

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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VIRTUAL PUBLIC MEETING

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THURSDAY

NOVEMBER 19, 2020

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The Regular Public Meeting of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 4:06 p.m. EDT, Anthony Hood, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

- ANTHONY HOOD, Chairperson
- ROBERT MILLER, Vice-Chair
- PETER SHAPIRO, Commissioner
- MICHAEL TURNBULL, Commissioner
- PETER G. MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- SHARON SCHELLIN, Secretary
- PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

- MAXIMILIAN TONDRO, Esquire

D.C. OFFICE OF PLANNING

- JENNIFER STEINGASSER, AICP

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The transcript constitutes the minutes from the  
Regular Public Hearing held on November 19, 2020

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## P-R-O-C-E-E-D-I-N-G-S

(4:06 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia. Today's date is Thursday, November 19, 2020. It is approximately, 4:06 p.m. This is the 1,524th meeting session.

We are convening and broadcasting this public meeting by videoconferencing. My name is Anthony Hood, and joining me are Vice Chair Miller, Commissioner Shapiro, Commissioner May, and Commissioner Turnbull. We're also joined by the Office of Zoning Staff, Ms. Sharon Schellin, who is our secretary, and Mr. Paul Young who handles all of our virtual operations. Also, others are from the Office of Planning, District Department of Transportation, and Office of the Attorney General. I would ask all others to introduce themselves at the appropriate time.

Copies of today's meeting agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live, Webex and YouTube Live. The video will be available on the Office of Zoning's website shortly after the meeting.

Accordingly, all those listening on Webex or by phone

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will be muted during the meeting unless the Commissioner suggests otherwise, or we ask you to come forward with information. The hearing action items, the only documents before us this evening are the application, the ANC setdown report, and the Office of Planning Report. All other documents in the record will be reviewed at the time of the hearing.

Again, we do not take any public testimony at our meetings unless the Commissioner requests someone come forward and speak.

If you experience difficulty accessing Webex or with your phone call-in, then please call the OZ Hotline number at 202-727-5471. Again, 202-727-5471 for Webex login or call-in instructions.

So with that, I'm going to move right along. Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. Our first case for this meeting, the Zoning Commission Case No. 20-03. This is the Office of Planning text amendment, Subtitle B, C, H, K and U to require certain ground floor uses in self-service storage establishments. Ms. Schellin.

MS. SCHELLIN: Yes, sir. There is just one exhibit, Exhibit 10, it's an ANCPD report determining that the proposed text would not be inconsistent with the Comp Plan nor for the National Capitol, nor would it adversely affect any identified

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federal interest. So we'd ask the Commission to consider that final action this evening.

CHAIRPERSON HOOD: Okay. Commissioners, I'm looking to see, does anybody have any comments or questions? Any further discussion? I think this is pretty straightforward. Would somebody like to make a motion?

COMMISSIONER TURNBULL: Mr. Chair, I would move that we take final action on Zoning Case 20-03, text amendment to Subtitles B, C, H, K and U to require certain ground floor uses in self-storage establishments, and look for a second.

COMMISSIONER SHAPIRO: Second.

CHAIRPERSON HOOD: Okay. It's been moved and properly seconded. Any further discussion? Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes.

MS. SCHELLIN: Commissioner Shapiro?

COMMISSIONER SHAPIRO: Yes.

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Miller.

COMMISSIONER MILLER: Yes.

MS. SCHELLIN: The vote is 5 to 0 to 0 to approve final

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action in Zoning Commission Case No. 20-03

CHAIRPERSON HOOD: Okay. Mr. Turnbull, you might want to mute.

All right. Next, the Zoning Commission Case No. 20-06. This is Felice Development and 1333 M Street, LLC, first-stage and consolidated PUD related map amendment in Square 1025E and 1048S and reservation 129 and 299. Ms. Schellin.

MS. SCHELLIN: Yes, at Exhibit 77 through 81, you have the applicant's post-hearing submissions and at Exhibit 82 is an NCPC Report. Not finding any issues, they ask the Commission to consider final action.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. Again, Commissioners, this application, as we all remember is a request for a PUD related map amendment from the PDR-4 to the MU-9 zone. Let me open up any questions or comments from anyone. Yeah, I don't see any Commissioners, it looks like. Vice Chair Miller?

VICE CHAIR MILLER: Mr. Chairman, I would just like to reiterate what we said at proposed action that the additional height that's being allowed for due to this related map amendment and PUD is balanced out by the view lines, the vistas, the more open space that's being provided and so that overall, when you balance all the factors, that there is comprehensive plan consistency with the zone that's being proposed.

CHAIRPERSON HOOD: Okay. Any other questions or

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comments? All right. With that, would somebody like to make a motion? Vice Chair Miller, since you --

VICE CHAIR MILLER: Sure. Mr. Chairman, I would move that the Zoning Commission take final action on Case No. 20-06, Fleece Development and 1333 M Street, LLC first-stage in consolidated PUD and related map amendment at Squares 1025E and 1048S and reservations 129 and 299 and ask for a second.

COMMISSIONER SHAPIRO: Second.

CHAIRPERSON HOOD: Okay. It's been moved and properly seconded. Any further discussion? Not see anything, Ms. Schellin, could you please do a roll call vote?

MS. SCHELLIN: Commissioner Miller?

COMMISSIONER MILLER: Yes.

MS. SCHELLIN: Commissioner Shapiro?

COMMISSIONER SHAPIRO: I vote yes.

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes.

MS. SCHELLIN: The vote is 5 to 0 to 0 to approve final action in Zoning Commission Case No. 20-06.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin, let's move right along. Zoning Commission Case No. 20-17. This

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is the Office of Planning Text Amendment to Subtitle Z, flexibility to improve campus plans during academic year 2020 through 2021, due to the public health emergency. Ms. Schellin.

MS. SCHELLIN: At Exhibit 15 there is a response from the American University to the Second Emergency Rulemaking and that appears to be the only submissions. They ask for a final action on this case.

CHAIRPERSON HOOD: Okay. Do we have the submission in front of us? I thought we had a very good discussion previously on this, so let me see if there are any additional questions or comments. Not seeing any. Okay. So what I will do, since I'm unmuted, I would move that we would approve Zoning Commission Case No. 20-17 due to the public health emergency with the time frame set in our regulations, which we've already discussed, be implemented at that time. And I'll leave it to OAG to make any legal corrections or whatever. So I move. Can I get a second?

VICE CHAIR MILLER: Second.

CHAIRPERSON HOOD: Being properly seconded, any further discussion? Not seeing any. Ms. Schellin, would you do a roll call vote?

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: Commissioner May?

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COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Shapiro?

COMMISSIONER SHAPIRO: Yes.

MS. SCHELLIN: Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes.

MS. SCHELLIN: The vote is 5 to 0 to 0 to approve final action on Zoning Commission Case No. 20-17.

CHAIRPERSON HOOD: Okay. Thank you. Next (audio interference), Zoning Commission Case No. 15-22A, 301 FL Manager, LLC, two-year PUD time extension in Square 722N. Ms. Schellin.

MS. SCHELLIN: Yes, sir. In this case the applicant is asking for a two-year time extension. It is their first request for an extension. At Exhibit 5 we have a report from the ANC in support. At Exhibit 6 you have an OP report, also recommending approval, and so we'd ask the Commission to consider final action on this case this afternoon.

CHAIRPERSON HOOD: Thank you, Ms. Schellin. I -- let me start off. I would definitely be in support of the application, because it definitely meets our standard of review, it's a 705.2 in Subtitle Z. And, again, as stated by Ms. Schellin, this is the applicant's first request for a time extension. Let me open up any further questions or comments. And not seeing any, would somebody like to make a motion, please?

COMMISSIONER TURNBULL: Mr. Chair, I would move that we grant the time extension for 301 FL Manager, LLC two-year PUD

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time extension at Square 722 for Case 15-22A.

COMMISSIONER SHAPIRO: (Audio interference) second.

CHAIRPERSON HOOD: Okay. It's been properly seconded by Commissioner Shapiro. Any further discussion? Okay. Ms. Schellin, would you do a roll call vote, please?

MS. SCHELLIN: Yes. Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes.

MS. SCHELLIN: Commissioner Shapiro?

COMMISSIONER SHAPIRO: Yes.

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Miller?

VICE CHAIR MILLER: Yes.

MS. SCHELLIN: The vote is 5 to 0 to 0, to approve final action in Zoning Commission Case No. 15-22A.

CHAIRPERSON HOOD: Okay. Let's go up to hearing action Zoning Commission Case No. 20-26. This is the Office of Zoning, text amendment to Subtitles Y and Z for administrative approvals of validity period of approvals during COVID-19 pandemic. Ms. Schellin, do you want to T that up?

MS. SCHELLIN: Yes, that's actually me. We are asking for setdown and asking the Commission to take emergency action as well as authorize the immediate revocation of the Notice of

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Proposed Rulemaking and to approve a shorter notice period of 30 days for the notice of public hearing. We're asking the Commission to approve six-month and one-year time extensions to be approved administratively by Office of Zoning staff for both the BZA and Zoning Commission for time extensions. And, of course, if it's the normal two-year time period then they would go through the normal process. This would piggyback on the previous approval that the Commission granted back April 27th to the end of the year. Some of those that got six months if you count from April 27th, they would expire October 27th, so this will be effective for those that expired October 27th on. And so this would carry us to, I believe, April 27th and, of course, when we reach April 27th, we'll see where we are at that point. So that's what we're asking for this evening.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Schellin. Commissioners, you've heard the request to set down the emergency -- the approval for shorter notice of approval on the hearing notice. So let me see if there are any questions or comments? Okay. So I will go ahead and move the approval of everything that's been asked for, the set down that would take emergency action authorizing immediate publication of the Notice of Proposed Rulemaking and we approve the notice period for 30 days for public hearing notice. Did I leave anything out? So that's my motion.

VICE CHAIR MILLER: Second.

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CHAIRPERSON HOOD: It's been moved and seconded. Thank you, Vice Chair. Any further discussion?

Ms. Schellin, would you do the roll call vote, please?

MS. SCHELLIN: Commissioner Hood?

CHAIRPERSON HOOD: Yes.

MS. SCHELLIN: Commissioner Miller?

COMMISSIONER MILLER: Yes.

MS. SCHELLIN: Commissioner May?

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Commissioner Shapiro?

COMMISSIONER SHAPIRO: Yes.

MS. SCHELLIN: Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes.

MS. SCHELLIN: The vote is 5 to 0 to 0 to approve setdown as a rulemaking case to take emergency action and authorize immediate publication of the Notice of Proposed Rulemaking and to approve a 30-day notice period for a public hearing notice in Zoning Commission Case No. 20-26. Thank you.

CHAIRPERSON HOOD: Okay. I do -- since we're having our regular meeting, I do have -- I know there's a big discussion of how we proceed with the affordable housing and design review and some of those topics. So what I would like to do is, I guess, bring Ms. Steingasser up, or I don't know if Mr. Rodgers and Ms. Kirschenbaum and those who are working on it, just in general, affordable housing, Office of Planning -- if somebody's here --

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okay, Ms. Steingasser is here.

Ms. Steingasser, what we would like to do is to just throw out some things that we would like for the Office of Planning to look at as we, again, go down this road in trying to figure some things out. So I will start off with my colleagues who may have some things -- we probably all have something different and we would like for you all to take everything we have and come back with something for us to proceed with, in that fashion, as we work through the second part of IZ and affordable housing and when we talk about all that together. So it might sound like we're all over the place, but we want to -- we're depending on the Office of Planning to help bring us back closer together. So we'll see how we can move forward. So Commissioner May, could you start us off?

COMMISSIONER MAY: Yeah, I mean, I would like to start with a question for Ms. Steingasser about, you know, you're already aware of the issue, right? We're dealing with the fact that certain zones are not subject to Inclusionary Zoning and the fact that certain processes don't take that into consideration, the design review process in particular.

So what I -- I mean, I guess, I know that this is already a known issue to the Office of Planning. What has been your plan? I think we've heard before that you wanted to bring it back as a subsequent IZ related case after we get through the IZ Plus case, but maybe you could just fill us in on what you're

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plans have been up to this moment.

MS. STEINGASSER: Yes, we do have kind of a long-term strategy of looking at the Inclusionary Zoning regulations. The first phase was to look at IZ Plus and how it would relate to map amendments. Now that we're done with that case, the second cases we refer to locally as "IZ XL," and that was to look at areas that are totally exempt from IZ, and that would be areas like the Southwest, which is a previous receiving zone. The Commission may remember, one of the foundations of the IZ program when we first started was that if the property couldn't absorb the bonus density, then the IZ wasn't applied. So there's that strict nexus between the bonus and the application of IZ to properties, or receiving zones which were part of a -- like NoMa was a receiving zone and this part of South Capitol and the near southeast, and then there was some over towards the Foggy Bottom area. They were receiving zones for density that was generated in the downtown and that housing transferred to these areas called receiving areas and (audio interference) if you had residential, so then the full capacity to develop, so IZ was not applied to those areas.

We're going to now re-look at that, it's been what, 8, 10 years, so we're going to re-examine IZ in terms of those areas. We're going to also look at the historic districts which have previously been exempt and that's (indiscernible) and Georgetown. And we're going to examine conversions, so office buildings that

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convert to residential, we're going to also look at how IZ would apply to those. Because those three big buckets were exempt from IZ. So that's our next phase and we'll be probably breaking those down into smaller pieces. We're trying to look at a path that can allow the projects that have the highest possibility of success to move first and then the more controversial ones that require the bigger study, Mr. Rodgers has to do basically a financial model for each of these scenarios. We then share that model with stakeholders and other people who do -- work in this area who have financial experience and economic modeling and so that's why that takes a little bit longer to work through those. So that is our next phase. We plan to bring that back to the Commission at least partially in January. And I'm understanding -- I watched the hearing last week, I know the Commission is concerned. So it's not triggered by design review. Design review is just one of the tools the Commission (audio interference) provides just -- for an opportunity to look at buildings in sensitive architectural areas along South Capitol, things that interfered with or had an interface with (audio interference), so we will be looking at those areas.

CHAIRPERSON HOOD: Okay. Thank you.

MS. STEINGASSER: Is that too long an answer?

COMMISSIONER MAY: No, no, you covered all the key points there. So I think that given the question we had in the one case and, you know, the overarching issue and the urgency of

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the housing shortage in the District and the housing affordability in the District, it seems to me that whatever we can do to move things along more quickly would be greatly appreciated. And even if there are short-term more targeted measures that could be implemented, I think that would be a welcome development.

Basically, I don't really want to have another case like we have on us right now. I'm not sure, is that -- Ms. Steingasser, is that your microphone that's picking up that extra noise? It is.

MS. STEINGASSER: Sorry, there's not --

COMMISSIONER MAY: Yeah, there's something going on there. I understand. I was at BZA yesterday with my road right outside my window and all day long there were jackhammers and saws and stuff. Anyway, but anything that can be done, even in a targeted way, that would avoid us getting into the kinds of cases like we had last week where, you know, many people who are concerned about the project were concerned about issues that were not part of our review.

And, in fact, I would go so far as to say that I don't really even want to have any more cases like that until we have begun to address that. Now that's not really an OP issue, that's more of an Office of Zoning issue and when things get scheduled. I don't think it's really a setdown issue because I don't think new cases that would -- where this is a factor would be subject

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to the setdown procedure. But I think anything that can be done to expedite it. I really would like to see, you know, the ability -- I mean, I understand where we started from, right, where it was a carrot stick approach and we didn't want to implement the stick without the carrot. Well, I think we're in a position now where we're going to have some straight up sticks only kinds of areas, where there just has to be that minimum amount of Inclusionary Zoning and that minimum should be as high as we think we can make it. And maybe we can move forward with something that's, you know, an initial minimal amount without necessarily having done all of the analysis, but then use that analysis that Mr. Rodgers would do in order to get it -- to fine-tune it to the point where we have it. Otherwise we wind up with cases where we are hearing a whole lot of testimony about things that are not relevant to that particular type of review and, you know, it doesn't do the Commission, the neighbors, the city any good to not be able to address those in that context.

So whatever can be done to move it along, again, even if it means a short-term targeted measure, I think it would be beneficial and then, you know, then we can move forward. And, again, I'm thinking we shouldn't take up other cases until we've gotten to -- gotten some of this stuff covered.

MS. STEINGASSER: I hear you, and general affordable housing is the top priority for OP and especially for development and review as we bring forward text changes and you'll see these

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incremental movements on accessory apartments and accessory buildings and how they relate in both those -- in the lower density. And I hear you very clearly on this being the next priority piece and moving forward on it ahead -- not ahead of, but as at the front of the line of the next section and we absolutely will bring that to you.

COMMISSIONER MAY: Okay. Thank you.

CHAIRPERSON HOOD: Okay. Thank you. Commissioner Shapiro?

COMMISSIONER SHAPIRO: Thank you, Mr. Chair. So, Ms. Steingasser, I'm curious about whether and how to evaluate that whether transfer of development rights is actually still the right tool for us. I mean, where are you all with that? Or is it just a given that that's something that we need to continue to be doing or is it sort of no longer as relevant?

MS. STEINGASSER: It is something that we are looking at as part of this overall IZ affordability issue, so I don't really have a quick answer for you tonight.

COMMISSIONER SHAPIRO: Okay. All right. That's fine. That's all I have, Mr. Chair.

CHAIRPERSON HOOD: Okay. Commissioner Turnbull?

COMMISSIONER TURNBULL: I would just echo Commissioner May's comments. I think last week's case was very painful. We find ourselves trying to do the best for the community and trying to -- you know, the Mayor has got objectives to do with housing,

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she wants affordable housing, but we feel like our hands are handcuffed in a way. I mean, even though we can make arguments -- Comp Plan arguments for why they need to do this, it would be better if before we get a design review before us, the affordable housing element -- the IZ element has already been taken care of. In other words, they have to have had something in place, before they can do it. Either that, or we change the whole process of how we do it. But somehow, strictly a design review in one way is an easier case to look at in one way, but there are always issues that are going to come up that do not necessarily go with the design of the building. It's the impact on the neighborhood in a different sense. And as members of the Zoning Commission, I think we feel obligated to try to do something about that -- those impacts, such as the housing -- affordable housing. And I think we find ourselves not in a position to be able to be effective -- to be effective adjudicators of a case going forward.

So I think we need -- the design review process has got to change a bit, or as I say, before we get to a design review, whatever zone that is in, does have to have as its ground rules an affordable housing element already in place, so that it's there and when it comes to us, either they've fulfilled it or they haven't. But I think -- Commissioner May said, we feel challenged on this, so we do need some help and we really don't want to do any more of these cases, because I think we're not -- we're not doing anyone any favors in looking at these cases

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the way they are presently presented to us.

So whatever you can do to try to expedite or look at some of the key areas first and give us some more ammunition or something to be able to review these -- what we're looking at a lot better, I think that would be what I would ask you. Thank you.

CHAIRPERSON HOOD: Okay. Thank you, Commissioner Turnbull. Vice Chair Miller?

VICE CHAIR MILLER: Thank you, Mr. Chairman. I would agree with the comments of my colleagues that we need to include -- well, need to move forward as -- which the Office of Planning wants to move forward as quickly as possible with the Inclusionary Zoning XL case, beyond the expanded Inclusionary Zoning case that we just did propose rulemaking on earlier this week, so that there are less exemptions than currently exist in particular zones or in particular circumstances, including design review circumstances or the zones in which design review is occurring, so that Inclusionary Zoning in the future Inclusionary Zoning -- expanded Inclusionary Zoning applies because of the civic priority that the Comprehensive Plan places upon affordable -- and the Mayor's Housing Equity Report, places upon developing affordable housing in the city at all levels of affordability. So Inclusionary Zoning only targets a certain median family income level currently, it doesn't get to the very low, but it does get to an important level of 60 percent and 80 percent --

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60 percent for rental median family income.

So yeah, I would concur that we need to expedite -- setting down that future -- getting that proposal from the Office of Planning, which they're working on and setting it down shortly thereafter so that we can get that at least interim rule.

And as Commissioner May said, if it's just an interim -- if there needs to be more analysis in terms of the sticks and carrot approach for the long-term, that's fine, but we need it as soon as possible to get a baseline of what's required almost in every -- in every case in terms of affordable housing, and then we can look at limited exemptions.

I guess I wouldn't be necessarily -- without knowing more about what's in the pipeline, I wouldn't be in favor of stopping the scheduling of design review case -- hearings on design review cases that are in the pipeline and ready to move forward, we just would be continuing to have the frustrating level that we're having in terms of conversations about other Comprehensive Plan priorities beyond architectural design review in those cases.

So I don't necessarily want to hold up projects from going forward that are able to go forward and we'll have our frustrating dialogue about whatever we have it about in terms of design and other aspects of the project.

But as soon as we can get that other case that limits the -- limits exemptions to IZ further and maybe sets down new

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rules of the game for projects going forward, that would be useful to have, so I would urge OP to get that to us as quickly as possible.

CHAIRPERSON HOOD: Okay. So I'm going to agree with everything I've heard from my colleagues, but I'm going to add some of my ideas behind this. I would agree that we stop hearing design review cases, because when we hear them, then we try to add things that don't apply, so that's my problem. You know, it's a stretch. We're trying to make things fit that when we did those design review regulations, we didn't think about them at that time. Maybe we need to go back and revisit that, because there were some things that came up, I believe, that should have, that's one.

The other thing is, for me, I heard you mention Mr. Rodgers is going to be doing -- I guess, have a conversation about affordable housing. I would just ask and I'm going to call out some names, because when we have these hearings they seem to have pretty good ideas on how to try to help us do things that don't necessarily fit within our regulations and that's where we struggle. I would like to see Ms. Cork (phonetic), I would like to see Cord McKinney (phonetic) and Laura Richards, if we can and if they're willing. So they can sit there, they can kind of be our think tank to help us get through this. And I call on them because they were the most recent -- and anybody else, I don't want us -- and I don't say that's what we do -- I don't want us

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to just get a certain group and just listen in. But I think that to me represents a large representation.

Because I've heard some -- I heard different ideas and one I've been thinking about since that hearing and that is, the matter of right, I don't even know, legally, does it work? We're taking away the public citizen's voice, as Ms. Richards said, we should not give away the authority, but do we sacrifice that for affordable housing?

So those are some of the things that I'm thinking about and if we need to revisit our regulations, because we put the design review and regulations in place and if we need to -- if it's time for us to revisit that, let's do it. And it sounds easy, but as far as what's in our jurisdiction and what's not in our jurisdiction, justification the way I see it now, the courts tell me it's in my jurisdiction. So from what I hear and from what I've been learning from OAG and others, it seems like everything, we have a little more jurisdiction, we just don't use it.

So, you know, when they cinched our back to us in those orders, they basically tell us, you didn't look at this. And I know we have one order -- you didn't look at justification, you need to consider this. So for me, everything is open. So I know we got a lot of different varying views, just from the five commissioners, Ms. Steingasser, but the Office of Planning has always come through with something for us and I know you're not

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going to let us down now. And I'll leave it at that.

Any follow-up questions or comments?

Ms. Steingasser, are you all well confused now?

MS. STEINGASSER: No, sir. Actually, I think I understand exactly what is being asked of us. I do want to just state, design review and affordable housing are not exclusive nor are they the same type of review. So I don't want people thinking that OP is valuing design over affordable housing, we're absolutely not. And the design review process it is just a public review process. It's a tool that the Commission came up with for, like you said, for very sensitive areas where that relationship between new buildings, especially in these areas where the height was allowed to go to the Height Act and it was along really prominent corners and creating (audio interference) in and out of the federal court and our most national landmarks.

So it was never meant to supersede or have any impact on the issue of affordable housing. So that's a very different issue and we will absolutely take a look at that as both a matter of right scenario and then as we go into discretionary processes like PUDs, we'll take a look at that.

CHAIRPERSON HOOD: Okay. Thank you so much. That wasn't necessarily on our agenda, but that was a good topic, so we really appreciate the Office of Planning looking into that for us. And we're looking forward to what you come back with, as soon as you can. All right. Thank you, Ms. Steingasser.

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Vice Chair, you had another question?

VICE CHAIR MILLER: Yes. Thank you, Mr. Chairman. I wonder if Ms. Steingasser in the meantime might be able to get to us a -- or in concert with Ms. Schellin, a list of what design review cases we know are in the pipeline so that we're not holding off for too long a period in scheduling these for hearing while we think that something's coming forward that might affect our review of those.

I'm not in favor, as I said before, putting off -- suspending our scheduling of design review cases that may be in the pipeline. But I don't know what's in the pipeline and I'd like to maybe -- I think we need -- we would benefit from knowing what's coming down the pike in the next month, two months, year in terms of design review cases that may be coming to the Commission. And (audio interference) develop for us that list relatively quickly apart from any type of analysis of whether Inclusionary Zoning should apply in some of those cases.

MS. STEINGASSER: Yes, sir. We can absolutely assemble a list, at least for the next two or three months that we know of cases that are out there.

VICE CHAIR MILLER: Thank you, I think that would be helpful.

CHAIRPERSON HOOD: Okay. Commissioner May?

COMMISSIONER MAY: So in terms of the timing of that though, I mean, we'll get that list -- say we get the list by

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the December meeting, I know that there's at least one case that's already in the pipeline that might otherwise be scheduled before that time.

So, Mr. Chairman, what I'm wondering is, can we defer scheduling anything at least for that month until we get the list, and then make a decision about where we go from there go from there.

CHAIRPERSON HOOD: Yeah, I think we -- I think -- while, I understand Vice Chair Miller's -- I think I've heard four people, so, you know, the majority, so we will defer it. But once Ms. Steingasser, we finish asking her questions, I wanted to kind of talk about what the Vice Chair mentioned, and I guess I can do it now. But for me, while we're ready -- and Rob, I'm really talking to you, we're ready to move forward but it's frustrating, as Mr. Turnbull, has said, because when we have those hearings, we're trying to put things that are not in the regulations in there. So I think that does not just a disservice to us -- and we just talking this out, we don't have to agree on it, if we're going to fall, we'll fall. But I just think that's a disservice to us because we're sitting here -- and trust me, I agree with what you're saying, I'm just trying to figure out how to make it fit into something that from what I'm hearing legally shouldn't be there.

So, you know, I don't know if that's the right way to phrase it, but that's what we're trying to accomplish and that

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is frustrating. So I don't know if I want to have that exchange (audio interference).

Yeah, go ahead, let me give you a chance to respond, Vice Chair Miller, if you want to.

VICE CHAIR MILLER: No, I agree with you that we need to put in our regulations that what's a statute -- what is currently a statutory requirement in the Home Rule Chart and we are the Zoning Commission that needs to interpret that phrase, "Zoning shall be not inconsistent with the Comprehensive Plan." To me that means all zoning, whether or not the regulations spell out a civic priority of affordable housing, for example, in the Comprehensive Plan, for a particular type of case, such as design review. So, yes, I have (audio interference) interpret and it's a stretch, as you -- as you and others have said, that affordable housing is an appropriate discussion point for that type of case even where the regulation doesn't call for it, because the statute calls for it, our Home Rule Charter calls for it, that zoning cannot be inconsistent with the Comprehensive Plan. And when we know that affordable housing is the civic priority of a Comprehensive Plan and the Mayor's Housing Equity Report, we can try to push that envelope and stretch it -- stretch the interpretation ourselves. If we're not going to interpret it, others are going to do it for us until we clarify what our regulations say and we need to clarify and expand the application of Inclusionary Zoning, which is what's in the works.

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So, I don't know if I've answered your question. I guess I'm not as uncomfortable with having the discussion about affordable housing in those cases where it isn't necessarily a part of design review, when a huge chunk of the community is asking us to look at it.

CHAIRPERSON HOOD: (Audio interference).

VICE CHAIR MILLER: And, you know, we need to clarify. But I don't know if that answers your question.

CHAIRPERSON HOOD: Yeah, that answers my question. I actually agree with everything you just said. My only disagreement is -- I want to put it there so everybody else -- it won't be a question. Because I agree -- you and I are on the same page. I just want to -- I want to eliminate the question of uncertainty. Because you're saying it one way and I'm saying -- I mean, the Supreme Court has given us -- the courts have given us -- not Supreme, but the courts -- I don't know where I got Supreme Court, but the courts have given us a lot of things to look at and said, look, this is within your jurisdiction. Commissioner Shapiro?

COMMISSIONER SHAPIRO: Yeah, Mr. Chair, I'm -- you know, the intention is honorable, and I couldn't agree more with using every tool in the toolbox to move the priority issues forward. You know, I think it's -- you know, we have rules and regs in place for all these different cases that we take up, for a reason. And I don't want to get us in a position of sort of

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advocating against ourselves. You know, it's almost as if we're lobbying against our own authority.

If we think there's something wrong with our rules and regs, we change our rules and regs. I don't think we try to stretch them to be an advocate for an issue, even if it's an issue that I think all of us really want to advocate for. But that's not our role. Our role is to work within our rules and regs.

So I'd rather have us change them than try to -- to use Vice Chair Miller's word, to try to push the edge of the envelope. I think that's tricky for us. I mean, other people try to push the edge of the envelope within our rules and regs. We have the authority to just change them if we don't think that they make the most sense.

CHAIRPERSON HOOD: I really think we all are pretty much saying the same thing, it's just the approach and how to get there. So it's going to be key for us when the Office of Planning brings back what they bring back to us, that will help get us started. So it goes back to what Commissioner May said. I believe to keep us away from trying to stretch the envelope and trying to make something fit that doesn't fit, trying to get in a size 38 when I need a 46. So instead of trying to do that, I think what we need to do is give us some time. Let's look at the list like the Vice Chair mentioned, let's look at that list and then we go from there.

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So, Ms. Schellin, I'll take the Commissioners' direction. It's the general consensus, even though we may have someone that's outside of it, is not to schedule anything and just hold it in abeyance. Ms. Steingasser?

MS. STEINGASSER: Yes, sir. Thank you. What I was going to suggest is the Commission had considered having a special meeting on November 30th, a week from Monday, we could have the list of projects by then and at least be able to put those on record and get that list to the Commission.

And then like we did in January with IZ Plus, you can bring back to the Commission in December, a setdown concept. This is the concept which puts everybody on notice what the Commission is doing and where you're going. So then if you want -- if you choose to proceed with the design review cases, everybody is on notice that the design review is not to be considered a waiver of any rule changes, so that the -- because the IZ requirement is part of the base requirements. It's not tied to the process the way benefits and amenities are tied to a PUD. Design review just stands alone, that's why it has no setdown, it doesn't have any variances to it, it's really geographically located, but we could bring forward the concept, identifying for everybody in December, everybody being public and all property owners, that this is the way the Commission wants to proceed, we're setting it down, we're going to continue to work through this and then if you want to proceed with the design

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review cases, you can do so with the -- by the time they get to their permit, the rules may change and they may be -- they may have an Inclusionary Zoning requirement, but -- separating those two processes.

CHAIRPERSON HOOD: Okay. Thank you, Ms. Steingasser. Commissioner Turnbull, did you want to say something else?

COMMISSIONER TURNBULL: So, Ms. Steingasser, I think I could work with that. Are you looking at that this would then be some sort of emergency action to put in place for --

MS. STEINGASSER: No, sir. No, sir. I don't think we -- I don't think we could make the case for an emergency, but I do -- it's just allowing the Commission to get some answers sooner. So if Ms. Schellin would allow us, there's a special meeting just for the purpose of getting you that list, of identifying those cases that are out there. I'm not even asking that the Zoning Commission would take any action, you would just have that piece of information on the record. And then in December, two weeks later, we would come back with a concept set down that talks to the issues of the XL and then in January we would come back with specifics. So it kind of puts everybody on notice and lets the Commission be very up front about what it is you're trying to achieve and trying to do.

CHAIRPERSON HOOD: Ms. Schellin, do we have a meeting the 30th?

MS. SCHELLIN: No, she's talking about scheduling a

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special public meeting, we have a hearing that evening. But I just did look and you guys --

CHAIRPERSON HOOD: Well, hold on -- do we have a hearing? Let me make sure I'm following you; do we have a -- I know we said something about November the 30th.

MS. SCHELLIN: We have a hearing and we had originally talked about having a special public meeting --

CHAIRPERSON HOOD: Okay.

MS. SCHELLIN: -- but you guys ended up taking proposed action on the case Monday night, so we didn't seek --

CHAIRPERSON HOOD: And that's the meeting we're now supposed to take that. Okay. I'm just trying to catch up. Okay. I got you.

MS. SCHELLIN: So I just looked at our -- my case log that I keep and -- so you have pending 20-14 the hearing that you just had and you had that big discussion about, the affordable housing issue. You've got the other design review case, 20-18, that you are scheduled to consider final action on at the December meeting. Yesterday, another design review case was filed that I have to schedule for a hearing, but if I'm hearing you correctly, I'm not going to be scheduling for a hearing. And I was contacted by another attorney who wants to file a design review under Subtitle I, that would be a design review he's planning to file in the next week, I think.

So I think those are the only pending cases under design

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review.

CHAIRPERSON HOOD: So it sounds to me like the 30th, let me see what -- I think Ms. Steingasser is giving us a proposal for the 30th and for some reason I don't have anything on the 30th on my calendar, but my calendar is sometimes messed up. So Commissioner May, what are your thoughts?

COMMISSIONER MAY: So, I guess, Ms. Steingasser, would you -- if we waited until the 30th to get the list, I mean, we just heard what Ms. Schellin knows about, but are you aware of other cases that might be out there?

MS. STEINGASSER: I'm not sure if the fourth case that Ms. Schellin referenced is the same case that contacted OP today, so we'll have to share that.

The other information that I'd like to provide the Commission with these, you know, some design reviews -- like if they're inside the Southeast Federal Center, they're already covered by a -- affordable housing is part of their -- the construct of that zone and so I'm able to provide that point of context for you as well.

MS. SCHELLIN: That is -- the case that was filed yesterday is in the Southeast Federal Center, it is part of The Yards.

COMMISSIONER MAY: Okay.

MS. STEINGASSER: So that one will have -- that one will have an affordability requirement --

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MS. SCHELLIN: So I could schedule that one; is that what I'm hearing?

MS. STEINGASSER: I believe so.

MS. SCHELLIN: I would have to hear it from the Commissioners.

MS. STEINGASSER: From the Commissioners, yes.

COMMISSIONER MAY: Yeah, if we know that there's already an affordability component to it -- can you remind us what that component is? What the numbers are like for the Federal Center?

MS. STEINGASSER: Off the top of my head, I'd be a little uncomfortable. I know it has to do, I think, with rental, but I'd rather look that up.

COMMISSIONER MAY: Okay. I would be comfortable foregoing a meeting on Monday, but I would also suggest that when we're talking about a design review, you know, if we do have other design review cases beyond the Federal Center one, that we hold off on any decision-making on whether that -- when that gets scheduled until after we have the briefing from OP at the December meeting.

MS. SCHELLIN: Okay. So Southeast Federal Center is okay. The others don't schedule until after the December meeting.

CHAIRPERSON HOOD: Ms. Schellin, let me ask --

COMMISSIONER MAY: (Audio interference).

CHAIRPERSON HOOD: -- yes, Commissioner May, I want to

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ask the other commissioners do they agree? And then that -- then we'll make the decision.

COMMISSIONER MAY: Yes.

MS. SCHELLIN: Okay.

CHAIRPERSON HOOD: Have you finished, Commissioner May?

COMMISSIONER MAY: I think so.

CHAIRPERSON HOOD: Okay. Commissioner Shapiro, you've heard from Commissioner May the (audio interference). Do you agree or concur?

COMMISSIONER SHAPIRO: The only thing that I might say is that this isn't -- doesn't sound like it's going to be a long list, so it doesn't sound like we're going to get a whole lot of new information. So I'm wondering what the difference is between getting that information in November versus later in December? I mean, the real issue is, what are we going to do once we have that information, which we kind of already have now? I'm actually a bit lost as whether this step is even that necessary.

CHAIRPERSON HOOD: You mean, this -- of whether we -- I thought the 30th -- I'll tell you, I thought the 30th was a good idea, so we can get briefed and we can move forward, but if --

COMMISSIONER SHAPIRO: But the briefing -- if the briefing is a simple -- I'm sorry, Mr. Chair, I didn't mean to interrupt. If the briefing is as simple as, let's just get the list, I don't think we need to spend a whole lot of time waiting

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for that. I think the broader issue is, you know, what's the universe out there. It's a little bit more of what Ms. Steingasser was talking about, which is, you know, what is it -- IZ XL. You know, that feels like what we -- I think that feels like what we ought to be moving on. I mean, if we want to do something -- I don't even know -- and this may be me and you all have just this. I don't even know in my head what -- how broad this issue is. How many -- you know, how many zones are there where IZ is exempt? You know, that's kind of what would help me to make sense of this. And then what's the strategy for unexempting them in all those zones? And are there some that we can take under some kind of short-term emergency action? You know, the lower hanging fruit.

I think that's what we're pushing for. I don't think we need a whole lot more information to start -- around which of the design review case is in front of us.

CHAIRPERSON HOOD: I didn't think that the meeting on the 30th was just about getting the list. I thought there was going to be a whole lot more that was going to be involved in that whole discussion, but if it's just getting the list, no, I'm not -- we don't need to just have a meeting for that. I thought and maybe I misunderstood, Ms. Steingasser, I thought they were going to bring us back some results and the path going forward. I thought we were going to have -- oh, okay, she's -- so I got to --

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MS. STEINGASSER: No, sir. I was just trying to find ways to get the Commission some information so that as you start to think about what steps -- so when you were considering not scheduling any of the other design reviews, just getting you that list earlier so that you would understand what is that universe.

And in December we would come back to you with a bigger universe that Mr. Shapiro was just discussing: What are the zones that are exempt? What are the historic districts? What are the type of properties that are exempt? Then in January, we'd come back with an actual proposal.

CHAIRPERSON HOOD: Okay. I misunderstood. I apologize. I thought it would -- (audio interference).

MS. STEINGASSER: No, I -- we're fast, but not that fast.

CHAIRPERSON HOOD: All right. So Commissioner Shapiro, do you have anything else?

COMMISSIONER SHAPIRO: With that understanding if -- and if this is where Commissioner May was, are we talking about teeing off getting enough information so that we're going to have this discussion in December?

CHAIRPERSON HOOD: It looks like we're going to have to because I -- for me, and I heard Ms. Steingasser when she mentioned about there's some cases in the Southeast -- I think what Commissioner May was saying, the ones that are in the Southeast Federal Center, that we can move forward with those and

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have that component, but the ones that weren't, we wanted to hold off on.

COMMISSIONER SHAPIRO: One of the ones we haven't -- who already have taken -- I mean, they're in very different stages, these three cases, right? Or these four cases?

CHAIRPERSON HOOD: No, we haven't even set them down yet.

COMMISSIONER SHAPIRO: Or are you talking about, Ms. Schellin, are you talking about the three cases are all perspective?

MS. SCHELLIN: Two (audio interference) and one is just filed, I have to schedule for a hearing, and it won't be until February.

COMMISSIONER SHAPIRO: So one of the options on the table, at least from some of my colleagues, is for the ones that we've heard, we take no further action on them?

COMMISSIONER MAY: No, no, I was suggesting, I mean, the one that's -- we've already taken and had a complete hearing and we are preparing for the vote on the one case that was heard a few weeks ago, in December, right?

MS. SCHELLIN: Yes. That's 20-18.

COMMISSIONER MAY: And then the one we heard last week, which I don't think we're going to hear and we're not going to decide on until January.

MS. SCHELLIN: Correct. January 15th.

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COMMISSIONER MAY: Right?

MS. SCHELLIN: Correct.

COMMISSIONER MAY: So, I think those two stay on track because they didn't enter the process with any kind of affordable component requirement and I don't think it's reasonable for us to do anything more than we've already done on those.

COMMISSIONER SHAPIRO: I agree. That's what I wanted to make sure we were all in agreement.

COMMISSIONER MAY: But there are two new applications, one is in the Southeast Federal Center and because there's already an affordable component there, there's no reason not to get that one scheduled. The other one that is about to be filed?

MS. SCHELLIN: That's what he said.

COMMISSIONER MAY: Yeah, so that one -- I mean, I would say, let's not worry about scheduling that one until we've had the discussion in December. That's my proposal.

MS. SCHELLIN: Yeah, that's in the D8 zone, I believe he said. A D8 zone, it's under Subtitle I.

COMMISSIONER MAY: So that's my proposal.

COMMISSIONER SHAPIRO: I'm fine with that, Mr. Chair. That makes sense to me.

CHAIRPERSON HOOD: Okay. Okay. All right. Commissioner Turnbull? Okay. You're fine. Okay. Vice Chair Miller?

VICE CHAIR MILLER: I just wanted to thank Ms.

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Steingasser for bringing -- for suggesting that they would bring forward to us a concept for our December meeting for us to discuss and we can discuss it then. I'm looking forward to the -- as we all are, the (audio interference). Thank you.

COMMISSIONER TURNBULL: That meeting is on the 17th, right?

MS. SCHELLIN: Yes, sir.

COMMISSIONER TURNBULL: It's a Thursday.

MS. STEINGASSER: Is it safe for us when we're talking with applicants to assume that if there's an IZ requirement, the D8 zone does have an IZ requirement, it's one of the of downtown zones that does have IZ. Is it safe to schedule that case?

COMMISSIONER SHAPIRO: If it has an IZ requirement, I think what we're saying is, it's fine to move forward.

MS. STEINGASSER: Okay.

VICE CHAIR MILLER: Or if it has an affordable housing requirement because it's in another area, like the Southeast Federal Center, it's not an IZ requirement, it's an affordable housing requirement because of the way those properties (audio interference).

COMMISSIONER MAY: Yes. I think that makes sense. I think the thing is that, you know, one of the things I think we should be looking at in IZ XL is whether the requirements for IZ and some of those -- you know, some of the areas like D8 or anywhere else, is it the right number? Because, undoubtedly, we

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could wind up with a lot of people coming in and saying, well, you know, 8 percent at 60 percent MFI is not enough. So I think we have to be looking at that question too. Now that may be a question for further along in the process. It's probably not low-hanging fruit, but it is fruit we've got to look at.

VICE CHAIR MILLER: No, and it's something I asked for as part of actually the -- if I understand you correctly, Commissioner May, something I asked for at Monday night's hearing on expanded Inclusionary Zoning, for all the exempt zones, what is the affordable housing requirement? Because they were being exempt because there was an affordable housing -- and what are they? And do we think it's enough? So, I agree.

COMMISSIONER MAY: Right. I agree with that. Yes.

COMMISSIONER TURNBULL: I would like to hope that we're going nowhere near 80 percent MFI.

COMMISSIONER MAY: You're getting ahead of us, Mr. Turnbull.

CHAIRPERSON HOOD: Yeah. So -- all right. While we're all agreeing, let's go ahead and end this meeting. I think we have a path going forward. I think we're on the same page. Let me ask, Ms. Schellin, do you understand -- well, hopefully you and Ms. Steingasser and OAG understand what we asked for.

MS. SCHELLIN: Yes.

MS. STEINGASSER: Yes.

CHAIRPERSON HOOD: Okay. Does anybody have anything

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else?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. The Zoning Commission will be meeting November -- Monday, November the 23rd. Our case is Belmont Crossings Apartments, LLC, map amendment, Square 6208, and it talks about the map amendments from RA-1 to RA-2, 7th Street and Barnaby Road, Southeast. Square 6208, Lots 59 through 63, 65-69, 809 through 811, 817, 827 through 829, and this is in Ward 8.

So we will meet this coming Monday, November 23rd at 4p.m. on the same website, on the Office of Zoning's website. Anything else?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: Okay. With that, I want to thank everybody for a good discussion. I think we're all looking forward to a further good discussion and I think we're going to come up with a win-win for the City as well. So with that, I want to thank everybody for their participation tonight and this meeting is adjourned. Good night.

(Whereupon, the above-entitled matter went off the record at 5:08 p.m.)

## C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCBZA

Date: 11-19-20

Place: Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

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