

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

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IN THE MATTER OF: :

:

TEXT AMENDMENT : Case No.

:

VARIOUS ADMINISTRATIVE : 12-11

AMENDMENTS :

-----:

Thursday,

November 8, 2012

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 12-11

by the District of Columbia Zoning Commission

convened at 6:30 p.m. in the Jerrily R. Kress

Memorial Hearing Room at 441 4th Street, N.W.,

Washington, D.C., 20001, Anthony J. Hood,

Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- MARCIE COHEN, Vice Chair
- MICHAEL G. TURNBULL, FAIA,
- Commissioner (OAC)
- PETER MAY, Commissioner (NPS)
- ROBERT MILLER, Commissioner

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OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation

ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF
PRESENT:

N/A

The transcript constitutes the
minutes from the Public Hearing held on November
8th, 2012.

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

2 6:35 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is the Public
5 Hearing of the Zoning Commission for the
6 District of Columbia for November 8th, 2012.

7 My name is Anthony Hood and joining
8 me this evening are Vice Chairperson Cohen,
9 Commissioner Miller, Commissioner May,
10 Commissioner Turnbull.

11 We are also joined by the Office of
12 Zoning staff, Ms. Sharon Schellin. Also the
13 Office of the Attorney General, Mr. Bergstein
14 and the Office of Planning, we
15 are joined by Ms. Steingasser and Mr. Jackson.

16 This proceeding is being recorded
17 by a Court Reporter and is also Webcast live.

18 Accordingly, I ask you to refrain from any
19 disruptive noises or actions in the hearing
20 room.

21 The subject of this evening's
22 hearing is Zoning Commission Case Number 12-11.

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1 This is a request by the Office of Planning
2 for various administrative text amendments to
3 the current zoning regulations.

4 Notice of tonight's hearing was published
5 in the D.C. Register on August the 24th, 2012,
6 and copies of that announcement are available
7 to my left on the wall near the door.

8 The hearing will be conducted in
9 accordance of provisions of 11 DCMR 3021 as
10 follows: Preliminary matters; presentation by
11 the Office of Planning; report of other
12 government agencies; report of the ANC. In this
13 case, all ANCs across the city. Organizations
14 and persons in support, organizations and
15 persons in opposition.

16 The following time constraints will
17 be maintained in this meeting. Organizations
18 roughly about six minutes, individuals roughly
19 about five minutes. And I may tweak that
20 depending on the witness list. We have a lot
21 on the list.

22 The Commission intends to adhere to

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1 the time limits as strictly as possible in order
2 to hear the case in a reasonable period of time.

3 The Commission reserves the right to change
4 the time limits for presentations, if necessary,
5 and notes that no times shall be seeded.

6 All persons appearing before the
7 Commission are to fill out two witness cards.

8 These cards are located to my left on the table
9 near the door. Upon coming forward to speak
10 to the Commission, please give both cards to
11 the reporter sitting to my right before taking
12 a seat at the table.

13 When presenting information to the
14 Commission, please turn on and speak into the
15 microphone, first stating your name and home
16 address. I think most here are seasoned so I'm
17 going to skip over a lot of this and go straight
18 to -- please turn off the beepers and cell phones
19 at this time so as not to disrupt these
20 proceedings.

21 At this time, the Commission will
22 consider any preliminary matters. Does the

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1 staff have any preliminary matters?

2 SECRETARY SCHELLIN: No, sir.

3 CHAIRMAN HOOD: Okay. I do have a
4 preliminary matter that I'd like to do one
5 official action for our closed meeting which
6 is coming up on Wednesday.

7 In accordance with D.C. Official
8 Code 2-575, I move that the Zoning Commission
9 hold a closed meeting on Wednesday, November
10 the 14th, 2012. The closed meeting will begin
11 at 6:00 p.m. and is for the purpose of obtaining
12 legal advice from our counsel and deliberate
13 upon but not voting on the cases that appear
14 on the Commission's agenda for the public
15 meeting also scheduled for that date.

16 Is there a second?

17 COMMISSIONER TURNBULL: Aye.

18 CHAIRMAN HOOD: Okay. Thank you,
19 Mr. Turnbull.

20 Will the secretary please take a
21 roll call vote on the motion before us that has
22 been seconded?

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1 SECRETARY SCHELLIN: Yes.

2 Chairman Hood.

3 CHAIRMAN HOOD: Yes.

4 SECRETARY SCHELLIN: Vice Chair

5 Cohen?

6 VICE CHAIR COHEN: Yes.

7 SECRETARY SCHELLIN: Commissioner

8 Miller?

9 COMMISSIONER MILLER: Yes.

10 SECRETARY SCHELLIN: Commissioner

11 May?

12 COMMISSIONER MAY: Yes

13 SECRETARY SCHELLIN: Commissioner

14 Turnbull?

15 COMMISSIONER TURNBULL: Yes.

16 SECRETARY SCHELLIN: The vote is

17 five to zero.

18 CHAIRMAN HOOD: Okay. As it

19 appears, the motion has passed, I request the

20 Office of Zoning provide notice of this closed

21 meeting in accordance with the Act.

22 Anything else, Ms. Schellin?

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1 SECRETARY SCHELLIN: No, sir.

2 CHAIRMAN HOOD: Okay. Let's go
3 straight into our case for the night. And,
4 again, we will tweak some of the time from those
5 who we have who would like to testify on these
6 matters.

7 Let's go straight to Ms.
8 Steingasser.

9 Good evening.

10 MS. STEINGASSER: Chairman Hood and
11 Commissioners, we're happy to stand mostly on
12 the record. We are proposing recommendations
13 of the Text Amendment before you.

14 Regarding the height text the
15 Commissioner has held hearings on this twice
16 in the past, once in September of 2008 and then
17 again in March of 2011. We've taken the text
18 that was then drafted solely for the new zoning
19 regulations and have reformatted it for the
20 current zoning regulations.

21 We've provided one additional piece
22 of illustration which is the images before you

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1 that show how the measuring point will have an
2 effective result of actually kind of creating
3 a lower building, so it should help reduce the
4 sense of uncertainty of how high a building can
5 be by moving that measuring point from the
6 ceiling as you see in the top illustration to
7 the midpoint of the roof and the pitch. And
8 that has more or less an effect of about a five
9 foot reduction in height while still allowing
10 for the three stories.

11 With that, we're happy to stand on
12 the record and answer any questions.

13 CHAIRMAN HOOD: Okay.
14 Commissioners, I really think unless we have
15 questions, I really would like to hear from the
16 public first. I just want to put that out there
17 unless we want to go first because as stated
18 we've been through a lot of this. We've heard
19 from the Office of Planning. We've had a back
20 and forth dialogue. But there may be some
21 questions that we may want to institute from
22 what we hear from the public that we may want

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1 to go back to the Office of Planning before we
2 ask our questions.

3 So, the way we're going, I think that
4 is the best way to go unless someone else
5 differs. We're not putting you on the spot.
6 We want to go ahead and ask questions this way
7 and then ask on the back end. We can do it both
8 ways, but I think some of the questions may be
9 relative to some of the comments we hear.

10 Anybody disagree on this? Does
11 anybody have anything they want to ask right
12 quick?

13 Mr. Turnbull?

14 COMMISSIONER TURNBULL: I just had
15 a technical question on the height of parapets
16 which I don't know if anyone would ask from the
17 audience but in some sections you mentioned
18 three feet, but in one section you mentioned
19 four feet. And I guess my more basic question
20 is, why do we even mention any -- it's really
21 a building. It's a building code issue at some
22 point that what the height is for safety or

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1 whatever. It's probably got to be 42 inches,
2 32 feet.

3 MS. STEINGASSER: I believe the
4 building code is 42 inches and I think the reason
5 it's mentioned is it's translating what the
6 current regulations require.

7 COMMISSIONER TURNBULL: Okay.

8 MS. STEINGASSER: And we didn't
9 want to allow an indefinite height of parapet
10 to be up against the building edge. So, we put
11 a cap on it so that anything beyond that would
12 have to be set back so it wouldn't give the
13 appearance of more -- of taller buildings.

14 COMMISSIONER TURNBULL: I was just
15 wondering if at some point we might just say
16 that as per the requirements of the building
17 code. I don't know if we want to get more
18 generic or more -- me, I understand where you're
19 going. I'm just curious why we're so definitive
20 on three feet and then four feet.

21 MS. STEINGASSER: The four feet --
22 I've forgotten which section that was in.

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1 COMMISSIONER TURNBULL: 400.15B.

2 MS. STEINGASSER: 15B? So, it's in
3 the residential zone. It was to allow for --
4 we could stay with 32 feet if you're more
5 comfortable with that. It was to allow
6 basically for roof decks.

7 COMMISSIONER TURNBULL: Okay.

8 MS. STEINGASSER: But anything
9 beyond that we wanted to make sure it got set
10 back.

11 COMMISSIONER TURNBULL: Okay.

12 MS. STEINGASSER: But we can revise
13 that.

14 COMMISSIONER TURNBULL: It was just
15 a general questions. I'm just curious as to,
16 you know, I'm comfortable with the way you want
17 to go. I'm just wondering from a -- do we
18 hamstring ourselves at some point by -- I guess
19 I'm trying to be as flexible and cover as many
20 options as could possibly be out there and yet,
21 you know, with the intent of what we really want
22 to do. I mean, I think we all know what the

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1 intent is. I just wanted to make sure that we
2 were covered from a standpoint of legally and
3 that we don't have somebody coming back, you
4 know, asking us, well, you're not quite right.

5 And if you got 42 inches, you know, we got to
6 allow for this and that.

7 MS. STEINGASSER: Well, I think
8 from OP's standpoint we would rather them bring
9 that to us and us bring it back to you as a code
10 amendment than cite the building code and not
11 know what the --

12 COMMISSIONER TURNBULL: Yes, I
13 would not want to cite the building code per
14 se.

15 THE COURT: Yes.

16 THE COURT: I mean, but I would want
17 to be more generic but whatever.

18 MS. STEINGASSER: Okay.

19 COMMISSIONER TURNBULL: I'm okay.

20 COMMISSIONER MAY: Mr. Turnbull, I
21 would point out the building code doesn't
22 actually require a parapet per se. It requires

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1 a guard rail.

2 COMMISSIONER TURNBULL: A guard
3 rail.

4 COMMISSIONER MAY: Which could be
5 a parapet.

6 COMMISSIONER TURNBULL: Which
7 could be, right.

8 COMMISSIONER MAY: But it could
9 very easily be set back and there could be no
10 parapet --

11 COMMISSIONER TURNBULL: Yes.

12 COMMISSIONER MAY: -- by the
13 building code. So, yes, I think referencing
14 the building code --

15 COMMISSIONER TURNBULL: No, I
16 wouldn't want to necessarily reference it. I
17 just want to -- I just --

18 COMMISSIONER MAY: It does raise a
19 good question about how you define the top of
20 the roof.

21 COMMISSIONER TURNBULL: Right.

22 COMMISSIONER MAY: Because the top

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1 of the roof is, you know, where the membrane
2 is and then you add ballast on top of it or you
3 add pavers on top of it or a decking.

4 COMMISSIONER TURNBULL: Decking,
5 yes. So, what is the top of the roof, but I
6 don't think I want to get into that level of
7 detail.

8 COMMISSIONER MAY: Okay.

9 COMMISSIONER TURNBULL: Okay. In
10 the zoning code.

11 CHAIRMAN HOOD: Any other burning
12 questions? Okay.

13 The report of other government
14 agencies? I don't think we had any in our
15 packets.

16 Report of ANC. The only ANC that
17 brought up some issues, we may ask questions
18 from their submission which was ANC 6C, I believe
19 is the only one I saw.

20 3G is on the list. D -- 3D is on
21 the list to speak. We will hear from them and
22 then we'll do the report of ANCs.

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1 Any one Commissioner that's here if
2 you can come forward. You can come forward,
3 Commissioner. You want to hand those to Ms.
4 Schellin. Okay. Good. Thank you.

5 You can sit down, introduce yourself
6 and we're ready to get started. Once it lights
7 up, then you're good.

8 Oh, you know what? I didn't need
9 that tonight, I'm sorry.

10 MR. ROSS: After me already, huh.

11 Thank you very much.

12 Good evening Chairman Hood and
13 Members of the Commission. I'm Stu Ross and
14 I'm Chair of the Advisory Neighborhood
15 Commission 3D and we have appeared before the
16 Commission on numerous occasions. And in our
17 meeting of the ANC we dealt with zoning issues
18 and procedures virtually every month as I'm sure
19 is the case for most ANCs.

20 It has been our experience that most
21 the larger institutions that come before us are
22 generally represented by experienced and

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1 competent counsel and subject matter advisors.

2 But we also see a lot of individual dwelling
3 requests for variances in opposition to those
4 requests, sometimes by a single opponent and
5 sometimes by groups of neighbors.

6 We have a concern that in these
7 individual dwelling matters, particularly where
8 someone might want or need party status, that
9 needs to retain counsel or an advisor, it turns
10 out to be a very costly proposition for them,
11 in part, not because of the actual work they
12 have been doing but rather because of the
13 Commission's workload, the time they have to
14 spend here waiting to be heard, sometimes I
15 should say.

16 This involves BZA Rules of
17 Procedure, new D3113.21 and 3113.22, which are
18 set forth below. And I'd like to draw your
19 attention, number 21, to a reference that is
20 a quote. "At the time of the hearing on the
21 application, the Board shall consider any
22 requests for party status made pursuant to

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1 3106.2" And there are very specific categories
2 that must be addressed by someone who is seeking
3 party status. And someone seeking party status
4 must comply with the very specific provisions
5 of 3106.2 in their filing. But under new
6 3113.21 they do not find out until the "time
7 of the hearing" if they are going to get it.
8 Surely, they have probably been preparing the
9 filing for party status and possibly even
10 preparing the case while spending their client's
11 money with no knowledge if they will get party
12 status and spending their client's money.

13 We think the Commission should
14 consider moving the party status determination
15 to an earlier time in the overall procedure.
16 It could delegate to professional staff a
17 rebuttal determination of the status by the
18 Commissioners or simply move it up. It could
19 do this for all matters or just individual
20 dwelling matters. We think with the work
21 counsel or an advisor would put into filing such
22 a request for party status, preparing for the

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1 case, waiting to be heard or on some evenings
2 if there is one of those big institutional people
3 in front of you, having to come back at another
4 time. It would allow the client to know where
5 they are earlier in the process and make for
6 a more efficient use of their money.

7 We see a lot of these cases as you
8 do and they're difficult and sometimes the
9 people really don't have that kind of resources
10 to do that. So, it was just a suggesting that
11 based upon our own experience that if there was
12 a way to move it up to an earlier determination
13 point it would be helpful.

14 Lastly, we also strongly support and
15 ANC 3D did testimony of our actual former chair
16 of ANC 3D who is sitting behind me, Alma Gates,
17 who is going to be discussing height which has
18 been a major problem in our ANC which in my
19 particular district is the Palisades and our
20 other districts. I think you're pretty familiar
21 with it. It includes Spring Valley, Wesley
22 Heights, all the Palisades and thank you very

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1 much.

2 CHAIRMAN HOOD: Okay. Thank you,
3 Chair Ross.

4 You bring up an interesting point.
5 We've tackled that and we've grappled with that
6 previously and then you bring back something
7 we've done in the past. I think this is where
8 we landed, you know. I think that is something
9 we discussed, something we can probably bring
10 back up and continue to discuss about when is
11 the time to let people know party status,
12 especially if you have someone with
13 representation which you're paying a lot of
14 money to. So, I mean, that's a discussion that
15 we've had and if we need to revisit that
16 discussion we will.

17 But let me open it. Any questions
18 of Chairman Ross? And I don't know if Mr.
19 Bergstein wants to comment. I know that's
20 something that we have talked about and --

21 COMMISSIONER MAY: Are we going to
22 hold our questions because I'd like to talk about

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1 this too.

2 CHAIRMAN HOOD: He's the only
3 Commissioner. Yes, now we can do.

4 COMMISSIONER MAY: We're going to
5 do that one. Okay.

6 CHAIRMAN HOOD: Our normal.

7 COMMISSIONER MAY: So, are we on?

8 CHAIRMAN HOOD: Yes, let's get
9 started but I want to see if -- why don't we
10 do it first and if we need to go to him, we will.

11

12 COMMISSIONER MAY: So, yes, I
13 remember us talking about it before too and I
14 think we could not resolve a smooth way to do
15 it. But, you know, stepping back and thinking
16 about it again, having let all of that prior
17 discussion kind of flow out of my brain because
18 the space is being taken up by other very
19 important zoning issues.

20 It does make me wonder. Wouldn't
21 it be conceivable that we could consider party
22 status simply just in advance of the hearing.

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1 So, in other words, if somebody is ready to
2 make an application, at the time of setdown we
3 could consider it.

4 MR. BERGSTEIN: This is actually a
5 BZA rule we're talking about --

6 COMMISSIONER MAY: Oh.

7 MR. BERGSTEIN: -- and the BZA has
8 no setdown.

9 COMMISSIONER MAY: Right, right.

10 MR. BERGSTEIN: And the interesting
11 thing is that a few years ago there wasn't even
12 really a definite requirement to put in party
13 status requests 14 days in, but think that what
14 was decided was it was going to be in writing
15 and the original thought was that the BZA would
16 just simply look at the papers. And this is
17 all true for the Zoning Commission to make a
18 determination of papers. What invariably
19 happens is that there's often questions that
20 the Commission or the BZA wants to ask person
21 seeking party status.

22 Also, one of the reasons why there's

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1 a 14-day gap is that the party -- the actual
2 applicant can say, you know, I don't object to
3 that and if they don't object to that, that let's
4 the party status applicant know that he has an
5 easier way to do it.

6 But the only way I could think of
7 making that work, that suggestion work, is to
8 allow the chair of each of the bodies to make
9 party status determinations. There's no reason
10 why that can't be done, a procedure rule, a
11 determination like any other determination.
12 The question is, what would be the comfort level
13 of each chair in doing it on the papers and not
14 be able to resolve possible ambiguities because
15 sometimes people have problems with that form
16 and they don't really lay out their interests
17 as specifically as they might.

18 And, again, there's no opportunity
19 for the actual applicant to object or state
20 reasons why they're objecting. So, again, the
21 reason there is a 14-day period is to allow the
22 applicant to cite what their position is. And

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1 the reason it comes before the BZA or the Zoning
2 Commission is because invariably it seems that
3 the Commission or the BZA has questions for the
4 party and in all fairness wants to flush out
5 issues. Or say, there's three of you out there.

6 Can you combine? So, there are reasons why
7 doing it as a Commission or a Board makes sense.

8 But, again, the other option would be to change
9 the rules to allow that determination to be made
10 by each chair, assuming each chair would be
11 comfortable with that because the request would
12 have to come to the chair and be rules on it
13 in a quick enough time for the person seeking
14 party status to know whether they got it or not.

15 So, those are the sort of variables that are
16 involved in your suggestion.

17 MR. ROSS: It's not. I understand
18 it's not an easy thing to do but it's an important
19 thing to do. And the thing that people have
20 been coming back to us with was, of course, when
21 they were denied party status and they'd spent
22 \$6,000 or \$7,000 having someone work up their

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1 application, prepare their case and do the work
2 that would be done, they were combined and didn't
3 feel it. So, I just thought I'd pass
4 it on to you that it's still out there, Mr.
5 Chairman. And it's not easy but the only thing
6 I thought of was having some staff make a
7 rebuttal presumption that there was status like
8 that which you all could overturn if someone
9 was given an opportunity to say why at the
10 hearing they thought someone shouldn't be a
11 party.

12 I'm sorry, go ahead.

13 CHAIRMAN HOOD: I was just
14 thinking. Even in that way we still are
15 defeating the purpose because if we wait until
16 they get t the hearing they still spend all that
17 money.

18 MR. ROSS: Right.

19 CHAIRMAN HOOD: Staff may have gone
20 ahead and said okay, but would still have spent
21 all that money and we'll end up in the same spot.

22

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1 I hear you and I'm glad Mr. Bergstein
2 reminded us because this has been an exhaustive
3 conversation that we've had on this Commission.

4 And I can tell you, all of us want to make sure
5 that the Commissioners and those who are not
6 zoning experts also get fair treatment when they
7 go out and purchase or solicit someone who is
8 an expert to come and represent them. We don't
9 want to see anyone spend \$6,000 and come in and
10 get turned down. It happened. I don't know
11 if it happens a lot. I may be wrong, but we
12 know it happens. We're aware of it but we have
13 to make that decision here and I personally,
14 like all my colleagues, we don't always agree
15 who should get party status or not. At least
16 me being the chair I like all of us to have input.

17 I'm not sure about my colleagues on the BZA
18 but this is just my personal preference.

19 MR. ROSS: With your expertise, I
20 suggest to you. I don't know, but I suggest
21 that most of the time you'd be right if you made
22 an earlier determination of whether someone

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1 should be eligible for party status. But if
2 you left something in that was rebuttal and you
3 saw it was really egregious, that the decision
4 was egregious because facts had changes or been
5 misrepresented, then you could just pop them.

6 But I understand.

7 CHAIRMAN HOOD: And that does
8 happen what you just said. At the beginning
9 of the hearing they misrepresent themselves.
10 We start off giving them party status and during
11 the hearing we have to rethink or revisit that.

12
13 So, as Mr. Bergstein said, it's a
14 number of variables. We don't take what you
15 said loosely. We actually are very passionate
16 and very concerned about that we've just been
17 looking for exactly what you're trying to do.

18 Achieve a way so it won't put that extra burden
19 or extra cost on that person who is not the zoning
20 expert.

21 I'll let some of my other colleagues
22 -- Commissioner May?

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1 COMMISSIONER MAY: I have a
2 follow-up actually for Mr. Bergstein on this.

3 Is there any reason why we could not
4 set up a procedure where the chairman could make
5 an advance decision, if you will, on someone's
6 party status but then if there's not enough
7 information simply defer decision to the time
8 of the hearing? In other words, if somebody
9 submit information and it's very clear it meets
10 all of our usual standards can you go ahead and
11 give them the green light in advance and then
12 just allow any of the ones that are kind of gray
13 to, you know, just simply be deferred to the
14 time of the hearing?

15 MR. BERGSTEIN: Those were my early
16 suggestions. If each chair would be
17 comfortable with doing that and then I don't
18 know, 14 days before the hearing is sufficient
19 time for everybody to then find out they need
20 counsel or not need counsel. But assuming that
21 there would be some point before the hearing
22 where all party status requests would be in.

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1 Then each chair could rule on the papers which,
2 I say, could be good or bad but that's what would
3 happen.

4 So, there's no reason why we can't
5 change --

6 COMMISSIONER MAY: But often there
7 are many, many weeks on this and someone could
8 put their party status in immediately before
9 they start building their case. And if it could
10 be turned around and if the slam dunks are
11 granted, you know, right off the bat, that could
12 give somebody the advantage of a lot of time.

13 I mean, granted you wouldn't have the
14 opportunity for an applicant to rebut someone's
15 application for party status which does occur.

16 But, frankly, I don't, you know, if we're going
17 to air on the side of getting a more full
18 discussion I'd rather air on the side of giving
19 somebody party status that maybe was marginal
20 than pulling it away from somebody because
21 they're in that gray area.

22 MR. BERGSTEIN: It can be done.

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1 Other ideas I've had is -- one of the reasons
2 we want to make this period between application
3 hearing fairly short, in a court you would
4 normally have a status hearing before a hearing.

5 COMMISSIONER MAY: Right.

6 MR. BERGSTEIN: Things like this
7 get flushed out.

8 COMMISSIONER MAY: Right.

9 MR. BERGSTEIN: But we have no point
10 in our schedule to put something like that in.

11

12 You could have special hearing days
13 where let's say the chair presides over various
14 motions for all these cases where all these
15 things get disposed of. But there's no reason
16 why you can't give more authority for matters
17 like this that aren't dispositional in nature.

18 They don't go the merits of the case but are
19 procedural in nature, why those things cannot
20 be given to each of the chairs to decide.

21 COMMISSIONER MAY: Okay. Well, I
22 think it is something worth thinking about and

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1 discussing again.

2 CHAIRMAN HOOD: Actually, I would
3 agree. Maybe we need to continue to have our
4 discussion.

5 I don't necessarily have a problem
6 with that way. I believe in letting everybody
7 have status so I believe for me to do that.
8 And then they come in here and spend all that
9 money and then my colleagues disagree with me,
10 we're right back in the same place that we were
11 before we ever started. And then the person
12 is going to be fuming at Mr. May because he didn't
13 agree with me for party status.

14 But anyway let's look at it. I
15 would be willing to go down that line. I don't
16 have a problem with it. If everybody agrees,
17 let's try it and see what happens. And if that
18 don't work, let's keep trying until we get
19 something that works that solves that issue.

20 MR. ROSS: Thank you very much.

21 CHAIRMAN HOOD: I would agree. I
22 definitely agree with that.

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1 MR. ROSS: Thank you very much, all
2 of you.

3 CHAIRMAN HOOD: Okay. Did anybody
4 have any other questions of the chair?

5 Okay. Thank you very much. We
6 appreciate it.

7 MR. ROSS: You're welcome.

8 CHAIRMAN HOOD: Do we have any other
9 commissioners?

10 Okay. I don't have a list to call
11 so I'm going to ask all those who would like
12 to testify if you'd come forward.

13 Let me see if I can get a spark out
14 of anybody. Do you need about two minutes?

15 Okay. I haven't seen the testimony
16 so once I see your testimony we can figure out
17 how much time everybody thinks they need. I'm
18 going to start with you, Ms. Kahlow.

19 MS. KAHLOW: I have two and a half
20 pages. Do you have my testimony now?

21 CHAIRMAN HOOD: No, I don't have it
22 but two and a half, we're good.

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1 MS. KAHLOW: Can do that? Okay.

2 CHAIRMAN HOOD: Some people might
3 have 10 or 15, so I wanted to try to balance
4 that.

5 MS. KAHLOW: I knew what it was
6 supposed to be.

7 CHAIRMAN HOOD: We only have three.
8 Anyone else to testify?

9 So, what we'll do as long as we don't
10 have 10 pages, we'll hear everyone's testimony.

11

12 Okay? Ms. Kahlow, you want to
13 start?

14 MS. KAHLOW: I'd be happy to.

15 I, Barbara Kahlow, live at 800 25th
16 Street, Northwest. I am testifying on behalf
17 of the West End Citizens Association, the oldest
18 citizens organization in the Foggy Bottom area,
19 Ward 2.

20 The WECA is primarily interested in
21 maintaining and improving the quality of life
22 for the existing residential community in Foggy

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1 Bottom West End.

2 I first want to talk about the zoning
3 regulations review on the specific case in front
4 of us.

5 The WECA is surprised that the
6 Commission is tonight considering various
7 amendments -- administrative amendments,
8 especially to the existing Planned Unit
9 Development PUD rules before holding the ward
10 meetings for the Office of Planning to present
11 proposed specific language changes and to take
12 questions in the community as the Commission
13 directed OP to do for the comprehensive zoning
14 regulations review, ZRR.

15 We recommend that the Commission not
16 finalize its views on this case until these
17 meetings have occurred and until OP has
18 incorporated changes to reflect the public's
19 view since they are based on the public's
20 extensive experience with the subject matter.

21 If OP does not support the public's
22 view, OP should methodically explain the

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1 differences and the underlying rationale for
2 each rejection.

3 The WECA participated in five of
4 OP's ZRR working groups. In all five, most
5 public comments including all of the WECA's
6 related to PUDs were largely ignored by OP.
7 This will probably be news to Rob Miller, Mr.
8 Miller -- and without any explanations to date
9 as required by traditional and time-tested
10 government rule-making procedures. This
11 includes the WECA's two major PUD issue, both
12 of which are addressed in tonight's proposal.

13 I am mentioned it again because Mr. Miller is
14 new.

15 One, DC's policy for future "omnibus
16 PUDs" such as the George Washington University's
17 20 non-contiguous squares omnibus PUD for campus
18 plan which was used to bypass the protective
19 cumulative ratio FAR cap for colleges and
20 universities and 11 DCMR subsection 210.3.

21 And two, DC's procedures to
22 implement DC law protecting impact of

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1 communities and PUDs requiring "location of PUD
2 amenities require a substantial amount of the
3 amenities proposed in PUDs shall improve the
4 community in which the PUD would have an impact."

5 And then I cite the Comprehensive Plan
6 provisions that Mr. Miller actually worked with
7 me on.

8 With respect to future omnibus PUDs,
9 during OP's campus institutional working group,
10 OP committed to address omnibus PUDs in OP's
11 working group. OP failed to do so.

12 With respect to PUD amenities, OP
13 failed to mention the statutory requirement in
14 any of the ZRR presentations to date. Why?
15 At a bare minimum, since that's statutory, and
16 who knows how long ZRR is going to take it should
17 be mentioned.

18 Now, let's go to the case in front
19 of us today.

20 Today's proposal is problematic in
21 multiple ways. In order of presentations they
22 include. First, page 9, PUD Procedures. And

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1 that's where I mention again. Why is there no
2 mention of the statutory requirement just stated
3 about a substantial part of the amenities
4 proposed in PUDs shall accrue in the community
5 in which the PUD would have an impact.

6 We think the Commission should
7 direct OP to include in this Text Amendment case
8 the statutory essential protection for directly
9 impacted communities which is an essential
10 element to assure fairness and equity. This
11 should be a mandatory item in OP's checklist
12 for completeness of PUD applications at a bare
13 minimum.

14 Second, page 9, Amendment to
15 Subsection 2403.6C.

16 As the WECA testified on October
17 4th, 2010, in the Commission's hearing on PUDs,
18 we opposed the added and noncommunity friendly
19 criterion stating monetary contributions shall
20 not be allowed except to district housing funds.

21 We stated "The WECA does not agree with this
22 standard in OP's proposal." "Cannot include

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1 monetary contributions." Attached is a
2 one-page document prepared at the request of
3 a mayoral appointee to the National Capital
4 Planning Commission entitled "Examples for
5 Dixon of PUD Amenities for Foggy Bottom West
6 End."

7 This includes monetary
8 contributions which enhance the area
9 surrounding the project and attracts other
10 positive developments for specifically needed
11 amenities in the Foggy Bottom West End community
12 and to benefit the immediately impacted
13 community. Examples are \$100,000 for
14 prescription drugs for the elderly at the
15 subsidized elderly facility, St. Mary's Court
16 in our neighborhood, \$50,000 for a van for the
17 elderly in that neighborhood, 5,000 square feet
18 of retail and another one, \$5,000 in nutrition
19 of the elderly in ANC 2A, \$10,000 for a traffic
20 light for the safety of the elderly pedestrians
21 and \$460,000 for augmented services in the West
22 End Library.

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1 The bottom line is the current
2 negotiated process for PUD amenities works and
3 results in more desired and appropriate
4 amenities.

5 Next section. Pages 11 and 18.
6 Time Extension for First Stage PUDs and Time
7 Extensions for the Validity of Orders.

8 You are proposing to amend "The
9 Board may grant one extension and cross out the
10 word grant one extension and extend the time
11 period. The WECA does not support more than
12 one extension of an order. We have testified
13 about this repeatedly, especially, without good
14 cause, we have seen too many cases in our
15 neighborhood where properties lie vacant and
16 sometimes in districts there for many years.
17 And I use 2501 Pennsylvania Avenue that was
18 vacant for a good 15 years.

19 One-time extension should be
20 sufficient. They just go on endlessly and they
21 can't always claim a financial reason. They
22 claim another transfer of ownership. It goes

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1 on and on and on and they start again when there
2 is a change and when there's a brand new
3 proposal. And we think the time should be a
4 max of one-time extension for either a BZA case
5 of Zoning Commission PUD case.

6 The next one. Party Status
7 Requests. And I'm looking at a different thing
8 than the last witness talked about. Your add
9 to Section 3113 to read. "In granting party
10 status the Board may specify whether the person
11 will be permitted to participate as a party for
12 general or limited purposes." There is no
13 definition of party status for limited purposes.

14 A categorization such as this would lead to
15 possible charges of discrimination or economic
16 differences.

17 What would limit a party status
18 include? Would you still be able to
19 cross-examine the witnesses? Would you be able
20 to file post-hearing submissions? Would you
21 be able to file Findings of Facts?

22 The Commission should not approve

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1 this added subsection which is patently unfair
2 to directly affected parties.

3 Next Section. Pages 17 to 18.
4 Submission of Post Draft Decision Draft Orders
5 and Amendment to 3125.3 to read "The prevailing
6 party in an application or appeal may file
7 proposed order. No response to the proposed
8 order may be submitted by any other party."
9 This is absolutely unfair to directly offend
10 affected parties and the Commission should not
11 approved it.

12 Often the order is where we best can
13 lay out the legal issues for our case and we
14 need to be able to submit a draft order in every
15 instances.

16 And that would be the most helpful
17 to AG to be able to come up with an order that
18 cites the proper provisions.

19 Lastly, pages 18 to 19. Time
20 Extensions to Validity of Orders. Amendment
21 to 3130.9. Request for a Time Extension and
22 OP wanted to cross out "Filed at least 30 days

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1 prior to the date upon which an order is due
2 to expire shall toll the expiration date.

3 And the question is why would we
4 remove the 30-day notice requirement which is
5 fair to all parties? This requires an applicant
6 to come back to the ANC, to come back to all
7 of us and say what's going on? And we do not
8 want a more open-ended time extension. Again,
9 here we go with more than one.

10 We have a case in our neighborhood
11 where they asked for an extension over and over
12 again in this kind of instance and the 30 days
13 gave us an opportunity to say, wait a second.

14 And I really think that's important.

15 Hopefully, I went through a lot of
16 stuff and you got it. And I wanted to take
17 questions and I definitely would like to talk
18 about what you talked about with the last
19 witness, if you would like me to and ask me any
20 questions about that because obviously we apply
21 for party status all the time. So, I'd be happy
22 to answer questions on that as well.

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1 CHAIRMAN HOOD: I think we may have
2 some questions for you, Ms. Kahlow, but let's
3 go to Ms. Gates. And we'll hear from everybody
4 and then we might have an interaction with
5 everyone, some questions and go along the lines
6 a little more and define some things with you.

7
8 Ms. Gates?

9 MS. GATES: Thank you.

10 Good evening, Chairman Hood and
11 Members of the Commission.

12 I am Alma Gates, representing the
13 Committee of 100 on the Federal City.

14 Committee members and active
15 participants in the Zoning Regulation Revision
16 process, ZRR Task Force members and have
17 testified before the Commission to insure the
18 new zoning regulations are in compliance with
19 the city's Comprehensive Plan and would not
20 negatively affect established neighborhoods
21 across the city.

22 The proposed ZRR Text Amendments in

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1 Case No. 12-11 are presented in the context of
2 the current zoning regulations and ahead of the
3 setdown for the ZRR Text.

4 In the limited time available,
5 C100S, consideration of its comments on the
6 following proposed amendments.

7 One, Height, a definition. Berms
8 or other forms of artificial elevation shall
9 not be included in the measuring of building
10 height. This was something that I pushed for
11 very hard and I'm delighted to see it in here.

12 It is a technique that has been used by
13 developers in residential areas to get extra
14 height. So, getting the prohibition against
15 berms is very important.

16 B Zones, specific rules for
17 measurements. Chapter 4, resident district
18 height area and density regulations, Section
19 400 Height of Buildings or Structures as amended
20 by adding new sections 400.15 through 400.22.

21

22 I think in the essence of time I will

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1 not read those. However, I will begin with the
2 comments on Section B.

3 The establishment of the measuring
4 point for height of residential buildings with
5 a roof that is not flat, limited to 40 feet in
6 height is unnecessarily complicated and open
7 to creative interpretation. A much cleaner,
8 clearer amendment would use the top of the roof
9 as the point to which height is measured. There
10 can be no confusion about the top of the roof.

11 Establishing uniform height in this
12 manner would help maintain uniformity of roof
13 heights in a given block face and perhaps prevent
14 the inclination to build taller roofs that
15 pierce the free canopy.

16 Earlier in the ZRR process, the
17 Office of Planning proposed removing the
18 three-story restriction for residential
19 dwellings. The proposed open text in Section
20 400.18B would have facilitated the additional
21 stories. However, OP recently announced there
22 will be no change to the three-story limit in

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1 R-1 to R-4 residential zones. This reversal
2 makes unnecessary the provisions of Section A
3 and B which can be changed to read as follows:

4 The height of a residential building in zones
5 and specify the zones shall be measured from
6 the building height measuring point to the
7 highest point of the roof. Language and more
8 to that found in Section 400.18 is found in the
9 proposed ZRR Text under Subtitle D, Section
10 308.1C and applies to the R-1 through R-4 Zones.

11 And here the zones are specified.

12 Height Act language previously
13 proposed for residential zones and rejected by
14 the Commission remain in this section. If a
15 building fronts on more than one street, any
16 front may be used to determine the maximum height
17 of the building, but the basis for the height
18 shall be determined by the width of the street
19 selected as the front of the building.

20 Comment. The draft Text Amendment
21 does not say that width of street may be the
22 basis for maximum height but, rather, it says

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1 the basis for the height of the building shall
2 be determined by width of the street selected
3 as the front of the building.

4 OP is taking part of the existing
5 building height of definition and converting
6 it to a zone-specific rule which doesn't belong
7 in Chapter 4 under Section B. This proposed
8 language is confusing given current zoning
9 specific rules of measurements for resident
10 zones is contained in Section 400.1 of the
11 existing zoning regulations which provide
12 height limits for residential zone districts
13 as shown in the chart below.

14 Under the proposed definition,
15 Section 199.1, building height in resident
16 districts are, is the vertical distance measured
17 from the existing grate opposite the middle of
18 the front of the building to a point designated
19 in the zoned district. The Committee of 100
20 suggests the following highlighted text be
21 substituted in the alternative to make the
22 definitions and the specific rules for

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1 measurement consistent in the current code.

2 In resident districts, if a building
3 fronts on more than one street, any front may
4 be used to determine the front of the building,
5 provided that the basis for determining the zone
6 building height is found in Section 400.1.

7 Thank you.

8 CHAIRMAN HOOD: Thank you, Ms.
9 Gates.

10 Ms. Simon.

11 MS. SIMON: Thank you.

12 My name is Marilyn Simon. I live
13 on 43rd Street, Northwest, and today I would
14 like to briefly address the proposed Text
15 Amendments for the public benefits criteria for
16 Planned Unit Development procedures.

17 I begin by noting that I appreciate
18 the clarification of the current criteria for
19 public benefits. The benefits are
20 significantly greater than what would likely
21 result for matter of right development at that
22 site are tangible and quantifiable are

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1 measurable and able to be completed or arranged
2 prior to the issuance of a C of O and that
3 monetary contributions are not allowed except
4 for district housing funds.

5 My concern today is with the second
6 part of this section. This section is meant
7 to recognize that affordable housing can only
8 be counted as a public benefit to the extent
9 that it exceeds what would otherwise be required
10 and to be more clearly described the calculation
11 of the portion of affordable housing that might
12 be counted toward public benefits and project
13 amenities.

14 My concern is that the proposed
15 language is ambiguous where a PUD includes
16 certain related map amendments. When there are
17 map amendments, the affordable housing set
18 asides can change and a map amendment can put
19 the site in a category with a lower percentage
20 of floor area set aside for affordable housing
21 and that all units would serve moderate income
22 households where rents for an affordable studio

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1 would be over \$1,500 a month, while the original
2 zone would have required a higher percentage
3 of the floor area be dedicated to affordable
4 housing and at least half the units be set aside
5 for low income households with lower incomes
6 and lower rents.

7 For the lower zones, up to R-5-B and
8 C-2-A, the set aside requirements for
9 inclusionary zoning is for the greater of 10
10 percent of the gross floor area being devoted
11 to residential use or 75 percent of the bonus
12 density.

13 For each of these zones plus some
14 other apartment zones, it is required that at
15 least half be inclusionary units be set aside
16 for low income households, while the remaining
17 units would be for moderate income households.

18 For higher density zones the set
19 aside requirements for inclusionary zoning is
20 lower. Eight percent of the gross floor area
21 being devoted to residential use or 50 percent
22 of the bonus density.

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1 For C-2-B Zones and higher, none of
2 the inclusionary zoning units must be set aside
3 for low income households.

4 Using a one-bedroom apartment as an
5 example, the income limit for a low income,
6 two-person household is \$43,000 a year, while
7 the income limits for a moderate income
8 two-person household is \$68,800 a year, a limit
9 which actually exceeds D.C.'s median income.

10 The rent for an inclusionary
11 one-bedroom apartment for a low-income
12 household is \$1,075 a month, while the rent for
13 a one-bedroom apartment for a moderate income
14 household is over \$1,700 a month.

15 My concern with the proposed
16 language is that it might be interpreted
17 comparing the floor area devoted to affordable
18 housing in a PUD with the floor area that would
19 have been required in a matter of right
20 development at that site without considering
21 whether the matter of right project would be
22 required to include affordable housing for a

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1 low income household as well as moderate income
2 households.

3 I think that it is necessary to
4 evaluate both the floor area allocated to
5 affordable housing and the income eligibility
6 requirements in the determination of the
7 portion, if any, of affordable housing component
8 of a PUD that should be credited as a public
9 benefit.

10 And in my written text I provided
11 a chart that gives some of the income and rent
12 and purchase price limits for 2012.

13 I also want to note that I have been
14 involved in several cases where there were PUDs
15 in my neighborhood and we had to apply for party
16 status. We spent tens of thousands of dollars
17 prior to knowing whether or not we would be able
18 to put on a case. We spent hundreds of hours
19 preparing our case so this is also a very
20 important issue to us. We would have greatly
21 appreciated knowing before we spent that time
22 and money whether or not we would have been able

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1 to make our presentation. We were granted party
2 status though.

3 Thank you.

4 CHAIRMAN HOOD: Okay. I want to
5 thank you three. We really appreciate your
6 testimony. I think the way we can move if we
7 choose. I think we have Office of Planning we
8 can ask questions to. And I'd like for if we
9 have questions of the we can kind of have an
10 exchange. The room is not that crowded that
11 we can kind of have an exchange between both
12 the witnesses as well as the Office of Planning.

13 I would like for us to maybe asked
14 the questions between the both. But I'd just
15 like to ask -- let me start off with Ms. Kahlow.

16 And, Ms. Simon, I appreciate your
17 comment about the party status because that is
18 an issue that this Commission really understands
19 and we need to get to the bottom of it.

20 In your instances of asking for
21 party status, you have not never been turned
22 down so you didn't spend all that money and come

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1 in here and been turned down.

2 MS. SIMON: No. No, we've never
3 been turned down but we always have in the back
4 of our minds, should we be raising tens of
5 thousands of dollars from our neighbors and
6 spending all our free time.

7 CHAIRMAN HOOD: Well, let me ask
8 you. When do you go out and start with your
9 case once the case is filed with the Commission
10 or do they tell you prior, we're going to file
11 a case to the Zoning Commission or the BZA and
12 this is what -- I guess, what is the point that
13 you start to go out and get that help?

14 MS. SIMON: Usually when we hear
15 about it is when the developer makes a
16 presentation to the ANC or we read about it in
17 the press.

18 CHAIRMAN HOOD: So, you go out even
19 before they file a case?

20 MS. SIMON: Yes, raising money
21 comes later, but in terms of finding out what
22 people think, thinking about the issues and

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1 informing people of what's going on, that starts
2 very early.

3 CHAIRMAN HOOD: So, in your case if
4 you start very early and the applicant decides
5 or the developer decides, you've spent or raised
6 the money and spent some time. So, what if they
7 decide not to come in front of us?

8 MS. SIMON: No, we would be raising
9 money until we're actually hiring.

10 CHAIRMAN HOOD: Okay. So, really
11 you start the leg work after the case is filed?

12 MS. SIMON: yes.

13 CHAIRMAN HOOD: Okay. Okay.

14 Ms. Kahlow, can you comment?

15 MS. KAHLOW: Yes, ours is different
16 and, of course, every PUD is different. But
17 I'll use an example. The West End Library.

18 CHAIRMAN HOOD: Let me ask this.
19 Are we finished with that?

20 MR. BERGSTEIN: It's all done.
21 That's all done and on appeal.

22 MS. KAHLOW: Thank you. But the

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1 reason I mention it is it was so complex it went
2 on for years before they filed something because
3 there were changes with the district on
4 property. And we coordinated with the
5 different parties in the community, with the
6 applicant. We went through all kinds of sherets
7 and all kinds of stuff. This went on for a very
8 long time.

9 Then when we came for party status
10 we need to know if we're going to make a party
11 status for one, to determine how long we write
12 testimony, two to determine if we should hire
13 someone and three to figure out about our
14 questions. This all takes hours.

15 We coordinate with each other to
16 make sure we don't have duplicative and in that
17 particular instance was the only time we were
18 denied party status and some not real group got
19 it. And we had spent so -- invested hundreds
20 of dollars going to sherets and everything else
21 and working with everybody on a deal and we were
22 denied party status in addition to throwing away

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1 money. That's the only time that's ever
2 happened. Hopefully, it will never happen
3 again.

4 But my point is, there's lots of
5 pre-stuff and if it's testimony, it's questions.

6 If it's working out arrangements with an
7 amenity package developer, all of this takes
8 -- if you're in a case, it takes an enormous
9 amount of time. And knowing if you're a party
10 helps everybody make it more efficient.

11 CHAIRMAN HOOD: So, again, same
12 question I asked Ms. Simon. So, you start going
13 out and, I guess, raising money or working on
14 the case once the case is filed.

15 MS. KAHLOW: No, before that. The
16 West End Library was years before that.

17 CHAIRMAN HOOD: So, again, what
18 happens if they never come down here? They
19 don't file a case?

20 MS. KAHLOW: That -- that rarely
21 happens. I don't know that it ever happened
22 in our case. We know when they're going to

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1 develop something. We don't know when it's
2 going to come to you but there's so many stages.

3 I use the library because it was determined
4 it was a surplus property. Had to testify on
5 that.

6 CHAIRMAN HOOD: I think I might
7 remember that one.

8 MS. KAHLOW: I mean, there were so
9 many instances. I must have testified maybe
10 10 times on that case before it came to the PUD
11 and then denied party status in the PUD when
12 I'd been a principal in all of the discussions
13 and the only witness sometimes in front of those
14 things. But there's something completely
15 screwed up. But anyway it could be years is
16 the point. It could be years before it gets
17 to the Zoning Commission case, especially if
18 it's a district-owned property.

19 CHAIRMAN HOOD: Okay. Ms. Gates,
20 did you want to comment on that?

21 MS. GATES: I couldn't agree with
22 them more to be honest with you. Because I was

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1 an ANC commissioner I really wasn't in the same
2 boat but I know that working with communities
3 it is a concern.

4 Ms. Kahlow and Ms. Simon are both
5 fairly experienced but when you have
6 representatives from the community who don't
7 have this kind of expertise and have to hire
8 expert witnesses or some sort of support system
9 to come with them, it's very difficult and it
10 costs a lot of money. So, I think there's good
11 reason to consider this.

12 MS. KAHLOW: And let me just say one
13 other case if I can to use an example.

14 Even if we weren't a party,
15 sometimes we work with the applicant's attorney
16 because they don't have a lot of experience with
17 our neighbors. We can spend and the case is
18 coming before you so I won't mention what it
19 is. We can spend hundreds of hours. Not
20 hundreds, maybe twenty, thirty hours helping
21 those people frame their arguments about what
22 happens in our community. I mean, there's such

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1 an investment when it's a PUD that it's
2 phenomenal before it even reaches you.

3 CHAIRMAN HOOD: Okay. I may ask
4 more but let me open it up.

5 COMMISSIONER TURNBULL: I just
6 wanted to follow up on your line of questioning.

7 When do you normally file though for
8 party status?

9 MS. KAHLOW: The day that it's
10 noticed on the first one. I file almost the
11 day it's noticed in the D.C. Register so it's
12 40 days in advance. And I do it so that the
13 applicant and everybody else knows where we
14 stand.

15 COMMISSIONER TURNBULL: Forty days
16 or fourteen?

17 MS. KAHLOW: Oh, 14 is the minimum.

18 COMMISSIONER TURNBULL: Right.

19 MS. KAHLOW: Forty is the first.
20 The day it's in the Register I file. 4-0.

21 COMMISSIONER TURNBULL: And, Ms.
22 Simon, when do you normally file?

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1 MS. SIMON: I think the PUDs that
2 I worked with the party on we usually file very
3 close to the filing deadline, within a few days
4 of them. But we had put in a fair mount of work
5 prior to that and we had committed to --

6 COMMISSIONER TURNBULL: Have you
7 invested money by that time?

8 MS. SIMON: Definitely. We would
9 have committed to hiring an attorney. We would
10 have a traffic expert. We usually would have
11 a land use expert.

12 COMMISSIONER TURNBULL: But I mean
13 as far as the filing party status. I mean
14 usually, I mean, you're both familiar with the
15 requirements and you --

16 MS. SIMON: Right.

17 COMMISSIONER TURNBULL: -- fill out
18 the application so you wouldn't be hiring an
19 attorney again to --

20 MS. SIMON: By 14 days beforehand
21 you have to be pretty far along to preparing
22 your presentation.

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1 COMMISSIONER TURNBULL: Right.

2 MS. SIMON: The traffic expert
3 would --

4 COMMISSIONER TURNBULL: But if
5 you're going for party status though the
6 organization as far as getting party status
7 isn't that mainly a formality though for most
8 of you on that?

9 MS. SIMON: Well, not always. The
10 reason we do 40 days in advance is so that the
11 applicant has to work with us --

12 COMMISSIONER TURNBULL: Right.

13 MS. SIMON: -- during those 40 days
14 and the ANC has to work with us.

15 COMMISSIONER TURNBULL: Right.

16 MS. SIMON: Everybody is on notice.
17 And it's not a formality because this one time
18 we were rejected and we had worked out, believe
19 it or not, coordinated cross-examination. I
20 was going to do the main cross-examination and
21 wasn't able to.

22 COMMISSIONER TURNBULL: Okay.

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1 Thank you.

2 CHAIRMAN HOOD: Okay. Let me see
3 if there are any other comments on this issue
4 from any of my colleagues on this particular
5 party status issue.

6 COMMISSIONER MAY: No, I just want
7 to say that I disagree with Ms. Gates. I think
8 Ms. Kahlow and Ms. Simon have a lot -- are not
9 fairly experienced. They are very experienced.
10 You characterized it as fairly experienced.

11 CHAIRMAN HOOD: I would like for us
12 to, if my colleagues agree, and I know we've
13 been down this road before to revisit that and
14 I think we had some ideas from Commissioner May
15 and my other colleagues. If we could work again
16 and I know, Ms. Bergstein, if we can dust off
17 that book because I know we've looked at all
18 this again and come up with some options that
19 we can discuss with the Office of Planning and
20 let's try to go down that avenue again,
21 especially, in light of what we heard tonight.

22

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1 Okay. Agreeable with everyone?

2 COMMISSIONER MAY: Absolutely.

3 CHAIRMAN HOOD: Okay. Let's move
4 to -- let's open it up. Who would like to start
5 off. The good part about it is we have so many
6 -- those who testified, the Office of Planning,
7 Mr. Bergstein and myself or who else?

8 Commissioner May.

9 COMMISSIONER MAY: Yes, I'd like to
10 start with the Office of Planning.

11 I received this diagram and I looked
12 at it and I thought this is going to be very
13 helpful. And then I looked at it and I said
14 no, this is not. It's confusing.

15 The bottom part is supposed to be
16 the proposed way of measuring?

17 MS. STEINGASSER: Yes.

18 COMMISSIONER MAY: And it only
19 really seems, I mean, it still has the same
20 designation as for unmeasured height and --

21 MS. STEINGASSER: That's my own
22 lack of skill on computer graphics.

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1 COMMISSIONER MAY: Okay.

2 MS. STEINGASSER: So, I will take
3 full ownership of that.

4 COMMISSIONER MAY: Okay.

5 MS. STEINGASSER: What we were
6 trying to show is that currently you measure
7 to the top of the ceiling in a residential low
8 density zone.

9 COMMISSIONER MAY: Right.

10 MS. STEINGASSER: And what we're
11 proposing is that that measuring point be raised
12 to the midpoint between an eave and the highest
13 point on a roof.

14 COMMISSIONER MAY: Right.

15 MS. STEINGASSER: So, that the --
16 and that's always where we end up with the
17 controversies in front of the BZA is what happens
18 in that roof. Is there a false drop ceiling?

19 COMMISSIONER MAY: Right.

20 MS. STEINGASSER: You know.

21 COMMISSIONER MAY: Because they're
22 lost in that occupied habitable peak roof and

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1 so on. And if I understand it correctly when
2 there is a dormer, which would have an eave
3 that's higher than the eave of the pitched roof,
4 then that becomes the low end of the average?

5 MS. STEINGASSER: That's correct.

6 COMMISSIONER MAY: All right. So,
7 it pushes it up further. See, I'm not sure I
8 understand, you raise the issue of confusion
9 here. I mean, I understand top of roof is pretty
10 clear. But measuring to the top of roof isn't
11 necessarily going to give us the best roof forms
12 and it may wind up pushing, you know, pushing
13 the volume around in ways that we don't
14 necessarily want. So, I think actually
15 measuring the average makes a lot of sense.
16 I'm not sure where the confusion come in.

17 MS. GATES: I think we've had this
18 discussion before.

19 COMMISSIONER MAY: Yes. I think so
20 too.

21 MS. GATES: I just believe that top
22 of the roof, 40 feet, is very clear. When you

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1 start -- now, we do not have this diagram, by
2 the way, but I think it's the same diagram that
3 was in the task force handbook. It's that line
4 that goes to the middle of the roof. That can
5 move up and down. So, why not just, you know,
6 cap the height off at the top of the roof.

7 COMMISSIONER MAY: But how would it
8 move up and down? I mean it's measured from
9 -- the line in the middle of the roof is measured
10 from the bottom of the eave to the top.

11 MS. GATES: The higher -- you can
12 stretch that roof up. An architect on the C
13 100 zoning subcommittee was talking about these
14 nordic style roofs to get extra height in there
15 and this was to be honest in relation to the
16 unlimited stories. However, in neighborhoods
17 where houses are measured to 40 feet to the top
18 of the roof and there are some, it makes a big
19 difference.

20 COMMISSIONER MAY: But now that --

21 MS. GATES: I'm not --

22 COMMISSIONER MAY: The Office of

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1 Planning ha said now that they're going to keep
2 the limitation to three stories. Is that in
3 your testimony too?

4 MS. GATES: No, no.

5 COMMISSIONER MAY: No?

6 MS. GATES: No. I'm sorry, three
7 stories.

8 COMMISSIONER MAY: Three stories?

9 MS. GATES: Yes.

10 COMMISSIONER MAY: They're going to
11 keep that limitation?

12 MS. GATES: Yes. That stays.

13 COMMISSIONER MAY: We're going to
14 throw it away.

15 MS. GATES: Who is?

16 COMMISSIONER MAY: The Office of
17 Planning. I thought that's what you just said.

18 MS. GATES: No, no. No. There was
19 a time when they were going to throw it away.
20 They have changed their mind and they are
21 keeping 40 stories.

22 COMMISSIONER MAY: Okay. All

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1 right.

2 MS. GATES: So, the chart that is
3 in my testimony still holds, correct?

4 MS. STEINGASSER: Yes.

5 COMMISSIONER MAY: Okay. So,
6 that's it from me for questions on that subject
7 but I'll stick with your testimony at the moment.

8

9 And this is more a question for the
10 Office of Planning. Ms. Gates raised the issue
11 in 400.22 about the basis of the height shall
12 be determined by the width of the street selected
13 as the front of the building. And that's for
14 residential zones. I mean, isn't his really
15 mostly about Height Act?

16 MS. STEINGASSER: This reflects the
17 language that's currently in the zoning
18 regulations in Section 199.

19 COMMISSIONER MAY: Right.

20 MS. STEINGASSER: It says that you
21 can determine where you're going to pull your
22 height and where it's applied has to be at the

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1 front of the building. That's how it's always
2 been.

3 COMMISSIONER MAY: Right.

4 MS. STEINGASSER: I don't know what
5 the unintended consequences would be of allowing
6 that height to be measured in other places.
7 The front of the building could be the low end
8 of the site. And so now we're creating an
9 opportunity for someone to draw their maximum
10 height and measure it at the back fo the
11 building.

12 COMMISSIONER MAY: That's what
13 we're not doing. That's what we're avoiding.

14 MS. STEINGASSER: That's what we're
15 proposing so the Committee of 100's reference
16 to changing shall to may creates that type of
17 flexibility that the height would then be
18 measured at other points beyond -- besides the
19 front. We're happy to take a look at that.
20 I have no objections to doing it but what we
21 tried to do was incorporate the language out
22 of Section 199 that's been on the books all these

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1 years.

2 COMMISSIONER MAY: Right. Okay.

3 CHAIRMAN HOOD: We are going to take
4 a look at that. But I remember a case -- well,
5 anyway.

6 COMMISSIONER MAY: Yes, I mean, I
7 don't have any problem with the way it's drafted.

8 I'm confused at what you're trying to get at,
9 what you're trying to -- are you trying to allow
10 more height?

11 MS. GATES: The width of the street.

12 COMMISSIONER MAY: Yes.

13 MS. GATES: Is not what determines
14 the height of the residence. It's measured to
15 40 feet.

16 COMMISSIONER MAY: Yes, that's true
17 for zoning. It's limited by the table.

18 MS. STEINGASSER: Absolutely,
19 limited by the table.

20 COMMISSIONER MAY: This doesn't
21 change that.

22 MS. STEINGASSER: It's not intended

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1 to change that at all. And if people are reading
2 it that way, then --

3 MS. GATES: They are reading it that
4 way.

5 MS. STEINGASSER: I mean, I did get
6 an email and someone else asked the same
7 question. And we clarified that there's rules
8 and --

9 COMMISSIONER MAY: Yes.

10 MS. STEINGASSER: -- there's
11 standards.

12 MS. STEINGASSER: This is a rule,
13 not a standard.

14 COMMISSIONER MAY: What I do find
15 confusing about it is that, I mean, the area
16 where the width of the street is a determinant
17 of height has to do with Height Act enforcement.
18 Is that right?

19 MS. STEINGASSER: It's probably
20 drawn from the Height Act but it's also currently
21 in our zoning regulations.

22 COMMISSIONER MAY: That language is

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1 in there?

2 MS. STEINGASSER: Yes, sir.

3 COMMISSIONER MAY: But there's no
4 way in which the zoning regulations currently
5 limit height based on width of street, is there?

6 MS. STEINGASSER: With the
7 exception of the downtown.

8 COMMISSIONER MAY: Right.

9 MS. STEINGASSER: And the C-5.
10 That's the only place where it does. This is
11 a rule. It is not a standard.

12 COMMISSIONER MAY: But even
13 downtown on a C-5, isn't it also, I mean, it's
14 still based on the zones.

15 MS. STEINGASSER: It is but in
16 several places in the DD and in the CR -- I'm
17 sorry, the Capital Gateway Overlay we actually
18 refer to the Height Act that the building can
19 be build to the maximum allowed under the Height
20 Act.

21 And then there's also a reference
22 in Chapter 25 --

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1 COMMISSIONER MAY: But that's a
2 reference to the Height Act. It's not a
3 reference to the width of the street.

4 MS. STEINGASSER: Like I said, this
5 is out of the current code and the definition
6 199 now.

7 COMMISSIONER MAY: Yes.

8 MS. STEINGASSER: That's all it is.
9 Just pulling that same rule forward. It's not
10 applying it in any new way.

11 COMMISSIONER MAY: Right. Okay.

12 Yes, obviously, there is some reason
13 to clarify what's happening because it is
14 causing some confusion. But it doesn't cause
15 any confusion for me because I know that the
16 height is actually set by the chart by themselves.

17 MS. STEINGASSER: Right.

18 COMMISSIONER MAY: Okay.

19 VICE CHAIR COHEN: Can I just
20 interject for a second? But is there a better
21 way of stating it to make it clearer now so that
22 the people --

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1 MS. STEINGASSER: I think we can.
2 Sure. Yes, I think there is.

3 COMMISSIONER MAY: Yes. I mean,
4 you know, the Zoning Administrator is the one
5 who makes the determination on Height Act,
6 right?

7 MS. STEINGASSER: Yes, he is.

8 If there's concern that this for
9 some reason would trump the chart as Ms. Gates
10 has put into the record, we can make it
11 absolutely clear that --

12 COMMISSIONER MAY: It does not
13 trump the chart.

14 MS. STEINGASSER: -- it does not
15 trump the chart.

16 COMMISSIONER MAY: Okay.

17 MS. STEINGASSER: In any zone.

18 COMMISSIONER MAY: And I think it's
19 worth saying something like this here because
20 I don't know where else. I see there's separate
21 codes that have to do with the application of
22 the Height Act. Is that what you just handed

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1 me, Mr. Bergstein?

2 MR. BERGSTEIN: Yes.

3 COMMISSIONER MAY: Yes. Do you
4 want to talk to that?

5 MS. GATES: I would just point out
6 that that's where the -- the Height Act says
7 something like this. I mean, what the Height
8 Act says that you determine your maximum height
9 by the width of the street. And then it tells
10 you measure from the front but if the building
11 has more than two fronts you can take -- you
12 can actually determine what your actual height
13 is from whichever front gives you the highest
14 height. It's certainly clear to me the section
15 which was moved from the definitions to other
16 sections was intended to parrot that or somehow
17 amplify that or what the intent of the purpose
18 was. But Ms. Steingasser is right. All they
19 did was remove something that's always been in
20 the definitions and then moved it in each
21 iteration to each separate zone district because
22 the notion is, we should be specifying standards

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1 and definitions which would be putting them in
2 the zoned districts where they belong.

3 So, that's -- all they've done is
4 a codification. So, I just wanted to show you
5 that the notion in terms of Height Act, where
6 you measure the height as opposed to where you
7 determine what the height is. There are two
8 separate issues and the Height Act you determine
9 the actual height by the width of the street
10 at whatever point you want to choose. And then
11 once you know what that maximum height is, 90,
12 100 whatever, then you figure out well, how do
13 I know what height my building is?

14 Well, if you got a front that gives
15 you a higher elevation, you can measure from
16 that even though it's a different measuring
17 point than what you chose to measure the actual
18 maximum height of the building. That's what
19 I interpret the Height Act to say.

20 COMMISSIONER MAY: Okay. That
21 takes care of this issue from my questions.

22 I'll move on to Ms. Kahlow's

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1 testimony.

2 The couple of points she raised that
3 she said were raised during the working groups
4 and were not addressed by the Office of Planning,
5 I was wondering if you wanted to have the
6 opportunity to speak to those couple of issues?

7 The omnibus PUDs issue and the requirement that
8 the amenities accrue to the community affected.

9 MS. STEINGASSER: Well, the omnibus
10 amenities -- the omnibus PUD, we've never agreed
11 with Ms. Kahlow or the association on their
12 position on that. The Zoning Commission has
13 also felt otherwise. And I believe it was
14 appealed to the courts and the courts upheld
15 the Zoning Commission's position that an omnibus
16 PUD as an implementation of campus plans, not
17 in lieu of a campus plan, but as an
18 implementation was indeed a valid exercise.
19 And we continue to-- so we disagreed on that.
20 It's not that we didn't hear her. We just
21 didn't agree.

22 The other issue was the accrument

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1 and we do have that in the proposed folder
2 revision to the PUD regulations. We tried not
3 to interject new standards in this. We were
4 happy to bring that one forward but right now
5 I think we propose it in the new regs that it
6 would say pretty much exactly what Ms. Kahlow
7 suggested and we're happy to bring that forward
8 if the Commission is interested in that at this
9 time.

10 COMMISSIONER MAY: Well, and that
11 goes to her first point which is that there --
12 she was surprised to see that we were even
13 talking about PUDs since the discussions in the
14 communities haven't happened. But for the most
15 part what's being proposed here if I understand
16 correctly are more administrative in nature and
17 does not represent the full breath of potential
18 modifications to PUDs that might be under
19 discussion with the community.

20 MS. STEINGASSER: It does not and,
21 you know, to be clear, this is the forum for
22 that discussion. This is a typical Text

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1 Amendment. This is not a ZRR movement and all
2 the ANCs were noticed through the standard legal
3 process and it's on line and it was in the D.C.
4 Register so --

5 COMMISSIONER MAY: I guess the key
6 question for me is, is there an opportunity for
7 some of the issues that members of the committee
8 would like to discuss with regard to PUDs,
9 there's still going to be an opportunity to talk
10 about those in the context of the ZRR?

11 MS. STEINGASSER: Absolutely.

12 MR. BERGSTEIN: Okay. In fairness
13 to the Office of Planning, let me just point
14 out that I was, in essence, invited by the Office
15 of Planning if I had a list of things that have
16 been going on forever where the Zoning
17 Commission has made determinations or we've been
18 putting things in orders forever that I could
19 provide them with a list of amendments. So,
20 the choice of the amendments that were presented
21 to the Office of Planning were mine. And I tried
22 to the maximum extent possible to limit those

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1 amendments to issues that came up over, and over
2 and over again like the first-stage extension,
3 use second-stage standards. Codification of
4 the baffle process we're putting in every single
5 order.

6 The issue of the monetary
7 contributions which is something that has always
8 come up, it's not like the Commission actually
9 ruled up but it's come up in case after case
10 after case and including a case Ms. Kahlow was
11 involved in where she suggested that there was
12 an informal policy to not allow monetary
13 contributions. And the essence of that case
14 and cases like that, I thought it was time to
15 put the issue before the Commission to resolve
16 at this time that it didn't bear waiting any
17 longer.

18 So, the choices of what were in the
19 PUD amendments were and were not in PUD
20 amendments were initially mine and I presented
21 them to the Office of Planning and they proceeded
22 with the ones they thought were appropriate.

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1 So, I just want to make that clear.

2 MS. KAHLOW: Since I've been
3 mentioned by both of them, both said things that
4 are not correct and I'd like to respond to both,
5 especially what Mr. Bergstein just said. The
6 case he --

7 CHAIRMAN HOOD: Hold on, Ms.
8 Kahlow.

9 Is that coming up, Commissioner May?
10 Do you want to hear?

11 COMMISSIONER MAY: I'd just assume
12 finish the things that I'm interested in in this
13 case.

14 CHAIRMAN HOOD: I'll give you a
15 chance but let the Commissioners finish their
16 questions.

17 MS. KAHLOW: I need to respond to
18 both of those. Inaccurate statements about me.

19
20 CHAIRMAN HOOD: I'll give you some
21 personal privileges, hold tight.

22 MS. KAHLOW: I would like to shave

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1 person privilege in both cases.

2 CHAIRMAN HOOD: Okay. That's
3 fine. There's only a few of us here. We can
4 have a half a hearing.

5 MS. KAHLOW: The one that was heard
6 was Mr. May.

7 CHAIRMAN HOOD: Yes, okay, I'll
8 come back.

9 COMMISSIONER MAY: So, let me talk.

10

11 I understand that we've already had
12 discussions in various PUDs about monetary
13 contributions and our general discomfort with
14 that so I have no problem with proceeding with
15 that.

16 CHAIRMAN HOOD: Let me just add to
17 this, though, Commissioner May.

18 I think if I understand what Ms.
19 Kahlow -- I think it was Ms. Kahlow about the
20 monetary hired work in some cases, I think it
21 wasn't necessarily the -- the issue was the money
22 and I also agree with, I forgot who it was, that

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1 mentioned just monetary gifts. I think it was
2 the -- I forget how it was worded but there are
3 some things that do work but it was just how
4 it was administered, I think. I remember this
5 happened back when Carol was here. It was about
6 how it was administered by giving money to
7 groups. We were saying, put it like as if it
8 was for a specific group, feed the homeless.
9 Do you give it to the community group, the money?

10 No. We give it to that group and then they
11 supply that amount of money. I think that's
12 kind of where we were going with this.

13 COMMISSIONER MAY: Yes. I think
14 the idea is to make the amenities immediate and
15 tangible and things that we know are going to
16 happen as opposed to just, you know, putting
17 money off to the side that might be controlled
18 by any number of groups, not us. We want the
19 developer to be putting the money directly to
20 the cause.

21 CHAIRMAN HOOD: Right.

22 COMMISSIONER MAY: And if that

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1 means buying \$30,000 worth of computers, they
2 do, as opposed to giving a check to a third party
3 that then passes it on and all sorts of things.

4 CHAIRMAN HOOD: Keeps it and it
5 never happens and that kind of stuff. Okay.
6 I just wanted to make sure.

7 COMMISSIONER MAY: That's the
8 general sense that I've had in the direction
9 that we were going.

10 Yes, and back to the omnibus PUDs.

11 I hope that we don't continue to hear that this
12 has not been addressed. The idea that it's not
13 been addressed is not correct. I mean, if it
14 is something that the Office of Planning
15 disagrees with, I mean, I certainly disagree
16 with -- well, let me put it this way.

17 The policy for future omnibus PUDs
18 is that we did it once at George Washington
19 University and it was upheld in court and it
20 seems to be working fairly well. And so as far
21 as I'm concerned that's the policy. I don't
22 know how the rest of the Commissioner feels about

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1 that.

2 So, I don't know if the Office of
3 Planning has anything further on that topic.

4 I think that's it for my questions
5 on Ms. Kahlow's testimony.

6 And I would just with regard to Ms.
7 Simon's testimony with regard to IZ. I think
8 that's a good point to make about what the
9 relative value is and we know how things shifts
10 when you go from one zone to another. And, you
11 know, we want to look at PUDs and the relief
12 granted by PUDs in comparison to what can be
13 done as a matter of right. And IZ should be
14 treated the same way. And that comparison
15 should not limited to square footage. I'm not
16 sure how to get to the bottom of that but I'm
17 sure there are a lot of smart people working
18 on this that will be able to figure it out.

19 MS. STEINGASSER: We absolutely
20 agree with you and Ms. Simon on that point.
21 Thank you.

22 COMMISSIONER MAY: And the smart

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1 people do. Thank you.

2 VICE CHAIR COHEN: Okay. I'll go
3 next and ask the smart people.

4 CHAIRMAN HOOD: Well, that's true
5 but let me go to Ms. Kahlow. Ms. Kahlow, you
6 wanted a personal privilege.

7 MS. KAHLOW: I did on two things.

8 CHAIRMAN HOOD: I don't know if it's
9 necessary but if you feel that you need to do
10 that.

11 MS. KAHLOW: I think it is. In both
12 cases I think we're misunderstood.

13 The first instance was about omnibus
14 PUDs. We had the discussion in the working
15 group in which the Office of Planning said it
16 is a serious issue. We promise we'll cover it.

17 They made a commitment. Even if you may
18 disagree, we thought we were going to have a
19 discussion about it. And there will be more.

20 And we would not appeal it in court. Maybe
21 another group did. I have not heard any
22 judgment. I do not think they appealed it.

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1 So, I don't think there's been any court ruling
2 but I think -- we did not appeal it. I can just
3 tell you. The West End Citizens Association
4 did not appeal it. There was an FDA court ruling
5 that had to counting the number of heads, number
6 of students, number of faculty. It didn't have
7 to do with the omnibus thing as far as I know.

8 And it had to do with NEPA as far as I know.

9 Those are the two main issues, head counts and
10 NEPA, D.C. Environmental Policy Act.

11 But, nonetheless, it is an issue
12 that may come up at another university. Other
13 university communities have come to
14 use, discussed it and said we told them we
15 understood it would be discussed. So, it was
16 clarified, can you do noncontiguous squares?
17 Anyway, we did not appeal it. We were told it
18 would be and if it's not going to be, we'd like
19 that opportunity to why.

20 The other one was this business
21 about monetary contributions. Maybe it's the
22 text isn't clear. If you look at 2403.6 it says,

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1 tangible benefits, dah, dah, dah. Monetary
2 only for district housing funds. What we
3 thought was, you're going to get tangible. I'll
4 use the example of the 2101 L Street PUD where
5 we got a lot of specific things for the fire
6 station. They needed it. They didn't have
7 beds. They didn't have whatever they needed
8 and if they're tangible, we're fine. We don't
9 money to sit at the associations either. But
10 we do want to be able to get tangible dollars
11 given to worthy causes. And examples I gave
12 were tangible dollars for worthy causes. A van.
13 Someone can buy a van for an elderly facility
14 that had no transportation. Some using D.C.
15 money for a traffic light. I mean, as long as
16 get for a specific thing we're fine. We don't
17 want cash to anybody either.

18 Maybe the text could be rewritten.

19 That would helpful.

20 As for Mr. Bergstein saying that I
21 was against monetary contributions, I'm only
22 against monetary contributions of cash to

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1 somebody, not if it's for a specific good.
2 We've always been in favor of that and the Zoning
3 Commission has supported us.

4 CHAIRMAN HOOD: All right. Let's
5 go to another smart person. Vice Chair.

6 VICE CHAIR COHEN: Thank you, Mr.
7 Chairman.

8
9 Ms. Simon, your testimony has really
10 given me a lot of food for thought because
11 there's some things in here that are being
12 addressed as we speak. You know that there is
13 a housing task force that is undergoing a review
14 and developing a policy, a plan for the city?

15 MS. SIMON: I believe I've read
16 about that.

17 VICE CHAIR COHEN: Okay. So, I
18 think another of your concerns is also
19 overlapping in their area. But, again, I think
20 that it's important to differentiate in a PUD
21 what is, as of right versus what's being offered
22 and just giving credit for the differential.

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1 But thank you for this because I
2 think it touches on many issues that are of
3 importance to the city.

4 Ms. Kahlow, I do have something I'd
5 like to share with you and that's probably my
6 40 years of experience in real estate
7 development. I agree with you that there are
8 some cases that come before us for extensions
9 that probably are opportunistic as opposed to
10 reasonable. But there are a couple of things
11 that have occurred in the city.

12 D.C. now taxes vacant land at a
13 higher rate so that's an important thing and
14 I believe the city in their city-owned parcels
15 now have a state certain that a developer has
16 to move forward or else the land reverts back
17 to the city. But I have never seen a real estate
18 development project in my years of experience
19 throughout the country going on a smooth road
20 for development. It just is largely not only
21 related to the market and to financing and
22 financing is a big thing. Equity partners are

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1 always shopping around for the best projects
2 and leaving developers often in the lurch. So,
3 I think we have to have an opportunity to
4 evaluate a second extension and to be able to
5 provide it in certain cases.

6 I would say that there are times when
7 it's just being done as a routine matter and
8 we need to look more carefully at that.

9 MS. KAHLOW: And second maybe and
10 you have the good cause exception rules now,
11 it's the ones that go like 2501 went on for many
12 extensions, four or five different developers.

13 People are flipping properties and I can think
14 of two of them where they're just trying to flip
15 the properties. Meanwhile, that's a real
16 problem for us.

17 VICE CHAIR COHEN: It's a problem
18 for the community, I understand.

19 MS. KAHLOW: A max of two maybe.

20 VICE CHAIR COHEN: So, I think we're
21 going to take this very, very seriously.

22 Again, my read on proffers that are

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1 financial, again, similar to your opinion, I
2 don't think money should be given to different
3 agencies. It's hard to monitor, to track and
4 it should be the responsibility of the developer
5 to, if it's a van, to purchase the van. If it's
6 computers -- so I agree with Commissioner May
7 on that.

8 So, I just wanted to say that one
9 of the most -- for like \$100,000 for prescription
10 drugs for the elderly, you know, how do you
11 monitor that kind of thing? So, I think that's
12 something we're going to be questioning a lot
13 in the future to make sure that it is something
14 that is very practical but you can, you know,
15 buy it today or offer it today. So, there's
16 a tracking system there.

17 And I guess those are just my points,
18 Mr. Chairman, so I am finished.

19 CHAIRMAN HOOD: Thank you very
20 much. Vice Chair.

21 Any other questions or comments of
22 either the Office of Planning or the witnesses?

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1 Commissioner Turnbull?

2 COMMISSIONER TURNBULL: Thank you,
3 Mr. Chair.

4 I guess, I don't want to repeat a
5 lot of comments that we had before but having
6 sat on a number of BZA cases and where we had
7 time extensions come up and there were some real
8 issues. And I think the applicants at that
9 point presented bona fide financial information
10 than rather having a case simply expire, I think
11 it's -- I think it's prudent that the BZA have
12 the same opportunities to extend an order to
13 extend the case. I think given the financial
14 situation we've been in for the last few years,
15 I think it's been very difficult for a lot of
16 developers and I do think they need that
17 flexibility. I'd rather have them keep trying
18 and working on it.

19 We've had in the Zoning Commission
20 people coming back from condos, going to
21 apartments and what are we going to say? No,
22 you can't do that. We're going to hold your

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1 feet to the fire when project is going to go
2 belly up. So, there are a lot of situations
3 that this body and what the BZA looks at and
4 I think for the most part, all in the cases that
5 I've sat on, we have been very prudent. We have
6 been very cautious and been very careful in how
7 we look at these issues.

8 So, there may have been other cases
9 out there that have gone on forever, but the
10 ones that I have, I think we've looked at very
11 carefully and I think we've been very cautious
12 and I think it's something that the BZA has to
13 have codified and I think the people that serve
14 on the BZA that are very cautious also.

15 So, I would argue that we do need
16 this, that they do need the ability to do this.

17 CHAIRMAN HOOD: Let me just echo.

18 I would agree. The only reason I did that the
19 other day on the BZA is because it had that
20 language --

21 COMMISSIONER TURNBULL: Right.

22 CHAIRMAN HOOD: -- and the issue for

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1 me, Mr. Turnbull, and you were here. The issue
2 is that for some reason we -- I say this all
3 the time, to 11:30, quarter to 12:00 at night
4 and we're making rules and regulations of how
5 things need to be governed. And just for the
6 life me I couldn't figure out why we had that
7 one-time extension. But it was there and I was
8 like, okay. We are here -- it's probably 12:00
9 one night figuring that out or somebody was here.

10 And that's why I was hard fast on that rule
11 even if I wasn't on the prevailing side. But
12 I do agree that they can do it pretty much like
13 we do.

14 COMMISSIONER TURNBULL: Yes.

15 CHAIRMAN HOOD: And I would agree
16 with you.

17 COMMISSIONER TURNBULL: And I guess
18 the only other thing is on the monetary. I mean,
19 looking at Ms. Kahlow's, I mean, the \$50,000
20 for a van. I mean, the developer could buy the
21 van and the developer is going to do the traffic
22 light or whatever and work with -- so, I think

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1 a lot of these things can be done or paid for
2 but the developer can go ahead and actually
3 either do the work or contract out for the work
4 rather than simply-- I mean, there was a case.

5 I think it was GW. I don't know if it was before
6 my time. But something about an escrow account
7 was set up because we didn't know what to do.

8 The ZA didn't know what to do with the money
9 and --

10 VICE CHAIR COHEN: That was Francis
11 Field. That was in our neighborhood.

12 COMMISSIONER TURNBULL: Francis
13 Field.

14 VICE CHAIR COHEN: And it was
15 not--

16 COMMISSIONER TURNBULL: Right.
17 But it's those kinds of things we want to avoid,
18 an escrow account being set up because nobody
19 knows what to do with the money and we don't
20 want to be involved in that. We don't want to
21 be a broker on this or trying to -- we want a
22 definitive answer for the community with the

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1 monies going to be used and used legitimately.

2

3 I would agree. There's has to be
4 a tangible and quantifiable item. And I think
5 the Office of Planning is on the right track
6 with this.

7 MS. KAHLOW: If I could just say.

8 I think the word "and" is the problem here.
9 If you look at 2403.6, all public vendors should
10 meet A, B and C and you really mean A, B or C.

11 I mean, I think that's why I was confused.
12 If you got the tangible, fine. Each benefit
13 should be one or the other or A and B and then
14 "or" C. Something like that.

15 CHAIRMAN HOOD: We will relook
16 that.

17 COMMISSIONER TURNBULL: Look at
18 that, yes.

19 CHAIRMAN HOOD: 6C obviously got a
20 little confused to so --

21 COMMISSIONER TURNBULL: Okay.

22 MS. KAHLOW: Right. So, we don't

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1 disagree on substance, it was how it's
2 presented.

3 CHAIRMAN HOOD: Right. Okay.

4 Any other questions, Mr. Turnbull?

5 COMMISSIONER TURNBULL: No, I think
6 that's it, Mr. Chair.

7 CHAIRMAN HOOD: Okay.
8 Commissioner Miller?

9 COMMISSIONER MILLER: Yes, on the
10 issue of the monetary contributions, I think
11 the proposed language needs to be clarified if
12 not stricken because I think -- well, I just
13 have some unreadiness with it because I want
14 to make sure it does cover the kinds of tangible,
15 quantifiable benefits that Ms. Kahlow's
16 testimony referred to. And I'm not sure in my
17 own mind whether -- I see the exception for
18 district housing funds and that's what that
19 is referring to because it's another zoning
20 provision and the regulations talk about
21 contributing to the Housing Production Trust
22 Fund in PUDs where there's additional office

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1 space granted. And so I agree with that but
2 there may be other district housing funds that,
3 you know, there may be a library book fund that's
4 established and I think they would be considered
5 public amenities. So, I have some unreadiness
6 with the outright prohibition without further
7 clarification of the language.

8 Do you have any suggestions on how
9 we would -- Mr. Bergstein is --

10 MR. BERGSTEIN: I'm thinking, well,
11 two things. I think maybe we actually need to
12 separate the thoughts of the tangible and
13 measurable and perhaps have a separate statement
14 that no monetary contributions can be accepted.

15 And then if you want to broaden that out, the
16 point is what applicants will say and it's true
17 is that once they make the monetary
18 contributions they're off the hook. That
19 there's no way that we can compel any third party
20 to do anything. And so the issue is, how can
21 we say that the thing you got to show us at the
22 time you get your C of O because that's the last

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1 opportunity we have. That's our last hook is
2 that the computers are there. The park benches
3 are there.

4 We have a separate category of
5 contributions to District agencies. But the
6 question then is, unless there's a specific fund
7 and I think you know this, any money is going
8 to go into the general fund. And unless it's
9 done as a gift and then there's question in the
10 Office of Grants -- whatever it's called,
11 whether or not a PUD condition is a gift. So,
12 there's been a quandary as to whether or not
13 District agencies can actually accept these
14 monies and use these monies as "gifts" because
15 if they're not gifts as one exception to the
16 appropriation rule. Otherwise, it goes right
17 into the general fund and it can be used for
18 anything.

19 COMMISSIONER MILLER: It probably
20 would be generally categorized as a public
21 benefit.

22 MR. BERGSTEIN: Well, but it also

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1 generally categories as a tax. And, again, the
2 point of a PUD is it's supposed to give you
3 something better than you can get as a matter
4 of right. And the notion of purchasing density,
5 purchasing height is something that--

6 COMMISSIONER MILLER: And I agree.

7 And I agree with Ms. Kahlow that it could affect
8 the community is the --

9 MR. BERGSTEIN: That why the point
10 is to the maximum extent possible. I mean,
11 originally it wasn't even off site amenities.

12 All the amenities were supposed to be on site
13 and it would block an alley, affordable housing
14 was recognized as an off site amenity. And now
15 it can be more but it has to be within a quarter
16 mile. It's got to be within the ANC district.

17 And that's the problem with general
18 contributions to District funds because you got
19 to show that whatever is going to be used is
20 going to be used within that confined area of
21 the PUD site itself.

22 So, there are issues with general

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1 contributions to District agencies. Generally
2 what's been done is where the applicant has
3 actually constructed the park improvements or
4 where the park has agreed to construct the park
5 improvements. But that second scenario is the
6 more difficult one because we can't tell Parks
7 and Recreation to do anything.

8 Once that contribution is made, it's
9 gone. The applicant has satisfied their
10 obligations and all you've got is money that's
11 going from one hand to another. That's what
12 we're trying to work here with this language
13 to get at.

14 MS. KAHLOW: Can I add one thing
15 that I think will clarify this? This is your
16 usual. Other issues are really administrative.

17 This is not administrative. This is a policy
18 issue and it belongs in the ZRR issues about
19 PUDs. This is too substantive to just have it
20 -- and if it was a real ZRR you'd have a million
21 witnesses here. This is something people care
22 about. Instead, people thought this is just

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1 little administrative stuff. This is one that
2 doesn't belong in this document, I think.

3 I mean you say well there's been
4 lots of issues. It's lots of issues and lots
5 of lack of clarity and we need to discuss it,
6 the public, on this as the evidence -- sorry.

7 CHAIRMAN HOOD: Commissioner
8 Miller?

9 COMMISSIONER MILLER: Yes. Well,
10 I think there might be some validity to that
11 last point.

12 On the Amendment 2, the IZ
13 recognizing affordable housing resulting from
14 IZ compliance as a public benefit. Only to the
15 extent if it results from additional gross --
16 granted by the PUD.

17 I had some language to add to that
18 that I think goes to Ms. Simon's point and maybe
19 addresses the Vice Chair's concern that I
20 thought I heard that -- where it says, accepted
21 affordable housing provided in compliance with
22 Chapter 26 shall not be considered a public

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1 benefit except to the extent it exceeds the
2 amount that would have been required to matter
3 of right development under existing zoning.

4 Is there a way that we can add to
5 that exception whether it exceeds the IZ amount
6 of the affordable housing or provides deeper
7 affordability levels than would have been
8 required by affordable --

9 MR. BERGSTEIN: Ms. Steingasser
10 might have been changing text because we both
11 recognized the issue and assuming you don't take
12 proposed action tonight, we can come back with
13 something more concrete.

14 COMMISSIONER MILLER: Okay. Well,
15 then let me share with you a couple of other
16 things that you can come with maybe.

17 On the escrow account, I just
18 thought that the -- I don't have the experience
19 that you all have had with the previous order
20 where there might have been problems with
21 establishing an escrow account, but I think the
22 Commission should maybe should reserve to itself

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1 the flexibility to, you know, to authorize an
2 escrow account to satisfy an order if it wants
3 to in a particular case if it's the way it would
4 work. It's just an outright prohibition nor
5 shall the ZA accept the establishment of an
6 escrow account in satisfaction of any condition
7 in the Commission's order approving the PUD.
8 I would just add, unless the Commission's order
9 expressly authorizes the establishment of such
10 an escrow account for that purpose. See if you
11 would want to constrict our flexibility there.

12
13 Sorry to go through these. I can
14 share these. Okay. All right.

15 On the closing of the record, I think
16 there needs to be language added here it says
17 it's trying to track what's in the BZA rules
18 for the Commission. But I think the way it reads
19 is that even where the Chairman leaves the record
20 open, except for the submission of additional
21 documents, after the record closed, and before
22 there was any decision in the proposed order,

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1 the way this reads, I think they -- they have
2 to be returned by the director unless there's
3 a specific request by the applicant to reopen
4 the record. I just think it needs to have an
5 exception there where it says any such materials
6 received the Commission after the close of the
7 record shall be returned by the director and
8 not received into the files of the Commission
9 unless the Commission has directed the applicant
10 to submit stuff for the record. I think it just
11 needs to be clarified.

12 MR. BERGSTEIN: I think the use of
13 the word "other" instead of "such" --

14 COMMISSIONER MILLER: Yes.

15 MS. GATES: That's what this is.
16 Should say any other materials.

17 COMMISSIONER MILLER: Yes, that's
18 it. That's it. That will do it.

19 Then my last -- on the dismissal for
20 failure to appear in the BZA rules and
21 procedures. Is there a similar rule for Zoning
22 Commission? Does the Zoning Commission have

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1 that ability as well?

2 MR. BERGSTEIN: No, because the BZA
3 has this rule that says no case can be dismissed
4 for failure to comply with procedural rules
5 unless there's an opportunity to cure it. And
6 so that's been interpreted as saying, if
7 somebody doesn't show up you have to give them
8 an opportunity to cure it. That rule doesn't
9 exist in the Zoning Commission. There was no
10 need to clarify. I was trying to remove an
11 ambiguity that seems unique to the BZA.

12 COMMISSIONER MILLER: And in
13 removing that ambiguity, make it clear that the
14 BZA can dismiss a case if the applicant doesn't
15 appear.

16 MR. BERGSTEIN: Right. In fact,
17 it's stated right from that rule. In other
18 words, what it says it's an additional phrase
19 because what it says is, no appeal may be
20 dismissed for the applicant to fail to comply
21 with the provisions of the rule until he has
22 notice of the deficiency. So, that rule has

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1 been read and that doesn't appear in the Zoning
2 Commission rules. So, this is the caveat that
3 says, except when a person doesn't appear.

4 COMMISSIONER MILLER: But does the
5 Commission have the ability to dismiss the case
6 if the applicant doesn't appear?

7 MR. BERGSTEIN: Yes.

8 COMMISSIONER MILLER: Okay. That
9 was a question.

10 I think that's it for now, Mr.
11 Chairman, sorry.

12 CHAIRMAN HOOD: Okay. That was
13 good.

14 Anybody else, Commission May?

15 COMMISSIONER MAY: Yes, I just want
16 to make a comment following up on the comments
17 that we received from ANC 6C. It has to go with
18 the BAFO process and, you know, we refer to it
19 as the BAFO process but I think that's not the
20 right term. Because BAFO implies -- I think
21 part of the issue that they have with it is that
22 it seems like this is going to be the latest

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1 and greatest version of the amenities. And,
2 in fact, it's not. It's simply a codification
3 of what's been proffered.

4 And so to call it a BAFO suggests
5 that it is more than it actually is. It really
6 is just a codification. It's a translation of
7 an amenity into a condition or a proffer into
8 a condition. Right?

9 MR. BERGSTEIN: Yes, and the word
10 BAFO doesn't appear in the regs, in the text
11 that I provided.

12 COMMISSIONER MAY: Well, maybe it's
13 just that we need to stop calling it BAFO.

14 MR. BERGSTEIN: Probably so. I
15 mean, though things do change. One of the
16 things that sometimes happen in these processes
17 is that when we actually write the proffer, it's
18 stated as specifically as possible. The
19 applicant will say, oh, no. That's not what
20 I meant.

21 So, when it becomes clear that they
22 actually have to comply, sometimes what you are

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1 getting is different.

2 COMMISSIONER MAY: Right. But
3 again, still it's not really a BAFO in the sense
4 of the word.

5 MR. BERGSTEIN: It's a final
6 proffer and condition is what it is.

7 COMMISSIONER MAY: Well, and I just
8 think maybe we ought to just take BAFO out of
9 our lexicon because I think it implies something
10 that it's not.

11 MR. BERGSTEIN: Okay.

12 CHAIRMAN HOOD: Okay. I don't know
13 if I agree with that. Has that been working?
14 Are we causing a problem? I think your issue
15 though, Commissioner --

16 MR. BERGSTEIN: It led to a
17 misunderstanding, I think, on the part of ANC
18 6C. They're imagining that this is the latest,
19 greatest, most improved version of the
20 amenities. And that's not -- or the proffers
21 and that's not really what it is. It's just
22 translating proffers into --

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1 CHAIRMAN HOOD: I think what it
2 does. It tells you what the final offer is.
3 I mean, you know --

4 MR. BERGSTEIN: Well, again, but if
5 you adopt this, we're not going to hand you
6 little orders in the future and say here's the
7 -- you've been using this, you say here's the
8 BAFO in this case. It's just a BAFO in this
9 case. If you adopt this, this is going to become
10 seamless. The applicant is just going to do
11 it because the rules say to do it.

12 CHAIRMAN HOOD: Right. Automatic.

13 MR. BERGSTEIN: So, we won't be
14 saying, you know, here's the BAFO order for this
15 case. So, I'm not going to say it anymore
16 anyway.

17 But basically we have been -- it's
18 been referred to actually when you get the
19 submissions, the applicant has been saying, this
20 is in response to your procedural order. What
21 you'll get in the future is this will be in
22 response to section to whatever 4 or whatever

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1 it is.

2 So, as this becomes a seamless
3 process and it becomes codified people refer
4 to it by its section number and not by any other
5 acronym

6 CHAIRMAN HOOD: Okay. I'm fine
7 with that.

8 Any other questions?

9 I do want to say that I really
10 appreciate the Office of Planning's report.
11 When I was reading this I was thinking maybe
12 I don't agree with that and then when I turned
13 it over and saw -- I'm just using me. I
14 wholeheartedly concur so I like the way this
15 was done actually because, you know, we see a
16 lot of cases. We deal with a lot of stuff.
17 And I was thinking, maybe I don't agree with
18 that and then I turn over and Vice Chairman
19 Schlater says something and I agree with him.
20 So, that was able to help me go to the next
21 point and I saw what Mr. Turnbull said a few
22 points -- said a few things.

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1 So, that's actually good because we
2 hear a lot of cases and a lot of times we forget
3 and then we see it again. We start getting all
4 these other things coming into our minds. So,
5 I really appreciate that little added caveat.
6 You don't necessarily have to do it on all of
7 them but that would be very helpful here. That
8 saved us about probably 30 minutes.

9 Any other questions?

10 Okay. I think that's it.

11 Any other comments from the
12 witnesses?

13 MS. KAHLOW: I would like to say one
14 more thing about PUD amenities and dollars.

15 You're inconsistent and you may need
16 language where you're not inconsistent. You
17 don't want prescription drugs but you're allowed
18 to have a loan fund that lasts for "X" number
19 of years. So, in some PUDs you get something
20 that's specific which is the accounting and in
21 another one you don't allow it. Some you allow
22 and some you don't allow and I don't know why.

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1 VICE CHAIR COHEN: Could you be more
2 specific when you say loan funds?

3 MS. KAHLOW: Yes. The loan fund
4 was in the Brookland 901 Monroe Street case where
5 they had a bunch of funds. They had one for
6 small business loans and they had another fund
7 for something else -- for businesses. And the
8 answers are going to be multi-year funds and
9 that's what we objected to. How come you would
10 allow a multi-year fund that doesn't buy a
11 computer, doesn't buy a specific thing? And
12 as I said, some cases you allow it. Some ones
13 you don't. So, if you can actually talk about
14 that's why I consider it a policy issue. We
15 really need to talk about what do you want?
16 What should be consistent across cases? I think
17 that's fair. Sorry, just wanted to --

18 CHAIRMAN HOOD: All right. No
19 problem.

20 Anybody else. Ms. Simon? Ms.
21 Gates? Any closing comments? Okay. All
22 right.

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1 Ms. Schellin, do we need any dates
2 or anything?

3 SECRETARY SCHELLIN: I think so.

4 Ms. Steingasser, are you good with
5 shooting for December 10th meeting?

6 MS. STEINGASSER: Yes.

7 SECRETARY SCHELLIN: I think you
8 know what you're coming back with. Can you do
9 that by 3:00 p.m., November 26th? Does that
10 work.

11 MS. STEINGASSER: Yes, that's the
12 week after Thanksgiving?

13 SECRETARY SCHELLIN: Yes.

14 MS. STEINGASSER: Yes.

15 SECRETARY SCHELLIN: Okay. So,
16 3:00 p.m. November 26th. We have no party since
17 it's a rule-making case so we are not
18 anticipating responses from anybody else.

19 The record is closed and we'll take
20 this up at the December 10th meeting.

21 CHAIRMAN HOOD: Okay. Does
22 anybody have anything else?

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1 Okay. I want to thank everyone for
2 their participation tonight and I appreciate
3 the dialogue, the back and forth with the Office
4 of Planning, us, the Office of the Attorney
5 General and our witnesses.

6 With that, this hearing is
7 adjourned.

8 (Whereupon, the above matter was
9 concluded at 8:17 p.m.)

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