GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

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MONDAY

JUNE 14, 1999

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The Commission met in Hearing Room 220 South at 441 4th Street, N.W., Washington, D.C., at 1:30 p.m., Jerrily Kress, Chairperson, presiding.

COMMISSIONERS PRESENT:

JERRILY R. KRESS	Chairperson
ANGEL F. CLARENS	Commissioner
HERBERT M. FRANKLIN	Commissioner
ANTHONY J. HOOD	Commissioner
JOHN F. PARSONS	Commissioner

STAFF PRESENT:

SHERI PRUITT-WILLIAMS	Interim Director
STEFANIE BROWN	Office of Zoning
VINCENT ERONDU	Office of Zoning
KENNETH KARKEET	Office of Zoning
VANESSA ATKINS	Office of Zoning
ALBERTO BASTIDA	Office of Zoning
STEVE CORCORAN	Office of Zoning

D.C. OFFICE OF CORPORATION COUNSEL:

ALAN BERGSTEIN
MARY NAGUEL HOUT

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(1:41 p.m.)

CHAIRPERSON KRESS: I call to order our regular meeting for Monday, June 14th. I'm Jerrily Kress, Chairperson. Joining me this afternoon are Commissioners Franklin, Clarens, Hood, and Parsons.

First I'll begin with preliminary matters. Ms. Pruitt-William, do we have any preliminary matters?

MS. PRUITT-WILLIAMS: Staff has no preliminary matters, Madam Chair.

CHAIRPERSON KRESS: Thank you. Next I have Action on Minutes. I have quite a few changes to the minutes. I was going to suggest we postpone the minutes for approval until our next meeting and that I have enough time to redo them. Is that all right with my fellow Commissioners?

I do have a question, by the way, on the 8th Street overlay. It particularly has me not voting -- not having participated -- which I did. I just wanted to check with Franklin.

COMMISSIONER FRANKLIN: That's correct. I did not participate.

CHAIRPERSON KRESS: You did not, okay. Are there any other votes that are incorrect? I have notes on all of the other issues but I just

wanted to double-check on the voting and make sure that the voting was correct in the minutes as you all reviewed them.

COMMISSIONER CLARENS: I thought there was an incorrect vote recorded -- let me see if I can find it -- on the minutes. Now, are we talking about all the minutes or are you talking about May 10th only?

CHAIRPERSON KRESS: Well, I was talking about them all but let's take them one at a time. Any comments on the May 10th minutes? I mean, that -- regarding the votes, I have major rewriting for this thing that I would like to hold off till next month.

COMMISSIONER CLARENS: None other than spelling and typos.

CHAIRPERSON KRESS: Okay. Anyone else?

COMMISSIONER HOOD: Madam Chair, I have a question on the June 3rd special meeting.

CHAIRPERSON KRESS: Okay.

COMMISSIONER HOOD: The June 3rd special meeting, number 5. It has in here a vote of 5 to zero. If I'm correct I think I voted against this piece. I should have been voted --

COMMISSIONER CLARENS: That's correct. That's --

COMMISSIONER HOOD: -- as opposed.

COMMISSIONER CLARENS: There is a 4 to 1 vote.

CHAIRPERSON KRESS: Well, it's interesting. It says 5 to zero and it doesn't mention Mr. Hood's name.

COMMISSIONER CLARENS: There is also another issue on the June 3rd and May 20th meeting that both meetings show the same times and I cannot imagine that we would have been so coincidental to have started the meeting at the same time and end it at exactly at the same times. So it seems to me that there's something that is not quite right there. Could be, but I think it needs to be checked. It shows 8:50, the time that we started --

CHAIRPERSON KRESS: The one was before our meeting which was at about 7, and then the other was at 8:50 after.

COMMISSIONER CLARENS: Okay.

CHAIRPERSON KRESS: I will check. That's what I said. I have major problems with these and so I was definitely going to rewrite these before I bring them back to you all for approval.

Any other votes incorrect in the minutes? Otherwise with your permission I will bring these back at our next meeting revised for

your approval.

With that, we'll move on to Proposed Action. The first is Walter Washington Estates.

MR. BASTIDA: Madam Chairperson?

CHAIRPERSON KRESS: Yes?

MR. BASTIDA: For the record, my name is Alberto Bastida with the D.C. Office of Planning. With me this afternoon is Vanessa Atkins, the Acting Director of the Office of Planning.

In conversation with the applicant, all the facts and requests that you have were not met. So I'm requesting that you postpone that decision until the July meeting. With the consent of the applicant.

CHAIRPERSON KRESS: You have spoken to the applicant about this?

MR. BASTIDA: I spoke to the legal representative of the applicant as late as this morning at 10 o'clock.

CHAIRPERSON KRESS: All right. Well, let's go over with what we were expecting and what we did receive.

The units with decks, we did receive that clarification. We did not receive the light fixture clarification according to my old notes, and we did not get any findings of fact -- although

that's only a request.

MR. BASTIDA: Right.

CHAIRPERSON KRESS: We did not get findings of fact, conclusions of law, and the decision, and we did not get executed covenants.

MR. BASTIDA: That is correct. And also I would like the applicant to resubmit the plan in which the houses that decks could be added shaded more clearly because the print is not clear enough.

CHAIRPERSON KRESS: All right.

MR. BASTIDA: Because remember, you requested that also.

CHAIRPERSON KRESS: Yes. Well, that's the one thing that I --

UNIDENTIFIED: -- clarification. I thought we had gotten that.

CHAIRPERSON KRESS: We did. That's --

MR. BASTIDA: We did, but if you look at the print it's not really totally clear how that is. I would like that it would be darker so there is no doubt about the ones that are intended to have the possibility of a deck.

CHAIRPERSON KRESS: Fellow Commissioners, was there anything else that you required?

COMMISSIONER PARSONS: The landscape

plan that we had spoken about --

MR. BASTIDA: I thought the landscape plan was submitted for the revised area, but I would make sure that in fact, that's the case. It was submitted to me and I thought it had been submitted for the record.

COMMISSIONER PARSONS: It may have been but it didn't seem to make it into our packages for the weekend. So if we could just make sure for next month?

MR. BASTIDA: Yes. We will make sure that in fact, all that is in the record.

COMMISSIONER PARSONS: All right.

MR. BASTIDA: Thank you.

CHAIRPERSON KRESS: Commissioner Hood, does that take care of your concern?

COMMISSIONER HOOD: Right. The parking agreement wasn't as specific but I don't think I want to as tedious. I think what will happen is when they do the Homeowner's Association piece the parking issue hopefully will be taken care of.

MR. BASTIDA: Yes, but you have -- it has to be put in such terms that in fact that would be the case for the detail of it, not for institutionalizing it.

COMMISSIONER HOOD: Right. Well, that's

not why I'm going to prolong that and keep asking about it because I believe once that's established the homeowner's association will deal with it accordingly. It's in the covenant.

MR. BASTIDA: That is correct, yes. But the details are left to them to see how -- will this function.

COMMISSIONER HOOD: Okay.

CHAIRPERSON KRESS: Any other comments regarding the Walter Washington Estates?

COMMISSIONER FRANKLIN: Madam Chair, I'm just curious as to why it has taken so long to have them respond to it. I thought it was a pretty clear request. Maybe Mr. Bastida can --

MR. BASTIDA: There has been a couple of issues. There has been sickness, vacation time, and also that in fact, the second phase hasn't begun and this is the third phase. So it's on such a critical path, accordingly there has been a slippage here and there. And it cannot be pinpointed to one given individual organization.

COMMISSIONER FRANKLIN: Thank you.

CHAIRPERSON KRESS: Thank you. Hearing nothing more I'll move on to 98-21, which is the PUD and Map Amendment for the Hoffman Project.

MR. BASTIDA: Madam Chairperson, the

applicant submitted the four items that you've requested to be added for the record, which were the issue about the wisterias, the --

CHAIRPERSON KRESS: I'm sorry, the -- and I think that's -- could we bring that forward or have someone put it on the stand for us and bring it closer for discussion purposes?

MR. BASTIDA: The second point that I was going to make is the palette that has been resubmitted, and that way you can make a decision one way or another regarding the palette.

Thirdly is the outline of the view from the park for the National Park Service, and another is a letter of the Nation Park Service; in fact, stating that they are working with the applicant and they have reviewed some working drawings and basically have a basic agreement.

Subsequent to that, the applicant has had other meetings with NPS and is revising the working drawings to accommodate NPS in their request. So I believe that all the items that the Commission requested have been submitted for the record.

CHAIRPERSON KRESS: I believe so, too. As I checked my notes and records, I believe we do have all information we requested. So with that

I'll open it up to discussion by the Commissioners.

COMMISSIONER FRANKLIN: For the record, Madam Chair, I have read the transcript of the one hearing that I missed so I'm prepared to participate.

CHAIRPERSON KRESS: Terrific. Thank you for putting that on the record. Discussion, questions and discussion on the case?

COMMISSIONER HOOD: I just wanted to put on the record, I believe the ANC is going to support this project. They think it's a good project and they're ready to move forward and I just wanted to put that on the record.

COMMISSIONER CLARENS: Well, Madam Chairperson, to initiate a discussion, I find a lot of merit with this application. I think that it is a project that will enhance that portion of Wisconsin Avenue. The relief or the additional items that are requested by the applicant seem to have been justified on the basis of what the building would contribute to the city as a whole and to that particular area in particular.

Each is related to views which I'm sure will be raised. I think that in my mind, are mitigated by the fact that an urban park is an urban park and that Fort Reno is such a park, and that

there is evidence all surrounding while you walk Fort Reno, all the presence of the city around you, and that whatever additional impact this building will bring to Fort Reno are counteracted by what the building will bring to Wisconsin Avenue at that point.

So it seems to me that it is a case of balancing which is exactly what we're supposed to do, and in this particular case I find that what is positive outweighs any negatives that the building might have.

CHAIRPERSON KRESS: Thank you.

COMMISSIONER PARSONS: I find the new exhibits that we just got, very helpful. That is, it shows that the existing trees, most of which -- excuse me, all of which are on park service property -- that is, there are two parks here. There's the Fort Reno Park and then the Triangular Park. And they will all be preserved in the restoration of that park and Triangular Park.

That is building will not be visible from Fort Reno in the summer. It will be in the winter but on balance I think I would agree with my colleague, Mr. Clarens, on the benefit to the community, and therefore would support this application.

CHAIRPERSON KRESS: Commissioner Franklin.

COMMISSIONER FRANKLIN: I concur with the previous statements and I just wanted to find out from Mr. Clarens whether he feels that the alternative coloration samples are to his satisfaction since he requested them. They look quite handsome to me.

CHAIRPERSON KRESS: Well actually, as I read, I think the applicant even stated they liked the new design better, and I personally do. What is your sense?

COMMISSIONER CLARENS: I am very happy you do. When I saw the pictures over the weekend I said, aagh, what a mistake. But now that I see the real materials I could concur. I think that this direction and if the architect is happy, I think that that's fine.

COMMISSIONER PARSONS: I think our Order should reflect the continuing discussions with the Park Service because we really don't have an approved plan at this juncture. I think it represents a monetary commitment that is sufficient to qualify as an amenity.

CHAIRPERSON KRESS: I agree. Did you have any comments, Commissioner Hood?

COMMISSIONER HOOD: No, I said them earlier, I think. I concur with the reset of my colleagues.

CHAIRPERSON KRESS: I would like to then go to the finding of facts and conclusions of law and the decision. I agree. I don't think the Park Service has been appropriately addressed but I have a concern on page 17 about the minor adjustments to the facade, window and cornice detailing. That's pretty major and that is of some concern to me. I don't know if it's of concern to anyone else.

COMMISSIONER FRANKLIN: I saw that language, Madam Chair, and I think we need to tinker with it.

CHAIRPERSON KRESS: And I'm not saying we have to do it today, but otherwise in that, I think we have two issues that are not dealt with completely and that's number 7 -- that's number 8B and then number 7 deals with the Park Service and I think we need a little additional information regarding what will be done with the finalization of the Park Service agreement.

So with those two notes before an agreement we need to tighten up what we will allow as a minor adjustment and tighten up regarding the Park Service; otherwise, basically I find the

findings of fact, conclusions of law, and decision to be pretty adequate.

MS. PRUITT-WILLIAMS: Excuse me, Madam Chair. In reference to the Park Service, do you have direct language that you'd like to see?

CHAIRPERSON KRESS: No, I'm not prepared to -- I just heard that from Commissioner Parsons and --

COMMISSIONER PARSONS: Let's go then, to number 7 on page 17.

CHAIRPERSON KRESS: That's where I am.

COMMISSIONER PARSONS: I think it should say in general accordance, so that they are not facing the Zoning Administrator with two plans. And we should reference the May 14th letter from the Acting Superintendent, Cynthia Cox. Somewhere -- I can't put it in the sentence, but if we can just reference that, because it technically is an amendment to the plan that's referenced.

CHAIRPERSON KRESS: I'm sorry, we'll try to speak as loud as we can. Unfortunately, our microphone system is not working. We will try to keep our voices up.

COMMISSIONER FRANKLIN: I have this question, Mr. Parsons, just hypothetical for the moment. Suppose they were to give the Park Service

a certain amount of money and just told the Park Service to re-landscape it in accordance with their own desires? Would that be satisfactory?

COMMISSIONER PARSONS: That has proven to be problematic in the past. I won't go into the details, but it has. The developer usually is anxious to enhance the park and we sometimes don't move fast enough for them. That is, they're concerned about marketing their amenity and -- was that behind --

COMMISSIONER FRANKLIN: When I saw the letter from the Park Service I thought there was going to be a lot of to and fro before this thing ever --

COMMISSIONER PARSONS: No, I think they're fairly close, as I understand it.

MR. BASTIDA: Yes, Mr. Parsons, if I may? They are fairly close but there still is a little tinkering with the details, so you are going to state that it generally meets with the letter dated the 14th. I mean, no --

COMMISSIONER PARSONS: The exhibit of the plan and the Park Service comments, and then --

MR. BASTIDA: But they are in compliance with that, so --

COMMISSIONER PARSONS: And I use the

word "general" so that the Zoning Administrator has some guidance when it comes times for permit.

MR. BASTIDA: And that way they can negotiate with NPS to make sure that they do everything that NPS -- or, try to accommodate NPS. Thank you.

COMMISSIONER CLARENS: So Madam Chairperson, how are we going to deal with this request or these findings or these requests for flexibility on the window and cornice detailing?

CHAIRPERSON KRESS: I basically don't feel we should be giving them the flexibility to the window and cornice detailing from our experience in the past. I think the flexibility to shift the location of the doors to the retail uses is a reasonable request.

COMMISSIONER CLARENS: But the appearance of retail frontage --

CHAIRPERSON KRESS: I have a problem with that.

COMMISSIONER CLARENS: You have a problem with that?

CHAIRPERSON KRESS: I mean, I --

COMMISSIONER CLARENS: I concur. And the process would be then, that they come for modification? Once --

CHAIRPERSON KRESS: A minor modification.

COMMISSIONER CLARENS: A minor modification, which is relatively routine.

CHAIRPERSON KRESS: If they decide they need to do something different. We're going to give them the flexibility to -- it's my advice that we give them the flexibility to shift the location of doors and retail uses, but that if they really want to change the appearance of the retail frontage or the window and cornice detailing, then they need to come back to us for minor modification.

COMMISSIONER FRANKLIN: Unless they can suggest language that's a little bit more specific than this. I mean, I don't know what "appearance" means in this context.

CHAIRPERSON KRESS: I don't either. And I was all right with the location of all the interior components because it did not in any way deal with the exterior. Item 6A was fine; it was 6B that was left too loose.

COMMISSIONER CLARENS: Yes. And C is also.

CHAIRPERSON KRESS: Well, I don't know what your preference is.

COMMISSIONER CLARENS: It's the number

of units; it's not the square footage of residential space.

CHAIRPERSON KRESS: Exactly. And I could, personally, if a certain kind of unit was marketing better than another type of unit I could see that a different layout might be appropriate as long as it didn't affect the exterior.

COMMISSIONER CLARENS: That's right.

CHAIRPERSON KRESS: Depending on what --

COMMISSIONER CLARENS: I don't have a problem with that.

CHAIRPERSON KRESS: All right. Then I might ask for a motion for approval of 98-21, the Map Amendment 4725 - 4727 Wisconsin Avenue, N.W., from C-2-A to C-2-C for Square 812 and 817, lots 807, 812, and 817, in accordance with the findings of fact, conclusions of law, and decision in general accordance as it has been submitted to us by the applicant with changes both to what is noted under "Decision" as 16-B and number 7, which we will rewrite and will of course, be returned to the Commission for final action.

Is there such a motion?

COMMISSIONER FRANKLIN: So moved, Madam Chair.

COMMISSIONER HOOD: Second.

CHAIRPERSON KRESS: All those in favor signify by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

MS. PRUITT-WILLIAMS: Staff will record the vote as five to zero to approve. Motion made by Mr. Franklin and seconded by Mr. Hood.

CHAIRPERSON KRESS: Thank you. With that, we'll move to 9808, the Text Amendment Update of the Child Development Center regulations.

MR. BASTIDA: Madam Chairperson, you have received the Office of Planning Hearing Summary on May the 3rd. I think it's pretty clear and concise, and if you want me to go over it I'll be glad to do so.

CHAIRPERSON KRESS: No, we already did last meeting.

MR. BASTIDA: Yes, right.

CHAIRPERSON KRESS: The reason we didn't vote last meeting is we were asking OP to get in touch with the organizations that have expressed concern about this legislation.

MR. BASTIDA: Right.

CHAIRPERSON KRESS: And it is our understanding that OP was going to do that and get

back to us.

MR. BASTIDA: That is correct. How would I put it -- the Office of Planning has tried to establish that communication. Unfortunately, it was not successful in doing so. But we contact them and they were supposed to call us back, and that was not done.

CHAIRPERSON KRESS: Have you spoken, or should we postpone this to another month?

MR. BASTIDA: David was supposed to then --

CHAIRPERSON KRESS: Yes, David was the one who was supposed to be in contact with them.

MR. BASTIDA: Right. And he will have further details of those conversation or lack of it, but there was not any affirmation or opposition to it. But if you'd like to postpone it for another month we'll have no objection to do so.

CHAIRPERSON KRESS: If we can make it, if David could possibly -- and I know we've had a lot going on this month -- but if David could possibly make this a priority so that one way or another we have had communication and they have said they don't have time, aren't interested, or whatever. But that there is definitely communication established.

MR. BASTIDA: What I would suggest, Madam Chairperson, is we will provide the list of all the calls that were made and the date that they were made. And that way, if there was no answer, you're aware in fact, what took place.

CHAIRPERSON KRESS: All right. That would be very helpful. Thank you.

MR. BASTIDA: Okay, thank you.

CHAIRPERSON KRESS: Colleagues, is that in agreement with everyone?

COMMISSIONER HOOD: Madam Chair, I just have a question. Have we discussed the 24-hour limitation question I was reading? Have we resolved the time limitation?

CHAIRPERSON KRESS: I thought we had. If you would like to open it up?

COMMISSIONER HOOD: No.

CHAIRPERSON KRESS: Why don't we wait until next month anyway, when Mr. Colby is back and communication has transpired, and we'll go ahead and discuss it then, if that's all right.

COMMISSIONER HOOD: Okay.

CHAIRPERSON KRESS: Since we do have quite a bit today.

The Corrections Corporation of America.

COMMISSIONER PARSONS: Madam Chair, let

the record reflect that I'm leaving the room as part of my recusal in this case.

CHAIRPERSON KRESS: I hope we see you this afternoon. Thank you.

MR. BASTIDA: Madam Chairperson, the Office of Planning doesn't have anything else to proffer at this time.

CHAIRPERSON KRESS: Thank you. With that I would move to discussion regarding 98-16.

Commissioner Clarens, would you like to begin?

COMMISSIONER CLARENS: Madam Chairperson, I have reviewed with great care all of the material and the testimony that was presented to us in this case.

I also have gone to the regulation for guidance in making this decision. And I would propose to the Commission that we need to look at this application on the basis of sound planning principles and that I have looked at two items in the regulations in the plan review procedures, Chapter 24, dealing with plan unit development and both item 2400.3 and 2400.4 gives the basis under which we can begin to deal with this issue.

Under 2400.3, the regulations talk about the Commission undertaking a public review in order

to evaluate the public benefit offered in proportion to the flexibility or incentive requested and in order to establish a basis for long term public control over the specific use and development of the property.

Under 2400.4, it says that while providing for greater flexibility in planning and design that may be possible under conventional zoning procedures, the plan unit development process shall not be used to circumvent the intent and purposes of the zoning regulations, nor to result in action that is inconsistent with the comprehensive plan.

I think that the principal work here is what to do with land that is adjacent to the waterfront and what is the sound planning use for land that is adjacent to the waterfront and this Commission and sound planning principle indicates that waterfront property should be used in a manner that allows for transparency between the community and the waterfront, that a land should be developed on the waterfront property in such a way that the city participates on a major asset of the community which is its waterfront.

So on the basis of that I have great difficulty with this application because it

introduces a use in waterfront, in a major element of the waterfront of the city that is by its own definition a barrier to the use of this land for public use and for this interaction between the city and the waterfront.

And on the basis of that I would recommend denial of this application.

CHAIRPERSON KRESS: Thank you. Commissioners? Commissioner Franklin?

COMMISSIONER FRANKLIN: Madam Chair, I'd like to expand a bit on what Mr. Clarens has said because I basically concur with the thrust of his comments.

Every zoning action has to have a basis in planning, otherwise it's arbitrary and capricious and planning and zoning together seems to me you need to take a long view of what land use is best able to serve the community over a long period of time. Fifty years from now, the decision to permit this to be converted from open space and recreational uses be regarded as the right decision.

The Applicant in its post-hearing submissions has all but asserted that we should ignore any planning considerations in reaching our decision. While it is true that legislation has been enacted to remove the role of the National

Capital Planning Commission from decisions by the Federal Bureau of Prisons in this matter, that legislation in my view has not preempted the jurisdiction of this Commission, nor has it granted the Bureau of Prisons the right to preempt, override the authority of the District Government or this Commission in the location of the site for a correctional institution.

Now in evaluating how to locate and size a facility of such community important, a planning process might have taken place which would have accessed the need to find the appropriate site criteria, inventoried the possible sites and assuming a particular site could be identified, develop a concerted means of site acquisition and development.

It is possible, but not altogether certain that a site within the District of Columbia would be so identified.

In my view, the public and this Commission has been severely handicapped by not only the absence of any semblance of such a process, but by lack of knowledge of alternatives that may be under consideration by the Bureau of Prisons.

If proximity to loved ones is of vital importance to those who are incarcerated and there's

no doubt that it is, we have no way of knowing whether another location, perhaps one not as proximate as Oxon Cove, but still accessible, is a realistic alternative. We've been presented with an all or nothing choice and in this regard the Applicant states that the legislative elimination of review by NCPC indicates an intent that the facility must be located within NCPC's jurisdiction.

I think we can interpret that law to simply void NCPC's review authority for a facility that might be located within its jurisdiction.

So instead of a process that might have taken place that I have described, I have had to search for a planning predicate for this decision through other means. For me, that planning basis starts with the comprehensive plan which defines the site as open space for recreational purposes owned by the Federal Government.

We have been told, in addition, by the Mayor's Office that this particular development would chill economic development in the vicinity of the Oxon Cove site and I've had occasion to review the Federal Clean Water Action Plan announced by President Clinton in February 1998 and reaffirmed by EPA in November of last year, to assure that the National Capital Region's water quality is

maintained.

That policy limits developments of new federal facilities on federal lands to already developed areas instead of open space land. So I have to conclude that if the Bureau of Prisons had proposed this site itself, it would be in violation of the President's Clean Water Plan. And of course, the Office of Planning has opposed the site.

So in brief, there isn't a scintilla of planning indicia as the premise for the change of this from open space to M, as requested. The National Park Service, I might add, probably hasn't been the greatest steward that it might have been, but whatever deficiencies there have been and the stewardship can be remedied over time, and that would not be possible if we converted this to M zone.

So my feeling is that I cannot even cross that immediate threshold to consider the other aspects of the matters presented to us. I don't think that an economic development plan or a planning process of any sort that I can contemplate would have designated this particular site for this use.

CHAIRPERSON KRESS: Thank you. Commissioner Hood?

COMMISSIONER HOOD: Madam Chair, our charge as Commissioners is not to be inconsistent with the comp. plan. The comp. plan is developed with the help of community groups such as the ANC, civic groups. I believe the opposition is great and I will admit that I've toiled with the opposition. I went back and forth and it was a rather decision when we weigh the pros and cons with the visitation piece, what not. But I believe the ANCs and the civic groups have made their positions well known and that we give them the great weight that they are accorded by law.

D.C. residents have the right to mold and plan the surrounding neighborhoods in which they live. So I don't believe we should shove anything down the community's throat. I will be voting in opposition of this PUD.

CHAIRPERSON KRESS: All right, thank you. Is there a motion regarding 98-16?

COMMISSIONER HOOD: I will make a motion that deny 98-16 for all the reasons mentioned previously.

CHAIRPERSON KRESS: Is there a second?

COMMISSIONER CLARENS: I will second that motion.

CHAIRPERSON KRESS: Any further

discussion? All those voting to deny 98-16 signify by saying aye?

(AYES.)

Opposed? Would you record the vote, please?

MS. PRUITT-WILLIAMS: Staff will record the vote as 4 to 0 to deny the application of 98-16.

Motion made by Mr. Hood and seconded by Mr. Clarens.

CHAIRPERSON KRESS: Thank you.

Next on our agenda -- and I'm not sure what to call it -- a reaffirmation. It has to do with the Solar Building, 98-14. It came to our attention after the vote at our last meeting, that in fact, several pieces of information had come into the files in accordance with the timeframe of April 28th, if I recall. Yes.

And we had not had them in our packet at the time that we made our decision and so we had not reviewed those letters prior to our vote. And then subsequently, Ms. Mitten, and correctly so, noted from our discussion that we were obviously missing some materials. And so we have now given them to you and you have them in your packet.

And basically what I wanted to ask is if anyone cares to re-open the case to re-discuss or

wished -- think more simply, does anyone wish to change their vote with the new information that has come to us?

COMMISSIONER PARSONS: Madam Chairman, procedurally -- I'm anxious to talk about this -- but procedurally, is it a circumstance where somebody on the prevailing side needs to open the record? I mean, we've now allowed these things to come into the record.

CHAIRPERSON KRESS: No, we haven't allowed them; they were already there. We made a mistake by -- there was a staff error by not giving it to us -- I actually had seen them. There was a staff error that when the package got put together on the weekend it wasn't in your package.

COMMISSIONER FRANKLIN: But Mr. Parsons is correct, that somebody on the prevailing side I think, has to do the reconsideration.

COMMISSIONER PARSONS: Even though we all acted without this information, so then why is it before us?

COMMISSIONER CLARENS: Well, it's to perfect the record. I mean, we've made a decision based on incomplete material that should have been properly before us. So the question then becomes, now that we have been presented with the material

that we should have had at the time that our decision was made, does this new material -- new to us but should have been presented -- makes any difference?

CHAIRPERSON KRESS: Alan, our corporate counsel, had advised us and he appears not to be here. I don't know if Mary is prepared to speak. When I brought this to corporation counsel's attention -- would you like to speak to this or should I speak from what Alan told me?

Okay, is he there? Yes, I would very much like to talk to Alan. Procedurally, I spoke to him regarding this issue and I would like him to advise us.

Alan, this is regarding the issue of the Solar Building and the couple of pieces of information which were filed on time but were not appropriately in our package the weekend that we reviewed the information and that we now all have. In my discussions with you it appeared that, unless someone wanted to reopen the record after reviewing them, we did not need to do anything.

I don't want to put words in your mouth. Would you mind speaking to the issue? I take back everything I said. You advised us on what we should do. We had a couple of letters that were duly --

and I double-checked -- were stamped in within the April 28th timeframe but because of a staff error, was not included in the package that we reviewed over the weekend.

MR. BERGSTEIN: Then they're in the record?

CHAIRPERSON KRESS: They're in the record. We don't need to reopen the record?

MR. BERGSTEIN: That is correct.

CHAIRPERSON KRESS: And we don't want to reopen the record. We have everything in the record we need.

MR. BERGSTEIN: I agree. They're in the record. The fact that they may not have been in our packet but you have them now, doesn't relate to what's in the record. What's in the record, it was timely filed with this office for the time period provided, and that becomes the record. The rest is a matter of delivery to you. You know have it delivered, it's going to be part of your deliberation, so you're going to be deciding it on the record. So everything is appropriate.

COMMISSIONER CLARENS: No, but Alan, the issue is that we already made a decision. This is an item that has already been voted on. So we've already voted and the vote has been recorded and a

decision has been made. But now we realize that that decision was based on incomplete material. So now the question is, to perfect the record, the vote by --

CHAIRPERSON KRESS: Do we need to take another vote?

COMMISSIONER FRANKLIN: It seems to me, if I can suggest it, that the prevailing side could move to reconsider on the grounds that their vote would be different. Otherwise, I don't see how procedurally you can reopen the matter.

MR. BERGSTEIN: I would prefer to discuss this privately, but if you want me to discuss it with you publicly (inaudible). Your choice.

I think that if you've all reviewed the material and if one of you believes that it's appropriate to reconsider the matter, that would be a motion you could make.

COMMISSIONER PARSONS: But it would have to be on the prevailing side. Otherwise, I'm very anxious to talk about this but I'm on the losing side of the vote.

MR. BERGSTEIN: Well, if you want to make the motion to reconsider because you wish to argue to the other Commissioners that what you have

read changes the merits of the case, then what you need to do is to request the Commissioners to reconsider the matter based upon the new material, and argue why you think the new materials merits their consideration. Then the Commission will have to vote on the question of whether or not to reconsider the vote based upon the materials that were reviewed. And then if they vote to reconsider then you'll have a second vote.

COMMISSIONER FRANKLIN: But if we knew though at the outset that no member of the majority wishes to reconsider, that the vote is not going to change even though the --

MR. BERGSTEIN: But what I'm suggesting is that at least a member who now has these materials before him in the record that was not before you, can at least request the opportunity to argue to you that it would be appropriate for you to reconsider the matter by making a motion to reconsider.

Then you could take a vote as to whether or not that's appropriate. You won't be actually discussing the merits based upon -- it's a question of whether or not to reopen the matter based upon the receipt of new material. And then if the majority felt it doesn't change your mind, then you

would deny the motion to reconsider. You won't even actually debate the merits of it as affected by the materials that's been provided.

The only question is whether or not to reconsider the matter. And what I'm suggesting is, I think a member could under these circumstances, at least make the procedural motion to have you reconsider, and then you can decide that upwards and downwards. And if you decide downwards that's the only discussion.

If you decide upwards then you do have a second vote, taking into account the new material. That's what I'm suggesting.

COMMISSIONER CLARENS: So Madam Chairperson, it seems to me that the thing to do is, in the absence of none of the Commissioners -- I don't know that for a fact, that that's the case -- but in the absence of none of the Commissioners that have voted for this application making a motion to reconsider, then the only thing is for Mr. Parsons who voted against the application, to ask us to reconsider. That's what you're saying?

MR. BERGSTEIN: That's what I'm saying.

COMMISSIONER HOOD: Mr. Parsons, if you make the motion I'll second it.

COMMISSIONER PARSONS: I'm not sure

we're able to do that. That is, the prevailing side is the only one that can make a motion for reconsideration.

CHAIRPERSON KRESS: That's what I was saying --

COMMISSIONER FRANKLIN: Under Roberts' Rules --

COMMISSIONER CLARENS: Yes, but what has been said is that Mr. Parsons can make an argument to the Commission for making a motion for reconsideration. You're not making a motion for reconsideration but you might say, this material --

CHAIRPERSON KRESS: To convince us to change our minds again, so that --

COMMISSIONER PARSONS: Let me just argue this. It is important for this Commission to go on record in response to an ANC. We did not do that because we didn't have it before us. The ANC has brought forth a position, and I'm not here to argue what's in it -- we'll do that in a moment, hopefully -- that we should, in order to develop the findings of fact and conclusions of law and a decision in an appropriate way, this document has to be dealt with. It can't be dealt with by some other method. That's the reason I would urge you to at least have a brief or extensive debate on this matter.

COMMISSIONER HOOD: Madam Chair, I would concur with Mr. Parsons that as no fault of the submissions that came in late, as a fault of ours, I would like to see it reconsidered too, so we can have that information before us before we even rule to make a decision -- well, reconsidered, rather. We've already made a decision.

MR. BERGSTEIN: Has there been a written order?

CHAIRPERSON KRESS: A written order has not been --

MR. BERGSTEIN: Because as I've indicated, under the ATA -- this is a contested case?

CHAIRPERSON KRESS: Yes.

MR. BERGSTEIN: Under the ATA the written order is the final order. And this new material will be before you when the written order is signed and can in fact, be discussed as part of the written order.

COMMISSIONER CLARENS: That is correct. And that is why -- I mean, that's exactly what we're talking about. but because of the argument that Mr. Parsons has made, that this is from an ANC to which this Commission is obligated to give great weight, which means that it must consider the arguments made

by the ANC in making our decision.

Independence was always -- in my experience, I don't know is always -- but we have discussed in public, the argument made by the ANC, whether in favor or against a case. So what Mr. Parsons is arguing, and Mr. Hood is willing to make a motion as one of the members who voted --

CHAIRPERSON KRESS: No, he voted not --

COMMISSIONER CLARENS: Oh, he's on the same vote? Oh, I see, I see. So he cannot make the motion. I see, I see. He cannot make the motion. Okay well, but in any case, the argument that Mr. Parsons has made is that we should publicly discuss the issues raised by the ANC in order to complete the record. But you might disagree, I don't know.

CHAIRPERSON KRESS: Well, let me just make a point. First of all, these issues, no matter how we feel about them, both of these issues -- I mean to me, in all of the information that has come forward, these are the same issues that we have discussed in that throughout the whole process.

COMMISSIONER CLARENS: Correct.

CHAIRPERSON KRESS: I don't see -- personally, I don't see any information that we have not discussed or evaluated as a part of the process. So I have a question as to how helpful, other than

to reopen it and redo the discussion, I don't see that this is new information.

COMMISSIONER FRANKLIN: It is not new information and we have addressed these issues, and I presume that the order will also address these issues as persuasively as we can, and we will give great weight to each of them. So I feel if there was something new here that we weren't aware of before, new issues, I might feel differently.

COMMISSIONER HOOD: I think we do have some new issues. I think that there were five unresolved issues and they settled on three, and I think you have two that are still outstanding.

COMMISSIONER FRANKLIN: And we knew that.

CHAIRPERSON KRESS: We knew that.

COMMISSIONER HOOD: Right, so there was some headway. I mean, you know, in all fairness, this was submitted on time. I just think we need to reconsider and reopen it.

COMMISSIONER PARSONS: I'm trying not to stray into the argument, okay, but the amount of time we spent to arrive at a 3-2 discussion, seemingly it was a debate between myself and the rest of you on how we could rezone this property to protect SP. And I think the Chair was back and

forth on that.

And I think I was handicapped in that discussion by not having the support of the ANC to share with you. Because the very discussion we were having was 20 feet versus 45 feet. And I think my argument would have been strengthened if I'd known this was in the record. And I'll leave it at that.

If there's nothing in here that's going to persuade you otherwise, we'll move on. But I feel troubled by that.

COMMISSIONER FRANKLIN: We did have a discussion, Madam Chair, about the extent to which the PUD, a full approval would actually change the underlying zoning. And I think in connection with other cases we've had some illumination of that issue by examining the regulations which are pretty plain as I recall.

That if this PUD never goes any further, this approval, or if for one reason or another the building is destroyed, which we all grant is remote likelihood, the underlying zoning applies. And I do recall that that was a major concern that you had, Mr. Parsons.

CHAIRPERSON KRESS: And a major concern I had.

COMMISSIONER FRANKLIN: That's right;

that the Chair had. And I believe that that concern can be allayed by just looking at the regulations.

COMMISSIONER HOOD: Let me just say something. This may not make sense and if it doesn't, nobody has to respond. But what if it was on the other -- if the roles were reversed? The ANC and the community, Presidential piece, they got their submission in on time, and the applicant didn't?

MS. PRUITT-WILLIAMS: Everything was in timely. This was a staff error, not getting it in --

COMMISSIONER HOOD: But I'm saying was if the error was on the other foot as opposed to where it is now? Would we reopen it?

MS. PRUITT-WILLIAMS: The applicant has the burden of proof.

COMMISSIONER HOOD: I really think the way the project was going and the way the vote is, I think it would be reopened then.

COMMISSIONER FRANKLIN: Well, neither party here is at fault.

COMMISSIONER HOOD: Right. I'm saying either party. But what I'm just saying, if the roles were reversed and it was to happen, then we would probably reopen it. So I want to make sure

that we're clear about it.

CHAIRPERSON KRESS: I disagree.

COMMISSIONER CLARENS: Well Madam Chairperson, I think that -- I'm listening to corporation counsel and I hear what they have to say, and I also hear from Mr. Franklin. These are issues that were dealt with at the time we made our decision. If you want to move for reaffirmation of our decision, you know -- which I think is unnecessary.

I mean, either we move to reconsider, and I don't see any basis for that, or because we've discussed these issues. We've made our decision with full knowledge of the 20 feet rather than the 45 feet and with the curb cut at 16th Street rather than an entrance from an alley, after having reviewed the material in the record and after having weighed the positives against the negatives of this application.

And there's nothing here that is new or different for the facts that we had before us. And the order will deal with the opinion of the ANC and give it the great weight that they're entitled to. So on the basis of that I would say that this item is moot. The decision has been made and should remain so.

CHAIRPERSON KRESS: And we should move on?

COMMISSIONER CLARENS: And we should move on.

COMMISSIONER FRANKLIN: I agree.

COMMISSIONER CLARENS: There is no motion before us. It's just a matter of a reaffirmation of a proposed action --

CHAIRPERSON KRESS: No, I don't think --

COMMISSIONER CLARENS: Not even that.

CHAIRPERSON KRESS: That was the clarification I had when I put it on the agenda. I said that and I believe our corporation counsel has said that we do not need to do a reaffirmation, correct? We can just move on.

MR. BERGSTEIN: As long as your written decision reflects the grounds for your decision.

CHAIRPERSON KRESS: Okay.

MR. BERGSTEIN: Respond specifically to the ANC requirements which is how great weight is considered.

CHAIRPERSON KRESS: All right. With that then, we will move on. We have no hearing action, and again, this one is mislabeled. The next thing says Reconsideration of Hearing Action, and I didn't really mean for it to say that. I mean, all

hearing actions pertaining to the DD that was put forward.

What I was proposing that was difficult is, is that we had certain information put forward to us on which we made a bench decision, and I believe you had that in your package written in a form prepared to go out for announcement -- yes.

It says "draft". It's the Zoning Commission, Minutes Proposed Rulemaking, Case No. 99-3Z. This we did pass by a bench decision, and it is my intent unless anyone disagrees, to continue with and go ahead and announce. We send to NCPC the issues that we did pass as part of the bench decision.

The other piece I had handed out, this was that I would like to continue to go ahead, and that is the Notice of Public Hearing for September 9th with the issues as they relate to the Woodies Building and only the Woodies Building. And that we go ahead and do this Notice of Public Hearing.

Maybe we should wait until you all get caught up. I know you've been in on part of this but not all of it.

COMMISSIONER PARSONS: I missed the May 20 meeting. I was here for June 3rd. There's two things before us on the table and I don't understand

--

CHAIRPERSON KRESS: Okay, let me go through them once more. Basically, what my proposal is, is to hold in abeyance -- we sent down a bunch of other things which it is not clear to me what we sent down, what we didn't. We really don't have it in any clean way from Office of Planning.

So it was my intention that the miscellaneous other considerations which we've received a lot of information on and comment relating to the DD, be tabled and that we deal with them at the July meeting; and we go over with Office of Planning once David Colby has a chance to be back, only the other items relating to the DD.

But that we continue ahead with two pretty clean things -- fairly clean. The first one being what is marked "draft", which is the Notice of Proposed Rulemaking on which we made the bench decision --

MS. PRUITT-WILLIAMS: On May 20th.

CHAIRPERSON KRESS: -- on May 20th. And that basically adds the residential use that does affect the Woodies Building, and then addresses the two other issues. That we made a bench decision on and I suggest that go forward in its normal process.

COMMISSIONER PARSONS: I will not

participate in that, but go ahead.

CHAIRPERSON KRESS: Okay. And then the meeting that we had where we set down -- where the Mayor had asked us to set down the points of interest relating to the Woodies Building on July 26th, we voted September 9th. And so I also suggest this go ahead to announce the meeting for September 9th.

COMMISSIONER PARSONS: I would only recommend that this draft dated June 3rd, probably shouldn't have the June 3rd date on it. That's what confused me. It should say May 20th, I guess.

CHAIRPERSON KRESS: Or May 20th somewhere, yes, I agree.

COMMISSIONER PARSONS: Not June 3rd at the top. Now I'm straight.

COMMISSIONER CLARENS: Okay, so then May what?

CHAIRPERSON KRESS: The actual date of the bench decision was May 20th.

COMMISSIONER CLARENS: May 20th. So you're suggesting that we send this to NCPC for review prior to final action --

CHAIRPERSON KRESS: Right.

COMMISSIONER CLARENS: -- of these text amendments?

CHAIRPERSON KRESS: Right.

COMMISSIONER CLARENS: That's on one hand. That to postpone any action on the other issues regarding DD until we have an opportunity to meet in July and Mr. Colby is here to represent the Office of Planning?

CHAIRPERSON KRESS: Right.

COMMISSIONER CLARENS: And there's no action required. We have already decided on a set down for the Woodies Building?

CHAIRPERSON KRESS: Right.

COMMISSIONER CLARENS: And that's all?

CHAIRPERSON KRESS: That's what I'm proposing.

MR. BASTIDA: Madam Chairperson, my understanding is that in fact, at that meeting on May 20th you set down additional facts. So what you want is then an enumeration of those facts as reflected on the transcripts, and then if there is any discrepancy between all the memos sorted out, that in fact, nothing is left out of the laundry list --

CHAIRPERSON KRESS: Not only left out but also analyzed, because after we set that down Office of Planning suggested rewriting some things, we got other comments in on that perhaps we should

have rewritten them in a different format, a different style.

I would like Office of Planning to look at -- not only pull out of the record for us what all those other items are, but to comment on them and to perhaps tighten up the language or rewrite the language as it may seem appropriate.

Because some of these we were just saying, okay we want to use Mr. Doctor's amendment, we want to use something from Mr. Lynch, and then other people later said, well you should have written it X, Y, Z. And I'm just feeling uncomfortable with the way this has gone.

And so if you can pull out for us and hone what those issues are and then do an Office of Planning report on those other items we're talking about setting down, then we can either reaffirm to set them down or change the manner in which they're set down, to more appropriately reflect the language that may be proposed.

MR. BASTIDA: Madam Chair, that's doable and we will have that for the next meeting -- for the July meeting.

CHAIRPERSON KRESS: All right. Thank you. Is that all right to all of my fellow Commissioners?

COMMISSIONER CLARENS: Sounds good.

CHAIRPERSON KRESS: Okay, the next item on the agenda we're moving into Final Action.

COMMISSIONER PARSONS: No, wait. Now I'm really confused. What are we going to do with this?

CHAIRPERSON KRESS: That is going to be mailed out. I mean, that will be put in The Register.

MS. PRUITT-WILLIAMS: That's just an advertisement for the hearing; the public hearing notice.

CHAIRPERSON KRESS: That's going to happen September --

COMMISSIONER PARSONS: We took a decision in May that affected more than Square 346.

CHAIRPERSON KRESS: Yes.

COMMISSIONER PARSONS: Why is that not included in this Notice?

CHAIRPERSON KRESS: Because that one already has a bench decision. This one has no decision on it. That's why I'm stopping all these other ones and pulling them together.

COMMISSIONER PARSONS: You mean on May 20th you made the decision on --

CHAIRPERSON KRESS: On those three

items. A bench decision, yes.

COMMISSIONER FRANKLIN: A set of --

CHAIRPERSON KRESS: No, no, these are bench decisions.

COMMISSIONER PARSONS: Without a hearing? What did you do?

CHAIRPERSON KRESS: Yes, we had a hearing. We had a hearing and we had a bench decision on these three items.

MR. ERONDU: Included in your package for you to know what you decided and that package shows exactly what I have sent into the Planning Commission and --

CHAIRPERSON KRESS: To The Register.

MR. ERONDU: I just wanted the Commission to know if I made a mistake. That's why it's in the package.

COMMISSIONER PARSONS: Thank you.

CHAIRPERSON KRESS: I'm sorry. Hopefully we'll get it more cleaned up than that --

COMMISSIONER PARSONS: I think I said last time, when this Commission hurries it screws up.

CHAIRPERSON KRESS: You're absolutely right.

COMMISSIONER PARSONS: I think we have.

CHAIRPERSON KRESS: That's why I stopped a bunch of the other pieces so that we can evaluate those next month.

COMMISSIONER PARSONS: Good idea.

CHAIRPERSON KRESS: Under Final Action, basically the rules of the Zoning Commission and BZA are not here because we're not dealing with them because corporation counsel has not had a chance to --

MS. PRUITT-WILLIAMS: Completely go through everything. We do have the OP report.

CHAIRPERSON KRESS: The final OP report?

MS. PRUITT-WILLIAMS: Yes, we got it. It was delivered to our office Friday evening.

MR. CORCORAN: We were gone Thursday in the early afternoon. Friday evening I delivered a report just noting that it wasn't on the agenda, what happened. And corporation counsel had also dropped it off --

MS. PRUITT-WILLIAMS: -- so we just got it again. You have that information but you don't have corporation counsel's information so you can take it up --

MR. CORCORAN: And corporation counsel also walked it down -- they accepted our report. They walked it down even before I did on the --

MS. PRUITT-WILLIAMS: But no, corporation counsel is going to go through it themselves to make sure that there was some issues that Mrs. Kress had and they have not had the opportunity to deal with those.

MR. CORCORAN: Okay.

CHAIRPERSON KRESS: So we have their final report. We will definitely be ready in July to be done with this because we do have NCPC's comments. So we will do the final vote in July once we have reviewed Office of Planning's report and corporation counsel comments.

MR. BASTIDA: Madam Chair, just for clarification. That means you are putting it on the July agenda, correct?

CHAIRPERSON KRESS: Absolutely.

MR. BASTIDA: Thank you.

CHAIRPERSON KRESS: Thank you. I also had -- well, basically, the two items that are on the agenda are 97-6 and 97-6(I), which has to do with the Chain Bridge Road/University Terrace TSP Overlay.

COMMISSIONER CLARENS: The first one approves and the second one denies, is that correct?

MS. PRUITT-WILLIAMS: Correct.

CHAIRPERSON KRESS: Yes.

COMMISSIONER PARSONS: So moved.

COMMISSIONER CLARENS: Second.

COMMISSIONER FRANKLIN: Madam Chair, I did not participate in B.

CHAIRPERSON KRESS: In B? All right. I would only say, I have several amendments; nothing of substance, mostly typos. So I would just like the motion to reflect as amended. I don't really have anything of major substance.

COMMISSIONER CLARENS: All right.

CHAIRPERSON KRESS: All those in favor -- we'll break it into two parts since Commissioner Franklin did not participate in both.

So 97-6, all those in favor signify by saying aye.

(Chorus of ayes.)

MS. PRUITT-WILLIAMS: Staff records the vote as five to zero to approve 97-6. And I've got the motion made by Mr. Parsons but I'm sorry, I wasn't clear who seconded it. Mr. Clarens, thank you.

CHAIRPERSON KRESS: And now I would call for the vote, I would assume the same motioner and seconder for 97-6(I) for purposes of Commissioner Franklin.

COMMISSIONER PARSONS: Yes.

COMMISSIONER CLARENS: Yes.

CHAIRPERSON KRESS: All those in favor signify by saying aye.

(Chorus of ayes.)

MS. PRUITT-WILLIAMS: Staff will record the vote as four to zero to one. Motion made by Mr. Parsons, seconded by Mr. Clarens; Mr. Franklin not present, not voting.

CHAIRPERSON KRESS: Perfect. Thank you. With that we'll move forward. I just wanted to double-check and make sure I'm correct. The other one that was being carried over was the millennium case, and Mr. Bastida you seem to think that has to do with the status?

MR. BASTIDA: I discussed that with Sheri so I think that she can address it now.

MS. PRUITT-WILLIAMS: That was the result of Ms. Kahlo sending a letter in form of a motion requesting her party status be revisited. The Commission dealt with that at a meeting and took a vote and therefore, that really doesn't require an order.

Usually the transcript stands on its own in reference to motions, but as a courtesy we can write Mrs. Kahlo and state that the Commission has reconsidered and still has chosen to deny the

party's status. So that she'll have some correspondence.

CHAIRPERSON KRESS: Okay, so that is completed then? All right. Thank you.

MR. BASTIDA: Hopefully.

CHAIRPERSON KRESS: With that, we'll move on to the status reports of the Office of Planning.

MR. BASTIDA: Madam Chairperson, the Office of Planning submited the report June the 7th and I'll be glad to go with it. There's not any really major issues or statements.

On page 2 I think three -- it's the one that has been highlighted for your review. Ms. Atkins would like to add to it.

MS. ATKINS: And the Zoning Commission will soon be receiving our final report on page 97-7(I), the completion of the SP Zoning case in the Logan and Thomas Circle (inaudible).

CHAIRPERSON KRESS: I didn't hear that. What did you say at the end?

MS. ATKINS: That the Commission will soon be receiving our final report on Case 97-7(I), the completion of SP Zoning case in the Logan and Thomas Circle areas.

CHAIRPERSON KRESS: I'm sorry, thank

you, yes. That was an initially going to be on the agenda for today but we had such a full agenda. And I understand conversations transpired that there was an agreement that this could go to July.

MS. ATKINS: Yes.

CHAIRPERSON KRESS: So that will be set down in July.

MR. BASTIDA: So you're saying basically, that will be on the July agenda?

CHAIRPERSON KRESS: I meant -- not set down. I've got to be careful how I use the words. That will be on the July agenda. Thank you.

MR. BASTIDA: Thank you.

CHAIRPERSON KRESS: Forgive me. All right. Any questions of Office of Planning? I see the next thing is the report of the Director. Did you have any other reports before we move to the Report of the Director, Ms. Pruitt-Williams?

MS. PRUITT-WILLIAMS: In your package you have a request for sua sponte review on a BZA Case 16426. You have the order that was just signed. This actually comes as a result of Mr. Clarens sitting on the Board. And because of the summary order the order itself probably gives you new information, which is why we included the transcripts which was the basis for the decision.

CHAIRPERSON KRESS: Did everyone get the transcripts?

COMMISSIONER CLARENS: Yes.

MS. PRUITT-WILLIAMS: At this juncture you are requested to determine whether or not you will be taking this under sua sponte review or not.

CHAIRPERSON KRESS: What we should do is do this in two steps: 1) decide to take a sua sponte review; and then if that motion passes then actually have the discussion of the case and then make a corporate vote.

MR. BERGSTEIN: Madam Chair, I believe that after you decide to review it, the Board then transmits the order to the Office of Planning -- that's 3103.3 -- who then forwards it to the Zoning Commission and to all parties before the Board. And then following that you would conduct a review under 3103.4.

So it appears to me that what you'd be doing here today is determine whether or not to actually take up the sua sponte review and then you would follow this process. And at the completion of the process you would have a second meeting to actually decide --

CHAIRPERSON KRESS: The trouble is, we only have ten days.

MS. PRUITT-WILLIAMS: No, you have ten days to make a decision whether or not to take the sua sponte review.

MR. BERGSTEIN: Well, actually you have ten days to request sua sponte.

MS. PRUITT-WILLIAMS: And that has been done timely. The order was --

MR. BERGSTEIN: I'm sorry. You may request a sua sponte -- that's what you're doing here today. You're within your 10-day limit now to request the sua sponte review and then we go through this process. So this is -- what you're doing is actually making a determination to go forward with a sua sponte review. And that's within a 10-day --

MS. PRUITT-WILLIAMS: The order was signed on Friday, so you're still within a 10-day period.

MR. BERGSTEIN: And there's no time period that I see to actually complete the process on (inaudible).

COMMISSIONER FRANKLIN: Mr. Bergstein, is the review de novo or just appellate?

MR. BERGSTEIN: What it says is -- let me see --

MS. PRUITT-WILLIAMS: There's no real procedures for a sua sponte review. That's part of

the concern.

MR. BERGSTEIN: It says that you give -- you have to afford the parties an opportunity to present memorandum to the Board in support of or in opposition of the actions of the Board. It sounds to me appellate. That is, you do not have a new hearing; you merely invite the parties to brief the issue.

That's what -- I'm relying on 3103.4. "Upon receipt of the record the Zoning Commission shall review the case and take action as it deems appropriate provided the Zoning Commission shall not reverse or modify the order of the decision of the Board without affording the parties before the Board an opportunity to present memoranda to the Commission in support of or in opposition to, the actions of the Board."

COMMISSIONER FRANKLIN: Thank you.

MR. BASTIDA: Madam Chairperson?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: Did you say something about the Office of Planning?

CHAIRPERSON KRESS: Yes.

MR. BASTIDA: I couldn't quite understand what you were saying. So if you were to clarify that I would be appreciative.

MR. BERGSTEIN: Certainly. I'm reading from 3103.3, the Commission's determination to review an order or decision of the Board. Its actual decision to do that shall be transmitted forthwith to the Director of the Office of -- I'm sorry, I'm sorry.

CHAIRPERSON KRESS: I was going to say -- because we never sent anything to -- the sua spontes I've been through before --

MR. BERGSTEIN: I apologize to you, Mr. Bastida.

MR. BASTIDA: Thank you.

COMMISSIONER CLARENS: The Director absolves you. You would then communicate with BZA.

CHAIRPERSON KRESS: I'm glad you asked.

MR. BASTIDA: You know me by now.

CHAIRPERSON KRESS: So basically what we do today is discuss doing the sua sponte review but we cannot discuss the case until we have memoranda from the parties?

MR. BERGSTEIN: Yes, and this may be of some guidance to you. I'm reading from 3103.8. "The Zoning Commission shall look to the following guidelines when determining whether to invoke its sua sponte review authority. The Commission shall exercise its discretion for sua sponte review as

follows: a) in a particular instance where it appears to the Commission that the Board of Zoning Adjustment has exceeded its prerogatives and has thus in effect, changed the zoning; b) where it appears that a basic policy of the Zoning Commission as expressed in the Zoning Regulations has been violated as a result of the Board of Zoning Adjustment action; or c) an unusual instance as determined by the Zoning Commission."

COMMISSIONER PARSONS: I think this qualifies under all three.

COMMISSIONER CLARENS: So in my letter to you, Madam Chairperson, I cite two of the three. I think that under Section 3103.8 which establishes the guidelines that Mr. Bergstein has just been talking about, the Commission may initiate a sua sponte review.

That is my opinion that the Board has exceeded its prerogative and has thus changed the zoning and that furthermore the policy of the Commission as expressed in the Zoning Regulation has been violated by this action.

And that is why I'm recommending sua sponte -- or requesting sua sponte.

CHAIRPERSON KRESS: In fact, before when we did the sua sponte I don't know that we did get

memorandum. So I'm not sure we have handled it --

COMMISSIONER PARSONS: Which case are you referring to? Because I can only recall one in the entire time I've been on the Commission.

CHAIRPERSON KRESS: I can only recall one as well, but we didn't get -- do you remember getting memorandum from the --

COMMISSIONER PARSONS: Well, the case I'm talking about is WTA down at Hecht's -- 15 years ago.

CHAIRPERSON KRESS: That was actually -- because I've been on the Board for only nine.

COMMISSIONER PARSONS: All right, 12. I'll compromise. A long time ago.

CHAIRPERSON KRESS: Well, I was just wondering if we could waive our rules to receive -- and go ahead and discuss this, or would we feel more comfortable going ahead and asking for -- following the procedures as Alan has laid them out?

COMMISSIONER CLARENS: There is only one party in this case and that is the applicant. There's no other party.

CHAIRPERSON KRESS: Correct.

COMMISSIONER FRANKLIN: There was no opposition?

COMMISSIONER CLARENS: There's a letter

in opposition --

CHAIRPERSON KRESS: Yes, there is --

COMMISSIONER CLARENS: -- but it's not a party. So it doesn't get any --

CHAIRPERSON KRESS: So practically we're asking the applicant, which has received approval from BZA, to say it agrees with BZA giving it approval?

MR. BASTIDA: No, but they'd have to -- the applicant is supposed to argue the reason why he agreed -- I mean, the applicant agrees with BZA. He has to elaborate on those reasons.

COMMISSIONER PARSONS: Well, but that's not fair. I mean, if you've read the transcript that's not going to happen. To me this is an issue between us and the BZA.

MR. BASTIDA: But that's how the rules of the Zoning Regulations work. If you --

COMMISSIONER CLARENS: If you read the regulations, the regulations say -- Mr. Bergstein, if you have the regulations you can correct me if I'm wrong -- but what it basically says is that before acting to reverse or remand a case, the Board should do that after affording the parties an opportunity to write a memorandum.

So this Commission can proceed to

discuss and act on the sua sponte review that only after we act, after we review the case, and if we're going to act in reverse, then we afford the applicant -- we inform the applicant that we're going to act in reverse. Is there anything you want to tell us?

MR. BERGSTEIN: That is correct. You would afford the applicant opportunity to present --

CHAIRPERSON KRESS: All right.

MR. BERGSTEIN: But that's after you get to step 2. You're still in step 1 which is, whether or not going to invoke sua sponte review in the first place. Then after you've determined to invoke it you then you get to stage 2 where you would afford the applicant an opportunity to argue its position.

MR. BASTIDA: Madam Chairperson, on the previous -- I'm not arguing Mr. Bergstein's case. In the previous case that was 11-and-a-half years ago, the Commission afforded the applicant to provide that memo before the discussion. But that was what the Commission did. That was all.

CHAIRPERSON KRESS: So there was a memo before the discussion?

MR. BASTIDA: Yes. But that is not necessarily the rules for the game. So you can do

it however you so wish.

CHAIRPERSON KRESS: Well, then I would ask for a motion regarding whether we're going to do a sua sponte review. I guess that's the first step. Would someone make a motion to propose that we do a sua sponte review of BZA Case No. 16426?

COMMISSIONER PARSONS: So moved.

COMMISSIONER HOOD: Second.

CHAIRPERSON KRESS: Any further discussion? All in favor signify by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

MS. PRUITT-WILLIAMS: Staff will record the vote as five to zero to do a sua sponte review. The motion made by Mr. Parsons and seconded by Mr. Hood.

CHAIRPERSON KRESS: Should we now -- are you comfortable to go ahead and just discuss this and perhaps reach the point of making a decision that we can then ask the -- assuming it goes negatively -- to ask them for the memorandum from the applicant? Is that -- yes, we have the record and we have read it.

MR. BERGSTEIN: It sounds to me that it almost presumes that you would get to a stage of I

suppose, consensus that you were going -- or it is likely that you would reverse or modify it. And then at that time you would afford the applicant an opportunity to present materials to you.

So if that's what you care to do you could go forward today with what you have and get to that point. But where you can't cross the point is actually to reverse or modify.

COMMISSIONER CLARENS: So you're saying that a letter -- if it goes as far as getting the Commission to get close to making a decision on the reversal, that then we notify by letter both the Board and the applicant that the Commission is intending to reverse and they can address the Commission. Is that what you're saying?

MR. BERGSTEIN: Yes, but I don't believe the Board gets to address the Commission.

COMMISSIONER CLARENS: No, no, no, I'm sorry --

MR. BERGSTEIN: Just the parties.

COMMISSIONER CLARENS: Just the parties.

MR. BERGSTEIN: Yes, that's correct.

COMMISSIONER CLARENS: And it's not address; it's address by memo?

MR. BERGSTEIN: That's correct, although the rules do afford you as among your options, an

opportunity to also hear argument. But that's strictly a prerogative that you have.

But yes, since you do already have the record and if you view it as being efficient, you can at least get to the point where you know you've got to ask the party to -- the party applicant to provide you something in support of the Board's position, if the party cares to. And then make your final decision after that.

CHAIRPERSON KRESS: All right. With everyone's approval I think we should --

COMMISSIONER FRANKLIN: Madam Chair, could I --

CHAIRPERSON KRESS: -- go ahead and proceed. Yes?

COMMISSIONER FRANKLIN: I'm sorry.

CHAIRPERSON KRESS: Go ahead.

COMMISSIONER FRANKLIN: Would it not be prudent of us to inform the ANC and invite their comments on this?

COMMISSIONER PARSONS: I don't think so. Madam Chair, when are we going to talk about the issue here?

CHAIRPERSON KRESS: That's what I'm trying to get to.

COMMISSIONER PARSONS: Screw procedure,

frankly. The issue here to me, is twofold. One, the neighborhood is in transition and we have implemented zoning regulations to assist that transition. The Board on the other hand, is cognizant of that but has an applicant who's saying that, I can't conform to the Zoning Regulations because the neighborhood is a mess.

There is nothing in the record that deals with the test that has to be taken as to hardship on the site. It is the hardship of the community that they based their decision on; that a junkyard belongs in a junkyard, frankly, as I see it. That is, it is premature for him to undertake something that would conform to the regulations because of the neighborhood.

And they've gone way beyond the regulations which are affecting the site itself -- which is fine from a zoning standpoint -- and based their variance on the neighborhood. And I've never seen the BZA do that before.

Have I got his right? Mr. Clarens, you were there.

CHAIRPERSON KRESS: I'm not sure you want him to talk.

COMMISSIONER CLARENS: I would not have taken this action, frankly. Except for the fact

that there was not a scintilla of anything provided to the Board in order to make this decision. I mean, there was no unique of the site that differentiated from any other site in this vicinity, there's nothing topographical, there was nothing in its shape, there was nothing in its history, there was nothing anywhere to define a distinguishing site from any other site in that area.

And there was no connection whatsoever, between this lack of uniqueness and any possible hardship to the owner in complying with the zoning regulations, and that is the first threshold and that was never crossed and that was never met and the applicant never made an argument that made any sense. And the Board didn't even make any kind of argument on that.

I think that the argument was exactly as Mr. Parsons had said, on the general characteristics of the site, and it is one of the basic tenets of zoning: that we look through a planning process at the future and we see the land use in a rational, planned way. And of course it's going to take some time and of course at some point in this -- but if we begin to corrode the power of the zone plan then the zone plan ceases to have any meaning and any possible effect.

So that's why I was -- and it took me a little bit by surprise, and I think in reading the record maybe you noticed that it is at the end that I become a little bit concerned because all of a sudden it surprises me that the Board is going to go in the direction of approving this application where no case has been made whatsoever.

So that's why I'm asking you to reverse this decision because I think, as I said in my letter, that the Board erred on making findings necessary. The applicant did not meet any burden of proof and the Board did not make findings that would justify its decision.

And then the third item -- so there's no uniqueness, there's no hardship, and it is contrary to the intention of the Zoning Regulations.

COMMISSIONER FRANKLIN: Otherwise it's okay.

COMMISSIONER HOOD: Madam Chair, I just wanted to say that I believe the ANC did take a vote on it and they voted six to zero, while not normally -- it's page 115, starts about at line 15.

CHAIRPERSON KRESS: But if ANC did --

COMMISSIONER HOOD: Right, I think it was mentioned that they didn't.

CHAIRPERSON KRESS: No, that they did.

COMMISSIONER HOOD: Oh, they did. Okay, I'm sorry.

CHAIRPERSON KRESS: And they are automatic parties, so I would think that as we go ahead and that it appears that there's at least four of us that look like there's a good chance of reversal, I would think that we would notify the applicant and also the ANC to make their comments in writing, because they are automatically a party to every case anyway.

COMMISSIONER HOOD: Well, can I just interject, Madam Chair?

CHAIRPERSON KRESS: Sure.

COMMISSIONER HOOD: Normally, I don't usually go in totally the opposite way but this time I think Mr. Clarens is correct. What I read here -- what's the word we're using now, scintilla?

CHAIRPERSON KRESS: It's the word of the day.

COMMISSIONER HOOD: While I was reading the transcript I believe Mr. Clarens asked the question, "What prevents you from developing this property for any of the uses that are allowed under C.3.C? Mr. Hong: The only way I could benefit for owning this property without building an automotive repair shop would be to wait around for somebody to

buy it to a higher market".

To me, that was not justifiable and I do concur with Commissioner Clarens.

CHAIRPERSON KRESS: Well, I guess we're not supposed to bring it to a vote. We're supposed to have a consensus. And do we have a consensus that this should be reversed and then at this point --

MR. BERGSTEIN: Perhaps a motion would be in order to advise the parties of the Board's intent to reverse -- on the site -- intent to reverse. And that might be an appropriate procedure vehicle.

CHAIRPERSON KRESS: All right.

COMMISSIONER PARSONS: But that doesn't go to the Board?

MR. BERGSTEIN: No, that's not how the rules are written. It goes to the parties.

COMMISSIONER PARSONS: We are not going to have an adequate record here. We won't get a response. In other words, we'll have nothing --

CHAIRPERSON KRESS: If he thinks it's going to -- you don't think --

COMMISSIONER CLARENS: Well, I mean, he might then go and find a lawyer and write something.

MR. BASTIDA: The regulations say that

you can afford the parties to have an input. It doesn't mean that you must have it.

MR. BERGSTEIN: That is correct. This is a matter of due process here. It's not a mandatory -- you can't go forward if you don't receive one. It's merely giving the opportunity to be heard to the parties. And if you give them the opportunity and they don't avail themselves of the opportunity that means you can go forward and make your decision.

MR. BASTIDA: I would suggest, Madam Chairperson, that when you afford them the opportunity to answer to you, that you give them a time limit.

CHAIRPERSON KRESS: That's a good idea.

MR. BASTIDA: Or a time certain to have it by that, such and such a date.

CHAIRPERSON KRESS: That's an excellent suggestion.

COMMISSIONER CLARENS: Mr. Parsons, why do you say that if we don't let the Board know that we won't have a record?

COMMISSIONER PARSONS: I guess what I meant was -- and I'm violating our regulations -- but it seems to me that the Board should have an opportunity, at least through their Chair, to

address us on this matter in written form or in person.

CHAIRPERSON KRESS: I don't see why we couldn't. I mean, we're not --

MR. BERGSTEIN: I don't think it would violate your regulations if you allow greater notice than less. So if you feel it's appropriate to advise the Board of your actions today and invite them to respond, I don't think that would be in violation of your regulations.

CHAIRPERSON KRESS: I think that's an excellent --

COMMISSIONER FRANKLIN: Does it not mean though, that the action of the Board is stayed?

CHAIRPERSON KRESS: Oh, yes.

MR. BERGSTEIN: Yes.

COMMISSIONER FRANKLIN: But there has to be some -- the zoning Administer has to know that. Or somebody has to know that right away.

COMMISSIONER CLARENS: Or we hold the order. The order has no --

MS. PRUITT-WILLIAMS: It has not been sent.

CHAIRPERSON KRESS: Or signed. It has to go -- it has not been --

COMMISSIONER CLARENS: Then we can form

that a motion be made to stay the order until the issue is resolved.

CHAIRPERSON KRESS: All right. So I'm going to ask for a motion to stay the order to submit a letter to the applicant, to the ANC -- affected ANC -- and to the Board of Zoning Adjustments telling them of our intention to reverse their action and set -- what kind of a date? How much time shall we give them? A month?

COMMISSIONER CLARENS: Ten days. Eleven-and-a-half years.

MR. BASTIDA: Well, 60 days because you're not going to make (unintelligible) in any event. So you're going to give it 60 days so you can have it in your September meeting.

CHAIRPERSON KRESS: Okay.

COMMISSIONER HOOD: So moved, Madam Chair.

CHAIRPERSON KRESS: Okay, Commissioner Hood has made the motion. Is there a second?

COMMISSIONER FRANKLIN: Second.

CHAIRPERSON KRESS: Commissioner Franklin seconds. All in favor signify by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

MS. PRUITT-WILLIAMS: Staff will record the vote as five to zero to advise the parties, the ANC and the Board, of the Commission's decision to reverse the Board's action and a motion to stay the order. Motion made by Mr. Hood and seconded by Mr. Franklin.

CHAIRPERSON KRESS: Terrific.

COMMISSIONER FRANKLIN: It's almost in the nature of a Show Cause Order why it should not be reversed.

CHAIRPERSON KRESS: Okay, with that, let's --

MS. PRUITT-WILLIAMS: The next item is to hear the request for an extension.

CHAIRPERSON KRESS: We have a request for an extension for 90-3C, a PUD order, Conference Center Associates Limited Partnership requesting a 2-year time extension. What's your pleasure? Have you reviewed it?

COMMISSIONER FRANKLIN: Madam Chair, I have reviewed it and I do not believe it meets our standard for an extension.

COMMISSIONER PARSONS: Could he repeat that? I'm sorry, I didn't --

COMMISSIONER FRANKLIN: I said I have

reviewed the materials and I do not believe that it meets our standards for the extension, which should come as no surprise. This thing has been kicking around for years and years and years. We have gone through now six or seven years of extraordinary economic vitality.

There is something wrong with this PUD. Either somebody doesn't know how to move from one point to the other or no one is putting enough resources into it. But I think the Commission is made a laughing stock by continual extensions when obviously very little progress is being made.

And I think that our regulations called for some kind of good faith, diligent showing that -- you know, this was before us two years ago and essentially the same story was told to us two years ago. So it's just obviously not a viable proposal.

And I think that we have to start signalling to the development communities that this Commission is just not a bunch of naives to be taken advantage of by continual extensions when people don't know how to develop anything.

Now, if I don't persuade you with that then I would like to urge that we actually have a hearing so we can ask some questions about what people are actually doing to move this forward. And

I would be very surprised to learn that they have done anything that a professional would regard as diligent activities to get this kind of development going.

COMMISSIONER HOOD: Madam Chair, in looking over this piece myself, I concur with Mr. Franklin, but I had thought maybe if we can extend it to December of 1999 -- because I understand from the letter behind the packet that there's someone else who's ready to come in and do a development piece on that particular piece which is being held up with the PUD.

So I'm not in favor of going past December '99. If the rest of the Commission is in favor of going past December '99 I too will associate myself with the comments of Mr. Franklin.

COMMISSIONER FRANKLIN: What letter are you referring to?

CHAIRPERSON KRESS: It was the last thing in the package.

COMMISSIONER FRANKLIN: We had similar kinds of representations the last time around, but I'd be willing to go to December '99. But I still don't believe it.

COMMISSIONER CLARENS: Well, because Madam Chairperson, I -- I agree. I think that

because we are now taking away permission for PUD that had been previously approved, and even though I think that we could deny the request for extension which I think is a problem, it seems to me that we should give one last opportunity, brief as it may be -- of six months or December of '99 -- to the person that holds the application, holds the PUD, for making something happen.

And we are putting them on notice that after, that if there's no project ready to proceed at that point, that then any other extension will be denied.

COMMISSIONER FRANKLIN: That is acceptable to me, Madam Chair.

CHAIRPERSON KRESS: The only other option is to hold a hearing.

COMMISSIONER FRANKLIN: I think a hearing would be helpful.

CHAIRPERSON KRESS: And I do think this is major to take -- and again, I think the compromise on the table is December '99 -- but I do think that we haven't really withdrawn these except for very good cause. And I would think it would be helpful to have an interaction rather than just pieces of paper. I don't know where the ANC stands, reading these.

COMMISSIONER CLARENS: Well, but we have a letter that basically says that there is another party that is ready to move forward. Now, we have no knowledge and this might be another, you know, pie in the sky type of thing. But in any case it seems to me that we can hold a hearing but I'm not sure what we're going to get out of that.

And we cannot hold properties hostage simply because we've already approved a PUD over a period of more than ten years -- almost 11.

COMMISSIONER PARSONS: Based on Mr. Mariani's letter at Tab 2 it seems to me that the six months is the appropriate thing to do. If we were then to introduce a hearing into the middle of that we'd probably get to it in October. And I think there would be reason in December, if they came forward and said you know, give us another two years to work this out, that that would be the time for a hearing.

CHAIRPERSON KRESS: Okay. Sounds like there's some unanimity. Would someone like to make a motion?

COMMISSIONER PARSONS: Move that we extend the PUD orders 689, 689-A, 689-B, and 689-C to December of 1999 -- December 31st, 1999.

COMMISSIONER HOOD: I second the motion.

CHAIRPERSON KRESS: Any further discussion? All in favor signify by saying aye.

(Chorus of ayes.)

COMMISSIONER FRANKLIN: I'll abstain, Madam Chair. Because I know what's going to happen on December 1999. You guys are going to extend it again. We're going to have a whole bunch of these coming up now that have been here before, and we've got to send a signal out -- I don't want to belabor the point -- that we've gone through a period of unparalleled prosperity and there are still some PUDs sticking around.

This has not produced any amenity. I have been in favor of extending PUDs when the amenity package has been provided or substantially provided, which shows you the good faith and ability of people to move. But when they just hang around like this we've just got to start getting some discipline into the process.

COMMISSIONER HOOD: Madam Chair, if I may add. If we start doing what we just did I think -- we add another six months as opposed to two years -- I think we will bring that process to some closer and people will see that we're serious about it and they will stop asking for these 2-year extensions, and they'll know to be ready to get these projects

moving. So I think --

CHAIRPERSON KRESS: But usually they're 3-year extensions.

COMMISSIONER HOOD: Well, three years.

CHAIRPERSON KRESS: But yes. Okay.

COMMISSIONER CLARENS: It's really -- I mention although it's not a motion -- and I don't know if it's too late to amend the motion -- but it is a notice of intent for the Commission not to extend the PUD any more unless very clear evidence --

COMMISSIONER FRANKLIN: Unless the regulations are complied with, and this does not comply with our regulations.

CHAIRPERSON KRESS: And I would also say there is something new and that's in the Comprehensive Plan, which is to put a cap of 12 years on these.

COMMISSIONER FRANKLIN: Yes, I mean, this has been noticed throughout --

CHAIRPERSON KRESS: Not just us; this has come from the community -- I mean, obviously for it to be in the Comp Plan -- but there needs to be some timeframe set. And as you say, when you get there you can decide whether to have hearings and have more information or handle it however you wish.

Is there any other business before we go to the election? Yes?

MS. PRUITT-WILLIAMS: We need to record the vote.

COMMISSIONER FRANKLIN: I'll change my vote to being in favor so I don't sound too --

MS. PRUITT-WILLIAMS: Staff will record the vote at five to zero to approve an extension on the time for this -- and just for clarification -- until December 31st, 1999. Motion made by Mr. Parsons and seconded by Mr. Hood.

CHAIRPERSON KRESS: Did you have any other business before we move to election of officers?

MS. PRUITT-WILLIAMS: No, Madam Chair.

CHAIRPERSON KRESS: All right, with that I vote to move to the election of officers, and I would like to make the motion that Commissioner Clarens be elected Chairperson and Commissioner Hood be elected Vice Chairperson. Is there a second?

COMMISSIONER FRANKLIN: I'll second that.

CHAIRPERSON KRESS: Any discussion? All in favor signify by saying aye.

(Chorus of ayes.)

Opposed?

(No response.)

Motion carries.

MS. PRUITT-WILLIAMS: Staff will record the vote as five to zero. Motion made by Ms. Kress, seconded by Mr. Franklin. The motion was to have Mr. Clarens as Chairperson and Mr. Hood as Vice Chair.

COMMISSIONER CLARENS: And as my first action as Chairperson of this honorable Commission I adjourn this meeting.

(Whereupon, the meeting was adjourned at 3:37 p.m.)