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**Citizens Aware Civic Association
6009 New Hampshire Avenue, N. E.
Washington, D. C. 20011**

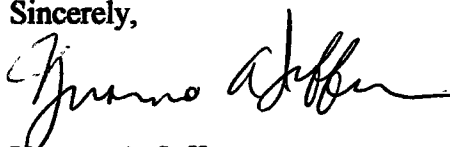
**Citizens Aware Civic Association
Yvonne A. Jefferson, President
6009 New Hampshire Avenue, N. E.
Washington, D. C. 20011
October 4, 2006**

**ATTN: Commissioner Mitten and Et. Al.
Case #05-30
Office of Zoning Commission
441 4th Street, N. W. #210S
Washington, D. C. 20001**

Dear Commissioner Mitten and Et. Al.:

Citizens Aware Block Organization hereto referred to as the "Party" in Case 05-30 hereby submit on October 5, 2006 to the District of Columbia Zoning Commission the proposed Finding of Facts and Conclusions of Law according to the District of Columbia Zoning RECORD of Case 05-30.

Sincerely,



Yvonne A. Jefferson
President
Citizens Aware

**ZONING COMMISSION
District of Columbia**

CASE NO. 05-30
EXHIBIT NO. 91

**ZONING COMMISSION
District of Columbia
CASE NO.05-30
EXHIBIT NO.91**

FINDING OF FACTS AND CONCLUSIONS OF LAW

As Regards the Case 05-30 of 6000 New Hampshire Avenue, NE West Group Development Company, LLC and The Jarvis Company

Position: The “Party” in Case 05-30 maintains the position, *opposing* the zone change for the Subject Property and thereby retaining the R-1-B zone.

Based on the Finding of Facts, the “Party” hereby petitions the District of Columbia Zoning Commission to rule in favor of a **NO ZONE CHANGE** for the subject property identified in Case 05-30.

The “Party” bases this petition to rule in favor of a **NO ZONE CHANGE** for the subject property identified in Case 05-30 based on its reported *Finding of Facts and Conclusions of Law* as regards the following:

1. The 272 petitions of the affected residents inclusive of those residents living within the 200 foot radius of the subject property who received letters of “Notice Intent to File a Zoning Application”.
2. The 20 signed petitions submitted by Ms. Gloria Mobley in the July 20, 2006 Public Hearing.
3. Testimonies of “Opposition” within the Public Hearing on July 20, 2006 by the Party, individuals, and an organization.

The “Party” also bases this petition to rule in favor of a **NO ZONE CHANGE** for the subject property identified in Case 05-30 based on its reported *Finding of Facts and Conclusions of Law* as regards the last carried vote of 5-0-4 of the ANC 4B to reject the PUD Proposal – Case-05-30 (Exhibit #47; Paragraph 4; Line 1).

The “Party” further bases this petition to rule in favor of a **NO ZONE CHANGE** for the subject property identified in Case 05-30 based on its reported *Finding of Facts and Conclusions of Law* as regards an *unauthorized executed* Memorandum of Understanding (Exhibit #81 of the Zoning Record), especially from ANC 4B.

I. FINDING OF FACTS AND CONCLUSIONS OF LAW

As Regards the Case 05-30 of 6000 New Hampshire Avenue, NE West Group Development Company, LLC and The Jarvis Company

OPPOSITION BY THE COMMUNITY

On August 31, 2005 with an edited version on September 1, 2005, the West Group Development Company and The Jarvis Company as owners and developers of the subject property (collectively referred to herein as the "Applicants" gave notice of their intent to file an application for consolidated review and approval of a Planned Unit Development ("PUD") with the District of Columbia Zoning Commission under Chapter 24 of the District of Columbia Zoning Regulations (11 DCMR #2400 *et seq.* (February 2003). The Notice of Intent read that the Applicants were seeking to rezone the property from R-1-B to R-5-B in connection with their Application. The Notice further read that the Application would be filed with the Zoning Commission not less than ten (10) days from the date of this notice; and that this notice was given pursuant to #2406.7 of the Zoning Regulations.

- I. The Notice of Intent read: *The Applicants are seeking consolidated PUD approval and rezoning of the Subject Property to the R-5-B District, and intend to construct 199 unit residential development containing approximately 426,394 square feet of gross floor area dedicated to residential uses, with approximately 27 detached single family dwellings, 111 townhouses, and 61 condominiums, on the Subject Property.*
- II. **Petitions of Opposition:**
 - A. According to the Record: Two-hundred seventy two (272) original signed petitions from affected residents (4B07 and 4B08) of the District of Columbia opposing the zone change and indicating that the signers wanted the zone to remain R-1-B was submitted to the District of Columbia Office of Zoning on September 22, 2005 as an immediate response to the "Notice of Intent to File a Zoning Application". According to the Record, the Applicant had mailed to residents within the 200 foot radii of the subject property the Notice of Intent to File a Zoning Application. This Notice informed the signers of the petition of the 199 unit residential development (27 single detached single family dwellings, 111 townhouses, and 61 condominiums) to be erected on the subject property. The Record indicates that 140 Notices were mailed to residents.
 - B. In addition, the "Party" submitted as part of its testimony on the July 20, 2006 Public Hearing duplicate copies of the 272 petitions in support of its *position of opposition*. Of the 272 petitions opposing the

Proposal, 140 are recognized as residents within the 200 foot radii of the subject property, and therefore, received first hand information as presented by the Applicant.

- C. Furthermore, Ms. Gloria Mobley's testimony on July 20, 2006 indicated a *position of opposition* supported by *20 signed petitions* from affected residents (4B07) of the District of Columbia *opposing the zone change* and indicating that the *signers wanted the zone to remain R-1-B*.

Finding: The "Party" finds within the Zoning Record for Case 05-30 a substantial number of valid signed petitions by affected residents of the District of Columbia in *opposition to a zone change* for the subject property.)

II. Findings of Fact RE: Testimonies of Opposition (July 20, 2006)

- A. *Ms. Jefferson Presents as a Party – Points (the process was faulty #1-3):*
1. The community had been in negotiation with West Group for about a year before we were informed (Notice of Intent ...) that there was a zone change to accompany the PUD. (Page 24 of Zoning transcript).
 2. West Group proposed a commercial strip and park. Both we opposed; the latter we opposed due to drug traffic.
 3. Negotiation broke down. The reason for numerous meetings was that West Group negotiated with individual members of the community and with this group one month and another group another month.
 4. We are against this project because the zoning variance would drastically increase the community population.
 5. We agree with Commission Turnbull's testimony earlier that a zoning for variance under the PUD would result in crammed buildings...
 6. We are concerned about increased density in the short and long term in our community.
 7. Increased density yields increased traffic; whereby the present streets and thoroughfare are already overly burdened.
 8. We are concerned about crime increase with little police protection for our neighborhoods.
 9. We are concerned about the condo association being responsible for certain items. Also private streets are proposed. Those condo residents would also have to pay for snow removal, repair of streets. You may also have people duck some of the traffic that we know they will have to face by cutting through the property..
 10. There's an issue of affordable housing that was not originally included in the PUD. And, now 12 units, as condominiums, of the

- 17 are going to seniors. You only have five townhouses that really would be available to the general public as affordable housing units. This is not significant when you are talking about 200 households.

Ms. Jefferson -In conclusion: *We would propose that the West Group develop this project as a matter of right, as all single family homes.*

B. Witnesses of the Party: Lawrence Martin, Mr. Johnson, Rabiha Martin (absent), Ms. Griffin, and Judi Jones.

1. **Mr. Lawrence Martin:** A 48 -1/2 years resident of DC in SMD 4B08 who lives one block from the subject property. His enumerated concerns are: *population density/resident occupancy, excess traffic, plaster walls* of existing homes, proposed *cost of housing for homeowners* could necessitate increased occupancy to pay mortgages.
 - a. **Population Density:** For the proposed development, which would be located in Census Tract 4505 in Ward 4, the proposed development would include 27 single-family homes, approximately 100 townhouses, and 60 condominiums. Research using suggested national standards of approximately three persons per family home, two and a half persons per townhouse, and one and a half persons per condominium would total 371 and 401 persons residing on 11.2 acres of land and building. An Office of Planning Map, dated July 17, 2006 which depicts population density of Ward 4 as 13 persons per acre, and for Census TRACK 9505, Ward 4, in which the development is proposed, is 10.5 persons per acre. Noting the density figures just given, the population density for the project would range from 31.5 to 35.8 persons per acre, more than three times the current population density for Track 9505 and almost two times the population density for Ward 4, creating a disparity that exasperates, not only the housing situation, but other related problems associated with the proposed development.
 - b. **Excess traffic:** Increased traffic to an overburdened system, which currently and in the foreseeable future is unable to adequately handle the a.m./p.m. rush hour traffic that flows to and from the downtown area of the City. The proposed project is bounded by local streets: New Hampshire Avenue, Peabody, Chillum Place, and Sligo Mills Road, respectively. Rittenhouse, between New Hampshire and Kansas Avenue, would also be affected by

the proposed development. Local streets by definition are supposed to offer lowest level mobility and service to through traffic movement, usually deliberately discouraged. This is from a DDOT printout.

- c. *Plaster walls:* Homes adjacent to the proposed development, older homes, have plaster walls. Excess traffic causes, on some streets, to develop a corridor effect, thereby causing cracks in walls in homes that the District Government will not repair.
- d. *Proposed cost of housing for homeowners:* The proposed cost of housing for persons buying into the proposed development may require the additions of more persons per unit than anticipated in order to meet the high mortgage obligations.

Mr. Lawrence Martin -In conclusion: Members of Citizens Aware, and residents beyond our immediate block organization boundaries, as supported by 272 signed petitions, are trying desperately to maintain the integrity of our community, by asking that the Commission give great thought before making a determination to grant the zoning from a R-1-B to a R-5-B. We truly love our community, and hope that the R-1-B will remain.

2. ***Mr. Willard Johnson:*** Resides at 6128 New Hampshire Avenue, NE for 42 years. His house is situated on the proposed property site map display at the bottom of the hill. His enumerated concerns are: *the 50 foot slope on the property, volume of traffic, bus traffic, bumper-to-bumper vehicles, pollution problem, and increased density.*

- a. *The 50 foot slope on the property:* A 50 foot slope is coming down towards his property.
- b. *Volume of traffic:* There is a tremendous increase in the volume of traffic coming out of Maryland into the District, particularly during the morning and evening hours between 6:30 and 9:00 a.m. and 3:30 to 6:30 p.m.
- c. *Bus Traffic:* To complicate things New Hampshire is a bus route to Fort Totten. There are several bus stops southbound and northbound inside the District line between Eastern Avenue and North Capitol Street. Buses delay traffic with their frequent stops in an already crowded situation.
- d. *Bumper-to-bumper:* There is a steady flow of traffic bumper-to-bumper coming into the District, blocking

existing driveways and streets and sometimes intersections. Travelers make an effort to avoid delays so they travel to side streets to get downtown. Those 5 exits (mentioned in the proposal) might sound good on paper, but will not work because it's going to be blocked up over there, trying to get out of the circle of Kansas Avenue, already bumper-to-bumper.

- e. *Pollution Problem*: Currently, with bumper-to-bumper cars, buses, heavy-duty trucks, and other types of conveyances, and the proposed additional traffic entering New Hampshire, NE Corridor would only serve to add to the pollution problem. There has been no mention of pollution, but there is a tremendous pollution problem, with *slow* trucks coming through (due to traffic back-up), having an effect on human health. Increased density would add an additional impact on the above-named problems.

Mr. Johnson had no closing remarks.

- 3. *Ms. Pamela Griffin*: An affected resident of the DC- Resides at 6119 New Hampshire Avenue. Her concerns are: *excess traffic resulting in auto accidents, and the effect of construction on existing houses, flood.*

- a. *Excess traffic*: The amount of traffic the PUD will bring to the community that is already overly burdened is of great concern. There are a lot of accidents where people are hurt very badly at the intersection at New Hampshire Avenue and Rittenhouse Street. This is the location of- her house (right on that corner). She personally knows people who have been hurt on that corner. Therefore, increasing the density to the area would make it worse.
- b. *The effect of construction*: The existing houses shake. Expresses worry about the magnitude of construction at the site, and the physical trauma to the existing houses.
- c. *Flood*: Cited the big construction going on South Dakota Avenue, next to Fort Lincoln. When it rains that area is just mud. It too is on a hill. One time they had to close the street down. We've done a lot to our houses in that neighborhood to waterproof. *I'm very worried about run-off, especially during the construction phase of the project.*

Ms. Pamela Griffin - Concluding Statement: *Every neighborhood has a zone for a reason, and I don't see a reason to change our zone. There are other communities all over the City that have a zone. They stay that zone. And, when there is a change a lot of people are opposed to it, because we*

move there for a reason. We move there because that was the zone, and that's where we wanted to live. So, I don't see a valid reason for changing the zone.

4. Ms. Judi Jones: So, as a resident I've lived in DC all my life. But I moved into the area in 1999. We are a community of neighbors. I'm a resident, and this is going to be in my backyard. So, I have a vested interest for two reasons. She has concerns: *the demolition of the 2 single-family houses and the retention of the existing large buildings, parking spaces, and our defined community.*
 - a. There are two single-family dwellings on the lot. They plan to tear them down and have a building that we don't want.
 - b. Parking spaces: She questions the parking spaces as aligned with the question asked by a Commissioner on the drawing on SO4.
 - c. Our defined community: Our community is much more than houses. It's much more than a homeowner's fee, or a virtual gated community, and we have a lot at stake. The Plan doesn't know the outside of that 1.2 acres.

Ms. Judi Jones - Concluding Statement: My recommendation as a resident is that you reject this plan and allow the West Group to come back to the community and negotiate a more community-friendly plan.

- C. Individual Testimonies: Dr. Martin, Dr. Kelly, Mr. Goings, Ms. Mobley, and Rodney Foxworth.
 1. Dr. Martin: a DC resident located at 6101 New Hampshire Avenue. Her actions and concerns: *Solicited petitions opposing zone change, process used for solicitation, vague images of the PUD, revisions of the PUD proposal, expertise needed in challenging the PUD, felt violated, opponents to PUD silenced, and Project viewed as a monstrosity.*
 - a. *Solicited Petitions:* On September 22, 2005, I, with Dr. Kelly and three others, on behalf of the citizens who comprise this community of Lamond Riggs subdivision, submitted to the District of Columbia Zoning Commission 272 adult-signed petitions in opposition to Zoning Application for Case 05-30.
 - b. *Process used for solicitation:* Door to door, knocking on doors, talking to people about the new development as it was presented to us.
 - c. *Vague images of the PUD:* The community went a whole year of a PUD proposal that looked like a glorified spider

web placed on a screen with our supposedly commenting on what we liked or didn't like.

- d. *Revisions of the PUD proposal*: We are constantly reacting.
- e. *Experts needed in challenging the proposal*: Experts like the Zoning Commission were needed in challenging the Proposal that had the community constantly reacting.
- f. *Felt violated* because the community went through a process looking at a PUD a whole year, and it wasn't until August 31, 2005 that we learned this required a change of zoning.
- g. *Opponents to PUD silenced: And for people who opposed, we didn't get much of a voice.*
- h. *Project viewed as a monstrosity*: We looked at the project as a monster sitting in the middle of our community. Though I didn't use the word, monster, when discussing the proposal to the people.

Dr. Martin- Concluding Statement: Hard working residents of the District of Columbia continue to look to our Zoning Commission and the elected officials to protect us from the violation of our rights. And, we urge you to not grant a rezoning of the said property, and to vote that it retain its zoning R-1-B.

2. Dr. Avis Kelley: a resident of the Lamond Riggs community; resides at 5900 New Hampshire Avenue, NE. Her property adjoins the property in question, and she is directly affected by this project. I am here to appeal to the Zoning Commission to deny the request of the West Group for a zone change from R-1-B to R-5-B. I do not want the zone changed. I want the zoning to stay R-1-B. Dr. Martin joined me in solicitation in support of the petitions. I really feel invaded. As I look right out into the property, ... when I'm facing that property I see a big wall in front of me, and the back of these houses 30 feet in front of me. The (subject) property is the same as the piece she owns in Takoma Park: empty space and greenery.

Dr. Kelley – Concluding Statement: The property is the same as that piece I have in Takoma Park. It is a big piece of greenery. We cannot afford to have anything there, because the place is already congested. In the morning it's so dense. It's a traffic jam every morning along New Hampshire Avenue.

3. Mr. Goings: a member of Lamond Riggs community; Has lived in the Lamond Riggs community for 47 years. His concern: community benefits alone.

- a. **Reject the Proposal because there isn't enough community benefits for the size of the Project proposed. Proper people were not in the negotiation of the community benefits.**
 - b. **As principal of Coolidge High School, he was not part of the negotiation for the 14 computers as part of the benefit package. Coolidge High School cannot receive 14 computers at this time because of the electrical capacity.**
 - c. **It should have been more leaders of the community in the negotiation. Ms. Judi Jones is the affected ANC Commissioner. Problem developed as because West Group was trying to accommodate all these little groups. They should return to the community to negotiate something that the community can live with. As it stands the community cannot live with this. It's going to be too compact of a community.**
4. **Ms. Mobley: resides at 6030 Sligo Mill Road, NE Washington, DC 20011. She lives within 200 square feet of the subject property. Has lived there for 48 years Her family was the first Black, African American family to live in the 6000 block of Sligo Mill Road. Therefore, she has watched the community evolve, develop, and change. Her concerns: *fundamental flaws with the Office of Planning report, safety of children in neighboring charter schools, density affects traffic jam, dog park, sign petitions of opposition.***
- a. ***Fundamental flaws with the Office of Planning report:* Advises Office of planning to go back out there and look at the community.**
 - b. ***Safety of children in neighboring charter schools:* We have several charters schools. The increased density will prohibit safety for children going to and from the bus stops. Specifically the bus stops at Peabody and New Hampshire Avenuc; three bus stops between New Hampshire and Rittenhouse, up to New Hampshire and Quakenbos, and New Hampshire and Oneida.**
 - c. ***Density:* It's not only density, because it's not only traffic. It's not just mass buildings; it's people mass.**
 - d. ***Dog park:* Only people from three or four houses would benefit from a dog park.**
 - e. ***Signed petitions of opposition:* Submits 20 signed petitions of opposition to the zone change; includes her statements of what was explained to signers.**

Ms. Mobley – Concluding Statement: *What that number of people will do to change the character of the community is significantly so, that I am urging you to reject the proposal.*

III. Organization in Opposition (July 20, 2006)

A. Mr. Rodney Foxworth, president of Lamond Riggs Citizen Association, resident of 5714 5th Street, NE. He opposes the PUD on the following grounds:

1. With the fire and EMS, it clearly states, “The turn rate of 20 feet is going to be somewhat tight, and it depends upon parking. Residents of our community and residents of that development shouldn’t have to depend upon appropriate parking to get emergency services.”
2. From the DDOT report, we don’t see any evidence of similar proposals like this working in the District, and in fact, when the developer mentioned this model, he really couldn’t cite two or three examples of where this has worked in DC. Traffic was bad on New Hampshire Avenue before the bridge work; and, in fact DDOT’s traffic study only includes the four streets around the development. It doesn’t go four blocks over to New Hampshire and North Capitol Street, which is a major thoroughfare, and it doesn’t go 12 blocks over to Riggs Road and New Hampshire Avenue, which is also a major thoroughfare. ... In fact, DDOT confirmed today that their study only includes the four blocks that are adjacent to the actual project.
3. With the DHCD report, there’s no way that the density of this proposed development replicates the massing and density of the housing units in Lamond Riggs. There are no townhouses and condos in our community, none at all. In terms of public spaces serving as public front yards, these are private spaces in private development, funded by private funds.
4. The number of proposed units that is affordable are also insufficient. We understand that projects like this in the City consider about 20% as an affordable housing number. In addition if this was raised to 28 units, then they should not be limited to townhouses. The affordable units should be spread out throughout the development.
5. The project is still too dense and that’s been echoed by several of the Commissioners. The project was proposed at 199 units. The 187 units really don’t make any significant difference in the project. The project does comply with Section 410 and 225 sections of the Zoning Regulations.

Mr. Foxworth – Closing Statement: If the developer offers additional materials for consideration of the PUD, the Lamond Riggs Citizens Association would like to have a chance to look at any additional materials

that are being offered, and have a chance to offer public testimony for the record as well.

II. FINDING OF FACTS AND CONCLUSIONS OF LAW

As Regards the Case 05-30 of 6000 New Hampshire Avenue, NE West Group Development Company, LLC and The Jarvis Company

FINDING of FACTS AS REGARDS THE MISREPRESENTATION OF ANC -4B

A. Based on the Finding of Facts, the ANC 4B report did not comply with the DC Regulations 3115.1.

1. DC Municipal Regulations 3115.1: *"The written report of the ANC shall be submitted to the Board at least seven (7) days in advance of the Zoning Public Hearing and ..."*

- *The Resolution of ANC 4B (identified as the only ANC report – Transcript September 7, 2006- Page 16; lines 8, 9 and 10) was submitted to Zoning Commission less than seven (7) days in advance of the Zoning Public Hearing on September 7, 2006*

B. Based on the Finding of Facts, according to the zoning Record the only *carried vote* by ANC 4B as it relates to zoning is a vote 5-0-4 vote that rejects the zone change. (See Exhibit #47; Paragraph 4; Line 1.)

1. Even a subsequent RESOLUTION voted on by ANC 4B on September 5, 2006 resulted in a 4-4 tie vote (Please, see Gotlieb Simon's letter – Exhibit #86) thereby affirming the 5-0-4 vote *against the zone change* as the ANC 4B *position*.

C. Based on the Finding of Facts, the chair (Ms. Cherita Whittings) had been operating as the spokesperson for ANC 4B in the July 20, 2006 Public Hearing. (See July 20, 2006 transcript; especially bottom of page 35 and top of page 36.) Based on the Finding of Facts (Transcript: September 7, 2006 page 35 of 36 - bottom) the Zoning Commission assigned September 7 as a second date for Public Hearing "as an additional opportunity to digest this material. The record reads: *"Ms. Whiting: Well, the ANC has already taken a vote."*

D. Based on the Finding of Facts, the ANC 4B failed to submit a Report.

1. Resolution is identified as the only report by ANC -4B (Transcript; Sept. 5, 2006 page 6, lines 5 through 7.
2. The Resolution failed to carry in a 4-4 tie vote – (Exhibit #86)

According to DC Municipal Regulations 3115.2: *"The Board shall give "great weight" to the written report of the ANC..."*

E. Based on the Finding of Facts, in the September 7, 2006 Public Hearing the chair (Ms. Cherita Whiting) points to minutes from a September 5, 2006 ANC 4B meeting designating the chair (Ms. Cherita Whiting) as the spokesperson, and authorizing Ms. Judi Jones (the Affected ANC, representing SMD 4B07) to present the Resolution (Transcript: September 7, 2006: page 10; lines 14 through 16). The chair interprets “to present” to mean “to READ” the Resolution (Transcript: September 7, 2006: page 12; lines 25) that failed to carry by a 4-4 tie vote.

According to DC Municipal Regulations #3022.7 (f): “*The order of procedure presenting evidence at the hearing shall be as follows: (f) Affected ANC’s*”

F. Based on the Finding of Facts within the DC Zoning Record:

- There is no presented evidence at the hearing by the affected ANC’s, Judi Jones, the SMD for 4B07, nor the affected ANC, Cherita Whiting, the SMD for 4B08.
- The affected ANC, Judi Jones, submitted to the Zoning Commission a 15 page Report (Exhibit 69), urging the DC Zoning Commission to reject the Proposal of Case 05-30.
- A letter was written by the chair (Exhibit 76), discrediting the Report by Commissioner Judi Jones for SMD 4B07 indicating that Ms. Jones acted unilaterally without input from the members of ANC 4B. The chair (Cherita Whiting) backs up such the said position referring to the ANC 4B minutes of September 5, 2006 that indicated a 7 to 1 ANC 4B vote to *not allow Commissioner Jones* to represent ANC as she requested. Therefore, based on these findings there was no valid *Report* even within the submitted DC Zoning Record to the DC Zoning Commission by the affected ANC, Judi Jones, the SMD for 4B07.
- The affected ANC, Cherita Whiting, the SMD for 4B08, has no Report indicating the position of the community for 4B08, *since* the “Notice of Intent to File for a Zone Change”. Yet, a Memorandum of Understanding – MOU (Exhibit #81) has the signature of SMD 4B08 (Cherita Whiting). The Memorandum reads: “*By executing below, each of the representatives of the Community hereby acknowledges and affirms that he or she is designated representative of his or her respective organization with the power and authority to execute this MOU on behalf of such organization.*”

Memorandum of Understanding (Exhibit #81) Changes the PUD Application

G. Based on the Finding of Facts,

- The Memorandum of Understanding was submitted to the Zoning Commission by the Applicant on September 7, 2006 – the date of the Public Hearing (Transcript: September 7, 2006: page 18; lines 14 to 15). The

Memorandum reads: *"This Memorandum of Understanding is made as of this 5th day of September, 2006."*

- The Applicant refers to the Memorandum of Understanding as having *been executed by some of the participants in the community*. (Transcript: September 7, 2006; page 19, Line 6).
- Since the Memorandum (Exhibit #81) of Understanding is made as of September 5, 2006, the date of the ANC 4B meeting. The minutes of the ANC 4B indicates that the chair was not granted the authorization to "execute" the Memorandum of Understanding. According to the said minutes, there is no vote taken by ANC 4B in this Public Hearing to authorize the chair, Cherita Whiting, to sign the Memorandum of Understanding (Exhibit #81). The Minutes further indicate questions asked by the Commissions, with cited oppositions.
- The minutes of the ANC 4B meeting further indicates that Mr. Jarvis, the Applicant representative submitting the Memorandum of Understanding (Exhibit #81) to the Zoning Board, was present at the ANC-4B meeting. Jarvis presented the proposed changes of the Proposal, and according to the said minutes: *COMMISSIONER Bowser criticized a proposed Memorandum of Understanding.... Bowser said that her name was used on the Memorandum of Understanding without her permission*. Present, too, was Rodney Foxworth, another signer of the Memorandum of Understanding.
- According to the September 5, 2006 Minutes of the ANC 4B, (page #3 of 6) Rodney Foxworth presented the Lamond Riggs Citizens Association's (LRCA) changed position regarding the Proposal. Rodney Foxworth was challenged by Commissioner Bower who said that *"she is a LRCA's vice president and believes the group's report is 'debatable.'" In addition, according to the said minutes, Commissioner Bowser said that the vote of the LRCA executive committee took place by phone or e-mail, as no meeting was held."*
- Terry Goings (an executive member of LRCA) said, *"he is 'appalled' that there was no general meeting to vote on the proposed changes."* *"The majority of Lamond residents do not support the proposal," he said.* (page #3 of 6).
- The Memorandum of Understanding (Exhibit #81 page 1 of 3; second para; lines 1 through 4) reads: West*Group Development and the Community have been in meetings and discussion concerning the Development since November, 2004, but in particular have had a series of focused meetings on the Project since the Zoning Commission Hearing on July 20, 2006.

H. The execution by the chair, Ms. Cherita Whiting, of the Memorandum of Understanding (Exhibit #81 of the Zoning Record) indicates the Applicant *based its ability to make particular changes to the PUD Proposal based on the agreement between the Applicant and those who signed the Memorandum* (Transcript: September 7, 2006: page 19; lines 4 to 7).

I. Based on the Finding of Facts: The Memorandum of Understanding (Exhibit #81) not only applies to the changes in the PUD, the execution of the Memorandum of Understanding indicates the signers, representing their constituents, agree on the following development principles:

- (i) the planned unit development (“PUD”) process is preferable to the matter-of-right process;
- (ii) a zoning change associated with the PUD process is acceptable;
- (iii) the number of units proposed in the PUD application should be reduced;
- (iv) the number of affordable housing units is linked to the number of overall units in the development;
- (v) the large “village green” at the center of the development should be terraced so that it would not become a draw for undesirable activity;
- (vi) any financial community benefits provided by the developer should be provided upon issuance of the building permits and not spread out over time.

Based on the Finding of Facts according to the Transcript: September 7, 2006:

- The Applicant acknowledges an “increased number of community groups than were here beforehand” –testifying (Transcript: September 7, 2006: page 19; lines 7 and 8).
- The Record indicates that there has been no communication with South Manor Neighborhood Association (a signer on the Memorandum of Understanding) as a part of this process as regards Case 05-30.

According to the Title 11 District of Columbia Municipal Regulations (#3015, 3015.1 to #3015.11; #3020, #3020.1 to #3020.4; #3022, #3022.1 to #3022.9; 3023 #3023.1 to #3023.5; #3024, #3024.1 to #3024.7; #3027, #3027.1 and 3027.3; #3028, #3028.3 to #3028.9; #3115.1 to #3115,;#3121. Through the Municipal Regulations, the District of Columbia awards its citizens the service of its elected officials, the Advisory Neighborhood Commission Broad that is composed of 9 Single Member District (SMD) representatives. According to the said Regulations a well defined process for *Contested Case Hearings* as it relates to “a planned unit development” has been put into place upon which rulings are made by the District of Columbia Zoning Commission.