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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.]

7:31 p.m. to 10:15 p.m.  
Monday, April 25, 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 DONNA HANOUSEK, Secretary

10

11 Office of Planning:

12 JOEL LAWSON

13 JENNIFER STEINGASSER

14 MEGAN RAPPOLT

15

16 Other:

17 TANYA HILTON

18 DENNIS B. LEE

19 ELLEN MCCARTHY

20 JIM WATSON

21 MICHELINE KLAGSBURN

22 GRAHAM BOYLE

23

24

25

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

2 CHAIRPERSON HOOD: So let's reconvene, Zoning  
3 Commission Case -- hold on one second. Just giving  
4 the recorder time. The video -- web stream live time  
5 to do the transfer. I guess, Ms. Hanousek, can you  
6 check and make sure he's ready because I know he  
7 needed some time.

8 [Pause.]

9 CHAIRPERSON HOOD: Okay. We're going to  
10 reconvene, Zoning Commission Case 15-19. Again, my  
11 name is Anthony Hood. Joining me are Vice Chair  
12 Cohen, Commissioner Miller, May, and Turnbull. Also  
13 the Office of Zoning staff, Ms. Hanousek, as well as  
14 the Office of Planning, Ms. Steingasser, Mr. Lawson,  
15 and Ms. Rappolt.

16 Again, the comments of our previously  
17 meeting, hearings, will be incorporated into this  
18 edition of this proceeding. So what I would like to  
19 do, I think where we left off, Ms. Moldenhauer and  
20 Mr. Otten, I think there was going to be cross-  
21 examination. Ms. Moldenhauer by the party in  
22 opposition. So would you like to begin?

23 MR. OTTEN: Chairman, I have just a  
24 procedural question.

25 CHAIRPERSON HOOD: Sure.

1 MR. OTTEN: So tonight we're going to  
2 continue where we left off in terms of the cross-  
3 examination from the applicant of our panel, and then  
4 proceed into further expert testimony from the  
5 applicant. Is that as I understand it?

6 CHAIRPERSON HOOD: Let me -- I don't even  
7 recall. I thought that we were at --

8 MS. MOLDENHAUER: We'd be at rebuttal.

9 CHAIRPERSON HOOD: Rebuttal, right.

10 MS. MOLDENHAUER: Which includes one expert.

11 CHAIRPERSON HOOD: Yeah, cross is over. We  
12 finished that.

13 MS. MOLDENHAUER: Actually, three experts  
14 that they are --

15 CHAIRPERSON HOOD: We finished that the other  
16 night.

17 MS. MOLDENHAUER: No, we had -- I  
18 indicated --

19 CHAIRPERSON HOOD: Oh, that's right. You  
20 haven't finished cross.

21 MS. MOLDENHAUER: I haven't finished cross.  
22 A procedural question I have is that there are two  
23 other witnesses that were requested by the Commission  
24 to attend at 7:00. I have questions for them and  
25 they are not here.

1           CHAIRPERSON HOOD: Okay. Well, here is what  
2 we're going to do. And I will talk to my colleagues  
3 and let them chime in, but I'm going to offer this.  
4 Since they're not here, if the applicant really wants  
5 to, we can reconvene this or -- I'm just saying, if  
6 that's what you really want to do.

7           MS. MOLDENHAUER: I would like to just note  
8 it on the record that two of the applicants failed to  
9 show at 7:00 when they were instructed to attend to  
10 continue cross-examine.

11           CHAIRPERSON HOOD: And do we have the names  
12 of the two people who did not show?

13           MS. MOLDENHAUER: It's Desiree Venn-Frederic,  
14 and Luke Stewart.

15           CHAIRPERSON HOOD: Okay. And always, we will  
16 deal with testimony as appropriate. Okay? Noting  
17 that the testimony was not being able to be crossed  
18 because of not showing up. Okay.

19           So colleagues, any questions on that  
20 procedure? Okay. Did you have something,  
21 Commissioner Miller?

22           MR. MILLER: I was only going to add that Mr.  
23 Otten also was a representative of those witnesses,  
24 in addition to being his own witness. At least  
25 that's how he presented himself. He could possibly

1 answer any questions that the applicant wanted to  
2 address in terms of cross-examination.

3 CHAIRPERSON HOOD: Okay. Well, that's up  
4 to --

5 MR. MILLER: Yeah.

6 CHAIRPERSON HOOD: -- Ms. Moldenhauer if she  
7 wants to get the answers from Mr. Otten or if you  
8 wanted to get it from the two people who mentioned  
9 it. That's why I didn't go down that line. But  
10 that's up to you, if you want to ask Mr. Otten, he's  
11 sitting right there.

12 MR. OTTEN: And Chair, for the record, I just  
13 want to put on the Commission's radar that we  
14 received 60 pages of testimony that's going to be  
15 introduced tonight about a half an hour before 5:00.  
16 And that was only after visiting the Office of Zoning  
17 website. We did not actually get the rebuttal  
18 testimony before this hearing, in really any time. I  
19 had to print it out and bring it and I'm looking  
20 through it now. I'm having Mr. Boyle look through  
21 it. I just, I don't know how we can cross-examine  
22 with this information being delivered to us 30  
23 minutes before the hearing tonight.

24 CHAIRPERSON HOOD: You're crossing on  
25 rebuttal. Now the information, there will be time

1 for you to look at that information at a later time.  
2 That information was what, staff that we asked for?

3 MS. MOLDENHAUER: It's typically procedure if  
4 we have written testimony of who will be rebutting,  
5 to file that in the record so that the Zoning  
6 Commission has access to written statements of what  
7 they will be stating this evening. And so the same  
8 way I was able to listen to his witnesses, he will be  
9 able to listen to the rebuttal.

10 The full written statements will not be  
11 orally stated this evening. It will be -- sorry.

12 CHAIRPERSON HOOD: Okay. Let me cut you off.  
13 I think I got it. I got it. Yeah. We're going to  
14 go ahead and proceed because one of the things I've  
15 noticed, we get bogged down in a lot of unnecessary  
16 stuff and we need to cut that out. We need to move  
17 forward because the Zoning Commission, as well as  
18 residents, and anybody else, has a lot of other stuff  
19 going on and we have a lot of people who are trying  
20 to get in here to have hearings with us and we can't  
21 because we're having the same people in here for the  
22 same hearing.

23 So tonight I'd like for us to move as  
24 efficient and effective as possible so we can do the  
25 business of the city and the residents of the city

1 who live here, and the ones who do business here.

2 So, Ms. Moldenhauer, if that's all, can you  
3 finish cross-examining?

4 MS. MOLDENHAUER: Thank you. Micheline, have  
5 you personally contacted the Department of Small and  
6 Local Businesses?

7 MS. KLAGSBURN: No.

8 MS. MOLDENHAUER: Are you aware that they are  
9 one of the organizations that are supposed to take  
10 action upon creative D.C. agendas strategies?

11 MS. KLAGSBURN: I don't know.

12 MS. MOLDENHAUER: Have you contacted DMPED  
13 during the course of this last three months?

14 MS. KLAGSBURN: I haven't personally  
15 contacted them, no.

16 MS. MOLDENHAUER: Do you know if anybody from  
17 the representation of 411 Artist Union has contacted  
18 DMPED?

19 MS. KLAGSBURN: I don't know. You might ask  
20 -- you might ask Mr. Otten about that. I don't know.

21 MS. MOLDENHAUER: Mr. Boyle, have you  
22 personally contacted DMPED?

23 MR. BOYLE: No, ma'am.

24 MS. MOLDENHAUER: Are either of you aware  
25 that on the DMPED's website there is a creative and

1 open space modernization grant that is available  
2 currently?

3 MS. KLAGSBURN: I'm sure you're right. I  
4 don't know.

5 MS. MOLDENHAUER: I'm asking if you're aware  
6 of that, if you've checked out their website to see  
7 what grants are available to artists and creative  
8 spaces.

9 MS. KLAGSBURN: No, I haven't.

10 MS. MOLDENHAUER: Mr. Boyle, have you checked  
11 out the website to see that there is a creative and  
12 open space modernization grant available?

13 MR. BOYLE: No, ma'am.

14 MS. MOLDENHAUER: Mr. Graham, how do you  
15 actually currently get to the property; to and from  
16 the property each day?

17 MR. BOYLE: I either bike or I take a van.

18 MS. MOLDENHAUER: And if you bike do you have  
19 to carry your bicycle up to your unit?

20 MR. BOYLE: No.

21 MS. MOLDENHAUER: Where do you put your bike?

22 MR. BOYLE: I'll lock it outside or in the  
23 hallway.

24 MS. MOLDENHAUER: Okay. Micheline, have you  
25 personally retained a professional to conduct an air

1 quality impact study?

2 MS. KLAGSBURN: No.

3 MS. MOLDENHAUER: Do you know if 411 Artist  
4 Union has done so?

5 MS. KLAGSBURN: I don't believe so.

6 MS. MOLDENHAUER: Mr. Boyle, have you  
7 personally retained a professional traffic consultant  
8 to conduct a traffic study?

9 MR. BOYLE: No, that's out of my league.

10 MS. KLAGSBURN: Bizarre question.

11 MS. MOLDENHAUER: And have you -- do you know  
12 if 411 Artists Union has done so?

13 MR. BOYLE: No, ma'am.

14 MS. MOLDENHAUER: Mr. Otten, during your  
15 testimony you stated that tenants are facing  
16 displacement due to this PUD action. Is it true that  
17 it's not this PUD action but rather the \$7 million  
18 sales price that is causing the possible displacement  
19 and whether this was a matter of right project, or  
20 this PUD that the tenants would be displaced?

21 MR. OTTEN: When a building is sold it does  
22 not necessarily mean that people will be displaced  
23 from that project, from that sale. When a building  
24 is sold it is exchanged deed simple. Doesn't mean  
25 that the people in those buildings will be displaced.

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1           What it means when a PUD is applied for and  
2 is set before this Commission for approval or not,  
3 then there is a specific project that's being  
4 specifically requested of public entitlements by  
5 which a specific set of adverse impacts will be  
6 generated. One of those adverse impacts in this case  
7 is the direct displacement of the residents --  
8 current creative residents and tenants in the  
9 building.

10           MS. MOLDENHAUER: I appreciate the definition  
11 but I'm asking in this case you know that the  
12 property sold for \$7 million. You're aware of the  
13 rental -- the low rental values the tenants are  
14 paying and you're aware of the substantial subsidy  
15 that the current applicant is paying out of pocket in  
16 order to keep the tenants in the building. Isn't it  
17 true that whether this project was done as a matter  
18 of right or a PUD that these tenants would be  
19 displaced?

20           MR. OTTEN: I cannot speculate. All I can  
21 say is that your client's choice to purchase the  
22 building at three times the tax assessable value does  
23 not mean he's providing a subsidy. Mr. Lee knew when  
24 he purchased this property at that significant price  
25 that he would be subsidizing, particularly without

1 any rent paying tenants there, he'd be paying a lot  
2 of money. In fact, we're subsidizing him with the  
3 money we're providing him right now. If this  
4 building was empty he'd be paying a significant  
5 amount of money on his own that he chose to do by  
6 purchasing the property at three times the taxable  
7 assessed value.

8 MS. MOLDENHAUER: Are you aware that there  
9 were two other bidders on this property?

10 MR. OTTEN: I don't see how that relates to  
11 anything that's before the Commission.

12 MS. MOLDENHAUER: No other questions.

13 CHAIRPERSON HOOD: Okay. Thank you, Ms.  
14 Moldenhauer and the party in opposition. Let's, Mr.  
15 Otten, let's get ready for rebuttal. Are you ready  
16 for rebuttal?

17 MS. MOLDENHAUER: I am ready for rebuttal. I  
18 reminded the Commission the other evening, I know  
19 this has been going on so long, we never asked for  
20 the ANC to step forward or referenced the ANC's  
21 support. That may be appropriate before we start  
22 rebuttal.

23 CHAIRPERSON HOOD: I know I've mentioned the  
24 ANC a few times, but if you want to -- are they here?

25 MS. MOLDENHAUER: They are not, but I just

1 didn't know if it was specifically called for in the  
2 record. I cannot remember and I didn't think it was.  
3 I thought it was skipped over.

4 CHAIRPERSON HOOD: Well, if you want to  
5 mention the ANC support again you can do that.

6 MS. MOLDENHAUER: Oh, so just in the record  
7 as Exhibit 19, is the full resolution of the ANC  
8 support which we obtained after going to multiple  
9 meetings and also a small SMD meeting. And then also  
10 more recently at Exhibit 238, is a letter in support  
11 from the single-member district representative  
12 confirming her support for the project after many of  
13 the questions and concerns were brought up.

14 And now I'll ask my party to move --

15 CHAIRPERSON HOOD: And again, Ms.  
16 Moldenhauer, as you know, the full resolution is the  
17 one that we look at.

18 MS. MOLDENHAUER: Yes.

19 CHAIRPERSON HOOD: That's the one that gets  
20 the great weight.

21 MS. MOLDENHAUER: So the Exhibit 19.

22 CHAIRPERSON HOOD: Okay.

23 MS. MOLDENHAUER: I can ask my parties to  
24 step forward and we can begin rebuttal.

25 CHAIRPERSON HOOD: So let's begin rebuttal.

1 Mr. Otten, if the party could step back? We're going  
2 to do the rebuttal. Maybe one of you all can sit at  
3 the table. Mr. Otten, and everybody else can step  
4 back. If there's enough space. Doesn't look like  
5 it's going to be enough space. Okay, so if you all  
6 can step back? Thank you.

7 [Pause.]

8 MS. MOLDENHAUER: Commissioner Hood, we would  
9 request 30 minutes of time to address the individual  
10 in opposition's and the Artist Union's presentation.  
11 Thank you.

12 CHAIRPERSON HOOD: Thank you.

13 MS. MOLDENHAUER: As a brief introduction,  
14 it's been more than three months --

15 MR. OTTEN: Chairman, I have to object right  
16 out the gate. They're asking for an additional 30  
17 minutes. This is presentation by experts. This  
18 should have happened at the hearing where they  
19 presented. This is duly eliminated, an extra 30  
20 minutes from our presentation. You know, we were  
21 limited at 30 minutes because they gave a 30 minute  
22 presentation. In fact they rushed it, quote/unquote,  
23 in the transcript.

24 And now, at the end of the hearing, at the  
25 end of this administrative process they're getting an

1 extra 30 minutes and we've got a half an hour before  
2 the hearing to look through the materials to cross-  
3 examine them on. How are we supposed to do an  
4 appropriate job here according to the APA, the  
5 Administrative Procedures Act? How are we supposed  
6 to do this?

7 CHAIRPERSON HOOD: Okay. Under the zoning  
8 ordinance, under the zoning code, our procedures are,  
9 once we get to this point the applicant does what is  
10 called rebuttal. Once they finish rebuttal you will  
11 have a chance to cross on rebuttal. If they take 30  
12 minutes to an hour you can cross on rebuttal.

13 MR. OTTEN: That's not the point. It is  
14 presentation.

15 CHAIRPERSON HOOD: That is the point. Let me  
16 explain something to you --

17 MR. OTTEN: These are new experts. These  
18 aren't people who --

19 CHAIRPERSON HOOD: No.

20 MR. OTTEN: -- presented already.

21 CHAIRPERSON HOOD: Let me explain something  
22 to you, Mr. Otten. Our regulations speak for itself,  
23 and you can deal with that at another venue or  
24 however you want to do it, but our regulations are  
25 what they are. They have an opportunity to rebuttal.

1 MR. OTTEN: With presentations from experts?

2 CHAIRPERSON HOOD: We're going to proceed  
3 with rebuttal. We're going to proceed with rebuttal  
4 and then you can, if --

5 MR. OTTEN: This is new testimony. We  
6 disagree and we'll take this to court if we have to.

7 CHAIRPERSON HOOD: Okay. So noted. So  
8 noted.

9 MR. OTTEN: Thank you.

10 CHAIRPERSON HOOD: Next. Okay, Ms. --

11 MS. MOLDENHAUER: It's been three months  
12 since we presented our initial case-in-chief. The  
13 opposition has raised mostly global city-wide  
14 concerns about the need for artist space. 411 Artist  
15 Union's we believe underlying opposition stems from  
16 wanting more relocation assistance. Our rebuttal  
17 will address those global and tenant issues, but will  
18 mostly focus back on the PUD standard, the  
19 Comprehensive Plan, the Small Area Plan, and the  
20 public benefits for the project.

21 On rebuttal you will hear about the project,  
22 how the project is exceptional in nature from its  
23 extensive list of public benefits for a substantial  
24 relocation package. The artists benefit provides a  
25 20 year secured dedicated art and maker space in the

1 hotel, plus gallery performance and event space and  
2 much more.

3           The project satisfies the goals and policies  
4 of the Comprehensive Plan, the Creative D.C. agenda,  
5 and the Ward 5 Works Plan, as well as the vision for  
6 Florida Avenue. This is a truly revolutionary plan  
7 and one that has already started to change the  
8 District's landscape and discussions amongst artists  
9 and developers alike in the development community.

10           To that end we will have a brief introduction  
11 from Brook Rose providing information on his efforts  
12 with the tenants. Mr. Dennis Lee will then also  
13 testify about the relocation and negotiations  
14 throughout the last three months. Tanya Hilton, the  
15 acting Executive Director for Cultural D.C. will  
16 explain more about the project's substantial arts  
17 benefits as it relates to questions that were brought  
18 up by the individuals who testified.

19           Ms. Ellen McCarthy, who is the former  
20 Director of Office of Planning, will testified and  
21 we'll request that she be qualified as an expert in  
22 land use and planning in regards to the PUD standards  
23 and the Comprehensive Plan. Her resume was filed in  
24 Exhibit 236 of the zoning record.

25           Nick from BBGM is here in replace of David

1 Delcher due to scheduling issues and he will speak  
2 and be available for questions on the revised plans.  
3 The revised plans were filed on February 19th and our  
4 Exhibit 188. Jim Watson is here from Gorove/Slade  
5 and will be answering questions that were directly  
6 requested or crossed on DDOT's submissions.

7 At this point now we'll turn over to Mr.  
8 Rose.

9 CHAIRPERSON HOOD: Before we do that let me  
10 make sure, has everyone been sworn in?

11 MS. MOLDENHAUER: I believe that possibly Ms.  
12 McCarthy needs to be sworn in, Jim from Gorove/Slade  
13 needs to be sworn in and -- okay. And that's it.

14 CHAIRPERSON HOOD: Okay.

15 MS. MOLDENHAUER: So just two individuals.

16 CHAIRPERSON HOOD: Could you do that, Ms.  
17 Hanousek, please?

18 MS. HANOUSEK: For those who need to be sworn  
19 in, please rise. Raise your right hand.

20 [Oath administered to participants.]

21 MS. HANOUSEK: You may be seated.

22 CHAIRPERSON HOOD: And let's go with the  
23 expert witness. You only have one person, that's Ms.  
24 McCarthy.

25 MS. MOLDENHAUER: Only one new expert. We

1 had filed our original BBGM expert testimony at the  
2 beginning of the hearing, as well as Gorove/Slade.  
3 So our new expert would be Ellen McCarthy, which I  
4 stated her resume was filed in Exhibit 236.

5 CHAIRPERSON HOOD: And you're proffering her  
6 as an expert in what? I read it but I want you to  
7 just say for the record.

8 MS. MOLDENHAUER: And that --

9 CHAIRPERSON HOOD: Yeah, you're proffering  
10 her as an expert.

11 MS. MOLDENHAUER: Oh, sorry, sorry, sorry.  
12 Yes, I am proffering her as an expert and that was  
13 filed and noticed to the opposition on 3/11.

14 CHAIRPERSON HOOD: An expert -- an expert in  
15 what?

16 MS. MOLDENHAUER: An expert in land use and  
17 planning.

18 CHAIRPERSON HOOD: Okay. All right. Okay.  
19 All right. Any objections, colleagues? Not hearing  
20 any. Not hearing any we will -- Ms. McCarthy. I  
21 thought she was already done this previously as an  
22 expert in front of the Zoning Commission. I believe  
23 you have been, so we don't need to revisit that.

24 Anything else? Any other procedures?  
25 Colleagues, anything? Okay. So we may begin.

1 MS. MOLDENHAUER: Thank you.

2 CHAIRPERSON HOOD: You may begin.

3 MR. ROSE: Chairman Hood and Members of the  
4 Commission, over the past several months we have  
5 heard emotional testimony about artist displacement.  
6 Yes, there is a city wide challenge with artist  
7 displacement. Nobody agrees more than we do. It was  
8 the inspiration for us to create sustain art space.

9 In our project many thousands of square feet  
10 of prime commercial space will be dedicated to the  
11 arts for a minimum of 20 years. How have we lost  
12 sight of that? We are creating a sustainable long-  
13 term place for art.

14 Let's take a step back. Many of the artists  
15 entered our building with the demise of Gold Leaf  
16 Studios. A developer came along, bought the Gold  
17 Leaf building, vacated tenants, and it became an 11-  
18 story commercial and residential building. No arts.

19 Prior to our purchasing 411 New York Avenue,  
20 two other parties were interested. One, as a  
21 corporate office, and the other as a youth hostel.  
22 Again, no arts.

23 Few developers would choose the path we are  
24 presenting here. Yes, the current artists will have  
25 to relocate. For this reason we have a generous

1 relocation plan offering financial assistance, moving  
2 art, and helping build out new space. We've also  
3 been actively identifying relocation space on behalf  
4 of the tenants. I spent an afternoon driving one  
5 tenant around showing her potential space. Such  
6 genuine involvement is rare in our industry.

7           And let's not forget we welcome these artists  
8 to participate in our city wide arts program  
9 connecting artists, the community, and visitors to  
10 our city.

11           Now let's turn to financial reality. The  
12 rent roll is way too low to cover the mortgage. Many  
13 developers would have immediately raised rent and  
14 evicted tenants who couldn't afford it. Instead we  
15 locked in artificially low rents for 15 months. We  
16 offered this at our very first tenant meeting to give  
17 everyone ample time to prepare next steps. Without  
18 any obligation we've operated at a significant loss  
19 at the cost of hundreds of thousands of dollars.

20           But we cannot afford to continue subsidizing  
21 the building, and the tenants cannot afford to pay  
22 market rent. The building is not sustainable.

23           The opposition is fighting the wrong fight.  
24 It's ironic to have artists fighting the arts. These  
25 artists are not defined by the four walls in which

1 they work. Their spirit and talent will thrive  
2 anywhere. We commend them for their activism and  
3 want to join in their call that the city take a more  
4 proactive approach on this issue. We should have a  
5 unified voice. But don't punish this project. It is  
6 a strong plan to create a unique hotel and art center  
7 at the gateway of our city, and it guarantees  
8 affordable space for a minimum of 20 years.

9 Stopping this project will stop arts in this  
10 location. Our community will lose out on a wonderful  
11 amenity. And out of pure economics we will be forced  
12 to pursue one of the many other matter of right uses  
13 of C-M-1 zoning. But one thing is for sure, no arts.  
14 Thank you.

15 CHAIRPERSON HOOD: And could you tell us your  
16 name again, please?

17 MR. ROSE: Brook Rose.

18 CHAIRPERSON HOOD: Okay. Thank you.

19 MR. LEE: Hi. Good evening. My name is  
20 Dennis Lee and I'm a co-developer with Brook. I  
21 think Brook summed everything up in a big picture,  
22 and I'll hit on just a couple of details and try to  
23 move quickly.

24 So, when we purchased the building it was  
25 under structural duress. Not only with the concrete

1 and the rebar, also the operational systems that are  
2 obsolete and in poor working condition. The boiler  
3 system was abandoned years ago. There's individual  
4 heating in all of the units. There's a fire alarm  
5 which is functioning, but it's antiquated and  
6 certainly wouldn't meet today's standards.

7           The interior partitions, which are between  
8 the studios and the spaces are ad-hoc. They're  
9 patched together with a variety of materials, none of  
10 the fireproof. But also keep in mind that when we  
11 first went into the building we invested over \$80,000  
12 just to make it safe. We pulled it together and we  
13 got the fire alarm working, we got the elevator  
14 working. So, we've been doing what we can to keep it  
15 safe during this interim period.

16           But the reality is to bring it up to a  
17 commercial standard would cost \$5 million. That's  
18 \$100 a square foot. And anybody that knows  
19 construction knows that's very conservative to take a  
20 building like that, get the structure back in place,  
21 and then get the systems up.

22           From the financial aspect that Brook talked  
23 about, the \$7 million purchase price is a very real  
24 price. Our --

25           CHAIRPERSON HOOD: Let me do this. Let me do

1 this. And one of my colleagues just mentioned, I'm  
2 listening to what you're saying. I'm trying to  
3 figure out how this is rebuttal. And you all started  
4 talking, I would have to say, I don't want to say  
5 that Mr. Otten was right because you all hadn't  
6 started --

7 MR. LEE: Uh-huh.

8 CHAIRPERSON HOOD: -- saying rebuttal. But  
9 what I'm hearing now, Mr. Otten was right. I don't  
10 hear where this is rebuttal.

11 MS. MOLDENHAUER: I mean, there were comments  
12 that were made about the existing condition. Even  
13 Commissioner Cohen asked the question at the last  
14 hearing. So we were trying to address those  
15 questions, and in that way, that was rebuttal  
16 specifically addressing those comments that were made  
17 at the last hearing.

18 CHAIRPERSON HOOD: Okay.

19 MS. MOLDENHAUER: About the existing  
20 condition and questions that --

21 CHAIRPERSON HOOD: Let's --

22 MS. MOLDENHAUER: -- Commission Cohen brought  
23 up.

24 CHAIRPERSON HOOD: Hold on.

25 MS. MOLDENHAUER: But we can jump --

1           CHAIRPERSON HOOD: Hold on. Hold on, Ms.  
2 Moldenhauer. Hold tight. Let's make sure that we're  
3 clear that we're rebutting some of the things that  
4 have been said about this particular application,  
5 because what I just heard Mr. Lee say, he was quoting  
6 what Mr. Rose just said, or had said.

7           So it sounded to my colleague, and to me -- I  
8 listened for a moment before I was just pulled on it,  
9 like it was closing.

10           So we need to make sure that we stay within  
11 the parameters of rebuttal because you've already  
12 heard Mr. Otten say he's going to take you to court,  
13 or take this to court. He's already put that out  
14 there. So when the judges read what I'm saying, he's  
15 already told us where we're going. So you know where  
16 you're going. Okay?

17           MS. MOLDENHAUER: We've known where we were  
18 going probably from the beginning, but I think that  
19 we will continue to reference, you know, that there  
20 were comments made from individuals in testimony that  
21 this is responding to a specific issue. And we  
22 will --

23           CHAIRPERSON HOOD: So let's just make sure we  
24 stay on target with rebuttal.

25           MR. LEE: Okay.

1           CHAIRPERSON HOOD:   Okay.

2           MR. LEE:   I think I can work to that.   So one  
3 of the other comments that's been made is that this  
4 could be made a sustainable art building financially,  
5 and due to that cost to bring it up, we don't believe  
6 that's true.   What it would require is more than  
7 tripling the rents, which would certainly not be  
8 affordable.   Right now they're \$10 a square foot on  
9 average, and I might add that it only averages out to  
10 that because of five other tenants that we put in at  
11 a higher market rate when we first started.   So  
12 counter to Mr. Otten's claim that they're subsidizing  
13 the building, thank goodness we were able to fill  
14 some empty space and get that average up to at least  
15 get us to where we are now.

16           And I think it's very clear that under the  
17 current zoning, C-M-1 zoning, there would be no arts  
18 or affordable component within the building.

19           There has been criticism about the arts  
20 program and the variety of features of it that don't  
21 meet the artist's desires or expectations.   So I'd  
22 like to hit on that briefly.   When we first presented  
23 the program it was in its early stages.   We got a lot  
24 of negative feedback from the artists so we went back  
25 and we changed it and we made some fairly remarkable

1 changes, thank goodness, for Mike Abrams who  
2 presented here. He took the time to come in and he  
3 was the original Gold Leaf founder, and also the  
4 original Union Arts founder at 411.

5           So with his help we went in and were able to  
6 make some changes. And those include what you've  
7 seen on the record, 2,000 square feet additional art  
8 space, three new studios, two of which can be divided  
9 into smaller subunits because they're fairly large.  
10 We added the music studio, which actually we got the  
11 dimensions from Luke Stewart and the Gauge Jones, who  
12 are the musicians in the building. We agreed to put  
13 a member of the Artist Union on the Board of the  
14 Cultural D.C. Selection and Programming Committee.  
15 And then we also gave all the 411 artists  
16 preferential treatment above any other artist that  
17 would apply to the program.

18           So we feel like we've satisfied those  
19 concerns.

20           You've heard the criticism on the third floor  
21 space where the Artist Union came to us and they  
22 brought up the third floor. And we entertained it  
23 together and we discussed, well, that could be  
24 possible. However, it would have to be at market  
25 rent, whatever the revenue replacement was for the

1 hotel room revenue. Our subsidy was on the second  
2 floor on the other square footage.

3 They had presented, the Artist Union had  
4 presented us with a plan, their presentation where  
5 they showed us that they could afford to support that  
6 sort of a venture. That's the only reason we pushed  
7 it forward. So we created that option, we made it  
8 real, and then we volunteered to assist them with  
9 getting their financial numbers together, getting  
10 their presentation together so that they could create  
11 this program, which even if the third floor didn't  
12 work out, they could take that to another venue.

13 We've asked numerous times for any  
14 information on that that we can help with and we  
15 haven't received anything.

16 So, another point of criticism that's come up  
17 during the hearings has been the lack of the tenant  
18 outreach. I think Brook made it clear that two weeks  
19 after we bought the building we had a meeting with  
20 all of the tenants. That was on June 17th, we closed  
21 on June 1st. On the 17th we met with the tenants.  
22 We explained to them about our plan for development.  
23 We told them that it would be a yearlong and that  
24 during that year we would freeze that rent.

25 Couldn't be any clearer as to what our plan

1 was. We told them that as the plan was coming  
2 together we would update them with any potential  
3 delays that might afford them more time in the  
4 building, and that meeting we left.

5           It was in November of that year that we saw  
6 the first opposition. November of last year where  
7 Desiree Venn-Frederic, she posted an Instagram  
8 stating that she would not be moved, that they were  
9 getting displaced. We tried numerous times over the  
10 next couple of weeks to get a meeting with her to  
11 talk about it. We were never afforded a meeting.

12           The next meeting happened in January 18th,  
13 where we called another building wide meeting to  
14 update the progress, and also to introduce Cultural  
15 D.C. who we had finally put the plan together. It  
16 was during that meeting that we got the comments back  
17 on our plan and we went and worked on that.

18           We have had 21 meetings with the tenants  
19 since we purchased the building. That's a  
20 considerable amount of opportunity. On top of that  
21 we've had three meetings canceled that were set up by  
22 the Artist Union at the very last minute. So I  
23 believe that our outreach has been pretty  
24 significant.

25           One of the biggest issues has been

1 communication. When the opposition was first filed  
2 it was unclear who Mr. Otten represented. We started  
3 attending meetings with the Artist Union as we knew  
4 it. We were trying to get information as to who was  
5 involved with the Artist Union, and it wasn't  
6 available.

7 So finally we started going to the larger  
8 scope of the building trying to get more information  
9 disseminated. But yet we still had a lot of clichés  
10 within the building that were getting pulled to the  
11 Artist Union. Nobody was really clear on who they  
12 were united with or who they were listening to.

13 That became even further confusing two weeks  
14 ago when Micheline Klagsburn hired an attorney who  
15 came in and they called a meeting last Tuesday night  
16 to negotiate a settlement that based off of a  
17 proposal that we had presented several times and  
18 modified with the final version on April 10th.

19 So we took the meeting Tuesday night. The  
20 first question that we had was, who do you represent  
21 and do you have the authority to negotiate with  
22 everybody in the building. It was said that they  
23 represented all the artists in the building and that  
24 they had the authority to represent them and make the  
25 decisions during the settlement. We negotiated for

1 four hours. We spent another two and a half working  
2 on a settlement agreement, jointly.

3 The next morning they were supposed to  
4 deliver comments from the greater whole. We never  
5 received the comments. That deal was negotiated to  
6 end on Thursday at noon because it was contingent on  
7 getting it done before the hearing. Otherwise the  
8 April 10th agreement would survive.

9 So that was just more of the confusion and  
10 the difficulty getting through to the tenants. Brook  
11 mentioned outreach where he actually took somebody  
12 and looked at properties. I've done the same. We've  
13 found very real opportunities to move into. One of  
14 them that could be moved in to tomorrow. So it's  
15 hard to understand the continued protest.

16 I think with the relocation package that  
17 we've presented, all of that is in the record so it  
18 would probably be better if you want to ask questions  
19 about that. That's the April 10th. I could read the  
20 whole thing but it's probably not necessary. But  
21 it's a very strong package, and at the very minimum  
22 the value of that package is over \$200,000. And that  
23 does not take into account the subsidy that we've  
24 provided over the last year, which is another  
25 \$240,000. So there's been a very substantial subsidy

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1 to this project.

2 I think that's it. Thank you very much.

3 MS. HILTON: My name is Tanya Hilton. I'm  
4 the interim Executive Director for Cultural D.C.

5 Cultural D.C. has been involved as a member  
6 of the team. Specifically, we shaped a programming  
7 blueprint and it specifically is a blueprint that we  
8 have envisioned and anticipate having multiple  
9 experts involved and have invited the Artist Union to  
10 have a representative involved in actually building  
11 out the program as it will exist.

12 And we also developed a financial structure  
13 to support that program that will generate workspace  
14 programming, performing, and exhibition opportunities  
15 for more than as was stated in our original testimony  
16 and was repeated as was mentioned by one of the  
17 witnesses for the Artist Union on the Kojo Show for  
18 over 850 artists.

19 It was mentioned that they weren't sure how  
20 we came up with that number. Well, the actual  
21 information that we've presented in our original  
22 testimony said that there would be four exhibitions  
23 per year for up to 50 artists and 10 curators, five  
24 sculptures rotated annually for up to five artists,  
25 four interior and four alley studios that would

1 support up to 20 artists. That has been increased to  
2 add six more artists. Four exhibitions per year for  
3 two to five artists each for up to 20 artists, 10  
4 floors of hallway exhibitions rotated annually for up  
5 to 200 artists, artist led talks, workshops,  
6 lectures, film screenings, with eight artist  
7 facilitators per week estimated at 416 artist  
8 opportunities, monthly events with universities,  
9 communities, nonprofits and other partners featuring  
10 up to 10 artists per month estimated at 144 artists.  
11 And that totals 865 opportunities which have been put  
12 into spreadsheet detail which financial supporting  
13 information that includes corporate and nonprofit, 80  
14 percent of which would be nonprofit and include those  
15 artists.

16 So that, in fact, is how we came up with that  
17 number. Just to be clear.

18 In addition to that we have participated in  
19 the two other hearings -- three other hearings.  
20 Excuse me. And listened to all of the testimony. So  
21 my purpose for the rebuttal statement that I'd like  
22 to make is three-fold. First, I do want to reinforce  
23 that a 20 year commitment to the arts is somewhat  
24 rare in our city. There are a couple that are 30  
25 year commitments. There are a few that are 10. Most

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1 are five, two, and one year commitments for spaces in  
2 the arts. Very rare is anything over 10 years.

3           So this commitment is a special opportunity.  
4 In addition to that, and I've heard that that was not  
5 a special or unique opportunity in testimony that's  
6 been made before tonight. In addition to that,  
7 Cultural D.C.'s track record capabilities, the  
8 projects that we run have been called into question  
9 and the quality of the work we do has been called  
10 into question.

11           I'd like to go on record to say that we have  
12 a track record of success in working with developers,  
13 government agencies, private entities, and we've in  
14 fact provided over 250,000 square feet of space for  
15 the arts and artists in the District over the last 18  
16 years. And there are several examples. I won't  
17 spend our time telling you all of them, but I'd like  
18 to highlight that it dates back to our work to bring  
19 the Atlas Performing Art Center to life, which  
20 enlivened the H Street corridor, the Gala Hispanic  
21 Theater in Upper Northwest, our own Source Theater at  
22 14th and H Street -- 14th and U. And then we have  
23 also been involved in many housing projects for  
24 artists. Live/work spaces that include the Brooklyn  
25 Art Space Loft, Laurie Grand, the Mathers Studios,

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1 and the upcoming H Space Apartments, as well as the  
2 27 studios at Monroe Street Market, which has been  
3 award winning for us and Bozzuto. As a matter of  
4 fact, it's home to 40 artists and we have a 50 artist  
5 waiting list currently. And those studios had an 85  
6 percent release rate this past summer after the  
7 initial two-year leases of the artists there.

8 Third, I want to point out that we did meet  
9 with the artist tenants, have met with the artist  
10 tenants. We have provided information on  
11 opportunities for leasing spaces in the city. It was  
12 pointed out that they might be the size of parking  
13 spaces at 300 square feet. I'd like to be also very  
14 clear that when you look at artist studios across the  
15 city and around the beltway, they average 215 square  
16 feet to 430. I'd like to give you a few examples.

17 The Gateway Art Center averages 330 square  
18 feet for their studios. The Lorton Workhouse  
19 averages 215 square feet to 430 at an average price  
20 of \$19 a square foot, not including utilities and not  
21 including the upgraded amenities that you'll find at  
22 the art hotel. Studio B in Bethesda starts at 215  
23 square feet. Excuse me, they only offer 215 square  
24 feet. Then the D.C. Artist Studios -- and they're at  
25 \$23 a square foot for their 215 square feet. The

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1 D.C. Artist Studios are at \$25 a square feet for  
2 their 408 square foot studios. And then the O Street  
3 studios start at 200 square feet and go up to 300  
4 square feet. The Monroe Street Artist Studios are  
5 300 square feet up to 400 and -- I'm sorry, we have a  
6 couple at 600 square feet at about -- and the O  
7 Street are about \$23 a square foot.

8           So, what happens typically is artists team up  
9 and you could have three, two, one, four artists in  
10 any studio. They meet at different times, they work  
11 in that space at different time. And I'd also like  
12 to close, without taking much more time, to say that  
13 there are all types of artists. Tens of thousands of  
14 them in this area. And the actual conversation that  
15 has taken place over this last couple of months has  
16 really underscored the great potential that there is  
17 in establishing affordable artist spaces through a  
18 range of approaches, models, and location.

19           When you look at 1800 Montana Avenue, for  
20 instance, that's being transformed into rental  
21 studios, and what S&R Foundation has done recently to  
22 announce 10 new studios for free. Yes, it will only  
23 be six months at a time, but when you think of ten  
24 thousands of artists in our area, we'll take all the  
25 space we can get any time we can get it. And when it

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1 can be for years to come in the way that we're doing  
2 at this hotel, which will be the first of its kind in  
3 its city, I think we welcome this opportunity and we  
4 welcome the opportunity to work with the artists at  
5 411 in this special space. And we honor all that  
6 they do. And I think we should join together to  
7 create another lasting arts legacy at 411 New York  
8 Avenue.

9 MS. MOLDENHAUER: Thank you very much. We'll  
10 now turn to Ellen McCarthy.

11 MS. McCARTHY: Good evening, Mr. Chairman,  
12 Members of the Commission. Tonight I'd like to  
13 address several planning related issues that have  
14 been raised by the opponents to the 411 project  
15 during the hearings. Since we're short on time I'll  
16 do that very briefly. You have substantially longer  
17 testimony in front of you so I'll just hit the  
18 highlights.

19 Next slide. To do this most efficiently let  
20 me start with the requirements that we have to meet  
21 in order to be able to be approved by the Commission.  
22 Number one, that any adverse impacts -- there be no  
23 adverse impacts or if there are that they be capable  
24 of being mitigated. I think it's very clear between  
25 the Transportation Demand Management Program and the

1 fact that this is a low traffic activity generating  
2 use, plus the fact that we provide a significant  
3 improvement over the existing conditions with respect  
4 to design and efficient land utilization, and that  
5 there are a number of matter of right uses which  
6 could go here, and which are quite profitable, such  
7 as self-storage, vehicle repair, big box retail, et  
8 cetera, all of which could, upon receiving a building  
9 permit, proceed to demolish the entire building and  
10 displace the artists and other tenants without  
11 providing any project amenities. But these  
12 developers have offered a generous relocation package  
13 to mitigate any adverse impacts for those artists  
14 that are not selected to enjoy the attractive new art  
15 studios being proposed.

16           The second major criteria is whether the plan  
17 -- whether the proposal is consistent with the  
18 Comprehensive Plan. Any assertions that this project  
19 is not consistent with the Comprehensive Plan are  
20 simply not true and suggest either a misunderstanding  
21 of the role of the plan or a lack of attention to  
22 what it says. First of all, as you know from the  
23 Tenley Town case, the Court of Appeals has ruled that  
24 the Comprehensive Plan, quote, is not self-executing;  
25 that the Zoning Commission is the body whose word is

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1 law with regard to consistency with the Comprehensive  
2 Plan. There are a number of elements of the Comp  
3 Plan, but as the framework element in Chapter 2  
4 clearly points out, the land use element and the two  
5 land use maps, which are part of it, have primacy  
6 with regard to any possible conflicts between the  
7 various other elements.

8 In this case the Comp Plan's prescription for  
9 the site, mixed use, high density commercial, high  
10 density residential, and production distribution and  
11 repair and entirely consistent with the proposal,  
12 which is also supported by the Northeast, Upper  
13 Northeast element, and those dealing with economic  
14 development, design, arts, culture, and  
15 transportation. In addition there are the two small  
16 area plans which provide supplemental guidance and  
17 this project closely conforms to those plans.

18 The most important thing is to look at the  
19 change that was made in the land use map. Next  
20 slide. The future land use recommendations were  
21 specifically changed by the City Council between the  
22 2006 Comprehensive Plan, which you can see from the  
23 large purple site that's outlined in blue, called for  
24 the site to be entirely production, distribution, and  
25 repair. It was specifically changed by the Council

1 after they also adopted the Florida Avenue Market  
2 study, to be high density, commercial, residential,  
3 and production distribution and repair.

4           And you can see from this larger, this  
5 blowup, very clearly how the whole area that we are  
6 talking about is striped with those designations.  
7 The generalized policy map called for it to be a  
8 multi-neighborhood center. That did not change  
9 between 2006 and 2010. But let's go specifically to  
10 the Florida Avenue Market study which called for the  
11 site specifically, and you can see from the blowup  
12 there of the yellow triangle, it specifically called  
13 for it to be developed for commercial, office, and  
14 hotel. And it's important to note that neither of  
15 the small area plans, despite focus groups that  
16 specifically included artists, called for the  
17 retention of this building and its current use.

18           Also in the Florida Avenue Market study, the  
19 plan, it specifically included this in the high  
20 density category, which as you can see from the chart  
21 in the next slide, called for up to 130 feet and  
22 eight FAR. The applicant is proposing only 110 feet  
23 and eight FAR.

24           So basically you come down to the balancing  
25 test. Do the amenities and benefits outweigh the



1 Traveler's Reader's Choice poll with more than 25,000  
2 respondents. 21C itself has sponsored more than 30  
3 exhibits in its first two years.

4           But what I think is so revolutionary about  
5 this concept is, unlike all the other arts hotels  
6 that we can cite in the U.S., which is important,  
7 mind you, that they showcase art, this hotel will  
8 include an active arts community with studios,  
9 programming, and exhibitions. That's unique. And  
10 this is exactly the kind of project that can support  
11 and enhance the creative vibe that the plans and the  
12 community have envisioned for the Union Market area.

13           This Commission is aware of the major changes  
14 that are being proposed for the Florida Avenue Market  
15 area, and New York Avenue in General, including the  
16 project that was just set down tonight. Over 8  
17 million square feet of redevelopment has been  
18 proposed for the market, and this project will be the  
19 touchstone that connects it to New York Avenue and  
20 all that's going on with the Hecht Company Warehouse  
21 and others.

22           So on balance, having read the submissions  
23 and discussed the project with the developers it is  
24 my professional opinion the proposed redevelopment of  
25 411 New York Avenue has not only met all the

1 requirements of Chapter 24, but will be a very  
2 positive addition to the area. Thanks.

3 MS. MOLDENHAUER: Let me ask you one quick  
4 question. On the second hearing I stated that it was  
5 my understanding that the Commission could not waive  
6 the requirements for the 1,000 square feet asked by  
7 Commissioner Miller and referenced by Commission May  
8 at set down. Have you professionally reviewed that  
9 and do you have a different conclusion?

10 MS. McCARTHY: I have. I noted when I went  
11 back to the Blagden Alley case that the Court of  
12 Appeals said specifically that the Commission has  
13 broad authority to promote health, safety, morals,  
14 convenience, order, prosperity, or general welfare of  
15 the District of Columbia by regulating height, bulk,  
16 number of stories, location and size of buildings,  
17 and other structures. And I note that -- and we  
18 could show it if we went back to the generalized  
19 policy map. This project is only a little more than  
20 one block from the boundary of the Central Employment  
21 area where the current zoning regs, which  
22 specifically allow you to do a waiver of half of the  
23 15,000 square foot minimum size. And that  
24 established principle in the current regulations with  
25 regard to the Centralized Employment area, I think

1 it's important to note that this site being listed as  
2 part of high density commercial, the definition of  
3 high density commercial in the plan says, this  
4 designation is used to define the Central Employment  
5 District of the city and other major office  
6 employment centers on the downtown perimeter.

7           So the notion of being able to waive minimum  
8 lot size for PUDs if you are in the Central  
9 Employment area, was based on the notion that this  
10 was not something that was adjacent to low density  
11 residential, but the Central Employment area was in  
12 the high density areas.

13           But most importantly, your own regulations  
14 which you have adopted, which will go into effect  
15 September 6th, specifically provide for the waiver of  
16 minimum lot size if a development is identified in an  
17 approved small area plan and will generally not be  
18 inconsistent with the Small Area Plan. That is  
19 Section 301.2 of Subtitle X and Section 301.1 for  
20 applicants in zone groups 1, 2, 5, and 6.

21           MS. MOLDENHAUER: At this point we are over  
22 our time so we have a representative from BBGM if the  
23 Commission has any questions on the revised plans  
24 that were filed in February in response to the  
25 initial group of comments provided by the individuals

1 in opposition. We also have Jim Watson from  
2 Gorove/Slade also here as part of our panel to answer  
3 any questions that the Commission may have in regards  
4 to cross that was provided by Mr. Otten. And we  
5 conclude our rebuttal at this point.

6 CHAIRPERSON HOOD: Okay. Thank you.  
7 Commissioners, any questions on their rebuttal?  
8 Anybody? Commissioner Miller.

9 MR. MILLER: Thank you, Mr. Chairman. Thank  
10 you for your rebuttal testimony. Mr. Lee, you said  
11 there's a property tomorrow that artists who need to  
12 be relocated could move into. Could you just  
13 identify that property?

14 MR. LEE: Yes, it's 14 --

15 MR. MILLER: And how much space is available.

16 MR. LEE: It's 1400 North Capitol Street, and  
17 it's approximately 2,800 square feet. It has seven  
18 studios with the ability to create one to two more  
19 studios. It's already been renovated for art  
20 studios. It's got high ceilings and a lot of light.  
21 It's got a lot of character to it. It has the old  
22 trim but it's also got clean walls and electric and  
23 sinks in there.

24 MR. MILLER: And what is that space renting  
25 for?

1           MR. LEE: He was initially marketing it for  
2 \$25 per square foot. I explained to him that that  
3 was too high and his response, the owner's response  
4 was that he could be flexible with a longer term. He  
5 would actually like a 10 year lease on that.

6           MR. MILLER: Okay. Thank you. Thank you.

7           CHAIRPERSON HOOD: Any other questions or  
8 comments?

9           Ms. McCarthy, help me understand. You  
10 mentioned one of our subtitles, which doesn't go into  
11 effect, at least the proposed date now is September  
12 6th, or whenever it is. How do we get there in this  
13 case? What rules are you all -- you're all up under  
14 the old code, right? So how do I join the subtitle,  
15 which doesn't come until September the 6th, into what  
16 we're doing today?

17           MS. McCARTHY: One of the possibilities would  
18 be to have the order have a condition in the order  
19 where the order does not -- the final order does not  
20 go into effect until after the September 6th regs are  
21 officially implemented.

22           CHAIRPERSON HOOD: Thank you. I just wanted  
23 to make sure that that was put on the record for  
24 those who may say that to us. Or say that even in  
25 cross. So, okay. I know those kind of things can be

1 exercised in that fashion.

2 Any other comments, questions up here? None?  
3 Okay. I'm not going to press it.

4 The ANC, again, is not here for any cross on  
5 rebuttal. Mr. Otten, it's time for cross on  
6 rebuttal. Do you need more than one seat? Can  
7 somebody -- they probably want to sit together. Can  
8 we make that feasible for them?

9 Okay, Mr. Otten. You may begin.

10 MR. OTTEN: Chairman, for the record this is  
11 Chris Otten, representative for the 411 Artist Union.  
12 And by the way I want to make clear I didn't throw  
13 out there that we might have to take this to the  
14 Court frivolously. We don't want to, but --

15 CHAIRPERSON HOOD: Mr. Otten, I just --

16 MR. OTTEN: I just want to put that on the  
17 record.

18 CHAIRPERSON HOOD: Okay. Yeah, that's fine.  
19 It's already on the record, actually. But let's go  
20 ahead with cross and rebuttal.

21 MR. OTTEN: So, okay, Ms. McCarthy, just to  
22 be clear, the PUD site is not located in the Central  
23 Employment district, right?

24 MS. MCCARTHY: As I said, it's located  
25 approximately a block from the edge of the boundary

1 of the Central Employment area.

2 MR. OTTEN: And what's the -- is that the  
3 current Central Employment area you're speaking of,  
4 or is that the one that's being discussed in the  
5 zoning rewrite?

6 MS. McCARTHY: No, the Central Employment  
7 area isn't in the zoning rewrite. It's part of the  
8 Comprehensive Plan general policy, generalized policy  
9 map.

10 MR. OTTEN: Okay. But -- okay. And what  
11 regulation are you aware of that this application  
12 could actually proceed and be set down despite not  
13 meeting the bare minimum 15,000 square foot  
14 requirement?

15 MS. McCARTHY: The Zoning Regulations, the  
16 current Zoning Regulations permit the Commission to  
17 waive up to 50 percent of the minimum lot size if  
18 something is in the Central Employment area, and then  
19 the new regulations have the provision that I --  
20 excuse me, that I just read, that they could waive  
21 and it doesn't put a limit on the percentage that  
22 could be waived if a project is consistent with an  
23 approved small area plan.

24 MR. OTTEN: Are there any current PUD  
25 regulations that allow for this PUD applicant --

1 application to be processed right now despite not  
2 meeting the 15,000 square foot minimum requirement?

3 MS. McCARTHY: Yes, I think my argument was  
4 that the Bladen Alley case, the Foggy Bottom case,  
5 and others specifically provide a great deal of  
6 flexibility to the Zoning Commission in the  
7 interpretation of the zoning regs, as long as they  
8 are acting to promote public health, safety, morals,  
9 convenience, prosperity, general welfare of the  
10 District of Columbia, and that they have flexibility  
11 with regard to location, height, bulk, number of  
12 stories, and size of buildings and other structures.

13 MR. OTTEN: But there is specific --

14 MS. McCARTHY: So there isn't a specific  
15 regulation that says that.

16 MR. OTTEN: But to this point there's a  
17 specific regulation right now that allows the  
18 Commission to choose to waive it if the project is in  
19 the Central Employment area.

20 MS. McCARTHY: In the Central Employment  
21 area.

22 MR. OTTEN: And there's also a point that  
23 says that they could waive it if the project has  
24 housing involved. It's a residential project?

25 MS. McCARTHY: Yeah, if it were outside the

1 Central Employment area, 80 percent of the units have  
2 to be residential.

3 MR. OTTEN: And is that, as you understand, a  
4 hotel, is that a residential project?

5 MS. McCARTHY: No, it is not residential.

6 MR. OTTEN: And are you aware, you testified  
7 that otherwise there's -- you know, besides the  
8 relocation package that Mr. Lee, the applicant is  
9 offering at this point, there's no other -- the  
10 current creative tenants at 411 New York Ave. would  
11 have no other such opportunity?

12 MS. McCARTHY: I didn't testify to that.

13 MR. OTTEN: You didn't testify to that?

14 MS. McCARTHY: I testified to the fact that  
15 if they were -- if this project were purchased and  
16 used for a matter of right purpose, and I only named  
17 a few of them but there's a very long list of uses  
18 that are matter of right uses within a C-M-1 zone,  
19 that there would be no requirement for any  
20 relocation, any amenities, or anything else. It  
21 could be self-storage which is extremely profitable  
22 with the artists kicked out and no compensation to  
23 them.

24 MR. OTTEN: Does that include the concept of  
25 the alley closing?

1 MS. McCARTHY: If this were used for a matter  
2 of right use there wouldn't be an alley closing.

3 MR. OTTEN: Perhaps --

4 MS. McCARTHY: Because there wouldn't be a  
5 minimum lot size. So.

6 MR. OTTEN: What about the residential areas  
7 round the PUD site? Are you familiar with those?  
8 You talked about the residential components of the  
9 project in the surrounding area. What residential  
10 areas are you --

11 MS. McCARTHY: The only residences that  
12 directly abut this project are those that are being  
13 proposed for the Florida Avenue Market area.

14 MR. OTTEN: And you had that map that showed  
15 the Florida Area Market study.

16 MS. McCARTHY: Uh-huh.

17 MR. OTTEN: Area. The area just south of  
18 Florida from that study area, isn't that a  
19 residential area?

20 MS. McCARTHY: Yes, but I said directly  
21 abutting this site. That is the entire depth of the  
22 Florida Avenue Market and Gallaudet are south of that  
23 and then on the other side of -- actually, not even  
24 directly on the other side of Florida Avenue because  
25 directly on the other side of Florida Avenue is

1 Central Armature, the Cash and Carry, Two Rivers. In  
2 order to get to Ivy City or Trinidad you have to go  
3 some distance. Nothing, no residential, except for  
4 new residential, directly abuts this site.

5 MR. OTTEN: Would you say that the adverse  
6 impacts of this project extend several blocks from  
7 this site?

8 MS. McCARTHY: I said that I didn't see any  
9 adverse impacts for the project.

10 MR. OTTEN: Did any of your analysis look at  
11 infrastructure, public services and infrastructure?

12 MS. McCARTHY: I was looking at the  
13 Comprehensive Plan. That's what I was addressing the  
14 planning issues.

15 MR. OTTEN: And you mentioned -- you  
16 testified to the balancing act that this Commission  
17 has to uphold. Does the balancing act, as you see  
18 it, consider uses adjacent to each other and how they  
19 might interplay?

20 MS. McCARTHY: The balancing act is, the  
21 Commission looks at the flexibility that's requested  
22 and they weigh that against the amenities and public  
23 benefits that are provided. And if they determine  
24 that on balance that's positive, then they can grant  
25 the planned unit development.

1           MR. OTTEN: And how does locating two hotels  
2 just adjacent to each other figure into that  
3 balancing act?

4           MS. McCARTHY: Well, first of all, the  
5 Commission doesn't look at the fact that there is  
6 another hotel next to it. They're looking at what  
7 flexibility this project has requested. But I also  
8 know from when the motels that are just slightly  
9 further down came to see us at the Office of Planning  
10 for relief from their parking requirement, that they  
11 deliberately went from one hotel flag to two, to  
12 maximize their opportunity to show up on computerized  
13 reservation systems.

14           So the fact that you have two hotels next to  
15 each other doesn't -- first of all, this is a very  
16 specific hotel. It's an arts hotel. It has a  
17 specific clientele which is going to be interested in  
18 that which may or may not be interested in the  
19 Baywood. But I can't testify to the Baywood because  
20 I was just looking, as the Commission would, at this  
21 particular project and whether the balance of  
22 amenities and public benefits outweighs the  
23 flexibility that's requested.

24           MR. OTTEN: Doesn't the Comprehensive Plan  
25 talk about not concentrating like uses that are high

1 intense commercial uses like this, like two hotels  
2 next to each other?

3 MS. McCARTHY: No, the Comprehensive Plan  
4 particularly both the Ward 5 Works and the Florida  
5 Avenue Market Plan called for this site because it is  
6 the gateway to the city, immediately adjacent to New  
7 York Avenue as a site that would be perfect for hotel  
8 use.

9 MR. OTTEN: For one hotel use, right?

10 MS. McCARTHY: You saw that triangle. It  
11 said, hotel or office use. It didn't say whether it  
12 was one hotel or two.

13 MR. OTTEN: But doesn't that triangle include  
14 the abutting hotel that's about to be finished?

15 MS. McCARTHY: I think it probably does.  
16 Since I wasn't assessing the Baywood I didn't go back  
17 and see where it was located. I just looked at what  
18 the Comprehensive Plan and the two small area plans  
19 that are a supplemental guidance to the Comprehensive  
20 Plan called for on the site.

21 MR. OTTEN: And there's no office space that  
22 you're aware of in this hotel project for this PUD  
23 application right?

24 MS. McCARTHY: Yeah, the map designation was  
25 office/hotel, meaning either/or, or both.

1           MR. OTTEN: Doesn't -- you mention the arts  
2 and culture element of the Comprehensive Plan.  
3 Doesn't some of those policies talk about protecting  
4 the artists that currently exist in the District?

5           MS. MCCARTHY: The arts and culture element  
6 talks about the importance of arts. It also  
7 specifically mentions -- one, it specifically  
8 mentions using partnerships with the private sector  
9 to create new art space, which is exactly what we are  
10 doing here.

11           But in addition I noticed when I went to the  
12 implementation element, which is in the back of the  
13 Comprehensive Plan, which takes the major policies  
14 that are outlined for action, and then applies who  
15 was the responsible agency, that the policy items  
16 that the Comprehensive Plan viewed as being there for  
17 implementation included creating art spaces in public  
18 construction and they named the Coalition on Arts and  
19 Humanities as the lead agency with regard to that.

20           They talked about arts overlay zones. That  
21 was Office of Planning and Commission of Arts and  
22 Humanities and DMPED. They talked about creating an  
23 arts district along Rhode Island Avenue. That's not  
24 relevant to us.

25           They talked about cultural enterprise zones

1 which would cluster commercial and nonprofit cultural  
2 organizations, and that was also Commission of Arts  
3 and Humanities, DMPED, and OP. That's arts and  
4 culture element 1.2.C. And then talked about the  
5 enforcement of Zoning Regulations that do require  
6 arts and the responsibility for that, named  
7 responsibility, is DCRA.

8           Nothing in the arts and culture element says  
9 that artists who are currently in a building that a  
10 private owner who buys that building has to be forced  
11 to retain those artists.

12           MR. OTTEN: Are you surprised that none of  
13 those agencies you just mentioned have heeded the  
14 call of the artists to join into a partnership to  
15 help mitigate their displacement?

16           MS. McCARTHY: I think what I've mostly heard  
17 in the cross-examination is that the artists haven't  
18 reached out to those agencies. Those agencies don't  
19 go around trying to find instances. They're busy  
20 agencies, they're providing funding for public art,  
21 arts performances. I've got a whole list from the  
22 cultural -- the Creative Economy Report that you  
23 cited that lists the various things that the  
24 Coalition -- that the Commission on Arts and  
25 Humanities funds. So, it's not like the dog catcher.

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1 They're not going out to find artists. They are  
2 expecting that artists that want to find -- oh, thank  
3 you -- that want to find new locations will come and  
4 work with the Commission.

5 MR. OTTEN: And you're the former Director of  
6 the Office of Planning, correct, here in the District  
7 of Columbia?

8 MS. McCARTHY: I am.

9 MR. OTTEN: And upon hearing that there were  
10 two zoning hearings in this case with hundreds of  
11 artists basically coming to support those who were  
12 facing displacement, wouldn't -- isn't that a signal  
13 to the Office of Planning to start to live up to the  
14 words of the Comprehensive Plan and maybe reach out  
15 to some of those other agents, the sister agencies,  
16 to maybe step up for partnerships?

17 MS. McCARTHY: The Office of Planning plans.  
18 The implementation of those plans is the  
19 responsibility of the Deputy Mayor for Planning and  
20 Economic Development, the Coalition of the Commission  
21 on Arts and Humanities. The Office of Planning  
22 doesn't create artist space. That's not their job.

23 MR. OTTEN: But the Office of Planning does  
24 in a PUD procedure, think about comprehensive  
25 planning and coordinating of agencies to review the

1 PUD application, does it not?

2 MS. McCARTHY: I believe I heard the Office  
3 of Planning indicate that they had sent the report to  
4 all of the agencies that are listed in the zoning  
5 requirements as those that are supposed to review  
6 PUDs.

7 MR. OTTEN: Are you aware of any partnerships  
8 that might have come out of that referral for the  
9 artists that are calling for help?

10 MS. McCARTHY: That wasn't really my purview.

11 MR. OTTEN: Okay.

12 MS. McCARTHY: But as I said, I think what is  
13 being proposed here today is the epitome of the kind  
14 of partnership that is called for in those plans to  
15 have a private property owner provide subsidized  
16 below market space for artists and opportunities for  
17 artists to exhibit and opportunities for the  
18 community to come in and see and appreciate that art.  
19 And opportunities for the artists to have  
20 commissioned works displayed permanently and semi-  
21 permanently in that building. It's really  
22 extraordinary. We don't have anything else like that  
23 in the District.

24 MR. OTTEN: Are you aware of how much work  
25 artwork space that the PUD application actually has?

1 MS. McCARTHY: Yes. I don't remember the  
2 number off the top of my head, but --

3 MR. OTTEN: Well, in terms of work space, are  
4 you aware that it's a significant reduction than  
5 what's currently happening at the space right now?

6 MS. McCARTHY: Well, it might be less than  
7 what is happening at the space now, but it sort of  
8 goes back to supply and demand. If you have space  
9 that you are paying next to nothing for you can  
10 afford to be quite expansive with the amount of space  
11 that you take. The fact that you take a lot of space  
12 doesn't mean that you couldn't work efficiently and  
13 effectively in a smaller amount of space. So I don't  
14 think that's a relevant yardstick.

15 MR. OTTEN: Wouldn't you agree, though, that  
16 as you might have heard other testimony from Cultural  
17 D.C., that the city has lots of small studio size  
18 space, but this current space has large studio space?

19 MS. McCARTHY: You might want to talk to the  
20 representative from Cultural D.C.

21 MR. OTTEN: Okay. Graham Boyle, do you have  
22 any questions for Ms. McCarthy?

23 MR. BOYLE: Just a couple, if I may? Ms.  
24 McCarthy, you mentioned the developer's generous  
25 relocation package as if it was something they came

1 up with on their good will.

2 MS. MOLDENHAUER: I would just object.  
3 Typically, on the representative can ask questions.  
4 I'm more than happy to allow this, but I just want to  
5 put it on the record that that's typically not the  
6 process.

7 CHAIRPERSON HOOD: First of all, Ms.  
8 Meredith, Ms. Moldenhauer, you're more than happy to  
9 allow it. The Commission makes -- we make the --  
10 okay. Okay. You can dissent, but we allow and don't  
11 allow. Okay? And I'm going to allow this. Okay?  
12 All right. You can continue.

13 MR. BOYLE: Thank you, Chair. Are you aware  
14 that no relocation package was offered to the Artist  
15 Union until March 4th?

16 MS. McCARTHY: I didn't testify to that. I  
17 haven't followed the ins and outs of that. I --

18 MR. BOYLE: You mentioned the developer's  
19 generous relocation package.

20 CHAIRPERSON HOOD: Here's what I want to do.  
21 Yeah, she can ask the question but let her finish  
22 answering the question before you start asking  
23 another one. Okay? And her answer is her answer,  
24 and then we can move to the next one.

25 MS. McCARTHY: Okay. What I was testifying

1 to is the fact that there is a relocation package  
2 which if this were any other matter of right use,  
3 there would be no relocation package.

4           The details about when that was offered was  
5 not testified to by me, so you should talk to Brook  
6 and Dennis about the dates. And I think they gave a  
7 pretty comprehensive accounting of when things were  
8 offered and when meetings took place.

9           MR. BOYLE: Okay. Going on, you mentioned  
10 the small area plans that affect the PUD in question,  
11 and you said that the new project would become a --  
12 or check off the multi-neighborhood center  
13 checkpoint, bullet point, in that small area plan.  
14 Are you aware that Union Arts exists as a multi-  
15 neighborhood center as it current stands, attracting  
16 audience members from all eight wards of D.C.?

17           MS. McCARTHY: What I was referring to is the  
18 category, the map that's called the Generalized Land  
19 Use Policy Map, that designates that area as a multi-  
20 neighborhood center and it has a specific definition  
21 of what a multi-neighborhood center is, which says it  
22 serves areas from one to three miles and generally is  
23 retail. I don't have the text memorized, but that's  
24 not -- what I was testifying to is what the  
25 Comprehensive Plans' Generalized Policy Land Use Map

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1 says about the site.

2 MR. BOYLE: Okay. Do you believe that a  
3 boutique or luxury hotel would attract clients from  
4 all the wards of the District of Columbia?

5 MS. McCARTHY: As a hotel or for the bar and  
6 restaurant and the exhibitions and community spaces  
7 and lectures. For the community arts activities,  
8 yes, I think it could easily attract people from all  
9 eight wards.

10 MR. BOYLE: You also mention that the  
11 incoming hotel would be a low traffic generator. Do  
12 you --

13 MS. McCARTHY: Hotels typically are low  
14 traffic generators.

15 MR. BOYLE: And why is that?

16 MS. McCARTHY: Because guests arrive by taxi  
17 or by bus. The project specifically calls for a  
18 shuttle that would take them to the nearest Metro  
19 station. People who are -- especially for high end  
20 hotels like this, they're not generally folks that  
21 drive and then get in their car and do a lot of  
22 driving around the city. They come, they either have  
23 events in the hotel, or they go out for a day of  
24 sightseeing or going to museums or whatever. But  
25 they're not high traffic generators. That's about

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1 the limit of what I can say about it but you can  
2 check with -- talk to DDOT and yeah, and I am not a  
3 traffic expert. So beyond the fact that they are  
4 typically low traffic generators you could talk to  
5 DDOT or to our traffic engineer.

6 MR. BOYLE: Thank you.

7 MR. OTTEN: Ms. McCarthy, just two more  
8 questions. The Comprehensive Plan is a family of  
9 plans, correct? It involves other plans.

10 MS. McCARTHY: Correct.

11 MR. OTTEN: Outside of the -- and did you  
12 look at any of the DMPED Creative Action Agenda or  
13 Actionomics D.C. documents when you prepared your  
14 testimony?

15 MS. McCARTHY: I did.

16 MR. OTTEN: And what in there -- did you  
17 notice anything in those documents that support the  
18 artists in the space right now, the current creative  
19 residents of 411 New York Avenue?

20 MS. McCARTHY: Yes, I'm looking back to the  
21 report. One of the recommendations is to have  
22 training sessions for concierges of the major hotels  
23 throughout the city to better educate them about  
24 D.C.'s creative economy, coordinate distribution of  
25 creative event listings to visitors, and explore

1 cross-promotional opportunities between hotels and  
2 creative offerings. I also looked at --

3 MR. OTTEN: I'm talking about -- no, I'm not  
4 talking about the hotel. I'm talking about the  
5 cultural hub, the artist space that exists right now.  
6 Did you see anything in there that supports fostering  
7 and encouraging the current artists that are in the  
8 space right now?

9 MS. McCARTHY: Yes. The Creative Capital  
10 Report says that in FY2009 the city budget included a  
11 total of \$39 million for arts and cultural  
12 activities. The majority of the remainder of the  
13 funds flowed directly from the D.C. Commission on  
14 Arts and Humanities and the Office of Motion Picture  
15 and TV Development, and it mentioned that the overall  
16 city commitment to arts and culture is significant.  
17 The total DCCAH allocation alone was larger than arts  
18 related funding in most states on a per capita basis,  
19 two and a half times greater than the next highest  
20 state.

21 So it's not that there are not substantial  
22 funds that the District makes available through the  
23 Commission on Arts and Humanities.

24 MR. OTTEN: And seeing that these documents -  
25 - these other planning documents by DMPED, they're a

1 couple years old now, right? They're several years  
2 old. Are you aware?

3 MS. McCARTHY: The Actionomics, I went to the  
4 unveiling of in 2014. Late 2014. So, and I know  
5 that the Creative Capital Report is older than that.

6 MR. OTTEN: And so it's fair to say that the  
7 current Office of Planning director and the deputy  
8 director had these plans at their convenience,  
9 perhaps, when reviewing this PUD application?

10 MS. McCARTHY: I didn't testify about that.  
11 I don't know what the Office of Planning was looking  
12 at when they did their report.

13 MR. OTTEN: Given those reports in your  
14 testimony, are you surprised that the Office of  
15 Planning did not even mention this current artist hub  
16 at this PUD site that's been there since 1981, at  
17 least?

18 MS. McCARTHY: I'm testifying about land use.

19 CHAIRPERSON HOOD: Let me just say, Ms.  
20 McCarthy. Mr. Otten, I don't think that's an  
21 appropriate question for her in her testimony. You  
22 can ask anybody in this room that question. Let's  
23 ask her on her testimony, on her rebuttal that she --  
24 any rebuttal she had. Let's make sure we stay  
25 focused.

1 MR. OTTEN: Yeah, I'm just kind of, I'm  
2 trying to clarify because she mentioned these other  
3 plans that --

4 CHAIRPERSON HOOD: I think that point, we got  
5 that -- what's tonight? Monday? We got that  
6 Thursday from you. And it's still here. I still  
7 have it. Okay?

8 MR. OTTEN: This is the former Director of  
9 OP, I'm just trying to understand it.

10 CHAIRPERSON HOOD: I understand. I  
11 understand it. But I think you made your point clear  
12 a number of times on Thursday. So for the  
13 Commission, I know who we have here, but for the  
14 Commission's standpoint, I think we got that.

15 MR. OTTEN: Okay. And finally, Ms. McCarthy,  
16 you mentioned two Court of Appeals cases. Tenley  
17 Town and Cleveland Park in the Durant Case, in your  
18 testimony.

19 MS. McCARTHY: I didn't mention the Durant  
20 case but I have the Durant -- part of the Durant  
21 decision in front of me. But I mentioned the Foggy  
22 Bottom and the Tenley Town case.

23 MR. OTTEN: And you mentioned that in lieu of  
24 saying that the Comprehensive Plan is more of a tool  
25 of guidance, broad policy guidance?

1 MS. McCARTHY: Correct.

2 MR. OTTEN: Don't those cases also say  
3 specifically, quote/unquote, except where  
4 specifically requested or provided?

5 MS. McCARTHY: Even if a proposal conflicts  
6 with one or more individual policies associated with  
7 the Comprehensive Plan this does not in and of  
8 itself, preclude the Commission from concluding that  
9 the action would be consistent with the Comprehensive  
10 Plan as a whole. The plan is not a code of  
11 prohibitions. It is an interpretive guide which the  
12 Commission must consider holistically. It provides a  
13 broad statement of policy to guide future public  
14 decision making.

15 MR. OTTEN: Are you aware of any cases that  
16 distinguished that the Comprehensive Plan is truly a  
17 broad interpretive tool except where specifically  
18 provided?

19 MS. McCARTHY: I am aware there's language  
20 like that in Durant where it says it's discrete  
21 elements guide the Commission's actions but do not  
22 impose specific implementation techniques.

23 MR. OTTEN: We'll clarify that. Just  
24 finally, page 3 of your testimony, the width and  
25 traffic volumes on New York Avenue support this level

1 of building, density, and height. Are you aware that  
2 DDOT's report mentions that there's two  
3 intersections, one most adjacent to the PUD site  
4 that's failing right now in terms of its LOS?

5 MS. McCARTHY: I heard that in the DDOT  
6 testimony the other night, yes.

7 MR. OTTEN: Okay.

8 MS. McCARTHY: And I heard their explanation  
9 that an F level of service was not considered by DDOT  
10 to be problematic in terms of approving the project.

11 MR. OTTEN: Thank you.

12 MS. McCARTHY: Okay. Let's -- thank you, Ms.  
13 McCarthy.

14 CHAIRPERSON HOOD: Let me ask you this, Mr.  
15 Otten, about how many questions do you have? You  
16 have one for everybody, or I mean, about how much  
17 more -- let me rephrase it. About how much more time  
18 do you need?

19 MS. McCARTHY: You know, Chair, we got 60  
20 pages of rebuttal testimony, half an hour before the  
21 hearing.

22 CHAIRPERSON HOOD: I have something within  
23 our regulation. I'm going to deal with that, but  
24 let's not deal with that now. Let's just ask the  
25 rebuttal. I'm going to deal with that.

1 MR. OTTEN: I'm going to get through this as  
2 quick as we can.

3 CHAIRPERSON HOOD: And our regulations have  
4 something for us to deal with that issue. It's a  
5 surprise regulation, which is in there. So.

6 MR. OTTEN: Okay.

7 CHAIRPERSON HOOD: I'm just letting you know.

8 MR. OTTEN: I appreciate it. All right.

9 CHAIRPERSON HOOD: That we do read the  
10 regulations too, so.

11 MR. OTTEN: Right on.

12 CHAIRPERSON HOOD: But what I'm asking you to  
13 do is, again, we've got to -- I know you want to ask  
14 a few questions. So what I would ask -- yeah, Ms.  
15 Moldenhauer, I'll help you all with the statute if  
16 that's what you all are talking about. But let's pay  
17 attention to this.

18 Do me a favor, just talk about the rebuttal  
19 and let's get this over with tonight. We don't need  
20 another night. I don't see where -- they had 30 --  
21 had 33 minutes of rebuttal. There shouldn't be eight  
22 hours, or I don't see where it could be eight hours  
23 of cross-examination. Now you can take that to court  
24 and the judge can overrule me, but I don't understand  
25 how that -- to me, that's not balancing it. Thirty

1 minutes of testimony of rebuttal, and eight hours of  
2 cross-examination.

3           So what I would ask is, let's make sure we  
4 stay focused. The issue that you brought up earlier,  
5 we're going to deal with that towards the back end of  
6 it. Okay? So you can continue.

7           MR. OTTEN: Okay. This is for Ms. Hilton,  
8 Cultural D.C.

9           Tonight you testified to Cultural D.C.'s  
10 experience in the city, and you mentioned how must  
11 studios are fairly small, 200 to 400 square feet.  
12 Correct?

13           MS. HILTON: I didn't say most. I gave some  
14 examples and I could repeat those specific examples  
15 if you'd like.

16           MR. OTTEN: No, I think those are clear. I  
17 wonder then, do you find the spaces that exist  
18 currently at 411 New York Avenue and the Artist Union  
19 special in that they're larger than all those studio  
20 spaces you mentioned?

21           MS. HILTON: I don't know the specific sizes  
22 of those at 411. Currently. I know the ones that  
23 are planned. The current ones? The existing ones.  
24 Okay. I have them here. 450 square feet, 650, 450,  
25 150, 150, 250, 650, 250, 246, 75, 100, 350, 330 --

1 MR. OTTEN: Can I ask where you're reading  
2 that from?

3 MS. HILTON: -- 330. For the current spaces.

4 MR. OTTEN: Is there any spaces in there over  
5 2,000 square feet?

6 MS. HILTON: Yes, there is one space that is  
7 3,500 square feet. And that is Nomad Yard  
8 Collective. And then there's one other space that's  
9 2,800 square feet, which is Micheline's space.

10 MR. OTTEN: And is there a list of --

11 MS. HILTON: In other words, I didn't know  
12 all of them by heart.

13 MR. OTTEN: Okay. Is there a list for 2B  
14 studios and how big that is?

15 MS. HILTON: 2B studios. Ah, yeah, Graham's.  
16 That's a shared space that's 1,800 square feet.

17 MR. OTTEN: So does the Cultural D.C. look at  
18 -- it sounds like you're just hearing that for the  
19 first time tonight. How does Cultural D.C. view  
20 larger spaces like that? Do you -- how do you -- do  
21 you have any spaces like that in your portfolio?

22 MS. HILTON: We don't have a portfolio of  
23 spaces.

24 MR. OTTEN: You don't? I'm looking at your  
25 testimony. It seems that on page 7 you listed some.

1 Seven and eight. Or at least seven. You have an  
2 arts walk at Monroe Street and, I don't know, D.C.  
3 Artist Studios. Are any of these yours?

4 MS. HILTON: We manage those spaces for  
5 Bozzuto.

6 MR. OTTEN: So when you say you don't have  
7 any in your portfolio, it's Bozzuto's portfolio that  
8 you're managing?

9 MS. HILTON: We manage those spaces for  
10 Bozzuto, yes.

11 MR. OTTEN: Where is the --

12 CHAIRPERSON HOOD: Mr. Otten, can I ask a  
13 question on that? In the line of questioning, this  
14 is scary, I'm in line of questioning with Mr. Otten  
15 and I'm just messing with him because I know him.  
16 But let me say this, you mentioned 18th and Monroe.  
17 What's going on there? It's an artist studio that's  
18 -- is that the vacant building right there that's on  
19 the corner?

20 MS. HILTON: 1800 Montana Street.

21 CHAIRPERSON HOOD: Montana. Montana. That's  
22 what I meant to say. Yeah.

23 MS. HILTON: And the owners there recently  
24 were quoted in an article saying that they would look  
25 at converting that space to studio space.

1 CHAIRPERSON HOOD: And that's the corner  
2 building right there on that corner there, I believe.

3 Now let me ask you this, has there been any  
4 conversation with maybe this group of artists? Or  
5 how does that work?

6 MS. HILTON: Dennis can speak to that.

7 CHAIRPERSON HOOD: Okay. I see this as being  
8 an opportunity.

9 MR. ROSE: Gary Goldberg from the building  
10 was elected as a representative that I could go  
11 around and show space to. So I happen to know the  
12 developer through other acquaintances and asked for a  
13 meeting. I had Gary -- had them visit our -- I had  
14 them visit New York Avenue, at which point they met  
15 with Gary and showed their plan for what they're  
16 going to be doing to the space.

17 In addition to that I also met the new owners  
18 to discuss the possibility of some of our artists  
19 moving over there. Happened to be very appropriate  
20 for musical artists, because the neighborhood is such  
21 that there's really not a lot of residential there.  
22 So noise can be made and people probably won't care.  
23 I mean, obviously.

24 CHAIRPERSON HOOD: Be very careful because  
25 you're actually talking about neighborhoods, so -- my

1 neighborhood. So be very careful. So be very  
2 careful your comments. I think it's a suitable  
3 building and yes, noise can be made, and it's a lot  
4 better than what's going on now.

5 MR. ROSE: Yes. Okay. I --

6 CHAIRPERSON HOOD: But be very careful in  
7 those comments in this city.

8 MR. ROSE: You know, absolutely. But I have  
9 to tell you that it -- well, at 1,800 with the  
10 additional traffic that also goes by, this is what  
11 the developer had told me, that he felt it would be  
12 appropriate for some of those musical artists.

13 Again, you know, I'm not as familiar with  
14 exactly what is around that immediate areas, so I do  
15 apologize. But these gentlemen are in the nascent  
16 stages of building out this space.

17 CHAIRPERSON HOOD: Okay. I don't want to  
18 prolong my question. I just think that for the sake  
19 of what we're doing here and what we're hearing, that  
20 may be a segue to help solve some of the other issues  
21 that I'm hearing from the party in opposition and  
22 some of the people who want to save arts in this  
23 city. I'm just saying, we want to cease the moment  
24 and capitalize on that opportunity there. That's  
25 all.

1 MS. HILTON: And to be clear, the article was  
2 from the Washington Business Journal and they said  
3 that there would be 14 individual studios and some  
4 common space in their final plans. And we typically  
5 are contacted by developers to work with them in  
6 building in their designs sometimes, sometimes in  
7 managing the space, sometimes in doing the  
8 qualifications and the lottery for the applicants in  
9 actually looking at the financials. And sometimes  
10 even helping the applicants with managing their  
11 financials. So there's a wide range of services that  
12 we provide. Think of us also as a clearinghouse of  
13 information on what is available.

14 CHAIRPERSON HOOD: Okay.

15 MS. HILTON: We also manage Space Finder D.C.

16 CHAIRPERSON HOOD: Let me get back to Mr.  
17 Otten.

18 MS. HILTON: But we don't maintain or own the  
19 spaces typically.

20 CHAIRPERSON HOOD: Let me get back to Mr.  
21 Otten's --

22 MS. HILTON: If that helps clarify the  
23 portfolio question.

24 CHAIRPERSON HOOD: Oh, okay.

25 MR. OTTEN: That does help. And so for the

1 record, what is Bozzuto?

2 MS. HILTON: Bozzuto is a development company  
3 and also has a marketing and management arm and they,  
4 along with Abdo, another developer, developed the  
5 property and mixed use area in the Brookland area.

6 MR. OTTEN: Okay. So Bozzuto and Abdo are  
7 real estate professionals?

8 MS. HILTON: Developers, yes.

9 MR. OTTEN: And is it they that are  
10 suggesting that \$20 a square foot is affordable  
11 artist space? These real estate developers?

12 MS. HILTON: I would not say that Bozzuto,  
13 and it's spelled B-O-Z-Z-U-T-O for the record, is  
14 suggesting what the cost per square foot should be.  
15 I think typically the market drives the cost per  
16 square foot in any urban area, for any space, be it  
17 residential or commercial.

18 MR. OTTEN: And did you put anything on the  
19 record showing --

20 MS. HILTON: That's just my personal opinion.  
21 I don't have an expert opinion on that.

22 MR. OTTEN: Okay. Got it. You said in terms  
23 of your testimony on page 2, it says that we have  
24 worked to support 411 tenants by providing  
25 information on alternative spaces. Is that the page

1 7 list, which looks familiar?

2 MS. HILTON: Let me find page 7. If your  
3 page 7 is titled, Artist Studio Space Options.

4 MR. OTTEN: Yes. That's it. Okay. But on  
5 that list is the arts walk on Monroe. But your  
6 testimony says that there's a 50 plus person waiting  
7 list for that. Right?

8 MS. HILTON: In any and all of these  
9 particular listings, availability changes just as any  
10 or all rentals, by the residential or commercial for  
11 any and all individuals in the City of D.C.,  
12 Maryland, or Virginia locations. It is a very  
13 dynamic opportunity. I, who am in the process of  
14 looking for a new place to rent personally, know that  
15 firsthand after looking this weekend.

16 MR. OTTEN: In terms of the arts benefit  
17 package in this application, you say on page 2 you  
18 revamped the quote/unquote, "Review panel that  
19 selects studio space to include 411 New York Avenue  
20 Artists."

21 Can you describe what that means?

22 MS. HILTON: I don't believe we revamped the  
23 panel. We always, in all of our panels and advisory  
24 groups, include those in the community and directly  
25 involved in the arts in the locations that we have

1 programs, projects. It's a best practice that we've  
2 always used ever since we have been an organization.  
3 So this would be no different.

4 MR. OTTEN: Okay.

5 MS. HILTON: And we introduced that concept  
6 at our first meeting witness the artists.

7 MR. OTTEN: And so it would still be the case  
8 that the artists who have been in this space working  
9 and creatively producing would have to compete for  
10 the 411 studio spaces that are part of the arts  
11 benefit?

12 MS. HILTON: Yes. And as part of -- for the  
13 studio space, as part of the process, what we did do  
14 was say that the artists from 411 would not have to  
15 go through the first phase, but they would go through  
16 the panel review phase. The difference between the  
17 first and second phase is that in the first phase we  
18 do ask all artists to fill out an application that  
19 has a lot of details about their work, their current  
20 location, their demographics, and we have that  
21 information already for the 411 artists for the most  
22 part.

23 MR. OTTEN: How did you access that  
24 information, or how did you get that information?

25 MS. HILTON: We have information that's

1 available to us from information you've provided in  
2 the meetings that you've attended. And we have  
3 information from your website of the work that you  
4 do, and we have information from various ways that  
5 you've displayed your art and various things that  
6 you've done. So any artist that would want to apply,  
7 we would use that baseline information, and in the  
8 panel review process you would -- those artists would  
9 be considered along with all other artists that would  
10 apply from the panels.

11 And you would have a representative on the  
12 panel, along with the other panel representatives of  
13 the community, which would include other artists,  
14 other experts, and people in the community, the  
15 business areas, local arts organizations, et cetera.

16 MR. OTTEN: What do you see happening to the  
17 artists that don't make it past the second round in  
18 your review process for this space?

19 MS. HILTON: I don't understand the question.

20 MR. OTTEN: For the artists that somehow  
21 can't compete to get into the arts benefit studio  
22 space, what happens to them?

23 MS. HILTON: I still don't understand the  
24 question.

25 MR. OTTEN: Okay. You testified here that

1 because of this case that the project has become a  
2 catalyst for important dialog for affordable art  
3 space. Do you believe \$20 a square foot is  
4 affordable?

5 MS. HILTON: Do I personally believe it's  
6 affordable?

7 MR. OTTEN: Yes.

8 MS. HILTON: I believe that it is an average  
9 in the market today.

10 MR. OTTEN: And that's based on -- do you  
11 have information that you can share that shows that?

12 MS. HILTON: I believe I gave examples of  
13 several locations, Gateway, Lorton, Studio B, D.C.  
14 Artists, O Street, that range from 19 to \$25 a square  
15 foot that are in the general area. And there are  
16 some others that I could give. And those do or do  
17 not include utilities. And I know that the studios  
18 being proposed here would be an average of \$20 a  
19 square foot and do include utilities, as well as  
20 upgraded amenities. Does that help any?

21 MR. OTTEN: Yeah. Yeah. It does. Thank  
22 you. Are you testifying that in D.C. there's no --  
23 besides the current space now, there's no seven to  
24 \$12 artist space per square foot?

25 MS. HILTON: No, I did not say that.

1 MR. OTTEN: Okay. Page 5, I just want to  
2 understand that you've provided this for the record.  
3 Is this -- what is this for? Is this a list of  
4 individual artist grants? Is that --

5 MS. HILTON: In the artist meetings that we  
6 participated in we volunteered to assist and give  
7 guidance in grants writing, coaching, as well as, I  
8 believe, the developers offered the same sort of  
9 assistance from an organization called Elevate. And  
10 some questions have been asked in those meetings  
11 about individual grant making organizations and  
12 organizational grant making organizations. So these  
13 were just some highlights of some of those individual  
14 grants making organizations and some of the  
15 organizations that typically make grants. Some of  
16 the grantors for organizations.

17 MR. OTTEN: I noticed on page 6, would the  
18 Maryland State Arts Council or Virginia Commission  
19 for the Arts be supporting D.C. artists? Is that  
20 something that happens?

21 MS. HILTON: Not all of the artists only  
22 operate in D.C. that live and work in D.C. Sometimes  
23 they do work with other organizations outside of  
24 their specific geography. They work with other -- a  
25 lot of artists collaborate across the boundaries of

1 the District, regardless of where they live. And as  
2 a matter of fact, I just wanted to note that we've  
3 only heard from one artist, and I'm not sure he's  
4 with the Artist Union, Aaron Myers. Is he with your  
5 group?

6 MR. OTTEN: I don't know.

7 MS. HILTON: I don't think anyone has --

8 MR. OTTEN: Aaron. Aaron Myers?

9 MS. HILTON: -- contacted us for any guidance  
10 from your group, but an individual has contacted us,  
11 called Aaron Myers. I just wasn't sure if he was  
12 with your group.

13 MR. OTTEN: Okay. Just so we can go over the  
14 list on page 7 again, the options. The efficacy of  
15 this list, are you aware that like for example, O  
16 Street raw artist space is already full?

17 MS. HILTON: As I mentioned before,  
18 availability is dynamic and changes based on what's  
19 available at the time. I have no control over the  
20 availability of artist studios at any given moment.

21 MR. OTTEN: But in this, are you -- by  
22 suggesting this list are you saying that Cultural  
23 D.C. could perhaps expedite availability?

24 MS. HILTON: I never made that statement.

25 MR. OTTEN: Okay. I just want to clarify why

1 this -- how important this list is for the current  
2 artists. Graham, do you have any questions?

3 MR. BOYLE: Yes, please. Ms. Hilton, how are  
4 you today?

5 MS. HILTON: Good.

6 MR. BOYLE: So you mentioned you are the  
7 interim director at Cultural D.C. Did that change  
8 take place during the course of these hearings?

9 MS. HILTON: October 1st, 2015.

10 MR. BOYLE: Okay. Has Cultural D.C. signed a  
11 20-year contract with the developers for the boutique  
12 arts hotel program?

13 MS. HILTON: No, we have not.

14 MR. BOYLE: So, why do people keep referring  
15 to a 20 years, like that this is something  
16 sustainable and long-term?

17 MS. HILTON: That is the commitment for the  
18 space should the hotel emerge, live, and operate. So  
19 that space as designed is committed for 20 years to  
20 arts programming and art space.

21 MR. BOYLE: So if there's no hard contract  
22 how will the naming of a hotel operator impact that  
23 situation?

24 MS. HILTON: Can you repeat the question?

25 MR. BOYLE: Yes, ma'am. How will the naming

1 of a hotel operator impact the said 20 years'  
2 dedication to arts programming at the boutique arts  
3 hotel?

4 MS. HILTON: I can't testify to that.

5 MR. BOYLE: Interesting. Can artists  
6 participating in your program sign a 20-year lease?

7 MS. HILTON: I can't testify to that.

8 MR. BOYLE: In your testimony you mentioned,  
9 or your rebuttal, whichever, you mentioned over 800  
10 exhibition opportunities. Of these opportunities,  
11 how many would be relegated to hotel hallways?

12 MS. HILTON: Ten floors of hallway  
13 exhibitions rotated annually for up to 200 artists.

14 MR. BOYLE: Okay. That's good.

15 MR. OTTEN: Okay. Ms. Hilton, just to close  
16 out. So Cultural D.C. is -- when did that contract --  
17 - you say you have a five-year contract with the  
18 applicant?

19 MS. HILTON: Yes.

20 MR. OTTEN: And that began -- has that  
21 already started to count?

22 MS. HILTON: We will operate the program for  
23 five years if the program starts, if the hotel  
24 emerges with an arts program.

25 MR. OTTEN: And what I heard you testify

1 tonight is that you don't understand how a hotel  
2 operator may affect the spaces and things involved in  
3 that contract?

4 MS. HILTON: I did not say I don't understand  
5 it. I said I could not testify an answer to that  
6 question.

7 MR. OTTEN: But is it out of the realm of  
8 possibilities that a hotel operator to be named could  
9 affect this arts benefit?

10 MS. HILTON: It is not -- I do not have any  
11 response to that question.

12 MR. OTTEN: Okay. Let's go into Mr. Lee,  
13 then, and I'll just ask the same question since  
14 you're hiring, or you're going to be seeking a hotel  
15 operator. How does that affect the arts benefit?

16 MR. LEE: I'm sorry. Repeat that, Chris.

17 MR. OTTEN: How would the hiring of a hotel  
18 operator affect the arts benefit?

19 MR. LEE: Well, all of the hotel operators  
20 that we've interviewed to date have that as specific  
21 criteria to the operation of the hotel and it's  
22 actually going to be captured into the PUD. So  
23 there's no flexibility from it. The program is very  
24 specific. It's very well outlined, and it will be  
25 part of the PUD process. And it's a minimum of 25

1 years. And Cultural D.C. is also a minimum of five  
2 years. So, it's designed to perpetuate. And the  
3 hotel operator will have no ability to change that.

4 MS. HILTON: I can offer you an opinion that  
5 Cultural D.C. has been around 18 years, hopes to be  
6 around many more, and there's no reason we would not  
7 love to continue in that role should it work out for  
8 all involved.

9 MR. OTTEN: And Cultural D.C. and Dennis, and  
10 Mr. Lee, you're both considering wall space where  
11 paintings are as part of this art benefit, like in  
12 the lobby and the lounges and the bars. That's part  
13 of your 19,000 square foot number?

14 MS. HILTON: We mentioned hallways only at  
15 this point.

16 MR. OTTEN: Okay.

17 MR. LEE: Chris, there's a variety of  
18 opportunities for gallery space. And they will be on  
19 each floor and we imagine featuring a different  
20 artist on each floor with then a master board in the  
21 lobby so that people can actually circulate through  
22 the hallways. It's a pretty dynamic program. And  
23 then we have dedicated gallery space on the 11th  
24 floor in the restaurant area, as well as the gallery  
25 on the second floor which is more the meeting event

1 hang out area. So it's throughout the hotel.

2 And then there's also opportunities where in  
3 the stair wells, going in the sculpture garden there  
4 will be opportunity for people to display art and  
5 even commission art. So there's quite a bit.

6 MS. HILTON: I think the key to how the art  
7 will be displayed and where, is that the expert  
8 advisory groups and panels will help us determine  
9 what the best uses are, where they're located, and  
10 what types of things should be in those areas that  
11 are going to be the most appealing to all of the  
12 visitors, the residents, and the community that will  
13 be involved. And that's what makes these projects  
14 time and time again successful. It's what will work  
15 that has the emotional aesthetic and community  
16 appeal.

17 So, it's very early to determine what goes  
18 where when and how, and what it will even be. It's  
19 up to those panels of experts to make those  
20 determinations. We're not doing that at this hearing  
21 tonight. We don't know specifically.

22 MR. OTTEN: Okay. But it sounds like people  
23 will be sitting and eating next to art and drinking  
24 beers and things and --

25 MS. HILTON: Maybe, maybe not. It all

1 depends. Maybe there is some art that will appeal in  
2 that environment. Maybe there won't. We don't know  
3 yet.

4 MR. OTTEN: But you're calculating that as  
5 part of your benefit, right? Okay. Anyway.

6 Let's get to Mr. Lee's testimony. Mr. Lee,  
7 you testified that you purchased the building for \$7  
8 million in June of 2015.

9 MR. LEE: I'm sorry. Could you repeat that?

10 MR. OTTEN: Did you testify that you  
11 purchased the building for \$7 million in June of  
12 2015?

13 MR. LEE: That's correct.

14 MR. OTTEN: Can I ask you, why did you  
15 purchase -- well, are you aware of the tax assessable  
16 amount of that building --

17 MR. LEE: Yes.

18 MR. OTTEN: -- when you purchased it? And  
19 you chose to purchase it at twice the amount, or more  
20 than twice the amount?

21 MR. LEE: Well, the purchase was qualified  
22 based on the comparable sales in the area, not off of  
23 the tax assessment.

24 MR. OTTEN: Okay. And so when you did that  
25 you were aware of -- let me ask you this; were you

1 aware of the income coming in through conversations  
2 with the prior owner of how many rents and things  
3 were coming in from the current tenants?

4 MR. LEE: We had some information.

5 MR. OTTEN: And so when you say you're  
6 subsidizing rent every month, you knew when you  
7 purchased the building in June of 2015, how much  
8 income was coming in and how much you would have to  
9 be putting out before, to cover your cost, right?

10 MR. LEE: That's correct.

11 MR. OTTEN: Okay. And you also testified in  
12 June of 2015, you spent \$80,000 to make the building  
13 safe.

14 MR. LEE: That was a minimum.

15 MR. OTTEN: Okay. Thank you for doing that.  
16 I guess you've discussed communication breakdowns in  
17 your testimony. Isn't it the case that the first  
18 time any real discussion about specific terms on a  
19 relocation package happened on March 4th?

20 MR. LEE: Prior to that we were discussing a  
21 mix of relocation terms with also integrating into  
22 the art program. So there were multi conversations  
23 happening. It was on March 4th where we started  
24 getting more specific to relocation.

25 MR. OTTEN: Okay. And according to your

1 timeline, between June and January -- between June  
2 and January -- June of 2015 and January 2016,  
3 basically there wasn't really any discussion about  
4 relocation plans or anything like that. It was, you  
5 were developing your PUD application, it would seem.

6 MR. LEE: That's correct. And we actually  
7 discussed that in our June meeting, that we would  
8 follow back up with the tenants towards the end of  
9 the year as things were progressing because at that  
10 point we really had nothing to talk about. So I  
11 think we were pretty clear that there would be  
12 limited communication within there.

13 I do want to reiterate, as soon as we heard  
14 that there was some displeasure from Ms. Venn-  
15 Frederic filing, or posting the Instagram, that we  
16 tried to meet with her immediately and she was not  
17 available.

18 MR. OTTEN: And so between June and January  
19 it would be fair to say you were meeting with  
20 Cultural D.C. to forge this arts benefit?

21 MR. LEE: Among other things, yes.

22 MR. OTTEN: And you also testified that you  
23 communicated with individual artist tenants during  
24 that time.

25 MR. LEE: That's correct.

1 MR. OTTEN: Do you happen to know who those  
2 were? You said 411 artist tenants.

3 MR. LEE: Well, there was one specific, Anne  
4 Barnes that I actually met with and had coffee with.  
5 But then there were other communications in passing  
6 in the hallways when we were in the building, we  
7 would speak with people, people would ask for  
8 updates. There was communication back and forth.

9 MR. OTTEN: But more generally, not specific  
10 to relocation planning or anything like that, right?

11 MR. LEE: No.

12 MR. OTTEN: In terms of the current artists  
13 that are there now that you're well aware of, and  
14 been meeting with specifically, you know, in terms of  
15 relocation since March, during the development of  
16 this arts benefit package would it be fair to say  
17 that very little of that came from any of the current  
18 tenants? That it was mainly Cultural D.C., that you  
19 were packaging that with?

20 MR. LEE: I'm sorry, I don't understand that.

21 MR. OTTEN: Between June and January, so June  
22 of 2015 and January 2016, you're preparing this  
23 package that's associated with the PUD. Would it be  
24 fair to say that that was largely a conversation  
25 between you and Cultural D.C. to forge that package

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1 and not with the current tenants?

2 MR. LEE: You're referring to the arts  
3 program.

4 MR. OTTEN: Right.

5 MR. LEE: If that's the case, that's correct.

6 MR. OTTEN: And it was only after there was  
7 concerns that you heard, I guess certainly the first  
8 hearing, that you started wanting to address those  
9 concerns with the current artists. Is that fair to  
10 say?

11 MR. LEE: I'm sorry. Repeat that.

12 MR. OTTEN: Is it fair to say that it was  
13 only after this PUD application was filed that -- and  
14 hearing, you know, seeing in that first meeting, all  
15 the artists and supporters that you really took on --  
16 you wanted to make more serious, this discussion  
17 about the relocation package?

18 MR. LEE: No. No, I don't think that's true.  
19 I mean, when we had our meeting in January, on  
20 January the 18th, that was our first presentation of  
21 the art package, because that's when it was ready to  
22 be presented. It wasn't ready prior to that.

23 MR. OTTEN: That's the one with Cultural D.C.  
24 though.

25 MR. LEE: Correct.

1 MR. OTTEN: Okay.

2 MR. LEE: And so after that, that's when we  
3 got comments back and started the conversations.

4 MR. OTTEN: So March 4th, though, some  
5 significant -- some terms started rising up a bit,  
6 right? We just heard that. And then I see  
7 throughout March you have listed, a set of meetings  
8 that supposedly were called. Do you have lists of  
9 the tenants that attended those meetings?

10 MR. LEE: Chris, if you could help me when  
11 you're referencing the written testimony --

12 MR. OTTEN: Okay. I'm looking at --

13 MR. LEE: -- identify a page, please?

14 MR. OTTEN: Sure. On page 6 of your  
15 testimony, starting at March 14th.

16 MR. LEE: Okay.

17 MR. OTTEN: I see March 14th, March 22nd, we  
18 advertised and participated in a building-wide  
19 meeting. Let's just take March 22nd for example. Do  
20 you have a list of who attended that meeting that you  
21 advertised and hosted?

22 MR. LEE: I don't have it with me, no.

23 MR. OTTEN: Would you say that of the  
24 meetings you held since March 4th, that tenants  
25 outside of the ones that you see have been seen

1 throughout these proceedings, namely the ones that I  
2 represent, were there any others outside of that core  
3 that attended these meetings?

4 MR. LEE: Yes, there were a variety of people  
5 that came in. The attendance was very low. However,  
6 they were very productive. Once we sat down with  
7 them we were able to get a little insight into what  
8 the issues were with the spaces, and we actually had  
9 productive conversations about the size of the  
10 spaces. So while they were poorly attended, they  
11 were productive.

12 MR. OTTEN: But the attendants, are you -- I  
13 don't know if I heard that right. Are you saying  
14 they were attended by other tenants that are outside  
15 the core of the people I represent?

16 MR. LEE: Chris, that goes back to I really  
17 don't know who you represent. We really don't know.  
18 We've asked you for a solid list about it. But we do  
19 not know.

20 MR. OTTEN: You named them in this testimony.

21 MR. LEE: I mean, you have certain ones that  
22 were on the filing, but other than that we're not  
23 sure.

24 MR. OTTEN: So, starting at page 11 you have  
25 -- you've testified to this meeting summary. And

1 just going back to use the March 22nd example, this  
2 is the building-wide meeting that you claim to --  
3 that you, as the developer, have advertised and held.  
4 And you list -- it seems you list two people  
5 attended, along with the development team. Ray Leath  
6 (phonetic) and Aaron Martin.

7 MR. LEE: That's correct.

8 MR. OTTEN: So is this matrix basically  
9 saying that at that meeting two people attended?

10 MR. LEE: Yes.

11 MR. OTTEN: Okay.

12 MR. LEE: Along with the development team.

13 MR. OTTEN: Got it. So on page 14 I guess  
14 you have an index here of what the different  
15 connotations mean in this list. So whenever it says  
16 Artist Union in attendance, does that presume Gage  
17 Jones, Desiree Venn-Frederic, Luke Stewart, Shannon  
18 Lewthwaite (phonetic), Graham Boyle, Micheline  
19 Klagsburn, and Aaron Martin attended?

20 MR. LEE: We can't say that every one of  
21 those attended if it was the Artist Union. However,  
22 those were the attendees in the first couple of  
23 meetings that we had specific with you and the people  
24 you were representing.

25 MR. OTTEN: And this PUD proposal, regardless

1 of the requirements in the filing of 15,000 square  
2 feet, you would still be closing the alley to build  
3 out adjacent into the alley.

4 MR. LEE: No, no, we have no intention of  
5 building into the alley. That gets conveyed back.  
6 An easement back to the city. It stays exactly the  
7 way it is, except that we get to maintain it.

8 MR. OTTEN: What side is the alley? If  
9 you're looking at the building from the front, what  
10 side is the alley on?

11 MR. LEE: It's on the rear.

12 MR. OTTEN: It's on the back side of the  
13 building?

14 MR. LEE: Correct.

15 [Pause.]

16 MR. OTTEN: Can you break down how you come  
17 to a value of the relocation package at \$163,000?

18 MR. LEE: One second.

19 MR. OTTEN: Yeah.

20 [Pause.]

21 MR. LEE: I have a general breakdown of that  
22 but they might be slightly different from others that  
23 we've presented. We tied them -- we tried to tie  
24 them directly to the April 10th relocation package.  
25 So, would you like me to run through them?

1 MR. OTTEN: Yes, please. Just the -- I mean,  
2 just how you calculated that.

3 MR. LEE: As I said, it goes point by point  
4 from the April 10th relocation brackets.

5 MR. OTTEN: Well, hold on. Hold on. Before  
6 we get into that. Just looking at page 8, you have  
7 Option 1, right? So I'm looking at financial numbers  
8 from that Option 1 that says \$800 in relocation  
9 assistance fees, right? Is that per tenant?

10 MR. LEE: That's per master leasee.

11 MR. OTTEN: Master leasee. Okay. I'm having  
12 a hard time understanding how -- because there's  
13 what, 10 master leasees, or more?

14 MR. LEE: Correct.

15 MR. OTTEN: So at \$800 each, how do we get up  
16 to \$163,000?

17 MR. LEE: I'm sorry, Chris, you need to look  
18 at the entire list because you're pegging that number  
19 to one line item, the relocation at 800. We value  
20 that at -- we actually did it with 11 tenants.

21 MR. OTTEN: Okay.

22 MR. LEE: So that specific line item is  
23 \$8,800 for that line item.

24 MR. OTTEN: Uh-huh. And that's -- do you  
25 understand it from the conversations with the tenants

1 that the relocation component in terms of sheer  
2 financial value is probably the most important part  
3 of any of the offers here?

4 MR. LEE: I look at this particular line  
5 item, the relocation assistance as physical  
6 relocation. And so the proposal has this as an  
7 allowance that we would pay to the tenants who could  
8 apply it towards professional movers. Or they can  
9 utilize our services where we have a lot of  
10 experience moving people. We would supply the truck  
11 and give all of our time, and I think our only  
12 restriction was a radius. I think it was 30 or 45  
13 miles. Otherwise we will actually help you do the  
14 move.

15 MR. OTTEN: Okay.

16 MR. LEE: When you talk about relocation I  
17 think you're referring to the entire package. This  
18 is moving assistance.

19 MR. OTTEN: When the tenants met with you on  
20 March 4th, going back to that important first date  
21 where terms were being finally discussed, wasn't  
22 there a discussion about financial assistance  
23 actually building out a location that we can move  
24 into when we leave this space?

25 MR. LEE: Yeah, there were discussions.

1           MR. OTTEN: And it would seem at this point  
2 that the financial aspects of that, besides a  
3 management, in kind management offer, has  
4 disappeared, right?

5           MR. LEE: No, I disagree with that  
6 completely. I mean, in our meeting I don't think we  
7 ever discussed us outright paying for a full  
8 buildout. What we're trying to do is encourage all  
9 the artists and the tenants to work with us to get  
10 this done. We're volunteering. And this is what we  
11 do for a living so it's very real to us. The  
12 management fee is very real. It's our time. It's  
13 our commitment. It's our resources. And we're  
14 willing to donate that to help the artists get into  
15 the space, figure out how to lay it out, be  
16 resourceful, and get it -- build it out as  
17 inexpensively as possible.

18           And then we've also volunteered to assist  
19 going to our vendors to subcontractors, and trying to  
20 get a lot of these services donated. So that's very  
21 real.

22           MR. OTTEN: Doesn't -- do you expect that to  
23 expire in a certain period after the artists leave  
24 the building, that offer?

25           MR. LEE: After they leave the building we

1 would presume that that would be done as they're  
2 leaving the building. They would move into a new  
3 space because we also offer that relocation, finding  
4 the actual space. So I would assume they work  
5 together.

6 MR. OTTEN: But is there a timeline on that?  
7 Have you looked at a realistic timeline to those  
8 ends?

9 MR. LEE: I mean, I'm not sure I fully  
10 understand the question. But in the time frames that  
11 we've discussed there has been the options of tenants  
12 either staying through up until November 1, or an  
13 option of going through April 1st. I would presume  
14 that they would be moving at those times.

15 MR. OTTEN: The \$800 in the relocation  
16 assistant fees, how did you come up with that number?

17 MR. LEE: We've seen the majority of the  
18 studios inside, and as I mentioned we do quite a bit  
19 of moving. We move a lot of condominiums for  
20 clients. So we looked at that at a time and  
21 materials on an average. We've also noted to other  
22 people, like Micheline or to Desiree, who have the  
23 shops, that we would work with them on a case by case  
24 basis. But again, keep in mind if they use our  
25 resources it's free.

1           MR. OTTEN: You just mentioned Micheline  
2 Klagsburn. Didn't she introduce a receipt for when  
3 she was pushed out of her last artist space to move  
4 to 411 New York Avenue? Didn't she show you that  
5 receipt?

6           MR. LEE: I wasn't clear on whether that was  
7 a receipt or an estimate, and if it actually  
8 happened.

9           MR. OTTEN: And if it was a receipt or  
10 estimate, didn't it -- weren't the expenses  
11 associated more above \$4,500 in terms of relocating  
12 her, just her space?

13          MR. LEE: I believe that's correct.

14          MR. OTTEN: Have you explored getting any  
15 help from the city in terms of tax rebates or  
16 anything to help with this relocation package?

17          MR. LEE: No, we have not. And the reason  
18 being, Chris, is because as we understand it, that  
19 the benefits that we're getting from the PUD are part  
20 of what we're giving with the arts. So a subsidy tax  
21 break would not be warranted.

22          MR. OTTEN: But you would agree there's also  
23 potentially a significant loss to the arts in this  
24 case?

25          MR. LEE: I don't agree with that at all.

1 MR. OTTEN: Is that because -- why is that?

2 MR. LEE: Well, because I think that we can  
3 find homes for all the existing artists that are in  
4 there. I think they can come back into our program.  
5 And the program that we're proposing to build is a  
6 very substantial program, and it's going to be much  
7 greater than what's happening right now.

8 MR. OTTEN: And this is the program that the  
9 current artists would have to compete for to get back  
10 into?

11 MR. LEE: Correct.

12 MR. OTTEN: And you say that -- well, did you  
13 get any information from the city or any ideas of  
14 tools or resources that you could incorporate into  
15 the relocation package for the artists, regarding  
16 their displacement?

17 MR. LEE: No, we have not. We've worked  
18 closely with Cultural D.C. They're very aware of  
19 what is available for that, and as we had mentioned  
20 we've negotiated with a grant writing company that is  
21 more than happy to educate everybody if -- I'm sorry.

22 MR. OTTEN: Okay. When you purchased the  
23 building for 7 million was it your intention from the  
24 get-go to seek a hotel project at the site?

25 MR. LEE: By the time we purchased the

1 building we had narrowed it down to that.

2 MR. OTTEN: Okay. And so -- okay. I think  
3 that's all I have for now. Graham, do you want to  
4 ask questions?

5 CHAIRPERSON HOOD: Let me ask, about how many  
6 more questions do you have of this witness? And I  
7 think, are we running out -- I think that's about it  
8 right, Chris? Okay. Excuse me. Mr. Otten. Next.  
9 You can go ahead and --

10 MR. BOYLE: Yeah. Just a couple softballs  
11 for you, Dennis.

12 MR. LEE: Let me get my glove. Hang on.

13 MR. BOYLE: You stated that your July 27th,  
14 2015 meeting, the first meeting with all the tenants  
15 included all the tenants. Was I in attendance?

16 MR. LEE: I'm not sure, Graham. I'd have to  
17 look at the sign-in list. We did have a sign-in  
18 list.

19 MR. BOYLE: You did have a sign-in list. Is  
20 there a reason you scheduled the first meeting to  
21 announce the hotel arts program on MLK Day, a federal  
22 holiday?

23 MR. LEE: No, there was no reason either way.

24 MR. BOYLE: However, you are aware that most  
25 people have that day off and aren't trying to go to a

1 meeting on a holiday.

2 MR. LEE: Well, what we found is that a lot  
3 of the artists in the building have other jobs and so  
4 it actually could have been very opportune, and we  
5 didn't have one comment come back from the  
6 announcement stating that it was an issue.

7 MR. BOYLE: Great.

8 CHAIRPERSON HOOD: Okay, does that conclude  
9 your cross-examination?

10 MR. OTTEN: I'll just -- just one more  
11 question for closure.

12 When you purchased the building and were  
13 thinking that you were going to build a hotel there,  
14 did you assume that you would be able to evict the  
15 artists without compensating them fairly?

16 MR. LEE: Certainly not. And that was part  
17 of our original subsidy. I mean, you mentioned  
18 earlier that the artists were subsidizing us, but the  
19 reality is, Chris, we could have gotten that tenant,  
20 the building, fitted up with new tenants at 15 to \$20  
21 a square foot immediately. We would have had the  
22 ability to come in and raise the rents.

23 But as part of what we were trying to do with  
24 the arts we froze that rent at a substantially low  
25 rate just to assist with that process. And then see

1 how the program developed and evolve into the  
2 relocation. The temporary relocation so people could  
3 come back. That was always our intent.

4 MR. OTTEN: And in that, I guess in that line  
5 of thinking, given the short timeline between when  
6 you bought the building and when people would have to  
7 leave, I mean, did you expect anybody else to come in  
8 and pay double the rent or triple the rent?

9 MR. LEE: Yeah. Actually the fourth floor,  
10 when the previous owners moved out of the fourth  
11 floor, we were able to occupy that space on one year  
12 terms. Pop-ups are very popular right now, so people  
13 are looking for temporary spaces to develop  
14 businesses.

15 MR. OTTEN: And have you done any surveys of  
16 what's affordable artist space in the District?

17 MR. LEE: I've relied on Cultural D.C. and  
18 then what I've seen since we've been out looking.

19 MR. OTTEN: And would you say that in terms  
20 of the fair compensation that what Ms. Klagsburn  
21 brought to you in terms of a moving cost, is that  
22 fair? Is that a fair compensation?

23 MR. LEE: Well, again, I think that's a case  
24 by case line item in general. I believe that 90  
25 percent of the artists in the building could move for

1 the \$800. As we noted, the studio sizes range from  
2 100 square feet up to 350 square feet. So on  
3 average, where we picked that number, we believe that  
4 that's an accurate number.

5 MR. OTTEN: Okay. No more questions.

6 MS. COHEN: Then I think we have to move on  
7 to closing, and if we could just make that pretty  
8 comprehensive and short?

9 MR. TURNBULL: Vice Chair.

10 MS. COHEN: Yes.

11 MR. TURNBULL: I wonder if I could ask one  
12 question of the --

13 MS. COHEN: Well, if it's you, Mr. Turnbull,  
14 I will allow it.

15 MR. TURNBULL: Thank you so much. I just had  
16 a question. Maybe you've addressed this and I just  
17 didn't notice, or didn't write it down. The timing  
18 from when the panel awards spaces to artists that  
19 will go into the hotel, and the time for the artists  
20 to leave, to vacate, when will -- if an artist knows  
21 he's going to get a space, he's an existing artist in  
22 space, how does that overlap work before he knows he  
23 has to get out or he's going to get in, or -- what  
24 was the timing of that?

25 MR. LEE: I'm not sure I fully understand but

1 perhaps I can get close to it.

2 MR. TURNBULL: Well, I guess what I'm saying,  
3 I'm an artist and I put in for --

4 MR. LEE: From a practical standpoint.

5 MR. TURNBULL: From a -- and I put in for a  
6 space in the building and I'm with the Artist Union.  
7 And but at the same time I'm antsy that I may not get  
8 this space.

9 MR. LEE: Right.

10 MR. TURNBULL: And you've got a deadline that  
11 you're trying to do construction and everything else,  
12 and I'm just looking at, when is the drop dead line  
13 that I know that either I have to get out and find  
14 something, or you're going to help me get out and  
15 find something? Or I may be one of the fortunate  
16 ones that actually gets in. So how do you roll the  
17 dice and know where you're going to fit within that?  
18 How does somebody sort of try to predict their lives  
19 and where they're going?

20 MR. LEE: Yeah, that's interesting. That's  
21 something that we haven't really picked that number.

22 MR. TURNBULL: Yeah.

23 MR. LEE: First we have to have a projection  
24 as to when the hotel will deliver. I would have to -  
25 - I mean, the program, as you can see by what's

1 submitted, is very well cooked.

2 MR. TURNBULL: Right.

3 MR. LEE: The program is ready to go. So I  
4 would have to imagine that we could solicit the  
5 artists because we would also want to start  
6 commissioning art. So I see the process happening at  
7 least a year before delivery, where we really start  
8 engaging with the art community and filling the  
9 calendar with events.

10 MR. TURNBULL: Uh-huh.

11 MR. LEE: So I think somewhere in that range  
12 we would shoot to get those studios filled up and get  
13 people thinking about getting in there.

14 MR. TURNBULL: I guess what's driving my  
15 question, I think there was -- when you took over the  
16 building you gave them a 15-month lease continuation  
17 at the old rent.

18 MR. LEE: We started with the year and then  
19 in the January meeting we extended another three  
20 months.

21 MR. TURNBULL: Okay. So, well I guess that's  
22 really the drop dead date for them to get out.

23 MR. LEE: That's correct.

24 MR. TURNBULL: But isn't -- you're not going  
25 to be knowing when you're going to award spaces until

1 much later, I'm guessing.

2 MR. LEE: That's correct. There's  
3 certainly --

4 MR. TURNBULL: So, I mean --

5 MR. LEE: There's certainly a gap.

6 MR. TURNBULL: -- what I'm worried about is  
7 the artists who elect, who say well, I've got to get  
8 out because you're going to close my door, and they  
9 go out and they have to sign a lease with some other  
10 place, and then all of a sudden they find out that  
11 they're going to be selected, I'm just concerned how  
12 that whole scenario works out.

13 MR. LEE: Well, I think as we've seen there  
14 is a demand for art space. So, in the properties  
15 that we've looked at recently, the North Capitol  
16 Street, and then the Montana Avenue, those would be  
17 longer term leases, and I think the artists that are  
18 -- that we would relocate to a property like that,  
19 they would be able to leave at any time and then  
20 refill that space.

21 I think they would more be like a sub-lease,  
22 almost as though we have here.

23 MR. TURNBULL: Okay.

24 MR. LEE: So I think --

25 MR. TURNBULL: Well, I guess I would just

1 like to see maybe if you could tighten up that time  
2 line a bit for us and just actually --

3 MR. LEE: Yeah, I know. I understand.

4 MR. TURNBULL: I mean, I understand what  
5 you're doing and I mean, I appreciate the fact, the  
6 relocation costs and everything, but I'm just worried  
7 that there is some slippage that some artists are  
8 going to panic and they may be selected and if they  
9 don't, and there's some unpredictability from an  
10 artist's standpoint as to what he's going to do. I  
11 mean, some of them are going to want to be in the  
12 hotel very much, and some might say, no I think we're  
13 -- but I just, I just like to see that time line  
14 tightened up a bit.

15 MR. LEE: No, I agree. I think we can do  
16 that pretty well from what we've already prepared.

17 MR. TURNBULL: All right. Thank you.

18 MR. LEE: And writing all that down. Thank  
19 you.

20 CHAIRPERSON HOOD: Okay. Any other questions  
21 up here? Okay. Closing.

22 MS. MOLDENHAUER: Thank you, Commissioners,  
23 the proposed project satisfies the PUD standard in  
24 that it is particularly strong in many of the  
25 categories, including consistency with the family of

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1 plans, a high quality public benefit package, and  
2 amenities. And it is acceptable or able to mitigate  
3 any impacts of the tenants concerns that we have  
4 heard over these hearings if the Zoning Commission  
5 determined that the tenants are an aspect within  
6 their purview that must be mitigated.

7           The proposed development is in line with the  
8 Florida Avenue Market study that specifically calls  
9 out the site for high density use. And the C-3-C  
10 zone is compatible with the other neighboring PUDs  
11 and PUD projects that are currently pending or have  
12 been approved. This project is taken as a whole as  
13 the Comprehensive Plan evaluates and must be viewed  
14 holistically, is not inconsistent with the  
15 Comprehensive Plan and lacks adverse impact on the  
16 community, city services, infrastructure, and  
17 provides substantial benefits that are consistent  
18 with the Comprehensive Plan elements.

19           The hotel will generate significant economic  
20 development with construction jobs and long-term  
21 hotel and hospitality jobs, as well as a job for  
22 curator and all the arts related jobs related to the  
23 positions that Cultural D.C. will be required in  
24 order to run the program.

25           The landscaping will create a gateway along

1 New York Avenue before you cross the bridge into  
2 downtown. The monetary investments in the street  
3 scape and landscaping will also improve the  
4 pedestrian experience from someone crossing past the  
5 Baywood Hotel, past this project, and into the Union  
6 Market area.

7           Furthermore, the PUD will create an impact  
8 and will create an improvement to the alley and the  
9 curb and the sidewalk leading to the site from the  
10 alley behind the project from Penn and 4th Street.  
11 The flow of safety on the site will be improved as  
12 the current curb cut is a full access curb cut, and  
13 the project, as indicated in our testimony and in the  
14 record, will continue to work with DDOT to create a  
15 safe and clear signage for an only one-way flow from  
16 New York Avenue.

17           We heard from artists all over the city  
18 during the multiple hearings in this case. The  
19 outcry seems to be a global concern and not something  
20 specifically related at times to this project.  
21 However, that global concern for increased real  
22 estate costs, based on the concerns of increased real  
23 estate costs and challenges for artists in general  
24 has been addressed by the sustainable long-term  
25 affordable project associated with the benefit of

1 this project.

2 As you heard in opposition, there was  
3 reference to the District's Creative Action Agenda.  
4 That agenda outlined multiple strategies for  
5 successful accomplishment of its goals in that it  
6 actually stated elements that I believe support this  
7 PUD, including an increased support for the creative  
8 economy through public private funding. Here, we are  
9 offering private funding of a great partnership with  
10 a non-profit organization such as cultural D.C.

11 And it also quotes to say, "Increased visitor  
12 awareness of D.C.'s creative assets, and quote,  
13 explore cross-promotional opportunities between  
14 hotels and creative offerings."

15 This project is doing all of that and more.  
16 The project is an example of how a continued private  
17 cultural partnership will enhance the City's creative  
18 capital. The PUD accomplishes many of the arts  
19 Comprehensive Plan elements and the action steps for  
20 the creative action agenda. It will increase  
21 tourist's connective awareness of the District's art  
22 community and interlock the hospitality industry with  
23 the art and the creative market in a broader way than  
24 has been done in the past.

25 This PUD is a remarkable project because

1 while it will relocate tenants for a limited period  
2 of time during construction, it provides an  
3 opportunity for those tenants to come back. And it  
4 will -- it accomplishes the goals of a fusion between  
5 development and the preservation of art space. The  
6 PUD provides an extensive arts benefit with  
7 subsidized art working studios. We've heard  
8 testimony from Micheline that when she went out and  
9 looked at the studios that the studios were typically  
10 \$25 a square foot, plus utilities.

11           The proposal here is for \$20 a square foot,  
12 and that is, as we've heard additional testimony from  
13 Cultural D.C. the current today -- today's going  
14 rate. This is actually going to be a rate two years  
15 in the future, plus no utilities, and they're going  
16 to get the added benefit of having Cultural D.C. on  
17 site, opportunities for grant writing, opportunities  
18 for information on obtaining funds from the District  
19 from -- obviously there's been a communication issue  
20 where none of the individuals who testified in  
21 opposition have talked or talked with the Small  
22 Business Administration, DMPED, or have applied to  
23 any of the District agencies for the ability to  
24 obtain some of the grants for modernization. There  
25 will be an in-house individual that will be able to

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1 assist those artists with this information.

2 In addition to all of those benefits there  
3 will be gallery opportunities. There were testimony  
4 focused on the hallways. That doesn't focus on the  
5 publically accessible locations on the first floor,  
6 the second floor, and the 11th floor, that will all  
7 be publically accessible. There will be no dealer  
8 commissions paid to Cultural D.C. --

9 CHAIRPERSON HOOD: Let me interrupt. I don't  
10 know -- let me interrupt. I don't know what my  
11 colleagues feel but I feel like we're getting back  
12 into the merits of the case. What we need to do is  
13 deal with a closing statement. Something to the  
14 effect like, we have satisfied requirements, we think  
15 that this project should go forward. Or something to  
16 the effect, to be balanced, we will withdraw our  
17 application. One or the other. But those are  
18 closing remarks.

19 MS. MOLDENHAUER: We believe that we satisfy  
20 the requirements as Ms. McCarthy testified, the  
21 Commission has the ability to waive its authority if  
22 the Commission finds it appropriate to go forward  
23 with or without an alley closing. Please note that  
24 with or without an alley closing the April 10th  
25 relocation package, which is part of the record, will

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1 be part of the PUD proffers.

2 And given OP's support, DDOT's support, we  
3 look forward to the Commission to close the record  
4 and move forward to propose the action. Thank you.

5 CHAIRPERSON HOOD: Thank you for that  
6 closing.

7 Here's what I'd like to do, colleagues. I  
8 want to extend this to Mr. Otten, and I don't need a  
9 whole lot of conversation on it. We're going to  
10 leave the record open for 3020.4 by regulations,  
11 which talks about -- somewhat surprised but I will  
12 tell you as Mr. Otten did his rebuttal questions, he  
13 basically looked at all the testimony that was  
14 presented. He went verbatim, I think, page for page.  
15 I followed some of it. Some of it I got turned  
16 around because I was listening.

17 But I will tell you that he went through all  
18 of this. He said earlier that he didn't have an  
19 opportunity, but in 3020.4, it allows the Commission  
20 to give him opportunity and it spells it out how we  
21 can proceed.

22 But what I would like to proceed, even though  
23 I think he went through it thoroughly, I'm going to  
24 give him the opportunity. If he goes through those  
25 documents that -- in rebuttal, if you could present

1 those documents that were in rebuttal. Not how much  
2 Mr. Lee and them paid \$7 million because that's not a  
3 question I will ask, but if you ask something that's  
4 germane to rebuttal and that you have not asked, that  
5 you find as you look through these documents after  
6 this hearing, I'm going to leave the record open for  
7 that.

8           And it's not going to be a 60-pager, because  
9 you went through those -- you went through  
10 specifically through those submissions and rebuttal.  
11 So we will entertain that. I'm going to leave the  
12 record open for that, for something that you may see  
13 in that line of questioning that you may not have  
14 asked because you just got this this evening. Okay?

15           MR. OTTEN: Okay.

16           CHAIRPERSON HOOD: All right. That's one  
17 thing I normally leave open. I'm not sure what all  
18 else is out there because I know we had some other  
19 hearings, some things. Do you have a list?

20           MS. HANOUSEK: Well, two things. One, I was  
21 going to ask you, for how long are you going to leave  
22 the record open for this?

23           CHAIRPERSON HOOD: How much time do you need,  
24 Mr. Otten? A week? Two weeks? A week?

25           MR. OTTEN: I can do it in 10 days. So,

1 maybe by --

2 CHAIRPERSON HOOD: I'll tell you what. Why  
3 don't we --

4 MR. OTTEN: How about April -- I mean, May --  
5 by next Friday, May 6th.

6 CHAIRPERSON HOOD: Okay. That's sufficient.  
7 That's good. May 6th. Okay.

8 MR. OTTEN: And that's for questions --

9 CHAIRPERSON HOOD: That you may see in  
10 rebuttal.

11 MR. OTTEN: Right.

12 CHAIRPERSON HOOD: Not about the -- I don't  
13 want to see -- if it's a \$7 million question --

14 MR. OTTEN: Right.

15 CHAIRPERSON HOOD: -- I personally will not  
16 ask them that.

17 MR. OTTEN: Right on.

18 CHAIRPERSON HOOD: I'm not going to ask  
19 anything else about \$7 million. I got it. Okay?  
20 Commissioner May?

21 MR. MAY: I'm curious about the word, use of  
22 the word, questions. You're asking Mr. Otten to  
23 submit additional questions related to the rebuttal  
24 testimony, or just a response to the rebuttal  
25 testimony?

1           CHAIRPERSON HOOD: You could do questions or  
2 responses. And here's the thing, and when I say that  
3 I'm trying to afford him the opportunity under  
4 3020.4. Our regulations specifically talk about  
5 surprise. I don't know who put that in there. I  
6 wasn't on the -- actually, I was on the Commission  
7 when that was put in.

8           But I will tell you that one of the things  
9 that I want to make sure is that we afford him the  
10 opportunity. And when I say questions or responses,  
11 and thank you, Commissioner May, either one.

12           MR. MAY: So then the applicant also gets an  
13 opportunity to --

14           CHAIRPERSON HOOD: Because the applicant --  
15 because we just -- the rebuttal was just given what,  
16 this afternoon? When was the rebuttal given?

17           MS. MOLDENHAUER: This evening.

18           CHAIRPERSON HOOD: Okay. Yeah. Well, the  
19 rebuttal was given but in writing. It was given this  
20 evening.

21           So he says he didn't have an opportunity.  
22 And technically our regulations say we should  
23 postpone it and give them the opportunity.

24           MS. MOLDENHAUER: Only if surprise is proven  
25 and I think from your statement that it's not proven

1 because he actually quoted multiple pages --

2 CHAIRPERSON HOOD: Right. I'm not  
3 disagreeing with anybody. I'm just trying to balance  
4 this issue out. I'm not disagreeing. And you're  
5 right, it has to be proven. So that's why I don't  
6 want to hear about the \$7 million and I'm putting  
7 that with some parameters.

8 If it's anything that you see that's in  
9 writing, or -- well, in writing that you may have  
10 missed. Now, I don't expect this to be a whole lot,  
11 Mr. Otten, but I'm giving you that opportunity.

12 MR. OTTEN: Okay. For questions and  
13 responses?

14 CHAIRPERSON HOOD: Really response. The  
15 questions, if you see something that you didn't ask.  
16 You might have one or two questions that you might  
17 need to ask.

18 MR. OTTEN: Yep.

19 CHAIRPERSON HOOD: Then you put that in your  
20 response. Put, "I didn't ask this question," and I  
21 will ask it.

22 MR. OTTEN: Okay. In that case can I have  
23 until May 9th to include the responses as well? May  
24 9th, instead of the 6th? That would give me the  
25 week. You know, it's two weeks from today.

1           CHAIRPERSON HOOD: We probably won't be  
2 taking this up at our -- we probably won't be taking  
3 this up until -- and I don't know what our  
4 schedule -- until our -- do we have a second meeting  
5 in May?

6           MS. MOLDENHAUER: Will we be providing  
7 written responses so that the record is -- and we'll  
8 just be providing written responses to that?

9           CHAIRPERSON HOOD: I'm going to close the  
10 record on that and we're going to be done with it.  
11 We have your submissions and we will weigh what we  
12 have, whatever responses.

13           MS. MOLDENHAUER: But he's asking questions  
14 of my witnesses on rebuttal. Will they have to  
15 respond to those in writing?

16           CHAIRPERSON HOOD: I'm actually going --  
17 here's what's going to happen. Whatever questions he  
18 have, if I think that they're germane, I'm going to  
19 actually ask you those questions.

20           MS. MOLDENHAUER: We'll come forward in any  
21 proposed action. Okay.

22           CHAIRPERSON HOOD: I'm going to ask you those  
23 questions at proposed action to give him opportunity.  
24 I'm going to ask the questions.

25           MS. MOLDENHAUER: I'm just trying to clarify.

1           CHAIRPERSON HOOD: Right. Right. I know  
2 this is unique, but sometimes down here we deal with  
3 all unique -- I mean, we deal with some very unusual  
4 situations.

5           MS. MOLDENHAUER: I appreciate your creative  
6 review of this. Thank you.

7           CHAIRPERSON HOOD: You have to be creative  
8 down here, very. Believe me.

9           So anyway, I think that's the best way to  
10 proceed forward. And again, Mr. Otten, if it's a \$7  
11 million question, and I hope you get what I'm saying,  
12 I'm not going to ask it. Okay?

13           [Pause.]

14           MS. HANOUSEK: Chairman Hood --

15           CHAIRPERSON HOOD: Hold on. Let me say this.  
16 Hold on for a second. Commissioner May has a  
17 suggestion he's going to add on top of to what I'm  
18 trying to be creative here with.

19           MR. MAY: So I mean, since the typical course  
20 of action is to have rebuttal and cross-examination  
21 and closing, and what we're getting is essentially  
22 additional cross on the rebuttal, but I think it's  
23 fair for the applicant to have the opportunity to  
24 respond to that in writing before we take this up for  
25 proposed action.

1           So, if he submits his stuff on the 12th, then  
2 another week later or so you can -- I'm suggesting  
3 that a week later you'd have a response, and then we  
4 can take it up at the next meeting.

5           CHAIRPERSON HOOD: If you choose to because  
6 it may already --

7           MR. MAY: Yeah.

8           CHAIRPERSON HOOD: -- be in the record.

9           MS. MOLDENHAUER: We will be judicious in our  
10 responses.

11           CHAIRPERSON HOOD: Okay. All right. Enough  
12 with that. Let's see. Do we have anything -- a lot  
13 of stuff outstanding?

14           MS. HANOUSEK: There is a list of items here  
15 that had been kept by Sharon Schellin. It's not very  
16 long. I wasn't around the last couple of hearings so  
17 I don't know if some of them have already been dealt  
18 with, but it's a half a dozen things. Shall I go  
19 over them?

20           CHAIRPERSON HOOD: Let's read down the list  
21 and, Ms. Moldenhauer and Mr. Otten and everybody,  
22 let's make sure we're paying attention. Okay.

23           MS. HANOUSEK: The first thing it says, ANC  
24 report. So.

25           [Discussion off the record.]

1 CHAIRPERSON HOOD: We already have the ANC  
2 report.

3 MS. HANOUSEK: Okay. The next thing, and  
4 this -- are things asked the applicant for. One,  
5 perspective of the rear of the building that shows  
6 the impact of the relief asked for by Cohen and May.

7 MR. MAY: That was done.

8 MS. HANOUSEK: Okay. Increase LEED to Gold  
9 and meet with DOEE.

10 MR. MAY: In my notes, I don't think the -- I  
11 think the meeting might have happened, but I don't  
12 think that we have a proffer of gold yet, do we?

13 MS. MOLDENHAUER: What we stated was that we  
14 would be working towards Gold but we were continuing  
15 to have a Silver and we'd actually, I believe,  
16 increased our point system as stated in our February  
17 11th filing.

18 MS. HANOUSEK: Okay.

19 MS. COHEN: did you have that meeting,  
20 though, with Wilson?

21 MS. MOLDENHAUER: Yes, we did.

22 MS. HANOUSEK: Okay. Suggest looking at  
23 reducing rents for artist space, and if can't do then  
24 explain, Cohen.

25 MS. COHEN: I believe that's in the record

1 and so I'm satisfied.

2 MS. HANOUSEK: Thank you. Provide  
3 information regarding other artist space that  
4 Cultural D.C. referred to, Cohen.

5 MS. COHEN: That was satisfied.

6 MS. HANOUSEK: Okay. Front of penthouse not  
7 setback properly, May.

8 MR. MAY: That was fixed.

9 MS. HANOUSEK: View by Bay Hotel with  
10 applicant's building, Turnbull.

11 MR. TURNBULL: That was done.

12 MS. HANOUSEK: Meet with the 411 Artist  
13 Union, Hood.

14 MS. COHEN: They did.

15 MS. HANOUSEK: So the last thing is from  
16 tonight. Turnbull wants the timeline between when an  
17 artist has to leave and when he will know whether he  
18 has a spot at the new hotel. Did I get that right?

19 MR. TURNBULL: Yeah, and I think they're  
20 going to put something together that shows the  
21 timeline between leaving, awarding, and how that sort  
22 of is going to be synthesized somehow.

23 MS. MOLDENHAUER: I guess, just from a  
24 questioning standpoint, should we provide that in the  
25 next week and that way Mr. Otten will have that

1 information and if he chooses to include that one of  
2 his questions -- I just don't want to put that in  
3 after.

4 MR. TURNBULL: No, right.

5 MS. MOLDENHAUER: So if the record could be  
6 open for us to file that in the next week, in advance  
7 of whenever Mr. Otten files his request. Thank you.

8 CHAIRPERSON HOOD: Thank you.

9 MR. OTTEN: Also, to that end, can I get  
10 clarity? I don't recall the price changing on the  
11 studio space in the benefit. I don't know how that  
12 was satisfied.

13 MR. MAY: Maybe you want to provide what  
14 information was given in response to that in your  
15 response a week from now?

16 MS. MOLDENHAUER: Sure. We can do that.

17 MR. MAY: Rather than us try to find that  
18 now.

19 CHAIRPERSON HOOD: All right. I think  
20 actually we have exhausted anything else to come out  
21 of this. I don't know what else we can pull out of  
22 this application.

23 But anyway, anything else? Anybody up here?  
24 Commissioners?

25 Okay. The applicant and the party, we all on

1 the same page? Okay.

2 MS. MOLDENHAUER: I think we just need dates.  
3 I heard a couple. The 9th, the 12th thrown around,  
4 and then for proposed action.

5 CHAIRPERSON HOOD: Let's do the 9th for your  
6 response.

7 MR. OTTEN: Hold on. But they have to submit  
8 answers to --

9 CHAIRPERSON HOOD: When can you submit those  
10 answers?

11 MS. MOLDENHAUER: That will be done by this  
12 Friday, the 29th.

13 CHAIRPERSON HOOD: The 29th. Yeah. So  
14 you'll have it.

15 MR. OTTEN: So then, can I give my responses  
16 in two weeks after that? That would be the 13th.

17 MS. MOLDENHAUER: That's only one element. I  
18 mean, that's --

19 MR. OTTEN: I agree.

20 CHAIRPERSON HOOD: We're going to stick with  
21 the time frame.

22 MR. MAY: Just a couple of things --

23 CHAIRPERSON HOOD: What did we say? The 9th.  
24 We said the 9th anyway, right? We didn't say the  
25 6th. So we said the 9th. You asked for the 9th.

1 MR. OTTEN: Okay.

2 CHAIRPERSON HOOD: Yeah. So we said the 9th,  
3 which is a Monday, I believe.

4 MS. HANOUSEK: Yes, afternoon.

5 CHAIRPERSON HOOD: Okay. All right. Do we  
6 usually ask for -- I mean, findings of fact, we  
7 usually ask for this for the parties.

8 MS. HANOUSEK: Yeah.

9 CHAIRPERSON HOOD: Did you have that Ms.  
10 Hanousek?

11 MS. HANOUSEK: Well, are you shooting for  
12 having this at the 23rd? The meeting on the 23rd?

13 CHAIRPERSON HOOD: Of May?

14 MS. HANOUSEK: Yes.

15 CHAIRPERSON HOOD: We have two hearings in  
16 May? Oh, I mean, two meetings. Okay. Yes, let's  
17 shoot for the 23rd of May.

18 MS. HANOUSEK: Then we would want the draft  
19 orders two weeks before that on the 9th.

20 CHAIRPERSON HOOD: That's --

21 MR. OTTEN: That will work for us.

22 CHAIRPERSON HOOD: Okay. You know what?  
23 We're not going to be able to do this case on the  
24 23rd of May, because some of us will not be present  
25 and we need a full Commission. So I hate to prolong

1 this even more but we need to --

2 MS. HANOUSEK: June 13th is the next meeting.

3 CHAIRPERSON HOOD: Ms. Moldenhauer, is that a  
4 crisis? I mean, is it going to be a showstopper, Mr.  
5 Lee and Mr. Brooks? I mean, come on now. June 13th.  
6 You all tell me. Tell me if it is. Is it a  
7 showstopper? Is it a showstopper Mr. Otten? No, I  
8 don't think so.

9 MS. MOLDENHAUER: June 13th.

10 CHAIRPERSON HOOD: Unless you all want to do  
11 a special public meeting, and I don't understand the  
12 urgency, but --

13 MS. MOLDENHAUER: June 13th for proposed  
14 action.

15 [Discussion off the record.]

16 CHAIRPERSON HOOD: The problem is, we don't  
17 have a full Commission so we need to make sure we  
18 have a full Commission on this one. Our schedules  
19 change sometimes too.

20 Okay. So let's do June 13th. We can make  
21 these decisions longer than the four cases; four  
22 hearings.

23 MS. HANOUSEK: Right. So that means the  
24 draft orders would be due the 30th. I have a little  
25 trouble trying to state about the other things, when

1 they're due, because of the issue with Chris Otten  
2 and the questions.

3 CHAIRPERSON HOOD: Okay. Let me try to help  
4 out a little bit. Mr. Otten is --

5 MS. HANOUSEK: Thank you.

6 CHAIRPERSON HOOD: Mr. Otten's submissions  
7 are due on the -- everything that he's going to  
8 respond to -- the applicant is going to have  
9 everything in by Friday, which is whatever the date  
10 is.

11 MS. MOLDENHAUER: The 29th.

12 CHAIRPERSON HOOD: Mr. Otten is going to have  
13 everything in, the responses and the questions, which  
14 should be very -- the questions should be very  
15 limited by May the 9th, which is a Monday.

16 The findings of facts and conclusions of law  
17 should -- did you say the 30th?

18 MS. HANOUSEK: Yeah, if it's going to be on  
19 the 13th, that's enough time.

20 CHAIRPERSON HOOD: Yeah. Mr. Otten, that's  
21 enough time for you too, also, if you choose to give  
22 us some findings of facts and conclusions of law.

23 MR. OTTEN: When -- but they're responding.  
24 When are they to respond to the May 9th, our May 9th  
25 filing?

1 MS. MOLDENHAUER: We can do it by Friday the  
2 13th. That would give them still more than two weeks  
3 before the May the 30th.

4 CHAIRPERSON HOOD: Okay. Okay. So, when are  
5 the findings of fact and conclusions of law due?

6 MS. HANOUSEK: Well, it's typically two weeks  
7 before.

8 CHAIRPERSON HOOD: Right. But I'm saying,  
9 you gave me a date earlier. I'm just --

10 MS. HANOUSEK: Oh, 30th.

11 CHAIRPERSON HOOD: That's not -- when is  
12 Memorial Day?

13 MS. HANOUSEK: The 30th.

14 CHAIRPERSON HOOD: Okay. What is the -- when  
15 is the 31st? It's a Tuesday, right?

16 MS. HANOUSEK: Right.

17 CHAIRPERSON HOOD: Let's make it due on the  
18 31st. Okay?

19 MS. MOLDENHAUER: Thank you very much. Have  
20 a good evening.

21 CHAIRPERSON HOOD: You must know where I'm  
22 trying to go. Anything else? Okay. Not hearing  
23 anything, with that, this hearing is adjourned. Good  
24 night.

25 [Hearing adjourned at 10:15 p.m.]