

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING  
1104th MEETING SESSION (10th OF 2000)

+ + + + +

MONDAY  
OCTOBER 16, 2000

+ + + + +

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, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

|                     |                  |
|---------------------|------------------|
| ANTHONY J. HOOD     | Chairperson      |
| CAROL J. MITTEN     | Vice Chairperson |
| HERBERT M. FRANKLIN | Commissioner     |
| KWASI HOLMAN        | Commissioner     |

OFFICE OF ZONING STAFF PRESENT:

|                  |                  |
|------------------|------------------|
| Alberto Bastida, | Secretary, ZC    |
| Gerald Forsburg, | Office of Zoning |

## OTHER AGENCY STAFF PRESENT:

|                          |                    |
|--------------------------|--------------------|
| Andrew Altman, Director, | Office of Planning |
| Ellen McCarthy,          | Office of Planning |
| David McGhettigan,       | Office of Planning |
| Jennifer Steingasser,    | Office of Planning |

## D.C. OFFICE OF CORPORATION COUNSEL:

|                 |      |
|-----------------|------|
| Alan Bergstein, | Esq. |
| Marie Sansone,  | Esq. |

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P-R-O-C-E-E-D-I-N-G-S

(1:36 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission, October 16th, at 1:30.

I'm Anthony Hood, Chairman of the Zoning Commission. Joining me are Commissioner Franklin, Commissioner Mitten, who serves as Vice Chair, and Commissioner Holman.

Preliminary matters. Mr. Bastida, is there any preliminary matters from staff?

MR. BASTIDA: Yes, Mr. Chairman. I just revised the agenda, and I added two projects to the hearing action, proposed hearing action. One of them is the Kennedy-Warren. That is because we have to send it out for exception. Accordingly, you are only making a proposed action today, unless you -- if you vote on the affirmative. If you vote on the negative, then that would be the final action.

CHAIRPERSON HOOD: So we're adding Kennedy-Warren to proposed action.

MR. BASTIDA: Right. And then --

CHAIRPERSON HOOD: Okay.

MR. BASTIDA: -- also I moved Zoning Commission Case 00-20TA to the proposed action category, from the correspondence section, because that was a case that it was already had a case number. Accordingly, it should have been a

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1 proposed action and not in correspondence.

2 CHAIRPERSON HOOD: Okay. So, in other words,  
3 colleagues, alphabets F and G will be moved to under Section 5,  
4 Proposed Actions.

5 VICE CHAIRPERSON MITTEN: I think it's that F is  
6 supposed to stay under -- F has been added under Hearing Action,  
7 and G, which was added under Hearing Action, is really supposed  
8 to be under Proposed Action.

9 MR. BASTIDA: Ms. Mitten is correct. Thank you.

10 CHAIRPERSON HOOD: So it should be up under  
11 Proposed Action.

12 MR. BASTIDA: Right. Correct. No. The Kennedy-  
13 Warren should be under Proposed Action, not Hearing Action. And  
14 I apologize for the mistake.

15 CHAIRPERSON HOOD: No problem. When we get to it,  
16 I'm sure we'll correct it. But I just wanted --

17 MR. BASTIDA: right.

18 CHAIRPERSON HOOD: -- to make sure that was up  
19 front.

20 Also, I want to add the -- something that we got a  
21 few minutes ago from the Office of Planning colleagues, and I  
22 want to know what your pleasure is. I propose that we put this  
23 on the agenda. It's the cyber hotels. That we put it down up  
24 under Hearing Action. And if there is some unreadiness after we  
25 hear from the Office of Planning, then we will choose, at that

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1 point in time, whether to proceed or not.

2 Do we have a consensus?

3 COMMISSIONER FRANKLIN: Sure.

4 CHAIRPERSON HOOD: Okay. With that, we'll move  
5 right into our agenda.

6 Action on our minutes, Mr. Bastida?

7 MR. BASTIDA: Mr. Chairman, you have a copy of the  
8 September 11th minutes in your package, and we would like to have  
9 adoption of those minutes.

10 CHAIRPERSON HOOD: I just have one correction. Let  
11 me start right off quickly, before I go to Vice Chair Mitten.  
12 Under Proposed Action on page 3, Section 2, I'm sure that I  
13 didn't say, "Discussion ensued regarding Chairman Hood's concern  
14 about the parking. He stated Department of Public Works was also  
15 opposed to the garage entrance on K Street."

16 That is incorrect. I would ask that you either  
17 omit that from the minutes, or let's look back in the transcript  
18 to see exactly what I said. I know I didn't say that, so I want  
19 to make sure that that's clear on the record.

20 MR. BASTIDA: We'll make such a correction.

21 CHAIRPERSON HOOD: Thank you.

22 COMMISSIONER HOLMAN: In fact, Mr. Chairman, I made  
23 some comments about K Street and about Department of Public  
24 Works, but I don't recognize these as being those comments.

25 CHAIRPERSON HOOD: Which page are you referring to?

1 COMMISSIONER HOLMAN: Right here. Oh, I'm sorry,  
2 A-2.

3 CHAIRPERSON HOOD: Oh, well, maybe you made the  
4 comments and they just put my name.

5 COMMISSIONER HOLMAN: Well, that's what I'm saying.  
6 I did make comments about it, but these are not the comments  
7 that I made.

8 (Laughter.)

9 CHAIRPERSON HOOD: Okay. Well, I just wanted to  
10 make sure that the minutes reflected exactly what took place.

11 Commissioner Franklin?

12 COMMISSIONER FRANKLIN: Mr. Chairman, this colloquy  
13 just reminds me to restate what I've said before, and often  
14 before, and that is the role of minutes, in my judgment, is just  
15 to simply record the actions of the Commission. And once you  
16 start trying to extract comments by individual Commissioners on  
17 matters before the Commission, you're going to get into the kind  
18 of troubles that we're seeing here.

19 So I would urge the staff to just simply limit the  
20 minutes to actions that the entire Commission has taken.

21 CHAIRPERSON HOOD: Again, Commissioner Franklin, I  
22 agree with your comments. I will ask staff if we can go back to  
23 how we were doing them previously as opposed to -- and I know Mr.  
24 Bastida wasn't with us, but if we can go back to how we  
25 previously did it in the past.

1 I think we had narrowed that point down to where  
2 our minutes were not specifically on what Commissioners said but  
3 actions that basically took place.

4 MR. BASTIDA: Mr. Chairman, it's a great  
5 suggestion. I would be delighted to implement it.

6 CHAIRPERSON HOOD: Good. Thank you.

7 COMMISSIONER FRANKLIN: One other minor correction,  
8 Mr. Chairman. On Roman 4, Arabic 3, Action on Minutes, it says,  
9 "Herbert M. Franklin abstaining, not voting." I'd like to change  
10 that to "Herbert M. Franklin abstaining, not having been  
11 present."

12 CHAIRPERSON HOOD: Okay.

13 VICE CHAIRPERSON MITTEN: I had a couple of quick  
14 ones. Under -- on page 3, under Proposed Action, letter A,  
15 number 1 and number 4. It says that I excused myself, and I  
16 would like that to say I recused myself.

17 And then, under Correspondence, on page 5, under  
18 items 1 and 2, and I'll just read what 1 says. "The petition is  
19 to be set down at the October 16th meeting," and then there's  
20 some parallel language in number 2. I'd like that to read, "The  
21 petition is to be considered for setdown at the October 16th  
22 meeting."

23 CHAIRPERSON HOOD: Let me just add, Commissioner  
24 Mitten, if you don't mind, I think you recused yourself and  
25 excused yourself. And I think that to keep the record -- I would

1 just put that out there. I don't know what the legal terms are.

2 COMMISSIONER HOLMAN: But the legally relevant  
3 issue is recusal.

4 CHAIRPERSON HOOD: Recusal, right. But it should  
5 be noted that she did leave the room, whether that's an issue or  
6 not.

7 MR. BASTIDA: Thank you.

8 CHAIRPERSON HOOD: I think there was an issue --

9 MR. BASTIDA: We'll clarify that. Thank you, Ms.  
10 Mitten. We'll clarify -- we will correct that for the record.

11 CHAIRPERSON HOOD: Okay. Anything else? If not, I  
12 would like to obtain a motion.

13 VICE CHAIRPERSON MITTEN: I would move approval of  
14 the September 11th minutes, as amended

15 COMMISSIONER HOLMAN: Second.

16 COMMISSIONER FRANKLIN: Second.

17 CHAIRPERSON HOOD: Okay. It has been moved and  
18 properly seconded. All those in favor, by the usual sign of  
19 voting.

20 (Chorus of ayes.)

21 Any opposition?

22 (No response.)

23 So ordered. Staff, would you record the vote?

24 MR. BASTIDA: The staff will record the vote four  
25 to zero, Ms. Mitten moving it, and was it Mr. Holman who seconded

1 or was --

2 COMMISSIONER FRANKLIN: It was Mr. Franklin. Mr.  
3 Holman is fine with me.

4 MR. BASTIDA: Mr. Holman, and Hood concurring. Mr.  
5 Parsons not present, not voting.

6 CHAIRPERSON HOOD: Well, we have in the past had  
7 two people second a motion, so it's good to know that.

8 Anyway, status report, the Office of Planning. If  
9 you could be very brief; we don't need to go item by item, but  
10 maybe a few that are up and coming, unless my colleagues have  
11 some specific that they want to ask questions of the Office of  
12 Planning.

13 Ms. McCarthy?

14 MS. MCCARTHY: Right. I think that probably makes  
15 the most sense, Mr. Chair. Most of the items that are on our  
16 status report are before you today for setdown. Two that I would  
17 flag are the Welsh School, the rezonings. We have some draft  
18 text on that. We are negotiating with the applicant and trying  
19 to make some changes. I expect we'll bring that to you for  
20 setdown next month.

21 The same thing with the changes to the Uptown Arts  
22 Overlay District. We're trying to work with the community and  
23 the developers in that instance to see if we can come up with  
24 something that accomplishes similar objectives but doesn't  
25 require doing it through change to the overlay text.

1                   And the Buzzard's Point rezoning -- again, we've  
2 got a large contract out for work on the waterfront, so we're  
3 trying to incorporate the rezoning as part of that waterfront  
4 work.

5                   The rest of it, I think the status -- the tracking  
6 report is fairly clear.

7                   CHAIRPERSON HOOD: Good.

8                   Okay. Commissioners, do we have any questions on  
9 the report to the Office of Planning? No. No questions?

10                  Okay. A job well done.

11                  Moving right along with our agenda, hearing action.  
12 The first case, by my notes --

13                  MR. BASTIDA: I should address that.

14                  CHAIRPERSON HOOD: Okay. The first case, Zoning  
15 Commission Case Number 00-01, Yale Steam Limited Partnership.  
16 Mr. Bastida?

17                  MR. BASTIDA: Mr. Chairman, this project has been  
18 pending since May. The issue here is that the Historic  
19 Preservation Review Board had taken jurisdiction of the case for  
20 the preservation issue, and then it goes to the manual site  
21 agent. And there has been some decisions made, but the applicant  
22 is requesting clarification of those decisions.

23                  Accordingly, the applicant had requested another  
24 month as a time extension to be considered by the Commission for  
25 a setdown. The staff will recommend that perhaps you might want

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1 to do that for three months, and that way we don't have to  
2 revisit this particular issue every month on the agenda. That's  
3 a suggestion.

4 CHAIRPERSON HOOD: Okay. So I guess the -- are you  
5 asking us to postpone it for three months?

6 MR. BASTIDA: Maximum.

7 CHAIRPERSON HOOD: Maximum.

8 MR. BASTIDA: Up to three months. They could come  
9 before that, but a maximum of up to three months.

10 CHAIRPERSON HOOD: Colleagues, I guess we could  
11 postpone this, unless there is some objection.

12 Do we need a vote?

13 MR. BASTIDA: No, you can do it by consensus.

14 CHAIRPERSON HOOD: Could we get just a consensus of  
15 up to three months on the Yale Steam monitor case? That's okay?  
16 Especially since we have nothing in our packets to move forward.

17 (Laughter.)

18 I guess our options are limited.

19 MR. BASTIDA: Yes. I --

20 CHAIRPERSON HOOD: Okay. So general consensus, we  
21 will deal with that in January.

22 MR. BASTIDA: Up to January.

23 CHAIRPERSON HOOD: Up to January. Okay.

24 MR. BASTIDA: Yes. Thank you, Mr. Chairman.

25 CHAIRPERSON HOOD: Okay. Sounds good. Thank you.

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1                   Next, hearing action, Zoning Commission Case Number  
2                   00-22P. There is a letter, colleagues, in our file asking us to  
3                   defer this for further study and consultation for our November  
4                   meeting. We can also do that on a general consensus, unless  
5                   there are some questions. Hearing, none, we'll move right along.

6                   Next, Zoning Commission Case Number 00-23P, the  
7                   rezoning of eastern side of Connecticut Avenue, Northwest, from  
8                   Nebraska Avenue to Jocelyn Street, Northwest.

9                   Office of Planning?

10                  MS. MCCARTHY: Mr. Chairman, you have the report  
11                  before you. The Office of Planning has recommended setdown for  
12                  this. We have indicated that some of our hesitations involve the  
13                  two blocks in which there are buildings that could become non-  
14                  conforming through the creation of -- through the rezoning that's  
15                  proposed.

16                  And we have discussed that with the community  
17                  people who originated this request, and they are willing to look  
18                  at either taking those out or looking at maybe a slightly higher  
19                  density zoning category than what would be advertised. We felt  
20                  that since what would be advertised, then, would be the strictest  
21                  form, we could always, by the time of the hearing, have completed  
22                  those negotiations and come back to you with a recommendation  
23                  which may include not as large a downzoning.

24                  But the comprehensive -- it certainly does appear  
25                  that the comprehensive plan -- the zoning that's on the site now

1 is not consistent with the comprehensive plan designation. And  
2 so, as a result, we had recommended that this overlay be set --  
3 or this rezoning be set down.

4 CHAIRPERSON HOOD: Okay. Thank you, Ms. McCarthy.

5 Colleagues, are there any questions of the Office  
6 of Planning before we proceed?

7 COMMISSIONER FRANKLIN: I have one, yes, Mr.  
8 Chairman.

9 CHAIRPERSON HOOD: Commissioner Franklin?

10 COMMISSIONER FRANKLIN: What is the status of the  
11 assisted housing development proposal on Nebraska Avenue and  
12 Connecticut? At what point is it? Has a building permit been  
13 issued?

14 MS. MCCARTHY: No. My understanding is that the  
15 full site acquisition has not taken place, and that there is no  
16 -- that part of that project was dependent on an alley closing,  
17 and the Council member in whose district it's located has  
18 indicated concerns about proceeding with the alley closing.

19 So I have not talked to the Council representing  
20 that case lately, but that was definitely one of the issues that  
21 we wanted to work out in the intervening time period before the  
22 public hearing on that.

23 COMMISSIONER FRANKLIN: Well, I guess my question  
24 is: would that proposal become non-conforming if the zoning were  
25 changed?

1 MS. MCCARTHY: If the zoning that's proposed here  
2 on that block?

3 COMMISSIONER FRANKLIN: Yes.

4 MS. MCCARTHY: Yes.

5 COMMISSIONER FRANKLIN: Right. So what is it that  
6 you wanted to work out in the interim?

7 MS. MCCARTHY: To look whether there is -- the --  
8 with regard to the assisted living facility, the community has --  
9 their most direct concerns relate to access to that project,  
10 because the access, as initially planned, was all through an  
11 alley, which is quite narrow and which is used heavily because  
12 people on the Nebraska Avenue side are not permitted to park on  
13 the street, so they all have to park behind their houses.

14 So one possibility was to work on redesign of that  
15 project and work with DPW, so that the access to the project  
16 could be through Connecticut Avenue. Then, it might be more of a  
17 design issue of some stepping down as it related to the rear to  
18 those houses to preserve light and air.

19 COMMISSIONER FRANKLIN: Well, I guess the question  
20 would be: if those issues were all resolved, would the whole  
21 project become moot if it were downzoned to R-5 -- whatever, R-5  
22 -- R-3 -- yes, R-5-D to R-3?

23 MS. MCCARTHY: Well, I think we raised that issue  
24 with the Advisory Neighborhood Commission, but they felt that  
25 this block had been looked at by the Zoning Commission before,

1 based on the same designation. The west side across the street  
2 had been downzoned, but the east side had not been. And they  
3 felt that the issues were greater than just the assisted living  
4 project, so they --

5 COMMISSIONER FRANKLIN: What does the Office of  
6 Planning think?

7 MS. MCCARTHY: Well, I mean, it's true that the  
8 comprehensive plan designation on the site is substantially lower  
9 than the existing zoning.

10 COMMISSIONER FRANKLIN: And --

11 MS. MCCARTHY: And that one could argue the zoning  
12 on the site is not consistent with the comprehensive plan, which  
13 is our mandate.

14 COMMISSIONER FRANKLIN: The comprehensive plan also  
15 has other provisions regarding housing, does it not?

16 MS. MCCARTHY: That's right. I mean, it's not --  
17 we are definitely not suggesting it's an open and shut case. And  
18 we felt because of the clear inconsistency, or the seemingly  
19 clear inconsistency, with the comprehensive plan land use  
20 designation on the site, that it was worth setting down, but it  
21 was certainly worth taking the time before the hearing report to  
22 visit each of those issues in detail and to see whether there was  
23 another alternative besides the density that was being asked by  
24 the -- by ANC-3G.

25 COMMISSIONER FRANKLIN: All right.

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1 CHAIRPERSON HOOD: Any other questions?

2 VICE CHAIRPERSON MITTEN: I had a request, if I --  
3 if it doesn't seem too far outside the scope of what this case  
4 would involve. Is when I went and looked at the zoning that's in  
5 place, and then the comprehensive plan designations for this  
6 whole little stretch on Connecticut Avenue, I noticed that there  
7 are some other areas that are zoned R-5-D that are actually  
8 designated for medium density residential.

9 And I don't know if the reason for the zoning  
10 inconsistency with that designation is related to the existing  
11 projects there or not. But specifically I'm referring to the  
12 west side of Connecticut Avenue between Nebraska and Chevy Chase  
13 Parkway, and the east side of Connecticut Avenue between Military  
14 and Livingston. Those are designated for medium density, which  
15 would be either typically R-5-B or R-5-C.

16 So I think since you're examining the whole stretch  
17 there for consistency, I would ask that that be included, if that  
18 seems appropriate to you.

19 MS. MCCARTHY: Sure. We can take a look at that as  
20 well.

21 VICE CHAIRPERSON MITTEN: Okay.

22 CHAIRPERSON HOOD: Ms. McCarthy, the only other  
23 thing I would ask is that if it's set down that we make sure that  
24 the Department of Public Works really provide us with the  
25 documentation information we need, because in reading the report

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1 there is some congestion and some alley issues. And I think  
2 sometimes, while I know that they are busy over there, too, we  
3 want to make sure we get a response from Department of Public  
4 Works.

5 MS. McCARTHY: Sure.

6 CHAIRPERSON HOOD: So if you can twist their arm  
7 and see that we can have that report, we appreciate it.

8 Any other questions?

9 Okay. Colleagues, what is your pleasure?

10 VICE CHAIRPERSON MITTEN: I would move that we set  
11 this application down for a public hearing.

12 CHAIRPERSON HOOD: It has been moved. Can we get a  
13 second?

14 COMMISSIONER HOLMAN: Second.

15 CHAIRPERSON HOOD: Moved and properly seconded.  
16 All those in favor, by the usual sign of voting.

17 (Chorus of ayes.)

18 Any opposition?

19 (No response.)

20 So ordered. Staff, would you record the vote?

21 MR. BASTIDA: Yes, Mr. Chairman. The staff would  
22 record the vote four to zero to set it down for a hearing, Ms.  
23 Mitten moving, Mr. Holman seconded. Mr. Hood and Mr. Franklin  
24 concurring. Mr. Parsons not voting, not being present.

25 CHAIRPERSON HOOD: Okay. Mr. Bastida, did Mr.

1 Parsons leave any proxies?

2 MR. BASTIDA: Yes. He left a proxy with me.

3 CHAIRPERSON HOOD: Okay.

4 MR. BASTIDA: And I'm sorry. Mr. Parsons voted to  
5 set it down as a proxy.

6 CHAIRPERSON HOOD: Okay.

7 MR. BASTIDA: Thank you, Mr. Chairman.

8 CHAIRPERSON HOOD: Sure.

9 Our next case, Zoning Commission Case Number  
10 00-24M, the rezoning of Square 516, Lots 29, 30, and 62, from  
11 HR/C-2-C to DD/C-2-C, K-4 & Associates.

12 Okay. Office of Planning?

13 MS. MCCARTHY: Mr. Chairman, this case is very  
14 similar to one that was before you last month, which was the  
15 rezoning of Square 517, a similar set of issues where the  
16 underlying zoning had been changed to a downtown development  
17 district overlay, but because of a preexisting PUD that change  
18 had not been made on this site.

19 So the Office of Planning recommended that the  
20 zoning be changed to include the DD overlay, and we recommended  
21 that you proceed with setdown.

22 My understanding is that they have already -- they  
23 have also requested an emergency rezoning.

24 CHAIRPERSON HOOD: Okay. Thank you, Ms. McCarthy.

25 Colleagues, I think the first issue is whether or

1 not -- well, no. The first issue I think is whether or not we  
2 set it down. Then we decide whether it's an emergency. Okay?

3 VICE CHAIRPERSON MITTEN: Well, if I might suggest  
4 that I think the idea of the emergency is that we would do it  
5 now, you know, and then have a hearing later, if I'm -- is it --

6 CHAIRPERSON HOOD: Ms. McCarthy, can we get some  
7 clarification on that? Because I --

8 MS. MCCARTHY: I believe that's what the applicant  
9 is requesting, but you may want to ask them to describe that in  
10 more detail.

11 CHAIRPERSON HOOD: Okay. Colleagues, if there is  
12 no objection, I'm going to call them to the table, so we can just  
13 be clarified on that issue and that issue only.

14 Mr. Glasgow?

15 MR. GLASGOW: Mr. Chairman, thank you. Good  
16 afternoon, members of the Commission.

17 CHAIRPERSON HOOD: Good afternoon.

18 MR. GLASGOW: For the record, my name is Norman M.  
19 Glasgow, Jr., of the law firm of Wilkes Artis, representing the  
20 applicant, K-4 & Associates, in this proceeding.

21 We have requested emergency rezoning. You've  
22 gotten a letter from the American Housing Partnership, the letter  
23 from the Office of Planning supporting the emergency, and also  
24 the ANC report, even though there wasn't a quorum.

25 We believe that due to the financing considerations

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1 and how it is that we need to proceed, what we would like to do  
2 is have the Commission take emergency action to rezone the  
3 property today, and then expeditiously schedule a hearing, which  
4 we believe will be along the same timeframe and same testimony as  
5 we had with respect to the hearing that you had September 21st.

6 The cases are somewhat similar, although in this  
7 case it's even we think more compelling because it is very clear  
8 that the DD/C-2-C zoning category encompasses that entire square,  
9 including part of this property that was closed, involved in an  
10 alley closing some years ago.

11 So part of the site that reverted is already zoned  
12 DD/C-2-C, so we need to move very expeditiously, and it does  
13 impact the ability to proceed with the project as set forth by  
14 the American Housing Partnership.

15 CHAIRPERSON HOOD: Okay. Colleagues, any questions  
16 of Mr. Glasgow while he's at the table?

17 COMMISSIONER FRANKLIN: Yes, Mr. Chairman.

18 What is the public safety, health, or welfare basis  
19 for an emergency here?

20 MR. GLASGOW: Mr. Franklin, with respect to that  
21 issue, we have looked at the timing and how it is that you  
22 proceed with the DCHFA bond financing, which is involved in this  
23 project. And until there is a certification as to the finality  
24 of the zoning, we are not able to go to the City Council and get  
25 -- and finalize that bond financing.

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1           We are at the end of a fiscal year right now, so  
2           that there are some issues with respect to the timing with  
3           respect to that bond financing. You finish up a session at the  
4           end of December, and we need to go to the Council and have that  
5           resolved, and we can only go and have that resolved after our  
6           zoning is final. So that we have some severe timing constraints.

7           CHAIRPERSON HOOD:       Any further questions,  
8           colleagues?

9           Okay. Thank you, Mr. Glasgow.

10          MR. GLASGOW: Thank you.

11          CHAIRPERSON HOOD: Okay. Colleagues, we have in  
12          front of us asking for an emergency -- for us to deal with it  
13          today. Open for discussion.

14          VICE CHAIRPERSON MITTEN: Well, I guess I'll begin.  
15          I'm troubled the same way that we were troubled when we took up  
16          the other case on Square 517, which is that, you know, there is  
17          an emergency for the applicant. But we have specific criteria as  
18          to what would constitute an emergency for this body.

19          And at least what I heard does not rise to the  
20          level of something that's necessary for the immediate  
21          preservation of the public peace, health, safety, welfare, or  
22          morals of the citizens of the District. So I would be reluctant  
23          to grant the emergency in this case.

24          CHAIRPERSON HOOD: Mr. Holman?

25          COMMISSIONER HOLMAN: Well, Mr. Chairman, I'm kind

1 of torn, because based on the -- what I've been able to read, it  
2 certainly the kind of project we want to take up as quickly as  
3 possible.

4 I guess in retrospect we probably -- I probably  
5 should have asked, when the applicant's attorney was here, if we  
6 considered it on an expedited as opposed to an emergency basis,  
7 could the project go forward. Because that's a question that is  
8 unresolved in my mind.

9 CHAIRPERSON HOOD: Mr. Holman, sometimes that  
10 happens to me, too. So I will ask, if no one has a problem, if  
11 Mr. Glasgow can come back to the table.

12 MR. GLASGOW: Also here with me is Mr. Donnelly,  
13 one of the owners of the property. We had made the assumption  
14 that the provision of the housing in a DD area was of grave  
15 concern to the District of Columbia. I should have further  
16 articulated that besides the timeframe.

17 I went with just the timeframe, not the underlying,  
18 because I took that as an assumed. That if we're in a DD area,  
19 we're trying to build a project with DCHFA financing, that that  
20 is something that the District, as a whole, is extremely  
21 interested in.

22 Also, with respect to the timeframes, we have a --  
23 the way the Council is structured right now, we have an upcoming  
24 session in November, first Tuesday in November, and first Tuesday  
25 in December. That's all we have left in order to proceed and get

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1 through with all of the legislation that we need.

2 We normally like to give the Council two sessions  
3 to deal with any issue like this, in case they have problems,  
4 concerns, or issues. I think in looking at the emergency aspect,  
5 there also should be some balancing as to what the probability  
6 is, or what adverse impact there could occur, with respect to the  
7 Commission taking action on an emergency basis, bearing in mind  
8 that there will be a public hearing on the case, and that the  
9 emergency is in place for a period of time.

10 And in this situation, we would say that, one,  
11 that, if you will, the assessment of the down side risk is  
12 essentially zero. This property clearly would be rezoned to  
13 DD/C-2-C.

14 Then, with respect to the emergency, we think with  
15 respect to the timing that we have with the Council, and the need  
16 for the city to have affordable housing projects in the downtown  
17 development district, particularly here in housing priority area  
18 A, where most of the cases have been tried recently in housing  
19 priority area B south of Massachusetts Avenue, this project is  
20 north of Massachusetts Avenue, close to the lower Shaw community,  
21 that we would be in a position to request an emergency relief in  
22 this situation.

23 COMMISSIONER HOLMAN: Mr. Chairman, could I ask a  
24 question --

25 CHAIRPERSON HOOD: Sure.

1 COMMISSIONER HOLMAN: -- of Mr. Bastida? Mr.  
2 Bastida, if we took this on the most expedited basis that we  
3 could, keeping in mind I guess our hearing, our notice  
4 requirements, and so forth, when would be the earliest that we  
5 could conclude on our action on this?

6 MR. BASTIDA: From the top of my head, it would be  
7 the second half of December is that you first can hear the case.

8 VICE CHAIRPERSON MITTEN: Are you saying that based  
9 on schedule, or are you saying that based on some kind of notice  
10 requirements?

11 MR. BASTIDA: It's the kind of notice. We need to  
12 have 20 days' notice prior -- I mean, excuse me. We have to have  
13 20 days in receipt of the entire proposal prior to notification  
14 to the Register. I can cut that by maybe seven, eight days. And  
15 then, there is a 45 days' notice for the public for the hearing.  
16 So that gives me approximately 57 days.

17 CHAIRPERSON HOOD: What was the date again, Mr.  
18 Bastida?

19 MR. BASTIDA: It would be the middle of December,  
20 just a rough estimate, for the hearing. And then, if you are so  
21 inclined, you could take a -- an action at that time, and we  
22 could have a final action in January.

23 VICE CHAIRPERSON MITTEN: I would like to ask  
24 another question.

25 CHAIRPERSON HOOD: Another question of Mr. --

1 VICE CHAIRPERSON MITTEN: Yes.

2 CHAIRPERSON HOOD: Okay.

3 VICE CHAIRPERSON MITTEN: Or of the owner, property  
4 owner.

5 How long has American Housing Partnership had the  
6 property under contract?

7 MR. DONNELLY: Approximately 35 days, 40 days. But  
8 I might add, we're trying to reach the city's goals of producing  
9 this housing in a timely fashion. And I think that if we can't  
10 get these approvals, it could delay us -- the groundbreaking at  
11 least six months because of the housing financing agency  
12 requirements, the hearing requirements, going to Wall Street,  
13 etcetera. And I think that impacts the welfare requirement.

14 MR. BASTIDA: Mr. Chairman, could I add something  
15 that it changes?

16 CHAIRPERSON HOOD: Sure.

17 MR. BASTIDA: You can take a proposed action today.  
18 Accordingly, I can then have the final action in December,  
19 because in that way I can send it to NCPC and have NCPC's review  
20 in November or early December. Then it would be prior to your  
21 hearing.

22 CHAIRPERSON HOOD: Okay. We had a couple more  
23 questions. We don't want to make it a hearing, but we had a  
24 couple more -- Mr. Franklin?

25 COMMISSIONER FRANKLIN: Yes. What would be the

1 import if we were to adopt something on a temporary or an  
2 emergency basis, Mr. Glasgow? Why -- and as everyone recognizes,  
3 legally an emergency action of that sort, until it's made final,  
4 is just that. It's just the equivalent of a proposed action, as  
5 it were.

6 Well, maybe it's a little more than that, but it  
7 doesn't necessarily mean that that's the way it's going to end  
8 up. It's not final.

9 What's the legal import of that compared to a  
10 proposed action?

11 MR. GLASGOW: Well, I'd say with respect to the  
12 emergency action, we would be able to certify that as of X date  
13 -- and we would advise the Council exactly what our status is --  
14 that the zoning is DD/C-2-C.

15 We can make the certification because that is the  
16 zoning as of that period of time when they are considering the  
17 bond inducement resolution, and that is of significance with  
18 respect to the Council and how you proceed forward.

19 Certainly, action that's taken today will be a  
20 value to us. We normally use 60 days roughly from whenever the  
21 Commission votes to set a case down as to the earliest that we  
22 can have a hearing. Mr. Bastida said it's, you know, 57 days or  
23 so. We use roughly two months.

24 Two months is past the time period that we would  
25 need to have this done, given the Council's regular schedule as

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1 to how they conduct business for what it's set for right now.  
2 They have a legislative session now once a month, generally, and  
3 it's the first Tuesday of the month.

4 COMMISSIONER FRANKLIN: Well, I think you can sense  
5 the reluctance to engage in emergency actions because if we --  
6 every time an applicant, because of its own timing -- and that  
7 timing may be the result of fortuitous circumstances; it also  
8 might be the result of lack of diligence, or whatever -- I'm not  
9 saying that's the case here -- would come to us to ask for  
10 emergency rulemaking. And we rarely do that, you know.

11 MR. GLASGOW: Well, I think this is emergency map  
12 amendment. And I think in this situation it's a different --

13 COMMISSIONER FRANKLIN: Or emergency map amendment.

14 MR. GLASGOW: Right. And I think that in this  
15 situation, though, because of the uniqueness of the situation,  
16 it's different than just the general issue that you're raising.  
17 We have an expired PUD or a PUD that we could remove a request  
18 for an extension and this immediately expired.

19 And the question -- the only -- the sole question  
20 before the Commission is what zoning should it revert to. And  
21 given those facts and circumstances, that's why I went into, what  
22 is the -- in effect, the down side risk, if you will, to the  
23 Commission?

24 We have a very unique set of circumstances. It's  
25 just that we happen to have a couple of PUDs that have expired in

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1 a short timeframe from each other that had been in existence for  
2 10 or 12 years. And we think from a public policy standpoint, to  
3 go through the entire process and deal with this, because you  
4 apply these facts and circumstances, you apply the standard to  
5 the facts and circumstances.

6 And we believe application of the standard to these  
7 facts and circumstances, given what the Zoning Commission decided  
8 in 1990, that this site -- that this square would be rezoned to  
9 DD/C-2-C. And then, given the issues that we have with respect  
10 to the affordable housing and our timing problems, that all of  
11 that taken together is an appropriate case for the Commission to  
12 take an emergency action.

13 And if there are other cases with expired PUDs with  
14 the same facts and circumstances, then they ought to be  
15 considered similarly. We think that they will be very, very few  
16 and far between.

17 MR. BASTIDA: Mr. Chairman?

18 COMMISSIONER FRANKLIN: Mr. Bastida, you said  
19 something about a proposal action.

20 MR. BASTIDA: Right. Yes, I have to correct that.

21 But Alan can address that better than I can.

22 But, remember, this PUD has not expired. This PUD  
23 filed a time extension in a timely fashion, and it has not been  
24 handled, because of certain circumstances that are not under the  
25 Office of Zoning's jurisdiction. Accordingly, this is not an

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1 expired PUD.

2 MR. GLASGOW: Right. And we have stated in our  
3 documents that -- as I answered to Mr. Franklin, that if we have  
4 action here, we would immediately retract that request that was  
5 made some time ago.

6 CHAIRPERSON HOOD: Well, let me ask --

7 MR. GLASGOW: The property would be unzoned.

8 CHAIRPERSON HOOD: I wonder if we could -- Mr.  
9 Franklin, had you finished asking --

10 COMMISSIONER FRANKLIN: Yes.

11 CHAIRPERSON HOOD: -- your question?

12 We could have --

13 COMMISSIONER FRANKLIN: Excuse me. One other -- I  
14 just was going to ask, is proposed action out of the question?

15 MR. BASTIDA: Yes, it is.

16 COMMISSIONER FRANKLIN: Okay.

17 MR. BASTIDA: Because looking at the regulations,  
18 you cannot take a proposed action until after the hearing.

19 COMMISSIONER FRANKLIN: I see. Thank you.

20 CHAIRPERSON HOOD: I believe -- Mr. Altman, you can  
21 finish your thought and I'll come back. You go ahead because  
22 I've forgotten mine.

23 MR. ALTMAN: No. I was going to simply make two  
24 points. One is I think Mr. Glasgow -- I think Mr. Glasgow  
25 pointed out. One is that making it consistent, as indicated in

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1 our report, that this is really a consistency action, so that it  
2 really brings it into conformance with what is now the existing  
3 zoning in the DD, which I think is something that we all support  
4 and really just brings it in a line with that.

5 So in terms of, as you were saying, the down side  
6 risk, it's not as if it's an area of controversy. It's really  
7 bringing it into what would be consistency, and, in fact, the  
8 reversion with the PUD when the PUD expires. The reversion to  
9 the preexisting -- to the zoning before the DD, in fact, would be  
10 inconsistent with what our goals are, which is to promote the DD  
11 and the effectiveness of the DD.

12 And the second point which the applicant has  
13 brought out, which I think is important, is not only is it  
14 housing, but it's affordable housing. And I think a significant  
15 amount of affordable housing, bringing that to an area at a time  
16 when we all know that there is a significant demand and need for  
17 affordable housing in the city.

18 And so what we can do to both facilitate housing  
19 downtown and, moreover, affordable housing downtown, which would  
20 all be consistent with the existing zoning, really means that  
21 it's a conformance action that I think brings all of those goals,  
22 in terms of the welfare of the city, and, hence, the urgency I  
23 think of the action to ensure that that can proceed.

24 CHAIRPERSON HOOD: Let me just ask one quick  
25 question.

1 Thank you, Mr. Altman.

2 Mr. Glasgow, why didn't the withdrawal for the PUD  
3 come into the office hand in hand with the application that  
4 you're asking us to do -- with the emergency rulemaking?

5 MR. GLASGOW: What we requested was is knowing if  
6 you were to grant the emergency decision, we would immediately  
7 withdraw it. I think that's what we said in our papers.

8 CHAIRPERSON HOOD: Right. That's what you say.  
9 But I'm just saying, just in case we were to move if both of them  
10 -- you know how you do a follow up, sometime you have a  
11 contingency plan. I'm just concerned. That should have probably  
12 accompanied this request, and I was just wondering -- I've seen  
13 it done in the past. I was just wondering why it wasn't done  
14 this time.

15 MR. GLASGOW: I think we, in effect, viewed that  
16 that's what we were doing with the way that we submitted our  
17 papers.

18 CHAIRPERSON HOOD: Okay. Well, okay. So --

19 VICE CHAIRPERSON MITTEN: I would be ready to make  
20 a motion whenever you are.

21 CHAIRPERSON HOOD: Let me just -- any further  
22 discussion?

23 COMMISSIONER HOLMAN: Yes. I just wanted to ask  
24 either Mr. Bergstein or Mr. Bastida, under what circumstances  
25 have we typically declared emergencies in the past? I'm just

1       trying to understand the precedent that we may or may not be  
2       setting, and just how the Commission has handled it in the past,  
3       being relatively new on the Commission.

4               MR. BASTIDA:   Emergency legislation has been few  
5       and far between, and usually has been directed to some situations  
6       related to the government of the city, like the most recent was  
7       the police and fire action.   I don't think -- and I can be  
8       corrected, and I'm sure Mr. Glasgow will correct me -- but I  
9       think that prior to that was -- there hasn't been an emergency  
10      legislation or action for years, even though Mr. Glasgow believes  
11      that at the recent hearing on the Zoning Commission case on 5th  
12      and Massachusetts Avenue you took an emergency action.

13              And that is in question, and I have shared that  
14      concern with the Commissioners, or at least with one  
15      Commissioner, who is willing to clarify that.   That basically  
16      concludes my answer.

17              COMMISSIONER HOLMAN:   Well, if I may, Mr. Chairman,  
18      just a follow-on question -- and I presume that the  
19      Administrative Procedures Act and other laws that govern us don't  
20      allow us to waive any of our notice or any other kinds of  
21      provisions.   That's really for --

22              MR. BASTIDA:   I think that I will defer to Alan on  
23      that, because we have some latitude for that, and Alan could  
24      address that.   Thank you.

25              MR. BERGSTEIN:   In essence, well, no, you can't

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1 waive an APA requirement. The emergency procedures, in essence,  
2 is a built-in waiver of the requirement for notice and comment  
3 before a rule becomes effective.

4 And the Court of Appeals has also, I believe,  
5 recognized that your own requirement under the charter to conduct  
6 hearings can be waived in emergency circumstances. And the one  
7 instance where I recall the Court of Appeals indicating where --  
8 and it's not exclusive, but to give you an example of -- and I  
9 believe it's called Tenley Emergency Committee.

10 The Court of Appeals pointed out that the Zoning  
11 Commission has used emergency orders to change what would have  
12 been matter of right zoning to something more restrictive in  
13 order to, in essence, maintain the status quo of an area when  
14 they felt a new use was coming in that was inconsistent with how  
15 the Zoning Commission felt the area should be developed.

16 But that's not exclusive, and I think the issues  
17 are either whether or not the timing of this is crucial that it  
18 would result in the project not coming into fruition at all; or,  
19 if it's a matter of delayed development, why delayed development  
20 is -- would be inconsistent with the public welfare. And I think  
21 those are the two issues that you might want to consider as you  
22 reflect upon this.

23 COMMISSIONER HOLMAN: Yes, especially the second  
24 part of what you said, because I can conceive of how this  
25 development might go forward, but I can also see how delaying

1 action may certainly inhibit the timely achievement of some  
2 pretty strong public policy goals.

3 So I'll defer to Commissioner Mitten, but I think  
4 I'm beginning to form an opinion on this.

5 CHAIRPERSON HOOD: Commissioner Mitten?

6 VICE CHAIRPERSON MITTEN: Okay. I'm going to make  
7 a motion, but I'm going to preface it with a few comments. One  
8 is it's ironic that the first time we voted on emergency  
9 rulemaking, which was for the police department case, and then  
10 shortly on its heels come three -- at least three requests for  
11 emergency rulemakings. So as -- so that's why -- that's probably  
12 the reason why we're extremely cautious about doing this.

13 And I appreciate the comments of the property owner  
14 about the fact that, you know, this is a -- this is an affordable  
15 housing project, and that is to the benefit of a segment of the  
16 population of the District of Columbia that's often overlooked.

17 I think Mr. Holman had a good comment about the  
18 fact that, you know, the timing issue -- a delay, while everyone  
19 may anticipate that the project would eventually go forward,  
20 there is economic pressure at work here, and it's not -- you  
21 know, it's by no means a certainty that it would go forward if  
22 some time were allowed to lapse.

23 And in deference also to Mr. Altman's comments  
24 about, you know, the -- just the benefits of going forward with  
25 this, and the unique aspects of this case, and then, as Mr.

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1 Glasgow had articulated, that there are very specific  
2 characteristics that apply in this case.

3 And so the message I would want to send is that  
4 there -- this is a very special circumstance, and it's under  
5 those -- recognizing all of those conditions that I move that on  
6 an emergency basis we rezone this property to DD/C-2-C.

7 COMMISSIONER HOLMAN: I second your motion, based  
8 on all that has been said, because I want to be sure that it is  
9 known that we are not setting a precedent for any and every  
10 request or any -- any circumstance that arises, that this is a  
11 very, you know, well thought out reaction to a unique situation.

12 CHAIRPERSON HOOD: Okay. Colleagues, any further  
13 discussion before I call -- Mr. Franklin?

14 COMMISSIONER FRANKLIN: Yes, if I could just try to  
15 narrow the special circumstances, at least in my mind, and that  
16 is that it's the affordable housing aspect of the situation, and  
17 not the -- let's say the exigency of the applicant, and the  
18 processing that would normally occur for financing.

19 We're always going to be faced with potential  
20 hiccups in the financing process. But when affordable housing is  
21 the issue, I think we can justify, on public policy grounds in  
22 this instance, addressing it as an emergency.

23 CHAIRPERSON HOOD: And I want to also comment. I  
24 will be voting in favor of this on extreme hesitation, because,  
25 again, since we had -- as Commissioner Mitten mentioned, since we

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1 had the Metropolitan Police Department issue come in front of us  
2 for an emergency, I think the very next meeting we had another  
3 one, the next meeting after that we had another one, and here we  
4 are here again faced with another one, even though there are some  
5 relevant issues here that are a little different.

6 But I can assure you, I think this Commission, we  
7 will send a clear message that we will really scrutinize and turn  
8 these emergency rulemaking issues on emergency upside down before  
9 they move forward. So I think we want to send a clear message.

10 Next month I'm not saying don't bring it, but --

11 (Laughter.)

12 -- I'm saying it's going to be scrutinized. So  
13 with that, it's been moved and properly seconded. Any further  
14 discussion?

15 VICE CHAIRPERSON MITTEN: I would like to just  
16 amend the motion to include -- just to make certain that we have  
17 included the contingency that the request for extension of the  
18 PUD will be withdrawn. So to make that a contingency of our  
19 action.

20 CHAIRPERSON HOOD: Is that accepted, Commissioner  
21 Holman, or --

22 COMMISSIONER HOLMAN: If our --

23 CHAIRPERSON HOOD: Is that suitable, Mr. Bergstein?

24 MR. BERGSTEIN: Well, I think what you're talking  
25 about is that it will become effective -- the map rezoning will

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1 become effective upon the expiration of -- or withdrawal, however  
2 you would put it, of the PUD, because of the inconsistency with  
3 the PUD map amendment being in place and this. So it could not  
4 become effective until the PUD was actually removed.

5 CHAIRPERSON HOOD: Okay. You refined that; that's  
6 fine. Is it accepted?

7 MR. BERGSTEIN: Absolutely.

8 CHAIRPERSON HOOD: Okay. Any further discussion?

9 It has been moved and properly seconded. All those  
10 in favor, by the usual sign of voting.

11 (Chorus of ayes.)

12 Any opposition?

13 (No response.)

14 So ordered. Staff, could you record the vote?  
15 Also, if Mr. Parsons has a proxy.

16 MR. BASTIDA: Yes, Mr. Chairman. The staff would  
17 record that the action the Commission took was to rezone Square  
18 516, Lots 29, 30, and 62, from HR/C-2-C to DD/C-2-C, upon the  
19 expiration of the existing PUD. And the vote was four -- five to  
20 zero, Ms. Mitten, Mr. Holman -- Ms. Mitten moving and Mr. Holman  
21 seconded, and Mr. Hood and Mr. Franklin to approve. Mr. Parsons  
22 to approve by proxy.

23 MR. BERGSTEIN: Mr. Bastida, I think it's  
24 expiration or withdrawal.

25 MR. BASTIDA: Expiration or withdrawal. Thank you.

1 CHAIRPERSON HOOD: Okay. Thank you.

2 Let's move right along with our agenda. The next  
3 one is Zoning Commission Case Number 00-25M -- thank you, Mr.  
4 Glasgow. Thank you.

5 MR. GLASGOW: And I assume we'll be properly set  
6 down for a hearing.

7 MR. BERGSTEIN: Actually, I think you need to vote  
8 on that.

9 (Laughter.)

10 MR. BASTIDA: Yes, you need to vote to set it down.

11 CHAIRPERSON HOOD: Can we get a motion to set this  
12 down for a hearing?

13 VICE CHAIRPERSON MITTEN: So moved.

14 COMMISSIONER HOLMAN: Second.

15 CHAIRPERSON HOOD: It has been moved and properly  
16 seconded. All those in favor, by the usual sign of voting.

17 (Chorus of ayes.)

18 Any opposition?

19 (No response.)

20 So ordered. Staff, would you record the vote?

21 MR. BASTIDA: Yes. Staff would record the vote  
22 five to zero, Ms. Mitten moving, Mr. Holman seconded, and Mr.  
23 Hood and Mr. Franklin to approve. Mr. Parsons to approve by  
24 proxy.

25 CHAIRPERSON HOOD: Okay. The next case in front of

1 us is Zoning Commission Case Number 00-25M, and that's the K-Mart  
2 rezoning of two parcels, one from unzoned to M, the other from 5-  
3 A to C-M-1.

4 First, let me begin with the Office of Planning.

5 Before you do that, let me just do a disclosure,  
6 and I'll do it again at the hearing. I attended the ANC meeting,  
7 and I heard the presentation, and I did not take part. So  
8 hopefully no parties have any problems with me participating in  
9 the case.

10 MS. MCCARTHY: Thank you, Mr. Chairman.

11 There are two different parcels of this project  
12 that are proposed for zoning action. And I should mention now --  
13 I should have mentioned earlier -- the staff that have been  
14 involved in writing each of these individual reports are  
15 available also if you have more a detailed question.

16 There is one parcel which is currently unzoned that  
17 belongs to the Postal Service, and then there is another property  
18 that is zoned R-5-A currently, both of which are proposed to have  
19 their zoning changed in order to take this entire parcel, which  
20 is a 22-acre tract, and be able to do big box retail -- K-Mart, a  
21 grocery store, and another large big box retailer that's still in  
22 negotiation.

23 It's a very high priority project for the city.  
24 You have in your parcel a letter from Elchino Martin, the Chief  
25 of Staff, to the Deputy Mayor for Economic -- Planning and

1 Economic Development indicating their support.

2 And, basically, the Office of Planning recommends  
3 enthusiastically that this case be set down for a public hearing,  
4 and indicates that there are some issues that we plan to address  
5 in greater detail in the large tract review process that have to  
6 do with traffic and transportation, environmental impacts,  
7 community input, and integration of this project with the WMATA  
8 parcel, which is next door at the 4th and Rhode Island metro  
9 station.

10 And we have mentioned as well to the applicant,  
11 with regard to sale of public land, since this is a sale of a  
12 federal parcel, and, therefore, will involve a federal action, it  
13 should trigger a Section 106 review -- Section 106 to the  
14 National Historic Preservation Act.

15 And since historic preservation in the city is now  
16 within the Office of Planning, we will be working on that from  
17 our side. But that -- so all of those reviews will be taking  
18 place concurrently while this project is getting ready to go for  
19 the public hearing for zoning action.

20 And we -- we think that the zoning categories which  
21 have been recommended -- the CM, the M -- C-M-1 and the M zone --  
22 are very appropriate based on the comprehensive plan land use  
23 designation for the area, and based on the character of the area  
24 involved.

25 CHAIRPERSON HOOD: Thank you, Ms. McCarthy.

1 Colleagues, is there any questions of the Office of  
2 Planning? Mr. Franklin?

3 COMMISSIONER FRANKLIN: Ms. McCarthy, how long do  
4 you think the Office of Planning would need to really complete  
5 its analysis of the many issues that you've identified?

6 MS. MCCARTHY: I think we could complete that  
7 probably within the 40 to 60 days that it would take for the  
8 public hearing. We've actually been providing input on this  
9 project now for close to a year, not quite that long, but it's  
10 been -- there's been a lot of city action, city work on it  
11 already.

12 COMMISSIONER FRANKLIN: In other words, our normal  
13 schedule would be something that you could assure us would allow  
14 you to have enough time to have a fully matured final report on  
15 this --

16 MS. MCCARTHY: Yes, definitely.

17 COMMISSIONER FRANKLIN: -- at the hearing. Thank  
18 you.

19 CHAIRPERSON HOOD: Any further questions,  
20 colleagues?

21 Okay. With that, if there are no questions, if I  
22 could get a motion.

23 VICE CHAIRPERSON MITTEN: I move that we set Case  
24 Number 00-25M down for hearing.

25 COMMISSIONER FRANKLIN: Second.

1 CHAIRPERSON HOOD: Okay. It has been moved and  
2 properly seconded.

3 Let me just make a correction. I believe I was  
4 corrected. It's not unzoned to M-1. It's unzoned to M. I don't  
5 think we have an M-1 category, so I wanted to put that on the  
6 record.

7 Okay. It's been moved and properly seconded. All  
8 those in favor, by the usual sign of voting.

9 (Chorus of ayes.)

10 Any opposition?

11 (No response.)

12 So ordered. Staff, would you record the vote, with  
13 Mr. Parsons' proxy?

14 MR. BASTIDA: Yes, Mr. Chairman. The staff would  
15 record the vote five to zero, Ms. Mitten moving and Mr. Franklin  
16 seconded, Mr. Hood and Mr. Holman to set it down. Mr. Parsons  
17 concurring by proxy.

18 CHAIRPERSON HOOD: Thank you. It's going to get a  
19 little tricky right in here, because I'm going to make some  
20 adjustments, and I'm looking at two different agendas that I've  
21 created for myself.

22 The next case is Zoning Commission Case Number 00-  
23 20TA, the request from the Office of Planning to add a site in  
24 Square 377 to Housing Opportunity Area C.

25 MR. BASTIDA: Mr. Chairman, before you move it, you

1 need to waive your rules to allow the -- into the file the Office  
2 of Planning's report that was not filed in a timely fashion.

3 CHAIRPERSON HOOD: Okay. Mr. Bastida, let me take  
4 some time and try to find it first.

5 Okay. Colleagues, can we waive our rules and --  
6 hold on. Bear with me. Let me find the report first. Okay. I  
7 have it. Thank you.

8 Okay. Colleagues, we need to waive our rules to  
9 accept the Office of Planning's report. Can we do that by  
10 general consensus? Okay. No problem.

11 MR. BASTIDA: Mr. Chairman, in addition, the  
12 attachment to the report was just handed to you a few minutes  
13 ago.

14 CHAIRPERSON HOOD: Mr. Bastida, is this the  
15 attachment?

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

17 CHAIRPERSON HOOD: I didn't take speed reading, so  
18 --

19 COMMISSIONER HOLMAN: I did.

20 CHAIRPERSON HOOD: You did?

21 COMMISSIONER HOLMAN: But I'd need a half an hour  
22 to --

23 CHAIRPERSON HOOD: Why don't we -- colleagues, how  
24 do you want to proceed? Do we need time to be able to review and  
25 try to come up at the end or --

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1 VICE CHAIRPERSON MITTEN: Well, what was put before  
2 us is related to the review by the mayor's agent for historic  
3 preservation. This is related to the historic buildings on the  
4 property, and I don't know the import of that as -- insofar as  
5 making the decision about setting the case down, you know, for  
6 zoning.

7 CHAIRPERSON HOOD: I would just say that a lot of  
8 times this attachment was referenced, and when I went to go  
9 reference and look for it it wasn't there. So that was just my  
10 concern, but I -- I'm ready to move forward if you are.

11 COMMISSIONER HOLMAN: Mr. Chairman, I think,  
12 certainly, the final pages of the -- I'm sure the whole document  
13 is eminently relevant, but certainly the conclusions and the  
14 order are of particular relevance to us.

15 CHAIRPERSON HOOD: Let's do this. I don't even  
16 think we went to Office of Planning first, so let's go to Office  
17 of Planning, and then we can discuss it.

18 MS. MCCARTHY: Okay. Mr. Chairman, yes, I should  
19 correct the entry in the agenda just slightly. This is not a  
20 request from the Office of Planning to add this site to Square  
21 377. The applicant is JBG. But the Office of Planning did the  
22 setdown report, and so this is our report recommending setdown of  
23 the proposed text amendment.

24 Basically, the text amendment would permit JBG to  
25 construct housing in the 900 block of E Street; that is, in a

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1 site which currently has smaller historic buildings that now  
2 include what's the site of the present Wendy's and could possibly  
3 include the site of the McDonald's next door. That's the site  
4 that is still in negotiation.

5 Rezoning this parcel, which is just on the outside  
6 of the current downtown -- the current DDD housing priority area  
7 C would enable the property owner, the developer of that housing,  
8 to take advantage of the transfers of development rights and  
9 combine lot provisions and to produce something in the range of  
10 140 to 160 housing units on that site, which is currently not  
11 even mixed zoned.

12 It's currently zoned for commercial development, so  
13 we have a -- quite an extension section in the report that looks  
14 at the zoning history and present zoning and talks about the  
15 various comprehensive plan goals that would be met by increasing  
16 the amount of housing being provided in that area.

17 The applicant proposes to put the housing there and  
18 expects to do a combined lot development with Square 406, which  
19 is the square immediately south of the Portrait Gallery Museum of  
20 American Art.

21 That development, however, would only require  
22 70,000 square feet of housing space, so what we are getting by  
23 adding the housing on the E Street block is substantially more  
24 housing than could be done even if we were to require the housing  
25 to be built on Square 406.

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1                   So the Office of Planning is recommending that this  
2                   report be -- that this project be set down for a public hearing.

3                   CHAIRPERSON HOOD:     Colleagues, any comments or  
4                   questions of the Office of Planning? If not, any discussion?

5                   VICE CHAIRPERSON MITTEN:   Well, before we proceed  
6                   with the discussion, I would like to put on the record that the  
7                   apartment -- cooperative apartment building that I live in has  
8                   been in opposition to a PUD that JBG Companies has brought to the  
9                   Zoning Commission. And I would like to put that on the record.

10                  And I would also like to put on the record that I  
11                  believe that I can be impartial in making a decision on this  
12                  case, but I would be open to any objections that representatives  
13                  of the JBG Companies might have.

14                  CHAIRPERSON HOOD:   Okay. Colleagues, Ms. Mitten is  
15                  putting a disclosure on the table. Anyone has any problems with  
16                  her proceeding with this case? Okay. Thank you.

17                  Any other comments or questions? If not, I'd like  
18                  to obtain a motion, colleagues, or however we want to deal with  
19                  this.

20                  VICE CHAIRPERSON MITTEN:   I think I would like to  
21                  ask the Office of Planning a question, if I could. This request  
22                  is specific, which was -- you know, is understandable, given that  
23                  a property owner would be concerned exclusively with their  
24                  property. But what we're doing is considering expanding housing  
25                  priority area C, and in the hearing process I would like to know

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1 whether or not it would be appropriate to expand it into any  
2 other areas that you would think -- where you could recommend  
3 that we would expand it.

4           Instead of just cherrypicking a site outside the  
5 housing priority area, is there a shift that we should be making  
6 of any kind? A shift of the boundary? I would like that to be  
7 discussed further if we go forward with this.

8           MS. MCCARTHY: The opportunities for doing that --  
9 there's a possible opportunity in this block, in that there is  
10 some additional property on the north side of this square that is  
11 being discussed as potentially part of a planned unit development  
12 with another site that's asking for a text change.

13           But because the bulk of this square is also in  
14 either the downtown historic district or the Pennsylvania Avenue  
15 historic district, and, therefore, has some density limitations  
16 on that, the decision was made by -- when the Zoning Commission  
17 was considering the downtown development district that additional  
18 requirements for uses that were less profitable uses, like  
19 housing, would be too much of an additional burden, given the  
20 density limitations.

21           The Office of Planning does not see at this point  
22 in time any additional area for expanding the housing priority  
23 areas. We have indicated that we want to look at the newly  
24 designated historic districts on Mount Vernon Square east and  
25 west, about the appropriateness of the zoning that's on there

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1 now, but that's more related to the density of what is permitted  
2 versus the historic designation, and not so much about extension  
3 of any housing priority areas.

4 And I should ask -- or I should say we -- while we  
5 considered putting the squares on the north side of this -- the  
6 lots on the north side of this square in with this request, we  
7 decided that it was probably more appropriately done, or could be  
8 accomplished as well through the PUD process, and that because  
9 those were part of a deal, part of an overall amenity package for  
10 a PUD, would probably be the better way to go, thus tying the  
11 amenities in with the proposed action and allowing better control  
12 over the -- making sure that those amenities are performed as  
13 part of that action.

14 VICE CHAIRPERSON MITTEN: So you've considered it  
15 already, so --

16 MS. McCARTHY: Yes.

17 VICE CHAIRPERSON MITTEN: The fact that it's been  
18 given consideration is really what I'm looking for.

19 MS. McCARTHY: Yes.

20 VICE CHAIRPERSON MITTEN: Okay.

21 MS. McCARTHY: We definitely considered that.

22 VICE CHAIRPERSON MITTEN: Thank you.

23 CHAIRPERSON HOOD: Okay. Colleagues, if there's no  
24 further discussion, I'll just make a motion that we set down  
25 Zoning Commission Case Number 00-20TA.

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1 VICE CHAIRPERSON MITTEN: Second.

2 CHAIRPERSON HOOD: It has been moved and seconded.

3 All those in favor, by the usual sign of voting.

4 (Chorus of ayes.)

5 Any opposition?

6 (No response.)

7 So ordered. Staff, would you record the vote, also  
8 including Mr. Parsons' proxy?

9 MR. BASTIDA: Yes. The staff would record the vote  
10 five to zero, Mr. Hood moving it, Ms. Mitten seconded, Mr. Hood  
11 and Mr. -- I mean, I'm sorry, Mr. Holman and Mr. Franklin voting  
12 in the affirmative, and Mr. Parsons voting in the affirmative by  
13 proxy.

14 CHAIRPERSON HOOD: Okay. Next, we have moved the  
15 Kennedy-Warren up under proposed action. I'm going to ask --

16 MR. BASTIDA: That's correct, Mr. Chairman.

17 CHAIRPERSON HOOD: Right. I'm going to ask Mr.  
18 Altman and Ms. McCarthy -- while we're waiting on Mr. Altman, Ms.  
19 McCarthy, if you could just take a moment and introduce your  
20 staff. I know that -- and I hope my colleagues won't mind, but  
21 we need to know who we're working along with.

22 You've been upbeat and improving the staff over at  
23 the Office of Planning, so we would like for them maybe to stand  
24 and introduce themselves. That should only take five minutes.

25 (Laughter.)

1 Or less.

2 MS. McCARTHY: Okay. I'd be glad to. They're all  
3 in the back row there. Maxine, do you want to stand and  
4 introduce yourself?

5 COMMISSIONER HOLMAN: Why don't you introduce them.

6 CHAIRPERSON HOOD: Yes. Maybe we'll do it that  
7 way, so it will be on the record.

8 MS. McCARTHY: Okay. This is --

9 CHAIRPERSON HOOD: You can wave your hand, so we'll  
10 -- or stand. Stand when your name -- so we'll know who you are.

11 MS. McCARTHY: Okay. Maxine Brown Roberts comes to  
12 us with some extensive background, both in the private sector and  
13 most recently working for Fairfax County.

14 And Arthur Jackson comes to us from the City of  
15 Baltimore, where he was Secretary of the Site Plan Review  
16 Committee, was also the former Planning Director in Danville, and  
17 also was in Fairfax at one point in time.

18 Jennifer Steingasser, who you'll be seeing on  
19 Thursday night at the Albemarle PUD public hearing. Jennifer was  
20 with the Town of Vienna before this.

21 And Arthur Rogers you've seen before. He is old  
22 hat.

23 (Laughter.)

24 Excuse me, a veteran. A veteran.

25 (Laughter.)

1                   And David McGhettigan, who also has both a  
2 combination of public and private sector background, coming to us  
3 most immediately from the City of Fairfax.

4                   CHAIRPERSON HOOD: We want to welcome you and are  
5 looking forward to a good working relationship with all of you.

6                   Let me do this first, cyber hotels. Let me just  
7 say that I think we need to waive the report, our rules for  
8 accepting the report. There was some discrepancy when we got it,  
9 but still, nevertheless, we have it now, so I want us to -- if  
10 there's a general consensus that we waive the report, not saying  
11 how we're going to proceed. Is that a general consensus?

12                  Next, Mr. Altman, if you could discuss the cyber  
13 hotels, which is -- as a matter of fact, Mr. -- Kennedy-Warren  
14 has been moved to proposed action, so cyber was left off the  
15 agenda, and we did that in preliminary matters.

16                  But I wanted to ask, Mr. Bastida, we don't have a  
17 case number either for cyber hotels.

18                  MR. BASTIDA: No, Mr. Chairman. When the Office of  
19 Planning makes a request, as in other reports, it has been always  
20 put in correspondence, and then, at that moment when you receive  
21 the information, you can set it down for a hearing, and then the  
22 Office of Zoning will provide a case number and will open the  
23 file upon that action by the Commission.

24                  CHAIRPERSON HOOD: Okay. So we will hear from Mr.  
25 Altman at this time. Thank you, Mr. Bastida.

1 MR. ALTMAN: Thank you, members of the Commission.

2 Let me give you a brief introduction to this, and  
3 actually I'd like to ask Jennifer, who is sitting right here, to  
4 provide an overview on this, especially in light of the fact that  
5 the report came out at the very last minute. We were working  
6 with the city attorney, actually, up until Friday evening.

7 The issue before us -- and I certainly appreciate  
8 if the Commission is not ready to take action today, given that  
9 -- but I think it's important to raise this issue with the  
10 Commission. And if you desire to take action today, that's fine.

11  
12 If not, we will be bringing this back for you at  
13 your next meeting -- is the issue of cyber hotels, which we will  
14 define in a moment, but essentially are centers for the process  
15 and for the data transmission. These are large -- often large  
16 facilities. They don't always have to be large facilities, but  
17 many of the applications that we're seeing before us could be  
18 large facilities, which would serve an important function in  
19 terms of the telecommunications economy, but at the same time  
20 also have to be carefully located, carefully sited, in terms of  
21 their compatibility with areas of the city, particularly those  
22 where you're promoting adopting mixed use or trying to encourage  
23 mixed use development.

24 So that these facilities, which are, in essence,  
25 warehouses would have such provisions as to the ground floor

1 retail or ground floor -- sort of the relationship to the street,  
2 how active those uses will be on the ground floor, concern about  
3 proximity to metro stations in terms of overconcentration of  
4 facilities, because you don't want them to become what would, in  
5 essence, be dead zones in cities -- the places where these would  
6 be most encouraged, so that along certain -- where you have the  
7 trunk lines, where these could be very -- bring very positive  
8 benefits to the city.

9           So those were the issues that we wanted to bring  
10 before you. I'll have Jennifer actually go through the outlines  
11 of the report, which we will be happy to bring back to you. But  
12 we thought it important, because there may be a number of  
13 applications that are moving forward -- these are currently --  
14 most of them now are allowed by right, which means there is --  
15 other than occasionally a large tract review, these can largely  
16 proceed with minimal review.

17           And this is occurring particularly in areas of the  
18 city such as the north of Massachusetts Avenue, the area where  
19 we're making significant investments in the new metro stop to  
20 make that area a very mixed use, very heavily intensively people  
21 used kind of a place.

22           Also, along the waterfront, where we are promoting  
23 mixed use development, residential development, we've been seeing  
24 those applications come before you. So places where there are  
25 significant public investment that is occurring, we need to take

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1 great care that sites are not being rapidly acquired and used for  
2 this kind of use in an unregulated way.

3 At the same time, we want to encourage them in  
4 appropriate locations. So, with that, why don't I -- Jennifer,  
5 why don't you do a quick overview for the Commission, since they  
6 haven't had time to go through the report, and then we can  
7 discuss how you would like to proceed.

8 MS. STEINGASSER: Okay.

9 COMMISSIONER HOLMAN: Mr. Chairman, if you wouldn't  
10 mind, before she proceeds, I would like to disclose that my  
11 employer is very active in this area. I've had no direct  
12 involvement with the Office of Planning or with anyone making any  
13 application regarding these facilities. And I believe that I can  
14 be fair and objective. And if any of my colleagues have any  
15 concerns, they are certainly welcome to express them.

16 CHAIRPERSON HOOD: Okay. Colleagues, Mr. Holman  
17 has put a disclosure. Are there any problems from any interested  
18 parties or anyone?

19 VICE CHAIRPERSON MITTEN: I guess maybe if you  
20 could just clarify what "very involved" means for everyone.

21 COMMISSIONER HOLMAN: Well, certainly. The New  
22 York Avenue Development Corporation has proposed a series of  
23 transportation and housing improvements in the general area from  
24 the new Convention Center to the confluence of Route 50 and the  
25 BW Parkway along New York Avenue. But we have not been involved

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1 in any discussions regarding cyber hotels or any such facilities.

2 CHAIRPERSON HOOD: Any further questions? If not,  
3 there are no objections? Okay.

4 MS. STEINGASSER: In a nutshell, what I'm going to  
5 do is -- we've classified them as an electronic equipment  
6 facility in order to try to bring all of them under one umbrella.

7 What they are -- they're also referred to as telcom hotels,  
8 internet hotels, cyber hotels. They are extremely large  
9 warehouses. They are extremely easy to build and to retrofit.

10 They are very attractive to developers because they  
11 require very little interior alteration, and they can house  
12 hundreds of companies.

13 The one that was presented to us most recently had  
14 about 300,000 square feet and a 24-hour employment base of 28  
15 people. So they're very -- they're not necessarily bad  
16 neighbors. They just need to be appropriate neighbors.

17 We are concerned about them going into the mixed  
18 use areas because they do like to gravitate towards fiber optic  
19 lines, which run in this case along the railroad tracks through  
20 most of Washington, and as well along Southeast Freeway.

21 Often times companies do tend to locate businesses  
22 near the hotels, but they're not in the hotels, and the hotels  
23 themselves can be designed to be very secure. And because of  
24 that security issue, they tend to be closed off if they have --  
25 trails are prohibited across them. They like to reduce the

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1 parking and secure the site, which makes them also not conducive  
2 to pedestrian activity or mixed use areas where you're trying to  
3 increase your pedestrian presence, have a vibrant street life,  
4 and such.

5 Staff report tries to go through and lay out some  
6 of the purposes of the emergency legislation that we requested,  
7 mostly because they can be developed quickly. We have become  
8 aware of three -- one site which would have three or four on that  
9 site, totaling almost a million square feet.

10 And we've kind of walked through where they would  
11 -- what their unique development patterns are, which is their  
12 ability to fill large spaces. They have dry fire systems,  
13 minimal windows, high security. They have also incredibly large  
14 energy demands because they need to have an uninterruptable  
15 service.

16 They have a low number of employees, low parking  
17 delivery demands, and they operate for 24 hours. So they are  
18 essentially a huge computer site.

19 What we did is go through our comprehensive -- have  
20 gone through the comprehensive plan and found the objectives of  
21 the different areas and tried to lay them out in a way that  
22 provided guidance for where we thought they should be located and  
23 where they shouldn't be located.

24 Our initial emergency legislation proposed that  
25 they be allowed by right, if they are 100 percent underground,

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1 which would then negate the streetscape effect of them. If they  
2 wanted to go above ground for this -- at this point in time, we  
3 would request that they be considered by a special exception only  
4 in the C-3, C-4, C-M, and M industrial districts. We felt they  
5 were only appropriate in the C-5 district as an underground use.

6 And then, through the next month, we intend to have  
7 roundtables with some technology -- local technology  
8 representatives and businesses to discuss the issue, get their  
9 input on them, from a standpoint that they could provide.

10 And I'd be happy to answer any questions.

11 CHAIRPERSON HOOD: Colleagues, any questions?  
12 Commissioner Holman?

13 COMMISSIONER HOLMAN: Yes. Have you looked at how  
14 other jurisdictions handle this situation, and how I guess your  
15 regulations might square with what I understand to be the city's  
16 desire to attract high-tech companies?

17 MS. STEINGASSER: Yes. We've talked with several  
18 cities -- Los Angeles, Boston, Seattle, Portland, and Baltimore.  
19 Los Angeles has had the most dramatic relationship with them,  
20 and they have regretted that they didn't have regulations  
21 available when these things came in.

22 They did -- they moved in heavily downtown in Los  
23 Angeles and took over a lot of empty office buildings, and now  
24 that the city is trying to revitalize their downtown they've got  
25 a -- it's very barren blocks at a time from these things.

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1           So we did look at that aspect. We did take their  
2           development standards and try to square them against what we have  
3           for revitalized areas, such as north of Massachusetts, the  
4           waterfront, and the downtown area where we're trying to increase  
5           the presence, areas around the metro stations where we want to,  
6           you know, get some return on the public investment and support  
7           metro, get a more efficient use of the land. And we would go  
8           into that further in detail as we meet with the technology  
9           companies.

10           CHAIRPERSON HOOD: Let me ask, can everyone hear?  
11           Since we're having this discussion, I want to make sure we're  
12           talking loud enough, because I happen to know there's nothing  
13           worse than to go to a meeting and not be able to hear. So I want  
14           to make sure everyone was being able to hear. Okay.

15           MR. ALTMAN: Let me just add, the approach that we  
16           were taking as we were working on this, as I said until up I'm  
17           sure the very last minute with city attorney on how to proceed  
18           with this, is we wanted to allow time. On the one hand, there  
19           was an urgency to it, in that there are a number of applications  
20           which may or may not come to fruition, but a lot of intensified  
21           interest in this use.

22           The second is to allow time to actually work with  
23           the service providers as well as with the development community,  
24           neighborhood organizations, about the specifics of the  
25           regulation. So the approach we took was to -- we hope was a more

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1 simple one, which is this -- that you make at the moment what are  
2 by right into what would be a discretionary action; in other  
3 words, a special exception.

4 That allows the ability to review these cases as  
5 they come up. It doesn't prohibit them. It doesn't say that  
6 they are not allowed. But it does allow for a review that  
7 otherwise would not occur. That would be step one.

8 Step two, then, is that we develop actually the  
9 detailed regulations, of which we have a draft, but get that out  
10 to the community, get that out to the users, really talk about  
11 the details, because I think there are a lot of details here in  
12 this as to what percent of the buildings should be allowed for a  
13 cyber -- to cyber -- for those uses. Let me call it telcom hotel  
14 uses. Is that 20 percent? Is that 50 percent of the building?

15 It's clear that you may not in some areas want it  
16 to be 100 percent of the building, but you may want it as an  
17 accessory use not to exceed, say, 20 percent of the building and  
18 still have the mixed use character of an area. Overconcentration  
19 -- so you'd have specific regulations within one-eighth of a mile  
20 of, say, a metro stop. How many would be allowed or not allowed?

21 Issues of facade, how does actually this -- the  
22 buildings, what will be their appearance and compatibility,  
23 particularly if you're trying to have a mixed use zone. The  
24 specificity of those kinds of regulations is what we would be  
25 bringing back to you in a setdown report after we have had more

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1 detailed discussions.

2 We certainly have a way to proceed, but we thought  
3 in the meantime, in order to allow a review that otherwise may  
4 not occur, we would make the special exception to allow for a  
5 generalized review that we could do and also have public input  
6 before the Board of Zoning Adjustment for those applications.

7 So it would be a two-step -- one is generalized,  
8 and then the second would be much more specific, which would then  
9 supplant the emergency regulation once we've had a time to really  
10 work with the providers and understand just exactly how we can  
11 make this regulation work, in which areas of the city it's most  
12 appropriate.

13 And as we said, we have a proposal for where those  
14 areas are, particular concern around NOMA and the waterfront, but  
15 there are areas where it can also be encouraged, we think, along  
16 New York Avenue. And you've seen some conversion of cyber hotels  
17 there, some parts of M Street, so in a way it's a system you want  
18 to set up of incentives where you have encouraged and also where  
19 you're going to have stricter regulations.

20 But the first step would be to allow that greater  
21 level of review that we currently do not have the ability to do.

22 COMMISSIONER HOLMAN: Okay. And, Mr. Altman, and  
23 staff, I guess the second part of my question is, you may or may  
24 not have heard the discussion we just had about the whole -- I  
25 don't see how you could miss it -- the subject of emergencies.

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1 And do you feel prepared at this time to address the issues as  
2 they -- this issue as it relates to the public safety, welfare,  
3 morals, and the other issues?

4 Because I see us moving towards kind of a standard  
5 there, and, you know, I'd at least like to have some thoughts on  
6 the record if you have any.

7 MR. BERGSTEIN: Before they answer, I wonder if I  
8 could chime in, because I'm the city attorney they were referring  
9 to. And, in fact, when I mentioned earlier about the instance  
10 where the Court of Appeals has recognized for emergency  
11 rulemaking as appropriate, it is -- and I don't know the  
12 specifics of what's going on -- but this is the exact instance  
13 where the Court of Appeals has recognized that the Zoning  
14 Commission has acted in the past where a new use has been  
15 recognized where the existing matter of right regulations would  
16 include that use and that allowing for that type of matter of  
17 right development is not acceptable as an immediate choice by the  
18 Zoning Commission; and, therefore, permitting some higher either  
19 level of review or even changing the requirements of the use  
20 adding conditions would be the type of emergency regulation that  
21 the Zoning Commission could undertake.

22 So this type of scenario is the scenario that I  
23 believe the Court of Appeals was discussing. And also, just so  
24 that Planning knows, their change in the memo did respond to some  
25 questions I had about the clarity of what was being initially

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1 proposed.

2 And I think that actually the four bullets that are  
3 proposed are fairly clear and concise enough to go forward with  
4 an emergency if that's what the Commission feels would be  
5 appropriate, if it felt, in fact, that these uses were imminently  
6 coming into play and that it would, in fact, change the status  
7 quo of these areas that could not be later changed.

8 COMMISSIONER HOLMAN: Thank you, Mr. Chairman. I'm  
9 glad I asked that question.

10 (Laughter.)

11 MS. MCCARTHY: Well, I think, Mr. Holman, to take  
12 what Mr. Bergstein has said on the legal side, and then translate  
13 that into the part of your question which was about general  
14 welfare, public morals, etcetera, I think we could safely  
15 conclude that cyber hotels don't have much to do with public  
16 morals.

17 But with regard to the general welfare, I think our  
18 concern is that there are two areas in particular of the city --  
19 the NOMA, parts of New York Avenue corridor, and the waterfront  
20 -- which happen to be located adjacent to some of the major fiber  
21 optic trunk lines. Both of them are areas where the character of  
22 the land use is changing, and very much being encouraged to  
23 change by the comprehensive plan and by the zone plan and the  
24 policies of the city.

25 These are very economically attractive uses. They

1 don't -- they can go into areas that are of mixed character and  
2 the machines don't care. But our concern is that they would be  
3 -- the attractiveness of these to the property developer would  
4 mean that they would set -- they would be placed in there and  
5 would then preclude higher and better uses which might otherwise  
6 have come along shortly thereafter.

7 So that was what we saw as the public welfare  
8 issue. We thought also in this instance the fact that the  
9 emergency legislation, or the emergency rulemaking, is only good  
10 for 120 days, also helps bring home the point that we wanted to  
11 make to the industry, which was this was a placeholder.

12 We were inserting this so that we had some control  
13 over the development and making sure that there were no adverse  
14 impacts on the surrounding area. But we are not trying to say  
15 that the city is being unfriendly to the high tech industry. In  
16 fact, as you know, Mr. Holman, and I think as all the  
17 Commissioners know, the city has tried to reach out to the high  
18 technology industry.

19 That's why we want to develop a set of standards  
20 and guidelines in conjunction with the industry that will end up  
21 protecting general welfare issues, or the development of the  
22 city, and yet be standards and guidelines that the industry can  
23 live with.

24 CHAIRPERSON HOOD: Okay. Colleagues? Oh, you have  
25 a question. Commissioner Franklin?

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1 COMMISSIONER FRANKLIN: Yes. I need a real  
2 education on these so-called cyber hotels. By the way, it must  
3 be the industry who decided to call them hotels. I think the  
4 idea of calling these facilities a hotel is tantamount to calling  
5 a cemetery a rest hotel.

6 (Laughter.)

7 Let's call them EEFs, as you've preferred to I  
8 think designate them.

9 Is there any reason why somebody, not an EEF, would  
10 want to be in close proximity to an EEF? Are they something  
11 that, in a secondary way, could have economic stimulus effects?  
12 Or does an EEF -- is an EEF serviceable if it's 20 miles away?

13 MS. STEINGASSER: Well, yes and no. They do tend  
14 to gravitate towards each other. So one EEF does tend to draw  
15 another. Mostly that's attributable to the fact that they run --  
16 they like to be placed along the fiber optic trunk lines.

17 However, there are cases that we've heard about in  
18 Boston where one building plugs into another building. And they  
19 are very quick and very clean revenue for building owners, if  
20 they want to convert, say, their basement level. They can also  
21 hook in or connect to another building, but it does not have the  
22 standard economic spinoff where secondary businesses would  
23 locate. You know, they don't --

24 COMMISSIONER FRANKLIN: That's not likely.

25 MS. STEINGASSER: That is not likely, no, sir.

1 There are cases, though, excuse me, where say some -- a high tech  
2 firm would locate near their cyber hotel if it's available.

3 COMMISSIONER FRANKLIN: Is there a technical  
4 advantage to locating in proximity to an EEF?

5 MS. STEINGASSER: Only if you're going to extend  
6 the use into your building.

7 COMMISSIONER FRANKLIN: Okay. Now, you talk in  
8 your memo about encouraging a scale of development that's  
9 appropriate. We've lived with telephone switching facilities for  
10 some time, which, you know, in my perception have not been very  
11 large typically.

12 Are you thinking that, you know, from a regulatory  
13 standpoint we would basically allow them in certain areas if they  
14 were not of too large a scale, that we wouldn't otherwise allow?

15 MS. STEINGASSER: That's our thinking at this time,  
16 yes, that partial use of buildings or that distance between  
17 buildings, so they don't become all encompassing to a  
18 neighborhood. That there would be a scale. They can be very  
19 large. They're much larger than the standard telephone system.

20 COMMISSIONER FRANKLIN: Do we have now regulations  
21 that deal with telephone switching stations or --

22 MS. STEINGASSER: With the telephone switching  
23 stations we do, yes.

24 COMMISSIONER FRANKLIN: And has somebody looked at  
25 that and found that that does not conceptually give us any

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1 guidance as to dealing with these?

2 MS. STEINGASSER: Yes. We do have an application  
3 filed under that provision, so we have worked through that  
4 scenario preliminarily at this point. However, it does not  
5 provide the kind of guidance that we would like to see for the  
6 full-fledged industry.

7 COMMISSIONER FRANKLIN: Plus, obviously, the  
8 telephone switching facilities were done by a monopoly, and these  
9 are being spawned by, you know, proliferating companies. Is that  
10 --

11 MS. STEINGASSER: Right. As well as spec. A lot  
12 of them are spec.

13 COMMISSIONER FRANKLIN: I see.

14 MR. ALTMAN: And there's -- some of you also had  
15 questioned right now -- Mr. Franklin, if I can just clarify it --  
16 it's also a question of scale, and also a question of you have  
17 very few remaining parcels in some of these areas, and these can  
18 move very quickly and take up large parcels. They have high  
19 security requirements often, depending on the user.

20 They often don't have ground floor uses, and they  
21 can be significant. So I think the question is, is we have this  
22 scarce resource in some of our areas of the city, that we find a  
23 way to kind of immediately allow us to review that and then  
24 develop these detailed regulations to make them discretionary.

25 COMMISSIONER FRANKLIN: Is it your view that if we

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1 do not act on an emergency basis that we might find in very short  
2 order a sprouting of these EEFs in places that would be highly  
3 undesirable?

4 MR. ALTMAN: Yes. I mean, we read -- I mean, part  
5 of what heightens our anxiety, whether it's true or not, is the  
6 fact that every time you read the Business Journal or another  
7 paper that there is another one coming, another one planning to  
8 come, another one speculating, and I think we want to get ahead  
9 of that very quickly, allow that review to occur, particularly in  
10 these areas of the city, and then give us time, as Ms. McCarthy  
11 said, to work with the industry and others on very specific  
12 standards, but at a minimum get ahead of what we see as the  
13 intensity of interest and speculation that's occurring.

14 COMMISSIONER FRANKLIN: Well, Mr. Chairman, just  
15 let me say that at this point it strikes me, notwithstanding our  
16 earlier discussion about emergencies --

17 (Laughter.)

18 -- that we are confronted with what seems to me to  
19 be a serious issue that might be appropriate for emergency  
20 treatment because of the rapidity with which these developments  
21 can occur, and the inadequacies of our existing regulatory  
22 system.

23 CHAIRPERSON HOOD: I, too, concur with your  
24 comments, Commissioner Franklin.

25 I just have one question I wanted to ask the Office

1 of Planning, and I'm trying to set up a scenario. For example,  
2 if you're in an R-4 residential, and I see here where you're  
3 saying that it's prohibited in an R-4, the R-4 is right across  
4 the street from a C-M-1, where you can go in by -- there's a  
5 special exception.

6 Then, what happens when you start getting a  
7 conglomerate? Is there anything in what you've proposed here  
8 that will eliminate from having maybe 20 -- I'm not saying this  
9 would happen. It might not even be feasible. But would you have  
10 20 across the street from someone's house? Because it's C-M-1  
11 right across the street.

12 Is it a factor that -- let's be reasonable. Let's  
13 say three or four of them in one area.

14 MR. ALTMAN: Yes, I think there are two issues. I  
15 mean, one, this is exactly the level of detail they'll be working  
16 out in this -- in the regulations we're bringing forward to you.  
17 Right now, what we're saying is we would make the special  
18 exception, so you'd be able to review those.

19 In the detailed regulations we would bring forward  
20 to you, we would look at the issue of concentration, which is how  
21 many in a particular area within -- particularly if you're in  
22 adjacency to residential or within proximity to a metro area, you  
23 may want to allow, you know, two or three of them, or X number of  
24 square feet.

25 But beyond that, you may have a concern about what

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1 the overall sort of cumulative impact is. So we'd want to look  
2 at that, understand from the community perspective, from the  
3 industry perspective, what seems to be the right balance there.

4 The other is, of course, you have the regulations  
5 that sort of relate to I think, you know, health and safety,  
6 which you could look at. Obviously, these are precluded in terms  
7 of looking at health effects of these, but I think in terms of  
8 looking at the general welfare and adverse impact on communities  
9 that could be part of the criteria that you look at, that we  
10 would be developing.

11 CHAIRPERSON HOOD: Okay. Colleagues, any more  
12 questions? Any further discussion? If not, I'd like to obtain a  
13 motion.

14 COMMISSIONER HOLMAN: Mr. Chairman, if I can get a  
15 case number for this, I'd move adoption of emergency rulemaking  
16 for zoning text amendments regarding electronic equipment  
17 facilities.

18 CHAIRPERSON HOOD: Okay. It's been moved. Can I  
19 get a second? I'll second it. All those in favor, by the usual  
20 sign of voting.

21 (Chorus of ayes.)

22 Any opposition?

23 (No response.)

24 So ordered. Staff, would you record the vote? And  
25 also, Mr. Bastida -- well, we wouldn't have had a proxy for Mr.

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1 Parsons.

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

3 CHAIRPERSON HOOD: Okay.

4 MR. BASTIDA: The case number will be 00-28T as in  
5 Tom, and it will be named electronic equipment facilities. The  
6 Commission has taken a vote as an emergency ruling for this case  
7 in a vote of four to zero, Mr. Hood moving it --

8 CHAIRPERSON HOOD: No.

9 MR. BASTIDA: No. Mr. Holman moving and Mr. Hood  
10 seconded, Ms. Mitten and Mr. Franklin to approve. Mr. Parsons  
11 not voting, not being present.

12 CHAIRPERSON HOOD: Okay. Next? It's always good  
13 to have a Vice Chairman next to you. The next thing we need to  
14 do is the vote to set it down for a hearing.

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

16 CHAIRPERSON HOOD: Colleagues, I'd like to obtain a  
17 --

18 VICE CHAIRPERSON MITTEN: So moved.

19 COMMISSIONER FRANKLIN: Second.

20 CHAIRPERSON HOOD: It has been moved and properly  
21 seconded. All those in favor, by the usual sign of voting.

22 (Chorus of ayes.)

23 Any opposition?

24 (No response.)

25 So ordered. Staff, would you record the vote?

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1 MR. BASTIDA: Yes. The staff would record the vote  
2 for the setdown Ms. Mitten moving, Mr. Franklin seconded, and Mr.  
3 Hood and Mr. Holman agreeing -- voting in the affirmative. Mr.  
4 Parsons not voting, not being present.

5 CHAIRPERSON HOOD: Let me just say this to the  
6 Office of Planning. I haven't been here that long, but I can  
7 tell you that this is some good planning, as far as I'm  
8 concerned, from this Commissioner. And I'm sure my colleagues  
9 who have been here long before I have, and those who are here  
10 now, will concur with that.

11 It's good to see things come up to us on the front  
12 end of things as opposed to on the back end. So I want to  
13 encourage the Office of Planning to keep up the good work.

14 COMMISSIONER FRANKLIN: I join the Chairman in  
15 thanking the Office of Planning. And I would hope that when we  
16 do have the hearing that we will get some technical expertise on  
17 the nature of these facilities that can at least enlighten me on  
18 their nature and what their role is in the information economy.

19 VICE CHAIRPERSON MITTEN: Can I just add one  
20 thought? Which is, to the extent that it's possible in the  
21 regulations that you bring forward, if you can have objective  
22 criteria regarding concentration as opposed to this sort of vague  
23 notion of what it is, because, you know, in the heat of it, when  
24 the last person is coming before the BZA, you know, they don't  
25 want to get shut out, and it's very difficult to quantify what

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1 overconcentration is.

2 So to the extent that you can provide guidance with  
3 some -- you know, with something specific, I think that would be  
4 very helpful.

5 CHAIRPERSON HOOD: Okay. Well, moving right along  
6 with our agenda, but I also want to take some time -- and I know  
7 we're getting into the bewitching hour, it's getting late, but I  
8 want to also recognize Mr. Bastida, having worked with him.

9 I want to say in my comments after Office of  
10 Planning, we have to have someone here on the Office of Zoning  
11 side. And Mr. Bastida works very hard. I basically talk to him  
12 every day. I don't mind putting that on the record. And I think  
13 he does an excellent job of keeping this Commission informed and  
14 enabling us to be able to come out and do our job. So, again, my  
15 hat is off to Mr. Bastida and to the Office of Zoning, and,  
16 naturally, corp counsel.

17 So let's move right along with this agenda.

18 MR. ALTMAN: Mr. Chairman, may I say one quick  
19 thing?

20 CHAIRPERSON HOOD: Sure.

21 MR. ALTMAN: Thank you for all of the compliments.

22 But, no, we will be holding a roundtable discussion before the  
23 hearing, getting some expert testimony and advice. So for all of  
24 those who are out there who have names of people we should  
25 involve, people that you'd like to -- that you may have, and

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1 we're also working with -- the Urban Land Institute had a forum  
2 on this at their meeting last week with people who are developing  
3 these.

4 So we really do want to get broad input from the  
5 industry and really get on top of understanding this phenomenon.

6 It's important.

7 CHAIRPERSON HOOD: Good. Looking forward to it.  
8 And I wanted to put those things on the record while we had an  
9 audience, because once we finish, more and more people are going  
10 to get out, and they won't be able to hear some of the good  
11 comments we're going to say. So, Mr. Bastida --

12 (Laughter.)

13 -- again, a job well done. Office of Planning, a  
14 job well done.

15 Okay. Next, proposed action.

16 MR. BASTIDA: Yes. This is Zoning Commission Case  
17 96-07C, Kennedy-Warren, and it is in front of you on a very  
18 narrow issue under remand, and we are looking for your guidance  
19 to see how you would like to proceed in your discussions and your  
20 actions.

21 This item is on the proposed action because the  
22 individuals who heard -- were on the Commission at the time had  
23 not -- are not any more members of the Commission. Accordingly,  
24 we will have to put it -- the order out for exceptions, and that  
25 is why it is in proposed action rather than final action.

1 CHAIRPERSON HOOD: Let me also add that at last  
2 month's meeting we said that we were not going to deal with this  
3 issue because of the absence of some -- one of the persons who  
4 participated in the case previously. To be fair -- he had to go  
5 out of town again this month, and to be fair to the public, we  
6 want to proceed with the Kennedy-Warren case. So I just wanted  
7 to put that on the record.

8 MR. BASTIDA: Mr. Chairman, that reminds me to  
9 clarify the point. If a Commissioner has heard -- has been at  
10 all of the hearings in a case, he can vote as a -- by proxy.

11 CHAIRPERSON HOOD: Proxy, right. Okay.

12 MR. BASTIDA: And that's part of the regulations.  
13 Thank you.

14 COMMISSIONER FRANKLIN: Mr. Bastida, if you could  
15 clarify something else for the record. Has Mr. Parsons been  
16 given the case of the order in which we're voting? And has he  
17 reviewed that?

18 MR. BASTIDA: Yes, Mr. Franklin. Mr. Parsons was  
19 provided with a draft order.

20 CHAIRPERSON HOOD: Okay. Colleagues, it's open for  
21 discussion. We have in front of us the Kennedy-Warren, Case  
22 Number 96-07C. So I hear no comments. I guess we'll --

23 VICE CHAIRPERSON MITTEN: Well, I'll go first.

24 (Laughter.)

25 Maybe I'll begin by saying -- and we may have said

1 this at another -- on another occasion, but I'll repeat it --  
2 that I read the entire record in this case in preparation for  
3 this, so I'm prepared to discuss it and vote on it.

4 To me, one of the issues -- or the main issue, and  
5 this was an issue on remand, that remains unresolved in this case  
6 is the issue of a low density -- under the Ward 3 plan, there's a  
7 requirement -- this is 1407.3(c), a requirement that development  
8 adjacent to parks be low density.

9 And in the order that we have before us, I'm going  
10 to -- what I'd like to take issue with is the item number 8 on  
11 page 12, which is, for the benefit of the audience, it says,  
12 "Read in its entirety, the purpose of 1407.3(c) is to protect  
13 parks that are designated landmarks from potential harm to their  
14 environment and aesthetics, including to protect unstable soils,  
15 to eliminate runoff potential, to promote a green buffer between  
16 the built environment and the natural settings of the parks, to  
17 avoid any adverse effects on the landmarks, including adverse  
18 effects on water quality, flora and fauna, and to minimize any  
19 intrusion on views from these parks.

20 And I think that the notion of this that's flushed  
21 out in more detail is that because there are additional  
22 conditions on the PUD, that they offset the requirement to have  
23 low density development in proximity to parks.

24 So I'd first like to begin by saying that what that  
25 section of the 1407.3 -- it says, and I thought I had a copy of

1 it in front of me, but I -- I guess I don't. It says that they  
2 are to be low density, and, to the extent that further  
3 restrictions are required to protect against unstable soils,  
4 runoff potential, etcetera, not that the low density in and of  
5 itself is meant to accomplish that.

6 So I think that the low density requirement  
7 remains. Oh, here it is. It's on page -- it's at the bottom of  
8 page 11 of the draft order.

9 So we have this low density requirement of the Ward  
10 3 plan, and then we have the land use element that designates  
11 this site for high density. High density residential can be in  
12 two categories -- R-5-D or R-5-E -- and this PUD provides for the  
13 highest density permitted under high density residential. So  
14 it's the highest density category, R-5-E, which is the sixth FAR.

15 And then, beyond that, there's a five percent increment that's  
16 permitted in a PUD, so it's a 6.29 FAR, so it's literally as high  
17 as it could possibly be.

18 So inasmuch as we are required to give the land use  
19 element greater weight than other elements, I think that  
20 certainly we can't just default to the low density requirement of  
21 the Ward 3 plan. But in accommodating, giving some weight, which  
22 is what we're required to do, give some weight to the Ward 3  
23 plan, I don't think giving this PUD the highest density  
24 development permitted for residential use exclusively  
25 accommodates that.

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1                   And I think that the issue on remand that requires  
2                   us to consider whether this meets the low density requirement in  
3                   proximity to parks, I don't think that has been met, and that  
4                   creates an inconsistency with the comprehensive plan.

5                   CHAIRPERSON HOOD:     I want to ask Mr. -- Mr.  
6                   Bergstein, I'm sorry, if he could respond, if you could respond  
7                   to that, or Ms. Sansone.

8                   MS. SANSONE:   Mr. Chair, that was the issue that is  
9                   before the Commission for a decision on remand, whether the low  
10                  density provision that Commissioner Mitten read and spoke about  
11                  -- whether -- the PUD is not a low density provision.   So reading  
12                  the Section 1407.3(c), it would preclude the high density  
13                  development.

14                  And the question that the Commission needs to  
15                  consider is whether the land use element, and whether other  
16                  provisions of the comprehensive plan, the Commission is entitled  
17                  in reviewing the PUD to make sure that the PUD meets those  
18                  requirements.

19                  If that somehow balances out such that the fact  
20                  that there is an inconsistency, a potential inconsistency, with  
21                  the low density provision, whether that makes the PUD  
22                  inconsistent with the plan as a whole, with the section and with  
23                  the plan as a whole.   Those are the issues that the court has  
24                  called upon you to decide.

25                  CHAIRPERSON HOOD:   Right.

1 MS. SANSONE: And Commissioner Mitten has proposed  
2 one analysis addressing that question. And in the draft order  
3 before you, we have suggested there are other elements that come  
4 into play that need to be addressed.

5 CHAIRPERSON HOOD: I guess what I'm asking is if  
6 her comments can be incorporated.

7 MR. BERGSTEIN: Well, I think what she's saying is  
8 that she doesn't believe that there is a way of achieving  
9 consistency between the comprehensive plan when both the Ward 3  
10 elements and the land use elements are looked at together, if I  
11 understand what Commissioner Mitten is saying, that to give the  
12 Ward 3 elements their due, you can't provide for an R-5-E for  
13 this PUD. It must be something less than that.

14 And, therefore, what she is saying I believe is  
15 that she doesn't believe that on remand, given the analysis  
16 before you, that you can approve -- that following the analysis  
17 the finding would be that, in fact, the PUD should be disapproved  
18 because there's no way to reconcile the two requirements.

19 And I don't want to misstate what you're saying,  
20 Commissioner, but the question is whether or not the suggestion  
21 that -- to give the land use elements their due means downgrading  
22 the density from something less than R-5-E to something else,  
23 which I think is the suggestion that Ms. Mitten is making, or  
24 whether or not the land use elements trump or supersede, or,  
25 judging them in totality, allow for a higher density to be

1 allowed.

2 VICE CHAIRPERSON MITTEN: Well, if I could -- I  
3 don't disagree with any of the interpretations that have been  
4 made of what I said. I'll just maybe say a few more things.

5 One is just to add some clarity to this, this --  
6 I'm going to read now from the Judge's order sending this back to  
7 us. It says, "In its decision, the Commission did not expressly  
8 address the requirement of Section 1407.3(c) that development  
9 adjacent to landmark parks must be low density. For our part, we  
10 are disinclined to interpret and apply that requirement to  
11 Kingle's PUD application, without benefit of the views of the  
12 Commission on this issue."

13 So I'm rendering my views on the issue, and I would  
14 like to -- so my view is that the way that you -- the way that  
15 you give weight to the Ward 3 plan is not -- it deserves weight.

16 Clearly, the land use element that designates it high density is  
17 to be given greater weight. We know that from Section 112.1(c)  
18 of the comprehensive plan. But that doesn't say ignore anything  
19 that's in conflict with the land use element.

20 So my view is that the way you give some weight to  
21 the Ward 3 plan is not by giving the absolute maximum density  
22 that you could give to this PUD. You have to back away from  
23 that. And whether that is a five and a half FAR or a five FAR or  
24 a four and a half FAR, I'm just saying if you -- clearly, the  
25 maximum, which is what we're -- what the PUD has requested, or

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1 what the applicant has requested in this PUD, that clearly gives  
2 no weight to the Ward 3 plan, is my opinion.

3 COMMISSIONER HOLMAN: So, if I could ask, so are  
4 you proposing something in the alternative? I'm not clear. I  
5 understood what you said. I'm just not understanding where that  
6 leads you and what you're proposing.

7 VICE CHAIRPERSON MITTEN: Well, I guess what I  
8 would propose is that the application be denied, but that there  
9 be a direction given to the applicant that if you come back to us  
10 with an R-5-E proposal, or with something less than the maximum  
11 density, that gives weight to the Ward 3 plan, because we've  
12 determined that -- I think we've determined that the low density  
13 requirement of the Ward 3 plan does apply, given that this is a  
14 landmark park, or whatever the phraseology is.

15 So I'm saying that, as it is, no accommodation of  
16 that has been made.

17 CHAIRPERSON HOOD: Let me just ask about the Ward 3  
18 plan. Does anyone know whether or not the Ward 3 plan has been  
19 approved?

20 VICE CHAIRPERSON MITTEN: Approved?

21 CHAIRPERSON HOOD: Yes, approved.

22 VICE CHAIRPERSON MITTEN: Yes. There was --

23 CHAIRPERSON HOOD: There are a lot of plans out  
24 there that haven't been approved. I just want to know if the  
25 Ward 3 plan --

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1 MR. BASTIDA: Do you mean adopted by --

2 CHAIRPERSON HOOD: Right.

3 VICE CHAIRPERSON MITTEN: There was a Ward 3 plan  
4 in place as part of the comprehensive plan at the time that this  
5 was heard, and that's where all of these quotes are coming out of  
6 and --

7 CHAIRPERSON HOOD: Okay. So at that time, that  
8 Ward 3 plan was approved.

9 MR. BASTIDA: That is correct. But the plan had  
10 not been adopted.

11 CHAIRPERSON HOOD: See, there are a lot of plans --  
12 I don't want to call any specific wards -- where those plans have  
13 not been adopted, if that's the correct legal term. And I just  
14 wanted to know if this plan, at that time, had been approved and  
15 adopted, more or less approved. And does it take precedence over  
16 the comprehensive plan? Sometimes it takes bits and pieces, and  
17 that was the question that I had in trying to decide on how I was  
18 going to deal with this personally.

19 But, anyway, if no one has the answer --

20 MR. BASTIDA: I'm sorry, Mr. Chairman. I'm trying  
21 to listen to several people at the same time. It's a little  
22 difficult, so I apologize.

23 CHAIRPERSON HOOD: It is?

24 (Laughter.)

25 MR. BASTIDA: The Ward 3 plan was not officially

1 adopted at the time of the hearing.

2 VICE CHAIRPERSON MITTEN: So are you saying there  
3 was no Ward 3 plan in existence as of the time --

4 MR. BASTIDA: No, I didn't say that. It was a Ward  
5 3 plan that the Office of Planning had come up with, and it had  
6 been reviewed, and so on. But the Council had not adopted it at  
7 the time of the hearing.

8 And Ms. Newmark is coming, and I'm sure she doesn't  
9 agree with what I'm saying. It was she -- and I would have to --  
10 she provides information that it was adopted in 1994 and  
11 incorporated in the comp plan. I would have to doublecheck that  
12 with the Office of Planning.

13 COMMISSIONER FRANKLIN: Mr. Chairman?

14 MR. BASTIDA: Or you might have it there, Mr.  
15 Franklin.

16 COMMISSIONER FRANKLIN: No, I don't have an answer  
17 to that question. I was just going to take issue with  
18 Commissioner Mitten's approach on this, with which I disagree.  
19 But if we're not ready for that, I'll --

20 CHAIRPERSON HOOD: That's okay. I can proceed  
21 without an answer to my question.

22 COMMISSIONER FRANKLIN: I just had assumed that  
23 whatever we were talking about, in terms of the provisions and  
24 their language, were in effect.

25 Colleagues, we're confronted in this case with the

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1 fact that the comprehensive planning process in the District of  
2 Columbia does not result from a coherent planning process, but is  
3 a result of individual tweakings of a comprehensive plan that are  
4 responsive to constituencies throughout the city.

5 I'm not saying that that's not a legitimate aspect  
6 of any planning process, but the result of all -- of the way the  
7 process works is that the comprehensive plan has a lot of  
8 internal inconsistencies. And it seems to me it's the role of  
9 this Commission to try to interpret the comprehensive plan as a  
10 whole, to assure that our -- what we're doing, from a zoning  
11 standpoint, does not fly in the face of the integrity of the plan  
12 as a whole.

13 Now, where several provisions of the plan arguably  
14 apply to a given site -- and by the way, you know, I don't know  
15 how many jurisdictions use the word "comprehensive planning" to  
16 apply to things that are very site specific, as happens in the  
17 District of Columbia. But when you start having something called  
18 a comprehensive plan that gets into the minutia of sites, you are  
19 not into the comprehensive planning process. You're into  
20 something else.

21 But I'll let that go. We'll just have to live with  
22 what we have before us. But where several provisions of the comp  
23 plan arguably apply, but are not wholly consistent with one  
24 another -- and that's the case here -- it seems to me the  
25 Commission, with the assistance of the Office of Planning, is

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1 entrusted with the authority and the responsibility to balance  
2 those provisions to achieve a result that's best calculated, in  
3 the discretion of the Commission, to achieve the objectives of  
4 the entire plan.

5 Accordingly, I think the Commission should give  
6 greater weight to the land use element of the plan, the site's  
7 location in the high density Connecticut Avenue corridor, and the  
8 clear desire of the plan to increase residential development near  
9 metro rail stations, than to the countervailing general provision  
10 of 1407.3(c), which calls for low density development near what  
11 are called landmark parks.

12 Now, I also think that the intent of 1407.3(c),  
13 which is what the court asked us to address, is to avoid the  
14 scale of adjacent development that would overwhelm the qualities  
15 that contribute to the landmark status of a park. These are  
16 called landmark parks for a reason, and it's called a landmark  
17 park because it has some historic character to it.

18 Now, the qualities of the adjacent park -- that is,  
19 the landmark park in this case -- would not, in my judgment, be  
20 compromised at all in terms of its landmark status by this  
21 particular development. So the Commission has concluded, on the  
22 basis of other evidence before it, that the proposed high density  
23 development here will not have any adverse effect on the  
24 neighborhood.

25 And it clearly, in my judgment, would not have an

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1 adverse effect on the landmark status of the adjacent park. And  
2 that kind of issue was addressed by the National Capital Planning  
3 Commission. It was addressed by the Fine Arts Commission. And  
4 it was addressed by this Commission. And none of them felt that  
5 this landmark would be in any way compromised by the construction  
6 of this historic development.

7 So I think we can talk at great length about what  
8 low density means in this context, but if we're trying to protect  
9 the historic landmark status of a park, this certainly does not  
10 in any way detract from that objective, in my judgment.

11 MR. BASTIDA: Ms. Mitten, if I may clarify, because  
12 I -- when I spoke before, I doublechecked -- went back to  
13 doublecheck. In 1989, Wards 1, 2, and 6 were adopted and put  
14 into the comprehensive plan. In '94, those three wards, plus the  
15 rest of the other wards, those were readopted and then the others  
16 were adopted.

17 So, since 1994, all of the ward plans became part  
18 of the comprehensive plan. And I stand corrected. Thank you.

19 COMMISSIONER FRANKLIN: My comments presupposed  
20 that the Ward 3 plan had been adopted.

21 CHAIRPERSON HOOD: Okay.

22 Commissioner Holman? And then I'll make my  
23 comments.

24 COMMISSIONER HOLMAN: Mr. Chairman, I just -- I  
25 generally concur with what Commissioner Franklin says. On

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1 further reflection, what concerns me most is that we don't, in  
2 fact, have a full Commission present for this vote. I have  
3 certainly had the benefit, as have the other Commissioners, of  
4 reading the file, but I did not personally attend the case.

5 And I would not like to see a result where we did  
6 not -- we may not have a unanimous vote, but I certainly want a  
7 vote of a majority. And I'm just a little concerned that if we  
8 take up this question without having Commissioner Parsons here,  
9 we may not get the full -- a final result.

10 And I guess what I'm really thinking about is his  
11 particular expertise as it relates to park lands, the landmark  
12 status of those park lands, and the particular expertise that he  
13 derived from having participated in those hearings.

14 Nevertheless, Mr. Chairman, if you bring it -- if  
15 you bring the matter to a vote, I am prepared to vote. But I  
16 would like to have heard that as part of this discussion.

17 COMMISSIONER FRANKLIN: Mr. Holman, if I could add  
18 to this discussion. Mr. Parsons called me this morning from  
19 Denver because he was unable to reach Mr. Bastida. And he said  
20 he had read the order, we discussed this in general terms, and he  
21 said that he was comfortable with the order that was before us.

22 COMMISSIONER HOLMAN: Thank you.

23 CHAIRPERSON HOOD: Well, let me just say, while I  
24 concur with Mr. Holman's -- maybe Mr. Parsons may be able to  
25 bring something to the discussion as opposed to the proxy. But I

1 will just say that, in trying to figure out which way I wanted to  
2 move with this, I will tell you that I had some problems when I  
3 read the record.

4 But I also know that I was not charged but to deal  
5 with four specific issues. And I'll tell you, I -- one way it  
6 was one time, and the next time it was another time they had the  
7 discussion. So my concern is, and my point is, then I started  
8 looking at other factors, and I believe I would be correct if I  
9 said the ANC voted in support of this case. Okay?

10 I believe I would be correct, if I'm looking -- the  
11 National Park Service, and, like it was stated earlier, NCPC, and  
12 all of those people wrote letters in support of this project.

13 And in reading the record and identifying the  
14 different issues that were remanded on us, I, too, am ready to  
15 move forward. While I did have an issue, I wouldn't have  
16 explained it quite as eloquently as Commissioner Mitten, with the  
17 density, but then I had to think about what was the charge in  
18 front of me.

19 So, again, I am ready to move forward. Colleagues,  
20 any other discussion?

21 COMMISSIONER FRANKLIN: Mr. Chairman, if we are  
22 ready to move forward, I would like to suggest that when the  
23 final proposed order is wordsmithed, and I'm not talking about  
24 any change in the content, but just a change in format, I think  
25 it would be very helpful if the specific questions that were

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1 posed to the Commission by the Court of Appeals were addressed at  
2 the front end of the Commission's response, and the answers  
3 given, and then, of course, the reasons would be set forth in the  
4 text as they are now.

5 So it would be of great aid to the court to see at  
6 one place how the Commission dealt with the specific questions.  
7 So it's really a formatting suggestion, not a content suggestion.

8 CHAIRPERSON HOOD: Okay. And also, if I can just  
9 add that when we record the vote, at least from this  
10 Commissioner's standpoint, that I be recorded as voting on the  
11 remand issues and remand issues only. Okay?

12 VICE CHAIRPERSON MITTEN: Could I just have one  
13 final thought, just about something that Commissioner Franklin  
14 said? Which is that the notion of the low density adjacent to  
15 landmark parks is to protect the nature of the landmark parks.  
16 And, actually, that is a call that was made by the City Council  
17 in the comprehensive plan, and it sort of unambiguously states  
18 "development adjacent to parks which are designated landmarks  
19 must be low density."

20 It's not "unless they don't compromise the nature  
21 of the landmark parks." So I guess I just wanted to have -- just  
22 wanted to round out what my thoughts are about the accommodation  
23 that has been made to the Ward 3 plan.

24 COMMISSIONER FRANKLIN: Well, just to respond, and  
25 not to prolong the discussion, the language does not say "parks."

1 If it said "parks," I think your point would have more validity.  
2 The language says "landmark parks," and you have to give some  
3 meaning to the word "landmark" used in that context. That's all  
4 I am saying.

5 CHAIRPERSON HOOD: Okay. Colleagues, first, let me  
6 lean back to Mr. Holman's suggestion. Would my colleagues like  
7 to move in that direction, or are we prepared to vote?

8 COMMISSIONER HOLMAN: Mr. Chairman, I would say  
9 that, despite my concerns, I did end up saying that I am prepared  
10 to vote today.

11 CHAIRPERSON HOOD: So you're going to vote today?

12 COMMISSIONER HOLMAN: Yes.

13 CHAIRPERSON HOOD: Okay. Next, I would like to  
14 obtain a motion on Zoning Commission Case Number 96-07C, the  
15 Kennedy-Warren.

16 COMMISSIONER FRANKLIN: Mr. Chairman, I move that  
17 the draft order that has been presented to us be approved,  
18 subject to the formatting changes I suggested.

19 COMMISSIONER HOLMAN: Second.

20 CHAIRPERSON HOOD: All those in favor, by the usual  
21 sign of voting.

22 (Chorus of ayes.)

23 Any opposition?

24 (Nay response.)

25 So ordered.

1 Did Mr. Parsons leave a proxy?

2 MR. BASTIDA: Mr. Franklin was on the affirmative?

3 COMMISSIONER FRANKLIN: Yes.

4 MR. BASTIDA: Thank you.

5 CHAIRPERSON HOOD: And before you -- I want to be  
6 -- even though I was voting for it, I want to be recorded as  
7 voting just for those on remand.

8 MR. BASTIDA: Right.

9 CHAIRPERSON HOOD: Not the whole case.

10 MR. BASTIDA: Right. The vote on the remand is  
11 four to one, Mr. Franklin moving the action, Mr. Holman seconded,  
12 Mr. Hood voting in the affirmative, Mr. Parsons voting in the  
13 affirmative in a proxy, and Ms. Mitten voting no, to deny. And  
14 that is the way that the vote will be recorded.

15 CHAIRPERSON HOOD: Thank you.

16 MR. BASTIDA: Thank you.

17 CHAIRPERSON HOOD: Next --

18 MR. BASTIDA: There is an additional item that we  
19 need to discuss, which is we -- because the majority of the  
20 members deciding the case didn't participate in the hearing, we  
21 have to put this action out for exceptions. And Marie Sansone  
22 from corporation counsel will advise you as to the timeframe that  
23 is customarily done in these instances.

24 MS. SANSONE: Mr. Chair, we don't have any  
25 timeframe established in the rules, but we would suggest two or

1 three weeks would be a reasonable time following receipt of the  
2 proposed order. The exceptions can be submitted in the form of a  
3 written brief. The Commission should also consider whether it  
4 would like to hear oral comments or arguments. Those would be  
5 your options.

6 CHAIRPERSON HOOD: So we have -- we can have either  
7 a written brief or oral comments.

8 MS. SANSONE: That is correct.

9 CHAIRPERSON HOOD: Any suggestion, colleagues?  
10 Oral comments or written briefs? I think we did written briefs  
11 previously, right?

12 MR. BASTIDA: Yes. We have conducted the whole  
13 affair of the remand in written briefs. So if you would like to  
14 keep --

15 CHAIRPERSON HOOD: Let's be consistent. Let's do  
16 written briefs. And also, let's put a three-week timeframe.

17 MR. BASTIDA: Okay.

18 CHAIRPERSON HOOD: Okay? Can we do that on general  
19 consensus?

20 MR. BASTIDA: Yes, you can do that on general  
21 consensus. Thank you, Mr. Chairman.

22 CHAIRPERSON HOOD: Okay. Mr. Bergstein?

23 MR. BERGSTEIN: Is that going to be three weeks  
24 from today, or three weeks from the date that the draft order is  
25 mailed out? I assume from the date of mailing.

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1 CHAIRPERSON HOOD: The draft order, right?

2 MR. BERGSTEIN: Yes.

3 CHAIRPERSON HOOD: Okay. I mean, is that  
4 sufficient? Three weeks from when the draft order is mailed out?

5 MR. BASTIDA: Let me specify that the exceptions is  
6 put -- is only provided to the parties in the case.

7 CHAIRPERSON HOOD: Right.

8 MR. BASTIDA: Okay.

9 CHAIRPERSON HOOD: So we're going to have it three  
10 weeks from when it's mailed out.

11 MR. BASTIDA: Right. To the parties in the case.

12 CHAIRPERSON HOOD: Okay.

13 MR. BASTIDA: Okay?

14 CHAIRPERSON HOOD: Right.

15 MR. BASTIDA: Thank you.

16 CHAIRPERSON HOOD: Moving right along with our  
17 agenda, that was proposed action, now we're down to final action.  
18 Zoning Commission Case Number 98-14, the Solar Building, 1000  
19 16th Street, Northwest.

20 Mr. Bastida?

21 MR. BASTIDA: Mr. Chairman, a draft order has been  
22 provided for the Commission to do -- I mean, for you to discuss  
23 and take action on it. And Ms. Mitten would like to talk.

24 VICE CHAIRPERSON MITTEN: I would just like to put  
25 on the record, once again, that I will be recusing myself from

1 any discussion or voting on this case. And I'll --

2 CHAIRPERSON HOOD: Okay.

3 VICE CHAIRPERSON MITTEN: -- step out until you're  
4 done.

5 CHAIRPERSON HOOD: You want to recuse yourself and  
6 excuse yourself.

7 VICE CHAIRPERSON MITTEN: I'm going to recuse and  
8 excuse myself.

9 (Laughter.)

10 CHAIRPERSON HOOD: Okay.

11 MR. BASTIDA: Ms. Mitten, I will come and let you  
12 know when the action has been taken. Thank you.

13 CHAIRPERSON HOOD: Well, colleagues, I will start  
14 off and just say that I think in proposed action I've said all  
15 I'm going to say on this case, and I guess I'll just leave it at  
16 that.

17 If there is no further discussion --

18 COMMISSIONER FRANKLIN: Mr. Chairman, I just have a  
19 small amendment to the order before us. On page 27, paragraph or  
20 section number 15(c) -- and this is just perhaps at the expense  
21 of -- at the risk of redundancy, just to say that to adjust the  
22 exact location of the -- I would put in the words "sole permitted  
23 retail entrance along 16th Street." Add the words "sole  
24 permitted" before "retail."

25 CHAIRPERSON HOOD: Staff, did we get Commissioner

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1 Franklin's comments?

2 MR. BASTIDA: Yes, Mr. Chairman.

3 CHAIRPERSON HOOD: Okay.

4 MR. BASTIDA: Also, there is a typo in your name.

5 We left the Y out.

6 CHAIRPERSON HOOD: What page? I missed that one.

7 MR. BASTIDA: The last page.

8 CHAIRPERSON HOOD: Oh, okay. I didn't really need  
9 to look at the last page because I knew what the vote was.

10 MR. BASTIDA: Anthon.

11 CHAIRPERSON HOOD: Well, we'll get Anthon to sign  
12 it.

13 (Laughter.)

14 COMMISSIONER FRANKLIN: It's better, Mr. Chairman,  
15 than the Honorable Hood. Got a letter addressed to him.

16 (Laughter.)

17 CHAIRPERSON HOOD: They must have known me in some  
18 of my earlier days.

19 (Laughter.)

20 MR. BASTIDA: I'm not going there.

21 (Laughter.)

22 CHAIRPERSON HOOD: Okay. Any other discussion?  
23 Comments? Okay. No more?

24 I don't want to make a motion, because I did that  
25 last time. So I will let someone else make the motion.

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1 COMMISSIONER HOLMAN: I move adoption of the order  
2 in Zoning Order Number 906 in Case 98-14C, consolidated planned  
3 unit development and related map amendments for the Solar  
4 Building at 1000 16th Street, Northwest.

5 CHAIRPERSON HOOD: It's been moved.

6 COMMISSIONER FRANKLIN: Second.

7 CHAIRPERSON HOOD: It's been moved and properly  
8 seconded. All those in favor, by the usual sign of --

9 MR. BASTIDA: Mr. Chairman, if I may interrupt  
10 before you take the final -- sorry. I failed to mention the fact  
11 that this was -- this was referred to the National Capital  
12 Planning Commission, and the National Capital Planning Commission  
13 stated that there were no unfavorable impacts associated --  
14 negative impacts associated with this project.

15 CHAIRPERSON HOOD: Okay. Thank you, Mr. Bastida,  
16 for putting that on the record.

17 It's been moved and properly seconded. All those  
18 in favor, by the usual sign of voting.

19 (Chorus of ayes.)

20 Any opposition? Opposed?

21 (No response.)

22 Staff, any proxies on -- yes, do you have a proxy  
23 on this?

24 MR. BASTIDA: I think that Mr. Franklin has the  
25 proxy.

1 COMMISSIONER FRANKLIN: Yes. Mr. Parsons called me  
2 with his proxy in favor of the order.

3 CHAIRPERSON HOOD: Okay. Staff, would you record  
4 the vote?

5 MR. BASTIDA: Yes, Mr. Chairman. I'm having a  
6 little problem. Mr. Holman moved it, and who seconded?

7 COMMISSIONER FRANKLIN: I seconded.

8 CHAIRPERSON HOOD: Mr. Franklin.

9 MR. BASTIDA: So the vote will be four to zero, Mr.  
10 Holman moving, Mr. Franklin --

11 CHAIRPERSON HOOD: No, three to one. The vote is  
12 three to one.

13 MR. BASTIDA: Well, four to zero because --

14 CHAIRPERSON HOOD: I oppose.

15 MR. BASTIDA: Are you opposing? I'm sorry.  
16 Franklin and Parsons on the affirmative, Mr. Hood voting on the  
17 negative, and Ms. Mitten has recused herself from the case.

18 CHAIRPERSON HOOD: Okay. Thank you.

19 MR. BASTIDA: Thank you.

20 CHAIRPERSON HOOD: Moving right along with our  
21 agenda, once we get Ms. Mitten back in --

22 MR. BASTIDA: Okay. Let me go and advise her.

23 CHAIRPERSON HOOD: I beg your indulgence. We're  
24 going to take a two-minute break.

25 (Whereupon, the proceedings in the foregoing matter

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1                   went off the record at 3:48 p.m. and went back on  
2                   the record at 3:55 p.m.)

3                   CHAIRPERSON HOOD: We're now ready to resume our  
4                   Zoning Commission meeting.

5                   Resuming with our agenda, the next case under final  
6                   action is Zoning Commission Case Number 00-19, the map amendment  
7                   at 5th Street and Massachusetts Avenue. Mr. Bastida?

8                   MR. BASTIDA: Yes. Mr. Chairman, this case was  
9                   referred to the National Capital Planning Commission. It was on  
10                  their consent calendar, and it was determined that there was not  
11                  a negative impact to the federal interest. And it is in front of  
12                  you for a final action.

13                  You have a copy of the agenda. I think that Ms.  
14                  Mitten -- the point of clarification of your action at the last  
15                  -- when you had the hearing and you took proposed action at that  
16                  time, and I will let her address that matter.

17                  VICE CHAIRPERSON MITTEN: Okay. The idea that --  
18                  well, I don't believe that this is an emergency, because the  
19                  whole idea of having the hearing was because we were unwilling to  
20                  proceed on an emergency basis in that case. But we did give them  
21                  a bench decision.

22                  And so what we have before us has numerous  
23                  references to emergency, and I think it would be appropriate to  
24                  have all of those deleted, if my recollection is consistent with  
25                  the other Commissioners.

1 COMMISSIONER HOLMAN: I absolutely concur. And I  
2 think if nothing else, we've helped redefine or clarify what an  
3 emergency is here today. And I would certainly concur with you  
4 wholeheartedly.

5 COMMISSIONER FRANKLIN: I agree as well.

6 CHAIRPERSON HOOD: Any other questions? Staff has  
7 the transcript. We have it in hand. I, too, concur with  
8 Commissioner Mitten's comments.

9 VICE CHAIRPERSON MITTEN: But I think in spite of  
10 the fact that there is some editing that needs to be done, I  
11 think the content of the order is essentially what we had agreed  
12 to. And with the deletion of references to emergency rulemaking,  
13 I would move final approval of this case and move approval of the  
14 summary order number 927.

15 CHAIRPERSON HOOD: Okay. It's been moved.

16 COMMISSIONER HOLMAN: Second.

17 CHAIRPERSON HOOD: Moved and seconded. All those  
18 in favor, by the usual sign of voting.

19 (Chorus of ayes.)

20 Any opposition?

21 (No response.)

22 So ordered. Staff, would you record the vote? And  
23 also, if we have a proxy. Oh, no, we wouldn't have a proxy on  
24 this one. I'm sorry.

25 MR. BASTIDA: Yes. Mr. Parsons didn't hear the

1 case. The vote is four to zero, Ms. Mitten moving and Mr. Holman  
2 seconded. Mr. Hood and Mr. Franklin voting in the affirmative.  
3 Mr. Parsons, not present, not voting. And he hasn't heard the  
4 case.

5 CHAIRPERSON HOOD: Okay.

6 MR. BASTIDA: Thank you.

7 CHAIRPERSON HOOD: Moving right along with our  
8 agenda, consent calendar, Zoning Commission Case Number 00-04,  
9 editorial corrections to be published as proposed rulemaking.  
10 Mr. Bastida?

11 MR. BASTIDA: Yes. Thank you. The Office of  
12 Zoning has taken a long and hard review to the zoning regulations  
13 and found a number of editorial comments to make. We have  
14 transmitted those to the Office of -- the Register, but they had  
15 some problems with it and wanted to put some headings and other  
16 things that would have made the regulations very difficult to  
17 really look at.

18 Accordingly, we have provided them with a proposed  
19 rulemaking, and it is 243 pages. And those are all editorial  
20 changes. There is nothing of substance. But in that way, when  
21 they go to publish the Register, there will be no footnotes or  
22 anything of that sort.

23 This is in the consent calendar, so that way we  
24 will meet for a public hearing, but we will have a 30-day period  
25 of comments to -- when the rulemaking is published. And then it

1 will come back to you for final action.

2 CHAIRPERSON HOOD: Mr. Bastida, correct me, but are  
3 we asking for us to set this down?

4 MR. BASTIDA: No. It's just to be able to send it  
5 to the Register as a rulemaking.

6 CHAIRPERSON HOOD: Okay. Colleagues, I think we  
7 can do that by general consensus.

8 MR. BASTIDA: No, I think that you need a vote.

9 CHAIRPERSON HOOD: We need a vote on that one?

10 MR. BASTIDA: Yes.

11 CHAIRPERSON HOOD: Maybe we'll just take a vote on  
12 everything, and then I'll --

13 (Laughter.)

14 Trying to save time.

15 Okay. Colleagues, any discussion? If not, I'd  
16 like to obtain a motion. I'll make a motion that we send -- you  
17 want a motion to --

18 MR. BASTIDA: For a proposed rulemaking.

19 CHAIRPERSON HOOD: Okay. That we have a proposed  
20 rulemaking for Zoning Commission Case Number 00-04, editorial --  
21 it involves editorial corrections to be published as proposed  
22 rulemaking.

23 VICE CHAIRPERSON MITTEN: Second.

24 CHAIRPERSON HOOD: It's been moved and seconded.

25 All those in favor, by the usual sign of voting.

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1 (Chorus of ayes.)

2 Any opposition?

3 (No response.)

4 So ordered. Staff, would you record the vote?

5 MR. BASTIDA: Yes.

6 Mr. Franklin, Mr. Parsons gave me a proxy on this  
7 item. Did he give it to you also?

8 COMMISSIONER FRANKLIN: We didn't discuss this.

9 MR. BASTIDA: Okay. The vote will be five to zero,  
10 Mr. Hood, Ms. Mitten -- I mean, Mr. Hood moving and Mr. Mitten  
11 seconded. Mr. Franklin and Mr. Holman voting on the affirmative.  
12 Mr. --

13 COMMISSIONER HOLMAN: Ms. Mitten.

14 MR. BASTIDA: Ms. Mitten. And --

15 (Laughter.)

16 CHAIRPERSON HOOD: We're getting kind of tired, but  
17 we'll get through it.

18 MR. BASTIDA: I have to slow down.

19 Mr. Parsons voting on the affirmative by proxy.  
20 Thank you.

21 CHAIRPERSON HOOD: Okay.

22 MR. BASTIDA: The second -- there is an addition in  
23 the consent calendar, the proposed rulemaking for the change of  
24 authority between -- from the BZA -- the campus plan from the BZA  
25 to the Zoning Commission, and that is Zoning Commission Case 99-

1 09. And that is just to be able to publish the proposed  
2 rulemaking and have the 30-day comment period that will end  
3 shortly after your public hearing.

4 CHAIRPERSON HOOD: Okay. I omitted to mention that  
5 in preliminary matters at the beginning of the agenda. So I  
6 guess we'll take that up now, and then we will vote on what Mr.  
7 Bastida is asking for, and that's to send it to the Register.

8 Colleagues, are there any problems with this being  
9 on the agenda? Okay. No problems? Can I obtain a motion?

10 VICE CHAIRPERSON MITTEN: Wait. The action that  
11 we're going to vote on is to send the notice of proposed  
12 rulemaking to the Register?

13 MR. BASTIDA: That receive comments -- and then it  
14 will be open for 30 days for comments, and that will end shortly  
15 after this public hearing that you have established for this  
16 case.

17 VICE CHAIRPERSON MITTEN: And at what point would  
18 it be appropriate to make any editorial changes? After?

19 MR. BASTIDA: At the time of the hearing.

20 VICE CHAIRPERSON MITTEN: All right. I move that  
21 we send the notice of proposed rulemaking in Zoning Commission  
22 Case Number 99-09 to the Register.

23 CHAIRPERSON HOOD: Okay. I'll second it.

24 It's been moved and seconded. Any discussion?

25 COMMISSIONER FRANKLIN: I just wanted to clarify

1 it. We're sending a notice and some proposed rules, right?

2 CHAIRPERSON HOOD: Mr. Bastida?

3 MR. BASTIDA: No. No, we are sending --

4 COMMISSIONER FRANKLIN: Just the notice.

5 MR. BASTIDA: No, no. We are sending a proposed  
6 rulemaking, in order to have -- which only changes the authority  
7 from the Board to the Zoning Commission. There are not really  
8 drastic changes on the regulations. It's just to enable the  
9 Zoning Commission, if you vote on the affirmative, to take over  
10 the campus plans.

11 COMMISSIONER FRANKLIN: Yes, I understand. But, I  
12 mean, these are actual rules, whether editorial or whatever.  
13 It's not just a notice. That's all I was clarifying.

14 MR. BASTIDA: The notice of hearing was published  
15 prior to that, and it was very generic. And this is a little  
16 more specific. It addresses the sections that will have to be  
17 modified to change the authority from the BZA to the Zoning  
18 Commission.

19 COMMISSIONER FRANKLIN: Exactly. That's all I  
20 wanted to clarify. Thank you.

21 CHAIRPERSON HOOD: Okay. It's been moved and  
22 properly seconded. All those in favor, by the usual sign of  
23 voting.

24 (Chorus of ayes.)

25 Any opposition?

1 (No response.)

2 So ordered. Do we have a proxy?

3 MR. BASTIDA: Yes, I have a proxy from Mr. Parsons  
4 to vote on the affirmative. Ms. Mitten moved, Mr. Hood seconded,  
5 Hr. Franklin and Mr. Holman voting on the affirmative. Mr.  
6 Parsons voting on the affirmative by proxy. Thank you.

7 CHAIRPERSON HOOD: And, Mr. Bastida, let me thank  
8 you again for your hard, diligent work on the items that came up  
9 under the consent calendar.

10 Next, moving right -- no legislative report, no  
11 litigation. Correspondence. Mr. Bastida?

12 MR. BASTIDA: Under correspondence, there are three  
13 reports provided by the Office of Planning -- more than three --  
14 that it seems there were -- Zoning Commission cases addressed to  
15 it are here for your discussion, and perhaps to set it down for a  
16 hearing if you so choose, and the Office of Planning is better  
17 able to explain these proposals to you.

18 CHAIRPERSON HOOD: Okay. Let's start off with item  
19 A. I will refer to the Office of Planning. We have your report.  
20 We can be relatively brief, but --

21 MS. MCCARTHY: Okay. The origin of this was the  
22 City Council's request a couple weeks ago that the Office of  
23 Planning develop a set of revised standards for antennas, and Ms.  
24 Steingasser is here, who developed the proposal, if you'd like  
25 her to present it, or if you just want to ask questions.

1 CHAIRPERSON HOOD: Okay. Colleagues, we have this  
2 in front of us asking that we set this down. Let's open it up  
3 for discussion. No discussion? If there's no discussion --

4 COMMISSIONER FRANKLIN: Well, this is a very  
5 important issue, obviously, and one that has to be approached  
6 very carefully. When the purpose of the regulations is stated to  
7 ensure that antenna towers are planned, located, and constructed  
8 to minimize their visual and physical impacts on the nation's  
9 capital, is there anything in these proposed regulations that  
10 would address the number of such towers?

11 The reason for my question is my understanding,  
12 which is, again, very primitive, is that it's possible for one  
13 antenna tower to serve a number of broadcasters. And I would  
14 hate to see us get into a situation which is analogous to I think  
15 what happened with the tearing up of our streets, because  
16 communications companies did not want to share a conduit.

17 So they all went independently and tore up the  
18 streets for their own, you know, primary purposes. This is sort  
19 of the aerial version of that subterranean problem.

20 (Laughter.)

21 Is there some way in which the regulation can  
22 facilitate the consolidation of antenna towers, so that we don't  
23 have one tower for every couple of stations? That's the first  
24 question.

25 The second question is, technically, how high does

1 such a tower have to be for technical reasons? In other words,  
2 we're all aware of the problem that now exists with respect to a  
3 Tenley Circle Tower, which I believe was to go up to 750 feet.

4 In order to reach the audience that is either  
5 approved by the FCC or is otherwise reasonable, I don't know how  
6 high these towers have to be. Do we know that?

7 MS. STEINGASSER: No, sir, we do not know how high  
8 they have to be. What we've done through these regulations is,  
9 number one, filled the height loophole that exists between the  
10 definition of a tower as an antenna, and then there's a provision  
11 that exempts antennas from height. So we've tried to fill that  
12 loophole by defining an antenna tower separately from an antenna.

13 If they exceed their height district -- the height  
14 limitation of the zoning district, or as set by Congress on the  
15 -- through the Congressional Height Act, they would have to  
16 provide evidence that it is technically absolutely necessary that  
17 they have that height because it is subject to the type of  
18 broadcasting.

19 As far as requiring them to collocate, we certainly  
20 encourage broadcasters to collocate on an existing tower. I  
21 don't know how we would limit the amount of -- the number of  
22 towers in the city. We'd probably have to work with the corp  
23 counsel and see if there's a way to facilitate that.

24 Many of the towers now are being built by tower  
25 companies as real estate, and then they lease them out to the

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1 various broadcasters, cell phone providers.

2 COMMISSIONER FRANKLIN: Does somebody have to  
3 locate in the District in order to effectively broadcast to the  
4 District?

5 MS. STEINGASSER: No, sir, they do not.

6 COMMISSIONER FRANKLIN: So that if we were to have  
7 a standard which basically didn't permit more than a certain  
8 number, period, in the District of Columbia, would that have --  
9 would that strike anybody as -- that's really a question to  
10 corporation counsel, I guess, but -- whether that would be an  
11 unreasonable regulation.

12 But I think that some -- some attention to this has  
13 to be paid at the hearing, even though the regulations may not,  
14 at the moment, be specifically addressing some of these issues.

15 MS. STEINGASSER: This is phase one. The City  
16 Council, when they passed their moratorium on towers over 250  
17 feet, asked that the Office of Planning take the lead and develop  
18 an overall comprehensive policy towards antennas and towers.

19 So what we wanted to do immediately was fill this  
20 loophole and get the height covered, and then we are working with  
21 the Department of Consumer and Regulatory Affairs to establish a  
22 more comprehensive review of antennas and towers as they come  
23 through, because there are quite a range of users.

24 COMMISSIONER FRANKLIN: Thank you.

25 VICE CHAIRPERSON MITTEN: If I could just sort of

1 piggyback on what Mr. Franklin was saying, I think it's not  
2 unlike the issue with the EEFs. Is that what we're calling them?  
3 About concentration. So to the extent that that could be, you  
4 know, fleshed out further.

5 CHAIRPERSON HOOD: I don't know if this is a legal  
6 issue or not. But my question is: do we know of any other sites  
7 that are proposed for antennas as we speak now? Are there are  
8 any proposals on the table?

9 MS. STEINGASSER: None that we're aware of at this  
10 time. No, sir.

11 CHAIRPERSON HOOD: Okay. Any other comments? Any  
12 other discussion? Colleagues --

13 COMMISSIONER FRANKLIN: Just one other question.  
14 Under the moratorium of the City Council, I take it that for a  
15 period of time there will not be any approvals of further antenna  
16 towers.

17 MS. STEINGASSER: That's correct.

18 COMMISSIONER FRANKLIN: How long is that --

19 MS. STEINGASSER: I believe it was 180 days.

20 COMMISSIONER FRANKLIN: 180 days? From September  
21 21st, so March 21st.

22 MR. BERGSTEIN: It's probably from the effective  
23 date of the legislation, and I don't know what the effective date  
24 of that legislation is.

25 COMMISSIONER FRANKLIN: Oh.

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1 MR. BERGSTEIN: If it was passed on September 21st,  
2 it would probably take about three weeks. I don't know if it's  
3 even through mayoral signature and Control Board review, which  
4 are the two steps that are required for an emergency. But  
5 congressional review is not required for an emergency. They have  
6 their emergencies, too.

7 CHAIRPERSON HOOD: Mr. Bastida, do we need to waive  
8 the Office of Planning report?

9 MR. BASTIDA: That is a good question. I have  
10 written all of those out. No, we don't have to.

11 CHAIRPERSON HOOD: Okay. It came from Vice  
12 Chairman Mitten, so good question.

13 (Laughter.)

14 Now, if it had been in the affirmative, I wouldn't  
15 have said anything. No, I'm just playing.

16 (Laughter.)

17 Okay. Colleagues, we have this in front of us.  
18 Are there any more comments? I'd like to obtain a motion whether  
19 we're going to proceed or not proceed.

20 COMMISSIONER FRANKLIN: We're being asked to set  
21 this down for public hearing?

22 CHAIRPERSON HOOD: Right. Correct.

23 COMMISSIONER FRANKLIN: I move, Mr. Chairman, that  
24 we set down the proposed zoning text amendments regarding  
25 development of standards for antenna towers in all zone districts

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1 as initiated by the Office of Planning for public hearing.

2 CHAIRPERSON HOOD: I'll second the motion. All  
3 those in favor, by the usual sign of voting.

4 (Chorus of ayes.)

5 Any opposition?

6 (No response.)

7 So ordered. Staff, would you record the vote,  
8 along with the proxy, if we have one?

9 MR. BASTIDA: Yes, Mr. Chairman. For your  
10 information, this is Zoning Commission 00-29T, and the staff will  
11 record the vote four -- no, five to zero, Mr. Franklin moving  
12 it, Mr. Hood seconded, and Ms. Mitten voting in the affirmative,  
13 Mr. Holman voting in the affirmative. I'm sorry. And that is  
14 it. Mr. Parsons didn't give me a proxy on this specific piece of  
15 correspondence.

16 CHAIRPERSON HOOD: Let me ask -- I don't know, I  
17 think Commissioner Franklin may have already touched this. I  
18 think you said at the hearing if we could have some experts with  
19 expertise in this. I believe you asked for that earlier?

20 COMMISSIONER FRANKLIN: Yes. On the EEF. And I  
21 think it's equally appropriate here. I don't know, are there  
22 going to be any roundtables or anything else of this nature? No.  
23 Okay. I guess this is a little different. These are real  
24 estate developers.

25 But I think it would be important for us to know to

1 what extent collocation is technically feasible, and height, and  
2 all that thing. Apparently, there are some antennas on some  
3 buildings; at least there appear to be on some buildings near  
4 Tenley Circle.

5 CHAIRPERSON HOOD: I just wanted to make sure,  
6 Commissioner Franklin, like you asked for in the cyber hotels,  
7 that we also have some experts on this issue, too. Okay.

8 MR. BASTIDA: And staff has recorded that he -- Mr.  
9 Franklin is very interested in a height and collocation  
10 discussion of antennas.

11 CHAIRPERSON HOOD: Okay. Moving right along with  
12 our agenda, let's see where we are here. Okay. Under  
13 correspondence -- the alphabet has changed on me, but anyway it's  
14 H, request for the Office of Planning for zoning changes to the  
15 downtown development district, which is case --

16 MR. BASTIDA: There is --

17 CHAIRPERSON HOOD: No case number.

18 MR. BASTIDA: No case number as of yet.

19 CHAIRPERSON HOOD: Okay.

20 MR. BASTIDA: For this item, you need to waive your  
21 rules to accept the Office of Planning's report late.

22 CHAIRPERSON HOOD: I believe we can do that by  
23 general consensus.

24 MR. BASTIDA: Right.

25 CHAIRPERSON HOOD: And also, before we get started,

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1 I'm going to -- Mr. Altman, I'm going to ask him if he -- maybe  
2 next month if he can come down and brief the Commission on the  
3 downtown action plan, and that whole issue dealing with the  
4 downtown action plan. We can do that for our November meeting,  
5 so we can work along with staff to make sure that that happens.

6 MR. ALTMAN: Be happy to do that.

7 CHAIRPERSON HOOD: Okay. Colleagues, any  
8 discussion? If there is no discussion, I'd like to obtain a  
9 motion to set or not set.

10 COMMISSIONER HOLMAN: I move we set down the  
11 discussion of the downtown development district zoning changes,  
12 whatever the case number might be.

13 CHAIRPERSON HOOD: It's been moved. Can I get a  
14 second?

15 COMMISSIONER FRANKLIN: Second.

16 CHAIRPERSON HOOD: Moved and properly seconded.

17 All those in favor, by the usual sign of voting.

18 (Chorus of ayes.)

19 Any opposition?

20 (No response.)

21 So ordered. Staff, would you record the vote?

22 MR. BASTIDA: The staff would record the vote five  
23 to zero to set down. Mr. Holman moving and Mr. Franklin  
24 seconded, Ms. Mitten voting in the affirmative, and Mr. Hood, and  
25 Mr. Parsons voting in affirmative for -- in a proxy.

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1 CHAIRPERSON HOOD: Okay. Now we have next D,  
2 Zoning Commission Case Number 99-10, discussion of campus plan  
3 regulation amendments.

4 MR. BASTIDA: I think that the Office of Planning  
5 could better address this report. My perception is that it's a  
6 discussion item in which probably the Office of Planning would  
7 like to engage the Zoning Commission in extensive discussions  
8 regarding this matter. But I think that the Office of Planning  
9 could better address such a matter.

10 CHAIRPERSON HOOD: Is the Office of Planning  
11 prepared to deal with that? Okay. Mr. Altman or Ms. McCarthy?

12 MR. ALTMAN: I think what we'll -- we've -- this is  
13 the second in our series of campus plan reports. The first,  
14 which as we discussed earlier, related to the change in  
15 jurisdiction from the Board of Zoning Adjustment to the Zoning  
16 Commission as the responsible entity for the hearing of campus  
17 plans.

18 This is the -- as it was pointed out, we had done  
19 an earlier report that said we would now look at changes to the  
20 regulations themselves beyond the jurisdiction, but the specific  
21 regulations related to university as well as institutional  
22 expansion in the city.

23 And what we've done in this report, based on the  
24 roundtable that the Zoning Commission held, which was very  
25 successful, which we've summarized in a previous report, is to

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1 take those issues, crystallize them, and begin to address them  
2 one by one.

3 And so what we've done in this -- and we're happy  
4 to discuss these in detail -- and David McGhettigan, I'll ask him  
5 to just briefly run through some of the key issues that we have  
6 here. And what we're suggesting is that we then set this down  
7 for a public hearing on the specific recommendations.

8 I'm sorry. That's not what we're going to do.  
9 This is for discussion with the Commission today, and then we  
10 would proceed to determine the setdown for the specific  
11 regulations, but to get feedback from you, actually, on each of  
12 these proposals. I moved ahead one step.

13 One, did we capture the issues that are of most  
14 importance to you based on the roundtable that was held, and the  
15 input that you'd like to have? Do these seem to be in the right  
16 direction? Are there other issues you'd like to add or  
17 emphasize? That's the kind of feedback we'd like to get from you  
18 today. Why don't we -- yes?

19 CHAIRPERSON HOOD: Let's also do this, because some  
20 of us may not have it all in tune today, what we would like to  
21 submit to the Office of Planning. At the end of it, let's have a  
22 cutoff date where maybe Commissioners can give you something in  
23 writing, if we have something else that we run across that we  
24 want to maybe deal with. We may not have it all today, if that's  
25 still permissible --

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1 MR. ALTMAN: That's fine.

2 CHAIRPERSON HOOD: -- on both sides. Okay.

3 MR. ALTMAN: So would -- David?

4 COMMISSIONER HOLMAN: Before you --

5 MR. ALTMAN: Yes?

6 COMMISSIONER HOLMAN: This must be disclosure day.

7 I would like to disclose that a member of my Board is the  
8 president of a university, and I would recuse myself from any  
9 consideration having to do with that university. But I do not  
10 believe that it would prejudice me in terms of dealing with the  
11 general issue of campus plans, and I wanted to disclose that.

12 CHAIRPERSON HOOD: Well, Mr. Holman, actually, it  
13 wasn't your turn to do a disclosure. I think the three of us  
14 have done one, so we're waiting on Mr. Franklin. That was a  
15 joke.

16 COMMISSIONER FRANKLIN: I'd like to disclose that  
17 all my children have, fortunately, left university.

18 (Laughter.)

19 CHAIRPERSON HOOD: Okay. If no one has a problem,  
20 then we will proceed.

21 MR. MCGHETTIGAN: Thank you. We, as Andy said,  
22 looked at the roundtable discussion and developed some issues that  
23 we think should be in the plan as referring to structure, how  
24 these regulations will work, how they'll be formed, and what  
25 their purposes are.

1           The first one that we are concerned with is -- it  
2       has, as you know, been used as a special exception process. And  
3       a lot of times a special exception tends to be a little narrower  
4       in focus, and we'd like to consider going to a broader focus like  
5       the planned unit development. And that's one of our initial  
6       issues, because it takes in a number of factors that all of these  
7       campuses have with streetscape and use and variety of traffic  
8       impacts, and also the housing impacts.

9           So the first consideration is what scope should we  
10      look at, and the narrow special exception, or the broader, like  
11      is similar to the planned unit development.

12           The second issue is a question of boundary. We  
13      have -- universities and colleges have a sort of synergy and a  
14      combination that they provide in their mix of uses and their use,  
15      different uses that coordinate with each other. And we -- under  
16      the current process, we can see colleges and universities  
17      expanding outside their boundaries. Some development could occur  
18      by right in certain zones.

19           It would impact the whole campus, and it impacts  
20      the whole campus. For example, they could come and build a new  
21      type of college or school in the -- in a C-4 zone, and that would  
22      have impact on the number of students and the demand for  
23      dormitory housing, the demand for onsite services on the campus.

24           So anything that they develop would have some  
25      considerations. So we want to look at the boundary and of the

1 campuses.

2           The third issue, should campus plans be treated as  
3 an overlay to the base zoning or become a new zone, which would  
4 not consider the base zoning. There are two approaches to the  
5 process. One is adding on additional regulations to current  
6 zoning, and the other is, in our mind, more flexible and that it  
7 was -- we can look, then, comprehensively at the campus as a  
8 whole, and the relationships of the individual buildings within  
9 that campus to each other, regardless of what the original  
10 historic underlying zoning was.

11           The fourth is if we were to start putting these  
12 regulations on campuses, we have to define what a campus is,  
13 because not everything is a campus. So we have to come up with  
14 some way of what are we going to call and how are we going to  
15 define a campus.

16           Fifth is, how are we going to enforce these  
17 regulations? How will they be implemented in the zoning context  
18 to -- and how will the universities be held responsible for the  
19 requirements in there?

20           Next, should we link things like housing and  
21 parking availability to the student enrollment? And in a broader  
22 context, if we're looking at the whole campus, then we should  
23 probably also want to look at its impacts in the neighborhood as  
24 a whole campus. And these impacts can be on parking and on  
25 housing and a number of other things.

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1                   So we -- student enrollment is a key measure of how  
2                   the -- just one -- but it is one of the keys in how the campus is  
3                   impacting the neighborhood.

4                   And then, there -- when we define a campus, if  
5                   there's something that's left out, we have to figure out how  
6                   we're going to handle those uses that are not qualifying as  
7                   campuses.

8                   And, lastly, should we consider other institutional  
9                   type uses, such as medical campuses or private high schools, in  
10                  these regulations.

11                  CHAIRPERSON HOOD:    Okay.    Mr. McGhettigan, thank  
12                  you for your comments.

13                  I just wanted to -- in looking at the packet, I  
14                  just wanted to mention to you -- and I'm sure that you've taken  
15                  this under consideration -- I saw where you had Wards 1, 2, and 3  
16                  with the comprehensive plan references.

17                  I wanted to make sure in the analysis that we were  
18                  also including Wards 5, 4, because there are other issues that  
19                  may be similar that are also taken into effect in those other  
20                  wards, too, with other colleges and universities, and 6, 7, and  
21                  8, if it need be.   I just wanted to make sure that was being put  
22                  into the analysis, too, along with 1, 2, and 3.

23                  MR. MCGHETTIGAN:   Yes, we will.   But there is no  
24                  specific regard to university and college uses in those wards.  
25                  That's why it wasn't put in there.

1 CHAIRPERSON HOOD: Okay.

2 MR. MCGHETTIGAN: But there --

3 CHAIRPERSON HOOD: But they are being --

4 MR. MCGHETTIGAN: -- are some general guidelines in  
5 those separate wards that might be applicable.

6 CHAIRPERSON HOOD: Okay. Good.

7 Okay. Any other comments? Mr. Bastida?

8 MR. BASTIDA: Yes. You were referring to Wards 4  
9 and 5 because of Trinity College, American -- I mean, Catholic  
10 University of America and other universities, institutions,  
11 located in those wards, right?

12 CHAIRPERSON HOOD: Mr. Bastida, I was trying to not  
13 call out any colleges, the same way we did at the hearing.

14 (Laughter.)

15 MR. BASTIDA: Oh, sorry.

16 CHAIRPERSON HOOD: I just wanted to make sure we  
17 were looking at it overall, and not missing something specific in  
18 those wards.

19 MR. BASTIDA: Okay.

20 CHAIRPERSON HOOD: As opposed to 1, 2, and 3.

21 MR. BASTIDA: Oh, I'm --

22 CHAIRPERSON HOOD: But since you did that, we are  
23 --

24 MR. BASTIDA: Well, I can say my alma mater.

25 (Laughter.)

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1 Thank you.

2 CHAIRPERSON HOOD: Okay. Thank you.

3 Any other questions or comments?

4 VICE CHAIRPERSON MITTEN: I guess the discussion --  
5 I like the idea that I think there are some aspects of how we  
6 handle planned unit developments that would be desirable to apply  
7 to campus plans. But I guess I just want to caution you that I  
8 think that the nature of amenities, and so forth, that we see in  
9 PUDs, I think sometimes we lose track of making sure that the  
10 amenity is offsetting some detrimental condition -- the amenity  
11 is offsetting the detrimental condition in the same place, so  
12 that it needs to be tied to, you know, the area of immediate  
13 impact, however that would be defined, but so that it's not this  
14 broad, vague benefit that, you know, may, in fact, be substantial  
15 but is not being enjoyed by the community that's most affected.

16 COMMISSIONER FRANKLIN: That was Professor Shalit's  
17 point in his letter, which I thought was very interesting.

18 CHAIRPERSON HOOD: Any other comments, colleagues?

19 COMMISSIONER FRANKLIN: Yes, Mr. Chairman. First  
20 of all, I think this is a very helpful report, Mr. McGhettigan.  
21 I'm very impressed with its comprehensiveness, and I really  
22 appreciate the care that went into it.

23 This issue about student enrollment, the link to  
24 housing and parking availability, I take it the question relates  
25 to on campus housing in every instance. Is that your take on it?

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1                   MR. MCGHETTIGAN:     Well, when we define our  
2 boundary, we would capture anything that was owned by the  
3 university that was off campus. I mean, when we -- anything  
4 that's off campus would have to be redefined to be within the  
5 campus, or not within the campus.

6                   COMMISSIONER FRANKLIN:     Okay. Well, in other  
7 words, what I'm trying to avoid is the housing availability that  
8 exists in the rental market for group homes, and the like, so  
9 that we are tying student enrollment to -- well, you have in the  
10 last sentence "dormitory beds," but I just wanted to emphasize I  
11 assume that means on campus dormitories.

12                  MR. MCGHETTIGAN:     Correct.

13                  COMMISSIONER FRANKLIN:     Now, that sort of segues  
14 into another rather thorny issue, and that has to do with, oh, I  
15 guess what you'd call off campus dormitories.

16                         It's a thorny issue because, for example, if a  
17 university, as I think has occurred, were to make an arrangement,  
18 either by buying an interest in the partnership or otherwise with  
19 a -- an owner of a normal apartment, and that apartment owner  
20 makes units available to students, might make available quite a  
21 few units to students, and you might -- but, nevertheless, the  
22 university does not have full ownership. It might be a limited  
23 partner, for example, and not a general partner in the operation.

24                         I don't know how we could approach the regulation  
25 of that, because that -- that -- the fact that somebody is a

1 student and rents an apartment that is on the market, and  
2 theoretically available to anybody, doesn't necessarily convert  
3 that into a university use, and yet it becomes a concentration of  
4 students.

5 Maybe there is something that the corporation  
6 counsel can assist with in this area. And, of course, as you  
7 know, under District law, students are not to be discriminated  
8 against. They are a protected class.

9 So what I'm suggesting is that we take a look in a  
10 little deeper way at that issue of off campus housing that gets  
11 converted to what we would all consider dormitory use but is not  
12 technically owned by a university.

13 MR. MCGHETTIGAN: Well, there's two or three  
14 things, actually, that I have to try and address that. One is --  
15 well, first of all, if it's -- the building is open for anybody  
16 to go in under equal housing opportunity, to go in and rent  
17 there, then it's not a dormitory.

18 If they start limiting it to only students, then it  
19 becomes a dormitory, and that's when the use changes from an  
20 apartment to a dormitory. So we have to regulate --

21 COMMISSIONER FRANKLIN: Even though the university  
22 is technically not --

23 MR. MCGHETTIGAN: Even if it's not the owner. If  
24 they are not providing equal housing opportunity to anybody who  
25 comes in there, then they're -- and they're limiting it only to

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1 their students, then they're -- and they're de facto used as a  
2 dormitory, whether it's a private dormitory --

3 COMMISSIONER FRANKLIN: Okay.

4 MR. MCGHETTIGAN: -- or part of the institution's  
5 dormitory system.

6 Second, we are going to look at, in this linkage,  
7 linking the student enrollment to housing in a sense that they  
8 have to supply a certain amount of dormitory space on campus.  
9 And so that will limit the impact and the demand for student  
10 housing outside the campus.

11 And the third thing is we would define the boundary  
12 and the -- not only the boundary of the campus, but the boundary  
13 of the neighborhood that's impacted by the campus. So any use  
14 that's in that impacted neighborhood we can -- we need to look at  
15 carefully as to whether it should be in the boundary or not, and  
16 limit the use of it -- the university uses in that area.

17 COMMISSIONER FRANKLIN: I notice that you had  
18 referred in a footnote to I think a Cambridge, Mass, ordinance on  
19 this subject. Have you looked at the way in which this issue has  
20 been handled by other urban areas? Do we have models of --

21 MR. MCGHETTIGAN: In have information from a number  
22 of different jurisdictions. I'm still analyzing it now, but that  
23 specific issue I haven't come across yet in how it's addressed.  
24 But we plan to do that with further study, because we will  
25 include other jurisdictions, the way they handle campuses and

1 institutions in their zoning ordinance in our further analysis.

2 COMMISSIONER FRANKLIN: Going to another subject, I  
3 think it would probably be important to require that a campus  
4 plan address at least 10 years into the future, or 10 seems to be  
5 appropriate.

6 I know that in one case in which I sat on the BZA  
7 there was consideration given to whether the BZA ought to approve  
8 a campus plan for less than 10 years as an aid to kind of holding  
9 the university's feet to the fire and having a chance to revisit  
10 their compliance with the plan.

11 The university's reaction to that was, perhaps  
12 predictably, negative on the grounds that they felt that they  
13 would be constantly in a planning process and never really -- I  
14 guess that was in reaction to a two-year approval, that they  
15 would never be able to get out of a planning process because they  
16 would be constantly having to be responsive to the neighborhood  
17 and the BZA on everything they were doing without having a chance  
18 to take a breath.

19 I think this is an important issue and one that is  
20 a -- it's a double-edged situation. You want them to look far  
21 enough in advance, so that they're not looking ahead just 18  
22 months. On the other hand, you want to not wait every 10 years  
23 to decide whether, in fact, they've lived up to the plan or there  
24 is a reasonable degree of departure from the plan.

25 So are you suggesting, when you say campus plans

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1 should be revisited every five years, that they actually would  
2 have to come back before the Commission at five-year intervals?

3 MR. MCGHETTIGAN: Yes. Well, there's two timelines  
4 involved. One is their planning, how far into the future are  
5 they planning. And that should be at least 10 years, preferably  
6 more, as far as what they plan to do. But as far as when should  
7 the District review the plan, we can't review it every 10, 15  
8 years, because, of course, it depends on the level of development  
9 in the plan.

10 I mean, if the plan doesn't propose doing much in  
11 the next 10 years, then perhaps five years is appropriate. But  
12 with the rate of development these universities are developing,  
13 and the way that the plan can change, it should be designed for  
14 at least a 10-year period. But it should be reviewed every five  
15 years.

16 COMMISSIONER FRANKLIN: Okay. Then, the other  
17 comment I have is, I'm just wondering whether two or more  
18 collocated buildings ought to be constituting a campus apart from  
19 maybe their size and nature. You know, you can get two buildings  
20 that really have a relatively small impact, and then you'd have  
21 two buildings that have a large impact.

22 This may be addressed in the details of your  
23 process, but I didn't come across it. Do you have any further  
24 thoughts on that?

25 MR. MCGHETTIGAN: No. We need to yet think about

1       how we're going to define campus more clearly. I started out  
2       with collocation of two buildings because that's when you can  
3       start getting synergy between buildings. But I guess it would be  
4       a judgment call by, say, the Office of Planning to determine  
5       whether it really functions as a campus or not. And, you know,  
6       that could have a specific situation.

7               So we may set up a process where there is some  
8       determination made on -- based on planning principles that this  
9       is -- acts as a campus where it doesn't. But as just a general  
10      criteria, if it's two or more buildings, that would be a starting  
11      point.

12             COMMISSIONER FRANKLIN: Thank you.

13             CHAIRPERSON HOOD: Commissioner Mitten?

14             VICE CHAIRPERSON MITTEN: I would just like to ask  
15      that, as you go forward through this process of refining all of  
16      this information, is that you develop definitions of some key  
17      words. I mean, it was interesting, the conversation you were  
18      having with Mr. Franklin about, you know, the specific instance  
19      of an increasing number of students in an apartment house. And  
20      then you said, well, at some point it becomes a de facto  
21      dormitory.

22             We instinctively use that term, but we don't have  
23      that as a defined term in the zoning ordinance right now. So  
24      that needs to be -- that's one that comes to mind.

25             Another is, you know, all of these criteria that we

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1 use for evaluating the university and its size and its  
2 composition, things like enrollment and full-time enrollment and  
3 full-time equivalent, and all of those things, I think there are  
4 fairly consistent -- there is fairly consistent usage of those  
5 terms, but I think we need to define them so that we -- so that  
6 everybody is on the same page, and it's on the page that we want  
7 them on.

8 And I'm sure there will be others as you go  
9 through, but, you know, just we can't take for granted that  
10 everybody agrees on what different terms mean or -- I guess I'll  
11 just leave it at that. But, I mean, I think this is wonderful.  
12 And, I mean, I look forward to refining this and getting input on  
13 it, and I think that everyone involved is going to be better off  
14 for it when we finally get this to the point where we can vote on  
15 something.

16 CHAIRPERSON HOOD: Any other comments, colleagues?

17 MS. MCCARTHY: I should probably add in terms of  
18 the process that we had in mind, it was, after getting your  
19 comments, to then convene some meetings with the Consortium of  
20 Universities and with the Federation of Citizens Associations  
21 Task Force and other interested parties -- I mean, we'll contact  
22 everybody, for example, that had been at the roundtable -- but to  
23 convene some meetings, to get some further input, to do some  
24 draft regulations in a very early stage, take them back out,  
25 discuss them with people, and then to be able to bring something

1 back to you for setdown.

2 So in terms of what Mr. Hood asked for before, I  
3 would think that you could take -- easily take 30 days, if the  
4 Commissioners would like to, just by the next Zoning Commission  
5 meeting, take some time and read them and send us anything that  
6 you would like, or, you know, you can call up with questions or  
7 suggestions of what we should focus on. That would be fine.

8 We'd really like to get your input when you have  
9 more chance. You know, this is very useful today. Anything more  
10 that you'd like to say would be great as well.

11 COMMISSIONER FRANKLIN: Did you happen to see  
12 Professor Shalit's letter, which is in the correspondence file?

13 MS. MCCARTHY: Yes. Yes. And the report that he  
14 gave as well at the hearing date. Both of them I thought had  
15 some very interesting points to make.

16 CHAIRPERSON HOOD: Okay. No further comments?  
17 This is not before us to set down or anything, but it's just in  
18 front of us as correspondence for our review. Again, I think,  
19 Ms. McCarthy, the Office of Planning is open for 30 days, at  
20 least until our next Zoning Commission meeting, to take any more  
21 comments from us that we may have.

22 I want to commend Mr. McGhettigan. I know this is  
23 your -- I believe your first time up with us, joining us, and  
24 you've done a well to do job on this submittal that you've given  
25 us today, something to work with. So you should be commended.

1 And, again, in this city, as far as I'm seeing --  
2 this is in my short tenure -- this is becoming Planning at its  
3 best. And I think that's a tribute to the direction this city is  
4 moving.

5 Anyway, let me move with the agenda, as soon as I  
6 figure out where we were.

7 MR. BASTIDA: Page 3 at the top.

8 CHAIRPERSON HOOD: Page 3? Okay.

9 MR. BASTIDA: Mr. Chairman? Oh, okay.

10 CHAIRPERSON HOOD: Let me just say that if we could  
11 take both of these sequentially in order, the letters from the  
12 West End Citizens Association. And I would like to refer that to  
13 the corporation counsel.

14 But, Mr. Bastida, if you have something you wanted  
15 to add --

16 MR. BASTIDA: I was just saying that when I made  
17 changes I didn't realize that Microsoft had changed the alphabet.

18 And it doesn't coincide, so I apologize for that because I  
19 didn't catch it until now. But I had referred the first and  
20 second item on page 3, which I am calling D and E, to corporation  
21 counsel, and corporation counsel is here and would be able to  
22 address those two letters.

23 MR. BERGSTEIN: And assistant corporation counsel  
24 is here. There's actually three letters that you have that are  
25 requesting declaratory order. They're shown in the present

1 agenda numbering -- lettering as E, G, and J, and I'll try to  
2 discuss them, if I can, just all together because --

3 CHAIRPERSON HOOD: Stick them in that order.

4 MR. BERGSTEIN: -- their concepts are the same.  
5 Section 9 of the D.C. Administrative Procedure Act allows  
6 agencies to issue declaratory orders in certain circumstances,  
7 but that a decision by an agency not to issue a declaratory order  
8 is not subject to appellate review.

9 Without going to the issue of whether or not a  
10 declaratory order is appropriate, in at least two of these  
11 instances, which involve contested cases, the first letter  
12 actually concerns a campus plan -- campus plan compliance, which  
13 is really, until the Zoning Commission changes it, under the  
14 jurisdiction of the BZA. And so with respect to letter -- the  
15 first letter, the Commission may want to consider simply  
16 referring the matter to the BZA for appropriate action.

17 The other two letters that are letters G and J both  
18 ask that a PUD -- or two different PUDs, actually, be declared  
19 null and void. Both of the letters share at least one ground,  
20 which is that there's a belief that the permit has expired.

21 And then, with respect to another ground, there is  
22 -- another letter -- one of the letters, there seems to be a  
23 suggestion that the plans, which have not yet been apparently  
24 shown to DCRA, are different than what was originally proposed in  
25 the PUD, and therefore represents, in essence, a PUD

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1 modification.

2 In all these instances, when the Zoning Commission  
3 issued a PUD order, the administration, in the enforcement of  
4 that order, normally go to the Zoning Administrator. And if, in  
5 fact, the time for going forward with a PUD has expired, it would  
6 be the responsibility of the Zoning Administrator, if, in fact,  
7 that's true, to deny building permits because of that.

8 That has not occurred yet. At least there's no  
9 assertion that has occurred. If it did occur and the Zoning  
10 Administrator erred and did issue a building permit, the  
11 appropriate thing to do for an aggrieved citizen would be to file  
12 an appeal with the BZA.

13 The same is true in terms of a modification to a  
14 PUD. If the plans that are presented before the Zoning  
15 Administrator reflect a different design than that which was  
16 approved in a PUD order, again, the Zoning Administrator, if that  
17 were true, would deny the building permit. And if the Zoning  
18 Administrator did not deny the building permit, an aggrieved  
19 citizen could bring the appeal to the BZA.

20 In essence, what these letters ask you to do is to  
21 move your normal BZA review process, which is a sua sponte review  
22 at the end of BZA appeal, before any of the instances which would  
23 even commence an appeal had occurred.

24 And the issue before you, then, is whether or not,  
25 even without knowing whether or not these facts are true, even

1 without knowing whether or not the Zoning Commission -- Zoning  
2 Administrator might err, you want to interpose yourself at this  
3 very early date and make a decision, rather than letting the  
4 processes go ahead and allowing the citizens, if they believe  
5 that there is a potential issue that the Zoning Administrator  
6 should know in advance before the building permits are shown to  
7 alert the Zoning Administrator, so the Zoning Administrator would  
8 be in a position to take appropriate action.

9 If you did decide to go forward with these  
10 declaratory orders, because they all involve contested cases, you  
11 would need to bring the parties in and allow them to respond to  
12 the motions that are before you.

13 CHAIRPERSON HOOD: Okay. Colleagues, let's take  
14 each letter one by one, if you don't mind. The first one is the  
15 motion for declaratory ruling, non-compliance with GWU's current  
16 campus plan.

17 I personally am in favor of just forwarding that,  
18 as has been recommended to us, to the Board of Zoning Adjustment,  
19 and asking them to respond, however -- whatever needs to be. But  
20 I'm in favor of them -- I want to make sure that this  
21 correspondence is followed up on, because I did have some  
22 concerns, but I want to err on the side of caution and hold off.

23 Any other comments?

24 VICE CHAIRPERSON MITTEN: I guess I would just -- I  
25 would affirm what you just said, and just to -- just to reinforce

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1 the notion that the determination, as I learned when I was  
2 sitting on that case, the determination of compliance with the  
3 existing campus plan as sort of a threshold to going forward with  
4 the processing of the new campus plan is within the jurisdiction  
5 of the BZA to do.

6 So that is sort of a threshold thing that needs to  
7 be accomplished on the George Washington University campus plan.

8 And given that the deliberation hasn't taken place yet, I think  
9 referring this letter to the BZA, if it isn't already there, is  
10 very appropriate and will fall right in line with the first task  
11 that will be undertaken in deliberation.

12 CHAIRPERSON HOOD: Okay. Do we need to -- I guess  
13 we can just do that by general consensus that that's how we're  
14 going to proceed.

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

16 CHAIRPERSON HOOD: Okay. The next letter is the  
17 request for party status. We've heard Mr. Bergstein's report.  
18 How do you proceed to move forward on this? Okay.

19 Mr. Bergstein, in a nutshell, could you just tell  
20 us, again, how we should proceed, or your opinion on how we  
21 should proceed?

22 MR. BERGSTEIN: Well, what I'm suggesting is before  
23 you even consider whether or not to grant party status, that, I  
24 think, would be after you determine initially whether or not you  
25 think the matter is even appropriate for you to go forward.

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1                   And, again, this letter alleges both that the  
2                   underlying PUD has expired and that the plans that are being  
3                   considered are inconsistent with the PUD as you approved it. And  
4                   the question is whether or not, at this point, based upon that,  
5                   you want to invite the parties to have a -- to respond to that,  
6                   perhaps have a hearing about that, and declare the PUD null and  
7                   void based upon what you might discover, or whether or not the  
8                   matter should proceed, if it does proceed at all, to the Zoning  
9                   Administrator.

10                   This may not even be going forward as a PUD  
11                   approval, but as a matter of right zoning. But if it does go  
12                   forward as a PUD approval, if, indeed, these -- the PUD did  
13                   expire, that would be something for the Zoning Administrator to  
14                   determine and act upon. And only if the Zoning Administrator  
15                   erred would it come before the BZA, and then only if the BZA, in  
16                   your opinion, erred would it come before you for a sua sponte  
17                   review.

18                   So the question is whether or not the Zoning  
19                   Commission wants to interject itself at this stage or whether to  
20                   allow the processes to play out as they normally would, based  
21                   upon the facts as they might develop.

22                   CHAIRPERSON HOOD: Mr. Bergstein, would that also  
23                   be the same conclusion on Ms. Olson's letter?

24                   MR. BERGSTEIN: Well, Ms. Olson's letter is really  
25                   different than that, I think.

1 CHAIRPERSON HOOD: Okay.

2 MR. BERGSTEIN: I think we should discuss that  
3 separately.

4 CHAIRPERSON HOOD: Okay. I was trying to combine  
5 them. But anyway --

6 VICE CHAIRPERSON MITTEN: Could I just ask Mr.  
7 Bergstein a couple of questions.

8 CHAIRPERSON HOOD: Sure.

9 VICE CHAIRPERSON MITTEN: First, can the -- given  
10 that -- I mean, I understand very clearly that the first stop in  
11 the process is the Zoning Administrator that would trigger -- he  
12 would make a determination that could potentially trigger an  
13 appeal before the BZA. Can the BZA, on their own, generate an  
14 appeal?

15 MR. BERGSTEIN: No.

16 VICE CHAIRPERSON MITTEN: So it has to be triggered  
17 by an outside party, which has to be triggered by an action of  
18 the Zoning Administrator.

19 MR. BERGSTEIN: That's correct.

20 VICE CHAIRPERSON MITTEN: So I would think that  
21 would be -- that it would be inappropriate for us to jump ahead  
22 of all of that. But I would be -- if it -- if this were  
23 appropriate, is to just refer the letters that are -- that we  
24 have as G and J to the Zoning Administrator so he is aware, if  
25 these matters come to him, that there are these sensitivities, so

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1 that he'll be aware of it in advance and not overlook something.

2 Is that appropriate?

3 MR. BERGSTEIN: I think that's perfectly  
4 appropriate.

5 CHAIRPERSON HOOD: And let me apologize. I'm  
6 looking at two different agendas. And you're right; those were  
7 exactly the letters I was referencing. I referenced the wrong  
8 letter -- Ms. Olson. I meant Ms. Shalight (phonetic). I believe  
9 that's how you pronounce it.

10 VICE CHAIRPERSON MITTEN: I think one letter is  
11 from John Batham. That would be the letter that is at G in our  
12 agenda. And then, the other letter is from Barbara Spillinger,  
13 and that's the one that's referenced as letter J in our agenda.  
14 Those are the two I was referring to.

15 CHAIRPERSON HOOD: Okay. Again, I'm looking at the  
16 wrong agenda. But, anyway, we know what it is.

17 VICE CHAIRPERSON MITTEN: So I would recommend that  
18 we refer those to the Zoning Administrator at this point.

19 CHAIRPERSON HOOD: Okay.

20 COMMISSIONER FRANKLIN: I concur with Commissioner  
21 Mitten. I think that's the appropriate action.

22 CHAIRPERSON HOOD: Right. And I think we need to  
23 let nature take its course. I concur.

24 COMMISSIONER HOLMAN: Yes. I agree.

25 CHAIRPERSON HOOD: Okay. So we have that by

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1 general consensus. Okay.

2 If I can find the right agenda -- it's rough when  
3 you have two. Let's see. Okay. Now we're on letter H, letter  
4 from Diane L. Olson, regarding Zoning Commission's authority in  
5 the Macomb-Wisconsin Overlay District. Again, I guess we'll have  
6 to refer that to Mr. Bergstein.

7 MR. BERGSTEIN: This is a matter that concerns an  
8 ongoing Zoning Commission proceeding for a planned unit  
9 development. And the way the Zoning Commission's regulations  
10 consider those matters, it's normal, first, for persons to apply  
11 for party status.

12 And then, if there are legal issues that they  
13 believe should be considered by the Zoning Commission, for them  
14 to bring that to the attention of the Zoning Commission to serve  
15 the other parties and the applicant, and for the Zoning  
16 Commission to either take it up at the proceeding itself, either  
17 as a preliminary matter or in its ultimate decision.

18 Again, this is an instance where the author of the  
19 letter is asking you at this time, in a meeting that's completely  
20 unrelated to that proceeding, to resolve the legal issue. And I  
21 think the issue before you is whether to suggest instead that the  
22 author of the letter seek party status, if they believe it's  
23 appropriate, and to make their legal -- make their submission at  
24 the time when they are seeking party status, and then the matter  
25 could properly be determined by the Zoning Commission at the time

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1 it hears the matter, with, of course, service to all of the other  
2 parties.

3 I don't believe that the letter actually served the  
4 applicant. And, of course, no parties are known at this point  
5 because they haven't been identified in the proceeding.

6 COMMISSIONER FRANKLIN: In other words, Mr.  
7 Bergstein, you're saying this is -- goes to the jurisdiction of  
8 the Commission and ought to await an assumption of jurisdiction  
9 by the Commission, so that a motion could be presented at that  
10 time that addresses these issues?

11 MR. BERGSTEIN: I guess I'm saying it's not yet  
12 right, that the appropriate time for it to be considered is in  
13 the context of the hearing itself. I believe there is a  
14 proceeding. The Zoning Commission has jurisdiction over the  
15 proceeding.

16 But that the appropriate time and manner for it to  
17 be considered would be after service has been made on all  
18 parties, and that when the Zoning Commission actually has the  
19 hearing on it -- on this matter, to consider it at that time; or  
20 if it considers it best to resolve the issue after hearing, after  
21 developing a record and resolving it in the final decision, if it  
22 believes it to be legally relevant.

23 VICE CHAIRPERSON MITTEN: Can I ask a follow-up  
24 question to that? Which is I -- I think I can sympathize with  
25 why they want this taken up now, which is it -- and maybe if they

1 had presented this with us -- this to us when we set it down we  
2 wouldn't have this problem, but -- and I don't know if there's a  
3 way to accommodate it.

4 But in order to wait for the hearing, if they  
5 prevail on the fact that we don't have -- that we shouldn't have  
6 set this down, then everybody has had their experts and they've  
7 prepared and they've spent lots of money, you know, to move  
8 forward. And then, if we say -- if we agree with them, then that  
9 -- all that preparation was for naught.

10 So I don't know, is there a way to take up the  
11 preliminary -- I'm just trying to accommodate what I think is the  
12 -- what is related to the timing issue, and there may not be a  
13 way to accommodate it.

14 MR. BERGSTEIN: Well, I believe there was, even  
15 before this, a motion of some sort to reconsider the setdown, and  
16 I may not be correct about that. And, actually, your rules don't  
17 even provide for that to occur.

18 But if that were the case, again, it needs to be  
19 clear to all of the -- to the applicant that that's what's going  
20 on, and that you consider this to be a motion to reconsider your  
21 setdown, and to allow the applicant to respond and be heard,  
22 because this is a contested case and you have to allow the  
23 applicant an opportunity to respond and be heard for that.

24 If you believe that this letter raises that type of  
25 issue, and you want to consider the matter of, in essence,

1 reconsidering your setdown, then that's something that you should  
2 give the applicant fair notice of -- that that is your intent to  
3 do, and to allow the applicant an opportunity to argue against  
4 that and then you consider it at a further meeting where the  
5 applicant could be available to hear your decision.

6 So I can see that even though there is no rules on  
7 it, there may be instances you may want to reconsider the issue  
8 of a setdown, but I think it needs to be very clear to everybody  
9 that's what you're doing. And the applicant needs to have an  
10 opportunity to respond, knowing that that's what's on the table.

11 MR. BASTIDA: Mr. Chairman, the staff of the Office  
12 of Zoning has been advised that it's likely to have a request for  
13 a postponement of this hearing to sometime in December, sometime  
14 in the Giant --

15 CHAIRPERSON HOOD: Okay. So in other words --

16 MR. BASTIDA: That's just for your information.

17 CHAIRPERSON HOOD: Okay. So if that happens, and,  
18 most likely, Mr. Bastida, you said that will happen.

19 MR. BASTIDA: I believe that is most likely. I was  
20 told today that -- by the lawyer representing the applicant that,  
21 in fact, the letter has been filed sometime in the late morning.

22 CHAIRPERSON HOOD: Okay.

23 MR. BASTIDA: But I haven't had a chance to look at  
24 it.

25 CHAIRPERSON HOOD: So we have an option to put on

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1 the table what Mr. Bergstein has mentioned to us, and that is to  
2 let them know that we're thinking about reconsidering the  
3 setdown, if that's -- that's one of the avenues I believe we can  
4 take, if that's what the Commission chooses.

5 So, colleagues, I'm going to throw that out for  
6 discussion. And then that will give Giant a chance to respond to  
7 the letter here of Ms. Olson. Any comments?

8 COMMISSIONER FRANKLIN: Mr. Chairman, I am inclined  
9 to let this go to the point of a motion at the time of the  
10 hearing.

11 CHAIRPERSON HOOD: Okay. Any other comments? Was  
12 that a motion, Mr. Franklin?

13 COMMISSIONER FRANKLIN: Well, I didn't put it in  
14 the form of a motion. I don't think that -- I think we would be  
15 going through a lot of extra effort to basically get all parties  
16 together to look at this preliminary motion. And why not just do  
17 it at the time of hearing?

18 CHAIRPERSON HOOD: Okay. So --

19 VICE CHAIRPERSON MITTEN: I mean, I just -- I  
20 didn't know -- I agree it's burdensome to do it that way. And I  
21 just wanted to discuss it. But I could -- I mean, I'm happy  
22 going along with what Mr. Franklin said.

23 COMMISSIONER FRANKLIN: I think if we did otherwise  
24 we'd be inviting all kinds of issues of this sort to be presented  
25 preliminarily, apart from a hearing.

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1 COMMISSIONER HOLMAN: Indeed. Yes. It looks like  
2 a preliminary matter to me, and I think that given the notice and  
3 the opportunity to be heard we'll be starting a precedent that  
4 we'll be doing this -- we'll have preliminary matters, you know,  
5 every -- you know, for quite a while.

6 I think that it is -- you know, it's an issue that  
7 does need to be discussed, but I think that in the context of the  
8 hearing is the best forum to do that.

9 CHAIRPERSON HOOD: Okay. I believe we have a  
10 general consensus to deal with this in preliminary matters at the  
11 hearing. At the hearing, general consensus. Okay. Thank you.

12 Let's move right on. Zoning Commission Case Number  
13 00-27M. This is the petition from Holland & Knight to amend  
14 zoning map for portions of Square 37 to resolve the inconsistency  
15 between the comprehensive plan and zoning map.

16 Mr. Bastida?

17 MR. BASTIDA: Mr. Chairman, you received a copy of  
18 this report that was submitted by Holland & Knight that's  
19 basically requesting -- they have a client that has requested a  
20 change of zoning for the area, but there are three property  
21 owners that they contacted and they agreed basically with the  
22 petition; but because they didn't authorize their client to go  
23 forward, it came to us as a matter of a petition rather than a  
24 contested case.

25 So it's up to the Commission to decide what they

1 would like to do in this case.

2 CHAIRPERSON HOOD: Colleagues, in my reviewing this  
3 submittal, I believe the applicant has already started the  
4 process, and that would be the process that I would start with,  
5 would be to refer to the Office of Planning.

6 MR. BASTIDA: It has been referred to the Office of  
7 Planning.

8 CHAIRPERSON HOOD: That has already been done.

9 MR. BASTIDA: Yes. And I think that if that's the  
10 way you decide it, then when the Office of Planning provides a  
11 report, then we'll set it down -- we put it for a setdown for a  
12 hearing.

13 CHAIRPERSON HOOD: Okay. Colleagues, are there any  
14 other comments on that correspondence? We're in general  
15 consensus? Okay.

16 Moving right along --

17 MR. BASTIDA: Yes. Then, you have a letter from  
18 Mr. Sol Shalit, titled "George Washington University's Ten-Year  
19 Foggy Bottom Campus Plan." That was for your information, and I  
20 provided you with another letter that was omitted sometime this  
21 morning regarding the same matter from Mr. Shalit.

22 COMMISSIONER FRANKLIN: When was that provided to  
23 us?

24 MR. BASTIDA: I put it on the conference table.

25 COMMISSIONER FRANKLIN: Oh. Okay. I'll have to

1 look for it.

2 CHAIRPERSON HOOD: It must still be on the  
3 conference table, because I don't have it either. No one has it.

4 MR. BASTIDA: No? Well, maybe I erred, but I think  
5 -- okay. I'll rectify that. I will provide it. It's just  
6 really for your information.

7 CHAIRPERSON HOOD: Just for information?

8 MR. BASTIDA: Yes.

9 CHAIRPERSON HOOD: Okay. So I think we're down to  
10 the last thing on our agenda, right? Because we've taken care of  
11 letter J from the Foggy Bottom and West End. We've done that.

12 MR. BASTIDA: That is correct. That's what I  
13 skipped.

14 CHAIRPERSON HOOD: Okay. Now we are at Zoning  
15 Commission Case Number 00-26M, Arnold & Porter, map amendment  
16 24th and M Streets, Northwest.

17 MR. BASTIDA: Right. This is a request from Arnold  
18 & Porter for an emergency rulemaking and for a permanent map  
19 amendment of a property on 24th and M Street that was bought on  
20 September 8th by the hospital. Being private property, it was  
21 unzoned. This has been referred to the Office of Planning also.

22 CHAIRPERSON HOOD: Okay.

23 MR. BASTIDA: So what is -- so you have two matters  
24 in front of you. One is a request for the emergency legislation.  
25 The second is for the setdown, or is to follow the Shalits and

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1 go through the process of referring to the Office of Planning,  
2 which has been done, and then to wait until the Office of  
3 Planning provides a report to set it down.

4 CHAIRPERSON HOOD: Okay. Colleagues, we have this  
5 in front of us. The applicant is asking us to do emergency  
6 legislation. I don't know if we'd rather deliberate or you have  
7 questions for the applicant. How do you want to proceed?

8 VICE CHAIRPERSON MITTEN: Well, I guess in fairness  
9 to them, we should ask them to come up and address -- I mean,  
10 they know our reservations about emergencies, so they should make  
11 their case.

12 CHAIRPERSON HOOD: First, let me ask, colleagues,  
13 is that permissible among all of the Commission members before we  
14 ask them to speak? Anyone has a problem? General consensus?

15 Okay. With that, Mr. Gross?

16 MR. GROSS: Thank you, Mr. Chairman, and members of  
17 the Commission. I'm Nate Gross, and with me is Porter Dawson of  
18 the JBG Companies.

19 This property is at the corner of 24th and M  
20 Street, Northwest, in the West End. It's more or less the  
21 northeast quadrant of the square. It's been unzoned for many  
22 years. A partnership between JBG and the hospital acquired it on  
23 September 19th, and it has always been, since 1974, exactly  
24 within the C-2-C zone along the south side of M Street. It was  
25 mapped as part of the West End plan. And so the applicant is

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1 simply applying for that zone as the logical zone.

2 And it wasn't realized until probably 10 or 12 days  
3 ago that the parking on the property presented a very serious  
4 situation; that is, that about 60 or 70 percent of the parking  
5 spaces are used by the Columbia Hospital for Women. And, of  
6 course, it is a dense, congested, urban neighborhood.

7 And there's a provision in the zoning regulations  
8 that suddenly came to our attention that until this regular  
9 process for zoning unzoned properties is completed, you can't  
10 apply to the BZA, can't use the property, and so on.

11 So we're faced with a situation where 150 parking  
12 spaces, both in terms of just overspill parking on a dense  
13 neighborhood generally, and, probably more importantly, for the  
14 hospital purposes, would suddenly be unavailable.

15 I guess I would say that this is probably your more  
16 typical classical emergency situation than some of those you've  
17 heard today. We obviously didn't realize we were stacked up  
18 behind two other emergency requests. My only comment on that  
19 might be that it's a little bit like your 100-year flood plan.  
20 You may get 300 years of floods in one year, and then none for  
21 the next 297 years. But we do think it is really an emergency.

22 I guess I would also comment that, of course, if  
23 you do take emergency action, you would establish the C-2-C zone,  
24 and then you'd have 120 days to complete action on it. But there  
25 are examples in the past when emergencies have been extended. So

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1 given your flow of cases, it seems very heavy today. You know,  
2 if you needed to extend it a few months to stretch out, I mean,  
3 obviously -- Mr. Dawson, do you want to add anything or --

4 MR. DAWSON: Thank you for considering it. We do  
5 grant that we're here as the third request for this -- for  
6 emergency action today. So we would appreciate your considering  
7 it. We do believe it's very important for the hospital's  
8 continued smooth operation, for the revenue it gets. The  
9 hospital, as you know, is -- needs the revenue now, and it would  
10 be, I believe, a very great practical burden on the neighborhood  
11 to attempt to absorb that many cars.

12 CHAIRPERSON HOOD: Okay. Colleagues, any other  
13 questions?

14 VICE CHAIRPERSON MITTEN: Well, can I just, at this  
15 juncture, put my disclosure regarding JBG on the record?

16 (Laughter.)

17 And if you have any reservations about me voting in  
18 the case, please say so.

19 CHAIRPERSON HOOD: Okay. Any questions of Mr.  
20 Gross and the applicant?

21 COMMISSIONER FRANKLIN: I take it that if Land Use  
22 or Zoning Council had been engaged early enough in the process  
23 this would not have happened.

24 MR. DAWSON: Fair.

25 CHAIRPERSON HOOD: Okay. Colleagues, I will -- any

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1 other questions? Okay. Thank you.

2 I will just start off by saying that when I looked  
3 at this, and I just -- the comments that I made earlier, I, too,  
4 agree that this will impose a hardship and a problem on the  
5 surrounding neighborhood, because that influx of cars that were  
6 using the lot will now be looking for spaces.

7 It will hamper those who have folks who are in the  
8 hospital, and that will cause -- I think we will have a big  
9 disaster. We will have not just two people -- the applicant and  
10 the Council -- down in front of us; we may have the whole  
11 neighborhood.

12 So I think that constitutes an issue there that I  
13 think we need to move expeditiously on, and those are my  
14 comments.

15 COMMISSIONER HOLMAN: Mr. Chairman, boy, this has  
16 been a tough day, because I agree with you intellectually. And  
17 what I'm trying to understand is what, if any, standard are we  
18 going to set for emergencies. And maybe that's something, in  
19 fact, we need to deal with, because if we take a sympathetic  
20 approach to every hardship that one has to face, we'll be here  
21 dealing with emergencies for quite a while.

22 I'm trying to fit this into that health, safety,  
23 morals, welfare, kind of scenario, and I'm just having a little  
24 trouble. So if somebody can help me with that.

25 CHAIRPERSON HOOD: Well, I will just say that was

1 one of the reasons I took the position I did, because I looked  
2 back at the administrative procedure, and it definitely has a  
3 definite tie-in with safety, as far as I'm concerned.

4 Now, health, somebody could argue that point. But  
5 -- and public peace, definitely. So, you know, that's just my  
6 opinion, but I will --

7 VICE CHAIRPERSON MITTEN: Well, I agree with you.  
8 This is -- I mean, I know we're trying to be very strict about  
9 this, and yet every time we vote we're usually like, okay, that's  
10 an emergency.

11 CHAIRPERSON HOOD: Right.

12 (Laughter.)

13 VICE CHAIRPERSON MITTEN: I guess the thing is is  
14 that there -- we're not -- we're accommodating a user of the  
15 property who really has had no control over what's been going on  
16 -- the hospital. And it would create a hardship for the  
17 hospital, I believe, because, you know, all of a sudden they're  
18 going to have dozens of employees that they're going to have to  
19 find parking for. And the parking -- you know, the availability  
20 of it is questionable.

21 So then you get into, well, where are the cars  
22 going to go? And that's going to impact the neighborhood. And,  
23 you know, I believe that the neighborhood is already  
24 significantly impacted by a number of other forces, so while we  
25 would like to think that people would be aware of these things,

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1 particularly sophisticated purchasers with sophisticated Land  
2 Use/Council would know these things in advance of making a  
3 transfer of ownership that was going to trigger such a thing.

4 We're not really doing it for their benefit. We're  
5 doing it for the benefit of the innocent user of the hospital and  
6 the community. So I would reluctantly move approval of the  
7 zoning for Lot 103 in Square 25 to C-2-C.

8 CHAIRPERSON HOOD: It has been moved. Can I get a  
9 second? I'll second it. Any further discussion?

10 COMMISSIONER HOLMAN: I'm just saying we need to --  
11 we need some standards badly. I mean, it's like I -- you can  
12 create an argument for almost any difficult situation. But we  
13 really need to look at this seriously, because I'm afraid we're  
14 setting ourselves up for some trouble down the line. It's not  
15 saying how I'm going to vote on it, but --

16 CHAIRPERSON HOOD: Let me just say --

17 COMMISSIONER HOLMAN: -- you know, I'm just saying  
18 --

19 CHAIRPERSON HOOD: Because of the issue of this one  
20 -- I understand, Mr. Holman, where you're coming from with --  
21 believe me, I believe that we need to set a criteria and stay  
22 with our standards.

23 But if there are any issues today, with the  
24 exception of NPD, that I think -- that I felt more strongly  
25 about, and think we need to move forward on, it's this one -- for

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1 the simple reason that I see it creating problems if this is not  
2 -- if this is not permissible, and they can't go forward with the  
3 parking in the C-2-C zone, and I see a problem coming out into  
4 the neighborhood.

5 So as opposed to making a broader problem, I think  
6 we can address it here, like the example Mr. Gross used. And I  
7 will, you know, comment on that example and say that I agree with  
8 that example for the fact that today we have all of these  
9 emergencies.

10 And I referenced earlier, since my two years on the  
11 Commission, this is the first time since NPD has come down that  
12 we had an emergency. And after that, it seems like they all are  
13 coming right in. We might not see another one until -- well, the  
14 Commission may not see another one until 2010. We never know.  
15 But this is a prime example of what I consider emergency.

16 COMMISSIONER HOLMAN: But I'll tell you, if we  
17 don't come up with some standards, we are going to see a lot  
18 more. But I guess I'd like to call the question.

19 CHAIRPERSON HOOD: Well, let me just add to that.  
20 I said the same thing about minor modifications, and that was,  
21 what, three years ago. Even though Mr. Bergstein has helped us  
22 out with that. So, I mean, you know, things are changing in the  
23 city, and I think that there are going to be some more complex  
24 issues, where we're going to have to change with the times.

25 Mr. McGhettigan?

1 MR. MCGHETTIGAN: Yes. Just two things. I wasn't  
2 sure what -- why are they having to move -- stop parking there?  
3 Can't they just continue to park there?

4 CHAIRPERSON HOOD: GSA.

5 MR. MCGHETTIGAN: Well, who is forcing them to stop  
6 parking there? The Zoning Administrator is going to close them  
7 down, or something?

8 CHAIRPERSON HOOD: I believe -- Mr. Gross, do you  
9 want to come respond? You're the best person to --

10 COMMISSIONER FRANKLIN: I think it's probably just  
11 a punctilious respect for law.

12 (Laughter.)

13 MR. GROSS: Actually, we probably should have just  
14 ignored this all together.

15 (Laughter.)

16 No. Section 106 of the zoning regulations has a  
17 series of steps -- provisions for zoning previously unzoned  
18 property, including District of Columbia and federal properties.

19 And one of the provisions in there says that during this period  
20 -- well, it says that the Zoning Commission has to schedule a  
21 public hearing to adopt zoning on previously unzoned federal  
22 land.

23 And then, it says, until that zoning is adopted,  
24 property can't be used, and you can't apply to the BZA for a use  
25 either. And so, technically, if somebody filed a zoning

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1 complaint to the Zoning Administrator, it could be shut down,  
2 which would be, I think, very serious.

3 MR. BASTIDA: Mr. Chairman, the Zoning  
4 Administrator regularly, when something is in the process of  
5 trying to arrive to the right zoning category, has not pursued an  
6 action, an adverse action toward a present use that has been used  
7 before in that fashion. That has been always the standard of the  
8 Zoning Administrator.

9 Obviously, that could change, but I just wanted to  
10 throw that into the discussion, so you are aware of that. Thank  
11 you.

12 MR. MCGHETTIGAN: Also, the second thing I wanted  
13 to ask was, could we choose a stricter zone than C-2-C? Maybe C-  
14 R? Just -- it's temporary, but just to make sure that this goes  
15 through, without having -- C-2-C becoming the zone, because it  
16 may be down the line that Office of Planning might recommend a  
17 stricter zone for this. And if you zone it to C-2-C  
18 automatically, it may just make a more difficult case.

19 CHAIRPERSON HOOD: But I believe that this is just  
20 going to be temporarily. Once we set it down and get the Office  
21 of Planning's report, then we can always restrict the zone even  
22 more. So as long as it's allowable.

23 COMMISSIONER FRANKLIN: We could even be more  
24 strict than C-R, then.

25 CHAIRPERSON HOOD: No.

1 MR. GROSS: Actually, the C-R also -- actually, C-R  
2 is often considered less restrictive because of one additional  
3 FAR of commercial use. And I realize the Office of Planning has  
4 brought up the option of C-R, because there's other C-R zoning on  
5 the West End. But this property happens to be right within the  
6 band of C-2-C zoning that was established based on the West End  
7 plan. So it has a lot of public purpose and planning rationale  
8 behind it.

9 MR. DAWSON: May I speak?

10 CHAIRPERSON HOOD: Yes.

11 MR. DAWSON: The hospital has really been driving  
12 this, and they're not as sophisticated as some people in terms of  
13 the processes. And they are particularly anxious that they be  
14 punctilious in adhering to the law. And they are very anxious  
15 about any appearance or any substance of losing this parking lot,  
16 both for their patients and for their revenue.

17 So they are very concerned about it, and I really  
18 do believe it would be a tremendous burden on the neighborhood if  
19 we were to lose it. And it would accommodate their sense of  
20 propriety if they felt like they were in accord with the  
21 regulations.

22 CHAIRPERSON HOOD: Okay.

23 COMMISSIONER FRANKLIN: Mr. Gross, do you agree  
24 with Mr. Bastida's comment that if we were to set down a public  
25 hearing on the zoning of this property that the Zoning

1 Administrator would regard that as an indication of sufficient  
2 likelihood of zoning, that he would not respond favorably to  
3 somebody who might be so inclined as to --

4 MR. GROSS: Well, I would reiterate what he said at  
5 the end, which is you never know what might happen in the future.

6 (Laughter.)

7 I mean, what's been going on might be regarded as  
8 very lax zoning enforcement. I mean, it goes against the plain  
9 meaning of the law. That's the unfortunate thing about it. The  
10 language cited in our report is very explicit that, you know,  
11 while you're waiting for this zoning to be established, former  
12 federal property will not be used. So it's a real risk for the  
13 applicant to rely on that, I think.

14 CHAIRPERSON HOOD: Okay. Any more comments or  
15 questions?

16 VICE CHAIRPERSON MITTEN: Well, since we have Mr.  
17 Gross here, I just want to ask one little technical thing, which  
18 is, in this section -- or 106.4, it says, "Properties owned by  
19 the Government of the United States and used for, or intended to  
20 be used for, a federal public building or use," blah, blah, blah,  
21 "shall not be included in any zoned district."

22 So how is it that this parking lot came to be used  
23 for other than a federal use? Is it -- what happened that -- I  
24 mean, because this is a very special circumstance, actually, I  
25 would think, because it's atypical that private use would be made

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1 of public property that's unzoned because it's public -- you  
2 know, public land.

3 MR. GROSS: Yes. I think Mr. Dawson has a comment.

4 MR. DAWSON: GSA had operated -- not this building  
5 -- on this site. The building is actually still there, and I'm  
6 not sure of the time, because we've come to this relatively late.

7 But at some point, GSA, when they abandoned the building -- the  
8 building has been empty for five or six years -- GSA licensed the  
9 hospital to operate a parking lot on the space for a fee. So the  
10 hospital has been paying GSA an annual or a monthly fee to  
11 operate a parking lot there.

12 Does that answer your question?

13 VICE CHAIRPERSON MITTEN: Yes. And I guess,  
14 arguably, that's not their prerogative to do, because it's  
15 property that's not -- it should have been zoned when they  
16 decided to do that, because it no longer rose to the level of the  
17 status that it needs to be to be unzoned. It seems like.

18 Now, that's just --

19 MR. GROSS: Well, that's very interesting. I do  
20 not know the answer. But probably GSA has done that elsewhere,  
21 but I don't know what the legalities would be.

22 CHAIRPERSON HOOD: Okay.

23 COMMISSIONER HOLMAN: Another emergency?

24 (Laughter.)

25 CHAIRPERSON HOOD: We have a motion on the table.

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1 It has also been moved and seconded. All those in favor, by the  
2 usual sign of voting.

3 (Chorus of ayes.)

4 Any opposition?

5 (No response.)

6 So ordered.

7 Do we have anything, a proxy? And, staff, would  
8 you record the vote?

9 MR. BASTIDA: No, we don't have a proxy from Mr.  
10 Parsons. The staff would record the vote for the emergency  
11 legislation, moved by Ms. Mitten, seconded by Mr. Hood, and voted  
12 in the affirmative by Mr. Franklin and Mr. Holman. Mr. Parsons  
13 not voting, not being present.

14 CHAIRPERSON HOOD: Okay. Thank you.

15 MR. GROSS: Thank you very much.

16 MR. BASTIDA: Do you want to set it down for a  
17 hearing?

18 CHAIRPERSON HOOD: Oh. I forgot.

19 MR. BASTIDA: Or do you want to wait until the  
20 Office of Planning provides a report?

21 CHAIRPERSON HOOD: Yes.

22 MR. BASTIDA: You have the option.

23 CHAIRPERSON HOOD: I think now we can wait until  
24 the Office of Planning provides a setdown report, unless you all  
25 want to -- how much time does the emergency --

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1 MR. BASTIDA: 120 days. You can renew it, if you  
2 so wish.

3 CHAIRPERSON HOOD: All right. Is that the pleasure  
4 of the Commission?

5 VICE CHAIRPERSON MITTEN: That's fine.

6 CHAIRPERSON HOOD: That's fine? Okay.

7 Let me just -- I just want to make a point. I know  
8 a lot of different things are coming down in front of the  
9 Commission now, but I want to equate this with typewriting and  
10 computing. Sometimes we have to make a change. Nobody is using  
11 typewriters anymore. If you are, I'm sorry. But times have  
12 changed.

13 The city is changing. I guess just because it  
14 wasn't done in the past doesn't make it just out of the window  
15 for the future. That's just the point I want to make. Whether  
16 anybody understood that point or not, doesn't matter.

17 COMMISSIONER HOLMAN: I kind of got it.

18 CHAIRPERSON HOOD: Okay. Next, the report of the  
19 Secretary, Mr. Bastida.

20 MR. BASTIDA: Yes. It's only the reminder of the  
21 schedule. You have that in your package, and I don't think it  
22 requires any discussion.

23 If the Giant case is postponed, I will be advising  
24 you of that at -- on Thursday.

25 CHAIRPERSON HOOD: Okay.

1 MR. BASTIDA: But I will need somebody to open the  
2 meeting -- the hearing and close it, because they want to  
3 postpone it to a day certain.

4 CHAIRPERSON HOOD: Okay.

5 MR. BASTIDA: So I will need an individual -- you  
6 know, a Commissioner here that day.

7 CHAIRPERSON HOOD: Okay. Next, the report of the  
8 director. There is none?

9 MR. BASTIDA: Right.

10 CHAIRPERSON HOOD: Other business. Zoning  
11 Commissioner's attendance at BZA meetings and hearings.

12 MR. BASTIDA: Yes, that's the one you have.

13 CHAIRPERSON HOOD: Oh.

14 COMMISSIONER FRANKLIN: Can I ask Mr. Bastida a  
15 question?

16 CHAIRPERSON HOOD: Sure.

17 COMMISSIONER FRANKLIN: With this obvious volume of  
18 stuff to be heard, will we get in a situation where if the Giant  
19 matter is postponed we won't have anything else to deal with on a  
20 hearing night?

21 MR. BASTIDA: I believe that the Giant will be  
22 postponed to a day that it will be prior to the Commission being  
23 able to hear any of the cases that have been set down today,  
24 because of the time constraints I will have for advertising and  
25 filing, and so on.

1                   So I already looked into that, and I believe that  
2                   that is not a problem at this time.

3                   COMMISSIONER FRANKLIN:   Well, in other words, we  
4                   would lose a hearing date, basically.

5                   MR. BASTIDA:   No, you will -- you cannot have a  
6                   hearing date on the cases that you set down for hearing today, in  
7                   accordance to the calendar, until after the date in December that  
8                   --

9                   COMMISSIONER FRANKLIN:   Okay.

10                  MR. BASTIDA:   -- that the Giant is contemplating on  
11                  having.

12                  COMMISSIONER FRANKLIN:   Okay.   Fine.

13                  CHAIRPERSON HOOD:    Okay.    Next was the Zoning  
14                  Commissioners' attendance at BZA meetings and hearings.

15                  MR. BASTIDA:    Yes.

16                  CHAIRPERSON HOOD:    I think we need to sign up for  
17                  the -- we finished for October.   We need to sign up for November.

18                  MR. BASTIDA:    No, no, we are not finished for  
19                  October.   We are finished for October 17th, but not October 24th.

20                  VICE CHAIRPERSON MITTEN:   My name is on the 24th.

21                  COMMISSIONER HOLMAN:   And I'm on Halloween, so --

22                  CHAIRPERSON HOOD:    I won't comment.

23                  (Laughter.)

24                  MR. BASTIDA:    October 31st.   Okay.   We should be  
25                  through, and then I would need it through November 14th, because

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1 --

2 CHAIRPERSON HOOD: Can we do the whole month of  
3 November?

4 MR. BASTIDA: Yes. So you have for November, let's  
5 see, November 8th, Zoning Commission, to be determined.

6 CHAIRPERSON HOOD: Okay. Who can sign up for  
7 November 8th? That's a Wednesday.

8 MR. BASTIDA: Which is a Wednesday, because the 7th  
9 is -- Tuesday is election day.

10 VICE CHAIRPERSON MITTEN: Well, just so that  
11 everybody knows who has to be there in the morning, who might  
12 find it convenient to stay for the afternoon.

13 Mr. Parsons would have to be there in the morning,  
14 although that's relatively brief, I think. Mr. Franklin will  
15 have to be there for the Georgetown University campus plan  
16 decision. And Mr. Holman will have to be there for the Bertha  
17 Tucker Day Care decision.

18 So maybe one of those people could take it.

19 COMMISSIONER HOLMAN: Or both.

20 VICE CHAIRPERSON MITTEN: Or both

21 (Laughter.)

22 CHAIRPERSON HOOD: Well, I'll tell you what, if  
23 they have a problem with the morning, I'll take the afternoon.  
24 So we'll just do that, unless that's -- is that okay? And I'll  
25 take the afternoon.

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1 COMMISSIONER HOLMAN: That's fine with me. I've  
2 been out. I'm spending most of October.

3 CHAIRPERSON HOOD: Okay. I'll take the afternoon.  
4 I know I won't be able to do -- now, I see the 14th and 15th.

5 MR. BASTIDA: Okay. We have the 14th and the 15th.  
6 How many volunteers do I hear?

7 CHAIRPERSON HOOD: I will do -- well, I can't do  
8 the 15th. Somebody is already on --

9 COMMISSIONER FRANKLIN: I can do the 14th in the  
10 afternoon.

11 CHAIRPERSON HOOD: The 14th in the afternoon?

12 VICE CHAIRPERSON MITTEN: I'll take the 14th in --  
13 I was going to say I'll take the 14th in the --

14 CHAIRPERSON HOOD: You're on the 15th.

15 VICE CHAIRPERSON MITTEN: I know.

16 CHAIRPERSON HOOD: I'll do the 14th in the morning.

17 VICE CHAIRPERSON MITTEN: Oh, fine. Okay, then.

18 MR. BASTIDA: Okay. So afternoon will be Mr.  
19 Franklin, and the morning will be Ms. Mitten.

20 VICE CHAIRPERSON MITTEN: No. Mr. Hood.

21 CHAIRPERSON HOOD: No, the morning will be Anthony  
22 Hood.

23 MR. BASTIDA: Mr. Hood?

24 CHAIRPERSON HOOD: Right. Because Ms. Mitten is  
25 coming on the 15th.

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1 MR. BASTIDA: Okay. On the 15th, okay, that is  
2 George Washington University. So I guess we know who will be  
3 here.

4 VICE CHAIRPERSON MITTEN: Yes.

5 MR. BASTIDA: How about November 21st?

6 CHAIRPERSON HOOD: Let's see if Mr. Parsons will  
7 stay all day, because I know he --

8 MR. BASTIDA: Well, November 21st will -- oh, it's  
9 --

10 CHAIRPERSON HOOD: Somebody has him down here.  
11 They just have to verify it.

12 MR. BASTIDA: Okay. I'll verify that on Thursday  
13 when he's here.

14 CHAIRPERSON HOOD: Okay. And the 28th?

15 MR. BASTIDA: And who is -- the 28th, which is the  
16 Tuesday before the Thanksgiving, or is it just after?

17 CHAIRPERSON HOOD: The 28th.

18 MR. BASTIDA: No. It's the Tuesday before  
19 Thanksgiving -- I mean, after Thanksgiving.

20 VICE CHAIRPERSON MITTEN: I'll do that.

21 CHAIRPERSON HOOD: I'll do that one.

22 VICE CHAIRPERSON MITTEN: Oh, you want to do that  
23 one?

24 CHAIRPERSON HOOD: Yes, I'll do that.

25 VICE CHAIRPERSON MITTEN: That's all day.

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1 CHAIRPERSON HOOD: Yes.

2 VICE CHAIRPERSON MITTEN: Okay. Fine.

3 CHAIRPERSON HOOD: Unless you want to switch it up.

4 VICE CHAIRPERSON MITTEN: No. No, no. It's fine.

5 It's easier for you that way.

6 MR. BASTIDA: Okay. Thank you.

7 The list of new cases filed you basically have  
8 discussed them -- I don't want to say to death today, but it's  
9 almost.

10 And then, that concludes -- and there has been no  
11 orders published, so that concludes the agenda.

12 CHAIRPERSON HOOD: Okay. If everything is in  
13 order, I'd like to thank all of those who stuck it out, the  
14 community people who stuck it out with us; I see two. But if  
15 everything is in order, this meeting is adjourned.

16 (Whereupon, at 5:29 p.m., the proceedings in the  
17 foregoing matter were adjourned.)

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