

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR PUBLIC MEETING

+ + + + +

MONDAY

MARCH 11, 2013

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The Regular Public Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:30 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
MARCIE COHEN, Vice Chair
MICHAEL G. TURNBULL, FAIA,
Commissioner (AOC)

PETER G. MAY, Commissioner (NPS)
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

JOEL LAWSON

STEVEN COCHRAN

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on
March 11, 2013.

T-A-B-L-E O-F C-O-N-T-E-N-T-S

PRELIMINARY MATTERS5

CONSENT CALENDAR

Z.C. Case No. 10-19A (Valor 1350
Maryland, LLC - Minor Modification to
Z.C. Order No. 10-19, 1320.4(f))

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Z.C. Case No. 05-36H (K Street
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to PUD @ Square 749).7

Office of Planning, Steve Cochran .9

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FINAL ACTION

Z.C. Case No. 1301 (Office of Planning
- Minor Modification to 1700.1, DD
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CORRESPONDENCE

A. Z.C. Case No. 11-03A (Hoffman-Struever Waterfront, LLC)
Request for Reconsideration & Motion for Stay from Sixth Street Homeowners (Z.C. Order No. 11-03A(4)) and Applicant's Opposition thereto. 20
Vote to deny request for reconsideration and motion for stay (4-0-1). 22

Request for Reconsideration from Gene Solon (Z.C. Order No. 11-03A(4)) and Applicant's Opposition thereto. 23
Vote to deny request for reconsideration (4-0-1) 25

B. Z.C. Case No. 10-14 (Big Bear Cafe)
Request for Reconsideration from Karla Lewis (Lewis Party) and Applicant's Opposition thereto. 25
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C. Z.C. Case No. 79-18/78-15 (Prudential Insurance Co. of America - Determination Letter from Zoning Administrator) 29

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

6:37 p.m.

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3 CHAIRMAN HOOD: We will convene
4 our regular monthly meeting for Monday, March
5 11, 2013. This is the Jerrily R. Kress
6 Memorial Hearing Room located at 441 4th
7 Street, N.W., Suite 220 South. We do not take
8 any public testimony at our meetings unless we
9 ask someone to come forward.

10 My name is Anthony Hood. Joining
11 me are Vice Chair Cohen, Commissioner May,
12 Turnbull, and Miller. Also the Office of
13 Zoning Staff Ms. Sharon Schellin. Also the
14 Office of Attorney General Mr. Ritting, Office
15 of Planning Ms. Steingasser, Mr. Lawson, and
16 Mr. Cochran.

17 Let's go right into our agenda.
18 Do we have any preliminary matters, Ms.
19 Schellin? None.

20 Let's go to the consent calendar.

21 COMMISSIONER TURNBULL: Mr. Chair,
22 we do have one preliminary matter. We should

1 wish happy birthday to the Vice Chair.

2 CHAIRMAN HOOD: Oh, okay.

3 VICE CHAIR COHEN: It hasn't
4 happened yet.

5 CHAIRMAN HOOD: We won't have a
6 meeting or anything. Do you want us to sing
7 or would you just like for us to wish you a
8 happy birthday?

9 VICE CHAIR COHEN: I would like
10 for you to wish me a happy birthday and all
11 the people up here take up a collection for a
12 nice gift.

13 CHAIRMAN HOOD: And I'll collect
14 it. With the gift it might be half.

15 COMMISSIONER MAY: I don't think
16 we can actually sing because the Office of
17 Zoning would have to pay royalties. Believe
18 it or not it's copyright protected.

19 CHAIRMAN HOOD: Okay. I'm sure
20 our singing will not be a major issue, believe
21 me.

22 Okay. Again, we want to wish the

1 Vice Chair happy birthday.

2 VICE CHAIR COHEN: Thank you.

3 CHAIRMAN HOOD: Enjoy yourself.

4 The gift is we're not going to have a hearing
5 a few days around your birthday so enjoy.

6 Okay. Consent Calendar. Let me
7 call first Zoning Commission Case No. 10-19A
8 has been withdrawn so we will not be taking
9 that up this evening. We don't need to do a
10 motion. It's just been withdrawn.

11 Next Zoning Commission Case No.
12 05-36H. Ms. Schellin.

13 MS. SCHELLIN: Yes, sir. This is
14 a request for a minor modification to allow
15 the PUD to be constructed and occupied as
16 separate buildings on the property which is a
17 single record lot divided into multiple
18 assessment and taxation lots.

19 Exhibit 6 is a letter in support
20 from ANC SMD-6-C-06. Exhibit 7 is a letter in
21 support from Council Member Wells. Exhibit 8
22 is an OP report in support.

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CHAIRMAN HOOD: Okay.

Commissioners, I believe in looking at what we've been asked to do, before I ask the question, does anyone want this to come off as a consent calendar item?

I would ask that if we have any questions that we direct them to the Office of Planning and see if we can work through it that way. If not, there is a possibility we may take it off the consent calendar.

Commissioner Miller.

COMMISSIONER MILLER: Thank you, Mr. Chairman. Yes, I have a question for the Office of Planning. Since the modification is to remove the connection between, as I understand it, the already built 3rd Street part of the property -- 3rd Street part of the square and this building on 2nd Street, my question is in reviewing the record that I had, was the connection necessary for the height that exist for the 2nd Street building? Is the 2nd Street building still 121 feet in

1 height? Was that originally measured from 3rd
2 Street?

3 MR. COCHRAN: Yes. In an earlier
4 version of the PUD there would have been a
5 height issue but the Applicant removed a story
6 as it progressed through approvals so there
7 would not be a height issue with what you
8 approve.

9 COMMISSIONER MILLER: So the 121
10 feet it really was 130 feet and they reduced
11 it to 121 feet and you're saying the 121 feet
12 is compliant with what --

13 MR. COCHRAN: The 121 feet is
14 compliant, yes.

15 COMMISSIONER MILLER: If measured
16 from 2nd Street rather than 3rd?

17 MR. COCHRAN: It could easily be
18 measured from K Street also which is 147 feet
19 and six inches wide.

20 COMMISSIONER MILLER: Okay. That
21 is my only question. Thank you.

22 COMMISSIONER MAY: Actually, I

1 want to follow that for a second. As I
2 recall, the intersection of 2nd and K is the
3 low point on the site.

4 One of the reasons why we had
5 anxiety about the height of the building had
6 to do with the fact that even though it was
7 only whatever the measurement was, 121 feet,
8 still felt really, really tall from that
9 intersection because you are starting out 10
10 or 15 feet below the measuring point at that
11 intersection.

12 I guess my question is with the
13 new measuring point, I understand that 120 is
14 still less than what the street width would
15 demand based on measuring off K Street but the
16 way we measure height there has to be a
17 specific measuring point. As I recall, the
18 measuring point was on 3rd Street.

19 MR. COCHRAN: It was and the
20 building isn't changing other than the closing
21 of that one door.

22 COMMISSIONER MAY: No, but that

1 meaningful connection is a very important
2 thing when it comes to measuring height. You
3 can't have a building -- you can't have two
4 buildings next to each other and measure the
5 height from the measuring point for the other
6 building.

7 MR. COCHRAN: They would now be
8 considered two separate buildings.

9 COMMISSIONER MAY: Right. So
10 where is the measuring point going to be?

11 MR. COCHRAN: The Applicant has
12 not informed me but I do know if they measure
13 from K Street, it more than complies. If they
14 measure from 2nd Street, I'm not sure.

15 COMMISSIONER MAY: Okay. Oh,
16 because you're saying it's 121 feet above K
17 Street. I thought it 121 feet off the
18 measuring point which is on 3rd Street.

19 MR. COCHRAN: The Applicant has
20 assured me it does not go above 130 feet at
21 any of the measuring points that it would
22 choose. Sorry, I don't know specifically

1 beyond that.

2 COMMISSIONER MAY: Okay.

3 MS. SCHELLIN: Commissioner May,
4 Mr. Glasgow has informed me that the measuring
5 point would be from L Street and it would
6 still be under 130 feet.

7 COMMISSIONER MAY: Okay. And the
8 width of K Street is?

9 MR. COCHRAN: K Street is 147 and
10 6.

11 COMMISSIONER MAY: Okay. That's
12 it.

13 CHAIRMAN HOOD: Vice Chair.

14 VICE CHAIR COHEN: Thank you, Mr.
15 Chairman.

16 Mr. Cochran, there is going to be
17 a central plaza for the two buildings. The
18 security and the maintenance of that central
19 plaza, how is that going to be handled now
20 that there is sort of a disagreement between
21 the two parties? Can you tell me that?

22 MR. COCHRAN: The publicly-

1 accessible part of that plaza was in phase two
2 and will remain in phase two. I wouldn't want
3 to infer anything from that other than to note
4 it's fully within phase two. There is a
5 private part of the plaza that is somewhat
6 elevated from the public part and is fully
7 within phase one.

8 VICE CHAIR COHEN: So the private
9 part obviously is the condominium that has
10 been built already in phase one.

11 MR. COCHRAN: That's correct.

12 VICE CHAIR COHEN: And the
13 public --

14 MR. COCHRAN: There is nothing
15 in the application that indicates that the
16 public would not have access to phase two.
17 It's just the door that they are asking for a
18 change in. The same requirement would apply.

19 CHAIRMAN HOOD: Mr. Cochran, I'm
20 pretty sure I know the answer to this. The
21 Office of Planning considered this a minor
22 modification?

1 MR. COCHRAN: Yes, sir.

2 CHAIRMAN HOOD: All right.

3 Mr. Turnbull.

4 COMMISSIONER TURNBULL: I just
5 have one question.

6 What happens on the roof? There's
7 a pool in the one section that's built.

8 MR. COCHRAN: That's correct.

9 COMMISSIONER TURNBULL: And that
10 has elevator access. The roof on the building
11 which will be adjoining it does not have
12 elevator access but there is a stairwell that
13 goes up. Is this a shared --

14 MR. COCHRAN: I would have to look
15 at the roof plans again. I thought I
16 remembered the pool being in phase two, not in
17 phase one but I may have remembered that
18 incorrectly.

19 In any event, that would be
20 something that would have to be worked out
21 between the two phases. The pool was not
22 offered as either an amenity or a public

1 benefit so who has access to the pool or not
2 is not necessarily relevant to the Zoning
3 Commission's order.

4 COMMISSIONER TURNBULL: That's
5 fine in one sense, but if you can go from one
6 roof to another roof just by going up one
7 stair, it's not a separate -- there is not a
8 separation. You are not separating the two
9 buildings. It's a fine point just on how you
10 look at the roof.

11 MR. COCHRAN: The same thing is
12 true with rowhouses or R-5-A construction.
13 They have the same roof but they are
14 considered -- you know, they are on separate
15 lots. They are considered separately salable,
16 etc. Zoning concerns itself with the interior
17 connection above grade.

18 COMMISSIONER TURNBULL: I guess I
19 was just saying being on a rowhouse normally
20 there is a parapet between. There is a fire
21 separation between the two structures. I
22 don't see anything like that here. I simply

1 see a green area, walkways, and it's like
2 there is just one continuous roof.

3 If you look at it, it looks like
4 it's one building. I don't see any fire
5 separation. If these are now two buildings,
6 you are going to have a firewall. You were
7 talking about a code issue.

8 It's two separate buildings. I
9 don't see any evidence like that when I look
10 on the roof. I don't want to get into
11 building code issues but just looking at a
12 roof plan --

13 COMMISSIONER MAY: Mr. Turnbull,
14 I'm confused. I'm looking at drawing --

15 COMMISSIONER TURNBULL: Six.

16 COMMISSIONER MAY: Page 6. And I
17 think we're seeing a parapet wall along the
18 dark black dash line.

19 COMMISSIONER TURNBULL: The red
20 dash line?

21 COMMISSIONER MAY: No, no, no.
22 Dark black, not the red. That's phase two

1 separation. Those are different parts of
2 phase two.

3 COMMISSIONER TURNBULL: Where are
4 you seeing the black line?

5 COMMISSIONER MAY: At the very
6 bottom. That is the separation between phase
7 two and phase one.

8 COMMISSIONER TURNBULL: Oh, okay.
9 I see. Okay. That's fine.

10 CHAIRMAN HOOD: Do you have any
11 questions of the Office of Planning?

12 Again, let me go back. Does
13 anyone see any reason to take this off of the
14 consent calendar? Okay. Not hearing
15 anything. I also will concur that we can leave
16 this as a minor modification on the consent
17 calendar.

18 We do have a letter of support
19 from Honorable Council Member Ward 6 Tom
20 Wells. And also from ANC-6C-06, Tony Goodman,
21 in support of this minor modification.

22 With that I would move that we

1 approve the minor modification in Zoning
2 Commission Case No. 05-36H and ask for a
3 second.

4 COMMISSIONER MILLER: Second.

5 CHAIRMAN HOOD: It has been moved
6 and properly seconded. Any further
7 discussion? All those in favor, aye.

8 COMMISSIONERS: Aye.

9 CHAIRMAN HOOD: No hearing any
10 opposition, Ms. Schellin, would you please
11 record the vote?

12 MS. SCHELLIN: Staff records the
13 vote five to zero to zero to approve final
14 action in Zoning Commission Case No. 05-36H.
15 Commissioner Hood moving, Commissioner Miller
16 seconding, Commissioners Cohen, May, and
17 Turnbull in support.

18 CHAIRMAN HOOD: Okay. Next, let's
19 go to final action.

20 Zoning Commission Case No. 13-01
21 (Office of Planning - Minor Modification to
22 1700.1, DD Overlay, District to Correct

1 Outdated Reference to Original Boundaries).

2 Ms. Schellin.

3 MS. SCHELLIN: The staff has
4 nothing further to add for this. There is
5 nothing new.

6 CHAIRMAN HOOD: Okay,
7 Commissioners. We have the proposed text in
8 front of us. Are there any questions? Okay.
9 I would move that we approve Zoning Commission
10 Case No. 13-01 as noted and ask for a second.

11 COMMISSIONER MAY: Second.

12 CHAIRMAN HOOD: It has been moved
13 and properly seconded. Any further
14 discussion? All those in favor, aye.

15 COMMISSIONERS: Aye.

16 CHAIRMAN HOOD: Not hearing any
17 opposition, Ms. Schellin, would you please
18 record the vote.

19 MS. SCHELLIN: Staff records the
20 vote five to zero to zero to approve final
21 action in Zoning Commission Case No. 13-01.
22 Commissioner Hood moving, Commissioner May

1 seconding, Commissioners Cohen, Miller, and
2 Turnbull in support.

3 CHAIRMAN HOOD: Next we have
4 Zoning Commission Case 12-10, Office of
5 Planning Text Amendment to GAR. We have
6 another request from the Office of Planning to
7 defer this, I think, until the April 8th
8 meeting. Any objections?

9 Seeing none, we will defer this to
10 April 8th public meeting.

11 Let's go to Correspondence.
12 Zoning Commission Case No. 11-03A (Hoffman-
13 Struever Waterfront, LLC). We have two
14 requests and I'll let Ms. Schellin go over
15 those.

16 MS. SCHELLIN: Yes. The first one
17 is a Request and Motion for Stay from Sixth
18 Street Homeowners. There is also a opposition
19 filed from the Applicant to that.

20 The second one is a Request for
21 Reconsideration from Gene Solon. Again, the
22 Applicant has filed their opposition to that

1 request.

2 CHAIRMAN HOOD: Commissioners,
3 again, after reading -- let's just take the
4 reconsideration and motion to stay from the
5 Sixth Street Homeowners and the Applicant's
6 opposition. Well, let's take the
7 reconsideration.

8 I think on a number of occasions a
9 lot of stuff, at least that I saw in the
10 submission to us that asked for the
11 reconsideration, was very vetted and very
12 thoroughly discussed during the hearing so I'm
13 not in favor of the reconsideration or the
14 motion to stay.

15 VICE CHAIR COHEN: Mr. Chairman, I
16 would concur with your analysis of this. We
17 have received no new information and it is
18 just sort of rehearing the same arguments that
19 we've gone through during the hearing process.

20 CHAIRMAN HOOD: Okay. Any other
21 comments?

22 COMMISSIONER MILLER: Mr.

1 Chairman, only that I did not participate in
2 hearing this case so I will not be
3 participating in this motion.

4 CHAIRMAN HOOD: Okay. In that
5 case I would move that we deny reconsideration
6 and motion for the stay from the Sixth Street
7 Homeowners and ask for a second.

8 COMMISSIONER TURNBULL: Second.

9 CHAIRMAN HOOD: It has been moved
10 and properly seconded. Any further
11 discussion? All those in favor of the motion,
12 aye.

13 COMMISSIONERS: Aye.

14 CHAIRMAN HOOD: Any opposition?
15 So ordered.

16 Staff, would you record the vote.

17 MS. SCHELLIN: The staff records
18 the vote four to zero to one to deny the
19 motion -- I'm sorry, the request for
20 reconsideration and motion for stay from the
21 Sixth Street Homeowners.

22 Commissioner Hood moving for

1 denial, Commissioner Turnbull seconding,
2 Commissioners Cohen and May in support of the
3 denial, Commissioner Miller not voting having
4 not participated.

5 CHAIRMAN HOOD: Okay. The next
6 one is reconsideration -- request for
7 reconsideration and motion to stay from Mr.
8 Gene Solon, Order No. 11-03A(4) and
9 Applicant's opposition.

10 Did Mr. Solon also ask for stay?
11 Request for reconsideration. Okay. Discount
12 what I said about the motion to stay. He just
13 asked for reconsideration.

14 Again, I think the same
15 information. Nothing new. Just a different
16 date on the material that was provided. I
17 think we hashed that out and vetted it. We
18 went through this.

19 Actually, I think we actually went
20 through this twice and so we are seeing it
21 again in a different form with a different
22 date. If you look at the transcript, we have

1 hashed it in our discussions about this
2 particular case 11-03(A)(4). I would move
3 that we deny Mr. Solon's request for
4 reconsideration and ask for a second.

5 COMMISSIONER MAY: Second.

6 CHAIRMAN HOOD: It's been moved
7 and properly seconded. Any further
8 discussion? All those in favor, aye.

9 COMMISSIONERS: Aye.

10 CHAIRMAN HOOD: Not hearing any
11 opposition. I would also invite anyone who
12 would like to provide any draft orders because
13 I would also be open for that.

14 MR. RITTING: Yeah, the only
15 request that is before you is to reopen the
16 record by the Applicant to submit a draft
17 order which makes sense since you denied the
18 motion.

19 CHAIRMAN HOOD: Okay. We will
20 just leave the record open unless anyone
21 objects for draft orders. Only for that. All
22 right.

1 Did we carry the motion? Oh, all
2 those in favor, aye.

3 COMMISSIONERS: Aye.

4 CHAIRMAN HOOD: Not hearing anyone
5 opposed, Ms. Schellin, record the vote.

6 MS. SCHELLIN: Staff records the
7 vote four to zero to one to deny the request
8 for reconsideration filed by Gene Solon in
9 Zoning Commission Case 11-03A. Commissioner
10 Hood moving for denial, Commissioner May
11 seconding, Commissioners Cohen and Turnbull in
12 support, Commissioner Miller not voting having
13 not participated.

14 CHAIRMAN HOOD: Okay. Next we
15 have Zoning Commission Case No. 10-14. This
16 is the Big Bear Cafe request for
17 reconsideration from Ms. Karla Lewis who was
18 a party. We also have the Applicant's
19 opposition of her reconsideration request.

20 Ms. Schellin.

21 MS. SCHELLIN: Staff has nothing
22 further to add.

1 CHAIRMAN HOOD: Okay.

2 Commissioners, if you recall, again, I think
3 this was vetted. I think it was mentioned in
4 the ANC's letter at the time from Chairman
5 Edwards that possibly the covenant could be
6 agreed to.

7 I think there was an agreement
8 that if they agreed to the covenant, then I
9 think asking the party, which was the Lewis
10 Party, to drop their opposition. The
11 Applicant apparently went forward with it.
12 They did have a covenant but, for some reason,
13 it was not signed.

14 Then the ANC's letter just asked
15 if it's possible. At some point I think the
16 Commission asked him to go back and try to
17 resolve that. For some reason that was not
18 responded to or both parties did not sign it
19 so that little deal did not work out.

20 I think the issues and everything
21 with this case were very well vetted again.
22 I would be inclined to deny this request for

1 reconsideration. Let me open it up for any
2 other comments for those who participated.

3 COMMISSIONER TURNBULL: Mr. Chair,
4 I would concur with your analysis. I think we
5 had a very thorough vetting of this one. We
6 went through all the issues at the time of the
7 hearing.

8 CHAIRMAN HOOD: And we also sent
9 them back -- come back.

10 COMMISSIONER TURNBULL: That's
11 right. In final action we went through all of
12 the issues at the time.

13 CHAIRMAN HOOD: I want to thank my
14 colleagues for being patient. I know I was
15 the one who led that going back and I
16 appreciate all efforts that were tried.

17 When it boils down to it, I think
18 this was a good move for the Commission to
19 move forward. We did the best we could to try
20 to get those two parties to agree but it
21 actually did not happen.

22 Any other comments? I would move

1 that we deny the request for reconsideration
2 from the Lewis party and ask for a second.

3 COMMISSIONER TURNBULL: Second.

4 CHAIRMAN HOOD: It's been moved
5 and properly seconded. Any further
6 discussion?

7 VICE CHAIR COHEN: And I did not
8 participate.

9 CHAIRMAN HOOD: Call for that.
10 All those in favor, aye.

11 COMMISSIONERS: Aye.

12 CHAIRMAN HOOD: Ms. Schellin,
13 would you record the vote for those who
14 participated and for those who didn't.

15 MS. SCHELLIN: Yes. Staff records
16 the vote three to zero to two to deny the
17 request for reconsideration from Karla Lewis
18 on behalf of the Lewis party.

19 Commissioner Hood moving for
20 denial, Commissioner Turnbull seconding,
21 Commissioner May in support of denial,
22 Commissioners Cohen and Miller not voting

1 having not participated.

2 CHAIRMAN HOOD: Did we also record
3 the vote in the case before that the same way?
4 Okay, good.

5 Let's see. Do we have anything
6 from the Office of Planning?

7 MS. SCHELLIN: There is one more
8 case, the case we added under C. I'm sorry.

9 CHAIRMAN HOOD: Do we have
10 anything from the ZRR? Okay.

11 Let's go back to the information
12 on modification from the Zoning Administrator
13 Mr. Le Grant dated March 11, 2013. I think
14 basically this is for information purposes
15 only. Any discussion? Any comments? So
16 noted that we have received it. There is no
17 unreadiness and no comments on this.

18 Ms. Schellin, do we have anything
19 else?

20 MS. SCHELLIN: No.

21 CHAIRMAN HOOD: I want to thank
22 everyone for their participation tonight and

1 this meeting is adjourned.

2 (Whereupon, at 7:00 p.m. the
3 meeting was adjourned.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: DCZC

Date: 03-11-13

Place: Washington, DC

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