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Carol Mitten, Chairperson  
Zoning Commission  
441 4<sup>th</sup> Street, NW  
Suite 210  
Washington, DC

**Re: Zoning Commission Case No. 04-33  
Inclusionary Zoning Text Amendment**

ZONING COMMISSION  
District of Columbia  
CASE NO. 04-33  
EXHIBIT NO. 187

Dear Chairperson Mitten and Members of the Commission

Enclosed are our comments regarding the proposed inclusionary zoning regulations (“IZ”) being considered by the Zoning Commission (“Commission”). We write primarily to express our concern with the Commission’s decision to apply IZ to planned unit developments (“PUDs”). As discussed in more detail below, at its November public meeting, the Commission raised several valid reasons for excluding PUDs from the IZ program that should be reconsidered. We also write to encourage the Commission to consider a twenty year term on affordability, as opposed to the indefinite term now proposed. There are also portions of the proposed regulations that should be clarified to simplify their implementation.

**I. Planned Unit Developments**

**A. IZ places too great a burden on PUDs and should not apply**

At its meeting held in February, the Commission indicated that it would consider applying IZ to PUDs, which is contrary to the conclusion the Commission reached at its meeting on November 10, 2005. Applying IZ to PUDs will have a detrimental effect on the PUD process for the very reasons expressed by Commissioners Parsons, Hood, and Jeffries at the November meeting.

The Zoning Regulations are clear that PUDs should offer a “commendable number or quality of public benefits.” The Zoning Regulations offer more than a dozen public benefits and project amenities that may be provided through the PUD process, including affordable housing. To date, the Office of Planning has made PUDs an effective tool in procuring generous amounts of affordable housing for the community. If affordable housing is to be required for all

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PUDs, regardless of the other amenities that could be offered, however, as the IZ regulations indicate that it will, PUDs will no longer be able to offer the community the array and quality of benefits and amenities that may be appropriate. Applicants will be forced concentrate resources on providing affordable housing at the expense of providing other benefits and amenities. Deciding not to include PUDs in IZ does not mean that the Zoning Commission will forego influencing the amount of affordable housing proffered with each PUD application. To the contrary, the Zoning Commission retains considerable influence since it has final approval authority over each application.

At the November 2005 meeting, Commissioners Mitten and Hildebrand suggested that PUD applicants could opt into the IZ program; that if the IZ regulations were properly drafted, developers would be inclined to opt into the program to obtain the bonus density despite the increased affordable housing component. This compromise would preserve PUDs as a powerful tool providing communities with a variety of benefits and amenities.

Moreover, applying IZ requirements to PUDs creates administrative difficulties that have not yet been addressed, including how the requirements will be applied to sites that are rezoned from an industrial zone district to a high density residential or commercial zone district. The proposed regulations do not provide for how the bonus density would be calculated in such a situation, and there is no matter-of-right residential development in an industrial zone. Failure to address issues such as this in the regulations will cause confusion and uncertainty for many projects.

**B. If IZ applies to PUDs, it should be flexible and only apply to those located within the IZ Overlay**

IZ is only one method, among many, to increase levels of affordable housing in the District; PUDs are another tool. If the IZ requirements apply to PUDs, the regulations should afford some flexibility to ensure that increased amounts of affordable housing are not being obtained at the expense of other benefits or amenities that may have greater value to the community. PUDs are evaluated on a case by case basis, thus, there is no risk in providing this flexibility since the Commission is assured an opportunity to provide its input.

The Commission has also referenced the possibility of blanketly applying IZ to PUDs regardless of whether the project site is mapped with IZ. If this is the case, there will be a strong disincentive for developers to pursue PUDs outside of the IZ Overlay. These missed opportunities will deprive the District of additional benefits and amenities as well as affordable housing units. For the first time in years, residential development is favored over commercial development in some commercially zoned areas. If all PUDs are subject to IZ, there will be a diminished incentive to pursue residential development in commercial zones, thus, reducing

available housing -- contrary to the Commission's intent. Such widespread application of IZ would undermine the effectiveness of PUDs as a tool to benefit the greater needs of the community

### **C. Vesting of PUDs**

If IZ is applied to PUDs, all PUDs filed before the effective date of the mapping case should be considered vested. Otherwise, the uncertainty of when IZ will be adopted will leave developers little guidance regarding the economic feasibility of a project. By the time developers file a PUD application, they have already spent months planning the project; for them to learn at a later date that IZ will apply to the project would be a considerable burden. Applying IZ to PUDs filed after the effective date of the mapping case will provide a clear date of when developers can expect IZ to apply and help ease the transition of implementing the regulations.

## **II. Affordability Term**

The proposed regulations do not provide for how long the affordable units are required to remain "affordable." At the November meeting, some Commissioners proposed a term of 99 years, which was opposed by other Commissioners who favored a term of 20 years. As Commissioners Jeffries and Hood pointed out, requiring an affordable unit to remain affordable for 99 years limits an owner's ability to accumulate equity in his home, which, in turn, may relegate the owner to a lower income status for a longer period of time.

Alternatively, a term of 20 years provides an owner of an affordable unit the opportunity to create a return on his investment, which then gives him the opportunity to rise to a higher economic status. A 20 year limit balances the concerns of Commissioners Jeffries and Hood with the other Commissioners because there is still the possibility that a unit will remain affordable for longer periods of time. If an owner of an affordable unit sells it before the 20 year period has expired, a new term of 20 years would be initiated. This creates stability in the affordable housing market, while still providing the standard benefits of investing in a home.

George Rothman, President of Manna, Inc., a respected non-profit developer of affordable housing, similarly believes that "long term control periods and capital gains restrictions are patently unfair to the homeowner." See article from April 2006 edition of "Pipeline" attached as Exhibit A. Rothman warns that "[i]f public officials and policymakers want to continue trends of creating a permanent underclass of low income citizens in DC, affordability restrictions such as the ones being proposed and being implemented will accelerate and expand the process to a much greater degree than is now occurring." He proposes terms as short as 5-10 years to ensure that the owners have the opportunity to take advantage of the wealth-creation possibilities afforded by homeownership.

### **III. Clarification of Proposed Regulations**

There are also several areas of the proposed regulations that should be clarified. For instance, Sections 2603 1 and 2603 3 conflict in that the former does not indicate a set-aside requirement for developments in the R-5-C through R-5-E Zone Districts, while the latter section does. Presumably, IZ will apply to the R-5-C, R-5-D, and R-5-E Zone Districts so Section 2603 1 should be revised accordingly

Section 2602.3 lists those Zone Districts where IZ will not apply; the Downtown Development District (“DD”) should be included on that list. The Office of Planning’s previous proposal excluded DD from IZ because of the limited opportunity for bonus density. This should be clear in the text of the regulations before the mapping case is considered

Section 2603 indicates that a certain percentage of bonus density should be dedicated to affordable “units.” This creates a disproportionate balance between that portion of the bonus density reserved for affordable housing and the portion reserved for market-rate housing. It requires the portion reserved for market-rate housing to account for the entirety of those core elements used by all of the residents, including the tenants of the affordable units. This diminishes the value of the bonus density and it increases the burden on the developer, which could be considerable in large projects. The portion of the bonus dedicated to affordable housing should be permitted to be used for a proportionate share of the core. Accordingly, the definition of “units” should be revised.

Section 2604.2 provides modifications to the Zoning Regulations to afford developments the ability to capture the proposed bonus density, however, the proposed regulations do not provide any flexibility for projects in the R-5-A through R-5-D Zone Districts. This creates a hardship for those projects, which will be forced to abide by the lot occupancy and height limits imposed by the Zoning Regulations when trying to accommodate the bonus density. Similar modifications should be provided for these zone districts to ensure that projects will not be burdened by the affordable housing requirement without the ability to capture the full bonus density.

No clear guidelines have been provided for when matter-of-right cases have been vested. Applicants must be assured that if they receive a building permit before the effective date of the mapping case, that their project not be required to comply with the proposed regulations. Otherwise, there would be too much ambiguity for developers, making it difficult for them to plan the project.

Finally, the IZ Overlay that was initially proposed in April 2005 covered a far more limited land area than the map that is now being proposed by the Office of Planning. The initial

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map led many people to believe that their property would not be affected by these regulations, thus, many did not find it necessary to actively oppose the proposed regulations. Many people will be surprised by the extent to which the proposed Overlay has been expanded and it will be too late for them to voice their opinions regarding the proposed text now that they have reason to. The limited coverage of the initial mapping proposal effectively limited opposition to the proposed IZ regulations, however, now that OP is proposing to significantly expand the Overlay there will be more voices opposing the regulations -- but they will not be heard.

These regulations will have a great influence on development in the District in the coming years and we appreciate the Commission's careful consideration of them. Please feel free to contact me should you have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Allison Prince" followed by a small "100" or similar mark.

Allison C Prince