

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR PUBLIC MEETING

+ + + + +

MONDAY

NOVEMBER 8, 2010

+ + + + +

The Regular Meeting of the
District of Columbia Zoning Commission
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 6:30 p.m., Anthony J. Hood,
Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
KONRAD SCHLATER, Vice Chairman
GREG SELFRIDGE, Commissioner
PETER MAY, Commissioner (NPS)
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director
SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director
JOEL LAWSON
STEVEN COCHRAN
MATT JESICK
TRAVIS PARKER
ARLOVA JACKSON
ART RODGERS
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on
November 8, 2010.

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

6:43 p.m.

CHAIRPERSON HOOD: Okay. First, let me apologize for being a few moments late.

Before we get started I'd like to advise everyone that there's a gentleman in the room, if you look over your shoulders, from the Office of Cable Television who will be filming for an internal video for the Office of Zoning. So I'm being assured that you won't see yourself on 16, 13 or any other channel. This is internal. So, okay.

Okay. This meeting will, please, come to order. Good evening, ladies and gentlemen. This is the November 8, 2010 Public Meeting of the Zoning Commission of the District of Columbia.

My name is Anthony Hood. Joining me are Vice Chairman Schlater, Commissioner Selfridge, Commissioner May, Commissioner Turnbull. We are also joined by the Office of Zoning staff, Director Weinbaum. I see Ms.

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1 Bushman, Ms. Sharon Schellin and Dr. Donna
2 Hanousek. Also the Office of the Attorney Mr.
3 Alan Bergstein. The Office of Planning under
4 the leadership of Ms. Steingasser.

5 Copies of today's meeting agenda
6 are available to you and are located in the
7 bin near the door.

8 We do not take any public testimony
9 at our meetings unless the Commission
10 requests someone to come forward.

11 Please, be advised that these
12 proceedings are being recorded by a Court
13 Reporter and is also webcast live.
14 Accordingly, we must ask you to refrain from
15 any disruptive noises or actions in the
16 hearing room. Please, turn off all beepers
17 and cell phones.

18 Does the staff have any preliminary
19 matters?

20 MS. SCHELLIN: No, sir.

21 CHAIRPERSON HOOD: If not, let's
22 proceed with our agenda.

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1 First Consent Calendar item, Zoning
2 Commission Case No. 08-14A Kelsey Gardens
3 Property Company, LC, Minor modification to
4 PUD at Square 421.

5 Ms. Schellin?

6 MS. SCHELLIN: Yes, sir. If the
7 Commission will recall, this case was on our
8 agenda, the October 18th agenda, rather, and
9 at that time the Commission asked the
10 applicant to provide some supplemental
11 information, which the applicant has done.
12 And therefore, the staff would ask the
13 Commission to please consider this case this
14 evening.

15 CHAIRMAN HOOD: Okay.
16 Commissioners, if you look at Exhibit 10 there
17 was some questions that I believe we asked
18 when we had this in front of us previously.
19 And it addressed the questions, and I won't
20 read all the responses we have in front of us.
21 We've already reviewed it.

22 Let me just ask the colleagues are

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1 your uncertainties or your questions answered
2 in this submission? Vice Chairman Schlater?

3 VICE CHAIRMAN SCHLATER: Mr.
4 Chairman, I ask for one clarification on the
5 timing of construction for both phases. And
6 the applicant has clarified that condition and
7 proposed making an amendment to it. I think it
8 looks good and I think it's ready to go.

9 CHAIRMAN HOOD: Okay. Were there
10 any other outstanding issues? Okay. If not, I
11 would move that we approve on the Consent
12 Calendar Zoning Commission Case 08-14A Kelsey
13 Gardens, Minor modification to PUD at Square
14 421 and ask for a second.

15 VICE CHAIRMAN SCHLATER: Second.

16 CHAIRMAN HOOD: It's been moved and
17 properly second. Any further discussion? Are
18 you ready for the question?

19 All those in favor aye?

20 ALL: Aye.

21 CHAIRMAN HOOD: Not hearing any
22 opposition, Ms. Schellin would you please

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1 record the vote?

2 MS. SCHELLIN: Yes. The staff
3 would record the vote five to zero to zero to
4 approve final actions in Zoning Commission
5 Case 08-14A. Commissioner Hood moving,
6 Commissioner Schlater seconding, Commissioners
7 May, Selfridge, Turnbull in support.

8 CHAIRMAN HOOD: Okay. Thank you,
9 Ms. Schellin.

10 Under Final Action Zoning
11 Commission Case No. 10-03 (Parcel Seven
12 Associates-Consolidated PUD at Square 912).

13 Ms. Schellin?

14 MS. SCHELLIN: Yes, sir. This case
15 is before the Commission for final action.
16 NCPC has submitted a report at Exhibit 53
17 stating that they have no issues with this
18 case.

19 Staff would ask the Commission
20 based on the applicant's request to reopen the
21 record, to accept a full set of architectural
22 plans. I do have those if the Commission would

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1 accept such a request and would put those in
2 the record if they'll do so.

3 CHAIRMAN HOOD: Okay. Do we do
4 need to do a vote or can we just do a general
5 consensus?

6 MS. SCHELLIN: General consensus
7 would be okay.

8 CHAIRMAN HOOD: We have a request
9 in front of us to reopen the record. It looks
10 like we have a general consensus.

11 MS. SCHELLIN: Okay.

12 CHAIRMAN HOOD: So we will reopen
13 the record for that.

14 You want to those out or do we
15 already --

16 MS. SCHELLIN: They're just for the
17 record.

18 CHAIRMAN HOOD: Oh, just for the
19 record. Okay.

20 For the record, let's move on.

21 We had a number of questions,
22 Commissioners, and we have in front of us

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1 responses to the procedural order, responses,
2 submissions to some of the issues, Exhibit 55.

3 And I think Ms. Schellin's already mentioned
4 this, but NCPC says "I find that the proposed
5 Consolidated PUD development Square 912, Lot
6 55 would not be inconsistent with the
7 Comprehensive Plan for the National Capital
8 Area, nor would it adversely effect any other
9 identified federal interests."

10 But I want to call your attention
11 to Exhibit 55. And we had some additional
12 questions and some outstanding issues. I
13 think one of them in particular we spoke about
14 thee mid-alley vehicle egress to the retail
15 would not reduce traffic in the private alley
16 and might increase it. And that was one of
17 the issues. And I think the applicant tries
18 to address that in Exhibit 55. We had a
19 number of things, but let's look at that
20 first. And I think it's spelled out on page
21 2. I'm not sure who brought that up or how it
22 got there, but whatever Commissioner it was

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1 just chime in.

2 COMMISSIONER MAY: Mr. Chairman, I
3 don't know if anybody else was concerned about
4 that, but I certainly was. And I was
5 interested to see if it could work. And I'm
6 not sure that I'm totally convinced that it
7 doesn't work, but I think that the explanation
8 was reasonable enough and I'm ready to move on
9 from that issue.

10 CHAIRMAN HOOD: Okay. Thank you,
11 Commissioner May. Was anyone else sharing
12 that concern?

13 VICE CHAIRMAN SCHLATER: I think I
14 asked. And it was looked at, and they don't
15 think it works. And I think that's okay.

16 CHAIRMAN HOOD: Okay. All right.
17 The other issue was the option. I thought we
18 gave them flexibility whether it was bollards
19 or concrete, and I may be getting it mixed up.

20 But I thought we gave them flexibility to go
21 with either Option 1 or Option 2, as I recall.

22 COMMISSIONER MAY: I think that's

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1 right, but that was not the bollards versus
2 the planter. The bollards and planters is a
3 new thing.

4 CHAIRMAN HOOD: Oh, that's a new
5 thing?

6 COMMISSIONER MAY: Yes.

7 CHAIRMAN HOOD: So that's another
8 issue that we have to deal with?

9 COMMISSIONER MAY: It's the parking
10 access, is that right?

11 CHAIRMAN HOOD: Wait a minute.
12 Maybe somebody could help me, but I thought
13 was that egress?

14 MR. BERGSTEIN: Option 1 and Option
15 2 concerns how the vehicles would enter in the
16 private alley and the difference between the
17 two options was whether or not there would be
18 one large curb cut that would be accessed by
19 both trucks and vehicles as opposed to two
20 separate ones. And that was an option on
21 Option 2.

22 And it's my understanding it's your

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1 recollection, you're right. decided they could
2 do either.

3 Bollards versus concrete planter
4 issue was that there is an area within the
5 alley itself that they had proposed a five
6 foot buffer for the residential properties.
7 The original drawings that were submitted
8 proposed actually showed bollards in that
9 area. You asked them to see if they could
10 enhance the security for the adjacent
11 neighbors. They came back with an alternative
12 suggesting that in lieu of the bollards they
13 could do a concrete planter. And so the
14 question is do you want to specify one or the
15 other, or both. Have a flexibility to do
16 either.

17 CHAIRMAN HOOD: Okay. So with the
18 issue with the curb cut, we've already decided
19 that. Thank you for the recollection, Mr.
20 Bergstein. We've already decided that we
21 would give them flexibility.

22 The other issue then is bollards

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1 and the concrete curb, I believe. We asked
2 them to look, a particular home was right
3 there, and we asked them to look at it. So
4 we're now being faced with on page 01 of the
5 submission, the rendering, we have Option 1
6 and Option 2.

7 COMMISSIONER TURNBULL: Mr.
8 Chairman, I'm not opposed to either Option 1
9 or Option 2. The only thing on Option 2, and
10 it's not just a concrete planter, it does have
11 a brick facing on it which I think is
12 appropriate. I think the applicant is being--
13 I think that's very acceptable.

14 I think the other thing I'd be
15 concerned about is drainage, that the planter
16 drains either back into the alley or away from
17 the property owner's townhouse. But other than
18 that, I think either one would be acceptable.

19 CHAIRMAN HOOD: Mr. Turnbull, I'm
20 not putting you on the stand, but do you think
21 Option 1 would we still have a problem with
22 drainage?

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1 COMMISSIONER TURNBULL: Well, it
2 looks like it's slopping toward the alley.
3 That's mainly a landscaping issue. I'm not
4 concerned as much there other than the built
5 up planter.

6 CHAIRMAN HOOD: No. I'm talking
7 about reasonable action. I actually like
8 Option 2.

9 COMMISSIONER TURNBULL: Well, I
10 think Option 2 is every -- it's a very
11 handsome structure.

12 CHAIRMAN HOOD: So, unless I hear
13 something, I like Option 2. So I guess the
14 only concern we have is to make sure of the
15 drainage.

16 COMMISSIONER TURNBULL: Yes, that
17 would be only concern; just to make sure that
18 the drainage from the planter does not
19 interfere with the townhome in some way.

20 CHAIRMAN HOOD: Okay. So does
21 everyone agree with Option 2 or do we want to
22 give them flexibility with this one also?

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1 VICE CHAIRMAN SCHLATER: Mr.
2 Chairman?

3 CHAIRMAN HOOD: Vice Chairman
4 Schlater?

5 VICE CHAIRMAN SCHLATER: I think
6 Option 1 and Option 2 are both fine with me.
7 I guess I wouldn't support Option 2 if for
8 whatever reason the homeowner didn't support
9 it. But if they are in support of it, and I
10 don't know if that was addressed in the
11 submission, then I would definitely support
12 Option 2.

13 COMMISSIONER TURNBULL: That's a
14 good point that the Vice Chair brought up. I
15 would agree with that also.

16 CHAIRMAN HOOD: So it looks like
17 we're going flexibility. So, we'll just do
18 everything with flexibility and go home, huh?

19 COMMISSIONER MAY: Yes, I would
20 prefer that we have that flexibility because I
21 think I could make an argument either way
22 about what the best solution was. And if I

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1 lived right next to it, I might have more
2 opinions about which would be best.

3 So, I think that it's best to leave
4 some flexibility on this issue.

5 On the curb cut issue and the
6 access to the parking, I'm a little bit
7 inclined to go with the single curb cut and
8 have folks enter off the alley rather than off
9 the street. So I'm inclined toward Option 2
10 in that regard.

11 CHAIRMAN HOOD: So are you
12 revisiting our first option that we gave for
13 it? Is that what you're doing?

14 COMMISSIONER MAY: Yes, I mean,
15 we've been bouncing back and forth a little
16 bit. I don't think we quite put the access to
17 parking issue completely to bed there. But
18 maybe we should just do these one at a time.

19 So, bollards versus planter, I
20 think flexibility. I think the consensus was
21 flexibility, is that right?

22 CHAIRMAN HOOD: Right.

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1 COMMISSIONER MAY: Lots of heads
2 nodding.

3 CHAIRMAN HOOD: Yes. And I thought
4 the first was flexibility, which I thought we
5 decided that at the hearing.

6 VICE CHAIRMAN SCHLATER: I don't
7 think Commissioner May, were you at the
8 hearing?

9 CHAIRMAN HOOD: Oh, is that what it
10 was?

11 COMMISSIONER MAY: I was not at the
12 hearing. No.

13 CHAIRMAN HOOD: Okay. All right.
14 So, Commissioner May, what would you like to
15 do? Option 2?

16 COMMISSIONER MAY: I think Option 2
17 is better.

18 CHAIRMAN HOOD: Does anyone else
19 feel moved or changed to go against our
20 already decided flexibility to go along with
21 Commissioner May? Not hearing anything,
22 Commissioner May, so I think it dies.

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1 COMMISSIONER MAY: That's okay.

2 CHAIRMAN HOOD: We won't even put
3 up a motion to go forward.

4 COMMISSIONER MAY: No. I'm not
5 going to push it that far.

6 CHAIRMAN HOOD: All right.

7 COMMISSIONER MAY: It's just a
8 slight preference.

9 CHAIRMAN HOOD: Gotcha. Okay.

10 One of the other questions was the
11 affordable housing amenity as a public
12 benefit. I'm not sure how that rolls, but
13 that's one of the questions.

14 VICE CHAIRMAN SCHLATER: Mr.
15 Chairman, I probably raised that.

16 CHAIRMAN HOOD: Vice Chairman
17 Schlater?

18 VICE CHAIRMAN SCHLATER: I think we
19 were going through the list of proffered
20 public benefits and amenities just to make
21 sure they were in fact benefits and amenities.
22 And I don't think anybody would argue that

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1 affordable housing is a good and excellent
2 thing. I think just in this case the
3 inclusionary zoning regulations do apply to PU
4 projects. The applicant is not providing
5 anymore than the minimum percentage affordable
6 housing. They're in fact required to provide
7 8 percent of the gross floor area for
8 affordable residential units.

9 So, I just don't think it should be
10 considered a proffered public benefit and
11 amenity, and I would recommend striking it
12 from the list.

13 CHAIRMAN HOOD: I would
14 wholeheartedly concur, Vice Chairman Schlater,
15 with your analysis and your recommendation.

16 Anyone else? Okay. So ordered.

17 VICE CHAIRMAN SCHLATER: Mr.
18 Chairman, I will say I also asked the
19 applicant to follow-up on whether LEED Silver
20 in fact exceeded the requirements under the
21 Green Building Act. And they came back and did
22 the analysis, and it does in fact exceed the

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1 requirements, and therefore we should be
2 giving them credit for providing that as a
3 benefit and amenity.

4 CHAIRMAN HOOD: Okay. Let me ask
5 Vice Chairman Schlater, were you the one also
6 about the public projects benefits? Did you
7 ask about that?

8 MR. BERGSTEIN: I added into the
9 email that I sent you just because in the
10 event you decided that the affordable housing
11 wasn't a public benefit, then the question is
12 does that change your views as to the
13 sufficiency of the public benefits versus the
14 zoning flexibility proffered. So, I don't
15 think anybody raised that. I just raised that
16 as a final -- there was a lot of discussion,
17 proposed action about whether or not the
18 amenities were sufficient. Commissioner
19 Schlater described them as light at one point.
20 The applicant responded in their submission
21 explaining why they felt that the public
22 benefits were similar to other projects of the

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1 same sort.

2 So, since you did raise the issue
3 on proposed actions to sufficiency of the
4 amenities I thought and asked for a response,
5 which you got, I thought you should then
6 resolve the issue.

7 CHAIRMAN HOOD: Okay. Well, let me
8 ask does anyone still think even with the
9 issue about the affordable housing not being a
10 public benefit, does anyone believe that the
11 amenities are still liked?

12 VICE CHAIRMAN SCHLATER: Mr.
13 Chairman, I did raise that at the hearing.
14 And I believe that -- I think the reality is
15 that the list of proffered public benefits and
16 amenities, there's not a lot that jumps out at
17 me that says they're providing exceptional
18 things. But in reading the applicant's
19 submission, which was supplemented with
20 letters from the ANC, the Councilmember, the
21 Mayor's office, I think the overarching
22 message that I got from that submission is

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1 that the project itself is the amenity. Just
2 the fact that you're building a new project on
3 a place that's an under utilized site with
4 less than -- you know, it doesn't have street-
5 fronting retail as of now, there is not
6 housing on the site right now. If it does get
7 built, it will go a long way towards
8 developing H Street and bring the east side
9 and the west side of H Street together. I
10 think it's a project everybody wants to see
11 get done. So I'm not going to hold it up over
12 the benefits and amenities issue.

13 CHAIRMAN HOOD: I just remember a
14 case I thought the amenities was light and it
15 never went through. So, they do have a
16 consistency of -- yes, I think ANC 6A as you
17 already stated. They also have a support
18 letter from the Deputy Mayor's Office from Mr.
19 Derek Woody, and also I thought I saw one
20 other letter.

21 But anyway, as you stated, it looks
22 like the project -- and it also mentioned I

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1 think somewhere in their submission that they
2 had been working, I think some three years
3 with this community to try to get to this
4 point.

5 So, anything else on this? Oh,
6 wait a minute. I'm sorry.

7 Commissioner May? Roof-top?

8 COMMISSIONER MAY: Roof-top
9 structures. Yes. I'm fine with the latest
10 version of that. I think that was an
11 improvement in the end.

12 CHAIRMAN HOOD: And also the
13 elevator issue.

14 COMMISSIONER MAY: And, you know, I
15 could still argue that -- I mean, the
16 explanation wasn't very detailed, but I'll let
17 that go.

18 CHAIRMAN HOOD: Okay. I don't
19 think there's anything else. Is there
20 anything else, Commissioners?

21 Okay. If not, I'll obtain a motion
22 to approve.

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1 COMMISSIONER TURNBULL: Mr. Chair,
2 I would like to move that we approve Zoning
3 Commission Case No. 10-03 Consolidated PUD,
4 Parcel Seven Associates, LLC, Square 912, Lot
5 55 and ask for a second.

6 COMMISSIONER MAY: Second.

7 CHAIRMAN HOOD: Okay. It's been
8 moved and properly second. Any further
9 discussion? Are you ready for the question?
10 All those in favor aye.

11 ALL: Aye.

12 CHAIRMAN HOOD: Not hearing any
13 opposition, so ordered.

14 Staff, would you record the vote?

15 MS. SCHELLIN: Yes, sir. I believe
16 that Commissioner Selfridge did not
17 participate in this case, if I'm not mistaken.

18 So, the staff would record the vote
19 four to zero to one. Commissioner Turnbull
20 moving, Commissioner May seconding,
21 Commissioners Hood and Schlater in support.
22 Commissioner Selfridge not voting having not

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1 participated.

2 CHAIRMAN HOOD: Commissioners, I
3 think what i'm going to do is we're going to
4 slow up a little bit. I don't want any cases
5 to running together and getting them mixed up
6 like I'm doing. So we're going to slow up
7 just a little bit.

8 Zoning Commission Case No. 10-16
9 (Office of Planning Test Amendment to ' 2515
10 Open Arcades). Ms. Schellin?

11 MS. SCHELLIN: Yes, sir. This a
12 test amendment to ' 2515 for Open Arcades. As
13 you said, we have an NCPC report at Exhibit 13
14 that shows that they have no issues with this
15 case. And the staff would ask the Commission
16 to please consider final action.

17 CHAIRMAN HOOD: Okay,
18 Commissioners, as Ms. Schellin has already
19 mentioned, the amendment repeals the provision
20 that incitivizes construction of open arcades
21 through alliance of an FAR credit and expanded
22 authority to close open arcades in all SP,W,

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1 CR, C zoned districts subject to the same
2 limitations that existed in the repeal
3 provisions.

4 I believe this was fully vetted.
5 I'm not sure if we did a bench decision. But
6 I think this was fully vetted at the hearing.

7 And with that, unless there is any discussion
8 needed, I would move that approve Zoning
9 Commission Case No. 10-16 and ask for a
10 second.

11 VICE CHAIRMAN SCHLATER: Second.

12 CHAIRMAN HOOD: It's moved and
13 seconded. Any further discussion? Are you
14 ready for the question? All those in favor
15 age.

16 ALL: Aye.

17 CHAIRMAN HOOD: Not hearing any
18 opposition, Ms. Schellin would you please
19 record the vote?

20 MS. SCHELLIN: Yes. The staff has
21 recorded at five to zero to zero to approve
22 final action in Zoning Commission Case No. 10-

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1 16. Commissioner Hood moving, Vice Chairman
2 Schlater seconding, Commissioners May,
3 Selfridge and Turnbull in support.

4 CHAIRMAN HOOD: Okay. Next Zoning
5 Commission Case No. 10-15 (Office of Planning
6 Text Amendment to ' 3004 Minutes). Ms.
7 Schellin?

8 MS. SCHELLIN: Yes, sir. This case
9 is before the Commission too for final action.
10 It was a text amendment to Section 3004. And
11 because this was a text amendment to the
12 Office of Planning's internal proceedings, it
13 did not need to be referred to NCPD.

14 CHAIRMAN HOOD: I'm going to first
15 start off by commending the Office of Planning
16 under the leadership of Dr. Weinbaum and
17 others who worked on this. This is something
18 that I noticed that we've been trying to get
19 done now I want to say 12 years. But it's
20 been around a while, so I want to commend the
21 Office of Planning for getting this done.

22 Again, Commissioners, this is the

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1 Office of Planning the request dated to us
2 July the 1st, 2010 Petition of Zoning
3 Commission for text amendments to remove all
4 reference to meeting minutes in the Zoning
5 Regulations. Office of Planning provided a
6 secondary report on July the 2nd.

7 So, with that I think this is
8 pretty straightforward. Any discussion?
9 Anybody want to make a motion?

10 COMMISSIONER TURNBULL: Mr. Chair,
11 I move that we approve Zoning Commission Case
12 No. 10-15 Text Amendment to 11 DCMR Chapter 30
13 ' 3004 minutes and transcript and ask for a
14 second.

15 COMMISSIONER MAY: Second.

16 CHAIRMAN HOOD: Okay. It's been
17 moved and properly second. Any further
18 discussion? Are we ready for the question?
19 All those in favor aye.

20 ALL: Aye.

21 CHAIRMAN HOOD: Not hearing any
22 opposition, Ms. Schellin will you please

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1 record the vote?

2 MS. SCHELLIN: Yes. Staff records
3 the vote five to zero to zero to approval
4 final action in Zoning Commission Case No. 10-
5 15. Commissioner Turnbull moving,
6 Commissioner May seconding, Commissioners
7 Hood, Schlater and Selfridge in support.

8 CHAIRMAN HOOD: Next for
9 consideration Final Action Zoning Commission
10 Case 09-06. This is the Abdo New York, LLC -
11 Consolidated PUD and Related Map Amendment at
12 Square 4268 and Various parcels. Ms.
13 Schellin?

14 MS. SCHELLIN: Yes, sir. The
15 Commission may not recall, this was a case
16 that a hearing back in July of 2009 and at
17 that the Commission took proposed action at
18 the conclusion of the hearing. And at the
19 conclusion of the hearing the Commission asked
20 for some additional documents to be provided
21 before final action would be taken. At that
22 time it was indicated that final action would

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1 be scheduled for September of 2009. However,
2 the applicant has not provided those
3 additional documents and therefore, final
4 action has never been scheduled.

5 Since then I've contacted the
6 applicant's attorney and it's my understanding
7 that the owners no longer have control of this
8 site. And so what staff would ask the
9 Commission tonight is to consider whether they
10 need the additional documents in order to
11 proceed with final action, and just ask the
12 Commission how they would like to proceed with
13 this case.

14 CHAIRMAN HOOD: Okay.
15 Commissioners, we have a request in front of
16 us, and we also have parts of the transcript.
17 And it looks like, Commissioners, you asked
18 for some pretty specific items which were very
19 important to moving forward in final action.
20 I'd just like to know if those things are
21 still relevant, and if they are, then we will
22 see how we proceed from there.

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1 Let me ask. When I'm looking I see
2 Commissioner Turnbull, I see Commissioner May
3 and I believe I see -- I don't see the Vice
4 Chair in what I have here. You must have been
5 quiet that night. Okay.

6 Well, let me go to my two
7 colleagues and see if what you asked for
8 before final is very germane. If not, we'll
9 figure out how we're going to proceed.

10 Commissioner May or Commissioner
11 Turnbull, either one?

12 MS. SCHELLIN: Chairman Hood, Vice
13 Chairman Schlater was part of that hearing.

14 CHAIRMAN HOOD: Oh, okay.

15 MS. SCHELLIN: I think it may have
16 been his first, or one of his first. It was in
17 July. So, it wasn't too long after he started.

18 CHAIRMAN HOOD: Well, he didn't ask
19 for something that night, so that must have
20 been his first.

21 Okay. We'll just take our time. It
22 was 2009, it wasn't like it was yesterday.

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1 COMMISSIONER TURNBULL: Mr. Chair,
2 I think my comments in just going back to the
3 transcript are those, you know what we often
4 do when we don't like something with the
5 designs we're asking for comments. So, I was
6 concerned about the garages and the facade and
7 how it related to the rest of the building.
8 So, I was basically looking for some ideas,
9 some alternates as to how they could come up
10 with a better solution. So, I would be
11 looking for that.

12 CHAIRMAN HOOD: Great. I think
13 that's pretty important.

14 Commissioner May?

15 COMMISSIONER MAY: Yes, I would
16 agree. I mean, we certainly could take the
17 matter up for a vote without this information
18 in the record. But I think some of the things
19 we talked about were pretty important to what
20 we thought would make a successful project.
21 So, I would much rather see them before we
22 vote than, you know go with the hand we're

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1 dealt.

2 CHAIRMAN HOOD: Okay. Okay. The
3 way I see, and my colleagues you can chime it,
4 is due to the time that this has been out
5 there, also due to the comments that Ms.
6 Schellin has mentioned in trying to contact
7 and get this thing moving to get the
8 information to us which we asked for it, and
9 the longevity of it, and also the importance
10 of what my colleagues have asked for, I would
11 suggest and make a recommendation that we do
12 three weeks. And, Ms. Schellin, I ask you for
13 a time certain. And at that time if we have
14 not received any information, and I hate to
15 say this because this is New York Avenue in
16 Ward 5, but that we would have to dismiss this
17 case.

18 MS. SCHELLIN: That would put us to
19 December 6th, and staff will contact the
20 attorney in this case and let them know the
21 deadline. And then we'll place this on the
22 December 13th agenda. Bring it back to you.

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1 CHAIRMAN HOOD: Okay. So we don't
2 have the submission by December 6th, we will
3 deal with it accordingly. And my
4 recommendation at that time is going to be
5 that we dismiss this case.

6 MS. SCHELLIN: Okay. Thank you.

7 CHAIRMAN HOOD: Thank you.

8 Okay. Let's move right to Zoning
9 Commission Case No. 07-02B. This is the
10 Highland Park West PUD Modification at Square
11 2672. Ms. Schellin?

12 MS. SCHELLIN: Yes, sir. This is a
13 case that is before you for final action also.
14 Exhibit 43 is the NCPC report. Again, NCPC
15 has no issue with this case and we would ask
16 the Commission to please consider final
17 action.

18 CHAIRMAN HOOD: Okay. Thank you,,
19 Ms. Schellin.

20 If you look at Exhibit 45,
21 colleagues, I know I had asked Mr. Danta, I
22 think it was pretty straightforward, I just

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1 asked him about his track record and all the
2 dwellings he has done in the city as far as
3 affordable housing. He has submitted that. I
4 personally don't have any major issues unless
5 my colleagues see something.

6 But I did have one with Exhibit 46,
7 and I'm just trying to figure out. It says "In
8 addition after final action in this case to
9 ask for request for relief from the Zoning
10 Commission to submit a consolidated set of PUD
11 plans." And I think we normally do that. I
12 know it was somewhere. I think we normally
13 do that before we make final action. And I
14 guess I'm just perplexed of why we're doing
15 this after.

16 MS. SCHELLIN: I think that the
17 reason why this request was made to do it
18 afterwards was based on the decision that you
19 guys make this evening. And my understanding
20 from the applicant is that we will get those
21 plans within the next day or two.

22 We have done it this way before. I

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1 mean,, it's a very short time period. It's a
2 matter of based on the decision that you make
3 tonight, they wanted to have the plans based
4 on the decision made tonight. And it was a
5 little bit of a misunderstanding whether they
6 brought them tonight or not.

7 CHAIRMAN HOOD: Okay.

8 MS. SCHELLIN: So, we'd just ask
9 that in this case that you allow them to do
10 that.

11 CHAIRMAN HOOD: Okay. Does anyone
12 have any issues with this or any comments, any
13 questions even about the -- I see we're
14 looking at the pink, green and yellow sheet;
15 any questions about the track record or
16 anything?

17 Okay. Again, we have a request to
18 submit, the applicant requested relief from
19 the Zoning Commission to submit a consolidated
20 set of PUD plans incorporating the changes
21 made to the plans throughout this application
22 process. I would make sure staff make sure

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1 that our wishes are represented on those
2 plans. I'm sure we can trust the counsel of
3 that applicant.

4 Okay. Any other questions or
5 comments?

6 COMMISSIONER SELFRIDGE: Mr.
7 Chairman, I just wanted to touch on Exhibit 45
8 because originally I had some questions about
9 the affordable housing as well, and it's worth
10 certainly pointing out that the two projects
11 that are cited here, the Kenyon Square
12 Condominium project and both the Highland Park
13 Phase 1, and both of these have over 20
14 percent of the residential floor area devoted
15 to affordable housing, and they do provide a
16 chart on the back and it shows that it looks
17 like Kenyon Square is a for sale project, and
18 certainly in this case they've met those
19 requirements or very close it. Actually, they
20 have met those requirements, a little
21 variation but basically they have.

22 And also, on the Highland Park

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1 which is a rental property, I don't see it
2 right here but I know from reviewing it, that
3 that case they did as well. So I think that in
4 both examples they've cited they've certainly
5 met that requirement of over 20 percent of the
6 affordable housing.

7 CHAIRMAN HOOD: Okay. Vice
8 Chairman?

9 VICE CHAIRMAN SCHLATER: I, too,
10 was looking at that exhibit. And I just found
11 it interesting that if you look at them, I
12 don't think this says anything about the
13 applicant. I read this and it looks like the
14 applicant's met its commitments in terms of
15 affordable housing. But just when we base our
16 affordable housing based on area median
17 income, which is very high in the District of
18 Columbia MSA, you end up with units that are
19 affordable under the law, but are being sold
20 for \$322,000 and that are being rented for
21 over \$2,000 a month, which a lot of people
22 wouldn't consider affordable housing.

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1 Just when we're proffered things in
2 terms of moderate income affordable housing
3 targeted towards 80 percent of AMI we should
4 have no illusions that that means those units
5 are seriously affordable.

6 CHAIRMAN HOOD: I really appreciate
7 your comments because I've questioned 80 and
8 60 percent at AMI. I look more at 30. I know
9 when we had some hearings and I was even
10 trying to get to 20 and I was told at that
11 time that developers said that couldn't be
12 done. But I do know that we have a project
13 that was just done that all of it was at 30
14 percent of AMI. That's kind of where I am.
15 But I appreciate your comments and agree what
16 is affordable.

17 Any other? We have what's in front
18 of us at this time. So, what I would do, I
19 would recommend that we approve this project
20 as it is because we went through it, and
21 actually it has met as Commissioner Selfridge
22 has mentioned, has met his commitment to us or

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1 his commitment especially in his track record,
2 which we asked for.

3 Okay. That was all the issues I
4 had on that. I would move that we approve
5 Zoning Commission Case No. 07-02B, Highland
6 Park West PUD Modification at Square 2672 and
7 ask for a second.

8 VICE CHAIRMAN SCHLATER: Second.

9 CHAIRMAN HOOD: It's been moved and
10 properly seconded. Any further discussion?
11 Are you ready for the question? All those in
12 favor aye?

13 ALL: Aye.

14 CHAIRMAN HOOD: Not hearing any
15 opposition, Ms. Schellin could you record the
16 vote?

17 MS. SCHELLIN: Yes, sir. Staff
18 would just note that Commissioner May did not
19 participate in this case. So, staff would
20 record the vote four to zero to one. Chairman
21 Hood moving, Vice Chairman Schlater seconding,
22 Commissioners Selfridge and Turnbull in

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1 support. Commissioner May not voting having
2 not participated.

3 CHAIRMAN HOOD: Okay. Next, Zoning
4 Commission Case No. 05-36D, K Street
5 Developers, LLC - Two-Year PUD Time Extension
6 at Square 749. Ms. Schellin?

7 MS. SCHELLIN: Yes, sir. The
8 applicant is requesting a two year time
9 extension for the additional time is being
10 requested for a permit and to start
11 construction of the second stage of the larger
12 project. So, staff were to ask the Commission
13 to please consider action on this case.

14 CHAIRMAN HOOD: Okay.
15 Commissioners, we have Exhibit 1 in front of
16 us. Well, anyway, it's dated October the 8th,
17 2019. Also, we have an extension request
18 second stage of PUD Case 05-36D Office of
19 Planning report, which recommends the
20 Commission approve the requested two year time
21 extension.

22 The request for a two year

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1 extension of a second stage planning and
2 development related Zoning Map Amendment
3 approved by the Zoning Commission as Order
4 No. 05-36A, which issued on November the 14th,
5 2008. So the PUD is such that a building
6 permit application must be filed no later than
7 November the 14th, 2012. And I think what
8 we're asked to do is to extend our order from
9 November 14th, 2008 to November the 14th,
10 2010, am I correct, Ms. Schellin?

11 MS. SCHELLIN: Yes, sir.

12 CHAIRMAN HOOD: All right. For two
13 years. And again, if you look through the
14 submissions, it's got a template in there.
15 But, you know, the economy is an issue, and it
16 talks about the requirements of the extension.
17 So, let me just open it for comments. Any
18 comments?

19 VICE CHAIRMAN SCHLATER: Ms.
20 Schellin, is it correct that they've submitted
21 a modification as well to this PUD?

22 MS. SCHELLIN: I believe they have.

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1 It's a separate case. I believe that's 05-36E.

2 VICE CHAIRMAN SCHLATER: But that
3 has no bearing on the extension?

4 MS. SCHELLIN: No. They are two
5 separate issues under different rules.

6 VICE CHAIRMAN SCHLATER: Okay.
7 Thank you.

8 MS. SCHELLIN: Just to clarify, a
9 modification does not extend the time they
10 have to actually ask for it, separate issues.

11 CHAIRMAN HOOD: Okay. Commissioner
12 Selfridge?

13 COMMISSIONER SELFRIDGE: Thank you,
14 Mr. Chairman.

15 I'm just looking at this letter
16 here, it's Exhibit 6, from Anne Phelps. She's
17 the Single Member District Commission at ANC
18 6C-04. And I was just struck by she says that
19 the K Street Developers, LLC have been model
20 neighbors, that phase 2 portion of the
21 property, which we're talking about tonight
22 has been secured while maintaining the cover

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1 in grass. The property owners allowed the
2 area to actively programmed as amenity for the
3 community, and they regularly allow the
4 community to make use of the green space. And
5 I just think that that's a pretty good
6 statement coming out of the community of what
7 kind of neighbor the developer has been. So,
8 I think that's worth mentioning.

9 CHAIRMAN HOOD: And that's a good
10 point, Commissioner Selfridge. Because for
11 some reason I had highlighted, for example,
12 the Noma Bid hosted weekly movies. And that, I
13 just didn't highlight the whole part, but I
14 appreciate that, you're right they've been
15 great neighbors. So, good point.

16 Anything else, Commissioners?
17 Commissioner May?

18 COMMISSIONER MAY: No. I was just
19 going to get ready to second, or make a
20 motion, or second it, whatever.

21 CHAIRMAN HOOD: Okay. Go right
22 ahead, Commissioner May.

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1 COMMISSIONER MAY: I would move
2 that we draft the extension request for the
3 second stage of PUD in Zoning Commission Case
4 No. 05-36D, 250 K Street Northeast.

5 COMMISSIONER TURNBULL: Second.

6 CHAIRMAN HOOD: It's been moved and
7 properly second. Any further discussion? Are
8 we ready for the question? All those in favor
9 aye.

10 ALL: Aye.

11 CHAIRMAN HOOD: Not hearing any
12 opposition, Ms. Schellin would you record the
13 vote?

14 MS. SCHELLIN: Yes. Staff records
15 the vote five to zero to zero to approve final
16 action in Zoning Commission Case No. 05-36D.
17 Commissioner May moving, Commissioner Turnbull
18 seconding, Commissioners, Hood, Schlater and
19 Selfridge in support.

20 CHAIRMAN HOOD: Okay. Let's move
21 upon the Proposed Action. Zoning Commission
22 Case 08-06 (Office of Planning - Comprehensive

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1 Zoning Regulations Review, Use & Height Text).
2 Ms. Schellin?

3 MS. SCHELLIN: Yes sir. This is
4 our first text under the ZRR process for the
5 Commission to take proposed action. And so we
6 would ask the Commission to please consider
7 action on the first topic Use and Height.

8 CHAIRMAN HOOD: Okay. Again, I'll
9 be honest, I was actually looking for the
10 worksheet. But, again, this is our first time
11 doing text, so bear with us. And again, you
12 know what we go through tonight at anytime we
13 may go back and revisit it, but for now let's
14 move forward.

15 So what I would like to do, and we
16 did ask for, I think, ANC 6B and also Ms.
17 Barbara Kahlow's -- those are the only two
18 submissions I think we asked for. Okay.

19 So, I would like to work off of
20 Exhibit 37, which is the Office of Planning's
21 supplemental report and work from there. And
22 also they have the proposed chapter for Title

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1 11 subtitle (b), and all that towards the
2 back.

3 So, let's start with -- I guess the
4 best way is to start with 400.3, 400.21.
5 We'll make explicit relationship between the
6 height regulations and the District Zoning
7 Text and height regulations in the Federal
8 Height Act. And, I'll tell you, that has been
9 going on an on probably for much longer than
10 I've probably been around.

11 Now, we had a lot of submissions, I
12 want to start it with, from a lot of different
13 people telling us this is how it should be
14 done and that's how it should be done. Some we
15 looked at, some we didn't. It doesn't mean
16 that we're not going to consider it at some
17 point. It's just that now we're just moving
18 forward to try to get something get done, and
19 we may go back and revisit it. Case in point,
20 I'm looking at one where one person talks
21 about the titles include habitual space, if so
22 believes that the height of the tower should

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1 be subject to the height limits. Those sort
2 of things as we go along that we're taking
3 into consideration as e deliberate.

4 Okay. As we see OP recommends the
5 following revision of the previously propose
6 400.2 to 400.3. Commissioners, we've already
7 read that. Any issues or any strikes?

8 I don't necessarily think, and you
9 all can help me with this is, this is the
10 first time we did it, I don't necessarily
11 think I need read it. I don't think so, do we?

12 Okay. But if someone has a better way to go
13 through this, that'll be great. But I think
14 we've already the text. I don't necessarily
15 want to sit up here and read the whole thing.

16 COMMISSIONER MAY: Just try to go
17 at it section-by-section or by the topics as
18 organized in the supplemental report from OP.

19 CHAIRMAN HOOD: I'm going just how
20 it's organized here in the supplemental
21 report.

22 COMMISSIONER MAY: Okay. Well,

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1 that's fine.

2 CHAIRMAN HOOD: So what I'm doing
3 now, we're looking at 400.3 and 402.1.

4 COMMISSIONER MAY: 2.1, right.

5 CHAIRMAN HOOD: Okay.

6 COMMISSIONER MAY: Yes, I think
7 that's fine the way it's been edited in the
8 final version.

9 CHAIRMAN HOOD: Okay. And I'm
10 hoping everybody's following this who has a
11 copy of it. Everybody has a copy of it. I
12 don't see anybody move their head, nod their
13 head. And are we giving that to the audience
14 also?

15 MS. SCHELLIN: It's in the record,
16 and I believe OP has made it available on
17 their website.

18 CHAIRMAN HOOD: Okay. If not,
19 maybe we need to do that. We'll work that out.

20 COMMISSIONER MAY: It's not an
21 awful lot of words, maybe it's worth just
22 reading 400.3.

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1 CHAIRMAN HOOD: Let me read it.
2 Okay. 400.3 "In addition to the height
3 limitations of the Zoning Regulations all
4 buildings are subject to and shall conform
5 with the height limitations of the D.C.
6 Official Code 6-601.08, the regulatory
7 interpretation of and rules pertaining to the
8 height adopted by the District Department of
9 Consumer and Regulatory Affairs, DCRA, are
10 location in subtitle (m)."

11 402.1 "This section provides rules
12 of measurements for the purposes of
13 determining compliance with zone height
14 limitations. Unless otherwise stated the
15 rules of this section are identified two DCRA
16 rules for the measurement of building height
17 under the Height Act which appears in subtitle
18 (m)." Okay. Zoning Commission Case 08-06
19 (Office of Planning - Comprehensive Zoning
20 Regulations Review, Use & Height Text).

21 COMMISSIONER MAY: So the objective
22 here, the essence of this is to state that

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1 height is also subject to the Height Act and
2 it's been codified by DCRA, there are
3 regulations related to it, and it references
4 those regulations.

5 CHAIRMAN HOOD: Okay. I don't want
6 to misspeak, so what I am going to also allow
7 is Mr. Parker, who has worked on this
8 diligently, he also has the award I know, so I
9 want to make sure we don't put words in my
10 mouth, I believe you're right, Commissioner
11 May, but Mr. Parker.

12 MR. PARKER: Commissioner May is
13 absolutely right. That was the intent of
14 these two sections.

15 CHAIRMAN HOOD: Okay. All right.
16 I guess what we can do is go through all of
17 them. Maybe we'll take turns in reading.
18 Commissioner May, could you read number two
19 for us, please?

20 COMMISSIONER MAY: Well, number 2
21 in the report was a specific question: What
22 was the timetable for DCRA propose codified

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1 and interpretation of the Height Act. And the
2 answer was "DCRA's legal counsel is reviewing
3 the Zoning Administrator's draft regulations
4 related to the Height Act. DCRA has not
5 provided a time table for the completion of
6 this review or for the advertising of proposed
7 regulation."

8 I mean, I think in this regard what
9 I would be looking for is just comfort in
10 knowing that those regulations will have been
11 established by the time the new Zoning
12 Regulations are enacted. And I think that
13 gives them an awful lot of time. So, I have
14 nods. But we're going to note this, we're
15 going to remember this when it comes to that
16 final decision to make sure that it's all out
17 there.

18 CHAIRMAN HOOD: Okay.

19 VICE CHAIRMAN SCHLATER: Well, I
20 wonder if maybe the way to go is approve this
21 on proposed action. I mean, I would like to
22 see what the DCRA's regs are before we

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1 actually approve the language of this section,
2 I would think.

3 COMMISSIONER MAY: That's true.

4 I have a question, actually maybe
5 Mr. Bergstein needs to weigh in on this, but
6 I've forgotten now what we had decided in
7 terms of the process from here. Are we taking
8 proposed action now and then final action, and
9 then a final, final action?

10 MR. BERGSTEIN: You would take
11 proposed action, have a normal 30 day period
12 for comment. At the conclusion of the 30 day
13 period of comment you would take final action.

14 The final action only be for the adoption of
15 a final order that would indicate that the
16 Zoning Commission has adopted the text and
17 explains why. But you would not issue a
18 notice of final rulemaking for reasons that
19 are very complex and have to do with how ODI,
20 the Office of Documents and Administrative
21 Issues, puts things in its system. Once we do
22 a notice of final rulemaking it's impossible,

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1 pretty much, to get that text back and
2 manipulate it without going through a lot of
3 hurt.

4 So, you would for all of these take
5 proposed action, adopt a notice of final
6 rulemaking -- I'm sorry. Adopt a final order.
7 When all the final orders are done, you'll be
8 presented, and Mr. Parker can correct me if
9 I'm wrong, you'll be presented with a new
10 Title 11 and then you'll have all these final
11 orders that will explain how each and every of
12 that Title 11 came to be. And then if you
13 agreed, you would issue a notice of rulemaking
14 adopting the revised Title 11. I believe
15 that's the process.

16 COMMISSIONER MAY: Okay. So before
17 we -- it's hard for me to imagine -- well,
18 maybe I'm wrong, but it's hard for me to
19 imagine that we're going to get final DCRA
20 text on the Height Act regulations before we
21 get to take final action. And that first
22 final action which results in an order. Is

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1 that right? I mean, since you're working with
2 both of these things, Mr. Bergstein, maybe you
3 can comment.

4 MR. BERGSTEIN: I think Mr. Parker
5 has provided you with status there is in terms
6 of DCRA. I think the most you could hope for
7 at this point would be that they would issue a
8 notice of proposed rulemaking before you take
9 final action, which you would be able to see,
10 but just by virtue of the time it takes for
11 them to do notice for proposed action, then
12 another 30 days of comment, if you're starting
13 yours first then, obviously, you'd be prepared
14 to take final action before they're prepared
15 to adopt a final rule.

16 So, just by nature of how things
17 are going you would be in place to move first
18 before they would be in place to take their
19 final rulemaking action.

20 So, if you wanted to wait for them
21 to complete their regulatory process, you
22 would have to allow them to issue their notice

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1 of proposed rulemaking, get their 30 day
2 period of public comment and then they may --
3 we haven't quite worked this out -- they're
4 either going to have issue a notice of final
5 rulemaking or then in essence wait for you to
6 take your final actions. Because ultimately
7 this is going to be a new subtitle (m), which
8 is part of the Zoning Title 11 that doesn't
9 exist it. So, ultimately this is all going to
10 have to come together as a codification event.

11 COMMISSIONER MAY: So the final,
12 final action that we take would have to be
13 inclusive of whatever they introduced?

14 MR. BERGSTEIN: Yes. Yes.

15 COMMISSIONER MAY: So we will
16 certainly have to have that ability to back-
17 check.

18 MR. BERGSTEIN: That's right.
19 There's going to have to be a Subtitle (m).

20 COMMISSIONER MAY: However man
21 years now that's going to take.

22 MR. BERGSTEIN: That's right.

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1 That's right.

2 COMMISSIONER MAY: Yes, because it
3 doesn't seem like we can get it all to synched
4 up before we take final action on this. But
5 I'm not sure. I mean, it might actually be
6 very good if we could see what the proposed
7 rulemaking is before we take final.

8 VICE CHAIRMAN SCHLATER: I guess
9 the question is what do we change any of this
10 section if there were items in the Subtitle
11 (m) that conflicted with what we thought we're
12 going to be in there.

13 COMMISSIONER MAY: Yes. It's hard
14 to know without seeing at least the proposed
15 rulemaking.

16 VICE CHAIRMAN SCHLATER: And the
17 only reason why I raise this is we've been
18 asked to do something similar with regard to
19 the parking and load and DDOT regulations that
20 are yet to be promulgated and they kind of
21 want us to take the jump. And I don't know --

22 COMMISSIONER MAY: DDOT always

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1 wants us to go first, that's right.

2 VICE CHAIRMAN SCHLATER: I did, I
3 felt uncomfortable with it in that regard.
4 Although in this one I could probably go
5 either way.

6 MR. BERGSTEIN: The one thing I
7 wanted to point out is that under the Zoning
8 Act, whichever is the more stricter applies in
9 terms of height. So, even if they adopted
10 something that was less stringent then what
11 you do, in terms of zoning the more stringent
12 would apply. And since zoning is the lower
13 height threshold anyway, it would pretty much
14 obviate anything they said. An vice versa, if
15 they have more stricter height rules, then
16 those rules would govern.

17 So, although we're striving for to
18 the maximum possible to get everything
19 identical, even if there is some variation it
20 doesn't mean that a more lenient height
21 approach would happen. You would just have to
22 know, read both in context and understand

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1 which is the stricter approach.

2 CHAIRMAN HOOD: Okay. So it goes
3 to the point, and I'm reading here from Mr.
4 Kahlow, and you know sometimes the community
5 expects stuff. And I'm one also that it's
6 disheartening when it doesn't happen.

7 She writes "We were unable to find
8 explicit legal authority for such an
9 interpretative role for the Zoning
10 Administrator, and this DCRA office is
11 understaffed. In fact, for years Zoning
12 Enforcement for which the Zoning Administrator
13 is currently responsible for has not worked
14 satisfactorily."

15 Let me just ask this, and I know
16 we're waiting for DCRA to give us something,
17 and Mr. Parker, I don't want to necessarily
18 put you on the spot. But I mean are we going
19 to -- we can discuss all day long. Did you
20 give an inclination in your discussions, or
21 Mr. Bergstein, that first of all it's doable,
22 and first of all it's going to happen and

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1 we're not going to hear that we're under
2 staffed or everybody in that area is fired, or
3 whatever the case may be? Because I think if
4 we're going to put something in place, we need
5 to make sure that first of all that it's going
6 to be doable and that it's going to actually
7 materialize. I'm not asking to predict the
8 lottery. I'm just asking you in your
9 discussions.

10 MR. PARKER: I can answer two
11 things affirmatively. It's doable, legally
12 and procedurally. And it's underway. And
13 then the Zoning Administrator is reviewing
14 with his legal counsel proposed language.

15 So Mr. Cochran and I have done our
16 best to stay on top of them, and we will
17 continue to do so. I can guarantee as much as
18 possible that something will be done before
19 this process is over with. I don't know
20 whether something will be done before your 30
21 day period is up for your first final action.

22 CHAIRMAN HOOD: Okay. So before

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1 our final, final action, whenever that is.

2 Okay. Anything else on that
3 particular point? Okay.

4 Let's move on to number 3. You had
5 something else, Vice Chairman Schlater?

6 VICE CHAIRMAN SCHLATER: No.

7 CHAIRMAN HOOD: We're going to
8 split it up. Everybody's going to have a
9 little action to night.

10 Vice Chairman Schlater?

11 VICE CHAIRMAN SCHLATER: One of the
12 things OP has done in the revised text is to
13 eliminate all references to straight based
14 height rules in the zoning text. I think I
15 don't have to read each section and street
16 based limits have been deleted, just to say
17 that anywhere where they did appear, they've
18 been deleted. But I'm comfortable with it.

19 CHAIRMAN HOOD: Great. Any
20 comments?

21 COMMISSIONER MAY: That's something
22 that had to be cleaned up, it's cleaned up.

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1 That's good.

2 CHAIRMAN HOOD: Great.

3 Number 4, Commissioner Selfridge.

4 COMMISSIONER SELFRIDGE: Thank you,
5 Mr. Chairman.

6 Number 5 deals with structures
7 permitted atop the roof, changeover roof
8 element to enclosing roof element as
9 appropriate. And OP recommended the following
10 revisions that particularly now number 6
11 penthouses, "Be fully or partially enclosing
12 utilitarian features, including but not
13 limited to mechanical equipment may be built
14 above the zoned height limitations subject to
15 conditions." I might have gotten -- "The
16 following structures be built above zoned
17 height limitations subject to the following
18 conditions in this section." Penthouses fully
19 or partially enclosing utilitarian features
20 was a change they made. And then penthouses
21 fully or partially enclosing accessory amenity
22 features such as communal recreation space,

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1 structure accessories to outdoor recreation
2 space.

3 And then in 401.1(a) they added (b)
4 "Incompatible with the purpose and the intent
5 of the height regulations listed in 400.2 and
6 not in conflict with the Height Act."

7 MR. BERGSTEIN: And, Commissioners,
8 this is one where I discussed with you that
9 that reference to "and not in conflict with
10 the Height Act," at least I'm recommending
11 that it be eliminated. And I've discussed
12 this with Office of Planning and they don't
13 object to it because it would put the BZA in a
14 position of looking at compliance with other
15 regulations other than the Zoning Regulations.

16 And since these types of applications would
17 come self-certified before the Zoning
18 Administrator would have an opportunity to
19 review the application for compliance with the
20 Height Act, I think it's premature and goes
21 beyond the scope of what's necessary for a
22 special exception review. So, this is one

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1 change that OP has suggested that it'd be my
2 recommendation for you to strike.

3 VICE CHAIRMAN SCHLATER: Mr.
4 Bergstein, is subtitle (m) part of the Zoning
5 Regulations?

6 MR. BERGSTEIN: Not the way it's
7 going to be written. The introductory portion
8 of the Title 11 is going to indicate what
9 comprises the Zoning Regulations, which may
10 well be every subtitle other than (m).
11 Although for ease of understanding in terms of
12 BZA rules and Zoning Administrator, and
13 possibly other procedural rules, we may want
14 to differentiate between the Zoning
15 Regulations that are really substantive in
16 nature that those deal with changes, area
17 requirements, use requirements, the Map as
18 opposed to merely procedural rules like
19 minutes which really aren't part of the Zoning
20 Regulations which don't have to go to NCPC.
21 So we need to mark that out. But it's going
22 to be a clear explanation at the very

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1 beginning of revised Title 11 that at least
2 subtitle (m) and possibly other things aren't
3 the Zoning Regulations as that term is meant
4 in the Zoning Act.

5 VICE CHAIRMAN SCHLATER: Mr.
6 Bergstein, I seemed to remember when we had
7 the hearing on height whether or not to
8 include subtitle (m) as part of the Zoning
9 Regulations, or at least reference them was an
10 issue. Because there's going to be certain
11 cases before us where certain elements of a
12 design may be blatantly in conflict with the
13 Height Act, but we wouldn't be able to speak
14 to them, I guess, was the concern. And I
15 thought we were going to reference subtitle
16 (m) as part of the Zoning Regulations so that
17 we'd be able to weigh in on that.

18 MR. BERGSTEIN: Well, there's two
19 things. One is whether or not maybe this
20 should be a private discussion, whether or not
21 you could bootstrap jurisdiction over the
22 Height Act by merely saying it's in the Zoning

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1 Regulations. It would also bring in NCPC into
2 the picture in a different way. Because once
3 you assume that you can actually interpret the
4 Height Act and regulate the Height Act as
5 opposed to the Zoning Administrator and you
6 believe that's within your jurisdiction, then
7 if it's part of the Zoning Regulations, then
8 it would have to go to NCPC for review. It
9 would go to BZA for review on errors.

10 So, what I thought the decision was
11 at the time you set this down was to recognize
12 that the Height Act was an Act that was passed
13 by Congress ten years before the Zoning Act
14 was. That its interpretation is made by the
15 Zoning Administrator. And that to the extent
16 the Zoning Administrator has historically made
17 interpretations in terms of the Height Act,
18 that it would be the Zoning Administrator to
19 promulgate regulations pertaining them.

20 VICE CHAIRMAN SCHLATER: I think
21 that's true, Mr. Bergstein, when you said the
22 Zoning Administrator would promulgate the

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1 regulations. But I also remember a
2 conversation whereby we would incorporate
3 portions of -- what's it called? Subtitle (m)
4 by reference so that we would be able to speak
5 to that.

6 MR. BERGSTEIN: Well, that's what
7 this -- what the text that is before you says
8 is that the text is identical to what's in
9 subtitle (m) except what otherwise noted. So,
10 rather than incorporating by reference what
11 this text does is it interprets the zoning
12 height limits as opposed to the street-based
13 height limits and makes only those
14 recommendations or interpretations that are
15 needed.

16 For example, what was taken out of
17 this text and moved to subtitle 11 is what is
18 a residential street, what is a business
19 street. Because that is something that's
20 uniquely relevant to the Height Act and it's
21 for the Zoning Administrator to make that
22 determination.

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1 So this text contains just those
2 provisions that are relevant to the zoning
3 height. Subtitle (m) will have very similar,
4 hopefully identical provisions as to those
5 areas. But will also have additional
6 regulations that will identify what is a
7 resident street, what is a business street,
8 how one gets a waiver from the Height Act,
9 what are the standards that will be applied
10 for Height Act waivers, which aren't germane
11 to zoning height.

12 So, to the extent that the subject
13 matter is the same, the text should be the
14 same, and that's what the introduction to this
15 subchapter says, that the text is identical
16 unless stated otherwise.

17 VICE CHAIRMAN SCHLATER: We don't
18 have any control over whether they'll be the
19 same.

20 MR. BERGSTEIN: Well, we'll have to
21 change that if it turns out not to be the
22 case. We are proceeding with hope and

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1 confidence that that will occur.

2 VICE CHAIRMAN SCHLATER: Okay.

3 MR. BERGSTEIN: And based upon
4 feedback we've had from the Zoning
5 Administrator, I mean he's seen the text, I've
6 seen some suggestions from him. But
7 fundamentally, the text is the same as I've
8 seen it. The last version I saw the text was
9 identical except for some minor tweaking.

10 VICE CHAIRMAN SCHLATER: Okay.
11 I'll give you a hypothetical then. Say that we
12 have a project come before us, a PUD project.
13 It conforms to the zoning height limits but
14 is clearly not conforming to the Height Act
15 height limit. Are we able to weigh in on that
16 subject when that project is before us?

17 MR. BERGSTEIN: In past PUD orders
18 when that has come up, and it has come up a
19 lot, usually through an NCPC comment, they
20 will say it doesn't look to us like this is a
21 true tower. You should deny this PUD because
22 it's not a true tower and it's not waivable

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1 under the Height Act.

2 What the Commission has said is
3 certainly we would not approve a PUD where
4 there is no reasonable explanation as to its
5 divergence from another District law,
6 including the Height Act. But where the design
7 is a matter of interpretation, we will defer
8 that interpretation to the Zoning
9 Administrator. So that's how it's been
10 handled in the past.

11 VICE CHAIRMAN SCHLATER: And under
12 these regs that's how it will be handled in
13 the future?

14 MR. BERGSTEIN: Yes. In other
15 words if someone submits a building plan
16 that's blatantly intrudes onto to public space
17 and there's no possibility that the Public
18 Space Committee could grant a public space
19 permit, I think you'd be reasonable in saying
20 there's no sense in approving stuff that'll
21 never be built. And I think the same thing is
22 true for the Height Act.

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1 So, that is how the Commission has
2 stated in the past. And yes, I would expect
3 that that would happen in the future.

4 VICE CHAIRMAN SCHLATER: Okay.
5 Thank you.

6 CHAIRMAN HOOD: I wanted to
7 piggyback on some of that. But I think where
8 it's blatant in front of the Zoning Commission
9 in the past, what we have done we have simply
10 gone back and asked the applicant to revise
11 that because it was just blatant. But like you
12 said, where it falls on rule of
13 interpretation, then we would always says that
14 we would leave it to the Zoning Administrator.

15 I want to make sure that if it's
16 blatant and we sit here and we know it's
17 blatant, it's in violation, then we usually
18 kick it back to the applicant, at least that's
19 what we've done in the past.

20 MR. BERGSTEIN: Yes, you've never
21 denied a PUD in this circumstances. But if
22 someone were to propose a penthouse that's

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1 clearly habitable above the Height Act, you
2 can't get a waiver for that. It's just plain,
3 simple illegal.

4 CHAIRMAN HOOD: Okay.

5 MR. BERGSTEIN: So in that
6 circumstance you would say you've got to
7 change those plans, not show human habitation
8 above the Height Act limit.

9 CHAIRMAN HOOD: Okay.

10 COMMISSIONER MAY: Well, and it's
11 not just a matter of the Zoning Administrator.

12 I mean, we don't kick everything if it's --
13 you know, unless it's a blatant violation. I
14 mean, I can remember some that were a matter
15 of interpretation and we were not going to,
16 for example, interpret a vaulted skylight as a
17 dome; that didn't pass the test with us. And
18 so we sent the applicant back to work on that.

19 So, that wasn't really blatant. I mean, that
20 was theoretically, it might have been a matter
21 of interpretation, but we didn't buy the
22 interpretation, I guess.

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1 VICE CHAIRMAN SCHLATER: I think my
2 point on that, and I think we've hashed it out
3 sufficiently, is that because we're saying
4 these regs are going to promulgated by DCRA
5 and they're gong to be the ones who interpret
6 the Height Act, I don't think that means we're
7 getting out of the business of looking at the
8 height of buildings and interpreting what's
9 appropriate and what makes sense.

10 Is that OP's understanding of the
11 state?

12 MR. PARKER: I'm sorry, could you
13 repeat your question?

14 VICE CHAIRMAN SCHLATER: If a
15 project coming before the Zoning Commission
16 and there's a Height Act interpretation, is it
17 within the Zoning Commission's authority under
18 these regulations to basically either deny a
19 project or ask them to change it because they
20 don't conform to what we think is a proper
21 interpretation of the Height Act?

22 MR. PARKER: I don't think I can

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1 speak to the Zoning Commission's authority.
2 But I'll second Mr. Bergstein's comments that
3 it would certainly be under your purview to
4 deny a project that was clearly in violation
5 of any law outside of the Zoning Regulations.

6 CHAIRMAN HOOD: Okay. Anything on
7 that? Let's see. Okay. Let's go to number
8 5--

9 COMMISSIONER MAY: Hold on. I'm
10 still on number 4.

11 CHAIRMAN HOOD: Oh, you're doing
12 it. Okay.

13 COMMISSIONER MAY: I'm doing it, I
14 have something to say about 403.1. We spent
15 all this time on 404.1.

16 CHAIRMAN HOOD: Okay.

17 COMMISSIONER MAY: We're on 403.1.
18 So 403.1, I just have a question about --

19 CHAIRMAN HOOD: Oh, you were asking
20 the question.

21 COMMISSIONER MAY: I'm not asking a
22 question about it.

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1 CHAIRMAN HOOD: That's where you
2 were. You were asking questions. I thought
3 you were doing it.

4 COMMISSIONER MAY: He was leading
5 the discussion of number 4.

6 CHAIRMAN HOOD: Okay. We're right
7 here. Thank you.

8 COMMISSIONER MAY: Okay. 403.1(k).
9 (k) has fully or partially enclosing
10 accessory amenity features such as communal
11 recreational space and structures accessory to
12 outdoor recreation space.

13 I'm assuming, I mean in my mind,
14 things like that which are occupiable space in
15 effect, it's like having another floor of the
16 building in certain ways. I mean, that would
17 count towards the regular FAR of the building,
18 it would not be part of that allowance that
19 you get for penthouses, right?

20 MR. PARKER: Well, you have to keep
21 in mind one of the changes in this chapter
22 from our current regs is the current regs have

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1 an allowance in FAR for penthouses. You get
2 .37 over your traditional FAR.

3 The way that we propose calculating
4 FAR differently in the future is FAR is only
5 calculated through the top of the building and
6 penthouses are limited by footprint and not
7 included in FAR calculations.

8 COMMISSIONER MAY: So you can have
9 a big door indoor recreation space on the
10 penthouse level and it wouldn't count on the
11 FAR?

12 MR. PARKER: It would be limited by
13 floor area. Like, for example, in the current
14 situation you could have a big enclosed space
15 up above with bathrooms and space accessory to
16 your outdoor pool, it doesn't count in your
17 base FAR. It would be in the .37 bonus.

18 COMMISSIONER MAY: In the .37
19 bonus.

20 MR. PARKER: And under our proposal
21 you have a 40 percent footprint limit for
22 that. So, it's a very similar limit to how

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1 much space on the room can be used as a
2 penthouse.

3 COMMISSIONER MAY: And the 40
4 percent limit would be inclusive of everything
5 that's enclosed?

6 MR. PARKER: Yes. And actually I
7 should point out, the 40 percent is actually
8 in many ways more restrictive because right
9 now if your existing building envelop doesn't
10 use up all of your allowed FAR, you can use on
11 your roof the .37 plus whatever is unused in
12 your building.

13 Under the new proposal the two are
14 separate. You count FAR for the building and
15 you count 40 percent for the roof structure,
16 but you can go above the 40 percent. Is that
17 clear?

18 COMMISSIONER MAY: Yes, I guess.
19 We haven't gotten to the point of -- since
20 we're writing our first section of text
21 tonight, we haven't gotten to the point of
22 writing a text about how you calculate FAR.

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1 MR. PARKER: No, but that will be
2 coming.

3 COMMISSIONER MAY: Okay. Well, I
4 think we should just have a discussion of this
5 issue when we have that matter before us. I'm
6 not saying that I have any problem or issue
7 with it one way or another, I just want to
8 make sure we have that discussion in the right
9 context.

10 MR. PARKER: Okay. But to be clear
11 -- well, a couple of things with that.

12 We aren't really proposing any
13 major changes to how to calculate FAR. When
14 you see a chapter, it will just mainly codify
15 existing practice. But I think the --

16 COMMISSIONER MAY: But at some
17 point you're going to be dealing with
18 penthouses at a 40 percent limit, right?

19 MR. PARKER: I guess what I'm
20 saying is that's in the text --

21 COMMISSIONER MAY: That's in this
22 here? This is the entirety of it?

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1 MR. PARKER: Is the entirety of it.
2 It's 403.4, I believe.

3 VICE CHAIRMAN SCHLATER: And then
4 the definition of FAR will specifically
5 exclude penthouse space --

6 COMMISSIONER MAY: Anything about
7 this.

8 VICE CHAIRMAN SCHLATER: -- is that
9 how that will work?

10 MR. PARKER: Yes. I had assumed --
11 you know before this very second I had assumed
12 that this was in this section as well. It will
13 have to be in one or the other, yes. It makes
14 sense to have it in with the FAR.

15 So I withdraw my earlier comment.
16 We will discuss it at the FAR chapter.

17 COMMISSIONER MAY: Okay. It's
18 limited to 40 percent of the building's total
19 footprint.

20 MR. PARKER: Right.

21 COMMISSIONER MAY: So, I mean, the
22 total footprint that would include for a

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1 commercial building it's a 100 percent of the
2 site.

3 MR. PARKER: Yes. Well --

4 COMMISSIONER MAY: And the building
5 itself at the roof might be only 60 percent of
6 the building's FAR?

7 MR. PARKER: Keep in mind right now
8 you get .37 FAR, which is 37.5 percent of the
9 lot, not of the building.

10 COMMISSIONER MAY: Right. Okay. I
11 mean, if you got a 100 percent lot occupancy,
12 this is an increase? If you've got less than
13 100 percent occupancy, it's probably going to
14 be a decrease?

15 MR. PARKER: Correct.

16 COMMISSIONER MAY: Okay. Okay.
17 It's good enough for me for now, I guess.

18 CHAIRMAN HOOD: Anybody else, any
19 other questions? Okay.

20 I think now, Commissioner May, can
21 I go to Commissioner Turnbull now? Thank you.

22 Commissioner Turnbull?

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1 COMMISSIONER TURNBULL: Thank you,
2 Mr. Chair.

3 .5 was to clarify how the point
4 from which height is to be measured shall be
5 determined when the location of that point is
6 ambiguous. And I think I'd better read OP's
7 proposed 402.4.

8 "When the curb grade has been
9 artificially changed by a bridge, viaduct,
10 embankment, ramp, abutment, excavation tunnel
11 or other type of artificial elevation or
12 depression, the height of a building shall be
13 measured using the first of the following four
14 methods that is applicable to the site:

15 (a) elevation or means of
16 determination established for a specific zone
17 elsewhere in this title;

18 (b) an elevation for the site that
19 prior to the effective date of this section by
20 the Zoning Administrator or the redevelopment
21 land agency, its predecessor or successors;

22 (c) a street frontage of the

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1 building not affected by the artificial
2 elevation, or;

3 (d) a level determined by the
4 Zoning Administrator to represent the logical
5 continuation of the surrounding street grid
6 where height is not affected by the
7 discontinuation of the natural elevation."

8 I think there's quite a bit going
9 on. This, I believe, would refer to
10 developments such as Union Station, behind
11 Union Station, any built area.

12 COMMISSIONER MAY: I don't think
13 this actually applies at Union Station because
14 there's not been anything measured off the
15 viaduct there, right?

16 MR. PARKER: No. but I think in
17 theory subsection (a) would apply to Union
18 Station.

19 CHAIRMAN HOOD: An evaluation meets
20 the --

21 COMMISSIONER MAY: Right, right.
22 And that special zoning for Union Station that

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1 sets height limits that are measuring points
2 or something like that, it's dealt with
3 explicitly. And I think that is preferable. I
4 mean, when it comes to something like Union
5 Station we don't want it -- that should be
6 treated as a special case rather than trying
7 to find some rule that would specifically
8 impose a measuring standard that doesn't
9 really apply in that kind of a circumstance.
10 It's a very odd circumstance.

11 I think where it's more likely to
12 apply are things like L'Enfant Plaza where
13 there's been an elevated grade and there are
14 height limits that have been established by
15 previous rulings, right?

16 CHAIRMAN HOOD: I don't know. I was
17 going along with Mr. Turnbull. Because I was
18 trying to think we had a situation, at least
19 over near Union Station if it wasn't Union
20 Station on H Street when we were trying to
21 find the measure point.

22 COMMISSIONER TURNBULL: Are you

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1 talking about Station Place?

2 CHAIRMAN HOOD: No, I don't think
3 it was Station Place.

4 MR. PARKER: It was Station Place.

5 CHAIRMAN HOOD: Okay. And, Mr.
6 Parker, you're saying (a) goes down that line,
7 is that what you're saying?

8 MR. PARKER: I think what we're
9 saying these are the same four sections that
10 you saw at the hearing. One of the requests
11 that we had from you, and I think it made a
12 lot sense, was to set them in order of
13 precedence. And it actually maybe is a little
14 counterintuitive because it's not in order of
15 occurrence. You know, the most common are
16 going to be (c) and (d). I think (a) and (b)
17 are fairly rare. But (a) and (b) certainly
18 take precedent if they exist. So anywhere
19 that the Zoning Code calls out a place like
20 Union Station it says this is how you will
21 measure, then that takes precedence over
22 anything else on this list. And if that

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1 doesn't exist, areas like you said like
2 L'Enfant or the Portals development that have
3 a previously determined measuring point, then
4 if that exists, that would take precedent. And
5 then if neither of those exist, then we go
6 into (c) and (d) which are the Zoning
7 Administrator and making a determination.

8 CHAIRMAN HOOD: Okay. Any other
9 comments or any other -- we can take our time
10 with this. We don't have to rush.

11 COMMISSIONER MAY: With regard to
12 (b), I think one of the concerns I had was
13 whether we had any sense of how often that has
14 already occurred. And my recollection was
15 that there isn't really catalogue of these
16 things, but there may be in someone's loan
17 records or a building owner's records or
18 something like that some determination that
19 was made at some point. So, we don't really
20 have a way of getting a grasp on what that is.

21 MR. COCHRAN: So far the only two
22 that we're aware of are L'Enfant Plaza and

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1 Portals.

2 COMMISSIONER MAY: Okay.

3 MR. COCHRAN: There may well be
4 some others.

5 COMMISSIONER MAY: Okay.

6 MR. COCHRAN: Those are the only
7 ones that have been brought to our attention.

8 COMMISSIONER MAY: Okay. Well,
9 it's encouraging that those are the only ones
10 that you actually are aware of. Because was
11 hearing that there were, you know, all sorts
12 of other ones that are just out there that
13 haven't been discovered yet.

14 MR. PARKER: If so, they haven't
15 been brought to our attention yet.

16 COMMISSIONER MAY: Yes. Okay.

17 CHAIRMAN HOOD: Okay. Anything
18 else? Any other questions or comments? Okay.

19 Okay. Include flats in 402.5. So
20 we're changing it to six. One and two family
21 dwellings and any building setback from all
22 lot lines by a distance of at least equal to

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1 its own height shall be measured from the
2 ground level at the midpoint of the building
3 face closest to the nearest public right-of-
4 way. I'm reading it again for myself.

5 MR. PARKER: Do you want an
6 explanation of this one?

7 CHAIRMAN HOOD: Yes, I was going to
8 read it again. But, no, go ahead and give me
9 the explanation. Maybe I won't have to read it
10 again.

11 MR. PARKER: Basically this is
12 saying if you have a single family or two
13 family home unlike all the other buildings in
14 the city you don't measure from the property
15 line, you measure from the front of the
16 building. And also, there's a clause in the
17 middle, you also do that according to the
18 Height Act for any building that's set back a
19 distance equal to its height. So, if a 40 foot
20 building is setback 40 feet, even if it's not
21 a one or two family home, it would measure
22 that way as well. Every other building that's

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1 not mentioned in this clause you measure from
2 the property line and not from the building
3 front.

4 CHAIRMAN HOOD: I'm looking at
5 this. Where does it say that I measure?
6 Maybe I'm missing something. Where does it
7 say that we're measuring from the --

8 MR. PARKER: The second half of the
9 sentence, "Shall be measured from the ground
10 level at the mid-point of the building face
11 closest to the --"

12 CHAIRMAN HOOD: Okay. Building
13 face closest to the nearest part -- okay.
14 Thank you.

15 Vice Chairman Schlater?

16 VICE CHAIRMAN SCHLATER: I'm sorry.
17 I have to go back to 402.4. Just so I
18 understand clearly. If I'm a property owner
19 adjacent to an bridge, a viaduct, embankment
20 or ramp will I be able to take height off of
21 that bridge, viaduct or ramp under these new
22 regulations if there is not a specific zone or

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1 interpretation existing under the RAI or the
2 Zoning Administrator?

3 MR. PARKER: If (a) or (b) doesn't
4 apply, you're going to (c).

5 VICE CHAIRMAN SCHLATER: So we're
6 basically taking down -- so there have been a
7 number of instances where buildings have been
8 taking their height off of these embankments
9 or ramps, correct?

10 MR. COCHRAN: You allowed one PUD
11 that hasn't been constructed yet at New York
12 and Florida to take its height off of New York
13 Avenue, which was not considered to be a
14 bridge. It's actually something that's been in
15 existence for 60 years or something. It's a
16 street grading. It's on earth. But as I
17 recall, when you discussed Station Place there
18 was discussion of a developer wanting to take
19 the height off of H Street, but in that
20 instance there was a curb on, I believe,
21 either 2nd or 3rd Street from which the height
22 could have been derived. And that would be in

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1 accordance with the Height Act.

2 It's my understanding that in the
3 case of Union Station the only curb that
4 exists that surrounds that site just happens
5 to be the curb on H Street. So by the Height
6 Act it's possible that one could interpret it
7 so that that would be the logical measuring
8 point. But each of these have been different
9 instances. But that does say the curb

10 COMMISSIONER MAY: In the H Street
11 case and subsequent to Station Place, Zoning
12 Commission wrote specific text that basically
13 made it impossible to measure off of a viaduct
14 like that. And that was ruled out as a result
15 of that case, as a result of Station Place,
16 for the purposes of zoning. Maybe not for the
17 purposes of the Height Act, but for the
18 purposes of zoning.

19 And I think that generally speaking
20 that's the direction we want to stay
21 consistent with, not leaving it out there for
22 interpretation, but if there are going to be

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1 special circumstances like the Union States
2 Air Rights development where there isn't
3 really a good place to measure from, that we
4 do it in some manner that's appropriately
5 considered and thoughtful and not somebody's
6 ingenious interpretation of the Height Act or
7 the Zoning Regulations..

8 VICE CHAIRMAN SCHLATER: And I
9 think that's the result of this text. Putting
10 aside (b), for a second, which is only exists
11 in a couple of situations you really have
12 either the Zoning Commission acts
13 affirmatively and says this is how we will
14 measure in a certain instance or you go to (c)
15 which is, you know Station Place or someone
16 else shall measure off of another right-of-
17 way.

18 VICE CHAIRMAN SCHLATER: And I
19 guess I wasn't aware of the subsequent action
20 of the Zoning Commission after that case.
21 Because I know there are instances out there
22 in matter-of-right projects where people were

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1 getting height off of these bridges and
2 viaducts and it had nothing to do with Zoning
3 Commission.

4 And maybe before final action on
5 this text, I'd just like to see where -- if
6 you could just give me the reference and maybe
7 you could do it right now that addresses this
8 specific issue within the current regs?

9 MR. PARKER: I can't do it off the
10 top of my head, but we can do that.

11 Oh, yes, actually, yes. It's in the
12 definition of building height in 199

13 CHAIRMAN HOOD: Let's go back to
14 402.6. Any comments? I've asked my question
15 about the measurement being on the front side,
16 and it says a mid-point of the building faced
17 closest to the nearest public right-of-way.

18 Any other comments? Okay.

19 Let's go into -- that's the height
20 general chapter. Let's look at the use
21 general chapter. I don't believe there were
22 any changes for the use general chapter, were

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1 there, Mr. Parker?

2 MR. PARKER: No. You didn't request
3 any additional information or changes. So the
4 chapter from the Notice of Public Hearing or
5 Notice of Public stands. Sorry.

6 CHAIRMAN HOOD: Any comments?
7 Chapter 2 Use Category Relations. 201
8 relationship to land use subtitles. It just
9 goes on, 202 rules for determining use
10 categories.

11 Let's just take a few minutes and
12 look through all this. I know there may still
13 be uncertainties about the definitions. I
14 think I remember seeing some submissions
15 saying definitions should be more clear. And,
16 you know, at some point we have to have a
17 starting point.

18 Emergency shelter happens to jump
19 out at me. And again, I think we vetted this
20 during the hearing. There were no changes
21 requested by us, but I want to make sure
22 there's adequate time.

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1 Commissioner May?

2 COMMISSIONER MAY: What about the
3 term accommodation versus lodging?

4 CHAIRMAN HOOD: Where is that?

5 COMMISSIONER MAY: It's the
6 definition 206.2.

7 CHAIRMAN HOOD: 202.6?

8 MR. PARKER: I think we're open to
9 that change.

10 COMMISSIONER MAY: Okay.

11 CHAIRMAN HOOD: Okay.

12 COMMISSIONER MAY: Yes. Because
13 the word "accommodation" has so many meanings
14 outside of the Zoning Regulations.

15 CHAIRMAN HOOD: And the change is
16 "lodging"?

17 COMMISSIONER MAY: Lodging is a
18 little bit more consistent, I think.

19 CHAIRMAN HOOD: Okay.

20 COMMISSIONER MAY: Although, you
21 know you have to figure out the slightly
22 different definition because you can't define

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1 lodging as lodging. Maybe you could identify
2 as an accommodation.

3 CHAIRMAN HOOD: Any use providing
4 customers with temporary lodging for an agreed
5 upon term of less than 30 consecutive days
6 when use for lodging is offered to the public
7 for compensation and is open to transient
8 rather than permanent guests. These uses
9 differ from the residential category because
10 of the short tenure of residence. Yes. I
11 agree. That change lodging as opposed to
12 accommodation.

13 COMMISSIONER MAY: Mr. Chairman, it
14 means a whole lot of renumbering and
15 everything, too. Because it changes the
16 order. Oh well.

17 CHAIRMAN HOOD: Okay. Anybody else
18 have anymore comments or need more time?

19 Vice Chairman Schlater?

20 VICE CHAIRMAN SCHLATER: Mr.
21 Chairman, I just wanted to point out that we'd
22 received a letter from ANC 6B requesting that

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1 we take a look at a few items. The first one
2 was "ANC 6B previously communicated to the
3 Zoning Commission its concerns over a point of
4 measurement with respect to the determination
5 of what constitutes a cellar or a story."

6 The second issue is, I guess, the
7 Commission is also concerned that the current
8 proposal is somewhat ambiguous on the issue of
9 point of measurements; the words "building,"
10 "building face" and "facade are all used in
11 the same section, apparently, to mean the same
12 thing without any definition.

13 And the last thing is the
14 Commission is specifically concerned services
15 might be prohibited or discouraged in areas
16 where there would be a benefit.

17 So, I just wanted to throw those
18 out there, as the ANC had taken the time to--

19 CHAIRMAN HOOD: Okay. That's going
20 back to, I think,, our height limits.

21 The last one a use?

22 VICE CHAIRMAN SCHLATER: The last

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1 one was a use.

2 CHAIRMAN HOOD: Okay. Well, let's
3 start with the last one and let's try to get
4 through use and then we'll back and try to
5 reconcile with the height.

6 What was the last one, Vice
7 Chairman Schlater? Proposed regulation for--

8 VICE CHAIRMAN SCHLATER: It's
9 service versus retail.

10 CHAIRMAN HOOD: And they're asking
11 us to --

12 VICE CHAIRMAN SCHLATER: I'm not
13 exactly sure. But maybe Mr. Parker read the
14 letter.

15 CHAIRMAN HOOD: Did you read the
16 letter, Mr. Parker?

17 MR. PARKER: I did. And I've
18 actually had a conversation with them. The
19 real issue I think here is how we set the
20 permission level. I think they're concerned
21 that part of the reason that service and
22 retail are distinguished as categories is

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1 there are instances where we may want to limit
2 service uses in favor of retail uses. service
3 uses like banks and travel agencies, limiting
4 them in order to promote active vibrant retail
5 space and street frontages.

6 The discussion I had with 6B is
7 they're concerned that in some instances that
8 may have the impact of prohibiting uses that
9 they want; dry cleaner is the example they
10 give. And I think this isn't so much an issue
11 with whether we should have retail services
12 different categories, but just where and how
13 we limit services.

14 VICE CHAIRMAN SCHLATER: Okay.
15 That seems right.

16 CHAIRMAN HOOD: So, Mr. Parker.
17 because I know that's probably not applicable
18 to everywhere in the city. So, we would kind
19 of go back to what this whole intent is is to
20 try to tailor these new regulations to
21 neighborhoods?

22 MR. PARKER: Right. Yes. And this

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1 isn't anything that would change overnight. I
2 mean, one of the strengths of the system that
3 we're proposing is that instead of overlays
4 having to create a list, we want these 30 uses
5 allowed. We can use these categories to
6 encourage and discourage different types of
7 uses. And so one of the possibilities of this
8 is to use this system to discourage services
9 uses where we want more active uses on the
10 ground floor. ANC 6B thinks that might cause
11 some additional problems, but again I think
12 that's a discussion to be had when we're
13 talking about how and where to limit service
14 uses, not an issue with whether we define
15 service uses or not.

16 CHAIRMAN HOOD: Okay. Before we go
17 back to height, general chapter on height, any
18 other issues with the uses? Okay.

19 Okay. Since obviously since you
20 read the letter, can you comment?

21 MR. PARKER: Sure. There are two
22 issues. The first one I think is fairly easy

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1 to deal with. It talks about, you know the
2 difference between a cellar and a story. By
3 virtue of the change that we've made in
4 height, in simply limiting height to a number
5 of feet rather than in the existing code it's
6 a number of fact and a number of stories. By
7 doing that we've eliminated the need for a lot
8 of these distinctions.

9 In the current districts we have a
10 limit of three stories. So we have to define
11 an attic and a cellar and a story to determine
12 what is and what is not something that counts
13 against one of those three stories.

14 The proposal is just to limit to 40
15 feet or 30 feet or some number of feet and
16 within that feet we no longer have a need to
17 determine what is a story.

18 So, my argument here is basically
19 to say that their first point is somewhat
20 mute. It is a problem with the existing code,
21 but not with the proposed code.

22 Their second point is well taken.

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1 There are words in the text that will still
2 need definitions, and there are going to be
3 words in every chapter that you see for the
4 next year that are going to need definition.
5 And eventually, you know one of the chapters
6 that you see will be the definitions of all
7 the terms that we've dealt with in the code.
8 Part of the reason to wait until the end is:
9 (a) to have the complete list of terms that
10 need to be defined, and (b) to make sure that
11 the definitions work across all of the
12 chapters and work equally well. But if there
13 are terms in here that the definition might
14 change how they'd be interpreted, we're more
15 than willing to add some clarity. And Mr.
16 Cochran has something to add as well.

17 MR. COCHRAN: Our intention was to
18 measure from street frontage as often as that
19 is possible. You'll notice that's in 402.2.
20 It's only if a building doesn't have frontage
21 on a street that we intended to come up with
22 another way of measurement. In that case, it

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1 would be from a facade nearest a public street
2 that would substitute for a street frontage
3 when there is no street frontage.
4 Unfortunately, we did say building face
5 closest to the nearest public right-of-way
6 when we were talking about one and two family
7 dwellings. But the concept was meant to be the
8 same. You're talking about facade nearest a
9 public right-of-way, and we'll clear up that
10 kind of language so that it's consistent
11 words.

12 But generally it's street frontage
13 unless there's not a street right-of-way, in
14 which case it's a building face nearest the
15 street right-of-way. That's the concept.

16 VICE CHAIRMAN SCHLATER: Every item
17 that's going to be defined is in italics, is
18 that right, or are they --

19 MR. PARKER: To the best of our
20 ability. There's a lot of auditing that will
21 need to be done as we finish more and more
22 chapters. So, there may be additional words

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1 that we italicized. But we've tried to do
2 that.

3 VICE CHAIRMAN SCHLATER: Okay.
4 Well, I think OP's addressed the major issues
5 identified in that letter to my satisfaction.

6 CHAIRMAN HOOD: Okay. Any other
7 comments on either the height or use? Does
8 anybody need additional time?

9 Okay. Commissioners, this is our
10 text, and I'm sure -- or we might have
11 captured everything here. And we will have
12 another bite at the apple at some point in
13 time, I believe.

14 So is this all one case, Ms.
15 Schellin, 08-06?

16 MS. SCHELLIN: It is. All of the
17 text will be under 08-06.

18 CHAIRMAN HOOD: All of the test?

19 MS. SCHELLIN: Yes.

20 CHAIRMAN HOOD: Okay. I would move
21 approval, I want to say tentatively, but I
22 would move approval of 08-06. Do I need to

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1 say the general height chapter and use chapter
2 as noted thus far in the Office of Planning's
3 recommendations and the comments that have
4 been made by other submissions so noted, and
5 ask for a second.

6 COMMISSIONER MAY: Second.

7 CHAIRMAN HOOD: Okay. It's been
8 moved and properly second. Any further
9 discussion? All those in favor aye.

10 ALL: Aye.

11 CHAIRMAN HOOD: Not hearing any
12 opposition, Ms. Schellin, would you please
13 record the vote?

14 MS. SCHELLIN: The staff would
15 record the vote at five to zero to zero to
16 take proposed action in Zoning Commission Case
17 08-06 with regard to the chapters on height
18 and use. Commissioner Hood moving,
19 Commissioner May seconding, Commissioners
20 Schlater, Selfridge, Turnbull in support.

21 CHAIRMAN HOOD: And I will tell you
22 that it is our first time doing the text, it

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1 may be another, I'm not going to say easier
2 way, I don't think anything is going to be
3 easy. Another way that we can do this. But
4 let's all think about it. We're not going to
5 come up with it tonight, but let's figure out
6 is there another way where we can do this when
7 we're doing our proposed action. Is there an
8 easier way that we kind of capture the
9 comments as well as OP's recommendation.
10 Let's think about it. Nobody has to -- we
11 don't have to come up with the idea tonight.
12 So, just food for thought.

13 Okay. Proposed Action, the next
14 04-33D (Office of Planning - Text Amendment
15 the IZ exemptions for Federal and District
16 Funded Affordable Housing Development. Ms.
17 Schellin?

18 MS. SCHELLIN: Yes, sir. OP has
19 provided some revised text for the Commission
20 to consider. And they are asking the
21 Commission to take emergency action on this
22 revised text along with proposed action.

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1 CHAIRMAN HOOD: Thank you, Ms.
2 Schellin.

3 For the record, I have reviewed the
4 record, and I'm going to ask Vice Chairman
5 Schlater who actually led that hearing tonight
6 to lead the discussion this. While I have
7 reviewed the record, he was here and know a
8 lot more of the specifics and details.

9 So, Vice Chairman, if you can take
10 over? Thanks.

11 VICE CHAIRMAN SCHLATER: Thank you,
12 Mr. Chairman.

13 Well, I think the text before us is
14 very much changed from the text that we had
15 the hearing on and is responsive to a number
16 of the comments that were raised at the
17 hearing.

18 I think no longer does the
19 developer have the option of whether to opt
20 into the requirements under IZ, whether or not
21 they use bonus density which was one thing
22 that I think concerned people.

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1 I think also the affordability
2 requirements will meet or exceed the IZ
3 requirement under all circumstances and they
4 will be for as long as the IZ period.

5 So, I think I could go through our
6 individual comments, but I won't. What I
7 would say is under the current text I think
8 they've gone a long way. There was only two
9 questions that I had. One is there was a
10 question as to whether -- I think there was
11 general consensus that the conflicts between
12 federally funded projects and IZ made it
13 important to give those federally funded
14 projects an IZ exemption. There is an open
15 question as to whether District funded
16 projects should be included in that waiver.
17 So, that's open for discussion.

18 And the second is technical and
19 administration is after the control period
20 ends for these federal affordability programs
21 and District affordability programs if we so
22 choose, whether or not these units would fall

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1 into the administrative framework of IZ. And
2 I think as it's written now those units would
3 be administered outside of IZ but they would
4 have the same affordability requirements as
5 they would if they were included in the IZ
6 program.

7 I think I'm comfortable with the
8 way the text has been drafted in this case. I
9 feel like the District Government projects,
10 there's an open question as to whether those
11 should be included in the exemption, but I do
12 understand that the Housing Production Trust
13 Fund and some of these other programs have
14 their own statutory requirements and that they
15 often conflict with IZ. So, I'm open for
16 making life a little bit simpler on the
17 implementor of DHCD in this case.

18 So, I'll open it up for questions.

19 But I think I'm comfortable with where it's
20 at now. And I'm open to moving on an emergency
21 today so that there's no laps in that
22 emergency.

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1 COMMISSIONER MAY: Yes, I would
2 just say that on the subject of whether it's
3 federally financed or District financed, I
4 think the important improvement in the
5 language that we have right now is that it's
6 explicit that requirements of IZ would be met
7 in the project no matter what. And that it
8 would continue in perpetuity once the other
9 restrictions are no longer applicable. So it's
10 not like anybody's going to get a free ride
11 and not be subject to IZ. We're going to have
12 something that's equivalent to IZ or better in
13 the beginning. And then when the extra
14 regulations fall away, we'll still be left
15 with IZ equivalent in terms of the numbers of
16 units and protection, and so on.

17 And I am comfortable with the
18 revised language for setting it down on
19 emergency basis tonight. So, I think it was
20 smart not to take action the other time. I
21 think we were right to put it off because I
22 think what we have now is much better.

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1 COMMISSIONER TURNBULL: Mr. Chair,
2 I would just concur with both my colleagues.
3 I think we should go forward.

4 COMMISSIONER SELFRIDGE: I agree,
5 Mr. Chair. Thank you.

6 VICE CHAIRMAN SCHLATER: I'd like
7 to OP and DHCD and OAG for all working
8 together and improving the text here. It's
9 good to see DHCD down before the Commission
10 and working with us. And we look forward to
11 working with you in further ways to make the
12 administration of IZ work better.

13 That being said, I would move if I
14 could find the right paper that we approve on
15 an emergency basis Zoning Commission Case No.
16 04-33D Text amendment regarding inclusionary
17 zoning.

18 COMMISSIONER TURNBULL: Second.

19 MR. BERGSTEIN: And you take
20 proposed action as well.

21 VICE CHAIRMAN SCHLATER: Emergency
22 and proposed action.

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1 MR. BERGSTEIN: Yes. Okay. Thank
2 you.

3 VICE CHAIRMAN SCHLATER: Well,
4 let's have a vote on this. All in favor say
5 aye.

6 ALL: Aye.

7 VICE CHAIRMAN SCHLATER: All
8 against? No. I think we've got a unanimous
9 vote. Ms. Schellin?

10 MS. SCHELLIN: Yes. Staff would
11 record the vote five to zero to zero to
12 approve emergency action and proposed action
13 on Zoning Commission Case No. 04-33D. Vice
14 Chairman Schlater moving, Commissioner
15 Turnbull seconding, Commissioners Hood, May,
16 Selfridge in support.

17 CHAIRMAN HOOD: Thank you very
18 much, Vice Chairman. I will tell you as I was
19 reading the transcript it looked like the
20 proposed text that was given to us tonight
21 definitely differs from what you guys had at
22 the hearing. And also, I read Director

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1 Edmonds' comment, as well as some other
2 comments. I think Mr. Stucker and others. I
3 think that you guys had a great hearing in
4 flushing out the issues and I think we
5 definitely, as Commissioner May said, got a
6 better piece to deal with and to vote on
7 tonight.

8 So, we voted on the emergency, and
9 we also did proposed action. Thank you very
10 much, Vice Chairman.

11 Okay. Let move to the Hearing
12 Action. Zoning Commission Case No. 04-33E
13 (Office of Planning - Text Amendment to Add '
14 2602.3 Inclusionary Zoning to Exempt Property
15 Disposed by DHCD).

16 Office of Planning, we're going to
17 go to Mr. Cochran

18 MR. COCHRAN: Thank you, Mr. Chair.

19 OP recommends the Commission set
20 down an additional text amendment to Chapter
21 26 Inclusionary Zoning that's related to the
22 amendment you just acted on on an emergency

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1 basis. But it requires a separate
2 consideration because it wasn't previously
3 advertised.

4 The proposed new section ' 2602.3,
5 which is showing on page 2 of OP's October
6 29th report would exempt from IZ certain
7 developments on property that DHCD disposed of
8 under two specific empowerments. The first is
9 the D.C. Code Section 42-4171.03 which allows
10 the Mayor to acquire and dispose of abandoned
11 or deteriorated property for the purpose of
12 eliminating slum and blight.

13 And the second is Mayor's Order
14 2007-209 which delegates the Mayor's authority
15 under that law that I just cited to the
16 Director of DHCD, and the types of property
17 are generally described as abandoned or
18 deteriorated or vacant and abandoned.

19 And DHCD has asked OP to introduce
20 this proposal to give their Department the
21 ability to dispose of city owned properties
22 for residential development without always

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1 having to require the production of affordable
2 units that would have otherwise have been
3 required by IZ.

4 The District sometimes has
5 properties in areas of concentrate poverty
6 where DHCD believes healthier and more stable
7 neighborhoods could be achieved by giving the
8 Department more flexibility in the amount of
9 affordable housing or the targeted household
10 income levels then is permitted by IZ.

11 DHCD points out that not all your
12 other disposition programs to which this
13 exemption would be applied required to focus
14 on eliminating slum and blight. The
15 appropriateness of the disposition
16 requirements for the properties that would be
17 exempted are further insured by the proposed
18 dispositions being subject to a public hearing
19 and requiring formal notice to the City
20 Council. And OP would also be updating the
21 Commission on the proposed exempt dispositions
22 as part of the annual IZ reporting process.

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1 OP understands DHCD's concerns and
2 recommends the Commission schedule a public
3 hearing on the proposed amendment at its
4 earliest convenience.

5 I'm available to answer any
6 questions and so is Mr. Stucker from DHCD.

7 CHAIRMAN HOOD: Okay. Mr. Cochran,
8 as I looked at this, Ms. Schellin, when would
9 we probably have a hearing on this case? Do
10 we have a date?

11 MS. SCHELLIN: Probably not until
12 February or March.

13 CHAIRMAN HOOD: You know, what
14 concerns me is, I'm not sure if this is going
15 to make a difference or not, but I've been
16 around long enough when Administrations
17 change, things change. That office may
18 change, the Mayor we know is going to change
19 even though we're not politically driven. But
20 recommendations, I've seen it where
21 recommendations change. You know, you might
22 not want to hear this, but I will tell you in

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1 November there was one recommendation from the
2 Office of Planning about 12 years ago, and
3 when the Administration changed it was in
4 support an when the Administration changed it
5 was in opposition.

6 So, I guess, I'm looking at, you
7 know, I don't have a problem with setting it
8 down. But I think like anything else, I think
9 the new Administration needs to have the
10 courtesy to review this, whether it be DHCD's
11 directly if it changes or not, or whatever the
12 case is. I would like to see that done, and I
13 want to know that that has been done if I'm
14 still here. If I'm not here, I don't have to
15 worry about it. But if I'm still here, then I
16 would like to know that that has been done at
17 that point in time.

18 Okay. Let me open it up for any
19 other questions. Any other questions?
20 Commissioner May?

21 COMMISSIONER MAY: Yes. I would
22 just say that, you know because DHCD has asked

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1 for this, you know just on the basis of a
2 District agency asking for an amendment to the
3 Zoning Regulations, I'm inclined to give them
4 the benefit of the doubt and -- but I will say
5 that I think this is a pretty high threshold
6 for me. And I think the case has to be made
7 very clearly as to why this is really
8 necessary and why it's going to be helpful and
9 beneficial to the city. And so far all I have
10 is the impression that it would make things a
11 little bit easier for DHCD, I'm not sure that
12 that's compelling enough. But the case may
13 well be made. I jus want to make sure that
14 it's know that while I'm willing to set it
15 down, there's I think a high hurdle to clear
16 to get it approved.

17 CHAIRMAN HOOD: Okay. Vice
18 Chairman Schlater?

19 VICE CHAIRMAN SCHLATER: Mr.
20 Chairman, I'm inclined to set this down as
21 well. From what I heard at the hearing it
22 seemed that DHCD had been asking for a much

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1 broader exemption. I may be wrong about that,
2 but it seems to have come in much more
3 narrowly focused on this one program. So, I'm
4 willing to hear the case as to why this
5 program should be exempted and I look forward
6 to getting it.

7 I don't think we don't got -- oh,
8 okay. No problem. And OP says for the
9 hearing they'll provide an analysis of the
10 authority of DHCD history of the properties
11 disposed. I think all of that will be helpful
12 and illuminating. So, I look forward to the
13 hearing.

14 CHAIRMAN HOOD: Okay. Now any
15 comments or questions?

16 COMMISSIONER TURNBULL: Yes. Mr.
17 Chair, I would just add I think that in our
18 hearing basically on 04-33E or D before, I
19 think we found at the hearing that the whole
20 subject had grown. We suddenly got a binder,
21 you know two inches thick put on our dias up
22 here. And I think it became obvious that it

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1 would have to be a separate issue.

2 So, I think we could have the
3 hearing, but I would agree with Commissioner
4 May that the threshold is going to be high for
5 the explanation as to why we need to go this
6 extra measure.

7 CHAIRMAN HOOD: Okay. Great.

8 So it sounds as though no objection
9 to maybe setting this down. And nothing worse
10 than making a motion and don't get a second.
11 So, I would move that we set dow Zoning
12 Commission Case No. 04-33E and ask for a
13 second.

14 COMMISSIONER MAY: Second.

15 CHAIRMAN HOOD: It's moved and
16 properly second. Any further discussion? All
17 those in favor aye.

18 ALL: Aye.

19 CHAIRMAN HOOD: Not hearing any
20 opposition, Ms. Schellin, would you please
21 record the vote.

22 MS. SCHELLIN: The staff would

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1 record the vote five to zero to zero to set
2 down Zoning Commission Case No. 04-33E as a
3 rulemaking. Commissioner Hood, Commissioner
4 May seconding, Commissioners Schlater,
5 Selfridge and Turnbull in support.

6 CHAIRMAN HOOD: Okay. I think at
7 this point we just have one more thing on our
8 agenda, which shouldn't take that long, but
9 we're going to take five. And we'll come
10 back in five minutes.

11 (Whereupon, at 8:34 p.m. off the
12 record until 8:43 p.m.)

13 CHAIRMAN HOOD: Okay. Let's
14 reconvene.

15 And also, I should have done this
16 probably an hour and a half or two hours ago.

17 We've also been joined by Ms. Buschman and
18 the Office of Planning staff. So forgive me
19 for being only an hour and a half late, or
20 maybe two hours late.

21 Okay. Let's go ahead. Next on our
22 agenda is the ZRR Guidance. Zoning Commission

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1 Case No. 08-06-12 Office of Planning ZRR PUDs.

2 And I'm going to have Mr. Parker walk us
3 through it, and we will let him know our
4 recommendations as we proceed.

5 Mr. Parker.

6 MR. PARKER: Good evening, Mr.
7 Chairman, members of the Commission. I'm
8 Travis Parker, Office of Planning.

9 So there are a series of
10 recommendations from our hearing on the
11 planned unit development. I'll walk you
12 through them one at a time.

13 The first recommendation is sort of
14 the overarching recommendation. We've talked
15 about basically dismantling our existing PUD
16 process and creating three new processes.
17 None of them are exactly like the existing
18 one, but all of them have some components of
19 the existing PUDs.

20 The first process we've recommended
21 is basically a design review process. This
22 would be optional city-wide, in some cases it

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1 could mandatory, places where it's mandatory
2 now including the Capital Gateway and H Street
3 Northeast. But this would be a process where
4 dimensional flexibility, lot occupancy, yards,
5 some height would be available in executive
6 for design review.

7 The second process would involve
8 limited bonus density. Process 2 would also
9 include design review and dimensional
10 flexibility, but would include the possibility
11 for some bonus density in exchange for public
12 benefit.

13 Process 3 would be greater amounts
14 of density availability in exchange for a
15 greater amount of benefits. And would also
16 included, again, design review and dimensional
17 flexibility.

18 So that in a very short nutshell
19 encapsulates OP's main recommendation.

20 A second option would be for you to
21 alter those three types that we've recommended
22 in some different way.

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1 Option 3 would be to just reject
2 outright our recommendation and stick with one
3 type of PUD process.

4 I'm happy to offer more explanation
5 or walk you through our reasonings again if
6 you'd like.

7 CHAIRMAN HOOD: Okay.
8 Commissioners, we have a number of requests.
9 But let's open it up for any questions.
10 Commissioner May?

11 COMMISSIONER MAY: Yes. I just
12 wanted to ask, it's not stated here but there
13 were differences in the processes for each of
14 the three. Is that embedded in your
15 recommendation here? Because I don't see that
16 discussed anywhere else.

17 MR. PARKER: That is except where
18 it's part of another recommendation like the
19 lot size and stuff. But, yes, that's a good
20 point. The processes would be embedded in our
21 recommendation. I believe we had a
22 supplemental filing.

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1 COMMISSIONER MAY: There was a
2 little chart that showed.

3 And as I recall for type 1 design
4 review there was no setdown and there was just
5 a final action, is that right?

6 MR. PARKER: Type 1, correct.

7 COMMISSIONER MAY: Okay. And then
8 for type 2 we asked you to reintroduce the
9 setdown?

10 MR. PARKER: Yes. The chart here
11 just encapsulates what was in our PowerPoint
12 that you asked us to submit. But, yes, we're
13 open to having a setdown in type 2.

14 COMMISSIONER MAY: Okay. And then
15 the final one, type 3 was the traditional
16 setdown plus proposed action, plus final
17 action?

18 MR. PARKER: Correct.

19 COMMISSIONER MAY: With regard to
20 type 2, I don't know how the rest of the
21 Commission feels on this, but I'm inclined to
22 make sure we have a setdown for type 2, but I

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1 don't have any difficulty with going straight
2 to a final action there. It may be that we
3 take final action a little bit more slowly in
4 some cases. Because, you know a lot of stuff
5 happens between proposed and final. But I
6 don't have any difficulty in a type 2 review
7 going just a setdown and final action. And I
8 think no setdown and just a final action in
9 type 1 if it goes okay.

10 VICE CHAIRMAN SCHLATER: In the
11 chart that we've been provided, and it says
12 for type 1, there is no final action. Just
13 wanted to clarify that.

14 MR. PARKER: Well, it would
15 certainly be an option but just like the BZA
16 you could take action at the hearing. Just
17 one vote, but that could take place at the
18 hearing.

19 CHAIRMAN HOOD: I'm lost. You said
20 no final action type --

21 VICE CHAIRMAN SCHLATER: One.

22 MR. PARKER: In other words, no

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1 separate meeting would be required unless you
2 opted for it.

3 VICE CHAIRMAN SCHLATER: But
4 there's no separate meeting required for us, I
5 guess to take action now.

6 CHAIRMAN HOOD: So basically what
7 this is saying you take action at the public
8 hearing; that's what we're trying achieve?

9 MR. PARKER: Yes, that would be the
10 preferred method.

11 COMMISSIONER MAY: But I mean even
12 at BZA that's not an automatic.

13 MR. PARKER: Right. Absolutely.

14 COMMISSIONER MAY: So I think that
15 your chart more correctly should show that
16 there would be a single final action.

17 CHAIRMAN HOOD: Final action at
18 least.

19 COMMISSIONER MAY: And it could be
20 done at the hearing.

21 MR. PARKER: Right. I think the
22 intent was final action on a separate date.

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1 But you're right, there is final action taken.

2 CHAIRMAN HOOD: Right. Because if
3 I walk in the door in a type 1, I just
4 automatically know it's going to be, more than
5 likely, pretty much approval in a public
6 hearing, and that's not actually the case.

7 I think we need to have final
8 action. Well, I guess as far as I'm
9 concerned. I think that's a good point,
10 whoever brought it up. I think it was, Vice
11 Chair.

12 COMMISSIONER MAY: I think that the
13 analysis of the approximate number of cases
14 that fall into those categories, I think that
15 was also a helpful thing to see. And we see
16 that the majority of the PUDs were type 3, but
17 there's a significant enough a number of type
18 1 and type 2 to make them viable methods, if
19 you will.

20 CHAIRMAN HOOD: So the
21 recommendation, Commissioners, I think
22 Commissioner May is saying under type 2 we

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1 have a setdown.

2 COMMISSIONER MAY: Yes.

3 CHAIRMAN HOOD: Yes. And under
4 type 1 final action we have that option, but
5 we want to make sure we have final action,
6 yes. It doesn't necessarily mean that the
7 final action will be taken at a public
8 hearing, but we're trying to achieve mainly to
9 get final action at the public hearing.
10 Actually, we always try to achieve that.

11 Anything else?

12 VICE CHAIRMAN SCHLATER: Mr.
13 Chairman, I'd just ask I think I'm okay with
14 these three different tracks because they do
15 represent three distinct types of cases and
16 it's good to characterize them that way. And
17 I think it's okay to streamline the processes.

18 One issue that is does raise that's
19 not really addressed in our worksheet is how
20 these different processes, you know what
21 additional steps there may be that might be
22 helpful.

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1 and one thing I find, and I think I
2 mentioned this at the hearing, is that in our
3 current design review process I don't think it
4 works particularly well. I don't get the
5 sense that we're pushing the architects and
6 developers very hard with respect to their
7 designs. I don't feel like we are given
8 enough -- I feel like there needs to be
9 additional help with respect to these designs
10 whether it's criteria for what actually --if
11 we're going to grant relief and they need this
12 design review process, what are the criteria
13 that the developers -- what are the hurdles
14 that they have to get over? Do they need a
15 more articulated facade? Do they need to use
16 higher quality building materials? Do they
17 need to do something above and beyond what's
18 normally done in D.C. architecture? Because
19 what they're all asking for is flexibility on
20 heights, yards, lot occupancy. And if we're
21 going to give them that, we want to get
22 something in return.

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1 So, the first thing I would ask is
2 that when we have text we come up with clear
3 criteria for how the design review is going to
4 be judged.

5 And then the second thing I'd like
6 to ask is look at best practices around the
7 country about how design review processes work
8 in New York City, San Francisco, Portland. Do
9 we ask the applicant to go out and find a
10 third party reviewer for these plans, and you
11 get an architect? Because I would certainly
12 be in support of that.

13 Do we set up an architectural
14 review panel that provides independent third
15 party comments on these designs? Because I
16 would find that to be helpful. Because we
17 need more ammunition. I'm not an architect.
18 I'm not qualified necessarily to say what's
19 good design and what's bad design. But
20 sometimes when we get people who can put it
21 into better words, that helps us.

22 And so I think we really need to as

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1 part of this entire zoning rewrite, and I
2 think it's specifically related to this option
3 -- well it relates to all three types here,
4 but I want to beef up our design review
5 process so that we can ensure that we're
6 actually getting good architecture.

7 I know that when we have PUDs come
8 before us, often times they're deemed as a
9 public -- you know, their benefits is that
10 they're superior architecture but in fact
11 they're not. They're supremely average
12 architecture. So, we need to figure out a way
13 to improve that. And I think we have a great
14 opportunity to do that here. Let's look at
15 best practices and try to do a better job.

16 MR. PARKER: If I could, you've
17 actually hit on the one area that we haven't
18 finished. We have one of our 20 working
19 groups remaining, and that's the working group
20 specifically to look at design review. And I
21 think you've hit on the main component of that
22 and we'll be setting up these criteria.

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1 COMMISSIONER MAY: I just want to
2 say I guess I agree sort of what that idea
3 that it needs to be beefed up. I'm a little
4 bit concerned by some of the suggestions.
5 Because i'm not sure that we necessarily are
6 going to benefit from seeing a peer review
7 report or something like that.

8 I guess I'd be interested in
9 knowing what some other cities do in their
10 design reviews, and we may find simply that
11 the design reviewers are actually designers
12 which I'm not sure what embodies for us. But
13 I do think that the idea that we have some
14 criteria upon which to base decision making
15 for granting flexibility I think would be
16 helpful. So, knowing for example superior
17 quality materials is one of the areas where
18 you get some credit for how good your design
19 is, or better use of public space. You know,
20 better sustainability features, or things like
21 that. You know, what's going to matter to us.

22 I think having that codified in

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1 some manner in the actual language I think
2 would be helpful. I'm just not too sure we
3 can go too far in setting rules as a design
4 review body.

5 So, that's my couple of cents on
6 that.

7 VICE CHAIRMAN SCHLATER: I think I
8 agree with that. But if our only purpose in a
9 third of these cases is for design review, I
10 guess we just -- I think I agree with you.

11 I don't know what the right answer
12 is. I think it would be helpful to look at
13 some best practices.

14 COMMISSIONER TURNBULL: I think
15 both of you -- I think, Vice Chair, your idea
16 is a good one. I just think that a peer
17 review is difficult. I've been through a
18 number of peer review setup like that, and the
19 cost; you have to pay for the peer review
20 period and it adds more time. I think it
21 would probably complicate our job more than it
22 would help, to some extent. And depending upon

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1 who the jurors and where you get them from,
2 you get into a whole debate on how to pick
3 these people.

4 I mean, we've already gone through
5 -- we've had several PUDs where we've had a
6 lot of design review. I know and one of the
7 big issues we come at is what I would call
8 three dimensional design for a building. Some
9 buildings, whether they're in the downtown
10 area built up, they have an alley facade or
11 something, the materials definitely get
12 lesser. But I can remember when we had a
13 project on South Capitol Street right across
14 from the stadium and you had your South
15 Capitol Street facade, and then the other
16 three sides changed dramatically even though
17 there's townhouses right on the other side.
18 And the view is going to be looking at the
19 back of this building. And we were able to,
20 after several hearings continued on, I think
21 with Commissioner Parsons I think we were able
22 to finally get them to change it.

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1 Again, not dramatically. It
2 wouldn't match the front of the building. But
3 we did get them to change significantly the
4 back of it. So we've been able to do it in the
5 past, but it would be nice to have a little
6 bit more ammunition to look at these things to
7 some criteria of some sort.

8 I think Commissioner May is right.
9 I think we do need to beef up viability to do
10 it, but we don't want to make it so
11 complicated that it adds more to the process
12 of it. But I agree, design review is going to
13 be an interesting topic to discuss.

14 CHAIRMAN HOOD: Commissioner
15 Selfridge?

16 COMMISSIONER SELFRIDGE: Thank you,
17 Mr. Chairman.

18 I, too, agree with Vice Chairman
19 Schlater's points.

20 On the Commission we really benefit
21 from the expertise that Commissioner May and
22 Commissioner Turnbull bring with their

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1 background in architecture. But there could
2 certainly be a time when gentlemen with their
3 skill sets aren't on the Commission. And to
4 have some sort of best practices or guidelines
5 I think would be helpful going forward. I
6 don't know if a full commission or review
7 commission is practicable, but the idea that
8 there be a little more guidance I think would
9 be helpful.

10 CHAIRMAN HOOD: So you don't like
11 my design reviews?

12 All right. You know, and I'm
13 sitting here listening to this conversation
14 and I'm thinking about a conversation that's
15 been had in this city for quite a while, and
16 that's the Planning Commission that ups from
17 time-to-time. And that's not a best word
18 around here for me to use, but I know that
19 there was a lot of discussions. And that's
20 always been the case whether or not we should
21 have a planning commission. But, I will leave
22 that alone.

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1 I actually like what's before us,
2 but I do not agree with -- I think I know
3 where one of the ANC -- I read one letter of
4 one of the ANC's talked about doing away with
5 the three PUD process. I actually think this
6 is good. With some refining, as we've already
7 mentioned, I think this is exactly along the
8 lines of which we should go. And I'm fully
9 supportive of at least recommendation 1, 2 and
10 3 of the three types of PUDs as stated. And
11 unless I hear objection, we can move on. Any
12 objections with the refinements of what my
13 colleagues have already mentioned.

14 Okay. Mr. Parker?

15 You want to hit your microphone.

16 MR. PARKER: Excuse me.

17 So action was in favor of option 1
18 subject to the refinements we heard? All
19 right.

20 Number 2, the first option here and
21 OP's recommendation is to basically
22 distinguish between types 2 and type 4 through

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1 a standard percentage above matter-of-right.
2 So whether you're going through a type 2 or
3 type 3 process would be determined by how much
4 density above matter-of-right you're
5 requesting. And we propose that cut-off to be
6 20 percent above matter-of-right for
7 residential projects and 30 percent above
8 matter-of-right for commercial projects.
9 These numbers, basically, represent what the
10 average differential is now for when people
11 apply for PUDs and what's available within the
12 same zone.

13 Option 2 would be to have a
14 standard percentage, but some other standard
15 than what OP has recommended.

16 And option 3 is not changing the
17 existing process.

18 CHAIRMAN HOOD: Any comments for
19 discussion? Commissioner May?

20 COMMISSIONER MAY: I would just say
21 that I'm not completely comfortable with the
22 percentages at this point, but I think that

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1 for a starting point I think that's fine. I
2 think it's going to be part of a continuing
3 discussion.

4 I guess, you know often with these
5 things it's hard for me to grapple with them
6 in only a theoretical or a statistical kind of
7 way. And it may be that we need some case
8 studies that show us massing of things or what
9 have you that show what the net effect is of
10 adding these percentages would be. But as I
11 said, I think that option 1 is okay because
12 we're just trying to set a direction at this
13 moment and I think that we can further refine
14 numbers. And if we have the percentages need
15 to be a little different, we can sort that out
16 as this moves forward.

17 VICE CHAIRMAN SCHLATER: Mr.
18 Parker, the additional OP data in response to
19 Commission request provides a chart for us.
20 It corresponds to page 8 of the PUD report.
21 Those are the proposed FAR amounts by zones?

22 MR. PARKER: For residential

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1 projects.

2 VICE CHAIRMAN SCHLATER: For
3 residential projects?

4 I think what would be helpful, and
5 I guess what was in my head when we asked for
6 this, is that you compare that to what the
7 existing limits are in one chart?

8 MR. PARKER: I certainly now.

9 VICE CHAIRMAN SCHLATER: So that we
10 an just see, okay, today 1.0 is allowed, in
11 the future 1.4 will be allowed, or whatever
12 the amount is. It's just it would be helpful
13 to see where the greatest changes are
14 occurring in which zones.

15 I'm okay making the increase a
16 standard amount. I'd like to see that chart
17 to understand whether 20 percent or 30
18 percent, 40 percent is the right amount.

19 MR. PARKER: Certainly.

20 CHAIRMAN HOOD: Anybody else?

21 So, I think we're looking at option
22 1, but I think there's some uncertainty of the

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1 percentages. am I right, Commissioner May?
2 Okay.

3 COMMISSIONER MAY: We'll proceed
4 with option 1 and revisit the percentages at
5 the time of text, okay?

6 CHAIRMAN HOOD: Okay. Let's move
7 right on.

8 MR. PARKER: Number 3 is setting a
9 lot size minimum for each type. And this would
10 largely be based on the existing lot size
11 minimums.

12 For type 1 in low and moderate
13 density residential zones, R-1 to R-4, it
14 would basically be a two acre minimum. And in
15 commercial and higher density residential
16 zones there would be no minimum. Again, this
17 would keep you from doing a design review for
18 single family homes and flats and small
19 apartment buildings, but would allow it for
20 commercial corridors and larger residential.

21 For type 2 and type 3 these
22 basically aren't applicable in the low and

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1 moderate density residential zones because we
2 don't use FAR in those zones so there's no
3 such thing as bonus density in those zones.
4 In the other zones the limit would be what it
5 is now, 15,000 square feet.

6 And option 2 if for you to set
7 other limits as you desire.

8 CHAIRMAN HOOD: So we have two
9 options, option 1 and option 2. Any comments?

10 OP is recommending option 1.

11 VICE CHAIRMAN SCHLATER: I
12 apologize, but I can't read actually on the
13 worksheet. There's a chart under this
14 question. And I read the second and third
15 rows, but I can't read the first row.

16 MR. PARKER: I apologize.

17 There's nothing in the very top
18 left, but the next three columns are type 1,
19 type 2, type 3.

20 VICE CHAIRMAN SCHLATER: And the
21 Commission has the option, as we do now, to
22 waive these minimums if we so choose, correct?

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1 MR. PARKER: That's true. And in
2 recommendation 4 that we'll talk about next is
3 actually the criteria for those waivers.

4 VICE CHAIRMAN SCHLATER: Okay. I'm
5 comfortable with this, Mr. Chairman.

6 CHAIRMAN HOOD: Okay. Anybody
7 else, comments? Okay. Thank you. We will
8 move with option 1.

9 Let me ask, what is 2 AC?

10 MR. PARKER: Two acres.

11 CHAIRMAN HOOD: Oh. It must be
12 getting late, close to my bedtime. Okay. I
13 was thinking Atlantic City.

14 Okay. Mr. Parker?

15 MR. PARKER: So number 4 actually
16 is, as we talked about, the criteria for
17 waiving those lot size minimum. Right now
18 there's just general criteria. What we've
19 proposed is adding some potential categories
20 of criteria that the Zoning Commission could
21 use to waive that, including redevelopment and
22 consistent with the small area plan,

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1 government projects, or in fill that is
2 compatible with its surrounding development.

3 Option 2 would be to just ignore
4 it, leave the criteria as they are now and/or
5 add additional criteria as you see fit.

6 VICE CHAIRMAN SCHLATER: Would the
7 regulations say, would it be, I guess, the
8 Commission may waive? What are we looking at
9 in terms of --

10 MR. PARKER: I don't have the
11 language in front of me, but basically it
12 says. That the Commission may waive up to 50
13 percent of the lot size minimum, and right now
14 again it's under general criteria and we would
15 add these as things that the Commission may
16 consider in waiving.

17 VICE CHAIRMAN SCHLATER: By 50
18 percent?

19 MR. PARKER: That's the existing
20 standard. We hadn't proposed changing it.
21 Oh, we have. No reason.

22 VICE CHAIRMAN SCHLATER: I don't

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1 know what we wouldn't just maintain
2 flexibility on that point. I don't know why
3 50 percent is a magic number.

4 MR. PARKER: I'm sorry. We can take
5 away. Fifty percent is the existing number.

6 VICE CHAIRMAN SCHLATER: I
7 understand that.

8 MR. PARKER: We can change that
9 number.

10 VICE CHAIRMAN SCHLATER: In my
11 mind--

12 MR. PARKER: Okay. Understood.

13 CHAIRMAN HOOD: Is everyone in
14 agreement? I don't want to get into 50/40.

15 Okay. So, as we stand now we will
16 go with option 1, I believe. Any differences?
17 Okay.

18 Thank you, Mr. Parker. Let's move
19 on.

20 MR. PARKER: Okay. Option 5 is
21 another big paradigm shift. Basically again,
22 from our best practices what we learned is

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1 that other jurisdictions in the country don't
2 do their public benefits acceptance through
3 just negotiation and proffers. They actually
4 define a list of what they want to see as
5 public benefits in their PUDs. And that's
6 basically the crux of number 5 is codifying a
7 list of acceptable public benefits. And OP's
8 recommendation for standards for things being
9 on that list being that they must be
10 measurable and specific, cannot include
11 monetary contributions with the exception of
12 District Housing Fund, and should last for the
13 life of the project unless specified.

14 In the hearing we had a proposed
15 two page list of ideas. This is still -- you
16 know, between now and then we're going to put
17 a lot more into that, but that was to give you
18 an idea of how that list would look and how it
19 would work.

20 CHAIRMAN HOOD: Okay. I remember
21 we talked about this, and I just want to make
22 sure. We talked about not giving monetary

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1 contributions. We didn't necessarily say not
2 give them, we said give them with direction or
3 instead of giving the money, give the
4 contribution. Is that what I think? Ms.
5 Steingasser, I think you elaborated on that
6 for me.

7 MS. STEINGASSER: We did. We talked
8 about money could be given to a particular
9 program as long as the Commission had
10 assurance of how it would be spent, or they
11 could just buy the item. So instead of giving
12 to a little league, they could just buy the
13 uniforms.

14 CHAIRMAN HOOD: Okay. Gotcha.

15 COMMISSIONER TURNBULL: Mr. Chair,
16 just sort of following up on your question. So
17 that doesn't eliminate material or
18 "construction"?

19 MS. STEINGASSER: Oh, no. It
20 encourages material and construction.

21 COMMISSIONER TURNBULL: Okay. So
22 they could build something, provide something

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1 but just not cash.

2 MS. STEINGASSER: Right.

3 COMMISSIONER TURNBULL: Okay.

4 CHAIRMAN HOOD: Anyone have a
5 problem with option 1?

6 COMMISSIONER MAY: I just want to
7 touch on a couple of points that relate to
8 this.

9 We got into the discussion with
10 regard to public benefits having to do with
11 the extent to which they need to accrue to the
12 immediately effected community. I don't see
13 that addressed here. And, you know, I think
14 there is an obligation to do that; that's been
15 our practice and it was one of the subjects at
16 the hearing. So, I'd like to determine a
17 direction by now as we head towards developing
18 the text here.

19 CHAIRMAN HOOD: You mean as far as-
20 -

21 COMMISSIONER MAY: Well, I mean in
22 other words, I think there is a specific

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1 obligation that the benefits substantially
2 accrue or something like that to the
3 immediately effected community.

4 CHAIRMAN HOOD: Right.

5 COMMISSIONER MAY: And we need to
6 have language that reflects that intent in
7 some manner.

8 CHAIRMAN HOOD: Okay. I think
9 we've so noted on what he said. The effected
10 area should be the one --

11 MR. PARKER: It's just a matter of
12 how we want to effectuate that. I think our
13 answer was of our list of benefits something
14 like two-thirds of those that were available
15 benefits accrue to the local community. We
16 didn't necessarily want to tie the hands of
17 the Zoning Commission or the developers to say
18 you must pick two-thirds of the development
19 that do because there might be neighborhoods
20 that don't need things off that that want more
21 general things.

22 VICE CHAIRMAN SCHLATER: I think

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1 you list the contributions to a District
2 housing program as an example. I could
3 imagine a project being done downtown that
4 decides to contribute \$5 million to the
5 Housing Production Fund, and I don't think you
6 could make an argument that that benefits the
7 immediate neighborhood. But I think I would
8 look favorably upon that.

9 So, I don't think it needs to be a
10 hard and fast rule that it accrue directly to
11 the neighborhood. That's my thinking on that
12 particular point.

13 COMMISSIONER MAY: I don't think it
14 should be a hard and fast rule, but I think
15 that there should be an intention when we're
16 granting this increased benefits to the
17 property owner in some manner, that there be
18 some immediate attention in the neighborhood.

19 Now in some circumstances it may not be as
20 important as in others. But I think that
21 emphasis and an intention to do something that
22 benefits the effected community I think is an

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1 important thing to express at this point.

2 And I think simply having a chart
3 with point values on it, of which many are
4 local, I don't think that's enough. I think
5 that we need to have some sort of incentive or
6 encouragement, or statement about the
7 intention that there be a local benefit. I
8 think it needs to be explicit.

9 I don't necessarily want our hands
10 tied.

11 MR. PARKER: So an intent statement
12 in the code prior this section or --

13 COMMISSIONER MAY: I mean if we
14 could do something that's more than intent,
15 that would be great. But retain flexibility.

16 MR. PARKER: Is it a matter of just
17 valuing local benefits higher?

18 COMMISSIONER MAY: It very well
19 could be.

20 CHAIRMAN HOOD: Let's do this: We
21 actually had a case like that, and I can't
22 remember what the local benefits were. But

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1 let's take a real example. And I can't
2 remember, because I'm getting ready to go on a
3 limb here. The Watergate case. That was a
4 live example where the affordability, which I
5 know a lot of people frown when I ask for the
6 affordable housing component that was supposed
7 to be on site at the time, and it was off
8 site. It was in another ward versus what the
9 neighborhood got. And I'm not sure exactly
10 how that panned out.

11 But let's take a live example, and
12 I think that kind of ties in to what Vice
13 Chairman Schlater is saying about the Housing
14 Production Trust Fund. Because there have
15 been cases where I think, I want to say a
16 million dollars, but I'm not sure. I thinking
17 that case it was a million dollars. And also,
18 I'm not exactly sure if the neighborhood got
19 it.

20 I kind of agree both. Let's just
21 find out how we get there. Let me open it up
22 to Commissioner Turnbull.

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1 COMMISSIONER TURNBULL: Yes. I
2 guess maybe OP could think about it and
3 provide some options.

4 I mean, I don't want to get caught
5 in a rigid percentage formula, you know like
6 75 percent or 66 percent. But I think we
7 might like some direction on how we could
8 weight on this, and maybe if there was some
9 language in there that the Zoning Commission
10 can waive those things depending upon a
11 condition that we have the ability. But,
12 there should be some standards, I think. But
13 I'm not sure and we look to you to try to come
14 up with some ideas on how to structure that.

15 MR. PARKER: We'll certainly put
16 some work into it.

17 Another difficulty, not to make
18 excuses, is everyone's opinions differ on what
19 is something that accrues to the local
20 community. But we'll certain work on that.

21 COMMISSIONER TURNBULL: That's
22 true. You know, I don't think it's an easy --

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1 I think Commissioner May and the Vice Chair
2 both got some very good points that need to be
3 massaged so we have a direction on this.

4 I think I'm persuaded to have more
5 money or more of the amenities focused on the
6 area where the project is, but I also see the
7 point of the expanded view of the whole city
8 where the community at large is benefitting
9 too. So I think there's a little bit of play
10 there.

11 CHAIRMAN HOOD: Commissioner
12 Selfridge

13 COMMISSIONER SELFRIDGE: Thank you,
14 Mr. Chairman.

15 I think like so many is saying the
16 devil's in the details, how do you get there?

17 And I just come back to the idea of the point
18 system and a point that Vice Chairman Schlater
19 made. We're setting the system up to be gamed
20 perhaps a little a bit. And how do you really
21 make a qualitative judgment about these public
22 benefits, particularly if you have a point

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1 system in place and somebody hits that number,
2 if it's 20 points or 25 points.

3 I would almost be more comfortable
4 opening it back up and stepping back from
5 these rigid requirements and leaving the
6 discretion with the Commission to maybe make
7 these judgments with the input of the
8 community, as they're the people who are
9 really going to be able to tell us whether or
10 not there's some benefits that are accruing
11 and if it's sufficient for the local area.

12 CHAIRMAN HOOD: That's a very good
13 point, Vice Chairman Schlater.

14 I know these kind of go hand-in-
15 hand with public benefits and then we're
16 talking about this value system. We're kind
17 of trying those together. And I know they go
18 hand-in-hand.

19 Vice Chairman Schlater?

20 VICE CHAIRMAN SCHLATER: Yes, just
21 piggy-backing on Commissioner Selfridge's
22 point. I think when you do go through the

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1 list there are some things that people are
2 going to disagree on whether they're valuable.
3 And I know you've said we can tweak the point
4 system as we go along, but I am worried that
5 people are going to use this as a menu and
6 they're going to cherry pick, and they're
7 going to look an they're going to say "How can
8 I as cheaply as possible get out of this PUD
9 process? And I'm just going to go through
10 each one and, oh, I've already got some tree
11 canopy, so I'm going to take that point. I've
12 got do LEED anyway, because that office
13 buildings are almost required to do at this
14 point. So check off, I get points for that.
15 And I was going to provide retail in my
16 project anyway, so that's good. We're done
17 with that one,"

18 Here's what I like about the list.
19 I like that a lot of things are specific,
20 measurable and lasting. I have a problem with
21 a lot of the PUD amenities that are put
22 forward that are gone the day after the money

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1 is put in. So, if it's overhead, general and
2 administrative expenses for a nonprofit, I
3 think however worthy those nonprofits are, and
4 I think most of the ones that do get money are
5 extraordinarily worth, I don't think that's
6 what we're trying to get at with these
7 proffered benefits and amenities. These are
8 projects that are going to be around for a 100
9 years. We want to see items that are going to
10 last a similar amount of time so that future
11 generations will benefit from these benefits
12 an amenities.

13 And I think it's important that
14 when we come up with these benefits we look at
15 it through that lens, which is are these
16 proper benefits and amenities going to be
17 around 50 years from now?

18 I'll get to the point system when
19 we get to that. Because I think whether or not
20 you create a specific list of measurable
21 public benefits, it's pretty much tied to the
22 points system. I think I have some problems

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1 with it.

2 CHAIRMAN HOOD: Okay. Anybody
3 else?

4 And one things that I like about it
5 is bullet point 3: Should last for the life
6 of the project unless specified. I really
7 like that. So that gets me through that.

8 So, any other comments on number 5?

9 So are we asking, Commissioner
10 Turnbull, for a little more massaging?

11 COMMISSIONER TURNBULL: Yes. You
12 know, I guess the point system I think is one
13 way of doing it. I'm not opposed to that. I'm
14 just concerned that like LEED, architects and
15 engineers can work the LEED point system too
16 picking the very low hanging fruit. So at one
17 point you're LEED certified, but you really
18 haven't done a hell of a lot.

19 So, you know I'd just say be
20 careful as we go through this and as we start
21 to have a workable process involved in this.
22 You know, I'm not sure what you replace that

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1 with. I mean, I think the point system is
2 still probably the way to go, but I would look
3 carefully at how you structure it.

4 CHAIRMAN HOOD: Commissioner May?

5 COMMISSIONER MAY: I would agree
6 that we have to be careful on how this gets
7 structured. I think the idea is very useful.
8 There have been many PUDs we're we don't have
9 a very strong sense of whether it's adequate
10 or not, and it's hard to judge. I think we've
11 gotten better about that over the years that
12 I've been here. But it still, I think, can be
13 codified in some way. And I think that we need
14 to make sure that there is some structure to
15 it, but there's also some flexibility to it.
16 Because we may well faced with a project where
17 it's essentially all just low hanging fruit
18 for the developer and they're getting off
19 easy. And, you know, we may want more in that
20 circumstance, or the opposite could happen. It
21 could be an onerous burden to try to
22 incorporate some o this stuff into something

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1 that's smaller or has significant other
2 benefits.

3 I think it's a yes, let's go
4 forward, let's come up with a system. But it's
5 a cautious system and it is kind of dependent
6 on what we wind up with. And I think there's
7 got to be a significant community input on
8 that. And, of course, I also think there has
9 to be local benefit to much of whatever
10 benefits are established for a given project.
11 Just getting lead points and those sorts of
12 things are not enough to help the immediately
13 effected community.

14 CHAIRMAN HOOD: Okay. Commissioner
15 Selfridge?

16 COMMISSIONER SELFRIDGE: Mr.
17 Chairman, I want to reference a letter we have
18 here that speaks to this. I don't know if it
19 belongs in 5 or 6, or they're kind of running
20 together here. So, I'm just going to talk
21 about it.

22 It's from ANC 6B, my ANC actually,

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1 on October 13, 2010. And the ANC basically
2 says that it would support the revision for
3 the PUDs with the added provision that the
4 Zoning Commission be specifically authorized
5 to require additional public benefits if it
6 believes the packaged offered by the developer
7 is not sufficient.

8 And then skipping down it says:
9 "We believe the Zoning Commission should have
10 the power to expand the public benefits
11 package if requirement. The Zoning Commission
12 already has the power to put in other changes
13 and restrictions; it should have this power as
14 well."

15 So, I think ANC 6B maybe has some
16 of the same concerns we do about this being a
17 little too prescribed.

18 CHAIRMAN HOOD: Okay. I actually
19 looked at that letter also and for so the
20 second paragraph I have a question mark and
21 the third paragraph I have "Not sure." And I
22 actually sat on that particular case. And I'm

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1 not sure. It leaves open for, I think, some
2 additional message and maybe a valid point.

3 I just think that we could -- if my
4 colleagues agree, we can go with option 1. I
5 think Mr. Parker has heard some of our concern
6 and he can maybe message is the word I think
7 that we're using. Right, Commissioner
8 Turnbull?

9 COMMISSIONER TURNBULL: Yes.
10 Correct.

11 CHAIRMAN HOOD: Thank you. So I
12 think he's heard all of our concerns and
13 issues with the broad range. And I'm sure
14 that he could maybe by that time kind of fine
15 tune this and refine this a little bit for us.

16 So, if we say option 1 with all the
17 refinements and comments, and we go along with
18 that, Commissioners? Okay. Thank you.

19 Now, let's move right on, which we kind
20 of elaborate somewhat anyway this point
21 system, the value of the benefits. Let's
22 right on to six. Mr. Parker, do you have

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1 anything to add?

2 MR. PARKER: No. I think you've
3 already got started down the path of number 6.

4 CHAIRMAN HOOD: Okay. Let's talk
5 about this value system, and I think it was --
6 who mentioned it first? Somebody started
7 talking about it, actually.

8 VICE CHAIRMAN SCHLATER: I did.

9 CHAIRMAN HOOD: Oh. Vice Chairman
10 Schlater?

11 VICE CHAIRMAN SCHLATER: Thank you,
12 Mr. Chairman.

13 I think I've raised my concerns,
14 which is cherry picking. In the hearing I
15 think I did mention the possibility that this
16 would be used a floor so you'd have a point
17 system, you'd have to clear that hurdle in the
18 point system and the Zoning Commissioners
19 could determine whether it's appropriate to
20 ask for more. And so just by clearing the
21 point system hurdle wouldn't mean that you had
22 met the test at that point. It's just a bar

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1 that you have to clear and just to demonstrate
2 that you are providing benefits and amenities.

3 And I think that's a road that I would be
4 willing to go down.

5 I think the point system needs to
6 be carefully evaluated. I think each item
7 instead of -- well, in evaluating each item on
8 the scorecard, I think you need to place a
9 dollar value, frankly, on each of them today
10 so that you have a sense of whether -- because
11 this is exactly how people are going to be
12 evaluating it when they go through. They're
13 going to say "How much money is this going to
14 cost me?"

15 And I think it's also very
16 important when you look at these items if
17 they're already required for some reason or
18 another, you shouldn't be getting credit for
19 it. So I think of the Green Building Act
20 requires that an office building pulling a
21 permit in January 2012 has to meet LEED Silver
22 criteria. So, I don't think they should be

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1 getting two points of credit for meeting that
2 criteria. Or, if you're required to provide a
3 certain amount of retail, you shouldn't be
4 getting credit for that.

5 So, with those caveats I would say,
6 look, try to appropriation some dollar value
7 on it and that will give you sense of whether
8 you're weighing the point system properly.
9 Like, bike racks aren't that expensive
10 compared to affordable housing, yet they're
11 getting a similar amount of points.

12 So, I think we just need to take a
13 careful look at it.

14 And then the other thing is we just
15 need to have the flexibility if a different --
16 if there's always going to be something dreamt
17 up that's not on your list in your menu, and I
18 know that's addressed somewhere in your
19 report, but if the community developer agree
20 that something that's not on the list should
21 be provided and it meets all the tests that
22 we've set out for these benefits an amenities,

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1 it should be allowed to be included and given
2 certain point value.

3 I think that's it for me.

4 CHAIRMAN HOOD: Any other comments
5 on the point system?

6 Let me just say one thing. When I
7 look at the point system, I think I kind of go
8 along with Vice Chairman Schlater to some
9 point. But where I think we're departing,
10 case in point and I like live example. When I
11 look at park maintenance for me, when an
12 applicant comes down and in front of this
13 Commission and talks about they want three
14 points, they have adopted a park, and it's
15 stated here in the list, and they're adopting
16 a park is putting up a sign. That's how they
17 have adopted a park. I don't think that's
18 three points.

19 I mean, from my standpoint I don't
20 think that's three points. I think we need to
21 fully flush out how you have adopted the park.

22 How long are you going to help maintain the

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1 park in collaboration or cooperation with the
2 community? Are you going to do it for two
3 years? And I think that's when we start
4 getting to that full three points. Because
5 just to put a sign up I don't even think is
6 worth a point. So that's how I look at this
7 point system, and I may not be looking at it
8 like my other colleagues are, but that's how I
9 envision this point system. Because I will not
10 be inclined to give anybody a point for just
11 putting a sign up and say I adopted park.

12 I need to know how you're going to
13 care for that park, how you're going to work
14 in collaboration, what kind of greenery are
15 you going to buy for that park. What are you
16 going to do for that park? How you going to
17 help the neighborhood keep that park up? And
18 kind of like what we do now. And then I would
19 be willing to maybe give them points, or maybe
20 22. So, anyway, that's my three cents worth.

21 Any other comments? Commissioner
22 May?

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1 COMMISSIONER MAY: Yes. Well, I
2 would agree with, believe it or not, both what
3 Vice Chairman Schlater and the Chairman has
4 said in this regard. And there is a lot more
5 to adopting a park than putting up a sign.

6 I would say also -- I mean, this
7 isn't really covered here but I want to
8 mention it before it gets away from me. But
9 along the lines of what Commissioner Schlater
10 was saying, you know where there are certain
11 things that you might be required to do
12 anyway, like LEED Silver or what have you.
13 Along the same lines, some of the things that
14 a PUD, some of the actions that a developer
15 may have to take on a PUD may not actually be
16 considered a benefit, but actually a
17 mitigation from a specific impact from that
18 project. I mean things like traffic lights,
19 for example, come to mind for me. And there's
20 costs associated with those, but they may be
21 necessary simply to deal with the traffic
22 impact of a project. And I think we need to

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1 make sure that it's well defined and that
2 there is language in the regulations that
3 items that are included in the project as
4 mitigation for specific impacts of the project
5 should not be considered benefits.

6 CHAIRMAN HOOD: Commissioner
7 Selfridge?

8 COMMISSIONER SELFRIDGE: I just
9 wanted to reiterate the idea that I remain
10 concerned that this is going to be we're
11 getting the minimum in public benefits. We're
12 almost negotiating with ourselves here. We're
13 giving a list of things they can get, and
14 potentially developers could do the bare
15 minimum and that would be all, and we would be
16 powerless to ask for or compel more. And I
17 guess that that's a concern that if we don't
18 end up with less than maybe we would have
19 anyways through the regular process.

20 COMMISSIONER TURNBULL: Yes, Mr.
21 Chair. I guess I would look at it that leaving
22 the threshold point on a point system doesn't

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1 guarantee you from my standpoint, approval by
2 the Zoning Commission of your project. I
3 think it gets you a seat at the table where we
4 get to we get on the route to getting there,
5 but it doesn't necessarily mean you
6 automatically are going to get approval by the
7 Zoning Commission.

8 I think, as all the other members
9 have said, you know whether it's mitigation
10 factors or other issues, there's a lot of
11 things that come into play. And I think we
12 need some standards that we can work from, but
13 I think that just meeting the standards isn't
14 necessarily it.

15 As I said before with the LEED, you
16 can meet the very minimum LEED standards
17 fairly easily. But is that really what we
18 want?

19 So, I'm not sure if that maybe is
20 not giving much direction to the Office of
21 Planning, but as I say, I think once you get
22 to that threshold you're at least in the range

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1 of getting a meaningful project, a meaningful
2 PUD. But there's got to be more to it than
3 just simply meeting those levels. We have to
4 begin to look at a lot of different factors.

5 COMMISSIONER SELFRIDGE: I agree
6 with Commissioner Turnbull. It'd be
7 interesting if that was clearly articulated
8 that that's maybe even the minimum, that
9 that's where you start. And I think that you
10 need to set an expectation in terms of how the
11 Commission is going to view that when somebody
12 hits that minimum threshold that it's very
13 clear that that's not what it take to meet
14 that criteria. But that gets you on the road
15 towards maybe satisfying the requirement.
16 But, I think it's important to articulate that
17 that's not where the process ends, but that's
18 where it begins.

19 CHAIRMAN HOOD: I think we still
20 would have the opportunity even if we did a
21 numbering system to use a word that I've used
22 previously, and Vice Chairman just used today,

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1 you're package is weak. You know, you might
2 have the points, but when you specifically
3 spell it out -- I keep going back to the sign
4 in the park. You know, if that's all you're
5 doing, your package is weak. And I think this
6 Commission can kind of do kind of what we do
7 now, evaluate.

8 But I take Commissioner Selfridge's
9 point to heart, and I understand exactly he's
10 saying. And we don't want to sell ourselves
11 or the community short. But I'm willing to
12 kind of equate these numbers and everything
13 just with my park example. And I may be
14 looking at it differently or looking at -- I
15 may be out of school, but I believe that's how
16 I think it would work. I'm not sure.

17 MR. COCHRAN: I think that when we
18 were trying to develop this system, there
19 might be a slight misunderstanding. We weren't
20 trying to relate points directly to density.
21 That would be inappropriate and probably
22 illegal.

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1 What we're trying to do is come up
2 with an approach that will give some
3 predictability and consistency to you and to
4 the community so that when we're, say,
5 tallying up points it gives you the ability to
6 relate, for instance, what you've done in a
7 project with a certain number of points in the
8 past to what you might want to be doing with
9 this project that has a similar or remarkably
10 different number of points in the present. So
11 that you have some ways of gauging consistency
12 of your own actions when it comes to how much
13 bonus density there might be, whether here's
14 how much bonus density they're asking for, do
15 they have fewer or more proffers of quality
16 than a similar project that asked for this
17 much density gave you.

18 It's not meant to be a if you give
19 us this, we'll give you that. No. I think I
20 explained, it's to help guide you.

21 VICE CHAIRMAN SCHLATER: Question.
22 Is there going to be one point value for type

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1 2 and type 3 projects in each zone that you
2 have to clear no matter how much additional
3 density you're aiming to achieve?

4 MR. PARKER: I think anything's on
5 the table right now. We've talked about a
6 couple of different ways of doing it. Through
7 the working group we talked about setting a
8 threshold. So if you just had to accomplish
9 20 points if you were going to do a type 2
10 project, and then you could do your type 2
11 project.

12 We also talked at various stages
13 about 20 points equaled 20 percent. So if you
14 were only going up 10 percent, you only had to
15 ten points. So, I think we're open to your
16 guidance on how you want to proceed and how we
17 should envision the system.

18 VICE CHAIRMAN SCHLATER: Okay.

19 CHAIRMAN HOOD: Commissioner
20 Selfridge, you want to add something? Okay.

21 COMMISSIONER SELFRIDGE: I feel
22 like this was said, but just the idea that

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1 different amenities have different values to
2 different communities. You know, I feel like
3 this was said, so if I'm piggy-backing on
4 someone or stealing that, I apologize.

5 And I know a lot of work has gone
6 into this. I understand the idea. I don't
7 think we mean to minimize it, but just the
8 difficulty of getting the details of it. If
9 it means more to a certain neighborhood, how
10 does it -- you know. An outdoor children's
11 play area, I could see certainly in some
12 neighborhoods where there's a high
13 concentration of children and there's maybe a
14 lack of facilities, that that would be
15 extremely valuable. In other neighborhoods,
16 you know it wouldn't. So, I don't know, how
17 do you kind of weigh those differences?

18 MR. PARKER: I think the answer to
19 that and the goal of the system is to get away
20 from a straight negotiation where coming into
21 the hearing nobody knows what the outcome is
22 going to be. I think the goal of this system

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1 is to get to a point where we've set a good
2 value threshold for how many points we want to
3 see for a project of X density, and we have
4 reasonable values on the various public
5 benefits and amenities. And I think what that
6 means is a lot of work both up front and on an
7 ongoing basis into making sure that the list
8 is right. Making sure that if neighborhood X
9 puts more value on a certain amenity, that we
10 increase the benefit of that or increase the
11 value of amenity in that area, in that Ward,
12 in that ANC. And there's a flexibility to do
13 that.

14 I think what we should try and stay
15 away from, though, based on what we've seen
16 around the country and other jurisdictions is
17 just using this as guidance, and just saying
18 well, you know, come in and we'll tell you
19 what more you have to do. That doesn't give
20 the predictability, the clear guidance of what
21 needs to be done up front, which is sort of
22 what this is getting at.

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1 I think the goal of this is to put
2 as much work in up front and on an ongoing
3 basis on getting the list right and the number
4 of values right so that there is
5 predictability so that you don't have to spend
6 a lot of time negotiating each and every
7 project.

8 CHAIRMAN HOOD: Okay. Vice
9 Chairman?

10 Okay. Let me try this. Let me
11 see, is there anyone who would like to go
12 option 2 where it says do not create a point
13 system to relate density to public benefits?
14 Does anyone favor that? Okay.

15 So, we're only in favor of option
16 1, but taking into consideration our comments
17 that we made. I'm sure that's telling you
18 exactly what we want.

19 Okay. Well, good. I hope you
20 understand it. All right.

21 Mr. Parker?

22 MR. PARKER: I don't know if I do

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1 understand it. I understand that everyone's
2 in general in favor of option 1. I guess what
3 I might take away is we're going to put a ton
4 of work into what the list should be, what
5 should be in it, what the values should be.

6 The one question I have remaining
7 is is the sense of the Commission that we
8 should have a threshold for a type 2 and a
9 threshold for type 3 or there should be more
10 of a valuation scale? I know we heard some
11 comment at the public hearing.

12 If through a type 2 I can get 20
13 percent extra density but I only need ten
14 percent, do I have to do the full 20 points or
15 can I do ten?

16 VICE CHAIRMAN SCHLATER: Here's my
17 two cents on that. I think there should be a
18 starting amount where you should have to
19 provide 20 points if you're going to go
20 through the PUD process. And then the more
21 density you're requiring up to the maximum,
22 you would increase the amount of points.

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1 I can't tell you exactly off the
2 top of head what the scale would be, whether
3 it would be start at 20 and you end at 40 or
4 you start at 20 and you end at 60; I'm not
5 sure. But I think there should be a hurdle you
6 have to get over, and I think it should
7 increase as more density is granted. Because
8 we have had a few PUDs that come through that
9 don't ask for a lot of extra density and I
10 think we have evaluated -- I mean, I think if
11 you look at the current standard for
12 evaluation of PUDs, it would say that if
13 you're not granting a lot of additional
14 density, it's okay to have a lighter benefit
15 than amenities package. And I think that I
16 personally would be in favor of continuing
17 that.

18 CHAIRMAN HOOD: Does that help you?
19 Does everybody agree with that? I don't know
20 if I agree with all of it, but that's a
21 starting point. It's a starting point?

22 MR. PARKER: That's a starting

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1 point.

2 CHAIRMAN HOOD: Thank you for
3 getting us started, Vice Chairman Schlater. I
4 can probably add to that, but not tonight.

5 Okay.

6 MR. PARKER: Recommendation 7.

7 CHAIRMAN HOOD: Recommendation 7.

8 MR. PARKER: All right. This is to
9 add a step for the type 2 and type 3 processes
10 prior to application. So basically this is
11 saying that a developer interested in going
12 through a type 2 or type 3 process would be
13 required to submit the application first to
14 the ANC and allow the ANC up to 45 days to
15 schedule and hold a public meeting of the ANC.
16 The developer and OP would then attend that
17 meeting.

18 At the end of 45 days whether a
19 meeting had been held or not, the applicant
20 could then submit their application and they
21 would submit along with their application any
22 correspondence, any information that came from

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1 the ANC as well as detailing any changes that
2 they made as a result of this community
3 interaction.

4 Option 2 we could adopt some sort
5 of different process based on your feedback.

6 And option 3 skip it altogether and
7 keep with our current just ten day
8 notification policy.

9 CHAIRMAN HOOD: Okay. I'm going to
10 start off on this one. I have a question.
11 You said after an applicant submits to the ANC
12 and after the ANC reviews it, then the
13 applicant and I guess Office of Planning and
14 the ANC have a meeting. Whether they have it
15 or not, then the applicant can then send us
16 the application.

17 MR. PARKER: In other words, an ANC
18 can't kill a project by just refusing to hold
19 a meeting. So the developer notifies the ANC.

20 The ANC has 45 days to hold a meeting. The
21 ANC can choose not to hold a meeting, or they
22 can even notify the developer and the OZ that

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1 they have no interest in holding the meeting,
2 the applicant could file sooner. But under no
3 circumstances does the developer have to wait
4 longer than 45 days to submit their
5 application if the ANC chooses not to have a
6 meeting.

7 CHAIRMAN HOOD: Well, I'm going to
8 tell you, I can understand if the ANC chooses
9 not to hold a meeting. I could go along with
10 that, and they come down and tell us the ANC
11 wouldn't set them up for a meeting. But what
12 I can't understand is a developer who is going
13 to do something in the community not wanting
14 to be a good neighbor and hold an ANC meeting.

15 So, I can tell you, that second part is going
16 to be very difficult for this Commissioner to
17 go in that direction.

18 I think at some point it needs to
19 be a specific reason, or a very good reason
20 actually for any developer not to want to hold
21 a meeting in a community. First of all,
22 probably in which they don't live in. And the

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1 reason I don't understand why they don't want
2 to meet with the existing folks who live in
3 the neighborhood.

4 So, I mean, the first part I can
5 understand. And if the ANC pushes back,
6 you're right the applicant should come down
7 here. But if the ANC is open to it and the
8 applicant just say I don't want to go to the
9 ANC.

10 MR. PARKER: Well, let me clarify.
11 This requires them to.

12 CHAIRMAN HOOD: It requires them to
13 go, but you also I think the second part --
14 unless I misunderstood it. I'll take it. But
15 you said that the applicant also can choose
16 not to go.

17 MR. PARKER: No. No, no, no. The
18 applicant can submit whether or not the ANC
19 chooses to hold a meeting.

20 CHAIRMAN HOOD: Okay. I got that.

21 MR. PARKER: But if the ANC holds a
22 meeting, the applicant goes to the meeting.

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1 CHAIRMAN HOOD: Okay. So the only
2 way they don't go to the ANC is if the ANC
3 chooses not to hold a meeting?

4 CHAIRMAN HOOD: Okay. We're all
5 right. Okay.

6 Any other questions, comments?

7 And I will tell you that I saw some
8 comments about going to the civic
9 associations. And I don't have any biases,
10 I'm a civic association president myself. But
11 as I looked at that, I saw the confusion it
12 probably would cause.

13 I know I think one of the other
14 civic associations or groups asked that it
15 also go to the community organizations. I
16 would suggest, and we need to make it known
17 that maybe the community organizations needs
18 to work with their ANC. Because the ANC is a
19 formalized elected body in this city. And I
20 saw that way of doing it in that fashion as to
21 not confuse everything. Because I will tell
22 you, I see a lot of times groups start up for

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1 different cases.

2 But the other thing is, one of the
3 things that was mentioned also about party
4 status. And I don't know if this is the right
5 time. But we really need to look at that, the
6 party status process. And after saying not
7 going to the other communities groups, and
8 this is something that just didn't start with
9 the zoning rewrite. This has been out there
10 for a long time about early potential of
11 granting party status. Maybe we could do it
12 at setdown, or something of that nature. And
13 I don't know if this is the right time to
14 input that, but I think that's something that
15 we need to consider, at least I would like to
16 see it before we come back.

17 But I'll open it up.

18 COMMISSIONER MAY: Mr. Chairman,
19 that's exactly the point I was going to make.
20 I think that there has to be a process or
21 there should be a process for establishing
22 party status in advance of PUD hearing dates.

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1 And I don't know how you get it integrated in
2 here, but we have meetings frequently enough
3 that we can take up party status applications
4 for upcoming hearings as part of the meeting
5 process. And, you know, take them up at that
6 point and get people some advance ability to
7 make their case.

8 You know, I've been a party in a
9 zoning case before as part of a group. And--

10 CHAIRMAN HOOD: Well, how were you
11 treated? Were you treated pretty good?

12 COMMISSIONER MAY: I was treated
13 wonderfully.

14 CHAIRMAN HOOD: Because I remember
15 that case.

16 COMMISSIONER MAY: Yes, I know.
17 But it would be disappointing after all the
18 effort that we put into that particular case
19 to come to the hearing on that night and being
20 told that we'd get just five minutes and we
21 wouldn't have the rights of a party. I mean,
22 we were a party in support, which was

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1 relatively unusual. All we got was 20 minutes
2 instead of five. So that was the only
3 substantial benefit. But I'm sure it's the
4 same for other people.

5 I mean, there's a lot of effort
6 that goes into making your case in support or
7 in opposition to a particular PUD. And
8 knowing whether or not you're going to be able
9 to act as a party I think is a really big
10 thing. So, there has to be a way to do it in
11 advance.

12 CHAIRMAN HOOD: Any other comments?

13 VICE CHAIRMAN SCHLATER: Mr.
14 Chairman?

15 CHAIRMAN HOOD: Vice Chairman
16 Schlater?

17 VICE CHAIRMAN SCHLATER: Mr.
18 Parker, you're saying that the type 1 projects
19 would not need to go through this extra level
20 of community input?

21 MR. PARKER: Correct.

22 VICE CHAIRMAN SCHLATER: Because

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1 they're only design review?

2 MR. PARKER: Correct.

3 VICE CHAIRMAN SCHLATER: And that's
4 because -- what's the logic behind that?

5 MR. PARKER: Well, I think the
6 logic is these are not projects that are
7 asking for any additional density. These are
8 not projects that are proposing necessarily to
9 have any additional impact. These are
10 projects that are looking -- they're basically
11 special exceptions. They're looking for a
12 change in their building envelop without
13 adding additional density. And it's a design
14 review.

15 I guess it would be similar to
16 requiring an additional step for special
17 exceptions. But it could be useful in cases,
18 but the whole goal of setting up this is to
19 create a quicker, more mainline process.

20 VICE CHAIRMAN SCHLATER: They're
21 going to have to go down to their local ANC
22 anyway, right? Because once we set it down

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1 for public hearing, we're going to be looking
2 for ANC input. They're going to go down to
3 the ANC, hopefully get a favorable letter. So
4 if they're already going there, might these
5 projects not benefit from going there a little
6 bit earlier so that the community is notified?

7 Sometimes we find that these ANC
8 reviews, the timelines are pretty tight in
9 terms of their ability to look at a project
10 and comment on it insightfully. And so, I
11 don't know.

12 I think that more community input
13 is definitely an admirable goal, and I would
14 be open to extending it to all different type
15 of PUD projects, not just type 2 and 3.

16 CHAIRMAN HOOD: I actually would
17 agree. So we're all inclusion I think it's
18 type 1, right? Yes, I would agree. Because
19 when I heard the word "special exception," we
20 go now for special exceptions so why would we
21 change it? And I understand, that's just what
22 it is, a special exception.

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1 All right. Anything else? Anybody
2 else? So we're going with the option 1 with
3 just the comments.

4 MR. PARKER: I'm hearing option 1
5 but have it apply to all three types.

6 CHAIRMAN HOOD: All three types,
7 right. Okay.

8 MR. PARKER: All right.

9 COMMISSIONER MAY: And a process
10 for establishing party status in advance?

11 MR. PARKER: Actually, I think
12 that's larger than just PUDs. That's all.
13 We're going to be talking about that with the
14 Administration Enforcement recommendations
15 that are coming to you in a month or so.

16 CHAIRMAN HOOD: Okay.

17 COMMISSIONER MAY: Okay.

18 MR. PARKER: That's all contested
19 cases.

20 COMMISSIONER MAY: Okay.

21 CHAIRMAN HOOD: Okay. Let's move
22 on.

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1 Number 8 extension and expiration
2 of PUDs. This is a recommendation to adopt
3 time periods. So right now PUDs are eligible
4 for two years and they can have, I believe, an
5 unlimited number of extensions. The proposal
6 here is two year approval limit for PUDs and
7 up to two year extensions.

8 We did hear at the hearing, you
9 know there may be an issue with legal cases
10 that extend beyond six years, and we're open
11 to reconsidering the number of extensions or
12 the length of extensions.

13 We also have a list of additional
14 criteria for extensions as part of this
15 recommendation.

16 CHAIRMAN HOOD: Vice Chairman
17 Schlater?

18 VICE CHAIRMAN SCHLATER: Thank you,
19 Mr. Chairman.

20 I think this is a great approach,
21 particularly in the type 2 and type 3. I
22 think limiting the number of extensions is

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1 appropriate. I think these get stale after a
2 while and it's important to provide those
3 limits.

4 The only question I have with these
5 type 11s, I can understand how they go through
6 a different process. It's a different level
7 of review.

8 I think you may want to have a time
9 limit on that approval, say ten years, and
10 just leave it at that. Because they'll get
11 stale too eventually.

12 MR. PARKER: Okay.

13 CHAIRMAN HOOD: I kind of like that
14 ten years. I know a former colleague, Mr. Herb
15 Franklin, he always thought ten years was long
16 enough for any PUD. Hopefully, he's watching.
17 He would be happy after ten years we're
18 getting this thing right.

19 Any other comments? Any other
20 comments?

21 So, we'll go with option -- what
22 was that, option 1?

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1 MR. PARKER: Option 1 and with the
2 change that the original approval for a type 1
3 would be ten year with no extensions
4 available.

5 CHAIRMAN HOOD: Okay. Let's go to
6 number 9.

7 MR. PARKER: Number 9 post-hearing
8 filing requirements. This is adding some
9 things that will make administration and
10 enforcement of PUDs a lot easier.

11 Prior to proposed action, and again
12 proposed action just applies to type 3s, prior
13 to a proposed action the applicant must
14 provide a table showing the proposed benefits,
15 the number of points earned for each benefit
16 and how the standard for each benefit is met.

17 Prior to final action the applicant
18 must provide in the case of a type 2 that
19 benefit information, but also full and
20 comprehensive set of updated plans, the table
21 showing all the approved benefits with a time
22 table of when they'll be provided, and any

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1 other documents required by the Zoning
2 Commission.

3 So basically, this helps with the
4 final order writing making sure that all the
5 documents that are in the final order
6 represent what the Zoning Commission approved
7 rather than what was in the original packet.

8 CHAIRMAN HOOD: Any comments?

9 Okay. I think we can go with
10 option 1.

11 MR. PARKER: Okay.

12 CHAIRMAN HOOD: So you need
13 conditions of enforcement.

14 MR. PARKER: The final
15 recommendation is just dealing with how the
16 Zoning Administrator deals with PUD
17 conditions. You'll well aware that there have
18 been instances of PUD conditions that could be
19 met and had to be modified and changed. And
20 basically what this would do would allow the
21 Zoning Administrator in the case where a
22 condition had not been met by the time of the

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1 C of O and the standard should be that they
2 all should be met before the C of O is issue.

3 If for some reason for good cause a condition
4 hadn't been met, the Zoning Administrator
5 could issue a temporary C of O for six to 12
6 months. The applicant would have that time
7 period in which to finish that condition. If
8 it hadn't been met by the expiration of the
9 temporary C of O, the applicant would have to
10 come back to the Zoning Commission to amend
11 their application to change their benefit list
12 to provide an equivalent number of points in
13 some other way.

14 CHAIRMAN HOOD: Okay. Anyone have
15 any problems with option 1?

16 COMMISSIONER TURNBULL: No. I guess
17 what I wanted to -- are you also trying to
18 cover modifications of a PUD that the Zoning
19 Administrator can get into?

20 MR. PARKER: Not here. Actually
21 what this would be would create sort of a new
22 modification where if an applicant couldn't

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1 meet their condition for some reason, you know
2 they proffered to plant tress and the ground
3 washed away, basically they would do a
4 modification to change their benefit list. So
5 this would sort of be a new. But different
6 types of modifications wouldn't be effected by
7 this recommendation.

8 COMMISSIONER TURNBULL: Okay. I
9 mean, I guess I get -- because right now I
10 think the Zoning Administrator can basically
11 do -- I think in the Regs there's four things
12 that he's covering that he can make a
13 modification. And other than that, it has to
14 come back to the Zoning Commission for a
15 modification.

16 And there's this one case on the
17 BZA where a community organization had
18 appealed the C of O that the Zoning
19 Administrator had issued. And basically it
20 was an escrow account, and it's not GW. This
21 is another one. But it had to do -- my
22 feeling, and I was going to sua sponte this,

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1 but eventually they took back their appeal.

2 And I'm just concerned about when
3 we get into modifications and what the ZA,
4 when he looks at the provision of a PUD what
5 exactly he's allowed to do and when it has to
6 come back to the Zoning Commission either
7 dealing with the amenity package or whatever.

8 MR. PARKER: Well, I think what
9 we've proposed here will hopefully solve that
10 problem. Because we're getting away from
11 money escrow. The benefits list that will be
12 approved with PUDs will be a set number of
13 things that are built or provided.

14 What we've proposed here is a
15 process for if for good cause they can't be
16 provided by the time of C of O, the process
17 for how long the Zoning Administrator has to
18 offer a temporary, and then they actually
19 would have to come back. The Zoning
20 Administrator cannot modify the public
21 benefits that have been proffered. This only
22 creates the process for how and when they have

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1 to come back to get them modified if they
2 haven't met them.

3 COMMISSIONER TURNBULL: Okay. So
4 you're coming back with something else on
5 modification to PUDs or --

6 MR. PARKER: I thinking whether
7 there's anything on that in our -- we finished
8 our working group on administration and
9 enforcement. And in the next months or so
10 you're going to see some recommendations on
11 general, just PUD, but processes, Zoning
12 Commission, BZA process stuff. I don't
13 remember off the top of my head whether
14 there's anything changes in that working group
15 on that.

16 COMMISSIONER TURNBULL: Okay.
17 Because I don't know if -- there's like four
18 items that he basically can make changes on.

19 MR. PARKER: I don't remember any
20 changes off the top of my head that we've made
21 to that, to what's in the roadmap.

22 COMMISSIONER TURNBULL: Okay.

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1 Thank you.

2 CHAIRMAN HOOD: Any other questions
3 or comments?

4 Commissioner Turnbull, are you okay
5 with moving with option 1?

6 COMMISSIONER TURNBULL: Absolutely.

7 CHAIRMAN HOOD: Everybody's okay
8 with option 1? Okay.

9 Mr. Parker, we'll go with option
10 one.

11 MR. PARKER: Very good.

12 CHAIRMAN HOOD: Okay. I think that
13 concludes that exercise, Mr. Parker. Thank
14 you very much.

15 It's getting late. I see a few
16 people yawning, including myself. Anything
17 else, Ms. Schellin, for now?

18 MS. SCHELLIN: No, sir.

19 CHAIRMAN HOOD: Well, on behalf of
20 all your Commissioners, we want to wish you a
21 happy birthday. You'll be 25, I think, on
22 Wednesday and so we want to wish you a happy

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1 birthday. And we want you to thank nothing
2 but zoning.

3 Okay. So with that, I believe this
4 meeting we will adjourned.

5 (Whereupon, at 9:59 p.m. the
6 meeting was adjourned.)

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