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TO: SHARON SCHELLIN

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FROM: ELAINE MITTLEMAN

TEL, 703 734-0482
NO.

STATEMENT RE:

SKYLAND HOLDINGS
PUD APPLICATION
NO. 09-03

Sharon:

My statement is attached,
Thank you for your assistance,
Elaine Mittelman

Att: 4 pages

ZONING COMMISSION
District of Columbia

CASE NO. 09-03

EXHIBIT NO. 30

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Admitted in the District of Columbia; Not Admitted in Virginia

March 16, 2009

Anthony J. Hood
Chairman
D.C. Zoning Commission
441 4th St., N.W.
Suite 200S
Washington, D.C. 20001

Re: Skyland Holdings, LLC, PUD Application, No. 09-03

Dear Mr. Hood:

I represent several property owners and tenants at the Skyland Shopping Center in Southeast Washington, D.C. The District passed a law to take the property at Skyland Shopping Center by eminent domain and there has been ongoing litigation about the condemnations.

It is my understanding that Skyland Holdings, LLC, submitted on February 17, 2009, an Application to the District of Columbia Zoning Commission for Consolidated Review and Approval of a Planned Unit Development and Zoning Map Amendment. The Application is No. 09-03.

Following are several concerns I have about this Application. As I have the opportunity to review this Application in further detail, I may submit additional information and thoughts about this matter. I would appreciate receiving notice of any hearing and would like the opportunity to speak at any hearing on this matter.

- I. There needs to be an explanation of the agreement and relationship between the Applicant and the District of Columbia concerning this Application.**

The Applicant is Skyland Holdings, LLC, which consists of The Rappaport Companies, William C. Smith & Company, Harrison Malone Development LLC, the Marshall Heights Community Development Organization and the Washington East Foundation. The Application states at page 1 n. 1 that "(t)he Subject Property is owned

by the District of Columbia.” The Application does not explain the agreement and relationship between the Applicant and the District of Columbia concerning this Application. Specifically, the terms under which the Applicant may gain control or an interest in the Subject Property are not described. In addition, there is no discussion of any financing terms or financial arrangements between the Applicant and the District of Columbia.

II. The status of ownership and of the titles to the parcels included in the Subject Property must be verified.

The Application states that the Subject Property is owned by the District of Columbia. However, the Application provides no documentation to support that statement. The District undertook to take many of the parcels included in the Subject Property by eminent domain and the condemnation litigation is ongoing.

In addition, there is uncertainty concerning the titles to many of the Skyland properties. Enclosed herein is a list created from the Recorder of Deeds website for filings on March 9, 2007, which is apparently the date on which there were filings for several Skyland properties. These records do not show that the District of Columbia has title to the Skyland properties. Further, the records show that the grantor was the National Capital Revitalization Corporation.

The titles to the parcels in the Subject Property must be verified and accurate before the Application can be approved. The District must show that it has clear title to the parcels in the Subject Property.

III. All of the property included in a PUD shall be contiguous.

The regulations provide that all of the property included in a PUD shall be contiguous 11 DCMR § 2401.3. The Application lists numerous parcels, but it is not clear that they are contiguous and include all pertinent parcels at Skyland. For example, Square 5632 Lot 0002 and Square 5633 Lot 0021 appear to be Skyland parcels, but they are not included in the Application. Lists created from the Recorder of Deeds website for Square 5632 Lot 0002 and Square 5633 Lot 0021 are enclosed herein.

In addition, the Application includes Square 5632 Lot 0003 in the Subject Property. The Application includes the same parcel in Exhibit D, which is a list of all property within 200 feet of the property involved in the Application. Square 5632 Lot 0003 should not be included as part of the Subject Property and also as property within 200 feet of the property involved in the Application. Square 5632 Lot 0003 should be either included in the Subject Property or as an adjoining property, but not both.

IV. The anchor tenant should be identified.

National Capital Revitalization Corporation (“NCRC”) pledged to the District of

Columbia Council that no land acquisition would begin until there was an anchor tenant. See letter dated March 3, 2005 (enclosed herein), to Councilmember Jim Graham from Shaw Pittman, LLP. There still appears to be no anchor tenant, even four years after the date of the Shaw Pittman, LLP, letter. The District is the successor to NCRC and should be held to the pledge of NCRC concerning an anchor tenant.

The Application must describe specific information about the anchor tenant and other tenants to be included in the proposed development. The lack of an anchor tenant is a strong indicator of the extreme uncertainty about the successful implementation of the development plan.

V. The Applicant should provide notice about the Application to Skyland Shopping Center property owners, businesses, tenants and employees.

The regulations provide that, at least ten calendar days prior to filing an application, the applicant shall mail written notice of its intent to file the application to the owners of all property within two hundred feet of the perimeter of the property in question. The applicant may mail notice to any other person or organization the applicant determines appropriate to receive the notice. 11 DCMR §§ 2406.7 - 2406.10.

The Applicant apparently has not mailed written notice about the Application to the property owners, businesses, tenants and employees at the existing Skyland Shopping Center. As discussed above, the titles to certain parcels at Skyland are not clear. As a result, those who were and/or remain property owners at Skyland Shopping Center should have received written notice from the Applicant of its intent to file the Application.

Further, the regulations provide that the applicant may mail notice to any other person or organization the applicant determines appropriate to receive the notice. It would certainly be in the interest of the property owners, businesses, tenants and employees at the existing Skyland Shopping Center to receive notice of the Application. These persons are directly affected by the planned development and they should be given full notice and an opportunity to participate in any proceedings concerning the proposed development at Skyland Shopping Center.

VI. The Application should address the effect of the proposed development on Skyland Shopping Center property owners, businesses, tenants and employees.

The Application fails to address the concerns of the property owners, businesses, tenants and employees at the existing Skyland Shopping Center. A reader of the Application would be left with the impression that the property owners, businesses, tenants and employees do not exist. Many people at Skyland have been long-standing merchants and have served the community. In addition, many people rely upon the businesses at Skyland for their livelihood. The displacement of those businesses would cause great hardship and loss of income to the property owners, businesses, tenants and

employees at Skyland Shopping Center.

There remains substantial uncertainty about the viability of the proposed development, which has been exacerbated by today's economic climate. Other highly-touted economic development projects, such as the one in New London, Connecticut, have apparently been halted or delayed. It would be a detriment to the District of Columbia, its citizens and those who rely upon the existing Skyland Shopping Center to close the businesses when there is no assurance whatever as to when replacement businesses would be in operation. The presentation of an elaborate plan with drawings and landscaping design can foster the desire for a picture-perfect development, but it does not provide the economic means to guarantee that the proposed development will be built.

VII. The role of land use counsel Pillsbury Winthrop Shaw Pittman, LLP, should be reviewed.

The law firm of Shaw Pittman, LLP, represented First FSK Limited Partnership, which was the property owner of a significant part of the Skyland Shopping Center. The law firm of Shaw Pittman, LLP, is now Pillsbury Winthrop Shaw Pittman, LLP. The Application identifies the land use counsel as Pillsbury Winthrop Shaw Pittman, LLP.

In a letter dated April 6, 2004 (enclosed herein), Shaw Pittman, LLP, described its opposition to NCRC's proposed acquisition and redevelopment of the Skyland Shopping Center. In a letter dated September 25, 2004 (enclosed herein), Shaw Pittman, LLP, stated that, "(u)pon investigation, you will likely find the NCRC's proposed redevelopment an unjustifiable and misguided use of public resources. NCRC and all parties engaged in forcing through the redevelopment have failed to assess the situation fully and have completely dismissed the many negative factors undermining the justification and success of the 'revitalization.'"

The representation by Shaw Pittman, LLP, (and its successor firm) of two parties which have diametrically opposite positions concerning the development of the Subject Property raises substantial questions. The statements made by Shaw Pittman, LLP, in its representation of First FSK should be considered in the review of this Application.

Thank you for your attention to this letter. I would be glad to provide additional information on this matter.

Sincerely,



Elaine Mittleman

Enclosures