

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING  
1113TH MEETING SESSION (5th OF 2001)

+ + + + +

MONDAY  
APRIL 16, 2001

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The meeting was held at 1:30 p.m. in the Office of  
Zoning Hearing Room, Suite 220, 441 4th Street, N.W.,  
Washington, D.C., Carol Mitten, Chair, presiding.

PRESENT:

|                  |              |
|------------------|--------------|
| CAROL MITTEN     | Chair        |
| HERBERT FRANKLIN | Commissioner |
| ANTHONY HOOD     | Commissioner |
| JOHN PARSONS     | Commissioner |

ALSO PRESENT:

|                 |                         |
|-----------------|-------------------------|
| ANDREW ALTMAN   | Office of Planning      |
| ALBERTO BASTIDA | Office of Zoning        |
| ALAN BERGSTEIN  | Office of Corp. Counsel |
| GERALD FORSBURG | Office of Zoning        |
| ELLEN McCARTHY  | Office of Planning      |
| ART RODGERS     | Office of Planning      |
| MARIE SANSONE   | Office of Corp. Counsel |

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1. Z.C. Case No. 01-05TE/00-08TE/90-20F/87-4P (Capitol Point Time Extension)

C. Copies of Published Orders:

1. Z.C. Order No. 668-G (Z.C. Case No. 00-35TE/94-4M/89-31C - Time Extension for the PUD and Map Amendment at 500 5th St., N.W.)

1:38 p.m.

1  
2 CHAIRPERSON MITTEN: Good afternoon, ladies and  
3 gentlemen. This is the regular monthly meeting of the Zoning  
4 Commission for the District of Columbia. Today is Monday,  
5 April 16, 2001.

6 My name is Carol Mitten. Joining me this afternoon  
7 are Vice Chairman Anthony Hood and Commissioner John Parsons.  
8 We will be joined in approximately 30 minutes by Commissioner  
9 Herbert Franklin.

10 Mr. Bastida, are there any preliminary matters  
11 today?

12 MR. BASTIDA: Madam Chairman, the staff has no  
13 preliminary matters.

14 CHAIRPERSON MITTEN: All right. I would like to  
15 just suggest that in order to give us just a little bit more  
16 time for Mr. Franklin to join us and help us out on some of the  
17 more detailed issues that we need to discuss, I would like to  
18 move up on the agenda Final Action on Zoning Commission Case  
19 No. 00-33C to follow the Status Report by the Office of  
20 Planning.

21 Then if Mr. Franklin still hasn't joined us, I  
22 would like to do the BZA scheduling which is under other  
23 business. We'll do that following final action. Then we'll  
24 move into hearing action if he hasn't joined us yet if that is  
25 amenable to everyone.

1           Let's turn to the minutes of the public meeting  
2 from March 12th, 2001. I had a couple of editorial changes  
3 which I'll share with staff. Other than that, I didn't have  
4 anything substantive. Anyone have anything substantive?

5           COMMISSIONER PARSONS: Move approval.

6           COMMISSIONER HOOD: Second.

7           CHAIRPERSON MITTEN: We have a motion and a second  
8 for approval of the meeting minutes for March 12th, 2001. All  
9 those in favor, please say aye.

10          ALL: Aye.

11          CHAIRPERSON MITTEN: Those opposed?

12          Mr. Bastida, do we have any proxies?

13          MR. BASTIDA: Yes. Mr. Holman has that he is in  
14 favor of the minutes.

15          CHAIRPERSON MITTEN: Very good. Would you record  
16 the vote?

17          MR. BASTIDA: Yes. I would record the vote five to  
18 zero, Mr. Parsons moving and Mr. Hood seconded it. The  
19 remaining members of the Commission voting in the affirmative,  
20 Mr. Holman doing it by proxy.

21          CHAIRPERSON MITTEN: Did Mr. Franklin give you a  
22 proxy?

23          MR. BASTIDA: Oh, yes. I'm sorry. Yes. Mr.  
24 Franklin also gave me a proxy in the affirmative.

25          CHAIRPERSON MITTEN: Very good. Thank you.

1 MR. BASTIDA: Thank you for the reminder.

2 CHAIRPERSON MITTEN: I think we are ready to go,  
3 Ms. McCarthy, if you are ready to present the status report for  
4 the Office of Planning.

5 MS. McCARTHY: Good afternoon, Madam Chair, and  
6 members of the Commission. Since the status report was not in  
7 the packet, would you like me to just review it briefly?

8 CHAIRPERSON MITTEN: Perhaps you could highlight  
9 anything that's changed significantly from last month's status  
10 report just to call it out to us.

11 MS. McCARTHY: I think the major items that have  
12 changed from last month are basically under pending cases.  
13 This was listed as a pending case but actually we were able to  
14 speed up and to include it in your packets for this time the  
15 text amendment for Square 377 and Square 346 in conjunction  
16 with the Woodies case.

17 CHAIRPERSON MITTEN: Yes.

18 MS. McCARTHY: That is before you. And we have met  
19 with the D.C. Building Industry Association and discussed with  
20 them that we have done a first draft of the case which Mr. Hood  
21 has asked about several times, taking another look at PUD  
22 modifications.

23 We have talked to the D.C. Building Industry  
24 Association about meeting with them to get some sort of  
25 consensus and polish it up. We expect to submit that for set

1 down to the Zoning Commission in May.

2 We have very recently received a request for  
3 extension of the Capitol Point PUD and so we expect to come  
4 back to you next month with a recommendation with regard to  
5 that.

6 As well, the Capitol Hill commercial overlay. When  
7 we begin meeting with some people on Capitol Hill there was  
8 concern among ANC-6A and 6B that they had not had a chance to  
9 review that yet.

10 So far ANC-6B has met and has approved it but I  
11 don't believe 6A has done that yet. We expect to get back to  
12 you next month with regard to the Capitol Hill commercial  
13 overlay. I think those are the major items for which there has  
14 been activity.

15 CHAIRPERSON MITTEN: I did have one question on the  
16 third page, the Welch-Gould rezoning, Square 369 and Square  
17 370. We did get a piece of correspondence a couple of months  
18 ago from the counsel for the Welch family.

19 Can you shed some light on what the status of that  
20 particular case is because the concern was that things weren't  
21 moving forward.

22 MS. McCARTHY: Yes. We have met with the applicant  
23 and counsel and have indicated to them that because of the  
24 ongoing planning effort with regard to the existing convention  
25 center and the work that is being done by the other side of the

1 Office of Planning, the community revitalization side, on the  
2 creation of a Hospitality District, that we indicated to them  
3 we were looking to see what happened with regard to the  
4 recommendation for where a convention center hotel was going to  
5 be and how the Hospitality District was shaping up.

6 We thought it was important to establish that  
7 context before we rezoned just one square in the middle of all  
8 of that area which is very current and a lot of decisions being  
9 made about development there right now.

10 We indicated to the applicant, though, that if that  
11 decision weren't made by June, that we would proceed one way or  
12 the other because we understood that they wanted to get some  
13 sort of finality or some sort of answer from the Office of  
14 Planning about whether we would or would not support set down  
15 for that case.

16 CHAIRPERSON MITTEN: And was that course of action  
17 satisfactory to them?

18 MS. MCCARTHY: That was satisfactory.

19 CHAIRPERSON MITTEN: Thank you.

20 Any questions for the Office of Planning?

21 COMMISSIONER HOOD: Madam Chair, I just have one  
22 question.

23 Ms. McCarthy, I see with the antenna tower  
24 regulations where we now have advisory committee set up, I  
25 guess I just want to know is the committee already in existence

1 and who actually sits on it?

2 MS. McCARTHY: Mr. Hood, I expected Ms. Steingasser  
3 to be here today.

4 COMMISSIONER HOOD: I can find out later.

5 MS. McCARTHY: We have prepared a short memorandum  
6 which I was going to give you today with Ms. Steingasser.  
7 Basically the committee has not yet been established. What we  
8 recommended was a committee that would include representative  
9 from the industry, representatives from citizen's groups, and  
10 we've laid out a process to work with them to develop some  
11 draft recommendations.

12 First to do research, which we have already begun,  
13 getting a good body of knowledge about what the regulations are  
14 in the surrounding jurisdictions, and to do some national  
15 research on regulation of electromagnetic fields and many of  
16 the issues that were raised at the round table.

17 We also have a summary in that memo, just a  
18 bulleted summary of the issues raised at the round table and we  
19 are preparing a more detailed version of that.

20 So we are proposing, first, a research phrase,  
21 discuss that with the members of the task force, then do a  
22 draft set of regulations, have that reviewed by the task force,  
23 and then finalize that based on comments.

24 COMMISSIONER HOOD: I guess I was just asking  
25 because I was hoping. I'm sure it will be because it is

1 reflected all over the city. I know we have a heavy  
2 concentration in one area. I'm sure people in other wards like  
3 Ward 5, Ward 7 also have issues with the antennae. I was  
4 hoping that committee would be reflective to encompass everyone  
5 and include everyone.

6 MS. McCARTHY: Yes. Definitely. I have the memo  
7 in front of me now. So that's one reason why we were talking  
8 about convening that advisory group beginning in mid-May to  
9 June, so we had time to really make sure that we had a well-  
10 rounded advisory group that represented people from  
11 neighborhoods throughout the city and so that we had done a  
12 good job of reviewing the round table issues and doing our  
13 homework.

14 Then we expect to prepare the draft ordinance and  
15 coordinate that with the Office of Corporation Counsel in late  
16 June, have the advisory group review that draft and suggest  
17 changes in early July, have a proposed ordinance with the  
18 report outlining the positions and recommendations of the  
19 advisory group and any issues that we have not come to  
20 consensus over.

21 Submit that to the Board in July or early August  
22 and then recommend a final proposal for set down and public  
23 hearing probably for the September meeting of the Board.

24 COMMISSIONER HOOD: Okay. Thank you.

25 COMMISSIONER PARSONS: The Capitol Point extension,

1 is that just a straight extension or do you expect a  
2 modification of some kind?

3 MS. McCARTHY: I believe the request that we  
4 received was simply for an extension of time.

5 MR. BASTIDA: Madam Chair, the Office of Zoning  
6 received that request and forwarded it to the Office of  
7 Planning but it was a straight request. The concern that the  
8 office is that certain parameters are being negotiated with  
9 Capitol Point and corporation counsel. I don't know if that  
10 would be appropriate for you to take into account and staff is  
11 researching that.

12 CHAIRPERSON MITTEN: Well, at the moment it's a  
13 little premature to discuss anything substantive.

14 MR. BASTIDA: Right.

15 CHAIRPERSON MITTEN: I guess I would just maybe  
16 remind everyone that we had given them a one-year extension  
17 last time we voted on that in order to take into consideration  
18 all the broader issues going on at the Buzzard Point Overlay.  
19 We were expecting them to come back relatively quickly because  
20 of the one year.

21 COMMISSIONER PARSONS: And I guess I just wanted to  
22 send an early warning signal that I'm not terribly interested  
23 in another extension.

24 How old is an historic church and synagogue?

25 MS. McCARTHY: I'm sorry? How old does one have to

1 be in order to be historic?

2 COMMISSIONER PARSONS: Yes. Or does it have to be  
3 a landmark? What is the threshold that we're working with  
4 here?

5 MS. McCARTHY: This is based on a comprehensive  
6 plan amendment that was passed by the city counsel and I don't  
7 believe they were very specific. One of the issues that we  
8 need to look at is does the church have to be a designated  
9 landmark or contributing building in an historic district, or  
10 can one simply qualify after a certain time period.

11 COMMISSIONER PARSONS: So we're not there yet.  
12 Okay.

13 MS. McCARTHY: No.

14 CHAIRPERSON MITTEN: Thank you. Now on the revised  
15 agenda we'll move to final action on Zoning Commission Case No.  
16 00-33C. Mr. Bastida.

17 MR. BASTIDA: Yes, Madam Chairman. The final  
18 action is on the Woodies Case 00-33C. The staff has provided a  
19 draft order for the Commission to base their decision on. The  
20 staff request an action on this case.

21 CHAIRPERSON MITTEN: Had you received any comments  
22 as to the wording of the final order from Commissioners  
23 Franklin or Holman?

24 MR. BASTIDA: I have received proxies from both but  
25 no wording changes.

1 CHAIRPERSON MITTEN: All right.

2 Any discussion of the final order?

3 COMMISSIONER PARSONS: Move approval.

4 COMMISSIONER HOOD: Second.

5 CHAIRPERSON MITTEN: I just wanted to by way of  
6 discussion, I don't know if everyone has the same recollection  
7 that I do but for No. 11 on page 3 it then proceeds to  
8 enumerate the amenities.

9 We actually had a discussion about whether or not  
10 architecture and historic preservation were actually amenities  
11 and we determined them to be negligible because particularly as  
12 it relates to the amenity sites they were not offering to us  
13 any kind of control over design. They withdrew that as an  
14 amenity that they were proffering.

15 COMMISSIONER PARSONS: Excuse for the building  
16 itself.

17 CHAIRPERSON MITTEN: Except for the building  
18 itself. Right. I don't know if that should be either  
19 eliminated or, at the very least, modified to say --

20 COMMISSIONER PARSONS: So you want to remove 377?

21 CHAIRPERSON MITTEN: I would like to just have the  
22 references apply to the PUD site itself.

23 COMMISSIONER HOOD: Madam Chairman, I'm not  
24 following you. Unfortunately, I voted on this by proxy so --

25 CHAIRPERSON MITTEN: It's actually listed as No. 12

1 but it really should be a subset of No. 11. I have some  
2 editorial changes I would like to suggest that I don't think  
3 are substantive. As it relates to the amenity of urban design  
4 architecture and historic preservation, there is the discussion  
5 of the PUD site itself which is the Woodies building.

6 Then there is going to be some historic  
7 preservation on the amenity site on Square 377 but we did not  
8 have control over that. That was not really part of the PUD  
9 itself. The same goes for Square 517. If we could make that  
10 modification to No. 12, I would be more comfortable.

11  
12 Then I also just wanted to call out because I know  
13 it's important to Mr. Parsons under decision No. 1 on page 6.  
14 It says, "One or more roof structures shall be permitted." I  
15 remembered that you had commented on the nature of the  
16 penthouses that exist there.

17 I guess my understanding was to the extent that  
18 they were going to be changed, they were going to be  
19 consolidated into one. Do we really want to say one or more in  
20 terms of being permitted? I mean, clearly they get to keep  
21 whatever they have but to the extent that they make a change,  
22 don't we just want one?

23 COMMISSIONER PARSONS: I certainly don't remember  
24 multiple roof structures being mentioned in the hearing. Do  
25 you?

1 CHAIRPERSON MITTEN: No.

2 COMMISSIONER PARSONS: No, I don't.

3 CHAIRPERSON MITTEN: I would propose that should  
4 just say --

5 COMMISSIONER PARSONS: One is better.

6 CHAIRPERSON MITTEN: -- one roof structure shall be  
7 permitted.

8 COMMISSIONER PARSONS: Um-hum.

9 CHAIRPERSON MITTEN: So if you would accept those  
10 as amendments.

11 COMMISSIONER PARSONS: Accepted --

12 CHAIRPERSON MITTEN: Would you accept those?

13 COMMISSIONER HOOD: Accepted.

14 COMMISSIONER PARSONS: -- with enthusiasm.

15 CHAIRPERSON MITTEN: So we have a motion and a  
16 second to approve Zoning Commission Case Order No. 940 with  
17 amendments.

18 MR. BASTIDA: Madam Chairman, just clarification  
19 for the staff.

20 CHAIRPERSON MITTEN: Yes.

21 MR. BASTIDA: Are you eliminating totally 12 or are  
22 you are eliminating the first sentence on 12? I mean the  
23 second, "The application includes significant historic  
24 preservation ... Square 377."

25 CHAIRPERSON MITTEN: It will say, "The application

1 includes significant historic preservation components at the  
2 PUD site." All those in --

3 MR. BASTIDA: End of that one. Right?

4 CHAIRPERSON MITTEN: I'm sorry?

5 MR. BASTIDA: End of that paragraph?

6 CHAIRPERSON MITTEN: That's the end of that  
7 paragraph period.

8 MR. BASTIDA: Then the other change is "with one  
9 roof structure."

10 CHAIRPERSON MITTEN: It's on page 6, No. 1 under  
11 Decision.

12 MR. BASTIDA: Yes.

13 CHAIRPERSON MITTEN: Then I did have some editorial  
14 changes that I don't think I need to go into right now.

15 MR. BASTIDA: Okay. Then I will obtain that from  
16 you.

17 CHAIRPERSON MITTEN: All right. So we have a  
18 motion and a second to approve Zoning Commission Order No. 940  
19 as amended. All those in favor, please say aye.

20 ALL: Aye.

21 CHAIRPERSON MITTEN: Those opposed, please say no.

22 Mr. Bastida, do we have proxy?

23 MR. BASTIDA: Yes. Mr. Franklin and Mr. Holman had  
24 given me proxies in the affirmative and I think the changes  
25 made will not have an -- will not make a change on their vote.

1 Accordingly I will exercise the two proxies in favor of the  
2 application. The staff will record the vote five to  
3 zero. Mr. Parsons moving and Mr. Hood seconded it, Ms. Mitten  
4 voting in the affirmative, and Mr. Holman and Franklin voting  
5 in the affirmative by proxy.

6 CHAIRPERSON MITTEN: Very good. Thank you.

7 Now, since we haven't been joined yet by Mr.  
8 Franklin, if we could just pull out the BZA calendar and go  
9 through that quickly.

10 Mr. Hood, I think you're up tomorrow.

11 COMMISSIONER HOOD: Yes. I'll yield to my  
12 colleagues. It looks like I'm also scheduled for May 1st.

13 CHAIRPERSON MITTEN: There's a decision in the  
14 morning.

15 COMMISSIONER HOOD: Oh, okay.

16 One of the things -- Mr. Bastida, I don't know if  
17 you know the answer to this question. You don't know anything  
18 about the BZA schedule other than what's on the paper. Is that  
19 correct?

20 MR. BASTIDA: That is correct.

21 CHAIRPERSON MITTEN: Okay.

22 MR. BASTIDA: I know of certain areas but not  
23 really in depth. I might know of a couple of cases.

24 CHAIRPERSON MITTEN: Okay. There was a case about  
25 an appeal of the PUD -- appeal of the Zoning Administrator's

1 decision on a PUD. I had asked that either Mr. Franklin or Mr.  
2 Parsons would sit on that case and something happened with the  
3 schedule that when the case began Mr. Franklin wasn't present.

4 Now I believe that has been rescheduled for the afternoon of  
5 May 1st.

6 MR. BASTIDA: That is correct.

7 CHAIRPERSON MITTEN: That's true? That's right?

8 MR. BASTIDA: I believe that is the case.

9 CHAIRPERSON MITTEN: Okay.

10 MR. BASTIDA: But I will double check and make sure  
11 that's the case and convey it later on during the meeting.

12 CHAIRPERSON MITTEN: Okay. In that case, I don't  
13 know, Mr. Parsons, if you might be available to take the  
14 afternoon of May 1st.

15 COMMISSIONER PARSONS: I'm sorry. What was the  
16 case?

17 CHAIRPERSON MITTEN: The case is an appeal of the  
18 Zoning Administrator's decision related to a PUD at 1957 E  
19 Street, N.W., which is the Associated General Contractors site  
20 -- the former Associated --

21 COMMISSIONER PARSONS: I totally object because I  
22 didn't sit on that case.

23 CHAIRPERSON MITTEN: Oh, you didn't sit on that  
24 case?

25 COMMISSIONER PARSONS: No.

1 CHAIRPERSON MITTEN: Okay. I was trying to find  
2 one of the Commissioners who had sat on it. In that case, then  
3 we'll see if Mr. Franklin can pick it back up.

4 COMMISSIONER PARSONS: That's too bad. That's one  
5 of the few cases I've missed.

6 CHAIRPERSON MITTEN: You need to turn on your  
7 microphone.

8 COMMISSIONER PARSONS: I'm sorry.

9 CHAIRPERSON MITTEN: We'll see if Mr. Franklin can  
10 pick up the afternoon of May 1st.

11 So the 24th of April, Mr. Parsons? How are you set  
12 for that?

13 COMMISSIONER PARSONS: I have a mid-day meeting.

14 CHAIRPERSON MITTEN: I can take the 24th if that  
15 doesn't work for you.

16 COMMISSIONER PARSONS: Well, I would have to leave  
17 at 11:30 and be back at 2:00.

18 CHAIRPERSON MITTEN: Well, how are you for the 8th  
19 of May?

20 COMMISSIONER PARSONS: I'm pretty good for the 1st,  
21 too.

22 CHAIRPERSON MITTEN: Okay.

23 COMMISSIONER HOOD: Madam Chair, who is going to do  
24 the morning of the 1st?

25 COMMISSIONER PARSONS: I'll do that.

1 COMMISSIONER HOOD: Oh, okay.

2 CHAIRPERSON MITTEN: Well, there are cases that I'm  
3 on and then there's a case that you're on, Mr. Hood. It's all  
4 set already, the cases on the morning of the 1st.

5 COMMISSIONER HOOD: I mean, as far as -- I guess  
6 you probably need to be here so I think mine is going to be  
7 proxied in.

8 CHAIRPERSON MITTEN: Okay.

9 COMMISSIONER PARSONS: I think I'll be out of town.

10 CHAIRPERSON MITTEN: Then how about if you take the  
11 24th?

12 COMMISSIONER PARSONS: As long as everybody  
13 understands I'll bail out in the middle of it.

14 CHAIRPERSON MITTEN: Yes. Then I'll take the 8th.

15 MR. BASTIDA: Mr. Parsons, you stated that you have  
16 to leave between --

17 COMMISSIONER PARSONS: I'll leave at 11:30 and be  
18 back at 2:00.

19 MR. BASTIDA: Okay. I'm making a note of that.

20 COMMISSIONER HOOD: But also it looks like Burke  
21 School -- you're sitting on Burke School. Right?

22 CHAIRPERSON MITTEN: I think that might have been  
23 Mr. Franklin.

24 COMMISSIONER HOOD: Oh, okay. I know it's coming  
25 up on the 15th.

1 CHAIRPERSON MITTEN: Well, if Mr. Franklin can't  
2 take that --

3 COMMISSIONER HOOD: I was going to take it but I  
4 think someone is already on it.

5 CHAIRPERSON MITTEN: Let me pencil you in because  
6 I'm not sure that it's done yet.

7 COMMISSIONER HOOD: If not, I'll move to the --  
8 well, we can wait.

9 CHAIRPERSON MITTEN: Okay. I think we have enough  
10 down to go ahead.

11 Now we'll get back to the regular order on the  
12 agenda.

13 MR. BASTIDA: May 1st was decided. Is Mr. Hood the  
14 one taking that?

15 CHAIRPERSON MITTEN: We are going to see if Mr.  
16 Franklin can sit in the afternoon.

17 MR. BASTIDA: Okay. And then Mr. --

18 CHAIRPERSON MITTEN: And I will take the 8th all  
19 day.

20 MR. BASTIDA: And the 15th?

21 CHAIRPERSON MITTEN: Let me just ask Mr. Franklin a  
22 softball question since he's just sitting now.

23 Are you on Burke School?

24 COMMISSIONER FRANKLIN: I have been but it raises  
25 an issue which we should discuss in terms of post-May 31.

1 CHAIRPERSON MITTEN: Have hearings started on that  
2 yet?

3 COMMISSIONER FRANKLIN: No.

4 CHAIRPERSON MITTEN: All right. So we may end up  
5 with Mr. Hood on that.

6 COMMISSIONER HOOD: Thank you.

7 MR. BASTIDA: So Mr. Hood would be May 1st all day?

8 CHAIRPERSON MITTEN: We were talking about May 15th  
9 just then.

10 MR. BASTIDA: Sorry.

11 CHAIRPERSON MITTEN: Except for the very first  
12 case.

13 MR. BASTIDA: Um-hum.

14 CHAIRPERSON MITTEN: All right?

15 MR. BASTIDA: Okay. And then May 1st?

16 CHAIRPERSON MITTEN: Oh, May 1st.

17 Mr. Franklin, the afternoon of May 1st is the date  
18 to which they had postponed the appeal of the Associated  
19 General Contractors site. That may actually conclude that day  
20 given that they have had some element of the hearing already.  
21 Do you think you might be able to take that afternoon?

22 COMMISSIONER FRANKLIN: I think if that's going to  
23 be the decision day but I'll have to read the record.

24 CHAIRPERSON MITTEN: I understand. Okay.

25 So Mr. Franklin will take that but he's going to need the

1 transcript from the earlier hearing.

2 COMMISSIONER FRANKLIN: I have lawyers working on  
3 the transition issues so the Burke School may still yet be a  
4 possibility. I'll have to get back to you on that.

5 CHAIRPERSON MITTEN: Great. Thanks.

6 MR. BASTIDA: Point of clarification. Is Mr.  
7 Franklin in the afternoon only on May 1st or --

8 CHAIRPERSON MITTEN: The morning sessions are cases  
9 that have already been heard.

10 MR. BASTIDA: Okay. Thank you.

11 CHAIRPERSON MITTEN: Just to bring you up to speed,  
12 Mr. Franklin, we did the final action on the Woodies case and  
13 now we're going back to hearing action. We'll begin with the  
14 Buzzard Point rulemaking. Ms. McCarthy or Mr. Altman or  
15 whoever.

16 MS. MCCARTHY: Madam Chair, as you know, at our  
17 past meetings -- at the last month's meeting the Commission had  
18 indicated its desire to set down for -- not to set down but to  
19 advertise for additional public hearing the text as it had been  
20 originally submitted with a couple of changes and asked to the  
21 Office of Planning to come back with more specific wording with  
22 regard to those changes. The version that you have before you  
23 today, let me just highlight the changes that had occurred in  
24 there.

25 The first one is on page 2, 1601.2, which is

1 something that we added subsequently because the question had  
2 come up. This is really cleaning up a conflict that existed in  
3 the zoning regulations with regard to the capital south  
4 receiving zone.

5 The regulations for BP overlay as they currently  
6 existed permitted one to go to 8 FAR if one incorporated  
7 certain preferred uses. Yet, apart from the BP overlay, when  
8 the Commission extended the bonus density provisions of the TDR  
9 generating provisions for downtown housing, it created the  
10 Capitol South Receiving Zone and it indicated then that one  
11 could go to a maximum of 10 FAR through the purchase of  
12 transfers of development rights.

13 A question had come up with regard to that on a  
14 specific project that was being planned on M Street. We  
15 inserted item D which indicated that where a lot is also  
16 located in the Capitol South Receiving Zone as identified in  
17 Section 1709.18 of this title, then the provisions of 1709.21  
18 shall apply with regard to establishing the maximum permitted  
19 FAR applicable to the lot with the receipt of transferable  
20 development rights including planned unit developments as  
21 provided in 1603.3 of this chapter.

22 In other words, that only applied to the section  
23 that is on the north side of M Street for a half a block which  
24 is in the Capitol South Overlay but which was also included in  
25 the BP overlay so that one may go up to 10 FAR on those lots by

1 the purchase of transfers of development rights.

2 Then if you go to page 4 with regard to M Street,  
3 we have inserted two provision 1604 that are advertised in the  
4 alternate. One provides that simply along M Street there be a  
5 set of design standards that would be established and would  
6 apply along M Street between South Capitol and 4th Street, S.E.

7  
8 Those design standards include a clarification  
9 which is in 1604.2 that the intent when we had talked about  
10 sidewalk width was that buildings be recessed 15 feet from the  
11 curb line.

12 We discovered, again in conjunction with another  
13 project that had been proposed, that sometimes the public space  
14 right-a-way varies in width so we felt that it was simpler to  
15 change the wording of 1604.2 to say, "The street wall of each  
16 new building shall be set back for its entire height and  
17 frontage along M Street not less than 15 feet measured from the  
18 curb line of the right-a-way of M Street, S.E."

19 Then we proposed standards similar to those in the  
20 downtown development district along that section of M Street  
21 that 50 percent of the gross floor area of the ground floor be  
22 devoted to retail service, entertainment, or arts uses,  
23 excepting certain uses like car washes.

24 And that no less than 50 percent of the surface  
25 area of the street wall of any new building along M Street

1 would be developed to display windows with clear or low  
2 emitcity glass and/or entrances to the commercial uses of the  
3 building.

4 And that there would be a prohibition against the  
5 construction or use of a driveway from M Street to require  
6 parking spaces or loading berths in or adjacent to a new  
7 building.

8 That is one provision along M Street which would be  
9 those design standards or, in the alternative, you will see on  
10 page 5 of the handout a requirement where the zoning  
11 regulations would require on a footprint of 10,000 square feet  
12 or greater to require them to go through a planned unit  
13 development process.

14 This is so the Commission can look at issues like  
15 amenities and the contribution of that building to the area so  
16 the Commission would have a greater ability to influence the  
17 design of those buildings than simply adherence to the design  
18 standards that we were promulgating.

19 We are recommending that those be advertised in the  
20 alternative and that the Commission hear input from both of  
21 those.

22 CHAIRPERSON MITTEN: When Mr. Gross made his report  
23 summarizing some of the things that had happened in the past,  
24 the issue that apparently had hung up the Commission from  
25 making a decision previously was this notion about whether we

1 have the legal ability to have a mandatory PUD process. I take  
2 it you have sorted that out with the corporation counsel.

3 Mr. Bergstein, can you speak to that?

4 MR. BERGSTEIN: I think we were talking in general  
5 terms about a mandatory type of design review. I don't think  
6 we discussed specifically the PUD process itself particularly  
7 to the extent that amenities might actually be required.

8 If the intent is to use the actual PUD process, I  
9 want some -- I would like to continue that discussion with  
10 planning about whether or not every single aspect of what is  
11 the PUD process that we now have would be required and whether  
12 or not we would need to rethink the evaluation criteria.

13 Because, for example, one of the issues in PUD it's  
14 a balancing including zoning ability. In this case there would  
15 be no zoning relief. This would be a prerequisite to  
16 establishing a use which would be a matter or right.

17 I would like to continue that discussion with OP in  
18 terms if they are really viewing the PUD process in Chapter 24  
19 to apply section by section of whether or not there is sort of  
20 a modified PUD process that they are talking about here.

21 CHAIRPERSON MITTEN: Okay. We'll look forward to  
22 getting more feedback on that.

23 I have a number of questions but I'll ask my fellow  
24 Commissioners if they have any questions for the Office of  
25 Planning about the overlay.

1           There is an issue that came up for me but it has  
2 also been raised in a letter from Fred Green regarding Squares  
3 700 and 701. I understand that the Office of Planning is not  
4 recommending C-3-C for those two squares but that was something  
5 that in Mr. Gross' summary to us of where the Zoning Commission  
6 had reached consensus in the past that their consensus was that  
7 those two square be zoned to BP/C-3-C instead of BP/CR.

8           I understand that things have changed but I guess I  
9 would like to inquire as to your thoughts about advertising  
10 both of those zones to acknowledge what the Zoning Commission  
11 had reached consensus about in the past, and yet to also  
12 acknowledge your recommendation and to go forward and get some  
13 input from the public about both of those categories. Is that  
14 satisfactory to you?

15           MR. ALTMAN: Yes, I think that's satisfactory. As  
16 we discussed, our conclusion about that was that when we looked  
17 at the C-3-C zoning for that site in light of changed  
18 conditions, we really feel it's important that there be mixed-  
19 use zoning that is both housing and commercial for the entire  
20 Buzzard Point.

21           Particularly as we're working very hard with the  
22 General Services Administration on their Southeast Federal  
23 Center where the thrust of the policy has been now for the past  
24 year since we've been working with them to have both housing  
25 and office at their site which is just immediately next door to

1 that.

2 And it was clear that the thrust of what would  
3 happen from the policy perspective, through the community  
4 workshop we held last May and has been reaffirmed since then,  
5 has been all the area from M Street to the water should have  
6 mixed-use zoning to allow the opportunity for both residential  
7 and for commercial as opposed to exempting various parcels to  
8 be solely commercial. Again a whole square could be an  
9 enormous amount of commercial development. Although  
10 we want to encourage commercial, we think that shouldn't be  
11 just an office corridor, that housing is very critical to that.

12 We thought from a consistency standpoint with what we're  
13 working on with the federal government, the city side should be  
14 equally vigorous about the residential which is why we weren't  
15 recommending it as a policy matter.

16 I understand what you're saying as from the  
17 Commission from the previous discussion, which was a number of  
18 years ago. In light of that deliberation, you could advertise  
19 both and get public input on that. We simply at this point  
20 didn't bring it forward given what our policy conclusion was at  
21 this point.

22 CHAIRPERSON MITTEN: I understand but you wouldn't  
23 be adverse to it?

24 MR. ALTMAN: I understand that. Yeah.

25 CHAIRPERSON MITTEN: All right. On the point that

1 you raised about your efforts at the Southeast Federal Center,  
2 just for my clarification and understanding, on the map that's  
3 attached to your April 13th report there's a portion of the  
4 Southeast Federal Center that's included in the area to be  
5 rezoned which is Square 744 and Square 771. Are those the only  
6 portions of the Southeast Federal Center that will be developed  
7 with nongovernmental uses?

8 MR. ALTMAN: No. At this point we are working with  
9 the General Services Administration on a master development  
10 program for the entire 55 acre site leading to a request for  
11 proposals that Eleanor Holmes Norton legislation requires.

12 No. It may be that there are other portions of  
13 this site I can see already that will ultimately be zoned for  
14 residential development. It's not solely that area. I think  
15 it will probably be a broader area but we'll know better in the  
16 next three months.

17 CHAIRPERSON MITTEN: All right. I just wanted to  
18 make sure to the extent that you knew whether or not that was  
19 truly going to be isolated or not. I know this is a first past  
20 at accomplishing something down there and that there may be  
21 refinements that you recommend later.

22 MR. ALTMAN: Absolutely.

23 CHAIRPERSON MITTEN: Are you aware of any federal  
24 restrictions that are in place that relate to water front  
25 development? I know there is something called the Chesapeake

1 Bay Preservation Area and things like that that would impact  
2 the sites already, particularly those that you are proposing be  
3 rezoned to BP/W-2.

4 MR. ALTMAN: There are a couple of impacts to the  
5 Chesapeake Bay agreement. One is a broader issue that we're  
6 looking at that affects the entire waterfront planning effort  
7 that relates to the amount of developments within the whole  
8 Chesapeake Bay, the whole greater watershed, I guess. That's  
9 something that we're looking at in terms of the amount of  
10 trying to reduce both the amount of pollutants that are in the  
11 river, as well as not an impervious surface and those issues.  
12 That we are addressing in the broader waterfront planning  
13 context.

14 In terms of the specific what might affect here, I  
15 do believe there is a provision I don't have off hand about  
16 within 100 feet of the shoreline that might have an impact and  
17 I would need to look at that. I don't know off hand.

18 CHAIRPERSON MITTEN: The reason I ask that is  
19 because as it relates to the setback that would be required in  
20 the W-2 it's being suggested that we offer bonus density in  
21 exchange for the setback.

22 Well, if the setback is already effectively  
23 dictated by some other regulation, then I don't know that it's  
24 appropriate to be offering bonus density in exchange for  
25 something that's already in place and could actually be even

1 more restrictive than something that we would put in place. I  
2 think that is something important to explore.

3           Could you tell me whether or not the recommendation  
4 in terms of generating bonus density on the W-2 sites would be  
5 developable on that site or is that strictly for transfer off  
6 site?

7           MS. McCARTHY: It's for transfer off site.

8           CHAIRPERSON MITTEN: I think we need to make that  
9 clear because it wasn't clear to me.

10           MS. McCARTHY: It says in 1601.4, "Provided that  
11 such bonus density shall not be constructed on a lot zoned W-2  
12 but may be transferred to a lot or lots zoned BP/CR or BP/C-3-C  
13 by means of a combined lot development."

14           CHAIRPERSON MITTEN: Well, you see, that relates to  
15 residential development. Then later in 1603.2.B.2 -- is that  
16 it? Yeah. You see, it says, "Zoning Commission shall  
17 determine each case."

18           Well, maybe it's because there's enough flexibility  
19 in the PUD process. Actually, that's not strictly related to a  
20 PUD. I think it needs clarification and I guess I'll just call  
21 out that it's in 1603.2.B.2.

22           While we're at that point, I would also like to  
23 say, and I have a recommendation in terms of the language,  
24 1603.2.B., you say, "The setback by no less than 50 feet and  
25 preferably 75 feet." This is all subject to whatever you might

1 find out about whatever federal regulations are in place or  
2 other regulations. I would recommend that it should  
3 say, "Shall be set back 75 feet unless such setback renders a  
4 development project infeasible and in no case less than 50  
5 feet." If you say 50 and you prefer 75, unless it's in the  
6 context of something where there's discretion, you're going to  
7 get 50.

8 Okay. In the CR zone and in the W-2 zone there are  
9 75 percent lot occupancy limitation and we don't have any  
10 requirements about green space. We just have places where you  
11 can't build structures. Given particularly what Mr.  
12 Altman just said about the sensitivity about impervious surface  
13 close to bodies of water, I guess I just want to introduce the  
14 idea that we might want to have in addition to the lot  
15 occupancy limitation that we have a minimum green space  
16 requirement so we don't end up with everything being paved.

17 I also notice that, and I don't know if this was  
18 intentional or not, but in the discussion or the text related  
19 to the combined lot development provisions in 1602, there isn't  
20 any leverage in those provisions to get the preferred uses. Is  
21 that intentional?

22 MR. ALTMAN: That's right. In other words, in the  
23 combined lot differs from, say, the downtown. The downtown is  
24 an example where you have a very strong linkage between the  
25 uses between the office use and the construction of the

1 residential, which although we are modifying still has funds  
2 placed in escrow to really encourage preferred use.

3 I believe, and Ms. McCarthy, you can correct me,  
4 that it is much more -- it's almost on a voluntary as opposed  
5 to a regulatory basis here. One of the issues here, frankly,  
6 is that you can still build the commercial FAR and not  
7 construct the residential FAR. You can't obviously build as  
8 much as you would have liked but you still are not guaranteed  
9 the preferred use.

10 CHAIRPERSON MITTEN: Okay. I just want to be sure  
11 that we're consciously not having any kind of leverage there.

12 I had one other question and then I just have some  
13 editorial things just to make sure that there's not some  
14 slippage in the advertisement but that can be done afterwards.

15 In 1601.2.A there's a provision that in Square 657  
16 lots fronting on Second Street and P Street are going to have a  
17 one-to-one setback to the extent that they are higher than 90  
18 feet.

19 Now, I'm going to assume that's because they are  
20 abutting residential uses. Is that correct? Is that a correct  
21 assumption? Maybe just explain to me why that's been singled  
22 out.

23 MS. MCCARTHY: Let me ask Mr. Gross to address that  
24 because he's the author of that regulation.

25 MR. GROSS: Madam Chair, I believe that is adjacent

1 to Fort McNair. I think there is also --

2 CHAIRPERSON MITTEN: Square 657?

3 MR. GROSS: I haven't looked at the map lately but  
4 that's my recollection.

5 CHAIRPERSON MITTEN: Okay.

6 MR. GROSS: I think residential may come into that  
7 location pretty closely, too.

8 CHAIRPERSON MITTEN: According to my map, that's  
9 not adjacent to Fort McNair.

10 MR. GROSS: Okay. I would have to look at the map.  
11 Then it probably must be the residential. Is it adjacent to  
12 the residential on the north?

13 CHAIRPERSON MITTEN: Yes. Right.

14 MR. GROSS: It must be that.

15 CHAIRPERSON MITTEN: Okay. I wanted to establish  
16 the reason and then I wanted to ask a follow-up question which  
17 is there's a proposal as it relates to Square 601 and 656 that  
18 the southern half

19 -- I guess there's a lot of discussion about this and a lot of  
20 debate about this -- I think they were advertised for maybe  
21 four different zoning categories. One was C-2-B, one  
22 was BP/C-2-B, one was BP/C-2-C and BP/CR. As near as I can  
23 tell from the map that's attached to the Office of Planning  
24 report, they are now being proposed for BP/CR. I don't know  
25 what's on the northern half of Square 656 but on the northern

1 half of Square 601, or at least part of that, we had a rezoning  
2 case that came before us, the Syphax School site. There's  
3 going to be townhouses built there.

4 I was curious as to whether or not there shouldn't  
5 be a similar sort of setback provision there. Then there's on  
6 the north also some squares that abut some C-3-C squares that  
7 abut residential use. I can point those out to you. Is that  
8 something that you would be --

9 MS. MCCARTHY: We would definitely be happy to take  
10 a closer look at that.

11 CHAIRPERSON MITTEN: Okay.

12 MR. GROSS: Ms. Mitten, are the C-3-C squares in  
13 the Capitol South Receiving Zone over by 3rd Street?

14 CHAIRPERSON MITTEN: One of them is and one of them  
15 is not.

16 MR. GROSS: Okay. Because on the ones related to  
17 the Downtown Receiving Zone there is a setback or a cap on the  
18 height in that location next to the Arthur Capper dwellings on  
19 that side.

20 CHAIRPERSON MITTEN: And that's a function of what?

21 MR. GROSS: That was just intended to have a little  
22 step down in height.

23 CHAIRPERSON MITTEN: I'm saying where is the  
24 provision.

25 MR. GROSS: The provision is in the downtown

1 development under the height and bulk relationship provisions  
2 in the Capitol South Receiving Zone.

3 CHAIRPERSON MITTEN: Okay. I overlooked that. And  
4 then one final thing is there's no mention made of Square 800,  
5 although the map seems to indicate that it's included in the  
6 Buzzard Point Overlay. Is it your intention to go as far as  
7 4th Street along M Street, 4th Street on the east?

8 MS. McCARTHY: It goes up to 4th Street.

9 CHAIRPERSON MITTEN: So Square 800 should be in, I  
10 think.

11 MS. McCARTHY: That's just to the west of 4th  
12 Street?

13 CHAIRPERSON MITTEN: Correct. Oh, I misspoke. I  
14 do have one other question I would like to ask. It goes back  
15 to what Mr. Parsons asked about the Capitol Point PUD. Square  
16 602 is not included. It's not included on the map other than  
17 with its designations under the PUD. I guess I would like you  
18 to give some thought to included that because depending on how  
19 we move forward with the extension, we're going to need to  
20 include it.

21 MS. McCARTHY: After this was drafted, I guess, on  
22 Friday in conjunction with looking at the extension of the  
23 Capitol Point PUD it did occur to me that we could save having  
24 to go back as we just did with Salvation Army and all the rest  
25 of them by changing the underlying zoning now so that if a PUD

1 expires, we have the zoning in place as it was changed and we  
2 don't have to go back and reinstate that so we will look at  
3 that.

4 CHAIRPERSON MITTEN: Thank you.

5 MR. GROSS: That's a good opportunity to review  
6 that. I believe that before the PUD, it seems to me that there  
7 was a matter of right zoning established, W-2 and W-3 or W-1  
8 and W-3. It might be with the CR zoning, that's worth  
9 reviewing whether CR should be considered as an alternative  
10 base zone to the W zones that were already mapped. It's not on  
11 the water. It's worth noting that, too.

12 CHAIRPERSON MITTEN: Right.

13 MR. BERGSTEIN: It was actually done simultaneously  
14 the same day as the HUD order because it was federally unzoned  
15 land. The Zoning Commission decided at that time to take care  
16 of the underlying permanent zoning and made it W and at the  
17 same time granted the PUD and allowed for CR zoning.

18 CHAIRPERSON MITTEN: Thank you, Mr. Bergstein.

19 Are there any other questions for the Office of  
20 Planning related to the Buzzard Point rulemaking?

21 MR. FORSBURG: Madam Chair.

22 CHAIRPERSON MITTEN: Mr. Forsburg.

23 MR. FORSBURG: I would also -- it was brought to my  
24 attention just prior to the meeting that 1601.3 was omitted.  
25 That was something that was included in the original proposed

1 text but it is omitted in the revised text.

2 MR. GROSS: That can be checked out. I believe  
3 that simply resulted from creating the alternative text  
4 regarding M Street, whether it would have the street level  
5 design standards or the mandatory PUD. Definitely it's worth  
6 double checking whether something was left out or if it was  
7 just a numbering issue.

8 CHAIRPERSON MITTEN: Well, the concept that was in  
9 1601.3 has been moved up to 1601.1 so it hasn't been lost.  
10 It's just been moved around.

11 MS. McCARTHY: And we'll check to make sure that is  
12 the case. As we deal with these other issues that have been  
13 raised today, we'll possibly be renumbering or whatever. We'll  
14 make we go through it carefully and make sure all the squares  
15 are included and that we've captured and gotten answers to the  
16 questions that you've asked.

17 CHAIRPERSON MITTEN: Thank you. You know, maybe it  
18 seems a little bit laborious but it's better to advertise it  
19 correctly in the first place.

20 MS. McCARTHY: Definitely.

21 CHAIRPERSON MITTEN: Well, we have this case before  
22 us for set down and I would move set down of the Buzzard Point  
23 rulemaking as proposed by the Office of Planning and the map  
24 amendments as proposed given the suggestions that have been  
25 made today.

1 COMMISSIONER PARSONS: Second.

2 COMMISSIONER HOOD: Madam Chair, I just want to  
3 make one quick comment. I know you have a motion and a second.

4 I'm just hoping that this time having read the transcript I  
5 know a lot of thought and a lot of time went into it. I'm  
6 opening if we open it back up or we're going to revisit it,  
7 this time we come to some finality.

8 CHAIRPERSON MITTEN: I agree completely and I don't  
9 want to put anyone else through five more years of this.

10 MS. McCARTHY: And, Madam Chair, I think I should  
11 note, too, that another correction that was to be made in this  
12 text was made on the map which was, as you recall, originally -  
13 - which you recall from your hours of transcript reading,  
14 originally the Office of Planning had proposed a 110 feet. The  
15 BP/W-2 would apply 110 feet from the shoreline.

16 CHAIRPERSON MITTEN: Yes.

17 MS. McCARTHY: That was difficult and split some  
18 zones and split some lots. What we had discussed the last time  
19 was changing that so that the entire squares were included that  
20 were approximately 110 feet.

21 The map that you have before you shows that. I  
22 realize in looking at the text that we don't have those squares  
23 listed and called out separately as W-2 so if you can consider  
24 that a proposed amendment to what you were just setting down,  
25 we will be sure to enumerate that in the next version.

1 CHAIRPERSON MITTEN: Yes. Thank you for that  
2 clarification.

3 COMMISSIONER FRANKLIN: Will the map be considered  
4 part of the advertisement?

5 CHAIRPERSON MITTEN: I think it should be.

6 COMMISSIONER FRANKLIN: It seems to me that all of  
7 the square should be designated.

8 CHAIRPERSON MITTEN: Yes. That's very helpful.  
9 Absolutely. That's a good recommendation.

10 COMMISSIONER HOOD: What else is also helpful if we  
11 can enlarge -- I don't know whose photocopying but you can  
12 enlarge some of these and that way for me I can exactly see  
13 what square and what's going on because a lot of times I'm kind  
14 of lost even though I'm from the city.

15 MS. McCARTHY: I think it would be -- I believe  
16 that we are expecting up-to-date aerial photos for our maps.  
17 They've been taken and they are in the process of being  
18 digitized or whatever. Hopefully they will be done in time  
19 that we can actually provide you with the aerials with the  
20 lines drawn on that. That also would be easier along with the  
21 square number.s

22 CHAIRPERSON MITTEN: Very good. We have a motion  
23 and a second to set Case No. 96-03/89-01 down for further  
24 public hearing with amendments as have been discussed. All  
25 those in favor, please state aye.

1 ALL: Aye.

2 CHAIRPERSON MITTEN: Those opposed, please say no.

3 Mr. Bastida, do you have a proxy from Mr. Holman on  
4 this case?

5 MR. BASTIDA: Yes, I do, Madam Chairman. He is  
6 voting in the affirmative so the staff will record the vote  
7 five to zero, Ms. Mitten moving and Mr. Parsons seconded it,  
8 Mr. Franklin and Mr. Hood voting in the affirmative and Mr.  
9 Holman doing the same by proxy. Thank you.

10 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

11 Let's move now to hearing action on Zoning  
12 Commission No. 01-04M/98-12M/88-32C which is a PUD modification  
13 request on 1616 Rhode Island.

14 Before you begin, Ms. McCarthy, I would like to  
15 state for the record that the University of California is a  
16 client of mine and I did appraisal and consulting work for them  
17 on their portion of this site.

18 I don't believe they have an interest in the  
19 portion of the site that we will be taking up in this request  
20 for modification. Unless someone has an objection, I plan to  
21 hear the case but I wanted to state my relationship to the  
22 University of California for the record. Any objections?

23 COMMISSIONER HOOD: No objection.

24 COMMISSIONER PARSONS: No objection.

25 CHAIRPERSON MITTEN: Please go ahead, Ms. McCarthy.

1 MS. McCARTHY: Members of the Commission, Madam  
2 Chair, the Office of Planning is recommending set down for this  
3 modification of the planned unit development and found it  
4 essentially consistent with the revised order that was issued  
5 on this case so we recommend it be set down for a public  
6 hearing.

7 CHAIRPERSON MITTEN: Could I ask you for a little  
8 bit more detail? We're all at a bit of a disadvantage because  
9 the application was inadvertently omitted from our packets and  
10 we've had relatively little time to review it so could you just  
11 briefly run through the elements of the modification that's  
12 being questioned?

13 MS. McCARTHY: I can really briefly run through  
14 those elements because, unfortunately, I told Mr. Jackson he  
15 could go back to the office and he is the person that had  
16 worked on this in far greater detail than I had.

17 The proposal is to construct a headquarters  
18 building for the Human Rights Campaign. The office building  
19 would not utilize the full FAR. It's set back substantially  
20 from the street and is designed with a ground floor that has a  
21 substantial amount of glass. It would have a cafeteria area  
22 and a meeting area.

23 The proposal was discussed with the Dupont Circle  
24 ANC, with ANC-2B, and was endorsed by them.

25 I know the applicant is here. Because of the omission of the

1 past PUD you wanted them to discuss it in further detail.

2 CHAIRPERSON MITTEN: Would any of the Commissioners  
3 find that helpful to have a summary of the proposed changes?  
4 Or is there any unreadiness about going forward?

5 COMMISSIONER FRANKLIN: Well, is the change in  
6 summary a reduction in the bulk and density of what had been  
7 previously approved? Change in the use?

8 CHAIRPERSON MITTEN: I think if you turn to page 8  
9 of the February 2001 submission from the applicant, it's the  
10 summary of requested modifications to the PUD. It's a change  
11 of use from inn to office building.

12 The inn was approved to a 7.9 FAR and the office  
13 building will not exceed 6 FAR. There was a condition in the  
14 existing PUD to limit the height of the building to 106 feet.  
15 It says the roof of the proposed office building complies with  
16 the sight limit.

17 However, the front building wall extends to a  
18 height of 122 feet. They are looking for some flexibility in  
19 terms of phasing of construction, a little bit of a  
20 modification related to the number of parking spaces.

21 COMMISSIONER FRANKLIN: I'm prepared to go forward,  
22 Madam Chair, without testimony.

23 CHAIRPERSON MITTEN: All right.  
24 I have a question for Ms. McCarthy. We actually confronted  
25 this on the case that's been appealed to the BZA on the

1 Associated General Contractors site which is when an applicant  
2 comes to the Commission. One of the things that they  
3 are proffering is that the building is going to be a  
4 headquarters building and all of the things that go with it,  
5 all the goods things that go with that.

6 As has been the experience in at least one case,  
7 there's no guarantee that they will in reality occupy the  
8 property. I don't know if that's something that you've given  
9 thought to. I would definitely want there to be more thought  
10 given to that if we move forward. Can you make any comments  
11 about that at this point?

12 MS. McCARTHY: It's a good point because it  
13 certainly is something that did influence us in feeling this  
14 was something worth set down given the importance of the human  
15 rights campaign as an organization given the presence that it  
16 would have on Rhode Island Avenue.

17 It seemed a very compatible neighbor, and the  
18 headquarters nature of that is something that fits in very well  
19 in that situation. We would be happy to have some further  
20 discussions with the applicant and see what sorts of guarantees  
21 could be provided. We would certainly consider that in the  
22 hearing report which the Office of Planning would provide.

23 CHAIRPERSON MITTEN: Very good. Thank you.

24 Any other questions for the Office of Planning?

25 COMMISSIONER PARSONS: Wasn't this originally

1 proposed as a dormitory facility for the university?

2 MS. McCARTHY: There was residential to be included  
3 within this and the university has included residential in  
4 their portion of the project. This site was offered, or a  
5 portion of the site was offered to the university for further  
6 residential construction and the university was not interested  
7 in constructing any more residential.

8 COMMISSIONER PARSONS: So the residential that's in  
9 the original PUD is the same?

10 MS. McCARTHY: I understand it's more. I know that  
11 it was around the same level.

12 COMMISSIONER PARSONS: We haven't lost the  
13 residential then?

14 MS. McCARTHY: I know we've discussed that question  
15 with the applicant when they came.

16 COMMISSIONER PARSONS: Well, we can do that at the  
17 hearing.

18 MS. McCARTHY: Right.

19 COMMISSIONER PARSONS: Thank you.

20 CHAIRPERSON MITTEN: Any other questions? Can I  
21 have a motion to set down Case No. 041 etc., for 1616 Rhode  
22 Island Avenue PUD modification?

23 COMMISSIONER HOOD: Madam, so moved.

24 COMMISSIONER PARSONS: Second.

25 CHAIRPERSON MITTEN: There's a motion and a second

1 to set this case down for public hearing. All those in favor,  
2 please say aye.

3 ALL: Aye.

4 CHAIRPERSON MITTEN: Those opposed, please say no.

5 Mr. Bastida, do you have a proxy from Mr. Holman?

6 MR. BASTIDA: Yes. Mr. Holman will vote in the  
7 affirmative. The staff will record the vote five to zero, Mr.  
8 Hood moving it, Mr. Franklin seconded it, Commissioners Mitten  
9 and Parsons voting in the affirmative, and Mr. Holman also  
10 voting in the affirmative by proxy.

11 CHAIRPERSON MITTEN: Thank you, Mr. Bastida.

12 Now, the text amendments related to the Woodies  
13 case. Ms. McCarthy.

14 MS. MCCARTHY: Okay. Madam Chair, as you recall,  
15 during the Woodies planned unit development discussion, it was  
16 indicated by the applicant -- there was a question specifically  
17 from the Commission about how the applicant proposed to  
18 accomplish putting Square 377, which is now in DDC-4 but not in  
19 the housing priority area, into the housing priority area and  
20 how it would accomplish the relief from the existing cap, which  
21 caps the maximum amount of density that can be constructed on  
22 the Woodies site to that which exist already.

23 The applicant had indicated that they recognized  
24 that would be difficult to do through the PUD so they expected  
25 to come back to the Commission for a separate text change to

1 accomplish that. This is that text change. It is entirely  
2 consistent with the terms that were discussed as part of the  
3 planned unit development.

4 It would permit the applicant to generate bonus  
5 density or transfers of development rights on the site to F  
6 Street, the Square 377 site, and would remove the 6 FAR cap  
7 that exist on Square 346 and in Square 377 but both of those  
8 are still subject to design review by the Historical  
9 Preservation Review Board.

10 CHAIRPERSON MITTEN: Thank you.

11 Any questions for Ms. McCarthy? I think these text  
12 amendments were expected and, as she mentioned, they are in  
13 keeping with what we had discussed in the context of the PUD  
14 case. Any questions for Ms. McCarthy?

15 COMMISSIONER HOOD: Madam Chair, if there are no  
16 questions, I make a motion that we set down Zoning Commission  
17 Case No. 01-06TA.

18 CHAIRPERSON MITTEN: Second. It has been moved and  
19 seconded to set Zoning Commission Case No. 01-06TA down for  
20 public hearing. All those in favor please say aye.

21 ALL: Aye.

22 CHAIRPERSON MITTEN: Those opposed, please say no.

23 Mr. Bastida, do you have a proxy from Mr. Holman?

24 MR. BASTIDA: Yes. Mr. Holman will be voting in  
25 the affirmative. Accordingly, the staff will record the vote

1 five to zero, Mr. Hood moving it and Ms. Mitten seconded it,  
2 Mr. Franklin and Mr. Parsons voting in the affirmative, and Mr.  
3 Holman doing the same by proxy.

4 CHAIRPERSON MITTEN: Thank you.

5 Now we'll move to proposed action. We'll begin  
6 with Zoning Commission Case No. 00-02MA Medstar. Mr. Bastida.

7  
8 MR. BASTIDA: The staff has provided you with the  
9 applicant's submission regarding the Commission's suggestion of  
10 a hybrid PUD. The staff request that the Commission take an  
11 action on the matter.

12 CHAIRPERSON MITTEN: Thank you. I think in working  
13 with the Office of Planning the applicant has been very  
14 responsive to the concerns that we voiced at our last public  
15 meeting and has embraced the idea of a PUD and, in essence,  
16 asking us to amend their application to place the rezoning that  
17 they have requested in the context of a PUD with the limitation  
18 on the by right density in the zones that have been proposed.

19 Just as an opening question, is everyone amenable  
20 to the idea of a PUD as Office of Planning and the applicant  
21 have presented?

22 COMMISSIONER HOOD: Madam Chair, first I think I  
23 need clarification of what a hybrid PUD is.

24 MS. MCCARTHY: Would you like us to outline our  
25 proposal?

1           COMMISSIONER HOOD: I see your proposal but I just  
2 want to know what a hybrid PUD was. I guess my concern is we  
3 open up the door for more hybrid PUDs and the point when it  
4 comes when maybe the Commission may not like it. Are we being  
5 fair?

6           We're going to start hybrid PUDs now and on down  
7 the line we may come up with hybrid PUDs. I personally am a  
8 Commissioner who is against the PUD process to begin with. I  
9 was ready to vote for it in favor as it was. SP-1 and SP-2, I  
10 thought that was a good concept, a good map amendment.

11           Obviously I was outvoted so we went to the hybrid  
12 PUD and I just need to know. I understand your plan. I see  
13 what you have here and I think what I'm hearing thus far seems  
14 like everybody is on the same page with the exception of a few  
15 issues.

16           My concern is the hybrid PUD. We will come back in  
17 a couple of months, somebody will come down and say we have a  
18 hybrid PUD. I guess that's just my concern. You can respond,  
19 Mr. Altman and Ms. McCarthy.

20           MR. ALTMAN: Our view is that we would not be  
21 encouraging this as a new method of a PUD. I think that we  
22 crafted this in light of this unique circumstance working with  
23 Medstar and listening to the Commission's concerns and trying  
24 to come up with a proposal that, I think, on the one hand  
25 balanced their need for flexibility with the Commission's

1 desire to make sure that the master plan that they presented,  
2 which I think we all found to be a very solid master plan, and  
3 that Medstar was behind and their board was behind.

4 That, in fact, would have some teeth. It would  
5 have some -- there would be some effect of that master plan  
6 beyond simply the adoption by Medstar's board but also on the  
7 regulatory side in terms of consistency.

8 I guess the answer, Commissioner Hood, is that  
9 we're not looking to this as a new method for PUD. We would  
10 not be encouraging people to apply for this. We would be  
11 proceeding by the same PUD guidelines as per statute as opposed  
12 to trying to recommend a hybrid PUD. This is something that  
13 came out as a consequence of the discussions here at the  
14 Commission but not as a recommended alternative of a new way of  
15 doing PUDs.

16 COMMISSIONER HOOD: I guess, again, my concern is  
17 just make sure that people take this as this is how we are  
18 going to do things. We are going to come up with new names and  
19 attach it to the PUD. While I applaud the Office of  
20 Planning's effort and the applicant in trying to reconcile some  
21 of the concerns they heard from my colleagues, I always have  
22 precedent. I just believe on down the line somebody is going  
23 to come in front of this Commission with a hybrid PUD and I  
24 just wanted to --

25 CHAIRPERSON MITTEN: If I may just interject

1 something. Mr. Bergstein had actually raised an interesting  
2 notion earlier when we were talking about in the discussion  
3 about the Buzzard Point Overlay about what role does a  
4 mandatory PUD play in that context because typically what  
5 you're seeking is zoning relief whereas that's not what is  
6 being done here. Mr. Bergstein, can you help us get a little  
7 more comfortable with the way a PUD is being applied in this  
8 case?

9 COMMISSIONER FRANKLIN: Could I jump in, Madam  
10 Chair, before he does that?

11 CHAIRPERSON MITTEN: Certainly.

12 COMMISSIONER FRANKLIN: Just if I could add to what  
13 Mr. Altman says and try to give Mr. Hood more comfort. There  
14 is enormous flexibility in the PUD process. The Commission can  
15 impose certain conditions. It can relieve the applicant of  
16 certain requirements, etc.

17 I think we are not really setting any precedents  
18 here when you look at the powers of the Commission. Perhaps to  
19 call this a hybrid PUD is a misleading moniker.

20 What I understood -- the other additional element  
21 here is that we do have a very comprehensive master plan, far  
22 more comprehensive than we are likely to have on other PUD  
23 applications.

24 Even with the rezoning that they had requested,  
25 under the SP zones they could not do a number of things that

1 they were proposing to do like garages and physicians' office  
2 buildings without further regulatory approval.

3 Now, I haven't read this that closely but it seems  
4 to me if we have this PUD approved and give them from the get  
5 go the right to do those uses without further review as would  
6 be required under SP, or I should say with modified review if  
7 that's the way it comes out, that's a benefit being conferred  
8 on the hospital.

9 In return for that benefit, we may want to have  
10 more oversight over some of the other things they do. It falls  
11 into the context of the tradeoffs that are typical PUD process.

12 Now, we can probably have nuances of views as to  
13 the specifics of it but I don't think we are doing anything  
14 that is fundamentally precedent setting.

15 MR. ALTMAN: Let me just also add --

16 COMMISSIONER HOOD: Let me just say I am not stuck  
17 on -- I guess maybe I'm looking at the Office of Planning in  
18 negotiations this time. The next person may come back and they  
19 will want a hybrid PUD, too. I don't know if we  
20 could just drop the word hybrid. That's just my concern. I  
21 understand and I'm not stuck on it. Like I said at first, I  
22 was ready to vote for it as it was but obviously I was  
23 outvoted.

24 CHAIRPERSON MITTEN: Can we just get from Mr.  
25 Bergstein if he has any input on it and then we'll go back to

1 you, Mr. Altman.

2 Do you have anything you could add?

3 MR. ALTMAN: I think that the PUD process is  
4 available in instances where the only relief requested, in  
5 essence, is a map amendment.

6 But because of the nature of the project that  
7 underlies the map amendment, the normative map amendment would  
8 not be a readily available option and the PUD process is a way  
9 of accomplishing a map amendment for a project that by nature  
10 of its inherent underlying objectives would only be one that  
11 would be suitable for the PUD process.

12 I think there is nothing that unusual about that.  
13 In fact, there have been other PUDs like Oxon Cove PUD which  
14 involved the prison where there was no zoning relief requested,  
15 but because of the nature of the project itself, the PUD  
16 process was the only available option that the Commission felt  
17 was available to it and that, in essence, the map amendment  
18 probably would have failed as a pure map amendment.

19 I guess the terminology hybrid is maybe what we are  
20 confused about. I saw the hybrid issue as being the suggestion  
21 by OP that they would be involved in some sort of post final  
22 order review.

23 If that is the nature of the hybrid, I think there  
24 is some further discussion, legal discussion that might need to  
25 occur about that concept. Otherwise, I'm not quite sure what

1 the hybrid nature of this is.

2 Maybe that's my own misunderstanding of how the  
3 term is being used. If that is the hybrid nature, I think  
4 there are some issues that have been raised by the applicant in  
5 terms of whether or not that can be accomplished that will need  
6 to be addressed.

7 CHAIRPERSON MITTEN: Would the folks from the  
8 Office of Planning be comfortable with dropping the use of the  
9 word hybrid?

10 MR. BERGSTEIN: I don't think that's going to solve  
11 the problem, frankly.

12 CHAIRPERSON MITTEN: Well, it will get us a little  
13 further down the road.

14 MS. MCCARTHY: I think the reason that we were  
15 calling it a hybrid or the way in which it would differ from a  
16 typical PUD is that typically a PUD would come before you with  
17 detailed designs related to a particular building that was  
18 being proposed.

19 In this instance, the PUD itself is the master plan  
20 for the further development of the campus. That makes it a  
21 little bit different. It certainly makes what is before you --  
22 you don't have building plans spelled out in great detail. You  
23 have general indications of the amount of square footage of  
24 various uses.

25 I should also add in relation to the issue that was

1 just raised by Mr. Franklin that we did address with the  
2 applicant the issue of the physicians' office building and  
3 guest accommodations which are uses that would not typically be  
4 considered matter of right uses in these zones, even the zones  
5 to which the applicant had proposed the change, the SP-1 and  
6 the SP-2.

7 We felt that as long as what was being provided was  
8 consistent with the master plan, those uses could be  
9 accomplished without having to go back to the BZA. We felt  
10 that it made some sense and we negotiated with the applicant  
11 some upside limitations on that.

12 For example, you'll notice on page 5 of our memo  
13 that we say in particular up to 90,000 net new square feet of  
14 physician office space and up to 100,000 net new square feet of  
15 guest accommodations and guest and employee services are  
16 permitted as part of this PUD.

17 Guest employee services includes retail, retail  
18 pharmacy which are there now, gift shop. It permitted a minor  
19 expansion of that and it permitted some minor expansion of the  
20 guest accommodations which are already at the hospital for  
21 families of patients who are undergoing therapy and who are  
22 coming from out of town.

23 We felt in those instances by limiting them to the  
24 90,000 into the 100,000 that we were clearly keeping them at  
25 accessory uses.

1           There was no way that one could then transfer the  
2           entire property into an office complex were things to get any  
3           more difficult in the health industry than they already are  
4           now. That's why we have that upside limitation.

5           COMMISSIONER FRANKLIN: If I could jump in, Mr.  
6           Altman, the other thing I meant to mention earlier that is  
7           accomplished by this process is a take to their master plan and  
8           basically embraces it from a regulatory standpoint so that it's  
9           not something that they can readily change.

10           It begins to take on kind of the aspect of a campus  
11           plan approval in the university and college context which I  
12           think is something that is a very useful approach.

13           MR. ALTMAN: I was just going to say something  
14           about Commissioner Hood's point, something that Ellen McCarthy  
15           raised. One of the things in terms of setting precedent that  
16           does distinguish this is the fact there was a comprehensive  
17           plan amendment to allow for greater density for this campus,  
18           for this site.

19           I think that can help to make this a unique case  
20           versus others that come in that would not have had a  
21           comprehensive plan amendment previously if they were trying to  
22           get zoning consistency.

23           COMMISSIONER HOOD: I think, Madam Chair, I'm not  
24           necessarily saying that we need to drop the word hybrid. I  
25           just wanted to hear the discussion. I think I've heard the

1 difference but I will tell you that I've sat here long enough  
2 to know that a couple of months from now somebody will come and  
3 refer to the Zoning Commission Order No. such and such, the  
4 hybrid PUD and we'll hear the same thing.

5 If my colleagues from the Office of Planning, from  
6 what I'm hearing from corp. counsel, feel that won't happen,  
7 then that's all I was concerned about, just seeing it again.

8 COMMISSIONER PARSONS: Madam Chairman.

9 CHAIRPERSON MITTEN: Yes, Mr. Parsons.

10 COMMISSIONER PARSONS: I agree with Mr. Hood. I've  
11 never seen us develop a new category of zoning in this fashion  
12 and that's just what we're doing in my judgment. This term  
13 will now leak into somehow our vocabulary without anything in  
14 our regulations to deal with it.

15 I'm wondering how we could deal with the concept in  
16 a different way. This was not advertised, nor was it conducted  
17 as a PUD hearing at the applicant's request, although we  
18 requested him to do that a year ago.

19 Now we are converting it to a PUD in some fashion  
20 that I don't think we could withstand if this was a contentious  
21 case in the neighborhood or a neighborhood in the city. I'm  
22 trying to figure out how we get here.

23 Let's presume this is in Foggy Bottom. All right?

24 We wouldn't be doing this is my point. We would have an  
25 audience full of people out here that would be opposed to it.

1           Since that's not the case here, we seem to be able  
2 to slide along and I'm worried about it. I was even thinking  
3 of an overlay district that was specific to Washington Hospital  
4 Center, something that's in our vocabulary that would  
5 accomplish the same thing.

6           Or possibly a first-stage PUD delegating the design  
7 requirements of the second-stage PUD to the Office of Planning  
8 which is also not in our regulations.

9           I'm more concerned about this than Mr. Hood, I  
10 think. What I've heard here today doesn't convince me that  
11 this is the right thing to do. I'm not being very helpful. I  
12 know that.

13           COMMISSIONER FRANKLIN: Mr. Parsons, could I ask  
14 you --

15           COMMISSIONER PARSONS: I certainly don't like the  
16 case we've heard either.

17           COMMISSIONER FRANKLIN: Could I ask you whether you  
18 would be comforted, as I would be, by having this set down for  
19 another hearing as the proposal, as a PUD?

20           COMMISSIONER PARSONS: Well, at least we've got  
21 some grounds to make a decision.

22           COMMISSIONER FRANKLIN: In fact --

23           COMMISSIONER PARSONS: But I don't like the word  
24 hybrid. I really don't.

25           COMMISSIONER FRANKLIN: I don't either.

1 COMMISSIONER PARSONS: To me an overlay --

2 COMMISSIONER FRANKLIN: It's either a PUD or it's  
3 not a PUD.

4 CHAIRPERSON MITTEN: Well, hybrid implies that  
5 there are things being combined. There's a new animal being  
6 created from one and another and really it's either a PUD and  
7 is permitted under our regulations or it's not.

8 Let me just ask Mr. Parsons, what do you think we  
9 would gain by having a public hearing calling it a PUD and  
10 having a public hearing on a PUD? What new information are we  
11 going to get or is it just a question of making sure the public  
12 is aware that we are putting a new hat on and it's going to  
13 wear a new hat now? The PUD hat instead of --

14 COMMISSIONER PARSONS: I'm interested in making  
15 sure we do not create a new zoning category in this fashion so  
16 it's either an overlay district that applies to this campus,  
17 the only thing I can think of that's on the books and  
18 understood. You can apply it to Cleveland Park. You can apply  
19 this to the Washington Hospital Center.

20 The trouble with that is that's not the way we  
21 heard it either. Or use a PUD process to say, all right, we're  
22 converting this to a PUD. We're not convinced and I don't  
23 think any of us are -- well, I shouldn't speak for everybody --  
24 that what we heard is what we should do. That is, to approve  
25 what was brought before us, a straight zoning change.

1           If we have a PUD here which they will object to and  
2 they have to submit to, they have no interest in it, or haven't  
3 in the past. I'm not sure where we go. It seems as though  
4 they are not even willing to agree to what is on the paper  
5 before us.

6           CHAIRPERSON MITTEN: Well, I think they agree to  
7 most aspects of it. There's just some review.

8           COMMISSIONER PARSONS: Well, there's some pretty  
9 significant stuff. They don't want design review.

10          CHAIRPERSON MITTEN: Let's explore our options  
11 here. If we decide that we would set this down as a PUD and  
12 then go forward with the hearing, that's one course of action  
13 and that will take several months to accomplish. At the end  
14 I'm not sure that you'll be satisfied.

15          Now, what if we instead -- I think one of the  
16 problems is that the applicant for us has not specifically  
17 addressed the burden of proof required by Chapter 24 for a  
18 planned unit development. What if we gave them some additional  
19 time, maybe until our next public meeting, where they could  
20 specifically address the burden of proof in Chapter 24, which  
21 they may be able to do but we're not sure.

22          We're trying to piece it together for them. At  
23 least based on what Mr. Franklin was articulating earlier, I  
24 think he thinks it's possible within the flexibility that the  
25 planned unit development process gives us that they could meet

1 the burden of proof.

2 COMMISSIONER FRANKLIN: It seems to me on that  
3 subject, Madam Chair, that they put on what I regarded as a  
4 very impressive statement of the value to the community at  
5 large of the things that they are doing now and the things that  
6 they are proposing to do in the future. From that standpoint,  
7 it seems to me the public interest has been educated in terms  
8 of the benefits to be obtained from what is being proposed.

9 I only suggested the possibility of a set down in  
10 another hearing so that some of the issues that they have with  
11 this proposal can be ventilated and we can have some time.

12 I don't see this as taking a lot of time frankly.  
13 I think it can be put on a hearing as expeditiously as possible  
14 and I don't see it being a very long hearing in view of the  
15 fact that the neighborhood wants us to move forward with this.

16 CHAIRPERSON MITTEN: Just to maybe continue with  
17 your line of thought, one of the concerns that I have at this  
18 point is we know we recommended a PUD in the beginning and they  
19 did not pursue that but they made a choice but now we've  
20 continued to urge them to go the PUD route and they are doing  
21 their best to accommodate the direction that we've given them.

22  
23 I guess I would like to see if we could get some  
24 closure sooner as opposed to drawing this out for several more  
25 months.

1 MS. McCARTHY: Madam Chair, could I just address  
2 that a little bit because it may not be entirely clear from the  
3 Office of Planning report what was added in this go around. I  
4 guess it partly relates to the issue of hybrid PUD.

5 As Mr. Franklin said, Chapter 24 does provide wide  
6 leeway to the Zoning Commission with regard to PUDs. It  
7 doesn't say that something has to be a building.

8 Frequently, as was discussed here today, an  
9 applicant coming in for a PUD is merely coming in for a map  
10 amendment but a map amendment donned very specific to the site  
11 at hand.

12 That is, in effect, what this PUD is. It's a  
13 request for a map amendment. What the Commission indicated  
14 when the map amendment was originally proposed was that it  
15 needed more guarantees with regard to the provision of the  
16 transportation infrastructure investments which putting it in a  
17 PUD format, and you saw the attached agreement with the  
18 Department of Public Works, is accomplished through this.

19 It provided upside limits so that the full density  
20 that it would be entitled to as a matter of right through those  
21 map amendments, which they did not seek and which the  
22 Commission was not interested in providing, that limitation,  
23 that upside limitation, was placed on the total density.

24 The last issue which the Commission had voiced  
25 their concern with was design. When we met with the applicant

1 as we hammered out this version as the planned unit  
2 development, we indicated that we thought that what was written  
3 in the document, which is the second part of Attachment B in  
4 your handout, was a good set of guidelines with regard to  
5 development in talking about the planning framework, the open  
6 space landscaping, land use, access parking, interior  
7 circulation, and way-finding.

8 What we suggested to the applicant might not be  
9 sufficient to address some of the concerns that Mr. Parsons, in  
10 particular, had broached in the past. So what is in your  
11 packet as Attachment B which spells out the commitment to some  
12 of these design guidelines in more detail than had been the  
13 case.

14 In the plan in front of you was the applicant's  
15 attempt by specifying design elements and by including the way-  
16 finding system which has subsequently been developed after the  
17 original plan was proposed.

18 The applicant tried to meet our request or our  
19 suggestion that they provide more detail to the Commission so  
20 the Commission could be comfortable in approving this PUD  
21 essentially as a map amendment with much more in the way of  
22 guarantees in those three areas than what had originally been  
23 proposed to the Commission.

24 That's why the Office of Planning was very  
25 comfortable in proposing this to you. I maybe should have

1 explained in more detail what Attachment B was all about  
2 because that was an attempt to provide a little more comfort to  
3 the Commission with regard to design guidelines.

4 MR. BERGSTEIN: Madam Chair, I just wanted to jump  
5 in for a moment, not that I understand what hybrid is about,  
6 and just say what I think might be the precedent here either  
7 good or bad that you're looking at.

8 I'm looking at Chapter 24, the PUD chapter.  
9 Beginning at 240611 it indicates what has to be in a first-  
10 stage PUD application and then tells you what has to be in a  
11 second-stage PUD application.

12 To the extent, and I don't know the extent, that  
13 what you have before you doesn't contain all these things,  
14 what, in essence, you're doing is waiving the requirements for  
15 this degree of specificity in your application, at least,  
16 whether or not what these application requirements mean is that  
17 a PUD that is before you must be solid enough and concrete  
18 enough that you know all these things before you grant it.

19 It's something I'm not sure about but I think  
20 that's an argument to be made that you need to know all these  
21 things. Before you can grant the PUD the PUD must reach that  
22 level of specificity. I don't know whether or not that's true  
23 or not but assuming that's not true and that you can waive  
24 knowing these very specific things that are required, I think  
25 the precedent is that in the future others might come before

1 you with a concept and not specific information on each  
2 building, on each lot, on the stories of each building, etc.  
3 Then the question is can you waive it for them, too.

4 I think as you look at this, what you should also  
5 be looking at is what you would normally require in the first-  
6 stage or second-stage PUD application which the degree of  
7 information that your regulations require that is before you.

8 Ask yourself what's the difference between what's  
9 required and what you have. Then ask yourself whether or not  
10 it's possible to go forward without greater specificity. In  
11 the event it is, then ask yourself what precedent your setting  
12 for the future.

13 CHAIRPERSON MITTEN: All right. Mr. Bergstein,  
14 would your recommendation then be to ask the applicant to  
15 outline for us the manner in which they have addressed the  
16 items of 240611 as they relate to a first-stage PUD and to the  
17 extent that -- I mean, basically what they are asking for is a  
18 consolidated PUD approval because the second stage -- they are  
19 not going to come back for a second stage. Should we ask them  
20 for how they meet the requirements for both a first stage and  
21 second stage? Do you have a recommendation?

22 MR. BERGSTEIN: I think that if you care to, that  
23 might be useful. In other words, if you are going to permit  
24 them to, in essence, amend their application to do a PUD, then  
25 at least, with respect to what they have submitted before you,

1 to go through beginning at 240611 and 12, which would be the  
2 consolidated PUD application, and tell you where in their  
3 materials that's found. Or, if not, requesting you to waive  
4 that requirement. Then at least you know what you have before  
5 you and then you can decide what the best course might be.

6 CHAIRPERSON MITTEN: Mr. Parsons, how would you  
7 feel about that?

8 COMMISSIONER PARSONS: You want me to do that  
9 today?

10 CHAIRPERSON MITTEN: To make the request?

11 COMMISSIONER PARSONS: To have them come forward  
12 and do that today?

13 CHAIRPERSON MITTEN: No.

14 COMMISSIONER PARSONS: Oh, good. I hope not.

15 I guess the thing that set me off here a little bit  
16 was the italics in the OP report that shows that the applicant  
17 really is being dragged to this. He's not supporting it.

18 In other words, what he wants to do, or they want  
19 to do, is rather than have design review, they want to self-  
20 certify that their buildings are in conformance with the master  
21 plan and move forward somehow as a matter of right. And, if it  
22 isn't right, let somebody sue them or take it to the Board of  
23 Appeals as I understand the tone of this.

24 We're talking about increasing this from 2 million  
25 square feet to 5 million square feet. I mean, this is one of

1 the most significant land use changes I've seen in the city.

2 I've been troubled by the whole proceeding before,  
3 during, and now after about, "Trust us. This is a changing  
4 industry. We'll just move forward," when their physical plant  
5 is not the most handsome in the city.

6 That's why I was so much hoping for a PUD. My  
7 clean way to deal with it is to move to deny it and start over  
8 again and I'm not sure that's welcome here on the panel but  
9 that's cleaner to me than what we're doing here, trying to  
10 create something that we shouldn't be creating.

11 Mr. Bergstein's suggestion, maybe we'll see a  
12 different attitude flowing from the responses to the proposal  
13 and let's give it another chance.

14 CHAIRPERSON MITTEN: All right.

15 MR. ALTMAN: May I just suggest one point when you  
16 have a chance?

17 CHAIRPERSON MITTEN: Just to follow up on Mr.  
18 Parsons' point, which is I guess your concern is that we're  
19 just prolonging the inevitable which is that they can't meet  
20 the standard of Chapter 24 so we're dragging it out. Some of  
21 the essential ingredients of it they are really not on board  
22 with in terms of design review.

23 COMMISSIONER PARSONS: On board with? I think they  
24 can produce it and do what we've asked them to do for years but  
25 I don't sense that there's any willingness to do it, not that

1 I'm not willing to try.

2 CHAIRPERSON MITTEN: All right.

3 Mr. Hood, did you have something?

4 COMMISSIONER HOOD: Yes. I really think it's  
5 unfair for us -- again, you remember I was in the minority with  
6 the approval when it was presented. I really think it's unfair  
7 now for us to prolong it, especially to deny it at this point  
8 when we've had the applicant and Office of Planning do all this  
9 work because they had the discussion up here. I really think  
10 it's unfair.

11 Meanwhile, while we're sitting here and going  
12 through all that bureaucracy, people's lives are at stake.  
13 People are having to deal with that facility every day. Now  
14 for us to lead them down one road and then turn around and, I  
15 guess, do a 360 or 180 and turn around and come back down  
16 another road, I think, is unfair. I really do. I have some  
17 serious problems with it.

18 Also the neighborhood, I believe the counsel member  
19 ANC-4C, I believe, 5C, or whoever, they went out and did a  
20 presentation. The folks that use that facility were in favor.

21 Now we're sitting here and we come up with all these different  
22 measures. We had the applicant and OP do all that work and now  
23 we're talking about denying. I have some serious problems with  
24 it and I question it.

25 CHAIRPERSON MITTEN: Mr. Altman.

1 MR. ALTMAN: I just wanted to comment on the  
2 question of the report because I think what we've actually come  
3 to with Medstar is a very positive, I think, agreement.

4 I just wanted to be clear that anything in the tone  
5 of the report that implies otherwise, we've actually had a very  
6 productive conversation throughout this, particularly taking  
7 the Commission's direction and working with them on this.

8 Our assumption going in, because they had done a  
9 substantial amount of work and detail as they presented to us  
10 in their master plan, that that with the additional information  
11 related to, as Ms. McCarthy said earlier, making very tangible  
12 and concrete the commitments around the transportation  
13 improvements. One of the most significant issues in  
14 terms of the impact of the proposed development was the  
15 transportation, what transportation improvements would be  
16 necessitated by the increase in zoning, making sure that was a  
17 very firm commitment by making clear more specific design  
18 guidelines which we heard from the Commission needed to be  
19 codified.

20 We have more work, as you see, in the exhibit  
21 that's attached, and having a subsequent process that would  
22 allow for this consistency with the master plan to be insured  
23 and that there be a process, if there was any deviation from  
24 that master plan, that that would be brought.

25 Our only point of disagreement, I would say, in the

1 context of everything we agreed to is minor and relates to  
2 whether that's the zoning administrator or whether that's the  
3 Office of Planning. I think that is something that we could  
4 discuss here and resolve one way or another.

5 In terms of major policy issues, our basic premise,  
6 based on the discussion of the Commission, was to look at this  
7 and to satisfy what would be the PUD stage-one requirements as  
8 closely as possible, with as much detail as possible, and to  
9 see that it tried to meet that specificity and by working on  
10 those areas where we felt more specificity was needed, which is  
11 what we've been working with the applicant on, hearing  
12 essentially the fundamental concern of the Commission.

13 One of the fundamental concerns, which was a master  
14 plan, was presented to us but it's not being presented in a way  
15 that that master plan will have further enforceability. We  
16 were really focusing in on what could make this enforceable and  
17 that was converting essentially their master plan to the form  
18 of a PUD.

19 That PUD then would allow for over the years  
20 whether or not how many of those buildings come to fruition or  
21 the changes are modified, etc., based on the market, but there  
22 would be a way to check in, whether that's the zoning  
23 administrator or the Office of Planning, but there was a  
24 mechanism in place by which the government could ensure  
25 consistency and ensure that those improvements are

1 accommodated.

2 I just wanted to be clear on the record that I  
3 think based on these discussions, we've had a very good coming  
4 to terms about how to accomplish their needs.

5 At the same time I think not bend the rules or not  
6 create a new model that will in the end set a harmful  
7 precedent. That's what we try to achieve by adhering as  
8 closely as we could to what are the PUD guidelines.

9 CHAIRPERSON MITTEN: Right. And the italics were  
10 not because Medstar had a problem with the design guidelines.  
11 It was because Medstar felt that the process of going with the  
12 Zoning Administrator was one which had a more established  
13 administrative process associated with it. But they were  
14 perfectly agreeable as a result of our discussions that we go  
15 ahead and present this approach.

16 We simply note where they had a disagreement and  
17 then, as you saw, they followed up with their submission which  
18 indicated why they felt going with the Zoning Administrator was  
19 sufficient and had certain administrative remedies that weren't  
20 necessarily present with the Office of Planning.

21 CHAIRPERSON MITTEN: I think I would like to put a  
22 proposal on the table for a way to move forward which is based  
23 on large measure on what Mr. Bergstein had suggested, which is  
24 that if the applicant's schedule will accommodate it, that we  
25 would get an additional submission as to their view of the

1 manner in which their application, a formal application, or an  
2 amendment to their application to put this in the context of a  
3 PUD and then some discussion about the way that the application  
4 meets the standards of Chapter 24.

5 That way I think some of my discomfort is really  
6 just a sense that we're sweeping quickly past the requirements  
7 of Chapter 24 without really considering them carefully.

8 I just want to say that I'm not of the same mind as  
9 Mr. Parsons because I don't think every PUD is created equal.  
10 Some have a great deal of emphasis on design and this PUD, at  
11 least the concerns that are raised for me, were related to  
12 traffic and were related to not giving the applicant such a  
13 huge increase in the amount of density that they could build  
14 it.

15 It was far in excess of what they needed and that's  
16 what we are getting at through this PUD process, and that's  
17 what we're getting at through the conditions that are being  
18 proposed.

19 I would like to just take a little bit more time to  
20 make sure we're doing the best job that we can to examine the  
21 requirements of Chapter 24 and yet not expect that every PUD is  
22 going to be held to the same standard on every issue that we  
23 can evaluate a project on. I move that we reopen the record  
24 for a response from the applicant on that point.

25 COMMISSIONER FRANKLIN: I second the motion.

1 CHAIRPERSON MITTEN: Any discussion?

2 COMMISSIONER FRANKLIN: Yes, Madam Chair. I think  
3 your point is very well taken that each PUD in its nature is  
4 sui generis. The considerations that go into the exercise of  
5 the Commission's discretions are going to vary from case to  
6 case depending on what the circumstances are.

7 I dare say this particular one is unlikely to be  
8 like any other that we face for the reasons that Mr. Parsons  
9 has already stated for the extensive nature of the campus, the  
10 special role played by the hospital, etc., etc.

11 I think if the applicant can look on this in a  
12 optimistic light and jump through that remaining hoop, which I  
13 think in many respects it has already done, I don't think we  
14 would be talking about this at this point if it weren't for the  
15 fact that the material they already provided to us was  
16 tantamount to a first-stage PUD application. They really have  
17 fulfilled, in my judgment, on a quick glance of the regulations  
18 everything required of that.

19 Then the second stage, I know Mr. Parsons has a  
20 concern with design review, and I do, too, but I think the  
21 Chairman's point there is also valid. The Commission can  
22 because of special circumstances determine to what degree it  
23 wants to focus on certain elements of the PUD and make sure  
24 that they are held to some kind of regulatory standard and how  
25 that is to be done.

1           It doesn't mean that everything has to come back  
2 before the Commission. I think we ought to be creative about  
3 this within the framework that has been set out in the  
4 regulations and I think we can be.

5           CHAIRPERSON MITTEN: Thank you.

6           COMMISSIONER HOOD: Madam Chair, may I also just  
7 add you have a motion on the table and it's been seconded.  
8 While I was not in favor of the PUD, I will be voting in favor,  
9 not of the PUD but of the motion so we can move things ahead  
10 and not further delay it. I just wanted to put that on the  
11 record.

12          CHAIRPERSON MITTEN: Thank you.

13          All right. We have a motion and a second.

14          Yes, Mr. Moore?

15          MR. MOORE: Jerry Moore from Medstar.

16          CHAIRPERSON MITTEN: You're going to need to turn  
17 on the microphone.

18          MR. MOORE: With me is John Green, Senior Vice  
19 President of Medstar.

20          MR. GREEN: Just a very brief comment that I want  
21 to make. I want to thank you very much for your thoughtfulness  
22 today in terms of your deliberations.

23                 I do want to make one comment, though, and that is  
24 there is no bad attitude on the part of Medstar. I constantly  
25 heard a comment today "their attitude," "their tone." There is

1 no such thing.

2 We heard you all at your last meeting. We went  
3 back and tried to work cooperatively with the Office of  
4 Planning to produce for you what you said you wanted.

5 We heard you say that you were looking for a PUD  
6 but that you were certainly open to a flexible approach to a  
7 PUD. That's what attempted to achieve. I do take offense for  
8 our organization at being accused of having an attitude and  
9 being intolerant.

10 We should not be criticized because we are trying  
11 to pursue a plan that we think makes sense for our organization  
12 and for what we do and the services that we provide in our  
13 community. It does trouble me if you all perceive us as having  
14 an attitude because that's not the case.

15 Mr. Parsons, you mentioned on several occasions  
16 "their attitude" and "third intolerant tone." There is no such  
17 attitude within our organization that is bad or that is  
18 intolerant in any way.

19 I mean, we made a good faith effort at being  
20 response to what we heard at your last session. I just wanted  
21 to state that for the record. We will work as hard as we can  
22 to try to meet you in terms of what you're looking for as long  
23 as you're trying to meet us in terms of what we need for the  
24 success of our organization.

25 CHAIRPERSON MITTEN: Thank you. What we have

1 expressed numerous times, and I hope that you understand that  
2 the Commission is very sensitive to the essential nature of the  
3 role that the Washington Hospital Center plays in the community  
4 and the services that it provides. As Mr. Hood said, people  
5 lives depend on this and we don't mean to minimize that in any  
6 way.

7 MR. GREEN: And it's not just the Washington  
8 Hospital Center. On that campus we also have the National  
9 Rehabilitation Hospital which is a major institution. Out of  
10 our commitment to this city, we recently acquired Georgetown  
11 University Hospital which was struggling and about to either  
12 close or be acquired by some out-of-state interest again as a  
13 result of our commitment to this city.

14 Now, we may not always agree in terms of your  
15 positions on issues but never will be have a bad attitude.  
16 Now, what I heard today was that somehow Medstar has a bad  
17 attitude and I cannot let anyone say that we have a bad  
18 attitude when we are such a contributing citizen in this  
19 District.

20 CHAIRPERSON MITTEN: Thank you, sir.

21 MR. GREEN: Thank you.

22 COMMISSIONER PARSONS: Madam Chairman, I don't want  
23 to engage in a debate here but if there is any  
24 misunderstanding, it was -- it has been my impression that you  
25 have -- not you personally but the Hospital Center has not been

1 willing to participate in the zoning process the way it's been  
2 established; that is, a PUD which is the normal process we use  
3 for processing projects of this sort you would not accept.

4 That, to me, began the word attitude. I can  
5 understand why you didn't want to do that and so forth. The  
6 thing that set me off is this compromise on page 3 of the  
7 report of the Office of Planning which says that you are still  
8 not willing to subject yourself to any kind of design review by  
9 this Commission. You want to go to a different process and  
10 that's what I was referring to.

11 Not your attitude about the city, your service to  
12 this city, or anything else. It was just that we are being put  
13 in a position of having to craft something very special for you  
14 that does not exist and that, to me, implies, "We are special.  
15 We need special treatment." That's all I meant.

16 MR. GREEN: I accept that and I appreciate that  
17 because we certainly don't want to be viewed as having a bad  
18 attitude. We are asking you to look at us not as a special  
19 entity but as an organization in a business that is rapidly  
20 changing.

21 Nationwide about 60 percent of the hospitals are in  
22 the red. We have tremendous shortages in all categories of  
23 manpower, nursing and all technical manpower. This is an  
24 industry that is in deep crisis. We are not asking to  
25 be treated in a special way. We are simply asking you to work

1 with us to help us meet the challenges that we face in terms of  
2 delivery of health care and to recognize that in our efforts to  
3 meet those challenges that we are competing with heavily  
4 financed organizations outside the city and who are each year  
5 attracting more and more patients away from us into those  
6 suburbs because they have the ability in the suburbs to get  
7 regulatory changes effected in a much more rapid way than we do  
8 here in the district.

9 So we are asking you not to abandon your regulatory  
10 oversight but to be understanding of what we face in a rapidly  
11 changing health care environment, not to be treated special.  
12 We respect these processes.

13 We have been here before. We worked closely with  
14 you on our Physicians Office Building and parking garage on the  
15 campus. We accepted all of the landscaping recommendations and  
16 we have continued to make a significant investment on the  
17 campus in those areas. We accepted the design recommendations  
18 in terms of the garage and the Physicians Office Building  
19 because we respect these processes.

20 We're not asking for special treatment. We are  
21 asking for understanding and a recognition of the condition of  
22 the business that we're in. We're asking you to work with us  
23 in such a way that the District can continue to have health  
24 care facilities that are first rate, of high quality, and that  
25 you can be proud of, and that you can enable us to be able to

1 meet the challenges in an environment where we're seeing  
2 perhaps the closure of D.C. General Hospital.

3 We don't know what the challenges will be for us in  
4 the future so normal traditional regulatory processes may not  
5 be the order of the day when industry is in such stress as we  
6 are. That's all we're asking. It's not an attitude. We will  
7 do whatever we can to meet you half way in terms of our needs.

8 CHAIRPERSON MITTEN: Thank you very much.

9 MR. GREEN: Thank you.

10 CHAIRPERSON MITTEN: We have a motion on the table,  
11 or we have a motion that has been moved and we have a second to  
12 reopen the record and allow the applicant to amend their  
13 application to put the rezoning in the context of a PUD and to  
14 give us some detail about how they meet the standards of  
15 Chapter 24 in that regard.

16 MR. MOORE: Madam Chairman, I hate to interrupt  
17 again but in your motion would you please specify that we don't  
18 have to pay the fees again. There are six figures worth of  
19 fees on this Map Amendment Case. I don't want any question in  
20 the Office of Zoning or anywhere else that Medstar would be  
21 subject to any PUD fees.

22 MR. BASTIDA: Madam Chair, you reopened the record  
23 of an existing case.

24 CHAIRPERSON MITTEN: Right.

25 MR. BASTIDA: Accordingly it is a continuation of

1 this case and, in the staff opinion, there is not additional  
2 fees involved.

3 CHAIRPERSON MITTEN: Great.

4 MR. MOORE: Thank you.

5 CHAIRPERSON MITTEN: No problem.

6 MR. GREEN: And I might want to add just in my  
7 concluding comment --

8 CHAIRPERSON MITTEN: You're going to need to turn  
9 on your microphone.

10 MR. GREEN: -- that in trying to reduce  
11 a first-class plan for you, we are now approaching \$2 million  
12 in terms of what we have spent to produce the master plan that  
13 we produced. We are approaching \$2 million because we thought  
14 you wanted a high-quality piece of work and we retained the  
15 best people we could find in terms of engineers and architects  
16 to work with us.

17 CHAIRPERSON MITTEN: And we found that to be a very  
18 high quality and it hasn't gone unnoticed.

19 MR. GREEN: Thank you.

20 CHAIRPERSON MITTEN: Thank you very much.

21 COMMISSIONER FRANKLIN: All that's required is Mr.  
22 Moore to wordsmith it a little bit.

23 MR. MOORE: Thank you.

24 COMMISSIONER FRANKLIN: Which he is quite capable  
25 of doing.

1 CHAIRPERSON MITTEN: All right. So I think we all  
2 understand the motion. It's been seconded. All those in  
3 favor, please say aye.

4 ALL: Aye.

5 CHAIRPERSON MITTEN: Those opposed, please say no.

6 Mr. Bastida, would you record the vote?

7 MR. BASTIDA: Yes. Staff would record the vote to  
8 reopen the record four to zero, MS. Mitten moving and Mr. Hood  
9 seconded it.

10 COMMISSIONER HOOD: Mr. Hood didn't second it.

11 CHAIRPERSON MITTEN: Mr. Franklin seconded it.

12 MR. BASTIDA: Mr. Franklin seconded it, Mr. Hood  
13 and Mr. Parsons voting in the affirmative. Mr. Holman is not  
14 present and no voting.

15 CHAIRPERSON MITTEN: All right. If I could just  
16 request one further thing of the applicant which is, given that  
17 we are very reliant on the master plan and there's an  
18 implementation sequence in Chapter 7, one of the things that I  
19 believe is important to the Commission is the landscaping plan  
20 and the landscaping plan is not listed on the implementation  
21 plan.

22 If you could introduce that so that we could have a  
23 sense of when all of the things that are of greatest importance  
24 to the Commission would be -- the construction would be  
25 commenced, I think that would be helpful as well.

1 Anything else on Medstar?

2 MR. ALTMAN: I was just going to make one request  
3 which maybe already has been made in the context of what you  
4 said, Chairman, which is try to schedule this as soon as we can  
5 --

6 CHAIRPERSON MITTEN: Yes.

7 MR. ALTMAN: -- to bring this back in light of how  
8 hard, I think, they've worked and we've all worked to bring  
9 this before you.

10 CHAIRPERSON MITTEN: Maybe Mr. Bastida could give a  
11 date to the applicant that if they could have the material in  
12 to us, it would be timely for us to take it up at our next  
13 public meeting.

14 MR. BASTIDA: Staff would be glad to do so. The  
15 next regular meeting will be on May 14. Accordingly, staff  
16 would request to receive the Washington Hospital submission by  
17 the 7th of May. I don't know if that would give them enough  
18 time. Otherwise, you want to go to the June meeting?

19 CHAIRPERSON MITTEN: No, they want May.

20 MR. BASTIDA: Okay.

21 CHAIRPERSON MITTEN: We all want May.

22 Now let's move to Case No. 00-30T, the zoning  
23 changes to the downtown development district.

24 Mr. Bastida.

25 MR. BASTIDA: Madam Chairman, the staff have

1 provided you with the proposed -- with all the documentation  
2 that has been on the record and request that the Commission do  
3 a proposed decision on this case.

4 CHAIRPERSON MITTEN: All right. I probably should  
5 have done this a couple of times previously but I have a note  
6 to myself here that the record was closed on the 2nd of March  
7 and we need to waive our rules to accept the materials from the  
8 Office of Planning dated March 8th and April 13th.

9 COMMISSIONER HOOD: So moved.

10 CHAIRPERSON MITTEN: Second. All those in favor of  
11 waiving the rules to accept the additional Office of Planning  
12 materials, please say aye.

13 ALL: Aye.

14 CHAIRPERSON MITTEN: Those opposed, please say no.

15 Mr. Bastida.

16 MR. BASTIDA: The staff will record the vote four  
17 to zero, Mr. Hood moving and Ms. Mitten seconded it, Mr.  
18 Parsons and Mr. Franklin voting in the affirmative.

19 COMMISSIONER PARSONS: The record, Madam Chair,  
20 should show that the memorandum of the Office of Planning dated  
21 March 8th is so dated only on the front page but the body of  
22 the report is dated March 12th.

23 CHAIRPERSON MITTEN: Thank you.

24 All right. We have basically three issues before  
25 us in this case and there have been some additional issues that

1 have arisen through it. Let's, if we could, deal with the  
2 three issues that the amendments relate to.

3 The first is -- well, I'll just state the three  
4 issues to begin with and then we can take them in any order.  
5 Relief from the residential recreation space requirements,  
6 eliminating the FAR restrictions, and changing the combined lot  
7 development provision. If we could just begin with  
8 relief from the residential recreation space requirements. Any  
9 thoughts?

10 COMMISSIONER PARSONS: Well, I wanted to have a  
11 discussion with Andy or Ellen about the concept of producing a  
12 major park with these funds. There seems to be some reference  
13 to doing something over the deck of the freeway. In other  
14 words, if we set aside all these funds in an area that  
15 desperately needs a major park. Mount Vernon Square is not  
16 enough.

17 How do we -- not we the Zoning Commission but how  
18 are we assured that this Trust Fund will result in acquisition  
19 and development of a park which I understand to be the intent?

20 If it's not the intent, I have misunderstood.

21 MS. MCCARTHY: Excuse me, Mr. Parsons. That is  
22 definitely our intent. Our feeling was that to require each  
23 development to have substantial open space and recreation space  
24 within that development meant a series of very small spaces  
25 that wouldn't provide the kind of major outdoor amenity that

1 that area needed, unlike the area south Mass Ave. where it was  
2 not necessary, or where we didn't feel it was necessary, to  
3 provide that.

4 There were so many open spaces and close access to  
5 the mall that beginning north of Massachusetts Avenue there  
6 just wasn't the kind of major green space of any area around  
7 Mount Vernon square and that's of limited size.

8 The reason that we set the requirement was because  
9 in our supplemental report that we recently submitted we were  
10 talking about \$2.25 a square foot. We felt that it was  
11 inappropriate to burden the developers with the acquisition of  
12 land. That was a public responsibility.

13 The sites that we had looked at include the Wax  
14 Museum site which is owned by the District, or the deck, or a  
15 site a 5th and I Street. Those were all District owned sites  
16 or the air space would be a District owned site that were  
17 possibilities.

18 The other thing that we considered was we are going  
19 through an intensive planning process now very closely with the  
20 major property owners in that area. Our thought was if it were  
21 felt that those parcels which are under the District's control  
22 weren't themselves suitable, then we could possibly engineer a  
23 land trade to pick a site that was optimally located.

24 We also felt that if there were insufficient funds  
25 within the Districts' Department of Recreation and Parks budget

1 to play more of a role in landscaping and outfitting that park,  
2 that this amenity, which would be a substantial amenity to  
3 anybody doing development in that neighborhood, was of  
4 sufficient value that we could justify a benefit improvement  
5 district or benefit assessment district to pay for that and  
6 perhaps other infrastructure investments that were needed to  
7 really make that area a more attractive site for development  
8 and private investment.

9 We felt a very low rate, the \$2.25 or something  
10 like that as part of the buy-out, would help begin that process  
11 and would give us some funding to begin beautifying the public  
12 space in that area. We also certainly expect to talk to the  
13 National Park Service about the land that you own there and the  
14 role that that might play. We are serious about wanting some  
15 sort of major open space.

16 COMMISSIONER PARSONS: So your last sentence says,  
17 "The Office of Planning would like to continue to do research  
18 on this and request the record be left open."

19 That's the reason for my question. Are you  
20 suggesting we not deal with this at this time or leave the  
21 record open in this aspect of the case until this is resolved?

22 That is, a site is identified so you are sure that we are  
23 going to have an alternative open space or what?

24 CHAIRPERSON MITTEN: Mr. Parsons is referring to  
25 your March report where he was quoting from.

1 MS. McCARTHY: Right. In the --

2 CHAIRPERSON MITTEN: Could you turn on your  
3 microphone, please?

4 MS. McCARTHY: In the April report we updated the  
5 conclusions from that supplemental report and recommended that  
6 we pick the amount of \$2.25 a square foot and that we move  
7 forward to permit the buy-out at that level.

8 As Mr. Sher's article in the record indicates, or  
9 letter in the record indicates, that fund does not now exist  
10 and we would have to create that as an enterprise fund within  
11 District government but we don't regard that as being a major  
12 hurdle.

13 We would certainly create some specially designated  
14 fund so this doesn't just get mixed with general fund amounts  
15 and disappear, that it be specifically earmarked for financing  
16 public space downtown. The section that I'm talking about is  
17 on page 8 of the April 13th memo.

18 COMMISSIONER PARSONS: But we still don't have an  
19 identification of where this site is and how we are truly going  
20 to get a meaningful open space.

21 MS. McCARTHY: We don't have an identification of  
22 that but there was a design guideline workshop on the Was  
23 Museum site that was held last Thursday in which input was  
24 solicited from the participants.

25 We had about 70 people there, property owners, and

1 stakeholders in the area and got some suggestions about the  
2 configuration of the Wax Museum site which included very  
3 favorable reviews of open space on the Was Museum site.

4 And then our hope was to engage in some pretty  
5 intensive planning following up on the NOMA study first phase  
6 which we were about to complete and working closely with the  
7 property owners and other stakeholders in that area to identify  
8 some sites and get those identified quickly and then begin more  
9 detailed design work for the public space.

10 I guess our major concern is, and I should say this  
11 really about all of the issues that we have discussed that Ms.  
12 Mitten just identified, that our feeling is that this is a very  
13 fruitful but potentially fragile time for downtown housing.

14 There has been an enormous amount of interest in  
15 downtown housing. All anecdotal evidence appears to indicate  
16 that the market is very strong. There is considerable interest  
17 in development of downtown housing.

18 But we are troubled by the fact that despite all  
19 these expressions of interest, there have been no projects  
20 which have actually broken ground after the three PADC projects  
21 and the mid-town south of Massachusetts Avenue and nothing  
22 substantial going north of Massachusetts Avenue.

23 We know that there has been a substantial increase  
24 in construction cost. That has made some perspective  
25 developers nervous. Obviously the national economy is a little

1 bit shaky and that has made people nervous.

2 Our feeling was rather than hold the recreation  
3 space buy-out in these other provisions until some later period  
4 of time when we can work out all the details, we wanted to send  
5 a strong and positive signal to the development community now  
6 that we are interested in incenting housing north and south of  
7 Massachusetts Avenue and that we would try to work out the  
8 details as soon as possible thereafter.

9 COMMISSIONER PARSONS: Well, I would urge you to --  
10 I agree with everything you said but it would seem to me that  
11 if we could identify a site that the District was going to  
12 acquire and make a park, it would be an amenity and incentive  
13 for people to begin to develop around it as opposed to let's  
14 watch out for the market and so forth.

15 I'm worried that we're going to end up with all of  
16 this built out in some fashion, no park, and we'll spend the  
17 money doing something else. I don't mean not park like but  
18 street trees and we'll improve the paving patterns. That's not  
19 what we're talking about here. We're talking about a Franklin  
20 Park, something significant.

21 MS. MCCARTHY: That's correct.

22 COMMISSIONER PARSONS: That size.

23 CHAIRPERSON MITTEN: A Parsons Park. There's  
24 already a Franklin Park.

25 If I could just jump in because I think I'm in

1 agreement with Mr. Parsons in terms of I think we need a little  
2 bit more -- what's the word? We need it to be more tangible as  
3 to where the park will be located, the Trust Fund has to exist,  
4 and so on. Notwithstanding that, I think we had some really  
5 great testimony on this subject in particular.

6 The fellow who testified from Avalon Bay, Mr.  
7 Bierrenbaum, he said that what they have applied for -- what  
8 they have received in terms of relief from the BZA and what  
9 they intend to apply for is less than five percent recreation  
10 space.

11 I thought about that quite a bit and the fact that  
12 there is no rec. space requirement in any residential zone and  
13 we have it in some -- we have it in SP and we have it in CR and  
14 we have it in the commercial zones and sometimes at very high  
15 levels. If you think about it, and I can speak more on this if  
16 anybody disagrees, but I think anything above five percent is  
17 too high.

18 That is part of the reason why -- I mean, it's not  
19 the only reason why but it's part of the reason why it's  
20 difficult for residential use to overcome commercial uses when  
21 we are trying to provide that around some of the metro stations  
22 like Friendship Heights and Tenleytown, why it's only  
23 commercial that gets built there.

24 What I would like to advocate for, because the only  
25 thing we have before us relates to the DDD, is that we

1 immediately reduce the recreation space requirements for all  
2 zones in the DDD to five percent. Then we think about  
3 in the future reducing it to any zone where there is a  
4 residential recreation space requirement to five percent. And  
5 that in the future, after we have identified where the park is  
6 going to go and when we have the open space Trust Fund in  
7 place, then given that it's likely that developers are going to  
8 continue to go to the BSA for relief even from five percent,  
9 that we make that an easy process they can buy-out instead of  
10 having to go through the BZA.

11 I don't think we're ready to do that yet but I'm  
12 very ready to reduce the recreation space requirement to five  
13 percent.

14 COMMISSIONER FRANKLIN: If you'll make that in the  
15 form of a motion, I'm sure I'll second it.

16 CHAIRPERSON MITTEN: All right. I move that we  
17 reduce the residential recreation space requirement in the  
18 downtown development district overlay in all zones to the  
19 extent that a recreation space requirement exist in the zone to  
20 five percent.

21 COMMISSIONER FRANKLIN: Second. In fact, if you  
22 want to amend it to four percent, I would even go with that but  
23 I agree with five.

24 CHAIRPERSON MITTEN: Okay. We want to give them  
25 something to buy-out of later so we can get some money in the

1 Trust Fund.

2 COMMISSIONER FRANKLIN: I'm not so sure that will  
3 ever materialize. I agree with what Mr. Parsons said earlier  
4 and what the chair has said, that in the absence of a tangible  
5 site and convincing evidence, that the public is ready to  
6 invest in the creation of the infrastructure elements. I don't  
7 think we should be fooling ourselves into thinking that this  
8 buy-out will produce anything.

9 CHAIRPERSON MITTEN: Any other discussion? We have  
10 a motion and a second to reduce the residential recreation  
11 space requirement in the DDD to five percent. All those in  
12 favor, please say aye.

13 ALL: Aye.

14 CHAIRPERSON MITTEN: Those opposed, please say no.

15 Mr. Bastida, would you record the vote?

16 MR. BASTIDA: Mr. Holman is voting in the  
17 affirmative by proxy. The staff will record the vote five to  
18 zero, Ms. Mitten moving and Mr. Franklin seconded it, Mr.  
19 Parsons and Mr. Hood voting in the affirmative.

20 CHAIRPERSON MITTEN: Thank you.

21 All right. The next issue was the proposal to  
22 eliminate the residential density requirements in the downtown  
23 development district. I think I would like to speak first on  
24 this.

25 This gave me a lot of concern and there is a couple

1 of reasons for that. One is the Office of Planning introduced  
2 the notion of inclusionary zoning in their report and that is  
3 something that we've talked about briefly on various occasions.

4  
5           There are a number of local jurisdictions that have  
6 inclusionary zoning. In no case that I am aware of in the  
7 metropolitan area has there been a complete elimination of  
8 density restrictions.

9           They might not be FAR restrictions. They are  
10 either dwelling units per acre or minimum net lot area per  
11 dwelling unit but there is some kind of control on density.

12           I think the main thing that people were hoping to  
13 accomplish through this recommendation is that it would lower  
14 the effective land cost for developers.

15           That only works for the developers who have land  
16 now because the market is going to recognize as soon as these  
17 regulations were to be put in place that now you can get  
18 greater density, the land prices would go up, and they wouldn't  
19 enjoy the benefit of that anymore.

20           I think that the effect of this would be very short  
21 lived. I guess I'm fearful, given that we would be the first  
22 jurisdiction that I'm aware of, that would have absolutely no  
23 density limitation for residential use that -- I guess I'm  
24 afraid of what the consequence would be.

25           I can imagine what some of the adverse consequences

1 would be but I don't think that's the kind of issue that we  
2 want to be out in front on setting the trend for local  
3 jurisdictions. I don't think it's going to accomplish in the  
4 long run what we hope it will which is to lower land costs  
5 across the board.

6 Any other discussion?

7 MS. McCARTHY: Madam Chair, in addition to lowering  
8 land cost, we also had looked at it as an opportunity to close  
9 the gap that existed between the 5,400 unit target that had  
10 been set and the reality which was that we were falling short  
11 of that. And we looked for it as an opportunity through  
12 increasing the number of taxpaying residents in downtown.

13 I know Mr. Whitticomb from the Business Improvement  
14 District had done an assessment of the bonus alone and what the  
15 impact of that density would be north and south of  
16 Massachusetts Avenue within the DDD and then concluded it could  
17 make a difference of \$2.6 million of tax revenue to the city  
18 every year from the additional income tax revenue from those  
19 residents.

20 We certainly have been troubled by the fact that  
21 the density bonus is likely to be capitalized into the cost of  
22 the land fairly shortly. But we were also interested in  
23 increasing the number of units that were possible based on  
24 recognizing the fact that there was a lower floor to ceiling  
25 height required for residential development than for office

1 development which was really the genesis of that plan  
2 initially, as you know.

3 CHAIRPERSON MITTEN: And although I would like to  
4 keep the deliberation among the Commissioners, I'd appreciate  
5 input.

6 The issue then becomes if you think this is a good  
7 idea in terms of increasing yield or whatever compelling reason  
8 there might be, why is it only a compelling reason in the DDD?  
9

10 And will we then be approached about easing these  
11 restrictions elsewhere and what argument would their be against  
12 it? I would just like to caution that this is not as simple as  
13 it appears to be.

14 COMMISSIONER PARSONS: I'm not sure I understand  
15 your concern yet. I don't recall any testimony along these  
16 lines. I was ready to go for this completely. To me the whole  
17 idea of housing in the DDD is so defensible that anything we  
18 can do to make it a better opportunity for that, I can't  
19 imagine somebody coming to us on Connecticut Avenue and saying,  
20 "Gee, we need this relief as well," or elsewhere in the city.

21 Of course, with the height restrictions that we  
22 have, I don't have any concern about things getting out of  
23 hand. What is it that you are concerned about? Is it traffic?  
24 I don't understand yet.

25 CHAIRPERSON MITTEN: No. Well, first of all, I

1 think the main concern in terms of getting individual  
2 development projects off the ground is that if you buy land at  
3 a certain price and you expect that you were going to be able  
4 to build 150 units, and the numbers work sort of borderline at  
5 150 units, now all of a sudden if these regulations go into  
6 place, maybe you can build 175, 180, 200 units. The numbers  
7 start to work. Okay?

8 That works for you because you bought your land at  
9 a price that expected that you would only be able to build 150  
10 units. All of the projects that are sitting there that bought  
11 land relatively cheaper because of the density restrictions  
12 that are in place now, they will enjoy the differential.

13 The next people that come through, they are going  
14 to pay a higher price because they are going to say, "That's  
15 not a site for 150 units anymore. That's a site for 180 or 200  
16 units and they are going to have to pay based on that."

17 All of a sudden you're at the same economic  
18 crossroads as the people are now because they are going to be  
19 buying land at higher prices. The benefit of lowering the  
20 effective land cost is only for the developers who currently  
21 have sites that they bought at relatively cheaper prices.

22 COMMISSIONER PARSONS: You're presuming that the  
23 price is going to go up.

24 CHAIRPERSON MITTEN: I can --

25 COMMISSIONER PARSONS: If the price goes up --

1 you're in this business but if the price goes up and it's still  
2 not a viable housing project, how will it be for sale? Who  
3 will buy it? Nobody.

4 CHAIRPERSON MITTEN: It's the same situation that  
5 we're in now. The economics are very tenuous for housing as  
6 we've been told. People are seeking relief both from the  
7 Zoning Commission and the mayor has proposed financial relief.

8 Now, many times people look to Zoning for the  
9 financial relief and I'm saying the only people that are going  
10 to enjoy that financial relief are people that currently own  
11 sites. I'm going to tell you that the land prices will go up.  
12 I mean, it's just the market.

13 COMMISSIONER PARSONS: So why don't I ask Ms.  
14 McCarthy how many people own sites? It seems to me it's  
15 speculative. We don't know who owns the site at a certain  
16 rate, who's got a contract purchase. I mean, we can't get into  
17 those.

18 If we've got three properties with housing on them,  
19 it's worth it. It's worth it to me to push forward to get more  
20 of a critical mass to get housing downtown. Anything we can do  
21 in the next six months, which seems to me to be critical here,  
22 before the window closes, I'm good to go.

23 CHAIRPERSON MITTEN: You say it doesn't concern you  
24 that that's a short-lived effect?

25 COMMISSIONER PARSONS: No. No, because the other

1 option is what we see is what we get. PADC's housing is all we  
2 could achieve because the Zoning Commission wasn't cooperative.

3 CHAIRPERSON MITTEN: Well, that's not true because  
4 we just voted to reduce the recreation requirements and their  
5 are financial incentives that are going to be in place that  
6 were not in place. It's not all dependent on Zoning is what  
7 I'm trying to say. Let's not pretend that it is.

8 Anyway, thank you for your thoughts.

9 COMMISSIONER PARSONS: I respectfully disagree.

10 CHAIRPERSON MITTEN: I'm in the same boat.

11 COMMISSIONER FRANKLIN: I have to say that I agree  
12 with the Chair and with Mr. Parsons. You're both right. I  
13 think there's no question that if reducing the land cost is an  
14 objective here, it will not be achieved by this particular  
15 device.

16 I also agree that we will have to do everything we  
17 can to get more housing. I confess that -- well, first I have  
18 a question. My memory isn't what it used to be and maybe I've  
19 missed something. Have we ever had a hearing where  
20 we've had a discussion about this and testimony and something  
21 in our record that we can rely on in terms of adopting this  
22 kind of policy? This is something that seems to me to really  
23 come out of the blue as far as I'm concerned. Maybe I missed a  
24 hearing or something.

25 CHAIRPERSON MITTEN: Do you mean this specifically?

1 COMMISSIONER FRANKLIN: Yes, this specifically.

2 CHAIRPERSON MITTEN: Yes, we had a hearing on it.

3 COMMISSIONER FRANKLIN: On increasing density  
4 bonuses for residential?

5 CHAIRPERSON MITTEN: No, on eliminating the FAR  
6 limitation on residential.

7 COMMISSIONER FRANKLIN: Oh, and that's the  
8 equivalent of what we're talking about.

9 CHAIRPERSON MITTEN: Right.

10 COMMISSIONER FRANKLIN: You mean the FAR part.

11 CHAIRPERSON MITTEN: Right.

12 COMMISSIONER FRANKLIN: But in terms of -- well,  
13 let me ask this question. In terms of the other requirements  
14 like height requirements and other requirements affecting the  
15 bulk of a highrise multi-family building, is simply eliminating  
16 the FAR -- I mean opening up the FAR going to do it? In the  
17 envelope available in this city, how effective is that going to  
18 be?

19 CHAIRPERSON MITTEN: Well, the Office of Planning  
20 had some studies if you remember. Well, maybe you don't  
21 remember.

22 COMMISSIONER FRANKLIN: I don't.

23 CHAIRPERSON MITTEN: They had some studies in terms  
24 of how much additional density you would be able to put into  
25 the zoning box, if you will, or the zoning envelope given that

1 there's a minimum height that you have to have in order for the  
2 space to be habitable. Then how many of those layers can you  
3 fit within the envelope. You can fit more than the current FAR  
4 limitations would permit you to fit so that there's a way if  
5 you lower the --

6 COMMISSIONER FRANKLIN: Significantly more?

7 CHAIRPERSON MITTEN: Yes. It is significantly  
8 more.

9 COMMISSIONER PARSONS: You use an eight-foot  
10 ceiling that you can't use in an office building. Let's say  
11 you get 13 floors instead of 12, the same height.

12 COMMISSIONER FRANKLIN: Considering the building  
13 sites in the city, I don't consider that a significant  
14 increase.

15 COMMISSIONER PARSONS: Well, you've got a floor or  
16 two on top of a building. There's a diagram in our material  
17 that shows it.

18 MS. MCCARTHY: Right. But in addition, Mr.  
19 Franklin, where it is particularly significant is in a C-2-C  
20 zone where we have a lot of interest in housing development  
21 now, and where under the DDD, although you can go to the  
22 maximum height limit, you are limited to a maximum of 8.5 FAR.

23  
24 Under this proposal some of the projects that have  
25 come in that have gone through the variance process to get the

1 additional height that have been approved recently are around  
2 10.2 or 10.3 FAR. The Fazakerley site, the JBG site are two  
3 that were in that range. In that instance if you can go from  
4 8.5 up to 10.2 or 10.3, that is a significant density increase.

5 COMMISSIONER FRANKLIN: And you would limit this to  
6 the DDD area because you want to create an incentive that's  
7 stronger than in other areas?

8 MS. MCCARTHY: Well, it partly goes back to Mr.  
9 Parsons' point and Ms. Mitten's point about drawing lines.  
10 Within the DDD you've got very strong comprehensive plan  
11 language that set these targets and talked about the importance  
12 of achieving housing. That's why we would look to this to be  
13 permissible and desirable there where we would not necessarily  
14 find it to be applicable in other sections.

15 CHAIRPERSON MITTEN: I would just also like to  
16 remind folks of a point that I thought was very good that was  
17 raised at the hearing that I now see in my notes, which is the  
18 notion that instead of just lifting the density requirements,  
19 that we require developers to buy up the density with TDRs  
20 given that we have quite a number of TDRs available and we  
21 don't have the demand that perhaps we would wish existed.

22 An alternative is rather than just eliminating it out  
23 right but instead allowing them to buy the density at a  
24 relatively lower rate through acquiring TDRs.

25 COMMISSIONER FRANKLIN: Would a developer who is

1 benefiting by the increased density have to provide moderate  
2 income housing?

3 CHAIRPERSON MITTEN: That's not part of the  
4 proposal. I guess that's another issue which is if we decide  
5 do we want to tie it to anything, is this a way of achieving  
6 some measure of affordability or is that an issue in terms of  
7 the inclusionary zoning that we want to revisit on a city-wide  
8 basis at some point.

9 COMMISSIONER FRANKLIN: I have to confess that 27  
10 years ago I wrote a book on inclusionary zoning, or co-authored  
11 one. That was just when I think Montgomery County was focusing  
12 on it.

13 I retain a skepticism about the appropriateness of  
14 having a process whereby some tenants in a building, or  
15 occupants, are paying across subsidy for others in the same  
16 building as distinguished from having the public make those  
17 subsidies available. I'm not keen on requiring that kind of  
18 skewing within a building for policy reasons.

19 It can work and I think in the suburbs where there  
20 was obvious developing pressures it has worked in Montgomery  
21 County. I'm not as sure that it would work that well in the  
22 District. It is, I think, amongst developers not regarded as  
23 an incentive. I think that has to be approached very carefully  
24 so I would not favor adding that to the density increase.

25 I think that I agree with Mr. Parsons' statement. I

1 don't see that an increase in the density would lead to adverse  
2 effects from a planning standpoint. I also agree with you that  
3 I don't think it would achieve a reduction in the land cost.  
4 The question is is it worth trying to see what happens in my  
5 mind.

6 CHAIRPERSON MITTEN: Well, Mr. Parsons, would you  
7 like to make a motion?

8 COMMISSIONER PARSONS: Yes, but I'm not looking at  
9 the right page --

10 CHAIRPERSON MITTEN: Oh, okay.

11 COMMISSIONER PARSONS: -- to know exactly what it  
12 is I'm supposed to say. What section are we dealing with?

13 CHAIRPERSON MITTEN: Well, I'm not going to phrase  
14 it for you.

15 COMMISSIONER PARSONS: Well, somebody help me then.

16 CHAIRPERSON MITTEN: Okay. Well, the essence of it  
17 is to eliminate the residential --

18 COMMISSIONER PARSONS: I can make that motion.

19 CHAIRPERSON MITTEN: I think that's where we are.

20 COMMISSIONER PARSONS: Eliminate the FAR  
21 requirement for residential as advertised.

22 CHAIRPERSON MITTEN: In the DDD.

23 COMMISSIONER PARSONS: Yes.

24 CHAIRPERSON MITTEN: Okay. We have a motion. Is  
25 there a second?

1 COMMISSIONER FRANKLIN: I'll second.

2 CHAIRPERSON MITTEN: Any further discussion? We  
3 have a motion and a second to eliminate the density  
4 requirements for residential projects in the downtown  
5 development district. All those in favor, please say aye.

6 ALL: Aye.

7 CHAIRPERSON MITTEN: Those opposed, please say no.

8 No.

9 Mr. Bastida, would you record the vote.

10 MR. BASTIDA: The staff will record the vote four  
11 to one, Mr. Holman voting in the affirmative by proxy, Mr.  
12 Parsons moved it and Mr. Franklin seconded it, Mr. Hood voting  
13 in the affirmative, Ms. Mitten voting in the negative.

14 CHAIRPERSON MITTEN: Thank you.

15 Now we have the combined lot provisions. This is  
16 fleshed out -- well, there are several, I guess, subtopics to  
17 it which the discussion of the good cause standard was part of  
18 that. The discussion about the Housing Trust Fund was also a  
19 part of that.

20 The basic idea of it is to relieve some of the  
21 pressure on the combined lot projects because the commercial --  
22 that would hold up the commercial component until the  
23 residential component was completed. This would give some  
24 flexibility in terms of the timing of completing the  
25 residential projects. Any thoughts?

1           COMMISSIONER HOOD: Madam Chair, I noticed that my  
2 name was mentioned here in the report. I'm satisfied with the  
3 material I read in front of me. I have to agree with Mr.  
4 Parsons.

5           I was ready to move and vote in favor of the whole  
6 piece without any changes but if my colleagues have changes, I  
7 will be amenable to those. As far as the "good cause" standard  
8 which I did have a concern, I seem to be very comfortable with  
9 what I read here.

10           CHAIRPERSON MITTEN: Well, in terms of the proposal  
11 for 1708.1.F.ii and iv --

12           COMMISSIONER HOOD: Two and four?

13           CHAIRPERSON MITTEN: Um-hum.

14           COMMISSIONER HOOD: I was fine with what was  
15 proposed here.

16           CHAIRPERSON MITTEN: Okay.

17           COMMISSIONER HOOD: I mean, if that's what you're  
18 looking for, discussion on --

19           CHAIRPERSON MITTEN: There's that aspect of it but  
20 there's the overall aspect of it which is basically disengaging  
21 the requirement for the residential part of the combined lot  
22 development to be completed prior to getting the certificate of  
23 occupancy for the commercial use.

24           Then it's a question of if you are satisfied that  
25 is a proper way to proceed, then it becomes a question of what

1 are the timing issues. We had various proposals related to  
2 timing in terms of, I think, what had been proposed that the  
3 escrow money would be released after five years if the  
4 residential project hadn't been built with the possibility for  
5 a three-year extension. That's where the good cause came in.

6 Then there were various other proposals that were  
7 made. The woman who testified on behalf of the Washington  
8 Regional Network for Livable Communities suggested cutting the  
9 period to four years with an extension of only two years. The  
10 Downtown Cluster Congregations had proposed only two years in  
11 terms of starting the residential project with a possible  
12 three-year extension.

13 I think the concern overall was that there would be  
14 we're going from a process that requires the residential  
15 development to be completed in advance of the commercial  
16 development to one that really would extend it as long as eight  
17 years to even get the money that's in escrow to produce the  
18 housing. That's a relatively long period of time to wait. I'm  
19 interested in thoughts about that.

20 I mean, for me the process is a good one and I  
21 think that having worked through the concept on the Woodies PUD  
22 has been helpful, but it is a relatively long period of time to  
23 wait. I guess I would be in favor of trimming the time periods  
24 to some extent.

25 COMMISSIONER PARSONS: I'm about as enthusiastic on

1 this one as you are on the FAR.

2 CHAIRPERSON MITTEN: I'm open-minded.

3 COMMISSIONER PARSONS: But what I see is sitting  
4 here five years from now all the developers coming back saying,  
5 "Housing didn't work. I guess it's time to build offices on  
6 these sites."

7 But to me it's still worth the risk because housing  
8 -- of course, I'm so committed to housing it's ridiculous.  
9 I've been at it too long. You don't have to comment on that.

10 I think it's worth the risk but I complete agree  
11 with you and Terry Lynch that two years is what we ought to be  
12 talking about, not five years. This is going to happen in the  
13 next two years or it's not going to happen unless we have a  
14 total recession and we'll deal with that two years from now.

15 CHAIRPERSON MITTEN: If I --

16 COMMISSIONER PARSONS: I'm not terribly  
17 enthusiastic about this but I think it's worth trying.

18 CHAIRPERSON MITTEN: If I could just maybe make  
19 sure that my understanding is the same understanding that you  
20 have. I think that the timing, which I would like to have  
21 shortened up, is related to when the escrow money gets  
22 released.

23 Then there will be a covenant that encumbers the  
24 receiving site. Not the receiving site but -- well, the  
25 receiving site for the residential component of the combined

1 lot development that will require that site be developed with  
2 residential.

3 I think what is going to -- I mean, there will be  
4 developers that will come back and say, "We want that covenant  
5 lifted." We just have to be serious about saying no. I mean,  
6 I think we need to send a strong message about that.

7 COMMISSIONER PARSONS: You mean there's no such  
8 thing as good cause?

9 CHAIRPERSON MITTEN: No, that's to get the  
10 extension. I mean, the good cause relates to getting the  
11 extension before the escrow money is taken or released. I  
12 mean, it's a whole other kind of case in terms of lifting that  
13 restriction and it goes beyond good cause.

14 Mr. Altman.

15 MR. ALTMAN: May I just make one comment?

16 CHAIRPERSON MITTEN: Yes.

17 MR. ALTMAN: We obviously did a lot of thinking  
18 about the timing, too. I mean, our overall  
19 -- I share your goal and your anxiety and eagerness, I should  
20 say, to see this accomplished.

21 It is true that the developer of the site involving  
22 a combined lot would be accepting that additional housing  
23 density on their site. Say you had 2.0 housing requirement,  
24 you would be accepting a 4.0 housing requirement, 2.0 for the  
25 office site that's sending you that density.

1 Our thinking about the timing was that we also want  
2 to motivate the person who would be developing the housing to  
3 accept that additional requirement. In other words, if I'm at  
4 a site where I might otherwise be thinking about office but I  
5 want it to be attractive for me to develop housing, I also want  
6 to have sufficient time that I believe I can build that  
7 housing.

8 I just throw this out for your discussion which is  
9 concern that that person might not be as motivated because they  
10 would say, "Gee, I only have two years to access this money or  
11 I lose it." I'm going to be more reluctant to accept the  
12 additional housing requirement on my site, the additional 2.0  
13 housing, or thinking about five years.

14 There's a science to this but of giving some -- it  
15 was sort of tied to an economic -- some sense of maybe an  
16 economic cycle that they could build within five years and they  
17 would be more willing.

18 It would incent them to want to accept that  
19 additional housing density on their site that they might  
20 otherwise be inclined to just build office. We're trying to  
21 find a balance in that timeline to give enough incentive for  
22 that person to develop.

23 Of course, we don't want them to get out of their  
24 housing requirement which is why originally there was no escrow  
25 provision at all. People just could go on indefinitely. We

1 had to revert to this housing production Trust Fund to ensure  
2 that the housing would get built.

3 The only reason we put in a three year was if you  
4 go through an economic downturn and then it starts to see an  
5 upturn, they would be able to have to prove that they are now  
6 committed to do that additional housing before they lose the  
7 funds.

8 That was our only thing but more concern about the  
9 issue of the five year being enough of an incentive to the  
10 developer. At least, that was our thinking based on  
11 conversations with the housing development community.

12 CHAIRPERSON MITTEN: Thank you. I guess also along  
13 those lines is one of the things that concerns me is the amount  
14 of money that gets put in escrow is basically the amount of  
15 money presuming an actual transaction that the commercial  
16 developer has to pay to the resident developer to get them to  
17 take this obligation on to their site which is nowhere near  
18 what it takes to get anything built.

19 If you remember what the did in the Woodies PUD is  
20 we said the amount of money that goes in escrow is the amount  
21 of money it's going to take to build the residential project.

22 I would also like us to consider how we are going  
23 to capture that because I think, first of all, there is no  
24 guarantee that there actually will be a transaction because a  
25 developer can own both ends of the deal. They can own the

1 commercial site and they can own the residential site. There's  
2 no provision for what would go in escrow in that case.

3 Then again with the way that it's worded, the only  
4 money that goes in escrow is the differential for taking on the  
5 burden of the residential development. That's going to be  
6 insufficient to get much done.

7 That's something that -- I mean, it reduces the  
8 amount of leverage and it reduces the amount of effectiveness  
9 of having the money revert to the Housing Trust Fund because  
10 there won't be enough money in the Trust Fund to build  
11 anything.

12 COMMISSIONER PARSONS: So have you got a suggested  
13 dollar per square foot? You would have to get that specific.  
14 Right?

15 CHAIRPERSON MITTEN: Yes. You would have to get  
16 that specific.

17 COMMISSIONER PARSONS: Just like with the  
18 recreational thing. How is \$600 a foot?

19 CHAIRPERSON MITTEN: Heavy.

20 COMMISSIONER PARSONS: What does it cost to build  
21 residential?

22 CHAIRPERSON MITTEN: Again, it depends on the  
23 nature of the project but there is certainly a minimum that  
24 would be acceptable. I wouldn't want to be the person to put  
25 that on the record.

1           It's clearly much more than it would -- much larger  
2 amount of money than would be necessary to get someone to take  
3 that burden onto their property. To my mind, this needs more  
4 work, this particular aspect of the text amendment.

5           COMMISSIONER FRANKLIN:       Specifically in what  
6 regard, in terms of the amount of money to be escrowed?

7           CHAIRPERSON MITTEN: Yes.

8           COMMISSIONER FRANKLIN:       And how it is to be  
9 determined?

10          CHAIRPERSON MITTEN: Right.

11          COMMISSIONER FRANKLIN: In this regard, what other  
12 regulation, if any, exists with respect to this escrow?

13          CHAIRPERSON MITTEN: I think the first time the  
14 concept was introduced was on the Woodies PUD. The only other  
15 thing that we have that does not go to the same -- doesn't  
16 speak to the same question of the cost of actually building an  
17 apartment house, but we do have formulas that relate to  
18 calculation contributions to the Housing Trust Fund. There are  
19 a couple different formulas in the regulations and they are not  
20 consistent with each other.

21          COMMISSIONER FRANKLIN: Would they provide a model  
22 for this if it's made consistent?

23          CHAIRPERSON MITTEN: The formulas that exist right  
24 now for contributions to the Housing Trust Fund are based on  
25 the -- they are a function of the value of the commercial FAR

1 on the sending site so they are still only a function of  
2 differential land cost.

3           They don't get at the other component which is the  
4 improvement cost so they still fall short even though they  
5 would go farther. Well, depending on which formula we chose to  
6 adopt they would go farther than the current proposal. I still  
7 think it's insufficient.

8           We're talking about -- just think about the amount  
9 of leverage that exists right now to get residential built  
10 sooner as opposed to later. Commercial development, you know,  
11 people want to move forward with that and that is a big  
12 incentive.

13           One of the hurdles we have to get over is you have  
14 to get residential built because you want to get at that very  
15 valuable commercial component and that's a lot of leverage and  
16 we have to have something.

17           I mean, we're talking about lowering that because  
18 we're talking about giving added flexibility in terms of  
19 timing. Even so we would be giving added flexibility in terms  
20 of the amount of money that they would have to put up and when.

21           I just think if all you do is capture the differential land  
22 cost, then you've gone from having a lot of leverage to having  
23 very little leverage.

24           COMMISSIONER FRANKLIN: So what you're suggesting  
25 is a different formula all together?

1           CHAIRPERSON MITTEN: One that is based on the cost  
2 of actually building housing. At the moment I don't have  
3 something to propose. I'm just saying that's what it's going  
4 to take.

5           If you're saying to someone, "If you don't build  
6 it, we'll build it for you," the Trust Fund is just going to  
7 get some dribbles and drabs of escrow payments that are going  
8 to have to be accumulated to actually do even one project. I  
9 don't think -- that's not the intention, I don't think.

10          I think the intention is if you have five projects  
11 that don't go forward and the Housing Trust Fund has to take  
12 over, that it's funded, at least to a large degree, to produce  
13 five projects.

14          COMMISSIONER HOOD: Or at least four.

15          CHAIRPERSON MITTEN: Right. Or at least four but  
16 not to pool all that money and maybe get one.

17          COMMISSIONER HOOD: Right.

18          COMMISSIONER FRANKLIN: And are there any models  
19 that we know of in other jurisdictions?

20          CHAIRPERSON MITTEN: Not that I'm aware of. I  
21 mean, I guess I would be in favor of sending this back given  
22 that I think we're amenable to easing these provisions to some  
23 extent but I'm uncomfortable that we're going to sacrifice what  
24 is a significant amount of leverage for a very little amount of  
25 leverage.

1 COMMISSIONER FRANKLIN: Remind me, please, of what  
2 we did in the Woodies case.

3 CHAIRPERSON MITTEN: What we said in the Woodies  
4 case is the amount of money that they put in escrow was \$18  
5 million or whatever it was going to cost to build the housing  
6 on Square 377. If they don't produce, then the money that will  
7 be released will be sufficient to accomplish what is intended  
8 on Square 377.

9 COMMISSIONER HOOD: I thought in the Woodies case,  
10 and correct me if I'm wrong, that \$18 million was put out to  
11 show his good faith effort to do what he said he was going to  
12 do as opposed to building the residential. I'm kind of  
13 confused on that. I can't remember exactly.

14 COMMISSIONER FRANKLIN: The \$18 million was an  
15 estimate of the cost of construction of something that had  
16 already gone in schematic design, as I recall.

17 CHAIRPERSON MITTEN: That's right.

18 COMMISSIONER FRANKLIN: And we're not likely to  
19 have -- if you're talking about this delay, you're not going to  
20 have that benchmark to use for purposes of escrow. The  
21 question is what other formula can you come up with that is  
22 meaningful that has some real fight.

23 CHAIRPERSON MITTEN: Right. Just maybe to give a  
24 sense of the magnitude of the difference, that number, the \$18  
25 million number, is at \$205 per square foot of residential

1 density that's going to be built there, 88,000 square feet.

2 When we look at the formulas that we have now for  
3 calculating contributions to the Housing Trust Fund, the  
4 linkage formula that's in the PUD requirements are you pay 50  
5 percent of the on-site commercial FAR value.

6 Let's just for a number use 90 which is not  
7 uncommon downtown. \$90 per square foot of commercial FAR is  
8 the land value. You take 50 percent of that. If they were to  
9 use the linkage formula, \$45 versus \$200 plus, and that's just  
10 an example that I'm making up on the fly, the differential  
11 could be even more but that's the magnitude of the difference.

12 COMMISSIONER HOOD: Madam Chair, I think you bring  
13 up a good point. I guess the question would be what do we do  
14 without the land. Also I read where they are saying that if we  
15 don't -- one of the reasons it's like this is this is if we --  
16 this is a good time to put it out there and see what happens.

17 How can we not sacrifice that end of it while the  
18 envelope is still open as opposed to also deal with the concern  
19 you have because if money is for five projects and we get one,  
20 then obviously we have some problems.

21 I really don't know how to proceed but I do know  
22 that I would like to see us proceed as fast as possible but  
23 also be able to deal with that issue that you raise.

24 CHAIRPERSON MITTEN: Well, if you want to pick a  
25 number, you could pick 200. I mean, Mr. Parsons had me earlier

1 and you could pick \$200 per square foot of residential density  
2 in terms of getting something built.

3 COMMISSIONER HOOD: I would yield that number to  
4 those who may be more in tune.

5 CHAIRPERSON MITTEN: Well, that's why I said I  
6 would recommend sending it back for more work.

7 COMMISSIONER PARSONS: I would agree but what other  
8 aspects of the combined lot? Is it just this one?

9 CHAIRPERSON MITTEN: You mean what other aspects  
10 are of concern?

11 COMMISSIONER PARSONS: Of those provisions if we  
12 were to combine lots in housing priorities A and B.

13 CHAIRPERSON MITTEN: That was removed. The Office  
14 of Planning withdrew that.

15 COMMISSIONER PARSONS: There are some other aspects  
16 of this. Right? Is that the only part of it?

17 CHAIRPERSON MITTEN: Let's see.

18 COMMISSIONER PARSONS: I guess you're right.  
19 Combined lot was the covenant, the escrow account, and a five-  
20 year issue. That's it.

21 CHAIRPERSON MITTEN: The timing, the five plus --

22 COMMISSIONER PARSONS: No issue with the covenant.  
23 Right? That's to be done.

24 CHAIRPERSON MITTEN: Yeah. I mean --

25 COMMISSIONER PARSONS: How many years.

1 CHAIRPERSON MITTEN: How much money. Well, how  
2 much money and how many years.

3 COMMISSIONER PARSONS: I think Andy makes a  
4 convincing argument to me that two years is too little so I'm  
5 headed for a compromise.

6 CHAIRPERSON MITTEN: Well, I think in some measures  
7 it's a function of how much money is at stake, too. I would  
8 feel more comfortable with more time if at the end of waiting  
9 there was a sufficient amount of money so that the people who  
10 were in charge of the Trust Fund would say, "We've got the  
11 money and we're going. We're going to build it right now."  
12 Instead of saying, "We've got to accumulate more money from a  
13 variety of projects." I would be more flexible on the timing  
14 if there was more money in escrow.

15 COMMISSIONER PARSONS: So 200 bucks and three is  
16 okay.

17 CHAIRPERSON MITTEN: 200 bucks and five is okay.

18 COMMISSIONER PARSONS: Oh, okay.

19 CHAIRPERSON MITTEN: I mean, I agree with Anthony  
20 that we should let people who are more expert in these matters  
21 in terms of what things cost.

22 COMMISSIONER HOOD: Actually, Madam Chair, I was  
23 referring to -- I was following your lead on that actually but  
24 maybe you're right. If you're not the expert, then maybe we  
25 need to go to someone else.

1 CHAIRPERSON MITTEN: I'm an expert in certain  
2 things but not that.

3 COMMISSIONER PARSONS: All right. Have we beat  
4 this one to death?

5 CHAIRPERSON MITTEN: Yes, I think it's time to get  
6 off the horse.

7 COMMISSIONER FRANKLIN: That reminds me, Madam  
8 Chair, of a professor who in law school who asked me to opine  
9 on something involving airline operations. I began to talk and  
10 he said, "Mr. Franklin, do you know anything at all about  
11 airline operations?" I said, "No." He said, "Neither do I so  
12 let's speak freely."

13 CHAIRPERSON MITTEN: So do we have a consensus that  
14 we would like the Office of Planning to do a little bit more  
15 work on the modifications to the combined lot provisions of the  
16 DDD that would address the concerns that we have about getting  
17 an adequate amount of money in escrow for the Housing Trust  
18 Fund?

19 COMMISSIONER FRANKLIN: I think so, yes.

20 COMMISSIONER PARSONS: We do.

21 CHAIRPERSON MITTEN: All right.

22 COMMISSIONER FRANKLIN: I'd like to make two other  
23 suggestions that are in the nature of kind of tweaking of the  
24 language before us and that some consideration might be given  
25 by the Office of Planning and this has to do with the timing

1 issue whether in 1708.1.F.iv we might ask for the issuance of a  
2 building permit relevant to a receiving residential project  
3 rather than a certificate of occupancy. I think that does, in  
4 effect, extend a little bit of the time and then we can --

5 CHAIRPERSON MITTEN: Yes.

6 COMMISSIONER FRANKLIN: Then I would like to  
7 suggest that the word diligent be put before good faith to give  
8 it a little bit more oomph. I agree that I think we really  
9 don't know quite how -- at least, I detect we don't know how to  
10 value the escrow amount.

11 CHAIRPERSON MITTEN: And also since we're going to  
12 be spending a little bit more time on this, in other words,  
13 there was concern raised by a number of individuals, and I'm  
14 sure that the Commission share the concern, about the Housing  
15 Production Trust Fund. Given that it's been  
16 relatively dormant and it's now been funded with a significant  
17 amount of money, the more we know about it and can be  
18 comfortable with who is on the board or however it's structured  
19 and how is this money -- what is the structure in place to make  
20 sure this money gets spent, we could be more comfortable about  
21 relying on the Trust Fund as the place where the money should  
22 ultimately end up if the escrow has to be drawn.

23 Anything else on the combined lot provisions of the  
24 DDD?

25 I wanted to call out a couple of issues, and we

1 talked about one of them that had been raised in the context of  
2 the hearing and the items that were submitted for the record.  
3 One is the notion of inclusionary zoning. Mr. Franklin has  
4 already suggested that there are some aspects of it that make  
5 him uncomfortable.

6 I think given that it's really become much more  
7 common, I think we owe it to the citizens of the District and  
8 given the fact that housing affordability is becoming a much  
9 more acute problem, I think we need to follow up on that as an  
10 item.

11 COMMISSIONER FRANKLIN: Could I interrupt at this  
12 point on that item?

13 CHAIRPERSON MITTEN: Yes.

14 COMMISSIONER FRANKLIN: I think there is something  
15 in view of the housing production trust fund that is worthy of  
16 exploration. I'm sure Mr. Altman is aware of the old UDAG  
17 program at HUD which I think is conceptually one of the best  
18 programs that ever came down the pike in terms of stimulating  
19 housing and other economic development projects.

20 The Housing Production Trust Fund, and I guess I  
21 haven't read everything I should read about the nature of it,  
22 and maybe it hasn't all been scoped out, but that Trust Fund  
23 could make favorable loans to developers to get them to produce  
24 housing that was at a certain economic level and have the  
25 payback terms arranged so that it's a softer loan than the

1 market would provide.

2 You can start getting some moderate income housing  
3 in that fashion. The District doesn't have to become a  
4 developer but it has to sort of pick up on -- there's an  
5 enormous amount of experience under the UDAG program where  
6 loans were made that were very, very successful and the money  
7 got replenished through the success of these projects. I hope  
8 they would look at that as a model.

9 CHAIRPERSON MITTEN: Thank you.

10 Mr. Parsons just reminds me that we need to vote to  
11 reopen the record on this case in order to get these additional  
12 materials from the Office of Planning. I would move that we  
13 open the record to receive that information.

14 COMMISSIONER PARSONS: Second.

15 CHAIRPERSON MITTEN: It's been moved and seconded  
16 to reopen the record on the issue of combined lot development  
17 related to Case No. 00-30T. All those in favor, please say  
18 aye.

19 ALL: Aye.

20 CHAIRPERSON MITTEN: Those opposed, please say no.

21 Mr. Bastida.

22 MR. BASTIDA: The staff will record the vote four  
23 to zero, Ms. Mitten moving and Mr. Parsons seconded, Mr. Hood  
24 and Mr. Franklin voting in the affirmative, Mr. Holman not  
25 present or voting.

1 CHAIRPERSON MITTEN: Okay. Thank you.

2 Another issue that had been raised, and I think  
3 this was raised by the Committee of 100 and touched on by  
4 others, is the notion of development guidelines for Mount  
5 Vernon Triangle which not unlike the issue in the Buzzard Point  
6 area is more -- I mean, things are happening so we need to get  
7 on that before events take over, what we want to control.

8 Then there were a few more on the side of  
9 miscellaneous requests. One was from Robin Kaplan on behalf of  
10 Peter Schwartz regarding eliminating R-5-E from the building  
11 height restrictions that are in 1701.7.

12 Really 17.01.7 is about easing height restrictions  
13 but it specifies certain zones in which that relief is not  
14 permitted and R-5-E is one of them. I think that is worth  
15 examining in the context of what we're talking about.

16 Then there was also -- I think we heard this at the  
17 Woodies case as well as in the context of this case which is  
18 the idea of expanding the housing priority area C west of 9th  
19 Street which we've done once and we've just set down a case to  
20 do it again. I think we should think of that in a more -- we  
21 should have a broader view of that given that we've already  
22 broken the barrier at 9th Street.

23 I would just ask that the Office of Planning would  
24 follow up on those and maybe give us your thoughts at our next  
25 public meeting about which of those you feel we could go

1 forward with sooner as opposed to later.

2 Any other issues?

3 CHAIRPERSON MITTEN: Ms. McCarthy, if you wanted to  
4 have this issue revisited of the combined lot provisions at our  
5 next public meeting, I think the same deadline of the 7th that  
6 Mr. Bastida gave to Mr. Moore from Medstar would be helpful if  
7 we could get it by that date and then we could have sufficient  
8 time to take a look at it.

9 MS. MCCARTHY: That would be fine.

10 CHAIRPERSON MITTEN: Thank you.

11 Anything else? Then this public meeting  
12 is --

13 MR. ALTMAN: I would just ask -- I'm sorry. I  
14 would ask a question on the two items that you were discussing  
15 that I guess you voted on. I guess I missed one of the votes.  
16 You voted on the additional density and you voted on the  
17 recreation space requirement?

18 CHAIRPERSON MITTEN: Right.

19 MR. ALTMAN: Were those approved to move those  
20 forward now and then advisement for clarity. Then what we're  
21 bringing back is discussion of combined lot.

22 CHAIRPERSON MITTEN: I'm glad you --

23 MR. ALTMAN: The only reason I ask is I know there  
24 were a number of housing developers, for example, that had  
25 projects in the pipeline that were looking one way or the other

1 for guidance and whether they should be going to the BZA or  
2 not.

3 CHAIRPERSON MITTEN: Right.

4 MR. ALTMAN: We're pressing for time and I wanted  
5 to check with you.

6 CHAIRPERSON MITTEN: Okay. I'm glad you raised  
7 that because there was another issue that we wanted you to  
8 revisit related to the recreational space even though we did  
9 dispatch with part of that, which is we voted to reduce the  
10 residential recreation space requirement to five percent in the  
11 DDD across the board.

12 And then what we were interested in is finding out  
13 more about to the extent that there is going to be a large  
14 public park and so on, we need some more -- I guess we want to  
15 know if that is farther along than just a concept. The same  
16 would go for the Open Space Trust Fund which is right now all  
17 conceptual.

18 I guess we are open to the idea that there would be  
19 a buy-out provision from even the five percent level but we are  
20 uncomfortable about going forward with that at this point given  
21 that we don't know where it would be targeted and the trust  
22 fund is not in place for that so there would be follow up  
23 there. The other is the vote was taken to eliminate the  
24 density requirements.

25 MR. ALTMAN: The notion, so I understand, though,

1 is that you approved going from 15 percent to five percent.

2 CHAIRPERSON MITTEN: Yes.

3 MR. ALTMAN: What you're saying is that is a  
4 consent policy, a consensus. Another question is if you want  
5 to go from five percent to even lower, then that's when this  
6 idea of the Trust Fund might kick in?

7 CHAIRPERSON MITTEN: There would be a buy-out in  
8 order to do that.

9 MR. ALTMAN: A buy-out would kick in below that.

10 CHAIRPERSON MITTEN: Right.

11 MR. ALTMAN: I understand.

12 CHAIRPERSON MITTEN: I think we have been given  
13 indications that there will continue to be cases before the BZA  
14 of people trying to get out of the -- you know, get below the  
15 five percent rec. space provision which is why if we get a buy-  
16 out provision in place, it becomes much more transactional  
17 instead of going through that lengthy process.

18 Then the other issue that I'm reminded of that came  
19 up is I guess we would like an examination of the rec. space  
20 requirements in residential -- well, not in residential zones  
21 but mixed-use zones citywide because given that there is some  
22 at metro stations and so on. If they are too high, then they  
23 are too high.

24 Anything else? Anybody else? This public meeting  
25 is adjourned.

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(Whereupon, at 4:47 p.m. the meeting was  
adjourned.)