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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Special Public Meeting
1465th Meeting Session [16th of 2017]

7:17 p.m. to 8:50 p.m.
Thursday, June 29, 2017

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 ROBERT MILLER, Vice Chair

4 PETER MAY, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JENNIFER STEINGASSER

13 JOEL LAWSON

14

15

16 Office of the Attorney General:

17 ALAN BERGSTEIN

18

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

2 CHAIRPERSON HOOD: This meeting will please
3 come to order. This is a special public meeting of
4 the Zoning Commission. Good evening, ladies and
5 gentlemen, this is the special public meeting of the
6 Zoning Commission for the District of Columbia.

7 My name is Anthony Hood. Joining me are Vice
8 Chair Miller, Commissioner May, and Commissioner
9 Turnbull, as well as Office of Zoning Secretary, Ms.
10 Sharon Schellin, Office of Attorney General, Mr.
11 Bergstein, Office of Planning, Ms. Steingasser, and
12 Mr. Lawson.

13 Copies of -- well, this is a remand case for
14 Zoning Commission Case 13-14, and this is for the
15 purpose of the Zoning Commission deliberations only.
16 We're being recorded, and we ask that you -- webcast
17 live, and we ask that no one in the audience be
18 disruptive as we continue our deliberations.

19 So, with that, I would ask Ms. Schellin, do
20 we have any preliminary matters?

21 MS. SCHELLIN: No, sir.

22 CHAIRPERSON HOOD: Okay. Commissioners, what
23 I would like to do is go down some of the issues that
24 have been remanded back to us by the Court. We have
25 a guide that we can kind of go by to discuss some of

1 these issues as we move forward. Any opening
2 comments from anyone?

3 [No audible response.]

4 CHAIRPERSON HOOD: Okay. One of the -- there
5 were issues that we have numbered the whole time
6 through this process. Issue 1A, could the other
7 policies cited in the order be advanced if
8 development on the site were limited to medium or
9 moderate density use? And I think that's in the -- a
10 lot of this was pointed out on page 2 of the Office
11 of Planning's report, dated March 13th, 2017.

12 Okay. So, let me go through some of the
13 assertions that were made. And I'll just read them
14 all and we can talk about them, or we can do one at a
15 time. Which is your preference? Go through all of
16 them?

17 Okay. Let me do the whole list and then we
18 can talk about it. The project would not be viable
19 without at least 860,000 square feet of office or
20 healthcare facility uses. A 90-foot tall office
21 building with a typical floor to ceiling heights
22 could accommodate 860,000 square feet of gross floor.
23 And the office building on parcel 1, would be
24 unmarketable. Healthcare facility buildings have
25 specialized floor to ceiling requirements due to

1 requirements for the large insential (phonetic)to
2 accommodate mechanical, electrical, and plumbing
3 components.

4 The healthcare facility building could only
5 achieve a height of 90 feet by eliminating 190,000
6 square feet of gross floor area. Recapturing the
7 190,000 square feet of lost gross floor elsewhere on
8 the site would significantly reduce the quality and
9 quantity of the Comprehensive Plan policy's advance,
10 including historic preservation, open space,
11 affordable housing, and retail opportunities.

12 Do you agree that these assertions -- anyone
13 disagree with any of the assertions by the applicant
14 or want to discuss any one of those that I just
15 mentioned?

16 [No audible response.]

17 CHAIRPERSON HOOD: Do we agree with the
18 assertions? Commissioner May?

19 MR. MAY: No. So, I think that we heard
20 substantial and credible testimony on these
21 assertions, I think generally. And but I think that
22 there -- I don't feel like the question is fully
23 satisfied. But let me back up just one second. I
24 think that one of the reasons why this is a pivotal
25 question to be addressed has to -- it goes to the

1 court's question or assertion of the importance of
2 the Mid-City element in the statement that -- in that
3 policy that wherever, or where development occurs,
4 that the development should be limited to moderate --
5 medium and moderate density use.

6 And there are lots of different ways to look
7 at that, I think. And, you know, some of that has to
8 -- well, the medium moderate density use that
9 actually is, I think, largely consistent with that,
10 the issue here is that in order to achieve this
11 particular type of use, the building had to be
12 taller.

13 I understand that, I understand the rationale
14 for that. I think the thing that's a bit missing for
15 me is that the applicant kind of jumped from the --
16 you know, this is what we've designed and it's 115
17 feet tall, to the question of dropping it down to 90
18 means losing 190,000 square feet of gross floor area,
19 and then we give us some ways that that might be
20 solved.

21 You know, I think again, we heard good
22 information on that, but I don't know that the --
23 what we received is as exhaustive as I would like. I
24 mean, granted, we cannot ask the applicant to run
25 every conceivable scenario for redeveloping the

1 property and limiting it to a, you know, no more than
2 a medium density development because the, you know,
3 the range of alternatives is too big and things like
4 this should be developed through a public planning
5 process. And that's in fact how this -- we wound up
6 with the scheme that we have.

7 But I think that there are some -- there is
8 some further examination of that building that could
9 be done that would at least give me comfort that --
10 on this question of whether it's possible to do a
11 building with medium density. I mean, okay, we've
12 looked at the question of whether you take off two
13 floors what happens. But I don't know that we've --
14 that ever possible manipulation in that building or
15 every reasonable manipulation of that building has
16 been examined. And okay, if they come to the
17 conclusion that 190,000 feet doesn't work. Well,
18 what if it's a, you know, a 90,000 square foot
19 reduction in the building. What if they took off
20 only one floor? What if they manipulated the
21 footprint a little bit? What if they, you know,
22 expanded the building in certain parts?

23 I mean, I think there actually is more that
24 can be done to examine solutions that we need to see.
25 And again, I'm not looking for -- I'm not suggesting

1 that there needs to be an exhaustive examination of a
2 wide range of alternative configurations, but I think
3 more work would be helpful for us to answer this
4 question because I think that we have to answer it
5 with absolute confidence if we're going to say, yeah,
6 the only way this can be done is to have a building
7 that is taller than would be allowed under the medium
8 density zone.

9 CHAIRPERSON HOOD: Vice Chair Miller.

10 MR. MILLER: Thank you, Mr. Chairman. Yeah,
11 I would agree that we should explore whether reducing
12 the height, what's before us, could result in a
13 viable project that still advances all of the
14 Comprehensive Plan policies for parks, recreation,
15 and open space on a third of the space, affordable
16 housing on a lot of the housing, grocery store
17 requirement that this Zoning Commission required when
18 it was only aspirational, when it was first presented
19 to us.

20 So, and I think we should remember that it
21 was this Zoning Commission that requested a look at
22 what was presented to us originally as a 130-foot
23 building, saying that you need to take a floor off of
24 that. And the applicant came back with a viable
25 project at 115. These are floor to ceiling heights

1 that are more than normal because of the medical
2 office building requirements. But they went from 130
3 to 115 because this Zoning Commission, at one of the
4 public hearings, one of the 20 hours of public
5 hearings that we held on this project, said that it
6 needed to be a lesser height.

7 So, I -- yeah, I'd be open to saying --
8 asking the applicant to come back to say if they can
9 do a viable project with another floor, reduced,
10 which is what the party opponent is requesting,
11 basically, although they have provided submissions in
12 our most recent hearings as to why that would have a
13 domino effect as to not advancing all of those other
14 affordable housing, parks, recreation, and open
15 space, and other preservation policies that are
16 important for this site and the land-use element in
17 the Comprehensive Plan.

18 But I could, if we want to see if they can
19 produce something that says it could be viable with
20 another floor off, I mean, we can give more time to
21 do that. So, I guess that's it for me for right now.

22 CHAIRPERSON HOOD: Okay. Anyone else? Mr.
23 Turnbull?

24 MR. TURNBULL: Oh, thank you, Mr. Chair. I
25 would agree with my colleagues. I think, even though

1 I know the -- I think there's a significant amount of
2 issues that we're looking at here, and I know that
3 the applicant in its material sort of gave a -- one
4 of its presentations gave a block massing of what a
5 whole building would look like and then they sort of
6 showed how it -- showed how they got to where they
7 were with our help.

8 As we continue to go through this thing, and
9 then we've taken the time to go back and look at what
10 was presented to us when we did, and maybe we should
11 have been a little bit more adamant in asking the
12 questions about, have you really massaged that one
13 site, and can that building be really looked at in
14 more depth to see if it could accommodate some of the
15 concerns that we were getting at the first time, and
16 see if we could even go a little bit further in that
17 analysis.

18 So, I don't want to repeat what everyone else
19 has said, but I would agree with Commissioner May and
20 the Vice Chair. There was a lot of elements on this
21 site that are very critical. There is the open
22 space, the housing, the grocery store. But I really
23 think that we need to take another key look at the
24 medical building. I mean, the drawing that was shown
25 at one point showed some very specific floor heights,

1 whether it was 18-6 on the first floor to going to 13
2 feet, and then suddenly 14 feet, floor heights at the
3 upper floors, you begin to question well, someone has
4 looked at this somehow, but how did you get to there
5 and is there some way that can be massaged into a
6 more meaningful building and placement on the site
7 that would get us to where we think we need to be?

8 So, I would agree that I would like to have
9 the applicant try to take another look at this, and
10 knowing program needs of medical healthcare are
11 different than office building, but I'd like to have
12 them take another look at this and see if something
13 can be massaged on that site a little bit more.

14 CHAIRPERSON HOOD: While I agree with all of
15 my colleagues, I do think, though, that the
16 information that was supplied to this commission,
17 dealing with floor to ceiling heights, and the
18 rationale of the height that we came, and as the Vice
19 Chair mentioned, the rationale of us questioning the
20 floor to be taken off to begin with, came from this
21 commission.

22 I do think programmatic ways of the
23 healthcare facility brings some rationality to what
24 was presented to us by the applicant. I sat on
25 another case where they were asking for a certain

1 amount of space and rooms in healthcare, which was
2 the Washington Hospital Center. I've been around
3 long enough for that part of it. But I can tell you
4 that I know there's certain pieces of equipment to
5 make things marketable, the way I see it, for
6 healthcare. And I'm not an expert in healthcare and
7 I'm not going sit here and profess to be one. But I
8 do know there are certain pieces of equipment and
9 things that need to go -- and I think the applicant
10 kind of eluded to that in that whole discussion, as I
11 recall. If you don't believe me, wait until you need
12 it.

13 So, I agree with the comments that I've heard
14 from my colleagues. We can ask the applicant to look
15 at maybe taking 90,000 square feet, or whatever, off
16 and see if it's still viable. But one of the things
17 that I know that the community, who supported this
18 moving forward was, one of the things that I heard
19 was green space. And we probably could lose a whole
20 lot of height, but we'll lose the green space.

21 So, we're gaining one thing and losing
22 something else, and I think this was, for the most
23 part, I know everybody didn't agree, but for the most
24 part the way I saw it and it was presented here, in
25 front of me, was that this was partially also a

1 community driven project. Because I noticed I didn't
2 see the ANCs come back. That's not who took us --
3 took it further. A lot of folks in the neighborhood
4 want to see this moving forward, and I thought that
5 there was a -- I don't want to necessarily use the
6 word balance, but a compromise with community input,
7 the applicant's input, because I heard a lot about
8 green space and I think there was a concession made
9 for that.

10 But I'm in agreeance with, let's look and see
11 what happens again. But some of those other elements
12 I think are very critical to this project moving
13 forward. So, we'll see what happens if we send it
14 back in that direction. Vice Chair?

15 MR. MILLER: Thank you, Mr. Chairman. Yeah,
16 I just wanted to add that I agree with everything
17 you've just said and note that, I mean, this is a
18 project that has gone through the mayor and council
19 process many times and has been approved many times
20 in this configuration. And the ANC.

21 So, those are the elected representatives of
22 the people, and the ANC has recommended approval.
23 So, I think we just should take note of that fact
24 that this is supported by the elected representatives
25 of the people.

1 Of course, there is opposition but there is a
2 lot of support for this project in the community, and
3 the green and open space in the community center has
4 grown throughout the project. The affordable
5 housing, and the grocery store requirement has been
6 strengthened throughout this process. And I just
7 think we need to be cognizant of that.

8 And yeah, you could -- there are -- we did
9 step downs and setbacks of the height when we did the
10 -- when we took the floor off. So as to not
11 adversely impact the adjacent lower density
12 neighborhoods, as called for in the Comprehensive
13 Plan. So, that's why there were the setbacks and
14 scale downs. So, it just -- we just need to be
15 cognizant that there has been a balancing that has
16 already occurred of all of the Comprehensive Plan
17 policies which are divergent and competing and
18 important. But this is an important mixed use, mixed
19 income housing and economic development project that
20 the city has been trying to develop for over 30
21 years. And it's important that it move forward at
22 some point.

23 CHAIRPERSON HOOD: Okay. Anything else on
24 this? Let's move to Issue 2, which was, and I'm
25 going to read what I have. Do the other

1 Comprehensive Plan policies cited by the Friends of
2 McMillan Park in the record of this case weigh
3 against approval of the project.

4 And there are some issues that were raised by
5 -- do we call them FOMP? I don't want to -- what do
6 we call them? Friends of McMillan Park. I thought
7 we called them -- okay. Do so many acronyms and
8 shortcuts. No disrespect to them, but I want to make
9 sure that I call people by their -- or did we call
10 them FOMP? I can't remember. We've got so many
11 cases down here. But anyway, Friends of McMillan
12 Park.

13 One of the things that they talked about was
14 the inconsistency of the application with the
15 following Comprehensive Plan and policies, weigh
16 against approval.

17 And I'm going to cite some and if I leave
18 anything out, please let me know. Mid-City, 2.6.5
19 scale and mix of new uses. Basically, they say the
20 PUD fails to maintain view sheds and vistas and fails
21 to minimize impacts on historic resources in adjacent
22 development. The Commission prior findings to the
23 contrary, was based upon false testimony by NCPC
24 planner who subsequently, hired by attorneys for the
25 applicant. The issue should be referenced to NCPC.

1 For me, that last part that I read is very
2 speculative. I don't know if I even want to go down
3 that road. I don't think I want -- I, personally, am
4 not going to engage in that because you know, I
5 wasn't in the room and that's very speculative. So,
6 but if anyone else wants to comment they can.

7 The PUD fails to maintain view sheds and
8 vistas and fails to minimize impacts on historic
9 resources in adjacent development.

10 And I guess, does that weigh against the
11 approval of our first approval of this project?

12 On the same order. Commissioner May. Okay.

13 MR. MAY: I'm happy to shake things up, but
14 I'll go on this one first, too.

15 So, we did look very carefully in the initial
16 case and in consideration of -- in our
17 reconsideration about whether views and vistas were
18 taken into consideration and whether -- well, so,
19 let's just talk about views and vistas.

20 And I think that the project has been
21 developed to maintain views and vistas, and I mean,
22 granted, we're building buildings where there is
23 currently nothing, and so that will affect the view
24 depending on where you're standing.

25 But, I think that we looked at some of the

1 important views from further north in the city, and
2 honestly, I don't think that there is -- I think that
3 the project has been modeled sufficiently to address
4 that and to minimize impacts on historic resources.
5 And certainly, in terms of the adjacent development,
6 you know, the project steps down towards the south,
7 as you approach one area of row houses, and then it,
8 you know, the taller buildings across where we have
9 the tall building in Parcel 1, it's set back
10 substantially from North Capitol Street to minimize
11 its potential impact on the houses across the street
12 there.

13 And then the rest of the development is of a
14 scale that's -- that I think works well with what's
15 across the street. So, I think that views and vistas
16 are appropriately addressed in the project.

17 Impacts on historic resources, I mean,
18 there's a -- I think we'll go into historic resources
19 a little bit later in a different policy. But I
20 think that the project has been very carefully
21 planned and has changed over its development in order
22 to minimize the impacts on historic resources. That
23 doesn't mean that there aren't impacts on historic
24 resources, but I believe that they have been
25 substantially minimized. And to the extent that

1 there are impacts, they're being mitigated by some of
2 the approaches to making those historic resources
3 into actually usable and enjoyable resources for the
4 community that will be created here.

5 I agree with you that we don't have any
6 evidence in the record that the testimony that offers
7 -- that was offered to us was influenced in any way
8 by the NCPC planner who, you know, worked for NCPC
9 and studied this project and then subsequently went
10 to work for the attorneys for the applicant. I just
11 don't see that connection, and I think we have
12 testimony from the planner that indicate that there
13 was no connection. I don't see any reason to second-
14 guess that, and I don't think that there's any reason
15 to refer this again, back to NCPC.

16 CHAIRPERSON HOOD: Okay. We'll just keep the
17 same order. Vice Chair Miller. You have anything on
18 -- nothing? Commissioner Turnbull?

19 MR. TURNBULL: Oh, thank you, Mr. Chair. I
20 would agree with Commissioner May. I think I mean,
21 the principle access, or the North Capitol Street and
22 1st Street, you've also got a major opening in the
23 middle of the site going north and south. And I
24 think that the applicant in its way, when it had
25 studied the plans and showed the layout how this

1 thing grew and changed, show the access and how this
2 thing interplayed, and the historical elements that
3 are being preserved. I don't think really, from the
4 standpoint of vistas and views, if you had a third --
5 a three-story building, or a four-story building on
6 Michigan Avenue it's changed. But I don't think
7 there was any testimony given that showed to me,
8 convinced me that from any other historic sites,
9 looking toward the view of the capital, I think were
10 severely impacted.

11 I mean, the testimony that I heard said that,
12 again, we're relying on NCPC's original report, but
13 again, I have no reason at this point in time, to
14 doubt that. So, I think it was a fairly genuine
15 report and I'm satisfied with that.

16 So, I feel that the view and the view sheds
17 have been maintained.

18 CHAIRPERSON HOOD: Okay, I won't say too much
19 more than what my colleagues have already said. But
20 I would say that I agree that the views have been
21 respected. I think the crafting of the positioning
22 of different things that were placed on this site, on
23 this large site, as far as development was concerned,
24 I think that it was respectful of the surrounding
25 area. And I think that the record will -- the record

1 still, I think, upholds that. I think the record is
2 complete, the merits of the case show that the views
3 and the view sheds have been respected. And as was
4 mentioned by Commissioner May, there's nothing there
5 now. So, it will be touched some, but I think for
6 the development that's being proposed, I think it was
7 dealt with.

8 And again, I go back to the community wanting
9 that open space. And that's part of why we have some
10 of the areas more dense or something than we have
11 others because the community wanted open space.
12 Okay. Anything else?

13 All right. Let's move on to MC 2.6.3,
14 mitigating reuse impacts. The PUD, I'm going to read
15 both. The PUD will not reduce parking, traffic, and
16 noise impacts on the community, but will increase
17 those impacts, and fails to increase connectivity
18 between Northwest and Northeast neighborhoods, as
19 well as the hospital complex to the north.

20 Do you, or do you agree that that weighed
21 against our approval? Commissioner May?

22 MR. MAY: Okay. So, you know, this is -- one
23 of the things to keep in mind here is that the PUD
24 itself is not going to reduce traffic, and parking,
25 and noise. Right? I mean, right now it's

1 essentially vacant, unused land with, you know, some
2 historic features on it. But, so it's not generating
3 a lot of -- I mean, there is no significant parking.
4 It's not generating traffic as it is. This is really
5 about the reuse. And so, you know, what kind of
6 reuse occurs here is going to determine the potential
7 of such impacts.

8 And, you know, the question before us was
9 whether this project does a good job of you know,
10 creating the right kind of development that actually
11 you know, really gives an opportunity for minimizing
12 some of those impacts.

13 And I think that the project does a very good
14 job of reducing potential traffic and parking impacts
15 because of the way it has been designed. And I think
16 that part of that is you know, making sure that there
17 is a range of uses in the property, and that there is
18 a certain significant density within the project,
19 right? I mean, it may seem counterintuitive to say
20 that more density might actually reduce traffic. But
21 with some greater density you have greater
22 efficiencies associated with the things like the
23 shuttle buses that are planned for the project right
24 now. They wouldn't make sense if this was all just
25 developed as apartment, you know, low-rise apartment

1 buildings or townhouses, or something like that.

2 So, I think that there are certainly ways
3 that the site could have been developed that would
4 have been, you know, consistent with the
5 Comprehensive Plan that would have actually had
6 substantially more traffic impacts, and created more
7 potential parking impacts for the neighborhood. You
8 know, if it were all built out as townhouses then
9 we'd have, you know, lots of people parking in the
10 streets and that would spill over into the
11 neighborhood.

12 And so, I think there you know, of course
13 we're reacting to what is presented to us, but I
14 think that what was presented to us was a reasonable
15 approach and as we reviewed the project it improved,
16 and the potential impacts on parking and traffic were
17 mitigated, or were minimized and then mitigated. And
18 I think that there are some other features to it
19 having to do with how the crossings are handled and
20 how the intersections are handled that further help
21 in that regard.

22 So, you know, again, this is a question of
23 you know, assuming it is going to be reused and
24 redeveloped, how do you keep those kind of impacts as
25 minimal as possible, and I think that this project

1 does a good job of addressing that.

2 CHAIRPERSON HOOD: Vice Chair Miller.

3 MR. MILLER: On the traffic and parking, I
4 would just note that from my perspective, that was
5 one of the areas that the Court didn't seem to have a
6 problem with how we handled that issue. When they
7 were talking about how we didn't address
8 sufficiently, other adverse impacts and how they were
9 being mitigated, which I think we have addressed
10 them, and now, and we can go into that and how
11 they're being mitigated. But on the traffic and
12 parking area, we did have substantial testimony from
13 citizens and from DDOT as to the mitigations and the
14 shuttle buses that were going to be provided, and
15 other measures to try to address those issues. So,
16 that was one -- the parking and traffic, from my
17 perspective, was one area where the Court did not
18 seem to have a problem with how we had handled that,
19 and I'm happy that there was one area that they
20 seemed to not have a problem with, with what we had
21 done in the original decision.

22 So, I don't think we need to do anything
23 further on that point.

24 CHAIRPERSON HOOD: Okay. Commissioner
25 Turnbull.

1 MR. TURNBULL: Yeah, I guess I'm not going to
2 add much more to that. I would agree with everything
3 that's been stated. I think one of the things that
4 the site plan did do is that it did provide new
5 connections that integrated the site with the city
6 fabric. I think the street patterns that were
7 developed, both east and west, and north/south, I
8 think helped to contain traffic within the site, I
9 think by continuing the street pattern per se, of the
10 city, I think it did a great job of integrating the
11 development with the street network.

12 So, I am more than happy -- I didn't see any
13 issues with that and as the Vice Chair said, I think
14 it was an excellent job of working with that site.

15 I think, again as I said, the east/west
16 connections are very closely replicating the street
17 pattern that already exists within the neighborhood.
18 So, I think it was respectful of the existing
19 pattern.

20 CHAIRPERSON HOOD: All right. I would
21 definitely agree with the Vice Chair. I'm not sure
22 how much the D.C. Court of Appeals sent back to us as
23 far as traffic, and I think that's one thing that we
24 were able to -- and I know we harped on it. I know
25 specifically I harped on traffic. Especially on

1 Michigan Avenue and North Capitol, for sure. I know
2 I harped on that.

3 But one of the things I think, though, that I
4 want to make sure that we don't lose sight on, it was
5 not necessary that the Zoning Commission, who came up
6 with some of the push that we had on making sure of
7 some of this traffic is mitigated, it was due to the
8 help of even the Friends of McMillan, the ANC, the
9 community again. Again, a community driven project,
10 that we made sure that some of those things were
11 mitigated.

12 So, I don't want to take all the credit for
13 dealing with traffic because I want to give that to
14 everybody, because I think collectively, as a unit,
15 we moved in the direction of where we came down on
16 traffic. So, I don't -- maybe that's probably why we
17 didn't get as much of that back as some other things.
18 And as far as the connectivity, I would associate
19 myself with Mr. Turnbull.

20 I think it was respected, I think it was well
21 thought out. And whatever project eventually goes
22 there, and I think it's going to be similar to what
23 we have now, and I don't think you're going to get
24 too much more, or better of what we have there,
25 because -- and I'll just leave it at that because

1 I've got something else I want to say when we get to
2 historic. Anything else on this?

3 Okay. All right. Let's go to the MC 2.6.2,
4 Mid-City 2.6.2, Historic Preservation at McMillan
5 Reservoir. We'll just keep the same order.
6 Commission. Somebody else want to go first?
7 Commissioner May.

8 MR. MAY: So, I'll start off and there's
9 certainly -- I'm sure this will have things to say.

10 So, I mean, this -- the project absolutely
11 has an effect on the historic structure that exists
12 on the site. But it, I think, goes a long way to try
13 to preserve some component of that, some
14 understanding of what was there. And I think
15 especially goes a long way with the above-ground
16 elements. I mean, I think that actually what they
17 did with the above-ground elements is really quite
18 remarkable, and it's going to be a terrifically
19 interesting place to be.

20 Would it also be interesting if they
21 preserved more of it? Conceivably, but again,
22 it's -- there is, the essential challenge of this is
23 trying to come up with a project that is both viable
24 in all senses of the word, not just financially
25 viable, but actually creates a real community and

1 makes a good place within the city. And you know,
2 also preserves substantial components of this
3 historic fabric.

4 I mean, I think when you compare this to many
5 other developments where they're basically working
6 with a blank slate, you don't have this gift of
7 historic fabric to work with that makes it into a
8 truly interesting and exciting place. And I think
9 that they've done a good job of integrating that. I
10 mean, the notion that it -- the project destroys the
11 spacial relationship between the open space and the
12 towers and structures to the north and south service
13 courts, yeah, I mean, there's going to be buildings
14 there.

15 But the fact that there are buildings there
16 doesn't mean that those things are destroyed. And,
17 in fact, the notion that there is as much open space
18 on the site as there is, again, as a result of the
19 community's involvement and the push for more open
20 space. I mean, I think that all further mitigates
21 that impact.

22 So, I think that those issues have been well
23 addressed in the project.

24 CHAIRPERSON HOOD: Okay. Vice Chair Miller.

25 MR. MILLER: Thank you, Mr. Chairman. I

1 would agree with Commissioner May. And the creation
2 of the Olmstead walk around the site, and the
3 enormous amount of open space, parks, recreation,
4 open space on the southern third of the site with the
5 community center there, is a very important element
6 which I think the medical office building and other
7 vertical development is helping support all that
8 historic preservation.

9 CHAIRPERSON HOOD: And, Mr. Turnbull?

10 MR. TURNBULL: Thank you, Mr. Chair. I would
11 just want to echo with the Vice Chair on the Olmstead
12 walk. I mean, here you're dealing with a site where
13 the grade changes considerably. I mean, it's a very
14 -- it's a big change and you've got this elevated
15 plinth. And they're putting -- they're restoring
16 this elevated plinth. And if you look at the
17 drawings, what they're proposing with all the trees
18 lining this, you're looking at, it's going to be
19 accessible. They're working with a site that's got
20 variations in grade and yet making it accessible to
21 people of all walks of life.

22 And even by the community center, opening up
23 that community center so you have a walkway directly
24 in to it, and then having a bridge across it, the
25 continuation of the walkway, I think they did a

1 remarkable job of working with this site with the
2 elevated plinth, and getting that Olmstead walk back
3 to where it would be a very significant feature of
4 the site. And I think that was a very excellent job
5 of site planning. And I would also echo Commissioner
6 May's comments as well.

7 But I think working with that plinth and
8 trying to really, really get that integrated with the
9 site and the development that is being proposed, is
10 really significant.

11 CHAIRPERSON HOOD: I would agree. Especially
12 with those, the towers. And when I first saw this
13 site and what was being proposed, I'll be frankly
14 honest. I got very nervous when I saw those towers.
15 For the most part they were being reserved, because
16 long before I got on the Zoning Commission in 1993, I
17 too did a tour of McMillan, and while I was in one of
18 them the gentleman told me that they were not
19 structurally sound. So, you should have saw me
20 trying to get out of there.

21 So, I think this is a very serious concern,
22 and I think it's admirable for the amount of money at
23 92 that would -- I think it was '92 or '93, there was
24 a call to shore these up. So, I think that as far as
25 preserving the historic fabric, I think this

1 applicant, what's proposed in front of us, has done a
2 yeoman's job as far as doing that. Especially from
3 what I've heard in '92. Now, we're talking years
4 later now and I'm looking to -- and I looked at this
5 site, and I see some of those spirals and down under
6 being preserved for the most part. There was another
7 point.

8 Okay. Did I read this point, destroys
9 majority of the architecture or distinctive portals
10 to the cells? I didn't read that. Okay. Anyone
11 want to comment on that? I think I did to a point.
12 Okay. All right. That's all I have.

13 And the last one was 2.6.4, community
14 involvement in reuse planning. The development was
15 an assertion from FMOP was the development was not
16 responsive to community needs and concerns in reuse
17 planning for the site. Any comments on that?

18 I really think that I totally disagree with
19 that. I think while everybody didn't get what they
20 want, it might not have went what they want. Some
21 people wanted all open space. Some people wanted
22 something else. Some people -- so, I think that the
23 record will show that for the most part, even though
24 everybody is not happy with it, obviously because it
25 went to the D.C. Court of Appeals, which is fine.

1 But it shows that this community worked together to
2 come up with it, especially those frontline elected
3 officials, and the green space. I'm looking at how
4 much green space is on this site. I'm looking at the
5 grocery store as you mentioned, that's on this site.
6 So, to say that it lacked community involvement, I
7 think the record is sufficient. I think it shows by
8 at least the amount of people that we've seen, and
9 it's not a popularity contest, but there are a lot of
10 people in that surrounding neighborhood who wants
11 this to move forward. They want to walk across the
12 street in the connectivity to go to the grocery
13 store, instead of going out to, I'm not going to call
14 it Ward 9, but Maryland, to do their grocery
15 shopping.

16 So, and this whole project reminds me of what
17 can happen in my neighborhood at the old Hex
18 warehouse. So, I can tell you, these are some of
19 those places that people never go at night, and I'm
20 sure that this community would benefit sufficiently,
21 and I know that this community, whether you disagree
22 with it or you've been against whatever is ongoing
23 here or not, I think that this is a community drive
24 project.

25 And I think if the Court looks at the record,

1 I think they will see the merits of this case shows
2 that the community had a lot to say so in this
3 project. Anybody else? Commissioner May?

4 MR. MAY: I would agree strongly, and I think
5 we saw good evidence in the testimony of the
6 applicant, which we did not have the first time
7 around in the case, which showed, at least not in the
8 same level of detail, showed the development of the
9 plan over time, and what the various iterations were
10 and how it evolved and how it clearly was changed by
11 the input from the community as the plan was
12 developed. I mean, I thought that was very
13 compelling. So, I'll leave it at that.

14 CHAIRPERSON HOOD: Okay. Anybody else? Vice
15 Chair Miller?

16 MR. MILLER: I would agree with Commissioner
17 May on the evolution of the project based on
18 community input. We had 20 -- oh, I think we had
19 over 20 hours of hearings before we had the remand
20 hearing. And I know there have been probably that
21 many hours of hearings, if not more, at the council
22 as well. So, this project, for decades, has been
23 trying to be responsive to community concerns.

24 And finally, this major space will be
25 accessible to the public and will benefit the public.

1 And I think all of us will benefit, and including the
2 adjacent neighborhood, from that.

3 CHAIRPERSON HOOD: Okay. Commissioner
4 Turnbull.

5 MR. TURNBULL: Yeah, thank you, Mr. Chair. I
6 would agree with my colleagues. I think it -- I
7 don't think we really understood the amount of the
8 input until the most current hearing that we had, and
9 the applicant presented the whole setup of plans
10 showing how it had developed from almost very little
11 open space on the site, and I think there was like
12 six or seven iterations that that went through, and I
13 think that was -- again, we did not get that in the
14 original set down and in the hearing that evolved
15 after that. But I think it was very telling to see
16 those plans afterwards to know what the applicant had
17 done in meeting with the various -- with the ANCs and
18 the neighborhood groups.

19 And so, I would -- again, I guess I was
20 pleasantly surprised to see that. I think we almost
21 want that presented earlier. I think that would have
22 made it a little bit easier for us to understand.
23 But I'm glad we did get it when we got it. It really
24 shows that there was a process, and the process was
25 followed through, and that the applicant did listen

1 to the neighbor's request.

2 CHAIRPERSON HOOD: All right. Let's move to
3 Issue 3. Is the high density development proposed
4 for the site the only feasible way to retain a
5 substantial part of the PUD site, is open space and
6 make this site usable for recreational purposes.

7 For the most part, I think we answered that.

8 MR. MAY: Well, Issue 3, I think is something
9 that we'll have to take up further when we see
10 further information from the applicant.

11 CHAIRPERSON HOOD: Right. And that's what I
12 was going to, I think --

13 MR. MAY: Yeah, okay.

14 CHAIRPERSON HILL: I think we did that when
15 we dealt with the first issue, 1A. So, I was kind of
16 going there. I might not have said it the same way.
17 Anybody else want to comment on that, because I think
18 we dealt with that already. Vice Chair Miller?

19 MR. MILLER: Only, I think Commissioner May
20 has a good way of articulating, as -- not to put you
21 on the spot, as to how even Parcel 1, with its --
22 although its height is somewhat -- is out of scale
23 with the medium density, but the density designation
24 itself is not necessarily -- do you want to -- I
25 don't want to put you on the spot, but --

1 MR. MAY: Well, you know, you know, I think
2 that again, I think that this is something that we
3 should discuss further when we see what the applicant
4 can do. But as you know, as you note, and as I
5 alluded to earlier, I have a hard time calling what
6 happens on Parcel 1, in itself, high density
7 development. Yes, the height of it is consistent
8 with what you would find in a high density zone. But
9 every other aspect of it is consistent with a medium
10 density zone. Or, you know, be granted the high end
11 of the medium density zone, but still. You know, if
12 it weren't for the fact that it were a medical office
13 building and it needs additional floor to floor
14 heights for the equipment, it would be consistent
15 with the medium zone. So.

16 MR. MILLER: Thank you. That's why I
17 appreciate you providing that information.

18 MR. MAY: Okay.

19 CHAIRPERSON HOOD: He just liked to hear you
20 elaborate on that.

21 MR. MILLER: It's more credible coming from
22 you than me.

23 CHAIRPERSON HOOD: All right. Let's go to
24 Issue 4A. Okay. Will the project result in
25 environment problems, destabilization of land values,

1 or displacement of neighboring residents, or have the
2 potential to -- or will have the potential to cause
3 any other adverse impacts identified by the Friends
4 of McMillan Park in the record for this case?

5 So, I guess one of the questions, do you
6 agree that -- do we all agree that the -- does
7 anybody agree that the applicant -- with the
8 applicant that the project will have no substantial
9 environmental impacts, and in fact includes the
10 potential environmental benefits in this case? In
11 the record of this case.

12 Vice Chair Miller.

13 MR. MILLER: Well, I'll start off by saying
14 that we did get a report from the District Department
15 of the Environment and Energy, DOEE, which we didn't
16 have, I think, in the original case. So, it's
17 important that we had that report, and that report
18 said that there were no adverse impacts that could
19 not be mitigated by what was being provided, and it
20 wasn't out of the ordinary. But I just would note
21 that for the record, that we -- that was an important
22 report that maybe we should have had originally, and
23 we do have it now and I think that addresses the
24 concerns that was in the Court's decision.

25 CHAIRPERSON HOOD: Commissioner May.

1 MR. MAY: Yeah. So, I agree it was helpful
2 having that more detailed report. You know, I think
3 normally in the PUD process we do take into
4 consideration substantial environmental aspects of
5 every case. And it is an important thing. I mean,
6 certainly, you know, we even modified the zoning
7 regulations to incorporate a green area ratio a few
8 years ago because of those sorts of concerns, and
9 this project satisfies the GAR requirements under the
10 zoning regulations.

11 You know, what's clear from the Court's
12 consideration of this is that when concerns about
13 environmental impacts are raised by an opponent to
14 the case, they are things that we actually have to
15 consider, and the applicant has to address. I mean,
16 I imagine some of them -- there are going to be
17 limits on what gets addressed, and in the past, we
18 have relied on the DCRA process for screening
19 projects, the EISF process, to make sure that all of
20 those requirements are met. And, you know, I have
21 some experience with having to go through this, go
22 through that for projects, and certainly have to
23 meet, you know, even in the federal government we
24 have to meet certain requirements for when it comes
25 to water, local requirements for water. So, we deal

1 with DOEE on things like that.

2 So, you know, those are all projects, or
3 aspects of the project that, you know, came up in
4 this case, and I think the first time around we
5 didn't necessarily have all the information to be
6 able to address that, and I think that now that we've
7 had further testimony on the topic, I am convinced
8 that those concerns have been addressed. I mean,
9 simply having some information on the EISF process,
10 as it has been done for this case, having that
11 further analysis that was done by DOEE, understanding
12 how things like air quality are considered in their
13 process and whether this project would actually have
14 a measurable impact on air quality, and I think we
15 heard compelling testimony that it would not have
16 measurable impact on air quality. And you know,
17 there are other aspects of what they do which go far
18 beyond what we have addressed typically in zoning
19 cases, and go beyond what we have addressed in the
20 zoning regulations.

21 You know, again, zoning regulations now are
22 stronger and with regard to concerns about
23 environmental impacts. Even you know, District law,
24 with the tree protection statutes and so on, is
25 stronger in this regard than it was 20 years ago, or

1 you know, let's go back 30 years to when this, you
2 know, project was first envisioned. It's you know,
3 it's a lot better. It's addressed more clearly. And
4 I think that there is a very strong commitment, not
5 just by the city but by you know, all of -- I mean,
6 not just by city, by politicians, by you know, the
7 broader city objectives. But in the actual operation
8 of government by DCRA, by DOEE, by DDOT and the you
9 know, the Urban Forestry Administration, and as I
10 said, certainly by the Zoning Commission, in
11 regulation and in reviews.

12 So, I mean, I think this has been a highly
13 educational experience for us and will shape how we
14 consider future projects. But I think that the case
15 has been very clearly made that the concerns raised
16 by the opponents to the project have been addressed
17 in the further testimony by the applicant, and more
18 importantly by DOEE. So, thanks.

19 CHAIRPERSON HOOD: Okay. Anyone else? Mr.
20 Turnbull?

21 MR. TURNBULL: Thank you, Mr. Chair. I was
22 trying to remember, I don't know when the last time
23 on a PUD that we actually saw an EISF report. I
24 can't recall when that's actually -- it usually comes
25 later after the -- in the process. So, for us to see

1 it at this point in time is, it is unusual to say the
2 least. Although, it's nice to have.

3 I think the other thing is that we rely on
4 the regulatory agencies for their input, and I know
5 the Friends of McMillan wanted these agencies to do
6 additional, or further analysis. But you know, at
7 some point the agencies do their job. I mean, and I
8 think that's what we have to rely on. I mean, I
9 think we rely on the standards that they have, and as
10 Commissioner May says, you know, we've helped the
11 process too, along the way, by increasing the zoning
12 regulations to further environmental regulations.

13 But I think when we get something from DOEE,
14 and I think after hearing their testimony, these are
15 very serious individuals doing their jobs. And I
16 think they're very serious about what the care that
17 they do, and in looking at the aspects. And so, when
18 they were looking at the -- assessing the
19 environmental aspects, I felt very good at looking at
20 the reports, and I have no question that other things
21 should have been done beyond what they had done
22 already, which is again, something that the Zoning
23 Commission rarely gets into, or we rarely see the
24 follow-up that they've done.

25 So, I at this point in time, whether it's the

1 GAR and everything else, I'm quite satisfied that
2 we've seen a substantial environmental analysis, and
3 I'm satisfied with it.

4 CHAIRPERSON HOOD: Okay. One of the things
5 that I will credit the community, and especially
6 friends of McMillan Park, we really pushed for those
7 agencies to make sure, and I think, you know, that's
8 again, another learning experience for us to make
9 sure that we had a response. At first, we didn't get
10 a whole lot of input, a whole lot of response. So
11 again, this is a community driven project due to
12 their efforts of having some issues with the project
13 that made us push a little harder and get some of the
14 information that we needed.

15 Now, as far as the environmental impacts,
16 it's like any other project in this city. I'd like
17 to say we -- if there is a problem, we remedy it, we
18 rectify it, and then we reassure. So, that's the way
19 I look at it. This is nothing different, nothing
20 unique than what we do, and everything else we build
21 in this city, or build probably in the country. And
22 I know the country is not being under scrutiny here.
23 It's the McMillan project right now.

24 But I think that as far as the environmental
25 issues, I think that -- I think it's been responded

1 to, I think it's been taken -- and like anything
2 else, like I said, if it comes up and there are some
3 issue there, we'll remedy it, we'll rectify it, and
4 we'll reassure ourselves. And I think that's done
5 all the time. This is no different. As far as that
6 goes, McMillan is not unique. It's done all over the
7 city.

8 Anything else on this? All right. Let's go
9 to the stabilization of land values or displacement
10 of neighboring residents.

11 On the same order? Commissioner May?

12 MR. MAY: Okay. So, first of all,
13 destabilization of land values, I think actually, you
14 know, it's a big ironic that we'd be talking about a
15 project like this destabilizing land values when in
16 fact the 30-year abandonment, if you will, of the
17 property, is probably more destabilizing than
18 anything else.

19 So, this is a stabilizing project. Now,
20 stabilizing you know, can have its negative effects
21 as well. You know, there's been this incredible
22 awakening in the last 15 years or so in the city
23 about what a great place this is to live. And, that
24 is driving a renaissance of so many neighborhoods
25 across this city, but that renaissances also drives

1 the potential for displacement.

2 And I think we saw good testimony in the
3 record about the way, you know, property values have
4 been increasing substantially within the
5 neighborhoods that are around McMillan. And you
6 know, it is just -- I cannot conceive of how a
7 project that has been you know, kind of lumbering
8 along for years is somehow driving this dramatic
9 rise. What's driving this dramatic rise is the same
10 factor that's driving the dramatic rise across the
11 city. It is happening across the city, and it has
12 the most substantial effect in neighborhoods that
13 were substantially undervalued in the first place.

14 You know, we've seen prices rise across the
15 city, but prices are rising less in Georgetown and
16 Capitol Hill than they are on places like
17 Bloomingdale or Eckington or Trinidad where, you
18 know, the prices have been so low and they're being
19 driven up by this, again, this recognition that
20 Washington is a great place to live. So, I don't see
21 how this project contributes to that in any way,
22 shape, or form. And I think, again, going back to my
23 original statement, this is going to stabilize land
24 values in the area more than it will destabilize.

25 So, I think that you know, it was helpful to

1 hear the range of testimony that we heard. But I
2 mean, this is a -- it's a long-standing phenomenon
3 that prices, you know, home values change and you
4 know, displacement has been an issue in the city for
5 a long time. I mean, I don't know if I mentioned
6 this in prior discussions, but I wrote my
7 undergraduate thesis in 1984 on the topic of
8 revitalization of neighborhoods in Washington and
9 displacement. It was big issue back then. It is not
10 -- it was not nearly as big an issue as it is now,
11 and the city has to address it, but stopping a
12 project like this isn't going to help that.

13 CHAIRPERSON HOOD: Okay. Any other comments
14 on that? Vice Chair Miller? We'll go in the same
15 order.

16 MR. MILLER: Thank you, Mr. Chairman. I
17 would agree with everything Commissioner May has
18 said. You didn't -- so, your thesis didn't solve --
19 didn't have the solution how this --

20 MR. MAY: No, and I --

21 MR. MILLER: -- all the displacement and
22 gentrification problem --

23 MR. MAY: And I even tried to look at it with
24 my graduate thesis 10 years later, and I didn't fix
25 it there either.

1 MR. MILLER: Yeah, well, there you go. Yeah,
2 it's a city-wide phenomenon all over the city because
3 it's a valuable city. And one project can't solve
4 it, or cause it. Then there are other city-wide
5 policies which attempt to try to ameliorate the
6 adverse effects upon longtime residents in terms of
7 rising property values, whether it's tax abatements
8 or other measures, and I think the city puts hundreds
9 of millions of dollars into that effort, and
10 obviously needs to continue to do so.

11 But, so I don't think this project alone is a
12 cause of displacement or gentrification. That is a
13 city-wide, nation-wide phenomenon for urban
14 attractive areas, and we just need to have other
15 policies that protect long-time existing residents so
16 they can maintain their homes where they've been for
17 years, and I think the city is trying to do that.

18 CHAIRPERSON HOOD: Okay. Commissioner
19 Turnbull.

20 MR. TURNBULL: Thank you, Mr. Chair. I can
21 remember even 20 years ago on Capitol Hill, when I
22 can remember I hired a project manager from
23 University of Texas, and he moved up and was able to
24 get a place on Capitol Hill back then. And I'm sure
25 he would be surprised. He eventually moved back to

1 Texas when he was finished with what he had to do.
2 But I can imagine what he would do if he came back
3 now and tried to look at the prices 20 years later.
4 I mean, you're right, it's a phenomena throughout the
5 city. It's neighborhoods catch on and they start to
6 change, and it shifts. It shifts from one area of
7 the city to the other, and it's going to continue to
8 happen. It happens in every city.

9 So, and I can't see that this project, per
10 se, is doing anything to affect that. I think it's
11 just a phenomena of neighbors. People come into a
12 neighborhood, they see it, and they go hey, I think
13 it's either close where I want to live, it's close to
14 where I want to go to school, it's close to a lot of
15 other things, and this is when I want to move to
16 there.

17 So, I can't see that people are moving out of
18 this neighborhood because of this project. And as
19 Commissioner May had said, you know, it's empty right
20 now. So, more than anything else, it is a
21 stabilizing -- it will be a stabilizing factor. So,
22 I can't see that it's causing anything like that.

23 CHAIRPERSON HOOD: I would agree. I don't
24 see where this project has any bearing whatsoever on
25 destabilizing land values and displacement of

1 neighbors. This is just a small scintilla of maybe
2 adding credence to that, whether this project -- even
3 if it stayed like it does now, I believe and I'm not
4 an acknowledge or analysis, or I'm not an expert on
5 gentrification, but even like it stays as it is now,
6 and has already been stated, these trends are already
7 happening.

8 But one of the things that the city does have
9 to do, and I'm going to take a line out of Vice Chair
10 Miller's first -- you probably didn't think I watched
11 it, your first confirmation hearing, where you said,
12 protect the past and prepare for the future. That's
13 what needs to happen here.

14 Now, can the Zoning Commission do that?
15 We're just a scintilla, a piece of it as you said.
16 So, you probably didn't think I listened to your
17 first confirmation hearing, but I did.

18 MR. MILLER: I think I stole that from your
19 confirmation hearing.

20 CHAIRPERSON HOOD: Oh, well, I knew it
21 sounded good so -- but no, but it's a reality.
22 Seriously, it's a reality of that. And that's all I
23 can say on that. I'm sorry. This is going to happen
24 regardless. It's happening now, whether you put
25 something over there and it's going to happen. And I

1 think the record is sufficient, and I think the
2 record is complete on that. And I think the way the
3 city is moving, it's going, and I forgot how many
4 people, the mayor, and I don't want to misquote her,
5 said the other night I was at a meeting with her and
6 she mentioned how many people were coming to the
7 city. So, I don't want to get that all fouled up and
8 misquoted. But we do have to prepare for that. We
9 have to get ready for that.

10 So, anyway. Anything else on this? All
11 right.

12 Let's go to -- give me one moment, please.

13 [Pause.]

14 CHAIRPERSON HOOD: I kind of think this next
15 -- yeah. Hold on. Mr. Bergstein.

16 [Pause.]

17 CHAIRPERSON HOOD: All right. I'm going to
18 read Issue 4B. But unless my colleagues want to
19 comment, and I think this is another one we can wait
20 and see what the applicant comes back for what we
21 asked for previously.

22 [Discussion off the record.]

23 CHAIRPERSON HOOD: If so, how should the
24 Commission -- okay. 4B is, if so, how should the
25 Commission -- okay. So, how should the Commission

1 judge, balance, and reconcile a relative values of
2 the project amenities and public benefits offered to
3 the degree of the development incentives required,
4 and the potential adverse impacts? That was 4B.

5 MR. BERGSTEIN: And, Mr. Chair.

6 CHAIRPERSON HOOD: Yes.

7 MR. BERGSTEIN: Let me put it out there, that
8 that is the basic PUD standard. That's really,
9 although as part of the remand consideration that you
10 do this at the end, these two last questions are the
11 standard PUD questions, are the ultimate PUD
12 questions.

13 And so, you should just treat it as not
14 particularly special to this particular project, but
15 as you would do for any PUD. Just basically this
16 wraps up the entire PUD process.

17 CHAIRPERSON HOOD: Okay. So, I can just go
18 on to 5A. Five. Will the PUD have favorable impact
19 on operation of city services and facilities? And
20 then we will answer, if not, is the impact capable of
21 being mitigated or acceptable given the quality of
22 public benefits in the project.

23 So, we can wait, Mr. Bergstein, I'm making
24 sure we can wait until we get the information back
25 from the applicant.

1 MR. BERGSTEIN: If you care to. I mean,
2 the --

3 CHAIRPERSON HOOD: I think that would be a
4 better --

5 MR. BERGSTEIN: Okay.

6 CHAIRPERSON HOOD: Better deliberation. So,
7 we can make sure we have -- now, let me ask, do --
8 never mind. Well, you know what? I'm going to ask
9 it. Does the party in opposition respond to what we
10 get back in this remand case?

11 MR. BERGSTEIN: I think you should allow
12 them --

13 CHAIRPERSON HOOD: Okay.

14 MR. BERGSTEIN: -- to respond. Yes.

15 CHAIRPERSON HOOD: All right.

16 MR. BERGSTEIN: Because if they come back and
17 say they just can't do it, I think it would be very
18 appropriate to allow friends of McMillan Park to
19 suggest reasons why they could.

20 CHAIRPERSON HOOD: Okay. And I wanted to do
21 that because I didn't want to get to that point and
22 then we have to do that part and keep moving and
23 moving so we can kind of know what we're expecting as
24 we move along.

25 All right. Anything else? Any other

1 comments colleagues?

2 Ms. Schellin, do we have some dates? Or, do
3 we need to put together some dates? I would ask Mr.
4 Glasgow and Ms. Ferster.

5 MS. SCHELLIN: How much -- did you have a
6 date of when you guys wanted to take this back up?

7 CHAIRPERSON HOOD: Well, we're used to being
8 called names, so --

9 MS. SCHELLIN: Somehow or another somebody
10 was calling through. Anyway, sorry about that. I
11 have no idea.

12 CHAIRPERSON HOOD: Were they trying to reach
13 me? I've been called a lot of names.

14 MS. SCHELLIN: Maybe it was calling you, but
15 that was weird. Anyway.

16 When did the Commission want to take this
17 back up?

18 MR. MAY: So, I think that we need to allow
19 the applicant substantial time given that we're at
20 the end of June and you know, this is not a two-week
21 turnaround kind of thing.

22 MS. SCHELLIN: Right.

23 MR. MAY: I don't see how we can take this up
24 again in July. So --

25 MS. SCHELLIN: In July?

1 MR. MAY: I don't think we can take it up in
2 July, so I think that we have to allow the applicant
3 time so that we could take it up in September.

4 MS. SCHELLIN: September. Okay.

5 MR. MAY: That's my thought. I mean --

6 CHAIRPERSON HOOD: I would like to take it up
7 the first, soon as possible, the first week of
8 September, while it's fresh.

9 MS. SCHELLIN: The first meeting? Okay.

10 CHAIRPERSON HOOD: The first meeting.

11 MS. SCHELLIN: That would be September 11th.
12 So, asking the applicant how much time they'll need.
13 How much time do you need to respond?

14 CHAIRPERSON HOOD: But you know what, for
15 this case, you know, and I know we've done this in
16 the past and I know I'm getting ready to get in
17 trouble now but I'm used to it, even if we had to do
18 something in August for this case, because we've had
19 done that first, because I just, you know --

20 MS. SCHELLIN: The first week, we have.
21 Yeah.

22 MR. MILLER: This is a very important case,
23 Mr. Chairman, and so I would support whatever
24 expeditious scheduling that you can do.

25 CHAIRPERSON HOOD: But, you know what?

1 MR. MILLER: But, we've got to get it right.
2 We've got to get it right.

3 CHAIRPERSON HOOD: But I'm going to take that
4 statement back because now I'll be accused of doing
5 stuff when everybody is on vacation. So, let me take
6 that statement back. September. I'm sorry. I was
7 just trying to move this thing.

8 MR. MAY: So, Ms. Schellin, can we work
9 backwards from the 11th? I mean, I'm not sure how
10 much time the party in opposition will need, but you
11 know, giving them time to respond and then so you
12 know, we'd need to have that a few days before the
13 11th, so --

14 MS. SCHELLIN: We also have the ANC, since
15 their parties to the ANC are ANCs. So, that becomes
16 an issue because they don't meet in August.

17 [Discussion off the record.]

18 CHAIRPERSON HOOD: Hold on for a second. Ms.
19 Ferster, could you come to the table as well? And
20 give us some time. We're trying to get some dates
21 straight.

22 [Pause.]

23 CHAIRPERSON HOOD: I understand the 14th is
24 available, Ms. Schellin. September 14th.

25 MS. SCHELLIN: We have a hearing on that

1 date.

2 CHAIRPERSON HOOD: So, you need to put that
3 on your calendar. Your calendar is --

4 MR. MAY: Have you sent us that one yet,
5 because that was one I'm not sure --

6 MS. SCHELLIN: Yes. Unless you want to start
7 it at 5:00 on that day.

8 CHAIRPERSON HOOD: No, do we have -- is the
9 18th open?

10 MS. SCHELLIN: No, we're going to have a
11 hearing on that day too.

12 CHAIRPERSON HOOD: Can you send Mr. May the
13 updates?

14 MR. MAY: Yeah, I mean, I --

15 MS. SCHELLIN: Those are two that just got --
16 they're being scheduled this week. They were just
17 set this week, so they're not on that schedule, no.
18 But the 14th was on the schedule.

19 MR. MAY: So, the 18th and the 21st, we've
20 got something.

21 MS. SCHELLIN: The 18th. Right. The 21st,
22 we do not have anything, but it's a continuation of
23 the Jewish holiday so I was asked not to put anything
24 on there.

25 MR. MAY: On the 18th?

1 MS. SCHELLIN: On the 21st.

2 MR. MAY: On the 21st. So, I mean, the one
3 on the 18th just got scheduled this week. Can we
4 bump them to the following week?

5 MS. SCHELLIN: No, because that week is taken
6 up also.

7 CHAIRPERSON HOOD: Why don't we just do a --
8 since, I understand -- yeah, why don't we just do it
9 on a Wednesday?

10 MS. SCHELLIN: Do it on the second meeting.

11 CHAIRPERSON HOOD: Everybody seems to want to
12 come in on Wednesday, but for some reason, Ms.
13 Schellin, they don't want to do it the first of
14 second meeting, they want to do it by itself.

15 Do you think we need that much time, by
16 itself?

17 [Discussion off the record.]

18 CHAIRPERSON HOOD: I think we can do it
19 before another hearing.

20 MS. SCHELLIN: Okay.

21 MR. MAY: 5:00?

22 CHAIRPERSON HOOD: Yeah, 5:00. So, do we
23 have a shorter one?

24 MS. SCHELLIN: 5:00 on the 14th. That one
25 would be very short. I think it's the vesting one.

1 CHAIRPERSON HOOD: Okay, let's do the --

2 MS. SCHELLIN: Which, you guys took emergency
3 action on.

4 CHAIRPERSON HOOD: Okay, let's do the 14th.
5 Does the 14th work? Okay.

6 MS. SCHELLIN: You want to do it after,
7 because it will probably be a half an hour hearing.
8 Do it after?

9 CHAIRPERSON HOOD: We're going to do it
10 before and then that way -- I don't know, whatever
11 you all decide this time.

12 MR. MAY: I don't think it makes much
13 difference because I don't think we'll have a big
14 crowd in the audience for the vesting hearing.
15 Unless of course, we'd keep all these people around
16 for it, you know, kind of like television
17 programming. You've got that dud of a show and
18 you --

19 CHAIRPERSON HOOD: Do, if we do it after --
20 so, it will be 7:00. Okay. Well, why don't we just
21 do that?

22 MS. SCHELLIN: Okay. So, 7:00, special
23 public meeting for the 14th of September, and we
24 would need to have let's see, the responses. How
25 much time do you need those responses before?

1 [Discussion off the record.]

2 MS. SCHELLIN: Okay. So, then if we could
3 have the responses from the parties by September 5th,
4 3:00 p.m., that's a Tuesday, since Monday is a
5 holiday. And then we would have the applicant
6 provide their submissions by August 28th, 3:00 p.m.

7 CHAIRPERSON HOOD: Okay. I see everyone came
8 to the table. Let me start with you, Ms. Ferster,
9 first. You have any issues with the schedule? To --
10 oh, hold on for a second. I'm sorry. Can you
11 identify yourself and speak into the mic?

12 MS. FERSTER: I am Andrea Ferster, counsel
13 for Friends of McMillan Park, and we do not have an
14 issue with the schedule.

15 CHAIRPERSON HOOD: Okay. Thank you. Mr.
16 Glasgow.

17 MR. GLASGOW: We certainly can meet that time
18 frame very easily, because of the economic modeling.
19 We can -- that has already been prepared over a
20 significant period of time for this project. We can
21 move much faster than that if the Commission is
22 amenable.

23 MR. MAY: This is about more than economic
24 modeling, this is about design.

25 MR. GLASGOW: Oh, we understand and I had

1 that discussion also with Mr. Wears. He said that we
2 will get people in around the clock to deal with
3 this.

4 MR. MAY: I'm not sure I want a 24-hour
5 architecture charrette kind of product on this. I
6 think that this needs full consideration. So, you
7 know, putting more bodies on it doesn't necessarily
8 yield the best product.

9 MS. FERSTER: Can I interrupt? I completely
10 misspoke because I wrote -- did I write down
11 correctly that August 28th is their submission, and
12 ours would be September 5th, which would basically
13 give us two working days to respond? I don't think
14 that's reasonable. I didn't -- I was not focusing on
15 the fact that we would only have two working days to
16 respond to that.

17 MS. SCHELLIN: No, that's not --

18 MS. FERSTER: Did I write that down
19 incorrectly?

20 MS. SCHELLIN: It's the following week you
21 would have.

22 MS. FERSTER: Okay, August 28th to September
23 5th.

24 MS. SCHELLIN: Is a Monday. And then the
25 following Monday is a holiday. So, you would have

1 that Tuesday, the 5th, to respond.

2 MS. FERSTER: All right. So, I'm counting
3 the 28th gives us what, three days? Three working
4 days, then?

5 MR. MAY: I'm sorry. Ms. Ferster, can we go
6 back to the discussion?

7 MS. FERSTER: Four days.

8 MR. MAY: Ms. Ferster, can we go back to the
9 discussion with the applicant because they were
10 debating whether they -- I mean, clearly they're
11 pushing for July.

12 MS. FERSTER: Right. I just want to make
13 sure that I clarify --

14 MR. MAY: And we'll come back to that.

15 MS. FERSTER: -- I clarified it.

16 CHAIRPERSON HOOD: We'll come back to that.

17 MR. MAY: Do you have an alternate date you
18 would suggest that you could meet?

19 MR. GLASGOW: We're suggesting that we could
20 do what we think we need to do in a month, and that's
21 what we're thinking. We didn't think we needed two
22 months.

23 MR. MAY: Got it, okay.

24 MR. GLASGOW: Yeah, we can do it in a month.

25 MR. MAY: So, that would put us into August,

1 right, because you do your part in 30 days. We're at
2 July 29th. And so, we'd have to take it up -- you
3 know, I mean, we could take it up earlier in
4 September, but --

5 CHAIRPERSON HOOD: It's only going to be
6 about a three-week difference because we couldn't do
7 it the first two weeks of August because all of us
8 are not going to be here. And I don't know who's
9 going to be here the third week of August because
10 August is really our month off. So, we want to make
11 sure we at least have four. Well, that's all we need
12 is four. We don't want to end up with three. We're
13 already short.

14 MS. SCHELLIN: Right. And just, we can't do
15 anything other than if it were the first couple days
16 in August because we have work being done in this
17 room, and also the first week of September. So,
18 that's our issue. This hearing room is not
19 available.

20 MR. MAY: I'm sorry. Ms. Schellin, you had
21 said that the hearing on the 14th was the vesting
22 provision?

23 MS. SCHELLIN: Correct.

24 MR. MAY: So, I have that on the 7th. Did it
25 get moved?

1 MS. SCHELLIN: It was changed on the last
2 schedule that --

3 MR. MAY: So, is there nothing on the 7th?

4 MS. SCHELLIN: There's nothing because the
5 hearing room is not available.

6 MR. MAY: Oh, got it. Got it. Okay. So,
7 the earliest -- the only real opportunity for us to
8 do it, the earliest would be the week of the 11th.

9 MS. SCHELLIN: Correct.

10 MR. MAY: So, we might as well do it on the
11 14th.

12 MS. SCHELLIN: Correct.

13 MS. FERSTER: May I be heard?

14 CHAIRPERSON HOOD: Let's give it one second.
15 We're going to come to the 28th and the 5th, we're
16 going to come to that. But let's make sure that
17 we're on schedule for the 14th for September. It
18 looks like that's -- we're going to have to do it
19 because we don't have a full commission for the first
20 two weeks in August anyway. We don't have a full
21 commission. We only have three people.

22 So, all right. Well, we tried, and then the
23 room is out of order. Well, not out of order, but
24 it's going to have some work done for a couple of
25 weeks.

1 All right.

2 MS. JOHNSON: I'm Kimberly Johnson on behalf
3 of the District. Just one suggestion. Are there any
4 other hearing rooms in this building that the
5 Commission could potentially borrow? I mean, this is
6 a very important case for the District and for the
7 citizens. And as you've indicated, this case has
8 been around for a very long time. And so, we were
9 very hopeful that we had come to the end, and to now
10 push it off even longer is something that --

11 CHAIRPERSON HOOD: What I'll do is ask you
12 that question because the last time we tried to get
13 the hearing room downstairs some years ago, I don't
14 recall the person's name that gave us a hard time,
15 but it was like pulling teeth. So, and it wasn't
16 this administration, it was a couple back. So, I
17 mean, I don't know -- I wouldn't have the first clue
18 of who to talk to. Well, I know who to talk to but I
19 don't know if they would give me a hearing room. Do
20 you have a way we can get a hearing room?

21 MS. JOHNSON: I don't know. I certainly
22 don't have any problems trying. So, given the
23 magnitude of this case and the desire of everybody to
24 have this matter resolved --

25 MS. SCHELLIN: Well, excuse me, but the

1 problem with that, we have tried a few times before
2 to get that and it's just never guaranteed. We've
3 been told they will bump us. So, if we schedule for
4 that room, we can be bumped at the last minute. It
5 is never guaranteed. So, it's never safe to use that
6 room.

7 CHAIRPERSON HOOD: That's the one downstairs.

8 MS. SCHELLIN: Downstairs.

9 CHAIRPERSON HOOD: Yeah, well that person is
10 retired so I --

11 MS. SCHELLIN: No, that's --

12 CHAIRPERSON HOOD: Oh, it's somebody else?
13 Oh, okay.

14 MS. SCHELLIN: That's been even recent.

15 CHAIRPERSON HOOD: Okay.

16 MR. MILLER: And the council is --

17 MS. SCHELLIN: This, within the last --

18 MR. MILLER: The council is on recess until
19 September 15th.

20 MS. SCHELLIN: Yeah.

21 MR. MILLER: Those are the Wilson Building
22 hearing rooms are available.

23 MS. FERSTER: Mr. Chair.

24 CHAIRPERSON HOOD: Yes, Ms. Ferster.

25 MS. FERSTER: And I apologize for being not

1 comprehending that the schedule that you previously
2 suggested only gives us, I guess four working days.
3 But since the applicants are willing to, and able to
4 provide their submittal on July 29th, I would ask
5 that we get a month to respond. That's what we would
6 like. This is a very substantial response.

7 CHAIRPERSON HOOD: They're responding June --
8 July 29th, and you're asking for August -- or, you're
9 asking to respond in August?

10 MS. FERSTER: That's correct.

11 MR. MAY: They were willing to do it in a
12 month. I was not convinced that they have the --
13 that it would really be a good --

14 CHAIRPERSON HOOD: The quickest thing I can
15 do, and I know everybody wants this off their plate,
16 including me, but I think what we can do is -- but we
17 want it off right. But I think what we can do is we
18 can just have the first week in September. We can't
19 do -- oh, that's right. The hearing room.

20 MS. SCHELLIN: The room is not available.

21 CHAIRPERSON HOOD: And here's the thing, I
22 have to announce a hearing room tonight. I can't do
23 that, and I don't have the latitude, or know how to
24 get a hearing room.

25 MR. BERGSTEIN: You don't actually have to -

1 this is not a hearing. You don't have to announce
2 the continuation date of this.

3 CHAIRPERSON HOOD: Oh, okay.

4 MR. BERGSTEIN: Okay. I mean, the only thing
5 that the Open Meeting Act requires is that, and our
6 regulations require four days' notice of the agenda.
7 And if you're going to have it as a regular public
8 meeting, then it just gets added to the agenda. So,
9 I mean, I know you normally like to accommodate the
10 public and indicate when the next date would be, but
11 there's no legal requirement that you do that. It's
12 something that could be worked out as time allows.

13 CHAIRPERSON HOOD: Okay.

14 MR. BERGSTEIN: Okay. Just so you know.

15 CHAIRPERSON HOOD: So, let me ask, who all
16 will work on finding a hearing room? I know you will
17 help us.

18 MS. JOHNSON: I'll certainly make efforts to
19 do that, yes.

20 CHAIRPERSON HOOD: Okay. Okay.

21 MS. FERSTER: I would object to that. I
22 think that, you know, the Office of Zoning, if they
23 want to make efforts to look for another hearing
24 room, they should do that. I don't think that the
25 applicant should be assisting the Office of Zoning in

1 doing that sort of thing.

2 CHAIRPERSON HOOD: Okay. So noted. So, do
3 you want to look for a hearing room?

4 MS. SCHELLIN: Chairman Hood, if we could --
5 yeah, I don't know that we'll be able to find one.
6 We can try.

7 CHAIRPERSON HOOD: We might not be successful
8 now, but we'll try.

9 MS. SCHELLIN: Yeah. If we could just -- if
10 Ms. Ferster wants to back up the date, we could just
11 have the applicant make their submission on the 23rd.
12 I mean, I was given the date per the regulations
13 which allows for seven days for responses from the
14 parties. But I think if we just give another week,
15 if the applicant would make their submission by the
16 21st, and then the parties would have still, until
17 the 5th to make it, to give them a little extra time.

18 Mr. Glasgow, do you have an issue with that?

19 MR. GLASGOW: No, it seems like that's as
20 fast as we can go, given the schedule of the
21 Commission, when we would have four members there.

22 MS. SCHELLIN: Okay. September 5th for
23 responses.

24 MR. BERGSTEIN: Okay. So, I think that sort
25 of moots out the hearing room issue anyway.

1 CHAIRPERSON HOOD: Yeah, the hearing room
2 issue is gone.

3 MR. BERGSTEIN: You might as well just put
4 the place marker at the 14th.

5 MS. SCHELLIN: Keep it where it is. Yeah.

6 CHAIRPERSON HOOD: So, what day is it? We
7 done been so I don't even know the date myself.

8 MR. BERGSTEIN: Sorry.

9 MS. SCHELLIN: To the 14th at 7:00 p.m.

10 CHAIRPERSON HOOD: So, we're going to have to
11 go with September the 14th at 7:00 p.m.

12 MS. SCHELLIN: Yes.

13 CHAIRPERSON HOOD: And we will have four
14 commissioners, hopefully. That's the goal.

15 All right, Ms. Ferster, are you all right
16 with the schedule now?

17 MS. FERSTER: I will accept this.

18 CHAIRPERSON HOOD: You will accept it.

19 MS. FERSTER: I will accept it. I would
20 prefer 30 days, but I'll accept what you've offered,
21 since I don't have any choice.

22 CHAIRPERSON HOOD: How many days does she
23 have, Ms. Schellin?

24 MS. SCHELLIN: 15 calendar days, 14 minus the
25 holiday.

1 CHAIRPERSON HOOD: Okay. All right. She
2 says she'll accept it. So, are we all -- is
3 everybody on the same page? We will reconvene --
4 well, I guess reconvene, let's remand and finish on
5 September the 14th at 7:00 p.m. in this room. Any
6 other -- anything else?

7 [No audible response.]

8 CHAIRPERSON HOOD: With that, thank you and
9 this remand will continue on September 14th.

10 [Whereupon, the regular public meeting
11 adjourned at 8:50 p.m.]

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