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November 4, 2013

Anthony J. Hood
Chairman
D.C. Zoning Commission
441 4th St., N.W.
Suite 200S
Washington, D.C. 20001

Re: Case No. 08-06A
Title 11, Zoning Regulations – Comprehensive Text Revisions
Subtitle X: General Procedures

Dear Mr. Hood:

I have reviewed some of the proposed revisions for the zoning regulations. My comments on several provisions in Subtitle X: General Procedures are discussed below. These comments concern the PUD procedures.

I. Ownership of the properties included in the PUD should be verified

There should be verification or documentation concerning the ownership of the properties included in the PUD. Paragraph 300.9 provides that:

> Unless specifically stated otherwise, the term "Applicant" in any condition of an order approving a PUD or PUD modification shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under the order shall be joint and several. If a person or entity no longer holds title to the PUD site, that party shall have no further obligations under the order; however, that party remains liable for any violations of any condition that occurred while an Owner.

Paragraph 307.4 provides that:

> The name, address, and signature of each owner of property included in the area to be developed, or of the owner's authorized agent, shall be included in the PUD application.

There needs to be stricter verification of the ownership of the property included in a PUD application. There also should be a more complete identification of the applicant and its relationship to the property owner. In the Skyland Holdings, LLC case, Z.C. Case No. 09-03, the application was from the applicant, Skyland Holdings, LLC, rather than from the property owner. Skyland Holdings, LLC, was applying for the PUD on behalf of the District of Columbia. There was no deed or other proof of ownership included in the application.

It is my understanding that, in some other jurisdictions, the application must include a deed or some proof of ownership of the property. I think that proof of ownership should be required in the District of Columbia. If the application is submitted by an applicant that is not the property owner and there is no proof of ownership, there is a risk that questions of ownership and liability could be raised at a later time. The Zoning Commission should not grant a PUD application if there is the possibility of questions about ownership of the property.

The need to have proof of ownership in a PUD application is illustrated by the Recorder of Deeds records for the Skyland properties. The Recorder of Deeds records do not reflect that the District has title to some of the Skyland properties. For example, the Recorder of Deeds record for property, 5632 0001 (attached hereto), does not show that the District has title to that property.

In addition, the use of the name of the applicant, Skyland Holdings, LLC, does not provide information about the owner. The names of the owners of the property to be developed should be included in the PUD application, even if the PUD application is filed by the owner's authorized agent or some other applicant. There should be complete information about the property owners. Further, a deed or some proof of ownership should be included in the PUD application.

II. Procedure needed to assure the recording of a proper covenant

There is a provision concerning the recording of a covenant. Paragraph 313.3 provides that:

> The Zoning Administrator shall not approve a permit application unless the applicant has recorded a covenant in the land records of the District of Columbia between the owner or owners and the District of Columbia satisfactory to the Office of the Attorney General and the Zoning Administrator, which covenant shall bind the owner and all successors in title to construct on and use the property only in accordance with the adopted orders, or amendments thereof, of the Commission.

There should be a procedure to verify that a proper covenant has been recorded. The Skyland Holdings, LLC, case, No. 09-03, provides an example why the covenant should be verified. The Zoning Commission Order dated July 12, 2010, includes a provision about the covenant in paragraph 15 of the Decision section. First, it should be noted that the language in that paragraph uses the term, "Applicant," instead of owner in the phrase providing that a covenant must be recorded between the Applicant and the District of Columbia.

A covenant has been recorded in the Recorder of Deeds records for the Skyland properties. The record for parcel 5632 0001 (attached hereto) shows that the covenant has been recorded. However, there are several problems with this recording. First, the covenant shows that the District of Columbia is both the grantor and the grantee. A covenant is considered to be a contract. Thus, it is difficult to understand how a covenant with the same entity for each side of the contract (grantor and grantee) can be a valid and enforceable covenant.

There is another problem with the covenant. As discussed above, the Recorder of Deeds records do not show in the chain of title that the District of Columbia has title. In other words, the Recorder of Deeds records do not reflect that the District is the owner. As a result, there is a question whether the District could properly be a grantor, because the previously-recorded documents concerning title do not show that the District had been a grantee. In other words, the records do not show that the District had the authority to be a grantor because the District had not previously been granted any rights to the property.

The requirement that a covenant be recorded must be effective. It appears that a document which is called a covenant can be recorded, even if that document is not a proper or enforceable covenant. Thus, there should be a procedure to verify that a proper covenant has been recorded.

III. Notice of the application should be sent to additional categories of persons

There are several provisions concerning notice. These include 307.6, 307.7 and 308.7. Paragraph 307.6 provides:

> At least forty-five (45) calendar days prior to filing an application under this chapter, the applicant shall mail written notice of its intent (NOI) to file the application to the Advisory Neighborhood Commission for the area within which the property is located and to the owners of all property within two hundred feet (200 ft.) of the perimeter of the property in question.

The new rules have omitted the provisions that were previously in paragraphs 2406.8 and 2406.10. It is not clear why those provisions have been omitted. Also, the time for the notice has been changed from ten calendar days to forty-five calendar days before filing an application. The longer time requirement for giving notice seems appropriate.

The issue of notice is important. I think that the required notice should be given to categories of persons in addition to the Advisory Neighborhood Commission and nearby property owners. In the Skyland case, the owners of the Skyland property (before the District took the property by eminent domain or purchased the property) were not given notice of the PUD application. In addition, I believe that the business owners and tenants of the Skyland Shopping Center were also not given notice. The property owners, business owners and tenants at Skyland had a strong interest in what will happen to the property. Thus, they should have received notice of the PUD application.

The provision about notice should be expanded to include additional categories of persons. The requirement that notice be sent only to the Advisory Neighborhood Commission and to nearby neighbors is too restrictive. Further, it seems counter-intuitive that owners of nearby property should be given notice and yet those with an interest in or doing business on the property itself are not notified. The notice provision needs to be revised to ensure that other interested persons receive notice.

I appreciate the opportunity to present my comments.

Sincerely,

Elaine Mittleman

Elaine Mittleman

Attachment

version 1.33

Washington DC Recorder of Deeds - Search Records

Logged in as: **elainemittleman**

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Select Application | Search Menu | Search Criteria | Results | Need Help?

Washington DC - Land Records

We found 18 records.
Displaying 1 through 18.

Criteria Searched:
Square: **5632** Lot: **0001**
Type(s): **ALL**

Currently Sorted By: **Square (Asc)** Then by **Lot (Asc)** Then by **Filing Date (Desc)**

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View in groups of: 10 | 25 | 50 | 100 | 200

All on this page

0 items selected total
0 items in Shopping Cart

Index Detail	View Image	Purchase Image	Square	Lot	Grantor	Grantee	Document #	Filing Date	Book Type	Instrument Type	Roll Frame
			5632	0001	D C WATER AND SEWER AUTHORITY	DMPED	2012057003	5/25/2012	LAND	WATER SEWER RELEASE	
			5632	0001	DC WATER AND SEWER AUTHORITY	DMPED	2012043355	4/24/2012	LAND	WATER SEWER RELEASE	
			5632	0001	DC WATER AND SEWER AUTHORITY	DMPED	2012005382	1/13/2012	LAND	WATER SEWER LIEN	
			5632	0001	DC WATER AND SEWER AUTHORITY	DMPED	2011111612	11/4/2011	LAND	WATER SEWER LIEN	
			5632	0001	DISTRICT OF COLUMBIA	DISTRICT OF COLUMBIA	2011078168	7/26/2011	LAND	COVENANT	
			5632	0001	PNC BANK NA	FIRST FSK LIMITED PARTNERSHIP	2008107466	10/16/2008	LAND	DEED RELEASE	
			5632	0001	NATIONAL CAPITAL REVITALIZATION CORPORATION	WACHOVIA BANK NATIONAL	2007033554	3/9/2007	LAND	MISCELLANEOUS	
			5632	0001	NATIONAL CAPITAL REVITALIZATION CORPORATION	FIRST FSK LIMITED PARTNERSHIP	2007033555	3/9/2007	LAND	ORDER	
			5632	0001	RIGGS BANK NATIONAL ASSOCIATION	PNC BANK NATIONAL ASSOCIATION	2006118311	8/29/2006	LAND	ASSIGNMENT OF LEASE	
			5632	0001	PNC BANK NATIONAL ASSOCIATON	FIRST FSK LIMITED PARTNERSHIP	2006118312	8/29/2006	LAND	DEED RELEASE	
			5632	0001	FIRST F S K LIMITED PARTNERSHIP	RIGGS BANK N A	2003047516	4/22/2003	LAND	FIN STMT CONTINUATIO	
			5632	0001	FIRST F S K LIMITED PARTNERSHIP	RIGGS BANK N A	2003047633	4/22/2003	GENERAL	FIN STMT CONTINUATIO	
			5632	0001	FIRST F S K LIMITED PART	RIGGS BANK N A	9800036537	5/11/1998	LAND	FINANCING STATEMENT	[illegible] 1270
			5632	0001	FIRST F S K LIMITED PART	RIGGS BANK N A	9800036538	5/11/1998	LAND	MISCELLANEOUS	[illegible] 1525
			5632	0001	BINDEMAN J E	STERNBURG BURTON S	7300002233	1/29/1973	LAND	TRUST	[illegible] 0404
			5632	0001	KOGUD CELIA	DISTRICT OF COLUMBIA	1970003936	3/4/1970	LAND	AGREEMENT	[illegible] 111
			5632	0001	BINDEMAN J E	NEALE JOHN R	1967002458	2/2/1967	LAND	TRUST	[illegible] 326
			5632	0001	KOGOD CELIA	NATIONAL SAVINGS AND TRUST COMPANY	1966022623	7/8/1966	LAND	COVENANT	[illegible] 572

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Office of Tax and Revenue

Property Detail

Address: 2800 - 2834 ALABAMA AV SE
SSL: 5632 0001

Record Details

Neighborhood:	HILLCREST	**Sub-Neighborhood:**	A
Use Code:	44 - Store-Shopping Center/Mall	**Class 3 Exception:**	No
Tax Type:	DC - District of Columbia	**Tax Class:**	002 - Commercial
Homestead Status:	** Not receiving the Homestead Deduction		
Assessor:	OLUFEMI ABAYOMI-PAUL		
Gross Building Area:		**Ward:**	7
Land Area:	173,230	**Triennial Group:**	1

Owner and Sales Information

Owner Name:	DISTRICT OF COLUMBIA SUITE 307
Mailing Address:	1350 PENNSYLVANIA AVE NW; WASHINGTON DC20004-3003
Sale Price:	Not Available
Recordation Date:	Not Available
Instrument No.:	

Tax Year 2014 Preliminary Assessment Roll

	Current Value (2013)	Proposed New Value (2014)
Land:	$5,196,900	$5,196,900
Improvements:	$2,103,120	$2,285,620
Total Value:	$7,300,020	$7,482,520
Taxable Assessment: *	$7,300,020	$7,482,520

* Taxable Assessment after Tax Assessment Credit and after $69,100 Homestead Credit, if applicable. (Click here for more information).

** If you believe you should be receiving tax relief through the Homestead deduction program and if you are domiciled in the District and this property is your principal place of residence, you can access the link below, complete the form, and return it per the instructions. For additional information regarding the Homestead program, call (202)727-4TAX. Click here to download the Homestead Deduction and Senior Citizen Tax Relief application *

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