

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

THURSDAY

OCTOBER 21, 2010

+ + + + +

The Public Hearing of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Konrad Schlater, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

KONRAD SCHLATER, Chairman
PETER MAY, Commissioner (NPS)
GREG SELFRIDGE, Commissioner
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ALAN BERGSTEIN, General Counsel

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO. null

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
ART RODGERS
JOEL LAWSON

The transcript constitutes the minutes from the Public Hearing held on October 21, 2010.

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

6:36 p.m.

VICE CHAIRMAN SCHLATER: Good evening, ladies and gentlemen. This is a public hearing of the Zoning Commission for the District of Columbia for Thursday, October 21, 2010.

My name is Konrad Schlater. Joining me tonight are Commissioners Selfridge, May and Turnbull.

We are also joined by the Office of Zoning Staff, Sharon Schellin, Alan Bergstein from the Office of Attorney General, Jennifer Steingasser from the Office of Planning, Mr. Rodgers from the Office of Planning and Mr. Lawson from the Office of Planning.

This proceeding is recorded by a court reporter and is also webcast live. I hope Chairman Hood is watching us somewhere out there. Accordingly, we must ask you to refrain for any disruptive noises or actions in the hearing room.

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1 The subject of this evening's
2 hearing is Zoning Commission Case Number 04-
3 334D. This is a request by the Office of
4 Planning for Text Amendments to the Zoning
5 Regulations to allow an exception to the
6 Inclusionary Zoning requirements for Federal
7 and District funded Affordable Housing
8 Developments.

9 Notice of today's hearing was
10 published in the D.C. Register on August 6,
11 2010 and copies of that announcement are
12 available to my left on the wall near the
13 door.

14 This hearing will be conducted in
15 accordance with provisions of 11 DCMR Section
16 3021 as follows:

17 First, preliminary matters;

18 Second, presentation by the Office
19 of Planning;

20 Reports of other government
21 agencies;

22 Fourth, report of ANCs;

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1 Fifth, organizations and persons in
2 support;

3 Sixth, organizations and persons in
4 opposition.

5 The following time constraints will
6 be maintained during this hearing:
7 Organizations five minutes, individuals three
8 minutes. The Commission intends to adhere to
9 the time limits as strictly as possible in
10 order to hear the case in a reasonable period
11 of time. The Commission reserves the rights
12 to change the time limits for presentations if
13 necessary and notes that no time shall be
14 ceded.

15 All persons appearing before the
16 Commission are to fill out two witness cards.

17 These cards are located to my left on the
18 table near the door. Upon coming forward to
19 speak to the Commission, please give both
20 cards to the reporter sitting to my right
21 before taking a seat at the table.

22 When presenting information to the

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1 Commission please turn on and speak into the
2 microphone first stating your name and home
3 address. When you are finished speaking,
4 please turn your microphone off so that your
5 microphone is no longer picking up sound or
6 background noise.

7 The decision of the Commission in
8 this case must be based exclusively on the
9 public record. To avoid any appearance to the
10 contrary, the Commission requests that persons
11 present not engage the members of the
12 Commission in conversation during any recess
13 or at anytime.

14 The staff will be available
15 throughout the hearing to discuss procedural
16 questions.

17 Please turn off all beepers and
18 cell phones at this time so as not to disrupt
19 these proceedings.

20 At this time, the Commission will
21 consider any preliminary matters. Does the
22 staff have any preliminary matters?

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1 MS. SCHELLIN: No, sir.

2 VICE CHAIRMAN SCHLATER: I guess
3 we'll go to the Office of Planning report.

4 CHAIRMAN HOOD: Okay. We will turn
5 to the Office of Planning.

6 MR. RODGERS: Good evening, members
7 of the Zoning Commission. My name is Art
8 Rodgers. I am the Senior Housing Planner for
9 the D.C. Office of Planning. I, along with my
10 colleague Steve Cochran wrote OP's reports to
11 the Zoning Commission regarding the
12 introduction of Inclusionary Zoning.

13 I'm here tonight to present OP's
14 recommendation to the Zoning Commission
15 regarding Case 04-33D, a Text Amendment to
16 Exempt from IZ those development projects with
17 affordability requirements originating from
18 Federal or local funding sources.

19 OP introduced the emergency
20 amendment at DHCD's request to exempt projects
21 where at least 80 percent of the units were
22 affordable at IZ target incomes. This was

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1 because of conflicts between DC's IZ program
2 and other affordable housing programs that
3 were threatening the financing of several
4 projects in DHCD's pipeline.

5 It is important to state that DHCD
6 is currently considering financing in projects
7 totaling over 2200 affordable units.

8 Between setdown and the hearing
9 report, OP worked with DHCD to refine the
10 language provided to the Commission in OP's
11 hearing report and based on continuing
12 discussions with DHCD there are further
13 substantive amendments which DHCD feels may be
14 necessary to fully address the conflicts and
15 the complexity between multiple affordable
16 housing and neighborhood revitalization
17 programs.

18 OP and DHCD asked the Commission to
19 extend the current emergency at this time with
20 the edits included in OP's report. There are
21 two central problems the amendments try to
22 resolve.

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1 First, there is a conflict between
2 D.C.'s Inclusionary Zoning program which
3 requires the leases of households occupying IZ
4 units to be terminated if their incomes exceed
5 the IZ income limits. This conflicts with
6 Federal and financing subsidies which
7 specifically require that those households may
8 remain as long as their income does not exceed
9 140 percent of the qualifying income limit.

10 This conflict threatens investor's
11 willingness to invest in the tax credits and
12 potentially other projects.

13 Second, there is a significant
14 overall complexity of administering multiple
15 affordability requirements that may exist on a
16 single project. It is not unheard of for
17 three to four different subsidies to be used
18 on a single project. IZ should not further
19 and unnecessarily complicate affordable
20 housing development that provide comparable
21 affordability.

22 The emergency amendments with the

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1 technical corrections achieve several
2 important things that this time.

3 First and foremost, they exempt
4 from the District IZ program Federally and
5 locally funded projects that achieve
6 comparable affordability without burdening
7 them with additional administrative
8 regulation.

9 The amendments permit those
10 Federally or local financed projects to use
11 their own definition of low and moderate
12 income households. And because these programs
13 have their own target incomes, they also
14 require their own rent and pricing formulas,
15 and therefore Section 2602.3(f)(ii) would
16 cause conflicts and is no longer recommended.

17 The technical adjustments in
18 Section 2502.3(f)(iii) are necessary for
19 proper enforcement by the Zoning
20 Administrator.

21 Finally, Sections 2604.4 and 2604.5
22 permit a project to not only use the IZ bonus

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1 density, but the zoning modifications
2 necessary to achieve that bonus density as
3 well, as long as the percent of units set
4 aside for the life of the project under the
5 Federal local programs equal the percent that
6 IZ would have required.

7 I note Director Leila Edmonds of
8 DHCD would like to testify tonight. I don't
9 see her in the room, but I do see Gilles
10 Stucker of DHCD, who at this time may be able
11 to answer any questions the Commissioners
12 might have.

13 That concludes my comments. And
14 I'd be happy to try to answer any questions
15 the Commissioners may have as well.

16 VICE CHAIRMAN SCHLATER: Thank you
17 Mr. Rodgers.

18 I think we should have the DHCD
19 representative Mr. Stucker come up now. That
20 way he can give his presentation and then we
21 can all ask questions collectively at the same
22 time.

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1 Come on up, Mr. Stucker.

2 MR. STUCKER: Good evening, Mr.
3 Chairman.

4 The Director is moment away from
5 the Hearing Room. Is it possible to reorder
6 the witnesses for the moment, or perhaps take
7 a brief recess just based on her arriving?

8 COMMISSIONER MAY: Mr. Chairman,
9 I'd be happy to ask questions of the Office of
10 Planning that don't require the --

11 VICE CHAIRMAN SCHLATER: Okay.
12 What we'll do is we'll ask questions of the
13 Office of Planning now, give some time for
14 Director Edmonds to come and we'll get to
15 Director Edmonds after questioning the Office
16 of Planning.

17 MR. STUCKER: Great. Thank you
18 very much.

19 VICE CHAIRMAN SCHLATER:
20 Commissioner May?

21 COMMISSIONER MAY: Yes. The first
22 question I have is I'm a little confused about

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1 the sort of sequence of editing here, the way
2 it's being done. You know, I have the text as
3 it was originally advertised and the notice.
4 And then I have in your report the text which
5 shows essentially the same advertised text but
6 then further edits to it. Are all of those
7 further edits driven by DHCD's comments?

8 MR. RODGERS: A majority of them
9 are. Some of them are technical amendments
10 that OP recommended as well. The ones that OP
11 were particularly interested in were, for
12 instance, the ability for the Zoning
13 Administrator to allow the exemption and make
14 sure the exemption was reasonable given
15 covenants placed on the land. And then also
16 there were other modifications that came in.

17 We realized that 2602.4 mentioned
18 utilizing bonus density, but we thought we
19 should clarify that it's not only just the
20 bonus density, but it's the lot and occupant
21 lot occupancy and height adjustments that are
22 needed to achieve that bonus density.

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1 And then finally we thought that in
2 2504.5 we needed to clarify the intent of that
3 section. We thought affordability levels was
4 vague, and also greater than. You could look
5 at that as requiring greater affordability in
6 percent of units or as in greater
7 affordability as in lower incomes. And so we
8 thought it was important to clarify that
9 section and state that essentially if the
10 exempted project was using the bonus density,
11 they could use the Federal income limits for
12 the period of time that the control periods
13 for those programs were in place. And then if
14 the Federal programs expired and were lower
15 than the IZ requirements, then the owner of
16 the property could allow the units to rise up
17 to what the IZ was requiring.

18 COMMISSIONER MAY: Okay. So that
19 covers essentially -- those two are clearer to
20 me, 2604.4 and 2604.5. And I assume that that
21 wording was worked out with the OAG? Have you
22 been consulted on those particular changes?

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1 MR. BERGSTEIN: Yes.

2 COMMISSIONER MAY: Okay. And then
3 so going back to some of the other what I
4 would regard as more substantive and less sort
5 of clarification, which is the changes to
6 2502.3(f)(i), the 80 percent, dropping the 80
7 percent requirement. That was something that
8 was done at DHCD's request?

9 MR. RODGERS: This was something
10 that DHCD and OP agreed to.

11 COMMISSIONER MAY: Okay. And so
12 explain to me why that's necessary?

13 MR. RODGERS: When the emergency
14 setdown was placed, there was the need to:
15 (1) Make sure that the projects in the
16 pipeline were not unduly held up. There were,
17 I believe, at least seven or eight projects
18 that could have been held up by this. And so
19 that was the initial need. And the vast
20 majority of those projects would have met this
21 80 percent test.

22 After the emergency setdown was

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1 placed, we continued our discussions with DHCD
2 and realized that there was not only the
3 conflicts, but there was the complexity of, as
4 I said, the multiple affordability programs
5 and that if the goal of the District as a
6 whole was to achieve affordability in a
7 project, that as long as these units were
8 meeting IZ's minimum and they had their own
9 procedures and processes and enforcements,
10 that there was no sense in unduly burdening
11 them with additional IZ requirements.

12 COMMISSIONER MAY: Okay. It's a
13 little hard to wrap my brain around how this
14 is actually going to work. Can you try to
15 explain this in terms of a concrete example
16 of, you know, a 100 unit development and how
17 the units might be reserved and what could
18 happen?

19 MR. RODGERS: Sure. So I'll do my
20 best, but I think the Director of DHCD would
21 probably be better suited.

22 So, for instance, if there was a

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1 100 unit project and it had affordable housing
2 that exceeded the sort of 8 to maybe 122
3 percent of the units that IZ would have
4 required, then it would meet the test and be
5 exempt from the full IZ program which includes
6 the Inclusionary Zoning Implementation Act of
7 2006 and the Administrative Regulations.

8 Instead of the IZ regulations, it
9 would be using the Federal or local program
10 requirements, whether for instance there are
11 Community Development Block Grant money,
12 there's the local housing production trust
13 fund money, there are the low income housing
14 tax credits; all these have their own
15 requirements for maintaining the affordability
16 of the projects while those controls are in
17 place. And so instead of adding on the IZ
18 requirements, those developments that met that
19 minimum or the IZ requirement would be using,
20 as I said, the Federal and local requirements.

21 COMMISSIONER MAY: Okay. So if a
22 unit drops out, because under some of those

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1 Federal programs you don't -- the
2 affordability does not have to be maintained
3 to necessarily the same extent as under IZ, I
4 mean what happens in those circumstance? Are
5 we at risk of ever dropping below the minimum
6 IZ requirements in these projects?

7 MR. RODGERS: Yes. The language as
8 it is now if they're not using the bonus
9 density, and I think the Zoning Commission's
10 intent with the life of the project would
11 certain tie to the bonus density. Because the
12 bonus density was there for the life of the
13 project. And going back to the original
14 hearings the Zoning Commission thought that
15 because the bonus density was there for the
16 life of the project, then the affordability
17 should be there for the life of the project.

18 So for those projects that are not
19 using the bonus density, yes, the
20 affordability controls would expire after
21 their control periods. And those vary
22 generally between 15 to 30 and some of the

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1 local programs have 50 year requirements.

2 If they decide to use the bonus
3 density, then the regulations do require that
4 they set those units aside for the life of the
5 project to meet the IZ requirement.

6 COMMISSIONER MAY: Okay. So
7 regardless of whatever Federal requirements
8 might drop out, they're still going to wind up
9 having to maintain that affordability for the
10 life of the project?

11 MR. RODGERS: Yes when they use the
12 bonus density.

13 COMMISSIONER MAY: Right. Okay.
14 All right. Let's move on to the next issue,
15 which is (ii) paragraph following.

16 Why did you feel it was necessary
17 to strike that paragraph entirely?

18 MR. RODGERS: There are -- well
19 DHCD administers at least 11 different Federal
20 and local programs. Each of them have
21 slightly different definitions of low or
22 moderate income. In some cases those, such as

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1 Community Development Block Grants,
2 definitions align fairly closely with IZ. In
3 other cases such as low income tax credits or
4 home money, they don't match up. And
5 therefore if those programs we're targeting
6 have different incomes than IZ, they had their
7 own pricing whether it was rent or for sale to
8 make sure that those units would be
9 affordable; they had their own pricing
10 mechanisms.

11 COMMISSIONER MAY: So this has to
12 be struck because --

13 MR. RODGERS: Because if we were
14 applying the IZ pricing schedule, it might
15 conflict with the pricing of the Federal and
16 local program.

17 COMMISSIONER MAY: Well, I mean,
18 conflict or be more restrictive?

19 MR. RODGERS: It will depend on the
20 project. I mean, as I said, there are units
21 in Federal and local programs targeted at --

22 COMMISSIONER MAY: Well, is there

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1 anything in the Federal programs that prevents
2 you from having more restrictive requirements?

3 MR. RODGERS: That's a question I'd
4 have to defer to DHCD.

5 COMMISSIONER MAY: Okay. Well, I
6 think I'd want to know that because I mean if
7 it's a more restrictive, I'm not sure that
8 there really is a conflict.

9 I didn't see it noted in your
10 markup, but on paragraph (iii) the duration on
11 for sale units was changed from 15 years to
12 ten. Why was that?

13 MR. RODGERS: Again, I think I'll
14 have to defer to DHCD. I believe they had
15 left out one of the programs in the first
16 round.

17 COMMISSIONER MAY: It was in your
18 text on the next page, on page 3. It still
19 refers to it as 15 years.

20 MR. RODGERS: That's just an
21 oversight.

22 COMMISSIONER MAY: Okay. So, that

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1 should be ten?

2 MR. RODGERS: Yes, it should be
3 ten.

4 COMMISSIONER MAY: Okay. And
5 we'll, I guess, wait for DHCD to explain why
6 it's ten not 15 and to elaborate on those
7 other questions I've raised.

8 I think that's it for me for right
9 now.

10 VICE CHAIRMAN SCHLATER: Any other
11 questions for OP? I've got a couple, just to
12 keep us going.

13 I have a question about 2604.5, and
14 this speaks to the provision which it says
15 that after the control period for these
16 Federal programs is up, IZ would only apply if
17 the bonus density is used. I think I'm
18 reading it correctly, and that's what it says.

19 MR. RODGERS: Yes. If the Federal
20 programs are targeting higher incomes, then
21 the Federal programs have to be in place for
22 the life of the project. If the Federal

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1 programs at targeting lower incomes, then
2 after they expire those units could rise up
3 from, let's say, 30 percent of AMI to a unit
4 that is at 50 percent of AMI under the IZ
5 requirements.

6 VICE CHAIRMAN SCHLATER: So my
7 understanding is that if an affordable housing
8 project does not use this bonus density,
9 that's federally funded. So you have a
10 federally funded affordable housing project
11 that does not use the bonus density. Will
12 they have affordability restrictions after the
13 federal control period?

14 MR. RODGERS: No.

15 VICE CHAIRMAN SCHLATER: I don't
16 understand how that fits into this overall
17 construct of conflicts between IZ and these
18 Federal funding programs.

19 MR. RODGERS: I will have to defer
20 to DHCD on that. I don't know enough about
21 the ins and outs of the Federal programs.

22 VICE CHAIRMAN SCHLATER: Okay. Now

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1 if you do utilize the bonus density for a for
2 sale project, there would be a covenant that
3 would be placed over the project for the life
4 of the project at that point and not just this
5 ten year period?

6 MR. RODGERS: Yes, if they're using
7 the bonus density.

8 VICE CHAIRMAN SCHLATER: Is that a
9 correct understanding? Okay.

10 And then one other question I have
11 is if it's a District funded -- I understand
12 why we have conflicts between the Federal, you
13 know you really can't do anything about low
14 income housing tax credit requirements or CBG
15 requirements. Those aren't going to change
16 just because there's a conflict with the
17 District's IZ program.

18 MR. RODGERS: Yes.

19 VICE CHAIRMAN SCHLATER: But I feel
20 like I don't know why this is broadly applied
21 to both District funded and Federal funded
22 projects.

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1 MR. RODGERS: Yes. Again, I should
2 defer to DHCD. I think Director Edmonds could
3 explain the challenges better than I could.

4 VICE CHAIRMAN SCHLATER: Okay. I
5 don't have any further questions for the
6 Office of Planning. So I'm going to look to
7 Mr. Stucker. Would you like to give your
8 presentation now, or would you like to wait
9 until after the testimony of the individuals
10 who are testifying here today? We have about
11 four people signed up to testify.

12 Oh, turn on your microphone,
13 please.

14 MR. STUCKER: If we could defer
15 until after the other witnesses, that would be
16 great.

17 VICE CHAIRMAN SCHLATER: I don't
18 think that's a problem. Thank you very much.

19 MR. STUCKER: Thank you.

20 VICE CHAIRMAN SCHLATER: So I think
21 now we're going to move -- well, we've got
22 reports of other government agencies. I don't

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1 think we have anybody besides DHCD and OP
2 here.

3 Reports for ANCs. We haven't
4 received any reports. Is there anybody here
5 representing an ANC in the audience? Not
6 seeing any, we would go to the organizations
7 and persons in support.

8 Are there any persons in support in
9 the audience? I don't see any signed up.
10 Okay.

11 Moving on to organizations and
12 persons in opposition, I've got four people
13 listed: Chad Baldwin, Elinor Hart, Ed Lazere
14 and Jim Gray. If you could all come up now.

15 MS. SCHELLIN: Would you hand your
16 testimony to me, please, and your cards to the
17 Court Reporter.

18 VICE CHAIRMAN SCHLATER: Welcome.
19 Thank you for coming out tonight.

20 I think we'll start with three
21 minutes for Mr. Baldwin.

22 MR. BALDWIN: Thank you.

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1 My name is Tad Baldwin. I reside at
2 3507 Morrison Street Northwest.

3 And thank you for the opportunity
4 to testify in opposition to portions of the
5 proposed amendment to the IZ requirements.

6 I worked with the Campaign for
7 Mandatory Inclusionary Zoning Technical
8 Committee for seven years, and with a similar
9 program in Montgomery County for 30 years as
10 an affordable housing producer and a
11 financier.

12 My main points are two. That only
13 the Federal funding source be a reason for a
14 temporary exemption from the IZ requirements.

15 I do not think there is a conflict between
16 the D.C. rules and IZ requirements.

17 Secondly, that even in the Federal
18 funding case, the IZ requirements commence
19 after the Federal restrictions end, and in
20 most cases after 30 years. And these two
21 points parallel the comments submitted in
22 writing by Cheryl Cort of the Coalition for

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1 Smarter Growth, who was unable to be here
2 tonight.

3 The thrust of the IZ legislation
4 was to apply the requirements as broadly as
5 possible, and the text amendment as currently
6 drafted permits affordable housing developers
7 using local governmental funds to have a far
8 shorter affordable requirement than those
9 required of developers reliant upon strictly
10 private financing.

11 I appreciate the amendments curing
12 of the problem caused by the projects
13 utilizing federal tax credit. I was a long
14 time President and now Treasurer of a
15 nonprofit housing group finishing preliminary
16 design and beginning the process of zoning
17 appeals for a 50 unit affordable rental
18 project at R and 7th Street using both federal
19 tax credits and D.C. funding.

20 Thank you.

21 VICE CHAIRMAN SCHLATER: Thank you,
22 Mr. Baldwin.

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1 We'll move on to Ms. Hart for three
2 minutes.

3 MS. HART: Good evening.

4 I'm going to depart quite a bit
5 from my written testimony. If it is true that
6 the IZ requirements kick in after the Federal
7 control ends, that is a good thing and I think
8 it really should. But I do not think that it
9 should be the choice of the developer whether
10 to participate in Inclusionary Zoning. If we
11 start allowing developers to opt out for
12 certain reasons, we won't have an Inclusionary
13 Zoning policy.

14 The Office of Planning said we
15 should exempt projects that exceed exclusionary
16 zoning. There is no way that a project that
17 does not have permanent affordability can
18 match the requirements of Inclusionary Zoning.

19 One of the purposes of creating
20 housing is to maintain the city's stock of
21 affordable housing. It's not just to keep
22 doing serial building, which we're doing. And

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1 the gap between affordable housing the city
2 needs and that available is huge. And it's
3 growing every day. And letting people opt out
4 from Inclusionary Zoning would just make the
5 gap even worse. And needless to say, I'm
6 opposed to the amendment.

7 VICE CHAIRMAN SCHLATER: Thank you
8 very much, Ms. Hart.

9 Next we have Mr. Ed Lazere from the
10 D.C. Fiscal Policy Institute for five minutes.

11 MR. LAZERE: Good evening. Thank
12 you for the opportunity to testify. My name
13 is Ed Lazere, and I'm the Director of the D.C.
14 Fiscal Policy Institute. We engage in research
15 and public education on tax and budget issues
16 in the District of Columbia with a focus on
17 issues that affect low and moderate income
18 residents.

19 And I'm here to tonight to oppose
20 the proposed tax amendment, although I
21 understand that it addresses a serious issue I
22 believe that this amendment would undermine

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1 the goal of Inclusionary Zoning of creating
2 permanent affordable housing. I believe that
3 the text amendment can be modified relatively
4 simply following the suggestion that came out
5 with the notice from the Zoning Commission of
6 rather than exempting projects from IZ rules,
7 just exempting them during the control period
8 when the Federal or D.C. program rules apply,
9 and then having IZ rules kick in when those
10 control periods expire.

11 Inclusionary Zoning I think is a
12 unique and important affordable housing
13 development tool in the District of Columbia
14 in a city that is rapidly gentrifying and has
15 been for a number of years. Ensuring that
16 private market developments includes some
17 affordable housing is really important.

18 I think there's the added benefit
19 that those creating affordable housing in
20 private market developments, creating mixed
21 income housing, allowing those residents to
22 benefit from the amenities that are likely to

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1 come when new market rate housing is
2 developed, improved retail, reduce crime,
3 better schools; all those things it's really
4 important that low and moderate income
5 residents benefit from that as well.

6 I think it was incredibly important
7 and notable that the Zoning Commission choose
8 to make the affordable housing set aside in
9 Inclusionary Zoning projects permanent. And
10 there's certainly important lessons from other
11 communities where the housing was not
12 affordable and on a permanent basis where it
13 ultimately is lost.

14 Maintaining, if anything, less than
15 permanent affordable housing rules are
16 allowed, then all of the benefits from
17 Inclusionary Zoning are ultimately lost. So,
18 we think it was a good decision to maintain
19 permanent affordable housing.

20 The proposed solution to the
21 problem that's been addressed tonight we
22 believe is not to exempt these projects from

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1 Inclusionary Zoning entirely which would
2 indeed create the problem of not having
3 permanent affordable housing. We believe the
4 right option is to take what's currently
5 listed as an option in the text amendment to
6 allow projects to accept the bonus density and
7 then accept the Inclusionary Zoning rules when
8 the Federal or D.C. program rules expire;
9 rather than make that an option, simply make
10 it mandatory that every project that's
11 eligible for inclusionary zoning should be
12 allowed with bonus density. And if there are
13 Federal or D.C. program rules that conflict
14 with Inclusionary Zoning, those would be
15 waived during the life of those controls and
16 that Inclusionary Zoning rules would apply
17 once those control periods end.

18 Thank you for the opportunity to
19 testify.

20 VICE CHAIRMAN SCHLATER: Thank you,
21 Mr. Lazere.

22 Next up is Mr. Jim Gray from NCB

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1 Capital Impact.

2 MR. GRAY: Thank you. My name is
3 Jim Gray, and I live at 1630 Underwood Street
4 Northwest. And I do represent NCB Capital
5 Impact. We are a national nonprofit
6 organization that we were originally based in
7 the District, and we have worked on affordable
8 housing issues in the District for 30 years
9 principally around limited equity
10 cooperatives. But now we are funded by the
11 Ford Foundation to work nationally to promote
12 long term affordability and community
13 stability for local home ownership programs
14 throughout the country.

15 And we commend the Commission for
16 the decision that it made to adopt the
17 Inclusionary Zoning rules in the first place.
18 And we hope that this amendment does not get
19 interpreted or adopted in an overly broad way
20 that will seriously cut back on the
21 effectiveness of the Inclusionary Zoning
22 program.

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1 We are in complete understanding
2 with the Office of Planning and DHCD about the
3 need to modify the provisions so that other
4 affordability restrictions don't cause a
5 problem that keeps worthwhile projects from
6 moving forward. But as some of the other
7 witnesses have said, we feel like the solution
8 that has been proposed is overly broad and
9 that there is -- it would be a big mistake to
10 only continue to apply the Inclusionary Zoning
11 when the developer choose the density bonus.
12 And that it should apply in all cases on a
13 permanent basis. That's really the beauty of
14 the D.C. Inclusionary Zoning rules. And so we
15 hope that the Commission will decide to go
16 with that amendment to the amendment.

17 Thank you.

18 VICE CHAIRMAN SCHLATER: Thank you
19 very much, all of you coming out tonight and
20 testifying before us.

21 Do we have any questions? Mr. May?

22 COMMISSIONER MAY: I have a

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1 question for Mr. Lazere. Your testimony you
2 refer to as an option. Just so I'm perfectly
3 clear on what you refer to as the optional
4 provision: You're talking about 2604.4?

5 MR. LAZERE: Right, that says that
6 developers may still allow to take the bonus
7 density and the IZ rules would apply. It
8 shouldn't be an option.

9 COMMISSIONER MAY: All right. And
10 this is so I understand, and anybody can
11 answer this who has an opinion on this. And
12 this is, I guess, what is in the letter from
13 Cheryl Cort, which would be essentially to
14 take 2604.04 and instead of applying it only
15 when bonus density is involved, that it would
16 apply in all circumstances. And that would
17 fix the entire problem?

18 MR. LAZERE: That's right. Yes. I
19 mean, Inclusionary Zoning gives the bonus
20 density and then has these affordable housing
21 requirements. So, it should maintain that
22 bonus density allowance and maintain the

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1 affordability of --

2 COMMISSIONER MAY: I mean, there
3 isn't always bonus density involved?

4 MS. HART: Well, I think so.

5 MR. LAZERE: I believe it is.

6 COMMISSIONER MAY: If it is an
7 optional thing, why would be written as an
8 option?

9 MR. LAZERE: This text amendment
10 makes it an option for these exempted
11 projects. It doesn't exempt the projects
12 entirely from Inclusionary Zoning so they
13 don't get bonus density and they don't have
14 the permanent affordability restrictions. But
15 it allows them to opt back in if they want to.

16 And we're saying they shouldn't be allowed to
17 opt back in.

18 MS. HART: Currently Inclusionary
19 Zoning is mandatory.

20 COMMISSIONER MAY: No, I understand
21 that. It's whether there's bonus density
22 involved. And there may or may not be bonus

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1 density involved? I mean, I wasn't
2 understanding --

3 VICE CHAIRMAN SCHLATER: My
4 understanding is that you get --

5 COMMISSIONER MAY: You get the
6 bonus, but whether or not you use it is up to
7 you.

8 VICE CHAIRMAN SCHLATER: You always
9 have the requirement of Inclusionary Zoning.

10 COMMISSIONER MAY: Right. Right.

11 VICE CHAIRMAN SCHLATER: So whether
12 or not you use the bonus density.

13 COMMISSIONER MAY: Right. So you
14 may not be utilizing the bonus density?

15 VICE CHAIRMAN SCHLATER: So you may
16 not be utilizing the bonus density, but you're
17 allowed --

18 COMMISSIONER MAY: You're still --
19 right. Okay. I just wanted to understand
20 exactly what's being suggested here.

21 I mean, I would just have a follow-
22 up question for the Office of Planning, which

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1 is would that work? Would it work to simply
2 modify 2604.4 to make it apply in all
3 circumstances? That after the Federal
4 requirements are gone, then IZ would kick back
5 in?

6 MR. RODGERS: I think that that's a
7 question DHCD will need to answer. They're
8 charged with managing and monitoring and
9 enforcing the units long term. So, they would
10 be more familiar with the challenges that
11 might pose.

12 COMMISSIONER MAY: Okay.

13 MR. BERGSTEIN: And, Mr. May, I
14 would actually -- if I was going to do it, I
15 would just get rid of that provision and put
16 it at the top of the exemption in (f) that it
17 would exempt any development fed in a whole or
18 part by Federal District Government for so
19 long as it controls and replace, period. And
20 then get rid of the mention of the control
21 periods in 3 because actually the shorter the
22 control period, the better.

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1 If you have a one year control
2 period, that means it goes into IZ right after
3 that. So it wouldn't matter how long the
4 control periods are in the Federal District
5 program, the exemption simply lasts as long as
6 the Federal control period is in place.

7 COMMISSIONER MAY: Right. So, I
8 mean in essence you agree that this could
9 solve the issue potentially?

10 MR. BERGSTEIN: I wouldn't want to
11 go to whether I agree or not. I'm just saying
12 it's somewhat of a codification issue --

13 COMMISSIONER MAY: Right.

14 MR. BERGSTEIN: -- that I would
15 simply state up front that the exemption
16 exists for so long as the Federal Control
17 periods are in place, then get rid of any
18 reference to what the minimum control periods
19 are because the shorter the control periods,
20 the better it is.

21 COMMISSIONER MAY: Right. That's
22 fine. I understand that. I'm not

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1 understanding everything, but I understand
2 that.

3 All right. That's why I'm asking a
4 lot of questions. I guess I don't have
5 anything further at this moment.

6 VICE CHAIRMAN SCHLATER: Okay.

7 COMMISSIONER TURNBULL: Mr. Chair,
8 I just had one. I think the panel is fairly
9 consistent all the way down that you've just
10 heard, is there any other parts of the
11 language that you're troubled with other than
12 what we've just said as a possible option as a
13 correction?

14 MR. LAZERE: No.

15 COMMISSIONER TURNBULL: I mean,
16 anyone from Mr. Baldwin on down. Okay.

17 So that would seem to satisfy some
18 of your concerns then?

19 MS. HART: Yes.

20 MR. GRAY: Yes.

21 COMMISSIONER TURNBULL: Okay.

22 Thank you.

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1 VICE CHAIRMAN SCHLATER: I'll ask
2 do you have any questions, Mr. Selfridge?

3 Mr. Baldwin, one point you raised
4 which I don't think we've discussed is the
5 Federal funding source be a reason for a
6 temporary exemption from the IZ requirements.

7 You do not think there's a conflict between
8 D.C. rules and IZ requirements? Could you
9 expound a little bit further on that?

10 MR. BALDWIN: Well, my
11 understanding is the D.C. programs in general
12 have ben fairly flexible across the board with
13 all kinds of different requirements depending
14 on location, time and place, who is involved
15 and everything else. And they seem pretty
16 flexible. So, I don't know why D.C.
17 regulations are handcuffing the program in
18 relation to the rules with IZ. And I get a
19 little bit nervous about broad exemptions as
20 throwing things in that I don't understand why
21 they should be there. Because before you know
22 it, something happens that you didn't

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1 understand and yet the purpose of the program
2 is defeated. So, that's basically it.

3 VICE CHAIRMAN SCHLATER: I want to
4 thank this panel for their testimony tonight.
5 It's been very helpful. We appreciate your
6 input in the process.

7 I think we're going to circle back
8 now to reports of other Government agencies.
9 I see that Director Edmonds has arrived. So,
10 I'll ask her to come up, and anybody else who
11 wants to come up with her.

12 Welcome.

13 DIRECTOR EDMONDS: Should I just
14 get started?

15 VICE CHAIRMAN SCHLATER: Are we
16 getting more paper?

17 DIRECTOR EDMONDS: More paper.

18 VICE CHAIRMAN SCHLATER: I feel bad
19 for the trees.

20 DIRECTOR EDMONDS: Yes. I believe
21 we were specifically requested to submit paper
22 copies.

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1 VICE CHAIRMAN SCHLATER: Please
2 proceed with you testimony. Thank you.

3 DIRECTOR EDMONDS: Good evening.

4 We're here today. My name is Leile
5 Finucane Edmonds. I'm the Department of
6 Housing and Community Development's Director
7 here in the District of Columbia. I am joined
8 this evening by Gilles Stucker, who is the
9 Housing Regulation Administrator.

10 And we are here to submit testimony
11 to communicate the role on existing programs
12 of the Department of Housing and Community
13 Development. And just to state our position
14 that while we support the continuation of this
15 emergency as a necessary short term fix, in
16 looking for permanent action we request that
17 the permanent regulations provide a complete
18 and thorough exemption of properties financed,
19 sold, disposed of or subsidized by DHCD.

20 The mission of DHCD is to create
21 and preserve opportunities for affordable
22 housing and economic development, and to

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1 revitalize underserved communities in the
2 District of Columbia. In order to understand
3 DHCD's programs as they relate to Inclusionary
4 Zoning, we believe that Inclusionary Zoning's
5 role is to be used a complimentary tool in
6 projects outside of DHCD's programs.
7 Inclusionary Zoning, in fact, is our latest
8 tool for monitoring and compliance in the
9 Housing Regulation Administration which
10 regulates rental housing through rent control,
11 the Tenant Opportunity To Purchase Act and
12 other regulations that seek to promote or
13 preserve affordable housing.

14 Our Department, DHCD, is organized
15 with an operations branch and a regulatory
16 branch. Compliance of our operations branch
17 is monitored by Office of Program Monitoring.

18 This monitoring covers our development of
19 finance, portfolio management, housing
20 production and trust fund management,
21 residential community services and property
22 acquisitions and dispositions.

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1 Applications of IZ to DHCD's
2 operations will bring the regulatory and
3 operations branches into unnecessary conflict
4 due to varied and often conflicting
5 regulations and require DHCD to exhaust scarce
6 resources in an attempt to effect projects
7 that are already being pursued and monitored
8 within the parameters of DHCD's mission.

9 We submit the following documents
10 to educate you on our mission and
11 accomplishments:

12 A copy of our FY '11 through FY
13 2015 Consolidated Plan as evidence of our role
14 in setting and executing policies and programs
15 to generate affordable housing and community
16 development;

17 Our Performance Reports for FY
18 2009, and;

19 A matrix of some of the funding
20 sources utilized in development finance that
21 DHCD uses to create and preserve affordable
22 housing.

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1 So, we hope that you will take this
2 information into consideration, and we'd like
3 to get it entered into the record. And again,
4 as we support the continuation of this
5 emergency as an emergency, as a necessary
6 short term fix, we look for the permanent
7 action to provide a complete and thorough
8 exemption of the properties financed, sold,
9 disposed of, or subsidized by our Department.

10 VICE CHAIRMAN SCHLATER: Thank you.

11 Is that all your testimony?

12 DIRECTOR EDMONDS: Yes. So, thank
13 you very much. We're happy to answer any
14 questions you might have this evening.

15 VICE CHAIRMAN SCHLATER: Okay. I
16 might kick off the questioning tonight.

17 We've got a couple of issues that I
18 want to cover. First is the existence of the
19 emergency and the extension of the emergency.

20 Second is the issue on the
21 permanent exemption for DHCD projects from IZ.

22 The third I want to talk about is

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1 an issue that's been raised in testimony
2 tonight, which talks about the IZ requirements
3 after the Federal control period expires.
4 Specifically related to developers who don't
5 choose to utilize bonus density.

6 And the fourth is the conflict
7 between District regulations and Inclusionary
8 Zoning, and whether there in fact is a
9 conflict there.

10 So, let's start with the existence
11 of the emergency. The question is we've got
12 120 day emergency, is that correct, Mr.
13 Bergstein?

14 MR. BERGSTEIN: Yes, sir.

15 VICE CHAIRMAN SCHLATER: And there
16 are projects out there clearly that are
17 pursuing Federal sources that are intended to
18 close. Are there still projects out there
19 that haven't closed that are needed for this
20 emergency to stay in place?

21 DIRECTOR EDMONDS: I mean, right
22 now we need the emergency to stay in place for

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1 those projects that are proceeding to close
2 in, as well as others that will come up. We
3 can't know for certain exactly which projects
4 will come up. We're expecting the HFA, the
5 four percent credits that we delegate to them
6 for underwriting, that is done on a rolling
7 basis in terms of applications to the HFA.
8 The nine percent credits that we allocate we
9 expect our next request for proposals to be in
10 the spring of 2011. And so we don't know what
11 will come up next, but we do know that we need
12 to keep the emergency in place for these
13 existing projects. But we feel that there is
14 sufficient time to do an emergency, and then
15 to take permanent action. We think the
16 permanent action should be the total
17 exemption.

18 VICE CHAIRMAN SCHLATER: Okay.

19 Well, let's move on to that. Because I think
20 we do have a process in place that we put in
21 place at the request of DHCD and the Office of
22 Planning to take permanent action before the

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1 emergency expires. So, I think what you're
2 asking for is us to take some time and amend
3 the regulations further specifically relating
4 to this request around the permanent exemption
5 for DHCD projects.

6 Can you talk to me about how this
7 is -- I know this initially came about as
8 conflicts between Federal programs and
9 Inclusionary Zoning. So it seems like it may
10 be a little bit outside of the scope of what
11 we're discussing here. It may be better
12 suited for another text amendment altogether.

13 That would be my gut feeling, but I just want
14 to give you a chance to say why should this be
15 included.

16 DIRECTOR EDMONDS: We just wanted
17 to share the perspective from the agency. We
18 actually, I believe that we're the ones who
19 first were requesting this emergency on behalf
20 of the projects that were going through our
21 process.

22 I think there may have been some

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1 early miscommunication between the agencies in
2 terms of what was intended. What we're trying
3 to achieve is a situation where we can have a
4 rational application, a regulation, certainty
5 for the developers within our program, and a
6 situation where we do not undermine the
7 planning that we do on a five year basis and
8 then come back to on an annual basis for
9 affordable housing programs and policy. We
10 don't undermine that by trying to put a tool
11 in place that is really meant to effect
12 projects that wouldn't have affordable
13 housing, or wouldn't already be under the
14 scheme of affordable housing and community
15 development.

16 We're actually very close to this
17 problem because we are the agency charged with
18 monitoring and compliance under Inclusionary
19 Zoning. So, as the Director of the agency I'm
20 in the rather uncomfortable position of having
21 to have different compliance; people from the
22 regulatory side which is effectively

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1 compliance on regulatory schemes and then the
2 folks who do the compliance on the programs
3 and the financing schemes coming into
4 conflict. And really, the lawyers are the
5 ones who benefit from this and every
6 additional cost that it adds to a project is
7 an additional cost that I then have to find --
8 or not I, but the agency has to find further
9 subsidies to subsidize. So that's really --
10 that was our intention, and I think that what
11 came out was language that was maybe broader
12 and really referred to the Federal and the
13 local resources, but really the intention was
14 very specifically to say that projects that
15 are already happening because we do affordable
16 housing programs, those should not be the ones
17 that are having issues with Inclusionary
18 Zoning. Because Inclusionary Zoning should
19 not have been intended to effect those
20 projects.

21 VICE CHAIRMAN SCHLATER: Okay. The
22 third question is what are the specific

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1 conflicts between District regulations and
2 Inclusionary Zoning?

3 DIRECTOR EDMONDS: Sorry. Can you
4 repeat the question?

5 VICE CHAIRMAN SCHLATER: One of the
6 provisions in the text that's before us, it
7 exempts both Federal and District affordable
8 housing programs from the IZ program.

9 DIRECTOR EDMONDS: Yes.

10 VICE CHAIRMAN SCHLATER: I'm asking
11 what the specific conflicts are between the
12 District programs and Inclusionary Zoning that
13 can't be worked out.

14 DIRECTOR EDMONDS: Well, the
15 specific things that came up that led to this
16 were around things like trying to designate
17 specific units versus floating units, the
18 tenant income and eligibilites and what
19 happens when a tenant's income goes over the
20 IZ threshold. And issues around -- I guess a
21 lot of that had to do with issues around how
22 that would then effect the tax credit scheme,

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1 because these were actually low income tax
2 credit projects that are happening. And one
3 of them was originally a 9 percent deal that
4 then became a 4 percent deal, and it is
5 already going through a lot of different
6 machinations.

7 It had trust fund dollars the New
8 Communities Program. It had the tax credits.

9 And it also had a Federal funding directly
10 through the Housing Authority and HUD.

11 VICE CHAIRMAN SCHLATER: And I
12 think I understand the conflicts between the
13 Federal programs and the Inclusionary Zoning
14 regulations, and the fact that there's no way
15 to fix those conflicts because you can't go
16 petition HUD to change or the IRS to change
17 their regulations.

18 DIRECTOR EDMONDS: No.

19 VICE CHAIRMAN SCHLATER: But DHCD
20 actually is in charge of overseeing the
21 Housing Production Trust Fund and its
22 disbursement and creating the regulations for

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1 its disbursement. So what I don't understand
2 is why you can't merge the IZ regulations with
3 the local funding requirements?

4 DIRECTOR EDMONDS: Well, I think I
5 understand your question. And I think that we
6 first felt that when we first looked at this
7 and the regulations were first being drafted,
8 we had thought that what we had looked at,
9 actually and what we were asking, it appeared
10 that that needed to go back to the actual
11 statute to fix. And so the thought was that
12 there was a way to change it through the
13 regulations.

14 The regulations the way that they
15 were currently drafted is not in a way that
16 left the agency enough discretion to get those
17 things to match up. We thought we had waived
18 certain things, and those waivers have not
19 actually -- those hadn't gone deep enough, or
20 they hadn't been broad enough.

21 Some of the questions that I know
22 that you're getting to later about, for

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1 example, what happens after the control period
2 and all these things, these transactions were
3 being financed with a number of investors,
4 different layers of financing and trying to
5 get -- I guess in some ways it's hard to
6 describe just the brain damage and trying to
7 get all those things to match up. But the
8 funny thing was that the feedback we were
9 getting from OAG was that the IZ sort of
10 trumped everything. And that's not workable.

11 We generally -- the Federal part is what we
12 generally -- generally preempts everything.
13 Because like you said, you can't argue with
14 IRS. You can't really argue with HUD. But to
15 be in a situation where basically you're
16 saying that the Inclusionary Zoning
17 regulations are somehow the ones that trump
18 everything doesn't give us the flexibility to
19 really do anything with that. We just end up
20 having to go back and forth and trying to
21 understand what was intended and trying to get
22 waivers.

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1 I think it's unnecessary. Because
2 I just can't believe that that's the intent to
3 give us a case study where we're trying to
4 overlay this and trying to figure out how
5 these can match up. It's just confusing to
6 the agency. It's confusing to the project
7 managers. It's confusing to the developers.
8 And it's using scarce resources that we really
9 just don't have.

10 VICE CHAIRMAN SCHLATER: Some of
11 the people who were testifying are concerned
12 that you're actually going to end up with in
13 the long term fewer affordable units as a
14 result of these regulations.

15 DIRECTOR EDMONDS: In terms of the
16 Inclusionary Zoning? I'm not sure. It
17 wouldn't be fewer than what we would typically
18 produce.

19 Our targets for our programs are
20 not effected by Inclusionary Zoning. They
21 might be effected by Inclusionary Zoning if it
22 got to the point where we had to turn away

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1 projects because they couldn't fit
2 Inclusionary Zoning or if we had to say no to
3 a project because of Inclusionary Zoning. But
4 I don't see how Inclusionary Zoning adds to
5 what those programs are already doing.

6 For example, the Housing Production
7 Trust --

8 VICE CHAIRMAN SCHLATER: Well, it
9 has a longer control period, for instance. So
10 it's permanent affordability versus ten year
11 or 15 year or 30 year affordability, which 30
12 years from now means you have a more
13 affordable units.

14 DIRECTOR EDMONDS: Well, I mean
15 that's an interesting conversation in and of
16 itself. Because a lot of the projects that we
17 have, and that's actually a sign of how
18 markets change, a lot of the preservation that
19 we do is preservation of one type of
20 affordable housing that then moves into a new
21 regime based on new resources that are
22 available and the fact that over time

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1 different things become available.

2 We have projects that -- we go
3 through a process with HUD, and we've
4 tightened it up a lot, but there's a process
5 where if there's expiring subsidies in Section
6 8s and we receive the notices, and then
7 there's now like -- I mean, a lot of things
8 are being layered into the law even as we
9 speak, like there's a District opportunity to
10 purchase, there's these different pieces that
11 we can then act on. A lot of it at the end of
12 the day it becomes a question of resources and
13 how do these buildings move forward. So we
14 have buildings that are have project base
15 vouchers that then sometimes move into
16 becoming tax credit projects. Maybe the
17 vouchers become tenant-based and tenants may
18 move somewhere else.

19 And there are advantages and
20 disadvantages to all those changes. But the
21 most important thing that I see over the
22 scheme is that the market really does change

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1 over time, and as some resources get
2 exhausted, for example Section 8 and the
3 project-based, other resources do become
4 available, people find new ways to finance
5 things. Today we have in the District you
6 have the local rent supplement, you have the
7 Housing Production Trust Fund that came about.

8 On the Federal side you have new market tax
9 credits, you have -- you know, you don't know
10 what's going to happen, but you do know that
11 at the end of 20 years, 30 years a building is
12 going to have to be refinanced, it's going to
13 have to be recapitalized. And there is going
14 to have to be a check-in point for the rental
15 buildings, at least.

16 For the home ownership, we have a
17 land trust we've now put in place. So there
18 are other public policy programs that are
19 trying to and working to achieve that sort of
20 permanent affordability.

21 What we're saying is that if we've
22 decided that a project within the scheme of

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1 what the targets that we've set and the
2 Consolidated Plan, if we've already decided
3 that should only be affordable for ten years
4 versus 15 on home ownership, or if we've
5 slated it to be 40 years versus 99. I mean,
6 we can arbitrarily set a restriction level on
7 almost any project. We do it based on
8 feasibility financing and according to the
9 policies that we've set.

10 So if we're setting a project's
11 targets within our overall policies and our
12 plan, I don't understand what IZ can add to
13 that. Inclusionary Zoning seems designated to
14 effect the things that are not being done
15 already according to a plan. Where actually
16 in some markets we don't want permanent
17 affordability, because in some markets -- or
18 for a particular property, I should say.

19 I mean, sometimes when we're
20 disposing of properties, like on our
21 disposition side, we actually have properties
22 that are in markets that it could change. But

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1 at that particular point in time neighborhood
2 revitalization and reduction of slum and
3 blight is more important than permanently
4 restricting the unit.

5 VICE CHAIRMAN SCHLATER: I think
6 the IZ requirements only apply to a percentage
7 of the building's units. So it's not as if
8 the entire building would be required to be
9 permanently affordable.

10 DIRECTOR EDMONDS: I mean, if you
11 have a two unit building -- I mean, I think
12 that's the other point. Is our universe is
13 very small. At DHCD we're not talking about
14 Poplar Point. We're talking about very
15 specific projects that go through buildings
16 and on the property acquisition and
17 disposition side we have mostly -- it's very
18 few multiple families. That tends to be like
19 the unusual case. It's mostly like the lots
20 and the single family, or 1 to 4s, or
21 something like that. We're not disposing in
22 general --

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1 VICE CHAIRMAN SCHLATER: Well, I'd
2 have to defer to OAG and OP on this in terms
3 of its applicability to single family lots.

4 MR. BERGSTEIN: I was going to come
5 up -- IZ only applies to ten units or greater.

6
7 DIRECTOR EDMONDS: I think in
8 general, like I'm saying, that if you look at
9 what we would be disposing of, we have like
10 one building -- like how many multi-families
11 did we dispose of this year? I think there
12 may be three that we tried to dispose of. But
13 in general they're in markets where we can't
14 get people to be interested. So we're trying
15 to move the market.

16 MR. BERGSTEIN: Okay.

17 DIRECTOR EDMONDS: And actually the
18 other is -- I'm trying to think. Anyways.
19 But I just was thinking that it was very few
20 multi-families. And then on the finance side
21 the properties that we effect, if you look at
22 just our funding resources, there's just a

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1 limited universe of what we would be touching
2 in any given year.

3 VICE CHAIRMAN SCHLATER: Okay.
4 Thank you very much.

5 I'm not going to hog the rest of
6 the time. Mr. May?

7 COMMISSIONER TURNBULL: I just had
8 a couple of questions. I'm just concerned
9 where the emergency still is, and what this
10 language doesn't do to correct what's in the
11 pipeline right now? Why are we here? Why did
12 we do this? What is the emergency that is
13 facing you that you can't go ahead and get
14 this language?

15 DIRECTOR EDMONDS: I think in terms
16 of the emergency, this is the emergency, this
17 language that works for the emergency. I
18 think our point is that when it comes to make
19 it permanent, that the real fix we need is
20 different. What we entreated is not what--

21 COMMISSIONER TURNBULL: I think
22 what I'm trying is that there's a separate

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1 issue beyond what we're dealing with tonight.

2 DIRECTOR EDMONDS: And that's I
3 think part of this -- what we wanted to make
4 sure is that you all were aware of our issues
5 and our position for when you move to consider
6 the emergency and when you look to the next
7 set of issues.

8 COMMISSIONER TURNBULL: Okay. All
9 right. I mean, I think you do a wonderful
10 job.

11 DIRECTOR EDMONDS: No, absolutely.

12 COMMISSIONER TURNBULL: And I
13 admire you. We hate as a body to keep going
14 down the line with emergencies.

15 DIRECTOR EDMONDS: Actually, you
16 know if you -- if it were possible for it to
17 be permanent that we would have our exemption
18 from this, that would be great to us. But my
19 understanding is that procedurally that that
20 could not happen. We were hoping that it
21 could. And I think that's part of why we did
22 this package when we came, is I think we're

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1 trying to better understand, especially as
2 we're taking on this role with IZ and doing
3 the monitoring and compliance, we're trying to
4 better understand how the Zoning Commission
5 works and what role is. But we also -- we
6 feel that it's very important for you to also
7 understand our universe and how IZ fits in
8 within that framework.

9 COMMISSIONER TURNBULL: Okay.
10 Thank you.

11 VICE CHAIRMAN SCHLATER:
12 Commissioner May?

13 COMMISSIONER MAY: Yes. It really
14 does sound like you're dealing with a
15 completely separate issue and it raises a
16 whole host of other questions that cannot be
17 answered in the context of, frankly, this case
18 unless we were to pull the whole thing back,
19 readvertise, have new hearings; all that sort
20 of stuff. So you might as well handle it a
21 different context.

22 I also have to say that the idea

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1 that because of some potential that it might
2 effect some portion of the work that you do
3 that everything that DHCD touches should be
4 exempted is really an extraordinary remedy.
5 And I think if you're going to go down that
6 road, it needs to be very thoroughly
7 considered. Because, frankly, I haven't heard
8 anything tonight that indicates that it really
9 is necessary.

10 So, I really do think it needs to
11 be considered separately.

12 As to the case that's before us
13 right now, which is this specific language of
14 the Office of Planning originally proposed and
15 then has amended in their report, it was
16 suggested tonight that a simpler way to
17 resolve the conflict between IZ and the work
18 that you do is to simply say that IZ would --
19 you be exempt from IZ until the Federal
20 control periods expire. And then once it
21 expires, then IZ kicks in again.

22 And remember, IZ is not

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1 affordability of the entire building, it is a
2 small percentage of the building. So why
3 would that not be a simple and easy fix to
4 this problem?

5 DIRECTOR EDMONDS: I think the way
6 that that came back to me was basically a lot
7 of time being spent, and without being able to
8 come to remedy. That was where the question
9 of the fixed versus the floating and how to
10 figure out what the units were -- which units
11 were going to be designated and then at the
12 end of the period what do you do?

13 COMMISSIONER MAY: You just lock
14 down what the percentage is of IZ units.

15 DIRECTOR EDMONDS: Like it would
16 seem that simple, but I think it was -- in
17 terms of like getting to the documentation,
18 there were just -- if that would have worked,
19 I think at that point it was like the question
20 of floating units that would have -- it was
21 sort of thought, the lawyers sort of thought
22 well maybe that would work to have floating

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1 units. But that was not acceptable in the IZ.

2 Under IZ my understanding is that it has to
3 be fixed units.

4 It's just little things. I mean,
5 honestly, it may all seem like little things
6 but they are regulations and there are things
7 that have to be complied with. And that's
8 actually most of our job is trying to make
9 sure that everybody complies.

10 COMMISSIONER MAY: That's a big
11 part of my job too, so I'm sympathetic.

12 DIRECTOR EDMONDS: Okay.

13 COMMISSIONER MAY: But at the same
14 time it seems to me that that this proposed
15 solution is actually the simplest. It
16 certainly is less language you have to
17 decipher in the Zoning Regulations. So that
18 on its face might make it an easier fix.

19 I mean, I think this is a
20 legitimate question. And I'm, frankly, really
21 interested in seeing how that might be worded
22 and whether that can be an acceptable fix.

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1 And I would like to see that before we
2 consider taking action, even if that means we
3 have to extend the emergency.

4 VICE CHAIRMAN SCHLATER: I agree.

5 I'm not sure I understand the
6 floating unit issue all that well. If the
7 units are exempt from IZ for 15 years --

8 DIRECTOR EDMONDS: Yes. Gilles
9 Stucker can give you a little bit more on
10 that.

11 VICE CHAIRMAN SCHLATER: Thank you.

12 MR. STUCKER: Hi.

13 During an affordability period if a
14 tenant, their income rises or decreases and
15 it's a floating unit, hence their designation
16 of now Unit 101 can become there's a tenant in
17 105 that becomes a unit. And that can happen
18 throughout the life of the project in many of
19 the Federal programs.

20 In IZ there's a certificate of
21 Inclusionary Zoning compliance, which the
22 Zoning Administrator approves when the

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1 building permit is approved. And that locks
2 in the unit. So at that point it's a rental
3 unit. You know, 101 is that unit.

4 So, if we're going to have IZ apply
5 after the control period, Unit 101 would need
6 to stay as that locked unit throughout the
7 period of the --

8 VICE CHAIRMAN SCHLATER: Why
9 couldn't the building owner just come back at
10 the end of the control period and say these
11 are now the units that are affordable?

12 COMMISSIONER MAY: It seems to me
13 we get to write the regulations, so we could
14 say that. It's an easy fix.

15 MR. STUCKER: One of the reasons we
16 have is during that control period, even under
17 IZ program, we want to make sure that there
18 still is compliance with that unit. Because
19 while when the property originally gets
20 developed there could be good intentions for
21 101, for example, to remain at 50 percent AMI.

22 If we wait for 20 years, 30 years for the

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1 developer to come back to us and say "Okay.
2 Now Unit 107 is a unit," 30 years is a long
3 time. Folks will likely have forgotten, or
4 changing management companies, things of that
5 nature. If we're not tracking it throughout
6 the life of the project, how do we ensure that
7 that unit will actually be at the right rent?

8 DIRECTOR EDMONDS: The issue with
9 the tracking then becomes that you have the
10 Housing Regulation Administration tracking all
11 the IZ units, I have the tax credit people
12 tracking all the tax credit projects. And
13 then if there's any gap, financing and the
14 home funds or the Housing Product Trust Fund,
15 then that means that we're also tracking that.

16 You know, there's only so much sort
17 of synergy and taking out of redundancy you
18 can do. But if they're completely separate
19 programs and IZ had different things its
20 tracking versus what the tax credit program is
21 tracking, then I've paying two people to
22 monitor one project.

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1 VICE CHAIRMAN SCHLATER: But I
2 guess what I hear is being proposed is it'll
3 be under one set of regulations during the
4 Federal control period, and then no more
5 Federal control period. Then you're in
6 District regulations, so it's a completely
7 different set of regulations.

8 DIRECTOR EDMONDS: It moves into a
9 different. You'd have to change, so that
10 would be one thing that you'd have to change
11 in IZ to make that possible. It's another --

12 MR. STUCKER: And the monitoring to
13 go also to the for sale is even more
14 problematic. Because it's in compliance. In
15 the for sale units you can't turn back time,
16 you have a new owner.

17 VICE CHAIRMAN SCHLATER: Right.

18 MR. STUCKER: I mean rents can --
19 that can be a way to fix it when you have
20 vacancy perhaps. But for sale it's very
21 difficult.

22 DIRECTOR EDMONDS: And under for

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1 sale housing when we use home funds, you know
2 the home regulations under the Federal
3 Government, there are very specific
4 regulations to that program and things that
5 you can choose to do when you're using it for
6 home ownership, there's subsidy limits,
7 there's caps on the prices; there's all these
8 different things that are similar to what you
9 would find in IZ. So it just -- to then go
10 back and put that into a different framework,
11 it's -- I just don't -- it requires too many
12 resources from an administrative perspective,
13 but it also, it means that you've probably
14 changed the goal of what that home program was
15 doing to begin with.

16 VICE CHAIRMAN SCHLATER: Is there a
17 limitation within Home on extending on the
18 affordability -- for a for sale project, for
19 instance?

20 DIRECTOR EDMONDS: No. I mean,
21 that's one of the things I said before, maybe
22 I should have said it more simply. I mean, we

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1 can choose. There are projects where we can
2 be under the policies and the programs we said
3 we would like to have permanent affordability,
4 and this and that. That's possible.

5 VICE CHAIRMAN SCHLATER: Okay.

6 DIRECTOR EDMONDS: And then there's
7 certain things that happen like recapture or -
8 - I guess recapture or resell if the person
9 moves and you can choose which one you're
10 going to apply. Whether or not they have to
11 sell to another eligible buyer or if they pay
12 back the funds, they are then like free of the
13 restrictions. And those are all choices you
14 can make under the program for a different
15 project, and that's a process that people go
16 through as they develop their project.

17 VICE CHAIRMAN SCHLATER: Mr
18 Selfridge, do you have any questions?

19 COMMISSIONER SELFRIDGE: Thank you,
20 Mr. Chairman. I don't have any questions.

21 I agree with Commissioner Turnbull
22 that this just seems like a completely

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1 separate issue and that it should be
2 addressed, perhaps, in a different forum.

3 I don't want to disagree with Mr.
4 May, but I don't know that extend the
5 emergency would get me comfortable enough with
6 all the issues involved in this.

7 COMMISSIONER MAY: No. I'm not
8 suggesting that we extend the emergency for
9 the sake of wrapping in the entire -- you
10 know, the entire of the issue as its been
11 described. I'm just saying in terms of
12 dealing with a decision on the language that
13 already has been advertised. I'm not even
14 comfortable with that. And I'd rather take
15 some time to consider how that can be -- how
16 else that might be structured to solve the
17 problem a little bit better.

18 And then can deal with the other
19 broadening issue I think separately.

20 VICE CHAIRMAN SCHLATER: Do we have
21 any more questions for our government
22 witnesses?

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1 I just want to say having worked on
2 both the government side and on some
3 affordable housing projects, and on the
4 private side these things are mind numbing,
5 and I completely sympathize with you when you
6 have five different overlapping regulations
7 and different lawyers saying theirs is the
8 most important and there's no flexibility. I
9 completely understand the headaches that
10 creates for all involved. And what we don't
11 want to do is create an outcome where a well
12 meaning affordable housing developer just
13 can't get their project done because our
14 regulations aren't working.

15 So, we're going to work hard to
16 work with you. I mean, you are the agency
17 that's helping implement our regulations. And
18 we need to hear the feedback from you what's
19 working and what's not working.

20 So, I would recommend that we do
21 have more interaction rather than less. And
22 make it more regular so that we hear what's

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1 working. Because we don't want to put you in
2 a bad spot.

3 With respect to this matter at
4 hand, we may take more limited action tonight,
5 but I do urge you to work with the Office of
6 Planning to come back with further amendments
7 as necessary. Because we want to work with
8 you and make this as streamlined as possible.

9 DIRECTOR EDMONDS: Okay. Thank you
10 very much.

11 VICE CHAIRMAN SCHLATER: Thank you.

12 DIRECTOR EDMONDS: Thank you for
13 hearing us tonight.

14 VICE CHAIRMAN SCHLATER: Thank you.

15 Okay. So this is not your typical
16 deliberation. I don't think we're talking
17 about an up or down -- well, first of all, I
18 feel like some action needs to be taken
19 tonight. It's not as if we can just adjourn
20 the hearing and wait to take proposed action.

21 COMMISSIONER MAY: Just to clarify.

22 I think the emergency doesn't expire until

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1 sometime in November.

2 MR. BERGSTEIN: That's true. But if
3 you don't take proposed action tonight, and
4 you wait until November 8th or some later
5 time, then NCPC gets a full 30 days, they
6 can't meet until the first week in December.
7 So the emergency expires November 28th. So if
8 you don't take proposed action tonight --

9 COMMISSIONER MAY: If we were to
10 take action at some point to extend the
11 emergency?

12 MR. BERGSTEIN: Then that's what
13 you'd have to do.

14 COMMISSIONER MAY: Then we can take
15 that up another --

16 MR. BERGSTEIN: I'm just saying
17 that the only way to avoid doing that is the
18 proposed action.

19 COMMISSIONER MAY: I understand.

20 MR. BERGSTEIN: Whether or not you
21 want to take proposed action or not is up to
22 you.

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1 COMMISSIONER MAY: I'm certainly
2 not comfortable going ahead with the language
3 that we have in front of us. So it's a
4 question of whether -- you know, what language
5 we'll wind up having. And I think that some
6 extension of the emergency is probably
7 inevitable. And I'd rather, frankly, take
8 that up on November 8th than deal with it
9 tonight. Just because I think there's a
10 little bit more thought that needs to go into
11 figuring out the course from here.

12 VICE CHAIRMAN SCHLATER: I think I
13 agree. I think we should get the language
14 that everybody's comfortable with, and then
15 enact that language, the new language, on an
16 emergency basis to hold this over. Because I
17 don't think we're going to be able to work
18 through the language tonight, drafting on the
19 dias such that we'd be able to take proposed
20 action. That's my gut, unless others have--

21 COMMISSIONER TURNBULL: No. I
22 mean, I think we've had input from the other

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1 panel who are opposed in some form, I think,
2 there was a level of comfort with some of the
3 issues that we talked about. And I'm not sure
4 how much further massaging -- I mean, I guess
5 that's between OAG and OP to come back and
6 give us a finalized version of that.

7 VICE CHAIRMAN SCHLATER: Well, what
8 I think we would need to do is give some
9 direction so that DHCD, OP aren't sort of
10 twisting in the wind figuring out what
11 language to put down. And so let's just talk
12 about maybe one issue at a time, the
13 direction.

14 From what I've heard this idea of
15 adding a permanent exemption for DHCD
16 projects, that does not currently have support
17 and it's something we'd like to be addressed
18 in a separate text amendment. Go forward by
19 DHCD and OP. I think we have agreement on
20 that.

21 As for the extension of the
22 emergency, I don't think we'll be extending

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1 the emergency tonight.

2 COMMISSIONER MAY: Yes, I would
3 prefer not to do it tonight with the existing
4 language.

5 VICE CHAIRMAN SCHLATER: I think I
6 agree that we shouldn't be reenforcing the
7 existing language. Everybody okay with that.

8 Now it comes down to important
9 issues. One is this question of exemption
10 from IZ after the control period for a Federal
11 program. I'd like to get your thoughts on how
12 to move forward on that issue.

13 COMMISSIONER MAY: I personally
14 would like to understand whether something
15 like that might work from the Office of
16 Planning working with DHCD whether they could
17 come up with some language that would be
18 appropriate, a way to make it kick in at the
19 end of the control period, that sort of thing.

20 But then I'd also -- you know, Mr. Bergstein
21 had suggested how the language might be
22 structured, and I'd be interested in seeing

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1 that if it's possible before we could --

2 VICE CHAIRMAN SCHLATER: But that
3 would be a shift in intent from what's current
4 written.

5 COMMISSIONER MAY: I understand.
6 But I think --

7 VICE CHAIRMAN SCHLATER:
8 Effectively saying to delete those --

9 COMMISSIONER MAY: Yes.

10 MR. BERGSTEIN: If you do decide to
11 have automatic applicability of IZ, we're
12 going to have to add some language about what
13 to do for for sale. Because the way it works
14 now is at the point where you have a single
15 owner owning a single IZ for sale development,
16 they come in and they do a certificate of
17 Inclusionary Zoning compliance and say yes,
18 these are my units, A,B,C,D. So you might
19 have a 50 unit apartment house with 7 IZ units
20 and you know what they are, and those units
21 get a covenant and they know that they're
22 bound by IZ.

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1 If you exempt for sale units from
2 IZ but kick them in later, okay, you don't
3 have single portion unit building anymore, you
4 have 50 individual condo owners. Who then
5 decides which are the lucky five units that
6 are under IZ? How do they even know to come
7 in and say they're under IZ?

8 So the only way to do that would be
9 to somehow exempt them but not exempt them.

10 COMMISSIONER MAY: Well, we have
11 that issue now with the proposed 644.4
12 language, right?

13 MR. BERGSTEIN: There would have to
14 be a covenant recorded and actually as I think
15 about, the covenant would probably have to
16 identify the specific units. So we sort of
17 have to -- you're right. It's an issue that
18 we have to deal with anyway, as I'm thinking
19 about. And there's something I could discuss
20 with DHCD and OP. But there's got to be a way
21 for the units that are going to be permanently
22 in control of IZ to know at the get-go that

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1 they're the units that 30 years out or five
2 years out have to get notices of availability
3 when the units become subject -- marketing.
4 There's all sorts of things --

5 VICE CHAIRMAN SCHLATER: Why can't
6 you just record a covenant on those units that
7 doesn't kick in until the end of --

8 MR. BERGSTEIN: That's what we have
9 to do, is we have to identify what those units
10 are. So we have to reach that language
11 anyway.

12 VICE CHAIRMAN SCHLATER: I mean, it
13 doesn't seem that complicated.

14 MR. BERGSTEIN: Yes.

15 VICE CHAIRMAN SCHLATER: But I mean
16 I think we would ask that you go back and sort
17 of work through some of those issues with
18 regards to the floating units and the for
19 sale.

20 COMMISSIONER MAY: And I would
21 suggest that if we can't come to complete
22 agreement or come to some real consensus

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1 between now and November 8th, that maybe what
2 we do need is some interim temporary -- or
3 some interim emergency language that will keep
4 what we need to have in effect in effect.
5 Maybe it is continuing the exact same language
6 that we have right now, but maybe it should be
7 tweaked a little bit further. Because we
8 don't -- I'm really just not in a rush to try
9 to take proposed action on something when we
10 realized tonight there are just too many
11 things that are kind of unresolved, and
12 frankly, some different ways of looking at it
13 that wind up being simpler and easier to
14 administer.

15 MR. BERGSTEIN: But there are these
16 separate issues. Do you want to see language
17 with a permanent nondescribed automatic shift
18 back into IZ at the end of whatever control
19 period it might be?

20 VICE CHAIRMAN SCHLATER: I think
21 yes.

22 MR. BERGSTEIN: And then you have

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1 the other issues of the strict applicability
2 and the other issues you might have.

3 VICE CHAIRMAN SCHLATER:
4 Commissioners, do you have any thoughts? So
5 originally my understanding of this was that
6 it was we had a problem with conflicts between
7 Federal requirements and the IZ requirements.

8 And the Federal requirements were not
9 flexible. In talking with the Director
10 tonight she said there are also certain
11 statutory obligations on the District funds
12 that make it impossible for the two programs
13 to coexist properly. So --

14 COMMISSIONER MAY: I heard really
15 difficult, not impossible. But I don't think
16 that's really the crux of the matter.

17 I wonder, you know are there
18 control periods related to the District
19 financing as well?

20 VICE CHAIRMAN SCHLATER:
21 Absolutely.

22 COMMISSIONER MAY: So, I mean,

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1 maybe it's an issue of making them IZ kick in
2 after the control period are over no matter
3 whether they're Federal or District. And
4 actually, I would be interested in leaving the
5 record open from the hearing to hear further
6 from those who testified tonight or in the
7 audience, or those who may be paying attention
8 to what we're saying tonight and want to add
9 to the debate before we make a decision on it.

10 VICE CHAIRMAN SCHLATER: I think we
11 can certainly do that since we're not taking
12 proposed action tonight.

13 We have to set a date?

14 MS. SCHELLIN: So that we can have
15 the documents in time for your package.

16 VICE CHAIRMAN SCHLATER: Okay, Ms.
17 Schellin. Can you give me some dates?

18 MS. SCHELLIN: Yes. We'll just set
19 one date for OP and sounds like you're leaving
20 the record open for everybody. November 1st
21 by 3:00 p.m.

22 VICE CHAIRMAN SCHLATER: And when

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1 will this be considered?

2 MS. SCHELLIN: November 8th.

3 VICE CHAIRMAN SCHLATER: Are there
4 any other matters we need to attend to?

5 MS. SCHELLIN: No, sir.

6 VICE CHAIRMAN SCHLATER: Okay. I
7 got to read my closing statement then.

8 Folks, thank you for you testimony
9 and assistance in this hearing.

10 The record in this case is closed
11 except for those matters that we've left open.

12 And which must be filed as indicated by the
13 Secretary.

14 Please note that all filings are to
15 take place no later then 3:00 p.m. and should
16 be directly served to the NCPC.

17 The Commission will make a decision
18 in this case at one of its regular monthly
19 meetings following the closing of the record.

20 These meetings are held at 6:30 p.m. on the
21 second Monday of each month with some
22 exceptions, and are open to the public. If

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1 any individual is interested in following this
2 case further, please contact staff to
3 determine whether this case is on the agenda
4 of a particular meeting.

5 You should also be aware that
6 should the Commission propose affirmative
7 action, the proposed action must be published
8 in the *D.C. Register* as proposed rulemaking
9 with a period of time for comments.

10 In addition, the proposed
11 rulemaking will be referred to the National
12 Capitol Planning Commission for Federal impact
13 review. The Zoning Commission will then take
14 final action at a public meeting following
15 receipt of public comments and NCPC comments,
16 after which a written final rulemaking and
17 order will be published.

18 I now declare today's Public
19 Hearing adjourned.

20 (Whereupon, the Public Hearing was
21 adjourned at 8:01 p.m.)
22

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