it's as Mr.
7 Mettam mentioned, you know, sort of stabilizing it so
8 people could see it better and understand it or
9 actually repurposing it, which has its challenges, as
10 Mr. Leonard has articulated.

11 Q And you heard Ms. Eig's testimony, that she
12 didn't think -- and do you agree that -- as I heard
13 her testimony, that she did not think it was possible
14 to preserve Cell 14. Do you agree with that
15 testimony or not?

16 A I don't think she said it was impossible, I
17 think she said it had its challenges. I think this
18 team is very sober about the challenges.

19 Q But do you think it can be done?

20 A We're going to try.

21 Q Okay. And do you think after you try, it
22 can be done, is it possible?

1 A If I could prognosticate the future, I
2 wouldn't be here, I mean do you see what I'm saying?
3 I mean we're going to give our best professional
4 effort to making that part of the McMillan plan and
5 so we have made a plan that allows that to be
6 possible.

7 Q Okay, but would you try if you thought it
8 were impossible to do?

9 A If I thought it was impossible, would I
10 try? I don't think so. I think it's possible, yes.

11 Q Okay, thank you. All right, so here we are
12 at slide 32. So this is the passive recreation that
13 I assume will occur on top of Cells 25 and 26, that's
14 correct?

15 A Well, aren't those the ones that are being
16 removed by D.C. Water? I don't think they're there
17 any more.

18 Q It's in that location.

19 A Yes, it's in that location, yeah.

20 Q And then Cells 28 and 29 are the cells that
21 are going to be partially -- yes?

22 A Yes.

1 Q And those cells are under the community
2 center.

3 A No, they are adjacent to the community
4 center. If you go to the section, you can see --
5 what we're proposing is being able to see into those
6 cells from the lower level of the community center.

7 Q Okay, can you go to I think it was Slide
8 20?

9 A Is that the one you want?

10 Q Yes, and actually, yeah, if you could also
11 then go to Slide 15. Yeah, so this slide shows the
12 heights of the buildings that will be basically
13 surrounding the sand towers on the north court. And
14 the views that you showed us of the sand filtration
15 site were taken from within the site.

16 A Some of them.

17 Q Some of them. I did not see any views in
18 your presentation that were taken outside. Were
19 there some there?

20 A Well, View 20 is actually across North
21 Capitol Street, it's not on the site, this one.

22 Q I guess my question would be if you're

1 standing on Michigan Avenue and you're at ground
2 level on Michigan Avenue, can you see the sand
3 filtration towers?

4 A If you look down Half Street.

5 Q So you'll be able to see how many sand
6 filtration towers if you look down Half Street?

7 A This is Half Street right there.

8 Q You'll be able to see one.

9 A Right. But you probably, diagonally, you
10 could see these two, as well, on the north service
11 court. The spacing is interesting, you know, the
12 street fits through there and so if you're up here,
13 you get to see that one and that one, then you have a
14 sense of the distance of that one.

15 Q Okay, so you could see maybe three if
16 you're standing in that location.

17 A Yeah, depending on where you're standing.

18 Q And if you're standing farther over on the
19 other side of Michigan Avenue, that would be in the
20 area of the hospital facility, can you see the sand
21 filtration towers from that vantage point?

22 A You mean from over there?

1 Q Yes.

2 A You could probably see some of them,
3 probably the same experience. It's not so very
4 different from standing here to standing there.

5 Q So one and three, okay. And then I think
6 you probably would agree that the views of the towers
7 are significantly altered by the height of the
8 construction on Michigan Avenue, isn't that correct?

9 A Well, a one-story building would occlude
10 your view, as well, right? Because if you're on
11 grade, a one-story building, you wouldn't see it
12 anyhow, right?

13 Q But if you moved farther away --

14 A You still wouldn't see it if it was a one-
15 story building.

16 Q -- the Armed Forces Retirement Home, you
17 wouldn't see them.

18 A I don't think I testified to that,
19 actually, the view, I don't think I testified to the
20 views from the Armed Forces Retirement Home.

21 Q Okay, that's fine. I'll be happy to ask
22 that question of somebody else. Okay, so there was a

1 slide that you showed of the Columbia Heights
2 development and I didn't jot down what number it was.
3 Here we go. Okay, and you said that this was similar
4 to Columbia Heights.

5 A I didn't say that.

6 Q In some ways.

7 A No, what I said was I want to give a sense
8 of a comparative transformative development. I said
9 essentially, the project is not going to be like
10 Columbia Heights, it'll be like McMillan.

11 Q Mm-hmm, okay.

12 A What I was trying to do was give a
13 reference to scale there so that people could
14 understand, you know, in this hearing the size of
15 McMillan relative to that and the extent to which
16 that has been a very positive transformation in the
17 city.

18 Q And wouldn't you agree that a very
19 significant difference between the Columbia Heights
20 development and the McMillan development is that
21 Columbia Heights has a Metrorail station near there
22 and McMillan has a Metrorail station that is more

1 **than one mile away?**

2 A I can't change the location of that, they
3 are different. I know there is Metro at Columbia
4 Heights and there is not at McMillan.

5 Q And just a question about -- and I know you
6 were probably a little facetious when you made that
7 comment about jaywalking, but I feel that --

8 A Actually, no, but go ahead.

9 Q Because it gave me some concern. If you go
10 back to your slide where you show the picture of the
11 stairs that you are reconstructing to the park
12 area --

13 A Yes.

14 Q -- are you really encouraging jaywalking on
15 North Capitol Street?

16 A Not in that location, no, not in that
17 location. What I meant, if I could clarify, what I
18 meant was in a retail district people need to feel
19 comfortable that they can cross the streets. And on
20 the north service court, I think that's what we're
21 going to have.

22 I don't think we're going to have the same

1 situation on North Capitol Street. I think North
2 Capitol Street would be significantly improved, but I
3 think what we're looking for on the north service
4 court is that kind of activity.

5 Q Okay, but you are assuming that people in
6 the neighborhood are going to use this park and you
7 are aware of the fact that this site is going to
8 generate approximately 31,500 weekday trips. So is
9 there any concern on your part for the accessibility
10 to this park for the people in the neighborhoods,
11 given the traffic levels that are going to be seen on
12 those streets?

13 A No.

14 Q And why is that?

15 A Because I've met a lot of people in the
16 neighborhood, they seem like they know how to cross
17 the street. So I think it's a normal crossing of the
18 street, when the light changes and there's an
19 opportunity to get in the crosswalk, they'll do it.

20 Q And is there a light at the corner of
21 Channing and --

22 A Today, I think there is.

1 Q -- that First Street?

2 A Yeah, there is today. There is today, yes.

3 Q There is a light at the corner of Channing
4 and First Street?

5 A No, it's North Capitol, there is.

6 MS. BROWN: You know, he didn't testify to
7 transportation issues, so I think he could answer the
8 question as best he can, but he's probably not the
9 right person to ask.

10 THE WITNESS: I think our accessibility is
11 fine.

12 BY MS. FERSTER: (Resuming)

13 Q And perhaps, I'm just wondering if that's
14 one of the reasons why you feel that people can
15 jaywalk successfully, is that the traffic might be a
16 gridlock in the area, given the level of traffic?

17 MS. BROWN: Objection.

18 JUDGE BYRNE: No, no, no.

19 BY MS. FERSTER: (Resuming)

20 Q No, that wasn't a reason.

21 MS. BROWN: Objection.

22 JUDGE BYRNE: Objection sustained.

1 MS. FERSTER: I couldn't resist.

2 BY MS. FERSTER: (Resuming)

3 Q I have just a couple of questions about the
4 community center. So this is an aspect of the
5 project that will be accessible to the neighbors and
6 will it be owned by the developer, a developer,
7 privately owned?

8 A I couldn't testify to that, I think we have
9 some people who'll be clarifying that after me.

10 Q Which witness will that be?

11 A Aakash.

12 MS. FERSTER: Okay, then I'm done, thank
13 you.

14 MS. MERRITT: I have just a couple of
15 questions.

16 BY MS. MERRITT:

17 Q Could you tell us -- this is related to the
18 jaywalking comments. Could you tell us what the
19 projected average daily traffic levels are on that
20 north court street?

21 MS. BROWN: Objection, he is not testifying
22 to traffic and transportation.

1 MS. MERRITT: He talked about jaywalking,
2 that's what it was a result of.

3 MS. BROWN: Jaywalking doesn't necessarily
4 imply volumes of how many people are going to be
5 going there.

6 MS. MERRITT: Okay, I can ask another
7 witness.

8 BY MS. MERRITT: (Resuming)

9 Q There was a map that you showed, I think it
10 was early on, and it was when you were talking about
11 the evolution of the plan. And it showed that at one
12 point, Cell 20 would be focused on as a potential
13 cell for preservation over on the First Street side.
14 Why was that plan changed and why was Cell 20 no
15 longer decided for participation?

16 A Well, as I mentioned before, with your
17 master plan, you're trying to balance a lot of
18 different things. We felt that a park on the
19 southern side of the south service court achieved a
20 number of important objectives. Number one, it gave
21 the community a bigger park, which they wanted. They
22 objected to that plan because they felt the park was

1 too small, number one.

2 Number two, by putting the park on the
3 south side of the plan, we could have the most
4 dramatic rendition of the berm. So the berm is most
5 acute and, you know, tallest on the south side.

6 So by virtue of those two things, we felt
7 that it would be appropriate to look at a cell to
8 retain other than Cell 20 and use one of the cells
9 that was part of that park structure. So we felt
10 that it satisfied a number of things at once.

11 Q Could you turn to the slide that showed --
12 I think it's 36 and 37, it showed what you're talking
13 about? Yes, this is what you were referring to?

14 A I think so. This is a portion of Cell 20.
15 We were showing its relationship to the ground level
16 of the community building.

17 Q So am I correct in understanding from your
18 presentation today that there would be no public
19 access to the underground cell, the preserved cell.
20 People would look through the window at it. Is that
21 what you're describing?

22 A No, I think what we're saying is exactly

1 what Mr. Mettam said, which is that we will be
2 looking at a variety of options from what you just
3 described looking at to access. And we're going to
4 have to evaluate that and see how to make those
5 things possible.

6 Q Okay, I was just trying to interpret your
7 slide because it didn't show any human figures in the
8 portion that's called "Preserved Cell," and I didn't
9 know whether that was part of the goal or whether
10 part of the goal was to preserve it to look through
11 the window.

12 A I didn't hear a question.

13 Q Is the goal to try to preserve it to the
14 point that people could actually access it from the
15 lower level of the community center?

16 A I think the goal right now is for us to
17 evaluate and see what the options are. The master
18 plan calls for it in that location, so that we have
19 that as an option available to us.

20 Q Am I correct in understanding this diagram
21 to show, to mean that the lower level of the
22 community center would not represent a preserved cell

1 or preserved cells, it would be excavated and built
2 as a new structure? Is that correct?

3 A Let me see if I can clarify. This is new
4 construction at the lower level of the community
5 center.

6 Q Okay.

7 A This is the preserved cell --

8 Q Yes.

9 A -- showing several bays of it. So I think
10 the idea that we were seeking here with the
11 architecture was to have an architecture of the lower
12 level of the community center that was sympathetic
13 with the arches of the preserved cells, so it's not
14 the preserved cell.

15 Q Thank you, that's exactly what my question
16 was directed to. In Cell 29, will there be any --
17 it's designated as a partial preservation cell. Will
18 there be any -- what will be preserved, let's put it
19 that way?

20 A Right now, the landscape architecture plan
21 for that calls for that cell to part of the garden
22 and portions of it to be engaged with that garden.

1 We've gotten to a concept plan for that that doesn't
2 necessarily specify exactly what's going to be
3 preserved, but the idea is to have that as a kind of
4 another way in which these cells could be
5 experienced.

6 Q Would there be, is there an intention to
7 preserve anything overhead or solely the bottom of
8 the cells? I think there was a slide on something.

9 A Yeah, go to the plan blow-up there. Well,
10 the way this is designed is that it might be possible
11 to preserve some aspects of that along here, but
12 excavating all of that to the lower level rain garden
13 is what this concept plan proposes. I think it's
14 fair to say at this point in our concept design, we
15 would like to integrate portions of that cell into
16 the park design.

17 Q Okay, so just the bottom of the cell.

18 A Yes.

19 Q One of the earlier witnesses said that the
20 footprint of the community center would not overlap
21 with Cell 28. That's not right, is it? Because it
22 looks on this map like it does overlap.

1 A That's all new construction and that's a
2 portion of Cell 28. It would be visible from inside
3 the community center.

4 Q So the community center footprint would be
5 located within the footprint of what is now Cell 28.

6 A A portion of it, a portion of it.

7 MS. MERRITT: Thank you, I don't have any
8 further questions.

9 JUDGE BYRNE: Do you have any images of the
10 plan from the north, from Michigan Avenue?

11 THE WITNESS: You mean perspective images
12 from Michigan?

13 JUDGE BYRNE: Yes.

14 THE WITNESS: We do, we have perspective
15 images.

16 JUDGE BYRNE: I think actually, they're in
17 the book.

18 THE WITNESS: Yes, I didn't include them
19 today, but we do have them.

20 JUDGE BYRNE: Well, I'm okay, they're
21 there, so that's in the record, I'll look at that.

22 Okay, that's all I have. Thank you very much.

1 THE WITNESS: Thank you.

2 MS. BROWN: Next, we'd like to call Adam
3 Weers from Trammel Crow.

4 JUDGE BYRNE: Before you do, before you do,
5 so it's evident that we're going to have a
6 continuation and I thought that it might be good to
7 discuss when we can have a continuation and maybe
8 take a short break so that people can check their
9 calendars and things.

10 The Historic Preservation Office is a
11 little bit like Amtrak, which runs on freight lines,
12 and so this room is only available on certain dates
13 and I'm only available on certain dates. So the two
14 dates that we're thinking of are Friday, October
15 24th, or Monday, November 3d.

16 MS. FERSTER: I'm in a trial on October
17 24th, committed the entire morning to possibly into
18 the afternoon.

19 JUDGE BYRNE: Let's take a five-minute
20 break here, in any event, and you folks can check
21 your calendars and see.

22 (Whereupon, a brief recess is taken.)

1 JUDGE BYRNE: So how does November 3d work,
2 doable?

3 MS. BROWN: November 3d works for VMP.

4 JUDGE BYRNE: Okay, great. Okay, thank
5 you.

6 MS. FERSTER: So let's get some
7 clarification because we have witnesses that I feel
8 would like to leave right now if, in fact, our case
9 is not going to go on today. Is that safe to say?

10 JUDGE BYRNE: I think we can do that
11 because we can then complete the Applicants' case and
12 we can hear from Mr. Calcott. Are there ANC folks
13 here to speak?

14 MS. BARNES: Yes.

15 JUDGE BYRNE: So maybe we can do that, as
16 well, and then we can start your case at that time.

17 MS. BROWN: And Mr. Byrne, it should just
18 be the people that are in the room today that are
19 allowed to come back, as opposed to new people
20 showing up.

21 MS. FERSTER: No, I --

22 JUDGE BYRNE: No, I don't think that's the

1 case. We won't allow any more parties or anything
2 like that, but she hasn't given a list of her
3 witnesses.

4 MS. FERSTER: I have not and I'm not
5 required to do that.

6 JUDGE BYRNE: So I think we could allow --

7 MS. BROWN: I mean the public.

8 JUDGE BYRNE: The public? No, it's an open
9 event.

10 MS. BROWN: I'm just used to other
11 proceedings where they set the parameters --

12 JUDGE BYRNE: No, here, it's more informal.
13 Okay, so when Mr. Bank comes back, we'll settle,
14 we'll get the room set and we'll do it 9:30 again so
15 we make sure we get done that day and then we'll be
16 ready to vote.

17 MS. BROWN: Our next witness is Adam Weers
18 from the Trammel Crow Company.

19 Whereupon,

20 ADAM WEERS

21 having previously been duly sworn, testified as
22 follows:

1 DIRECT EXAMINATION

2 BY MS. BROWN:

3 Q And Adam, could you please introduce
4 yourself?

5 A Good afternoon. My name is Adam Weers, I
6 am a principal with Trammel Crow Company.

7 JUDGE BYRNE: So there's no --

8 MS. BROWN: He's not qualified as --

9 JUDGE BYRNE: He's not qualified as a
10 witness. Okay, very good. You're going to be
11 talking about --

12 THE WITNESS: Some thoughts specifically
13 about the health care facilities and the special
14 merit of the public benefits included with the health
15 care facilities.

16 JUDGE BYRNE: Excellent.

17 BY MS. BROWN: (Resuming)

18 Q And could you clarify, Trammel Crow is the
19 developer of the health care facilities?

20 A That's correct, so we are one of the three
21 members of Vision McMillan Partners and we are the
22 developer of the health care facilities.

1 MS. FERSTER: You're the developer of the
2 what?

3 THE WITNESS: The three health care
4 facilities.

5
6 THE WITNESS: Trammel Crow Company is one
7 of the largest and most successful commercial real
8 estate developers in the nation. Our development
9 platform is very diverse, covering multiple product
10 types. In recent years, health care has become one
11 of our most important and fastest growing components.

12 Earlier this year, we were ranked the
13 number one health care developer in the country by
14 Modern Health Care Magazine and nationwide, we have
15 \$4.3 billion of health care developments completed or
16 in process.

17 The national leader of our health care
18 platform, Eric Fisher, is also a District resident
19 and he has worked with me on this initiative since
20 day one.

21 From the beginning, our team has viewed
22 McMillan as an incredible health care development

1 opportunity. Health care development in the District
2 has a unique set of drivers for what makes a
3 particular location desirable.

4 Where other types of developments look for
5 employment centers or population density, what
6 attracts health care development in this city is
7 proximity to hospitals. This map illustrates that
8 point with circles indicating the concentration of
9 health care focused real estate. The larger the
10 circle, the higher the concentration.

11 The blue circles represent the District's
12 hospitals and the large yellow dot at the center of
13 the map represents the three and a half million
14 square feet of hospitals located at the intersection
15 of Michigan and North Capitol.

16 McMillan is directly adjacent to the
17 largest concentration of hospitals in the District of
18 Columbia, in the Washington Hospital Center and
19 National Rehab., Children's National Medical Center
20 and the VA. The site is less than a mile and a half
21 from two additional hospitals in Howard University
22 and Providence. When viewed from this perspective,

1 McMillan is, in our opinion, the single most
2 desirable health care development site in this city.

3 Our strategy for McMillan was bolstered in
4 November 2012 when the Mayor published his five-year
5 economic development strategy for the District, a
6 foundational component of which was to facilitate the
7 development of a best in class global medical center
8 at McMillan.

9 The primary goals for this major initiative
10 included establishing a medical hub that brings
11 together area hospitals and research institutions and
12 leveraging those anchor institutions as impetus for
13 growing the local nearby economy.

14 In addition to helping to support and
15 expand the District's health care sector, locating
16 the epicenter of this initiative at McMillan has the
17 potential for not only significant economic
18 development impacts on the surrounding communities,
19 but for significant public health impacts as well.

20 Janice Posey, with the Office of the Deputy
21 Mayor for Planning and Economic Development and the
22 project manager for their higher education and health

1 care sectors, testified to this at a McMillan zoning
2 hearing, noting that, quote, "Diabetes is the number
3 six cause of death in D.C. and number seven leading
4 cause of hospitalization. Diabetes in Ward 5 affects
5 12.5 percent of the population, the second highest
6 rate in the District. Indeed, Ward 5 accounts for 21
7 percent of all District deaths due to diabetes.
8 Additionally, Ward 5 has the third highest obesity
9 rate in the city.

10 "The District supports health care
11 development at McMillan as a way to encourage venues
12 and spaces for revolutionary advances in medical
13 treatment for chronic diseases. In this way,
14 McMillan is about more than just the real estate. It
15 is a place that generates healthy outcomes for the
16 Ward 5 community and the District, as a whole,"
17 unquote.

18 As had been frequently reported, the
19 physical plant of many of the District's health care
20 providers and hospital facilities, even some of its
21 most successful operators, are significantly aged,
22 outdated and inefficient. This outdated

1 infrastructure creates tremendous inefficiencies and
2 as a result, can create extreme financial pressures.

3 However, because of the complex and
4 incredibly demanding uses of these buildings, major
5 upgrades and improvements to these facilities can
6 often be cost prohibitive, if not downright
7 impossible.

8 The creation of approximately one million
9 new square feet of cutting edge health care delivery,
10 research and administration space will have a hugely
11 positive impact on the ability of several of the
12 District's leading health care providers to deliver
13 care to customers more efficiently and effectively,
14 thereby positively impacting the health care system
15 of the city as a whole.

16 Much of our vision for how impactful
17 McMillan can be was directly informed by research we
18 performed on 17 different medical districts across
19 the country. The health care component of McMillan
20 is clearly its economic engine, generating the bulk
21 of our project's 3,200 permanent jobs and nearly \$1
22 billion in fiscal impact.

1 In studying medical districts from Boston
2 to Houston to Chicago, we have found examples of
3 cities that have capitalized on large concentrations
4 of health care institutions by encouraging formal
5 medical districts that are now generating economic
6 activity in areas like tax revenues, employment and
7 research funding that have dramatic impacts.

8 By way of comparison, the Longwood Medical
9 Area in Boston, which is home to six hospital and
10 research institutions, as well as several educational
11 systems, is about twice as large as what an
12 equivalent medical district at McMillan could be.

13 In 2011, Longwood published research
14 showing a combined economic impact, including that it
15 employs approximately 43,000 people, sees an annual
16 average of 8,800 job openings, generates an average
17 of 1,200 net new jobs each year and produces
18 approximately \$113 million in annual tax revenues for
19 the state of Massachusetts.

20 The medical districts we researched have a
21 few key elements in common, including the combination
22 of hospital systems, universities and research

1 institutions. All of these ingredients currently
2 exist along the Michigan Avenue corridor.

3 Despite the existing base at the Hospital
4 Center, a medical district in D.C. has not sprouted
5 organically so far. The addition of one million new
6 square feet of health care density at McMillan is a
7 huge step in this direction and VMP is already in
8 discussions with the District government to begin the
9 formal process of creating a medical district at
10 McMillan.

11 Historically, large scale health care
12 projects across the country have been developed by
13 placing large, sprawling complexes on very large land
14 parcels. You can see this phenomenon locally in
15 facilities like the United Medical Center and
16 Providence Hospital.

17 Successful health care development projects
18 being built today include many more smart growth
19 principles, like taller buildings, smaller footprints
20 and underground parking when possible. Incorporating
21 these new facilities into mixed use projects with
22 rich amenity bases has become increasingly important

1 to a project's success. A new facility can provide
2 many benefits to a health care system, including
3 operational efficiency and cost reductions.

4 But systems occupying more smartly designed
5 facilities are finding that their building can also
6 assist in attracting and retaining top flight human
7 capital. Vibrant work environments attract talent,
8 which gives an employer a significant competitive
9 advantage.

10 A great local example of this can be seen
11 at G.W. Hospital, which has integrated into a
12 thriving mixed use environment and is seeing positive
13 effects from their employee base as a result.

14 We've incorporated many of our lessons
15 learned into the facilities located at McMillan. By
16 using height to reduce the building footprint and
17 placing the garage underground, we are squeezing
18 around 840,000 square feet into less than four acres.
19 The building's final configuration has been as much
20 influenced by the McMillan site context and by
21 community input as it has smart growth principles.

22 We pushed back our building from North

1 Capitol to preserve both Cell 14 and a special view
2 into the site, thereby creating a 260-foot buffer on
3 the eastern side of the site between the building and
4 our residential neighbors in Stronghold to the east.
5 The buffer is two and a half times the height of the
6 building.

7 And healing gardens can be traced back to a
8 salon session at Big Bear Cafe, where a community
9 member asked us point blank if we would shrink our
10 building footprint even further to make room for
11 additional green space, which we did.

12 The mixed use nature of McMillan is
13 distinctive, not only incorporating housing and
14 retail options, which are proving incredibly
15 attractive to potential tenants, but also provides
16 direct adjacency to a tremendous park system and
17 preservation assets.

18 One of the most significant aspects of the
19 health care component of McMillan is the deliberate
20 and comprehensive workforce development program, a
21 major component of our broad set of public benefits.

22 One of the advantages of the job creation

1 at McMillan is that the majority of the permanent
2 jobs created are within the health care sphere.
3 Health care jobs represent a diverse set of options
4 for District residents from a wide range of
5 backgrounds.

6 From home health aides and EMTs to
7 researchers and physicians, careers in health offer a
8 variety of entry points to residents with advanced
9 degrees, as well as those with high school diplomas
10 and equivalencies.

11 Whether one is among the unemployed
12 population or simply transitioning from another
13 industry, health care provides many attractive career
14 paths and opportunities. But many of these
15 opportunities require education and training programs
16 that take time. We need to get started right away
17 for facilities that will open in 2018.

18 McMillan is projected to generate more than
19 6,000 jobs, about half of which will be permanent
20 positions in the health care and retail industries.
21 Job creation of this magnitude for any project is
22 rarely seen, but to bring this kind of employment

1 impact to a ward where unemployment is still hovering
2 at nearly 12 percent is priceless.

3 To many of these 5,000 unemployed Ward 5
4 residents struggling to make their way in an economy
5 that is not recovering as quickly or as evenly as
6 many of us would like, access to an opportunity like
7 McMillan could be life changing.

8 VMP has committed to funding \$1 million to
9 facilitate workforce development initiatives and
10 scholarship programs for District residents and
11 residents of the surrounding Ward 5 communities. We
12 have developed a comprehensive strategy, in
13 conjunction with the Community Foundation of the
14 National Capital Region, to direct these funds
15 towards training, apprenticeships and job fairs for
16 both the construction and the permanent jobs
17 generated by this site.

18 We are excited about the possibilities this
19 project creates and we believe that by coordinating
20 our efforts with leaders in the District government,
21 agency heads, as well as councilmembers and the
22 Mayor, workforce development and job preparation at

1 McMillan can be a true priority for this city.

2 While there are many powerful aspects to
3 the McMillan project, the health care component is
4 its economic engine and, indeed, its heart. We have
5 spent much of our focus and energy striving to shape
6 McMillan into one of the largest and most innovative
7 developments focused on history, health and wellness
8 that the District has ever seen.

9 For the past six years, we have worked
10 closely and collaboratively with the leadership teams
11 at health care systems throughout the region,
12 including MedStar, Children's National Medical
13 Center, the VA and Johns Hopkins. This market
14 feedback has been combined with TCC's existing
15 knowledge base as the largest health care developer
16 in the nation and then poured into the design of
17 these facilities as much as possible.

18 With nearly one million square feet of
19 health care facilities, the current plan encourages
20 unprecedented growth of one of the District's most
21 important industries and employment bases. Since
22 2008, we have had countless meetings with the senior

1 leadership teams of multiple health care systems to
2 discuss their occupancy in this project. Several of
3 those conversations are still ongoing and the
4 advantages of them occupying these new facilities is
5 becoming abundantly clear.

6 A redeveloped McMillan can, as it once did
7 more than a century ago, serve as a vehicle for the
8 District's growth, expansion and betterment. This
9 new version of McMillan will play a critical role in
10 improving public health by allowing for the expansion
11 and reintegration of some of the same Washington
12 Hospital Center occupants that its original
13 incarnation helped to create and support.

14 The new McMillan will again spur the
15 creation of new, much needed housing for a growing
16 and expanding set of District residents and the new
17 McMillan would deliver one of the largest and most
18 amazing park systems the District has ever seen, a
19 nod to its historic and notable public space heritage
20 and in a way that pays homage and honor to the past,
21 present and future residents of the neighboring
22 surrounding sites.

1 That concludes my testimony. Thank you
2 very much.

3 JUDGE BYRNE: Thank you very much.

4 BY MS. BROWN: (Resuming)

5 Q I have one quick question for Mr. Weers.
6 You mentioned that you're talking to a lot of health
7 industry leaders about tenancy in the buildings.
8 Would one of those potential tenants actually sign a
9 lease or a letter of intent this early in the process
10 or is that something that's usually completed after
11 the entitlement process?

12 THE WITNESS: Definitely completed after
13 the entitlement process. The feedback we have
14 received from every system is they will not sign a
15 lease commitment for a project that doesn't have
16 entitlements yet.

17 MS. BROWN: Thank you, no further
18 questions.

19 JUDGE BYRNE: Okay, Ms. Ferster.

20 MS. FERSTER: Thank you.

21 CROSS EXAMINATION

22 BY MS. FERSTER:

1 Q So to follow up on that question, that you
2 do not currently have a tenant for the health care
3 facility, in terms of the type of tenant you're
4 looking for, are you looking for a nonprofit health
5 care provider or a for profit health care provider or
6 either one?

7 A We are talking to both.

8 Q And let me ask you about the million
9 dollars that you'll be providing for employment
10 training. Is that going to be in the form of a grant
11 to a nonprofit organization?

12 A It will be a series of grants, so we will
13 put the capital in a fund that will be managed by the
14 Community Foundation and they will dole out grants.

15 Q And they will provide individual grants to
16 Ward 5 residents, to the District of Columbia?

17 A That will be --

18 Q I mean what are the criteria to be eligible
19 for this grant?

20 A The details of the specific criteria have
21 not been worked out yet. We do have commitment from
22 the Community Foundation to work with us in this

1 endeavor and our commitment to funding the million
2 dollars is a part of our PUD approval, so we are
3 committed to that.

4 It will be a combination of scholarships to
5 individuals and I would think grants to
6 organizations, workforce development organizations
7 that do job training, certification programs,
8 et cetera.

9 Q So at this point, it's really not possible
10 for you to say that the individuals who will be
11 benefiting from this employment training will
12 necessarily work at McMillan, isn't that correct, you
13 have no way of knowing whether they will or not?

14 A I think that's correct.

15 Q So just in terms of what you mentioned
16 about smart growth principles governing your view
17 that this is a good location, are you assuming that
18 the people who go to these health care facilities for
19 treatment or to work there will take the Metro there,
20 even though it's located over a mile away from the
21 Metro rail station?

22 A I think that the majority of the people

1 that will be coming to this facility will be driving.

2 Q Thank you.

3 MS. FERSTER: I don't have any other
4 questions.

5 MS. MERRITT: I have just a couple of
6 follow-up questions.

7 BY MS. MERRITT:

8 Q In responding to Ms. Ferster's question
9 about seeking a nonprofit versus a for profit, your
10 answer made it sound like you're just looking for one
11 or two tenants. Could you clarify that?

12 A So the way that we are approaching trying
13 to find our anchor tenancy, these buildings will
14 probably be anchored by one or two hospital systems.
15 There will almost certainly be many, many
16 institutions in this what will, between all three
17 buildings, be a million square feet. But I do think
18 that those early institutions and those anchor
19 institutions will likely take the largest portions.

20 So we are focused right now in trying to
21 get anchor institutions because which anchor
22 institution we partner with will set the tone and the

1 flavor for a lot of the rest of the tenancy.

2 Q Is it your intention or understanding that
3 the goal would be to have an institution, whether
4 it's for profit or nonprofit, that would be oriented
5 toward patient treatment, as opposed to, say,
6 research or something that's less interactive with
7 patients?

8 A I think in our mind -- and I'll explain why
9 I put that qualifier on it in a moment. I think in
10 our mind, an ideal outcome is a mix of patient
11 treatment space, research and lab space, educational
12 space and what you would probably call traditional
13 medical office, doctors' offices, dentist offices,
14 et cetera.

15 So in that way, you'd almost have within
16 the health care component a campus with several
17 different types of uses. And I think part of our
18 desire for doing that was shaped by the research that
19 we did in looking at other successful medical
20 districts across the country.

21 That ultimate mix will definitely be
22 affected by who the anchor tenant is. If, say,

1 MedStar, just an example, not saying that will be, if
2 MedStar were to be the anchor institution for half of
3 all the space that we have, they would have a
4 significant say on what goes inside, what types of
5 uses are in the box and what the other uses are in
6 the space that they will occupy.

7 Q And what's the ratio between employees and
8 patients in terms of the coming and going, driving?

9 MS. BROWN: If you know.

10 THE WITNESS: I don't have them off the top
11 of my head, I don't have them off the top of my
12 head.

13 MS. MERRITT: I don't have any further
14 questions.

15 BY MS. FERSTER: (Resuming)

16 Q I had a follow-up question prompted by one
17 of your responses to Ms. Merritt's question and that
18 was that I did not -- you had mentioned that you were
19 speaking about medical office space as being part of
20 the space that you're responsible for. And I guess I
21 had assumed that you were only dealing with the
22 health care facility portion of this project.

1 Are you also responsible for the leasing of
2 the medical office buildings?

3 A They are one and the same.

4 Q Okay, so there is a health care facility
5 that is in a separate building from the medical
6 office building is my understanding.

7 A No. When I say health care facilities, I'm
8 referring to the three commercial buildings that
9 are --

10 Q Okay, so that includes the --

11 A Yes.

12 Q -- medical office building. Ah, okay, I
13 thought you were --

14 A None of them I would label as the medical
15 office building, they are all three the health care
16 facilities.

17 Q Okay, okay, I did not understand that your
18 testimony went to the medical office building, as
19 well.

20 So just to follow-up on that, has your
21 evaluation of the leasing looked at the fact that
22 there are numerous other medical office buildings,

1 you know, Walter Reed and others, that are going on
2 line, that will, in fact, be fully constructed before
3 your medical office building, is that --

4 A Very much so. So if you remember the map I
5 put up in my second slide, the biggest advantage of
6 having a site like McMillan is that this is what real
7 estate people would call main and main when it comes
8 to health care development. We are across the street
9 from the single largest concentration of hospitals in
10 the city, so it's a very, very desirable site.

11 So to the extent I have to compete with
12 other sites, I think we have a better option from a
13 supply and demand perspective.

14 I would also say I do think that those
15 other competing sites, with the exception of about
16 200 or 300,000 square feet that's in the Armed Forces
17 Retirement Plan set aside specifically for health
18 care, we're pretty far away. So if there are people
19 that want to be close to the system in particular,
20 MedStar and Children's and the VA, which are all
21 pretty big and powerful systems, I have almost an
22 unbeatable advantage from a competitive standpoint.

1 MS. FERSTER: Thank you.

2 JUDGE BYRNE: How significant would it be
3 to have medical school involvement in this plan?

4 THE WITNESS: I think it's a big part.

5 JUDGE BYRNE: Longwood has, of course,
6 Harvard right in the middle --

7 THE WITNESS: They do, they do, and if you
8 look at the Texas Medical Center, there's a lot of
9 universities there, too. I think it would be a big
10 part of what we want to do and I think that that
11 could incorporate the Michigan Avenue corridor
12 schools, so Catholic or even Howard. I mean there's
13 a lot of very --

14 JUDGE BYRNE: A couple of other
15 universities.

16 THE WITNESS: Well, Trinity I think could
17 be an option, as well.

18 But you could also go outside of the
19 Michigan Avenue corridor I guess was my point. It
20 could be any school in the city or it could be
21 schools that are right adjacent to the McMillan site.

22 But I do think that's a big part of it and

1 I think that having an educational component, along
2 with having a research institution, like National
3 Rehab. or Children's does a lot of research, as well,
4 it changes the flavor. But it also can do like what
5 you see at Longwood, which is attracting research
6 dollars and having all of that sort of become --
7 McMillan becoming a magnet for that, it has a lot of
8 follow-on effects, positive follow-on effects.

9 JUDGE BYRNE: All right, thank you very
10 much, I appreciate it.

11 THE WITNESS: Thank you.

12 MS. BROWN: Next, we have Mr. Jair Lynch.

13 Whereupon,

14 JAIR LYNCH

15 having previously been duly sworn, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. BROWN:

19 Q Please introduce yourself for the record
20 and proceed with your testimony.

21 A Okay. My name is Jair Lynch. I am the
22 president and CEO of a family of real estate

1 companies under the brand Jair Lynch Development
2 Partners.

3 Q Speak up, they're having trouble hearing
4 you.

5 A And I am also a member of Vision McMillan
6 Partners, as well, our company is.

7 Q Okay.

8 A We are an urban regeneration company that
9 focuses on reimagining walkable urban places. We
10 have been in business for over 15 years and have
11 developed three million square feet of neighborhood
12 assets, totaling nearly \$700 million.

13 I am a native Washingtonian and I have been
14 drawn to this industrial site since as a young boy, I
15 was told that it was not safe, not accessible and the
16 definition of blight.

17 This often discouraging story was repeated
18 to me throughout the city in the 1980s and for that
19 reason, I intentionally returned to Washington to
20 start my business in Shaw, in a row home, with a
21 laptop and a cell phone to specifically work in
22 emerging neighborhoods. This project is a direct

1 extension of my personal and professional growth and
2 I'm here to put forth a responsible plan of a dream
3 deferred.

4 While we bring our vision and resumé, we
5 also bring our own capital to execute our component
6 of the plan, the multifamily and retail component of
7 the plan. We are proud to stand shoulder to shoulder
8 with two other nationally recognized development
9 companies as the lead sponsor developer of the
10 multifamily component of the project. A locally
11 owned company developing its own component, more than
12 20 percent of the plan, is quite frankly also a dream
13 deferred and of special merit.

14 VMP has created a mixed income housing
15 program for not only neighborhood residents, but also
16 a walkable alternative for the working population in
17 the surrounding institutions currently who live
18 outside the District. The program includes mixed
19 income rental housing, as well as mixed income family
20 housing with the for-sale townhomes.

21 Our affordable housing strategy far exceeds
22 the regulations set forth by inclusionary zoning at

1 80 percent AMI by reaching 20 percent affordability
2 across the housing program for households between 50
3 and 80 percent area median income.

4 This program includes a senior housing
5 component that targets deeper affordability between
6 50 and 60 percent AMI and for-sale townhomes for
7 families at both 50 and 80 percent AMI. The
8 remaining apartments will be a natural extension of
9 the current market of workforce rental housing that
10 is already in the neighborhood and arriving near at
11 the Brookland Metro station. We define workforce
12 housing as 80 to 120 percent of area median income.

13 Our combined plan with over 120 new
14 affordable units in a single master plan, compared to
15 the 430 affordable housing units between 30 and 80
16 percent AMI and the 530 permanent supportive housing
17 units that were awarded subsidy from the D.C.
18 Department of Housing and Community Development last
19 year, this is a laudable project.

20 The agency's totals were spread over nearly
21 20 projects and this project represents a hundred
22 percent increase over what was approved by the agency

1 last year in Ward 5.

2 In addition, we are programming a full
3 service grocer as part of the retail program as it
4 benefits the neighborhood. According to the USDA,
5 who defines and tracks food deserts, this area has
6 more than a 20 percent population in poverty and more
7 than 33 percent of the population has to travel more
8 than one-half mile to get to a supermarket. There
9 are simply limited retail options within a walking
10 distance of the site and the surrounding
11 neighborhoods of Bloomingdale, Stronghold and LeDroit
12 Park.

13 In addition, the over 15,000 employees at
14 the hospital campus have limited fresh produce and
15 food options near work. We intend to change that by
16 knitting together the daytime population with
17 existing vibrant neighborhood populations to create a
18 dynamic retail environment on the north service
19 court, anchored by a full service grocer.

20 The remaining components of the retail
21 program will include neighborhood-serving retail with
22 incentives to facilitate business startups on site

1 and locally owned businesses. In addition, the plan
2 seeks to connect to a merging corridor and eliminate
3 blight on North Capitol Street with a facade
4 improvement program. Retail has consistently been
5 among the top three requests from this community in
6 an effort to create a walkable neighborhood.

7 In conclusion, we are very proud of our
8 housing and retail vision for McMillan. The plan is
9 responsive to the community-at-large and not to only
10 a subset of a privileged few.

11 Our housing plan provides deeper
12 affordability than required by inclusionary zoning,
13 as well as the specific type of housing for seniors
14 that is a direct request from the community to ensure
15 members of the neighborhood can age in place. By
16 building apartments as an extension of the existing
17 neighborhood, the market rate units will reach a
18 workforce customer.

19 Finally, bringing a captive daytime
20 population to the site allows for the retail to
21 thrive in a relatively low density community and,
22 thus, this is a true neighborhood revitalization

1 project. That's the end of my testimony.

2 JUDGE BYRNE: Thank you.

3 MS. BROWN: No questions.

4 JUDGE BYRNE: Ms. Ferster?

5 MS. FERSTER: Thank you.

6 CROSS EXAMINATION

7 BY MS. FERSTER:

8 Q Can you go to slide 6, please. So I'm
9 wondering if you could spell out on the affordable
10 rental senior apartments, 85 units, 50 to 60 AMI, do
11 you know how many will be limited to people who are
12 50 percent, earning 50 percent AMI and how many 60,
13 do you know the breakdown of that?

14 A We do not know the breakdown today because
15 it will be responsive to the market studies that will
16 be done closer to construction.

17 Q And in terms of parking for the people who
18 are living in any of these units, either the for-sale
19 -- well, particularly the rental units, will parking
20 be a separate charge for the tenants?

21 A Parking will be a separate charge for the
22 tenants. Parking will be available for the retail

1 customers without charge, at least with validation
2 for a couple of hours. But parking is a separate
3 charge, correct.

4 Q And what will the charge be to the tenants
5 of the senior apartments for parking?

6 A We have not determined, but we will follow
7 the low income tax credit practices for what is
8 available for charges for parking.

9 Q Okay, and that is?

10 A I can't tell you that today.

11 Q I'm asking about the practice. You don't
12 know what the practice is that you're going to
13 follow?

14 A No. You can charge for parking in certain
15 situations and we'll follow the appropriate
16 situations for the project.

17 Q And in terms of the tax abatement or
18 credits that you're going to eventually comply with,
19 can you specify what they are? These are abatements
20 or credits that are available for affordable housing?

21 MS. BROWN: Did you testify to that?

22 THE WITNESS: No.

1 BY MS. FERSTER: (Resuming)

2 Q You just testified that you're going to
3 comply with the tax --

4 MS. BROWN: You asked about parking.
5 That's a little far afield.

6 MS. FERSTER: You don't want him to testify
7 about the tax credits or abatements?

8 BY MS. FERSTER: (Resuming)

9 Q I mean you've talked about affordable
10 housing and I just, you know, would like to specify
11 whether or not, in fact, there's going to be --

12 MS. BROWN: Well, I think the point is it
13 doesn't matter because it's affordable, it's got to
14 be required under any either a Mayor's Agent order
15 and certainly under the Zoning Commission order.

16 MS. FERSTER: Well, it does matter because
17 if you're going to qualify for certain abatements or
18 credits, you have to meet certain guidelines and I'd
19 like to know what the guidelines are.

20 MS. BROWN: Well, he didn't testify about
21 that.

22 THE WITNESS: I'm not an expert, yeah,

1 yeah.

2 BY MS. FERSTER: (Resuming)

3 **Q So you don't know what tax credits or**
4 **abatelements that affordable housing --**

5 JUDGE BYRNE: Well, I'm just trying to
6 understand what the question is. Is the question
7 whether there's a federal tax credit deal?

8 MS. FERSTER: Well, what's relevant here is
9 that in order for housing to be affordable, you don't
10 look just at what the rent is, but you also look at
11 the additional charges that tenants are going to be
12 required to pay. Because if you create an affordable
13 unit, but you charge them an exorbitant charge for
14 parking, it then becomes less affordable. And there
15 are particular requirements that need to be met if
16 you are getting a tax credit. So I'm curious --

17 MS. BROWN: I think that his direct
18 testimony strictly went to the promise of 20 percent
19 affordability, end of story. And you know, how it's
20 complied with is not part of his direct testimony.

21 MS. FERSTER: Okay, is there another
22 witness who's going to -- because I know that your

1 prehearing submission did talk about the, you know,
2 tax benefits that are going to be generated by this
3 project and in terms of the Green Door Advisors. Is
4 somebody going to be able to describe what tax
5 credits or abatements are going to be applied for, as
6 well?

7 MS. BROWN: It's in the Green Door report
8 and you've heard the list of witnesses.

9 MS. FERSTER: Is somebody who's prepared
10 the Green Door report going to testify?

11 MS. BROWN: You'll see.

12 MS. FERSTER: I will see? Can you tell me?

13 MS. BROWN: No, just as you said you don't
14 have to tell me who all your witnesses are, I don't
15 have to tell you the scope of the testimony that my
16 witnesses are going to prepare.

17 MS. FERSTER: Okay, then I would like to --
18 I have a witness in front of me who's talking about
19 affordable housing. I'd like to be able to ask my
20 affordable housing questions.

21 MS. BROWN: It's not part of the scope.

22 JUDGE BYRNE: So you've been talking about

1 parking. Does your building intend to use federal
2 low income tax credits as a part of it?

3 THE WITNESS: It may, it may.

4 JUDGE BYRNE: It may, you haven't
5 determined that yet.

6 THE WITNESS: Correct.

7 JUDGE BYRNE: Okay, fine. Okay, so I think
8 that's the end of that.

9 BY MS. FERSTER: (Resuming)

10 Q Okay, and there's also tax abatements that
11 are available under D.C. law, as well. Are you
12 intending to use those?

13 JUDGE BYRNE: He hasn't determined yet.

14 THE WITNESS: Right.

15 BY MS. FERSTER: (Resuming)

16 Q You don't know. Your answer is you just
17 don't know.

18 MS. BROWN: I think he said it hasn't been
19 determined was the answer.

20 BY MS. FERSTER: (Resuming)

21 Q All right, so going back to the parking,
22 then, is it also your testimony that you know the

1 price that tenants will be paying for parking -- you
2 do not know that?

3 A It has not been determined yet.

4 Q And do you know any other charges that
5 tenants will be charged?

6 MS. BROWN: Again, I thought that we
7 narrowed the scope and got out of this realm and I'm
8 hearing the same questions again.

9 MS. FERSTER: And again, I --

10 JUDGE BYRNE: What kind of charges are you
11 talking about?

12 MS. FERSTER: Well, tenants, you know,
13 particularly tenants in affordable housing, it's
14 pretty typical that some landlords will charge, will
15 create an affordable housing apartment unit that
16 rents for a certain amount, then charge them a lot
17 for parking and charge them a lot for other fees and
18 services, you know, concierge, whatever. I just want
19 to know, get out on the table what these tenants are
20 going to be charged.

21 MS. BROWN: Well, perhaps a better question
22 is is that something that will be developed at this

1 point in this entitlement stage.

2 THE WITNESS: The answer would be no.

3 BY MS. FERSTER: (Resuming)

4 Q So you don't know. That is my question,
5 you don't know at this point what additional charges
6 the tenants will be charged. You don't know at this
7 point, is that correct?

8 MS. BROWN: I'm not answering the
9 questions.

10 MS. FERSTER: You were, you were asking the
11 question.

12 MS. BROWN: I was suggesting the question
13 to you.

14 MS. FERSTER: Okay, and I just asked that.
15 Can your witness answer it?

16 MS. BROWN: He did.

17 BY MS. FERSTER: (Resuming)

18 Q You don't know.

19 MS. BROWN: But that's not what his answer
20 was.

21 BY MS. FERSTER: (Resuming)

22 Q Okay, at this time, you don't know. Well,

1 can you just answer it, then?

2 MS. BROWN: Go ahead and reanswer her
3 question.

4 THE WITNESS: Okay, if you could reask the
5 question --

6 BY MS. FERSTER: (Resuming)

7 Q So is it correct that at this point, you do
8 not know what additional charges tenants in the
9 affordable housing will be charged, at this point,
10 other than the rent?

11 A At this point, we have not developed any
12 additional charges at all, just like the base rent
13 will be changing from year to year in accordance with
14 lots of different funding sources.

15 Q But it is possible there will be additional
16 charges, you just don't know.

17 JUDGE BYRNE: That's enough. I think
18 you've made your point and I think he said he hasn't
19 determined what charges there are and he doesn't
20 anticipate any.

21 BY MS. FERSTER: (Resuming)

22 Q You don't anticipate any charges?

1 MS. FERSTER: Because he did not say that.

2 JUDGE BYRNE: He said he hadn't planned
3 any. Okay, fair enough.

4 BY MS. FERSTER: (Resuming)

5 Q So the representative from the Deputy
6 Mayor's Office said that she believed that an
7 affordable dwelling unit would be agreed to in this
8 project. Are you familiar with the terms, the
9 parameters of the affordable dwelling unit that would
10 be entered into?

11 A I don't know what you're talking about.

12 Q Okay, so you're not involved in that.

13 A No, no, what you just asked was an
14 affordable dwelling unit. I don't know what you're
15 talking about.

16 Q Affordable dwelling unit agreement, it's
17 called an ADU agreement. You're not familiar with
18 that? Because I did ask the representative from the
19 Deputy Mayor's Office about specifically whether an
20 ADU agreement would be entered into and she said it
21 would be.

22 MS. BROWN: Okay, so you have your answer.

1 MS. FERSTER: But then I followed up and
2 said -- and then she said she's not involved in that
3 and you said there's another witness to talk about
4 affordable housing who I can ask that question to.

5 I would like to ask that question. If he
6 doesn't know, he doesn't know.

7 THE WITNESS: You have to explain to me
8 what an ADU is.

9 BY MS. FERSTER: (Resuming)

10 Q Okay, so you don't know anything about an
11 ADU agreement, is that it?

12 A No, an ADU agreement is a generic term. I
13 don't know what you're talking about.

14 Q Okay, okay. Are you aware of any agreement
15 with the District of Columbia relating to affordable
16 dwelling units that will be entered into?

17 A There could be a variety of ADU -- of
18 affordable housing covenants and/or a variety of
19 other agreements. I don't know which one you're
20 speaking of.

21 Q Okay, can you describe all the agreements
22 --

1 A No, I can't do --

2 Q -- relating to affordable housing?

3 JUDGE BYRNE: What's typical for an
4 affordable housing covenant?

5 THE WITNESS: There could be a plethora of
6 different agreements.

7 JUDGE BYRNE: Different agreements with
8 different agencies?

9 THE WITNESS: Exactly.

10 BY MS. FERSTER: (Resuming)

11 Q With the D.C. government, do you know
12 whether any agreements are going to be entered into
13 with the D.C. government for this process relating to
14 affordable housing?

15 A That's for the District to decide. As the
16 seller, we would be -- we will entertain and be able
17 to comply with the agreements that the District sets
18 forth for us.

19 Q But you don't know what they are.

20 A No, I didn't say that.

21 Q But if you do know what they are, could you
22 tell us?

1 A No. They need to present them to us.

2 Q Mm-hmm.

3 A And we will respond.

4 Q And they haven't presented them, any
5 agreements to you?

6 A This is not the appropriate time to be
7 going through covenants, pre-entitlement.

8 Q Okay, so they haven't presented any drafts
9 of any kind of parameters? You don't know what
10 covenants are going to be required?

11 MS. BROWN: I'm kind of concerned about
12 this direction and I think he's been asked and
13 answered the same questions six or seven times.

14 MS. FERSTER: Is this your only witness on
15 affordable housing?

16 MS. BROWN: You know, we have another
17 witness who can testify to it, but you know --

18 MS. FERSTER: I'd be happy to ask the
19 affordable housing questions to a more knowledgeable
20 witness, that's not a problem.

21 But I think it is very relevant because
22 when affordable housing is one of your core special

1 merit arguments, it is really relevant the things
2 that would normally be in the covenants on affordable
3 dwelling units in the District, including the
4 duration of affordable housing, how long it -- you
5 know, any kind of covenants that run with the land
6 that would restrict resale to an affordable price and
7 that sort of thing.

8 BY MS. FERSTER: (Resuming)

9 Q So I'm happy to direct my questions to
10 somebody else if that's not something you're
11 knowledgeable about.

12 A This is the first time that you've actually
13 explained what it is that you're talking about, so if
14 you were --

15 Q Just tell me --

16 A You can walk me through the rest of it and
17 that will be helpful, too.

18 Q Are you the right witness to talk about it
19 or is there somebody else? That would be the
20 question.

21 A We are perfectly qualified to talk about
22 affordable housing as it relates to this project.

1 Q Okay. Can you tell me the affordable
2 housing covenants that you would enter into with the
3 District of Columbia that would ensure the
4 affordability for resale purposes of this housing?

5 A I think it would be inappropriate for me to
6 suggest an affordable housing covenant when the
7 District is responsible for providing that covenant
8 to us.

9 Q And they haven't provided you one yet, a
10 draft?

11 A I have not reviewed one.

12 JUDGE BYRNE: So let's try this. So what
13 is the anticipated duration of the affordability of
14 these units and what kind of assurances are there
15 that they will remain affordable for that period of
16 time? Is that a more workable question?

17 THE WITNESS: As it relates to the senior
18 affordable housing, it would be our intent that these
19 units would be affordable into perpetuity --

20 JUDGE BYRNE: Perpetuity.

21 THE WITNESS: -- to mirror the inclusionary
22 zoning practice.

1 JUDGE BYRNE: Okay, good. And assuming
2 that, let's say you sold the property to somebody
3 else, how would they be bound by that, by a PUD?

4 THE WITNESS: Typically, a PUD and/or
5 several other covenants that would run with the land.

6 JUDGE BYRNE: And you would expect that as
7 the project matures, that you will enter into a
8 variety of covenants with the District government
9 that will set more specific parameters to these
10 questions, is that fair?

11 THE WITNESS: As the project matures and as
12 we proceed through the LDA process, yes.

13 JUDGE BYRNE: All right. So is that what
14 you're looking for, Ms. Ferster? Do you have more?

15 MS. FERSTER: Yeah, that was definitely
16 part of what I'm looking for.

17 BY MS. FERSTER: (Resuming)

18 Q And I also was looking for not just the
19 covenants that restrict the rental price, that
20 restrict the resale price. I'm wondering whether or
21 not there were going to be covenants in terms of the
22 for-sale units, whether or not the resale price would

1 **be restricted in perpetuity, as well, if you --**

2 A That I can't speak to.

3 JUDGE BYRNE: He's just the rental guy.

4 THE WITNESS: Right, thank you.

5 BY MS. FERSTER: (Resuming)

6 **Q You're just the rental guy, good, that's**
7 **the only thing you can speak to. And then in terms**
8 **of the covenants or the agreements that you would**
9 **enter into with the District of Columbia, in your**
10 **experience sort of as a person who is generally**
11 **involved in this type of project, what other types of**
12 **restrictions would the District of Columbia require**
13 **in that sort of agreement?**

14 A Why am I going through that?

15 **Q Because I would like to know what other**
16 **protections there are --**

17 A It depends on what you ask.

18 **Q -- to the tenants.**

19 JUDGE BYRNE: I think if it goes beyond
20 affordability, then it's not within the scope of --

21 MS. FERSTER: Well, I think those
22 protections do go beyond. I mean, typically, you

1 know, these agreements do have a number of -- should
2 have a number of protections to tenants that ensure
3 that the units remain affordable, not just in terms
4 of rents, but other charges.

5 BY MS. FERSTER: (Resuming)

6 Q Do you have anything you'd like to --

7 MS. BROWN: You know, I think he answered
8 that.

9 MS. FERSTER: And the answer was he didn't
10 know.

11 MS. BROWN: No, I heard "perpetuity."

12 MS. FERSTER: Yeah, but that was for the
13 senior housing, yeah.

14 BY MS. FERSTER: (Resuming)

15 Q So for the other affordable rental units?

16 MS. BROWN: Do you know --

17 BY MS. FERSTER: (Resuming)

18 Q I mean it would be easier if you would just
19 look to me --

20 A No, I can look this way, that's fine.

21 Q I mean your attorney knows how to object
22 when she wants to.

1 MS. BROWN: Can we hear what the pending
2 question was?

3 JUDGE BYRNE: Do you want to restate the
4 question?

5 BY MS. FERSTER: (Resuming)

6 Q Okay, so you talked about the restrictions
7 in perpetuity that are on the affordable rental
8 senior units. How about for the other affordable
9 rental units, are there restrictions in perpetuity on
10 those units, will there be?

11 A That has not been negotiated with the
12 District yet.

13 Q Okay, so you don't know.

14 MS. BROWN: He answered the question.
15 Asked and answered, let's move on.

16 BY MS. FERSTER: (Resuming)

17 Q Well, I guess I just have to ask you a
18 question about your certified business enterprise
19 status.

20 A Mm-hmm.

21 Q So which of your affiliated entities is a
22 certified business enterprise?

1 A Well, let's start with the fact that I'm a
2 District resident.

3 **Q Mm-hmm.**

4 A My businesses are located on E Street in
5 Washington, D.C. The majority of our businesses are
6 -- the majority of our business is done here in the
7 District.

8 **Q Okay.**

9 A So that allows for my companies, our
10 companies to be certified by the Department of Small
11 and Local Business Development. And I own a
12 development and service -- an advisory service
13 business, which is certified.

14 **Q Okay, and what's the name of that? Is that**
15 **Lynch Development Advisers?**

16 MS. BROWN: Don't look to me, she's asking
17 you. Go ahead.

18 THE WITNESS: That is Lynch Development
19 Advisers.

20 BY MS. FERSTER: (Resuming)

21 **Q Okay, and that is your certified business**
22 **enterprise, and is that --**

1 A That's A. I have a second here.

2 Q **You have a second one, okay.**

3 A I own an investment company, also, which
4 invests in our holding companies in a series of our
5 real estate projects. That is also certified.

6 Q **Okay, and --**

7 MS. BROWN: I'm going to object at this
8 point because he testified that he's a CBE, that he
9 will be qualified for this project that's part of the
10 package; we've heard testimony today to that effect.

11 So what list that you have there that you're working
12 through is irrelevant because that's going to be a
13 requirement of the deal.

14 MS. FERSTER: Mm-hmm.

15 MS. BROWN: End of story. So you don't
16 need to -- if you have an issue with what his CBE
17 status is, you take it to the Department of Small and
18 Local Business Development, not the Mayor's Agent.

19 MS. FERSTER: Thank you for that lecture.
20 I appreciate being instructed on how I should
21 represent my clients and how I should proceed, that's
22 very kind of you to provide that.

1 BY MS. FERSTER: (Resuming)

2 Q And let me just conclude by asking you this
3 one last question about your certified business
4 enterprise entity, which is are the two, the entities
5 that are certified business enterprises, are they
6 part of the partnership of this Vision McMillan
7 Partners?

8 A JL EM Investor is an investment holding
9 company, which is very much part of VMP. Lynch
10 Development Advisors is an affiliate of the entity
11 that's involved in this project.

12 Q Okay, thank you.

13 JUDGE BYRNE: Ms. Merritt?

14 MS. MERRITT: I have a follow-up question.

15 BY MS. MERRITT:

16 Q We were told by one of your earlier
17 witnesses that -- I think the word was like
18 "unprecedented use of CBEs" or something quite
19 extraordinary like that.

20 And I was wondering if you could tell us
21 what the overall percentage of the development
22 opportunity allocated to the CBE is.

1 A So the question would be in terms of
2 dollars of the whole thing? The CBE involvement is
3 one of the three partners in the project, and I don't
4 -- if you want to know what the allocation of shares
5 are among them?

6 Q There is a budget statement that a certain
7 percentage of the overall development opportunities
8 will be awarded to CBEs. And this is a follow-up of
9 the earlier witness who testified that one of the
10 community benefits is this extraordinary use of CBEs.

11 And so I wanted to find out what the
12 percentage, since this is the only main CBE we've
13 heard about, what the percentage is of the overall
14 development.

15 JUDGE BYRNE: That seems fair.

16 THE WITNESS: I believe you're describing,
17 and I don't know, that you're describing goods and
18 services if you're looking at a budget.

19 BY MS. MERRITT: (Resuming)

20 Q I'd be happy to read the sentence from the
21 budget justification from the city's FY 2014 budget.

22 It says --

1 MS. BROWN: I'm a little concerned about
2 this going beyond the scope of his testimony. I
3 think if she wants to bring evidence in her direct --

4 JUDGE BYRNE: I think she's trying to ask a
5 question about the extent of CBE involvement in the
6 project. And I think when the lady from the Deputy
7 Mayor's Office testified, you said that later on,
8 there would be somebody who could better answer the
9 question and I had assumed that Mr. Lynch was that
10 person. If that's wrong, we may have to think about
11 who could answer her question.

12 THE WITNESS: No, I can answer the
13 question. The question is -- I believe she's reading
14 about goods and services, which is typically the way
15 the District thinks about CBE. And for the last 30
16 years, unfortunately, they've been thinking only
17 about goods and services.

18 Over the last few years, backed by
19 legislation, there is a desire to have ownership
20 potential for local businesses in larger projects.
21 This is one of the first times in which there is
22 local ownership through our company in actually

1 components of this development project.

2 JUDGE BYRNE: So what was described, then,
3 as an unprecedented CBE involvement was specifically
4 referring to the ownership component of the project.

5 BY MS. MERRITT: (Resuming)

6 Q So what's the percentage that corresponds
7 with that ownership interest, that CBE ownership
8 interest?

9 A The percentage of the FAR that we're
10 developing.

11 JUDGE BYRNE: And what is that?

12 THE WITNESS: Approximately 25 percent of
13 the FAR.

14 JUDGE BYRNE: Approximately 25 percent of
15 the FAR, okay.

16 BY MS. MERRITT: (Resuming)

17 Q So one other CBE reference in this budget
18 document refers to 35 percent of local contracting
19 opportunities must go to CBEs. Do you have anything
20 to do with that or is that somebody else's bailiwick
21 entirely. Since you're the only CBE that's been
22 identified, I'm wondering --

1 A Actually, again, as I walked you through
2 that, that's referring to goods and services. Goods
3 and services start with any and all businesses that
4 are working on the project, Traceries, Perkins
5 Eastman D.C., they're all CBE companies. And that
6 will continue through the project as we get through
7 full design and construction.

8 So again, if you're looking for goods and
9 services, you can actually see the CBEs here in the
10 room now.

11 MS. MERRITT: I don't have any more
12 questions.

13 MS. FERSTER: No questions.

14 JUDGE BYRNE: All right, Mr. Lynch, thank
15 you very much.

16 THE WITNESS: Thank you.

17 Whereupon,

18 AAKASH THAKKAR

19 having been previously duly sworn, testified as
20 follow:

21 DIRECT EXAMINATION

22 BY MS. BROWN:

1 Q **Mr. Thakkar, do you want to start your**
2 **testimony?**

3 A Good evening. My name is Aakash Thakkar
4 and I am a partner and senior vice president with the
5 firm EYA. I am the for-sale guy.

6 My firm has been involved in this project
7 since 2007, when we were selected for this site in an
8 extraordinarily competitive process where five teams,
9 all with good and diverse backgrounds, frankly, all
10 qualified, were, you know, put through the wringer
11 might be a way to say it, by the District of Columbia
12 or the NCRC at the time to select a firm that had,
13 frankly, the bandwidth -- and when I say a firm, a
14 team -- that had the bandwidth to understand the
15 complexities of the site and put together a
16 development plan and then implement it.

17 So what the District was really looking for
18 at that time, as I said, we've got this big, you
19 know, wonderful opportunity and we need a firm that
20 has expertise in a number of different areas to
21 address the issues, solve the problems and put forth
22 a first rate development plan in partnership with the

1 community.

2 So in 2007, a team led by both EYA and Jair
3 Lynch Development Partners were selected by the
4 District. And I will come back to that CBE question
5 in just a second because I do think Jair Lynch's
6 participation is unprecedented. And we've been in a
7 lot of projects with CBEs and I think we have sort of
8 a good vantage point about what's unprecedented or
9 unique about the partnership with Jair Lynch
10 Development Partners.

11 A little bit about EYA. We were founded in
12 1992 and our goal, in a nutshell, is to do
13 outstanding urban infill development and
14 redevelopment. We've done over 4,000 units of mixed
15 income housing in the region, we are a mixed income
16 expert. We do predominantly for-sale; as I say, I'm
17 the for-sale guy. We do some rental.

18 But in terms of the quality of the
19 projects, you know, we're very focused on inside the
20 Beltway, in the District and in the surrounding
21 communities. And I say that because this site is one
22 that needs both, as Mr. Bell said, knit into the

1 surrounding community and be uniquely McMillan. And
2 I think we're well situated, based on our experience,
3 to do both of those.

4 We have a lot of experience working with
5 communities and a lot of experience in the historic
6 preservation process in the District and in the
7 surrounding communities.

8 This is just a quick project I show because
9 it's in the District of Columbia and --

10 JUDGE BYRNE: That's South Carolina Avenue.

11 THE WITNESS: You've got it, you've got it.

12 And I like to show this slide because when these
13 houses were delivered or to be delivered to the
14 residents, the inspector came out and called over to
15 the office and said, "Unfortunately, there are no new
16 homes to inspect. You know, I'm not sure what to
17 do." And our project manager called him up, drove
18 him over to the site and said, in fact, "The homes on
19 the right are new homes and the homes on the left are
20 existing Capital Hill rowhouses."

21 And I show that because in that instance,
22 the preservation solution that was called for by the

1 HPRB and by the community was one of sort of an exact
2 replication of what was in the surrounding community.
3 And we think we did a good job of addressing those
4 concerns and the community there was very happy with
5 the alternative. We took that same approach with
6 McMillan.

7 So the purpose of my testimony, I can
8 certainly talk about the for-sale housing. I'm going
9 to kind of touch on each of our community benefits
10 and really focus on those that have not been
11 articulated in any detail to date.

12 So I'm going to start, actually take it out
13 of order and just start with the CBE participation
14 question, there's been a lot of discussion about it.

15 So why do we think this is unprecedented in
16 terms of our partnership with Jair Lynch Development
17 Partners? We work a lot in the District and what we
18 find is we have development partners, local
19 businesses that are part of our team when we're
20 developing a site. And so they get to take part in
21 what we do, they get to learn from EYA, which is a
22 larger company in the region, and really be a part of

1 our team, but not have their own development parcels.

2 Like I said, we've been involved in a
3 number of projects. Never once have I had the
4 experience where a CBE will have its own capital and
5 develop its own individual parcel.

6 So why is that important? You know, the
7 District has an office that focuses on local
8 companies and insuring that local companies can take
9 part in these projects.

10 Mr. Lynch is humble, but he really is sort
11 of on the forefront of local companies that do their
12 own thing. And why is that important? I can't tell
13 you how many people say, "Oh, you know Jair? Can I
14 meet with him. I'm young, I'm local, I want to get
15 in the business and I want to follow his track of how
16 do you become a big, successful local business?" Not
17 big yet, but getting there.

18 But, you know, "How do you become a first
19 class local business and how do you develop sites on
20 your own?" And he's one of the folks at the
21 forefront of that. And so when we say unprecedented,
22 it's not as if he is investing in EYA or investing in

1 Trammel Crow. He is fully developing what in my
2 opinion are critical, critical pieces of this
3 project, the senior housing, the grocery store,
4 rental housing, creating places along the north
5 service court.

6 As Jair said in his testimony, he is
7 standing toe to toe with us. I think our percentage
8 of the FAR is very similar to Jair Lynch's. The
9 medical office is the bigger part of this project.

10 But my point is that we do believe it is
11 especially meritorious because it is one of the first
12 projects that I am aware of, there might be a couple
13 of others, but I can assure you there aren't many,
14 where the CBE developer has a parcel of this size,
15 scale and import.

16 With regard to affordable housing, I'd like
17 to address a couple of questions there. First, the
18 for-sale affordable housing will be for sale in
19 perpetuity, just as Mr. Lynch mentioned that the
20 senior housing would be.

21 In terms of covenants and such, we are
22 currently working through, and that's why we can't

1 sit here today and tell you that it is final, with
2 the Zoning Commission what the final language will be
3 with regard to those covenants. I can assure you,
4 having worked with the Zoning Commission on covenants
5 many, many times, they're going to hold our feet to
6 the fire and we want them to.

7 We develop mixed income housing, we know
8 how to develop mixed income housing. I believe that
9 we have a proposed covenant into the Zoning
10 Commission right now. There may be tweaks to that
11 back and forth, but my sense is when the Zoning
12 Commission takes final action, we're going to have a
13 covenant in place that is restrictive in keeping with
14 other District projects of this size and scale.

15 They're going to mandate the 20 percent, they're
16 going to mandate the general affordability levels
17 that we've laid out. That's how the District does
18 business. So I can assure sort of, you know, the
19 broader community that our affordable housing program
20 will be enshrined in that PUD, enshrined in the
21 covenants and will be delivered. So that's
22 affordable housing.

1 With regard to the rest of these benefits,
2 and I will touch on each one, I think what is
3 important here, looking back again to this sort of
4 very high bar that is special merit, each and every
5 one of these community benefits were suggested and/or
6 put forth or mandated, frankly, the City, the city
7 councilmember in Ward 5 and the ANC, who's actually
8 been kind enough to wait here today.

9 And so when we talk about community
10 benefits at large, what we did is starting with the
11 District and the councilmember who represents that
12 community at large, said, "What would make this
13 project special for you, not just an everyday public-
14 private partnership, but a unique project?" And I'd
15 like to say that we have addressed a vast majority of
16 those issues in putting forth this comprehensive set
17 of public benefits here.

18 So I'm going to talk a little bit about the
19 public park. I know we've had a fair bit of
20 discussion around it and so I'm not going to read
21 through these again. But I will say having been
22 involved now for eight years, a vast public park is

1 something that is important to many people, many
2 people in this room. Some folks want it bigger, but
3 in kind of working through the right size of a park,
4 we found this to be an extraordinarily large and
5 wonderful space that can be enjoyed by the community.

6 The community center. Again, I'd like to
7 speak about this one. You've seen the program,
8 you've seen the slides. Where did this request come
9 from with regard to the community at large?

10 The sitting councilmember, as you've heard,
11 lives across the street. Our single member ANC,
12 who's sitting here today, and many folks in the
13 community said, "A park would be one thing and we
14 want a park and we need a park. But there are other
15 communities throughout the city who have excellent
16 community centers and with this excellent opportunity
17 to develop the site, we want a community center
18 here."

19 And so again, that request was made. We
20 worked with the District to include funds for it in
21 the budget. We worked with Mr. Bell and company to
22 design something that's in keeping with the site and

1 were able to deliver on something that was of
2 significant import to the community.

3 I want to talk a little bit about the park
4 in terms of context. We studied the best parks
5 instrument the nation, period. And so I've got two
6 pictures here. I'll start with the bottom one,
7 actually. It's Citygarden in St. Louis. Three
8 acres. So, you know, almost a little bigger than a
9 third of our eight acres. High density surroundings,
10 as you can see, designed by Nelson, Byrd, Wolz.

11 And we haven't talked about them much.
12 They are our landscape architect and, frankly, a firm
13 of international reputation. This park, at three
14 acres in downtown St. Louis, was awarded the Urban
15 Land Institute Park of the Year Award in 2012. And
16 what I'll note about it is it's got great landscape
17 design.

18 What we think makes our park and parks work
19 in today's day and age is some level of vitality and,
20 yes, maybe this is a dirty word, but density, because
21 you do need people around a park to make it vibrant.
22 So you've got the communities to the south,

1 Bloomingdale, and to the east, Stronghold.

2 But what we are doing is really giving the
3 park, frankly, a safety and also a vitality through
4 development associated with a park that you see in
5 both Citygarden and then a more local example, the
6 2013 winner of the Urban Land Institute Park of the
7 Year Award, a five-acre park in the District, and
8 significantly more density than McMillan will have.
9 But if you've been here on a Friday night, you can
10 see part of the vitality of this park.

11 And what we're trying to create in McMillan
12 will result from what is around the park, as well.
13 So we want to be the best, we want to be special
14 merit and we think our park will be on par with these
15 great parks around the country.

16 You heard Ms. Corbett talk about an
17 expanded transportation network. I am not a traffic
18 engineer and I'm not testifying to the Zoning
19 Commission report that was submitted. What I can say
20 and what I think Ms. Corbett was trying to explain is
21 that whether it's privately-owned shuttle, Bikeshare
22 docks, short and long-term bicycle storage, a

1 multimodal transit hub, a number of improvements
2 around the site with regard to road improvements, we
3 have proposed a hefty package of transportation
4 improvements to the Zoning Commission.

5 And what's important here is that we've
6 worked with DDOT for months. DDOT has approved our
7 package of improvements. The Zoning Commission has
8 tentatively -- or preliminarily, I should say, not
9 tentatively -- approved our transit improvements.
10 And we think were bringing a lot to the table in
11 terms of more opportunities for people to experience
12 the site and get to the site in different ways than
13 they can today with regard to the bikes.

14 And what else we'll do with regard to this
15 is, as this development happens, all of the plans for
16 the city in terms of the streetcar and even
17 Circulator assume the development of McMillan, and
18 what DDOT has said is once this project comes, "We
19 will start investing in those other forms of
20 transportation."

21 And what we think will happen ultimately,
22 the long-term solution, is that with streetcar or

1 even more public transportation access, like the
2 Circulator, getting to this site will be easier to
3 get to and there will be different forms of
4 transportation than there are today.

5 We've talked about low-impact development
6 and so we want to be clear on this point. There's a
7 designation called LEED ND for master plans and we've
8 scored our site and we meet the base levels of what
9 it means to be LEED ND and we intend to exceed those.

10 As you can see in the PowerPoint here,
11 there's a number of different stormwater management
12 techniques we'll use. As Mr. Bell described, we've
13 got a great rain garden for running down the north-
14 south streets, what we believe will be best in class
15 with regard to environmental design.

16 Another sort of large component of our
17 project and of our community benefits and of our
18 special merit application that we haven't talked
19 about in detail, as part of this process we went
20 through a very detailed conversation, maybe
21 negotiation I'll say, with the Advisory Neighborhood
22 Commission that is where the site is located.

1 And in summary, we came up with a community
2 benefits package. Because as important as it was for
3 us to invest in McMillan, the communities around the
4 site said, "You need to invest around McMillan." And
5 so you can see the numbers on the screen here, but
6 economic and job opportunities, we're making an
7 investment. We're making an investment in all of
8 these areas and I'll talk a little bit more about
9 each of these.

10 So economic and job opportunities. A total
11 of \$1.425 million going to workforce development,
12 jobs for teens and seniors and business start-ups, as
13 well. So the point here is that there's a big
14 development project that will be happening in this
15 community and we wanted to ensure that people within
16 the community, the community at large, would have the
17 opportunity and the ability through the use of these
18 funds, working with nonprofits, to actually access
19 these jobs.

20 Mr. Weers talked a little bit about this,
21 but here's some more detail with regard to there's a
22 million dollars and then we can walk through some of

1 the others.

2 A scholarship fund of \$300,000.00. I will
3 tell you that we've been involved in scholarship
4 funds in Ward 5. There is a need for, you know,
5 bright, young children who -- we all know how much it
6 costs to attend college these days -- to attend two-,
7 four-year post high school institutions. The
8 \$300,000.00 will be used for Ward 5 students to
9 attend college and similar.

10 We also want to be supportive at the high
11 school level and so again, in discussions with folks
12 who represent the community at large, it was
13 determined that these schools right around the
14 McMillan site, Dunbar, McKinley and Langley, should
15 receive dollars so folks at a younger age could get
16 involved in the fields that will one day be
17 represented at McMillan. And so a very targeted
18 approach and a targeted investment to ensure that
19 folks in the surrounding communities will have access
20 to all that McMillan will be.

21 Facade improvement grant. So again, this
22 \$150,000.00 does not represent anything to do with

1 the McMillan site. I think part of our suggestion
2 with regard to special merit is this project will be
3 a revitalization project.

4 This project is not downtown, it is an area
5 which still has a high unemployment rate and needs
6 revitalization. The facade improvement grants are
7 for businesses surrounding the site so that they,
8 too, will have the economic opportunity and dollars
9 needed to make improvements to their business, so
10 that when McMillan happens, they'll be part of this
11 larger renaissance in the area.

12 And then funds for signage, trees and tree
13 boxes. Again, a direct request from the
14 councilmember and the Advisory Neighborhood
15 Commission is, "If you're going to do this project,
16 our surrounding communities need dollars for
17 beautification." And so we've come up with an
18 allocation amongst all the areas immediately
19 surrounding McMillan and this is the allocation of
20 those dollars.

21 There was a question regarding programming
22 and maintenance of the park. And so let me start by

1 saying, and I think we've said this a number of times
2 publicly, the park will be owned by the District of
3 Columbia and be open to all District residents.

4 So I'll start there. The development team
5 is not purchasing that land. We are, however,
6 because of our expertise, charged with designing it
7 and coming up with a long-term implementation
8 program.

9 And so as part of our PUD, we have proposed
10 \$750,000.00 to create various programming for the
11 park and the historic resources, various business
12 incubators, maintenance. And this is, frankly, just
13 seed dollars. It is our charge, longer term, to put
14 together, as Ms. Eig testified, a BID, a business
15 improvement district, that will run for the city not
16 just the park, but the community center and the
17 historic courts and the activity that goes on there.
18 It was very important to the city that we had a good
19 plan on the table, but that they would retain
20 ownership to ensure that the park would be public in
21 perpetuity, as it is proposed today.

22 JUDGE BYRNE: Will the city own the

1 community center?

2 THE WITNESS: The city will likely own the
3 community center. And I say likely because what we
4 could do here, what the city could ultimately do, is
5 say, "There's a BID formed and we transfer all this
6 property to the BID, with the covenant that says you
7 can't do anything but what is approved by the PUD."
8 There's a number of approaches. Public use is our
9 point, though, always be public use.

10 So that concludes my testimony. I'll just
11 close by saying that it is not one of these public
12 benefits that earns us, in my view, special merit;
13 it's the combination of all of them that addresses a
14 plethora of needs, desires and benefits that the
15 community has requested and we look forward to being
16 able to deliver on those promises. Thank you.

17 JUDGE BYRNE: Thank you.

18 MS. BROWN: I have a couple of quick
19 follow-up questions.

20 THE WITNESS: Sure.

21 BY MS. BROWN:

22 Q You began your testimony talking about the

1 affordable dwelling unit covenants and the PUD
2 covenants and how the Zoning Commission will hold
3 your feet to the fire to make sure that you get
4 there.

5 I just want to make sure that we get the
6 record straight.

7 A Of course.

8 Q The Zoning Commission will put conditions
9 into the PUD order requiring you to meet the
10 affordable housing requirements, correct?

11 A Correct.

12 Q And from there, you record a PUD covenant
13 on the property, which makes those conditions in
14 force, correct?

15 A Correct.

16 Q And you will have a separate covenant with
17 the Department of Housing and Community Development
18 on the affordable dwelling units.

19 A That's correct.

20 MS. BROWN: Okay, thank you, that's all I
21 have.

22 JUDGE BYRNE: Thank you. Ms. Ferster.

1 MS. FERSTER: A couple of quick questions.

2 CROSS EXAMINATION

3 BY MS. FERSTER:

4 Q So you're basically relying on the Zoning
5 Commission covenants, then, to provide the
6 enforceability in terms of your commitment for
7 affordable housing and that sort of thing?

8 A No, one, Zoning Commission, two, the
9 Department of Housing and Community Development, and
10 my sense, and this is what Mr. Lynch says as well,
11 there's also a land disposition process that we are,
12 frankly, just starting to go through. Our sense is
13 that that, too --

14 I mean the District is going to be selling
15 us parcels. Of course, they are going to have
16 covenants that I imagine would be the same covenants
17 as the Zoning Commission and DHCD, because we don't
18 want sort of differing affordability levels. I
19 imagine we're going to have sort of one set of policy
20 goals enshrined in a number of different places.

21 Q So your position is that the Mayor's Agent
22 should rely on the fact that these other entities are

1 going to include these covenants, even though these
2 covenants have not yet been entered into.

3 A The Zoning Commission took a vote and their
4 vote on this past Monday evening included our
5 proposal of 20 percent of the site being affordable
6 housing, as we proposed.

7 Q But in terms of the specific covenants that
8 you talked about --

9 A Right.

10 Q -- you know, to ensure that it's in
11 perpetuity and that sort of thing, has the Zoning
12 Commission specifically voted to approve those types
13 of covenants?

14 A I believe that there's a proposal on the
15 table in terms of --

16 Q Not yet.

17 A -- the Zoning Commission.

18 Q Not yet.

19 A It's just that they haven't taken final
20 action.

21 Q That's right.

22 A They're aware. But I want to say this.

1 There are generally accepted norms with regard to
2 affordable dwelling units in the District of
3 Columbia, there's policy that has been -- we build
4 houses like the Jair Lynch Development Project has.
5 We're going to met those same -- if those aren't
6 satisfactory, you know, there's nothing that we can
7 do about that, but the District --

8 I've been hearing a lot of the questions
9 and the bottom line is, even with regard to your
10 questions around AMI, the District determines that
11 between zero and 80 percent of AMI is what is
12 considered affordable housing.

13 You may not like that, I may not like that,
14 but the materiality in my view is that between zero
15 and 80 is considered affordable housing in the
16 District of Columbia, pursuant to inclusionary zoning
17 and DHCD. And we're meeting those requirements
18 through a number of ways with the appropriate bodies
19 who we are supposed to have agreements with.

20 Q But just in terms of the specifics --

21 A Yes.

22 Q -- of the affordability, your position,

1 then, is that the Mayor's Agent should essentially
2 rely on the fact that the government agencies are
3 going to include the specifics that will ensure that
4 this affordable housing is available to, you know,
5 the required number of tenants who meet the
6 particular income eligibility, that it's
7 enforceable --

8 A Right.

9 Q -- they'll be monitoring. All that stuff
10 is going to be done in the future and the Mayor's
11 Agent should rely on that.

12 A Well, let me say this --

13 Q In fact, everybody else is --

14 A That's a good question, so let me say it
15 this way. I'll consult with our attorney. There is
16 no issue with us meeting our affordable housing
17 requirements, so you know, we'll -- I don't have the
18 answer because I actually don't know exactly what is
19 required by the Mayor's Agent process. Because there
20 are so many entitlements in this project that, you
21 know, I thought them covered elsewhere.

22 But I'll say it very simply. If it is part

1 of process that we make the same commitment to the
2 Mayor's Agent that we have made to every other
3 entitlement body, of course we'll do that.

4 I want to be very clear that there's
5 nothing to hide here. As I said, all of the
6 developers on this team have developed significant
7 mixed income housing in the District and we're going
8 to do so here. So whatever the requirements of the
9 Mayor's Agent's process are, we're happy to do those.

10 Q Thank you, I appreciate that. Okay, so you
11 had mentioned that DDOT had approved the package of
12 transportation improvements that are on the site.

13 A Yes.

14 Q But isn't it correct that DDOT, in the
15 context of approving this, has also said that
16 significant transit capacity improvements are needed
17 to accommodate the expected increase in travel
18 demands, including 1,100 new bus seats of capacity,
19 and that DDOT has made no commitment whatsoever to
20 fund Circulator or streetcar?

21 A It's a good question. So as we submitted
22 to the Zoning Commission -- and I think one of the

1 reasons, frankly, that the Zoning Commission did take
2 that vote in our favor is DDOT said, "Look, this
3 project is a number of years away. We can't commit
4 to it being Circulator versus streetcar versus
5 expansion of the WMATA bus lines, which are also
6 going to the site today. We don't know yet, it's too
7 early." They did commit, if you'll note in their
8 report, to enhancing public transit service at the
9 site now.

10 Now, what we said is, "Look, we can't rely
11 on that," and the Zoning Commission was saying, "We
12 like this project generally, but we are concerned
13 about traffic," and frankly, we are concerned about
14 traffic, very self-interestedly. We don't want you
15 or Mr. Norman sitting in traffic, you know, coming to
16 the grocery store at the site.

17 So what we said was, "We will fund,
18 regardless of cost, the amount of shuttle seats, the
19 1,100 or whatever it ultimately is. We will fund
20 private services to fulfill that demand if DDOT does
21 not fill it."

22 If you want my opinion, my opinion is DDOT

1 will fill much of it, but not all of it, and we will
2 have private shuttles, as well.

3 But in order for the project to move
4 forward, we said we will fund all of the expansion of
5 what I'll call a private shuttle that is necessary to
6 fulfill all the trips that our project is causing.

7 JUDGE BYRNE: Shuttle to the Brookland
8 Metro?

9 THE WITNESS: What we're thinking is
10 Brookland and Columbia Heights, sort of a private
11 Circulator, if you will, yeah.

12 MS. FERSTER: That's all I have.

13 MS. MERRITT: I have a couple of follow-up
14 questions.

15 BY MS. MERRITT:

16 Q You testified about the community center
17 and the park.

18 A I did.

19 Q And you said that EYA's responsibility is
20 to design the park and to implement the programming.
21 What about constructing the park?

22 A Again, let me back up. When I say "our,"

1 when I say "our," I mean Vision McMillan Partners.

2 Q Okay.

3 A So Vision McMillan Partners is the three
4 groups, EYA, Jair Lynch, Trammel Crow. Anne Corbett
5 is our project director. And so as part of the
6 process that we are currently going through, it
7 obviously is and was and will continue to be our
8 responsibility to design the park, as we have
9 designed to date that you see.

10 Q EYA.

11 A No, no, speaking of Vision McMillan
12 Partners. EYA's involvement in the site is through
13 Vision McMillan Partners, which is a development
14 partnership, right? So in our capacity as Vision
15 McMillan Partners, one of our tasks is to design the
16 park.

17 To answer your question, we are still
18 working with the city to determine who will actually
19 build the park. It's the city's responsibility to
20 ultimately build the infrastructure and park and
21 community center. And we're working with them
22 because we have the expertise to build the park and

1 the infrastructure and the community center in terms
2 of the agreement of how best to do that.

3 Q So at this point it's uncertain about the
4 degree to which the city will do that or --

5 A No, it's not uncertain. It's the city's
6 responsibility to build the infrastructure for the
7 site and the park and the community center, right?
8 The city has committed dollars in its budget to do
9 exactly that. It's just a question of working
10 through the finer details of the implementation of
11 the build-out.

12 What I imagine will happen is they'll say,
13 you know, go talk to three or four of the firms that
14 do this type of construction on a regular basis, get
15 bids from them and the District, in consult with us,
16 will actually select a firm that has expertise in the
17 construction of parks, community centers, the roads
18 and so on.

19 Q What's your understanding of the amount of
20 money that the District has set aside in its budget
21 for that work as you referred to?

22 A I know that the District has \$50 million in

1 its budget for capital investment in McMillan.

2 Q And it's your understanding that's for the
3 park, the community center, the roads, et cetera --

4 A Correct.

5 Q -- and construction.

6 A Correct.

7 Q One other question. You mentioned that you
8 negotiated with one of the ANCs and you outlined some
9 mitigation measures. Which of the ANCs were you
10 referring to?

11 A We negotiated with I believe the 5E, the
12 ANC that -- well, this is an important point here.
13 We negotiated with the ANC where the site is located
14 and so I believe that's ANC 5E. So we met with ANC
15 5E, Ms. Corbett did, I did and Mr. Lynch did, over a
16 several month process.

17 And their charge to us was, "This is a good
18 project, but we want to see more community benefits
19 outside the walls of this project," so that's how we
20 came up with that agreement.

21 Q One of the earlier witnesses mentioned that
22 there were three ANCs involved in this jurisdiction.

1 A Ms. Corbett did, so there are two adjacent
2 ANCs. But in the way development projects typically
3 work, we work with the ANC that is, quote, unquote,
4 "most effective" and the ANC that is most effective
5 is the one in which the property actually sits.

6 **Q And did you negotiate with the MAG, the**
7 **McMillan Advisory Group, did you reach out to them?**

8 A I mean with them and again, I'm not party
9 to all of the details. But we met with them, you
10 know, I would certainly say tens of times throughout
11 the course of the year, we took their input, and we
12 provided a benefits package that we thought met the
13 needs of the community.

14 Ultimately, the way the process works in
15 the District is you do work on those types of things
16 with the affected ANC.

17 **Q You mentioned at the beginning of your**
18 **testimony that there was an extraordinarily**
19 **competitive process and that five different**
20 **development teams were put through the wringer.**

21 A I did.

22 **Q Was that in response to the 2006**

1 **solicitation --**

2 A It was.

3 Q -- by NCRC?

4 A That was.

5 Q **And do you know who the other five teams**
6 **were?**

7 A I knew you'd ask that ask, I'm starting to
8 think about it. There's a firm called Kettler, which
9 has a great reputation here locally and nationally,
10 that was one of the teams. There's a team I dealt
11 with named EastBanc and I think they actually teamed
12 up with a national firm, so that's two. I just don't
13 recall the names of the other two. I'm sure I could
14 find that in the records, it was a very public
15 process.

16 Q **There are significant differences -- I**
17 **don't have a copy in my hand, but there are**
18 **significant differences between some of the**
19 **parameters spelled out in the 2006 solicitation and**
20 **in the current plan. I wonder if you could address**
21 **those differences.**

22 A I can't, I don't believe. I mean we've

1 worked on the project with the District, who issued
2 the solicitation.

3 Q Do you know what any of the other five
4 teams proposed in terms of their concepts?

5 A I can tell you, when I said "put us through
6 the wringer," I was having memories of this process.
7 We were in the basement of a church right off of
8 North Capitol and all I can say, that there were a
9 number of community meetings, during which teams
10 proposed both their qualifications and very broad
11 concepts.

12 And again, I think what's important here is
13 I think we were selected for this project not because
14 we had the right plan; it's because we had the
15 wherewithal, the capacity, the bandwidth to bring on
16 folks like Emily Eig and Matt Bell and Anne Corbett
17 and Holland and Knight and others to put together,
18 through a very community oriented process over many
19 years, the right plan. I mean that's what we were
20 selected to do, not to say, "This is the plan,"
21 period, the end, but solicit the folks who are the
22 experts.

1 That's the developer's role, to be the
2 conductor and pull together something that at the end
3 of the day, we think, you know, is the right solution
4 for us. That's what we do every day.

5 MS. MERRITT: I don't have any further
6 questions. Thank you.

7 JUDGE BYRNE: Do you have anything further?

8 MS. BROWN: No, I don't.

9 JUDGE BYRNE: All right, thank you very
10 much.

11 THE WITNESS: Thank you.

12 MS. BROWN: We do have one final witness
13 and I hope to be out of here quickly, Mr. Lindsley
14 Williams, and I'm proposing him as an expert in
15 planning and zoning. I have his resumé here.

16 (Exhibit 5 is marked for identification.)

17 Whereupon,

18 LINDSLEY WILLIAMS

19 having previously been duly sworn, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. BROWN:

1 Q If you could introduce yourself, Mr.
2 Williams.

3 A Good afternoon. For the record, my name is
4 Lindsley Williams. I have been active in planning
5 and zoning matters for quite a while here in the
6 District of Columbia.

7 My history here goes back to when I moved
8 in 1966 to the area, in 1970 to the area. Shortly
9 after that, I had a role in the local community,
10 something like what Anne Sellin did later on with
11 this particular site. But I was responsible for
12 nominating the Wardman Tower complex into the Joint
13 Committee on Landmarks at the time.

14 So I have some history with historic
15 preservation and I revere it, but I've also taken on
16 other roles that are consistent with my training as
17 an urban planner and that's what I'll talk about
18 today.

19 JUDGE BYRNE: One moment. So any objection
20 to his qualifying?

21 MS. FERSTER: No objection.

22 JUDGE BYRNE: Okay, Mr. Williams, you're

1 qualified as a expert witness.

2 THE WITNESS: The assignment I have today
3 is essentially to show you, Mr. Hearing Examiner, how
4 the particular application is satisfying of the
5 requirements relating particularly to the
6 Comprehensive Plan.

7 The way I went about that is to show you
8 what the provisions are that explicitly relate to the
9 Comp. Plan in the many volumes that are there and to
10 say how I see the plans stacking up against it.

11 So for example, the plan says, at MC-2.6 in
12 one of the subsections, 2016.1, it's for community
13 development purposes. This was what was stated at
14 the time in 1987 and the McMillan Plan provides
15 precisely that.

16 The McMillan site, as noted in the next
17 section, has had a lot of community forums. We've
18 heard about that more than perhaps some of us wanted
19 to reminded of today. But it's gone on and on and on
20 and now we have the plan reflecting the extended
21 efforts of the District of Columbia to realize
22 community development and the hurdles it's faced

1 since the transfer of ownership in 1987.

2 Note, in particular, the fact that the use
3 in 1980 was utility and that's what the Comprehensive
4 Plan even in '89, '82 reflected -- excuse me, it was
5 reflected later in one of the early plans that I'll
6 show you.

7 On open space, the plan says that it should
8 be dedicated, a substantial portion, a contiguous
9 portion of the site, for recreation and open space.
10 We've had different kinds of numbers showing how it
11 went from different stages, from six acres to nine
12 acres, up to as much as 12 acres. This plan has over
13 half of that in the south park area alone and it
14 satisfies that criteria.

15 Under historic preservation of the McMillan
16 Reservoir, the plan says -- and this is really
17 important, I'd like you to focus on these words. It
18 says two things. It says something about what we
19 should do about the above ground elements and what we
20 should do about the below grade elements.

21 For the above grade elements, it says,
22 "Restore key above grade elements." There are a lot

1 of surviving towers, there are the pumps there, the
2 meter stations. There are other features of the
3 built environment which are visible on the exterior.

4 And I think you've heard any number of
5 references, from Emily to the architect, showing how
6 each of them is being given very careful attention,
7 trying to build something that will be of long-term
8 value, not just to the site, but the overall city.

9 And most important in terms of the
10 controversies here, to my way of reading, is what it
11 says about what goes on below grade is, "Explore the
12 adaptive reuse of some . . .," "some", very different
13 words than what it says above grade.

14 And that's exactly what the project does.
15 It tries to say what is there that we can work with
16 and bring to the community in some fashion. Whether
17 it's going to be occupied or not is not yet
18 determined, we know that. But it is explored, it's
19 been evaluated and pushed as hard as it can be and we
20 have as much certainty now about that as is possible
21 at this stage in the process.

22 As to the investment in the reuse planning

1 and talking with the community, Ms. Corbett and
2 others have talked about 160 meetings on her part and
3 other witnesses have said over 200 instances of
4 collaboration with the ANCs, with the McMillan
5 Committee and with others. That satisfies that
6 condition.

7 The scale of the use is the next subject.
8 When development takes place, it should consist of
9 moderate to medium density housing, retail and other
10 compatible uses. That is what we'll be turning to,
11 with pictures in just a few pages.

12 There are a few other places where McMillan
13 is mentioned. It's mentioned in part in the Rock
14 Creek East Element. It's not a requirement that says
15 what the site has to do, but it's acknowledged and I
16 would assert that it is behaving sympathetically to
17 the objectives that are stated in the adjacent
18 element by land area.

19 Okay, let's turn to the pictures. The
20 first picture which you've seen before in the booklet
21 is what it is that should be taking place, medium
22 density residential, medium density commercial and

1 parks and recreation and open space.

2 The site is colored with three bands of
3 color. It's got a green ring, the green that runs
4 through it, and it has the two other colors which
5 represent the medium density residential and medium
6 density commercial that are called for squarely
7 inside the plan.

8 The next picture is the Comprehensive
9 Plan's adopted, generalized policy map. It
10 essentially says this is supposed to be an area where
11 things change and, boy, would they change. It goes
12 from this utility use to the type of uses that have
13 been elaborated on here in some detail.

14 The next picture shows you how -- it's a
15 slide you've seen before, but it says the same things
16 that we've just been talking about, residential,
17 office and community center. The community center
18 doesn't show up very well in this particular slide,
19 but you'll remember it from before.

20 In the history of this, we go back -- in
21 1980, NCPC first published as an assistance to the
22 Office of Planning what are the land uses in the

1 area. And in 1980, the NCPC classification of this
2 site was as a local public facility. Well, it was,
3 it was clean water.

4 In 1985, what is sometimes called the blob
5 map, the generalized land use plan, which was done
6 almost in watercolors, it did color it green. But I
7 want to emphasize that while it was colored in green,
8 green was the color of all kinds of open space.
9 Cemeteries are open space, airports are open space.

10 And this was a tract of land that was open.
11 It was still being used for utilitarian purposes in
12 '85, but at that point, it wasn't yet any part of the
13 discussion about for sale.

14 By 1992, when the plan that was started in
15 1989 was published, it had moved to something like
16 what we see right now, a combination of commercial
17 and residential, along with parkland, and that's what
18 brings us to the plan that I showed you on the first
19 picture of the three uses.

20 The next few pages that I have essentially
21 go through consistency with the general guiding
22 principles of the Comprehensive Plan. The land use

1 element, which is sort of a premier element among the
2 many elements of the Comprehensive Plan -- I'm not
3 going to try to read all that in the interest of
4 time.

5 I would assert that there is sweeping
6 consistency with the provisions of the Comprehensive
7 Plan, all of the ones that are very specific, all of
8 the ones that are in the land use plan, and a series
9 of others, including the housing element, the
10 environmental protection element, the economic
11 development requirements.

12 Which brings me to the end of the
13 presentation where I essentially say -- and this is a
14 word that I was going to use at the beginning, as
15 well. It's a four-letter word, epic. This is a word
16 which tries to capture, in my view, the culmination,
17 the absolute summation of what you're getting in this
18 project, which is something that is, to my way of
19 thinking, something that goes way beyond what I've
20 seen elsewhere in the city.

21 Now as a small aside, you asked earlier in
22 the day whether there are any of these cases that

1 involve structures and the answer is there's at least
2 one. I sat in a room like this and it was a case in
3 the Southwest with curved canopies over parking
4 garages for the -- I think it was Capitol Riverfront.

5 JUDGE BYRNE: Oh, yes. That's part of the
6 landscape, yes.

7 THE WITNESS: So that's my answer and I
8 don't know that it adds to my expertise, but it does
9 show you that I haven't gotten completely senile.

10 So with that, I would wrap up and hope that
11 we could get out of here before the CSX freight train
12 comes through at 5:00 p.m. Thank you.

13 JUDGE BYRNE: Thank you very much, Mr.
14 Williams.

15 MS. FERSTER: No questions.

16 JUDGE BYRNE: Okay, any questions?

17 MS. FERSTER: Just one quick one.

18 CROSS EXAMINATION

19 BY MS. FERSTER:

20 Q You mentioned that the land use element is
21 the premier element in terms of your review of the
22 consistency with the Comp. Plan. So you would say

1 that the land use element will control over the more
2 general policies if there is a conflict?

3 A I don't know if I would say that it would
4 control. There is nothing absolute that I know about
5 anywhere in the Comp. Plan that says, notwithstanding
6 any other provision, this trumps whatever.

7 I would say that where you have specific
8 directives pertaining to a site, as we have here for
9 McMillan, you've got to pay attention to that. We
10 did pay attention to it, we satisfied that.

11 You then turn to the land use element and
12 to my way of thinking, as the plan itself says, it
13 has a special status. And so I agree with that
14 status. I'm here as an expert. That's what it says,
15 it is important. But I'm not trying to say that
16 education, housing or any of the other things are to
17 be dismissed as trivial.

18 But if there's a conflict, I would sort of
19 speak -- I would try to defer and find a rationale
20 that satisfies land use before I would go struggling
21 to find something in one of the other elements.

22 That's a vague answer, but that's the way I

1 see it.

2 Q That's helpful, thank you. In terms of
3 hierarchy, then, you're saying that the hierarchy
4 would be first would be the specific area elements
5 that relate to the site, second would be the land use
6 and third would be general policies?

7 A I would say that there are some overarching
8 principles which are described in my materials as
9 well. And so that and land use together are fairly
10 important and then I would say the other elements.

11 But again, I'm not trying to say that
12 housing is somehow not an important thing or that
13 economic development is not important. They're all
14 important. That's why we have a comp. plan and it's
15 why we have a Zoning Commission and other groups that
16 try to balance these things out, to make sure that
17 even though you can't be something for everybody,
18 that you are not inconsistent with it.

19 The zoning order was approved, the decision
20 was approved, knowing that it would be not
21 inconsistent with the Comprehensive Plan, District
22 elements and federal elements. And that's the

1 process here which we live with and enjoy or suffer.

2 Q Okay, so just to bring it to a very
3 concrete level then, if, hypothetically, you have a
4 specific policy relating to the McMillan site or any
5 particular historic site that specifies what the
6 level of development or use would be on that site,
7 and then you have a general policy saying historic
8 preservation that says that, you know, we should
9 preserve and protect the District of Columbia's
10 historic resources, obviously, there might be a
11 conflict, right?

12 A Yeah, a tension.

13 Q Right. In terms of what would control, if
14 there's something more specific, would that control
15 or is it more general?

16 A I don't think I can answer that question.
17 I think it's a balancing test that you have to look
18 at the facts of each case. And I'm not going to set
19 up myself as a substitute for the Zoning Commission.

20 I will say that they are charged with
21 looking at the array of elements that are out there
22 and I believe that folks here would be knowledgeable

1 about how to bring those arrays into focus in front
2 of the eyes of the Zoning Commission.

3 Q Okay. But as an expert -- you are an
4 expert --

5 A Yes, Ma'am.

6 Q So if I would ask you to render,
7 hypothetically, an opinion on the consistency or
8 inconsistency with the Comp. Plan, where you had to
9 look at two factors that were potentially relevant,
10 one was a specific land use policy, an area element
11 that specified that a certain site would be available
12 for mixed use development and a general policy that
13 -- in Ward 1, say -- and a general policy that says
14 in Ward 1, we want to preserve our architectural and
15 historic heritage, which policy is in control? And
16 that's going to be my last question.

17 A Okay, if it were to a specific site in Ward
18 1 and it talked about why some particular location
19 was of premier importance, I would that would have to
20 be paid pretty close attention to.

21 If it's just sort of a ward-wide wish or
22 aspiration, I would say we'll do what we can, but

1 we've got a whole series of other elements that we
2 have to look at and go forward.

3 MS. FERSTER: Thank you, that's it.

4 MS. MERRITT: I don't have any questions.

5 JUDGE BYRNE: Okay.

6 MS. FERSTER: I have one procedural
7 question and that is there's a number of PowerPoint
8 presentations. I don't know if they're part of the
9 record, but if they are, can they be provided and --

10 MS. BROWN: Yes, we plan to do that.

11 JUDGE BYRNE: I was going to ask that for
12 my own purposes.

13 MS. BROWN: I just need to get to the color
14 copier.

15 JUDGE BYRNE: That's fine. So do you have
16 more?

17 MS. BROWN: That concludes our direct
18 witness testimony.

19 JUDGE BYRNE: All right, I'm conscious here
20 of the time and I'm also conscious that this lady is
21 here from the ANC and has been sitting here all day.
22 And so Ma'am, you're here to make a statement, I'm

1 sure.

2 THE WITNESS: Yes, I won't be long.

3 JUDGE BYRNE: Why don't you come up, so
4 that you don't have to come back on November 3d, come
5 on over here and --

6 THE WITNESS: Thank you very much.

7 JUDGE BYRNE: -- let's hear from you. Have
8 a seat in that second chair if you don't mind. Did
9 you sign the witness list?

10 THE WITNESS: Yes, I did.

11 JUDGE BYRNE: Excellent, okay, wonderful.
12 So please state your name for the record and then
13 when you're comfortable, please proceed with your
14 presentation.

15 Whereupon,

16 CELIA DIANE BARNES

17 having previously been duly sworn, testified as
18 follows:

19 DIRECT EXAMINATION

20 THE WITNESS: Okay, my name is Diane
21 Barnes, the Advisory Neighborhood Commission for ANC
22 5E-09 commissioner, in which the McMillan Sand

1 Filtration Site is located.

2 I live two blocks from the site at 41 Adams
3 Street, Northwest. I am a retired employee from the
4 Army Corps of Engineers and I have been actively
5 involved with the McMillan issues relating to this
6 site for at least 30 years.

7 I've been very active in this community,
8 serving in the past as the president of the
9 Bloomingdale Civic Association, the former chair of
10 the ANC 5E, and currently, I'm serving as the chair
11 of the McMillan Advisory Group, which is called the
12 MAG, and representing my single member district,
13 5E-09 in the ANC.

14 I have observed over the last seven years
15 in participation in the Vision McMillan Partners'
16 effort to work with and for the community to
17 conceptualize and develop plans for the former
18 McMillan Sand Filtration Plant.

19 Today, I am here to testify in support of
20 the VMP's plan for the McMillan site. I'm asking for
21 you to approve this application for partial
22 demolition of the underground cells and subdivision

1 of the land into seven building parcels because it is
2 necessary in the community's interest to construct a
3 project of special merit.

4 I truly believe this site meets the
5 definition of special merit, based on my experience
6 while working with the VMP team. I've seen them come
7 back, again and again, to address the ANC concerns,
8 allowing the community to voice their opinions and
9 sharing what they want to see on the site.

10 Specifically as a representative of the
11 Bloomingdale and Stronghold neighborhoods, there have
12 been a few items that are constantly mentioned by my
13 neighbors as amenities that they feel they are
14 lacking that would be served by the Vision McMillan
15 Partners.

16 From my home on Adams Street, Northwest, it
17 is at least over a mile to the closest full service
18 grocery store, something that would be drastically
19 different if the Vision McMillan Partners project
20 moves forward as planned.

21 But as we learned through the many meetings
22 and discussions with the development team, no grocer

1 will build a store underground. And it is not
2 financially feasible to enforce the underground cells
3 to build something of that magnitude above the
4 existing cells.

5 Another area that our community is
6 particularly lacking is the central community
7 recreation center, with a 17,000 square foot pool,
8 plus park space abutting it. Neither of these
9 tremendous benefits to the community can be
10 constructed on this site as it currently stands
11 today, without the subdivision and demolition plan
12 being requested by the VMP team.

13 Finally, as a longtime homeowner, 40 years,
14 within this community, I want to be able to see my
15 neighbors and my family who currently live within
16 this community get to stay, work and play within this
17 community.

18 With your approval of the VMP's application
19 for the subdivision and demolition plans today, due
20 to special merit, they will be able to offer
21 affordable housing for both seniors and families
22 above and beyond what is required for a project of

1 this magnitude.

2 All of these items that I have mentioned
3 today are significant benefits to the community that
4 cannot be ignored. In the long term, these are
5 benefits that would help everyone within the
6 community immediately surrounding the site and within
7 the 5E-09 single member district on a daily basis,
8 plus for families across the District of Columbia,
9 too.

10 I ask that you not ignore the potentials
11 for the sake of preserving unstable and unusable
12 underground cells. I hope that you will take my
13 testimony into consideration when making your
14 decision today. Thanks again for allowing me to
15 testify.

16 JUDGE BYRNE: Thank you very much. May I
17 ask you, did ANC 5E take a formal vote on this?

18 THE WITNESS: Yes, we did, it was six to
19 two.

20 JUDGE BYRNE: Six to two in favor of the
21 proposal.

22 THE WITNESS: In favor of the proposal.

1 JUDGE BYRNE: Okay, thank you very much.

2 THE WITNESS: You're welcome.

3 JUDGE BYRNE: Any questions?

4 MS. BROWN: No questions for me.

5 MS. FERSTER: Yes, I have a couple of
6 questions.

7 CROSS EXAMINATION

8 BY MS. FERSTER:

9 Q So when the ANC took its full vote, were
10 they specifically directing their resolution to the
11 Mayor's Agent for Historic Preservation?

12 A They did it for both the Mayor's Agent and
13 the Zoning Commission.

14 Q And do you have a copy of that resolution?

15 A Not with me, but it's public knowledge, so
16 it's out there on the site. But I can send it to
17 you.

18 JUDGE BYRNE: I don't have it.

19 THE WITNESS: I can send it to you.

20 JUDGE BYRNE: You could send it to Mr.
21 Calcott, the Historic Preservation Office, he'll make
22 sure everybody gets a copy.

1 THE WITNESS: Okay, will do.

2 BY MS. FERSTER: (Resuming)

3 Q So the statement that you delivered today,
4 was that statement approved by the full ANC?

5 A No, this statement is from the single
6 member district which I represent.

7 MS. FERSTER: That's all the questions I
8 have.

9 MS. MERRITT: I don't have any questions.

10 JUDGE BYRNE: All right. Well, thank you
11 everybody, it's been a long day, but we've gone
12 through a great deal of material.

13 We will reconvene on November 3d at 9:30
14 and I look forward to seeing you then. Thank you.

15 (Whereupon, at 5:05 p.m., the proceeding
16 adjourned.)

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CERTIFICATE OF REPORTER

I, PAUL R. CUTLER, Certified Verbatim Reporter with Certificate of Merit, Master, do hereby certify that the foregoing pages were recorded by me by Stenomask and thereafter reduced under my direction to typewritten form; that the foregoing pages are a true record of the proceedings in the above matter; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this testimony is taken; and further, that I am not a relative of or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

PAUL R. CUTLER

Certified Verbatim Reporter
with Certificate of Merit, Master

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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HISTORIC PRESERVATION REVIEW BOARD

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MAYOR'S AGENT FOR HISTORIC PRESERVATION
HEARING

+ + + + +

MCMILLAN SAND FILTRATION SITE
2501 FIRST STREET, N.W.
CASE NUMBER: HPA 14-393

+ + + + +

MONDAY
NOVEMBER 3, 2014

+ + + + +

The Mayor's Agent for Historic
Preservation Hearing met in Room 4032, 1100 4th
Street S.W., Washington, D.C., at 11:10 a.m.,
J. Peter Byrne, Mayor's Agent for Historic
Preservation, presiding.

APPEARANCES:

On Behalf of the Opponents:

ANDREA C. FERSTER, ESQ.
1100 17th Street N.W.
Washington, D.C. 20036
(202) 974-5142

ELIZABETH S. MERRITT ESQ.
Deputy General Counsel
National Trust for Historic
Preservation
2600 Virginia Avenue, N.W.
Suite 1100
Washington, D.C. 20037
(202) 297-4133

On Behalf of the Applicants:

MARY CAROLYN BROWN, ESQ.
Of: Holland and Knight LLP
800 17th Street N.W.
Suite 1100
Washington, D.C. 20006
(202) 955-3000

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

2 (11:10 a.m.)

3 JUDGE BYRNE: Ladies and
4 gentlemen, I'm glad to say that we are ready to
5 begin. This is a continuation of the hearing
6 to consider a permanent application to raze 15
7 of the filtration cells at McMillan Park
8 Reservoir.

9 The application has Historic
10 Preservation Act Number 14-393. I'm Peter
11 Byrne and I am the Designated Mayor's Agent for
12 this matter. We're going to continue and
13 remain in conformity with the D.C.
14 Administrative Procedure Act and Title 10(c) of
15 the Municipal Regulations, which contain the
16 rules for procedure for Mayor's Agent
17 Proceedings.

18 Now we left off on October 6th with
19 the conclusion of the applicants' case and
20 testimony from the affected ANC. Normally now
21 we would turn to the public, to the HPO to Mr.
22 Callcott to testify next, but because of the

1 terrible delays this morning we're going to
2 start with some witnesses for the opponents who
3 have to leave.

4 So with all of that being -- are
5 there any preliminary matters to be discussed
6 before we begin?

7 MS. BROWN: Yes, Carolyn Brown with
8 Holland & Knight on behalf of VMP, the
9 applicant. We do have one witness in support
10 that is here now that would speak for two to
11 three minutes. We told our other witnesses to
12 not bother to show up.

13 But since that would be the normal
14 procedure as well to allow persons in support,
15 I'm wondering if we might be able to let her
16 testify quickly.

17 JUDGE BYRNE: Yes, that would be
18 normally the case that a person in support would
19 come, no, before actually. Okay, so ■

20 MS. FERSTER: Excuse me. Andrea
21 Ferster for Friends of McMillan Park. I think
22 the persons in support, what's the order for

1 that?

2 MS. BROWN: Yes, it's persons --

3 JUDGE BYRNE: Other persons in
4 support of the application would normally come
5 after the HP, before the --

6 (Simultaneous speaking)

7 JUDGE BYRNE: Yes, that's the
8 normal procedure.

9 MS. FERSTER: Okay, sorry. Yes.

10 JUDGE BYRNE: Okay. All right,
11 very good. So let's, then Ms. Brown, why don't
12 you call your witness?

13 MS. BROWN: It's not my witness,
14 but it's a person in support. I believe it's
15 Ms. Cort.

16 JUDGE BYRNE: Please come up. So,
17 and you've signed in?

18 MS. CORT: Yes.

19 JUDGE BYRNE: Okay. And since --
20 so let me ask this actually before we begin
21 again. Because the testimony at these
22 hearings is supposed to be sworn, what I would

1 like to do is everyone who intends to testify
2 today, I'd like to swear you at once if I may.
3 So if you are intending to speak today, please
4 raise your right hand and I'll ask you, my word,
5 do you promise to tell the truth at this hearing
6 completely and to the best of your ability?

7 (Chorus of affirmation)

8 JUDGE BYRNE: Thank you. Very
9 good.

10 All right, please state your name
11 for the record.

12 MS. CORT: My name is Cheryl Cort.

13 JUDGE BYRNE: Ms. Cort, nice to see
14 you. Please proceed.

15 MS. CORT: Oh. My name is Cheryl
16 Cort. I'm the policy director for the
17 Coalition for Smarter Growth. We're the
18 leading organization in the Washington, D.C.
19 region dedicated to making the case for smart
20 growth.

21 Our mission is to promote walkable,
22 inclusive and transit-oriented communities and

1 the land use and transportation policies and
2 investment needed to make those communities
3 flourish.

4 We have tracked the community
5 discussions and the historic review process for
6 this proposal for several years. We have come
7 here to express our support for the adaptive
8 reuse of the historic McMillan Sand Filtration
9 plant.

10 This thoughtful plan restores the
11 major historic features along with creating a
12 new, large park that incorporates the distinct
13 historic elements of the former industrial
14 site.

15 Implementing the proposed plan will
16 deliver a wide range of public benefits of
17 special merit including historic restoration,
18 preservation, adaptive reuse of structures and
19 landscape features including the recreation of
20 the Olmsted Walk; creation of an eight-acre
21 community park and aquatic recreation center
22 along with several acres of smaller public

1 spaces; reuse of distinct underground cells for
2 future public use and storm water management;
3 addition of new medical office uses to
4 strengthen the cluster of hospitals north of
5 Michigan Avenue, helping ensure jobs and health
6 care facilities stay in this central D.C.
7 location; and expanded housing supply of 677
8 units for our rapidly growing city, especially
9 the 20 percent of affordable homes, including
10 94 units affordable at or below 60 percent of
11 Area Median Income, and the remainder 38 units
12 at 80 percent AMI.

13 This ambitious plan is a
14 breakthrough in the long stalemate over how to
15 adaptively reuse this fascinating historic
16 industrial landscape. We believe it is a good
17 compromise for meeting historic preservation
18 goals while delivering public benefits of
19 special merit.

20 The plan for the 25-acre site also
21 complements the continued use of the Army Corps
22 of Engineers 70-acre reservoir site component

1 which includes additional underground cells,
2 historic structures that will be managed by the
3 federal owner.

4 We note that there are important
5 transportation benefits in this project. The
6 project provides a new street grid and traffic
7 signals to connect the site to its surrounding
8 context. The new street grid will help
9 distribute driving trips and invite more
10 walking and bicycling.

11 Walkers and bicyclists will
12 especially have better access in the area which
13 has been largely cut off by large landscape
14 features such as the fenced off, 70-acre Army
15 Corps site of the reservoir, the inward-looking
16 Washington Hospital Center complex and the
17 nearby cemeteries.

18 The uses and street network will
19 knit together a part of the city that has
20 expanses of inaccessible and isolated spaces,
21 and connect the important Washington Hospital
22 Center to the city and surrounding communities.

1 The commitment derived through the
2 PUD process to advance transit plans will
3 increase bus service and eventually street car.
4 It will be a benefit both to the new uses of the
5 site and to the surrounding areas. DDOT, in
6 fact, is launching an east-west transportation
7 study for this area in part due to the progress
8 of this proposal.

9 This is a welcome assessment of how
10 we can better create walking and bicycling
11 connections in this area that currently lacks
12 safe, easy and engaging environments for
13 walkers and cyclists. The DDOT study will also
14 identify the transit improvements that should
15 be expedited.

16 One of the features of this plan
17 that deserves special recognition is the robust
18 commitment to several Capital Bikeshare
19 stations at the site and a nearby Metro station
20 for a total of 80 bicycles.

21 Just overall we wanted to reiterate
22 our support and excitement for moving forward

1 on this plan for a 25-acre site that has
2 prohibited any access for many decades.

3 I myself have, since moving here in
4 1988, have wondered what's going on with this
5 site. These are fascinating historic
6 structures and we're very excited with moving
7 forward with something that's going to allow
8 people to enjoy this site. Thank you.

9 JUDGE BYRNE: Thank you, Ms. Cort.
10 Questions? Anybody want to ask? Ms. Ferster?

11 MS. FERSTER: Thank you.

12 So Ms. Cort, you as policy director
13 for the Coalition for Smarter Growth have been
14 very involved in Kenyan McDuffie's bill that
15 would establish minimum requirements for
16 affordable housing in projects that involve the
17 disposition of public land. That's correct?

18 MS. CORT: Yes.

19 MS. FERSTER: And would this
20 project's level of housing, affordable
21 housing, satisfy the standards in that bill?

22 MS. CORT: The bill would establish

1 a 30 percent set-aside, and this is a 20 percent
2 set-aside.

3 MS. FERSTER: Thank you.

4 MS. MERRITT: I have a question.

5 MS. BROWN: Go ahead.

6 MS. MERRITT: I'm Elizabeth
7 Merritt. How close is this site to the nearest
8 Metro station?

9 MS. CORT: I think it's a mile to
10 the nearest Metro station. I think that's
11 either Columbia Heights or Brookland.

12 MS. MERRITT: So would you consider
13 this a transit-oriented development?

14 MS. CORT: Yes, in terms of the --
15 in two important ways. One is the bus priority
16 corridor along North Capitol Street, which was
17 why it would qualify for the higher 30 percent
18 set-aside standard in the public lands bill
19 rather than -- so the public lands bill has a
20 set-aside of 20 percent affordability for
21 public land dispositions if they're not near a
22 major transit corridor. Because of the bus

1 priority corridor it is adjacent, it's right
2 next to the bus priority corridor and also
3 ultimately the streetcar corridor as well.

4 MS. MERRITT: What's the projected
5 date for the streetcar?

6 MS. CORT: Oh, for streetcar? The
7 streetcar was actually not -- that's a longer
8 date. That's not the thing that's really, it's
9 actually in the PUD, I don't even think they've
10 mentioned the streetcar.

11 It's really about the Circulator
12 bus service plan which says that they would move
13 up the implementation of the Circulator bus
14 service for this area. We certainly want to
15 get moving on the bus priority corridor
16 improvements for the 80s line. And then the
17 complementary pedestrian and bicycle
18 improvements.

19 But the other thing I want to
20 emphasize is that DDOT has very recently put in
21 place an east-west corridor study for this area
22 which we're very pleased with, because if

1 you've ever tried to walk or bicycle in this
2 area you know what an unpleasant environment it
3 is.

4 And so we're very pleased to see
5 DDOT paying attention, saying, you know, as
6 these uses come on line we're going to be able
7 to look at, you know, improving bus service, and
8 also they're going to take a hard look at the
9 poor environment for bicycling and pedestrians
10 that we suffer from today.

11 MS. MERRITT: Can I ask just
12 another followup question? Has DDOT made any
13 commitment to fund the transit?

14 MS. CORT: Well, the transit is
15 committed to over 1,000 bus seats in the PUD.
16 Right now, the sort of the mechanism has not
17 been -- there hasn't been sort of good linkage
18 between getting development to pay into, you
19 know, a public transit, and so right now those
20 1,000 seats are as a fallback committed to a
21 private shuttle. But clearly our preference
22 is to make this, these should be public transit

1 investments.

2 MS. MERRITT: Was there anything in
3 the budget at this point from DDOT?

4 MS. CORT: Well, they have their
5 plans that, I'm not sure. I mean the point is
6 that these are sort of like the phase, the
7 Circulator plan, for instance, is in phase 3,
8 but they said they could move it to phase 2 which
9 would start in 2018 with more, with the
10 activities coming on line in this area. That's
11 for the Circulator.

12 MS. MERRITT: But nothing's in the
13 budget yet.

14 MS. CORT: Not to my knowledge.

15 MS. BROWN: I have one question.
16 So you wouldn't have direct knowledge then
17 about the budgetary efforts on DDOT's part to
18 get these into the --

19 MS. CORT: What I know is that they
20 put in place an east-west study, an east-west
21 corridor study that's new and it's in their
22 two-year plan now. So that's being budgeted

1 for right now, and that we're very happy to see
2 that.

3 MS. BROWN: Thank you.

4 JUDGE BYRNE: Okay, thank you, Ms.
5 Cort.

6 MS. CORT: Thank you.

7 JUDGE BYRNE: All right, Ms.
8 Ferster, are you going to --

9 MS. FERSTER: Yes.

10 JUDGE BYRNE: You're going to call
11 a witness now?

12 MS. FERSTER: Yes. Now I had
13 planned to make an opening statement. I will
14 not do that because our witness, I would like
15 to make a closing statement however.

16 JUDGE BYRNE: Of course.

17 MS. FERSTER: So let me give you
18 first to sort of get some business. One is the
19 resumes of our expert witnesses. Okay, and the
20 other is that we have six witnesses. Several
21 of them we'll want to qualify as an expert and
22 I'll do that as they come up.

1 JUDGE BYRNE: Very good.

2 MS. FERSTER: And I also, because
3 the applicant has made a number of arguments
4 that are on paper as part of their prehearing
5 submission, particularly the Green Door study
6 and transportation arguments, we're not
7 presenting a witness on those issues, but we are
8 presenting some documents that support a
9 counter view of those arguments. So this is
10 just for the record.

11 JUDGE BYRNE: Okay.

12 MS. FERSTER: And the applicant ■

13 JUDGE BYRNE: They have a copy.

14 MS. FERSTER: -- has a copy.

15 MS. BROWN: Make sure I got ■

16 MS. FERSTER: The one thing you
17 don't have, and I apologize, my copier went bad
18 when I was copying the CCMJ report, which is
19 huge. So the mayor's agent has the Johnson
20 Malhotra structural reports. I know you have
21 that but I will email you a copy afterwards.

22 But that's why his packet is bigger

1 than your packet. You have pieces of it, and
2 then that's when the copier, you do not have the
3 whole thing.

4 MS. BROWN: So is it sequential,
5 the number of pages you gave me?

6 MS. FERSTER: I don't even know. I
7 was just running out the door and I just grabbed
8 it. But I will email you the entire, and I know
9 you have it, but I will email you the entire one
10 after the hearing. I don't know if those pages
11 are sequential or not.

12 JUDGE BYRNE: Whether these pages
13 are?

14 MS. FERSTER: Yours are. Yours
15 are fine. The applicants' may not be.

16 JUDGE BYRNE: Do you want to look at
17 this and see?

18 MS. BROWN: Yes. I think there are
19 additional things in here that have nothing --

20 MS. FERSTER: This is just
21 documents. There's a number of documents
22 here.

1 JUDGE BYRNE: These are sort of
2 public documents and then ■

3 MS. FERSTER: Yes, they're public
4 documents. They're documents about the public
5 subsidy. There's the exclusive rights
6 agreement. There's the terms sheet for the
7 development.

8 They're just documents that we feel
9 is important to have in the public record. And
10 maybe during a break you can look it over and
11 if you have any objections we can talk about
12 them. But I'd like to get my witnesses
13 presented.

14 MS. BROWN: Okay.

15 JUDGE BYRNE: So I could just hold
16 these sort of provisionally --

17 MS. BROWN: Yes.

18 JUDGE BYRNE: -- until you feel
19 satisfied you have, you're covered.

20 MS. BROWN: And does this include
21 the information I had asked you about over the
22 weekend?

1 MS. FERSTER: Yes, it does. It
2 does.

3 (Simultaneous speaking)

4 MS. FERSTER: Thank you for
5 pointing that out to me. It includes the
6 partisan report plus the Excel spreadsheets.

7 Okay, so our first witness is going
8 to be Anne Sellin who we'd like to qualify as
9 an expert in historic preservation.

10 Anne Sellin actually wrote and researched
11 the nomination for the designation of McMillan
12 for the D.C. Inventory of Historic Sites, and
13 we think she definitely qualifies as an expert
14 in the area of historic preservation and a
15 specific expert in this particular site. She
16 was qualified as an expert before the Zoning
17 Commission.

18 JUDGE BYRNE: Okay.

19 Any objection?

20 MS. BROWN: I just have a couple
21 questions to understand the scope of her
22 expertise. And if it's appropriate to ask her

1 questions or ask --

2 JUDGE BYRNE: I think, yes. Let's
3 just get that out of the way.

4 MS. BROWN: Okay.

5 Ms. Sellin, have you ever been hired
6 as a preservation consultant on a redevelopment
7 project involving historic resources?

8 MS. SELLIN: I have been hired to
9 designate historic areas in the city which
10 would include parcels that were developed.
11 For instance, the Greater U Street Historic
12 District. I was hired by the city to designate
13 part of that.

14 MS. BROWN: Right. I understand
15 your expertise in writing landmark nominations
16 and preparing National Register nominations.
17 I'm getting to a different aspect of
18 preservation, and that's whether you've worked
19 as a consultant on redevelopment projects.

20 MS. SELLIN: No.

21 MS. BROWN: And have you ever been
22 involved in rehabilitation tax act projects?

1 MS. SELLIN: No.

2 MS. BROWN: Okay. So your
3 expertise then is limited to research and
4 drafting of landmark and national registry ■

5 MS. SELLIN: Yes, right.

6 MS. BROWN: Thank you very much.

7 MS. FERSTER: Redirect. Have you
8 also been involved in projects where you have
9 used your expertise in historic preservation to
10 evaluate the impacts of the development
11 projects on historic resources?

12 MS. SELLIN: Yes.

13 MS. FERSTER: Okay, so the fact
14 that you haven't been a consultant on
15 development projects doesn't mean that you
16 don't have the qualifications to assess the
17 impact of the McMillan redevelopment plan on
18 this landmark?

19 MS. SELLIN: Yes.

20 MS. FERSTER: You do have the
21 expertise?

22 MS. SELLIN: Yes.

1 MS. FERSTER: Thank you.

2 MS. SELLIN: And I have testified
3 numerous times before the Zoning Commission,
4 NCPC and various -- the Preservation Review
5 Board regarding projects.

6 MS. BROWN: The only point I wanted
7 to make is I don't disagree that she's evaluated
8 the impacts, but I think it's more to get to the
9 understanding of the projects and the
10 structural and the mechanics of putting
11 together a redevelopment project and
12 understanding preservation pressures on that.
13 So just to narrow that scope.

14 JUDGE BYRNE: Okay, so fair enough.
15 So I will qualify her as an expert in historic
16 preservation, and the questions about the
17 redevelopment project we'll treat as questions
18 of weight. So please proceed.

19 MS. SELLIN: McMillan is a stunning
20 and unique historic site. A combination of
21 civil engineering and landscape design, it was
22 constructed between 1902 and 1912.

1 JUDGE BYRNE: Ma'am, is there a
2 slide presentation associated with --

3 MS. SELLIN: Yes, but it'll be
4 coming up.

5 JUDGE BYRNE: It comes later.
6 Okay, fine. I just wanted to make sure we're
7 getting --

8 MS. FERSTER: Load it up because it
9 takes some time.

10 MS. SELLIN: It is unique as a fully
11 preserved combination park and water
12 filtration site. In 1984, the American
13 Waterworks Association made it a waterworks
14 landmark. In 1991, it was designated a D.C.
15 historic landmark and has subsequently been
16 listed on the historic -- the National Register
17 of Historic Places.

18 Not only is it nationally important
19 for its architectural structures representing
20 its significance as a unique park, civil
21 engineering site, it's highly significant for
22 its open space and landscaping features.

1 It's part of the McMillan Plan that
2 was developed between, really, in 1902 and was
3 the first park to be designed under that plan
4 by Frederick Olmsted Jr., who also contributed
5 to the McMillan Plan.

6 The McMillan Plan entailed a
7 protective ribbon of green spaces both public
8 and private which extended from the Anacostia
9 River to Rock Creek Park. It linked and was a
10 key part of this emerald necklace of private and
11 public open spaces which would serve for public
12 enjoyment, recreation and vistas along the
13 escarpment in this part of the city which is the
14 central part.

15 McMillan Park Reservoir originally
16 connected on the north to the Old Soldiers'
17 Home. To the west is Howard University, and
18 here's a slide of the campus. To the east are
19 Glenwood and Prospect Hill cemeteries, this is
20 Prospect Hill, and the campuses of Trinity and
21 Catholic Universities.

22 For the health and enjoyment of

1 citizens, the new public park was designated
2 McMillan Park Reservoir. The grounds of the
3 Old Soldiers' Home, the largest plot of open
4 land in the area, also served as park land open
5 to the public.

6 However, in this area of Washington
7 which once luxuriated in open parks, large
8 chunks of those spaces have been lost. Parts
9 of the southern area bordering the west side of
10 McMillan which now operates as a chemical water
11 treatment plant but retains its historic
12 buildings, have been taken up by a Howard
13 dormitory and the D.C. Alarm Building for fire.

14 The Dairy Farm with its animals on
15 the southern end of the Old Soldiers' Home,
16 beloved by many children who visited, was built
17 over by the many buildings of the Washington
18 Hospital Center.

19 And this is a slide taken that shows
20 that the Old Soldiers' Home, the upper right
21 hand portion flowed right into McMillan Park.
22 And that area, this has all been built over now

1 by the Washington Hospital Center.

2 The surviving Old Soldiers' Home site of
3 some 270 acres has been closed to the public for
4 decades except for visitors to the Lincoln
5 Cottage. People can no longer stroll down the
6 hill or walk around the Victorian buildings.

7 The result is the erosion of the
8 connecting greensward. Through the years,
9 well over 300 acres of public park land have
10 been closed and fenced off.

11 Ward 5, the largest ward in the city
12 area-wise is now the least served by
13 recreational park space along with Ward 8.
14 Contrary to the applicants' claim that the
15 eastern side was never used for public
16 recreation but was simply a water engineering
17 site to be walked around, it was in fact always
18 used for recreational and civic space and has
19 thus acquired historic significance.

20 The following slides demonstrate this.
21 Next, please. Yes. There was a peripheral
22 walk-around surrounded by avenues of hawthorn

1 trees.

2 Citizens that I interviewed when I
3 did the application remembered coming to this
4 east side of the site and sleeping there on very
5 hot days where the wind came over the escarpment
6 and aerated the area. They remember playing
7 ball just south of Michigan Avenue -- next slide
8 please -- on the site. And here's a
9 resident who was recently interviewed about the
10 site and remembered it and used that part of the
11 site. Next please. It was used by Girl Scouts
12 for gardens during the First World War. Next.
13 It is a stunning site, clad in the fall by these
14 beautiful red Boston Ivy claddings.

15 The National Capitol Planning
16 Commission has been protective of use of the
17 Armed Forces Retirement Home, the Old Soldiers'
18 Home, and has required a proposed building site
19 on McMillan be moved in order to preserve views
20 of the Capitol Dome.

21 But what about the views of the
22 multitude of citizens who pass McMillan? Tens

1 of thousands pass the north and east sides of
2 McMillan every day on Michigan Avenue and North
3 Capitol Street.

4 Their views of those remarkable
5 rows of sand towers will be obstructed by the
6 medical office buildings which also will
7 obstruct the views of the Washington Monument
8 from Michigan Avenue and the National Cathedral
9 Towers, you can see they're pointed out, from
10 North Capitol Street.

11 As the EHT Tracerics report
12 recognizes, there are significant internal
13 views from the park itself such as those of the
14 Capitol Dome, the dome of the Catholic Basilica
15 Shrine seen from the north court, next, and from
16 the north corner of Michigan Avenue near
17 Girard, the library clock tower of Howard
18 University, which would no longer be visible.

19 All these views would be
20 obliterated by the buildings proposed for the
21 site, nor would the striking rows of sand towers
22 be visible anymore from Michigan Avenue, being

1 blocked by 115-foot high office buildings.
2 They could only be glimpsed through very small
3 windows from North Capitol Street and First
4 Street.

5 The proposed housing, office
6 buildings and supermarket would severely
7 compromise the context of the sand towers and
8 the regulator houses.

9 VMP's prehearing statement on Page
10 29 states that only one of the 12 historic sand
11 washers will be preserved. Presumably, the
12 rest will be destroyed. These original sand
13 washers contributed to the site's historic
14 significance. There's been no showing as to
15 why it's necessary to demolish 11 of the 12 sand
16 washes.

17 The groin vaults containing the
18 filter sand are a spectacular feature of the
19 site and comprise the heart of the water
20 cleansing process. Two of these one-acre
21 vaults at the north end and southwest corners
22 are taken over by WASA and will function as a

1 catch basin and tunnel to collect and rechannel
2 runoff water to prevent flooding in
3 neighborhoods south.

4 The applicants propose to destroy
5 all the other vaults except vault 28. These
6 groin vault compartments, 16, 17, and 19, which
7 the applicants' own engineer, Robert Silman,
8 finds to be in the best condition, would be
9 destroyed.

10 Ironically, the one vault proposed
11 to be saved, number 28, is located on the
12 southeast part of the site and is listed by the
13 Silman report as in poor condition.

14 The records of the construction
15 history of the site in the Corps of Engineers'
16 archives reveal that two original vaults in
17 this area collapsed a few years after
18 completion and had to be rebuilt. No wonder.
19 Underground in this area runs a creek which
20 makes this vault a poor choice for
21 preservation.

22 I agree that there could be no

1 assurance that this vault could be preserved,
2 but not all the vaults are fragile by any means.
3 Those which lie in the middle of the area
4 between the north and south courts are
5 described by the Silman report as being in the
6 best condition and being the best candidates
7 for being saved. But inexplicably they were
8 not selected for preservation.

9 And here's a slide of those vaults.
10 The essence of this historic park lies in its
11 water treatment facilities and features which
12 include the entrances and doors to the vaults.
13 Those would be destroyed.

14 An arch might be preserved, would be
15 preserved, the ramps leading down to the vaults
16 from the courts, the standing electric light
17 fixtures surmounting the entrances, the cement
18 sand washers and the one area of groin vaults.

19 Except for the sand towers and
20 regulator houses, one sand washer and perhaps
21 one vault, all the rest would be destroyed along
22 with about 60 percent of the open space.

1 Those open fields are an important part
2 of the historic site. Moreover, preserving
3 only one cell will not convey the historic
4 context, feeling and association of the vaults,
5 since one cell will not afford the dramatic
6 views and perspectives of the multiple columns
7 and arches. The retention of several, not just
8 one, of the groin vaults need to be explored for
9 imaginative reuse. VMP in its prehearing
10 submission acknowledges that the site would
11 need to be subdivided in order to accommodate
12 their intensive development.

13 The subdivision cannot by any
14 stretch of the imagination be characterized as
15 consistent with the purposes of the
16 Preservation Act as VMP suggests on Page 19 of
17 the prehearing submission.

18 The Preservation Act provides that
19 with respect to historic landmarks and McMillan
20 as an individual landmark, the relevant
21 purposes of the act are "to retain and enhance
22 historic landmarks in the District of Columbia

1 and to encourage their adaptation for current
2 use."

3 The destruction of all but one of
4 the below ground historic vaults possibly not
5 even retaining that one, all but one of the
6 historic sand washers and the majority of the
7 site's open space and landscaping features
8 certainly does not retain and enhance the
9 landmark site. Frederick Olmsted Jr. intended
10 the entire site to be visible and open.

11 Finally, Emily Eig testified last month
12 that she believed that the project was one of
13 special merit. I disagree. Any key element
14 in assessing whether a project is one of special
15 merit requires weighing the proposed
16 destruction and loss of historically important
17 features against the advantages being offered
18 by the developers.

19 Here, the benefits offered by VMP do
20 not outweigh the irreparable destruction of one
21 of the nation's unique, historically
22 significant, civil engineering works in open

1 spaces.

2 The preservation of less than 40
3 percent of the open space area, and this
4 includes berms, streets, backyards, slightly
5 lower housing prices for the few families, part
6 of which is a requirement by law, a small number
7 of senior units and a grocery store all amount
8 to routine offerings. A far greater public
9 benefit should be required to justify the
10 destruction of such an extraordinary historic
11 resource.

12 In her testimony, Ms. Eig mentioned
13 the O Street Market as a comparable example of
14 the special merit project. I disagree. The
15 two projects are very different.

16 The O Street Market project
17 required only the demolition of a single
18 deteriorated wall of the historic O Street
19 Market, and yet it provided comparable public
20 benefits, affordable housing and a grocery
21 store. So the balance of benefits versus
22 destruction was much different.

1 The sheer breadth and scale of the
2 destruction of McMillan's significant historic
3 features distinguish this case from the more
4 minor demolition approved in the O Street
5 Market case.

6 This destruction and intensive
7 development would profoundly alter the
8 numerous aspects of the site's integrity of
9 both the slow sand filtration plant and the
10 designed landscape, and will significantly
11 impair McMillan's ability to read as a whole.

12 Design, materials, feelings,
13 association and setting would be incomparably
14 altered. Moreover, the O Street Market does
15 not possess the unique and extraordinary degree
16 of significance that is represented by the
17 McMillan Sand Filtration Site.

18 There are a number of historic
19 markets in the District of Columbia including
20 the O Street Market, Eastern Market and the
21 Georgetown Market. However, there is only one
22 McMillan Park. If this intensive development

1 is approved, the essence of the sand filtration
2 portion of the landmark, its open spaces,
3 vistas and vaults, would be lost forever.

4 JUDGE BYRNE: Thank you, Ms.
5 Sellin.

6 MS. FERSTER: And here is the full
7 testimony which she has abbreviated.

8 JUDGE BYRNE: Okay, thank you.
9 Okay, do you have any further questions, Ms.
10 Ferster?

11 MS. FERSTER: No.

12 JUDGE BYRNE: Okay.

13 Ms. Merritt, do you have anything
14 you want to --

15 MS. MERRITT: No questions.

16 JUDGE BYRNE: All right, your
17 witness then, Ms. Brown.

18 MS. BROWN: Ms. Sellin, you said
19 that the Silman report claimed that the cells
20 in the center were in the best condition?

21 MS. SELLIN: Yes. Below the
22 northern court it's almost kind of an L-shape

1 of the best vaults that need -- could be
2 restored actually.

3 MS. BROWN: And how do you know that
4 they could be restored?

5 MS. SELLIN: Well, I'm not an
6 engineer. We will have testimony by an
7 engineer.

8 MS. BROWN: Okay, thank you.

9 MS. SELLIN: But there is a
10 cladding that can be put over the vaults, a
11 carbon cladding.

12 MS. BROWN: But you have no
13 experience in that.

14 MS. SELLIN: I have talked to the
15 Corps of Engineers on the other side of the
16 site, and they're using a very --

17 MS. BROWN: Was this you
18 personally?

19 MS. SELLIN: I have personally
20 spoken to --

21 MS. BROWN: No, experience as
22 opposed to speaking to somebody.

1 MS. FERSTER: I think that
2 qualifies as her experience.

3 MS. SELLIN: Well, they have
4 covered one of the vaults which is a much higher
5 vault, it's almost 20 feet high, for the
6 cleansed water. They covered it about ten or
7 twelve years ago with a membrane that prevents
8 water from filtering into the unreinforced
9 cement vault, and that has been done.

10 JUDGE BYRNE: Are we going to have
11 testimony on that from an engineer?

12 MS. SELLIN: I don't know.

13 JUDGE BYRNE: Okay.

14 MS. BROWN: And then you claimed
15 that the VMP project is destroying all but one
16 vault?

17 MS. SELLIN: Well, that's the
18 testimony I heard.

19 MS. BROWN: And DC Water hasn't
20 been involved in any --

21 MS. SELLIN: It has. It has taken
22 three vaults, actually one on the north side

1 that it's not going to be as drastically
2 destroyed as the two on the southwest side which
3 are used for preventing flood waters going to
4 the south.

5 MS. BROWN: Okay. So it wasn't
6 accurate then that VMP is destroying all of
7 them.

8 MS. SELLIN: Well, they're --
9 (Simultaneous speaking)

10 MS. BROWN: Right? Yes or no?
11 They're not.

12 MS. SELLIN: Well, they're
13 certainly --

14 MS. BROWN: Yes or no?

15 MS. SELLIN: -- compromised.

16 MS. BROWN: Okay, no more
17 questions.

18 JUDGE BYRNE: Okay. Thank you,
19 Ms. Sellin.

20 MS. SELLIN: Thank you.

21 MS. FERSTER: So we're going to go
22 out of order and one of the National Trust

1 witnesses will present her testimony and with
2 some supporting exhibits.

3 JUDGE BYRNE: Thank you.

4 (Off microphone discussion)

5 MS. MERRITT: This is a copy of
6 testimony that the National Trust has submitted
7 to the National Capital Planning Commission.
8 And that is background for what Ms. Mast is
9 going to discuss.

10 It also has as an attachment the
11 National Trust's testimony before the second
12 HPRB hearing which occurred on October 31st of
13 last year.

14 JUDGE BYRNE: Of 2013?

15 MS. MERRITT: 2013, yes.

16 JUDGE BYRNE: Okay. All right,
17 ma'am. Please state your name for the record.

18 MS. MAST: My name is Erin Carlson
19 Mast. I'm the executive director of President
20 Lincoln's Cottage.

21 JUDGE BYRNE: Thank you very much.

22 Please proceed.

1 MS. MAST: President Lincoln's
2 Cottage is one of 27 sites of the National Trust
3 for Historic Preservation. The Cottage is
4 located on the grounds of the Armed Forces
5 Retirement Home in Northwest Washington, D.C.,
6 formerly known as the Soldiers' Home. In 1862,
7 Abraham Lincoln and his family relocated to the
8 Gothic Revival Cottage on the grounds now known
9 as President Lincoln's Cottage.

10 The Cottage was originally built
11 for banker George Washington Riggs in 1842 but
12 was sold to the federal government in 1851, and
13 they purchased it with the intention of
14 creating a home for retired and disabled
15 veterans which is the purpose it serves to this
16 day.

17 The Cottage served as the Lincoln
18 family residence for over a quarter of his
19 presidency, particularly during the summers of
20 1862, '63 and '64. It's where he was living
21 when he developed the Emancipation
22 Proclamation and made some of his most crucial

1 decisions about the war and weathered his
2 reelection campaign.

3 Lincoln's time there actually
4 bookends his presidency and the Civil War, as
5 he first visited a few days after his
6 inauguration, and last visited on April 13th,
7 the day before his assassination.

8 The historic significance of the
9 Soldiers' Home was officially recognized in
10 1974 when four buildings built before the Civil
11 War along with six surrounding acres of land
12 were designated a National Historic Landmark.

13 In 2000, President Clinton
14 designated the Cottage and 2.3 surrounding
15 acres a national monument, specifically in
16 recognition of Lincoln's time there and what he
17 accomplished as president during the Civil War.

18 Beginning in 2000, the National
19 Trust assumed the stewardship of President
20 Lincoln's Cottage and began an eight-year
21 capital project to preserve, restore and
22 sustainably rehabilitate the Cottage and a 1905

1 Beaux Arts style building adjacent to it. And
2 we also conducted extensive archeology on the
3 property.

4 After the \$15 million restoration
5 by the National Trust, President Lincoln's
6 Cottage opened to the public for the first time
7 in 2008, giving Americans an intimate,
8 never-before-seen view of Abraham Lincoln's
9 presidency and private life.

10 In addition to President Lincoln's
11 Cottage, the adjacent Robert H. Smith Visitor
12 Education Center, which is the 1905 building I
13 mentioned, features related exhibits and media
14 presentations, and each year we have thousands
15 of visitors of all ages from all over the world
16 come to President Lincoln's Cottage.

17 We serve on average 30,000 visitors
18 a year including thousands of students, and as
19 I mentioned we get visitors from all 50 states
20 and around the world.

21 The applicants' development plans
22 would adversely impact the viewshed of the

1 Capitol Dome from two specific locations at the
2 site at President Lincoln's Cottage, the south
3 lawn and the main entrance to the Visitor
4 Education Center, the Cottage lawn was
5 Lincoln's historic view, and both are important
6 views for the visitors, programs and education
7 of President Lincoln's Cottage.

8 In addition, from inside the
9 Cottage, the proposed development could
10 adversely impact the historic viewsheds from
11 the second floor, specifically in the room that
12 we refer to as the Emancipation Room, in part
13 because over 100 years ago people began
14 attributing that room as the place where
15 Lincoln specifically worked on the
16 Emancipation Proclamation.

17 President Lincoln developed the
18 Emancipation Proclamation while he was living
19 in the Cottage, through numerous conversations
20 he held throughout the Cottage, from the
21 veranda, as he walked the grounds including the
22 nearby cemetery and along his commute. The

1 proposed development would represent a visual
2 intrusion on the historic views that Lincoln
3 would have seen as he was developing that
4 historic document.

5 President Lincoln believed that the
6 view of the Capitol Dome was extraordinarily
7 meaningful to the country as a whole, and in
8 July 1863 when he was living at the Cottage and
9 the construction of the Dome was ongoing,
10 President Lincoln is known to have said, if
11 people see the Capitol going on it is a sign that
12 we intend the Union shall go on. And to obscure
13 that symbol of our democracy would be a
14 significant blow to our operations and our
15 interpretation. Thank you.

16 JUDGE BYRNE: Okay. Before -- so
17 Ms. Merritt, what is the legal significance
18 under D.C. law of the effect of a tall building
19 on this site on President's Lincoln Cottage?
20 It's not a 106 proceeding involving that site?
21 And I'd just like to hear what you have to say.

22 MS. MERRITT: If I understand your

1 question correctly, and I may not, it's
2 relevant to consistency with the comprehensive
3 plan because of the viewsheds south are
4 considered -- are historically significant.
5 And under the comprehensive plan those are
6 supposed to be prevented.

7 MS. BROWN: And I would object to
8 those characterizations whether or not they're
9 -- I understand that that's her explanation of
10 this, but I don't know that we should give any
11 weight to it as fact if it is argument.

12 JUDGE BYRNE: Okay. But what I'm
13 trying to understand is what the legal aspect
14 of this is since this is a special merit
15 proceeding involving McMillan Reservoir as
16 opposed to a proceeding about adverse effects
17 on President Lincoln's Cottage.

18 I'm just trying to clarify it so we
19 can just sort of narrow whatever we're going to
20 argue about.

21 MS. FERSTER: And if I could add to
22 that explanation, the applicants' planner

1 testified as part of their special merit case
2 that this is a special merit project due to its
3 consistency with the comprehensive plan.

4 JUDGE BYRNE: Okay.

5 MS. FERSTER: And, you know, this
6 testimony refutes that it's consistent with the
7 comprehensive plan because the comprehensive
8 plan actually requires that the viewsheds, the
9 significant viewsheds be protected.

10 MS. BROWN: And again I would
11 object to that characterization. I think
12 that's again argument and not fact.

13 JUDGE BYRNE: Okay, so maybe we'll
14 have a chance --

15 MS. FERSTER: We're lawyers so
16 that's what we do.

17 JUDGE BYRNE: We'll have a chance
18 to argue that out as a legal matter later on,
19 but I just wanted to know what Ms. Mast's
20 testimony, you know, what it was directed at at
21 this point. So okay, that's good. Thank you.

22 Any further questions for Ms. Mast

1 from --

2 (Off microphone discussion)

3 JUDGE BYRNE: Okay. Ms. Brown?

4 MS. BROWN: Yes. So you're
5 saying, I have a question about this along the
6 same lines as the comprehensive plan. Does the
7 National Trust then say that it has a legal
8 right to prevent any private development
9 between the Lincoln Cottage down to the
10 Capitol?

11 MS. MAST: I don't think that I have
12 the expertise to respond to that.

13 MS. MERRITT: I'd like to object
14 because that's a legal question and she's not
15 in a position to answer that about the National
16 Trust's legal position.

17 JUDGE BYRNE: I think that's fair.

18 MS. BROWN: And was the -- did
19 Lincoln ever see the Capitol Dome?

20 MS. MAST: Yes.

21 MS. BROWN: From the property?

22 MS. MAST: Yes.

1 MS. BROWN: When was the
2 construction completed?

3 MS. MAST: The construction was
4 completed in 1863, I believe.

5 MS. BROWN: You believe?

6 MS. MAST: I'm not sure of the exact
7 date, but it was under construction during the
8 summers that he was there.

9 MS. BROWN: So he couldn't see it if
10 it was under construction.

11 MS. MAST: Well, he could see the
12 construction of the Dome once it was completed,
13 yes.

14 MS. BROWN: And the trees didn't
15 block the view?

16 MS. MAST: Correct, particularly
17 during that time.

18 MS. BROWN: Do the trees block the
19 view now?

20 MS. MAST: During the height of the
21 summer for a limited period of time there are
22 trees that obstruct the view from the second

1 floor of the Cottage, but not from the other
2 areas I mentioned including the front of the
3 Visitor Education Center, which is a
4 contributing historic feature but not
5 Lincoln's historic viewshed. But from the
6 landscape it is visible.

7 MS. BROWN: Okay. And are those
8 views protected under the D.C. Inventory of
9 Historic Sites?

10 MS. MERRITT: I'd like to object
11 because that's a legal question.

12 JUDGE BYRNE: Okay, I think that's
13 fair.

14 Yes sir?

15 MALE PARTICIPANT: I can't hear a
16 word back here. Is there microphones?

17 JUDGE BYRNE: No, there aren't any
18 microphones, sorry. I'll ask everybody to
19 just speak up but that's the best we can do.

20 Okay, anything else?

21 MS. BROWN: No more questions.

22 JUDGE BYRNE: Okay. Thank you,

1 Ms. Mast.

2 MS. MAST: Thank you.

3 JUDGE BYRNE: Okay, let's see.

4 MS. FERSTER: So we have another
5 witness who needs to go on before 2 o'clock.

6 JUDGE BYRNE: That's fine. We're
7 doing fine. Let's just roll along here.

8 MS. FERSTER: Okay, so our next
9 witness will be George Oberlander. He's a
10 planner. And we have circulated, actually,
11 his CV in our prehearing submission, so that's
12 where you would find it.

13 Mr. Oberlander is a former staff, a
14 director at the National Capital Planning
15 Commission. He's a planner. He's been
16 qualified as an expert witness in planning in
17 numerous proceedings before the mayor's agent
18 and before, of course, the Zoning Commission
19 and the National Capital Planning Commission.
20 So I would ask that he be qualified as an expert
21 --

22 MS. BROWN: No objection.

1 MS. FERSTER: -- in the area of
2 planning.

3 JUDGE BYRNE: Okay. In the
4 absence of objection we're happy to qualify
5 him.

6 Mr. Oberlander?

7 MS. FERSTER: Yes, and we have
8 copies of his full testimony. He's going to
9 present an abbreviated testimony.

10 JUDGE BYRNE: Thank you.

11 Thank you, sir. All right, please
12 state your name for the record.

13 MR. OBERLANDER: My name is George
14 Oberlander. I'm an urban planner and zoning
15 consultant. I have been a qualified expert
16 before the mayor's agent, so I don't need to
17 repeat that again.

18 My statement is on behalf of the
19 Friends of McMillan Park before you today and
20 opposing the granting of special merit for this
21 project based on the claim that it is consistent
22 with the adopted comprehensive plan for the

1 national capital, the D.C. elements of a plan.

2 I strongly disagree that the
3 project is consistent with the specific
4 policies and objectives of the comprehensive
5 plan relating to this specific site. That the
6 plan is consistent with a few general
7 comprehensive plan policies and goals such as
8 the use of the site for community development
9 or mixed use developments cited by the
10 applicant does not justify itself as special
11 merit approval.

12 The site is designated in the
13 comprehensive plan land use map for mixed use,
14 medium density residential and moderate
15 density commercial and park, recreation and
16 open space. And I emphasize medium density and
17 moderate density. And it gives the citation in
18 the middle of that paragraph.

19 "The requested C-3-C zoning
20 represents high bulk completely out of
21 character with the surrounding neighborhoods
22 and is therefore inconsistent with the basic

1 medium and moderate density land use
2 designation of the comprehensive plan." So it
3 does not meet that requirement of the
4 comprehensive plan.

5 Reading the words describing the
6 color code on the maps, the big maps of the
7 generalized policy map, you will find the
8 following descriptive language.

9 "As land use changes are
10 redeveloped, the District aspires to create
11 high quality environments that are compatible
12 with and do not negatively impact nearby
13 neighborhoods." And I emphasize the
14 negatively impact nearby neighborhoods.

15 A high bulk density in this area
16 would not be in keeping with the surrounding
17 existing zoning. The future land use map,
18 which is another big map in the plan for the
19 surrounding neighborhood, is moderate density
20 residential. The proposal, the proposed
21 office building heights have now reduced to 115
22 feet are not in keeping and/or compatible with

1 the moderate density residential neighborhoods
2 of Stronghold to the east and Bloomingdale to
3 the south.

4 As I researched and prepared for
5 this case before the Zoning Commission, I
6 reviewed an old letter from February of 1990
7 that the Planning Commission sent to the Zoning
8 Commission about sight lines over this site,
9 the McMillan site. And I quote from that
10 letter.

11 "Close visual relationship with the
12 hospital complex, McMillan Reservoir and the
13 District-owned portion of McMillan Park can be
14 readily interpolated." Eleven reciprocal
15 sight lines are indicated in that letter.

16 The document concludes, and I
17 quote, "from this analysis we find that first
18 a distinctly open space character of McMillan
19 Park is still scenically desirable as a federal
20 interest, and two, any structures to be
21 introduced with the District-owned part of
22 McMillan Park should be widely spaced, not to

1 exceed a four-story on Veterans Hospital and
2 preferably have lower transitional heights and
3 picturesque roof lines to blend with the
4 immediate landscape and the park environment."

5 In my opinion, the project is also
6 inconsistent with a number of more specific
7 comprehensive plan policies, and I cite those
8 on Page 3 starting with Policy LU-1.2.7,
9 protecting existing assets of large sites.

10 And I quote, "Identifying and protecting
11 existing assets such as historic buildings,
12 historic site plan elements, important vistas
13 and major landscape elements as large sites are
14 redeveloped."

15 The Applicant's proposal would
16 demolish 18 out of 20 cells or about 90 percent
17 of the underground historic cells, demolishing
18 a park built by one of the founders of American
19 landscape architecture, and you've heard about
20 that already.

21 The next policy is that it would
22 violate, the project would violate, is

1 MC-2.6.1, MC meaning McMillan Reservoir
2 specifically for this site, require that the
3 reuse plans of the McMillan Reservoir Sand
4 Filtration Site dedicate a substantial
5 contiguous portion of the site for recreation
6 and open space consistent with the 1901
7 McMillan Plan. Connectivity to nearby open
8 space such as the Armed Forces Retirement
9 should be achieved through the site design.

10 In my opinion, the site design does
11 not meet that criteria. The proposed
12 intensive development on the portion of the
13 site not dedicated to park use and particularly
14 the 115-foot height of the medical office
15 building would impair the site's open space and
16 obstruct key sight lines. And that's been
17 dealt with with the NCPC letter, which I believe
18 is in the file. The next violation of
19 the policies in the plan is Policy MC-2.6.2,
20 historic preservation of the McMillan
21 Reservoir. And I quote from there.

22 "Restore key above-ground elements

1 of the site in a manner that is compatible with
2 the original plan and explore the adaptive
3 reuse of some of the underground cells as part
4 of the historic record of the site.

5 "The cultural significance of this
6 site and its importance to the history of the
7 District of Columbia must be recognized as it
8 is reused. Consideration should be given to
9 monuments, memorials and museums as part of the
10 site design."

11 As noted above, under the proposed
12 plan, all but two of the underground historic
13 cells would be destroyed and none of the site's
14 below ground structures would be adaptively
15 reused.

16 Going on to a next policy on Page 4
17 that is being violated deals with mitigating
18 reuse impacts. "Ensure that any development
19 of the site is designated to reduce parking,
20 traffic and noise impacts on the community and
21 improve transportation options to the site and
22 the surrounding neighborhood.

1 "Any change in use on the site
2 should increase connectivity between northwest
3 and northeast neighborhoods as well as the
4 hospital complex that is north."

5 There is no question that the plan
6 will increase not reduce traffic impacts on the
7 community. The McMillan site is located more
8 than a mile from the nearest Metro station and
9 will generate, by the Applicant's own estimate,
10 more than 31,500 additional vehicle trips per
11 weekday in an already congested area with no
12 adequate means of mitigating these severe
13 impacts.

14 All the studies that are still being
15 done or answers to these traffic problems are
16 still unanswered and need to be considered as
17 part of this application. Moreover, the
18 Applicant's plan does not increase the site
19 connectivity with existing street grid and the
20 enjoining neighborhood. The McMillan
21 site continues to be self-contained under the
22 development proposal and that's a fact. The

1 next policy that is being violated is the 2.6.5,
2 which I quote. "Recognizing that
3 development on portions of the McMillan Sand
4 Filtration Site may be necessary to stabilize
5 the site and provide the desired open space and
6 amenities, where development takes place it
7 should consist of moderate to medium density
8 housing." So this is being violated, in my
9 opinion.

10 Retail and other compatible uses.
11 Any development on the site should maintain
12 viewsheds and vistas and be situated in a way
13 that minimizes impact on historic resources and
14 adjacent development.

15 As noted above, the Applicant
16 proposal is a high density development that
17 would affect viewsheds and vistas. The next
18 policy that is violated in the comprehensive
19 plan is dealing with open space, 3.3, other
20 significant open space network it's called.

21 The McMillan Reservoir is
22 identified as a significant element in the

1 element of the comprehensive plan, which states
2 that, and I quote, "a unique open space network
3 comprised primarily of major federal
4 facilities, cemeteries and institutional uses
5 located just north of the city's geographic
6 center in an area otherwise lacking in public
7 park land." The rest of that paragraph
8 describes as emerald necklace of open space
9 that the concept envisions.

10 As Friends of Historic Preservation
11 experts have indicated, the sand filtration
12 site has a long history of public recreation use
13 prior to World War II and that the proposed
14 destruction of two thirds of this space
15 represents a net loss of park and open space for
16 an area that has fewer parks and recreation
17 areas than any other ward in the city.

18 There are two additional policies
19 that I want to quote dealing with the north
20 central open space network, which is Policy
21 3.31.

22 Protect and enhance the historic
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1 open space network extending from McMillan
2 Reservoir to Fort Totten. As future land use
3 changes in the area take place, an integrated
4 system of permanent open space and improved
5 parks should be maintained or created. In my
6 opinion that is not being done.

7 And the next policy that's being
8 violated is open space conservation. It
9 includes a specific reference to, quote, "a
10 linear park connecting extending from this site
11 south through the Irving Street Hospital campus
12 and McMillan Reservoir Sand Filtration Site to
13 LeDroit Park should be pursued."

14 As noted above, two thirds of
15 McMillan Park open space would be destroyed in
16 the Applicant's proposal. The proposed
17 development plan if approved, in my
18 professional opinion, would therefore violate
19 the site-specific comprehensive plan policies
20 enumerated.

21 Now if I may before commenting on
22 the Applicant's planning expert's testimony of

1 October 6th, I will briefly outline what makes
2 up the comprehensive plan if anybody doesn't
3 know it by now.

4 There are three basic elements that
5 make up, or volumes that make up this ten-pound
6 document and is formulated in those three
7 volumes.

8 First are city-wide elements,
9 general policy statements that apply city-wide
10 with some reference to geographic sites
11 including 14 general substantive elements such
12 as land use, transportation, housing, park and
13 recreation, open space, historic preservation,
14 economic development and community service and
15 there are others as well.

16 The area elements, which deal more
17 with the neighborhoods, govern specific
18 planning areas, actual neighborhoods, and are
19 more specific policies guiding specific named
20 sites. And then the third element is the
21 implementation of the plan.

22 Now with respect to Mr. Williams'

1 comments on the Applicants meeting the planning
2 requirements, the 21-page statement focuses on
3 and then applying several general
4 comprehensive plan policies that support the
5 proposed development. Yes, the site is part of
6 a mixed use, land use change area.

7 The project proposed mixed income
8 housing. Yes, includes a park and a community
9 facility and provides economic development and
10 follows some of the environmental and historic
11 preservation general policies. However, as my
12 testimony indicates, there are at least eight
13 specific policies that the approval of the
14 project would violate.

15 In my professional planning work
16 with the National Capital Planning Commission
17 preparing comprehensive plan drafts for
18 adoption over 31 years with that agency
19 interpreting adopted policies as well as
20 defining adopted plans in court and before the
21 Zoning Commission of the District of Columbia,
22 I have advised and taken the position that if

1 there are site-specific, land use density,
2 historic preservation and other policies like
3 park, recreation and open space, they outweigh
4 or need to be given greater weight than the
5 supporting general policies.

6 Moreover, in most cases the
7 development proposal manifestly does not
8 satisfy even the policies and identified in the
9 comprehensive plan cited by Mr. Williams as
10 having been satisfied. Examples of these are
11 questionable policy interpretations to be
12 found on the bottom of Page 6 and the rest of
13 the statement on Page 7.

14 Mr. Williams considers meeting the
15 land use 1.2.7 requirement of protecting
16 existing assets on large sites by saying,
17 quote, "The project will protect many of the
18 historic assets of the filtration site," end of
19 quote.

20 The policy implies as many as
21 possible, not just many. This proposal will
22 destroy the vast majority of the historically

1 important features of the site.

2 He also refers to a 6.2 acre of
3 meeting the substantial requirement to open
4 space. In my opinion, the long planning
5 history for the site requires keeping at least
6 50.1 percent of the site's open space. That
7 would be substantial.

8 And I have a definition in Webster's
9 Dictionary what substantial really means, but
10 it's a matter of how the plan's wording of
11 substantial is.

12 Mr. Williams does not mention the
13 zoning density that the applicant requests of
14 C-3-C, but claims that Policy MC-2.6.5, scale
15 and mixed of use of moderate to medium density,
16 is met. As noted above, medium density and
17 mixed use, even with a planned unit
18 development, does not permit 115-foot high
19 buildings.

20 Mr. Williams' testimony makes no
21 reference to the policies in park, recreation
22 and open space 3.3, which indicates that the

1 site is part of a very significant open space
2 network needing preservation.

3 Mr. Williams claims, quote, "that
4 the site connects from and to the surrounding
5 areas," end of quote. However, that is not
6 what the Policy 3.31 and the Rock Creek East
7 planning area Policy 2.5.4 specific policies
8 envision as open space, conservation and open
9 space networking connecting to the larger part
10 of the city.

11 In conclusion, I have a footnote to
12 this statement. I'd like to point out that the
13 Zoning Commission's intended approval of the
14 PUD merely represents its required finding that
15 the development would, quote, not be
16 inconsistent with the comprehensive plan which
17 is called for in the Home Rule Act.

18 However, a finding that the
19 development is not inconsistent with the
20 comprehensive plan is not a basis for receiving
21 special merit approval under the Preservation
22 Act for precisely the reason that it is not a

1 special component of the project.

2 All development proposals must be found
3 to be not inconsistent with the comprehensive
4 plan. To be a basis for special merit
5 approval, the developer must instead
6 affirmatively show that the development
7 furthers the specific policies of the plan, and
8 in my opinion the developer has not made this
9 showing.

10 In my professional opinion, the
11 development is inconsistent with the majority
12 of the specific policies related to McMillan,
13 therefore the comprehensive plan cannot be a
14 basis for granting special merit approval.

15 Thank you for considering my testimony
16 today and I'd be happy to answer any of your
17 questions.

18 JUDGE BYRNE: Thank you, Mr.
19 Oberlander.

20 Do you have any further questions?

21 MS. FERSTER: No further
22 questions.

1 JUDGE BYRNE: Okay. Your witness
2 then, Ms. Brown.

3 MS. BROWN: Yes, I just have a
4 couple quick questions. You mentioned that MC
5 stands for McMillan in the comprehensive plan?

6 MR. OBERLANDER: Yes.

7 MS. BROWN: Do you think it might
8 mean mid-city elements?

9 MR. OBERLANDER: That's not, no.
10 It's specifically to McMillan.

11 MS. BROWN: All right, and you rely
12 quite heavily on the 1990 letter in the NCPC
13 record. That letter was issued in connection
14 with comprehensive plan amendments to allow
15 development on the McMillan site. Is that
16 correct?

17 MR. OBERLANDER: I don't recall
18 what it specifically related to, but yes,
19 there's no objection to a moderate density
20 development.

21 MS. BROWN: And so the
22 comprehensive plan has since been changed since

1 1990, many times, yes?

2 MR. OBERLANDER: Well, the
3 comprehensive plan has been updated. Yes.

4 MS. BROWN: No more questions.

5 JUDGE BYRNE: Okay, thank you.

6 MR. OBERLANDER: But the intensity
7 of the development has not been changed.

8 MS. FERSTER: One redirect.

9 JUDGE BYRNE: Please.

10 MS. FERSTER: Mr. Oberlander,
11 would you just clarify that while the policy MC,
12 does refer to the mid-city element, you're
13 dealing with a specific mid-city element
14 relating to McMillan Park.

15 MR. OBERLANDER: Absolutely.

16 MS. FERSTER: Thank you.

17 JUDGE BYRNE: Okay. Thank you,
18 Mr. Oberlander.

19 MR. OBERLANDER: Thank you.

20 JUDGE BYRNE: Okay, I think we can
21 do more.

22 MS. FERSTER: Okay. One moment.

1 Okay, our next witness is Susan
2 Burmeister. You have her resume --

3 JUDGE BYRNE: Yes.

4 MS. FERSTER: -- in your materials.
5 She is a structural engineer and we would like
6 her to be qualified as an expert in structural
7 engineering.

8 JUDGE BYRNE: Ms. Brown, what do
9 you think? Any objection?

10 MS. BROWN: I have a couple of
11 questions or a quick question.

12 JUDGE BYRNE: Let's do that first.
13 So please first state your name for
14 the record.

15 MS. BURMEISTER: My name is Susan
16 Burmeister.

17 JUDGE BYRNE: Okay. All right.

18 Well, Ms. Brown, go ahead and ask
19 your question.

20 MS. BROWN: Do you have experience
21 with structures made of unreinforced concrete
22 and their stability?

1 MS. BURMEISTER: I certainly have
2 experience with stability. The stability's
3 not necessarily related to whether or not
4 they're unreinforced. Unreinforced concrete
5 is not very common these days, so there aren't
6 very many people out there who can say that they
7 have experience with unreinforced concrete.

8 I would tend to say I have as much
9 experience as most engineers in the industry
10 do. I have done some nominal design with it but
11 it's not the norm.

12 MS. BROWN: I'm fine with her
13 qualifications as a --

14 JUDGE BYRNE: Okay, thank you.

15 All right, please proceed.

16 MS. BURMEISTER: Okay. So my name
17 is Susan Burmeister and I'm a structural
18 engineer with about 20 years of experience
19 designing building-type structures.

20 (Off the record comments)

21 MS. BURMEISTER: I'm the president
22 of S2B Structural Consultants and I'm a

1 registered professional engineer in Georgia,
2 Virginia, Maryland and Washington, D.C. I'm
3 here to talk about some of the structural
4 implications associated with new construction
5 above the existing vaults.

6 I'm going to preface my testimony by
7 recognizing the two structural reports that
8 have been previously prepared to evaluate the
9 structural impacts of new construction at the
10 site of the McMillan Park, the CJM report and
11 the Silman report, both which I believe have
12 been presented in these hearings before.

13 My comments and observations about
14 the existing structure are based on a review of
15 these reports. I have not performed any
16 independent analysis to validate the
17 assertions made in those reports, and I have not
18 visited the project site and done my own
19 condition survey. So my comments are
20 predicated on these reports.

21 First of all, I want to take a look
22 just at a typical section through the vault cell

1 and identify the key elements of the structure
2 that need to be considered if we're looking at
3 any sort of reuse scheme. There's a
4 slab on grade, which supports the columns. A
5 portion of that slab on grade is your effective
6 existing foundation now. The columns support
7 the ceiling slab, and on top of the ceiling slab
8 we have an existing layer of soil.

9 As part of any structural
10 renovation, we'll need to evaluate the impact
11 of each of these elements in terms of their
12 existing structural capacity and in terms of
13 minimum current designed building code
14 requirements.

15 So we'll start by taking a quick
16 look at the columns. One of the current
17 building code requirements is that for
18 unreinforced columns they are not permitted,
19 okay. Therefore, if there is any new
20 construction or anything that goes on top of the
21 existing column, the column will have to be
22 reinforced. That's a given.

1 There's two ways, typical ways, of
2 reinforcing the columns. The first would be
3 built up column reinforcing. In this method,
4 it entails installing a rebar cage around the
5 perimeter of the existing column and encasing
6 the rebar and the existing column in concrete.

7 Alternatively, the columns can be
8 wrapped with CFRP sheets. CFRP stands for
9 carbon fiber reinforced polymer composites.
10 CFRP wraps are used extensively in seismic
11 retrofits as a means of reinforcing concrete
12 columns. The wraps are thin enough that the
13 existing proportions of the structural
14 elements would not be visually altered and the
15 wraps can be painted.

16 From a structural perspective, it
17 is feasible to reinforce the columns by either
18 method, encasing them or wrapping them.

19 Let's talk briefly about the
20 foundations. This is a diagram straight out of
21 the Silman report. It's the one that Anne
22 referred to earlier with the green cells show

1 that the three cells on the interior were the
2 ones that they said had the least amount of
3 damage; those were identified as having minor
4 damage. The yellow cells are moderate. The
5 two red ones are collapsed, and the pink ones
6 are what they're calling severe damage. Okay.

7 So looking at this diagram you can
8 get a sense as to which ones are in good shape
9 versus which ones are in bad shape.

10 The areas colored green or yellow
11 are reportedly in fairly good condition, and
12 the red and pink areas are where we have
13 structural deterioration. From the CCJM
14 report, the yellow and green areas also
15 correspond to the areas where the existing
16 grade was cut to install the vaults.

17 And these are what we call residual
18 soils and should be relatively good soils,
19 while the red and pink areas correspond to the
20 areas where they had to raise the grade in order
21 to install the vaults by installing fill. In
22 these areas we would not expect soils to have

1 as much load-bearing capacity.

2 Additional geotechnical work would be
3 required to confirm the geotechnical capacity
4 of any of this. For the areas where the
5 structure appears to be in decent condition and
6 where the soils are expected to have a decent
7 capacity, one option to consider in new
8 construction could be a load swap. Go ahead.

9 If you look at the cross section
10 through the existing vaults, a typical section,
11 the original drawing details indicate that
12 there's two feet of soil above the ceiling slab
13 at the slab high point and three foot five of
14 dirt at the low point over the columns.

15 This is a varying depth soil with a
16 parabolic curve so we can approximate these and
17 say that our average depth of soil is at least
18 two foot three.

19 For our local region in Washington,
20 D.C., the unit weight of soil is typically
21 between 120 and 130 pounds per cubic foot. So
22 if we assume the low end of that at 120 pounds

1 per cubic foot per saturated soil, we can
2 estimate that the load that these vaults are
3 currently carrying on top of them is roughly 270
4 pounds per square foot.

5 The question becomes if we want to
6 remove the existing soil, what can we build in
7 its place that weighs less than the equivalent
8 baseline 270 pound per square foot load?

9 Putting something else in place of the
10 soil which is of equal or lesser weight means
11 we are effectively swapping one load for
12 another with no net increase over the loads in
13 the structure that the structure's supported
14 for the last 100 years.

15 Let's take a quick look at the
16 ceiling slab first. In this scenario, which
17 has been previously identified as an element in
18 the Silman report as having some structural
19 concerns, the ceiling slab, if we post up with
20 new structure off the existing columns, all of
21 these superimposed loads, i.e., the soil, would
22 be removed from the ceiling slab.

1 If detailed correctly, the new
2 floor slab can provide a horizontal diaphragm,
3 which could aid in resolving the structural
4 stability issues raised in the Silman report.

5 The Silman report, the lower
6 diagram in here identifies a picture from the
7 Silman report where they indicate that has part
8 of the collapse progression; you get cracks
9 occurring at roughly quarter points of the
10 span.

11 If you take off the soil and you see
12 these cracks in existence, we can inject them
13 with an epoxy injection and reinforce them with
14 carbon fiber reinforcing on top in order to
15 stabilize any existing movement. And, again,
16 you would have removed the 270 pound per square
17 foot soil load so you would no longer have that
18 on there.

19 So with this basic concept, the
20 ceiling slab becomes more of an architectural
21 element than a structural element since you've
22 removed the load, and by removing the soil and

1 exposing the structure you could also do any
2 waterproofing or insulation required.

3 So let's look at a couple of schemes
4 of building some structures on top of this.
5 First one, Scheme 1 considers removing the
6 existing soil and building a one-story, steel
7 frame structure on top of the existing columns.

8 There are certain loads associated
9 with any new construction that we can easily
10 quantify in estimating the impact to the
11 existing system. The floor self-weight, the
12 framing plus concrete slab and floor finishes,
13 can be estimated at approximately 60 pounds per
14 square foot.

15 The roof, including the framing,
16 insulation and roofing membrane systems, can be
17 estimated at about 25 pounds per square foot.
18 We also need to provide a 30 pound per square
19 foot allowance for transient loads, which we
20 call live loads, such as rain and snow.

21 If we deduct these unavoidable
22 loads from the 270 pound per square foot

1 baseline, we're left with 155 pound per square
2 foot in reserve for whatever occupancy would
3 occupy the one-story space.

4 So if we have 155 pounds per square
5 foot in reserve and we review the 2012
6 International Building Code, a 40 pound per
7 square foot load capacity is required for
8 residential structures, 70 psf for offices, 100
9 psf for restaurants, 100 psf for public meeting
10 areas, 75 to 125 pound per square foot for
11 retail. All of these occupancies are less than
12 our 155 psf reserve capacity, and would mean
13 that the new one-story structure is actually a
14 reduction in the load to the existing structure
15 relative to the current soil load that has been
16 in place for roughly 100 years.

17 Because there's so much reserve
18 capacity in the one-story scheme, we should
19 look at a two-story scheme. Again if we allow
20 60 psf for the self-weight of the two floors,
21 25 psf for the roof self-weight and 30 psf for
22 the roof load, we're left with a 95 pound per

1 square foot reserve capacity.

2 If we consider two floors of
3 residential occupancy, we can stay within our
4 target load allowance relative to the existing
5 loads. You have 80 psf which is less than the
6 95.

7 If we're going to look at
8 residential structures, it's more common for
9 those to be framed using a lighter framing such
10 as wood as opposed to steel. So let's look at
11 a three-story wood-framed residential
12 structure.

13 We would recommend that they
14 maintain the steel concrete slab at the grade
15 level as there are global structural benefits
16 to using a concrete slab system as opposed to
17 a wood framing system that deal with the overall
18 stability.

19 But above that for the wood-framed
20 floors you could probably look at a 20 pound per
21 square foot loading, and again on the roof we'd
22 use 30 pounds per square foot for the live load.

1 So subtract those from your 270
2 pound per square foot baseline, you've got 120
3 pounds per square foot reserve. Should be --
4 so with 120 pound per square foot reserve
5 capacity and residential being 40 pounds per
6 square foot per floor, then basically our three
7 floors of residential is right at your reserve
8 capacity. So you would be swapping the soil
9 load for a three-story residential structure.

10 It should be noted that as the
11 proposed construction gets taller, the
12 potential effects due to lateral loads may be
13 more significant and are not addressed in these
14 simple examples.

15 However, with conscientious
16 planning and forethought, the lateral load
17 resisting systems can be concentrated such that
18 any existing structural reinforcing required
19 is located to impact only a few select existing
20 members and not the entire structure.

21 The previous three schemes assume
22 new columns or load-bearing walls aligning with

1 the existing columns at 14 feet on center.
2 While this should be a workable solution for
3 residential use, it is not practical for most
4 of the other occupancy use types.

5 So let's look at an impact of
6 placing the new columns at 28 feet on center in
7 each direction. Assuming the loads we've seen
8 in the early examples, 60 pounds per square foot
9 for the floor, 25 for the roof and 30 for the
10 roof live, we can see that this scheme would
11 result in a load to the interior column that
12 exceeds the 275 pounds per square foot swap load
13 allowance by 10 pounds per square foot, and
14 that's not considering any new use occupancy
15 load.

16 So in this scheme we have no reserve
17 capacity at the column locations and further
18 study would be required to evaluate what the
19 actual capacity of the columns and the
20 foundations are to see whether or not
21 reinforcing is required. Go ahead.

22 For slight reinforcing, there are

1 systems out there for reinforcing the
2 foundations called helical piers and
3 micropiles. These systems can increase the
4 foundation capacity with minimal impact to the
5 existing space and can be installed in confined
6 spaces.

7 Once you're to the point where you
8 have to reinforce the structure, removing the
9 soil vaults within the building footprint and
10 looking at reinforcing the new columns that
11 support the structure and the foundations, you
12 might as well look at more usable bay spaces.

13 So you could look at a 42 by 28 foot
14 superstructure, which would only require four
15 out of twelve columns and foundations to be
16 reinforced thereby minimizing your impact to
17 the elements below.

18 And with that the number of stories
19 that you put on there would just depend on what
20 you wanted to do and how you wanted to lay it
21 out.

22 JUDGE BYRNE: Oh that's it?

1 MS. BURMEISTER: That's it. I was
2 just presenting some options.

3 JUDGE BYRNE: Yes, thank you.

4 Further questions? All right, Ms.
5 Brown, your witness.

6 MS. BROWN: Yes, I have a couple
7 quick questions. These examples that you gave
8 were for the cells that are least damaged or for
9 any cell?

10 MS. BURMEISTER: These would
11 assume that the existing structure has at least
12 enough integrity in it that it's holding its
13 current weight.

14 MS. BROWN: And many of these have
15 not held their current weights, correct?

16 MS. BURMEISTER: Two. Two out of
17 the, if you go back to, there's two red that have
18 partial collapse that have not, now again I have
19 not visually looked at the ones that are
20 highlighted pink that say severe damage to know
21 how comprehensive that is.

22 I know that looking through the CCMJ

1 report a number of the photographs that they
2 include and which were hard to see in the print
3 appear to be in the ceiling slab, which again
4 with these systems being the columns that may
5 or may not be an issue. There are reports of
6 settlement which would bring into question the
7 foundations on most of the pink and red areas.

8 MS. BROWN: And your opinion could
9 change if you had an inspection of this site?

10 MS. BURMEISTER: Well, as far as
11 where they could do it. I mean I think that the
12 basic concepts are valid, but yes, as far as the
13 extent to where this could be applied would be
14 dependent on seeing it.

15 MS. BROWN: Does your study take
16 into account access to these buildings, what
17 roadway and construction activities --

18 MS. BURMEISTER: No.

19 MS. BROWN: -- would have affected
20 that?

21 I think those are all my questions.

22 JUDGE BYRNE: So if we look at the

1 scenarios that you've laid out, are you
2 suggesting that, I understand the sort of basic
3 physics you're describing in terms of pounds
4 per square foot. So are you testifying about
5 whether one could get permits to build
6 buildings like that? In other words that a,
7 you know, conscientious building code
8 administrator would allow you to build
9 residences or commercial structures in the way
10 you described, granting all the assumptions
11 you've made.

12 MS. BURMEISTER: Right. I am not
13 necessarily making any judgment as to what a
14 building official would or would not permit. I
15 think that in order to truly proceed with a
16 design of this nature, geotechnical work would
17 have to be done even on the good cells.

18 You'd have to get a true report of
19 someone going in and testing the soil and saying
20 this has a certain capacity. You'd have to
21 evaluate the existing structure strength.
22 You'd have to run through all the numbers and

1 validate the design.

2 JUDGE BYRNE: Yes.

3 MS. BURMEISTER: But the concept is
4 that you have a system here that's been in place
5 for roughly 100 years supporting a certain
6 load, and if you're coming back with something
7 that is roughly of equal or lesser load, the
8 numbers, you ought to be able to find a way to
9 make the numbers work and to do the engineering
10 to validate what's there.

11 I mean the soils --

12 JUDGE BYRNE: I understand. But
13 does that take into account that people may be
14 either underneath or within these structures
15 that could be at some level of risk? In other
16 words that the structures haven't collapsed,
17 but one wouldn't necessarily assume that the
18 degree of weight there is safe, currently.

19 MS. BURMEISTER: Right. So you
20 have to look at it on element by element basis,
21 right.

22 JUDGE BYRNE: Yes.

1 MS. BURMEISTER: So with the
2 ceiling slabs, which the current code does
3 allow an arched slab as unreinforced; you are
4 not required to reinforce an arched slab, which
5 is what these are. They would only be carrying
6 their self-weight; a significant amount of the
7 load would be removed.

8 So that was one of the big, my read
9 of the reports, one of the big concerns was
10 related to those elements.

11 JUDGE BYRNE: Right.

12 MS. BURMEISTER: The columns, by
13 reinforcing them regardless of whether they're
14 taking more load or not, we're going to have to
15 reinforce the columns in some form or fashion
16 because the code does not allow unreinforced
17 columns.

18 So then the only real question is
19 the foundations. And again you would have to
20 do, I think, an analysis to prove that you're
21 comfortable with what's there as an
22 unreinforced element.

1 I believe the code does allow
2 unreinforced concrete if it's in contact with
3 the soil in its entirety. I believe that's how
4 it's worded, something to that effect. I'd
5 have to --

6 JUDGE BYRNE: So the techniques
7 you've described of reinforcing the columns,
8 these have, to your knowledge have these been
9 applied to unreinforced concrete structures in
10 the context of redevelopment projects?

11 MS. BURMEISTER: I do not have
12 firsthand knowledge of that.

13 JUDGE BYRNE: Okay. Do you have a
14 sense as to how much they would change the
15 visual character of the columns if one was
16 standing next to them?

17 MS. BURMEISTER: Doing a built up
18 column reinforcing I think would have the more
19 significant visual impact because I think you
20 would probably have to put on roughly a six-inch
21 wrap around it. So your 22 by 22 would probably
22 become a minimum of a 32 by 32.

1 And the way that would express in the
2 ceiling curvature would probably have the
3 biggest visual impact. So I would assume
4 architecturally the preference would be to go
5 with the CFRP wrap. And I also think
6 logistically from a construction standpoint
7 that's a little bit easier in the confined
8 space. That proportionally should not change
9 the look at all.

10 JUDGE BYRNE: Is it very thin?

11 MS. BURMEISTER: I mean those are
12 very, very thin. Very thin. It's basically
13 just a thin sheet of carbon fibers that are in
14 an epoxy resin and they come out and they wrap
15 it around and it's, you know, it's a very thin
16 membrane.

17 JUDGE BYRNE: It's like duct tape.

18 MS. BURMEISTER: Pretty much like
19 duct tape, that's right. And then the epoxy
20 resin hardens. So you now have a visual impact
21 in that you have a shell around your column that
22 may be a different color than the virgin

1 concrete, so to speak.

2 You know, how much leeway they have
3 with playing with the resin colors I'm not
4 entirely certain, but I do know that these
5 things can be painted because I've used them on
6 projects before where they've been painted.
7 So, you know, if you don't like the color of the
8 resin, at a minimum, paint is an option.

9 JUDGE BYRNE: Okay, but you don't
10 have actual knowledge of the use of these to
11 support unreinforced concrete columns upon
12 which a redevelopment project is going to go?

13 MS. BURMEISTER: I've not seen that
14 in firsthand in an application.

15 JUDGE BYRNE: Yes, okay.

16 MS. BURMEISTER: No.

17 JUDGE BYRNE: Good. Thank you
18 very much. Oh, sorry.

19 MS. FERSTER: To redirect.

20 JUDGE BYRNE: Okay.

21 MS. FERSTER: So even though you
22 have no firsthand experience with the use of

1 these techniques on unreinforced concrete, in
2 your professional opinion do you think that
3 these techniques would work?

4 MS. BURMEISTER: My understanding
5 from reading the commentary to the building
6 code is that the purpose behind saying that you
7 cannot have unreinforced concrete columns is
8 because with unreinforced concrete you could
9 have a very sudden failure of the column, okay.
10 That's the purpose behind saying they have to
11 be reinforced.

12 These wraps are used extensively in
13 high seismic specifically to confine columns to
14 prevent that kind of a failure mode. So they
15 seem like they would be an appropriate
16 application for this because they would confine
17 the concrete, which is the main concern that we
18 have with the unreinforced concrete.

19 MS. FERSTER: And then my last
20 question is that you testified that your
21 opinion here today was based on your review of
22 the CCMJ report and the Silman report. So is

1 it your testimony that these scenarios that
2 you've shown us are not precluded by those
3 reports?

4 MS. BURMEISTER: I would agree. I
5 don't believe I saw anything in the report that
6 would say that these are not viable options.

7 JUDGE BYRNE: Okay, thank you very
8 much.

9 MS. BROWN: Do you have a copy of
10 the slides?

11 MS. FERSTER: You know, we'll have
12 to email them to you afterwards.

13 JUDGE BYRNE: Okay, good. Given the
14 late start at 11 o'clock, maybe could we do
15 another witness before we take a break?

16 MS. FERSTER: Here's a non-colored
17 version.

18 JUDGE BYRNE: Of the slides?

19 MS. FERSTER: Yes, but just one.
20 I'll have to email you the colored one.

21 MS. BROWN: Okay. Great, thank
22 you.

1 MS. FERSTER: You do have them.

2 All right. Our next witness is Miriam
3 Gusevich; you have her CV in your package. Ms.
4 Gusevich was qualified as an expert witness in
5 the area of architecture and design. Is that
6 correct?

7 MS. GUSEVICH: Urban design.

8 MS. FERSTER: Urban design before
9 the Zoning Commission, and that's how we would
10 like to qualify her as an expert today.

11 MS. BROWN: I have a couple quick
12 questions.

13 JUDGE BYRNE: Please state your
14 name for the record first before she --

15 MS. GUSEVICH: Yes, my name is
16 Miriam Gusevich.

17 MS. BROWN: Ms. Gusevich, are you
18 also a practicing architect?

19 MS. GUSEVICH: I am a practicing
20 urban designer; I am not a practicing
21 architect, but I do have a firm.

22 MS. BROWN: You'll have to speak

1 up.

2 JUDGE BYRNE: Speak up please.

3 MS. GUSEVICH: Okay. I currently
4 am practicing urban design. I started a
5 practice last year. But I am mainly an
6 academic and I have been most of my life.

7 MS. BROWN: Okay, so you don't have
8 any built, completed projects?

9 MS. GUSEVICH: I have eight years
10 of experience working in Chicago with projects
11 similar to this and have had major projects
12 built from new parks to monuments.

13 MS. BROWN: Any buildings for human
14 habitation?

15 MS. GUSEVICH: Small renovations.
16 I mainly specialize in urban design and the
17 integration of landscape and architecture.

18 MS. BROWN: And the last time a
19 project was completed?

20 MS. GUSEVICH: My last project was
21 completed, as you know, urban design projects
22 are often contentious and take a long time, so

1 that was when I left Chicago in 1996.

2 MS. BROWN: Okay, thank you. So I
3 have no issue with her being qualified in urban
4 design.

5 JUDGE BYRNE: Okay, good.

6 MS. FERSTER: In architecture.
7 Your qualification is in architecture as well.

8 MS. GUSEVICH: Well, also
9 professor of architecture, but it's really my
10 expertise is in urban design.

11 JUDGE BYRNE: So I don't know that
12 it matters about this whether the architecture
13 is included or not, because I heard her say
14 urban design is really her field.

15 MS. GUSEVICH: Right.

16 MS. FERSTER: But you are qualified
17 in architecture.

18 MS. GUSEVICH: Yes.

19 MS. FERSTER: I would like, yes.

20 MS. GUSEVICH: So my presentation
21 is mainly visuals, so I will try to, for the sake
22 of time since everybody's ready to have lunch,

1 to be quick.

2 MS. FERSTER: Take the time you
3 need.

4 JUDGE BYRNE: Yes.

5 MS. GUSEVICH: Okay. So as Andrea
6 introduced me, my name is Miriam Gusevich.
7 This is a presentation on addressing as we all
8 know the question of the special merit for the
9 project.

10 And the work that I'm sharing with
11 you is based on a collaboration not just with
12 myself but a lot of very talented young people,
13 so I'm giving them credit as well. The next
14 slide please.

15 It is pretty well established that
16 this is a national landmark and this is very
17 significant, so I will not go over that point.
18 That's pretty much established.

19 I would also emphasize the fact that
20 it's also of urban and symbolic significance,
21 as has been stated as the gem in the emerald
22 necklace, and that's a map from the Olmsted

1 plan, and that it's also located on axis with
2 the U.S. Capitol and is equidistance from the
3 Lincoln Memorial. And it's just to stress how
4 significant its location is that, you know, we
5 experience the relationship of the Capitol and
6 the Lincoln Memorial.

7 We understand that with that
8 McMillan, because of the way the road has been
9 treated, doesn't have the same experience, but
10 it is symbolically very important. Can I have
11 the next slide please?

12 Thanks to the HPRB process, we also
13 believe that the historic template was based on
14 the Olmsted plan, should serve as the same
15 framework for any new plan for this site.

16 And I'd like to just reiterate the
17 significant features of the template which is
18 of course all the significant features. It's
19 also the Olmsted Walk, the courts with all their
20 features, and also the tripartite order of the
21 site.

22 And can I have the next slide

1 please. The other thing that I would stress
2 that is important is that is distinctive is this
3 split level landscape which has two ecologies.
4 This giant green roof overall, which was 20
5 acres, one of the largest green roofs ever built
6 and especially at the time, and also the unique
7 sand and water ecology below.

8 My testimony will have two parts.
9 The first part contains this request for
10 demolition and special merit and it challenges
11 the claims that a VMP plan adequately fulfills
12 preservation goals or that it abides or based
13 on the template.

14 The second part presents our own
15 alternative People's Plan to illustrate what a
16 creative design can be that honors the unique
17 history of the site and offer an exciting vision
18 for the future.

19 So to challenge the number of claims
20 I'm going to go through this. So one is the
21 question of the viewsheds that are being
22 protected and preserved, and in fact other

1 people have testified to that effect. But
2 basically what this project does is mainly
3 privatize a lot of the views. The views
4 remain; they're just not available to the
5 public. The next slide please.

6 The historic silos, the claim is
7 that they will not be compromised or adversely
8 affected. Here's a view of from VMP. These
9 are the views in the site eye, and you can tell
10 that the scale of this site has been transformed
11 and that the silos are stranded in the canyon
12 created by tall buildings and they're reduced
13 to tokens along the street. Next slide please.

14 The question of the sand washers,
15 only one out of twelve washers remain and eleven
16 are destroyed. Next slide please. That it
17 preserves the retaining walls, and that clearly
18 the historic walls lose their structural
19 integrity as to their real purpose as retaining
20 walls. You can see in this photograph that
21 they really service everything in the wall
22 because they're holding up both the earth and

1 the structure on the other side, and that these
2 just remain as these kind of freestanding
3 screens.

4 Claim number E is the question of
5 the Olmsted Walk. We all agree that the
6 Olmsted Walk is significant to the template,
7 and at the north end, you can see that it is cut
8 off by driveways, which create potential hazard
9 for pedestrians and bicyclists.

10 And also, with these new changes
11 that have been made, there's the questions
12 about what exactly is the standing of the
13 Olmsted Walk, to what extent it even remains or
14 what it means it just becomes a very narrow
15 sidewalk which is what exists right now. Next
16 slide please.

17 The second major claim is that the
18 McMillan story can be read as a whole through
19 the new proposal. And here I'd like to make a
20 distinction between what is a perceptual and
21 conceptual order.

22 And clearly as many, as Anne Sellin

1 and others have testified, that perceptually
2 there's no way that the site can be read as a
3 whole because the buildings are in the way and
4 so you wouldn't really have the panoramic
5 views. Have the next slide please.

6 But when we look at the conceptual order,
7 a claim has been made that the VMP proposal
8 follows a tripartite structure, the historic
9 template, but if you examine the plan you can
10 see that in fact that is not quite accurate and
11 that the VMP plan, in fact, is divided into four
12 sections not three, and that there is a very
13 kind of awkward sort of intersection of the
14 mixed use and the row houses. Have the next
15 slide please.

16 The third set of claims are really
17 related to the whole question of method. And
18 so the claim is made that this is a good
19 contextual solution because it extends the
20 adjacent development patterns into the park and
21 so it makes it kind of a contextually
22 responsible site. And generally that is very

1 good urban design practice. However, in this
2 case a conventional solution is to address in
3 an unconventional site, and as John Salatti
4 says, "it makes the extraordinary into the
5 ordinary." The next slide please.

6 So based on this reason, argues that
7 a contextual solution should extend the
8 character of adjacent development, and we can
9 see that the EYA housing that's being proposed
10 is basically the conventional boilerplate
11 design plans that they use everywhere, and it
12 makes no effort to integrate the exceptional
13 historic features and the character of the
14 site.

15 And here is just to illustrate as a
16 counter example, was one of our earlier designs
17 which looked at repurposing the vaults as lofts
18 and mixed use purposes and then use the row
19 houses above so that this concept of the two
20 ecologies can be retained and at least recalled
21 as well as the fabric itself being repurposed.
22 The next slide please.

1 The fourth claim, they said the
2 vaults were not built for human habitation, and
3 here's the replies I have used as an established
4 preservation practice, and we will be sharing
5 so many examples. Next slide please.

6 So here's one successful example in
7 Paris, before and after, where the lower level
8 was renovated, and upstairs -- next slide
9 please -- is a whole system of parks that is
10 actually about three miles long. Next slide
11 please.

12 Another claim that was made was that
13 the vaults were unsuitable for commercial use.
14 And here an example from New York City years
15 before. Afterwards they have the Food
16 Emporium, which is a chain in New York, and this
17 is -- another slide please. They also have the
18 restaurant which they also -- it's really quite
19 successful. Next slide please.

20 But most importantly is that we have
21 really the use of vaults for markets have a
22 great tradition. Here's the UNESCO World

1 Heritage Site from Isfahan and Tabriz. I'll
2 have the next slide. In Aleppo, which sadly
3 has been destroyed. Next slide please.

4 And that we could in fact be using
5 the vaults in McMillan for a market, and I will
6 show that in more detail. Next slide please.

7 Another claim is that unreinforced
8 concrete cannot last. We understand that
9 these are just a counter example. Okay, next
10 claim is that complete vaults are too severely
11 damaged to rescue, they are unsafe and need to
12 go. And the next slide.

13 And, you know, we understand that
14 there are areas that have been in fact very
15 severely damaged. We don't deny that. In
16 fact that has always been an acknowledgment we
17 have made. And it's clear that the damage is
18 mainly addressing what has been there from the
19 beginning which has to do that it was built from
20 fill over a creek bed. The next slide please.

21 And so our position is that, you
22 know, contingent upon geotechnical studies

1 that the vaults should be properly tested and
2 that many can be repurposed. Next slide
3 please.

4 In terms of examples of the kind of
5 fiber reinforced concrete repair system that
6 Susan was addressing, here is the standard.
7 This is one brand. There are many others.
8 They repair nuclear power plants. They repair
9 bridge repairs which address major dynamic
10 loading from trucks, so I think that they could
11 handle McMillan.

12 JUDGE BYRNE: Are these wrapping
13 around unreinforced concrete?

14 MS. GUSEVICH: Many of these are
15 used, this is a standard product that is used
16 to repair concrete.

17 JUDGE BYRNE: Unreinforced
18 concrete?

19 MS. GUSEVICH: As well.

20 JUDGE BYRNE: And you're
21 presenting this as an example of these for
22 unreinforced concrete?

1 MS. GUSEVICH: I'm presenting this
2 as an example that it is a standard procedure.
3 It's a standard product, has been on the market
4 for over 30 years. It has been utilized in
5 conditions which are much more challenging than
6 anything we would encounter on the site.

7 JUDGE BYRNE: Such as?

8 MS. GUSEVICH: Well, I mean you
9 don't have major trucks driving on top of --

10 JUDGE BYRNE: Yes, but if those are
11 still reinforced concrete there that's a
12 different story than what we're talking about
13 here. And I'm not trying to quarrel with you,
14 I'm just trying to understand what the
15 testimony is.

16 MS. GUSEVICH: No. Actually my
17 major testimony, because I'm not a structural
18 engineer ■

19 JUDGE BYRNE: Right, apparently.

20 MS. GUSEVICH: -- and Susan
21 addressed that, is basically is that there has
22 not been due diligence in terms of studying how,

1 in this particular instance, what would be the
2 consequences and the implications of using
3 systems of this kind.

4 JUDGE BYRNE: Okay, thank you.

5 MS. GUSEVICH: Okay. The other
6 question is whether there is in fact the
7 opportunity of using a hybrid structural
8 solution to add stability.

9 And here for a relevant example,
10 this is in Sydney, Australia. This is
11 Paddington Reservoir Park. It was a
12 reservoir. It is below grade. It was turned
13 into a very beautiful park. I'll have the next
14 two slides. And you can see the integration of
15 different kinds of structures within the park,
16 and this is just another view of it.

17 So you can see that the opportunity
18 exists if you are creative to significantly
19 maintain the historical presence of the actual
20 fabric. Have the next slide please.

21 Another claim is that the lower
22 level is inaccessible, and clearly that is the

1 case on Michigan Avenue. But at the lower, as
2 the slope continues you can see that the project
3 courts are actually at street level as you go
4 further south. Have the next slide please.

5 Another claim is that it doesn't
6 have a public purpose and if you do so, there's
7 surplus property here. I realize that's not the
8 issue here. But it does have a public purpose
9 and I think that it is a question of the wisdom
10 of totally privatizing it when it might be
11 needed in the future. Next slide please.

12 The other implicit claim is that
13 McMillan is a standalone project. And I just
14 wanted to remind that there have been over
15 12-1/2 million square feet of development
16 either proposed or approved in the area, and
17 there has not been that much integrated
18 planning to address the transportation impacts
19 and marketing plan, to my knowledge. And I'm
20 not an expert in marketing. Has not been
21 updated to fully take into account these new
22 projects. Have the next slide please.

1 The other issue which has been
2 brought up in other instances is this whole
3 question of the neighborhood issues, and I just
4 simply copied the adjacent development
5 patterns.

6 And here's just a diagram that we
7 did just to emphasize how by really looking at
8 the whole site that there might be
9 opportunities that should be studied on how to
10 improve access to the hospital which is a real
11 life and death issue to address. Next slide
12 please.

13 And then the last claims that the
14 city keeps making is that this is all or
15 nothing. But our point is that this is an
16 exceptional historic site. Right now we're
17 being given an ordinary subdivision in an
18 extraordinary site, and we feel that it really
19 should have an extraordinary project on this
20 site. Next slide please.

21 So here is just an illustration of
22 what this could be. This is the last iteration

1 of our project. Basically we're just going to
2 walk you through some of our visions for the
3 People's Plan.

4 We approached the project very
5 differently. We started with the premise that
6 the site speaks to us and so we listen. And we
7 listen to the history. We listen to the
8 community. We listen to the structure. We
9 listen to the national history, and we tried to
10 see how all of these can come together.

11 As you can see from just this very
12 general view, we feel that keeping as much as
13 possible of the character of the site as an open
14 site is very significant, and also the fact that
15 as you can see on the lower southeast area is
16 that we recognize that that area is damaged and
17 really needs to be demolished, but that
18 actually is an opportunity and not just the
19 problem. The next slide please.

20 So the main point is that in fact
21 there are cells that can be repurposed and there
22 are many ideas for how to, you know, what it can

1 be repurposed for. These are just a sort of
2 consensus of ideas that have been brought up
3 over time that include basically being the
4 bazaar with cafes, restaurants.

5 There's an opportunity for the
6 production of many artisan products. There's
7 also the opportunity to do business incubators
8 and really sort of use it as a kind of incubating
9 plan of small entrepreneurs rather than just
10 simply do these kind of typical development
11 kind of tenants. Next slide please.

12 This is another view, so with cafes
13 and bars. Next slide please. We also looked
14 at the possibility of integrating a community
15 center, but also making it part of the green
16 roof. And so we used the areas for yoga and
17 other smaller scale things within the existing
18 vaults. Next slide please.

19 And they added these new vaults to
20 create space, adequate space for basketball and
21 tennis courts in the dry area. Here is, in the
22 wet area there's the spa and rehab center.

1 There's the lap and wading pools
2 that would be, again, it's inspired by the kind
3 of undulating character of the site. It's
4 really sort of bringing it together rather than
5 just sort of treating it has just an
6 intervention that has nothing to do with the
7 site. Next slide please.

8 We also looked at a demonstration
9 cell. You've been swimming and you can see how
10 the water used to filter down. Next slide
11 please. And then you can see the water sort of
12 spilling over into a pool. This is part of the
13 area that is destroyed so that you could
14 actually keep them as ruins. Next slide.

15 And I just want to walk you through
16 to the south quadrant. Under the Olmsted Walk
17 you would be able to see, there's the urban
18 beach, the green roof and the framing view of
19 the Founder's Library. That would be at street
20 level. This is a beach over there. The water.
21 Next slide.

22 Here's just a view of the urban

1 beach that we propose as part of like recycling
2 the national history of the site. The site is
3 to have a creek; that's the source of the
4 damage. We see that as an opportunity by
5 really capturing both the water and the kind of
6 sand and the landscape creating this very
7 unique place anywhere. Next slide please.

8 This is another view from the south
9 showing the sort of overall landscape. Next
10 slide please.

11 In the north quadrant we have done
12 various alternatives. This is the latest one.
13 It basically just illustrates what could
14 happen. Basically the Veterans Hospital,
15 well, if we shift more of the development to the
16 Veterans Hospital site, we understand that that
17 is not in the process right now.

18 But what we are arguing is that if
19 in fact this is really such an important project
20 that it deserves to be seen in this kind of
21 larger context.

22 The Veterans create once a campus,

1 that's what their plan calls for. We feel that
2 this is an opportunity to actually bring the
3 veterans in, and what we propose is as you can
4 see there is a sort of Veterans Plaza on the
5 opposite side and then a pedestrian bridge that
6 brings you to the site. Next slide please.

7 And then this would be sort of
8 another one of those sculpted spaces that
9 create an accessible entrance to the lower
10 level from Michigan Avenue, and it also allows
11 for the handicap access all the way down the
12 slope and then down and then we walk around to
13 the corridor and then the lower level. So
14 there's two ways of actually entering the lower
15 level. Next slide please.

16 And in general what this does is
17 that it maintains, even though there are very
18 significant contemporary interventions that it
19 maintains the kind of, the sort of character of
20 the landscape as an open landscape with the
21 green roof. Next slide please.

22 This would be a close up of what the

1 space would look like. Next slide please.
2 And basically this is just to highlight what the
3 site could be as an open space and still
4 incorporate development and incorporate the
5 community's vision. Thank you.

6 JUDGE BYRNE: Thank you, Ms.
7 Gusevich.

8 Do you have any further questions?

9 MS. MERRITT: No questions.

10 JUDGE BYRNE: Okay, Ms. Brown?

11 MS. BROWN: Yes. Ms. Gusevich,
12 you said that this is the latest iteration of
13 the People's Plan. How many iterations have
14 you shared with the public?

15 MS. GUSEVICH: We have shared
16 three. The first one would be for the HPRB.

17 MS. BROWN: Did they accept that?

18 MS. GUSEVICH: Well, it was not
19 presented because we're presenting it as a
20 formal plan. We believe that a lot of our
21 recommendations were in fact followed and
22 adopted.

1 For instance, the idea of the
2 Olmsted Walk being a significant part of the
3 site was something that was insisted on by HPRB
4 staff because that was not presented.

5 We are not presenting these to be
6 accepted. We are presenting these to
7 illustrate the different method and different
8 approach to the sites and --

9 MS. BROWN: And how many other, I'm
10 sorry. Just a follow-up on my question.

11 MS. FERSTER: Can she just finish
12 answering your question?

13 MS. BROWN: Well, actually she
14 answered my question.

15 MS. FERSTER: Are you done?

16 JUDGE BYRNE: Well, I think it's
17 appropriate to let her finish.

18 Do you have more you wanted to say
19 about it?

20 MS. GUSEVICH: Well, I just wanted
21 to clarify because I think there has been a lot
22 of misrepresentations of my actions over the

1 years.

2 JUDGE BYRNE: Well, not here
3 though. So we don't need to really go over
4 that.

5 MS. GUSEVICH: No, no. Right.
6 Just to clarify, we're here and this is a labor
7 of love. This is done pro bono. And all of
8 this is done because it is a very significant
9 site, and this is just to illustrate of options
10 ■- illustrate opportunities.

11 When we started, we took the
12 existing program that the city was proposing
13 and tried to fit it into the site. At this
14 point, and this is why I say it's the last
15 iteration. You notice that it doesn't have,
16 like we had done some housing plans when they're
17 including it in this because we want to make a
18 point. And the point is that this is a public
19 site and it should be first and foremost for
20 public purposes.

21 JUDGE BYRNE: Yes.

22 All right, Ms. Brown, you can

1 continue.

2 MS. BROWN: So this is the first
3 time you've shown this plan, today?

4 MS. GUSEVICH: No. Basically
5 almost everything that you have seen are the
6 same. The only thing that we have noted that
7 is new is the development on the north end.

8 MS. BROWN: So that there is no
9 development now on this site at all.

10 MS. GUSEVICH: In this version that
11 is not, we assumed that the development would
12 be integrated with the vaults. That the vaults
13 could be reused for development. And that that
14 development could take many different roles.

15 The other thing that I would like to
16 emphasize and is again part of the process, is
17 that I know that everybody is very tired of
18 working on McMillan on and on and on. But I
19 really believe and this is something about the
20 process that I have learned, is that the city
21 is have a proposal that is a whole big package.

22 And a proposal like this is really

1 much more of an experimental process. It's
2 something where let's try a cell. Let's see
3 what happens. Can we make it work?

4 You know, there have been a lot of
5 people who have made, you know, what would it
6 take? What would it cost? You know, what it
7 would take to actually just take one cell at a
8 time? You know, one take one of the cells that
9 works and see what it looks like. You know, see
10 if it works. I mean I think that we, the point
11 is not that this is the be all and end all, we're
12 just trying to show it is possible to do a
13 community facility that is integral to the
14 character of the site.

15 That it is possible to recycle the
16 vaults, and that the split level nature of the
17 site is as historically significant as the
18 features. And that that deserves to be honored
19 and integrated, and I just think we haven't,
20 something that comes from the outside.

21 JUDGE BYRNE: Okay, thank you.

22 MS. BROWN: No more questions.

1 MS. FERSTER: If we could have one
2 more witness who has an obligation.

3 Is that your --

4 MR. SULLIVAN: Yes.

5 JUDGE BYRNE: How do you feel about
6 that?

7 MS. FERSTER: It will be very
8 short. I mean --

9 MS. BROWN: I know who he is so --

10 JUDGE BYRNE: Okay, you got ID on
11 him. Let's see.

12 MS. GUSEVICH: Thank you very much.

13 JUDGE BYRNE: Yes, thank you.
14 Thank you.

15 MS. FERSTER: Or maybe a ten-minute
16 break?

17 JUDGE BYRNE: Well --

18 MR. SULLIVAN: I can do this in five
19 minutes.

20 JUDGE BYRNE: Maybe we should just
21 have all the witnesses come first.

22 (Laughter)

1 JUDGE BYRNE: I am kidding. This is
2 very helpful. It's good testimony.

3 MS. FERSTER: Our next witness is
4 Jack Sullivan. He is a landscape architect, an
5 associate professor at the University of
6 Maryland, and we are qualifying him as an expert
7 witness in his area of expertise which is
8 landscape architecture.

9 MR. SULLIVAN: In order to be very
10 quick about this --

11 JUDGE BYRNE: One second please.
12 Okay, no. Please go ahead. State your name
13 for the record.

14 MR. SULLIVAN: My name is Jack
15 Sullivan. In order to be very quick about this
16 I am going to skip a lot of prefacing that I had
17 prepared.

18 But what I would like to do is
19 emphasize the crux of the discussion, which is
20 first and foremost understanding the site in
21 its entire context. And that would be of
22 course, in my view, looking at those structures

1 that are above ground in the context of the flat
2 plain on which they sit which was created by the
3 vaults below.

4 The image of course that we have of
5 the site that we know and understand is of
6 course the entire site itself. It's not just
7 the objects that sit above the ground. It is
8 in fact the sort of mysterious question of
9 what's below. And the structures that had been
10 created for the purpose of cleaning the water
11 have in fact been the distinguishing feature in
12 terms of this entire site.

13 You've seen this testimony
14 previously. I did want to reinforce it, but I
15 don't want to spend too much time on it. The
16 planned diagram on the right hand side is an
17 indication of the cells that are in the most
18 deteriorating state, or in the case of the two
19 southwestern cells have been totally destroyed
20 for the sake of the WASA project.

21 But I think what's significant of course
22 is that there are these historic structures,

1 and as you can see documented in this particular
2 document in this survey start to clarify some
3 of the purposes of the historic sand filtration
4 process.

5 This drawing actually shows, and I
6 guess this is important for me to convey to you
7 as a landscape architect. I'm looking at this
8 very comprehensively. I find that a landscape
9 architect can't really do his or her job without
10 understanding the work of the consultants
11 involved in terms of their work as well.

12 So we make a point, and I do with my
13 students particularly, to try to understand
14 what some of the initial causes of any of the
15 problems that might be on the site, understand
16 transportation issues, understand potential
17 development opportunities as well as
18 recreation and open space opportunities.

19 So in this case I thought it was
20 important to recognize that the initial, the
21 original site was actually as mentioned in
22 Susan's testimony, a much more rolling terrain

1 with a lower wet area that has basically been
2 the cause of a lot of the destruction to the
3 instability of those cells that are along North
4 Capitol Street and in the southeast corner of
5 the site.

6 I won't go into this, but just to
7 clarify it is a tributary of the Tiber Creek.
8 The Tiber Creek is actually a water body that
9 runs, did run all the way through Washington,
10 D.C., channelized at various times as a canal
11 and then covered it.

12 In my mind, one of the most
13 important aspects of this particular site is
14 its relationship to the federal Washington,
15 D.C. As Miriam pointed out, it's about the
16 same distance from the Capitol as the Lincoln
17 Memorial is from the Capitol.

18 It also has starting at what I refer
19 to, this is my own designation, the North
20 Capitol gateway, the point of which when
21 arriving from the north you first get that
22 straight axis shot to the Capitol. From that

1 point you also get a view to the Washington
2 Monument.

3 In my estimation, understanding of
4 the site that tends to give me a sense that there
5 is a bifold development opportunity here, one
6 for open space and the other for a more built
7 environment. Basically split about either
8 way, about equally I mean.

9 It just happens to coincide, the
10 area that is within the open space triangle to
11 the northwest side of the site is essentially
12 a way of being able to view from various points
13 its relationship not only to the Washington
14 Monument but, as noted earlier, to the National
15 Cathedral.

16 This opportunity as Miriam pointed
17 out, there are about nine acres of underused
18 property right across the street north of
19 Michigan Avenue, which then could actually
20 complement more comprehensive development that
21 could happen along North Capitol Street and
22 perhaps residential or some other use, just

1 speculating here, along Channing Street.

2 Oh, I will say that there's also a
3 desire at some point to create some kind of
4 greensward connection to the Soldiers' Home and
5 Lincoln's Cottage, and that that greens --
6 diagram indicates that potential that were
7 going through the hospital site.

8 Now for many years my students and
9 I have been working on creative ideas for what
10 could happen on the site. To the left you can
11 see very much, almost literally, transforming
12 the diagram into a potential park development
13 and other built environment on the property.

14 On the right hand side, students
15 looking creatively on what could happen below
16 ground. Some students, having seen this site
17 as once having been both industrial, as part of
18 the infrastructure of the city, but also as a
19 recreational space, saw the idea of keeping
20 that for a modern technology which would be
21 perhaps producing energy for the city of
22 Washington.

1 Again just other ideas. I show
2 these not to say that there is any one specific
3 answer that I would propose here, but to offer
4 that there really hasn't been a full
5 exploration of all the possibilities, and it
6 would really be pertinent to this as a civic
7 space having been part of an open space network
8 that the citizens of Washington, D.C. have an
9 opportunity to see what else is available as an
10 alternative development. Again,
11 creating anything from residential to
12 commercial but also looking at the potential of
13 bringing the arts, musical arts as well as
14 visual arts to this neighborhood as part of the
15 reuse of the existing conditions of the
16 property.

17 This isn't anything new. There's a
18 lot of industrial properties that are being
19 transformed for new civic purposes. The ghost
20 station is referring to the Metropolitan that
21 have been neglected over the years,
22 transforming those for a new use and very

1 creatively done so.

2 The Delancey Street Underground
3 Park, which I think is very pertinent here, it
4 was designed essentially for turning around the
5 trolley cars and making underground passages
6 through the Lower East Side of New York, and how
7 that is planned at this point to be opened in
8 2018 as a new basically underground park using
9 interesting, modern techniques for bringing
10 light down into the space and making it more
11 comfortable for human use.

12 And then of course we have our very
13 own Dupont Underground, which I know there's
14 probably a couple of chuckles going on right
15 now. But since it had been mentioned earlier,
16 I thought it was worthwhile and to note that
17 looking at the potential has not really stopped
18 yet.

19 There is a proposal on the table
20 right now for a 41-room micro-hotel that would
21 actually cost about \$26 million as a mixed use
22 project. It would include hotel with very

1 small rooms, and fine arts, storage facility,
2 cafes, a restaurant, art gallery, black box
3 theater and artist studios.

4 So these are all potential uses that
5 could also be applied to McMillan Park, and I
6 just want to make sure that there is an
7 opportunity for more of that exploration in the
8 future. And if we take these cells, these
9 vaults, away we'll never have and never know
10 what that potential is. Thank you.

11 JUDGE BYRNE: Thank you.

12 Questions? All right. Ms. Brown,
13 questions?

14 MS. BROWN: Just a couple quick
15 ones. Thank you, that's very creative what you
16 and your students do. Does that take into
17 account the comp plan designation for the site
18 for meeting the moderate density development?

19 MR. SULLIVAN: Does what?

20 MS. BROWN: Your plans that you
21 have for the site, McMillan site.

22 MR. SULLIVAN: Some of them do.

1 Not all of them. We did review the
2 comprehensive plan. I can't say that we
3 matched it by the letter.

4 MS. BROWN: And how about historic
5 preservation considerations? Were they taken
6 into account? Do you think that this is what
7 the Historic Preservation Review Board might
8 approve?

9 MR. SULLIVAN: Which are you
10 referring to?

11 MS. BROWN: Your plans. You have
12 many plans that you have for --

13 MR. SULLIVAN: Yes, I have many
14 plans. Right.

15 MS. BROWN: -- development on the
16 site, and I'm wondering if they actually really
17 take into account --

18 MR. SULLIVAN: They all understand
19 the requirements from historic preservation,
20 not only from the city but also from the
21 standards set by the secretary of the interior.

22 So the students did study that.

1 They studied the structural reports that were
2 published online. Whether they all adhere to
3 a very realistic opportunity here, I would say
4 that's probably not conclusive that they would
5 in fact. Some would be a very good fit and
6 others would probably not pass muster.

7 MS. BROWN: Okay, thank you very
8 much.

9 JUDGE BYRNE: I wanted to ask one
10 question about the image you showed with the
11 diagonal division of the property where you
12 were sort of suggesting that a park land -- yes,
13 thank you.

14 So that the park land area would be
15 in the northwest section and then the
16 development would be down in the southeast.

17 MR. SULLIVAN: The development
18 would be in the orange area.

19 JUDGE BYRNE: In the orange area,
20 yes, particularly on the south.

21 MR. SULLIVAN: Where the cells are
22 also in a very deteriorated state.

1 JUDGE BYRNE: Right. And, you
2 know, that's interesting, because it really
3 addresses the fact that that's where the cells
4 are deteriorated. And I understand about the
5 viewshed from what you described as the portal
6 at the north park.

7 But on the other hand, I mean so
8 would you -- but what the proposal that's before
9 me does is to group the largest scale
10 development on the north end so that the medical
11 buildings can take advantage of proximity to
12 the hospitals and then puts the park land on the
13 south end when it's most contiguous to the row
14 house neighborhoods.

15 MR. SULLIVAN: That would be --
16 yes.

17 JUDGE BYRNE: And wouldn't you say
18 that's also a reasonable approach to allocating
19 uses to the site?

20 MR. SULLIVAN: I would. And in
21 fact I think it would be very favorable to the
22 neighborhood so that they have a continuation.

1 As you can see there is a sense that
2 you could make a better connection to
3 Stronghold, which is that neighborhood on the
4 east side of North Capitol Street, to the area
5 of Bloomingdale which is south of Channing
6 Street.

7 So in a way it would actually make
8 a much more cohesive relationship between those
9 parts of the neighborhood that are now somewhat
10 disconnected.

11 JUDGE BYRNE: But that would
12 suggest a much lower scale of development.

13 MR. SULLIVAN: I would assume as
14 much, but I --

15 JUDGE BYRNE: However, be
16 consistent with Stronghold and Bloomingdale in
17 that sense.

18 MR. SULLIVAN: That'd be correct.

19 JUDGE BYRNE: The row houses.

20 MR. SULLIVAN: Yes.

21 JUDGE BYRNE: Okay. It's
22 interesting. Thank you.

1 All right, well, this is a good
2 place to take a pause. I want the record to
3 reflect that the mayor's agent made an effort
4 to allow the professors to get back to teach
5 their classes.

6 MR. SULLIVAN: Thank you.

7 JUDGE BYRNE: Okay, so it's now
8 1:15 or 1:17. Do we want, what, 45 minutes or
9 an hour?

10 MS. BROWN: Forty five.

11 JUDGE BYRNE: Forty five minutes so
12 we can try to finish today. Okay, thank you.
13 So we'll reconvene at 2 o'clock. Okay, thank
14 you.

15 (Whereupon, the above-entitled
16 matter went off the record at 1:18 p.m. and
17 resumed at 2:02 p.m.)

18

19 A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

20 (2:02 p.m.)

21 JUDGE BYRNE: All right.

22 MS. FERSTER: Okay, our next

1 witness will be Matt Bader.

2 JUDGE BYRNE: All right, is
3 everybody ready to settle down here and tuck
4 into some more testimony? Mr. Bader is.

5 Okay, will you please state your
6 name for the record.

7 MR. BADER: Sure. Matthew Bader.

8 JUDGE BYRNE: Okay, thank you.
9 You're going to read a statement. Okay, fine.
10 Please proceed.

11 MR. BADER: My name is Matthew
12 Bader. I currently serve as one of two
13 Bloomingdale Civic Association
14 representatives appointed to the McMillan
15 Advisory Group. I speak today on behalf of the
16 MAG at the request of the MAG.

17 I'll provide a brief overview of the
18 purpose of the MAG followed by a discussion of
19 why this project is not one of special merit,
20 and conclude with some of my own thoughts on the
21 benefits being claimed exemplary by the
22 applicant.

1 With a quorum present, the MAG voted
2 by a count of ten in favor to oppose and with
3 two abstentions to reject the claim that the
4 Vision McMillan Partners LLC and Office of the
5 Deputy Mayor for Planning and Economic
6 Development, the applicant planned unit
7 development master plan constitutes special
8 merit to justify the level of demolition
9 included as part of the project.

10 As for a bit of MAG history for those
11 who aren't familiar with it. The MAG was
12 founded in 2006 as an unincorporated nonprofit
13 through the support of the District of Columbia
14 via the National Capitol Revitalization
15 Corporation.

16 According to the founding charter,
17 the MAG acts as a voice for the community and
18 its interaction with the development partners
19 throughout the predevelopment and land
20 development phases for the McMillan Sand
21 Filtration Site.

22 It communicates the community's

1 perspective throughout the master planning of
2 the site and serves as a mechanism for shaping
3 the creation of the master plan by
4 participating in the ongoing dialogue with the
5 development partners.

6 The MAG signed a letter of
7 commitment with VMP and DMPED to endorse the
8 selection of VMP as the master developer for the
9 project on the basis of certain terms.

10 These terms, among other items, include
11 the development in conjunction with the MAG and
12 other parties of a detailed community amenities
13 package which may include open space, historic
14 preservation, mixed income housing, job
15 creation, neighborhood-serving retail
16 options, infrastructure upgrading,
17 broad-based LSDBE participation, support for
18 local community organizations and other
19 similar objectives, and afford the MAG and
20 other parties the opportunity to review and
21 comment on the PUD before submission to
22 regulatory agencies.

1 The other thing I wanted to point
2 out that's not in here is the MAG has
3 representation from all impacted areas and
4 civic associations of which participation is
5 chosen according to those groups.

6 JUDGE BYRNE: Let me just ask you,
7 what does LSDBE stand for?

8 MR. BADER: It's now CBE.

9 JUDGE BYRNE: Oh, the CBE, okay.

10 MR. BADER: So it's essentially a
11 microcosm of all stakeholders from the
12 community who might be impacted, adversely
13 impacted by this project.

14 I can skip over the laws and
15 definitions because I think we're all familiar
16 with them. So part of the difficulty for us is
17 the act doesn't define the terms, exemplary
18 architecture, specific features of land
19 planning, and social or other benefits having
20 a high priority for community services other
21 than some of the prior decisions that I know you
22 worked on and had published.

1 So it's kind of our best effort to
2 breakdown at least the exemplary architecture
3 and the benefits component of this and why we
4 don't think that these warrant this being a
5 project of special merit.

6 So to the exemplary architectures,
7 we haven't really discussed that a whole lot in
8 the two hearings so far, but in our opinion
9 exemplary architecture refers to architecture
10 that is coherent with the site and is of an
11 unprecedented nature.

12 The townhomes' schematic drawings
13 crafted by Lessard Designs on behalf of EYA
14 mirror both an appearance and an architecture
15 of three other developments either in
16 construction or already constructed by EYA, the
17 Mosaic District in Fairfax, Arts District in
18 Hyattsville, Grosvenor Heights in Bethesda.

19 Moreover, we felt the proposed
20 medical facility to be built on parcel 1 and the
21 multifamily structures proposed for parcels 2
22 and 4 do not complement the scale or character

1 of the existing buildings in and around the site
2 nor retain the sense of space of the site.

3 So what we discussed more in these
4 hearings is the benefits, so I want to kind of
5 elaborate on our opinion on that. While the
6 applicant has indicated a series of social or
7 other benefits to be generated by this
8 development with impact for the District, we
9 find that A, the social benefits were derived
10 in violation of the terms of concurrence upon
11 which the MAG was reinstated, and B, the
12 benefits do not provide high priority for the
13 community.

14 As a result, we do not believe that
15 the proposed benefits meet the criteria of
16 special merit to warrant the scale of
17 demolition proposed by this project.

18 So the first thing is just the
19 violation of terms of concurrence as agreed
20 upon in a signed letter of commitment between
21 VMP, DMPED and the MAG and reflected in the
22 terms of concurrence.

1 VMP, the District and MAG commit to
2 using the Office of Planning summary of
3 recommendations for the site revitalization,
4 February 2002, and its recommendations, along
5 with any pertinent zoning and historic
6 regulations for the site as a baseline and/or
7 blueprint for revitalization. Furthermore,
8 to develop in conjunction with MAG, ANC 5C, now
9 ANC 5E, ANC 1B, Ward 5 and Ward 1, City Council
10 representation and a representative for the
11 chairperson of the City Council's Committee on
12 Economic Development, a detailed community
13 amenities package.

14 And in signing this letter of
15 commitment all parties agreed that the terms of
16 this letter of commitment shall be binding upon
17 VMP, the master developer, and the prospective
18 successors and assigns.

19 It's our opinion that the terms of
20 concurrence also stipulate that the applicant
21 is to work with the MAG, ANC 1B and the
22 surrounding community in crafting a series of

1 amenities, not simply ANC 5E.

2 However, in violation of the terms
3 of concurrence, both the applicant and ANC 5E
4 commissioners have stated in public that
5 negotiations would only take place between the
6 applicant and ANC 5E.

7 The MAG was denied an opportunity to
8 develop and agree upon a community amenities
9 package in conjunction with ANC 5E and the
10 applicant. As such, the social benefits were
11 derived in violation of the terms of
12 concurrence.

13 This may in part account for the
14 lack of high priority benefits included in the
15 proposal for development of the site. As
16 already stipulated, in the terms of concurrence
17 the applicant committed to using the Office of
18 Planning summary of recommendations for the
19 site dated February 2002 as a blueprint for
20 development of the site.

21 Sorry, I didn't include that in what
22 I provided you. This report captures the high

1 priority areas for the community as evidenced
2 by the significant level of community
3 participation and testimonies submitted to the
4 Zoning Commission.

5 The high priority areas listed in
6 the document are described below and compared
7 to the benefits provided by the PUD and filed
8 by the applicant. I'm not going to walk
9 through the whole table, just kind of walk
10 through our synopsis.

11 The first is parks, open space and
12 landscaping. It is our opinion that while the
13 PUD plans allow for passive recreation uses,
14 proposes high standards for landscape design
15 and allocates nearly 35 percent of the site for
16 recreation, it misses the priority goal of 50
17 percent publicly accessible recreation and
18 open space.

19 This plan also fails to retain the
20 existing views both into and out of the site.
21 In particular, the erection of the medical
22 office facility and multifamily units would

1 restrict key views such as the external view
2 looking northeast across the site to the
3 Basilica of the Shrine of the Immaculate
4 Conception and the internal view looking
5 southeast from the northwest corner of the
6 site.

7 For historic preservation the
8 proposed plan does take steps to restore the
9 above ground elements, but it takes almost no
10 care to adaptively reuse the stable underground
11 cells. Moreover, there is little
12 understanding about the extent to which these
13 structures will be preserved, how they will be
14 preserved and what their uses will be.

15 To that end, in her testimony Ms.
16 Eig indicated her skepticism that any of the
17 below ground structures will be preserved upon
18 completion of this project.

19 Scale density and uses. This is
20 the one that kind of most directly conflicts
21 with the summary of recommendations that I was
22 referencing earlier.

1 The PUD proposes the creation of now
2 115-foot medical office building, 210-foot
3 multifamily and office buildings in phase 2,
4 and the creation of nearly 2,900 parking
5 spaces.

6 It is our opinion that this grossly
7 deviates from the high priorities for the
8 development of the site. In particular, the
9 summary of recommendations specifies
10 particular things that it does not believe
11 should be built on this land, one of which is
12 medical offices to support health care
13 facility.

14 Two others are high-rise office and
15 high-rise residential. Another is any sort of
16 development that will yield a large number of
17 cars coming to the site.

18 In addition, the applicant
19 indicates a series of other social benefits
20 generated by this development with impact for
21 the District to include increased health care
22 facilities in the District, employment

1 opportunities and reliance on District
2 residents to perform some of those jobs,
3 training of District employees in advance of
4 those employment opportunities, participation
5 of District business in the executing of
6 development contracts, and a creation of
7 additional housing in the District to meet the
8 growing housing demand.

9 So that's it for the MAG testimony
10 of which I've elaborated on some of the stuff
11 that was released following when we could have
12 a formal MAG meeting, so I just want to make that
13 clear.

14 This is some of my opinions and my
15 understanding of working with the MAG of some
16 of the issues associated with each of the
17 benefits that were raised in the first mayor's
18 agent hearing.

19 So I understand the case put forth
20 by Vision McMillan, however, I would like to
21 step through these benefits being offered, one
22 by one, to discuss why many do not warrant

1 condition of special merit.

2 First, VMP highlights expanded
3 health care service as an extraordinary public
4 service. From a community perspective, this
5 has never been a priority for local residents.
6 In fact, in the 2002 summary of recommendations
7 for the site crafted based on input from
8 government bodies, many local citizens and
9 organized local groups and various experts, a
10 health care facility was the exact opposite of
11 what was requested for this site.

12 While health care facilities may be
13 lacking in the city, something that was
14 attested to that I'm sure we'd need more
15 evidence of, the question is whether it makes
16 the most sense for the surrounding residents to
17 have those health care services on McMillan and
18 whether such services are actually a benefit or
19 a detriment when constructed on McMillan.

20 Second, VMP has touted this project
21 as an employment engine, projecting 3,200
22 temporary employment positions and 3,000

1 permanent employment positions. To this end,
2 the real benefit here is the jobs to be set aside
3 for District residents.

4 There are two issues with this.
5 First, there is no discussion over whether
6 these will be new jobs or simply a reshuffling
7 of existing positions.

8 Second, while any job is better than
9 no job, some clarity to the extent to which
10 these jobs will allow D.C. residents to remain
11 in D.C.

12 According to the fiscal impact
13 analysis submitted by VMP, this development
14 will create 1,239 permanent jobs for D.C.
15 residents and 1,214 temporary jobs for D.C.
16 residents. According to the same fiscal
17 analysis, the average salary for each position
18 will be as follows.

19 One hundred sixty one jobs in retail
20 and restaurant generating on average \$30,000 a
21 year; 1,081 jobs in medical generating on
22 average \$76,000 a year, a figure that's skewed

1 on account of the physician/surgeon estimate of
2 \$163,705 a year versus all the other
3 professions which are under \$65,000 a year; and
4 then the temporary construction jobs averaging
5 about \$70,000 a year.

6 I tried to put this a little bit into
7 perspective of the projections that were in the
8 fiscal impacts analysis for the various housing
9 units to be developed on that site at that time.

10 That's obviously since changed, but
11 rough estimates are at least the majority of
12 this site is going to be 80 percent AMI of which
13 you would need a family of four to generate
14 roughly an income of \$87,000 in order to be able
15 to support that 80 percent AMI affordable
16 housing unit.

17 And the point here being as far as
18 you can tell from fiscal impact analysis, a lot
19 of the jobs that are created would not allow
20 residents to even qualify for the 80 percent AMI
21 units that are being generated by this site.
22 What's more, VMP allows that it will train D.C.

1 residents to prepare them for the positions in
2 the health care industry. However,
3 according to the final VMP proffer submitted to
4 the Zoning Commission, prior to the issuance of
5 the first certificate of occupancy for the
6 health care facility on parcel 1, the applicant
7 shall initiate annual payments of \$140,000 each
8 over a five-year period to CFNCR to support
9 workforce development initiatives.

10 It is our understanding that this
11 funding is to be used to train D.C. residents
12 in preparation for openings generated by the
13 construction of a medical office building.
14 However, if such funds are not initiated until
15 after the certificate of occupancy, how will
16 residents be trained in time to be qualified for
17 those positions?

18 Third, VMP indicates that \$500,000
19 will be awarded to fund part time, I guess it's
20 docents, made of local seniors and teens. It
21 should be noted that this has never been a
22 benefit proposed or prioritized by the

1 community. Rather, this was a benefit
2 proposed by VMP as an example of a benefit that
3 the community might request. Nonetheless, VMP
4 has carried this benefit through to their final
5 set of proffers. Fourth, VMP touts a
6 level of affordable housing offered by the
7 projects. While VMP is correct that
8 affordable housing for this site is greater
9 than requirements under existing PUD
10 standards, it does not address any of the real
11 affordable concerns of the city.

12 What's more, it addresses nearly
13 none of the requirements for affordable housing
14 reflected in Council Member McDuffie's
15 proposed bill for the disposition of government
16 land and the Disposition of District Land for
17 Affordable Housing Amendment of 2013
18 introduced by Council Member McDuffie and
19 cosigned by mayoral hopeful Bowser and Council
20 Members Bonds and Graham.

21 It states, and then kind of lays
22 some things out about 25 percent should be 30

1 percent AMI, 50 percent should be, or 75 percent
2 should be 50 percent AMI.

3 To summarize in short, this means
4 that for rental units it is expected that 25
5 percent of the affordable units will run at
6 below or up to 30 percent AMI and 75 percent of
7 the unit will run at 30 to 50 percent AMI.

8 For ownership units, 50 percent of
9 the affordable units will run at 30 to 50
10 percent AMI and 50 percent of the units will run
11 50 to 80 percent AMI.

12 This bill goes on to state a number
13 of other things related to the disposition of
14 which Ms. Cort testified about the 30 percent
15 of residential units shall be affordable. The
16 bill then goes on to document a list of
17 exceptions to this case.

18 The PUD for the McMillan site as
19 filed with the Zoning Commission projects the
20 creation of a series of rental and ownership
21 units. Specifically, the plan calls for 281
22 rental units of which 85, or 30 percent, will

1 be 50 to 60 percent AMI for seniors; 146 town
2 homes of which nine, or six percent, will be 50
3 percent AMI; and 13, six -- I guess over six
4 percent now, will be 80 percent AMI; 251
5 rental units of which 25, ten percent, will be
6 50 to 80 percent AMI. According to the
7 proposed bill, the expectation for this site
8 would be as follows. 281 units of which 85
9 should be affordable, 21 units be up to 30
10 percent AMI and the remaining 64 units should
11 be 30 to 50 percent AMI; 146 town homes of which
12 44 should be affordable, 22 should be 30 to 50
13 percent AMI and 22 should be 50 to 80 percent
14 AMI; and 251 rental units of which 75 should be
15 affordable, 19 units should be up to 30 percent
16 AMI and the remaining 56 units should be 30 to
17 50 percent AMI.

18 At present, this PUD application
19 falls short of all of the rental requirements
20 proposed in this bill and falls short of
21 offering an additional 26 ownership units
22 proposed in this bill.

1 What's more, while the ownership
2 units indicate 30 to 50 percent AMI and 50 to
3 80 percent AMI, prior costs for houses sold by
4 EYA indicate that recipients purchased the home
5 at 50 percent AMI and 80 percent AMI,
6 respectively, rather than 30 percent of their
7 monthly income.

8 Fifth, to the points of an expanded
9 transit network, it should be noted that none
10 of these items are actually benefits. These
11 measures were put in place to try and offset the
12 traffic impact from this development. These
13 measures will not improve existing traffic
14 conditions nor supplement city transportation
15 needs.

16 It's also my understanding that as
17 of October 28th, DDOT filed an additional
18 letter with the Zoning Commission indicating
19 that they do not have full funding for the
20 expanded Circulator or regulated bus service
21 that Ms. Cort was referencing earlier.

22 Sixth, all of the preservation/open

1 space improvements to the site are to be funded
2 by the District, not VMP. While we understand
3 that this a joint project between the city
4 working through DMPED, and the developers
5 working through VMP, as a taxpayer one needs to
6 consider the benefits to be those of the
7 developers not those that could be paid for by
8 the citizens themselves.

9 Seventh, and arguably most
10 important, there has never been a candid
11 discussion of the finances for this project,
12 meaning the city has never conveyed its
13 expected return on investment, the developers
14 have never conveyed theirs, and real financial
15 costs and benefits of the project are unclear.

16 The MAG has explicitly posed
17 questions regarding finances to both the now
18 head of DMPED and former project manager of this
19 program, Jeff Miller and Shiv Newaldass,
20 respectively, as well as the project manager
21 for VMP.

22 No such information has been

1 disclosed. Rather, VMP directs members of the
2 MAG to the fiscal impact analysis to better
3 understand the figures for this project.
4 However, the problem here is that the financial
5 impact analysis is nearly three or four years
6 old and does not accurately reflect the
7 existing market conditions.

8 For example, that analysis projects
9 market rate town homes will sell around
10 \$480,000. However, recent homes in
11 Chancellor's Row, another comparable EYA
12 development, have been selling between
13 \$750,000 to \$800,000 in recent months.

14 Further, the retail expert from
15 Streetsense, Bruce Leonard, expressed that
16 D.C. retail can typically run nearly \$60 per
17 square foot. However, the fiscal impact
18 analysis project between \$20 and \$34 per square
19 foot.

20 What's more, for the financial
21 return for this city typical office taxes are
22 being projected. However, depending on the

1 type of uses for the medical office space,
2 there's a strong possibility that such space
3 could be tax-exempt.

4 All of this makes it difficult for
5 us to understand whether such a scale of
6 development is necessary to justify such
7 benefits and if it is not, we must question
8 whether additional cells could not be
9 stabilized and retained to serve as green space
10 for the surrounding communities.

11 While we acknowledge that the PUD
12 proposes a series of social benefits and
13 community amenities, we do not believe that
14 such benefits are of a high priority for the
15 community nor do the proposed benefits warrant
16 the extent of demolition proposed by this
17 project.

18 The McMillan site provides the
19 community with a sense of open space in an
20 increasingly built up city. The site provides
21 the District with a reminder of what a true
22 public works industrial project can look like.

1 The PUD submitted by the applicant
2 both violates the suggested uses of the site as
3 defined in the report as well as key
4 preservation aspects of the report, including
5 the preservation and the adaptive reuse of the
6 underground cells as well as the sense of open
7 space and views within the site. These items
8 rest at the foundation of the strongest desires
9 of the community for this site to revitalize the
10 land, but not at the expense of the
11 neighborhood.

12 While the benefits proposed by the
13 project are commendable, they are insufficient
14 and out of line with both the scale of
15 development and demolition and the needs of the
16 surrounding community.

17 We disagree that the proposed
18 demolition is necessary in order to construct
19 a park, community center and supporting retail
20 for the community. Specifically, the
21 applicant has never presented a series of
22 proposals related to the project's economic

1 viability/feasibility that might be used by
2 community groups in formulating its input and
3 suggestions to the developers.

4 The applicant has also failed to
5 present a proposal with the goal of additional
6 preservation of the underground cells nor have
7 shown any effort to secure funding for the
8 retention of additional cells.

9 To this end, the MAG has repeatedly
10 requested that the applicant provide concrete
11 financial figures to support claims that such
12 preservation is economically infeasible and
13 that such scale of development is an economic
14 necessity.

15 Part of the concern is that the
16 District has not released its solicitation for
17 vertical development of the site, nor does it
18 intend to. It has not been proven that the only
19 way such housing could be achieved was through
20 demolition.

21 Moreover, we're troubled by the
22 fact that the applicant relies upon general

1 goals of the District to justify this project
2 as one of special merit, but that these goals
3 are not tied to the specific location of the
4 proposed project. The applicant apparently
5 sees the historic features of the site as an
6 obstacle to its rather pedestrian design
7 proposals, not as elements to enhance its
8 unique design. Based upon these facts, we ask
9 that the Mayor's agent reject the claim that
10 this project is one of special merit and not
11 allow the proposed schedule of demolition.

12 JUDGE BYRNE: All right, thank you.

13 Do you want to ask any additional
14 questions?

15 MS. FERSTER: One followup
16 question. Did you provide a copy of the letter
17 of commitment for the record?

18 MR. BADER: I provided one to --
19 yes, Mr. Byrne.

20 JUDGE BYRNE: So this is a document
21 called letter of commitment. It doesn't
22 really have a heading. It's signed December

1 20th 2007, McMillan Partners, McMillan
2 Advisory Group.

3 Have you seen this? Do you have any
4 questions?

5 MS. BROWN: Was that in the package
6 of the materials that you gave me?

7 MS. FERSTER: No. Can you provide
8 another copy? Do you have another copy?

9 (Off the record comments)

10 MS. FERSTER: That's all the
11 questions I had.

12 MS. MERRITT: I don't have any
13 questions.

14 JUDGE BYRNE: Okay.

15 MS. BROWN: I'm just going to take
16 a quick moment to look this over.

17 JUDGE BYRNE: Yes, take your time.
18 Take your time.

19 MS. BROWN: I just have two very
20 quick questions. Mr. Bader, you mentioned
21 that the community benefits were not for the
22 benefit of the immediate neighborhood as

1 opposed to the community at large. Can you
2 distinguish between the two?

3 MR. BADER: I don't think that's
4 what I said. I said the community benefits
5 don't reflect the highest priority areas for
6 the community at large that indicated --

7 MS. BROWN: For community at large
8 or for the immediate neighbors? I thought
9 that's what you had said, that the neighborhood
10 was --

11 MR. BADER: Can you read back my
12 testimony --

13 MS. BROWN: No, no. I'm asking for
14 clarification.

15 MR. BADER: So it's my -- I can only
16 speak to my opinion because the MAG has kind of
17 said what they want to say.

18 So it is my opinion that the biggest
19 priority, from what I've heard both in my
20 interactions with the MAG and attending civic
21 association meetings and what has been emailed
22 to me, is that the biggest priority is to have

1 something that is not going to be of a scale and
2 density to dwarf kind of the surrounding
3 neighborhoods.

4 That, in my opinion, has never been
5 up for negotiation for whether that level of
6 density can be reduced. So we're starting from
7 there, which I think is inherently why perhaps
8 things went awry in community negotiation.

9 MS. BROWN: And do you think that
10 the benefits to the city and the community at
11 large can be beyond the MAG and the civic
12 associations?

13 MR. BADER: I do, yes.

14 MS. BROWN: Okay, thank you. And
15 you were here for the testimony of Mr. Roman
16 Gullstone from McDuffie's office?

17 MR. BADER: Yes, I was.

18 MS. BROWN: Okay, and you're aware
19 that the council member has not requested that
20 this project be held to a proposed bill
21 standards?

22 MR. BADER: I am. I pointed it out

1 simply because there's a clear disparity
2 between something he has put his name on and
3 would seem to fit this exact scenario and what
4 he is endorsing for this project, and trying to
5 pursue for this project.

6 MS. BROWN: And laws are normally
7 prospective in --

8 MR. BADER: Sure. But if that's
9 his feeling --

10 MS. BROWN: Okay, thanks very much.
11 No more questions.

12 JUDGE BYRNE: One moment please.

13 MR. BADER: Sure.

14 JUDGE BYRNE: What is your
15 understanding of the status of the letter of
16 commitment that you referred to?

17 MR. BADER: We have been working to
18 communicate with DMPED to kind of find that out.
19 I don't know. I'm not a lawyer. I have no
20 idea.

21 JUDGE BYRNE: Okay. Well, maybe
22 that's a question we'll get to later on. Okay,

1 I think that's great.

2 MR. BADER: Okay.

3 JUDGE BYRNE: Thank you very much.

4 MR. BADER: Thank you.

5 MR. NORMAN: Is there a mic we speak
6 in?

7 JUDGE BYRNE: No, you just have to
8 speak up.

9 MR. NORMAN: I'll try to speak up
10 if I can. My name is Tony Norman. I presently
11 serve as chair of the McMillan Park Committee,
12 also one of the founders of the Friends of
13 McMillan Park, and I also am the immediate past
14 chair of ANC 1B, which is two thirds of the
15 historic site fall in our commission and two
16 thirds of the site fell into my single-member
17 district as ANC commissioner.

18 I'm also a past president of
19 Bloomingdale Civic Association which is the
20 civic association that this site falls in. I'm
21 also a past chair of the MAG, the McMillan
22 Advisory Committee, and also I helped draft the

1 document, the letter of commitment that was
2 referred to earlier.

3 I served as chair of the MAG for
4 about a year or two in 2008-2009, as chair and
5 spokesperson. Primarily I've been involved --
6 also we're the group that actually had the site
7 designated a historic site, the McMillan Park
8 Committee, back in 1990. And I've had the
9 great opportunity of being involved in this
10 site, went to every community meeting since
11 1990 up until today's date, every major
12 community that was open. Let me just say this,
13 every public open community meeting. And I've
14 been involved with the negotiations of this
15 project since 1990 with the city, with the
16 various developers and the various -- we've
17 gone through at least five different mayors,
18 four council members, six, if you count Barry
19 twice.

20 And so I've been involved with this
21 project for a very long time. I got involved
22 -- I was asked when I first got out of law

1 school, actually, so I'm not really that old,
2 even though it's been over 20 years.

3 It was my first project getting
4 involved in when I got out of law school and
5 graduated. I bought a house in the
6 neighborhood, and actually it was the senior
7 citizens, the black senior citizen who asked me
8 to get involved with McMillan because it was a
9 very -- I don't think what's conveyed here is
10 the passion that the neighborhood has had with
11 this site since actually the '30s, and their
12 connection, their passionate connection. And
13 many of those senior citizens were the people
14 who slept on the site in the '40s or '30s, or
15 whenever that was, and they got me involved in
16 the site and I've been involved ever since.

17 Actually it was a neighbor of mine,
18 an elderly lady of mine, who asked me to get
19 involved with this project and come to a
20 meeting. Which I said, well, you know, we need
21 development in the city, I don't see what the
22 big deal is. And then she went over all of the

1 stories and said, you need to come to this
2 meeting because this project means a lot to us.
3 So -- and well, she said, I'm not asking you,
4 I'm telling you. You're going to the meeting
5 and you're going to help us. So I did go to the
6 meeting and I've been involved ever since
7 actually.

8 And I think they are the individuals
9 that first recognized how historic this site
10 was because I said, if all these stories are
11 true you don't need to apply for historic
12 designation. And to their credit, today it's
13 on the local registry and it is now a national
14 historic site.

15 So I've been involved with this
16 project since then, and I'm here to say that our
17 biggest disappointment is that this particular
18 development team was actually selected by the
19 National Revitalization Corporation in about
20 1996 as a land development partner, which was
21 not to do vertical development, over the master
22 developer. They were simply to prepare the

1 land for the pads, which is what they were
2 selected for, and since that was abolished in
3 NCRC, they sort of evolved into the master
4 developers.

5 Our biggest frustration was we
6 thought there was going to be a competitive
7 process in terms of the plan and what was -- you
8 would think a project this large and this
9 important to the city that it would be a
10 international competition or even a national
11 competition, because this has always been a
12 desirable site for development.

13 Even in the worst economic
14 conditions of the city in the '80s, there were
15 unsolicited proposals by developers to develop
16 this site. It has always been a desirable
17 development site, and that's why we were just
18 floored when there was not a major competition
19 to put this thing out in terms of the master
20 development and the vertical development.

21 And when the NCRC was abolished,
22 when it went back to the Deputy Mayor's office,

1 they just sort of kept this team without any
2 opening up the project. And unfortunately,
3 basically there's always been just one plan.

4 I mean they moved the pieces around
5 on the puzzle, but there's always been this plan
6 of 1.5 to 2 million square feet of development
7 to destroy over 96 or 97 percent of the
8 underground. That's been the basic concept
9 that has been followed since this first plan.
10 The idea of this concept of this particular
11 development plan, and they've moved it around
12 a little bit. Pieces on the -- you know,
13 puzzle, but they really haven't changed that
14 concept since then and that's been our biggest
15 frustration.

16 Because one of the things in the
17 letter of commitment, and I actually drafted
18 this letter of commitment and put it together,
19 is that they would follow the Office of
20 Planning's recommendations in 2000. And I
21 have that here. I don't know if this is in the
22 record, but these are the Office of Planning's

1 recommendations in 2000.

2 Office of Planning at that time
3 issued an RFP, and then they called a major, I
4 guess, summit of all of the stakeholders,
5 community stakeholders. The federal
6 government was involved. All of the local D.C.
7 departments were involved. And everybody came
8 to a consensus of how we're going to deal with
9 McMillan and certain general principles that we
10 will agree upon. The city, the federal
11 government, and the local stakeholders and the
12 preservation committee.

13 And it was in this document that
14 those principles were agreed to. One of those
15 principles -- there were a number of
16 alternative concepts and plans that should be
17 pursued with various degrees of development.
18 In fact, Howard University submitted an
19 alternative plan in this project that involved
20 development but less intense.

21 A major principle here was that
22 those cells that are stable, we should try to

1 pursue some adaptive reuse of those cells.
2 That was a major component in terms of, we know
3 you can't save all of them, but there at least
4 three or four cells in the center of the site
5 that are very stable and we should adaptively
6 reuse those particular cells.

7 Our biggest frustration in MAG, in
8 dealing with the developers of the city is that
9 they never seriously had any discussion on how
10 we could reuse those cells. There was never
11 any serious dialogue or discussion in all the
12 community meetings that we've had and all of the
13 dialogue. There was never any serious
14 alternative reuse of those underground cells.
15 They always said, we're going to destroy over
16 90 percent of them. They cannot be saved. End
17 of story.

18 And so that was one of our biggest
19 frustrations. In fact, when they came out with
20 their -- the reason -- actually we were all
21 working together, believe it or not, in the
22 beginning. EYA and Jair Lynch, we were all

1 working together singing Kumbaya at that time,
2 but the biggest friction came is when we found
3 -- first I have to go over what the purpose of
4 MAG was.

5 MAG was an entity to serve as an
6 advisor to the Deputy Mayor's office and it was
7 supposed to be all of the stakeholders,
8 community stakeholders, to help design a plan
9 and come up with a concept that everybody can
10 live with. That was the whole design.

11 When we on MAG discovered that the
12 developers and the city had already came up with
13 a plan -- here it is, our job was to come up with
14 a plan. They've already had a plan that they
15 were lobbying council members, and an article
16 came out in a publication, economic
17 publication, that disclosed what their plan
18 was. So we were outraged that how can you
19 commit to come up with a plan with us and you
20 already have your plan together, and not only
21 that, you're lobbying council members for?

22 And it was essentially the basic concept

1 of the plan we have today. This is back in
2 maybe mid '90s, mid '90s, about 1999 coming up
3 to -- oh I'm sorry.

4 JUDGE BYRNE: 2009.

5 MR. NORMAN: 2009. I'm sorry.
6 2009, that's right.

7 JUDGE BYRNE: After the
8 Revitalization Corporation went away and
9 you're dealing with the Deputy Mayor.

10 MR. NORMAN: That's right. 2009.

11 So that was the biggest friction
12 that we had a falling out over. That, you know,
13 in a way you have your plan together and you
14 weren't really honestly working with us to come
15 up with a design.

16 But the major thing I think, we as
17 community want you to know, we're not against
18 development actually. We're not here to
19 destroy it, to stop any development proposal.
20 We want, quote, smart development. We want
21 something that you can put together and make
22 this project work. We've done everything we

1 can to come up with alternative solutions in
2 problems and concept.

3 But the city has always been
4 determined to do, this is our plan, this is what
5 we need. They're always telling us, this is
6 how much development we need, without giving us
7 why do you need this amount of development?
8 Well, the project just won't work if we reduce
9 the density and if we don't destroy over 90
10 percent of the underground. That's always
11 been their position.

12 In fact, actually, their plan was
13 developed before they even finished the
14 Historic Review report by Emily Eig. Or the
15 structural ■ before the updated Structural
16 Engineering report was done, this plan was
17 already put together. They had already hit the
18 ground running with it, because we helped -- I
19 thought Emily's report was very good, we
20 actually helped her, at least met with her a
21 couple times on her report, but they had their
22 plan together before their reports were

1 completed. That's the problem here. You
2 would think that you would do the reports first,
3 talk to the community first, then you see how
4 you can develop it and what your concept is.

5 So our biggest concern was there was
6 no real dialogue or discussion over repurposing
7 and reusing the underground. And that, I
8 think, is the tragedy here, because I think the
9 city is losing a great opportunity to do
10 something great for this city and for this
11 nation with this site.

12 It's not just another parking lot
13 that you can just split up and sell off into
14 different pieces. You have a great
15 opportunity to do something great here. In
16 fact, the former Deputy Mayor of Economic
17 Development said if he had his chance he
18 wouldn't handle this project this way, you
19 know, but it wasn't his call. You know, it was
20 decided up on Mount Olympus, that was his
21 statement.

22 But we're saying that the city is

1 missing out on a great opportunity, and because
2 there wasn't competitive bidding, the city's
3 putting a great deal of our public money into
4 this that they don't really have to. The city
5 has already committed over \$50 million in
6 capital improvements to this project, which it
7 may not have had to if it was up for competitive
8 bidding.

9 The development team here today,
10 the city has them on a consultant contract.
11 We're actually paying them to be here today.
12 So that's us, taxpayers. I mean if we had a
13 competitive process, that may not have been the
14 case, you know, you could have had other people
15 step in.

16 That's the biggest concern that we
17 have. The one message I can make is that it's
18 not even a good economic development deal from
19 our perspective, even if you had favored
20 development from the city's perspective.

21 Why wouldn't you let someone else
22 come in here and say, well, you know, you only

1 need \$10 million. You don't need the \$50
2 million. We can do the rest and repurpose some
3 of the cells and give you the same, somewhat,
4 development, you know, but we'll never know
5 about that because we never had that chance to
6 look at any competitive bidding on the master
7 developer or the vertical development.

8 So in summary, I really think it was
9 tragic that the city didn't give an opportunity
10 to let the MAG work because the MAG was a
11 mechanism -- and it's still in operation. The
12 MAG still meets and the MAG was designed to help
13 the city and the development team come up with
14 a plan. Not just come up with a design plan,
15 but also work with them throughout the
16 construction phase and the end phase of making
17 sure everything is done on the part of the
18 community and the city. That was the concept,
19 and it's still in operation, although it hasn't
20 been communicating because of frictions in the
21 past.

22 So in conclusion, I would simply say

1 our biggest concern is we didn't have an
2 opportunity and the city never seriously
3 pursued any alternative plan that could have
4 saved a lot of the underground and still come
5 up with their development. That was never
6 seriously pursued. Thank you.

7 JUDGE BYRNE: Okay, good. Thank
8 you.

9 MS. FERSTER: Yes. Did you bring
10 extra copies of that RFP?

11 MR. NORMAN: This is the only one I
12 have, but I can leave it for the record.

13 MS. FERSTER: Okay. Yes, we can
14 email you extra copies of that RFP.

15 JUDGE BYRNE: Okay.

16 MS. BROWN: I'm sorry, that's the
17 label, RFP?

18 JUDGE BYRNE: No, it's the summary
19 of recommendations from the Office of Planning,
20 February 2002.

21 MS. BROWN: Okay, just wanted to make
22 sure we're talking about one thing and not two

1 things. Okay.

2 JUDGE BYRNE: Yes. Okay, anything
3 you want to ask further? Okay.

4 Ms. Merritt?

5 MS. MERRITT: I have no questions.

6 JUDGE BYRNE: Okay, Ms. Brown. Go
7 ahead.

8 MS. BROWN: No questions.

9 JUDGE BYRNE: No questions?

10 MS. BROWN: No questions.

11 JUDGE BYRNE: Okay, I have some
12 questions.

13 MR. NORMAN: Sure.

14 JUDGE BYRNE: Has ANC 1E taken a
15 resolution on this?

16 MR. NORMAN: What do you mean, 1B?

17 JUDGE BYRNE: So 1B rather. I'm
18 sorry, it's 5E, 1B, right?

19 MR. NORMAN: Not before the Mayor's
20 agent, no, they haven't taken a position. In
21 the past, we did take a position at the Zoning
22 Commission. They opposed the project,

1 initially, at the Zoning Commission.

2 JUDGE BYRNE: Initially.

3 MR. NORMAN: At the Historic
4 Preservation Review Board. I'm sorry, I take
5 that back. We did oppose it at the Historic
6 Preservation Review Board.

7 JUDGE BYRNE: Officially?

8 MR. NORMAN: Officially, and I
9 don't think 1B -- I was not Chair then. I don't
10 think -- I think their position was they were
11 not going to take a position at the Zoning
12 Commission and they would leave it up to 5C to
13 see what their position.

14 JUDGE BYRNE: Okay. So I'm
15 interested if the lawyers think that there's
16 anything in front of me from 1B that's relevant
17 to my decision in this case? I mean we can talk
18 about that later, I suppose, but I guess that's
19 a question.

20 MR. NORMAN: Although, if I could
21 add, we did testify and I did come before you
22 on the DC Water where we took a position on

1 McMillan in terms of the DC Water, and I was the
2 one that gave that testimony.

3 JUDGE BYRNE: Okay. All right,
4 yes, and you were in favor of that.

5 MR. NORMAN: Yes. Oh yes, because
6 of the --

7 JUDGE BYRNE: Because otherwise
8 you'd get flooded.

9 MR. NORMAN: That's right.

10 JUDGE BYRNE: Yes. Okay. So the
11 MAG, I guess, has been effectively sidelined in
12 the process is a part of your complaint. In
13 other words, you haven't -- that the
14 discussions that were contemplated between the
15 deputy mayor's office and the development team
16 and the MAG simply broke down over questions of
17 density and the scale of the demolition of the
18 underground cells.

19 MR. NORMAN: Exactly. Well, the
20 MAG simply didn't approve of the plan that they
21 had. And we had recommendations and
22 suggestions to make recommendation, and like I

1 said, they always kept the same plan. They
2 refused to make any major adjustments to that
3 plan and that's where the falling out in terms
4 of disagreement.

5 JUDGE BYRNE: Okay. Okay, all
6 right, good. Thank you very much.

7 MR. NORMAN: Thank you.

8 MS. MERRITT: I'm Elizabeth
9 Merritt, and I'm Deputy General Counsel of the
10 National Trust for Historic Preservation and
11 I'm going to be testifying, not as an expert,
12 but as a representative of the National Trust
13 in opposition to the development proposal.

14 JUDGE BYRNE: Okay.

15 MS. MERRITT: Okay, the National
16 Trust is a nonprofit organization chartered by
17 Congress to promote public participation in
18 preserving our nation's heritage and to further
19 the historic preservation policy of the United
20 States.

21 The National Trust has been
22 involved in trying to protect the McMillan Park

1 site for almost 25 years. Most recently, the
2 National Trust testified before the Historic
3 Preservation Review Board in June and October
4 of 2013, and before the Zoning Commission in May
5 of this year, and we appreciate being accepted
6 as a party here in opposition to the proposed
7 development.

8 The basis of our opposition has been
9 that the density and the magnitude of the
10 proposed development, and the magnitude of the
11 proposed demolition, would be inconsistent
12 with the purposes of the D.C. Landmarks and
13 Historic District Protection Act and
14 inconsistent with the comprehensive plan and
15 inconsistent with the requirements of the
16 legally binding historic preservation
17 covenants that run with the property.

18 In addition, as you heard earlier
19 from Erin Mast, the director of President
20 Lincoln's Cottage, the National Trust's
21 interest arises from our special role in
22 managing President Lincoln's Cottage and the

1 Visitor Center on the grounds of the Armed
2 Forces Retirement Home.

3 The applicants claim that the
4 proposed redevelopment of the McMillan site is
5 a project of special merit by virtue of its
6 exemplary architecture, its social and other
7 benefits having a high priority for community
8 services and specific features of land
9 planning. We strongly disagree.

10 They also claim that the
11 subdivision of the site is consistent with the
12 purposes of the Preservation Act. We strongly
13 disagree with that as well.

14 In our view, the evidence offered by
15 the applicants fails to satisfy the heavy
16 burden of proof they bear to show that they're
17 entitled to the requested permits under the
18 Preservation Act.

19 As you know, in determining whether
20 the demolition is necessary to construct a
21 project of special merit two findings must be
22 made. First, to balance the historical value

1 of the landmark against the special merit of the
2 proposed project, and second, you must find
3 that the demolition of the structure is
4 actually necessary to allow the proposed
5 project to proceed.

6 In our view, the applicants have
7 failed to sustain their burden of proof on
8 either of these elements. The applicants
9 argue that the project offers special features
10 of land planning based on its consistency with
11 the comprehensive plan. In our view, this
12 argument must be rejected because the project
13 is not consistent with the D.C. comprehensive
14 plan.

15 While the Zoning Commission made a
16 preliminary determination, which we think is
17 highly questionable, that the project is not
18 inconsistent with the D.C. comprehensive plan,
19 this is required of all development projects in
20 the city and should not be considered a special
21 merit. Instead there must be affirmative
22 consistency with the comprehensive plan.

1 The 115-foot building heights and
2 the dense development that's proposed for the
3 site is not consistent with the comprehensive
4 plan's land use map which designates the
5 property as medium density residential,
6 moderate density commercial, and parks,
7 recreation and open space.

8 The proposed development is
9 inconsistent with a number of specific policies
10 in the comprehensive plan, both general
11 policies and those that apply to the McMillan
12 site as part of the midcity section that was
13 discussed earlier.

14 And I'll skip over some of the
15 provisions mentioned by Mr. Oberlander. We
16 agree with everything in his testimony, but I
17 want to focus on a couple of provisions in
18 particular. One is that Midcity Policy 2.6.2
19 calls for the exploration of the adaptive reuse
20 of some of the underground cells as part of the
21 historic site.

22 And as you've heard from earlier

1 witnesses, the vast majority of the underground
2 cells would be destroyed here, and we believe
3 the applicants did not give serious good faith
4 consideration to adaptively reusing even the
5 underground cells that are only moderately
6 damaged or in good repair even though the
7 structural engineers acknowledge that these
8 could be reinforced to allow interior reuse and
9 some overbuild.

10 We believe they just made -- they
11 didn't really make an effort to identify or
12 market this below ground space, but instead
13 they made assumptions based on generic retail
14 approaches.

15 I want to focus more specifically on
16 the comprehensive plan provisions that relate
17 to view sheds because of President Lincoln's
18 Cottage, and the significant view sheds that
19 are involved with President Lincoln's Cottage.

20 So one of the provisions that was
21 mentioned in Mr. Oberlander's testimony is
22 Section 2.6.5, which says where development

1 takes place it should consist of moderate to
2 medium density housing, retail and other
3 compatible uses. Any development on the site
4 should maintain view sheds and vistas and be
5 situated in a way that minimizes impacts on
6 historic resources and adjacent development.

7 I distributed earlier a copy of the
8 testimony that we've submitted to the National
9 Capital Planning Commission and also to the
10 HPRB last October, and as this discusses in more
11 detail the building heights of the proposed --
12 the most dense area of the development, in
13 particular will obstruct important views from
14 Lincoln's Cottage.

15 And there are also significant
16 internal views from the McMillan Park site such
17 as those of the Capital Dome, the dome of the
18 Catholic Basilica Shrine, the Founder's
19 Library clock tower of Howard University, and
20 these would no longer be visible due to the
21 height of the proposed buildings on the site.

22 In our view, the massive scale of

1 the proposed development would overwhelm and
2 dominate most of the significant
3 character-defining features within the site,
4 especially the north service court, and would
5 obliterate important views of the striking rows
6 of sand towers from Michigan Avenue.

7 In particular, the height and mass
8 and scale of the new development would
9 overwhelm, obscure, dominate and distract from
10 these character-defining historic features.

11 The shape and bulk of the medical
12 office buildings include upper floors that
13 extend out to dominate the space rather than
14 transitioning back, which echoes the
15 architecture of the urban renewal area rather
16 than bearing any relationship to the historic
17 character of the site.

18 The arches and the curves of the
19 historic structures are virtually nowhere to be
20 seen in the rectangular shapes of the proposed
21 new construction.

22 The plan clearly violates the

1 guidance that was developed by the NCPC in 1990
2 when it reviewed and approved the amendment to
3 the comprehensive plan that allowed some
4 development at the McMillan Reservoir site.

5 And you heard about this from Mr.
6 Oberlander's testimony. We also included a
7 copy of that memo in an attachment to what we
8 submitted. And the NCPC memo said, we find
9 that any structures to be introduced within the
10 District-owned part of McMillan Park should be
11 widely spaced, should not exceed the four-story
12 height of the Veterans Hospital and preferably
13 have lower transitional heights and
14 picturesque rooflines to blend with the
15 immediate landscape and the park environments.

16 In National Trust's view, the
17 proposed development does not qualify as a
18 project of special merit based on special
19 features of land planning because it's not
20 consistent with the comprehensive plan and not
21 consistent with these recommendations, which
22 were a part of the assumptions based on the

1 amendment of the comprehensive plan in 1990.

2 I want to elaborate a little bit on
3 the impact of the view sheds from the Lincoln's
4 Cottage and from the National Historic Landmark
5 District within the Armed Forces Retirement
6 Home.

7 You've heard Ms. Mast reference
8 these view sheds earlier. And there was a set
9 of correspondence exchanged between the
10 National Capitol Planning Commission and the
11 Zoning Commission in August and September of
12 this year, which has all been submitted for the
13 record.

14 And in a letter from the Armed
15 Forces Retirement Home, dated August 21st, the
16 AFRH explains in detail why several of the
17 viewsheds from the Armed Forces Retirement Home
18 are important, and it describes the extensive
19 planning effort undertaken by the Armed Forces
20 Retirement Home to manage the future
21 development of its property in a way that would
22 minimize harm to those view sheds.

1 The proposed development at the McMillan
2 Park site threatens to undermine all of that
3 careful planning by obstructing the very view
4 sheds that the Armed Forces Retirement Home
5 spent years working to preserve.

6 The NCPC staff focused on only one
7 of these significant view sheds, and the
8 applicants proposed moving a portion of the
9 building 15 feet to the east in order to avoid
10 obstructing the view shed from the Scott
11 statue.

12 However, the NCPC's final letter,
13 dated September 15th, which says essentially,
14 okay, okay, you've moved the building so it
15 won't block the view from the Scott statue,
16 we'll let it go. And that focuses on that one
17 view shed to the exclusion of the other highly
18 significant view sheds, namely, from the
19 National Historic Landmark District and from
20 President Lincoln's Cottage.

21 And one reason given for selecting
22 that view shed as the paramount view shed was

1 that is was identified in the 2008 master plan
2 of the Armed Forces Retirement Home as the most
3 important to the federal interest.

4 However, two very significant things have
5 happened since 2008, which in our view make
6 these other historic view sheds more
7 significant than the view shed from the Scott
8 statue.

9 First, as you heard earlier, under
10 the National Trust stewardship through a lease
11 from the Armed Forces Retirement Home,
12 President Lincoln's Cottage is now open to the
13 public together with the Visitor Education
14 Center in the nearby administration building.
15 And since that time this historic site now
16 receives more than 30,000 visitors every year.

17 Second, as described in the Armed
18 Forces Retirement Home letter, which is a part
19 of the record, on Page 3 and in Attachment C,
20 the view sheds from President Lincoln's Cottage
21 and the National Historic Landmark District
22 were previously blocked. In 2008, they were

1 blocked by the presence of a noncontributing --
2 a nonhistoric building known as the Scott
3 Building. However, since that time the Armed
4 Forces Retirement Home has demolished the
5 noncontributing building thus reopening these
6 significant viewsheds.

7 Because of these two significant
8 changes in the past five years, the National
9 Trust opening President Lincoln's Cottage to
10 the public and the reopening of the historic
11 view sheds from the Cottage and the NHL
12 District. The fact is that far more people,
13 tens of thousands of more people now have the
14 opportunity to see these historic view sheds
15 than those who may see the historic view from
16 the Scott statue.

17 So in our view, those are, the
18 obstruction of those historically significant
19 view sheds are very serious, negative impacts
20 that are inconsistent with the comprehensive
21 plan.

22 I also want to address the balancing

1 of the special merit and the benefits of the
2 project against the significance and the value
3 of the historic property that's being
4 destroyed.

5 In our view, the onsite aspects of
6 the development that may provide social or
7 other benefits to the community, having a high
8 priority of community services, such as
9 affordable housing, the community center and
10 the grocery are relatively routine benefits.

11 They're no different than the kinds
12 of benefits being provided by other
13 public-private partnerships and in some ways
14 they're less robust. For example, we heard
15 that the affordable housing in this project is
16 substantially less than what would be required
17 as a matter of course under the new law.

18 Here the routine benefits are also
19 outweighed by the extraordinary magnitude of
20 destruction of significant features. The vast
21 majority of the below ground vaults, ten out of
22 11 of the historic sand washers, and most

1 importantly, the site's open space, its spatial
2 relationships, its setting and its significant
3 views.

4 In our view the applicants have also
5 failed to satisfy their burden for proving that
6 this level of destruction is necessary in order
7 to achieve the aspects of the project that might
8 otherwise constitute a special merit benefit or
9 that they have considered reasonable
10 alternatives to demolition.

11 The applicants have failed to show
12 that destruction of 60 percent of the open
13 space, with its significant views, and the vast
14 majority of below ground structures is
15 necessary to achieve these benefits.

16 The developer treated the site as if
17 it were simply vacant land with a few obstacles
18 to design around, namely, the sand filtration
19 towers, and no attempt was made to adapt the
20 development to protect the unique features of
21 this site. Either its internal and external
22 vistas, its open space, its unique

1 architectural elements, or the underground
2 vaults that are in the best condition.

3 The National Trust is familiar with
4 the marketing of unusual historic properties
5 and it requires a much more specialized
6 expertise than the applicants brought to bear
7 in this case.

8 In our view the office buildings for
9 the medical professionals would be more
10 appropriately located across the street to the
11 north at the Hospital Center where there is much
12 unbuilt open space. There's no justification
13 for the massive destruction of this national
14 historic site.

15 Let me also emphasize the absence of
16 any attempt by the applicants to justify the
17 destruction of so much open space. As the
18 applicants' own historic expert acknowledges,
19 the open space is one of the most important
20 historically significant features of the site,
21 and the planned subdivision to accommodate
22 intensive development would destroy 60 percent

1 of that open space. Destroying that much of a
2 key contributing feature cannot, by any stretch
3 of the imagination, enhance the landmark.

4 Finally I'd like to address the
5 issue, well, finally -- almost finally, the
6 issue of the subdivision. In approving a
7 subdivision, the Mayor's agent is required to
8 make findings under the Preservation Act, which
9 clearly provides no subdivision shall be
10 admitted to record unless the Mayor or his agent
11 finds that the admission to record is necessary
12 in the public interest.

13 The Mayor's agent must first obtain
14 the HPRB's recommendation on the subdivision,
15 and the Mayor's agent is not empowered to
16 approve the subdivision without a public
17 hearing in the case of the subdivision of
18 historic landmarks as opposed to historic
19 districts.

20 In this case, the HPRB has not
21 reviewed the subdivision and has made no
22 written finding that the subdivision would be

1 consistent with the purposes of the Act.
2 Instead, on October 31, the HPRB reviewed the
3 proposed demolition and concluded that the
4 substantial demolition would be inconsistent
5 with the purposes of the Act, that's why we're
6 here. And the HPRB also reviewed the master
7 plan and the design concepts but not the
8 subdivision. The fact that the HPRB approved
9 the design concept does not mean the design is
10 consistent with the purposes of the Act, if the
11 HPRB did not make such a finding.

12 Here the HPRB's comments regarding
13 the architectural cohesiveness of the design
14 were made in the context of their review under
15 the new construction standard in the
16 Preservation Act. In reviewing new
17 construction applications, they can consider
18 only whether the design is compatible with the
19 historic district.

20 By contrast, the Mayor's agent is
21 responsible for reviewing the demolition of
22 contributing properties, and in this case can

1 approve a demolition only on the showing that
2 it's necessary to achieve a project of special
3 merit.

4 So the extent to which the design of
5 the new building may have been found to be
6 coherent by the HPRB has no bearing on the
7 issues in this proceeding, namely whether
8 demolition and subdivision are necessary in
9 order to construct a project of special merit
10 or are consistent with the purposes of the
11 Act.

12 And again the HPRB has not made any
13 review of the subdivision. And the
14 subdivision would not retain important
15 character-defining features of the site
16 sufficient to convey its historic
17 characteristic, because it involves destroying
18 60 percent of the open space and building an
19 intensive development that's incompatible with
20 the overall character, landscape and vistas of
21 the site.

22 The applicant has not made any

1 showing that this intensive development is
2 necessary to adapt the site to its current use.
3 A less dense development that preserves more of
4 the open space would adapt it to current use
5 without destroying the majority of its
6 features.

7 Finally, now this is finally. A
8 written testimony that was submitted to NCPC,
9 and which we submitted earlier, explains in
10 detail our concern that the proposed
11 development would violate the binding historic
12 preservation covenants that were imposed by the
13 GSA as a condition of the sale of the property
14 to D.C. back in 1987.

15 This is not a legal or factual issue
16 for the Mayor's agent to address, but it's
17 useful to understand as background. The whole
18 purpose of the historic preservation covenants
19 was to ensure that the sale of the property to
20 D.C. would have no adverse effect on the
21 historic character of the McMillan site.

22 Suffice it to say that the National

1 Trust strongly disagrees with the applicants'
2 position that they have complied with the terms
3 of the covenant. And so, in conclusion, the
4 National Trust urges the Mayor's agent to
5 reject the application for special merit.

6 JUDGE BYRNE: Thank you.

7 You have nothing?

8 Ms. Brown?

9 MS. BROWN: Just to clarify for the
10 record, we do have our continuing objection to
11 Ms. Merritt testifying as both a witness. I
12 don't think it was necessary to restate --

13 JUDGE BYRNE: I appreciate that.
14 Yes, but that's still --

15 MS. BROWN: You have the record.

16 JUDGE BYRNE: -- on the record. I
17 appreciate it.

18 MS. BROWN: Yes, okay.

19 So Ms. Merritt, I do have a couple
20 clarification points on that. When you
21 testified on the legal standard of the Historic
22 Preservation Review you did that as a factual

1 witness not as a legal witness.

2 MS. MERRITT: Correct. I am a
3 lawyer, so I guess it's difficult for me to
4 separate.

5 MS. BROWN: Exactly.

6 MS. MERRITT: It was not as an
7 expert, but I am stating that as a lawyer,
8 that's the legal position of the National Trust
9 before this body.

10 MS. BROWN: And are you making a
11 legal interpretation on historic preservation
12 covenants by raising them here?

13 MS. MERRITT: I did state that in
14 our view it's not a legal issue before the
15 Mayor's agent. Is that responsive to your
16 question?

17 MS. BROWN: No, because you seemed
18 to say -- you gave an interpretation, a legal
19 interpretation of the covenants that are not
20 before the Mayor's agent, and are you doing that
21 as a fact witness or are you making legal
22 conclusions?

1 MS. MERRITT: Well, I mean, I guess
2 it would be difficult to separate the legal
3 element of that statement, but I'm not
4 suggesting it's a legal issue for the Mayor's
5 agent to decide.

6 MS. BROWN: Did the National Trust
7 consider buying the McMillan site to protect
8 its view sheds?

9 MS. MERRITT: No.

10 MS. BROWN: Did the National Trust
11 consider acquiring any easements over private
12 property to protect its view sheds?

13 MS. MERRITT: I don't know the
14 answer to that.

15 MS. BROWN: And are any of these
16 viewsheds or views listed in the D.C. Inventory
17 of Historic Sites?

18 MS. MERRITT: I don't believe they
19 are.

20 MS. BROWN: So they're not legally
21 protected views.

22 MS. MERRITT: I don't agree with

1 that statement. I don't agree with that
2 conclusion.

3 MS. BROWN: They're not legally
4 protected before the mayor's agent.

5 MS. MERRITT: They're not listed
6 under D.C. law but they're relevant to the
7 comprehensive plan, and consistency with the
8 comprehensive plan is a relevant issue before
9 the mayor's agent.

10 MS. BROWN: And you're aware that
11 the NCPC staff has agreed that the viewsheds are
12 protected? That have been properly
13 accommodated by the shift in the building.

14 MS. MERRITT: I'm aware of a letter
15 written by the NCPC staff on September 15th,
16 12th or 15th, I think that's what you're
17 referring to. I'm aware of the existence of
18 that letter.

19 MS. BROWN: And you're not aware of
20 any subsequent issuances from NCPC staff?

21 MS. MERRITT: I don't know whether
22 they've issued a staff report today, for

1 example, for Thursday's hearing. I don't
2 know.

3 MS. BROWN: Okay. I think those
4 are all my questions. Thank you.

5 MS. FERSTER: One redirect. As a
6 lawyer for the National Trust for Historic
7 Preservation, isn't it correct that you
8 routinely present the position of the National
9 Trust in the context of the laws that will
10 protect historic properties?

11 MS. MERRITT: Yes.

12 MS. FERSTER: As a witness?

13 MS. MERRITT: Routinely.

14 MS. FERSTER: As a witness before
15 numerous boards and --

16 MS. MERRITT: Yes.

17 MS. BROWN: And if I could have one
18 followup question then. Were you authorized
19 by the National Trust to appear here today?

20 MS. MERRITT: Yes. As was Erin.

21 JUDGE BYRNE: So what scale of
22 development would be permissible on the site

1 that would retain the viewsheds? You were
2 describing both viewsheds from the Soldiers'
3 Home and also we're talking about viewsheds
4 from the interior of the reservoir site.

5 So I mean my concern in some sense
6 is that any development of any significant size
7 is going to impinge upon those viewsheds.

8 MS. MERRITT: I'm glad you asked that
9 question. In the National Trust's view,
10 speaking for the National Trust, a level of
11 development that is consisted with what was
12 contemplated in that 1990 memo from NCPD staff
13 that references four-story height limits,
14 widely spaced buildings, lower transitional
15 heights, picturesque rooflines, development
16 consistent with those assumptions would be
17 acceptable to the National Trust.

18 Those were the assumptions that
19 were in place when the comprehensive plan was
20 amended in 1990 and so we're not taking the
21 position that no development whatsoever should
22 go on the site.

1 JUDGE BYRNE: So I guess I'm asking
2 you a more factual question as to whether in
3 fact development of four-story buildings would
4 preserve the viewsheds that you're concerned
5 about.

6 MS. MERRITT: Well, presumably
7 some additional viewshed analysis would be
8 necessary in terms of how you exactly arrange
9 the development.

10 JUDGE BYRNE: Configure the
11 development.

12 MS. MERRITT: Configure the
13 development. But in general our position is
14 that we would be comfortable with some
15 development of that magnitude.

16 JUDGE BYRNE: So also we can save
17 this until we have sort of concluding
18 arguments, but I'd like to come back.

19 You made a legal argument towards
20 the end to the effect that I can't rule upon
21 whether the subdivision is necessary for a
22 project of special merit without prior

1 consideration of that specific question by the
2 HPRB. And I'm not sure that that's right at
3 all, but I think at some point you ought to have
4 some legal argument.

5 Again it's a little awkward to do it
6 while you're on the stand as a witness, so maybe
7 we can just make sure we get to that before we're
8 done with the hearing, okay.

9 Okay, thank you.

10 MS. FERSTER: That concludes our
11 case and the National Trust's case, I believe.
12 We don't have any other witnesses.

13 MS. MERRITT: We don't have any
14 other witnesses.

15 JUDGE BYRNE: Okay. Then I think
16 we have an opportunity to hear from people who
17 want to --

18 MS. BROWN: I'm sorry, would we go
19 to Steve Callcott next?

20 JUDGE BYRNE: Steve. Well, Steve
21 and I talked about that. I think, yes. I
22 think it's better to go to Steve next. Thank

1 you. And then we'll hear, then I want to have
2 an opportunity for people who want to speak in
3 opposition to the project to have very, and
4 we'll talk about the protocols for that so we
5 can hear from people but also be able to
6 conclude the hearing.

7 So we'll hear from Mr. Callcott
8 first, and then we'll go on to other public
9 comments. Okay.

10 MR. CALLCOTT: Thank you. I'm
11 Steve Callcott, deputy preservation officer
12 for the D.C. Office of Planning's Historic
13 Preservation Office.

14 And as you can appreciate, this was
15 a very difficult project for HPRB and for the
16 HPO to deal with. Whenever a project comes in
17 the door, and you'll also appreciate how many
18 cases we discourage from coming to the mayor's
19 agent and trying to resolve at the HPRB level
20 by eliminating the need for such a hearing.

21 But in a case like this where the
22 project inherently is inconsistent with the

1 Preservation Act for the extent of demolition,
2 it's a very difficult situation for the board
3 to know exactly how to deal with it because they
4 know that they're reviewing something that, you
5 know, what is the proper balance? What should
6 they try and achieve?

7 This was exacerbated particularly
8 with this case due to many of the circumstances
9 you've heard about. The deteriorated
10 structural condition of the site, which the
11 board felt was well documented by the Silman
12 report and the testimony related to it, and the
13 extreme difficulty of reusing that for whatever
14 purpose it might be whether it's for a park or
15 for a development.

16 The unique nature of this resource,
17 a park above, an engineering site below, the
18 scale of it is enormous. The enormity of the
19 infrastructure that's needed just to stabilize
20 the site is hard to fathom. The
21 difficulty of reuse, which again was the Street
22 Sense testimony you heard at the previous

1 hearing as well as the similar testimony before
2 HPRB, the difficulty of finding viable reuse
3 options for these underground cells and
4 incorporating them into a plan that didn't
5 structurally compromise them and that in any
6 way was viable.

7 And then as I say, just sort of the
8 overall challenge of balancing the goals of
9 preservation, adaptive reuse, and the city's
10 redevelopment goals which are well
11 established.

12 Since the 1987 transfer of this
13 property to the city, it has been the goal of
14 successive administrations to see
15 redevelopment on this site that would serve
16 both the community and the city at large to
17 increase housing, regional opportunities, all
18 the goals that you've heard, and to balance that
19 with the goal for historic preservation, park
20 use and so many other goals.

21 So it's inherently a compromise and
22 that was established at the very beginning.

1 And I think what the passion that's related to
2 this is people, some people don't feel that this
3 is the appropriate compromise and that there
4 should be some sort of different balance that's
5 going on.

6 When HPO first got seriously
7 involved in this project was after the deputy
8 mayor's office had this property for a number
9 of years and didn't quite know how to approach
10 it, they asked us to advise them on what would
11 be a reasonable preservation strategy for this.

12 And what we developed was a series
13 of principles that first of all, we said, you
14 need to step back and stop looking at it as a
15 development project and look at it as a master
16 planning process.

17 And we outlined a series of
18 principles that we thought were reasonable for
19 any redevelopment of the site to try and
20 achieve, and we forwarded those, and ultimately
21 the city, I think, made the biggest difference
22 in requiring their master plan to be brought on

1 to this project and that's when Perkins Eastman
2 was brought on.

3 And with respect to some of the
4 testimony that said there have not been
5 substantial changes, we thought otherwise that
6 there was some serious reconsideration of the
7 historic aspects of the site as documented by
8 the Traceries report and the evaluation that
9 started to take place by the master planning
10 team and the landscape architecture team.

11 And they began to address the many
12 preservation principles that we had
13 established or that we had put forth as things
14 of consideration. These included the
15 perimeter walk, the Olmsted Walk; retaining all
16 of the above grade features which, just for the
17 record, in all the information that we have all
18 12 of the sand washers are being retained, not
19 just one of the 12, so I'm not quite sure where
20 the idea of 11 being demolished is in all this
21 testimony; the site organization, the
22 tripartite site organization being the guiding

1 principle; retaining a substantial sense of the
2 open space of the site; retaining the plinth,
3 the topographical condition which we were told
4 at the outset of this development project that
5 could never happen, that was going to be a
6 horrible development project.

7 But through trial and error and a
8 number of iterations going back and forth to
9 HPRB where the HPRB adopted the principles that
10 we had sort of initially set out, the applicants
11 were able to revise the project to respond to
12 these development parameters, or these
13 preservation parameters within the context of
14 the development that we thought were necessary
15 for this to be a credible preservation project.

16 And then probably one of the hardest
17 ones was one of the last ones which was while
18 the applicants never put forth that they were
19 seeking a project of special merit on the basis
20 of exemplary architecture, the HPRB
21 established early on that they wanted to see a
22 cohesive and unified design approach to this

1 site, understanding full well that the site was
2 going to be redeveloped as separate parcels by
3 separate developers and were reviewing them as
4 such, their primary criticism in the last
5 several reviews was this doesn't add up to
6 anything.

7 You may be now preserving the
8 perimeter, but it just looks like a bunch of
9 development projects. You need in some way to
10 get these development projects to talk to each
11 other and to relate a common sense of place.

12 And I've never worked on a project
13 in which that had happened that way and first
14 of all in which there are so many different
15 development projects being proposed by so many
16 different design teams.

17 But again, I think under the
18 auspices of the master planning team, and I
19 wasn't a part of all these meetings and I don't
20 know how much head smashing went on in those
21 meetings to get people to work together, but the
22 HPRB was ultimately very impressed with the

1 outcome which was a, as you've seen, a very
2 edited palette of materials and architectural
3 expressions that even though it clearly has
4 many different building types and many
5 different types of uses, the HPRB found would
6 ultimately create that sense of unity and
7 cohesiveness that would continue to say that
8 McMillan was a distinct and special place that
9 was unified by its architecture and unified by
10 its common perimeter condition and extensive
11 preservation of open space.

12 So I would just, I was trying to
13 think of about whether or not there were sort
14 of analogies to other cases that have come
15 before the mayor's agent before, and in looking
16 through it I didn't come up with too terribly
17 many, again given the sort of unique nature of
18 this site and the conditions related to it, but
19 there were one or two that might have some
20 applicability.

21 People talked about the O Street
22 Market project already, so I won't get into that

1 one. The Atlantic Building redevelopment, HPA
2 88-490 to 493, it was four different concurrent
3 permits.

4 In that instance, it was
5 redevelopment of a high-rise wood-frame
6 building, an unusual resource, in which
7 demolition of all but the facade of the building
8 was found necessary in the public interest due
9 to the structural deficiencies of that
10 structural condition and the need to
11 essentially replace it for any modern adaptive
12 reuse of that site.

13 And as part of that egress
14 requirements were considered tying into of a
15 structural condition, or introducing a
16 structural system, was all necessary or found
17 to be necessary in the public interest for the
18 adaptation of that building.

19 Again not exactly a parallel, or a
20 parallel but not an exact match, the CMP
21 Warehouse building at 1111 North Capitol
22 Street, HPA 10-180. In that instance the

1 mayor's agent found partial demolition of the
2 building to be necessary in the public
3 interest.

4 And it was really more a part of the
5 HPRB record rather than the mayor's agent
6 record in which the HPRB sort of conceded that
7 this building, which was a concrete frame
8 building and had a repeating structural bay
9 pattern for an entire city block, an enormous
10 building, that the loss of some of that
11 ultimately didn't result in a significant loss
12 of integrity to the building.

13 That once you have this repeating
14 pattern and you preserve a sufficient amount of
15 it for it to be understood as a feature, then
16 some amount of demolition was acceptable. But
17 those are about the only cases that we could
18 find that had any sort of particular parallels
19 to this one, just to introduce this on the
20 record.

21 And then lastly, related to the
22 subdivision question, the parties in

1 opposition are correct that there is no formal
2 subdivision application that went to HPRB as
3 part of this for the reason that it couldn't
4 have because the applicants couldn't have
5 applied for a subdivision until they get their
6 PUD approval which they're still waiting for
7 final approval for.

8 However, in speaking for the staff
9 and the HPRB, there was clearly an
10 understanding that the master plan, inherent in
11 the master plan is the notion of subdivision.
12 It was clearly going to be developed by
13 different teams, different parcels.

14 The buildings are not connected so
15 it's not all one structure. It's separate
16 structures. So I think, frankly, that's why
17 the HPRB spent so much time talking about
18 ensuring that there be a commonality of
19 architectural character and a unifying set of
20 characteristics, such as the landscape and the
21 perimeter walk and those sorts of things, so
22 that McMillan would continue to read as a single

1 entity even though it would be subdivided into
2 smaller components.

3 JUDGE BYRNE: So what I understand
4 you saying that in thinking about the degree of
5 loss of historic resources in the case, HPO
6 suggests that I should take strongly into
7 account the structural deficiencies of the site
8 in terms of the lack of capacity to retain more.

9 MR. CALLCOTT: Correct. Right.
10 That was certainly something that --

11 JUDGE BYRNE: That was sort of
12 reference to the Atlantic Building was intended
13 to highlight that.

14 MR. CALLCOTT: Right.

15 JUDGE BYRNE: Okay, thank you.

16 I guess, Ms. Ferster, you can go
17 first if you want to ask some questions.

18 MS. FERSTER: Okay, thank you.

19 So Mr. Callcott, I assume you're
20 familiar with the HPRB's regulations in 10
21 DCMR?

22 MR. CALLCOTT: Yes.

1 MS. FERSTER: Let's see, isn't it
2 correct that the HPRB does have the authority
3 to approve a subdivision in concept and has
4 undertaken concept review in subdivisions in
5 the past?

6 MR. CALLCOTT: Correct.

7 MS. FERSTER: And so even though
8 the applicant cannot put in their application
9 for a subdivision until after the PUD is
10 approved, they could have requested concept
11 approval of the subdivision before the HPRB.

12 MR. CALLCOTT: Correct.

13 MS. FERSTER: And talking just a
14 little bit about your discussion of the
15 compromises that the HPRB took into account in
16 terms of its consideration of the condition of
17 the underground cells, of the District of
18 Columbia's desire to redevelop this site, of
19 the policy, you know, goals of the District of
20 Columbia in terms of this site, can you point
21 to me where in the HPRB's regulations the HPRB
22 is directed to take into account these sort of

1 policy issues or make these sort of compromise
2 determinations?

3 MR. CALLCOTT: Off the top of my
4 head, no, I cannot cite the specific citation
5 in the regulations.

6 And I'm not suggesting that the HPRB
7 has to do the job of the mayor's agent in
8 balancing these compromises, however, in
9 projects that involve whether it be something
10 as small as a zoning variance or something as
11 large as a PUD, we think it's important for the
12 HPRB to be informed of the broader planning
13 perspective behind those.

14 So in our initial report to them we
15 cite comprehensive planning goals. We cite
16 the fact that this is going to be a PUD and we
17 cite the fact that it's going to be a project
18 of special merit as claimed by the applicants,
19 it'll have to go to the mayor's agent.

20 So what we're trying to do is give
21 them the broader planning perspective so that
22 they're not making their decision in a complete

1 vacuum and they understand what the bigger
2 picture implications of this project
3 potentially will be.

4 MS. FERSTER: So, but in terms of
5 the recommendations that the HPRB is legally
6 required to forward to the mayor's agent, isn't
7 it correct that their recommendations really go
8 to the core issues of consistency with the
9 purposes of the act and all the standards under
10 the regulations relating to historic
11 preservation?

12 MR. CALLCOTT: Correct.
13 Absolutely. Yes.

14 MS. FERSTER: And then in terms of
15 you mentioned that the HPRB was, correct me if
16 I'm wrong. Is it the HPRB or the HPO that
17 developed sort of a set of preservation, you
18 know, or principles that would govern the
19 review?

20 MR. CALLCOTT: The HPO developed a
21 memo that we gave to the deputy mayor's office
22 and the development team, and then we

1 summarized that in our initial report to the
2 HPRB when it first went to the HPRB.

3 The HPRB didn't go through the
4 principles one by one by saying yes we agree
5 with that one, no we don't agree. It was a
6 series of principles that was a way of looking
7 at the site and considerations that we felt were
8 important for the HPRB to have in mind.

9 Some of those principles they didn't
10 ultimately adopt. For instance, we had
11 suggested that, you know, we think of this site
12 almost equivalent to a campus with the idea of
13 taller buildings centered in the site with open
14 space around it.

15 What we're trying to do is try and
16 put forth a vision, the vision of McMillan, that
17 would again think beyond what the initial
18 development approach had been and to think a
19 little bit bigger picture as to how you could
20 develop a site of this size and scale and still
21 preserve sort of what was important about it.

22 So again, some of the specific

1 principles that we highlighted didn't end up
2 playing out, but ideally or hopefully better
3 ideas came along that supplemented them,
4 substituted for them.

5 MS. FERSTER: So just following up
6 on that. You know, under the historic
7 preservation regulations, and I'm referring
8 specifically to Section 2004, there is several
9 regulations that deal with the HPRB's authority
10 to adopt what they call design guidelines for
11 use in conjunction with the standards for
12 historic preservation to essentially augment
13 the regulations.

14 And it says that before the
15 implementation of any design guidelines HPO
16 shall submit the proposed guidelines to the
17 HPRB for its review and acceptance and shall
18 adopt design guidelines only after
19 distribution of the proposed guidelines to the
20 public for review and comment and a duly noticed
21 public hearing at which the public may
22 participate.

1 Those preservation principles that
2 you discussed, it's correct that those were not
3 the sort of design guidelines that the
4 regulations refer to?

5 MR. CALLCOTT: Correct. No. No,
6 they're not.

7 MS. FERSTER: And then just
8 finally, so your testimony today is the HPRB did
9 not find that this master plan and the
10 architecture within that master plan
11 constitutes exemplary architecture under the
12 act. Is that correct?

13 MR. CALLCOTT: Correct.

14 MS. FERSTER: Okay, that's all I
15 have.

16 MS. MERRITT: I don't have any
17 questions.

18 JUDGE BYRNE: Okay. Ms. Brown?

19 MS. BROWN: Just a couple followup.
20 Good afternoon, Mr. Callcott.

21 MR. CALLCOTT: Good afternoon.

22 MS. BROWN: Just to follow up on Ms.

1 Ferster's last question. The HPRB doesn't
2 have authority over exemplary architecture,
3 does it, to make that point?

4 MR. CALLCOTT: Correct.

5 MS. BROWN: It's simply the mayor's
6 agent.

7 MR. CALLCOTT: That's a finding
8 that the mayor's agent would make.

9 MS. BROWN: But they did believe
10 that the design as a project was in concept a
11 good design, worthy of sending forward to the
12 mayor's agent?

13 MR. CALLCOTT: Yes. They found
14 that the master plan met the principles that
15 they established through successive reviews to
16 maintain a sense of McMillan as a unique site
17 for all the reasons that are highlighted. I
18 won't go into all those specifics, but yes.

19 MS. BROWN: Did the HPRB consider
20 viewsheds?

21 MR. CALLCOTT: There was
22 discussion of the viewsheds to a limited extent

1 in the Traceries report, important views into
2 and out of the site, and so yes, to a limited
3 extent. It was not a primary area of review as
4 part of the board's review, or primary focus
5 rather.

6 MS. BROWN: Right. You've heard
7 discussion today about the viewsheds from the
8 Armed Forces Retirement Home. Are those
9 viewsheds protected in the D.C. Inventory of
10 Historic Sites?

11 MR. CALLCOTT: No.

12 MS. BROWN: You also saw today the
13 HPRB went through many alternatives?

14 MR. CALLCOTT: Correct.

15 MS. BROWN: And the plan changed
16 substantially as a result of the comments from
17 HPRB and the pressure. I think you described
18 that. There were other alternatives that we
19 saw today. Were any of those presented to
20 HPRB?

21 MR. CALLCOTT: A portion of
22 Professor Gusevich's presentation was shown,

1 although that's been evolving. So in fact,
2 actually I'm not sure that that's what was shown
3 to HPRB.

4 What was shown to HPRB was a series
5 of apartment buildings, I think, on the site or
6 buildings on the site. I'm hearing nos behind
7 me, but a series of buildings on the site. So
8 yes, I'm actually not sure that what was shown
9 today is the same thing that HPRB saw.

10 MS. BROWN: And do you have any
11 opinion on whether or not some of the
12 alternatives shown today would be good
13 preservation alternatives?

14 MR. CALLCOTT: I don't. I mean
15 they look very aspirational, conceptual, but I
16 don't have any understanding of what they're
17 calling for specifically.

18 MS. BROWN: I think those are all my
19 questions for now. Thank you.

20 JUDGE BYRNE: Let me make sure I'm
21 covered here. So at one time sort of the public
22 park area was going to be more in the middle of

1 the site, and that's relevant to an extent
2 because it would have been over some of the
3 cells that are in better condition than others.

4 And as I understand it, the park was
5 moved to the south side so it would have open
6 vistas around it and not be enclosed by other
7 buildings. Was that part of the consultation
8 that you did with the development team?

9 MR. CALLCOTT: It was.

10 JUDGE BYRNE: HPRB, I think. It
11 was after the first HPRB hearing, I believe.

12 MR. CALLCOTT: Yes, it was
13 definitely after the HPRB hearing. And
14 forgive me because there's been so many
15 different iterations of it I sort of forget when
16 different things happened.

17 But that was an enormous move. From
18 a planning perspective and particularly under
19 the director of the Office of Planning that we
20 had at the time, there were several meetings
21 with her and there was a lot of discussion about
22 the importance of having this park be in the

1 center of the new community because we thought
2 it would actually be equi-distant to all of the
3 other existing communities around it.

4 The criticism of that of course was
5 that it sort of embedded it within the
6 community, the new community, right, and
7 therefore potentially would be felt to be
8 exclusive to that community.

9 And I think it was sort of to try,
10 because again with all of this you're trying to
11 solve for multiple problems, so any time you
12 make one chess move it has repercussions across
13 the board. But I think it was really when the
14 applicants also addressed the notion of saving
15 the topography which is the most exaggerated at
16 the southern end.

17 JUDGE BYRNE: The plinth.

18 MR. CALLCOTT: The plinth. And in
19 preserving that, that gave the opportunity to
20 have some expansive use to the south, but also
21 to better relate that and have it serve as a
22 buffer between the new community and the

1 existing communities around it. So --

2 JUDGE BYRNE: Yes, that's
3 interesting. Okay, good. Thank you very
4 much.

5 MR. CALLCOTT: Thank you.

6 JUDGE BYRNE: All right. Let's
7 see. So let's just take a five-minute break
8 now please, and then we're going to hear from
9 members of the public who want to speak in
10 opposition to the application. Thank you.

11 (Whereupon, the above-entitled
12 matter went off the record at 3:39 p.m. and
13 resumed at 3:45 p.m.)

14 JUDGE BYRNE: Okay, let's
15 recommence please. If you would like to make
16 a statement in opposition to the application,
17 yes, let me ask you to do so.

18 And just to the extent to which you
19 can say something new, that's good, but I also
20 understand people need to express themselves.
21 So how many -- yes?

22 MS. FERSTER: I just wanted to also

1 mention that several of the people who wanted
2 to testify have some time constraints. So
3 would it be possible, I don't know what order
4 you were planning on going, but allow the people
5 who have time constraints raise their hand?

6 JUDGE BYRNE: Okay. I suppose
7 that's fine. Nobody's going to object to that.
8 Okay? I mean, yes. All right, let's begin
9 then. Who had time constraints?

10 Ms. MacWood, why don't you come up
11 and have a seat and identify yourself for the
12 record and proceed.

13 MS. FERSTER: Aren't there persons
14 in support that need to come?

15 MS. BROWN: We don't have any other
16 persons in support. We sent them all home.
17 But we do have letters for the record that were
18 left behind.

19 JUDGE BYRNE: Good, yes. Happy to
20 have them.

21 MS. BROWN: And I don't have
22 extras, so --

1 MS. FERSTER: Just email.

2 MS. BROWN: Yes.

3 JUDGE BYRNE: Okay, that's fine.
4 Thank you. Okay.

5 MS. MACWOOD: I'm Nancy MacWood,
6 and I'm testifying on behalf of the Committee
7 of 100 on the Federal City. The committee is
8 the oldest citizen planning organization in the
9 District. We aim to further the principles of
10 the L'Enfant Plan and the McMillan Plan as we
11 work to adapt and grow and promote good land use
12 decisions in the District of Columbia.

13 We urge you today to rule against
14 the demolition of the McMillan sand filtration
15 underground cells because demolition would not
16 further the purpose of the Historic
17 Preservation Act to retain and enhance the
18 historic landmark.

19 The proposal submitted by the
20 District of Columbia and Vision McMillan
21 Partners that requires the destruction of the
22 cells is not compatible with the character of

1 the landmark and it is not necessary in the
2 public interest.

3 I would like to discuss the last
4 point first. Public interest in McMillan is
5 clearly stated in the comprehensive plan for
6 the District of Columbia which establishes land
7 development and use policies throughout the
8 city. It is a document that takes years to
9 write and is based on the deliberations of a
10 diverse advisory task force and many citizen
11 meetings at locations around the city before it
12 is thoroughly vetted and voted on by the D.C.
13 council.

14 The most recent comprehensive plan
15 has an unusual level of detail about how the
16 McMillan Sand Filtration historic landmark
17 should be preserved and protected in
18 furtherance of the public interest. And most
19 importantly, how it should be developed.

20 These are not vague policies, but clear
21 and detailed statements of the public interest
22 with regard to development at McMillan. The

1 land use element provides the table for us to
2 set with all the policy pieces related to
3 McMillan.

4 Quoting from the overview of the
5 element, quote, the land use element is the
6 cornerstone of the comprehensive plan. It
7 establishes the basic policies guiding the
8 physical form of the city and provides
9 direction on a range of development,
10 conservation and land use compatibility
11 issues, unquote.

12 Further down, quote, because the
13 land use element integrates the policies and
14 objectives of all the other District elements,
15 it should be given greater weight than the other
16 elements as competing policies and different
17 elements are balanced.

18 The land use element lists the
19 McMillan Sand Filtration Site's 25 acres as the
20 smallest of ten large sites in the District.
21 The next largest site is the 45-acre Southeast
22 Waterfront, and the largest site is the

1 336-acre St. Elizabeth site.

2 For specific policies on the future
3 use of these large sites, the land use element
4 directs us to the area elements. But before
5 leaving these large sites, the element outlines
6 some broad policies for reusing publicly owned
7 large sites.

8 It cautions that there is no single
9 preferred use for all large sites and that the
10 area element and the future land use map will
11 provide information of preferred use or uses
12 for each site. In addition, the land use
13 element states that, as a broad policy goal,
14 existing assets including historic features,
15 views and vistas and landscape elements should
16 be protected as large sites are reused. The
17 land use element also states that zoning of
18 these large sites should be compatible with the
19 surrounding area.

20 Here the surrounding rowhouse
21 neighborhoods are zoned R-3 and R-4 with
22 maximum heights of 40 feet. The actual heights

1 of buildings in the established neighborhoods
2 of Stronghold and Brookland are much lower.

3 Throughout the District, R-3 and
4 R-4 neighborhoods adjoin commercial district
5 zones C-2-A with maximum height of 50 feet or
6 65 feet with a PUD. The proposed office towers
7 and multifamily residential buildings here
8 range from 48 feet to 115 feet. The requested
9 zoning, C-3-C and CR is typically only used in
10 downtown where greater height is expected, not
11 in the neighborhoods.

12 The future land use map
13 designations of medium residential density,
14 moderate commercial density and open space park
15 land do not require the level of requested
16 density for the McMillan development. The map
17 is not intended to suggest that the most intense
18 zoning related to medium or moderate density
19 designations should be permitted.

20 When the land use and midcity
21 elements are brought together with the future
22 land use map as intended it is difficult to

1 conclude that this development proposal is in
2 sync with the city plan for this significant
3 site.

4 The midcity area element of the
5 comprehensive plan provides the details of the
6 District's plan for future development and use
7 of McMillan. All of the prescriptions in the
8 area element fill out the broad policies in the
9 land use element and the future land use map.
10 Unfortunately, not one of the midcity public
11 policies is realized in this proposal.

12 In the preamble on McMillan, the area
13 element states that, quote, the entire site is
14 considered historically significant, unquote.
15 It then outlines five basic objectives for any
16 reuse of McMillan.

17 I have included the policies in the
18 footnotes, but won't read them during testimony
19 today. And I'm also only going to testify
20 about three of the five principles although all
21 are included in the testimony. The
22 first one, preserve open green space and the

1 emerald necklace connection. Only about
2 one-fourth of the site would be set aside for
3 open space.

4 Part of this area includes a
5 community center that lacks a basketball court,
6 track, playground and playing fields, but
7 instead has a catering kitchen that complements
8 what seems to be an event venue. In
9 contrast, the vision for this site, as
10 mentioned in almost every planning document
11 since the McMillan Plan, centers on its
12 potential to correct the striking lack of
13 publicly usable recreation and open green space
14 in what is the densest part of the city by
15 leaving it predominantly open.

16 The midcity element also notes that
17 it is public policy to facilitate McMillan's
18 link to the McMillan Plan's emerald necklace of
19 connected green space. Both the reservoir and
20 the sand filtration site were included in the
21 McMillan Plan.

22 The proposed development site

1 features a one-acre green space across from the
2 Armed Forces Retirement Home, but its main
3 access point appears to be a broad staircase
4 that connects it to the proposed office
5 building. The intent seems to be to offer this
6 green space primarily to office workers.

7 There is no green connectivity between
8 this space and the proposed park at the other
9 end of the site. There are no design elements
10 that would connect the filtration site to the
11 reservoir.

12 In many respects the site plan looks
13 inward and does not take advantage of the
14 opportunities and indeed the city plan's
15 directives to look outward.

16 Two, restoration based on the
17 original plan. The above ground elements are
18 not proposed to be restored in a manner
19 compatible with the original plan for the site.

20 The proposal eviscerates the
21 historic context for the regulator houses and
22 cell towers. Their new setting would be

1 roadway medians adjacent to office towers or
2 dense residential blocks.

3 The heavily programmed treatment of
4 this area renders them as follies and leaves no
5 hint of the original plan for McMillan. It's
6 noteworthy that a condition of the conveyance
7 from the General Services Administration to the
8 District of Columbia as embodied in a
9 preservation covenant was the requirement that
10 the city would rehabilitate and renovate the
11 historic features of the sand filtration site.

12 The objective was to maintain their
13 character-defining influence on the park-like
14 setting not to shroud them between buildings as
15 this proposal would.

16 It's also noteworthy that the
17 height measurement starting point for the
18 medical office complex adjacent to the north
19 court is at the midpoint of the cell towers.
20 They will become insignificant artifacts if
21 this proposal is implemented.

22 In addition, the proposal doesn't

1 include monuments, memorials or museums. It
2 is a dense housing/retail complex that does not
3 facilitate stabilization of the site, but
4 rather obliterates the McMillan landscape and
5 regulates the above ground historic elements as
6 nothing more than oddities separating traffic
7 traveling through the development.

8 Three, reduced parking and traffic
9 impacts and improved transportation options.
10 The comprehensive plan describes the traffic
11 congestion surrounding McMillan and the few
12 viable public transit options. To date, the
13 proposed development has not included any
14 reliable plans to improve traffic or transit
15 options.

16 The Metro is not a short walk from
17 the proposed development, which is why the
18 medical office complex includes nearly 1,000
19 parking spaces more than zoning requires.

20 In fact, every part of this
21 development that has a parking requirement
22 would provide double or greater the number of

1 parking spaces required. This is evidence
2 that the developers know that there aren't
3 reasonable public transit options.

4 They expect cars to fill these
5 parking spaces, and that will result in
6 thousands more car trips daily in this already
7 heavily congested area, and along with it more
8 air pollution and reductions in quality of
9 life.

10 The only measures that have
11 recently been proffered are to partially
12 mitigate the increased congestion with Metro
13 shuttles. But that proposal has not been
14 accompanied by a reduction in new parking
15 spaces.

16 So it is fair to assume that the
17 proposed activity from this dense development
18 will only worsen congestion.

19 The lack of connectivity to the
20 surrounding neighborhood, Stronghold to the
21 east and Bloomingdale to the south, is
22 characteristic of this development proposal's

1 inward focus.

2 All of the new streets adjoin only
3 north-south roadways with the exception of the
4 orientation of the office complex to Michigan
5 Avenue. Existing right-of-way including
6 Franklin Street adjacent to the north service
7 court, Everett Street that would connect
8 Everett Street east of McMillan, and Douglas
9 Street that would connect to Douglas Street
10 east of McMillan would be closed.

11 The park and community center have
12 a wide vehicular entrance from First Street,
13 but that road is not a through street and only
14 29 service parking spaces on the south court are
15 provided for what should be an intensely used
16 space.

17 The accessibility that is common
18 for parks and community centers is missing.
19 Walkers who want to access this area by crossing
20 busy North Capitol Street must use the
21 signalized intersection at Channing Street and
22 walk a block north or use the proposed signal

1 at the new Everett Street and walk a block
2 south. They then have to walk another block
3 inside the development to reach the park area.
4 The best connections to the park are inside the
5 development.

6 Finally, the Committee of 100 finds
7 the rectilinear design approach that features
8 metal and glass panels and harsh boxing/massing
9 incompatible with the character of the
10 landmark.

11 The whimsical barrel cells that dot
12 the open landscape that hint that there is much
13 more underground lose context in this proposal.
14 This is simply a very dense development on a
15 large piece of land.

16 The design and site plan with the
17 exception of the restoration of the Olmsted
18 Walk are not sensitive to the historic site.
19 The Committee of 100 Historic Preservation
20 Subcommittee concluded that the development
21 overwhelms the character of the landmark and
22 does not attempt to present an organic site plan

1 that should be required for such a sensitive
2 site.

3 If the project had addressed the
4 explicit series of development goals outlined
5 in the comprehensive plan, an argument might be
6 made that it's necessary for the public
7 interest. But that hasn't happened.

8 It's a challenge to find special
9 merit when so much is wrong-headed about this
10 proposal. The significance of the demolition
11 proposed and the almost total loss of the
12 historic context in exchange for a dense
13 office/residential development that will
14 actively destroy the ability to maintain the
15 emerald necklace and will impair historic views
16 and vistas renders this proposal unacceptable.

17 There is no equivalency in what
18 would be lost and what would be gained. And
19 it's clear that the stated public interest has
20 been replaced with developers' vision for a
21 dense, overbuilt, unconnected development.

22 Thank you for the opportunity to

1 testify.

2 JUDGE BYRNE: All right. Ms.
3 Brown?

4 MS. BROWN: No questions.

5 JUDGE BYRNE: Okay.

6 Thank you, Ms. MacWood.

7 Yes.

8 MS. VAN DEN BERG: Hi.

9 JUDGE BYRNE: Please state your
10 name for the record.

11 MS. VAN DEN BERG: Yes, my name is
12 Katelyn van den Berg. I am a volunteer from the
13 community against these developments. I live
14 in Bloomingdale so I will be quite negatively
15 impacted by the development.

16 And also here today I would like to
17 provide testimony very much against the
18 development. As a community volunteer I have
19 been gathering some letters of opposition that
20 I have been submitting to your office.

21 We submitted 61 letters last week
22 and 20 today. These are the masters and

1 originals and some of my other volunteers,
2 colleagues', submittals from the originals but
3 they have been already accepted to the records.
4 And I also would like to explain how easy it is
5 to get all these letters of opposition.

6 Because almost anybody you run into
7 who is living close to this site, you explain,
8 you say, oh, there is a hearing coming up. We
9 have a letter of opposition. Would you like to
10 sign? They immediately go yes, where do I
11 sign?

12 So I really want to point out that
13 the atmosphere in the neighborhood for this
14 development is extremely negative because of
15 the massive negative impact that this will have
16 on the community and because of the lack of
17 vision for the adaptive reuse of the
18 underground structures.

19 I think there was a lot of testimony
20 on the history and the importance so I will not
21 go into that and repeat it. But I do want to
22 point out that the request of the developer for

1 the demolition permit is time and again based
2 on their statement that the underground
3 structures cannot be adaptively reused or
4 reinforced, and this is simply false.

5 And this has been their statements
6 from the beginning. This is not something that
7 slowly came out. I was present at one of the
8 first community meetings, Mr. Bell may
9 remember, where VMP presented.

10 It was way before HPRB meeting where
11 VMP presented, had their analysis of the
12 underground cells, and the simple conclusion
13 was they are made of unreinforced concrete
14 therefore they are not structurally sound and
15 they have to be demolished.

16 I specifically asked you in that
17 meeting a question, saying why isn't VMP not
18 looking at alternatives because you have plenty
19 of options around the world. I even pointed
20 out a few of them that the developer
21 acknowledged that they are aware of how you can
22 actually do it.

1 And their statement has been from
2 the beginning, we're not going to look at
3 alternatives. They're unreinforced concrete,
4 they don't support development, they have to be
5 demolished.

6 Yes, there were some changes
7 whether the park is in the middle or the south
8 because of DC Water and their engagement. But
9 the big intensive development and treating this
10 site as an industrial wastelands, basically the
11 taxpayer subsidy has to be just demolish in
12 order to provide for this big, high density
13 buildings has been from the first day of the
14 community engagement.

15 I put in my written testimony that
16 I submitted a while ago, there are really a lot
17 of examples in the U.S., abroad, of very
18 financially successful redevelopment of
19 historic structures.

20 They're not fully compatible maybe
21 in how the site looks, but I got a few examples.
22 Chelsea Market, New York, six million visitors

1 a year; the site in Amsterdam that I pointed out
2 to the developers that they said they were
3 familiar with, millions of visitors a year, and
4 really a lot of financial revenues; the High
5 Line, \$2 billion of private investors.

6 If you want, really, there are tons
7 of ways how you can actually make this into a
8 site of respect the landmark that it is and that
9 does something with the redevelopment of the
10 underground structures, and there's really no
11 reason why it cannot be done.

12 The real reason why it is not done
13 is because there's no international design
14 competition for this that states that there is
15 a need for preservation of the underground
16 cells, and there's no separation between the
17 design part of the process and the vertical
18 development because it's all one cozy,
19 exclusive deal with the city.

20 So naturally if the developer that
21 this directly go to financially benefit from
22 the density of development is also in charge of

1 the design, then any option that would
2 structurally really start with the historic
3 landmark that it is and look at options from
4 there is going to be dismissed.

5 So with this process, the only thing
6 you're going to get is this massively high
7 development, and this is not how you should
8 develop a site like this. You should do a
9 design competition.

10 D.C. just did a design competition
11 for the 11th Street Bridge with beautiful
12 designs coming out. You put in the
13 requirements how much money you want to get out
14 of it as a city and some constraints in terms
15 of the need to preserve and adaptively reuse the
16 underground structures, and then the designs
17 that would come out wouldn't look in any way,
18 shape or form of what is now on the table that's
19 supposed to have special merit.

20 Nobody in the community that I speak to,
21 and I've been also involved in collecting the
22 over 7,000 signatures against this

1 development, sees any special merit in this
2 development. We only see unbearable traffic
3 impacts from the development, a park that will
4 be uninteresting, and it's even not clear if
5 people would be able to use it because the
6 public/private status is not so clarified.

7 There's no tenant for the medical
8 offices so maybe they will be flipped. There
9 are so many things wrong with this deal, I
10 really hope that you can look at the historic
11 significance of the site and what could be
12 there. Thank you.

13 JUDGE BYRNE: Thank you very much.
14 I appreciate that.

15 MS. FERSTER: No questions.

16 MS. MERRITT: No questions.

17 (Off the record comments)

18 JUDGE BYRNE: Did you sign the
19 witness --

20 MS. VAN DEN BERG: No, I wasn't here
21 for it.

22 JUDGE BYRNE: Okay, please.

1 Okay, next. Anybody else? Sir?

2 MR. VINING: Oh yes.

3 (Off the record comments)

4 JUDGE BYRNE: Okay, please. State
5 your name.

6 MR. VINING: My name is Kirby
7 Vining. Made my home just east of the McMillan
8 Park on Franklin Street NE, since 1986. I'm a
9 member and an officer of the Friends of McMillan
10 Park who has requested party status in this case
11 before you today, and an officer in my
12 neighborhood, Stronghold Civic Association,
13 and one of the Stronghold representatives in
14 the McMillan Advisory Group.

15 I'm also a candidate in tomorrow's
16 election for the Advisory Neighborhood
17 Commissioner for the area that includes the
18 McMillan site.

19 I'm speaking today in a personal
20 capacity only. These other affiliations
21 mentioned only to indicate the depth of my
22 interest in this site and my community.

1 I think we could almost have a
2 quorum of MAG members here. I think there's
3 about eight in the room at this moment here.
4 These are delegates from their communities who
5 try to work on this project. That is how
6 serious these people are taking off of work.

7 I am independently wealthy in my
8 small government pension. I do not have any
9 financial interest either way in this project
10 but quite the opposite. We're hiring counsel
11 for this event out of my paycheck.

12 Though the above ground portion of
13 the McMillan site has long been familiar to me,
14 I first saw the cathedral-like underground
15 caverns in about 1989. There's a young lawyer
16 in the room here who knocked on my door and gave
17 me a tour of that.

18 I first saw the cathedral-like
19 underground caverns about 1989. Since that
20 time I've dreamed of the many things that they
21 could be reused for hiding under that huge green
22 roof unknown to most Washingtonians.

1 The development plan submitted to you
2 today clearly regards the McMillan site
3 features as obstacles that must be demolished
4 in order to advance the applicants' plans.

5 I do not see in these plans any
6 effort to incorporate elements of the site's
7 structures or spaces in the proposed
8 development, only a token and trivial retention
9 of some of the above ground structures and that
10 in a manner in which is really insulting to the
11 space of this site. The views of the
12 Washington horizon from several directions on
13 this escarpment are gone in the proposed plan
14 to be cherished only by the occupants of the
15 proposed high rise building, and my dream of
16 seeing the underground vaults put to new and
17 interesting uses would be killed.

18 Is this what the McMillan Plan
19 envisioned? Other buildings I have seen in
20 pictures by these same three principal
21 developers are entirely too similar to the
22 buildings you have been shown.

1 That further confirms my suspicion
2 that there has been no effort to incorporate
3 local and historical elements in the
4 development design, but merely impose existing
5 thematic buildings on the site as if it had no
6 history or characteristic features worthy of
7 inclusion in a new design.

8 McMillan is an obstacle, it is in
9 the way and must be removed for these proposed
10 buildings to be erected. Thus today you are
11 asked to approve demolition of most of the site
12 so that this development, which looks like it
13 could be anywhere, can turn this site from
14 something extraordinary into something quite
15 ordinary.

16 I don't think that the intention of
17 the Historic Preservation Act was to allow such
18 callous demolition, unless of course some
19 features of special merit rival and benefit the
20 features of the existing structure.

21 Imagining the McMillan site to be a living
22 body, the applicant proposes amputation of

1 three or more limbs to be replaced with nothing
2 of equal or higher value to the city or the
3 community, and yet asks us to celebrate the
4 remaining limb as if that somehow compensated
5 for or justified the surgery. It doesn't.

6 What little would remain of the
7 historic park and vaults and the views from the
8 site is token and trivial, not replaced by
9 anything I know of that is necessary in the
10 public interest. The MAG paper earlier talked
11 about the consolidated community interest. I
12 don't hear any of that left in the proffers of
13 the alleged benefits.

14 Quite on the contrary, the
15 staggering traffic problems and blocking of the
16 entire skyline this development would cause are
17 a very different kind of special than the
18 applicant is suggesting to us. The scale of
19 the proposed demolition is unreasonable and
20 unnecessary for a historic site owned by the
21 District of Columbia that should not be
22 permitted.

1 I hope you will see the scale of the
2 proposed demolition is unnecessary and
3 inconsistent with the intentions and the spirit
4 of the Historic Preservation Act and reject it
5 so that we can hope to see something more
6 inclusive of these spaces and structures in a
7 revitalization proposal.

8 Lengthier remarks here I'll just
9 drop it right there. It's the detail.

10 JUDGE BYRNE: Thank you, Mr.
11 Vining. Stay up here, want to ask a question.

12 MS. FERSTER: One followup
13 question. As a nearby resident of the site, do
14 you believe that your personal use and
15 enjoyment of your home and your neighborhood
16 will be harmed by the proposed development?

17 MR. VINING: Yes.

18 MS. MERRITT: I have no questions.

19 JUDGE BYRNE: Okay, thank you, Mr.
20 Vining.

21 Sir? Have a seat.

22 MR. LEPTAK: Thank you.

1 JUDGE BYRNE: Have you signed the
2 sheet?

3 MR. LEPTAK: I did, on the way.

4 JUDGE BYRNE: Okay, very good.
5 Thank you. Just state your name for the record
6 please.

7 MR. LEPTAK: Sure. My name is
8 Chris Leptak, L-E-P-T-A-K.

9 JUDGE BYRNE: Great.

10 MR. LEPTAK: And I have some
11 slides.

12 JUDGE BYRNE: Oh, okay. Great.

13 MR. LEPTAK: So I ran up here
14 because like Kirby I'm also a resident of
15 Stronghold, so I figured we'd kind of put
16 ourselves together. As I said, my name is
17 Chris Leptak. I've been a resident of
18 Stronghold since 2005.

19 I'm a member of the civic
20 association. I've been on the McMillan
21 Advisory Group since 2010 as one of the
22 Stronghold representatives and I'm currently

1 the vice chair for the McMillan Advisory Group.

2 Stronghold, for those who don't
3 know, we're basically a landlocked island, if
4 there is such a thing, which is basically a
5 community that's sandwiched between --

6 COURT REPORTER: I'm sorry sir. I
7 can't hear you when you're up there.

8 MR. LEPTAK: So we're a landlocked
9 island sandwiched between a cluster of
10 cemeteries, a private gated community here,
11 McMillan here, the hospital complex on this
12 side.

13 And so basically all of our streets,
14 minus one, dead end into the cemetery, so the
15 only means to get into and out of our community
16 is North Capitol. So as such, traffic is
17 obviously a big issue for us, and so one of the
18 things I want to talk about is the impact of this
19 development, neighboring developments on our
20 daily life in terms of getting to and from our
21 homes.

22 The second thing that you might

1 notice is that for the folks that live along
2 North Capitol, many folks in our neighborhood,
3 there's about 250 homes in total, about half of
4 them have been there for several decades
5 raising their children, currently
6 grandchildren, in their homes, the other half
7 are probably more recent transplants. At this
8 point I'm one of the older folks, surprisingly,
9 being there since 2005.

10 So for the folks that have been in
11 their homes for a long time, what they've
12 enjoyed across the site facing west are
13 basically beautiful sunsets. Many of those
14 sunsets are going to be no longer present should
15 the substantial buildings be set.

16 The other thing to notice is that
17 because we only have North Capitol to get to and
18 from our homes, if the site goes forward, in
19 addition to the other neighboring developments
20 in the area, all of which are going to likely
21 use North Capitol as a main means of
22 construction for a site of this scale, and since

1 the DC Water project has begun, we're basically
2 looking at construction for about a decade.

3 You would think that with a project
4 of this size the construction mitigation would
5 be something that the development team would be
6 interested in.

7 The construction mitigation plan
8 filed before Zoning was never presented before
9 the Stronghold Civic Association nor the
10 Bloomingdale Civic Association nor the MAG.
11 To my knowledge, the plan that was filed never
12 had one public hearing for mitigation of
13 construction issues for a decade. That
14 doesn't tell me that the development team has
15 much interest in what the community thinks.

16 So in terms of the things that
17 they're proposing as community benefits, one of
18 the things that I've learned certainly as a
19 staff member at the FDA, there is no such thing
20 as benefit alone. It's always benefit and
21 risk.

22 So in this case I'll go through what

1 they're proposing as community benefits and
2 needs from a retail standpoint and try to
3 balance that with potentially the negative
4 impacts of the traffic for the proposed site.

5 So just north of our neighborhood is
6 the VA Hospital expansion. Based on public
7 record, I tried to pull down what the proposed
8 expansion is going to entail.

9 JUDGE BYRNE: Sir, I mean this
10 really, you know, this is just on historic
11 preservation, right? So the questions of the
12 surrounding development and stuff is very
13 peripherally connected. So I'd just
14 appreciate it if you'd focus on the historic
15 preservation aspects.

16 MR. LEPTAK: All right. So we'll
17 go to the end. So in terms of the demolition
18 of the site, do we need to destroy a historic
19 feature of the District and national landmark
20 in order to create retail? Since that's one of
21 the things that's been proposed.

22 If you take the summary of the

1 adjacent developments that have been approved
2 or proposed, there's a total of 3.4 million
3 office and commercial health care space, if you
4 include McMillan as well as with the Soldiers'
5 Home and the like.

6 There's also retail, residences,
7 two hotels that have been proposed, all of which
8 I bring up because why do you need to destroy
9 a national landmark to have retail since there
10 is already planned retail that's either in
11 existence or on line for approved PUDs?

12 The second is you can't have retail
13 without the downside of people getting to that
14 retail. If you look at the transportation
15 plans for both the Soldiers' Home and for the
16 VA Hospital Center, in both of them they say
17 that current employees use public
18 transportation less than ten percent of the
19 time.

20 If you look at the TIS study for the
21 McMillan Plan, they're expecting 50 percent of
22 people use public transportation. So their

1 assumptions don't even meet the current
2 practice patterns of current employees.

3 In addition, if you look at the
4 extent of retail on the site and North Capitol
5 Street, as I said, we're landlocked. We have
6 no way to get to and from our site.

7 At present, at least based on the
8 DDOT filing for zoning from a couple of days
9 ago, they still say that even the minimal amount
10 of increased bus service for Circulator bus and
11 planned bus service is yet unfunded.

12 So from my mind and for those of us in the
13 neighborhood, we find it appalling that you
14 have such a large development and there hasn't
15 been one comprehensive regional traffic study,
16 even though we've asked repeatedly for such
17 one.

18 If you look at the mitigation plans
19 for all these developments, they basically are
20 encouraging people to walk and to bicycle. And
21 if you look at the number of total parking
22 spaces that are being generated at these sites,

1 it doesn't match up.

2 So ultimately what we'd like to see
3 is something, and that's not to say that we're
4 against development as a whole. I think
5 unfortunately we've been given an unnecessary,
6 false and dichotomous choice of either keep the
7 fence up or you build this monstrosity.

8 And I don't think that's the case. I
9 think that ultimately if you talk to a lot of
10 residents, yes, we would like to walk to
11 something, but we don't want to walk to
12 something if we're going to be in gridlock and
13 that's going to basically add another half an
14 hour to our days trying to get to and from our
15 homes.

16 So in general I think that there's
17 a large swath of the community that could
18 support a more limited style of development,
19 and unfortunately what I've seen over my years
20 with this project, the only times those changes
21 take place is when someone of authority causes
22 those changes to take place, much like with the

1 DC Water.

2 We had advocated repeatedly for a
3 larger park and been repeatedly told there was
4 no opportunity for a larger park. And it
5 wasn't until DC Water moved the cell down in the
6 demolition for the water storage to mitigate
7 the Bloomingdale flooding, that magically the
8 park got bigger. So the assumptions that
9 basically you can't have a larger park
10 magically disappeared.

11 We're not saying that we don't like
12 the fact that the park got bigger, but a lot of
13 the assumptions that we're constantly given, I
14 think, they need to be questioned. And we
15 would very much encourage you to not support the
16 plan as is and to please have them scale back
17 the development.

18 JUDGE BYRNE: Okay, good. Thank
19 you very much.

20 Good afternoon.

21 MS. SOUTHERLAND: Good afternoon.

22 JUDGE BYRNE: Would you please

1 state your name for the record?

2 MS. SOUTHERLAND: Yes, I am Gwen
3 Southerland.

4 JUDGE BYRNE: Okay, have you signed
5 the witness list?

6 MS. SOUTHERLAND: Yes.

7 JUDGE BYRNE: Okay, very good.
8 Please give us your statement.

9 MS. SOUTHERLAND: Good afternoon
10 everybody. And I would like to say it's really
11 good to meet you, Professor Byrne.

12 JUDGE BYRNE: Thank you.

13 MS. SOUTHERLAND: I'd love to study
14 under you one day.

15 JUDGE BYRNE: Thank you.

16 MS. SOUTHERLAND: My testimony
17 will be to oppose VMP's request for special
18 merit. McMillan itself is a place of special
19 merit.

20 In February of 1997 I moved to the
21 Brookland/Edgewood community on Franklin
22 Street, a rather long block from McMillan

1 Reservoir.

2 And in 1987, as my daughter and I
3 would walk to our medical appointments at
4 Hospital Center and Children's Hospital, we
5 just encountered this amazing thing. It was
6 unkempt, and my initial involvement with
7 McMillan was bouncing between the city and the
8 Army Corps as to determine who could trim the
9 weeds that were hitting me in the chest and my
10 daughter in the face as we would walk to the
11 hospital, because on the other side of the
12 street there was construction and we could not
13 walk on that side.

14 Let me also state that I'm
15 testifying as a personal individual, however
16 I've probably been involved in every group that
17 had McMillan in it except for Create McMillan
18 Park, and that's because they did not invite me.

19 But I am a member of MAG. I am a
20 member of the Friends of McMillan Park. I am
21 also a member of the McMillan Park Committee.
22 I'm also a former ANC commissioner, and I served

1 from 1998 until 2002, and I was the commissioner
2 for McMillan.

3 The social significance of
4 McMillan. Back when most District parks were
5 segregated, the open green space at McMillan
6 along with Soldiers' Home and some pocket parks
7 provided recreation and relaxation for many
8 African Americans. We couldn't go anywhere
9 else.

10 When I was about seven years old we
11 were living over on Capitol Hill and one day I
12 just said to heck with it. I'm going to
13 integrate this playground because I want to
14 ride on this shiny red merry-go-round and I want
15 to be able to roll around on their beautiful,
16 open green space.

17 But there were limitations as to
18 where we could go for the enjoyment of open
19 green space. I recall my visits over to the
20 Soldiers' Home when my mother would take my
21 brother and I.

22 The open green space provided the

1 recreational outlet that allowed us to kind of
2 romp and play and engage with many other black
3 people who were over there, because like
4 McMillan they tolerated black people at the
5 Soldiers' Home on their contiguous open green
6 space.

7 So we were able to enjoy the bliss
8 of that contiguous open green space, and to this
9 day I have a fondness for contiguous open green
10 space.

11 And I see as I travel somewhat
12 around the city just coming here today, there
13 are so many big buildings in D.C., office
14 buildings, and they all look alike. As I was
15 coming on the train today it's like they remind
16 me of the old D.C. jail, a kind of a penal feel.
17 And I'm serious about that.

18 There seems to be no creativity in
19 the architecture. Same with McMillan. It's
20 plain. And at one meeting I expressed this to
21 our council member that the architecture, it's
22 not of special merit. It's plain. They're

1 rectangles.

2 And as a former teacher, those are
3 the kind of things the kids would draw in
4 kindergarten and first grade. Rectangles, and
5 they would put the little rectangle windows.
6 McMillan has cylindrical shapes. There's
7 curvature. It's not reflected in any of the
8 architecture.

9 Now sometimes at night I peruse the
10 internet and I saw this building in London, it
11 was called, I think, the Bullet.

12 And I thought to myself, why can't we have
13 something shaped like that as long as it doesn't
14 interfere with the views? And then another
15 night I was perusing the internet and I saw this
16 building in Germany, and I'm going to try to
17 pronounce it correctly, the Reichstag, which it
18 was burnt at one point. Beautiful dome.

19 Why can't we have some beautiful
20 architecture? So for me, the plan that has
21 been presented before us, I find the
22 architecture very mundane.

1 The reason why we're here today are
2 the caverns, the application to demolish a good
3 portion of the underground sand filtration beds
4 which is what we call the caverns.

5 I would only hope and pray that the
6 mayor's agent would understand the uniqueness
7 of the underground cells. There is nothing
8 like it.

9 During my four years as ANC
10 commissioner at first I had no clue. And I'm
11 going to be a little bit honest with you, you
12 know, I was in favor of development. Back in
13 1990, Horning Brothers wanted me to testify on
14 their behalf for their project, and I guess it
15 was only some power that prevented me from
16 testifying to support their development plan.

17 McMillan is a special place. Once
18 I learned what it was, as I said I was for
19 development, but once I went on the internet and
20 I learned what it was and I got some documents
21 and I said to myself, oh no, they will never have
22 Gwen Southerland's name down there as, oh yes,

1 supporting the office buildings and the
2 housing, et cetera. Because it's a special
3 place.

4 And I won't go into the
5 significances of it. We all know that. And I
6 don't blame the developers. You're only doing
7 your job. I really blame the city because the
8 city has failed to give us other options.

9 For all of these almost 30 years,
10 the only plan that they've presented is high
11 density, mixed use, and they wonder why 25 years
12 later we're still haggling over it. The battle
13 over McMillan has indeed waged on for over 25
14 years.

15 And as I said, the reason is that the
16 city only, has only presented high density,
17 mixed use plans. For all these years, citizens
18 have asked simply for alternative plans.
19 Plans that would preserve the site while giving
20 access to the public to use and enjoy the site,
21 and the city just continually resists.

22 And one plan, I don't understand it,

1 one-track thinking. I just don't understand
2 it. I am not a preservationist nor am I a
3 historian nor am I an architect, just an average
4 citizen. But I know when something is worthy
5 of being preserved for its historic value and
6 I know when something is special. And McMillan
7 is special.

8 The current development plan does
9 not warrant destruction of, I have down here
10 "any" but I did make a note, "most" of the
11 underground cells. Surely there must be
12 alternative uses for the caverns. And I think
13 we've seen some today by other people who have
14 testified.

15 I would simply humbly and very
16 sincerely ask the mayor's agent to deny this
17 application to demolish a substantial portion
18 of those underground cells fondly known the
19 caverns. Thank you.

20 JUDGE BYRNE: Thank you very much,
21 Ms. Southerland.

22 Any questions?

1 MS. BROWN: No questions.

2 JUDGE BYRNE: Okay, great. Thank
3 you very much. Appreciate it.

4 Please sir?

5 MR. BLAIR: Hello, sir. My name is
6 Philip, with one L, Blair, B-L-A-I-R, Jr. I
7 had the privilege of testifying before you once
8 before --

9 JUDGE BYRNE: Yes.

10 MR. BLAIR: -- on McMillan when we
11 were talking about the water.

12 JUDGE BYRNE: The flooding case,
13 yes.

14 MR. BLAIR: And I want to thank you
15 for insisting that the cell in the northeast
16 corner be returned to the city in the status it
17 was received in when WASA is finished using it
18 for their purposes.

19 I want to be just a tiny bit
20 contrarian to start with. You people all
21 talking about the view over McMillan, imagine
22 what the view of the people in that medical

1 building is going to be. It is going to be the
2 parking lots at Washington Hospital Center.

3 A very wise architect, Christopher
4 Alexander, who I think is just the best thing
5 going and he's also very good at helping people
6 figure out what they want and inform the
7 process, once said that if you have an ugly
8 thing next to a beautiful thing you build on the
9 ugly thing to look at the beautiful thing, not
10 the other way around.

11 And that is exactly what is
12 happening on this site. We're building on the
13 beautiful thing to look at the ugly thing
14 including the wrong end of a parking structure
15 at VA Hospital which is now planned.

16 Having mentioned Mr. Alexander, I
17 want to mention another Mr. Alexander. I
18 brought this with me. This was part of the
19 materials handed out to the public who
20 participated in the meeting where we were
21 supposed to express our wishes with regard to
22 the various teams that were competing to do what

1 Vision McMillan is doing now.

2 This is from Vision McMillan
3 Partners which at the time did not include
4 Trammell Crow. Many of us thought that the
5 Vision McMillan proposal at that time was
6 clearly superior because the grand champion
7 guys for historic preservation and adaptive
8 reuse in this part of the world, the Alexander
9 Companies, who had redone Seminary, the
10 National Park Seminary, and a bunch of other
11 stuff, we were overjoyed that they were going
12 to be on the team.

13 A year and a half later my wife and
14 I were at a National Capitol Planning
15 Commission meeting and we bumped into Alexander
16 himself. And we said, well what's going on
17 with McMillan? And he said I don't know.

18 At that point he was gone. We were
19 subject to a switch and bait. They said one
20 thing and then did another. Different people
21 around this table and in the audience have
22 different moments in which they realized there

1 was a knife in their back. That was my moment
2 with regard to McMillan Vision Partners.

3 Tony's talked about the point at
4 which we discovered that negotiations were
5 happening while they were pretending that
6 things were still open with us. There is the
7 burden of my testimony, and I have a written
8 version which I will send to you to replace the
9 written version I gave you at the last hearing.

10 The burden of my testimony is that
11 there is really mistrust in the community,
12 distrust of Vision McMillan Partners. We
13 don't believe them when they say things.

14 I can cite some examples and some of
15 them are very pertinent to you. You were shown
16 a slide in which Olmsted was quoted
17 conditionally as saying it might not be a good
18 idea to let people out on the plain.

19 That was a conditional statement.
20 But we know exactly what he did. The path, the
21 Olmsted Walk on the northern tier of cells is
22 on the plain. It's not the sidewalk. It went

1 over the cells. It not only went out over the
2 cells, it used these purportedly dangerous
3 manhole covers as stepping stones.

4 Moreover, the Walk was a very interesting
5 thing to do because you're walking out over the
6 cells, but when you got to the service court you
7 went down a set of stairs into the service court
8 and then back up again. There was no
9 effort to preserve people from the dangers of
10 an industrial site. There was an effort to
11 guide people's experience and to say this is
12 what's here. Look at it.

13 When we are told that it was never
14 a park, we're being lied to. When we are told
15 -- but we're being lied to with a purpose.
16 Because then any person who wants to do this
17 development who is in a political office can
18 say, oh well, the experts say it was never a
19 park. Not true. That is historical
20 malpractice. It's shameful.

21 And I will cite one further case
22 because you can tell I've got to watch my blood

1 pressure. I'll cite one other particular
2 instance of the lack of trust that we have that
3 I think makes it very difficult for any of us
4 to put any faith in the good faith of the
5 proposed developers of this project.

6 We had a zoning hearing and at the
7 last minute view lines had come up as an issue,
8 and the executive director, or I may not get the
9 title exactly right, of Vision McMillan
10 partnership, under oath, looked at these board
11 of zoning and said that she had personally
12 looked to see if the Capitol was visible from
13 Michigan Avenue along the site and that it
14 wasn't.

15 Lo and behold, we had a person in the
16 audience who had pictures on her cell phone
17 which could be shown to this person, who when
18 her lie was exposed questioned whether the
19 picture had been fraudulently created. And we
20 have still not been apologized to about that and
21 now would be an appropriate time to do that, Ms.
22 Corbett.

1 That is the kind of bad blood and
2 mistrust that has been engendered not by the
3 community but by two groups of people, certain
4 political figures in this city and the Vision
5 McMillan Partners.

6 JUDGE BYRNE: So when you say that
7 the site was used as a park, are you referring
8 to anything beyond the Olmsted Walk?

9 MR. BLAIR: Oh, of course. We have
10 aerial photography of baseball diamonds on the
11 park. If you look at the pictures that were
12 part of their own submission you see paths all
13 across the park. They were not used by the
14 workmen necessarily on the site, it was walked
15 over.

16 I have my dear neighbor Cordelia
17 Freeman, who couldn't come, I said to her, Ms.
18 Cordelia, they're saying it was never a park.
19 And she said, they're lying. She said, I slept
20 out there every night month after month because
21 before air conditioning it was the only
22 habitable place.

1 And if it comes to believe Ms.
2 Freeman or Traceries, I'm going to believe Ms.
3 Freeman. She's never lied to me before.

4 JUDGE BYRNE: All right, thank you
5 Mr. Blair.

6 MR. BLAIR: Thank you.

7 Do I get the apology? Never mind,
8 never mind.

9 JUDGE BYRNE: Yes, sir.

10 MR. YOUNGBLOOD: Hello.

11 JUDGE BYRNE: Hi.

12 MR. YOUNGBLOOD: How are you doing?

13 JUDGE BYRNE: All right. Have you
14 signed the --

15 MR. YOUNGBLOOD: I have signed the
16 document.

17 JUDGE BYRNE: Okay, good. State
18 your name for the record please and give us your
19 statement.

20 MR. YOUNGBLOOD: Hello, my name is
21 Hugh Youngblood. I am one of the officers of
22 Friends of McMillan Park, former ANC in the

1 Bloomingdale community and the chair of the
2 board of Sierra Club, D.C. Chapter.

3 I'm speaking today in opposition to
4 the application for a demolition permit and
5 subdivision based on community concerns and
6 community position data that's recently
7 revealed, particularly the new citywide poll by
8 WAMU in the Washington City Paper regarding the
9 future of the park.

10 One question that the poll posed was
11 to each ward, and I'm speaking to the Ward 5
12 results in particular, should McMillan Park be
13 developed?

14 Now Council Member McDuffie's made
15 his position clear in favor and support of the
16 development plan in numerous venues. Proposed
17 plans characterized by demolition of over 90
18 percent of the historic structures, intense
19 height and density and absence of any plausible
20 mitigation plan for major issues, particularly
21 traffic, pollution and sustainability. Of
22 course the development would destroy the

1 overall park nature of the site.

2 The recent poll shows that 75
3 percent of Ward 5 respondents are either not
4 sure, 26 percent not sure in particular, and
5 that the development of the park should be
6 allowed to go forward, or they directly oppose
7 it, 49 percent. They oppose the project going
8 forward as currently proposed.

9 JUDGE BYRNE: Are they responding
10 to the statement of the project that you just
11 read, or is it, I mean you just described the
12 project.

13 MR. YOUNGBLOOD: Oh, no, they were
14 simply responding to the question, ■Should the
15 site being developed?•

16 JUDGE BYRNE: Okay.

17 MR. YOUNGBLOOD: And then in
18 response to that question as well, only 25
19 percent of Ward 5 respondents think that the
20 project should go forward. So it's kind of 3:1
21 ratio.

22 Considering the amount of exposure

1 that the proponents of the development have
2 received through public funding and McDuffie's
3 personal support, the results of this poll can
4 be considered unambiguous rebuttal of the
5 deputy mayor's plans by District residents who
6 are most directly concerned, Ward 5 residents.

7 Residents are also concerned about
8 the public subsidy of \$50 million, and we've
9 heard more, that have been budgeted by the
10 deputy mayor and approved by the council for the
11 demolition of the park.

12 So the candidates for Ward 5 council
13 have been asked for their positions and we see
14 that they continue to support the proposal. It
15 appears significantly at odds with community
16 opinion and so just wanted to bring that issue
17 to your attention. Thank you.

18 JUDGE BYRNE: Thank you. Ma'am?

19 MS. HANRAHAN: Thank you very much,
20 and thank you for your patience.

21 JUDGE BYRNE: Oh not at all. Have
22 you signed in?

1 MS. HANRAHAN: Yes, sir, this
2 morning.

3 JUDGE BYRNE: Okay, very good.
4 Please state your name for the record and let's
5 hear your testimony.

6 MS. HANRAHAN: Yes, I want to thank
7 you very much. I'm from Ward 2. I consider
8 this land to belong to the city as a whole, not
9 just to Ward 5. I think it's such a treasure
10 that it is a citywide treasure.

11 I want to say that for the last five
12 months, six of us in this room have stood at the
13 intersection every Tuesday morning of North
14 Capitol and Michigan and held up signs.

15 Maybe two times out of that whole period
16 have ambulances not had to cross coming toward
17 the hospital, they can't get through, they
18 cross the median, they go against the traffic
19 so they can turn left at Children's Hospital.
20 Now that's without the development.

21 When we talk to people at the
22 intersection, every time they stop and we see

1 a D.C. license plate, we make them roll down
2 their window, and they say do you know that
3 thousands more cars will be here every morning
4 for rush hour? They go, oh my god. It's
5 impossible.

6 So from a health and safety point of
7 view this is insane and from an efficiency point
8 of view of getting to work it's insane.

9 Secondly, I would like to pick up on this
10 lack of trust, and I would like, Mr. Lynch is
11 here. And I would like him to tell me again in
12 plain English who can use the community center?

13 Will all the children in the
14 neighborhood have access to it? Because when
15 I queried you about this you said, to the extent
16 that's allowed under D.C. law, which means
17 nothing to me.

18 I am afraid this so-called
19 community center, which will be privately
20 managed, will keep out the very children that
21 need to be here. In surveys of Ward 5, obesity,
22 diabetes, the fact they have no recreational

1 space to speak of compared to the other wards
2 in this city except for Ward 8. This should be
3 open to all children.

4 And I'm afraid we're talking about
5 a private, it's not even a recreation center.
6 It's a community center for old people to sit
7 around the swimming pool. It has no organized
8 sports on it. Somebody said, well you can have
9 a Frisbee game if you want it.

10 So Mr. Lynch, please tell me so that
11 I can have more trust in you what kind of
12 activities will be allowed on those so-called,
13 that magnanimous, what is it, eight acres?
14 What kind of activities will be allowed there?

15 JUDGE BYRNE: Sorry, ma'am, this is
16 not a situation in which you can ask them
17 questions.

18 MS. HANRAHAN: Oh okay. But I
19 wanted to follow up on Phil saying -- also I
20 wanted to say one last thing, which I think is
21 really very important. There are two people in
22 this room and some other people who actually

1 stopped the freeway from bisecting our city
2 that preserved our city so that we can sit
3 around and talk about these important projects,
4 and they're both --

5 (Applause)

6 MS. HANRAHAN: -- and they're right
7 back here and I would like them to just sort of,
8 Angela Rooney and her husband.

9 And they're here today because they
10 think this project, they're in their 90s, but
11 they think this project is so important that
12 they want to be here to listen and to see it.

13 And I think that this project
14 reminds me, I think the city would approve the
15 freeway today. I think everything is so wired
16 that we would approve the freeway today.

17 This is a big project. It's too big
18 to stop. It's like a goddamn bank. You can't
19 stop it because it's too big. This is our land,
20 everybody. This is our land and we need to stop
21 it and use it for what we want to use it for.
22 Thank you.

1 JUDGE BYRNE: Thank you.

2 (Applause)

3 MS. HANRAHAN: Oh, my name is Debby
4 Hanrahan.

5 JUDGE BYRNE: Thank you. Make
6 sure we have that.

7 Anybody else?

8 MR. SCHULMAN: My name is Jim
9 Schulman. I'm a registered architect in the
10 District. And Hearing Officer Byrne, I am the
11 founder of Community Forklift, a surplus and
12 salvage building materials outlet. I also
13 currently serve as the treasurer of the
14 Building Materials Reuse Association.

15 Among other preservation efforts, I
16 was involved with the National Parks Service
17 restoration of the Harry S. Truman Home in
18 Independence, Missouri, and various upgrades
19 to historic properties at the Washington Navy
20 Yard. The current development effort at
21 McMillan Park concerns the whole District, as
22 Ms. Hanrahan just said, not just Ward 5, just

1 as it did when the facility in question was a
2 functioning filtration site.

3 As a D.C. resident, I strongly urge
4 you to deny the raze permit at hand and send
5 Vision McMillan Partners back to the drawing
6 board with respect to their request to destroy
7 the vast majority of the sand filter caverns at
8 the McMillan Park Reservoir historic district.

9 Although the design of the VMP
10 project has improved significantly over time,
11 it yet remains a project of merit but not
12 special merit. Compared to the ingenuity of
13 the original sand filtration system, the
14 current plan for the site demonstrates only
15 business interest as usual.

16 Even with the employment
17 opportunities projected, it will benefit the
18 developers far more than District residents and
19 diminish a significant physical record of
20 D.C.'s history. The latest incarnation of the
21 VMP plan captures some aesthetic aspects of the
22 McMillan site but dishonors its historic role.

1 The fact that the development team
2 has not made a serious effort to develop an
3 adaptive reuse scheme for the one cell that they
4 propose to preserve is emblematic of the team's
5 disdain for serious preservation.

6 I suggest that the District as
7 owners should embrace the opportunity to
8 celebrate and adapt as many of the underground
9 reservoir caverns for both civic and commercial
10 purposes as possible, and thereby benefit in a
11 big way from the work of the past that has been
12 missed in the current design. The VMP
13 proposal fails to meet the basic terms of their
14 own master plan which calls for the
15 preservation of a majority of the structures
16 both underground and above ground and/or
17 adapted for incorporation and reuse in the
18 proposed development.

19 JUDGE BYRNE: Mr. Schulman, can
20 you, what's the citation to that document?

21 MR. SCHULMAN: Good question. It
22 was from their own report. It's on the website

1 for this --

2 JUDGE BYRNE: In their
3 application? You don't mean the application
4 to me, no. You don't mean that.

5 MR. SCHULMAN: It definitely was
6 one that's on the HPRB record.

7 JUDGE BYRNE: Application.

8 MR. SCHULMAN: Yes.

9 JUDGE BYRNE: Okay. All right, go
10 ahead, proceed.

11 MR. SCHULMAN: Yes, I quoted it
12 verbatim, but I apologize for not knowing
13 exactly which report that came from. But it's
14 one of the, probably the initial application.

15 I urge you to direct the District to
16 use creativity with a more responsive
17 development team, if needed, to repair,
18 reinforce and utilize far more of the existing
19 cavern vaults.

20 I am reminded of the case of the
21 cathedral of St. Francis de Sales in Oakland,
22 California that was seriously damaged in the

1 Loma Prieta earthquake in 1989. The local
2 diocese wanted to tear down the structure and
3 gave as evidence an assessment by a structural
4 engineer that repairs would cost in the range
5 of \$25 million.

6 Area residents rallied to the
7 defense of their landmark and found that
8 through some sophisticated and elegant
9 engineering that the cathedral could become
10 useful again through the expense of only \$2
11 million.

12 And today it is once again open for
13 business as a church and a community center as
14 should a robust McMillan Park featuring a great
15 number of impressive and amazing cathedral
16 vaults. I thank you for the opportunity to
17 share my views.

18 JUDGE BYRNE: Thank you very much,
19 Mr. Schulman.

20 MS. BROWN: Mr. Schulman, you don't
21 have a copy of your statement?

22 MR. SCHULMAN: I do and I'm happy to

1 share it.

2 MS. BROWN: Thank you.

3 JUDGE BYRNE: I don't have one.
4 Thank you.

5 MR. SCHULMAN: If I may, I just
6 wanted to add that I was on the design review
7 committee for the 11th Street Bridge Park
8 competition, and I can really see how having a
9 design competition really helped that process
10 to let sort of good design rise to the fore.

11 So I'm not sure where we are on that,
12 but I'm agreeing basically with others who have
13 testified to that effect.

14 JUDGE BYRNE: Okay, thank you.

15 Anybody else? Yes, ma'am. Hi.

16 MS. ROWAN: Hello.

17 JUDGE BYRNE: Have you signed in?

18 MS. ROWAN: Yes, I have.

19 JUDGE BYRNE: Thank you.

20 MS. ROWAN: Thank you. My name is
21 Mary Pat Rowan. I'm a Brookland resident and
22 I'm a landscape architect. I would like to

1 support completely Jim Schulman's testimony.
2 He kind of said everything I wanted to say but
3 better.

4 But I have just a few comments.
5 When this, many, many years, in 2000, when I
6 started being involved in McMillan we used to
7 refer to McMillan as a sacred site. I haven't
8 heard that today. But that it was so special
9 that we called it a sacred site.

10 And I think the foundation of
11 McMillan is now metaphorically and physically
12 being destroyed. Nothing proposed on VMP is
13 reflective of the importance of this site.
14 What is being proposed could be done anywhere
15 without traffic and circulation disruptions.

16 There's nothing exemplary, in my
17 opinion, in the design of the buildings or
18 spaces. Everything is pretty ordinary and
19 mundane.

20 Ward 5, where I live, is under such
21 intensive development as you just saw in
22 someone's illustration that the site should

1 really be preserved for a park. Now even more
2 a park is needed because there's so much
3 happening in that area, and it's the perfect
4 spot.

5 The -- well, I won't go into that.
6 There is no proposal in the VMP plan to
7 adaptively reuse any of the unique historical
8 resources which this site offers. The
9 original Olmsted Walk is talked about as being
10 preserved and adapted, but this historic
11 resource is interrupted, paved over and changed
12 throughout the site. So it's no longer the
13 Olmsted Walk.

14 These additions should adapt
15 themselves to honor the site, not obliterate it
16 or adjust it. They should adjust the buildings
17 to adapt to the site. Actually the fact that
18 this was an Olmsted Park is nowhere honored.
19 The Olmsted Park is forgotten and destroyed.
20 Ironically, some might say the Olmsted
21 connection, it's history. Thank you very
22 much.

1 JUDGE BYRNE: Thank you. Thank
2 you.

3 All right, have you signed the
4 witness sheet?

5 MS. THARRINGTON: I did.

6 JUDGE BYRNE: Okay, then please --

7 MS. THARRINGTON: I signed it as
8 Alexandra Tharrington.

9 JUDGE BYRNE: That's fine.

10 MS. THARRINGTON: Okay. My name
11 is Allie Tharrington and I have no financial
12 interest in this project except as a D.C.
13 taxpayer.

14 Before I bought a house off North
15 Capitol Street in Manor Park in May, I lived in
16 Ward 5 for five years, so I just recently moved.
17 As a child visiting from North Carolina, the
18 National Mall was a really majestic place full
19 of wonder and inspiring sights and public
20 spaces that I could never experience back home,
21 and back then D.C. represented for me a place
22 where the past meets the yet to come, history

1 meets vision, and where former foresight meets
2 future dreaming.

3 It has always been my favorite city
4 and where I wanted to spend my adult life. So
5 I'm real excited about owning a house here and
6 getting to be a part of this community for
7 decades to come.

8 So as I'm looking forward towards
9 spending these next decades of my life as a
10 homeowner here, joining a community, raising a
11 family, having kids, I am really dismayed and
12 really disturbed by the lack of vision that our
13 political leaders and our planning
14 professionals seem to have when it comes to the
15 future of our city's really great places.

16 We the people of D.C. have in our
17 possession a really special and beautiful asset
18 that could be turned into something visionary,
19 creative, iconic, and what's been offered by
20 the proposed development in VMP's plans
21 couldn't be more different.

22 Twelve-story medical office

1 buildings, big box grocery, even more traffic
2 loads and a corporate lawn managed by a business
3 improvement district. You've heard a lot
4 about these qualms today.

5 So I spent this past weekend in
6 Chicago with a few friends who had never visited
7 the city, and as the sun set we took a walk
8 through one of Chicago's most celebrated public
9 spaces, Millennium Park. And they
10 immediately remarked on the park's ability to
11 convey a sense of wide open space while also
12 serving as a central place for public
13 gathering. And they said, isn't this what you
14 think McMillan Park should be like? They sort
15 of immediately grasped what they thought was
16 kind of a metaphor there.

17 And at 24-1/2 acres, Millennium
18 Park is almost identical in size to the space
19 at McMillan. And despite issues with cost and
20 schedule, critics have described that space as
21 extraordinary, iconic, and the product of an
22 ensemble of creative spirits.

1 And in its first year the park, its
2 features and the people associated with its
3 design received over 30 awards. And I'm not an
4 urban planning expert, but nothing about what
5 VMP is offering up comes even close to any of
6 those accolades in my mind.

7 So I've stood inside what is
8 arguably the most distinctive part of the
9 McMillan site, one of the underground
10 filtration cells, and obviously a big reason
11 that we're here today. And that space's
12 specialness is really unmistakable and almost
13 spiritual. A plan for preserving or reusing
14 those in some kind of creative way has never
15 even been put up for a design competition, let
16 alone a competitive bid, and that is a real
17 shame on our elected officials.

18 Those underground cells are an
19 invaluable and unique part of this city's
20 history and the idea that they must be destroyed
21 wholesale, indiscriminately, in order to
22 create something meaningful at McMillan only

1 reiterates and reinforces our city's current
2 trend of trading public use for private profit
3 and trading historic structures for
4 unremarkable, pedestrian, mixed use
5 development.

6 Cities all around the world are
7 moving into the future with forward thinking,
8 adaptive reuse projects that truly serve the
9 public. Why not the District of Columbia? I
10 really urge you to reject the case for special
11 merit for VMP's proposed development at
12 McMillan Park. Thank you.

13 JUDGE BYRNE: Thank you very much.

14 So okay, is there anyone else? Do
15 other people want to testify? All right. Two
16 more.

17 Okay, so here's the rub. We have to
18 be out of this room at 5 o'clock, and there's
19 still more proceedings to go. After this, you
20 finish, you folks will have a chance to testify.
21 But then the parties are going to want to do
22 rebuttal of course.

1 And so what we're going to do is
2 remove ourselves to the Office of Planning
3 conference room on the sixth floor. And, well,
4 I guess we can have one more witness before we
5 do that.

6 And there's probably not room in
7 there for everybody who would like to sit in
8 there, but we'll, you know, and we're going to
9 go on. I don't know when we're going to go on
10 to, but we're going to finish the proceeding
11 tonight. So that's what we're going to do.

12 So I think we can have one more
13 witness, and then we're going to adjourn and
14 move to that conference room. Okay. And
15 we're going to have to wait for our friend the
16 court reporter to be able to set up in there.

17 MS. WAGNER: My name is Cheryl
18 Wagner. I'm a member of the MAG, member of the
19 Friends of McMillan. I'm an acting secretary
20 of the Park Place I Condominium board, and I
21 want to thank you for this opportunity to
22 testify. I'll try to make this one minute.

1 I live across the street from the
2 McMillan site at the corner of Michigan and
3 North Capitol, so this proposed project is of
4 vital importance to me.

5 I just want to say something.
6 Probably a lot of this has already been stated
7 about the exemplary architecture and all that
8 and of course I don't feel that the VMP project
9 is significant. But I want to say one thing
10 about addressing statements that traffic
11 mitigation can be done through bicycles.

12 I have lived at that corner for 25
13 years and I've commuted by bicycle down North
14 Capitol Street for 12 years. And it has become
15 much more, much busier.

16 I was hit by a car in 2007 at
17 Franklin Street at that corner, and it's become
18 death-defying recently. I can't imagine with
19 6,000 more cars that there will be any
20 opportunity for bringing in, did they say we
21 were going to have a bicycle rack and all that?
22 There's no way. You can't ride a bicycle down

1 that street.

2 So I'm just saying the traffic's
3 going to be a nightmare. And the rest, I think,
4 has already been stated about the architecture
5 and all that. So I'll wrap up.

6 JUDGE BYRNE: Okay. Well, thank
7 you very much for your testimony.

8 Ma'am, if you want to testify I
9 think we do have time before we stop.

10 MS. MCDANIEL: I signed it.

11 JUDGE BYRNE: Good.

12 MS. MCDANIEL: My name is Betsy
13 McDaniel. I live on First Street in
14 Bloomingdale, the street that will be greatly
15 impacted by the development at McMillan.

16 Other than being a homeowner, taxpayer
17 and voter, I have no financial interest in the
18 project, but I do have a historical interest in
19 the site.

20 To me none of the parallel cases
21 cited by the applicant or HPO are comparable.
22 As much as the word was overused and I really

1 hate it, McMillan is unique. Its underground
2 cells are a huge factor in this, and I think
3 we're here today because HPRB has said this plan
4 is too destructive.

5 I think a lot of people have talked
6 about it, but I don't think anyone has said
7 that, and it's something I mentioned to HPRB.
8 I think one intact cell should be preserved. I
9 don't see how you can convey the historic
10 concept, I don't see how you can understand how
11 the site functions if you do not have one
12 complete cell as is to show how the water was
13 purified.

14 This is a huge project. It was
15 built the same year my house was and it was
16 rushed because they wanted to get it finished
17 so people could have purified water.

18 This is the same water that the city
19 was, residents were using, the Capitol was
20 using. It was just such an important event in
21 the city's history.

22 So as for the views, I've only

1 visited the Soldiers' Home and Lincoln's
2 Cottage one time and it was a foggy day, so I
3 don't know what the views are like from there.

4 But the views from Michigan Avenue
5 where I walk a lot are fabulous, and no one's
6 mentioned, maybe no one notices, but you can see
7 the Library of Congress. You can see the Post
8 Office Building, and hopefully Mr. Trump won't
9 mess that up.

10 There's just, you can see so much
11 there. And I don't think it's, the Soldiers'
12 Home, I think, is the second highest site in the
13 city after Fort Reno, and so McMillan's not
14 quite as high but it has a view that cannot be
15 replaced.

16 And I don't think it's right that a
17 few people in a medical office building or who
18 can look at a parking lot and then the people
19 in the other apartment buildings in front,
20 they're going to take the view that should be
21 shared by the whole city.

22 People have had that view for, you

1 know, over 100 years. The only problem I won't
2 have if the buildings are attractive is that
3 from my house the development will block my view
4 of the Children's Hospital which is not my
5 favorite view.

6 As for special merit, I think Mr.
7 Bader and Ms. Merritt presented ample evidence
8 to say that there is not special merit to these
9 buildings. You know, you can build these
10 office buildings and these apartments and
11 retail anywhere in the city, preferably closer
12 to a Metro station and not in a location where
13 there's really no good grid system for the
14 traffic.

15 There's a problem now in DDOT and
16 Metro can't fix it now. So when there are
17 thousands and thousands more cars, I don't see
18 how they're going to fix that if they can't fix
19 the problem now.

20 So, and it has been mentioned since,
21 it came up but I wanted to mention that I really
22 feel like the impetus for moving the park was

1 the DC Water project, and you allowed them to
2 raze two cells in the southwest corner. That's
3 where the park, you know, is now because it'll
4 be over the new space.

5 And I did want to clarify. I think
6 someone, there was a misunderstanding about the
7 poll. You questioned Mr. Youngblood, about
8 the poll. And the poll that WAMU and the Kojo
9 Nnamdi Show conducted, it did reference the
10 current plan to develop McMillan that everyone
11 was opposed to.

12 JUDGE BYRNE: Okay, thank you very
13 much. Thank you. All right, we're going to
14 temporarily adjourn while we travel, and when
15 we will resume, when Mr. Court Reporter's ready
16 to go.

17 (Whereupon, the above-entitled
18 matter went off the record at 5:01 p.m. and
19 resumed at 5:13 p.m.)

20 JUDGE BYRNE: Now my understanding
21 is that we're done. Is there anybody else who
22 was going to testify? All right.

1 (Off microphone discussion)

2 MR. NORMAN: Yes. We have one
3 other witness.

4 JUDGE BYRNE: You do have one other
5 person? All right, ma'am, why don't you come
6 up here.

7 MS. HOLLIDAY: This will be
8 somewhat sketchy because it's kind of
9 extemporaneous, but I will be submitting
10 written testimony. When does that close?

11 JUDGE BYRNE: So, well we can talk
12 about that. We'll have to talk about that at
13 the end.

14 MS. HOLLIDAY: Okay, because I read
15 someplace --

16 JUDGE BYRNE: Because they're
17 going to have an opportunity to -- I think it
18 will probably be about two weeks for a witness.

19 MS. HOLLIDAY: Yes, okay.

20 JUDGE BYRNE: And you're going to
21 have to send it to everybody.

22 MS. HOLLIDAY: Who's everybody?

1 JUDGE BYRNE: Well you're going to
2 have send it to Ms. Brown and to Ms. Ferster.

3 MR. BLAIR: Could we be told the
4 email addresses to send our testimony?

5 JUDGE BYRNE: Just send it to Mr.
6 Callcott.

7 MR. BLAIR: Okay. He will
8 distribute it to the --

9 MR. CALLCOTT: Yes.

10 MR. BLAIR: Okay.

11 MR. CALLCOTT: Yes, does everybody
12 have my email address?

13 MS. HOLLIDAY: No.

14 MR. CALLCOTT: It's Steve,
15 S-T-E-V-E, dot Callcott, C-A-L-L-C-O-T-T, at
16 D-C dot gov.

17 MS. HOLLIDAY: C-O-C-A?

18 MR. CALLCOTT: C-A-L-L- --

19 MS. HOLLIDAY: C-O-T-T.

20 MR. CALLCOTT: -- C-O-T-T.

21 MS. HOLLIDAY: Steve, S-T-E-V-E?

22 MR. CALLCOTT: Exactly.

1 JUDGE BYRNE: Yes, dot Callcott.

2 MS. HOLLIDAY: At?

3 JUDGE BYRNE: D-C dot gov.

4 MR. CALLCOTT: D-C dot gov.

5 MS. HOLLIDAY: Okay.

6 JUDGE BYRNE: All right, ma'am,
7 have you signed into the witness list?

8 MS. HOLLIDAY: Yes.

9 JUDGE BYRNE: Okay, good. Well
10 then you can state your name for the record and
11 we'll get your testimony.

12 MS. HOLLIDAY: Okay. Let me get my
13 little notes together.

14 JUDGE BYRNE: Sure.

15 MS. HOLLIDAY: Okay. My name is
16 Bertha Holliday. I'm the Second Vice
17 President of Bloomingdale Civic Association
18 and I'm a resident of Bloomingdale living at 49
19 T Street NW.

20 I've been involved in this project
21 for a number of years and I've had two
22 continuing concerns about the project. One is

1 that I've been concerned that the McMillan site
2 is recognized not only as an asset for its
3 owners and the DC government, but also as a
4 major asset for its abutting residential
5 neighborhoods and city residents in general.

6 And one of my continuing quarrels
7 has been that there has been a continuous, what
8 I consider deception and manipulation of
9 information given to residents of abutting
10 neighborhoods and there's been a resistance of
11 the developer and the city to engage those
12 neighborhoods and their diverse concerns and
13 opinions in a genuine pursuit of common ground
14 and common understanding of why and why not
15 certain things can or cannot be done.

16 And I think these two concerns have
17 resulted in benefits and proposals that I
18 believe really erode the notion of special
19 merit of this proposal and plan and, therefore,
20 the legitimacy and need to destroy the
21 underground structures.

22 Now in particular what I want to

1 focus on are issues related, first of all, to
2 the healthcare building and issues related to
3 some aspects of the community benefits
4 agreement, which I feel really erode the notion
5 of special benefits and special merit.

6 With the healthcare building, the
7 healthcare building has been proffered by the
8 developers as the economic engine of the
9 development.

10 Initially it's proposed that over a
11 million square feet of space be developed. I
12 don't know, I don't know if it's ten or thirteen
13 stories, I don't know, but it's 115 feet high,
14 right, is the current proposal?

15 MR. BLAIR: One hundred fifteen
16 feet, yes.

17 MS. HOLLIDAY: Yes. A high, a very
18 dense development for that area. One of the
19 things that was interesting in some of the
20 material that was recently submitted by the
21 developers to the City Council was they, in the
22 financial analysis the consultant went through

1 various comparability studies.

2 And one of the things that was noted
3 in some of the comparability studies as a
4 footnote was that in some cases persons who had
5 initially purchased parcels of land with intent
6 of developing those parcels had to sell the
7 parcels because they were unable to get
8 financing because they were unable to identify
9 a primary tenant.

10 Now here we have a situation where
11 we have a million square foot healthcare
12 building for which -- for public purposes no
13 primary tenant has been identified.

14 As a healthcare building it is not
15 only huge, but it is also very specialized in
16 its use. The city is going to probably have to
17 invest a minimum of \$100 million to get the land
18 and to destroy the underground structures to a
19 point that it is ready for vertical
20 development, okay.

21 They spend \$100 million of our
22 money, they've destroyed the underground

1 structures, and we have no sense that they are
2 going to be able to get financing for this,
3 which means that the healthcare building is a
4 very high risk financial proposition.

5 As a high risk financial
6 proposition I think it really erodes the
7 special merit of that building in terms of it
8 being an economic engine for the development.

9 I think there are other provisions
10 of the plan, especially related to the
11 Community Benefit Agreement, that also erode
12 the special merit and do not in any sense offset
13 the loss of assets of the historical
14 underground structures.

15 So, for example, one of the
16 provisions of the Community Benefit Agreement
17 is that \$150,000 will be set aside for
18 commercial facade improvements on North
19 Capitol Street, that money is to be
20 administered by the North Capitol Main Street
21 Program and it is to be provided to them over,
22 at the rate of I believe \$30,000 a year over a

1 five year period.

2 I would contend that you cannot do
3 a commercial facade, not a single commercial
4 facade improvement for \$30,000. So if the
5 money for all practical purposes in the way that
6 it is proposed to be handed out erodes it having
7 any significant impact, and that can be pointed
8 out again and again.

9 Unfortunately, I do not have a copy
10 of the Community Benefit Agreement before me,
11 but that can be pointed out again and again in
12 various provisions of the Community Benefit
13 Agreement where money is parceled out over time
14 in amounts that are insignificant, where they
15 cannot make a significant impact.

16 The same goes for the money that's
17 designated for the STEM training at the high
18 schools, so that the -- it's already been noted
19 that the development of the training is out of
20 sync with the construction, someone pointed
21 that out earlier.

22 There are all kinds of flaws in

1 their Community Benefit Agreement that really
2 erode any special merit that that agreement
3 might have. So that's basically my testimony
4 and I'll go into more detail in writing.

5 JUDGE BYRNE: Thank you. All
6 right, thank you very much.

7 MS. HOLLIDAY: Thank you.

8 JUDGE BYRNE: Okay. So I think at
9 this time then I think we're ready for rebuttal
10 that you would like to put on, Ms. Brown.

11 MS. BROWN: Yes, sir. We'd like to
12 call for our first rebuttal witness Mr. Kirk
13 Mettam, who was previously qualified as the
14 expert in structural engineering.

15 JUDGE BYRNE: Okay, good.

16 MS. BROWN: And I guess they're all
17 previously sworn in?

18 JUDGE BYRNE: Yes.

19 MS. BROWN: Yes.

20 JUDGE BYRNE: They're all
21 previously sworn in.

22 MALE PARTICIPANT: Good.

1 MR. METTAM: Kirk Mettam, for the
2 record.

3 MS. BROWN: Yes. For the record
4 could you state your name again?

5 MR. METTAM: Yes. Kirk Mettam.

6 MS. BROWN: Mr. Mettam, you saw a
7 couple of different plans in today's testimony
8 and in particular you saw the -- you heard the
9 testimony of the Opponent's expert in
10 structural engineering.

11 Could you give us your evaluation of
12 that report?

13 MR. METTAM: Absolutely. I
14 appreciate the opportunity because I tortured
15 everybody with structural engineering facts
16 and figures before and I imagine with that
17 testimony there were probably some questions.

18 So I'd like to -- I've jotted down
19 my thoughts on that. So Susan Burmeister's
20 testimony was titled "Structural
21 Considerations," it offered sort of a
22 simplification of the structure, looking more

1 at the structure in terms of an individual
2 column and how the loads are chased through a
3 column.

4 This is, the structure is not that
5 simple and what I'd like to do is touch on three
6 points, the discussion of column
7 reinforcement, the concern about whether or not
8 unreinforced concrete vaults are permitted,
9 and then also this idea of a load swap analysis.

10 But very briefly, we agree that both
11 methods for column reinforcement have been used
12 successfully in the past, but the two methods
13 described was one of a fiber reinforcement
14 shell and another one where a layer of concrete
15 with reinforcement would be added.

16 We find both of these inadequate for
17 this structure. We did consider both of these.
18 For three reasons, first, both of these methods
19 are just not acceptable from a preservation
20 perspective. They'll have a very significant
21 impact on the visual character of the
22 structure.

1 Perhaps more importantly on the
2 technical side though is the top and the bottom
3 of these columns flare out and it's not possible
4 to engage that flare in these kinds of
5 reinforcement, so you leave the structure above
6 and below unreinforced.

7 So, in essence, putting these wraps
8 on will effectively not improve the performance
9 of the structure. It would enable us to call
10 it a reinforced structure, but it would do that
11 at the expense of the preservation and to no
12 benefit of the structural performance.

13 JUDGE BYRNE: So that's -- so the
14 fact that it would not benefit the performance
15 seems to be in direct contradiction to the
16 testimony we heard earlier today?

17 MR. METTAM: Correct. And,
18 lastly, another sort of technical nuance is
19 that these kinds of fiber wraps are only
20 intended for reinforced columns.

21 In a fire event the fire, the wrap
22 disappears, it's you're left with an

1 unreinforced column, it does not achieve a fire
2 rating.

3 JUDGE BYRNE: Okay.

4 MR. METTAM: There was a statement
5 made today that unreinforced concrete vaults
6 are permitted by code, this is not the case.
7 Traditional construction often utilizes
8 unreinforced concrete or unreinforced masonry
9 vaults, but those are almost always accompanied
10 by an external reinforcement, we call them tie
11 rods, that sort of thing.

12 And those are permitted to stay in
13 place in historic buildings, that's not the
14 case with this building.

15 JUDGE BYRNE: You mean you couldn't
16 put a metal rod in?

17 MR. METTAM: You could. You could
18 retrofit this entire building with metal rods,
19 again to the detriment of the preservation.
20 The metal rod would then have to be fireproofed
21 as well.

22 So you'd have a 1-inch rod with, you

1 know, could be a 3-inch diameter --

2 JUDGE BYRNE: And the rod would
3 have to be external to the pillar?

4 MR. METTAM: Correct. It would be
5 down, and it would also cut into the headroom.
6 On this load swap analysis --

7 JUDGE BYRNE: Tell me what you mean
8 by that, please?

9 MR. METTAM: Sure. The term was
10 simply to say if I take off 100 pounds I can put
11 back 100 pounds.

12 JUDGE BYRNE: Oh, yes, okay.

13 MR. METTAM: And that analysis was
14 used by Ms. Burmeister to evaluate the
15 potential for adding new loads and used as an
16 example to demonstrate how a light frame
17 construction could be used in various
18 scenarios.

19 It's an oversimplified analysis of
20 this structure and it fails to account for three
21 things, and all three of these were outlined in
22 our report, so I'm fearing that maybe she didn't

1 read our report.

2 But the foundations of the
3 structure, based on the CCJM data, we analyzed
4 and we found that in fact the structure is
5 overloaded at its foundation level and I think
6 that's why she chose to use this kind of load
7 swap analysis rather than sort of say okay, it's
8 overstressed today, how can we switch things
9 out?

10 So what does that mean? The
11 existing foundations by numbers are
12 overstressed. They have not been excavated
13 and observed.

14 We have a strong suspicion, as
15 stated in our report, that the foundations,
16 which is a thin unreinforced concrete slab as
17 you saw on the image, that they have already
18 failed and you'd have to remove a lot of, a large
19 volume of sand to see that.

20 In some of the cells we have seen
21 direct evidence that that failure has occurred,
22 the columns are starting to lean and so forth,

1 so that's one thing that this analysis did not
2 directly address the stresses at the foundation
3 level.

4 The load swap idea does not address
5 the specific problems with this building, which
6 are, and, again, you've heard me talk about
7 balancing loads, what it's doing is it's taking
8 all the dead load off.

9 The dead load is a stained load;
10 concrete likes compression. It's taking that
11 compression off and replacing it with a very,
12 a smaller amount of compression and a lot of
13 unbalanced live load.

14 JUDGE BYRNE: Live load meaning new
15 construction?

16 MR. METTAM: Live load meaning that
17 would just, the people in this room and the
18 furniture, which is the uncertain portion.

19 JUDGE BYRNE: Right, moving
20 around.

21 MR. METTAM: It moves around.

22 JUDGE BYRNE: Yes.

1 MR. METTAM: And so this unbalanced
2 load is exactly what the unreinforced concrete
3 vaults cannot handle, and so the analysis did
4 not address that and it's just, it's a
5 fundamental flaw with that approach.

6 Some of the schemes you also saw
7 skipped columns and put more heavy loads on one
8 column than another. Similar to our report we
9 had looked at something like that, or, I'm
10 sorry, the CCJM report we had reviewed, and said
11 you can't do that because we're going to cause
12 a great deal of settlement locally and the
13 vaults will pull apart.

14 The last slide in her presentation
15 also showed a reinforced existing vault,
16 similar to CCJM, it's just not possible. You
17 cannot reinforce those existing footage
18 because diagrams of going underneath the
19 existing vault, that excavation will bring this
20 whole structure down.

21 JUDGE BYRNE: Really? You
22 couldn't jack them and then put new supports

1 underneath them?

2 MR. METTAM: In theory you could,
3 but the sensitivity of the unreinforced
4 concrete to settlement is significantly high
5 and to what, again, to what end because that
6 scheme was putting a -- the scheme that she
7 portrayed was reinforcing isolated footings
8 with piles that went down to rock and that
9 creates almost the reverse problem because
10 we've got a very, very well supported column
11 surrounded by other columns that are settling.

12 So, you know, one of the -- for
13 settlement-sensitive structures we don't mix
14 foundations. You want it all to be on the same
15 foundation.

16 Those were the three points for the
17 testimony by the structural engineer. There
18 were also points on Ms. Gusevich's
19 presentation.

20 MS. BROWN: Yes, before we move on
21 to that I just had a couple quick follow up
22 questions.

1 MR. METTAM: Sure.

2 MS. BROWN: So setting aside the
3 issue of, you know, whether it was appropriate
4 to have the park in the center versus at the
5 southern end of the site, what about the
6 possibility of saving the least damaged cells
7 in the way that was proposed by the Opponent's
8 expert?

9 MR. METTAM: Yes, I don't know if
10 she was here for our last testimony, but the --
11 what I had described at that time is we really
12 have three large structures.

13 They're confined at their
14 perimeter. The perimeter confinement
15 actually represents a vulnerability. There's
16 damage at the perimeter.

17 Unless you keep the entire
18 structure from one end to the other, those cells
19 in the middle will have a new edge and will be
20 vulnerable, too, will experience lateral
21 movement and some damage.

22 So there really is not a -- even

1 though based on existing condition there are
2 some cells that are less damaged than others,
3 all of those cells are really equally
4 applicable.

5 MS. BROWN: Okay.

6 JUDGE BYRNE: We couldn't
7 reinforce those externally, we could put
8 reinforcements in those cells?

9 MR. METTAM: We could save
10 practically any of these cells with different
11 degrees of, you know, I hate to say, you know,
12 money can solve any problem --

13 JUDGE BYRNE: Yes.

14 MR. METTAM: -- but many of these
15 could be preserved with higher degrees of
16 difficulty.

17 JUDGE BYRNE: Okay.

18 MR. METTAM: It's a matter of
19 investment.

20 JUDGE BYRNE: It's a matter of
21 investment.

22 MR. METTAM: And commitment to

1 monitoring, that was the other important part
2 of this equation.

3 MS. BROWN: And that doesn't get to
4 the issue of whether it's good preservation
5 practice, that's just feasibility?

6 MR. METTAM: Correct. That's
7 correct.

8 MS. BROWN: Okay. And then you did
9 see some alternatives suggested by Ms. Gusevich
10 and I was wondering if you could comment on
11 whether they seem to have any structural
12 viability.

13 MR. METTAM: Yes, Ms. Gusevich.
14 There were a few things I would like to comment
15 on.

16 I think there was a discussion of,
17 there was some historic precedence of
18 unreinforced masonry structure, if I could,
19 and, specifically, sort of discussions of
20 normal courses of action with these very
21 prominent and historic buildings.

22 And all I wanted to point out was

1 that in most of those cases we're not
2 significantly altering these structures.
3 These are very important iconic buildings and
4 the normal course of action would be exactly
5 what we're doing in this project, which is
6 monitoring and reducing any activities that
7 would cause settlement or initiate
8 settlement-related damage, and then
9 eliminating any source of unbalanced loading
10 and then throughout the life of the structure
11 maintain visibility so we can see the
12 structures.

13 So I just wanted to share those
14 parallel comments. In my previous testimony,
15 I'll recap a few key points, not to go through
16 the whole thing, but these structures need
17 confinement.

18 They're underground, they're
19 confined by adjacent cells or soil. They are
20 very sensitive to differential settlement,
21 either vertical or lateral.

22 Both of those within, with a small

1 amount of lateral, or a small amount of
2 displacement in the range of three quarters of
3 an inch can cause catastrophic collapse and
4 we've shown that in our reports and my analysis.

5 And then lastly, again, loading
6 must uniform. And if you think about the
7 uniform loading, the soil on top right now is
8 uniform, every cell experiences the same amount
9 of soil.

10 When the water fills these things up
11 there's actually a tremendous amount of weight,
12 but it's uniform on that entire subslab. It's
13 when a load comes down on a column and there's
14 no load on the surrounding soil, that causes an
15 uneven settlement.

16 So specific comments related to the
17 scheme that was presented, the first was, and
18 I don't have her images obviously, but you saw
19 a lot of open cells on the edge, the confinement
20 is gone.

21 We can't do that. The cells will
22 collapse, so to sort of force something like

1 that to happen you would have to replace the
2 soils with massive external buttresses or
3 something that would be completely out of
4 character for the building.

5 She showed a sort of very heroic
6 creative structure, the eyebrow. That center
7 zone of the project represents complete removal
8 of all the historic fabric.

9 There's no preservation in those
10 zones, and, in fact, there's a pool beneath, so
11 we probably undermined the zone to the
12 perimeters.

13 There were some local renderings,
14 or sort of cutaways in the residential areas.
15 Similarly, you can't cut these without taking
16 out the thrust force, and so the cutaways are
17 not possible.

18 JUDGE BYRNE: You're talking about
19 the housing that she showed using the walls of
20 the structures as the ground floor?

21 MR. METTAM: Right. Correct.
22 And I think there were images that showed larger

1 columns removed and so forth.

2 I think, you know, what we need to
3 remember, outside of the structure, as I said
4 before, once we solve all of the structural
5 problems and we have all the other issues, how
6 do you make use of the space?

7 You know, we've got water, sewer,
8 we've got ADA, a lot of other things, a lot of
9 other, you know, force ventilation, we've got
10 electrical conduit, lighting, all of these
11 other things that have to happen, and while I
12 say they are not structural, they very quickly
13 become structural when somebody has to carve a
14 ramp or remove a wall or penetrate the slab.

15 So all of these represent
16 limitations. We shouldn't get too rosy on it
17 about the reuse of these cells. And, in the
18 end, you know, I did this before, in this room
19 if we were in some cells there would be a column
20 right in the middle of this space.

21 So we're really talking about
22 small, beautiful, but small vaults. These are

1 not cathedrals and there's 4000 of these very
2 small vaults and that is the balance.

3 And I'm here to answer the balance
4 question, but that is the balance. How much do
5 we want to spend and how many can we make use
6 of once we're done?

7 MS. BROWN: And one follow up
8 question and I realize you didn't get a chance
9 to look at these plans extensively, but based
10 on your cursory view of the slides that you saw
11 today would you estimate that there is more
12 preservation of cells or less preservation of
13 cells in these plans?

14 MR. METTAM: It is hard to say, but
15 a lot of what I saw on the plans actually can't
16 be done and I would say that by the time, in just
17 eyeballing it, it's probably a comparable
18 number of cells.

19 MS. BROWN: Thank you. That's all
20 I have on direct for you.

21 JUDGE BYRNE: Okay. Ms. Ferster?

22 MS. FERSTER: All right, yes, thank

1 you.

2 COURT REPORTER: Can I adjust one
3 of the microphones?

4 JUDGE BYRNE: Yes. One moment,
5 please.

6 COURT REPORTER: Okay.

7 JUDGE BYRNE: Okay.

8 MS. FERSTER: Thank you. So you
9 testified about what you view as the impact of
10 the various interventions that would be
11 required to structurally reinforce these
12 vaults for adaptive reuse as being impairing
13 the historic character of the cells and I have
14 a couple questions about that.

15 First is, have you ever been
16 qualified as an expert in evaluating the
17 significance of a historic structure and
18 changes or alterations that are made in making
19 a determination of whether or not, you know,
20 those changes would impair the historic
21 character or integrity of a historic structure?

22 MR. METTAM: In terms of?

1 MS. FERSTER: Have you been
2 qualified as an expert in that area?

3 MR. METTAM: No.

4 MS. FERSTER: Okay. And in your
5 non-expert opinion on that issue what would you
6 say is worse for the historic character of one
7 of these structures, doing interventions that
8 change the historic appearance of a structure
9 in certain ways or demolishing it all together?

10 MR. METTAM: Well first of all I do
11 consider myself an expert, even if I'm not
12 qualified. But secondly, that is a
13 determination to be made at this forum, that's
14 not for me to say.

15 MS. FERSTER: Okay. So you have no
16 opinion on that? You have no opinion on that,
17 okay. That's fair. So let me just ask you a
18 hypothetical question as an expert.

19 Let's say that you are being hired,
20 this project did not exist, VMP was not your
21 client and instead you were being hired by a
22 different design team and the design team told

1 you that the District of Columbia as a matter
2 of public policy had made a determination that
3 they wanted to preserve, you know, the
4 underground vaults, or as many as possible, and
5 adaptive reuse them and cost was no object, cost
6 was no object to that.

7 Would you be able to design, you
8 know, or provide the structural, and wholly
9 apart from your issues and your questions about
10 the historic character of the vault, would you
11 be able to design something that would provide
12 sufficient structural reinforcement for these
13 vaults to allow for their interior adaptive
14 reuse and some level of overbuild?

15 MR. METTAM: We have, and that's in
16 my report.

17 MS. FERSTER: Okay, thank you.

18 MR. METTAM: The deliverable would
19 be exactly the same.

20 MS. FERSTER: Okay, thank you.
21 That's it.

22 MS. MERRITT: I had a couple of

1 questions --

2 MR. METTAM: Sure.

3 MS. MERRITT: -- but Andrea already
4 asked them, so I'm fine. Thank you.

5 JUDGE BYRNE: Okay, good. Any
6 further questions?

7 MS. BROWN: Yes, just one follow up
8 question.

9 JUDGE BYRNE: Yes.

10 MS. BROWN: Cost is always a
11 consideration, isn't it though?

12 MR. METTAM: Absolutely.

13 MS. BROWN: Okay, thank you.

14 JUDGE BYRNE: Okay. Thank you
15 very much.

16 MR. METTAM: Thank you.

17 MS. BROWN: Our next witness is
18 Emily Eig. So I'm going to have a couple
19 questions for you, but I think I can skip the
20 first one.

21 We've heard a lot during today's
22 testimony and the first day of hearings about

1 the location of the park in the center or to the
2 south.

3 You've heard that there is -- the
4 VMP considered putting it at the center at one
5 time, correct?

6 MS. EIG: Correct.

7 MS. BROWN: How is it justifiable
8 under the Preservation Law to demolish the
9 most, the least damaged cells in this project?

10 In your expert opinion how is any
11 demolition of these cells justifiable? Is
12 there a balancing test that we have to go
13 through?

14 MS. EIG: I believe that there is a
15 balancing test. It is unfortunate that the
16 cells that are in the worst condition are
17 exactly where we would like there to be a park
18 today.

19 And as we determined the location of
20 the park to the south as it is allows the plinth
21 to be read, it allows the Olmsted walk to be
22 read, so that one's experience going up and down

1 North Capitol Street, which is the main
2 thoroughfare that people view this from, will
3 be retained, the sense of it will be retained.

4 When the park was proposed to be in
5 the middle that was, as it was discussed
6 earlier, there was a sense that it was going to
7 be too inwardly oriented and there were people,
8 actually many people from MAG and different
9 places who complained that that would mean it
10 wouldn't be a sense that it belonged to the
11 community and not just to the people who lived
12 at the McMillan Filtration Site.

13 And for reasons that have to do with
14 many things, including the fact that DC Water
15 came along and sort of through a complete monkey
16 wrench into what was going to happen and they
17 had to rethink this whole project, it was not
18 a simple resolution of DC Water demanding or
19 stating that they were taking those cells,
20 there was no question about it.

21 This was a solution that resulted,
22 one, in the saving of the plinth in a way that

1 was really positive because at one point when
2 the park was going to be more towards the center
3 there were plans to have the townhouses at the
4 southern end and I was -- explained how
5 important it was to keep the plinth there to
6 retain that sense of character.

7 And I was, let us say, did not
8 receive a positive response to that suggestion
9 from a preservation point of view, how
10 important it was, because the people who live
11 on Channing Street did not want to have houses
12 that looked down upon them.

13 And yet from a preservation point of
14 view, not from a community or any other point
15 of view, preservation point of view, keeping
16 that plinth was very important, but it's 20 feet
17 high at that end and by putting the park at that
18 end actually that resolved, I think, a problem
19 that everyone was much more comfortable with
20 that even though it was going to be 20 feet high
21 it was a park that could be entered now on that
22 side.

1 So it was a very good solution from
2 practical life today and the -- putting it in
3 the center wasn't as good a solution as it might
4 have been, though the cells underneath it might
5 have been able to have been preserved.

6 MS. BROWN: We have to balance, so
7 the Mayor's Agent has to balance the special
8 merit features of the project versus the
9 historical value of what's being demolished.

10 Could you repeat again what the
11 value of these particular underground cells in
12 comparison to the rest of the historic
13 resources?

14 MS. EIG: In the report that we have
15 submitted we did a very in-depth study of the
16 -- what we call the relative level of
17 significance of each of the resources after the
18 resource types were identified.

19 And we assessed it against the
20 statements of significance that were part of
21 the designation that were based on the
22 nomination that had been prepared by Ms. Sellin

1 and Mr. Norman back in, you know, the earlier,
2 20 years ago, and based on that the one thing
3 that was important was the -- there was the
4 relationship to McMillan and all of the
5 celebration via the park and his sculpture,
6 there was the relationship to the water
7 purification system as a process, and then
8 there was relation to the aesthetics of the
9 site.

10 And the thing that is important is
11 that the cells themselves really have no
12 relationship to McMillan per se in terms of a
13 celebration of his life because they were not
14 visible, as much as we've seen photographs of
15 them and they will be photographs of the Corps
16 of Engineers, they were publicly accessible.

17 They were not photographs that, you
18 know, people didn't think of it as a sacred spot
19 as it might be seen today. The romanticism is
20 very much part of our time, not back then.

21 It was an industrial site and the
22 good fortune of having Frederick J. Olmsted

1 overlay his landscape on it made it something
2 that was very attractive and that was the very
3 positive aspect to it.

4 MS. BROWN: So when you balance the
5 special merit features against the value of the
6 cells to be lost --

7 MS. EIG: Right.

8 MS. BROWN: -- what is your
9 professional opinion on that balance?

10 MS. EIG: It's a minor thing, but it
11 definitely, keeping what is visible is in fact
12 more important than keeping what's not visible
13 as much as we want to keep that, so I mean we're
14 talking very small degrees, but there's no
15 question that that which is visible, it is sort
16 of like when we look at a landmark in Washington
17 D.C. and we review, the review board reviews the
18 exterior of the building and unless there's an
19 interior designation they do not look at the
20 interior except for its structure until we're
21 sort of in a similar kind of situation.

22 Whereas not to say that the interior

1 isn't important, but it's slightly less
2 important to the public good.

3 MS. BROWN: I'd like to turn now to
4 the Opponent's testimony about views and
5 viewsheds. First, what is the difference
6 between a view, a view corridor, and a viewshed?

7 MS. EIG: Well I think if you think
8 of a view corridor as like looking down in the
9 line, down a street, it has a defined character.

10 Whereas a viewshed is more like a
11 cone where you're seeing what you can see, you
12 know, peripherally, so it's a larger area that
13 comes to a point more than the linear.

14 MS. BROWN: And are you aware of any
15 views or viewsheds that are designated in the
16 DC Inventory of Historic Sites?

17 MS. EIG: Just the L'Enfant Plan
18 has view corridors that are designated. There
19 is, but I'm not aware of any individual viewshed
20 that's been identified as a landmark.

21 MS. BROWN: And do you believe that
22 the Armed Forces Retirement Home viewsheds to

1 the Capitol are relevant to this proceeding?

2 MS. EIG: No.

3 MS. BROWN: Did you examine the
4 views across and within the McMillan site?

5 MS. EIG: Yes.

6 MS. BROWN: And what did you
7 conclude?

8 MS. EIG: Well we looked at three
9 different types of views. We looked at views
10 that were in towards the site and views out of,
11 it was two different views out of the site, and
12 views along the edges and the extent, and
13 keeping in mind that people walked along the
14 edge of the Sand Filtration Site itself, they
15 didn't walk across it, they walked along the
16 edge.

17 So that if we continue along the
18 edge we'd still in fact, we'll have all the
19 views that went out if you were just on the edge,
20 we just don't have all the views that are
21 across, but in the southern third, from the
22 service corridor south, in fact we do have

1 views.

2 And I will add is, there was later
3 discussion of the loss of views from Michigan
4 Avenue looking south, well the fact is the park,
5 the new park that will placed if this approved
6 at the lower portion, the southern portion,
7 will allow everyone to walk at that same level
8 in a park, in a public setting, the views will
9 be available across the entire site in that
10 whole section which is going to also allow you
11 to look over towards the reservoir and --

12 JUDGE BYRNE: And see Howard
13 University and the Founder's Tower.

14 MS. EIG: Howard University, yes.

15 JUDGE BYRNE: Is that at the same
16 height or altitude as Michigan Avenue?

17 MS. EIG: It is -- What happened is
18 the plinth is like this and Channing is down
19 here and Michigan's up here, so --

20 JUDGE BYRNE: It's a little lower.

21 MS. EIG: It's just approximately,
22 right.

1 JUDGE BYRNE: Approximately.

2 MS. EIG: Approximately the same,
3 and the Olmsted Walk will be at the same place
4 as the perimeter walk that was, it wasn't called
5 the Olmsted Walk back then, obviously, but that
6 perimeter will be at the same level.

7 MS. BROWN: We saw some alternative
8 schemes presented today by Ms. Gusevich and Mr.
9 Sullivan. I want to focus on Ms. Gusevich's
10 plans.

11 We heard Mr. Mettam describe that
12 based on his preliminary review, because we
13 obviously couldn't study them as the slides
14 were being presented, that he estimated that
15 there were roughly the same amount of cells
16 being preserved, demolished as planned by VMP.

17 What is your view on those plans
18 from a preservation perspective?

19 MS. EIG: Well based on what I saw
20 they are very creative. They are very
21 creative, look at this, it retains a lot of open
22 space, it has the sense of retaining the cells,

1 but most of what we could see, you can see they
2 were flattened and, from the drawings, I'm just
3 looking at the drawings, those cells are all,
4 they're groin vaults so they have a lot of
5 dimension to it, which is the point that Mr.
6 Mettam was making about the covering and that
7 it's, you know, like this, and we had a flat
8 surface, it was cut, and I don't know if those
9 were new, I don't know, but they couldn't cut
10 them, there would be no way to cut them, so they
11 would've had to create new cell, that look
12 historic-like situations, and some of them,
13 obviously with the pool and there's a lot of
14 depth, I mean I question how much could be saved
15 based on those drawings.

16 I did not feel like I was looking at
17 a situation that even in a romantic belief that
18 you could keep the cells that were there in
19 place that actually could be created with what
20 was drawn, but it was very inspiring.

21 MS. BROWN: And you heard testimony
22 again today that this was -- the Sand Filtration

1 Site was used as an park and has your opinion
2 now changed since you've heard that testimony?

3 MS. EIG: Absolutely --

4 MS. BROWN: Okay.

5 MS. EIG: I actually have here from
6 the report, it's on Page 155, a photograph that
7 can show, and I'll show it to you, Mr. Byrne.

8 JUDGE BYRNE: Yes.

9 MS. EIG: This is the walk that was
10 on the northern edge that is at Michigan Avenue,
11 because this is the Armed Forces Retirement
12 Home --

13 JUDGE BYRNE: Yes. Okay.

14 MS. EIG: -- was their dairy, the
15 pasture of the dairy, and they certainly
16 weren't using this, the manholes as stepping
17 stones, there was a walk there and it was I'm
18 sure referenced to the more bucolic look to the
19 north than the regular urban aspect to the
20 south.

21 JUDGE BYRNE: So this white line is
22 what we call the Olmsted Walk?

1 MS. EIG: Yes, right.

2 MS. BROWN: And one final question,
3 are you aware of any public views on the site
4 to the U.S. Capitol from the interior of the
5 site, if you know?

6 MS. EIG: And we have, we've
7 figured out exactly where you could see the
8 Capitol from around the edges of that and it's,
9 but I --

10 MS. BROWN: And it's from a
11 publicly accessible --

12 MS. EIG: No, there's nothing
13 publicly accessible right now. That site is
14 completely fenced off.

15 MS. BROWN: Thank you, those are
16 all my questions.

17 JUDGE BYRNE: Ms. Ferster?

18 MS. FERSTER: Yes, just a couple of
19 quick questions. So to the point that you made
20 about how the underground cells in your opinion
21 are less important in terms of the historic
22 character of the site because they are not

1 visible --

2 MS. EIG: Slightly less important.

3 MS. FERSTER: Slightly less
4 important. Okay, so the open space, you would
5 agree that that is an important visible part --

6 MS. EIG: Absolutely, yes.

7 MS. FERSTER: -- that is important
8 to the character of the site?

9 MS. EIG: Yes.

10 MS. FERSTER: And is it your
11 opinion that open space is, therefore, it's
12 more important than the underground cells, that
13 open --

14 MS. EIG: Slightly. Slightly, but
15 so we are in front of the Mayor's Agent because
16 some of that open space is going to be removed
17 by virtue of this proposal. That's why we're
18 here today.

19 MS. FERSTER: Yes, okay. The
20 balance, as between the open space and cells you
21 believe the open space is more important than
22 the cells, the underground cells?

1 MS. EIG: Yes, it's a very, very
2 slight -- I think, I mean let me say, if there
3 was a way that we could retain those cells below
4 ground I would be the first person here to raise
5 my hand to save them.

6 And believe me I think that -- if I
7 could just add, this is such a complicated
8 project, such a complicated project. There
9 are so many masters, so many forces, so many
10 people, even the people who testified in
11 opposition had different points of view as to
12 what they liked and don't like about this
13 project and what's the future.

14 And I think the complications of it
15 is something that this department team has had
16 to deal with every day and try to come up with
17 a solution that in fact balanced, and that is
18 important for everyone to know, that it is not
19 a simple oh, we don't like this, or we don't like
20 that.

21 It is in fact working out something
22 that is going to be an effective balance that

1 can preserve as much as possible but do achieve
2 the goals of making this place public and
3 accessible and something that is an asset to the
4 City that people can actually experience.

5 MS. FERSTER: Thank you.

6 JUDGE BYRNE: So I have a question,
7 too.

8 MS. FERSTER: Do you --

9 JUDGE BYRNE: Oh, yes, I'm sorry.

10 MS. MERRITT: I don't have any
11 questions.

12 JUDGE BYRNE: Okay, I have a
13 question, too. So one of the comments today
14 was that the Olmsted Walk that as it's conceived
15 of in the new, in the plan, is not really in any
16 sense continuation of the perimeter walk that
17 existed before and I'd like to hear your view
18 about that.

19 MS. EIG: The perimeter walk went
20 around and was broken by the corridors and by
21 the corner stairs as it was originally
22 designed.

1 JUDGE BYRNE: Yes.

2 MS. EIG: The perimeter walk as it
3 will go today will be broken in the southern
4 side by some stairs that have access in the
5 center of the southern end by the corner stairs,
6 it'll be broken by the corridor, the service
7 corridor, just as it was before, and then as we
8 move up there will be breaks for these new roads
9 that will go in, the roads that will go across
10 east to west.

11 JUDGE BYRNE: The east-west roads?

12 MS. EIG: East-west roads. And as
13 we move up it'll -- where there are any
14 interference of roads there will be a break in
15 it, but it will be designed, based on the
16 drawings, that you will have a sense, you will
17 be walking and you'll have to go down some steps
18 or there's in fact some, they've had to design
19 for ADA, you know, access, you know, up and
20 down, and so that it will be continuous and not
21 exactly the way it was, but we are not saying
22 it's exactly what it is, it's pretty much been

1 taken up or it might be under earth or whatever,
2 it's obviously not intact there, but the sense
3 of walking around the perimeter will be there
4 and the plane at which you are, the height at
5 which you are at, will replicate that.

6 JUDGE BYRNE: Okay, good.

7 MS. BROWN: I have --

8 JUDGE BYRNE: One other --

9 MS. BROWN: Sorry.

10 JUDGE BYRNE: One other question.

11 MS. EIG: Yes?

12 JUDGE BYRNE: One of the comments
13 also today was that the structure, the
14 aboveground structures that are being
15 retained, are going to be so isolated from the
16 context in which they existed that they will
17 have no integrity of context.

18 So that, you know, the round tower
19 is being on the median of a road means that
20 they've become kind of nothing and I just
21 wanted, I'd just like to hear your, like to hear
22 what you have to say --

1 MS. EIG: Well I don't agree with
2 that obviously or I wouldn't be here.

3 JUDGE BYRNE: Right.

4 MS. EIG: I think that especially
5 on the southern corridor you'll have the entire
6 open space there and the brilliantly designed
7 community center that looks like it's just
8 raised up with the horizontality of the space
9 and you will read those as you're coming north
10 on North Capitol Street.

11 And then there's the retaining
12 walls that are not going to be retaining as they
13 did because that grade will change, that is
14 true, but that sense of that corridor will be
15 there, and as you go to the north then there will
16 larger buildings, but if you remember that
17 there's a setback that pushes back the taller
18 parts so that it's -- you'd have the towers like
19 this -- and they are very large, they are very
20 large.

21 This space, I mean the fact that in
22 some places that vehicles can drive around can

1 give you an idea of the scale that they are and
2 there's certainly anticipation, despite what
3 was said today, that they will be reused and
4 rehabilitated, I think he's testified to that,
5 and that people will be able to experience them
6 and then as they -- I don't think that they will
7 feel that way. I think there's a lot of
8 interaction.

9 Would it be better if we could do
10 nothing there and just spend, you know, what
11 \$200 million, \$300 million to restore it and to
12 get it so we could all walk on it with no holds
13 barred?

14 But this is a very good way to mix
15 the -- adaptively reuse this so that, and in
16 fact you will be able to read that connection,
17 and because of the setback along North Capitol
18 Street coming from Cell 14, which, well we don't
19 have access to Cell 14 now, the top of Cell 14
20 will be visible.

21 I understand it's still going to be
22 fenced off by DC Water, we can't control that,

1 but you'll be able to see, and that, people
2 don't remember but way back when, it was David
3 Maloney from the Preservation Office who very
4 much wanted that corner to be retained in place
5 and efforts to put something like a grocery
6 store there were pushed back so that we could
7 in fact have that sense of a corridor as we go
8 down, and that's very important to
9 understanding the relationship of the two
10 service corridors that cut across the site as
11 well as having the extension that way.

12 JUDGE BYRNE: Thank you, that's
13 helpful.

14 MS. BROWN: I'm sorry. I have just
15 one very quick follow up question. Ms. Ferster
16 was asking you to compare the loss of the open
17 space versus the loss of the underground
18 structures.

19 MS. EIG: Yes.

20 MS. BROWN: We're only here today
21 because a demolition permit is required for the
22 underground cells, no demo permit is required

1 for the open space, right?

2 MS. EIG: That is correct, yes.

3 MS. BROWN: Okay. Thank you.

4 MS. FERSTER: Can I ask a follow up
5 on that? And --

6 MS. BROWN: Can I say no?

7 (Laughter)

8 MS. BROWN: Go right ahead.

9 MS. FERSTER: There's some
10 confusion, yes, among our group about the sand
11 regulators, the sand washes --

12 MS. EIG: Oh, yes.

13 MS. FERSTER: -- because the -- it
14 was not noticed in the hearing that there was
15 demolition of the sand washes, but the
16 Applicant's pre-hearing submission on Page 29
17 said 11 out of 12 sand washes would be
18 demolished, so we --

19 MS. EIG: That must be a mistake
20 because that was not the intention. I've
21 checked with everybody here, because when I
22 heard that I was like that's not right.

1 MS. FERSTER: Yes, because it's in,
2 it is in the pre-hearing --

3 MS. EIG: Right, that is an error.
4 That is an error. All 12 are being contained.

5 JUDGE BYRNE: All 12, none of them
6 demolished?

7 MS. EIG: No.

8 MS. FERSTER: Okay.

9 JUDGE BYRNE: That's helpful.

10 MS. EIG: So I, I mean I don't know
11 what caused that, but if we missed that we
12 apologize for that, but that's, you know, so --

13 JUDGE BYRNE: Thank you.

14 MS. EIG: You can feel better about
15 that.

16 MS. BROWN: Okay, I'd next like to
17 call Mr. Matt Bell.

18 JUDGE BYRNE: Mr. Bell.

19 MS. BROWN: Mr. Bell, to follow up
20 on the line of questioning with Mr. Mettam and
21 Ms. Eig, you saw some of the alternatives
22 presented by the opponents; do you believe that

1 they are reasonable alternatives from an urban
2 design perspective and a preservation
3 perspective?

4 MR. BELL: I think in this project
5 you have three very important things. You have
6 preservation, open space, and development, and
7 our scheme tries to balance the three of those
8 things.

9 So my critique of the work that we
10 saw today I think would be based along those
11 lines. In other words, if you have all
12 preservation and open space you have no
13 development and, you know, a 25-acre open space
14 becomes a difficult, as a kind of public place.

15 And I think if you noticed in a lot
16 of renderings there were very few people in them
17 and I think there wouldn't be very many people
18 in those parks because there's just not enough
19 development around it to bring any vitality to
20 them.

21 If you just do development and open
22 space then this place has no character, in other

1 words if you get rid of the whole site then you
2 lose the potential for the character of a
3 special place like McMillan.

4 And if you just have development and
5 preservation the community suffers because
6 there's no open space. So I think my critique
7 would be that those designs, and I realize
8 they're student projects and they're
9 hypothetical, designed to illustrate some
10 potential there and some ideas.

11 But I think there were some problems
12 there because I really think that in order to
13 have the sort of vitality of open space is
14 required you really need to balance those three
15 things.

16 MS. BROWN: And you mentioned that
17 they were student projects. You're a
18 professor of architecture at University of
19 Maryland?

20 MR. BELL: Yes. I'm a tenured full
21 professor at Maryland and I teach urban design
22 and architecture. And we frequently have the

1 occasion to work on an interesting site with the
2 community and with some, you know, features and
3 existing historic context and things and I
4 think the sort of work that students do can be
5 illuminating and can pose some things that, you
6 know, should be considered.

7 I do think though, when I do things
8 like that I always try to make it clear to people
9 outside the school that it's designed to
10 illuminate those things, not necessarily
11 designed to propose because in the case when
12 you're working with students you don't have the
13 practical and economic constraints that you
14 have with a project.

15 And often times you also don't have
16 the access to other consultants that can bring
17 their expertise to bear. So, for example, in
18 a professional project you would meet with the
19 regulatory bodies, you would work with
20 consultants, to develop a sophisticated look of
21 the project and possibilities.

22 I think the benefit of student work

1 is that sometimes they are freed from those
2 constraints, but it's also a problem as well
3 because sometimes the very serious things that
4 need to be considered with a project are not
5 considered.

6 MS. BROWN: Thank you. Those are
7 all my questions.

8 MS. FERSTER: Yes. So you've
9 indicated that you're a professor in
10 architecture, but you're in the, you also are
11 a --

12 MR. BELL: Practicing architect.

13 MS. FERSTER: -- practicing
14 architect, and you are with Perkins
15 Eastman/EEK?

16 MR. BELL: That's correct.

17 MS. FERSTER: And so it is in your
18 capacity with Perkins Eastman that you are here
19 today?

20 MR. BELL: Yes.

21 MS. FERSTER: Okay. And so
22 Perkins Eastman and you are on the team that was

1 selected for the Vision McMillan Partners
2 master planning --

3 MR. BELL: Yes. We were brought in
4 the project in 2010.

5 MS. FERSTER: Okay. And you are
6 being paid?

7 MR. BELL: Yes, ma'am.

8 MS. FERSTER: Okay. I just wanted
9 to get that on the record. And will you also
10 have a role in the design of any of the buildings
11 on the site if this plan goes through all the
12 various approval processes and it gets to a
13 point where you're at vertical development?

14 MR. BELL: We are the master plan
15 architects so we've also been the concept
16 design architects for the community center and
17 also worked with the landscape architect and
18 the civil engineers on the open spaces and all
19 the streets and horizontal development.

20 MS. FERSTER: Right. I understand
21 that you're on the master plan team, but my
22 question is will you then have a, your firm,

1 have a professional role in the design of the
2 buildings if all these, if the master plan of
3 this project is approved?

4 MR. BELL: I'm not quite sure I
5 understand your question. Do you mean --

6 MS. BROWN: And if I could object,
7 I'm not sure that there's anything that he
8 testified to in his rebuttal testimony on this,
9 but to the extent you want to hear an answer I
10 don't think it --

11 JUDGE BYRNE: Yes, I mean I think
12 she's asking would your firm be involved in
13 designing the taller office buildings?

14 MS. FERSTER: In anything, in any
15 building on the site?

16 JUDGE BYRNE: Well he's --

17 (Simultaneous speaking)

18 MR. BELL: We are the leaders of the
19 project. We are the ones coordinating all the
20 architects. We are working to make sure there
21 is coherence on the site, which was praised by
22 the Historic Preservation Review Board in terms

1 of our coherence, that we were the office of
2 that.

3 MS. FERSTER: I understand that.

4 MR. BELL: So in a project like this
5 that has a lot of architects you need one big
6 dog and some puppies and we are the big dogs
7 coordinating everybody there.

8 MS. FERSTER: Okay.

9 MR. BELL: And we will be the
10 architects of the community center.

11 MS. FERSTER: Okay. Just of the
12 community center?

13 MR. BELL: Well we will be the ones
14 sealing the drawings, architects of record for
15 the community center, and other horizontal
16 things that need to be built on the site, such
17 as, you know, things, reinforcing walls and
18 things like that, we'll be working with the
19 engineers on that as well.

20 MS. FERSTER: Just on the community
21 center site?

22 MR. BELL: Well the horizontal

1 site.

2 MS. FERSTER: Okay.

3 MR. BELL: We'll be coordinating
4 with all of the landscape architects and the
5 engineers.

6 MS. FERSTER: Okay. So other
7 buildings as well?

8 MR. BELL: As well as the other
9 architects, yes.

10 MS. FERSTER: Other, okay. And
11 assuming there will be fees involved in that
12 process as well?

13 MR. BELL: I certainly hope so.

14 MS. FERSTER: Okay. Thank you.

15 JUDGE BYRNE: Ms. Merritt?

16 MS. MERRITT: I don't have any
17 questions, thank you.

18 JUDGE BYRNE: Mr. Bell, I have one
19 question. So you testified just now that using
20 this whole site as a park would be, you would
21 predict would be unsuccessful because of the
22 lack of density of population around it.

1 And you may have testified to this
2 before, but did you, in reaching that
3 conclusion did you do any specific study of the
4 area in terms of the numbers of people living
5 there and comparing it to other parks?

6 I'm just wondering what the basis
7 of --

8 MR. BELL: Yes. We looked
9 carefully at parks in and around Washington. I
10 mean for example on Capitol Hill, Stanton Park
11 and Lincoln Park, I think Stanton's two to three
12 acres, Lincoln is four to five, maybe six acres.
13 They're substantially smaller than 25 acres.

14 JUDGE BYRNE: Right.

15 MR. BELL: The issue you get into,
16 and my familiarity as well, and I had spoken to
17 the team about this, was places like Patterson
18 Park in Baltimore, which is very wide across,
19 and at night people can't see into it.

20 JUDGE BYRNE: Sure.

21 MR. BELL: And if they can't see
22 into it becomes a dangerous proposition there.

1 So I think what you have to do is you have to
2 have development there that will activate
3 public spaces so there are surveillance and
4 eyes on the street.

5 So if there were building facades
6 that faced public spaces then people feel safe
7 going down the street there, and when building
8 facades are too far away from public spaces you
9 can have an unsafe condition.

10 JUDGE BYRNE: So you're thinking
11 that for an open space of this size embedded in
12 a community, essentially a row house community
13 on two sides, the industrial essentially around
14 you, that having no development would unlikely
15 be a successful project?

16 So some development to activate the
17 space as you described --

18 (Simultaneous speaking)

19 MR. BELL: Well I think the
20 development program we proposed, which
21 includes commercial, retail, residential,
22 senior, and community use, will get people

1 there.

2 There will be more activity through
3 the hours of the day and when people are coming
4 and going and they're visiting community
5 centers or visiting people in the senior
6 building or they're leaving work or they're
7 coming in early, you have a greater chance of
8 public spaces being activated and, therefore,
9 being safer through positive surveillance.

10 JUDGE BYRNE: Okay. All right,
11 thank you.

12 MS. BROWN: I'd next like to call
13 Mr. Len Bogorad and he is specifically a
14 rebuttal witness. I'd like to have him
15 qualified as an expert in financial impact
16 analysis.

17 JUDGE BYRNE: Okay.

18 MS. BROWN: He's here to testify
19 about the critiques that were filed on the Green
20 Door Financial Impact Report.

21 JUDGE BYRNE: Okay. All right,
22 thank you. Thank you. I'll just -- Welcome,

1 Mr. Bogorad.

2 MR. BOGORAD: Thank you.

3 JUDGE BYRNE: Just give them second
4 to look at your --

5 MS. FERSTER: All right, can you
6 state again what his expertise is?

7 MS. BROWN: It's in financial
8 impact analysis and it's related to the Green
9 Door Financial Impact Statement and then the
10 materials you submitted in opposition to
11 critique that, to --

12 MS. FERSTER: Okay, so he's an
13 expert in financial impact analysis?

14 MR. BOGORAD: Of real estate
15 development.

16 MS. FERSTER: Of real estate
17 development. Can you just give an example of
18 that just for my clarification of projects that
19 you've been involved in that would involve that
20 kind of analysis?

21 MR. BOGORAD: Sure. Yes,
22 absolutely. Sure, and it's sometimes called

1 fiscal and economic impact analysis. Downtown
2 Silver Spring is one example, we worked on the
3 revitalization and redevelopment of Downtown
4 Silver Spring.

5 We were retained at one point by the
6 developer, another point by Montgomery County,
7 and we analyzed what the tax revenues would be
8 over time from all the developments, what kind
9 of expenditures might be generated by that
10 towards the county, what the net fiscal impact
11 would be, and then how many jobs would be
12 created.

13 MS. FERSTER: Yes. So you do what
14 Green Door does?

15 MR. BOGORAD: Exactly.

16 MS. FERSTER: Okay. Thank you.

17 MS. BROWN: And, I'm sorry, could
18 you name your company and your name.

19 MR. BOGORAD: Yes, I'm sorry.

20 MS. BROWN: Give me your name and
21 then the name of your company.

22 MR. BOGORAD: I'm sorry. My full

1 name is Leonard Bogorad and the company is
2 RCLCO, Robert Charles Lessor and Company.
3 It's a weird spelling.

4 JUDGE BYRNE: Okay, great. All
5 right, go ahead.

6 MS. BROWN: Sure. Mr. Bogorad,
7 have you had a chance to review the Green Door
8 Financial Impact Analysis that was prepared for
9 this project?

10 MR. BOGORAD: Yes, I have.

11 MS. BROWN: And do you have any
12 relationship with Green Door or a connection
13 with who prepared the report?

14 MR. BOGORAD: Yes. The owner of
15 Green Door Associates I guess was, I don't know
16 if they're still technically a business, but
17 Marisa Gaither, who was the author of that
18 report, she actually worked in my firm before
19 she set up her own company and I guess I can take
20 some credit for training her in how to do fiscal
21 and economic impact analysis.

22 I think very highly of her. My

1 understanding is she's left that business to do
2 some other things for family reasons.

3 MS. BROWN: Okay. And so you've
4 reviewed the Green Door Report and have you done
5 an analysis of whether you believe those
6 figures are accurate?

7 MR. BOGORAD: Yes. As of the date
8 of that report I believe they were very well
9 done, very accurate, and I also considered the
10 changes in the development program since then,
11 and, if anything, I would say that if this were
12 to be updated, the fiscal and economic impacts
13 would be even greater than they were when the
14 Green Door Analysis was done.

15 MS. BROWN: So the projections on
16 the number of jobs created were accurate?

17 MR. BOGORAD: Absolutely.

18 MS. BROWN: And the number of the
19 figures on tax revenue generated for the site?

20 MR. BOGORAD: Yes.

21 MS. BROWN: And what about the two
22 critiques submitted by the Opponents, have you

1 had an opportunity to review those -- those
2 written submissions?

3 MR. BOGORAD: Yes, I have.

4 MS. BROWN: And could you give an
5 evaluation of those?

6 MR. BOGORAD: I don't think they
7 have any validity, quite honestly. Some of
8 them I think were because of confusion in their
9 mind about what was in the Green Door Report;
10 others were misfounded, another reason --

11 JUDGE BYRNE: Can you identify
12 which of those submissions you're referring to?

13 MR. BOGORAD: Sure, yes. Sure,
14 I'd be happy to go into a little more detail.
15 So one was by Mr. Hardison, who submitted a
16 written report, a few pages of critique of the
17 Green Door Analysis, and he had three or four
18 points that he made that I thought were not
19 correct.

20 One thing that he testified was that
21 the generation of over 3,000 new construction
22 jobs was what he called "grossly overstated"

1 and, therefore, drew into question the entire
2 GDA analysis in his view.

3 And then he went on to say that he
4 thought that at its peak, the number of
5 construction jobs would be roughly half of
6 3,270, which was what he said was what Green
7 Door said were the construction jobs.

8 And actually he misunderstood the
9 construction job analysis. As it's typically
10 done and as we would do and as Green Door did
11 it, it's a full-time equivalent to the, you
12 know, the little pieces of the construction
13 jobs, it's not like a certain number of people
14 are working on the site for three years. So we
15 always do it in --

16 JUDGE BYRNE: It's like an
17 equivalent or something?

18 MR. BOGORAD: Equivalent, exactly.
19 So that the over 3,000 number is the total
20 number of full-time equivalent annual jobs that
21 are created over the life of the development and
22 the construction and so on.

1 And actually the peak that was in
2 the Green Door Analysis was about 17 -- I forget
3 the exact number, it was 1,800 jobs, so the most
4 that had in any one year was 1,800, which is
5 actually very much in line with what he was
6 saying would be correct.

7 So I think that was really a
8 misunderstanding on his part about what, all
9 the numbers involved that she was talking
10 about.

11 The next point he made was that
12 somehow the office development cost per square
13 foot that was assumed for, you know, for office
14 by Green Door must be wrong because it was
15 somewhat similar to the per square foot cost in
16 RSMeans, and RSMeans is a secondary data source
17 and actually well regarded.

18 But he stated, I think, that she had
19 somehow plucked these numbers from the
20 secondary source rather than having a good
21 source for it, and, actually, she got them from
22 Trommell Crow Company, which is one of the

1 partners in this development, one of the
2 leading office developers in the region and in
3 the country.

4 It happened that those numbers are
5 quite similar to the RSMeans numbers, which I
6 consider additional confirmation of their
7 validity, not that that's something wrong with,
8 those numbers are actually similar and they
9 certainly didn't come directly from that, and
10 so that's the second point he raised.

11 Another is that he opined that the
12 medical office space might be exempt from real
13 property taxes by a potential impending
14 legislation and that this might reduce the
15 entire project's annual contribution and he
16 said it might even reduce it by 88 percent,
17 although he said that was probably a wildly high
18 percentage or whatever.

19 I'm not aware of any impending
20 legislation and I asked, at least asked the
21 development team, and they weren't aware of
22 that would make this exempt.

1 But just to see what the affect
2 would be I did test what would happen if you
3 magically had no real property tax revenues
4 from any of the office space and that reduced
5 the total revenues to the district by 29.9
6 percent.

7 The revenues would still be \$825
8 million over 30 years, so a very substantial
9 positive benefit even if somehow those all
10 became tax exempt. And I think that's all that
11 I identified from Mr. Hardison.

12 MS. BROWN: Okay, thank you.
13 Those are all my questions.

14 JUDGE BYRNE: All right, thank you.

15 MR. BOGORAD: I don't know, did you
16 want me to respond to the others? There was one
17 other. You asked about two, I guess just
18 quickly, I mean the Mr. Schwartz, I didn't find
19 any criticisms really in that document except
20 that he made the argument that the timing in the
21 Green Door Report was somehow incorrect
22 relative to when the office construction would

1 be occurring.

2 And, again, this is a
3 misunderstanding on his part. He was looking
4 at one place for those, that construction date
5 and in fact I looked at it and it's entirely
6 consistent with the construction date on the
7 income tax report.

8 MS. BROWN: Okay. Any other
9 comments on those two reports? Do you think
10 you've got it?

11 MR. BOGORAD: No, that's it.

12 MS. BROWN: Okay, thank you. You
13 stay; she'll ask you questions.

14 MS. FERSTER: Yes, a couple of
15 questions. Have you reviewed the Exclusive
16 Rights Agreement that the District of Columbia
17 entered into with Vision McMillan Partners or
18 the amended summary term sheet for the
19 redevelopment team?

20 MR. BOGORAD: No, I haven't.

21 MS. FERSTER: Okay. So you're not
22 aware of --

1 MS. BROWN: He didn't testify to it
2 on his direct rebuttal and he answered the
3 question that he hasn't read anything, so --

4 MS. FERSTER: I'm asking him a
5 general question about the project, not about
6 this. I'm asking are you aware and did this
7 factor into your analysis of the economic
8 benefits of the project, let me ask my question,
9 that the project is intended to have a number
10 of public financing tools, including TIF --

11 MS. BROWN: And I think --

12 MS. FERSTER: Just let me answer my
13 question.

14 JUDGE BYRNE: One moment, one
15 moment, let me -- go ahead, let her ask the
16 question. We can see where --

17 MS. FERSTER: -- housing
18 production trust funding, industrial revenue
19 bonds, and other similar projects and other
20 similar products and, you know, did that, was
21 that a factor in your analysis of the fiscal
22 impact of the project?

1 MR. BOGORAD: I'm not aware of that
2 specifically. I know the Green Door Analysis
3 did incorporate subsidies from the District
4 basically, which sounds like similar to what
5 you're talking about, but that's all I know.

6 MS. FERSTER: Oh, I'm sorry, one
7 other question. You're being paid for your
8 testimony today, or are you pro bono?

9 MR. BOGORAD: Hopefully I'm being
10 paid.

11 MS. FERSTER: Okay. Who is paying
12 you?

13 MS. BROWN: Relevance?
14 Relevance?

15 MS. FERSTER: You know, the
16 credibility of every witness should be at issue
17 here.

18 JUDGE BYRNE: Well, yes, but he
19 says he's being paid. He's not being paid by
20 me, so --

21 MS. FERSTER: I didn't ask him how
22 much, but I just said, is the District of

1 Columbia paying you as a developer, or, there
2 are two parties here?

3 JUDGE BYRNE: I don't think that
4 that really matters. I get the point, so,
5 thank you, Mr. Bogorad.

6 MR. BOGORAD: You're welcome.

7 MS. BROWN: I'd next like to recall
8 Mr. Lindsley Williams.

9 (Off the record comments)

10 MR. WILLIAMS: Good afternoon.

11 JUDGE BYRNE: All right.

12 MS. BROWN: Mr. Williams, you've
13 heard today some testimony, or correct me if I'm
14 wrong, but today there was testimony regarding
15 the fact that this project should not
16 considered special merit just because it is not
17 inconsistent with the comprehensive plan
18 versus an affirmative statement of fulfilling
19 the comprehensive plan.

20 How do you react to that
21 characterization?

22 MR. WILLIAMS: I believe this

1 project -- my name for the record is Lindsley
2 Williams -- and I do not agree with that
3 assessment.

4 I do believe that the project not
5 only is not inconsistent with the comp plan, but
6 for any number of reasons, some that I set forth
7 in my earlier report, a vast number of comments
8 that were made on the record by the Office of
9 Planning and PUD Exhibits 15, 37, 46, 67, 68,
10 and particular 855, in which the Office of
11 Planning identified aspect after aspect after
12 aspect in which the project not only satisfied
13 the PUD rules but went above and beyond them to
14 address issues in housing, issues in
15 employment, issues across the spectrum of
16 concerns that were addressed by them in their
17 materials.

18 Beyond that I will -- I'll just stop
19 there.

20 MS. BROWN: Okay. And just for the
21 record those Office of Planning reports were
22 attached to our initial submission and

1 pre-hearing submission, so they are available.

2 So the Office of Planning has made
3 affirmative statements that the project
4 fulfills goals and the objectives of the
5 comprehensive plan?

6 MR. WILLIAMS: Absolutely, yes.

7 MS. BROWN: And that's consistent
8 with your professional opinion?

9 MR. WILLIAMS: Absolutely, yes.

10 MS. BROWN: Okay. And you heard
11 Mr. Oberlander's testimony today, do you agree
12 with it?

13 MR. WILLIAMS: No.

14 MS. BROWN: Okay. And what is the
15 relevance, if any, of the 1990 NCPC staff letter
16 that was discussed today?

17 MR. WILLIAMS: I've given that
18 quite a bit of thought and I find that it has
19 no relevance and let me explain why.

20 Thinking that this might happen, I
21 tried to parse out what are the federal elements
22 in particular with the comp plan and they

1 include, as Mr. Oberlander correctly
2 identified, a number of different elements.

3 Among them is one called Parks and
4 Open Space. The one, the plan that this memo
5 went into was a plan that was adopted in and
6 around 1990.

7 Subsequent to that, the National
8 Capitol Planning Commission has revised the
9 comp plan federal elements just as the District
10 did.

11 The District elements were revised
12 in 1998 and so thereafter it oozed out over the
13 next couple of years. And then again we had a
14 review that started about six or seven years ago
15 with another set.

16 The current, official NCPC Parks
17 and Open Space Report -- and I looked at that
18 both with my own eyes and with the assistance
19 of the finder feature in PDFs -- I went through
20 the Historic District Preservation Report, the
21 word "McMillan" does not appear. The word
22 "Armed Forces Retirement Home" does not appear.

1 It may have been in the 1990
2 element, but as far as I know that is now an
3 archived document that has no standing today
4 whatsoever.

5 MS. BROWN: Are you aware of any
6 NCPC staff report that was issued today in
7 connection with a PUD?

8 MR. WILLIAMS: Yes, I am.

9 MS. BROWN: And could you share
10 with us its evaluation?

11 MR. WILLIAMS: Its evaluation
12 recommends approval of the project by the Full
13 Commission when it takes it up on Thursday. It
14 is not a decided matter by the Commission at
15 this point, but the staff presentation of the
16 report identifies the features of the project;
17 it also acknowledges the complexities and some
18 seeming inconsistencies, and I think the word
19 "seeming" is directly in their report.

20 It then goes on to explain exactly
21 why what may be first apparent is not actually
22 the case and they recommend approval, finding

1 it not only not inconsistent with the comp plan
2 but supportive of several things.

3 The report either will come into the
4 record as a staff recommendation or it will come
5 on Thursday, or shortly thereafter from NCPC as
6 a statement of fact.

7 MS. BROWN: You've heard reference
8 to the letter submitted to the PUD case from
9 September 15th where the NCPC did not
10 supposedly back off its critique of the
11 proposed C-3-C zoning for the site as being too
12 dense, did they change their opinion in this
13 report?

14 MR. WILLIAMS: No. They continue
15 to support C-3-C and CR. They have their
16 reasons, I have mine, for finding them both very
17 consistent.

18 MS. BROWN: And did they comment on
19 the viewsheds?

20 MR. WILLIAMS: They did discuss the
21 viewsheds and they then went on to say that in
22 terms of what, in their view, sort of an

1 interesting wording, that they were satisfied
2 that the areas that needed protection had been
3 addressed by the Applicant by the shifting of
4 the location of the building in the northwest
5 corner somewhat and adjusting the height.

6 If you remember that was a building
7 that was to have been somewhat taller and it was
8 dropped down a bit, so they are now entirely and
9 fully satisfied and their report is
10 unequivocally positive.

11 MS. BROWN: Is that, do you have a
12 copy that you could submit for the record?

13 MR. WILLIAMS: I have a copy which
14 I marked up, so I think it would be better to
15 get a clean copy.

16 MS. BROWN: And is it publicly
17 available on the NCPC website?

18 MR. WILLIAMS: It's publicly
19 available right now on the NCPC website.

20 MS. BROWN: And we'll happy to
21 provide a copy for the record.

22 JUDGE BYRNE: Thank you.

1 MS. BROWN: Is the density really
2 all that high on the site?

3 MR. WILLIAMS: No, and let me
4 explain why. The comp plan identifies as the
5 uses that Mr. Oberlander identified, and it
6 then goes on to suggest that the mapping of it
7 in the PUD is inconsistent. I do not agree.

8 In my view when the comp plan does
9 a coloration, a striping, or whatever, it is
10 trying to lay out what should be done by the
11 Zoning Commission to establish a baseline of
12 zoning.

13 So that's fine. This case, in the
14 PUD, does not establish a baseline of zoning.
15 It goes from unzoned all the way to what should
16 occur doing a PUD, and a PUD represents an
17 opportunity for an applicant to lay out an idea
18 or two, or three, or many, that can be advanced
19 by a different configuration of zoning and what
20 either exists already by right or what doesn't
21 exist as it does on that site unzoned.

22 And it allows for a review by the

1 ranking officials, that's the Zoning
2 Commission, to compare what it is that is being
3 provided in the overall project against a whole
4 set of City objectives.

5 It must satisfy certain things and
6 it must not be inconsistent, but the overall
7 part of the PUD process is that it has to go
8 beyond just satisfying a checklist of items and
9 the Zoning Commission has now determined that
10 it does go beyond what is a bare minimum or they
11 wouldn't have approved it.

12 MS. BROWN: One last question,
13 you've heard reference today about the emerald
14 necklace and its references in the
15 comprehensive plan. Are you familiar with
16 that and what is its relation to the site?

17 MR. WILLIAMS: I'm familiar with
18 the reference, and it led me to try to find the
19 early McMillan report, which I did online, and
20 I also found a barely readable diagram, which
21 showed that there were areas where bands of
22 federal and city lands connected up creating

1 sort of an open bracelet I guess I'll call it,
2 you know, the kind that you can slip on over your
3 wrist.

4 Well this is an open necklace and
5 part of what's open is adjacent to the site.
6 This is not, everyone has agreed, and the
7 authors agreed, having continuous linear
8 connectivity would be wonderful.

9 It just goes to show that planners
10 have always been dreamers, but sometimes dreams
11 can't be fully realized and the necklace, I'm
12 afraid, is not intact and it never was and
13 that's -- it was a dream on the part of those
14 who put together the language for that element
15 of the comprehensive plan, but if you drill
16 down, you'll find that the necklace isn't all
17 there.

18 MS. BROWN: Thank you. I have no
19 more questions.

20 JUDGE BYRNE: I want to ask a
21 question before you do, if you don't mind. So
22 one of the things that one of the witnesses for

1 the Opponent said, I can't remember their name
2 right, I guess Mr. Sullivan -- no, Mr.
3 Oberlander, it was Mr. Oberlander -- that the
4 comp plan had provided a specific area plan for
5 McMillan --

6 MR. WILLIAMS: Yes.

7 JUDGE BYRNE: -- spoke of medium to
8 moderate density with also the provision of
9 open space.

10 MR. WILLIAMS: Yes.

11 JUDGE BYRNE: And his testimony
12 then was that, and this may be reiterating what
13 you just testified, but was that what's being
14 proposed here is well in excess of medium to
15 moderate density and therefore is not
16 consistent with the comprehensive plan, and I'd
17 like to hear your reaction to that.

18 MR. WILLIAMS: Sure, thank you.
19 My view of it is this, that had the
20 comprehensive plan guided the Commission to
21 establish a baseline of zoning creating a
22 matter of right, I don't know what they would've

1 done, but in my professional opinion it
2 would've come out C-2-something or other, which
3 has got opportunities for all the things that
4 are wadded in the comp plan, housing, mixed
5 commercial, and parks are allowed.

6 It wouldn't show up as something
7 that was in the title, but it would allow it.
8 The PUD process has allowed for the, through a
9 series of refinements -- and we have the plan
10 that's before you now -- it has all of these
11 things and if you go to the schedule in the PUD
12 regulations of what is permitted under various
13 zones C-3-C and CR, both permit FARs that are
14 rather substantial, eight, and then you can get
15 little add-ons to that, too.

16 This project has different parts
17 that are in different densities, but none of
18 them are at the eight level and some of them are,
19 I mean at the bottom end of the park -- it's
20 below one.

21 JUDGE BYRNE: Right.

22 MR. WILLIAMS: But as you go up you

1 find fours and fives and things like that,
2 you're not seeing this project filling the
3 development envelope.

4 If you look at the PUDs that are
5 typically brought in the commercial world
6 before the Zoning Commission, you'll find that
7 nearly all of them will be pushing toward or
8 trying to get a little above, as others rules
9 provide, that ceiling.

10 The heights are likewise mixed, but
11 they are closer to what is allowed under the
12 PUD, and for that matter the baseline zoning as
13 well.

14 JUDGE BYRNE: Okay, thank you.
15 All right.

16 MS. FERSTER: Thank you.

17 JUDGE BYRNE: Any questions?

18 MS. FERSTER: A couple. Okay, so
19 you in your testimony previously and you had
20 testified that currently the comp plan land use
21 map designates this for mix of use, medium
22 density residential, moderate density

1 commercial, parks, recreation, and open space?

2 MR. WILLIAMS: Right.

3 MS. FERSTER: Okay. And isn't it
4 correct that in 1990 this was the language that
5 was adopted by the NCPC when, you know, when
6 they approved the comprehensive plan for the
7 land use method?

8 MR. WILLIAMS: It used the same
9 words.

10 MS. FERSTER: Great, okay. And,
11 yes, and okay, so thank you. Let's see, you had
12 testified that you didn't think that there was
13 any longer a federal interest in the Armed
14 Forces Retirement Home, is that
15 characterized --

16 MR. WILLIAMS: No, that is not what
17 I said.

18 MS. FERSTER: Okay.

19 MR. WILLIAMS: I said that the
20 language that may have gone into the 1990 plan
21 I believe is now retired. I didn't use the word
22 "retired," but that plan was replaced by a

1 subsequent version and another version and yet
2 right now NCPC's working on yet a further
3 edition.

4 MS. FERSTER: Okay.

5 MR. WILLIAMS: And I believe that
6 the 1990 approved plan is now archived and no
7 longer in effect.

8 MS. FERSTER: I see, okay. Other
9 than the things that weren't changed, like the
10 land use map designation --

11 MR. WILLIAMS: But the land use map
12 was changed.

13 MS. FERSTER: I'm talking about
14 this language from 1990 that, you know, as you
15 said is the same language. There are some
16 things --

17 MR. WILLIAMS: No, I said it's the
18 same words. I did not say it's the same
19 language, and I absolutely would not agree that
20 it's the same definitions. I haven't
21 researched that.

22 MS. FERSTER: Oh, okay, all right.

1 Good, well, so you don't know whether or not in
2 1990 McMillan site was designated and approved
3 by the NCPC for mix of uses --

4 (Simultaneous speaking)

5 MR. WILLIAMS: I have not
6 independently verified that, no, but I assume
7 that that statement is accurate, but the point
8 of it, when I was asked to get involved in this
9 case, I was trying to find areas in which the
10 plan met or exceeded the requirements.

11 That plan did not come on my radar
12 because it is not in effect and it is not
13 germane.

14 MS. FERSTER: Understood.
15 Understood. Okay, so you've reviewed Mr.
16 Oberlander's testimony?

17 MR. WILLIAMS: As quickly as I
18 could.

19 MS. FERSTER: Okay. And you were,
20 he also delivered it verbally?

21 MR. WILLIAMS: Yes.

22 MS. FERSTER: Are any of the

1 policies that he cited in his plan obsolete, you
2 know, isn't it correct that all the policies
3 that he identified in the plan as being --

4 MR. WILLIAMS: I would believe
5 that --

6 MS. FERSTER: I'm sorry, let me
7 just finish my question.

8 MR. WILLIAMS: Sure.

9 MS. FERSTER: And I'm sorry I'm not
10 being articulate. Isn't it correct that the
11 policies that he identified in the plan that he
12 believed in his opinion were not met by this
13 project, aren't they currently in the current
14 comprehensive plan?

15 MR. WILLIAMS: Everything that he
16 quoted from the current plan is in the current
17 plan. He concluded that they were not met.

18 I do not agree with those
19 conclusions, but that's, you know, different
20 people can come to different conclusions
21 looking at the same thing.

22 MS. FERSTER: Understood. That's

1 all I have.

2 MS. MERRITT: I just have one
3 question for clarification -- and I apologize
4 if this sounds like I'm asking, that you're
5 hearing this question for the fourth time.

6 Are you saying that the current
7 comprehensive plan land use map designates that
8 the McMillan site as medium density
9 residential, moderate density commercial and
10 parks, recreation and open space, or is that not
11 correct?

12 MR. WILLIAMS: I went through, I
13 think it was on the seventh page of my
14 submission back when I gave it when they put out
15 the diagram and a short explanation as to what
16 should to be done.

17 That is the -- and those are the
18 classifications that were called for in the
19 current now effective comp plan. I then went
20 on to say that this ordinarily would lead to a
21 mapping of a bi-right zoning situation, which
22 would probably be satisfied at some

1 considerably lesser level of approval than
2 C-3-C CR.

3 It would provide for the mix of
4 uses, but that's what has been requested and
5 everything would -- everything that is desired
6 in the plan is possible under the zones that
7 I've just identified, and several others as
8 well.

9 MS. MERRITT: I don't have any
10 further questions.

11 JUDGE BYRNE: All right.

12 MS. MERRITT: Thank you.

13 JUDGE BYRNE: Thank you.

14 MR. WILLIAMS: You're welcome.

15 MS. BROWN: Next I'd like to call
16 Mr. Aakash Thakkar.

17 (Off the record comments)

18 MS. BROWN: I'm sorry. I've asked
19 the wrong person up next. Mr. Dan Van Pelt,
20 please. Mr. Van Pelt is a traffic consultant.
21 He is our expert before the PUD hearing, and I'd
22 like to have him here to respond to some of the

1 criticisms we've heard on traffic impacts.

2 I did not bring his resume so I don't
3 know that, but he was qualified before the
4 Zoning Commission as an expert in
5 transportation planning and engineering.

6 I don't know if you have an
7 objection to him being qualified here.

8 MS. FERSTER: I do. I do have an
9 objection to his testimony.

10 MS. BROWN: Overall?

11 MS. FERSTER: I don't know his
12 qualifications, so --

13 MS. BROWN: You don't remember him
14 being qualified before the Zoning Commission?

15 MS. FERSTER: I do not have -- the
16 record is thousands of pages, I do not retain
17 knowledge of his qualifications.

18 MS. BROWN: Seriously? So you
19 don't recall that you didn't object to his
20 qualifications before the Zoning Commission?

21 MS. FERSTER: Actually I wasn't
22 counsel for the whole entire Zoning

1 Commission --

2 MS. BROWN: He testified
3 throughout the hearings.

4 MS. FERSTER: I'm sorry, I don't
5 remember.

6 JUDGE BYRNE: So let's just hear
7 about his -- so you just tell us.

8 MS. FERSTER: You know, but there's
9 a preliminary question and that is that before
10 we get to his qualifications I object to his
11 testimony here, not based on his
12 qualifications --

13 JUDGE BYRNE: Okay. Go ahead.

14 MS. FERSTER: -- which I'm sure are
15 quite adequate, but on the fact that the
16 Applicant in their opening case, okay, they
17 made representations about the traffic in Mr.
18 Williams' report where he said in the context
19 of the comprehensive plan that, you know, that
20 the traffic issues were not problematic, that
21 he thought that it was, you know, qualified with
22 special features of land planning.

1 Other witnesses sort of alluded to,
2 you know, how the traffic was adequate, et
3 cetera, et cetera. So based on the fact that
4 the Applicant showed -- and they didn't
5 identify a traffic expert in their list of
6 witnesses for their opening case on which they
7 have the burden of proof.

8 So we have a traffic consultant, so
9 on that basis, we submitted only our traffic
10 consultant's report as a pre-hearing exhibit.
11 We did not bring our traffic consultant today.

12 We did not have him testify
13 verbally. He's not, you know, a present
14 witness and, you know, it was our assumption
15 that the traffic issues were going to be
16 submitted on the written representations that
17 were already in the record and we feel pretty
18 much sandbagged because we have no rebuttal to
19 this witness and we would've had our traffic
20 expert here had in their open cases they
21 supported their, you know, written testimony
22 about the traffic issues with a person .

1 JUDGE BYRNE: Yes. Okay, I think I
2 understand. What would you have to say?

3 MS. BROWN: Well first of all this
4 is a rebuttal witness because what we were
5 handed today and the materials that she
6 submitted was Mr. Van Pelt's report so we feel
7 that we have -- we're within our scope of
8 rebuttal to this submission that he gave to us
9 today.

10 MS. FERSTER: Well I have no
11 objection to you submitting his entire report,
12 traffic impact statement, written report, for
13 the record.

14 This is, you know, his report, so
15 it's not like, you know, this is unfamiliar
16 issues from your perspective, and if you want
17 to submit the entire report for the record I
18 have no objection to that, but I do have an
19 objection to an in-person testimony that we
20 cannot submit a rebuttal witness for at this
21 point.

22 MS. BROWN: And I guess I'm just a

1 little confused because if you were able to
2 submit the critiques of the two experts on the
3 Green Door Report, how is this different?

4 MS. FERSTER: It's different, let
5 me tell you it's different. And, you know,
6 perhaps I should've objected to your fiscal
7 person's objection to the Green Door Report,
8 but quite frankly I don't consider the fiscal
9 issue legally relevant to this proceeding
10 because I don't consider any of the tax or
11 employment issues qualifying for special
12 merits, so I chose not to object to his
13 testimony.

14 MS. BROWN: I have a suggestion
15 then. We can stipulate that the Mayor's Agent
16 doesn't need to take into consideration traffic
17 impacts.

18 MS. FERSTER: Well you brought it
19 up in your -- in Mr. Williams' testimony. I'm
20 simply, you know, I'm making the point that, and
21 if you want to retract Mr. Williams' testimony,
22 you know, and others who talked about --

1 Part of the special merit is being
2 these, you know, wonderful traffic features
3 that are part of the site, the bikeshare, you
4 know, the transit shuttles, et cetera, et
5 cetera, et cetera.

6 That's fine. If you want to take
7 all your written references to traffic out, we
8 can stipulate that traffic is not an issue, but
9 your references were written, and that's what
10 our references were, written.

11 MS. BROWN: And, Mr. Byrne, I think
12 that there is a distinction between traffic
13 impacts versus transportation features to the
14 project and that's what we are selling as part
15 of our special merit project, and there's
16 nothing in the Mayor's Agent evaluation
17 standards about adverse impacts.

18 So I don't understand how this could
19 be submitted to the record and we not be allowed
20 to have a rebuttal witness to --

21 MS. FERSTER: It's your own report.

22 JUDGE BYRNE: So I haven't even

1 looked, I haven't looked at that so I don't --

2 MS. FERSTER: And it's your own
3 report. It's on your website, you know, and,
4 you know, we can withdraw that report if you
5 want. It's on the website, it's public
6 knowledge.

7 JUDGE BYRNE: So this is a little
8 slippery, right, because several of the people
9 who testified in opposition to the application
10 basically described this as a traffic disaster
11 of various sorts, and I've put that issue into
12 play in terms -- they were not experts, but they
13 did testify to that effect -- and so it seems
14 to me to be reasonable for them to put on a
15 witness.

16 MS. FERSTER: Well we did not. We
17 did not put on --

18 JUDGE BYRNE: I understand.

19 MS. FERSTER: -- a witness as a
20 party in opposition.

21 JUDGE BYRNE: Right.

22 MS. FERSTER: And had we known that

1 the Applicant would have put on our their own
2 witnesses on traffic issues we would've brought
3 ours, and if you allow this into the record, you
4 know, we certainly will, you know, object to
5 have, like to have our objection, you know,
6 noted for the record.

7 JUDGE BYRNE: Right. So, I mean I
8 do think that the question of -- so I do think
9 that, you know, basically the questions of the
10 traffic impact are questions for the Zoning
11 Commissioner, not for the Mayor's Agent, and I
12 do not view them as central.

13 I mean it plainly plays some role,
14 the question of evaluating whether it's a
15 project of special merit, but it's pretty far
16 down the list I think for special merit, either
17 way.

18 Given that nobody's claiming that
19 the transit benefits are like, you know, core
20 to special merit, the sort of add-ons if you
21 will, and the question of the traffic impact on
22 the neighborhood is not one that's really

1 before us.

2 So it may be better if we just skip
3 this part and proceed to other issues that are
4 more central to the special merit question. So
5 in that case we could excuse this witness --

6 MS. BROWN: Okay, thank you.

7 JUDGE BYRNE: -- and go on, is that
8 okay?

9 MS. BROWN: Yes. Thank you.

10 FEMALE PARTICIPANT: Thanks, Dan.

11 MS. BROWN: Now we can move on to
12 Mr. Thakkar.

13 JUDGE BYRNE: Welcome back.

14 MR. THAKKAR: Thank you. Thanks
15 for having us so late this evening.

16 JUDGE BYRNE: Yes. Is that
17 Chinese for dinner, right?

18 MS. BROWN: Yes, Mr. Thakkar, we've
19 heard testimony about the Office of Planning
20 DDOT Zoning Commission, the State Historic
21 Preservation Officer, HBRP, having supported
22 this plan, and we've also heard that -- is it

1 true that they've commented that it has gotten
2 better over time?

3 MR. THAKKAR: It is true.

4 MS. BROWN: And the Opponents have
5 consistently requested -- or Friends of
6 McMillan Park and other groups have
7 consistently requested that the project have
8 larger green spaces and affordable senior
9 housing, has VMP responded to those requests?

10 MR. THAKKAR: We have. We have and
11 just to give a little background on this
12 process, because there is discussion in the
13 letter that you may have seen.

14 JUDGE BYRNE: Yes.

15 MR. THAKKAR: You know, my
16 signature is on that letter of commitment. I
17 guess I'll start by saying that I think the
18 issue in this case is sort of a philosophical
19 one because we are a development team and we
20 were retained by the District to develop the
21 site and as we've seen, and I'm not sort of
22 making a judgement, but our collective job with

1 the District was to propose development on the
2 site.

3 As we saw from Ms. Gusevich's
4 proposal, I don't think there was any
5 development, you know, on the site to
6 commercial development and other things that
7 were in the comprehensive plan and a part of our
8 charge.

9 So to respond to the question, yes,
10 we had a 2-year community engagement process
11 prior to the HPRB hearings. We then had 18
12 months of HPRB hearings and another call it one
13 year of PUD hearings.

14 And in that time what we genuinely
15 tried to do and, you know, trust us when we tell
16 you we have a lot of respect for the people in
17 this room, we've worked with a lot of them, and
18 frankly, Ms. Gusevich is right, we actually
19 took a number of their ideas and incorporated
20 them into our plan.

21 The size of the park was probably
22 the biggest and most important. We were

1 getting pushed, and I recall at the time a
2 number of folks, we had a 3-acre park, a number
3 of folks were saying how about another acre,
4 give us another acre, make it a 4-acre park, and
5 we were able to and I want to be clear on this,
6 not because of DC Water.

7 DC Water did do its activities in
8 the southern part of the site, but we could've
9 easily built on a portion of that southern part
10 of the site and maintained a 3-acre park.

11 We went back to the District at that
12 point in time and we said, "District, we think
13 this is a good idea." Emily Eig, she's still
14 here, was pushing for the retention of the
15 plinth.

16 The community, many folks in this
17 room today, were pushing us for some more park
18 space and we went to the District and we said,
19 we think this is the right thing to do. It
20 solves some planning issues, it makes the plan
21 better, and the park gets a whole lot bigger and
22 the park also ties into the southern service

1 court so you get this very, very large space.

2 You heard me testify about the two
3 parks of the year, ULI 2013 and 2012, both
4 around three to five acres, kind of consistent
5 with what Mr. Bell said, and our park is, you
6 know, double those parks which are considered
7 nationally significant.

8 So I say all that to say that we did
9 go through an intensive community process.
10 There have been, you know, 20, 30 different
11 designs, the parks in different places, and we
12 did listen.

13 I think at the end of the day it is
14 this philosophical difference and, if I can cut
15 to the heart of it, it's these medical office
16 buildings that folks are talking about, we hear
17 a lot about the heights of them. It is our view
18 that yes, they are the economic engine for this
19 project and we think 3000 jobs for District
20 residents in a Ward with double digit
21 unemployment rate is a huge benefit for the
22 community-at-large, huge, one of the largest

1 benefits this plan offered.

2 It might be the folks in this room
3 may not be hired, but in a Ward with that kind
4 of unemployment that's what we see our charge
5 as economic developers to provide those jobs,
6 temporary and permanent, and to retain District
7 residents for those jobs. So, you know, we'd
8 argue strenuously that those jobs are part of
9 what our special merit case is, not all of what
10 our special merit case is.

11 And I think some of the challenge
12 has been that public officials and such concur
13 that that is a benefit for the
14 community-at-large, but understandably folks
15 who live right around the site may not think
16 it's as big of a benefit.

17 MS. BROWN: You heard testimony
18 about the overbuild option for the townhouses
19 and you saw some of the possibilities that Ms.
20 Gusevich had. What do you see, is that -- and
21 you've even heard some of the Structural
22 Engineering reports say they shouldn't have two

1 to three story overbuild over the vaults, and
2 it seems that was going to be residential
3 development and that's what you're doing --

4 MR. THAKKAR: Right.

5 MS. BROWN: -- and why isn't it
6 possible to use the vaults in part of your
7 townhouses?

8 MR. THAKKAR: It's a good question.
9 So we do build, we'll call it three to four story
10 wood frame products. So we're very familiar
11 with that product, and I went back to our
12 engineers -- I don't know probably five, six
13 years ago at this point in time, and asked them,
14 apart from the structural issues, you know,
15 what are the real issues to building on these
16 cells? And so it does go beyond -- and I
17 appreciate the creativity of all the structural
18 engineers, but it does go beyond structural
19 engineering.

20 For example, I know we don't have
21 slides, there are three roads that go from the
22 south service court to the north service court.

1 Right? Those roads have to tie in at grade to
2 both the north service court or south service
3 court and let's say those roads weren't there
4 and there were different roads that ran east to
5 west. Those roads, too, would have to tie into
6 the grades at 1st Street and at North Capitol.

7 So what happens there is you're
8 going to have to put a road -- you can't put a
9 road on top of the cells because the cells don't
10 tie into the grade, as we've heard because of
11 the plans around the site, so very practically
12 speaking, you're running what is probably
13 50-foot of right-of-way straight through these
14 cells and they would require demolition. Then
15 you'd have a condition where the roads in some
16 places are lower. You'd have houses higher,
17 and sort of ADA and other accessibility issues.

18 So the roads in my mind are
19 something that just weren't looked in terms of
20 a structural standpoint, but then in addition
21 to those things when you do look at utilities,
22 and utilities are not insignificant. There's

1 water, there's sewer, there's fiber hubs,
2 there's cable, there's gas. All of those
3 things come from the ground and would have to
4 essentially, you know, come up through the
5 cells and that's where we got into that
6 discussion with Emily of, you know, at the end
7 of the day when you got roads running through
8 these cells, forgetting about the structural
9 issues, and utilities puncturing up through
10 these cells, you know, what is it going to feel
11 like and look like and what kind of historic
12 integrity do those cells have? So that was
13 sort of --

14 JUDGE BYRNE: So the roads you're
15 describing are internal north/south roads in
16 your project?

17 MR. THAKKAR: Yes. Yes, and
18 that's in our project.

19 JUDGE BYRNE: Right.

20 MR. THAKKAR: But let's assume, one
21 could ask well, you know, would EYA look at a
22 different road configuration? You need roads,

1 you need alleys, and they must tie to grade, and
2 there's no way to do that on top of those cells
3 because you need to tie in to existing grades
4 and those cells don't do that, if that makes
5 sense.

6 MS. BROWN: And you wouldn't build
7 these houses on top of the cells without roads?

8 MR. THAKKAR: We would not.

9 MS. BROWN: Okay. Sorry.

10 MR. THAKKAR: And, you know,
11 there's a liability issue, too. I think the
12 question was asked by the Mayor's agent about
13 would a reasonable building official approve
14 something like this?

15 I can tell you as as a builder of
16 probably over 5,000 stick built homes in this
17 region, we would not build on those cells
18 because the -- just some of the stuff that Kirk
19 is far more schooled than I am -- but the
20 liability issues of settlement and other such
21 things, forgetting the roads and forgetting the
22 utilities, it's just not a viable option to

1 build on top of them.

2 MS. BROWN: And you heard Ms.
3 Ferster ask Mr. Mettam, if costs were not an
4 issue. If you didn't have to worry about
5 cost --

6 MR. THAKKAR: Right.

7 MS. BROWN: -- wouldn't you, could
8 you take cost out of the equation for a project
9 that you're trying to do?

10 MR. THAKKAR: We couldn't. As a
11 builder of homes, as a builder of mixed income
12 housing, it costs a certain amount to build a
13 house and you have to sell it or rent it such
14 to preclude some of those costs, we couldn't
15 take the costs out of the equation.

16 MS. BROWN: Right.

17 MR. THAKKAR: But even then, I'm
18 not sure that there's anything you could do at
19 any cost to build row homes with road, streets,
20 sewer, water, et cetera, on top cells.

21 MS. BROWN: So it's a matter of
22 physical feasibility as opposed to economic

1 feasibility?

2 MR. THAKKAR: Correct. In the
3 overbuild scenario.

4 MS. BROWN: Okay. Thank you.
5 Those are my questions.

6 JUDGE BYRNE: Okay.

7 MR. THAKKAR: One clarification,
8 just because it was brought up, about the
9 Alexander Company, that I did want to respond
10 because -- Right?

11 JUDGE BYRNE: Oh, yes.

12 MR. THAKKAR: So it was brought up
13 that there was, I don't -- that they were on our
14 team at one point in time. So I want to start
15 by saying that that in effect shows, as we've
16 testified, there was, and I'll say this again,
17 a very competitive process to select a
18 qualified development team.

19 And, yes, the Alexander Companies
20 was on our team at the time we were selected.
21 They are, you know, a firm that we are close to,
22 that we are partners with on the seminary side.

1 We do that together.

2 And they looked at this site and
3 they gave us a lot of ideas. The issue with the
4 site, which goes to sort of the heart of some
5 of our testimony, is that they are a developer,
6 a historic rehabilitation developer, and their
7 view was, you couldn't put housing on the cells.

8 And they build a lot of housing.
9 They build a lot of retail, and they said the
10 size and scale of the adaptive reuse
11 opportunities are --

12 MS. FERSTER: I'm going to object
13 to that because if you want to put Alexander on
14 to say what they said, but at this point, you
15 know, my understanding, this is not -- this is
16 triple hearsay here.

17 MR. THAKKAR: It was testified,
18 there was a bait and switch.

19 JUDGE BYRNE: Well I think there's
20 testimony as to why Alexander's not on the team
21 rather than to the whether you can build in the
22 cell.

1 MR. THAKKAR: Yes, yes. Yes,
2 okay, so, yes, I'm not suggesting what their
3 view is. I can tell you the fact that they were
4 my partner in this, that their conclusion was
5 there wasn't a commercially viable --

6 MS. FERSTER: And objection.

7 MS. BROWN: Hearsay is allowed for
8 these administrative proceedings.

9 MS. FERSTER: Objection. No.

10 MS. BROWN: This isn't trial.

11 MS. FERSTER: Yes, I know hearsay
12 is objected, but this is beyond hearsay. This
13 is, you know --

14 JUDGE BYRNE: Well they left
15 because they didn't think the project was
16 workable, you can leave it at that?

17 MR. THAKKAR: That's fine.

18 JUDGE BYRNE: Okay.

19 MR. THAKKAR: Yes.

20 JUDGE BYRNE: Okay. So I have a
21 question, but I'll let you ask questions first
22 this time.

1 MS. FERSTER: Do you have a
2 question?

3 MS. MERRITT: I just --

4 (Off microphone discussion)

5 MS. MERRITT: Do you have any
6 questions?

7 MS. FERSTER: No, no, go first.

8 MS. MERRITT: Would you agree that
9 Alexander Company, their specialty is in the
10 rehabilitation and adaptive reuse of
11 above-ground historic structures?

12 MR. THAKKAR: I would.

13 MS. MERRITT: And do they have any
14 experience with historic preservation projects
15 involving underground historic structures?

16 MR. THAKKAR: I can't -- I don't
17 know yes or no.

18 MS. MERRITT: So was there --

19 MR. THAKKAR: I can say, just let me
20 finish, that they are a foremost expert on
21 adaptive reuse of historic structures. I
22 don't know if I could say that means just

1 above-grade historic structures.

2 MS. MERRITT: Was there ever any
3 plan to use any of the existing historic
4 structures on the site for occupation?

5 MR. THAKKAR: We have said -- well
6 with regard to the cell, and I'm forgetting the
7 number at the northwest --

8 MS. MERRITT: Above ground, okay,
9 I'm talking about ground, sorry. Any of the
10 above --

11 MR. THAKKAR: Say that again, I'm
12 sorry?

13 MS. MERRITT: Okay. Was there
14 ever any plan to use any of the above-ground
15 historic structures for occupation?

16 MR. THAKKAR: Oh, right. We
17 looked at that possibility with Alexander's eye
18 and creativity and given that they're probably,
19 I don't know, 15-foot wide in diameter and got
20 these cones coming down the middle, we couldn't
21 see anything workable with regard to those.

22 Let me be clear though, Alexander

1 took an extraordinarily hard look with us at the
2 below grade structures. They knew that those
3 were some of the structures that, you know, may
4 have some possibility and so we had them look
5 at those as well.

6 MS. MERRITT: So the timing of
7 their departure from the team was
8 approximately, what year?

9 MR. THAKKAR: Within a couple years
10 after we were selected. And they are -- you
11 know, keep in mind that, you know, the economic
12 times were different as well. Come and go, up
13 and down, but it was, you know, well after we
14 had gone through a community process. Our
15 initial community process I'll say, with regard
16 to the site.

17 MS. MERRITT: I think I'll leave it
18 at that.

19 MR. THAKKAR: Okay.

20 JUDGE BYRNE: So what --

21 MS. FERSTER: I have questions.

22 JUDGE BYRNE: Okay, go ahead.

1 MS. FERSTER: But if you want to
2 go --

3 JUDGE BYRNE: So you said that the
4 medical office buildings are the economic
5 engine of the site, right?

6 I think this is an important point
7 because I think what many of the neighbors
8 object to primarily is the medical office
9 building because of its size and the traffic
10 that will generate.

11 MR. THAKKAR: Yes.

12 JUDGE BYRNE: So I guess my
13 question is economic engine in what sense? I
14 mean your testimony was about the job creation
15 possibilities and I suppose you could say the
16 property tax or the sales tax --

17 MR. THAKKAR: Yes. The fiscal
18 impact.

19 JUDGE BYRNE: -- the fiscal
20 impacts.

21 MR. THAKKAR: Yes.

22 JUDGE BYRNE: But I'm wondering how

1 significant it is for floating the financing of
2 the project as such?

3 MR. THAKKAR: Right.

4 JUDGE BYRNE: In other words, you
5 know, are funds from the medical office
6 building subsidizing other parts of the
7 development?

8 MR. THAKKAR: It's a good question
9 and what I can say is, you know, to be
10 determined. There's a large land value
11 associated with the office building, and the
12 reason I say to be determined is the District
13 is the one who is in receipt in those funds.

14 JUDGE BYRNE: Yes.

15 MR. THAKKAR: And so in effect, as
16 you know, they are investing \$50 million in the
17 project. So they are saying what funds are we
18 going to take in and what are we going to do with
19 it.

20 JUDGE BYRNE: Yes.

21 MR. THAKKAR: So the proceeds from
22 the medical office building will in effect

1 offset investments that the District is making.

2 JUDGE BYRNE: Yes.

3 MR. THAKKAR: As sort of a
4 corollary -- I mean, this isn't exactly what
5 you're asking, but in terms of the viability of
6 the site. A full-service grocery store is
7 something that many in the community, I'm not
8 speaking of particulars, did want, along with
9 good retail options.

10 JUDGE BYRNE: Yes.

11 MR. THAKKAR: The principle issue
12 of retail in this neighborhood is that there
13 isn't much daytime traffic because folks, you
14 know, are generally working during the daytime.
15 Not in Ward 5.

16 And so by having an office presence
17 and by connecting that office presence with the
18 presence across the street. Forgetting about
19 the jobs and the other thing, the reasons why
20 we think a medical office is good, it actually
21 activates the retail and makes that part of our
22 project financable and viable.

1 JUDGE BYRNE: Yes. Okay, so those
2 are two different elements.

3 MR. THAKKAR: They are. That's --

4 JUDGE BYRNE: There's the money
5 that the District will get that they can use of
6 the public parts of the project --

7 MR. THAKKAR: Correct.

8 JUDGE BYRNE: -- and then there's
9 the -- as you say, the activation of the retail
10 site by having daytime --

11 (Simultaneous speaking)

12 MR. THAKKAR: Right. And so, with
13 the residential at night, you now have
14 conditions whereby we hope retail can succeed.

15 JUDGE BYRNE: Yes.

16 MR. THAKKAR: And the park, too.
17 The park will be utilized in the daytime --

18 JUDGE BYRNE: Yes, okay. That's
19 helpful to me, thank you.

20 MR. THAKKAR: Sure.

21 JUDGE BYRNE: All right, Ms.
22 Ferster.

1 MS. FERSTER: Okay. So let's
2 start with the medical office building and its
3 relationship as the economic engine for the
4 project.

5 MR. THAKKAR: Yes.

6 MS. FERSTER: So are you aware of
7 the fact that if this project is approved as a
8 special merit project that as a special merit
9 project it will be subject to a requirement that
10 you demonstrate that you have the ability to
11 complete the project and that you have building
12 permits for everything before you move forward
13 with anything?

14 MR. THAKKAR: Yes.

15 MS. FERSTER: Or are you not aware
16 of that requirement?

17 MR. THAKKAR: I'm not aware of like
18 the detail behind it. I do recall our counsel
19 sharing something to that effect with us, yes.

20 MS. FERSTER: Okay. Okay, so --
21 and part of the ability to complete the project
22 would of course involve showing that you have

1 the financing for the medical office building
2 and others?

3 MR. THAKKAR: Correct. Yes,
4 correct.

5 MS. FERSTER: So isn't it correct
6 that, you know, your financing mechanism,
7 particularly lenders, will want to see a anchor
8 tenant in the medical office building before
9 they provide that financing?

10 MR. THAKKAR: I wouldn't say an
11 anchor, but they're certainly going to want to
12 know that there is a viable marketplace for said
13 office building, right.

14 MS. FERSTER: Yes, okay.

15 MR. THAKKAR: Yes, they would want
16 to know that.

17 MS. FERSTER: Okay. Let's talk
18 about job creation for a minute. You testified
19 that this will create jobs for people in Ward
20 5. Isn't it correct that there is no guarantee
21 that people in Ward 5 will in fact work at
22 McMillan, at the site?

1 MR. THAKKAR: There's no
2 guarantee --

3 MS. FERSTER: There's no
4 guarantee.

5 MR. THAKKAR: So what I'd say is
6 this. There are lots of jobs across the
7 economic spectrum. We have committed, and not
8 just we, but the District of Columbia sort of
9 separate and apart from us, have committed to
10 saying, okay, we know these jobs are coming --
11 and by the way I do want to say it's highly
12 likely that they are net new jobs. There was
13 some testimony around that. This is new office
14 space in the District, and so we're not
15 demolishing a building to put people at
16 McMillan.

17 MS. FERSTER: Right.

18 MR. THAKKAR: It's net new jobs.

19 MS. FERSTER: Sure.

20 MR. THAKKAR: And so we're going to
21 make every effort, and when I say Ward 5, I'll
22 take a step back and say we're going to make

1 strong efforts with the dollars behind them
2 that people who work there be District
3 residents.

4 Ward 5 is a natural option because
5 it's right around the site and we're going to
6 obviously target ANCs and such right around the
7 site for the job training programs. So the
8 commitment is there backed by dollars that
9 District residents will have a good number of
10 these jobs.

11 MS. FERSTER: Yes. Okay, but not
12 necessarily Ward 5?

13 MR. THAKKAR: Not --

14 (Simultaneous speaking)

15 MS. FERSTER: You --

16 MR. THAKKAR: You're missing the
17 point. I cannot guarantee that.

18 MS. FERSTER: And then, regarding
19 your testimony about the roads and the scenario
20 that the north/south roads would not be able to
21 be built over the cells --

22 MR. THAKKAR: Yes.

1 MS. FERSTER: -- how about just
2 driveways? Couldn't driveways be, you know,
3 assuming that you could build a house on -- and
4 you're not testifying as a structural person,
5 but assuming your structural engineer said that
6 whatever reinforcement can be done you can
7 build, you know, one of your your houses on the
8 cells.

9 MR. THAKKAR: Right.

10 MS. FERSTER: Could a driveway also
11 be located on top of the cells in addition to
12 the house?

13 MR. THAKKAR: I guess I don't know
14 how you would because you always have to get
15 back down to somewhere, and you're talking
16 about an elevated set of cells and you have to
17 get from a cell to a service court or a cell to
18 one of the streets, right? So you're talking
19 about a grade differential, so how do you get
20 from point A to point B?

21 And I'm not sure, whether it be road
22 or a driveway how, without demolishing a cell

1 to bring that road back to, let's call it 1st
2 Street, right.

3 MS. FERSTER: Yes.

4 MR. THAKKAR: At certain points
5 cells are below First Street, at certain points
6 they're above First Street.

7 MS. FERSTER: Yes.

8 MR. THAKKAR: In all those
9 conditions, which are probably 95 percent of
10 the conditions, you have to get a road that gets
11 you back to tie into a public street.

12 MS. FERSTER: But I'm not talking
13 about a road, I'm just talking about driveways.

14 MR. THAKKAR: Yes. So my answer, I
15 guess, I'm not clear on how it could be yes, so
16 my answer is no, because the driveway has to get
17 back down to the street so a car could drive on
18 the streets around the site and then drive up
19 into or down into their home.

20 MS. FERSTER: Well I guess then I'm
21 confused. So you're saying that -- I'm being
22 very literal here.

1 MR. THAKKAR: Yes.

2 MS. FERSTER: So you're saying the
3 road could not have a grade change or a
4 driveway? I mean it would be nice to have a
5 picture, but --

6 MR. THAKKAR: I don't understand
7 the question.

8 MS. FERSTER: Yes, I -- Well I don't
9 understand your point.

10 JUDGE BYRNE: I think she's asking
11 whether a driveway or a road can go like this
12 instead of like this?

13 MR. THAKKAR: Yes.

14 JUDGE BYRNE: In other words, could
15 you grade it to come down to the service court
16 and back up again?

17 MS. FERSTER: Or add fill to make
18 it --

19 JUDGE BYRNE: Well you don't want
20 to add that to the service court though.

21 MS. FERSTER: Well so that, you
22 know, you could remove some of the topsoil and

1 add some of the -- you know, if you can put a
2 frame house on it you could probably put some
3 fill to create a grade.

4 I just don't understand what your
5 concern is, you know, about the driveways and
6 not -- I mean it seems to me, and I'm just not
7 a housing person --

8 MR. THAKKAR: Right.

9 MS. FERSTER: -- but it seems to me
10 that if you can build a frame house, structural
11 issues aside, if you can build a frame house why
12 can't you also add a driveway?

13 MR. THAKKAR: Right.

14 MS. FERSTER: I don't understand
15 it. So just, maybe just be a little more basic.

16 MR. THAKKAR: Okay. Yes, I think
17 I'm being as clear as I can. It's how do you
18 get the driveway -- how do you, without
19 significantly impacting the cells, I guess is
20 what I'm saying.

21 In my testimony what I said is you
22 could have a road and you could run it through

1 the cells, right, and so you'd demolish parts
2 of the cells to have a road come into the site
3 somehow, right.

4 MS. FERSTER: Well couldn't you
5 have a driveway that goes, you know, it may not
6 be a straight driveway, but to a part that is,
7 you know, at a grade where you wouldn't be
8 demolishing the cells?

9 I mean you -- there's a lot of
10 streets around that you can have access to, the
11 driveway doesn't have to be completely in a
12 grid.

13 MR. THAKKAR: Yes.

14 MS. BROWN: I'm not sure we're
15 really getting anywhere.

16 MS. FERSTER: I just don't
17 understand his point, that's all. I mean there
18 are many ways that in the zoning rules in which
19 developers have creatively created accesses
20 using driveways.

21 MR. THAKKAR: Yes, right.

22 MS. FERSTER: They have pipe stem

1 lots, et cetera, et cetera, et cetera. They
2 don't, you know, necessarily need to have your
3 road provide the optimal access if you have a
4 constrained site, you know.

5 And so aren't -- it seems to me that
6 there should be ways in which you could get a
7 driveway into, you know, some of those houses
8 anyway.

9 MR. THAKKAR: For every home?

10 MS. FERSTER: Not every home, but
11 some of them.

12 MR. THAKKAR: Okay.

13 MS. BROWN: And I think he's
14 probably answered the question as best he can.

15 JUDGE BYRNE: I think we can leave
16 it there.

17 MR. THAKKAR: Yes.

18 JUDGE BYRNE: I think you've made a
19 point and we'll figure it out.

20 MS. FERSTER: All right. That's
21 it for me. Thank you.

22 JUDGE BYRNE: Okay. Oh, you have

1 one?

2 MS. BROWN: No, no, no, I'm done.
3 I was going to call the last witness.

4 JUDGE BYRNE: Okay.

5 MS. BROWN: Just quickly, Ms. Anne
6 Corbett.

7 JUDGE BYRNE: Okay, Ms. Corbett.

8 MS. CORBETT: Again, my name is
9 Anne Corbett and I was project manager.

10 JUDGE BYRNE: Yes, that's right.

11 MS. BROWN: Ms. Corbett, could you
12 clarify the ANC votes on this project?

13 MS. CORBETT: Sure. So in my 2-1/2
14 years of tenure with this project I have
15 observed or have documentation of three ANC
16 votes.

17 In October of 2012, then ANC 5C,
18 which was the affected ANC in 2012, voted to
19 support the master plan and development
20 proposal as it stood in October 2012.

21 Then, gosh, and I don't -- I should
22 remember exactly, then the ANCs were

1 redistricted. The wards were redone and
2 then --

3 JUDGE BYRNE: Yes, the wards were
4 redone.

5 MS. CORBETT: Right. So the
6 affected ANC became 5E. 5E voted this year in
7 support of the project. Then 1B and 5A are the
8 abutting ANCs on, 1B is on the west side, 5A is
9 kind of catty corner on the northeast side.

10 JUDGE BYRNE: Park Place.

11 MS. CORBETT: Park Place is where
12 it touches. It goes all the way up -- the
13 meeting I was at was in Northeast Michigan Park,
14 so it goes miles away from the site.

15 JUDGE BYRNE: Yes.

16 MS. CORBETT: Both of those ANCs,
17 in a nutshell, voted to support 5E and basically
18 -- we can submit those resolutions to the record
19 -- said, we defer judgement to the affected ANC
20 5E.

21 MS. BROWN: And when you say
22 support for the project, did that refer to the

1 Zoning Commission proceedings, the HPRB, the
2 Mayor's agent, what did it cover?

3 MS. CORBETT: It covered -- it's a
4 continued support, and this resolution should
5 be submitted to the Zoning Commission and the
6 Mayor's agent.

7 MS. BROWN: Okay, all right.

8 (Off microphone discussion)

9 MS. BROWN: And then switching
10 gears, you heard today testimony from the
11 National Trust regarding the historic
12 preservation covenants and compliance with
13 them, and are you aware of a report submitted
14 by the State Historic Preservation Officer on
15 that matter?

16 MS. CORBETT: I am. So I have a
17 memorandum dated May 22, 2014, from Jennifer
18 Steingasser, Deputy Director, Development
19 Review and Historic Preservation, and David
20 Maloney, the State Historic Preservation
21 Officer, and they're commenting specifically
22 on the language in the covenant about if the

1 SHPO does not agree with the plans that the
2 project could be referred to the Advisory
3 Council on Historic Preservation.

4 And so, they are commenting that the
5 SHPO does not disagree with the plans and has
6 no reason to conclude that the project will not
7 be in compliance with the covenants.

8 MS. BROWN: Could you please submit
9 that for the record? And I see that -- I only
10 have the one copy, but I see that Ms. Ferster
11 is reading it.

12 JUDGE BYRNE: No, they have it.

13 MS. FERSTER: We have it.

14 MS. BROWN: Yes.

15 JUDGE BYRNE: Could you also submit
16 all of the ANC resolutions that are relevant?

17 MS. BROWN: Yes. I thought that we
18 had included in the first submission, but I'll
19 go make sure --

20 JUDGE BYRNE: Somebody last -- Oh,
21 in the first time through?

22 MS. BROWN: I'll make sure to

1 include them if they're not there.

2 JUDGE BYRNE: I can't remember, but
3 I could be wrong. Remember there was a lady who
4 testified in the first hearing from the ANC and
5 said that she would send it, but I don't think
6 she ever did.

7 MS. BROWN: Okay.

8 MS. CORBETT: Certainly, I'd be
9 happy to do so.

10 MS. BROWN: Okay. Those are all my
11 questions.

12 MS. FERSTER: Just to clarify, this
13 May 22, 2014 memo, the clause you read. The
14 SHPO does not disagree with the plan and has no
15 reason to conclude that the plan will not be in
16 compliance with the covenants.

17 Can you read the predicate clause
18 that starts with recognizing?

19 MS. CORBETT: Recognizing the
20 findings of the HPRB and that the applicant will
21 need to establish that the proposed demolition
22 will result in a project of special merit before

1 the Mayor's agent for historic preservation.

2 MS. FERSTER: Thank you. I don't
3 have any other questions.

4 MS. MERRITT: I don't have any
5 questions.

6 JUDGE BYRNE: All right, thank you.

7 MS. BROWN: That concludes our
8 rebuttal testimony.

9 JUDGE BYRNE: Okay, good. Now you
10 have an opportunity, if you wish, to put on --
11 to bring on witnesses in surrebuttal.

12 MS. FERSTER: I don't -- do I?

13 JUDGE BYRNE: Yes.

14 MS. FERSTER: At this point, you
15 know, our surrebuttal is -- well let me just
16 check.

17 JUDGE BYRNE: Take your time. And
18 then, I know, you'll have a chance first to make
19 an argument.

20 MS. FERSTER: Yes, it seems like
21 they've all gone home.

22 JUDGE BYRNE: Yes. I understand.

1 MS. FERSTER: Unless, you know --

2 MR. BADER: I mean, if I'm allowed
3 to speak I'd like to clarify one or two things.

4 MS. FERSTER: Okay, go ahead.

5 JUDGE BYRNE: Come on up, sir.

6 MS. FERSTER: Surrebut.

7 JUDGE BYRNE: Okay. Mr. Bader,
8 right?

9 MR. BADER: Yes.

10 JUDGE BYRNE: So state your name
11 again for the record for the reporter.

12 MR. BADER: Matthew Bader.

13 JUDGE BYRNE: Okay.

14 MR. BADER: So, can I just speak?

15 JUDGE BYRNE: Okay.

16 MS. FERSTER: You can.

17 MR. BADER: So to Ms. Corbett's,
18 you probably know where I'm going with this, she
19 indicated there is approval from various ANCs,
20 including 5C, 5E. Along with the approval from
21 5C and 5E have been letters submitted by both
22 the Stronghold and Bloomingdale Civic

1 Associations requesting they rescind that
2 approval.

3 The most recent approval back in
4 November, about a month after the HPRB
5 approval, a letter was submitted for ANC 5E to
6 approve the PUD. I was at that meeting and a
7 few follow meetings about what that
8 pre-approval was about.

9 They said it was to approve the PUD
10 and I said, anybody have received or seen the
11 PUD? We entered that as a vote and they orderly
12 said no, and it was captured in the meeting
13 minutes. But I just want that to be on the
14 record that while they may have received
15 approval, the nature of that approval we'll
16 leave in the air.

17 JUDGE BYRNE: Okay.

18 MR. BADER: So there are some
19 concerns at the civic association level with
20 the ANC vote that took place and this is part
21 of what has led to the MAG opposing its
22 development.

1 JUDGE BYRNE: Okay.

2 MALE PARTICIPANT: You can ask him
3 those questions if you want.

4 MR. BADER: The only other thing I
5 wanted to clarify was -- I don't know if you were
6 speaking to permanent jobs or not, but Mr.
7 Aakash, said there were 3,000 District resident
8 jobs being promoted from this.

9 There's 3,000 permanent jobs being
10 promoted, which a portion of that, I think it's
11 1,200, 1,230, are for District residents. So
12 I just wanted to clarify that point as well.

13 There's temporary as well, but the
14 3,000 permanent jobs, only a portion of that's
15 for District residents.

16 MR. THAKKAR: That's what I said.

17 MR. BADER: Okay. I must have
18 missed that, I thought you said 3,000 District
19 resident jobs. So that was all I wanted to
20 clarify.

21 JUDGE BYRNE: Okay.

22 MS. FERSTER: Just one follow up.

1 Can you comment on the relationship between the
2 developer and ANC 5E? If not --

3 MR. BADER: No.

4 MS. FERSTER: Okay.

5 MR. BADER: No, I can't. I can say
6 that, I don't know how much credibility there is to
7 this but it is in writing, where one of the
8 Commissioners said that Vision McMillan wrote
9 the support letter for the PUD application.

10 And take that for what it is, I don't
11 know if I believe her or agree with her, but that
12 is in an email from her. So, thanks. I don't
13 know if you want to ask your other question?

14 MS. FERSTER: Well, okay. Did the
15 ANC approval reflect constituent support?

16 MR. BADER: And I think I've made it
17 clear that, no, I didn't think they did.

18 MS. BROWN: If I could ask a follow
19 up question. Does the ANC always have to
20 reflect 100 percent a view one way or the other,
21 isn't it always going to have to be a
22 compromise?

1 MR. BADER: I overtly agree with
2 you, but I don't know how you can vote on
3 something that you have not been presented
4 with. That's my concern.

5 So no, but to your point I do not
6 believe it's the ANC's obligation to vote with
7 their civic association. You would hope that
8 they would, in my opinion, but it's not their
9 obligation.

10 MS. BROWN: Thank you.

11 JUDGE BYRNE: Okay, thank you.

12 MR. BADER: Thank you.

13 JUDGE BYRNE: All right. Are you
14 guys feel like in a mood for making closing
15 arguments?

16 MS. BROWN: I have a suggestion.
17 I'm perfectly happy to go forward, but if Ms.
18 Merritt and Ms. Ferster are agreeable, I think
19 we could do in writing, closing, if that would
20 be more convenient?

21 JUDGE BYRNE: There's been a lot of
22 evidence, right.

1 MS. BROWN: Yes.

2 JUDGE BYRNE: So there's a lot of
3 stuff here and I think it might be hard for the
4 lawyers to pull it all together, but I'm willing
5 to listen if you want to talk or you can do it
6 in writing.

7 MS. BROWN: Your preference, I just
8 throw that out there as an option. It's
9 getting late.

10 MS. FERSTER: Well -- and maybe if
11 I could just be very brief, because I would've
12 made this as an opening, you know, a point to
13 end, so --

14 JUDGE BYRNE: Yes, you didn't make
15 an opening, so --

16 MS. BROWN: Do your opening.

17 MS. FERSTER: You know, and I'll
18 try and be brief here.

19 JUDGE BYRNE: Okay.

20 MS. FERSTER: Just, and we will, of
21 course, submit --

22 JUDGE BYRNE: Yes.

1 MS. FERSTER: -- you know, legal
2 arguments particularly addressing the issue of
3 subdivision because at this point this
4 proceeding is, you know, got a fatal legal
5 defect here because -- or the proceeding
6 doesn't, you know, you can go ahead if you
7 decide and approve the demolition of the below
8 ground vaults a special merit project, you
9 know, if that's your judgment that the law and
10 the facts permit that.

11 But the issue of subdivision is a
12 separate issue and it has to be by law, by
13 statute, by regulations, it has to be noticed
14 if you have an application for a subdivision,
15 but even if there's a concept approval that
16 wouldn't have to necessarily be noticed.

17 The Mayor's agent by law cannot
18 approve a subdivision as being either
19 consistent with the purposes of the Act or a
20 project of special merit without the
21 recommendation of the HPRB. That is in the
22 statute 6-1106, I believe it's (c).

1 MS. MERRITT: (c).

2 MS. FERSTER: So --

3 MS. BROWN: Yes, if I can probably
4 bypass this, I'll concede that point that we
5 need to file an application for a subdivision.

6 MS. FERSTER: And that has to come
7 before the Mayor's agent again and at the --

8 MALE PARTICIPANT: Really?

9 MS. FERSTER: Yes. And that the
10 issue before you will be very different than it
11 is today. You cannot simply say in that next
12 proceeding, you know, I approve the special
13 merit of the below ground grade vaults. So,
14 you know, obviously that's sort of
15 administrative res judicata, I'm just going to
16 apply that proceeding here, because the issue
17 is different. Because in subdivision the
18 issue is going to be the open space and the open
19 space is a key defining characteristic of this
20 historic site.

21 And, yes, they don't need a
22 demolition permit for the open space, but they

1 need a subdivision for the open space and they
2 will have to show --

3 MS. BROWN: And if I could, is this
4 part of your -- I'm sorry, I'm confused because,
5 is this part of your closing or your opening?

6 MS. FERSTER: I just figured,
7 well --

8 MS. BROWN: Or is this --

9 JUDGE BYRNE: This is just, she's
10 laying it out. This is okay.

11 MS. FERSTER: Either one. This is
12 a clarification.

13 MS. BROWN: Because I can just say,
14 if I've just conceded that we're going to come
15 back with a subdivision, I don't think we need
16 to argue anything more on it.

17 MS. FERSTER: I just wanted to lay
18 the road map out that the issue is a little
19 different.

20 MS. BROWN: Well I think it's up to
21 him to decide whether -- I mean I don't think
22 we need to get into the argument.

1 JUDGE BYRNE: Yes. No, but I
2 actually appreciate it because I appreciate the
3 instruction on this because I -- because this
4 hadn't come up until later today and it is an
5 important point.

6 MS. BROWN: Okay.

7 JUDGE BYRNE: But I appreciate the
8 fact that you're not contesting the fact that
9 there has to be a subdivision application.

10 MS. BROWN: Yes.

11 JUDGE BYRNE: And I do -- I would
12 accept the idea that it's not necessarily
13 incorporated into the demolition part.

14 MS. FERSTER: Yes. And the reason
15 why is, and this goes to the issue at hand here
16 relating to the demolition of the below grade
17 vaults, which is a key issue here.

18 The issue of special merit is not
19 evaluated as an objective, you know, thing.
20 Are these benefits special merit? It's the
21 relationship into what is lost versus the
22 benefits that are provided.

1 It's a balance, and that's a key
2 finding that you have to make is that the loss
3 of these historic structures, the below grade
4 in this case, is that the special merits
5 outweigh that.

6 JUDGE BYRNE: Right.

7 MS. FERSTER: And then in the
8 subdivision context you will make a different
9 determination that the loss of the open space
10 is, you know, outweighed by the special merit.

11 And then the second determination
12 that you're going to have to make is, of course,
13 are there alternatives? You know, that's a key
14 finding that the Mayor's agent has to make. Is
15 that are there alternatives to the demolition
16 or destruction of open space?

17 And in each case the question of
18 alternatives is going to be very different. So
19 in this case the applicants have exclusively
20 focused their valuation of, you know,
21 alternatives on the fact that, as a structural
22 matter, as a development matter, they don't

1 believe that it's possible to renovate the
2 below grade cells in a way that could provide
3 some kind of interior or overbuild development.

4 But, you know, it's -- and then, of
5 course, that will be not an issue on the
6 subdivision. The question on the subdivision
7 would be can they redevelop the surface? Are
8 there alternatives that can avoid the
9 destruction of open space? So I'm just saying,
10 going to be very different on Stage 2 in the
11 subdivision than it is here.

12 So turning now to the underground
13 vaults, let me say that, you know, it is our
14 position that the developers have not sustained
15 their burden of proof on the issue of relative
16 balance.

17 And one of the points that I, you
18 know, was going to point in my opening statement
19 -- I'll just do this now, is that the majority
20 of the benefits that are being offered here as
21 special merit benefits do not legally qualify
22 as special merit, which is one of the reasons

1 why I didn't object to the Green Door Report
2 even though, you know, we have some disputes
3 about the rebuttal witness -- about the Green
4 Door because we do have some disputes about the
5 accuracy of the employment projections and the
6 tax revenue projections.

7 But it's undisputed that if you do
8 a massive development on any site, historic or
9 not, you're going to generate employment and
10 you're going to generate tax, and the rulings
11 of the Mayor's agent in the past are clear that
12 those are basic, you know, benefits of any kind
13 of development project and they do not qualify
14 as special merit.

15 So, you know, we just don't -- we
16 don't even consider that. Second off, there's
17 a lot of payoffs involved here that were
18 discussed in the Applicant's pre-hearing
19 submission. Payments to, you know, people who
20 were going to train -- do employment training,
21 there's payments to the ANC.

22 And, you know, I think it's very

1 questionable that any of those payments will
2 actually go back to the site. They're just
3 divorced from the site. They're for the
4 generosity that is a very typical thing in the
5 PUD process.

6 JUDGE BYRNE: Right.

7 MS. FERSTER: But, again, offsite
8 benefits, they're all offsite benefits, they do
9 not qualify as special merit. We've gone into
10 the transportation issue, we don't think, you
11 know, at this point that transportation could
12 remotely be anything, even the -- we don't even
13 think it's mitigation, quite frankly.

14 But anything that's mitigation is,
15 you know, of the impact that's caused by the
16 development clearly cannot be special merit,
17 bikeshare stations, transit, you know, busses
18 and those sorts of things.

19 None of that is special merit.
20 It's just bad mitigation, or not even
21 mitigation for, you know, the traffic impacts.
22 So we're down to, you know, affordable housing

1 and we're down to a grocery store, and we're
2 down to a community center.

3 And, you know, I won't deal with the
4 community center or the park because the
5 reality is is that I have a lot of questions
6 about whether this community center or park is
7 going to be, you know, open to the public --
8 fully open to the public, and the question is,
9 the other question is, again, this is a large
10 site so you're only preserving a small amount
11 of the open space, but certainly a park is a
12 benefit, you know.

13 And affordable housing, even
14 though, you know, clearly this is not the sort
15 of affordable housing that we would like to see,
16 which is for really low income people, you know,
17 30 percent of the AMI or the kind of affordable
18 housing that is in Councilmember McDuffie's
19 bill.

20 In this case, the affordable
21 housing does not outweigh the loss of these
22 historic structures and I think I would just use

1 a word that the applicants witness used for this
2 project and that is epic.

3 This project is epic. It's epic in
4 the level of destruction and, you know, the O
5 Street Market cases and all the other special
6 merit cases that were cited to you do not
7 involve a resource, this unique, this
8 significant, number one. And two, do not
9 involve the level of demolition that's going to
10 be involved here and in that case you got to
11 provide a lot more than 80 percent -- 20 percent
12 AMI affordable housing, the balance is just
13 off.

14 And then, the last point I'll just
15 make as a general matter is, you know, the
16 Applicant has not sustained their burden of
17 proof in their opening case to show that there
18 are no alternatives that would avoid the
19 demolition.

20 I mean what we've heard is that they
21 selected a single development team and they
22 basically said, you know, this is the

1 development we want and -- you know, and make
2 it work on this site, and that's not -- that's
3 not how you look at alternatives.

4 There's clearly been, you know, a
5 huge failure of the Applicant's burden of proof
6 on that key point which is that they have to show
7 that the benefits that they are providing, you
8 know, which qualify as a special merit benefit,
9 and that would be the 20 percent AMI and the 20
10 percent that's affordable housing, the grocery
11 store, and the park, could not be achieved with
12 a lesser amount of destruction of historic
13 properties.

14 And they have epically failed in
15 that burden of proof because they have shown not
16 a single alternative development proposal.
17 They have not, they selected, they didn't
18 competitively bid the project, they didn't show
19 that there was any kind of project that was
20 looked at other than the one that this team came
21 up with.

22 And the final point I would make has

1 to do with the issue of cost. You know, it's
2 been said, and I asked questions about this in
3 terms, in my cross examination, if costs were
4 no obstacle and, you know, there was kind of
5 well cost is always an obstacle.

6 As a practical matter, yes. As a
7 legal matter for purposes of what the Mayor's
8 Agent is doing today, no, because they are not
9 arguing that demolition is required to prevent
10 an unreasonable economic hardship.

11 That's the only context in which the
12 cost is relevant. You know, so it's not
13 surprising that they haven't come up with any
14 figures describing the costs of the adaptive
15 reuse, any kind of adaptive reuse scenario
16 because it would be clear that it, they just
17 have failed, they have not made that argument
18 because it's not legally relevant, you know.

19 If they believe that the cost of
20 adaptive reuse is so prohibitive, you know,
21 that it would preclude, you know, these
22 adaptive reuse alternatives then they

1 should've argued economic hardship.

2 And we'll address the remainder of
3 the points that I wanted to make in our proposed
4 findings of fact and conclusions of law. Did
5 you want to make any --

6 (Simultaneous speaking)

7 MS. MERRITT: No, I'm content with
8 going with, following Carolyn's suggestion
9 that we submit, that closing arguments, or
10 summaries --

11 MS. BROWN: And I'd like to follow
12 that, too, but I do want to make just some quick
13 points in response, and that's Ms. Ferster has
14 the law wrong.

15 Number one, the Mayor's Agent in
16 cases say that we need to establish objectively
17 whether or not there is special merit features
18 to the project.

19 Only then do we get into an
20 evaluation of the balancing of the quality of
21 the historic resources to be lost, and that's
22 clear from the case law.

1 MS. FERSTER: Agreed. I agree to
2 that.

3 JUDGE BYRNE: Yes.

4 MS. FERSTER: No, I agree.

5 JUDGE BYRNE: Okay.

6 MS. BROWN: So it is an objective
7 standard for special merit.

8 MS. FERSTER: That part of it for
9 sure.

10 MS. BROWN: Okay. Secondly --

11 JUDGE BYRNE: Let me just point out
12 that --

13 MS. BROWN: Sure.

14 JUDGE BYRNE: -- and you may not be
15 aware of this because of, but I decided a
16 special merit case that was distributed on
17 Friday and, unfortunately, it was only sent at
18 that date to the parties.

19 But it's 22-28 Martin Luther King
20 LLC and I think it's now on the HPO website, so
21 I just would appreciate as you sort of make your
22 arguments in writing that you take account of

1 that because I tried to lay out some of the way
2 I think about the steps in a special merit case.

3 And it's not really different than
4 what you're saying, although I think there are
5 comments about the nature of the alternatives
6 that would be considered that Ms. Ferster will
7 have to think about.

8 MS. BROWN: Yes, and I thank you,
9 and I did take a real quick look at the case at
10 the lunch break, but I have not examined it
11 fully, so we'd be --

12 JUDGE BYRNE: Yes. No, you
13 couldn't.

14 MS. BROWN: I think we all would
15 like the opportunity --

16 JUDGE BYRNE: I didn't know it was
17 published at all myself until I got here today.

18 MS. BROWN: And secondly I think
19 the points, I think Ms. Ferster probably should
20 go back and reread the Rhodes Tavern case
21 because there the Mayor's Agent did decide that
22 providing jobs for over 2000 persons of which

1 whom 50 percent would be low or moderate income
2 and the fact that the project would provide over
3 \$2 million in tax revenues were features of
4 special merit that did justify the demolition.

5 And the alternatives that we
6 discussed today and on October 6th clearly show
7 that we did examine quite a bit different, and
8 the project has evolved tremendously since the
9 time that this was first proposed.

10 And I think I'll wrap it up with that
11 and then just submit the rest of our closing
12 statement in writing. Thank you.

13 JUDGE BYRNE: Okay. So just,
14 let's, we can wrap this I think. I'd like to
15 thank everybody for a really illuminating and
16 thoughtful and sometimes quite passionate
17 presentation, which I deeply appreciate. I
18 certainly understand this case better and I'm
19 going to, I will have a lot of work to do to
20 resolve this case appropriately.

21 So the parties then will get, so you
22 will have some time after the transcript of this

1 hearing is prepared to do, you know, to do what
2 is generally called proposed findings of fact
3 and conclusions of law, which are also briefs
4 in a sense, of making your arguments about the
5 law, about subdivision, about the special merit
6 process and how that's to be decided.

7 And I would, I guess I would ask that
8 in that you take care to sort of lead me through
9 what you understand the decision, the different
10 steps in the decision process to have been to
11 get us to this point because there are many,
12 there have been many findings and many reports
13 and what not and it would just be helpful to me
14 to have written out your sense of what that
15 process has been to bring us to this point.

16 MS. BROWN: I'm sorry. Could I ask
17 for clarification?

18 JUDGE BYRNE: Yes.

19 MS. BROWN: Do you mean for the
20 Mayor's Agent proceeding itself or do you mean
21 the larger approval processes that you've heard
22 about today?

1 JUDGE BYRNE: Well I'm very sorry
2 to say that I mean the approval processes,
3 because I do understand the Mayor's Agent
4 process. I think that part comes to me, but the
5 rest of it is complicated.

6 MS. BROWN: Right, okay.

7 JUDGE BYRNE: There are a lot of
8 moving parts and I'm not going to make a ruling
9 on that, but I'd just like to hear your
10 understanding of how we got to this point for
11 the project. Is that reasonable?

12 MS. FERSTER: Yes. And can I ask a
13 clarifying question? So typically when we do
14 these proposed findings of fact and conclusions
15 of law we simultaneously submit proposed
16 orders, but in this case since some of it is
17 going to be legal argument perhaps it would be
18 appropriate to have some kind of legal reply if
19 you would find that helpful?

20 MS. MERRITT: Back and forth you
21 mean?

22 MS. FERSTER: Just, you know,

1 rebuttal of the other --

2 MS. MERRITT: Oh.

3 MS. FERSTER: Only if you find it
4 helpful.

5 MS. BROWN: I think that the
6 proposed orders can stand on their own.

7 JUDGE BYRNE: Okay. So why don't
8 we do that and then if I, if it's okay, if I feel
9 like I need to hear more legal argument I can
10 ask for it at that point I think?

11 MS. BROWN: Yes.

12 JUDGE BYRNE: Is that all right?

13 MS. BROWN: That's fine.

14 JUDGE BYRNE: But, yes, let's see
15 if we can do it in one round and sort of just
16 try that because we want to bring this to
17 conclusion.

18 So I think that the, I can ask Mr.
19 Reporter of the estimate when the transcript
20 will be ready?

21 COURT REPORTER: I don't know. I
22 don't have --

1 (Simultaneous speaking)

2 JUDGE BYRNE: You have no idea,
3 okay. So it's usually two weeks to three
4 weeks, something like that, and then how long
5 would you like after you have the transcript to
6 be able to submit the proposed findings?

7 MS. FERSTER: We're going to need
8 30 days. This is --

9 (Simultaneous speaking)

10 JUDGE BYRNE: It's pretty
11 complicated and it's a lot of stuff.

12 MS. FERSTER: It's a complicated
13 record.

14 JUDGE BYRNE: We had two days of
15 hearings.

16 MS. FERSTER: It's a big, one
17 document that's going to address everything,
18 every piece of evidence. I mean I would ask for
19 more but I'm sure it would be objected to, but
20 this could be a stretch even getting 30 days,
21 getting through all this at 30 days --

22 (Simultaneous speaking)

1 JUDGE BYRNE: Thirty days is going
2 to, you know, bring us into the holiday.

3 MS. MERRITT: The holiday.

4 JUDGE BYRNE: We're going to get
5 into the holidays here I'm sure.

6 MS. BROWN: So it would be great to
7 try to get it done before the holidays.

8 JUDGE BYRNE: It would be great to
9 get it done before the holidays.

10 MS. FERSTER: Yes, but the
11 transcript, it's got to be 30 days after the
12 transcript comes out.

13 JUDGE BYRNE: Yes.

14 MS. BROWN: And that's fine if, you
15 know --

16 JUDGE BYRNE: Why don't we say 30
17 days after the transcript and then if that falls
18 on like New Year's Eve or something we'll make
19 some adjustment to sort of not ruin anybody's
20 life.

21 JUDGE BYRNE: Yes, ma'am?

22 MS. HOLLIDAY: When can I issue

1 testimony, written testimony?

2 JUDGE BYRNE: How about two weeks?

3 MS. HOLLIDAY: Okay.

4 JUDGE BYRNE: And send it to Mr.
5 Callcott.

6 MS. HOLLIDAY: Yes.

7 JUDGE BYRNE: Okay.

8 MS. BROWN: And is, are there
9 parameters set on that or is it just people that
10 were here that asked to submit that?

11 JUDGE BYRNE: Yes, I think that's
12 right. I've got tons and tons of stuff that
13 have been submitted by writing even during the
14 day today.

15 So I would just, yes, two weeks for
16 people who were here who felt like they wanted,
17 who hadn't prepared written, who testified, but
18 hadn't prepared written testimony and would
19 like to submit it.

20 MS. FERSTER: And we were going to
21 provide you with, you know, the copies of the
22 PowerPoints that weren't available today, of

1 course, as well.

2 JUDGE BYRNE: Yes, thank you.

3 MS. FERSTER: I have a question
4 about the HPRB, in terms of the record there was
5 some reference to testimony that Miriam
6 Gusevich had provided to the HPRB and, you know,
7 it had been my assumption that everything that
8 was within the, at the HPRB would be --

9 JUDGE BYRNE: It's part of the
10 record.

11 MS. FERSTER: -- part of the
12 overall record and it would eventually --

13 JUDGE BYRNE: Yes, it is.

14 MS. BROWN: Good, okay.

15 MS. FERSTER: So then we don't need
16 to submit that PowerPoint.

17 JUDGE BYRNE: Right.

18 MS. BROWN: Good.

19 JUDGE BYRNE: Right. I don't, I
20 probably don't have, all I really have from the
21 HPRB is the transcript.

22 MS. FERSTER: Okay.

1 JUDGE BYRNE: I mean I --

2 MS. FERSTER: Well then maybe we'll
3 submit Miriam's, you know, it's part of the
4 record, but she wanted, you know, you had ask
5 about and she had asked me particularly she
6 wanted you to have that earlier PowerPoint that
7 she submitted to the HPRB.

8 JUDGE BYRNE: Okay. Do you have
9 any concerns about her submitting the
10 PowerPoint?

11 MS. FERSTER: And it's part of the
12 record, so, at the HPRB.

13 MS. BROWN: I don't recall that and
14 I think I'm supposed to get her slide
15 presentation from today.

16 MS. FERSTER: Yes. No, I'll throw
17 all the slides and everything.

18 MS. BROWN: Yes, that's fine. And
19 then I guess one other housekeeping is that
20 there was a lot of stuff that was submitted to
21 the record that I didn't get copies of today
22 and it, people just didn't have extra copies.

1 JUDGE BYRNE: Right.

2 MS. BROWN: I think it's mostly
3 just the testimony.

4 JUDGE BYRNE: It's mostly just
5 testimony.

6 MS. BROWN: Yes.

7 JUDGE BYRNE: And I think, you
8 know, most of those are really expressions of
9 viewpoint rather than evidence.

10 MS. BROWN: And I think I'll, I
11 think that's correct, but I'm not sure who the
12 keeper is of those.

13 JUDGE BYRNE: Well I've just, I've
14 gotten handed a bunch of stuff today.

15 MS. BROWN: Yes, okay.

16 JUDGE BYRNE: And I think most of
17 what I got as I was watching the table, people
18 were giving it out, there may have been one or
19 two exceptions in the course of that.

20 MS. BROWN: Yes, I agree. I don't
21 think it's anything of substantive --

22 JUDGE BYRNE: I don't think you

1 need to be too concerned about it.

2 MS. BROWN: Yes, okay. All right,
3 and then I think I'll be able to see them in
4 transcript anyway.

5 JUDGE BYRNE: Right. There we go.

6 MS. BROWN: Okay.

7 JUDGE BYRNE: There we go. All
8 right. All right, once again thank you to
9 everybody. You were extraordinarily patient
10 and good spirited about this and let's hope for
11 a good outcome.

12 (Whereupon, the above-entitled
13 matter went off the record at 7:40 p.m.)

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