

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA  
2 Mayor's Agent for the Historic Landmark  
3 and Historic District Protection Act

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Public Hearing

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10 In Re: HPA 15-133, 2501 (2507) 1<sup>st</sup> Street, NW  
11 Square 3128, Lot 800, McMillan Park Reservoir

12 Applicant: Vision McMillan Partners, LLC

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9:33 a.m. to 1:02 p.m.

16

Monday, May 18, 2015

17

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Office of Planning

19

1100 4th Street, SW, Suite E650

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Washington, D.C. 20024

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OLENDER REPORTING, INC.  
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1 Appearances:

2 JUDGE PETER BYRNE, ESQ.,

3 Designated Mayor's Agent

4

5 For the Applicant:

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1 Appearances: (continued)

2

3 For the Applicant (continued):

4 AAKASH THAKKAR

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8

9 For the Friends of McMillan Park and National  
10 Trust for Historic Preservation:

11 ANDREA FERSTER, ESQ.

12 Law Office of Andrea Ferster

13 2121 Ward Court, NW

14 Washington, DC 20037

15

16 For the National Trust for Historic Preservation:

17 ELIZABETH (BETSY) MERRITT, ESQ.

18 Deputy General Counsel

19 2600 Virginia Avenue, NW

20 Washington, DC 20037

21

22

1 Appearances: (continued)

2

3 For DC for Reasonable Development:

4 Chris R. Otten

5 King Memorial Library

6 901 G Street, NW

7 Washington, DC 20001

8

9 For the McMillan Coalition for Sustainable

10 Agriculture:

11 Daniel Wolkoff

12 1231 Randolph Street, NE

13 Washington, DC 20017

14

15 Witnesses:

16 GILLES STUCKER

17 ANNE CORBETT

18 AAKASH THAKKAR

19

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C O N T E N T S

WITNESSES		PAGE
	DIRECT	CROSS
Gilles Stucker	48	53, 77, 78
Anne Corbett	137, 145	147, 158, 165, 167, 200
Aakash Thakkar	209	213, 213, 214

EXHIBITS	PAGE
Exhibit No. B2	164

1                                   P R O C E E D I N G S  
2                   MAYOR'S AGENT BYRNE:   Okay.   Good  
3 morning, everybody.   Today is Monday, May 18th,  
4 2015.   I'm Peter Byrne, the designated Mayor's  
5 Agent for this matter, which involves  
6 applications to subdivide a portion of the zoned  
7 reservoir at lot 801 First Street, Northwest, for  
8 construction as a mixed-use project.   The  
9 application is assigned Historic Preservation Act  
10 Number 15-133.

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

19                   Prior to consideration by the Mayor's  
20 Agent, the law requires that the applications be  
21 referred to the Historic Preservation Review  
22 Board for its recommendation.   On January 29,

1 2015, the Review Board recommended against the  
2 subdivision on the grounds it would not be  
3 consistent with the purposes of the Historic  
4 Landmark and Historic District Protection Act.  
5 After the board made its recommendation, the  
6 Applicant requested this public hearing, as  
7 provided by law.

8           The hearing will be conducted in  
9 conformity with D.C. Administrative Procedure Act  
10 and Title 10-C, D.C. Municipal Regulations, which  
11 contains the rules of procedure for the Mayor's  
12 Agent pursuant to the preservation law.

13           So, we will proceed as follows: First,  
14 we will consider pending motions; then  
15 presentation of the Applicant's case; then  
16 statement by public agency representation,  
17 statements by affected ANC's; then other parties  
18 or persons in support of the application; then  
19 we'll hear from parties and other persons in  
20 opposition to the application.

21           There will be a chance for rebuttal by  
22 the Applicant and by parties in support of the

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

3 I want to note here that this case is in  
4 a somewhat unusual procedural context because the  
5 subdivision issue was not ready for discussion by  
6 the Mayor's Agent in the prior two-day hearing  
7 that we held, because it had not yet gone to the  
8 Historic Preservation Review Board.

9 However, the Mayor's Agent issued a  
10 decision, an order, last month, finding that the  
11 project as proposed is a project of special merit  
12 and that the special merit outweighed to the loss  
13 to preservation from the demolition of the cells,  
14 and that the demolition was necessary to carry  
15 out the project of special merit.

16 And I just want to make it really clear  
17 that we're not re-litigating any of that. That's  
18 closed; that's done. We spent two days on that.  
19 Everybody worked hard on it. And all we want to  
20 hear about today is the question of the  
21 subdivision and the issues that it raises that  
22 are different from why it was decided in the

1 prior decision. Okay? So, that means, I think,  
2 we can be very focused in what we have to say and  
3 proceed that way.

4 Okay. So, there's a pending application  
5 by Friends of McMillan Park for participation as  
6 parties.

7 MS. FERSTER: And the National Trust for  
8 Historic Preservation.

9 MAYOR'S AGENT BYRNE: And the National  
10 Trust for Historic Preservation, okay. So, are  
11 you going to be representing them, as well?

12 MS. FERSTER: No. Betsy Merritt is on  
13 the way. She is in a taxicab.

14 MAYOR'S AGENT BYRNE: Okay. Okay. Fine.  
15 Do you have any objections to that?

16 MS. BROWN: No. I would just request  
17 that the National Trust Historic Preservation  
18 submit the documentation from the organization  
19 authorizing them to appear under, you know,  
20 3001.1(c).

21 MAYOR'S AGENT BYRNE: Okay. Well, we can  
22 assume that that will occur.

1           MS. FERSTER: I can say that, in absence  
2 of Elizabeth Merritt being here, but my  
3 understanding is the National Trust makes  
4 litigation intervention decisions, often, with  
5 written attorney-client privilege documents.

6           So, the Deputy General Counsel of the  
7 National Trust -- I see you're over here -- has  
8 represented at the last hearing that she had  
9 authorization from the National Trust to  
10 participate. And I don't think that she would  
11 perjure herself.

12           MAYOR'S AGENT BYRNE: Do you have any  
13 sort of foundation for having a concern as to  
14 whether she is authorized?

15           MS. BROWN: No. I just saw a requirement  
16 in the regulations, and felt -- have that  
17 demonstrate. But, you know, otherwise I don't  
18 have an objection.

19           MAYOR'S AGENT BYRNE: Okay. Okay. All  
20 right. Well, so, we'll get Ms. Merritt to be  
21 settled and we can hear further about that.

22           There's also an application for party

1 status from Mr. Wolkoff on behalf of the McMillan  
2 Coalition for Sustainable Agriculture and DC for  
3 Reasonable Development dispute.

4 Mr. Wolkoff? Is Mr. Wolkoff here?

5 (No audible response.)

6 MAYOR'S AGENT BYRNE: No. Okay.

7 AUDIENCE MEMBER: I'm sure he will be  
8 here.

9 MAYOR'S AGENT BYRNE: You're sure he will  
10 be here. Okay. Well, we will deal with that  
11 when the time comes. I think that will give me a  
12 chance to speak now. Right.

13 Okay. Good morning, Ms. Merritt. So,  
14 the Applicant has raised a question of your  
15 authorization to represent the National Trust in  
16 this matter. And typically, one for nonprofit  
17 organization is often a document that's used.  
18 But I'm happy for you to say something about your  
19 authorization.

20 MS. MERRITT: Well, we have an internal  
21 policy that requires authorization by our  
22 president in order to file a court action. We do

1 not require authorization for engagement in  
2 administrative actions or presenting of  
3 testimony.

4           However, we have had meetings with our  
5 president to discuss this particular hearing,  
6 because there was an effort to reach out to her  
7 to silence us, to prevent us from testifying  
8 today. And so, we had a meeting with her. And  
9 in fact, I just saw her again this morning.  
10 She's well aware of the fact that we are  
11 participating.

12           We have asked for party status in this  
13 matter. And although we don't have an internal  
14 process where she approves that in writing the  
15 way we do for a court action, she is well aware  
16 of it and comfortable with it and knows, even as  
17 of this morning, that the National Trust is being  
18 represented here.

19           MAYOR'S AGENT BYRNE: Okay. Thank you.

20           So, I'm going to accept her as a party  
21 and move on.

22           All right. I think then we're ready for

1 your presentation.

2 MS. BROWN: If I may, I understand there  
3 is another request for party status for the  
4 Coalition for Sustainable Agriculture.

5 MAYOR'S AGENT BYRNE: Right. But they're  
6 not here yet.

7 MS. BROWN: Oh, I thought it was two  
8 separate requests. I just wanted to make sure.

9 MAYOR'S AGENT BYRNE: I think that there  
10 are two --

11 MS. BROWN: And one was represented by  
12 Chris Otten, and the other was --

13 MAYOR'S AGENT BYRNE: Okay. I thought  
14 they were both being represented by both. But is  
15 Chris Otten here?

16 (No audible response.)

17 MAYOR'S AGENT BYRNE: Okay. So neither  
18 is here.

19 MS. BROWN: Okay.

20 MAYOR'S AGENT BYRNE: So, when they come  
21 in, we'll deal with it.

22 (Pause.)

1 MS. BROWN: Good morning.

2 MAYOR'S AGENT BYRNE: Good morning.

3 MS. BROWN: We're here today, as you  
4 noted, for the express purpose of getting the  
5 subdivision approved for the McMillan Sand  
6 Filtration Site. Before we launch into that, I  
7 thought it might be helpful to go through some of  
8 the parameters and the types of divisible lots  
9 that are available in the District of Columbia.

10 And I don't see this coming up on the  
11 screen yet, but I can --

12 MR. DENNEE: Oh, sorry. It's just going  
13 to take another second.

14 MS. BROWN: Actually, Mr. Otten has just  
15 arrived. And I don't know if we want to go to  
16 that. But in the meantime, I can give copies of  
17 the slides, too. That might be helpful.

18 (Pause.)

19 MAYOR'S AGENT BYRNE: All right. So, are  
20 you Mr. Otten?

21 MR. OTTEN: Yes, I am.

22 MAYOR'S AGENT BYRNE: Have I got that

1 right?

2 MR. OTTEN: Yes.

3 MAYOR'S AGENT BYRNE: Okay. And are you  
4 expecting Mr. Wolkoff to come?

5 MR. OTTEN: Yes.

6 MAYOR'S AGENT BYRNE: Okay. So, for now,  
7 I'm holding in abeyance your motion for party  
8 status.

9 MR. OTTEN: Okay.

10 MAYOR'S AGENT BYRNE: So we can hear the  
11 two of you together on that point.

12 MR. OTTEN: I mean, even though we  
13 applied for party status at the same time, we are  
14 individual organizations. And I could address my  
15 party status with DC for Reasonable Development.

16 MAYOR'S AGENT BYRNE: Okay. All right.  
17 Well, let's do it. Let's do that then.

18 MR. OTTEN: Okay.

19 MAYOR'S AGENT BYRNE: So, I have the  
20 written document that you submitted.

21 MR. OTTEN: Yes, initially.

22 (Pause.)

1           MAYOR'S AGENT BYRNE: And so, right now  
2 it's okay. Fine. Bring it on.

3           (A discussion ensued wherein Mr. Otten  
4 explained the documents to Mayor's Agent Byrne.)

5           MR. OTTEN: This is additional board  
6 membership for some of our members.

7           MAYOR'S AGENT BYRNE: Okay.

8           MR. OTTEN: Two of who -- three who live  
9 right across the street.

10          MAYOR'S AGENT BYRNE: Okay. Okay. Okay.  
11 Good.

12          MS. BROWN: May I have copies, please?  
13 I've forgotten how many there are.

14          MAYOR'S AGENT BYRNE: I made three.

15          (Documents were distributed.)

16          MAYOR'S AGENT BYRNE: Okay. So, right  
17 now then, Mr. Otten, the question is the question  
18 of party status.

19          MR. OTTEN: Yes.

20          MAYOR'S AGENT BYRNE: And that is  
21 distinct from the question as to whether you have  
22 a chance to speak and sort of make a

1 presentation.

2 MR. OTTEN: I understand.

3 MAYOR'S AGENT BYRNE: Okay. So, please  
4 tell me then why you should be afforded party  
5 status in the case.

6 MR. OTTEN: Well, I'm representing DC for  
7 Reasonable Development. It's a non-incorporated,  
8 nonprofit association here in the District of  
9 Columbia. We've been in existence for three  
10 years.

11 There are several of our participating  
12 members live within eyesight of the McMillan Park  
13 Infiltration Plant and literally across the  
14 street from the site. Some have lived there,  
15 their families have lived there since 1925.

16 And basically, as an organization, our  
17 mission is to look at major development projects  
18 here in the District of Columbia and analyze them  
19 and get engaged on these issues.

20 We were at the zoning, the interrelated  
21 Zoning Commission hearings. We didn't ask for  
22 party status then, because of some of the other

1 parties that were involved. But since then, it's  
2 clear some of the issues, we don't really have  
3 duplicative issues as some of the other parties,  
4 such as Friends of McMillan.

5 MAYOR'S AGENT BYRNE: Okay.

6 MR. OTTEN: You know, our issues contend  
7 with the cutting-up of this parcel, which follows  
8 on from the master plan. It is really going to  
9 negatively affect our members' daily lives if  
10 it's processed through, both in terms of the  
11 daily construction that will be around for three  
12 years.

13 But more importantly, it's the loss of  
14 the public enjoyment that these people have of  
15 this current public asset, both it serving as  
16 environmental benefits, but also the historic  
17 aspects of the site regarding its deep history  
18 and the integration of the District of Columbia  
19 between blacks and whites, as well as just the  
20 open-air vistas that our members enjoy currently.

21 MAYOR'S AGENT BYRNE: Okay. Okay. So,  
22 before you got here, I was sort of making clear

1 for the other participants that the issues that  
2 were decided in the Mayor's Agent order April are  
3 not going to be reopened. So, this has been  
4 determined by the Mayor's Agent to be a project  
5 of special merit, that justifies the demolition  
6 of the underground cells and that it's necessary  
7 in order to carry out the project.

8 And so, the only question really that's  
9 going to be addressed today is the question of  
10 subdivision.

11 MR. OTTEN: Which implements the master  
12 plan.

13 MAYOR'S AGENT BYRNE: Which implements  
14 the master plan, right.

15 MR. OTTEN: Right.

16 MAYOR'S AGENT BYRNE: But the arguments  
17 against subdivision, it seems to me, cannot go  
18 back and say, "Well, it's not a project of  
19 special merit," in particular, and then other  
20 things that were decided in the prior --

21 MR. OTTEN: Well, isn't that part of the  
22 measuring act here, is that it's, dividing this

1 parcel up is being done so because, in part, it's  
2 a project of special merit?

3 MAYOR'S AGENT BYRNE: Yes. So, the  
4 question of whether it's necessary to carry out  
5 the project is an open question that can be  
6 addressed. But not whether the project itself is  
7 a project of special merit.

8 MR. OTTEN: So then, this would seem a  
9 case that's a fait accompli for the Applicant.

10 MAYOR'S AGENT BYRNE: Well, it is created  
11 by a procedural quirk, in the sense that the  
12 question of subdivision couldn't be decided with  
13 the other issues, because it hadn't been  
14 addressed yet by the Historic Preservation Review  
15 Board. And so, the Mayor's Agent was not able to  
16 address it at that point.

17 So, the question really -- so, I think it  
18 is fair to say that the opponents of the case  
19 have a tough case to make, given what's  
20 established in the first hearing.

21 MR. OTTEN: So, to that end, dividing up  
22 what has historically been a one continuous

1 parcel into several parcels contends directly to  
2 what we're dealing with today, correct?

3 MAYOR'S AGENT BYRNE: Yes.

4 MR. OTTEN: And that would implement what  
5 was approved at the last hearing?

6 MAYOR'S AGENT BYRNE: Correct.

7 MR. OTTEN: So, contending with the  
8 parcels being cut up contends with cutting up a  
9 continuous historic parcel?

10 MAYOR'S AGENT BYRNE: Correct. Right.

11 MR. OTTEN: And that's -- yeah. I mean,  
12 that's what we have issue with.

13 MAYOR'S AGENT BYRNE: Okay.

14 MR. OTTEN: That may be flowing from the  
15 master plan that was approved, but what we need  
16 to understand more fully is, what's not clear is  
17 the scope of the special merit that allows for  
18 both the master plan and the cutting-up of the  
19 parcel.

20 MAYOR'S AGENT BYRNE: Okay. Well, that's  
21 what we're going to address, I think. Okay.  
22 That's what we're going to address.

1 Now, may I ask, are you a lawyer?

2 MR. OTTEN: I'm not.

3 MAYOR'S AGENT BYRNE: Okay. Okay. All  
4 right.

5 MR. OTTEN: I'm a civic agent.

6 MAYOR'S AGENT BYRNE: Do you have any  
7 view about whether --

8 MS. BROWN: Yeah. I'm a little concerned  
9 that what was submitted here doesn't demonstrate  
10 that these are actual members of the  
11 organization. And secondly, all the letters  
12 address the Zoning Commission, they don't address  
13 the Mayor's Agent proceeding.

14 And third, I haven't heard any alleged  
15 personal injury, in fact, to the members. There  
16 doesn't seem to be anything that is real,  
17 perceptible, concrete, specific, and immediate,  
18 rather than conjectural, theoretical, and  
19 speculative, as the courts have established in  
20 York Apartments Tenants Association versus the  
21 Zoning Commission.

22 MAYOR'S AGENT BYRNE: Do you have a view,

1 Ms. Ferster?

2 MS. FERSTER: We have no objection to the  
3 coalition's participation as a party. I'm sure  
4 that a little voir dire to Mr. Otten could, and  
5 perhaps his testimony as well will, establish  
6 that he and his members are injured and  
7 aggrieved, because they use, enjoy, and  
8 appreciate the McMillan site and feel that its  
9 subdivision would harm their use, enjoyment, and  
10 appreciation of it.

11 MAYOR'S AGENT BYRNE: Yeah. So I do  
12 think that the letters that are submitted here  
13 are for the Zoning Commission. But I think they  
14 do establish the fact that there are neighbors  
15 who live across the street who would be adversely  
16 affected by the project.

17 MS. CORBETT: Have we established that  
18 they are members of the organization?

19 MAYOR'S AGENT BYRNE: Are they members of  
20 the organization, Mr. Otten?

21 MR. OTTEN: Yes. They're participating.

22 MS. BROWN: All of these have been

1 attached to each one of them?

2 MR. OTTEN: Yes. And they all mention  
3 that in the narrative. Their positions have not  
4 changed since the Zoning Commission hearing. In  
5 fact, they have become stronger.

6 MS. BROWN: And I guess they still --

7 MAYOR'S AGENT BYRNE: They don't  
8 establish they are members of the organization,  
9 but that you are representing them. They don't,  
10 I mean, they just don't say that.

11 MR. OTTEN: The first two specifically  
12 say that in the last paragraph. And then, the  
13 others have acknowledged -- I mean, I could get  
14 our --

15 MAYOR'S AGENT BYRNE: Okay. I see one  
16 that does. One does, Mary Judd.

17 (Pause.)

18 MS. BROWN: And I would just -- I still  
19 have not heard how lines on a piece of paper  
20 creates these injuries.

21 MAYOR'S AGENT BYRNE: Well, if it's  
22 necessary to develop a project, then the project

1 is, I think, the point at which they would  
2 reasonably expect to be injured. So I think that  
3 approach might -- I think that's enough to give  
4 them party status. But we will -- I think we'll  
5 have to allow it.

6 Okay. So, are you Mr. Wolkoff?

7 MR. WOLKOFF: Yes, I am.

8 MAYOR'S AGENT BYRNE: Okay. And so,  
9 we're already dealing with the question of your  
10 application for party status in the case. And do  
11 you have any more -- do you have any information  
12 about members of the McMillan Coalition for  
13 Sustainable Agriculture and what their --

14 MR. WOLKOFF: I have our material. And  
15 we have a list of our membership.

16 MAYOR'S AGENT BYRNE: Okay. Can you  
17 submit those, please?

18 MR. WOLKOFF: Sure.

19 (A discussion ensued wherein Mr. Wolkoff  
20 explained the documents to Mayor's Agent Byrne.)

21 MAYOR'S AGENT BYRNE: All right, Mr.  
22 Wolkoff, can you describe how your members are

1 going to be or would be injured?

2           Let me just say, first of all, that  
3 before you got here, I was stating to the parties  
4 what the scope of the hearing is today, which is  
5 strictly on the subdivision issue, that the prior  
6 decision order establishing that the proposed  
7 project is a project of special merit is not  
8 going to re-litigated; that is a closed question.  
9 And the other questions that were decided in the  
10 April order are closed.

11           But the question of the subdivision is  
12 the open question, and that's what the hearing is  
13 limited to today.

14           MR. WOLKOFF: Yes. And how we arrived at  
15 the subdivision, is that something we could  
16 cover?

17           MAYOR'S AGENT BYRNE: Depending on what  
18 you mean by that, it may well be. But not the  
19 question of how the project -- the project  
20 itself, in its character, is not an open  
21 question.

22           MR. WOLKOFF: Okay.

1           MAYOR'S AGENT BYRNE: Now, would you  
2 please -- so, having said that, would you  
3 describe how your members would be injured by the  
4 subdivision?

5           MR. WOLKOFF: Well, a good portion of the  
6 members are 200-footers. So they live on Bryant,  
7 they live on First. I live pretty close by in  
8 Brookland.

9           I think that everyone in the City is  
10 going to be affected by the loss of McMillan, of  
11 the open site, of the historic site, to the  
12 developers. It's public land. We're all  
13 concerned about what our taxes are being abused  
14 for. And if they are being abused and squandered  
15 and wasted, every citizen is concerned about  
16 that.

17           MAYOR'S AGENT BYRNE: Well, that doesn't  
18 give you party status in a case, though. There  
19 has to be something more specific.

20           MR. WOLKOFF: Well, no. The other thing  
21 is we're an organization that is looking towards  
22 sustainable agriculture, which can produce

1 millions of pounds of fresh vegetables, even  
2 tilapia. And 20 acres underground at McMillan --  
3 because this is a system called vertical  
4 agriculture, where it's actually done indoors.

5           This is the future of food in our country  
6 and in Europe, especially with all the drought  
7 conditions in Mexico and California and the  
8 wastefulness of driving, you know, trucks, from  
9 California, from Florida, from South America.

10           MAYOR'S AGENT BYRNE: Those questions --  
11 those questions are definitely not on the table.

12           MR. WOLKOFF: No, well, sir, we have a  
13 program, and we're working towards this  
14 sustainable agriculture program with the council  
15 members, with the Mayor and the Sustainable DC  
16 Plan for McMillan.

17           Because the 20 acres underground are the  
18 absolute perfect place to create a food hub, a  
19 nutrition hub, and an exercise hub for the  
20 community. As a matter of fact, the rate is 50  
21 percent higher in child obesity since 1970.

22           MAYOR'S AGENT BYRNE: Okay. So I know --

1           MR. WOLKOFF: So we're looking at being  
2 harmed if we don't have access to this site, if  
3 we don't have good recreational facilities. And  
4 if the site is turned into a carbon-emitting heat  
5 island, we're going to suffer. The community is  
6 going to suffer.

7           The traffic is going to be atrocious. I  
8 understand 30,000 cars a day on North Capitol  
9 now; 20,000 more. It's 50,000 cars a day. And  
10 we have issues with the traffic study, the  
11 structural study. And we have a program that is  
12 great merit. Yeah.

13           MAYOR'S AGENT BYRNE: But that's not --

14           MR. WOLKOFF: And we're going to be  
15 harmed when the land is stolen by developers and  
16 they're given hundreds of millions of dollars of  
17 our tax money, when we have alternative plans.  
18 We have other options, desirable options. And  
19 our organization is promoting them.

20           So we are directly hurt if our open  
21 space, our park space, the caverns that are there  
22 are turned into millions of tons of carbon-

1 emitting concrete.

2 MAYOR'S AGENT BYRNE: Okay.

3 MR. WOLKOFF: As opposed to urban  
4 agriculture that is the future of being able to  
5 secure food in this City. It's very critical.  
6 It's not just locally produced, la-de-da.

7 MAYOR'S AGENT BYRNE: All right. I hear  
8 what you're saying. However, I'm going to deny  
9 your request for party status because I think  
10 that most of what you want to say is not relevant  
11 to the question that I am limited to deciding  
12 today, which is the subdivision question. And  
13 the question of whether there are better uses for  
14 the McMillan site filtration system is not a  
15 question that I'm authorized to decide.

16 The only question that I have is whether  
17 the subdivision is necessary to build the project  
18 that's already been found to be a project of  
19 special merit.

20 MR. WOLKOFF: Yes, sir. You decided at  
21 the last hearing that the demolition was  
22 appropriate to bypass an entire stream of

1 historic preservation laws -- D.C., federal, the  
2 covenants that were placed on the site, the  
3 Secretary of Interior's guidelines for historic  
4 rehabilitation. So, we're all involved in this.

5           And I object, and I would like to know  
6 where you expect me to protest your decision, and  
7 I will protest immediately. I will fill out  
8 whatever you have for me. And I am absolutely  
9 protesting the denial of party status.

10           The community in this City has been  
11 pushed out, blown off, denied any participation  
12 in this. We go to hearings. We spend the whole  
13 night up writing this stuff. And the HPRB is  
14 arrogant, disgusting the way they handled it.

15           The Zoning Commission, arrogant. The  
16 Zoning Commissioner said, "Nobody even testified  
17 that we want to save 25 acres of the park, sir."  
18 Everybody testified to that! He wasn't  
19 listening.

20           MAYOR'S AGENT BYRNE: I wasn't there, Mr.  
21 Wolkoff.

22           MR. WOLKOFF: Yeah, but you're here now.

1 And I'm protesting -- the other thing is, what  
2 kind of setup is this? Holland and Knight is  
3 billing our department, our Deputy Mayor, us.  
4 The opponents, we're paying both sides of the  
5 table here. Holland and Knight and VMP are  
6 billing the Deputy Mayor for Economic  
7 Development, who is our employee, who is trusted  
8 with our tax dollars.

9 So, what crazy situation is this? We're  
10 trying to have access to this event, to this  
11 hearing. We're paying their way by the millions  
12 of dollars. And you're denying us access.

13 And we want to protest it, and we want  
14 community access to this decision. This land is  
15 ours, sir. It's not theirs. It's not Mayor  
16 Gray's. It's not Mayor Bowser's. It ain't  
17 yours! The land is ours. We're the citizens of  
18 the District of Columbia.

19 The money spent on it that has been  
20 pissed away and wasted for 30 years is our money!  
21 Is it Gray's money? Is it Bowser's money? Is it  
22 McDuffy's money? Was Gray even elected honestly?

1 No.

2 We shouldn't be paying their salaries and  
3 their charges, which we have right here. We  
4 shouldn't be paying for their public relations  
5 campaign to squash us. Is that the way the  
6 business of the District of Columbia, the people  
7 of the District of Columbia -- is this the way  
8 the business is going to be carried out?

9 PR campaigns to squash us, hearing after  
10 hearing where we're denied -- we even finish our  
11 testimony, and then the Chairman of the HPRB  
12 turns to them and says, "Well, how many streets  
13 will you have there? Will it be gated? Will you  
14 have nice colors?" It's proposed! It's a  
15 proposal!

16 And if your HPRB committee hearings can't  
17 be objective and can't evaluate objectively, you  
18 yourself, sir, you said in your decision, you  
19 said, "I'm approving the demolition of the site  
20 because all the other agencies in the City  
21 approved it." How can it be an objective  
22 evaluation if you hadn't even heard the

1 opposition and the zoning decision was made?

2           The City Council had a vote seven years  
3 into this that if it went negative, real  
4 democracy -- and they weren't on the take and  
5 corrupt with lobbyists like Carmen Group, okay,  
6 lobbyists like Carmen Group, \$100,000 spent for  
7 David Grosso. What do you think of that,  
8 \$100,000 for one appointment with David Grosso?

9           MAYOR'S AGENT BYRNE: Okay. I've heard  
10 enough. That's enough.

11           MR. WOLKOFF: No, it's not enough! So --  
12 so, how was your evaluation objective and not  
13 pressured with the City Council deciding, the  
14 Zoning Commission deciding, all of this  
15 overlapping, all of these agencies in the same  
16 department of the City Government, including you?  
17 All mayoral appointees, and now you want us to  
18 pay their salaries, sitting on the other side of  
19 the table?

20           No! I'm protesting, and I'm objecting.  
21 We want party status. We are the people of the  
22 District of Columbia, like it or not!

1           MAYOR'S AGENT BYRNE: Your application is  
2 denied, sir. And you have protested.

3           MR. WOLKOFF: Oh, I'll stand here. I'll  
4 stand here till it's accepted. How's that?

5           MAYOR'S AGENT BYRNE: All right. As long  
6 as you're quiet, that's fine. Okay.

7           MR. OTTEN: Mr. Byrne, I didn't get a  
8 chance to -- I mean, you didn't ask the other  
9 parties to the case about his party status.

10          MAYOR'S AGENT BYRNE: That's true; I  
11 didn't.

12          MR. OTTEN: Right.

13          MAYOR'S AGENT BYRNE: Would you like to  
14 say --

15          MR. WOLKOFF: Why bother?

16          MAYOR'S AGENT BYRNE: Well, because, Mr.  
17 Wolkoff, I find you to be wanting to talk about  
18 an issue that I cannot address.

19          MR. WOLKOFF: Tough! Tough, sir! We  
20 want to address it! We are the people!

21          MAYOR'S AGENT BYRNE: I also find you to  
22 be extraordinarily rude.

1           MR. WOLKOFF: You are an employee! You  
2 are our employee. You do what we tell you, all  
3 right? Or we're going to fire you. How's that?

4           MAYOR'S AGENT BYRNE: Okay. Be my guest.

5           MR. WOLKOFF: Okay. You're fired.

6           MAYOR'S AGENT BYRNE: Good.

7           (Laughter.)

8           MAYOR'S AGENT BYRNE: Mr. Otten, what do  
9 you want to say?

10          MR. OTTEN: Well, I do think Mr. Wolkoff  
11 brings up several good points. You know, what I  
12 have in front of me is the Fontaine and Company  
13 document, which clearly shows that their key  
14 message point -- and this is the PR firm that he  
15 mentioned that was used, that taxpayer money was  
16 used to pay for.

17          One of their key points is the site was  
18 never a park. And that's exactly why his members  
19 --

20          (Inaudible interjection.)

21          MR. OTTEN: No, excuse me; I'm not done  
22 yet.

1           MAYOR'S AGENT BYRNE: Let him, give him a  
2 minute to say.

3           MR. OTTEN: But the point is, is that his  
4 members, who live just across the street as well  
5 as --

6           MAYOR'S AGENT BYRNE: I got that.

7           MR. OTTEN: -- also directly impacted  
8 neighbors, have seen this place as an  
9 opportunity, as a park, to do something good for  
10 the City.

11           The parceling of the land that's going to  
12 happen with the decision today, the fait accompli  
13 decision, it seems to me that their wishes to  
14 keep this park is as valid as any other wishes of  
15 the people who otherwise are impacted. And that  
16 his points about the money being used to squash  
17 public dissent include his members.

18           MAYOR'S AGENT BYRNE: But that's,  
19 frankly, irrelevant to this proceeding. The fact  
20 of the matter is neither of you were here at the  
21 hearings that were held in October and November.  
22 You could have come then; you didn't come.

1 MR. WOLKOFF: So, the ethics, the ethics

2 --

3 MAYOR'S AGENT BYRNE: SHUT UP!

4 MR. WOLKOFF: So, the ethics of this  
5 process are not relevant. Yesterday, Mayor  
6 Bowser was on TV, and she said, "Our ethics are  
7 in order."

8 MAYOR'S AGENT BYRNE: Mr. Wolkoff, I want  
9 you to be quiet until I recognize you --

10 MR. WOLKOFF: Okay.

11 MAYOR'S AGENT BYRNE: -- because you're  
12 disrupting the hearing.

13 MR. WOLKOFF: Yes, sir. Thank you, sir.  
14 No problem.

15 MAYOR'S AGENT BYRNE: So, Mr. Otten, the  
16 question of the -- so, Mr. Wolkoff, I want you to  
17 be able to stay for the hearing. Okay? But  
18 you're going to have to follow the decorum that's  
19 appropriate to an administrative hearing. Okay.

20 So, the question of who was lobbying  
21 David Grosso is not a question that I can or I'm  
22 going to decide today. We're going to consider

1 the merits of the subdivision as it relates to  
2 the project of special merit. That's what we're  
3 looking at. We're not examining the politics of  
4 the District of Columbia for the last 30 years or  
5 how we got -- how the political process arrived  
6 at a decision that was unanimously voted on by  
7 the City Council to proceed with this project.

8 The only question is the subdivision  
9 question.

10 MR. OTTEN: That's what I was pointing  
11 to. If these members think of this as the park,  
12 as a continuous park, and the parceling up of it  
13 is going to affect that vision for them, that's  
14 why I would support their -- and why we came in  
15 together, partially. We're kind of -- both of  
16 the organizations have been supporting each  
17 other's members.

18 MAYOR'S AGENT BYRNE: Okay.

19 MR. OTTEN: In the sense of analyzing the  
20 two different angles. But certainly, around the  
21 same issue, that this is a park that shouldn't be  
22 parceled up.

1           MAYOR'S AGENT BYRNE: Okay. I hear you.  
2 But I'm still going to deny the application for  
3 party status for Mr. Wolkoff's organization, but  
4 I am recognizing yours. And you can act as a  
5 party in the case.

6           All right. Let's proceed then, Ms.  
7 Brown.

8           MS. BROWN: Thank you. For the record,  
9 my name is Carolyn Brown. I'm with the law firm  
10 of CastroHaase and Brown. I'm joined by Whayne  
11 Quin of Holland Knight.

12           Before I begin, I've just been advised  
13 that the representative from the ANC would prefer  
14 to submit her letter. She's not feeling well and  
15 would like to depart. And if that's appropriate,  
16 I would request that.

17           MAYOR'S AGENT BYRNE: Are you the  
18 representative from the ANC, ma'am?

19           MS. BARNES: Yes.

20           MAYOR'S AGENT BYRNE: Okay.

21           MS. BARNES: The single-member district.

22           MAYOR'S AGENT BYRNE: Okay. And what's

1 your name, please?

2 MS. BARNES: Dianne Barnes.

3 MAYOR'S AGENT BYRNE: Dianne Wallace?

4 MS. BARNES: Barnes.

5 MAYOR'S AGENT BYRNE: Barnes, I'm sorry.

6 I see your name, Dianne Barnes.

7 And, Ms. Barnes, this is your letter?

8 MS. BARNES: Yes.

9 MAYOR'S AGENT BYRNE: Okay. I'm happy to  
10 accept this as testimony in the case. And if  
11 you'd like to depart, that's fine.

12 Is that all right, Ms. Ferster?

13 MS. FERSTER: Are there extra copies?

14 MAYOR'S AGENT BYRNE: Are there other  
15 copies?

16 (No audible response.)

17 (Pause.)

18 MAYOR'S AGENT BYRNE: There's one for Mr.  
19 Otten and Ms. Merritt and Ms. Ferster.

20 (Documents were distributed.)

21 MS. BROWN: So, good morning again.

22 Before we get into the actual testimony, I wanted

1 to establish the types of divisible lots that  
2 exist in the District of Columbia. And I'm going  
3 to switch over to -- maybe I can grab them now so  
4 I can put forward the next slide. Got it.

5 MAYOR'S AGENT BYRNE: Okay.

6 (Pause.)

7 MS. BROWN: Thank you. So, there are  
8 approximately three different types of lots for  
9 the District of Columbia. First, we have the  
10 record lots. And those are lots of records that  
11 set parameters for zoning and building code  
12 purposes. And they're usually numbered 1 through  
13 100, to 999, on the base maps that we see, and  
14 then the record of the Office of the Surveyor.

15 And that is where they're recorded, and  
16 that is part of the subdivision of the zoning  
17 regulations and the Surveyor's Office.

18 MAYOR'S AGENT BYRNE: Is that in the deed  
19 records? In other words, the private-owned -- in  
20 other words, are those --

21 (Cross-talk.)

22 MAYOR'S AGENT BYRNE: Those could be --

1 the record lots are also the parcels of  
2 ownership. I understand here there are a bunch  
3 of them together.

4 MS. BROWN: Yes.

5 MAYOR'S AGENT BYRNE: But in theory, an  
6 individual could own just one of the record lots  
7 and convey it to somebody else.

8 MS. BROWN: Correct.

9 MAYOR'S AGENT BYRNE: Okay.

10 MS. BROWN: You're correct. Yes.

11 The second type of lot is done through  
12 the Office of Tax and Revenue. And it does not  
13 have anything really to do with zoning. And they  
14 define the parcels for tax purposes. Oftentimes,  
15 you will see tax lots superimposed over record  
16 lots. They're usually number 800 through 899.

17 So, when you have several developers  
18 developing a project that might be a city block,  
19 in order for each to be taxed individually for  
20 that one record lot, they will carve it into tax  
21 lots. Assessment tax --

22 MS. FERSTER: May I interrupt a minute?

1 I just want to understand. Are you making an  
2 opening statement or are you testifying as an  
3 expert in these issues?

4 MS. BROWN: I'm setting the legal  
5 framework as legal argument.

6 They are known as "theoretical lots."  
7 Technically, the correct name is "theoretical  
8 building sites." Those are done through the  
9 zoning regulations under Section 25-16 and 25-17.  
10 Those are generally when you have a large lot  
11 that has very limited street frontage and you  
12 want to divide it in order to create, for  
13 example, townhouse parcels.

14 And Section 25-16 under the zoning  
15 regulations deals with residential districts, and  
16 Section 25-17 deals with nonresidential  
17 districts, commercial areas.

18 Now, the third type are the condominium  
19 and air rights parcels. Those are 3D parcels  
20 that are cubes of space, and they're usually  
21 numbered 7,000 through 9,000. They can be air-  
22 shaft space per easements in order to convey

1 them. There can be a library space on the fifth  
2 floor of the building that's going to be owned by  
3 somebody else, and that's where they come in  
4 handy.

5           So, those are generally the three types.  
6 The only two that the historic preservation law  
7 is concerned with are the record lots and the  
8 theoretical building sites, or theoretical lots  
9 under Sections 25-16 and 17 of the zoning  
10 regulations.

11           I just wanted to quickly go over again  
12 how we got here today. As you mentioned, this  
13 subdivision implements and effectuates the  
14 special merit project approved by the Mayor's  
15 Agent.

16           And typically, the subdivision would have  
17 been included in the master plan and demolition  
18 application that has already been decided as a  
19 project of special merit. But the property  
20 needed to be zoned first, and the zoning  
21 procedures had not completed yet, which prevented  
22 us from going to the historic preservation. So

1 it's a little more than not getting to HPRB; the  
2 zoning piece needed to be completed as well. So  
3 that's why they were bifurcated.

4 But in effect, there's really no  
5 difference from the special merit projects that  
6 were approved as subdivision -- sorry. That  
7 other subdivision projects that were approved as  
8 special merit, this is consistent with those when  
9 they were consolidated and some that were done  
10 individually.

11 So, we have one witness today. And that  
12 will be Anne Corbett, the Project Director of  
13 Vision McMillan Partners. We're also joined by  
14 Aakash Thakkar of the VMP team, but he's here for  
15 any explanations, but he will not be testifying  
16 directly. So with that, I'll turn it over to Ms.  
17 Corbett.

18 MAYOR'S AGENT BYRNE: If you can come  
19 over here, Ms. Corbett.

20 MS. CORBETT: Sure.

21 MS. FERSTER: I have a preliminary  
22 matter.

1           MAYOR'S AGENT BYRNE:   Okay.

2           MS. FERSTER:   Is anybody from the  
3 District of Columbia here to testify?

4           MS. BROWN:   I'm sorry.   Actually, why  
5 don't we start with Mr. Stucker from Deputy  
6 Mayor's Office for Planning and Economic  
7 Development?

8           MAYOR'S AGENT BYRNE:   Okay.

9           MS. BROWN:   I apologize.

10          MAYOR'S AGENT BYRNE:   Not at all.

11          MS. BROWN:   Thank you.

12          MAYOR'S AGENT BYRNE:   Okay.   So, now let  
13 me ask.   All right.   You're going to go first.

14          MR. STUCKER:   Yes.

15          MAYOR'S AGENT BYRNE:   Would you please  
16 state your name for the record?

17          MR. STUCKER:   Sure.   Gilles Stucker.

18          MAYOR'S AGENT BYRNE:   Gilles Stucker.

19 Okay, Mr. Stucker.   So, testimony in these cases  
20 are given under oath.   So I ask both you and Ms.  
21 Corbett, please, if you'll raise your right hand.

22                   Do you promise to tell the truth

1 completely and to the best of your ability today?

2 MR. STUCKER: Yes.

3 MS. CORBETT: I do.

4 MAYOR'S AGENT BYRNE: Thank you both.

5 Okay. All right. Go ahead. Please proceed. Do  
6 you want to come over here, use the computer? So  
7 we need the mouse back, I guess.

8 MS. BROWN: I don't think he's speaking  
9 to any slides.

10 MAYOR'S AGENT BYRNE: Okay.

11 MR. STUCKER: I don't.

12 MAYOR'S AGENT BYRNE: That's fine.

13 Whereupon,

14 GILLES STUCKER

15 was called as an expert witness and testified as  
16 follows:

17 DIRECT TESTIMONY

18 MR. STUCKER: Good morning. My name is  
19 Gilles Stucker. I'm a senior project manager  
20 with the Office of the Deputy Mayor for Planning  
21 and Economic Development. On behalf Deputy Mayor  
22 Kenner, as well as the Bowser administration, I'm

1 privileged to voice our strong, enthusiastic  
2 support for the subdivision and the McMillan  
3 Redevelopment Plan.

4           The District purchased the property in  
5 1987 explicitly for mixed-use redevelopment to  
6 benefit the community. The District, together  
7 with our development team, have developed a plan  
8 that celebrates the history of McMillan, truly  
9 opens the site up to the public, and offers a  
10 broad and deep array of community benefits to  
11 District residents of all ages and, more  
12 importantly, all income levels.

13           The District set very robust goals for  
14 economic development and community amenities.  
15 And we are pleased to see the various elements  
16 integrated into the project. As the owner of the  
17 property, the District's specific role is to  
18 oversee the entire process to ensure that the  
19 project maximizes benefits to the community and  
20 the City.

21           These goals and benefits include  
22 affordable housing, job creation, open-space

1 parks and reading space, historic preservation  
2 and cultural amenities, neighborhood-serving  
3 retail, a strong comprehensive set of community  
4 benefits that assist the communities around  
5 McMillan site, and positive fiscal and economic  
6 impacts.

7           The District believes the development  
8 will strike a balance of economic development and  
9 preservation of open space and historic  
10 structures, a fiscal impact in community  
11 amenities in creating new economic opportunities.

12           In a decision and order issued April  
13 31st, 2015, the Mayor's Agent for Historic  
14 Preservation approved the demolition of the  
15 McMillan underground cells in order to construct  
16 a project of special merit. The redevelopment  
17 plan for McMillan was deemed to be a project of  
18 special merit by virtue of its exemplary  
19 architecture, social and other benefits having a  
20 high priority for community services, and special  
21 features of land planning.

22           The subdivision has one technical

1 mechanism required to allow the special merit  
2 project to be constructed. When the District  
3 acquired McMillan, the Federal Government was not  
4 bound by the District's subdivision laws, and it  
5 constructed the facility without regard to the  
6 parcel lines.

7           Thereafter, when McMillan was sold to the  
8 District Government, it was transferred as tax  
9 lot 800, which included the area of the 122  
10 record lots and streets. This application simply  
11 provides for the re-subdivision of the same land.

12           Like the approved demolition, the  
13 subdivision application will allow redevelopment  
14 of McMillan, thereby providing significant  
15 benefits to the District of Columbia through its  
16 diverse mix of market-rate and affordable housing  
17 units; a major health care facility; retail  
18 opportunities, including a full-service grocery  
19 store; and significant community gathering  
20 spaces.

21           The requested subdivision will also  
22 provide benefits through the adaptive reuse of

1 many of the historic elements on McMillan, the  
2 carefully designed architecture of sustainability  
3 features that incorporate and celebrate the  
4 historic elements, the vast outdoor public spaces  
5 that encourage community interaction, and  
6 numerous other features of special value to the  
7 neighborhood.

8           These features of McMillan, all of which  
9 have a high priority to the community, foster the  
10 goals of the preservation law and establish a  
11 special merit necessary for issuance of the  
12 subdivision.

13           The Deputy Mayor's Office respectfully  
14 requests that the Mayor's Agent approves this  
15 application for subdivision to be moved forward  
16 with this exceptional project.

17           Thank you for the opportunity to address  
18 you this morning. I'll be happy to answer any  
19 questions throughout.

20           MAYOR'S AGENT BYRNE: Thank you.

21           MR. STUCKER: You're welcome.

22           MAYOR'S AGENT BYRNE: Do you have any

1 additional questions, Ms. Brown?

2 (No audible response.)

3 MAYOR'S AGENT BYRNE: Okay. Ms. Ferster,  
4 do you have any questions?

5 MS. FERSTER: So, I have a number of  
6 questions for you.

7 CROSS EXAMINATION

8 BY MS. FERSTER:

9 Q. Just in terms of your testimony about the  
10 1887 subdivision to 122 lots, do you know whether  
11 that subdivision was -- whether any development  
12 ever took place on the McMillan site that  
13 implemented that subdivision?

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

15 Q. Did you do the research into that, into  
16 the lots, yourself or did somebody assist you  
17 with that?

18 A. I have reviewed all the lot information.  
19 We had both an Office of Attorney General with  
20 the D.C. Government, as well as CastroHaase, do  
21 the research on the subdivision and review of the  
22 pleadings.

1 Q. So, and you testified about the special  
2 merit, that the subdivision, you believe, is  
3 warranted and necessary because of the special  
4 merit benefits that the Mayor's Agent previously  
5 found; is that correct? That's your testimony?

6 A. That's in my testimony.

7 Q. Yeah, yeah. So I have a couple of  
8 questions about that. All right. And you are  
9 generally familiar with the history of your  
10 office's involvement in this site?

11 A. That's a really general question. When  
12 you have a specific question, I'm happy to --

13 Q. Are you familiar, for example, with the  
14 various agreements that have been entered into  
15 between the District of Columbia and Vision  
16 McMillan Partners?

17 A. I know of many of them. If you have one  
18 you have a question about.

19 Q. Yeah, I do. I do. But I just wanted to  
20 establish --

21 MS. BROWN: Does this go beyond the scope  
22 of this testimony?

1           MAYOR'S AGENT BYRNE: We'll have to see.

2           BY MS. FERSTER:

3           Q. Yeah. So, in 2010, D.C. entered into an  
4 exclusive rights agreement with Vision McMillan  
5 Partners; is that correct?

6           A. That's beyond the scope of my testimony.  
7 I didn't go into the relationship between  
8 ourselves and McMillan Partners.

9           MAYOR'S AGENT BYRNE: So, you want to  
10 describe where you're going?

11           MS. FERSTER: The issue here, obviously,  
12 we're not going to go into whether or not he does  
13 not believe that the benefits are special merit,  
14 because we understand that and we're going to  
15 accept that. The issue here for the subdivision  
16 is necessary in order to provide these special  
17 merit benefits.

18           And I think, in our case, you know, we  
19 will -- our case will develop the issue that we  
20 believe that the intensity of this development,  
21 as allowed by the subdivision, is in excess of  
22 what is necessary in order to provide the

1 specific special merit benefits that the Mayor's  
2 Agent found in your decision.

3           So, the issue of "necessary" really  
4 relates to the various agreements between Vision  
5 McMillan Partners and the District of Columbia,  
6 which go into a whole level of analysis about  
7 what level of development is necessary, you know,  
8 to afford the benefits. You know, why is the  
9 District giving away, you know, valuable, well,  
10 money, subsidizing and selling land for private  
11 development? They must be getting some benefits  
12 out of it, which we understand.

13           But the issue here is the balance of the  
14 benefits. And the intensity of the development,  
15 particularly as it relates to the subdivision,  
16 which is -- and one of the issues that, you know,  
17 the issue that really does need to be resolved  
18 here, and which I'm very surprised that Emily Eig  
19 is not here today, is that, you know, we have a  
20 different issue because we're not dealing with  
21 the demolition of the below-ground faults.

22           We're dealing with the destruction of the

1 special relations, the open space and  
2 relationship to the structures, which is, you  
3 know, what the subdivision destroyed.

4           So, we need to probe. And so I'm going  
5 to ask a series of questions that try to get some  
6 information about how you made that balance that  
7 the intensity of the development is necessary in  
8 order to provide the special merits that this  
9 project will project. So, these are my  
10 questions.

11           MAYOR'S AGENT BYRNE: All right.

12           MS. FERSTER: And I have a series of  
13 them.

14           MAYOR'S AGENT BYRNE: Ms. Brown?

15           MS. BROWN: Yeah. I would object to  
16 that, because I think that those special merit  
17 parameters and the intensity of development, the  
18 height, the massing, the location of all those  
19 buildings, has already been established and that  
20 those features are necessary for the demolition.

21           So, how it could not be necessary for the  
22 subdivision is why it needs to be reestablished.

1 the intensity of the development, I think it's  
2 been decided.

3 MS. FERSTER: Well, it's a completely  
4 different issue. I mean, now we're talking about  
5 a site that is basically -- there's no  
6 constraints in terms of the below-ground  
7 resource, right? Demolition has been approved,  
8 okay?

9 So there now is the question, okay.  
10 We're not saying, you know -- and the issue  
11 before the Mayor's Agent was, you know, can you  
12 save the below-ground vaults? Are they too  
13 deteriorated? You know, can you do over-fills?,  
14 et cetera, et cetera, et cetera.

15 Now we're not dealing with that. Now  
16 we're dealing with a site that basically can be  
17 demolished below grade. And now we're dealing  
18 with the question of, do you subdivide in order  
19 to allow this level of intense development?

20 Understanding, as we will prove -- and  
21 I'm surprised, again, that you don't have your  
22 historic preservation person here -- that we will

1 prove is a much more important, and Emily Eig  
2 said it's a key, key, as opposed to supporting  
3 element, of the historic significance of McMillan  
4 in the relationship between the open space and  
5 those factors.

6           So, the intensity of the development is  
7 very much at issue here. And we have a series of  
8 questions that we would like to ask the District  
9 of Columbia about that.

10           And in fact, I will also say that I did  
11 attempt to probe these same questions at the last  
12 hearing and was shut down because the ruling was  
13 made when Ms. Combo testified that it was beyond  
14 the scope of her testimony. They were only  
15 dealing with the condition of the vaults, dah-  
16 dah-dah-dah-dah-dah-dah. Sorry, Court Reporter;  
17 you can't type that.

18           So, you know, this is the place. This is  
19 exactly the place where that issue needs to be  
20 probed. And if you don't allow it now, I'm happy  
21 to accept that and take an exception to that.  
22 But that will certainly be an element, a key

1 element of any petition we file in the court of  
2 appeals.

3           MAYOR'S AGENT BYRNE: Right. I  
4 appreciate that. So, I mean, I think that when  
5 you look at the Mayor's Agent's decisions  
6 involving the question of what is necessary to  
7 fill the project of special merit, it is said  
8 repeatedly that it is what is necessary to build  
9 this project, not just to -- in other words,  
10 we're not going to sort of -- I think where  
11 you're going is really an invitation to re-  
12 litigate the project that's being proposed.

13           And the project that's being proposed has  
14 been found to be a project of special merit. The  
15 question now is whether subdivision is necessary  
16 to build that project, not some better project  
17 that your members would prefer to see there.

18           MS. FERSTER: Well, I would again take  
19 exception, because we did attempt to pursue this  
20 line of inquiry at the last hearing, and we were  
21 told that that was not an issue. This seems to  
22 be the place to do it.

1           And I would say that the issue -- and I  
2 would take exception with your analysis that, you  
3 know, the issue is not -- the project as a whole  
4 -- you found that there were certain elements of  
5 the project that were special merit elements and  
6 certain elements that are not.

7           And so, the question before you at the  
8 last hearing was whether the elements of the  
9 project that you found to be special merit  
10 outweighed the loss of historic structure, the  
11 below-ground faults.

12           MAYOR'S AGENT BYRNE: Right. Right.

13           MS. FERSTER: So, the same issue is here.  
14 Are the elements of this project that have  
15 already been found to be elements of special  
16 merit, are they outweighed by the loss of now  
17 other very important, if not more important,  
18 features of this site? And the balance is  
19 different, and the issues are different.

20           And how the Mayor undertook that  
21 analysis, and particularly the issue of the fact  
22 that there was never an alternative proposal

1 before the Mayor, okay? And we understand from  
2 the last hearing that when the RFP was issued in  
3 2006 by the National Capital Revitalization  
4 Corp., that D.C. solicited a development team,  
5 not specific development proposals.

6 We also understand that at the time --  
7 then in 2009, this development team, not a  
8 proposal, was selected by the District of  
9 Columbia. Then, we find that D.C. has entered  
10 into an exclusive-rights agreement with a single  
11 development team -- again, not soliciting  
12 requests for different proposals.

13 And at that time, in 2009, when they --  
14 in 2010, when its exclusive rights agreement was  
15 entered into, Vision McMillan Partners was  
16 fronting all the predevelopment costs to the tune  
17 of \$50-plus million for the site preparation,  
18 infrastructure, Holland and Knight and the  
19 lawyers, and the experts, et cetera, et cetera.

20 That changed. And now we know at some  
21 point, perhaps even between the last hearing and  
22 this hearing, we don't know exactly when, but

1 that changed. And now we find that the District  
2 of Columbia is now paying, you know, for all the  
3 site infrastructure and all the development  
4 costs.

5 So we have a situation where the  
6 developer is essentially getting an exclusive  
7 rights agreement where they have no risk, which  
8 is contrary to our understanding of when you have  
9 an exclusive rights agreement. And --

10 MAYOR'S AGENT BYRNE: Let me ask you to  
11 pause there. Because I don't see what any of  
12 this -- honestly, I don't see where that is an  
13 issue for today. It seems to me --

14 MS. FERSTER: And let me just tie the bow  
15 around that.

16 MAYOR'S AGENT BYRNE: Okay. Go ahead.

17 MS. FERSTER: Because I'm just almost  
18 done with that.

19 So, the issue for Friends of McMillan  
20 Park and the other opponents is that, had this  
21 project been competitively bid out, not just to  
22 teams, but to people who would come up with

1 different proposals that would save more of the  
2 key features of the site, while affording the  
3 same special merit benefits that you found in  
4 your decision, you know, justify the below-ground  
5 vaults' demolition.

6           Had they done that, we would have known  
7 that it's not necessary to destroy that level of  
8 open space in order to have those benefits,  
9 because there would have been competitive  
10 proposals and we would have had an evaluation of  
11 that.

12           We don't have that here. So, the only  
13 thing that we can do is cross-examine the witness  
14 from the District of Columbia about why that  
15 situation happened.

16           And certainly, in terms of what, you  
17 know, return on cost that Vision McMillan  
18 Partners is getting, I mean, we don't even know  
19 whether they're getting in excess of --

20           MS. BROWN: I think it's time to cut,  
21 object.

22           (Cross-talk.)

1           MS. FERSTER: Yeah. So, I mean, these  
2 are all issues that have to do with the intensity  
3 of the development and the loss of the open space  
4 that we don't know anything about. And this is  
5 our one opportunity to probe that.

6           MAYOR'S AGENT BYRNE: Actually, it's not  
7 your opportunity to probe that. So, because the  
8 holding last time was that the project as  
9 proposed is a project of special merit. And it's  
10 not just that the elements of this -- it's true  
11 you base that decision on identifying the  
12 elements of special merit. But the conclusion is  
13 that the project is a project of special merit.

14           So the question of whether the project  
15 could have been better, could have been  
16 different, whether the process leading to it is  
17 appropriate or not is not an open question at  
18 this time. It's not an available question at  
19 this point.

20           MS. FERSTER: Okay.

21           MAYOR'S AGENT BYRNE: So the question is  
22 whether the subdivision is necessary in order to

1 construct that project.

2 MS. FERSTER: I respectfully take  
3 exception to your ruling.

4 MAYOR'S AGENT BYRNE: I understand that.  
5 That's fair.

6 (Cross-talk.)

7 MAYOR'S AGENT BYRNE: I think we have a  
8 clear line here that --

9 MS. FERSTER: Absolutely.

10 MAYOR'S AGENT BYRNE: -- that the court  
11 of appeals can figure out whether I'm right --  
12 whether you're right or I'm right.

13 Do you have other questions for the  
14 witness?

15 MS. FERSTER: Okay.

16 BY MS. FERSTER:

17 Q. Isn't it correct that the District of  
18 Columbia has paid the invoices to the Vision  
19 McMillan Parks for the predevelopment costs for  
20 its experts and attorneys?

21 MS. BROWN: Objection.

22 MR. STUCKER: That's outside the scope of

1 my testimony.

2 MAYOR'S AGENT BYRNE: What's the  
3 relevance of that, please?

4 MS. FERSTER: Simply, you know, the level  
5 of --

6 MR. OTTEN: It's a conflict of interest,  
7 certainly.

8 MS. FERSTER: The level of bias, shall we  
9 say, of all the witnesses that have participated  
10 here.

11 MAYOR'S AGENT BYRNE: Well, I don't know  
12 if it's bias. I mean, they're on the same team,  
13 right? I mean, they've agreed to go forward with  
14 this project. And exactly what the financial  
15 arrangements between them are not historic  
16 preservation questions.

17 MS. FERSTER: But generally, whether a  
18 witness is being paid or not is grounds --

19 MAYOR'S AGENT BYRNE: So you're trying to  
20 impeach the witness; is that fair?

21 MS. FERSTER: I just want to know the  
22 question of whether the District of Columbia is

1 paying for the development team, the cost of the  
2 development team.

3 MAYOR'S AGENT BYRNE: And if they were,  
4 what difference would it make?

5 MS. FERSTER: Just in terms of your  
6 understanding and appreciation of the scenario.

7 MAYOR'S AGENT BYRNE: I'm going to  
8 sustain the objection.

9 (Pause.)

10 BY MS. FERSTER:

11 Q. Okay. And you -- had the District of  
12 Columbia entered into a land disposition and  
13 development agreement with Vision McMillan  
14 Partners?

15 A. No, it has not.

16 Q. Okay. Has one been approved?

17 A. Yes, through the resolution through D.C.  
18 Council.

19 Q. And when do you anticipate that being  
20 executed?

21 A. That's future. So I don't -- it hasn't  
22 been approved to date.

1 MS. BROWN: And I would object. It's  
2 beyond the scope of his testimony.

3 MR. STUCKER: And also I'll maintain that  
4 as well.

5 MAYOR'S AGENT BYRNE: I'll allow it.

6 BY MS. FERSTER:

7 Q. Okay. And since -- has the District of  
8 Columbia amended the summary term sheet that sets  
9 forth the terms of Vision McMillan Partners'  
10 arrangement with the District since 2009?

11 A. It's beyond the scope of my testimony  
12 today.

13 MAYOR'S AGENT BYRNE: She's the one who  
14 has to object. You don't get to say what you  
15 answer.

16 MR. STUCKER: Excuse me.

17 MAYOR'S AGENT BYRNE: Do you object to  
18 that?

19 MS. BROWN: Well, I do object. But I  
20 think he does have the right to decide what is  
21 within his testimony. He decides himself not to  
22 answer the question because it's --

1           MAYOR'S AGENT BYRNE: Well, that's a very  
2 general question, Ms. Ferster. Do you have  
3 something more specific about the term sheet  
4 that's relevant to the subdivision?

5           MS. FERSTER: I would like to understand  
6 what the -- according to my clients, the McMillan  
7 Advisory Group has repeatedly requested copies of  
8 these documents. And they have not been provided  
9 to the MAG in response to their request. So I  
10 don't have that information. So I would like to  
11 know whether or not -- simply, the question is  
12 whether or not it's been amended since 2009. If  
13 so, when?

14           MS. BROWN: Then I would object for  
15 relevancy. It has nothing to do with the  
16 subdivision here today. There might be another  
17 forum where it's appropriate, but it's not  
18 appropriate here.

19           MAYOR'S AGENT BYRNE: Are there current  
20 term sheets that are publicly available?

21           MR. STUCKER: Yeah, as part of the  
22 resolutions that were with council, there's a

1 term sheet that's approved by D.C. Council as  
2 part of the disposition for the development.

3 MAYOR'S AGENT BYRNE: Right, right. So  
4 that's what the term sheet is.

5 MS. FERSTER: Well, the resolution  
6 actually includes a draft, sort of a template of  
7 land disposition agreement, with several  
8 schedules. But there are a number of key  
9 schedules, actually, that are missing, isn't that  
10 correct, from the resolution?

11 MS. BROWN: Again, that's something to  
12 take up with the council and the Deputy Mayor's  
13 Office, outside this proceeding.

14 MAYOR'S AGENT BYRNE: Yeah. Yeah. I  
15 think if the council -- if what the council  
16 released is inadequate, that is a question to the  
17 council. But I don't know whether it is or not.

18 BY MS. FERSTER:

19 Q. You testified about the park, the  
20 benefits that the District of Columbia will be  
21 receiving as part of this special merit package.  
22 And one of the questions I have is about the

1 community center and the park that the District  
2 of Columbia will be building, if that's correct.  
3 And the question I have is, when will D.C. be  
4 building the community center and with what  
5 funds?

6 A. The community center and the park are  
7 acquired by the Zoning Commission order and  
8 spelled out in that order. And we're working on  
9 the timeline for the construction of those,  
10 because both orders were just issued recently.  
11 So we're now able to move forward. And before  
12 council currently is a budget that would allow  
13 for the construction of the park and community  
14 center.

15 Q. Okay. And there is, I guess one of the  
16 questions I have is in terms of the timing of the  
17 park construction. Is that going to occur in  
18 phase two; is that correct? Or when in relation  
19 to the other, the private development, is the  
20 construction of the community center going to  
21 occur?

22 A. We're looking at already, right now I

1 said, you know, we're -- once the council takes  
2 action on the budget and Congress approves the  
3 budget, then we can -- we'll have the funds  
4 available to construct the park and community  
5 center. And we'll work on that as we go forward.  
6 But, you know, that's -- that's the best answer  
7 right now I have for you.

8 Q. So you don't know whether that will be  
9 before the private development or afterwards?

10 MS. BROWN: And I'm going to object  
11 again. We're going far afield again.

12 MAYOR'S AGENT BYRNE: I think he's  
13 answered the question. He doesn't know until the  
14 council passes the resolution. Okay? Approves  
15 the budget.

16 BY MS. FERSTER:

17 Q. So, okay. So that when the council  
18 approved the surplus of the property, they  
19 issued a committee report. And the committee  
20 report says that the District of Columbia --

21 MS. BROWN: And again, I'm going to  
22 object. We're going forward again with council

1 action. This is --

2 (Cross-talk.)

3 MS. FERSTER: Can I finish my question,  
4 please?

5 MS. BROWN: This is the Mayor's Agent  
6 proceeding for the subdivision.

7 MS. FERSTER: Can I finish my question?

8 MAYOR'S AGENT BYRNE: I want to hear the  
9 question.

10 BY MS. FERSTER:

11 Q. The committee report indicates that the  
12 District of Columbia and Vision McMillan Partners  
13 will form, I'm quoting, "a bid-like nonprofit to  
14 raise revenue, raise resources, and manage the  
15 open-space preserved areas and community center."

16 So, does that mean that once the District  
17 of Columbia builds a community center, it will no  
18 longer be responsible for managing it and funding  
19 its operations, the new operations? What does  
20 that mean in terms of who is responsible for  
21 managing and ensuring that the benefit of the  
22 community center is effectuated?

1 MS. BROWN: And I'm going to object now  
2 at this point.

3 MAYOR'S AGENT BYRNE: Is it fair to say  
4 that the District of Columbia is going to own the  
5 park and the community center, correct?

6 MR. STUCKER: Yes.

7 MAYOR'S AGENT BYRNE: Okay. I think  
8 that's all that you need to establish.

9 MS. FERSTER: Okay. But my question is,  
10 I understand that they're going to own it and  
11 build it. But the question is, who's going to  
12 manage it so that the public gets a benefit?

13 MAYOR'S AGENT BYRNE: Why is that  
14 relevant to the question of subdivision?

15 MS. FERSTER: Well, you know, when you --  
16 assuming you approve the subdivision, which I  
17 certainly would not assume necessarily, but if  
18 you approve the subdivision as a project of  
19 special merit, you know, one of the issues is  
20 going to be, you know, when the benefits are  
21 achieved because of the provision in the  
22 preservation law that requires that the Applicant

1 have the ability to complete the project before  
2 any kind of subdivision actual permit is issued.

3           MAYOR'S AGENT BYRNE: Before the permit  
4 is issued, right.

5           MS. FERSTER: So I wanted to, you know,  
6 probe into the timing of that. I mean, I just  
7 don't understand how that's -- I just wanted to  
8 understand if there was actually an ability to  
9 actually deliver that benefit to the public and a  
10 mechanism for doing that.

11           MAYOR'S AGENT BYRNE: Well, there's a  
12 budget resolution, as I understand it, that is  
13 before the council. And that would be the ways  
14 to fund the construction of the project.

15           I don't think you need -- I don't think  
16 that he needs to establish who's going to manage  
17 it in the future, at this point, except that  
18 you're describing that there's a provision for  
19 the creation of a mechanism for managing it. And  
20 I think that's all that has to be established.

21           BY MS. FERSTER:

22           Q. And you agree that the mechanism will be

1 this bid-like nonprofit?

2 A. The Zoning Commission order lays out that  
3 there will be a bid or a community association  
4 that will be beyond McMillan. So as we move  
5 forward with the development, we're determining  
6 how those, how that will operate.

7 Q. Um-hm. Okay. And are you aware of the  
8 fact that the Office of Tax and Revenue has  
9 appraised the McMillan site at \$100 million?

10 MS. BROWN: Objection.

11 MAYOR'S AGENT BYRNE: Sustained.

12 (Pause.)

13 MS. FERSTER: I think that's it for me.

14 MAYOR'S AGENT BYRNE: Okay. Ms. Merritt?

15 MS. FERSTER: And appreciate the fact  
16 that I'm just doing my job here.

17 MAYOR'S AGENT BYRNE: Oh, I understand.

18 CROSS EXAMINATION

19 BY MS. MERRITT:

20 Q. Mr. Stucker, how long have you worked at  
21 the Office of the Deputy Mayor for Economic  
22 Development?

1           A.    I'm with District Government or  
2   Government for eight years and with DMPED for  
3   approximately the last two years.

4           Q.    And what part of the District Government  
5   did you work in before you came to DMPED?

6           A.    Department of Housing and Community  
7   Development.

8           MS. MERRITT:   Okay.  I don't have any  
9   other questions.  Thank you.

10          MAYOR'S AGENT BYRNE:   Okay.  Mr. Otten,  
11   do you have any questions?

12          MR. OTTEN:   Yes.

13                                CROSS EXAMINATION

14          BY MR. OTTEN:

15          Q.    I'm sorry.  Can you say your name again  
16   for the record?

17          A.    Sure.  Gilles Stucker.

18          Q.    Gilles Stucker?

19          A.    Gilles, yes.  As long as you get close,  
20   I'll answer.

21                                (Laughter.)

22          BY MR. OTTEN:

1 Q. Okay. Okay. And Deputy Mayor's Office  
2 for Planning and Economic Development -- okay.  
3 Thank you.

4 So, in your testimony, you're talking  
5 about the parceling up of what is now one  
6 contiguous parcel, correct?

7 A. Right, it's the subdivision, the  
8 application.

9 Q. Subdivision. And the parcel extends from  
10 First and Michigan, Northwest, in the northwest  
11 corner, down to Channing and North Cap,  
12 Northwest? Is that correct?

13 A. The Surveyor's Office identifies where  
14 the parcel lines are. But, yeah, the application  
15 identifies what were going from the 122 record  
16 lots to the 6 lots.

17 Q. Are you saying, are you testifying right  
18 now that there's 122 record lots?

19 A. That's in my testimony.

20 Q. And those record lots, are those taxable  
21 lots?

22 A. I'm not clear on the question.

1 Q. As presented earlier by your counsel --

2 MS. BROWN: Just for the record, I'm not  
3 his counsel.

4 MR. OTTEN: Okay. I'm sorry. Who do you  
5 represent, ma'am?

6 MS. BROWN: Vision McMillan Partners.

7 MR. OTTEN: Okay. So who's representing  
8 DMPED today? Is there a lawyer --

9 MAYOR'S AGENT BYRNE: There's no lawyer  
10 here representing DMPED.

11 MR. OTTEN: There's no lawyer  
12 representing DMPED? Okay.

13 BY MR. OTTEN:

14 Q. The taxation lots mentioned earlier in  
15 terms of types of divisible lots.

16 A. Right.

17 Q. Are you familiar with those?

18 A. I am.

19 Q. And the lots that you're saying there are  
20 120 record lots --

21 A. A hundred-and-twenty-two.

22 Q. Are those taxation lots?

1 A. I believe they are record lots.

2 MAYOR'S AGENT BYRNE: Record lots.

3 BY MR. OTTEN:

4 Q. Those are record lots?

5 A. Yes.

6 MAYOR'S AGENT BYRNE: I think the  
7 presentation suggested that there was one tax lot  
8 that was, that had been established on the whole  
9 Sand Filtration site.

10 MR. OTTEN: So as a whole, it's one tax  
11 lot?

12 MAYOR'S AGENT BYRNE: Yes.

13 BY MR. OTTEN:

14 Q. And that whole lot, to your  
15 understanding, is a public lot? It's owned  
16 completely and entirely by the public?

17 A. It's owned by District of Columbia.

18 Q. Correct. Okay. And what ways, if you  
19 can describe for me, what ways does the parceling  
20 up of this one tax lot into multiple, or six  
21 lots, help you with the objective of this  
22 project?

1           A.   It's required to have one building per  
2 record lot.  That's why we're subdividing it to  
3 six record lots.

4           Q.   Aren't there more than six buildings,  
5 though?

6           A.   There are.  Within the -- there's one  
7 section of buildings that are together as one.  
8 There will be -- through the process of the  
9 permitting and regulatory processes, they will be  
10 seen as one lot.  But the remaining property,  
11 there will be one building on each record lot.

12                   MAYOR'S AGENT BYRNE:  So, just so I  
13 understand, the row houses are going to be on one  
14 record lot.  That's the plan.

15                   MR. STUCKER:  Yes.

16                   MAYOR'S AGENT BYRNE:  And is that --  
17 sorry, no.  Is that contemplated eventually to be  
18 subdivided further to be held in a condominium-  
19 type holding?

20                   MR. STUCKER:  There will be tax lots for  
21 each of the -- within that record lot.

22                   MAYOR'S AGENT BYRNE:  Um-hm.

1           MR. STUCKER: Because each person, when  
2 they take ownership, will have a tax lot they  
3 will take ownership of.

4           MAYOR'S AGENT BYRNE: Okay.

5           MR. STUCKER: Which will be part of an  
6 association for those parcels.

7           MAYOR'S AGENT BYRNE: Okay. Okay.

8           BY MR. OTTEN:

9           Q. What would otherwise happen if you did  
10 not divide up this one record lot into multiple  
11 lots?

12           MS. BROWN: Objection. There is no "one  
13 record lot."

14           BY MR. OTTEN:

15           Q. The one tax lot; excuse me. The current  
16 public one lot -- what would -- why can't you  
17 leave it that way?

18           A. Because within each record lot there has  
19 to be a building. And because there are so many,  
20 my understanding is because there are so many  
21 smaller lots, that we have to subdivide to have  
22 larger lots so the buildings sit within each

1 record lot.

2 Q. And who did the subdividing? Who led  
3 that process?

4 A. The application?

5 Q. Was it Vision McMillan Partners, or was  
6 it the DMPED?

7 A. The application?

8 Q. The actual shape and scope of each  
9 subdivided lot.

10 A. It was both, the District of Columbia  
11 through DMPED, as well as Vision McMillan  
12 Partners.

13 Q. And how was that determined? What  
14 parameters did you use to get to the shapes of  
15 the different lots and what was contained in each  
16 lot?

17 A. We looked at the master plan, improved  
18 the master plan, and where the proposed  
19 improvements would be within McMillan, and drew  
20 record lots or established record lots within the  
21 application to further the master plan that's  
22 been approved.

1           Q.   And then I understand one of the lots I  
2 saw in the testimony, parcel 1 is the most  
3 northern lot; is that correct?  And how many  
4 buildings are in that lot?

5           A.   One.

6           Q.   And can you describe that building?

7           A.   It will be a health care facility,  
8 approximately, I believe -- I mean, the  
9 entitlement, the order from the Zoning Commission  
10 determines the maximum size, but approximately,  
11 from my recollection, 825,000 square feet, health  
12 care building on that part of that northern  
13 parcel, parcel 1.

14          Q.   Okay.  And when the Zoning Commission was  
15 looking at that, to your recollection -- you  
16 mentioned the Zoning Commission looked at that  
17 process there.  When they were looking at that  
18 first parcel, at that point the subdivision  
19 hadn't happened yet, right?  We're still  
20 subdividing out?

21               MS. BROWN:  I'm going to object.  I think  
22 some of these questions somewhat go to the

1 subdivision. But when he's asking about Zoning  
2 Commission, I'm not sure how much he testified as  
3 to that. And I'm not sure he has the orders  
4 before him.

5 MR. OTTEN: He just testified to the  
6 Zoning Commission process.

7 MR. STUCKER: I testified to the order,  
8 not to the process.

9 BY MR. OTTEN:

10 Q. To the order. So did the order, does the  
11 order from the Zoning Commission contend with the  
12 subdivision of the lots?

13 A. The order would speak for itself.

14 Q. Does the order measure the building in  
15 parcel 1 strictly to the lot you're now trying to  
16 subdivide today? Or does it measure it for the  
17 entire continuous site?

18 A. From my recollection, I don't know the  
19 answer to that as I sit here right now.

20 Q. Isn't it the case that the measurements  
21 for the buildings in the subdivided lots were  
22 actually measured across one contiguous lot, the

1 original public contiguous lot?

2 MAYOR'S AGENT BYRNE: I don't quite  
3 understand what that means. I mean, plainly,  
4 there right now is one tax lot site.

5 MR. OTTEN: Right.

6 MAYOR'S AGENT BYRNE: And that what the  
7 Zoning Commission approved was a sort of  
8 development plan without the consideration of how  
9 the actual lots would be divided up.

10 MR. OTTEN: Okay.

11 MAYOR'S AGENT BYRNE: And that's what,  
12 that's the process that we're working through  
13 now.

14 MR. OTTEN: And that's what I'm trying to  
15 understand, is when the metrics were calculated  
16 to say that this is somehow compatible, like the  
17 size of the building, the one office building you  
18 testified to in the first parcel, when the  
19 metrics were calculated for that building to be  
20 okay there, to be compatible, supposedly --

21 MAYOR'S AGENT BYRNE: Right.

22 MR. OTTEN: -- they did it across the

1 entire lot, not the parcels we're considering  
2 today.

3 MAYOR'S AGENT BYRNE: But in anticipation  
4 of being in that location.

5 MR. OTTEN: Um-hm.

6 MAYOR'S AGENT BYRNE: But without the  
7 consideration of how the record lots would be  
8 divided up.

9 BY MR. OTTEN:

10 Q. Okay. Given that, though, doesn't that  
11 effectively skew the potential boundaries of any  
12 building and any lot? The size of the lot  
13 determines the metrics of any building on that  
14 lot, correct?

15 A. I'm not clear on your question.

16 MAYOR'S AGENT BYRNE: Yeah. So the size  
17 of the lot controls the size of the building; the  
18 size of the building controls the size of the  
19 lot. I mean, it's sort of --

20 MR. OTTEN: Right.

21 MAYOR'S AGENT BYRNE: Right? There's a  
22 chicken-and-egg relationship there.

1 MR. OTTEN: Right.

2 MAYOR'S AGENT BYRNE: Right.

3 BY MR. OTTEN:

4 Q. So the point is, is that I guess this  
5 goes to Ms. Ferster's point earlier about the  
6 intensity and density of the site and its  
7 capability with the historic characteristic of  
8 the site.

9 We're at a point now where we're  
10 subdividing the site. We're looking at that.  
11 But the metrics are across what has been  
12 historically one lot. Now we're subdividing  
13 after the fact to a smaller lot for that same  
14 building, correct?

15 A. The subdivision is subdivided to six  
16 record lots.

17 MAYOR'S AGENT BYRNE: Yeah. So there's  
18 the creation of six record lots for the six  
19 buildings, having the row houses as one building.

20 MR. OTTEN: And so, size, lot occupancy,  
21 floor area ratio --

22 MAYOR'S AGENT BYRNE: Right.

1           MR. OTTEN: -- those sort of things will  
2 be changed by the division, correct?

3           MAYOR'S AGENT BYRNE: No. Those have  
4 already been established by the Zoning  
5 Commission. And what we're only looking at is  
6 the division of the lots in order to implement  
7 what the Zoning Commission has already done.

8           MR. OTTEN: Understand. But that's what  
9 I'm trying to get at, is I'm unclear on.

10          BY MR. OTTEN:

11          Q. It's my understanding that the Zoning  
12 Commission did their metrics across the original,  
13 current, historic, one contiguous lot. Correct?

14          A. That would be for the Zoning Commission  
15 to --

16          MAYOR'S AGENT BYRNE: I don't know. I  
17 mean, I would --

18          MR. OTTEN: Well, obviously, the  
19 intensity goes up when you subdivide. And the  
20 question I think for you, Mr. Byrne is, you know,  
21 with the intensity that increases with the  
22 subdivision, how does that affect the historic

1 characteristic of this site in terms of the  
2 intensity of the site for the last 100 years?

3 MAYOR'S AGENT BYRNE: Uh-huh.

4 MR. OTTEN: So, let me just keep going  
5 on.

6 MAYOR'S AGENT BYRNE: Well, I don't know  
7 -- I don't know how this -- I mean, assuming -- I  
8 mean, let's imagine that the site was entirely  
9 owned by one party. And the plan was going to  
10 all be developed by one party, and they could  
11 have one building on -- they could have one lot.

12 So, what -- so I don't understand -- I  
13 don't understand how the subdivision affects --  
14 the question in some sense is what -- the  
15 question of the intensity of the development in  
16 relation to the site as a whole is something that  
17 was discussed last time.

18 The question here really is just about  
19 the cutting up of the total site into six  
20 parcels. And so, I don't think that that's a  
21 vehicle for going back and reexamining the  
22 intensity of the development in the approved

1 plan.

2 (Inaudible interjection.)

3 MR. OTTEN: Well, okay. Let me go down a  
4 couple of other questions here.

5 BY MR. OTTEN:

6 Q. Do you know how many buildings are in lot  
7 2, parcel 2?

8 A. Two? There's a building that will be --  
9 I mean, I think the question of the definition of  
10 the word "building" is, there will be a -- parcel  
11 2 will have a multi-family building with  
12 affordable housing, as well as a health care  
13 building in that parcel 2.

14 Q. So there are two separate buildings in  
15 the same parcel?

16 A. Those are two buildings that there may be  
17 -- yes, they are two buildings.

18 Q. And didn't I hear you earlier say that  
19 one building per lot is what's required?

20 A. There's something I'm not able to recall  
21 at the moment about allowing for buildings to  
22 connect within one parcel. That at this point I

1 don't have all that information at the top of my  
2 head right now.

3 MS. BROWN: I'm sorry to interject. If I  
4 may help. It might be more useful for these  
5 questions to come with Ms. Corbett's testimony,  
6 who will address those. Because I don't know  
7 that Mr. Stucker --

8 MAYOR'S AGENT BYRNE: Yeah. So, Ms.  
9 Corbett has detailed information if you could ask  
10 about it at that point.

11 MR. OTTEN: I mean, for all intents and  
12 purposes, though, this is the gentleman that  
13 represents the public in this deal.

14 MAYOR'S AGENT BYRNE: Right.

15 MR. OTTEN: Or is supposed to. But  
16 that's where we were going earlier, with the  
17 conflict of interest. There's clearly a conflict  
18 of interest here that they cannot discern  
19 planning principles without the influence of  
20 moneyed interests that are private.

21 BY MR. OTTEN:

22 Q. So, that gets me to the next question.

1 Historically, this is a public lot that is now  
2 being subdivided into how many private lots?

3 MS. BROWN: Objection again. I don't  
4 think they've established that it's a public lot  
5 or what the meaning of "public lot" is.

6 MAYOR'S AGENT BYRNE: It's a publicly  
7 owned space that's being -- that's going to be  
8 subdivided and partially privately owned. Right?

9 MR. STUCKER: Right.

10 MAYOR'S AGENT BYRNE: That's the point.

11 MS. BROWN: Well, I guess there is a  
12 question, though, of whether District ownership  
13 turns it into public land.

14 MR. OTTEN: What?

15 MS. BROWN: It's --

16 MAYOR'S AGENT BYRNE: Publicly owned.

17 MS. BROWN: It's owned by the District of  
18 Columbia, but not --

19 MR. OTTEN: That's not a private entity.

20 (Cross-talk.)

21 MAYOR'S AGENT BYRNE: That's not a public  
22 park. I understand the distinction.

1 MS. BROWN: Okay.

2 MAYOR'S AGENT BYRNE: I mean, it's not  
3 public trust property. It's just a publicly  
4 owned property. And so, and then it's going to  
5 be partially privatized, which is where you want  
6 to go, right?

7 BY MR. OTTEN:

8 Q. In terms of subdivision --

9 MAYOR'S AGENT BYRNE: Right.

10 BY MR. OTTEN:

11 Q. -- part of this is going to be  
12 privatized, right?

13 A. Yes.

14 Q. And that's a new characteristic of this  
15 subdivision?

16 A. A portion of the parcel will be sold,  
17 yes.

18 Q. Will be privatized?

19 A. Sold to the development partners, yes.

20 Q. Okay. Do you know the percentage of  
21 that? What's the percent of the historically  
22 contiguous lot, what percentage of it will be

1 privatized in the subdivision?

2 MS. BROWN: Objection. Relevance.

3 MAYOR'S AGENT BYRNE: I'll allow the  
4 question.

5 MR. STUCKER: Two of the parcels will  
6 remain in the District ownership, the north  
7 service court parcel, as well as the parcel that  
8 includes the south service court, and the park,  
9 community center to the south.

10 BY MR. OTTEN:

11 Q. Can you point that out to me in your  
12 testimony in the slide show?

13 MAYOR'S AGENT BYRNE: That's not his.  
14 That's not his.

15 MR. STUCKER: That's not my slide.

16 MAYOR'S AGENT BYRNE: That's going to be  
17 Ms. Corbett's.

18 BY MR. OTTEN:

19 Q. Okay. Then, referring to Ms. Corbett's  
20 testimony, which --

21 MAYOR'S AGENT BYRNE: Well, we haven't  
22 had the testimony yet.

1 MR. OTTEN: Well, okay. Let me do this  
2 then.

3 BY MR. OTTEN:

4 Q. Just, I guess, what I'm trying to get at  
5 is, I'm trying to get at a sense of what you just  
6 -- where in this one contiguous lot you just  
7 mentioned.

8 A. Sure.

9 Q. The public lots --

10 A. Okay.

11 Q. -- that will remain. If I can -- can I  
12 bring a map up to you?

13 A. I can describe it to you again, because  
14 by the nature of how it sits today --

15 MS. BROWN: Objection. I mean, he's  
16 bringing documents up to him he didn't even  
17 testify to.

18 MAYOR'S AGENT BYRNE: Right. So I think  
19 that it's very irregular, Mr. Otten. I think  
20 that we all understand -- I mean, having worked  
21 on this project, there is the park in the south  
22 end with the community center. And there is the

1 north service court, which is going to be public.  
2 It's going to be a public way, all right. So  
3 those are the two that are going to be publicly  
4 owned.

5 MR. OTTEN: And so, does that include --  
6 does the south -- what is this? What did you  
7 just refer this to, Mr. Byrne, with the --

8 MS. BROWN: I have an objection to him  
9 approaching the witness.

10 MR. OTTEN: Well, I'm --

11 MAYOR'S AGENT BYRNE: He's just trying to  
12 clarify his question.

13 MR. OTTEN: Yeah.

14 MAYOR'S AGENT BYRNE: So I'm going to  
15 allow it.

16 BY MR. OTTEN:

17 Q. The public service court, that's where  
18 the --

19 A. The north service court, the north  
20 service court.

21 Q. Okay. The north service court stays  
22 public?

1 A. Correct.

2 Q. And does the south service court?

3 A. Yes.

4 Q. And then the property from there, south

5 --

6 A. The south service court, south, remains  
7 public, yes.

8 Q. Okay. Thank you for that.

9 So that's -- it's fair to say that, given  
10 that more than half of the site is sold and  
11 privatized from what it's currently --

12 A. Well, that's to the record lots, which  
13 we're discussing today. As was discussed  
14 previously, there are also tax lots. So it will  
15 be retained tax lots ownership interest, the  
16 District will have, including what we call cell  
17 14, which is at the northeast corner. That's  
18 currently being occupied by D.C. Water. That  
19 will remain District of Columbia property, to a  
20 tax lot.

21 Q. And do you have a sense of when, as the  
22 subdivision happens, just a timeline for when the

1 deeds for these different parcels will be issued,  
2 or archived and then issued?

3 A. The general timeline is that there is a  
4 signature of the land disposition agreements.  
5 And then there is a closing that follows that.  
6 So, at the closing, that's a normal time when the  
7 deeds are signed to transfer property.

8 Q. How soon after a ruling in this case do  
9 you expect that to happen?

10 A. I don't know the answer to that. It  
11 depends on -- there's a lot of factors that play  
12 into that.

13 Q. It's very important for us to understand  
14 how our Deputy Mayor's Office for Planning and  
15 Economic Development defines a park. Do you have  
16 a policy book or regulation or anything that  
17 defines a park?

18 MS. BROWN: Objection. Not testified on  
19 direct.

20 MR. OTTEN: This contends directly to  
21 this subdivision. He's testified to the site.

22 MAYOR'S AGENT BYRNE: To the park.

1 MR. OTTEN: Yes.

2 MAYOR'S AGENT BYRNE: I'll allow the  
3 question.

4 MR. STUCKER: Sure. So there is no  
5 direct policy related to what a park is defined  
6 as on McMillan from our office.

7 BY MR. OTTEN:

8 Q. Does DMPED have anything to cite  
9 regarding the definition of an open space, open-  
10 area space?

11 A. In terms of policy document? No.

12 Q. How would, currently, this one contiguous  
13 lot, how would DMPED describe the characteristics  
14 of this lot in terms of topology? Is it hilly?  
15 Is it flat?

16 A. It's outside -- I mean, I don't see how  
17 that relates to the subdivision.

18 Q. Currently, the site is one lot. Can you  
19 see from one end of the lot to the other end of  
20 the lot?

21 MS. BROWN: Objection.

22 MR. OTTEN: Currently.

1 MS. BROWN: Clarification for the  
2 question.

3 MR. OTTEN: The current site.

4 MS. BROWN: I keep hearing the word  
5 "lot." And there are several different types of  
6 lots. I think it's important to use the correct  
7 terminology.

8 MAYOR'S AGENT BYRNE: So, the tax lot.

9 MR. OTTEN: Okay.

10 MAYOR'S AGENT BYRNE: You mean from one  
11 end of the tax lot to the other?

12 MR. OTTEN: Right.

13 MAYOR'S AGENT BYRNE: Okay.

14 BY MR. OTTEN:

15 Q. The McMillan tax lot, the one contiguous  
16 public tax lot, right now. Can you see from one  
17 end to the other end on a clear, sunny day like  
18 today?

19 A. Assuming D.C. Water, all their equipment  
20 is out of the way and you have the right point of  
21 view, you could see across the park -- McMillan,  
22 excuse me.

1 Q. And would you agree that, as Frederick  
2 Law Olmsted designed his walk around this site,  
3 that he designed it in a way for people to look  
4 across the vista?

5 A. I don't know. I wasn't Frederick  
6 Olmsted, nor was I, you know -- do I understand,  
7 you know, at this sitting here today what his  
8 intent was with the vault, with the walk.

9 Q. But he did have a walk. He has a walk  
10 there currently, right?

11 A. There is a walk around that perimeter of  
12 McMillan, yes. That's severely overgrown.

13 Q. The walk itself, the historical walk  
14 that's along this contiguous lot, is it on the  
15 same, I guess, depth or level as the actual tops  
16 of the underground vaults? Can you walk off --  
17 can you take a step off the walk onto the green  
18 space that is on top of the lot?

19 A. There is -- between when you're on the  
20 walk, there is no fence that would stop you from  
21 going from the walk to the interior of the space.  
22 But there are many circular sort of caps along

1 that are in varying states, also some collapsing  
2 along --

3 (Cross-talk.)

4 BY MR. OTTEN:

5 Q. The manhole covers to the cells at  
6 various points?

7 A. Exactly.

8 Q. And so, if somebody were to be walking on  
9 that walk and stepped onto the open space above  
10 the cell, would they have to climb a hill or  
11 would they have to go down a hill? Or can they  
12 just walk straight onto the open space?

13 A. Walk straight.

14 Q. And given that, isn't it the case that  
15 many District residents, when there wasn't a  
16 fence around the entire space, like now, could  
17 walk off the lot and walk onto this open space?  
18 And in fact, they did?

19 MS. BROWN: Objection.

20 MAYOR'S AGENT BYRNE: Sustained. Sir,  
21 you're asking to testify what happened in the  
22 past. And they either did or they didn't. He

1 doesn't know.

2 BY MR. OTTEN:

3 Q. Are you aware of people playing baseball  
4 on the open field?

5 MS. BROWN: Objection.

6 BY MR. OTTEN:

7 Q. MR. OTTEN: Have you seen images of that  
8 at all? You talked about the park. So, this  
9 open space, do you know of the public using this  
10 open space?

11 MS. BROWN: Again, objection. Relevancy.  
12 It was not testified to in his direct.

13 MR. OTTEN: It's very relevant because it  
14 contends with what the historic, some of the  
15 historic characteristics of the site, what they  
16 are now, what they were, and what they might be.

17 MAYOR'S AGENT BYRNE: I don't know about  
18 the "might be," but I think it's relevant what  
19 they were. So I'll allow the question, although  
20 I don't know whether he can answer it or not.

21 MR. STUCKER: By personal knowledge, I  
22 don't know exactly what games are played or when

1 they were played or if they were played. But  
2 there have been varying accounts. Whether it's  
3 true or not, you know, I didn't personally  
4 experience it, seeing anyone playing baseball,  
5 for example, as you mentioned, on the space on  
6 McMillan.

7 BY MR. OTTEN:

8 Q. And in your position at DMPED, reviewing  
9 this very large project, public project, you were  
10 not alerted to any use of this open space prior,  
11 as a public space, prior to them putting a fence  
12 around it?

13 A. So, as the case, or as McMillan  
14 redevelopment has proceeded, folks similar to  
15 myself, who has been tasked with the  
16 redevelopment of McMillan, have received, you  
17 know, many accounts of what has occurred on  
18 McMillan. And I was here during the Mayor's  
19 Agent testimony the last time, so I did hear some  
20 of that testimony.

21 That's just, that's all, I've heard  
22 testimony. And I've also, you know, read the

1 filings in the varying cases.

2 Q. Isn't it the case that this site has been  
3 placed on the local D.C. Registry for historic  
4 sites?

5 MAYOR'S AGENT BYRNE: It's a fact that it  
6 has been. I mean, everybody -- it's in the  
7 official records.

8 MR. OTTEN: And it's also on the Federal  
9 Register.

10 MAYOR'S AGENT BYRNE: Yes.

11 BY MR. OTTEN:

12 Q. And in the process of becoming designated  
13 as such, weren't there reports developed by the  
14 District of Columbia to seek that designation?

15 A. The history of those designations and how  
16 they came about I don't have immediately in front  
17 of me.

18 Q. Would it be surprising to you to hear  
19 that these applications for designation to be  
20 historic include stories of the use of the site?

21 MAYOR'S AGENT BYRNE: That's speculative.  
22 I'm going to not allow the question.

1           MR. OTTEN: I'm asking the question if he  
2 knows about that.

3           MAYOR'S AGENT BYRNE: So, what --

4           MR. STUCKER: You asked me if it was  
5 surprising or not.

6           MAYOR'S AGENT BYRNE: He asked if it was  
7 surprising to hear that, that this was in the  
8 documents.

9           MR. STUCKER: Oh, okay.

10          BY MR. OTTEN:

11          Q. Are you aware of the designation  
12 applications? Have you read the narratives to  
13 seek the historic designation of this contiguous  
14 public site?

15          A. I have read many documents of McMillan,  
16 whether it's all the designations you're talking  
17 about or which, what the time period of them.  
18 You know, there's -- not clear on which documents  
19 you're talking about or when they were filed.

20          Q. I'm talking about the critical document  
21 that brings us to this forum today, the document  
22 that sets forth why this is an historic place and

1 why perhaps the subdivision of this site would be  
2 in contravention of historic acts and statutes.  
3 Are you aware of that, of the designation  
4 application?

5 A. I'm aware that there's a designation  
6 application, yes.

7 Q. Okay. But you're not aware of how the  
8 site was described to be used in that designation  
9 application by the public, how the site was used  
10 by the public?

11 A. I've read accounts over, since my  
12 becoming the product manager for the McMillan  
13 Redevelopment. And, you know, what accounts or  
14 what was in those applications, I can't  
15 immediately bring to mind.

16 Q. Isn't it the case that this public site,  
17 as part of the McMillan plan, really set forth as  
18 one of its key objectives to create a free space,  
19 an integrated space where blacks and whites could  
20 gather together without fear of retribution?

21 MS. BROWN: I'm going to object.

22 MAYOR'S AGENT BYRNE: Sustained.

1           MR. OTTEN: That's part of the historic  
2 character of the site.

3           MS. BROWN: I think the landmark  
4 applications or National Register nomination  
5 forms speak for themselves. He didn't testify to  
6 them.

7           MAYOR'S AGENT BYRNE: Yeah. Right.

8           MS. BROWN: He doesn't have them in front  
9 of him.

10          MAYOR'S AGENT BYRNE: If you want to  
11 submit those in evidence, we can do that. But I  
12 don't think -- asking him about it just doesn't  
13 feel like it's getting us anywhere.

14          MR. OTTEN: Well, what I'm trying to get  
15 at here is -- and maybe you're seeing it. We  
16 have a government who is supposed to be looking  
17 at the historic characteristics of this site.  
18 What I'm hearing today is DMPED -- you know,  
19 DMPED is not even aware of some of the critical  
20 aspects of why this site is so important to the  
21 District of Columbia.

22          MAYOR'S AGENT BYRNE: Okay. Well, that's

1 your argument, and that's fine.

2 (Inaudible conversation.)

3 BY MR. OTTEN:

4 Q. In your testimony, you said in 1987 the  
5 City purchased this property with the explicit  
6 intent to build mixed-use development; is that  
7 correct? Did I hear you say that right?

8 A. I'll stand by my testimony.

9 Q. Isn't it the case, though, that that sale  
10 just allowed for the option for mixed-use; it  
11 didn't explicitly demand mixed-use development?

12 A. I'm not clear.

13 MS. BROWN: Objection.

14 MAYOR'S AGENT BYRNE: Sustained. The  
15 document says what it says.

16 (Inaudible conversation.)

17 BY MR. OTTEN:

18 Q. Do the documents in the sale of the site  
19 mention anything about the subdivision of the  
20 site and how that would impact the characteristic  
21 of the site?

22 A. From 1987?

1 Q. Yes.

2 A. Not that I'm aware of.

3 Q. And wouldn't you agree that some of the  
4 historic characteristics of the site include the  
5 fact that it is one contiguous site? Would you  
6 define that as a characteristic of the site  
7 currently?

8 MS. BROWN: Objection. I think we've  
9 already established that the landmark designation  
10 says exactly what it says, and he hasn't really  
11 testified to it.

12 MR. OTTEN: I'm asking DMPED about what  
13 they deem as historic characteristics of this  
14 site. I'm asking him specifically.

15 MR. OTTEN:

16 Q. If the contiguous nature, the fact that  
17 it is one continuous site right now, is that one  
18 of the historic characteristics of the site?

19 A. There's many historic characteristics of  
20 a site. Whether that we've already decided as  
21 part of the prior case making this of special  
22 merit or not, I'm not --

1 Q. I don't want to even go there.

2 A. That's fine. I'm just trying to  
3 understand how that --

4 Q. Tell me about --

5 MAYOR'S AGENT BYRNE: It is. It is an  
6 historic site, and that is a characteristic of  
7 the site. The question of what its significance  
8 is in the nomination application, I think, is not  
9 -- we don't need to go there. It is -- I mean, I  
10 understand that it is characteristic of an  
11 historic site.

12 MR. OTTEN: Right.

13 MAYOR'S AGENT BYRNE: That it's an open  
14 site.

15 MR. OTTEN: That it's one of the historic  
16 characteristics of the site.

17 MAYOR'S AGENT BYRNE: Well, it's one --  
18 right.

19 MR. OTTEN:

20 Q. Okay. And the same thing with the fact  
21 that it was designed in a way to allow for open  
22 vistas. Would you consider that as an historic

1 characteristic of the site?

2 MS. BROWN: And I would object because  
3 the question is leading and it assumes facts that  
4 aren't in the record.

5 MR. OTTEN: Mr. Byrne, he just said that  
6 there are many historic characteristics to an  
7 historic site. I'm trying to understand what  
8 DMPED's -- because I didn't hear anything so far  
9 of his understanding of the designation of this  
10 site, historically.

11 MAYOR'S AGENT BYRNE: So, what's the  
12 relevance of that to the question of subdivision?  
13 Because the question of subdivision is, it  
14 doesn't matter what -- I mean, for my purpose, it  
15 doesn't matter what's in DMPED's head.

16 MR. OTTEN: Right.

17 MAYOR'S AGENT BYRNE: It matters what the  
18 reality is on the ground.

19 MR. OTTEN: Right. And so, the question  
20 then goes to, what is subdivision of this what is  
21 now historically contiguous site -- how does that  
22 affect the other historic characteristics of the

1 site that you have to weigh in?

2 MAYOR'S AGENT BYRNE: Right. So I think  
3 that's part of your case is to put on how the  
4 subdivision harms those characteristics --

5 MR. OTTEN: Right.

6 MAYOR'S AGENT BYRNE: -- as opposed to  
7 sort of trying to get it out of him by asking  
8 what was in DMPED's head. I think you can put on  
9 what you think is significant and what could be  
10 harmed by subdivision.

11 MR. OTTEN: We intend to do that.

12 MAYOR'S AGENT BYRNE: Okay.

13 MR. OTTEN: But I think from our  
14 perspective, to give us some scope to that, some  
15 boundaries to that, is to understand what our  
16 planning, our municipal planning agents in the  
17 City expect from that. What do they determine  
18 are historic characteristics? Because they are  
19 the experts.

20 MAYOR'S AGENT BYRNE: They're not experts  
21 on historic preservation. They are experts on  
22 property development. The expertise in historic

1 preservation is in the HPO, and the HPRB, and to  
2 some extent here. And so that's really where  
3 you're going.

4 MR. OTTEN: And is the HPO testifying  
5 today? Do we get to cross-examine the HPO then?

6 MAYOR'S AGENT BYRNE: Mr. Callcott is  
7 here, and you can ask him questions.

8 MR. OTTEN: Okay.

9 BY MR. OTTEN:

10 Q. Continuing on just with MPED here,  
11 currently, there's no residential space at the  
12 site, correct? At the site right now, there's no  
13 residences at the site?

14 MAYOR'S AGENT BYRNE: Mr. Otten, that's  
15 obvious. Everybody knows that there's no  
16 residences on the site now. Right? It's a sand  
17 filtration site.

18 MR. OTTEN: Uh-huh.

19 BY MR. OTTEN:

20 Q. And there's no recreation. Is there  
21 recreation space at the site right now?

22 A. No. There's no recreation space on the

1 site. It currently has a perimeter fence, and  
2 there's -- the only on the site right now is D.C.  
3 Water activity to do the Clean Rivers Project.

4 Q. And besides the special merit factors  
5 involved in this case, are you aware of how the  
6 land covenants on the site affect the decision-  
7 making here?

8 A. In what regard? I don't follow.

9 Q. Both in your approval or support of the  
10 project and, ultimately, today presenting to Mr.  
11 Byrne why he should allow the subdivision of the  
12 project.

13 MS. BROWN: And I'm going to object  
14 again. We don't have anything in the testimony.

15 MAYOR'S AGENT BYRNE: I'm going to  
16 sustain that. I sustain that objection. The  
17 covenants are not relevant.

18 MR. OTTEN: The covenants are not  
19 relevant?

20 MAYOR'S AGENT BYRNE: They're not  
21 relevant, no.

22 MR. OTTEN: Well, let me understand that,

1 because as I understand it, the covenant says any  
2 and all work at the site will be taken in  
3 accordance with the Secretary of Interior's  
4 standards for rehabilitation, correct? Isn't  
5 that --

6           MAYOR'S AGENT BYRNE: I don't -- I have  
7 not dealt with the covenants at all. The  
8 covenants are a separate legal issue that would  
9 have to be pursued in a court to claim that they  
10 have not followed the covenants. It's not part  
11 of this case.

12           MR. OTTEN: Well, Mr. Byrne, we don't  
13 want to keep going to court.

14           MAYOR'S AGENT BYRNE: I appreciate that.

15           MR. OTTEN: You're here to represent the  
16 issues of the people, without having to go  
17 through, you know, miles and piles of paper.

18           MAYOR'S AGENT BYRNE: Yeah. But I can't  
19 just sort of decide what's the right thing to  
20 happen here because I'm sitting here. I have  
21 specific tasks that I have to decide. And the  
22 question of the application of the covenants is

1 not relevant to it.

2 MR. OTTEN: Well, as you just --

3 MAYOR'S AGENT BYRNE: The interpretation  
4 of the covenants involves all kinds of legal  
5 questions that we have not had testimony on and  
6 that it's not -- it's not germane.

7 MR. OTTEN: Well, let me understand then,  
8 because I'm new to this process. Where and when  
9 does the Secretary of Interior's standards for  
10 rehabilitation and guidelines for rebuilding  
11 historic buildings -- when did those come into  
12 place? Should those have come into play at HPRB  
13 and they were not?

14 MS. BROWN: I'm going to object. It  
15 seems as if we're having questions of the Mayor's  
16 Agent instead of the witness now.

17 MAYOR'S AGENT BYRNE: Yeah.

18 MS. BROWN: And the appropriate person to  
19 talk to about that would be the staff.

20 MAYOR'S AGENT BYRNE: I think that's  
21 right. I'm not here to justify the whole  
22 process. I'm here to adjudicate the question of

1 the subdivision.

2 MR. OTTEN: But the subdivision goes  
3 directly to affecting the historic character of  
4 the site.

5 MAYOR'S AGENT BYRNE: Correct.

6 MR. OTTEN: So, and the Secretary of the  
7 Interior's standards specifically disallow major  
8 changes to the historic character of --

9 MAYOR'S AGENT BYRNE: I don't believe  
10 that's a correct interpretation of the  
11 Secretary's standards, and I don't believe that  
12 it is -- I don't think that -- they are not  
13 relevant to -- I'm not applying the Secretary's  
14 standards here. I'm applying the District of  
15 Columbia Historic Preservation Act. And the  
16 relevance of the Secretary's standards I'm not  
17 adjudicating.

18 MR. OTTEN: But isn't the conveyance of  
19 this land, which comes out and by of sub-  
20 parceling it up, subdividing this land up, lends  
21 to the conveyance of this land, correct?

22 MAYOR'S AGENT BYRNE: Yes.

1           MR. OTTEN: So, in preparation for  
2 conveyance of the land, you're saying that you're  
3 not looking at the covenants that affect the  
4 conveyance of that land?

5           MAYOR'S AGENT BYRNE: Those covenants go  
6 to the conveyance from the United States to the  
7 District of Columbia. They don't go to the  
8 conveyance that's going to be effectuated by the  
9 subdivision.

10          MR. OTTEN: Have you read the covenant?

11          MS. BROWN: Objection.

12          MAYOR'S AGENT BYRNE: I haven't. No, I  
13 haven't read the covenant. It's not part of --  
14 it's not part of the case. I'm not adjudicating  
15 the covenant.

16          MR. OTTEN: Well, I --

17          MAYOR'S AGENT BYRNE: But the covenants  
18 don't apply to -- the covenants apply to the sale  
19 to the District of Columbia.

20          MR. OTTEN: Well, the covenant also, if  
21 you read it, specifically says that the covenants  
22 fall onto every successor there --

1 MS. BROWN: I would object again.

2 MR. OTTEN: Excuse me.

3 MAYOR'S AGENT BYRNE: He's speaking. Let  
4 him speak.

5 MR. OTTEN: The City is paying you money,  
6 I understand that.

7 MAYOR'S AGENT BYRNE: Come on, Mr. Otten.  
8 Please just make your argument, okay? And if you  
9 look -- so --

10 MR. OTTEN: I'm trying to make this  
11 clear. I want to make this a very clear point.

12 MAYOR'S AGENT BYRNE: Okay. I'm  
13 listening.

14 MR. OTTEN: Because when I read the  
15 covenant, it ties in HPRB and the State Historic  
16 Preservation Office by which you are part of. It  
17 ties that directly in very clearly in the black  
18 letters of this document. And this is as good as  
19 anything else in terms of law, is conveyed to any  
20 successor of the site.

21 MAYOR'S AGENT BYRNE: Okay. So, my  
22 suggestion for here is then to put the covenant

1 into evidence in the case. And to, if you want  
2 to put on a witness to testify as to it, then we  
3 can deal with the questions --

4 MR. OTTEN: That's fine.

5 MAYOR'S AGENT BYRNE: -- of whether it's  
6 relevant to the subdivision. But I'm deeply  
7 skeptical that it is. But I'll allow you to  
8 proceed to do that if you want to.

9 MR. OTTEN: That would be great. What  
10 I'm trying to do right now, since we have the  
11 witness here from the Deputy Mayor's Office for  
12 Planning, is to understand how that covenant was  
13 calculated in his support or their support of  
14 this subdivision, which will ultimately lead to  
15 the conveyance of it.

16 Without this subdivision, the conveyance,  
17 I presume, does not happen. Is that correct?

18 MS. BROWN: Objection.

19 MAYOR'S AGENT BYRNE: Yeah. That is  
20 asking for a legal conclusion.

21 (Cross-talk.)

22 MAYOR'S AGENT BYRNE: It is problematic.

1 Obviously, it is problematic if they can't make  
2 the conveyances, right?

3 MR. OTTEN: Well, we heard earlier, he  
4 testified -- I asked about the deeds and when  
5 they would be issued and archived.

6 MAYOR'S AGENT BYRNE: Right.

7 MR. OTTEN: The deed said the possibility  
8 to convey those deeds to other people, right?  
9 Isn't that how it works?

10 MR. STUCKER: Deeds is a conveyance of  
11 property interest, yes.

12 MR. OTTEN: Right. So, at some point,  
13 these subdivided parcels will have their own  
14 deeds by which will be conveyed to various  
15 private entities and people, individuals.

16 MR. STUCKER: Yes.

17 MR. OTTEN: So, that is important that  
18 that calculus comes in to understand that the  
19 subdivision that's precipitating the conveyance  
20 of those deeds does affect this whole decision-  
21 making process. It's all connected. It's all  
22 interconnected. Right?

1           MAYOR'S AGENT BYRNE: So, that's an  
2 argument that you can make. But I don't know  
3 that he needs to testify about it one way or  
4 another. If you want to put on an argument and  
5 put on witnesses to establish this, that's fine.  
6 But trying to get him to sort of give it back to  
7 you I don't think is working very well.

8           MR. OTTEN: I understand. This is a  
9 laborious process. I'm just trying to understand  
10 how, you know, our agency that's supposed to be  
11 looking at planning is taking all this into  
12 account.

13           MAYOR'S AGENT BYRNE: Right. But this is  
14 not a press conference. This is an adjudication  
15 of this case. And it actually doesn't really  
16 matter to me very much how DMPED did this, you  
17 know, whether they took it into account  
18 adequately or not, subjectively, is not really a  
19 question for me to decide.

20           And so, I understand why you would like  
21 to ask him that. But it's not relevant to the  
22 hearing.

1           MR. OTTEN: I think I just heard you say  
2 it doesn't matter how one of D.C.'s critical  
3 planning agencies is not taking into account  
4 federal covenants on this public land. Is that?  
5 That cannot be.

6           MAYOR'S AGENT BYRNE: Okay. So, but it's  
7 not relevant to this question. You can argue  
8 that they didn't take them adequately into  
9 effect. But to ask him to say whether they took  
10 them adequately into effect or not is not  
11 relevant.

12           I mean, the question is what -- if the  
13 covenants prohibit the subdivision, that's one  
14 thing. But whether they have dealt with them  
15 with the kind of care that you would like to have  
16 DMPED deal with them or not is not relevant to  
17 this decision.

18           They may have done a dreadful job in  
19 thinking about the historic preservation issues;  
20 and I'm not saying they did. But if they did,  
21 it's irrelevant to this because the question is,  
22 what does the project do that's before me?

1           MR. OTTEN: I mean, part of the special  
2 merit then in this case would be that you can  
3 just ignore covenants that follow through on the  
4 land.

5           MAYOR'S AGENT BYRNE: If that was the  
6 case and if they were relevant. But the special  
7 merit of the project has already been  
8 established, and the question of the covenants  
9 was not particularly addressed.

10           But I don't understand why there -- I  
11 just don't understand why they're relevant. I  
12 don't want to argue with you now as to whether  
13 they're relevant or not without having the  
14 covenants in front of me and some kind of a legal  
15 argument as to why they're relevant and why  
16 they're not being followed. I just don't see any  
17 of that, and I'd like to move on to another  
18 topic.

19           MR. OTTEN: Okay. Okay. We'll bring  
20 that up in our argument, if that's okay.

21           MAYOR'S AGENT BYRNE: Yes. I will give  
22 you a chance to do that, although I wish you had

1 a lawyer with you.

2 MR. OTTEN: Well, it doesn't take lawyers  
3 to read --

4 MAYOR'S AGENT BYRNE: Yes, it does.

5 MR. OTTEN: -- plain English.

6 MAYOR'S AGENT BYRNE: Yes, it does.

7 MR. OTTEN: Which is what these covenants  
8 are.

9 BY MR. OTTEN:

10 Q. I just want to understand, because for  
11 our members of DC for Reasonable Development, one  
12 of the -- would you agree that one of the  
13 characteristics of this site is that it's  
14 vegetated open space? Vegetated, green, open  
15 space?

16 MAYOR'S AGENT BYRNE: It is vegetated  
17 green open space. Why are you asking --

18 MR. OTTEN: I want to make sure -- I'm  
19 not sure if he's seen the site.

20 MAYOR'S AGENT BYRNE: I don't care what  
21 he thinks about that.

22 BY MR. OTTEN:

1 Q. Have you been to the site, Mr. Stucker?

2 MAYOR'S AGENT BYRNE: I don't care  
3 whether he's been to the site.

4 MR. OTTEN: Okay.

5 MAYOR'S AGENT BYRNE: I mean, really,  
6 we're not dealing with whether they did a good  
7 job or not. That's not the question.

8 MR. OTTEN: Doesn't that help you balance  
9 the equities here?

10 MAYOR'S AGENT BYRNE: No. I'm telling  
11 you it doesn't help me.

12 (Cross-talk.)

13 MR. OTTEN: If the agency doesn't do a  
14 good job in planning, it doesn't --

15 MAYOR'S AGENT BYRNE: I'm telling you it  
16 doesn't help me. I've seen the plans. I've  
17 heard the testimony that were developed by DMPED  
18 and Vision McMillan, and I found that it was a  
19 project of special merit. We had two days --

20 MR. OTTEN: But this gentleman is  
21 supposed to be representing the public interest.

22 MAYOR'S AGENT BYRNE: I don't care -- all

1 right. That's really enough on that. Okay?

2 MR. OTTEN: Okay.

3 MAYOR'S AGENT BYRNE: Just accept that  
4 that's enough on that.

5 MR. OTTEN: Where was I going? What --  
6 the historic -- one of the historic  
7 characteristics of this site is that it's open;  
8 we've already decided that it's open green  
9 spaces. You're saying we should all just assume.  
10 I'm not assuming anything. He hasn't read the  
11 designation application to make this an historic  
12 site. So that's where I'm working from, Mr.  
13 Byrne.

14 MAYOR'S AGENT BYRNE: Okay.

15 BY MR. OTTEN:

16 Q. Given the open green space there, doesn't  
17 that serve an environmental purpose, currently?  
18 Does it produce smog?

19 A. I don't know how to answer your question.  
20 I'm not a biologist or a chemist or whoever would  
21 be appropriate to answer that question.

22 Q. When Senator McMillan and Frederick Law

1 Olmsted were designing this historic space, they  
2 did it with intent, with purpose, correct?

3 MS. BROWN: Objection.

4 MAYOR'S AGENT BYRNE: Sustained.

5 BY MR. OTTEN:

6 Q. Will the site's environment be  
7 drastically changed with the subdivision of this  
8 parcel?

9 A. The subdivision will not physically  
10 change what you see today on McMillan. It allows  
11 for the development of the parcel, of the  
12 buildings on this site.

13 Q. And in allowing that development, does it  
14 change, does it affect the environmental aspects  
15 of this site?

16 A. I'm not an environmentalist.

17 Q. Will it look different --

18 A. Yes.

19 Q. Will there be a lot more hardscape on the  
20 site through the parceling and subdivision  
21 ultimately leading to this project?

22 A. There will be many changes that have been

1 laid out within prior hearings, as well as with  
2 Zoning Commission case.

3 MR. OTTEN: Okay. Thank you.

4 MAYOR'S AGENT BYRNE: Okay. Ms. Brown,  
5 do you have anything else for this witness?

6 MS. BROWN: No.

7 MAYOR'S AGENT BYRNE: Okay. Okay.

8 MS. FERSTER: We have a procedural issue  
9 affecting the scheduling of the case, if we might  
10 raise it now.

11 MAYOR'S AGENT BYRNE: Okay. But the  
12 witness can be excused first.

13 MS. FERSTER: Yeah, yeah.

14 MAYOR'S AGENT BYRNE: Thank you.

15 (The witness was excused.)

16 MAYOR'S AGENT BYRNE: Okay. Yes.

17 MS. FERSTER: We have several witnesses  
18 who are on standby for our case. And given what  
19 we have learned today about your rulings  
20 concerning the scope of the issues before you  
21 today, I would like to make a proffer of their  
22 testimony. And if you would rule whether or not

1 you believe it's within the scope of the hearing  
2 so that if you believe it's not within the scope  
3 of the hearing --

4 MAYOR'S AGENT BYRNE: Okay. So you can  
5 let them go, right.

6 MS. FERSTER: They don't have to come.  
7 (Laughter.)

8 MAYOR'S AGENT BYRNE: Right. Fair  
9 enough.

10 MS. FERSTER: Okay.

11 MAYOR'S AGENT BYRNE: Let's take a five-  
12 minute break. Okay? And then we'll do that, and  
13 then we'll hear from Ms. Corbett.

14 (Whereupon, at 11:30 a.m., a recess was  
15 taken, to resume at 11:37 a.m.)

16 MAYOR'S AGENT BYRNE: All right, ladies  
17 and gentlemen. So, you want to discuss the  
18 proffer then, please?

19 MS. FERSTER: Yes, I do. We had intended  
20 to introduce two witnesses, who it occurred to me  
21 it's possible you might find that their testimony  
22 goes beyond the scope.

1           The first one is our expert. We had an  
2 expert witness in the economics of development  
3 who had undertaken a review of all the agreements  
4 that we had, that I probed the D.C. witness on,  
5 to evaluate, you know, in his opinion whether or  
6 not the information in the record that we know of  
7 at this point demonstrated that the intensity of  
8 this development was necessary in order to afford  
9 the special merit benefit. So that's one. He's  
10 on standby, obviously.

11           So, and then the other witness is Erin  
12 Carlson Mast, who is the Director of the  
13 President Lincoln's Cottage. Because the  
14 Applicant's prehearing submission did include  
15 many planning issues, and Lindsley Williams was  
16 on your list of witnesses about the Comprehensive  
17 Plan issue, which obviously, you know, relates to  
18 the views from the site to the historic Lincoln  
19 Cottage, from the Lincoln Cottage.

20           She was going to testify, you know, more  
21 in the nature of an update to things that had  
22 occurred since her last testimony to the Mayor's

1 Agent and the National Trust, continued concerns  
2 that the development would affect those important  
3 views. So those are the -- yeah.

4 MAYOR'S AGENT BYRNE: Comments, Ms.  
5 Brown?

6 MS. BROWN: Yes. I would object to the  
7 testimony because I do think it goes beyond the  
8 scope of this because they seem to deal with the  
9 intensity of development, the massing height, and  
10 the view sheds that were all addressed and  
11 resolved in the previous Mayor's Agent order.

12 MS. FERSTER: You object to both  
13 witnesses?

14 MS. BROWN: Both witnesses, yes.

15 MAYOR'S AGENT BYRNE: I think that's  
16 right. I think that the intensity of the  
17 development issue is -- just to reiterate, I  
18 think what I said last time, that the prior  
19 decision approved a particular project as a  
20 project of special merit by identifying aspects  
21 of the project that were in accord with the  
22 standards for special merit.

1           And I don't believe -- it is not an open  
2 question as to whether you could achieve those  
3 benefits in a different project that was less  
4 intense.

5           And I think I also dealt in the prior  
6 decision order specifically with the views, the  
7 question of the views from President Lincoln's  
8 Cottage, in a footnote. And so, I think that  
9 that issue was particularly closed.

10           MS. FERSTER: Okay. So we will then  
11 release our witnesses so that they will not --

12           Do you need to call home?

13           MS. MERRITT: I can communicate with her  
14 by email.

15           MS. FERSTER: All right. And of course,  
16 I take an exception, and would like that noted  
17 for the record, to your ruling.

18           MAYOR'S AGENT BYRNE: Sure. Sure, sure,  
19 sure. You have a nice, clean issue for the court  
20 of appeals.

21           MR. OTTEN: I'm not trying to go to the  
22 court of appeals. I'd like to do this right.

1           MAYOR'S AGENT BYRNE:  It's not that bad.  
2  I understand.

3           Okay.  So we're ready for Ms. Corbett.

4           MS. BROWN:  Yes.

5           MAYOR'S AGENT BYRNE:  Welcome, Ms.  
6  Corbett.

7           MS. CORBETT:  Thank you.

8           MS. BROWN:  Would you introduce yourself  
9  for the record and proceed with your testimony?  
10  Whereupon,

11                                   ANNE CORBETT

12  was called as an expert witness and testified as  
13  follows:

14                                   DIRECT TESTIMONY

15           MS. CORBETT:  Certainly.  My name is Anne  
16  Corbett, C-o-r-b-e-t-t.  I'm the Project Director  
17  working on contract to Vision McMillan Partners,  
18  the Applicant.

19           So, I'm going to show you some maps if  
20  you don't mind.

21           MAYOR'S AGENT BYRNE:  Okay.

22           MS. CORBETT:  So, this is the historic

1 record lot configuration in the area that our  
2 site is. As you can see, it includes more than  
3 the site in question in this map. But in the  
4 trapezoid between Michigan and Channing and First  
5 Street and North Capitol, there are 122 record  
6 lots, as mentioned previously. One A and T lot  
7 superimposed over those lots, that's lot 800.

8           MAYOR'S AGENT BYRNE: That means the tax  
9 lot? The term that was used before, I think, was  
10 "tax lot."

11           MS. CORBETT: Yes.

12           MS. BROWN: Yes.

13           MS. CORBETT: Yes. This was part of an  
14 area known as Dobbins's Addition. And again,  
15 Dobbins's Addition included what, to me it looks  
16 like a bowtie sort of, or stronghold, what is now  
17 referred to as stronghold, as well as the sand  
18 filtration site proper that D.C. owns today.

19           This subdivision was recorded in 1887 and  
20 extended south another four blocks to V Street,  
21 as shown in the next slide. So this is the  
22 larger -- and I'm sorry, we turned it sideways so

1 it would fit on the slide. So, this is the map  
2 of all of Dobbins's Addition. So you see on the  
3 left is actually the southern section, part of  
4 Bloomingdale today.

5 It goes all the way to V Street on the  
6 south, or the left. Michigan Avenue is the  
7 angled street on the right, far right, and  
8 actually the north.

9 And at the -- so, at the time it was  
10 recorded, there were -- the recordation included  
11 a drawing of streets in the McMillan site proper.  
12 Those streets were renamed in 1891, as shown on  
13 the plat. But these streets do not appear to  
14 ever have been formally dedicated to the District  
15 or used as part of the public street system.

16 So then, back to the site in question,  
17 again on the same historic map, this is a color  
18 version of just that McMillan site. Michigan  
19 Avenue is to the right, and then North Capitol is  
20 to the east in the bottom. Channing Street is to  
21 the left and the south.

22 The records of the Office of the Surveyor

1 show these lots as the last recorded subdivision  
2 for McMillan, again, 122 lots delineated here.  
3 Then it was conveyed to the Federal Government.

4 As you probably know, the U.S. Government  
5 is not bound by District laws. The lot  
6 configurations were irrelevant to the Federal  
7 Government, who took over the site in 1901 for  
8 the creation of the larger McMillan Reservoir and  
9 Water Filtration Plant.

10 The original subdivision essentially  
11 merged into one building site by virtue of that  
12 U.S. Government ownership. So that was the  
13 entirety of the 24.69 acres in question today.  
14 When the property was conveyed back to the  
15 District, it was done so as, again, one A and T,  
16 or one tax lot, number 800, which included all  
17 122 record lots in it.

18 So here you have a new map, where we have  
19 proposed six record lots to replace the 122 that  
20 were there before. So, those 122 lots will need  
21 to be wiped out by the D.C. surveyor in order to  
22 create six proposed record lots, as proposed by

1 our plan.

2           You can note that the numbers are, there  
3 are six lots. You'll see numbers one through  
4 seven because parcel -- there's no parcel 3, and  
5 that's sort of a technicality.

6           MAYOR'S AGENT BYRNE: There's no what?  
7 How so?

8           MS. CORBETT: So, there's a parcel 3  
9 that's intended as a separate theoretical lot.  
10 But there's not a parcel 3 that's a record lot.

11           MAYOR'S AGENT BYRNE: Record lot. Okay.

12           MS. CORBETT: And this proposed  
13 subdivision of six lots is necessary to create  
14 the required zoning lots to effectuate the  
15 approved special merit project.

16           So, this map again has those six record  
17 lots and has the outlines of the building  
18 footprints intended by the proposed project.  
19 Again, there's parcels 1, 2, 4, 5, 6, and 7,  
20 which were identified in the approved master plan  
21 and will become individual record lots. And  
22 again, parcel 3 is a theoretical lot that's a

1 subset of parcel 2.

2           Then, just to give you sort of an example  
3 of the application, this is a zoom-in of that map  
4 to show you where parcel 5 is a record lot and is  
5 then divided into 146 theoretical lots in order  
6 to facilitate the simple townhomes as proposed by  
7 the master plan and previously approved. And  
8 again, that's just to demonstrate the different  
9 kinds of lines on the map. Theoretical lots are  
10 different kinds of lines within the record lot.

11           MAYOR'S AGENT BYRNE: Okay. So, I just  
12 need to ask a question for legal clarification.  
13 I've tried to ask this before, and I probably  
14 didn't do it very well. But a record lot -- so I  
15 don't understand why the townhomes are divided  
16 into theoretical lots rather than record lots,  
17 since they're going to involve individual fee-  
18 simple ownership.

19           MS. BROWN: I can help answer that legal  
20 question.

21           MAYOR'S AGENT BYRNE: Yes. That's a  
22 legal question. I'm asking the question.

1 (Laughter.)

2 MS. BROWN: The subdivision regulations  
3 require buildings to have -- record lots to have  
4 street frontage. When you have the individual  
5 townhouse parcels that will be sold off, they do  
6 not have street frontage. Some do; some don't.

7 MAYOR'S AGENT BYRNE: I see.

8 MS. BROWN: And so that we have to create  
9 the theoretical building sites for those  
10 individual parcels. But they also have to be  
11 under the zoning regulations on a lot of record.

12 MAYOR'S AGENT BYRNE: Okay.

13 MS. BROWN: So, parcel 5 becomes the lot  
14 of record. And then the theoretical lots get  
15 created under Section 25-17 of the zoning  
16 regulations.

17 MAYOR'S AGENT BYRNE: Which you pointed  
18 to before.

19 MS. BROWN: Yes.

20 MAYOR'S AGENT BYRNE: So, that means that  
21 somebody who buys that townhouse owns only a  
22 theoretical lot.

1           MS. BROWN: Building site. But the land  
2 couldn't be in property, could be transferred as  
3 an assessment in taxation lot, which is what gets  
4 assigned to a theoretical building site.

5           MAYOR'S AGENT BYRNE: Okay. The law is  
6 very mystical in this area. I follow what you're  
7 saying. Thank you. Okay.

8           MS. CORBETT: That reminds me, it  
9 probably is worth noting that -- so this is  
10 parcel 1. And it's a record lot. But it will be  
11 divided such that the District of Columbia will  
12 retain ownership of that --

13           MAYOR'S AGENT BYRNE: Of that northeast  
14 corner.

15           MS. CORBETT: That northeast acre.

16           MAYOR'S AGENT BYRNE: Yeah.

17           MS. CORBETT: In addition to parcel 7 and  
18 all of parcel 6, they will retain this tax lot.

19           MAYOR'S AGENT BYRNE: Okay. Good. I'm  
20 glad you clarified that.

21           MS. CORBETT: Sure. And so, in  
22 conclusion, the subdivision is necessary to allow

1 the construction of the special merit project  
2 approved by the Mayor's Agent in the decision and  
3 order issued April 13th, 2015.

4 We do request flexibility to adjust the  
5 classification on lots on parcel 5, whether  
6 they're treated as theoretical lots or record  
7 lots, without changing the number and  
8 configuration of those lots. Those facing on  
9 First Street or North Capitol may be treated as  
10 record lots because they are facing public  
11 streets, as to be determined by the zoning  
12 administrator during the building permit review  
13 process.

14 MAYOR'S AGENT BYRNE: Okay. Good.

15 MS. CORBETT: Thank you.

16 MAYOR'S AGENT BYRNE: Thank you.

17 MS. BROWN: I have a couple of questions  
18 that I'd like to ask.

19 MS. CORBETT: Certainly.

20 DIRECT EXAMINATION

21 BY MS. BROWN:

22 Q. Ms. Corbett, you weren't here for Mr.

1 Stucker's testimony and cross-examination by Mr.  
2 Otten. And one of the questions posed to Mr.  
3 Stucker that I'm going to ask you is, when you  
4 stand at Channing Street and look north across to  
5 Michigan Avenue, do the 122 record lots on the  
6 site interfere with your vision across the site?

7 A. No.

8 Q. Does the creation of six record lots  
9 interfere with your views across the site?

10 A. No.

11 Q. Will the creation of theoretical lots or  
12 the townhouse development in the division of  
13 parcel 2, the two theoretical lots, will that  
14 affect your vision across the site?

15 A. No.

16 Q. Do the lines on this piece of paper that  
17 we've submitted today, do they in any way allow  
18 construction in and of themselves?

19 A. No.

20 Q. And do you need subdivision to be created  
21 in order to get a building permit, if you know?

22 (No audible response.)

1 BY MS. BROWN:

2 Q. Let me ask another way. Can you get a  
3 building permit for this project without the  
4 subdivision first?

5 A. No.

6 MS. BROWN: Thank you. Those are my  
7 questions.

8 MAYOR'S AGENT BYRNE: Okay. Good.

9 Ms. Ferster.

10 CROSS EXAMINATION

11 BY MS. FERSTER:

12 Q. Yeah. Okay. So, turning first to the  
13 Dobbins subdivision issue -- I don't need to see  
14 it.

15 A. Okay.

16 Q. Can you elaborate in a little more detail  
17 why this 1887 subdivision into 122 record lots,  
18 why it's relevant to your argument here that your  
19 subdivision, your new subdivision is necessary in  
20 the public interest, which is the issue we're  
21 here for? I don't understand the relevance.

22 A. I was just establishing the existing

1 condition.

2 Q. Okay. That's it. And are you familiar  
3 with the historic report prepared by EHT  
4 Traceries that was submitted at the last hearing,  
5 September 2014?

6 MS. BROWN: I believe the witness is  
7 waiting for me to object because it was not in  
8 her direct testimony.

9 (Laughter.)

10 MAYOR'S AGENT BYRNE: Where are you going  
11 with this?

12 MS. FERSTER: My next follow-up question  
13 was simply if the Dobbins subdivision mentioned  
14 anywhere in that report.

15 MAYOR'S AGENT BYRNE: Either it is or it  
16 isn't, right? As I understand, this is basically  
17 just background to explain that they're not going  
18 from one lot to six, but that they're going from  
19 essentially a historical relic of 122, with one  
20 tax lot, to six. Am I right? I mean, that's  
21 what -- it's basically just clarifying what the  
22 technical situation has been.

1 MS. FERSTER: So, are you sustaining the  
2 objection?

3 (Laughter.)

4 MAYOR'S AGENT BYRNE: Well, I guess I'm  
5 arguing with you to try to understand why you  
6 think -- what you're trying to pursue.

7 MS. FERSTER: I mean, the issue here is  
8 none of the subdivision is consistent with the  
9 purpose of the Act.

10 MAYOR'S AGENT BYRNE: Right, right.

11 MS. FERSTER: The preservation law,  
12 whether it enhances the landmark and -- you know,  
13 et cetera, et cetera.

14 MAYOR'S AGENT BYRNE: Right.

15 MS. FERSTER: So, we have an historic  
16 preservation report that shows, you know, what is  
17 historically significant. And so, if there is an  
18 existing condition that shows 122 lots, I just  
19 wanted to know how it relates generally to  
20 historic preservation. If it doesn't, it  
21 doesn't.

22 MAYOR'S AGENT BYRNE: And the answer is,

1 as far as you know?

2 MS. CORBETT: Sorry. The question is how  
3 it relates generally to historic preservation?

4 MAYOR'S AGENT BYRNE: Is it significant  
5 to the historical character of the site that  
6 there are 122 record lots?

7 BY MS. FERSTER:

8 Q. Well, I guess my specific question was,  
9 do you know whether or not the Dobbins report is  
10 mentioned in the historic preservation report?  
11 But I guess the broader issue is, do you know  
12 generally whether the Dobbins report is at all  
13 part of the historic significance of -- the  
14 Dobbins subdivision is part of the history and  
15 significance of McMillan?

16 A. Okay. So, whether it was in the report,  
17 the report is 100 pages.

18 Q. You just don't know?

19 A. I'd prefer not to make a speculation  
20 without it.

21 Q. Fair enough.

22 So, the second question, which was --

1 (Laughter.)

2 BY MS. FERSTER:

3 Q. Don't make me repeat this question.

4 Do you believe that the Dobbins  
5 subdivision relates somehow to the historic  
6 significance of McMillan as a D.C. Historic  
7 Landmark?

8 A. No.

9 Q. Okay. That was it.

10 So, on your slide show, you showed only  
11 one of the theoretical lots, on parcel 5. Do you  
12 have some demonstratives that show the other  
13 theoretical lots on the other parcels?

14 MS. BROWN: If I can just interject, they  
15 were submitted as part of the original  
16 application, so they are part of the record.

17 MS. FERSTER: Oh, we don't have them. We  
18 never got them. You have an application? Yeah,  
19 we don't have them.

20 MAYOR'S AGENT BYRNE: In the subdivision,  
21 in this application?

22 MS. BROWN: Yes.

1 MS. FERSTER: Okay. We didn't -- they  
2 weren't attached to your prehearing submission.  
3 So if you can provide us copies with them, we  
4 would appreciate that.

5 MS. BROWN: I'm sorry. You're asking for  
6 the other theoretical sites?

7 (Cross-talk.)

8 MS. FERSTER: Yeah, yeah. All of them,  
9 not just the sample --

10 MS. BROWN: Yeah. Absolutely they were  
11 included.

12 MS. FERSTER: -- for parcel 5, but the  
13 other ones.

14 MS. BROWN: They should -- again, they  
15 were in the record.

16 MS. FERSTER: Okay. So --

17 MAYOR'S AGENT BYRNE: Yeah. They're in  
18 the back.

19 MS. FERSTER: And that's a document that  
20 -- can we see that document? That's the  
21 application you brought the Mayor's Agent?

22 MS. BROWN: It is our prehearing

1 submission.

2 MS. FERSTER: Oh. Okay. Oh, okay. No,  
3 we do have the prehearing submission; yes. Yeah.  
4 We have that.

5 MS. BROWN: Okay. Good.

6 MS. FERSTER: So that shows all the  
7 parcels.

8 MS. BROWN: Yes.

9 BY MS. FERSTER:

10 Q. Okay. So, I have a question about the  
11 actual application for subdivision. It's filed  
12 with the Office of the Surveyor, correct?

13 A. Yes.

14 Q. And when did you file that application?

15 A. I'd have to look for the specific date.  
16 I don't know off the top of my head.

17 Q. Okay. I would ask that you provide us  
18 with a copy of that application for subdivision.

19 MS. BROWN: Again, it's part of the  
20 record. And we were happy to --

21 MS. FERSTER: Yeah. We don't have it.  
22 We just don't have it.

1 MS. BROWN: Again --

2 MS. FERSTER: Well, I'm asking to be  
3 provided with it. If you have the record in  
4 front of you, that would be helpful if I could  
5 see that. I mean, we don't have it. We don't  
6 have it, the application for subdivision.

7 And if you have another witness who knows  
8 the date that that would be filed, that would be  
9 terrific. But I would like to know if you have  
10 that document in front of you because I have some  
11 questions about the date the application was  
12 filed.

13 Can I just look at it?

14 MS. BROWN: I just don't -- you know, I  
15 don't -- I don't know that I have it with me  
16 here. But --

17 MAYOR'S AGENT BYRNE: So, it seems highly  
18 likely that this hearing is going to be continued  
19 at some point, that we're not going to finish  
20 today. And maybe we can have an occasion to ask  
21 -- I mean, we don't have the document about the  
22 subdivision application right now. It's not in

1 the prehearing submission.

2 MS. BROWN: No. It was -- yeah.

3 MAYOR'S AGENT BYRNE: Maybe we can agree  
4 to --

5 MS. BROWN: Prior to the Historic  
6 Preservation Review Board meeting, because that  
7 was what was required to get to the HPRB.

8 MAYOR'S AGENT BYRNE: Right. So that had  
9 to be -- right.

10 (Cross-talk.)

11 MS. FERSTER: But we never got it.

12 MAYOR'S AGENT BYRNE: Right.

13 MS. BROWN: Well, I think it's up to you  
14 to look into the record and get what you need.

15 MS. FERSTER: We've asked for it. Yes.  
16 So we would like to see it, and we'd like to know  
17 the date. And if you don't -- if you have a  
18 witness who knows the date the application was  
19 filed, that would just make life a little easier.  
20 And I have several questions that have to do with  
21 the relevance of that date.

22 MAYOR'S AGENT BYRNE: The relevance of

1 the date?

2 MS. FERSTER: The date, yes, that the  
3 subdivision application was filed. I mean, do  
4 you know roughly when it was filed? I mean, you  
5 testified that -- or you testified --

6 MS. BROWN: I don't think I testified.  
7 (Laughter.)

8 MS. FERSTER: That the application, the  
9 reason why this Mayor's Agent hearing was  
10 bifurcated was because you had to -- legally, you  
11 had to delay the subdivision process until after  
12 the zoning approval. So, I guess my question --  
13 I want to know a little bit more about the timing  
14 of the subdivision application.

15 MS. BROWN: Well, I'm not sure that she,  
16 that this witness testified to that.

17 MS. FERSTER: Well, perhaps we can  
18 continue and I can run downstairs, then, and get  
19 that document. And then I can continue my cross-  
20 examination.

21 MAYOR'S AGENT BYRNE: You mean go right  
22 now and go get it?

1 MS. FERSTER: I mean, we did ask for  
2 those documents. And we never received them.

3 (Inaudible conversation.)

4 MAYOR'S AGENT BYRNE: All right. So,  
5 they're checking. The HPO staff is checking for  
6 it.

7 MS. FERSTER: Okay.

8 MAYOR'S AGENT BYRNE: Do you have other  
9 questions you want to ask, other lines?

10 MS. FERSTER: Well, along those lines, I  
11 had several questions about that, but I do need  
12 to see that document.

13 MAYOR'S AGENT BYRNE: All right. Well,  
14 so, maybe we should go on to the other parties.  
15 And then we'll come back to you, Ms. Ferster,  
16 when we get that.

17 MS. FERSTER: Yes.

18 MAYOR'S AGENT BYRNE: Is that a good  
19 idea?

20 MS. FERSTER: Yeah.

21 MAYOR'S AGENT BYRNE: Okay. Ms. Merritt,  
22 do you have questions?

1 MS. MERRITT: Yeah, I have a couple of  
2 questions. I was just looking to see if I had  
3 the document, by any chance, but I didn't receive  
4 it.

5 Okay. Would it be possible to put up the  
6 slide that showed the six parcels, the one that  
7 we were talking about before? Yes, that one.  
8 Okay.

9 MS. CORBETT: With the buildings or  
10 without the buildings?

11 MS. MERRITT: With the buildings. Let's  
12 do it with the buildings. Thank you.

13 MS. CORBETT: Okay.

14 CROSS EXAMINATION

15 BY MS. MERRITT:

16 Q. In parcel number one, over on the far  
17 right, the north end of the site, how many  
18 buildings are in parcel 1?

19 A. One building.

20 Q. And I mean, I would just say to a  
21 layperson it looks like two buildings. Is there  
22 a connection there? Or how do you define two

1 footprints that are connected? And at what point  
2 -- where do you draw the line between what's one  
3 building and what's two buildings?

4 A. There's one building.

5 MAYOR'S AGENT BYRNE: It is one building.  
6 It's just there is -- it looks --

7 MS. MERRITT: It looks like there's a  
8 street.

9 MAYOR'S AGENT BYRNE: It looks like  
10 there's a street up in --

11 (Cross-talk.)

12 MS. MERRITT: Cutting left to right.

13 MS. CORBETT: What you see in this  
14 drawing is the at-grade footprint --

15 MAYOR'S AGENT BYRNE: Okay.

16 MS. CORBETT: -- at the 165 level,  
17 actually the 170-foot level of the plane, the  
18 artificial plane created. So, the building slope  
19 -- I mean, the topography slopes around it  
20 dramatically. So, Michigan Avenue is at a  
21 different level than their north service court.

22 MAYOR'S AGENT BYRNE: Right.

1 MS. CORBETT: So, the building is  
2 connected. Interestingly, the building is  
3 connected in what's below grade. But you can  
4 enter at grade in the south service court and  
5 walk continuously around and back out at grade on  
6 the other side. So that's the connection of the  
7 buildings from a zoning standpoint. And the one-  
8 building answer is a zoning-specific answer.

9 BY MS. MERRITT:

10 Q. So the zoning regulations say if it's  
11 only a connection on the top floor, it's two  
12 buildings or whatever, they would specify -- they  
13 specify the definition of one building versus --

14 A. There are specific zoning regulations  
15 that specify how you define a contiguous  
16 building.

17 Q. Yes. Okay. Then I'd like to ask about  
18 parcel 2, as well. How many buildings are in  
19 parcel 2?

20 A. The intention is two buildings on parcel  
21 2.

22 Q. Okay. So then, could you explain again

1 why, using this map here, why there is more than  
2 one building in one record lot? Why there are  
3 two buildings in parcel 2 as opposed to one?

4 A. Why there are?

5 MAYOR'S AGENT BYRNE: Mr. Stucker  
6 testified that there had to be one building per  
7 lot, or one lot per building.

8 (Pause.)

9 MS. CORBETT: There's one record lot,  
10 parcel 2. And then as we -- as counsel  
11 explained, you can then have separate theoretical  
12 lots and have buildings on separate theoretical  
13 lots. So in this case, the intention is to  
14 create two theoretical lots, each with a building  
15 on it.

16 MAYOR'S AGENT BYRNE: Is that because one  
17 of the parcels, one of the buildings is not  
18 currently on a street? That's why it has to be a  
19 theoretical lot rather than a record lot?

20 MS. CORBETT: Correct.

21 MAYOR'S AGENT BYRNE: Okay.

22 BY MS. MERRITT:

1 Q. How do you access the building if it  
2 doesn't front on a street?

3 A. It will front on a street. It's the  
4 difference between a street today on L'Enfant's  
5 plan and a public right-of-way created later.

6 Q. Because none of these streets, these  
7 proposed streets exist now. So --

8 A. No. First Street exists now. And North  
9 Capitol exists now.

10 Q. Of course. But I mean the streets that  
11 are proposed within the development.

12 A. The north service court exists now, and  
13 it was always a vehicular service-way.

14 Q. So the building in the middle of the site  
15 that's in parcel 2 that right now is below the  
16 other building -- yes, that building right there.  
17 That's immediately adjacent to the service court.  
18 Isn't it? Looks like it. So, why doesn't that  
19 count?

20 A. Because from a zoning definition, the  
21 service court is not a street. That's a great  
22 question, though.

1 Q. Okay. I thought you were just arguing  
2 that it was a street. I thought that's what you  
3 were just saying, that the service court is a  
4 street.

5 A. It depends on your definition. Are you  
6 talking about the Zoning Administrator's  
7 definition of a street or what, again, you and I  
8 as laymen use as streets?

9 MAYOR'S AGENT BYRNE: So you're saying  
10 that each of these parcels has to front on North  
11 Capitol, First, Michigan --

12 MS. CORBETT: On the zoning  
13 administrator's --

14 MAYOR'S AGENT BYRNE: -- or Channing in  
15 order to qualify as a record lot?

16 MS. CORBETT: Bingo.

17 BY MS. MERRITT:

18 Q. So, in the case of parcel 5, yes --

19 A. Yes.

20 Q. -- which street, you're saying parcel 5  
21 fronts on North Capitol and --

22 A. So, this North Capitol.

1 Q. Yes. So, what's the official frontage  
2 for parcel 5?

3 A. I think it's North Capitol is where the  
4 measuring point is for the Height Act.

5 Q. Okay.

6 MS. MERRITT: I don't think I have any  
7 further questions.

8 MS. FERSTER: I have one follow-up  
9 question just because I have now located the map,  
10 so I realized why I was confused about the parcel  
11 5, if I could just ask about that.

12 MAYOR'S AGENT BYRNE: Okay.

13 MS. FERSTER: So --

14 MAYOR'S AGENT BYRNE: Do you want to tell  
15 us which page you're looking at?

16 MS. FERSTER: Yeah. Well, it's not  
17 numbered, but it's on the attachments. But I'm  
18 looking at Exhibit B2, proposed theoretical lot  
19 configuration. And so, there are several pages  
20 that deal with the theoretical lot subdivision of  
21 parcel 5.

22 And then the first page is what I'm

1 looking at right now. And that's one that shows  
2 the two theoretical lots, lot 2A and lot 2B on  
3 parcel 2.

4 MAYOR'S AGENT BYRNE: Okay.

5 CROSS EXAMINATION

6 BY MS. FERSTER:

7 Q. But so, since all you show are  
8 theoretical lots on parcel 5 and parcel 2, does  
9 that mean that there are no theoretical lots on  
10 parcel 4 or parcel 1?

11 (No audible response.)

12 MAYOR'S AGENT BYRNE: So you testified  
13 there was a theoretical lot on parcel 1 so that  
14 D.C. would retain ownership of the acre of the  
15 northeast corner.

16 MS. BROWN: I'm sorry. I don't think she  
17 did testify to that. She testified that there  
18 would be an assessment and taxation lot.

19 MAYOR'S AGENT BYRNE: Okay. Thank you.

20 BY MS. FERSTER:

21 Q. Okay. So, my question is, are there no  
22 theoretical lots on parcel 1? Is that? Because

1 I don't see a map showing theoretical lots on  
2 parcel 1.

3 A. At this time, the application does not  
4 include a theoretical lot on parcel 1.

5 Q. Okay. And parcel 4, is there no  
6 theoretical lot on parcel 4?

7 A. At this time, there is no theoretical lot  
8 proposed for parcel 4.

9 Q. Okay. So, it looks like there are two  
10 separate buildings on parcel 4.

11 A. I don't know how it looks to you, but  
12 there is a singular residential building. It has  
13 several entrances, and it's three wings.

14 Q. Okay. All right. I mean, this is very  
15 schematic, so I just don't see the connection.

16 A. Right.

17 Q. So, okay. So that clarifies my question.  
18 Parcel 5 is the one that has the most theoretical  
19 lots.

20 A. A hundred.

21 Q. And then only two on parcel 2.

22 A. Correct.

1 Q. How many on parcel 5, exactly?

2 A. A hundred and forty-six.

3 MS. FERSTER: Okay. All right.

4 MAYOR'S AGENT BYRNE: Okay. Okay. Mr.  
5 Otten, it's your turn.

6 MR. OTTEN: Thank you, Mr. Byrne.

7 CROSS EXAMINATION

8 BY MR. OTTEN:

9 Q. Ms. Corbett, you used the Dobbins map to  
10 testify to the existing conditions, the right  
11 condition of your site, right, the Dobbins map  
12 from 1887?

13 A. 1887.

14 Q. 1887. And just so I understand this, on  
15 that map the historic record lot configuration of  
16 1887, there was 122 record lots?

17 A. Right.

18 Q. And that's one -- it was at one tax lot,  
19 but 122 record lots under that?

20 A. I don't know whether there were tax lots  
21 in 1887.

22 Q. Okay.

1           A. I don't know about the tax lot situation  
2 in 1887.

3           Q. Okay. That's helpful.

4 And how did the McMillan plan of 1901 affect the  
5 Dobbins record lot situation? Do you know?

6           A. I don't.

7           Q. Okay. And the drawing of the streets, it  
8 seems to be that those streets have always been  
9 delineated there as public right-of-ways?

10          A. "Always"? I don't know what you --

11          Q. I mean since 1887.

12          A. They're on that map. And again,  
13 Dobbins's Addition is a surveyor's map, a piece  
14 of paper with lines on it.

15          Q. Right.

16          A. And there are lines on that map that  
17 indicate streets.

18          Q. Okay. So then, in 1987, I heard you  
19 testify that in the conveyance from the Federal  
20 Government to the District Government, that it  
21 still retained the 122 record lots within the one  
22 tax lot, right?

1           A.   They didn't -- as far as I understand,  
2 they did not change the surveyor's map at that  
3 point.

4           Q.   Okay.  And so, this subdivision  
5 application is saying, "Let's go from the 1987  
6 one-hundred-and-twenty-two record lots to six  
7 record lots.

8           A.   Correct.

9           Q.   And then, what I saw was, was there any  
10 -- let me ask you this.  Was there any  
11 theoretical lots in the Dobbins map, or is that  
12 just all historically the 122 record lots?

13          A.   I don't know, and I don't know if --  
14 again, similarly, I don't know if "theoretical  
15 lots" was a legal classification in the 1887.

16          Q.   Okay.  And I heard you say that parcel 5  
17 alone has 146 lots.  They happen to be  
18 theoretical lots.

19          A.   The proposed --

20          Q.   Subdivision?  No?

21          A.   Theoretical lots isn't subdivision.  The  
22 proposed plan includes 146 intended, theoretical

1 lots to facilitate 146 townhomes on parcel 5.

2 Q. Okay. So what's the total amount of lots  
3 in the proposed subdivision? Well, any kind of  
4 lot -- theoretical, record.

5 MAYOR'S AGENT BYRNE: So, we could all  
6 add it up. She can't do the --

7 MS. CORBETT: I can write it down.

8 MAYOR'S AGENT BYRNE: You could actually  
9 do the math on the spot. I think -- well, she's  
10 working on it.

11 (Laughter.)

12 BY MR. OTTEN:

13 Q. So, it would be fair to say that there's  
14 many more lots in the proposed subdivision than  
15 what has been historically there on this site?

16 (Pause.)

17 MS. CORBETT: Would you state your  
18 question again for me? I'm sorry.

19 BY MR. OTTEN:

20 Q. Sure. No problem. I was saying, is it  
21 fair to say that there is many more lots, whether  
22 theoretical, record lots, in the proposed

1 subdivision application than what has been  
2 historically there as lots?

3 A. There are fewer record lots than were  
4 drawn in 1887. And that's the only thing that  
5 was drawn in 1887. So I really, that's the only  
6 thing I would compare.

7 Q. So there was no other lots besides record  
8 lots in 1887? Okay.

9 A. I don't know.

10 MAYOR'S AGENT BYRNE: There was no zoning  
11 in 1887. We know that.

12 BY MR. OTTEN:

13 Q. Is this all in one square on the zoning  
14 map?

15 A. Yes.

16 Q. Now, what -- when you were looking at the  
17 maps to submit this application that's before us,  
18 how did you come up with the parcel subdivisions,  
19 the delineation, the lines? How did you come up?  
20 Did you use any studies, any reports or anything?  
21 What was that based on?

22 A. The record lot parcel lines specifically

1 facilitate the previously proved plan for special  
2 merit and the components in that plan.

3 Q. So, the subdivision, you're saying, into  
4 these six lots will allow a project -- will allow  
5 this project of special merit to move forward?

6 A. Will allow the specific proposed and  
7 approved project of special merit.

8 Q. And in that project, there was -- you  
9 know, in parcel 1 is the 13-story office  
10 building, medical office building, right?

11 A. No.

12 Q. No?

13 A. No.

14 Q. What's in parcel 1?

15 A. Parcel 1, there's a health care facility,  
16 but it is not 13 --

17 Q. Fourteen stories?

18 A. No.

19 Q. Fifteen?

20 A. No.

21 Q. Can you tell me how many stories?

22 A. I think in the highest corner it's nine.

1 Q. In the highest corner, it's nine stories?

2 A. Um-hm.

3 Q. And so, that equates to about 115 feet?

4 A. It is approximately 115 feet, and it's  
5 nine stories on the northwest corner.

6 Q. Okay. And that's part of the project of  
7 special merit by which you're seeking the  
8 subdivision for?

9 A. Yes, sir.

10 Q. And I guess going back to that, I asked  
11 about how you subdivided -- how you're proposing  
12 to subdivide the lot. What generated the  
13 parcels? Was it the buildings that you were  
14 situating on, the one continuous lot? Or was it  
15 like the vaults underground? Some of them have  
16 fallen into disrepair. Did you use those  
17 studies? How did you -- are these just arbitrary  
18 divisions? Or how did you come about to this?

19 A. There are lines on a map that facilitate  
20 the previously approved project of special merit.

21 Q. And the lines on the map create these  
22 throughways along the service courts, right, in

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1 between the parcels? Are those parcels  
2 themselves, the service courts?

3 A. The north service court is a separate  
4 parcel, number 7. The south service court is  
5 part of parcel 6, which includes the southern  
6 third of the tripartite.

7 Q. And so, parcel 7 is the north service  
8 court?

9 A. Correct.

10 Q. Who owns that?

11 A. The District of Columbia.

12 Q. And there will be cars driving on it?

13 A. Yes.

14 Q. Will there be trucks driving on it?

15 A. No. I mean, depends on your definition  
16 of a truck.

17 Q. Okay.

18 A. A pickup truck perhaps.

19 Q. A pickup truck? How about a 30-foot-long  
20 tractor-trailer?

21 A. No.

22 Q. No?

1           A. I think a tractor-trailer is much longer  
2 than 30 feet, but --

3           Q. Yeah, I guess; I don't know. A mid-range  
4 truck is what I'm trying to get at, that's  
5 delivering goods maybe to the grocery store. Is  
6 that --

7           A. Grocery delivery trucks will not travel  
8 on the north service court.

9           Q. Okay. But there is vehicular  
10 transportation on those service courts?

11          A. Yes.

12          Q. And are the streets within the  
13 subdivision? Can you explain the context for  
14 them in terms of ownership? When this  
15 subdivision happens and allows this project to  
16 proceed, in theory, who would own the streets?

17          A. Depends. So, as we were just discussing  
18 the north service courts, parcel 7, that is a --  
19 that will be a public street. And that is owned  
20 by the District of Columbia. Half Street, for  
21 instance, which is this street right here, that  
22 will have a variety of owners because part of it

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1 is parcel 1, part of it is parcel 7, part of it  
2 is in parcel 2, part of it is parcel 5.

3 Q. And the subdivision allows for that to  
4 happen?

5 A. Subdivision allows for what to happen?

6 Q. For that street to be created and then  
7 owned by several owners.

8 A. I'm not exactly sure what you're -- I  
9 don't quite understand your question. I don't.

10 MS. BROWN: And I might object on the  
11 relevance of ownership to the subdivision.

12 MR. OTTEN: Well, it goes to the historic  
13 condition of the site. I'm trying to -- you  
14 know, it's been found that this was a fully  
15 public site. And now the subdivision is lending  
16 to the parceling up of this public space,  
17 including the street, to various private owners,  
18 right?

19 MS. BROWN: But the lots could all be  
20 owned by a single person anyway. So I don't  
21 understand ownership -- I don't --

22 MR. OTTEN: Is that the historic context

1 right now?

2 MS. BROWN: I'm saying that ownership has  
3 no relevance to how lines are drawn on the piece  
4 of paper for subdivision purposes.

5 MAYOR'S AGENT BYRNE: Let me ask this  
6 question. Are the streets that will be partially  
7 privately owned, such as Half Street, are going  
8 to be subject to a public right-of-way?

9 MS. CORBETT: Yes.

10 MAYOR'S AGENT BYRNE: So.

11 MS. CORBETT: Just like the street out in  
12 front of this building that we're sitting in is  
13 privately owned. But you and I probably both  
14 conveyed ourselves across it to get here without  
15 anything getting in our way.

16 BY MR. OTTEN:

17 Q. Do you know -- again to the subdivision  
18 that's creating this private street, do you know  
19 about how that affects the historic rights, of  
20 persons' right to free speech, for example,  
21 constitutional rights?

22 A. Would you restate the question?

1 Q. Sure. How does the ownership of the  
2 public right-of-way by private entities affect  
3 one's constitutional rights on those streets?

4 MS. BROWN: And I'm going to object on  
5 it's asking for a legal conclusion.

6 MAYOR'S AGENT BYRNE: Right. You're  
7 asking for a legal conclusion. I think that's  
8 right.

9 The reality is that in a public right-of-  
10 way, it's essentially the same as a public  
11 street, for those purposes.

12 MR. OTTEN: Okay. Well, I guess we'll  
13 have to argue that. I'm just trying to  
14 understand. I'm still unclear on how the  
15 divisions -- it seemed like kind of an arbitrary  
16 parceling up.

17 BY MR. OTTEN:

18 Q. I'm unclear on how -- did anything with  
19 the vaults have anything to do with the division  
20 of the site? The condition of the vaults or  
21 anything?

22 A. Did anything with the condition of the

1 vaults have to do with the record lots?

2 Q. Yeah, how you came up with the six record  
3 lots.

4 A. No.

5 Q. And so it was purely economic driven? Or  
6 how did the subdivision proposal come about?  
7 What's it driven by?

8 MAYOR'S AGENT BYRNE: I think she  
9 testified that it was designed to implement the  
10 master plan that was presented in the prior  
11 proceeding and that it allows there to be, those  
12 buildings to be owned by the various entities  
13 that are prepared to build them.

14 MR. OTTEN: Okay. So, given that the  
15 subdivision allows for that project, which has  
16 all these buildings on it, at the end of the day,  
17 the subdivision that allows this project to go  
18 forward, will you be able to see, you're standing  
19 on Michigan Avenue and look south across this  
20 historic open space -- will you be able to see  
21 across it?

22 MS. BROWN: And I have an objection. I

1 think the question is whether or not it's the  
2 subdivision lots that be used, not the buildings

3 --

4 (Cross-talk.)

5 MAYOR'S AGENT BYRNE: I think you've --  
6 no, you've made that point, and he wants to make  
7 a different point, which I'll permit him to ask.

8 MS. BROWN: Okay.

9 MR. OTTEN: Well --

10 MS. CORBETT: It depends on where you're  
11 standing.

12 MR. OTTEN: In terms of --

13 MS. CORBETT: So, I will be able to stand  
14 right here at North Capitol and Channing and see  
15 across here, just as you can today.

16 BY MR. OTTEN:

17 Q. Um-hm. So see north?

18 A. I will be able to stand right here and  
19 see through this very wide public right-of-way.  
20 But if I stand somewhere else, I will look at the  
21 facade of a building, also. Yeah.

22 Q. And if you were standing on the north

1 side, on Michigan, except for perhaps that one  
2 public right-of-way, would you be able to see  
3 south to the grand vistas of Washington, D.C.?

4 A. I don't know.

5 Q. But you did claim in that first parcel  
6 that it was a building of 115 feet or  
7 thereabouts. Clearly, at that point, in parcel  
8 1, you would not be able to see down the site,  
9 the open site, as historically we could.

10 A. If you stand here, there's a view. It's  
11 different than if you stand here. It's different  
12 than if you stand here. It's different than if  
13 you stand here.

14 Q. So, would you say the majority of the  
15 views, looking south from Michigan Avenue, the  
16 historic open vista is eliminated by the  
17 subdivision that allows this project to move  
18 forward?

19 A. No. I wouldn't say that.

20 Q. You just pointed to -- didn't you just  
21 point to the majority of the property line there  
22 by which if you were standing on, you would not

1 be able to see the vista south?

2 A. What I said was there are a multitude of  
3 different vantage points that have entirely  
4 different view sheds, depending on where you're  
5 standing on Michigan Avenue. That's what I said.

6 Q. Okay. I'll conclude with this line of  
7 questioning. But ultimately, all of those view  
8 sheds that you're suggesting are quite different  
9 than the view sheds that exist currently, that  
10 existed historically, on this site?

11 MS. BROWN: Now I am going to object  
12 again because the view shed issues were, as you  
13 said, addressed in the previous Mayor's Agent  
14 order, and I don't know that it has any relevance  
15 to the subdivision.

16 MAYOR'S AGENT BYRNE: I appreciate that.

17 MR. OTTEN: Well --

18 MAYOR'S AGENT BYRNE: But I'll let her  
19 answer the question.

20 MS. CORBETT: I still think -- I still  
21 don't think -- right now, the view is of several  
22 construction cranes, and the view is interrupted

1 by construction of the northeast boundary tunnel  
2 project.

3 BY MR. OTTEN:

4 Q. Okay. So let's say this --

5 A. And I wasn't there in 1905.

6 Q. Let's say this was 2008.

7 A. Okay.

8 Q. Before the construction cranes.

9 A. Two-thousand and?

10 Q. Eight.

11 A. Eight.

12 Q. Yeah. This provides you --

13 A. I didn't stand there in 2008.

14 MAYOR'S AGENT BYRNE: I think we can  
15 accept as a fact that there are various points  
16 through there in which at almost every point the  
17 view will be different from Michigan Avenue, and  
18 in some of them, all you're going to see is the  
19 face of the building. And I think that's what  
20 you want to establish.

21 MR. OTTEN: Right.

22 MAYOR'S AGENT BYRNE: And I think that's

1 established.

2 MR. OTTEN: Okay.

3 BY MR. OTTEN:

4 Q. Ms. Corbett, you mentioned that you know  
5 about the McMillan plan. But it didn't really  
6 shift the subdivision of the lot, correct? The  
7 1901 McMillan plan didn't shift the original  
8 Dobbins plan much or at all?

9 A. No. It did not.

10 Q. And are you aware of anything in the  
11 McMillan plan that kind of illuminated one of its  
12 historic characteristics, like of the open  
13 contiguous space? Does the McMillan plan suggest  
14 any elimination or subdivision that you're --  
15 elimination of the view sheds or the open space  
16 or the subdivision that's being proposed here  
17 that allows the elimination of the view sheds?

18 MS. BROWN: Can we get clarification as  
19 to what is meant by "McMillan plan"?

20 MR. OTTEN: Okay. The 1901 McMillan  
21 plan.

22 MAYOR'S AGENT BYRNE: Does it anticipate

1 subdivision of the space? Is that what you're  
2 saying?

3 BY MR. OTTEN:

4 Q. Right. I'm asking if the VMP is aware of  
5 --

6 A. I don't know.

7 Q. Okay. Do you know if the McMillan plan  
8 suggests many hundreds of separate private lots  
9 on this --

10 (Cross-talk.)

11 MS. CORBETT: I don't know.

12 MS. BROWN: Object.

13 MAYOR'S AGENT BYRNE: Sustained.

14 MS. BROWN: Called for speculation.

15 MAYOR'S AGENT BYRNE: Sustained.

16 MR. OTTEN: Calls for what?

17 MS. BROWN: Speculation.

18 MR. OTTEN: Speculation? I'm just asking  
19 her is she knows about the McMillan plan. Okay.

20 Let's see.

21 (Pause.)

22 BY MR. OTTEN:

1 Q. Just looking at parcel 6, I think you  
2 said that's entirely owned by the public?

3 A. Correct.

4 Q. And that includes the south service  
5 court?

6 A. Correct.

7 Q. And I see in this diagram you have, the  
8 proposed -- for the record, proposed record lots,  
9 future buildings. And in the southwest corner of  
10 parcel 6, so yeah -- there's -- if you go south,  
11 I mean if you go east there with your mouse,  
12 heading east, there's that first line when you  
13 come east. Yep, right --

14 A. This slanted line?

15 Q. Right there, right there. Now, going  
16 across the lot right where you had your mouse.  
17 I'm sorry.

18 MR. OTTEN: Maybe I should -- Mr. Byrne,  
19 can I point with --

20 MAYOR'S AGENT BYRNE: Yes, you may.

21 (Pause.)

22 BY MR. OTTEN:

1 Q. So, I'm seeing, is this just a walk here  
2 or is there some kind of subdivision happening  
3 here?

4 A. It's a sidewalk.

5 Q. That's a sidewalk, okay. So in this -- I  
6 just want to understand. This area here, I see  
7 this projecting into it. Do you know what that  
8 is?

9 A. That's a ramp. It makes the site both  
10 accessible for D.C. Water to maintain the  
11 northeast boundary tunnel project, which is 100  
12 feet below grade. It's being constructed right  
13 now. It also will provide ADA-compliant ramp  
14 into the public park.

15 Q. This will? Where does this ramp lead to?  
16 I'm sorry. Where does this lead to?

17 A. It leads to the middle of the park.

18 Q. And the tunnel project, the opening of  
19 the tunnel is at the end of this ramp?

20 A. The opening of the tunnel is 100 feet  
21 below ground.

22 Q. But does it actually come out into this

1 parcel 6 here, this subdivision? Will the  
2 opening of the tunnel actually -- will you be  
3 able to see it in this parcel?

4 A. So, my understanding from D.C. Water --  
5 for the record, I can't testify to exactly the  
6 specifications of the D.C. Water construction  
7 project. But as explained to me, it will be  
8 seamless. And it's my intention to hold them to  
9 that.

10 Q. Do you --

11 A. Seamless as in it will be a big grassy  
12 area. There will be some vents, like -- kind of  
13 like along a public sidewalk where Metro is  
14 underneath.

15 MAYOR'S AGENT BYRNE: Yeah, Metro vents.

16 MS. CORBETT: And you have vents. You  
17 can walk across it. But sometimes there --

18 BY MR. OTTEN:

19 Q. That will be in the park?

20 A. That will be in the park.

21 Q. Do you know how much space that is, how  
22 many vents are part of this subdivision?

1           A. I wouldn't testify to the specifics of  
2 that off the top of my head. I could --

3           Q. Okay.

4           A. And again, it's --

5           Q. I haven't seen those. I'd like to  
6 understand that. But do you -- has D.C. WASA  
7 asked anything about subdividing this parcel up  
8 further into theoretical lots for their needs to  
9 access what is going to be kind of -- it's an  
10 off-limits tunnel, right? Is the tunnel  
11 available to the public to go into?

12          A. I'm not --

13           MAYOR'S AGENT BYRNE: Just answer you  
14 don't know.

15           MS. CORBETT: I don't know.

16           MAYOR'S AGENT BYRNE: But I'm sure the  
17 answer is no. I mean, they're not going to let  
18 the public into a tunnel.

19           MR. OTTEN: Right. And so that's why I'm  
20 wondering if this is going to be subdivided  
21 further.

22           MAYOR'S AGENT BYRNE: Right. But it's

1 all owned by D.C. So, well, WASA is sort of  
2 different. But there's no expectation of further  
3 subdivision.

4 MS. CORBETT: It's all owned by the  
5 District of Columbia.

6 MR. OTTEN: Right.

7 MS. CORBETT: D.C. Water is a separate  
8 agency that has a use agreement.

9 BY MR. OTTEN:

10 Q. Yes. With the VMP?

11 A. No, with the District of Columbia, the  
12 owner.

13 Q. And just so -- I just want to understand  
14 this. In your conversations in developing this  
15 special merit project that will proceed if this  
16 is subdivided, was there anything mentioned about  
17 the further subdivision of these parcels to  
18 protect D.C. WASA's assets?

19 A. Not that I ever heard.

20 MR. OTTEN: Okay. I think I have one  
21 more question.

22 (Pause, inaudible conversation.)

1 BY MR. OTTEN:

2 Q. And I guess, so parcel 6, how many acres  
3 is that?

4 A. Parcel 6 is approximately eight acres.

5 Q. Approximately eight acres. And the  
6 unusable, if you will, the non-park aspects of  
7 D.C. WASA in that corner, do you know how much of  
8 that eight acres will be taken up by that?

9 A. It's my understanding there's no unusable  
10 portion of that, due to the tunnel entrance 100  
11 feet below ground.

12 Q. The tunnel? That's what I wanted to get  
13 clarity on. Because it's kind of a mysterious  
14 tunnel.

15 (Laughter.)

16 MS. CORBETT: Tunnels are.

17 (Laughter.)

18 BY MR. OTTEN:

19 Q. Right. Does it come up out of the  
20 ground?

21 A. No.

22 Q. How do they access it?

1           A.  It's like -- so again, I don't represent  
2  D.C. Water.  So, there is a 60-foot diameter  
3  shaft that goes down 100 feet to facilitate the  
4  construction of the tunnel, which is parallel to  
5  the horizon, about 100 feet down.  Then when  
6  that's complete, that shaft will be closed up,  
7  sealed, and the bulk of that 60-foot-diameter  
8  circle will look like grass, will look as we  
9  design it to be a park.

10          Q.  Except for the vents.

11          A.  There's no fence.

12          Q.  No, I'm sorry, vents.

13          A.  Oh, the vents.  Except for rectangular  
14  vent, which again, I don't know -- well, I know  
15  that it's 60 feet in diameter.  I actually don't  
16  off the top of my head know the specific size of  
17  the vents.  But other than the vent, which can  
18  then be opened, I'm told, for infrequent  
19  maintenance activity, scoop out the tunnel if  
20  need be.

21                 MR. OTTEN:  Thank you.  Given the  
22  technical nature of this, it's tough to fully

1 understand it. But, and that's why I would ask,  
2 maybe through Mr. Byrne, that we should really  
3 understand this parcel and the subdivision and  
4 what --

5 MAYOR'S AGENT BYRNE: But there's no  
6 subdivision. There's no subdivision anticipated.  
7 There's just a use agreement between --

8 MR. OTTEN: Well, we don't know that.

9 MAYOR'S AGENT BYRNE: She's testified  
10 that she doesn't know of any.

11 MR. OTTEN: Well, that's what I'm asking  
12 is that can we find that out?

13 MAYOR'S AGENT BYRNE: I cannot.

14 MR. OTTEN: You cannot ask D.C. WASA?

15 MAYOR'S AGENT BYRNE: I don't do that.  
16 I'm just an adjudicator. You can ask them and  
17 then present evidence to some official. But  
18 that's not what I do.

19 (Cross-talk.)

20 MS. BROWN: And I think --

21 MAYOR'S AGENT BYRNE: And I don't know  
22 that it's even -- I mean, you're speculating that

1 there may be a future subdivision, and she's  
2 testifying that she knows of none. And I don't  
3 see why there would be one. So I'm just -- that  
4 doesn't seem like a very helpful line of inquiry  
5 to me.

6 MR. OTTEN: I don't think it's clear  
7 anywhere on the record that states or shows D.C.  
8 WASA is not going to prevent the public from  
9 accessing part of this parcel subdivision. To  
10 think in this day and age, with terrorism and all  
11 these other things happening, that somehow the  
12 public will be allowed to walk right up to the  
13 tunnel entrance or thereabouts just seems --

14 MS. CORBETT: But you can walk right up  
15 to a sewer grate today. It's the same thing.

16 BY MR. OTTEN:

17 Q. But this is a massive -- this is a  
18 massive tunnel, right?

19 (Cross-talk.)

20 MS. CORBETT: There was a separate  
21 Mayor's Agent hearing on D.C. Water's particular  
22 use of this site and the concept design for the

1 tunnel. And the necessary demolition to  
2 facilitate that tunnel was presented. And so,  
3 you can go to the public record and get the  
4 details on that.

5 MS. BROWN: Sorry to interject again.  
6 But I think perhaps what we can give Mr. Otten  
7 some assurance about is, if there is a future  
8 subdivision, it would have to come back here.

9 MAYOR'S AGENT BYRNE: Um-hm. If it was a  
10 record lot.

11 MS. BROWN: If it was a record lot or a  
12 theoretical lot.

13 MAYOR'S AGENT BYRNE: Or a theoretical  
14 lot.

15 MR. OTTEN: I mean, I would imagine that  
16 part of the special merit for this project in  
17 weighing out that balance there is to understand  
18 how much of this public space we get to use as a  
19 park.

20 MAYOR'S AGENT BYRNE: So that the prior  
21 decisions understands it to be the entire site.  
22 And so, if it turned out to be different from

1 that, it would be in violation of the prior  
2 order. So, it shouldn't happen.

3 MR. OTTEN: Okay. That's helpful.

4 That's all I have for now. Thank you.

5 MAYOR'S AGENT BYRNE: Okay. Okay. Good.

6 Yes, Ms. Brown.

7 MS. BROWN: I wasn't -- I don't think I  
8 need to ask my redirect questions. I had said  
9 that we would have one witness, but now I'd like  
10 to bring Mr. Thakkar to just make a very brief  
11 statement.

12 MAYOR'S AGENT BYRNE: Sure.

13 MS. BROWN: Because there's been some  
14 confusion about the practices of theoretical  
15 lots, and I think he might be able to clarify  
16 some of that.

17 MAYOR'S AGENT BYRNE: Exactly.

18 MS. FERSTER: Just in terms of the  
19 additional document for my deferred cross-  
20 examination --

21 MAYOR'S AGENT BYRNE: Right.

22 MS. FERSTER: -- is that available yet?

1           MAYOR'S AGENT BYRNE: Oh, right. Do we  
2 know about that?

3           MR. CALLCOTT: We don't have a document.  
4 But the date it was filed was December 14th.

5           MS. FERSTER: 2014?

6           MR. CALLCOTT: Correct.

7           MAYOR'S AGENT BYRNE: Okay. Do you have  
8 questions then you want to pursue on that with  
9 Ms. Corbett?

10          MS. FERSTER: Yeah.

11          MAYOR'S AGENT BYRNE: Okay. Is that  
12 adequate for your purposes?

13          MS. FERSTER: Well, I'd like the document  
14 if it's been filed. Did you -- I mean, that  
15 would be the question, yeah, the date. But was  
16 it filed? If the D.C. HPO doesn't have it, was  
17 it filed with the Mayor's Agent or the HPRB?

18          MAYOR'S AGENT BYRNE: I don't have it.

19          MR. CALLCOTT: I thought we did forward  
20 it, as per the record.

21          MAYOR'S AGENT BYRNE: To me?

22          MR. CALLCOTT: Yeah.

1           MAYOR'S AGENT BYRNE: Oh, maybe on the  
2 back of the HPRB record. No?

3           (Pause.)

4           MAYOR'S AGENT BYRNE: No. I don't know  
5 that I --

6           MR. CALLCOTT: The application itself.

7           MAYOR'S AGENT BYRNE: The application  
8 itself isn't here. And there's your report.

9           MR. CALLCOTT: Right.

10          MAYOR'S AGENT BYRNE: And HPRB actions.  
11 And that's the best of the lot configurations.

12          MR. CALLCOTT: Okay. Okay. I'll go look  
13 for the application itself.

14          (Inaudible interjection.)

15          MR. CALLCOTT: Yeah. That's it. Right.  
16 We're sure of that.

17          MR. OTTEN: Well, Mr. Byrne, I would like  
18 to ask. I mean, I feel somewhat prejudiced by  
19 this. I would like to have this document to  
20 review to prepare for this hearing. I feel like  
21 we should -- I would like to ask for postponement  
22 until we can all get this document before us and

1 see it and be prepared as such.

2 MAYOR'S AGENT BYRNE: Okay. Well, I hear  
3 you. What's the relevance of the document?

4 MS. FERSTER: Okay. It certainly has to  
5 do with the timing of the subdivision report, for  
6 sure.

7 MAYOR'S AGENT BYRNE: Uh-huh. Okay. As  
8 to whether they did it at the right time before  
9 they went to the HPRB? Is that the question?

10 (Pause.)

11 MS. FERSTER: We have a bifurcated  
12 Mayor's Agent proceeding.

13 MAYOR'S AGENT BYRNE: We do.

14 MS. FERSTER: At incredible expense.

15 MAYOR'S AGENT BYRNE: Yes.

16 MS. FERSTER: To the parties, the  
17 adjudicators, the District of Columbia, because  
18 of two proceedings --

19 MAYOR'S AGENT BYRNE: Right. Right.

20 MS. FERSTER: -- which we are told now  
21 had to be done this way because you had to wait.  
22 VMP, District had to wait for Zoning. And of

1 course, now we see that the Applicant -- the  
2 subdivision application was filed on December  
3 14th, 2014, which was before the zoning approval  
4 that you supposedly had to wait.

5 CROSS EXAMINATION (Cont'd)

6 BY MS. FERSTER:

7 Q. So my question is, you know, why did you  
8 wait? Couldn't -- if you could proceed with the  
9 subdivision application before the written zoning  
10 decision was issued, why couldn't you go in  
11 tandem and do your subdivision application review  
12 by the HPRB, along with your demolition, and so  
13 that we all could have had a consolidated Mayor's  
14 Agent proceeding?

15 MS. BROWN: I don't know that that's a  
16 question for Ms. Corbett. I think it's more --

17 MAYOR'S AGENT BYRNE: Who is it a  
18 question for, do you think?

19 MS. BROWN: I think it's among the  
20 lawyers to figure. I mean, she's asking strategy  
21 questions. She's asking legal, you know, policy  
22 about how we formulated our case. She's asking

1 about --

2 MAYOR'S AGENT BYRNE: Okay.

3 MS. FERSTER: This strategy has  
4 prejudiced my client, and I think I'm entitled to  
5 know why this strategy was pursued.

6 MS. BROWN: Well, frankly --

7 MAYOR'S AGENT BYRNE: Well, if the  
8 strategy is legal, I don't know that you do,  
9 actually. Yeah.

10 MS. FERSTER: I mean -- let's ask the  
11 witness.

12 BY MS. FERSTER:

13 Q. Why did -- I mean, if it -- why did you  
14 not apply for your subdivision application  
15 earlier, before December 14th, 2014? Why didn't  
16 you?

17 MAYOR'S AGENT BYRNE: Before the first  
18 Mayor's Agent hearing.

19 MS. BROWN: I'm going to recommend that  
20 she not answer the question because it really  
21 does -- I mean, I think it's really just a basic  
22 fact that we needed zoning. We didn't -- once we

1 had -- our hearing was scheduled in October,  
2 initially. We didn't have our zoning approval  
3 then. We didn't have a decision yet. That came  
4 later. That came just on the eve of the second  
5 hearing.

6           MAYOR'S AGENT BYRNE: Right. It happened  
7 right before the second hearing.

8           MS. BROWN: Right. It was perhaps a week  
9 before. And again, there was all sorts of stuff  
10 going on in the meantime, before the City Council  
11 and getting it through and at that administration  
12 --

13           MAYOR'S AGENT BYRNE: Right. The council  
14 hadn't voted on this decision.

15           MS. BROWN: Right. And there is getting  
16 -- it's a timing issue. So I don't know that it  
17 is relevant, other than I appreciate the cost and  
18 additional expense to the team, and it's  
19 certainly an additional expense for everybody,  
20 yes. Would it have been easier to have it  
21 consolidated into one proceeding? Sure. But it  
22 didn't happen.

1           But I don't know that it's relevant to  
2 whether or not this subdivision facilitates the  
3 special merit project that's before the Mayor's  
4 Agent.

5           BY MS. FERSTER:

6           Q.   Okay.  So, are you declining to object  
7 (sic) on the grounds of relevance or attorney-  
8 client privilege?

9           A.   Am I declining to answer?

10          Q.   To answer.

11          MAYOR'S AGENT BYRNE:  She didn't decline  
12 to answer.  She just suggested that she was  
13 asking her not to answer.

14          MS. CORBETT:  Yeah.

15          MS. FERSTER:  Okay.

16          MAYOR'S AGENT BYRNE:  And I haven't --

17          BY MS. FERSTER:

18          Q.   Okay.  What's the grounds?  Is it  
19 relevance or attorney-client privilege?

20          MS. BROWN:  Well, she -- let her answer.

21          MAYOR'S AGENT BYRNE:  We haven't seen it.

22          MS. BROWN:  Yeah.

1 MS. CORBETT: The entitlement process for  
2 the McMillan Sand Filtration Site is quite  
3 possibly the most complex entitlement process I  
4 personally have ever experienced in 20 years of  
5 working in this field. And there was a multitude  
6 of review and approval steps. There is a  
7 multitude of review and approval steps involved.

8 And therefore, there was a very complex  
9 scheduling, you know, entitlement project title  
10 timeline created to accomplish all of those along  
11 with the client, which is the District of  
12 Columbia, the client's expectations. And so, we  
13 used judgment to make the most efficient use of  
14 the client's time and resources in order to get  
15 to an entitled property, as they have charged us  
16 to do.

17 MS. FERSTER: And during the zoning  
18 proceeding, did at any point you disclose to,  
19 during the course of those zoning proceedings,  
20 your intention to proceed with a subdivision  
21 application?

22 MS. BROWN: Relevance? Objection.

1           MAYOR'S AGENT BYRNE: Yeah. So, but  
2 we've certainly talked about it when we had the  
3 Mayor's Agent hearing in October.

4           MS. FERSTER: Yes. And as far as we were  
5 concerned, that was the first time we became  
6 aware that a subdivision application was  
7 contemplated.

8           MAYOR'S AGENT BYRNE: Is that right?

9           MS. FERSTER: That's correct.

10          MAYOR'S AGENT BYRNE: Well, I don't know  
11 what -- I don't know that -- I mean, it is  
12 unfortunate that we've had this bifurcated  
13 proceeding. It's unfortunate for everybody. But  
14 I don't know that it really goes to the question  
15 that's in front of me as to the necessity for the  
16 subdivision for the project of special merit.

17          As to the timing and exactly why the  
18 timing is the way it was, so maybe you can shed  
19 light on that.

20          MS. FERSTER: I'd just simply take an  
21 exception for the record because we have been  
22 prejudiced by the fact that this has not been a

1 consolidated proceeding.

2           And that the inquiries that we have  
3 pursued at the demolition stage were ruled out of  
4 order at that stage. And then when we expected  
5 to bring them up at the subdivision stage, they  
6 were ruled out of order at the subdivision stage  
7 because perhaps they were only -- because you had  
8 already issued your decision.

9           And so, this entire process that for some  
10 unknown reason has proceeded in this bifurcated  
11 fashion has been extremely prejudicial to my  
12 client. So I do object to not allowing me to  
13 pursue that line of questioning. I take my  
14 exception for the record.

15           MAYOR'S AGENT BYRNE: Okay. Okay.

16           MS. FERSTER: And I would like a copy of  
17 the application.

18           MAYOR'S AGENT BYRNE: And Mr. Otten  
19 would, too. I guess I should have one, too. I  
20 mean, I don't know where they are. But I don't  
21 know whether you have them or you have them  
22 either.

1 MS. BROWN: I don't.

2 MAYOR'S AGENT BYRNE: Yeah.

3 Okay. So, HPO will make sure everybody  
4 gets a copy of that application.

5 MS. BROWN: And, you know, they may also  
6 be available at the Surveyor's Office.

7 MAYOR'S AGENT BYRNE: Yeah.

8 MR. OTTEN: Doesn't the application go to  
9 sort of the reasoning and rationale for the  
10 subdividing of this particular lot?

11 MAYOR'S AGENT BYRNE: I don't believe it  
12 does. I think it's just a request to subdivide  
13 the property.

14 MS. BROWN: It's a form.

15 MAYOR'S AGENT BYRNE: It's a form that  
16 you file with the proper office to proceed, that  
17 actually do the subdivision. But they can't do  
18 it until we -- until a Mayor's Agent clears it.  
19 But I consider it, and they may have other  
20 criteria that they would apply as to whether they  
21 would permit the subdivision. But the historic  
22 preservation is just one of them.

1           Okay. All right, Ms. Corbett. Thank  
2 you.

3           MS. CORBETT: You're welcome.

4           (The witness was excused.)

5           MAYOR'S AGENT BYRNE: Let's proceed then.  
6 I mean, there's only so much more time that I can  
7 do today. But I think we'd like to get through  
8 his testimony, and then maybe we'll have to  
9 recess at that point.

10           MS. BROWN: Mr. Thakkar, could you state  
11 your name for the record?

12           MR. THAKKAR: Aakash R. Thakkar. I'm a  
13 senior vice president with EYA and one of the  
14 partners of Vision McMillan Partners.

15           MAYOR'S AGENT BYRNE: Okay. Good. And I  
16 don't think that you've had an opportunity to  
17 take the oath and to say that you promise to tell  
18 the truth to the very best of your ability.

19           MR. THAKKAR: I do.

20           MAYOR'S AGENT BYRNE: I do. Okay.

21 Whereupon,

22                                   AAKASH R. THAKKAR

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1 was called as an expert witness and testified as  
2 follows:

3 DIRECT EXAMINATION

4 Q. Mr. Thakkar, you've had extensive  
5 experience with the creation of theoretical  
6 building sites; is that correct?

7 A. That is correct.

8 Q. Could you discuss a little bit about your  
9 experience with them in the District of Columbia?

10 A. Sure. And just to take a step back, the  
11 reason I asked to testify was just to make clear  
12 that, having done numerous projects very similar  
13 to McMillan in the District and outside of the  
14 District, the subdivision proposal that we made  
15 is a very normal one, sort of consistent with  
16 standard subdivision practices. So the creation  
17 of the six record lots and then the theoretical  
18 lots with the townhomes, we are the townhome  
19 developer on the project.

20 And again, as Ms. Corbett stated, because  
21 not all of those townhomes front on public  
22 streets, it's a very common practice in the

1 District of Columbia to create theoretical lots.

2           So the key purpose of my testimony is  
3 just to share that, whether it be the record  
4 lots, the A and T lot for cell 14, or the 146  
5 theoretical lots, that all of those, in my view,  
6 having done this many times, is sort of standard  
7 operating procedure, in the townhouses' case, for  
8 example, to sell feasible homes, which is what we  
9 like to do.

10           MAYOR'S AGENT BYRNE: Yeah, well, I  
11 appreciate --

12           MR. THAKKAR: Sir, I just want to clarify  
13 that. It is very similarly with regard to D.C.  
14 Water or any other utilities. It is very common  
15 on a development project that all of those  
16 utilities, public utilities, they mandate public  
17 -- they mandate utilities such that they can  
18 maintain, whether it be the tunnel or PEPCO and  
19 its electricity, or any of a number of other  
20 utilities.

21           There are utilities -- excuse me,  
22 easements all throughout, for example, as Ms.

1 Corbett said, the street that sits in front of  
2 this building. So all of those are very standard  
3 as well. I just wanted to kind of share that  
4 experience.

5 MAYOR'S AGENT BYRNE: Okay.

6 BY MS. BROWN:

7 Q. Mr. Thakkar, if you recall, were any of  
8 those theoretical building sites within historic  
9 districts?

10 A. Yes. Yeah, I was thinking of an EYA  
11 project where that was the case, and the answer  
12 is yes.

13 MS. BROWN: Okay. Thank you.

14 MAYOR'S AGENT BYRNE: So, the application  
15 -- just to clarify, the application that I'm  
16 considering is to -- it involves both the record  
17 lots and the theoretical lots?

18 MR. THAKKAR: That is my understanding.

19 MAYOR'S AGENT BYRNE: In other words,  
20 because that's all part of the package that's in  
21 front of me. And that's obviously what's shown  
22 in the attachments. I just wanted to clarify

1 that.

2 MR. THAKKAR: That is correct.

3 MAYOR'S AGENT BYRNE: And so one of the  
4 questions I think that Ms. Corbett raised -- I  
5 think it was you -- was that if it comes about  
6 that the Zoning Commission wishes to change some  
7 of the theoretical lots to record lots, that you  
8 not need to come back for a further proceeding;  
9 is that correct?

10 MS. BROWN: Correct. We would want  
11 flexibility. If for some reason, the Zoning  
12 Administrator, through the review of this,  
13 determines that he would prefer us to get record  
14 lots for those theoretical sites that front on  
15 First Street or North Capitol, I believe that's  
16 right.

17 MAYOR'S AGENT BYRNE: Yeah. Yeah.

18 MS. BROWN: The lines won't necessarily  
19 change, but the nomenclature for it might.

20 MAYOR'S AGENT BYRNE: Okay. I think I've  
21 got that.

22 Questions?

1 MS. FERSTER: Yeah. Just one general  
2 kind of question.

3 CROSS EXAMINATION

4 BY MS. FERSTER:

5 Q. You testified that you worked on a  
6 variety of projects in which theoretical lots  
7 were -- that subdivisions, either through record  
8 lots or theoretical lots, were done in historic  
9 districts. And have you worked on projects where  
10 either subdivisions into record lots or  
11 theoretical lots were performed or done on  
12 historic landmarks.

13 A. I personally? I don't believe so.

14 MS. FERSTER: All right.

15 MAYOR'S AGENT BYRNE: Ms. Merritt?

16 MS. MERRITT: Just one question.

17 CROSS EXAMINATION

18 BY MS. MERRITT:

19 Q. You mentioned in response to a question  
20 from Ms. Brown that you had done other matters  
21 involving theoretical lots in historic districts.  
22 What are the historic districts you're thinking

1 of when you answered that question?

2 A. Capitol Hill, for instance, a project  
3 that EYA did awhile back. It was in an historic  
4 district and had similar lots.

5 Q. Any other examples besides that,  
6 essentially?

7 A. No.

8 MS. MERRITT: Okay. Thanks.

9 That's all. I don't have any further  
10 questions.

11 MAYOR'S AGENT BYRNE: Okay. Mr. Otten?

12 CROSS EXAMINATION

13 BY MR. OTTEN:

14 Q. Is it --

15 A. Thakkar.

16 Q. Mr. Thakkar; thank you. You mentioned  
17 that you're using subdivision standards, national  
18 subdivision standards to come up with these  
19 parcels, to go from 122 of the historic record  
20 lots to 6. What standards did you use to do  
21 that?

22 A. I didn't say national standards. I

1 didn't even say the word "standards."

2 Q. Yes, you did. You said "subdivision  
3 standards." You used regular -- some kind of  
4 advised subdivision standards.

5 A. What I said was that the approaches used  
6 here -- and I'll speak specifically to the  
7 District of Columbia -- are common practice in  
8 the District of Columbia.

9 Q. Are there other sites that are 25 acres  
10 where the number of record lots basically drops  
11 down 90 percent from its historic condition?

12 A. Not aware per se. Not sure what the  
13 relevance of that is. Again, the record lots, as  
14 Ms. Corbett testified, are created to implement  
15 the master plan that we have approved.

16 Q. And that plan is suggesting 6 record lots  
17 from the 122 original record lots?

18 A. That is correct.

19 Q. And so, what other project can you point  
20 to where that has happened in the City?

21 A. I can't think of one offhand. Again, I'm  
22 not sure why it's relevant.

1 Q. Are there subdivision standards that  
2 planners such as you and DMPED could look at to  
3 help determine subdivisions of the size lot this  
4 big?

5 A. I think Ms. Corbett presented the number  
6 of different -- right there in front of you are  
7 the different types of lots that are generally  
8 accepted in the District of Columbia. As you  
9 well know, our proposal is in accord with these  
10 generally accepted types of lots.

11 Q. But as far as I could tell by the record,  
12 there's no standard referenced in how you've come  
13 up with these lots.

14 A. I'm not sure if you're looking at the  
15 same thing I am. But there are a number of  
16 different regulations even on this page that  
17 dictate what can and cannot be done with regard  
18 to subdivision. And we followed those District  
19 regulations.

20 Q. Are you saying that following the  
21 District regulations, subdividing one record lot  
22 into 146 theoretical lots is something that's

1 usual?

2 A. I do believe it is usual, yes.

3 Q. To take one record lot and to subdivide  
4 it into 146 different theoretical lots? Do you  
5 know another project in the District that you've  
6 worked on?

7 A. I've worked on several projects in the  
8 District. I'm not going to go through them, you  
9 know, project by project where one or two or  
10 three record lots have been further subdivided  
11 into theoretical lots.

12 Q. To that degree?

13 A. Yes.

14 Q. And just so we close on this, my  
15 understanding -- have you seen an open space,  
16 open public space like this in the District ever  
17 divided up into that many theoretical lots?

18 A. I've not worked on a project exactly like  
19 McMillan.

20 Q. Is it unusual -- do you find this unusual  
21 to divide what is one contiguous into six  
22 parcels?

1 A. I don't.

2 Q. And you're referencing standards on that,  
3 or not?

4 A. I'm referencing past projects that I've  
5 worked on, projects that I'm aware of. And I  
6 don't find it unusual at all. As I said, our  
7 proposal, as I said before, is very consistent  
8 with the common practice in the District of  
9 Columbia.

10 Q. But you can't point to anything,  
11 otherwise?

12 A. No two projects are ever alike, so I  
13 can't point to a project that is exactly like  
14 this particular project.

15 Q. Of course not. Every lot is different,  
16 right?

17 A. Yep.

18 Q. But is there anything similar that you've  
19 seen? I'm not hearing you point to anything that  
20 is, this has happened before.

21 A. I worked on a project called Chancellor's  
22 Row, maybe a mile from this project, in which

1 there was a 10-acre site that was subdivided into  
2 I don't know exactly how many. I'm pretty sure  
3 it was actually a significantly greater number of  
4 theoretical lots. And that is an example just to  
5 share with you that, as I said, what's being  
6 proposed here is common practice.

7 Q. And was that -- was Chancellor's Row a  
8 public historic site on the register?

9 A. It was not. It was not.

10 Q. Was it a public site?

11 A. It was not. Not sure how relevant that  
12 is. The District is the owner and made a  
13 decision to do what it wanted to do with this  
14 parcel.

15 Q. But you do recognize that there are  
16 historic conditions associated with this public  
17 site that may not otherwise exist with other lots  
18 around the District?

19 A. Absolutely. That's why I've labored  
20 through a seven-year process with my team,  
21 working through the appropriate entitlement  
22 bodies, to get to this point. Absolutely.

1 Q. And when you say you've labored through  
2 this process, was that with Vision McMillan  
3 Partners?

4 A. Yes.

5 Q. Seven years with Vision McMillan  
6 Partners?

7 A. Probably longer.

8 Q. Uh-huh.

9 A. But somewhere around that period of time,  
10 yes.

11 Q. But you are paid for this labor?

12 MS. BROWN: Relevance? Objection.

13 MAYOR'S AGENT BYRNE: Sustained.

14 MR. OTTEN: Well, okay. Thank you.

15 MAYOR'S AGENT BYRNE: Okay. Okay. Thank  
16 you. Thank you very much. No further questions.

17 Okay. It's one o'clock. And I'm sorry  
18 this is taking the time it is. I'm not sure how  
19 much we're clarifying. But we're going to have  
20 to schedule another meeting. And we'll do so as  
21 soon as everybody's schedule permits.

22 MR. CALLCUTT: Do you think a June 3rd

1 meeting? We have it scheduled.

2           MAYOR'S AGENT BYRNE: Okay. So we have  
3 one possibility. Mr. Callcott is suggesting is  
4 June 3rd because we have the room, because there  
5 is another hearing that was scheduled that's  
6 going to be postponed. How does that work for  
7 people?

8           MS. BROWN: It works for me.

9           MR. CALLCOTT: Nine-thirty?

10          MAYOR'S AGENT BYRNE: Nine-thirty, yeah.

11          (Pause.)

12          MS. MERRITT: I have a problem with it  
13 because I've been ordered to serve on a grand  
14 jury. And the grand jury -- yeah, it really is  
15 horrible -- it meets Wednesday, Thursday, and  
16 Friday, and Sunday.

17          MS. FERSTER: And I have one commitment  
18 that I would have to -- if we could take a late  
19 lunch hour, maybe we could do it that way. But I  
20 have a meeting that I have to go to at 1:30. But  
21 it won't take that long.

22          MAYOR'S AGENT BYRNE: Well, I hope it

1 would not take that long.

2 MS. FERSTER: Yeah, but I have to be  
3 there. So I'm be happy to come back.

4 MAYOR'S AGENT BYRNE: Yeah, yeah, I  
5 understand. We can work with that if we start at  
6 9:30, I think.

7 MS. MERRITT: And I can see whether I can  
8 get excused for -- are you anticipating half a  
9 day?

10 MAYOR'S AGENT BYRNE: That's what I'm  
11 anticipating.

12 MS. BROWN: And is there maybe someone  
13 else from the General Counsel's office you could  
14 trust to be here?

15 MAYOR'S AGENT BYRNE: Yeah. Perhaps  
16 that's right.

17 MS. MERRITT: Oh, quite possibly, yes.

18 MAYOR'S AGENT BYRNE: Okay. Thank you.  
19 June 3rd, Mr. Otten?

20 MR. OTTEN: I'm sorry; what time?

21 MAYOR'S AGENT BYRNE: June 3rd, 9:30 in  
22 the morning?

1 MR. OTTEN: Yes.

2 MAYOR'S AGENT BYRNE: Okay.

3 MS. FERSTER: And will we get that  
4 document before then?

5 MAYOR'S AGENT BYRNE: Yes, you will.

6 Yes, you will.

7 Okay. All right. Thank you, everybody,  
8 for your patience.

9 (Whereupon, at 1:02 p.m., the proceedings  
10 concluded.)

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CERTIFICATE OF COURT REPORTER

I, Brian Knieser, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing pages are a correct and accurate transcription of the proceedings that were recorded by me and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties associated with these proceedings.

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BRIAN KNIESER