GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1094th MEETING SESSION (13th OF 1999)

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MONDAY
DECEMBER 13, 1999

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The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Anthony J. Hood, Vice Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Vice Chairman
HERBERT M. FRANKLIN	Commissioner
KWASI HOLMAN	Commissioner
CAROL J. MITTEN	Commissioner
JOHN G. PARSONS	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Alberto Bastida,	Secretary, ZC
Stefanie D. Brown,	Office of Zoning
Vincent C. Erondu,	Office of Zoning
Kenneth Karkeet,	Office of Zoning

OTHER AGENCY STAFF PRESENT:

Steven Cochran,	Office of Planning
Dave Colby,	Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.

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(1:58 p.m.)

VICE CHAIRMAN HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission. Joining me are Commissioners Parsons, Mitten, Holman, Franklin, and I'm Anthony Hood, Vice Chairman of the D.C. Zoning Commission.

First, let me say that we all are a part of history because this is the last meeting of the D.C. Zoning Commission for this century. So congratulate yourselves; you're a part of history.

Next, I want to apologize for us getting started. We had a few technical difficulties. So moving right ahead, we have our preliminary matters. Mr. Bastida?

MR. BASTIDA: The staff has no preliminary matters, Mr. Hood.

VICE CHAIRMAN HOOD: Okay. Action on minutes. Mr. Bastida?

MR. BASTIDA: The minutes have been provided to you, and we are asking approval of those minutes. On the first minutes, on page 2 to page 3, we didn't realize that when we made it there are two lines that should have been under the heading, and we will correct that.

VICE CHAIRMAN HOOD: The only other thing that I would like to see in the minutes -- I think there were some things

asked for, minor modifications on PUD campus plan. And also, Commissioner Parsons I believe mentioned open space. I think that should be reflected in our minutes also. I'm not exactly sure what the exact terms were, but I know they were mentioned at the last hearing.

MR. BASTIDA: This is the special meeting minutes of September 30th. Are you referring to --

VICE CHAIRMAN HOOD: Okay. Well, we can reserve my comments to the --

MR. BASTIDA: November 8th?

VICE CHAIRMAN HOOD: -- November 8th.

MR. BASTIDA: Okay.

VICE CHAIRMAN HOOD: Right. Can I get a motion to approve our special meeting minutes?

COMMISSIONER PARSONS: I move approval.

VICE CHAIRMAN HOOD: So moved. Do I have a second?

COMMISSIONER FRANKLIN: Second.

VICE CHAIRMAN HOOD: It's been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

So ordered.

MR. BASTIDA: The staff recorded the vote as Mr. Hood moving it, Mr. Parsons seconded, and voted five to zero to

approve.

VICE CHAIRMAN HOOD: Mr. Bastida, I think we need to make a correction. Mr. Parsons moved, and Mr. Franklin seconded.

MR. BASTIDA: I'm sorry.

VICE CHAIRMAN HOOD: And the vote was five to zero -- three to zero.

MR. BASTIDA: Okay.

VICE CHAIRMAN HOOD: Also, if we can make sure that Commissioner Mitten and Commissioner Holman are not present, not voting.

MR. BASTIDA: Thank you.

Next, our action on our regular public meeting of November 8, 1999. Our minutes, Mr. Bastida?

MR. BASTIDA: The Office of Zoning requires approval of the minutes of the regular meeting of November 8th.

COMMISSIONER MITTEN: The only change that I would suggest is that under -- on page 3, under Final Action, Case Number 98-20M, which is the Walter Washington Estates, in the paren regarding the voting that it be added, "Ms. Mitten and Mr. Holman not voting, not having participated in the case."

VICE CHAIRMAN HOOD: Thank you.

COMMISSIONER PARSONS: Mr. Chairman, I think my open space issue is coming under B here on page 3, the last paragraph.

VICE CHAIRMAN HOOD: Okay. Mr. Bastida, I will withdraw the last piece about Mr. Parsons' open space statement because it's covered. But I didn't see anything on the campus plan or on the minor modifications on the PUD.

MR. BASTIDA: We'll go through the transcript again, Mr. Hood, and we'll make sure that whatever was said it will be covered.

VICE CHAIRMAN HOOD: Okay. Thank you. Can I get a motion, with any necessary corrections, that we need to make --

COMMISSIONER PARSONS: So moved.

COMMISSIONER FRANKLIN: Second.

VICE CHAIRMAN HOOD: Okay. It has been moved and seconded. It has been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

Could you record the vote, please?

MR. BASTIDA: Mr. Parsons recorded in favor, Mr. Parsons moved. Who seconded?

COMMISSIONER FRANKLIN: I did.

MR. BASTIDA: Mr. Franklin seconded. Everybody voted.

VICE CHAIRMAN HOOD: Everybody participated.

MR. BASTIDA: Participated. I will record the vote

five to zero to approve, with Mr. Parsons moving, Mr. Franklin seconded.

VICE CHAIRMAN HOOD: Okay. Thank you, Mr. Bastida.

We'll now move on to proposed action. We have no proposed action from the Office of Planning.

MR. BASTIDA: That is correct.

VICE CHAIRMAN HOOD: Okay. Hearing action, Mr. Bastida?

MR. BASTIDA: Those hearing actions are there to show the Commission the need that the Office of Zoning believes that these items should take -- should be taken by the Commission. There are some proposed dates to just put the availability of the Commission for those dates, but I think that the Commission might would like to consult with the Office of Planning to see when, in fact, the Office of Planning could provide recommendations on Items A through E.

VICE CHAIRMAN HOOD: Let me, first, just say that if we're looking at our agendas, Commissioners, Item A and Item D, if we can move D up to where B should be. If we want to discuss them, I would like to discuss them in that order.

Let's start with 99-9, campus plan, transfer of review authority to the Zoning Commission, and also 99-10, which is the campus plan review and promulgation of new regulations. I believe that it is the Commission -- the Zoning Commission who is initiating whether or not to review -- whether we want to review

whether or not the Board of Zoning Adjustment, whether we should have the campus plans back in front of the Zoning Commission.

There has been a lot of discussion, and right now we do not have an Office of Planning Report. And I think it's advisable -- and I'll throw this out to the other Commissioners -- that we do proceed with the Office of Planning Report. So I'll open that up now, that we discuss those in that order.

I think what I'll do, since I didn't get a response, is ask Mr. Parsons -- and I know he has a severe case of laryngitis -- if he could, to just speak on the campus plan, transfer of review authority to Zoning Commission.

COMMISSIONER PARSONS: Mr. Chairman, it seems as though this Commission has reviewed this about five times since I've been on this Commission. And it's usually as a result of somebody's perception that the BZA caseload is too heavy or they're not equipped to deal with this issue. Then we go through a hearing process -- and I think it's all in your packets here -- and come to the conclusion that it's better off with the BZA.

But the comprehensive plan apparently instructs us to do something about this again. So if that's what we need to do, we need to do it. But we certainly need the Office of Planning's help in crafting new regulations for this Commission, if we're going to do that, because we can't use special exception regulations on this. It's got to be a PUD-type proceeding, rather than a BZA proceeding.

So given the comprehensive plan's instructions, I guess we'd better refer to OP for another look.

VICE CHAIRMAN HOOD: Okay. Commissioner Holman?

COMMISSIONER HOLMAN: Yes. I was just wondering if the representative from the Office of Planning had any initial reaction to this request before we consider what we should do.

MR. COLBY: David Colby. We are expecting Mr. Altman, and he was prepared to speak on the issue. I could speak, but I hesitate to speak for him. He is in another meeting, and he is in two places at one time, which is a problem. He has -- I understand from talking to Mr. Altman this morning that he is prepared to focus on the campus plan issues and do what we can to understand the issues and provide reporting and support to the Commission on this.

But as to the timing, I'm not sure -- the timing -- there will be an issue as to whether the timing of the Commission's action, both in terms of its rules and regulations, and the changes to the regulations themselves, can all be done in advance of the two major campus plan cases coming to either the Commission or the BZA in the near term.

That aside, though, we are prepared, I understand, to support the Commission and to support this endeavor. I just don't know what the timing will be.

VICE CHAIRMAN HOOD: Okay. Again, Mr. Colby, we have two issues in front of us. One is to transfer the campus

plan. The other one would be to review the -- I'm sorry -- the campus plan review and promulgation of new regulations.

Commissioner Mitten?

COMMISSIONER MITTEN: Mr. Colby, do you have a sense -- or can you advise us of -- one of the issues seems more cut and dry about transferring the authority for the decisionmaking, and the other is more abstract, just, you know, in general reexamining the rules, can you give us some advice about either of those items being set down for a hearing prior to us receiving a report from Office of Planning?

MR. COLBY: Okay. The problem with setting something down is that you should have language to set down, to advertise for a hearing. And without that, wherever that language might come from, you really can't set it down. Or you could set down -- I mean, the Commission has set down in the past issues to hear the public on an issue which might not have language in front of it, just to get input. That you could do, I'm quite certain, without specific zoning amendment language. I --

VICE CHAIRMAN HOOD: It appears that we're going to need to wait for Mr. Altman --

MR. COLBY: Yes.

VICE CHAIRMAN HOOD: -- to give us some definite dates on if the Commission decides to proceed. So we won't hold up the agenda, if it's okay, Commissioners, that we move right on and defer those two cases. And let's move on to 99-8, if that is

the wish -- the will of the Commission.

MR. COCHRAN: I was just on the cell phone with Mr. Altman. He has thrown his back out. Otherwise, he would have been here. So he is at home incapacitated. This happened since we saw him this morning.

He asked me to convey to you that he certainly would like to work with the Commission on the campus planning, that he has a sense of our ability to get worked on in the near future -- is that that should be what we would concentrate on. And he would like to get together with you about scheduling the other work later, but also get together with you soon to talk about scheduling that work for later. But we would move on the campus plan.

He apologizes very much for not being able to be here.

COMMISSIONER MITTEN: Could you maybe speak to the issue that Mr. Colby spoke to, and just so we know a little bit more, weighing in on the subject of us setting either of these cases down for a hearing in advance of getting the OP report. And now I'm going to add another question, which is, should we be dealing with these simultaneously or in sequence?

MR. COCHRAN: I'm sorry. I don't feel comfortable addressing any of this.

COMMISSIONER FRANKLIN: Could you answer this question -- are we under the obligation, pursuant to the

comprehensive plan, to revisit a transfer of authority?

MR. COLBY: I'll try and answer that. The Commission, according to the materials which I believe you all have in front of you, or in the order deciding the earlier case, determined that, because the Office of Planning said they would work with the Council to amend that provision of the comprehensive plan, that the Commission didn't feel bound -- necessarily bound by changing from the BZA process to a Zoning Commission process.

I'm not aware that that amendment -- I know the amendment was never made by the Council, and I'm not sure if the Office of Planning ever took that action to the Council. But in any case, the comprehensive plan still says what it says about that being a Commission process.

I think --

COMMISSIONER FRANKLIN: What does it say?

MR. COLBY: It's -- well, it --

COMMISSIONER FRANKLIN: Is it in our packet? Because I wasn't able to --

MR. COLBY: Yes. It's right -- I'm sorry. It's -- I don't have it with me. I'm sorry. But it says that the -- just that -- that the -- in order to be more efficient and effective, it uses terms like that, the process should be shifted from one for the Board of Zoning Adjustment to the Zoning Commission. That's, in essence, what it says. It doesn't give any more reasons than that.

VICE CHAIRMAN HOOD: Okay. Commissioners, while I know things change, things have changed since the last developments that were noted earlier by earlier Commissioners, some of those who were on and some were not, situations have changed within the community as opposed to the campus plans and universities.

What I'd like to hear from the Commission is whether or not we want to proceed and set it down and work with the Office of Planning, when they are ready, to be able to supply us with the necessary information, or do we like to hold -- would we like to hold off and wait for the Office of Planning report, to see whether or not we need to proceed.

COMMISSIONER MITTEN: Would you like a motion at this time?

VICE CHAIRMAN HOOD: However the Commission chooses.

COMMISSIONER MITTEN: I'll move that we set down case number 99-9, the campus plan transfer of review authority to the Zoning Commission, for a hearing.

VICE CHAIRMAN HOOD: It's been moved. Can we get a second?

COMMISSIONER FRANKLIN: Is the intent of Commissioner Mitten to do nothing but substitute the words "Zoning Commission" for the "BZA"? I mean, in other words, just simply transfer the review authority to the Commission, without changing

the basic criteria that are employed in approving campus plans? Is that your intent?

COMMISSIONER MITTEN: That's the intent, although I'm not sure it's as simple as that, in terms of the language about the -- of that section. But that's my intent.

COMMISSIONER FRANKLIN: Well, my feeling is that if the Commission is interested in entertaining the transfer of review authority, that it would be well to advertise a provision that had some kind of mature input from the Office of Planning, as well as our own staff, so that the advertisement would be able to not only deal with the question of the transfer of authority but whatever other things might be necessary to fix something that may or may not be broken. I just don't know whether the process is broken at the present time.

VICE CHAIRMAN HOOD: Okay. So --

COMMISSIONER FRANKLIN: My inclination would be to hear from the Office of Planning and our own staff at the earliest possible time, so that we could have a mature proposal to then advertise, rather than simply advertising a simple transfer of authority.

VICE CHAIRMAN HOOD: And also, I would like to add to that a friendly amendment that we also look at 99-10. For some reason, I believe those -- while we should have them in sequential order, the campus plan transfer should be resolved first. But right after that, we, in turn, need to look at our review of the

promulgation of the new regulations.

So I think that should be right there with -- right in line. And I would like for the Office of Planning to work, when they work on the transcript, to also work with the campus plan review, if that's okay with fellow Commissioners.

COMMISSIONER FRANKLIN: Well, that's okay with me because I'm operating, frankly, from a lack of knowledge as to what it is that is motivating these concerns, either on the transfer authority or the new regulations. I'd like to know what's broken.

VICE CHAIRMAN HOOD: Okay. So what we will do, I guess, if there's consensus is defer to the Office of Planning. Commissioner Mitten had a lack of a second. So 99-9 and 99-10 we will petition and ask for an Office of Planning report as soon as possible, so we can proceed, if that's okay with my fellow Commissioners.

COMMISSIONER HOLMAN: Yes, that's fine. I just did want to say that I was inclined to second the motion, but I am still -- my thinking would be clarified a lot by having the views of the Office of Planning, so that I could help frame my understanding of the issues.

VICE CHAIRMAN HOOD: Okay. I think it's advisable that we err on the side of caution. So with that, we will move on. We are --

MR. BASTIDA: Mr. Chairman, just for clarification,

what you are requesting from the Office of Planning is a setdown report on 99-9, and on 99-10, as being -- this being at two separate cases --

VICE CHAIRMAN HOOD: Yes.

MR. BASTIDA: -- for the Zoning Commission.

VICE CHAIRMAN HOOD: Exactly.

MR. BASTIDA: And that they should be here sequentially.

VICE CHAIRMAN HOOD: Right.

MR. BASTIDA: Thank you.

COMMISSIONER PARSONS: Wait a minute. Sequentially? What do you mean?

MR. BASTIDA: By that, I meant 99-9 would be heard first, and following that, if the Commission decided to go forward with 99-9, to do 99-10 or follow the instructions of the Commission. I am looking for clarification, so that's all what I'm asking.

VICE CHAIRMAN HOOD: I believe, Commissioner Parsons, that we're going to have to look at 99-10 anyway. So I was just trying to expedite it and have 99-9, and if they could work on 99-10 -- because they kind of go hand in hand. Even if we don't do anything with 99-9, we're still probably going to have to do some revamping because the change of things 10 years ago with 99-10. So I was asking for those sequentially, if that's --

COMMISSIONER PARSONS: Sequentially implies you see

one six months from now.

VICE CHAIRMAN HOOD: Oh, okay. Well, let me change my language. At the same time.

(Laughter.)

COMMISSIONER FRANKLIN: Concurrently, as two separate cases. Is that what you're saying?

VICE CHAIRMAN HOOD: Yes.

MR. BASTIDA: Okay. So it's concurrently, as two separate cases.

VICE CHAIRMAN HOOD: Right.

MR. BASTIDA: Thank you.

VICE CHAIRMAN HOOD: Okay. Okay. Thank you. We'll move right along with our agenda. We'll give staff a few minutes to get all of that down.

MR. BASTIDA: Thank you, Mr. Chair.

Now, the next item on the agenda is a request from Wilkes, Artis, Hedrick and Lane, on a text amendment to Chapter 7 of the Downtown Historic District. And the request from Wilkes is that it's attached -- it's in your package.

VICE CHAIRMAN HOOD: Okay. Commissioner Mitten, I believe -- yes?

COMMISSIONER MITTEN: I would just like to go on the record. I would like to recuse myself from this case. In my capacity as a member of the Ward 2 Democratic Commission, I solicited support for a fund raiser that we had from Summit

Properties, and I think that creates a conflict for me in making a decision on this matter. So I'm not going to participate in this case.

VICE CHAIRMAN HOOD: Thank you.

COMMISSIONER FRANKLIN: Well, are you simply disclosing that and asking the Commission to -- or you really do want to -- I mean, I would hate to have you not participate if you feel that the proper disclosure of this -- nevertheless, you and your colleagues not create a conflict.

COMMISSIONER MITTEN: Well, I suppose I'm open to the views of my colleagues. It's just that I had specifically solicited a donation from this company, and it was -- and they allowed us to have the fund raiser at the property in question. So it just seemed a little bit too close to home for me. But I don't --

COMMISSIONER FRANKLIN: But do you believe you could exercise an independent judgment with respect to this issue?

COMMISSIONER MITTEN: Yes, I do.

COMMISSIONER FRANKLIN: Well, my colleagues, I don't myself feel that this is a disabling conflict. It has been disclosed, and I don't feel that, knowing Commissioner Mitten as I do, that she would be influenced by what has occurred in the past, unless there is some ruling by corporation counsel that, as a matter of law, this constitutes a conflict.

MR. BERGSTEIN: I'm not the ethics person,

government ethics, and so I'm not comfortable to say one way or the other, just because I simply don't know. Except what I'm understanding is that solicitation occurred before the involvement with the Zoning Commission and not during it, and that may be a distinction.

But, again, I'm not an expert in government ethics, and there is someone in my office who does handle government ethics issues and I'd feel far more comfortable if that was an issue brought before her.

COMMISSIONER FRANKLIN: Well, we do have some time. It seems to me we're setting this down for hearing for that opinion to be solicited. I don't want to force the issue, if you feel uncomfortable, but I think that we need all of the intelligence we can get on this issue. I don't know how my colleagues feel.

VICE CHAIRMAN HOOD: I would also echo your comments, Commissioner Franklin, because I'm of the view if we all recuse ourselves every time something came up, we would never have a quorum. But I do believe that Commissioner Mitten, as well as my other colleagues, could be fair and impartial on any issue. So I would hope she would not -- would just do the disclosure, not recuse herself, unless otherwise noted by corp counsel that it needs to be done.

Any other comments?

COMMISSIONER HOLMAN: I concur with the Chairman.

VICE CHAIRMAN HOOD: Okay. With that, colleagues, we will act now with Commissioner Mitten taking -- participating with the Zoning Commission, case number 99-8, if that is in agreement with everyone.

Let us move into the discussion. What do we see that we may need? When do we want to set it down for a hearing? And I will open it up to my colleagues. Maybe we'll start with Commissioner Franklin.

COMMISSIONER FRANKLIN: Oh, really?

(Laughter.)

I wasn't prepared to -- I am in favor of setting this down, certainly. And, of course, this schedule here -- and I applaud the staff for, you know, giving everyone fair notice, including the Office of Planning, as to when reports would be due, if we set it down. I would be in favor of setting it down on the tentative hearing date indicated on the agenda.

VICE CHAIRMAN HOOD: Fellow Commissioners?

COMMISSIONER PARSONS: Well, I'm troubled by our new process, which apparently is to set down or suggest things to be set down for a hearing without the report of the Office of Planning. I'm very troubled by this. But I've been doing it another way for a number of years, so -- I mean, the Office of Planning may recommend this not be set down for hearing, and we've listened to them in the past.

I can't believe that would be the case here, but

why -- why have we not got an opinion from the Office of Planning on this?

VICE CHAIRMAN HOOD: What I would like to do is defer that to the Office of Planning.

Mr. Cochran or Mr. Colby?

MR. COLBY: As I said earlier, from a brief discussion with Mr. Altman this morning, we are prepared -- or given the limited resources which are being further reduced by my retiring -- in fact, in that capacity, of course, I could say anything I want, I guess, and --

(Laughter.)

-- now is my chance to do that.

(Laughter.)

But it's really not fair to the people who are here to continue. I could speak to Mr. Parsons' point, which certainly speaks to the history of how these cases have proceeded in the past with the Office of Planning recommendation.

I think that particularly where the case involves rulemaking, and where you're not looking at a project like a PUD or a map change, which is fairly straightforward, the rulemaking always seems to have -- I mean, and maybe this can come out of the hearing, too -- but where there is rulemaking being proposed, as there is in this case, the Commission sometimes does benefit from the opinion of the Office of Planning, where different options are set down in the alternative. I don't know that that would be the

situation in this case.

MR. COCHRAN: If I could address --

VICE CHAIRMAN HOOD: Sure.

MR. COCHRAN: -- I think we have a number of new people up here, and we're all, I'm sure, looking forward to working better with each other for quite some time.

Again, brief conversations with the Director. I think we all understand that it's a very hot economy. We're all sort of under the gun. There are certainly a number of planning issues that are coming up. Realistically, we've probably taken on a good third additional work commitments, without any new statute, thanks to the Congress not passing the budget expeditiously.

I fully believe that you could set this down for a hearing. I also fully believe that you would not be getting a report from us by that time, unfortunately. We can work with you on some of these things. We cannot do everything.

David has alluded to the fact that we have 25 years of institutional memory retiring. I'd rather see us working together cooperatively on scheduling, so that we have time to get prehearing reports, and so that we're working together on moving all of the agenda for the city together. And I don't think that giving us these kinds of deadlines is going to help that.

VICE CHAIRMAN HOOD: Okay. Well, as always, I have to associate myself with the comments of Commissioner Parsons. We've always had an Office of Planning report. But Mr. Cochran,

in essence, we do need to kind of move forward. We have a public we all have to serve. So I hope that we all could work together to accomplish and not keep people just waiting.

And we're not pointing any fingers, but I think it's good if we all work together as expeditiously as possible. You have to remember that the Zoning Commission for a while -- we've been under the gun, just kind of just laying on things. So we're trying to move things expeditiously and move forward.

But at the same time, we want to have a good working relationship, so we can do the planning piece. Because without a plan, we do run into problems.

So I guess what we're going to need to do on 99-8, Commissioners, is wait for an Office of Planning report. Do I hear --

COMMISSIONER FRANKLIN: We don't have any idea when that report will be coming?

MR. BASTIDA: Mr. Vice Chairman, what I'm gathering from the Chair's conversation is that perhaps on Items A through E, the staff should work with the staff of the Office of Planning trying to establish a timeframe in which the Office of Planning could commit to the Zoning Commission to provide its report, and do that as expeditiously as possible in order to put it on the record. And then the Commission, at its January meeting, can take decisions about either setting it down or not.

COMMISSIONER FRANKLIN: Is that to indicate we're

going to have an Office of Planning recommendation before our January meeting?

MR. BASTIDA: Well, I am hoping that we can meet with the Office of Planning and set up a time table in which -- realistically, from their point of view, in which they -- we can advise the Commission that they feel comfortable with.

VICE CHAIRMAN HOOD: Okay. Commissioner Holman?

COMMISSIONER HOLMAN: I guess my only question is: what do our rules say about applications that we don't prepare ourselves but are generated by applicants? Is there some requirement that the Office of Planning respond within a given timeframe?

VICE CHAIRMAN HOOD: I would refer that to corp counsel.

MR. BERGSTEIN: The requirement is that the Office of Planning provide a report 10 days prior to the hearing. There's nothing that says that you cannot have a hearing or cannot decide to set down a matter for hearing without that report. It's really the Zoning Commission speaking to the Office of Planning, and, in essence, requesting that a report be provided within a certain period of time.

But there is nothing that we've seen, either in the statute or in the rules, that would indicate that you cannot go forward in either case without an Office of Planning report. Though I would note that the Office of Planning is supposed to

comment on every zoning case, and that you're supposed to give great weight to the Office of Planning with respect to the comments you do receive.

VICE CHAIRMAN HOOD: Unfortunately, well --

MR. BASTIDA: Mr. Chairman, I would like to clarify Alan's comments. The Office of Planning is supposed to do that, but it doesn't mean that if the Commission decides to be -- to go forward, and the Commission had given the Office of Planning the opportunity to comment and provide its comments 10 days prior to the hearing, that the Zoning Commission cannot go forward on its own without the Office of Planning report.

The regulations don't address the point that the Zoning Commission cannot go forward without the Office of Planning report.

VICE CHAIRMAN HOOD: I guess --

MR. BASTIDA: Is that correct, Alan?

MR. BERGSTEIN: Yes. That's correct. I thought that's what I had said, but I'm happy you clarified it.

VICE CHAIRMAN HOOD: I guess we have two things in front of us here, maybe more than two. First, we need to find out if we can get our reports on these specific cases. And also, we want to be fair, I believe, to the general public, regardless of who they are. But we also want to be accommodating and work together as expeditiously as possible.

Now, my question to my fellow Commissioners is

whether or not we should, again, wait on the Office of Planning report, set it down, and then receive the Office of Planning report.

COMMISSIONER HOLMAN: I was going to say my personal preference is to get the Office of Planning report, so that they can frame the issues for us and help us understand what we are bringing to the table. I have no -- obviously, no problem meeting and deciding on the issues, but I'd like to get an idea of what they perceive to be the related issues there, because there may be some that may not be readily apparent on the face of the application.

VICE CHAIRMAN HOOD: Commissioner Mitten?

COMMISSIONER MITTEN: I just want to interject something, and I guess I'm not weighing in on either side of it at the moment. It's just that in contrast to the earlier discussion about campus plans, which what we were talking about was rather abstract, we do have something fairly specific before us in this case, which is we have language. And so that's a distinction for this case, and notwithstanding anything else that was said about providing a context, and so on. Just so that people have that distinction in their mind as they consider this.

COMMISSIONER FRANKLIN: I think, Mr. Chairman, that it's a very important distinction. And I want to say something else. I understand that the resources of the Office of Planning have been stretched, but economic development is a very important

thing for the District of Columbia. And I, for one, do not want this Commission to be perceived as in any way dragging its feet in terms of the resolution of issues that are important to that issue.

It seems to me that this Commission should be establishing its own priorities and not simply be the victim, if that's the right word, of the priorities set by others. And the fact that the Office of Planning, you know, is doing a lot of things, I respect -- and, obviously, the demands on them have been increasing.

But it seems to me that if we simply wait to do our business until they can sort out what their priorities are, we are inevitably going to be delaying things, not because we want to but because somebody else, you know, has decided that whatever it is is not a very high priority.

So I'm sure Mr. Altman would agree with the importance of an issue of this sort to the future of the downtown area and its housing. So I don't see why we could not set this down, since we have specific language, and we will get an OP report hopefully by February 7th, or waive our rules, as we typically do, and get it a little bit later; and, therefore, enable us to make judgments at the time subsequent to the hearing, because we're not talking about having this resolved very, very quickly.

I mean, this could take us six months, even under

the schedule we're looking at here. So I'd just sort of renew my motion to set it down for a tentative hearing -- a hearing hopefully on February 17th, or as close to that as is feasible from our standpoint.

VICE CHAIRMAN HOOD: Okay. We have a motion on the floor, I believe. Everything is in order. I would like to get a second.

COMMISSIONER MITTEN: Could you just repeat the motion? I'm sorry.

VICE CHAIRMAN HOOD: Mr. Franklin, could you repeat your motion>

COMMISSIONER FRANKLIN: Yes. I move that we set down a hearing on the language that has been presented to us for February 17th, or as close to that date as possible, and that we request an OP report by

February 7th, as close to that as possible.

VICE CHAIRMAN HOOD: Okay. It has been moved. Can I get a second?

COMMISSIONER MITTEN: Second.

VICE CHAIRMAN HOOD: It's been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(Nay.)

Okay. We have -- would you record the vote?

MR. BASTIDA: The staff will record the vote, Mr. Franklin moving and Ms. Mitten seconded, Mr. Hood and Mr. Holman to approve, Mr. Parsons denied. So the vote is recorded four to one to set it down for hearing.

VICE CHAIRMAN HOOD: Let's move along with our agenda. The next case is 99-12. Mr. Bastida?

MR. BASTIDA: That is a proposal for the review of the transfer of development rights of Chapter 17, Section 1709. And the Office has provided to you all of the documentation that we have gotten regarding that case.

VICE CHAIRMAN HOOD: Fellow Commissioners, from the submissions and from what I've read, it definitely looks like we have a flaw that this Commissioner needs to address expeditiously, or as soon as the resources will allow us.

So I guess, with that, again, I know the concern of not having OP's report. But, again, I associate myself, too, with the comments of Mr. Franklin about us moving our agenda forward, and also trying to work along with the Office of Planning to make sure that we have a plan and make sure that we know exactly where we're going.

So with that, I would like to open it up to fellow Commissioners, if you just want to expound on it or make a motion to set it down for a hearing, or make a motion not to set it down. I just want to open it up for discussion.

Commissioner Mitten?

COMMISSIONER MITTEN: I will offer a few things for discussion. To my mind, there are two issues that have been raised by the materials that have been provided, and there is some proposed language to deal with one of the issues, which is a disparity in the price that is paid for a TDR versus the value that it has on the receiving site. That's one issue.

And then there is another issue, which is that for a certain section of the downtown east receiving zone, it's also in the HR overlay, which has basically two incentive programs working at cross purposes. And it's the latter issue that I think is of more concern to me.

I'm very uncomfortable trying to control the price of any -- of real estate or any portion thereof, which is what the proposed language deals with, although I would be very interested in exploring the other issue further about having one section of a receiving zone overlapping with the HR overlay, as it does in downtown east.

So I guess just to go back to my little theme of specificity versus abstract, the language that has been proposed to us doesn't deal with the issue that I think is the more pressing.

COMMISSIONER FRANKLIN: I concur with Commissioner Mitten.

VICE CHAIRMAN HOOD: Commissioner Holman?

COMMISSIONER HOLMAN: So if I'm hearing you

correctly, that means that you're -- if you had some language on the -- I guess it would be the second, you would be ready to set that down. But the one that you have language on you're not persuaded is one that we might need to proceed on right away.

COMMISSIONER MITTEN: Well, I'm comfortable proceeding on the language before us without an OP report, because to me it is too abstract and it doesn't deal with the issue that I think is probably more relevant, which is this overlap of receiving zone and HR. So I would recommend in this case that we put it more in the status of the campus plans and ask for a setdown report from Office of Planning prior to setting this down for a hearing. And I'd put that in the form of a motion, if that was what was appropriate.

VICE CHAIRMAN HOOD: Okay. Well, we have a motion. Is there a second?

COMMISSIONER HOLMAN: I'll second that.

VICE CHAIRMAN HOOD: It's been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

So ordered. Can we --

MR. BASTIDA: The staff will record the vote as five to zero, Ms. Mitten moving it, Mr. Holman seconded. And the Commission voted unanimously to refer it to the Office of Planning

for a setdown report.

VICE CHAIRMAN HOOD: Okay.

MR. COCHRAN: Mr. Vice Chairman, can I just -- I just want to be clear.

VICE CHAIRMAN HOOD: Sure.

MR. COCHRAN: It looks like you have decided to set down 99-8. I'm hoping for, but not necessarily -- dependent upon an Office of Planning report -- whereas, although you've set down A and D concurrently, and C, you would still be waiting for a report from the Office of Planning before actually proceeding.

VICE CHAIRMAN HOOD: Exactly.

MR. COCHRAN: Okay.

VICE CHAIRMAN HOOD: Again, the reason 99-8 was set down was because we did have some language. And, again, we are trying to work with the Office of Planning and not work against. So that kind of helped you to move forward. So we took on 99-8.

I think the concern, Mr. Cochran, and Mr. Colby, is that the Commissioners -- we usually have an Office of Planning report, and I understand the limited resources. But then again, the general public is waiting for us to move forward.

So we are trying to work cohesively and come up with a schedule and show you what our priorities are, so we can work together and try to move these projects forward, or, you know, be able to obtain them, you know, and be able to --

MR. COCHRAN: Thank you.

COMMISSIONER MITTEN: Mr. Hood, can I just clarify one thing?

VICE CHAIRMAN HOOD: Sure.

COMMISSIONER MITTEN: I don't know if I misunderstood what you said. But we don't intend to vote on -- or, you know, we're not proceeding on 99-8 without a report from OP. We're just -- we've set it down for a hearing in advance of a report. We still look to you for advice and guidance before the final decision is made.

VICE CHAIRMAN HOOD: And I want to reiterate, Mr. Cochran, again, that we are trying to work with the Office of Planning. Again, we've been criticized in the past for dragging our feet, so we're trying to show our priorities, so we can move as expeditiously as possible.

COMMISSIONER FRANKLIN: Just to clarify, Mr. Chairman, on C, 99-12, my understanding of what we did was decide not to set it down.

VICE CHAIRMAN HOOD: We're waiting on the OP report.

COMMISSIONER FRANKLIN: Right.

VICE CHAIRMAN HOOD: Correct.

MR. BASTIDA: Mr. Vice Chair, I am -- the staff is a little confused. I thought that Items 99-9 and 99-10 were requested that the Office of Planning provides a setdown report, and that you were not, in fact, setting it down, that you were

just creating a priority for them to make sure, and that when that report is due then you will set it down, or you are inclined to set it down, and that the same thing happens with Item 99-12.

VICE CHAIRMAN HOOD: Correct.

MR. BASTIDA: So, in fact, it has not been set down. It's you are showing your willingness to set it down, provided the Office of Planning provides --

VICE CHAIRMAN HOOD: Supplies the report.

MR. BASTIDA: -- that report.

VICE CHAIRMAN HOOD: Right.

MR. BASTIDA: Thank you.

VICE CHAIRMAN HOOD: That's where we are.

Okay. So we're going to move off of our -- well, no, I'm sorry. Sorry. Next, we'll have 99-11. Mr. Bastida?

MR. BASTIDA: Mr. Vice Chair, that was a request that the Zoning Commission made, and I understand at their November meeting, when the sua sponte site location was being discussed, that the Office of Planning review the original case that rezoned the area, which is 95-11. And that is what is reflected there, and that, I was informed, was the wish of the Commission.

VICE CHAIRMAN HOOD: And this is relative to a case that we're going to be deciding next, am I correct?

MR. BASTIDA: Well, I think that it's a separate issue.

VICE CHAIRMAN HOOD: Yes.

MR. BASTIDA: You were concerned about the different uses in the area, and you wanted a rezoning of the area to be revisited by the Office of Planning, to see if the conclusions that the Commission took at that time are still valid.

And I was not presently at that time. Unfortunately, I was elsewhere -- in the hospital. But that was my perception from reading the record.

VICE CHAIRMAN HOOD: Again, Commissioners, I don't believe we have an Office of Planning report. We have the order that was done previously. I think, for the sake of time, again, we may need to defer -- Commissioner Franklin, do you want to --

COMMISSIONER FRANKLIN: Yes. Mr. Chairman, we do have an Office of Planning report of December 3rd on this matter.

VICE CHAIRMAN HOOD: Commissioner, I think you're looking at 99-4. We're on 99-11.

COMMISSIONER FRANKLIN: Oh. Oh, I see.

VICE CHAIRMAN HOOD: It's a smaller folder like this.

COMMISSIONER FRANKLIN: Yes, right. Well, excuse me, 95-11 was the background.

VICE CHAIRMAN HOOD: Right.

COMMISSIONER FRANKLIN: For -- I'm getting a little confused because I see 99-4 on the Office of Planning's --

VICE CHAIRMAN HOOD: Mr. Franklin, if I may help

out. 99-11 is the review of the Zoning Commission case number 95-11, which is sua sponte site location. That was basically in conjunction with our next piece that we're getting ready to visit, which is 99-4, which we do have an Office of Planning report.

COMMISSIONER FRANKLIN: Okay.

VICE CHAIRMAN HOOD: That was so we can look over all of -- but when we move to the final action, we are going to have to dispose of 99-4 as a Commission. 99-11 was taken up because we wanted to look at that whole site and the avenues that it was going, and the way things were developing over there, whether it was feasible or reasonable or rational for the Zoning Commission to revisit case number 95-11.

Commissioner Mitten?

COMMISSIONER MITTEN: I think I was the person who pushed for a review, and I am very happy with the report from Office of Planning as it relates to case 99-4, as providing guidance to the BZA, depending on whether or not they should, you know, get the case back.

So if it's -- given that I was the instigator, I would be happy to withdraw that request for review of that zoning order.

VICE CHAIRMAN HOOD: So you would be inclined to withdraw 99-11?

COMMISSIONER MITTEN: Yes.

COMMISSIONER PARSONS: I'd certainly concur with

that.

(Laughter.)

VICE CHAIRMAN HOOD: I think we can dispose of this one real quick. Do we have a consensus?

COMMISSIONER PARSONS: Yes.

VICE CHAIRMAN HOOD: Okay. Let me call for a vote. Let me ask for a motion and a vote to dispose of 99-11.

COMMISSIONER MITTEN: I move that we withdraw or dispose -- I don't know what the proper terminology is -- withdraw case 99-11.

VICE CHAIRMAN HOOD: It's been moved. Is there a second?

COMMISSIONER PARSONS: Second.

VICE CHAIRMAN HOOD: Moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

So ordered. Mr. Bastida, would you record the vote?

MR. BASTIDA: Yes. The staff will record the vote as five to zero, with Ms. Mitten moving it, Mr. Parsons seconded.

VICE CHAIRMAN HOOD: Okay.

MR. BASTIDA: To withdraw.

VICE CHAIRMAN HOOD: Moving right along with our

agenda, final action, case number 99-4, 16426, sua sponte review -- sua sponte. Mr. Bastida?

MR. BASTIDA: Mr. Vice Chairman, I would refer to Mr. Bergstein to start the discussion.

VICE CHAIRMAN HOOD: Mr. Bergstein?

MR. BERGSTEIN: Thank you. This was a case that was before the Zoning Commission under the sua sponte provisions. The BZA had granted a variance to the applicant, and the Zoning Commission took this up to determine whether or not it should reverse, affirm, or have further hearings concerning the matter.

The Zoning Commission voted to express its intent to reverse the BZA and allowed the parties and the BZA to provide comment. In the course of the comment, I think it became clear that the matter was not a variance at all, but a request for a special exception, or should have been posed as a request for a special exception.

At its last hearing, the Zoning Commission determined to continue the matter, pending the report from the Office of Planning concerning the case, which it has received. And now the question before the Board is, again, whether or not to reverse the BZA and, in essence, deny the application, both as a variance and as a special exception, because that was relief that should have been requested; or to affirm the BZA, finding that a special exception should have been granted or to remand the case to the BZA for a hearing as to whether a special exception should

be granted. And I believe those are the choices you have before you.

VICE CHAIRMAN HOOD: Okay. Thank you, Mr. Bergstein.

We have three ways to dispose of this, Commissioners. I would like to open it up for discussion. Commissioner Mitten, if you'd like to start us off.

COMMISSIONER MITTEN: Well, as I said, I'm happy with the report from the Office of Planning in terms of providing guidance for discerning what the issues are. And while we're not going to, you know, decide whether or not a special exception or a variance are in order, I think that because there is now guidance from the Office of Planning, it would be appropriate to remand this case to the BZA.

And given that everyone I think is now aware of the fact that the application should have been made for a special exception, and as long as this report from OP is included in their record, I think they're in a good position now to make a decision about a special exception in this case.

VICE CHAIRMAN HOOD: Okay. Let me just put something on the record before we call for a motion. I think also, when you look at the -- not pointing fingers, but if you look at the way the guy had taken place, went to the Zoning Administrator and asked for some advice, and he was told for a use variance. And I think it would be in the best interest of us in

the city to make sure at some in time that when these things happen we try to correct them. Not all the time, but in this case.

So with that, I would, too, be in favor of sending it back to the Board of Zoning Adjustment to deal with it on a special exception scenario. So what I would like to do is ask for a motion.

Was that a motion, Commissioner Mitten?

COMMISSIONER MITTEN: I'll make it a motion that we remand this case to the BZA and include it in that document B, the report of the Office of Planning.

COMMISSIONER FRANKLIN: Second.

VICE CHAIRMAN HOOD: It's been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

So ordered. Mr. Bastida, can we have the count?

MR. BASTIDA: Yes. The staff will record the vote five to zero, with Ms. Mitten moving and Mr. Franklin seconded. The only thing the staff would like to clarify, that the motion includes that it would be remanded to be heard as a special exception.

VICE CHAIRMAN HOOD: Right.

MR. BASTIDA: Thank you.

VICE CHAIRMAN HOOD: Thank you.

And moving right along with our agenda, we have nothing on the consent calendar.

MR. BASTIDA: That is correct, Mr. Vice Chairman.

VICE CHAIRMAN HOOD: Status report, Office of Planning?

MR. COLBY: Thank you. The status report, which apparently was not in your package last time, is this time. And the changes which are in italics are so very minor that they just reference the continuing of a couple of cases on downtown housing to dates in January -- on January 6th. So beyond that, there are no changes in the status report.

VICE CHAIRMAN HOOD: Okay. Any questions for the Office of Planning on the status report?

Okay. We'll move right along. Legislative report. We have none?

MR. BASTIDA: None, Mr. Vice Chairman. Litigation, we have none. Then we'll go to correspondence. You have information in front of you for the request of the time extension at 200 K Street, Northeast. It was referred to the Office of Planning on 11/18/99. The Office of Planning provided its report when we were closing the package, and it was included in your package. And the office requests that the Commission take an action on this case.

VICE CHAIRMAN HOOD: Okay. Commissioners, I'll

open it up for discussion.

COMMISSIONER MITTEN: Mr. Chair, I have a disclosure to make before we start.

VICE CHAIRMAN HOOD: Another disclosure.

(Laughter.)

COMMISSIONER MITTEN: I guess I'll start with my history with this property is that I appraised the property in 1995 for Columbia First Bank. And since that time, I appraised a portfolio of properties that are owned by several partnerships. And Mr. Ronald Cohen, who is at least part owner of this property, was one of the partners in those partnerships.

As far as I am aware, he was not the person who decided to hire me for that case. I'm not currently working on any appraisal assignments for Mr. Cohen. And I don't feel that I have a conflict. I'm not suggesting that I am going to recuse myself. I just wanted to make that disclosure.

VICE CHAIRMAN HOOD: Okay. Thank you, Commissioner Mitten.

Any objection, fellow Commissioners?

Okay. Moving right along, I would like to open this up for discussion. They're asking for an extension of Zoning Commission Order Numbers 783 and 783-A, in case number 93-3C, 200 K Street, Northeast.

COMMISSIONER FRANKLIN: Mr. Chairman, again, I sound like a broken record on these extensions. I did not detect

in this submission any evidence that is responsive to our regulations that indicate there must be diligent, good faith efforts to get this property financed and developed.

Now, there is in the submission a letter indicating that somebody has kind of a half-formed interest in this project financing that was supposed to have been perhaps made more definitive on December 10th, but we had nothing submitted to us. Of course, that was just last Friday, reflecting anything that came out of that meeting.

So I think that while I don't have a closed mind on an extension here, I think that there ought to have been at least some deference paid to the regulations that we have discussed at some length and considered carefully before adopting to address this question of endless extensions of approved PUDs.

So I guess what I'm saying at this point, on the basis of the material before us, I'm not prepared at this point to vote for an extension. I would be prepared to look at some additional information, if such exists, that indicates there has been a diligent effort here to develop this property.

COMMISSIONER MITTEN: I'd just like to put something on the record as well, Mr. Chair, which is that the letter from the ANC chair, which is at Tab E, as I believe representing the view of a single Commissioner and doesn't carry the weight of the recommendation of the ANC, because there are certain requirements for disclosure of, you know, when the meeting

was held at which the vote was taken, and what constitutes a quorum, and so forth.

And that's not laid out in this letter, which may just be an oversight but perhaps ANC 6A has not yet reviewed this matter, which would be another argument for waiting for more information to come in.

VICE CHAIRMAN HOOD: Okay. Commissioner Holman, would you like to weigh in, or, Commissioner Parsons, would you like to weigh in?

COMMISSIONER PARSONS: I would support the extension.

VICE CHAIRMAN HOOD: Commissioner Holman?

COMMISSIONER HOLMAN: I'm inclined to support the extension. I guess one of the things that I am finding -- and, you know, admittedly I'm new to this -- is that there appears to be almost a proper format for ANCs to record that information. But I've been in situations in that other forum where they weren't universally adhered to, so I can't really tell whether this is what it appears to be or not. But I am generally in support of the extension.

VICE CHAIRMAN HOOD: I, too, will be favoring the extension. When I was reading through the submittal, again, I had the same thing. I, too, have to echo the comments of Mr. Franklin. But when the rubber meets the road, and applicants are not able to find tenants, then, yes, it is difficult, I'm sure, to

find financing or somebody who can support you, back you up.

But I think this is a good piece. 6A Commission, while their letter may not say that they had a quorum, or whether or not we could -- I don't know if we can leave the record open to obtain that, but they usually are a pretty responsible Commission. And I think even the letter from the Chair, which stated the community is in support of it.

So I, too, am in support of not delaying anything and hoping that this PUD can get started as expeditiously as possible. So I will be voting in favor of the extension.

COMMISSIONER MITTEN: If I could just add another comment --

VICE CHAIRMAN HOOD: Sure.

COMMISSIONER MITTEN: -- which is that the transition for this area is -- I mean, it's -- this is the best time for this project to get off the ground. So while I made the comment about the ANC report and there could be more information supplied, I think we should be supporting the fact that the time has finally come for a project like this to be successful. And we'll find out in the next two years if it's going to happen.

VICE CHAIRMAN HOOD: Okay. Commissioner Franklin, did you want to add something?

COMMISSIONER FRANKLIN: Only that I'm not opposing an extension. I just believe we have to send a message that our regulations are meaningful. And because we will be getting a lot

of other people coming in here with similar unfulfilled dreams asking for extensions without any evidence that they are, you know, doing what a prudent and diligent developer would do to get the job done.

Now, at this point, I see that there are four votes to extend, so I'll just simply abstain.

VICE CHAIRMAN HOOD: Okay. Thank you, Commissioner Franklin.

Moving right along, I'd like to ask for a motion to extend. It's rough when you lose your -- I'd like to obtain a motion to extend 93-3C, Commissioners.

COMMISSIONER HOLMAN: So moved.

COMMISSIONER MITTEN: For two additional years, if I could just piggyback on that.

VICE CHAIRMAN HOOD: I'm asking for the motion.

COMMISSIONER HOLMAN: Yes. I would move that it be extended for two additional years.

VICE CHAIRMAN HOOD: It's been moved and properly -- can I get a second?

COMMISSIONER MITTEN: Second.

VICE CHAIRMAN HOOD: It's been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

COMMISSIONER FRANKLIN: Abstention here.

VICE CHAIRMAN HOOD: We have one abstention.

MR. BASTIDA: The staff will record the vote four to one abstention, Mr. Holman moving and Ms. Mitten seconded. And Mr. Hood and Mr. Parsons voted to approve.

VICE CHAIRMAN HOOD: Okay. Next on our agenda we have case number -- I mean, correspondence from 99-5C, which is the request for a consolidated PUD and map amendment from R-5-D to C-M-1, Ft. Lincoln/Premium Distributors. Mr. Bastida?

MR. BASTIDA: The applicant in this instance is requesting a waiver -- or a lowering of the filing fees. The Office of Zoning will defer to Mr. Bergstein regarding this matter.

MR. BERGSTEIN: Thank you. I disagree with the premise of the letter that the general waiver provisions of the Commission's rules apply to a waiver of a fee. I feel that way for several reasons. First of all, the fees were added by the Zoning Commission at some time after the rules of procedure were adopted, and I don't believe that the Zoning Commission intended for the general waiver provision to apply.

First of all, the chapter, at the beginning, indicates that the purpose of the chapter is to supplement procedures. And that is what the waiver provision goes to -- a waiver of procedures. So that the time for filing papers may be waived; that's a procedure. But I don't believe a fee is a procedure. A fee is a fee.

And when the Zoning Commission did do its rulemaking, it indicated that there was only one instance where a fee could be waived, which is Rule 304-2, and that is not a circumstance that is before you.

I'd also note that although the letter portrays this case as being unique, the circumstances that are being offered to warrant a waiver are really matters that you would consider as a rulemaking issue and are not unique to this particular case. They are essentially arguing that the fee is too high and is inconsistent with other jurisdictions, and that they are doing very important things.

As I indicated, those are considerations which could apply to almost every case that comes before you for a fee waiver. They were before the Zoning Commission when the Zoning Commission adopted its fees. And, again, there was only one circumstance that the Zoning Commission, at the time it promulgated the rules, set forth that would authorize a waiver. And, again, this isn't it.

So I don't believe that the Zoning Commission has the authority to waive its fees in this instance. And that is my view on the matter.

VICE CHAIRMAN HOOD: So I'm hearing that that is not in our purview or in our jurisdiction. Am I correct?

MR. BERGSTEIN: Yes. I don't believe you need to get to the merits. I don't believe that you have the authority to

grant a waiver, other than in the instance that's been noted. And if you feel that your fees are, indeed, too high, or this fee is, indeed, too high and it's not competitive with surrounding jurisdictions, that's something that you may wish to consider as a rulemaking but not in a case-by-case waiver scenario.

VICE CHAIRMAN HOOD: Commissioner Holman?

COMMISSIONER HOLMAN: I hear what corporation counsel is saying. I do have some concerns with this, and I will probably, once we work out the relationship with Office of Planning, or some -- I think this whole fee issue is something we need to address. I'm not specifically requesting that we set it down for hearing, but I think it's something that definitely bears looking at. And I'm just sorry we -- our advice is not to look at it right now, but comparability is an issue that has always been a high priority for me. And I'll just stop right there.

VICE CHAIRMAN HOOD: Can we --

MR. BASTIDA: If you so choose, you have the -- it's your privilege. You can --

VICE CHAIRMAN HOOD: Is this the applicant?

MR. BASTIDA: Yes.

VICE CHAIRMAN HOOD: Mr. Feola, if you can come forward. We'll hear you for about three minutes. Speak loudly.

MR. FEOLA: Thank you, Mr. Chairman.

MR. BASTIDA: Just a minute. We'll get you one.

VICE CHAIRMAN HOOD: Hold on. Let me -- before I

do that, I kind of jumped out. I want to ask my colleagues, do they have any problems with hearing from Mr. Feola? Because that's not normal. Kind of jumped in front of the -- put the cart before the house.

COMMISSIONER PARSONS: Well, certainly, if he's going to give us another opinion on our authority, I think it's something that we should listen to.

VICE CHAIRMAN HOOD: Okay. Proceed.

MR. FEOLA: Thank you, Mr. Chair. Phil Feola with Wilkes, Artis for the applicant.

I guess I take an opposite view of my colleague, Mr. Bergstein. There is nothing in the rules; and these are rules, it's not the zoning ordinance. These are rules that this Commission sets. There's nothing that says because a certain rule happened first that a subsequent rule isn't applicable to the previous rules.

And it seems to me that for good cause, if this Commission chose, it could waive any of its rules. In that chapter, that's called Rules of Practice and Procedure, or whatever it's called nowadays. It's Chapter 3030.

And I just don't believe that because the fee structure came after the first part that the Commission at the time meant that anything that happens after the fee structure doesn't go back to the full range of the rules. And I think that's a real stretch to say you can't change anything that

happened after you've put in place 3000.8, which probably happened in 1960.

So it just seems to me that this Commission has the authority to waive its rules. It has it pursuant to 3000.8 for good cause shown, and then it's up to this Commission to decide whether good cause is shown or not.

Because there is a specific provision that allows for a waiver of the fee and a specific case doesn't mean that all other waivers are put aside. This Commission chooses; it can or cannot grant that waiver. And I think on the legal ground this Commission has that authority. I don't think you have to do a rulemaking to lower the fees to a specific case to address a specific inequity.

And on the merits on this case, the reason -- and I'm glad Mr. Colby is still here -- is the reason that this fee is so high is that the Office of Planning chose -- chose not to change the zoning for Ft. Lincoln when the comprehensive plan changed that made this property -- designated this property as commercial, production, and technical employment, because it felt it would be better -- the city would be better served if applicants came forward with project-specific cases. And that's what is happening here.

So we're sort of being penalized because we are trying to bring the zoning into conformance with the comprehensive plan, which is why we are suggesting the PUD fee would be

appropriate in this case. We're not asking for a freebie. We're asking them to pay $16,000, which is still almost twice as high as the surrounding jurisdictions, to process the application for this particular project.

But had the Office of Zoning, when it did its consistency case for comprehensive planning in 1994, included Ft. Lincoln in that consistency, this property would be zoned some commercial zone, I would assume.

And so I think, for those reasons, that this isn't a typical case. This is a very unique case, on those grounds.

And as Mr. Jefferson sitting next to me from Ft. Lincoln, this property is owned by the city. The city is going to benefit if this Commission upzones the property. The value is going to go up, and the dollars that are paid to the city for the purchase will go up as well.

VICE CHAIRMAN HOOD: Commissioners, I know that this is not normally what we do, but in this case, if it's okay with the Commissioners, we might want to ask a few questions so we can have some better dialogue, if that's the consensus.

Mr. Feola, I'm just curious, why would you want to accept the PUD as opposed to doing a map amendment fee?

MR. FEOLA: Well, the PUD fee is $16,400. And the map amendment fee is $58,000. So it's just a question of what is -- what is the value of the case, and what is the processing of the case going to cost this Commission. We fully expect that

there will be some costs and recorder's fees, and the like, and that's what the hearing fee is supposed to accomplish. It isn't a tax. It isn't something that affixes.

So we didn't think it was appropriate to ask for nothing, that -- you know, ask a waiver to zero because we're coming before this Commission asking for a project to be approved.

VICE CHAIRMAN HOOD: Commissioners? Commissioner Mitten?

COMMISSIONER MITTEN: Well, I have to say that I think that, given everything I've heard and with all due respect to Mr. Bergstein, I think we have the authority to waive our rules, or modify them, if we find that there is a good reason to. And based on what I looked at, I think that the fee for rezoning of C-M and M land is too high, is prohibitively high, and perhaps not what was originally intended.

And if I could just, for the record, recount over the research that I did, which was that the fees changed in 1994. Just by way of example, to rezone 10,000 square feet of C-1 or C-2 property, before 1994 it was $625. It was doubled to $1,250 in 1994. For C-3, C-4, C-5, to rezone 10,000 square feet, had been $1,250. It was doubled to $2,500.

For C-M or M, the former fee was $500 an acre. That was increased by a factor of eight by changing the fee structure to $2,000 per 20,000 square feet. And I think that because there is a push on in the city to at least minimize the

amount of industrial zoning that we have, the fact that those parcels of land tend to be the largest parcels of land in the city, I think that having an unlimited fee of just $2,000 for every 20,000 square feet, without a cap, is just -- that's too high.

And if this is a trigger for us to reexamine the fee, that's fine. I just -- I'm inclined to give them -- and let me just further say that if the fee had been -- had just doubled like the fees for the other commercial zones, the fee in this case would be $14,000.

So on that basis -- on the basis that the fee for C-M and M rezoning is too high, and that -- that is the basis on which I would support a reduction.

COMMISSIONER FRANKLIN: Mr. Chairman?

VICE CHAIRMAN HOOD: Sure.

COMMISSIONER FRANKLIN: I heard Mr. Bergstein say something besides the question of the sequence of these regulations. If I'm not misunderstanding what Mr. Bergstein said, he was making a distinction between the waiver of something that was procedural as distinguished from something that is substantive. Is that correct? That is to say, we could waive our procedures but not --

MR. BERGSTEIN: That's my sense that it goes to, because at the beginning of that section it deals with waivers -- is introduced by saying, "This chapter shall govern the

procedures." So I read that waiver provision as going to procedures.

And there's things in this chapter you cannot waive. For example, you cannot waive great weight to the ANC, and that is a substantive command. That's not a procedural command.

COMMISSIONER FRANKLIN: Right.

MR. BERGSTEIN: And, again, when they did the rulemaking -- and I didn't know this was coming up before I had researched this. And when you read the preamble, there was a discussion about waiver of fees. It was something that came before the Zoning Commission, and my concern is, one, that the issue of waiver was something that was done in the process of a rulemaking, the context of a rulemaking, with public notice and comment.

And after public notice and comment, the Zoning Commission, when it promulgated the rule, only identified one instance where there would be a waiver of a fee. If the Zoning Commission intended the general provision to apply, it need not have done 3042. That would just be unnecessary.

And, secondly, if you're going to approve this because of your sense that your fees are too high, you've, in essence, done a rulemaking without notice and comment because you're saying in every instance where someone comes in for a rezoning we will waive the rule to something else.

COMMISSIONER FRANKLIN: Well, my purpose in asking

that question was to state that I come out very close to where Commissioner Mitten has come out, although she did much more homework than I to reach her conclusion.

I think that this fee, under these circumstances, is really a procedural matter and not substantive. And I think that the Commission does have the authority to say that under the circumstances peculiar to this case and not involved in a rulemaking, that because of the special circumstances of this case, one of which has already been cited by Mr. Feola, but I believe also the urban renewal -- that also called for what this is -- the notion that we have to have an extraordinarily high fee to support our finding that the zoning that we adopt is in conformity with the general plan and the urban renewal plan, seems to me to be ludicrous.

So my feeling is that we can, as a procedural matter, follow the PUD regulations, which more appropriately reflect the likely costs that would be entailed in the determination of this matter.

COMMISSIONER MITTEN: And if I could just make one further point, for whatever weight it has, is in the discussion there is this use of the term "waiver." And this is not specifically a waiver; this is a reduction. So to the extent that that's relevant --

COMMISSIONER FRANKLIN: It's an interpretation.

VICE CHAIRMAN HOOD: Commissioner Parsons?

COMMISSIONER PARSONS: I was just going to second the motion.

VICE CHAIRMAN HOOD: Oh, okay. So do we have a motion on the floor? Or was it a motion? I got up and moved, so I don't -- was there a motion?

COMMISSIONER FRANKLIN: I didn't recall hearing a motion, Mr. Chairman. If there is none, I'll make a motion that we interpret the applicable fee in this case, because of the special circumstances, to be basically the fee that would be applicable to a PUD approval, or a PUD hearing I should say.

COMMISSIONER PARSONS: Second.

VICE CHAIRMAN HOOD: Okay. It has been moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(No response.)

So ordered. Mr. Bastida, could you record the vote?

MR. BASTIDA: Yes. Mr. Vice Chair, the staff will record the vote as five to zero, Mr. Franklin moving, Mr. Parsons seconded.

VICE CHAIRMAN HOOD: Okay. Moving right along with our agenda, report of the Secretary. Mr. Bastida?

MR. BASTIDA: It's the reminder schedule that was

attached to your agenda.

VICE CHAIRMAN HOOD: Okay. Let me just say for the record, the Director had a death in the family. That's why she is not here with us today. Let's keep her and her family in our prayers.

Mr. Bastida, are you going to do the report of the Director?

MR. BASTIDA: No, Mr. Chair, I am not ready to do so.

VICE CHAIRMAN HOOD: Okay. Let me -- before we get to other business, election of officers, let me just say what a great job -- I don't know how my other colleagues felt, but let me say what a great job that the staff is doing while we make our mistakes. But our folders were very amenable to me, and I felt very comfortable; I don't know about my other colleagues. But let me commend the staff as a whole, all staff members, for working so hard in due diligence to try to increase the way we do business in the Office of Zoning.

MR. BASTIDA: Thank you, Mr. Vice Chair.

COMMISSIONER FRANKLIN: If I could add just a word, Mr. Chairman.

VICE CHAIRMAN HOOD: Sure.

COMMISSIONER FRANKLIN: I appreciate the folders as well. And just to keep the cost down, I'm going to leave the folders with you, Mr. Bastida, so they can be reused -- matters

that have been decided.

MR. BASTIDA: Thank you, Mr. Franklin. I appreciate your generosity.

(Laughter.)

VICE CHAIRMAN HOOD: I would actually hope that we all would leave the folders, so we can recycle them.

Next, we will have election of officers. I've never done this before, but I believe that I will have to step down as the Vice Chair and open up the floor for nominations.

COMMISSIONER PARSONS: Mr. Empty Chair --

(Laughter.)

-- I would like to move that you be nominated as Chairman, and that Ms. Mitten be nominated for Vice Chairman.

VICE CHAIRMAN HOOD: Okay.

COMMISSIONER FRANKLIN: I second the motion.

VICE CHAIRMAN HOOD: Okay. It has been moved and properly seconded. Do we -- Commissioner Holman? Okay. Moved and properly seconded. All those in favor, by the usual sign of voting.

(Ayes.)

Any opposition?

(Nay.)

(Laughter.)

Okay. So Commissioner Mitten opposes --

COMMISSIONER MITTEN: But I guess I'm outvoted.

COMMISSIONER HOLMAN: Yes, I guess I would be opposing if I'm not supporting. Yes.

VICE CHAIRMAN HOOD: Okay. So, Mr. Bastida, could you record the vote.

MR. BASTIDA: Excuse me. Could I ask for a clarification? Mr. Holman votes --

COMMISSIONER HOLMAN: I guess I'm voting in opposition.

VICE CHAIRMAN HOOD: We have two in opposition, three in favor. So, Mr. Bastida, could you record --

MR. BASTIDA: Yes. Mr. Ex-Vice Chair, the staff would record the vote as three to zero, Mr. Parsons moving, Mr. Franklin seconded. Mr. Holman -- I mean, Mr. Hood voting in favor, Ms. Mitten and Mr. Holman voting against it.

VICE CHAIRMAN HOOD: Okay. Thank you. Mr. Bastida, could you read back what the results were, please? Not the count, but who was doing what, for the record.

MR. BASTIDA: Mr. Hood being the Chair; Ms. Mitten being the Vice Chair. That's the -- that was the motion.

VICE CHAIRMAN HOOD: Again, I want to thank you for your confidence, those of you who --

(Laughter.)

Anyway, let me thank the Commission for its confidence in me as the Chair, and my colleague, Commissioner Mitten, as Vice Chair. We are looking forward to a good working

relationship, and we are ready to move forward with the business at hand for the best interest of the District of Columbia. So --

COMMISSIONER MITTEN: May I please say one thing before we adjourn?

VICE CHAIRMAN HOOD: Sure.

COMMISSIONER MITTEN: Which is that I have all of the confidence in the world in you, Mr. Hood, as being the Chair.

VICE CHAIRMAN HOOD: I'll say they're both in --

(Laughter.)

COMMISSIONER HOLMAN: Congratulations.

VICE CHAIRMAN HOOD: Without further ado, I now pronounce this meeting adjourned.

(Whereupon, at 3:25 p.m., the proceedings in the foregoing matter were adjourned.)