

District of Columbia Court of Appeals
430 E Street, N.W.
Washington, D.C. 20001

2010 OCT 12 11:10:39

JULIO CASTILLO
CLERK OF COURT

Telephone: 879-2700
Area Code 202

October 7, 2010

10-AA-1226 Gary Puckrein, et al vs. D.C. Zoning Commission

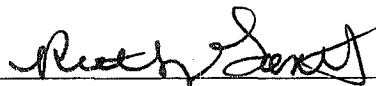
District of Columbia Zoning Commission
Jerrily Kress, Director
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed October 7, 2010, in the above-entitled case.

Yours very truly,

Julio Castillo
Clerk of Court

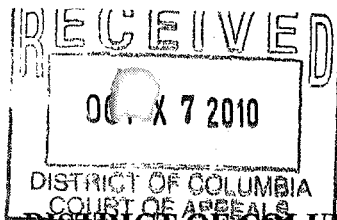
By: 

Pro Se Inmate Coordinator

cc: Todd Kim, Esq.

ZONING COMMISSION
District of Columbia

CASE NO. 09-03
EXHIBIT NO. 133



**DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW**

Gary Puckrein, Ronald Cole, and
Cynthia Brock-Smith
Petitioners

v.

District of Columbia Zoning Commission
Respondent

Appeal No. 10-AA-1226

Zoning Commission Order No. 09-03

We, Gary Puckrein, Ronald Cole, and Cynthia Brock-Smith, seek review by the District of Columbia Court of Appeals of Zoning Commission Order No. 09-03 entered on the 7th day of September, 2010 (copy of Order attached).

Parties appearing in Zoning Commission Case No. 09-03:

Applicant Skyland Holdings, LLC represented by Paul Tummonds of Goulston & Storrs, 2001 K Street, N.W., Washington, DC 20006; Telephone No. (202) 721-1157.

Advisory Neighborhood Commission No. 7B, 3200 S Street, S.E., Washington, DC 20020; Telephone No. 202-584-3400.

Martin P. Sullivan, Esq.
D.C. Bar No. 460458
Sullivan, Styles & Barros, LLP
1990 M Street, NW
Suite 200
Washington, DC 20036
202-503-1704

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2010, a copy of this Petition for Review was mailed by U.S. Mail to the following:

Paul Tummonds, Esq.
Goulston Storrs
2001 K Street, NW
Suite 1100
Washington, DC 20006

ANC 7B
3200 S Street, SE
Washington, DC 20020

A handwritten signature in black ink, appearing to read "Martin P. Sullivan", written over a horizontal line.

Martin P. Sullivan

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03

Z.C. Case No. 09-03

Skyland Holdings, LLC

**(Consolidated Approval for a Planned Unit Development and Related Zoning Map
Amendment for Property Located @**

**Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190,
& 214/196; Square 5632, Lots 1, 3-5, & 802; Square 5633, Lots 800 & 801; Square 5641,
Lots 10-13 & 819; Square 5641-N, Lots 12-31 & 33)**

July 12, 2010

Pursuant to notice, the Zoning Commission for the District of Columbia (the "Commission") held public hearings on December 10, 2009; February 4, 2010; February 17, 2010; and April 21, 2010 to consider an application from Skyland Holdings, LLC (the "Applicant") for consolidated review and approval of a planned unit development ("PUD") and related Zoning Map amendment. The Commission considered the application pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

The Application, Parties, Hearing, and Post-Hearing Documents

1. The project site consists of Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196; Square 5632, Lots 1, 3-5, and 802; Square 5633, Lots 800 and 801; Square 5641, Lots 10-13 and 819; and Square 5641-N, Lots 12-31 and 33 ("Subject Property" or "Property"). The Subject Property is known as the Skyland Shopping Center and is generally bounded by Naylor Road and Good Hope Road on the west; Alabama Avenue to the south, a small residential area to the east, a large wooded ravine to the east and northeast, and a residential area to the north. The Subject Property is located within the boundaries of Advisory Neighborhood Commission ("ANC") 7B and abuts the boundaries of ANC 8B. The Subject Property consists of the existing shopping center and some vacant lots. (Exhibit ("Ex.") 4, p. 1.)
2. The Applicant initially filed its application on February 17, 2009. The Commission set the application down for a public hearing at its May 11, 2009 public meeting. (Exs. 4-6; May 11 Transcript, p. 49.)

3. The Applicant filed a pre-hearing statement on September 21, 2009, and a public hearing was timely scheduled for December 10, 2009. Prior to the public hearing, the Applicant supplemented its application with additional information on November 20, 2009. (Exs. 19, 20, 25.)
4. A public hearing was held on December 10, 2009. Testimony was presented by the Applicant's project team, including the architect, landscape architect, and transportation consultant. The Applicant also submitted its proposed community amenities, a parking space assessment matrix, and conditions of approval. Pursuant to a written request submitted on November 25, 2009, a group of four homeowners residing at 2933 Fort ("Ft.") Baker Drive, 2929 Ft. Baker Drive, 2937 Ft. Baker Drive, and the 2900 block of Ft. Baker Drive, called the Ft. Baker Drive Party ("FBDP"), were granted party status. No other individuals or entities requested, or were granted, party status. At the close of the hearing, the Commission asked the Applicant to reconsider the visual impact of the project on FBDP properties and to submit a wetlands study for the nearby wooded ravine. The Commission scheduled an additional hearing for February 4, 2010. (Exs. 50-52; Dec. 10 Transcript, pp. 9-10, 12-78, 187-191.)
5. On January 21, 2010, the Applicant supplemented its application with additional information as requested by the Commission at the December 10, 2009 hearing. (Ex. 62.)
6. The Commission held an additional public hearing on February 4, 2010. Testimony was presented by the Applicant's architect and tree and wetlands consultant. In addition, the Office of Planning ("OP") and the District Department of Transportation ("DDOT") presented testimony. The Commission scheduled an additional hearing for February 17, 2010.
7. The Commission held an additional public hearing on February 17, 2010. Testimony was presented by a representative of the Deputy Mayor for Planning and Economic Development, ANC 7B, organizations and persons in support, and organizations and persons in opposition. FBDP presented testimony from a traffic expert and from the representative homeowners. At the conclusion of the hearing, the Commission requested additional information from the Applicant concerning the following: construction techniques/soil stabilization/erosion control measures that will be used; a construction mitigation and management plan; a matter-of-right analysis for the possible development of the existing R-5-B zoned portion of the Property; additional information on the visual impact of the project; additional consultation between the Applicant and ANC 7B; additional consultation between the Applicant and DDOT; additional information as to when residential uses were first proposed for the project; and refinement of the calculation of the public benefits and project amenities provided in the project. The Commission scheduled an additional public hearing for April 21, 2010.

8. On March 29, 2010, the Applicant submitted additional information in response to the Commission's requests at the February 17, 2010 public hearing. (Ex. 103.)
9. On March 29, 2020, FBBDP submitted a report assessing the adequacy of the Applicant's traffic report. (Ex. 102.)
10. On April 12, 2010, the Applicant submitted a response to FBBDP's traffic report assessment. (Ex. 104.)
11. On April 12, 2010, FBBDP submitted a response to the Applicant's March 29th submission. (Ex. 105.)
12. The Commission held an additional public hearing on April 21, 2010. At the hearing, the Applicant presented rebuttal testimony. After the close of the hearing, the Commission requested more specific information from the Applicant concerning mitigation measures that will be undertaken during the period of construction activity on the Property. The Applicant submitted that information on May 5, 2010. (Ex. 112.)
13. At its public meeting held on May 24, 2010, the Commission took proposed action to approve the application. The Commission ordered the Applicant to submit by June 4, 2010 its final list of proffered benefits for the consolidated PUD, and for each public benefit, propose a draft condition that is both specific and enforceable, and serve the submission on the District of Columbia Office of Zoning ("OZ"), OP, Office of the Attorney General ("OAG"), and the parties. The Commission further ordered that OP and OAG communicate with the Applicant regarding any perceived deficiencies in the Applicant's proposed conditions by June 11, 2010; that the Applicant submit any revisions to the conditions made as a result of this communications to OZ, OP, OAG, and the parties by June 18, 2010; and that OAG, OP, and the parties file any responses to the Applicant's submission by June 25, 2010, with the OAG response treated as a confidential attorney-client communication. The Applicant submitted a final list of proffered benefits and draft conditions on June 4, 2010. OAG and OP discussed the proffer and draft conditions with the Applicant on June 11, 2010. The Applicant submitted a revised list of conditions on June 18, 2010.
14. The proposed action of the Commission was referred to the National Capital Planning Commission ("NCPC") pursuant to the District of Columbia Home Rule Act. NCPC, by action dated May 27, 2010, found the proposed PUD would not affect the federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.
15. At its June 28, 2010 public meeting, the Commission considered the Applicant's list of proffered benefits and draft conditions. The Commission expressed concern over the

lengthy time table proposed for the development, which could extend over 15 years and did not include a certain expiration date, and the same lengthy and uncertain time period established for the delivery of benefits. The Commission directed the Applicant to submit a revised proffer and draft conditions and engage in the same process described in Finding of Fact No. 13, with the Applicant submitting its revised proffer and draft conditions by June 30, 2010; OAG and OP delivering their comments by July 2, 2010; the Applicant submitting its revised proposal by July 6, 2010; and with OAG, OP, and the parties providing final comments by July 9, 2010. The Applicant provided a revised set of conditions on June 30, 2010. OP, OAG, and the Applicant conferred by telephone on July 2, 2010, and the Applicant filed a revised proffer of benefits and conditions on July 6, 2010. Condition No. 2, which required the provision of the public benefits, now included firm deadlines for their delivery. A new Condition No. 3 added enforcement mechanism for any non-delivery. Lastly, the phasing condition, Condition No. 17, was revised to require that all applications for building permits had to be filed within 10 years after the effective date of this Order.

16. FBDP provided its comments on July 9, 2010. FBDP objected to the draft conditions because the Applicant would be permitted to develop the project and provide the public benefits over a 10-year period, but not required to construct the retail uses included in the project.
17. The Commission considered the revised proffers and conditions submitted by the Applicant, and the comments provided by FBDP, at its July 12, 2010 public meeting. The Commission considered the revised conditions to be an improvement, but did not want to delay the delivery of the public benefits, other than the build-out subsidies, for 10 years if all building permits were applied for before then, and requested OAG to Condition No. 2 accordingly. The Commission then took final action to approve the application.

The Subject Property and Surrounding Area

18. The Subject Property consists of two major parcels of land, comprising a total of approximately 18.7 acres. The largest parcel contains the Skyland Shopping Center, which was developed in the 1940s as an early automobile-oriented shopping center. This center contains many retailers and some vacant retail spaces spread among several buildings. A large surface parking lot for patrons of the shopping center is also on the site. The second smaller parcel, located to the east of the shopping center and largely in the ravine, is unimproved and contains construction debris and fill. The District of Columbia acquired the Property through eminent domain and maintains ownership of it. The District of Columbia signed the application form, self-certification form, and agent authorization letter to file and process this application. On April 21, 2010, the Applicant submitted a chart listing the ownership of every property included in the Subject Property. (Ex. 19, p. 1; Ex. 109.)

19. The Subject Property is located among residential and commercial properties. The residential neighborhood of Hillcrest is located to the east. The Fairlawn residential neighborhood is located to the north of the Property. The Good Hope Marketplace is located across Alabama Avenue. (Ex.19, p. 6.)
20. The Hillcrest neighborhood to the east of the Subject Property is low density and includes single-family detached homes. This area is generally zoned R-1-B. (Ex. 20, p. 17.)
21. The Fairlawn neighborhood is located to the north of the Subject Property. The neighborhood generally consists of row-houses and semi-detached residential structures. The area is generally zoned R-5-A. (Ex. 20, p. 17.)
22. The Good Hope Marketplace, located across Alabama Avenue to the south, includes approximately 97,000 square feet of retail space and is anchored by a supermarket. This area is zoned C-3-A. (Ex 20, p. 17.)

Existing and Proposed Zoning

23. The parcel containing the existing Skyland Shopping Center is located in the C-3-A Zone District, and the second parcel to the east is located in the R-5-B Zone District. Under the proposal, the second parcel will be rezoned to C-3-A. (Ex. 20, p. 17.)
24. The Property is included in commercial areas on the District of Columbia Generalized Land Use Map. The Future Land Use Map indicates that moderate-density commercial uses are appropriate for the Subject Property. The Generalized Policy Map designates the Property as a multi-neighborhood center.

Description of the PUD Project

25. The PUD is a mixed-use project in five distinct and self-sufficient development parcels ("Blocks"). The project will include a diverse mix of retail and residential uses in a Town Center setting with a "Main Street" shopping experience that will meet the needs of Ward 7 and 8 residents, as well as District residents at large. The project will incorporate a large format retailer and smaller community-serving retail and services, providing approximately 305,000 square feet of retail space. The residential component will include 450-500 residential units in four buildings, and 20 townhouses will be located along the eastern side of the Property. (Ex. 19, p. 6.)
26. The project will include a private street system that will assist in creating the look and feel of a Town Center. A new Main Street will run in the middle of the project from

Alabama Avenue north to the large format retailer and then west to Naylor Road. A new Residential Street will run from Main Street east and then south to Alabama Avenue. A lively mix of retail establishments will line the new Main Street, Naylor Road, Good Hope Road, and Alabama Avenue in order to create a pedestrian-friendly and inviting retail experience. A large plaza will be located where Main Street intersects the large format retail building. The project will include a pedestrian-only paseo extending from Good Hope Road to Main Street. The project will also include a private system of alleys. (Ex.19, pp. 6-7; Ex. 20.)

27. The project will include many features to enhance the streetscape. Planting strips, street trees, sidewalks, and café zones will all contribute to the pleasurable pedestrian experience. In addition, retailers will be provided the opportunity to create their own distinctive signage and façades at the ground level, rather than having to satisfy a uniform signage requirement. Awnings, canopies, and individual retailer signs will all augment the vibrant streetscape. (Ex. 19, pp. 6-7.)
28. The project will contribute transportation infrastructure improvements to the Subject Property and the area around it. A new signalized intersection will be created at Naylor Road and Main Street. The intersection of Alabama Avenue and Good Hope Road will be modified to include a new street entrance into the project. High visibility crosswalks will be added at all adjacent intersections. In addition, the Applicant has engaged DDOT to include Main Street as part of two existing Metrobus routes that already pass by the Property. To accommodate the buses, Main Street will have a designated bus stop and shelter, and the adjacent roadways will also have bus shelters. The Applicant has also committed to providing space for a bus station/commuter store if DDOT decides to operate such a facility in this location. (Ex. 19, pp. 6-7; Ex. 20, p. 27.)
29. The residential portion of the project will attain a Certified rating in the LEED-for-homes rating system. The large format retail store will be designed to meet the Silver requirements of the LEED NC 2.2 or LEED CS 2.0 rating system. (Ex. 19, p. 3.)
30. The five Blocks will be developed as follows:
 - (a) Block 1. Located at the northwest corner of the Property, Block 1 will front on Naylor Road and Main Street and will consist of one building. A large format retail store, with separate in-line retail spaces provided at the ground floor level, will occupy this site. The building will provide approximately 135,000 square feet of space for the large format retail store and approximately 10,000 square feet for other retailers. In response to concerns from FBDP and the Commission, the Applicant shifted the location of the building 37 feet toward the west and away from the residential area and property line. The building will be separated from the property line by 72 feet. The building will be 28 feet tall as measured from the mid-point of the Main Street frontage, with a distinctive

taller architectural embellishment at the large format retail store's entry. The entry will be two stories, but the remainder of the store will be one story, with parking on the roof. Approximately 630 parking spaces will be provided on the roof and on a half level below grade. The parking areas will be accessed via an internal ramp at the eastern side of the building. Roof lighting will be directed downward, and vegetated screening will be provided on the roof to minimize the impacts of the parking. Loading berths and trash collection areas will be accessed from Naylor Road. (Ex. 19, pp. 9-10; Ex. 62, pp. 1-2.)

- (b) Block 2. Consisting of two buildings (Block 2A and Block 2B), Block 2 will be located along the western edge of the Property. Block 2 will front on Naylor Road, Good Hope Road, and Alabama Avenue, and the internal Main Street will run along its eastern and northern sides. The pedestrian-only paseo will separate the two buildings at ground level, but an elevated pedestrian bridge will connect the two buildings. These two buildings will include approximately 92,000 square feet of ground floor retail with approximately 256 residential units above. Residential units will be available in one-bedroom, one-bedroom plus den, and two-bedroom configurations. Block 2A will be three and four stories tall and rise to a measured height of 56 feet. Block 2B will be three stories tall and rise to a measured height of 56 feet. A pool and open/amenity space will be located on the roof of Block 2A adjacent to the paseo, and it will be available to residents of both buildings. Loading berths for both buildings will be accessed via a dedicated loading drive just north of the paseo. A five-level above-grade parking structure will provide 573 spaces (317 for retail/visitors and 256 for residential) for both buildings. The parking structure will be surrounded by Block 2A, and access will be from Main Street. Block 2A will have a single-loaded corridor along the interior of the building to buffer the parking garage, and no residential units in this building will have windows facing the parking structure. The façades of Block 2 will incorporate several identities to create the notion of a neighborhood rather than one building. Block 2B is a single building with one identity, but the significantly larger Block 2A will be conceptually composed of several buildings. The Good Hope Road/Naylor Road façade of Block 2A will incorporate variegated massing, while the Main Street façade will be on one plane but broken into different identities. Street frontages of the residential units will include balconies, and large courtyards along Naylor Road, Good Hope Road, and the paseo will provide additional light and air for the residential units. Retail spaces will face Naylor Road, Good Hope Road, the paseo, Main Street, and a retail plaza at the northeast corner of Block 2A. This plaza will also serve as the primary lobby for Block 2A. Sidewalks along Main Street will be ten feet wide with eight-foot-wide planting strips. Main Street will have a dedicated parking space for a car-sharing program. (Ex. 19, pp. 10-12; Ex. 62, p. 1.)

- (c) Block 3. Located at the southeast section of the site, this building will front on Main Street and Alabama Avenue. This building will provide approximately 39,000 square feet of ground-floor retail space with approximately 111 residential units above. The building will be four stories and will have a measured height of 51 feet. The ground-floor retail uses may also include small-scale offices. The residential units above the retail will be available in one-bedroom, one-bedroom plus den, and two-bedroom configurations. This building will wrap around a three-story parking garage that will include approximately 245 parking spaces (134 for retail/visitors and 111 for residential). Access to the parking garage will be on the building's east side from the new Residential Street, which runs along the east side of the building. Access to the shared retail/residential loading berths will be from the building's north side, just off Main Street. The roof of the parking garage will be green with vegetation and will have a pool, providing residents with an outdoor amenity. The building will include a double-loaded corridor for the residential portion, so some units will have views of the green roof and pool. Units on the lowest residential level facing the green roof will have outdoor patios. The façade of the building will be primarily masonry but will also be articulated with differing identities to enhance the character of the street. The character of the outdoor space will be further enriched by the outdoor sidewalk space at the northwest corner of the building, which will be ideal for outdoor café seating. (Ex. 19, pp. 14-15.)
- (d) Block 4. This building fronts only on Main Street. The building will provide 29,000 square feet of ground floor retail with 81 residential units above. Like the other buildings in the project, residential units will be offered in one-bedroom, one-bedroom plus den, and two-bedroom configurations. The building will have a measured height of approximately 53.3 feet and will be four stories. A three level parking garage providing approximately 192 spaces (111 for retail/visitors and 81 for residential) will be located at the rear (eastern) side of the building. Access to the parking garage and loading berths will be from an alley off Residential Street, with an additional entrance from the drive next to Block 1. The parking garage will have a vegetated green roof, and a significant landscape buffer will shield the parking garage from the adjacent residential properties. The building façade will consist primarily of masonry with precast elements. The building will be notable for its tower element at the intersection of Main and Residential streets. (Ex. 19, pp. 15-16.)
- (e) Townhouses. The project will include 20 townhouses that will provide a transition from the higher density Blocks 3 and 4 to the lower scale residences to the east of the Property. Access to the townhouses will be via the private residential street, which connects with Alabama Avenue. The townhouses will offer three bedroom units and will be three stories in height, though they will

have the appearance of being two stories. The townhouses will be offered in 18-foot- and 38-foot-wide models and will include front porches and optional decks; some houses will also have front yards. Garage and/or surface parking spaces will be dedicated to each unit, totaling 36 spaces for all of the townhouses. The façades will be in either Tudor or Federal styles and will be composed of colored brick and cast stone. (Ex. 19, pp. 16-17.)

- (f) RCN Building. The Subject Property includes a switching facility for the RCN cable company. The Applicant is required to incorporate this facility into the project as part of the land disposition agreement with the District. The RCN facility will be relocated to a new structure located along the private residential street near its intersection with Alabama Avenue. The appearance of the building will reflect the lower scale townhouse and residential uses to the east of the Subject Property. (Ex. 19, p. 17.)

Applicant's Testimony

- 31. At the public hearing, Gary Rappaport of the Rappaport Companies testified on behalf of the Applicant. Mr. Rappaport provided a background of the Rappaport Companies and an overview of the proposed project's history and development team. (Dec. 10 Transcript, pp. 17-21.)
- 32. Brad Fennell, Senior Vice President for William C. Smith and Company, testified about the company's background and experience in Wards 7 and 8. Mr. Fennell also discussed the company's experience with other redevelopment projects. Mr. Fennell emphasized the company's involvement in the community and its responsiveness to community concerns. (Dec. 10 Transcript, pp. 21-25.)
- 33. Cheryl O'Neill of Torti Gallas testified as the Applicant's expert in architecture. Ms. O'Neill testified about the design and architecture of the proposed project. Ms. O'Neill stated that the project's design will create a vibrant mixed-use environment. Ms. O'Neill also noted the importance of the private street system, especially the new Main and Residential Streets, and many plazas within the project in creating open spaces and a pedestrian-friendly environment. She noted that the townhouses will provide a buffer from the higher-density elements of the project to the lower density residential area to the east. Ms. O'Neill then described how the architecture of the project contributes to a lively pedestrian experience. She stated that the variety of architectural styles, though compatible with the style and scale of the surrounding neighborhood, will enhance the public realm. Ms. O'Neill also highlighted the fact that the design incorporates a number of environmentally-sustainable features, including green roofs. Ms. O'Neill testified to the many features of the project that will decrease its impacts on the neighboring properties. Such features include a green screen and a masonry/metal screen for the parking area of Block 1. (Dec. 10 Transcript, pp. 25-50.)

34. Doug Hays, of Michael Vergason Landscape Architects, testified as an expert in landscape architecture on behalf of the Applicant. Mr. Hays testified about the present vegetation and conditions on the eastern side of the Subject Property. He testified that the understory of the stand was poor and that the stand contained piles of fill and trash. He testified that no noteworthy vegetative community is present that would restrict removal of vegetation subject to the requirements of District of Columbia codes and regulations. He also stated that the Applicant would make every reasonable effort to retain existing trees on the Property. Mr. Hays then testified about the types of trees and other plantings that would be planted along both the internal streets and the public streets adjacent to the project. Mr. Hays also noted the types of furnishings, features, and pavers that would be included in the pedestrian areas of the project. (Dec. 10 Transcript, pp. 50-58.)
35. Erwin Andres of Gorove/Slade Associates testified as an expert in traffic and parking engineering. Mr. Andres stated that the project would not significantly affect traffic conditions at most studied intersections during peak hours because much of the traffic that travels through those intersections is not related to the project. Mr. Andres stated that many of the project's features, including an existing shopping center and a new mixed-use development, would reduce the impacts of incremental trips generated by the project. Mr. Andres also stated that the potential traffic impacts of the project would be further reduced by the existing and planned public transportation services. Mr. Andres noted that the pedestrian experience in the project will be better and safer than the existing conditions. Mr. Andres testified that the Applicant would provide bicycle parking equivalent to the DDOT standard of five percent of the required auto parking. Mr. Andres identified six intersections in and near the project that will be improved to reduce congestion and improve pedestrian safety. (Ex. 19, Tab D; Dec. 10 Transcript, pp. 58-63.)
36. Carrie Thornhill of the Washington East Foundation testified on behalf of the Applicant. Ms. Thornhill testified that the Applicant has engaged in extensive dialogue with the community and that the proposed project has broad community support. She also described the Washington East Foundation's role in development and its role in engaging the community on matters related to the proposed project. She noted that the Applicant has attended many community meetings over the past seven years and that it has actively engaged the community to listen to its concerns about the project. She noted that the Applicant has been a good community partner and that the project has included many modifications in response to community concerns. (Dec. 10 Transcript, pp. 63-68.)
37. Stephen Green of William C. Smith and Company testified on behalf of the Applicant. Mr. Green testified to the proposed community benefits. Included in these benefits are public space improvements to increase pedestrian safety, environmentally-sustainable

design features, neighborhood financial contributions, sponsorships of local community events, job preparedness and training, a small contractor loan fund, a retail build-out subsidy for small and local retailers, home ownership/buying counseling, and space dedicated to a commuter store. Mr. Green stated that it is not viable to build the entire project in one phase. Mr. Green also noted that the proposed number of parking spaces is essential to attract a large format retailer, but the Applicant is willing to assess the number of required spaces in later phases of development. The Applicant is committed to the fewest number of spaces for a feasible project and submitted an assessment matrix for determining the number of parking spaces that will be constructed in later phases of the development of the project. Finally, Mr. Green testified that the Applicant is concerned about the possible impact of construction activity on the nearby properties. He stated that the Applicant is committed to a series of construction mitigation measures. (Exs. 50, 51; Dec. 10 Transcript, pp. 68-78.)

Density Proposed and Flexibility Requested

38. The total gross floor area included in the proposed PUD project is approximately 1.3 million square feet for a total floor area ratio ("FAR") of approximately 1.61. The commercial density is approximately 0.95 FAR. Building heights range from 53 to 60 feet. The proposed density and building heights are significantly less than those permitted as a matter-of-right in the C-3-A zone (4.0 [2.5 commercial] FAR and 65 feet, respectively) and significantly less than the PUD guidelines (4.5 [3.0 commercial] FAR and 90 feet, respectively). (Ex. 19, p. 17; Ex. 20, pp. 18-19.)
39. The Applicant requested permission to construct more than one building on a single record lot pursuant to § 2516. The Applicant requested flexibility from the following requirements of the Zoning Regulations: (i) the rear yard requirements for 11 of the townhouse lots and for Block 3; (ii) the side yard requirements for Blocks 2 and 4, and the townhouse lot adjacent to Block 4 and the private alley; and (iii) the lot occupancy requirement for one of the townhouse lots. The Commission has the authority to grant this flexibility pursuant to §§ 2405.4, 2405.5, and 2405.7 of the Zoning Regulations. (Ex. 19, p. 18.)
40. The Applicant requested flexibility from the strict application of the roof structure requirements of the Zoning Regulations in order to allow roof structures on the buildings in Blocks 1-4 that do not satisfy the requirements that roof structures be enclosed in a single structure of equal height and set back from all exterior walls at a ratio of 1:1. The Commission has the authority to grant this flexibility pursuant to § 2405.7. (Ex. 19, pp. 18-19.)
41. The Applicant requested flexibility from the strict application of closed court width requirements of the Zoning Regulations for Blocks 2A and 2B. The proposed design and layout of these buildings will provide sufficient light and air to the residential units,

and this flexibility will not adversely affect residents of these buildings or nearby property owners. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 19, p. 19.)

42. The Applicant requested flexibility from the loading requirements of the Zoning Regulations for Blocks 3 and 4. The project will provide shared loading for the retail and residential facilities in these Blocks. These loading facilities will adequately serve the needs of the buildings. The Commission has the authority to grant this flexibility pursuant to § 2405.5. (Ex. 19, p. 19.)
43. The PUD will be constructed in phases. The Applicant expects that the first stage will consist of Blocks 1 and 4 and the relocation of the RCN building, along with the construction of Main Street. Grading of the Residential Street will also be completed in the first phase. Since the additional phases will be determined by market demand, the Applicant has requested flexibility to develop the additional Blocks as it deems appropriate. The Applicant requested that the Order be valid for three years after which time a building permit must be applied for at least one building, with construction to begin a year afterward, and requested 10 years to develop the project. (Ex. 19, p. 20.)
44. The Applicant provided significant testimony on its need to construct all 1,698 parking spaces for the project based on the requirements of potential large format retailers. The Applicant proposed an assessment matrix to review demand for parking spaces in later phases of the project. The Commission grants the Applicant flexibility to construct all proposed 1,698 parking spaces or less if later phases reveal that not all of these spaces are necessary. (Ex. 19, p. 20; Ex. 51.)

Public Benefits and Project Amenities of the PUD Project

45. The Applicant, in its written submissions and testimony before the Commission, noted that the following benefits and amenities will be created as a result of the project, in satisfaction of the enumerated PUD standards in 11 DCMR § 2403:
 - (a) Housing and Affordable Housing: Pursuant to § 2403.9(f) of the Zoning Regulations, the PUD guidelines state that the production of housing and affordable housing is a public benefit that the PUD process is designed to encourage. This project will create approximately 450-500 residential units, with 20% of the units (90-100) reserved for households earning up to 80% of Area Median Income ("AMI") and an additional 10% of the units (45-50) reserved for households earning up to 120% of AMI. The affordable units will be located in all of the multi-family buildings and will be distributed throughout these buildings (except for the upper stories). The amount of affordable housing provided is more than double what is required under the Inclusionary Zoning Regulations. These affordable units will be reserved for a term that is consistent

with the affordability covenant that will be recorded in the DC Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia. (Ex. 19, p. 23.) Because the Applicant did not request flexibility from the Inclusionary Zoning Regulations, it must still comply with the set-aside, control period, and other requirements of Chapter 26 unless the project falls into one of the exempted categories.

- (b) Urban Design, Architecture, Landscaping, or Creation of Open Spaces: Section 2403.9(a) lists urban design and architecture as categories of public benefits and project amenities for a PUD. The project exhibits all of the characteristics of exemplary urban design and architecture. The project will create the first pedestrian-oriented mixed-use project for residents of Wards 7 and 8. The architecture of the buildings is thoughtful and timeless and includes only high-quality materials, and is consistent with the surrounding neighborhood. The façades and buildings along Main Street and the frontages along Alabama Avenue, Good Hope Road, and Naylor Road will provide significant opportunities for sidewalk cafes and varied retail uses to animate the neighborhood. Defined public spaces, such as the paseo, Retail Plaza, and Main Street Plaza will provide ample gathering spaces. In addition, the project will incorporate low-impact development and landscaped buffers for the low-scale residential uses along the eastern boundary of the site. (Ex. 19, p. 24.)
- (c) Site Planning, and Efficient and Economical Land Uses: Pursuant to § 2403.9(b) of the Zoning Regulations, “site planning, and efficient and economical land utilization” are public benefits and project amenities to be evaluated by the Commission. The creation of this significant mixed-use project on the Subject Property, with housing and varied retail and service uses, is an example of appropriate site planning and efficient and economical land use as a project amenity. Currently, the Property feels very suburban and uninviting due to the large expanse of surface parking lots located in front of the existing buildings. The Applicant will utilize a soil improvement method to make the fill and debris portion of the site suitable for development. In addition, the introduction of the internal streets will create more distinct and identifiable development parcels on a human scale. The creation of a mixed-use environment allows people to live and shop in the same location, while the availability of Metrobus service also demonstrates efficient and economical use of land. (Ex. 19, p. 25.)
- (d) Effective and Safe Vehicular and Pedestrian Access: The Zoning Regulations, pursuant to § 2403.9(c), state that “effective and safe vehicular and pedestrian access” can be considered public benefits and project amenities. The Subject Property currently has 11 site access points which create far too many

vehicular/pedestrian conflicts. Vehicular access to the site will be reduced to six access points, thereby reducing the potential for vehicular/pedestrian conflicts. In addition, the Applicant will fund the following transportation infrastructure improvements to remedy existing and potential traffic problems in the area:

- Installation of a new signalized intersection at Naylor Road and the project's Main Street;
- Pavement restriping on Naylor Road to increase capacity;
- Improvements to the existing intersection at Good Hope Road and Naylor Road/25th Street;
- Modification of the signalized intersection at Alabama Avenue/Good Hope Road and Main Street;
- Installation of a new signalized intersection at Alabama Avenue and the New Residential Street; and
- The creation of high visibility pedestrian crosswalks at intersections adjacent to the Subject Property and throughout the project's internal street system.

The Applicant submitted a Transportation Impact Study and a Transportation Management Plan ("TMP"). The TMP includes the following components:

- Dedicated parking spaces for car-sharing vehicles;
- The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation;
- The Applicant will request that all retailers and employers provide all employees with a Metrocheck or SmarTrip Card with a value of \$20.00 to encourage the use of public transit; and
- The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project.

The Traffic Impact Study concluded that with the implementation of the transportation infrastructure improvements and TMP programs noted above, "the proposed development would not have any appreciable objectionable impacts on the surrounding roadway network and adjacent communities, from the perspectives of traffic and parking." (Ex. 19, pp. 25-26.)

- (e) Uses of Special Value: According to § 2403.9(i), "uses of special value to the neighborhood or the District of Columbia as a whole" are deemed to be public

benefits and project amenities. The Applicant has agreed to provide the following project amenities as a result of this project:

- Transportation Infrastructure Improvements - the transportation infrastructure improvements noted above will cost the Applicant approximately \$1 million - \$1.2 million dollars; and
 - Community Benefits and Amenities - The Applicant has committed to a community amenities package with a value totaling \$5,249,325. (Ex. 19, p. 26; Ex. 103.) The specifics of these benefits and amenities are set forth in Condition No. 2 of this Order.
- (f) Revenue for the District: Section 2403.9(i) states that “uses of special value to the neighborhood or the District of Columbia as a whole” are deemed to be public benefits and project amenities. The creation of approximately 450-500 new households and approximately 305,000 square feet of retail space will result in the generation of significant additional tax revenues for the District. (Ex. 19, p. 27.)
- (g) Employment and Training Opportunities: According to § 2403.9(e), “employment and training opportunities” are representative public benefits and project amenities. The proposed retail and service-oriented uses will result in the creation of a significant number of new jobs. The Applicant will enter into an agreement to participate in the Department of Employment Services First Source Employment Program to promote and encourage the hiring of District of Columbia residents. The Applicant will also enter into a Certified Business Enterprise Utilization Agreement with the Department of Small and Local Business Development (“DSLBD”) to utilize Certified Business Enterprises in the design, development, and construction of the Project. (Ex. 19, p. 27.)
- (h) Comprehensive Plan: According to Section 2403.9(j), public benefits and project amenities include “other ways in which the proposed planned unit development substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan.” The proposed PUD is consistent with and furthers many elements and goals of the Comprehensive Plan. (Ex. 19, p. 27.)
- (i) Public Benefits of the Project: Sections 2403.12 and 2403.13 require the Applicant to show how the public benefits offered are superior in quality and quantity to typical development of the type proposed. This PUD project will include many, if not all, of the attributes of PUD projects that have been recently approved by the Commission, including:

- Exemplary/superior architecture;
- Affordable housing;
- Transit-oriented development;
- Destination retail and service establishments;
- Traffic calming measures and transportation infrastructure improvements;
- Significant job creation;
- Public space improvements (\$169,250);
- Pocket park improvements (\$50,000);
- Low impact design features;
- Financial support for local schools to make capital improvements (\$200,000);
- Sponsorship of local community events and programs (\$35,000);
- Job preparedness training (\$75,000);
- Contractor loan fund (\$300,000);
- Homeownership/Home buying counseling (\$75,000);
- Enhancements to Anacostia and Francis Gregory Libraries (\$50,000); and
- Retailer build-out subsidy (\$500,000). (Ex. 19, pp. 28-33; Ex. 50.)

Comprehensive Plan

46. The proposed PUD is consistent with, and fosters numerous policies and action items enumerated in, the Comprehensive Plan. The Subject Property is located in the Far Northeast and Southeast Planning Area delineated in the Comprehensive Plan. The Comprehensive Plan's Far Northeast and Southeast Elements include the following pertinent provisions:

Reinvestment in Skyland is an important part of the District's efforts to provide better shopping options for neighborhoods east of the Anacostia River, reduce the loss of retail dollars to the suburbs, and make the East of the River area more attractive to existing and future retailers. To be most effective, planned improvements should be part of a broader strategy to enhance the Alabama/Good Hope area as a focal point for surrounding neighborhoods such as Hillcrest and Fairlawn, and to upgrade the Naylor Road corridor as a gateway to Far Northeast and Southeast and Historic Anacostia.

Policy FNS-2.7.1: Skyland Revitalization

Revitalize Skyland Shopping Center as an essential, dynamic community-scale retail center. Together with the Good Hope Marketplace, these two centers should function as the primary business district for adjacent neighborhoods, providing a diverse array of quality goods and services for area residents.

Action FNS-2.7.B: Fort Baker Drive Buffering

Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive.

Policy FNS-1.1.2: Development of New Housing

Encourage new housing for area residents on vacant lots and around Metro Stations within the community, and on underutilized commercial sites along the area's major avenues. Strongly encourage the rehabilitation and renovation of existing housing in Far Northeast and Southeast, taking steps to ensure that the housing remains affordable for current and future residents.

Policy FNS-1.1.3: Directing Growth

Concentrate employment growth in Far Northeast and Southeast, including office and retail development, around the Deanwood, Minnesota Avenue and Benning Road Metrorail station areas, at the Skyland Shopping Center, and ...

Provide improved pedestrian, bus, and automobile access to these areas, and improve their visual and urban design qualities. These areas should be safe, inviting, pedestrian-oriented places.

Policy FNS-1.1.4: Retail Development

Support the revitalization of the neighborhood commercial areas listed in Policy FNS-1.1.3 with new businesses and activities that provide needed retail services to the adjacent neighborhoods and that are compatible with surrounding land uses.

Policy FNS-1.1.9: Congestion Management

Re-examine traffic control and management programs along major far Northeast and Southeast arterials streets, particularly along Pennsylvania and Minnesota Avenues, East Capitol Street, Benning Road, Branch Avenue, and Naylor Road, and develop measures to improve pedestrian safety and mitigate the effects of increased local and regional traffic on residential streets.

Policy FNS-1.1.10: Transit Improvements

Improve bus service to the Metrorail stations from neighborhoods throughout Far Northeast and Southeast, particularly in the southern part of the Planning Area.

The proposed project furthers all of the Policies noted above. The project will create a vibrant and exciting pedestrian-oriented mixed-use project on the site of the existing Skyland Shopping Center that will serve residents of the adjacent neighborhoods, as well as residents of Wards 7 and 8. The proposed landscaping of the project and the treatment of the retaining wall along the northeast corner of the Subject Property will create a suitable buffer between the project and the residential uses east of the site. The project proposes a robust TMP that will mitigate any adverse transportation impacts that may result from

this project. The project also proposes significant improvements to the Metrobus service in the area surrounding the Subject Property.

47. The Comprehensive Plan identifies the Property as a Multi-Neighborhood Center. The Comprehensive Plan's Generalized Policy Map defines a Multi-Neighborhood Center as follows:

Multi-neighborhood centers contain some of the same activities as neighborhood centers but in greater depth and variety. Their service area is typically one to three miles. These centers are generally found at major intersections and along key transit routes. These centers might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade. Mixed-use infill development at these centers should be encouraged to provide new retail and service uses, and additional housing and job opportunities. Transit improvements to these centers are also desirable.

The proposed Project is entirely consistent with this land use designation. The Project will include a variety of retail and service-oriented uses. The inclusion of a large format retail store establishes the site as a true multi-neighborhood center. The introduction of the residential units on the Subject Property is also entirely consistent with this land use designation. In addition, the Project will result in significant transit improvements that will benefit the surrounding neighborhoods and communities.

48. The Comprehensive Plan's Land Use Element addresses Neighborhood Commercial Districts and Centers and notes:

LU-2.4 Neighborhood Commercial Districts and Centers

Many District neighborhoods, particularly those on the east side of the City, lack well-defined centers or have centers that struggle with vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing can encourage their revival.

Policy LU-2.4.1: Promotion of Commercial Centers

Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be

inviting and attractive places, and should support social interaction and ease of access for nearby residents.

The proposed project is the type of development that is sought in the above-mentioned Land Use policies. The proposed retail and service-oriented uses will enliven the surrounding area and provide opportunities for District residents to purchase goods and services in the District. The project will also create significant job opportunities for District residents. The high quality of design and finishes in both the retail and housing components of the project will create an inviting and attractive experience that will help ensure the project's long term success.

49. The Comprehensive Plan's Housing Element includes the following policies that are supported by this project:

Policy H-1.1.4: Mixed Use Development

Promote mixed-use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations.

The project's provision of approximately 450-500 residential units, including 20% of the units reserved for households earning up to 80% of AMI and an additional 10% of the units reserved for households earning up to 120% of AMI, in a neighborhood commercial center is consistent with this Policy.

50. The Comprehensive Plan's Transportation Element includes the following policies that are supported by this project:

Policy T-3.1.1: Transportation Demand Management (TDM) Programs

Provide, support, and promote programs and strategies aimed at reducing the number of car trips and miles driven (for work and non-work purposes) to increase the efficiency of the transportation system.

Policy T-3.1.3: Car-Sharing

Encourage the expansion of car-sharing services as an alternative to private vehicle ownership.

The Applicant's TMP is consistent with these policies of the Transportation Element of the Comprehensive Plan.

Government Agency Reports and District Government

51. By report dated November 30, 2009, OP recommended that the proposed PUD and related Zoning Map amendment should be approved. In its report, OP stated, "The

proposal is not inconsistent with the 2006 Comprehensive Plan, Future Land Use Map that recommends moderate density commercial for the majority of the property and Generalized Policy Map recommendation for a multi-neighborhood center for the property. The development is also consistent with many of the policies for the Far Northeast ... Area.” (Ex. 31, p. 1.)

52. In testimony at the public hearing and as noted in its November 30, 2009 report, OP expressed concerns about the number of parking spaces in the project. OP stated its belief that the number of spaces is excessive and that they have met with the Applicant to discuss the possibility of reducing the number of spaces in the project. (Ex. 31, pp. 6-7.)
53. OP recommended that the Commission approve the number of parking spaces associated with the first phase of development (Blocks 1 and 4). OP also recommended that the Applicant be required to return to the Commission for later phases of development to determine whether the proposed number of parking spaces is necessary. This would be based on a collaborative analysis between OP and the Applicant. (Feb. 4 Transcript, p. 14.)
54. OP also recommended that the Applicant provide space in the project for a commuter store. The store would provide information on transit services, as well as offering SmarTrip cards, student/senior passes, bus schedules, SmartBike information, and car-sharing information. OP also requested that the Applicant provide security and cleaning services for the space. OP noted that the Applicant agreed to this and noted that staffing and operation of the commuter store would be the District’s responsibility. (Feb. 4 Transcript, p. 69.)
55. OP stated that the Applicant requested “only a minimum amount of flexibility which does not affect the FAR, density, or height allowed by-right in the C-3-A district.” At the same time, OP noted that the Applicant will provide a suitable number of amenities based on the flexibility requested. (Ex. 31, p. 8; Feb. 4 Transcript, p. 71.)
56. OP stated in its report and at the hearing that the Fire and Emergency Medical Services Department (“FEMSD”) submitted comments that noted concerns about emergency access to all of the buildings in the project and truck-turning radii. FEMSD also noted concerns about the layout of fire hydrants. Both concerns were based on the project’s compliance with the D.C. Fire Code. (Ex. 31, p. 16; Feb. 4 Transcript, pp. 69-70.)
57. By its report dated December 7, 2009, DDOT recommended conditional support of the PUD and related Zoning Map amendment. DDOT agreed with the Applicant that the Project would not have significant transportation impacts. It stated that the Applicant is following DDOT’s policy for a TDM program. (Ex. 36, p. 2.)

58. In its testimony at the public hearing and in its report, DDOT noted its concerns with pedestrian safety around the project and its desire for additional pedestrian safety measures. DDOT stated that it is concerned about the increased number of pedestrians crossing the street because of this development and that many of the intersections are unsafe for pedestrians. It also noted that curb radii create pedestrian safety hazards. It identified certain locations near the Property that should be improved for safety. DDOT noted that the Applicant agreed to install three traffic signals to improve pedestrian safety. (Ex. 36, pp. 3-4; Feb. 4 Transcript, p. 135.)
59. In its testimony at the public hearing and in its report, DDOT noted its concerns with the proposed curb cuts. DDOT stated that two of the proposed curb cuts are problematic for DDOT's pedestrian safety standards. (Ex. 36, p. 4; Feb. 4 Transcript, p. 135.)
60. In its report, DDOT noted its concern with the excessive number of parking spaces. DDOT also expressed concern with the unloading of freight to the retail fronting on Main Street. DDOT also noted its desire for a commuter store in space provided by the Applicant. (Ex. 36, pp. 3-5.)
61. By a report dated January 21, 2010, the Urban Forestry Administration ("UFA") recommended approval of the PUD and related map amendment with conditions. UFA recommended that the Applicant undertake several mitigation techniques to address the loss of some of the urban forest and to minimize erosion and stormwater runoff in the ravine to the east of the Property. (Ex. 63.)
62. The District Department of the Environment ("DDOE") submitted a report on the proposed PUD and related Zoning Map amendment. DDOE recommended that the Commission require the proposed environmental design elements as proposed by the Applicant. The report also noted that further detailed review regarding green building and stormwater management would be conducted at the building permit stage. (Ex. 31, p. 16.)

ANC 7B Report

63. ANC 7B submitted a letter in support of the application on December 3, 2009. The letter stated that, on November 19, 2009, the ANC unanimously voted to approve a motion in support of the PUD and related Zoning Map amendment application, provided that the Applicant first meets four conditions. The first condition states a request that the Applicant executes a "construction management agreement, bond, or equal instrument" and reasonably meets the concerns of the residents of the four homes on Ft. Baker Drive located on land adjacent to the Property. The concerns of the residents relate to the impact of rezoning the transitional R-5-A Zone District located closest to their homes to the more intensive C-3-A Zone District proposed by the

Applicant, and the higher intensity uses and development on land that is contiguous with the four properties and just a few feet from the homes. The second condition is a request that the Applicant enter into an agreement that addresses the concerns of the Ft. Baker Drive residents and ANC 7B related to adequate buffering of the residents from the PUD project as expressed in paragraph FS-2-7-B of the Comprehensive Plan. The third is a request that the Applicant review the project to determine a design, location, and/or operation that minimizes the visibility of the Block 1 roof top parking area ramp to adjacent residential property to the north, minimizes the noise impact of vehicular and loading activity on the ramp, and prohibits truck traffic serving the PUD from using 30th Street between Park Drive and Alabama Avenue. Also included in the third condition is a request that the Applicant take measures to restrict residents and employees of the project from obtaining residential parking permits allowing them to park on neighborhood streets. The fourth condition is a request that the Applicant enter into an agreement to provide the community with a list of 21 proposed community benefits. (Ex. 33.)

64. At the public hearing, ANC 7B Commissioner Robert Richards and Kenneth Davis represented ANC 7B and testified on its behalf. Mr. Davis testified to the ANC's conditions of support for the Applicant's proposed project. (Feb. 17 Transcript, pp. 25-32.)
65. The Commission noted that the list of benefits requested by the ANC differs from that proposed by the Applicant. The Commission asked the ANC to revisit its requested 21-item community benefits package and to engage the Applicant in additional discussions about the benefits package. (Feb. 17 Transcript, pp. 33-34.)
66. In response to the Commission's requests, on March 29, 2010, the ANC submitted a revised list of community benefits. The ANC stated that it had engaged in further discussion with the Applicant. The ANC removed four items from its previous list and added an item for a total of 18 requested benefits. However, the list did not match that proposed by the Applicant. The report did not state any additional issues or concerns of the ANC regarding the PUD project. The letter did not indicate whether it was approved by the ANC at a properly noticed public meeting through a majority vote of the ANC representatives with a quorum present. (Ex. 100.)

Parties in Support

67. There were no parties in support of the application.

Persons in Support

68. Eric Jenkins, Development Manager in the Office of the Deputy Mayor for Planning and Economic Development, testified on behalf of the Deputy Mayor in support of the

Applicant's proposed PUD and related Zoning Map amendment. Mr. Jenkins noted how the project will generate over 1,740 construction jobs and 690 permanent jobs. In addition, Mr. Jenkins stated that the project is estimated to generate more than \$303 million in tax revenue over a 20-year period. He emphasized the positive social and economic impact of the project on the residents of Ward 7 and the considerable public benefits package offered by the Applicant. (Feb. 17 Transcript, pp. 7-12.)

69. Karen Lee Williams, of the Hillcrest Community Association ("HCCA"), testified in support of the Applicant's proposed PUD and related Zoning Map amendment. Ms. Williams stated that HCCA supports the application and that the Applicant's team has been open, forthright, and accessible. She also noted that the Applicant has upheld its commitments and has been responsive to community concerns. She concluded by stating that HCCA's board of directors passed a resolution in support of the proposed PUD and related map amendment. (Feb. 17 Transcript, pp. 48-54.)
70. Villareal Johnson of the Washington East Foundation and Eugene Dewitt Kinlow, resident of 3952 2nd Street S.W., testified in support of the Applicant's proposed PUD and related Zoning Map amendment. They noted how the proposed mixed-use project will enhance the neighborhood and will bring a much needed and important mix of retail and services to Wards 7 and 8. They also noted how the proposed project will improve the quality of life for residents nearby. (Feb. 17 Transcript, pp. 56-62.)
71. Julius Ware of the Ward 7 Business and Professional Association testified in support of the proposed PUD and related Zoning Map amendment. He noted that the project will create jobs and opportunities for businesses and residents in Ward 7. He also expressed his confidence in the Applicant's proposed community benefits package and the Applicant's ability to work with the community on the community benefits package. (Feb. 17 Transcript, pp. 62-65.)
72. Ten people submitted letters and/or written testimony in support of the proposed PUD and related Zoning Map amendment. Among others, Councilmembers Marion Barry and Kwame Brown submitted letters in support of the project. (Exs. 27, 32, 42, 43, 48, 61, 66, 69, 91, 92.)

Party Status Requests

73. HCCA filed a request for party status on November 24, 2009. They subsequently withdrew their request for party status on November 30, 2009. (Exs. 28, 35.)
74. On November 25, 2009, a group of four residents living on nearby Ft. Baker Drive requested party status in opposition. The Commission granted party status to the Ft. Baker Drive Party. (Ex. 29.)

Parties in Opposition

75. At the February 17, 2010 public hearing, FBDP presented testimony in opposition to the proposed PUD and related Zoning Map amendment. FBDP noted three major problems with the PUD application: traffic-related impacts; inconsistency with the Comprehensive Plan; and the insufficiency of the project's benefits and amenities package. FBDP's traffic and parking consultant, Joe Mehra (admitted as an expert), testified that, in his opinion, the Applicant's traffic study had five shortcomings. On March 29, 2010, FBDP submitted a written report from Mr. Mehra assessing the Applicant's traffic study. (Ex. 102; Feb. 17 Transcript, pp. 128- 131.)
76. Ronald Cole, owner of 2933 Ft. Baker Drive; Gary Puckerin, owner of 2929 Ft. Baker Drive; Karen Siebert, owner of 2937 Ft. Baker Drive; and Cynthia Brock-Smith, resident of the 2900 block of Ft. Baker Drive (all members of FBDP), testified in opposition to the proposed PUD and related Zoning Map amendment. These individuals stated concerns with the rezoning of the R-5-A zoned area on the eastern edge of the Subject Property, with the close proximity of Blocks 1 and 4, with the height and scale of Block 1, with the loss of forest views and privacy in the ravine between their properties and the project, and with the large scale of the project. They also testified that they believe that the project will adversely affect traffic, light and air, security, environmental quality, and property values. (Feb. 17 Transcript, pp. 133-143.)
77. FBDP individuals testifying in opposition to the application expressed concerns about the project being incompatible with the neighborhood. They objected to the access to the parking in Block 1 and the related consequences of frequent traffic in the Block 1 parking garage. The testifying individuals also noted their concerns that the loss of the R-5-A zoned area will allow for high density development close to their homes that is incompatible with their low density neighborhood; they expressed a strong desire to maintain a natural buffer between their properties and the project. FBDP testified in objection to the residential component of the project and expressed a desire for only a commercial project. (Feb. 17 Transcript, pp. 143-160.)
78. FBDP individuals expressed concerns with possible soil erosion in the ravine between the Subject Property and the Ft. Baker Drive properties. FBDP noted that, in their opinion, the soil quality in the ravine is poor and unstable because it was once a dumping site. FBDP also expressed concern with the possibly harmful effects of construction on their properties because of the unstable ground in the ravine and the possibility that construction will exacerbate problems they already have with their homes. (Feb. 17 Transcript, pp. 143-160.)
79. FBDP testified that they believe a natural spring runs in the ravine. These individuals stated their concerns that the steep slope of the ravine adjacent to Block 1 will be unable to support such a large development and will damage their homes. FBDP

requested the Commission to require an environmental assessment and impact study by the Applicant to verify that FBDP's homes will not be damaged. (Feb. 17 Transcript, pp. 160-166.)

Persons in Opposition

80. Ronald Mitchell, Mary Rose Green, ANC 7B Commissioner Robin Hammond-Marlin, Kimberly Jones, and Yvonne Bing all testified in opposition to the proposed PUD and related Zoning Map amendment. These people testified to their concerns about density, traffic, parking, pedestrian safety, noise, environmental impacts, inadequate community benefits, ownership of land included in the Subject Property, and a construction management plan. (Feb. 17 Transcript, pp. 82-95.)
81. Approximately 26 people or organizations submitted letters in opposition to the proposed PUD and related Zoning Map amendment. (Exs. 34, 37-41, 44, 47, 57-60, 64, 65, 67, 68, 70-74, 83, 84, 95, 97, 98.)
82. Elaine Mittleman, attorney for several previous owners of the Subject Property, submitted letters into the record noting concerns about the status of the title to the properties included in the Subject Property and questioning whether the District of Columbia held proper title to all of the properties that make up the Subject Property. Ms. Mittleman also raised questions regarding the satisfaction of the PUD filing requirements, requested information about the contractual relationship between the Applicant and the District of Columbia Government, requested information about the identity of the potential anchor tenant, raised concerns about the project's impact on the existing tenants, and raised concerns about the previous legal representation of some of the previous property owners. (Exs. 14, 83).

Applicant's Responses

83. In response to questions from the Commission, the Applicant submitted additional information and modifications to the project on January 21, 2010. The Applicant moved the Block 1 building away from the property line adjacent to Ft. Baker Drive an additional 37 feet, for a total distance of 72 feet. This change removed approximately 10,000 square feet of retail space along Naylor Road. The change also eliminated the need for a retaining wall system along the ravine and maintains a larger portion of the slope into the ravine. The Applicant also added more landscaping buffer to diminish the appearance of Block 1 from Ft. Baker Drive. The Applicant relocated the ramp to the roof parking area in Block 1 to be completely within the building, thereby minimizing noise from cars. (Ex. 62.)
84. In response to UFA's concerns and requests from the Commission, on February 4, 2010, the Applicant submitted a report and provided testimony from Lynn Straughan, an

expert in arboriculture and wetland delineation. Ms. Straughan testified about the vegetation in the ravine to the east of the Subject Property. She testified that the site contains no noteworthy vegetative community and consists of many invasive species; she stated that nothing would restrict the removal of vegetation on the site under the requirements of the D.C. Code. She testified that the area includes only 17 Special Trees (as defined in the Urban Forest Preservation Act of 2002), and one of those will be preserved. In addition, many of the trees are in poor condition, and many will be replaced. The Applicant submitted a chart to the Commission which explains the proposed tree removal and replacement on the Property. This chart showed that the total caliper amount of trees to be planted on the Property is greater than the total caliper amount of the Special Trees proposed to be removed. Ms. Straughan explained that the ravine was once cleared of vegetation. Ms. Straughan also explained that the area in question is not wetlands or waters of the U.S. because it does not meet the criteria set forth by the Army Corps of Engineers. (Exs. 62, 76, 77; Feb. 4 Transcript, pp. 20-24.)

85. The Applicant addressed FEMSD's concerns in its January 11, 2010 filing by submitting a copy of the letter it sent to FEMSD stating that the Applicant will take all necessary measures to ensure the project's compliance with the D.C. Fire Code. FEMSD submitted a follow-up report (via OP) stating that their issues had been resolved. (Exs. 62, 101.)
86. In response to the assessment submitted by FBDP concerning the Applicant's traffic study, the Applicant submitted additional information on its traffic study. The Applicant's traffic engineering expert noted that the data and methods in his reports were appropriate and provided an accurate assessment of the project's impact on traffic. (Ex. 104.)
87. In response to questions and requests from the Commission at the February 17, 2010 public hearing, the Applicant submitted additional information on March 29, 2010:
 - The Applicant stated that it will use construction techniques that will have no or few impacts on neighboring properties. Such techniques will include dynamic compaction and/or stabilizing the existing soil. In lieu of dynamic compaction, the Applicant may use soil surcharging, compaction grouting, mat foundations, and drilled micro piles. The Applicant noted that all of the proposed construction techniques could be utilized on the Property in a manner that will effectively mitigate construction impacts on FBDP properties;
 - The Applicant stated that it will provide on-site seismic/vibration monitoring for the Ft. Baker Drive properties during construction;
 - The Applicant noted that the proposed construction measures will also reduce stormwater flow toward Ft. Baker Drive through an on-site stormwater management system;

- The Applicant reiterated that the proposed Tree Preservation Area will reduce any further erosion and a newly planted vegetation area will further stabilize the slope area of the ravine;
- The Applicant noted that it had presented FBDP with a draft Construction Mitigation Agreement in December 2009 but had not received a written response to that Agreement;
- The Applicant prepared a matter-of-right analysis for the existing R-5-B area of the Property. This analysis demonstrated that a matter-of-right multi-family residential building in this area could be 30.5 feet taller than the proposed Block 1 and 22.5 feet taller than the proposed Block 4, and would have a greater impact on the neighboring properties. The Applicant also provided shadow studies which depicted the impact that the proposed project, and a possible matter-of-right residential building, would have on FBDP properties;
- The Applicant also provided information on a “balloon test” that it conducted on March 16, 2010 to depict the visual impact of the proposed project. The test revealed that the visual impact would be negligible;
- The Applicant stated that it has engaged ANC 7B in a dialogue about the ANC’s conditions of support, and they have come to agreement on many of these. The Applicant reassessed its public benefits and amenities and submitted a revised chart describing these benefits and amenities;
- After meeting with DDOT, the Applicant agreed to modify the ingress/egress point for Block 2; and
- The Applicant stated that the proposed residential use for the project was first presented to the community by representatives of the National Capital Revitalization Corporation on August 19, 2006. (Ex. 103.)

88. In response to concerns about ownership of the lots comprising the Subject Property, the Applicant submitted a chart illustrating the ownership of all of the lots. The chart demonstrates to the satisfaction of the Commission that the District has title to all of the properties that are included in this project. The Commission further finds that the District of Columbia government submitted the appropriate agent authorization letter into the record. All of the properties included in the PUD project are contiguous and the required notice was provided to all current lessees on the property. These lessees were given the opportunity to participate in this process and make their concerns known. The other issues raised in the letter of Ms. Mittleman concerning a request for more information of the agreement between the District and Applicant, the identity of a possible anchor tenant, and the legal representation of previous property owners are outside the scope and review authority of the Commission. (Ex. 109.)

89. In response to concerns from the Commission at the April 21, 2010 public hearing, on May 5, 2010, the Applicant submitted a list of the construction mitigation measures that it will follow during construction of the project. Such measures include monitoring of construction activity impacts on Ft. Baker Drive properties; a commitment to repair, at

its own expense, any damage that may occur during construction; site management, including fencing, erosion control, frequent trash removal, and direction of construction traffic; and designation of an on-site construction representative to answer questions and respond to concerns. (Ex. 112.)

Satisfaction of the PUD and Zoning Map Amendment Approval Standards

90. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse effects.” (11 DCMR § 2403.8.) The Applicant’s March 29, 2010 submission noted that it believes the total value of the project and community amenities provided in this project is \$5,249,325. Given the significant amount and quality of the project amenities and public benefits included in this PUD and related Zoning Map amendment application, the Commission finds that the development incentives to be granted for the project and the related rezoning are appropriate. The Commission also finds that the requested areas of flexibility from the requirements are consistent with the purpose and evaluation standards of Chapter 24 of the Zoning Regulations and are fully justified by the superior benefits and amenities offered by this project. The Commission notes that the amount of development proposed in this PUD project (approximately 350,000 square feet) is significantly less than the amount of development that could occur on the Property as a matter-of-right (approximately 1.6 million – 2.1 million square feet).
91. The Commission finds that the project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities relating to affordable housing, urban design, landscaping and open space, site planning, job training and employment opportunities, transportation measures, environmental benefits, and uses of special value to the neighborhood and District as a whole.
92. The Commission credits the written submissions and testimony of the Applicant and OP that the proposed PUD and rezoning to the C-3-A Zone District is appropriate and that the proffered amenities and benefits are acceptable. The Commission also credits the testimony of the Applicant and OP that the proposed PUD project and rezoning of the Property are not inconsistent with the Comprehensive Plan. The Commission finds the written statements, reports, and testimony of the Applicant and OP persuasive that the creation of a town center (residential and commercial mixed-use) project is entirely consistent with the designation of the majority of the Property as a Multi-Neighborhood Center. In addition, the Commission notes the changes the Applicant made to Block 1 of the project, and how those changes address Action Item FNS 2.7.B of Chapter 17 of the Comprehensive Plan which requires that the Applicant work with property owners to develop and maintain a suitable visual, sound, and security buffer between the Skyland Shopping Center and the adjacent residential areas along Ft. Baker Drive. In response to issues raised by the property owners on Ft. Baker Drive, the building on

Block 1 was pulled back from the property line an additional 37 feet (for a total distance of 72 feet), a 58,000-square-foot Tree Preservation Area was created, and the ramp to the roof parking was internalized into the building. As shown in the materials submitted into the record on March 29, 2010, a matter-of-right multi-family residential project could be developed on the R-5-B zoned portion of the Skyland Property, adjacent to the Ft. Baker Drive properties, which would have a much more significant impact on the Ft. Baker Drive properties than the proposed PUD project. The Commission also notes that in response to security issues raised by the property owners on Akron Place, a site plan was created which did not allow direct pedestrian or vehicular access from Akron Place into this project, but instead allowed for the establishment of a significant landscaped buffer area between the project and those properties.

93. The Commission also concludes that the proposed Tree Preservation Area located near the adjacent Ft. Baker Drive and Akron Place properties responds to Policy FNS-1.2.4 of Chapter 17 of the Comprehensive Plan, which seeks to reduce soil erosion and stabilize slopes at Far Northeast and Southeast erosion "hot spots," particularly the Skyland/Alabama Avenue area.
94. The requested rezoning to the C-3-A Zone District is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public spaces and amenities against the requested zoning relief. In Z.C. Order No. 921, a PUD and Zoning Map amendment case, the Commission clearly articulated the legal standard for reviewing PUD-related Zoning Map amendments:

A PUD map amendment is thus a temporary change to existing zoning, that does not begin until a PUD Covenant is recorded, ceases if the PUD is not built and ends once the PUD use terminates. This being the case, the Commission may grant PUD related map amendments in circumstances where it might reject permanent rezoning.

Z.C. Order No. 921 at 15 (COL 5). The Commission added:

A map amendment granted as part of a PUD establishes no precedent for zoning cases involving permanent zoning map amendments. A PUD map amendment is tied to the PUD use. The PUD use is constrained by covenant. Therefore, the merits of such amendments are usually analyzed in the narrow context of the PUD use requested.

Id. at 17(COL 13). Finally, the Commission observed:

A PUD applicant seeking a related map amendment must still demonstrate that public health, safety, and general welfare goals of the zoning regulations would be served by the amendment.

Id. at 16 (COL 6).

95. In this case, the Commission finds that the proposed PUD and related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the project, the significant landscaped buffer that has been created in the area adjacent to FBDP properties, the design and architectural treatment of the buildings in Block 1 and Block 4, and the Property's inclusion in an area deemed to be a Multi-Neighborhood Center in the Comprehensive Plan's Generalized Policy Map. The Commission's conclusion is consistent with OP's recommendations to approve the project and the PUD-related Zoning Map amendment.
96. The Commission finds that the Applicant's January 11, 2010 and March 29, 2010 submissions adequately addressed the issues raised by OP, FEMSD, DDOT, DDOE, and UFA in their written submissions and in testimony at the public hearing. The Commission agrees with the Applicant's position that the amount of parking proposed in the project is appropriate and that the Applicant's proposed assessment matrix is appropriate for determining parking amounts in later phases of development. The Commission finds that the proposed street and intersection enhancements adequately address DDOT's concerns about pedestrian safety. In addition, the Commission finds that the proposed number and location of curb cuts are appropriate for the project. The Commission concludes that the Applicant's vegetation study and wetlands assessment adequately addresses the concerns noted by DDOE and UFA. The proposed plan for the Tree Preservation Area and plan for the replanting of trees will serve as a significant soil erosion control measure.
97. The Commission finds that the Applicant's March 29, 2010 and May 5, 2010 post-hearing submissions adequately address the issues raised by the Commission at the February 17, 2010 public hearing. The Commission concludes that the Applicant has adequately addressed all issues regarding the impact that construction of the project may have on the adjacent FBDP properties. The Commission finds that the construction mitigation measures and techniques and soil erosion control measures proposed by the Applicant will mitigate any adverse impacts on FBDP properties.
98. The Commission has accorded ANC 7B the "great weight" to which it is entitled. In so doing, the Commission fully credited the unique vantage point that ANC 7B holds with respect to the impact of the proposed PUD on the ANC's constituents. The Commission recognizes that the Applicant met with the community on numerous

occasions to address residents' concerns with the application. The Commission also finds that the Applicant worked with the ANC to resolve differences as to what each group felt were appropriate items to include in the public benefits and project amenities package. The Applicant's March 29, 2010 proposed public benefits and project amenities package is entirely appropriate for the development incentives and flexibility that it is requesting. The Commission has no authority to require that the Applicant provide more public benefits than it chooses to offer, but can only approve a PUD where the benefits suffice or deny a PUD when the proffer is deficient. The Commission can add conditions needed to mitigate potential adverse impacts of a PUD, but it has already found that the Applicant's conditions suffice. The Commission finds that the Applicant has proffered a series of conditions which: mitigate traffic impacts; provide significant distance between the buildings located on Blocks 1 and 4 and FBBDP properties, as well as substantial landscaping and visual buffering of these buildings; include a number of construction mitigation measures that will be undertaken while construction activity occurs on the Property; and will provide significant amenities and benefits to the surrounding community. Therefore, the Commission cannot include all of the ANC's proposed conditions in this Order.

99. The Commission acknowledges the testimony provided by neighboring property owners and by FBBDP. The Commission notes the three major issues that FBBDP raised in opposition to this application: (i) the project is inconsistent with the Comprehensive Plan; (ii) the Applicant failed to prove the sufficiency of the project's benefits and amenities; and (iii) the Applicant's Traffic Impact Study was flawed. The Commission finds that the Applicant's responses to these concerns have been thoughtful and thorough. The Commission finds that the movement of the building on Block 1 away from the property line, the internalization of the ramp to the parking area in the building on Block 1, and additional greenery adequately address the concerns of FBBDP about visual impacts of Blocks 1 and 4 on their properties. The Commission finds that the distance between the project and FBBDP properties is adequate to minimize the visual impacts of the project. In addition, the Commission relies on the shadow studies provided by the Applicant which show that the PUD project will not adversely impact the amount of light and air afforded to FBBDP properties. The Commission finds that the scale of the project is considerably smaller than what would be allowed as a matter-of-right in the existing R-5-B zoning. In addition, the Commission finds that the proposed town center mixed-use project, as proposed by the Applicant, is compatible with the surrounding neighborhood and is not inconsistent with the Comprehensive Plan. The Commission concludes that the Applicant's plans for the Tree Preservation Area, additional trees and plantings, and green screens on various buildings will adequately preserve FBBDP's views. The Commission finds that the Applicant's traffic study provides a sufficiently accurate assessment of the traffic impacts of the project and that the project will not have a significant adverse impact on traffic in the surrounding area. Finally, in response to the objections raised by FBBDP in its filing dated July 9, 2010, the Commission finds that the 10-year development timetable

proposed by the Applicant is justified by the size and complexity of the project, and the market forces it is likely to encounter. The Commission further finds that the design of the ground-floor retail spaces shown in the plans is sufficient to ensure that the spaces are filled with retail uses, and that no further conditions are required to ensure that these spaces are put to retail use.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the PUD process provides a means for creating a "well-planned development." The objectives of the PUD process are to promote "sound project planning, efficient and economical land utilization, attractive urban design and the provision of desired public spaces-and other amenities." (11 DCMR § 2400.1.) The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." (11 DCMR § 2400.2.)
2. Under the PUD process, the Commission has the authority to consider this application as a consolidated PUD. (11 DCMR § 2402.5.) The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment. (11 DCMR § 2405.)
3. The development of the Project will implement the purposes of Chapter 24 of the Zoning Regulations to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design and that would not be available under matter-of-right development.
4. The application meets the minimum area requirements of 11 DCMR § 2401.1.
5. The application meets the contiguity requirements of 11 DCMR § 2401.3.
6. The proposed height and density of the buildings in the project will not cause a significant adverse effect on any nearby properties and does, in fact, comport with District goals for development of this important Multi-Neighborhood Center. Any impact of the project on the surrounding area and adjacent properties is deemed to be not unacceptable. As demonstrated in the Traffic Study submitted by the Applicant and supported by DDOT, the project will not cause adverse traffic impacts.
7. The application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the project will be properly mitigated. The

Commission finds that the conditions of approval proposed by the Applicant are sufficient given the potential impacts of the project on the surrounding and adjacent properties and the development incentives and flexibility requested in this application. The benefits and amenities provided by the project are truly significant. The Commission has judged, balanced, and reconciled the relative value of project amenities and public benefits offered, the degree of development incentives requested and any potential adverse affects, pursuant to 11 DCMR § 2408.3, and concludes that granting the application is appropriate.

8. The Commission concludes the project is acceptable in all proffered categories of public benefits and project amenities and therefore satisfies the requirement of 11 DCMR § 2403.9.
9. The application seeks a PUD-related Zoning Map amendment to the C-3-A Zone District. The application also seeks limited flexibility from the Zoning Regulations regarding rear yard, side yard, and lot occupancy requirements for some of the proposed theoretical lots; roof structure relief; relief from the closed court width requirements for the buildings on Blocks 2A and 2B; and relief for the proposed shared loading facilities for the buildings on Blocks 3 and 4.
10. Approval of the PUD and change in zoning is not inconsistent with the Comprehensive Plan. The Commission finds that rezoning the site is consistent with the Comprehensive Plan, specifically the designation of the majority of the Property as a Multi-Neighborhood Center on the Generalized Policy Map.
11. The PUD is fully consistent with and fosters the goals and policies stated in the elements of the Comprehensive Plan. The Project is consistent with the major themes and city-wide elements of the Comprehensive Plan, including the Land Use, Housing, and Transportation Elements. The PUD is also consistent with the more specific goals and policies of the Far Northeast and Southeast Area.
12. The Commission is required under § 13 (d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)), to give "great weight" to the issues and concerns of the affected ANC as expressed in its written report. "Great weight" requires that the Commission state with particularity and precision the reasons why the Commission does or does not offer persuasive advice under the circumstances. As is reflected in the Findings of Fact, ANC 7B voted to support the application subject to four proposed conditions that also contained references to its issues and concerns about the PUD. The Commission finds that the conditions of approval proposed by the Applicant adequately address the relevant and appropriate conditions proposed by the ANC. The Applicant agreed to undertake construction mitigation measures that are adequate to address the concerns about adverse construction affects on neighboring residences. The Applicant modified

the project to adequately buffer the residents of Ft. Baker Drive in a manner that adequately addresses the buffering concerns expressed by the ANC in its first and second proposed conditions. The Applicant revised the design of the project to adequately address the concerns regarding the ramp to the rooftop parking area of Block 1. The Applicant has provided a community benefits package that, while it does not match the requests contained in the ANC's report, is more than adequate to justify the granting of the PUD, especially in light of the other benefits and amenities of the PUD project.

13. The Commission is also required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code §6-623.04), to give great weight to the recommendations of OP. The Commission gives OP's recommendation to approve the PUD great weight and concurs with its conclusions, except with regard to the proposed number of parking spaces. The Commission notes that the overall parking ratio for the project is appropriate for this Property. The Commission approves the number of parking spaces proposed for the project and the Applicant's proposal regarding the number of parking spaces to be provided in later stages of development, as identified in the Applicant's parking space assessment matrix.
14. The Commission notes that the concerns of each public agency, including, but not limited to OP, DDOT, DDOE, UFA, and FEMSD, have been addressed satisfactorily by the Applicant.
15. The Commission acknowledges those individuals and FBDP who testified in opposition to the Application. The Commission finds that the density, height, and scale of the development are appropriate. The Commission notes that the Applicant made changes to the design and location of the building on Block 1 over the course of the public hearing process to address the concerns of FBDP. The Commission finds that the proposed town-center, mixed-use development is entirely consistent with the majority of the Property's designation as a Multi-Neighborhood Center. The Commission finds that the soil erosion control and construction mitigation measures proposed by the Applicant adequately address the concerns raised by FBDP regarding possible construction impacts on their homes. The Commission also finds that the Applicant's Traffic Impact Study was conducted and prepared in an appropriate manner. The Commission agrees with the conclusions of the Applicant's Traffic Engineering expert that this project will not create adverse traffic impacts. The Commission finds that the design of this project is consistent with good urban planning principles and will not have a detrimental effect on neighboring properties.
16. The PUD project and the rezoning of the Property will promote orderly development of the Property in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

17. The Commission notes that the Zoning Regulations treat a PUD-related Zoning Map amendment differently from other types of rezoning. PUD-related Zoning Map amendments do not become effective until after the filing of a covenant that binds the current and future owners to use the Property only as permitted and conditioned by the Commission. If the PUD project is not constructed within the time and in the manner enumerated by the Zoning Regulations and the conditions of this Order, the Zoning Map amendment expires and the zoning reverts to the pre-existing designation, pursuant to 11 DCMR § 2400.7. A PUD-related Zoning Map amendment is thus a temporary change to existing zoning that does not begin until a PUD covenant is recorded, ceases if the PUD is not built, and ends once the PUD use terminates. Here, the Commission finds that the proposed PUD-related map amendment of the Property to the C-3-A Zone District is appropriate given the superior features of the PUD project and is subject to the limitations stated herein.
18. The applications for a PUD and related Zoning Map amendment are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of this application for consolidated review of a planned unit development and related Zoning Map amendment for the Subject Property (Parcels 213/52, 213/60, 213/61, 214/62, 214/88, 214/104, 214/182, 214/187, 214/189, 214/190, and 214/196; Square 5632, Lots 1, 3-5, and 802; Square 5633, Lots 800 and 801; Square 5641, Lots 10-13 and 819; and Square 5641-N, Lots 12-31 and 33). The approval of this PUD is subject to the following conditions. Except where otherwise noted, compliance with the following conditions shall be the sole responsibility of the Owner, although the Owner may authorize others to perform on its behalf. For the purposes of these conditions, the term "Owner" shall mean the person or entity then holding title to the Subject Property. If there is more than one owner, the obligations under this Order shall be joint and several. If a person or entity no longer holds title to the Subject Property, that party shall have no further obligations under this Order, however that party remains liable for any violation of these conditions that occurred while an Owner. Reference to the Applicant shall refer to Skyland Holdings, LLC and any successor in interest.

1. The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibit 121 of the record, as modified by the guidelines, conditions, and standards of this Order.
2. The Applicant shall make the following financial, or in-kind service, contributions:
 - (a) Financial Support to Schools: The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools located

within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as "Buff and Scrub." The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator ("ZA") and the Office of Zoning ("OZ") as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;

- (b) Sponsorship of local community events and programs: The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$17,500) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;
- (c) Contractor loan fund: The Applicant shall establish and administer a \$300,000 fund that will ensure timely payment for small Certified Business Enterprise and local contractors during construction who cannot otherwise wait for typical draw cycles to be paid. The contractor loan fund will be made available for the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this

Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. If any money remains in this fund 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner, that money will be added to the retailer build-out subsidy fund;

- (d) Local retailer build-out subsidy: The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. The full amount of this contribution must be made by the Applicant no later than 12 years after the effective date of this Order.
- (e) Anacostia and Francis Gregory Libraries: The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 17, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;

- (f) Pocket Park at 25th Street & Naylor Road: The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park be will be provided over the entire time period of the development of the project, as discussed in Condition No. 17. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any improvements were made for this purpose. The Applicant will construct the improvements to the pocket park within five years of the effective date of this Order;
- (g) The Applicant shall provide job training programs, at a cost of \$75,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the job training programs that were conducted in the prior year, if any. The extent of the training provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide job training programs in that year; however, the Applicant must expend \$75,000 for the purpose of providing job training programs prior to 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner; and
- (h) The Applicant shall provide home buying and homeownership classes, at a cost of \$75,000, to prepare community members and future residents for purchasing a home, repairing credit, and maintaining a home. The Applicant expects that these classes will be conducted over the entire time period of the development of the project, as discussed in Condition No, 17. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the home buyer training programs or homeownership classes that were conducted in the prior year, if any. The extent of the classes provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide any home buying or homeownership classes in that year; however, the Applicant must expend \$75,000 for the purpose of providing such home buying or homeownership classes prior to 10 years after the effective date of this Order,

or the date the last application for a building permit is filed for the project, whichever is sooner.

3. The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 2 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit or non-residential certificate of occupancy then in effect.
4. In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for an 800-1,000 square-foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders SmarTrip cards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finished floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment or specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that the store is not necessary, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
5. The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
6. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. These public space improvements must be made by the completion of the last phase of development of the project.
7. The project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The large format retail store in Block 1 shall be designed to achieve a LEED Silver rating in the LEED NC 2.2 or LEED-CS 2.0 rating system, or other equivalent standard. The Applicant will also provide two green roofs.

The Applicant shall provide evidence to the ZA, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building.

8. The Applicant shall establish a transportation management program ("TMP") that includes the following:
 - (a) A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies;
 - (b) Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA;
 - (c) Request employers at Skyland Town Center to provide employees with Metrochecks or SmarTrip cards;
 - (d) Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company;
 - (e) Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops;
 - (f) Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets;
 - (g) Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT);
 - (h) Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center; and
 - (i) Monitor and regularly evaluate the TMP.
9. The Applicant shall enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") in conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
10. The Applicant shall enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in

conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the ZA prior to the issuance of the first above grade building permit for the project.

11. The Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant shall reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2-4 except for the two upper stories of each building and the townhouses. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia.
12. The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Commission, nor the ZA, will have any responsibility or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of a on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.
13. The number of parking spaces permitted in the PUD project shall be consistent with the Parking Space Assessment Matrix included as Exhibit 51 in the record.
14. The Applicant shall have flexibility with the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures;
 - (b) To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction, without reducing the quality of the materials;
 - (c) To make minor refinements to exterior details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings and trim, or any

other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit; and

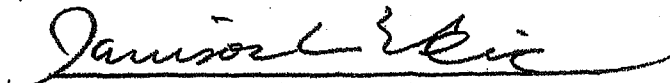
- (d) To vary the appearance of the façades of the building on Block 1 to meet the design requirements and architectural standards of the ultimate tenant.
15. The ZA shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning Division of DCRA. Such covenant shall bind the Applicant and all successors in title to construct and use the Subject Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
 16. The change of zoning from the R-5-A, R-5-B, and R-1-B Zone Districts to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 15, pursuant to 11 DCMR § 3028.9.
 17. The PUD shall be valid for a period of three years from the effective date of this Order. Within such time, an application must be filed for a building permit for the construction of a building on Block 1, 2, 3, or 4 as specified in 11 DCMR § 2409.1, and construction must start within four years of the effective date of this Order to remain valid. Applications for building permits for all remaining portions of the project must be filed no later than 10 years after the effective date of this Order and construction must start no later than 11 years after the effective date of this Order.
 18. The Applicant is required to comply fully with the provisions the D.C. Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-1401.01 et seq., ("Act"). This Order is conditioned upon full compliance with those provisions. In accordance with the Act, the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On May 24, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **APPROVED** this application at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to approve; Konrad W. Schlater, not having participated, not voting; third Mayoral appointee position vacant, not voting).

On July 12, 2010, upon the motion of Chairman Hood, as seconded by Commissioner Turnbull, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **3-0-2** (Anthony J. Hood, Peter G. May, and Michael G. Turnbull to adopt; Konrad W. Schlater, not present, not voting; third Mayoral appointee position vacant, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on September 10, 2010.


ANTHONY J. HOOD
CHAIRMAN
ZONING COMMISSION


JAMISON L. WEINBAUM
DIRECTOR
OFFICE OF ZONING

Washington, D.C., May 6, 2002

Scale: 1 inch = 100 feet

Foreign No. 03836
Furnished to: PLSUR.REV

Order:

(Signature of owner or his authorized agent)

W. A. Smith
Surveyor, D.C.

Dr. LUC ~~REDACTED~~



DETAIL #1

101 74 24 24

DETAIL #2

(NOT TO SCALE)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning



Z.C. CASE NO.: 09-03

SEP - 7 2010

As Secretary to the Commission, I hereby certify that on _____ copies of this Z.C. Order No. 09-03 were mailed first class, postage prepaid or sent by inter-office government mail to the following:

1. D.C. Register
2. Paul Tummnds, Esq.
Goulston & Storrs
2001 K Street, N.W., Suite 1100
Washington, D.C. 20006-1042
3. ANC 7B
3200 S Street, S.E.
Washington, DC 20020
4. ANC 8B
1809 Savannah Street, S.E. Suite A
Washington, D.C. 20020
5. Commissioner Zina D. Williams
ANC/SMD 7B02
2904 S Street, S.E.
Washington, DC 20020
6. Commissioner L. Yvonne Moore
ANC/SMD 7B03
2330 Good Hope Road, S.E. #1112
Washington, D.C. 20020
7. Commissioner Mary Buckley
ANC/SMD 8B01
1854 Woodmont Place, S.E.
Washington, D.C. 20020
8. Gottlieb Simon
ANC
1350 Pennsylvania Avenue, N.W.
Washington, D.C.
9. Councilmember Marion Barry
10. Councilmember Yvonne Alexander
11. DDOT (Karina Ricks)
12. Melinda Bolling, Acting General Counsel
DCRA
1100 4th Street, S.W.
Washington, D.C. 20024
13. Office of the Attorney General (Alan Bergstein)
14. Ft. Baker Drive Party
c/o Martin Sullivan, Esq.
1726 I Street, N.W. Suite 300
Washington, D.C. 20006

ATTESTED BY:

A handwritten signature in cursive script, reading "Sharon S. Schellin", is written over a horizontal line.

Sharon S. Schellin
Secretary to the Zoning Commission
Office of Zoning