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September 4, 2014, Written testimony, re: ZRR

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In 2008 and 2010, OP presented the Zoning Commission with reports on possible changes to the Planned Unit Development procedures.

Attached find a portion of the Executive Summary.

There are many instances where many of the pointed recommendations of this report have not been chosen for the latest iteration of the Zoning Regulations Rewrite.

On Page 3, second paragraph of the Executive Summary, OP staffers noted how important ANC's can and must be to the PUD process.

ANC's have throughout OP's ZRR process ~~have~~ asked for the PUD regulations to be changed to allow at least 30 days for them to review and weigh in with as much information as possible, ~~but~~ ideally even more time for review and negotiation after the issuance of OP's last report filed on the matter. But we have not seen these regulations changed. Why?

For many of my DC friends and neighbors, the proof that the current PUD process even needs to persist as part of the zoning regulations any longer has not been demonstrated.

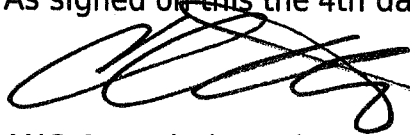
I believe this is especially true since OP has offered at least one more zoning amendment case that seeks to redefine DC's penthouse structures to add up to 20 feet, or 2 additional stories of inhabitable space, above the roof, yet not count this greater density in the zoning calculus for FAR or height. See Zoning Commission Case #14-13.

The idea you can build two additional stories and not count that towards allowable zoning density is simply unethical and destroys DC Law which sets the intent of the zoning regulations to protect resident safety, limit congestion by developing to prevailing neighborhood patterns, and to take care not to destabilize longterm neighborhood land values with high speculation and corporate "cashing & dashing."

This drive to overdevelop in DC leaves the residents who stay in the City feeling the longterm adverse impacts of planning and zoning issues like displacement pressures, public utility infrastructure stresses and breakdowns, construction pollution and noise, and more congestion.

As judged next to the AICP planning ethics and protocols, the ZRR does not pass muster. The Zoning Regulations Rewrite is simply not right. Please stop.

As signed on this the 4th day of September, 2014,



ANC Commissioner (2008-2010)
Statehood-Green Mayoral Candidate (2006)
Public Property Defender; Affordable Housing Advocate; Longterm Ward One Resident

ZONING COMMISSION
District of Columbia
CASE NO.08-06A
EXHIBIT NO.783



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Planned Unit Development (PUD)

Recommendations Now Available!

The Office of Planning (OP) has submitted recommendations on this subject area to the Zoning Commission. You can find OP's Public Hearing Report, with the recommendations, below in the [Working Group Documents](#) section.

What Did This Working Group Cover?

This subject area looked at different options for review and approval of larger development projects in the District. Issues include the limits of matter-of-right development, the relationship between density and public benefits, the role of government agencies and community groups in development, and other issues relating to discretionary review of large developments. The PUD Working Group focused on discretionary review zoning processes that enable more flexible development options, often in conjunction with additional height or density and with superior design and public benefits. We examined the existing PUD system and discussed possible changes and improvements. If you'd like to learn more about the current PUD process, you can review Chapter 24 of the Zoning Regulations, found [here](#).

Working Group

This working group met from March through May 2010. If you would like to provide further feedback, contact Travis.Parker@dc.gov.

To sign up for further notifications on this topic [click here](#).
Questions? [Click here](#).

Working Group Documents (13)

Date	Title/Description
15-Sep-2010	<u>Public Hearing Report - PUD Recommendations</u> - Public Hearing Report with OP's recommendations for changing the approach to PUDs.
15-Jun-2010	<u>Meeting 5 - Issues & Recommendations Handout</u> - Handout provided at May 26th meeting, outlining PUD issues covered and tentative recommendations.
15-Jun-2010	<u>Meeting 5 - Sample Benefits List Handout</u> - Handout provided at the May 26th meeting, outlining a sample list of PUD point-based benefits.
14-Jun-2010	<u>Meeting 5 - Notes Summary</u> - The summary of notes and feedback from the fourth meeting on May 26th, 2010.
28-May-2010	<u>Meeting 5 - Presentation</u> - The presentation on tentative proposed recommendations for PUDs was given at the fifth meeting on May 26, 2010.
18-May-2010	<u>Meeting 4 - Presentation</u> - The presentation on community feedback and tentative direction was given at the fourth meeting on May 5, 2010.
18-May-2010	<u>Meeting 4 - Notes summary</u> - The summary of notes and feedback from the fourth meeting on May 5th, 2010.
29-Apr-2010	<u>Meeting 3 - Notes summary</u> - Meeting 3 - Notes-The summary of notes and feedback from breakout groups at the April 21, 2010 meeting.
08-Apr-2010	<u>Meeting 2 - Presentation</u> - The presentation on best practices in other jurisdictions given at the second meeting on April 7, 2010.
08-Apr-2010	<u>Meeting 2 - Notes</u> - The summary of notes from the April 7, 2010 meeting.
30-Mar-2010	<u>Meeting 1 - Notes</u> - The summary of notes and feedback from breakout groups at the March 24, 2010.
25-Mar-2010	<u>Meeting 1 - Presentation</u> - The presentation of background and introductory research given at the first meeting on March 24, 2010.
25-Mar-2010	<u>PUD Study - 2007</u> - The report details the current state of the Planned Unit Development (PUD) regulations and procedures in Washington, DC. Based largely on interviews with planners, community leaders, land use attorneys, architects, and developers with extensive experience working on PUDs, the report is an attempt to capture how the regulations and the processes are currently working, who is involved, and what the specific strengths and weaknesses are.

Zoning Review 2008

Website:

www.dczoningupdate.org

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EXECUTIVE SUMMARY

The following report details the current state of the Planned Unit Development (PUD) regulations and procedures in Washington, DC. Based largely on interviews with planners, community leaders, land use attorneys, architects, and developers with extensive experience working on PUDs, the report is an attempt to capture how the regulations and the processes are currently working, who is involved, and what the specific strengths and weaknesses are.

Many of those interviewed indicate that the process is, overall, working quite well and achieving the aims it was meant to achieve: namely allowing developers more flexibility within the zoning regulations, in return for providing higher quality development projects. Many interviewed also note that the relationships between the Office of Planning and the development community are strong, open, and honest, and that the interaction between OP staff and development teams works consistently well.

The most frequently-noted problem with DC's PUDs is that the entire process seems unpredictable, both in terms of the time involved, and in terms of the benefits that the developer ultimately provides to the community. Interviewees from every profession comment that they often have little means of predicting how long a PUD process will take. Some PUDs speed through in as little as 9 months, while others can drag on for years. Interviewees also note that a large discrepancy exists in the benefits provided as part of the PUDs—some projects provide extensive benefits to the local community, while others seem to provide few.

These discrepancies—of time, and of benefit package—are unnerving to planners, developers, ANC Commissioners, attorneys, and architects alike. They contribute to a low-level anxiety that there might be something devious going on behind the scenes, and that communities are being mistreated, or that developers are being given the run-around. For this reason, any efforts focused on fixing DC's existing PUD regulations and procedures should address these uncertainties of time and of benefits packages. If these can be made more consistent across the city and across projects, developers, planners, ANC Commissioners, and everyone involved in PUD processes will benefit. Most notably, developers would know what to expect from the process before they enter into it, ANCs would know what they could reasonably expect to get from the process, and planners could rest a bit easier knowing that their constituencies are being more equitably treated.

In order to address these uncertainties about time and about the benefits packages, it is necessary to understand what issues underlie them. Interestingly, most interviewees do not feel that these uncertainties result from inconsistency on the part of the Zoning Commission or of the Office of Planning. Instead, it seems that the uncertainties of timing and of the benefits packages typically spring from the ANCs' lack of complex understanding about the PUD process and benefits packages.

This report lays out a number of different ways that OP might address this underlying problem: clearly defining in the regulations the appropriate interactions between developers and communities, creating lists of possible amenities and benefits that communities might want to ask developers for, providing education and outreach to communities to explain the process and how to best be involved, or serving as a facilitator for communities or as a mediator between communities and developers, and others.

Most of those interviewed explain that—although it is a tempting idea—consistency should not be achieved artificially through more formulaic regulation or through eliminating the negotiation process. They feel that the flexibility of the process and the ability for projects to be site-specific is valuable and necessary. Even those who are supportive of having a more mathematical formula for proffers given and bonuses received note that it would be nearly impossible to agree upon those standards, and that it might be very difficult to use such a system. Instead of more rigid regulation, then, better consistency might be achieved by ensuring that all of DC's ANCs are well-informed about PUDs, know how to and when to be involved in the process, and have a strong sense of what they might be able to ask from developers. These suggestions for dealing with those uncertainties—as well as a number of other, smaller suggestions—are laid out in the “How to fix PUDs” section of this report.

Alternatively, instead of simply making minor changes to the PUD regulations and procedures so that they might work better, the Office of Planning could entirely rethink the purpose of PUDs in DC. The City could establish new regulations and procedures that might help it achieve its underlying goals much more directly than PUDs are currently doing. For example, the city could increase the minimum size requirements for PUDs (so that DC's PUDs more closely resembled those of other cities), or could create separate processes for large and small PUDs. In an even more bold possibility, the City could eliminate PUDs altogether, by simply zoning the city as it would like to see it developed, and not allowing any deviation from that zoning. These solutions, and others, are outlined in the report below. It is important to note that, if the city were to make any sudden changes, it could have a devastating effect on the development community, which might also lose money invested in projects currently “in the pipeline.” In order to keep development from grinding to a halt, any radical changes made to the PUD regulations and procedures must be made known years before they are implemented.

In the end, DC faces a number of choices regarding PUDs. First, do the PUD regulations serve a valid purpose? If so, should the process just be altered in a minor way to make it smoother, less contentious, and less fraught with uncertainty? If not, what is the true purpose of PUDs, and how should the regulations and procedures be altered to meet that purpose? This report outlines a number of different answers to these questions, complete with pros and cons, examples from other cities, opinions from those involved in DC's PUDs, and more. It should be used, along with APA's PAS Report Number 545, *Planned Unit Developments*, as the primary reference for the City as it moves forward in re-writing the zoning codes.

- b. Since every project would go through a site review process under this plan, the PUD process could be separate, or could be eliminated entirely as an option (if the City decides that it should no longer allow variation from the zoning in return for benefits).
- 6) Several interviewees note that it might benefit the City if developers could—as part of the benefits package—provide funds to DC agencies like DDOT, Parks and Recreation, Public Schools, etc. That contribution would be routed through the city agency, but could be used for benefits in the immediate vicinity of the PUD. For example, if a project were going to have undue impact on the roads surrounding it, the developer should be able to give money to DDOT to rehabilitate or update those roads.
 - a. Rules and regulations governing the exchange of funds between private entities and city agencies would have to be amended to allow this.
 - b. This system could have a number of benefits:
 - i. The combined contributions of several PUDs in one area could allow for greater benefits than just one PUD could provide.
 - ii. This system would allow the agencies to do what they do best—building roads, fixing schools, making parks, etc., while giving the developers the time and space to focus on what they do best—developing.
 - c. The drawbacks of this system would be:
 - i. The potential argument over whether or not these PUD contributions are simply “impact fees.” Developers do not want to have these.
 - ii. This system, because it would involve private companies making contributions to government agencies, could look like bribery to those who were inclined to see it that way, and who already see the PUD process in that light.

CONCLUSION

The main challenge facing the Office of Planning is this: should it accept the current purpose of PUDs in DC as valid, and work on improving the process the already exists, *or* should it rethink the underlying concepts behind PUDs in DC, and create a new process that promotes the kind of development that the City would like to see occurring instead?

Make the current system better?

Most interviewees note that the system seems to be working fine as it is, although it could be made even more effective by removing the high levels of uncertainty surrounding it. If the City chooses this direction, it can simply pick and choose between the options listed above for educating ANC and communities, clarifying the interactions between developers and communities, and the like.

Totally rethink PUDs in DC?

Rather than simply improving the current system, the City may choose to go in an entirely different direction—based not on the feedback of interviewees, but on the fact that most other cities think of and use PUDs very differently from how DC does. In most places, developers get flexibility from the zoning *so that* they might build better projects, while, in DC, developers get flexibility from the zoning *in return* for building better projects. The difference is subtle, but important. If the Office of Planning decides that DC should adhere more closely to the concept of PUDs in much of the rest of the nation, then it can choose among the different options laid out in the “Thinking more radically” section above.

As the City chooses a new direction for PUDs, and contemplates re-writing the PUD regulations, it should keep in mind several important issues.

- First, whatever the PUD regulations might be, they should always be kept current in relationship to the most recent versions of the zoning regulations, zoning map, and Comprehensive Plan. Likewise, those documents should be in tune with the PUD regulations.
- Second, DC has adopted a set of Inclusionary Zoning regulations, which will require developers in some cases to offer affordable housing units. In return, they will automatically receive extra height and density for those projects. The effects of Inclusionary Zoning (IZ) on PUDs will not be known until IZ is fully implemented, but interviewees predict that there will be fewer PUDs (since developers can get nearly as much extra height and density through IZ), and that the proffer emphasis will shift from affordable housing to something else. Whatever the case may be, OP should keep an eye on the effects of IZ on PUDs and the PUD process, as it examines how to change these regulations and procedures.
- Third, if staff at Office of Planning moves to re-write the PUD regulations, it would behoove them to use the research on PUD regulation language and organization conducted by David Fowler. An outline of this extensive research is attached to this report as Appendix Item 3. Also of use would be the brief explanations of the PUD or PUD-like processes of other cities, attached to this report as Appendix Item 2.

Regardless of how the Office of Planning chooses to revamp its PUD regulations and processes, it should keep in mind that, above all, PUDs are meant to bring a more valuable, more desirable, better quality of development into the City. PUDs can lay the groundwork for how we want the city to grow and change; they can set the precedent for future development in each neighborhood. In deciding the fate of PUDs, OP will be—in some ways—deciding the fate of the city.