

COMMITTEE OF 100 ON THE FEDERAL CITY

July 25, 2005

District of Columbia Zoning Commission
441 4th Street, NW—Suite 220 South
Washington, DC 20001

Re *Case No 04-33 (Text Amendment to Require the Provision of Affordable Housing—Inclusionary Zoning)*

Ladies and Gentlemen:

Thank you for the opportunity to comment on tonight's significant proposal. I am Laura Richards, appearing on behalf of the Zoning Subcommittee of the Committee of 100 on the Federal City, a longtime advocate of sound planning in the District of Columbia and its environs.

Procedural Concerns Before turning to the substance of the proposed amendment, we challenge the procedural posture in which this case has come before the Zoning Commission.

The Notice of Public Hearing for this proceeding is facially unclear. Briefly:

- The Notice states that it is advertising the merits of the Petition of the Campaign for Mandatory Inclusionary Zoning (CMIZ), but not the text.
- The notice "summariz[es] the concepts presented," and does not advertise the text
- Certain aspects of the text are deemed excluded from the scope of the advertisement and testimony on those aspects is prohibited.
- Issues that not mentioned in the advertisement—and not deemed excluded—will be treated as if advertised.

We believe that the lack of clarity on the face of the Notice abrogates the notice requirements of the Zoning Regulations, and general notice-and-comment principles that govern administrative proceedings

Separately, the Notice does not identify which physical locations in the District will be affected by the Petition, or provide a category of zoning districts that will be affected, i.e., "all R-3 districts." The Notice cannot meet this basic requirement, because, as the Office of Planning (OP) Report acknowledges, the affected areas as are yet "unspecified." The Notice states that the Zoning Commission proposes to defer mapping

~~ZONING COMMISSION~~
District of Columbia

CASE NO. 04-33
FIGURE NO. 14b

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EXHIBIT NO.146

until after it has considered the broad merits. Therefore, it is deferring consideration of how IZ regulations, if adopted, will affect particular neighborhoods or zoning categories.

These restrictions and uncertainties on the content of the hearing strip it of its character as a rulemaking proceeding aimed at reaching a decision on a concrete set of facts. The content restrictions give this hearing the character of a roundtable. Roundtables are valuable factfinding and educational tools. A legislative session, however, should begin with a concrete “bill” on the table.

Finally, apart from the flaws in the notice, the Commission lacks jurisdiction to hear and decide many aspects of the case, and the Commission and OP have recognized *See* Notice at 2 (discussing aspects of the Petition that lie outside the Commission’s authority to act upon; *see also* OP Report at 16 (addressing legislation that the D.C. City Council must enact to bring the IZ program into being). Zoning regulations normally proceed from and implement Council legislation. Until the Council acts, the scope of the Commission’s rulemaking authority with respect to IZ remains uncertain, and its actions may be subject to *ultra vires* challenges.

We believe the above-described flaws can be cured only by recasting this hearing as a roundtable or similar session, and readvertising the hearing when a concrete set of proposed amendments, based on sufficient statutory authority, have been drafted. The comments that follow are made subject to these procedural objections.

* * *

Substantive Comments. With respect to the merits of what is being proposed.

The limits of IZ’s effectiveness in actually producing affordable housing in substantial amounts are well documented, and acknowledged by OP. “IZ must be considered as only one of many tools in comprehensive affordable housing programs. Compared to direct financial subsidies, inclusionary zoning is not as productive for building affordable units, and is usually not powerful enough to reach very low incomes without additional subsidies.” May 2005 OP Report at vi. *See also* Report at 29 (illustrating the number of units yielded by other housing programs (14,000 during the past seven years, with 3,500 in the pipeline).

In contrast, the Petitioner estimates that had its mandatory IZ proposal been in place during the past five years, it would have yielded about 758 units. OP has identified 10 jurisdictions with IZ programs. Of these, only Montgomery County, Maryland, has produced a substantial number of units (11,000 since 1979), under conditions totally unlike those in the District. May 2005 Report at 14. If the goal of IZ is to increase the number of moderate-income units, and intersperse them throughout the District, these goals are defeated by the buyout provision. The proposal allows bonus density heights to increase from 90 to 110 feet in the highest density zones while conceding that:

- (1) developers may charge premium prices for top floors to offset the cost of providing affordable units; and
- (2) developers may elect to satisfy their IZ obligations through contributions to the Housing Production Trust Fund; and
- (3) “unusually high” condominium fees constitute one basis for a buyout.

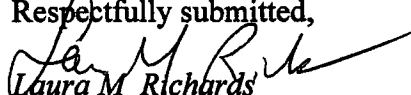
This provision does not promote affordable housing so much as it provides a direct public subsidy to luxury highrises. Private sector builders are afforded two extra floors of premium building space in exchange for a payment measured as the difference between the luxury market price and the price of the hypothetical affordable unit. In addition to the financial subsidy, District residents incur the nonmonetary costs of a substantially altered urban landscape. This is being done to benefit a handful of residents, half of whom may be single individuals earning \$50,000 a year (80% of AMI).

IZ, in addition to its questionable capacity to achieve its goals, is capable of affirmative harm. It may negatively impact historic districts (and neighborhoods of historic character, although not formally designated). Given the constraints on this hearing, we raise this issue and defer extended discussion to another day.

We also flag for later discussion a class of neighborhoods particularly at risk those in which the predominant use is R-1 or R-2, but which are zoned at densities that make them eligible for IZ inclusion. By way of example, we note the Deanwood neighborhood adjacent to the Minnesota Avenue Metro Station, a community of single-family homes with inconsistent zoning, and which has been designated as a Transit-Oriented Development Area. Other examples abound. The IZ proposal states that neighborhoods actually zoned R-1 and R-2 will be exempt from IZ’s requirements. Neighborhoods zoned inconsistently with their actual low-density use (which predominate in Ward 7) deserve equal protection. Their neighborhood character is in no sense diminished because of inconsistent zoning.

Despite the attractive label appended to this proposal, we urge the Zoning Commission to look a beneath the packaging. IZ, as proposed here, cannot withstand review on the merits and should be revisited.

Respectfully submitted,



Laura M. Richards

Vice-Chair, Committee of 100