

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ZONING COMMISSION

VIRTUAL PUBLIC MEETING

VIA WEBEX

MEETING SESSION

Thursday, January 18, 2024

The Public Meeting of the District of Columbia Zoning Commission convened via videoconference pursuant to notice at 4:00 p.m. EDT, Anthony Hood, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chairperson
TAMMY STIDHAM, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON SCHELLIN, Secretary
PAUL YOUNG, Data Specialist

OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

JACOB RITTING, Esquire

This transcript serves as the minutes from the Public Meeting held on January 8, 2024.

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C O N T E N T S

Case No. 23-02

3

Map Amendment Submitted by Office of Planning to
rezone from the MU-4 zone to the MU-10 zone the
contiguous properties at 1617 U Street, N.W.
(Square 175, Lot 826) and 1620 V Street, N.W.
(Square 175, Lot 827), and to apply IZ Plus

P R O C E E D I N G S

(4:00 p.m.)

Case No. 23-02

CHAIRPERSON HOOD: Okay, good. Mr. Young, could you start the recording?

Good afternoon. Today's date is January 18, 2024, and the time now is 4:00 p.m. This is Zoning Commission. We are reconvening Zoning Commission Case Number 23-02. This is the Office of Planning map amendment from MU-4 to MU-10 at Square 175, Lot 826 and 827. This is located in Ward 1. Again, today is a continuation of Zoning Commission Case 23-02, and today's date is January 18.

And I will incorporate the statement from January 8, opening statement, to this one.

Joining me today are Vice Chair Miller, Commissioner Stidham, Zoning staff Ms. Sharon Schillin and Mr. Paul Young, and the Office of Zoning Legal Division counsel, Mr. Jacob Ritting.

We will ask all others here to introduce themselves at the appropriate time.

And, Ms. Schillin, do we have any preliminary matters?

MS. SCHILLIN: I believe Mr. Hanlon may have a preliminary matter for you. I'm not positive. If we could bring him up, see for sure?

1 CHAIRPERSON HOOD: Good afternoon, Mr. Hanlon. do
2 you have a preliminary matter?

3 MR. HANLON: Chair Hood, can you hear me okay?

4 CHAIRPERSON HOOD: I can hear you now, yes.

5 MR. HANLON: Oh, my God. Okay. I thought I
6 wasn't going to be able to be at the hearing today. Let me
7 start my video. There I am. Thank you.

8 Chair Hood, I had raised, as a matter with
9 Ms. Schillin, it appears under the Zoning Regulations that
10 we do not get the opportunity to have a closing statement.
11 I took a look at the regulations and the proponent gets to
12 put on their case, then opponents get to put on their case.
13 Then proponent gets a rebuttal and proponent gets a closing
14 argument, and opponents don't get to say anything. And I've
15 never been in a court hearing or administrative hearing
16 where only one side gets to do a closing argument.

17 So I had asked if it would be possible for
18 opponents to have 10 minutes, or each party to have 10
19 minutes to do closing -- each side, not each party -- each
20 side to have 10 minutes to do closing arguments, or such
21 other equal time as the Chair might think appropriate. But
22 I find it extraordinarily odd that only one side gets to do
23 closing arguments, especially in such a long and complicated
24 case as this.

25 So that is my request, Chair Hood, is we be

1 allowed some time to do a closing at the end.

2 CHAIRPERSON HOOD: Mr. Hanlon, I am going to
3 follow title -- you actually answered your own question.
4 You said court hearing. This is not a court proceeding.
5 This is under Title 11-C DCMR, and the regulations are what
6 we follow. I am going to follow the regulations. You can
7 present -- you can do your cross-examination, which I think
8 is where we're going to start tonight. You can do your
9 direct testimony. And then at the end of the day, in not
10 just this case but all cases since I've been around here,
11 because it spells it out in Title 11, you can work with the
12 staff on that, is that the applicant has the final word.

13 Because here is what I guess the Zoning Commission
14 through their wisdom over the years, and through the City
15 through their years, this is the way I look at it. And I am
16 going to rule that we are going to follow the regulations.
17 We are not going to follow what the courts do.

18 But through their wisdom -- and what I've noticed
19 is a lot of times, people want to respond to something, even
20 though they've already responded throughout the proceeding.
21 And then they want to respond, and the other person wants to
22 respond, and another person. So I guess the Zoning
23 Commission's wisdom, long before any of us got here, figured
24 out that they would figure out a way so they could stop and
25 make a decision.

1 So I am not going to grant that. We are going to
2 follow the same process. And you will have ample time to
3 make your case.

4 Anything else, Mr. Hanlon?

5 MR. HANLON: No. We do have an expert witness,
6 but Ms. Schillin has advised me -- I just want to make sure
7 I understand, Chair Hood -- that we should ask to have the
8 experts qualified when we begin our case in chief, rather
9 than at the beginning of this hearing; is that correct?

10 CHAIRPERSON HOOD: She is exactly correct.

11 Ms. Schillin has been around a while, and most
12 people I hear say she gives out good advice. I'm not in on
13 that; I just deal with it when it comes here. So, yeah,
14 she's exactly correct.

15 MR. HANLON: Those were the only matters I wished
16 to raise as preliminaries.

17 CHAIRPERSON HOOD: Okay. I think, Ms. Schillin,
18 we are -- Mr. Hanlon is now ready for cross-examination.
19 Can we bring the applicant's team up so he can cross?

20 MS. SCHILLIN: Yes, and Mr. Young, if you could
21 bring up Mr. Kirschenbaum, Ms. Steingasser, and I believe
22 Mr. Lawson, too. I believe he is also on.

23 CHAIRPERSON HOOD: That's right, this was the
24 Office of Planning --

25 MS. SCHILLIN: Yes, Office of Planning, correct.

1 CHAIRPERSON HOOD: We do so many, I just figured
2 it was a team, okay.

3 MS. SCHILLIN: Yes. And, Mr. Young, I believe you
4 have a PowerPoint presentation that Mr. Hanlon wants to use
5 for his cross, so that -- to save time, without having to go
6 through pulling up all the documents, he thought that would
7 save time. So he put all of his documents in one place.

8 CHAIRPERSON HOOD: And let me just remind for the
9 public -- Mr. Hanlon already knows, this is not for
10 Mr. Hanlon, it's for the rest of us -- that the cross-
11 examination is on the Office of Planning's verbal and
12 written submissions into this record.

13 All right. Anything else, Ms. Schillin? Okay.

14 Mr. Hanlon, you may begin.

15 MR. HANLON: Thank you, Chair Hood.

16 If we could please go to my PowerPoint
17 presentation, Slide 2.

18 Mr. Kirschenbaum, can you hear me okay?

19 MR. KIRSCHENBAUM: I can hear you.

20 MR. HANLON: On November 16, you made a
21 presentation to ANC 1B concerning this project. You made it
22 on behalf of the Office of Planning, correct?

23 MR. KIRSCHENBAUM: I attended the meeting. My
24 colleague, Joel Lawson, provided the presentation. And we
25 object to this line, because this is not part of our

1 testimony or documents that are in the record.

2 CHAIRPERSON HOOD: Yes, Mr. Hanlon, November 16 --
3 is this in the record? I can't remember. Forgive me, I
4 can't remember everything that's in the record.

5 MR. HANLON: Chair Hood, yes, it has been filed in
6 the record. It was filed in the record prior to the
7 November 20 hearing. And so it has been sitting there in
8 the record for almost a month and a half or longer.

9 This witness has testified, and I should be
10 allowed to cross-examine him about a statement that he's
11 made. His name is on the report. He signed the report.
12 And I should be allowed --

13 CHAIRPERSON HOOD: Mr. Hanlon, you have not been
14 disallowed. My simple question was -- we had all these
15 exhibits, and unfortunately I can't remember everything
16 that's in the record. I am dependent upon my colleagues as
17 well as my staff to help me, especially my attorney, to help
18 me with everything that's in the record, because I cannot
19 recall all these submissions that are in the record.

20 But if it's in the record -- as I stated earlier,
21 if it's in the record, the Office of Planning's report,
22 anything they've done verbally, you can cross-examine.

23 MR. HANLON: I thank you.

24 Mr. Kirschenbaum, you signed at the bottom --

25 MR. RITTING: Mr. Hood and Mr. Hanlon, this is

1 Jacob Ritting. I'm sorry to interrupt. But I just wanted
2 to make something -- ask a question of Mr. Hanlon to clarify
3 something before we get into the questioning.

4 You're saying that this is in the record of this
5 case, 23-02. But are you saying that this is in the Office
6 of Planning report?

7 MR. HANLON: No, it is not in the Office of
8 Planning report. The Office of Planning made this report to
9 the ANC about this project eight days before the November 20
10 hearing. And Mr. Kirschenbaum signed the report, he wrote
11 the report, and I should be able to ask him a question about
12 the report that this witness wrote, that this witness
13 signed, and is about this subject, about this site.

14 I mean, this particular diagram that you see in
15 Slide 2 I'm sure is in the record of this case, and this
16 particular diagram is probably in the OP report itself.

17 MR. RITTING: Well, Mr. Hanlon, as you know, the
18 scope of cross-examination is supposed to be limited to the
19 subject matter of the witness's direct testimony or in this
20 case the reports that he's relying on. And it seems as
21 though you are introducing new evidence for some other
22 purpose.

23 Could you at least state what the reason is for
24 this, introducing this evidence now? I mean, of course,
25 it's also appropriate for you to attack the credibility of

1 the witness if you think that he's lying or misrepresenting
2 something. But it appears that the only purpose of this is
3 to bring in new evidence, and you will have an opportunity
4 to do that in your case in chief.

5 MR. HANLON: No. No. I am allowed to ask the
6 witness questions when he has made prior statements
7 concerning this matter. I'm allowed to ask him questions.

8 Now, the purpose of Slide 2 is merely to say that,
9 yes, he wrote this report. Slide 3, he has testified about
10 what the building looks like. And since he wrote this
11 report, I have a question about this, what this building is
12 going to look like.

13 CHAIRPERSON HOOD: So I am going to rule what the
14 building looks like out of order. That is not before this
15 Commission.

16 MR. HANLON: I apologize. I shouldn't have said
17 that. What the site -- well, let's be clear. We're talking
18 about up zoning to MU-10. OP has made representations about
19 what MU-10 is in terms of density, in terms of height,
20 correct? And the OP report has, in fact, a sketch of a
21 similar building in the most recent OP report. They have
22 provided a sketch of the building, how many stories, how
23 high it's going to be.

24 I certainly have the right to ask the witness
25 questions about what MU-10 would allow. Because what MU-10

1 would allow is in their reports.

2 CHAIRPERSON HOOD: Mr. Hanlon, you may ask your
3 question.

4 What exhibit is this and who submitted this? Did
5 OP submit this to this record?

6 MR. HANLON: OP did not submit Slide Number 2 to
7 this record. One of the other parties or Debby Hanrahan or
8 one of the other parties submitted this particular slide. I
9 can find the --

10 CHAIRPERSON HOOD: So let me -- you can ask Ms.
11 Hanrahan even though he presented it in another form. Hold
12 on, Mr. Hanlon. Hold on.

13 In this form, what I need tonight -- and
14 Ms. Schillin, I guess you're going to get the fourth and
15 fifth day. And I want to apologize to the other people in
16 the public who have called the Zoning Office and said that
17 Anthony Hood is a bully and some people said they like me
18 moving it along. So I want to hear from everybody.

19 So, Mr. Hanlon, let's do this. Let's go by what
20 OP submitted to this record and they have testified. You
21 can cross on what they've submitted and what they've
22 testified to present to the Commission. This was presented
23 to ANC 1-B. You can probably ask your same question without
24 using this new evidence or whatever this is. Because I
25 didn't see this from Ms. Hanrahan. I didn't see this.

1 MR. HANLON: I must strongly object, Chair Hood.
2 Because this violates the basic rules about being able to
3 cross-examine a party opponent. This party opponent has
4 made statements out of --

5 CHAIRPERSON HOOD: Objection -- objection so
6 noted. Objection so noted. I am going to overrule it.
7 Now, move on.

8 You can ask the same question using the Office of
9 Planning's materials. That's what I am asking you to do.

10 MR. HANLON: Can we please go to Slide 3?

11 On the -- do you see it, Mr. Kirschenbaum?

12 MR. KIRSCHENBAUM: We also object to this line.
13 This is also not from -- this is also from that ANC
14 presentation.

15 MR. HANLON: Mr. Kirschenbaum, is not the left-
16 hand side of this slide also in the OP report?

17 MR. KIRSCHENBAUM: This table, again, is from the
18 ANC presentation. This is not the table we provided in our
19 OP presentation to the Commission.

20 MR. HANLON: Mr. Kirschenbaum, in the OP reports,
21 is there not a representation about what MU-4 allows and
22 what MU-10 allows?

23 MR. KIRSCHENBAUM: There is a zoning table that
24 provides that information. But it is not this zoning table
25 that is on --

1 CHAIRPERSON HOOD: Mr. Hanlon, Mr. Kirschenbaum,
2 hold tight. I just had a chance to look at what was
3 provided. Mr. Hanlon, I think if you go to the OP report,
4 you will see the differences, what was submitted to the
5 Commission. And this is what we are going to focus on,
6 what's in this record.

7 This here is going to confuse the whole situation,
8 including my colleagues and myself. So let's stay focused
9 on the table that is on page I think it's 6 of 25 and 7 of
10 25 in the report.

11 MR. HANLON: Mr. Kirschenbaum, if the Zoning
12 Commission approves this map amendment, the FAR for MU-10
13 with IZ Plus would be 7.2; is that correct?

14 MR. KIRSCHENBAUM: It would allow up to 7.2 with
15 the IZ requirement, yes.

16 MR. HANLON: So I'm correct. Okay. And the size
17 of this lot is 81,981 square feet, correct?

18 MR. KIRSCHENBAUM: Correct.

19 MR. HANLON: And that does not include the
20 alleyway going up the middle, which is another couple
21 thousand square feet, right?

22 MR. KIRSCHENBAUM: Correct.

23 MR. HANLON: So if the max FAR is 7.2 and the
24 square footage of the lot is 81,981, then under MU-10, the
25 max gross floor area would be just under 600,000 square

1 feet, correct?

2 MR. KIRSCHENBAUM: Correct.

3 MR. HANLON: Okay. All right. Let's go to Slide
4 4.

5 MR. KIRSCHENBAUM: We also object. This is again
6 in the ANC presentation; this is not in materials --

7 CHAIRPERSON HOOD: I don't know what is the
8 problem that we can't just -- because I'm looking at -- and
9 I will tell you, Mr. Hanlon, for me -- I don't know about my
10 other colleagues -- I'm looking at the Office of Planning
11 report on my other screen. And I can see the distinct
12 differences in the information. So some things may have
13 changed due to community input.

14 I would strongly encourage you to make sure we're
15 talking apples to apples and not apples to what was
16 previously done and things that may have changed. So go
17 straight to that Office of Planning report. I would ask you
18 to do that.

19 MR. HANLON: Mr. Kirschenbaum, this particular
20 slide is not in the Office of Planning report but was
21 provided to the ANC; is that correct?

22 MR. KIRSCHENBAUM: Right, this is taken from the
23 ANC presentation.

24 MR. HANLON: Correct. Now, Chair Hood, you will
25 not allow me to ask the witness a question about this

1 presentation, this slide?

2 CHAIRPERSON HOOD: What I would suggest,
3 Mr. Hanlon, if you went to the ANC meeting, that would have
4 been an appropriate of time to talk about what's in front of
5 them. What's in front of the Commission is not what's in
6 front of us here. This is not in front of us. This was not
7 presented to us from the Office of Planning report as well
8 as verbally. Some of this may have been discussed, but I
9 need to make sure that we're getting an apples to apples
10 comparison.

11 And Mr. Ritting, do you want to add something
12 or --

13 MR. RITTING: I wanted to add something. If I
14 remember correctly, there were similar images or slides that
15 were contained in the OP report. Why don't we use --
16 Mr. Hanlon, why don't you use those? Because I think you
17 can make a lot of these same points using those images,
18 rather than relying on extrinsic images for this cross-
19 examination? And I think you could get to the same place if
20 you just relied on the images that are contained in the OP
21 report.

22 CHAIRPERSON HOOD: Maybe he will do it for you,
23 Mr. Ritting, because I asked that -- maybe you asked it
24 differently and maybe I asked it earlier, but we're saying
25 the exact same thing. But maybe you said it a little

1 differently than I said it.

2 Mr. Hanlon, both of us asked the same --

3 MR. HANLON: This particular slide, Mr. Ritting, I
4 don't believe is in the final OP report.

5 MR. RITTING: Can I make another suggestion,
6 Mr. Hood? And Mr. Hanlon, it invites your response as well.

7 If we need to take a brief recess so you could
8 look at the OP report again to see which images you can use
9 for your cross-examination to make some of these points, I
10 think that would probably be a good idea.

11 MR. HANLON: All right, we can take a five -- if
12 you want -- if Chair Hood --

13 MR. RITTING: It's up to Mr. Hood to decide. I
14 just wanted to make the suggestion.

15 CHAIRPERSON HOOD: Mr. Hanlon, you and I are going
16 to agree on this one, because we are going to work together
17 the rest of the evening. How many minutes do you need?
18 Five? Ten?

19 MR. HANLON: About five minutes, Chair Hood. I
20 don't believe this is in the prior report, but I'll take a
21 look.

22 CHAIRPERSON HOOD: Okay, so we will give the party
23 five minutes and we will come back again and pick it up with
24 Mr. Hanlon. So everybody take five minutes. We'll be back
25 at 4:26. Thank you.

1 MR. HANLON: Thank you.

2 (Recess.)

3 CHAIRPERSON HOOD: It's 4:26. Mr. Hanlon, are we
4 ready or do you need more time?

5 Let me, before we start again, Mr. Hanlon, let me
6 just say that what you were showing, those ANC, when you do
7 your direct testimony, you can present that to us. And I
8 think when I looked and saw -- I think this is Exhibit 350.
9 I am also trying to help you make your case to us. There
10 are some pictures I believe you possibly can use. I am not
11 trying to give your testimony for you because I haven't
12 prepared your testimony. I think you could possibly use
13 them for cross-examination because it's in their report.
14 And then when you come back and you do your testimony, you
15 can present those and we can talk about those because we may
16 have questions about those, other than what's been portrayed
17 to -- conveyed to us in the OP report as well as verbally.

18 Can we at least agree to that?

19 MR. HANLON: I want to thank you for thinking
20 about this. But, of course, you know one of the problems is
21 I can't call Mr. Kirschenbaum as a witness in my case in
22 chief. When he gets off the witness stand, he's done,
23 unless they voluntarily put him back on the stand. And so
24 I'll never get the chance to ask Mr. Kirschenbaum about this
25 report that he authored unless I can ask it to him now when

1 he's on the stand.

2 CHAIRPERSON HOOD: Mr. Hanlon, you may not be able
3 to ask him. If you watch these proceedings on this
4 Commission, when a party in opposition, what it sounds like
5 what you're going to do, brings that to our attention, the
6 commissioners will in turn call Mr. Kirschenbaum up and ask.
7 Your questions will probably come through the Commission.
8 I'm not saying guaranteeing it, but I'm pretty sure it will.

9 So I would again direct -- let's go through what's
10 in the Office of Planning's reports and what's been
11 testified to.

12 MR. HANLON: Well, I assume, Chair Hood, that I
13 can also ask him about the comp plan and various provisions
14 of the comp plan which we allege are inconsistent with the
15 map and --

16 CHAIRPERSON HOOD: Where they have references to
17 the comp plan in their reports, I don't know word for word
18 -- I'm not going to do that. But I think in their summary,
19 they talk about the comp plan, describe several different
20 policies. If you want to go down that line. But I would
21 again encourage you, as I did to the other young lady, to
22 make sure whatever you're asking helps the Commission.

23 MR. HANLON: No, I understand, Chair Hood. But
24 obviously, they are not going to put in their report
25 provisions that are inconsistent with the comp plan. And

1 since we believe there are provisions of the comp plan that
2 are inconsistent with this map amendment, I need to be able
3 to ask him about those provisions which we insist are
4 inconsistent. We have to show this map amendment is
5 inconstant.

6 CHAIRPERSON HOOD: But do you have to show
7 Mr. Kirschenbaum, who has already given his report? Or do
8 you have to show this Commission? That's where I think
9 you --

10 MR. HANLON: Well, I want to ask him -- I mean,
11 Chair Hood, he says -- he says that this map amendment is
12 consistent with the comp plan. I say it isn't. And I want
13 to ask him about particular provisions and ask him why he
14 believes that provision is not inconsistent with the comp
15 plan.

16 CHAIRPERSON HOOD: But you can do that, for me, as
17 far as I'm concerned, in your direct testimony. But let me
18 see what my counsel has to say.

19 Mr. Ritting?

20 MR. RITTING: I was going to suggest, Mr. Hood,
21 that if Mr. Hanlon has questions about the images, we deal
22 with that first. And then if he has questions about the
23 comprehensive plan and there might be objections to those
24 questions, I don't know what they'll be, we deal with that
25 when we get to it. And why don't we get on with questions

1 about the images, since that's where we could start, rather
2 than trying to solve everything all at once.

3 CHAIRPERSON HOOD: I would agree, counsel. And I
4 don't like to disagree with my counsel. But I am trying to
5 make my life a little easier so I can ascertain the argument
6 that he's making, instead of having to keep cutting him off.
7 And so it's better for me a person who is going to make a
8 decision, along with my colleagues, I would like to be able
9 to sit back and understand his points, instead of me having
10 to object because he's, as far as I'm concerned, going off
11 the course of the regulation. So I leave it at that. I
12 hear what you said.

13 So Mr. Hanlon, let's see. The counsel has said,
14 let's try to move this along, and I agree. But I would also
15 like to be able to ascertain myself, instead of having to
16 keep saying, Mr. Hanlon, next question. I would like to
17 hear your cross-examination. So thank you.

18 MR. HANLON: Thank you, Chair Hood.

19 Do you want me to go back to where we were?

20 Mr. Ritting, the Slide Number 4 is not in a prior
21 OP report. Slide Number 4 is in the OP PowerPoint
22 presentation made to the ANC on November 8. Therefore, I
23 assume that I will not be allowed to ask him questions about
24 that, correct?

25 MR. RITTING: That was Mr. Hood's ruling

1 previously, yes.

2 MR. HANLON: All right, let's go to Slide Number
3 5.

4 Mr. Kirschenbaum, have you been to the site?

5 MR. KIRSCHENBAUM: I have been to the property,
6 yes.

7 MR. HANLON: So you are familiar with the site?

8 MR. KIRSCHENBAUM: Correct.

9 MR. HANLON: Now, on the left side of Slide 5
10 comes from your most recent OP report, correct?

11 MR. KIRSCHENBAUM: It does not. This was also
12 taken from the ANC presentation. We have a similar image in
13 our report, but it's not the same as what you're showing
14 here.

15 CHAIRPERSON HOOD: Mr. Kirschenbaum, is your
16 similar image I think page 4 of 7?

17 MR. KIRSCHENBAUM: Correct.

18 CHAIRPERSON HOOD: So again, Mr. Hanlon, I am
19 looking at what you're presenting to me here. But I'm also
20 looking at what they presented to the Commission, and I have
21 it right here on my other screen. So I don't know why we
22 cannot just go from 4 of 7.

23 MR. HANLON: So there is an objection to my using
24 the left side of this slide; is that right?

25 CHAIRPERSON HOOD: I would really appreciate, and

1 I think my colleagues -- but I will let my colleagues speak
2 for themselves.

3 I would really appreciate if we use what's in the
4 Office of Planning's report because I -- this ANC report
5 that was presented to the ANC is not what's before me.
6 What's before me in the Office of Planning's report in this
7 case as presented by the Office of Planning is their report
8 and it has a representation exactly of what you're saying
9 here, of 60 feet. But this -- well, I don't want to make
10 anybody's case, so let me just -- that's why I need to have
11 the correct numbers, because that's not what we have here in
12 front of us here in the Office of Planning's report. The
13 representation of the building is there but there are some
14 different things with setbacks and other things that are
15 different on that one versus what we have here.

16 But you know what? At this point, you know, I
17 would again direct you to the Office of Planning's report
18 and also what has been verbally presented to the Commission,
19 not ANC.

20 MR. RITTING: This is Mr. Ritting again.

21 Mr. Hanlon, at Exhibit 358, on page 4, which is
22 titled OP's Supplemental Report Number 2, on page 4, there
23 is a very similar image.

24 CHAIRPERSON HOOD: I just said that,
25 Mr. Ritting --

1 MR. RITTING: I didn't hear the Exhibit 358 part.

2 MR. HANLON: Chair Hood did bring that up.

3 All right. Mr. Kirschenbaum, would you look at
4 page 4 of Exhibit 358?

5 MR. KIRSCHENBAUM: I am on that page, yes.

6 MR. HANLON: All right. You see the yellow side
7 of that building?

8 MR. KIRSCHENBAUM: Correct.

9 MR. HANLON: That's the side that would be facing
10 17th Street, correct?

11 MR. KIRSCHENBAUM: This is a building that is
12 located on M Street, Northwest.

13 MR. HANLON: You put this in your report as a
14 representation of what a similar building would be allowed
15 if this site were upzoned to MU-10, right?

16 MR. KIRSCHENBAUM: Correct.

17 MR. HANLON: All right. And so, in this
18 particular image, you showed a 60 foot height on the front,
19 blue part of the building, with a setback, right?

20 MR. KIRSCHENBAUM: Correct.

21 MR. HANLON: And you were doing that because you
22 were trying to show what the building with the setback would
23 look like along V Street, correct?

24 MR. KIRSCHENBAUM: Correct.

25 MR. HANLON: All right, so the yellow side of this

1 building has no setback and that is what it would look like
2 along 17th Street, right?

3 MR. KIRSCHENBAUM: Well, again -- again, zoning
4 creates the maximum building envelope. It's not known what
5 an actual building might do when it's built.

6 MR. HANLON: MU-10 would allow a 100-foot building
7 along 17th Street, with a 20-foot penthouse on top, correct?

8 MR. KIRSCHENBAUM: It would, correct.

9 MR. HANLON: All right. And this image on page 4
10 is -- you have a marking of 100 feet tall. The building was
11 actually 110 in this image, but you put a graph showing 100
12 feet tall with a penthouse on top, and that's what visually
13 it would look like from the two-story townhouses across the
14 street on 17th, right?

15 MR. KIRSCHENBAUM: Again, this was used as a
16 precedent image to show what a similar setback that's
17 currently built looks like currently.

18 MR. HANLON: And so if the Zoning Commission
19 approved this MU-10 map amendment, this is what could be
20 built along 17th Street, what's shown in yellow, correct?

21 MR. KIRSCHENBAUM: Again, what could be built
22 along 17th Street is a building up to 100 feet for part of
23 it, but there would be a 40-foot setback from V Street.
24 There would be 60 feet of building height along V Street and
25 then the 40-foot setback.

1 MR. HANLON: But I guess my point,
2 Mr. Kirschenbaum, is there would be -- there would be no
3 setback of this building along 17th Street, right?

4 MR. KIRSCHENBAUM: Zoning does not require a
5 setback along 17th Street.

6 MR. HANLON: So the answer would be that if this
7 map amendment is approved, then as a matter of right, a
8 building of 100 feet tall with no setback could be built
9 across the street from the two-story rowhouses on 17th,
10 correct?

11 MR. KIRSCHENBAUM: That would be correct.

12 MR. HANLON: And that 100-foot tall building could
13 have on top of it another 20-foot high penthouse, correct?

14 MR. KIRSCHENBAUM: That would be correct. And,
15 you know, this is testimony that we discussed last week.
16 So, you know, the testimony remains unchanged.

17 MR. HANLON: Right, but this is a graphic image of
18 what it could look like, right? That was the purpose of
19 this in your report?

20 MR. KIRSCHENBAUM: Again, I've already answered.
21 It was to show an illustrative example of what the setback
22 might look like.

23 MR. HANLON: Can we go to Slide 6, please?

24 You said you've been to the site, and you've been
25 to the site. Do you recognize the police station on the

1 left in this photo?

2 MR. KIRSCHENBAUM: Yes. You know, again, this
3 image was not part of our testimony, and it wasn't part of
4 our OP report.

5 MR. HANLON: Yes, but you just testified you were
6 familiar with the site, you visited the site, you've
7 testified about the police station. And I'm asking you, is
8 that the police station on the right side of this photo?

9 MR. KIRSCHENBAUM: That is the police station, but
10 again this is not --

11 CHAIRPERSON HOOD: No, listen, Mr. Hanlon, let me
12 rule that question out of order. You don't even have to
13 show us the picture. I see where we're going there. We're
14 going to use the ANC report again. I would ask you to do
15 that on your direct presentation to us, to talk about it. I
16 would ask you to ask questions pertaining to the Office of
17 Planning's report, and from what they're represented to us,
18 not to what they've represented to the ANC.

19 MR. HANLON: Thank you, Chair Hood.

20 Can we go -- can we skip and go to Slide 11?

21 Do you recognize what's shown in Slide 11?

22 MR. KIRSCHENBAUM: I mean, the objection still
23 stands. These are not in --

24 CHAIRPERSON HOOD: Mr. Hanlon -- hold on,
25 Mr. Kirschenbaum.

1 Mr. Hanlon, obviously you're just going to
2 disrespect me, as the Chair, who is trying to move this
3 process along. Obviously, that's what you're doing, because
4 I've asked you not to use this. You have discounted what
5 I've asked you.

6 I don't know, maybe my other colleagues ask you,
7 maybe you'll adhere to it.

8 I have asked you not to use this once. I've asked
9 you not to use this twice. I've asked you not to use this
10 three times. I've asked you to use what's in the record.

11 Because when you take it to court, the judge is
12 going to say, that's not before the Zoning Commission. Or
13 he'll say what Anthony Hood said was correct. Or what
14 Anthony Hood said was wrong. I'm not scared of that part.

15 I just want to make sure my process is correct.
16 And I am asking you to follow my instructions.

17 MR. HANLON: I will move on. I will move on,
18 Chair Hood.

19 Can we go, please to Slide 13?

20 MR. KIRSCHENBAUM: My objection still stands.

21 MR. HANLON: Well, wait a minute. The zoning --
22 under the rules of this Commission, the zoning maps are
23 always in evidence. The zoning maps, under the rules of --
24 under the evidence regulation of this Commission, the zoning
25 map is assumed to be in evidence, and I can ask the witness

1 questions about it.

2 CHAIRPERSON HOOD: Mr. Hanlon, there's plenty of
3 zoning maps in the report. It might not be that exact one.
4 But the issue for me, and I think my colleagues -- and
5 again, they can chime in if they want -- is that you're
6 still using what you presented to the ANC.

7 MR. HANLON: Well, no. This was not presented to
8 the ANC. This is a zoning map.

9 CHAIRPERSON HOOD: So we are off that PowerPoint
10 now? We are off that PowerPoint, so this is --

11 MR. HANLON: We are off the ANC.

12 CHAIRPERSON HOOD: Okay, so the ANC is gone. That
13 PowerPoint is gone. So I won't see any more ANC PowerPoint
14 pictures. Okay, so thank you.

15 MR. HANLON: I don't think so, Chair Hood. If
16 there is one, I will eliminate it.

17 CHAIRPERSON HOOD: Thank you.

18 I would ask, Mr. Kirschenbaum, even though you all
19 may not have done this particular map, this is a zoning map,
20 so I am going to ask you to respond to whatever the question
21 is.

22 MR. HANLON: Thank you.

23 Mr. Kirschenbaum, do you see the cited issue
24 labeled MU-4, MU-10 on the zoning map?

25 MR. KIRSCHENBAUM: I do, yes.

1 MR. HANLON: Okay. Now, there is no other MU-10
2 adjacent to this site, correct?

3 MR. KIRSCHENBAUM: There is -- the Arts 4 zone,
4 which is just east of this property, that is cut off of this
5 zoning map. And that is based off of the MU-10 zone.

6 MR. HANLON: The -- all right, we're going to go
7 to Arts 1, 2, 3 and 4. But let's talk about the zones
8 immediately around this site.

9 Because what we're talking about here,
10 Mr. Kirschenbaum, is a gross floor area of 7.2 or nearly
11 600,000 square feet if this map amendment is approved. Now,
12 is there any other density, is there any other zone
13 surrounding this site, that has anything like that density?

14 MR. KIRSCHENBAUM: There are no other zones. But
15 again, this is a straightforward zoning consistency case and
16 the MU-10 zone is not inconsistent with the FLUM
17 designations for this particular property and it is not
18 inconsistent with the written policies of the comprehensive
19 plan.

20 MR. HANLON: So to be clear, when we look
21 immediately to the north of this site, that would be R-2,
22 and that includes the little townhouses on V Street, right?
23 Right?

24 MR. KIRSCHENBAUM: There are -- it is zoned RE-2
25 across the street.

1 MR. HANLON: And the floor area ratio is only 1.8
2 across the street, correct?

3 MR. KIRSCHENBAUM: That's not correct.

4 MR. HANLON: It isn't?

5 MR. KIRSCHENBAUM: It can go up to 2.16 with IZ.

6 MR. HANLON: Without IZ, it's 1.8; is that right?

7 MR. KIRSCHENBAUM: Without IZ, it's 1.8.

8 MR. HANLON: Okay. And with IZ, it's slightly
9 over 2, correct?

10 MR. KIRSCHENBAUM: That would be correct.

11 MR. HANLON: All right. And if we go and look at
12 the -- I apologize. If we go and look at RA-2 DC, we would
13 see the same thing, right? We would see a very much smaller
14 gross floor area, very much less dense building, right? It
15 would be 1.8 again, the floor area, correct?

16 MR. KIRSCHENBAUM: It would be 1.8 FAR without IZ
17 and 2.16 with IZ.

18 MR. HANLON: Okay. And if we take a look at R-4,
19 and you see that R-4 stretches along the east side of this
20 site, and there is also some R-4 somewhat south of the site.
21 Do you see that on the zoning map?

22 MR. KIRSCHENBAUM: I see RA-4.

23 MR. HANLON: Okay. And the density for RA-4,
24 again, would be what?

25 MR. KIRSCHENBAUM: I need to double check. It

1 would be 3.5 FAR without IZ and 4.2 with IZ.

2 MR. HANLON: Okay, so 4.2 with IZ versus 7.2 if
3 this site is upzoned to MU-10. In other words, an RA-4 site
4 would be about 40 percent less dense building, correct?

5 MR. KIRSCHENBAUM: Uh, correct.

6 MR. HANLON: If we give a moment, please. One
7 second, Chair Hood. I apologize.

8 If we also look at MU-4 RC, would see the same
9 thing, a very much less dense building as a matter of right,
10 right? We'd see a 2.5 gross floor area, not a 7.2, right?
11 Or a 6.0?

12 MR. KIRSCHENBAUM: I'm sorry, for which zone?

13 MR. HANLON: MU-4 DC, the gross floor area would
14 be two and a half.

15 MR. KIRSCHENBAUM: I don't think that's quite
16 true, either?

17 MR. HANLON: 2.5 without IZ?

18 MR. KIRSCHENBAUM: 2.5 without IZ and I believe 3
19 with IZ.

20 MR. HANLON: All right. And in that case, a
21 building in that zone would be more than 50 percent less
22 dense than what could be built if a site is upzoned to MU-
23 10, right?

24 MR. KIRSCHENBAUM: Correct, in theoretical terms.

25 MR. HANLON: So if we go around all the zones that

1 border this site, the density of all the buildings in all
2 the zones that border this site is only 40, 50, 60 percent
3 of the density you're proposing for this site, right?

4 MR. KIRSCHENBAUM: Again, you know, the land use
5 assignments on the FLUM support higher density for this
6 property. I can't speak to what the FLUM would support for
7 a rezoning application for the surrounding properties.

8 And you can also see on the zoning map, for
9 instance, there is an MU-9B zone that is next to an RA-4
10 zone and an RA-2 zone. An MU-9B is higher density than MU-
11 10.

12 MR. HANLON: Um-humm. That MU-9B is a hotel,
13 right?

14 MR. KIRSCHENBAUM: That probably is a hotel, yes.

15 MR. HANLON: All right. The answer to my
16 question --

17 MR. KIRSCHENBAUM: I'm sorry, no. The MU-9 -- no,
18 the hotel is north of that. The MU-9B is the office
19 buildings, I believe, that are, I think, build to maximum
20 height permitted under the Height Act there.

21 MR. HANLON: So I would be correct, right, to say
22 that all the zones that border this site, the density is 40
23 to 60 percent less than what would occur if this upzoned to
24 MU-10, right?

25 MR. KIRSCHENBAUM: My previous testimony that I

1 just gave is unchanged.

2 MR. HANLON: All right.

3 Can we go to Slide 19?

4 Mr. Kirschenbaum, you talked about this site as
5 Lots 826 and 827, correct?

6 MR. KIRSCHENBAUM: Correct.

7 MR. HANLON: Those are tax lots, not record lots,
8 right?

9 MR. KIRSCHENBAUM: Those are tax lots, correct.

10 MR. HANLON: In fact, this site is made up of 11
11 record lots, isn't it?

12 MR. KIRSCHENBAUM: It is. But again, we -- you
13 know --

14 MR. HANLON: Sorry. The answer was yes?

15 MR. KIRSCHENBAUM: We object to this line. It was
16 not in our OP reports or our OP presentation.

17 MR. HANLON: Well, wait a minute. We're talking
18 about this site. You told the Commission it consists of two
19 lots, 826 and 827. But really, it consists of 11 record
20 lots, and they're all listed on this slide. This slide came
21 from the official records of D.C. Open Data. Right? You
22 agree, there are 11 record lots on this site?

23 MR. KIRSCHENBAUM: This is the first time I'm
24 seeing this information, so I cannot answer your question.

25 CHAIRPERSON HOOD: Okay. So he didn't submit

1 this. Wherever it came from, it was not submitted by him.
2 So you can ask the question without using the reference to
3 the slide.

4 Next question.

5 MR. HANLON: Mr. Kirschenbaum, do you know how
6 many record lots are on the site?

7 MR. KIRSCHENBAUM: I do not know.

8 MR. HANLON: Do you know if there are more than
9 two record lots on this site?

10 MR. KIRSCHENBAUM: I don't know.

11 MR. HANLON: Well, the tax lots consist of
12 multiple record lots, right?

13 MR. KIRSCHENBAUM: There are two existing tax
14 lots. I am not familiar with the underlying record lot
15 configuration, if there is one.

16 MR. HANLON: You've talked quite a bit about the
17 need, the growing population of the city and the need for
18 housing to accommodate the projected growing population,
19 right?

20 MR. KIRSCHENBAUM: Please provide me a citation
21 for that.

22 MR. HANLON: Mr. Kirschenbaum, isn't the purpose
23 of building all this additional housing on public land to
24 accommodate the projected growth in population of the city?

25 MR. KIRSCHENBAUM: Again, this is a zoning

1 consistency map amendment that is effectuating the updated
2 future land use map and updated comprehensive plan and its
3 policies. This will allow additional housing and more
4 affordable housing on the property, in addition to
5 opportunities for more open space and for new public
6 facilities.

7 MR. HANLON: So it's not relevant, then, am I
8 right, from OP's point of view, it doesn't matter whether
9 the city is growing or not? We need more housing?

10 MR. KIRSCHENBAUM: Again, the comprehensive plan
11 recognizes through many policies the importance of
12 affordable housing and more housing in the District.

13 MR. HANLON: Can we look at Slide 20 for a minute?

14 MR. KIRSCHENBAUM: Objection. Objection. Again,
15 this was not provided by OP.

16 MR. HANLON: All right. But this particular slide
17 comes from the comprehensive plan, Citywide Element 217.2.

18 CHAIRPERSON HOOD: Do you know what you're doing,
19 Mr. Hanlon? You practice in front of a court every day, I
20 guess, or every so often. Much more than I do.

21 You are introducing new evidence. And again, as I
22 stated for the fifth time tonight, this is when -- you can
23 do your new evidence when you do your presentation. And I
24 looked through your report earlier. And some of the latter
25 part of your PowerPoint is in order. But some of the --

1 this kind of stuff right here, we're not going to run a coup
2 here. We're going to run an organized hearing and I would
3 ask you not to introduce new evidence unless you are doing
4 your testimony, or DCCA's testimony.

5 MR. HANLON: All right, thank you, Chair Hood. I
6 will do my best to respect that ruling.

7 CHAIRPERSON HOOD: You know, you've told me that,
8 Mr. Hanlon. And so far, you and I have talked for almost an
9 hour and you and I -- and I am going to probably hear about
10 it later on, and you probably won't, but I will, about how
11 this hearing was run. Because we have other residents in
12 this city. And I am not taking your organization any
13 lighter. But we have other organizations in this city who
14 want to argue some of the same points as you. And my
15 colleagues and I are waiting to get to them as well.

16 We're going to go ahead, let you finish. But
17 let's be respectful of the public. Because that did get
18 back to us previously from the last hearing. We should be a
19 lot further along and we wasted a lot of time of introducing
20 new evidence.

21 MR. HANLON: All right, thank you, Chair Hood.

22 Mr. Kirschenbaum, you've told the Commission that
23 -- that if this public site is upzoned to include housing,
24 then it is a 30 percent IZ requirement, correct?

25 MR. KIRSCHENBAUM: That's incorrect.

1 MR. HANLON: There is no 30 percent IZ requirement
2 on the site?

3 MR. KIRSCHENBAUM: There would be a 30 percent
4 affordable housing requirement.

5 MR. HANLON: I apologize. You told the Commission
6 there would be a 30 percent affordable housing requirement
7 on the site if it's upzoned to MU-10 and there's residential
8 housing built on the site?

9 MR. KIRSCHENBAUM: If there's residential building
10 on the site, there would be, at minimum, a 30 percent
11 affordable housing requirement.

12 MR. HANLON: And your report indicates that
13 requirement comes from 10-801?

14 MR. KIRSCHENBAUM: Correct.

15 MR. HANLON: Let's look at 10-801 just for a
16 moment, if we could. It begins on Slide 23 and -- I
17 apologize. It begins on Slide 22.

18 "If multifamily units are located in the following
19 areas, at least 30 percent of the units shall be dedicated
20 to affordable housing."

21 That's what you were referring to in your report
22 when you talk about 10-801, correct?

23 MR. KIRSCHENBAUM: I don't think we're on the
24 correct slide.

25 MR. HANLON: Twenty-two.

1 MR. KIRSCHENBAUM: Could you repeat your question?

2 MR. HANLON: Right. When your report was
3 referring to 10-801 and the 30 percent requirement for
4 dedicated affordable housing, you were referring to this
5 section. If multiple --

6 MR. KIRSCHENBAUM: Correct.

7 MR. HANLON: Marked in yellow, correct?

8 MR. KIRSCHENBAUM: Correct.

9 MR. HANLON: But in fact, that 30 percent
10 requirement is not in stone. It can be waived by the Mayor
11 for multiple reasons, correct?

12 MR. KIRSCHENBAUM: I am not, you know, familiar
13 with all the ins and outs of this law.

14 MR. HANLON: Let me direct you to Slide 24. Do
15 you see where it says, "The Mayor may reduce the affordable
16 housing requirements of this section if the proposed
17 disposition of real property finances development of a
18 significant public facility. Public facility may be a fire
19 station, public library, public school, stadium, homeless
20 shelter."

21 Now, you've told the Commission the intent is to
22 keep the fire station and the police station on the site,
23 right?

24 MR. KIRSCHENBAUM: That was not part of my
25 testimony. That was part of the testimony from DMPED.

1 MR. HANLON: Okay. But if a fire station or
2 police station is kept on this site, that then -- and the
3 developer had to build that police and fire station, the
4 developer would not have to necessary have a 30 percent
5 affordable housing requirement; it could be waived, right?

6 MR. KIRSCHENBAUM: Again, these are issues that
7 could be addressed through the RFP process.

8 MR. HANLON: All right. You agree with me that
9 the 30 percent can be waived when public facilities are
10 financed through the disposition --

11 CHAIRPERSON HOOD: Mr. Hanlon, let me say this. I
12 agree with you. I've got it. We've got it. So you don't
13 need to be here at 5:30 because we've got it. And you bring
14 up a good point.

15 Okay. What's the next question?

16 MR. HANLON: Slide 25. I am looking at comp plan
17 227.8.

18 Now, you told the Commission that this site, the
19 FLUM upzoned this site to high density residential and
20 moderate density commercial; is that right?

21 MR. KIRSCHENBAUM: As I have stated, I believe, in
22 prior testimony and the OP report, it has three
23 designations. High density residential, moderate density
24 commercial, and public facility uses.

25 MR. HANLON: All right. And one of the

1 designations in the FLUM, the report says, and you've
2 testified to, haven't you, is that the FLUM upzone was to
3 high density residential, correct?

4 MR. KIRSCHENBAUM: The FLUM was changed in 2021 by
5 the Council to change the designations on this property.

6 MR. HANLON: And one of the designation changes
7 was to make it high density residential?

8 MR. KIRSCHENBAUM: Correct.

9 MR. HANLON: All right. Now, the comp plan says
10 either RA-4 or RA-5 is consistent with high density
11 residential, correct?

12 MR. KIRSCHENBAUM: That's correct.

13 MR. HANLON: All right. Can we go to Slide 26?
14 The RA-4 floor area ratio is only 3.5, right?

15 MR. KIRSCHENBAUM: As we've discussed, that's not
16 quite true. But this is segmenting the way you interpret
17 the future land use map and its policies surrounding it.

18 Again, this property has a mixed use designation
19 on it. So it has three different land use categories. And
20 your previous line showed that it would have that --
21 residential high density has a 4.0 or higher FAR.

22 MR. HANLON: All right. So with -- so -- I'm
23 trying to think this through with you. The site has
24 multiple lots. You agree, it even has multiple tax lots.
25 There is no reason, in theory, that this Commission could

1 not decide that one zone is appropriate for part of the lot
2 and a different zone is appropriate for another part of the
3 lot, correct?

4 MR. KIRSCHENBAUM: This is testimony that was
5 already asked by the Zoning Commission last week. So we're
6 not going to provide additional testimony on this.

7 MR. HANLON: So the Zoning Commission could,
8 consistent with the FLUM, decide that some part of this lot
9 should be RA-4, right?

10 MR. KIRSCHENBAUM: I don't want to speak for the
11 Zoning Commission.

12 MR. HANLON: Let's go to Slide 27, if we may.
13 Comp Plan 228.

14 You've made it sound, and maybe I haven't been
15 listening very well, but you made it sound as if the FLUM is
16 written in stone. And so you agree with me that the FLUM
17 just provides general guidance, right?

18 MR. KIRSCHENBAUM: The FLUM provides general
19 guidance.

20 MR. HANLON: And that it should be interpreted
21 broadly with a soft edge, right?

22 MR. KIRSCHENBAUM: That's what it says.

23 MR. HANLON: And if we go to 228 and look at Comp
24 Plan Provision 227.2, the FLUM is a generalized depiction
25 over roughly 20 years and is not an existing land use map,

1 right?

2 MR. KIRSCHENBAUM: It is not an existing land use
3 map, no.

4 MR. HANLON: And it's correct, isn't it, if we
5 take a look at Slide 29, Comp Plan 228, it's correct that
6 the FLUM should be interpreted in conjunction with the
7 citywide elements and the area elements of the comprehensive
8 plan, right?

9 MR. KIRSCHENBAUM: Correct.

10 MR. HANLON: And do you see down there, E, I
11 marked in yellow on this slide, the designation of an area
12 with a particular future land use map category does not
13 necessarily mean that the most extreme -- I'm sorry -- most
14 intense zoning district described in the category is
15 automatically permitted?

16 MR. KIRSCHENBAUM: As we've already testified last
17 week, there is more intense zoning than MU-10 that would
18 also not be inconsistent with the comprehensive plan. The
19 MU-10 zone is not the most intense zone.

20 MR. HANLON: Right. But there are RA-4 zones
21 immediately adjacent to the site which are also classified
22 high density, which would be consistent with the comp plan,
23 but not as intense a zoning?

24 MR. KIRSCHENBAUM: I do not agree with that
25 statement.

1 MR. HANLON: Let's look at Slide 30. This is Mid
2 City Area Element and Policy 1.15, Conservation of Row House
3 Neighborhoods. Recognize the value and importance of Mid
4 City's rowhouse neighborhoods is essential -- as an
5 essential part of the fabric of local community. Ensure
6 that the comprehensive plan and zoning designations for
7 these neighborhoods reflect the desire to retain the row
8 house architectural pattern. Sorry, I have an accent.
9 Pattern. P-a-t-t-e-r-n.

10 MR. KIRSCHENBAUM: I understand.

11 MR. HANLON: When you propose to build a building
12 that can have a maximum 600,000 square feet, can be 120 feet
13 tall, can have 10 stories plus a penthouse, how is that
14 consistent -- that is inconsistent, isn't it, with the row
15 house fabric of those row house blocks on V Street and 17th
16 Street and Seaton Street immediately adjacent to the
17 property, isn't it?

18 MR. KIRSCHENBAUM: Again, the MU-10 zone is not
19 inconsistent with the comprehensive plan. The rezoning
20 would not change existing row house zoning. It would not be
21 applied to any land in an historic district. And it would
22 not be applied to land where row houses currently exist.

23 And, you know, again, the proposed MU-10 zone
24 would not be contrary to the preservation of existing --
25 excuse me -- of existing row house neighborhoods.

1 MR. HANLON: Well, wait a minute. This particular
2 element of the comp plan talks about row house neighborhoods
3 as essential, right? And there are row house neighborhoods
4 across the street from this site. You can see it on the
5 map. 17th Street, you testified, has two- and three-story
6 row houses. Seaton Street has two-story row houses. V
7 Street has two-story row houses. How is a 12-story
8 building, 120 feet tall from the penthouse building
9 consistent with a little row house neighborhood?

10 MR. KIRSCHENBAUM: My testimony remains unchanged.
11 Again, the zone that is proposed is not changing existing
12 row house zoning on those properties you discussed. It is
13 not located in an historic district, and it's not, again,
14 applied to any property where there are existing row houses.

15 MR. HANLON: This talks about -- the title of this
16 is Conservation of Row House Neighborhoods. On all sides of
17 this property, on the north side, the east side, the south
18 side, there are row houses, correct?

19 MR. KIRSCHENBAUM: Correct.

20 MR. HANLON: And on the east side, there are RA-4
21 apartments and row houses, correct?

22 MR. KIRSCHENBAUM: There are certainly apartment
23 houses. And, yes, there are some row houses, but I don't
24 know if that is in the RA-4 zone.

25 MR. HANLON: So in a site that is surrounded by

1 row house neighborhoods, you intend to build this large --
2 you intend to -- you are asking the Zoning Commission to
3 allow a 120-foot building, right?

4 MR. KIRSCHENBAUM: And that's a misrepresentation.
5 As we discussed last week, the zone allows 100 feet. And
6 then in addition, there is a 20-foot penthouse. So I
7 believe we've already settled that issue.

8 MR. HANLON: Let's go to Slide 31. This one is
9 entitled Neighborhood Conservation. This is part of the Mid
10 City Element -- Area Element. And it says, retain and
11 reinforce the historic character of mid-city neighborhoods,
12 particularly its mix of row houses and apartment houses.
13 The area's rich architectural heritage and cultural heritage
14 should be preserved and enhanced.

15 How is upzoning this to MU-10 consistent with
16 reinforcing the historic character of this row house
17 neighborhood?

18 MR. KIRSCHENBAUM: Again, my testimony remains
19 unchanged. This zone is not going to be applied to any row
20 house properties. And it's not --

21 (Crosstalk.)

22 MR. HANLON: It is being applied across the street
23 from the row house properties.

24 Let's look at Slide 32. This comes from Mid City
25 Area Element 2007.3. The row house fabric that defines

1 neighborhoods should be conserved. Do you see that marked
2 in yellow?

3 MR. KIRSCHENBAUM: I see the marking in yellow.

4 MR. HANLON: Don't you agree that this -- a
5 building of this size is inconsistent with the row house
6 fabric of this neighborhood?

7 MR. KIRSCHENBAUM: There is no -- again, there is
8 no building being contemplated.

9 MR. HANLON: The upzoning to MU-10 would allow a
10 building that would be inconsistent with the row house
11 fabric of this neighborhood, right?

12 MR. KIRSCHENBAUM: I do not agree with that, based
13 on my previous testimony that I just gave.

14 MR. HANLON: Do you see down the bottom of this
15 particular slide, it says, intact blocks of well-kept row
16 houses should be zoned for row houses and not for tall
17 apartment buildings. Do you see that?

18 MR. KIRSCHENBAUM: Okay.

19 MR. HANLON: Again, isn't what you're proposing on
20 this site, to upzone to MU-10, inconsistent with Mid City
21 Area Element 2007.3?

22 MR. KIRSCHENBAUM: Again, this is not a
23 comprehensive plan policy. This is narrative. That is, in
24 the Mid City Area Element. And I believe -- I shouldn't say
25 believe. This is narrative that is summarizing comments

1 received from, I believe, a community workshop that took
2 place almost 20 years ago.

3 MR. HANLON: Almost 20 years ago. I meant to ask
4 the question, all the data in the comp plan is old data,
5 right? All the data in the comp plan is from 2010 census.
6 It's never been updated to the 2020 census?

7 MR. KIRSCHENBAUM: I can't speak on just a general
8 question like that.

9 MR. HANLON: You just told me some of the -- this
10 data is old. I was just inquiring whether you knew that all
11 the data was old?

12 MR. KIRSCHENBAUM: This particular section has a
13 date.

14 MR. HANLON: Can we go to Slide 33?

15 Mid City Element 2000.4, do you see marked in
16 yellow, many Mid City neighborhoods have a strong sense of
17 identity, and one of them mentioned here in the Mid City
18 Area Element is Striver's Section, do you see that?

19 MR. KIRSCHENBAUM: Okay, yes.

20 MR. HANLON: And the Striver's Section is on the
21 north side, the west side, and the south side of this site,
22 right?

23 MR. KIRSCHENBAUM: I do not remember the
24 boundaries offhand, but it is adjacent to it.

25 MR. HANLON: And don't you think that building

1 such a large building which, if it's really 600,000 square
2 feet, could have up to 650 apartment units in it, don't you
3 think that destroys the identity of the Striver's Section
4 that surrounds it?

5 MR. KIRSCHENBAUM: I do not agree with that. This
6 is not located in an historic district.

7 MR. HANLON: But it's surrounded on all four sides
8 by historic district, right?

9 MR. KIRSCHENBAUM: But it is not located in the
10 historic district.

11 MR. HANLON: It's like a donut, it has a hole in
12 it. It's surrounded, but not historic; is that right?

13 MR. KIRSCHENBAUM: It is not in an historic
14 district.

15 MR. HANLON: Can we look at Slide 34?

16 CHAIRPERSON HOOD: Mr. Hanlon, we've been going
17 roughly an hour. About how much more time do you think you
18 need?

19 MR. HANLON: I want to respect the Commission's
20 time. I would say max of 30, maybe only 20. I have about
21 15 slides left.

22 CHAIRPERSON HOOD: Okay. Let me just let everyone
23 know again, we're going to stop at 9:00. Ms. Schillin, I am
24 going to ask you to start looking for another date so we can
25 see when we can reconvene. And Mr. Hanlon, we're going to

1 ask you to help us so we can move along.

2 So go right ahead.

3 MR. HANLON: Thank you, Chair Hood.

4 Can we look at slide 34?

5 This is from Mid City Element Policies and
6 Actions, Mid City 1, General Policies. And you see 1.1.1?

7 Do you see that it there?

8 MR. KIRSCHENBAUM: Yes. But this is repetitive
9 from, I believe, two slides ago, we just discussed this
10 policy.

11 MR. HANLON: I don't believe we discussed this
12 particular element of the comp plan, so I want to ask you
13 again --

14 MR. KIRSCHENBAUM: I believe it was --

15 MR. HANLON: Don't want to ask you again. I want
16 to ask you about this particular comp plan provision called
17 Neighborhood Conservation, right? It talks about retaining
18 and reinforcing the historic character of Mid City
19 neighborhoods. Do you see that?

20 MR. KIRSCHENBAUM: I see what it says, yes.

21 MR. HANLON: Okay. And isn't upzoning this to
22 MU-10 inconsistent with this provision of the comp plan,
23 when all the surrounding blocks are historic, and all the
24 surrounding blocks do not allow density more than 50 or 60
25 percent of what you're proposing?

1 MR. KIRSCHENBAUM: As I have already stated, this
2 is not located in an historic district, and the proposed
3 zone would not be detrimental to any properties. It
4 wouldn't be detrimental and wouldn't be applied to any
5 properties that are row houses.

6 And, you know, again, this is a balancing of many
7 different policies and the policy maps. And there are
8 several written policies that, you know, strongly support
9 rezoning at this property, including the use of public sites
10 for more housing, new public facilities, and open space.
11 And this rezoning would provide opportunities to do all of
12 that. And it would provide for -- you know, the comp plan
13 calls for incentives and strategies that result in
14 production of more housing, generally speaking, certainly
15 more affordable housing, and then deeper affordability
16 levels as well in mixed use developments near commercial
17 centers, which this is near a commercial center, and close
18 to Metro stations, which this is closed to a Metro station,
19 and on District-owned properties, and this is a District-
20 owned property.

21 And again, the location of the subject property
22 combined with the MU-10 zone would provide new opportunities
23 to do all of this.

24 MR. HANLON: All right. Can you explain to the
25 Commission how upzoning this nearly two-acre site to MU-10

1 would retain and reinforce the historic character of this
2 neighborhood?

3 MR. KIRSCHENBAUM: Again, the zone would not
4 change any historic character of the neighborhood.

5 MR. HANLON: You don't believe building such a
6 huge building next to the Striver's Section, a historic
7 Black neighborhood --

8 MR. KIRSCHENBAUM: I believe that we've already
9 covered this. This is not located in an historic district.

10 MR. HANLON: No, but this doesn't talk about a
11 district. It talks about a neighborhood. The four sides of
12 this property form a neighborhood, which was founded by
13 Black freemen. It forms a neighborhood. And how does
14 granting this map amendment retain and reinforce the
15 historic character of the Striver's Section neighborhood?

16 MR. KIRSCHENBAUM: If you are talking about this
17 zone in the context of being zoned on properties that are
18 row houses, then, you know, that would be a different game.
19 But right now, this is a rezoning that is not touching any
20 historic properties and not touching any row houses.

21 MR. HANLON: But address my question if you don't
22 mind about the neighborhood. Talk about the neighborhood
23 that surrounds this property. How does granting this map
24 amendment retain and reinforce the historic character of tat
25 Striver's Section neighborhood?

1 CHAIRPERSON HOOD: That answer is going to be,
2 this is not an historic district. If I hear that one more
3 time -- Mr. Hanlon, you know, come on, seriously. Help us
4 understand about the stuff that's in the plan. Help us make
5 your point.

6 MR. HANLON: All right. Let's try Slide 35.

7 Now, slide 35, you see where it talks about infill
8 development should be compatible in scale and character with
9 adjacent uses? And you really -- would you define this
10 particular thing as infill? Or I guess we're really
11 demolishing and rebuilding. Would that be more appropriate?

12 MR. KIRSCHENBAUM: Again, you know, we don't know
13 what exactly will be going on. There is no building
14 proposed for this.

15 And again, this is a zoning consistency map
16 amendment consistent with the FLUM that was updated in 2021,
17 and it would provide for new opportunities for housing, more
18 affordable housing, plazas and open space, and could also
19 provide opportunities for many public facilities that would,
20 again, complement the existing neighborhood, which both
21 contains low buildings and tall buildings.

22 MR. HANLON: And you don't believe MU-10 is,
23 quote, incompatible in scale and character with the adjacent
24 properties?

25 MR. KIRSCHENBAUM: No, and I have already provided

1 a lot of testimony on that.

2 MR. HANLON: We have talked about -- if we can go
3 to Slide 36 for a moment? You've talked in your reports
4 about the Mid City Element -- Mid City Area Element to the
5 comp plan, right? Correct?

6 MR. KIRSCHENBAUM: We talked about the Mid City
7 Element.

8 MR. HANLON: And if we go to Slide 37 for a
9 moment?

10 And that comes from the Zoning Handbook. That's a
11 map. It may also be in your -- it's in the comp plan, the
12 map of the Mid City area, Mid City planning area. Do you
13 see it there?

14 MR. KIRSCHENBAUM: I see the map.

15 MR. HANLON: All right. Now, it's the most dense
16 planning area in the city; is that right?

17 MR. KIRSCHENBAUM: I believe the comp plan calls
18 it that.

19 MR. HANLON: And it stretches all the way from
20 almost Ivy City through Adams Morgan, right? It's very
21 long.

22 MR. KIRSCHENBAUM: Yes.

23 MR. HANLON: If you look at Slide 36 for a moment,
24 do you agree with me that one of the fundamental purposes of
25 the comp plan is to attempt to spread growth and prosperity

1 throughout the city?

2 MR. KIRSCHENBAUM: I don't disagree with that.

3 MR. HANLON: Now, I'm looking at the comp plan,
4 Mid City Area Element 2000.6. It says the Mid City is close
5 to having a fair amount of affordable housing. Do you agree
6 with that statement?

7 MR. KIRSCHENBAUM: It does say that. This is not
8 a policy in the comprehensive plan. This is a narrative
9 that's part of the Mid City Element.

10 MR. HANLON: And it says the distribution of that
11 affordable housing has been concentrated in a few
12 neighborhoods, Columbia Heights, Reed-Cooke, and U Street
13 Corridor. Do you see that?

14 MR. KIRSCHENBAUM: I do see that.

15 MR. HANLON: All right, so when we look at the map
16 on the next -- on Slide 37, the comp plan is saying that the
17 affordable housing has been concentrated in the west end of
18 the Mid City Area Element and not the east end. Do you
19 agree?

20 MR. KIRSCHENBAUM: I am not sure I agree with
21 that. Can you direct me to where you're making that
22 conclusion from?

23 MR. HANLON: Well, all the areas that they
24 mentioned in the previous provision of the comp plan,
25 Columbia Heights, Reed-Cooke, and U Street Corridor -- and

1 we're talking about the U Street Corridor here -- are all on
2 the western end of the Mid City planning area, right?

3 MR. KIRSCHENBAUM: They are on the -- towards the
4 western end, yes.

5 MR. HANLON: Okay. Can we look at -- go to Slide
6 38 for a moment?

7 This is from Mid City Area Element 2007.3. It
8 says, better economic balance should be achieved in the
9 neighborhood. The neighborhood centers on the west side of
10 the Mid City planning area are generally vibrant, with
11 strong demand for commercial space. Neighborhood business
12 districts on the east side, in particular Georgia Avenue,
13 North Capitol Street, are still facing challenges. Do you
14 see that?

15 MR. KIRSCHENBAUM: I do see that.

16 MR. HANLON: So if we -- so isn't what we're doing
17 here in moving to upzone this to MU-10, is inconsistent with
18 the policy of the comp plan to spread economic balance
19 through the Mid City Area Planning Element? We're
20 concentrating this development in the west end of the
21 planning area that already has a fair amount of affordable
22 housing and is already far more prosperous than the east
23 end.

24 How does upzoning this to MU-10 and directing
25 public and private investment to this site achieve better

1 economic balance within the Mid City Area Element?

2 MR. KIRSCHENBAUM: Well, first of all, this is not
3 a policy. Again, this is narrative, I believe from a
4 community workshop that was held in 2005, 2006. And again,
5 all of this is balancing. This is a straightforward zoning
6 consistency case, and the MU-10 zone is not inconsistent
7 with the FLUM, the policy map, and the policies of the
8 comprehensive plan.

9 And again, there are numerous policies that also
10 support housing, more affordable housing, deeper
11 affordability levels on publicly owned sites.

12 MR. HANLON: Look at Slide 39. This is Mid City
13 2013.5. Encourage growth and vibrancy of U Street between
14 6th and 12th Street and Georgia Avenue.

15 Again, this proposal doesn't do that, does it?
16 It's encouraging more development in the west end, right?

17 MR. KIRSCHENBAUM: First of all, the property is
18 not located in any of these areas that's described in this
19 policy. This is a neutral policy. This is a policy talking
20 about other parts of the planning area that are not located
21 where the property is.

22 MR. HANLON: Can we go to Slide 40, please?

23 Use of public sites. You quoted this, I believe,
24 yourself in your presentation. It says, utilize public
25 land, recenter -- et cetera. Engine 9, MPD 3rd District to

1 create mixed use neighborhood landmarks that acknowledge and
2 continue the history of U Street as a Black business
3 corridor.

4 How does upzoning this property to MU-10 create a
5 mixed use neighborhood landmark that acknowledges and
6 continues the history of U Street as a Black business
7 corridor?

8 MR. KIRSCHENBAUM: Well, again, it would create
9 mixed use zoning. It would provide opportunities for public
10 facilities. It would also require a plaza that could have,
11 you know, cultural uses integrated into it.

12 And again, the RFP process could further, you
13 know, direct, you know, the developer to provide these type
14 of landmarks and cultural uses.

15 MR. HANLON: All right, I have two follow-ups for
16 that. First, with respect to the plaza, the plaza you're
17 talking about under MU-10 only has to be 10 feet high; it's
18 not open to the sky, correct?

19 MR. KIRSCHENBAUM: It has to be open to the sky.

20 MR. HANLON: It's not limited -- it's open to the
21 sky or at least 10 feet vertical distance, either or?

22 MR. KIRSCHENBAUM: I don't know offhand. I would
23 have to refer to the zoning regulations.

24 MR. HANLON: I just want to be clear about this
25 plaza. It's not -- I hate to take the Commission's time now

1 to find the plaza regulation. I -- Mr. Hood -- Chair Hood,
2 I'll defer for the moment. I won't take the time now to
3 look for it. But I would direct the Commission's attention
4 to that. I'll give the cite afterwards to the plaza
5 regulation. I believe it says 10 feet vertical distance, or
6 open to the sky. It doesn't have to be open to the sky.
7 But the Commission can judge the regulation.

8 But tell me, how does upzoning to MU-10 -- once
9 upzoned to MU-10, as a matter of right, this Commission
10 never gets again to judge whether the project being built is
11 appropriate, right?

12 MR. KIRSCHENBAUM: There is no project before the
13 Commission to review.

14 MR. HANLON: Right. But once upzoned to MU-10, it
15 never comes back to this Commission, does it?

16 MR. KIRSCHENBAUM: If they build, right, it would
17 not come back to the Commission.

18 MR. HANLON: So how do you explain to the
19 Commission how upzoning this particular site to MU-10 is
20 going to continue the history of U Street as a Black
21 business corridor?

22 MR. KIRSCHENBAUM: I have already provided
23 testimony on that. That can be done through the RFP
24 process. The plaza requirement can help provide
25 opportunities for that. And this is a policy that is more

1 than just this one site: it's for multiple public sites.

2 MR. HANLON: With respect to this particular site,
3 it names this site, we're talking about this site,
4 acknowledging continuing the history of U Street as a Black
5 business corridor, this site, right?

6 MR. KIRSCHENBAUM: Among other -- yes, among
7 several other sites.

8 MR. HANLON: When I looked at your engagement log,
9 since the comp plan talks specifically about Black business
10 corridor, I did not see on the engagement log that OP or
11 DMPED had spoken to a single Black business organization.
12 Did you speak to any Black businessmen or businesswomen
13 about this map amendment?

14 MR. KIRSCHENBAUM: Again, that's a repeated
15 question from other cross-examination and the answer was no.

16 MR. HANLON: While we're on the subject of
17 engagement for the moment, I want to be clear. You were
18 asked about whether DMPED or OP had spoken to any Black
19 business organizations, black churches. St. Augustine's
20 Catholic Church is the oldest Black Catholic church in the
21 city. It's less than two blocks away. Do you know whether
22 DMPED or OP reached out to the priest at St. Augustine's?

23 MR. KIRSCHENBAUM: Again, as we testified, our
24 community engagement log is in our public hearing report and
25 our supplemental report detailing the meetings DMPED and OP

1 had with the ANCs and community residents.

2 MR. HANLON: All right. I looked at the log.
3 Maybe you can correct me if I'm wrong. I did not see that
4 you -- Black or White or Spanish, I did not see that you
5 spoke to a single business organization during your
6 engagement process about this map amendment; is that
7 correct?

8 MR. KIRSCHENBAUM: That is correct.

9 MR. HANLON: And you did not speak to a single
10 civic organization about this map amendment; is that
11 correct?

12 MR. KIRSCHENBAUM: Again, we spoke to several
13 agencies.

14 MR. HANLON: I'm sorry, I'm talking about civic
15 associations. Did you speak to any civic associations
16 during your engagement process about this proposed MAP
17 amendment?

18 MR. KIRSCHENBAUM: We did not, no.

19 MR. HANLON: Did you speak to any of the BIDs, the
20 business improvement districts, about this proposed map
21 amendment as part of your engagement process?

22 MR. KIRSCHENBAUM: I do not believe we did.
23 Again, the community engagement log details the engagement
24 that was done by DMPED and OP.

25 MR. HANLON: I can only find the names of seven or

1 eight individuals in that engagement log that you ever spoke
2 to, other than I think you spoke -- I think it says you
3 spoke to three or four people the day you were -- somebody
4 was hanging signs.

5 Am I wrong that the engagement log at most has 10
6 or 12 individual names on it that you spoke to?

7 MR. KIRSCHENBAUM: I believe that is correct.

8 MR. HANLON: Now, I represent the Dupont Circle
9 Citizens Association. You never reached out to us about
10 this project, did you?

11 MR. KIRSCHENBAUM: Not that I'm aware of.

12 MR. HANLON: All right. And the Shaw Dupont
13 Citizens Association, which has been around for decades, and
14 their boundaries are only a block or two from here, you
15 didn't reach out to them either, right?

16 MR. KIRSCHENBAUM: Not that I'm aware of.

17 MR. HANLON: And now about the Tenants Advocacy
18 Coalition, which has been around for decades. Since you are
19 concerned about affordable housing, did you reach out to
20 them about this proposed map amendment?

21 MR. KIRSCHENBAUM: Not that I'm aware of.

22 MR. HANLON: The Dupont East Civic Action
23 Association, how about them?

24 MR. KIRSCHENBAUM: Not that I'm aware of.

25 MR. HANLON: The Committee of 100 of the Federal

1 City, who are one of the best known organizations in this
2 city, who have testified before this Zoning Commission many
3 times, did you reach out to them about this proposed map
4 amendment?

5 MR. KIRSCHENBAUM: Not that I'm aware of.

6 MR. HANLON: So your engagement process consisted
7 of speaking to 10 or 12 individuals and the ANCs; is that
8 right?

9 MR. KIRSCHENBAUM: Again, that's what is on the
10 engagement log. We attended many ANC meetings.

11 MR. HANLON: Um-humm. At any point, did OP or
12 DMPED leaflet the neighborhood immediately surrounding the
13 site and offer to meet with the neighbors about this
14 proposed map amendment?

15 MR. KIRSCHENBAUM: Again, as detailed in our
16 engagement log, OP did reach out and hold a meeting with
17 several neighbors with the property at, I believe, 1603 U
18 Street.

19 MR. HANLON: Did you leaflet or give a notice to
20 the immediate neighbors on Seaton, V Street, 17th Street of
21 the proposed map amendment and offer to meet with them?

22 MR. KIRSCHENBAUM: The map amendment had complied
23 with the required public hearing notice and requirements.

24 CHAIRPERSON HOOD: Mr. Hanlon, let me just say
25 this. Obviously, that part of our regulation is not done,

1 so you made your point and I have issues with that. So I
2 don't know how long we need to -- it's really repetitive.

3 I guess the better question would be, even though
4 it's in their log, would be, who did you meet with. So
5 that's kind of -- I'm just letting you know, I get it. And
6 we can move on.

7 MR. HANLON: Thank you, Chair Hood. I will move
8 on.

9 (Continued immediately on following page.)

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E V E N I N G S E S S I O N

(6:00 p.m.)

MR. HANLON: Give me just a second, because I took my questions slightly out of order when we talked about engagement. I only have a few -- a half a dozen slides left.

Can you go to Slide 41, please?

This comes from the racial equity tool on the Zoning Commission's own website, and it's citing 10A DCMR 213.6. Comprehensive plan framework element states that equity is achieved by targeted actions and investments to meet residents where they are. Do you see that?

MR. KIRSCHENBAUM: I don't on that slide.

MR. HANLON: I'm sorry, Slide 41. I apologize.

Mr. Young, can we go to Slide 41? Okay, thank you, Mr. Young.

Do you see it now?

MR. KIRSCHENBAUM: I do see it, yes.

MR. HANLON: This particular census tract that this site is in is only about 5 percent Black; is that correct?

MR. KIRSCHENBAUM: I have not looked at the census tract data for this.

MR. HANLON: This particular census tract is

1 overwhelmingly White?

2 MR. KIRSCHENBAUM: I just told you, I did not look
3 at the census tract. We did the analysis based on the Mid
4 City Planning Area Element level.

5 MR. HANLON: And in the Mid City Area Planning
6 Element level, it would be the tracts, the census tracts at
7 the east end, Georgia Avenue, North Capitol, that have a
8 much higher percentage of Black residents; isn't that
9 correct?

10 MR. KIRSCHENBAUM: Again, that was not data in our
11 report. I just can't speak to that.

12 MR. HANLON: Well, the data -- the data -- let's
13 assume that my -- let's assume for the premise of my
14 question that the data says what I said it says, which it
15 does. Wouldn't it make more sense under the racial equity
16 tool to be directing investment to those areas of the Mid
17 City planning area that have a higher percentage of Black
18 residents, rather than directing the investment to an area
19 that is overwhelmingly White and has less than -- 5 percent
20 or less of Black residents?

21 MR. KIRSCHENBAUM: Again, this is an opportunity
22 to provide more housing and affordable housing, which would
23 certainly help people who are in need of more affordable
24 housing options. I don't understand that question.

25 MR. HANLON: Let's go to Slide 42. Again, this is

1 -- I'm trying to figure out whether you even applied the
2 racial equity tool that's on the Commission's website to
3 this analysis. I know you say you looked through it through
4 a racial equity lens. What does racial equity means to you?

5 MR. KIRSCHENBAUM: Racial equity is where everyone
6 is able to have a similar ability to access housing services
7 in the District.

8 MR. HANLON: It means that life's major outcomes
9 are not predetermined by race, right?

10 MR. KIRSCHENBAUM: Correct.

11 MR. HANLON: Okay. So I know you said that you
12 looked through this project through a racial equity lens.
13 But did you use the racial equity tool that's on the Zoning
14 Commission's own website?

15 MR. KIRSCHENBAUM: We did, and we used it to
16 gather our disaggregated data analysis.

17 MR. HANLON: All right, so let's go to Slide 42.

18 And Chair Hood, I won't belabor this point, but I
19 want to make the point that the racial -- let's look at
20 Slide 42 for a moment.

21 We've already discussed the lack of outreach. But
22 when you say you used the Commission's racial equity tool in
23 evaluating and proposing this map amendment, how did you do
24 that if the racial equity tool says the Zoning Commission
25 firmly believes community outreach engagement efforts must

1 start at the inception of any redevelopment plan before a
2 zoning action is filed with the Zoning Commission? How did
3 you fulfill that part of the racial equity tool?

4 MR. KIRSCHENBAUM: Well, again, my testimony is
5 unchanged. The community engagement log speaks for how
6 community engagement was done for this map amendment.

7 CHAIRPERSON HOOD: Mr. Kirschenbaum, what is that
8 exhibit again for the community engagement logs in your
9 report?

10 MR. KIRSCHENBAUM: It's at Exhibit 58. And then
11 it's also updated at Exhibit 358.

12 CHAIRPERSON HOOD: 358, okay. Thank you.

13 MR. HANLON: I think, Chair Hood, it might be
14 listed as Appendix B, if I'm not mistaken.

15 If we could, go to Slide 43.

16 Again, this is from the Commission's own website,
17 Community Participation Outreach Efforts.

18 You were supposed to answer questions for the
19 Commission while looking at this through the racial equity
20 lens. How were your outreach efforts proactive in terms of
21 meeting community needs?

22 MR. KIRSCHENBAUM: Again --

23 MR. HANLON: -- about the affected community
24 influence your outreach plan. What was your outreach plan?

25 MR. KIRSCHENBAUM: You know, this predates my time

1 on this project. But again, the community engagement log
2 details the community engagement that was done. And then
3 more recently, in meeting with ANC 1B, we heard numerous
4 concerns about the proposed height of the zone, which is why
5 we filed the separate text amendment to include building
6 height transitions at max.

7 MR. HANLON: And when the racial equity tool talks
8 about community, did you not think that the racial equity
9 tool was speaking about communities of color?

10 MR. KIRSCHENBAUM: I think it's talking about
11 certainly communities of color and, you know, different
12 people within the community.

13 MR. HANLON: And without belaboring the point, you
14 reached out to no communities of color?

15 MR. KIRSCHENBAUM: Again, the community engagement
16 log represents who we engaged with, including multiple ANCs
17 that are made up of the community.

18 CHAIRPERSON HOOD: I'm sorry again. I am trying
19 to locate that log. And I --

20 MR. HANLON: I think if you look at Slide 44,
21 Chair Hood. If Mr. Young can bring up Slide 44.

22 CHAIRPERSON HOOD: Oh, of what you're presenting
23 now? Okay.

24 MR. HANLON: Yeah, if you bring up Slide 44, it
25 has the first page of the log. It gives the page and the

1 exhibit number.

2 MR. KIRSCHENBAUM: It also appears in the OP
3 report at Exhibit 58, the last three pages.

4 CHAIRPERSON HOOD: Is it 358 or 58?

5 MR. KIRSCHENBAUM: Five-eight.

6 CHAIRPERSON HOOD: Okay. I was at 358. Okay.

7 MR. HANLON: Give me a second. I only have, I
8 think, three more slides.

9 Can you go to Slide 45 for a moment?

10 And, Mr. Kirschenbaum, I only have, I think, three
11 more slides. So -- this from Mid City Element 2007.3,
12 pedestrian safety, improved traffic operation, parking
13 management all high priorities. Increased density within
14 this already dense planning area creates busier streets for
15 cars and people.

16 When proposing to upzone this site to MU-10, what
17 studies did OP do about how upzoning to MU-10 might affect
18 pedestrian safety, traffic operations, or parking
19 management?

20 MR. KIRSCHENBAUM: Well, again, this is not a
21 policy of the comprehensive plan. This is narrative. And
22 again, the comprehensive plan is a balancing act, and we
23 reviewed this through all of the different policies of the
24 comprehensive plan and the maps and find, on balance, that
25 this proposed map amendment is not inconsistent with the

1 comprehensive plan overall, and the ability for it to
2 provide new opportunities for public facilities, housing,
3 affordable housing, open space far outweighs any policies
4 that might be inconsistent with the rezoning.

5 MR. HANLON: Would the answer to my question be
6 that OP did no studies concerning how upzoning to MU-10
7 might affect pedestrian safety, traffic management, or
8 parking in the neighborhood?

9 MR. KIRSCHENBAUM: Those studies were not done.

10 MR. HANLON: Can we go to -- give me one second.
11 Chair Hood, I believe I only have two more.

12 MR. KIRSCHENBAUM: But I just want to add that,
13 you know, this map amendment was referred to DDOT for their
14 review as well.

15 MR. HANLON: But OP -- but you're telling me OP
16 did no study, right?

17 MR. KIRSCHENBAUM: Well, DDOT is the agency that
18 is responsible for doing, you know, parking and traffic
19 analyses.

20 MR. HANLON: And did OP receive a study from DDOT
21 before proposing the map amendment?

22 MR. KIRSCHENBAUM: I believe there is a report
23 from DDOT in the record.

24 MR. HANLON: And it contains -- I don't believe it
25 contains a study. Did I misread the report?

1 MR. KIRSCHENBAUM: I don't remember offhand. But
2 again, they are the agency that is responsible for that type
3 of review. I can't speak to why or why not they didn't do a
4 particular study.

5 MR. HANLON: I mean, you may be right,
6 Mr. Kirschenbaum. I'm doing this from memory. But I think
7 it was a one-page boilerplate from DDOT that contained no
8 study. If DDOT didn't do a study, then you didn't do a
9 study either, right?

10 MR. KIRSCHENBAUM: Well, again, we would defer to
11 DDOT on that.

12 MR. HANLON: Um-humm. All right, can you go to
13 Slide 47, Mr. Young? We only have two more slides, this and
14 the last one.

15 You see this is from the Housing and Urban Policy
16 H1.4.6, the Whole Neighborhood Approach? Ensure that
17 planning and new construction of housing is accompanied by
18 concurrent planning -- see the word concurrent? Concurrent
19 planning and programs to improve neighborhood services,
20 schools, job training, childcare, services for older adults?

21 MR. KIRSCHENBAUM: I don't think we're on the
22 correct slide.

23 MR. HANLON: Oh, 47. I'm sorry. The Whole
24 Neighborhood Approach.

25 MR. KIRSCHENBAUM: I see the slide now, yes.

1 MR. HANLON: All right. Do you see how it says --
2 now, isn't what DDOT -- isn't this proposed MAP amendment
3 inconsistent with this Whole Neighborhood Approach? You
4 didn't do any studies about any of this, did you?

5 MR. KIRSCHENBAUM: Again, the proposed rezoning
6 would help facilitate any -- one or more of these uses at
7 the property.

8 MR. HANLON: It says, ensure that planning, by
9 concurrent planning. There's been no concurrent planning at
10 this point, right?

11 MR. KIRSCHENBAUM: Again, the MU-10 zone would
12 allow for a new -- one or more of these uses.

13 MR. HANLON: I know what I wanted to ask. Do you
14 see how it says services for older adults? Ensure that
15 planning and housing -- accompanied by planning and programs
16 to improve services for older adults?

17 When you were doing your community engagement, did
18 you reach out to any senior citizen organizations, any
19 village organizations about this proposed map amendment?

20 MR. KIRSCHENBAUM: Not that I'm aware of, no.

21 MR. HANLON: Can we go, lastly, to slide 48?

22 Anti-displacement strategy, H2.1.1 -- point I, I'm
23 sorry. Did -- isn't it correct that you did not -- that OP
24 did not, before proposing this map amendment, analyze the
25 effect that this proposed map amendment may have on housing

1 costs in the adjacent areas?

2 MR. KIRSCHENBAUM: Well, again, the comprehensive
3 plan recognizes that additional housing and affordable
4 housing will help bring down housing costs. And this map
5 amendment would allow for more housing opportunities --

6 MR. HANLON: But this neighborhood used to be --
7 just have a Black population in the, oh, 2000, 2010 census,
8 25, 35 percent black in the census tracking. Now it's 5
9 percent Black. I mean, shouldn't you have analyzed how this
10 proposed map amendment might affect displacement in the
11 immediate neighborhood?

12 MR. KIRSCHENBAUM: As we testified last week,
13 we'll be providing in the supplemental report additional
14 analysis on indirect displacements.

15 MR. HANLON: That reminds me, Chair Hood -- I
16 believe I'm done with my questions. But it reminds me,
17 Chair Hood, that because this is a contested hearing done
18 under the Administrative Procedures Act, I, on behalf of the
19 Dupont Circle Citizens Association, would strongly object to
20 any material entering the record after the close of this
21 hearing. Because, under the Administrative Procedures Act,
22 we have the right to cross-examine a witness about anything
23 in the record and we cannot let the witness or OP dump more
24 stuff in the record and not have the opportunity to cross-
25 examine.

1 Now, I think Commissioner Miller specifically -- I
2 played the tape again yesterday -- specifically asked OP to
3 provide this analysis before this hearing today, and it
4 hasn't done so. And so I think that's fundamentally unfair
5 to allow them to do so without providing the opportunity for
6 further conversation.

7 MR. KIRSCHENBAUM: That's not an accurate
8 statement. We clarified that we would need significantly
9 more time before this hearing to address that. And that was
10 agreed to by the Commission.

11 MR. HANLON: Chair Hood, I want to thank you for
12 your indulgence. I know it was a little difficult and time
13 consuming at points. But I want to thank you and I am done
14 with my questioning of this witness.

15 CHAIRPERSON HOOD: Okay, thank you, Mr. Hanlon.

16 And I also thank you Mr. Kirschenbaum.

17 Let me just -- I was going to do a closed reading,
18 but I'm going to do this right out in the public.

19 I will just tell you, I am very troubled by the
20 outreach. That's something that we fought for, we pushed on
21 this Commission. And even though it took Mr. Hanlon two
22 hours to get to something I think he really hit in 10
23 minutes, I am troubled. I am just telling you where I am.

24 I've been thinking about, and I know I want to
25 hear from my colleagues. I was thinking about postponing

1 this and letting them go back and do their due diligence of
2 outreach to the community, which I think is Mr. Hanlon has
3 brought out a great point. I didn't like the answers I
4 heard. That's why I wanted to look again at what was being
5 done.

6 And maybe we can continue and maybe that's not the
7 story. But that's one of the things we push, community
8 engagement. That's one of the things that the city, the
9 Council, and the Mayor, in their wisdom, pushed us to make
10 sure that people had city engagement.

11 And this is a prime example of what's been
12 presented so far. And hopefully I'm not putting the cart
13 before the horse. But that point and that line of
14 questioning, the last 15 minutes, even though it took two
15 hours, an hour and a half or so, but with the racial equity
16 tool that we have, it's disturbing.

17 And I'm thinking I'm wasting not just our time but
18 I'm wasting the time of the residents of this city to keep
19 going forward. Now, I don't mind going forward. But I can
20 tell you right now, until this engagement is tightened up,
21 it's a show stopper for me. I'm sorry.

22 I am very irritated by that last line of
23 questioning. And that can go to whoever. But that is
24 totally out of context for what this Commission is about.

25 I am ready to just postpone this and let them do

1 community engagement. Then if we have to come back next
2 year, then that's fine. And I'm not trying to stall it.
3 But I think if anybody in good conscience heard that last
4 exchange, it's disturbing.

5 And then you talk about different residents and
6 residents that look like me that have not been -- have not
7 had a -- I don't care if you agree or disagree. But at
8 least go to the table. So I'm having problems with that. I
9 don't mind proceeding. But I can tell you right now, this
10 is a heavy lift for me.

11 But let me hear from others right quick. If you
12 want to proceed, I don't have a problem. If you want to
13 hold off and maybe go into a closed meeting. But right now,
14 I'm having a problem.

15 Commissioner Stidham.

16 COMMISSIONER STIDHAM: I tend to agree with you.
17 I have concerns about the community engagement. I had
18 expected far more at this point. I am willing to do either.
19 I am curious what Commissioner Miller has to say.

20 But maybe it makes sense to postpone, since there
21 is still due diligence that OP needs to do.

22 CHAIRPERSON HOOD: Vice Chair Miller, your
23 thoughts?

24 VICE CHAIR MILLER: Thank you, Mr. Chairman.

25 I'm disturbed that you're disturbed. Whenever our

1 chairman is disturbed, I'm disturbed.

2 I mean, I was -- I don't -- I was prepared to
3 listen. I'm glad we got through that particular cross-
4 examination. I think there are others who -- other parties
5 who may want to cross-examine Office of Planning.

6 We've set aside this time. There are a lot of
7 people listening and watching who want to testify. Not to
8 get through it just to get through it, because I think, as
9 Mr. Hanlon pointed out, if there's supplemental information
10 that comes into the record on indirect displacement or
11 alternative zones, those were a couple of questions that a
12 couple of us asked about, amongst others, there might need
13 to be an additional opportunity again for parties to ask
14 about that later.

15 But I think we could probably -- I think there's
16 enough information. I'm sorry it took two hours in this
17 particular cross-examination. I think, I agree with you,
18 that it could have been done in a much shorter time period.
19 I hope the other parties, if we proceed, will use their time
20 a little more judiciously and not be as repetitive. Because
21 I got a lot of the points that were being made, even though
22 they probably should have been made in direct testimony, as
23 you reiterated six times, Mr. Chairman, my last count, in
24 terms of what was being tried to achieve here in this cross-
25 examination.

1 But, so I'm prepared to go forward because the
2 public is here, we're here. There's a lot of information.
3 I think we did glean some important information from that
4 cross-examination. I think we will get additional. And I
5 would like to get to the direct testimony of those in
6 opposition, and support, because we have both.

7 But I will defer to you, Mr. Chairman. Your
8 judgment on these matters is certainly respected by your
9 colleagues and a lot of the public. So whatever you're
10 comfortable doing, I can go along with. But it's almost --
11 with just two hours so far, we set aside until 9:00. There
12 are a lot of people here. So I'd like to hear from them.

13 But if you feel so strongly that you need to --
14 you want to continue it, I will not oppose that.

15 CHAIRPERSON HOOD: So I appreciate both my
16 colleagues, and I appreciate the comments from both of my
17 colleagues. You know, Vice Chair, you bring up a good
18 point. There are a lot of people here. And I don't want to
19 waste people's time.

20 But here's the thing. Are we wasting our time?
21 Because, for me, it's a heavy lift.

22 We've already heard, I believe, and Ms. Schillin
23 can correct me, we've already -- OP has already been crossed
24 by everybody else. Mr. Hanlon was the last to cross.

25 So what I will do is we'll try to plow through

1 this. But I'm telling you now, unless somebody comes up and
2 contradicts the engagement part, for me, you know, I'm only
3 one vote. I think it's horrendous. And I'll just leave it
4 at that.

5 But the point you make is there are people here.
6 And I think what we're going to hear from a lot -- we'll
7 hear some support. But we're going to hear a lot about, by
8 OP's own admission, the process. And I know, not blaming
9 Mr. Kirschenbaum, it started before him. Not blaming
10 anybody. But I'm just saying, the due diligence, where we
11 have mandated, which we began directions by the City Council
12 on what we're supposed to do has not been followed, and I
13 have problems with that.

14 So I will just leave it at that. I'll plow
15 through it. Where you got me, Vice Chair, is when you said
16 there are a lot of people here. So we will go through until
17 9:00. But I'll just sit there and listen. We've got to go
18 back to what has not been done. And I'll leave it there.

19 All right, thank you, Mr. Hanlon, and my
20 colleagues.

21 Ms. Schillin, where are we at now?

22 MS. SCHILLIN: Next, we go to agency reports. And
23 that would be -- the only agency we have is Ms. Cain from
24 OAG.

25 CHAIRPERSON HOOD: Okay, let's bring Ms. Cain up

1 from OAG to give their report.

2 MS. SCHILLIN: And I believe she sent Mr. Young a
3 PowerPoint presentation. Is that correct, Ms. Cain?

4 CHAIRPERSON HOOD: I saw her, but --

5 MS. SCHILLIN: Yes.

6 CHAIRPERSON HOOD: What number exhibit is it?

7 MS. CAIN: So our PowerPoint presentation is at
8 Exhibit 532.

9 CHAIRPERSON HOOD: 532, thank you.

10 Good evening, Ms. Cain. You may begin when you're
11 ready.

12 MS. CAIN: All right. Good evening, Chairman
13 Hood, members of the Commission. I am Alexandra Cain. I am
14 an Assistant Attorney General here tonight on behalf of the
15 Attorney General's Equitable Land Use Section. Just for
16 reference, so you have all of our filings, Chairman Hood,
17 our presentation is in the record at Exhibit 532. As I
18 mentioned, our written filing is in at 528. That also
19 includes two appendices, Appendix A, which is a list of
20 comprehensive plan references, which is the full text of all
21 the comprehensive plan sections that we reference both in
22 our written filing and in my presentation tonight. That's
23 at Exhibit 533. And then Exhibit 529 is a census data chart
24 that we cite to in our written filing.

25 I do just want to note sort of as a warning going

1 into this, this is something of a text heavy presentation.
2 But because this is a map amendment case and involves
3 analysis of the comprehensive plan language, we wanted to
4 provide as much of that language as possible in our
5 presentation. And again, we do have that appendix for
6 additional reference.

7 So I am here tonight on the part of OAG's
8 statutory public interest mission. As you know, ELU is now
9 charged with advocating for the public interest in zoning
10 matters. That mission has taken a variety of forms for us.
11 We have appeared in both support and opposition to zoning
12 cases. And we believe zoning fundamentally involves a
13 combination of both legal issues and public policy.

14 The Zoning Commission's authority derives from an
15 act of Congress as enshrined in the District charter under
16 Home Rule. And zoning is also to be guided by another law,
17 the comprehensive plan which is adopted by the District
18 Council through a public process. The zoning regulations
19 adopted by the Zoning Commission are to implement the Zoning
20 Act as guided by the comprehensive plan.

21 So even as I cover issues tonight that may, at
22 first blush, appear to be policy questions, we believe that
23 fundamentally, it does come down to questions of law.

24 And the finally, I just would like to request at
25 the outset that if there are sort of any more substantive

1 questions or concerns that are raised about our arguments
2 tonight, that we be given the opportunity to respond in
3 writing to those.

4 Next slide, please, Mr. Young.

5 So OAG is in support of the proposed map
6 amendment. We believe the map amendment is not only
7 consistent with the comprehensive plan's anticipated density
8 for the site but will also actively advance a number of
9 comprehensive policies, making it consistent with the
10 comprehensive plan as taken as a whole.

11 Now most critical amongst those policies from our
12 standpoint are those concerned with leveraging bonus density
13 on publicly owned sites to create affordable housing.

14 Next slide, please, Mr. Young.

15 So I know it doesn't seem like it after all of the
16 questioning and everything that has gone on, but in some
17 ways the case tonight is a very simple one. What the
18 Commission is considering is an amendment to the zoning map.
19 It's not a specific project or proposed development plan.
20 Instead, all the Commission is considering is whether the
21 proposed M-10 zone and the height and density it allows are
22 appropriate for this site.

23 Now, in making the determination, the Commission
24 is guided both by its charge under the Zoning Act to protect
25 the public welfare, and the requirement of the Zoning Act,

1 as enshrined in the zoning regulations, to ensure that the
2 map amendment is not inconsistent with the direction of the
3 comprehensive plan when taken as a whole.

4 Now, the Zoning Act provides the Commission with
5 broad and exclusive authority in zoning matters, and its
6 primary charge is to promote the health, safety, morals,
7 convenience, order, prosperity, or general welfare of the
8 District of Columbia. In short, to protect and advance the
9 public interest.

10 Now, the Commission's actions under this broad
11 charge are to be guided by the comprehensive plan, which is
12 also law adopted by Council, based on a draft from the
13 Mayor, created through a public process, which basically
14 starts as the public's determination of the planning goals
15 and priorities for the District. So a public assessment of
16 what that public interest of zoning and planning is.

17 Consistency with the comprehensive plan is the
18 only criteria for the evaluation of a map amendment. And
19 that comes straight from the Zoning Act. So again, what is
20 ultimately constructed on the site, who is responsible for
21 that construction, is not before the Commission, as I think
22 we have heard through two nights of testimony already. That
23 is going to be determined through a separate public process
24 that will ultimately be determined by a vote before Council.

25 Now, we understand that the concerns that many in

1 the public have raised, and we do certainly hope that DMPED
2 is paying attention to them. And we also appreciate the
3 difficulty, you know, in trying to understand what a map
4 amendment means without having a concrete project to
5 consider.

6 As you will see later in my presentation, we
7 ourselves have tried to use, you know, some hypothetical
8 examples to explain how the additional density allows
9 additional housing. But ultimately, the final determination
10 of what is built on this site is going to be determined at a
11 later date. And what is before us tonight is simply whether
12 this is consistent with the comprehensive plan.

13 Next slide, please.

14 So moving on from there, as I said, we believe
15 that the map amendment is consistent with the both the
16 comprehensive plan's maps and its written elements. So
17 starting first with the maps, starting with the future land
18 use map, as you heard the FLUM was formally amended in 2021
19 by the Marin council to designate the site mixed use, a mix
20 of high-density residential, moderate density commercial,
21 and local public facilities. I am going to be focusing on
22 the high-density residential component, which specifically
23 anticipates high-rise apartment buildings, densities greater
24 than 4.0 FAR, and identifies the RA-4 and the RA-5 as
25 specifically consistent, though it does note that other

1 zones may apply.

2 Next slide, please.

3 So to that end, the proposed MU-10 zone has the
4 same height and density limits as the specifically
5 identified RA-5. It is therefore consistent with the
6 heights and densities that are specifically identified by
7 the comprehensive plan as appropriate for this designation.

8 Next slide, please.

9 So moving then to the generalized policy map, this
10 site has a split designation. As you can see, the southern
11 portion of the property that is shown in dark orange in that
12 little excerpt there, is designated as a main street mixed
13 use corridor, given its location along U Street. Now, the
14 GPM calls for these areas to foster economic development and
15 housing opportunities.

16 Next slide, please.

17 Now, the northern section, which is the one that
18 borders the row home residential neighborhoods is a
19 neighborhood conservation area. Now, these neighborhoods
20 are supposed to be sensitive to the context that surrounds
21 them. But the comprehensive plan does specifically note
22 that this designation is not intended to preclude
23 residential development.

24 Now, the difference between the north and the
25 south part of the site does potentially suggest that the

1 Commission could treat the northern part differently than
2 the south. We don't believe that's ultimately
3 determinative. Again, the FLUM designation for the site is
4 uniform and calls for densities across the entire site.
5 There is no differentiation on the FLUM, which guides and is
6 guided by the GPM, so the two of them work together. So
7 again, this context requirement is limited by the explicit
8 statement that the NCA is not to be used to stop housing,
9 and that is supported by the comprehensive plan's general
10 support for housing, and also the fact that housing is
11 especially needed near transit and amenities, which this
12 site is.

13 Next slide, please.

14 So moving on from the comprehensive plan maps to
15 the other elements. Now, as I noted, the map amendment is
16 not only consistent with the comprehensive plan, but it is
17 also actively advancing numerous comprehensive plan
18 policies, particularly those that concern housing and
19 affordable housing. Now, this is critical because the
20 fundamental goal of the comprehensive plan is to create an
21 equitable and inclusive city. And key to realizing this
22 goal is the creation of more housing and more affordable
23 housing, so people of all income levels can afford to live
24 in the District.

25 Next slide, please.

1 So affordable housing, as we have heard many
2 times, is critically needed. The rising cost of housing is
3 one of the most pressing and critical issues facing the
4 District and the surrounding region, as noted in the
5 comprehensive plan. And these affordability issues play out
6 in a number of ways.

7 So the chart that you see here on the right shows
8 the increase in the District's median home value between
9 2000 and 2021, which was a 166 percent increase. Contrary
10 to that, the District's median household income only
11 increased by 40 percent during that same period. It's a
12 huge jump in housing prices versus a more incremental
13 increase in median income.

14 Next slide, please.

15 So narrowing our focus slightly from looking
16 District wide, the comprehensive plan specifically calls out
17 how the District-wide increase in housing prices has
18 particularly impacted the Mid City Planning Area where this
19 site is located. These housing costs, these rising housing
20 costs are threatening an area of the city that has
21 historically been one of the District's most economically
22 and racially diverse, by pricing out current residents and
23 limiting entry to new residents who are wealthy enough to
24 pay those rising housing costs.

25 So you can see in the chart on the right, it shows

1 the change between 2000 and 2021 in both the District-wide
2 and the census tract level median annual mortgage payment
3 and median annual rent payment. So focusing down even
4 farther into the census tract that includes the map amended
5 site.

6 Now, I do just want to note that this census tract
7 has been between 64 and 66 percent renter during that same
8 period between 2000 and 2021, so we are going to focus on
9 the rent costs.

10 As you can see, the census tract in rent exceeds
11 the District's median rent by over \$7,000 and it has
12 increased by 70 percent since the median in 2000.

13 Next slide, please.

14 So as we also know from the comp plan, the impacts
15 of these rising housing costs are not shared equitably
16 across the city's racial groups.

17 Next slide, please.

18 And we can see that fact illustrated here. So
19 what this graph shows is the Mid City Area median household
20 incomes broken down by race, and in comparison to the median
21 income and median annual rent at both the Mid City and the
22 District levels.

23 As you can see, White households are the only
24 racial group whose median household income exceeds the Mid
25 City median. Black household income is only about a third

1 of White income, and significantly below both the Mid City
2 and the District median.

3 What this means is that, in terms of the housing
4 impacts or housing cost impacts, is that non-White
5 households are more likely to be spending a greater
6 proportion of their household income on housing costs. And
7 you can see that where the median rent lines for both the
8 District and the Mid City Area Element bisect those income
9 columns.

10 Next slide, please.

11 So this slide is presenting that same information
12 in a slightly different way from a slightly different
13 perspective. So this is showing the Mid City's median rent
14 as a percentage of the median household income, again broken
15 down by race. So as you can see, while it makes up only 16
16 percent of median White household income, it's 28 percent of
17 median Hispanic household income and 45 percent of median
18 Black household income. Now, we also need to bear in mind
19 that anything above 30 percent is -- 30 percent of income
20 spent on housing costs is considered housing cost burden.

21 Next slide, please.

22 So having established that there is a clear need
23 for more affordable housing in the Mid City Area, the
24 comprehensive plan specifically identifies the map amendment
25 site as a publicly owned site that should be used to create

1 a significant amount of new affordable housing.

2 Next slide, please.

3 And this is a key site for increased affordable
4 housing, not just because it's publicly owned, a fact that
5 I'll discuss in a couple minutes, but also because of its
6 central location in a transit and amenity-rich location.
7 These are areas that the comprehensive plan as a whole tends
8 to focus as key locations for housing and affordable
9 housing.

10 Next slide, please.

11 So as we can see here, the site is highlighted in
12 blue and outlined in purple there on the left. It is within
13 half a mile of the U Street Metro Station, and it is also
14 adjacent to two high-priority bus routes.

15 Next slide, please.

16 So the comprehensive plan's focus on concentrating
17 affordable housing near transit is intended to help lower
18 transportation costs and times for lower income households,
19 which helps increase the overall affordability. Basically,
20 you're getting more bang for your buck. Not only is your
21 housing, your direct housing cost lower, but you're also
22 spending less time and money on transportation.

23 Next slide, please.

24 So there is a further reason that the
25 comprehensive plan calls for affordable housing on this

1 site, and that is because it is publicly owned. And
2 therefore, any development of it will be subject to the
3 District's surplus and disposition process. Now, the
4 comprehensive plan is very clear that when development
5 projects benefit from District subsidies or discretionary
6 zoning entitlements that increase buildable density, such as
7 a map amendment or a PUD, or the surplus of District-owned
8 land, that the District should leverage that increased land
9 value that results to address the District's equity needs in
10 the form of affordable housing.

11 So this is a very simple logic. The District is
12 conferring a benefit upon the future property owner and
13 developer. And in exchange for that benefit, something
14 needs to be given back to the District. The benefit needs
15 to redound to the District in the form of affordable
16 housing.

17 Next slide, please.

18 So beyond the sort of broad charge to leverage
19 public sites, the housing element of the comprehensive plan
20 specifically notes that 20 to 30 percent of housing units
21 constructed on publicly owned sites that are disposed for
22 residential use should be reserved for affordable housing,
23 and that this is of particular priority in high-cost housing
24 areas, which as we just saw does include the Mid City Area
25 and this site specifically.

1 Now, these requirements in the comprehensive plan
2 echo those of the Surplus and Disposition Law, which is
3 10-801 of the D.C. Code, which the project would be subject
4 to, which also requires between 20 and 30 percent of units
5 be reserved for affordable.

6 Next slide, please.

7 So as I said at the outset, at the end of the day,
8 in a lot of ways, this is a very simple case. More density
9 means more housing and more affordable housing that can be
10 provided under any metric that's used.

11 Now, as I noted, the surplus and disposition
12 process requires between 20 and 30 percent of residential
13 units be reserved for affordable housing. What that
14 ultimate requirement is will ultimately be determined
15 through the RFP process issued by DMPED. And as we heard
16 earlier, it is potentially subject to waivers requested by
17 the selected developer.

18 Now, we are pleased that OAG -- or, sorry, that OP
19 has recommended the application of IZ Plus to this property,
20 which we believe is a means of ensuring that, sort of
21 regardless of what happens in the surplus and disposition
22 process, that there is a clear baseline IZ requirement that
23 is higher than matter of right that has been established.
24 In this case, probably somewhere around 20 percent for the
25 building that would be required.

1 Now, a way of thinking about this is that IZ Plus
2 is basically establishing a clear floor for affordable
3 housing. And it also provides the Commission with a clear
4 reference point for assessing the amount of minimum
5 affordable housing that could be provided under the map
6 amendment. Because again, IZ Plus is set. It's based on
7 the map amendment itself; it's not based -- or it's not
8 contingent upon the future development in the way that the
9 surplus and disposition set aside would be.

10 So as you can see here, we were trying to sort of
11 block out what that additional density would mean in terms
12 of that IZ Plus set aside. Sort of that gray band at the
13 bottom represents what could be built on the site currently
14 as a matter of right. Then assuming maximum build-out,
15 exclusively for residential units. And then above that, the
16 sort of pink band and the red band represent the additional
17 density that would be gained through the map amendment to
18 the MU-10. And as you can see, the 20 percent IZ, under IZ
19 Plus, that would be about 94,442 square feet.

20 Next slide, please.

21 So sort of having established what the affordable
22 housing floor would be, we did want to, you know, provide
23 that same sort of visual estimation of what it might be
24 under the eventual surplus and disposition process. So what
25 I've just showed previously, the 20 percent under IZ Plus is

1 shown on the left. And then on the right is assuming 30
2 percent of units under the surplus and disposition law.

3 Now, I do want to highlight a couple of details
4 about these estimates. The IZ program percentages are based
5 on a percentage of the residential GFA, so square footage.
6 Whereas, the 10-801 affordability set-aside requirements are
7 based on a percentage of residential units, so square feet
8 versus units.

9 For our estimates, OAG therefore converted that 30
10 percent of residential GFA into units based on 1,000 square
11 feet per unit. I would say up front that this is probably
12 somewhat high, but we wanted to take a conservative approach
13 in terms of estimating the number of units that could be
14 generated out of this additional density.

15 Now, again, as I've been saying, the final number
16 of units, the final affordable housing set aside will be
17 determined at the end of the surplus and disposition process
18 based on what the final project is. But we wanted again to
19 give some kind of visual representation of what this
20 additional density gained through the map amendment means in
21 terms of affordable housing.

22 So 30 percent of units, higher estimates would be
23 approximately 141,664 square feet, so approximately 142
24 units. And this would be almost 50 percent of the
25 additional density gained through the map amendment that

1 could be used for affordable housing.

2 Next slide, please.

3 So the one other thing I wanted to call out in
4 talking about the affordable housing aspect is that 10-801
5 does require deeper levels of affordability than the IZ
6 regulations. So for rental units under 10-801, that means a
7 quarter would be set aside at 30 percent MFI and the
8 remainder would be at 50 percent MFI. So again, IZ Plus in
9 this case establishes a clear floor for the Commission to
10 use in its evaluation. And the final development on the
11 site most likely will go further. But, you know, it does
12 establish that clear floor that can be used to understand
13 sort of at a minimum what could be generated out of this map
14 amendment.

15 Next slide, please.

16 So briefly to summarize sort of where we are at
17 this point, OAG believes that the map amendment is
18 consistent with the density anticipated by the comprehensive
19 plan for the site. We also believe that the map amendment
20 will advance numerous policies calling for increased
21 affordable housing on public sites, as specifically in this
22 site. So when taken as a whole, we believe that it is
23 consistent with the comprehensive plan.

24 Next slide, please.

25 So there is a final issue that I want to over. So

1 prior to the originally scheduled hearing in November, OP
2 did propose that approval of the map amendment should be
3 held until OP was able to introduce a text amendment that
4 would require increased setback and site requirements for
5 the site. Subsequently proposed those in Zoning Commission
6 Case 23-26, which is currently scheduled to be heard in
7 March.

8 Now, as an initial matter, OAG does not believe
9 that these setbacks are required for comprehensive plan
10 consistency. As I discussed earlier, we believe that the
11 site is consistent with the comprehensive plan maps and the
12 density that they anticipate, even with the NCA permitting
13 increased density to address affordable housing needs.

14 Now, further, and just another thing to consider,
15 is that these increased setback requirements will result in
16 the reduction of the building footprint of the eventual
17 structure. And a reduced building footprint, i.e., square
18 footage, means less housing, less affordable housing that
19 can ultimately be provided. That's a fact worth noting,
20 just given how much focus the comprehensive plan places on
21 providing affordable housing on this site.

22 Next slide, please.

23 So nevertheless, while we do not believe that the
24 setbacks are required for comp plan consistency, should the
25 Commission determine that they are needed to mitigate the

1 impacts of the additional height and density that are going
2 to be gained through the map amendment, we believe that they
3 should impose those requirements as conditions directly on
4 the map amendment, rather than through a separate text
5 amendment. We believe that the Commission has the legal
6 authority to do so under the Zoning Act.

7 Because under the zoning regulations, the
8 Commission must make a determination that the map amendment
9 is not inconsistent with the comprehensive plan. Assuming
10 that the map amendment is consistent, in order to meet its
11 statutory charge under the Zoning Act, which again is to
12 protect and advance the public welfare, the Commission
13 should consider whether the map amendment will result in
14 adverse impacts to the general public.

15 Now, if the Commission identifies impacts, it then
16 makes a determination as to whether those impacts can be
17 specifically mitigated. You know, is there a solution to
18 this problem? If they make that finding, if you the
19 Commission make that finding, you can then impose conditions
20 that will specifically mitigate those impacts on the map
21 amendment in order to fulfill your charge under the Zoning
22 Act to protect the public welfare.

23 So in this case, as we've established, the map
24 amendment is consistent with the comprehensive plan. As OP
25 has identified in their reports, the map amendment's

1 additional height and density may result in adverse impacts
2 to the neighboring property owners, probably in terms of
3 access to light and air. And OP has also identified a
4 potential mitigation for those impacts in the form of
5 increased setbacks and side yard requirements.

6 Now, if the Commission is in agreement that those
7 or any other impacts require mitigation and they are in
8 agreement with what those potential mitigations are, they
9 can move forward with imposing those requirements as
10 conditions on the map amendment itself.

11 Next slide, please.

12 So we believe that the use of conditions tied to
13 the map amendment directly would be preferable to a separate
14 map amendment for a couple of reasons. First of all, in
15 terms of judicial efficiency. The two cases are already
16 tied together. They are linked. We believe it is more
17 efficient to deal with both those issues at the same time,
18 both at the Commission level and, should this move forward,
19 should there be any subsequent litigation, they are tied
20 together now. It makes everything easier to understand.

21 Also in terms of clarity of the regulations. Site
22 specific requirements might result in, you know, unintended
23 consequences and confusion in the public, because you now
24 have a separate carve out in the MU-10 that is only
25 applicable to this property. We believe that the mechanism

1 for doing this, the legal mechanism for imposing these
2 conditions would be to record a covenant against the
3 property with the effective date of the map amendment tied
4 to the execution and recordation of that covenant. Further,
5 that covenant could only be modified or extinguished by the
6 Commission upon a finding that the impacts that the
7 condition was intended to mitigate are no longer present.

8 Next slide, please.

9 And I would say, this is not a novel concept.
10 Covenants are already used throughout the zoning regulations
11 for exactly this purpose. Which is to enforce site-specific
12 zoning requirements throughout.

13 Next slide, please.

14 So to finally conclude, again, OAG is in support
15 of the map amendment, which we believe is consistent with
16 what the comprehensive plan calls for for this site. We
17 believe that it will advance numerous policies, particularly
18 those concerned with housing and affordable housing. And
19 finally, we do continue to suggest that if the Commission
20 determines that those setback requirements are necessary to
21 mitigate the map amendment's impacts, that they should be
22 imposed as conditions on the map amendment and not as a
23 separate text amendment.

24 Next slide, please.

25 So with that, I will conclude my testimony. This

1 is our public contact information. I am happy to answer any
2 questions. And again, we would reiterate our request to
3 respond in writing if there is any additional information or
4 sort of more detailed questions that the Commission would
5 like responses to.

6 Thank you.

7 CHAIRPERSON HOOD: Thank you, Ms. Cain, and for a
8 very detailed report to us. If we need additional
9 information, believe me, we will definitely ask. But we
10 appreciate the work that has been put into it.

11 I had a few questions, but I am going to ask my
12 colleagues to go first. Let me go to Vice Chair Miller
13 first.

14 VICE CHAIR MILLER: Thank you, Mr. Chairman. And
15 thank you, Ms. Cain, for the Office of the Attorney
16 General's testimony and report in this case. I think you
17 make a lot of strong arguments, which I generally agree
18 with, regarding the comp plan, map consistency, as well --
19 particularly in the context of all the affordable housing
20 and housing policies that are encouraged and incentivized in
21 the comprehensive plan.

22 I also share your -- well, regarding your
23 recommendation that if the Commission feels that mitigations
24 are needed, such as those along the lines proposed by Office
25 of Planning in the related text amendment, and you've

1 suggested that a covenant -- conditions on this map
2 amendment, specifically requiring a covenant, even though
3 you've cited examples where covenants are utilized or
4 authorized in other zones or cases in other projects in the
5 zoning regulation that come before us pursuant to the zoning
6 regulations, I'm really not -- I'm not familiar with -- I
7 need to look at your list a little more carefully, but I'm
8 really not familiar with our having done this straight kind
9 of map amendment with conditions attached to it.

10 I agree, that would be a lot more understandable,
11 maybe less confusing. But I'm not really sure we've done a
12 straight -- a conditional map amendment. So I think I need
13 to do my own due diligence on that. I think we need to
14 hear, not necessarily tonight, from our own counsel on that
15 issue, and from the Office of Planning on that alternative
16 mechanism that you are proposing to get at any mitigations
17 that are felt to be necessary.

18 Certainly, Office of Planning feels that
19 mitigations are necessary, because they recommended that
20 text amendment. I think those who support and oppose the
21 map amendment would be -- are generally supportive of those
22 kind of mitigations, whether they are the setbacks or the
23 transitional heights, what have you.

24 So I need to -- I do want to hear from others,
25 Office of Planning, particularly, and our own counsel.

1 Again, not tonight, since this case will go onward. The
2 text amendment isn't even being heard until March. I, too,
3 would have preferred if we had heard it all together. There
4 were reasons why that didn't happen, although I supported
5 that happening, finding a way to make that happen. One is a
6 rulemaking case, a text amendment, and the other is a
7 contested case, map amendment. And that would be a hard
8 hearing for even our super powered chairman to navigate. Or
9 anyone to navigate.

10 So do you have an example where we did a straight
11 -- a rezoning map amendment due to consistency with the comp
12 plan, and in the order we conditioned it? You're saying in
13 all those cases when we created a St. Elizabeth's zone or a
14 Walter Reed zone, I think those were kind of --

15 MS. CAIN: So those are sections of the zoning
16 regulations that use covenants to enforce the zoning
17 regulations.

18 VICE CHAIR MILLER: Right, right. So there's
19 already authorization for that. Yeah.

20 MS. CAIN: I'm not sure off the top of my head if
21 the Commission has ever done something similar in a map
22 amendment case. This one is a little bit sui generis in
23 that you have the map amendment proceeding and OP has
24 proposed this, you know, linked text amendment at the same
25 time, which is, as I believe OP has stated in the record, is

1 intended as a mitigation of the map amendment, so it is a
2 little bit of a unique sort of new situation.

3 I think what probably comes closest is the IZ
4 Plus, which is basically a conditioning of a map amendment.
5 It is through a slightly different mechanism. But, you
6 know, that is a way that the Commission has conditioned
7 prior map amendments.

8 VICE CHAIR MILLER: Right, and we did a text
9 amendment case, as I recall, on IZ Plus, which basically
10 authorized those kinds of map amendments with a little IZ
11 Plus designation on it. So the authorization was there due
12 to a text amendment. So, yeah, I think it is unique and I
13 think that presents a unique problem or a unique look at it
14 and unique review by various authorities, including yourself
15 and our own counsel and Office of Planning.

16 So, but I appreciate what you're saying. And I
17 appreciate the testimony you provided. I'm not sure I have
18 any specific -- other specific questions for you at this
19 time.

20 So thank you, Mr. Chairman.

21 CHAIRPERSON HOOD: I will say every time I hear
22 that, I know that we did do one. It maybe predates some
23 people. And I think that our counsel at that time regretted
24 it. So I think we did do one and it was actually in Ward 5.
25 So anyway, I will leave it at that for now.

1 Okay, Commissioner Stidham, any questions or
2 comments?

3 COMMISSIONER STIDHAM: Thank you for your
4 presentation. I think it brings a lot of interesting and
5 good points.

6 One question I have, as you talk about mitigation
7 as it relates to consistency with the comp plan that has
8 some adverse impacts on the neighbors, I think we heard from
9 OP's testimony that there is an -- this area has exceeded
10 its housing goals. But as you point out, there is still a
11 need for affordable housing in this area.

12 Have there been cases or instances in cases like
13 this where it's a public entity that is seeking a higher
14 density that ultimately the District will dispose of, where
15 a level of affordable housing higher than IZ Plus was
16 applied as a mitigation for the effects on the neighbors
17 from the increased density?

18 MS. CAIN: I don't know if there has been a prior
19 case. I think probably not, but don't quote me on that.
20 But again, sort of as I said in my testimony, you know, I
21 think this is -- it is within the Commission's legal
22 authority to make a determination that there are going to be
23 impacts resulting from the map amendment. Whether those are
24 sort of physical in terms of impacts to light and air or
25 whether they go to, you know, the community in terms of

1 affordable housing.

2 You know, we think it is within the Commission's
3 authority under the Zoning Act if you make that
4 determination that, yes, there are going to be impacts, that
5 you can then subsequently mitigate them through the
6 imposition of a covenant. And just to sort of clarify a
7 little bit how that mechanism would work, I think the key
8 for us would be that the map amendment would not become
9 effective until the recordation of the covenant. So it's
10 the recordation that sort of triggers the map amendment
11 becoming applicable. Which is sort of the link,
12 Commissioner Miller, to what you were saying about IZ Plus.
13 The IZ Plus becomes effective when it is mapped on the
14 zoning map. This is sort of the correlating thing in what
15 we are proposing.

16 COMMISSIONER STIDHAM: Thank you. Would you agree
17 that there is a higher need in this area for affordable
18 housing than there is just general housing, so that that
19 should be the primary goal of this potential disposal?

20 MS. CAIN: I mean, I think District wide, the need
21 for affordable housing is critical. I mean, we're seeing
22 that issue throughout the District. And even areas that
23 are, you know, currently in line with their housing goals,
24 that's a snapshot in time. That doesn't mean that they will
25 continue to be so five, 10 years down the line.

1 COMMISSIONER STIDHAM: Okay, thank you very much.

2 CHAIRPERSON HOOD: Thank you again, Ms. Cain. I
3 have a couple of questions.

4 I know that the OAG has been going out to
5 communities, especially, I believe, when it comes to public
6 land, to evaluate different cases or situations that are
7 proposed for that land. Is this one of those scenarios
8 where you all went out and, I guess, took public input or
9 did some engagement? Is this one of those cases?

10 MS. CAIN: So we have not been involved directly
11 with the disposition. We did meet with certain members of
12 the community. I believe Ms. Akel and her group did reach
13 out to us, so we did meet with them. That was prior to us
14 determining our position on this case, but we did meet with
15 them, a group of neighborhood residents, to provide sort of
16 general information about the map amendment process and how
17 it relates to the surplus and disposition process.

18 CHAIRPERSON HOOD: But am I correct that OAG is
19 now going -- the Attorney General is now going out in the
20 neighborhood, going out and, I guess, doing comment periods
21 or whatever they're doing? They're having meetings with the
22 community to see if whatever projects come are viable? Is
23 that a correct statement?

24 MS. CAIN: I'm not sure about that. I mean, our
25 office is trying to do more outreach generally, trying to be

1 out in the communities meeting with folks about a variety of
2 different issues. You know, we certainly try to keep tabs
3 on what development projects are upcoming. That's the best
4 answer I can give on that.

5 CHAIRPERSON HOOD: Okay, okay. I thought maybe
6 this may have been one of them. Which I think actually is a
7 good idea. But I'll just leave it at that.

8 So you heard the responses or the conversation
9 with the engagement and you know about our racial equity
10 tool. I'm sure that you probably are not -- it wouldn't
11 change your outcome, would it, wouldn't change what you
12 presented tonight and being in support of this application?

13 MS. CAIN: I'm not quite sure how you mean. If
14 the --

15 CHAIRPERSON HOOD: So your analysis is done based
16 on the comp plan consistency, I get that. But there is a
17 key piece to what we are also bound to look at on the Zoning
18 Commission, and it's engagement. And the way I took the
19 conversation, the interaction, between one of the parties in
20 opposition and the Office of Planning was, there's
21 definitely some room for more engagement or more
22 improvement.

23 Knowing all that, would that change -- that
24 wouldn't change your -- what would you recommend? If you
25 were back being our counsel, what would you recommend in

1 this capacity? What would you recommend?

2 I will first say, Chairman Hood, I think we
3 analyzed this purely on consistency with the comprehensive
4 plan, which is the standard in the zoning regulations, which
5 comes from the Zoning Act. We certainly believe in racial
6 equity, we certainly believe in, you know, as much public
7 outreach as possible by, you know, the petitioners or the
8 applicants of cases. But unfortunately, I am no longer your
9 counsel. I can't sort of advise you as how you should or
10 should not proceed in this case.

11 I realize -- because I have some very good
12 counsel. I know I can go to them, as the Vice Chair said.
13 But what I am trying to find out from you, in your analysis,
14 as someone who has -- knows some of the things that this
15 Commission should be looking at, what I am trying to
16 ascertain from you is, knowing that the racial equity and
17 the engagement is lacking, then would that change your
18 strong recommendation?

19 I think that is a procedural question that needs
20 to be addressed. I think we view this as this is a map
21 amendment that would allow more affordable housing. As we
22 went through, we think that that has racial equity benefits
23 in terms of providing housing to folks who are currently
24 unable to afford it. But I think that's really the best
25 answer I can give.

1 CHAIRPERSON HOOD: Okay, all right, thank you. I
2 will leave it at that.

3 Ms. Schillin, you're going to have to help me
4 because we don't always do this. Do the parties cross
5 examine? Oh, sorry, I don't want to skip anybody.

6 Well, Office of Planning doesn't do that. Let me
7 go to my list.

8 MS. SCHILLIN: Yes, they do. They are -- if they
9 choose to, they can, yes.

10 CHAIRPERSON HOOD: Mr. Kirschenbaum, do you
11 have -- have I ever asked you all did you have any cross?
12 I've never done this, I don't think.

13 MR. KIRSCHENBAUM: It's not very usual.

14 CHAIRPERSON HOOD: Okay. Well, Mr. Kirschenbaum,
15 do you have any cross of OAG?

16 MR. KIRSCHENBAUM: We don't. And we just thank
17 Ms. Cain and OAG for their report.

18 CHAIRPERSON HOOD: Okay, thank you.

19 All right, let me find my list. Ms. Schillin, I
20 want to thank you for helping me with my list, updated list.

21 All right. Let's go to ANC 1B. Commissioner
22 Harris, do you have any cross of OAG? Commissioner Harris.

23 MS. HARRIS: Hi. I only have one question. So
24 based on -- can you hear me?

25 CHAIRPERSON HOOD: Yes, we can now.

1 MS. HARRIS: Based on your estimates, which has
2 higher potential in alleviating the wealth disparities you
3 presented, passing this map amendment or leaving the zoning
4 for this land as is?

5 MS. CAIN: The additional zoning would allow more
6 density, and more density is needed for more housing is the
7 simplest answer.

8 MS. HARRIS: Thank you.

9 That's it, thank you.

10 CHAIRPERSON HOOD: Thank you, Commissioner.

11 Let's go to ANC 2B, either Zach Adams or May
12 Roggensack (phonetic), it's either one. Ms. Schillin, can
13 we bring them up?

14 MS. FRIEDMAN: I don't see either of them on.

15 MS. SCHILLIN: They're not on again tonight.

16 CHAIRPERSON HOOD: All right, let's go to Paige
17 Seaborn, who is filling in tonight.

18 MS. SCHILLIN: Mr. Young, you may see her under
19 Randy Jones.

20 CHAIRPERSON HOOD: Oh, okay, filling in for
21 Mr. Randy Jones.

22 MS. SEABORN: Can you all hear me now?

23 CHAIRPERSON HOOD: Yes, we can. You may go ahead.

24 MS. SEABORN: Sorry about that. Everything got
25 stopped and glitched for a second.

1 Yes, Randy is on a flight tonight, so I am going
2 to do the best I can to fill in with him.

3 I think the only question that I have really is
4 around I thought that we at one point had pushed back on the
5 fact that we saw that affordable housing goals had been
6 achieved in the area already. And so I am just wondering is
7 there a point at which we, you know, stop making changes
8 over and over again when goals have been achieved? Or is
9 there a possibility of -- that those goals can just continue
10 to be changed whenever it's kind of in OP's favor to do
11 more, regardless of, you know, potentially the interests of
12 the community? I'm just wondering, are the goals really
13 real.

14 MS. CAIN: So the goals are intended to, you know,
15 try to make affordable housing, you know, equitable across
16 the city. But they are ultimately goals. They are not set
17 in stone. It's not a hard cap on affordable housing. And,
18 you know, we are in an affordable housing crisis and will
19 probably continue to be for some time. So we need solutions
20 throughout the District, sort of regardless of where an
21 individual planning area might be on a goal, you know, that
22 goes to that broader goal of trying to make sure that all
23 District residents can afford to live in the city.

24 MS. SEABORN: Okay, thank you. And, sorry, just
25 to add one other thing. Randy actually is able to call in.

1 So it's possible to unmute him, he probably appears as
2 another, not Paige Seaborn/Randy Jones. He's another Randy
3 Jones. So if it's possible to enable him to unmute as well,
4 that would be great, as I believe he has a couple more
5 questions.

6 CHAIRPERSON HOOD: Ms. Schillin and Mr. Young, can
7 we accommodate that?

8 MS. SCHILLIN: I'm sorry, what was that?

9 CHAIRPERSON HOOD: She wants us to unmute
10 Mr. Jones. He's available, I guess by phone.

11 MS. SEABORN: Yes, by phone.

12 MS. SCHILLIN: He is, but I thought she was taking
13 his place, because there's only one person to ask questions.

14 MR. JONES: Can you hear me now?

15 CHAIRPERSON HOOD: Yeah, we can hear you now.

16 MR. JONES: Thank you. I apologize. (Inaudible)
17 I'll just try to keep it brief here.

18 What I wanted to ask, was OAG consulted prior to
19 the introduction of that initial comp plan amendment which
20 is very site specific to these two parcels?

21 MS. CAIN: Just want to make sure I heard that
22 correctly. Did you ask if we were consulted prior to the
23 amendment to the future land use map?

24 MR. JONES: Correct.

25 MS. CAIN: On that, I'm not sure. I think when

1 that was introduced, our office was in a slightly different
2 capacity. At that point, we were advising the Commission.
3 So I would need to double check on what our specific role
4 was at that time in terms of any comp plan amendments that
5 came through.

6 MR. JONES: Okay, are you aware of any kind of
7 outreach that was done with that comp plan amendment that
8 was set up (inaudible) --

9 MS. CAIN: I am not. It was not -- we certainly
10 were not the ones who proposed the amendment, so I really
11 cannot speak to what outreach was or was not done during
12 that period.

13 MR. JONES: Fair enough. On the housing costs,
14 you brought up all kinds of great data and we commend you
15 for being detailed with all that. It's a key consideration
16 here. Could you just reiterate simply, you know, what
17 underlying zoning (inaudible) what the percentage of
18 affordable units would be?

19 MS. CAIN: I'm sorry, I didn't quite catch that
20 whole question?

21 MR. JONES: If the petition to upzone is approved,
22 what the percentage of affordable units would be?

23 MS. CAIN: Gotcha. So under IZ Plus, which is, as
24 I mentioned, going to be sort of the floor for this, it will
25 probably be around 20 percent of the gross floor -- the

1 residential gross floor area. Under the Surplus and
2 Disposition Act, that is 10-801, that requires between 20
3 and 30 percent of units. So it is a slightly different base
4 of measurement that is being used between the two of them.
5 But I think, in terms of trying to understand what that
6 baseline would be, 20 percent of the residential GFA is that
7 starting point, and hopefully it will end up being higher
8 than that.

9 MR. JONES: Got it. Now, obviously there's plenty
10 of comp plan policies to balance and pick out. How did you
11 choose which policies to include in your presentation
12 tonight? And which did you give preference to?

13 MS. CAIN: So our focus is on the affordable
14 housing that this map amendment is going to permit.
15 Affordable housing is a sort of key focus area for the comp
16 plan as a whole. It comes up not only in the housing
17 element and in the framework element, but it also sort of
18 scattered throughout, you know, multiple elements of the
19 comprehensive plan.

20 So we focused on, you know, the ones that we
21 thought were most relevant for this site, you know, in terms
22 of providing affordable housing on publicly owned sites, the
23 policy concerning the development of this site in
24 particular. But affordable housing really was sort of our
25 guiding focus in our analysis.

1 MR. JONES: Got it. That checks out. Is it
2 possible you missed other comp plan policies which were --
3 which could have been important to choosing to support this
4 petition?

5 MS. CAIN: Again, the comprehensive plan is, you
6 know, analyzed as a whole when considering a map amendment.
7 So we start out looking at the two maps, the future land use
8 map and the generalized policy map. Believe that it is
9 consistent with both of those. And then looked at the
10 written elements concerning this affordable housing policy
11 which, as I said, is our focus.

12 So, as you mentioned, there are a lot of policies
13 in the comprehensive plan. But we think between the
14 combination of being consistent with the maps and also the
15 fact that it is consistent and will further these affordable
16 housing goals which are a high priority in the comprehensive
17 plan, we feel ultimately again, as a whole, makes the map
18 amendment consistent.

19 I would just add, in going through and looking for
20 the affordable housing elements, we did go through, you
21 know, the entirety of the comprehensive plan. That just
22 was, as I mentioned, sort of our guiding focus.

23 VICE CHAIR MILLER: Is that the conclusion of your
24 questions, Mr. Jones?

25 So I think Mr. Jones may have concluded his

1 questions. There was a pause. I was just asking him, did
2 he have any further questions.

3 MS. SEABORN: Yes, that's his conclusion.

4 VICE CHAIR MILLER: Okay, thank you.

5 CHAIRPERSON HOOD: Let me just say this, though.
6 Typically, Ms. Seaborn, only one person asks questions. The
7 office was notified today that you would be doing it on
8 behalf of Mr. Jones. I allowed that, since you all are a
9 husband and wife team. But hopefully either he can give you
10 the questions or if he's available he can ask the questions.
11 But -- and that's actually come from the courts some years
12 ago to us.

13 MS. SEABORN: Got it. Yeah, we'll plan for that.
14 Thank you very much for allowing that.

15 CHAIRPERSON HOOD: Okay, all right. Thank you.

16 Let's go to Mr. Gregory Adams, Black Neighbors.

17 Any questions of OAG?

18 Mr. Adams, I think you unmuted once.

19 MR. ADAMS: Can you hear me now, Chairman Hood?

20 CHAIRPERSON HOOD: We can hear you now. Go right
21 ahead.

22 MR. ADAMS: Thank you, Chairman Hood. And to
23 Attorney General Cain, I was asking how would rezoning to
24 MU-10 resulting in a 10-story by right, 70 percent market
25 rate building be considered equitable to the Attorney

1 General's Equitable Land Division Office?

2 MS. CAIN: So we believe that it is going to be
3 equitable. It will allow more housing and more affordable
4 housing than is currently able to be developed on the site
5 currently under the current zoning. And that is just a
6 product of more density allows more housing. So that is why
7 we believe that ultimately it will advance the equity goals
8 of the District.

9 MR. ADAMS: Okay, thank you. In your testimony in
10 Exhibit 528, is it fair to say that the OAG is keenly
11 focused on the public interest in this matter?

12 MS. CAIN: It is the public interest, as we have
13 defined it, which is looking, you know, District wide at,
14 you know, District-wide equity issues, such as affordable
15 housing.

16 MR. ADAMS: And does the Office of the Attorney
17 General find it in the public interest for the Office of
18 Planning to not outreach to the nearby affected Black
19 residents, not outreach to local Black businesses or
20 churches? That OP did not survey affected Black residents
21 at all?

22 MS. CAIN: I think we share a number of the
23 concerns that the Commission has voiced tonight about the
24 outreach that was or was not done.

25 Our position that we have taken in prior cases is

1 that more notice, more outreach, is always a good thing. So
2 that is our position on that, that, you know, we always like
3 to see that there is more notice than less.

4 MR. ADAMS: Okay, thank you. You mentioned that
5 lower density zones would mean less affordable housing.
6 However, couldn't a zone that is more consistent with the
7 existing area, like MU-4 or MU-5, still produce 142
8 affordable units?

9 MS. CAIN: I would need to run the numbers on
10 that. Again, the more density that you allow on the site,
11 just that's more square footage that can be built, that's
12 more square footage that can be put to affordable housing.
13 So I can't tell you off the top of my head what other zones
14 might propose or might produce. We based our analysis on
15 what is currently being proposed under the MU-10.

16 MR. ADAMS: Okay. But the majority will be market
17 rate. You would agree with that?

18 MS. CAIN: What the final outcome will be will be
19 determined by the Surplus and Disposition process. So like
20 I said, we have that 20 percent of the residential GFA under
21 IZ Plus, which is sort of the base. We certainly hope that,
22 you know, it is higher than that and that more affordable
23 housing -- you know, the most affordable housing that can be
24 provided on that site is. But that ultimate determination
25 will ultimately be subject to the RFP issued by DMPED.

1 MR. ADAMS: Thank you, Attorney General Cain.
2 That concludes my questioning.

3 CHAIRPERSON HOOD: Thank you. Now let's go to
4 Ms. Deborah Akel. Do you have any cross? Rochelle
5 Apartments.

6 MS. AKEL: Okay, sorry. (Inaudible.)

7 CHAIRPERSON HOOD: Ms. Akel, hold on a second --

8 MS. AKEL: I have some questions. I am a little
9 concerned about (inaudible) about -- can you hear -- hello?
10 Hello? Can you hear me?

11 CHAIRPERSON HOOD: Yeah, we can hear you now, yes.

12 MS. AKEL: Okay.

13 CHAIRPERSON HOOD: Either you're messing up or
14 mine is messing up. I don't understand why mine would be
15 messing up.

16 MS. AKEL: Testing, one, two. Testing.

17 CHAIRPERSON HOOD: Okay, there you go. Let's see
18 how --

19 MS. AKEL: Yeah? Okay.

20 Okay, I am concerned about the testimony from OAG.
21 It seems very narrow in its scope. And being that they
22 claim to be working for the benefit of the public, there are
23 some issues that I would like to ask Ms. Cain about. I am
24 not seeing anybody on my screen, but if you can see and hear
25 me, I guess that's okay.

1 CHAIRPERSON HOOD: It may help you to turn your
2 camera off --

3 MS. AKEL: In 2019, the Washington Post had a
4 headline, "Gentrification in D.C." -- I'm sorry?

5 CHAIRPERSON HOOD: Ms. Akel, you're getting a
6 delay.

7 MS. AKEL: Hello?

8 CHAIRPERSON HOOD: Yeah, you're getting a delay.
9 Can you turn your camera off and see how that works now.

10 MS. AKEL: I did. Okay. I turned it off. Can
11 you hear me? Hello?

12 CHAIRPERSON HOOD: Yes, let's see how that works.

13 MS. AKEL: Okay. Stop -- you know, stop me if you
14 can't hear me.

15 So in 2019, the Washington Post had a headline,
16 "Gentrification in D.C. Means Widespread Displacement, Study
17 Finds." And Washington is one of the few places in the
18 country where real displacement is actually occurring. And
19 I want to ask Ms. Cain just a few questions.

20 First of all, Ms. Cain, do you remember when I
21 contacted your office in March?

22 MS. CAIN: Yes.

23 MS. AKEL: Because we were frustrated that no one
24 was interacting with us, and we were being left in the dark
25 about this project. And you and Mr. Tondro spoke to us.

1 Can you recall sort of the frustration of the neighbors here
2 at being sort of shut out of public engagement on this
3 project? Do you remember from that meeting?

4 MS. CAIN: I do. I think that meeting involved a
5 combination of questions about the map amendment process and
6 then also the Surplus and Disposition process that's being
7 handled by the Deputy Mayor for Planning and Economic
8 Development. If I'm remembering correctly.

9 MS. AKEL: Okay, I have a few questions about OAG.
10 Is OAG Equitable Land Use Section concerned about
11 displacement risk of an MU-10 building that is surrounded by
12 low-rise affordable housing? Is the displacement risk of
13 this upzoning, given the context, of concern to your office?

14 MS. CAIN: We are looking at the issues of
15 affordable housing and displacement District wide. There is
16 sort of a lot of somewhat conflicting research about what
17 new development means in terms of, you know, rent prices
18 changing in the immediate neighborhood. But sort of the
19 uniform thing that we have found is that providing more
20 affordable housing on the sites that are redeveloping is the
21 best way to address that. So that has, sort of as I
22 mentioned, been our focus, is trying to see where affordable
23 housing can be maximized to deal with the affordable housing
24 crisis and displacement issues across the District as a
25 whole.

1 MS. AKEL: So you are not actually tallying the
2 dramatic loss of affordable units in the District through
3 this type of upzoning, gentrification, et cetera. Is your
4 office keeping track of that? I believe the D.C. Policy
5 Center has something about that. And it's dramatic how many
6 buildings we're losing that are rent controlled. And the
7 older, you know, the more time goes on, that, whatever it
8 is, 1976 or 1973 benchmark of protected rent controlled
9 buildings are -- you know, it's getting less and less and
10 less.

11 So is your office keeping track of the loss of
12 affordable housing in the District?

13 MS. CAIN: I think we are trying to focus on, you
14 know, encouraging affordable housing being built to address
15 these issues. Because gentrification displacement is
16 definitely occurring. And as I mentioned, the best remedy
17 that we have for that is to ensure that affordable housing
18 is built.

19 So that has been -- the primary focus of our
20 office is trying to advocate for more affordable housing,
21 you know, as much as possible in a variety of different
22 ways.

23 MS. AKEL: So there is something in the comp plan
24 about preserving existing affordable housing. And I would
25 ask you, Ms. Cain, is anyone doing a balance sheet about the

1 loss of affordable housing, like NOAH's, versus the building
2 of new units? Like what is the net gain? If our building,
3 for example, we have 21 affordable units. If our building
4 gets sold, which happened to me in 2008 in the west end, if
5 our building gets sold, we lose 21 units of permanent rent
6 controlled apartments, versus how many are built --

7 CHAIRPERSON HOOD: Ms. Akel, let's ask a question,
8 because you're giving us --

9 MS. AKEL: I am. I am asking a question.

10 CHAIRPERSON HOOD: Let's go to the question.

11 MS. AKEL: I'm asking her, is anyone keeping track
12 of the net gain. If you're losing NOAHs and you're building
13 new units that may or may not be as affordable as the ones
14 we're losing, because they don't have a rent controlled --

15 CHAIRPERSON HOOD: Ms. Akel, let's ask the
16 question, please.

17 MS. AKEL: Is anyone keeping track of that
18 differential?

19 MS. CAIN: That, I do not know. We are -- like I
20 said, we are trying to focus on creating more affordable
21 housing where we can. You know, there's a variety of
22 District agencies that are involved in housing. You know, I
23 think there a lot of different metrics that are being kept
24 by DMPED and DHCD. Whether any of them are specifically
25 capturing what you're talking about, I don't know. It is a

1 valid question. But I think that's the best response I can
2 give.

3 MS. AKEL: Okay, two more questions. Has OAG
4 included any recommendations on this particular project
5 about making sure that OP uses displacement risk mapping?
6 Are you talking to OP at all about the equity of using, you
7 know, indirect displacement risk mapping?

8 MS. CAIN: Again this is OP's amendment. We were
9 not involved in the initial proposal of it. We are
10 evaluating it on the legal standard, which is consistency
11 with the comprehensive plan.

12 To what you said a little bit earlier, we
13 certainly hope that those equity analyses are done, and that
14 outreach is done. But from the standpoint of our analysis
15 at this point, we are looking at the comprehensive plan and
16 feel this, in providing more affordable housing, does
17 address those equity and those affordable housing goals.

18 MS. AKEL: Okay, last question. Although I do
19 think equity also involves displacement in addition to new
20 construction.

21 But anyway, last question. Since you say that
22 equity housing is a priority, have you looked at this
23 project in terms of how it could maximize affordable units
24 by using a different model, rather than private pays for
25 affordable, like social housing or some other type, where

1 you get more affordable units than what we speculatively are
2 going to get?

3 MS. CAIN: So we have not looked at that yet.
4 That, sort of how the site is developed, what is ultimately
5 built there, who builds it, who controls it, will be
6 determined through the Surplus and Disposition process. As
7 I mentioned, we certainly hope that it maximizes affordable
8 housing. There are, you know, any number of models for the
9 way that can be done. I think most of them do require some
10 level of market rate to help cross-subsidize those
11 affordable units. But there are different ways that it can
12 be done. And I think, you know, we are certainly going to
13 continue to keep an eye on what happens with this project as
14 it moves forward.

15 And from the standpoint of looking at the MAP
16 amendment, which is again just looking at how much can be
17 built on this site, we think that this is appropriate, and
18 we think that, you know, the additional density that will be
19 gained through the MU-10 will allow for that additional
20 housing density to be constructed.

21 MS. AKEL: But you're not -- you don't see this as
22 putting the cart before the horse and giving away the farm
23 before you know what you're getting for it? And you don't
24 have any specific demands in your approval of this, based on
25 how much affordability are we really going to get.

1 MS. CAIN: I think it's a question of you need
2 density to build housing, at the end of the day. So, you
3 know, and the more density that you have, the more housing
4 and more affordable housing. So from that standpoint,
5 regardless of how this site is ultimately developed, whether
6 it goes to a private developer or whether it is used for
7 social housing or, you know, some other model that I cannot
8 think of, having that additional density will facilitate
9 that.

10 MS. AKEL: Okay. Thank you.

11 CHAIRPERSON HOOD: Okay, what I would like to do
12 is take a 10-minute break. For my colleagues, we've been
13 going for a while. A 10-minute break, and we'll come back
14 at 7:00 -- it will be a little shorter than 10 minutes.
15 We'll come back in six minutes, okay. Is that okay? All
16 right.

17 (Recess.)

18 CHAIRPERSON HOOD: All right. Okay.
19 Ms. Schillin, can we bring up homeowners within 200 feet?
20 I'm going to try to pronounce this right, Ms. Feskanich.

21 MS. FESKANICH: Good evening, Commissioners.

22 CHAIRPERSON HOOD: Good evening, Ms. Feskanich.

23 MS. FESKANICH: Can you hear me okay?

24 CHAIRPERSON HOOD: Yes, we can. You can go right
25 ahead.

1 MS. FESKANICH: Ms. Cain, well, you speak fast, so
2 I hope I caught everything on that. But during your
3 testimony tonight, that there were questions about a future
4 project. You testified that any questions about a future
5 project at this site is not really relevant because the
6 project will be decided at some point later on, correct?

7 MS. CAIN: That's correct.

8 MS. FESKANICH: So isn't there a zoning term
9 called by right development?

10 MS. CAIN: There is.

11 MS. FESKANICH: So isn't it true that if this
12 rezoning is approved by the Commission, an MU-10 size
13 project could be built at this site by right?

14 MS. CAIN: It could be built by right because it
15 is a public site. It is currently in the midst of the
16 Surplus and Disposition process, which is a public process
17 that is a separate public process that goes before the
18 District Council. So there will be a level of oversight in
19 terms of what the final project that is built on the site
20 will be. But it will not be a zoning process.

21 MS. FESKANICH: Okay, so to clarify then, the --
22 once the Zoning Commission approves, or if the Zoning
23 Commission approves this application, nothing that the OAG
24 says, nothing the Zoning Commission says can change the fact
25 that an MU-10 building can be built at this site by right;

1 is that correct?

2 MS. CAIN: If the Zoning Commission approves it,
3 it will be based on a determination that it is appropriate,
4 that an MU-10 zone is appropriate for this location.

5 MS. FESKANICH: Okay, and the Zoning Commission
6 wouldn't have any more say on that? It just could be built
7 by right?

8 MS. CAIN: Most likely, yes. I mean, it's always
9 possible that additional zoning relief might be needed. But
10 again, that's going to be determined by the ultimate
11 project.

12 MS. FESKANICH: Do you think that if this is
13 approved as an MU-10 zone, wouldn't it set a precedent for
14 the whole area going forward and likely lead to rezoning in
15 the area around the site to densities more akin to MU-10?

16 MS. CAIN: So the comprehensive plan future land
17 use map is sort of really the key determinant here. So the
18 future land use map for this site calls for high density
19 residential with moderate density commercial and local
20 public facilities. So any upzoning or any zoning changes in
21 the surrounding area would also need to demonstrate that
22 they are consistent with what the comprehensive plan maps
23 call for for those sites, which are different than this one.

24 So it is on a case-by-case basis. You know,
25 dependent on what the comprehensive plan calls for for those

1 specific areas.

2 MS. FESKANICH: And has the OAG office looked into
3 the type of increased development activity that has
4 historically happened around the city in other areas of MU-
5 10 zoning?

6 MS. CAIN: We have not. We are just looking at
7 these cases as they come up. As I mentioned, our primary
8 focus is on affordable housing, so we are looking at the
9 cases as they come before the Commission.

10 MS. FESKANICH: And this particular zone, just to
11 be clear, this particular zone is the only -- the only area
12 in this -- in this location that is being rezoned to -- or
13 requested rezoning to MU-10 according to the FLUM? The FLUM
14 only addresses this one particular area, correct? Or site?

15 MS. CAIN: The FLUM is District wide. What the
16 FLUM calls for on this site does -- the MU-10 is appropriate
17 for what the FLUM is calling for on this site.

18 MS. FESKANICH: Okay, and just at this particular
19 site, none of the surrounding areas to it.

20 It seems that, from your testimony and your
21 slides, you've placed a very high priority on housing above
22 all other needs in your support of this map amendment. Has
23 the OAG considered any health, education services, safety
24 impacts, or other needs at all that the community would
25 have?

1 MS. CAIN: So our primary focus has been on
2 affordable housing, and that's because we're looking at
3 public interest issues District wide. Obviously, there are
4 any number of issues, you know, facing the District right
5 now. But from our standpoint and in terms of what zoning
6 is, you know, best positioned to help leverage, affordable
7 housing, we believe, is the most important right now.

8 MS. FESKANICH: I am concerned about this
9 particular site, because it seems to be more of a stand-
10 alone site. It's not a whole area that you're talking
11 about. And the health -- I mean, how can you have more
12 housing, or even affordable housing, without considering
13 those other supporting services, and the importance of these
14 other services, community services that public property
15 provides, like health, education, safety?

16 MS. CAIN: I mean, again, we are looking at what
17 the comprehensive plan calls for for the site. And the
18 comprehensive plan, you know, both in general and specific
19 provisions, you know, really focuses on providing housing
20 and providing affordable housing here. So again, that is
21 what our focus has been.

22 MS. FESKANICH: Okay, so the corollary kind of
23 services that are needed to support all these new residences
24 and affordable housing or housing in general have not really
25 been considered?

1 MS. CAIN: Again, I cannot speak to what OP looked
2 at in their report. Again, I am just speaking on what we
3 are looking at in terms of our analysis, which is that we
4 believe that the map amendment is consistent with what the
5 comprehensive plan calls for and that it will provide a
6 substantial amount of affordable housing.

7 But I will say those sort of additional issues
8 that you're bringing up, they are valid. I think a lot of
9 those will probably be further addressed down the line,
10 again, in the Surplus and Disposition process, which will,
11 you know, have a more granular look because they will be
12 considering a specific project, if that's helpful.

13 MS. FESKANICH: Okay, you may have addressed this
14 before, but I just want to make sure I have this right.
15 Isn't it true that your calculated 142 affordable housing
16 units could be achieved in an MU-6 zone or an MU-5 zone or
17 even in an MU-4 zone?

18 MS. CAIN: Again, I haven't run those numbers. We
19 based our calculations, which again are estimates, on the
20 MU-10 zone because that's the only zone that's being
21 considered right now. So I can't say what would be the
22 maximum or what could be provided under those additional
23 zones.

24 MS. FESKANICH: Okay, I also wanted to ask you
25 about the covenants. It's kind of a new term for us. And

1 you talked about using covenants to help mitigate some of
2 the adverse impacts that this upzoning to MU-10 would have.
3 Could you -- you mentioned light and air. But what are the
4 other possible adverse impacts that you mention here or that
5 you allude to?

6 MS. CAIN: I think that's ultimately for the
7 Commission to determine. We focused on what OP had outlined
8 in their text amendment proposal because it was proposed as
9 a direct mitigation, which is how this issue sort of came
10 up.

11 So as I mentioned in my testimony, it is possible
12 that the Commission in its evaluation could decide that
13 there are other issues that warrant mitigation. But that's
14 ultimately for them to decide as, you know, the deciders and
15 the ones with the legal authority to do so.

16 MS. FESKANICH: Okay, so you're not specifically
17 aware of any other adverse impacts.

18 And in your -- when you gave your estimates on
19 housing units, did you figure in any of the space that would
20 be needed for the police, fire, and EMS services?

21 MS. CAIN: We did not. We were looking at a
22 purely residential building, again, because that is our
23 focus, is on affordable housing. And we wanted to really
24 see what that connection was between additional density and
25 housing.

1 So as I had mentioned, you know, what we're
2 providing are estimates. We hope that they were helpful in
3 trying to illustrate, you know, what that density can do in
4 terms of affordable housing. But the ultimate makeup of the
5 site, the project, will be determined through the Surplus
6 and Disposition process. So that will determine, you know,
7 how much affordable housing, how much of the site is
8 reserved for public uses, such as the police and fire
9 station. So that will all be determined down the line.

10 MS. FESKANICH: So the housing -- the estimates on
11 housing units was based on the use of the whole land for
12 housing?

13 MS. CAIN: Um-humm, that's correct.

14 MS. FESKANICH: Wow. Okay.

15 And we may have also said this. You aren't aware
16 of any impact studies, environmental studies done before the
17 FLUM amendment was enacted, correct?

18 MS. CAIN: We're not. Or to just quickly respond,
19 because I know it came up earlier. OAG's involvement at the
20 time in terms of the comp plan was simply on legal
21 consistency analysis.

22 MS. FESKANICH: Okay, yeah. Okay.

23 And I think this is my final question. Does the
24 OAG know how MU-10 rezoning affects land values in adjacent
25 neighborhoods? Have you done any studies on that?

1 MS. CAIN: We have not.

2 MS. FESKANICH: I may -- just one more question,
3 if I may? Oh, yes. You say that the OAG is acting in the
4 -- advocating for the public interest. Doesn't that also
5 mean protecting existing residents by avoiding impacts on
6 the community and displacement of existing affordable
7 housing nearby?

8 MS. CAIN: So again, we are looking District wide.
9 And while we have not done, you know, specific studies on
10 it, you know, looking at research from other jurisdictions,
11 as I mentioned, you know, the best solution for displacement
12 and gentrification issues is to ensure that a sufficient
13 amount of affordable housing is being built. So that's how
14 we are approaching this.

15 MS. FESKANICH: So is it your testimony that the
16 only way to get affordable housing is just to build more
17 housing? And the only way to keep housing costs down is
18 just to build more housing and more housing?

19 MS. CAIN: I think the way to keep or, you know,
20 to provide more affordable housing is to build more
21 affordable housing. And that can take a variety of
22 different forms. Sometimes, it's all-affordable buildings,
23 sometimes it's, you know, mixed -- but, you know, there is a
24 shortage of affordable housing in a variety of ways. So
25 ensuring that more of it is available is the best way to

1 deal with that issue.

2 MS. FESKANICH: Okay. All right, thank you.

3 Thank you for your time.

4 CHAIRPERSON HOOD: Okay, thank you.

5 Next, we will have Mr. Hanlon.

6 MR. HANLON: Thank you, Chair Hood. Can you hear
7 me okay?

8 CHAIRPERSON HOOD: Yes, I can hear you.

9 Let me ask you a question. We're going to stop at
10 9:00. Are you going to take us to 9:00?

11 MR. HANLON: I don't know. I have a lot of
12 questions. I hope not. But as I understand it, the witness
13 has testified that this map amendment is not inconsistent
14 with the comp plan. And so I want to ask her about
15 particular provisions of the comp plan.

16 CHAIRPERSON HOOD: Okay. I was just trying to
17 figure out -- we're going to stop at 9:00. But I think,
18 unless I hear from my colleagues, some of the public may
19 want to leave. So it looks like we can end with Mr. Hanlon.
20 I know it's an hour and a half. But the way things have
21 been going, I believe we will probably go right up to around
22 9:00.

23 VICE CHAIR MILLER: I would urge you to be more
24 judicious with your questions, Mr. Hanlon.

25 MR. HANLON: I thank you, Mr. Miller. But I still

1 need to ask about the comp plan provisions. It's very
2 important.

3 CHAIRPERSON HOOD: Let's do an assessment about
4 8:00. I'm hoping we won't get to 8:00. But, Mr. Hanlon,
5 let me do an assessment at 8:00.

6 Okay. Thank you. You may begin, Mr. Hanlon.

7 MR. HANLON: Thank you. Good evening. It's nice
8 to see you in person. I've only seen your name on reports.
9 So I'm glad to see you in person.

10 I want to start with Subtitle X, Chapter 500.3.
11 In all cases, the Zoning Commission shall find that the
12 amendment is not inconsistent with the comprehensive plan
13 and with other adopted public policies and active programs
14 related to the subject site. You are aware of that
15 provision?

16 MS. CAIN: I am.

17 MR. HANLON: And so it's not simply that this map
18 amendment is consistent with the FLUM. This map amendment
19 must be not inconsistent with a myriad of other comp plan
20 provisions, and policies such as the racial equity policy,
21 correct?

22 MS. CAIN: It is. But it is taken as a whole. So
23 it's taken all of those policies and elements on balance.

24 MR. HANLON: And balance them. All right.

25 So let's talk for a moment -- I would like to go

1 do a bit of cleanup before I go through your report. With
2 respect to engagement, I want to be clear, the OAG did no
3 engagement with the community, with the Black residents
4 concerning this map amendment, correct?

5 MS. CAIN: We did not engage. We were not the
6 petitioner in this case. So we were evaluating the
7 application that was put forward by the Office of Planning.

8 MR. HANLON: And does not the OAG believe that
9 racial equity is so important and so important a part of the
10 policy of this comp plan that it should review a map
11 amendment through a racial equity lens?

12 MS. CAIN: As I believe I stated in my testimony,
13 we believe that this map amendment will in fact further
14 racial equity by allowing more housing and affordable
15 housing on the site, which we think is one of the key issues
16 of racial equity facing the District.

17 MR. HANLON: So I would be correct that OAG did
18 not analyze this map amendment through a racial equity lens,
19 correct?

20 MS. CAIN: We certainly looked at racial equity
21 data, as you saw in our presentation tonight. But again, we
22 were not the ones who proposed this text amendment. So we
23 are evaluating it, you know, as best we can using our
24 metrics.

25 MR. HANLON: With respect to the surplus

1 disposition process, you said, I believe -- I don't want to
2 mis-paraphrase you -- that people have another opportunity
3 to make their views known. Did I misrepresent what you
4 said, misstate what you said?

5 MS. CAIN: The Surplus and Disposition process is
6 a public process. It goes before Council for approval. So,
7 yes, it is a public process.

8 MR. HANLON: And it's a legislative process.
9 There is no contested hearing, no right to call witnesses,
10 no right to appeal, correct?

11 MS. CAIN: I'm not super familiar with the ins and
12 outs and procedures of that process. But either -- it's a
13 public process. There is an opportunity for the public to
14 be heard.

15 MR. HANLON: But not to appeal, right?

16 MS. CAIN: Mr. Hanlon, I'm not familiar with it
17 and that's also separate from what is under consideration
18 tonight, to be honest.

19 MR. HANLON: Well, I just want to be clear that
20 what this Commission does with this map amendment is
21 basically the be all and end all of this site. Because the
22 public doesn't get another contested hearing in any forum
23 once it leaves this Commission, right?

24 MS. CAIN: The Commission is determining sort of
25 the outer bounds of what can happen on that site. There is

1 a public process. There is a way for the public to voice
2 its comments going forward.

3 MR. HANLON: Besides Black residents -- well, let
4 me ask, if racial equity is a prime public policy, and thank
5 God it is, but if it is, don't you think the OAG should have
6 asked some Black residents, some Black civic leaders, some
7 Black businesspeople what they thought of this map -- some
8 Black church leaders? One of the oldest Black -- the oldest
9 Black Catholic church is less than two blocks away. Don't
10 you think the OAG should have asked Black leaders, Black
11 residents, Black community folks who have lived there for
12 decades what they think?

13 MS. CAIN: Mr. Hanlon, we did not propose this
14 text amendment. It was the Office of Planning who proposed
15 it, who, you know, brought it forward initially, who did
16 what outreach was done. We are analyzing it based on its
17 consistency with the comprehensive plan.

18 As I mentioned, we always hope that more outreach
19 does occur and that applicants do do that. I mentioned we
20 do share the concerns that Chairman Hood raised. But that
21 is sort of where we are. We are in a different role in this
22 case than the Office of Planning.

23 MR. HANLON: Let me ask you about text amendment
24 versus map amendment. And maybe you can clear this up for
25 me.

1 Can you succinctly tell me the difference between
2 a text amendment and a map amendment, since you seem to be
3 opposed to the text amendment?

4 MS. CAIN: A text amendment is an amendment to the
5 zoning regulations. A map amendment is an amendment to the
6 zoning map.

7 So the map amendment will change the designation
8 of a site on the map, whereas the text amendment will change
9 what the regulations require for that zone or any other
10 provision.

11 MR. HANLON: All right, so a text amendment
12 applies to all lots within the zone. Like if I decide to do
13 a text amendment that says everybody can have an accessory
14 dwelling in an RA-75, then that text amendment applies to
15 all properties in all parts of the city that are RA-75,
16 right?

17 MS. CAIN: If the text amendment is written that
18 way. It's -- again, the text amendment is going to depend
19 on how it is written, as to what it applies to and what the
20 specifics are.

21 MR. HANLON: But a map amendment is to a specific
22 site, right? So that if I want to change this site, I'm not
23 changing every MU-10 or MU-4 site, I'm changing this one. A
24 map amendment is specific to a site and a text amendment is
25 generic and applies to all lots within that zoning district,

1 would that be fair?

2 MS. CAIN: That's an overbroad characterization.
3 I think text amendments depend on the language and the
4 intent of that text amendment. There can be very narrow
5 text amendments, there can be broader text amendments. It
6 really depends on the situation.

7 MR. HANLON: And this text amendment you're
8 opposed to, you're opposed to the process of the text
9 amendment. It's really an attempt to create a new zone,
10 right, this text amendment that you're opposed to?

11 MS. CAIN: We think this text amendment is a
12 mitigation of what OP has identified as impacts of this map
13 amendment.

14 MR. HANLON: Yeah, I was curious about that
15 because you know much more about this than I do, but I don't
16 know of a single case of a conditional map amendment. We
17 can do -- we can do a new zone, like they're trying to do in
18 Chevy Chase. But can you -- I want to make sure. You know
19 of no court case that has upheld a conditional map
20 amendment?

21 MS. CAIN: I don't know if one has ever come
22 forward in quite this way. As I mentioned, this is
23 something of a sui generis case. What we do believe is that
24 the Commission does have the authority under the Zoning Act
25 to impose conditions.

1 MR. HANLON: What section of the Zoning Act is
2 that? The zoning regs or the Zoning Act?

3 MS. CAIN: It's the Zoning Act, which is the
4 Commission's empowering legal authority, which the zoning
5 regs come out of. And it's the Zoning Act, which says that
6 the Commission in zoning matters should act to protect and
7 advance the public welfare.

8 MR. HANLON: And it's the zoning regs that control
9 how the Commission does that, right?

10 MS. CAIN: Ultimately, it's the Zoning Act. The
11 regulations simply put the Act into -- implement the Act.
12 The Zoning Act is the governing law that empowers the
13 Commission.

14 MR. HANLON: And are you aware of anything in the
15 zoning regulations that gives the Commission this power that
16 you say they have?

17 MS. CAIN: Again, the regulations are important.
18 But when we're looking for what, you know, gives the
19 Commission the legal authority to act, you have to look at
20 the underlying law, which is the Zoning Act.

21 MR. HANLON: And so I don't mean to press the
22 point, but I would like the answer to be clear. You don't
23 know of any part of the zoning regulations that give the
24 Commission the right or the authority to do a conditional
25 map amendment; is that correct?

1 MS. CAIN: I think I've already answered the
2 question, which is that the legal authority comes from the
3 Zoning Act.

4 MR. HANLON: All right. And so without belaboring
5 the point, can you give me a cite in the zoning regs that
6 enables that?

7 MS. CAIN: Again, I've answered the question,
8 Mr. Hanlon, with all due respect.

9 MR. HANLON: Did I misunderstand when you said,
10 and I don't want to misquote you, affordable housing is the
11 most important thing to consider in the map amendment
12 process?

13 MS. CAIN: Affordable housing is, we believe, one
14 of the key priorities of the comprehensive plan. There are
15 multiple sections in the comprehensive plan which talk about
16 affordable housing as being a high priority. It is
17 certainly, you know, one of our key priorities in assessing
18 the public interest.

19 MR. HANLON: Why don't we -- why don't we go to
20 your presentation, your PowerPoint, if we could. Give me a
21 moment.

22 I was going to ask one quick question before I --
23 before I go. I noticed that in Slide 10, it changed between
24 November and January, the numbers are different in Slide 10
25 from your November PowerPoint. Why is that?

1 MS. CAIN: The ones in November, we had not
2 adjusted for inflation, so the numbers that you're seeing in
3 the current PowerPoint have been adjusted to 2021 numbers.

4 MR. HANLON: Okay. And when you were looking at
5 the numbers, you looked at the 2020 census data?

6 MS. CAIN: We did.

7 MR. HANLON: And when you looked at the 2020
8 census data, did you look in the 2020 census data for this
9 census tract?

10 MS. CAIN: We did.

11 MR. HANLON: All right. And when you did that,
12 did you notice that the percentage of people in this census
13 tract who were paying more than 30 percent of their income
14 for housing actually decreased between 2010 and 2020?

15 MS. CAIN: I would need to look at the census
16 numbers. What I have -- what you see tonight is what we
17 have presented. I cannot speak to the other numbers that
18 were not presented in my testimony this evening.

19 MR. HANLON: All right. So you looked at the
20 census tract data but not that census tract data that
21 revealed the housing burden, the cost of housing burden on
22 people in this neighborhood?

23 MS. CAIN: We have looked at the housing burden on
24 the basis of the planning area. As you can see later in the
25 presentation, on Slides 12 and 13.

1 Again, I can only speak to the data that we
2 presented in our filings and in our testimony this evening.

3 MR. HANLON: Well, if you looked at the census
4 data for the planning area, did you notice that this
5 particular census tract at this end of the planning area in
6 2020 had a household income of almost \$150,000?

7 MS. CAIN: Mr. Hanlon, are you referencing
8 something in my presentation tonight?

9 MR. HANLON: No, well, you looked at census data.
10 I'm trying to figure out whether you looked at census data
11 that talked about the housing burden, the cost of housing as
12 a percentage of income.

13 MS. CAIN: I have what is presented in the slides.
14 You can see what we presented on Slides 12 and 13, which is
15 based on the planning area data as compared with some of the
16 census data. That's what I can speak to.

17 MR. HANLON: All right. Without belaboring the
18 point again, did you look at census tract data at the east
19 end of the planning area?

20 MS. CAIN: We looked at census tract data for the
21 census tract that the map amendment is located in, and then
22 we also looked at the planning area as a whole.

23 MR. HANLON: But not the income data for the
24 census tract, not the housing data for this census tract,
25 correct?

1 MS. CAIN: Mr. Hanlon, we looked at the data that
2 is presented. If you would like to ask me a question about
3 that specific data, I'm happy to answer it. I cannot talk
4 about data that we know is not presented in the testimony
5 this evening.

6 MR. HANLON: Why don't we take a look at -- can we
7 go to your Slide 4 for a moment? You might want to bring it
8 up, Mr. Young. I don't know. Make sure we get the same
9 slide.

10 That's Slide 4? Okay.

11 Down the bottom of Slide 4, you have high rise
12 apartment buildings with densities typically greater than
13 FAR or 4.0, the RA-4 and RA-5 zone districts are consistent
14 with the high density residential category. I have an
15 accent RA-4 and RA-5. You see both zones are consistent
16 with the high density residential category.

17 MS. CAIN: Yes.

18 MR. HANLON: All right. I was curious, when you
19 went to the next page, if we go to the next slide, Slide 5,
20 Mr. Young, I was curious why you only have the information
21 for RA-5 on Slide 5 and not RA-4?

22 MS. CAIN: Because the RA-5 zone's density and
23 height limits are the same as the MU-10s, which is proposed.

24 MR. HANLON: But in RA-4, there's a height limit
25 of 90 and a FAR of 3.5, and with IZ, a FAR of 4.2, right?

1 So it's a much less dense building. But according to your
2 Slide 4, it's also consistent with high density residential,
3 right?

4 MS. CAIN: However, the MU-10 zone is the zone
5 that is proposed, and that is consistent with the RA-5.

6 MR. HANLON: You agree with me that RA-4 is also
7 consistent with high density residential, which is what this
8 FLUM category is?

9 MS. CAIN: It is identified. But again, the MU-10
10 is what is proposed, and the MU-10 is the same as the RA-5,
11 effectively.

12 MR. HANLON: But you agree that this Commission
13 could in fact do a map amendment for less than MU-10. Could
14 in fact do split zoning of this site if it wanted to, right?

15 MS. CAIN: If it wanted to. But we believe that
16 the MU-10 is consistent with what the comprehensive plan
17 calls for, as is.

18 MR. HANLON: So the back half of this site is a
19 neighborhood conservation area, correct?

20 MS. CAIN: That is correct.

21 MR. HANLON: And the front half is moderate
22 density commercial; is that correct?

23 MS. CAIN: The front half of the site on the GPM
24 is a main street mixed use corridor.

25 MR. HANLON: All right. So you agree that this

1 Commission could in fact apply different zones to those two
2 halves of the site and still be consistent with the comp
3 plan, right? Not be inconsistent with the comp plan?

4 MS. CAIN: There's any number of things the
5 Commission could do. What I would say is that the GPM works
6 in tandem with the FLUM, and the FLUM's designation is
7 consistent across the entirety of the site.

8 MR. HANLON: Let's take a look. Give me a moment,
9 please.

10 I want to ask you about your Slide 7. The guiding
11 principle is to -- the section that you're siting of the
12 comp plan is neighborhood conservation area. And we can
13 bring it up on one of my slides if you'd like to get a more
14 complete cite of that section of the comp plan.

15 The guiding principle is to conserve and enhance
16 established neighborhoods. So I understand there's a comma
17 after that. But tell me how building a 12-story building
18 next to a two-story row house neighborhood enhances that row
19 house neighborhood?

20 MS. CAIN: I think you have to read it with the
21 second part of that sentence, which is that it should not
22 preclude development, particularly to address housing needs.

23 MR. HANLON: Mr. Young, is it possible to bring up
24 a few of my PowerPoint slides? I have some of the comp plan
25 sections on those PowerPoint slides I'd like to ask the

1 witness about.

2 Good, all right. Let me see for a moment.

3 Comp plan 228D and E, I'm looking at Slide Number
4 29. Do you see it says zoning of any given area should be
5 guided by the future land use map interpreted in conjunction
6 with the text of the comp plan, the city-wide elements, and
7 the area elements. Right? We look at it all together.

8 MS. CAIN: Um-humm.

9 MR. HANLON: Okay. You also see it says, the
10 designation of an area of the particular future land use map
11 category does not necessarily mean that the intense zoning
12 district described in that category is automatically
13 permitted?

14 MS. CAIN: Um-humm.

15 MR. HANLON: And RA-4 for some portion of the site
16 would be less intense but still consistent with the future
17 land use map, correct?

18 MS. CAIN: The RA-4 is an identified zone, but so
19 is the RA-5. And as we've discussed, the MU-10 is basically
20 the equivalent of the RA-5. The MU-10 zone will also
21 advance a number of other goals of the comprehensive plan,
22 including affordable housing and the redevelopment of public
23 sites.

24 So again, the comprehensive plan needs to be
25 understood as a whole, not just on individual elements.

1 MR. HANLON: Well, wait a minute. Wait a minute.
2 RA-4 is -- in the comp plan, RA-4 is called a high density
3 residential area. Right? So RA-4 is also -- you say RA-5
4 is consistent with MU-10 with this site. But RA-4 is also
5 consistent with this site. It's high density residential.
6 But it creates a -- maybe a 90-foot building, I don't know.
7 But a much less dense building, and therefore probably a
8 much lower building than RA-5. They are both consistent
9 with high density residential designation of this site,
10 aren't they?

11 MS. CAIN: They are both identified in the FLUM.
12 That is correct.

13 MR. HANLON: Let me go -- I apologize, give me one
14 second. Can we go to -- Mr. Young, can we go to Slide 30?

15 The conservation of row house neighborhoods. You
16 talked about the importance of affordable housing, even
17 though much of this will be luxury housing. But that's not
18 the only policy in the comp plan. Another one, particularly
19 for the Mid City Area Element, is to conserve row house
20 neighborhoods, correct?

21 MS. CAIN: That is what the policy states.

22 MR. HANLON: Right. And to recognize and value
23 the importance of those Mid City row house neighborhoods,
24 right?

25 MS. CAIN: Um-humm.

1 MR. HANLON: So how does building a 600,000 square
2 foot, 12-story building across the street from a row house
3 neighborhood, and historically Black row house neighborhood
4 -- Striver's Section was founded by free Black men. How is
5 that -- how is that consistent with this comp plan policy of
6 conservation of row house neighborhoods?

7 MS. CAIN: Again, as I believe Mr. Kirschenbaum
8 testified to earlier, this property does not have any
9 existing row houses on it. So it is not going to be
10 disrupting any row houses directly.

11 Again, there are multiple policies within the
12 comprehensive plan. We believe that the MU-10 zone, on
13 balance, furthers enough to be consistent. It will provide
14 housing, it will provide affordable housing, which is a key
15 priority for the comprehensive plan. And those all have
16 equity impacts.

17 MR. HANLON: Um-humm. Give me a second.

18 Can we go to Slide 31?

19 This is Mid City Policy 1.1.1, neighborhood
20 conservation. And the back half of this lot is a
21 neighborhood conservation area, correct?

22 MS. CAIN: That's correct.

23 MR. HANLON: All right. And the policy is to
24 retain and reinforce the historic character of these Mid
25 City neighborhoods, correct?

1 MS. CAIN: Um-humm.

2 MR. HANLON: Well, again, I ask you, if this is
3 the policy, to retain and reinforce the historic character
4 of -- and -- well, let me ask -- let me give you the
5 premise. This site is surrounded on three sides by the
6 Striver's Section Historic District, correct?

7 MS. CAIN: That's correct.

8 MR. HANLON: How does building this huge a
9 building next to these tiny row houses retain and reinforce
10 the historic character of the Striver's Section Historic
11 District?

12 MS. CAIN: I mean, I will note that this policy
13 also does reference the existence of apartment houses. So
14 there are larger buildings in the surrounding area. And
15 when talking about the character of the neighborhood, we are
16 not just talking about architectural character. We are
17 talking about the people who are able to afford to live
18 there.

19 This area of the city has historically been one of
20 the most diverse, both economically and racially. And
21 providing more housing and affordable housing will allow it
22 to continue in that way.

23 MR. HANLON: All right. Well, let's look at the
24 last sentence of this Mid City policy. You mention
25 architectural heritage. The area's rich architectural

1 heritage and cultural history should be preserved and
2 enhanced. Do you see that?

3 MS. CAIN: Yes.

4 MR. HANLON: All right. Well, how are you
5 preserving and enhancing the architectural heritage of the
6 Striver's Section Historic District by building a modern,
7 12-story, maybe 600-unit apartment building, you know, 100
8 feet away from these people's front yards?

9 MS. CAIN: Again, Mr. Hanlon, the comprehensive
10 plan is analyzed as a whole. And on balance, we believe it
11 is consistent. And again, this property, though it may be
12 surrounded by historic districts, is not specifically
13 located in one.

14 As I have just testified, we believe that the
15 equity impacts that will result from the affordable housing
16 and housing that can be developed on the site under the
17 additional density that will be provided will help maintain
18 neighborhood character in a broader way than just looking at
19 the architectural character.

20 MR. HANLON: All right, so --

21 CHAIRPERSON HOOD: Ms. Cain -- let me ask,
22 Ms. Cain -- hold on one second -- what exhibit is this of
23 yours that we're looking at?

24 MS. CAIN: This is not. We have gone to
25 Mr. Hanlon's presentation.

1 MR. HANLON: We've gone to that part of the
2 presentation, Chair Hood, which prints out pieces of the
3 comp plan that I wish to ask her about.

4 CHAIRPERSON HOOD: So I notice that Ms. Cain -- I
5 was looking for this, because I've seen it before and I know
6 it was probably -- so I was looking for this and I was
7 looking in Ms. Cain's presentation, her PowerPoint, and I
8 didn't see it. So I figured it was somewhere else.

9 So we really need to -- and I appreciate her
10 answering these questions, but we really need to look at her
11 presentation and not yours and asking her questions about
12 yours. Even though the substance is the same for the most
13 part.

14 But what she has on her presentation and in her
15 testimony is what she needs to be cross-examined on.

16 MR. HANLON: I understand that, Chair Hood. But
17 part of her presentation is this map amendment is not
18 inconsistent with the comp plan.

19 CHAIRPERSON HOOD: Show me in her presentation
20 what page, in her presentation, what page we're on so I can
21 follow you.

22 MR. HANLON: Well, maybe I should ask Ms. Cain.
23 Are you testifying that this map amendment is not
24 inconsistent with the comp plan?

25 MS. CAIN: We have testified that we do not

1 believe that this map amendment is inconsistent with the
2 comprehensive plan, when analyzed as a whole, which is what
3 the legal standard is.

4 MR. HANLON: All right. So she's testifying,
5 Chair Hood, that it's not inconsistent with the comp plan.
6 And so I want to show her some provisions which I believe
7 are inconsistent with this map amendment.

8 MS. CAIN: Mr. Hanlon, you're missing the second
9 part of my statement, which is that it is the comprehensive
10 plan as taken as a whole. There are many conflicting parts
11 of the comprehensive plan. No project, no map amendment, is
12 almost ever consistent with everything. The question is, is
13 on balance the map amendment consistent with the
14 comprehensive plan, you know, as a whole? That is what we
15 have testified to. And that is what my answer is and will
16 continue to be.

17 MR. HANLON: But my duty --

18 CHAIRPERSON HOOD: She's given you -- she's given
19 you her answer and your duty -- she told you what it is.
20 Now you need to move forward. And in your presentation to
21 us, then you can -- on direct, you can refute that or
22 however you want to deal with that in your presentation to
23 us. Next question, please.

24 MR. HANLON: Chair Hood, I have to be able to ask
25 her about certain provisions of the comp plan. She cannot

1 say that it's, on balance, consistent if I can ask her about
2 five -- five different provisions --

3 MS. CAIN: But, Mr. Hanlon, that is unfortunately
4 the legal standard. It is taken as a whole.

5 MR. HANLON: Well, let me ask you some whole parts
6 about this comp plan, then. Let's go to the specific site.
7 How about that? Let's go to the comp plan provision about
8 this site. Give me one second. We'll go right to this
9 site.

10 There is a comp plan provision, which you cited --

11 MS. CAIN: Mr. Young, if you want to pull up my
12 presentation, the slide he's referencing is Slide 14.

13 CHAIRPERSON HOOD: Okay, thank you.

14 MR. HANLON: All right. The specific comp plan
15 provision for this site says, utilize the public land at the
16 site to create mixed use neighborhood landmarks that
17 acknowledge and continue the history of U Street as a Black
18 business corridor.

19 All right, how does this map amendment create a
20 neighborhood landmark?

21 MS. CAIN: The map amendment is providing
22 additional density. How that density is ultimately used is
23 going to be determined by the ultimate Surplus and
24 Disposition of the site. It is a mixed use zone, which
25 allows a variety of different uses, and it will facilitate

1 housing and affordable housing, which is the second part of
2 that policy.

3 MR. HANLON: How does this map amendment
4 acknowledge and continue the history of U Street as a Black
5 business corridor?

6 MS. CAIN: Again, it is providing density and uses
7 that can be put to that use more specifically. But that is
8 going to be dependent on the eventual project. What this
9 map amendment does is make that project possible.

10 MR. HANLON: I guess I'm not following. I don't
11 understand from your answer. Just tell me succinctly,
12 please, succinctly, how does a building -- a 12-story,
13 600,000 square foot building -- carry out this part of the
14 policy which is continue the history of U Street as a Black
15 business corridor? How does it help the Black business
16 community?

17 MS. CAIN: Mr. Hanlon, I've addressed this
18 question. What the ultimate development of the site is is
19 not what is up for discussion right now. What is up for
20 discussion is whether the map amendment is consistent with
21 the comprehensive plan.

22 The map amendment, as I indicated, will allow a
23 mix of uses and it will allow for additional affordable
24 housing and housing on this site.

25 MR. HANLON: All right. Without belaboring the

1 point, this section in your presentation is part of the
2 comprehensive plan, and you can't tell me how this carries
3 out that part of the comprehensive plan.

4 MS. CAIN: Mr. Hanlon, with all due respect, I
5 believe I have answered your question.

6 MR. HANLON: Let me go -- let's go back through --
7 oh, I know what I wanted to ask you before I go back through
8 your report.

9 Correct me if I'm wrong. I thought you said that
10 under 10-801, that 30 percent of the housing units at this
11 site would have to be affordable housing units. Did I
12 understand that right?

13 MS. CAIN: That is a requirement of 10-801, yes.

14 MR. HANLON: All right. Whereas, the IZ
15 requirement is different. It's 20 -- 18 to 20 percent of
16 the floor area, correct?

17 MS. CAIN: That is IZ Plus, correct?

18 MR. HANLON: Right. So one possibly, I suppose,
19 is since we are dealing -- since 10-801 doesn't talk about
20 square footage, why couldn't we make 30 percent of the units
21 in this building efficiencies, junior efficiencies, one
22 bedrooms, and build no family units at all? Because my
23 requirement as a developer is to kick out 30 percent of the
24 units as affordable. It doesn't say how big those units
25 have to be. Doesn't say how many bedrooms they'll have to

1 be. Doesn't even say it has to have a bedroom, it could
2 have an efficiency; isn't that right?

3 MS. CAIN: Mr. Hanlon, that is a question for the
4 ultimate development of the site. That is not a question
5 that is relevant to the map amendment evaluation.

6 MR. HANLON: Well, but you're presenting -- as I
7 understand it, you are supporting -- OP is presenting, you
8 are supporting this as important to carrying out the
9 affordable housing goals of the city. But I'm pointing out
10 to you that 30 percent of housing units, from a profit point
11 of view, almost certainly means we're going to build tiny
12 units to get to 30 percent. And so I don't understand how
13 that creates family affordable housing. Isn't that one of
14 the goals, family affordable housing?

15 MS. CAIN: Mr. Hanlon, you are talking about the
16 eventual project, which is again not before us. What we are
17 talking about is the maximum allowable density and what that
18 can facilitate.

19 MR. HANLON: You mention -- you talk about 10-801
20 and the requirements to provide 30 percent of the housing
21 units, no matter how big or small, can be waived by the
22 Mayor for multipole reasons, right?

23 MS. CAIN: There are waivers available.

24 MR. HANLON: And one of the reasons would be if
25 the disposition helps finance the provision of public

1 facilities, right?

2 MS. CAIN: I believe so.

3 MR. HANLON: All right, OP has said we're going to
4 have a fire station and a police station. The neighborhood
5 doesn't believe it. But OP has said that.

6 So if we're going to have a police station on this
7 property and a fire station on this property, then the
8 developer can get a credit against that 30 percent
9 affordable housing unit requirement because the Mayor can
10 waive it if the developer provides those facilities, right?

11 MS. CAIN: Again, Mr. Hanlon, you are talking
12 about what will be ultimately determined through the RFP
13 process. We cannot evaluate that right now. All we can
14 evaluate is what is, you know, within the zoning regs. So
15 the imposition of IZ Plus acts as a backstop against any
16 potential waivers that might be requested. But again, what
17 that final affordable housing set aside is, what the
18 affordability levels are, that is all to be determined
19 through a separate public process. That is not before the
20 Commission at the moment.

21 MR. HANLON: Does 10-801 require minimum of IZ
22 Plus?

23 MS. CAIN: IZ Plus is established through zoning.
24 And as I mentioned, it serves as a floor. It gives the
25 Commission something clear that is within their wheelhouse

1 to evaluate. What happens to the Surplus and Disposition
2 process would be above that. But again, the Surplus and
3 Disposition process is not before the Commission, the
4 Commission does not have a role in it.

5 MR. HANLON: No, I appreciate that. I understand
6 that, Ms. Cain. It's just that we see in your presentation,
7 OP's presentation 30 percent are going to be affordable.
8 It's not necessarily going to be that at all, right? It may
9 only be a minimum of 18 to 20 under IZ Plus, right?

10 MS. CAIN: Again, Mr. Hanlon, what it ultimately
11 is will be determined later. I cannot speak to what that
12 is.

13 MR. HANLON: Okay. Okay.

14 CHAIRPERSON HOOD: Mr. Hanlon, could you -- it's
15 getting late, and we are actually getting not necessarily
16 tired. What we are tired of is hearing the same questions
17 asked over and over again, which are not beneficial to us.
18 You are citing OP's report to her, you were using your
19 report. Let's ask her about her comments about her report
20 which she provided and stop really going way beyond what she
21 already has in her submissions. I think that would be
22 helpful.

23 If you want to help us to help you, help us
24 dissect her report or her verbal comments, her verbal
25 testimony.

1 MR. HANLON: Thank you, Chair Hood. I appreciate
2 that. But if she must -- if OP must establish that this map
3 amendment is not inconsistent with the comp plan and
4 policies, then -- and she's testifying that it is not
5 inconsistent with the comp plan and policies, as I
6 understand it, then I need to ask her about those comp plan
7 provisions and policies.

8 CHAIRPERSON HOOD: But you asked --

9 VICE CHAIR MILLER: -- over and over again and
10 many different ways, and she's given you the answer, the
11 same answer in many different ways. But you obviously don't
12 agree with it. That's fine. But I think you're really
13 providing, once again, testimony and repetitive testimony
14 over and over again.

15 I appreciate the points you've made. You've made
16 them in like the first five minutes of each of your rounds
17 of cross-examination.

18 MR. HANLON: Thank you, Mr. Miller.

19 Let me -- Chair Hood, may I have a moment to see
20 what additional questions I might have?

21 CHAIRPERSON HOOD: I really shouldn't say this,
22 but I've allotted -- well, no, I'm not going to say I
23 allowed you to 9:00, because I just figured that's what we
24 were going to do, be repetitive to now to 9:00.

25 But it will be helpful, Mr. Hanlon, seriously, it

1 would be helpful if you help us to understand how you are
2 differing from what Ms. Cain has mentioned. That's what
3 it's all -- that's what cross-examination is all about. You
4 know this. You're in court much more than I am.

5 MR. HANLON: Thank you. Well, thank you, Chair
6 Hood.

7 Let me take a look at -- I want to talk about --
8 the comp plan policy, the comp plan also talks about
9 balanced growth, right? Balanced growth in the Mid City
10 area, planning area. How is putting so much investment on
11 the eastern end of the area -- I apologize -- the western
12 end of the area balancing growth within the planning area?

13 MS. CAIN: Can you tell me which section that
14 you're citing to?

15 MR. HANLON: Yeah, give me one second. I was
16 afraid you were going to ask me that.

17 I'm looking at Mid City Element 2007.3. I don't
18 know if you need time to pull it up. I can put it on the
19 screen for you if you'd like. But I don't want to --

20 MS. CAIN: Just based on the earlier conversation,
21 I believe that that section of the comprehensive plan is
22 talking about the community, you know, meetings that were
23 held back when those sections were originally being drafted.

24 Again, taken as a whole, we believe that the map
25 amendment is consistent with the comprehensive plan, both

1 the area elements and the city-wide elements and the maps.

2 MR. HANLON: Even though this particular Mid City
3 element says that a better balance should be -- better
4 economic balance, quote, unquote, should be achieved, and
5 that the west end, where this development is, is already
6 generally vibrant, strong, demand for commercial space.
7 Whereas, neighborhood businesses from the east end are
8 suffering.

9 MS. CAIN: Again, Mr. Hanlon, taken as a whole, we
10 believe that the map amendment is consistent with the
11 comprehensive plan.

12 MR. HANLON: And doesn't the comprehensive plan
13 also say that this west end of the Mid City planning area
14 already has a fair amount of affordable housing?

15 MS. CAIN: Mr. Hanlon, as I've indicated, we
16 believe that whenever there is a possibility to provide
17 affordable housing, the comprehensive plan identifies
18 affordable housing as being in crisis in the District. So,
19 as I mentioned, we see that as in agreement with the
20 comprehensive plan that that is a key priority.

21 CHAIRPERSON HOOD: Let me interrupt.
22 Ms. Schillin, I meant to do this earlier, and I apologize to
23 everyone. Ms. Schillin, could you come up with another
24 date? Or did we do that? I don't think we did.

25 MS. SCHILLIN: I gave you two options, the 22nd

1 and the 29th, and you said you would make that determination
2 tonight.

3 CHAIRPERSON HOOD: Okay. Does anybody have any
4 issues with the 29th? Okay. So I know we have some people
5 who may be out on the 22nd, so I want to make sure that
6 everyone is here.

7 So the 29th, I believe -- I'm looking at my
8 colleagues. Okay.

9 All right, so we are going to reconvene on the
10 29th. But we are going to get as far as we can tonight,
11 Mr. Hanlon. And I'll leave it at that. So thank you.
12 Thank you, Ms. Schillin.

13 MR. HANLON: Ms. Cain, I was looking at Mid City
14 Area Element 2013.5. It says one of the policies of the Mid
15 City area, planning area, is, quote, unquote, to encourage
16 the growth and vibrancy of U Street between 6th Street and
17 12th Street, Northwest, and Georgia Avenue, 17th Street,
18 between Rhode Island and Barry Place.

19 You would agree with me that this type of large
20 investment at the other end of U Street is not consistent
21 with that comp plan policy to encourage growth at the other
22 end of U Street?

23 MS. CAIN: Mr. Hanlon, with all due respect, I
24 have answered your question about comprehensive plan
25 consistency. OAG believes this map amendment is consistent

1 with the comprehensive plan as taken as a whole. I don't
2 know how else to answer various questions about various
3 comprehensive plan elements other than that answer.

4 MR. HANLON: Well, has the OAG identified
5 particular -- has the OAG identified particular provisions
6 of the comp plan that this map amendment is inconsistent
7 with?

8 MS. CAIN: I have outlined in my written statement
9 and in our appendix all of the comprehensive plan sections
10 that we cite to in support of our position.

11 MR. HANLON: Right. And you said it should be
12 taken as a whole. I am asking whether there are certain
13 sections of the comp plan that this map amendment is
14 inconsistent with?

15 MS. CAIN: We believe that the sections we have
16 outlined render it consistent. Again, I don't -- my answer,
17 unfortunately for you, is not going to change. So --

18 MR. HANLON: The Commission's racial equity tool
19 says -- and it is also in 10-A DCMR 213.6 -- says the
20 comprehensive plan framework element states that equity is
21 achieved by targeted actions and investments to meet
22 residents where they are.

23 Wouldn't you agree with me that targeting so much
24 public and private investment is the opposite of this
25 provision of the racial equity tool? You're not --

1 MS. CAIN: I would not agree with that. We
2 believe that this site, as a public site, is a site that is
3 located in a central area, near transit, provides a key
4 opportunity to provide housing and affordable housing, as
5 called for by the comprehensive plan, both broadly in the
6 housing element and various housing policies, and then also
7 for the specific site, which specifically says that it
8 should be used to provide affordable housing.

9 So, no, we do think that this map amendment is
10 consistent with the comprehensive plan's equity goals.

11 MR. HANLON: Did I misunderstand before, and I
12 don't want to misstate your testimony, so please correct me
13 if I'm wrong, that you did not analyze the Mid City Planning
14 Area census tracts by race?

15 MS. CAIN: We analyzed the census tract for the
16 project. We used some of the census data that was provided
17 for the Mid City Planning Area. You can see that data. We
18 have cited to everything in both the written filing and in
19 the PowerPoint testimony.

20 MR. HANLON: All right, so I would be correct that
21 you looked at the Mid City Planning Area as a whole, and you
22 looked at this one census tract, but not all the other
23 census tracts in the Mid City Planning Area, which have a
24 much greater Black and Hispanic population, right?

25 MS. CAIN: I believe the Mid City Planning Area

1 data comes from an amalgamation of all of those census
2 tracts. But again, what is in our presentation is in our
3 presentation. If you would like to ask me specific
4 questions about that data, I'm happy to answer it.

5 MR. HANLON: Well, yeah. I'm just trying to
6 figure out how you do a racial equity analysis if you don't
7 look at the racial composition of the census tracts in the
8 planning area.

9 MS. CAIN: Mr. Hanlon, as I've also indicated, we
10 did not propose this text amendment. We did not -- we were
11 not in the position of the Office of Planning to do that
12 racial equity analysis as part of the proposal. We have
13 analyzed it, as I have demonstrated in my PowerPoint
14 presentation.

15 MR. HANLON: Without belaboring the point, don't
16 you think the Attorney General of the District of Columbia
17 has an obligation when it comes here to testify before the
18 Zoning Commission to look at these map amendments through a
19 racial equity lens? How are we ever going to deal with the
20 problems if we don't look at it through the lens?

21 MS. CAIN: Mr. Hanlon, we provided data broken
22 down by race. Again, I don't know how else to answer your
23 question other than I already have.

24 MR. HANLON: Chair Hood, can you give me a moment,
25 please?

1 CHAIRPERSON HOOD: Sure. How much time do you
2 need?

3 MR. HANLON: Is it possible to give me three or
4 four minutes to let me see if I have other questions?

5 CHAIRPERSON HOOD: Oh, I thought it was three or
6 four before you finished. Okay, yeah, sure, take three or
7 four minutes. Sure.

8 MR. HANLON: Can I go off video for my three or
9 four minutes?

10 CHAIRPERSON HOOD: Yeah, let's take a five-minute
11 break.

12 MR. HANLON: Thank you.

13 (Recess.)

14 MR. HANLON: I'm sorry. Chair Hood, can you hear
15 me okay?

16 CHAIRPERSON HOOD: Yes, we can hear you. Are you
17 ready?

18 MR. HANLON: Yeah.

19 CHAIRPERSON HOOD: Okay.

20 MR. HANLON: I have a couple more questions. I
21 want to ask you about your graphs in your presentation.

22 Can we go to your slide number -- I believe it's
23 Slide Number 10, Census Tract and District Meeting Annual
24 Mortgage and Rent Costs?

25 This was the slide that you corrected for --

1 corrected for inflation?

2 MS. CAIN: Yes, we adjusted it for inflation.

3 MR. HANLON: But I don't know -- I don't see that
4 you corrected it for income growth.

5 MS. CAIN: I don't understand what you mean.

6 MR. HANLON: Well, I mean, this census tract is
7 one of the richest census tracts in the city now, has one of
8 the highest incomes in the city. And so I mean, the census
9 data indicates household income is like 148,000 and change.

10 So what I'm trying to wonder is, rather than
11 presenting this to the Commission, would it have been much
12 more informative, because it's available, I've seen it, to
13 present to the Commission how many -- what percentage of
14 people are paying more than 30 percent of their income for
15 housing in this census tract, what percent are doing that in
16 the city as a whole? And if you did that, wouldn't you find
17 that the housing -- the rent burden in this census tract, in
18 this neighborhood, has actually decreased. It's only about
19 15 percent of people paying more than 30 percent of their
20 income for housing. It's greater, seriously greater, in
21 places in Southeast, seriously greater in places in
22 Northeast.

23 But this census tract, when you produced this
24 graph that shows rent costs in this census tract going way
25 up to 27,000, that's about -- what is that, about \$2,300 a

1 month or something for rent, don't you think it's somewhat
2 uninformative? I don't want to use the word misleading.
3 But uninformative? Because you haven't also told the
4 Commission how much the income has risen of the people in
5 the census tract. This burden is actually lower for them
6 than it was 20 years ago.

7 MS. CAIN: Mr. Hanlon, this seems like information
8 that would be more relevant in your presentation.

9 MR. HANLON: But I am asking how you created the
10 graph that didn't --

11 MS. CAIN: Mr. Hanlon, we presented the
12 information that we presented. If you would like to present
13 different information or conflicting information, or
14 information that you believe disproves our point, you are
15 welcome to do so. But that is not what I presented into
16 evidence in my testimony.

17 MR. HANLON: Right, and that's the problem.
18 Right? Because we haven't talked about the burden of
19 housing in the census tract in the city, and where that
20 burden is increasing. And in some places, it is. Not here.

21 MS. CAIN: We talked about the housing burden in
22 the area element, so we did provide that information. But
23 again, if you have differing information that you want to
24 present to the Commission, you are more than welcome to do
25 so in your testimony.

1 MR. HANLON: Okay, give me one second more.

2 I -- when looking at this graph again, am I
3 correct in understanding that this graph shows that the
4 burden of a home mortgage has actually decreased in the
5 census tract from 20 years ago?

6 MS. CAIN: It has decreased slightly. But again,
7 the percentage of renters in this census tract has always
8 been in the majority. It has always been between 66 and 64
9 percent.

10 MR. HANLON: Um-humm. And the income is much
11 greater, right? All right. I just wanted to be clear that
12 the housing burden for homeowners has decreased in this
13 census tract. The housing burden for the whole District of
14 Columbia -- well, for this census tract. The whole District
15 of Columbia has decreased from 2010 to 2021, the last
16 decade.

17 MS. CAIN: Again, Mr. Hanlon, if you have
18 additional information that you want to present, you may do
19 so. I can only testify to what is on this slide.

20 MR. HANLON: No, I understand.

21 Chair Hood, I believe I have no more questions at
22 this time. I know you were probably waiting for that. I --

23 CHAIRPERSON HOOD: If I was, I wouldn't admit it.

24 (Laughter.)

25 CHAIRPERSON HOOD: Let me just say this.

1 Ms. Schillin, what do we do next? I'm trying to see if we
2 have time.

3 MS. SCHILLIN: ANCs.

4 CHAIRPERSON HOOD: And then they have to be
5 crossed?

6 MS. SCHILLIN: ANC reports, and then cross.

7 CHAIRPERSON HOOD: Mr. Hanlon, do you think you
8 have any questions for the ANCs?

9 MR. HANLON: Do I? Oh, yeah. Oh, yeah, I do.

10 CHAIRPERSON HOOD: Okay. I'm just trying to gauge
11 my time, so --

12 MR. HANLON: Oh, yeah. I do, I do, I do.

13 CHAIRPERSON HOOD: So again, do my colleagues have
14 any final things to say?

15 VICE CHAIR MILLER: Mr. Chairman, DDOT isn't here,
16 are they? There's no other District agencies here to
17 testify; is that correct?

18 CHAIRPERSON HOOD: Yeah. We don't have anybody
19 else, right, Ms. Schillin? Any other government agencies?

20 VICE CHAIR MILLER: Okay, I just wanted to confirm
21 that.

22 MS. STEINGASSER: Chairman Hood, I have one
23 follow-up question for Ms. Cain.

24 CHAIRPERSON HOOD: Sure, go right ahead.

25 MS. STEINGASSER: So Ms. Cain, just one other

1 question. You stated in your testimony the goal for
2 affordable housing. Do you think that significant
3 affordable housing goals can be met on the property as
4 currently zoned?

5 MS. CAIN: I think a lot less affordable housing
6 could be provided under the existing zoning than what is
7 proposed. And as I mentioned, more affordable housing from
8 our standpoint is always better.

9 MS. STEINGASSER: Understood. Okay, thank you.

10 CHAIRPERSON HOOD: All right, thank you.

11 I guess what we'll do is just on January -- what
12 day was that, Ms. Schillin?

13 MS. SCHILLIN: The 29th. It's a Monday.

14 CHAIRPERSON HOOD: January 29, it's a Monday,
15 we'll start at 4:00 p.m. on these same platforms. And we
16 will start with ANC 1B.

17 Okay, does anybody have anything else? We're all
18 on the same page?

19 All right. So, again, we will reconvene on
20 January 29 on these same platforms.

21 With that, I thank everyone for your
22 participation, and we will see you then. Good night.

23 (Whereupon, the meeting was adjourned at
24 8:24 p.m.)

25 * * * * *

