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Christopher H. Collins
202-457-7841

Internet Address:
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MEMORANDUM

February 5, 2003

BY HAND

TO: Jennifer Steingasser,
Office of Planning

FROM: Christopher H. Collins

RE: Zoning Commission Case No. 02-35
(Text Amendment – Definition of Building Height) – Impact on Development of Portals Site at 12th, 14th and D Streets and Maine Avenue, S. W.

Introduction

As a follow-up to our recent meeting and our subsequent discussion, the following information is to provide you with a background of the development of the Portals site. This project, which has been in various stages of planning and development since January of 1986, uses Maryland Avenue, S.W. as the point of measurement of building height. This measuring point has been approved and confirmed by a number of D.C. government agencies over the years. Parcels A, B and C of the Portals site were developed with this point of measurement. A change in the point of measurement for Parcels D and E, as proposed in Case No. 02-35, would have significant impacts on the project.

Exclusive Rights Agreement

The proposed development of the Portals site was approved by the D.C. Redevelopment Land Agency (RLA) in early 1986. RLA controlled the property at that time, and executed an Exclusive Rights Agreement (ERA) with Portals Development Associates (PDA) on January 24, 1986 (Exhibit A). The ERA stated, *inter alia*, that in consideration of PDA's investment of both time and resources in the preparation of a

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 24
ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.24

proposal for development, the RLA would forego consideration of other proposals. Initial plans were due within 30 days, and the objective of the Agreement was "to create a high quality development."

Project plans were prepared by Arthur Cotton Moore Associates for submission to RLA. The Portals site, like most of Southwest D.C. at the time, was not subject to the 1958 Zoning Regulations, but instead to the pre-1958 regulations and the Southwest Urban Renewal Plan. The original plans for the project showed that the buildings in the Portals development would be constructed to a height of 90 feet, as measured from the Maryland Avenue roadway to be constructed over the railroad tracks. The attached Site Plan, dated February 21, 1986 (Exhibit B), shows the proposed development in roughly four quadrants, bordered by 12th, 14th and D Streets, S.W. and Maine Avenue, with the project divided into quarters by Maryland Avenue and 13th Street. The Site Plan shows that the elevation of the first floor levels of all of the proposed buildings was to be at D.C. datum plus 44, which was the then-proposed elevation of Maryland Avenue and the central plaza. Maryland Avenue was eventually constructed at a width of 160 feet, with a central plaza of 320 feet in diameter, at a building measuring point elevation of plus 47.

In order to confirm the then-current status of Maryland Avenue, S.W., PDA sought the input of the D.C. Surveyor. On January 16, 1986, Ralph Shaeffer, the then-Surveyor of the District of Columbia, confirmed that Maryland Avenue was vacated and abandoned for public use in 1901, and use of the street was granted to the railroad. (Exhibit C). He also confirmed that, subsequently, Congress then transferred certain portions of Maryland Avenue to the RLA, with the remainder of the right-of-way to be known as a "railroad street".

Land Disposition Agreement

In May of 1989, the Developer and RLA entered into a Land Disposition Agreement (LDA). Section 1 of Part I of the LDA includes the definitions to be used throughout the Agreement. The term "Basement-Type Space" was defined as anything below D.C. datum plus 46 (the elevation of the Maryland Avenue roadway).[1] Section 7 of Part I of the LDA required PDA to construct the Maryland Avenue roadway as a pubic improvement, and also required the RLA to review and approve the plans for the Maryland Avenue roadway prior to construction. Section 105 of Part II of the LDA required PDA to dedicate the Maryland Avenue roadway to the District of Columbia.

[1] The subsequent drawings indicate a point of measurement of the buildings abutting the Avenue at elevation plus 47.

Development

The Maryland Avenue roadway and Parcels B and C of the Portals site were developed in the early 1990's pursuant to the controls of the Southwest Urban Renewal Plan. The office buildings are now known as 1250 and 1280 Maryland Avenue, S.W. The plans for the buildings and the roadway were subject to RLA review and approval, as well as review and approval by the Commission of Fine Arts, under the Shipstead-Luce Act. The buildings were developed using the Maryland Avenue roadway as the point of measurement.

The Urban Renewal Plan for the Southwest Urban Renewal Area, Project Area C expired in 1997. The Zoning Commission then approved a Zoning Map Amendment to rezone the property from its then unzoned status to C-3-C. PDA then sought and received confirmation from the Zoning Administrator that, under the Zoning Regulations, the height of the buildings in the Portals development could be measured from Maryland Avenue. (Exhibit D).

Parcel A is currently being developed pursuant to the C-3-C zoning regulations with the Mandarin Oriental Hotel, and also uses Maryland Avenue as the point of measurement. The hotel was also reviewed and approved by the Commission of Fine Arts. The hotel development is using financial assistance by the city, through the Tax Increment Financing (TIF) program. The entire Portals site is identified by the Comprehensive Plan as medium-high density commercial, and is a Development Opportunity Area.

Schedule of Heights Amendment

In 1999, the Council of the District of Columbia enacted D.C. Law 12-234, the "Schedule of Heights of Buildings Amendment Act of 1998". The purpose of the legislation was "to amend Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings to provide more uniformity in the heights and setbacks of buildings to be developed on a site bounded by 14th Street, S.W., D Street, S.W., 12th Street, S.W., and Maine Avenue, S.W. in Ward 2."

The Report to Members of the Council from Chairman Linda Cropp on that legislation, dated October 20 1998 (Exhibit E), notes on page 3 that "The Portals site is zoned C-3-C, which permits a building to be constructed as a matter-of-right to a height of 90 feet, as measured from the highest elevated sidewalk adjacent to the building (which, in this case, is the Maryland Avenue frontage)." Chairman Cropp also recognized on page 3 of the Report that "the maximum building height of the Portals building under the 1910 Height Act is 130 feet, as measured from the Maryland Avenue frontage."

The purpose of the legislation was to amend the Schedule of Heights to allow a building on the portion of the Portals site adjacent to 14th Street to be set back an additional 20 feet, and thereby have its height measured from Maryland Avenue, the same as the other buildings in the Portals development. On page 4 of the Report, Chairman Cropp notes that the permitted zoning height of this parcel "would be still 40 feet lower than the overall maximum limits set forth in the 1910 Height Act". She further noted on page 4 that, under either the PUD or TDR scenario, "such additional height, if approved, would still be consistent with the overall maximum limits set forth in the 1910 Height Act."

The Executive Branch, through the D.C. Department of Housing and Community Development (DHCD), testified in support of the amendment to the Schedule of Heights. (Exhibit F). Mr. Smith of DHCD testified that the intent of the project design was "to provide balanced development along Maryland Avenue, framing views to the Capitol and the Tidal Basin and to ensure unified height along the grand new avenue". He testified that the proposed amendment would prevent "an awkward and unbalanced building scheme with three of the buildings along new Maryland Avenue with a uniform height of 90 feet and a fourth building at a height of less than 60 feet". He testified that the DHCD's Architectural Review Panel (ARP) and the U.S. Commission of Fine Arts both reviewed and approved the building height that would be permitted by the amendment, i.e., to measure the building height from Maryland Avenue.

Conclusion

Maryland Avenue was constructed for the purpose of facilitating this multi-phase development. At this point, the office buildings identified as 1250 and 1280 Maryland Avenue, S.W. have been completed and occupied, and the Mandarin Oriental Hotel is under construction. All of these buildings have used the plaza at Maryland Avenue (elevation plus 47) as the point of measurement. Those projects were subject to design review and approval by the Commission of Fine Arts, and the ARP, and were approved by those agencies. PDA has prepared plans for development of the parcels bordered by Maryland Avenue, D Street and 14th Street, S.W. Those plans have been reviewed and approved in concept by the Commission of Fine Arts, using Maryland Avenue as the point of measurement, and the site plan including those buildings as measured from Maryland Avenue was reviewed and approved by the ARP. DHCD testified in support of the proposed amendment to the Schedule of Heights. The testimony clearly indicates that DHCD was aware of, and supported, the development of the vacant parcels north of Maryland Avenue to be measured from Maryland Avenue with an elevation of plus 47, to allow for a comprehensive development with consistent building heights.

A change in the rules at this late stage of the Portals development would have significant adverse consequences on the project. We would like an opportunity to discuss this again with you before OP proceeds back to the Zoning Commission on this case.

CHC/skp

cc: Ellen McCarthy (w/attachments)
Steven Grigg (w/attachments)

WAS1 #1154148 v1

EXCLUSIVE RIGHT AGREEMENT
BY AND BETWEEN
THE DISTRICT OF COLUMBIA
REDEVELOPMENT LAND AGENCY
AND
PORTALS DEVELOPMENT ASSOCIATES

WHEREAS, the D. C. Redevelopment Land Agency ("Agency") desires Western Development Corporation, a Maryland Corporation, Eastcoast Development Corporation, a District of Columbia Corporation, and members of the D. C. Renewal Group (Marie Barksdale, John Clyburn, Manuel Fernandez, Carlton Jones, Carolyn Jordan, Roy Littlejohn and David Wilmot), a proposed limited partnership, who together are or intend to form a limited partnership known as Portals Development Associates ("Developer") for the development of Parcels 47 and 49 in the Southwest Urban Renewal area, as evidenced by: 1) a letter agreement dated June 19, 1985 executed by Western Development Corporation and Eastcoast Development Corporation, 2) a letter agreement concerning Portals Development Associates dated August 3, 1985 and, 3) an amended and restated memorandum of agreement dated August 8, 1985, executed between Western Development Corporation, Eastcoast Development Corporation and D. C. Renewal Group, (collectively "Organizational Document"); and

WHEREAS, the Agency recognizes that considerable time and expense is required to prepare such a proposal; and

WHEREAS, in consideration of the Developer's expending both time and resources in the preparation of said proposal, the Agency is willing to forego consideration of development proposals from other prospective developers for a period of time; and

EXHIBIT A

WHEREAS, the Developer, in return for the Agency's promise to deal exclusively with the Developer during the period of this Agreement, agrees to prepare at its own cost and expense a development proposal for Parcel 47 and 49 in the Southwest Urban Renewal Area and to submit it to the Agency within the time set forth hereinafter, and

WHEREAS, because of the importance of this site to the physical, social and economic well-being of the citizens of the District of Columbia, the Agency has established the following objectives as goals for the development of this site:

- creation of a high quality development

- receiving the fair market value of the site

- achievement of affirmative action goals

WHEREAS, the Developer agrees that efforts under this Agreement will be to formulate plans and programs constituting a proposal that will achieve the above objectives, and that if the proposal does not succeed in achieving them, the Agency will be under no obligation to accept the proposal; and

WHEREAS, in the event that the Agency in its sole discretion finds the development proposal prepared under the terms of this Agreement to be acceptable in terms of achieving the objectives, the Agency will offer to the Developer a Land Disposition Agreement ("LDA"); and

WHEREAS, the Agency and Developer desire to set forth their mutual rights and obligations under this Agreement.

NOW, THEREFORE, on January 24, 1986 the Agency and the Developer do agree as follows:

1. Good Faith Deposit. The Developer shall file with the Agency within five (5) working days after the date of this Agreement a Good Faith Deposit in the amount of $50,000 to insure that the Developer proceeds diligently and in good faith to prepare a development proposal during the exclusive right period. This deposit shall be made in a form acceptable to the Agency and may be in the form of an irrevocable and unconditional letter of credit, certificate of deposit or other certified funds made payable to the Agency or any combination thereof.

   a) The Good Faith Deposit will be forfeited as liquidated damages if the Developer fails or refuses to proceed diligently and in good faith during the period covered by this Agreement.

   b) If the Developer has proceeded diligently and in good faith, but the development proposal is rejected by the Agency, the Good Faith Deposit will be refunded.

   c) If the Developer withdraws voluntarily and requests in writing the return of the Good Faith Deposit, the Agency may, upon authorization by its Board of Directors, return the Good Faith Deposit to the Developer for good cause shown, but in such event, the burden shall be on the Developer to demonstrate, to the satisfaction of the Agency at a public meeting of its Board of Directors, that the Developer has proceeded diligently and in good faith, and in accordance with the terms of this Agreement.

d] Notwithstanding anything herein, if the Developer has proceeded diligently and in good faith, but the Agency and Developer are unable to execute the Letter of Agreement on General Business Terms pursuant to Section 2, below, the Good Faith Deposit will be refunded.

e) If the Good Faith Deposit is in the form of a certificate of deposit, interest earned thereon shall be paid to the Developer.

f) Unless sooner returned or forfeited, the Good Faith Deposit may, at the option of the Developer, be credited and applied to the good faith deposit requirement under the LDA

2. Letter of Agreement on General Business Terms. Within one hundred eighty (180) days after the date of this Agreement, the Developer shall execute a Letter of Agreement with the Agency which addresses and specifies the terms, conditions, processes and/or formulas of the General Business Terms and procedures for modifications thereof, including, but not limited to, the following items:

a) Parcelization Plan
b) Phasing Plan
c) Infrastructure and Site Condition Credit Schedul
d) Phasing Plan for Infrastructure Elements

e) Use Parameters
f) Interim Use Provisions
g) Price/Rent
h) Terms of Payment
i) Interest, Escalators and/or Reappraisals, if applicable
j) Parcel and Infrastructure Release Provisions
k) Subordination

3. Initial Drawings. The Developer agrees to the following:

a) Initial Submission. Within thirty (30) days after the date of this Agreement, the Developer shall submit Initial Drawings for the proposed development and thereafter, will meet on a schedule developed by the Agency with the Agency's Architectural Review Panel and the Commission on Fine Arts to discuss the Initial Drawings. These drawings shall adequately describe how the site is to be developed in order that the proposed development may be adequately evaluated. The drawings will be reviewed by the Agency to, among other things, identify any proposed Urban Renewal Plan for Southwest Area C changes indicated. Upon approval of the initial drawings, the Developer and the Agency shall agree to the required Urban Renewal Plan changes and the Agency shall thereafter initiate the plan change process.

b) Revised Initial Drawings. Within sixty (60) days after executing the Letter of Agreement on General Business Terms pursuant to Section 2, above, or within two hundred and forty (240) days after the date of this Agreement, whichever is later, the Developer shall submit revised Initial Drawings for the proposed development if, prior to or simultaneously with the execution of the Letter of Agreement on General Business Terms, it is determined by the Agency that such submission is necessary by reason of any changes required by the Letter of Agreement on General Business Terms. The Agency may also require the Developer to meet with the Agency's

Architectural Review Panel and the Commission on Fine Arts to discuss the revised Initial Drawings and any additional revisions if necessary shall be done on a time schedule to be mutually agreed upon by the Agency and the Developer. Those drawings shall adequately describe how the site is to be developed in order that the proposed development may be adequately evaluated.

4. Pro Forma and Cash Flow Analyses. The Developer agrees to the following:

a) Initial Submission. Within thirty-five (35) days after the date of this Agreement, the Developer shall submit Pro Forma and Cash Flow Analyses,indicating the estimated income and expenses by phase as well as capital requirements. The analyses shall follow the format identified in Attachment 1 hereto.

b) Second Submission. If the submission of revised Pro Forma and Cash Flow Analyses is required pursuant to the Letter of Agreement on General Business Terms, then within thirty (30) days after executing the Letter of Agreement on General Business Terms pursuant to Section 2, above, or within two hundred and ten (210) days after the date of this Agreement, whichever is later, the Developer shall submit revised Pro Forma and Cash Flow Analyses. The analyses shall follow the format identified in Attachment 1, hereto.

5. Organizational Documents. Within sixty (60) days after the date of this Agreement, the Developer shall submit the Organizational Documents, any amendments to the Organizational Documents, By Laws and Corporate Charter of Western Development Corporation and/or Eastcoast Development Corporation and a statement from the Developer explaining the development and ownership structure, together with a letter indicating the willingness of the Developer to execute the Developer's limited partnership agreement in accordance with the Organizational Documents no later than the Agency's issuance of Notice of a Public Hearing pursuant to Section 17 (a), below.

6. Affirmative Action Plan and Program. Within thirty (30) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within two hundred ten (210) days of this Agreement, whichever is later, the Developer shall submit an Affirmative Action Plan and Program which includes in appropriate detail, the following:

a) The extent to which minorities are or will be represented as a member of the development team, and the precise manner that such future representation shall be achieved.

b) The extent to which contracting or subcontracting arrangements for minority business in the development of the site will be provided, including specific goals and set asides (if appropriate), a schedule for meeting such goals, and the specific manner in which these goals and set asides will be achieved.

c) The manner in which employment opportunities for low-income area and District residents will be provided, including specific manner(s) by which area and/or District residents will be apprised of such job opportunities.

d) The nature and manner in which community support mechanisms will be provided to implement the Affirmative Action Plan and Program.

e) Copies of the following executed by the developer:

(i) "First Source" Agreement with the District Department of Employment Services

(ii) Memorandum of Understanding with the District Minority Business Opportunity Commission.

f) Such other documents and information as the Agency may reasonably request concerning the first phase of the project.

7. Community Participation Program. Within thirty (30) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within two hundred ten (210) days after the date of this Agreement, whichever is later, the Developer shall submit a Community Participation Program which shall set forth, among other things, the community organization(s) with whom the Developer proposes to discuss the proposal, a schedule for submissions, the types of information to be provided the community, and related support mechanisms. This program should encompass the period from the submission of the Community Participation Program to the issuance of a Certificate of Occupancy for the entire development covered by the proposal.

8. Development Commitment Letters. Within thirty (30) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within two hundred ten (210) days after the date of this Agreement, whichever is later, the Developer shall submit Development Commitment Letters from the development team members which confirm their willingness to continue with their efforts and confirm that there has been no change in statements of qualifications filed at the time of their initial interview.

9. Letters of Intent From Financial Institutions. Within thirty (30) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within two hundred ten (210) days of this Agreement, whichever is later, the Developer shall submit Letters of Intent from qualified lending institutions indicating a willingness to provide funds sufficient for construction financing.

10. Submissions Required for Release of First Phase. Within one hundred eighty (180) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within three hundred sixty (360) days after the date of this Agreement, whichever is later, the Developer shall submit documents required for release of the first phase of development as defined in the Letter of Agreement of General Business Terms pursuant to Section 2(j) including, but not limited to, the following items with respect to the first phase of development:

a) Preliminary Drawings. The Preliminary Drawings shall be in conformity with the applicable Urban Renewal Plan and with the approved Initial Drawings pursuant to Section 3, above. Such drawings shall be at the indicated scale or another satisfactory to the Agency and shall include the following:

(i) Site plans (1"=40') showing location of buildings, loading, parking and treatment of open space

(ii) Preliminary Building Plans (1/16"=1')

(iii) Typical Floor Plans (1/16"=1')

(iv) Elevations and Cross Sections of proposed improvements (1/16"=1')

(v) Building Materials

(vi) A chart showing floor areas, building coverage of the site, building height, floor area ratio, number of parking spaces and number of loading berths.

b) Pro Forma and Cash Flow Analyses. Pro Forma and Cash Flow Analyses, which shall indicate the estimated income and expenses as well as capital requirements, shall be submitted. Unless modified pursuant to the Letter of Agreement on General Business Terms, the analyses shall follow the format identified in Attachment 1, hereto.

c) Development Commitment Letters. The letters shall be written by the development team members confirming their willingness to continue with their efforts and confirming that there has been no change in statements of qualifications filed at the time of their initial interview.

d) Letter(s) of Commitment From Financial Institution(s). The letter(s) shall be written by a qualified lending institution(s) indicating that it has provided a bona fide commitment to provide for construction financing, which funds shall be sufficient, in conjunction with other funds provided or to be provided for the first phase of the project, to complete the first phase of the project.

e) HUD Forms. The forms shall include HUD Form 6004, Parts I and II, "Redeveloper's Statement for Public Disclosure" and "Redeveloper's Statement of Qualifications and Financial Responsibility" and financial statements for all general and limited partners.

f) Development Schedule. The schedule shall detail work items and associated estimated start and estimated completion dates from initiation of the development through issuance of the Certificate of Occupancy.

g) Detailed Affirmative Action Plan and Program for First Phase. The program shall be in conformity with the Affirmative Action Plan and Program approved pursuant to Section 6, above, and shall include details concerning the First Phase Development's commitments regarding:

(i) The extent to which minorities are or will be represented as members of the development team, and the precise manner that such future representation shall be achieved.

(ii) The extent to which contracting or subcontracting arrangements of the site will be provided, including specific goals and set asides (if appropriate), a schedule for meeting such goals, and the specific manner in which these goals and set asides will be achieved.

(iii) The manner in which employment opportunities for low-income area and District residents will be provided, including specific goals or set asides (if appropriate), and the specific manner(s) by which area and/or District residents will be apprised of such job opportunities.

(iv) Fully executed copies of the following:

- o "First Source" Agreement with the District Department of Employment Services.
- o Memorandum of Understanding with the District Minority Business Opportunity Commission.

11. Statement of Developer's Willingness to Execute Land Disposition Agreement (LDA) for the Entire Development Area and First Phase. Within one hundred eighty (180) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within three hundred sixty (360) days after the date of this Agreement, whichever is later, the Developer shall submit a letter indicating its willingness to execute the Land Disposition Agreement negotiated with the Agency for both the entire parcel and the first phase of development.

12. Letters Between the Developer and Parties Holding Off-Site Parcels Indicating the Status of Agreements/Negotiations and Their Mutual Willingness or Unwillingness to Proceed. Within one hundred eighty (180) days after executing the Letter of Agreement of General Business Terms pursuant to Section 2, above, or within three hundred sixty (360) days after the date of this Agreement, whichever is later, the Developer shall submit letters between and among the Developer and all parties holding properties outside of the Agency's control, but upon which development must occur to implement the proposed development program, indicating the status of agreements reached between the respective party or the status of negotiations and which further indicate the willingness or unwillingness of the Developer and all such parties to proceed in order to enable implementation of the proposed development program.

13. Submission Review and Approval. The Agency shall endeavor to complete its review of each submission or resubmission required pursuant to Sections 2-12, above, within thirty (30) days from receiving such submission from the Developer and shall within such thirty (30) day period indicate the Agency's acceptance, approval or disapproval of such submission or resubmission. In the event of disapproval, the Agency shall indicate the reasons therefore at the time of disapproval and the Developer will have fifteen (15) working days to resubmit a corrected version to the Agency. In the event of a delay by the Agency in complying with the time requirements of this Section 13, the period of the Developer's exclusive rights hereunder and the time requirements imposed upon the Developer hereunder shall all be extended by one day for each day of delay by the Agency for the submission so affected and any other submissions also affected, which time extension shall be, in the case of an unreasonable delay, in addition to any other rights and remedies available to the Developer.

14. Extensions. The Agency may for good cause extend times specified for submissions under this Agreement. No request for extension will be considered unless the Developer (a) notifies the Agency in writing of such request for extension no less than five (5) working days prior to the specified time for such submission or resubmission or (b) provides the Agency written justification for failure to comply with clause (a) above.

15. Performance Fees. It is understood by the Developer that time is of the essence. Each day the Agency does not receive compensation for the site, community and economic development activities made feasible by such compensation are delayed or require the Agency to obtain costly alternative financing to be implemented. Under the provisions of the Agreement, the Developer is to make such submissions as required by Sections 2-12, above, not later than one hundred eighty (180) days after executing the Letter of Agreement on General Business Terms pursuant to Section 2, above, or within three hundred sixty (360) days of this Agreement, whichever is later. Each of the referenced sections provides a scheduled date for individual submissions. These submissions together provide the foundation for a public hearing. Therefore, if the Developer receives an extension pursuant to Section 14, above, and such extension results in the Developer's failure to deliver all submissions required for the public hearing within the referenced one hundred eighty (180) days after the Letter of Agreement on General Business Terms or within three hundred sixty (360) days of this Agreement, whichever is later, the Developer recognizes that the Agency has the right to and may in its sole discretion require the Developer to pay performance fees, which fees shall be established by the Agency upon a determination to impose such fees, but which fees shall in no event exceed an amount equal to five (5) percent per annum of the amount of the initial compensation determined pursuant to Section 2, above; such five (5) percent fee shall be calculated and paid on a daily basis. Such performance fees may be offset, at the option of the

Developer, against the Good Faith Deposit made pursuant to Section I, above, to the extent the Good Faith Deposit is adequate. If an extension is granted, performance fees shall not be imposed to the extent that the Developer can demonstrate to the reasonable satisfaction of the Agency that delays were due solely to the actions or inaction of the District or other public agencies.

16. Exclusive Right. During the term of this Agreement, the Agency shall deal exclusively with the Developer and shall forego consideration of development proposals with respect to Parcels 47 and 49 from other prospective developers.

17. Public Hearing and Land Disposition Schedule. The Developer agrees to the following schedule:

a) Notice of Public Hearing. Within twenty (20) days after accepting or approving all submissions pursuant to Sections 2-12, above, the Agency will issue a Notice of a Public Hearing.

b) Public Hearing. Within forty (40) days after issuance of notice pursuant to Section 17(a), above, a public hearing will be held. The Developer will make a presentation at the public hearing and be available for questions.

c) Authorization to Execute the LDA. The Agency, subject to decisions reached through the public hearing process, will be authorized to execute the LDA.

d) Execution of LDA. Within twenty (20) days after authorization by the Agency's Board of Director's to execute the LDA, the Agency and the Developer shall execute the LDA.

18. Termination During Exclusive Right Period. Notwithstanding anything to the contrary contained herein, in the event that:

a) The Agency and the Developer do not agree to execute the Letter of Agreement of General Business Terms pursuant to Section 2, above, or

b) Developer does not meet the dates for submissions under this Agreement and no extension has been given by the Agency pursuant to Section 14, above, or,

c. The Agency does not accept or approve of a submission required by this Agreement (for purpose of this section, acceptance and approval means also the acceptance and approval of a resubmission of a submission previously disapproved), and the Developer fails to obtain such approval after submission of a reasonable number of resubmissions.

Then and at that time of the Agency's determination of such event the Agency may at its sole discretion terminate this Agreement.

19. Modification and Waiver

None of the terms or provisions of this Agreement may be changed, waived, modified or terminated except by an instrument in writing executed by the party or parties against which enforcement of the change, waiver, modification or termination is asserted. None of the terms or provisions of this Agreement shall be deemed to have been abrogated or waived by reason of any failure or refusal to enforce the same.

20. Counterparts. This Agreement is executed in two (2) counterparts each of which shall constitute one and the same instrument.

IN TESTIMONY WHEREOF, the said District of Columbia Redevelopment Land Agency, in accordance with the provisions of a duly adopted Resolution of its Board of Directors, has caused this Agreement to be signed in its corporate name by Philip L. Johnson, its Secretary, attested by Shirley V. Hilliard, its Assistant Secretary, and its Corporate Seal to be hereunto affixed and does hereby constitute and appoint _____ its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed.

DISTRICT OF COLUMBIA
REDEVELOPMENT LAND AGENCY

ATTEST:

By _____
Assistant Secretary

By _____
Secretary

IN TESTIMONY WHEREOF, each of the undersigned partners of the Developer under authority and acting on behalf of and to bind the members of Portals Development Associates has caused this Agreement to be signed in its name by its Chairman or Vice Chairman, Richard L. Kramer, Vice Chairman, attested by its Secretary or Assistant Secretary, Richard M. Stone, Assistant Secretary, and hereby constitute and appoint Richard L. Kramer and Richard M. Stone, respectively its true and lawful Attorney-in-Fact for it and in its name to acknowledge and deliver these presents as its act and deed.

ATTEST:

PORTALS DEVELOPMENT ASSOCIATES BY WESTERN DEVELOPMENT CORPORATION, MANAGING GENERAL PARTNER

By _____
Assistant Secretary

By _____
Richard L. Kramer, Vice Chairman

Attest:

PORTALS DEVELOPMENT ASSOCIATES BY EASTCOAST DEVELOPMENT CORPORATION, GENERAL PARTNER

By _____
Secretary

By _____
President

ACKNOWLEDGED:

_____
Assistant Corporation Counsel

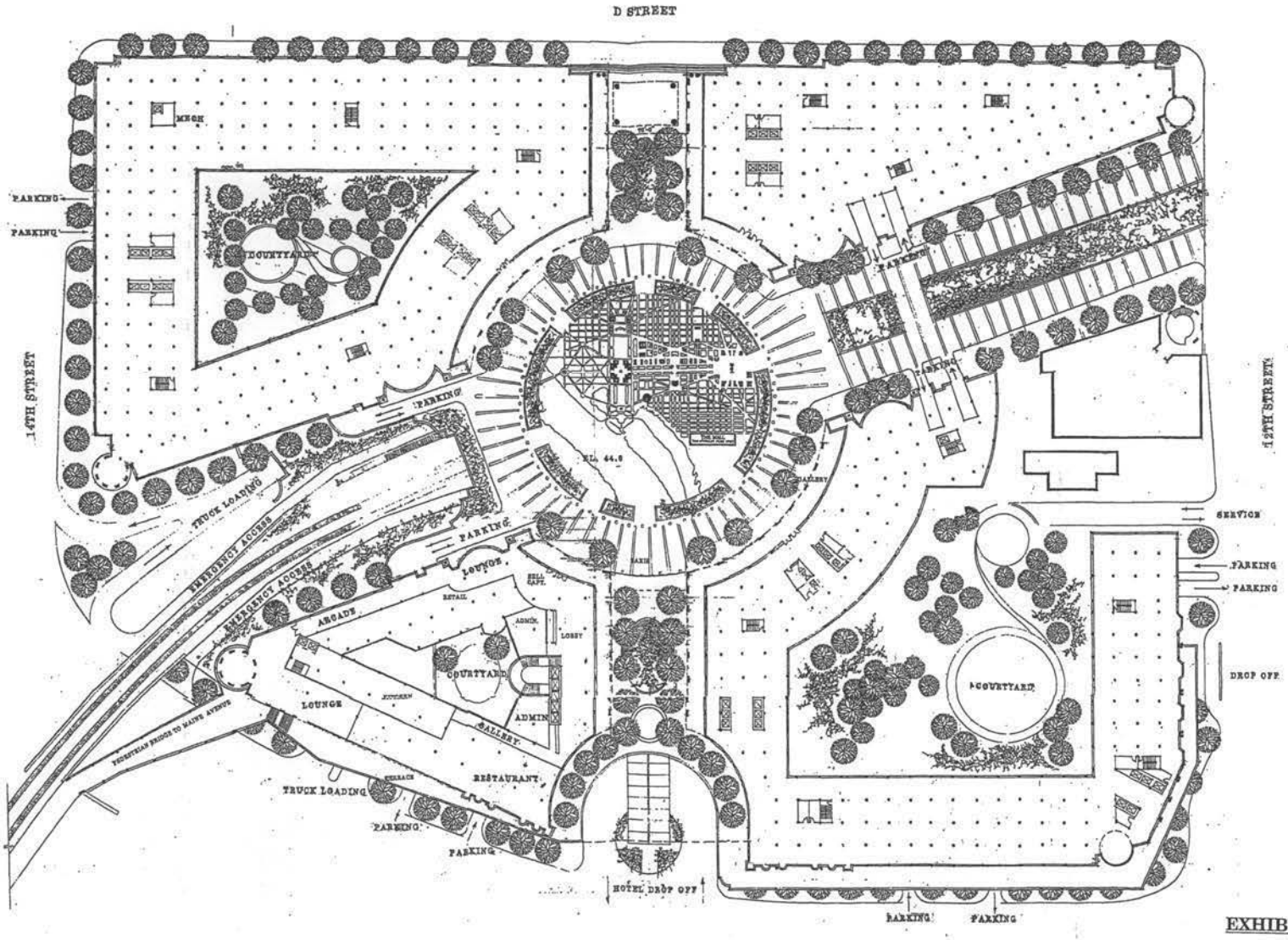


EXHIBIT B

PLAZA LEVEL PLAN (EL 44) 0 20 50 100

REVISED 4/1/86

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PROGRAM PHASE

THE PORTALS

THE PORTALS DEVELOPMENT ASSOCIATES

Arthur Cotton Moore / Associates
Architects Planners

CABLE ADDRESS: WILAN
TELECOPIER: 202-457-7814

C. FRANCIS MURPHY
(202) 457-7821

WILKES, ARTIS, HEDRICK & LANE
CHARTERED
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51 MONROE STREET
ROCKVILLE, MARYLAND 20850
4020 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030

January 16, 1986

BY HAND

Mr. Ralph B. Sheaffer
District of Columbia Surveyor
614 H St., N.W., Rm. 601
Washington, D.C. 20001

Dear Mr. Sheaffer:

The purpose of this letter is to confirm our recent discussion concerning the status of Maryland Avenue between 12th and 14th Streets, S.W. as designated on the records of your office.

By Act of Congress, approved February 12, 1901 (31 Stat. 767), Maryland Avenue was vacated and abandoned for public use and the use of the street was granted to the Baltimore and Potomac Railroad Company.

By Act of Congress approved November 2, 1965 (79 Stat. 1180; D.C. Code, 1981, §5-836), the Congress authorized the Mayor to transfer certain parts of Maryland Avenue to the Redevelopment Land Agency. Those parts of Maryland Avenue are no longer shown on the records of your office as being within Maryland Avenue.

As to the remainder of Maryland Avenue, my understanding is that the records of your office reflect that the remainder of Maryland Avenue is for railroad use, the public use having been vacated and abandoned. In sum, the remainder of Maryland Avenue is, in effect, a railroad street.

If you agree that the above accurately reflects the current status of Maryland Avenue, I would appreciate your

EXHIBIT C

so indicating on the copy of this letter.

Sincerely yours,

C. Francis Murphy

Agree:

Ralph B. Sheaffer
Surveyor, D.C.

WILKES, ARTIS, HEDRICK & LANE
CHARTERED
ATTORNEYS AT LAW
SUITE 1100
1666 K STREET, N. W.
WASHINGTON, D. C. 20006-2897
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FAX: 202-457-7814

CHRISTOPHER H. COLLINS
(202) 457-7841

ANNAPOLIS, MARYLAND
BETHESDA, MARYLAND
FAIRFAX, VIRGINIA
GREENBELT, MARYLAND
WALDORF, MARYLAND

October 17, 1997

By Hand

Gladys Hicks
Zoning Administrator
614 H Street, N.W., Room 333
Washington, D.C. 20001

Re: Portals Project - Maryland Avenue, S.W.

Dear Gladys:

The purpose of this letter is to confirm our discussion of October 16, 1997 concerning the point of measurement for height, and the method of FAR calculations, for the above-referenced project.

The Portals site is bounded by 12th, 14th and D Streets, S.W., and the Southwest Freeway. The site is owned by the District and was previously located in the Urban Renewal Zone, Project Area C, which expired on November 30, 1996. The site is now zoned C-3-C. The site is bisected by Maryland Avenue, S.W., which is an elevated roadway over the existing railroad tracks. (See attached portion of Sanborn Map).

The first of the buildings in the Portals project was developed by Portals Development Associates in the early 1990's pursuant to a development agreement with the city, and used Maryland Avenue, S.W. for its point of measurement. The building plans were approved through DHCD because of the property's status (under the Urban Renewal Plan) as being subject to the RLA. A second phase of the project is currently under construction.

Portals Development Associates is planning to construct a building on the Portals site north of Maryland Avenue, on the portion also bounded by 14th and D Streets, S.W.[1] Based upon our discussion, it is my understanding that:

[1] The 14th Street portion of the site is presently governed by Paragraph 14 of the Schedule of Heights. The Council is currently considering an amendment to the Schedule of Heights. The outcome of that legislation will have no effect upon the matters discussed herein concerning the point of measurement or the method of calculating FAR.

1. The point of measurement for the building on the north part of the Portals site can be from either Maryland Avenue, D Street or 14th Street, S.W. The building will have more than one front, and the Applicant is permitted to choose which front to use for purposes of measuring the building height. In fact, Section 7 of the 1910 Height Act requires that "[i]f the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height." (Emphasis added).

2. The area of the building which is below the elevated Maryland Avenue roadway will be excluded from FAR. The perimeter wall test will be used to determine cellars and basements, and the Maryland Avenue roadway will be considered the grade for the portion of the building which it abuts.

Please confirm my understanding of the above matters by signing in the space provided below and returning a copy of this letter to me.

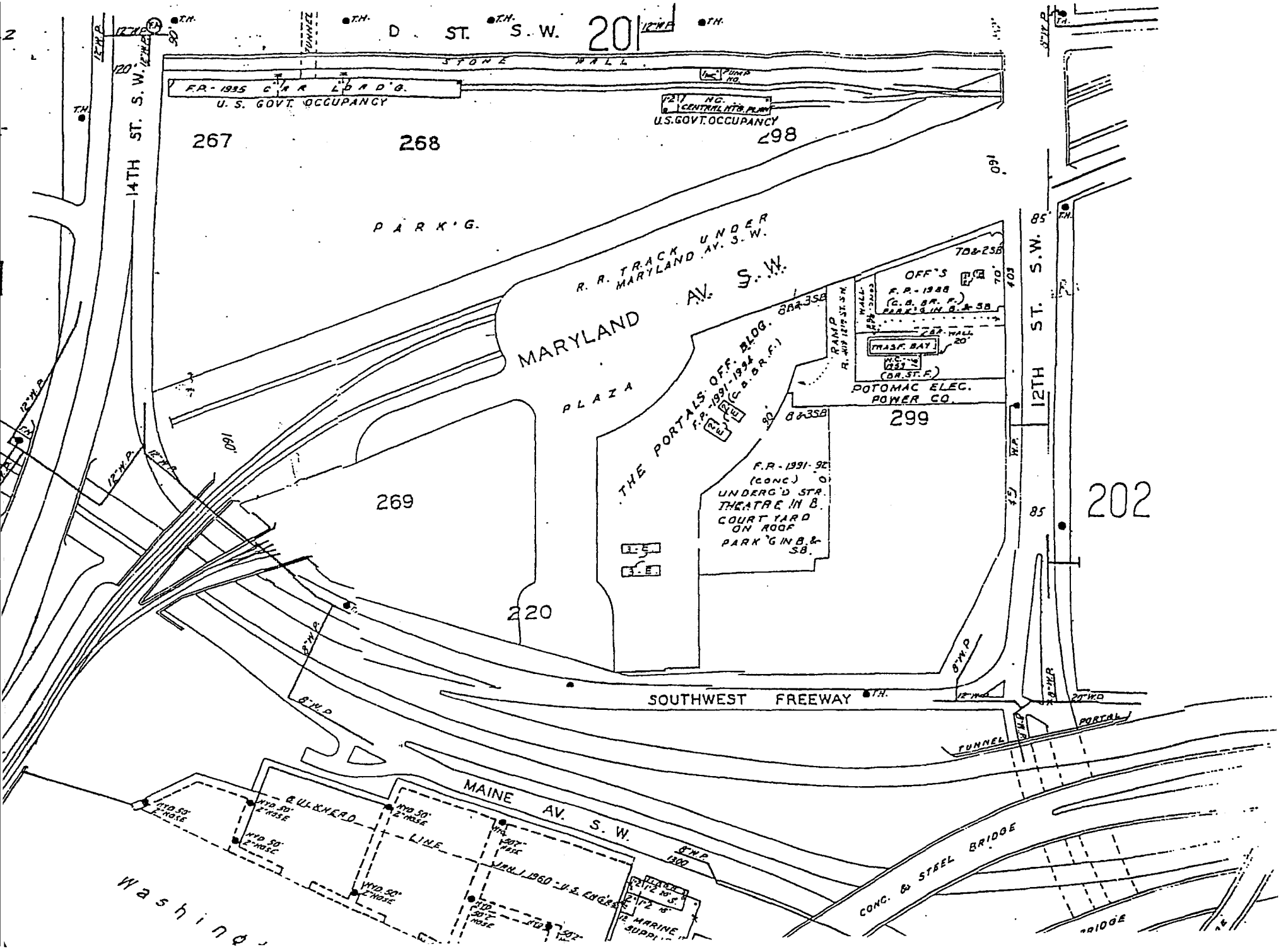
Sincerely,

Christopher H. Collins

CONFIRMED:

By: Gladys Hicks
Gladys Hicks
Zoning Administrator

Date: 11/12/97


D ST. S.W.
201
STONE WALL
F.P. - 1935 C.A.R. L.B.A.D.G.
U.S. GOVT. OCCUPANCY
N.C. CENTRAL HTR. PLANT
U.S. GOVT. OCCUPANCY
14TH ST. S.W.
267
268
298
PARK'G.
R.R. TRACK UNDER MARYLAND AV. S.W.
MARYLAND AV. S.W.
PLAZA
THE PORTALS OFF. BLDG.
F.P. - 1991-1994
(C.B.&R.F.)
RAMP
OFF'S
F.P. - 1988
(C.B.&R.F.)
PARK'G IN B. & SB.
TRANSF. BAY
(DR. ST. F.)
POTOMAC ELEC. POWER CO.
299
F.P. - 1991-92
(CONC.)
UNDERG'D STR.
THEATRE IN B.
COURT YARD
ON ROOF
PARK'G IN B. & SB.
269
220
12TH ST. S.W.
202
SOUTHWEST FREEWAY
TUNNEL
PORTAL
MAINE AV. S.W.
BULKHEAD LINE
JAN. 1960 - U.S. ENGRS.
CONC. & STEEL BRIDGE
MARINE
Washing

Council of the District of Columbia
Report

441 Fourth Street, N.W. Washington, D.C. 20001

To: Members of the Council of the District of Columbia

From: Linda W. Cropp, Chairman

Date: October 20, 1998

Subject: Bill 12-170, "Schedule of Heights of Buildings Amendment Act of 1998"

The Committee of the Whole, to which Bill 12-170, the "Schedule of Heights of Buildings Amendment Act of 1998", was referred, reports favorably on the bill as amended and recommends its adoption by the Council of the District of Columbia.

Statement of Purpose and Effect

Bill 12-170 amends the "Schedule of Heights of Buildings Adjacent to Public Buildings" -- a schedule that was adopted prior to home rule by the Commissioners of the District of Columbia -- to provide more uniformity in the heights and setbacks of buildings to be developed on the Portals site, which is bounded by 14th Street, S.W., D Street, S.W., 12th Street, S.W., and Maine Avenue, S.W., in Ward 2, within the overall parameters of the 1910 Height Act and the Zoning Regulations of the District of Columbia.

The legislation permits a building, which is proposed to be constructed adjacent to 14th and D Streets, S.W., to be 30 feet taller (pursuant to matter-of-right zoning) than the 80-foot height permitted under the existing Schedule of Heights, and the legislation also requires this building to be set back from the 14th Street property line by approximately 20 feet, thereby providing greater uniformity with other proposed buildings on the site and with existing buildings located to the north along 14th Street.

Legislative History

March 27, 1997	Bill 12-170 introduced by Councilmember Evans
April 11, 1997	Notice of Bill 12-170 published in *D.C. Register*
October 13, 1997	Public hearing on Bill 12-170

EXHIBIT E

Impact on Existing Law

Maximum building heights in the District of Columbia are governed by the Act of Congress of June 1, 1910, as amended (D.C. Code § 5-405) (the "1910 Act"). The 1910 Act generally limits the maximum height of buildings in commercial zones to 130 feet (except for the north side of Pennsylvania Avenue between 1st and 15th Streets, N.W., which is limited to 160 feet) and of buildings in residential zones to 90 feet. The 1910 Act establishes additional restrictions on the maximum height of a building, which are generally based on the width of the street on which the building fronts increased by 20 feet. The Zoning Regulations of the District of Columbia, which are adopted by the Zoning Commission for the District of Columbia, place further restrictions on building heights within the parameters of the 1910 Height Act.

The 1910 Act also provided that the maximum height of buildings immediately adjacent to public buildings "shall be regulated by a schedule adopted by the Commissioners of the District of Columbia." Attached is a copy of the "Schedule of Heights of Buildings Adjacent to Public Buildings" (Appendix G of the Zoning Regulations) ("Schedule of Heights") adopted by the Commissioners pursuant to the 1910 Act, which further restricts the height of buildings adjacent to certain public buildings within the parameters of the 1910 Act.

The Council of the District of Columbia has had authority over the Schedule of Heights since 1975, due to the transfer of the authority of the Commissioners to the appointed District of Columbia Council by paragraph 120 of section 402 of Reorganization Plan No. 3 of 1967, and by the transfer of the pre-home rule authority of the appointed Council to the elected Council of the District of Columbia by section 404(a) (D.C. Code § 1-144(a)) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973 (the "Home Rule Act"). Although section 602(a)(6) proscribes any Council act permitting the building of any structure "in excess of the height limits contained in" the 1910 Act, the height limits for city blocks adjacent to public buildings are not "contained in" the 1910 Act. Instead, the Congress in the 1910 Act authorized such height limitations to be set by the Commissioners.

The legislative history of section 602(a)(6) of the Home Rule Act does not support an argument that the elected Council was to obtain less power than the predecessor Commissioners, but rather that the Council should not receive new authority to amend the terms of the 1910 Act or to cause any building to be constructed in excess of the limitations contained in the 1910 Act. Bill 12-170, like the prior Council enactment of the Schedule of Heights Amendment Act of 1979 (D.C. Law 3-43), amends the Schedule of Heights within the legal parameters of the 1910 Act and the Home Rule Act. The Council's clear authority to amend the Schedule of Heights, as long as the amended height is within the overall limitations of the 1910 Act, has been reviewed and found to be existent during the past year by the Council's General Counsel, the D.C. Corporation Counsel, and the U.S. Department of Justice (see attached legal memoranda).

Bill 12-170 amends Paragraph 14 of the Schedule of Heights to permit a building, which is proposed to be constructed at 14th and D Streets, S.W., as part of the Portals development site, to be 30 feet taller (pursuant to matter-of-right zoning) than the 80-foot height (as measured from the southeast corner of 14th and D Streets) permitted under the existing language of Paragraph 14. The legislation requires this building to be set back from the 14th Street property line by approximately 20 feet, thereby providing greater uniformity with other proposed buildings on the Portals site and with existing Federal buildings located to the north along 14th Street. The legislation specifies that the new height shall be within the overall parameters of the Zoning Regulations, which do not permit any heights in excess of the maximum height limitations set forth in the 1910 Act.

Planning Issues

The amendment to the Schedule of Heights contained in Bill 12-170 will facilitate major office and retail development on the north side of the Portals site, which is bounded by 14th Street, Maryland Avenue, 12th Street, and D Street, S.W., in accordance with the District's Comprehensive Plan and Zoning Regulations, and within the limits set forth in the Congressionally-enacted Building Height Act of 1910. The development is also consistent with the urban renewal plan for this site, which was previously approved by the Council and the National Capital Planning Commission, and which has since been superseded by the Zoning Regulations.

The Comprehensive Plan designates the Portals site, which in its entirety comprises several former Southwest "C" urban renewal parcels on 10.7 acres of land bounded by D Street, Maine Avenue, 12th Street and 14th Street, S.W., within the medium-high density commercial land use category and as a development opportunity area located within the central employment area. The Portals site is zoned C-3-C, which permits a building to be constructed as a matter-of-right to a height of 90 feet, as measured from the highest elevated sidewalk adjacent to the building (which, in this case, is the Maryland Avenue frontage). Under the planned unit development ("PUD") provisions of the Zoning Regulations, the Portals building could be permitted to be constructed to 130 feet in height; and under proposed transferable development rights ("TDR") provisions of the Zoning Regulations, the Portals site would be eligible to receive additional density and height beyond matter-of-right zoning.

The 1910 Height Act generally limits the maximum height of buildings to the lower of 130 feet or the width of the widest adjacent street plus 20 feet, again as measured from the highest elevated sidewalk adjacent to the building. Because the widest adjacent street to the Portals site is Maryland Avenue, which is 160 feet wide (adjacent 14th Street is 110 feet, and adjacent D Street is 90 feet), the maximum building height of the Portals building under the 1910 Height Act is 130 feet, as measured from the Maryland Avenue frontage.

In addition to placing a cap on building heights, the 1910 Height Act required the Board of Commissioners of the District of Columbia to establish a separate Schedule of Heights to

further regulate the height of buildings fronting on certain federally-developed portions of the District. The Schedule of Heights of Buildings Adjacent to Public Buildings was in fact adopted by the Commissioners to limit further the height of buildings, lower than what would be permitted under the 1910 Height Act, to ensure the prominence of public buildings in 15 specified locations in the monumental core of the city. For the North Portals site, paragraph 14 of the existing Schedule of Heights provides that:

> "On 14th Street, S.W., between D and Water Streets, confronting the Bureau of Engraving and Printing, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the southeast corner of 14th and D Streets, S.W."

Bill 12-170 would change this provision of the Schedule of Heights to permit any structure on the North Portals site, which is set back an additional 20 feet from the 14th Street property line so that it aligns with the Bureau of Engraving and Printing's Annex to the north, to have its height established in accordance with the Zoning Regulations rather than the Schedule of Heights. The existing Schedule restricts the North Portals site building to a height of 80 feet above the elevation of the southeast corner of 14th and D Streets, which, at elevation 24.92, means that the top elevation would be 104.92 at this location. However, the amended Schedule would allow the North Portals site building to be constructed as a matter of right to a height of 90 feet (i.e., what is permitted as a matter-of-right under existing C-3-C zoning) as measured from adjacent Maryland Avenue, which, at elevation 44, is 20 feet higher than the elevation at 14th and D Streets, and thereby permits the top elevation of the building at 14th and D Streets to reach 134 feet.

In effect, Bill 12-170 would allow a building on the northern portion of the Portals site to be 30 feet higher, as a matter of right, than otherwise would be permitted under the existing Schedule of Heights, but the maximum height would be in accordance with zoning and would be still 40 feet lower than the overall maximum limits set forth in the 1910 Height Act. Bill 12-170 would further allow the North Portals site building to apply to the Zoning Commission for an additional 40 feet of height pursuant to the PUD and proposed TDR provisions of the Zoning Regulations; nonetheless, such additional height, if approved, would still be consistent with the overall maximum limits set forth in the 1910 Height Act.

The Portals project, which has previously been the subject of urban renewal plan approvals by the Council, calls for development of: four buildings with approximately 1,800,000 square feet of office space; a 500-room luxury hotel; 108,000 square feet of retail space; 48,000 square feet of theater and community use space; and 3,500 parking spaces. Thus far, a 440,000 square foot office building (with retail, community and special use space, and parking) was completed on Parcel B in 1991, and a 592,000 square foot office building (with retail and parking) was substantially completed on Parcel C last year and is expected to be the headquarters of the Federal Communications Commission. Construction of a hotel on Parcel A is expected to begin next year. Two additional office buildings with retail space will be constructed on Parcels D and E on the northern portion of the Portals site.

The Portals site, at the end of the 14th Street bridge at the entrance to the District from Virginia, is bounded on the north by D Street, on the south by Maine Avenue, on the east by 12th Street, and on the west by 14th Street, in Ward 2. The site is diagonally divided into two sections by the Conrail railroad tracks running in the bed of the old Maryland Avenue. To mitigate the impact of the industrial nature of the railroad and unite the site, the developer put the railroad in a tunnel running through the site over which a new Maryland Avenue has been constructed. The new Maryland Avenue, an original L'Enfant diagonal street reconstructed at its original 160-foot width, will continue to be maintained by the developer but remains in public ownership. The buildings on the north and south Portals site have been designed by architect Arthur Cotton Moore to provide balanced development along Maryland Avenue, framing views to the Capitol and the Tidal Basin, and to ensure unified heights along this grand new avenue.

The District of Columbia Redevelopment Land Agency ("RLA") executed an exclusive right agreement with Portal Development Associates ("PDA") in January 1987 for the phased development of the Portals site. PDA is a limited partnership that includes as general partners Republic Properties Corporation, whose principals include Steven A. Grigg, and Eastcoast Development Corporation, whose principals include Albert R. Hopkins, Jr. Minority partners control 49% of the equity of PDA.

Section-by-Section Analysis

Section 1 provides a short title, the Schedule of Heights of Buildings Amendment Act of 1998.

Section 2 amends paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings by adding a proviso that the 80-foot maximum height restriction contained in the schedule, for buildings located on 14th Street between D and Water Streets, S.W., would not apply to a building that is set back in conformity with the facade of the Bureau of Engraving and Printing annex located along 14 Street between C and D Streets, S.W. The amendment further provides that the height of such a set-back building would instead be governed by the requirements of the 1910 Height Act and the Zoning Regulations. The 1910 Height Act limits the maximum height of this building to 130 feet, as measured from the Maryland Avenue frontage. The Zoning Regulations currently limit the maximum height of this building to 90 feet as a matter of right, with the possibility of obtaining 40 additional feet in height pursuant to the PUD and TDR provisions of the regulations.

Section 3 adopts the fiscal impact statement contained in this report, which states that the proposed legislation would have a positive fiscal impact upon the District.

Section 4 provides the effective date.

Fiscal Impact

Enactment of Bill 12-170 will have a positive fiscal impact upon the District, because it facilitates the completion of a major commercial project which has generated direct payments and tax revenues to the District of Columbia.

The District government received disposition proceeds totaling $11,139,782 for Parcels A and B, and $15,782,001 for Parcel C in June of 1989. Additional cash payments totalling $7,000,000 are payable in connection with Parcel C, $1,000,000 of which was paid in May 1996 and $1,000,000 of which was paid in January 1998. The remaining $5,000,000 for Parcel C will be paid during 1998. The District of Columbia has also received cash payments totaling $3,558,595 thus far for Parcels D and E.

In addition to the above direct payments to the District, the developer has expended over $23 million of hard and soft costs to build and maintain the public roadway extension of Maryland Avenue over the Conrail tracks that bisect the Portals site, which defines a gateway into the city and is dedicated for public use. In addition, the developer has made payments to Conrail in excess of $3.25 million to resolve litigation between the District and Conrail regarding the District's attempts to exercise its eminent domain power the same railroad lines.

If the amendment to the Schedule of Heights in Bill 12-170 is not enacted, disposition proceeds to the District for Parcels D and E could be reduced by as much as $9,700,000, as a result of the developer's inability to build an additional 105,300 square feet, or three floors, of office space along 14th Street under matter-of-right zoning. This reduction in space would result in approximately 500 fewer permanent jobs in the District, and a reduction in annual property tax revenues to the District of approximately $400,000. (This estimated loss of jobs and revenues would be even higher if the developer of this building receives additional height or density from the Zoning Commission pursuant to the PUD and proposed TDR regulations). The development of the Portals office buildings on Parcels D and E is expected to generate total additional property tax revenue to the District of approximately $8.6 million annually.

To date, the Portals project has generated more than 1,300 construction jobs, as well 17 permanent jobs under the control of PDA. It is estimated that these employment figures will be matched in the construction of the northern office buildings. PDA previously committed to employ at least 51 percent of these construction and permanent jobs with residents of the District of Columbia. For Parcel B and the Maryland Avenue roadway, 45% of the construction jobs and 30% of the permanent jobs were filled by District residents. For Parcel C, 54% of the construction jobs and 50% of the permanent jobs were filled by District residents. PDA has pledged to continue its commitment to ensure that future jobs will be made available to District residents. The developer will continue to distribute all employment announcements to the Department of Employment Services and Southwest community organizations, as well as advertising in local newspapers.

Advisory Neighborhood Commission Review

Notice of Bill 12-170 was provided by the Committee to Advisory Neighborhood Commission ("ANC") 2D, in accordance with the requirements of the law.

Lee Eckles, chairperson of ANC 2D, testified in opposition to Bill 12-170 at the public hearing that was held by the Committee on October 14, 1997. The opposition was based primarily on the density and height of the existing Portals development, which the ANC stated creates a "fortress-like barrier at the river's edge" that "further isolates the 'federal city' from its most visually attractive and humanistic features. The architect for the Portals project, Arthur Cotton Moore, responded to this criticism as follows:

"...the Portals is hardly a 'fortress-like development. It is rather a complete urban design plan for a section of the city with the usual and comfortable balance of buildings, streets and plazas. There has been a conscious attempt to parallel and echo the pattern of structures and open public spaces that has been successful on Pennsylvania Avenue. These privately built, but fully accessible streets and plazas are the basic armature and geometry of the design and provide access where none has existed before. Principally, new Maryland Avenue (the missing complementary Avenue to Pennsylvania Avenue in the L'Enfant plan) provides a landscaped walking environment over active railroad lines ending at a circular plaza with an overlook of the Jefferson Memorial and Tidal Basin. Newly created nonvehicular 13th Street, between the first building and the future hotel, will lead to a recycled railroad bridge as a new pedestrian connection over the hazardous high-speed traffic lanes to the open air Fish Market, adjacent marinas, Tidal Basin, monument area, and the residential community of Southwest. When the central circular plaza is completed, it will provide an open public landscaped area the size of Sheridan Circle, but without the commuter traffic. All this must be seen as a welcoming urban environment in direct contrast to the adjacent plethora of enormously scaled bridges and freeways which are not part of the Portals project and which do have some visual and functional isolation and fortress-like qualities.

"Moreover, what is being considered is the north side of the Portals which abuts some of the largest and most formidable structures in the city. The north side of the Portals faces across D Street the huge industrial structure of the Bureau of Engraving and Printing Annex and the 160 foot high main heating plant for the federal government. It is impossible to be even a little fortress-like in the shadow of these gargantuan structures as it is to have perceptual visual impact from the north side of the Portals project on the new Southwest. In short, the north side now under consideration will have no impact, and the south side when fully completed will only be beneficial, providing new public spaces and new access."

National Capital Planning Commission Review

The Committee received the attached letter, dated January 8, 1998, from the National Capital Planning Commission in opposition to Bill 12-170. The Commission's opposition was

based primarily on its view that "the Council lacks legal authority to amend the Schedule of Heights to permit a building taller than that permitted by the current schedule." The Commission stated that its view was based on a 1990 Department of Justice interpretation, which has recently been reevaluated and revoked by the Department of Justice, which concluded that the 1990 interpretation was in error. As stated previously, the Department of Justice now agrees with the Council's General Counsel and the Corporation Counsel that the Council has the authority to amend the Schedule of Heights, as long as the amended height is within the overall limitations of the 1910 Height Act.

Position of the Executive Branch

Duryea C. Smith, Acting Administrator of the Neighborhood Preservation and Commercial Development Administration of the Department of Housing and Community Development, testified on behalf of the executive branch at the public hearing on Bill 12-170 in support of the legislation.

John M. Ferren, Corporation Counsel, submitted the attached letter, dated November 26, 1997, opining that the Council has the authority to amend the Schedule of Heights consistent with the Height Act, and that Bill 12-170 is legally sufficient.

Committee Action

The Committee held a public hearing on Bill 12-170 on October 14, 1997. The Committee received testimony in support of the bill from: Duryea Smith and Perry Perry, Department of Housing and Community Development; Steven Grigg, Albert Hopkins, Jr. Christopher Collins, and Arthur Cotton Moore, Portals Development Associates; and Mark Weiss and Margaret Feldman, Southwest residents. The Committee received testimony in opposition to Bill 12-170 from Lee Eckles, Advisory Neighborhood Commission 2D; Dorothy Miller, Advisory Neighborhood Commissioner 2A05; and David Grinnell, Committee of 100 on the Federal City. Attached is a copy of written testimony and comments on Bill 12-170.

The Committee considered a draft amendment in the nature of a substitute to Bill 12-170 at a meeting on October 20, 1998. Chairman Cropp moved approval of Bill 12-170 as amended and this Committee Report, which were approved by voice votes (Chairman Cropp and Councilmembers Allen, Brazil, Catania, Chavous, Evans, Jarvis, Patterson, Schwartz and Smith present; Councilmembers Ambrose, Mason and Thomas absent).

Attachments

Office of the Deputy Attorney General
Washington, D.C. 20530

September 3, 1998

RECEIVED
'98 SEP -8 A9:17

The Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
441 4th Street, N.W., Room 704
Washington, D.C. 20001

Dear Chairman Cropp:

The Deputy Attorney General has asked me to forward a copy of the enclosed memorandum to you for your information.

Sincerely,

Annie Bradley

Annie Bradley
Confidential Assistant
to
Eric H. Holder, Jr.
Deputy Attorney General

Enclosure

Office of Legal Counsel

Office of the Deputy Assistant Attorney General *Washington, D.C. 20530*

August 28, 1998

MEMORANDUM FOR ERIC H. HOLDER, JR.
DEPUTY ATTORNEY GENERAL

From: Beth Nolan
Deputy Assistant Attorney General

Re: Authority of the Council of the District of Columbia to Amend the Schedule of Heights Under Section 602(a)(6) of the Home Rule Act

This memorandum responds to your request for our views regarding the authority of the Council of the District of Columbia to amend the Schedule of Heights of Buildings Adjacent to Public Buildings ("Schedule of Heights"). Specifically, we have considered whether, under § 602(a)(6) of the Home Rule Act of 1973, the Council has the authority to amend the Schedule of Heights as long as any amendment is within the overall limitations set forth in the Building Height Act of 1910. We conclude that the Council does have that authority, and that its authority is not further restricted by the limitations contained in the Schedule of Heights that was in effect in 1973.

I. Background

Section 5 of the Building Height Amendment Act of 1910, 36 Stat. 452 (codified as amended at D.C. Code Ann. § 5-405 (1994)) ("Height Act"), contains limitations on the permissible heights of buildings in the District of Columbia. Those limitations depend on the width of the street on which a building will front, and on whether the street is a business or a residential street. In addition, the Height Act provides that the maximum height of buildings on blocks adjacent to public buildings "shall be regulated by a schedule adopted by the Council of the District of Columbia."[1] Since 1910, the Commissioners of the District of Columbia,

[1] Section 5 of the Height Act, as amended, provides in pertinent part:

> (a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway

and subsequently the Council, have exercised their authority to set such further height limitations under a Schedule of Heights in 15 different areas of the District adjacent to public buildings, including the blocks around the White House, the Supreme Court Building, and the House and Senate Office Buildings.

In 1973 Congress enacted the District of Columbia Self-Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973) (the "Home Rule Act"), which gave the Council broad legislative powers over "all rightful subjects of legislation within the District." D.C. Code Ann. § 1-204 (1992). That grant of authority, however, is not absolute. One of the limitations placed on the Council is set forth in § 602(a)(6) of the Home Rule Act:

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:
>
> . . . .
>
> (6) Enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in § 5-405, and in effect on

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in its front, increased by 20 feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway. . . .

(b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a business street or avenue . . . except on the north side of Pennsylvania Avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.

(c) On a residence street, avenue, or highway no building shall be erected, altered, or raised in any manner so as to be over 90 feet in height at the highest part of the roof or parapet . . . .

(d) The height of a building on a corner lot will be determined by the width of the wider street.

. . . .

(f) On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia.

D.C. Code Ann. § 5-405. As originally enacted, the Height Act granted the authority to adopt a schedule of heights to the District of Columbia Board of Commissioners. That authority was transferred in 1967 to the newly created District of Columbia Council, see Reorganization Plan No. 3 of 1967, § 402, ¶ 120, D.C. Code Ann. vol. 1, p. 126, 137 (1991), and in 1973 to the Council of the District of Columbia, see D.C. Code Ann. § 1-227(a) (1992).

December 24, 1973[.]

D.C. Code Ann. § 1-233 (1992).[2]

The question posed here is whether the Home Rule Act's reference to "the height limitations contained in § 5-405, and in effect on December 24, 1973" includes the limitations contained in the Schedule of Heights that was in effect on December 24, 1973. If it includes those limitations, then the Council lacks the authority to amend the Schedule of Heights in a way that would make it less restrictive than it was on December 24, 1973.

Both the Council's General Counsel and the District's Corporation Counsel have concluded that § 602(a)(6) of the Home Rule Act does not refer to the height limitations contained in the Schedule of Heights, but refers only to the height limitations included in the Height Act of 1910 itself, as amended (§ 5-405 of the D.C. Code). Accordingly, in their view, the Council has the power to amend the Schedule of Heights to the extent that any such amendment is consistent with (i.e., no less restrictive than) the overall limitations set forth in the Height Act. See Memorandum for Linda W. Cropp, Chairman, Council of the District of Columbia, from Charlotte Brookins-Hudson, General Counsel, Council of the District of Columbia (Nov. 24, 1997); Letter for Linda W. Cropp, Chairman, Council of the District of Columbia, from John M. Ferren, Corporation Counsel, Government of the District of Columbia (Nov. 26, 1997) ("Corporation Counsel Letter").

The National Capital Planning Commission, however, has expressed a contrary view. See Letter for Linda W. Cropp, Chairman, Council of the District of Columbia, from Harvey B. Gantt, Chairman, National Capital Planning Commission (Jan. 8, 1998). The Commission's view is based on a 1990 opinion letter from the Environment and Natural Resources Division of the Department of Justice ("ENRD"). See Letter for Linda Dodd-Major, General Counsel, National Capital Planning Commission, from Richard B. Stewart, Assistant Attorney General, Environment and Natural Resources Division, Department of Justice (Nov. 6, 1990), reprinted in 137 Cong. Rec. 5131 (1991) ("1990 ENRD Letter"). The principal conclusion of the 1990 ENRD Letter is that the Council's authority to amend the

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[2] As originally enacted in 1973, § 602(a)(6) of the Home Rule Act was worded as follows:

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to –
>
> . . . .
>
> (6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405), and in effect on the date of enactment of this Act[.]

Pub. L. No. 93-198, § 602, 87 Stat. 774, 813 (1973) (emphasis added).

Schedule of Heights is subject to the other limitations set forth in the Height Act.[3] However, the letter also contains a paragraph (not necessary to its overall conclusion) discussing § 602(a)(6) of the Home Rule Act and concluding that the height limitations referred to in that section include the limitations in the December 1973 Schedule of Heights. See id. at 12. Recently, ENRD has reevaluated the view expressed in this paragraph of the 1990 ENRD Letter and has concluded that it was in error. ENRD has consequently revoked the 1990 ENRD Letter. See Memorandum for Dawn Johnsen, Acting Assistant Attorney General, Office of Legal Counsel, from Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division (June 30, 1998). For the reasons set forth below, we agree with ENRD's recent conclusion that both the plain meaning and the legislative history of the Home Rule Act support an interpretation under which the Council may amend the Schedule of Heights consistent with the statutory limitations in § 5-405 of the D.C. Code.

II. Discussion

"Interpretation of a statute must begin with the statute's language." Mallard v. United States District Court, 490 U.S. 296, 300 (1989). We believe that the plain language of § 602(a)(6) of the Home Rule Act (D.C. Code Ann. § 1-233(a)(6)) supports the District's interpretation.

The statutory language restricts the range of the Council's authority to alter the Schedule of Heights to "the height limitations contained in § 5-405, and in effect on December 24, 1973." The height limitations set forth in the Schedule of Heights as of December 24, 1973, however, were not (and are not) "contained in" § 5-405 (§ 5 of the Height Act). Rather, that section contains certain specific height limitations (§ 5-405(a)-(d)) and also includes a provision that the Council shall further regulate the heights of buildings adjacent to public buildings by adopting a "schedule" (§ 5-405(f)). While § 5-405(f) may be considered an authorization to adopt height limitations, it is not itself a height limitation. The terms of the Schedule of Heights, on the other hand, are not contained in § 5-405 of the D.C. Code. Therefore, the statutory phrase "the height limitations contained in § 5-405" does not by its terms encompass the height limitations set forth in the Schedule of Heights.

The analysis is not altered when one considers the additional statutory language "and in effect on December 24, 1973." Because the pertinent phrases are joined by the conjunction "and," the "height limitations" identified by § 602(a)(6) of the Home Rule Act must be both "contained in § 5-405" and "in effect on December 24, 1973." The statute would be broader if it were phrased in the disjunctive, but it is not. Thus, under the natural reading of the language, that a height limitation is "in effect on December 24, 1973" does not bring it within the statute unless it is also "contained in § 5-405."

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[3] The Council's General Counsel and the District's Corporation Counsel both agree with this conclusion, as do we.

The 1990 ENRD Letter failed to recognize the significance of this language in its brief discussion of § 602(a)(6) of the Home Rule Act. It stated:

> Section 602(a)(6) prohibits the Council from enacting any act which permits the building of any structure that exceeds (1) the section 5-405 height limitations, or (2) the height limitations in effect on December 24, 1973 — which include the Schedule of Heights as it existed at the time the Home Rule Act was enacted. In other words, under section 602(a)(2) [sic] of the Home Rule Act, the Council's authority under section 5-405(f) of the Height Act is limited to amending the Schedule of Heights to set height limits that are (1) lower than the applicable Height Act limits (for locations not included on the pre-Home Rule Schedule of Heights), or (2) lower than the pre-Home Rule Schedule of Heights limitations (for locations that are included in the pre-Home Rule Schedule). The Council is barred by section 602(a)(6) of the Home Rule Act from exceeding either of those limitations.

1990 ENRD Letter at 12 (footnote omitted). This discussion, however, does not follow the language of § 602(a)(6). In fact, its significant rephrasing of the statutory language — and in particular its substitution of disjunctive language — highlights the lack of support for this interpretation in the actual language of the statute. See Corporation Counsel Letter at 5. The natural reading of § 602(a)(6)'s language covers only those height limitations that are both "contained in § 5-405" and "in effect on December 24, 1973."

We have considered whether this reading of the statute renders superfluous the phrase "and in effect on December 24, 1973." See 2A Norman J. Singer, Sutherland Statutory Construction § 46.06, at 119 (5th ed. 1992) (statute should be construed to give meaning and effect to each term). It would seem that Congress could have achieved the same result by referring to "the height limitations contained in § 5-405" without the additional "and in effect" phrase. As enacted in 1973, however, the Home Rule Act referred to "the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405)." See supra note 2. The Height Act was amended several times after 1910.[4] Thus, the additional phrase in the Home Rule Act — which originally was "and in effect on the date of enactment of this Act" — makes clear that the Council is bound not only by the limitations of the Height Act of 1910 itself, but also by all amendments to the Act that were in effect when the Home Rule Act was enacted. The phrase is therefore not superfluous.

The plain language of § 602(a)(6), in our view, does not cover the height limitations set forth in the Schedule of Heights. Even if the language were ambiguous, however, the

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[4] See, e.g., Act of June 7, 1924, ch. 340, 43 Stat. 647; Act of Feb. 21, 1925, ch. 289, 43 Stat. 961; Act of May 16, 1926, ch. 150, 44 Stat. 298; Act of April 29, 1930, ch. 220, 46 Stat. 258; Act of March 24, 1945, ch. 37, 59 Stat. 38; Act of Sept. 22, 1961, Pub. L. No. 87-281, § 1, 75 Stat. 583.

legislative history would not warrant a contrary conclusion.

The House report on the Home Rule bill describes § 602(a)(6) as precluding the Council from "permitting the construction of buildings in excess of the present height limitations set by Congress."[5] Rep. Fauntroy similarly referred to "the height limitations imposed by the Congress."[6] Because the height limitations in the Schedule of Heights are set by the Council rather than Congress, these references support the view that § 602(a)(6) addresses only the limitations set forth in the Height Act.

The conference report describes § 602(a)(6) as providing that "the Council could not change building height limitations."[7] Similarly, Rep. Diggs, the chair of the House Committee on the District of Columbia, stated that the Council is "prohibited from modifying the building height limitations now in effect,"[8] and from "increasing height limitations on buildings."[9] Such references are ambiguous. While they could arguably suggest a broader reading of § 602(a)(6) as including the Schedule of Heights limitations, they could also reasonably be construed as shorthand references to the limitations contained in the Height Act itself.

The strongest arguable basis in the legislative history for a contrary view appears to consist of two statements by Jacques DePuy, counsel to the House Subcommittee on Government Operations of the Committee on the District of Columbia, during markup of the bill. Before the provision was drafted, he suggested that the Members might want to add "in the specific limitations of the Council an amendment combining the existing height limitations."[10] And when presenting the provision, he stated:

> What we drafted was an amendment which would go to the limitations on the Council that the Council could not enact an act that permitted building above existing height limitations, and freezing in what now is existing law, and

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[5] H.R. Rep. No. 93-482, at 15 (1973) (emphasis added); see also id. at 37 (section-by-section analysis recites language of § 602(a)(6) without the final "and in effect on . . ." phrase).

[6] House Committee on the District of Columbia, 93d Cong., 2d Sess., Home Rule for the District of Columbia 1973-1974, Background and Legislative History 1125 (Comm. Print 1974) (proceedings dated July 25, 1973) (emphasis added) ("Home Rule Act Legislative History").

[7] H.R. Conf. Rep. No. 93-703, at 75 (1973).

[8] Home Rule Act Legislative History at 1358 (July 31, 1973).

[9] Id. at 3051 (Dec. 17, 1973).

[10] Id. at 215 (May 17, 1973) (emphasis added).

would prohibit the Council from allowing any building above that limitation.[11]

These statements could be read to support the view that Mr. DePuy contemplated a provision precluding the Council from broadening the height limitations in the Height Act as well as those in the Schedule of Heights in effect in 1973. Even these statements, however, are far from clear in their meaning. The reference to "freezing in what now is existing law," for example, could simply indicate that the Council would not have unrestricted authority to amend § 5-405, as it would with respect to many other provisions of the D.C. Code. Moreover, neither the congressional reports nor comments by Members of Congress reflect any intent on their part to include the separate Schedule of Heights restrictions in the scope of § 602(a)(6).

In sum, the legislative history does not reveal any clear or generally accepted intent on Congress's part to preclude the Council from making the Schedule of Heights less restrictive than it was at the time the Home Rule Act was adopted. Thus, even when the legislative history is consulted, it fails to overcome the natural reading of the statute as covering only those height limitations contained in the Height Act, as amended.

III. Conclusion

For the foregoing reasons, we conclude that the Council has the authority, under § 602(a)(6) of the Home Rule Act, to amend the Schedule of Heights as long as any amendment is within the overall limitations set forth in the Height Act of 1910, as amended (D.C. Code Ann. § 5-405), and that that authority is not further restricted by the limitations contained in the Schedule of Heights that was in effect on December 24, 1973.

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[11] Id. at 302 (May 21, 1973) (emphasis added).

COUNCIL OF THE DISTRICT OF COLUMBIA

WASHINGTON, D. C. 20001

LINDA W. CROPP
Chairman

January 12, 1998

The Honorable Eric H. Holder, Jr.
Deputy Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W., Room 2337
Washington, D.C. 20530

Dear Mr. Holder:

I am writing to request an updated legal opinion by the Department of Justice on the authority of the Council of the District of Columbia to amend the Schedule of Heights of Buildings Adjacent to Public Buildings ("Schedule of Heights") and an opinion specifically on the Council's authority to amend the Schedule of Heights as proposed by a bill that is pending in the Council.

Attached for your review are two recent legal opinions by the Council's General Counsel and the District's Corporation Counsel, each concluding that: (1) the Council has the authority to amend the Schedule of Heights as long as the amendment is within the overall limits set forth by An Act To regulate the height of buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code § 5-401 *et seq.*) ("1910 Act"); and (2) the Council has the authority to amend the Schedule of Heights as proposed by the attached Bill 12-170, the Schedule of Heights of Buildings Amendment Act of 1997, which is pending in the Council.

My request to you is prompted by the attached comments recently submitted to the Council by a federal agency, the National Capital Planning Commission ("NCPC"), which has advised that it believes that the Council lacks the legal authority to amend the Schedule of Heights to permit a building that exceeds the height set forth in the Schedule of Heights that was in effect at the time of enactment of the 1973 Home Rule Act, even if such height is within the overall maximum limits established by the 1910 Act. The NCPC's view relies on the attached 1990 opinion by the Department of Justice, portions of which are contradicted by the opinions of the Council's General Counsel, the District's Corporation Counsel, and the attached 1986 opinion by the U.S. General Accounting Office. In light of these contradictions, I respectfully request that the Department of Justice revisit the question of the Council's authority in this area.

Your Department's attention to this matter would be very much appreciated.

Sincerely,

Linda W. Cropp
Chairman

Attachments

cc: All Councilmembers
Mayor Marion Barry, Jr.
Congresswoman Eleanor Holmes Norton
White House Advisor Carol Thompson Cole
NCPC Chairman Harvey B. Gantt

NATIONAL CAPITAL PLANNING COMMISSION

COMMISSION MEMBERS

Appointed by the President of the United States

Harvey B Gantt
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Honorable David J Barram

Chairman, Committee on Governmental Affairs
United States Senate
Honorable Fred Thompson

Chairman, Committee on Government Reform and Oversight
U.S House of Representatives
Honorable Dan Burton

Mayor, District of Columbia
Honorable Marion S Barry, Jr

Chairman, Council of the District of Columbia
Honorable Linda W Cropp

IN REPLY REFER TO:
NCPC File No. 1731

JAN 0 8 1998

Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
414 4th Street, N.W., Room 704
Washington, D.C. 20001

Dear Chairman Cropp:

Thank you for the opportunity to comment on Bill 12-170, the Schedule of Heights of Buildings Amendment Act of 1997. As we understand the proposed bill, the Schedule of Heights would be changed to permit any structure on the North Portals site, which is set back an additional 20 feet from the 14th Street property line so as to align with the Bureau of Engraving and Printing's Annex to the north, to have its height established in accordance with the Zoning Regulations rather than the Schedule of Heights. Simply put, the Schedule currently would restrict any North Portal site building to a height of 80 feet above the elevation of the southeast corner of 14th and D Streets, or a top elevation of 104.92. The proposed bill would allow the building to be constructed to 90 feet (what is permitted under the existing C-3-C- zoning) as measured from Maryland Avenue, which is elevated to 44 feet. Therefore, as a result of the proposed legislation, the effective permissible height of the North Portals building at 14th and D Streets would be an elevation of 134 feet or approximately 30 feet above which is now allowed under the Schedule of Heights.

The National Capital Planning Commission opposes the proposed bill for two reasons. First, the Schedule of Heights was adopted in order to regulate the height of private buildings fronting on certain federally-developed portions of the District of Columbia. It was designed to protect and maintain the prominence of federal buildings and monuments in this city by establishing, in various locations around the city, heights that are generally lower than what would normally be permitted by Zoning. Allowing the North Portal site to be built to a practical elevation of 130 feet would effectively abrogate that Congressional intent by permitting a building which would be taller than the currently existing Bureau of Engraving and Printing Annex (BE&P) which is approximately 95 feet.

EXECUTIVE DIRECTOR
Reginald W Griffith

The Commission has consulted with officials at BE&P who have expressed strong opposition to any legislation which would raise the current height limit of 80 feet. The Bureau's position, which is set out in the attached letter, is based on three factors, interference with the dispersal of stack emissions exiting the roof, obstruction of natural light sources for hand engraving work being done on the top floors, and concerns about Bureau security.

Secondly, the Commission believes that the Council lacks legal authority to amend the Schedule of Heights to permit a building taller than that permitted by the current Schedule. Our view is based on Section 602(a)(2) of the Home Rule Act, (D.C. Code §1-233) which provides that the Council shall have "no authority" to:

> enact any act, resolution, or rule which permits the building of <u>any structure</u> within the District of Columbia in excess of the height limitations contained in Section 5-405 [section 5 of the Height Act], and in effect on December 24, 1973.

In a 1990 opinion, the Department of Justice interpreted section 602(a)(2) to mean that:

> [U]nder section 602(a)(2) of the Home Rule Act, the Council's authority under section 5-405(f) of the Height Act is limited to amending the Schedule of Heights to set height limits that are (1) lower than the applicable Height Act limits (for locations not included on the pre-Home Rule Schedule of Heights), or (2) lower than the pre-Home Rule Schedule of Heights limitations (for locations that are included in the pre-Home Rule Schedule.) The Council is barred by section 602(a)(6) of the Home Rule Act from exceeding either of those limitations.

Since the proposed bill would result in a building whose height would exceed the limitations in the Schedule of Heights in effect at the time the city was given Home Rule, this Commission would oppose Bill 12-170.

Please let me know if I can be of any further assistance.

Sincerely,

Harvey B. Gantt
Chairman

Government of the District of Columbia
OFFICE OF THE CORPORATION COUNSEL
JUDICIARY SQUARE
441 FOURTH ST., N.W.
WASHINGTON, D.C. 20001

IN REPLY REFER TO

November 26,1997

Honorable Linda W. Cropp
Chairman
Council of the District of Columbia
Suite 704
441 4th St., N.W.
Washington, D.C. 20001

Dear Chairman Cropp:

This is in reply to your October 22, 1997 request that I provide you with copies of earlier opinions by this Office addressing the authority of the Council of the District of Columbia to amend the Schedule of Heights of Buildings Adjacent to Public Buildings (hereinafter, "Schedule"), and to advise you concerning the Council's authority to amend the Schedule in the manner provided for in Bill 12-170, the "Schedule of Building Heights Amendment Act of 1997".

In a July 23, 1979 memorandum (copy enclosed), then Deputy Corporation Counsel Robert McCally concluded that the Council of the District of Columbia was free to amend the Schedule, and this position was reiterated in the September 26, 1990 letter from then Corporation Counsel Herbert O. Reid to then Chairman of the Council David A. Clarke (copy enclosed). For the reasons set forth below, it is my opinion that the Council may amend the Schedule, subject to the height restrictions set forth in the Building Height Amendment Act of 1910, approved June 1, 1910, 36 Stat. 452, as amended, D.C. Code § 5-405 (1994) (hereinafter, "Height Act").

1. The Height Act

The Height Act includes maximum building heights which vary, depending upon the width of the street on which a building will front, and upon whether the street is a business or residential street (D.C. Code § 5-405 (a)-(e)), as well as specific limitations for buildings in certain identified locations (D.C.

Code § 5-405 (g) and (h)). In addition, the Height Act contains the following provision:

> On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia.[1]

D.C. Code § 5-405 (f).

Clearly, this section authorizes the Council to establish separate height restrictions for buildings constructed adjacent to public buildings. It is my view that the Height Act permits the Council to increase height restrictions in the Schedule of Heights, so long as the increased height limitation does not exceed the limits set forth in the Height Act. When Congress enacted the Height Act, it enacted clear, unambiguous height limitations for various parts of the District. Nothing in the language of the Height Act suggested that the limited grant of authority to the Board of Commissioners to establish a schedule of heights for buildings near public buildings was intended to authorize the Commissioners to circumvent these Congressionally-enacted limits. See Memorandum of the Congressional Research Service to Chairman Ronald V. Dellums, House District of Columbia Committee, March 4, 1991, reprinted in 137 Cong. Rec. 5125-5128 (daily ed. March 6, 1991) (detailed analysis of how the plain meaning approach to statutory interpretation supports this reading of the Height Act).

The legislative history supports this interpretation. Before the Height Act was enacted, Congress had enacted a series of height limitations similar to those now in effect, but without any provision for the local government to promulgate a schedule of heights for buildings adjacent to public buildings. Building Height Act of 1899, ch. 322, 30 Stat. 922, 1899. Thereafter, the Commissioners asked Congress to reduce the height limitation for buildings that would be adjacent to Union Station (which was then under construction). Letter from Henry V.G. MacFarland, President, District of Columbia Board of Commissioners, to Jacob H. Gallinger, Chairman, Senate Committee on the District of

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[1] When the Height Act was originally enacted, it provided for the schedule of heights to be adopted by the Board of Commissioners of the District of Columbia. This authority was transferred to the District of Columbia Council by Reorganization Plan No. 3 of 1967, § 402, ¶ 120, and then to the Council by § 404(a) of the Home Rule Act, D.C. Code § 1-227(a) (1992).

Columbia, December 10, 1904, reprinted in S. Rep. No. 3082, Cong. 3d Sess. (1905). Congress did so in 1905. Then, in 1910, Congress revised the 1899 Act to include the provision allowing for the development of a schedule of heights. The House Report for this legislation noted that, "[t]he present law has no such provisions. The commissioners have found it advisable to make such regulations [governing the height of buildings on blocks adjacent to public buildings] . . . . , and the present building regulations fix the height of buildings on G and F streets, between Seventh and Ninth, adjacent to the United States Patent Office, and on Fifteenth street, between Pennsylvania avenue and G street, adjacent to the Treasury. This clause is inserted in order that there may be no question as to the right of the commissioners to make such a regulation." H. Rep. No. 720, 61st Cong. 2d Sess. 2 (1910). Thus, the language in the Height Act concerning the schedule of heights was intended to ratify the Commissioners' previous efforts to regulate building height, and to make clear that they had the authority to adopt similar regulations in the future. The Commissioners had no authority to authorize buildings to be built higher than the Congressionally enacted limits before 1910 and the 1910 legislation simply clarified their narrow authority to regulate building heights within these limits.

2. The Home Rule Act

Section 602 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Code § 1-233 (a)(6) (1992) (the "Home Rule Act restriction"), provides that, notwithstanding its general legislative power, the Council of the District of Columbia has no authority to

> [e]nact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, sec. 5-405) [the Height Act], and in effect on December 24, 1973.

This provision of the Home Rule Act plainly prohibits the Council from altering any building height limitation that was included in the Height Act and in effect on December 24, 1973, i.e., any limitation which satisfies both conditions. Cf. United States v. Bear, 932 F.2d 1279, 1281-82 (9th Cir. 1990) (federal statute which referred to any offense "that is not defined and punished by Federal law" (emphasis added) referred only to those offenses that met both conditions).[2] Therefore, I conclude that the Home

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[2] Arguably, Congress could have achieved the same result simply by prohibiting the Council from enacting any act, resolution, or rule permitting the building of any structure in excess of the limitations contained in section 5 of the Act of June

Rule Act restriction clearly does not prohibit the Council from taking action that would increase any maximum allowable building height, so long as the increased height limitation does not exceed the overall limitations included in the 1910 Act or permit a building to be built in excess of those limitations. See memorandum from Gene L. Dondero, Associate Director, General Accounting Office, to Senator Frank R. Lautenberg, September 19, 1986, reprinted in 137 Cong. Red. 5125, March 6, 1991 (reaching the same conclusion).

I recognize that the Justice Department has reached a different conclusion. See memorandum from Richard B. Stewart, Assistant Attorney General, to Linda Dodd-Major, General Counsel, National Capital Planning Commission, November 6, 1990 ("Justice Department letter"), reprinted in 137 Cong. Rec. 5131-34, March 6, 1991, which concludes that the Council may not make any amendment to the schedule of heights which has the effect of permitting a building to exceed the height allowed by the 1910 Act as amended as of December 24, 1973, even if the new maximum allowable height remains within the limitations set forth in the Height Act. The only support for this notion included in the Justice Department letter is the following statement:

1, 1910, without including the additional phrase, "and in effect on the date of enactment of this Act". Indeed, analogous language is not included anywhere else in the Home Rule Act. However, the reference to restrictions included in the Act of 1910 "and in effect" when the Home Rule Act was enacted is not superfluous -- it makes clear that the Council was bound not just by the Act of 1910, but also by all amendments to the act which were in effect when the Home Rule Act was enacted. Consistent with this interpretation, I note that when Congress was considering the draft bill to which the building height restriction was added, all of the references to other laws included in the draft bill were to: (1) acts that had not been amended after they were originally enacted, so there was no need to use language to make clear that later amendments were incorporated in the reference; (2) codified acts that had been enacted as positive law, so that reference to the act as codified necessarily incorporated any amendments to it adopted after its original enactment; or (3) acts that were being amended, where a reference to the underlying organic act only (without reference to later statutory amendments) was consistent with general drafting standards. Subcommittee Discussion Draft No. 1, reprinted in Background and Legislative History of the Home Rule Act, at 40-132. The extent to which these three types of references referred to later enacted changes was clear. Adding the phrase, "and in effect on the date of enactment of this Act", assured similar clarity concerning the effect of intervening amendments to the Act of 1910 on the Council's authority to alter building height limitations.

> Section 602(a)(6) prohibits the Council from enacting any act which permits the building of any structure that exceeds (1) the section 5-405 height limitations, or (2) the height limitations in effect on December 24, 1973 - which include the Schedule of Heights as it existed at the time the Home Rule Act was enacted.

However, this is not at all what the Home Rule Act restriction states. Indeed, the fact that the Justice Department had to engage in a major rephrasing of the language of the statute in order to make its argument is persuasive evidence that its interpretation is not supported by the wording of the statute.

Moreover, according the to the Justice Department letter, the effect of the Home Rule Act restriction was to amend D.C. Code § 5-405(f) to provide that the maximum height of buildings located on sites subject to the Schedule of Heights, could be amended by the Council, provided that while the Council may reduce any maximum height set forth in the schedule, it may not increase any such height, even where the increase would be within the limitations set forth in this act. However, the Home Rule Act did not amend D.C. Code § 5-405 to include language to this effect, nor did it include such a change in the "Changes in Existing Law" portion of the report on the District of Columbia Self-Government and Governmental Reorganization Act, H.R. Rep. 93-482, 93rd Cong., 1st Sess., at 82-112 (hereafter, "House Committee Report"), reprinted in House Committee on the District of Columbia, 93d Cong., 2d Sess., Home Rule for the District of Columbia 1973-1974, Background and Legislative History (hereafter, "Background and Legislative History of the Home Rule Act"), at 1522-52 (1974). The written legislative history contains no discussion whatever to suggest that the Home Rule Act somehow amended D.C. Code § 5-405 in this manner.

There is another reason why the Justice Department construction of the Home Rule Act restriction is incorrect. The Justice Department letter states that, "[s]ection 602(a)(6) prohibits the Council from enacting any act which permits the building of any structure that exceeds . . . the height limitations in effect on December 24, 1973". This interpretation would bar the Council from taking any act which has the effect of increasing any allowable building height to exceed that which was permitted on December 24, 1973, even if that height limitation was established by the District's zoning scheme. However, when Congress enacted the Home Rule Act it did not intend to freeze the height limitations then in effect in the District's zoning laws and regulations but instead, intended to permit the District to change its zoning restrictions to increase the height of buildings, so long as the overall height limitations set forth in the Height Act were not altered. Indeed, this is the rule set

out in An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, approved June 20, 1938, 52 Stat. 798, § 6, D.C. Code § 5-418 (1994), which states that:

> The permissible height of buildings in any district shall not exceed the maximum height of buildings now authorized upon any street in any part of the District of Columbia by §§ 5-401 to 5-409, regulating the height of buildings in the District of Columbia.

This statute permits changes to be made in the applicable zoning requirements to increase the maximum allowable height of buildings, as long as the increased allowable height is within the maximum permitted by the Height Act.

Congress has never amended this statute to eliminate the authority to permit such changes. Indeed, the courts have upheld the authority of the District's Zoning Commission to increase the maximum allowable building height permitted at various sites in many instances. See, e.g., Dupont Circle Citizens Association v. District of Columbia Zoning Commission, 431 A.2d 560 (D.C. 1981) (Zoning Commission decision to approve a planned unit development which, inter alia, increased the maximum allowable building height from 90 feet to 118 feet upheld). Cf., Blagden Alley Association v. District of Columbia Zoning Commission, 590 A.2d 139, 139-43 (D.C. 1989) (affirming Zoning Commission's authority to increase the maximum allowable building height for a planned unit development from 90 feet to 130 feet), Levy v. District of Columbia Board of Zoning Adjustment, 570 A.2d 739, 750 n. 15 (D.C. 1989) (noting that the Zoning Commission may approve increases in allowable building height). Just as zoning restrictions affecting maximum building heights may be amended to permit those heights to be increased, so long as they do not exceed the limitations in the Height Act, the maximum building heights included in the Schedule of Heights may be similarly amended.[3]

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[3] An argument could be made that because the Home Rule Act restriction addresses the Council's authority, it limits the Council's authority to amend the Schedule of Heights, but does not affect D.C. Code § 5-418, which sets forth the authority of the Zoning Commission to take action affecting building heights. However, this distinction does not survive close scrutiny. This is so because the "Council, no less than the [Zoning Commission] plays an important role in zoning matters", Blagden Alley Association v. District of Columbia Zoning Commission, 590 A.2d 139, 143 (D.C. 1991), and thus could enact legislation altering the zoning laws to permit an increase in maximum building heights (so long as the new

Finally, the written legislative history of the Home Rule Act supports the conclusion that the Council may amend the Schedule of Heights. The House Committee Report at p. 15 (Background and Legislative History of the Home Rule Act, p. 1455) states that under the Home Rule Act restriction, [t]he Council is also prohibited from . . . permitting the construction of buildings in excess of the present height limitations set by Congress." In other words, this indicates that the Council may not amend the provisions of the Height Act, but that it may take other action, e.g., amending the Schedule of Heights, so long as the restrictions in the amended Schedule of Heights do not exceed the height limitations enacted by Congress. The Conference Agenda provided by Senate staff similarly describes the restriction on Council action included in the House bill as one which prohibits the Council from enacting "any act, resolution, or rule in excess of height limitations for the erection of buildings contained in (District of Columbia Code sec. 5-405)." Background and Legislative History of the Home Rule Act, p. 2873. The Conference Agenda also notes that the version of the Home Rule Act enacted earlier by the Senate does not contain the restriction on Council action affecting building heights that was included in the House version.[4] While the Justice Department letter argues that the legislative history supports its conclusion insofar as it contains references to Congressional desire to "[freeze] what is now in effect", these references just as easily can be used as evidence of a Congressional intention to maintain the scheme then in place, under which the local legislature could amend the Schedule of Heights consistent with the Height Act restrictions. Accordingly, based on the plain language of the Home Rule Act restriction, the legislative history of the Home Rule Act, and the other factors discussed above, I conclude that: (1) the Council may amend the Schedule

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maximum heights do not exceed the limitations in the Height Act). Cf. Blagden Alley, 590 A.2d at 143, n. 8. On the other hand, the Justice Department position, i.e., that the phrase "and in effect on December 24, 1973" prohibits the Council from altering any building height limitation in effect on that day, would dictate that the Council could take no action involving zoning laws. Furthermore, common sense dictates that Congress did not intend to establish a scheme in which the Zoning Commission could increase maximum building heights, but the Council could not. Nor is there any evidence in the text of the Home Rule Act or in the legislative history of the Act, that Congress intended to create such a restriction.

[4] Language similar to that from the Conference Agenda as quoted above is included in an analysis of the House and Senate bills prepared for then Congressman Brock Adams, Chairman of the Subcommittee on Government Operations. Background and Legislative History of the Home Rule Act, p. 2890.

consistent with the Height Act; and (2) Bill 12-170 is legally sufficient.

If you would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,

John M. Ferren
Corporation Counsel

Enclosures

cc: Bernard Demczuk
Director
Office of Intergovernmental Relations

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

WASHINGTON D. C. 20004

LCD:RIC:ph

July 23, 1979

MEMORANDUM TO: James O. Gibson
Assistant City Administrator
Office of Planning and Development

FROM: Robert E. McCally
Deputy Corporation Counsel, D.C.
Legal Counsel Division

SUBJECT: Keith-Albee Theatre/Bill No. 3-85
(UZF90868)

You have requested my comments on a June 15, 1979 letter from Richard Robbins, Esquire, Assistant Solicitor, National Capital Parks, United States Department of Interior, with respect to the above matter. In the letter, Mr. Robbins suggests that the enactment of Bill No. 3-85 would not be within the Council's authority in view of the provisions of D.C. Code Sec. 1-147(a)(6), which provides:

> The council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to---
>
> * * *
>
> (6) enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in Section 5-405, and in effect on December 24, 1973;

In my opinion this conclusion is incorrect, for the following reasons.

As background it is necessary to keep in mind the distinction between the Height Act of 1910, 36 Stat. 452, and the Schedule of Heights. The Height Act is codified as Sections 5-401 through 5-409, D.C. Code. Section 5-405 consists of eight un-numbered paragraphs which regulate the Height of buildings.1/

The sixth paragraph authorizes the Council.2/ to adopt a schedule to regulate the height of buildings on blocks adjacent to public buildings. This schedule appears as Appendix G to the Zoning Regulations. The limitations in the Schedule are more restrictive than those contained in Sec. 5-405.

Bill No. 3-85 does not purport to change any of the limitations in Section 5-405. Mr. Robbins' characterization of the block in question as "regulated *** by a provision within *** [Sec.] 5-405" (Robbins letter, p. 1) and his assertion that "section 1-147(a)(6) states that the Council may not amend those building height restrictions referenced in Sec. 5-405" (ibid, p. 3) evade the plain fact that the restriction on the Council's power is applicable only to limitations contained in Sec. 5-405. The restriction is not by its terms applicable to limitations authorized by, but not contained in, Sec. 5-405.

1/ The first paragraph provides in general that the maximum permissible height of a building is determined by adding 20 feet to the width of the street upon which the building fronts. The second paragraph establishes an overall limitation of 130 feet on a business street other than the north side of Pennsylvania Avenue northwest, between First and Fifteenth Streets, where 160 feet is the permitted height. The third paragraph contains the provisions which control heights on residence streets. The seventh and eighth paragraphs contain, inter alia, various limits applicable to specified locations.

2/ In the Height Act itself, the authority is granted to the Board of Commissioners. This authority was transferred to the District of Columbia Council by par. 120 of Section 402 of Reorganization Plan No. 3 of 1967, and, in turn to the Council of the District of Columbia by Sec. 404(a) of the District of Columbia Self-Government Act, codified as Sec. 1-144(a), D.C. Code, 1978 Supp.

The restriction set forth in Sec. 1-147(a)(6), D.C. Code, 1978 Supp. refers only to limitations contained in Sec. 5-405, D.C. Code. Bill 2-85 would amend the height limits set forth in the Schedule of Heights. These limits are not contained in Section 5-405. Thus, the restriction of Sec. 1-147(a)(6) is not applicable by its terms. Various explicit height limitations are contained in Sec. 5-405 which were imposed directly by Congress and are the limitations which cannot, under Sec. 1-147(a)(6), be exceeded by Council action.

The legislative history of Sec. 1-147(a)(6) appears at pages 215-216 and page 302 of the "Background and Legislative History of *** the Self-Government *** Act." This discussion does not refer to the Schedule of Heights, but only to the limitations contained in the Building Height Act of 1910 and in the D.C. Code.

In context, it is evident, albeit not explicitly set forth, that the Congress was concerned with the additional authority which the Council was to receive. This additional authority would have enabled the Council to amend the 1910 Heigh Act, but for the restriction. The former Council already had the authority to amend the Schedule of Heights.

Mr. Robbins' argument relies on House Subcommittee Counsel Jacques DePuy's general reference at p. 302, supra, to "freezing *** existing law." This is far from persuasive legislative history, particularly since imposition by Congress of a general freeze would have been inconsistent with the Congressional failure to preclude the Zoning Commission from raising zoning height limits in effect on the effective date of the Act. As you are well aware, the Zoning Regulations have a substantially broader effect upon height limitations throughout the District than does the Schedule of Heights.

The Congress granted the citizens of the District of Columbia very broad legislative powers, limited only by the U.S. Constitution and certain specific reservations of authorit contained on title VI of the Act. See McIntosh v. Washington, D.C. App., 395 A.2d 744 (1978). For the Congress to freeze not only the height limitations which it had imposed, but also the more restrictive limitations which it had authorized the Board of Commissioners and former Council to impose, would have been to act directly contrary to the Congressional intention in enacting the Self-Government Act. No Congressiona intention to reach the Schedule is manifest and the plain language of Sec. 1-147(a)(6) does not reach the Scheudle of

Heights limitations. Mr. Robbins refers to no legislative history, whether of the 1910 Height Act or of the Self-Government Act, which suggests that any Federal interest is reflected by the grant of authority to the District to promulgate the Schedule. As Mr. Robbins notes, the authorizing provision is only mentioned in a Commissioners memorandum concerning the 1910 Height Act. The absence of any House or Senate discussion of the provision is not consistent with the Federal concern which Mr. Robbins hypothesizes but cannot sustain. In that light, I have concluded that the overly broad discussion of the effect of Sec. 1-147(a)(6) is insufficient to establish a restriction on Council amendment of the Schedule.

REM

cc: Office of Intergovernmental Relations

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL
DISTRICT BUILDING
WASHINGTON, D. C. 20004

IN REPLY REFER TO

September 26, 1990

The Honorable David A. Clarke
Chairman, Council of the District of Columbia
District Building
1350 Pennsylvania Ave.,N.W.
Washington, D.C. 20004

Re: Schedule of Heights Amendment Act of 1990
Bill 8-616

Dear Chairman Clarke:

At the hearing of the Committee of the Whole on September 18, 1990, The Honorable James Nathanson inquired as to the impact of the "Rhodes Tavern case" on Bill 8-616. Michael E. Zielinski, Acting Deputy Corporation Counsel, D.C., Community Development Division, requested an opportunity to respond in writing. Accordingly, the following response is submitted.

The reported court decisions involving the Rhodes Tavern matter do not deal with the Schedule of Heights issue, either directly or indirectly. Citizens Committee to Save Rhodes Tavern v. District of Columbia, 432 A.2d 710 (D.C. 1981), cert. den. 454 U.S. 1054, involved a challenge to a decision by the Mayor's Agent to issue a demolition permit pursuant to procedures mandated by the Historic Landmark and Historic District Protection Act of 1978. Grano v. Barry, 783 F.2d 1104 (D.C.Cir. 1986) and Grano v. Barry, 733 F.2d 164 (D.C.Cir. 1984) dealt with injunctive relief related to the voter initiative process and attorney's fees respectively. Neither these appellate decisions, nor the underlying trial court rulings, address the issues of the Council's authority with respect to the Schedule of Heights.

The question of the Council's authority to amend the Schedule of Heights was raised in conjunction with the project involving the Rhodes Tavern. At the time, paragraph 3 of the existing Schedule of Heights established a maximum height of 95 feet for buildings on "15th Street N.W., between Pennsylvania Avenue and G Street, adjacent to the Treasury Building". Bill 3-85, which became D.C. Law 3-43, amended that paragraph of the Schedule of Heights to make the restriction inapplicable on 15th

Street, N.W. between F and G Streets, beyond thirty-five feet from the building line, to any structure that retained the facades of the Keith-Albee Building and the National Metropolitan Bank Building. The amendment allowed the construction of Metropolitan Square, a commercial building bounded by 15th, 14th, F and G Streets, N.W., to a height of 130 feet except for the initial 35 feet of depth still governed by the Schedule's ninety-five foot limitation. The 130 foot height was the maximum height permitted by Section 5-405, D.C. Code.

As the July 23, 1979, opinion by Robert E. McCally, then of this Office, notes, the Council's authority to amend the Schedule of Heights was challenged by National Capital Parks, U.S. Department of the Interior. This Office, among others, took the position that the Council had the authority to amend the Schedule of Heights pursuant to the specific statutory authorization set forth in Section 5-405(f). That position was also supported by the General Accounting Office, which concluded that "the Council is not prohibited from amending the Schedule as long as the amendments do not allow any increase beyond the overall height limits set forth by the Building Height Act of 1910, as amended" (Section 5-405). There was no successful legal challenge to Council's amendment of the Schedule of Heights.

The National Capital Planning Commission has resurrected the challenge to the Council's authority to amend the Schedule of Heights. For the reasons presented at the hearing of the Committee of the Whole and those set forth in the 1979 opinion memorandum, it is the opinion of this Office that the Council has the authority to amend the Schedule of Heights as proposed in Bill 8-616.

Sincerely,

HERBERT O. REID, SR.
Corporation Counsel, D.C.

cc: The Honorable James Nathanson
Council of the District of Columbia

OFFICE OF THE GENERAL COUNSEL
COUNCIL OF THE DISTRICT OF COLUMBIA
441 4th Street, N.W.
Washington, D.C. 20001

Memorandum

TO: The Honorable Linda W. Cropp, Chairman
Committee of the Whole

FROM: Charlotte Brookins-Hudson, General Counsel

DATE: November 24, 1997

SUBJECT: Council's authority to amend the Schedule of Heights of Buildings Adjacent to Public Buildings ("Schedule of Heights") and Council's authority to amend the Schedule of Heights as proposed in Bill 12-170.

QUESTION:

This is in response to your memorandum dated October 22, 1997, in which you asked for a legal opinion on the following questions regarding Bill 12-170, the "Schedule of Heights of Buildings Amendment Act of 1997":

(1) Generally, whether the Council has the authority to amend the Schedule of Heights of Buildings Adjacent to Public Buildings ("Schedule of Heights").

(2) Specifically, whether the Council has the authority to amend the Schedule of Heights as proposed by Bill 12-170.

ANSWER:

(1) Based on the language of section 5 of the 1910 Act (D.C. Code § 5-405) and section 602(a)(6) of the Home Rule Act (D.C. Code § 1-233(a)(6)), as well as their respective legislative histories, the Council has the authority to amend the Schedule of Heights, as long as the amendment complies with the height limits set forth in section 5 of the 1910 Act, as amended. This opinion is consistent with the position taken in the past by the GAO (September 1986 Report), opinions issued by the Office of the-Corporation Counsel, and the plain language of D.C. Code § 5-405(f).

(2) Assuming that Bill 12-170 is redrafted to clearly indicate the intent of the Council

with regard to the desired height of the proposed building (not to exceed 110 feet), as reflected in the public hearing notice for Bill 12-170 and in your opening statement at the hearing. Bill 12-170 would not violate the 1910 Act.

DISCUSSION:

(1) **The Council's authority to amend the Schedule of Heights**

A. Height Act of 1910:

In 1910, Congress enacted An Act To regulate the height of buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452; D.C. Code § 5-401 *et seq.*) ("1910 Act"). Section 5 of the 1910 Act (D.C. Code § 5-405), sets forth various height limitations for buildings in the District of Columbia.

The relevant parts of section 5 of the 1910 Act (D.C. Code § 5-405(a), (b), and (d)) provide as follows:

> (a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet; but where a building or proposed building confronts a public space or reservation formed at the intersection of 2 or more streets, avenues, or highways, the course of which is not interrupted by said public space or reservation, the limit of height of the building shall be determined from the width of the widest street, avenue, or highway . . . .
>
> (b) No buildings shall be erected, altered, or raised in any manner as to exceed the height of 130 feet on a business street or avenue as the same is now or hereafter may be lawfully designated, except on the north side of Pennsylvania Avenue, between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.
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> (c) (Omitted).[1]
>
> (d) The height of a building on a corner lot will be determined by the width of the wider street.

In order to construe the meaning of a statute, one must first "read and examine the

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[1] This provision deals with buildings on a residential street. Since the proposed building at issue is on a business street, this opinion is limited to the discussion of buildings on a business street.

text of the act" itself. Singer, 2A *Sutherland Statutes and Statutory Construction* § 47.01, at 118 (4th ed. 1984). When construing the text of a statute, a statute must be read as a whole and "each part or section should be construed in connection with every other part . . . ." *Id.* at § 46.05, 90. Furthermore, the words of a statute are to be given their plain meaning. *Id.* at § 46.01, 73.

In order to construe the meaning of the above statute, its text must first be examined. Section 5 of the 1910 Act (D.C. Code § 5-405(a)) provides that "No building" shall be erected so as to exceed certain heights. This language would indicate that all buildings in the District of Columbia are subject to the limitations set forth in § 5-405(a). Section 5 of the 1910 Act (D.C. Code § 5-405(b)) provides further that "No buildings . . . on a business street or avenue . . ." shall be erected above a certain height. From the plain meaning of the above language, one can conclude that the reference to "No building" is broader than that of a building on a business street. Therefore, this section of the 1910 Act (D.C. Code § 5-405(a)) includes buildings on a business street and when the height of a building on a business street is at issue, both paragraphs (a) and (b) are applicable, and whichever height is lower will govern. Since a statute must be read as a whole, paragraph (d) of § 5-405 is also applicable to buildings on business streets. Paragraph (d) pertains to the height of a building on a corner lot and states that the height shall be determined by the width of the wider street. When read together with paragraph (a), paragraph (d) means that to determine the height of a building on a corner lot, 20 feet is added to the width of the wider of the streets at that particular corner.

While the meaning of section 5 of the 1910 Act seems to be clear from reading the text, some have argued that its provisions are ambiguous, and have questioned whether the limitations on business streets are independent of, or subject to, the general limitations set forth in D.C. Code § 5-405(a) above. If the language of the text is found to be ambiguous, then the legislative history may be examined. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

Assuming *arguendo* that the provisions in section 5 of the 1910 Act (D.C. Code § 5-405) are ambiguous, its legislative history will be examined. The legislative history of section 5 of the 1910 Act indicates that with regard to buildings on a business street, D.C. Code § 5-405(a) and (b) should be read together. Two committee reports discussing section 5 of the 1910 Act provide that, "The proposed act permits the erection of a fireproof building on a business street to a height of 20 feet in excess of the limit permitted by the present law, except that no building is permitted to be erected to exceed in height the present extreme limit of 130 feet." Height of Buildings in the District of Columbia, S. Rep. No. 581, 61st Cong., 2d Sess., at 2 (1910); Height of Buildings in the District of Columbia, S. Rep. No. 494, 61st Cong, 2d Sess., at 2 (1910). The "present law" being referred to in the committee reports is the Building Height Act of 1899, approved March 1, 1899 (30 Stat. 922), upon which the 1910 is based, and which provides in section 4 "That no building shall be erected or altered on any street in the District of Columbia to exceed in height above the sidewalk the width of the street in its front . . . ." Therefore, the reference in the above-cited committee reports indicating that a building on a business street is

permitted to be erected up to a height of "20 feet in excess of the present law." is referring to the width plus 20 rule which is now codified in D. C. Code § 5-405(a). In light of this, the above committee reports are clear that with regard to buildings on a business street, the width plus 20 rule is the general rule, with the qualification that no such building may exceed 130 feet. The legislative history is silent regarding D.C. Code § 5-405(d).

The fact that D.C. Code § 5-405(a) sets forth a general rule and that paragraphs (b) and (d) are to be read in light of the general rule, is also supported by many opinions issued, including that of the U.S. District Court for the District of Columbia. *See, Techworld Dev. Corp. v. D.C. Preservation League*, 648 F. Supp. 106, 121 (D.D.C. 1986) ("The general rule of the [1910 Act] is that a building may be built to a height equal to the width of the street on which it fronts plus 20 feet."); *see also*, Letter from Richard B. Stewart, Assistant Attorney General, U.S. Department of Justice, to Linda Dodd-Major, General Counsel, National Capital Planning Commission 5 & 10 (November 6, 1990) ("The first sentence [of D.C. Code § 5-405(a)] sets out the general formula for determining the maximum permissible height which 'no building' may exceed. The subsequent sentences set out additional limitations which, depending on the width of the street, may result in a lower maximum height than the general formula.") (Attachment A); *see also*, U.S. General Accounting Office, Height Limitations: Limitations on Building Heights in the District of Columbia 6 (July 1986) ("[Pursuant to the] 1910 act...maximum building heights [are] determined by the width of the street in front of the proposed building...") (Attachment B).

In light of the above analysis, certain rules regarding buildings on a business street can be gleaned from section 5 of the 1910 Act. The general rule for buildings heights is that a building may be built to a height equal to the width of the street on which it fronts plus 20 feet (width plus 20 rule); if a building fronts a public space or reservation at the intersection of 2 or more streets, the height of the building may be no more than the width of the widest street plus 20 feet. In no case is a building erected on a business street to be more than 130 feet in height, unless the building is on the north side of Pennsylvania Avenue between 1st and 15th Streets, N.W., where a maximum height of 160 feet is permitted. If a building is on a corner lot, its height will be determined by the width of the wider street plus 20 feet.

B. The Schedule of Heights:

Section 5 of the 1910 Act (D.C. Code § 5-405(f)) provides further that:

> On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the applications for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia.

The 1910 Act originally granted this authority to adopt a schedule to the Board of

Commissioners. This authority was transferred to the District of Columbia Council pursuant to section 402, paragraph 120, of Reorganization Plan No. 3 of 1967 (D.C. Code Vol. 1, p. 131), and, in turn to the Council of the District of Columbia pursuant to section 404(a) of the Home Rule Act (D.C. Code § 1-227(a)).

In 1910, the Board of Commissioners adopted the Schedule of Heights of Buildings Adjacent to Public Buildings ("Schedule of Heights"), in conformity with the Act of Congress of June 1, 1910, and the amendments of December 30, 1910, and May 20, 1912. The Schedule of Heights was issued by the Zoning Commission in Appendix G to the Zoning Regulations, effective May 12, 1958. (Attachment C). The Schedule of Heights contains height limits for 15 different areas in the District. All of the height limits set under the Schedule of Heights are lower than would otherwise be permitted under the height limits set forth in the 1910 Act.

C. Home Rule Act:

Section 601 of the Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206) ("HRA") gives Congress the ultimate legislative authority over the District. HRA § 303 does, however, vest in the Council broad legislative powers over "all rightful subjects of legislation within the District." D.C. Code § 1-204. This grant of authority is not absolute. Among the limitations placed on the Council is that found in HRA § 602(a)(6) which provides:

> (a) The Council shall have no authority to pass any act contrary to the provisions of this Act except as specifically provided in this Act, or to:
>
> . . . .
>
> (6) Enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in § 5-405, and in effect on December 24, 1973[.]

D.C. Code § 1-233(a)(6).

The above provision has been the subject of varying interpretations. Some have argued that the above provision means that the Council lacks the authority to exceed the height limitations contained in § 5-405 and the height limitations set forth in the Schedule of Heights, since the Schedule of Heights was "in effect on December 24, 1973."[2] Others have argued that

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[2] The Justice Department, for example, has interpreted that, "Section 602(a)(6) prohibits the Council from enacting any act which permits the building of any structure that exceeds (1) the section 5-405 height limitations, or (2) the height limitations in effect on December 24, 1973 -- which include the Schedule of Heights as it existed at the time the Home Rule Act was enacted." (Letter from Richard B. Stewart, Assistant Attorney General, U.S. Department of Justice, to Linda Dodd-Major, General Counsel, National Capital Planning Commission 12

the above limitation on the Council applies only to § 5-405, which was in effect on December 24, 1973, but because the Schedule of Heights is referenced in § 5-405(f), the Council is also limited by the height limits set forth in the Schedule of Heights.

I believe that the better interpretation of HRA § 602(a)(6) is that it is merely a restriction on the power of the Council to enact any act, resolution, or rule which permits the building of any structure in the District of Columbia in excess of the height limitations contained in D.C. Code § 5-405, and all of the amendments to § 5-405 which were in effect on December 24, 1973.[3] The phrase "and in effect on December 24, 1973" modifies the reference to "§ 5-405" which precedes it. On December 24, 1973, D.C. Code § 5-405(f) provided that, "On blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct said building, the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia." This is the only provision in § 5-405 which makes a reference to the "Schedule of Heights." Section 5-405(f) only sets forth that a Schedule of Heights shall be adopted and does not actually contain the Schedule of Heights itself. Therefore, the limitation in the HRA § 602(a)(6) cannot apply to the Schedule of Heights itself, and can only apply to the provisions in the 1910 Act. To interpret HRA § 602(a)(6) as the Justice Department does (*See, infra* note 2) would render § 5-405(f) meaningless. Such an interpretation would violate the general rule of statutory construction which requires that a statute be construed so that no part will be inoperative or superfluous, void, or insignificant. Singer, 2A *Sutherland Statutes and Statutory Construction* § 46.06, at 104 (4th ed. 1984); *District of Columbia v. Thompson*, 593 A.2d 621, 638 (D.C. 1991); *District of Columbia v. Acme Reporting Co.*, 530 A.2d 708, 713 (D.C. 1987).

i. Legislative history of section 602(a)(6) of Home Rule Act:

Because HRA § 602(a)(6) is arguably ambiguous, its legislative history should be

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(November 6, 1990). (Attachment A).

[3] This position is consistent with that of a prior opinion issued by the Corporation Counsel for the District of Columbia. *See*, Memorandum from Robert E. McCally, Deputy Corporation Counsel, Office of the Corporation Counsel, to James O. Gibson, Assistant City Administrator, Office of Planning and Development 233 (July 23, 1979)("The restriction set forth in [section 602(a)(6) of the Home Rule Act] refers only to limitations contained in Sec. 5-405, D.C. Code."); *see also*, letter from Robert E. McCally, Deputy Corporation Counsel, Office of the Corporation Counsel, to Councilmember Willie J. Hardy, Council of the District of Columbia 1 (February 8, 1979), contained as attachment C to Council of the District of Columbia Report on Bill 3-85, the "Schedule of Height Amendment Act of 1979" (March 20, 1979) ("The Council has the explicit authority to amend the 'Schedule of Heights of Buildings Adjacent to Public Buildings.'"). (Attachments D and E, respectively).

examined.[4] The legislative history for section 602(a)(6) is not definitive as to what Congress intended.

Some have used a statement made by Counsel to the House Subcommittee on Government Operations, Jacques DePuy, during markup of the bill which eventually became the Home Rule Act, to argue that Congress intended to prohibit the Council from amending the Schedule of Heights. Mr. DePuy states, "What we drafted was an amendment which would go to the limitations on the Council that the Council could not enact an act that permitted building above existing height limitations, and freezing in what now is existing law, and would prohibit the Council from allowing any building above that limitation."[5] This reference to "freezing in what now is existing law" has been interpreted by some to include the Schedule of Heights. This reference to "existing law" does not necessarily include the Schedule of Heights, and could easily be referring to the 1910 Act, and its amendments as of December 24, 1973. Furthermore, the following legislative history supports the proposition that the Schedule of Heights was not meant to be "frozen" as of 1973.

According to a House Report on the Home Rule Act, the description of title VI of the bill, "Reservation of Congressional Authority" provides that, "The Council is also prohibited from doing certain things, including . . . permitting the construction of buildings in excess of the present height limitations set by Congress.". House Comm. on the District of Columbia, District of Columbia Self-Government and Governmental Reorganization Act, H.R. Rep. No. 482, 93d Cong., 1st Sess., at 15 (1973) (emphasis added). This provision of this House Report would seem to indicate that Congress only intended to prohibit the Council from going above the height limitations set forth in the 1910 Act, and not those heights set forth in the Schedule of Heights, since these heights were set by the Council (originally the Commissioners), and not Congress.

Furthermore, when interpreting legislative history, more weight is given to a House or Senate report, than is given a statement made during markup, particularly if it is not coming from the sponsor of the bill. *See, Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . We have eschewed reliance on the passing comments of one Member . . . and casual statements from the floor debates . . . Committee Reports are 'more authoritative' than comments from the floor..."); *see also*, Singer, 2A *Sutherland Statutes and Statutory Construction* § 48.13, at 329 (4th ed. 1984). Therefore, Mr. DePuy's statement, made as counsel to the House Subcommittee during markup of a bill,

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[4] The legislative history for section 602(a)(6) is contained in: "Background and Legislative History of H.R. 9056, H.R. 9682, and Related Bills Culminating in the District of Columbia Self-Government and Governmental Reorganization Act" [Home Rule Act], Chapter I-Subcommittee Markup Sessions, 93d Congress, 2nd Sess., 215-216, and 302 (1974).

[5] *Id.* at 302.

does not bear much, if any, weight.[6]

ii. Legislative history of 1910 Act:

The legislative history of the 1910 Act is also helpful in making the determination that the Council has the power to amend the Schedule of Heights. This history provides, in part:

> The proposed act requires that on blocks immediately adjacent to public buildings the maximum height of a building to be erected shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.
>
> The present act has no such provisions. . . . This clause is inserted in order that there may be no question as the right of the commissioners to make such a regulation (emphasis added).

Height of Buildings in the District of Columbia, S. Rep. No. 581, 61st Cong., 2d Sess., at 2 (1910).

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[6] More legislative history than that cited above, is available regarding section 602(a)(6). This legislative history is not, however, helpful in definitively determining whether the Council can amend the Schedule of Heights, because it is conflicting and confusing. For example, during the House Subcommittee on Government Operations markup of the bill which became the Home Rule Act, Jacques DePuy, counsel to the Subcommittee, states, "It might be most appropriate, if members wanted, to add at that point in the specific limitations of the Council [*i.e.* HRA § 602(a)(6)] an amendment combining the existing height limitations." *Id.* at 215. This statement could be used to argue that Congress intended to include the Schedule of Heights in section 602(a)(6) of the Home Rule Act, since Mr. DePuy mentions "combining the height limitations." It could just as easily be argued, however, that Mr. DePuy's comment was directed at combining the height limitations set forth in Section 5 of the 1910 Act. Also, Mr. DePuy's comment may just have been a suggestion made to the House members, and it is unknown what the legislatures ultimate intent was.

Furthermore, later in the same markup session, a brief dialogue takes place between two Congressmen and Mr. DePuy, as follows: Mr. Fraser: "I do not think I follow you in the statement we are facing here. There is an overall restriction on the height of buildings in order to protect the primacy of the Capitol?" Mr. Adams: "That is correct." Mr. Fraser: "You say that is not found in the D.C. Code?" Mr. DePuy: "That is in the D.C. Code and presumably would be amendable by a Council." *Id.* This dialogue suggests that Congress intended only to prevent the Council from amending the 1910 Act, and not the Schedule of Heights. The reference to the "overall restriction on the height of buildings" that is "in the D.C. Code" can only be referring to the height restrictions set forth in the 1910 Act itself since these are general restrictions that are contained in the Code, while the height limitations in the Schedule of Heights are specific and are not actually in the Code.

To say that the Council cannot amend the Schedule of Heights would be contrary to the legislative intent of D. C. Code § 5-405(f) in which Congress granted the former Board of Commissioners and the Council the power to impose height limitations for buildings adjacent to public buildings and would render § 5-405(f) meaningless.

iii. U.S. GAO Office:

Further support that the Council has the authority to amend the Schedule of Heights is a report issued by the U.S. General Accounting Office (GAO). In this report, the GAO stated, "the D.C. Council is not prohibited from amending the Schedule as long as the amendments do not allow any increase beyond the overall height limits set forth by the Building Height Act of 1910, as amended.". U.S. General Accounting Office, Height Limitations: D.C. Government's Authority to Amend Building Height Limitations 2 (September 1986). (Attachment F).

iv. Prior amendments made to Schedule of Height:

In 1979, the Council amended paragraph 3 of the Schedule of Heights. This amendment was reviewed by Congress and became law on December 29, 1979.[7] The fact that Congress allowed the Council to amend the Schedule of Heights in 1979 is strong support that the Council has the authority to amend the Schedule of Heights.

In 1990, the Council once again attempted to amend the Schedule of Heights, when it approved the Schedule of Heights Amendment Act of 1990 (Bill 8-616), which was signed by the Mayor on December 27, 1990 (D.C. Act 8-329), and transmitted to Congress. This Act was, however, disapproved by Congress in H.J. Res. 158. *See*, 137 Congressional Record, at 5123, 102d Congress, 1st Sess. (March 6, 1991). The focus of Congress' disapproval of the Council's action was not on the basis that the Council lacks the authority to amend the Schedule of Heights, but because the Council's proposed amendment would violate the 1910 Act. During Congressional review of this resolution, the Chairman of the Committee on the District of Columbia, Congressman Dellums, stated, "Only the legal authority of the D.C. Council with

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[7] *See*, D.C. Law 3-43, "Schedule of Heights Amendment Act of 1979," effective December 29, 1979 (D.C. Act 3-117; Bill 3-85). Section 2 of D.C. Law 3-43 amended paragraph 3 of the Schedule of Heights by adding at the end, the following paragraph: "These restrictions shall not apply on Fifteenth Street, N.W., between F and G Streets, N.W., beyond thirty-five (35) feet from the building line, to any structure which provides for the retention of (a) that portion of the Keith-Albee Building described in the District of Columbia Application for Urban Development Action Grant, Application No. 79-09-010, and (b) the Fifteenth Street facade of the National Metropolitan Bank Building to a depth of twenty (20) feet."

regard to the 1910 Height of Buildings Act is being decided." *Id.* at 5124.[8]

The Schedule of Heights Amendment Act of 1990 amended the Schedule of Heights by adding a new paragraph 16 allowing a building, adjacent to the Federal Bureau of Investigation Building, to be built up to 130 feet on the east side of 9th Street, between D & E Streets, N.W. The widest of these streets, E Street, is 90 feet. Pursuant to the width plus 20 rule of the 1910 Act, the proposed building could only be built to a maximum of 110 feet. Because of this violation of the 1910 Act, Congress disapproved the Council's action. According to Mr. Dellums, "The committee [House Committee on the District of Columbia] has been advised that the maximum height set by the council would, for the first time, exceed the height of 110 feet established for that location under the 1910 Building Height Act." *Id.* at 5123.

D. Conclusion:

In light of the above discussion, the Council has the power to amend the Schedule of Heights. This amendment to the Schedule of Heights may not, however, exceed those height limits set forth in the 1910 Act.

(2) The Council's authority to amend the Schedule of Heights as proposed in Bill 12-170

Bill 12-170, the "Schedule of Heights of Buildings Amendment Act of 1997", was introduced on March 27, 1997, in the Office of the Secretary to the Council, by Councilmember Evans, and has been referred to the Committee of the Whole. Bill 12-170 proposes to amend paragraph 14 of the Schedule of Heights, by adding the following sentences at the end of the paragraph:

This restriction shall not apply to any structure that is set back from the 14th

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[8] During Congressional review of H.J. Res. 158, Congressman Bliley also made the following statement: ". . . this resolution is narrowly focused on the principle that, under home rule, the right to amend the Building Height Limitations Act and to alter the limitations contained in the schedule of heights is reserved to the Congress." 137 Congressional Record, at 5131. Congressman Bliley's view that only Congress can amend the Schedule of Heights is a minority view and is contrary to the positions of the U.S. Department of Justice, the U.S. General Accounting Office, and the Corporation Counsel of the District of Columbia. Furthermore, his statement is not in accord with the plain meaning of HRA § 602(a)(6). Even a very narrow reading of section 602(a)(6) would only restrict the Council from amending the provisions of the Schedule of Heights above the height limits that were in effect in 1973, and would not prohibit the Council from making amendments to the Schedule of Heights that were not contained in the Schedule of Heights in 1973, as long as these amendments were not in excess of the height limits in the 1910 Act (this is the Justice Department's opinion).

Street property line to a line that is continuous with the facade of the Bureau of Engraving and Printing Annex building located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of the Zoning Regulations of the District of Columbia, as amended." Section 2 of Bill 12-270.

Bill 12-170, as currently drafted, is too vague and should be redrafted so that it will clearly reflect that the 1910 Act is not being violated and so that the intent of the Council with regard to the desired height of the proposed building is known. The legislation, as it is currently drafted, indicates the desired set back of the proposed building, but does not indicate the desired height of the building.

In your opening statement during the public hearing on Bill 12-170, you stated that this bill would permit the building which is proposed to be built "along 14th Street, between Maryland and D Streets, S.W. . . . to be 30 feet taller than the 80-foot height limit that is established under the existing Schedule of Heights. The legislation would also require such building to be set back from the 14th Street property line by approximately 20 feet, thereby providing greater uniformity with other buildings on the site and with existing Federal buildings, such as the Bureau of Engraving and Printing Annex, that are located north of the site along 14th Street." Opening Statement of Linda W. Cropp, Chairman of the Committee of the Whole, Council of the District of Columbia, during Hearing on Bill 12-170 (October 14, 1997)[9].

As discussed above, the Council has the authority to amend the Schedule of Heights as long as the amendment does not exceed the heights set forth in the 1910 Act. In order to comply with the 1910 Act, the Council's proposed amendment must comply with the width plus 20 rule (D.C. Code § 5-405(a)) or the maximum height limit of 130 feet (§ 5-405(b)), whichever is lower. Since the proposed building is at the corner of 14th Street, D Street, and Maryland Avenue, S.W., D.C. Code § 5-405(d), which provides "[t]he height of a building on a corner lot will be determined by the width of the wider street," is applicable. According to the Surveyor in the Office of the Surveyor, 14th Street is 110 feet wide. Maryland Avenue is 160 feet wide, and D Street is 90 feet wide. Therefore, Maryland Avenue is the widest of the streets.[10] Pursuant to

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[9] The public hearing notice for Bill 12-170 also indicates that the desired height of the building is 110 feet. Hearing Notice for October 14, 1997, hearing, p. 1.

[10] The use of the width of Maryland Avenue also complies with section 7 of the 1910 Act which provides, in pertinent part, that "[i]f the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit of the greater height." D.C. Code § 5-407. Since the proposed building fronts 14th Street, D Street, and Maryland Avenue, Maryland Avenue would allow the greater height since it is 160 feet wide.

D.C. Code § 5-405(a). 20 feet is added to the width of Maryland Avenue. which amounts to 180 feet. Since this height exceeds the height the maximum height of 130 feet set forth in D.C. Code § 5-405(b). the lower of the two heights governs. Therefore. the proposed building may be built up to a height of 130 feet and the Council's proposal to build on 14th Street. between Maryland Avenue and D streets. a building 110 feet in height. would not violate the 1910 Act (assuming that the legislation is redrafted to indicate the 110 feet maximum height and assuming that the zoning regulations are complied with for this particular location).

The Council's proposal to set the proposed building back from the 14th Street property line by approximately 20 feet. would also not violate the 1910 Act. Although set back of buildings is not specifically addressed in the 1910 Act. the Council's proposal would be in keeping with the spirit and intent behind the 1910 Act. The legislative history of the 1910 Act is sparse. but one can infer from the language of the Act. as many have done, an intent to enhance the architectural/aesthetic character of the capital city. to ensure that public buildings are not overshadowed. to promote openness and fire safety. and to maintain a uniform skyline. The Council's proposition to set back the proposed building by 20 feet would be in keeping with this intent since the set back would make the proposed building contiguous with that of the adjacent Bureau of Printing & Engraving building.

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ATTACHMENT A



U.S. Department of Justice

Environment and Natural Resources Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 6, 1990

Linda Dodd-Major
General Counsel
National Capital Planning Commission
1325 G Street N.W.
Washington, D.C. 20576

Dear Ms. Dodd-Major:

Thank you for your memorandum of September 7, 1990, requesting a legal opinion on issues involving D.C. Council Bill 8-616 and the Building Height Limitations Act of 1910, ch. 263, 36 Stat. 452 (1910), (the "Height Act" or the "1910 Act"). We are happy for the opportunity to provide our views on these important issues.

Bill 8-616 would amend the Schedule of Heights promulgated under the Height Act to authorize construction of a 130-foot building on the east side of Ninth Street, N.W., between D and E Streets, adjacent to the FBI Building. In the absence of such an amendment, the maximum allowable height for that location would be 110 feet. Your memorandum requests our opinion as to whether the Council of the District of Columbia has the authority to amend the Schedule of Heights, and if so, whether that authority is limited in any way, specifically by the other restrictions of the Height Act.

1. Conclusion

On the basis of the language of the Height Act, its legislative history, and its implementation by the Commissioners of the District of Columbia prior to the enactment of the District of Columbia Self-government and Governmental Reorganization Act, P.L. 93-198; 87 Stat. 774 (1973) (the "Home Rule Act"), we conclude that the Council's authority to amend the Schedule of Heights is subject to the other limitations of the Height Act. In addition, the Council's authority to amend the Schedule of Heights is further limited by Section 602(a)(6) of the Home Rule Act. In our view, the Height Act and the Home Rule Act prohibit the Council from amending the Schedule of Heights as proposed in D.C. Council Bill 8-616.

2. History of the Height Act

The Height Act had its genesis in several earlier statutes and regulations.[1] In 1878, Congress gave the Commissioners of the District of Columbia[2] authority to make and enforce building regulations. Act of June 14, 1878, ch. 194, 20 Stat. 131. In 1894 the Commissioners promulgated building height regulations. These regulations applied generally to commercial and residential buildings in the District. They provided that:

> No building will be erected * * * whose height exceeds the width of the street in its front.
>
> No building will be erected on a residential street * * * whose height exceeds 90 feet.

1/ Federal regulation of buildings in the national capital is as old as the capital itself. The Act of July 16, 1790, 1 Stat. 130, authorized President Washington to appoint three commissioners to plan and develop a capitol city, and authorized the president to issue regulations to assure the city's orderly development. On October 17, 1791 President Washington promulgated regulations governing "the materials and manner of the buildings and improvements on the Lots in the City of Washington." Along with set-back and permit requirements, the regulations required that outer and party walls of all houses be built of brick or stone, and that

> The wall of no house to be higher than forty feet to the roof, in any part of the city; nor shall any be lower than thirty-five feet on any of the avenues.

Proclamation of 17 October 1791, reprinted in Staff of the House Committee on the District of Columbia, 94th Cong., 2d Sess., Report on Building Height Limitations 5 (Comm. Print Apr. 1, 1976) ("House Staff Report"). The requirement for stone walls was apparently primarily a safety measure to reduce the risk of fire, while the provision for maximum and minimum heights and set-backs was apparently intended to beautify the city. These twin concerns of public safety and aesthetics are echoed in subsequent building height regulations.

2/ At the time, the District of Columbia was governed by a board of Commissioners who were appointed by the President with the advice and consent of the Senate. Act of June 11, 1878, ch.20, 20 Stat. 102.

> No building will be erected on a commercial street * * * whose height exceeds 110 feet.

House Staff Report at 15. These regulations form the core of the limitations that are still in effect today. See D.C. Code §§ 5-401 et seq.

The regulations are arguably ambiguous as to whether the limitations on residential and business buildings are independent of, or subject to, the general limitation that height may not exceed the width of the fronting street. Any ambiguity was removed, however, in 1899, when Congress modified the Commissioners' regulations and enacted them into law as the Building Height Act of 1899, ch. 322, 30 Stat. 922 (the "1899 Act").

The 1899 Act included limitations on the height and use of non-fireproof buildings, and, in Section 4, the same overall height limitations as the earlier Commission regulations:

> Sec. 4. That no building shall be erected or altered on any street in the District of Columbia to exceed in height above the sidewalk the width of the street in its front, and in no case [emphasis added] shall a building exceed ninety feet in height on a residence street nor one hundred ten feet on a business street, as designated by schedule approved by the Commissioners of the District of Columbia, except on business streets and business avenues one hundred sixty feet wide, where a height not exceeding one hundred thirty feet may be allowed. * * *
>
> Provided, That spires, towers, and domes may be erected to a greater height than the limit herein prescribed, when approved by the Commissioners of the District of Columbia * * *

The clause "and in no case" resolves the apparent ambiguity in the 1894 regulations, clarifying that the limitations for business and residential streets must be read in conjunction with the general height-equals-street-width limit. In other words, under the 1899 Act, the height limit on a residential street was the width of the street or 90 feet, whichever was less. On a business street, the limit was the width of the street or 110 feet, whichever was less.

Note also that express authority for structures that exceed these limits is provided in the proviso on spires and domes, but nowhere else.

In 1903, Congress authorized the construction of Union Station, and in 1905, at the request of the Commissioners of the District of Columbia, Congress amended the 1899 Act to lower to 80 feet the height limit on buildings that front or abut the plaza in front of the Station. Act of February 8, 1905, ch. 557, 33 Stat. 709. The Commissioners requested the amendment because they believed it was "extremely desirable . . . from an architectural point of view" to limit all buildings fronting or abutting on the plaza to "a uniform height . . . not too great to overshadow the proposed Union Station." Letter of Henry B.F. Macfarland, President, District of Columbia Board of Commissioners, to Hon. Jacob H. Gallinger, Chairman, Committee on the District of Columbia, United States Senate, Dec. 10, 1904, reprinted in S. Rep. No. 3082, 58th Cong., 3d Sess. (1905).

In 1910 Congress revised the 1899 Act. Building Height Limitation Act of 1910, ch. 263, 36 Stat. 452 (1910). Like the 1905 Union Station amendment, the 1910 Act was proposed by the Commissioners of the District of Columbia. Letter of Henry B.F. Macfarland, President, District of Columbia Board of Commissioners, to Hon. Samuel W. Smith, Chairman, Committee on the District of Columbia, United States House of Representatives, Jan. 22, 1910, reprinted in H.R. Rep. No. 720, 61st Cong., 2d Sess. and S. Rep. No. 581, 61st Cong., 2d Sess.

The 1910 Act is quite similar to the 1899 Act, as amended. Section 5 of the 1910 Act retains, in slightly modified form, the height-equals-street-width formula of the 1899 Act:

> Sec. 5. That no building shall be erected * * * so as to exceed in height above the sidewalk the width of the street, avenue, or highway in its front, increased by twenty feet: * * *.
>
> No building shall be erected * * * so as to exceed the height of one hundred and thirty feet on a business street * * * except on the north side of Pennsylvania avenue between First and Fifteenth streets, northwest, where an extreme height of one hundred and sixty feet will be permitted.
>
> On a residence street * * * no building shall be erected * * * so as to be over eighty-five feet in height * * *.

The 80-foot limit on Union Station Plaza is also retained and, as in the 1899 Act, the only provision authorizing structures in excess of these limits is the one on spires, towers, and domes:

> Buildings hereafter erected to front or abut on the plaza in front of the new Union Station * * * shall not be of a greater height than eighty feet.
>
> Spires, towers, domes * * * may be erected to a greater height than any limit prescribed in this Act when and as the same may be approved by the Commissioners of the District of Columbia * * *.

In addition, and most important to the present inquiry, the 1910 Act recognizes "the need for Congress to be particularly mindful of regulating the height and certain aspects of design of buildings fronting on federally regulated sections" of the District. House Staff Report at 29. The Act delegates this authority to the Commissioners of the District of Columbia:

> On blocks immediately adjacent to public buildings or to the side of any public building * * * the maximum height shall be regulated by a schedule adopted by the Commissioners of the District of Columbia.

Section 5 of the 1910 Act thus follows the model of section 4 of the 1899 Act. The first sentence sets out the general formula for determining the maximum permissible height which "no building" may exceed. The subsequent sentences set out additional limitations which, depending on the width of the street, may result in a lower maximum height than the general formula.3/ The 80-foot limit on buildings around Union Station is retained, parallel regulatory authority for limits around other federal buildings is added, and the single exception for spires, towers and domes is retained.

3/ Note however, that the clause "and in no case" which appeared in the 1899 Act has been omitted. There is no indication in the legislative history of what, if anything, Congress intended by this change. One possible explanation is that in expanding the section into eight separate paragraphs, the clause became unwieldy. It may also have been considered unnecessary, since the Commissioners who were responsible for implementing the Act apparently understood the limits imposed in the various sentences to be conjunctive, as demonstrated by their subsequent implementation of the Act (discussed below).

The 1910 Act, as amended,[4/] continues to govern the height of buildings in the District today. See D.C. Code §§ 5-401 et seq.

3. Implementation of the Height Act

Between 1910 and the enactment of the Home Rule Act, the Commissioners of the District of Columbia exercised their authority to set height limits under the "Schedule of Heights" provision of the 1910 Act in 15 different areas of the District. Most of these limits apply to the blocks around the White House, the Supreme Court Building, and the House and Senate Office Buildings. In every case, the limits set under the Schedule are lower than would otherwise be permitted under the Height Act. For example, in 1912, the Commissioners lowered the height limit on 15th Street, N.W., between Pennsylvania Avenue and G Street, across from the Treasury Building, from 130 feet to 95 feet.

Commentators reviewing height limitations in the District have viewed the Commissioners' schedule-making authority as being subject to the other limits of the Height Act. For example, a 1986 GAO report states:

> The 1910 act also required the Board [of Commissioners] to establish a separate Schedule of Heights within the general parameters outlined in the act to further regulate the height of buildings fronting on federally developed sections of the District. The Schedule, by limiting the height of private sector buildings adjacent to federal buildings, has served to maintain the prominence of federal buildings and monuments in the District.

General Accounting Office, Height Limitations: Limitations on Building Heights in the District of Columbia 6 (1986) (emphasis added). Similarly, a 1987 Memorandum prepared for the House Committee on the District of Columbia by the Congressional Research Service describes the Commissioners' authority as subject to the Height Act's other limits:

4/ The Act was amended by Congress seven times between 1910 and 1945. Five of those amendments provided height exemptions, above those prescribed by the 1910 Act, for specific buildings to be erected at specific locations. The other two amendments raised the maximum height for residential buildings from 85 to 90 feet, and changed the maximum number of stories for residential buildings from eight to ten. See House Staff Report at 57-58.

> Also, the 1910 Act made clear that the Commissioners could adopt more specific limits (subject to the statutory limits) for "buildings" located on blocks adjacent to on the side of "public buildings."

Congressional Research Service, Memorandum: Whether Building Height Restrictions In the District of Columbia, Including Those Pertaining to Union Station, Apply to Federal Buildings, 3 (Aug. 18, 1987) (emphasis added).

4. Limited Transfer of Height Act Authority to the D.C. Council

Authority to implement the Height Act remained with the Commissioners of the District of Columbia until 1967, when their responsibilities were transferred to a presidentially-appointed District of Columbia Council. Act of Aug. 11, 1967, 81 Stat. 948, § 402 (120), reprinted at 1 D.C. Code 141 (1981). The authority of this council was subsequently transferred to the popularly-elected Council of the District of Columbia (the "Council") pursuant to section 401 of the Home Rule Act (codified at D.C. Code § 1-221 (1981)).

One of the most controversial issues in the debate over Home Rule was the extent of control the new local government would have over Federal interests.[5/] This issue is addressed in numerous provisions of the Home Rule Act, including an entire title of limitations on the District government. In particular, the Home Rule Act imposes important limits on the Council's authority to amend the Height Act. Section 602(a)(6) of the Home Rule Act (codified as § 1-233 of the D.C. Code) states that the Council shall have "no authority" to:

> enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in Section 5-405 [section 5 the Height Act[6/]], and in effect

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5/ See, e.g., House Comm. on the District of Columbia, District of Columbia Self-Government and Governmental Reorganization Act, H.R. Rep. No. 482, 93d Cong., 1st Sess. 3 (1973).

6/ Section 5 of the Height Act, as amended, edited and renumbered, appears as section 5-405(a) through (h) of the D.C. Code. In relevant part, it provides:

> (a) No building shall be erected, altered, or raised in the District of Columbia in any manner so as to exceed in

(continued...)

on December 24, 1973 [the date of enactment of the Home Rule Act].

(Emphasis added.)

The plain meaning of this section is to prohibit the Council from permitting construction of buildings that exceed the Height Act limits. The legislative history of Section 602(a)(6) confirms that Congress' intent in this section was precisely what the plain meaning of the words conveys. The provision originated in the House, in the Committee on the District of Columbia's Subcommittee on Government Operations. At Subcommittee markup, Subcommittee Chairman Brock Adams asked counsel to explain the provision, and was told the following:

6/ (...continued)
height above the sidewalk the width of the street, avenue, or highway in its front, increased by 20 feet; * * *.

(b) No buildings shall be erected * * * as to exceed the height of 130 feet on a business street * * * except on the north side of Pennsylvania avenue between 1st and 15th Streets Northwest, where an extreme height of 160 feet will be permitted.

(c) On a residence street * * * no building shall be erected * * * so as to be over 90 feet in height * * *.

* * *

(f) On blocks immediately adjacent to public buildings or to the side of any public building * * * the maximum height shall be regulated by a schedule adopted by the Council of the District of Columbia.

(g) Buildings erected after June 1, 1910, to front or abut on the plaza in front of the new Union Station * * * shall not be of a greater height than 80 feet.

(h) Spires, towers, domes * * * may be erected to a greater height than any limit prescribed in §§ 5-401 to 5-409 when and as the same may be approved by the Mayor of the District of Columbia * * *.

> What we drafted was an amendment [subsequently enacted as § 602(a)(6)] which would go to the limitations on the Council that the Council could not enact an act that permitted building above existing height limitations, and freezing in what now is existing law, and would prohibit the Council from allowing any building above that limitation.

Home Rule for the District of Columbia, 1973-1974, Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills. 93rd Cong, 2d Sess., Committee Print Serial No. S-4 302 (1974). Subsequent descriptions of this provision in the full Committee's report reflect this understanding. For instance, the description of title VI of the bill, "Reservation of Congressional Authority" notes that

> The Council is also prohibited from doing certain things, including * * * permitting the construction of buildings in excess of the present height limitations set by Congress.

H.R. Rep. No. 482 at 15.

5. Analysis

"Where, as here, resolution of a question of federal law turns on a statute and the intention of Congress, we look first to the statutory language and then to the legislative history if the statutory language is unclear." Blum v. Stenson, 465 U.S. 886, 896 (1984). The interpreter's task is "to interpret the words of [the statute] in light of the purposes Congress sought to serve." Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 118 (1983), (quoting Chapman v. Houston Welfare Rights Organization, 441 U.S. 600, 608 (1979)).

Both the language and the legislative histories of section 5 of the Height Act (D.C. Code § 5-405) and section 602(a)(6) of the Home Rule Act (D.C. Code § 1-233(a)(6)) compel the conclusion that the Council's authority to amend the Schedule of Heights is subject to the other limitations of the Height Act, and that the Council does not have the authority to amend the Schedule of Heights as proposed in Council Bill 8-616.

(a) The language of section 5-405 -- The language of section 5-405 provides numerous indications that paragraph (f), the schedule-making authority, must be read in conjunction with the section's other limitations which are based on the width of the fronting street and the residential or business character of the street. First, paragraphs (a), (b), and (c) of section 5-405

each plainly state that "no building shall be erected" in excess of their specified limitations (emphasis added). Nothing in the Act states that the buildings covered by paragraph (f) are exempt from those limitations. The fact that the general limitation in paragraph (a) (street width) applies in conjunction with the limitations in sections (b) (business streets) and (c) (residence streets) provides an additional confirmation that the paragraph (a) limitation also applies to paragraph (f). Accordingly, in the absence of an express exemption, the plain language of paragraphs (a), (b), and (c) must apply to buildings covered by paragraph (f). National Insulation Transportation Committee v. I.C.C., 683 F.2d 533, 537 (D.C. Cir 1982) (Absent persuasive reasons to the contrary, "a court must follow the axiom that Congress intended that statutory language be given its plain and ordinary meaning.")1/

Second, if Congress had intended to exclude buildings covered by paragraph (f) from the limitations of paragraphs (a), (b) and (c), it could easily have done so, as it did in the express exemption, in paragraph (h), for spires, towers and domes. But Congress did not do so. This omission is further evidence of Congress' intent that any height limitations established under paragraph (f) be within the limits established in paragraphs (a), (b) and (c). "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent." Andrus v. Glover Construction Co., 446 U.S. 608, 616-17 (1980). See Russello v. United States, 464 U.S. 16, 23 (1983) (quoting United States v. Wong Kim Bo, 472 F.2d 720, 722 (5th Cir. 1972)) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.")

(b) Legislative History and Congressional Intent -- The view that the Council's authority is subject to the Act's other limitations is fully consistent with all available indicia of Congressional intent. While the legislative history of the Height Act is sparse, an intent to enhance the architectural character of the capital city and ensure that public buildings are not overshadowed is easily inferred from the language of the Act, particularly the height limitations which are based on the

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1/ Moreover, a reading of paragraph (f) that renders the schedule-making authority independent of the paragraph (a), (b), and (c) limitations would run afoul of the "elementary canon of statutory construction that a statute should be interpreted so as not to render one part inoperative." Mountain States Telephone & Telegraph v. Pueblo of Santa Ana, 472 U.S. 244, 248 (1985) (quoting Colautti v. Franklin, 439 U.S. 379, 392 (1979)).

width of the street rather than fire safety criteria. See Dickerson, 460 U.S. at 118, United States v. Morton, 467 U.S. 822, 828 (1984).

Moreover, section 5-405(g), which sets an 80-foot height limit on buildings abutting the Union Station plaza, was expressly directed at such concerns. Its purpose was to limit buildings fronting or abutting on the plaza to a height below the otherwise applicable limitations and thereby prevent adjacent buildings from overshadowing the federal building. See Letter of Henry B.F. Macfarland, President, District of Columbia Board of Commissioners, supra. The schedule-making authority of paragraph (f) serves a function very similar to paragraph (g), providing authority to limit the height of buildings next to public buildings. It has enabled the Commissioners to provide other public buildings the same type of protection against overshadowing that Congress provided for Union Station.

Thus, given what we know about the purposes of the Height Act in general and the Union Station plaza height limitations in particular, there can be little doubt that Congress intended the Commissioners to use the paragraph (f) schedule-making authority to provide public buildings with protection more stringent that the Height Act's other limitations. Given this intent, it would be irrational to construe section 5-405(f) as allowing the Council to set heights above the Height Act's other limitations, thereby providing public buildings with less stringent protection than other buildings. See Bob Jones University v. United States, 461 U.S. 571, 586 (1983) (quoting Brown v. Duchesne, 19 How. 183, 194 (1857) ("[I]t is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . and the objects and policy of the law.")

(c) Commissioners' Implementation -- The Commissioners of the District implemented the Height Act's schedule-making authority by promulgating height limits for 15 locations in the District, all of which were below the Height Act's otherwise applicable limits. Thus, the Commissioners' record is consistent with the view that their authority to promulgate such limits was subject to the other limitations of the Height Act. Indeed, it is reasonable to assume that the Commissioners viewed the schedule-making provision as authorizing them to lower, but not raise, the Act's other height limits because, as noted above, it was the Commissioners who asked Congress to lower the height limitation on buildings on the Union Station plaza and who subsequently requested enactment of the paragraph (f) schedule-making authority.

The Commissioners' exercise of the schedule-making authority is relevant because, as the "agency" assigned to implement the Height Act, their interpretation is entitled to deference.

Chemical Manufacturers Association v. Natural Resources Defense Council, 470 U.S. 116, 125 (1985).

(d) Home Rule Act Limitations -- Section 602(a)(6) of the Home Rule Act (codified as § 1-233 of the D.C. Code) states that the Council shall have "no authority" to "enact any act . . . which permits the building of any structure . . . in excess of the height limitations contained in Section 5-405, and in effect on December 24, 1973." D.C. Council Bill 8-616 clearly runs afoul of this proscription, since it would authorize construction of a 130-foot building in a location where the limitation under the Height Act (as in effect on December 24, 1973) is 110 feet.

Furthermore, there is nothing in the legislative history of the Home Rule Act to suggest that the plain meaning of section 602(a)(6) does not accurately reflect Congress' intent. To the contrary, the legislative history shows that Congress fully intended to limit the D.C. Council's authority to authorize buildings in excess of the Height Act's existing limitations. Accordingly, the plain meaning of the section controls. Blum, 465 U.S. at 896; National Insulation Transportation Committee, 683 F.2d at 537.

Proponents of Bill 8-616 have argued that the Schedule of Heights is a freestanding provision and not part of section 5-405, and therefore not subject to the limitations of section 602(a)(6) of the Home Rule Act. This argument does not jibe with the plain language of section 602(a)(6). Section 602(a)(6) prohibits the Council from enacting any act which permits the building of any structure that exceeds (1) the section 5-405 height limitations, or (2) the height limitations in effect on December 24, 1973 -- which include the Schedule of Heights as it existed at the time the Home Rule Act was enacted. In other words, under section 602(a)(2) of the Home Rule Act, the Council's authority under section 5-405(f) of the Height Act is limited to amending the Schedule of Heights to set height limits that are (1) lower than the applicable Height Act limits (for locations not included on the pre-Home Rule Schedule of Heights), or (2) lower than the pre-Home Rule Schedule of Heights limitations (for locations that are included in the pre-Home Rule Schedule).[8/] The Council is barred by section 602(a)(6) of the Home Rule Act from exceeding either of those limitations.

Moreover, as explained above, the Height Act itself prohibits the Council from permitting buildings that exceed the applicable Height Act limitations. Thus, even if the argument that section 5-405(f) is not subject to the Home Rule Act limitations were correct -- and we do not think it is -- that

---

8/ The location covered by Bill 8-616 is not included in the pre-Home Rule Schedule of Heights.

still would not provide a legal basis for amending the Schedule of Heights in a manner inconsistent with the limitations of the Height Act.

Thus, it is our view that both the Height Act and the Home Rule Act prohibit the D.C. Council from amending the Schedule of Heights as proposed in D.C. Council Bill 8-616. In view of this conclusion, we believe it is unnecessary to address your third question, which dealt with permissible justifications for amendments to the Schedule of Heights.

Thank you again for requesting our views on these matters. Please do not hesitate to contact me if I can be of any further assistance.

Sincerely,

Richard B. Stewart
Assistant Attorney General

ATTACHMENT B

GAO

Briefing Report
Frank R. Lautenberg
United States Senate

July 1986

HEIGHT LIMITATIONS

Limitations on Building Heights in the District of Columbia

GAO/GGD-86-105BR

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-205447

July 18, 1986

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

This report responds to your January 22, 1986, letter requesting that we

--gather information to describe the current laws limiting building heights in the Nation's Capital (see app. I),

--discuss the administrative apparatus in place to implement building height limitations (see app. II), and

--elicit comments from federal and District officials on whether the current laws and regulations satisfactorily protect the federal interest with respect to security and to the architectural and aesthetic character of the Nation's Capital as well as the Federal Enclave (see app. III).

Your letter also requested that we interpret the meaning and objectives of the Home Rule Act relating to the District government's authority to amend building height limitations. As discussed with your office, this interpretation will be provided under separate cover.

SUMMARY

The Building Height Act of 1910 and the Schedule of Heights of Buildings Adjacent to Public Buildings (the Schedule of Heights govern private sector maximum building heights in the District of Columbia.[1] In addition, D.C. zoning regulations often place further restrictions on private sector building heights.

The administrative apparatus in place to enforce the Building Height Act of 1910 and the Schedule of Heights lies with the District government. In that respect, protection of the federal interest is locally enforced. The federal government, however, has building height approval authority over public building projects in some parts of the Nation's Capital.

---

[1] The Building Height Act of 1910 required that a Schedule of Heights be adopted by the Board of Commissioners of the District of Columbia to further regulate the height of buildings fronting on federally developed sections of the city.

Though the federal government is not involved in enforcing the Building Height Act of 1910 or the Schedule of Heights, federal organizations such as the Secret Service and the Commission of Fine Arts provide advice on private sector building heights in some situations. For example, proposed projects in some historical areas are referred by the D.C. government to the Commission of Fine Arts for its advice on whether the projects, including their height, are compatible with other buildings in the surrounding vicinity.

Responses to a questionnaire we sent to federal, District, and private organizations showed no clear consensus as to whether building height laws or the administrative apparatus to enforce those laws satisfactorily protect the federal interest. Some officials from federal agencies and private organizations are concerned, however, that pressures to allow for taller buildings in the District are increasing. Security is another issue raised; several federal officials are concerned that the federal government lacks a comprehensive, unified security plan for reviewing new construction in the District. Currently, there is no legal requirement for such a security review. Additionally, there is concern that tall buildings in the suburbs will mar the scenic vistas leading in and out of the Nation's Capital.

SCOPE AND METHODOLOGY

We researched building height laws and reviewed legislative histories and materials developed by the staff of the House Committee on the District of Columbia, the National Capital Planning Commission, and the Commission of Fine Arts. We sent questionnaires to 22 agencies, commissions, and private associations soliciting comments on aesthetics, architecture, and security as those subjects related to building heights. (A list of the organizations we surveyed is provided in app. IV.)

We also met with representatives of federal, District, and private organizations closely involved with building height issues--e.g., the D.C. Department of Consumer and Regulatory Affairs, the National Capital Planning Commission, the Commission of Fine Arts, the Secret Service, the D.C. Preservation League, and the Federal City Council.

We obtained oral comments on this report from officials of the National Capital Planning Commission, the Commission of Fine Arts, the Secret Service, the National Park Service, and the District of Columbia government. The officials generally agreed with the content of this report and made several suggestions to correct technical details. These suggestions were incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after its issue date. At that time, we will send copies to interested congressional committees and the organizations that responded to our questionnaire. Copies will be available to others upon request.

If there are any questions regarding the contents of this briefing report, please call me on 275-8387.

Sincerely yours,

Gene L. Dodaro
Associate Director

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APPENDIX I

BUILDING HEIGHT LIMITATION LAWS

Current building height laws for the District of Columbia essentially limit the maximum height of commercial buildings to 130 feet and residential structures to 90 feet. These limits have evolved over time. The federal government has been involved in regulating building heights in the Nation's Capital since 1791 when President George Washington established the District's first limitations on building heights. Correspondence between President Washington and Thomas Jefferson indicates that early building height regulations limiting private buildings to 40 feet were intended to aid in controlling fires and to provide for the "openness and convenience" of the federal city. Although the regulations were subsequently suspended, concerns about openness and fire safety were recurring themes in later building heights debates.

Building heights again became a documented concern in 1894 when a building permit for the 12-story, 160 foot, Cairo Hotel at 1615 Q Street, N.W., was issued. Since earlier regulations had been suspended, there were no laws or restrictions in force in the District to prohibit the building of private structures of such "skyscraper" proportions. To preclude the construction of more buildings in the Cairo's height class, the presidentially appointed Board of Commissioners of the District of Columbia established new height regulations. These regulations limited building heights to the width of the street in front of proposed buildings, with a maximum height of 90 feet for buildings in residential neighborhoods and 110 feet for buildings in commercial areas. Records from that period show that a primary concern of the Board in establishing building height limitations was the fear that fires in buildings of excessive heights would prove difficult to extinguish and that such buildings would create an unhealthy atmosphere by blocking light and air from the street below.

The Congress' first involvement in limiting building heights in the District of Columbia came several years later when it passed the Building Height Act of 1899. The act was drafted by the Board and generally consisted of the regulations, with slight modifications, that were promulgated in 1894. The history of the 1899 act does not identify the reason for legislating building heights other than to note a continuing concern for fire and safety and the need for light and ventilation on the streets of Washington.

The Congress again became involved with building heights when, at the request of the Board, the Building Height Act of

1910 was passed. The 1910 act continued the process, started by the Board in 1894, whereby maximum building heights were determined by the width of the street in front of the proposed building, but reduced the maximum allowable height from 90 feet to 85 feet in residential areas and increased allowable heights in commercial areas from 110 to 130 feet--except along Pennsylvania Avenue between 1st and 15th Streets, N.W., where the maximum allowable height was increased to 160 feet. The act of 1910, as amended, continues to govern building heights in the Nation's Capital.

The 1910 act also required the Board to establish a separate Schedule of Heights within the general parameters outlined in the act to further regulate the height of buildings fronting on federally developed sections of the District. The Schedule, by limiting the height of private sector buildings adjacent to federal buildings, has served to maintain the prominence of federal buildings and monuments in the District.

Since its passage the 1910 act, which governs building heights in the District at large, has been amended by the Congress on several occasions. Some amendments were concerned with building height restrictions in general. For example, one amendment raised the maximum height for residential buildings back to 90 feet, while another amendment established additional height limitations on nonfireproof buildings. Other amendments, however, provided specific exemptions for individual projects. For example, both the Georgetown University Hospital located on Reservoir Road and the National Press Club Building at 14th and F Streets were the subjects of amendments to the 1910 act. In both situations, exemptions were made to allow for taller structures than provided for under the act.

Officials we spoke with, including the D.C. Zoning Administrator, the National Capital Planning Commission's Associate Executive Director for D.C. Affairs, and the Secretary of the Commission of Fine Arts, were unaware of any amendments to the Schedule of Heights, prior to the Metropolitan Square Project, to allow for taller private sector buildings adjacent to public buildings.

ATTACHMENT C

SCHEDULE OF HEIGHTS OF BUILDINGS ADJACENT TO PUBLIC BUILDINGS, AS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, IN CONFORMITY WITH THE ACT OF CONGRESS OF JUNE 1, 1910, AND THE AMENDMENTS OF DECEMBER 20, 1910, AND MAY 20, 1912.

1. On G Street NW., between Seventh and Ninth Streets, adjacent to the Civil Service Commission Building, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb, at the northwest corner of Eighth and G Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

2. On F Street NW., between Seventh and Ninth Streets, adjacent to the United States Patent Office, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb at the southwest corner of Eighth and F Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

3. On Fifteenth Street NW., between Pennsylvania Avenue and G Street, adjacent to the Treasury Building, the cornice line or parapet wall of any building shall not extend above a horizontal line 80 feet above the top of the curb, at the southeast corner of Fifteenth and G Streets NW., and no part of the roof of any building shall be higher than a horizontal line 95 feet above the top of said curb, excepting ventilation and elevator shafts, which shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

4. On Seventeenth Street NW., between New York Avenue and G Street, confronting the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northwest corner of Pennsylvania Avenue and Jackson Place, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

5. On Pennsylvania Avenue NW., in squares 167 and 221, confronting the Treasury Building and the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of Pennsylvania Avenue and Madison Place for buildings to be erected or altered in square 221, and the curb at the northwest corner of Pennsylvania Avenue and Jackson Place for buildings to be erected or altered in square 167, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such building a distance equal to the height of such shafts above the adjacent roof.

6. On North Capitol Street, in square 625, confronting the City Post Office Building, no building shall be erected or altered to be higher than a horizontal line 90 feet above the top of the curb at the northwest corner of North Capitol Street and Massachusetts Avenue, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

7. On the north side of Maryland Avenue NE., between First and Second Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of First Street and Maryland Avenue NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building at a distance equal to the height of such shafts above the adjacent roof.

8. On the east side of Second Street NE, between East Capitol and B Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of Second and A Streets NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

9. On the east side of Third Street SE., between East Capitol Street and Pennsylvania Avenue, adjacent to the new Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of Third and A Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

10. On the south side of Pennsylvania Avenue SE., between Second and Third Streets, adjacent to the Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of the intersection of Second Street and Pennsylvania Avenue SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

11. On the south side of B Street SE., between First and Second Streets, adjacent to the Library of Congress, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

12. On the east side of First Street SE., between B and C Streets, adjacent to the House Office Buildng, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

13. On the south side of C Street SE. between First and South Capitol Streets SE., and between South Capitol Street and Delaware Avenue SW., adjacent to the House Office Building and Annex, no building shall be erected or altered so as to be higher than a horizontal line 90 feet above the top of the curb at the southeast corner of South Capitol and C Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

14. On Fourteenth Street SW., between D and Water Streets, confronting the Bureau of Printing and Engraving, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the southeast corner of Fourteenth and D Streets SW., excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such buildings a distance equal to the height of such shafts above the adjacent roof.

15. On the north side of C Street, NE., between First and Second Streets adjacent to the Senate Office Building Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of First and C Streets, NE. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

ATTACHMENT D

The restriction set forth in Sec. 1-147(a)(6), D.C. Code, 1978 Supp. refers only to limitations contained in Sec. 5-405, D.C. Code. Bill 2-85 would amend the height limits set forth in the Schedule of Heights. These limits are not contained in Section 5-405. Thus, the restriction of Sec. 1-147(a)(6) is not applicable by its terms. Various explicit height limitations are contained in Sec. 5-405 which were imposed directly by Congress and are the limitations which cannot, under Sec. 1-147(a)(6), be exceeded by Council action.

The legislative history of Sec. 1-147(a)(6) appears at pages 215-216 and page 302 of the "Background and Legislative History of *** the Self-Government ***Act." This discussion does not refer to the Schedule of Heights, but only to the limitations contained in the Building Height Act of 1910 and in the D.C. Code.

In context, it is evident, albeit not explicitly set forth, that the Congress was concerned with the additional authority which the Council was to receive. This additional authority would have enabled the Council to amend the 1910 Heig Act, but for the restriction. The former Council already had the authority to amend the Schedule of Heights.

Mr. Robbins' argument relies on House Subcommittee Counsel Jacques DePuy's general reference at p. 302, supra, to "freezing *** existing law." This is far from persuasive legislative history, particularly since imposition by Congress of a general freeze would have been inconsistent with the Congressional failure to preclude the Zoning Commission from raising zoning height limits in effect on the effective date of the Act. As you are well aware, the Zoning Regulations have a substantially broader effect upon height limitations throughout the District than does the Schedule of Heights.

The Congress granted the citizens of the District of Columbia very broad legislative powers, limited only by the U.S. Constitution and certain specific reservations of authori contained on title VI of the Act. See McIntosh v. Washington, D.C. App., 395 A.2d 744 (1978). For the Congress to freeze not only the height limitations which it had imposed, but also the more restrictive limitations which it had authorized the Board of Commissioners and former Council to impose, would have been to act directly contrary to the Congressional intention in enacting the Self-Government Act. No Congression intention to reach the Schedule is manifest and the plain language of Sec. 1-147(a)(6) does not reach the Scheudle of

Heights limitations. Mr. Robbins refers to no legislative history, whether of the 1910 Height Act or of the Self-Government Act, which suggests that any Federal interest is reflected by the grant of authority to the District to promulgate the Schedule. As Mr. Robbins notes, the authorizing provision is only mentioned in a Commissioners memorandum concerning the 1910 Height Act. The absence of any House or Senate discussion of the provision is not consistent with the Federal concern which Mr. Robbins hypothesizes but cannot sustain. In that light, I have concluded that the overly broad discussion of the effect of Sec. 1-147(a)(6) is insufficient to establish a restricti on Council amendment of the Schedule.

RBM

cc: Office of Intergovernmental Relations

ATTACHMENT E

C.

Government of the District of Columbia

OFFICE OF THE CORPORATION COUNSEL

DISTRICT BUILDING

WASHINGTON D C. 20004

IN REPLY REFER TO

LCD:E&C:ELC:ahw
UAB93394

February 8, 1979

Councilmember Willie J. Hardy
Chairperson, Committee on Housing
and Economic Development
Council of the District of Columbia

In Re: Bill 3-85 - the Schedule of Height Amendment Act of 1979.

Dear Councilmember Hardy:

This is in reply to your inquiry of February 7, 1979, to Mr. Robbins, with respect to the above-referenced Bill. The Council has the explicit authority to amend the "Schedule of Heights of Buildings Adjacent to Public Buildings." See Sec. 1-144(a), D.C. Code, 1978 Supp., and Reorganization Plan No. 3 of 1967, Sec. 402, par. 120, D.C. Code, Title 1 - Administration, Appendix.

Sincerely,

Robert E. McCally

Robert E. McCally
Deputy Corporation Counsel
Legal Counsel Division

cc: Judith W. Rogers

ATTACHMENT F

GAO

Briefing Report to the Honorable
Frank R. Lautenberg
United States Senate

19 September 1986

HEIGHT LIMITATIONS

D.C. Government's Authority to Amend Building Height Limitations

RESTRICTED—Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

RELEASED

GAO/GGD-86-85BR

GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-205447

September 19, 1986

The Honorable Frank R. Lautenberg
United States Senate

Dear Senator Lautenberg:

This briefing report responds to your January 22, 1986, letter requesting that we interpret the meaning and objectives of the Home Rule Act relatin to the District government's authority to amend building height limitations. Our July 18, 1986, report to you (GAO/GGD-86-105BR) addressed the other issues your letter requested we explore, namely (1) current laws limiting building heights in the Nation's Capital, (2) the administrative apparatus in place to implement building height limitations, and (3) comments from federal and District officials on whether the current laws and regulations satisfactorily protect the federal interest with respect to security and to the architectural and aesthetic character of the Nation's Capital as well as the Federal Enclave.

Attention has been drawn to the building heights issue by the controversy over the construction of the Metropolitan Square Project. This project, as a result of a D.C. Council amendment to the Schedule of Heights of Buildings Adjacent to Public Buildings (the Schedule of Heights), exceeds previously established height limitations for that area.

As noted in our July report, the Building Height Act of 1910 and the Schedule of Heights govern private sector maximum building heights in the District of Columbia. The 1910 act, as amended (D.C. Code, section 5-405), essentially limits the maximum height of commercial buildings to 130 feet and residential structures to 90 feet. The Schedule of Heights, required by the 1910 act, was established by the Board of Commissioners o the District of Columbia and places further limitations on the height of buildings adjacent to federal buildings within the parameters outlined in the 1910 act.

In 1979, the D.C. Council approved, and the Mayor signed, the Schedule of Heights Amendment Act (D.C. Law 3-43) to allow construction of Metropolitan Square, a 130 foot high commercial building (bounded by 15th 14th, F, and G Streets, N.W.) which overlooks both the Treasury Building and the White House. Before the Council's action, commercial buildings a that location were restricted by the Schedule of Heights to 95 feet. Questions arose over the District's authority, under provisions of the Home Rule Act, to amend the Schedule of Heights.

In our opinion, the D.C. Council was not prohibited by provisions of the Home Rule Act from promulgating the Schedule of Heights Amendment Act of

1979 (D.C. Law 3-43) which allowed construction of the Metropolitan Square Project to a height of 130 feet. Section 602 (a)(6) of the Home Rule Act states that the D.C. Council shall have no authority to "enact any act, resolution, or rule which permits the building of any structure within the District of Columbia in excess of the height limitations contained in section 5 of the Act of June 1, 1910 (D.C. Code, section 5-405), and in effect on the date of enactment of this Act." It has been argued that when section 602 (a)(6) of the Home Rule Act was written, the drafters believed that all building height limitations in effect in the District were contained in section 5-405 of the D.C. Code and could not be amended by the D.C. Council. We believe this to be unlikely, however, because even a cursory reading of section 5-405 of the D.C. Code suggests that height limitations, such as the Schedule of Heights or zoning regulations, exist elsewhere.

Because the height limitations set out in the Schedule of Heights are not contained in section 5-405 of the D.C. Code, the D.C. Council is not prohibited from amending the Schedule as long as the amendments do not allow any increase beyond the overall height limits set forth by the Building Height Act of 1910, as amended. This position is consistent with that of the District of Columbia Corporation Counsel.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 7 days after its issue date. At that time, we will send copies to other interested parties. Copies will also be available to others upon request.

If there are any questions regarding the contents of this report, please call me on 275-8387.

Sincerely yours,

Gene L. Dodaro
Associate Director

(426840)

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COUNCIL OF THE DISTRICT OF COLUMBIA
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

norandum

Members of the Council

m: Phyllis Jones, Secretary to the Council

:e: March 28, 1997

ject: Referral of Proposed Legislation

Notice is given that the attached proposed legislation has been introduced in the Office of the Secretary on March 27, 1997. Copies are available in Room 28, Legislative Services Division.

TITLE: Schedule of Heights of Building Amendment Act of 1997, Bill 12-170

INTRODUCED BY: Councilmember Evans

The Chairperson ProTempore is referring this legislation to the Committee of the Whole.

cc: General Counsel
Legislative Services Division

Councilmember Jack Evans

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Councilmember Jack Evans introduced the following bill, which was referred to the Committee on _____.

To amend Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Schedule of Heights of Buildings Amendment Act of 1997".

Sec. 2. Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings, as adopted by the Commissioners of the District of Columbia, in conformity with the Act of Congress of June 1, 1910, and the amendments of December 30, 1910, and May 20, 1912 (issued by the Zoning Commission of the District of Columbia in Appendix G of the District of Columbia Zoning Regulations, effective May 12, 1958) is amended by adding the following sentences at the end of the paragraph:

"This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the Bureau of Engraving and

Printing Annex building located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of the Zoning Regulations of the District of Columbia, as amended.".

Sec. 3. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council of the District of Columbia to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Authority Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), and a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(2)), and publication in the District of Columbia Register.

Public Hearing
before the
Council of the District of Columbia
Committee of the Whole
regarding
Bill 12-170
October 14, 1997

Statement of Steven A. Grigg
General Partner
Portals Development Associates Limited Partnership

Mr. Chairman and Members of the Committee, my name is Steven Grigg. I am a General Partner of Portals Development Associates Limited Partnership ("PDA") and President of Republic Properties Corporation. With me today are Butch Hopkins (one of my partners), Arthur Moore (our design architect for the Portals), and Christopher Collins (one of our counsel). We appreciate the opportunity to appear before you today to speak on behalf of the proposed modification to the Schedule of Heights of Buildings. My remarks will be brief.

Mr. Smith will describe to you the scope of the Portals project and the substance of the requested modification which is before you for consideration. The request for this modification is essentially driven and responsive to broad urban design considerations. In fact, the design of the Portals Project has been carefully conceived as a natural extension of the basic plans established over time for this area.

As part of the Portals project, PDA has already constructed a new Maryland Avenue above the existing railroad tracks. This provides the grand avenue originally envisioned in the L'Enfant and McMillan plans. The avenue is 160 feet wide and frames vistas between the U.S.

Capitol and the Jefferson Memorial. This avenue will unite the north and south portions of the site to enhance the overall development potential of the site. As a focus and "termination" of the avenue , we will be developing for public use a grand circle 320 feet in diameter. This circle, as with other elements within the site, will be landscaped and maintained by the developer for the benefit of the public.

In keeping with the nature of the site as a "portal" location, the buildings on the site have been designed to define and balance these public ways using Maryland Avenue as the common measuring point.

We understand and appreciate the purpose and importance of the Schedule of Heights and do not take this request for a modification lightly. We have done a number of studies in order to prepare a design which, in our opinion, best complements the Federal buildings to the north, and in keeping with the spirit of the Schedule of Heights.

A previous modification to the Schedule of Heights along 14th Street permitted the construction of the Bureau of Engraving and Printing Annex across the street from the Portals site which, itself, exceeds the 80-foot height limit. Our proposed building is set back approximately 20 feet from the property line. We found that pulling our building back to form a continuous line of facades along 14th street created a far more pleasant and consistent vista and entrance to the city than having a shorter building which protruded in front of the Annex.

Thus, our proposal is to construct a building on this site to a height permitted by the Zoning Regulations, and to pull our building back 20 feet to form a continuous facade line along 14th Street.

It is important to understand what this bill is not. This bill does not amend the 1910 Height Act, and will not authorize a building height which exceeds the limits of the 1910 Height Act. Some of you may recall that the last time the Council amended the Schedule of Heights was for the Market Square North site adjacent to the FBI building. In that instance, Congress overturned your approval of the amendment because they believed that it would authorize a building height in excess of the maximum permitted height under the Height Act. The Council is prohibited from doing that under the Home Rule Act.

It may be useful to point out that the purchase price for the Portals site was determined by the District on the basis of developable square footage. Since this proposal permits more square footage to be developed than would be permitted under the current restrictions of the Schedule of Heights, the purchase price to the District will increase accordingly.

Conversely, without the modification, the purchased price will be reduced. Thus, the proposed modification provides an economic benefit to the city in terms of an increased purchase price for the site, increased employment related revenues, and increased long-term tax revenues.

In our opinion, the requested modification to the Schedule of Heights enhances the relationship of buildings along 14th Street and permits clear definitions of the vistas and gateway image which the project has been designed to achieve.

As many of you know, the Phase II Office Building is rapidly moving toward completion. Phases I and II will provide employment for more than 5,000 office workers in Southwest D.C. at the Portals. The hotel is supposed to start construction early in 1998 and will

add over 550 full service hotel rooms and about 800-1,000 new jobs to our employment base.

As part of the construction of the first two Phases of the Portals, we delivered significant direct economic benefits to District residents and businesses. District residents were employed in over 50% of all construction jobs created by the first two Phases. So far On Phase II, over 77% of all new hires have been minority individuals.

In order to continue with the definitive design of Phases III and IV, it is necessary that the proposed Bill be approved. The completion of Phases III and IV will more than double the benefits already realized by the City from the development of the Portals.

Our architect, Mr. Arthur Cotton Moore, will provide a brief overview of some of the urban design concepts related to this Bill and the architectural design of the Portals.

Again, thank you for this opportunity to make this presentation to you today.

TESTIMONY OF DURYEA C. SMITH

ON BEHALF OF THE

DEPARTMENT OF HOUSING

AND COMMUNITY DEVELOPMENT

AT THE PUBLIC HEARING

ON BILL 12-170

"SCHEDULE OF HEIGHTS OF BUILDING

AMENDMENT ACT OF 1997"

BEFORE THE

COMMITTEE OF THE WHOLE

COUNCIL OF THE DISTRICT OF COLUMBIA

TUESDAY, OCTOBER 14, 1997

COUNCIL CHAMBER, ONE JUDICIARY SQUARE

12:00 NOON

GOOD AFTERNOON, CHAIRMAN CROPP AND MEMBERS OF THE COMMITTEE, I AM DURYEA C. SMITH, ACTING ADMINISTRATOR, ADMINISTRATION OF NEIGHBORHOOD PRESERVATION AND COMMERCIAL DEVELOPMENT IN THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD). I AM HERE TODAY TO RECOMMEND COUNCIL APPROVAL OF THE "SCHEDULE OF HEIGHTS OF BUILDING AMENDMENT ACT OF 1997", (BILL 12-170) IN CONNECTION WITH THE DEVELOPMENT OF THE PORTAL SITE IN THE SOUTHWEST URBAN RENEWAL AREA.

THE PORTAL SITE, AT THE END OF THE 14TH STREET BRIDGE AS YOU ENTER THE CITY, IS BOUNDED ON THE NORTH BY D STREET, ON THE SOUTH BY MAINE AVENUE, ON THE EAST BY 12TH STREET AND ON THE WEST BY 14TH STREET, S.W., IN WARD TWO. THE SITE WAS DIAGONALLY DIVIDED INTO TWO PARCELS BY THE CONRAIL

RAILROAD TRACKS RUNNING IN THE BED OF THE OLD MARYLAND AVENUE. TO MITIGATE THE IMPACT OF THE INDUSTRIAL NATURE OF THE RAILROAD AND UNITE THE SITE, THE DEVELOPER PUT THE RAILROAD IN A TUNNEL RUNNING THROUGH THE SITE OVER WHICH A NEW MARYLAND AVENUE HAS BEEN CONSTRUCTED. THE NEW MARYLAND AVENUE, AN ORIGINAL L'ENFANT DIAGONAL STREET RECONSTRUCTED AT ITS ORIGINAL 160 FOOT WIDTH, WAS CONSTRUCTED AND WILL BE MAINTAINED BY THE DEVELOPER, BUT REMAINS IN PUBLIC OWNERSHIP. THE BUILDINGS ON THE NORTH AND SOUTH PORTAL SITE HAVE BEEN DESIGNED TO PROVIDE BALANCED DEVELOPMENT ALONG MARYLAND AVENUE, FRAMING VIEWS TO THE CAPITOL AND THE TIDAL BASIN AND TO ENSURE UNIFIED HEIGHT ALONG THIS GRAND NEW AVENUE.

AS CURRENTLY PLANNED, THE PORTAL SITE WILL BE DEVELOPED AS A MIXED USE OFFICE/RETAIL/HOTEL PROJECT WITH ABOUT 1,800,000 SQUARE FEET OF OFFICE SPACE, 108,000 SQUARE FEET OF RETAIL SPACE, AN APPROXIMATELY 500 ROOM LUXURY HOTEL, A TOTAL OF 48,000 SQUARE FEET FOR A PERFORMING ARTS THEATER AND COMMUNITY USE SPACE, AND 3,500 PARKING SPACES. THUS FAR, AN APPROXIMATELY 440,000 SQUARE FOOT OFFICE BUILDING HAS BEEN COMPLETED AND A 600,000 SQUARE FOOT OFFICE BUILDING THAT WILL SERVE AS THE HEADQUARTERS OF THE FEDERAL COMMUNICATIONS COMMISSION IS NEARING COMPLETION AND WILL BEGIN OCCUPANCY EARLY NEXT YEAR. CONSTRUCTION OF THE HOTEL IS EXPECTED TO COMMENCE IN 1998.

THE SCHEDULE OF HEIGHTS WAS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA PURSUANT TO AN ACT OF CONGRESS (JUNE 1, 1910). THE COUNCIL OF THE DISTRICT OF COLUMBIA HAS THE SOLE AUTHORITY TO AMEND THE SCHEDULE OF HEIGHTS UNDER SECTION 5-405(F) OF THE D.C. CODE.

PARAGRAPH 14 IN APPENDIX G (SCHEDULE OF HEIGHTS) OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS PROVIDES THAT:

> "14. ON FOURTEENTH STREET, S.W., BETWEEN D AND WATER STREETS, CONFRONTING THE BUREAU OF ENGRAVING AND PRINTING, NO BUILDING SHALL BE ERECTED OR ALTERED SO AS TO BE HIGHER THAN A HORIZONTAL LINE 80

FEET ABOVE THE TOP OF THE CURB AT THE SOUTHEAST CORNER OF FOURTEENTH AND D STREETS, S.W., EXCEPTING VENTILATION AND ELEVATOR SHAFTS WHICH SHALL BE SET BACK FROM THE FRONT AND SIDE LINES OF SUCH BUILDINGS A DISTANCE EQUAL TO THE HEIGHT OF SUCH SHAFTS ABOVE THE ADJACENT ROOF."

AT THE PRESENT TIME, THE SCHEDULE OF HEIGHTS (PARAGRAPH 14, APPENDIX G) LIMITS ANY BUILDING LOCATED ALONG 14TH STREET ON THE NORTH PORTAL SITE BETWEEN D AND WATER STREETS, S.W. TO A HEIGHT OF 80 FEET ABOVE THE CURB MEASURED AT THE SOUTHEAST CORNER OF 14TH AND D STREETS, S.W. THE ELEVATION AT THE TOP OF THE CURB IS 24.92 FEET WHICH WOULD ALLOW THE HEIGHT OF A BUILDING, EXCLUSIVE OF PENTHOUSES, TO BE AT ELEVATION 104.92 FEET.

IN ORDER TO DEVELOP A UNIFIED HEIGHT THROUGHOUT THE PROJECT, BUILDINGS ON THE NORTH PORTAL SITE, AS WITH THE OTHER PORTAL SITE BUILDINGS, WOULD BE MEASURED FROM THE NEW MARYLAND AVENUE AT ELEVATION 46 FEET. ELEVATION 46 FEET MAINTAINS THE VISTA BETWEEN THE CAPITOL AND THE JEFFERSON MEMORIAL AND MEETS THE CLEARANCE REQUIREMENTS OF THE RAILROAD AND THE SERVICE REQUIREMENTS OF THE GSA COAL SHAKER. UNDER THIS DESIGN, THE PORTION OF THE BUILDING WHICH ABUTS THE 14TH AND D STREETS CORNER WOULD BE 111.08 FEET ABOVE THE CURB (ELEVATION 136 FEET).

CURRENTLY, THE SCHEDULE OF HEIGHTS DOES NOT ALLOW FOR A COMPREHENSIVE DEVELOPMENT WITH UNIFORM BUILDING HEIGHTS THROUGHOUT THE PORTAL SITE. DEVELOPMENT UNDER THE CURRENT SCHEDULE OF HEIGHTS WOULD BE AN AWKWARD AND UNBALANCED BUILDING SCHEME WITH THREE OF THE BUILDINGS ALONG NEW MARYLAND AVENUE WITH A UNIFORM HEIGHT OF 90 FEET AND THE FOURTH BUILDING AT A HEIGHT OF LESS THAN 60 FEET (58.92 AS MEASURED FROM MARYLAND AVENUE).

THE AMENDMENT TO THE SCHEDULE OF HEIGHTS IMPROVES THE RELATIONSHIP OF THE NORTH PORTAL SITE BUILDING ALONG 14TH STREET WITH SURROUNDING BUILDINGS AND FURTHER ENHANCES

THIS IMPORTANT ENTRANCE INTO THE CITY. THE ROCHAMBEAU MEMORIAL BRIDGE CONNECTS TO 14TH STREET NEAR THE D STREET INTERSECTION. THE CURRENT 14TH STREET BUILDING LINE IS LESS THAN 10 FEET FROM THE CURB ALONG 14TH STREET. PLACING A BUILDING DIRECTLY ON THE 14TH STREET PROPERTY LINE WOULD NEGATIVELY IMPACT THIS NARROW SIDEWALK AREA. A GENEROUS SIDEWALK AREA TO PROVIDE FOR ADEQUATE PEDESTRIAN MOVEMENT WITH ENOUGH SPACE FOR STREET TREES AND STREET FURNITURE IS AN IMPORTANT ELEMENT IN A MIXED USE DEVELOPMENT SUCH AS THE PORTALS. TO ACHIEVE THIS, THE PROPOSED LEGISLATION BEFORE YOU PROVIDES THAT THE BUILDING IS TO BE SET BACK FROM 14TH STREET APPROXIMATELY 20 FEET, TO A LINE THAT IS CONTINUOUS WITH THE BUILDING FACADE OF THE BUREAU OF

ENGRAVING AND PRINTING ANNEX ACROSS D STREET DIRECTLY NORTH OF THE PORTAL SITE. THIS RESULTS IN A CONSISTENT AND UNIFORM PLACEMENT OF THE BUILDING FACADES ALONG 14TH STREET WHICH GREATLY ENHANCES THE SENSE OF ENTRANCE AT THIS GATEWAY TO THE CITY. THIS MORE REGULAR PLACEMENT OF BUILDINGS ALONG 14TH STREET ESTABLISHES 14TH STREET AS A SPECIAL STREET. 14TH STREET IS 110 FEET WIDE AND CAN ACCEPT A TALLER BUILDING WITHOUT ANY SIGNIFICANT ADVERSE VISUAL IMPACT. WE BELIEVE THAT THE REQUESTED MODIFICATION IS CONSISTENT WITH THE SPIRIT OF THE SCHEDULE OF HEIGHTS, SINCE IT PERMITS A DESIGN WHICH IS MORE COMPATIBLE WITH THE ADJACENT FEDERAL BUILDINGS.

ADHERENCE TO THE CURRENT SCHEDULE OF HEIGHTS WOULD RESULT IN A REDUCTION OF DISPOSITION PROCEEDS BECAUSE OF THE REDUCTION IN THE AMOUNT OF BUILDING DEVELOPMENT THAT WOULD BE PLACED ON THE NORTH PORTAL SITE. A BUILDING UNDER THE CURRENT SCHEDULE OF HEIGHTS WOULD BE FIVE STORIES RATHER THAN THE EIGHT STORIES AS PROPOSED. THIS WOULD AMOUNT TO A REDUCTION OF ABOUT 280,000 SQUARE FEET, APPROXIMATELY A 37% REDUCTION IN BUILDABLE SPACE FOR THE BUILDING ALONG 14TH STREET. THIS REDUCTION IN SPACE WOULD RESULT IN FEWER PERMANENT JOBS – ABOUT 1400 – AND A REDUCTION IN YEARLY REAL ESTATE TAX REVENUES TO THE CITY OF ABOUT $1,023,000.

THERE IS HISTORIC PRECEDENCE TO CHANGES IN THE SCHEDULE OF HEIGHTS IN THIS AREA AS PREVIOUS AMENDMENTS ALLOWED TALLER BUILDINGS ALONG 14TH STREET. IN DECEMBER 1911, THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA ADDED THE FOLLOWING PROVISION TO THE SCHEDULE OF HEIGHTS WHICH PROVIDES IN PART THAT:

> "ON 14TH STREET, SOUTHWEST, BETWEEN B (INDEPENDENCE AVENUE) AND D STREETS, CONFRONTING THE BUREAU OF PRINTING AND ENGRAVING, NO BUILDING SHALL BE ERECTED OR ALTERED SO AS TO BE HIGHER THAN A HORIZONTAL LINE 80 FEET ABOVE THE TOP OF THE CURB AT THE SOUTHEAST CORNER OF 14TH AND B STREETS, SOUTHWEST..."

THIS PROVISION WAS SUBSEQUENTLY MODIFIED IN 1930 TO CHANGE THE AFFECTED AREA FROM "BETWEEN B AND D STREET" TO "BETWEEN D AND WATER STREETS." FOLLOWING THIS CHANGE, THE DEPARTMENT OF AGRICULTURE SOUTH BUILDING, BETWEEN INDEPENDENCE AVENUE AND C STREET, AND THE BUREAU OF ENGRAVING AND PRINTING ANNEX BUILDING, BETWEEN C AND D STREETS, WERE BUILT. BOTH BUILDINGS ARE SET BACK THE SAME DISTANCE FROM 14TH STREET AND HAVE A UNIFORM BUILDING LINE ALONG THE STREET. THE HEIGHT OF THE BUREAU OF ENGRAVING AND PRINTING ANNEX IS ELEVATION 120.7 FEET WHICH EXCEEDS THE BUILDING HEIGHT OF ELEVATION 104.92 FEET ALLOWED ON THE NORTH PORTAL SITE UNDER THE CURRENT SCHEDULE OF HEIGHTS.

MODIFYING THE BUILDING HEIGHT RESTRICTION ALONG 14TH STREET WOULD HELP CARRY OUT THIS IMPORTANT PROJECT AND PROVIDE SIGNIFICANT BENEFITS TO THE DISTRICT AND ITS RESIDENTS. THE AMENDMENT TO THE SCHEDULE OF HEIGHTS WOULD ALLOW FOR IMPROVED URBAN DESIGN OF THE PORTAL SITE DEVELOPMENT AND ENHANCE THIS GATEWAY ENTRANCE INTO THE CITY.

THE OVERALL URBAN DESIGN SOLUTION FOR THE PORTAL SITE THAT INCLUDES THE BUILDING HEIGHTS PERMITTED BY THE AMENDMENT OF THE SCHEDULE OF HEIGHTS HAS BEEN REVIEWED AND FAVORABLY RECEIVED BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S ARCHITECTURAL REVIEW PANEL AND THE U.S. COMMISSION ON FINE ARTS.

IN SUMMARY, THE PROPOSED CHANGE WILL RESULT IN A DESIGN WHICH IS SYMPATHETIC AND COMPATIBLE WITH SURROUNDING FEDERAL BUILDINGS – THE INTENT OF THE ORIGINAL LEGISLATION.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS TESTIMONY. DHCD STAFF AND I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.

The COMMITTEE of 100 on the FEDERAL CITY
founded 1923

Testimony of David Grinnell on Bill 12-170 "Schedule of Height of Buildings Amendment Act of 1997"

October 13, 1997

My name is David Grinnell, and I am testifying for the Committee of 100 on the Federal City. The Bill before you proposes to amend the Schedule of Height to permit a building at 14th and D Streets SW to rise thirty feet above what the building height act permits.

The first building height act was passed in 1894 and limited the height of buildings, using a formula linking maximum height to the width of the street and the nature of the street, whether residential or commercial. The act was subsequently adjusted by Congress, to permit such things as church spires, and the general formula of the width of the street plus 20 feet was arrived at to regulate the maximum height permitted for buildings. In 1910 Congress directed the Commissioners to devise a height schedule for specific sites around federal buildings and between 1910 and 1912 the Schedule of Heights was adopted by Congress identifying fifteen sites, among them the site in question; it reads "*14. On Fourteenth Street SW, between D and Water Streets, confronting the Bureau of Printing and Engraving, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the southeast corner of Fourteenth and D Streets, SW, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such buildings a distance equal to the height of such shafts above the adjacent roof.*" The purpose of these specific adjustments was aesthetic, because in all cases the allowable heights permitted is always lower than what the Height Act formula (width of street plus 20 feet) would allow. The schedule addressed sites around the old Patent Office, the White

House, the Treasury Building, the Capitol buildings, and Union Station, among others, sites that were to permanently house federal buildings which in many cases happened to be historic.

This site is surrounded by buildings connected with the U.S. Treasury Department, including several federal buildings under Treasury for printing and engraving. All of these buildings in the immediate vicinity of 14th and D *are under 80 feet in height.* In fact the annex immediately across Fourteenth Street from the proposed site is only four stories high, and is under 65 feet. Its neighbor to the north across 14th Street, is six stories high. The purpose for the Act at this site is to keep the skyline low, particularly since the site is on a rise just two blocks above the Jefferson Memorial.

In the Metropolitan Square Case of 1981, the US attorney ruled that the City Council of the District of Columbia has no right to alter the Height Act whatsoever. To allow the Council this function would permit the city, at the behest of any developer, to waive the height act on an *ad hoc* basis. Which is what the proposal would achieve, a mockery of Congressional will, for this proposal turns the process upside down, giving the Mayor and City Council authority to *increase* the heights around federal buildings extra height, in direct contradiction to the purpose of the Schedule, which diminishes heights. This proposal would permitted a huge and needless additional 30 feet in height at the Portals site, with a setback from the building line of 20 feet from the sidewalk. (None of the federal buildings are so setback.) Because the developer is able to build this project as a matter or right, attaining the same building bulk, the Council vote to oppose would deprive him of no usable interior space .

The Council should also consider the benefits the developer had already received from government. The Portals site, as an urban renewal site, was awarded to the developer through the Redevelopment Land Agency of the District. As you are aware, RLA sites are normally awarded at a considerably a lower purchase price than the market price. So an financial advantage already exists on this site. The developer can build as matter of right and still make a good profit. There is no economic reason to permit a break in the Height

Limit Act. If any developer claims the height act, which was devised to protect the low profile of the capital city, does not suit him aesthetically, the Height looses all authority.

I would like to remind you that the Committee of 100, with other civic groups in the city has successfully gone to the Hill and reversed City Council votes to break the Height Limit Law. In the case of the Kingdon Gould property across from the F.B.I. Eleanor Holmes Norton firmly supported the citizens. This is not a time to exacerbate relations with Capitol Hill. Please vote to defeat this bill.

Mrs. Dorothy Miller, Commissioner
Advisory Neighborhood Commission 2A-05
2440 Virginia Avenue, NW
Washington, DC 20037

Re: Schedule of Heights of Building Amendment Act of 1997, Bill 12-170
Statement before DC Council, October 14, 2997

Good afternoon, its me again, O'Council members for the fourth time in less than four weeks, Dorothy Miller, Advisory Neighborhood Commissioner for ANC-2A05 and the site in question borders my Single Member District. Copy attached of NOTICE DC LAW 9-112, "Advisory Neighborhood Commissions Boundaries Act of 1992", description of SMD 2A05 boundaries.

When Congress enacted the **Height Act** in 1894 after the Cario Hotel was built it was concerned about the safety of the District's citizens. Fire equipment could not reach the people on the upper floors.

As the District began to develop Congress was concerned about the aesthetic appearance as well as protection around Federal buildings in the Nation's Capitol. The **Schedule of Heights Act** was devised in 1910 by the three DC Commissioners, at the request of and approved by congress, in an effort to protect and enhance the areas around federal buildings. It consists of 15 specific sites and the Portal site at 14 Street between Water and D Streets, SW, covered in this legislation, was one of them. (Copy attached of Appendix G, of the Schedule's list of the 15 sites) The heights permitted for each site were carefully calibrated to each site, ***and are always lower than the normal Building Height Act formula of the with of the street plus 20 feet.*** The proposal covering the Portal site at 14 Street between Water andD Streets, SW, introduced by Jack Evans, council member for Ward 2, turns the process upside down, because it gives the Mayor and the City Council authority to increase the heights around these federal buildings, under the Treasury Department for printing and engraving, by a whopping 30 Feet!.

The Bill 12-170, before the Council today, introduced by Council Member Jack Evans is in violation of federal law and raises the question, What are the real concerns of the City Council for the Nation's Capitol and its residents? The DC City Council has no authority to amend the Schedule of Heights for the District of Columbia as it applies to areas adjacent to federal buildings. The areas surrounding federal buildings are all lower than 80 feet. In fact the annex building immediately across 14th Street from the proposed site is only four stories high and is under 65 feet.

The developer has already received financial benefits when the land, under the Redevelopment Land Agency (RLA), was considered an urban renewal site and was sold far below market price. The developer can build as a matter of right and meet the FAR allowed and

should make more than a reasonable profit. I have learned from the District of Columbia and the architect when asked, stated that the developer is able to build the project at the same density without breaking the height limit schedule at all. The city was complicit in breaking the height limit apparently from the very beginning, because the RLA sold the land to the developer at a considerably reduced price, and reviewed the plans several years ago when it disposed of the land and ended its authority over the site.

So, why would the City Council want to violate a Federal law at a time when Congress has a low opinion of how the District conducts its business and thereby antagonize Congress further? Why would a successful developer, who could make a profit without the additional 30 feet, want the Council to challenge Congress by violating a Federal statue? Then telling the Council that because it is not Federal land that there would be no review by The National Capitol Planning Commission. The Height Act is not about Federal land but what is built in the areas around the Nation's federal buildings.

This type of "backroom" legislation does not improve the Distrust's chance of taking control of its affairs again. Bill 12-170, Schedule of Heights of Building Amendment Act of 1997, should never have seen the light of day and should be denied.

Attachment (2)

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 9-~~112~~

"Advisory Neighborhood Commissions Boundaries Act of 1992".

Pursuant to Section 412 of the District of Columbia Self-Government and Governmental Reorganization Act, P. L. 93-198, "the Act", the Council of the District of Columbia adopted Bill No. 9-335 on first and second readings, February 4, 1992, and March 3, 1992, respectively. Following the signature of the Mayor on March 23, 1992, this legislation was assigned Act No. 9-184, published in the April 3, 1992, edition of the D.C. Register, (Vol. 39 page 2164) and transmitted to Congress on March 25, 1992 for a 30-day review, in accordance with Section 602(c)(1) of the Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional Review Period has expired, and therefore, cites this enactment as D.C. Law 9-112, effective May 21, 1992.

JOHN A. WILSON
Chairman of the Council

Dates Counted During the 30-day Congressional Review Period:

March 25,26,27,30,31

April 1,2,3,6,7,8,9,10,28,29,30

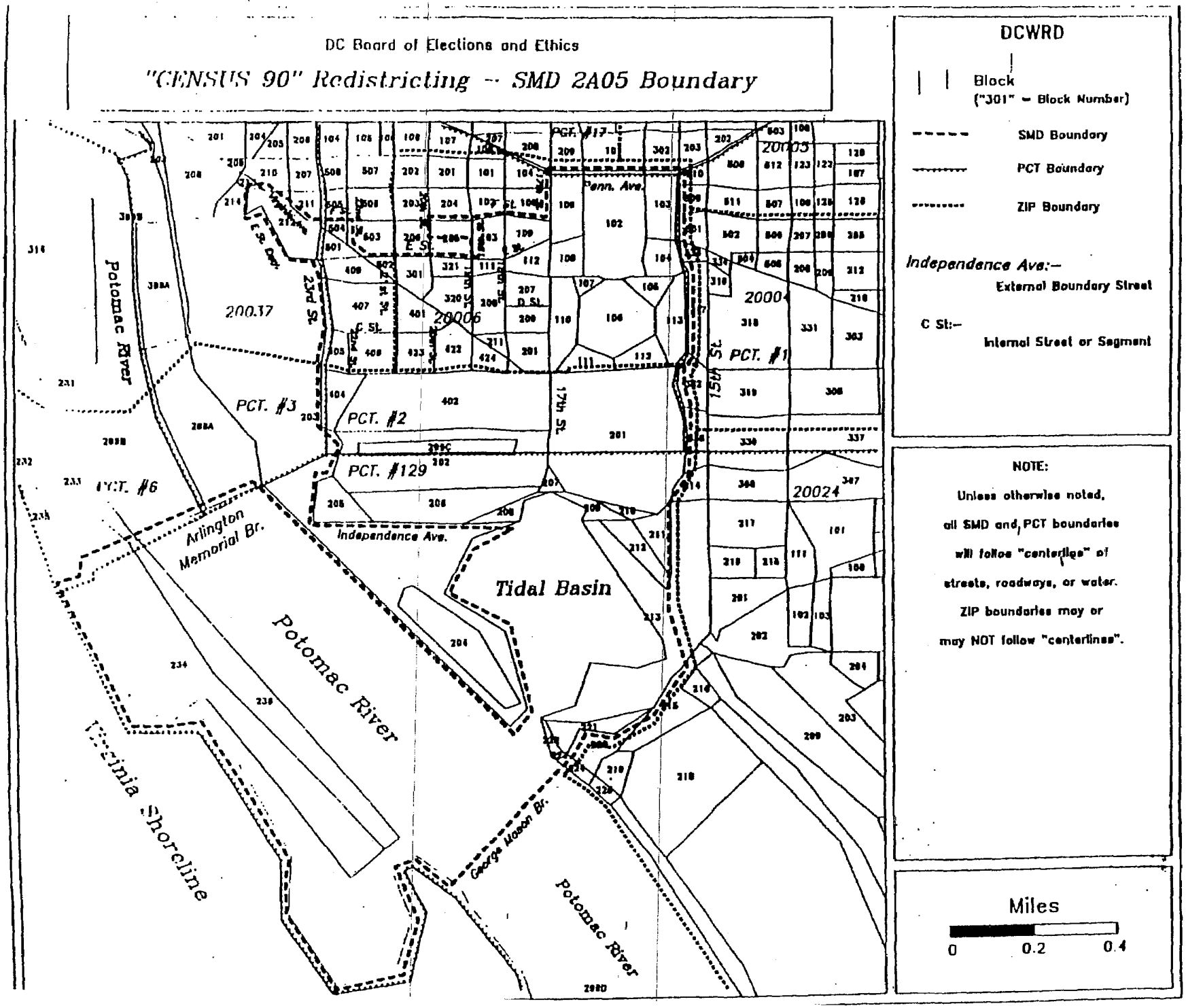
May 1,4,5,6,7,8,11,12,13,14,15,18,19,20

Description of SMD 2A05 boundaries

All of the following streets in the Northwest quadrant (unless otherwise designated): Beginning at I-66 and Virginia Avenue, Southeast on Virginia Avenue to F Street; East on F Street to 22nd Street; South on 22nd Street to Virginia Avenue; Southeast on Virginia Avenue to E Street; East on E Street to 19th Street; North on 19th Street to a line between Mitchell Hall (a George Washington University residence hall at 514 19th Street, N.W.) and Thurston Hall (a George Washington University residence hall at 1900 F Street); West on the line between Mitchell Hall and Thurston Hall and along the rear lot lines of other lots facing F Street to 20th Street; North on 20th Street to F Street; East on F Street to 17th Street; North on 17th Street to Pennsylvania Avenue; East on Pennsylvania Avenue to 15th Street; South on 15th Street to Maine Avenue; Southeast on Maine Avenue to the Northwest roadway of Route 1 South; Southeast on the Northwest roadway of Route 1 South to the George Mason Memorial Bridge; Southwest on the George Mason Memorial Bridge to the District of Columbia-Commonwealth of Virginia boundary line at the Commonwealth of Virginia shore of the Potomac River; Northwest on the District of Columbia-Commonwealth of Virginia boundary line at the Commonwealth of Virginia shore of the Potomac River to the extension of the Arlington Memorial Bridge; East on the extension of the Arlington Memorial Bridge to the Arlington Memorial Bridge; East on the Arlington Memorial Bridge to the Northeastern shoreline of the Potomac River; Southeast on the Northeastern shoreline of the Potomac River to the Western shoreline of the Tidal Basin; North on the Western shore of the Tidal Basin to Independence Avenue; West on Independence Avenue to 23rd Street; North on 23rd Street to the roadway around the Lincoln Memorial; Around the roadway around the Lincoln Memorial in a counterclockwise direction to 23rd Street; North on 23rd Street to the E Street Expressway; Northwest on the E Street Expressway to I-66; North on I-66 to Virginia Avenue.

DC Board of Elections and Ethics

"CENSUS 90" Redistricting -- SMD 2A05 Boundary



Schedule of Heights

APPENDIX G

SCHEDULE OF HEIGHTS OF BUILDINGS ADJACENT TO PUBLIC BUILDINGS, AS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA, IN CONFORMITY WITH THE ACT OF CONGRESS OF JUNE 1, 1910, AND THE AMENDMENTS OF DECEMBER 20, 1910, AND MAY 20, 1912.

1. On G Street NW., between Seventh and Ninth Streets, adjacent to the Civil Service Commission Building, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb, at the northwest corner of Eighth and G Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

2. On F Street NW., between Seventh and Ninth Streets, adjacent to the United States Patent Office, no building shall be erected or altered so as to be higher than the horizontal line 90 feet above the top of the curb at the southwest corner of Eighth and F Streets NW. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

3. On Fifteenth Street NW., between Pennsylvania Avenue and G Street, adjacent to the Treasury Building, the cornice line or parapet wall of any building shall not extend above a horizontal line 80 feet above the top of the curb, at the southeast corner of Fifteenth and G Streets NW., and no part of the roof of any building shall be higher than a horizontal line 95 feet above the top of said curb, excepting ventilation and elevator shafts, which shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

4. On Seventeenth Street NW., between New York Avenue and G Street, confronting the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northwest corner of Pennsylvania Avenue and Jackson Place, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

5. On Pennsylvania Avenue NW., in squares 167 and 221, confronting the Treasury Building and the State Department Building, no building shall be erected or altered so as to be higher than a horizontal line 80 feet above the top of the curb at the northeast corner of Pennsylvania Avenue and Madison Place for buildings to be erected or altered in square 221, and the curb at the northwest corner of Pennsylvania Avenue and Jackson Place for buildings to be erected or altered in square 167, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such building a distance equal to the height of such shafts above the adjacent roof.

6. On North Capitol Street, in square 625, confronting the City Post Office Building, no building shall be erected or altered to be higher than a horizontal line 90 feet above the top of the curb at the northwest corner of North Capitol Street and Massachusetts Avenue, excepting ventilation and elevator shafts, which shall be set back from the front and side lines of said building a distance equal to the height of such shafts above the adjacent roof.

7. On the north side of Maryland Avenue NE., between First and Second Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of First Street and Maryland Avenue NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building at a distance equal to the height of such shafts above the adjacent roof.

8. On the east side of Second Street NE, between East Capitol and B Streets, adjacent to the Supreme Court Building, no building shall be erected or altered so as to be higher than a horizontal line 60 feet above the top of the curb at the northeast corner of the intersection of Second and A Streets NE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

9. On the east side of Third Street SE., between East Capitol Street and Pennsylvania Avenue, adjacent to the new Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of Third and A Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

10. On the south side of Pennsylvania Avenue SE., between Second and Third Streets, adjacent to the Library of Congress Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of the intersection of Second Street and Pennsylvania Avenue SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

11. On the south side of B Street SE., between First and Second Streets, adjacent to the Library of Congress, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

12. On the east side of First Street SE., between B and C Streets, adjacent to the House Office Building, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the southeast corner of First and B Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

13. On the south side of C Street SE, between First and South Capitol Streets SE., and between South Capitol Street and Delaware Avenue SW., adjacent to the House Office Building and Annex, no building shall be erected or altered so as to be higher than a horizontal line 90 feet above the top of the curb at the southeast corner of South Capitol and C Streets SE. Ventilation and elevator shafts shall be set back from the front and side lines of the building a distance equal to the height of such shafts above the adjacent roof.

14. On Fourteenth Street SW., between D and Water Streets, confronting the Bureau of Printing and Engraving, no building shall be erected or altered so as to be higher than a horiozntal line 80 feet above the top of the curb at the southeast corner of Fourteenth and D Streets SW., excepting ventilation and elevator shafts, which shall be set back from the front and side lines of such buildings a distance equal to the height of such shafts above the adjacent roof.

15. On the north side of C Street, NE., between First and Second Streets adjacent to the Senate Office Building Annex, no building shall be erected or altered so as to be higher than a horizontal line 70 feet above the top of the curb at the northeast corner of First and C Streets, NE. Ventilation and elevator shafts shall be set back from the side lines of the building a distance equal to the height of such shafts above the adjacent roof.

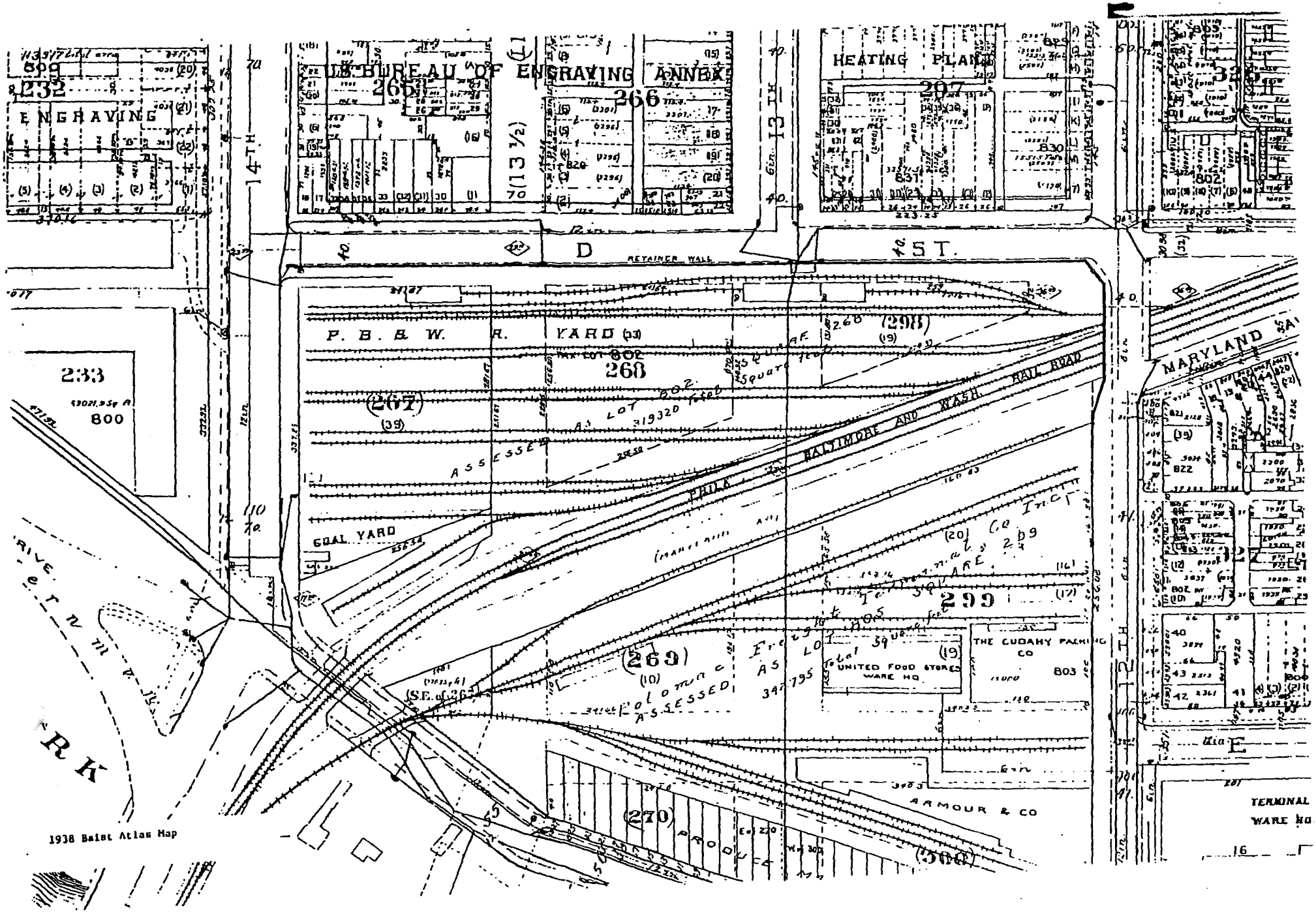

U.S. BUREAU OF ENGRAVING ANNEX
HEATING PLANT
ENGRAVING
14-TH
13-TH
D
45 T.
RETAINER WALL
P. B. & W. R. YARD (93)
MARYLAND
BALTIMORE AND WASH. RAIL ROAD
PHILA
COAL YARD
THE CUDAHY PACKING CO
UNITED FOOD STORES WARE HO
ARMOUR & CO
TERMINAL
WARE HO
1938 Baist Atlas Map

Table Showing the Widths of the Streets and Avenues in the City of Washington

The streets running East and West, are designated by letters of the alphabet, and by the word North or South, according as they are situated North or South of the Capitol, which is the dividing point; as, A street north, which is the first street north of the Capitol.

The streets running North and South are designated numerically, and by the word East or West, according to their positions with respect to the Capitol; as First street east and First street west.

STREETS	A	B	C	D	E	F	G	H	I	K	L	M	N	O	P	Q	R	S	T	U	V	W
North	90	90	80	70	90	100	90	90	90	147.67	90	90	80	90	90	90	90	90	90	90	80	80
South	90	90	80	90	90	70	100	80	90	80	90	90	90	85	85	85	85	85	85	80	80	40

STREETS	½	1	2	3	4	4	5	6	7	8	9	10	11	12	13	13½	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28
East	80	110	90	90	85	S.W.	100	85	90	100	90	80	90	112	90	-	100	90	80	100	80	80	100	80	80	80	80	-	-	-	-
West	80	90	90	110	80	110	80	100	85	100	85	85	111.42	85	110	70	110	110	160	110	90	110	90	90	90	100	90	90	80	70	80

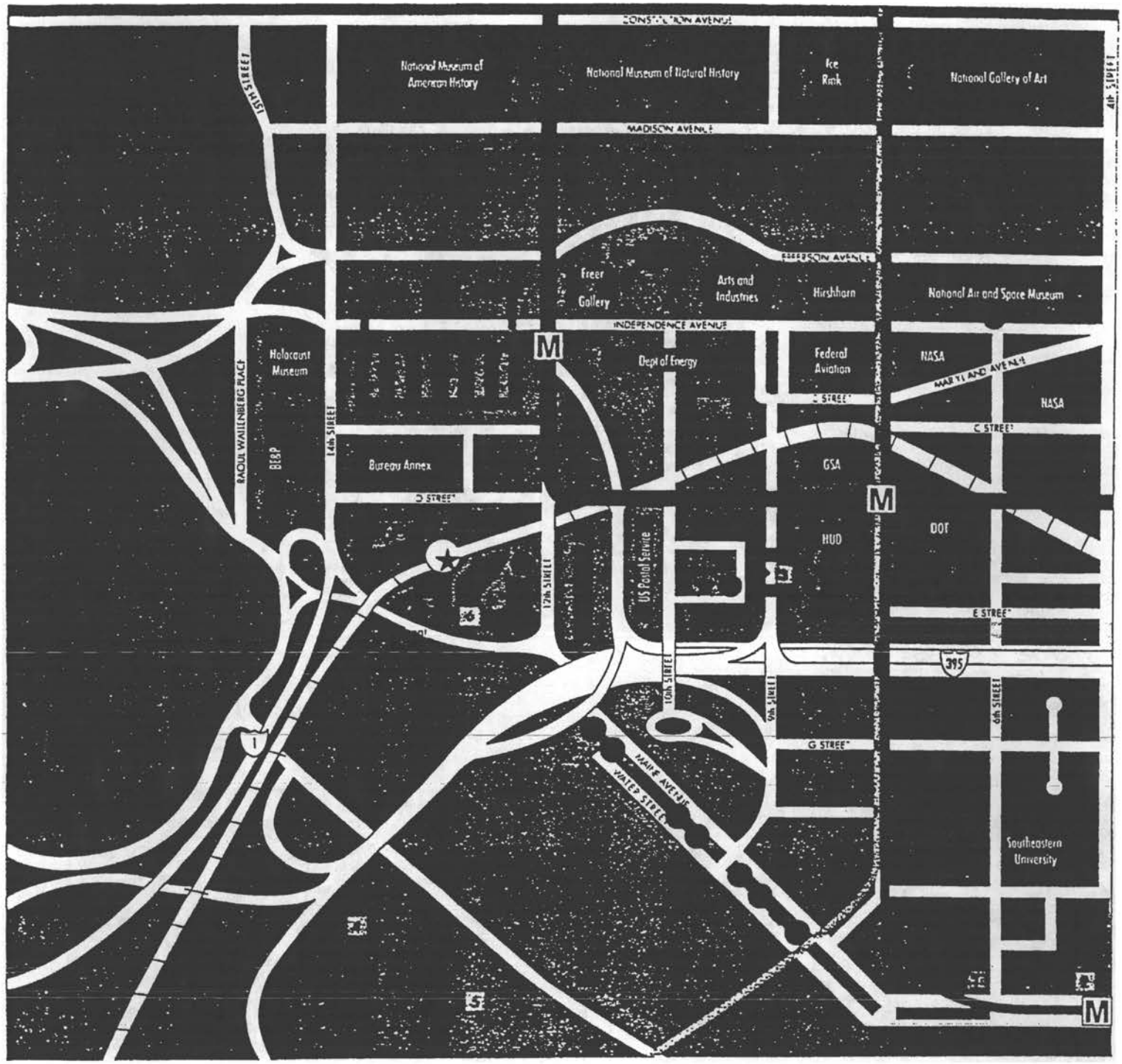
North and South Capitol Streets, each 130 feet wide; East Capitol Street 160; Half Streets, east and west, 80; Thirteenth and a Half Street, 70; Water Street, between South Capitol and N Streets, 60 feet wide, elsewhere, 80 feet; Boundary Street, 80 feet wide. The streets on the East and West sides of Lafayette Square are 90 feet wide; from F Street North to the Canal, the width of 8th St. West is 85'8". The width of D Street northwest of 17th Street West, is 80 feet, elsewhere, 70 feet.

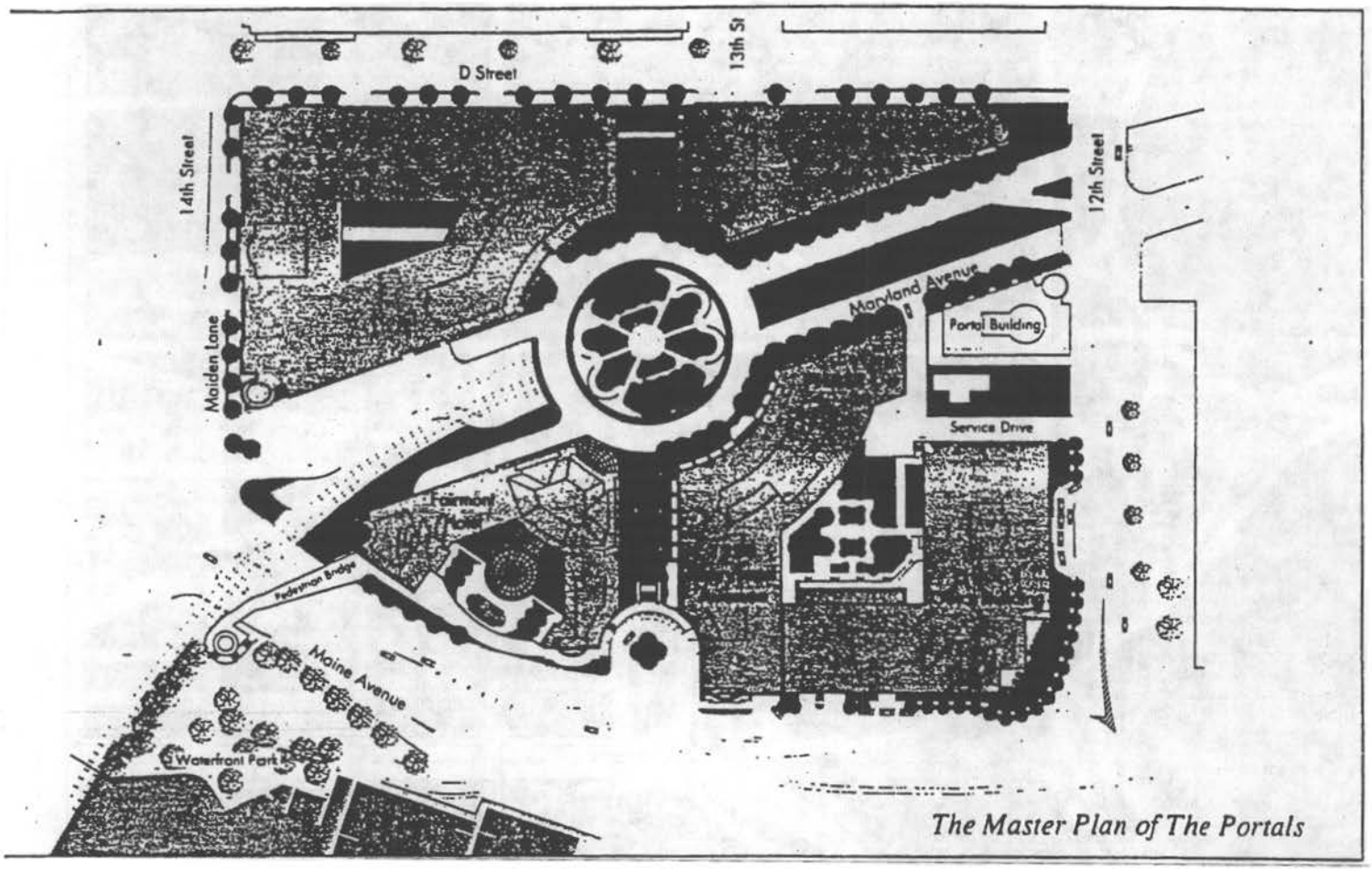
WIDTHS of the AVENUES

AVENUES	WIDTHS	COURSES	AVENUES	WIDTHS	COURSES	AVENUES	WIDTHS	COURSES
Delaware- - - - - -	160 Ft	N15-44-00E	Pennsylvania, White Ho. to Rock Creek- - -	130 Ft	S66-00-00E	New Hampshire- - -	120 Ft	N36-09-11E
New Jersey - - - - -	160 "	N15-44-00W	Pennsylvania, Capitol to E'rn Branch- - -	160 "	S62-27-00E	Massachusetts, West of N.J. Ave.- - -	160 "	S66-03-00E
Maryland, East of Capitol	160 "	N62-25-00E	Kentucky- - - - -	120 "	S33-00-00E	Massachusetts, East of N.J. Ave.- - -	160 "	S62-26-00E
Maryland, West of Capitol	160 "	N70-22-09E	Tennessee- - - - -	120 "	N32-25-00E	Ohio- - - - -	160 "	S70-18-00E
North Carolina- - -	160 "	N62-30-00E	New York, East of Wh. Ho.-	130 "	N66-09-00E	Louisiana- - - -	160 "	S70-21-36E
South Carolina- - -	160 "	N71-13-54E	New York, West of Wh. Ho.-	160 "	N70-27-00E	Indiana- - - -	160 "	S70-23-30E
Georgia (Potomac)- - -	160 "	N62-30-00E	Vermont- - - - -	130 "	N24-31-30E	Missouri- - - -	85 "	S70-33-30E
Virginia, Mall to E'rn Br	160 "	S70-18-05E	Connecticut- - - -	130 "	N24-31-30W	Maine- - - - -	85 "	N70-22-09E
Virginia, R.C. to Pot. R.	120 "	S55-20-00E	Rhode Island- - - -	130 "	N66-00-00E			
Pennsylvania, White Ho. to U.S. Cap.- - -	160 "	S70-33-30E						

The distance on an East and West line from the West side of Square No. 1 to the West side of 24th Street East,=24,140.6 feet, or 4.572 miles. The distance on a North and South line from the South side M Street South, along 11th Street West to the North side of Boundary Street is 19,954.0 feet, or 3.779 miles.

Refer to Record Map #2806. Copy by W.B.G. May 17, 1960. Compared by E.G.M. and P.H.M.

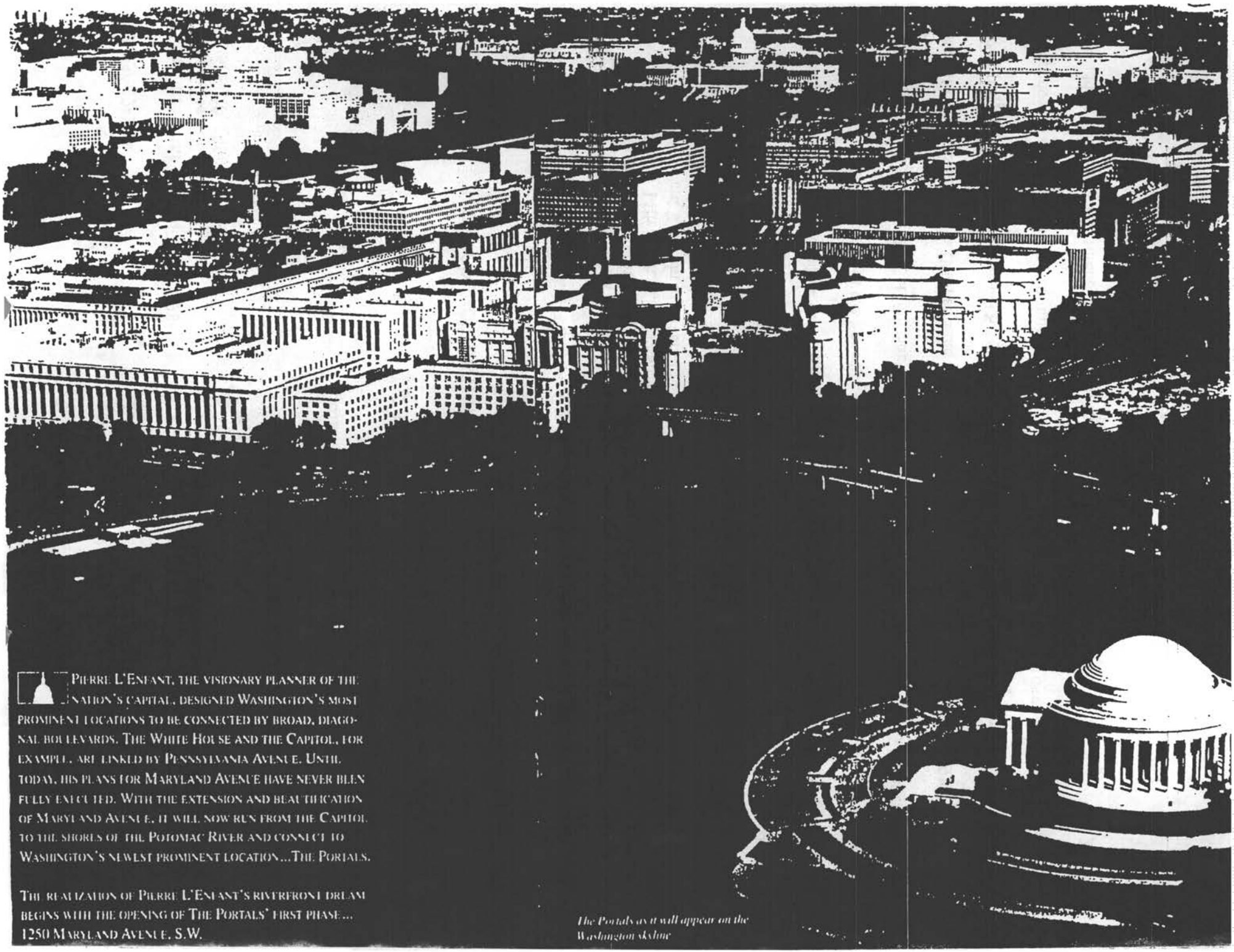

CONSTITUTION AVENUE
National Museum of American History
National Museum of Natural History
Ice Rink
National Gallery of Art
MADISON AVENUE
JEFFERSON AVENUE
Freer Gallery
Arts and Industries
Hirshhorn
National Air and Space Museum
INDEPENDENCE AVENUE
Holocaust Museum
Dept of Energy
Federal Aviation
NASA
MARYLAND AVENUE
NASA
C STREET
RAOUL WALLENBERG PLACE
BEP
14th STREET
Bureau Annex
D STREET
GSA
HUD
DOT
US Postal Service
12th STREET
10th STREET
9th STREET
6th STREET
E STREET
395
G STREET
MAINE AVENUE
WATER STREET
Southeastern University
M



The Master Plan of The Portals







PIERRE L'ENFANT, THE VISIONARY PLANNER OF THE NATION'S CAPITAL, DESIGNED WASHINGTON'S MOST PROMINENT LOCATIONS TO BE CONNECTED BY BROAD, DIAGONAL BOULEVARDS. THE WHITE HOUSE AND THE CAPITOL, FOR EXAMPLE, ARE LINKED BY PENNSYLVANIA AVENUE. UNTIL TODAY, HIS PLANS FOR MARYLAND AVENUE HAVE NEVER BEEN FULLY EXECUTED. WITH THE EXTENSION AND BEAUTIFICATION OF MARYLAND AVENUE, IT WILL NOW RUN FROM THE CAPITOL TO THE SHORES OF THE POTOMAC RIVER AND CONNECT TO WASHINGTON'S NEWEST PROMINENT LOCATION...THE PORTALS.

THE REALIZATION OF PIERRE L'ENFANT'S RIVERFRONT DREAM BEGINS WITH THE OPENING OF THE PORTALS' FIRST PHASE...
1250 MARYLAND AVENUE, S.W.

The Portals as it will appear on the Washington skyline

cdc05/b12-170

DRAFT

Committee Print -- DRAFT 10/15/98
Committee of the Whole
October 20, 1998

A BILL

12-170

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings to provide more uniformity in the heights and setbacks of buildings to be developed on a site bounded by 14th Street, S.W., D Street, S.W., 12th Street, S.W., and Maine Avenue, S.W., in Ward 2, within the overall parameters of the 1910 Height Act and the Zoning Regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Schedule of Heights of Buildings Amendment Act of 1998".

Sec. 2. Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings, as adopted by the Commissioners of the District of Columbia, in conformity with the Act of Congress of June 1, 1910, and the amendments of December 30, 1910, and May 20, 1912 ("1910 Height Act"), and as issued by the Zoning Commission for the District of Columbia in Appendix G of the District of Columbia Zoning Regulations, effective May 12, 1958, is amended by adding the following sentence at the end of the paragraph:

"This restriction shall not apply to any structure that is set back from the 14th Street property line to a line that is continuous with the facade of the adjacent Bureau of Engraving and Printing annex building that is located along 14th Street, S.W., between C and D Streets, S.W. The height of a structure described in the preceding sentence shall be established in accordance with the requirements of the 1910 Height Act and the Zoning Regulations (10 DCMR).".

Sec. 3. The Council adopts the fiscal impact statement in the committee report on Bill 12-170 as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat.813; D.C. Code § 1-233(c)(3)).

Sec. 4. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(1)), and publication in the District of Columbia Register.

cdc05/b12-170

Committee Print
Committee of the Whole
October 20, 1998

A BILL

12-170

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings to provide more uniformity in the heights and setbacks of buildings to be developed on a site bounded by 14th Street, S.W., D Street, S.W., 12th Street, S.W., and Maine Avenue, S.W., in Ward 2, within the overall parameters of the 1910 Height Act and the Zoning Regulations.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Schedule of Heights of Buildings Amendment Act of 1998".

Sec. 2. Paragraph 14 of the Schedule of Heights of Buildings Adjacent to Public Buildings, as adopted by the Commissioners of the District of Columbia, in conformity with the Act of Congress of June 1, 1910, and the amendments of December 30, 1910, and May 20, 1912 ("1910 Height Act"), and as issued by the Zoning Commission for the District of Columbia in Appendix G of the District of Columbia Zoning Regulations, effective May 12, 1958, is amended by adding the following sentence at the end of the paragraph:

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Sec. 3. The Council adopts the fiscal impact statement in the committee report on Bill 12-170 as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat.813; D.C. Code § 1-233(c)(3)).

Sec. 4. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(1)), and publication in the District of Columbia Register.

TESTIMONY OF DURYEA C. SMITH

ON BEHALF OF THE

DEPARTMENT OF HOUSING

AND COMMUNITY DEVELOPMENT

AT THE PUBLIC HEARING

ON BILL 12-170

"SCHEDULE OF HEIGHTS OF BUILDING

AMENDMENT ACT OF 1997"

BEFORE THE

COMMITTEE OF THE WHOLE

COUNCIL OF THE DISTRICT OF COLUMBIA

TUESDAY, OCTOBER 14, 1997

COUNCIL CHAMBER, ONE JUDICIARY SQUARE

12:00 NOON

EXHIBIT F

GOOD AFTERNOON, CHAIRMAN CROPP AND MEMBERS OF THE COMMITTEE, I AM DURYEA C. SMITH, ACTING ADMINISTRATOR, ADMINISTRATION OF NEIGHBORHOOD PRESERVATION AND COMMERCIAL DEVELOPMENT IN THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (DHCD). I AM HERE TODAY TO RECOMMEND COUNCIL APPROVAL OF THE "SCHEDULE OF HEIGHTS OF BUILDING AMENDMENT ACT OF 1997", (BILL 12-170) IN CONNECTION WITH THE DEVELOPMENT OF THE PORTAL SITE IN THE SOUTHWEST URBAN RENEWAL AREA.

THE PORTAL SITE, AT THE END OF THE 14TH STREET BRIDGE AS YOU ENTER THE CITY, IS BOUNDED ON THE NORTH BY D STREET, ON THE SOUTH BY MAINE AVENUE, ON THE EAST BY 12TH STREET AND ON THE WEST BY 14TH STREET, S.W., IN WARD TWO. THE SITE WAS DIAGONALLY DIVIDED INTO TWO PARCELS BY THE CONRAIL

RAILROAD TRACKS RUNNING IN THE BED OF THE OLD MARYLAND AVENUE. TO MITIGATE THE IMPACT OF THE INDUSTRIAL NATURE OF THE RAILROAD AND UNITE THE SITE, THE DEVELOPER PUT THE RAILROAD IN A TUNNEL RUNNING THROUGH THE SITE OVER WHICH A NEW ~~MARYLAND AVENUE HAS BEEN~~ CONSTRUCTED. THE NEW MARYLAND AVENUE, AN ORIGINAL L'ENFANT DIAGONAL STREET RECONSTRUCTED AT ITS ORIGINAL 160 FOOT WIDTH, WAS CONSTRUCTED AND WILL BE MAINTAINED BY THE DEVELOPER, BUT REMAINS IN PUBLIC OWNERSHIP. THE BUILDINGS ON THE NORTH AND SOUTH PORTAL SITE HAVE BEEN DESIGNED TO PROVIDE BALANCED DEVELOPMENT ALONG MARYLAND AVENUE, FRAMING VIEWS TO THE CAPITOL AND THE TIDAL BASIN AND TO ENSURE UNIFIED HEIGHT ALONG THIS GRAND NEW AVENUE.

AS CURRENTLY PLANNED, THE PORTAL SITE WILL BE DEVELOPED AS A MIXED USE OFFICE/RETAIL/HOTEL PROJECT WITH ABOUT 1,800,000 SQUARE FEET OF OFFICE SPACE, 108,000 SQUARE FEET OF RETAIL SPACE, AN APPROXIMATELY 500 ROOM LUXURY HOTEL, A TOTAL OF 48,000 SQUARE FEET FOR A PERFORMING ARTS THEATER AND COMMUNITY USE SPACE, AND 3,500 PARKING SPACES. THUS FAR, AN APPROXIMATELY 440,000 SQUARE FOOT OFFICE BUILDING HAS BEEN COMPLETED AND A 600,000 SQUARE FOOT OFFICE BUILDING THAT WILL SERVE AS THE HEADQUARTERS OF THE FEDERAL COMMUNICATIONS COMMISSION IS NEARING COMPLETION AND WILL BEGIN OCCUPANCY EARLY NEXT YEAR. CONSTRUCTION OF THE HOTEL IS EXPECTED TO COMMENCE IN 1998.

THE SCHEDULE OF HEIGHTS WAS ADOPTED BY THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA PURSUANT TO AN ACT OF CONGRESS (JUNE 1, 1910). THE COUNCIL OF THE DISTRICT OF COLUMBIA HAS THE SOLE AUTHORITY TO AMEND THE SCHEDULE OF HEIGHTS UNDER SECTION 5-405(F) OF THE D.C. CODE.

PARAGRAPH 14 IN APPENDIX G (SCHEDULE OF HEIGHTS) OF THE DISTRICT OF COLUMBIA ZONING REGULATIONS PROVIDES THAT:

> "14. ON FOURTEENTH STREET, S.W., BETWEEN D AND WATER STREETS, CONFRONTING THE BUREAU OF ENGRAVING AND PRINTING, NO BUILDING SHALL BE ERECTED OR ALTERED SO AS TO BE HIGHER THAN A HORIZONTAL LINE 80

FEET ABOVE THE TOP OF THE CURB AT THE SOUTHEAST CORNER OF FOURTEENTH AND D STREETS, S.W., EXCEPTING VENTILATION AND ELEVATOR SHAFTS WHICH SHALL BE SET BACK FROM THE FRONT AND SIDE LINES OF SUCH BUILDINGS A DISTANCE EQUAL TO THE HEIGHT OF SUCH SHAFTS ABOVE THE ADJACENT ROOF."

AT THE PRESENT TIME, THE SCHEDULE OF HEIGHTS (PARAGRAPH 14, APPENDIX G) LIMITS ANY BUILDING LOCATED ALONG 14TH STREET ON THE NORTH PORTAL SITE BETWEEN D AND WATER STREETS, S.W. TO A HEIGHT OF 80 FEET ABOVE THE CURB MEASURED AT THE SOUTHEAST CORNER OF 14TH AND D STREETS, S.W. THE ELEVATION AT THE TOP OF THE CURB IS 24.92 FEET WHICH WOULD ALLOW THE HEIGHT OF A BUILDING, EXCLUSIVE OF PENTHOUSES, TO BE AT ELEVATION 104.92 FEET.

IN ORDER TO DEVELOP A UNIFIED HEIGHT THROUGHOUT THE PROJECT, BUILDINGS ON THE NORTH PORTAL SITE, AS WITH THE OTHER PORTAL SITE BUILDINGS, WOULD BE MEASURED FROM THE NEW MARYLAND AVENUE AT ELEVATION 46 FEET. ELEVATION 46 FEET MAINTAINS THE VISTA BETWEEN THE CAPITOL AND THE JEFFERSON MEMORIAL AND MEETS THE CLEARANCE REQUIREMENTS OF THE RAILROAD AND THE SERVICE REQUIREMENTS OF THE GSA COAL SHAKER. UNDER THIS DESIGN, THE PORTION OF THE BUILDING WHICH ABUTS THE 14TH AND D STREETS CORNER WOULD BE 111.08 FEET ABOVE THE CURB (ELEVATION 136 FEET).

CURRENTLY, THE SCHEDULE OF HEIGHTS DOES NOT ALLOW FOR A COMPREHENSIVE DEVELOPMENT WITH UNIFORM BUILDING HEIGHTS THROUGHOUT THE PORTAL SITE. DEVELOPMENT UNDER THE CURRENT SCHEDULE OF HEIGHTS WOULD BE AN AWKWARD AND UNBALANCED BUILDING SCHEME WITH THREE OF THE BUILDINGS ALONG NEW MARYLAND AVENUE WITH A UNIFORM HEIGHT OF 90 FEET AND THE FOURTH BUILDING AT A HEIGHT OF LESS THAN 60 FEET (58.92 AS MEASURED FROM MARYLAND AVENUE).

THE AMENDMENT TO THE SCHEDULE OF HEIGHTS IMPROVES THE RELATIONSHIP OF THE NORTH PORTAL SITE BUILDING ALONG 14TH STREET WITH SURROUNDING BUILDINGS AND FURTHER ENHANCES

THIS IMPORTANT ENTRANCE INTO THE CITY. THE ROCHAMBEAU MEMORIAL BRIDGE CONNECTS TO 14TH STREET NEAR THE D STREET INTERSECTION. THE CURRENT 14TH STREET BUILDING LINE IS LESS THAN 10 FEET FROM THE CURB ALONG 14TH STREET. PLACING A BUILDING DIRECTLY ON THE 14TH STREET PROPERTY LINE WOULD NEGATIVELY IMPACT THIS NARROW SIDEWALK AREA. A GENEROUS SIDEWALK AREA TO PROVIDE FOR ADEQUATE PEDESTRIAN MOVEMENT WITH ENOUGH SPACE FOR STREET TREES AND STREET FURNITURE IS AN IMPORTANT ELEMENT IN A MIXED USE DEVELOPMENT SUCH AS THE PORTALS. TO ACHIEVE THIS, THE PROPOSED LEGISLATION BEFORE YOU PROVIDES THAT THE BUILDING IS TO BE SET BACK FROM 14TH STREET APPROXIMATELY 20 FEET, TO A LINE THAT IS CONTINUOUS WITH THE BUILDING FACADE OF THE BUREAU OF

ENGRAVING AND PRINTING ANNEX ACROSS D STREET DIRECTLY NORTH OF THE PORTAL SITE. THIS RESULTS IN A CONSISTENT AND UNIFORM PLACEMENT OF THE BUILDING FACADES ALONG 14TH STREET WHICH GREATLY ENHANCES THE SENSE OF ENTRANCE AT THIS GATEWAY TO THE CITY. THIS MORE REGULAR PLACEMENT OF BUILDINGS ALONG 14TH STREET ESTABLISHES 14TH STREET AS A SPECIAL STREET. 14TH STREET IS 110 FEET WIDE AND CAN ACCEPT A TALLER BUILDING WITHOUT ANY SIGNIFICANT ADVERSE VISUAL IMPACT. WE BELIEVE THAT THE REQUESTED MODIFICATION IS CONSISTENT WITH THE SPIRIT OF THE SCHEDULE OF HEIGHTS, SINCE IT PERMITS A DESIGN WHICH IS MORE COMPATIBLE WITH THE ADJACENT FEDERAL BUILDINGS.

ADHERENCE TO THE CURRENT SCHEDULE OF HEIGHTS WOULD RESULT IN A REDUCTION OF DISPOSITION PROCEEDS BECAUSE OF THE REDUCTION IN THE AMOUNT OF BUILDING DEVELOPMENT THAT WOULD BE PLACED ON THE NORTH PORTAL SITE. A BUILDING UNDER THE CURRENT SCHEDULE OF HEIGHTS WOULD BE FIVE STORIES RATHER THAN THE EIGHT STORIES AS PROPOSED. THIS WOULD AMOUNT TO A REDUCTION OF ABOUT 280,000 SQUARE FEET, APPROXIMATELY A 37% REDUCTION IN BUILDABLE SPACE FOR THE BUILDING ALONG 14TH STREET. THIS REDUCTION IN SPACE WOULD RESULT IN FEWER PERMANENT JOBS -- ABOUT 1400 -- AND A REDUCTION IN YEARLY REAL ESTATE TAX REVENUES TO THE CITY OF ABOUT $1,023,000.

THERE IS HISTORIC PRECEDENCE TO CHANGES IN THE SCHEDULE OF HEIGHTS IN THIS AREA AS PREVIOUS AMENDMENTS ALLOWED TALLER BUILDINGS ALONG 14TH STREET. IN DECEMBER 1911, THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA ADDED THE FOLLOWING PROVISION TO THE SCHEDULE OF HEIGHTS WHICH PROVIDES IN PART THAT:

> "ON 14TH STREET, SOUTHWEST, BETWEEN B (INDEPENDENCE AVENUE) AND D STREETS, CONFRONTING THE BUREAU OF PRINTING AND ENGRAVING, NO BUILDING SHALL BE ERECTED OR ALTERED SO AS TO BE HIGHER THAN A HORIZONTAL LINE 80 FEET ABOVE THE TOP OF THE CURB AT THE SOUTHEAST CORNER OF 14TH AND B STREETS, SOUTHWEST..."

THIS PROVISION WAS SUBSEQUENTLY MODIFIED IN 1930 TO CHANGE THE AFFECTED AREA FROM "BETWEEN B AND D STREET" TO "BETWEEN D AND WATER STREETS." FOLLOWING THIS CHANGE, THE DEPARTMENT OF AGRICULTURE SOUTH BUILDING, BETWEEN INDEPENDENCE AVENUE AND C STREET, AND THE BUREAU OF ENGRAVING AND PRINTING ANNEX BUILDING, BETWEEN C AND D STREETS, WERE BUILT. BOTH BUILDINGS ARE SET BACK THE SAME DISTANCE FROM 14TH STREET AND HAVE A UNIFORM BUILDING LINE ALONG THE STREET. THE HEIGHT OF THE BUREAU OF ENGRAVING AND PRINTING ANNEX IS ELEVATION 120.7 FEET WHICH EXCEEDS THE BUILDING HEIGHT OF ELEVATION 104.92 FEET ALLOWED ON THE NORTH PORTAL SITE UNDER THE CURRENT SCHEDULE OF HEIGHTS.

MODIFYING THE BUILDING HEIGHT RESTRICTION ALONG 14TH STREET WOULD HELP CARRY OUT THIS IMPORTANT PROJECT AND PROVIDE SIGNIFICANT BENEFITS TO THE DISTRICT AND ITS RESIDENTS. THE AMENDMENT TO THE SCHEDULE OF HEIGHTS WOULD ALLOW FOR IMPROVED URBAN DESIGN OF THE PORTAL SITE DEVELOPMENT AND ENHANCE THIS GATEWAY ENTRANCE INTO THE CITY.

THE OVERALL URBAN DESIGN SOLUTION FOR THE PORTAL SITE THAT INCLUDES THE BUILDING HEIGHTS PERMITTED BY THE AMENDMENT OF THE SCHEDULE OF HEIGHTS HAS BEEN REVIEWED AND FAVORABLY RECEIVED BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT'S ARCHITECTURAL REVIEW PANEL AND THE U.S. COMMISSION ON FINE ARTS.

IN SUMMARY, THE PROPOSED CHANGE WILL RESULT IN A DESIGN WHICH IS SYMPATHETIC AND COMPATIBLE WITH SURROUNDING FEDERAL BUILDINGS – THE INTENT OF THE ORIGINAL LEGISLATION.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS TESTIMONY. DHCD STAFF AND I WILL BE PLEASED TO ANSWER ANY QUESTIONS YOU MAY HAVE.