

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

WMATA (on behalf of the :

Department of General Services): Case Nos. 04-08G/02-45

Modification of Significance :

Significance to an approved :

PUD at Square 5868S, Lot 805 :

- Ward 8 :

-----:

MONDAY

JUNE 6, 2022

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The Public Hearing of Case No. 04-08G/02-45 by the District of Columbia Zoning Commission convened via videoconference, pursuant to notice at 4:00 p.m. EDT, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairperson
- ROBERT MILLER, Vice Chairperson
- JOSEPH IMAMURA, Commissioner
- PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

- SHARON SCHELLIN, Secretary
- PAUL YOUNG, Zoning Data Specialist

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OFFICE OF ZONING LEGAL DIVISION STAFF PRESENT:

JACOB RITTING, ESQUIRE

The transcript constitutes the minutes from the
Public Hearing held on June 6, 2022

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(4:00 p.m.)

CHAIRPERSON HOOD: Good afternoon, ladies and gentlemen. Today's date is June the 6th, 2022. We are convening and broadcasting this public hearing by video conferencing. My name is Anthony Hood, and I am joined by Vice Chair Miller, Commissioner Imamura, soon to be joined, I believe, by Commissioner May. We're also joined by the Office of Zoning staff, Sharon Schellin and Mr. Paul Young, as well as our Office of Zoning's Legal Division, our legal counsel, Mr. Jacob Ritting. I will ask all others to introduce themselves at the appropriate time.

The virtual public hearing notice is available on Office of Zoning's website. This proceeding is being recorded by a court reporter, and the platforms used are webcast live, WebEx and YouTube live. The video will be available on the Office of Zoning's website after the hearing.

All persons planning to testify should have signed up in advance and will be called by their name at the appropriate time. At the time of signup, all participants will complete the oath or affirmation required by Subtitle Z, 408.7 accordingly. And all those listening by WebEx or by phone be muted during the hearing and only those who have signed up to participate or testify will be unmuted at the appropriate time. When called, please state your name and home address before providing your

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1 testimony. When you are finished speaking, please mute your
2 audio. If you experience difficulty accessing WebEx and with
3 your telephone call-in or have not signed up, then please call
4 our OZ hotline number at 202-727-0789. If you wish to file
5 written testimony or additional supporting documents during the
6 hearing, then please be prepared to describe and discuss it at
7 the time of your testimony.

8 The hearing will be conducted in accordance with
9 provisions of 11-Z DCMR, Chapter 4, as follows: preliminary
10 matters; the applicant's case. The applicant has up to 60
11 minutes. I don't believe we need that much time. The report of
12 the Office of Planning and District Department of Transportation;
13 the report of other government agencies; the report of the ANC.
14 I believe in this case we have ANC-8C as well as ANC-8E, which
15 is across the street from the affected property. So we will have
16 the report -- then we will have the report of other government
17 agencies, the report of the ANC, as I stated. Testimony of
18 organizations, five minutes and individuals, three minutes. And
19 we will hear in the following order from those who are in support,
20 opposition, and undeclared. Then we'll have rebuttal and closing
21 by the applicant.

22 The subject of this evening's case is the WMATA (on
23 behalf of the Department of General Services), Modification of
24 Significance to an approved PUD at Square 5868S, Lot 805. I
25 think I have the coordinates correct. If not, I'm sure we can

1 correct them as we're moving on.

2 So with that, let me ask, do we have any preliminary
3 matters?

4 MS. SCHELLIN: Just very shortly, there are no
5 proffered expert witnesses. The applicant is being represented
6 by Ms. Bull, who has stated that they only need about 10 to 15
7 minutes to do their presentation. She has two witnesses who will
8 join her. I believe Mr. Young is in the process of pulling them
9 up. And so they are going to keep it very brief, since there's
10 no opposition. And those are the only preliminary matters that
11 I have.

12 CHAIRPERSON HOOD: So let me ask --

13 MR. RITTING: Can I interject? This is Mr. Ritting.

14 CHAIRPERSON HOOD: Hold on one second. Mr. Ritting,
15 hold on one second.

16 Ms. Bull, I believe there is some opposition.

17 So I'm going to ask Ms. Bull to speak to it. I think
18 we have opposition from the Congress Heights Homeowner's
19 Association, unless I stand to be corrected. So I will ask
20 Ms. Bull to let me know whether or not they're still in
21 opposition. I think Mr. Ritting has some comments. But let's
22 make sure we keep it in order.

23 Mr. Ritting?

24 MR. RITTING: Yeah. I just wanted to bring your
25 attention. I looked through the record prior to the hearing, and

1 I didn't see an affidavit of posting or maintenance in the record.
2 So my suggestion is, as a preliminary matter, you consider whether
3 to waive those requirements. And in the hearing briefing, the
4 -- I laid out the rule on the second page that you should apply
5 when deciding whether to waive the minutes. It's set forth at
6 11-Z, DCMR 402.12, and it provides -- I'll just read it. It's
7 not that long -- "a technical defect in the hearing that is minor
8 in nature, shall not deprive the Commission of jurisdiction over
9 the case. If a defect in the notice is alleged and proven," --
10 I think there is defect, because they didn't file the required
11 affidavits -- "the Commission may determine whether to postpone,
12 continue or hold the public hearing as scheduled based on the
13 following three considerations; the nature and extent of the
14 actual notice." And I'll just summarize. The attendance or lack
15 thereof at the public hearing and the nature and extent of the
16 construction and/or use involved in the application. I'm sure
17 you're familiar with this, having dealt with it many times. But
18 I just thought I'd refresh your recollection. So I suggest you
19 --

20 MS. SCHELLIN: Jake, I think we need to ask whether it
21 was actually posted, because I thought that they did post.

22 Ms. Bull, can you let us know if you actually --

23 CHAIRPERSON HOOD: Let me do this. Let me run the
24 hearing, and let me do it this way.

25 MS. SCHELLIN: Yeah.

1 CHAIRPERSON HOOD: Okay. Let me run it.

2 What I -- the reason I wanted Ms. Bull to speak, because
3 there was mention that we did not have opposition. And when I
4 read it, I think we do. I want her to clarify that. And then I
5 was going to go to the affidavit, because I want the Commission
6 to discuss whether or not we move forward with -- see those are
7 the two things. Because I need to know first of all if she still
8 believes that that opposition, and I think our legal counsel is
9 telling us that there's some questions that need to be answered.
10 So I want to find that out, because I want to make sure that
11 nobody's present if we consider to deal with the affidavit and
12 postpone the hearing. That's kind of -- those -- that's my
13 chronological order. So let me work with it, and let me go to
14 Ms. Bull.

15 Ms. Bull, could you, first of all, let me know, is the
16 Congress Heights Homeowner's Association still in opposition in
17 this case?

18 MS. BULL: So the Congress Heights HOA provided an
19 email back in 2021, and we haven't heard anything further from
20 them since. I did respond to some of the concerns through the
21 Office of Planning. We discussed the concerns that the HOA has,
22 but I haven't had any contact with them since.

23 CHAIRPERSON HOOD: Which leads me to my next problem
24 with -- that's why I wanted to go in that order. Now, the
25 affidavit. I will tell you, because of what our counsel has told

1 us, I have some concerns about the affidavit of posting. I don't,
2 you know, I know that there's a lot of things going on in Congress
3 Heights, and I would proceed in caution, unless you have something
4 to -- or my colleagues will steer me a different way, I believe
5 this is going to have to be postponed, period. But let me hear
6 from others, because you haven't heard anything, nobody has
7 anybody reached out, there's no proof, and I just have problems
8 with that. So anyway, and we haven't done our due diligence,
9 and I don't believe -- I will not be supportive of waiving the
10 affidavit of posting, especially in Congress Heights at this
11 moment in time.

12 Let me -- Ms. Bull, you have anything you want to
13 respond?

14 MS. BULL: We did provide the proper notice to all
15 adjoining properties within 200 feet through the -- per the Zoning
16 Commission's requirement for that posting, or I'm sorry, that
17 notice. And we did meet with both ANCs multiple times about this
18 application in the past.

19 CHAIRPERSON HOOD: Okay. But the -- but you have no
20 answers to the Congress Heights Homeowner's Association?

21 MS. BULL: Correct. I have no responses from them,
22 aside from the initial response.

23 CHAIRPERSON HOOD: Okay.

24 Ms. Schellin, do we have anything in the record showing
25 --

1 So we don't have an affidavit of posting, correct,
2 Ms. Bull? Is it Bold or Bull?

3 MS. BULL: It's Bull. Just like the farm animal.

4 CHAIRPERSON HOOD: Okay. Ms. Bull, we don't have it.
5 So we don't have our requirement of the affidavit of posting. Is
6 that a fair assessment?

7 MS. BULL: I'm searching for that in my records now.
8 I do apologize, because this has been a long one. And I know I
9 signed an affidavit for you guys, and I'm trying to remember if
10 it was for this case or a previous case.

11 MS. SCHELLIN: Did you guys post the property? Did you
12 come and get signs from our office and post it? Those are very
13 large signs, so they're like two foot by three foot.

14 MS. BULL: I don't believe so.

15 MS. SCHELLIN: So that -- see that's where the problem
16 is. The property was not posted. If it was just the affidavit,
17 it wouldn't be as big a deal. But the fact that it wasn't posted,
18 I think is what Chairman Hood is getting to.

19 CHAIRPERSON HOOD: Thank you.

20 So let me hear from my colleagues. And I can tell you,
21 I will -- I am not in favor of proceeding, just because of that
22 technicality. And I hate to do this, because I thought it was
23 pretty straightforward.

24 I do want to make sure, Ms. Bull, if we postpone this,
25 I will postpone it quicker. I would like for you to really reach

1 out to make contact to Congress Heights Homeowner's Association.
2 Let's find out where they are. There's a lot of moving parts
3 going on in Congress Heights, and I want to make sure the Zoning
4 Commission is proceeding correctly. So let me open it up.

5 And let me hear from my colleagues what your thoughts
6 are.

7 Commissioner May.

8 COMMISSIONER MAY: All right. Yeah. First of all, can
9 you hear me okay?

10 CHAIRPERSON HOOD: Yes.

11 MS. SCHELLIN: Yes.

12 COMMISSIONER MAY: Okay. I've been having strange
13 microphone issues today.

14 So I -- I'm with you, Mr. Chairman. The fact that the
15 property has not been posted is problematic. And I mean, given
16 where it is, I can understand why it would not necessarily have
17 had a substantial effect on it, because I'm not sure how you post
18 this property in a way that people really understand what's
19 happening there. But it is disappointing that the last thing we
20 heard from the Congress Heights Homeowner's Association from a
21 year ago was so negative, and I think in some ways misinformed
22 about what the nature of the project was. So I don't know why
23 that has not been resolved. It seems to me that that could have
24 been resolved by now.

25 I have a question though for the applicant, which is,

1 why is this taking so long? I mean, what, you know, I remember
2 we reviewed the Cell on Wheels when that came up, and then there
3 was his proposal to extend that, but that got withdrawn. And
4 now we have this proposal, and it's, you know, we set this down
5 a few months ago. But we originally considered the modification
6 of consequence more than a year ago. I mean, what -- why is this
7 taking so long? What's going on here?

8 MS. BULL: I can respond to that, Mr. May.

9 So when we initially designed this site, we designed
10 it with a larger equipment compound, and we've since adjusted our
11 design to reduce the amount of disturbance on this property. And
12 that updated drawing was provided to the record along with an
13 explanation, because we wanted to make sure that we were impacting
14 the property as little as possible with this installation of the
15 replacement tower. So that redesign process took some time.

16 COMMISSIONER MAY: So is that -- I mean, is everything
17 that's there right now, the Cell on Wheels, for example, is that
18 legitimately permitted there at this point?

19 MS. BULL: I can't speak to that, sir, because that's
20 a Verizon installation. So it's a bit separate from our
21 application. But it is still in place, yes.

22 COMMISSIONER HOOD: Okay. So I'm confused about who
23 you are representing then.

24 MS. BULL: I'm representing WMATA, who is building the
25 replacement tower.

1 COMMISSIONER MAY: Okay. But on behalf of DGS, who is
2 the property owner.

3 MS. BULL: Correct.

4 COMMISSIONER MAY: And this -- do we have somebody from
5 DGS here?

6 MS. BULL: We do not. We do have WMATA representatives
7 with us.

8 COMMISSIONER MAY: Okay. Well, they're not going to
9 know about what DGS is then.

10 I mean the whole thing seems to be rather confused.
11 And it's really disappointing that whatever the questions were,
12 or the issues that were raised by the Congress Heights Homeowner's
13 Association have not been addressed. Because again, they seem
14 like they would be relatively easy to address those concerns by
15 explaining the project more thoroughly and explaining to people
16 things like WMATA doesn't actually do bus lanes. You know,
17 there's just strange things in there that could be addressed, and
18 apparently nobody's bothered and that's disappointing.

19 So I'm with you, Mr. Chairman. I don't see a reason
20 to go ahead with this. Clearly, if this were an urgent matter,
21 it would have been taken up when it first came onto our radar,
22 like two years ago. But it's, you know, I don't see any reason
23 why we should press forward without having the proper notice
24 occurring and without the proper outreach.

25 CHAIRPERSON HOOD: Okay. Thank you, Commissioner May.

1 Commissioner Imamura, you want to respond to any of
2 this?

3 COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I
4 don't think I have much more to add. I think -- I'm in agreement
5 with you and Commissioner May. Unfortunately, it does seem like
6 a pretty straightforward issue, except for there's a confluence
7 of issues that seem to be overcomplicating it. As
8 Commissioner May had pointed out, you know, it seems like in that
9 letter from the homeowner's association, there's some
10 misinformation or misunderstanding that in at least a year that
11 could have easily been resolved and buttoned up. So unfortunate
12 we're at this point, but as Commissioner May pointed out, I mean,
13 if it's taken this long, there's really not a sense of urgency
14 to tackle this tonight.

15 CHAIRPERSON HOOD: Okay.

16 Vice Chair Miller, anything to add?

17 VICE CHAIR MILLER: Thank you, Mr. Chairman. No,
18 nothing to add. I concur with all of your comments.

19 CHAIRPERSON HOOD: Okay.

20 So Ms. Bull and Ms. Schellin and others, let's see how
21 we can, first of all, reach out to Congress Heights. I'm not
22 sure if Mr. Ritting can help us. I'm not sure if there's a time
23 limit for reposting the property, if you can do it shorter or
24 whatever. Let's work out all the open ends, because when I look
25 at the tower, and I thought this was going to be very easy, but

1 there's so many -- as one of my colleagues mentioned, I think
2 Commissioner Imamura said so many other confluence of factors
3 have come into this, and we want to make sure we proceed
4 correctly, especially, like I said earlier, with all the moving
5 parts in Congress Heights now, especially make sure that we've
6 done our due diligence as a Commission.

7 So Ms. Schellin, I will ask you and Ms. Bull to -- if
8 we could have that quick discussion about how Ms. Bull, how you're
9 going to satisfy these different requirements that need to be
10 done, if the affidavit can be shortened. I believe this case
11 and the reach out to Congress Heights; I think you have pretty
12 much that reached out to the ANCs, and I appreciate that, but
13 there's also a letter that we have in the file of opposition. So
14 let me open it up and see how we can -- I going to leave it right
15 now to Ms. Schellin, Mr. Ritting, and Ms. Bowl -- Ms. Bull, I'm
16 sorry, to see how you can remedy some of these outstanding issues.

17 MS. SCHELLIN: I think that even with the APA rules,
18 the shortest would be 30 days. And I don't see anything that we
19 could double up with in July that would be really short. But I
20 could -- we could give her September 1st.

21 MR. RITTING: My suggestion is we consider this a
22 continued hearing, so you don't need to do the public hearing
23 notice from square one.

24 MS. SCHELLIN: Right.

25 MR. RITTING: And that -- the next piece is for the

1 applicant to post the property for the allotted amount of time
2 and file the maintenance and posting affidavit. And then -- I
3 forgot how long the posting requirement is, but --

4 MS. SCHELLIN: Forty. Forty days.

5 MR. RITTING: But as soon as that's done, then hold the
6 urine. That's my suggestion.

7 MS. SCHELLIN: And September 1st would allow that.

8 MS. BULL: If we're able to pick up the signs this
9 week, we can have it posted before the end of the week.

10 MS. SCHELLIN: Right. And September 1st will
11 accommodate that. It's going to be --

12 CHAIRPERSON HOOD: Vice Chair Miller, you have
13 something to add to that? Vice Chair Miller?

14 VICE CHAIR MILLER: Yeah, the -- I have no problem with
15 the way -- with the dialogue, potentially. I just wanted to get
16 confirmation from Ms. Bull that there's no -- I mean, that there
17 is no urgency that the -- I mean, other than that this is a
18 critical infrastructure project. But in terms of timing, you're
19 not going to lose funding or anything like that if we have the
20 hearing on September 1st in order to provide the public with the
21 notice that's required under the law.

22 MS. BULL: I appreciate that, Mr. Miller. And I will
23 say that there is some urgency here, and if Allen Wonder would
24 like to speak to the urgency of this installation, he's welcome
25 to if he's able. Allen Wonder is with WMATA.

1 CHAIRPERSON HOOD: Let me ask you this --

2 MS. BULL: Sure.

3 CHAIRPERSON HOOD: -- even before we even go to that.
4 If this was so urgent, which I thought was very -- actually, I
5 thought the case tonight was going to 15 minutes. But when I
6 started looking at stuff and start running this case, I was hoping
7 Ms. Bull -- but if this was so urgent, I really -- I don't -- I
8 will yield to the Vice Chair, but I don't think that discussion
9 that is really before us or necessary about this being urgent,
10 especially when we have not reached out to the community properly.
11 And also, it's been so long to come back even with the
12 modification of significance. So that's where I am. But Vice
13 Chair --

14 VICE CHAIR MILLER: I agree with all that, Mr. Chairman.
15 I mean the -- if there was urgency, they could have taken care
16 of basic response -- in providing us with something in the record
17 that responds to the issues that have been raised at least. But
18 I just -- if there was an issue, I wanted to know -- I wanted to
19 be aware of it, in terms of the project getting done if we waited
20 all the way until September, as opposed to make -- finding some
21 date in late July, if it would make any difference. If it doesn't
22 make any difference -- and I agree, the applicant themselves have
23 shown a lack of urgency in proceeding with this project that we
24 set down -- that we originally heard Mr. May said it, a year ago.

25 CHAIRPERSON HOOD: Well, I was actually looking at a

1 day in July. That's what I was looking. But that's when
2 Ms. Schellin asked -- Ms. Schellin, Mr. Ritting, and Ms. Bull to
3 work it out, and that's when they came back with, September the
4 1st. But since the Vice Chair, you opened it up. And we're
5 getting ready to have more time doing this than the hearing, so
6 I'm going to let Mr. Wonder go ahead. And he has his hand up,
7 so that's very polite, and I appreciate that.

8 So Mr. Wonder, you can go right ahead.

9 MR. WONDER: All right. Thank you very much. I
10 appreciate you allowing me to participate today.

11 Yeah. No, I fully understand the issues that are
12 present that need to be resolved. WMATA is okay rescheduling
13 this for September 1st. I will say it is rather urgent that we
14 get this done, but equally I want to ensure that we're being a
15 correct partner to the community and ensuring that we're getting
16 all things properly addressed in order to do so. So September
17 1st will be fine with us.

18 CHAIRPERSON HOOD: Okay. So thank you, Mr. Wonder.
19 Thank you for your comments.

20 So I'm hoping that we can -- as my colleagues have
21 mentioned, Ms. Bull, if you speak to the neighborhood, let's try
22 to get them on track of what the issues really are. I think that
23 will definitely condense our hearing and condense our record.
24 And let's make sure we do the affidavit of posting. So I will
25 turn it back over again to Ms. Schellin, Mr. Ritting, and Ms.

1 Bull to finalize everything. And I really liked the path forward,
2 Mr. Ritting, to a continued hearing. That saves us a little bit
3 of labor. But let's make sure we talk to the neighborhood, so
4 thank you.

5 Ms. Schellin?

6 MS. SCHELLIN: Yes, sir. I just did a counting of the
7 days. If, by chance they did post this week, there was a
8 possibility, if the Commission were willing to do so, to double
9 up. The only possibility would be the last week of July, and it
10 would have to double up with a hearing, because -- a map amendment
11 hearing, because the other day, that last week of July is a
12 meeting. Mr. Imamura is not here, so we're already short a
13 person.

14 So if the Commission wanted to double up with the map
15 amendment on that Monday, the -- July 25th, that's the only other
16 possibility. So I will throw that option out there before you
17 make your final decision. It's a straight map amendment case.
18 Not that they're always easy, but that's a possibility.

19 CHAIRPERSON HOOD: So Ms. Bull, do you think you can
20 get to the community before now and then? To me, that's the
21 biggest issue.

22 MS. BULL: I can reach out to them immediately to see
23 if I can get a formalized response from them. So it's, you know,
24 that gives me just about two months to get some resolution on
25 their concerns. I think that that's reasonable.

1 CHAIRPERSON HOOD: Okay. About two months. Okay.
2 That's very important, and I think we can do the continued
3 hearing. I think we can post it for what is it, 30 days,
4 Mr. Ritting? Can we do 30 days?

5 MS. SCHELLIN: Forty.

6 CHAIRPERSON HOOD: Forty?

7 MS. SCHELLIN: Forty. And she can reach out to
8 Mr. Barron in my office, and he can have signs probably prepared
9 by Wednesday, noon Wednesday, he can get the signs prepared.
10 Each street frontage needs to be posted.

11 CHAIRPERSON HOOD: Okay.

12 Does anybody see any prior -- I just want to make sure
13 the Commission and our office, we have our ducks in order. Does
14 anybody have anything else to add to that? And I'm going to ask
15 Ms. Schellin to give us a recap.

16 Colleagues -- I'm asking my colleagues, anything else
17 to add? We don't want to make this longer than the hearing.
18 Okay.

19 Ms. Schellin, can you give us a recap?

20 MS. SCHELLIN: Yes. So we'll postpone this to
21 July 25th. I will put it for 4 o'clock p.m. or immediately
22 following the previous -- the other hearing, because that might
23 take 10 minutes, it might take an hour or two. So since we don't
24 know, I don't want to put down a specific time, just in case it
25 finishes in 10, 15 minutes.

1 CHAIRPERSON HOOD: Okay. Any other questions? We're
2 all on the same page?

3 MS. SCHELLIN: And I'll just direct Ms. Bull to
4 Subtitle Z for posting property, what she needs to do about filing
5 the affidavit and the maintenance affidavit. It was all in the
6 regs.

7 MS. BULL: Thank you.

8 CHAIRPERSON HOOD: So I'm going to seize the moment.
9 I'm hoping that the council and the constituency here in the City
10 realize that we did not move forward with this, because that was
11 one of my questions at my confirmation hearing. So I want this
12 to go on the record that we did not move forward on this for
13 these very reasons. But that was not the reason. We want to
14 make sure things are in (indiscernible) and in order.

15 And I want to thank everyone for their participation.
16 And as Mr. Ritting mentioned, this will be a continued hearing
17 to July the 25th.

18 Ms. Schellin?

19 MS. SCHELLIN: 25th.

20 CHAIRPERSON HOOD: July the 25, immediately following
21 our previous scheduled hearing that we have that day. Okay?

22 MS. SCHELLIN: Okay.

23 CHAIRPERSON HOOD: Are there any other questions?

24 (No audible response.)

25 CHAIRPERSON HOOD: All right. So with that, I want to

1 thank everyone, and we will see you all on July the 25th
2 immediately following our previously scheduled hearing. Good
3 night.

4 MS. SCHELLIN: Thank you.

5 (Whereupon the above-entitled matter went off the
6 record at 4:25 p.m.)

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C E R T I F I C A T E

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In the matter of: Public Hearing

Before: DCZC

Date: 06-06-2022

Place: Teleconference

was duly recorded and accurately transcribed under my
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accurate record of the proceedings.

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