

## Exhibit G

### Response to Testimony of Southwest Accountability Group (“SWAG”)

SWAG submitted testimony raising several objections to the Project. At the public hearing, a SWAG representative provided oral testimony in opposition to the Project. At the hearing, the Commission allowed the Applicant to submit this written response to SWAG’s testimony.

SWAG’s testimony in this proceeding suffers from three significant problems:

1. SWAG’s Testimony Raises District-Wide, Non-Specific Issues: SWAG raises in its testimony broad issues that are the same issues it raises in its testimony in other PUDs in Southwest.<sup>1</sup> As discussed more particularly below, much of SWAG’s testimony—regarding generalized grievances of public policy matters that would apply to any development in the District—is generic in nature and not specifically tailored to the Project or the instant proceeding.<sup>2</sup> Moreover, SWAG’s grievances would apply to any development occurring anywhere in the District, whether via a PUD or as a matter-of-right. As the Commission is aware, this PUD, which is part of an adjudicatory process, is not the proper proceeding for crafting the public policy responses SWAG seeks for its allegations of generalized injuries. Rather, SWAG should pursue its concerns before the D.C. Council, the Mayor’s Office or other executive agencies, or before the Commission when it is sitting in a rulemaking or other quasi-legislative posture. SWAG’s policy-animated concerns in this proceeding are a misuse of the PUD process, and its energies should be directed elsewhere.

2. SWAG’s Testimony Contains Only Unsupported Allegations: SWAG’s generalized grievances are conclusory statements that are not supported by any substantial evidence or concrete facts. SWAG’s grievances generally do not rise to the level of materially contested issues of fact.

3. SWAG’s Testimony Contains Numerous Factual Inaccuracies: Because SWAG refuses to participate in the PUD process in good faith, it has at best a tenuous grasp of the facts in this proceeding. Much of the purported factual recitation in SWAG’s written testimony contains many misstatements, half-truths, and outright errors.

Notwithstanding these deficiencies, in an attempt to provide the Commission with a full and correct record, the Applicant below provides point-by-point rebuttal to SWAG’s statements in roughly the order in which the statements appear in SWAG’s written testimony at Exhibit 37.

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<sup>1</sup> See, e.g., Z.C. Case No. 02-38I, Exhibit 86; Z.C. Case No. 07-13G, Exhibit 30; and Z.C. Case No. 11-03J, Exhibit 43.

<sup>2</sup> The Commission should feel entitled to dispense with such testimony as irrelevant or immaterial to the Project and not pertinent to any contested issues of material fact in this proceeding. As this Commission is aware, the instant proceeding is a contested case, which “present[s] issues for resolution at a public hearing that potentially have a *limited scope of impact*, and involve primarily questions of fact applicable to that limited scope of impact.” 11-Z DCMR § 201.2 (emphasis added). Pursuant to the Zoning Regulations, a public hearing on a contested case must be processed and conducted in accordance with the D.C. Administrative Procedure Act, see 11-Z DCMR § 201.3, which provides among other things that “Any oral and any documentary evidence may be received, but . . . shall exclude irrelevant, immaterial, and unduly repetitious evidence.” D.C. CODE § 2-509(b) (2012).

SWAG Concern/Allegation	Applicant Response
<b>Miscellaneous Allegations</b>	
<p>Agency reports from OP &amp; DDOT were put on record nine days before the hearing in error. Some relevant agencies haven't put any reports in writing on the record at all. 11 DCMR §Z-400.6.</p>	<p>Each of OP and DDOT timely filed its report prior to the public hearing and OP properly filed its report prior to the public meeting at which the Commission set down the application for the Project for public hearing. OP and DDOT each filed its final report on January 22, 2019. Although agency reports are typically required ten days in advance of the public hearing for inclusion in the public record, <i>see</i> 11-Z DCMR § 504.3, when the last day of a computed period for filing falls on a holiday (as was the case here), then the deadline runs to the end of the next day that is neither a weekend nor an official District holiday. <i>See id.</i> § 204.3. Because the date that was ten days before the public hearing, January 21, 2019, was an official District holiday—Martin Luther King’s Birthday—the District agency’s deadline to file a report ran until the end of the day on January 22, 2019.</p> <p>OP also timely filed its pre-setdown report on July 20, 2018, ten days before the Commission’s July 30, 2018 public meeting in which it set down the application for a public hearing. This timing is in accordance with the Zoning Regulations for OP’s set down report. <i>See id.</i> § 400.6. It is immaterial to the Commission’s review whether other agencies have filed a report. Moreover, SWAG never articulates how this alleged error caused it any injury.</p> <p>Finally, the Court of Appeals has recently re-affirmed that agency reports are not a requirement in a PUD proceeding. A common thread in complaints by SWAG and related groups is that the Commission has erred by not hearing from DHCD or other District agencies, often citing 11-X DCMR § 308.4 (“[OP] shall coordinate review of the application and prepare an impact assessment of the project, which shall include reports in writing from relevant District of Columbia departments and agencies, including, but not limited to, [DDOT] and [DHCD]”). Notwithstanding that OP’s review of the Project includes a report from DHCD in this instance, the Court has confirmed that such a report is not a requirement of a PUD. <i>See Shickler v. District of Columbia</i>, No. 17-AA-496 (D.C. Feb. 7, 2019) (“In this case, the relevant agencies were solicited for comment, and many of them either wrote reports or participated in meetings throughout the process. The fact that some did not submit reports is not enough to undermine a decision of the Commission that is otherwise supported by substantial evidence.”) (internal citations omitted).</p>

SWAG Concern/Allegation	Applicant Response
<p>The Applicant proffers 450+ new residential units; Most of the units are 1 bedrooms (225 1bdm units); There are NO FAMILY SIZED UNITS (3+ bedrooms) and thus no affordable family sized units; 136 of the 450 units will be considered "affordable" with 28 "affordable" 2-bedroom units.</p>	<p>SWAG cites no authority defining “family-sized” units as three- or more bedrooms. The Applicant is not aware of any authority establishing such a definition, as it arguably would be contrary to federal fair housing law to exclude “families” from units with two-bedrooms. Though the Project lacks three-bedroom units, the unit mix and bedroom sizes represents the District’s public policy adopted for this specific Project by the Mayor and the Council.</p> <p>Such policy is entirely rational: as noted in the body of the post-hearing submission, two-bedroom units can house “families” under DHCD’s regulations. A two-bedroom unit can certainly house a family with one or two children. Furthermore, in the Southwest neighborhood cluster in which the Project is located, the vast majority (90%) of households are childless. See <b>Exhibit G-1</b> at 16 (showing only 10 percent of households in “Cluster 9”, the neighborhood including the Property, include children, with an average household size of 1.7). The Mayor (through DMPED), the Council, and the Applicant reasonably concluded that the housing and affordable housing need that the Project should provide an overall greater number of units even at the cost of not providing units with three or more bedrooms.</p>
<p>Only 30% of the total units are considered affordable, but plan policies call for 51% or more of the units on former public land (especially given Ward 6's affordable housing crisis); See, Policy H-1.2.4: Housing Affordability on Publicly Owned Sites.</p>	<p>SWAG’s assertion that “plan policies call for 51% or more of the units on former public land” [to be affordable] is readily disproved by the actual language of the Comprehensive Plan policy that SWAG then cites:</p> <p style="padding-left: 40px;">“Policy H-1.2.4: Housing Affordability on Publicly Owned Sites – Require that a <b><u>substantial percentage</u></b> of the housing units built on publicly owned sites, including sites being transferred from federal to District jurisdiction, are reserved for low and moderate income households.” 10-A DCMR § 504.11 (emphasis added).</p> <p>There is no support in the Comprehensive Plan or any other adopted plan that the Applicant is aware of for interpreting “a substantial percentage” as meaning a “majority.” Quite to the contrary, the glossary to the Comprehensive Plan defines “substantial” as “Having considerable and perceptible importance, value, degree, or extent.” The Project’s reservation of 30 percent of its units as affordable satisfies the guidance in the Comprehensive Plan that a substantial percentage of the units on a publicly owned site be reserved for 30% and 50% MFI households.</p>

SWAG Concern/Allegation	Applicant Response
<p>All of the proffered affordable units expire over time, thus unlike IZ units do not exist fr [sic] the life of the project. This is an injury of the application, not a benefit.</p>	<p>SWAG’s characterization of the affordable housing benefits “expiring” over time is misleading. The Project’s affordability proffer lasts only 99 years because that is the term of the ground lease under which the Applicant controls the Property. Upon the end of the 99-year term of the ground lease, the District will have the choice whether to take control over the Property again, and if not to renew the ground lease only on terms extending the affordability of the Project. That is, the Project’s 99-year affordability restriction is co-terminus with the period of private control. The District’s action with respect to the Project’s affordability restriction after the end of the 99-year lease period is a public policy decision.</p>
<p>The Applicant does not proffer to dedicate any of the proposed housing units as replacement units for Ward 6’s threatened public housing so to mitigate any future public housing resident displacement and gentrification of longtime Ward 6 communities of color and culture.</p>	<p>This statement is unsupported by any substantial evidence: SWAG provides no evidence that anything related to the Project in any way threatens public housing in Ward 6 or displacement therefrom of any such residents.</p> <p>There is no requirement that this Project mitigate general displacement or gentrification occurring in Ward 6 that is not the result of the Project. The Applicant has provided substantial, robust, quantitative evidence that the Project itself is unlikely to cause adverse displacement or gentrification impacts. SWAG has not provided any evidence to the contrary. Rather, SWAG merely attempts to litigate generalized public policy grievances through this contested case. The Commission can quite reasonably find that the Project does not have any mitigation or displacement impacts that need to be mitigated.</p> <p>Nevertheless, the Project actually goes beyond what SWAG is suggesting is necessary with respect to Ward 6 public housing: the Project provides affordable housing that is <i>in addition to</i> any existing public housing in Ward 6. Such housing is beyond mere mitigation of putative adverse impacts: it is a public benefit of the Project.</p>

SWAG Concern/Allegation	Applicant Response
<p>There is no proffered affordable commercial space or conditions to work with local Ward 6 small businesses, or with Ward 6 organizations to access affordable incubator/retail space in perpetuity on the ground floor.</p>	<p>Again, SWAG’s statement here is either misleading or misinformed. The Waterfront Station PUD <u>does</u> require that the Project (like other phases of the Waterfront Station PUD) undertake reasonable efforts to provide space for small and local businesses.</p> <p>It is true that there is no affordable/incubator commercial space requirement for the Project, but such concern is not unique to this Project. The neighborhood-serving ground floor uses requirements and benefits were established in part during the first-stage PUD and more recently in consultation with the ANC. SWAG did not ever participate in the ANC process with respect to this Project. The Applicant believes the many Project Public Benefits reflect the community’s desires, notwithstanding SWAG’s lack of participation in determining such benefits.</p> <p>To SWAG’s point about limiting such spaces to Ward 6 businesses and organizations specifically, such a restriction would arguably be contrary to the D.C. Human Rights Act, which generally prohibits such discrimination on the basis of Ward. The Project’s small business benefits are available to all District businesses.</p>
<p>Use of status quo construction materials and basic quality at a time of great environmental uncertainty will lead to premature building degradation on public land, leaving us holding the bag of maintenance and reconstruction in the future.</p>	<p>This is a specious claim that is unsupported by any evidence or fact and simply does not rise to the level of a material contested issue. SWAG makes no showing of even attempting to understand the specific construction materials involved in the Project and offers no justification for why those selected will “lead to premature building degradation.”</p> <p>To the contrary, the Project’s façade materials are high quality and designed to be durable. The Applicant fully expects that the Project, with standard maintenance, is designed to withstand weather conditions for 99 years or longer.</p>

SWAG Concern/Allegation	Applicant Response
<p>The PUD will increase pressure and abuse on existing area infrastructure, public services, and environment, impacts thereof that largely remain unstudied.</p>	<p>This is another specious claim that is again unsupported by evidence and demonstrative of a lack of understanding of fact.</p> <p>With respect to infrastructure: the Project is part of the larger Waterfront Station PUD, pursuant to which 4<sup>th</sup> Street, SW between I Street, SW and M Street, SW was newly reconstructed. As part of that reconstruction, new infrastructure, including new sanitary and stormwater lines were installed. SWAG’s statement is 180 degrees wrong, this is a District-owned property that takes advantage of infrastructure recently installed by private developers.</p> <p>With respect to environmental impacts: the Project’s impacts on the environment have been studied in filings presented by the Applicant and addressed in its mitigation plans. <i>See</i> Exhibits 2I and 22E. Further, the Commission requested the District’s Department of Energy and the Environment file a report in this case, and the Applicant supplements previous impact assessments with the materials included in <b>Exhibit G-2</b>, and in which the Project’s civil engineer confirms that the Project is unlikely to “increase pressure” on area infrastructure. Moreover, this statement demonstrates a lack of understanding of the District’s in-depth environmental review process, which by regulation, is triggered at the building permit stage and not at the entitlement stage. Finally, SWAG acknowledges that the Project’s potential impacts are studied—SWAG is complaining only about the extent to which they have been studied.</p> <p>The Applicant is skeptical that this claim—repeated in nearly every SWAG filing and every filing from Mr. Otten’s other related groups—is animated by bona fide concerns about the environment. If SWAG has a particularized concern about the Project’s impacts, those concerns should be raised before the Commission in time to be studied and addressed; such concerns should not be raised without specificity in a threadbare filing 15 minutes prior to the closing of the public record in an attempt to sandbag the Commission. Here SWAG raises only a generalized and speculative policy concern, without any specific nexus to this proceeding.</p>

SWAG Concern/Allegation	Applicant Response
<p>Costs for infrastructure and transit upgrades to be unfairly born by the surrounding community leading to more displacement (health, safety, welfare, and rate increases).</p>	<p>This is another non-particularized allegation that is unsupported by any evidence relevant to the instant proceeding. It is moreover contradicted by the facts in this case. As noted above, the Project is part of a larger PUD that did make significant infrastructure improvements at the outset of construction. It is unclear how or what “infrastructure costs” and “transit upgrades” will be unfairly born by the community surrounding the Project. It is similarly unclear how those costs or upgrades relate to displacement or increases in health, safety, and welfare (especially insofar as increases in health, safety, and welfare would appear to be positive public outcomes).</p> <p>Nevertheless, this Project includes transit improvements in the form of an Applicant-funding Capital Bikeshare station to be located to the north of the Property. The first-stage PUD included the reconstruction of the Waterfront Metrorail station, which certainly constitutes the type of “transit upgrade” SWAG alleges is absent from the project.</p>
<p>The size of the project cheats the DC Height Act, at 130 feet (without the Penthouse) along 4<sup>th</sup> Street SW.</p>	<p>This is a false statement. However, SWAG’s misunderstanding of the Project’s height is possibly understandable: the maximum point of the Project’s roof or parapet is at <i>elevation</i> of 133 feet. The height of the Project (i.e., the vertical distance from the measuring point on the ground to the highest point of the roof or parapet) is approximately 114 feet.<sup>1</sup></p>

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<sup>1</sup> The Project does have a somewhat unusual history wherein the measuring point for the Project’s height is taken from M Street, SW rather than 4<sup>th</sup> Street, SW, which did not exist when the Waterfront Station PUD was first approved. The use of M Street, SW for measurement is consistent with the Waterfront Station PUD and the second-stage PUD approval for the Northwest Building opposite 4<sup>th</sup> Street, SW from the Property, which Northwest Building was approved in Z.C. Order No. 02-38D. *See* Z.C. Order No. 02-38A at Condition 1 (identifying the final approved plans for the Waterfront Station PUD as being those set forth at Exhibits 25 and 68 of Z.C. Case No. 02-38A, which Exhibit 68 shows the measuring point for all of the buildings in the Waterfront Station PUD as 19.88 feet and located at the M Street, SW intersection with the then-proposed 4<sup>th</sup> Street, SW; Z.C. Order No. 02-38A is included as Exhibit 2F of the record in this proceeding); *see also* Z.C. Order No. 02-38D at Condition 1 (identifying the final approved plans for the second-stage PUD approval of the Northwest Building in the Waterfront Station PUD as being those set forth at Exhibit 47-47A7 of Z.C. Case No. 02-38AD which Exhibit 47A1 Sheet 4 shows the measuring point for such Northwest Building as 19.88 feet and located at the M Street, SW intersection with 4<sup>th</sup> Street, SW).

SWAG Concern/Allegation	Applicant Response
<p>The Applicant wants more parking and cars associated with the PUD project than allowed, proffering a 200+ parking garage even though regulations require less than 100 spaces (strange that single professionals need parking next to Metro).</p>	<p>The Project provides an appropriate amount of parking as DDOT and the Applicant’s CTR both reasonably concluded. <b>Exhibit G-3</b> contains additional information from the Applicant’s transportation expert showing that the Project’s parking ratio, 0.43 parking spaces per residential unit is slightly below the market range of approximately 0.5 parking space per unit and concluding that such a parking ratio is appropriate because it is unlikely to induce additional driving and showing that the majority of residential vehicles in buildings such as the Project are not used on an average weekday.</p> <p>In addition, SWAG presents the Commission with no authority for this statement, which is simply not true as a matter of law (in addition to being incorrect from a transportation engineering perspective as described above). Presumably, SWAG is suggesting that under the now-applicable Zoning Regulations (i.e., so-called “ZR16”), a development the size of the Project would be required to provide only approximately 187 spaces, an amount that could be reduced by half (i.e., to 94) given the Property’s proximity to a Metrorail station pursuant to Section 702.1 of Subtitle C of ZR16. However, SWAG is incorrect on this point for two reasons (1) such reduction in minimum parking within a certain distance of a Metrorail station is permissive rather than required (so the 94 spaces would not be the maximum “allowed”), and (2) the parking requirements of ZR16 do not apply to the Project given its vested status under the substantive provisions of 1958 Zoning Regulations per Section 102.3 of Subtitle A of ZR16. Under the substantive parking requirements that do apply to the Project, i.e., those of the Waterfront Station PUD and ZR58, the Project provides sufficient parking.</p> <p>Moreover, SWAG’s buckshot approach to raising eleventh-hour objections to the Project is wildly inconsistent with its past statements and positions. SWAG’s complaint here that the Project contains too <i>much</i> parking (i.e., approximately 220 parking spaces for 450 units and approximately 50,000 square feet of non-residential uses) is in stark contrast to allegations raised in SWAG member’s appeal of Z.C. Case No. 07-13G that the project in that proceeding contains too <i>little</i> parking (i.e., approximately 250 parking spaces for 489 units and approximately 50,000 square feet of non-residential uses).</p> <p>Finally, SWAG alleges no injury resulting from too much parking at the Project.</p>

SWAG Concern/Allegation	Applicant Response
<p>Despite exceeding zoning regulations for parking and expecting residents and reatil [sic] components to drive up more vehicular use than anticipated for this type of development – the traffic impacts, parking impacts, pedestrian safety impacts, air &amp; noise quality remain largely unstudied by planning agencies and the Applicant. See, Policy T-1.1.1: Transportation Impact Assessment; Policy T-1.1.2: Land Use Impact Assessment.</p>	<p>As noted above, the Project does not “exceed zoning regulations for parking”. SWAG’s second statement—that the traffic, parking, pedestrian safety, and air and noise impacts of the Project are unstudied by the Applicant and District agencies—is again untrue. The Applicant’s CTR is thorough and addresses the types of impacts cited above. Moreover, the District’s transportation agency, DDOT, conducted its own review of the Project and the Applicant’s CTR and concluded that it had no objection to approval of the Project subject to conditions that the Applicant adopted. On the point of DDOT’s review of the Applicant’s CTR, DDOT found that the CTR “used sound methodology and assumptions to perform the analysis.” See Z.C. Case No. 02-38J, Exhibit 25, Memorandum from Jim Sebastian, DDOT re. ZC Case No. 02-38J 1000 4<sup>th</sup> Street SW (Waterfront Station) at 2-3 (Jan. 22, 2019).</p> <p>SWAG’s citation of Comprehensive Plan Policy T-1.1.1 is non-sensical in this context. That policy calls for “a full environmental impact statement” for “major transportation projects, including new roadways, bridges, transit systems, road design changes, and rerouting of traffic from roads classified as principal arterials or higher onto minor arterials or neighborhood streets with lesser volumes.” 10-A DCMR § 403.7. There is no way to reasonably read that policy and believe it could apply to the Project. SWAG is wasting the Commission’s time by directing the Commission’s attention to that policy.</p> <p>The other Comprehensive Plan policy that SWAG cites here is more on point. Policy T-1.1.2 has two directives: (1) “Assess the transportation impacts of development projects using multi-modal standards rather than traditional vehicle standards to more accurately measure and more effectively mitigate development impacts on the transportation network.” <i>Id.</i> § 403.8. This is precisely what the CTR does. The CTR assesses the Project using multi-modal standards. See Exhibit 15A at 19-20 (assessing the Project’s impact on four travel modes: driving, transit, biking, and walking) (2) “Environmental and climate change impacts, including that of carbon dioxide, <i>should be</i> included in the assessment to land use impacts.” <i>Id.</i> (emphasis added). The Applicant’s CTR admittedly does not consider environmental and climate change impacts. The Applicant and DDOT developed a scope for what the CTR should evaluate. These sorts of environmental impacts were outside the scope of that study. Policy T-1.1.2 is merely suggested and does not <i>require</i> a climate change impact analysis for the Commission to complete its review. Moreover, SWAG makes no allegation that the Project has adverse climate effects or that if it does, whether such effects injure SWAG.</p>

SWAG Concern/Allegation	Applicant Response																								
<p>The Commission has approved no affordable housing in the approved “Northwest building” across 4th Street, SW from the instant PUD site (we believe this is in egregious error, creating a segregated exclusive neighborhood project);</p> <p>The Commission has only required a measly 8% affordability for the other parts of the Waterfront Station PUD collectively; See, Policy H-1.2.4: Housing Affordability on Publicly Owned Sites.</p>	<p>These two related points are not at all related to the instant proceeding further proving that SWAG seeks to use the PUD process to litigate broad public policy positions that are not specific to the Project.</p> <p>The Northwest Building was approved in Z.C. Order No. 02-38D and the M Street, SW projects in 02-38I, and neither are before the Commission now. The affordable housing benefit in the Waterfront Station PUD was allocated among the multiple residential buildings on the overall site. Whether the Commission’s approval of the allocation of affordable units to the Northwest Building was in error or not, it is not redressable now as part of this proceeding.</p> <p>In any event, the Project provides more affordable housing, at deeper levels of affordability, and for a longer period of time than originally was required under the Waterfront Station PUD.</p> <p>Overall, the Waterfront Station PUD provides affordable housing as follows:</p> <table border="1" data-bbox="810 833 1753 1175"> <thead> <tr> <th>Building</th> <th>Z.C. Order No.</th> <th>Affordable Housing Sq. Ft.</th> </tr> </thead> <tbody> <tr> <td>East and West Towers</td> <td>02-38A</td> <td>84,033 sf</td> </tr> <tr> <td>Eliot on 4<sup>th</sup> (Northwest Building)</td> <td>02-38D</td> <td>0 sf</td> </tr> <tr> <td>325 M Street, SW</td> <td>02-38I</td> <td>19,571 sf</td> </tr> <tr> <td>425 M Street, SW</td> <td>02-38I</td> <td>20,590 sf</td> </tr> <tr> <td>The Project (Northeast Building)</td> <td>02-38J</td> <td>117,094 sf</td> </tr> <tr> <td>Waterfront Station PUD Overall</td> <td></td> <td>241,228 sf</td> </tr> <tr> <td>Total Residential Gross Floor Area</td> <td></td> <td>1,774,229 sf</td> </tr> </tbody> </table> <p>With the approval of the Project, the total affordable housing commitment for Waterfront Station PUD is 13.6 percent of the aggregate residential gross floor area, which is more than 1.5 times the percentage that would be required for a matter-of-right development under the District’s Inclusionary Zoning requirements.</p>	Building	Z.C. Order No.	Affordable Housing Sq. Ft.	East and West Towers	02-38A	84,033 sf	Eliot on 4 <sup>th</sup> (Northwest Building)	02-38D	0 sf	325 M Street, SW	02-38I	19,571 sf	425 M Street, SW	02-38I	20,590 sf	The Project (Northeast Building)	02-38J	117,094 sf	Waterfront Station PUD Overall		241,228 sf	Total Residential Gross Floor Area		1,774,229 sf
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<p>The Commission has otherwise not set requirements for any family sized units in other components of the Waterfront Station project at all, allowing the developers to create an exclusive community for single professionals making \$45,000+ who can qualify for the affordable units at a housing cost floor of about \$1200/month (the least expensive units in this project for singles as proposed at 30% AMI). This is wholly unacceptable.</p>	<p>SWAG again cites to “family sized units” as though that is a term with some pre-defined meaning. It is not. The Project’s units are more than capable of accommodating families, including those with or without minor children.</p> <p>Moreover, SWAG’s assertion that the Project is “an exclusive community for single professionals making \$45,000+” and its citation “to the housing cost floor of \$1200/month” are both absurd and demonstrably false for the following reasons:</p> <ul style="list-style-type: none"> <li>• All of the affordable units in the Project are subject to an income <i>maximum</i> rather than an income <i>minimum</i> as SWAG suggests.</li> <li>• A household occupying one of the Project’s 30% MFI one-bedroom or studio units could earn a <i>maximum income</i> of \$24,600 if an individual or \$28,150 if a couple under DHCD’s current income limits. Compare these figures to the \$45,000 + that SWAG writes is the <i>minimum income</i>.</li> <li>• The <i>maximum</i> income for <i>any</i> of the Project’s affordable units is \$58,600 under DHCD’s current income limits for a two-bedroom unit affordable at 50% MFI.</li> <li>• Similarly striking is SWAG’s assertion that \$1200 per month is the “housing cost floor.” The <i>maximum</i> monthly rental for any of the Project’s affordable units is \$1280 monthly. DHCD’s current rents for 30% MFI and 50% MFI units are as follows:</li> </ul> <table border="1" data-bbox="779 1044 1743 1195"> <thead> <tr> <th>Unit Type</th> <th>30% MFI</th> <th>50% MFI</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>\$600/month</td> <td>\$990/month</td> </tr> <tr> <td>1-Bedroom</td> <td>\$640/month</td> <td>\$1,070/month</td> </tr> <tr> <td>2-Bedroom</td> <td>\$770/month</td> <td>\$1,280/month</td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>• SWAG’s recitation of these income and rent numbers is either strikingly wrong or deliberately misleading.</li> </ul>	Unit Type	30% MFI	50% MFI	Studio	\$600/month	\$990/month	1-Bedroom	\$640/month	\$1,070/month	2-Bedroom	\$770/month	\$1,280/month
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SWAG Concern/Allegation	Applicant Response
<p>DHCD has not offered expertise in writing to the Commission as to the rationale/acceptability for the lack of affordability and lack of family-sized units in Waterfront Station projects as a whole or for the Northeast Building. Nor has DHCD reviewed the Applicant's last minute notes on economic impacts and commented (unlike DDOT's review of Applicant's traffic study).</p>	<p>Again, the Commission does not need DHCD to tell it whether the Project's units (affordable or otherwise) are capable of accommodating families. The Project's units can accommodate families, including families with children. DHCD is under no obligation under the relevant regulations to provide a written report on the Project, and the Commission has no obligation to withhold approval of the Project pending receipt of a DHCD report. The Commission can evaluate the evidence that the Applicant submitted and determine whether or not it is substantial.</p> <p>The Applicant notes that its economic impact report was timely filed and filed ahead of SWAG's testimony such that SWAG had an opportunity to review such report and provide written comments about such economic impact report in SWAG's pre-hearing filing.</p>
<p><b>Alleged Modifications to the Waterfront Station PUD</b></p>	
<p>Moreover, without any hesitation from the Office of Planning or any other agency, the Applicant has changed their plans substantially from the First-Stage PUD approval and modification orders in error</p>	<p>This is yet another false statement: the Project introduces no "substantial" changes from the approval from what was approved as the "Northeast Building" in the Waterfront Station PUD. The entire premise of this section in SWAG's report is flawed: the Project does not modify the approval contained in the first-stage PUD. SWAG lists four "examples" of "changes" to prior Commission decisions that it alleges are erroneous. None of the four examples proffered are correct and none are changes to the first-stage PUD.</p>
<p>According to all prior Commission decisions, "The maximum height of the Northeast and Northwest Buildings shall be 114 feet."</p>	<p>This statement is incorrect. As noted above, the Project's maximum height is 114 feet, which is what was approved for the Property (then called the "Northeast Building") in the Waterfront Station PUD. <i>See</i> Z.C. Case No. 02-38A, Exhibit 68 which is the final approved site plan for the Waterfront Station PUD as memorialized in Condition 1 of Z.C. Order No. 02-38A included in the record of this case as Exhibit 2F.</p>
<p>[T]he Applicant brings a proposed Northeast Building in excess of 130 feet, challenging prior decisions, the DC Height Act, and the moderate-medium density aesthetic of Southwest DC.</p>	<p>Again SWAG is simply wrong about the Project's height. The Project's maximum height is 114 feet, which is what was approved for the development of the Northeast Building under the Waterfront Station PUD, is below the maximum allowed under the Height Act, and consistent with the heights of other buildings in Southwest.</p>

SWAG Concern/Allegation	Applicant Response
<p>The proffered design the Applicant brings now maximizes the building footprint and eliminates the side and rear yards. It also brings the wings of the building to encroach in on the courtyard. Both of these design factors stray from prior Commission decisions in error.</p>	<p>Every word that SWAG states here is wrong:</p> <ul style="list-style-type: none"> <li>• The Project actually covers slightly <i>less</i> of the Property than the Northeast Building was proposed to cover in the Waterfront Station PUD. Both the original Northeast Building and the Project included open space for what is now called the “Private Drive” but the Northeast Building was shown as constructed to the lot line on both the east and west boundaries of the parcel. That is, the Northeast Building originally had no side yards, whereas the Project adds side yards to improve the pedestrian experience along both adjacent public streets.</li> <li>• The Project’s required side yard relief is necessary to provide side yards, not because it is not providing side yards. The Project does not eliminate a previously-required rear yard. Rather, small portions of some balconies on only some floors of the Project encroach into the required rear yard, which is at least as deep, and in some instances deeper, than was contemplated in the first-stage PUD. These balconies are architectural details not contemplated during the first-stage PUD process.</li> <li>• The Northeast Building, like the Project, showed “wings” wrapping the courtyard; that is not a change introduced by the Project. The Project adds articulation to all three public facing façades and to the courtyard, but does not change the form or massing approved in the first-stage PUD. Rather the first-stage PUD established the massing and orientation of the building and the second-stage PUD establishes the architectural details. <i>Compare</i> 11-X DCMR § 302.3(a) (describing a first-stage PUD as “a general review of . . . the appropriateness, character, scale, height, mixture of uses, and design of the uses proposed”) <i>with id.</i> § 302.3(b) (describing a second-stage PUD as “a detailed site plan review to determine transportation management and mitigation, final building and landscape materials”). The Project’s articulation constitutes final building detailing properly incorporated at the second-stage of the PUD process.</li> </ul> <p>The Project is fully consistent with the 400,000 square feet of gross floor area contemplated in the Waterfront Station PUD.</p>

SWAG Concern/Allegation	Applicant Response
<p>Further, most of the “affordable units” are disproportionately located in the proposed Northeast building as facing the less sunny and more enclosed courtyard or tucked in the back southeast corner. Further, no affordable units are proffered for the upper floors or in the penthouse, thus wrongfully ensuring lower income residents have a lesser experience in this building in opposition to the DC Human Right Act.</p>	<p>SWAG notes, as the Commission did, that the Project’s affordable units were concentrated around the Project’s courtyard. In response to comments from the Commission and SWAG and others testifying about the Project, the Applicant has decided to relocate some of the Project’s affordable units so that there are now affordable units spread around the north and east façades of the Project as well.</p> <p>However, this reallocation of affordable units does not constitute a change from the Waterfront Station PUD. The first-stage PUD did not specify any allocation of units within any of the buildings in Waterfront Station.</p> <p>Moreover, SWAG is simply wrong that the courtyard is the “less sunny” side of the building. The courtyard side of the building is south-facing and therefore the <i>more</i> sunny side of the building (because the sun traces an arc from east to west in the southern sky). The north side of a building at the latitude of Washington, DC never sees direct sunlight.</p> <p>Finally, the only level without affordable units is the penthouse level. All residential stories of the Project contain affordable units. The location of affordable units on all of the floors of the Project except for the penthouse is not prohibited (indeed it is not addressed at all) under the D.C. Human Rights Act. The Zoning Regulations prohibit concentrating affordable units on any one floor, but such regulations do not require locating any affordable units on the top story or in a penthouse. Indeed, the Commission’s practice has been to allow no affordable units on the penthouse or top floor, recognizing that the premium rents from those floors support and subsidize affordable housing on lower levels as well as other benefits. By providing affordable units up to and including the top floor, the Project goes beyond the Commission’s standard practice. More to SWAG’s concern: the residents of the Project’s affordable units will in no way have in a “lesser experience” than the residents of the Project’s market-rate units. The Project’s affordable units and market-rate units all have comparable interior finishes and fixtures, equal access to amenities, and are allocated throughout the building so that the affordable units are not distinguishable from the market-rate units.</p>

SWAG Concern/Allegation	Applicant Response
<b>Allegation: <u>The lack of significant affordable family sized units is fatal</u></b>	
<p>Injury: Without identification of the demographics and mitigation of displacement vulnerability in the planning area, our community imminently risks the loss of the character and existing culture of the area and people living here now threatening the community we enjoy now.</p> <p>Injury: A diversion from the characteristics of the broader area is a concrete injury to SWAG members who live in and enjoy the area now.</p>	<p>SWAG alleges two categories of “injury” related to the Project’s putative “fatal” lack of affordable “family sized uses units.” Neither of these “injuries” constitute the type of harm that the Commission can address in this proceeding, and neither justifies denying or delaying approval of the PUD.</p> <p>SWAG’s purported injuries can be readily dismissed from this proceeding because SWAG alleges the harm is “imminent”. Therefore, the harm is not at all tied specifically to the Project, which is unlikely to be constructed before 2022. SWAG raised similar concerns in its oral testimony noting that the demographic of Southwest DC has already “changed” “as the last 20 years have shown us through all of these projects.” In these statements, SWAG concedes that the Project is not the imminent harm that concerns SWAG: the harm, as SWAG perceives it, already exists.</p> <p>The Applicant is sympathetic to SWAG’s concerns about discrepancies between races and classes in the District arising in the context of housing opportunities and changing community demographics. Those concerns are legitimate and hard, yet very important, issues to address. Nevertheless, they cannot be remedied in the context of this PUD. The Applicant does dispute SWAG’s characterization as “fact” that the Project residents will be “largely white, likely with no families of color.” The Applicant expects that the Project will contain a wide mix of households and a racially diverse demographic of residents, reflecting the diversifying nature of Southwest DC.</p> <p>SWAG’s allegations of error are also flawed by a mischaracterization that the Project does not include family sized units. As noted above, the Project can accommodate families with children (and in two-bedroom units with dens, children in separate sleeping arrangements). However, nowhere in SWAG’s testimony does it identify an individual whose alleged injury can be redressed in this proceeding. There’s no specific evidence about the need for three-bedroom (or larger) units. SWAG’s only attempt at providing evidence (which is hearsay at best) relates to a need for a Mr. Lee, a current or former Southwest resident, looking for a <i>studio</i> unit. The Project provides 33 affordable studio units and 75 affordable one-bedroom units that Mr. Lee could seek to qualify for.</p>

SWAG Concern/Allegation	Applicant Response
<p>Moreover, neither OP nor DHCD have ensured the Applicant or agency staff conduct a demographics study to understand the specific circumstances of this PUD application’s affect on those families and residents who may be more vulnerable to displacement in the planning area, including SWAG members.</p>	<p>There is no need for OP or DHCD to conduct any study of the Project’s impacts alleged by SWAG because those alleged impacts are diffuse and generalized. SWAG’s proposed “planning area” underscores the diffuse and generalized nature of the alleged impacts arising from the Project. SWAG, in footnote 5 of its written testimony at Exhibit 37, defines the proposed “planning area” by reference to an aerial photo included in the record of the first-stage PUD proceeding. The photo, included as Exhibit 5 in Z.C. Case No. 02-38A shows an area bounded by 17<sup>th</sup> Street, <i>NW</i> on the west to 14<sup>th</sup> Street, <i>NE</i> on the east and C Street, <i>NW/NE</i> to the north and Stanton Street, <i>SE</i> to the south. The area encompasses perhaps approximately 10 percent of the entire District. It is not plausible that the Project could possibly have a material impact (or any measureable impact) on land values or housing markets or displacement or gentrification on this scale. Rather, SWAG’s identification of the planning area underscores that its concerns are District-wide in scale and not specific to the Project.</p>
<p>This Second-Stage PUD process allows the Commission to express its independent authority to meaningfully set required bedroom sizes and affordability commensurate with the expectations of the leading tenant of the Comprehensive Plan as well as the prevailing aesthetic and cultural and architectural characteristic of the surrounding community serving families (this project overall is anathema to the type of housing &amp; community it seeks to be shoehorned into).</p>	<p>As noted above, the Project’s mix of affordable housing and unit sizes was established by the Applicant in consultant with DMPED and subject to the approval of the D.C. Council. It therefore represents the policymaking determination of the two coordinate branches of the District’s government. The Project is entirely consistent with the Comprehensive Plan on this point.</p> <p>The Project is not an “anathema” to the surrounding community: it blends harmoniously with the other buildings in Waterfront Station and meshes with the prevailing modernist architectural vocabulary of Southwest DC. Similarly, the Project’s multifamily nature is very much in keeping with the strong multifamily fabric of Southwest DC. As shown in DMPED’s housing study, 65 percent of the units in Southwest DC are in multifamily buildings with more than 50 units—large apartment buildings are the norm in Southwest DC. <i>See Exhibit G-1</i> at 136. By adding ground floor performing arts space, the Project contributes to the cultural character of Southwest DC, which is a racially and economically diverse neighborhood. The Project contributes to that overall diversity and adds diverse uses and users.</p>

SWAG Concern/Allegation	Applicant Response
<b>Allegation: <u>Size of building is fatal</u></b>	
<p>The Commission approved a 114 foot tall building, meeting the DC Height Act. Now comes the Applicant with a 130 foot tall building possessing no transitions down to the surrounding lower-rise community (church, library, low-rise &amp; lower-income community to north, west and east).</p> <p>Injury: A building of this size is found downtown, not in Southwest and next to a prevailing low- and moderate-sized architectural open space aesthetic.</p>	<p>As addressed above, the Project is 114 feet tall, not 130 feet as SWAG incorrectly asserts in multiple places.</p> <p>The Project’s height and massing was established as part of the first-stage PUD, and the Project is entirely consistent with the height and massing established for the Property in the first-stage PUD. There is simply no justification for reducing the height of the Project now as SWAG suggests.</p> <p>SWAG’s statement that there are lower buildings to the north, west, and east is misleading at best. Immediately west of the Project is an existing building with an identical height and beyond that an existing building (originally constructed in the 1960s) rises even taller (to 130 feet). Further to the west, at 6<sup>th</sup> and I Street, SW are the Waterside Towers, which rise to ten stories. North of the Project are Potomac Place Tower and Capitol Park Plaza, both of which are nine stories. East of the Project is a nine story building and an eleven story building, the latter of which is taller than the Project. The Project is not anomalously tall, and “transitions” in height are unnecessary. Waterfront Station, and the Project were intended as a tall, dense town center near the Metrorail station. See <b><u>Exhibit G-5</u></b>.</p>

SWAG Concern/Allegation	Applicant Response
<p>The proposed project immensity negatively affects the existing character and destabilizes land values of the area, concretely impacting our members on fixed incomes and working-poor families.</p>	<p>SWAG’s objection to the Project’s height is puzzling. Reducing the Project’s height necessarily would result in a reduction of density and therefore <i>fewer</i> affordable units, seemingly at odds with its concerns about the production and delivery of affordable housing. Moreover, there have been no objections from residential or non-residential neighbors regarding the Project’s height. Although SWAG purports to speak for all of its members within the “planning area” identified as an exhibit to the first-stage PUD, it has not identified to the Commission the addresses of any such neighbors who live in any of the blocks north of the Project and who would at all be negatively affected by the Project’s height.</p> <p>SWAG also recycles its old trope: the Project allegedly “destabilizes” land values. Yet, SWAG offers no evidence or analysis of the Project’s alleged impacts besides a single conclusory statement. The Applicant did provide substantial evidence in the record that the Project is unlikely to adversely affect land values. This evidence is unrebutted.</p> <p>SWAG similarly provides no explanation or mechanism for how the development of a vacant lot that has been planned for redevelopment for nearly two decades produces negative impacts on nearby residents who are “on fixed incomes” or who are “working-poor families”. SWAG does not even allege what those impacts might be and how they might be related to the Project’s height.</p>

SWAG Concern/Allegation	Applicant Response
<p>Plus, this proposal directly challenges the aesthetic and environmental qualities (light &amp; air) of the low- and moderate-rise surrounding community. See, Comprehensive Plan Figures from the Urban Design Element, Chapter 9: Figure 9.5, 9.8, 9.9 &amp; 9.13.</p>	<p>SWAG asserts that the Project is too tall for Southwest, ignoring the presence of an identically-sized building immediately across the street and taller buildings elsewhere at Waterfront Station. Buildings similar in size to the Project have existed across the Southwest neighborhood, and in the blocks immediately near the Project, for decades. SWAG has not presented any light and air related injuries to the Commission and has not identified any individuals with redressable grievances related to the Project’s size. Moreover, the Project is not inconsistent with any of the figures from the Comprehensive Plan that SWAG cites:</p> <ul style="list-style-type: none"> <li>• Figure 9.5 encourages “Preservation of Review View Corridors.” 10-A DCMR § 905.9. There are no river views in the vicinity of the Property (south of the Project, Fort McNair’s “MP” building and sentry wall block any views from the Property to Greenleaf Point, which is more than a mile away; west of the Project Waterside Towers interrupts any view that would be created to the river along K Street, SW).</li> <li>• Figure 9.8 encourages “fine-grained street and development patterns” rather than “Superblocks”. <i>Id.</i> § 909.9. The Project is not inconsistent with this approach, as the Private Drive creates porosity in Waterfront Station at roughly the same scale as exists elsewhere in Southwest DC.</li> <li>• Figure 9.9 identifies “desired scale transitions at downtown edges to residential areas.” <i>Id.</i> § 909.11. The Project is itself a transition from the 130 foot tall buildings at the center of Waterfront Station. These transitions are “desired” and not “required.” Given the benefits provided by the Project’s height—namely, its provision of affordable housing and other public benefits—and its transit-proximate location, the Project is appropriately scaled for its context.</li> <li>• Figure 9.13 encourages “breaking up massing of development on lots larger than prevailing neighborhood lot size.” <i>Id.</i> § 909.17. The Project complies with this objective. The Project has a maximum façade length of 166 feet on a public street (and a maximum overall façade length of approximately 303 feet). These dimensions are characteristic of Southwest DC historic modernist character and existing residential building stock. For instance, Potomac Place Tower has a length of 530 feet along 4<sup>th</sup> Street, SW one block north of the Project. Capitol Park Plaza two blocks to the east has a width of approximately 505 feet on its south (street-facing) elevation. The apartment building at 355 I Street, SW immediately north of the Property has a length of approximately 140 feet along its south (street-facing) elevation.</li> </ul>

SWAG Concern/Allegation	Applicant Response
<b>Allegation: Lack of agency reporting is fatal</b>	
<p>It is unrefuted, the record lacks studies as to environmental impacts, infrastructure impacts, public service community facilities overcrowding (10A-DCMR-1102, POLICIES AND ACTIONS CSF-1 ENSURING ADEQUATE COMMUNITY SERVICES AND FACILITIES), and adverse emergency response time impacts (CSF-4.2 FIRE AND EMERGENCY SERVICES; CSF-4.1 POLICE FACILITIES AND SERVICES), and impacts on pedestrian safety (Action T-2.4.E: Pedestrian Master Plan) all fatal to the application.</p>	<p>The Applicant refutes SWAG’s assertion that the record lacks studies as to environmental impacts, infrastructure impacts, public service community facilities overcrowding and the like. Environmental and infrastructure assessments were included in the Applicant’s initial filing (<i>see</i> Exhibit 2I) and in subsequent filings (<i>see</i> Exhibit 15A and 22E). The Applicant further supplements the record with <b>Exhibit G-2</b> (regarding infrastructure impacts) and other comments provided below.</p> <p>SWAG is similarly wrong that the record lacks studies related to pedestrian safety. Such studies are included in the CTR and DDOT report and further addressed in the Applicant’s Construction Management Plan and follow-up commitments related to DDOT’s Safe Routes to School program. <i>See</i> Exhibits 15A, 22E, and 25.</p> <p>Furthermore, the Comprehensive Plan policies encouraging impact review are not limited to the Zoning Commission’s portion of the development review process. As the Commission is aware, the District’s many technical agencies continue the review of a development application at the building permit stage (and sometimes beyond) once the Commission completes its review. There is no requirement in the Comprehensive Plan or in the Zoning Regulations that the Commission’s “comprehensive public review” of a PUD application include all steps of a building permit or other permit review.</p> <p>SWAG’s implication, that updated and modern police and fire stations, are somehow required to be provided as part of this PUD, is misplaced and ill-informed about how the District budgets for and pays for its emergency services personnel.</p>

SWAG Concern/Allegation	Applicant Response
<p>The injuries to the surrounding community and SWAG members from this lack of a required comprehensive review and impact assessment are obvious. See, Policy IM-1.5.4: Transparency in Decision-Making; Policy E-3.4.2: Transparency of Environmental Decision-Making, H-1.4.6: Whole Neighborhood Approach.</p>	<p>If the allegations that SWAG makes are true (they are not), SWAG would be no differently injured than any other District resident from any other development in the District, whether that development proceeded as a PUD or as a matter-of-right. Simply put, these are not allegations of injury arising with respect to this particular Project but with respect to any development anywhere in the District. Accordingly, the instant proceeding is not the proper forum to seek redress to these grievances.</p> <p>With respect to the specific Comprehensive Plan policies particularly cited here, either the Project is not inconsistent with such policies or SWAG misunderstands the applicability of such policies to the current context:</p> <ul style="list-style-type: none"> <li>• Policy IM-1.5.4 “strongly encourages transparent decision-making in all land use and development matters, making information available and accessible to residents.” 10-A DCMR § 2507.6. The Project and the instant process complies with this policy. The Commission’s review of this application is entirely on the record and based on the record before it. All information in the record is publicly available.</li> <li>• Policy E-3.4.2 encourages “discussions and decisions regarding environmental impacts and mitigation measures [to] occur through a transparent process in which the public is kept informed and given a meaningful opportunity to participate.” <i>Id.</i> § 616.4. The Project will comply with the District’s Environmental Policy Act, which is triggered at the building permit review stage. As noted above, the Commission’s review is not the end of the review of a development project. If the Project is required to undergo an environmental impact statement in accordance with applicable District law, then the provisions of this policy objective will be applicable. However, this policy is not applicable to the instant proceeding at this point.</li> <li>• Policy H-1.4.6 encourages “that the construction of housing [be] accompanied by concurrent programs to improve neighborhood services, schools, job training, child care, parks, health care facilities, police and fire facilities, transportation, and emergency response capacity.” <i>Id.</i> § 506.12. The Project is not inconsistent with this policy. The Project includes job training benefits, a play area, and transportation improvements. This policy does not require that every new housing development provide every one of the items listed therein.</li> </ul>

SWAG Concern/Allegation	Applicant Response
<p>Injury: The lack of comment on impacts of overcrowding the area (now with 450 more units) affects public services such as the emergency response time of public safety responders, and exceeding the capacities of the area's public clinics, libraries, recreation centers, parks, etc. – all to the imminent harm of SWAG members who enjoy these public services now, but have seen quality and capacity decline with each new major project and lack of new investments therein.</p>	<p>This is a spurious allegation without any evidentiary support for the claim. Moreover, the allegation is entirely unrelated to the Project. SWAG again alleges its harm is “imminent” and therefore not likely to be caused by the Project, which is unlikely to be constructed until 2022. Furthermore, SWAG’s claim of a “lack of new investments” in Southwest public services is patently false and suggests an ignorance of SWAG’s understanding of services in Southwest:</p> <ul style="list-style-type: none"> <li>• Southwest DC has a brand new, state-of-the-art fire station at 450 6<sup>th</sup> Street, SW. The new facility was constructed from 2015-2016.<sup>2</sup></li> <li>• The Southwest Branch of the DC Public Library is about to be renovated, with construction expected to commence in 2019.<sup>3</sup></li> <li>• Amidon-Bowen Elementary School was renovated in 2012, and Jefferson Middle School is currently undergoing a modernization program.</li> </ul> <p>With respect to this injury, SWAG cites, without alleging any particular harm, a long list of policies from the Comprehensive Plan. Absent further explanation from SWAG about how such policies apply to the Project, this citation (and others like it in SWAG’s written testimony) is meaningless. The Applicant directs the Commission to its extensive analysis of the Project’s consistency with the Comprehensive Plan set forth at Exhibit 2L. Moreover, the Commission’s regulations make clear that the first-stage of the PUD process is the time for the Commission to review consistency with the Comprehensive Plan. <i>See</i> 11-X DCMR § 302.2(a). The Commission conducted that review in this case. <i>See</i> Z.C. Order No. 02-38A at Findings of Fact 98-106. There have been no changes to the Project that would disturb the Commission’s Findings in the Waterfront Station PUD regarding the Comprehensive Plan.<sup>4</sup></p>

<sup>2</sup> See DMPED, 450 6<sup>th</sup> Street, S.W. (Old Engine Co. 13), <https://dmped.dc.gov/page/450-6th-street-sw-old-engine-co-13> (last visited February 22, 2019).

<sup>3</sup> See DC Public Library, *Southwest Library Construction Updates*, <https://www.dclibrary.org/newsouthwestlibrary> (last visited February 22, 2019).

<sup>4</sup> See also *Randolph v. District of Columbia*, 83 A.3d 756, 762 (D.C. 2014) (“For similar reasons, we reject petitioners’ claim that the Commission was required to address the Historic Preservation Elements of the Comprehensive Plan in its stage-two PUD order. . . . [T]he Commission had already addressed the character of the neighborhood and it devoted approximately ten pages of its stage-one order to discussing the Comprehensive Plan.”).

SWAG Concern/Allegation	Applicant Response
<p>As well, an injury is the the [sic] lack of commitment to ensure the Applicant pays its fair share of public facility &amp; infrastructure upgrades (water, gas, electric) per plan policies, putting the burden on us. It is an injury for SWAG members to take on the costs of the PUD project impact. See, Policy IM-1.1.3: Relating Development to Infrastructure Capacity Policy, Policy CSF-1.2.6: Impact Fees, Policy IN-6.1.3: Developer Contributions.</p>	<p>As noted above, the Project is part of the Waterfront Station PUD, which did provide a significant privately-funded contribution to infrastructure in Southwest DC.</p> <p>And again, SWAG raises only generalized concerns that would apply to any new development that relies on public or quasi-public infrastructure. There is no particularized allegation of harm to SWAG as a result of the Project; only a vague, general concern that the Project will at some point in the future result in infrastructure maintenance costs.</p> <p>The Comprehensive Plan policies cited here are similarly misplaced in this context:</p> <ul style="list-style-type: none"> <li>• Policy IM-1.1.3 seeks to “Ensure that development does not exceed the capacity of infrastructure. Land use decisions should balance the need to accommodate growth and development with available transportation capacity, including transit and other travel modes as well as streets and highways, and the availability of water, sewer, drainage, solid waste, and other public services.” 10-A DCMR § 2502.7.</li> <li>• Policy CSF-1.2.6 seeks to “Ensure that new development pays its “fair share” of the capital costs needed to build or expand public facilities to serve that development. Consider the use of impact fees for schools, libraries, and public safety facilities to implement this policy.” <i>Id.</i> § 1104.8.</li> <li>• Policy IN-6.1.3 requires “that private developers fund the necessary relocation or upgrading of existing utilities to address limitations with existing infrastructure on or adjacent to proposed development sites. For necessary upgrades to water and wastewater infrastructure, developers should contribute to the cost of extending utilities to the project site or upgrading existing utilities to the specifications necessary for their proposed project.” <i>Id.</i> § 1317.5.</li> </ul> <p>The common thread in these policies is that new development should pay for new infrastructure. However, there is no requirement that such contribution commitments be made at the PUD stage. SWAG provides no credible allegation of actual infrastructure shortages or impairments and certainly none specifically related to the Project. SWAG’s assertions are baseless and unsupported by any substantial evidence.</p>

SWAG Concern/Allegation	Applicant Response
<p>Remedy: This Second-Stage PUD process allows the Commission to express its independent authority to meaningfully require impact assessments to greatest extent feasible, to mitigate impacts, and to set conditions for the benefit of protecting the surrounding community from identified impacts. The Commission can't fulfill this key planning role unless potential impacts are actually identified.</p> <p>Certainly, there's been limited agency impact assessments completed in time for the PUD hearing, thus denying due process in preventing the public and SWAG members from commenting on these types of impacts and comprehensive administrative review required by the PUD regulations in a timely way (let alone the lack of fact finding for the Commission to rest their decision). See, Policy IM-1.1.6: Studies Preceding Zoning Case Approvals; Policy IM-1.1.1: Mitigation of Development Impacts.</p>	<p>The record contains no evidence, whether introduced by SWAG or otherwise, of any potential adverse impacts of the Project on District infrastructure or public services. SWAG's baseless claims, made in every PUD proceeding in Southwest and without any credible sources or backup, do not merit further impact analysis. Absent any evidence of an actual, particularized concern resulting from the instant Project, the Commission can discharge its review obligations under the Zoning Regulations based on the evidence in the record before it.</p> <p>SWAG also avers non-particularized due process violations arising from the absence of District agency reporting on impact assessments. No such violations exist. SWAG is not a party to the instant proceeding and failed to seek party status. SWAG's rights in this proceeding as an organization in opposition to the Project are no different than those of any other member of the general public. SWAG has shown no harm arising from the exclusion of District agency reporting on the Project. The Commission has ample factual basis in the record before it to conclude that the Project will not have any unacceptable impacts.</p> <p>Finally, SWAG cites two additional Comprehensive Plan policies:</p> <ul style="list-style-type: none"> <li>• Policy IM-1.1.6 seeks to “Ensure that zoning case approvals such as Planned Unit Developments (PUDs) utilize: (1) transportation and infrastructure studies and recommended conditions of approval to mitigate potential impacts; (2) agreements for financing any necessary improvements, including public and private responsibilities; (3) agreements to comply with "first source employment" requirements and other regulations that ensure public benefits to District residents.” 10-A DCMR § 2502.10. The Project is consistent with this policy. The record in this proceeding includes transportation and infrastructure studies and recommended conditions of approval to mitigate potential impacts. The Applicant controls the Property through an agreement with the District setting forth financial terms for the improvement of the Property. Finally, the Applicant has already entered into a first source employment agreement with the District.</li> <li>• Policy IM-1.1.1 encourages “To the greatest extent feasible, use [of] the development review process to ensure that impacts on neighborhood stability, traffic, parking and environmental quality are assessed and adequately mitigated.” <i>Id.</i> § 2502.5. The Project complies with these objectives as well.</li> </ul>

SWAG Concern/Allegation	Applicant Response
<b>Allegations Raised at the Public Hearing during Oral Testimony</b>	
There can be no opportunity to do a Build First program in a development that has no family sized units	Notwithstanding the questions raised by the ANC in its cross-examination of the Applicant (which questions were not properly before the Commission because they were unrelated to the Applicant’s direct testimony <sup>5</sup> ), the “Build First” component of the Greenleaf redevelopment is not at all related to the instant proposal. As both the Applicant and OP noted at the public hearing, DCHA’s proposed redevelopment of Greenleaf is not close to commencement.
Contribution to Funds for Community Emergencies	<p>At the public hearing, SWAG asked whether the Applicant could reserve space or a fund for Southwest residents who experience an emergency like the fire that occurred at the Arthur Capper senior houses. The Applicant’s affiliates have already made these types of contributions outside of the PUD process.</p> <p>As noted in <b>Exhibit B</b>, affiliates of the Applicant have been collaborating with DCHA to provide units for displaced seniors with vouchers from Arthur Capper Carrollsburg at The Wharf and The Banks, two residential buildings controlled by the Applicant’s affiliates.</p>

[End of Exhibit G]

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<sup>5</sup> See *Watergate East Committee Against Hotel Conversion Co-op Apartments v. District of Columbia*, 953 A.2d 1036, 1046 (D.C. 2008) (“Matters beyond the scope of direct examination are properly left to the opposing party's case-in-chief.”).