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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Public Hearing

Case No. 15-19 [411 New York Holdings, LLC. -
Consolidated PUD and Related Map Amendment at Square
3594, Lot 800.]

6:34 p.m. to 10:58 p.m.
Thursday April 21, 2016

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, VICE CHAIR

4 PETER MAY, Commissioner

5 ROBERT MILLER, Commissioner

6 MICHAEL TURNBULL, Commissioner

7

8 Office of Zoning:

9 SHARON SCHELLIN, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 JENNIFER STEINGASSER

14 MEGAN RAPPOLT

15

16 DDOT

17 MR. ROGERS

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

2 CHAIRPERSON HOOD: Okay. Good evening,
3 everyone. This is the reconvening of Zoning
4 Commission Case No., excuse me, 15-9.

5 My name is Anthony Hood. Joining me are Vice
6 Chair Cohen, Commissioner Miller, Commissioner May,
7 and Commissioner Turnbull. We're also joined by the
8 Office of Zoning staff, Ms. Sharon Schellin, as well
9 as the Office of Planning staff, Ms. Steingasser, Ms.
10 Rappolt, and Mr. Lawson.

11 Again, we will take from the previous
12 sessions, the opening statement and we would just get
13 right into testimony where we left off. But before
14 that I believe we have a preliminary matter. But I
15 would ask that the opening statement from the
16 previous case be incorporated into this record, and
17 this record be added to the previous case in that
18 order.

19 Okay. Ms. Schellin, do we have any
20 preliminary matters?

21 MS. SCHELLIN: Yes, sir. We have a request
22 from the party in opposition for a postponement of
23 this evening's hearing. That is at, I believe it was
24 Exhibit 289 and I would ask the Commission -- or
25 actually I'm not sure of the exhibit number, it's not

1 coming up right now -- the Commission would consider
2 that this evening.

3 CHAIRPERSON HOOD: And this came in today.
4 Am I correct?

5 MS. SCHELLIN: Correct.

6 CHAIRPERSON HOOD: okay.

7 MS. SCHELLIN: This afternoon.

8 CHAIRPERSON HOOD: Okay. We have a series of
9 comments that was given by the former representative,
10 I believe, if I read the letters correctly. Mr.
11 Otten, who has mentioned a number of things in this
12 letter. And Commissioners, I believe, have we all
13 had a chance to read it? I do know that we do other
14 things during the day. But we've all had a chance to
15 read it? Great.

16 Let me open it up for any discussion. Well,
17 what is your position, Commissioners?

18 Does anyone have a position, before I give
19 mine?

20 MR. MAY: Yeah.

21 CHAIRPERSON HOOD: Commissioner May.

22 MR. MAY: Mr. Chairman.

23 CHAIRPERSON HOOD: Yes.

24 MR. MAY: So, you know, I appreciate the
25 points that were being made, but I don't really

1 believe that any of the arguments that were made in
2 this motion are relevant to our proceeding. I don't
3 think that anything is going to truncate the exercise
4 of the rights of the parties and the party in
5 opposition. You know, all we're talking about today
6 is continuing the hearing. We're not talking about
7 when the decision might be made. Furthermore, we
8 never -- I mean, there are lots of parallel processes
9 to the zoning process. HPRB review, street closings,
10 things like that. Those are never taken into
11 consideration and of course all of those things have
12 to be taken care of before a project can be built.
13 So, you know, if goes through a street closing
14 process and that affects the outcome, then you know,
15 then so be it. You know, it would not -- you know,
16 the fact that we've taken action does not nullify any
17 other component of those multiple proceedings.

18 CHAIRPERSON HOOD: Vice Chair Cohen.

19 MS. COHEN: Thank you, Mr. Chairman. I do
20 concur with Commissioner May, and in addition while
21 the PUD process is ongoing, it really requires that
22 we remain on record. And the request to have the
23 Office of Planning attend a meeting on site was
24 actually inappropriate. And they had to cancel or
25 postpone anything they were planning to do.

1 CHAIRPERSON HOOD: Wow. Okay. Any other
2 comments, questions? Commissioner Turnbull?

3 MR. TURNBULL: Yeah. Thank you, Mr. Chair.
4 I would agree with my colleagues. I don't think
5 there's been anything in our past case history where
6 the granting of a PUD in any way results in an alley
7 being closed. I mean, it's a whole separate process.
8 It's the Public Space process. It's a whole
9 different parallel process that goes on within the
10 city.

11 So I mean, we're concerned basically about
12 this PUD and it's action going forward and what we've
13 deliberated on so far. So, I'm not in favor of the
14 motion.

15 CHAIRPERSON HOOD: Okay. Commissioner
16 Miller.

17 MR. MILLER: Thank you, Mr. Chairman. Yeah,
18 I concur with my colleagues on the postponement
19 issue. This hearing began back in February and it's
20 now April, so I think it's time to continue it.

21 CHAIRPERSON HOOD: I would also agree, but
22 what's encouraging me, I do see that it looks like
23 there's some headway. And as you all have already
24 mentioned, the record will still be open. There's a
25 letter dated from Ms. Gaudet. Hopefully I'm

1 pronouncing, Caroline Gaudet, who is still in
2 negotiations with some of the issues that we've heard
3 from the Artist Union. And as always, the record
4 will be open if we need additional questions at that
5 time. That's how we will proceed.

6 So, I would move that we -- well, before I do
7 that and before I deny this request, Ms. Moldenhauer,
8 I don't think we need to hear from you unless you
9 have something other to add to this because I don't
10 think we need to hear from you. Since we're denying
11 you, Mr. Otten, we'll hear from you.

12 MR. OTTEN: Okay. Chris Otten for the
13 record, here representing the 411 Artist Union. What
14 we just heard tonight is that you all think that this
15 is a parallel process.

16 You all -- the PUD application at this
17 present time is at 14,000 square feet. The PUD
18 regulations state very clearly, and it's directly
19 relevant to this case, that you need 15,000 square
20 feet to apply for a PUD in the District of Columbia.
21 They do not have 15,000 square feet. It's directly
22 relevant to the alley closing. If they don't have
23 15,000 square feet and you can't grant them a waiver
24 because this is a hotel project and not a residential
25 project, they're stuck until they get the alley

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1 closed.

2 Part of what's at play here is the mitigation
3 of the people who live -- I mean, the creative
4 residents who are at the current building. The
5 relocation discussion is directly relevant to this
6 PUD process, and to say that this is a parallel alley
7 closing process, it's directly relevant to your bare
8 minimum requirements to file a PUD here in the
9 District of Columbia. So we wholeheartedly disagree
10 with the analysis that we heard today.

11 MR. MAY: Excuse me. But you're arguing that
12 the hearing should not continue. You're not arguing
13 that -- you know, your argument might have some
14 bearing if we we're talking about decision making
15 tonight. But that's not what we're doing. We're
16 talking about having a hearing.

17 MR. OTTEN: You shouldn't even be having a
18 hearing. It hasn't met the bare minimum requirements
19 to even be filed.

20 MR. MAY: We have done this in cases before.
21 There's nothing --

22 MR. OTTEN: You granted a waiver. You've not
23 granted a waiver in this case.

24 MR. MAY: Not necessarily. The great waiver
25 is often granted later in the process.

1 MR. OTTEN: Well, what we're saying is, by
2 not granting a waiver and explaining why this is okay
3 in this process, we're jeopardizing the rights of the
4 artist to fulfill their --

5 MR. MAY: Well, again, this is where we would
6 disagree because again, we're not making decisions at
7 this stage. We are having a hearing. There is
8 nothing appropriate about having that hearing.

9 MR. OTTEN: Commissioner May, to that
10 point --

11 MR. MAY: We have done it before.

12 MR. OTTEN: -- the issue here is, and as Mr.
13 Hood has just brought up, that we are in discussions
14 on a relocation package that's going to be part of
15 this PUD approval and as conferred as a benefit.

16 Now, if the relocation issue is being
17 discussed as part of this PUD, and yet we're not
18 given the rights to explore what our relocation
19 possibilities are under the alley closing law,
20 they're asking for us to give away our rights to
21 explore those issues during the alley closing.

22 MR. MAY: We're just talking about having a
23 hearing tonight. That is the extent of the motion
24 that was filed.

25 MR. OTTEN: The PUD hearing is directly

1 relevant to --

2 MR. MAY: All it is, is a hearing of
3 evidence. It has nothing to do with the decision
4 making that may come from it.

5 MR. OTTEN: The evidence put on the record
6 today by the applicant --

7 MR. MAY: It's all evidence that goes into
8 the record and informs the decision making that
9 would --

10 MR. OTTEN: That's directly relevant to --

11 MR. MAY: -- happen later.

12 CHAIRPERSON HOOD: Okay. Here's what I'm
13 going to say --

14 MR. OTTEN: It's directly relevant to the
15 decision.

16 CHAIRPERSON HOOD: One thing we're not going
17 to do, we're not going to go back and forth. I think
18 the Commission has spoken and we're going to deny --

19 MR. OTTEN: I'd like to put this on the
20 record --

21 CHAIRPERSON HOOD: Hold on. Hold on for a
22 sec.

23 MR. OTTEN: -- if I could.

24 CHAIRPERSON HOOD: Hold on for a second.
25 I've given you a chance to speak. I will move that

1 we deny the request by the party in opposition for
2 the motion to postpone the hearing tonight, with the
3 fact that we already know that through these
4 proceedings the record would be kept open. And I
5 would ask for a second.

6 MS. COHEN: Second.

7 CHAIRPERSON HOOD: It's moved and properly
8 seconded. Any further discussion?

9 MR. MAY: Mr. Chairman.

10 CHAIRPERSON HOOD: Yes.

11 MR. MAY: Just to clarify, the record will be
12 left open for those items that the Commission
13 determines would be necessary for decision making.

14 CHAIRPERSON HOOD: Okay. I will take that as
15 an amendment.

16 MR. MAY: Right? Yeah.

17 CHAIRPERSON HOOD: I will take that as
18 amendment.

19 MR. MAY: Okay. Good.

20 CHAIRPERSON HOOD: Okay. And I'm
21 particularly -- I would say that right now I'm
22 particularly interested in what's going on with these
23 conversations, which was in this letter.

24 MR. MAY: Regarding the relocation, et
25 cetera. Yeah, absolutely.

1 CHAIRPERSON HOOD: Okay. But we never know
2 what we may end up with. Anything else that's been
3 moved and any further discussion.

4 [Vote taken.]

5 CHAIRPERSON HOOD: Ms. Schellin, would you
6 please record the vote?

7 MS. SCHELLIN: Yes. Staff records the vote
8 five to zero to zero to deny the opposition's request
9 for a postponement of the hearing. Commissioner Hood
10 moving, Commissioner Cohen seconding, Commissioners
11 May, Miller, and Turnbull in support of denial.

12 CHAIRPERSON HOOD: Ms. Schellin, what letters
13 just did we get in now?

14 MS. SCHELLIN: Mr. Otten just handed this in.

15 CHAIRPERSON HOOD: Did we -- well, that's
16 right. It's not closed. Okay. All right. All
17 right. I will review that when we have an
18 opportunity.

19 Ms. Meredith, I think we're ready to move on
20 with the hearing. We have our order, so I guess
21 unless you have something else to add that's germane
22 to this proceeding right now.

23 MS. MOLDENHAUER: You just indicated that you
24 would be interested in understanding what's happened
25 so far in the communications, but we can address that

1 during rebuttal.

2 CHAIRPERSON HOOD: No. Yeah, we can do that
3 later.

4 MS. MOLDENHAUER: Okay. And I just want to
5 make sure that the record is clear. Caroline Gaudet,
6 from Steptoe is doing a dual representation. She is
7 simply representing the tenants in regards to the
8 relocation package, not in regards to zoning. She
9 does not have zoning experience. And so Mr. Otten is
10 still representing 411 Artist Union in regards to
11 this case.

12 CHAIRPERSON HOOD: Is that correct, Mr.
13 Otten?

14 MR. OTTEN: Thank you, Chair. Yes. And to
15 those issues, I wanted to -- we were supposed to --

16 CHAIRPERSON HOOD: Mr. Otten, let me just
17 say, I just asked that one question. Let's stick --
18 let's stay focused.

19 MR. OTTEN: I need to -- right. For tonight,
20 because we figured --

21 CHAIRPERSON HOOD: Oh, you have a procedural
22 question. Okay.

23 MR. OTTEN: Yeah, we figured that our rights
24 would not be jeopardized tonight. So now that we're
25 proceeding forward in regards to this PUD review,

1 there was a submission by the applicant regarding
2 rebuttal witnesses tonight, that was to be heard at
3 the last hearing.

4 In terms of the process, what it would seem
5 to us is that they're going to be introducing
6 experts, witnesses that we will not be able to cross-
7 examine that should have been brought during their
8 presentation.

9 CHAIRPERSON HOOD: You can -- Mr. Otten, if
10 we ever get to that point, you can cross on rebuttal.

11 MR. OTTEN: Okay. I've never heard of that
12 before. We can do that for this?

13 CHAIRPERSON HOOD: Find out something new
14 every time. Yes, you can. You can cross on
15 rebuttal.

16 MR. OTTEN: Okay.

17 CHAIRPERSON HOOD: You will have that
18 opportunity.

19 MR. OTTEN: I fear that the presentation that
20 these expert witnesses will be bringing, should have
21 been brought during their presentation and that we've
22 been prevented whatever extra time that those
23 presentations should have taken, for our
24 presentation.

25 CHAIRPERSON HOOD: Mr. Otten, you all have

1 not even went yet. So the thing is, they're going to
2 be -- I guess, you know, as we go through this
3 proceeding, is that they're going to make comments
4 and then you're going to make comments. And I'm sure
5 other people are going to make comments. And then
6 they have a right to rebut. They're going to go
7 through a rebuttal process.

8 And as we do the rebuttal process you and the
9 ANC have an opportunity to cross on rebuttal. Okay?

10 MR. OTTEN: Thank you.

11 CHAIRPERSON HOOD: All right. Now, can we
12 proceed so we can finish eventually?

13 MS. MOLDENHAUER: Absolutely. I was just
14 going to say that we did submit that back on 3/11,
15 which is Exhibit 236, was the rebuttal. It was
16 actually now over a month ago and the Commission has
17 accommodated Mr. Otten and the group in regards to
18 rearranging the schedule extensively in the portion
19 of this process. Thank you.

20 CHAIRPERSON HOOD: Okay. Thank you. All
21 right. Thank you both.

22 Let's move in now. Way I understand it, we
23 have seven witnesses that I'm going to call. Then
24 we're going to go to the Office of Planning and the
25 District Department of Transportation. We've been

1 joined by Mr. Rogers from DDOT.

2 Were you here when I first -- okay. Okay. I
3 don't want to tell Leaf you came late. No, I'm just
4 playing. But I want to acknowledge we've been joined
5 by Mr. Rogers from District Department of
6 Transportation. So I have seven names on my list. I
7 believe it's seven, if I'm looking at it quick
8 glance. Maybe eight. But anyway. Seven. We're
9 going to call these names, and once we finish with
10 them we'll go to the Office of Planning, we're going
11 to go to the District Department of Transportation,
12 and then the applicant as well as the party in
13 opposition. Or if anyone here representing the ANC
14 will have a chance to cross.

15 Okay, Morgan Weck. Morgan Weck. Oh, I'm
16 sorry. Morgan West. If it sounds close just come
17 forward. Cart Reiner. Marquez R. Smith. Nicole
18 Augbrooks. Is it Augbrooks or Claybrooks?
19 Claybrooks. My right ear is saying Claybrooks and my
20 other ear is saying Augbrooks. Claybrooks. I think
21 it's Claybrooks. Peter Hartman. I thought he
22 testified before. There was another case. Robert
23 Hatford.

24 MR. OTTEN: No, he's not here tonight.

25 CHAIRPERSON HOOD: Okay. Thank you. Ian

1 Malcolm. First name is I-A-N. Ian. Okay. Malcolm.
2 Is it Ian Malcolm? Okay. Let the record reflect on
3 one is here.

4 Let's go to the Office of Planning and
5 District Department of Transportation.

6 MS. RAPPOLT: Good evening, Chairman Hood and
7 members of the commission. OP continues to recommend
8 approval of the applicant's consolidated PUD and
9 related map amendment to the C-3-C district for the
10 development of a hotel with an arts component.

11 OP acknowledges that the applicant, at the
12 applicant's subsequent -- has made subsequent
13 submissions since the set down hearing on February
14 1st. With the most recent submission today OP is
15 encouraged by the efforts made by both the parties to
16 come to an agreeable plan moving forward. OP
17 encourages the applicant and the artists to continue
18 their discussions.

19 With regard to the proposed PUD building
20 itself, OP reiterates its requested the applicant
21 such that in no case shall the proposed hotel signs
22 extend higher than the roof land and that the letters
23 be backlit.

24 Additionally, OP is not opposed to the
25 applicant's request in terms of parking relief, roof

1 structure, setback relief from the rear of the
2 building, and OP also notes the applicant's amended
3 relief for the rear yard relief, and we're also not
4 opposed to this relief.

5 OP notes the applicant has asked for
6 flexibility to vary the location of interior
7 components like partitions, doors, hallways, columns,
8 et cetera, in the inside of the building, which we
9 think will be beneficial as the studio spaces are
10 laid out in the final design.

11 OP continues to support making the studios
12 affordable and accessible, which we've stated several
13 times in our report. Thank you and we're available
14 for questions.

15 CHAIRPERSON HOOD: Okay. Mr. Rogers.

16 MR. ROGERS: Good evening, Chairman Hood,
17 Members of the Commission. Just be way of refresher,
18 DDOT had requested four mitigations in our report to
19 which the applicant has agreed. And just given the
20 length of time that's passed since the report, I'm
21 going to provide that update and reminder. And with
22 that I'll pause and be available for any questions
23 you have.

24 CHAIRPERSON HOOD: Okay. Commissioners, any
25 questions of either Office of Planning or DDOT? Vice

1 Chair Cohen.

2 MS. COHEN: Thank you, Mr. Chairman. Mr.
3 Rogers can you again reiterate the four items so that
4 we could have that for the record?

5 MR. ROGERS: Certainly. So there's one
6 bucket of conditions regarding the alley closing the
7 elements that we requested to see in there, we're
8 providing full access easement for the section
9 closed, assuming maintenance responsibilities for the
10 entirety of the alley. And a clause that if when
11 the, essentially when the building ceases to exist
12 that the closed portion could remain. Or could
13 return as part of DDOT's right of way inventory.

14 The second condition was regarding improving
15 pedestrian facilities around the alley with Fourth
16 and Penn Street. Safety improvements, physical
17 improvements that will improve conditions at that
18 intersection.

19 The third request was providing the capital
20 BikeShare element of the TDM in perpetuity. And
21 finally a commitment for the applicant to provide a
22 circulation plan in support of signage plan to
23 reinforce their circulation plan during -- which
24 could be accommodated during Public Space permitting.

25 MS. COHEN: Thank you.

1 CHAIRPERSON HOOD: Anybody else.
2 Commissioner Miller.

3 MR. MILLER: Thank you, Mr. Chairman. I
4 guess we'll have an opportunity to ask the applicant
5 when they come back, but did you say as far as you
6 know the applicant has agreed to all of your
7 conditions?

8 MR. ROGERS: That's correct.

9 MR. MILLER: And I had asked this of the
10 applicant's transportation expert at the earlier part
11 of the hearing, whether they thought, but I was
12 interested in your thoughts on whether you think the
13 single 30-foot loading berth is sufficient for all
14 the different uses that are going on in this
15 building, the hotel use, the arts use, and the two
16 restaurant uses. So what are your thoughts on that?

17 MR. ROGERS: Given the diverse demands on the
18 loading, we worked with the applicant on a loading
19 management plan to manage how the loading would work.
20 In addition to the official loading facility there is
21 the front entry drive that could also be used for
22 some smaller vehicles. So we are confident that the
23 -- between the loading management plan and the
24 facilities provided on site, that that should be
25 sufficient to accommodate loading activity for the

1 site.

2 MR. MILLER: Thank you. And I had one
3 question for the Office of Planning. We'll get a
4 chance to ask the applicant about the potential sites
5 that may be identified for where artists, existing
6 artists can relocate. But is this -- has the city
7 identified any warehouse type buildings that it owns
8 that are underutilized that might be suitable for
9 these kinds of arts uses that are not yet ripe for
10 redevelopment. I mean, are all those buildings over
11 on St. Elizabeth's for example, I know we have plan
12 for St. Elizabeth that's being implemented in the
13 zoning.

14 But are there potential sites that the city
15 has or could identify to assist with the effort?

16 MS. STEINGASSER: We would refer that to the
17 D.C. Commission on Arts and Humanities who do have a
18 comprehensive environmental survey or arts resources.
19 They also have -- that is also co-funded by OP as
20 Space Finder D.C., which is an online service where
21 you can enter an address, the cost that you're
22 willing to pay, and it will help you find temporary
23 space. But that would be coordinated through the
24 Commission of Arts and Humanities.

25 MR. MILLER: Thank you.

1 CHAIRPERSON HOOD: And I know it would go
2 through the Commission of Arts and Humanity. I'm
3 going to piggy back on that, Ms. Steingasser. I'm
4 not sure if you can -- do we know whether or not --
5 I'm trying to remember, do we know whether or not
6 discussions have been had with them with the Artists
7 Union? Did that come up at the last meeting?

8 MS. STEINGASSER: Can you clarify? Could
9 you --

10 CHAIRPERSON HOOD: Yeah. Well, Commissioner
11 Miller just mentioned about the Arts and Humanities.
12 I know that's a Commission. Do we know whether or
13 not -- and I probably can ask Mr. Otten, do we know
14 whether or not the Artists Union have had
15 conversations with that commission? Arts and
16 Humanities?

17 MS. STEINGASSER: I don't think -- we don't
18 know the answer to that question, actually. We
19 haven't been involved in discussions with --

20 CHAIRPERSON HOOD: Right.

21 MS. STEINGASSER: Arts and Humanities and the
22 artists.

23 CHAIRPERSON HOOD: Because I know that -- I
24 do know that -- and I think I heard this at a
25 previous hearing. I do know that we do not want to

1 run arts out of town. So I'm just wondering if that
2 discussion is saying -- but I can do some fact
3 finding and ask the artists when they come up and do
4 their opposition party.

5 Okay. Anything else? I think that's a good
6 point, Commissioner Miller. Any other questions?

7 All right. I want to thank both of you all.
8 Let's see if they have any cross-examination. Does
9 the applicant have any cross?

10 MS. MOLDENHAUER: Just one or two for OP. In
11 the testimony that we heard over the last couple
12 hearings there were comments that the Office of
13 Planning has only taken into account the artists.
14 But isn't it true that in the Ward 5 Works program
15 there was a specific subgroup of artists that were
16 organized to try to address the artists' intentions
17 and desires as a study group?

18 MS. RAPPOLT: Can you ask that again? You're
19 saying there was a group of artists that were --

20 MS. MOLDENHAUER: In the prior hearings there
21 were comments that OP had not taken into
22 consideration, the arts. And I was saying, in the
23 Ward 5 works analysis, didn't that actually include a
24 specific study group that was an arts focused study
25 group that discussed those issues and addressed those

1 issues, and studied those issues?

2 MS. RAPPOLT: I think that during the Ward 5
3 Work-study there is definitely -- I'm trying to find
4 where it is in my report, but there was language
5 about how part of PDR uses would include arts in the
6 future and trying to maintain that and find places
7 for that particular use.

8 MS. MOLDENHAUER: And I guess I'm looking at
9 page 46, which actually talks about the arts impact
10 and there's an entire section dedicated to the arts
11 impact in the Ward 5 works program.

12 MS. STEINGASSER: You're referring to a page
13 in our report, or are you referring to a page in the
14 Ward 5 Works --

15 MS. MOLDENHAUER: In the Ward 5 Works report.

16 MS. STEINGASSER: We don't have a copy of
17 that with us, but we'll be happy to check on that and
18 enter it into the record.

19 MS. MOLDENHAUER: There has also been some
20 references by some of the individuals that testified,
21 referencing different kind of plucking out sections
22 of the comprehensive plan. Is it OP's job to look at
23 individual sections, or do you look at the
24 Comprehensive Plan holistically with also the future
25 land use map and the Small Area Plan?

1 MS. RAPPOLT: We look at it holistically.

2 MS. MOLDENHAUER: And here that has
3 determined to encourage a support for the project?

4 MS. RAPPOLT: You're saying the Comp Plan.
5 We've looked at the Comp Plan and found that we are
6 supportive of the project based on the Comp Plan.
7 Yes.

8 MS. MOLDENHAUER: The opposition also just
9 references the land use elements of the Comp Plan,
10 talking about rezoning industrial areas. And they
11 focus on some of the, you know, desires. And I'll
12 just quote this and then ask you a question if that
13 might help you, since I have it in front of me and
14 you may not.

15 The section, land use section 3.1.4 says,
16 "Allow the rezoning of industrial land for
17 nonindustrial purposes only when the land can no
18 longer viably support industrial or PDR activities,
19 or has located such that the industry cannot coexist
20 adequately with the adjacent existing use."

21 Can you maybe elaborate on how that applies
22 to the current floor to area location and the ability
23 to continue to use this site for matter of right C-M-
24 1 uses?

25 MS. RAPPOLT: Well, I think we can say that

1 having the art studio space a subsidized rate in this
2 particular building to us met that sort of criteria
3 of coexisting with a proposed new use that's proposed
4 for the site, which is also contemplated by the Comp
5 Plan.

6 MR. LAWSON: Right. And getting to your
7 point about viewing the Comprehensive Plan
8 comprehensively, we view that against the other
9 elements within the Comprehensive Plan, the land use
10 map which shows it appropriate for a mix of uses, and
11 taken -- so we're taking it together, holistically.

12 MS. MOLDENHAUER: Thank you. No other
13 questions for OP. Just one question for DDOT. You
14 were just referencing and the Commission asked a
15 question about the updated loading information. I
16 just wanted to make sure you had reviewed exhibit --
17 I know there's a lot of exhibits, but the Exhibit
18 8188E, which included the new loading plan. Is that
19 correct? That's what your basing your statement on?

20 MR. ROGERS: I can't recall the specific
21 Exhibit off the top of my head, but I'd be happy to
22 check on that and get back to you.

23 MS. MOLDENHAUER: Just for purposes of the
24 record I believe that the revised loading plan was in
25 Exhibit 188E. No other questions.

1 CHAIRPERSON HOOD: Okay. Again, do we have a
2 representative from ANC 5D? We may want to make some
3 -- have some questions. I'm not seeing anyone. Mr.
4 Otten, you have any cross?

5 MR. OTTEN: Yes. Chair, we have a lot of
6 questions for the Office of Planning tonight. I just
7 need to prepare my notes if I could.

8 [Pause.]

9 MR. OTTEN: Okay. Good evening. For the
10 record, Chris Otten with the 411 Artists Union. Also
11 I want to recognize that Graham Boyle is here, also a
12 representative with the 411 Artist Union. Looking
13 quite sharp, my friend.

14 Okay. I guess I'd like to first clarify for
15 the Office of Planning. I understand there's two
16 reports on the record from the Office of Planning.

17 MS. RAPPOLT: Yes.

18 MR. OTTEN: And was it you, Ms. Rappolt, that
19 wrote these reports?

20 MS. RAPPOLT: Primarily.

21 MR. OTTEN: I don't see your name on these
22 reports. Is that a mistake?

23 MR. LAWSON: It's standard practice to assign
24 every PUD to a case manager, and this case it was
25 assigned to Megan Rappolt. All reports come under

1 the name of either the deputy director or the
2 associate director.

3 MR. OTTEN: And in this case the deputy
4 director who signed off on these reports is Jennifer
5 Steingasser. Is that right?

6 MS. RAPPOLT: Yes.

7 MR. OTTEN: Okay. Well, since we have three
8 OP staffers here maybe one of you all can answer. In
9 terms of the PUD regulations what do you see as the
10 Office of Planning's role in reviewing PUD
11 applications as you've done in this case?

12 MR. LAWSON: The Office of Planning provides
13 analysis to the Zoning Commission.

14 MR. OTTEN: and are you supposed to be
15 looking at any potential adverse impacts per the PUD
16 regulations?

17 MR. LAWSON: We look at the application as a
18 whole.

19 MR. OTTEN: Doesn't the PUD regulations
20 require a review and an analysis of impacts that a
21 proposed PUD could bring to the community to those
22 directly, that might be at the property?

23 MR. LAWSON: Office of Planning looks at all
24 aspects of the PUD.

25 MR. OTTEN: And what is your name?

1 MR. LAWSON: My name is Joel Lawson with the
2 Office of Planning.

3 MR. OTTEN: And what's your title there?

4 MR. LAWSON: Associate Director for
5 Development Review.

6 MR. OTTEN: Okay. And how long have you been
7 there?

8 CHAIRPERSON HOOD: That actually -- he's been
9 there about 10 years or so.

10 MR. OTTEN: I'm just trying to understand.

11 CHAIRPERSON HOOD: But that's irrelevant.

12 MR. OTTEN: Okay.

13 CHAIRPERSON HOOD: Let's ask questions about
14 the case. Have you been here 10 years? I'm just
15 curious.

16 MR. LAWSON: Since 2012. Or sorry, since
17 2002.

18 CHAIRPERSON HOOD: Seem like it's been 10
19 years.

20 MR. LAWSON: 2002. Okay.

21 CHAIRPERSON HOOD: I was about to say, okay.

22 MR. OTTEN: Right on. And does the Office of
23 Planning look at ways to mitigate the adverse impacts
24 in any given PUD review?

25 MR. LAWSON: We can certainly make

1 suggestions for ways that a PUD can be -- that the
2 impacts can be mitigated. Yes.

3 MR. OTTEN: And you do that as one of the
4 central planning bodies of the District of Columbia?

5 MR. LAWSON: We do that in our reports which
6 advise the Zoning Commission.

7 CHAIRPERSON HOOD: Mr. Otten, obviously I
8 know you're going somewhere, and this is how we get
9 there. You're taking the long road and I really wish
10 you would get to the meats and potatoes of this
11 particular case. I know where you're going, you're
12 just taking the long road to prove a point. But why
13 don't you get there so we can deal with this case
14 tonight. Okay?

15 MR. OTTEN: Chair, I'd like to get there.
16 I'm just getting a baseline understanding of how the
17 Office of Planning understands the PUD regulations.

18 CHAIRPERSON HOOD: I could tell by your
19 method of question that we're going to eventually get
20 there. But I'm just trying to help expeditiously
21 move -- so we can hear your presentation tonight.
22 Okay?

23 MR. OTTEN: Could any Office of Planning
24 staffer that's on the dais tonight inform the public
25 what 11-DCMR-2407.3 says for the record? Does

1 anybody know that regulation?

2 MR. LAWSON: We don't have the regulations in
3 front of us.

4 MR. OTTEN: Okay. Are you aware that you're
5 required by the PUD regulations to prepare an impact
6 assessment of the project?

7 MS. RAPPOLT: Yes.

8 MR. OTTEN: And would the two exhibits on the
9 record be those impact assessments? Exhibit 28 and
10 Exhibit 11?

11 MS. RAPPOLT: You mean our two reports?

12 MR. OTTEN: Yes.

13 MS. RAPPOLT: Yes.

14 MR. OTTEN: Just looking at Exhibit 11, which
15 is the setdown report for Zoning Commission Case 15-
16 19, is that dated September 28th, 2015?

17 MS. RAPPOLT: Yes.

18 MR. OTTEN: It states on the first page, if
19 I'm not mistaken, that you're requiring or should be
20 provided information before the hearing. Correct?

21 MS. RAPPOLT: Yes.

22 MR. OTTEN: And it says that the first bullet
23 point in terms of the information that you are
24 seeking, that you were looking for information around
25 the status of the alley closing.

1 MS. RAPPOLT: Correct.

2 MR. OTTEN: Could you inform the Commission
3 and the public, what is the current status of the
4 alley closing, which is required for this hotel
5 development?

6 MS. RAPPOLT: I believe it's in process with
7 the Office of the Surveyor. I think at the time that
8 we wrote this report we weren't certain that it was
9 actually filed. But since that time we've been made
10 aware from the Office of the Surveyor that it has
11 been filed, and the applicant.

12 MR. OTTEN: And does anything in the record
13 show that, that you're aware of in your reports or
14 anything else in the record?

15 MS. RAPPOLT: I think the applicant submitted
16 the alley closing prior -- definitely prior to this
17 hearing. It might have been prior to the last
18 hearing. That included a list of tenants that were
19 in the building. That's one thing I was primarily
20 looking at when we saw that they had provided that.

21 MR. OTTEN: And where are you -- where is the
22 understanding from the Office of Planning right now
23 where the status of the alley closing is, as of
24 today?

25 MS. RAPPOLT: As far as I know it's just in

1 process and being reviewed internally by the
2 different departments that review it, which include
3 the Office of Surveyor, our office, and there might
4 be some others. I'm really not sure.

5 MR. OTTEN: And doesn't an alley closing
6 require city council legislation approval?

7 MS. RAPPOLT: Yes.

8 MR. OTTEN: Are you aware if that has been
9 processed and is before the council at this point?

10 MS. RAPPOLT: It is not before the council
11 today.

12 MR. OTTEN: And why, as a planner, were you
13 so interested in that information in your setdown
14 report?

15 MS. RAPPOLT: Because of the PUD requirement
16 for a nonresidential PUD. It has to be 15,000 square
17 feet.

18 MR. OTTEN: And currently the PUD application
19 is?

20 MS. RAPPOLT: Fourteen thousand square feet.

21 MR. OTTEN: So why would you ask for a set
22 down of this project if it didn't meet the bare
23 minimum PUD requirements?

24 MS. RAPPOLT: Because we anticipate that it
25 will; the alley closing will likely be processed

1 before this particular application would go to a
2 public hearing. I'm not certain of that but we knew
3 that it was in process and it doesn't take longer
4 than this particular application would take to get
5 through the Zoning Commission process.

6 MR. OTTEN: The process you're describing
7 there, you just testified to earlier requires council
8 review and approval. Correct?

9 MS. RAPPOLT: Correct.

10 MR. OTTEN: So therefore it's not a
11 discretionary process. The approval to close the
12 alley could be denied.

13 MR. LAWSON: It is a discretionary process.
14 It could be denied.

15 MR. OTTEN: Discretionary in what sense, Joel
16 Lawson?

17 MR. LAWSON: It's not a -- it's not a by-
18 right request. It's discretionary. Council could
19 approve it or deny it.

20 MR. OTTEN: So if the council denies the
21 alley closing aren't you wasting government resources
22 and time of all of us right now?

23 CHAIRPERSON HOOD: Let me -- I know you're
24 asking Office of Planning, but I'm going to answer
25 this one. There are many cases that I sit here on,

1 on these PUD cases, that need alley closings. And
2 two or three months later when I go home and watch
3 Channel 13 like everybody else, it brings back a
4 memory because we've already heard the case. So
5 that's a normal standard process, and nothing is a
6 given as Mr. Lawson said. So next question.

7 MR. OTTEN: Chair, just for information sake,
8 do the alley closings that you're aware of regarding
9 other PUDs involve disruption of commercial tenants?

10 CHAIRPERSON HOOD: When we get to your
11 presentation I do have some questions along that
12 lines. There are a lot of disruption. A lot of
13 things that are unsettled. And again, I'm not going
14 to be on the witness stand but what I do want to tell
15 you is, that when this Commission hears a PUD and
16 there's something else that needs to be done as
17 Commissioner May mentioned, another -- within another
18 jurisdiction or another commission or the City
19 Council action needs to be taken, it's no effect on
20 how we move forward. And as Mr. Lawson already
21 mentioned, it may get approved and it may not.

22 There are many cases that I watch that we've
23 heard two and three months earlier. And I would
24 just, again, refocus you back to what's here before
25 us tonight. Let's stay focused.

1 MR. OTTEN: That's where I'm confused, Chair.

2 MS. COHEN: Can I just add something? I
3 think the most important step that we're taking is
4 right now, at a public hearing. We're hearing the
5 arguments for the project and the arguments obviously
6 against the project. So no, I don't think it is a
7 waste of time. I think it's extremely important to
8 have public hearing.

9 MR. OTTEN: Well, thank you for that, Vice
10 Chair. What you might be missing here though in
11 these questions is that it prejudices if this Zoning
12 Commission hears and decides on a PUD --

13 MS. MOLDENHAUER: Can I --

14 MR. OTTEN: -- it prejudices our rights.

15 MS. MOLDENHAUER: Are we in the middle of
16 questions, or --

17 CHAIRPERSON HOOD: Yeah, you know what? I
18 should not have answered, Mr. Otten, but I thought
19 that would help move it along. So, Mr. Otten, let's
20 refocus. I'm going to stay focused. Colleagues,
21 we're going to stay focused. So if you can go back
22 to asking your questions and we can get through that
23 so we can get to your presentation, please?

24 MR. OTTEN: Well, okay. I don't want to
25 leave this line of questioning because this is the

1 central agency that plans for the District of
2 Columbia. I would like to know how the Office of
3 Planning or what was going through your mind when you
4 wrote your setdown report knowing that the minimum
5 PUD requirements were not met as of the filing of
6 this application.

7 MR. LAWSON: I guess what always go through
8 our mind, whether the project is sufficiently not
9 inconsistent with the Comprehensive Plan for it to
10 move forward.

11 MR. OTTEN: And doesn't the Comprehensive
12 Plan say that projects in the District of Columbia
13 should be in line with PUD regulations?

14 MR. LAWSON: I do not understand that
15 question.

16 MR. OTTEN: If the zoning requirements, if
17 the Zoning Regulations have a requirement, how do you
18 supersede that requirement is what I'm asking the
19 Office of Planning. How did you set this down --

20 MS. MOLDENHAUER: Can I just say, objection,
21 argumentative and I believe asked and answered.

22 MR. OTTEN: I haven't heard it yet.

23 MS. MOLDENHAUER: Your question is asked and
24 answered.

25 MR. OTTEN: No, that's your perspective. I

1 don't know. Chair?

2 CHAIRPERSON HOOD: You asking me for my
3 opinion?

4 MR. OTTEN: Yes.

5 CHAIRPERSON HOOD: Ms. Moldenhauer, please
6 let him ask his question, okay? And if you could not
7 interrupt as much maybe these proceedings would go a
8 little faster. Okay? Because the Commission knows
9 how to decipher and what to deal with as far as
10 what's germane to our proceedings. Okay?

11 Mr. Otten, you can continue.

12 MR. OTTEN: Okay. Well, following along the
13 processing of a setdown report, isn't it the case
14 that in your September 28th setdown report there's a
15 section called -- Section 7 called Agency referrals?

16 MS. RAPPOLT: Yes.

17 MR. OTTEN: And doesn't it say in that
18 section there that if this application is set down
19 for a public hearing, the Office of Planning will
20 refer it to the following government agencies for
21 review and comment?

22 MS. RAPPOLT: Yes.

23 MR. OTTEN: And what are the -- do you mind
24 listing the agencies that -- well, let me ask you
25 this. Did you refer this application to the

1 following government agencies that are listed there?

2 MS. RAPPOLT: The agencies that I had direct
3 contact with about this particular PUD was the
4 Department of Energy and the Environment, Department
5 of Transportation, Department of Housing and
6 Community Development, and D.C. Water. And it was
7 referred to all the others.

8 MR. OTTEN: Okay. Which ones -- which
9 agencies in this list provided review and comment?

10 MS. RAPPOLT: Sorry, can you repeat the
11 question again?

12 MR. OTTEN: Sure. In this Section 7 of the
13 setdown report, the list that we just reviewed, of
14 those agencies which ones actually provided review
15 and comment?

16 MS. RAPPOLT: DOEE, DDOT, and DCHD.

17 MR. OTTEN: Did D.C. Water provide review and
18 comment? Excuse me.

19 MS. RAPPOLT: Yes, they actually did. We had
20 a meeting with them about all of the PUDs within the
21 Florida Avenue Market area and we brought this one up
22 in particular.

23 MR. OTTEN: And by all the PUDs in this area,
24 are you referring to page 8 of your January 22nd
25 public hearing report which lists -- shows an aerial

1 map of --

2 MS. RAPPOLT: Yes.

3 MR. OTTEN: Okay. And the Artist Union has
4 not seen the comments or any reports from -- I'm just
5 going to go down the list. From the Department of
6 Energy Environment. Is that on the record? Can you
7 point to that?

8 MS. RAPPOLT: We did not receive a report
9 from them and it's not on the record.

10 MR. OTTEN: Okay. That was one of the -- I
11 checked them off as if you did actually refer and get
12 comment from them. That's not the case?

13 MS. RAPPOLT: They haven't written a formal
14 report to the Zoning Commission. We've had e-mail
15 exchanges and phone calls, that sort of thing. But
16 not a formal report to the Zoning Commission because
17 I think that was your question, right?

18 MR. OTTEN: Uh-huh. So of these agencies,
19 which have provided a formal report for the
20 Commission?

21 MS. RAPPOLT: DDOT.

22 MR. OTTEN: DDOT. Is there anything from
23 DHCD on the record?

24 MS. RAPPOLT: No, and again I think when we
25 met with them this was a more broad meeting about the

1 overarching development taking place in Florida
2 Avenue Market area. And since this is a hotel they
3 wouldn't have much to do with this particular
4 project.

5 MR. OTTEN: I'd like to go on that point for
6 a second. You say, this is a hotel project, so
7 housing and community development would not be
8 involved.

9 MR. LAWSON: DHCD did not submit written
10 comments to the record. That's --

11 MR. OTTEN: I'm trying to understand that.

12 MR. LAWSON: -- their prerogative. They can
13 submit comments or not. We invited them to and they
14 did not.

15 MR. OTTEN: Mr. Lawson, are you aware that
16 DCMR-2407.3 says that you shall include a report in
17 writing, specifically from DHCD?

18 MR. LAWSON: We requested comments and didn't
19 receive them.

20 MR. OTTEN: Is that what you would consider
21 comprehensive coordination in your review?

22 MR. LAWSON: Once again, we requested
23 comments and DHCD did not provide comments. So
24 they're not in the record.

25 MR. OTTEN: And to understand the Office of

1 Planning's perspective or expertise on DHCD in
2 providing comments, what kind of land value effects
3 do large hotels imbue on the surrounding community?

4 MS. RAPPOLT: Yeah, I don't think we can say
5 what DHCD would think of the land values for this
6 particular development.

7 MR. OTTEN: How would Office of Planning look
8 at those issues?

9 MS. RAPPOLT: Can you ask the question again?

10 MR. OTTEN: How would the Office of Planning
11 consider, review, and evaluate land value,
12 destabilization, or changes brought on by a large
13 hotel PUD?

14 MS. RAPPOLT: We just balance it against the
15 Comprehensive Plan and the Zoning Regulations and
16 don't necessarily take into effect the valuation of
17 properties.

18 MR. OTTEN: This is -- okay. Appreciate
19 that. Does the Office of Planning view land value
20 destabilization as an effect that contends with or
21 plays into displacement pressures, gentrification
22 pressures?

23 MS. STEINGASSER: I believe that question is
24 in the information requested is beyond the scope of
25 the application, and it's definitely beyond the scope

1 of our reports.

2 MR. OTTEN: Ms. Steingasser, to that
3 testimony, is it beyond the scope of your reports
4 because the DHCD comment is not on the record?

5 MS. STEINGASSER: It's beyond the scope of
6 the application.

7 MR. OTTEN: Define application. Help us
8 understand that.

9 CHAIRPERSON HOOD: I don't think -- I think
10 that question is out of order. Your next question.

11 MR. OTTEN: I don't understand the scope of
12 the application.

13 CHAIRPERSON HOOD: Well, you define
14 application. You know what application is. Come on,
15 man. Come on. Let's stay relevant. She gave you
16 the answer, let's go to the next question.

17 MR. OTTEN: So the agency, the Department of
18 the Environment, Energy Environment, did you -- I'm
19 sorry. Is there any reports or comments for the
20 Commission to consider in this PUD balancing act?

21 MS. RAPPOLT: No.

22 MR. OTTEN: And is that the same position of
23 OP, that you submitted it to DDOE for review and they
24 just didn't provide comment?

25 MS. RAPPOLT: They didn't provide their

1 comments in the form of a report to the Zoning
2 Commission.

3 MR. OTTEN: Do you find that unusual given
4 the size and use of being proposed in this PUD
5 application?

6 MS. RAPPOLT: No.

7 MR. OTTEN: So would that -- without the DOEE
8 report, does the Office of Planning have any
9 understanding of a large hotel's effect on public
10 services such as infrastructure or waste or noise?

11 MS. RAPPOLT: I don't think we can speak to
12 specifically how DOEE would review this particular
13 project. In other similar PUDs they discussed --
14 they provide comments to the applicant that are more
15 along the lines of green building technique,
16 sustainability, water reuse, elimination of excess
17 parking. And that's around -- that's it.

18 MR. OTTEN: Isn't there a chapter -- are you
19 aware of Chapter 13 in the Comprehensive Plan called
20 the infrastructure element?

21 MS. RAPPOLT: Yes.

22 MR. OTTEN: And in that chapter of the
23 Comprehensive Plan isn't there a section called
24 infrastructure and new development?

25 MS. RAPPOLT: I don't have that in front of

1 me right now.

2 MR. OTTEN: Okay. Without looking at
3 environmental impacts such as to the infrastructure,
4 how do you surmise the commission could build in any
5 mitigation conditions in their order to I guess
6 protect the public services in the surrounding
7 community?

8 MS. RAPPOLT: Are you asking what sort of
9 infrastructure improvements this hotel could make?
10 Is that what you're asking? I'm confused.

11 MR. OTTEN: Well, to that point, you know,
12 the Comprehensive Plan does discuss requiring private
13 developers fund -- exist, you know, upgrading
14 existing infrastructures to contend with new
15 development. So without a report from DDOT on the
16 record in terms of those impacts, how could the
17 Office of Planning offer suggestion to the Commission
18 to build in mitigation conditions into the order?

19 MS. RAPPOLT: I think that D.C. Water would
20 be the one that we would discuss with infrastructure.
21 And we have had ongoing discussions with them about
22 this general area and infrastructure. And I also
23 think the applicant has agreed to do other
24 infrastructure improvements, primarily with 4th
25 Street or -- is that right, Jonathan, the sort of

1 sidewalk improvements that have been -- sorry to
2 bring you into this.

3 MR. ROGERS: No problem. There are
4 improvements to the intersection of 4th, Penn, and
5 the alley that DDOT requested and the applicant has
6 committed to.

7 MR. LAWSON: The upshot is that with every
8 project it's reviewed in obviously in much more
9 detail at the building permit phase, including by
10 DOEE and D.C. Water for infrastructure issues. And
11 an applicant is required to address those issues that
12 haven't been previously addressed.

13 But certainly if the Commission, if the
14 Zoning Commission has questions or concerns about
15 this issue, as always we would be happy to take those
16 back to DDOE -- or sorry, DOEE, and get responses to
17 those questions.

18 MR. OTTEN: Mr. Lawson, to that scope of your
19 understanding of your role as the central planner in
20 the District of Columbia, are you aware of the
21 Comprehensive Plan, Chapter 25, the implementation
22 element?

23 MR. LAWSON: Yes.

24 MR. OTTEN: And doesn't that chapter include
25 policies that discuss, at least an evaluation during

1 the development review process?

2 MR. LAWSON: The building permit process is
3 part of the development review process. But to be
4 honest, I don't have that section in front of me so I
5 can't comment on it.

6 MR. OTTEN: Is the building review process,
7 to your understanding, building permit review, does
8 that have hearings and public opportunities to
9 present contested issues like we have with the zoning
10 process?

11 MR. LAWSON: I don't know.

12 MR. OTTEN: I'm sorry.

13 MS. COHEN: I think though -- can I
14 interrupt?

15 MR. LAWSON: I don't participate in the
16 building permit process. I don't know.

17 MR. OTTEN: It seems you know, like, a lot
18 about it though.

19 MR. LAWSON: I don't.

20 MR. OTTEN: Okay.

21 MS. COHEN: But I think what -- yeah, the
22 D.C. Water people would have experts who would be
23 able to be the -- in the building permit process.
24 They're the ones who make those types of decisions.

25 MR. OTTEN: Well --

1 MS. COHEN: So it's not being ignored, which
2 is I think what you're implying, but maybe I'm
3 reading you wrong.

4 MR. OTTEN: It's not that what?

5 MS. COHEN: You're implying that it's not
6 considered and I suggest to you that it is being
7 considered at the proper stage of development.

8 MR. OTTEN: Well, Vice Chair, tonight we
9 heard, and I'll ask this question again, that one of
10 the agencies that they were to coordinate with for
11 this PUD review was D.C. Water. And if I heard Ms.
12 Rappolt correctly that you were in discussion with
13 D.C. Water about the project, or more generally this
14 area.

15 MS. RAPPOLT: It's generally of the area and
16 then specific to this project of what particular
17 types of improvements they foresee to need in the
18 future. And so if it rises to the level of -- well,
19 and they would also convey that information to the
20 applicant who if they are agreeable to something like
21 that, they would then put it into their building
22 plans and then it would just continue from there.

23 MR. OTTEN: But as of right now there's
24 nothing on the record for any public review about the
25 infrastructure needs or anything identified by D.C.

1 Water with regards to this project?

2 MS. RAPPOLT: Not that I know of. I do think
3 that there might have been an infrastructure plan
4 submitted with the applicant's drawings that would
5 have shown the pipe sizes, the very back of their
6 plans, that are projected by the applicant that their
7 engineers would have been running by DCRA and others
8 that are reviewing them.

9 MR. OTTEN: And doesn't the PUD requirements
10 require the applicant to indicate in tabulations, how
11 much water and sewage any particular PUD will be
12 generating?

13 MS. RAPPOLT: Are you asking if the zoning
14 ordinance requires specific calculations?

15 MR. OTTEN: Yes. Are you aware of that?

16 MS. RAPPOLT: I don't have the copy of that
17 section in front of me so I can't be sure and I don't
18 want to rely on my memory.

19 MR. OTTEN: Okay. Just getting back to these
20 reports, particularly Department of Environment, did
21 any of these -- I guess between the Department of
22 Environment and D.C. Water, did any of them discuss
23 impacts to other infrastructure such as electric or
24 gas?

25 MS. RAPPOLT: Not that I'm aware of.

1 MR. OTTEN: Is there any sense of any leaking
2 gas pipes in the -- in and around the PUD site or in
3 the area?

4 MS. RAPPOLT: I don't -- I don't know.

5 MR. OTTEN: Okay. The Department of
6 Environment, again you said you had just general
7 discussions with them?

8 MS. RAPPOLT: I'm sorry. Can you repeat?

9 MR. OTTEN: Again, there's nothing on the
10 record from the Department of Environment. It was
11 general discussions with them about the project in
12 the area?

13 MS. RAPPOLT: No, we do discuss with them
14 individual PUDs and they typically do not submit
15 reports to the Zoning Commission. I think there has
16 been an instance where they have in the past, but for
17 this particular case and for other recent cases they
18 haven't, not --

19 MR. OTTEN: But they have in other cases?
20 That you're aware of?

21 MS. RAPPOLT: Yes.

22 MR. OTTEN: Okay. Is there any reason that
23 they haven't in this case, given the size of --

24 MS. STEINGASSER: We can't speak to the
25 Department of Energy and Environment. They did not

1 file a report. It was referred to them. The
2 applicant has worked directly with them, which is the
3 standard process.

4 MR. OTTEN: Can you get into that a bit?

5 MS. STEINGASSER: No.

6 MR. OTTEN: What do you mean by standard
7 process?

8 MS. STEINGASSER: No, I cannot. We do not
9 know why the Department of Environment --

10 MR. OTTEN: What do you mean by standard
11 process?

12 MS. STEINGASSER: -- did not file a report.

13 MR. OTTEN: You just said, this is the
14 standard process.

15 MS. STEINGASSER: It is again for an
16 applicant to reach out to all the agencies prior to
17 filing a PUD and often after filing a PUD. They then
18 satisfy those conditions or the requirements
19 requested of the agency, and so an independent report
20 is not filed.

21 MR. OTTEN: And are you aware of any
22 evidence --

23 MS. STEINGASSER: No.

24 MR. OTTEN: -- that the applicant --

25 MS. STEINGASSER: No.

1 MR. OTTEN: I didn't even get to finish my
2 question. That the applicant did exactly as you said
3 according to the standards.

4 MS. STEINGASSER: I believe you had an
5 opportunity to cross-examine the applicant about
6 their process.

7 MR. OTTEN: I'm asking you.

8 MS. STEINGASSER: The Office of Planning --

9 CHAIRPERSON HOOD: I think that question --

10 MS. STEINGASSER: -- does not --

11 CHAIRPERSON HOOD: -- is -- I let it go for a
12 minute, but I think it's getting out of line. Office
13 of Planning cannot speak for the applicant. What's
14 ever not in the record, come a time that you -- but
15 anyway, the applicant would have to answer that
16 question and I'm sure she's taking notes and she will
17 relay that to us. Next question.

18 MR. OTTEN: Chair, what I'm trying to get at
19 is --

20 CHAIRPERSON HOOD: She gave you an answer.

21 MR. OTTEN: No, what I'm not getting at, what
22 I'm not getting an answer to is what the Office of
23 Planning understands is standard protocol. That's
24 what I heard tonight.

25 CHAIRPERSON HOOD: The standard protocol is

1 the applicant -- what I just heard from Ms.
2 Steingasser, the standard protocol is the applicant
3 works with DOEE. I get it mixed up. But DOEE or DDO
4 -- no, it's DOEE. Okay? That was what --

5 MR. OTTEN: Yet --

6 CHAIRPERSON HOOD: That was what she just
7 said.

8 MR. OTTEN: Okay.

9 CHAIRPERSON HOOD: Let's go to the next
10 question.

11 MR. OTTEN: Yeah. Yet I see in the setdown
12 report that actually the Office of Planning is also
13 apparently reaching out to these agencies for review
14 and comment. And there is nothing from DOEE on the
15 record is what we're hearing tonight. Correct?

16 MR. LAWSON: Correct.

17 MR. OTTEN: So that would mean all of the
18 Comprehensive Plan policies, the relevant ones in
19 Chapter 6 of the Environment Protection Element,
20 therefore were not reviewed by DDOE?

21 MS. STEINGASSER: Again, for the record --

22 MR. OTTEN: DOE?

23 MS. STEINGASSER: -- we cannot address DOEE's
24 review.

25 MR. OTTEN: But isn't it the case, if I can

1 finish my question --

2 MS. STEINGASSER: We cannot address DOEE.

3 MR. OTTEN: I'm not asking you about
4 addressing DDO. I'm asking you, Jennifer
5 Steingasser, as the Deputy Director of the Office of
6 Planning, DDOE is one of the agencies that you're
7 supposed to be coordinating with?

8 MS. STEINGASSER: I believe we've been asked
9 and we've answered about our interactions with DOEE.

10 CHAIRPERSON HOOD: Ms. Steingasser, let's let
11 him finish his question. Mr. Otten, could you finish
12 your question, please?

13 MR. OTTEN: Yes. So would the Office of
14 Planning have any information then, in the general
15 conversation or otherwise, about the amount of energy
16 that this large luxury hotel will be using on a daily
17 basis?

18 CHAIRPERSON HOOD: She answered that
19 question. Next question.

20 MR. OTTEN: I didn't hear her answer.

21 CHAIRPERSON HOOD: Well, she answered it.
22 She said she could not speak for DOEE.

23 MR. OTTEN: I'm asking the Office of
24 Planning.

25 CHAIRPERSON HOOD: She said already -- and

1 see, this is where we're not hearing. She already --
2 I heard it. That's why I wanted her to let you
3 finish.

4 MR. OTTEN: Okay.

5 CHAIRPERSON HOOD: She answered that
6 question. Next question.

7 MR. OTTEN: Okay. Ms. Steingasser, as the
8 Deputy Director of the Office of Planning, are you
9 aware that the implementation element of the
10 Comprehensive Plan states that to the greatest extent
11 feasible, use the development review process to
12 ensure that impacts on neighborhood stability,
13 traffic, parking, and environment quality are
14 assessed and adequately mitigated?

15 MS. STEINGASSER: Yes, I am.

16 MR. OTTEN: Do you believe the environmental
17 impacts have been assessed and adequately mitigated
18 in this case?

19 MS. STEINGASSER: Office of Planning cannot
20 address the Department of Environment and Energy's
21 review.

22 MR. OTTEN: Is the Office of Planning aware
23 of any noise studies that this hotel will bring upon
24 the surrounding community?

25 MS. RAPPOLT: No.

1 MR. OTTEN: Is the Office of Planning aware
2 of any air pollution studies that the traffic and
3 emissions from the hotel will be bringing on the
4 surrounding community?

5 MS. RAPPOLT: Are you saying are we aware
6 that someone has done such study?

7 MR. OTTEN: Are you aware, yes, that any
8 agency or the applicant or yourselves have conducted
9 that study?

10 MS. RAPPOLT: We have not conducted and we're
11 not aware if someone else has or not.

12 MR. OTTEN: Okay. Did the Office of
13 Planning --

14 MS. COHEN: Excuse me. I just want to kind
15 of -- you're asking OP a number of questions that
16 OP's jurisdiction is somewhat limited. This is a
17 private development and everybody who puts their
18 hands on this, the equity partners, the private
19 financing, is certainly going to go into the same
20 depth because their money is at risk.

21 So I just want to make sure you understand
22 the whole development process. And, you know, the
23 developer has to do these studies no matter what;
24 whether they're part of OP's submission or not. I
25 just want -- I think that people in the audience need

1 to understand because you're skewing your questions.
2 This is not a public development. It's a private
3 development. And yes, we will be doing zoning
4 analysis, but some of it is constantly being done in
5 real estate development. Just want to make sure you
6 understand that.

7 MR. OTTEN: Okay. So I understand that -- we
8 understand that this is a private development. But
9 they are seeking public entitlements, correct? So
10 and they're going to be -- I mean, reading the regs
11 here it would seem that the Office of Planning is to
12 be determining any potential adverse impacts or
13 effects on the surrounding community, including
14 public services.

15 So that's where my questions are going to, is
16 the impacts on public services by this PUD.

17 One of those impacts is infrastructure and
18 who pays for that, you know, while -- well, we'll get
19 into that in our presentation. But I just want to
20 explain why I'm asking these questions. Okay. I
21 understand it's a private development, but there are
22 public entitlements here and impacts on the public.

23 CHAIRPERSON HOOD: Mr. Otten, we're going to
24 stop interrupting you. But let me ask you, about how
25 many more questions do you think you have?

1 MR. OTTEN: Well, I'm trying to go through
2 the Comprehensive Plan policy because that's --
3 policies because that's basically what we're trying
4 to weigh this PUD against.

5 CHAIRPERSON HOOD: So what are we talking?
6 Twenty minutes, 30 minutes, a hour?

7 MR. OTTEN: Well, maybe an hour.

8 CHAIRPERSON HOOD: An hour? Okay. We would
9 like --

10 MR. OTTEN: There's just a lot missing out of
11 these reports.

12 CHAIRPERSON HOOD: We would like to finish
13 this tonight. And I want to finish this case before
14 we go on recess. So Ms. Schellin, I don't know, what
15 is everybody doing tomorrow night? I'm just saying,
16 that's -- I'm just throwing that out there for
17 discussion. But I would like to -- we don't need any
18 comments. We don't need any comments right now, but
19 we need to finish this. We want to get through this
20 so you may continue your questioning.

21 MR. OTTEN: Chair, we're with you on that.
22 We want to get through it too. There's so many gaps
23 in the planning here, though, we have to explore that
24 for our rights and our sake. I hope --

25 MR. MAY: Mr. Chairman, can I make a

1 suggestion? I'm going to be very quick.

2 CHAIRPERSON HOOD: Yes.

3 MR. MAY: If you ask a question and you get
4 an answer, then I think you need to move on to the
5 next question. And if you ask it several different
6 ways you're not going to get any different answer.
7 We just spent 20 minutes going over the same stuff.
8 It doesn't help us. We want information that's going
9 to help us. So if you're asking a question and the
10 answer is, no, they don't have that information or
11 it's not, you know, it's DOEE's responsibility, take
12 that answer and go on to the next one because you're
13 not helping us by asking the question over and over
14 again using slightly different words. Okay?

15 Focus on the points you're trying to make and
16 ask the question, get an answer, move to the next
17 one.

18 MR. OTTEN: Okay. We're just trying to get
19 information on the record, Chair. Chair.
20 Commissioner. They have listed all these agencies
21 so --

22 MR. MAY: I'm not asking you to rebut my
23 questions. I'm just giving you some advice, so
24 please, go ahead and ask your next question.

25 MR. OTTEN: Just trying to understand this

1 through the prism of planning.

2 To the Department of Public Works, is it the
3 Office of Planning's understanding -- you submitted
4 this applicant to them as well for review and
5 comment?

6 MS. RAPPOLT: We contact them for review and
7 comment but I don't -- I didn't submit the
8 application of the applicant to them.

9 MR. OTTEN: Okay. Just to understand, what
10 do you submit to these agencies for when requesting
11 their comment?

12 MS. RAPPOLT: We usually contact a person on
13 a list that we have for each agency and we give them
14 information about the PUD and ask if they'd like to
15 come to an interagency meeting or if they'd like to
16 provide us comments, or if they'd like to wait until
17 after setdown to see if the project continues, if
18 they would like to give us their comments.

19 MR. OTTEN: And so Department of Public Works
20 did not provide a report to the record?

21 MS. RAPPOLT: Correct.

22 MR. OTTEN: Does the Office of Planning have
23 any understanding of the waste, the level of refuse
24 that will be generated by this project?

25 MS. RAPPOLT: Not at this time.

1 MR. OTTEN: How, to your understanding, has
2 the Office of Planning suggested mitigation of
3 commercial development impacts in this case?

4 MS. RAPPOLT: Can you ask that question
5 again? I don't understand.

6 MR. OTTEN: Regarding the Office of
7 Planning's reports and information provided to the
8 Commission, what parts of those reports show or offer
9 mitigation of commercial development impacts in this
10 case?

11 MS. RAPPOLT: Are you asking the difference
12 between what's there now and what will be there?
13 What are those impacts between the uses? Is that
14 what you're asking?

15 MR. OTTEN: That's one, one question. It
16 would also just be generally this project itself,
17 what ways have you offered to mitigate the commercial
18 development impacts? Have you done an analysis?

19 MS. RAPPOLT: I mean, there's always a TDM
20 through DDOT that helps mitigate the traffic impacts.
21 We ask for benefits and amenities. Streetscape
22 improvements. Things that are supposed to help
23 lessen the impact to the surrounding area.

24 MR. OTTEN: And the surrounding area, to your
25 knowledge, are there any residential aspects to this

1 surrounding area? Any residential --

2 MS. RAPPOLT: Are you asking is the
3 residential use currently?

4 MR. OTTEN: No, within the area around the
5 PUD site.

6 MR. LAWSON: Not that we're aware of
7 immediately adjacent to the PUD site. But certainly
8 in the broader area. There are a whole range of
9 uses, including residential. Yes. But more distant
10 from the PUD site, not directly adjacent. That we're
11 aware of.

12 MR. OTTEN: For example, the area south of
13 Florida Avenue?

14 MR. LAWSON: Correct. That would be like
15 three blocks away. Two, three blocks away.

16 MR. OTTEN: Two to three blocks. And then in
17 terms of Ivy City, is that also a residential area
18 that's in approximate --

19 MR. LAWSON: It's in the broader area, yes.
20 Not in the immediate area.

21 MR. OTTEN: Right. And to your knowledge
22 there was no study done to determine how a hotel
23 would affect these residential areas across various
24 zoning metrics or impacts?

25 MR. LAWSON: In terms of what?

1 MR. OTTEN: Public services.

2 MR. LAWSON: Public -- well, I don't know if
3 this is what you mean because I don't know what you
4 mean by that question. But if what you're asking is
5 would the residents be able to use the public space
6 in the hotel I would assume so.

7 MR. OTTEN: Is this a -- would the front
8 doors, to your knowledge, of this hotel, be open 24
9 hours?

10 MR. LAWSON: I don't know.

11 MR. OTTEN: So you don't know the hours that
12 the public could use the hotel space?

13 MS. RAPPOLT: Without looking at the
14 applicant a little more closely to see if they said
15 24 hours a day, we're not certain.

16 MS. MOLDENHAUER: I'm sorry. I know
17 Commissioner said not to put anything on the record,
18 but I just object. I think that a lot of the
19 questions that are being asked here, the applicant
20 already presented their case-in-chief, and there was
21 an opportunity for Mr. Otten to ask questions
22 directly of the applicant. We're more than happy to
23 answer some of these. But to be, you know,
24 argumentative towards the Office of Planning on
25 issues that could have been put into the record or

1 could have been requested of the applicant,
2 previously in the record, I just wanted to make sure
3 that that would have been the appropriate time to ask
4 a large majority of these questions.

5 MR. OTTEN: We respectfully disagree. We're
6 asking the Office of Planning questions on how they
7 view your application.

8 Terms of the -- to Office of Planning. In
9 your January 22nd report, 2016, you discuss
10 additional information regarding the so-called arts
11 benefit, correct?

12 MS. RAPPOLT: Yes.

13 MR. OTTEN: And that there was a concern
14 about the prices of the so-called art studios?

15 MS. RAPPOLT: Yes.

16 MR. OTTEN: How have you been satisfied with
17 that given the latest -- you know, your request for
18 more information? Have you been satisfied with the
19 applicant's response?

20 MS. RAPPOLT: Because there hasn't been an
21 agreement with the artist, the options that have been
22 submitted into the record, we can't be certain what
23 the actual -- how the prices have actually changed
24 over time. So we've seen a move that have shown the
25 prices to be reduced. But I don't know if that is --

1 has been agreed upon.

2 MR. OTTEN: But it's fair to say that the
3 Office of Planning was looking for it kind of on par
4 with \$16 a square foot for artist studio space?

5 MS. RAPPOLT: I think we were looking for
6 what would be considered a subsidized space and we
7 were made aware that \$16 a square foot was 2015
8 market studio space. And so if there were to be a
9 subsidy we'd prefer something less than that. But
10 certainly what was proposed initially was -- could
11 not be considered a subsidy, or even close to the \$16
12 a square foot.

13 MR. OTTEN: And just so we understand, where
14 did you gather then -- or where did you define \$16 a
15 square foot?

16 MS. RAPPOLT: Initially it was in the
17 applicant's prehearing statement.

18 MR. OTTEN: Okay. So you took that number
19 from them?

20 MS. RAPPOLT: Yes.

21 MR. OTTEN: Have you all done any independent
22 Office of Planning analysis of the prices of artist
23 studio space or what would be considered affordable
24 for artists?

25 MS. RAPPOLT: No, we have not.

1 MR. OTTEN: Did you, as the Office of
2 Planning -- well, I'll let you finish there.

3 [Pause.]

4 MR. OTTEN: Did you -- I'm looking at the
5 January 22nd report again, 2016. Again in your
6 agency referral section you anticipate reports from
7 DDOT and the Department of Energy and Environment.
8 At that stage, I mean, getting back to these agency
9 reports for the record, you were anticipating that.
10 Do you have any understanding why DOEE did not submit
11 a report filed under separate cover?

12 MR. LAWSON: No.

13 MR. OTTEN: But it does say you were
14 anticipating it.

15 MR. LAWSON: Yes.

16 MR. OTTEN: Without a report from DDOE, how
17 do you determine as the Office of Planning that the
18 cumulative effects of this PUD project with the other
19 PUDs you've listed in the area?

20 CHAIRPERSON HOOD: Have you finished asking
21 the question, Mr. --

22 MR. OTTEN: Yes, I have. I'm waiting for an
23 answer.

24 CHAIRPERSON HOOD: Okay. Well, maybe I
25 didn't understand that one myself. But anyway, do

1 you all understand that question?

2 MR. LAWSON: Sort of. Not really. What,
3 sir, was the question?

4 MR. OTTEN: Yeah, I'll repeat it. In your
5 January 22nd report you have on page 8 of 19, the
6 list of PUDs in the area in addition to the one
7 before the Commission tonight. How has the Office of
8 Planning considered the cumulative effects of all
9 these PUDs and now this PUD that's before the
10 Commission? Cumulative effects on public services,
11 for example.

12 MR. LAWSON: Thanks. Now I understand.
13 Obviously it's an ongoing issue because we're
14 continuing to receive PUDs in this area. Its' an
15 area, it's a pretty hot market right now. So we have
16 kind of ongoing and continuous meetings with other
17 agencies, including DOEE and including WASA and DDOT
18 and other agencies, to talk about the cumulative
19 impacts and the need for a coordinated approach,
20 particularly to deal with infrastructure concerns.

21 So those discussions are obvious ongoing
22 because the area is not built out yet.

23 MR. OTTEN: But this is -- these are the sort
24 of effects you want to discuss before the area is
25 built out, right?

1 MR. LAWSON: There are issues to discuss as
2 projects are coming forward, yes.

3 MR. OTTEN: And again, as far as the
4 Commission is aware, or the public, there is nothing
5 on the record in this case considering those effects
6 solely as the PUD project but also within the broader
7 area of PUD projects.

8 MS. RAPPOLT: Can you repeat again? Sorry.

9 MR. OTTEN: I think what I asked was for the
10 Commission and the public, regarding this review,
11 there is nothing currently on the record that
12 discusses the effects on public services for this PUD
13 project and also the PUD project as part and parcel
14 of all these other cumulative projects.

15 MR. LAWSON: Right. There is nothing on the
16 record that would say that this project would cause
17 an undue impact on services. Once again, if the
18 Commission, the Zoning Commission, requested
19 additional information from an agency we would be
20 happy to continue that coordination to get that.

21 MR. OTTEN: And it's your understanding that
22 the Comprehensive Plan, that this PUD approval has to
23 be found not to be inconsistent with the
24 Comprehensive Plan, right?

25 MR. LAWSON: The Zoning Commission has to

1 determine that, yes.

2 MR. OTTEN: And you've determined that in
3 your reports.

4 MR. LAWSON: We did. We recommended
5 approval.

6 MR. OTTEN: And the Comprehensive Plan is a
7 family of plans, right?

8 MR. LAWSON: It is.

9 MR. OTTEN: And it includes --

10 MR. LAWSON: And it's also meant to be read
11 generally and comprehensively.

12 MR. OTTEN: So to that issue, did you all
13 read the chapter on the arts, the artist chapter?
14 Guess that's Chapter 14.

15 MS. RAPPOLT: Yes.

16 MR. OTTEN: And what -- doesn't that chapter
17 talk specifically about the vitality and the
18 importance that artists bring to the District of
19 Columbia? Generally?

20 MS. RAPPOLT: Yes.

21 MR. OTTEN: And that it's important that
22 there's cultural and artistic diversity and
23 facilities around the city?

24 MS. RAPPOLT: Yes.

25 MR. OTTEN: Are you aware that the party

1 before you, 411 Artist Union, has been part of this
2 artist hub since at least 1981?

3 MR. LAWSON: No.

4 MR. OTTEN: Do any of your reports discuss
5 this decades long artist hub with regards to this
6 project?

7 MS. RAPPOLT: No, it doesn't. And when we
8 did our initial report and looked at COs that were in
9 the building, we could tell that there were at least
10 three artists in the building, and also a night club.
11 So, I don't know that we were aware based on public
12 record, the extent of the number of artists that are
13 involved in this particular building, based on
14 records that we could access.

15 MR. OTTEN: Did anybody from the Office of
16 Planning ever visit 411 New York Avenue?

17 MS. RAPPOLT: Yes.

18 MR. OTTEN: When did you do that?

19 MS. RAPPOLT: It was probably mid-day, and it
20 was either a Monday or a Tuesday during working
21 hours.

22 MR. OTTEN: Monday. I'm sorry, when?

23 MS. RAPPOLT: Either a Monday or a Tuesday.
24 It was an early part of the work week during working
25 hours.

1 MR. OTTEN: What month? When was that?

2 MS. RAPPOLT: I don't remember. I'm sorry.

3 MR. OTTEN: Was it before your set down
4 report?

5 CHAIRPERSON HOOD: She said she didn't
6 remember. Okay? She said she didn't remember.

7 MR. OTTEN: Well, I'm --

8 CHAIRPERSON HOOD: Next question.

9 MR. OTTEN: Are you aware that there is no
10 longer a night club at the space?

11 MS. RAPPOLT: The reason I brought up the
12 term night club is because that's what's on the CO,
13 not because I -- sorry. That's the only reason I
14 used that term.

15 MR. OTTEN: So when you visited the space can
16 you describe that for us? What was that like?

17 MS. RAPPOLT: Sure. When I visited the space
18 during the middle of the day I spoke with a gentleman
19 in the loading area who was either detailing cars or
20 cleaning them and we asked him if there is a way to
21 access the building. He made a phone call to
22 someone. I think he said management, to try to get
23 us access into the building. And he was not able to
24 do that so we walked around the building and tried to
25 access the front door. We saw some, what looked like

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1 a retail clothing establishment on New York Avenue.
2 Also saw a door on the eastern end that led me to
3 believe there might have been a worship type of
4 service, establishment.

5 And we did try to access a door off the
6 loading dock area, but were not able to get into the
7 building.

8 MR. OTTEN: Was that after the application
9 was submitted for review?

10 MS. RAPPOLT: Yes.

11 MR. OTTEN: Okay. And the purpose of your
12 visit, what was the purpose of your visit on this
13 undisclosed day?

14 MS. RAPPOLT: To take a look at the building
15 and see what uses were going on there and also look
16 at the historic façade that I think is going to be
17 preserved with the application because the
18 applicant --

19 MR. OTTEN: And what would the uses going on
20 there, how would that -- how does that play into your
21 planning protocols or reporting for the commission?

22 MS. RAPPOLT: I think it gives us a general
23 understanding of what the existing site conditions
24 are.

25 MR. OTTEN: And by site conditions, does that

1 include -- I heard you say uses. Does that include
2 the actual small businesses there, or the artists?
3 What does that mean?

4 MS. RAPPOLT: I think we were just looking
5 at, we had our CO records and we were looking if they
6 matched up with what I was -- we were seeing around
7 the building. And that affects our review of the
8 application just in general terms to try to
9 understand the site better.

10 MR. OTTEN: And in understanding the site
11 better, does that also refer to understanding who is
12 there, like the people using the site, or the
13 businesses using the site?

14 MS. RAPPOLT: It could, but I didn't see
15 anyone in particular using the site except for
16 someone washing cars.

17 MR. OTTEN: And when you were visiting the
18 site, were you aware of the history of the site in
19 terms of the uses? Not just what was on the CO.

20 MS. RAPPOLT: No, and that's as far as I
21 could tell. I did do an internet search of the
22 building too and saw Union Arts has a presence on the
23 internet. But I couldn't tell when, when to have it
24 -- get more information about that particular group
25 and how to get it. Just to sort of understand the

1 building a little bit more from just a person who is
2 not involved with arts on a daily basis.

3 MR. OTTEN: I understand that. So you were
4 trying to reach out to do that, but you couldn't find
5 contact info?

6 MS. RAPPOLT: Yeah, I wasn't sure that I was
7 -- yeah, was looking for contact information for
8 Union Arts, but we were just trying to have a better
9 understanding of the building and the site itself.

10 MR. OTTEN: And the Office of Planning in
11 terms of PUD reviews, you all do have I guess the
12 capacity to offer mitigation or at least concern
13 about displacement of uses from a site?

14 MS. RAPPOLT: I think for this particular
15 site, and it might have been shortsighted, but we
16 thought that the artists' benefit of affordable
17 spaces would have mitigated what might have been
18 displaced and our records of the three artists that
19 are on file for CO, and considering the amount of
20 space that the applicant was providing and the fact
21 that it's rare for a PUD to provide such space, I
22 think it was our understanding that this would be a
23 mitigation for those who we could tell were there.

24 It wouldn't have been a mitigation for the
25 music space. So, that is concerning, but --

1 MR. OTTEN: Okay. So what I just heard there
2 is that there was a concern for affordable space that
3 there was -- that the applicant's proffer of artist
4 space would somehow mitigate the displacement of the
5 artist's there now?

6 MS. MOLDENHAUER: Could I just ask that the
7 applicant or Mr. Otten not try to rephrase exactly
8 what was just said. If he has another question he
9 can ask another question. But to try to rephrase
10 what OP just stated I think is confusing.

11 MR. LAWSON: It's fine. But once again, just
12 so everybody understands, the question again? Sorry.

13 MR. OTTEN: I'm trying to understand I heard
14 what I'm -- and correct me if I'm wrong. What I
15 heard was that the applicant's proffer of artist
16 space would mitigate some displacement from the
17 current space.

18 MR. LAWSON: Yeah, I'm not sure in this case
19 I would use the word mitigate, but it was intended --
20 our understanding is it was intended to accommodate
21 the artists. You know, again like Ms. Rappolt said,
22 we did the search of the certificates of occupancy
23 and found that according to them a relatively limited
24 use within that building.

25 We did a site visit and that seemed to

1 confirm a fairly limited use of that building. And
2 we understand now that that use is greater than what
3 shows in the certificate of occupancies. So, yes, we
4 felt that providing the artists space within the
5 building would help to accommodate those artists who
6 wanted to stay within that building. That new
7 building. Yes.

8 MR. OTTEN: And to determine mitigation of
9 some kind of displacement, you would need to know
10 what is the kind of the scope of what exists now to
11 be mitigated, right? In terms of how you operate?

12 MR. LAWSON: That's why we looked at the
13 certificates of occupancy, to try to figure out what
14 was going on in the building. Yes.

15 MR. OTTEN: And if there was a door that was
16 open, would you have gone -- what was the purpose of
17 that?

18 MR. LAWSON: We don't speculate. We don't do
19 hypotheticals. So --

20 MR. OTTEN: I'm asking the purpose though.
21 If the door was -- you were going to the site to
22 visit and you were --

23 MR. LAWSON: To see the building.

24 MR. OTTEN: And you were stymied because you
25 couldn't get into the front door and the side door.

1 MR. LAWSON: Because everything was locked
2 up.

3 MR. OTTEN: But if it wasn't, if there was a
4 door open, what would the Office of Planning do in
5 terms of a --

6 CHAIRPERSON HOOD: I think that is -- that's
7 an "if." If there's a -- if that -- it wasn't open
8 so let's go to the next question.

9 MR. OTTEN: I'm trying to --

10 MR. LAWSON: To be honest, standard protocol
11 is to not go within the building. The standard
12 protocol is to visit the site, but to not enter the
13 building.

14 CHAIRPERSON HOOD: Sir, is your mic on?

15 MR. OTTEN: Now it is. Just so we can
16 clarify this issue of mitigation. The arts benefit
17 that you're claiming that might mitigate some of the
18 displacement of the current artists, correct? Did I
19 just hear that correctly?

20 MR. LAWSON: Well, I just want to be clear on
21 your question. Are you talking about the original
22 application or where the applicant is now? Because
23 what they are proposing in terms of art space within
24 the building has of course changed considerably.

25 MR. OTTEN: And by considerable, what do you

1 mean by that in terms of where we are now.

2 MR. LAWSON: There was more than there was
3 before.

4 MR. OTTEN: Considerably more?

5 MR. LAWSON: There's more. There's more than
6 there was before.

7 MR. OTTEN: How much space are you aware
8 they're offering right now as dedicated office space?

9 MR. MAY: Mr. Otten, you're asking questions
10 about things that are evidence in record. Okay?

11 MR. OTTEN: I'm asking the Office of
12 Planning.

13 MR. MAY: We can look at that and if you want
14 to bring that up in your presentation, I think that
15 would be appropriate. But to quiz them on how well
16 they have memorized the application is just not
17 helpful. So I suggest --

18 MR. OTTEN: Commissioner, I'm trying to
19 understand --

20 MR. MAY: -- that what you want to try to do
21 is focus on things that are helpful. So far what
22 you've demonstrated is that the Office of Planning
23 tried to do a very thorough investigation. Okay. If
24 that's your intention, fine. But that's what you've
25 demonstrated so far. I would suggest that if you

1 have questions about things that you think are
2 missing, focus on those questions.

3 MR. OTTEN: Are you listening?

4 MR. MAY: I am -- no, at the moment I'm
5 talking. I'm talking. Okay? So you have to listen.
6 You have to try to provide information that's helpful
7 in deciding the case. And what you're doing right
8 now is not helpful. We don't really care how well
9 they have memorized the application. And that's what
10 you're asking them.

11 MR. OTTEN: I'm asking them about their
12 mitigation --

13 MR. MAY: You're asking them to define the
14 word significant or considerable.

15 MR. OTTEN: Yes, because it goes directly to
16 their --

17 MR. MAY: Not the --

18 MR. OTTEN: -- role to mitigate PUD impacts.

19 MR. MAY: Okay. So what you're talking about
20 here really are benefits and amenities of the
21 project. You're not really talking about
22 mitigations.

23 MR. OTTEN: No, I'm talking about mitigation
24 conditions.

25 MR. MAY: There's not an obligation to

1 mitigate the tenants who might be displaced by the
2 project.

3 MR. OTTEN: You're saying there should not be
4 mitigation?

5 MR. MAY: No, I'm not saying that there
6 shouldn't be mitigations.

7 MR. OTTEN: Okay.

8 MR. MAY: I'm just saying that what your --
9 you know, there's a difference between mitigation and
10 benefits and amenities.

11 MR. OTTEN: There is.

12 MR. MAY: Yes.

13 MR. OTTEN: And a mitigation could be
14 considered a benefit if it's enough. If you have a
15 baseline analysis and you mitigate what's going to
16 displace that baseline.

17 MR. MAY: A mitigation is intended to offset
18 a negative impact.

19 MR. OTTEN: Correct. My question --

20 MR. MAY: And then above and beyond that
21 there are benefits and amenities.

22 MR. OTTEN: Right. So when I ask these
23 questions I'm trying to understand OP's understanding
24 of what they're proffering.

25 MR. MAY: And I'm trying to help you get to

1 that understanding of it. And what you're asking so
2 far is not helpful. I'm just trying to offer you
3 advice on how to be helpful in getting out the
4 information that we need.

5 MR. OTTEN: Okay.

6 MR. MAY: Okay.

7 MR. OTTEN: Well, in regards to this thorough
8 investigation, I wonder why the Office of Planning
9 did not pursue a meeting with the current tenants who
10 are about to be displaced, despite outreach as such.

11 MR. LAWSON: There has been no outreach to
12 the Office of Planning to come and talk to the
13 tenants.

14 MR. OTTEN: Are you aware of an e-mail to the
15 Ward 5 planner with regards to this project?

16 MR. LAWSON: Yes, I saw that in your
17 submission. I saw a part of that e-mail. It did not
18 include the entire e-mail.

19 So just to move this along, our understanding
20 of the original e-mail from Mr. Milter, who I don't
21 know, of Citylab, was to come and quote, "view the
22 space and discuss a potential Citylab project for our
23 fall class." There's no reference in that to come
24 and talking to the tenants, nor was that e-mail sent
25 to development review. Nor were we aware of it. And

1 SO --

2 MR. OTTEN: So, is there --

3 MR. LAWSON: -- your representation I think
4 that that was --

5 MR. OTTEN: [Simultaneous speaking.]

6 MR. LAWSON: -- a request to come and talk to
7 the tenants is just simply incorrect.

8 MR. OTTEN: This e-mail you're speaking
9 about, this is dated March 21st, 2016?

10 MR. LAWSON: No, it's dated March 14th, 2016.
11 It's the original e-mail from Mr. Milter to the -- to
12 a staff member at OP. Not to us.

13 MR. OTTEN: And the staff member at OP, is
14 that Andrea Limauro?

15 MR. LAWSON: Correct.

16 MR. OTTEN: And I don't see a March 14th
17 date. Can you --

18 MR. LAWSON: That's because your e-mail
19 didn't include it. But the original e-mail request
20 from Mr. Milter, as I said, was to -- was an
21 invitation to come and view the space at 14 -- or
22 sorry, 411 New York, and discuss a potential Citylab
23 project for our fall class, and asked if this is
24 something he would like to do. Evidently it's
25 something that's happened in the past. I don't know.

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1 So I reiterate, there has been no --

2 MR. OTTEN: And so that was to --

3 MR. LAWSON: -- request from the artists to
4 talk to the Office of Planning.

5 MR. OTTEN: Okay. So, but for the record,
6 Mr. Lawson, the e-mails that follow up from your OP
7 staffer, Andrea Limauro, is that correct? Is her --
8 she's a neighborhood sustainability and industrial
9 policy coordinator?

10 MR. LAWSON: He. He.

11 MR. OTTEN: He? Okay. Andrea Limauro?

12 MR. LAWSON: Andrea. It's Italian.

13 MR. OTTEN: Andrea. Excuse me. Okay.

14 Andrea Limauro, Neighborhood Sustainability
15 Industrial Policy Coordinator with the D.C. Office of
16 Planning.

17 MR. LAWSON: Correct.

18 MR. OTTEN: And isn't it the case that he
19 responded to this gentleman, a professor from Johns
20 Hopkins University. And in that response it says,
21 Union Arts is currently an active planned unit
22 development and is under review by the Zoning
23 Commission in our office?

24 MR. LAWSON: He did say that.

25 MR. OTTEN: And are you saying that there

1 were no other letters to either Jennifer Steingasser
2 or to you, Mr. Lawson, that you're aware of that
3 requested somebody to visit the site?

4 MR. LAWSON: Not that I'm aware of.

5 MR. OTTEN: And the 200 or so people that
6 came to testify at the last two hearings, did none of
7 that trigger for the Office of Planning, the
8 necessity or the push to want to meet with the
9 artists in the space that are facing displacement?

10 MR. LAWSON: The applicant was meeting with
11 the artists and --

12 MR. OTTEN: I'm asking OP --

13 MR. LAWSON: -- neither side invited the
14 Office of Planning to participate and that's
15 appropriate, and that's normal.

16 MR. OTTEN: Isn't it true at the last hearing
17 that I asked the Office of Planning to get involved
18 in these discussions?

19 MR. LAWSON: I don't know.

20 MR. OTTEN: Well, that's what happened. Back
21 to the Comprehensive Plan. Isn't there a policy in
22 the Comprehensive Plan that talks about affordable
23 artist space; spaces?

24 MS. RAPPOLT: Are you referring to the
25 live/work policies, or --

1 MR. OTTEN: I'm referring to -- yes.

2 MS. RAPPOLT: And you're asking if it's in
3 the Comp Plan. It is. I'm looking for it now.

4 MR. OTTEN: Okay. And how important is the
5 creative economy to the Office of Planning?

6 MS. RAPPOLT: That's beyond the scope of this
7 particular PUD.

8 MR. OTTEN: Is there a reason why you're --
9 why both of your reports do not mention the artists
10 that are there right now?

11 MS. RAPPOLT: I think generally it's hard to
12 know exactly who is a tenant in the building who
13 might do art in the building and I think it's
14 difficult to correctly characterize the unique
15 properties of this property, which we've heard at
16 these hearings.

17 I think we knew, as I said before, that there
18 were some artist uses happening here and there were
19 some music venue occurring here. It wasn't clear
20 that there were the extent of sort of this unique
21 space was happening to us when we wrote those
22 reports.

23 MR. OTTEN: Did the Office of Planning
24 consider revising or submitting additional
25 information about the artists after the last two jam

1 packed hearings?

2 MR. LAWSON: OP typically would not do that.

3 MR. OTTEN: And isn't the Office of Planning
4 supposed to help the public that may be facing
5 displacement?

6 MS. RAPPOLT: Yes, generally.

7 MR. OTTEN: And I guess part of that is
8 public funding, identifying public funding resources.

9 MS. STEINGASSER: The Office of Planning
10 doesn't provide public funding. We would work with
11 our sister agencies. In this case it would most
12 likely be the D.C. Commission of Arts and Humanities.
13 They have an extensive website, they have grant
14 programs, they have space finder applications. So we
15 would be referring in this case, artists over to that
16 agency. If they were a small business we would refer
17 them over to the Department of Small and Local
18 Business Development for assistance.

19 MR. OTTEN: But as of right now the Office of
20 Planning has not coordinated with these agencies to
21 ensure to mitigate the displacement of the existing
22 artists.

23 MS. STEINGASSER: The applicant is working
24 with the artists and their representatives.

25 MR. OTTEN: I'm asking the Office of

1 Planning.

2 MS. STEINGASSER: And that is my answer. The
3 applicant is working with the artists and their
4 representatives.

5 MR. OTTEN: Doesn't the Comprehensive Plan
6 discuss partnerships among artists in the District?

7 MS. STEINGASSER: And we would refer those
8 partnerships over to the Commission of Arts and
9 Humanities which has the -- which operates those
10 partnerships or the Department of Small and Local
11 Business Development, if that was the case.

12 CHAIRPERSON HOOD: Mr. Otten, we down this
13 line of questioning about 45 minutes ago. I do
14 have --

15 MS. STEINGASSER: Not on the arts --

16 CHAIRPERSON HOOD: Let me just say this.
17 Yes, we did because I even mentioned about the
18 Commission on arts. So what we need to do is move
19 further on than that because I will be coming back to
20 that issue with you and the Arts Union. So let's
21 move on. Let's move on, something that's helpful to
22 the Commission. Let's move on.

23 And also, let me just do a time check. You
24 mentioned about an hour, we're now -- the way I see
25 it, unless I'm incorrect colleagues, we're running up

1 on an hour and almost 15 minutes. Hour and 25. So,
2 okay. I apologize.

3 Mr. Otten, about how much more time do you
4 think you need?

5 MR. OTTEN: Half an hour.

6 CHAIRPERSON HOOD: Okay. You may continue.

7 MR. OTTEN: How does the Office of Planning
8 view the Comprehensive Plan policy regarding engaging
9 the arts community in planning?

10 MR. LAWSON: We review the Comprehensive Plan
11 holistically and comprehensively as a broad document.

12 MR. OTTEN: How have you engaged the existing
13 artist in that planning regarding this PUD?

14 MS. RAPPOLT: We have not directly engaged
15 the existing artists in this particular PUD.

16 MR. OTTEN: As part of the family of plans,
17 doesn't DMPED, regarding the artist community, have a
18 creative economy strategy? Did you all look at the
19 creative economy strategy by DMPED when reviewing
20 this PUD?

21 [Pause.]

22 MS. RAPPOLT: To answer your question we did
23 not talk to DMPED specifically about their creative
24 economy and how it affects this particular project.
25 So I'll just, I'll stop there.

1 MR. OTTEN: Okay. Did the Office of Planning
2 reference their own document called the Creative
3 Capitol -- the Creative D.C. Action Agenda with
4 regard to this PUD review?

5 MS. RAPPOLT: Sir, sorry. So are you asking
6 if we -- I think the scope of the Creative D.C.
7 Action Agenda was more -- as far as I understand it,
8 it was more of a way that OP could help facilitate
9 place making in art. And an example that I was made
10 aware of was the Illuminated Anacostia. And I think
11 we were using sort of the D.C. Action Agenda in that
12 way where planning intersects with place making. And
13 it's not clear that this particular PUD was relevant
14 to that sort of scope of how we were implementing the
15 Creative D.C. Action Agenda.

16 MR. OTTEN: With regard to that point from
17 the Creative D.C. Action Agenda of place making,
18 wouldn't a cultural hub and small business incubator,
19 that's been around in D.C. since 1981, be already a
20 made place that you'd want to enhance and protect?

21 [Pause.]

22 MS. RAPPOLT: Sorry, I just -- now I forgot
23 the question again. Sorry.

24 MR. OTTEN: Say that again.

25 MS. RAPPOLT: Sorry. Can you repeat the

1 question again? I'm sorry.

2 MR. OTTEN: Yes. The Creative Capitol D.C.
3 Action Agenda, which you referenced, you just
4 referenced, there was a point in there that you
5 highlighted that the city should support making a
6 place. Place making.

7 I'm asking the Office of Planning, do you
8 consider a cultural and creative hub, small business
9 incubator that's been around in the District since
10 1981, already a made place that should be protected?

11 MS. STEINGASSER: I'm going to take a stab at
12 this. We do recognize that this is an extremely
13 unique and extremely organic environment that's
14 happened here. The official government records did
15 not lead us to have any understanding of the depth of
16 activity that was going on. There were few, if any,
17 business licenses. There were very few certificates
18 of occupancy as we heard from the testimony from the
19 artists themselves. A lot of it was done through
20 kind of an organic barter system where one person
21 would sublet to another.

22 So they all may have, have a tenant
23 arrangement but in terms of a business function it
24 was very difficult for us to get a handle on that up
25 front. The other thing that we have to balance is

1 that this is not public property. This is private
2 property and there are development rights that the
3 developer and the property owner have rights to.
4 Whether this PUD is approved or not does not get to
5 the heart of whether the artist community stays in
6 the building. That is a private tenant lease
7 arrangement.

8 So yes, we recognize that it's an organic
9 environment. It's very unique. I think everybody
10 was impressed by the depth of it. But it's hard to
11 evaluate it and balance it all in terms of the Zoning
12 Regulations and the project which has a very private
13 property ownership rights.

14 MR. OTTEN: Okay. Given that testimony, Ms.
15 Steingasser, and I guess the rights of the private
16 developers to develop, PUD or not, where do you see
17 the Office of Planning stepping up to fulfill the
18 words in these family of plans to protect and maybe
19 serve the artists?

20 MS. STEINGASSER: The Comprehensive Plan does
21 not belong solely to the Office of Planning. It
22 belongs to the entire D.C. Government. All agencies
23 are involved and we would look to our sister agencies
24 that are specialized in artist and small business
25 locations to help work. And on their website they do

1 have Space Finder as I've mentioned. They've got
2 grant programs. They've got a call for artists.
3 They've got a public space artists program.

4 So we would look to those agencies that
5 specialize in these fields to step up.

6 MR. OTTEN: When you say we would look,
7 doesn't this proceeding turn that into more of a
8 specific, "We will look?"

9 MS. STEINGASSER: I think I have cited now
10 four or five times, where those websites are. I
11 think you've heard from the applicant as well, that
12 these facilities exist.

13 MR. OTTEN: But you have heard from the
14 artist, if I'm not mistaken, that they need help in a
15 comprehensive coordinated way.

16 MS. STEINGASSER: And these agencies exist
17 and are there for their resources.

18 MR. OTTEN: But as the central agency, if I'm
19 not mistaken.

20 MS. STEINGASSER: We're a planning agency.
21 There are these -- we have sister agencies that
22 specialize in serving these particular uses, so I
23 would refer -- I do refer all interested individuals
24 to look at these websites and see what the arts, and
25 the Commission on Arts and Humanities has to offer

1 because they do have a very active, very annually
2 funded grant program as well as different art
3 programs.

4 MR. OTTEN: That may be the case for
5 generally, but doesn't the PUD regulations elevate
6 your role as the Office of Planning?

7 MS. COHEN: I think you're asking the same
8 question again and again and again, just changing the
9 words around. So I think you need to go on. She
10 answered your question.

11 MR. OTTEN: Okay. Just so I can clarify, the
12 Office of Planning did not discuss with DMPED, the
13 impacts to the current tenants in this PUD
14 application, correct?

15 MS. STEINGASSER: We did not discuss with
16 DMPED this particular application.

17 MR. OTTEN: Was there any discussion by the
18 opportunity regarding the Actionomics D.C. Planning,
19 which discusses artists?

20 MS. STEINGASSER: I believe you have our
21 report. It's in the record. If Actionomics is not
22 mentioned then we did not evaluate it.

23 MR. OTTEN: Ms. Steingasser, you testified
24 that there were a few COs, certificate of
25 occupancies, for small businesses in the building.

1 Correct?

2 MS. RAPPOLT: I think I testified to that
3 fact.

4 MR. OTTEN: Okay. And so, there are several
5 of these small businesses in 411 New York Ave. At
6 what point does the Office of Planning consider that
7 an incubator?

8 MS. MOLDENHAUER: Objection. I don't know if
9 a C of O can actually illustrate how large or whether
10 a project is an incubator.

11 MR. OTTEN: Okay. Is the Office of Planning
12 -- what has the Office of Planning done in this case
13 to retain and grow and encourage the existing small
14 businesses that are facing displacement with this
15 project?

16 MS. STEINGASSER: Again, we would refer those
17 agencies to the Department of Small and Local
18 Business Development if they needed business
19 assistance in getting a small business established,
20 or to the Commission of Arts and Humanities if they
21 needed assistance with different art grants, funding,
22 et cetera.

23 MR. OTTEN: And are you expecting that
24 assistance to be delivered along this PUD timeline?

25 MS. STEINGASSER: I made no statement

1 whatsoever regarding expectations, just that these
2 are the sister agencies that would specialize in
3 those areas.

4 MR. OTTEN: Doesn't the Comprehensive Plan
5 specifically talk about the avoidance of displacement
6 of small and local businesses from the District of
7 Columbia?

8 MS. RAPPOLT: We don't have that section in
9 front of us. It does, if you're you know, referring
10 to it. But we don't have that right here if it's not
11 the arts and cultural section.

12 MR. OTTEN: Do many of your reports project
13 any understanding of the commercial disruption that
14 the existing small businesses face because of the PUD
15 application?

16 MS. STEINGASSER: No, and as I noted, it was
17 very hard to get a feel for how many of these tenants
18 are businesses versus practicing artists.

19 MR. OTTEN: How would you get a feel of that
20 in reality, on the ground?

21 MS. STEINGASSER: In a more conventional
22 environment there would be certificates of occupancy
23 and business licenses. We recognize this is not a
24 more conventional environment.

25 MR. OTTEN: I'm getting down to a few last

1 questions for the Office of Planning.

2 Did the Office of Planning consider the
3 siting of two large hotels next to each other as
4 unusual?

5 MS. STEINGASSER: No.

6 MR. OTTEN: Why is that?

7 MR. LAWSON: Because it's not.

8 MR. OTTEN: Doesn't the Florida Avenue Market
9 study discuss a mix of diverse uses in this area?

10 MR. LAWSON: Yes, and the Florida Avenue
11 Market area covers the area all the way down to
12 Florida Avenue, and we're actually pretty excited
13 about the broad mix of uses that we are seeing within
14 this area, including hotel, cultural, residential,
15 office, retail, maker space, park space. You know,
16 you name it, it's providing that variety.

17 MR. OTTEN: How does having two hotels next
18 to each other ensure that a balance of uses is
19 achieved throughout the site according to the Florida
20 Avenue --

21 MR. LAWSON: Again, we're looking at the
22 Florida Avenue Market area, which is a much broader
23 area, of which this is kind of on the northern
24 periphery. So there is a very broad range of uses
25 being provided within the Florida Avenue Market area,

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1 including a hotel, including different kinds of
2 hotels because of course the hotel next to the one
3 that's proposed here, if this one is approved, is a
4 very different kind of a product from the one that's
5 being proposed on this site.

6 MR. OTTEN: Are you aware of -- is this
7 project offering living wage jobs here in the
8 District of Columbia?

9 MS. STEINGASSER: That's beyond the scope of
10 what we would look at in terms of the PUD at this
11 stage. It would be subject to all applicable
12 District law.

13 MR. OTTEN: Are you suggesting that in a PUD
14 the types of jobs created by the use seeking public
15 entitlements is not important?

16 CHAIRPERSON HOOD: I did not hear -- I did
17 not hear her say anything of that nature. I think,
18 Mr. Otten, if you stop trying to lead them down and
19 just ask your question. Just hear me out. Just ask
20 your question. I know you only have a few left.
21 Just ask your question. And once you finish, I asked
22 my colleagues, we're going to take a three minute
23 break.

24 MR. LAWSON: I will note that our report
25 actually did state that employment issues are an

1 important issue for the applicant to work out through
2 DOES.

3 MR. OTTEN: And you have you received any
4 reports from DOES --

5 MR. LAWSON: No.

6 MR. OTTEN: -- during this proceeding?

7 MR. LAWSON: No.

8 MR. OTTEN: Does that happen at the building
9 permit stage as well?

10 MS. STEINGASSER: The applicant and the
11 operation and uses that occupy that building would be
12 subject to all applicable District law.

13 MR. OTTEN: And so to the Office of
14 Planning's understanding, there's no housing being
15 provided within this PUD project, correct?

16 MS. RAPPOLT: Correct.

17 MR. OTTEN: No affordable housing, no market
18 rate housing.

19 MS. RAPPOLT: Yes.

20 MR. OTTEN: And hearing perhaps for the first
21 time tonight, that the artists are seeking your help
22 as they face displacement, with the Office of
23 Planning work to directly -- work directly with these
24 artists to coordinate mitigation conditions that can
25 be included in the order?

1 MS. STEINGASSER: The applicant will propose
2 the conditions and mitigations, benefits and
3 amenities of their PUD. We would refer artists and
4 small businesses to the agencies which are identified
5 as the Commission on Arts and Humanities, which is
6 identified in the Comprehensive Plan as being the
7 primary public funding agency for arts and
8 humanities, as well as the Department of Small and
9 Local Business Development which also has several
10 programs for very small local businesses.

11 MR. OTTEN: Will that assistance be noted and
12 included in the -- or will that be asked by the
13 Office of Planning to be included in the order by the
14 Commission?

15 MS. STEINGASSER: A reference to these
16 agencies?

17 MR. OTTEN: No. That the assistance that
18 you're suggesting these agencies will provide or
19 could provide, be included in the order. That's
20 potentially passed by this --

21 MS. STEINGASSER: It's not a condition of
22 approval if that's what you're asking.

23 MR. OTTEN: So that's a no. Okay. That's
24 all I have for the Office of Planning.

25 CHAIRPERSON HOOD: Okay. Want to thank you.

1 We're going to take about a three-minute break, Mr.
2 Otten. And when you come back you'll have your party
3 up and you're ready to present.

4 MR. OTTEN: Oh, we're not -- we haven't asked
5 DDOT any questions.

6 CHAIRPERSON HOOD: Oh, well how many
7 questions do you have of DDOT?

8 MR. OTTEN: I don't know. Twenty minutes.

9 CHAIRPERSON HOOD: Okay. With the -- I need
10 to talk to my colleagues because it looks like --
11 I've been checking the schedule. It looks like,
12 colleagues, we're going to have to talk about this
13 because we may have to come back during the daytime,
14 okay, because of our schedule, and we need to finish
15 this before -- or at least deal with this before our
16 July -- our last July hearing. So we may have to
17 look at a daytime hearing, so we'll take a three-
18 minute break.

19 [Off the record from 8:45 p.m. to 8:54 p.m.]

20 CHAIRPERSON HOOD: Okay. Let's go back in
21 session.

22 We were trying to figure out some days.
23 We're going to try to press through as much as we can
24 depending upon how many questions are asked. We're
25 going to try to look at some dates. One of the

1 proposed dates we had was, I believe, Ms. Schellin,
2 the 28th at 10:00 a.m. That was one of the proposed
3 dates that we had, was next Thursday at 10:00 a.m.
4 Then that would give us the whole day to finish this
5 case.

6 The other thing that -- are there any issues
7 with 10:00 a.m. on next Thursday? Or I have another
8 alternative before -- I'll tell you what, we also
9 have a meeting on Monday and we could start Monday at
10 7:00 p.m. Depending upon how far we get tonight. If
11 not, we will keep 10:00 a.m. on the back burner. But
12 if we could start this meeting on Monday at 7:00
13 p.m., we have a very brief meeting which shouldn't
14 take us long. Okay?

15 MS. MOLDENHAUER: Monday at 7:00 p.m. would
16 be preferable for us.

17 CHAIRPERSON HOOD: Okay. Depends on how
18 things go.

19 MS. MOLDENHAUER: Due to one of our
20 witnesses.

21 CHAIRPERSON HOOD: Okay. But it depends on
22 how things go. We may have to go to 10:00 so I'm
23 going to see how we move the rest of the evening and
24 we'll go from there. Okay. Anything else?

25 All right, Mr. Otten, you said DDOT. You

1 said you had 20 minutes or so of DDOT questioning.

2 MR. OTTEN: Yes.

3 CHAIRPERSON HOOD: You may begin.

4 MR. OTTEN: Okay. For the record, this is
5 Chris Otten with the 411 Artist Union.

6 Mr. Rogers, are you with the Department of
7 Transportation?

8 MR. ROGERS: Yes.

9 MR. OTTEN: Did you -- how many reports from
10 DDOT are on the record right now?

11 MR. ROGERS: I believe there are two reports,
12 but one substantive report.

13 MR. OTTEN: The substantive report being
14 January 29th, 2016, Exhibit 62?

15 MR. ROGERS: Correct.

16 MR. OTTEN: And in this substantive report
17 you have on page 8, a cuing analysis, correct?

18 MR. ROGERS: There is reference to the cuing
19 analysis that the applicant performed.

20 MR. OTTEN: And there is a matrix there with
21 said cuing analysis?

22 MR. ROGERS: There is a table that has the
23 capacity analysis that the applicant completed.

24 MR. OTTEN: And that's Figure 3, Summary of
25 Capacity Analysis?

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1 MR. ROGERS: Correct.

2 MR. OTTEN: And when you say that the
3 applicant completed, they conducted this analysis?

4 MR. ROGERS: Correct.

5 MR. OTTEN: And DDOT approved that analysis
6 in this report?

7 MR. ROGERS: We reviewed the analysis that
8 the applicant completed. It was completed to a scope
9 -- according to a scoping process that we coordinated
10 with the applicant on.

11 MR. OTTEN: And isn't it the case there's at
12 least one intersection right now that's failing?

13 MR. ROGERS: Correct.

14 MR. OTTEN: And then another intersection is
15 close to failing. Sixth Street, Brentwood Parkway at
16 Penn Street Northeast. In the P.M. peak hour.

17 MR. ROGERS: That is listed as a level
18 service E, so I should note that failing is a
19 subjective term and it is a measure of level of
20 service, which is an automobile centric view of
21 capacity analysis.

22 MR. OTTEN: And that says E, for the P.M.
23 peak at Brentwood and Penn?

24 MR. ROGERS: It does.

25 MR. OTTEN: And in terms of F, that's the

1 A.M. peak at New York and 4th?

2 MR. ROGERS: Correct.

3 MR. OTTEN: Does this analysis, to your
4 understanding, include any cumulative review of all
5 of the other PUDs as the Office of Planning has noted
6 earlier in the area?

7 MR. ROGERS: Yes, it does. Through the
8 scoping form we developed a list of background
9 developments that should be considered in the
10 capacity analysis.

11 MR. OTTEN: And did that background
12 development include all of the PUDs that are in the
13 Office of Planning report?

14 MR. ROGERS: I have not checked all the PUDs
15 that are in the Office of Planning report. It is
16 every background development that the District
17 Department of Transportation is aware of as being
18 completed prior to the delivery year of the subject
19 project.

20 MR. OTTEN: How does your support of a large
21 hotel at the corner, essentially just north of New
22 York and 4th Street, line up with the fact that we're
23 already failing at that intersection?

24 MR. ROGERS: As I was saying, the failure
25 measure is a representation of the level of service,

1 which is an auto centric measure of vehicle capacity
2 and vehicle operations. The District has strong
3 multi-modal transportation goals and there are other
4 measures and evaluation criteria that we use for the
5 full transportation impact of a project.

6 MR. OTTEN: And to DDOT's perspective, are
7 hotels largely auto centric uses and projects?

8 MR. ROGERS: It depends.

9 MR. OTTEN: What does it depend on?

10 MR. ROGERS: It depends on context and it
11 depends on availability of other options. Depends on
12 the clientele, desired target market, and any number
13 of other factors.

14 MR. OTTEN: And this is an urban hotel,
15 correct? Not like a suites hotel. It's not like
16 where somebody would come in and stay for a week in a
17 suite?

18 MR. ROGERS: I can't speak to how long
19 someone would stay in this hotel. It's not an
20 extended stay hotel if that's what you're asking.
21 It's not branded as such.

22 MR. OTTEN: And isn't there international
23 traffic engineers kind of metrics on types of hotels
24 that determine expected, you know, traffic capacity?

25 MR. ROGERS: The Institute for Transportation

1 Engineers have trip generation estimates for hotels
2 that's based on suburban data collection, largely in
3 Florida, in the 1980s and is not all that applicable
4 to the District's context. So that is one piece of
5 information that we consider when developing trip
6 generation estimates. But it is not the complete
7 picture.

8 MR. OTTEN: What other hotels did DDOT
9 compare this project with from more locally in the
10 city?

11 MR. ROGERS: There are a number of hotel
12 projects that are underway and we considered those in
13 our evaluation of the trip generation.

14 MR. OTTEN: How many hotels are you aware of
15 in the area that are underway?

16 MR. ROGERS: There is a hotel under
17 construction immediately to the east.

18 MR. OTTEN: Are you aware of any other hotels
19 in the vicinity?

20 MR. ROGERS: I am not aware of any.

21 MR. OTTEN: DDOT states that there will be
22 178 guest rooms, or affirms the applicant's number on
23 that on the first page, correct?

24 MR. ROGERS: That is from the applicant's
25 application.

1 MR. OTTEN: And there's 47 off-street parking
2 spaces to be provided --

3 MR. ROGERS: Correct.

4 MR. OTTEN: -- in this project? How do you
5 expect the 130 some-odd guests, and maybe their
6 guests, to be accessing this hotel?

7 MR. ROGERS: Through a variety of means,
8 including automobile, but also transit, walking,
9 taxi, Uber, bicycling, walking, Metro.

10 MR. OTTEN: When you think of hotel guests
11 where do you expect them to be walking from in
12 relation to this PUD site?

13 MR. ROGERS: We would expect a portion of the
14 trips to be coming from the NoMa Metro Station and
15 other points from the south.

16 MR. OTTEN: Did you get a percentage of how
17 many of those trips you expect hotel guests to be
18 walking from the Metro to the hotel site?

19 MR. ROGERS: No.

20 MR. OTTEN: Did you determine how many of
21 those guests would be taking an Uber or cab from the
22 Metro to the hotel site?

23 MR. ROGERS: It was assumed as part of the
24 automobile mode split.

25 MR. OTTEN: And that was under the ITE Use

1 Code, or is that something else?

2 MR. ROGERS: It was partially informed by
3 that.

4 MR. OTTEN: Does DDOT have an average daily
5 count for currently or recently, for New York Avenue
6 adjacent to the PUD site?

7 MR. ROGERS: There are daily -- there are
8 volumes that are available for that street and I'm
9 not aware of what they are off the top of my head.

10 MR. OTTEN: I don't see that in the report
11 either. Is there a reason?

12 MR. ROGERS: No.

13 MR. OTTEN: So the current volume along New
14 York Avenue, just adjacent to the PUD site, is not in
15 this report?

16 MR. ROGERS: It's not specifically called out
17 in the report, but the volumes are underlying the
18 analysis that the applicant did. They're required to
19 provide counts, recent counts, as the baseline for
20 their analysis and they build on top of that
21 analysis. Future expected background growth, and
22 then they add on the hotel on top of it. So
23 everything comes back to existing data collection and
24 existing counts.

25 MR. OTTEN: Are you aware of a DDOT average

1 daily count map that states 51,500 cars or vehicles
2 traverse in front of the PUD site on New York Avenue?

3 MR. ROGERS: I'm aware of the map. I don't
4 know off the top of my head what the volumes are.

5 MR. OTTEN: Did the Department of
6 Transportation take into consideration any land use
7 impacts of this hotel with regards to the traffic it
8 will generate?

9 MR. ROGERS: Yes.

10 MR. OTTEN: Can you describe those for us?

11 MR. ROGERS: We had just spoken about it.
12 It's the table on page 8 of the DDOT report which
13 reflects the capacity analysis that the applicant
14 did. And that just reflects vehicle capacity, but we
15 do provide a multi-modal review of the project.

16 MR. OTTEN: This is the same matrix you're
17 saying that has the street just adjacent to the PUD
18 site at a failing LOS?

19 MR. ROGERS: That's correct.

20 MR. OTTEN: Did the --

21 MR. ROGERS: The background conditions with
22 nominal additions --

23 MR. OTTEN: Right.

24 MR. ROGERS: -- because of the project.

25 MR. OTTEN: Did DDOT consider any

1 environmental impacts such as the carbon dioxide that
2 would be generated by the traffic in this --
3 generated by this PUD project?

4 MR. ROGERS: DDOT's review is limited to the
5 transportation impacts of the project.

6 MR. OTTEN: And isn't air pollution part of
7 the transportation impact?

8 MR. ROGERS: No, it's not.

9 MR. OTTEN: It is not?

10 MR. ROGERS: No.

11 MR. OTTEN: Did DDOT discuss these traffic
12 numbers with the Department of Environment to
13 understand those sort of impacts?

14 MR. ROGERS: No.

15 MR. OTTEN: I can't remember if you answered
16 this. Is the hotel project as proposed an auto
17 oriented use?

18 MR. ROGERS: The site will be served by many
19 modes given the provision of parking which is
20 relatively low compared to the use. I would not
21 consider this to be a predominantly auto centric
22 development, which is consistent with District goals,
23 policies, and desires for how people travel around.

24 MR. OTTEN: DDOT does affirm, though, that
25 there will be a curb cut along New York Avenue into

1 the front driveway of the hotel site?

2 MR. ROGERS: Correct.

3 MR. OTTEN: Did DDOT, and I guess supporting
4 that -- you all support that curb cut from New York
5 Avenue into the PUD site?

6 MR. ROGERS: That is correct. We worked with
7 the applicant on various circulation schemes and that
8 was determined to be an acceptable design solution.
9 Permits have not been issued for that curb cut, but
10 it is something that does not have the objection of
11 the District Department of Transportation.

12 MR. OTTEN: Give the curb cut has the
13 Department of Transportation analyzed in any way, the
14 pedestrian safety, vis-à-vis that curb cut right
15 along New York Avenue?

16 MR. ROGERS: Yes, we have.

17 MR. OTTEN: What did you conclude?

18 MR. ROGERS: Through operational
19 restrictions, making that a right in only curb cut
20 and limiting the number of curb cuts to one, that is
21 a positive thing from a pedestrian standpoint because
22 it makes for predictable movements and limits the
23 number of potential conflict points between
24 pedestrians and other modes.

25 MR. OTTEN: But there's no curb cut there

1 right now, correct?

2 MR. ROGERS: I actually don't recall.

3 MR. OTTEN: The current site. The existing
4 site right now, is there any curb cut off New York
5 Avenue, north of 4th Street?

6 MR. ROGERS: I don't recall.

7 MR. OTTEN: Okay. Surprising. Has the
8 Department of Transportation analyzed the pedestrian
9 safety of this project against the family of plans
10 that include the pedestrian masterplan?

11 MR. ROGERS: We view pedestrian safety
12 through a number of lenses and different elements,
13 best practice, and our design and engineering manual
14 would concur with the site design that has been
15 proposed and is part of the current application.

16 MR. OTTEN: I don't see anywhere in the
17 mitigation section of your report dated January 29th,
18 2016, any mitigations with regards to bus visits to
19 this hotel. Tour buses, various large buses. Is
20 that in this report anywhere?

21 MR. ROGERS: I believe there is discussion
22 about shuttle buses for the site that would serve
23 patrons. And there's also, I believe, a discussion
24 of where tour buses might do their pick up and drop
25 off.

1 MR. OTTEN: Can you point that to me?

2 MR. ROGERS: DDOT's concern would to not have
3 that activity be on New York Avenue, which is a major
4 arterial.

5 MR. OTTEN: Where does it discuss, less so
6 the shuttle buses, more the larger tour buses and
7 where they'll be -- where they might be embarking,
8 disembarking, idling?

9 MR. ROGERS: I'd have to look for the exact
10 location. It was a discussion that we have had with
11 the applicant.

12 MR. OTTEN: Does that figure into any of the
13 TDM requirements?

14 MR. ROGERS: Coach bus service?

15 MR. OTTEN: Yes.

16 MR. ROGERS: No.

17 MR. OTTEN: What is the applicant putting up
18 in terms of investment in the public services, public
19 transportation services in this PUD application?

20 MR. ROGERS: Can you be a little more
21 specific with that, please?

22 MR. OTTEN: How is the applicant, or what is
23 the applicant proffering to offset the additional use
24 that their project will bring upon the surrounding
25 public transportation services?

1 MR. ROGERS: The applicant has proposed a
2 shuttle service which would not be public, but would
3 be a private service to serve the site.

4 MR. OTTEN: do you know, does this report
5 anywhere figure how many shuttle busses there will be
6 and how many people that actually might serve?

7 MR. ROGERS: No, it does not.

8 MR. OTTEN: Did the Office of Planning
9 coordinate with DDOT in any of the emergency services
10 of -- emergency community services of the District of
11 Columbia with regards to this PUD project. So by
12 that I mean, fire department, police department, and
13 impacts on the emergency transport systems around the
14 PUD site?

15 MR. ROGERS: No, but the site is on a major
16 arterial, has direct access from New York Avenue.

17 MR. OTTEN: How does a project that furthers
18 a failing intersection help or hurt the community
19 services provided by the fire department or the
20 police department? Has that analysis been done?

21 MR. ROGERS: No, it doesn't -- not, it
22 hasn't, but the applicant did provide a comparison of
23 what the trip generation might be under an office
24 scenario, which is a higher use. So the hotel is
25 actually a lower overall use. On top of that the

1 applicant is providing a rather substantial
2 transportation demand management program that will --
3 is designed to mitigate the impacts of any capacity
4 increase for vehicles.

5 MR. OTTEN: What does DDOT expect in this PUD
6 project in terms of monitoring commercial impacts
7 once operational?

8 MR. ROGERS: DDOT did not find it to be
9 necessary to have a performance monitoring plan for
10 this project. That's something that is typically
11 reserved for larger projects that have substantial
12 amounts of parking, substantial amounts of vehicle
13 use, and that characterization does not meet this
14 PUD.

15 MR. OTTEN: Had DDOT -- is DDOT, is it
16 unusual for DDOT to be reviewing a PUD application
17 that includes a use, a hotel, to be built directly
18 adjacent to another hotel?

19 MR. ROGERS: I can't speak to that.

20 MR. OTTEN: I cannot find in this report,
21 maybe you can point it to me, is there any baseline
22 analysis of the bus transit service that currently
23 exists around the PUD site? Or is it at capacity?

24 MR. ROGERS: That has not been -- that was
25 not included or specifically called out in the

1 report.

2 MR. OTTEN: Isn't that important to
3 understand the capacity of this surrounding public
4 transport infrastructure so that mitigation
5 conditions can be incorporated into this planning?

6 MR. ROGERS: The applicant is providing
7 shuttles for their tenants and guests. And that,
8 DDOT considers to be a mitigation for any potential
9 bus service impacts.

10 MR. OTTEN: Earlier you said that you expect
11 some of the hotel guests to be taking Metro and
12 buses.

13 MR. ROGERS: Uh-huh.

14 MR. OTTEN: If the -- that's right. So if
15 the bus routes are already at capacity how is DDOT
16 addressing that?

17 MR. ROGERS: It is not directly addressed in
18 our report. There are efforts underway to expand bus
19 service. The closest bus stop is .4 miles away from
20 the site. And as the Union Market area grows out
21 it's not unreasonable to think that there may be
22 additional transit service to serve this area.

23 In the meantime the shuttle service would
24 provide that service.

25 MR. OTTEN: But you're unaware of how many

1 shuttles is actually going to be provided?

2 MR. ROGERS: I cannot recall off the top of
3 my head. I believe it was in the applicant's
4 submission and perhaps they can speak to it.

5 MR. OTTEN: Okay.

6 MR. ROGERS: Oh, here it is. On page 11 of
7 the report. Expecting to operate shuttles of
8 approximately 20 to 25 seats on 15 to 30 minute
9 headways and could potentially be demand responsive.

10 MR. OTTEN: How many -- but it doesn't
11 mention how many shuttles.

12 MR. ROGERS: Well, if it's running at 15
13 minute headways it would be two to four routes an
14 hour.

15 MR. OTTEN: And where is that shuttle going?

16 MR. ROGERS: It has not been determined but
17 the applicant would need to coordinate with DDOT on
18 drop-off locations.

19 MR. OTTEN: By coordinate, would that --

20 MR. ROGERS: They're using the curbside
21 space, then they need to have a permit from DDOT,
22 which we do.

23 MR. OTTEN: Is there space at the Metro
24 station to accommodate shuttle buses to pick up and
25 drop off folks?

1 MR. ROGERS: That's what would be part of the
2 review and permit process. I don't know the
3 specifics of the curbside uses around the Metro
4 Station, but there are significant shuttle services
5 in the District and they're accommodated and this one
6 -- this shuttle would follow that same process and
7 review process and permitting process.

8 MR. OTTEN: The permitting process is a
9 different process than the PUD review process.

10 MR. ROGERS: Correct.

11 MR. OTTEN: In theory, at the -- to this
12 point, the applicant is proffering shuttles as a
13 benefit to mitigate traffic issues with this project,
14 right?

15 MR. ROGERS: They're offering it as a service
16 for their guests.

17 MR. OTTEN: And if there's nowhere to park,
18 if we don't understand where that shuttle could be
19 going and parking to assist, how can it be -- how can
20 you weigh the benefits of that?

21 MR. ROGERS: I would not confuse the fact
22 that a drop-off location hasn't been determined with
23 the fact that there isn't a drop-off location that's
24 possible.

25 MR. OTTEN: Well, you said that hotel guests

1 would be coming from the Metro to go to the hotel as
2 one mode in this multi-modal expression, right?

3 MR. ROGERS: That's the likely scenario, yes.

4 MR. OTTEN: And so either the guests are
5 going to get on public transport or take the shuttle.
6 But if there's no space at the Metro for the shuttle
7 to pick up, doesn't that affect that benefit?

8 MR. ROGERS: I don't believe I said that
9 there was no space at the Metro for them to pick up.

10 MR. OTTEN: But in this report there's no
11 analysis of that. It's to be determined later on?

12 MR. ROGERS: Yes, as is typical for many
13 elements that affect public space. It's a separate
14 process and there are processes established to handle
15 those requests, and it's not a determination that
16 needs to be made at this point. Curbside uses will
17 be very different, potentially, in two or three years
18 when this project delivers. So it's appropriate to
19 address issues, like curbside management and drop-off
20 locations closer to when the project will open.

21 MR. OTTEN: Okay. Thank you.

22 CHAIRPERSON HOOD: All right. Thank you, Mr.
23 Otten, for your questions. I think next we will go
24 to your report. Ms. Schellin, is the clock set?

25 MS. SCHELLIN: Yes.

1 CHAIRPERSON HOOD: Okay. You have 32 minutes
2 and 30 seconds.

3 MR. OTTEN: I'm sorry, what?

4 CHAIRPERSON HOOD: You have 32 minutes and 30
5 seconds once you get everybody up here. Are you the
6 only one?

7 MR. OTTEN: No, we have a panel of guests.
8 And I think we have to set up on the laptop,
9 according to -- did you bring information to share
10 via the projection unit or the screens?

11 MR. BOYLE: Oh, yeah. I have a presentation.

12 CHAIRPERSON HOOD: Okay. Well, you all can
13 go ahead and let's set it up.

14 MR. OTTEN: Okay.

15 CHAIRPERSON HOOD: Let's kind of pick it up.

16 [Pause.]

17 CHAIRPERSON HOOD: It's getting kind of late.
18 Sometimes when it gets late I feel like I'm in the
19 Twilight Zone.

20 [Pause.]

21 CHAIRPERSON HOOD: I know you'd like to stay
22 at the table and object, but could you move back and
23 let them have the table? Let them have the -- okay,
24 well, move on the end and let them have -- oh, I
25 thought you -- okay, he was with us. Does everybody

1 have a seat? Okay. We're good. You're good.
2 You're good. You're good. I thought he was trying
3 to sit down.

4 [Pause.]

5 MS. SCHELLIN: Mr. Otten, are you ready?
6 Okay.

7 MR. OTTEN: Okay. Thank you, Secretary
8 Schellin. Again, for the record, Chris Otten with
9 411 Artist Union.

10 Tonight, Commissioners, I wanted to ensure
11 that you got a good flavor of the people that the
12 Office of Planning apparently never met in the
13 building and get a sense of what's happening there
14 and how important it is that the City start to help
15 in coordinate a comprehensive assistance with this
16 long-time cultural artist hub, small business
17 incubator in operation and flowing since 1981,
18 creatively.

19 This is the creative economy in the District
20 of Columbia that all of the DMPED planning documents,
21 all of the Office of Planning documents, including
22 the Comprehensive Plan and the family of plans
23 referred to in terms of assisting, especially now
24 acutely because of a PUD application. If not but for
25 this PUD application they may not be under such

1 duress.

2 So I think what I'll do is first introduce
3 everybody up here. Maybe if you all can just say
4 your names from left to right and then we'll go into
5 it?

6 MS. KLAGSBURN: Micheline Klagsburn.

7 MR. STEWART: Luke Steward.

8 MS. VENN-FREDERIC: And Desiree Venn-
9 Frederic.

10 MR. BOYLE: Graham Boyle.

11 MR. OTTEN: And why don't we I guess
12 individually you all are just going to present kind
13 of what you're doing in the building, and what -- how
14 you're providing part of the vibrancy of the District
15 of Columbia from your perspective. And then we can
16 go into tease out a little bit more of the recent
17 issues with the applicant and how we're working to
18 mitigate your displacement. Okay? Micheline.

19 MS. KLAGSBURN: Okay. Good evening. I've
20 been a tenant of 411 New York Avenue for three and a
21 half years. I've lived in D.C. over 40 years. I've
22 been a full-time working visual artist for 25 years,
23 of which 22 have been in Ward 6 and these past three
24 and a half in Ward 5.

25 Throughout my time in D.C. I've engaged in

1 and supported community art projects and opened my
2 studio to neighborhood artists. At 411 my studio
3 partner, Ray Leath (phonetic) and myself, have about
4 3,000 square feet, and we, among the activities
5 there, we host is a weekly group which has met every
6 Tuesday night for 31 years and that consists of about
7 30 local and international artists.

8 I am just one of a number of similarly
9 dedicated long-working artists in this building who
10 are deeply involved in the artistic community.

11 MR. OTTEN: Okay. Now let's go to Luke.

12 MS. KLAGSBURN: Do you want me to go on with
13 my presentation?

14 MR. OTTEN: No, no.

15 MS. KLAGSBURN: Okay.

16 MR. OTTEN: Let's hold off and, Luke, you
17 want to go and introduce yourself?

18 MR. STEWART: My name is Luke Stewart. I am
19 a musician, presenter, producer, sound person. Been
20 operating out of 411 New York Avenue for the past
21 three and a half years also. Since that time I have
22 been able to record at least five different albums.
23 I've also had the opportunity and the honor to
24 showcase a lot of different D.C. based musicians,
25 giving them a platform, or providing a platform for

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1 them to perform as well as bringing in a whole host
2 of very important and world renowned musicians from
3 overseas, from New York City, from Los Angeles, from
4 Chicago. There have been a lot of various unique and
5 important happenings that have happened at the
6 building that wouldn't have happened anywhere else in
7 Washington, D.C. without the opportunity and the
8 insight that the people here have in that building.

9 So, through my part and Union Arts, we have
10 really added to the exposure of the populous of a
11 whole host of various important and historically
12 connected musicians, artists, and composers.

13 MS. VENN-FREDERIC: Oh, fantastic. Good
14 evening. My name is Desiree Venn-Frederic, a Ward 5
15 resident and business owner. And I'm speaking to you
16 today in my capacity as founder and curator of Nomad
17 Yard Collective. And one of the founding members of
18 the Artists Union.

19 Nomad Yard Collective is a small business
20 incubator and we support burgeoning vintage and
21 antique dealers as well as local artists and goods.
22 This includes the Made in D.C. Bill and many of the
23 members of that bill that's recently passed this
24 week.

25 We view vintage as a means to connect the

1 community to art, and we use -- and takes it, rather,
2 as a means to teach history. We incubate 38 small
3 businesses currently in support with distribution and
4 strategic business development. Within our first
5 year of being in 411 New York Artists, approaching
6 our second year in August, we have forged
7 partnerships with multi-national retailer, Urban
8 Outfitters, the Smithsonian Asian/American Pacific
9 Center, who we have an upcoming exhibit with on May
10 28th and 29th, the James Porta Collocium (Phonetic),
11 Busboys and Poets, to name a few.

12 And recently within the past two months we
13 partnered with Andy Shallal, who is the current Chair
14 of the Washington D.C.'s Work First Investment
15 Council and founder of Busboys and Poets, to increase
16 our capacity under a retailed city.

17 Our greatest success to date has been in
18 supporting and launching one brick and mortar store
19 in our first year in 2015, and we are on schedule to
20 launch two additional brick and mortar retailers in
21 fiscal year 2016. We are named the best vintage
22 store in D.C. two years consecutively, and we support
23 thousands of patrons daily -- weekly, rather, with
24 both our meeting their retail needs in addition to
25 our programming that supports with creative place

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1 making.

2 MR. BOYLE: Like I say, my name is Grant
3 Boyle. I'm a Ward 1 resident and been part of Union
4 Arts since I moved in to my studio, 2B Studios in
5 2012. I am an artist, curator, and community
6 organizer. We work under this collective -- we call
7 it an arts incubator as well. We have four small
8 businesses that are run out of 2B.

9 With these businesses are Patches and Flags
10 Printmaking Collective, Revolution Media, Art Under
11 Pressures Print Operations, and Walking Canvas Arts.
12 Collectively and individually we work on the most
13 pressing local, national, and sometimes global issues
14 affecting our society and environment. We work
15 contracts for some of the largest social change
16 organizations in the world, including AVAS
17 International, Greenpeace International, and 350.org
18 and we provide services for some of the smallest
19 local grassroots organizations who work with little
20 to no budget in D.C., such as the Berry Farm Tenants
21 and Allies Association, Family and Friends of
22 Incarcerated People, Culture Strike, and the Real Ivy
23 City, as well as the Prison Ecology Project in
24 Waymore.

25 MR. OTTEN: Right on. Okay. Well, why don't

1 we spend maybe three minutes each, just kind of for
2 your own personal testimony. Three to five minutes.
3 And then I'll go into some questions. Okay?

4 MS. KLAGSBURN: Okay. Since the last hearing
5 ended with the development team asking for response
6 to their revised proposal I thought I would address
7 that first.

8 The concept of an art hotel is a very
9 appealing one, but it's clear that this plan will
10 result in the eviction and total displacement of all
11 the visual artists in the building. And I thought I
12 should just mention that the space, the 3,000 square
13 feet that Ray Leath and I occupy, is in fact the
14 space that used to be the night club four years ago.
15 So I think that speaks to how out of date the
16 information -- at least that the Office of Planning
17 is going by.

18 And the quotes that I have are from the
19 proposal as submitted to the Zoning Commission
20 February 19th. One, the hotel will provide 11 artist
21 studios. This is an increase of three studios over
22 what was previously proposed. This will provide
23 opportunities, quote, "For another six to nine
24 artists to lease subsidized well-equipped studio space
25 at the hotel."

1 So now there are 11 studio spaces, but the
2 average size of these studio spaces has not been
3 revised, and it continues to be around 300 square
4 feet. These are in effect, cubicles. They are
5 neither useful as real working space nor affordable.
6 As a comparison I looked up the requirements for
7 parking spaces. The average requirement for a
8 parking space is in fact 300 square feet.

9 The claim that these three new spaces would
10 accommodate six to nine artists is based on the idea
11 that you could squeeze two to three artists into each
12 space by having them work in shifts. I think if you
13 stop to imagine that for a minute you can see how
14 absurd this proposal actually is.

15 The quote, "subsidized rent," for these
16 spaces, we were told, was going to be \$20 a square
17 foot, which is twice what we currently pay. This is
18 the going rate for office space, but artists cannot
19 afford and do not need office space. We need raw
20 industrial space which is exactly what we have and
21 what we do pay the going rate for at 411 right now.

22 Secondly, they added music space, 800 square
23 feet. This music space would replace four parking
24 spaces in the Northeast section of the first garage
25 level. Well, I'm not a musician so maybe Luke can

1 speak to the space requirements of musicians, but the
2 idea that you could squeeze all the musicians
3 currently at 411 into four parking spaces where they
4 would hold concerts, I think again, is pretty hard to
5 imagine.

6 Thirdly, they included a third floor option.
7 This was a response to the tentative proposal by
8 Union Arts Group that would aim to replicate our
9 current arts eco system in a financially sustainable
10 way by taking a larger share of the hotel building.

11 And in this case the development team now
12 proposed renting one floor of the building to Union
13 Arts at a rate of \$1,050,000 annually, which I
14 believe works out to about \$95 per square feet. A
15 rate, I don't know, possibly obtainable somewhere
16 else. Maybe in Dubai or somewhere. But not in our
17 neighborhood.

18 Fourthly, the total artist space, they report
19 in the hotel, would be approximately 19,000 square
20 feet in which almost 800 artists could work and
21 collaborate.

22 These estimates seem to inflate dramatically
23 with each proposal and this one says almost 800
24 artists on the radio last week. It jumped to 850
25 artists without any basis for those kinds of figures.

1 The claim of 19,000 square feet really rests
2 on a very misleading conflation of actual working
3 space for artists with the rest of the hotel space.
4 In fact the total amount of actual working space now
5 proposed for visual artists is around 3,600 square
6 feet, which is close to actually what Ray and I have
7 right now.

8 If you add in the 800 square feet for the
9 musicians you get a total of 4,400 square feet, which
10 is a completely inadequate replacement for the 25,000
11 square feet currently in full-time use by artists in
12 the building.

13 All hotels, even the Motel 6, which is our
14 other neighbor, hang art of some kind on their walls.
15 And this doesn't mean that you can define the
16 hallways, bathrooms, and public spaces as quote, "art
17 space." And I think that's what's going on. That's
18 how they seem to be able to arrive at 19,000 square
19 feet.

20 The fifth element of the plan was relocation
21 options. They provided two lists. Exhibit B and
22 page 4. So some of us checked out those two lists
23 right away and they were really inaccurate as to
24 addresses, availability, and rent information. None
25 of the listing was currently useful.

1 So I don't want to take too much longer but I
2 just want to say, it's pretty clear from the above
3 that this proposal really didn't inspire much
4 confidence in the artists that the development team
5 was really planning to arrive at some kind -- to work
6 with them and arrive at some kind of productive
7 solution. I'll stop there.

8 MR. OTTEN: Thank you. Okay, Luke, do you
9 want to go into a little bit on the kind of your
10 needs as a musician briefly?

11 MR. STEWART: Yeah.

12 MR. OTTEN: Or in general, you know, broadly
13 as musicians.

14 MR. STEWART: Well, I can speak to myself as
15 a musician and a lot of the musicians that are in my
16 sort of purview and my approach. And that is the
17 fact that a stand-alone studio does not work for
18 myself as a musician and for a lot of the musicians
19 that are in my community due to the sheer fact that
20 we have a lot of stuff. We have a lot of gear that
21 is part of our instrument. It's not just the guitars
22 or the saxophones or the bases, or the drums, it's
23 also the amps, it's also the PA, it's also -- it's a
24 lot of things that contribute to the sound of what
25 we're trying to achieve. And that is not something

1 that is achievable in a standalone music studio.

2 These people, myself included, need a space
3 that is individualized, a space that is our own, that
4 is not to be shared with anyone else except for you
5 know, other people that have that similar approach.

6 So this new music studio that has been
7 allocated is inadequate for my needs as a musician
8 and for, frankly for any other bands, anybody who is
9 in a band that has their own amps, that has their own
10 drum set, their own guitars, and their own, you know,
11 PA system and other types of gear. That sort of
12 situation is not going to work for them.

13 MR. OTTEN: Okay. That's clear, Luke. For
14 the edifice of the Office of Planning and the
15 Commission, Luke, can you kind of go into the circles
16 of powerful people you run with in the jazz community
17 and promoting jazz in the District of Columbia,
18 Capitol Bop, you know, your connections with PFW.
19 How is this space right now as a ready-made place,
20 helped serve you in the historical context of jazz in
21 the District of Columbia?

22 MR. STEWART: Well, like I mentioned in my
23 introduction, the work that myself and others have
24 been able to do in Union Arts is something that this
25 wouldn't have happened anywhere else in the District

1 due to, again, the opportunity that's available at
2 Union Arts to where we can make this sort of thing
3 happen. And also more importantly the insight that's
4 required. Myself and others are plugged into a world
5 of historic importance that speaks to a lot of
6 various issues that are relatable to the history of
7 jazz in Washington, D.C.

8 So through Capitol Bop we've hosted, for the
9 past three years, at least one major event during the
10 D.C. Jazz Festival at Union Arts. I've also helped
11 to coordinate and host at least three experimental
12 music festivals. There have been a whole host of
13 other various important and varying in popularity
14 musicians and artists at 411 New York Avenue at Union
15 Arts.

16 And again, this is an approach that's rooted
17 in historical and artistic aesthetic importance.
18 It's noncommercial music. And this is what Union
19 Arts has been able to present and expose the D.C.
20 populous to, another form of music making, another
21 form of music listening, and a completely different
22 kind of experience that is at once unfamiliar and new
23 to some people, but is again deeply connected to
24 historical legacies, to traditions, and to radical
25 aesthetics.

1 MR. OTTEN: Desiree, do you want to go into
2 your presentation?

3 MR. BOYLE: I'm going to go next.

4 MR. OTTEN: Oh, okay. Graham. Graham Boyle.

5 MR. BOYLE: So, as I mentioned the
6 collectives that I'm involved with at 2B Studios, we
7 do a lot of pro bono work for grassroots community
8 organizations that otherwise wouldn't be able to
9 afford art services for their campaigns. Some of the
10 most at-risk and vulnerable communities that are
11 being threatened by displacement and this rampant
12 gentrification going on in our city.

13 But I just want to make clear to the
14 commissioners and the representatives from the
15 different agencies in this city, is that we don't
16 just make art. We don't just decorate things. We
17 make history regularly. We win progress when our
18 work contributes to legislative victories. We make
19 change in this city.

20 Now the banners, flags, posters for street
21 campaigns that we produce are primarily for the
22 diverse movements which we are engaged in. When our
23 artworks are carried to the front of our protest by
24 affected community members fighting for justice, the
25 image that creates becomes a visual narrative of

1 resistance that is published in newspapers,
2 television, and other media outlets. This is how
3 history happens, inch by inch, march by march, and
4 zoning hearing by zoning hearing.

5 We achieve this by focusing our energies on
6 fighting capitalism, privatization, and all the other
7 intersections of the very depressive forces that
8 destroy our communities, poison our planet, and
9 incarcerate our people under this prevailing system.
10 The system that replaces greed and profit motives
11 over the universal needs of the people. And that,
12 many bureaucrats are complicit in.

13 We, the cultural workers of the Artist's
14 Union in D.C. reject and oppose the PUD application
15 for the proposed boutique hotel project on the ground
16 that it is another slap in the face to the District's
17 creative community. This project does little to
18 support the District's creative economy strategy.

19 A research study published by the Deputy
20 Mayor's Office for Planning and Economic Development,
21 which states in its three proposed visions, two of
22 which are foster a resilient entrepreneurial local
23 arts community with actional suggestions that DMPED
24 seems to ignore in the case of our building. Such is
25 a suggestion that D.C. should prioritize mobilizing

1 district resources to support arts and heritage
2 organizations. And it states further that they can
3 do such by building connections across creative
4 organizations and businesses, such as the unique
5 diverse eco system of creatives that can be found at
6 Union Arts.

7 We have an electrical bike company. We have
8 a motorcycle repair shop. We have a bicycle repair
9 shop. We have a print shop. We make t-shirts. We
10 have independent artists, music lessons. We have a
11 venue. We have many venues. So by limiting that, is
12 that actually living up to this plan to support the
13 creative economy?

14 It also says that the city should assist
15 local arts institutions in developing sustainable
16 business models such as Nomad Yard Collective. The
17 Creative Economy Strategy's second goal is to become
18 a national hub for creative start-ups and
19 entrepreneurs. And what is the long-term vision for
20 supporting these planning documents that are paid for
21 with public money and tax-payer dollars if, you know,
22 such a place is ignored?

23 We are that hub for creative start-ups and
24 entrepreneurs. If this PUD goes through you're
25 effectively doing what we're doing to the coral

1 reefs. You're just bleaching us and killing us.
2 You're killing creativity in D.C. If we can't afford
3 to be here, we can't afford to exist and do the work
4 that is needed work in the community. We are
5 supporting many you know, effective grassroots
6 organizations. We're fighting for the \$15 an hour
7 living wage in D.C. We passed Initiative 71 to
8 legalize marijuana. We've won many consolations for
9 different development projects across the city.

10 MR. OTTEN: Graham, do you have anything to
11 present visually?

12 MR. BOYLE: Oh, yeah. I forgot about that
13 part.

14 So these images show you exactly the work
15 that we're doing. This is a list of the
16 organizations we have. You can -- I'll submit it to
17 the record so you can read it later. We've been
18 published. There's an article from 2010, based on
19 the work of I and Cesar Maxit, one of my collective
20 mates. And this is our studio and operation. We're
21 making banners and props for a Cove Point anti-
22 fracking action that happened in the city. We build
23 large-scale props and banners.

24 This is a great banner we did out of a
25 parachute that we used for the Our Generation/Our

1 Choice.

2 This is Cowboys and Indian Alliance. There's
3 a national issue fighting the KXL Pipeline in D.C. A
4 lot of organizations come to D.C. to work with us, or
5 to protest in front of the Capitol and try to seek
6 justice. And we support these grassroots
7 organizations and sometimes bigger organizations by
8 creating aesthetic beautiful posters, banners,
9 patches, flags, that can catalyze and enhance that
10 movement with different aesthetic choices.

11 This is our studio where we had an anti-mass
12 incarceration arts show called Incarcerated Masses,
13 which featured almost a dozen artists who did custom
14 murals.

15 This is a campaign that was featured in the
16 show that merely was -- it was another victory that
17 we won through our work that got the D.C. Jail to
18 actually have a library because there was no library
19 in D.C. Jail. We work against mass incarceration and
20 deportations and fight for just migration policies,
21 such as the End of Quarter (phonetic) Project that
22 Cesar Maxit and I did. This was featured in the
23 Washington Post. We are part of the Five by Five
24 D.C. Commission on Arts and Humanities Five by Five
25 Public Art Project.

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1 MR. OTTEN: Graham, I don't mean to cut you
2 off. Are you going to submit this for the record?

3 MR. BOYLE: Sure.

4 MR. OTTEN: Okay. We can submit this. I
5 want to make sure. And also, Graham is wearing the
6 condo suit which won a prize.

7 MR. BOYLE: It was --

8 MR. OTTEN: A visual artist prize last year.

9 MR. BOYLE: It was a custom suit that me and
10 my friend Ryan Floreg (phonetic) made out of
11 liberated condo banners.

12 UNIDENTIFIED SPEAKER: Condo what?

13 MR. BOYLE: Banners. Like when you see a
14 construction site and they put up all their signs
15 that say, new studios in the lower 400,000s coming
16 soon.

17 MR. OTTEN: That's the large luxury hotel
18 just next door to the studio.

19 MR. BOYLE: And my exhibit that I curated was
20 featured in the Washington City Paper and later was
21 named as one of the 12 best art shows of 2015 in D.C.

22 MR. OTTEN: Okay. Black lives matter.
23 Protest. Okay. Graham. Very -- thank you for
24 bringing that and we'll include that in the record.
25 I think Desiree, we have some time for you to

1 present.

2 MS. VENN-FREDERIC: Oh, absolutely.

3 MR. OTTEN: As our small business
4 entrepreneur.

5 MS. VENN-FREDERIC: Yes. So I joined 411 New
6 York Avenue in August of 2014. Largely because of
7 the history of that neighborhood, the original Union
8 Market and Florida Avenue Market. And also because
9 of the work that was taking place within the building
10 by the individuals you just heard from today, and so
11 many more.

12 I had -- I've collected vintage for upwards
13 of 20 years and my interest in vintage is of course
14 to use it as a tool to teach human history. Not
15 merely to showcase pretty dresses or you know, pretty
16 accessories and things of that nature, but rather to
17 actually have dialog about arts, culture, and how we
18 carry those things through. And our responsibility
19 to one another to have honest and real dialog.

20 Now I stand in opposition of the displacement
21 that's taken place with this proposed development. I
22 understand the nature of this District. I understand
23 the nature of this world at this point. I do
24 understand that the future viability of the nation's
25 capital is by no means assured, and I understand that

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1 as the population changes and as the city truly
2 becomes increasingly bifurcated, high income
3 neighborhoods co-exist with severely distressed
4 communities, such as a neglected 411 warehouse in
5 Ward 5. And as we're dealing with abandoned homes
6 and unsafe streets and poor schools, that there is
7 change coming and I support and welcome said change.

8 I also understand the importance, as I
9 stated, of the development proposed at 411 New York
10 Avenue by D.B. Lee and Brook Rose Developments being
11 a part of the growth and really contributing to the
12 economy. However, that should never come at the
13 expense of the City's culture and already
14 marginalized constituencies, including the
15 economically disadvantaged or the public.

16 I am a small business owner. I am an
17 entrepreneur. Nomad Yard is exclusively funded by
18 me. It is a bootstrapped organization and to date
19 continues to strive as one. And my hope and work in
20 the collective is to ensure that this under-retailed
21 city can in fact boast once again, a group of small
22 business retailers who live in the city, pay taxes in
23 the city, employ those who live within their
24 neighborhoods, and continue to contribute to the
25 economic growth of this city.

1 Now, one of the things that I must note here,
2 when we started this challenge just 10 months ago
3 now, wow, it's almost a year of this fight, when we
4 were informed that the building was in fact sold, I
5 stood with the community and informed them of the
6 impending change. And I asked for their input. I
7 asked -- I wanted to know what they wanted.

8 Of course as a business owner I want to
9 continue to grow my business. I want to continue to
10 commit the 18 plus hours a day that I work, and I
11 want to continue to see small businesses emerge in
12 the city. But I really wanted to know if the
13 community members, the people that I served, wanted
14 me there. Did I matter to them?

15 And it was their responses and their
16 encouragement and their support that led me to move
17 forward with challenging this PUD.

18 At this stage I've learned from those very
19 people that what matters to them are not luxury
20 hotels with arts incentives, but rather access to
21 true grassroots arts spaces such as 411 New York
22 Avenue. They don't care for, you know, the fanciful
23 environments. They care for people who connect with
24 them, who see their need, who recognize you know,
25 their challenges, and who are there to support them

1 in meeting something new.

2 And as a retailer we are open six days a
3 week. I believe the day that you visited the
4 building, Ms. Rappolt, it was a Monday and we were
5 closed unfortunately because we are the front
6 entrance. I wish we were there to have met you. But
7 we work and support the needs of the active
8 community. There is a Catholic charity shelter just
9 a few -- about a mile and a half down, now right
10 across from the new Heck Warehouse building. And the
11 men who reside in that shelter visit our space on a
12 daily basis because as they state, we are the only
13 space who welcomes them and who listens to them, and
14 who works to meet their needs.

15 And in no way was that my intention in
16 opening this business. Of course I have my goals to
17 meet. But as I've existed in this space, as I've
18 worked with these creatives who have inhabited this
19 space long before me, I've learned that there is a
20 true sense of community that still remains in this
21 District.

22 And all that I want at this stage, and I do
23 recognize this is a private development, private
24 money, I recognize that, all I want is support in
25 relocation. True substantial support in relocation

1 at this point.

2 What we have at 411 New York Avenue is an
3 ecosystem, a group of people who depend on each
4 other, who work together, and who work with the city,
5 the larger city in meeting the city's needs. And
6 truthfully, meeting a lot of the city's own
7 comprehensive goals. You know, we are what the City
8 has been boasting and tooting about. We are already
9 in existence and it would be a disgrace to the City's
10 future to see it dismantled and fragmented.

11 We are asking for true support from the City.
12 We're not simply challenging the developers' proposed
13 project. We are challenging the District's
14 Government to stand and support its arts
15 constituency. We want to remain in the city. We
16 want to continue to contribute our artistic ability.
17 We want to continue to pay tax dollars here.

18 I want to continue to hire more employees and
19 continue to support these larger goals. But I cannot
20 do that if I am displaced in just a few months with
21 nowhere to go.

22 CHAIRPERSON HOOD: Okay. Well, we want to
23 thank you for your presentation and let's see if we
24 have any questions up here from this -- from my
25 colleagues. Any questions of this panel? Vice Chair

1 Cohen.

2 MS. COHEN: Thank you, Mr. Chairman. I just
3 have a couple of questions.

4 First of all, this building was up for sale,
5 I think, in 2012. Is that correct? And once you saw
6 the signs why didn't you motivate -- and this has
7 been my question all along -- and go to the city and
8 say, we want to remain here. We're positive and
9 we're functioning, and we provide what you know, you
10 want in the city.

11 I'd never heard any kind of testimony saying
12 that you attempted to even buy the building or go to
13 the city for funding, or crowd source, or whatever is
14 engaged. So maybe one of you can answer that for me.

15 MS. VENN-FREDERIC: Yes. If I may? I don't
16 know what may have transpired prior to my time in the
17 building. I entered in August of 2014 and from that
18 time I did learn from the former owner, Gayle Harris,
19 that the building of course was on the market and I
20 completed some research. And I personally, and this
21 was not communicated to the other tenants because I
22 had not developed relationships with them at that
23 point, started to inquire and really develop a plan
24 to acquire the building.

25 And this is something that I communicated

1 with Gayle during that time and we exchanged a lot of
2 e-mails and conversation. And the hope was to crowd
3 source, to crowd fund, to purchase the building. And
4 that was in the works at the time that of course we
5 learned of the impending close of the sale.

6 MS. COHEN: My other question is, my
7 understanding about this building is it's really not
8 had too much work done to it. Does it actually have
9 code violations? Wires exposed, or the -- is the
10 plumbing working? Are there other kinds of renters
11 there like mice and other insects and things like
12 that? I think I had heard somebody indicate that
13 there were some major code violations. Is that true?

14 MR. OTTEN: I don't think anybody here can
15 speak to code violations as we're not experts. But I
16 do know that several of the tenants have asked for
17 repairs to be done. They're not getting done. And,
18 you know, that's a different issue. You know.

19 MS. COHEN: I'm not an expert in code
20 violations either. But if a toilet doesn't flush --

21 MR. OTTEN: Right.

22 MS. COHEN: -- or if I see, you know, insects
23 and mice --

24 MR. OTTEN: Yeah.

25 MS. COHEN: -- you know, you just intuitively

1 know certain things. So.

2 MR. OTTEN: We're having those issues.

3 MS. COHEN: I know that there were some --
4 and then from some of the pictures I think there was
5 peeling paint and things like that, and I would think
6 that it could be a place that was not very healthy to
7 be in, as well as yeah, just not a very healthy
8 place. And you know, fire codes, occupancy limits,
9 that kind of thing.

10 So none of that was brought out and I think
11 that that's a very important issue as well. But I go
12 back to my basic. I have a lot of -- whatever good
13 this is going to do. I have a lot of empathy. I
14 think artists are a very important foundation and I
15 have been on the outskirts of it. I have always
16 wanted to be an artist, you know, when I grow up.
17 But I don't have the talent like many of you have.
18 But I guess what I'm trying to say is that yes,
19 you're going to be displaced because it's owned by a
20 private entity. He or they have done their due
21 diligence and now I would --

22 You know, I can't be up here preaching to
23 you. But as far as like space goes the underground
24 at DuPont Circle was like nothing for years either.
25 That would have been a perfect space for music. You

1 know, so I'm not sure you've all done your homework.
2 I mean, I don't know what we can do to help you. I
3 mean, I think you're counting on a portion of the
4 Comprehensive Plan. But the Comprehensive Plan deals
5 with many, many things, including the economy of the
6 city, the tourist industry. So we could go through
7 the Comprehensive Plan and come up with the same
8 types of things that the City needs.

9 You know, we need tons of money for
10 affordable housing. But one of the things you need
11 to do is really go after the decision makers. We're
12 only a -- you know, we deal with project on project
13 basis. But the decision makers, you vote, I assume.
14 There's certainly enough money for stadiums. Why not
15 artists?

16 So I just wanted to throw that out. I never
17 understood why you waited until this moment. You
18 were so successful at organizing. Hundreds of people
19 were here. That's impressive to me. So that's
20 really -- my question is, why did you wait? And two,
21 I don't think that's a very safe building. And there
22 are buildings in the city that are still either
23 vacant or underutilized or disused. And that's where
24 I'm coming from is that I don't know if this is the
25 right forum that we can really -- we're looking at a

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1 particular project that's owned by a private
2 developer.

3 CHAIRPERSON HOOD: Okay. Were you expecting
4 a comment, or you just was --

5 MS. COHEN: Lecturing?

6 CHAIRPERSON HOOD: Yeah. I didn't want to --
7 I was trying to be nice. Let's see if we --

8 MS. COHEN: [Speaking off microphone.]

9 CHAIRPERSON HOOD: Okay. Any other questions
10 up here?

11 MR. OTTEN: Do you want to comment?

12 MS. VENN-FREDERIC: Yeah. If I may
13 contribute to that statement?

14 CHAIRPERSON HOOD: You want to comment on the
15 lecture?

16 MS. COHEN: No.

17 CHAIRPERSON HOOD: Because we have zoning --
18 we have questions that we would like to ask that we
19 would really like to ask about the case. And I can
20 understand what may have happened, what-if and all
21 that. I could do a whole lot of that too.

22 MS. VENN-FREDERIC: Absolutely.

23 CHAIRPERSON HOOD: But I have questions that
24 I'd like to ask about the case. But since you asked
25 I'm going to let you go ahead. But let us get our

1 questions and so we can get back to the case.

2 MS. VENN-FREDERIC: I'm grateful,
3 Commissioner Hood.

4 So I just, in response, we have not waited
5 just until this last minute. We actually, as we
6 learned that the building was on the market and for
7 sale, as I share, there has been efforts to actually
8 acquire the building itself. Now, it happened before
9 we can really confirm or move forward in that sense,
10 but from that point we met, I believe, officially met
11 Dennis Lee and Brook Rose in June of 2015. And from
12 that point we started having conversations with the
13 larger arts community throughout the District because
14 once again this is not an isolated case. You know,
15 this is very much the norm of arts in most major
16 cities as, you know, the change in real estate
17 market.

18 And so we have built a coalition of --

19 MS. COHEN: After this is over you and I
20 should have coffee and discuss, because really I was
21 talking about the original when you weren't there,
22 the 2012 period of time.

23 MS. VENN-FREDERIC: Right.

24 MS. COHEN: That's what confused me.

25 MR. OTTEN: Ms. Chair, just to be clear

1 though --

2 MS. VENN-FREDERIC: I can't speak to that.

3 MR. OTTEN: -- just because the building is
4 sold and it doesn't necessarily mean it's you know --

5 MS. COHEN: That's true.

6 MR. OTTEN: -- it's going to go through a PUD
7 process. You know, we're in this PUD process now.
8 We see the Comprehensive Plan, we see the family of
9 plans that DMPED has brought forward, specific about
10 the creative economy and how important artists are.
11 What we don't understand is where the action is had
12 in terms of you know, having agencies in the city
13 kind of help directly out. Not just look at this
14 website and good luck. You know, like this is a
15 chance for direct you know, collaboration. And also
16 with the applicant. I mean, the applicant is
17 stepping up to do some things. We can combine these
18 efforts and that's what we're seeking here.

19 MS. COHEN: I appreciate that explanation.
20 Thank you, Chris.

21 MS. KLAGSBURN: Could I just correct
22 something there because in 2012 I came into the
23 building in 2012 and I was given a two-year lease
24 with an option to extend for two years. So I don't
25 believe the building was on the market in 2012.

1 And I know after -- you know, with
2 conversations with the landladies, with Gayle and
3 Jennifer, they were very ambivalent about selling or
4 not selling and they kept changing their mind on a
5 regular basis. So I don't think they would have
6 given me a lease two years with an option to renew
7 for another two years if they were serious about the
8 building being on the market.

9 CHAIRPERSON HOOD: Commissioner Miller.

10 MR. MILLER: Thank you, Mr. Chairman, and
11 thank each of you for your advocacy and for your
12 contributions, substantial contributions to the
13 District's creative economy.

14 I guess my question is, have any of you seen
15 -- can I have you comment on the applicant's latest
16 proposed relocation assistance plan, since you say
17 that's what you really want, you said, at this point.
18 You want a strong relocation assistance program.

19 Can you comment on the -- if you've seen the
20 latest from the applicant on that and what more --
21 what deficiencies, if any, are in there and that you
22 would like to see addressed?

23 MS. VENN-FREDERIC: Absolutely.

24 MR. OTTEN: Can we defer to Micheline on this
25 first? Okay. Thanks.

1 MS. KLAGSBURN: Yes. We've been working, I
2 think just really in the last week or two, the -- we
3 started to make progress really with working with
4 developers. In fact just a couple of days ago
5 Desiree and I attended a meeting with a development
6 team that went for -- went well into the night. And
7 then our lawyer and I worked until about 2:00 in the
8 morning on the proposed agreement. But it was really
9 too rushed and there were aspects of the agreement
10 that just were not acceptable to a number of people
11 in the building.

12 And so I just have to say the Artist's Union
13 is a very disparate group. The channels of
14 communication are not strong and it takes a long time
15 to work on an agreement. But we're hoping to keep
16 moving forward.

17 MR. OTTEN: Well, Commissioner Miller,
18 there's also in that latest set of terms, as it came
19 out and I wouldn't say our communication is not
20 strong, but there's so many people. It's like, and
21 the developer wants us to have everybody on board.
22 Otherwise, we're not going to do it. So, you know,
23 getting these terms out to folks and then hearing
24 comments, you know, it was relayed back to us that
25 the financial compensation offered by the alley

1 closing, which is why we're making such a big deal
2 about that would be far significant, more significant
3 than where we're at now with these terms.

4 However, if we were to agree to these terms
5 we would give up our rights during the alley closing
6 process. This is all part of this draft agreement
7 that I've seen, if I'm not mistaken. We would give
8 up our rights to pursue additional assistance from
9 the city or from whomever, through this alley closing
10 process through other administrative processes going
11 forward, the building permit process, environmental
12 review process, whenever that happens. You know,
13 this is kind of an important juncture for us along
14 those lines. And I don't know, did I miss anything
15 on that front? Okay. I don't know if that helps.

16 MR. MILLER: Okay. I guess my only other
17 question is -- and we'll ask if we can ask the
18 applicant when they come back, but on the third floor
19 option, I mean, that is a substantial amount of space
20 but you're saying it was a substantial amount of
21 money. Did you guys get into discussions or
22 negotiations over the financial terms of that?

23 MS. KLAGSBURN: It was so -- it's just such
24 an astronomical sum from, I think from our point of
25 view that I don't think it would have been workable.

1 It seemed I was not the person who -- actually, no, I
2 don't think the members are here today who the ones
3 who were working on this particular plan. The idea
4 was that we would occupy more space of the hotel and
5 have a model that would be partially self-supportive.
6 But the idea of having to pay over \$1 million in rent
7 annually for one floor of the hotel just was so far
8 out of our range that I didn't seem -- I don't think
9 it seemed worthwhile to even discuss.

10 But I'm not the one who was in charge of that
11 plan.

12 MR. OTTEN: I think it was kind of a
13 nonstarter because of --

14 MS. KLAGSBURN: Yeah.

15 MR. OTTEN: -- the inflated prices for us.
16 And it was also a size issue as well. I mean, you
17 know, we're really, as Desiree has said, we're
18 striving to keep this ecosystem together that's there
19 amongst the diversity of arts and services, small
20 businesses. And so this is really where we're hoping
21 the city -- and, you know, we are -- we want to ask
22 the city --

23 MS. MOLDENHAUER: Can I just object. Mr.
24 Otten is testifying and if he has four other
25 individuals that are actual witnesses that could

1 testify, if he's going to testify on the record and
2 put in facts and not, you know, be a lawyer kind of
3 proffering something and then having a witness
4 testify, then I would question whether I'd be able to
5 cross-examine him.

6 MR. OTTEN: Sure. You can cross-examine me.
7 I'm part of the Artist Union. I'm also their
8 representative.

9 CHAIRPERSON HOOD: Actually glad he mentioned
10 it because most of my questions are to him. So
11 you'll be able to cross him.

12 MR. MILLER: Okay.

13 MS. MOLDENHAUER: Thank you.

14 MR. MILLER: Well, thank you each for your
15 testimony and for that information. I appreciate it.

16 MR. TURNBULL: Oh, thank you, Mr. Chair. I
17 just wanted to thank everybody for being here tonight
18 and going through the, what we have, three nights of
19 hearings? Four nights? Three nights?

20 Yeah, so I think it will be four nights
21 Monday. So thank you all for coming here.

22 I guess my only question, and I guess
23 Commissioner Miller raised it, was on the relocation
24 package. But I guess that's still kind of no answer
25 as to which way -- it sounds like you're not going to

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1 -- that there's no solution there for you.

2 MR. OTTEN: We're hoping that the Office of
3 Planning and the District gets involved in this
4 conversation. Particularly as it relates to the
5 alley closing law and the rights conveyed to us by
6 that. But also just in general to live up to words
7 throughout all of these pages of planning documents
8 that you know, as Graham pointed out, lots of money
9 has been spent on developing these plans and getting
10 community feedback on these plans and ultimately
11 adopted by the agencies and even by the City Council.
12 They're just words on a paper right now. We're not
13 enacting these initiatives. And this is the perfect
14 opportunity to do that. It shouldn't all be on the
15 developer. And we're not expecting that. We're
16 expecting the Office of Planning to step up. Please.

17 CHAIRPERSON HOOD: Okay. Mr. Otten, I need
18 you to -- I wrote down a few questions as we were
19 going along. Help me understand the legal relevance
20 of this or any PUD and a tenant losing a lease. What
21 Zoning Commission regulation are you relying on?

22 MR. OTTEN: Well, these tenants are facing
23 direct displacement due to this PUD application. So.

24 CHAIRPERSON HOOD: Okay. But tell me which
25 regulation you're relying on in the code.

1 MR. OTTEN: In the PUD regulations that is
2 governing this process.

3 CHAIRPERSON HOOD: Give me the exact statute.

4 MR. OTTEN: DCMR-11-2400.2, .3, .4. The
5 Office of Planning's comprehensive legally
6 required --

7 CHAIRPERSON HOOD: I want the --

8 MR. OTTEN: -- comprehensive review is 2400.

9 CHAIRPERSON HOOD: So you're relying on
10 2400.2, 3, and 4. Okay.

11 MR. OTTEN: As well as 2403.8, 2403.3,
12 2407.3, 2408.4. And D.C. Code 6-641.02. That's the
13 underlying statute.

14 CHAIRPERSON HOOD: What's the last one?

15 MR. OTTEN: 6-641.02.

16 CHAIRPERSON HOOD: 6 dash --

17 MR. OTTEN: 641.

18 CHAIRPERSON HOOD: One.

19 MR. OTTEN: Point 02.

20 CHAIRPERSON HOOD: Point 02. And which -- is
21 that in the code?

22 MR. OTTEN: Yeah, that's the underlying
23 statute that gives you your powers and the Zoning
24 Regulation's purpose.

25 CHAIRPERSON HOOD: And that's in our

1 regulations?

2 MR. OTTEN: That's in the D.C. law. But the
3 others that I cited are --

4 CHAIRPERSON HOOD: Okay. Okay. Okay. Okay.

5 MR. OTTEN: -- regulations.

6 CHAIRPERSON HOOD: Now, what law prohibits
7 conversion of a building, which we have, to a hotel?

8 MR. OTTEN: I don't know if there's a law
9 that prohibits the conversion. What the laws require
10 or the regs require is in that request for conversion
11 and entitlements from the public, the regs require an
12 impact assessment be done, that the impacts on the
13 surrounding area and the operation of city service is
14 either found to be unacceptable or mitigated, and
15 then found to be favorable or acceptable.

16 CHAIRPERSON HOOD: Okay. And those are in
17 our regs, right?

18 MR. OTTEN: Right. Yes.

19 CHAIRPERSON HOOD: Okay. Which statute is
20 that?

21 MR. OTTEN: That's 2403.3.

22 CHAIRPERSON HOOD: Okay. I know that. Okay.

23 MR. OTTEN: And I think the important thing,
24 important regulation, Chairman, is 2403.8 because
25 this is the center of what the Commission does,

1 judging, balancing, and reconciling the amenities or
2 benefits versus the effects.

3 CHAIRPERSON HOOD: Okay. I understand that.

4 MR. OTTEN: If you don't have the full
5 understanding of the affects you can't judge,
6 adequately judge and balance the --

7 CHAIRPERSON HOOD: Well, I think my line of
8 questioning, you're going down right where I need to
9 go.

10 What District law requires this applicant to
11 allow the existing tenants to reside in the new
12 development. I think you've been around here, so you
13 know my position on displacement. And you know what
14 we have to deal with from a zoning standpoint. But
15 what law is it that requires the applicant to allow
16 the existing tenants to reside in the new
17 development?

18 MR. OTTEN: There's no specific law that says
19 existing tenants should reside in any new private
20 development.

21 CHAIRPERSON HOOD: So it's no law, but
22 it's --

23 MR. OTTEN: That I'm aware of. But there are
24 regs and laws that say if a PUD project is going to
25 displace people, that we have to seek to mitigate

1 that displacement.

2 CHAIRPERSON HOOD: Are we still looking at
3 2400.2, 3, 4, 248.4? We're still looking at those
4 that were --

5 MR. OTTEN: The whole PUD regs.

6 CHAIRPERSON HOOD: Okay. All right.

7 MR. OTTEN: Chapters and particularly,
8 though, this is the rub that we're hearing tonight.
9 It's almost like, I mean, the Office of Planning does
10 not mention the current artist collective hub that's
11 been there since 1981 in any of their reports. They
12 were aggressive tonight about defending those reports
13 despite two hearings that had hundreds of people at
14 it, despite the fact that we're asking -- we have
15 been asking for help. And this is an opportunity. I
16 mean --

17 CHAIRPERSON HOOD: No, the opportunity -- let
18 me just say this. Let me just put you right off.

19 MR. OTTEN: To protect the current existing
20 tenants.

21 CHAIRPERSON HOOD: Well, I don't like to
22 lecture --

23 MR. OTTEN: That's not too --

24 CHAIRPERSON HOOD: -- I think the opportunity
25 was exactly what the Vice Chair says. And she and I

1 don't always agree. I'll put that publically.

2 MR. OTTEN: I don't know what that
3 opportunity was.

4 CHAIRPERSON HOOD: Well, she mentioned it but
5 I'm not going to lecture. I don't believe in
6 lecturing. When I --

7 MR. OTTEN: Just because the building sold
8 doesn't mean --

9 CHAIRPERSON HOOD: What the goal is --

10 MR. OTTEN: -- people are going to get
11 displaced.

12 CHAIRPERSON HOOD: What my goal is, to
13 mitigate and try to find out how we can make things
14 work. My goal is not to lecture. But what the Vice
15 Chair said, I think is something that was already
16 said, and mentioned it, and we're going to move
17 beyond that point but I think you need to take heed
18 to what she said. And if you don't remember what she
19 said, go back and play it on the tape.

20 Let me ask you this; the question came up,
21 and this is my last question. The question came up
22 about Commission on arts and humanities. And I'm not
23 sure, but I know that they do a lot of work in the
24 City. I know when we consider arts overlay we're
25 looking at trying to do some some more places in the

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1 city because we too, I think the city needs to keep
2 art. So you know, you all are not by yourselves.
3 While I can't do a thing about art. I try to -- I
4 love to sing, but I can't. I would love to design
5 like my man here, but I can't. So there are some
6 people who have that talent and some of us know where
7 to stay in our lane. So my question is, has
8 anyone -- and I think this came up earlier in the
9 cross-examine with Ms. Steingasser, reached out to
10 Commission on Arts and Humanities? If we haven't,
11 why not?

12 MR. OTTEN: Yes, the artists have. And
13 consistently what we're hearing back from agencies is
14 that, you're involved in a PUD process, we can't get
15 involved. Which is exactly the opposite what we're
16 are expecting, according to the PUD regs and the
17 Office of Planning's legally required coordination of
18 agencies throughout the city, to get involved. We're
19 hearing the opposite. It's like, no, you're involved
20 in a PUD process. We can't really get involved. And
21 so --

22 CHAIRPERSON HOOD: Okay. So let me ask you
23 this, before the PUD process were you involved with
24 them?

25 MR. OTTEN: I think individually as

1 collectives inside --

2 CHAIRPERSON HOOD: Well, who organized all
3 the people we had down here? How did that get
4 organized? Was it the union, or how did that happen?

5 MR. OTTEN: The applicant did by filing this
6 PUD application and threatening displacement. I
7 mean, we've stepped up because we're facing eviction.
8 That's how it happened. You know, when something is
9 this acute you're going to move people to do -- to
10 act.

11 CHAIRPERSON HOOD: Okay. Okay. All right.
12 That's all the questions I have. Any other questions
13 up here? Vice Chair Cohen?

14 MS. COHEN: Just one other one. You mention
15 that you'll lose your standing or your rights. I
16 didn't see that in any of the communication. Can you
17 be a little bit more specific?

18 MR. OTTEN: In the terms of the latest
19 settlement agreement that we saw as artists and 411
20 tenants, and I think Ms. Moldenhauer can go into it a
21 bit more. But there's a section called -- I forgot
22 the title of the section. I have it with me.

23 MS. COHEN: That Exhibit A that you're
24 talking about?

25 MR. OTTEN: First of all yeah. No, the --

1 what the applicant has submitted in terms of the
2 relocation are really general terms. We received a
3 document that had more specific terms that has a
4 clause, if you will, a stipulation that says -- it's
5 titled no opposition. And essentially they want us
6 to drop not only our party status before you, but
7 then turn around and support their PUD and their
8 program and not interfere in any other administrative
9 process moving forward, whether that be the alley
10 closing, whether that be the permitting. Whatever
11 other agencies are involved in this process.

12 So, that's why we were concerned about that.

13 MS. COHEN: I don't think gag orders are
14 appropriate nor legal.

15 MR. OTTEN: That's what we're looking at.

16 CHAIRPERSON HOOD: Okay. Any other questions
17 up here? Again, there's no one here from the ANC to
18 do any cross. Oh, let me go to the applicant. I got
19 the ANC out of the way. Ms. Moldenhauer, do you have
20 any cross and about how many questions or how much
21 time do you think you'll need?

22 MS. MOLDENHAUER: I do have cross. I would
23 say I probably need 30 to 40 minutes. I probably
24 won't use all that but let me be more judicious in my
25 estimate and then come short.

1 CHAIRPERSON HOOD: Why don't we do this,
2 Commissioners, unless you all want to -- because I'm
3 only one vote. Why don't we let Ms. Moldenhauer do
4 her cross and then we call it at that point and come
5 back Monday. Then when we come back Monday we will
6 do rebuttal, and then we'll do cross on rebuttal.
7 And then we'll do closing. And then we will end the
8 hearing. Okay? Provided -- I have a provision,
9 provided take no more than 40 minutes.

10 But here's the thing, if we go over 40 she
11 needs to -- if she needs to continue to cross, then
12 we'll come back Monday and start at cross. Okay?
13 All right. Okay. Ms. Moldenhauer, you may begin.

14 MS. MOLDENHAUER: Thank you. Mr. Otten you
15 referred to the settlement agreement. That was
16 drafted on Tuesday night by me at 9:00 at night and I
17 submitted it to the attorney at 11:00 at night. Is
18 that correct?

19 MR. OTTEN: By Tuesday you're talking about
20 April 19th?

21 MS. MOLDENHAUER: April 21st. No, today is
22 the 21st. The 19th, yes. I'm sorry.

23 MR. OTTEN: My understanding from our
24 attorney is that you delivered her a draft statement.

25 MS. MOLDENHAUER: And Micheline, you were

1 present during that negotiation at my office?

2 MS. KLAGSBURN: Yes.

3 MS. MOLDENHAUER: And was it the
4 understanding of the parties that you were going to
5 review and our initial draft and then comment and
6 provide comments back on the draft language?

7 MS. KLAGSBURN: That's right.

8 MS. MOLDENHAUER: Did we ever receive any
9 revised language questioning the no opposition
10 language, questioning any of the terms, or providing
11 any additional counters to the proposal that we
12 drafted and submitted to your group?

13 MS. KLAGSBURN: We didn't have time for that.
14 I mean, by the time we had collected feedback it was
15 already late. You only gave us, I think, 24 hours to
16 come back.

17 MS. MOLDENHAUER: Did you say we have red
18 lines or we have revised terms and we'd like to get
19 it to you within an hour or two extra?

20 MS. KLAGSBURN: I wasn't communicating with
21 you. I believe our lawyer, Caroline Gaudet is the
22 one who communicated with you so I can't answer to
23 what was actually communicated with you.

24 MS. MOLDENHAUER: And the agreement does,
25 because it's awkward to be putting in statements

1 about a settlement agreement, but it's already been
2 part of the record so the door is open. But the
3 agreement does allow for the applicant or the
4 developer, to continue to work and to support the
5 artist, does it not, in obtaining government funding
6 presenting before the council, supporting
7 opportunity? Is that not a specific term that you
8 asked for in the agreement?

9 MS. KLAGSBURN: That's probably correct, but
10 I don't think we should be referring to it as the
11 settlement agreement because it has -- it doesn't --
12 it's right now in a draft form. It has not been
13 agreed to.

14 MS. MOLDENHAUER: It was a draft. It was a
15 draft -- you say draft agreement, you mean that is
16 referring to it as the draft agreement. I will
17 change my terminology.

18 MS. KLAGSBURN: Good.

19 MS. MOLDENHAUER: So, but the draft agreement
20 did allow for the applicant to continue to work to
21 support council, support for the artists --

22 MS. KLAGSBURN: Uh-huh.

23 MS. MOLDENHAUER: -- in whatever they were
24 obtaining.

25 MR. OTTEN: Did you say continue to work? Is

1 that what you're asking, continue to work, because we
2 haven't seen anything yet. I mean, as you know --

3 MS. MOLDENHAUER: I'm the one asking
4 questions, Mr. Otten, so I'd prefer --

5 MR. OTTEN: I answered your question.

6 MS. MOLDENHAUER: -- I'll address you and ask
7 you -- you're asking me a question but that's not the
8 proper procedures.

9 MR. OTTEN: No, I'm answering your question.

10 MS. MOLDENHAUER: It wasn't a question for
11 you. It was a question for Micheline.

12 MR. OTTEN: Okay. If you can identify who
13 you're questioning then, that would be helpful.

14 CHAIRPERSON HOOD: I think he did early on.

15 MS. KLAGSBURN: Can you repeat the question?

16 CHAIRPERSON HOOD: Okay. I know it's getting
17 late, Mr. Otten, so all of us get a little confused
18 sometimes. Including me.

19 MR. OTTEN: Right on. We all do.

20 MS. KLAGSBURN: Is there a question?

21 MS. MOLDENHAUER: I think you had already
22 answered the question. It was a continued statement
23 by Mr. Otten.

24 There was a statement that was made in a
25 response to a question from one of the commissioners

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1 that -- and I think, Mr. Otten, this is a question
2 for you. You had indicated that the agreement would
3 not allow you to continue to get funding and would
4 not allow you to continue to get support or other
5 opportunities through the alley closing process. Is
6 that a true statement or did the applicant actually
7 say that they would work to allow the government
8 agencies to continue to provide funding, it was just
9 that this was the final package monetarily that the
10 applicant was going to offer?

11 MR. OTTEN: These terms are pretty new to us.
12 We're still reading through them and we have to get
13 details vetted through a bunch of people that are in
14 the building and our lawyers.

15 So I can't really tell you the full analysis
16 of what's in this. It's a large sheet. All I can
17 tell you is I told the Vice Chair, is that section
18 that basically says, we do not oppose, we drop our
19 party status, and we actually turn around and support
20 the PUD, for really a limited amount of money that
21 isn't going to really truly support, as I understand
22 in my discussions, the variety of artists in the
23 building. Whether it be artists or small businesses.
24 It's just not there. It's not there yet.

25 MS. MOLDENHAUER: So I believe you've been

1 fairly vague to the commissioners as to what is not
2 sufficient as to the relocation program, or offer
3 that's being presented, and yet you just said it's
4 money; that you guys want more money? Is that --

5 MR. OTTEN: Well, you might recall from our
6 conversations, one of the key pieces is, in
7 relocation, is having a space to go to. So you know,
8 we've been -- we have been looking at other spaces.
9 We would really like the Office of Planning to help
10 us with DGS to identify maybe some vacant public
11 spaces.

12 But particularly in terms of financial
13 investment from the developer, in our first
14 conversation where there were some general terms
15 being discussed in early March, there was a
16 discussion about buildout costs of any space we
17 identify so that when we are moved out of -- when
18 we're pushed out of 411, we have a space that we can
19 move in to, we're not just disbursed and then hope
20 for a space later; that there is an actual space for
21 us to move into. That's critical to the
22 conversations that hasn't yet appeared in any real
23 terms. And I'm not aware of any work with the city
24 and the applicant to help with that at this point.

25 MS. MOLDENHAUER: Has the applicant always

1 offered in its other relocation packages as well as
2 the agreement, to provide mutual public support for
3 the community and the city officials and D.C.
4 Council?

5 MR. OTTEN: Well --

6 MS. MOLDENHAUER: Is that not number five,
7 and it's right below number four that you knew --

8 MR. OTTEN: -- listen to that statement.
9 It's as vague as -- I mean, it's as vague as the
10 words themselves. General public support. Was it
11 public mutual, public support. I mean, what does
12 that mean? Writing a letter?

13 MS. MOLDENHAUER: And did you counter those
14 terms and provide a revised language that would be
15 supportive for the artists?

16 MR. OTTEN: We got those terms two days ago.

17 MS. MOLDENHAUER: You said that you got those
18 terms two days ago, but isn't it true that the
19 applicant has submitted relocation packages on March
20 4th, March 11th, March 14th, March 31st, April 5th
21 and April 10th, all in advance of this marathon night
22 on Tuesday?

23 MR. OTTEN: The first time we saw any real
24 terms was the filing on the record on March 15th. We
25 saw general terms prior to that, but in terms of --

1 in reality, in terms of a real something to begin
2 discussing, March 15th, the submission shows what we
3 saw, to the commission. I don't know what exhibit
4 that is. Seen as Exhibits 237, 237A, and 237B on the
5 record. That's what we're -- that was the first time
6 we really saw any terms.

7 And then in view of these initial terms there
8 was some back and forth conversation a couple times
9 between then and April 19th. You must remember, we
10 didn't get the March 15th terms until the day before
11 the March 16th hearing was supposed to be scheduled.
12 But thank goodness that WMATA shut down that night
13 and we got an extra month to actually, yeah, go into
14 further discussions. But otherwise, that's what was
15 presented to us the day before the last hearing.

16 So there's a pattern here of presenting stuff
17 to us, you know, a couple days before the hearing and
18 then putting us under duress to try to get answers
19 from a whole variety of tenants who have different
20 needs, and also responses.

21 MS. MOLDENHAUER: So, Mr. Otten, you just
22 testified that the first time you ever received a
23 package that was real or true was on March 15th.

24 MR. OTTEN: The first time that we saw
25 definitively, anything from the applicant that they

1 were putting a stake in the ground of, here's what
2 we're offering you, was what was submitted to the
3 record on March 15th.

4 MS. MOLDENHAUER: Okay. So I have an e-mail
5 here from Mr. Otten to Mr. Dennis Lee on March 9th.
6 So March 9th, where it says, "We found last week's
7 meeting productive." And I'm jumping around in this
8 e-mail so I will provide a copy for the Board if the
9 Commission, they like.

10 "I must let you know that the artists are
11 definitely interested in the relocation strategies
12 discussed at our important meeting. One which felt
13 more, much more inclusive and meaningful than ever
14 before. There is a sense that we have a big
15 breakthrough coming, happening between you and the
16 artists very soon, but not soon enough. As such, the
17 artists want to request a continuance for next week's
18 zoning hearing until April 10th. If we take the
19 short time of a month to get this done right now, it
20 will save us all the energy and disappointment."

21 Is that an e-mail that you sent referencing a
22 meeting that occurred after the March 4th relocation
23 package was distributed?

24 MR. OTTEN: There was no relocation package
25 distributed. March 4th --

1 MS. MOLDENHAUER: You discussed.

2 MR. OTTEN: Yes, discussed. This is the
3 first time we saw anything. And what I was trying to
4 relay in as nice of a way as possible is, for the
5 first time since this whole thing has happened, since
6 last June, the first time that the developer and
7 applicant has presented something that we could begin
8 chewing on. That's all that e-mail meant. And
9 nothing more.

10 And then since then, you know, those terms
11 have actually gotten -- some of them have gotten
12 weaker. Some of them have gotten stronger. What has
13 disappeared off the table right now is any buildout
14 costs. And that's kind of critical to us in terms of
15 having a space to move into that's ready before we're
16 evicted. And that's where we're hoping the applicant
17 and the city can get together and start identifying
18 resources vis-à-vis the Comprehensive Plan and these
19 other planning documents to identify -- this is
20 budget season, to help us identify and work together
21 to get money, to get a space, to work together, build
22 it out, so that this incubator and artist hub isn't
23 just unceremoniously displaced; like, just disbursed.

24 MS. MOLDENHAUER: So the one thing I did
25 hear, because one of the things we've been trying to

1 get is, what is the Artist Union looking for. And
2 you said that the package does not include buildout.
3 But isn't most recently in the April 10th package
4 that was filed, that the Zoning Commission has copies
5 of, number 8 on the April 10th package, isn't it
6 relocation buildout assistance, "Developer will
7 assist with new location buildout by managing
8 construction at no cost and working with the tenants
9 to find donated services and materials from local
10 providers. Developer will be a resource for the
11 tenants."

12 And then also -- yes.

13 MR. OTTEN: Is there a value to that? We're
14 going to find donated items to build out our space
15 with? That seems -- I mean, that's as, like building
16 sandcastles near the ocean. I mean, there's no solid
17 terms in there for us to really work with.

18 MS. MOLDENHAUER: So you're saying that doing
19 a management fee, sorry, managing the construction at
20 no cost, so not charging you a management fee as a
21 general contractor, is not a substantive value added
22 to these tenants who may not have access to general
23 contractors who understand the building process,
24 understand obtaining subcontractors who typically
25 charge anywhere from 15 to 20 percent, that that's

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1 not a substantive benefit?

2 MR. OTTEN: I'm not sure if -- well, I'm not
3 sure if you're aware of this from the prior hearings,
4 but we built out this space ourselves; the current
5 space.

6 MS. MOLDENHAUER: Was it to code?

7 MR. OTTEN: Yes.

8 MS. MOLDENHAUER: Do you have C of Os for
9 those spaces?

10 MR. OTTEN: Whether --

11 MS. MOLDENHAUER: Was it to code and do you
12 have C of Os for those spaces?

13 MR. OTTEN: Whether I know that or not is not
14 important right now.

15 MS. MOLDENHAUER: So, Micheline, is your
16 space built out to code and do you have a C of O for
17 your space?

18 MR. OTTEN: I don't know. I don't think so.
19 I don't know.

20 MS. MOLDENHAUER: Luke, is your space built
21 out and do you have a C of O for your space?

22 MR. STEWART: I asked Gayle that question and
23 Gayle said that she had a C of O for the entire
24 building, so I assumed that the new owners have a C
25 of O for the entire building.

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1 MS. MOLDENHAUER: Do you have a personal C of
2 O for your space that associates with a basic
3 business license for your business?

4 MR. STEWART: Again, that was something that
5 was --

6 MS. MOLDENHAUER: Yes, or no? Do you know if
7 you have one?

8 MR. OTTEN: What is this -- how is this
9 relevant to this? I don't understand how this is
10 relevant. These folks don't even have your latest --

11 MS. MOLDENHAUER: It's relevant to the
12 fact --

13 MR. OTTEN: -- settlement terms.

14 MS. MOLDENHAUER: -- that there is an issue
15 of cost and benefitting these tenants. And I'm
16 asking what is not provided. And I'm trying to
17 inquire. And it was a question that you posed that
18 it was -- that they did it themselves.

19 MR. OTTEN: We're asking for help.

20 MS. MOLDENHAUER: So I'm following up on that
21 question. So, Micheline, does your space have --

22 MR. OTTEN: This is not relevant.

23 MS. MOLDENHAUER: -- a certificate of
24 occupancy?

25 UNIDENTIFIED SPEAKER: [Speaking off mic.]

1 CHAIRPERSON HOOD: Sometimes I use this
2 button up here when it gets to that point, and it's
3 getting late so I will let you know that I turned the
4 mics off. But what I will say, first of all, I don't
5 want to hear any noise from the right, because it's
6 getting late. I really don't want to hear any noise
7 from the right. I would ask that if you ask a
8 question you answer it.

9 She's identified Micheline to answer the
10 question, so that's the person who you're going to
11 get the answer from. Anyone else at the table
12 doesn't need to say anything unless they've been
13 identified. You may continue.

14 MR. OTTEN: As the representative I can still
15 object.

16 CHAIRPERSON HOOD: Yes, you can. And then I
17 will rule on it. I don't usually rule because I
18 usually let the parties work it out. You notice when
19 you object sometimes I don't say anything and then we
20 go ahead. You even upheld an objection one time
21 yourself. I haven't forgotten that.

22 So what I'm going to say is, what I'm going
23 to say is, let's -- come on, let's keep some order.
24 I know it's getting late.

25 MS. MOLDENHAUER: There's two more people.

1 Yes.

2 CHAIRPERSON HOOD: Okay. Okay.

3 MS. MOLDENHAUER: Two more questions.

4 CHAIRPERSON HOOD: You may continue.

5 MS. MOLDENHAUER: I just want to ask the two
6 because I think that it is relevant because it has
7 to --

8 MR. OTTEN: How? How is it relevant?

9 MS. MOLDENHAUER: -- go OP -- I don't need
10 to --

11 CHAIRPERSON HOOD: Mr. Otten.

12 MS. MOLDENHAUER: -- respond to that.

13 CHAIRPERSON HOOD: Mr. Otten, are you -- let
14 me ask you this.

15 MR. OTTEN: What is the relevancy?

16 CHAIRPERSON HOOD: Ms. Moldenhauer, are you
17 asking Mr. Otten the question?

18 MS. MOLDENHAUER: No, I wanted to ask
19 Desiree.

20 CHAIRPERSON HOOD: Mr. Otten, hold tight.
21 We've been doing fine this evening. Hold tight.

22 MS. MOLDENHAUER: Desiree, do you have a
23 certificate of occupancy or a basic business license?

24 MS. VENN-FREDERIC: I do have a basic
25 business license. But in reference to code, again, I

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1 don't have the full details to respond to that
2 question.

3 MS. MOLDENHAUER: Do you have a C of O
4 hanging up in your building, in your unit for your
5 use?

6 MS. VENN-FREDERIC: I do not.

7 MS. MOLDENHAUER: Okay. Mr. Graham Boyle, do
8 you have a certificate of occupancy in your space?

9 MR. BOYLE: No, but I recall seeing one on
10 the fourth floor when Gayle was still there, for
11 which I assume was for the whole building.

12 MS. VENN-FREDERIC: The entire building.
13 That's the understanding we had.

14 MS. MOLDENHAUER: So, Desiree, during the
15 discussions was it something that the applicant had
16 indicated, or the developer had indicated that maybe
17 they would take off items 7, 8, and 9 from the April
18 10th relocation package, but the applicant said, no,
19 we would prefer to keep it on. And we discussed that
20 as a benefit to the tenants, having the management
21 construction at no cost to the tenants.

22 MS. VENN-FREDERIC: Well, if my memory serves
23 me correct we actually -- we, in fact, advocated that
24 7, 8, and 9 remain in the settlement agreement. We
25 were offered \$2.50, I believe, a 50 cent increase in

1 the moving expenses in exchange for eliminating 7, 8,
2 and 9.

3 What I do remember as it relates to
4 relocation support, is that Brook Rose actually was
5 quite adamant about sharing; sharing that he had
6 interest in supporting my entity, Nomad Yard
7 Collective, and relocating as my needs are quite
8 different from those of the other tenants.

9 MS. MOLDENHAUER: So, Ms. Desiree, has the
10 applicant met with you on multiple occasions since
11 the previous hearings to try to help you find
12 relocation spaces?

13 MS. VENN-FREDERIC: Yes, I actually met with
14 Brook this past Tuesday. We went on a tour of
15 several sites throughout the city. I provided him
16 with a list of 40 properties; vacant properties that
17 are available for lease of comparable size. We in
18 fact visited, I believe, a total of six or seven
19 sites throughout the city that could accommodate
20 groups of artists and of commercial entity as my own.

21 MS. MOLDENHAUER: And are they trying to
22 assist you in their connections and understanding of
23 the real estate market and finding landlords that
24 might be able to place either you or other groups of
25 the Artist Union?

1 MS. VENN-FREDERIC: Yes, I believe their
2 interest is there now. We've yet -- this this is
3 just the beginning of said phase, so we have yet to
4 actually identify a space that could accommodate
5 either the artists or my commercial entity. And what
6 the current settlement states is not really something
7 that we can measure. You know, it's not something
8 that we can quantify. And nor is it enforceable.

9 You know, I've shared -- and from my
10 understanding Brook is interested in supporting Nomad
11 Yard and relocating. Now that in no way shape or
12 form is he contractually bound to that. And to be
13 truthful, and although I understand and I see his
14 efforts and I value his efforts, it's still quite
15 unsettling for me because he could at any time not
16 necessarily have the time or energy or supports that
17 are truly necessary for me to find another location
18 without a great period of disruption.

19 MS. COHEN: Ms. Moldenhauer, it seems to me
20 that you're far apart. Or there's misunderstanding.
21 And this needs to again, come back together and iron
22 out some of these differences. I don't think it's
23 productive to try to rehash what they're not
24 accepting because it doesn't help us. We're hoping
25 for some kind of conclusion, and you need some time

1 to accomplish that.

2 MS. MOLDENHAUER: I was just about to move
3 on.

4 MS. COHEN: Good.

5 MS. MOLDENHAUER: And I believe that in order
6 to accomplish that we need to understand the terms
7 that they would possibly want, and that has not been
8 provided. We can provide copies of the e-mails and
9 we will provide that during our rebuttal portion.
10 Ms. --

11 MS. COHEN: Well, now they hired a lawyer so
12 I think you're going to get more input.

13 CHAIRPERSON HOOD: Is the lawyer here
14 tonight?

15 MS. MOLDENHAUER: No, she's not.

16 MR. OTTEN: I don't know if you all saw the
17 letter the lawyer wrote with regards to what was
18 submitted by the applicant today. Did you see that?
19 Okay.

20 MS. MOLDENHAUER: Ms. Venn-Frederic, have you
21 personally spoken at all or had any interactions with
22 the Commission of Arts and Humanities?

23 MS. VENN-FREDERIC: Yes, I have.

24 MS. MOLDENHAUER: Was that in the last month
25 or two?

1 MS. VENN-FREDERIC: Within the last two
2 months.

3 MS. MOLDENHAUER: And did you ask them for
4 assistance in trying to find grants or obtain help
5 with construction build outs?

6 MS. VENN-FREDERIC: Yes. Several members of
7 the Artist Union have in fact reached out to the Arts
8 and Humanities Commission and I, myself, was present
9 at a meeting with Arthur Espinoza, the current
10 director. And we have requested support. We've
11 invited them to the building to see again the work
12 that takes place in the building. We've shared our
13 output, and we're hopeful that they will in fact
14 support our need.

15 MS. MOLDENHAUER: And are they a district
16 agency that actually has the ability to provide
17 grants for buildout in addition to whatever possibly
18 the applicant or the developer would agree to? Is
19 that part of their, I guess, purview to provide
20 grants to help build --

21 MS. VENN-FREDERIC: It is part of --

22 MS. MOLDENHAUER: -- out the facilities?

23 MS. VENN-FREDERIC: It is part of their
24 purview, correct.

25 MS. MOLDENHAUER: Mr. Otten, can you please -

1 - you've used the word multiple times. I think
2 that's probably even an understatement, displacement.
3 Can you please show me where in subsection 2400,
4 which is the PUD section, that the word displacement
5 is located?

6 MR. OTTEN: It's inferred in the adverse
7 impacts and protecting and advancing the public
8 health, safety, welfare, and convenience.

9 MS. MOLDENHAUER: So is the word displacement
10 actually in the regulations? Yes, or no?

11 MR. OTTEN: 2403.3 says, "The impact of the
12 project on the surrounding area and the operation of
13 city services and facilities shall not be
14 unacceptable."

15 The surrounding area includes --

16 MS. MOLDENHAUER: I know it's really late and
17 so the question is, yes, or no?

18 MR. OTTEN: The Comprehensive Plan is replete
19 with the term displacement. And that's directly
20 related --

21 MS. MOLDENHAUER: I'm not asking about the
22 Comprehensive Plan.

23 MR. OTTEN: -- to the PUDs. No, you did.
24 No, you did.

25 MS. MOLDENHAUER: I asked you about the

1 Zoning Regulations --

2 MR. OTTEN: Yes, the Zoning Regulations.

3 MS. MOLDENHAUER: -- Section 2400 --

4 MR. OTTEN: Uh-huh. Twenty-four hundred.

5 MS. MOLDENHAUER: -- Chapter --

6 MR. OTTEN: Twenty-four hundred point four.

7 MS. MOLDENHAUER: Does the word --

8 MR. OTTEN: The PUD process shall not be used
9 to circumvent the intent of the zoning regs, nor
10 result in an action that is inconsistent with the
11 Comprehensive Plan.

12 Comprehensive Plan is replete with the term,
13 displaced, displacement, displacement pressures.

14 MS. MOLDENHAUER: You're referring it by
15 another word. I'm just asking you, does this section
16 have the word displacement?

17 MR. OTTEN: You understand how the law works.
18 It's inferred through citations throughout.

19 MS. MOLDENHAUER: And you should understand
20 how the question works. I'm asking a question and I
21 want a yes or no answer.

22 MR. OTTEN: I'm not going to answer that.

23 MS. MOLDENHAUER: That's fine. That's an
24 answer. That's fine. We'll move on.

25 MR. OTTEN: You'll have to dig it out

1 yourself.

2 MS. MOLDENHAUER: Ms. Venn-Frederic, you
3 reference that you had actually asked Ms. Gayle, the
4 prior owner, about acquiring the building. Are any
5 of those e-mails or communications in the record
6 currently?

7 MS. VENN-FREDERIC: No, ma'am.

8 MS. MOLDENHAUER: Desiree, you used the word
9 access to a true grassroots program. Do you find
10 that it's important to provide ADA access and
11 accessibility for all individuals of the District of
12 Columbia to arts programs?

13 MS. VENN-FREDERIC: Do I find that it is
14 important? Can you repeat that?

15 MS. MOLDENHAUER: Do you find that
16 accessibility, so structures that are accessible to
17 ADA compliance, is important to provide --

18 MR. OTTEN: Chair, I'd like to object.

19 MS. MOLDENHAUER: -- access to all --

20 MR. OTTEN: This is not relevant to any of
21 the testimony brought by these fine witnesses
22 tonight.

23 MS. MOLDENHAUER: I believe it has to do with
24 access and the benefits of the new program and the
25 new arts program.

1 MR. OTTEN: They did not testify to ADA
2 compliance.

3 MS. MOLDENHAUER: She wrote the word, "access
4 to a true --" she said, access to a true grassroots
5 program and I'm just referencing --

6 MR. MAY: I think there's a difference
7 between access to and accessibility in terms of ADA,
8 and I think that --

9 MS. MOLDENHAUER: I'll move on.

10 MR. MAY: -- he's making a good point.

11 MS. MOLDENHAUER: Then in regards to access
12 do you find that a discounted membership or free
13 membership to the ANC and the community to programs
14 that are put on by an arts program would be
15 beneficial to the community?

16 MS. VENN-FREDERIC: Well, the arts
17 programming that takes place currently within Union
18 Arts is free and accessible to the very community.

19 MS. MOLDENHAUER: So my question is, would
20 any other program, whether yours, another program
21 that Cultural D.C. puts on, or a program that's
22 possibly located in the hotel, be a benefit to the
23 community if it provided discounted or free
24 memberships to arts programs?

25 MS. VENN-FREDERIC: It would be a benefit.

1 Mind you --

2 MS. MOLDENHAUER: Thank you.

3 MS. VENN-FREDERIC: -- hotels are privatized
4 and so the active community is not welcome into a
5 hotel. Whether or not you have programming that in
6 fact invites them in, there's a level of comfort, you
7 know, the lack of comfort that they will have in a
8 hotel space.

9 MS. MOLDENHAUER: And that's your personal
10 opinion?

11 MR. OTTEN: Based on her expertise.

12 MS. MOLDENHAUER: She's not entered as an
13 expert in this testimony.

14 CHAIRPERSON HOOD: Ms. Moldenhauer, she gave
15 her -- whether it's her personal opinion or not, that
16 was her answer, because that brings on other people
17 answering so let's just make sure we ask the question
18 to the person and get the answer.

19 MS. MOLDENHAUER: Ms. Shelline (sic). Sorry,
20 yeah, Micheline, have you ever been to one of the
21 Cultural D.C. arts studios that have been created by
22 them through the District?

23 MS. KLAGSBURN: Yes, I have.

24 MS. MOLDENHAUER: And were you able to
25 witness any of the shared space programming that they

1 have successfully accomplished?

2 MS. KLAGSBURN: I think -- I don't know much
3 about the shared spaces. I've seen, I've visited
4 quite a few and I have other friends who are artists
5 who are in some of the developments at Flashpoint at
6 Monroe Street. People have very different needs.
7 Some artists are really desperate for space.

8 I think -- you know, I don't want to
9 criticize Cultural D.C. I'm someone who was very
10 excited about their work for many years but I think
11 some of their developments are very disappointing and
12 I know some people who have a lot of problems with
13 the spaces that they've created.

14 MS. MOLDENHAUER: Micheline, do you know the
15 average size of all the studios at 411?

16 MS. KLAGSBURN: Currently?

17 MS. MOLDENHAUER: Yes.

18 MS. KLAGSBURN: I have -- I wouldn't know the
19 math, no. I have never done the math.

20 MS. MOLDENHAUER: Are you aware that maybe
21 yours is one of the larger studios?

22 MS. KLAGSBURN: Yes, I'm sure it is.

23 MS. MOLDENHAUER: Thank you. Micheline, you
24 said that the list that the applicant provided in
25 regards of availability of space was not accurate as

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1 to price.

2 MS. KLAGSBURN: Right.

3 MS. MOLDENHAUER: Was the prices that you
4 found when you went around and toured, you said you
5 checked out all those places --

6 MS. KLAGSBURN: Uh-huh.

7 MS. MOLDENHAUER: -- was the price higher or
8 lower?

9 MS. KLAGSBURN: Oh, the prices were higher.
10 I don't think I -- the list in front of me. There
11 was one, 5646 3rd Street Northeast that on this list
12 said it was supposed to be \$3 per square foot, but
13 it's actually \$20 a square foot. There were a number
14 of cases like that. There were just errors
15 throughout that list.

16 MS. MOLDENHAUER: Luke, you mentioned that
17 you've done different types of music festivals and
18 different venues.

19 MR. STEWART: Uh-huh.

20 MS. MOLDENHAUER: Is that correct?

21 MR. STEWART: That's correct.

22 MS. MOLDENHAUER: Are those music -- are
23 those festivals or venues away from where you have
24 your studio or where you have all your stuff?

25 MR. STEWART: Repeat the question. Or

1 rephrase the question.

2 MS. MOLDENHAUER: You said that you do music
3 festivals and events. And so I'm asking if those
4 programs that you put on, or those music
5 opportunities that you put on are either in 411 or
6 some of those outside of 411.

7 MR. STEWART: Both.

8 MS. MOLDENHAUER: Okay. And so when you have
9 programs that are outside 411 it's still a benefit
10 and you're able to either bring your amps or bring
11 your other stuff and then provide that benefit to the
12 community. Is that correct?

13 MR. STEWART: Not with the same degree of
14 leeway that, obviously, that I have at 411.

15 MS. MOLDENHAUER: Right. But when you put on
16 those festivals you find those to be productive and
17 beneficial for the people who enjoy them and for the
18 community as a benefit to the arts community overall.

19 MR. STEWART: I have to make a lot of
20 compromise. So not as beneficial as the ones that
21 are at Union Arts, but somewhat beneficial.

22 MS. MOLDENHAUER: In your Union Arts space
23 currently do you have, I would just say, top of the
24 line or kind of current industry soundproofing at the
25 current location?

1 MR. STEWART: Absolutely not.

2 MS. MOLDENHAUER: Would it be beneficial
3 whether -- maybe not for you personally, but would it
4 be beneficial typically for a musician to have a
5 totally built out new, high quality, soundproofed
6 music studio?

7 MR. STEWART: It depends. You have to ask
8 that musician.

9 MS. MOLDENHAUER: Okay. Thank you. Gauge,
10 you indicated that you are a curator. Does that mean
11 that you help work with other artists to curate or to
12 market or to show their material? Is that an
13 accurate definition of curator? Gauge. Sorry,
14 Graham. Graham. Graham.

15 MR. BOYLE: Could you repeat the question?

16 MS. MOLDENHAUER: I absolutely will, I
17 apologize.

18 You indicated that you are a curator and I'm
19 just trying to understand how you would define
20 curator. Is that somebody that helps other artists
21 market or show or exhibit their artwork?

22 MR. BOYLE: Yes. I help other artists. I
23 come up with a theme or a concept for an exhibition
24 and a lot of times it involves helping some of my
25 friends get exposure in the art circuit.

1 MS. MOLDENHAUER: So would you find that
2 exposure and exhibitions where people are able to
3 view people's art is actually a benefit to the art
4 community as a whole, and how you contribute.

5 MR. OTTEN: Graham isn't the artist.

6 MR. BOYLE: I'm not sure I understand.

7 MS. MOLDENHAUER: You just said that you
8 provide exhibitions where you're able to showcase and
9 show other artist's work. Is that a benefit to the
10 artists that you are providing?

11 MR. BOYLE: Absolutely.

12 CHAIRPERSON HOOD: Do you provide a -- do you
13 take a commission or do you charge them any fees for
14 that?

15 MR. BOYLE: No, I do not, unless -- in the
16 past I have curated exhibits for organizations in
17 which I'm hired as a contractual basis.

18 MS. MOLDENHAUER: Thank you.

19 CHAIRPERSON HOOD: Ms. Moldenhauer, about how
20 many --

21 MS. MOLDENHAUER: I'm almost -- I'm almost
22 done.

23 CHAIRPERSON HOOD: So you won't need Monday?

24 MS. MOLDENHAUER: I won't need Monday for the
25 cross-examination, I don't believe.

1 CHAIRPERSON HOOD: Okay.

2 MS. MOLDENHAUER: But let me just go back
3 through my notes. There's a lot of comments that
4 were made during OP that I want to review.

5 CHAIRPERSON HOOD: I understand. I
6 understand. I just wanted to make sure because we
7 were about ready to wind it down and if you need to
8 come back Monday we'll continue. We don't rush
9 cross-examination as everyone knows by now.

10 MS. MOLDENHAUER: I'm through their
11 questions. I'm through what they stated that I wrote
12 questions about. I do have questions of them on
13 cross-examination that have to do more with kind of
14 the elongated questions about OP and things about
15 that. So if we want to come back this might be a
16 good breaking point.

17 CHAIRPERSON HOOD: Okay. About how much time
18 do you think all that will be?

19 MR. MAY: Note, you've already been here for
20 nearly 40 minutes.

21 CHAIRPERSON HOOD: Is it more than --

22 MS. MOLDENHAUER: Fifteen, 20 minutes.

23 CHAIRPERSON HOOD: Okay.

24 MS. MOLDENHAUER: Fifteen, 20 minutes. And I
25 will time myself.

1 CHAIRPERSON HOOD: If this is a good breaking
2 point --

3 MS. MOLDENHAUER: Fifteen, 20 minutes.

4 CHAIRPERSON HOOD: -- why don't we pick up
5 with that and give everybody -- we can come back with
6 fresh minds. And why don't we break at this point
7 and we'll come back with you finishing --

8 MS. MOLDENHAUER: Yes. Yes. Yes.

9 CHAIRPERSON HOOD: -- your cross-examination.

10 MS. MOLDENHAUER: Thank you very much.

11 CHAIRPERSON HOOD: Okay. Now, everyone, we
12 will reconvene Monday at 7:00. We will begin with
13 Ms. Moldenhauer continuing the cross-examination of
14 these witnesses, of this party. And then after that
15 we will have any rebuttal. And then we will have
16 cross on rebuttal. And then we will have closing.

17 MS. MOLDENHAUER: Can I just remind the
18 Commission, I don't believe -- I know that the ANC is
19 not present, but I don't believe that we've actually
20 ever called the ANC or referenced their letters in
21 the record, so that might come after I cross but
22 before I rebut.

23 CHAIRPERSON HOOD: Okay. That's fine. Ms.
24 Schellin, do we have anything else?

25 MS. SCHELLIN: No, sir.

1 CHAIRPERSON HOOD: Okay. So we'll see
2 everyone Monday at 7:00 p.m. This hearing is
3 adjourned for the night.

4 MS. SCHELLIN: Mr. Otten, just a reminder
5 that you need to make sure all your witnesses come
6 back Monday.

7 [Hearing adjourned at 10:58 p.m.]

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