

Hearing

In the Matter of the Appeal of the: Queen Anne Community Council

March 26, 2019



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BEFORE THE HEARING EXAMINER
CITY OF SEATTLE

In the Matter of the Appeal of the:) Hearing Examiner
)
QUEEN ANNE COMMUNITY) File W-18-009
COUNCIL)
)
of the Final Environmental Impact)
Statement for the Citywide)
Implementation of ADU-FEIS)

HEARING

Heard before Deputy Hearing Examiner Barbara Dykes Ehrlichman

March 26, 2019

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Court-Approved Transcription

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1

2

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17

18 ALSO PRESENT:

19 Martin Kaplan

20 Queen Anne Community Council

21

22 Aly Pennucci

23 Seattle City Council Representative

24 Nicolas Welch

25 Planning and Community Development Representative

Richard Ellison

TreePAC

1 -oOo-

2 March 26, 2019

3

4 HEARING EXAMINER: All right. Well, we're here again

5 today to pick up where we left off. And I believe that was

6 Mr. Eustis calling his next witness.

7 MR. EUSTIS: Correct. And the next witness is Martin

8 Kaplan, and so why don't we call him to the stand.

9 HEARING EXAMINER: Okay.

10 MR. EUSTIS: Before Mr. Kaplan begins -- what would one

11 say -- (inaudible) point of personal privilege in that

12 Mr. Kaplan has recently undergone surgery, and I would

13 request that --

14 HEARING EXAMINER: Hold on just a second.

15 Which one is not?

16 FEMALE SPEAKER: Um, (inaudible) --

17 HEARING EXAMINER: Oh.

18 FEMALE SPEAKER: -- (inaudible).

19 HEARING EXAMINER: Okay.

20 So we're not picking you up very well. I don't know if

21 it's the mic or you. So try speaking --

22 FEMALE SPEAKER: Can you try that other mic?

23 MR. EUSTIS: Sure.

24 MR. KAPLAN: Is this one okay? One, two, three?

25 FEMALE SPEAKER: Yeah.

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1 MALE SPEAKER: Actually, can you unplug your computers and
 2 then plug it back in the same (inaudible).
 3 MR. EUSTIS: Okay. You got it? Yeah, I can see -- okay.
 4 Good. Okay. And this one goes --
 5 HEARING EXAMINER: That's fine.
 6 MR. EUSTIS: Okay. My request was that we be able to take
 7 a mid-morning break after about an hour as I indicated
 8 Mr. Kaplan has recently undergone surgery and he needs a
 9 break.
 10 HEARING EXAMINER: Okay.
 11 MR. EUSTIS: Okay? All right.
 12 HEARING EXAMINER: We can do that.
 13 MR. EUSTIS: Good. Thank you.
 14 HEARING EXAMINER: Great. All right.
 15 Mr. Kaplan, would you raise your right hand.
 16 Do you swear or affirm that the testimony you are about to
 17 give is the truth?
 18 THE WITNESS: I do.
 19 HEARING EXAMINER: Thank you. Could you state your name,
 20 spelling it, and then your address --
 21 THE WITNESS: Okay.
 22 HEARING EXAMINER: -- for the record. Thank you.
 23 THE WITNESS: My name is Martin Kaplan, M-a-r-t-i-n
 24 K-a-p-l-a-n, 360 Highland Drive, Seattle, 98109.
 25 ///

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1 MARTIN KAPLAN: Witness herein, having first been
 2 duly sworn on oath, was examined
 3 and testified as follows:
 4
 5 DIRECT EXAMINATION
 6 BY MR. EUSTIS:
 7 **Q. Mr. Kaplan, you are appearing here in two capacities?**
 8 A. Yes.
 9 **Q. Okay. And you have been designated as the representative of**
 10 **the -- of Queen Anne Community Council?**
 11 A. Yes.
 12 **Q. Okay. And in that capacity, in what role do you serve?**
 13 A. Um, I am a member of the Queen Anne Community Council. I've
 14 been so for, I guess, about 17 years. And during that time
 15 I've sat on the Land Use Review and Planning Committee. And
 16 in the last, maybe, ten years I've been chair of that
 17 committee.
 18 **Q. Okay. And your other capacity?**
 19 A. I'm an architect. I've practiced in my own firm for -- this
 20 is our 47th year in the city of -- I practice in the city of
 21 the Seattle and -- and many different places around the
 22 United States, primarily in the residential field. I also
 23 have a development company where, since 1978, we have
 24 developed single and multifamily residential projects
 25 throughout the West Coast. I've done a lot of infill

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1 projects as a developer and an architect and general
 2 contractor.
 3 **Q. Okay. So I have put up on the screen what Appellants marked**
 4 **as their proposed Exhibit 7. Could you identify that?**
 5 A. That is a copy of my CV.
 6 **Q. Okay. So what I'm going to do is ask you questions about**
 7 **your background and -- as your background might be pertinent**
 8 **to your topics of testimony today. But I won't have you go**
 9 **through your resume point by point.**
 10 MR. EUSTIS: So at this point I would offer Mr. --
 11 Mr. Kaplan's resume.
 12 HEARING EXAMINER: Okay.
 13 MR. EUSTIS: It's marked as, as I said, Appellant's
 14 Exhibit 7 for identification.
 15 HEARING EXAMINER: Okay. I am just receiving a communique
 16 that we need to stop for a minute and check our sound
 17 levels -- apparently, everything is much lower than it
 18 usually is, so -- even with your soft-spoken voices -- and
 19 get that rectified.
 20 (Recess)
 21 HEARING EXAMINER: Okay. We'll be back on the record.
 22 We're using a handheld digital device now to record because
 23 the system is -- seems to be down. And we have a -- we will
 24 call the repair person as soon as we can. But for now let's
 25 go ahead. We were in the middle of admitting Mr. Kaplan's

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1 CV as an exhibit. And it's No. 7 -- 7A; is that correct?
 2 MR. EUSTIS: Uh, yeah. Appellant's, marked for
 3 identification, 7A.
 4 HEARING EXAMINER: Okay.
 5 MR. EUSTIS: By my count it would be Exhibit 24?
 6 HEARING EXAMINER: Uh, let's see here a minute. Yes.
 7 MR. KISIELIUS: No objection.
 8 HEARING EXAMINER: No objection. Okay. We will admit
 9 Mr. Kaplan's CV as Exhibit 24 to the record.
 10 (Exhibit No. 24 admitted into evidence)
 11 MR. EUSTIS: I guess I don't need this.
 12 **Q. (By Mr. Eustis) Mr. Kaplan, with respect to -- well, let me**
 13 **just ask you in very brief detail. On what issues did you**
 14 **examine the EIS? I'm not asking for a summary of your**
 15 **testimony on what issues that you've oversaw.**
 16 A. I focused mostly on aesthetics and land form and impacts
 17 regarding changes in land use.
 18 **Q. Okay. Very well. And with respect to those issues, could**
 19 **you summarize your relevant background in the city of**
 20 **Seattle?**
 21 A. Sure. Again, I've practiced architecture at my own firm
 22 since 1972 in the city of Seattle. And, again, primarily
 23 focused in the residential segment for all those years.
 24 Probably 70 percent of my work has been in single and
 25 multifamily residential. Many -- many projects have been in

1 the city of Seattle in a variety of different neighborhoods:
2 new construction, remodeling. I'm actually doing my own
3 development, infill development, single and multifamily
4 projects.

5 Like I said, in 1978 I also started a construction
6 division where we actually acted as general contractor and
7 sometimes owning my own projects. And so from a very early
8 time I became very familiar with costs pro forma, residual
9 land value, as we talked about yesterday, and evaluating
10 projects on a multitude of different scales and levels of
11 investment opportunity and return on investment.

12 **Q. With respect to SEPA review of land use decisions, either**
13 **project-specific actions or nonproject or programmatic**
14 **actions, could you summarize your experience?**

15 A. Sure. I've never been hired as a consultant to compose an
16 EIS, although I've been part of teams that have contributed
17 to composing environmental impact statements and -- and
18 nonproject environmental reviews. For instance, South Lake
19 Union, I was on the original stakeholder committee and --
20 for South Lake Union and worked for -- I bet you it was --
21 eight years on that -- on that project representing Queen
22 Anne and also South Lake Union. I served for a term for a
23 while as the representative from the Seattle Planning
24 Commission on that committee that we -- we met over the
25 course of eight years, went through an urban design

1 **Planning Commission?**

2 A. I was from 2004 through 2012 -- not through 2012, but up
3 until 2012, maybe mid-2012. About eight years.

4 **Q. And specifically with respect to accessory dwelling units,**
5 **were you involved in any City process dealing with the**
6 **development of code provisions for accessory dwelling units?**

7 A. I was, yes. In 2004 when I joined the Seattle Planning
8 Commission, we were knee-deep in what was called
9 "inclusionary housing." We were trying to figure out ways
10 to increase housing choices throughout Seattle. This is
11 in 2004.

12 And then by 2006 we began reviewing the opportunities to
13 bring accessory dwelling units, what we called "backyard
14 cottages" to Seattle. AADUs, mother-in-law apartments,
15 were -- I'm not going to say they were permitted, but they
16 were overlooked at -- at that time. They're permitted now.
17 But we thought that by offering the opportunity for
18 homeowners to build a backyard cottage that would offer a
19 lot of different opportunities. One for families. One for
20 rentals. I mean, there's a lot of different opportunities
21 created by increasing density in single-family
22 neighborhoods. And I was an integral part in the review of
23 those opportunities, the outreach to many different cities
24 around the country.

25 We did a comprehensive study in 2006. We decided to bring

1 framework, and then developed an EIS to completely rezone
2 and change South Lake Union.

3 In addition to that, most recently, I was one of four
4 colleagues that -- we went to City Hall in about mid-2000s,
5 and we saw opportunity for developing land -- or we saw
6 opportunity to plan the development of land in what we call
7 the "Denny-Broad-Aurora Triangle," which is a triangle
8 created by those streets near the Space Needle. And that
9 area sat outside South Lake Union, Uptown, and Queen Anne.
10 So the four of us went and got the City's support, brought
11 that into the planning area of Queen Anne, and we initiated
12 a planning review, including a lot of public meetings, and
13 commenced an urban design framework review for the entire
14 urban center of Uptown.

15 And that morphed into creating an environmental impact
16 statement, DEIS, EIS, as an integral part of those processes
17 and all those meetings for about six years -- six years, so
18 maybe that was 2009 or -10 that we started that. And -- I
19 mean, those are two recent examples of being intimately
20 familiar with and connected to producing and evaluating the
21 reviews which eventually resulted in environmental impact
22 statements and a complete rezoning of South Lake Union and
23 also Uptown.

24 **Q. So I gather, not only were you a representative of the**
25 **Seattle Planning Commission, you were on the Seattle**

1 our ideas public. We ran a test program in southeast
2 Seattle to 2009 to see if some of our assumptions and
3 assumptions by other cities on environmental impacts -- we
4 wanted to ensure that if -- our proposed legislation, our
5 proposed code change would respect neighbors and provide the
6 opportunity for people to build.

7 During that test period we found that, really, our
8 assumptions, which were informed by cities like Santa Cruz
9 and others, were right on. And so we felt that our
10 regulations that we were proposing offered the opportunities
11 while protecting the environment, and we brought it to the
12 Council. And in 2010 it became citywide legislation. So
13 that's --

14 **Q. When you say -- when you say "we," who are you speaking --**
15 **the Seattle Planning Commission?**

16 A. Yes. Yeah. The Seattle Planning Commission is divided up
17 into a number of different committees: Land Use,
18 Transportation, Housing. And I was mostly on the Land Use
19 side of committee (inaudible), the Seattle Planning
20 Commission for my eight years. So when I say "we," it is
21 probably six to eight of us that worked on this project
22 throughout the -- until it became legislation in 2010.

23 **Q. The six to eight also being members of --**

24 A. -- the Seattle Planning Commission.

25 **Q. -- the Seattle Planning Commission. Very good.**

1 Then it -- more recently, you, as a representative of the
 2 Queen Anne Community Council, were involved in the challenge
 3 of the DNS or expanded ADU development?
 4 A. Yes.
 5 **Q. Okay. And I gather in that proceeding you testified both as
 6 a representative of Queen Anne Community Council and as an
 7 architect?**
 8 A. I did.
 9 **Q. Let's see. So following the hearing examiner's decision
 10 from that appeal, have you continued to follow the
 11 environmental review of the ADU legislation proposal?**
 12 A. Very carefully.
 13 **Q. Okay. And, briefly, how have you continued to follow it?**
 14 A. You know, after the decision came out in December of 2016, I
 15 took the opportunity to try and talk to planners and City
 16 Council members about the results and about what that --
 17 that could mean moving forward. And I -- I felt that the
 18 decision by the hearing examiner was really clear and
 19 straightforward, that there were many issues -- I think
 20 there were 17 -- that really needed to be studied. And to
 21 try and advance legislation without a -- any environmental
 22 review, I felt was wrong. And I also felt that it was
 23 against the law.
 24 And so the City took quite a bit of time to decide if they
 25 were going to do the EIS or to appeal the decision. And at

1 **EIS did you read?**
 2 A. Well, I did a cursory review of the entire EIS. But I
 3 really focused in on 4.3 Aesthetics and Parking and
 4 Appendix A and B.
 5 **Q. Okay. By "cursory review," essentially did you read --**
 6 A. I -- I --
 7 **Q. -- the -- the -- the full text of the --**
 8 A. Yes.
 9 **Q. -- EIS?**
 10 A. I -- I -- I read it. Please don't test me on it, but --
 11 **Q. And so Appendices A, B, and C: Economics, Parking,
 12 Aesthetics?**
 13 A. Yes.
 14 **Q. Did you read each of those appendices?**
 15 A. Yes.
 16 **Q. Okay. Thank you.**
 17 **Let's see. So given your area of focus, upon conducting
 18 this review, do you have an opinion as to whether the EIS
 19 accurately considers the impacts of the proposal upon
 20 aesthetics and upon the land use form?**
 21 A. I do.
 22 **Q. Yeah.**
 23 A. And I believe --
 24 **Q. What is that opinion?**
 25 A. -- I believe that it's very inadequate and -- and deficient

1 some point during 2017 they -- they began their work, and I
 2 attended a couple meetings where they were going to choose
 3 consultants. They had a requirement to do scoping for the
 4 EIS, which obviously I was very interested in. It was not
 5 really published widely, and there was a few hundred people
 6 that showed up to a scoping meeting. It was a real
 7 disappointment. So people's voices weren't heard.
 8 And then the review started. They came out with a DEIS.
 9 And, you know, I met with my colleagues and other people
 10 around the city. We looked at it, and I offered a comment
 11 letter from Queen Anne Community Council.
 12 **Q. Okay. So you commented on the draft impact statement?**
 13 A. Yes.
 14 **Q. Okay. Let's see. Before I get into that, in preparation of
 15 your testimony here, what documents have you reviewed?**
 16 A. Um, well, the EIS and the DEIS. The DEIS I reviewed last
 17 year.
 18 **Q. Sure.**
 19 A. The EIS, I reviewed when it came out in October.
 20 **Q. Okay.**
 21 A. And reviewed public comments, the City's responses,
 22 appendices, looked at the -- relooked at the ordinance, and
 23 kind of refamiliarized myself with the original proposal
 24 from Mike O'Brien and the DNS decision.
 25 **Q. Okay. So if not the entirety of the EIS, what parts of the**

1 in -- in its review, in its exploration of impacts, and its
 2 methodology.
 3 **Q. Okay. As with the other witnesses, to at least provide the
 4 examiner with an outline as to where you are going in your
 5 testimony, I would have you summarize the points that you
 6 would then later drill down on, maybe your points of
 7 inadequacy that you identify.**
 8 A. Okay. I'm going to look through my notes so I don't forget
 9 because there are a number of different issues. I prepared
 10 up some notes for today's hearing. So --
 11 **Q. These are notes that you prepared --**
 12 A. They're notes that --
 13 **Q. -- for yourself.**
 14 A. -- I prepared.
 15 **Q. Okay.**
 16 A. Uh-huh.
 17 **Q. Good enough.**
 18 A. They're my notes.
 19 It's inadequate in a number of -- number of reasons. But
 20 to me the number one reason will have to do -- and I'll
 21 discuss this later -- with the fact it didn't consider one
 22 of over 30 neighborhoods in the city of Seattle. It did not
 23 consider one neighbor, individual neighbor or collectively.
 24 It's an -- it's -- I'm also going to talk about the fact or
 25 the inadequacy of using a hypothetical model to investigate

1 environmental impacts when we have 350,000 people living in
2 neighborhoods that are existing and real and could be
3 evaluated easily. However, the City chose to make up its
4 own neighborhood and say that it represented all of the
5 neighborhoods, which I think is -- is deficient and a
6 narrow-sited view of that.

7 This has to do with studying the -- the land use form and
8 the aesthetics and what the results would be as far as how
9 this policy would impact the development within
10 neighborhoods. I think it grossly underestimates the
11 development opportunity and conversion of most every
12 neighborhood in the city of Seattle.

13 MR. KISIELIUS: And on this point I'm going to object on
14 the grounds of lack of foundation. He's now talking about
15 the production of ADUs and contesting the economic analysis,
16 and I don't think he's got the -- the technical background
17 to do that. They've actually presented an economist
18 yesterday that went at great length to that, and I don't --
19 Mr. Kaplan has not identified anything in his background
20 that would give him expertise to speak on that.

21 HEARING EXAMINER: Do you have a response?

22 MR. EUSTIS: Yeah. Mr. Kaplan is simply presenting a
23 summary of the points that he is going to raise. And if you
24 want to question his foundation at the time that he actually
25 presents it, you know, that -- you may do that. It --

1 totality silent on the land use form, which may happen under
2 the "for sale" mark as in condominiums and triplexes that
3 can be condominiumized.

4 It's also silent on the new proposed floor area ratio
5 of .5 and the impacts to neighborhoods because of that --
6 that policy.

7 **Q. You're speaking of the proposed .5 floor area, which -- the
8 preferred alternative.**

9 A. Yes.

10 **Q. Okay.**

11 A. I think that's the -- the highlight.

12 **Q. Okay. Very good.**

13 **Let's see. Then as a departure point for your testimony,
14 you mentioned that the Queen Anne Community Council, I
15 gather written by you, submitted a comment letter on the
16 draft EIS?**

17 A. Yes.

18 **Q. Okay. I've displayed on the screen what is identified as --
19 I -- I believe it's -- it's -- what -- Exhibit 19 --
20 proposed Appellant's Exhibit 19. And is this a copy of the
21 comment letter submitted on the draft EIS?**

22 A. Yes.

23 **Q. Okay.**

24 MR. KISIELIUS: I'm sorry. Can I interrupt?

25 MR. EUSTIS: Yeah.

1 MR. KISIELIUS: To the extent that he's offering a
2 conclusion and an opinion, even in summary format, I'm
3 entitled to object if I think he's strayed beyond his
4 qualifications.

5 HEARING EXAMINER: I'm going to overrule the objection.
6 You may go ahead.

7 MR. EUSTIS: Okay. Thank you.

8 **Q. (By Mr. Eustis) So I have three points --**

9 A. And I've had --

10 **Q. -- and the last of which was underestimation of the
11 conversion to ADUs. And what -- what would be your next
12 point?**

13 A. Okay.

14 **Q. Here I'm asking simply for a summary, outline as to where
15 you're going with your testimony.**

16 A. All right.

17 **Q. I'm not asking you to drill down.**

18 A. I'm sorry. I'm a driller. All right. I'll try and stay --

19 **Q. Okay.**

20 A. -- up above.

21 The EIS is silent, really, on the impacts of what happens
22 when you have 12 people living on a particular piece of
23 property.

24 It's also -- I'm going to talk about the -- the ADU model.

25 The EIS suggests that these are rental units. And it's

1 MR. KISIELIUS: This is not -- I don't think this is
2 Exhibit 19.

3 MR. EUSTIS: Uh, excuse me. I misspoke. This is -- I
4 have included it in the tabs as Exhibit 1A. I'm sorry.
5 Exhibit 1 is the EIS. This is included within the EIS.

6 **Q. (By Mr. Eustis) Okay. Nonetheless, can you identify this?**

7 A. That's a letter I drafted in response to the DEIS comment
8 letter.

9 **Q. Okay. And among the -- the comments I'm drawing your
10 attention to, I think what you've shown as Comment 2, it --
11 in which you contest a statement on -- I think it's page
12 4-66 of the EIS.**

13 A. I should look at it. Is this here?

14 FEMALE SPEAKER: That is the (inaudible).

15 **Q. (By Mr. Eustis) What I'm referring to is the statement that
16 you cite that -- that the form of existing development
17 varies widely across single-family zones in Seattle,
18 therefore a comprehensive summary is not possible.**

19 A. Correct.

20 **Q. Okay. And what is the thrust of your -- or your comment or
21 your request for the draft EIS?**

22 A. The -- I -- I absolutely disagree with that statement. So
23 the statement basically says that Seattle has a wide range
24 of different neighborhoods; and because of that, a
25 comprehensive summary is not possible because it's too big

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1 or too diverse. And both of my experiences helping compose
 2 EISs and representing 1 out of 35 different neighborhoods, I
 3 think it's unconscionable to say that neighborhoods can't be
 4 studied because there are too many and they're too diverse.
 5 As this -- as the City says, "The form of existing
 6 development varies widely across single-family zones;
 7 therefore, a comprehensive summary is not possible." I
 8 absolutely disagree with that.
 9 **Q. Okay. So you raise this as a comment. And do you recall**
 10 **what the City's response was?**
 11 A. Uh, the City's response, um, uh -- I don't have a copy of
 12 that right here, but -- I hate to paraphrase it.
 13 **Q. But what do you recall the City's response was?**
 14 A. The City's response was -- first of all, it -- it wasn't a
 15 direct response, number one. But their response basically
 16 said that we could -- we could look at a representative
 17 neighborhood, and in a -- in a programmatic EIS and in a
 18 nonproject EIS it's -- we don't have to drill down into each
 19 neighborhood. We don't have to drill down into any
 20 neighborhoods.
 21 **Q. Okay. In reviewing the aesthetic analysis, did you review**
 22 **the hypothetical neighborhood that was essentially presented**
 23 **in the EIS for purposes of showing land use and aesthetic**
 24 **impacts?**
 25 A. Yes.

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1 **Q. Okay. Was that a particular neighborhood?**
 2 A. No.
 3 **Q. All right. In your opinion, was that -- was that prototype**
 4 **hypothetical neighborhood, was that representative of any**
 5 **Seattle neighborhood?**
 6 A. No.
 7 **Q. Okay.**
 8 MR. EUSTIS: I have had the witness identify what
 9 Appellants had marked as Exhibit 1A and 1B, the Queen Anne
 10 comments and the City's responses. If the entire EIS is
 11 already part of Exhibit 1, these should already be in the
 12 record. If the examiner would like to make them separate
 13 exhibits, I would leave that issue to the examiner. But --
 14 HEARING EXAMINER: Any objection?
 15 MR. KISIELIUS: None. I do think it may be duplicative to
 16 have -- I think the response is lifted. It's an excerpt of
 17 the final EIS --
 18 HEARING EXAMINER: Uh-huh.
 19 MR. KISIELIUS: -- page number shown there. So we
 20 cross-referenced Exhibit 1, page --
 21 HEARING EXAMINER: Right. All right. So what I'm going
 22 to do is I will admit the letter from the Queen Anne
 23 Community Council as Exhibit 25.
 24 (Exhibit No. 25 admitted into evidence)
 25 HEARING EXAMINER: And then if you could find the page

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1 number.
 2 MR. EUSTIS: I'm sorry, Madam Examiner, I didn't mean to
 3 interrupt you, but I -- the -- the letter itself is also
 4 part of the EIS.
 5 HEARING EXAMINER: Oh.
 6 MR. EUSTIS: We can find you the specific page number as
 7 well.
 8 HEARING EXAMINER: Oh.
 9 MR. EUSTIS: But it -- it's -- it's the examiner's
 10 prerogative to -- if you --
 11 HEARING EXAMINER: Oh, sure.
 12 MR. EUSTIS: -- if you prefer to have separate exhibits.
 13 But in terms of minimizing the --
 14 HEARING EXAMINER: -- paper load.
 15 MR. EUSTIS: -- size of -- yes.
 16 HEARING EXAMINER: Right. I think I'll go ahead and admit
 17 it as an -- we'll admit both of them as exhibits since
 18 they're already pulled out. The letter dated
 19 June 1st, 2018, from the Queen Anne Community Council will
 20 be admitted as Exhibit 25. And the response will be
 21 admitted as Exhibit 26.
 22 (Exhibit No. 26 admitted into evidence)
 23 MR. EUSTIS: Very well.
 24 **Q. (By Mr. Eustis) Okay. So, Mr. Kaplan, you were just**
 25 **offering an opinion that the hypothetical -- in your**

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1 **opinion, the hypothetical neighborhood selected for purposes**
 2 **of analyzing or presenting aesthetic and land use impacts**
 3 **was not representative. So do you -- from, you know, other**
 4 **research that you've done, do you know where this**
 5 **hypothetical neighborhood came from?**
 6 A. Well, I can only suppose. It's maybe a software model. It
 7 may be something that I happened to find in the City's
 8 documents. I -- an exhibit from one of -- one of their
 9 consultants that coincidentally showed a very similar
 10 neighborhood in Arizona, as some city in Arizona. And if
 11 you compare the graphics in the aesthetics section of our
 12 EIS and the consultant's drawings of a city in Arizona, I
 13 think that any reasonable person would say that they're very
 14 similar.
 15 **Q. Okay. So I've put up on the screen what Appellants had**
 16 **marked in their list of exhibits as Exhibit 16A(17). Could**
 17 **you identify that?**
 18 A. I'll try.
 19 **Q. Yeah.**
 20 A. Yeah. It's a -- it's a document that was -- I'm only
 21 supposing it -- it -- it was referenced in the City's
 22 documents as an HDR response letter. And -- so.
 23 **Q. Okay. And how did you obtain this?**
 24 A. It was through the public records request.
 25 **Q. Okay. And this is included within the set of exhibits**

1 provided to the hearing examiner?
 2 A. Yes.
 3 **Q. Okay. And yet by -- by comparing this document to the**
 4 **portrayal of aesthetic impacts in the EIS, what similarities**
 5 **do you note?**
 6 A. Well, the graphics are similar. The -- the streets, the
 7 cars, many of the buildings are quite similar.
 8 **Q. Okay. So I guess, from your review, given your background,**
 9 **does this document bear greater similarity to the, you know,**
 10 **illustrations provided in the EIS than, you know, a -- an**
 11 **actual representation of an existing Seattle neighborhood?**
 12 A. Well, these drawing and the drawing that -- that are
 13 represented in the aesthetics portion of the EIS, which I
 14 and anyone else would assume came from this consultant, do
 15 not represent -- do not clearly represent most any
 16 neighborhood in the city of Seattle.
 17 **Q. All right. And do you know what HDR is or its involvement**
 18 **with the EIS?**
 19 A. It's one of the (inaudible) consultants that the City hired
 20 to compose the EIS.
 21 **Q. Okay. And you obtained this through a public records**
 22 **request of the City of Seattle?**
 23 A. Yes.
 24 **Q. And do you recall what -- I mean, what that request was for,**
 25 **what documents you were requesting?**

1 MR. EUSTIS: -- correct that.
 2 MR. KISIELIUS: -- as a courtesy.
 3 MR. EUSTIS: Yeah.
 4 HEARING EXAMINER: If you could just --
 5 MR. EUSTIS: Of course.
 6 HEARING EXAMINER: -- provide that HD- -- that URL up
 7 there to him so he has all of this.
 8 MR. KISIELIUS: Yeah. It's -- it's -- what -- what we
 9 have is just the -- I think the tail end of it, the
 10 HDR_additional_responses.pdf. And so --
 11 HEARING EXAMINER: Okay.
 12 MR. KISIELIUS: If I can't --
 13 MR. EUSTIS: Okay.
 14 MR. KISIELIUS: -- find it based on what's on the screen,
 15 I'll let you know.
 16 MR. EUSTIS: Okay. Yeah. Without going through the
 17 mechanics right now, may -- may I proceed --
 18 MR. KISIELIUS: I -- I -- yeah.
 19 MR. EUSTIS: -- with this?
 20 MR. KISIELIUS: I -- we don't have an objection --
 21 MR. EUSTIS: Okay.
 22 MR. KISIELIUS: -- to this exhibit. I'm just asking as a
 23 courtesy so that we're not --
 24 MR. EUSTIS: Sure.
 25 MR. KISIELIUS: -- looking through 30 documents to try to

1 A. Uh, we were requesting emails. We were requesting documents
 2 that related to -- all documents, really, related to
 3 composing the EIS. Anything focused around the EIS.
 4 **Q. Okay.**
 5 MR. EUSTIS: I move the admission of Exhibit -- of what
 6 Appellants had marked as Exhibit 16A(17).
 7 HEARING EXAMINER: Paren 17.
 8 Any objection?
 9 MR. KISIELIUS: None. I'd request, though -- because for
 10 Exhibit 16 we were not given subnumbers as the examiner was.
 11 We got a file that has a lot of different -- so if -- it
 12 would help if you could actually give the pdf. That will
 13 help us identify which one you're talking about. Otherwise
 14 we're at a bit of -- we're scrambling to keep up with you
 15 because you didn't give us the benefit of the numbering in
 16 what you gave us. So for example, for this one if you could
 17 say the file is HDRadditionalresponses.pdf, that would help
 18 us find and keep up.
 19 MR. EUSTIS: Okay. I believe it was provided through the
 20 dropbox that contained --
 21 MR. KISIELIUS: It was not. We have the files as we
 22 downloaded them from the dropbox, and they do not have the
 23 numbering that you're referring to.
 24 MR. EUSTIS: Very well. Okay. Then I will try to --
 25 MR. KISIELIUS: I'm just asking --

1 find the one that you're referring to. That would be
 2 helpful.
 3 HEARING EXAMINER: All right. This document --
 4 MALE SPEAKER: (Inaudible).
 5 HEARING EXAMINER: -- will be admitted as Exhibit 27 to
 6 the record.
 7 (Exhibit No. 27 admitted into evidence)
 8 MR. EUSTIS: Okay.
 9 **Q. (By Mr. Eustis) So let's see. Mr. Kaplan, at this point**
 10 **what I would like to do is go on to what is marked as**
 11 **Appellant's Exhibit 20 for identification. And I've put the**
 12 **first page up on the screen. Can you identify this?**
 13 A. This is a document that a colleague and myself put together
 14 to graphically illustrate a number of issues that we're
 15 talking about.
 16 **Q. Okay. So your -- your colleague in this is -- is also an**
 17 **architect?**
 18 A. Yes.
 19 **Q. Okay. So, as two architects, you essentially collaborated**
 20 **and prepared -- in preparing this document?**
 21 A. Yes.
 22 **Q. All right. And this consists of a number of pages. And**
 23 **what I would like you to do is walk us through this exhibit.**
 24 A. Okay. Just page by page. So page -- there are pages in
 25 this document that we do or do not have to use. But

1 page No. 1 is just simply a Google Map image of a typical
 2 5,000-square-foot lot in the city of Seattle.
 3 **Q. So just so we're -- we're clear, on the -- the exhibit**
 4 **itself has pagination.**
 5 A. Yes.
 6 **Q. Bottom right-hand corner.**
 7 A. Yes.
 8 **Q. And this pagination shows page 2.**
 9 A. Page 2.
 10 **Q. Okay. You had said page 1? So I just want to be sure that**
 11 **when you refer to a page, that it agrees with the**
 12 **pagination.**
 13 A. That would work.
 14 **Q. Okay.**
 15 HEARING EXAMINER: That would be helpful.
 16 A. I'll try and do better.
 17 **Q. (By Mr. Eustis) Numbers.**
 18 A. Page 2.
 19 **Q. Very well.**
 20 A. So this is a typical 5,000-square-foot lot. The image
 21 itself was -- I misspoke. It's not a Google Map because we
 22 have the addresses on there, but it's taken from a King
 23 County Assessor's map.
 24 THE WITNESS: Thanks.
 25 MALE SPEAKER: Yeah.

1 the current -- under the proposed alternative, really all
 2 the alternatives. And so that's what 35 percent lot
 3 coverage looks like on a 5,000-square-foot lot. And you can
 4 see there's really no room for any trees in the backyard,
 5 and we'll discuss that later as far as the rear lot -- lot
 6 coverage. But that ends up being a concern by many people.
 7 And so if we look -- if we look at the drawing below that,
 8 it further evaluates -- or it -- it -- it looks at the --
 9 the required yards and how, really, 35 percent lot coverage
 10 could end up filling most of that -- that -- that property.
 11 Now, the way the code is right now, you couldn't fill up
 12 the rear yard like that because there's a limit to
 13 building -- to cover only 40 percent of your rear lot
 14 coverage. The proposed alternatives increase that to
 15 60 percent. And when you increase it by [sic] 60 percent,
 16 you're essentially doubling the area in the rear yard that
 17 you can cover, which would -- will allow more building
 18 within the 35 percent lot coverage, but it will allow more
 19 building in the rear yard. And there's a concern that that
 20 will take light and air, trees, and impact neighbors. And
 21 the EIS is silent on that, completely.
 22 **Q. Is this shown by the lower illustration under Exhibit 2-7**
 23 **where it shows 60 percent rear yard coverage?**
 24 A. Yes. Uh-huh.
 25 **Q. Okay. And so this number, Exhibit 2-7, does that come from**

1 A. And it really just clearly represents a real neighborhood in
 2 the city of Seattle and a real lot. And we'll, on the next
 3 page, kind of drill down a little bit on the issue of -- of
 4 lot coverage.
 5 **Q. (By Mr. Eustis) So what was the purpose of including the**
 6 **aerial photograph in -- on page 2?**
 7 A. Just to -- to set up the next page --
 8 **Q. Okay.**
 9 A. -- which is a drawing and not a photograph. So, you know,
 10 this -- this drawing basically relates to this photograph
 11 and a real piece of property.
 12 **Q. So now we're on page?**
 13 A. Now we're on page 3.
 14 **Q. Okay.**
 15 A. And on a 5,000-square-foot lot the current code allows
 16 35 percent lot coverage. And so that -- the -- the house
 17 that we're showing on this drawing is just a graphic example
 18 of what 35 percent looks like on a 5,000-square-foot lot.
 19 And we've got a house that has a footprint of about
 20 1,350 square feet; and we've got a DADU in the backyard,
 21 which is that square to the right, with a 400-square-foot
 22 footprint. And together 17- -- excuse me. I should -- I
 23 should say that I'm -- I'm actually speaking from within
 24 that red circle on the top drawing. And the -- the area in
 25 orange would be an allowable accessory dwelling unit under

1 **the EIS?**
 2 A. Um, that -- where does that come from? Yes.
 3 **Q. Okay. All right. So your point on page 3 deals with the**
 4 **effective increased lot coverage allowed by -- under the**
 5 **proposed legislation?**
 6 A. On a 5,000-square-foot lot, it -- it doesn't allow for
 7 greater lot coverage, it allows for greater lot coverage in
 8 the rear yard.
 9 **Q. Okay.**
 10 A. It increases that allowable coverage by 50 percent.
 11 **Q. So then it would not be an increase of total lot coverage,**
 12 **it would be an increase of -- of coverage in your rear yard,**
 13 **which might otherwise have trees, vegetation, et cetera.**
 14 A. Yes.
 15 MR. KISIELIUS: Objection. That was a very leading
 16 question with a conclusion. It sounded like Mr. Eustis was
 17 testifying about tree impacts.
 18 HEARING EXAMINER: Okay. I'll sustain.
 19 MR. EUSTIS: Okay.
 20 **Q. (By Mr. Eustis) So what would be -- what would be the**
 21 **significance of allowing an increase in lot coverage up to**
 22 **60 percent in a rear yard?**
 23 A. Okay. I think I said that earlier, but by increasing the
 24 rear lot coverage and allowing greater building in the rear
 25 yard, you are removing the opportunities to save trees --

1 MR. KISIELIUS: Objection. Okay. This is now the third
 2 time that Mr. Kaplan is testifying to impacts to trees, and
 3 I don't think he has the foundation or expertise to speak on
 4 that.
 5 HEARING EXAMINER: Overruled.
 6 A. So it's not only trees; it's light and air and impacts upon
 7 neighbors. When you can build a lot more in your rear yard,
 8 you're taking away issues of privacy and respect for
 9 neighboring properties that might have a concern, depending
 10 on the neighborhood and the property.
 11 **Q. (By Mr. Eustis) All right.**
 12 **Let's see. I'm now moving to the next page in -- in**
 13 **Exhibit -- in what is -- what Appellants have marked as**
 14 **Exhibit 20, entitled Impacts of ADU FEIS Proposed Height,**
 15 **Bulk, and Scale. What do you -- what are you attempting to**
 16 **show in this exhibit?**
 17 A. Well, this is a document that was prepared by consultants in
 18 Portland and dealt with an issue in Portland. And it was an
 19 exhibit that was asked for by the City of Seattle. And so
 20 it -- it basically compared different results, different
 21 FARs in the top drawing by allowing a greater number of
 22 units on pieces of property.
 23 And I guess what this document means to me and the reason
 24 we included it is because if you take a look at what the
 25 propose -- proposal is in the preferred alternative, it's an

1 of .05. And --
 2 **Q. .05 or .5?**
 3 A. .5.
 4 **Q. Okay.**
 5 A. So what happens, then, is, based on the proposal in the EIS,
 6 the preferred alternative, that that .5 FAR just relates to
 7 the main house. And if you build an ADU into the project,
 8 you get another -- basically another 1,000 square feet to
 9 build. Okay? So if you had an ADU in that house, that
 10 house now becomes 3,500 square feet.
 11 And, finally, under the proposal in the preferred
 12 alternative in the EIS, you could build another AADU in the
 13 same building, and that also could be a thousand square
 14 feet -- so that's commonly called a triplex -- and now we're
 15 looking at 5,250 square feet. That's a huge concern to
 16 single-family neighborhoods because where you would start
 17 off, say, in the green area, you could easily then have a
 18 neighborhood that looks like the 5,250 square feet, which
 19 could actually be a lot larger than that because basements
 20 don't -- basements are not included. So you could have
 21 6,500 square feet very easily on the same 5,000-square-foot
 22 lot. And the EIS does not really address, with any
 23 specificity, the impacts or mitigations from all of a sudden
 24 building a -- converting one property or an entire street to
 25 very large buildings.

1 FAR of .5. And that FAR of .5 is one method to reduce the
 2 height, scale, and bulk of houses in neighborhoods
 3 throughout Seattle. However, if you -- based on the way the
 4 code is written, if you add an accessory dwelling unit or
 5 two accessory dwelling units, you can add a thousand square
 6 feet for each of those additional units onto the restricted
 7 FAR home that's allowed.
 8 Am I -- am I too much into the weeds here?
 9 HEARING EXAMINER: It's a little bit unclear.
 10 THE WITNESS: Okay.
 11 HEARING EXAMINER: Maybe you could try --
 12 MR. EUSTIS: Okay.
 13 HEARING EXAMINER: -- restating it.
 14 THE WITNESS: I -- I felt that I was moving a little bit
 15 sideways so --
 16 **Q. (By Mr. Eustis) So, Mr. Kaplan, you have this progression,**
 17 **let's -- that goes from 2,500 square feet to 3,500 square**
 18 **feet to 5,250. Could you explain that progression and the**
 19 **resulting FARs and how it relates to this FAR limit of .5 in**
 20 **the preferred alternative?**
 21 A. Okay. So "FAR" is floor area ratio. And a .5 FAR means
 22 that you can build 50 percent of the square foot of your
 23 lot. So if you have a 5,000-square-foot lot, you could
 24 build a 2,500-square-foot house. And so in the green
 25 example there, that's 2,500-square-feet. It's an FAR

1 **Q. Okay. So to the extent that, in the preferred alternative,**
 2 **limiting the FAR for the principal dwelling unit to .5 is**
 3 **proposed as some reduction of impacts to height, bulk, and**
 4 **scale, would it succeed in that point in your -- in your**
 5 **opinion?**
 6 A. No.
 7 **Q. And --**
 8 A. Not if you allow three units on every site.
 9 **Q. -- and would that be because the ADUs would not be subject**
 10 **to the FAR limit?**
 11 A. That -- that's correct.
 12 **Q. Okay. Are there other points that you wanted to make from**
 13 **this slide --**
 14 A. No.
 15 **Q. -- another presentation? Okay.**
 16 **I'm going to the next page, which is No. 5 for reference,**
 17 **SF 5,000 up to 1.05 FAR. And what are you -- if you're**
 18 **trying to show some -- something more than what you just**
 19 **explained in discussing the prior exhibit, what -- what are**
 20 **you attempting to show through this?**
 21 A. This just spells it out graphically. And the other thing to
 22 note, this -- this is a document that was prepared for Urban
 23 Design Seattle. It was prepared by Seattle for an urban
 24 design and neighborhood character study. And if you just
 25 take that little graphic, that box on the upper left,

1 instead of having a cute house or even a big cute house,
 2 what would happen is if you could build a triplex, you would
 3 start having a box in order to capture all the square feet
 4 that you could possibly build on a site. And this is a
 5 5,000-square-foot site. So keeping in mind you still have a
 6 35 percent lot coverage and any developer is going to want
 7 to maximize the square feet, you're going to end up with
 8 tall, big boxy buildings.
 9 **Q. Okay. So this is, you know, I guess some projection on your**
 10 **part so as -- as an -- both as an architect of residential**
 11 **housing and a developer of residential housing. Why do you**
 12 **say that you would end up with these boxes as opposed to**
 13 **what might be perceived as a more traditional single-family**
 14 **house?**
 15 A. Well, piggybacking onto what Bill Reid was testifying to
 16 yesterday -- yesterday about --
 17 **Q. No. What I want -- not to piggyback.**
 18 A. Oh.
 19 **Q. What I want you to do is to draw upon your experience --**
 20 A. Okay.
 21 **Q. -- as both an architect and a developer of single-family for**
 22 **residential properties.**
 23 A. Okay. And I have done infill development design on both
 24 single family under the current code and also multifamily
 25 on -- on small lots. And, essentially, by allowing three

1 **of the EIS?**
 2 A. Yeah. And -- and 4.3.
 3 **Q. Okay.**
 4 **Let's see. What I would like to do next is go on to the**
 5 **next page, page 6 of a propo- -- Exhibit 20 marked for**
 6 **identification. And what's the point you're making here?**
 7 A. It's -- it's simply a comparison between LR1, which is a
 8 multifamily zone, and what you would be allowed to do under
 9 the preferred alternative. Your -- basically your total FAR
 10 is theoretically the same. And so you will be able to build
 11 multifamily buildings that are represented as allowable
 12 under the multifamily code. You basically can build those
 13 same buildings now -- or you would be able to build the same
 14 buildings in single-family residences -- residential
 15 neighborhoods.
 16 **Q. Okay. So then in terms of what the proposed legislation**
 17 **would allow, are you saying that it effectively allows an**
 18 **intensity that is otherwise allowed under LR1?**
 19 A. Yes.
 20 **Q. Okay. And --**
 21 A. In fact, it could be greater, because if you allow
 22 12 unrelated people to live on the single-family site, you
 23 could have greater density on that site than you may have in
 24 LR1.
 25 **Q. Okay. But under LR1, currently, I -- you could have up to**

1 units on every lot, as a -- as a developer, investor and
 2 speculator, there is no way that someone wouldn't take a
 3 look at a piece of property and go through the exercise
 4 through a pro forma on deciding how to best develop that
 5 property. And I think -- and based on my experience -- that
 6 the EIS does not consider the incredible opportunity to
 7 small developers to convert single-family residences to
 8 three-unit triplexes. The way the code is written, there's
 9 no parking requirement. There's, you know, 35 percent lot
 10 coverage, but other than that, there's an ample height
 11 restriction that will produce nothing but boxes because
 12 developers will build to the limits that they can possibly
 13 build. So there won't be any cute, you know, boxes because
 14 of the height limit. And I think it's just a simple return
 15 on investment.
 16 **Q. Okay. So in your opinion, would the -- and let's focus on**
 17 **the preferred alternative. If adopted, would it result in a**
 18 **significant change in the land use form in single-family**
 19 **neighborhoods?**
 20 A. Yes.
 21 **Q. Okay. And having reviewed the -- the section dealing with**
 22 **aesthetics, did you find this eventuality disclosed,**
 23 **analyzed, discussed, presented?**
 24 A. No.
 25 **Q. Okay. And here you're talking about Appendix C and the text**

1 **8 unrelated adults per unit; is that the case?**
 2 A. I don't know. Yeah. I'm sorry.
 3 **Q. Okay. All right. And if, effectively, the proposed**
 4 **legislation would allow a level of intensity of -- that**
 5 **would equate to the intensity allowed under LR1, how would**
 6 **that affect the land use form of single-family**
 7 **neighborhoods?**
 8 A. Well, it -- in a word, it erases the land use form for
 9 single-family homes. It -- it -- it -- you know, it -- it
 10 would be equated to a multifamily neighborhood of town homes
 11 or duplexes, triplexes, apartment buildings.
 12 **Q. Okay. But I guess, judgmentally, whether that is good or**
 13 **bad, laudable, not laudable, in terms of the -- the**
 14 **disclosure of that impact, did -- did you find a discussion**
 15 **in the Land Use and Aesthetic Impact section of the EIS that**
 16 **revealed that?**
 17 A. No. There was no discussion of that change in land use
 18 form.
 19 **Q. All right. So I'm next drawing your attention to page 7 of**
 20 **this exhibit. And we'll go on to successive pages. What**
 21 **are you purporting to show on this page?**
 22 A. Well, this is a sample from the EIS of what the City
 23 believes the change in land use form would be over the next
 24 ten years, using their hypothetical prototypical
 25 neighborhood.

1 **Q. All right. Then let me go to the next page. Page 8. Is**
 2 **this also from the EIS?**
 3 A. Yes.
 4 **Q. Okay. And so this is -- you're just including these**
 5 **illustrations in this exhibit to provide background for your**
 6 **further pages?**
 7 A. Yes, for -- for -- for context.
 8 **Q. Okay. Let's see. Page 9. Also from the EIS?**
 9 A. It is.
 10 **Q. All right. Page 10.**
 11 A. Yes.
 12 **Q. Again, from the EIS.**
 13 A. And again.
 14 **Q. Now, do you have any -- any -- these are just taken from the**
 15 **EIS? Do you have anything further to say about this?**
 16 A. Um, yeah. So if you -- if you just go back a page.
 17 **Q. To page 9?**
 18 A. To page 9. We can just use page 9. Now, these are two
 19 drawings, and I think they're from Alternative 2, but it
 20 really doesn't matter because it's representative of the way
 21 the City graphically displayed images of all the -- all the
 22 four alternatives. So they're all graphically displayed the
 23 same. And I guess I want to go back. I have --
 24 **Q. To page 8?**
 25 A. No, I'm going to go -- I want to just relate one issue on

1 EIS, great topography; and these drawings, taken from some
 2 software program somewhere are not representative. And --
 3 and we'll show you why.
 4 **Q. Okay.**
 5 HEARING EXAMINER: Before you go any further, it is 10:30,
 6 time for our customary break. So is this a good time to
 7 break, or would you like to --
 8 THE WITNESS: I'm good.
 9 HEARING EXAMINER: -- wait? Okay.
 10 MR. EUSTIS: Um --
 11 THE WITNESS: It's up to you.
 12 MR. EUSTIS: -- I mean, if this is the customary time,
 13 let's -- let's take our mid-morning break.
 14 HEARING EXAMINER: All right. We will do that. We will
 15 be back at 10:45.
 16 MR. KISIELIUS: I just wonder whether it would be
 17 appropriate to check to make sure that this is working
 18 sufficiently for our purposes before we get too much
 19 further.
 20 HEARING EXAMINER: Yeah. That might be appropriate. We
 21 will do that. Thank you.
 22 MR. KISIELIUS: All right. Thank you.
 23 (Recess)
 24 HEARING EXAMINER: Back on the record. Apparently the
 25 handheld device is doing okay, so we'll have a recording.

1 how these drawings were -- why these drawings were composed
 2 by the City. In 4.3 --
 3 **Q. Section 4.3 of the EIS?**
 4 A. -- Section 4.3, page 4-93, the City says that these images
 5 basically prepare to, quote, illustrate a range of typical
 6 conditions found across the study area; we created a
 7 hypothetical two-block scene consisting of 60 lots with
 8 seven distinct block types.
 9 Okay. So these drawing purportedly represent the
 10 prototypical neighborhood in the city of Seattle. And on
 11 the following pages we're going to show you why this is
 12 completely inadequate in studying any neighborhood in the
 13 city of Seattle.
 14 **Q. So by "inadequate," you -- or do you -- are you questioning**
 15 **whether these prototypes are representative of Seattle**
 16 **neighborhoods?**
 17 A. Yes.
 18 **Q. Okay. And just in advance, why do you question that --**
 19 A. Well --
 20 **Q. -- that they're -- whether they are representative of**
 21 **Seattle neighborhoods?**
 22 A. -- because Seattle has a rich diversity of over 30 different
 23 neighborhoods that have different street widths, different
 24 property types, you know, some with trees, most with trees,
 25 most with more cars than the City shows or discusses in the

1 You may proceed, Mr. Eustis.
 2 MR. EUSTIS: Very well.
 3 **Q. (By Mr. Eustis) Okay. Mr. Kaplan, when we -- before the**
 4 **break we were talking about page 10 of Appellant's**
 5 **Exhibit 20 for identification. So next I would like to go**
 6 **to page 11. So what are you purporting to show on page 11?**
 7 A. Basically page 11 runs through a scenario of lot
 8 subdivision. And again, one of the issues that the EIS is
 9 deficient in in exploring, really identifying, is the fact
 10 that within single-family neighborhoods, this policy will
 11 allow lot subdivisions, which you can do now. However, the
 12 impact from going through and creating substandard lots
 13 legally has a detrimental effect on -- concerning a number
 14 of issues.
 15 When I say a substandard lot, you can have a
 16 neighborhood with a combination of 4,000, 5,000, 6,000
 17 square foot lots. And the graph at the bottom notes that
 18 Seattle has an average of bigger lots from 4,000 to 6,500
 19 square feet. And what developers are doing is they're using
 20 different vehicles within the code to combine and then
 21 subdivide lots throughout the City of Seattle.
 22 And while that's not illegal, it's also not legal right
 23 now to have 12 people living on a site. And it's not legal
 24 right now to have three units on every site. And so what
 25 happens when you have a substandard lot, you have greater

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1 impacts because of this legislation. For instance, you
 2 create -- you have a 7,500 square foot lot, or you combine a
 3 couple lots, and you create three very small lots.
 4 Now, the lot coverage issue that I was talking about
 5 before, current code, is 35 percent on a 5,000 square foot
 6 lot, and it would be over that. What happens is under 30 --
 7 under 5,000 square feet, lot coverage is calculated on a
 8 formula. And essentially on a 3,200 square foot lot, which
 9 this new alternative proposal allows, you can have lot
 10 coverage at 46.5 percent.
 11 Now, at 35 percent, the City says, well, you know,
 12 people are protected. Maybe there's trees that are
 13 protected. However, they do not talk about or reveal any
 14 impacts from lots that are small that are encouraged by this
 15 policy, this policy change. And at a reduced -- reduced
 16 size, you have 46 percent lot coverage, which means a lot
 17 more of your properties cover the building, you know, and --
 18 and trees are gone, and -- and then on top of that, you're
 19 allowing 12 people to live on a 3,200 square foot lot.
 20 And the City's models, as we've shown in the last few
 21 drawings, don't really show the 3,200 square foot lots, and
 22 they don't contemplate any parking issues related to that,
 23 so the graphics don't show very many cars. And as we -- as
 24 we know, there's many neighborhoods in Seattle that are
 25 going to be over 85 percent capacity. And the City's models

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1 show that you can park any- -- anywhere on -- in 2019 or in
 2 2028, where their models go on a 10-year -- they show a
 3 10-year change. And remarkably in a 10-year change, they
 4 still don't have very many cars on the road.
 5 So people -- so decision makers that are being informed
 6 by this document are getting completely erroneous
 7 information if they look at the City's graphics and the
 8 hypothetical model that they make because it really doesn't
 9 address what -- what is -- is really in every Seattle
 10 neighborhood.
 11 **Q. Mr. Kaplan, I take it you're familiar with the hearing
 12 examiner's ruling on the determination of non-significance?**
 13 A. Yes.
 14 **Q. Okay. As part of that ruling, did the hearing -- did the
 15 hearing examiner direct the City to explore a build-out of
 16 all lots converting to principal units with ADUs on a
 17 typical block?**
 18 A. Full build-out, yes.
 19 **Q. Okay. And did those -- did the EIS contain such a
 20 depiction?**
 21 A. Yes.
 22 **Q. Did that depiction include a rendition of the resulting
 23 automobiles?**
 24 A. No.
 25 **Q. Would, in your opinion, the analysis, followed by the**

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1 **parking study, would a full build-out result in an increase
 2 in the number of cars --**
 3 MR. KISIELIUS: Objection.
 4 **Q. (By Mr. Eustis) -- that would be generated by the increased
 5 units, logically?**
 6 MR. KISIELIUS: Objection. Objection. We're now asking
 7 Mr. Kaplan, who has not conducted a parking study, to
 8 testify as to what the results of parking would be in a
 9 hypothetical situation. He's not a parking expert. He's
 10 not a transportation expert. He doesn't have the expertise
 11 to testify to this.
 12 HEARING EXAMINER: Sustained.
 13 **Q. (By Mr. Eustis) Okay. Rather than pursuing that question, I
 14 believe Mr. Tilghman addressed it already. What I will do
 15 is move on to the next part of Exhibit 20. Okay. So the
 16 next part is where you -- it has part 2, actual versus
 17 hypothetical aesthetic evaluations. So what does this
 18 section show?**
 19 A. This section is -- is devoted to looking at a very high
 20 level at what the differences are between creating some
 21 hypothetical model based on maybe Arizona or something --
 22 it's unclear -- versus real neighborhoods in the City of
 23 Seattle.
 24 **Q. Okay. So I'm drawing your attention to the first page of
 25 this section identified as Northern Queen Anne. Are you**

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1 **able to identify this illustration?**
 2 A. Yes.
 3 **Q. What is it?**
 4 A. This illustration is taken from the City's GIS website. And
 5 we will -- this is a real Queen Anne neighborhood, and we
 6 will take this -- this two-block area and compare it to
 7 essentially the City's model.
 8 **Q. Okay. By two-block area, are you referring to the area
 9 outlined in red?**
 10 A. That's just a -- kind of the original drawing and then blew
 11 it up. They're both the same, just a different scale.
 12 **Q. Okay. Then are you referring to the next page?**
 13 A. Yes.
 14 MR. KISIELIUS: What page are these, by the way?
 15 MR. EUSTIS: Page 14 I have at the bottom.
 16 **Q. (By Mr. Eustis) All right. So page 14 has a -- what appears
 17 to be a vicinity map of blocks, and then an aerial
 18 photograph. Can you identify those blocks?**
 19 A. Sure. So we took the photo at the bottom which is simply a
 20 Google -- Google Maps photo. And we tried -- what I wanted
 21 to do is create a two-block representation of what the
 22 City's hypothetical drawing shows. So this is a block
 23 bordered on Crockett and McGraw and 6th and -- isn't it 4th?
 24 4th on the --
 25 **Q. Maybe 5th and 4th.**

1 A. Well, the -- oh, the red line is between 5th and 4th, McGraw
 2 and Crockett.
 3 **Q. Okay.**
 4 A. And so we identified each lot and then looked at the size of
 5 each lot. But I think that the graphic representation,
 6 which would be fairly typical in Seattle, you look at the
 7 picture, and you start comparing it to the City's model, you
 8 see a complete disconnect in the City's hypothetical model.
 9 **Q. Okay. So in terms of the disconnect between what you show**
 10 **here and the City's hypothetical model, what do you identify**
 11 **the disconnect to be, and why is that?**
 12 A. Well, in general, one can just look on Google Maps and find
 13 that the parking representation is different. But if you
 14 take a look at the buildings themselves, in a typical
 15 Seattle neighborhood, you will see a dense, you know,
 16 collection of roofs and trees and yards with not much space.
 17 The backyards are small, front yards are small.
 18 And these pictures were taken summertime at noon,
 19 arguably when, you know, streets are probably not full at
 20 all. But you can see that the houses, the representation of
 21 houses, backyards, garages and other things are very, very
 22 dense.
 23 **Q. Okay. So in the earlier pages of this exhibit you showed**
 24 **that illustrations from the EIS of what the EIS purports to**
 25 **show as city blocks. So how would you compare this actual**

1 is just a convention that we used to identify lot sizes.
 2 **Q. Okay. And these are actual lot sizes that you measured?**
 3 A. No, I did not measure them. King County did. This is from
 4 the King County records.
 5 **Q. Oh, okay. So this is -- these lot sizes are based upon King**
 6 **County records?**
 7 A. That's right. Yes.
 8 **Q. All right. And so you show a range of lots running from**
 9 **2,400 to 7,200 square feet.**
 10 A. Yes.
 11 **Q. Okay. And other than showing the range of lots, what do you**
 12 **purport to show by identifying these different lots?**
 13 A. That's it.
 14 **Q. That's it? Okay.**
 15 A. That's it.
 16 **Q. Good enough. Anything more about page 15?**
 17 A. No. It morphs into 16.
 18 **Q. Okay. So now we're on page 16.**
 19 A. So on page --
 20 **Q. It's a lot of language. Lots going on on page 16. Could**
 21 **you walk us through that?**
 22 A. Sure. So, you know, we -- we're just looking at a real
 23 Seattle neighborhood, one that wasn't considered. And so
 24 the dimensions -- we try to pick out dimensions that were
 25 similar to the City's model. So, you know, there's a real

1 **block to what the City selects as a representation of a**
 2 **block, a hypothetical block?**
 3 A. Well, there's way more density here. And we'll go through a
 4 calculation in the following pages. But the City's model,
 5 you know, makes it look as if there's 10 feet between each
 6 house. There's bigger yards, and in some cases, less trees.
 7 **Q. Okay. So based upon this aerial photograph, what's your**
 8 **opinion as to whether the City's hypothetical block is**
 9 **representational of any city block in the city?**
 10 A. It's not.
 11 **Q. All right. Let's go on to the next page, 15.**
 12 A. Okay. So on this page, just kind of drilling down a little
 13 bit here. So I take the same block in red and start
 14 identifying the prototypical lot sizes in a -- in a real
 15 neighborhood. And I might add that I didn't just cherry-pick
 16 this neighborhood. I thought since Queen Anne is the
 17 appellant that we should look at something like Queen Anne
 18 because the EIS is 100 percent silent on Queen Anne. It
 19 doesn't recognize Queen Anne or any other neighborhood. But
 20 I figured since we appealed, we ought to take a look at what
 21 our community feels.
 22 And so this -- this neighborhood is just taken at
 23 random and picked because there were two consecutive blocks
 24 that happened to align and match what the City's model
 25 looked at. And so the A, B, C in the top drawing basically

1 effort. And I think we did a good job in trying to figure
 2 out -- use exact -- not exact, but scales as close as we
 3 possibly could.
 4 So we're basically looking at number of lots. The
 5 City's model came up with 60, and we'll compare it in a --
 6 in a minute. But, so we're looking in -- in these blocks,
 7 78th, and we're looking at lots that are greater than 3,200
 8 square feet, and it's most of them. You know, we -- we
 9 don't really need to drill into the whole -- well, anyway,
 10 we might as well.
 11 So the total lot area, the whole area is about 144,000
 12 square feet. The dwelling unit capacity is about 206 with
 13 ADU. I think there was a couple with ADU. Existing
 14 average, non-relatives per lot -- now, I didn't do that
 15 count -- was four.
 16 **Q. Where does that figure come from?**
 17 A. I think it's King County.
 18 **Q. Okay.**
 19 A. I --
 20 **Q. Average residents per single-family lot?**
 21 A. Yeah.
 22 **Q. Okay.**
 23 A. Probable average vehicles with two ADUs would be 3.6. Oh,
 24 existing average vehicles per lot was 1.2. I think that's
 25 from the City's information that -- I think the City says

1 the average family has 1 point -- about 1.2 vehicles. So if
2 you take the 1.2 and you add 2 ADUs, you're adding two other
3 family units, so that's 3.6.

4 Estimated vehicles in the existing area are 93.6. But
5 the proposed vehicles if -- if you were to do a build-out on
6 this -- on this lot, would go up by 300 percent to 280, 281
7 vehicles. So increase in vehicles by 187 vehicles. Then --
8 then you go down. The increase in occupants per lot and --
9 and look at the proposed -- existing occupants within the
10 existing area is 663.

11 **Q. That's based upon, again, just using the figure of four
12 persons per lot?**

13 A. I think so. I'd have to figure out the number there. I
14 don't have that at the top of my head. Anyway, there would
15 be a proposed increase of -- of residents in this area in
16 the full build-out of about 500 percent.

17 **Q. And how do you reach that?**

18 A. Well, by adding -- by increasing your density by
19 300 percent -- or by increasing your density from 1.2 to
20 3.6. So that times --

21 **Q. Are you speaking of vehicles or people?**

22 A. Well, people. So when the average -- I think the City's
23 average is 1.2 -- or 1.2 per ADU. Is that -- I'm trying to
24 recall the -- I can't recall exactly.

25 **Q. Okay. So in terms of your 513 percent figure, does that**

1 prepared this exhibit. That's what I'm asking him to do. I
2 perceive the motion goes to foundation.

3 MR. KISIELIUS: It goes to both foundation and the fact
4 that when you asked him precisely how he arrived at these
5 numbers, he said he's not sure were his words. You've
6 already asked him those questions.

7 MR. EUSTIS: Well, at least from his responses he was
8 talking about two things. One is increase in vehicles and
9 increase in occupants. And what I would do is ask him how
10 he derived those figures.

11 MR. KISIELIUS: I thought that's precisely what you had
12 just done, and he didn't know.

13 HEARING EXAMINER: Let's go through the line of
14 questioning again trying to establish a foundation, and if
15 we can't sort it out, then I will rule on the motion.

16 MR. EUSTIS: Very well.

17 **Q. (By Mr. Eustis) Okay. So I'm focusing on the two figures
18 that you have (inaudible). One is the statistical increase
19 in vehicles of 187. Can you tell me how you reached that
20 number?**

21 A. The increase in vehicles was a function of taking a look at
22 what the existing condition is and what the City's number is
23 on the average number of vehicles per household at 1.2. If
24 you add in an ADU, and you add a AADU, if you add an
25 additional two units, two households on the property, you

1 **apply to the increase in the number of occupants in the
2 block?**

3 A. The potential increase.

4 **Q. Based upon a full build-out?**

5 A. Yes.

6 **Q. Okay. So what are the points you're trying to make on --
7 based upon page 16?**

8 MR. KISIELIUS: I'm going to at this point object. And
9 I'm also going to move to strike this page. Mr. Eustis has
10 asked Mr. Kaplan a series of questions that Mr. Kaplan can't
11 answer. He said he's not sure. This purports to calculate
12 increases in density and increases in parking based on
13 numbers he can't explain, and assigned to them a level of
14 certainty that aren't justified given his knowledge and his
15 expertise.

16 HEARING EXAMINER: Do you have a response?

17 MR. EUSTIS: Okay.

18 **Q. (By Mr. Eustis) Mr. Kaplan, could you --**

19 MR. KISIELIUS: Before we proceed, I've got a motion to
20 strike, so you can't --

21 HEARING EXAMINER: Do you have a response, is what I'm
22 asking?

23 MR. EUSTIS: Oh, okay. The basis for the motion is that
24 Mr. Kaplan cannot explain this. And what I'm asking
25 Mr. Kaplan to do is to give an explanation as to how he

1 increase that number three-fold. So 1.2 to 3.6. 3.6 would
2 be the average number of cars per lot. So an increase of
3 about 300 percent.

4 **Q. Okay. That's the increased number of vehicles. And then
5 you have an estimate as the increase of the number of
6 occupants. And there's the other figure involved. And you
7 determined this to be 513 percent. Can you tell me how you
8 reached that figure?**

9 A. The existing condition, if you take the average household
10 size, which is 1.5 --

11 HEARING EXAMINER: And where does that information come
12 from?

13 THE WITNESS: That's the City's estimate per -- per lot.

14 HEARING EXAMINER: Household size is 1.5 persons per lot?

15 THE WITNESS: I -- I -- I did not come up with that
16 number, so I can't testify to that.

17 MR. KISIELIUS: And I'd renew my motion in part, because
18 again, I think what Mr. Kaplan is describing as the quote,
19 unquote, existing condition, are based on numbers that he
20 can't describe where they come from, for both vehicles and
21 for existing condition of relatives per dwelling. And he
22 doesn't have the technical basis to be opining on either of
23 these things either.

24 I mean, he's not -- they had a parking expert who could've
25 done the work on the parking piece. He didn't. They're now

1 asking him to do this, and Mr. Kaplan doesn't have the
2 expertise to talk about increases in population based on
3 numbers he doesn't know where they came from. He didn't --
4 he didn't -- he doesn't know where this comes from.

5 HEARING EXAMINER: Okay. I am not going to strike this
6 page, but I will give it the weight that it deserves given
7 that you don't know where the numbers came from.

8 And so I would ask you, Mr. Eustis, to move on to the next
9 page.

10 MR. EUSTIS: Yes, I will do that.

11 **Q. (By Mr. Eustis) Okay. The next page, page 17.**

12 A. This is -- really the basis of the last two pages is a
13 comparison of the City's hypothetical model comparing it to
14 the reality of one Seattle block.

15 **Q. So where does this illustration come from?**

16 A. This is from the EI- -- the EIS.

17 **Q. Okay. All right. So then you have these six lot types, and
18 this is a, I take it, a prototype lot considered in the EIS?**

19 A. That's our assumption. These lots are not -- it never was
20 that descriptive. The EIS is silent about drilling down on
21 that, so we did our own calculations based on scale, came up
22 with those lot sizes.

23 **Q. So you came up with the lot sizes, you know, that would be
24 represented by the City's prototype lot?**

25 A. Yes. That's why there's, you know, the notion in the list

1 is the document that's used to inform decision makers. And
2 it's -- it's totally not representative.

3 **Q. And so how is it not representative, if you could be
4 specific?**

5 A. Okay. Again, it shows -- and any -- any planner, or any
6 reasonable person would look at this and go, well, this must
7 be a -- a suburban type of neighborhood. The streets are
8 wide. There's a million places to park. The yards are
9 gracious. The -- you know, it's scattered with some trees
10 on the right-hand subplot. On the left-hand subplot it's
11 different because it has an alley. The distance between
12 houses is extraordinary compared to Seattle.

13 **Q. Okay. By compared to Seattle, are you then comparing it to
14 the actual aerial photograph on --**

15 A. Yes.

16 **Q. -- slide 14?**

17 A. Yeah.

18 **Q. Or page 14.**

19 A. Yes.

20 **Q. Okay. So then is it your opinion it's not representative
21 from the standpoint of distances between houses?**

22 A. Yes.

23 **Q. From the standpoint of the amount of open space?**

24 A. Yes.

25 **Q. From the standpoint of the width of the streets?**

1 of lots.

2 **Q. And how did you come up with these lot sizes (inaudible)?**

3 A. It was scaled.

4 **Q. Using the City's --**

5 A. Measured.

6 **Q. Okay. Using the City's illustration?**

7 A. Yes.

8 **Q. So you've characterized the lots then in this illustration.
9 How does this relate to your actual measured lot?**

10 A. Well, first of all, I'd like to point out just the visual.
11 This is the City's hypothetical neighborhood, okay, and
12 this -- this -- this neigh- -- you know, it could be in
13 Bellevue, it could be in Arizona. But if you look back to
14 page 14 and compare what a typical Seattle neighborhood
15 looks like, anyone would understand that this drawing does
16 not represent a typical Seattle neighborhood.

17 **Q. Okay. So --**

18 A. The lot -- lot sizes might -- might be okay, but --

19 **Q. So page 14 is -- shows the aerial photograph of the Queen
20 Anne --**

21 A. Yeah.

22 **Q. -- block. And so what's your opinion with respect to
23 whether the illustration on page 17 is characteristic of an
24 actual city block, at least one in Queen Anne?**

25 A. Well, it's not, and it's concerning, because this document

1 A. Yes.

2 **Q. From the standpoint of vehicles on the street?**

3 A. Yes.

4 **Q. From the standpoint of actual trees?**

5 A. Yes.

6 **Q. Okay. In any other respects?**

7 A. I think that hits it.

8 **Q. Okay. So in terms of showing the actual impacts of a -- of
9 build-out of ADU units, is it your opinion that the City
10 should've considered actual city blocks?**

11 A. Absolutely.

12 **Q. Okay. Now, you were here for Mr. Tilghman's testimony, and
13 you -- having read the section of the EIS, having heard this
14 testimony, you're aware that the city -- these are the
15 actual city blocks for purposes of the parking analysis?**

16 A. Correct.

17 **Q. Okay. From your review, did the City consider aesthetic and
18 land use form impacts on those same city blocks?**

19 A. No.

20 **Q. Okay. In terms of the selection of those city blocks for
21 parking, did you find that from the standpoint of land use
22 form, were those representative of all city single-family
23 neighborhoods?**

24 A. Absolutely not.

25 **Q. Okay. And why do you think that they were not**

1 **representative of the full range of single-family**
 2 **neighborhoods in the city?**
 3 A. First of all, the selection of the -- it might be good to
 4 look at a drawing --
 5 **Q. Wait. What I'd like you to do is to answer my question as**
 6 **to whether those -- the four sets of city blocks considered**
 7 **in the parking analysis were representative of actual city**
 8 **blocks in the City of Seattle from the standpoint of impacts**
 9 **to aesthetics and land use form.**
 10 A. No, those city blocks are not representative, because not
 11 one of those city blocks lies within five miles of downtown
 12 where city blocks change as -- as one heads away from the
 13 space needle. They change because the age and
 14 infrastructure, lot size, topography and -- and density. So
 15 those four city blocks are not representative of city blocks
 16 that are located closer to the city. And those city blocks,
 17 those four, are on the -- kind of more on the perimeter of
 18 where the greatest impacts would occur.
 19 **Q. So by four city blocks, what you're referring to is the four**
 20 **quadrants --**
 21 A. Four quadrants.
 22 **Q. -- sets of city blocks?**
 23 A. Yes.
 24 **Q. And when you speak of closer-in city neighborhoods, what**
 25 **neighborhoods are you speaking of?**

1 MR. KISIELIUS: I'm going to object to the question. That
 2 issue has been dismissed.
 3 MR. EUSTIS: I'm not contesting whether they held a
 4 scoping hearing.
 5 MR. KISIELIUS: You're contesting the adequacy of it.
 6 What other probative value does the question have to the
 7 issues that remain before the examiner?
 8 MR. EUSTIS: I'm clarifying his testimony. He said there
 9 was no outreach. You earlier testified that there was a
 10 scoping hearing. I'm simply bringing that up. I'm not
 11 challenging the adequacy of the scoping hearing.
 12 MR. KISIELIUS: And therefore the question itself is
 13 trying to elicit testimony that is irrelevant.
 14 HEARING EXAMINER: I'll allow it. Go ahead.
 15 **Q. (By Mr. Eustis) Okay. So what I would like to do is move on**
 16 **to the next photograph. We are on page 19. Could you**
 17 **explain what you're attempting to show by this page?**
 18 A. Well, what we're trying to show is a graphic difference
 19 between computer model and an actual neighborhood and use a
 20 model from the EIS that showed a -- I can't give you the
 21 page where this model drawing is, but I think it's part of
 22 alternative 2 and a full build-out. Well, maybe not full
 23 build-out. But just, it's just a graphic comparison between
 24 the City model and an existing neighborhood where the City's
 25 model used an increased density and has four trees on it.

1 A. Well, obviously Queen Anne. And you just kind of go around.
 2 You've got Wallingford. You've got Ballard, and you've got
 3 Fremont. You've got the University District. You've got
 4 Montlake. You've got Capitol Hill, North Capitol Hill.
 5 You've got Beacon Hill and South Park, and you've got, you
 6 know, the junction in West Seattle. There's -- there's at
 7 least 20 neighborhoods that were ignored.
 8 **Q. Okay. And both as, you know, an architect and somebody**
 9 **who's worked on housing legislation proposals in the City of**
 10 **Seattle, what's your opinion as to whether in order to give**
 11 **a full consideration of the proposal's impacts on aesthetics**
 12 **and land use form, actual impacts upon actual city**
 13 **neighborhoods should've been considered?**
 14 A. My -- my opinion is that the EIS ignored completely the
 15 actual impact to Seattle neighborhoods, because not one
 16 neighborhood was studied; not one neighborhood was asked;
 17 not one neighborhood was part of any kind of outreach or
 18 discussion. The City created a hypothetical drawing and
 19 said, this is typical of every neighborhood, and that's what
 20 they used instead of doing any outreach whatsoever. So
 21 there's not one neighborhood that's represented in this --
 22 in this (inaudible).
 23 **Q. With regard to outreach -- well, you did mention they held a**
 24 **scoping hearing.**
 25 A. Well, you call it that.

1 And it -- it still doesn't look anything like the actual
 2 photograph.
 3 **Q. Okay.**
 4 A. As far as --
 5 **Q. So is this -- is it your understanding that the illustration**
 6 **on the left is part of the depiction of a full build-out on**
 7 **a block of every single-family lot having an -- at least a**
 8 **detached accessory dwelling unit?**
 9 A. Yes.
 10 **Q. Okay. And what's your purpose of including the photograph**
 11 **on the right?**
 12 A. Well, the photograph on the right is existing, so it has no
 13 build-out, but it's a typical neighborhood in the City of
 14 Seattle. You can see how close the buildings are together.
 15 You can see the density. And if you're trying to inform the
 16 City Council and other decision makers about the impacts of
 17 increasing the density, the drawing on the left is
 18 completely inaccurate as far as what it shows regarding open
 19 space primarily.
 20 **Q. Okay. So in terms of, I guess, the spacing between units,**
 21 **the spacing between principal units and those orange or**
 22 **brown accessory dwelling units, could you give a comparison**
 23 **between the build-out illustration on the left and actual**
 24 **existing conditions on the right in the aerial photograph?**
 25 A. Well, again, what I -- what I'm pointing out is that the --

1 the City's depiction on the left of the impact of a full
 2 build-out still looks pretty good compared to what the
 3 actual neighborhood looks like right now with no build-out,
 4 with no extra units. And my point is is that if they took
 5 an actual neighborhood, tripled the density, what -- what
 6 would it look like compared to what this photograph is now?
 7 This photograph, in its existing condition, looks way more
 8 dense than what the City's purporting with a full build-out.
 9 **Q. Okay. So if you then did a full build-out on this -- these**
 10 **sample blocks on the right shown in the aerial photograph,**
 11 **would you then expect the result to be even denser yet?**
 12 A. Yes.
 13 **Q. And why?**
 14 A. Well, there's hardly anywhere to build right now, but if you
 15 were -- if you were to build, you would be taking trees
 16 away. You would be trying to create more space. You'd be
 17 building bigger buildings and, you know, throw in more cars.
 18 **Q. Okay. So earlier on in your testimony, you spoke to the**
 19 **floor area ratio that would be allowed under the proposed --**
 20 **the proposed alternative. And if I recall, you're**
 21 **testifying that this would result in radically different**
 22 **residential structures than just a principal structure with**
 23 **a detached accessory building. I mean, is that consistent**
 24 **with your prior testimony?**
 25 A. Absolutely.

1 it might ask him to talk about infrastructure, I am going to
 2 withdraw that question. You don't need to object.
 3 MR. KISIELIUS: But the problem is the page that you're
 4 going to ask to enter talks about the very same issue.
 5 MR. EUSTIS: All right.
 6 HEARING EXAMINER: Well, I think it just says impact of
 7 utilities and services. It doesn't quantify that in any
 8 way.
 9 MR. KISIELIUS: Well, other than characterizing it as a
 10 noted inadequacy in the FEIS model versus actual sample. So
 11 it's attributing a consequence based on the analysis that
 12 preceded it. It's at the end of page -- section 2.
 13 HEARING EXAMINER: Well, I'm going to disregard it, and we
 14 will allow the page to come in.
 15 MR. EUSTIS: All right.
 16 **Q. (By Mr. Eustis) All right. Mr. Kaplan, I'm now going to**
 17 **part 3 of your -- of what Appellants have identified as**
 18 **Exhibit 20. So what do you purport to show in this part of**
 19 **your analysis? I'm drawing your attention to what's marked**
 20 **as page 22.**
 21 A. Sure. This is an analysis, City analysis of the current ADU
 22 code in Seattle. And so the page you have up right now is
 23 essentially just a graphic diagram from the City to show
 24 what can be done currently in regards to an ADU in the
 25 house, adding an ADU to an existing house, or adding a DADU

1 **Q. Okay.**
 2 A. Yes.
 3 **Q. So in terms of the change to the land use form that you were**
 4 **touching upon earlier in your testimony, is that depicted in**
 5 **this illustration of the build-out on the left-hand side of**
 6 **what's shown on page 19?**
 7 A. No. Again, the City is erroneously contemplating that this
 8 policy will encourage everyone to build a cute, little
 9 backyard cottage and maybe a mother-in-law apartment.
 10 That's what's showing in their drawing on the left-hand side
 11 here. But, in fact, the more common change in land use form
 12 would be a triplex, most likely three flats that are
 13 condominiums.
 14 **Q. Okay. Let's see. I'd like to -- I'd like to work through**
 15 **your remaining pages to this. So on page 20, what is the**
 16 **point of this?**
 17 A. Well, it's just a brief outline of -- of what we noted
 18 before. The parking count goes up, the increased number of
 19 occupants, and the impact to utilities and services that was
 20 not discussed in the EIS. Basically the EIS is silent on
 21 any kind of infrastructure impacts because --
 22 MR. KISIELIUS: I'm going to -- I'm going to --
 23 MR. EUSTIS: So (inaudible) object.
 24 MR. KISIELIUS: I'm going to object.
 25 MR. EUSTIS: Just, I'm -- I'll withdraw -- to the extent

1 in back of the house.
 2 **Q. Okay. And does this come from the EIS, or is this your**
 3 **rendition?**
 4 A. No, it's a -- it's a City document. It's not in the EIS.
 5 **Q. Okay. Do you know where it came from?**
 6 A. I don't have the source noted, but it's a City document.
 7 **Q. Okay. So it shows --**
 8 A. (Inaudible.)
 9 **Q. -- an attached ADU and a detached ADU. All right. The next**
 10 **page, page 23.**
 11 A. Again, taken from the City's documentation, this is
 12 basically showing that there's been a substantial increase
 13 in the number of constructed ADUs in the City of Seattle
 14 over the last few years.
 15 **Q. Okay. And what's your point?**
 16 A. Well, the point is -- the point of this policy is that
 17 there's not enough ADUs being built in the City of Seattle,
 18 and therefore we have to make it easier for people to build
 19 because people are not building enough ADUs. And you can
 20 see just by the City's own chart that the -- there's been a
 21 substantial increase in the number of ADUs being built under
 22 the current code.
 23 **Q. All right. So the -- going to the next slide, existing ADU**
 24 **rules, it's page 24. What are you trying to show here?**
 25 A. Well, just -- it's just simply a change in -- this is a City

1 document that describes the zoning code. And we just pulled
 2 out a piece of it that had to do with single-family zoning.
 3 And the concern here is that, you know, this is the current
 4 code, and now instead of 5,000 square foot lots, the City is
 5 reducing that to 3,200 square feet.
 6 **Q. Okay. So this is a description of part of the proposal?**
 7 A. Yes.
 8 **Q. Okay. Part 4 of your analysis is entitled City's Proposed**
 9 **Code Changes. And so you -- at page 26, it is the last page**
 10 **of the examiner's decision on the challenge to the DNS?**
 11 A. Yeah.
 12 **Q. Okay. And apart from background, have you included this for**
 13 **any other purpose?**
 14 A. No.
 15 **Q. Okay. And then at page 27, there's a cover page for the**
 16 **ADU-EIS, which is already an exhibit. And then you have at**
 17 **page 28, highlighted sections from Exhibit 2-2 of the EIS.**
 18 **And what's your point of including these?**
 19 A. So these are highlights --
 20 **Q. Right.**
 21 A. -- of what the greatest impacts will be from this proposal.
 22 And just -- just wanted to highlight the impacts.
 23 **Q. So you included this to underscore the changes --**
 24 A. Yes.
 25 **Q. -- that are being proposed? Okay. And when we speak of the**

1 And it also has the unintended consequence of allowing much
 2 bigger houses than 2,500 square feet if you added two ADUs.
 3 **Q. Okay. And this is the point that you made at the beginning**
 4 **of your testimony. All right. And then you have part 5,**
 5 **something -- a section called Additional Studies Excluded**
 6 **From The EIS. And what does this relate to?**
 7 A. Well, that one page is a -- is an example that's existing
 8 right now and the picture of a building. It's basically a
 9 depiction of what then somebody could build on a
 10 single-family lot.
 11 **Q. This sort of goes back to your prior testimony illustrating**
 12 **how even under the FAR effectively a triplex could be**
 13 **constructed?**
 14 A. Yeah.
 15 **Q. And is it -- as an architect, is it your position that the**
 16 **triplex that is shown here is representative of the kind of**
 17 **building that could be built under the preferred**
 18 **alternative?**
 19 A. It's one.
 20 **Q. Okay. And it would be subject to lot area coverage --**
 21 A. Yes.
 22 **Q. -- rear yard coverage and the FAR for the principal unit, et**
 23 **cetera?**
 24 A. Right.
 25 **Q. All right. Let's see. The next one, at page 34, what do**

1 **preferred alternative, we speak to the alternative on the**
 2 **far right-hand column?**
 3 A. That's correct.
 4 **Q. All right. All right. So, and the same for your inclusion**
 5 **of Exhibit 2-2?**
 6 A. Yes.
 7 **Q. All right. And then on page 30, this is also a continuation**
 8 **of Exhibit 2-2?**
 9 A. It is.
 10 **Q. All right. And again, you've encircled it in red to show**
 11 **the changes being proposed?**
 12 A. Yeah.
 13 **Q. All right. So then at 31, what's the point of including**
 14 **this page?**
 15 A. Well, the -- the inclusion of FAR restriction in the EIS
 16 was -- was added. It wasn't part of the DEIS.
 17 **Q. That's shown by the underscoring language?**
 18 A. Yeah.
 19 **Q. Okay.**
 20 A. So, and it's a -- you know, it's a very onerous -- well, it
 21 does two things. It's very onerous on one hand in that it
 22 does restrict new construction to .5 FAR. It also includes
 23 the fact if you own a home right now and it's over 2,500
 24 square feet, and it's on a 5,000 square foot lot, you can't
 25 add a window seat or anything and exceed 2,500 square feet.

1 **you purport to show by this?**
 2 A. Well, these were just sketches, studies about what would
 3 happen on a very small lot and how one might be able to
 4 exceed the limited allowable floor area by extending out
 5 under overhangs. It was just a -- just a quick study.
 6 **Q. Okay. So what's the effect of extending upper floors with**
 7 **overhangs?**
 8 A. Well, there are examples where people can exceed the lot
 9 coverage by actually having living space under overhangs.
 10 **Q. So overhangs don't count against lot coverage?**
 11 A. Well, lot coverage is taken -- you get a -- a bonus for
 12 overhangs that hang into setbacks. And lot coverage is --
 13 is taken from the exterior walls of the building and not the
 14 overhang. And there's been, you know, a number of cases
 15 where those calculations are taken to the foundation instead
 16 of upper floors that hang out. And the concern there is on
 17 a very small lot, that somebody would be living in -- if
 18 lots were 3,200 square feet, then maybe there's ways that
 19 people are looking to actually increase the building area.
 20 **Q. So is your point then that provisions relating to overhangs**
 21 **would allow effectively a greater lot coverage?**
 22 MR. KISIELIUS: I'm going to object. This is a leading
 23 question trying to give Mr. Kaplan the conclusion that
 24 Mr. Eustis would like him to reach.
 25 HEARING EXAMINER: Please rephrase the question.

1 MR. EUSTIS: Sure.
 2 **Q. (By Mr. Eustis) So with respect to the lot coverage, what's**
 3 **the effect of allowing overhangs with habitable space?**
 4 A. Greater living area.
 5 **Q. Okay. And with respect to lot area -- lot coverage?**
 6 A. Again, it depends on how the City decides to calculate that.
 7 It -- it could exceed lot coverage.
 8 **Q. Effectively?**
 9 A. Yes.
 10 **Q. All right. So then you have at page 35 a set of**
 11 **illustrations. What are you trying to show here?**
 12 A. It's just a three-dimensional model of what we've been just
 13 talking about. And --
 14 **Q. So does this relate back to your prior testimony as to**
 15 **the -- I guess the limited effect of a FAR of .5? Sir, if I**
 16 **could, earlier in your testimony you testified that the**
 17 **square -- that the square footage of a structure built with**
 18 **a principal unit and two attached accessory dwelling units**
 19 **could approach the form and intensity of LR1. Are you**
 20 **proposing this illustration to illustrate that point?**
 21 A. Yes.
 22 **Q. Okay. Okay. And the final section is Environmental Impacts**
 23 **of Tree Loss Excluded from the City's Study. Okay. Drawing**
 24 **your attention to 37. And what do you purport to show on**
 25 **page 37?**

1 THE COURT: Sustained.
 2 **Q. (By Mr. Eustis) Okay. So the question is your foundation.**
 3 **So my question is in keeping -- not the conclusion, but what**
 4 **did you -- what did you go through to analyze the impacts of**
 5 **the proposed legislation on tree canopy?**
 6 A. The analysis included the increased size and form of
 7 potential buildings on single-family lots.
 8 **Q. Okay. So then is it based upon essentially a projection of**
 9 **the increased lot coverage and increased rear yard lot**
 10 **coverage from detached accessory dwelling units upon the**
 11 **presence of trees and other vegetation in the city?**
 12 A. Yes.
 13 **Q. Okay. So --**
 14 MR. KISIELIUS: I'm going to renew my objection before we
 15 go to the substantive questions. The testimony, at least
 16 based on what we can see on the page, is going to get into
 17 something different than that. And I also don't know that
 18 it's been estab- -- Mr. Eustis asked the question. I'm not
 19 sure that there's been any sort of a study done on the
 20 comparison of the lot coverage to the tree loss.
 21 **Q. (By Mr. Eustis) Have you prepared a study yourself, a**
 22 **document study on the impact of the proposal on tree loss?**
 23 A. I have not employed an arborist who has done a study other
 24 than a land use study, looking at lot coverage and impacts
 25 from increased lot coverage.

1 MR. KISIELIUS: I'm going to object before Mr. Kaplan has
 2 an opportunity to start answering these questions.
 3 Mr. Kaplan is being offered as an expert in aesthetics and
 4 land use issues. We're getting into technical issues
 5 related to tree canopy, and I don't believe Mr. Eustis has
 6 established a foundation for that.
 7 **Q. (By Mr. Eustis) Mr. Kaplan, in terms of --**
 8 HEARING EXAMINER: I'm sorry. Mr. Eustis, are you trying
 9 to establish --
 10 MR. EUSTIS: Yes.
 11 HEARING EXAMINER: -- extent foundation right now?
 12 MR. EUSTIS: Yes.
 13 HEARING EXAMINER: Okay. Go ahead.
 14 MR. EUSTIS: Okay.
 15 **Q. (By Mr. Eustis) So in terms of potential loss of tree**
 16 **canopy, is this a topic that your inquiry considered?**
 17 A. Yes.
 18 **Q. Okay. And how did you go about analyzing the impact of the**
 19 **proposed legislation upon tree canopy?**
 20 A. First of all, the increased allowable lot coverage in
 21 backyards from the current 40 percent to allowing 60 percent
 22 would eliminate --
 23 MR. KISIELIUS: I'm going to object, because right now
 24 we're getting past foundation into the actual opinion
 25 testimony.

1 **Q. So your conclusions -- would it be fair to say your**
 2 **conclusions are qualitative as opposed to quantitative?**
 3 A. They are.
 4 **Q. Okay.**
 5 HEARING EXAMINER: I'm going to let you testify as a
 6 developer and also as an architect who is familiar with the
 7 spacing of objects on a lot and whether trees can exist
 8 within those certain spaces. I can't let you testify as to
 9 environmental effects of those tree losses because I think
 10 that's beyond the scope of your expertise.
 11 **Q. (By Mr. Eustis) Okay. With respect to the overall effect to**
 12 **the spacing of structures on lots, presumably the decreased**
 13 **spacing, do you have an opinion as to whether the proposed**
 14 **legislation put into effect would have an affect upon tree**
 15 **canopy?**
 16 MR. KISIELIUS: I'm sorry, I'm making an objection. It's
 17 technical. But can he rephrase the question to talk about
 18 the proposal rather than the proposed legislation? If he's
 19 asking about any proposed legislation, that's not before
 20 this examiner. This is the proposal that's at issue in the
 21 EIS. There's not an ordinance that's up for evaluation.
 22 HEARING EXAMINER: How about the terminology "preferred
 23 alternative"?
 24 MR. KISIELIUS: That would be fine, too.
 25 HEARING EXAMINER: Okay.

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1 MR. KISIELIUS: I just want to make sure we're clear on
 2 the record --
 3 HEARING EXAMINER: All right.
 4 MR. KISIELIUS: -- that we're not --
 5 **Q. (By Mr. Eustis) Without my repeating that question, can you**
 6 **substitute preferred alternative for the proposed**
 7 **legislation?**
 8 A. Sure.
 9 **Q. I only say that in the interest of time.**
 10 A. Sure. It's my opinion that the proposed -- or the preferred
 11 alternative disregards the impact on -- on loss of tree
 12 canopy is there's no provision -- it says along with
 13 increasing lot coverage in the rear yard to 60 percent from
 14 40 percent is not a companion type of -- of proposal within
 15 alternatives for preferred alternative. It says there is
 16 a -- a rich requirement to preserve trees.
 17 In fact, it goes beyond that and says that trees can be
 18 removed in the event that they interfere with building
 19 envelopes. And it's -- it's vague and would allow any --
 20 any homeowner or developer to build within that increased
 21 area in the rear yard and pay no attention to the -- to the
 22 trees.
 23 **Q. So when you -- when you speak of removal of trees**
 24 **interfering with building envelopes, what are you referring**
 25 **to?**

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1 A. Well, if you're increasing the build --
 2 **Q. I know, but what provision are you referring to? I**
 3 **understand the concept.**
 4 A. I don't understand the question.
 5 **Q. When you speak in terms of allowing the removal of trees if**
 6 **they interfere with building envelopes, what are you**
 7 **referring to?**
 8 A. I'm referring to -- to two things. If you're creating a --
 9 a DADU in your backyard, you're allowed to remove trees if
 10 the trees are in the way of building the DADU.
 11 **Q. Under current code?**
 12 A. Under current code. And there's no provision in the
 13 preferred alternative to -- to protect those trees.
 14 **Q. So your quarrel is that -- is it your -- part of your**
 15 **challenge to the EIS that it allows the -- it would allow**
 16 **the increase of rear yard lot coverage, but without**
 17 **mitigating impact of loss of trees?**
 18 A. Yes.
 19 MR. KISIELIUS: Object again in terms of the leading
 20 questions. Mr. Kaplan answers the question, and then
 21 Mr. Eustis insists on rephrasing it in the manner that he
 22 prefers to ask for his assent. This is his witness. It's
 23 not a hostile witness.
 24 HEARING EXAMINER: Sustained.
 25 **Q. (By Mr. Eustis) Okay. In your opinion, is the provision for**

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1 **the removal of trees to allow a building footprint, an**
 2 **impact upon tree canopy would be created by the proposal --**
 3 MR. KISIELIUS: I'm going to object.
 4 **Q. (By Mr. Eustis) -- by the preferred alternative?**
 5 MR. KISIELIUS: I'm going to object again on the grounds
 6 of expertise, talking about impacts to tree canopy.
 7 HEARING EXAMINER: Sustained.
 8 **Q. (By Mr. Eustis) From the -- you've earlier testified that**
 9 **the preferred alternative would allow an increase in rear**
 10 **yard lot coverage, correct?**
 11 A. Yes.
 12 **Q. Okay. And you identified that the preservation of trees is**
 13 **not something that is provided for under the preferred**
 14 **alternative by virtue of increased lot coverage in the rear**
 15 **yard; is that right?**
 16 A. Yes.
 17 **Q. Okay. So in your profession as architect, as a developer of**
 18 **residential properties, in your opinion, would the**
 19 **preservation of trees be an opinion of how your attribute in**
 20 **the development of residential property?**
 21 A. I -- I personally do, but what I'm concerned about is that
 22 many -- many don't. And given the option of saving a tree
 23 or getting rid of a tree within that much larger developable
 24 area in the rear yard, people will -- developers and others
 25 may make the decision just to get rid of a tree rather than

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1 to try and design around it and preserve it.
 2 **Q. Within the EIS and within the preferred alternative, could**
 3 **you see any measures that would mitigate that impact?**
 4 MR. KISIELIUS: Object. Objection. Again, based on we're
 5 fitting around tree canopy. If it's limited to the
 6 aesthetic question that you're asking, but I'm hearing a
 7 more open-ended question.
 8 HEARING EXAMINER: Can you --
 9 MR. EUSTIS: I believe the question's squarely within the
 10 confines of the examiner's ruling. I designed it that way.
 11 HEARING EXAMINER: Can you repeat --
 12 MR. KISIELIUS: Perhaps I misunderstood if you --
 13 HEARING EXAMINER: Can you repeat the question?
 14 MR. EUSTIS: Yeah.
 15 **Q. (By Mr. Eustis) To put it in context, from your reading,**
 16 **does the preferred alternative include mitigations or**
 17 **measures to protect trees within a single-family rear yard?**
 18 A. No.
 19 **Q. Okay. So in your opinion as a design professional, and to**
 20 **the extent that it would not protect trees in rear yards,**
 21 **would you consider that to be a significant impact?**
 22 MR. KISIELIUS: I'm going to object again. I don't
 23 understand how we're asking somebody who is an architect
 24 about the significance of the impacts to tree canopy.
 25 Fundamentally, that's what we're talking about.

1 HEARING EXAMINER: What I hear him asking is as an
2 aesthetic impact. I'm considering it within his scope of
3 expertise to speak to aesthetic impacts, not to the tree
4 canopy as a whole in the City of Seattle. And I'm assuming
5 that's the vein in which the question is being asked.

6 MR. EUSTIS: Yes.

7 HEARING EXAMINER: I think I will overrule the objection
8 on that basis.

9 **Q. (By Mr. Eustis) Okay. Putting it into context --**

10 A. I think to answer --

11 **Q. -- Mr. Kaplan, as an architect, as a design professional, as
12 a developer, do you consider trees, other greenery to render
13 aesthetic value to residential properties?**

14 A. Yes, without question.

15 **Q. Okay. So if such trees and vegetation can be removed
16 without limitations, would you consider that to be an
17 adverse impact in the character of residential properties?**

18 A. Yes, I would.

19 **Q. Do you see anything in the EIS that would limit or mitigate
20 that impact?**

21 A. I do not.

22 **Q. Okay. Thank you. Okay. We have just a few more pages
23 here. Page 37, what do you purport to show here?**

24 MR. KISIELIUS: And I'm sorry, this is the basis of the
25 objection. We have gotten some testimony on -- limited

1 the actual delivering an opinion that I don't think
2 Mr. Kaplan is qualified to deliver.

3 MR. EUSTIS: Okay.

4 HEARING EXAMINER: Okay. So can you tell us as an
5 architect and a developer, why are these pages here?

6 THE WITNESS: Madam Examiner, they're simply there to --
7 to identify the fact that 65 percent of our trees in the
8 City of Seattle are located in single-family neighborhoods.
9 Removal of those trees has significant impacts. I'll stop.

10 HEARING EXAMINER: Okay. You know, I think that the
11 information about having 65 percent of the trees in
12 single-family neighborhoods is okay, but, you know, you're
13 not qualified to testify as to the environmental impacts of
14 removal of those trees, correct?

15 THE WITNESS: Yes.

16 MR. EUSTIS: Correct. So, but he can testify as to the
17 aesthetic impact?

18 HEARING EXAMINER: Absolutely.

19 MR. EUSTIS: Okay.

20 **Q. (By Mr. Eustis) So on slide 37 or page 37, you show the --
21 I'm drawing your attention to the -- in the upper
22 illustration tree canopy and the lower illustration large
23 trees and tree groves, sir, do these -- does the presence of
24 tree canopy, large trees and tree groves, lend aesthetic
25 value to residential neighborhood?**

1 testimony on aesthetic impact. We are now turning to a page
2 that talks about tree canopy and heat island effect and
3 quantifying tree groves. And I guess I'm just not -- I'm
4 not sure that that fits within the bounds of what I
5 understood to be the limits of Mr. Kaplan's testimony or his
6 ability to testify towards the technical issue of tree
7 canopy.

8 MR. EUSTIS: So is it to foundation?

9 MR. KISIELIUS: It's the same objection we've been talking
10 about. So, yes, it's his credentials to be able to speak to
11 a technical issue.

12 MR. EUSTIS: Okay. I will attempt to establish
13 foundation.

14 **Q. (By Mr. Eustis) Let's see. On page 37 you've included a
15 couple of illustrations. You indicated that you haven't
16 done any separate empirical research on trees. Where do
17 these come from, and why are you including them?**

18 A. These are the City documents.

19 **Q. Right.**

20 A. And they're prepared by the City. And they're simply in
21 there to -- to illustrate --

22 MR. KISIELIUS: I'm going to -- this is where I'm going to
23 object again. Sorry. I would like to interpose the
24 objection before we get to the why, because if the why
25 includes what they show, then I think we're treading into

1 A. Yes.

2 **Q. Okay. And you've previously testified that the preferred
3 alternative because of increased building would result in
4 the loss of trees?**

5 A. Correct.

6 **Q. Would that be an adverse impact to the aesthetics of
7 residential neighborhoods in the city?**

8 A. It would.

9 **Q. Okay. Is that what you're purporting to show on page 37?**

10 A. Yes.

11 **Q. Okay. Okay. And then the last slide is page 38. And I
12 believe previously you gave the figure of, what, 65 percent
13 of tree canopy within residential neighborhoods?**

14 A. That's what I said.

15 **Q. And is this the source of that figure?**

16 A. Yes. It actually says 63 percent.

17 **Q. Okay. Let's see. So, and then what does the upper
18 illustration show?**

19 A. Well, just --

20 **Q. On page 38.**

21 A. -- shows the zoning -- zoning map, and then next to it is
22 the same study and it shows where, you know, most of the
23 trees are relative to the zoning which shows that it's
24 mostly in single-family neighborhoods.

25 **Q. Okay. And do you know the source of these two documents?**

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1 A. These are from the City of Seattle.
 2 **Q. Specifically, do you know?**
 3 A. Which department?
 4 **Q. Yeah. Which study?**
 5 A. Well, this is a zoning map. It's on the City's planning and
 6 zoning page. And I can't tell you where the -- the other
 7 two drawings came from.
 8 **Q. Right. Okay.**
 9 MR. EUSTIS: So with that, you know, subject to the
 10 limitations by the examiner, I move the admission of what
 11 Appellants have marked for identification as Exhibit 20.
 12 MR. KISIELIUS: And the City has an objection specifically
 13 as it pertains to pages 37 and 38. And the objection is
 14 two-fold. The limited testimony that Mr. Eustis elicited
 15 from his witness about aesthetic impacts is not what is
 16 depicted on page 37. It just simply is not. It uses
 17 technical terminology. It quantifies locations of trees.
 18 That's not the same as the more generic statement that
 19 Mr. Eustis elicited from his witness that talked about
 20 aesthetic impacts and how trees are a nice thing to have
 21 from an aesthetic standpoint.
 22 As to page 38, again, Mr. Kaplan is testifying he doesn't
 23 know where these documents come from with the exception of
 24 the zoning map.
 25 HEARING EXAMINER: Okay. Mr. Kisielius, are you going to

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1 deny that this comes from the City?
 2 MR. KISIELIUS: The zoning map, I'm not certain -- I mean,
 3 it goes to what the witness is able to say about it. And
 4 the witness has to introduce it. I just don't think that
 5 it's a Trojan horse mechanism that you can just pad the
 6 record with a document that the witness can't even speak to.
 7 HEARING EXAMINER: It has a City logo on it. I'm assuming
 8 that somebody will not be using the City logo for their own
 9 purposes.
 10 MR. KISIELIUS: It just puts us in a position of if it's
 11 in there and there's no testimony to accompany it explaining
 12 what the relevance is to this proceeding. It's in there,
 13 and then we have to address it.
 14 MALE SPEAKER: Madam Examiner, a pointed question. Am I
 15 allowed to --
 16 HEARING EXAMINER: A question?
 17 MALE SPEAKER: Well, I just -- if this document has
 18 been -- was submitted by the City that included this
 19 graphic, does that mean it's part of the record? That's
 20 what my question is.
 21 MR. KISIELIUS: That was entered into the record for the
 22 limited purpose to demonstrate that this discussion was
 23 going to happen.
 24 (Simultaneous crosstalk)
 25 MALE SPEAKER: -- assumption, I understand they allowed

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1 access to (inaudible).
 2 MR. KISIELIUS: The City would argue that's not. That had
 3 to do with the fact that there was coordination between the
 4 two parties. That was the basis of our objection to their
 5 entering into this proceeding. That was the sole purpose
 6 that it was shown. It was shown to prove that this existed,
 7 and that this was out there.
 8 HEARING EXAMINER: Okay.
 9 MR. KISIELIUS: Not that it was correct. Not that it
 10 would have probative value. We never waived any objection
 11 to relevance or that -- we never conceded that the witness
 12 had any sort of ability to testify to this. He's
 13 demonstrated he can't.
 14 HEARING EXAMINER: All right. I am going to strike page
 15 37 out of this exhibit, and I'm going to leave page 38 in
 16 because it's more generally talking about zoning and where
 17 the coverage occurs.
 18 MR. EUSTIS: And then the remainder of Exhibit 20 will
 19 become Exhibit 28?
 20 HEARING EXAMINER: Any objection to the remainder of
 21 Exhibit 20?
 22 MR. KISIELIUS: No, Your Honor.
 23 HEARING EXAMINER: Okay. Yes, we will enter it into the
 24 record as Exhibit 28.
 25 (Exhibit No. 28 marked and admitted into the record.)

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1 MR. EUSTIS: Very well. I have additional questions for
 2 Mr. Kaplan, but I cannot represent that they are so short
 3 that they would only take a marginal cut in the lunch hour.
 4 HEARING EXAMINER: Okay.
 5 MR. EUSTIS: Which is to say, if we take our lunch break
 6 now, that would be fine with me.
 7 HEARING EXAMINER: Okay. All right. So we'll be back at
 8 1:30. And we'll be off the record.
 9 (Lunch Recess)
 10 HEARING EXAMINER: Just a housekeeping note, and that is
 11 that we will be convening at 9:30 tomorrow morning because
 12 the sound people will be coming to check the system and we
 13 want to give them enough time to make sure they can do that
 14 adequately.
 15 (Inaudible colloquy)
 16 HEARING EXAMINER: So we listened to some of the tapes
 17 over the lunch hour. I'm one of the culprits. I have to
 18 have the microphone closer. And Mr. Kisielius, you do, too.
 19 It seems that the microphone Mr. Ellison is using works the
 20 best.
 21 MR. ELLISON: That's because my voice is --
 22 HEARING EXAMINER: Or maybe it's you. Who knows? But we
 23 will try that and see if that's any better. I don't know,
 24 do we need to switch those microphones for Mr. Eustis? No?
 25 MS. JOHNSON: It's not the microphones. Like, none of the

1 microphones. So that little one that's on the table --
 2 HEARING EXAMINER: Oh, okay.
 3 MS. JOHNSON: -- right there, that's about the only one
 4 that's really doing anything.
 5 HEARING EXAMINER: Okay.
 6 MS. JOHNSON: So that's why the people farthest from it
 7 are (inaudible).
 8 HEARING EXAMINER: I see.
 9 MR. KISIELIUS: But not this one. Both probably is good
 10 but --
 11 MS. JOHNSON: They all work marginally, but that's the one
 12 that's doing the most work.
 13 MR. EUSTIS: I wonder if we can have one at the other end.
 14 (Inaudible colloquy)
 15 HEARING EXAMINER: All right. Well, we have the other
 16 system going as well for backup, so we should be all right.
 17 Let's proceed, Mr. Eustis. You may continue questioning
 18 your witness.
 19 **Q. (By Mr. Eustis) Mr. Kaplan, the next topic that I wanted to**
 20 **bring up was the documentation that you had uncovered as to**
 21 **the sale of accessory dwelling units as individual**
 22 **condominiums. Okay? And here what I'm referring to are the**
 23 **collection of exhibits under Exhibit 8. Those exhibits and**
 24 **the various subparts, of which there are roughly 21, are**
 25 **shown on the screen currently. They are all -- they should**

1 A. Yes.
 2 **Q. Okay. So I'll begin with the Weller Street example.**
 3 **Turning to what has been marked as Appellant's 8A(1), what**
 4 **is this?**
 5 A. That -- that would be a City document attached to a building
 6 permit to apply for building a backyard cottage.
 7 **Q. At which address?**
 8 A. This address is at 1842 Weller Street.
 9 MR. EUSTIS: Okay. As we have done before, I can then
 10 offer these individually or -- they're essentially two sets
 11 of documents. 8A relating to Weller Street, and 8B relating
 12 to NE 88th. Or I can go through them, have the witness
 13 identify them, and then offer them as each sets. Each sets,
 14 I mean, I'd offer, you know, all of the subparts under 8A
 15 altogether and then 8B altogether. And it's simply, again,
 16 a matter of time.
 17 And I don't know if the City has objection to these or
 18 not. The City has been provided copies. Are we going to
 19 fight over each one, or not?
 20 MR. KISIELIUS: I don't suspect we will based on what I
 21 anticipate him saying. But there's an amount of sort of
 22 demonstrating that they're relevant without --
 23 MR. EUSTIS: Of course.
 24 MR. KISIELIUS: The case has to be made. So I don't
 25 anticipate it, but I do expect some more testimony about

1 **all be behind -- beginning with tab 8. And then they carry**
 2 **sub-designations. So what I would -- principally this**
 3 **exercise is to build the evidentiary record, but I would**
 4 **like to move through these in the order presented. Okay?**
 5 **Let's see. So to begin with, the work you did on this**
 6 **proposal, did you have the occasion to look into whether**
 7 **accessory dwelling units created on single-family lots in**
 8 **some instances were converted into condominiums for listing**
 9 **and later sale?**
 10 A. Yes.
 11 **Q. Okay. And at least according to the documentation, you've**
 12 **connected these to two separate single-family addresses; is**
 13 **that right?**
 14 A. Correct.
 15 **Q. Okay. And let's see. Generally, do you recall where these**
 16 **are?**
 17 A. Sure.
 18 **Q. Yeah. Is one on Weller Street?**
 19 A. Yes.
 20 **Q. Okay. And the other one on NE 88th?**
 21 A. Yes.
 22 **Q. Okay. And the documents listed at Exhibit 8 are documents**
 23 **that demonstrate the creation and sale and marketing of**
 24 **these accessory dwelling units and principal units as**
 25 **condominiums?**

1 what this means --
 2 MR. EUSTIS: Oh, I'm not --
 3 MR. KISIELIUS: -- beyond what --
 4 MR. EUSTIS: I'm not offering them all right now.
 5 MR. KISIELIUS: Okay.
 6 HEARING EXAMINER: Okay. I think maybe a grouping of the
 7 8A group and then an 8B group.
 8 MR. EUSTIS: Okay. So I'll work through the 8A, and then
 9 I'll offer them, work through the 8B.
 10 HEARING EXAMINER: Is that all right with you?
 11 MR. KISIELIUS: That's fine. We may have to refer to
 12 specific documents, but we can figure that out.
 13 HEARING EXAMINER: Okay.
 14 **Q. (By Mr. Eustis) Okay. So 8A(1) was an application to**
 15 **establish a backyard cottage at the 842 South Weller Street**
 16 **address?**
 17 A. Yes.
 18 **Q. Okay. 8A(2), what is that?**
 19 A. It was a requirement of the City of Seattle in order to
 20 build a backyard cottage. The owner of the property has to
 21 sign a covenant guaranteeing that he or she, the owner, will
 22 live on the property by occupying one of the two units.
 23 **Q. Okay. That appears to be a signed covenant for the Weller**
 24 **Street property?**
 25 A. Yes.

1 **Q. Can you identify what was marked as 8A(3)?**
 2 A. This exhibit is a part of establishing a condominium. This
 3 appears to be part of the condominium survey.
 4 **Q. And what would the purpose for -- of a condominium survey**
 5 **be?**
 6 A. Well, in establishing a condominium, you have to define how
 7 you're dividing up the property. In this case, they're
 8 taking an ADU and a -- and a home, a DADU and a
 9 single-family house, and creating a condominium. So this
 10 would be a document that helps support how the property
 11 itself is divided by ownership and how it's established as a
 12 condominium.
 13 **Q. Okay. The last page shows a unit 1, unit 2. Would those be**
 14 **the units to the condominium?**
 15 A. Yes.
 16 **Q. All right. Where did you -- you obtained this document?**
 17 A. I did.
 18 **Q. And where did you obtain it from?**
 19 A. King County Assessor's (inaudible).
 20 **Q. All right. And although it says "Unofficial Copy," this is**
 21 **the copy available online from either the Assessor's office**
 22 **or the Recorder's office?**
 23 A. Yes.
 24 **Q. Okay. Showing you what is marked 8A(4), what is this?**
 25 A. This appears to be the condominium declarations.

1 document that simply listed the property for sale.
 2 **Q. Again, this is for the Weller Street property?**
 3 A. Yes.
 4 **Q. Okay. And does it list both of the principal unit and the**
 5 **accessory dwelling unit?**
 6 A. No, just -- just the principal dwelling unit.
 7 **Q. Okay. And Appellant's designated Exhibit 8A(7), what is**
 8 **this?**
 9 A. I believe this was the statutory warranty deed recording the
 10 sale of the original property, if I'm not mistaken. Sorry.
 11 I really can't read it.
 12 **Q. You have these exhibits on your own computer. Would that**
 13 **help you --**
 14 A. Yeah.
 15 **Q. -- identify them? So if you recall, we're on Exhibit 8A(7).**
 16 **Are you there?**
 17 A. Is it 7 or 7A?
 18 **Q. 8A(7).**
 19 A. 7. Got it. Sorry about that.
 20 **Q. And I've asked if you're able to identify that.**
 21 MR. KISIELIUS: Mr. Eustis, I think the confusion might
 22 be -- at least what you gave us -- there are two 8A(7)'s
 23 that are different documents.
 24 MR. EUSTIS: Oh, okay. All right.
 25 MR. KISIELIUS: I don't know if he's looking at the same

1 **Q. Okay. And what is a condominium declaration?**
 2 A. In lay terms, a condominium declaration is basically the
 3 rules set forth to establish the condominium and create a
 4 legal record.
 5 **Q. All right. And where did you obtain this?**
 6 A. I obtained it from the King County -- probably the
 7 Recorder's office.
 8 **Q. Very well. At Exhibit 8A -- Appellant's proposed**
 9 **Exhibit 8A(5), can you identify that?**
 10 A. This was an article on a local site, local website, that
 11 talk about the project.
 12 **Q. When you say "the project," what are you referring to?**
 13 A. It talked about the Weller Street condominium and how both
 14 units are listed separately.
 15 **Q. Okay. And do you know what this document was prepared for?**
 16 A. I don't.
 17 **Q. Okay. Was it a marketing document?**
 18 A. That was my assessment. I just happened to find it online.
 19 **Q. Okay. So then does this document feature or promote the**
 20 **principal unit and detached accessory dwelling unit as**
 21 **separate condominium units?**
 22 A. It does.
 23 **Q. Okay. Then showing you what is identified as Exhibit --**
 24 **Appellant's Exhibit 8A(6), can you identify this?**
 25 A. This was, if I remember, I think it's part of the listing

1 time, but --
 2 **Q. (By Mr. Eustis) Just (inaudible) I'm looking at the**
 3 **statutory warranty deed.**
 4 A. Okay. Now I can read it. It's a -- a deed memorializing
 5 the sale of unit 1 to Joy Barlow and Ryan Barlow.
 6 **Q. This would be unit 1 of the condominium?**
 7 A. Unit 1 of the condominium.
 8 **Q. All right. Let's see. So then we have what's designated as**
 9 **8A(7a). Are you able to identify that?**
 10 A. That is a Windermere -- a listing that's posted on the
 11 Windermere page for the backyard cottage separately.
 12 **Q. Of the Weller Street property?**
 13 A. Of the Weller -- Weller Street property. (Inaudible.)
 14 **Q. Okay. I'm drawing your attention to what is marked as**
 15 **Exhibit 8A(8). Are you able to identify that?**
 16 A. That is a -- a complaint that I filed on the Weller Street
 17 property on -- I'm trying to find the date. But it's a
 18 complaint that I filed.
 19 **Q. And what was the basis of your complaint?**
 20 A. The basis of my complaint was, to the best of my knowledge
 21 as an architect, that it was not legal to sell these units
 22 as condominiums.
 23 **Q. Okay. If you would scroll down and go to page 2 of the**
 24 **complaint, does that summarize your complaint?**
 25 A. It does.

1 **Q. Okay. And what was the City's disposition of that**
 2 **complaint?**
 3 A. Essentially they -- they found no issue with it. They --
 4 they did not find that it broke any -- I think I have --
 5 **Q. So drawing your attention to Exhibit -- what Appellants have**
 6 **marked as Exhibit 8A(9). Is that a response to your**
 7 **complaint?**
 8 A. It is a response. And like I said, they -- they really had
 9 no response. They did not find any issues.
 10 **Q. Okay. So there's an inset. It looks like one window is**
 11 **superimposed over another. And at the bottom of the inset**
 12 **it says, "Main house and backyard cottage appear vacant and**
 13 **for sale"?**
 14 A. Correct. That was their response.
 15 **Q. Okay. But was that responsive to the substance of your**
 16 **complaint?**
 17 A. It was not.
 18 **Q. Okay. Next drawing your attention to Exhibit 8A(10).**
 19 **Again, in the inset window, there is another response. You**
 20 **see that?**
 21 A. Yes.
 22 **Q. Okay. Could you read that? It's a comment by Stephen**
 23 **Rudolph.**
 24 A. Right. "Outreach inspection. Main house appears occupied.
 25 Knocked on door, no answer. Backyard cottage, DADU, appears

1 (Inaudible colloquy)
 2 **Q. (By Mr. Eustis) Okay. Now I'm on Exhibit 8B. I believe the**
 3 **first one is 8B(1). Are you able to identify that?**
 4 A. This was a -- a covenant for owner occupancy and it's part
 5 of the series of individual documents on the legal
 6 description. And on page 3 out of 4 is an owner -- is a
 7 covenant for owner occupancy for the 1235 project. Again,
 8 assigning personal covenant, it says that Andrew Duffus
 9 agrees to occupy one of the two residences.
 10 **Q. And currently is that a condition for creation of an**
 11 **accessory dwelling unit, a covenant of owner occupancy?**
 12 A. The covenant is required since this current code says that
 13 the owner of the property must live in one of the two units.
 14 **Q. All right. At 88, I believe it's A(2), what is that?**
 15 A. That is a King County Assessor's record of the 1235 project
 16 representing one of the units.
 17 **Q. And this assessor record shows the zoning is single family**
 18 **5,000?**
 19 A. Yes, it does.
 20 **Q. And it describes the highest and best use as a multifamily**
 21 **dwelling?**
 22 A. It does.
 23 **Q. I seem to have skipped 3, but the next one is 8B(4). Are**
 24 **you able to identify that?**
 25 A. That was a similar condominium survey on the 1235 project.

1 vacant and currently listed for sale. Knocked on door, no
 2 answer."
 3 **Q. Was that responsive to your complaint?**
 4 A. It was not.
 5 **Q. Next drawing your attention to what is -- Appellants have**
 6 **marked as Exhibit 8A(11). Can you identify that?**
 7 A. It's a document just basically saying my complaint is
 8 completed by Stephen Rudolph (inaudible).
 9 **Q. Okay. And do you see anywhere in this response that**
 10 **addressed the substance of your complaint?**
 11 A. No.
 12 **Q. Okay. There is a notation, "No required inspections for**
 13 **this record number." Do you have any understanding as to**
 14 **what that means?**
 15 A. I do not.
 16 MR. EUSTIS: All right. That would conclude the 11, I
 17 guess, 12 parts of Exhibit 8A, and I would move for their
 18 admission.
 19 HEARING EXAMINER: Okay. Any objection?
 20 MR. KISIELIUS: No objection.
 21 HEARING EXAMINER: Okay. We will admit that as Exhibit 29
 22 in the record.
 23 (Exhibit No. 29 marked and admitted into the record.)
 24 MR. EUSTIS: Okay. I'll get rid of those and we'll move
 25 on to Exhibit 8B.

1 **Q. Turning to the survey map itself, I believe it's the third**
 2 **page of this document, can you see what that survey shows?**
 3 A. It shows the survey of the block front, but it shows the
 4 subject property is 1235 NE 88th.
 5 **Q. Does it then identify the units of the condominium?**
 6 A. (Inaudible.)
 7 **Q. This is --**
 8 A. Here we go. This is actually page 4. Yes, it identified
 9 unit A, and it identified unit B.
 10 **Q. And would those two units then be carved out of the parent**
 11 **parcel, the main single-family parcel?**
 12 A. Yes. And I might note that unit A exceeds the allowable
 13 limit of the DADU which was 800 square feet, including the
 14 garage. And this exceeds it as a -- and it also includes
 15 the garage.
 16 **Q. All right. Next I'm drawing your attention to what**
 17 **appellants have marked as Exhibit 8B(5). Are you able to**
 18 **identify that?**
 19 A. This is a -- a listing for 1235. It doesn't say A or B, but
 20 I'm assuming that it's for the DADU. And it's listed on the
 21 Redfin website.
 22 **Q. And you see the listing price?**
 23 A. Listing price is 569,184.
 24 **Q. I'm showing you what is marked as Exhibit 8B(6). Are you**
 25 **able to identify that?**

1 A. Sure. It's a Redfin listing again for 1235 NE 88th Street.
 2 This time it identifies unit B, listing price \$994,571.
 3 **Q. And so going back one exhibit, the DADU is listed as 569?**
 4 A. Yes.
 5 **Q. So if you added the two figures, would you end up with**
 6 **roughly 1.5 million for the two units?**
 7 A. Yes.
 8 **Q. Showing you what is marked Exhibit 8B(7), are you able to**
 9 **identify that?**
 10 A. Sure. This is a statutory warranty deed memorializing the
 11 sale of one of the units.
 12 **Q. Would that be unit A?**
 13 A. Yes.
 14 **Q. Okay.**
 15 A. (Inaudible.)
 16 **Q. Are you able to identify what is marked as Appellant's**
 17 **Exhibit 8B(8)?**
 18 A. This is a similar statutory warranty deed memorializing the
 19 sale of unit B.
 20 **Q. Of the --**
 21 A. Of the 1235 NE 88th Street condominium.
 22 **Q. And who's the grantee?**
 23 A. The grantee --
 24 **Q. For the sale of unit B.**
 25 A. The grantee is (inaudible).

1 **logged in. Are you the complainant?**
 2 A. No, I'm not. I logged in because I, like any architect, has
 3 an account with the Seattle Service Portal, and so authority
 4 to access information on virtually any property in the city
 5 is through everyone's individual portals. So that's the
 6 only reason my name's at the top.
 7 **Q. Okay. I'm next drawing your attention to what is marked as**
 8 **Exhibit 8B(10). Can you identify that?**
 9 A. This was a response by the City of Seattle to the complaint.
 10 **Q. And what was the City's response?**
 11 A. The -- the response from the City, I quote, "The inspection
 12 was completed, and there's no violation. The two units are
 13 joined together, and the owner's re- -- the owner resides in
 14 one." That's what it says. I'm not exactly sure what that
 15 means, but --
 16 **Q. Okay. So based upon the statutory warranty deed, would you**
 17 **conclude that each unit is -- the title to each unit is held**
 18 **by a separate person?**
 19 A. Yes.
 20 **Q. Okay. And were you able to identify whether the issuer of**
 21 **the covenant was an occupant or the owner of either unit?**
 22 A. No. The signer of the covenant, Mr. Duffus, is not an
 23 occupant of the property.
 24 **Q. Okay. So I'm not asking for a legal question, a legal**
 25 **answer, but would it appear to you that the covenant has at**

1 **Q. Or (inaudible)? Okay. Going back. And the grantee for**
 2 **unit A is? Unit A?**
 3 A. Is Tyler Anderson.
 4 **Q. Okay. So these two units have been sold to separate people?**
 5 A. Yes.
 6 **Q. So there was a covenant signed by Mr. Duffus that he would**
 7 **reside on the property?**
 8 A. Yes.
 9 **Q. He's not either of the grantees, is he?**
 10 A. That's correct.
 11 **Q. Generally if you create a condominium, would there then be a**
 12 **ground itself that would be owned by a condominium**
 13 **association?**
 14 A. Yes, I believe so.
 15 **Q. Have you seen any indication Mr. Duffus would live on the**
 16 **ground itself?**
 17 A. No.
 18 **Q. Drawing your attention to what is marked as Exhibit 8B(9),**
 19 **can you identify that?**
 20 A. This is a -- a complaint that was initiated for the same
 21 reason as the last complaint. This complaint is on 1235 NE
 22 88th Street. This is a complaint from a citizen that
 23 suggests that this has been created -- this condominium has
 24 been illegally created.
 25 **Q. All right. I see that your name is listed as the one who**

1 **least been disregarded, if not violated?**
 2 A. Yes.
 3 **Q. Okay. So the prior witnesses, Mr. Reid and Mr. Tilghman,**
 4 **each address in their spheres of testimony, potential**
 5 **impacts created by the potential for accessory dwelling**
 6 **units to be sold off as individual condominium units. From**
 7 **the standpoint of your area of testimony aesthetics, the**
 8 **land use form, what impacts do you see through the**
 9 **potentiality of accessory dwelling units being sold off as**
 10 **individual condominium units?**
 11 A. Well, from the standpoint of aesthetics, you just see the
 12 last two exhibits, and these two projects divided into two
 13 homes: A DADU and an existing home. In theory, the
 14 existing home fit into the fabric, the land use form of the
 15 neighborhood. Under the preferred alternative where you
 16 could have three homes per property, and apparently be able
 17 to condominiumize these three homes, these two projects
 18 would have been developed as three homes, and most likely
 19 been developed or most certainly been developed within one
 20 building, which would completely change the land use form.
 21 **Q. Okay. Could you break that down? What would be the -- I'm**
 22 **asking you, from your standpoint as an architect principally**
 23 **of residential structures and a developer of residential**
 24 **structures, first of all, how the ability to condominiumize**
 25 **the principal and accessory dwelling units on a**

1 **single-family lot, how that changes the form of the**
2 **buildings that could be developed or would be developed?**

3 A. So going back to the existing code that allows a principal
4 structure and a backyard cottage or a detached mother-in-law
5 unit, that contemplated keeping your old house or a house
6 and then building a cottage in the back. So you --

7 **Q. So was that kind of the general concept of promoting this as**
8 **allowing the development of backyard cottages?**

9 A. Completely, yeah.

10 **Q. Okay.**

11 A. Yeah. So the cottage was going to be small. It would sit
12 in the backyard, offer an alternative to increasing density.
13 And scale-wise, it would fit into an existing single-family
14 neighborhood. That has been the principal of that
15 initiative code since I helped develop it in the year 2000.

16 So what this does is this -- the preferred alternative
17 outlined in the EIS absolutely erases that original concept
18 and now allows a number of changes.

19 Number one, the fact that you can build three units on
20 one property.

21 Two, apparently there's no issue with ownership and
22 condominium -- and creating three condominiums, three units
23 in one condominium site with individual ownership. That
24 completely changes the -- the way the -- the properties will
25 be developed.

1 **you're, you know, operating your own business and**
2 **redeveloping property. If the -- if the property can be**
3 **essentially sold off as three condominium units, how does**
4 **that change the aesthetics, the land use form, you know,**
5 **from the outset of the decision as to what to build?**

6 A. You build three units. You can build three flats. And you
7 would build those units in one building. Your economy scale
8 in that building would most likely represent a box that we
9 see being proliferated around the city today, because it's
10 the most efficient way to build to the height limit in order
11 to get three units as high as possible above grade. Minimum
12 setbacks, and most likely provide no parking on site.

13 **Q. Okay. Certainly they couldn't dispense with the parking for**
14 **the principal unit. That would have to be divided.**

15 A. I -- I think so. I didn't --

16 **Q. Okay. So earlier in your testimony this morning you address**
17 **how even the FAR of .5 would allow a structure of -- that**
18 **still respected the .5, but had units underneath of 1,000**
19 **square foot each.**

20 A. Yeah.

21 **Q. So under the ability to condominiumize these units, what**
22 **would be the propensity or the tendency to develop principal**
23 **units and ADUs along that model?**

24 A. I'm not quite sure of the question. I'm going to -- I'll
25 try to answer. The preferred alternative establishes a .5

1 **Q. Okay. So from your standpoint as an architect, either an**
2 **architect or a potential developer, redeveloper of**
3 **structures on single-family properties, how does that change**
4 **the approach that would be taken in the proposal to**
5 **redevelop?**

6 A. We could take both of these properties and talk to any
7 reasonable, experienced developer, and ask them if the code
8 was -- if the code allowed you to build three units on that
9 property and sell them individually as condominiums and not
10 rent -- not have to rent them, then those two properties
11 would've been scraped, and new buildings would've been built
12 to maximize the return on investment in those properties.
13 Both of those properties were purchased by developers to be
14 redeveloped.

15 This is not -- those two properties were not developed
16 by homeowners that said I want a cute backyard cottage.
17 They both were developed -- developed by developers.

18 Now, if they were given the opportunity to build three
19 units on that property, there is little chance -- there's
20 almost zero chance that they would've preserved the existing
21 home, and therefore, they would've erased any type of fabric
22 of continuity within that neighborhood or that street.

23 **Q. Okay. So I'm not asking you to kind of (inaudible) in the**
24 **mind of the developer. What I'm asking you is based upon**
25 **your substantial experience as an architect, 47 years,**

1 FAR.

2 **Q. Correct.**

3 A. However, when you build additional -- two additional units,
4 what you end up with on a 5,000 square foot property is a
5 FAR that is double that. So basically you're building a
6 structure that's double what would knowingly be allowed.

7 **Q. You testified to that. What I'm asking you is with the**
8 **ability to condominiumize these units, how does that end up**
9 **driving the land use form? How does it affect the land use**
10 **form? I'm asking it from your standpoint both as somebody**
11 **who's built houses and designed houses.**

12 **Does it produce architecturally an aesthetic that --**
13 **does it produce a different result than if used ADUs of --**
14 **simply marketed as rentals?**

15 A. There's different land use forms in relationship to building
16 two extra units that you can sell. And, like I said, it
17 would most likely occur, if not always occur within one big
18 building.

19 **Q. Okay. How does potential for the sale of the units as**
20 **condominiums produce a completely different land use form?**
21 **That's what I'm asking.**

22 A. Well, the for sale model is -- is absolutely different from
23 a rental model. And -- and I think there would be more --
24 more interest in -- in producing for sale condominium --
25 condominiums than producing rentals.

1 **Q. Would the character of the building, the resulting building,**
 2 **differ?**
 3 A. The character of the building would completely differ in
 4 that it would align directly with a multifamily building
 5 where you're trying to squeeze as much square feet as
 6 possible in a box that's defined by the building code.
 7 **Q. Okay. Would the potential for the sale of accessory**
 8 **dwelling units as condominium units, would that increase the**
 9 **incentive to making accessory dwelling units larger?**
 10 MR. KISIELIUS: I'm going to object. Grounds again. We
 11 had yesterday testimony from an economist that was talking
 12 about development incentives, and we're now talking outside
 13 of the context -- market economics incentive is what I
 14 understood that question to ask about.
 15 MR. EUSTIS: No. I'm asking his perspective as an
 16 architect who would design housing or build housing for
 17 market. His potential -- his perspective as an architect.
 18 MR. KISIELIUS: And I thought the question was different.
 19 I thought it was about economic incentives.
 20 HEARING EXAMINER: Yeah. The general problem I'm having,
 21 Mr. Eustis, is almost all your questions seem to be leading,
 22 so if you could have the witness testify to his knowledge
 23 rather than suggesting what the answer is going to be, I
 24 would appreciate that. Maybe you could restate the question
 25 again.

1 next project.
 2 **Q. Okay. That deals with perhaps the incentives of the owner.**
 3 **But from your standpoint as a designer, how does that affect**
 4 **the aesthetics or the land use form of the product that you**
 5 **would produce for each of those clients?**
 6 A. The product on the first scenario would be to preserve the
 7 home and -- and add an ADU in the home in a number of
 8 different ways and then look and make sure that the lot is
 9 big enough to -- to build a DADU in the backyard and try and
 10 design something that is consistent with the property, as
 11 well as the neighborhood. It would be basically completely
 12 based on preserving the character of the owner's property
 13 and enhancing it.
 14 In the second scenario, would it be asked by a
 15 developer, I would be designing a project where I would
 16 maximum the square footage in all of -- in each of the three
 17 units because square footage equates to dollars, and I would
 18 be -- so I would be looking at designing a building that
 19 would meet a pro forma rather than address any neighborhood
 20 concerns.
 21 **Q. Okay. As you recall, the examiner in the prior proceeding**
 22 **directed the City to prepare an analysis that could save the**
 23 **full build-out of all single-family lots on a given block**
 24 **with accessory dwelling units under the proposal.**
 25 A. All range of alternatives, yes.

1 MR. EUSTIS: Sure.
 2 **Q. (By Mr. Eustis) Okay. As an architect, you are approached**
 3 **by clients with requests to design structures, I take it?**
 4 A. Yes.
 5 **Q. It's been going on for 47 of your years. Okay. And in**
 6 **terms of what you would propose, would there be a difference**
 7 **between a client approaching you saying, okay, I have this**
 8 **single-family house, now I'd like to design into it an ADU**
 9 **and a DADU versus a client approaching you and saying, okay,**
 10 **I have this single-family property, I understand that the**
 11 **City is willing to allow me to condominiumize, now I want**
 12 **you to design for me a development that allows principal**
 13 **unit and two ADUs with an eye towards condominiums?**
 14 **Two scenarios. My question to you is, from the**
 15 **standpoint of aesthetics, land use form, would that produce**
 16 **different results?**
 17 A. In my opinion, it would produce two different results. In
 18 the first scenario, where a property owner wants to add one
 19 or two units for rental, that property owner has an interest
 20 in maintaining the value in his property. Most likely the
 21 character in his house.
 22 The second scenario where a developer is looking at
 23 return on investment has, you know, absolutely no incentive
 24 to keep the house, but has every incentive to build to the
 25 maximum envelope and sell three units and move on to the

1 **Q. Right. A full build-out on single family. Okay. If you**
 2 **take these two scenarios, this redesign for an owner, for**
 3 **rental, there's a tear down and development of a proposal**
 4 **for one who wanted to condominiumize the unit. If in those**
 5 **two scenarios pursued over -- on every lot in a block, a**
 6 **build-out, would there be a difference in the land use form?**
 7 **The block with the rental accessory dwelling units versus**
 8 **the block with the condominiumized accessory dwelling units?**
 9 A. They'd look completely different.
 10 **Q. And how so?**
 11 A. Well, in one example a full build-out of the owner-occupied
 12 home with an ADU and a DADU, you know, might look --
 13 depending on the property size and lot of other issues, it
 14 would most likely look residential. It would look --
 15 **Q. By residential, do you mean single family?**
 16 A. I was just going to say that, yeah. More like a
 17 single-family home and backyard cottage. And usually
 18 accessory dwelling units are built into the principal
 19 structure, so you would expect that that would predominantly
 20 be the land use form.
 21 On the other hand, the land use form would mirror most
 22 any multifamily neighborhood, zoned neighborhood in the City
 23 of Seattle. I mean, you could go to Ballard or other
 24 places, any urban center, and the urban village, and see
 25 basically boxes of apartment buildings, some looking better

1 than the others, but basically maxing out the developable
 2 square feet and all looking like multifamily buildings.
 3 **Q. Okay. So whether it's considered a full build-out scenario**
 4 **or in some other scenario, would the consideration of the**
 5 **condominiumizing of accessory dwelling units lead to a**
 6 **change in the land use form?**
 7 A. In my opinion it would lead to a complete change in land use
 8 form.
 9 **Q. And in your review of the EIS, would you see -- in terms of**
 10 **aesthetics, in terms of land use form, did you see any**
 11 **consideration given to the potential for condominiumizing**
 12 **accessory dwelling units?**
 13 A. There was no consideration whatsoever.
 14 MR. EUSTIS: I move the admission of the exhibits at
 15 Exhibit 8B.
 16 HEARING EXAMINER: Any objection?
 17 MR. KISIELIUS: No.
 18 HEARING EXAMINER: Okay. We will admit those as
 19 Exhibit 30.
 20 (Exhibit No. 30 marked and admitted into the record.)
 21 THE WITNESS: Excuse me, Madam Hearing Examiner?
 22 HEARING EXAMINER: Yes?
 23 THE WITNESS: Could I take a two-minute break?
 24 HEARING EXAMINER: Absolutely. We'll be off the record --
 25 MR. EUSTIS: Sorry.

1 **interests it seeks to advance through these appeals?**
 2 A. Well, in the first appeal, the proposed legislation simply
 3 advanced for that one environmental impact study. And we
 4 felt that it was incumbent upon the City in the largest
 5 rezone ever to perform the required environmental impact
 6 studies and (inaudible) to inform, you know, the City of
 7 Seattle and 350,000 citizens who live in single-family
 8 (inaudible).
 9 Once that was done and the EIS came out, me and thousands
 10 of others felt that it did not represent our neighborhood
 11 and it did not represent other neighborhoods in its
 12 depiction of a number of issues and did not cover or
 13 investigate any impacts, nor did it ask anybody for
 14 opinions. And so we felt that the EIS was deficient in
 15 addressing a (inaudible) neighborhood impacts for which the
 16 City never asked anybody or did any studies.
 17 And so, therefore, we appealed the adequacy of the EIS and
 18 to hopefully ask the City to come back and actually study
 19 neighborhoods and what the real impacts are. Because all
 20 our neighborhoods are really different and you can't just
 21 create one model and say that it's representative of where
 22 350,000 people live. It's just not -- it's just not
 23 Seattle.
 24 MR. EUSTIS: Okay. Very well. I have no further
 25 questions for Mr. Kaplan.

1 THE WITNESS: That's good. Thank you very much.
 2 HEARING EXAMINER: We'll come back at 3 o'clock.
 3 MR. EUSTIS: 3 o'clock? It's 2:25.
 4 HEARING EXAMINER: Oh, I'm sorry. I meant 2:30. I'm
 5 sorry.
 6 (Recess)
 7 HEARING EXAMINER: We'll be back on the record.
 8 Mr. Eustis --
 9 MR. EUSTIS: Yes.
 10 HEARING EXAMINER: -- do you have in any more questions?
 11 MR. EUSTIS: Mr. Kaplan, I believe that that wraps up my
 12 direct testimony for you.
 13
 14 DIRECT EXAMINATION (Resumed)
 15 BY MR. EUSTIS:
 16 **Q. And, let's -- before I wrap up, you identified two**
 17 **capacities in which you were testifying. Most of your**
 18 **testimony dealt with your expertise as a (inaudible),**
 19 **et cetera. Sir, you also represent the Queen Anne Community**
 20 **Council, too. The -- and the Queen Anne Community Council**
 21 **obviously viewed this as this has enough importance to it so**
 22 **it's taken the additional steps of both filing the appeal of**
 23 **the determination of nonsignificance in this appeal.**
 24 **So, you know, in brief, what has prompted the Queen Anne**
 25 **Community Council to take these actions? What are the**

1 HEARING EXAMINER: Okay. Mr. Ellison.
 2 MR. ELLISON: Thank you. I used my (inaudible).
 3 HEARING EXAMINER: Yes. Although, again, I think the
 4 smaller one --
 5 MR. ELLISON: I will -- I will --
 6 HEARING EXAMINER: -- behind your water bottle.
 7 MR. ELLISON: -- try to speak up so we can be heard -- I
 8 can be heard.
 9
 10 CROSS - EXAMINATION
 11 BY MR. ELLISON:
 12 **Q. Thank you, Mr. Kaplan, for coming today. I have a few**
 13 **questions for you. My name, by the way, is Richard Ellison.**
 14 **I am the vice president of TreePAC.**
 15 **Do you understand why TreePAC has moved to intervene in**
 16 **this appeal?**
 17 MR. KISIELIUS: Objection. Not -- he's asking the witness
 18 a question about his own organization.
 19 MR. ELLISON: I'm asking why, in -- why we have -- I could
 20 ask the same thing for you in the sense of just, you know,
 21 why is TreePAC -- why are we trying to intervene in this
 22 appeal? That was...
 23 MR. KISIELIUS: I withdraw the objection.
 24 HEARING EXAMINER: It's cross. Okay. Well, go ahead.
 25 **Q. (By Mr. Ellison) Are you aware of why TreePAC is trying to**

1 **appeal -- join the -- to intervene in this appeal?**
 2 A. I don't know directly because I've never talked to you about
 3 it, but I can assume. Because of your interest in trees.
 4 **Q. Do you feel that the -- I believe you testified to this**
 5 **earlier, but do you feel that the FEIS adequately represents**
 6 **the impacts to trees in the city of Seattle?**
 7 MR. KISIELIUS: I'm going to object and maybe try to get
 8 some -- early on and get the ground rules the same. I
 9 understand his testimony was -- Mr. Kaplan's testimony where
 10 we landed was narrower than the impacts of tree canopy
 11 holistically.
 12 HEARING EXAMINER: That's correct. So Mr. Kaplan can
 13 testify as to aesthetics and architectural use of trees on a
 14 lot.
 15 MR. ELLISON: Okay.
 16 HEARING EXAMINER: Not about impacts to trees or tree
 17 canopy throughout the city.
 18 MR. ELLISON: Okay. Thank you.
 19 **Q. (By Mr. Ellison) Do you feel that the appeal that you're**
 20 **representing with the Queen Anne Community Council**
 21 **represents just the Queen Anne community or does it**
 22 **represent more of the greater Seattle area and the city**
 23 **of -- within the city of Seattle?**
 24 A. No. You have the appeal that's on behalf of area,
 25 single-family neighbors in the city of Seattle.

1 MR. ELLISON: There we go.
 2 **Q. (By Mr. Ellison) Okay. So I believe you discussed some of**
 3 **this before, but in looking at this -- looking at the trees**
 4 **in the yard here -- and we're going to want to compare this**
 5 **to some of the other diagrams you present -- represented --**
 6 **presented today. But as -- in your stag point of view, do**
 7 **you feel that there is a certain amount of tree cover in**
 8 **this picture? And I'd like to compare it to the tree cover**
 9 **in some of the architectural drawings that have been**
 10 **presented that are part of your exhibit. So I just -- it's**
 11 **refreshing your memory here on the tree canopy as seen in**
 12 **green and how much coverage it has on a lot.**
 13 A. I'm sorry, but I'm not understanding. Can you repeat the
 14 question? I guess I'm not understanding.
 15 **Q. I'll ask you a different question.**
 16 A. Okay.
 17 **Q. Looking at this picture here, do you see that the majority**
 18 **of the trees in this picture are in the -- are on the**
 19 **property or are they street trees?**
 20 A. I think most of the trees that are seen on the exhibit are
 21 on individual properties.
 22 **Q. Thank you.**
 23 MR. ELLISON: The next page, please, Page 3 of this
 24 exhibit.
 25 **Q. (By Mr. Ellison) Looking at the top diagram, could you**

1 **Q. Does the Queen Anne appeal apply only to aesthetic impacts**
 2 **or does it also apply to environmental impacts?**
 3 A. Well, the appeal is to the entirety of the EIS, which
 4 includes environmental impacts.
 5 **Q. I would like to refer to some of the exhibits that have been**
 6 **presented today by Mr. Kaplan.**
 7 HEARING EXAMINER: If you'd use the hearing examiner
 8 numbers, that would be helpful.
 9 **Q. (By Mr. Ellison) In Exhibit, I believe, 28, which is the**
 10 **large document that has a variety of pages -- on Page 2 --**
 11 MR. ELLISON: Could that be pulled up on the screen?
 12 MR. EUSTIS: Just a second. I'm sorry. It could be. I
 13 have to connect my computer to the -- to the screen and --
 14 MR. KISIELIUS: Exhibit 28 to your Exhibit 20.
 15 MR. ELLISON: Exhibit 28, Page 2.
 16 MR. KISIELIUS: It's the -- it's the long document, the
 17 37-page document.
 18 MR. EUSTIS: Gosh. You get to see my entire document
 19 tree. Isn't this interesting.
 20 MR. ELLISON: So Exhibit 28 --
 21 MR. EUSTIS: It's the Robert Mueller report. Okay. What
 22 page? I'm sorry.
 23 MR. ELLISON: So Page 2, please.
 24 MR. EUSTIS: I was never asked to be an AV specialist in
 25 school. Two.

1 **describe what the red circle represents and why -- how that**
 2 **is different from the other parcels on that -- of those**
 3 **three lots?**
 4 A. This drawing was an exhibit addressing lot coverage. And
 5 the difference between the three is the top drawing is a lot
 6 coverage of 25 percent, and the bottom one is 30 percent,
 7 and the one that's circled is 35 percent, which is a maximum
 8 lot of coverage.
 9 **Q. Is there a -- I was just wondering as to why you didn't have**
 10 **a tree represented in the backyard of the lot that is**
 11 **circled.**
 12 A. Perhaps -- I can't say 100 percent, but, perhaps, because
 13 there wasn't room for a tree.
 14 **Q. Are you familiar with the aspects of constructional design**
 15 **that impact the spacing that's available to put a tree in?**
 16 A. Sure.
 17 **Q. Could you describe some of what the -- how you determine how**
 18 **much space is available?**
 19 A. Well, as a rule of thumb -- and, again, I'm not an arborist,
 20 but we often employ arborists. But, as a rule of thumb, we
 21 take the diameter of a tree. We look at the drip line and
 22 try and make sure that that drip line is not interfered by
 23 any structure.
 24 **Q. Are you familiar with construction aspects such as the**
 25 **trenching of soils around foundations for building other**

1 structures like garages or shops or other aspects that might
 2 not be shown on this diagram?
 3 A. Am I familiar with construction methodology?
 4 **Q. In the sense of how much the soil may be disturbed as part**
 5 **of a construction process.**
 6 A. Sure. Yes.
 7 **Q. In this hypothetical lot, what other structures might you**
 8 **expect to be put on that lot that are not shown in this**
 9 **diagram?**
 10 A. The one that's circled in red?
 11 **Q. Yes, sir.**
 12 A. So in that particular drawing, there would not be any more
 13 allowable structures due to lot coverage. It's maxed out
 14 right now.
 15 **Q. So it is no -- you could not put a garage there or a -- or a**
 16 **shed of any kind?**
 17 A. No.
 18 MR. ELLISON: Now, if I may request Page 9, please, of the
 19 same document.
 20 MR. EUSTIS: Is that the page you had in mind?
 21 MR. ELLISON: Yes, thank you.
 22 MR. EUSTIS: Okay.
 23 **Q. (By Mr. Ellison) Earlier today you represented that this**
 24 **was -- you presented as a prototypical neighborhood diagram**
 25 **that you felt was inappropriate as far as comparing it to**

1 presented earlier by more than one witness that part of the
 2 failings of this FEIS is that it does not give any
 3 variabilities as to how different neighborhoods may differ.
 4 So you may have some neighborhoods that have only small lots
 5 and neighborhoods that have very large lots, some are very
 6 mixed.
 7 HEARING EXAMINER: Right.
 8 MR. ELLISON: And then you have some neighborhoods with a
 9 large canopy cover, and you have some neighborhoods with a
 10 very low canopy cover. And so I'm asking him (inaudible) if
 11 he has seen any diagrams but that's in the city here, in
 12 this FEIS, that talk about this variability in lot size by
 13 neighborhood height or in -- by canopy cover by neighborhood
 14 type.
 15 HEARING EXAMINER: Okay. I think we've covered lot size
 16 already. I don't think we've covered canopy cover, per se.
 17 But, remember, he's not a tree expert, so --
 18 MR. ELLISON: Correct.
 19 HEARING EXAMINER: -- he wouldn't be able to testify to
 20 canopy cover.
 21 MR. ELLISON: My --
 22 HEARING EXAMINER: I'd just ask you to be cognizant of all
 23 of the testimony that we've already heard today and try not
 24 to duplicate what has already been elicited from this
 25 witness.

1 the city of Seattle. Could you express that -- why is that?
 2 A. These two drawings represent examples of the City's
 3 hypothetical model that they purport to represent a typical
 4 Seattle neighborhood graphically.
 5 **Q. Do you feel that this diagram -- this prototype diagram**
 6 **shows a similar coverage of vegetation as would you see in**
 7 **the earlier photo that you saw of the City neighborhood?**
 8 A. No, I don't.
 9 **Q. Would you say that that is potentially a significant**
 10 **difference?**
 11 A. Depending on the neighborhood, but I think on the average it
 12 could be a significant difference in what a typical Seattle
 13 neighborhood actually looks like.
 14 **Q. So are you familiar with seeing any diagrams in the FEIS**
 15 **that shows how the different neighborhoods might differ in**
 16 **both presentation of different lot sizes or different canopy**
 17 **covers that might -- may have to deal with as an architect**
 18 **and, say, redesign for additional (inaudible) use?**
 19 MR. KISIELIUS: Examiner, I'm going to object that --
 20 mostly out of interest of time this is duplicative
 21 testimony. He seems to be treading the same ground that
 22 Mr. Eustis already went through with the same witness.
 23 HEARING EXAMINER: Sorry. Could you repeat that question?
 24 I didn't quite catch it all.
 25 MR. ELLISON: I'm referring to the idea that may have been

1 MR. ELLISON: Thank you. Okay. I will -- I will -- I
 2 will try.
 3 **Q. (By Mr. Ellison) In looking at this prototypical --**
 4 MR. EUSTIS: Sorry. I moved on. You'll have to -- an
 5 active AV amateur here.
 6 MR. ELLISON: You're fired.
 7 MR. EUSTIS: It's unbridled -- it was unbridled curiosity.
 8 Sorry.
 9 **Q. (By Mr. Ellison) Just in comparing this prototypical**
 10 **neighborhood design that shows also a lot of trees that's**
 11 **surrounding on the street trees, does this represent the**
 12 **picture that we saw earlier that showed a street that**
 13 **didn't -- did that -- that you had testified that said you**
 14 **didn't see very many street trees?**
 15 A. Yeah. I didn't think there were any street trees there
 16 earlier in the (inaudible).
 17 **Q. Thank you.**
 18 MR. ELLISON: Number -- I believe it's Page 13 of that
 19 same document. No. I'm right there. Yes. Is that 13?
 20 MR. EUSTIS: No.
 21 HEARING EXAMINER: Yes, it is.
 22 MR. EUSTIS: Yeah. It has 13 at the -- between some trees
 23 at the bottom.
 24 **Q. (By Mr. Ellison) So looking at this diagram right here,**
 25 **which you say came from a city GIS website -- so what are**

1 **those green splotches represent?**
 2 A. Those are -- those are existing trees that the City has
 3 registered as -- I hate to say it -- canopy cover.
 4 **Q. Well, they'd be very strangely shaped trees if they were**
 5 **trees, based upon their shape, but by canopy, that might**
 6 **work.**
 7 MR. ELLISON: If we could go back one slide, please. It's
 8 two pages, but one slide. One more.
 9 **Q. (By Mr. Ellison) Okay. Looking at -- that would be Page**
 10 **11. You're singling out, in looking at some particular**
 11 **sized lots, but one of the things I wanted to note was what**
 12 **tree protections are you familiar with that are available**
 13 **for lots that are under 5,000 square feet?**
 14 A. I'm not aware of any tree protections.
 15 **Q. So, then, that would show a certain proportion of the lots**
 16 **that are not having any tree protection in redevelopment?**
 17 A. Yeah. Now, with that -- with that said, I'm not 100 percent
 18 positive if it's a remarkable specimen tree. There may be,
 19 but I'm not certain. But, in general, there's no -- I'm not
 20 aware of any tree protection.
 21 **Q. As an architect, you are familiar with having to deal with**
 22 **trees on properties in redevelopment?**
 23 A. Sure.
 24 **Q. So are you familiar with Chapter 25.11, Tree Protection?**
 25 A. I will be.

1 get -- to establish relevance but he appears to be exploring
 2 the existing code with a person who is not an expert in tree
 3 canopy about existing code on tree retention. And this is
 4 about the adequacy of the EIS in the proposal, not the
 5 existing regulations regarding tree protection.
 6 HEARING EXAMINER: Agreed.
 7 It's not relevant, so you need to move on, Mr. Ellison.
 8 MR. ELLISON: Well, what I'd like to -- if -- I might beg
 9 the Court to go back to Page 3 of the same document.
 10 **Q. (By Mr. Ellison) Looking at the -- any of the three parcels**
 11 **that are -- any of the parts that are presented there, if**
 12 **you were trying to have to revegetate with trees that could**
 13 **achieve the same canopy cover as a large tree that was**
 14 **removed before, is that possible on any of those lots?**
 15 MR. KISIELIUS: Objection. Goes to his credentials to
 16 answer the question. You're talking about the ability to
 17 revegetate -- or revegetation plan and whether that's
 18 possible. Again, he's not a tree expert.
 19 HEARING EXAMINER: I'm going to overrule because, as an
 20 architect and a designer of lots, you have a general idea of
 21 where trees can fit and where they can't, I assume. At
 22 least in other projects, that seems to be the case for
 23 architects, so...
 24 A. Can you repeat the question?
 25 **Q. (By Mr. Ellison) Well, what I'm asking is the law specifies**

1 **Q. But as an architectural planner, I meant, you may have to --**
 2 **do you have to sort of note the location of exceptional**
 3 **trees, or what kind of trees to do you have to note on a**
 4 **property of redevelopment?**
 5 A. Sure. We note, basically, on projects that I work on, you
 6 know, the location of all trees with a survey, exceptional
 7 or not.
 8 **Q. And are you familiar with any options to modify proposals in**
 9 **order to try to save an exceptional tree on a parcel?**
 10 A. I have not personally dealt with that.
 11 **Q. So you've had no experience with somebody making a request**
 12 **to you that they wanted to save an exceptional tree as part**
 13 **of a -- a part of a project?**
 14 A. We have noted to save trees, but I haven't -- I haven't been
 15 subject to any particular requirement.
 16 **Q. Are you familiar with the replacement requirements as part**
 17 **of the Chapter 25.11, tree protection?**
 18 A. Well, from a high level I know about replacing trees with
 19 similar caliber and you try and do a (inaudible)
 20 replacement.
 21 **Q. Well, are you familiar with the -- the law says that the**
 22 **canopy cover or maturity should be equivalent to what was**
 23 **prior to removal -- tree removal?**
 24 MR. KISIELIUS: At this point I'm going to object. I've
 25 been trying to be patient and give Mr. Ellison a chance to

1 **that you replace -- that if you remove an exceptional tree,**
 2 **that you replace -- that any replacement trees could grow to**
 3 **the same canopy size as was removed. And so whereupon can**
 4 **you see in any of these lots that you're showing -- you show**
 5 **three different sized lots. Could you replace a large**
 6 **exceptional tree or moderate exceptional tree or only small**
 7 **trees on those lots?**
 8 A. I'd like to answer the question, but I need to -- I need to
 9 understand it more. Are you talking about removing the
 10 trees that are shown on there and replacing one with a
 11 building or -- I'm not sure.
 12 **Q. I guess I'm asking two questions. One question would be**
 13 **is: If you're working with those lots there and you were**
 14 **trying to put in any additional ADUs, would there be any**
 15 **room for a large or medium or small tree, depending upon**
 16 **what was being -- needed to be replaced? So if there was a**
 17 **large tree being removed, then you theoretically have to**
 18 **replace it with a large canopy tree that can grow to**
 19 **maturity. Is there space for that and, if so, which lots**
 20 **would allow that or where are your limitations with that?**
 21 A. Well, if you take the top lot and replace that tree with a
 22 DADU, let's say, of limited size, since the lot coverage is
 23 25 percent, you could put in a DADU, perhaps even the size
 24 of the one down below it. So your question is then where
 25 would you replace that. I think the answer would be is

1 you'd have to replace it with a number of other trees, not
2 maybe one particular tree. Because you would not have the
3 separation between buildings in order to replace it with a
4 similar single tree.

5 **Q. So you'd have to put multiple trees in there in order to
6 achieve the same canopy size?**

7 A. I think so.

8 **Q. Do you know of anything -- any discussion in the FEIS that
9 discusses whether a replacement canopy is possible? Whether
10 it's possible to achieve a placement canopy for the large --
11 for trees that would be removed?**

12 A. I don't recall. I don't recall reading that in the FEIS.

13 MR. ELLISON: Go to Figure 33, please.

14 MR. EUSTIS: Page 33?

15 MR. ELLISON: Page 33 -- I'm sorry -- of the same
16 document.

17 MR. EUSTIS: This page?

18 MR. ELLISON: Yes, thank you.

19 **Q. (By Mr. Ellison) Looking first at the aerial photo above,
20 would you say that the tree canopy represented there
21 represents anything like the diagrams that were presented
22 earlier showing hypothetical streets of Seattle in their
23 current condition?**

24 A. No.

25 **Q. If you were to try to construct two ADUs on some of these**

1 **Q. In it, it is described that there are many -- that trees
2 provide many social and provide (inaudible) --**

3 MR. KISIELIUS: I'm going to object. I'd normally wait
4 for him to finish asking the question, but he seems to be
5 reciting what's in a document that the witness has just
6 testified he doesn't -- he's not familiar with.

7 HEARING EXAMINER: Be sustained. You can't -- I mean, you
8 can't read it to him and then ask him to react to it. He
9 doesn't -- he already stated that he's not familiar with it.

10 MR. ELLISON: I guess I was trying to say that there was a
11 supporting document that expressed what he had said, so it
12 wasn't merely just an expression of his own.

13 HEARING EXAMINER: Okay. Now you're testifying, so you
14 need to --

15 MR. ELLISON: I can't do that. Okay.

16 HEARING EXAMINER: -- move on.

17 MR. ELLISON: I need to --

18 **Q. (By Mr. Ellison) So you're not familiar with that document.
19 Are there other aspects of testimony that -- regarding the
20 aesthetics of trees on properties that you'd like to express
21 in regards to the FEIS that's now being discussed?**

22 A. I think I testified to everything concerning the trees and
23 the preservation of trees and the way that they affect the
24 aesthetics.

25 **Q. There is one aspect that maybe you haven't touched upon**

1 **properties, do you expect that there might be significant
2 impact to the canopy that is currently there?**

3 MR. KISIELIUS: Objection. Asked and --

4 HEARING EXAMINER: Sustained.

5 **Q. (By Mr. Ellison) As someone who is designing houses for
6 people to occupy, what has been your experience as far as
7 the aesthetic nature is concerned with people finding a
8 house that has a large canopy tree or a grow of trees
9 associated with it versus not being present? From an
10 aesthetic point of view.**

11 A. As far as whether they like it or not or...

12 **Q. Well, it is -- is it something that's easier to market
13 itself to people or people -- if there's a -- have you had
14 any experience in representing homes and you might say,
15 Well, this property here has these kinds of trees or has no
16 trees versus this property. Have you had any experience
17 with that?**

18 A. Yes.

19 **Q. And what was -- what did the -- what is the result of that
20 experience?**

21 A. Oh, I think without exception, you know, people want trees
22 on their property.

23 **Q. Are you familiar at all with the mayor's director --
24 executive order of 2017-11 on tree protection?**

25 A. I'm not.

1 **and -- which isn't actually esthetics. It goes more to your
2 design background, and that is in the calculation of the
3 footprint for impacts to the tree canopy. They discuss that
4 an ADU would have a footprint of a maximum of 1,000 square
5 feet. However, you have mentioned that things like
6 trenching and other things associated with construction may
7 actually make that footprint bigger. So would you say, as
8 an architect, that limiting the impact size of only a
9 thousand square feet per ADU would be an incorrect number
10 and would be significantly lower than the footprint that an
11 ADU would actually create on a property?**

12 MR. KISIELIUS: Objection on several grounds. One, he
13 mischaracterized Mr. Kaplan's testimony, but more
14 fundamentally, we're now asking about tree canopy, again,
15 and technical issues about what happens to trees from a
16 scientific standpoint.

17 THE COURT: The question I heard was whether --
18 essentially whether the square footage of a particular
19 structure includes all of the pertinent grading or whatever
20 other support you need to provide as a part of the building
21 process. And I think that question is acceptable. I didn't
22 hear anything as to the tree canopy itself.

23 MR. KISIELIUS: I believe the follow-up and the final
24 question was whether or not that was -- what the impacts
25 would be to the tree canopy. And there was an addition,

1 again, I think, mischaracterizing Mr. Kaplan's testimony. I
 2 believe the question that Mr. Kaplan answered previously is
 3 whether he was familiar with trenching. I don't know that
 4 he ever quantified it, and now we're talking about the
 5 significance of that and significance to the extent of trees
 6 and their impact on trees.
 7 HEARING EXAMINER: Okay. Yeah.
 8 MR. ELLISON: Should I -- should I -- can I -- can I tree
 9 explain --
 10 HEARING EXAMINER: You need to lay the groundwork here.
 11 MR. ELLISON: The groundwork would be is that there was no
 12 actual measurement of impact to the tree canopy. What was
 13 done was --
 14 HEARING EXAMINER: Now you're testifying now.
 15 MR. ELLISON: Okay.
 16 HEARING EXAMINER: You can't -- you could ask the witness
 17 about whether --
 18 **Q. (By Mr. Ellison) The impact to the ground soil space to**
 19 **build a 1,000-square-foot ADU is significantly larger than**
 20 **the 1,000-square-foot final product.**
 21 HEARING EXAMINER: Mr. Ellison, you can't -- you are
 22 leading him. So you need to ask him a question that doesn't
 23 suggest the answer. You are saying it's significantly
 24 larger, but he didn't say that. You're asking him to say
 25 yes or no to that and that's leading.

1 **Q. (By Mr. Ellison) This is above ground or below ground?**
 2 A. It can be at grade, but it's all -- it's an underground
 3 system of retention. It's a pretty serious requirement that
 4 is not contemplated in the EIS.
 5 **Q. What about anything along the lines of utility trenches or**
 6 **sidewalks or any other structures you might -- anything --**
 7 **what else might you be familiar with that we can (inaudible)**
 8 **construction costs (inaudible)?**
 9 A. Well, I think you mentioned it. I think the utility
 10 trenching, other hardscape improvements, sidewalks. I think
 11 those are the -- those are the biggest ones.
 12 **Q. Okay. And how large -- how much space does that take?**
 13 A. It does not take up a lot.
 14 **Q. A hundred square feet?**
 15 A. Well, no. The trenching would be, you know, six -- it could
 16 be six, eight inches wide. So, I mean, you could go around
 17 trees, I imagine. It depends on how you design your
 18 landscaping and where paving is going to go. And based on
 19 the new stormwater code, that pavement may have to be
 20 permeable. But it's still potentially in your landscaping
 21 of trees.
 22 **Q. And so if you had two ADUs then this would obviously double**
 23 **the impact of that?**
 24 A. Yes. But that's a qualified yes because one -- presumably
 25 one of the ADUs might be built inside the house. It may not

1 **Q. (By Mr. Ellison) If you're constructing a 1,000-square-foot**
 2 **ADU, how large an area might be disturbed in order to build**
 3 **that 1,000-square-foot ADU?**
 4 A. Okay.
 5 HEARING EXAMINER: I think that's a workable question.
 6 THE WITNESS: That definitely works for me.
 7 A. It's -- there's a number of answers to that and it's
 8 cumulative. Number one, it's common when you're building a
 9 new structure. You're laying a foundation. You're building
 10 a new structure. You need to excavate at least three feet
 11 wider on every side in order to put in drainage and pour a
 12 foundation. So if a structure is, you know, 50-by-20, has a
 13 thousand square feet, you'd be looking at a structure -- an
 14 excavation that might be 56-by-26-feet wide. So you're
 15 disturbing a lot more -- a lot more yard.
 16 In addition to that, there is -- there are regulations --
 17 new regulations since 2016 that require on-site stormwater
 18 retention where you need to have a retention vault built
 19 into the site, which, for a 1,000-square-foot new building
 20 is substantial and that may take up an additional area
 21 on-site -- and this is required -- a bioretention system.
 22 And that system itself might take up 200 square feet. It
 23 might take up 300 square feet. It's a pretty onerous
 24 requirement of any new construction on every single family
 25 piece of property. So --

1 trigger some of these other things, although, it may trigger
 2 a much larger bioretention system in the backyard.
 3 MR. ELLISON: Okay. Thank you.
 4 At this time I have no further questions for Mr. Kaplan.
 5 HEARING EXAMINER: Thank you.
 6 Cross-examination.
 7
 8 C R O S S - E X A M I N A T I O N
 9 BY MR. KISIELIUS:
 10 **Q. Good afternoon, Mr. Kaplan. Tadas Kisielius. I'm here on**
 11 **behalf of the City, and I have a couple questions for you.**
 12 **Start with -- going -- it seems like a long time ago this**
 13 **morning when you started. You were testifying to your**
 14 **experiences on EISes, and I just wanted to explore that a**
 15 **little bit. I heard you say -- use phrases -- the ones I**
 16 **wrote down were, "we developed," "we contributed." And here**
 17 **you're referring to either your work on a stakeholder**
 18 **committee or the work on the planning commission. In either**
 19 **of those capacities, did you ever write any aspect of an**
 20 **EIS?**
 21 A. No. I was never a consultant. I think I had mentioned
 22 that.
 23 **Q. Okay. Well, I just -- I wasn't clear. Because when you use**
 24 **words like "we developed" and "we contributed," or that you**
 25 **were intimately familiar with and connected to, you weren't**

1 **suggesting that you had written anything for an EIS?**
 2 A. No. You know, usually committees are a few people, you
 3 know.
 4 **Q. Okay.**
 5 A. Yeah.
 6 **Q. Okay. And so in your capacity with stakeholders or planning**
 7 **commission, when you -- I'm just trying to understand what**
 8 **that means, intimately familiar with and connected to. Does**
 9 **that mean you read them? Does that -- what does that mean?**
 10 A. I'm not understanding.
 11 **Q. Well, I'm not understanding what you said. I just -- I**
 12 **understand -- you were trying to explain all of your**
 13 **background and expertise with respect to EISes.**
 14 A. Okay.
 15 **Q. And I heard you say you were intimately family with and**
 16 **connected to the EIS process for a couple specific projects.**
 17 **I'm just wondering what did that actually mean.**
 18 A. Okay. Do you want me to drill down on each one --
 19 **Q. Just --**
 20 A. -- individually?
 21 **Q. Let's pick, like, the Denny, Broad, Aurora triangle, the**
 22 **South Lake Union -- I mean, again, you didn't write those.**
 23 **Did you read them in their entirety? Did you comment on**
 24 **them? Did you --**
 25 A. I helped develop them.

1 uptown neighborhood because it's ripe for development and we
 2 ought to make sure that it gets developed right and
 3 establish a public process for property owners, businesses,
 4 residents, and others in a full-throated urban design
 5 framework study. And then after that was done, a DEIS and
 6 EIS. And I was involved in that process.
 7 **Q. That's where I want to pause. I appreciate the lengthy**
 8 **explanation of that. I'm cognizant of the amount of time**
 9 **you've been on the stand, and I've got a lot to cover with**
 10 **you, so I want to really focus here.**
 11 A. You said two questions.
 12 **Q. I certainly hope I didn't say that because I have a lot more**
 13 **than that.**
 14 HEARING EXAMINER: You said a few questions.
 15 **Q. (By Mr. Kisielius) The EIS, that's the part. You didn't**
 16 **write it, but you developed it, and I'm trying to understand**
 17 **what that means. You didn't write it but you developed it.**
 18 **So just all the other planning context is helpful, but what**
 19 **does that mean to you?**
 20 A. Well, I didn't develop it. I think I used the words "we"
 21 or "a group of us" worked on committees that helped develop
 22 it. Right? We work with a plan.
 23 So in this particular -- in this particular case, it was
 24 Jim Holmes, Seattle city planner, and Lyle Bicknell, Seattle
 25 city planner. And those two planners were given to us, our

1 **Q. Okay. What does that mean if you didn't write them?**
 2 A. Well, there was a -- initially there were four of us that
 3 worked to get to the support of the Seattle Planning
 4 Department. It was called DPD at the time. And we engaged
 5 them there. We engaged the director of planning to allow us
 6 to advance a planning process to be able to bring that
 7 triangle into our planning area; Step 1.
 8 You're looking like you don't understand what I mean.
 9 **Q. No. I'm...**
 10 A. Okay. So, I mean, that was a long process. It involved
 11 (inaudible). It involved public outreach. It involved
 12 people in that neighborhood. It was a very serious process.
 13 It probably took two years. And based on the results of
 14 that, the support of the community, and the support of the
 15 City, we then actually morphed that study into a commitment
 16 to study the entire uptown urban center. Okay?
 17 **Q. I'm following. Keep -- don't be -- don't be distracted by**
 18 **me.**
 19 A. No. I'm just reacting to your expression, so I'm trying --
 20 **Q. I'm trying to -- I'm trying to not have one.**
 21 A. Don't look at me during examination. No. So -- because the
 22 uptown urban center had just existed and since the three of
 23 us or four of us had just -- had just experienced going
 24 through the South Lake Union rezone from the first day to
 25 the final day, then we said, We should do this for the

1 committee, and started out as a stakeholder committee and
 2 then it then morphed into a city planning process that first
 3 started with an urban design framework study.
 4 And when I say "we," I mean that our original group
 5 morphed into about 15 people. And we -- and were tasked to
 6 conduct public outreach and come up with documentation that
 7 formed the basis of the environmental reviews.
 8 **Q. Okay. That's -- I'm -- I don't want to dwell too much on**
 9 **this, but I'm just not understanding. So you didn't -- you**
 10 **did not write that EIS. You didn't prepare the study that**
 11 **was included in the EIS. You were part of the process that**
 12 **eventually completed an EIS, but you didn't actually --**
 13 A. Yes.
 14 **Q. -- write it? Okay.**
 15 A. Yeah.
 16 **Q. Thank you. I'd like to ask you some questions -- well,**
 17 **first, before we get there, let's turn to your draft EIS**
 18 **comment letter -- I believe is Examiner's Exhibit 25.**
 19 MR. KISIELIUS: Mr. Eustis, that's your Exhibit 1A, I
 20 think.
 21 MR. EUSTIS: Are you asking for this to be on the screen?
 22 MR. KISIELIUS: I don't -- I don't necessarily need to. I
 23 did not provide your exhibits for your witnesses. So if he
 24 needs it to be up on the screen, I'd ask you to put it up.
 25 MR. EUSTIS: Okay.

1 THE WITNESS: I can look at it here.
 2 MR. KISIELIUS: That would be fine, too.
 3 THE WITNESS: It's clear.
 4 MR. EUSTIS: If you can look at it there, that's...
 5 THE WITNESS: Yeah. I'm going to get -- I need some
 6 power. Excuse me.
 7 HEARING EXAMINER: On the side of the table there is
 8 outlets.
 9 THE WITNESS: Yeah. I don't think it's long enough. We
 10 could try. I see -- oh, I think we're going to be cutting
 11 it close. Perfect. Thank you.
 12 MR. EUSTIS: I'm sorry. What exhibit number was it?
 13 MR. KISIELIUS: It's your exhibit. You have two exhibits
 14 1. I think one is 1A and one is 1B. The 1 is the letter
 15 that you wrote and 1B is the City's response.
 16 MR. EUSTIS: Oh, yeah.
 17 THE WITNESS: I'm good.
 18 **Q. (By Mr. Kisielius) Okay. So do you remember your testimony**
 19 **about the -- on Page 3 of your letter, The form -- you have**
 20 **a block quote there in red -- The form of existing**
 21 **development varies widely across single-family zoned**
 22 **Seattle; therefore, a comprehensive summary is not possible.**
 23 **And that's a quote you lifted from the draft EIS. Do you**
 24 **remember your testimony about -- I know it was earlier this**
 25 **morning, but...**

1 **contextually -- or if it answers the comment about the**
 2 **representativeness of the neighborhood?**
 3 MR. EUSTIS: Tadas, for clarification, you're referring to
 4 Response No. 6 or Response No. 4? Because No. 4 refers to
 5 Page 4-86.
 6 MR. KISIELIUS: No. 6, which appears --
 7 **Q. (By Mr. Kisielius) Was your comment letter written about**
 8 **the draft or final EIS?**
 9 A. The draft.
 10 **Q. Okay. And so when it says, Appears on 4-86 of the final,**
 11 **we're talking about the City's response related to the**
 12 **representativeness of the study areas that were used. I**
 13 **guess what I'm trying to get at is do you believe it was**
 14 **nonresponsive or you just didn't like the response that you**
 15 **got?**
 16 A. Well, I'm going to say both. I found that most of the
 17 answers that the City gave me were nonresponsive, and, at
 18 the same time, answers that I disagreed with.
 19 **Q. How can you have both, first of all, from purely, I mean --**
 20 A. It's pretty -- well, to me -- and it's easy to understand.
 21 First of all, the answer was nonresponsive. And then what
 22 was written, I disagreed with.
 23 **Q. Okay. I guess maybe we have a different -- I understand the**
 24 **meaning of the words "nonresponsive" differently than you do**
 25 **because I believe a response you disagree with is still a**

1 A. No. I've remembered that for many months.
 2 **Q. Okay. And then I think you characterized the City's**
 3 **response as -- "nonresponsive" was the word you used.**
 4 A. I think that's fair.
 5 **Q. Okay. Can you turn now to the other -- I guess it's**
 6 **Exhibit -- Examiner's Exhibit 26, which is your 1B --**
 7 A. Got it.
 8 **Q. -- which also -- I'm going to ask you to turn -- the**
 9 **pagination on that is actually lifted from the EIS. So the**
 10 **page I want you to look at is Page 5-62.**
 11 A. Okay.
 12 **Q. And do you see how there's numbers in the margin to the**
 13 **left?**
 14 A. Four, five, six?
 15 **Q. Yes. Did you understand No. 6 to be the City's response to**
 16 **that particular comment that you made associated with that**
 17 **quote?**
 18 A. Actually, I thought -- my recollection was, was the numbers
 19 were closely related to the numbers on my document. So I'm
 20 not sure. I haven't highlighted No. 6, I'm sorry, but I was
 21 dealing with -- since my question -- my comment was, I
 22 think, numbered No. 2. I went back up and I looked at the
 23 answer to No. 2 and No. 3, and so I'm not looking at No. 6
 24 right now. But now I am.
 25 **Q. So could you take a look at that and see if it**

1 **response. It is not a nonresponse. But you hold a**
 2 **different view.**
 3 A. Oh. Oh. Well, no. I mean, these were all responses. I
 4 totally agree with you.
 5 **Q. Okay. Let's turn to the main exhibit, which was your**
 6 **Exhibit 20, Examiner Exhibit 28. And do you need that up on**
 7 **your screen or do you --**
 8 A. Oh, I got it.
 9 **Q. Okay.**
 10 A. Actually, I've got the (inaudible).
 11 **Q. Let me know -- or do you have it up?**
 12 A. It's this one, right?
 13 **Q. Yes. Yes.**
 14 A. Yeah, I've got it.
 15 **Q. Thank you. Sorry.**
 16 **Can you turn to Page 4? This is the one with -- the top**
 17 **of it says, Impacts of ADU, FEIS proposed height, bulk, and**
 18 **scale. And did you -- you're there?**
 19 A. Yeah. Yeah.
 20 **Q. Okay. Great.**
 21 A. I'm sorry.
 22 **Q. Did you -- I just want to make sure I understand your**
 23 **testimony. You said this is from Portland?**
 24 A. It's my understanding that it's from Portland.
 25 **Q. Okay. And did I hear you say that floor area ratio -- let**

1 me flex back. The top -- do you recall your testimony about
 2 the top image and discussion about floor area ratio and the
 3 depictions of floor area ratio?
 4 A. Yes.
 5 **Q. And you were testifying about sort of the representativeness**
 6 **of this in relation to the preferred alternative, that this**
 7 **could be a proxy for what you might find under the preferred**
 8 **alternative? Do you recall that testimony?**
 9 A. I'm not sure I said specifically. I said that this was
 10 representation from Portland --
 11 **Q. Okay.**
 12 A. -- right? It had nothing to do with a preferred
 13 alternative. But it showed graphically the difference in
 14 sizes of buildings referencing floor area ratio.
 15 **Q. So you don't know whether this depicts what you could**
 16 **actually build under either existing Seattle city code or**
 17 **even the proposed changes that we're talking about here?**
 18 A. Could you repeat that again? I (inaudible) --
 19 **Q. Sure.**
 20 A. -- understand that.
 21 **Q. Do you think that this image depicts what could be built**
 22 **under existing city code? Start with that.**
 23 A. I have an opinion on that. And it would be that some of
 24 these could be built and some might not be able to be built.
 25 **Q. I want to unpack that in a second. But do you believe that**

1 **You're guessing based on that?**
 2 A. Yeah. I mean, it's not a guess. It wasn't meant as a
 3 dimensioned drawing. It's meant as a comparison between,
 4 you know, four different outcomes of a form-based code based
 5 on FAR.
 6 **Q. And, then, I guess, the (inaudible) actually wanting to get**
 7 **to this. I thought I heard you say that currently under**
 8 **existing code, Seattle imposes a floor area ratio currently**
 9 **to the single-family zone. Is that your testimony?**
 10 A. No, it's not my testimony.
 11 **Q. Okay. I'm going to ask you a couple questions as we page**
 12 **through these because I think I heard you say on several**
 13 **instances some of the images were from the EIS, or in this**
 14 **instance, the image was from Portland. But in several of**
 15 **these, there's some changes you've made, correct? For**
 16 **example, the blue box there --**
 17 A. They overlay, yes.
 18 **Q. Okay. So that was something that you added to this image?**
 19 A. Actually, I didn't do it personally, but an associate of
 20 mine did.
 21 **Q. Okay. And so similarly, the callout box is on the image**
 22 **below that -- the second half of the page?**
 23 A. Some inserts in there, yes.
 24 **Q. Okay. Those are all things that you added or your**
 25 **associate. Excuse me.**

1 **this is representative of what might be built under the**
 2 **preferred alternative -- or excuse me -- under the proposal**
 3 **generally under any alternative?**
 4 A. Not all, but some of the alternatives.
 5 **Q. On what is that based? If you didn't prepare this image --**
 6 **it's a representation. What do you know about the**
 7 **measurements of these homes?**
 8 A. I know nothing about the measurement of the homes.
 9 **Q. So how can you testify that you think it's representative or**
 10 **not representative about what can or cannot be built under**
 11 **existing code or under the proposal?**
 12 A. Well --
 13 **Q. Isn't that important to know what the square footage is,**
 14 **what the footprint is to know whether or not it actually**
 15 **conforms to either existing city code or what the proposal**
 16 **might allow?**
 17 A. Yeah. I think that my experience gives me the ability to
 18 take a look at this drawing, okay, know that these are
 19 created on typically 5,000-square-foot lots, right? The
 20 square footage of the building is noted, connected to an FAR
 21 measurement. And I think the relative difference between
 22 the two, compared to what the resulting FAR is, gives one a
 23 pretty good idea of the scale of building graphically that
 24 potentially could get built.
 25 **Q. But you don't know what the measurements are precisely.**

1 A. Um-hmm.
 2 **Q. Okay.**
 3 HEARING EXAMINER: I just want to note that I have a
 4 black-and-white copy, so I am not sure what you're referring
 5 to.
 6 MR. KISIELIUS: Ah. Okay. I will -- for the record,
 7 there's -- in the top half of the page, the first part I was
 8 referring to, to which the witness just testified, is a
 9 callout box at the bottom of the image that starts with the
 10 text "ADU FEIS does not impose limits on overall" --
 11 HEARING EXAMINER: Okay.
 12 MR. KISIELIUS: And then there are callout boxes --
 13 similar boxes for each of the --
 14 HEARING EXAMINER: I see.
 15 MR. KISIELIUS: -- images.
 16 HEARING EXAMINER: Okay.
 17 **Q. (By Mr. Kisielius) Okay. Let's turn to Page 5.**
 18 **So can you -- can you tell me, again, your understanding**
 19 **of where this is from?**
 20 A. I have noted that this part -- most of this drawing, aside
 21 from our notes, was taken from the MHA Urban Design
 22 Neighborhood Character Study at Page 24.
 23 **Q. And have you ever looked at that study yourself?**
 24 A. I may have. I may have seen part of this. I can't recall.
 25 **Q. So tell me exactly. You said it's taken from it, except for**

1 **our notes. What are your notes? What are you referring to**
 2 **there? What did you or your colleague do to this image?**
 3 A. I think the image on the left that shows a bulk with
 4 printing underneath is a City document. And where it
 5 says, "Typical 5,000-square-foot lot" and some calculations,
 6 that was it.
 7 **Q. Okay. But the image itself and the callouts there,**
 8 **preliminary dwelling, AADU No. 1, AADU No. 2, and the text**
 9 **that follows with FEIS AADU times two primary and all the**
 10 **text that follows, that's part of the image that you took**
 11 **from the City. Is that your understanding?**
 12 A. Counselor, I'm not -- I can't say 100 percent. I'm not
 13 sure. The image itself is taken from the City.
 14 **Q. Isn't that -- let me -- okay. I'm sorry. Finish your -- I**
 15 **didn't mean to interrupt.**
 16 A. The notations on the AADU and AADU primary dwelling very
 17 well could have been added. I mean, that was -- it's not
 18 the meat of the exhibit, but I'm --
 19 **Q. Let's turn to the next page because I'll have similar**
 20 **questions. What did you do, or your colleague do, on Page 6**
 21 **to that image or to the page generally? What were the parts**
 22 **that you added to the page?**
 23 A. Well, I think just the title.
 24 **Q. Just the title?**
 25 A. Yeah.

1 not been clear about. And I apologize for not being clear
 2 about them. And it doesn't take away from the intent of the
 3 exhibit and the importance of the exhibit. And, you know, I
 4 apologized that I have not been 100 percent up to speed on
 5 these exhibits.
 6 **Q. So let me -- let me just take it back. So in terms of Pages**
 7 **5 and 6, are you aware of what aspects of these pages are**
 8 **part of a City-prepared document and which ones are not?**
 9 A. No.
 10 **Q. Okay.**
 11 HEARING EXAMINER: It's time for us to take a break, so I
 12 would ask we take a 15-minute break now until 4:00. We'll
 13 be off the record.
 14 (Recess)
 15 HEARING EXAMINER: Back on the record.
 16 And, Mr. Kisielius, you were doing cross with this
 17 witness.
 18 MR. KISIELIUS: Mr. Eustis, do you mind turning to Page 6
 19 of that exhibit?
 20 MR. EUSTIS: I don't mind at all.
 21
 22 C R O S S - E X A M I N A T I O N (Resumed)
 23 BY MR. KISIELIUS:
 24 **Q. So, Mr. Kaplan, I wasn't yet finished with this. I believe**
 25 **in respect -- sorry, this -- I believe with respect to this**

1 **Q. So it's your testimony that you understand that the City**
 2 **prepared a graphic purporting to show a single-family home**
 3 **with ADUs in the urban design study?**
 4 A. No. This was not meant as a single-family home. And this
 5 was a -- this was a study in the -- what do they say -- the
 6 MHA, right?
 7 **Q. Correct.**
 8 A. So this would not be a single-family home. The notion
 9 behind this exhibit is to show the (inaudible) and scale of
 10 what would be allowed under the preferred alternative with a
 11 FAR of 1.5 on a single-family lot. And what possibly could
 12 happen is if you -- you would allow three units on one
 13 property. That's really what this exhibit is about.
 14 **Q. So, again, I'm going to ask you: Are you familiar with the**
 15 **exhibit -- the document that you said is a City document**
 16 **from which this information is drawn that you have now**
 17 **doctored? Are you familiar with that?**
 18 A. No.
 19 **Q. Don't you think it's important when you testify that the**
 20 **City prepared something to know which aspects of it the City**
 21 **did and didn't do before you testify on the record?**
 22 A. Do I think it's important?
 23 **Q. Yes.**
 24 A. Yeah, I think it's important. But, you know, there's a few
 25 exhibits -- and you know exactly which ones -- that I have

1 **page, you've made two statements, and I want you to correct**
 2 **me if I'm wrong. I think you said the impact in**
 3 **single-family areas could be greater than in multifamily due**
 4 **to density and -- or at the least it would be the same as in**
 5 **multifamily. Do you remember making those statements?**
 6 A. I do.
 7 **Q. Okay. So what was your testimony based that it could be**
 8 **greater? I heard you referring to the maximum occupancy.**
 9 **Do you -- what's your understanding of the maximum occupancy**
 10 **requirements and how they apply to multifamily homes?**
 11 A. I'm not sure what the maximum density would be in a
 12 particular multifamily project. I think it's based on the
 13 number of units. It's not based on, like, the preferred
 14 alternative where you can have 12 people per site.
 15 **Q. Okay. And so if I was -- okay. But you're not sure what**
 16 **the number is?**
 17 A. No.
 18 **Q. Isn't that important to know whether or not the impact is**
 19 **going to be greater? Wouldn't you want to know if you were**
 20 **making the basis on a maximum occupancy comparison?**
 21 **Wouldn't you want to know what the maximum occupancy of a**
 22 **multifamily structure would be in comparison to a structure**
 23 **on a single-family zone?**
 24 A. I think the comparison that I was making was that a
 25 structure built on the preferred alternative, housing 12

1 unrelated people, could approach or exceed a similar
 2 multifamily project built on a similar property.
 3 **Q. And I guess I'm coming back to the same question. You said**
 4 **with up to 12 unrelated people living together. That's part**
 5 **of your qualifier for what you're comparing from the**
 6 **single-family context. And you're comparing that to a**
 7 **multifamily context. So my question is: Isn't it important**
 8 **to know what the maximum occupancy would be of the**
 9 **multifamily structure to which you're comparing the single**
 10 **family scenario before you make a judgment about whether it**
 11 **would exceed?**
 12 A. Again, I don't know that I'm comparing a particular project
 13 to another specific particular project. All I'm saying is,
 14 is that in the land use form, all of a sudden, the single
 15 family residence can become equivalent to or even perhaps
 16 greater than the density of a multifamily project, given the
 17 same land use form.
 18 **Q. I want to come back to the land use form but I don't want to**
 19 **lose this for just a second. But it can only really exceed**
 20 **it if you have 12 people in the single-family scenario and**
 21 **you have something that amounts to less in the multifamily**
 22 **scenario?**
 23 A. Yeah.
 24 **Q. But if you're comparing max occupancy to max occupancy, you**
 25 **agree, don't you, that the multifamily will be greater in**

1 **feet, wouldn't you expect those to be different given that**
 2 **the lot size is exactly the same? You were talking earlier**
 3 **about how you can eyeball it. You can sort of tell based on**
 4 **measurements. Wouldn't you expect 4,500 square feet to look**
 5 **different than 6,000 square feet, given that the lot they**
 6 **sit on is exactly the same?**
 7 A. Well, I -- I mean, I would, but you're not -- you're not
 8 taking into consideration volume. You're just reviewing
 9 square feet, floor area. But if you -- if you -- if you
 10 take into consideration volume, they could be exactly the
 11 same.
 12 **Q. Would you expect the volume of what you described as**
 13 **identical looking structures to be different?**
 14 A. Given that one is 4500 square feet and the other one is 6,
 15 then they're definitely different. The volume is different.
 16 **Q. Ah. I'm talking about the depictions, not the -- I**
 17 **understand the description is different. I'm trying to**
 18 **figure out how the -- I'm trying to figure out how you can**
 19 **take two exactly identical structures and reconcile the**
 20 **differences in total square footage.**
 21 A. Well, you and I can have exactly the same house, and I could
 22 have twice the square feet if you had twice the volume,
 23 right? You had higher ceilings.
 24 **Q. Let's move on. I'm going to ask you a couple quick**
 25 **questions about Pages 7 and 8 and 9 and 10. I'm trying to**

1 **every instance?**
 2 A. Yeah.
 3 **Q. Okay.**
 4 A. Yeah.
 5 **Q. And without belaboring this too much, I guess the question I**
 6 **have for you is: Do the images here look similar to you?**
 7 **Not the descriptions, just the pictures that we're looking**
 8 **at.**
 9 A. They are similar.
 10 **Q. Are they almost exactly the same?**
 11 A. They almost exactly the same to me.
 12 **Q. I want to draw your attention to the distinctions in some of**
 13 **the lists below, the attributes. Do you see where it says,**
 14 **"ADU prototype proposed," at the bottom of that left-hand**
 15 **column?**
 16 A. Yes. Um-hmm.
 17 **Q. What's the total net square feet?**
 18 A. 4500.
 19 **Q. I'm sorry. I didn't hear you.**
 20 A. 45.
 21 **Q. Okay. And can you find the similar total net square feet**
 22 **for the multifamily, the low rise?**
 23 A. To 6,000.
 24 **Q. Okay. Wouldn't you expect them to be different? Because**
 25 **the depictions of 4,500 square feet compared to 6,000 square**

1 **make this efficient.**
 2 **So, again, you indicated that these are from the EIS but**
 3 **there's some contributions that you've got here, correct?**
 4 **You've --**
 5 A. On --
 6 **Q. You or your colleague has made some --**
 7 A. On that page, yes.
 8 **Q. Okay. And what changes have you made here?**
 9 A. Just an insert there of what's allowed now, current code for
 10 an ADU.
 11 **Q. And is that the same as the image that appears later that**
 12 **you testified --**
 13 A. Yes.
 14 **Q. -- you think is a City document?**
 15 A. Yes.
 16 **Q. Are you sure?**
 17 A. No.
 18 **Q. Okay. What about the titles, the captions? Those are --**
 19 **those are yours, right? The Seattle Single-Family Zones**
 20 **today, Seattle Single-Family Zones 2028, those are your**
 21 **additions or your colleague's?**
 22 A. Yes.
 23 **Q. Okay. Could you -- the next page, a similar question.**
 24 **Today's 2012 --**
 25 A. Yes.

1 **Q. Okay.**
 2 A. Yeah.
 3 **Q. And for Pages 9 and 10, can you remind me again what**
 4 **alternative you chose to show here?**
 5 A. The title of this is Alternative 2.
 6 **Q. And is that the case for --**
 7 A. All of it.
 8 **Q. -- 8, 9, 10? How familiar are you with 8, 9, and -- excuse**
 9 **me -- with Alternative 2 that's depicted on 8, 9, and 10?**
 10 **How is that different in ways that affect aesthetics from**
 11 **Alternative 3 or the preferred alternative?**
 12 A. They all have different nuances. I could go back and view
 13 the specifics. Is that what you'd like me to do?
 14 **Q. No, that's okay. Do you know --**
 15 A. It's part of the document.
 16 **Q. Do you know whether Alternative 2 includes a floor area**
 17 **ratio limit?**
 18 A. It does not.
 19 **Q. So that would not be depicted in these projections that**
 20 **you've chosen to compare it to?**
 21 A. That's not what they did; it purports to discuss.
 22 **Q. Let me make sure I'm understanding. That's not what the**
 23 **FEIS depictions that you took purport to discuss or that's**
 24 **not what you were planning to discuss by choosing those?**
 25 A. Us, yes.

1 And the -- let's see. I think those two.
 2 **Q. What about the graph, the bar graph and the text? Do you**
 3 **know if that's from the EIS?**
 4 A. It's noted here that it may not be, but I think it is. You
 5 know, I think that's part of the FEIS.
 6 **Q. But you're not sure?**
 7 A. I can't say 100 percent.
 8 **Q. Let's focus on the text that's on the left side of the page.**
 9 **There's text that says 75/80 rule on lot segregation of**
 10 **weighted or applied, question mark. You added that, right,**
 11 **or your colleague did?**
 12 A. Yes.
 13 **Q. What's your understanding of the 75/80 rule on lot**
 14 **segregation?**
 15 A. It's a means to subdivide lots. I've never done it. I'm
 16 not an expert in it, but my understanding is is you
 17 basically take the measurement of lots nearby and you can
 18 create new lots as long as the lot size is within 75 percent
 19 of the zoned square feet and adjacent lots are no more than
 20 80 percent of the average lots that you're trying to create.
 21 **Q. Okay.**
 22 A. And the exhibit was really prepared with the understanding
 23 that throughout Seattle right now, there is a significant
 24 amount of subdivision going on and many of it is -- much of
 25 it is being questioned as far as its legality it's going

1 **Q. Okay.**
 2 A. Um-hmm.
 3 **Q. Thank you. But you agree that the images that you chose,**
 4 **the City was intending to show the alternative, including**
 5 **the lack of a floor area ratio restriction?**
 6 A. I have no idea why they chose to show it.
 7 **Q. I'm asking whether they -- whether it's your understanding**
 8 **if we -- if the City did or not. I mean, you don't --**
 9 A. So at the time that this document was probably prepared,
 10 there wasn't an alternative for a floor area ratio
 11 limitation.
 12 **Q. Let's go to Page 11. Now, there's --**
 13 A. Which page?
 14 **Q. Eleven. There's a lot of text on here I think that you**
 15 **didn't really touch on and I'm going to ask you about it --**
 16 **and text I think that is not part of the EIS. Let's start**
 17 **with that. What is the -- what did you or your colleague**
 18 **add to this page that is not shown in the EIS?**
 19 A. Well, quite a bit. Really, the only drawing that's part of
 20 the EIS is the center site plan without any writing on it.
 21 And so the red box, the red writing, that was all added.
 22 The lower left is just simply just kind of a blowup of
 23 that upper drawing. And, again, if you take the color, the
 24 lines, and the -- any printing off there, that's from the
 25 FEIS.

1 through. So we're just trying to point out what happens if
 2 that continues and then you end up with 3200-square-foot
 3 lots.
 4 **Q. So that's what I wanted to ask about next is the text that's**
 5 **underneath -- so the contention there -- well, let me ask**
 6 **you. What does it -- what is that intended to communicate**
 7 **to the examiner?**
 8 A. Which exhibit or which part of it?
 9 **Q. The subdivisions reduced minimum lot size to 3,200 from**
 10 **4,000 square feet.**
 11 A. Okay.
 12 **Q. Is it your testimony that the proposal is going to change**
 13 **the subdivision requirements?**
 14 A. No. It's not my understanding that it will.
 15 **Q. Okay. So what am I supposed to infer from those two put**
 16 **together? This is a page that deals with subdivisions.**
 17 A. Okay.
 18 **Q. And then you're saying, "Subdivisions: Reduced minimum lot**
 19 **size to 3,200 from 4,000 square feet." What conclusion am I**
 20 **supposed to draw from that language?**
 21 **Let me just -- let me preface it. It sounds to me like**
 22 **you're saying we're going to reduce the lot size for**
 23 **subdivisions down to 3,200 square feet. Is that -- is that**
 24 **what you're communicating?**
 25 A. That's what it questions.

1 **Q. Is that what --**
 2 A. Yeah.
 3 **Q. So you believe the proposal is going to do that?**
 4 A. I believe that the proposal could do that.
 5 **Q. How?**
 6 A. If you start employing some of the subdivision activity
 7 that's going on in the City right now creating lots. So
 8 developers are combining lots and then doing lot land
 9 adjustments. And one of the thoughts is is that under the
 10 75/80 rule, if you were developing in neighborhoods with
 11 3200-square-foot lots, I'm not sure what would prevent you
 12 from creating 3200-square-foot lots.
 13 **Q. Okay.**
 14 A. Okay.
 15 **Q. I understand your testimony now.**
 16 A. Okay.
 17 **Q. And to make sure I'm also understanding your testimony, is**
 18 **that because of the operation of the proposal? Is the**
 19 **proposal a thing that allows that to happen, in your**
 20 **opinion?**
 21 A. No. But if you --
 22 **Q. Then I thought I understood. Now I don't.**
 23 A. But the subdivision rule is alive and well right now. Okay?
 24 **Q. Um-hmm.**
 25 A. So we're working on established code that would allow you to

1 **is above part of which is underlined in red? Excuse me.**
 2 **Not the last two sentences. The last sentence that is in**
 3 **the last two lines starting with the words "About 8."**
 4 A. Okay. "About 8 percent of at least twice the minimum area
 5 required by zoning, meaning the lot, could theoretically be
 6 subdivided into two lots.
 7 **Q. And is the red box showing the 8 percent that has at least**
 8 **twice the minimum area required by zoning?**
 9 A. No.
 10 **Q. Where are those shown on the bar graph?**
 11 A. Well, I think it just depends in what zone you're talking
 12 about.
 13 **Q. Let's assume we're single family, 5,000.**
 14 A. So 8 percent of at least twice the minimum area.
 15 **Q. Do you see on the bar graph where it says 10,000, three from**
 16 **the right?**
 17 A. I do.
 18 **Q. Do you see where it says 11,000 and 12,000?**
 19 A. I do.
 20 **Q. Does that depict the ones that are at least twice the**
 21 **minimum area required by zoning?**
 22 A. They would be included. That's showing about maybe 2 or 3
 23 percent, right?
 24 **Q. Well, I don't know. I see the 12,000 or more going up to 5**
 25 **percent and the other two going somewhere below. I don't**

1 perhaps create a 3200-square-foot lot separate and apart
 2 from the preferred alternative. What the EIS is silent on
 3 is if that happens and 3200-square-foot lots are developed,
 4 then what are the impacts from doing so?
 5 **Q. I just -- I guess so your understanding is that the 75/80 --**
 6 **I'm just saying it out loud because I'm -- I apologize. I'm**
 7 **having a hard time following. The 75/80 rule would allow**
 8 **for lot sizes of 3200 square feet to be made today; is**
 9 **that --**
 10 A. It could, yeah.
 11 **Q. Okay.**
 12 A. Um-hmm.
 13 **Q. And the proposal does or does not change any of that?**
 14 A. I don't think the proposal changes that.
 15 **Q. Okay. Could you tell me what's intended to be communicated**
 16 **by the -- now I'm switching to the bar graph. Sorry,**
 17 **context -- what's intended to be communicated by the**
 18 **underlined and the red box?**
 19 A. The red box simply identifies what the majority lot sizes
 20 are --
 21 **Q. Okay.**
 22 A. -- in Seattle. So it identifies the opportunities for
 23 subdivision because it's the larger lots and the combination
 24 of larger lots that would allow for lots to be reconfigured.
 25 **Q. Could you read the last two sentences of the paragraph that**

1 **know. I'm just asking your understanding. It's less**
 2 **important what I know.**
 3 **One last question on this and I'll leave it. You had said**
 4 **something about the ability to create 3,200-square-foot**
 5 **lots, and I think you had used in the vicinity of 4,000-,**
 6 **5,000-, 6,000-square-foot lots. So is it your understanding**
 7 **that the 75/80 rule would allow you to create a**
 8 **3,200-square-foot lot in the vicinity of 4,000-, 5,000-, and**
 9 **6,000-square-foot lots?**
 10 A. I'd like to -- with all due respect -- correct your
 11 interpretation of what I had said.
 12 **Q. Oh, please.**
 13 A. Okay. What I had said was -- is that the 75/80 rule may be
 14 able to enable somebody to create 3200-square-foot lots
 15 among other 3200-square-foot lots. I mean, you have to have
 16 similar size lots and opportunities. If the entire
 17 neighborhood is 5,000 square feet, I don't think you'd stand
 18 much of a chance with the 75/80 rule in creating a
 19 3200-square-foot lot.
 20 On the other hand, if you were in Capitol Hill, some
 21 places on Queen Anne and many other places in the city where
 22 lots are 3200 square feet or less, then you may be able to
 23 do it easily.
 24 **Q. Okay. Let's move on. I was hoping to turn to Page 15.**
 25 **Excuse me. 17. My Page 17 is different than your Page 17.**

1 The next one. There we go. Thank you.
 2 Do you remember your testimony about this page?
 3 A. I do.
 4 Q. Can you tell me again how you came up with the square
 5 footage that you assigned to each category of lot?
 6 A. Well, I helped work on this. And we took a typical drawing
 7 from the City and tried to put some scale to it, relative
 8 to -- straight with the other clues that we got from --
 9 since these drawings are not dimension. And we took an
 10 architect scale and simply went through the 60 lots and
 11 tried to ascertain what the average lot size was. And the
 12 combination came out to be about six different prototypes.
 13 Q. So you took what you thought would be measurements based on
 14 what you saw of what you knew and then kind of extrapolated
 15 measurements of the other ones?
 16 A. Exactly.
 17 Q. Okay. And did I hear -- I want to just make sure I
 18 understood. If I misunderstood, please correct me. Did you
 19 say that this does not depict any 3,200-square-foot lots?
 20 A. Oh, I didn't -- I wouldn't have said that.
 21 Q. Okay. I just -- I thought I heard that. I wrote it down.
 22 But it does, right? According to your calculations, it
 23 does?
 24 A. Yeah.
 25 Q. Okay. And you said you did this because the EIS doesn't

1 lots -- the two blocks, the one to the right --
 2 A. Okay.
 3 Q. -- top right corner, do you see there's two that are facing
 4 the short end of the block?
 5 A. Yeah. You're turning it the opposite way. I was turning
 6 the exhibit. I'll turn the appendix.
 7 Q. I'm sorry. Whichever way works for you.
 8 A. No. That's fine.
 9 Q. I'll be (inaudible) myself.
 10 A. That's fine. I just couldn't -- I -- okay. So --
 11 Q. What measurement did you get for F for those two?
 12 A. So for F it looks like 6400.
 13 Q. And can you compare that to Exhibit C-1 and C- -- and I
 14 think in the C-2 those are marked as G.
 15 A. Yeah. G --
 16 Q. What square footage does that show?
 17 A. That shows 5160.
 18 Q. Okay. So that's significantly less, right?
 19 A. Excuse me?
 20 Q. That's significantly less?
 21 A. It is.
 22 Q. So the smallest one that you found in your exhibit was 3,200
 23 square feet. Do you see which ones correspond to 3,200
 24 square feet on the City's exhibit and compare that? Did you
 25 catch the same ones or are they different?

1 tell you what the dimension are; is that right?
 2 A. That's a -- I think that's exactly what I said.
 3 Q. Okay. Could you please open up to Appendix C of the EIS,
 4 and turn to Page C-2?
 5 A. I'm sorry. What page?
 6 Q. It's Appendix C. It should be tabbed, I think.
 7 A. Yeah. I got it.
 8 Q. And then turn to Page C-2. Can you read the title to
 9 Exhibit C-1?
 10 A. Distribution of lot types on hypothetical blocks.
 11 Q. And do you see the key A, B, C, D, E, F, G?
 12 A. I do.
 13 Q. Doesn't this show the dimensions that you said were missing?
 14 A. It does.
 15 Q. So I'm going to ask you to juxtapose or compare this Page
 16 C-2, Exhibit C-1 to your measurements. I think you have to
 17 turn the EIS page --
 18 A. Yeah.
 19 Q. -- 90 degrees. But let's just take a couple examples. Do
 20 you see what you've marked as F, as in Frank, to the top of
 21 your page?
 22 A. Give me just a second, please.
 23 Q. Sure.
 24 A. Okay. So you're -- where do we want me to look?
 25 Q. On yours. Start with yours. You have F. Of the two

1 Let me -- let me be more direct. Look at your exhibit,
 2 the block to the left, but the upper right-hand corner you
 3 have three that are A --
 4 A. Um-hmm. Yes.
 5 Q. Okay. Those are correct, right?
 6 A. It looks like we got those ones right.
 7 Q. Okay. What about E, immediately below that? What are those
 8 shown on at City's?
 9 A. And you're looking at that as an A in the City's?
 10 Q. Correct.
 11 A. 52.
 12 Q. So the measurements that you found are different than the
 13 measurements that the City found; is that correct?
 14 A. Yeah. Well, on E we found at it 54. So, I mean, that's
 15 damn close when you're working with a drawing that's
 16 8-and-a-half-by-11.
 17 Q. What about 64 to 51? Is that damn close?
 18 A. Yeah.
 19 Q. Okay.
 20 A. I mean, I wouldn't build a house on it, but, you know, for
 21 the purposes that we were looking at, yeah.
 22 Q. Okay. Can we go back two pages to Page 15 on your exhibit.
 23 Sorry. I'm referring now to yours, not the --
 24 A. Got it.
 25 Q. And I think you had some testimony about the aerial

1 photographs. Do you recall the testimony in particular?
 2 You said -- I think you used the words "way off" when you
 3 were referring to cars. Do you recall that testimony?
 4 A. I recall the testimony on your call probably "way off" quite
 5 a few times.
 6 Q. Well, in this instance I'm referring to your testimony about
 7 this specific page.
 8 A. I can't recall this specific page, but I -- you know, could
 9 be.
 10 Q. Okay. Can you -- so I just want you to go through an
 11 exercise, if you have it in front of you that -- let's just
 12 pick the street that's top to bottom in the middle of your
 13 aerial photograph. Can you count the cars that are parked
 14 there?
 15 A. There's a larger picture of that same picture. It would be
 16 a lot easier to count the cars.
 17 HEARING EXAMINER: Yeah. I think that picture is bit
 18 small to counting cars, personally.
 19 MR. KISIELIUS: I guess I can blow it up on mine. So if
 20 it's small enough, I guess I can --
 21 THE WITNESS: But if you --
 22 Q. (By Mr. Kisielius) If I might be permitted -- if -- are you
 23 able to count the cars on that image?
 24 A. I might need my glasses. But the same image --
 25 Q. Okay. But --

1 A. That's cool.
 2 Q. Can you turn to -- let's get the apples to apples here --
 3 Exhibit -- let's see -- Page 4-96, Exhibit 4.3-5; 4-96.
 4 Exhibit 4.3-5, that's the no action existing conditions.
 5 Can you count the cars down that middle street?
 6 A. Sure. It looks like about the same.
 7 Q. Okay. That seem way off to you?
 8 A. It does, and I'll tell you why. Sorry, Mr. Kisielius, but
 9 the pictures that are in our Exhibit 20 are taken at about
 10 noon in the summertime. And it's not that I have special
 11 knowledge, but it's pretty easy to look at the shadowing and
 12 the color of the grass. And so if you consider that noon in
 13 the summertime is a time where one would consider the least
 14 amount of parking possible, I would say that if your exhibit
 15 depicts the same amount of cars and suggests that that has
 16 any kind of impact, that it's way off.
 17 Q. Okay. So a slightly more nuanced answer. I thought you
 18 were comparing numbers. It sounds like it's more
 19 complicated than that.
 20 A. It's all about numbers.
 21 Q. Okay. Well, let's also talk about street widths. In
 22 this -- now it's gone again. The page that we were just
 23 looking at from your exhibit -- McGraw Street I think is the
 24 biggest name I can see on there. Do you -- do you know the
 25 width of that street?

1 A. -- same image is a lot larger in a couple pages.
 2 Q. If you're testifying on that page as being way off on cars,
 3 I guess I'm wondering how you can reach that conclusion if
 4 we can't count them.
 5 A. Well, I can answer it this way. I've been studying these
 6 documents for about a year -- and pictures -- and looking at
 7 pictures of our neighborhood. So I'm pretty familiar with
 8 being able to say that it's way off.
 9 Q. Can you go to Page 19? Is this the bigger one that you're
 10 referring to?
 11 A. Uh-huh. That's correct.
 12 Q. I think the -- let's pick -- I think this is slightly
 13 different. This is a different -- at least a different
 14 portion of it. If you --
 15 A. Oh, yeah. It's the left-hand side.
 16 Q. Yeah. Well, let's just pick the one down the middle.
 17 There's that white line. Do you see -- if there are three
 18 north and south streets, let's -- the one that is to the
 19 right. Can you count the cars on that block on both sides?
 20 A. It's a little hard with the trees, but I can give it a shot.
 21 Q. Well, let's start with the ones you can see.
 22 A. It looks like there might be about a dozen.
 23 Q. Okay. I'm going to ask you to turn to the -- back to the
 24 EIS. I apologize. We're going to be jumping around a
 25 little bit.

1 A. No. I would image it's probably as -- maybe as a 60 footer.
 2 It's an arterial.
 3 Q. 60 feet as measured from where the where? Sorry to get
 4 precise.
 5 A. Probably the right of way.
 6 Q. Okay.
 7 A. So somewhere from sidewalk to sidewalk.
 8 Q. Okay. And what's your understanding of what the EIS
 9 depictions are for the same, you know, sidewalk to sidewalk?
 10 A. Well, I don't know. Maybe your exhibit in Appendix C had
 11 that data. I did not see that. I did not review that data,
 12 so I don't know.
 13 Q. I think -- but I think you had testified that they're not
 14 representative of what you believe the city street widths to
 15 be.
 16 A. Well, in a hypothetical model, I consider that these --
 17 since these hypothetical models are represented to be
 18 examples of a typical Seattle neighborhood, those street
 19 widths just -- it's saying the exhibit we just took a look
 20 at where you're asking me to count street -- count in
 21 Exhibit -- what was it -- 4-96. Is that the page? I can't
 22 read --
 23 Q. Yes. Yeah. That was the -- that was what we were talking
 24 about. Yes.
 25 A. Yeah. So that street width gives you parking on both sides,

1 and it appears it's wide enough for two lanes of traffic.
 2 That is not a typical street in many neighborhoods in
 3 Seattle.
 4 **Q. Now I'm looking at 4-96. You think that there is room to**
 5 **fit two cars between the two that are next -- I'm just**
 6 **picking a street down the middle, up, down.**
 7 A. Yeah.
 8 **Q. And there are two that are parked immediately across the**
 9 **street from each other. Do you see the two that I'm**
 10 **referring to?**
 11 A. Yeah.
 12 **Q. Do you think that you can fit two cars through there?**
 13 A. Neither of us know, but it looks to me like you can. I
 14 mean, that's just -- it's just to scale.
 15 **Q. Okay. So back to my question. Is the answer you don't know**
 16 **what the width in these -- in the EIS depictions?**
 17 A. I do not.
 18 **Q. Okay. Do you know -- going back to your images and your**
 19 **aerials, you said McGraw is an arterial. Do you know what**
 20 **the width of the north-south streets are if those are not**
 21 **arterials?**
 22 A. I did not record the width of those streets.
 23 **Q. Yeah. Okay.**
 24 A. I just tried to pick out a block that looked like the City's
 25 blocks.

1 **in the aerial? How can you tell?**
 2 A. I can tell because what I do for a living is draw. And I'm
 3 looking at this drawing, and it's easy for me to tell the
 4 difference. If these drawings were replaced by actual
 5 photographs of neighborhoods, then we wouldn't be sitting
 6 here today. But the fact that they're not and that they
 7 depict some hypothetical representation of a neighborhood to
 8 support the position of the City rather than to give a broad
 9 view of existing conditions in the city and what impacts
 10 might happen, I see a significant difference between reality
 11 and hypothetical prototype.
 12 **Q. But without knowing what the actual dimension are?**
 13 A. Neither my drawing nor your drawing are dimensioned.
 14 **Q. Okay.**
 15 A. I've scaled them for this scale. That's the closest I've
 16 come.
 17 **Q. As you were talking about these images, you were asked**
 18 **several questions about the representative nature of the**
 19 **study areas in the parking study. And I -- Mr. Eustis**
 20 **carefully crafted the questions to ask you about from the**
 21 **land use perspective, and I want to stay within those**
 22 **bounds. I just want to ask you -- and I think you had**
 23 **listed at least 20 neighborhoods. I heard Queen Anne,**
 24 **Wallingford, Fremont, Ballard, University District,**
 25 **Montlake, Capitol Hill, North Capitol Hill, Beacon Hill,**

1 **Q. So I guess I'm going to come to the same question. If you**
 2 **don't know what the widths are that are depicted in the EIS**
 3 **and you don't know what the widths are in the aerials, how**
 4 **do you feel qualified to say things like they are not**
 5 **representative? You don't know the measurement.**
 6 A. Well, I'm sorry. I'm going to push back on that. Okay.
 7 I've been doing this for over four decades. Okay. I deal
 8 with streets. I deal with dimensions. I deal with parking.
 9 I deal with traffic. I deal with all kinds of thing in
 10 my -- things in my profession in all kinds of different
 11 neighborhoods. I live in an older single-family
 12 neighborhood, and I've lived in many in the city of Seattle.
 13 Okay? So I have real-time data.
 14 And what we're talking about here is graphics. Okay. I
 15 don't see any dimension on this drawing, and I don't think
 16 that any of the councilmembers that will be reviewing this
 17 drawing are going to be looking for a dimension set of
 18 drawings. It's all perception. It's what the drawing looks
 19 like. And what I'm saying is, is that your drawing and a
 20 number of cars shown on this drawing are a lot different
 21 than what you would find in any aerial photograph taken of a
 22 real neighborhood in Seattle.
 23 **Q. And I'm sorry to keep pushing on this, but I guess I'm**
 24 **wondering how do you know that if you don't know the**
 25 **dimensions of either what is depicted or what you provided**

1 **South Park, Junction, West Seattle. It doesn't quite get**
 2 **you to 20, but you said at least 20, so that was just a**
 3 **representative list?**
 4 A. Yes.
 5 **Q. How many would you need of those before you were comfortable**
 6 **that you had a representative sample size? How many of**
 7 **those, at least, 20 neighborhoods would you want to see**
 8 **studied to get a representative sample?**
 9 A. That's a really hard question. I could answer it like
 10 this: There are neighborhoods that are of similar age and
 11 similar platting and similar topography that you could --
 12 and maybe similar socioeconomic, you know, composition. Or
 13 you could combine. And whether it's, like, Wallingford and
 14 Queen Anne, like, Fremont -- you could put three together.
 15 I'm not saying you need to do 34, but what I am saying is
 16 that -- is that to go out to the edges on all four corners
 17 and to ignore the inner 20 neighborhoods is not
 18 representative of the city of Seattle. It's just -- it's
 19 plainly not.
 20 **Q. But you don't know how many just in order of magnitude?**
 21 **Four was not enough, from your standpoint?**
 22 A. I don't think anybody is going to give you an exact number.
 23 I think what you have to do --
 24 **Q. I --**
 25 A. -- is you have to actually study what's the -- what the

1 differentiation is between Seattle neighborhoods, and you
 2 could come up with a half a dozen prototypical
 3 neighborhoods -- real neighborhoods and communities. And
 4 maybe there's eight. Maybe there's -- you know, it's
 5 probably not too much less than that. Because if you go out
 6 to the corners that you were just talking about, you know,
 7 those are -- some of those are similar neighborhoods. But
 8 they were developed 30 or 40 years after neighborhoods in
 9 Fremont or Queen Anne. And those are not representative of
 10 neighborhoods -- they'll be mostly challenged because what
 11 we're talking about is neighborhoods that have challenges
 12 that weren't addressed in the EIS because the EIS said,
 13 Well, everybody is cool. Everybody is the same. Everybody
 14 looks like this neighborhood; and, therefore, what are you
 15 guys worried about? There's no -- there's no issues with
 16 parking. There's no issues with density. There's none of
 17 these issues that we really need to drill down on. And, in
 18 fact, if these pictures were representative by real
 19 neighborhoods, I think you'd find that there are many issues
 20 that you need to drill down on because the FEIS did not
 21 consider many issues in those 20 neighborhoods inside the
 22 ring that we stayed outside.

23 **Q. Okay. So I heard at least eight, maybe more. Is that --**
 24 A. It's a guess. I didn't do a study.
 25 **Q. Staying on Page 19 of your study, I want to make sure I**

1 buildout and it's probably Alternative 2, because that's the
 2 one we've been --
 3 **Q. I think that's what you said, too. I just want to make sure**
 4 **I wasn't misunderstanding.**
 5 A. Yeah. I think that's right.
 6 **Q. And what's your understanding of the full buildout scenario?**
 7 **I mean, just, what is it -- what is it trying to capture?**
 8 A. Well, it should be trying to capture three units per site,
 9 and, you know, up to 12 people per site. I think those are
 10 the headlines.
 11 **Q. Okay. So I understand, based on the answer, that you might**
 12 **have some questions about whether this actually shows that.**
 13 **But wouldn't you expect these two to be totally different?**
 14 **Your testimony was they're totally different. And wouldn't**
 15 **you expect that?**
 16 A. Absolutely.
 17 **Q. Okay. So why is that a problem with the EIS?**
 18 A. Because here's the problem -- and I guess I didn't explain
 19 myself well enough last time. I apologize. The problem is
 20 is that when you look at what the City is depicting as a
 21 full buildout, which one might say is the greatest density
 22 in any neighborhood, okay, you look at that and there's 10
 23 feet or more between buildings. There's, you know, all this
 24 space. Okay. And here's where we get down into my critique
 25 about reality versus hypothetical prototypical examples

1 **understand your testimony about that. And I'll wait a**
 2 **second to -- I think your images.**
 3 A. That's 19.
 4 **Q. No. I know. It's just --**
 5 MR. EUSTIS: It's 19?
 6 MR. KISIELIUS: Yeah. You're on the right page. I
 7 just -- it appears strange to me with the white lines. It's
 8 not the way it appears for me. Do you have your own copy in
 9 front of you?
 10 THE WITNESS: I've got it.
 11 MR. KISIELIUS: Okay.
 12 THE WITNESS: That's weird.
 13 MR. EUSTIS: You don't like my white lines?
 14 MR. KISIELIUS: I just make obscure -- I've seen a clearer
 15 image. Okay. So --
 16 MR. EUSTIS: We could use your computer.
 17 **Q. (By Mr. Kisielius) I want to make sure I understood your**
 18 **testimony on this because I heard you testify and you were**
 19 **comparing the two. And I -- and I think you said they're**
 20 **way different, right?**
 21 **Okay. So what's your understanding of the image to the**
 22 **left? Can you -- I think we're on the same page. What**
 23 **is -- what is that showing on the left? Does that -- which**
 24 **scenario is that showing?**
 25 A. I think I mentioned that I had assumed that it was a full

1 created for one particular purpose.
 2 If the drawing to the left would have been the drawing to
 3 the right with an overlay that said, Here's how this
 4 neighborhood could be redeveloped in the highest densities
 5 and here's how this neighborhood would change, it would not
 6 look anything like the drawing that's depicted there.
 7 As you can see, the drawing on the right has hardly any
 8 distance between existing buildings. And these are
 9 single-family houses. What happens when you took a
 10 single-family residential block like this and said, Now you
 11 can do three units and you can rebuild your house and create
 12 triplexes and you can do this and that? It wouldn't look
 13 anything like what the City is showing, in reality. That's
 14 the purpose of this drawing.
 15 **Q. So I guess what I'm understanding is you think that the**
 16 **existing structure should have been depicted differently.**
 17 **Is that on the City's? Is that what I'm hearing?**
 18 MR. EUSTIS: Objection. Misstates testimony.
 19 MR. KISIELIUS: I didn't intend to. Sorry. I apologize.
 20 I didn't intend to. What I -- what I -- well...
 21 HEARING EXAMINER: I'm going to sustain the objection.
 22 MR. KISIELIUS: And I withdraw it. I did not intend to.
 23 HEARING EXAMINER: Okay.
 24 **Q. (By Mr. Kisielius) And I apologize. I'm not following what**
 25 **you're saying because I clearly misstated what you said. I**

1 thought I heard you say that the buildings to the right are
 2 denser or closer together, right?
 3 A. Yeah.
 4 **Q. Is it your testimony that the proposal would allow that**
 5 **proximity of construction of new principal or accessory**
 6 **dwelling units?**
 7 A. Not exactly like this. There would be more fire separation.
 8 I mean, there's codes to consider.
 9 **Q. To the extent -- I guess that's my question. What about the**
 10 **proposal is going to -- in your opinion, would allow**
 11 **construction of new structures, whether principle or**
 12 **accessory dwelling units that is not accurately depicted to**
 13 **the left that might be accurately depicted to the right?**
 14 **What parts of existing conditions do you think that you're**
 15 **saying lead to the density in the right picture would be**
 16 **allowed in the left picture that aren't shown there?**
 17 A. Oh, I think -- I think setbacks. I think building
 18 separations.
 19 **Q. So what's your understanding of that, precisely: setbacks,**
 20 **building separation?**
 21 A. What's my understanding of what?
 22 **Q. The proposal.**
 23 A. The proposal?
 24 **Q. Yes.**
 25 A. I have no idea. I have no idea what this model is taken

1 question. He -- I have not objected, but you have this way
 2 of then following your question with another question. So
 3 I'd ask that he'd be given a chance to answer the question.
 4 I realize the hour is getting late.
 5 MR. KISIELIUS: I have meant no offense. I'm really
 6 just --
 7 THE WITNESS: No. I'll try and talk --
 8 MR. KISIELIUS: -- trying to move it along.
 9 THE WITNESS: I'll try and talk fast.
 10 MR. KISIELIUS: You don't have to. You can...
 11 A. I think I understand what you were asking me. My critique
 12 is is that the drawing on the left might represent the
 13 preferred alternative but not in Seattle. Okay. I don't
 14 know where this model -- you know, would you show the model
 15 from Arizona and this and that?
 16 But if you take in -- like, I keep saying, if you take a
 17 real neighborhood and you just did an overlay into that
 18 neighborhood, what the -- what the maximum buildout would
 19 be, it would be far denser than that. It would just look
 20 different. Okay.
 21 **Q. (By Mr. Kisielius) And we're back to the place where I**
 22 **asked a question that I thought I understood where you were**
 23 **going and apparently mischaracterized it. But I'm going to**
 24 **try it again. Let me go a different direction.**
 25 **Do you know or do you have any opinion about whether the**

1 from.
 2 **Q. No, no, no, not -- I'm sorry. I don't mean to interrupt,**
 3 **but I am trying to move this along. I mean what the**
 4 **proposal would allow that is not accurately depicted on the**
 5 **left in terms of setbacks, separation requirements.**
 6 A. I'm not sure I -- I'm sorry. I'm not sure I understand your
 7 question.
 8 **Q. You're trying to make a point, as I understood it, about**
 9 **comparing these two. And one shows full buildout. One**
 10 **shows existing conditions. And I thought you were trying to**
 11 **say that based on what you see in existing conditions, the**
 12 **depiction on the left is inaccurately showing the full**
 13 **buildout. Is that fair?**
 14 A. Fair.
 15 **Q. Okay. So what I'm trying to understand is put aside the**
 16 **existing structure component. What about the proposal --**
 17 **rules that will be changed by the proposal -- is**
 18 **inaccurately depicted in the left side?**
 19 A. Well --
 20 **Q. You had mentioned --**
 21 A. -- it's -- it's --
 22 **Q. You had mentioned, like --**
 23 MR. EUSTIS: If he could just --
 24 MR. KISIELIUS: I'm trying to help.
 25 MR. EUSTIS: -- answer -- no. Let him answer the

1 **exhibit to the left inaccurately depicts anything about a**
 2 **full buildout scenario for Alternative 2?**
 3 A. I don't know.
 4 **Q. Okay.**
 5 A. Yeah. No. I would assume that -- or hope that it's, you
 6 know, clear.
 7 **Q. Okay. Page 22, I think, again, you had testified these are**
 8 **City documents.**
 9 A. Yeah.
 10 **Q. And I'm going to ask you again that you -- is this -- is**
 11 **this the same? Are you -- are you sure these are City**
 12 **documents?**
 13 A. I think, as I said before. I'm not 100 percent sure.
 14 **Q. Okay. I'm going to try to move this here.**
 15 **Page 28 you highlighted the floor area ratio restrictions.**
 16 **I guess I'd like to understand your testimony. I thought I**
 17 **heard you testify earlier in the morning that the floor area**
 18 **ratio limit was insufficient.**
 19 A. I'm sorry. I might be looking at the wrong exhibit. What
 20 page?
 21 **Q. It's less relevant that you looking at the page. I was --**
 22 A. Oh.
 23 **Q. I think I was look at Page --**
 24 **MR. EUSTIS: 28.**
 25 **MR. KISIELIUS: Yes.**

1 **Q. (By Mr. Kisielius) It's the one where you highlighted --**
 2 MR. EUSTIS: It's up -- it's on --
 3 **Q. (By Mr. Kisielius) -- that's --**
 4 MR. EUSTIS: -- the screen.
 5 **Q. (By Mr. Kisielius) Yeah. There's the one with the floor**
 6 **area ratio. I noted that it's -- it's not important. Let's**
 7 **just talk about floor area ratio and your understanding of**
 8 **floor area ratio. I actually think it's later.**
 9 A. Okay.
 10 **Q. I'm sorry. It's Page 31. I thought I heard you testify**
 11 **that the floor area ratio you thought was insufficient or**
 12 **ineffective somehow; is that correct?**
 13 A. No. I don't recall ever characterizing it that way. I --
 14 no. I...
 15 **Q. Do you agree that the limit on floor area ratio is -- places**
 16 **restrictions on height, bulk, and scale?**
 17 A. The floor area ratio --
 18 **Q. Um-hmm.**
 19 A. -- puts a limit on height, bulk, and scale?
 20 **Q. I mean, but it has an aesthetic impact that tends to**
 21 **minimize the impact.**
 22 A. It does.
 23 **Q. Okay. I must have misheard. And I just want to make sure**
 24 **I'm understanding your testimony again on Page 34. This is**
 25 **the drawing that was prepared with overhangs.**

1 A. For me, it is. But, as we've seen today, the City, you
 2 know, overlooks some codes, and so --
 3 **Q. We'll come to that in a second. But in terms of this one,**
 4 **your testimony is what's explained here is not a correct**
 5 **interpretation of the way the code works?**
 6 A. Personally, I have a problem with it.
 7 **Q. Yeah.**
 8 A. Yes. So that's the issue.
 9 **Q. I'm not asking if you have a problem with it. I'm asking a**
 10 **very precise question. Is what is portrayed here the**
 11 **suggestion that you would exclude the overhangs from lot**
 12 **coverage -- is that consistent with how you would interpret**
 13 **the City's code?**
 14 A. Yes. Maybe I didn't understand the question.
 15 **Q. Okay. What I -- okay. I think you do. So this purports to**
 16 **depict that you would exclude the overhangs from lot**
 17 **coverage; is that fair?**
 18 A. That's fair.
 19 **Q. And do you believe that that would be consistent with City**
 20 **code?**
 21 A. I do not.
 22 **Q. Okay. Okay. Just a couple very quick questions on the -- I**
 23 **don't think we have to call them up, but you had entered two**
 24 **exhibits. Now I've lost my note. Oh, here. All of**
 25 **condominimization ones. I believe those were exhibits --**

1 A. This was prepared.
 2 **Q. And can -- yeah. I'm sorry. I was just marking the page.**
 3 **So from where would you measure -- based on your**
 4 **understanding, from where would you measure the structure**
 5 **from the standpoint of lot coverage, of determining whether**
 6 **it's consistent with lot coverage requirements? I just want**
 7 **to make sure I'm understanding what your testimony is.**
 8 A. Sure.
 9 **Q. So you have the overhangs and then you have the garage and**
 10 **storage. Which of those exterior walls is the starting**
 11 **point when you're trying to calculate lot coverage, in your**
 12 **opinion?**
 13 A. Okay. Where I calculated as to an outside wall -- it's the
 14 perimeter. It doesn't matter if it's down here or way up
 15 there; what some other people calculated to an outside wall,
 16 that could be above grade. And that's what this drawing
 17 depicts; that there could be an opportunity to increase lot
 18 coverage by basically building a building with roof
 19 overhangs that are limited because of setbacks, then being
 20 able to build underneath there.
 21 **Q. But did I hear you just say that you wouldn't do it that way**
 22 **to comply with code?**
 23 A. That's exactly right.
 24 **Q. Okay. And do you believe that yours is the correct**
 25 **interpretation of the code?**

1 **Examiner Exhibits 29 and 30. They were the multitude of**
 2 **ones that were your 8A 1 through something and --**
 3 A. Um-hmm.
 4 **Q. -- 8B 1 through something. What's your understanding of the**
 5 **covenant -- the owner-occupancy covenant? I think for 8B I**
 6 **believe the person's name was Mr. Duff (phonetic) who signed**
 7 **it.**
 8 A. Um-hmm.
 9 MR. EUSTIS: Duffus.
 10 MR. KISIELIUS: Duffus. Duffus.
 11 **Q. (By Mr. Kisielius) Okay. We -- is it your understanding**
 12 **that the covenant requires the signatory to be the owner to**
 13 **satisfy the requirement? Does that person have to own it in**
 14 **order for that covenant to be good and valid?**
 15 A. My understanding is -- and this goes back to 2006 where I
 16 helped develop the regulation, which hasn't been amended
 17 since it was put in place. Okay. My understanding is that
 18 the owner of the property, in order to build a DADU, must
 19 sign the covenant that guarantees that that owner will live
 20 in one of the units.
 21 **Q. So this -- it's your understanding that the same owner would**
 22 **have to live there?**
 23 A. Yes. And it's been unambiguous, so...
 24 **Q. Okay. I want to -- I don't think we need to look at the**
 25 **documents, but you had some testimony related to the**

1 condominiumization, and you were characterizing it as a
2 change to the land use form. And I want to understand that
3 better because I'm not sure I do. I'm not sure I understand
4 your testimony.

5 So let me just start by, could you try to explain again
6 how that's a change to the land use form? And I want to try
7 to put aside, you know, Mr. Reid's testimony about whether
8 or not that's sort of incentivizes more production of more
9 ADUs.

10 A. Okay.

11 Q. Let's put -- because that's -- testified to that. I want to
12 focus on the land use form, what remains, other than that.
13 What's the change? How would you articulate it?

14 A. Okay. So if we use the 1842 Weller condominium project that
15 was Exhibit 8A or B -- what someone did there -- and I don't
16 know. I think it's probably close to a 5,000-square-foot
17 site, but let's just say it is. There was an old home that
18 was kind of dilapidated on the -- on the -- on the -- on the
19 property. A person came in -- a developer came in, bought
20 the home and signed a covenant, built a DADU, created a
21 condominium and sold both units.

22 Q. Um-hmm.

23 A. Okay. He rehabbed the original home so it's nice -- it fits
24 into the neighborhood -- and built a new DADU in the
25 backyard. Okay.

1 than you would be to create a DADU or an ADU and keep the
2 original house.

3 Q. Okay. But that -- I think that goes to the production piece
4 and the likelihood of a teardown and all that. But, again,
5 I'll put with Mr. Reid --

6 A. Sure. You asked me, sir.

7 Q. And -- no, no, but I'm trying to figure out. That's -- I
8 get that. I understand the appellants' arguments about
9 that. What's the change to the land use form that is not
10 that? What else is there? What's --

11 A. I totally don't get what you're asking me.

12 Q. Well, you came -- I'm asking you to try to articulate what's
13 the change to the land use form that is specific to the
14 condominiumization? In other words, it's specific to the
15 sale, as opposed to the rental. The change to the language
16 form -- and I don't -- again, I'm trying to not to tread the
17 same ground as what Mr. Reid testified about and the
18 incentives and the economics of that. I'm focused on if
19 there's anything else, other than what Mr. Reid testified
20 about that you think is representative of the impact, the
21 change to the land use form. And I hadn't heard anything
22 yet.

23 A. Well, the change to the land use form would be the fact that
24 you'd be losing a single-family home and a backyard cottage,
25 and in the event that you could build three units on one

1 Now, under Preferred Alternative 4, my opinion is that
2 would never happen again because now somebody can build
3 three units on that same piece of property and sell three
4 units as a condominium.

5 Q. Let me pause because this is -- this is important, I think,
6 to -- so I get the more. I get you can do one more. That
7 part I get. But what else? What's the change to the land
8 use form?

9 A. Because you wouldn't have the house anymore and you wouldn't
10 have the backyard cottage.

11 Q. Well, so couldn't you, in your -- I mean, couldn't you
12 today -- you said couldn't you scrape the existing house
13 today, build a new principal and a new DADU today?

14 A. Yeah.

15 Q. Okay. And in terms of the change to the land use form,
16 you're not suggesting that there are different things you
17 can do to the physical structures if you intend to sell them
18 as a condominium, than you would if you just were going to
19 rent them, are you?

20 A. If you were going to build three units on the site --

21 Q. Uh-huh.

22 A. -- and they are going to be new, then you could build the
23 same building either way. The point is, is by adding -- by
24 adding a third unit as a condominium, you are creating a
25 much larger incentive to build that building and sell it,

1 site but they weren't condominiums, you could still build an
2 ADU inside an existing home and build a DADU in the
3 backyard.

4 But with the incentive of creating a condominium and
5 something more valuable to sell, that is the greatest impact
6 upon changing the land use form.

7 Q. And I'm going to be dogged on this one. I want to make sure
8 I'm understanding. Is the change in the land use form, in
9 your estimation, that we're calling something a condominium,
10 and, therefore, you think it's no longer a single-family
11 home?

12 A. By definition, yes.

13 Q. Okay.

14 A. As a form -- as a land use form. I mean, you could build a
15 condominium that looks like a Craftsman, but that's not
16 going to happen.

17 Q. And, again, if you call it a condominium, you're not
18 suggesting that the rules -- that the proposal would change
19 the rules of what you can actually build? You still need a
20 principal accessory dwelling unit.

21 A. Yeah. (Inaudible).

22 Q. Excuse me. A principal unit and an -- it will have an
23 accessory, maybe two.

24 A. Yes.

25 Q. You still need that.

1 A. Yes.

2 **Q. And there are still rules that govern what you can and can't**

3 **do and those rules apply equally, whether you're going to**

4 **rent it or sell it; is that --**

5 A. That's --

6 **Q. -- accurate?**

7 A. -- exactly.

8 **Q. So is the change to the land use form that we're calling it**

9 **a condominium?**

10 A. Now you're heading off into a direction on semantics that

11 I'm having trouble getting my arms around.

12 **Q. I am not -- I am really most interested --**

13 A. No.

14 **Q. -- in what you think, so I'm just struggling. I'm not**

15 **hearing from you what is the change to the land use form**

16 **that is specific to this phenomenon that you're fixated on,**

17 **which is the condominiumization, in other words, the decision**

18 **of whether to sell or rent.**

19 A. Right.

20 **Q. So what is that?**

21 A. Well, I'm not fixated on it, by the way.

22 **Q. I'm sorry.**

23 A. But --

24 **Q. Strike that word.**

25 A. -- I think it's an important piece that --

1 **Q. But explain that one to me, too, because I think you made**

2 **the comparison to the apartment buildings in Ballard.**

3 **You're not suggesting that --**

4 A. I'm not saying Ballard. No.

5 **Q. You did before, I think.**

6 A. No. But I'm saying that there's a -- you know, there's a

7 proliferation of this type in L-1, L-2, L-3 throughout the

8 entire city of Seattle, and you can find it in Ballard. You

9 can find it in other places. But where you can't find it

10 right now is in single-family zoned neighborhoods.

11 **Q. Okay. And -- okay. I have just one more question for you.**

12 **I think early on you made a statement about the -- your**

13 **role in the challenge of the DNS. And I think you said you**

14 **thought it would be illegal to not have more environmental**

15 **review, and we're here. Do you recall -- you were involved**

16 **in the adoption of the earlier ADU regulations, right? You**

17 **were on the planning commission at the time?**

18 A. I was.

19 **Q. Do you know what the environmental review was for that**

20 **action?**

21 A. No, I can't recall.

22 **Q. Okay.**

23 A. I know that we've -- we had public meetings and -- you know,

24 I'm sorry but I can't recall.

25 MR. KISIELIUS: Okay. I have no further questions for

1 **Q. That you're focused on.**

2 A. I am --

3 **Q. One of -- one --**

4 A. It's one of the elements I'm focused on. I mean, I'm sorry,

5 but you can't separate economics from the foundation of

6 defining the change in land use form because, by definition,

7 being able to build a condominium and then be able to sell

8 something separately as part of the three-unit development

9 on a piece of property has an economic advantage and

10 encouragement that will create that where if there wasn't

11 the ability to sell those three units and they had to be

12 rentals, the economic model is totally different and would

13 not necessarily encourage the same change in land use form,

14 as a condominium.

15 **Q. And that's it. What is that? What is the change in the**

16 **land use form? I get the economics. I get your**

17 **testimony -- your expert's testimony about what he thinks is**

18 **the change to the economics. And we'll talk about that**

19 **with -- but focused on the change to the land use form that**

20 **accompanies that, that's what I'm not understanding.**

21 A. It's my belief that that change would end up being typical

22 block architecture that's built within setback and height

23 restrictions that is more commensurate with multifamily

24 zoning found in every multifamily zone in the city of

25 Seattle. Okay. And that's the change in land use form.

1 you, Mr. Kaplan.

2 HEARING EXAMINER: Well, I think it's been quite a day for

3 you, Mr. Kaplan, and I know it's been a day for me. So it

4 must be quite a day for you.

5 THE WITNESS: For all of us.

6 HEARING EXAMINER: Yes. So we're going to end it there,

7 and we'll go back to Mr. Eustis for redirect in the morning.

8 Give you a chance to rest up a little bit.

9 THE WITNESS: Thank you very much.

10 HEARING EXAMINER: And we'll be off the record. We'll be

11 coming on at 9:30 again tomorrow.

12 MR. KISIELIUS: Thank you for the reminder.

13 HEARING EXAMINER: Okay.

14 MR. EUSTIS: Before we go off the record, I'm fairly

15 confident that we will finish with Mr. Kaplan tomorrow.

16 HEARING EXAMINER: I hope so.

17 THE WITNESS: Don't even say it.

18 MR. EUSTIS: I offer that for levity.

19 HEARING EXAMINER: Okay.

20 MR. EUSTIS: So -- and then it would be -- let's see.

21 Normally it would be the intervenor's chance, but the


22 intervenor can't introduce new witnesses, so it would be the

23 City.

24 MR. KISIELIUS: Yes.

25 MR. EUSTIS: So what --

1 MR. KISIELIUS: I can --
 2 MR. EUSTIS: What's the batting lineup?
 3 MR. KISIELIUS: So I will give you my best working
 4 knowledge, and I will just preface it by saying we have two
 5 witnesses with time constraints that I'm going to do my best
 6 to honor. So already the order that I shared with you is
 7 going to be a little different, what I'm going to say, just
 8 because -- so we're going to start with Mr. Welch.
 9 MR. EUSTIS: Okay.
 10 MR. KISIELIUS: We need to call Oliver Kuehne because he's
 11 traveling in from out of town. I expect --
 12 MR. EUSTIS: Can you spell his last name?
 13 MR. KISIELIUS: I will try. K-u-e-h-n-e.
 14 HEARING EXAMINER: Yeah.
 15 MR. KISIELIUS: Okay.
 16 MR. EUSTIS: Okay.
 17 MR. KISIELIUS: And Morgan Shook would be our third.
 18 MR. EUSTIS: Is that it?
 19 MR. KISIELIUS: I believe that's likely all we may get to
 20 tomorrow.
 21 MR. EUSTIS: Okay.
 22 MR. KISIELIUS: But if we do get further, then the next
 23 person would be Andy McKim.
 24 MR. EUSTIS: Okay. Are those the witnesses you intend to
 25 call? I mean, you had some more, too.

1 CERTIFICATE
 2
 3 STATE OF WASHINGTON)
 4) ss
 5 COUNTY OF KING)
 6
 7 I, the undersigned, do hereby certify under penalty
 8 of perjury that the foregoing court proceedings were transcribed
 9 under my direction as a certified transcriptionist; and that the
 10 transcript is true and accurate to the best of my knowledge and
 11 ability, including any changes made by the trial judge reviewing
 12 the transcript; that I received the audio and/or video files in
 13 the court format; that I am not a relative or employee of any
 14 attorney or counsel employed by the parties hereto, nor
 15 financially interested in its outcome.
 16
 17
 18 IN WITNESS WHEREOF, I have hereunto set my hand
 19 this 5th day of April, 2019.
 20
 21
 22 
 23
 24 Bonnie Reed, CET
 25



1 MR. KISIELIUS: Some more. You want just the -- I
 2 can't -- the reason I'm being -- I'm not trying to be cagey.
 3 I just know that I'm juggling two restricted schedules, so
 4 the order might not be correct. But I'm also going to be
 5 calling Amalia Leighton Cody, Mary Catherine Snyder, and Aly
 6 Pennucci.
 7 MR. EUSTIS: Okay.
 8 MR. KISIELIUS: I do not believe -- my expectation, at
 9 least based on what I know of their direct testimony, is
 10 that nobody should be testifying for as long as Mr. Kaplan
 11 has.
 12 MR. EUSTIS: Okay.
 13 MR. KISIELIUS: So --
 14 MR. EUSTIS: So you would be calling seven witnesses?
 15 MR. KISIELIUS: Correct. Some for a very short duration.
 16 MR. EUSTIS: Okay. Good enough.
 17 HEARING EXAMINER: All right. We'll be off the record.
 18 (March 26, 2019 hearing day concluded)
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 21
 22
 23
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 25