

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

MAY 24, 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  
WILLIAM WARREN KEATING, Vice Chairman  
MICHAEL J. TURNBULL, Commissioner (AOC)  
KONRAD SCHLATER, Commissioner  
PETER MAY, Commissioner (NPS)

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  
JOEL LAWSON  
MAXINE BROWN-ROBERTS  
KAREN THOMAS  
ARLOVA JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Regular Meeting held on May 24, 2010.

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

2 6:40 p.m.

3 CHAIRMAN HOOD: Okay. We're going  
4 to go ahead and get started. I want to  
5 apologize for being a few minutes late. This  
6 meeting will please come to order. Good  
7 evening, ladies and gentlemen.

8 This is the May 24, 2010 Public  
9 Meeting of the Zoning Commission of the  
10 District of Columbia. My name is Anthony J.  
11 Hood. Joining me are Vice Chairman Schlater  
12 and Commissioner Turnbull and Commissioner  
13 May. We're also joined by the Office of  
14 Zoning Staff, The Director, Mr. Weinbaum,  
15 Secretary to the Zoning Commission, Ms. Sharon  
16 Schellin and also Ms. Donna Hanousek, Office  
17 of Attorney General, Mr. Bergstein, and Office  
18 of Zoning Staff, Ms. Bushman. To my right,  
19 under the leadership of the Office of  
20 Planning, we have Ms. Steingasser. I'm not  
21 going to call everyone's names, even though  
22 Mr. Lawson, Mr. Goldstein, Ms. Brown-Roberts,

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1 and Ms. Thomas, and I think Ms. Jackson in the  
2 audience. Do we have anyone else here from  
3 the Office of Planning? Okay.

4 Copies of today's meeting agenda  
5 are available to you and are located in the  
6 bin near the door. We do not take any public  
7 testimony at our public meetings unless the  
8 Commission requests someone to come forward.  
9 Please be advised that these hearings are  
10 being recorded by a court reporter. It's also  
11 webcast live. Accordingly, we must ask you to  
12 refrain from any disruptive noises or actions  
13 in the hearing room. Please turn off all  
14 beepers and cell phones.

15 Does the staff have any preliminary  
16 matters?

17 MS. SCHELLIN: No, sir.

18 CHAIRMAN HOOD: Okay. I have a  
19 few. I want to move the agenda around a  
20 little bit, for the sake of how we're  
21 participating. We're going to take up other  
22 business first; have elections; we're going to

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1 also have relaxed summer attire. Then we're  
2 going to have the Consent Calendar, Final  
3 Action, Hearing Action, and then we're going  
4 to deal with proposed action, which is the  
5 case we're going to have some deliberation on,  
6 which is the Skyland Holdings.

7 Okay. Other business? Ms.  
8 Schellin?

9 MS. SCHELLIN: Yes, sir. You asked  
10 Staff to put, under Other Business, the first  
11 item is elections. And I'll leave that for  
12 the Commission to bring up.

13 CHAIRMAN HOOD: Okay. As most of  
14 you already know, I was not reappointed and I  
15 will not be continuing on the Zoning  
16 Commission. After 12 years, I will tell you,  
17 I'm not in tears. Not at all. This is a lot  
18 of work. And it's very befitting, I think,  
19 when I look out and see the person I replaced  
20 in the audience tonight, Ms. Maybelle Taylor  
21 Bennett. And I will tell you that, when I  
22 first came on the Commission, I actually was

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1 very nervous. I can admit it now, 12 years  
2 later. I was very nervous because I heard  
3 about how good she was, what an excellent  
4 Commissioner she was, a dynamite Chairperson.

5 And I said many, Mr. Barry signed me up for  
6 the wrong job. But anyway, I will tell you  
7 it's been a labor of love. I've had a great  
8 time doing this. I'm looking forward to what  
9 the future holds. And I will tell you, it's  
10 been a great learning experience from a little  
11 old guy in Ward 5. And I -- you know, who  
12 didn't know anything. When Mr. Barry first --  
13 he still tells this story to date -- when he  
14 first asked me about the Zoning Commission, I  
15 said oh, no Mr. Barry, I can't do that. And I  
16 threw my hands up. And if you ever ask him,  
17 he'll tell you the same story. And he's very  
18 consistent with the story.

19 But, you know, with all the people  
20 I've worked with, and it's been great -- all  
21 the Commissioners, past and present, all the  
22 Zoning -- I call you all the Zoning family.

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1 You know, a lot of folks don't understand that  
2 the Zoning Commissions members -- and I know  
3 this from being on this side. I used to sit  
4 down there and testify. And I'd say oh,  
5 they're not listening to me. But I will tell  
6 you, these guys and ladies and gentlemen I've  
7 worked with over the past 12 years take to  
8 heart trying to make the best decision. And  
9 it's not always popular. But I can tell you,  
10 they take to heart trying to make the best  
11 decisions for the interest of the District of  
12 Columbia. I've enjoyed it. I've had a great  
13 ride. Some of it has been rough. Sometimes  
14 when you're in the street and people frown at  
15 you and kind of look at you like, you know,  
16 you've got a problem or something's wrong with  
17 you. But I can tell you, this has been a  
18 labor of love. And I know that this  
19 Commission, under the leadership of the new  
20 Chairperson and under the great leadership of  
21 Mr. Weinbaum, this office will continue to  
22 grow and be one of the best offices in the

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1 District of Columbia. And I'm looking forward  
2 to coming down here and complaining.

3 Okay. With that, let's move right  
4 into the --

5 COMMISSIONER MAY: Mr. Chairman,  
6 can I interrupt for just a second?

7 CHAIRMAN HOOD: Yes.

8 COMMISSIONER MAY: I just think it  
9 would be appropriate to take a break from the  
10 ordinary decorum of the Zoning Commission and  
11 take a moment to thank you and applaud you for  
12 your service to this Commission over the last  
13 12 years.

14 CHAIRMAN HOOD: I just hope  
15 everybody's clapping after the meeting.

16 COMMISSIONER SCHLATER: Mr.  
17 Chairman?

18 CHAIRMAN HOOD: Yes?

19 COMMISSIONER SCHLATER: To that  
20 end, in recognition of your 12 years up here,  
21 I asked the Staff just to look into all that  
22 you've accomplished in your 12 years. And

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1 it's very impressive. And so I just want to  
2 cite a few things. You've been on the  
3 Commission since 1998. You've served two  
4 terms as Chairman. Last term -- last tenure  
5 since 2007. In the last 12 years, Chairman  
6 Hood has been involved in over 500 cases that  
7 have been filed with the Zoning Commission.  
8 Since 2005 Chairman Hood has averaged more  
9 than 200 hours per year on the dias, during  
10 Zoning Commission cases, and more than 50  
11 hours per year on the dias during Board of  
12 Zoning Adjustment cases. In total, Chairman  
13 Hood has averaged more than 250 hours in  
14 hearing cases, outside of the preparatory time  
15 in advance of hearings and minutes. That  
16 means, over the past 12 years, he spent  
17 approximately 3000 hours up here on the dias.  
18 And, during that time, you've only tallied  
19 six absences from the Zoning Commission  
20 hearings and meetings, averaging one half an  
21 absence per year. And I think it just speaks  
22 to your absolute commitment to the Commission,

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1 to the people of the city. It totally  
2 exemplifies the ethic of public service. I've  
3 been lucky to have overlapped with you for  
4 about eight months now. I've learned a lot.  
5 And I thank you for helping bring me along in  
6 my first eight months. And I just want to  
7 thank you and commend you for your service  
8 over the past 12 years.

9 CHAIRMAN HOOD: Thank you, very  
10 much. And, as you were reading all them  
11 hours, I was thinking about saturday when my  
12 wife had me up on the roof fixing the gutter.

13 That's probably why I haven't got around to  
14 doing that. Because I've been down here all  
15 those hours. But I will tell you, I really  
16 thank you for that. And I'd actually like to  
17 keep a copy of that because I was wondering  
18 how many hours I've actually spent and I  
19 appreciate what you've done with accomplishing  
20 that and getting that data for me.

21 There are for people --

22 COMMISSIONER TURNBULL: That does

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1 not include executive sessions.

2 CHAIRMAN HOOD: Oh, dang. That's a  
3 lot of time.

4 COMMISSIONER TURNBULL: That's a  
5 lot of time.

6 MR. WEINBAUM: Can I also add in -  
7 -

8 CHAIRMAN HOOD: Sure.

9 MR. WEINBAUM: -- that time that  
10 you've spent with the Office of Zoning Staff,  
11 itself, and the time that you've devoted to  
12 insuring that the office is well run; that we  
13 have not only terrific people here, but also  
14 that we keep the professionalism that you've  
15 set by example. And it's something that I  
16 know the Staff all values your time and the  
17 attention that you've paid to all of us and  
18 the shepherding of the office. And I  
19 certainly appreciate it, as well. So that  
20 won't be forgotten.

21 CHAIRMAN HOOD: Thank you. Thank  
22 you, very much. And I want to say this too,

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1 as I've thought about when Director Weinbaum  
2 was speaking. I want to really thank the  
3 Honorable Mayor Marion Barry, who gave me an  
4 opportunity. And if he watches this -- this  
5 is why I need to do this -- I really want to  
6 thank the Honorable Marion Barry. And I also  
7 want to thank Mayor Williams, because, I'll  
8 tell you, when you go from one administration  
9 to the next, you know the scuttle; you know  
10 the gossip; you know what people say. He's  
11 not going to make it. Mayor Williams is not  
12 going to reappoint him. Mayor Williams  
13 actually reappointed me twice. So I  
14 appreciate both of them, and especially Mayor  
15 Barry for giving me the opportunity to be able  
16 to serve the city in this capacity.

17 But, do you know what? The Office  
18 of Zoning has a great Staff. I've hired two  
19 Directors since I've been here, Jerrily Kress  
20 who got the momentum going. But there's some  
21 people, when we didn't have a Director, that  
22 really helped me out. Because I do have a

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1 full time job, believe it or not. And there  
2 were some people who really helped me out.  
3 And I'm going to call them out, even though  
4 it's the whole staff. But particularly, who I  
5 called constantly during the day, three and  
6 four times a day, making sure of this; asking  
7 about this question. And that was Rick Nero,  
8 who was Acting Director. Also Mr. Nyambi, who  
9 helped me with all the personnel and the human  
10 resources stuff -- or issues -- I shouldn't  
11 say stuff. Also, Ms. Sara Bardin, who made  
12 sure that a lot of things got taken care of,  
13 the little inner workings of the office. But  
14 last, but certainly not least, the person who  
15 sometime when I leave out and I leave my head  
16 at home, Ms. Sharon Schellin, who's always  
17 been there. And there are times that you  
18 probably don't see this in the audience. But  
19 when I can't find the paper work and she sees  
20 me looking for it and she'll get up and come  
21 down here and hand it to me. So those four,  
22 in particular, really, really, have helped

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1 out. Especially when we didn't have a  
2 Director. And even more than that, the office  
3 as whole. And I will tell you that the public  
4 -- you work with Jamie Weinbaum. Jamie  
5 Weinbaum is going to take this office to a  
6 newer height. I'm sure about it. If he  
7 doesn't, he's going to get some nasty calls  
8 from me during the day. But I'm sure that he  
9 will. And I just think that this office is  
10 again, a model, as the Chairman and the  
11 counselors said, of representing and also  
12 being a conduit for residents of this city,  
13 whether you're a developer; whether you're a  
14 resident, or whatever you are or whatever  
15 interests you have in the Office of Zoning, I  
16 think this office is great. And I want you  
17 all to continue the great success that you're  
18 doing. Also, Office of Planning, you know how  
19 I feel. When I first came to the Office of  
20 Zoning, I can say this now, at 10:00 at night,  
21 we used to get reports. And you sit up here  
22 and you saw dozing off. But, under the

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1 leadership of Andy Altman, Steve Cochran was  
2 the first person that I was able to stay awake  
3 at 10:00 p.m. and listen to an Office of  
4 Planning report, especially in those days. We  
5 were going to like 11:30 p.m. or so. But I  
6 will tell you the Office of Planning has  
7 really revamped. And the research that you  
8 all do for us or for the Commission has really  
9 taken things to a higher height. And you all  
10 continue the great work that you do. And I  
11 would always go to Mr. Bergstein, the Office  
12 of Attorney General. Mr. Bergstein has kept  
13 me out of a lot of trouble and also helped me  
14 get some advice, because I was not legal  
15 minded. And, you know, that was one of the  
16 things that I was lacking. And I want to  
17 thank the Office of Attorney General,  
18 especially now in the leadership with Mr.  
19 Peter Nichols. I think they have a great  
20 staff and they do a great job. But let's get  
21 on with the agenda. I want to thank everybody  
22 for the nice comments.

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1           Okay. Election. I would move that  
2 the Commission -- and, you know, naturally,  
3 next week, you know, I'll be gone, so you all  
4 can do what you want. But I would move, for  
5 now, that the Commission adopt this motion.  
6 And the motion will be that Conrad Schlater  
7 become the Chairperson, upon my departure.  
8 And I will also, in that motion, include that  
9 Peter May become the Vice Chairman until the  
10 Commission sees it necessary to make any  
11 changes. And that's my motion and I ask for a  
12 second.

13           COMMISSIONER TURNBULL: Second.

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

17           ALL: Aye.

18           CHAIRMAN HOOD: Any opposition? No  
19 opposition. So ordered. Ms. Schellin, would  
20 you record the vote?

21           MS. SCHELLIN: Yes. Staff records  
22 the vote four to zero to one to adopt, upon

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1 the departure of Chairman Hood, that Conrad  
2 Schlater become Chairman and Peter May become  
3 Vice Chairman; Commissioner Hood moving;  
4 Commissioner Turnbull seconding; Commissioners  
5 May and Schlater in support; the third Mayoral  
6 Appointee seat vacant, not voting.

7 CHAIRMAN HOOD: Okay. Next, under  
8 other business, is relaxed summer attire. And  
9 I'm going to turn it over to my colleagues,  
10 because I'm going to be relaxed all summer.  
11 So I will turn it over to you guys and you all  
12 can move forward how you want.

13 COMMISSIONER SCHLATER: Mr.  
14 Chairman, last summer, I think, during the  
15 months of June and July, we relaxed our attire  
16 rules, such that we didn't have to wear a coat  
17 and tie, given the extreme -- extremely hot  
18 temperatures that we get in Washington, D.C.  
19 Summers. So I would move that we relax our  
20 attire for the summer. And that counts for  
21 Commissioners, OP Staff, Office of Zoning  
22 Staff, as well as Applicants and people

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1       testifying in front of us.

2                   CHAIRMAN HOOD:       So that's a  
3       requirement.       Coming here relaxed in the  
4       months of June and July?   Okay.   It's been  
5       moved.   Can I get a second?   You've heard the  
6       motion.

7                   COMMISSIONER SCHLATER:   Second.

8                   CHAIRMAN HOOD:   It's been moved and  
9       properly seconded.   Any further discussion?  
10      Mr. Turnbull?

11                   COMMISSIONER TURNBULL:   Shoes are  
12      required.

13                   CHAIRMAN HOOD:   Shoes are required?  
14      Tennis shoes?   No.   I'm just kidding.   Okay.  
15      Any further discussion?   Are you ready for  
16      the question?   All those in favor?

17                   ALL:   Aye.

18                   CHAIRMAN HOOD:   Not -- certainly,  
19      there's no opposition.   Ms. Schellin, would  
20      you record the vote?

21                   MS. SCHELLIN:   Yes, sir.   Staff  
22      records the vote four to zero to one for

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1 relaxed summer attire during the months of  
2 June and July; Commissioner Schlater moving;  
3 Commissioner May seconding; Commissioners Hood  
4 and Turnbull in support; the third Mayoral  
5 seat vacant, not voting.

6 CHAIRMAN HOOD: And you know the  
7 author of that -- for the record, the author  
8 of that relaxed attire was Mr. Herb Franklin.

9 But we never did it. So anyway, until last  
10 year. Okay. Consent Calendar item, Zoning  
11 Commission Case Number 08-32B. This is the  
12 Howard University Modification to Campus Plan  
13 Order to Request Extension of Time. Ms.  
14 Schellin?

15 MS. SCHELLIN: Yes, sir. This is a  
16 request from the University, asking for an  
17 amendment to their campus plan order to extend  
18 the validity of their plan until June 29,  
19 2011. This is coming before the Commission  
20 pursuant to Section 3129.

21 CHAIRMAN HOOD: Okay. Thank you,  
22 Ms. Schellin. Commissioners, when I was

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1 reviewing this, I looked at the submission  
2 dated May 10. And also, I looked at the  
3 Office of Planning report, which basically  
4 talks about what we did for the first  
5 extension. And it goes on to the reasons of  
6 the request for the second extension. Again,  
7 the Presidential Commission on Academic  
8 Renewal obviously PECAR, I believe, is what  
9 they may call it, has some additional work  
10 they're doing with their planning of that  
11 university. And they've asked for an  
12 extension of time. And I will tell you, when  
13 they first asked for the 18 months, I believe  
14 I asked did they need additional time. And  
15 I'm sure the record will reflect that I may  
16 have asked that. I believe I did. But  
17 anyway, they have a request before us this  
18 evening. And I would just like to open it up  
19 for an extension of one year, I believe. And  
20 I'll just open it up for any questions or  
21 comments on the extension.

22 COMMISSIONER SCHLATER: Mr.

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1 Chairman, I would just note that we got some  
2 letters from ANC 5C, in support of the  
3 extension. Bloomingdale Civic Association, in  
4 support of the extension. We got a letter of  
5 qualified support from the LeDroit Park Civic  
6 Association. I think LeDroit Park Civic  
7 Association asked that the Zoning Commission  
8 work with Howard and the community to set an  
9 extension date that will allow the necessary  
10 work on the plan, but not further delay this  
11 vital document for the community. And we also  
12 got a letter in support from the Pleasant  
13 Plain Civic Association.

14 I think I'm in general support with  
15 the extension. The reasoning for the request  
16 is that they've had some turnover in the  
17 leadership of the school. And I think it's  
18 important that they engage the community in a  
19 well thought out process. I will say that  
20 this is their second extension. And we don't  
21 want to get in the habit of just extending  
22 year after year. So I would expect that we'll

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1 get the revised campus plan, hopefully, by  
2 June of next year, so we can consider it. But  
3 I would not want to extend it further.

4 CHAIRMAN HOOD: Okay. Any other  
5 comments? Commissioner Turnbull?

6 COMMISSIONER TURNBULL: I would  
7 concur with Mr. Schlater's comments, in that I  
8 think a year extension is appropriate.

9 CHAIRMAN HOOD: Commissioner May?

10 COMMISSIONER MAY: Yes. Mr.  
11 Chairman, I would concur and I would also  
12 concur -- excuse me -- with Chairman elect  
13 Schlater's comments with regard to making sure  
14 that this is the last extension and that we  
15 get the plan submitted on time and reviewed in  
16 a timely manner. I think that part of the  
17 reason why I'm even open to this in the first  
18 place is that it's already been -- this  
19 extension is supported by the community, which  
20 is very often -- well, often enough, not the  
21 case. That there's resistance within the  
22 community for -- to cooperating with the

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1 University in these -- and I think that Howard  
2 University has done a good job of reaching  
3 out to the community. And that shows in the  
4 letters of support. Which makes me more  
5 sympathetic to the request. Thanks.

6 CHAIRMAN HOOD: I would agree with  
7 everything that has been said. But let me --  
8 Ms. Brown-Roberts, did you have anything you  
9 wanted to add?

10 MS. BROWN-ROBERTS: No, Mr.  
11 Chairman, except I had submitted the time line  
12 to just further explain what they're going to  
13 be doing during the one year extension.

14 CHAIRMAN HOOD: Okay. And that was  
15 very well done. And I will tell you, when all  
16 the positions that have changed, I think this  
17 is, again, as has already been stated, I think  
18 it's very good upon the University to want to  
19 be able to do this and get all the parties  
20 involved. And I think that's a good attribute  
21 to the Howard University. Okay. So, with  
22 that, I will move that we approve Zoning

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1 Commission Case Number 08-32B for one year,  
2 under the time line which is so noted, for  
3 Howard University Modifications to Campus Plan  
4 Order to Request Extension of time. And I  
5 asked for a second.

6 COMMISSIONER SCHLATER: Second.

7 CHAIRMAN HOOD: It has been moved  
8 and properly seconded. Any further  
9 discussion? Are you ready for the question?  
10 All those in favor?

11 ALL: Aye.

12 CHAIRMAN HOOD: Certainly, not  
13 hearing any opposition, Ms. Schellin, would  
14 you record the vote?

15 MS. SCHELLIN: Yes, sir. Staff  
16 records the vote four to zero to one to  
17 approve final action on Zoning Commission Case  
18 Number 08-32B; Commissioner Hood moving;  
19 Commissioner Schlater seconding; Commissioners  
20 May and Turnbull in support; the third Mayoral  
21 seat vacant, not voting.

22 CHAIRMAN HOOD: Okay. Next, Zoning

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1 Commission Case Number -- under Final Action,  
2 Zoning Commission Case Number 09-18, Office of  
3 Planning Text Amendment @ Section 3005.6. Ms.  
4 Schellin?

5 MS. SCHELLIN: Yes, sir. This case  
6 is before the Commission for final action. We  
7 did receive an NCPC report, stating that there  
8 were no adverse impacts.

9 CHAIRMAN HOOD: Okay. Colleagues,  
10 again, this is a meeting that changed the  
11 phrase to at least -- a meeting of the  
12 Commission shall be held at least once each  
13 month. So you may meet five times a month, 20  
14 times a month, but it's at least. So I think  
15 this is pretty straight forward and it's found  
16 in Exhibit Number 8. And I would move  
17 approval of Zoning Commission Case Number  
18 09-18, Office of Planning Text Amendment @  
19 Section 3005.6, and ask for a second.

20 COMMISSIONER TURNBULL: Second.

21 CHAIRMAN HOOD: Moved and  
22 appropriately seconded. Any discussion? All

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1 those in favor?

2 ALL: Aye.

3 CHAIRMAN HOOD: Not hearing any  
4 opposition, Ms. Schellin, would you record the  
5 vote?

6 MS. SCHELLIN: Yes. Staff records  
7 the vote four to zero to one to approve final  
8 action on Zoning Commission Case Number 09-18,  
9 Commissioner Hood moving; Commissioner  
10 Turnbull seconding; Commissioners May and  
11 Schlater in support; the third Mayoral seat  
12 vacant, not voting.

13 CHAIRMAN HOOD: Okay. Next is  
14 Zoning Commission Case Number 06-11 and 06-12,  
15 George Washington University -- Remand from  
16 Court of Appeals. Ms. Schellin?

17 MS. SCHELLIN: Staff has nothing  
18 further to add on this case.

19 CHAIRMAN HOOD: Okay.  
20 Commissioners, you know, we had issued some  
21 requests. We have those requests in. We  
22 asked for some information from the parties

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1 and also the Applicant. And I would just open  
2 it up. I think we have everything we asked  
3 for, in my looking at the submittal that we  
4 received. But let me just open it up for any  
5 comments or questions. Again, one of the  
6 issues was that we needed to -- I think, to  
7 articulate how we got to or how we accepted  
8 the provision in which we moved forward in  
9 this case. And it dealt with the proposal of  
10 the intensity of use, which was offered up, I  
11 think, by Foggy Bottom. But any comments on  
12 the submissions that we have?

13 COMMISSIONER TURNBULL: Mr.  
14 Chairman?

15 CHAIRMAN HOOD: Okay. Mr.  
16 Turnbull?

17 COMMISSIONER TURNBULL: I believe  
18 that the supplemental order that we have in  
19 front of us, as prepared by the Office of  
20 Attorney General, I believe that clearly  
21 articulates the Zoning Commission's reasoning  
22 for its decision. And I'm saying that because

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1 I was here at the time, along with yourself.  
2 And I believe that it is -- it succinctly  
3 explains the basis for our decision. And I am  
4 totally satisfied with the wording of this  
5 order and I would move that we approve it.

6 CHAIRMAN HOOD: Okay. I like that.

7 You put the motion in there too. And I'll  
8 second your motion because I definitely, whole  
9 heartedly agree. I think this articulates  
10 exactly a decision that we've reached. Okay.

11 It's been moved and properly seconded by  
12 myself. Any further discussion? All those in  
13 favor?

14 ALL: Aye.

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

18 MS. SCHELLIN: Yes, sir. Staff  
19 will record the vote four to zero to one to  
20 adopt the Order; Commissioner Turnbull moving;  
21 Commissioner Hood seconding; Commissioners May  
22 and Schlater in support; the third Mayoral

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1 seat vacant, not voting.

2 CHAIRMAN HOOD: Okay. Next, we're  
3 going to move to Hearing Action. Zoning  
4 Commission Case Number 10-09 -- I guess we can  
5 do 10-09 and 10-10 in block. I'm going to go  
6 to the Office of Planning first, and I'm going  
7 to go to -- because it's basically dealing  
8 with increases in the fees for the Office of  
9 Zoning -- I'm going to -- after the Office of  
10 Planning, I'm going to come over to the  
11 Director of the Office of Zoning, Director  
12 Weinbaum. Ms. Thomas -- is it Ms. Thomas?  
13 Okay. Ms. Thomas.

14 MS. THOMAS: Yes. Good evening,  
15 Mr. Chairman and members of the Commission.  
16 Both cases are combined for both purposes of  
17 brevity. The Office of Planning is  
18 recommending that the Commission set down the  
19 Proposed Text Amendments to Chapters 30 and  
20 31, as petitioned by the Office of Zoning, to  
21 permit fee increases for the filing and  
22 hearing of petitions before the Commission and

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1 the Board of Zoning Adjustment. These  
2 increases have been proposed, as no increases  
3 have been initiated by the Office of Zoning  
4 since 1994. And they would represent a mere  
5 30 percent increase over prior increases 16  
6 years ago. An analysis reviewed that the  
7 proposed increases would be less than that  
8 which would be charged for similar services in  
9 surrounding jurisdictions. And the Office of  
10 Planning has no objection to the set down as  
11 proposed. Thank you.

12 CHAIRMAN HOOD: All right. Thank  
13 you. Director Weinbaum, you wanted to add  
14 something?

15 MR. WEINBAUM: Yes. I just wanted  
16 to add, members of the Commission, that one  
17 other thing that we took into account, in  
18 addition to the fact that the fees had not  
19 been increased in about 16 years, and the fact  
20 that, even with the increase, we'll be lower  
21 than surrounding jurisdictions, is being  
22 cognizant of the amount of funds that are

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1 needed to run our office and staff the Board  
2 and Commission, as opposed to the amount of  
3 revenue that we actually bring in. And, if we  
4 had these -- this increase in let's say fiscal  
5 year 2008 and 2009, we would have realized  
6 about \$200,000 of additional revenue per year.

7 So that's something that we hope, obviously,  
8 will contribute to future success of the  
9 office, by having the additional revenue.

10 CHAIRMAN HOOD: Okay. Thank you,  
11 Ms. Thomas and also Director Weinbaum. Let me  
12 ask, Commissioners, have you any questions of  
13 either one or any comments? I think that --  
14 I'm sorry. Commissioner Turnbull?

15 COMMISSIONER TURNBULL: I guess,  
16 you know, the one -- my one question is the  
17 operating expenses then for -- have we been  
18 running a little bit behind then, compared to  
19 --

20 MR. WEINBAUM: Well, just to answer  
21 your question, our -- our funds are designated  
22 by the Counsel.

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1 COMMISSIONER TURNBULL: Right.

2 MR. WEINBAUM: So it's not that our  
3 funding that we receive is what funds us.  
4 It's just an interesting comparison. But our  
5 funding is independent of what we actually  
6 bring in and expenditures.

7 COMMISSIONER TURNBULL: Okay. I  
8 just wanted to clarify that.

9 MR. WEINBAUM: Yes. I'm sorry. I  
10 should have made that clear.

11 COMMISSIONER TURNBULL: All right.  
12 Thank you.

13 COMMISSIONER SCHLATER: So where do  
14 the fees go? Do they go into the General  
15 Fund?

16 MR. WEINBAUM: They do go into the  
17 General Fund. That's correct.

18 COMMISSIONER SCHLATER: That's  
19 interesting. So, if they're not paying for  
20 the operations of the office, why are we  
21 raising the fees?

22 MR. WEINBAUM: The idea is that the

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1 fees, in light of the fact that, you know,  
2 they do go over all, in terms of the revenue  
3 on a kind of a macro level, in terms of what  
4 it takes to run the office and run all  
5 agencies, as opposed to the services that are  
6 provided and what's needed to run the office.

7 It's sort of a more of a broader picture.

8 COMMISSIONER SCHLATER: Isn't it  
9 the case in some other offices in the District  
10 that the fees that they charge actually goes  
11 to support operations?

12 MR. WEINBAUM: It is.

13 COMMISSIONER SCHLATER: So, if we  
14 had a busy year, for instance, processing  
15 numerous cases.

16 MR. WEINBAUM: Yes?

17 COMMISSIONER SCHLATER: We would  
18 then be collecting more revenue, which would  
19 help offset some of the operational fees.

20 MR. WEINBAUM: If those funds were  
21 maintained here, in addition to the funds we  
22 already have, that would be one thing. But

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1 even with this increase, the funds that we  
2 take in are significantly lower than those  
3 that the Counsel has designated in past years  
4 for us. So our budget --

5 COMMISSIONER SCHLATER: So we can't  
6 get both?

7 MR. WEINBAUM: If the Counsel so  
8 deemed, I believe. Because it would be a  
9 different type of funding.

10 COMMISSIONER SCHLATER: I just  
11 don't -- I'm -- I guess I'm in support of  
12 raising the fees to make them comparable to  
13 other jurisdictions.

14 MR. WEINBAUM: Yes.

15 COMMISSIONER SCHLATER: But I don't  
16 see what's the pressing need to do so at this  
17 point.

18 MR. WEINBAUM: Yes. No. I think  
19 that the need is the fact that, you know, both  
20 that it hasn't -- the fees haven't been raised  
21 in so long, that we are lower than surrounding  
22 jurisdictions, you know, for the services that

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1 we provide. And then, again, the  
2 consideration of the expenses that the  
3 District incurs overall in employing a staff  
4 of our size and the programs that we're trying  
5 to pursue with respect to technology and  
6 others.

7 COMMISSIONER SCHLATER: Keeping our  
8 fees down could be considered a business  
9 friendly move. I'm just wondering what the  
10 pressing need is at this time.

11 MR. WEINBAUM: Yes. I think -- I  
12 mean, again, I think the need is the fact that  
13 it hasn't been done in so many years. I think  
14 the fact of the services that you get,  
15 compared to other jurisdictions, even with the  
16 increase, would be such that it keeps up with  
17 what it takes, actually, to run the District  
18 overall. I mean, I think it's looking across  
19 the board at where the District can increase  
20 the revenue it brings in, considering that,  
21 you know, we provide these services. I think  
22 that's the need, kind of on a broader level.

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1                   COMMISSIONER TURNBULL:    It's -- I  
2                   see where Commissioner Schlater is going.  It  
3                   would be interesting to be able to tap into  
4                   some of those funds to either enhance the  
5                   website or other aspects of the operation that  
6                   you see as not just to have, but as a desired  
7                   feature that would improve the overall  
8                   office's capabilities.  That would --

9                   MR. WEINBAUM:    And I definitely  
10                  understand the point you're getting at.  The  
11                  problem is that you can be funded without  
12                  going to too much.  I mean, you can be funded  
13                  by funds out of the General Fund from District  
14                  Council or you can be funded with O-type  
15                  funds, which basically are the funds that you  
16                  bring in.  If we were to make that kind of an  
17                  adjustment, we would put ourselves, in my  
18                  opinion, at a significant disadvantage,  
19                  because, in slower times, we wouldn't have as  
20                  much revenue.  And right now we're able to  
21                  project, in order to support the staff we  
22                  have, based on the revenue.  Just to throw

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1 some numbers behind it, without getting into  
2 too much detail, because I know if it's set  
3 down, we'll have a hearing, our budget is  
4 roughly around \$3 million. And, in past  
5 years, we bring in \$5-600,000 in revenues.  
6 So, if we were to sacrifice one for the other,  
7 it would dramatically undercut what the office  
8 could accomplish. And I haven't seen an  
9 environment where we'd be able to do both thus  
10 far. It would be up to the Council to do  
11 that.

12 COMMISSIONER SCHLATER: That's  
13 true. But there are offices that -- say DCRA  
14 -- that collect fees. But they don't operate  
15 exclusively on the basis of those fees. You  
16 can do both.

17 MR. WEINBAUM: My understanding  
18 though, with DCRA, as well, is that the fees  
19 go into the General Fund. And then they get  
20 their budget, much the same way we do.

21 MR. BERGSTEIN: The only agency in  
22 the District of Columbia that actually gets to

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1 keep its money is WASA. Everything else goes  
2 into the General Fund. All the money goes  
3 into the cash management pool. What you do  
4 with is based upon your appropriations. And  
5 money just helps argue how much appropriations  
6 you can get. But that's the way it is in the  
7 District of Columbia.

8 COMMISSIONER MAY: I'm not so sure.

9 I think there are several agencies that have  
10 revolving funds, where they receive fees and  
11 they get to use them.

12 MR. BERGSTEIN: No. They don't get  
13 to use them. A fund is an accounting tool.  
14 It's like a checkbook that you own. And you  
15 can say well, this is the money that only I  
16 can use. So that's a very good argument why  
17 you should budget that money for me, because  
18 no one else can use it.

19 COMMISSIONER MAY: Yes?

20 MR. BERGSTEIN: But, even though  
21 every dime DDOT collects goes into their  
22 operating fund, if their budget was \$2, they

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1       couldn't touch that money.       Your budget  
2       authority always has to --

3                   COMMISSIONER MAY:       Oh, no.       Of  
4       course.       There's always budget authority that  
5       goes with the revolving fund.       But the  
6       revolving fund is the source of the revenue.  
7       I mean, it goes into the revolving fund.       And  
8       you have to have budget authority to spend  
9       that money.       But that's where it comes from.  
10      It's not like it goes into the General Fund,  
11      and then goes to the agency.

12                   MR. BERGSTEIN:       No.       It still goes  
13      into the General Fund.       Well, yes.       It goes  
14      into a fund, but it doesn't -- it doesn't aid  
15      you in terms of what you ultimately can  
16      expend.       Because that's always based upon your  
17      appropriation.       And there's no guarantee that  
18      the Council will appropriate -- they should,  
19      if common sense prevails, but there's no  
20      guarantee that the Council will appropriate  
21      the amount of money that you actually have in  
22      your fund.       And actually, in the first year of

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1 WASA, there was like a \$250 million shortfall  
2 because they forgot to connect the dots  
3 between the money that was in the enterprise  
4 fund and what was their budget. And I  
5 remember that very well.

6 COMMISSIONER SCHLATER: Yes. I  
7 mean, I guess I'm of two minds on this. In  
8 that, one, there seems to be a relentless push  
9 to increase fees across the District, whether  
10 it be parking tickets, speeding tickets,  
11 professional business licenses, so, unless  
12 there's a pressing need to do it, I don't see  
13 why you necessarily just go out and raise the  
14 fees. But --

15 COMMISSIONER MAY: I mean, I think  
16 that, generally speaking, the District  
17 government is looking for ways to raise  
18 additional funds through a variety of means.  
19 I'm -- I have no objection, at this moment, to  
20 setting this issue down for a hearing and  
21 hearing what the public has to say. And let  
22 the business leaders come and speak to us and

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1 let us know if adding a couple extra hundred  
2 bucks to their fees is going to have an impact  
3 on whether they build that multi-million  
4 dollar building.

5 COMMISSIONER SCHLATER: Fair  
6 enough. It's certainly a worthy enough  
7 proposal for a hearing. I'll support setting  
8 it down.

9 CHAIRMAN HOOD: Okay. It sounds  
10 like everyone's going to support setting it  
11 down. So would somebody like to make a motion  
12 to set it down? I hate to leave out making a  
13 motion to set down go higher fees. So I'm  
14 going to let somebody else make that motion.

15 COMMISSIONER MAY: I'd be happy to  
16 make the motion. Separately or together?

17 CHAIRMAN HOOD: We can do them in  
18 block. I don't think that's a problem.

19 COMMISSIONER MAY: I would move  
20 that we set down Zoning Commission Cases  
21 Number 10-09 and 10-10, Proposed Amendments  
22 for the Filing of Fees for Applications Filed

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1 with the Office of Zoning under 11 DCMR  
2 Chapters 30 and 31 of the Zoning Regulations.

3 CHAIRMAN HOOD: It's been moved.  
4 Can I get a second?

5 COMMISSIONER TURNBULL: Second.

6 CHAIRMAN HOOD: Moved and properly  
7 seconded Any further discussion? Are you  
8 ready for the question? All those in favor?

9 ALL: Aye.

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

13 MS. SCHELLIN: Yes. Staff records  
14 the vote four to zero to one to set down  
15 Zoning Commission Case Numbers 10-09 and 10-10  
16 as rule making cases; Commissioner May moving;  
17 Commissioner Turnbull seconding; Commissioners  
18 Hood and Schlater in support; the third  
19 Mayoral seat vacant, not voting.

20 CHAIRMAN HOOD: Okay. Thank you.  
21 Next Zoning Commission Case Number 10-11.  
22 This is AWA Holdings, LLC & District of

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1 Columbia -- Consolidated PUD and Related Map  
2 Amendment @ Square 5148. Ms. Jackson.

3 MS. JACKSON: Good evening Chair  
4 and fellow Commissioners. For the record, my  
5 name is Arlova Jackson, with the Office of  
6 Planning. Zoning Commission Case 10-11 is a  
7 request from Northern Real Estate Urban  
8 Ventures, LLC, on behalf of AWA Holdings, LLC,  
9 and the District of Columbia for a  
10 consolidated PUD and related map amendment at  
11 4800 Nannie Helen Burroughs, N.E. The request  
12 would allow for the development of a new  
13 multi-family residential building with ground  
14 floor office and retail space and include a  
15 PUD related map amendment to place the entire  
16 site within the C-2-A zone. The site is  
17 comprised of two zones, with the majority  
18 being located within the C-1 zone and the  
19 remainder of the property zoned R-2. The  
20 existing site is largely vacant, with the  
21 exception of two buildings. And the property  
22 is over 45,000 square feet in size and

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1       comprised of ten lots.       The property is  
2       bounded roughly by Hayes Street to the north,  
3       Nannie Helen Burroughs to the south, 49th  
4       Street to the east, and 48th Street to the  
5       West, and is bisected by a 15-foot wide public  
6       alley.   The Applicant's are seeking closure of  
7       the alley and consolidation of all the lots  
8       into a single lot of record under a separate  
9       process.   The surrounding square is comprised  
10      of a variety of uses, including a church,  
11      single family residences, and retail uses.  
12      And the surrounding neighborhood includes a  
13      mix of residential and commercial uses and  
14      zones.

15                   The proposed 92,000 square foot  
16      building would include 70 units of affordable  
17      housing, including 23 public housing  
18      replacement units, 81,000 square feet of  
19      commercial space, and 40 surface parking  
20      spaces.   The building would be five stories  
21      tall and approximately 62 feet, eight inches  
22      in height.   The building would contain ground

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1 floor retail and office uses with upper level  
2 residences. Vehicular access to the site  
3 would be provided from 48th Street and an open  
4 off-street parking area would be located at  
5 the rear of the building, buffered from  
6 residential uses to the north by a landscaped  
7 retaining wall.

8 The Applicant requests flexibility  
9 from the number of required loading and  
10 delivery spaces and roof structure  
11 requirements. The Applicant has indicated  
12 they will provide the following public  
13 benefits and amenities as part of this  
14 proposal: 70 affordable housing units,  
15 including 23 public housing replacement units,  
16 green community certification, improved site  
17 design and new landscaping, and employment and  
18 training opportunities, via participation in  
19 the First Source program.

20 The proposal is not inconsistent  
21 with the Comp. Plan and addresses several  
22 stated policies within the Land Use, Housing,

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1 Transportation, Urban Design, and Far  
2 Northeast and Southeast Elements, by  
3 encouraging in-fill development, providing a  
4 new 100 percent affordable housing  
5 development, targeting investment on vacant  
6 and under-utilized land, and revitalizing a  
7 Great Streets Neighborhood commercial  
8 corridor. The majority of the property is  
9 designated for low density commercial use and,  
10 to a lesser extent, low density residential,  
11 and is shown as a neighborhood enhancement  
12 area in the Generalized Policy Map. As such,  
13 the requested PUD related map amendment to the  
14 C-2-A zone is not inconsistent with this  
15 classification.

16 To conclude, OP is supportive of  
17 the request and will continue to work with the  
18 Applicant on providing more details about the  
19 proposed design, benefits, and amenities. OP  
20 is comfortable that they can be addressed  
21 prior to the public hearing date. Based on  
22 the analysis presented and the documents

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1 placed on file, OP recommends that the  
2 requested consolidated Planned Unit  
3 Development and related map amendment be set  
4 down for public hearing. Thank you, and I'm  
5 available for questions at this time.

6 CHAIRMAN HOOD: Thank you, Ms.  
7 Jackson. Commissioners, any questions of Ms.  
8 Jackson?

9 COMMISSIONER SCHLATER: Mr.  
10 Chairman?

11 CHAIRMAN HOOD: Chairman elect?

12 COMMISSIONER SCHLATER: I have a  
13 few questions for the Office of Planning. I  
14 just want to get a sense of -- in the --  
15 requested relief is to go to C-2-A, is that  
16 correct?

17 MS. JACKSON: Yes.

18 COMMISSIONER SCHLATER: And is  
19 there C-2-A in the general vicinity on Nanny  
20 Helen Burroughs Avenue?

21 MS. JACKSON: There's C-2-A to the  
22 south on Nannie Helen Burroughs.

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1 COMMISSIONER SCHLATER: How far  
2 away is it, approximately?

3 MS. JACKSON: You have -- in  
4 several of the maps that were attached to the  
5 report, it's actually to the blocks to the  
6 east of 49th and to the west of 48th, directly  
7 south of Nannie Helen Burroughs, are both C-2-  
8 A zones. So this would connect the two along  
9 that.

10 COMMISSIONER SCHLATER: Okay.

11 MS. JACKSON: The other side of the  
12 street.

13 COMMISSIONER SCHLATER: Great. In  
14 terms of the impact, I think the project  
15 actually looks, from what I can see -- looks  
16 quite good. You've got single family homes  
17 immediately adjacent. You said that there was  
18 going to be a retaining wall built as sort of  
19 a buffer on the parking and loading?

20 MS. JACKSON: On the north.

21 COMMISSIONER SCHLATER: Is it a  
22 retaining wall, or is it just a wall?

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1 MS. JACKSON: I think part of it  
2 might serve as that function. But it's more  
3 of a landscape wall around the north border.

4 COMMISSIONER SCHLATER: Okay.

5 MS. JACKSON: There's a change in  
6 grade. So I'm not sure how much of it is  
7 necessary.

8 COMMISSIONER SCHLATER: And, in  
9 terms of those single family homes,  
10 immediately adjacent to the site, is there  
11 going to be significant impacts in terms of  
12 shading on those homes?

13 MS. JACKSON: They provided a  
14 shadow study with their application. And they  
15 are also setting the building back 25 feet  
16 from that property line. And the property  
17 slopes downward towards Nannie Helen.

18 COMMISSIONER SCHLATER: Have you  
19 had -- just -- have you had discussions with  
20 the immediate neighbors?

21 MS. JACKSON: No.

22 COMMISSIONER SCHLATER: Has the

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1 Office of Planning? Has there been a  
2 community process around this project, that  
3 you know of?

4 MS. JACKSON: I believe the -- at  
5 least, I believe that's begun.

6 COMMISSIONER SCHLATER: Have there  
7 been any concerns raised by the neighbors that  
8 you know of?

9 MS. JACKSON: Not that we've been  
10 made aware of.

11 COMMISSIONER SCHLATER: How long  
12 have you been aware of the project, I guess,  
13 might be one -- I mean, has it been a project  
14 that you've been following along? Has it been  
15 a years in the making kind of thing?

16 MS. JACKSON: A couple of months.

17 MS. STEINGASSER: I would estimate  
18 we've probably -- this project's probably been  
19 in the making for at least eight months.

20 COMMISSIONER SCHLATER: Okay. And,  
21 to your knowledge, there aren't any  
22 significant problems in the community?

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1 MS. STEINGASSER: No, sir.

2 COMMISSIONER SCHLATER: Okay. I  
3 don't have a problem setting this down, except  
4 I will say that the level of detail in the  
5 drawings, in terms of the facades is something  
6 I think, before the hearing, we'd like to see,  
7 you know, a rendering. It's a little, what my  
8 colleague might call it -- Commissioner  
9 Turnbull -- a little cartoonish, in that it's  
10 very difficult to get a sense of what the  
11 building is actually going to look like. And  
12 so I think we'd want to see some more detail  
13 on that, for sure. And then, in terms of the  
14 shading studies, I did see one page on the  
15 shading studies, at the spring equinox and the  
16 summer solstice. I might want to see it at  
17 other times of the year. Some maybe of the  
18 less favorable times of the year, just to get  
19 an -- just so we fully understand the impact  
20 on the neighbors.

21 CHAIRMAN HOOD: Any other comments?

22 Commissioner Turnbull?

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1                   COMMISSIONER TURNBULL:     I would  
2                   concur with Commissioner Schlater's statements  
3                   exactly. I think we're -- we all -- I mean, I  
4                   would vote to set this down. But I think,  
5                   when we get to the hearing, we'd like some  
6                   better defined architectural drawings, site  
7                   plan drawings, showing the residences and the  
8                   sun shade studies are definitely needed.

9                   CHAIRMAN HOOD: Commissioner May?

10                  COMMISSIONER MAY:        Sorry about  
11                  that.        Yes.        I would concur with my  
12                  colleagues. It would be good to see some  
13                  better drawings and some shadow studies. I  
14                  think that the -- you know, I have a certain  
15                  amount of discomfort with what's being  
16                  proposed here because it feels like a very big  
17                  building, planted in what's otherwise a very  
18                  low rise neighborhood. And maybe it would  
19                  just help to see more of the context. I mean,  
20                  I know that there's C-2-A not too far away and  
21                  maybe there's more that's going to be  
22                  happening in those areas. I mean, certainly

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1 tall buildings close to single family  
2 residential is not unheard of. It just  
3 happened -- it happens in many places across  
4 the city. But it would -- might give me more  
5 comfort to know that it's -- if there's  
6 anything like that that's occurring nearby,  
7 because I think some people might feel that  
8 this is really quite alien, given a, you know,  
9 60 foot tall building so close to two and  
10 even, it looks like one story homes. So I  
11 think that there's a bit of a concern with  
12 that.

13 I also think it's quite  
14 unfortunate, and I'm not sure that there's  
15 much that you can do about it, but that's an  
16 awful lot of paving in that site plan. And I  
17 am sure there are good reasons why it's laid  
18 out the way it is, in order to get the parking  
19 spaces in or something, but I just have to  
20 wonder whether there might be some more  
21 efficient way to lay things out so that you  
22 don't have 80 percent of the site or 85

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1 percent of the site paved in some fashion.  
2 So, I don't know. It's just a general  
3 thought. That's it. Thanks.

4 CHAIRMAN HOOD: Okay. Would one of  
5 the Commissioners like to make a motion to set  
6 this down?

7 COMMISSIONER SCHLATER: Yes. I'll  
8 make a motion. I move that we set down Zoning  
9 Case Number 10-11, AWA Holdings, LLC, and the  
10 District of Columbia -- Consolidated PUD and  
11 Related Map Amendment @ Square 5148.

12 CHAIRMAN HOOD: Moved. Can I get a  
13 second?

14 COMMISSIONER MAY: Second.

15 CHAIRMAN HOOD: Moved and properly  
16 seconded. Any further discussion? All those  
17 in favor?

18 ALL: Aye.

19 CHAIRMAN HOOD: Ms. Schellin, not  
20 hearing any opposition, could you record the  
21 vote?

22 MS. SCHELLIN: Yes. Staff records

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1 the vote four to zero to one to set down  
2 Zoning Commission Case Number 10-11, as a  
3 contested case; Commissioner Schlater moving;  
4 Commissioner May seconding; Commissioners Hood  
5 and Turnbull in support; the third Mayoral  
6 seat vacant, not voting.

7 CHAIRMAN HOOD: Thank you, very  
8 much. And I think Chairman Elect is going to  
9 be leaving us. So have a nice evening.

10 COMMISSIONER SCHLATER: Thank you,  
11 Mr. Chairman.

12 CHAIRMAN HOOD: Okay Let's go with  
13 proposed Action, Zoning Commission Case Number  
14 09-03. This is Skyland Holdings, LLC --  
15 Consolidated PUD and Related Map Amendment @  
16 Squares 5632, 5633, 5641, 5641N and Various  
17 Parcels. Ms. Schellin?

18 MS. SCHELLIN: Yes, sir. This case  
19 is before the Commission for proposed action.

20 One thing that Staff has noticed is that  
21 there are several submissions for the plans,  
22 in this case. And I would ask the Commission

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1 if so inclined -- we've done this in other  
2 cases -- if the Commission would allow the  
3 Applicant to submit one complete set of plans,  
4 not making any revisions, of course, but just  
5 one complete set of plans, so that, you know,  
6 we don't have, you know, going through so many  
7 different exhibits to find a complete set. We  
8 have so many different pieces. If we could  
9 just have that. If the Commission would allow  
10 that. We've done that in other cases when  
11 we've had so many bits and pieces.

12 CHAIRMAN HOOD: I think you're  
13 exactly correct, Ms. Schellin. Commission, we  
14 need to request before final -- you want it  
15 before final, right?

16 MS. SCHELLIN: Yes, sir. If we  
17 could.

18 CHAIRMAN HOOD: Okay. Before  
19 final, one set of exactly what's going on, on  
20 this site.

21 MS. SCHELLIN: Yes. What's already  
22 in the record, but just in one exhibit.

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1 CHAIRMAN HOOD: Right.

2 MS. SCHELLIN: If the Commission  
3 would allow the record to be opened to accept  
4 that.

5 CHAIRMAN HOOD: Okay. And also, I  
6 guess they could check with you on the  
7 procedural order, if this is approved, which  
8 -- on the procedural order, without me having  
9 to --

10 MS. SCHELLIN: My understanding is,  
11 if you guys take action tonight, that you will  
12 issue a procedural order, which I have.

13 MR. BERGSTEIN: Yes. You'll need  
14 to have a procedural order that goes through  
15 this process of what the proffers are and what  
16 the final conditions are that has already been  
17 prepared and it would be available to the  
18 parties from Staff, if you do take proposed  
19 action. And it's going to be mailed out  
20 tomorrow. So that's something that would  
21 happen after you take -- if you take proposed  
22 action.

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1                   CHAIRMAN HOOD:       Okay.       Great.  
2       Okay.    And again, that's the standard that  
3       we've been doing now in all of our PUDs, the  
4       procedural order.       Okay.       Commissioners,  
5       again, if you recall, this is a case the  
6       Applicant Skyland Holdings, on behalf of the  
7       District of Columbia, through the Deputy  
8       Mayor's office for Planning and Economic  
9       Development, proposed a consolidated PUD unit  
10      developed and related map amendment to  
11      property that is currently located in the C-3-  
12      A, R-5-B, R-5-A, and R-1-B districts.    The  
13      majority of the property is in the C-3-A  
14      district and the requested map amendment would  
15      rezone the R-5-A,. R-5-B. and R-1-B portions  
16      of the C-3-A district.    The development would  
17      replace the old Skyland shopping center,  
18      created by Skyland Town Center with retail,  
19      residential, and other complimentary uses.    At  
20      1.61, I believe, is the FAR.

21                   If you will remember, this project,  
22      we were told at the hearing, has been going on

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1 since 1989. For me, and I'll start it off,  
2 for me the biggest issue was the neighbors on  
3 Fort Baker Drive. I will have to kind of  
4 commend -- no, not kind of -- I will commend  
5 the Applicant. When I look at the  
6 construction management plan, I know that Mr.  
7 Sullivan, who I think ably represented his  
8 clients on Fort Baker Drive. And I think  
9 that, when I read the letter that he submitted  
10 -- well, it was stamped in May 12, but he --  
11 yes, May 12 -- there a few pieces of this  
12 letter I look at and I will say this. One  
13 part on page -- I guess it's page two, the  
14 latter option could be accomplished without  
15 economic harm to the Applicant. The Applicant  
16 could purchase the four Fort Baker Drive  
17 properties at market value and rent them out  
18 in the normal course of business. And then he  
19 goes on, the Fort Baker Drive residents  
20 believe that it is unfair for them to have to  
21 shoulder the sole risk of damage to the Fort  
22 Baker Drive homes. And then it goes on to say

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1 finding it the burden of the Applicant to show  
2 the impact of their PUD on the surrounding  
3 area will not be unfavorable and will not be  
4 inconsistent with the Comprehensive Plan  
5 directly, has not met that burden. That's  
6 where I kind of disagree. Because, when I  
7 look at the construction management plan and  
8 there's some things -- when I look at that  
9 letter and look at what is being given, as we  
10 had asked of them -- we asked Mr. Tummons and  
11 the Applicant to come back with what's the --  
12 make sure that the burden was not on the Fort  
13 Baker Drive neighbors. It says the Applicant  
14 will request access to the Fort Baker Drive  
15 neighbor properties, in order to conduct  
16 surveys before and after the commencement of  
17 the excavation of compaction work on the  
18 Skyland property. And, in reading that, I  
19 think that, when they go to those homes and  
20 they look at it, hopefully, that it appears  
21 that the Applicant thinks that they may have  
22 some problem accessing the owners' property.

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1 But I'm hoping that that does not happen. And  
2 I think also it needs to be very detailed  
3 exactly on how -- what already exists and what  
4 exists after the construction, if we're so  
5 inclined to improve. Then this also says  
6 responsibility for damage to adjacent  
7 properties, the Applicant agrees to repair, at  
8 its own expense, and as promptly as reasonably  
9 possible, any damage to the properties of the  
10 Fort Baker Drive neighbors and any  
11 improvements thereon, caused by and resulting  
12 from excavation or compaction work conducted  
13 on the Skyland property. And that's why I  
14 think, on the front side, I know when they  
15 talked about vibrations and some of those  
16 other things. But I think it's very key to  
17 what they have here. And I know one of the  
18 issues that the Fort Baker Drive neighbors  
19 had, at least the way I see it, was the --  
20 having to go to litigation to get this -- to  
21 go through all this. And that is an undue  
22 burden on the community, especially the

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1 neighbors on Fort Baker Drive. But I think  
2 that this construction management plan, which  
3 is being proffered and offered by the  
4 Applicant, I think, will ease some of that  
5 tension that we heard at the hearing. And  
6 that was a major issue for me, because a lot  
7 of folks, you know, homes are a big  
8 investment. And I think that the Applicant  
9 has risen to the occasion, from what I've seen  
10 here. This is a very detailed plan. I just  
11 disagree with Mr. Sullivan partly. But I  
12 think he represented well, because initially  
13 we didn't even have that. And the Applicant  
14 came back with that. And we just need to make  
15 sure that is an enforceable document. So,  
16 anyway, enough said on that. That was my  
17 major issue. I will open it up to my  
18 colleagues on the Commission and see if you  
19 have any other comments. Commissioner  
20 Turnbull?

21 COMMISSIONER TURNBULL: Mr. Chair,  
22 I only have one comment. Otherwise, I think I

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1 would agree with you 100 percent. My only --  
2 the only issue that I would like to seek  
3 clarification by the Applicant or maybe a  
4 little bit more specificity by the Applicant  
5 is on the seismic vibration monitoring. I  
6 mean, I've done this years ago at a major  
7 museum with a very world famous textile  
8 collection. And, at that time, there were no  
9 standards on this. Since then, a lot of  
10 things have changed. And I guess I would just  
11 like to see some specifics on the onsite  
12 seismic vibration monitoring. Is the one  
13 device, two devices, three devices? And what  
14 standards? Is it set to a certain level? Is  
15 there a residential level? Is there some  
16 determination that gives them a clue as to  
17 when they're going to have a problem? It's a  
18 very open ended item. I think it's very good.

19 I think it's an excellent idea. But there  
20 are many ways that you can approach this. So  
21 I would just like to see some specifics on  
22 this, as to how it's going to be applied to

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1 this specific site and for the home owners.  
2 And that's all I have.

3 CHAIRMAN HOOD: Okay. Anything  
4 else? Commissioner May?

5 COMMISSIONER MAY: Yes. I would  
6 agree with the Chairman and with Mr. Turnbull,  
7 with regard to the construction management  
8 plan. I think getting more specific  
9 information about how the seismic measurements  
10 will be taken I think would be helpful and  
11 would provide some assurance about the  
12 accuracy and certainty of the measurements  
13 that are being taken.

14 You know, I would want to -- I do  
15 want say something else on the impact of this  
16 project, overall. Specifically, the visual  
17 impact of the project and I believe that the  
18 Applicant has gone to great lengths to  
19 demonstrate that what they're proposing to do  
20 would be significantly better than what might  
21 be done as a matter of right. And I think  
22 that, you know, any of the issues about how

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1 the balloon tests were done or things like  
2 that, I think are secondary when all you  
3 really need to look at are the sections  
4 through the block that go all the way through  
5 to Fort Baker Drive, and see the difference  
6 between what's being proposed and what could  
7 be done as a matter of right. And I think  
8 that the developer has actually been quite  
9 careful to minimize the visual impacts on the  
10 neighbors across the ravine. And even to the  
11 point of actually moving the end wall of the  
12 one retail building and how that's treated,  
13 because I think that was -- I mean, you really  
14 could have something sort of looming over the  
15 ravine in that circumstance. So I think that  
16 there's been some significant progress on  
17 this. And I think that the Applicant has made  
18 a good case that what's being done here  
19 strikes the sort of balance that we look for  
20 in a PUD, between, you know, getting a little  
21 bit of flexibility on some parts of the zoning  
22 regulations, in order to get a better product

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1 in the long run. And I've seen some projects  
2 that go awry in the process and you wind up  
3 with matter of right projects that are really  
4 quite problematic for the neighborhood. And,  
5 in this circumstance, I think it's -- I think  
6 they've done a reasonably good job of limiting  
7 the impact of this large redevelopment  
8 project.

9 CHAIRMAN HOOD: Thank you, very  
10 much. I'm looking at my notes and I know ANC  
11 Commissioner Richards talked about the public  
12 benefits and the amenities package. And I  
13 think that that will be covered,  
14 Commissioners, even though it will be all in  
15 one place by June 4, which is by the  
16 procedural order question. And I want to just  
17 read this for the record. By June 4, 2010,  
18 the Applicant must file with OZ and serve OP,  
19 OAG, and parties with its final list of  
20 proffered public benefits for the consolidated  
21 PUD and, for each such public benefit, provide  
22 a draft condition that is both specific and

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1 enforceable. So I think that -- I had a note  
2 here that Commissioner Richards -- that was  
3 one of his -- ask questions about the point  
4 the developer's not providing as amenities all  
5 of the items that the ANC thinks is important.

6 And I remember writing that. So anyway, I  
7 think this is -- other than what Mr. Turnbull  
8 has asked for and other with our procedural  
9 order, I think that I will tell my colleagues  
10 that I will be voting in favor of what is  
11 presented to us with the necessary caveats of  
12 what Mr. Turnbull asked for. Also, some  
13 things that need to happen, I believe, before  
14 final. And I think it's only two things. Am  
15 I correct, Ms. Schellin?

16 MS. SCHELLIN: Just one thing.

17 CHAIRMAN HOOD: Just one thing?

18 MS. SCHELLIN: Just the plan.

19 CHAIRMAN HOOD: Okay. But the  
20 procedural order --

21 MS. SCHELLIN: And the items that  
22 are listed in the procedural order.

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1 CHAIRMAN HOOD: Okay. Any other  
2 questions or comments? I would move approval  
3 of Zoning Commission Case Number 09-03,  
4 Skyland Holdings, LLC -- Consolidated PUD and  
5 Related Map Amendment and ask for a second.

6 COMMISSIONER TURNBULL: Second.

7 CHAIRMAN HOOD: It's moved and  
8 properly seconded. Any further discussion?  
9 Other discussion, Ms. Schellin, is the set of  
10 final plans.

11 MS. SCHELLIN: Correct.

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

16 ALL: Aye.

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

20 MS. SCHELLIN: Yes, sir. Staff  
21 records the vote three to zero to two to  
22 approve proposed action on Zoning Commission

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1 Case Number 09-03; Commissioner Hood moving;  
2 Commissioner Turnbull seconding; Commissioner  
3 May in support; Commissioner Schlater not  
4 voting, having not participated; the third  
5 Mayoral seat vacant, not voting. And I think  
6 all of the parties are in the audience. So if  
7 they want to come forward, I'll give them a  
8 copy of the procedural order this evening.

9 CHAIRMAN HOOD: So all of the  
10 parties that are involved with this case, if  
11 you can see Ms. Schellin, now, you can come up  
12 and see her now, she will give you a copy of  
13 the procedural order. Ms. Schellin, do we  
14 have anything else before us?

15 MS. SCHELLIN: No, sir.

16 CHAIRMAN HOOD: Okay. I want to  
17 thank everyone for their participation in this  
18 meeting tonight and this meeting is adjourned.

19 (Whereupon, the meeting was  
20 adjourned at 7:39 p.m.)

21  
22

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