

Zoning Commission Case No, 09-03

Skyland Town Center

2010 JUN 18 PM 2: 14

Proposed Benefits and Amenities and Corresponding Conditions in Draft Order

June 18, 2010 - REVISED TO ADDRESS OP AND OAG COMMENTS

Benefit & Amenity	Condition Number in Order (See Attached)
1. Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located within the geographic boundaries of ANC 7B and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub." The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution.	Condition No. 2
2. Sponsorship of local community events and programs: The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.	Condition No. 2

ZONING COMMISSION
District of Columbia

CASE NO.

09-03

EXHIBIT NO.

124

3. Contractor Loan Fund: The Applicant shall establish and administer a \$300,000 fund that will ensure timely payment for small Certified Business Enterprise and local contractors during construction who cannot otherwise wait for typical draw cycles to be paid. The contractor loan fund will be made available for the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those contributions, and the outstanding balance of this fund. If any money remains in this fund at the time of issuance of the base building certificate of occupancy for the final component of the project, that money will be added to the retailer build-out subsidy fund.	Condition No. 2
4. Local retailer build-out subsidy: The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprises and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those contributions, and the outstanding balance of this fund.	Condition No. 2
5. The Applicant shall provide job training programs, at a cost of \$75,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to the job training programs that were conducted in the prior year, if any.	Condition No. 2

6. The Applicant shall provide home buying and homeownership classes, at a cost of \$75,000, to prepare community members and future residents for purchasing a home, repairing credit, and maintaining a home. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to the home buying programs that were conducted in the prior year, if any.	Condition No. 2
7. The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution.	Condition No. 2
8. The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The improvements and maintenance of the pocket park will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any improvements were made for this purpose, the recipient of those improvements, and the outstanding balance of this contribution.	Condition No. 2

9. In consultation with DDOT, and contingent upon its approval, the Applicant shall establish and provide space for an 800 - 1,000 square foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders Smartcards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the commuter store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finish floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment of specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that it will not be responsible for the operation of the commuter store, the Applicant will not be required to provide such space. DDOT must make this decision by the time of the issuance of the building permit for Block 2.	Condition No. 4
10. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards, and contingent on DDOT issuing a permit for such improvements.	Condition No. 5
11. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials: new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant shall replace a 12 inch waterline. These public space improvements must be made by the completion of the last phase of development of the project.	Condition No. 6
12. The project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent	Condition No. 7

standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The large format retail store in Block 1 shall be designed to achieve a LBED Silver rating in the LBED NC 2.2 or LEED-CS 2.0 rating system, or other equivalent standard. The Applicant shall provide evidence to the Zoning Administrator, from a LEED certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building.	
13. The Applicant shall establish a transportation management program ("TMP") that includes the following: a. A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies. b. Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA. c. Request employers at Skyland Town Center to provide employees with Metrochecks or SmarTrip cards. d. Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company. e. Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops. f. Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets. g. Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by	Condition No. 8

DDOT).	
h. Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center. i. Monitor and regularly evaluate the TMP.	
14. Enter into a First Source Employment Agreement with the D.C. Department of Employment Services in conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Zoning Administrator prior to the issuance of the first above grade building permit for the project.	Condition No. 9
15. Enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the Zoning Administrator prior to the issuance of the first above grade building permit for the project.	Condition No. 10
16. Reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, DC Metropolitan Statistical Area (adjusted for family size). Reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2-4 except for the two upper stories of each building and the townhouses. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the DC Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.	Condition No. 11

Construction Mitigation Measures	Condition Number in Order (See Attached)
17. Undertake the construction mitigation measures as stated in Exhibits 112 and ____ of the record. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity, the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Zoning Commission, nor the Zoning Administrator, will have any responsibility or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of a on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.	Condition No. 12
Permitted Parking Spaces	Condition Number in Order (See Attached)
18. The number of parking spaces permitted in the PUD project shall be consistent with the Parking Space Assessment Matrix included as Exhibit 51 in the record.	Condition No. 13

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of this application for Consolidated Review of a Planned Unit Development and related Zoning Map amendment for the Subject Property (Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, & 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641, Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33). The approval of this PUD is subject to the following conditions:

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit _____ of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall make the following financial, or in-kind service, contributions:
 - a. Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located within the geographic boundaries of ANC 7B and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub." The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution.
 - b. Sponsorship of local community events and programs: The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution.
 - c. Contractor loan fund: The Applicant shall establish and administer a \$300,000 fund that will ensure timely payment for small Certified Business Enterprise and local contractors during construction who cannot otherwise wait for typical draw cycles to be paid. The contractor loan fund will be made available for the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. If any money remains in this fund at the time of

issuance of the base building certificate of occupancy for the final component of the project, that money will be added to the retailer build-out subsidy fund.

d. Local retailer build-out subsidy: The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund.

e. Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution.

f. Pocket Park at 25th Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The improvements and maintenance of the pocket park be will be provided over the entire time period of the development of the project, as discussed Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether any improvements were made for this purpose, the recipient of those improvements, and the outstanding balance of this contribution.

g. The Applicant shall provide job training programs, at a cost of \$75,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to the job training programs that were conducted in the prior year, if any.

h. The Applicant shall provide home buying and homeownership classes, at a cost of \$75,000, to prepare community members and future residents for purchasing a home, repairing credit, and maintaining a home. The Applicant expects that these classes will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective

date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator as to whether as to the home buyer training programs that were conducted in the prior year, if any.

3. Once all of the financial and in-kind service contributions and programs identified in Condition Nos. 2-4 are completed, there is no further obligation on the part of the Applicant. The Commission will require those organizations receiving a monetary contribution to present evidence to the Zoning Administrator demonstrating that the money has been applied to the designated use within six months of receiving the contribution. If the money has not been applied to the designated use within six months, then the recipient must provide a reasonable explanation to the Zoning Administrator to why not and must present evidence to the Zoning Administrator within one indicating that the contribution has been properly allocated.
4. In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for a 800 - 1000 square foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders Smartcards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finish floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment of specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that it will not be responsible for the operation of the commuter store, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
5. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
6. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. The Applicant will also provide two green roofs. These public space improvements must be made by the completion of the last phase of development of the project.

7. The project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The large format retail store in Block 1 shall be designed to achieve a LEED Silver rating in the LEED NC 2.2 or LEED-CS 2.0 rating system, or other equivalent standard. The Applicant shall provide evidence to the Zoning Administrator, from a LEED certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building.
8. The Applicant shall establish a transportation management program ("TMP") that includes the following:
 - a. A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies.
 - b. Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA.
 - c. Request employers at Skyland Town Center to provide employees with Metrochecks or SmarTrip cards.
 - d. Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company.
 - e. Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops.
 - f. Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets.
 - g. Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT).
 - h. Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center.
 - i. Monitor and regularly evaluate the TMP.
9. Enter into a First Source Employment Agreement with the D.C. Department of Employment Services in conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully signed First Source Employment Agreement between the Applicant and DOES must be filed with the Zoning Administrator prior to the issuance of the first above grade building permit for the project.
10. Enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in conformance with

the Agreement included as Exhibit G of the Applicant's Pie-Hearing Statement submitted into the record. A fully signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the Zoning Administrator prior to the issuance of the first above grade building permit for the project.

11. Reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, DC Metropolitan Statistical Area (adjusted for family size). Reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2-4 except for the two upper stories of each building and the townhouses. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the DC Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.
12. Undertake the construction mitigation measures as stated in Exhibits 112 and _____ of the record. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Zoning Commission, nor the Zoning Administrator, will have any responsibility or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of a on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.
13. The number of parking spaces permitted in the PUD project shall be consistent with the Parking Space Assessment Matrix included as Exhibit 51 in the record.
14. The Applicant shall have flexibility with the PUD in the following areas:
 - a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - b. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
 - c. To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit;
 - d. To vary the appearance of the facade of the building on Block 1 to meet the design requirements and architectural standards of the ultimate tenant.

15. The Office of Zoning shall not release the record of this case to the Zoning Regulations Division of DCRA and no building permit shall be issued for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this order, or amendment thereof by the Zoning Commission. The applicant shall file a certified copy of the covenant with the records of the Office of Zoning,
16. The change of zoning from the R-5-A, R-5-B, and R-I-B Zone Districts to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 16, pursuant to 11 DCMR §3028.9.
17. The PUD shall be valid for a period of three (3) years from the effective date of Zoning Commission Order No. 09-03. Within such time, an application must be filed for a building permit for the construction of Block 1, 2, 3, or 4 as specified in 11 DCMR Section 2409.1; the filing of the building permit application will vest the Zoning Commission Order. An application for the final building permit completing the development of the approved PUD project must be filed within ten (10) years of the issuance of the final certificate of occupancy for the first building.

The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act") the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination, which is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this order.