

ZONING COMMISSION
District of Columbia

CASE NO. 04-33

EXHIBIT NO. 175

Manna, Inc.
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Capital Area Asset Building Corporation (CAAB)
Civil Rights Clinic, Howard University School of Law
DC Office, Local Initiatives Support Corporation (LISC)
Fair Housing Clinic, Howard University School of Law
Housing Counseling Services

April 21, 2006

Sharon Schelling
Acting Secretary to the Zoning Commission
Office of Zoning
441 4th Street, NW Suite 200-S
Washington, DC 20001

#04-33

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DC OFFICE OF ZONING

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RE Comments on Inclusionary Zoning Proposed Rulemaking

Dear Ms Schelling:

The undersigned parties have reviewed the Notice of Proposed Rulemaking ZC Case No 04 33 and hereby submit the following comments regarding our recommendations for changes in the proposed rules before submission to the City Council

Introduction

We are pleased to submit the following comments and recommendations concerning the current Mandatory Inclusionary Zoning ("MIZ") proposed rulemaking. We are strong proponents of MIZ in DC and have long advocated for a good MIZ policy. We feel MIZ requirements are sorely needed and long overdue. MIZ is one of many legislative and public policy remedies needed to help adequately deal with our current affordable housing and ever growing persistent poverty crisis. We deeply appreciate the Zoning Commission's, Mayor's, City Council's and community's efforts in this regard.

However, we are strongly opposed to the current proposal's resale and length of affordability requirements/restrictions in regards to homeownership for lower income people. While we believe in reasonable control periods and resale/equity recapture requirements which have been in use for many years by some DC nonprofit housing producers, we feel the current MIZ proposal goes too far. It places too onerous, extreme, unfair and discriminatory restrictions on the people who can least afford it and deserve much better. The proposal also fails to differentiate between different forms of homeownership and rental housing. This defeats the purpose of homeownership for low-income people, one of which is to provide a pathway out of low-income status. The logical end of the homeownership provisions in the current proposal is to, in effect, add to the creation of a permanent underclass of lower income people and make it even more difficult for them and generations who follow to rise out of poverty through homeownership. It keeps them in a "second class" citizenship status.

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Moreover, given that this pool of second class citizens will disproportionately consist of African-Americans and other racial minorities, the resale and length of affordability restrictions are unlikely to survive a civil rights challenge under 42 U.S.C. §§1981, 1982, 1983, 1985 & 2000d. It is settled law under sections 1981 and 1982 that all persons have the right to sell, hold and convey real property free of racial discrimination and animus. It is equally settled law under sections 1983, 1985 and 2000d that state action that has a disparate impact on groups protected under Title VII and other civil rights statutes will not survive constitutional scrutiny, even in the absence of discriminatory intent. Thus, while the current resale and length of affordability restrictions were undoubtedly proposed without any discriminatory intent, the fact that they will inevitably have a disparate impact in preventing African-Americans and other protected groups from enjoying the same opportunities to build equity as afforded to majority groups guarantees that the restrictions, if passed in their current form, will be subject to a civil rights challenge *

Inadvertently and, we hope, unintentionally, the current proposal pits the goal of "preserving affordable housing" in the District of Columbia--a goal we all support and are working for--against the continuing and important goal of "creating opportunities for equity creation and wealth building" among low-income people, people being priced out of the housing DC housing market through homeownership. Think of the enormous wealth that is being generated currently in DC through the real estate market, and think of how the current proposal denies people who are deserving and in need of access a portion of this wealth as being shut out by the current onerous, perhaps unworkable and certainly untried, homeownership restrictions and resale requirements. This is in addition to requiring them to secure a mortgage and be fully financially and legally responsible and liable for the housing unit from which they get little or no financial benefit.

The current proposal opts for the goal of preservation of affordable housing at the expense of, and to the serious detriment of, affordable homeownership and wealth creation. This is neither necessary nor advisable from a public policy point of view. We believe that it is not only morally unfair and unjust, but bad public policy. It perpetuates second class citizenship. These two very important goals must not be allowed to compete with each other in such a way that one cancels the other out and in so doing puts disadvantaged socio-economic and racial groups at an even greater disadvantage. We can achieve both goals in MIZ (and other housing policies), and we must for the good of our lower income citizens and our community as a whole. Our city must be unalterably committed to creating a range of housing opportunities through homeownership, rental, limited equity coops and community land trust--a range of housing options that equitably balances the need for long term and permanently affordable housing (primarily through rental) and equity creation options through homeownership with reasonable and fair restrictions. Otherwise, let's not fool ourselves; the first-time, low-income homebuyers who will be adversely affected by the current MIZ proposal are not being offered the true benefits of homeownership and may even be put at a greater disadvantage by buying.

The following paragraphs present our specific recommendations in greater detail as to how to achieve these two very important, equally valued and much needed goals. In the strongest of possible of terms, we urge the Zoning Commission, Mayor Williams and the City Council to seriously consider our analysis and recommendations.

2601 1 DEFINITIONS. Low-income household and moderate-income household.

The popular HPAP Program (Home Purchase Assistance Program) of DHCD and administered by the Greater Washington Urban League, the Housing Production Trust Fund of the Dept of Housing and Community Development, and the HOME Income guidelines of HUD define low-income as 50/51-80% of AMI, while the IZ proposal defines low-income as less than or equal to 50% AMI. It also defines moderate-income household as earning between 50% and 80% of AMI, while the HPAP program defines moderate at 80-110% AMI

Recommendation:

To avoid confusion and mistakes, try to be as consistent as possible with the most popular affordable housing programs in DC. Define low-income as 51-80% AMI and moderate income as 81-110% AMI.

2602 4 APPLICABILITY. All inclusionary units created pursuant to this chapter shall be leased or sold only to eligible households for so long as the inclusionary development exists.

The undersigned nonprofits all serve low income persons primarily in the field of affordable housing, but in other programs also We all support both permanent affordability AND wealth creation and equity buildup for homeowners.

We believe permanent affordability can and should be achieved by creating incentives for the development of rental projects, limited equity cooperatives, and community land trusts, all of which are represented in DC. MIZ could require that certain funding levels be tied to creating these permanent affordability structures

We also believe that homeownership and rental properties should be treated differently They have different objectives, different financing structures, and different markets. Homeownership has always provided certain financial and emotional benefits that rental housing has not and cannot provide Those benefits include equity buildup, wealth creation, increased self esteem, ability to use property as loan collateral for emergencies, assets to bequeath to children, catalyst for neighborhood revitalization. Stripping the financial gains from low-income homeowners is unfair and discriminatory

We support the elimination of this section as drafted or limiting it to rental properties, limited equity cooperatives and community land trusts We believe the section is unfair for the following reasons.

- It doesn't allow low income people to rise out of poverty.
- It's not really homeownership because the benefits of homeownership are missing (see above).
- Owners could easily be adversely affected as a result of increased real estate taxes, increased insurance costs, increased maintenance costs, increased condominium or coop fees and have no means to address emergencies and financial problems with little or no equity in their "housing "
- Owners who need more space in the future for whatever reasons will become real renters again because they won't have the equity needed to move-up and purchase another home if personal needs require it
- Low income persons could lose money under this proposal