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September 9, 2002

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BY HAND

Zoning Commission for the District of Columbia
441 – 4th Street, N. W.
Room 220 South
Washington, D. C. 20001

Re: **September 9, 2002 Agenda**
Case No. 02-35 (Text Amendment –
Building Height Measuring Point)

Honorable Members of the Commission:

On behalf of The John Akridge Companies, this letter is to respectfully request a postponement of the consideration of the above referenced proposed text amendment to allow time for further study and discussion with the Office of Planning. The John Akridge Companies is currently in negotiations to purchase the air rights parcel over the Union Station rail yards from the GSA. It is clear from the Summary section on page 1 of the Office of Planning Report of August 30, 2002, that the proposed development of this parcel is the reason for this proposed text amendment. The proposed text has serious adverse implications on the development of the Union Station air rights, undermines existing and future development in the District of Columbia and countermands the express mandate of Congress contained in the 1910 Height Act.

The postponement is requested for the following reasons:

ZONING COMMISSION
District of Columbia
Case 02-35
Exhibit 2

ZONING COMMISSION
District of Columbia
CASE NO.02-35
EXHIBIT NO.2

1. **Relation to 1910 Height Act.**

The 1910 Height Act mandates that the height of buildings "shall be measured from the level of the sidewalk opposite the middle of the front of the building to the highest point of the roof." It further requires that "if the building has more than 1 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.) D.C. Official Code Section 6-601.07 (2001). This is a mandatory requirement, imposed by Congress. Section 2510 of the Zoning Regulations indicates that in addition to the controls established by the Zoning Regulations, all buildings or other structures shall comply with the provisions of the 1910 Height Act. The Office of Planning's proposed language that "the height of the building shall be measured from the natural grade", when a street (and presumably the sidewalk) is at a different level than the "natural grade", is contrary to the Congressionally-mandated height requirement and is vague, incomprehensible and technically unworkable.

The simplistic and brief history of the 1910 Height Act contained on page 2 of the OP Report is presented as a basis for the need for a "clarification" to the definition of "building height" in the Zoning Regulations. OP's brief history asserts that in 1910, "there were no elevated roadways", and that "measurements were intended to be taken from ground level to the top of the building, because all sidewalks were located on the ground". This is not the case. Obviously, there were vehicular and pedestrian overpasses and bridges with sidewalks in the District of Columbia at that time, with changes of grade throughout the City. Major portions of the City were constructed on swampland and fill. The Tiber Creek drainage area was covered and many changes in "natural grade" were made to stream beds, ravines, hills and ditches. Since 1910, there has been abundant construction in the District of Columbia on areas that required substantial regrading before and/or after construction.

The plain wording of the 1910 Height Act is not ambiguous. The measuring point of buildings is from "the sidewalk". The later enactment of the Zoning Regulations to provide that the measuring point shall be from the top of the curb opposite the middle of the front of the building is not inconsistent with the language of the 1910 Height Act. The proposed OP amendment is, however, inconsistent with the 1910 Height Act.

2. **The term "natural grade" is unworkable**

The OP recommendation would require the building height to be measured from "the natural grade at the middle of the front of the building". What is the natural grade and how is that to be determined? Is one to look at 1791 for a determination of "natural grade." Or should one look to the first regrading or the second? Or perhaps some earlier or later grade? Grade changes throughout the District are common before and during construction, particularly in hilly areas and areas where construction involves substantial fill. How is the concept of "finished grade" to be dealt with? Virtually all streets are changed from their "natural" grade. How many buildings in the City would be rendered non-conforming by virtue of the proposed change?

Additionally, the proposed language "In the case of property fronting on a street that is elevated above grade ..." is not understandable. Aren't all streets elevated above grade by virtue of sub-foundation, foundation and finish? What is the OP's meaning of "grade"?

With regard to the Union Station air rights site, which this proposal is intended to govern, this proposal becomes even more impractical. The sidewalk adjacent to the building is approximately 30 feet higher than the level of the ground below that is dedicated to transportation uses. The ground is occupied by railroad tracks which we understand are not at "natural grade". Before Union Station was built, H Street had a different configuration. H Street previously tunneled below the railroad tracks. When the parking garage to the north of Union Station was built in the air rights above the tracks, the then-current H Street right-of-way was officially closed by action of the D.C. City Council. A new (and the current) H Street right-of-way was dedicated and built with sidewalks and curbs at the present elevation in order to provide access to the Union Station parking and development. The existing grade of H Street between North Capitol Street and 3rd Street, N.E. is the subject of D.C. Formal Agreement No. HT 7402, dated February 11, 1974.

The impact of the proposed text does not give the flexibility for appropriate and permitted height within other stringent reviews by the Commission of Fine Arts and the Zoning Commission under a PUD. None of this information was taken into consideration by the Office of Planning in the August 30 report and proposed text.

3. **The proposed text is not necessary and could affect substantial property rights.**

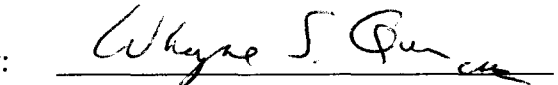
Although the proposed air rights development has been discussed with the D.C. Office of Planning, no mention was made by OP officials that this proposal was contemplated. Indeed, Akridge representatives met with officials of the Office of Planning on September 3, 2002, the very day that the Office of Planning report was filed, and were not told that this action was being sought. Nor has the building and construction industry been involved or consulted. The 1910 Height Act has served this community well and there is no need for Zoning Commission to "clarify" the language – especially in a way that makes no sense.

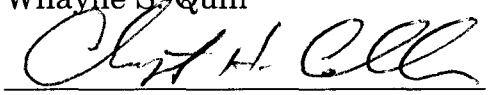
The disposition of the air rights parcel for development is the subject of Congressional legislation. This proposal jeopardizes the development and undercuts the Congressional intent. The John Akridge Companies intend to pursue a Planned Unit Development for this parcel in any event. As such, both the Office of Planning and the Zoning Commission will have an opportunity to review the proposed height of the building. There is no need to rush forward with this proposal at this time.

The proposed Text Amendment was hastily drafted, without the opportunity for full consideration and input of those most concerned. The text has no discernable purpose other than to affect the Union Station air rights proposal. Yet it can have far reaching adverse impacts. The John Akridge Companies is ready to meet with the Office of Planning to continue the dialog concerning the proposed development under the PUD regulations. We suggest that the Office of Planning withdraw its proposed text. We respectfully request the Zoning Commission to postpone consideration of this matter, in order to provide more time for discussion with the Office of Planning. There is absolutely no prejudice that can result from such a postpostment and dialog.

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: 
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By: 
Christopher H. Collins

CHC/skp

cc: Chip Akridge (via e-mail)
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Mayor Anthony Williams

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