

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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SPECIAL PUBLIC MEETING

+ + + + +

THURSDAY

NOVEMBER 10, 2005

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The Special Public Meeting of the District of Columbia Zoning Commission convened in Room 220 South, 441 4th Street, NW, Washington, D.C., 20001, pursuant to notice at 7:00 p.m., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	Chairperson
ANTHONY J. HOOD	Vice Chairperson
KEVIN HILDEBRAND	Commissioner (AOC)
GREGORY JEFFRIES	Commissioner
JOHN PARSONS	Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN	Acting Secretary
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OFFICE OF PLANNING STAFF PRESENT:

STEVEN COCHRAN
ARTUR ROGERS
JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.
SHERRY GLAZER, ESQ.

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This transcript constitutes the minutes
from the Special Public Meeting held on November 10,
2005.

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

7:02 p.m.

CHAIRPERSON MITTEN: Good evening,
ladies and gentlemen.

This is a Public Meeting of the Zoning
Commission of the District of Columbia for Thursday,
November 10th, 2005. And my name is Carol Mitten
and joining me this evening are Vice Chairman
Anthony Hood and Commissioners Kevin Hildebrand,
John Parsons and Greg Jeffries.

There is a single item on our agenda for
this Special Public Meeting and the agenda is near
the door. But I will just let everybody know as if
you didn't already, that the case of proposed action
this evening is Zoning Commission Case Number 04-33,
which is the Text Amendment for Inclusionary Zoning.

As I do like to remind folks for our
public meetings, there will be no testimony taken by
the Commission at the public meeting unless someone
specifically is invited forward which I don't
anticipate this evening. And I would just ask
everyone to turn off their beepers and cell phones
so as not to disrupt the deliberation. And I would
just also ask you to refrain from making any

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1 disruptive noises as we proceed because we are being
2 recorded by a Court Reporter.

3 So, I'll just begin by asking Mrs.
4 Schellin, are there any preliminary matters?

5 MRS. SCHELLIN: No, ma'am.

6 CHAIRPERSON MITTEN: Thank you.

7 I think due to the nature of this case
8 and it's an important sort of threshold discussion
9 for us to have, is to -- because we would have to
10 have a general consensus that we need to proceed
11 with the Text Amendment before we deliberate on all
12 the specifics of it. Because if we didn't have that
13 general consensus, then the specifics would kind of
14 fall by the wayside.

15 So, even though we don't typically have
16 opening statements by the Commissioners, we'll do
17 that tonight because I think it's important to hear
18 where everyone is at.

19 So, I would ask who would like to go
20 first in terms of making an opening statement.

21 Mr. Parsons, you've been nominated.

22 COMMISSIONER PARSONS: I'm used to
23 alphabetical order.

24 I am very concerned about this proposal.
25 I think it's a tool that's very effective in the

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1 suburbs as we have seen from the evidence. It's
2 less effective in urban areas as we've seen from the
3 evidence.

4 And the limited results as reported by
5 the Office of Planning in anticipating the 750 units
6 over five years is, I think, a real problem for me
7 because I think people think we are about to do
8 something that is very significant. Maybe it's
9 symbolically significant, but it's not significant.
10 That is, it is one small tool in a tool kit, if you
11 will. But the fact that we're the only people
12 focusing on this in this city at the moment, the
13 implication is that this is going to be some kind of
14 a windfall for housing.

15 And secondly, we have a vibrant but very
16 fragile housing market at the moment that we could
17 adversely affect. And I know that's speculative,
18 but I guess I've been around too long and watched
19 our housing market in a completely period for so
20 many years and see this brief period we've had and I
21 wouldn't want to do anything that would impact that.

22 And I think much of this proposal as I
23 see it is way beyond the jurisdiction, the knowledge
24 and the expertise of this Commission. We're dealing
25 in areas that have nothing to do with density and

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1 land use. Out of necessity, I guess we are. I just
2 feel that there are others that will be coming back
3 to us later saying you guessed wrong. You didn't
4 put the right percentages in. You didn't have the
5 right advice. It's not going to work. Please amend
6 this.

7 At the same time, I'll try to craft
8 something to do this, but I just want to let you
9 know where I come from at the beginning.

10 CHAIRPERSON MITTEN: Thank you, Mr.
11 Parsons.

12 Anybody else. Mr. Hildebrand?

13 COMMISSIONER HILDEBRAND: Yes. I'd like
14 to follow on with that because I think my concerns
15 are very similar. And that is that I'm very
16 concerned that the projection of what housing will
17 be created by this policy is too optimistic. And
18 if, in fact, it is, it will become mostly a symbolic
19 gesture that everyone is for affordable housing.
20 There's no ifs, ands or buts about that.

21 The question is, is the inclusionary
22 zoning policy the correct tool to help augment the
23 other tools that exist to create it.

24 I'm also concerned about the potential
25 impact of transitioning mixed-use developments into

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1 commercial only developments by fear in the
2 development community of the impact of inclusionary
3 zoning.

4 And another aspect that causes me some
5 pause is the permanent trading of height and density
6 for something that will be a temporary or
7 potentially a temporary benefit. And that is an
8 affordable housing that may only remain affordable
9 for a relatively short in the life of city period of
10 time.

11 CHAIRPERSON MITTEN: Thank you, Mr.
12 Hildebrand.

13 Mr. Hood.

14 VICE CHAIRMAN HOOD: Yes. Madam Chair,
15 I agree with the comments that I've heard and the
16 concerns. But on the flip side, I'm prone to moving
17 forward. We have a problem, I think, in the city
18 with some issues.

19 While the IZ is just a small piece of
20 the equation, it is not the final answer. I think
21 that we should move in some fashion to try and do
22 our part from a Zoning standpoint to help move this
23 inclusionary zoning forward and making it
24 affordable.

25 The other thing is, I will be the first

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1 one to admit that I will be the first one to revisit
2 this if the housing market was to dry up. So, I
3 think we should move forward. I'm willing to work
4 and try to craft something and see what we come up
5 with.

6 CHAIRPERSON MITTEN: Thank you, Mr.
7 Hood.

8 Mr. Jeffries.

9 COMMISSIONER JEFFRIES: Well, as I've
10 said from the dais many times before, I am, you now,
11 very concerned and very challenged over this
12 proposal, both proposals, in fact. And I've had a
13 very difficult time trying to reconcile so the need
14 for making certain that we're not losing large
15 portions of affordable housing in the District and
16 really not negatively impacting general housing in
17 the District.

18 I am so incredibly concerned that we are
19 going to impact on the overall production of housing
20 and that the result of that will be that you will
21 not get the levels of affordability that you've
22 looking for.

23 I think the District of Columbia is a
24 very unique place. It has a Height Act. It has
25 large portions of the district already with various

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1 overlays that we've already spent our density on.
2 We have historic districts. We have over 45 percent
3 of the land here that's held by the Federal
4 Government. I just think that this could be a very
5 burdensome proposal here. And I am going to make
6 certain that, you know, as we--if this Commission
7 decides to go forward, there's a number of things
8 that we're going to have to revisit and look if we
9 are to go forward.

10 I am willing to side with my colleague,
11 Vice Chair Hood in terms of going forward. I do
12 think it's important for the District, just for
13 symbolic reasons alone to make certain that its
14 people understand that it is trying to do something
15 to stem the tide as it relates to losing affordable
16 housing units. So, I think that trumps all of the
17 concerns that I have. But I will make certain, at
18 least on my part here, to try to craft something
19 that will be very, very incremental an approach,
20 particularly given the fact that we're only looking
21 at a very short-lived housing boom here. We're
22 talking three, four years, at best. And I just
23 don't think that kind of record warrants this kind
24 of proposal.

25 CHAIRPERSON MITTEN: Thank you, Mr.

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1 Jeffries.

2 I might be the most optimistic one up
3 here about our ability to craft a zoning Text
4 Amendment that meets the common goals that have
5 actually been expressed by pretty much everybody,
6 even people who are opposed to some of the specifics
7 of the text amendment. But I think everyone
8 appreciated that we have an affordable housing
9 crisis in the city. And that the goal of this Text
10 Amendment should be to not place the burden for
11 providing affordable housing on developers, but to
12 use the most important tool that the Zoning
13 Commission has which is to provide additional
14 density as a way of balancing or offsetting whatever
15 additional costs there may be with providing those
16 affordable units with an incentive. And I think we
17 can do that if we're careful and thoughtful. I
18 think we can accomplish that.

19 One of the things that I think is
20 important to remember and I think everyone also
21 agreed to the fact that this is one tool of many to
22 provide affordable housing in the city is that this
23 is multidimensional and how many dimensions we think
24 of this as having, will determine the impact.

25 So, one of those dimensions is the

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1 number of units that will be provided as affordable
2 in a given project. And so what plays into that is
3 what's the minimum size of the project that becomes
4 subject to IZ and then what's the percentage of
5 units that are affected in that project. And then
6 what's the degree of affordability that we provide.
7 And then further, how long are the controls in
8 place.

9 And so if you think of it as Mr.
10 Hildebrand pointed out that he's concerned that
11 there's a permanent trading of height and density
12 for a temporary benefit, I will be advocating that
13 the affordability should not lapse and that it
14 should be in perpetuity. Because if you think of
15 the benefit as lasting for 20 years, and it's, you
16 know, a fixed number of units but we could amplify
17 that and it goes to 100 years you've multiplied by
18 five the benefit that you're able to provide. And I
19 think that it will provide much more predictability
20 for people. And we're not permanently trading
21 height and density for a temporary benefit. We're
22 trading it for a permanent benefit, but I don't
23 think the need for affordable housing will g away.

24 The other thing I wanted to mention was,
25 you know, I think the Commission has taken really

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1 forward-thinking positions in the past and the
2 downtown development district overlay is one that I
3 have always been impressed with because it was a
4 very tough decision for the Commission to make to,
5 you know, enforce a housing requirement in the east
6 end of downtown.

7 And the reason I invoke that now is
8 because for a couple of reasons. One is that after
9 a number of years where the market wasn't ripe to
10 build that housing, then the Council became involved
11 with incentives of their own. And it was a
12 combination of things that actually made the market
13 happen, including market conditions in general. But
14 the important thing that the Commission did was they
15 reserved that density for housing in that location.
16 And the importance of having a mandatory
17 inclusionary zoning program is that we will be
18 reserving that component. And if there are other
19 incentives that are required to make it come to
20 fruition, we need to learn that and we need to
21 advocate for that. But if we don't reserve it, it
22 will be lost.

23 So, I'm looking forward to the
24 discussion tonight and unless anyone has anything to
25 add, I think we'll just get into it because I think

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1 we have a consensus at least that we can forward to
2 talk about the details.

3 And what I would just tell the audience
4 just so you have a sense of what we're looking at.
5 We just have a template that is guiding us through
6 this discussion that we're all looking at that just
7 basically outlines the decision points that we have.

8 And I would have to say too, it probably
9 doesn't have the level of detail that will
10 ultimately be reflected in the text of a rule-
11 making. But this will give the broad parameters for
12 the actual text to be written.

13 So, with that, the first item that we
14 will discuss which is a key component, which is what
15 types of residential development should be made
16 subject to an affordable housing requirement?

17 So, the first item there is there is a
18 minimum size requirement that has been proposed
19 which is 10 units. And I'd ask anybody who would
20 like to

21 say a word

22 COMMISSIONER JEFFRIES: Yes. I'd like
23 to start off.

24 Now, Madam Chair, we'll be able to, I
25 mean, have the Office of Planning to, you know,

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1 answer any questions that we have.

2 CHAIRPERSON MITTEN: Yes. Feel free.

3 If you want to direct a question to the Office of
4 Planning, I don't think you need to come through me
5 to do that.

6 COMMISSIONER JEFFRIES: Okay. I just
7 want to make certain--

8 CHAIRPERSON MITTEN: Let's just have
9 that freedom.

10 COMMISSIONER JEFFRIES: I've asked this
11 question before. I'm just trying to figure out,
12 what's the magical--why 10? Why not 5? Why not 15?
13 20? And granted, I mean, I know, you know, you're
14 trying to capture as much as possible. But I'm just
15 trying to get a sense of just what's behind. How do
16 we come to 10 units?

17 Anyone can take that?

18 MR. ROGERS: My name is Arthur Rogers.

19 I think one of the things if simplicity
20 in this nice round number. But, if you're talking
21 about a 20 percent bonus and you're talking about 10
22 or 12 or 15 percent of the units required to be
23 affordable, when you get to a certain size, you'd
24 like to get at least one unit affordable and not
25 have to deal in fractions.

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1 And so when the campaign proposed
2 theirs, they were going for 12 percent and 15
3 percent of the project. When you add your bonus
4 density, that's, you know, one unit in --I'm sorry.
5 No. It's two units in a 22-unit project, I guess
6 you said.

7 COMMISSIONER JEFFRIES: Yes.

8 The only concern I had is there are a
9 number of really small-scale developers, LSDBs who
10 are really looking to be part of this whole
11 renaissance around development. And I'm just
12 concerned that this will be a burden on those groups
13 as it relates to having 10 units.

14 I understand the whole notion of, you
15 know, wanting a round number. You know, why not 20?

16 MR. ROGERS: I think part of the answer
17 is also if you're having a smaller project, you're
18 very likely at the lower cost construction. You're
19 at the stick-built cost construction, which is
20 significantly cheaper. And so at that level, the
21 impact is not felt as great. And according to the
22 model and some developers, it actually sort of
23 improves the performance.

24 And so think that's one of the things to
25 think about.

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1 MS. McCARTHY: I think also for a lot of
2 the really small developers that are just getting
3 into the business in terms of the bulk of what we
4 see, is somebody taking say a three-story townhouse
5 and making that either three or six units. So, a
6 lot of that smaller work that's going on would be
7 below the threshold. Ten and more begins to get
8 people who are at the small brick apartment building
9 or the garden apartment buildings, so it's starting
10 to get into something which is a little more
11 substantial.

12 COMMISSIONER JEFFRIES: Yes. Just from
13 my own experience, I know two or three projects in
14 the District now that, you know, could perhaps, in
15 terms of the size of the footprint, this development
16 could be, you know a 15 or a 15 to 18 unit townhouse
17 development would be stick constructed. And, you
18 know, it's just sort of the concern there that in
19 those instances, you know, either they would have to
20 sort of deal with--again, I see it to be a fairly
21 burdensome requirement. And I'd just like to
22 perhaps hear what some of my colleagues have to say
23 around just the 10 or more?

24 CHAIRPERSON MITTEN: Okay. I just want
25 to caution us against a couple of things. It hasn't

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1 happened yet. So, I'm not chastising anybody. But I
2 do want to make it clear that we're not going to be
3 deliberating with OP. If you have a question, get
4 an answer and we then back away. And so I'm going
5 to ask OP which again you haven't done yet, but
6 don't try to interject unless there is a question
7 put to you. Okay? Thanks.

8 Are you advocating for an alternative or
9 just something more than 10?

10 COMMISSIONER JEFFRIES: I would like to
11 see 20.

12 CHAIRPERSON MITTEN: Okay. I guess my
13 reaction would be, I think the Office of Planning
14 made some valid points. And, you know, we've
15 already had some concern about the small number of
16 units that we're going to be able to create through
17 this process. And if we start excluding projects,
18 you know, you don't get a lot of units at the small
19 end but you won't get a lot from any individual
20 projects. But you might in the aggregate get more.
21 You've just restricting all the more the number of
22 units that this program would be able to produce.
23 So, I would have that concern.

24 Mr. Hildebrand?

25 COMMISSIONER HILDEBRAND: Actually, I

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1 would agree with that, Madam Chair.

2 I think that once the program is
3 started, I think the 10 units is a reasonable
4 choice. And I understood why OP and the Applicant
5 suggested it. At that point, you at least get one
6 unit out of the development. And the developer gets
7 a 20 percent bonus to offset that cost. So, I think
8 even though they are perhaps a small developer, the
9 balance is still there for them. So, they shouldn't
10 see anymore cost impact than a developer who is
11 building at a significantly highly rate.

12 So, I would propose and be comfortable
13 with the 10-unit as the starting point.

14 CHAIRPERSON MITTEN: Anyone else? Mr.
15 Hood?

16 VICE CHAIRMAN HOOD: Yes. Madam Chair.
17 I was listening to my colleague, Mr. Jeffries and I
18 was concerned when he mentioned LSDBEs. While I
19 don't know the magnitude that may exist, some of
20 them caused hm some hardship.

21 I'm wondering if maybe and I know it's a
22 work in progress. But for the sake of discussion of
23 him mentioning those small businesses which
24 concerns, I want to make sure that they get their
25 due diligence too.

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1 So, I was wondering if we when we craft
2 this if we could do an alternative? I mean, when we
3 get to that point. Maybe we'll put it out there as
4 OP recommended and you and Commission Hildebrand
5 state it's in. But also as an alternative, see what
6 reaction we get t maybe 15 or 20? I think you said
7 20?

8 COMMISSIONER HILDEBRAND: Right.

9 VICE CHAIRMAN HOOD: And see what we get
10 because we do not want to alienate those nice people
11 who do not have those big bankrolls--bank accounts
12 and make sure that those small businesses also are
13 part of this process also.

14 CHAIRPERSON MITTEN: Mr. Hood, would you
15 be comfortable with, you know. What we're going to
16 do is we're hopefully going to take proposed action
17 on the general principles. Then we will have the
18 test and we'll vote on the text to be advertised.
19 And then there will be at least a 30-day period for
20 comment.

21 But you know the time for people to give
22 us their reaction, you know, for us to be probing
23 for reactions, specific reactions, I think was
24 through the hearing process. I think we need to be
25 committed to something and people are still free to

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1 respond to it, but I guess I would be hesitant about
2 advertising something in the alternative at this
3 point.

4 VICE CHAIRMAN HOOD: I understand, Madam
5 Chair. But I wouldn't be--I understand if we don't
6 put it out there and I understand people have
7 responded. We have a voluminous record. A lot of
8 material. I understand that, but if we don't put it
9 out there, people won't know it's out there to be
10 responded to. And that's just my concern.

11 And my main thrust is those small
12 businesses, so I'm back to that.

13 CHAIRPERSON MITTEN: Mr. Bergstein,
14 what's our degree of flexibility about advertising
15 an alternative in a proposed?

16 MR. BERGSTEIN? That's somewhat unusual
17 because you're really supposed to have the defined
18 text that people can comment on. Though there is
19 nothing to prevent you in the preamble to the text
20 to say this is the number. In other words, to point
21 out specific issues within the rule-making while
22 inviting general comment to express an interest in
23 getting specific comment on specific issues.

24 So, for example, if you were to decide
25 on a consensus of for this point, 10, th preamble

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1 could say the Commission however is interested in
2 receiving comments as to whether the number 10 might
3 pose a particular hardship on a particular type of
4 developer. And that would help target the type of
5 comments you received. And then might allow you to
6 address those questions on final action.

7 CHAIRPERSON MITTEN: All right. Would
8 you be satisfied with that, Mr. Hood, if we
9 proceeded with 10 and invited specific comment as to
10 the number of units?

11 VICE CHAIRMAN HOOD: Right. I don't
12 have any problem with that.

13 Thank you, Mr. Bergstein. Thank you,
14 Madam Chair.

15 CHAIRPERSON MITTEN: And, Mr. Jeffries,
16 how would you feel about that?

17 COMMISSIONER JEFFRIES: That would be
18 fine.

19 CHAIRPERSON MITTEN: Okay. I'm sorry,
20 Mr. parsons. I didn't mean to skip over you.

21 COMMISSIONER PARSONS: That's all right.

22 I think that would be--I'm persuaded by
23 mr. Jeffries point of view. But at the same time, I
24 do not remember much testimony on this issue of 10
25 or 20. It seemed as though the testimony was

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1 running with the given of 10.

2 So, if we solicit more focused
3 testimony. Not testimony, but input as a result of
4 the notice, that's the way to get at it, I think.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER PARSONS: Because I don't
7 really see the basis for us to go to 20 today.

8 CHAIRPERSON MITTEN: Okay. All right.

9 Next would be whether or not a
10 conversion of a non-residential use to a residential
11 use with a minimum number of units, whether that
12 would be included to have an affordable housing
13 requirement?

14 COMMISSIONER JEFFRIES: This is
15 considered like adaptive re-use? Adaptive re-use
16 project?

17 CHAIRPERSON MITTEN: I guess so. I
18 mean, I guess one example would be an office
19 building that would be converted to or a hotel that
20 would be converted to residential use?

21 COMMISSIONER JEFFRIES: Just like the
22 Congressional Quarterly building on 22nd Street?

23 CHAIRPERSON MITTEN: Yes. That would be
24 an example.

25 I actually think maybe for purposes of

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1 this discussion, lumping it together with the
2 substantial rehabilitation because there's something
3 that's in common here. And this was raised by
4 people who had a concern about this. Which is, if
5 you can't capture the additional density, then
6 you've imposed the requirement without the
7 incentive. And I think that's a appropriate
8 criticism of a blanket requirement. And whether
9 it's conversion or whether it's substantial
10 rehabilitation, what I would be in favor of is if we
11 figured out a way of capturing that notion which is
12 if the bonus density is available, that the
13 requirement would be imposed. But if it's not
14 available, then it would not be imposed.

15 And I would say that that would not be
16 the developer's choice whether it's available or
17 not. It's a fact. And that's probably a debatable
18 point as well. Because just because there's density
19 there doesn't mean it's economically feasible to
20 capture it.

21 So, I don't know what other folks think
22 about that. But I am definitely opposed to breaking
23 from what I think is one of the fundamental
24 principles here which is to, you only impose the
25 requirement when you offer the incentive.

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1 So, if you can't capture the incentive,
2 you shouldn't impose the requirement.

3 COMMISSIONER PARSONS: Well, I would
4 submit that we should restrict this to new
5 residential for mixed-use development. And not get
6 into rehabilitation or conversions.

7 The definition of substantial is just
8 very difficult. We went through this with fire
9 regulations and so forth to see where--I mean, they
10 had to determine that you had to demolish 75 percent
11 of the building to reach substantial, that is the
12 fire had to.

13 And I see some guidelines in here, but I
14 don't understand them as substantial rehabilitation
15 replacing electrical and heating and ventilating and
16 so forth. I mean, we're giving the BZA or somebody
17 another mess.

18 CHAIRPERSON MITTEN: I think it would
19 the Zoning Administrator in this case.

20 What I would want to capture though is
21 those instances where there's--let's say there's an
22 existing improvement. I wish I could think of a
23 good example off the top of my head, but I'm not
24 coming up with one. But where there would be --I
25 know we've had these where there's like a dwelling

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1 house and then--okay. Here's one.

2 The Mine Workers' Building at 15th and I
3 where there's an existing office building and then
4 they built a residential tower next to it. Okay.

5 COMMISSIONER JEFFRIES: Like just an
6 addition?

7 CHAIRPERSON MITTEN: Yes. So, that was
8 a substantial rehabilitation of the Mine Workers'
9 Building. And then they put an addition on top of
10 it and then they did this power addition. So,
11 that's something I think we would appropriately want
12 to capture because they are capturing the additional
13 density even though someone might say that's just a
14 rehabilitation.

15 COMMISSIONER PARSONS: But it was a
16 standalone residential building.

17 CHAIRPERSON MITTEN: No. The tower is
18 not. It's connected to the--I believe it's
19 connected to the Mine Workers' Building.

20 I think that we've had somewhere there's
21 been a dwelling--like an historic dwelling house and
22 then--like, isn't that Warder Apartments on 16th
23 Street? That's another example.

24 COMMISSIONER JEFFRIES: Well, Madam
25 Chair, the case that you provided, I mean I wouldn't

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1 look at that as a rehabilitation. I mean, I'd look
2 at that as a new--an addition. A new construction
3 in addition to and I think that that would qualify.

4 CHAIRPERSON MITTEN: Okay. So, I'm just
5 trying to find the words to express the examples
6 that I've given. Because I actually think that we
7 agree, but we're just--

8 COMMISSIONER JEFFRIES: But I'm really
9 looking at sort of an existing envelope of a
10 building and whether the former use was an office
11 and then it was converted to residential. However
12 it is. If the actual envelope is in place, then
13 that's something that I wouldn't--I don't think--I
14 think should be exempt from this proposal. I think
15 it should be new construction or some addition to an
16 existing structure that might be residential.

17 CHAIRPERSON MITTEN: Okay. Then I
18 would--

19 COMMISSIONER HILDEBRAND: The only thing
20 that I would add to this mix though is in
21 transitioning of an existing building from an office
22 use to a residential use, the office use structural
23 requirements are significantly different than
24 residential. The live loading on floors, for
25 example, for example is higher for an office use

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1 than it is for residential. And in some cases,
2 there's actually the capacity in the existing
3 structure to do a rooftop addition to capture some
4 of that additional bonus without demolishing the
5 entire structure.

6 But that becomes very case specific.

7 COMMISSIONER JEFFRIES: Right.

8 COMMISSIONER HILDEBRAND: It's not a
9 universal thing that you can say. So, it would
10 really require looking at that particular project to
11 determine if the density was available or not. It
12 becomes much more complex an equation.

13 COMMISSIONER JEFFRIES: And,
14 Commissioner Hildebrand, you said addition. I mean,
15 I'm still sort of that word of addition and maybe
16 giving some level of definition of that.

17 CHAIRPERSON MITTEN: Well, what we could
18 possibly do is that we would set a threshold that
19 the square footage would increase by, you know, "X"
20 percent. So, you know, just to throw something out
21 there.

22 I could see where if there were--the
23 examples that I'm thinking of are ones where the
24 addition would be substantial so that you would get
25 the sense that there would be an opportunity for not

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1 marginal addition where you might be constrained and
2 couldn't get the bonus. So, I would suggest that if
3 there was an addition to increase the overall
4 density by 50 percent if that would fall into it.

5 VICE CHAIRMAN HOOD: Madam Chair, we
6 would include the conversion from nonresidential to
7 residential increases it 50 percent?

8 CHAIRPERSON MITTEN: If the development
9 included an addition that increased the density
10 above what was existing by 50 percent or more.

11 VICE CHAIRMAN HOOD: Because I'm
12 listening to the discussion. I'm thinking about why
13 this may not help because I'm not in the development
14 business. But I was thinking about. Remember when
15 we did all those tech hotels and how they were
16 designed for techs and then they were pushing the
17 full envelope of development. You can convert it to
18 a--I think most of them convert to commercial office
19 space, I guess, it was. And I'm thinking about that
20 scenario in this case.

21 In other words, I'm supportive of this
22 being included. I'm not too particular about the 50
23 percent. I'm not sure about the 50 percent.

24 CHAIRPERSON MITTEN: I'm sorry.

25 VICE CHAIRMAN HOOD: I just want to make

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1 sure we do it. I would like for this to be included
2 and not just do away with it.

3 CHAIRPERSON MITTEN: When you say "this"
4 you mean?

5 VICE CHAIRMAN HOOD: Well, the
6 conversion to nonresidential to a residential use.

7 CHAIRPERSON MITTEN: My only concern
8 with that is that what we're saying. The general
9 theme of the mandatory proposal is that you impose
10 the requirement where you can offer an incentive.
11 And that incentive is additional density. So, a
12 conversion and take an EEF where it was just, you
13 know, say it was a box and you were going to take
14 the box and convert it into a housing box and
15 instead of a tech hotel box. But if there's no
16 additional density, then there's no incentive for us
17 to offer to offset the imposition of the affordable
18 housing requirement. That's why I'm advocating that
19 only on the occasion where it would be a substantial
20 addition where you would get the sense that someone
21 could capture more density.

22 VICE CHAIRMAN HOOD: And that's 50
23 percent?

24 CHAIRPERSON MITTEN: That where the
25 addition would increase the density to 50 percent or

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1 more.

2 VICE CHAIRMAN HOOD: Okay. I'm clear.
3 I'm fine.

4 COMMISSIONER HILDEBRAND: Madam Chair,
5 would it possibly be simpler to use 20 percent which
6 is what our typical bonus density is? Why wouldn't
7 that be the trigger? If they can add 20 percent to
8 eh volume, would that not offset then the cost of
9 the affordable units?

10 CHAIRPERSON MITTEN: I'll let Mr.
11 Jeffries take that.

12 COMMISSIONER JEFFRIES: Well, first of
13 all, I think I'm going to go back to Commissioner
14 Parsons' opening statement about, you know, perhaps
15 all the expertise is not here. I think at some
16 point maybe we should sort of leave that as a
17 placeholder to figure out what the percentage should
18 be, whether it's 20 or 50. I mean, I don't know
19 what that number is. But, can we leave it as a
20 placeholder?

21 CHAIRPERSON MITTEN: Well, let me just
22 say something and we'll see.

23 The reason that I didn't say 20 is
24 because keep in mind the bonus as it exists now is
25 over the matter of right. So, if you do an

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1 addition, then all you may be capturing, if you did
2 it an addition of 20 percent, all you may be
3 capturing is what you're entitled to as a matter of
4 right anyway.

5 So, what I was suggesting is that if
6 you--and it might be more difficult if you can make
7 a--you may be able to make a relatively small
8 addition without like--

9 COMMISSIONER JEFFRIES: It's space
10 planning.

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER JEFFRIES: I mean, yes. I
13 mean, you have to get a core. I mean, there's a
14 number of things that might have to happen that it
15 really won't make sense to do 20 percent. It might
16 be 40, 50, 60 or whatever that would make it a
17 working addition. I mean, we just don't know that
18 right now.

19 But, I mean, 20 seems to be, you know,
20 fairly minor if you're adding an addition and
21 perhaps, you know, some different use. So, I think
22 it's a space planning issue and it would depend on
23 how, you know, the architecture would look.

24 CHAIRPERSON MITTEN: I guess what I'm
25 not very effectively trying to express is. Just

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1 because you can put on an addition of 20 percent, if
2 you were going to them try and--so that the 20
3 percent would be the trigger for imposing the
4 affordable housing requirement. And I guess I'm not
5 confident that in a more modest addition that you
6 could then assume that someone could then add the
7 kind of addition that would go from 20 percent to 40
8 percent, because that would be the bonus density.

9 But I would be more convinced of that if
10 they were already doing a substantial addition,
11 because maybe that would be something where there
12 would be --it would be set apart and this is not
13 rocket science. I mean, this is more instinctive on
14 my part.

15 So, you know, in the spirit of what we
16 did a minute ago, I guess I'd like to put 50 percent
17 out there because this is a new concept that we
18 didn't really flush out fully in the hearing. It
19 wasn't--

20 COMMISSIONER JEFFRIES: Well, I would
21 concur with that. I'm a little confused as to
22 whether we're talking about conversions or
23 rehabilitations or both.

24 CHAIRPERSON MITTEN: I'm suggesting that
25 they be together.

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1 COMMISSIONER PARSONS: Okay. Thank you.

2 COMMISSIONER HILDEBRAND: That they're
3 together?

4 CHAIRPERSON MITTEN: Yes.

5 COMMISSIONER PARSONS: All right. I
6 would support that.

7 CHAIRPERSON MITTEN: Can you go along
8 with that?

9 COMMISSIONER HILDEBRAND: Yes. If
10 you're lumping a substantial rehabilitations in with
11 that, I would agree too. My concern with
12 substantial rehabilitations was possibly getting a
13 small condominium building that had say 20 condos in
14 it. And it's reaching its end of its life span and
15 you want to go to change the mechanical system that
16 serves the whole building and replace the roof
17 because it's now 20 years old.

18 Does that suddenly mean that, you know,
19 three people have to move out and they have to sell
20 their units at affordable housing rates just because
21 they're maintaining their property?

22 CHAIRPERSON MITTEN: Right.

23 COMMISSIONER HILDEBRAND: And that's
24 what I wanted to avoid.

25 CHAIRPERSON MITTEN: I think we'd

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1 definitely avoid that with this approach.

2 Then there's an issue about and this has
3 actually come up in sort of a different context.
4 You know, since a number of units is an issue and
5 then it's a question of what's th project. For
6 instance, if there are multiple lots being developed
7 in some kind of phase, how would we capture that so
8 that somebody couldn't do--if our threshold was
9 going to be 10, that they wouldn't do, you know a
10 nine-unit building here and then next door doing
11 another nine-unit building. And it's really all
12 part of one project but they're under the threshold
13 for purposes of, you know, of avoiding the
14 requirement.

15 So, I don't know how we might want to
16 capture that. But, you know, would we want to say
17 that if the number of units exceeds a certain level
18 within three years on contiguous parcels by the same
19 developer? I don't know if you have thoughts about
20 that or you think that is going to be an issue for
21 us or not? Or would you like to come back to it
22 later?

23 One of the reasons why I might advocate
24 coming back to it later and, Mr. Jeffries I'll let
25 you speak in just a second.

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1 Which is we're dealing with some of the
2 major, the broad brush strokes of the proposal and
3 this is, you know, even though it's on point to the
4 threshold, it's a finer point. And we might want to
5 come back to it for that reason. Okay?

6 Okay. So, then there's the issue of
7 what would constitute a residential use and I think
8 there were a series of uses that were suggested as
9 being excluded, which are hotels, motels, inns,
10 dormitories, rooming house, boarding houses,
11 community-based residential facilities and single
12 room occupancy developments.

13 Do we have a consensus that those should
14 be excluded and, if so, are there any others that
15 should be excluded?

16 COMMISSIONER HILDEBRAND: Do we want to
17 include hostiling--

18 CHAIRPERSON MITTEN: Oh, good one.

19 COMMISSIONER HILDEBRAND: -- in that
20 list?

21 CHAIRPERSON MITTEN: Good one.

22 MR. BERGSTEIN: Although it falls within
23 the definition of inn.

24 COMMISSIONER HILDEBRAND: Oh, I'm sorry.

25 CHAIRPERSON MITTEN: But it never hurts

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1 to be sensitive to the topic.

2 COMMISSIONER PARSONS: I'm not sure this
3 is the place to discuss it, but I wanted to advocate
4 for those who are providing low-income housing be
5 exempted from this regulation. I know we had a lot
6 of testimony about that. Maybe this is not the
7 place to discuss that because it's not a zoning
8 category, if you will of use. So, maybe that's
9 later.

10 CHAIRPERSON MITTEN: Yes. Let me just
11 think for a second. I would rather deal with it in
12 a different section.

13 COMMISSIONER PARSONS: Yes.

14 CHAIRPERSON MITTEN: Okay. And I'm on
15 board with these uses. And I think they're
16 distinctly different than what we would be--in
17 configuration as well as--I think the configuration
18 is important because what we also don't want to do
19 is have someone be able to configure a building one
20 way and call it something and then change the use
21 with the same configuration as an apartment house or
22 a condominium and avoid the requirement that way.
23 Not that I think that's going to be a huge issue.
24 But, okay.

25 Okay. Let's go to the PUD requirements.

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1 And there's a couple of issues that I think we need
2 to deal with.

3 One is, whether or not the affordability
4 requirements should be imposed on residential
5 developments that are coming in as Planned Unit
6 Developments. That's the first thing I'd like to
7 deal with.

8 COMMISSIONER PARSONS: Well, I would
9 like to exempt PUDs in that category because PUDs
10 are based on having a broad sub-entities. And
11 shouldn't be focused on this one public value, if
12 you will. And I think PUDs should stand alone and
13 not be forced to require it.

14 At the same time, we're talking about
15 densities that would increase above the limit that
16 we have set for ourselves in PUDs which is another
17 subject. That is, people could choose to go without
18 a PUD and achieve the housing goal.

19 And then the PUD stands alone is
20 something where we can consider other amenities that
21 the PUD system has been set up for.

22 CHAIRPERSON MITTEN: Okay.

23 VICE CHAIRMAN HOOD: I would agree with
24 Mr. Parsons. I mean, I think the PUD should be
25 stand alone. The other amenities which are included

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1 in the PUD are far more to a point benefitting those
2 neighborhoods. Those monetary things that are
3 offered to neighborhoods so they can increase their
4 infrastructures and what not. So, I would also be
5 in agreement with Commissioner Parsons.

6 CHAIRPERSON MITTEN: One thing that I'd
7 like to point out is that the -- and we'll get to
8 this chart. But, the Office of Planning had done a
9 nice chart for us that shows in order to provide the
10 20 percent incentive density, what that means in
11 different zones. And when you look at the chart and
12 you compare that to the PUD guidelines for a
13 particular zone, they exceed the guidelines in a
14 number of cases. And what that brings to mind for
15 me and maybe, I think, Mr. Parsons was sort of
16 touching on this, which is. I think we ought to --
17 we ought to allow through some mechanism, whether
18 it's a PUD or otherwise.

19 In the event that someone wants to do a
20 PUD but it's really an affordable housing PUD, that
21 they can use the inclusionary zoning provision so
22 that they're not bound by the PUD guidelines, but
23 they can use the inclusionary zoning guidelines.
24 And they can do that anywhere in the city and not
25 just where we finally decide to map it. But I

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1 wouldn't want to do that as a matter of right,
2 because then there might be implications for--that
3 it might not be appropriate, because that's one of
4 the things that I know there's a concern about that
5 there needs to be some review to make sure it's
6 appropriate in the context. But I would like to
7 give that flexibility where people found that we had
8 struck the appropriate balance between the incentive
9 that we were offering and the affordability
10 requirement that we could allow the additional
11 density.

12 I don't know what your thoughts are
13 about that.

14 COMMISSIONER HILDEBRAND: Just to make
15 sure I understand.

16 In the PUD process, there would be a new
17 section that would allow an applicant to trigger the
18 IZ requirements to get the additional height and
19 density if they chose to meet the IZ requirements
20 within their PUD?

21 CHAIRPERSON MITTEN: Yes.

22 COMMISSIONER HILDEBRAND: And that would
23 be anywhere in the city, but the PUD process would
24 then give you a mechanism to review whether or not
25 there was a negative impact or an inconsistency with

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1 the Comprehensive Plan relative to that additional
2 height?

3 CHAIRPERSON MITTEN: Right.

4 COMMISSIONER HILDEBRAND: Okay.

5 CHAIRPERSON MITTEN: Yes. That captures
6 it a little more directly what I was trying to say.

7 And I think if we do this right, that
8 there actually will be cases like that. Because I
9 think that, I mean, my sense is that the Office of
10 Planning's analysis suggests that the incentive
11 doesn't just strike a neutral balance, but sometimes
12 strikes a balance in favor of the developer. And if
13 that's true, then people will want to do that.
14 They'll say, I really would like to avail myself of
15 that additional density because it makes sense for
16 me.

17 COMMISSIONER HILDEBRAND: In two cases,
18 in particular, in the W2 and the W3, the difference
19 between the IZ allowable height and the PUD
20 allowable height is 20 feet in both cases. So, that
21 would be approximately two stores in both of those
22 areas that a PUD process could gain by including the
23 IZ proposal.

24 COMMISSIONER JEFFRIES: So, Madam Chair,
25 this would be a voluntary action on the part of the

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1 developed who is going for--

2 CHAIRPERSON MITTEN: The only way they
3 could reach beyond the PUD guidelines for density or
4 height would be to make this an IZ project that
5 complied with the IZ requirements.

6 COMMISSIONER JEFFRIES: But they don't
7 necessary have--I mean, they don't have to. So, it
8 would be a voluntary--

9 CHAIRPERSON MITTEN: As long as it's in
10 an area that's not mapped for IZ.

11 COMMISSIONER JEFFRIES: Right.

12 CHAIRPERSON MITTEN: It would be
13 voluntary.

14 VICE CHAIRMAN HOOD: So, Madam Chair.
15 They have a PUD and they come in and they want the--
16 they wanted the added height and everything, so they
17 take it a step further to include the IZ
18 requirements?

19 CHAIRPERSON MITTEN: Yes.

20 VICE CHAIRMAN HOOD: So, they have a PUD
21 to start with and then the next step is to include
22 the IZ requirements?

23 CHAIRPERSON MITTEN: No.

24 VICE CHAIRMAN HOOD: I'm just trying to
25 follow you. Because at first I was against the PUDs

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1 period. But you have a PUD. And someone there is
2 trying to --and they also offer or proffer to
3 include the IZ requirements. So, therefore, they
4 can get the extra height? Over and above the normal
5 PUD?

6 CHAIRPERSON MITTEN: Right.

7 VICE CHAIRMAN HOOD: Is that what you're
8 saying?

9 CHAIRPERSON MITTEN: Yes. But I mean,
10 think of it this way.

11 They have a project. They have a piece
12 of property and they're trying to decide what they
13 want to do. So, they can do a PUD under the PUD
14 guidelines that could be a residential PUD. As long
15 as they don't exceed the PUD guidelines, they could
16 provide whatever kind of incentives they think the
17 Commission or whatever kind of amenities and
18 benefits they think will convince the Commission
19 that those are sufficient to offset whatever relief
20 would be requested, whatever flexibility.

21 If they wanted to take that a step
22 further and get additional height and additional
23 density which won't be available in every zone, but
24 is available in some, then they would subject
25 themselves to the IZ requirements.

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1 VICE CHAIRMAN HOOD: Are we going to put
2 that in the parking lot to come back to? Because I
3 would be susceptible to that.

4 CHAIRPERSON MITTEN: So, let me just
5 step back because I did kind of digress from Mr.
6 Parsons' original point which is. Mr. parsons was
7 advocating exempting PUDs from the mandatory
8 requirements. So, that would be a residential PUD
9 would be exempt from the IZ requirements. And Mr.
10 Hildebrand spoke in favor of that, suggesting or
11 somebody did. No. I guess Mr. Parsons did. Saying
12 that the PUD is supposed to provide the opportunity
13 to pursue multiple kinds of incentives. You know,
14 not always affordable housing.

15 COMMISSIONER HILDEBRAND: Just to make
16 sure I'm clear. So, then even, granted we haven't
17 mapped anything yet, so we don't know where we're
18 talking about this. But if it just so happened that
19 this PUD sight was included in an area that was
20 mapped for IZ, it would be exempt from the IZ
21 proposals as long as--requirements, as long as it
22 stayed within the PUD guidelines?

23 COMMISSIONER JEFFRIES: Correct.

24 COMMISSIONER HILDEBRAND: Okay.

25 CHAIRPERSON MITTEN: Well, let me just

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1 say that I don't think we're at that juncture yet.
2 I think the juncture we're at is. What I think was
3 being proposed was that all residential PUDs would
4 be subject to the IZ requirements, regardless of
5 where they were. Which is different than when we
6 map something. Are we going to exempt the PUDS
7 within that MAP area from the IZ requirements which
8 I suggest is a decision we don't have to make yet.

9 COMMISSIONER PARSONS: Let there not be
10 any confusion, that was my proposal.

11 CHAIRPERSON MITTEN: So that it's
12 actually--no matter where we map IZ--

13 COMMISSIONER PARSONS: Correct.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER JEFFRIES: Let me put an
16 exclamation point on that.

17 I wholeheartedly agree with Commission
18 Parsons. I mean, I think the beauty of the PUD and
19 all the various things that are proffered to that
20 process should really remain intact.

21 You know, we can't get completely
22 affordable housing on the brain here. I mean, you
23 know, there are other things that the city is trying
24 to do. So, I would strongly support you as it
25 relates to exempting PUDs, whether they are located

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1 in areas that we in the future will map or not.

2 CHAIRPERSON MITTEN: Let me, if I may,
3 invoke a saying that my father had which was. Don't
4 make a decision before you have to. And when I
5 would say I will never do that, that's when he would
6 remind me of that.

7 And I say that because when we finally
8 get around to mapping this, we're going to be
9 picking locations that have certain characteristics.

10

11 One is the capacity to handle the
12 additional density. And I suspect that those are
13 going to be along major transportation corridors and
14 they're going to be near public transportation and
15 all kinds of things like that, which will be places
16 where we--and maybe those, you know, those housing
17 incentive areas where we may very well want to say
18 that affordable housing is the most important
19 amenity that we want to promote here. But if we
20 right now say, make that decision, we can't make
21 that on a case by case basis as we map it.

22 COMMISSIONER JEFFRIES: But, Madam
23 Chair. I guess my point is, is that we look at PUDs
24 here on a case by case basis. I don't think this
25 will exclude us, you know, in certain areas that we

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1 might map to look at an individual PUD and perhaps
2 look at perhaps a higher percentage of
3 affordability. But I don't want to do something
4 that's blanketed right now.

5 CHAIRPERSON MITTEN: Well, keep in mind,
6 we don't tell the developer what to bring to us. We
7 just vote it up or down. And typically we're not in
8 a position to say. Gee, you know, it would be nicer
9 if you had another--I mean, we have said--we've
10 hinted at things. But, you know, we can't dictate,
11 hey. It's not enough and we're requiring more. We
12 can't do that.

13 COMMISSIONER JEFFRIES: Well, I think
14 normally, I mean, I've here at this Commission and
15 maybe I was out of place. But I most certainly
16 during set down have, you know, questioned the
17 percentage of affordable housing in certain
18 projects. But, you know, not basically saying, you
19 will not--you know, this will not go forward. But,
20 you know, often times, this is what we do. You
21 know, during the set down, we do send out messages
22 to people about how we're looking at their
23 particular application.

24 So, you know, I like the flexibility and
25 really the texture and the beauty of the PUD

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1 process. And I just think that it should remain
2 pure and not be part of this project. So, I agree
3 with your dad. You know, never say never. I agree
4 with that. But I do feel very strongly about this
5 at this point. How's that?

6 CHAIRPERSON MITTEN: Okay. How am I
7 doing over on this side?

8 COMMISSIONER HILDEBRAND: I guess my
9 only concern is that if you exempt all PUDs in even
10 in the areas where it's mapped, that that will drive
11 every parcel that's over 7,500 square feet into a
12 PUD process. Specifically, to avoid the IZ
13 requirement unless it's zoned--it's a piece of
14 property that's zoned in such a way that they can
15 get in excess of PUD limits by doing the IZ.
16 Because I can't imagine that the additional height
17 and density wouldn't be a significant bonus for the
18 development community to go beyond the PUD process.

19 So, my concern would be that if you
20 exempt PUDs, there will be a significant new number
21 of them.

22 COMMISSIONER JEFFRIES: But hasn't there
23 been a proposal here for a voluntary basis? I mean,
24 you know, if they can give additional density in
25 those areas that, you know are mapped, I mean, they

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1 have the option to go forward. I mean, is that my
2 understanding, Madam Chair?

3 CHAIRPERSON MITTEN: That's what I was
4 suggestion.

5 COMMISSIONER JEFFRIES: Yes.

6 CHAIRPERSON MITTEN: But what I'm trying
7 to focus on at the moment, because I took us down
8 the path, is that whether or not to exempt
9 residential PUDs from the IZ requirements. That was
10 the end.

11 Well, let me say that the proposal was
12 to require residential PUDs to meet the IZ
13 requirements. That was what the proposal was.

14 So, then Mr. Parsons had proposed
15 exempting them, you know, clearly exempting them.
16 And because the question got turned around, that's
17 why I got confused about that you're suggesting it's
18 where it's mapped.

19 COMMISSIONER PARSONS: Yes.

20 CHAIRPERSON MITTEN: Okay. So, which
21 is, you know, that's a good point.

22 So, that's the origin of the issue is we
23 were being asked to impose it. So, if we don't
24 impose this--we have to overtly impose it. We don't
25 have to exempt it, except where its mapped.

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1 COMMISSIONER PARSONS: I don't share Mr.
2 Hildebrand's concern. I mean, if we're doing this
3 right--

4 CHAIRPERSON MITTEN: Right.

5 COMMISSIONER PARSONS: -- they'll go
6 after the bonus.

7 CHAIRPERSON MITTEN: Yes.

8 COMMISSIONER PARSONS: They'll go after
9 two more stories, 20 percent, whatever it is. And
10 not opt for the PUD. If we've done it wrong,
11 they'll go for the PUD, but at least we'll get some
12 housing. That's my point.

13 COMMISSIONER JEFFRIES: And I think we
14 started off here saying that, you know, this is--IZ
15 is one tool in the toolbox. Okay? PUD will have
16 its part, you know, providing some level of
17 affordability as it has. You know, again, this is
18 about making certain that we're managing
19 expectations around just how much affordable housing
20 IZ can really deliver.

21 VICE CHAIRMAN HOOD: But, Madam Chair, I
22 thought that your proposal to us was that do the PUD
23 and if a developer wants to come in and include the
24 IZ on top of the PUD, make it as necessary. Is that
25 where we are?

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1 CHAIRPERSON MITTEN: Let me run down
2 where we are. Well, there's a series of things.

3 The first one is that I haven't heard
4 anyone advocating for imposing the IZ requirements
5 on all residential PUDs. I haven't heard any
6 residential PUD. I haven't heard anyone advocating
7 for that. Okay. So, we don't want to do that.

8 Then I've heard loudly on this side that
9 we should in mapping IZ, we should exempt
10 residential PUDs from the IZ requirement. At that's
11 what this side is advocating. And then what I had
12 suggested was that whether you're--but that does not
13 preclude someone voluntarily, once you've exempted
14 the PUDs, doesn't exclude them from voluntarily
15 having an IZ project and availing themselves in some
16 case, even more density than the PUD guidelines,
17 which then I was suggesting that we could do that
18 even outside of the areas where we had mapped IZ and
19 just let me, if they so choose as part of a PUD but
20 getting that--availing themselves of that additional
21 density, height, lot occupancy flexibility.

22 COMMISSIONER JEFFRIES: Yes.

23 CHAIRPERSON MITTEN: All right?

24 COMMISSIONER JEFFRIES: Go forth and say
25 no more.

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1 CHAIRPERSON MITTEN: Okay.

2 COMMISSIONER HILDEBRAND: I am in a
3 compromise mood. Yes. I think that--

4 CHAIRPERSON MITTEN: Okay. Yes. We
5 should have started a lot earlier in the day. Okay.

6 But maybe that's good.

7 MR. BERGSTEIN: Can I just make sure I
8 understand?

9 CHAIRPERSON MITTEN: Oh, sure.

10 MR. BERGSTEIN: Okay.

11 CHAIRPERSON MITTEN: Get me while I have
12 it in my head correctly.

13 MR. BERGSTEIN: All right. The petition
14 OP first proposed to impose the IZ requirement on
15 PUDs located outside the IZ overlay and you've
16 rejected that?

17 CHAIRPERSON MITTEN: Correct.

18 MR. BERGSTEIN: Okay. You've also
19 chosen to exclude PUDs that are mapped -- that would
20 be mapped within the IZ overlay from the IZ
21 requirements as well. However, with respect to any
22 PUD wherever located, they could come in with a
23 Planned Unit Development that meets the IZ
24 requirement and at that time that would establish
25 prima facie proof of public benefit. And that the

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1 only things after that that would need to be proven
2 would be no adverse impact and consistency with the
3 Comprehensive Plan. They wouldn't have to satisfy
4 any of the other criteria that a normal PUD would
5 have to.

6 CHAIRPERSON MITTEN: The only thing that
7 I would say that I would want to suggest is that it
8 would be prima facie proof of the public benefit for
9 the density, the height and the lot occupancy. And
10 if there was some other area or areas of flexibility
11 then they would have to proffer something to balance
12 that.

13 MR. BERGSTEIN: And the normal pub area
14 requirements would still govern that? In other
15 words, if you had someone who had a 10 or more unit
16 development wanted to come in the PUD process and
17 subject themselves to IZ, but would not meet the
18 minimum area requirements they could do it?

19 CHAIRPERSON MITTEN: Okay, guys. Okay.

20 COMMISSIONER PARSONS: Saying there--

21 CHAIRPERSON MITTEN: Well, what do you
22 mean no? What are you saying no to?

23 COMMISSIONER PARSONS: Saying there are
24 no minimum area requirements. I think that's what
25 he said.

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1 CHAIRPERSON MITTEN: Well, he's asking.

2 COMMISSIONER PARSONS: No. Well, the
3 answer is no for me.

4 CHAIRPERSON MITTEN: The answer to the--

5 COMMISSIONER PARSONS: The minimum area
6 requirement is for a reason.

7 CHAIRPERSON MITTEN: Okay.

8 COMMISSIONER PARSONS: Is Set aside for
9 this?

10 CHAIRPERSON MITTEN: Yes.

11 COMMISSIONER PARSONS: No. Mr.
12 Jeffries, what do you have to say?

13 COMMISSIONER JEFFRIES: No, no, no. I
14 just wanted to make certain I understood.

15 Mr. Bergstein, can you restate that
16 please?

17 MR. BERGSTEIN: Okay. Let's say I'm
18 outside of the IZ area.

19 COMMISSIONER JEFFRIES: Right.

20 MR. BERGSTEIN: So, I don't have an IZ
21 requirement. But I would like to take advantage of
22 the amount of bonus density that you're proposing
23 that would be available in a PUD. But I do not
24 otherwise meet the minimum area requirements for a
25 PUD.

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1 COMMISSIONER JEFFRIES: Right.

2 MR. BERGSTEIN: Under existing zoning
3 regulations, I could not do that. Do you want to
4 make an exception for projects outside the IZ
5 overlay that do want to comply with IZ, take
6 advantage of this PUD process, even though they
7 don't meet the minimum residential requirements.
8 The only thing they're asking for is that bonus.

9 CHAIRPERSON MITTEN: The only reason
10 that we would do it is because it opens up the
11 opportunity for more sites to potentially avail
12 themselves of the IZ program.

13 COMMISSIONER JEFFRIES: And these would
14 be sites that are not within the mapped areas?

15 CHAIRPERSON MITTEN: Correct. It would
16 help me to understand what--here's the idea.

17 What I am suggesting is, we take all of
18 the aspects of mandatory and then we say, hey. If
19 somebody wants to do it voluntarily in a place where
20 we didn't map it, well, what's the harm in that?
21 So, what's the harm in that?

22 COMMISSIONER PARSONS: The harm in that
23 is a very, very, very PUD set in the middle of a
24 circumstance where we don't want it. I mean, we
25 have these minimum area requirements for a reason.

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1 And I don't see any reason to set them aside. We
2 would have to have a whole new hearing on what's the
3 minimum size area for a residential PUD?

4 COMMISSIONER JEFFRIES: So, are you
5 saying like a 3,000 square foot footprint under that
6 scenario, that, you know, could they be afforded?

7 CHAIRPERSON MITTEN: Potentially.

8 MR. BERGSTEIN: It would be based upon
9 minimum unit size, not minimum square footage.

10 CHAIRPERSON MITTEN: Yes. Minimum
11 number of units.

12 We've debated.

13 COMMISSIONER PARSONS: I object to this.

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER PARSONS: There is nothing
16 in the hearing. Nothing.

17 CHAIRPERSON MITTEN: We have had --when
18 we've had complex cases, we have had the
19 conversation evolve as we've--

20 COMMISSIONER PARSONS: Right.

21 CHAIRPERSON MITTEN: -- deliberated the
22 issues.

23 COMMISSIONER PARSONS: We've taken them
24 one at a time as to whether we would waive our rules
25 on that particular case. But the way I hear this is

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1 it's just wide open. Anybody who wants to do that
2 is welcome to come forward.

3 CHAIRPERSON MITTEN: We're constrained
4 right now with the minimum--well, keep in mind that
5 depending on what zone you're in, the minimum area
6 requirement for a PUD in a residential zone is not
7 just 15,000 square feet. It could be--and I don't
8 have off the top of my head, but you know, it's an
9 acre or something.

10 COMMISSIONER PARSONS: Yes. It used to
11 be three.

12 CHAIRPERSON MITTEN: Well, there are
13 some that is more. I just don't have it in my head.
14 So, you know--

15 COMMISSIONER PARSONS: Three acres or
16 more.

17 COMMISSIONER HILDEBRAND: Madam Chair, I
18 wouldn't be in favor of eliminating the area
19 requirements for a PUD in this particular case. I
20 think that they're well established and it would be
21 proper for us to leave those in place.

22 VICE CHAIRMAN HOOD: Madam Chair, I hear
23 what everybody is saying. I would be in favor. I'm
24 open. So, we can get the achievement of what we're
25 trying to get here.

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1 While I know that the PUD process is
2 not broken. I mean, I think it works fine to a
3 point. But remember, we're trying to achieve a goal
4 here and that's the inclusionary zoning. We're
5 trying to get affordable housing. So, to me, if
6 that would work and no harm, no file. You know, no
7 file, no harm.

8 So, you know, if we could find a way to
9 --I understand about the requirements for the PUD
10 and the PUD has been working at least the eight
11 years I've been here. But again, the goal is to try
12 to get affordable housing. That little tool, even
13 though it's not the main thing. So, I'm open to it.

14 COMMISSIONER JEFFRIES: And what about
15 the cost involved with the PUD? I mean, I hear you,
16 Vice Chair. You know, in terms of, you know,
17 wanting to do what you can. But I really do think
18 we need to take these things one step at a time and,
19 you know. I just think the PUD process has done its
20 job in terms of producing some affordable housing
21 and other things.

22 And, I don't know, maybe we should a
23 placeholder on this. But I tell you, I'm just--I'm
24 really not inclined to go along with this.

25 I don't know whether, you know, our

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1 docket would be more full under that scenario than
2 it is now. There is a resource issue around this as
3 well. So, we have to consider.

4 I would probably at this point side with
5 Commissioners Hildebrand and Parsons.

6 CHAIRPERSON MITTEN: Okay. I think --
7 I'm happy to move on. No. I'm not happy to move on.

8
9 But the subject of minimum size
10 requirements for PUDs has come up before. And we've
11 talked about the fact that, you know, we should
12 probably discuss it. Not that it's set in concrete
13 and is perfect and doesn't need to be revisited.

14 COMMISSIONER PARSONS: My point is this
15 is not the time and place to do it.

16 CHAIRPERSON MITTEN: I hear you. I hear
17 you. But I think we should do it and then we can
18 have this conversation as part of that larger
19 discussion another time.

20 COMMISSIONER PARSONS: A separate case?

21 CHAIRPERSON MITTEN: Yes. Yes. Yes.

22 COMMISSIONER PARSONS: Thank you.

23 CHAIRPERSON MITTEN: Okay. So, the
24 other proposal--

25 VICE CHAIRMAN HOOD: So, that's off the

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1 table?

2 CHAIRPERSON MITTEN: I'm sorry to say it
3 is at the moment.

4 VICE CHAIRMAN HOOD: Okay. I think we
5 should also put that in the parking lot. And I'm
6 calling it a parking lot.

7 COMMISSIONER PARSONS: Disagree.

8 VICE CHAIRMAN HOOD: Well, okay.

9 CHAIRPERSON MITTEN: Well, they won't go
10 back to it. I sense very strong feelings about
11 this. Otherwise, if I sensed some--what's the word
12 I want? Hesitancy about their positions, but I
13 don't.

14 VICE CHAIRMAN HOOD: I don't want to
15 call anything, but I think there's some hesitancies--
16 -a little bit. I won't call Commissioner--

17 CHAIRPERSON MITTEN: Okay. Then at the
18 end, you can bring it up again. Okay.

19 So, the other issue was that the
20 campaign had suggested that we impose the
21 requirement if an applicant comes in for a variance
22 from density, which I think would just be too
23 problematic because if you're going to meet the test
24 for the variance, you're meeting it for a very
25 specific reason.

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1 You have a three-prong test and at least
2 the way I view the variance is the relief is
3 supposed to be commensurate with the practical
4 difficulty that's been created. So, the degree of
5 density variance that's given is proportionate to
6 the difficulty created by the unusual condition.

7 So, to add the IZ requirements on top of
8 that would suggest that that additional density
9 serving as an incentive when, in fact, it's
10 offsetting the practical difficulty that's inherent
11 in the land. So, I wouldn't be advocating for that.

12 Anyone else on that particular subject.

13 Okay. Okay.

14 Next sort of big topic is--

15 COMMISSIONER JEFFRIES: Well, excuse me,
16 Madam Chair.

17 So, we don't want to deal with this?

18 Oh, no. We've taken care of that. Okay.

19 CHAIRPERSON MITTEN: Okay. So, then the
20 next big question is, how much affordable housing
21 should be required to be provided in the template
22 that we're looking for. The chart that we're
23 looking at? You can see what the campaign had
24 proposed and then you can see what the Office of
25 Planning had proposed. And at least as we have

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1 agreed so far, substantial rehabilitation projects
2 would not be included, unless you wanted to have a
3 subcategory--well, I don't know how you would like
4 to break it down. But, the campaign has broken it
5 down by low-rise buildings, mid rise and high rise
6 buildings. And then the substantial rehabilitation
7 projects. Office of Planning has broken it down by
8 lower density, residential and commercial zones that
9 are stick built construction. The lower density
10 residential and commercial zones that are steel or
11 concrete framed construction. And then the higher
12 density, residential and commercial zones. All
13 construction types.

14 So, I don't know which kind of breakdown
15 you guys favor just as being the way the label, the
16 requirements as a starting point.

17 COMMISSIONER PARSONS: I would support
18 the Office of Planning.

19 CHAIRPERSON MITTEN: I think so too and
20 I think everybody was sort of striving for the same
21 general distinctions. I think the Office of
22 Planning distinctions are probably more clear in
23 their intent. So, I would agree with that.

24 And then you can see what the
25 percentages are there without me repeating them.

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1 COMMISSIONER JEFFRIES: So, yes. I
2 would agree. I think the Office of Planning's
3 structurally out it works for me.

4 I didn't want to revisit perhaps some of
5 the percentages here. Just give a sense from my
6 colleagues, you know, what they thought.

7 In particular, I was interested in some
8 of the higher density residential commercial zones.
9 You know, this greater of eight percent or matter of
10 right, FAR and 50 percent of achievable bonus
11 density.

12 If we can, do you mind just--

13 CHAIRPERSON MITTEN: No.

14 COMMISSIONER JEFFRIES: -- just talking
15 a bit about that?

16 You know, I think the question came up
17 for particularly the high-rise condo luxury, you
18 know, issues around parking, issues around the condo
19 fees and so forth. And I know we're going to get to
20 this thorny issue about construction costs going up
21 and so forth.

22 And I was looking at perhaps looking at
23 maybe dropping those numbers just a bit. But I just
24 wanted to get a sense from, you know, my fellow
25 commissioners what they thought.

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1 COMMISSIONER PARSONS: I'm not sure I
2 understand. You mean, just on the high density?

3 COMMISSIONER PARSONS: Well, just the
4 higher density.

5 COMMISSIONER PARSONS: Do you mean you
6 feel more comfortable with 10 percent or which way
7 are you--

8 COMMISSIONER JEFFRIES: Oh, no. I'm
9 sorry. It says the greater of eight percent.

10 COMMISSIONER PARSONS: Yes.

11 COMMISSIONER JEFFRIES: I'm just
12 wondering if we could look at a smaller number here,
13 perhaps, five percent, and looking at--

14 COMMISSIONER PARSONS: Oh, I see.

15 COMMISSIONER JEFFRIES: -- maybe 40
16 percent achievable bonus density. And by the way, I
17 can be persuaded. I'm just putting it out.

18 COMMISSIONER HILDEBRAND: In looking
19 through OP's analysis, I was actually persuaded that
20 they had reached the proper compromise there. I
21 think they tried to recognize the different
22 construction costs associated with high-rise
23 construction and dropped the percentage from 10 and
24 75 to 8 and 50. So, I think in my mind, they've
25 already accommodated that feature. But I think to

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1 reduce it further would be to bring it out of
2 balance in the wrong direction. That would be like-
3 -

4 COMMISSIONER JEFFRIES: When you say out
5 of balance meaning production of less units?

6 COMMISSIONER HILDEBRAND: Yes.
7 Production of less units and providing additional
8 offset for units that you're not providing.

9 COMMISSIONER JEFFRIES: Okay.

10 CHAIRPERSON MITTEN: I think that I
11 agree that the Office of Planning has struck the
12 right balance. And one of the things that I'm
13 looking at now is and it's kind of interesting that
14 it's the chart that they had given us back in August
15 when we asked them to show us the PUDs that we've
16 done so far. And what's been offered. And one of
17 the things that you see is there has generally been
18 an increase in the amount of affordability that
19 people have been offering. But in two of the more
20 recent cases in the case of Square 643, which is in
21 Southwest and there's the church and then there's
22 the tower.

23 COMMISSIONER JEFFRIES: The Friendship
24 Baptist.

25 CHAIRPERSON MITTEN: Yes. Friendship

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1 Baptist Church.

2 The affordable units as a percentage of
3 bonus, 40 percent and it's 5 percent of the total.
4 And you have a historic prevention issue there. So,
5 I thought that was interesting.

6 And then we have a PUD that we haven't
7 heard yet but what's been proffered in the
8 Dorchester PUD is a 30 percent of the bonus and 8
9 percent of the total. And, you know, we have to
10 sort through a bunch of things. You know, but
11 they're proffering 8 percent in that case.

12 COMMISSIONER JEFFRIES: Eight percent of
13 the total.

14 CHAIRPERSON MITTEN: Eight percent of
15 the total.

16 COMMISSIONER JEFFRIES: Okay.

17 CHAIRPERSON MITTEN: And these are in
18 cases where there's other issues, you know. This is
19 not just about affordable housing.

20 So, I don't think that this is out of
21 line.

22 COMMISSIONER JEFFRIES: Okay. Let me
23 just say this.

24 I mean, I think the Office of Planning
25 did an exemplary job as it related to really giving

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1 a lot of collaboration with the development
2 community. And that's why I'm moving very
3 tentatively through this one because I know that
4 there was a lot of time and efforts put into, you
5 know, calibrating these numbers and so forth.

6 I'm just, you know, out here in the
7 development world and getting a little uncomfortable
8 these days. And so I look at these numbers and, you
9 know. But I do know that we really, you know,
10 should if we're going to do some level of IZ, that
11 we have to have something that will fetch us some
12 level of affordability. So, I recognize that.

13 CHAIRPERSON MITTEN: So, do we have a
14 consensus to move forward with the amounts that are
15 being suggested by the Office of Planning? Do we
16 have a consensus there?

17 COMMISSIONER JEFFRIES: Yes.

18 CHAIRPERSON MITTEN: Okay. And then I
19 do want to raise the issue of, you know, there are
20 some historic districts where--and 14th Street comes
21 to mind where there are constraints. You know, you
22 can have a project that doesn't even include any
23 historic preservation. But just because of the
24 overall nature of the historic district, where there
25 are constraints on height and ability to achieve the

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1 full density.

2 So, do you want to calibrate this at all
3 to recognize those constraints where they exist? Of
4 course, you know, that may be something that we can
5 deal with when we map it. Maybe that's a decision
6 that we don't need to make yet.

7 COMMISSIONER HILDEBRAND: Well, Madam
8 Chair, won't we get to that too when we talk about
9 exceptions and relief from the requirements, that
10 that might be one of the--

11 CHAIRPERSON MITTEN: Yes.

12 COMMISSIONER HILDEBRAND: -- triggers
13 for relief?

14 CHAIRPERSON MITTEN: Okay.

15 COMMISSIONER HILDEBRAND: We should deal
16 with through the mapping.

17 CHAIRPERSON MITTEN: Okay. Sounds good.

18 Okay. Then we have the next issue is
19 what's the percentage of the set aside for
20 affordable and what does that mean?

21 So, it's a question of how deep are we
22 going to go? And you can see there, what the
23 proposal was by the campaign and what the proposal
24 is by the Office of Planning.

25 I think when we finally get the text of

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1 this written, I think we need to make this clear
2 about--I think sometimes, you know, the language is
3 kind of explicit that we're providing this
4 opportunity to people who make 50 percent of the
5 AMI, but it's really anybody who makes up to 50
6 percent of the AMI. And not that we're only
7 targeting those people who are right on the mark
8 there.

9 COMMISSIONER JEFFRIES: But it's not
10 going to be too far off.

11 CHAIRPERSON MITTEN: No. I wouldn't
12 anticipate it would be. Okay.

13 So, I need someone to advocate for
14 something.

15 COMMISSIONER JEFFRIES: You know, I like
16 the Office of Planning's approach here. I think
17 it's sensitive as it relates to, you know, stick
18 construction versus steel and glass. And so I think
19 that we--I mean, I don't really--again, I mean, I
20 think they spent a lot of time working with a number
21 of development groups on these types of things. I
22 mean, 50 percent, I think it would be good if we
23 could dip a little lower than that.

24 And as you said, Madam Chair, it's up to
25 50. It's going to be close to 50. I do think it

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1 makes an effort, a gesture to try to get some deeper
2 levels of affordability for the stick constructed
3 buildings.

4 COMMISSIONER PARSONS: I concur.

5 CHAIRPERSON MITTEN: Okay. I'm in favor
6 of the Office of Planning's rendition.

7 COMMISSIONER HILDEBRAND: Actually, I
8 would support that as well. I think initially it
9 was very disheartening to see the 80 percent AMI
10 figure for everything beyond stick built. But I was
11 somewhat persuaded by the notion that there are
12 other affordable housing initiatives that do reach
13 down lower.

14 And in order to make the numbers work
15 for this particular construction category, you
16 really needed to be a little bit more flexible and
17 that's what I found persuasive in their
18 recommendation at 80 percent AMI.

19 VICE CHAIRMAN HOOD: I would concur,
20 Madam Chair. I think during the hearing I was one
21 of the correspondents you see when we're talking
22 about 20 percent. But like Commissioner Hildebrand
23 said, we can reach that point with other incentives
24 that may be offered by the city. So, I would agree
25 with the Office of Planning's 50 percent.

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1 CHAIRPERSON MITTEN: Okay. Then next we
2 have the bonus which we've been actually talking
3 about quite a bit and making reference to the Office
4 of Planning's chart.

5 I think the campaign sort of started the
6 conversation at 20 percent for density, height and
7 lot occupancy. And the Office of Planning was able
8 to take that conversation and refine it in the chart
9 that we see.

10 We don't have page numbers on this, but
11 I know you're all on the same page as I am.

12 So, I mean, I think that the detail--and
13 this would be like a guideline that, you know, we
14 have the guidelines and PUDs and this would be a
15 guidelines, a maximum actually for the IZ. Because
16 I think we do need to think about the times when
17 it's appropriate to give flexibility to a lot
18 occupancy height and the FAR. And I think these
19 would make it easier for the Zoning Administrator
20 to administer. And in some cases, it exceeds what
21 you could get with a 20 percent flexibility, which
22 is good in some of the zones that are, you know, the
23 commercial mixed use zones.

24 So, I think that's good to be able to
25 offer more there.

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1 COMMISSIONER PARSONS: I don't know if
2 this is the place to talk about this. But I'm very
3 concerned about the W Zones. And, of course, they
4 were designed for Georgetown in that scale. And I'm
5 not sure that there's much opportunity in Georgetown
6 to use this density because it's pretty well build
7 out and I'm not sure we'd map it either.

8 But, if we allow the buildings along the
9 Anacostia Waterfront, on the river's edge to go to
10 80 feet, I think we've made a mistake. So, I'm just
11 letting you know early on, this increase in height
12 and density to me is out of scale with the concept
13 of the W zones.

14 VICE CHAIRMAN HOOD: Commissioner
15 Parsons, are you just talking about the W2 Zone or
16 all of the W Zones?

17 COMMISSIONER PARSONS: All of them.

18 VICE CHAIRMAN HOOD: Okay. So, you have
19 a problem with 100 feet too?

20 COMMISSIONER PARSONS: Yes. Maybe this
21 isn't the place to talk about that.

22 CHAIRPERSON MITTEN: Well, let's see.
23 Let's have Commissioner Hildebrand go first and then
24 mr. Jeffries.

25 COMMISSIONER HILDEBRAND: Well, I guess

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1 perhaps a fuller discussion about why during the PUD
2 process was it determined appropriate to leave the
3 heights in those two areas, W2 and W3 at the matter
4 of right limit and not allow additional density even
5 in a PUD?

6 So, I guess the question is. What were
7 the considerations then and have they been altered
8 by circumstances to make it favorable to include
9 them with IZ?

10 COMMISSIONER PARSONS: Well, they were
11 based, as I said, on the Georgetown model. There's
12 a building in Georgetown called the Dodge Center.
13 It's the one that slopes back from the freeway.

14 COMMISSIONER HILDEBRAND: Yes.

15 COMMISSIONER PARSONS: It was built in
16 an industrial zone. An office building that was
17 permitted in the industrial zone. And it went to
18 120 feet plus a penthouse.

19 So, when the Commission was considering
20 these heights, they said we're not going to do that
21 again. So, Washington Harbor then is the height of
22 the 90 feet, even though--that was not a PUD. But I
23 mean there was no advantage to them with going with
24 the PUD because they couldn't get anyone.

25 Anyway, I don't mean to focus on

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1 Georgetown, because I can't imagine anyone taking
2 advantage of this. There's nothing left. But
3 unless they're tear downs 30 years from now.

4 COMMISSIONER HILDEBRAND: Right. But I
5 think that your point is well made for me. In that
6 I have been watching the waterfront development or
7 not even actually the waterfront development in
8 Southeast from the Hill. And it's getting to the
9 point with the development of the Southeast Federal
10 Center that you can no longer see the Anacostia
11 River and you can no longer see the hillsides of
12 Anacostia from the Capitol Hill area because of the
13 height of the development that's occurring along the
14 river's edge there.

15 And I guess my fear is that at what
16 point have you gone too high and you lose that
17 character and depth of the city? Your perception of
18 the topography of the city. And, again, we don't
19 know exactly where this is going to be mapped. So,
20 I don't even know if it's an issue in that area.

21 COMMISSIONER PARSONS: Well, we've got
22 the W Zones mapped on the waterfront. And certainly
23 housing is something we want to happen along the
24 waterfront. So, I can us as we go towards mapping
25 saying, this is fine.

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1 COMMISSIONER JEFFRIES: Well, if I can
2 step in here. I think I'm very much on record
3 having been from Chicago. I don't have a problem
4 with height along water. It's a wonderful thing. I
5 think you can create new neighborhoods with some
6 height. So, I would have to differ somewhat with
7 Commissioner Hildebrand and I think that, you know,
8 it really depends on to the urban design and how
9 these buildings are articulated. You can still get
10 sort of this scale and so forth.

11 So, I know that we're sort of going far
12 afield here.

13 COMMISSIONER PARSONS: Yes.

14 COMMISSIONER JEFFRIES: But I just
15 wanted to say that for the record as it relates to
16 the W2 and 3 Zone.

17 VICE CHAIRMAN HOOD: Madam Chair--

18 CHAIRPERSON MITTEN: Sure.

19 VICE CHAIRMAN HOOD: -- can I also just
20 add?

21 I'm just hoping, you know, out of both
22 conversations because again I understand about the
23 percent of the height. But I go back t my main
24 issue as always. We're trying to achieve something
25 here. And that's inclusionary zoning which is

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1 affordable housing, not just around town, uptown,
2 downtown, but also around the waterfront. But, the
3 people also want to be included around the
4 waterfront. You know, affordable housing. I
5 understand about the height now. I don't have the
6 answer. But the achievement and the goal here
7 tonight is to try to achieve affordable housing at
8 the waterfront. And all -- should be included.

9 (Very loud noise.)

10 COMMISSIONER JEFFRIES: If the city
11 wants to really be very serious about increasing the
12 levels of affordability, it needs to increase the
13 overall level of supply. And a lot of that supply
14 can be height along the waterfront.

15 VICE CHAIRMAN HOOD: And, Madam Chair, I
16 just want to echo that. Because we had a case, the
17 Watergate. Affordable housing. If we're going to
18 do it, let's do it across the city and the
19 waterfront should be included.

20 CHAIRPERSON MITTEN: You don't have to
21 convince me.

22 The one think I want to say is that when
23 we have--you know, we have--when we thought it was
24 appropriate, we put additional controls on
25 waterfront zoning so that there would be a review

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1 process before the Zoning Commission in the Capital
2 Gateway Overlay.

3 So, I think as we map it, if we decide
4 that in a particular place. I see us creating the
5 tool and then we will have the tool available. If
6 it doesn't fit exactly right when we map it, then we
7 put some additional controls or we trim it back at
8 that point. I'd rather not have the tool available,
9 if we find that as we map it that there's a place
10 where this would be sensible.

11 COMMISSIONER PARSONS: What did your
12 father say?

13 CHAIRPERSON MITTEN: You started it.
14 Okay.

15 So, we'll go with the chart with the
16 Office of Planning?

17 COMMISSIONER PARSONS: Yes.

18 CHAIRPERSON MITTEN: Okay. Okay.

19 So, then the next issue would be, first,
20 how would the rent be set and then how would the
21 price be set? So, the proposal--basically, we have
22 select for a rent that the idea would be that
23 there's a percentage of annual gross income of
24 targeted households that needed to be set. And I
25 think the general proposals were for 30 percent.

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1 COMMISSIONER PARSONS: Madam Chair, this
2 is one of the areas that I think we are straying
3 outside of our jurisdiction, outside of our
4 expertise. And maybe Mr. Bergstein or somebody
5 could help me with this as to why this is--decision.

6 MR. BERGSTEIN: I'd like to hear OP's
7 view on this.

8 The question in my mind as I was placing
9 these things before you is what represents a
10 complete package, if there is something that you
11 must decide once you've decided to impose
12 affordability requirement. And I'm really not sure
13 whether or not this is something that you need to
14 do.

15 The key words in the petition is that
16 the house needs to be made affordable. And what
17 these percentages attempt to do is to define what
18 that means with the idea that eventually the agency
19 that's going to be responsible for doing this is
20 going to come up with the specific prices. And I
21 assume that that would be with respect to each
22 specific project that comes before it.

23 And so I would just like to hear if you
24 don't mind--can be deferred--the appropriate agency
25 to determine--

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1 CHAIRPERSON MITTEN: We have an audio
2 problem. Okay. Hold on.

3 (Whereupon, off the record from 8:37
4 p.m. to 8:39 p.m.)

5 CHAIRPERSON MITTEN: Mr. Bergstein, you
6 were saying?

7 MR. BERGSTEIN: What I was saying was
8 that it's not clear to me whether or not it's
9 necessary for you to promulgate a complete
10 affordability requirement for you to leave out any
11 guidance with respect to what would be the
12 percentage of the housing costs that --the extent to
13 which the purchase price could not be set so as to
14 cause the total amount of housing cost to exceed a
15 certain percentage.

16 And I would point out that the way the
17 petition was written, it would be that the mayor
18 would later establish specific prices for the units.
19 And I read that to be that there would just be
20 specific price for one bedroom units, two bedroom
21 units etcetera. Whereas, the alternative would be
22 for each project to be reviewed individually with
23 the appropriate prices set based upon the eligible
24 household that would be applying to purchase the
25 unit.

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1 And so I don't know whether or not that
2 needs to be stated here or whether that could be
3 left for the council or for the agency delegated by
4 the mayor to decide. And it might be helpful t
5 heard from the Office of Planning in terms of what
6 their view might be.

7 CHAIRPERSON MITTEN: Does the Office of
8 Planning have an opinion on that? All right.

9 MR. ROGERS: Yes. I would like to sort
10 of cite Montgomery County's regulations in this
11 matter.

12 They basically state that they direct
13 their government agency to periodically review a
14 number of factors, including the changes in the
15 income, interest rates, construction costs. And
16 that permits a certain amount of flexibility in
17 keeping the program up and running consistently over
18 changes without having to go through public
19 hearings.

20 And so I think it's our opinion that
21 that's the kind of language that should be used in
22 the zoning regulations saying when setting the
23 price, these factors shall be reviewed by the agency
24 to be determined by counsel. I mean, I think at
25 that point, we know that there's going to be needing

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1 empowering legislation for this. And so the agency
2 that would set the price would be determined by
3 counsel.

4 MR. BERGSTEIN: So, are you suggesting
5 that the standard would be that the affordable
6 housing units would have to be made affordable for
7 persons in this income range. And that for sell
8 units--that the agency would have to look to these
9 factors. But how it actually applies to factors, the
10 prices would be something that would be left for the
11 implementation phase.

12 MR. ROGERS: Correct.

13 CHAIRPERSON MITTEN: One of the things
14 you mentioned was construction costs, I thought I
15 heard you say. So, I mean, I understand how from
16 the developer's perspective construction costs
17 should be factored in. But from the affordability
18 of the unit for the targeted household, how is
19 construction cost appropriately factored in?

20 MR. ROGERS: The model that we used had
21 a number of sort of buffers you might want to call
22 them. For instance, while we do target at 30
23 percent of AMI as the housing cost, many mortgages
24 allow a household to go up to 33 percent. So, there
25 is some flexibility in what a household can afford

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1 with their mortgages.

2 In addition, there are other things that
3 use as flexibility. In the model we said that the
4 interest rate was 100 basis points higher than the
5 current. So, there was a number of things that we
6 did to make sure there was flexibility in the model
7 for those kinds of changes.

8 Now, certainly --we've had a lot of
9 information that construction costs are going at a
10 fairly consistent rate, at a pretty high rate. So,
11 there is certainly going to be a point where that
12 flexibility will be squeezed to its maximum. But I
13 think that's the kind of thing that we're looking
14 at.

15 CHAIRPERSON MITTEN: Well, one of the
16 reasons why I thought that this more specific
17 language was being proposed is because what you're
18 now suggesting is that there would be this periodic
19 revisiting of --why don't you guys finish and then
20 I'll ask my question. Revisiting of what the prices
21 would be and how they would be set, because there
22 would be these things, these factors that would be
23 taken into consideration. And that's all about
24 providing flexibility to the perspective purchaser.

25 But then on the other hand, one of the

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1 things that we heard from the development community
2 is that they want some predictability about, you
3 know, what exactly is going to happen. And you
4 don't get that when have, you know, all these
5 factors and they can't anticipate what the price is
6 going to be because they're chasing a bunch of
7 factors.

8 So, what's your response, you know, from
9 that side? From their side?

10 MR. ROGERS: I mean, the development
11 community was split. I mean, some of them wanted
12 the predictability of a price that they could rely
13 on that could be, you know, be published and
14 periodically reviewed and things like that.

15 And then some were more concerned about
16 the flexibility. So, the development community was
17 split on that.

18 CHAIRPERSON MITTEN: But why were they
19 concerned about the flexibility? Why are they
20 concerned about a perspective buyer having
21 flexibility?

22 MR. ROGERS: No. They were concerned
23 about if changes are happening very rapidly in the
24 market, that there would be some room at least to
25 respond to those changes without going to public

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1 hearing.

2 CHAIRPERSON MITTEN: Okay. Thanks.

3 COMMISSIONER PARSONS: I'm not sure I
4 got an answer here. I was asking about 30 percent
5 annual gross income.

6 CHAIRPERSON MITTEN: Right. And I
7 think--

8 COMMISSIONER PARSONS: did I get an
9 answer to that? I don't think I did.

10 CHAIRPERSON MITTEN: I think the answer
11 that you got is that we can leave that up to another
12 body providing guidance about the factors that they
13 need to consider in setting those prices.

14 COMMISSIONER PARSONS: We provide the
15 guidance?

16 CHAIRPERSON MITTEN: What are the
17 factors we'd like them to consider or not. We can
18 just say, you guys, you know, you guys are in the
19 housing business, you figure it out. We can do
20 that.

21 COMMISSIONER PARSONS: Well, that's--

22 CHAIRPERSON MITTEN: We can be that
23 general. Right?

24 MR. BERGSTEIN: In the final order, you
25 could indicate that with respect to the issue of

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1 pricing, the Commission would defer to the agency
2 that's identified to implement the program to decide
3 how to make these units affordable based upon the
4 targeted AMI that's reserved for the specific set
5 asides.

6 So, yes. You can just do that.

7 COMMISSIONER PARSONS: I like the sound
8 of that.

9 COMMISSIONER JEFFRIES: But, I just want
10 to be clear. I mean, the Office of Planning, you
11 know, worked closely with, you know, the development
12 community and getting these targeted numbers.

13 How will that work, figure into what you
14 said we could actually do in terms of pushing it off
15 to an agency?

16 MR. BERGSTEIN: I don't think I said
17 push it off. But what I heard the Office of
18 Planning say though was that at this point, it might
19 be premature to actually even come up with a
20 percentage figure for sale units. And that it might
21 be preferable to indicate what would be the factors
22 that should be considered by the agency that tries
23 to come up with that initial percentage.

24 And then what I guess with the
25 understanding that the model that OP used in terms

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1 of coming up with its affordability for sale units
2 would be the type of inputs that the agency would be
3 considering.

4 COMMISSIONER JEFFRIES: Okay.

5 MR. BERGSTEIN: Otherwise you do then,
6 the other choice is just to come up with this 30
7 percent as the baseline. And then my only question
8 is, what is meant by 30 percent of the targeted
9 households? Is that an averaging, an estimate or is
10 it based upon as is later stated in the petitioner's
11 text, based upon the medium income for an average
12 family of four within that income range?

13 So, I'm not even clear how this would be
14 implemented. But if you do feel you need --and
15 understand what 30 percent represents, then that
16 would become the baseline figure and anything after
17 that would be adjustments of that percentage.

18 COMMISSIONER JEFFRIES: Well, I think
19 the question I asked was, do you have to do it? I
20 think that the answer is. No. You do not. But you
21 certainly can do it, but once you've done it, then
22 the implementing agency would not be able to do
23 anything more relaxed than that figure.

24 CHAIRPERSON MITTEN: I guess the reason
25 why I would want to be more precise than what

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1 Commissioner Parsons is advocating is because I
2 think that even though I understand that the
3 committee that was helping to craft this was divided
4 on the subject. I think that having it so open. I
5 think that having some specificity to it gives some
6 predictability to it. More predictability.

7 I personally would like to prescribe
8 what the percentage of annual gross income for rent
9 would be and then what we would define as housing
10 costs for a for sale unit. I think that that's
11 clear and one could calculate a price with a certain
12 degree of reliability that way. But I could also go
13 the other way which is that we would allow the
14 implementing agency to do it, but not in the vacuum,
15 that we would give them guidance.

16 COMMISSIONER JEFFRIES: Yes. That's the
17 only concern that I have. I mean, there's been a
18 lot of work in, sort of, you know, crafting this.
19 And I would not want this to be referred over to an
20 agency who quite frankly might have, you know, other
21 goals and objectives. And which could be a little
22 bit separate and distinct than what we're looking to
23 do here.

24 I clearly understand what Commissioner
25 Parsons is saying in terms of, you know, the Zoning

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1 Commission and that we're looking at fairly narrow
2 things. But I think it might be a little difficult
3 in this case to separate these things out that
4 they're sort of linked in some ways.

5 So, I mean, I would be in favor, you
6 know, perhaps putting a basic number here and just
7 as some sort of guideline for what we're doing.

8 CHAIRPERSON MITTEN: Just so I'm clear.
9 So, would you be in favor of saying that rents
10 should not exceed 30 percent of the annual gross
11 income of targeted households which we could deal
12 with what that means and then something -- okay.

13 COMMISSIONER JEFFRIES: A minimum, I
14 mean, because, you know, it could be 35. I mean,
15 the number can--

16 COMMISSIONER PARSONS: Right.

17 COMMISSIONER JEFFRIES: Yes. Yes. But
18 are we saying a minimum?

19 CHAIRPERSON MITTEN: Well, the way that
20 it's crafted is shall not exceed.

21 COMMISSIONER JEFFRIES: Oh. Yes. Okay.

22

23 CHAIRPERSON MITTEN: Now, if you want to
24 be inflexible, you can say, shall not exceed 35
25 percent or less as determined by the whatever.

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1 COMMISSIONER JEFFRIES: Yes. My
2 experience is that a lot of these households, you
3 know, 30 percent, in some cases fairly, you know,
4 archaic and that, you know, there are a number of
5 lenders that could go to 35, even a little higher.

6 But I could probably sign onto shall not
7 exceed 35 percent.

8 CHAIRPERSON MITTEN: Okay. Well, first
9 we're dealing with the rents. So, 35 percent and
10 then the targeted households, I would think it would
11 be the family of four at the 50 percent or the 80
12 percent of the AMI. That would be the --

13 COMMISSIONER JEFFRIES: Right.

14 CHAIRPERSON MITTEN: -- targeted
15 household.

16 COMMISSIONER PARSONS: You mean you want
17 to add kind of a definition of targeted here?

18 CHAIRPERSON MITTEN: Yes. Maybe not
19 right here, but at some point that we would
20 introduce that notion.

21 Can we do that at some point?

22 MR. BERGSTEIN: For your information,
23 the petition defined targeted household either as
24 either a qualified low income household or a
25 qualified moderate income household. I guess if I

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1 can follow that.

2 A qualified household means a person or
3 household. It qualifies the persons for household
4 for purchase of a housing unit during the instant
5 control period. I don't know how helpful that is.

6 CHAIRPERSON MITTEN: But someone who is
7 qualified, you know, especially since we need to
8 have the language be that it's not targeted to
9 someone who is at 50 percent of the AMI, but it's
10 someone up to that that can qualify. Everyone is
11 not necessarily going to qualify at the same rent
12 level. There has to be this sort of generic. The
13 generic targeted household, because different
14 qualifying households may have different annual
15 gross income. And the rent can't be adjusted to
16 them.

17 COMMISSIONER HILDEBRAND: The only thing
18 I would perhaps interject here is that when you're
19 talking rents, and even for households, I think the
20 reason they said targeted household is because you
21 can have an efficiency, a one bedroom, a two
22 bedroom, three bedroom, four bedroom.

23 CHAIRPERSON MITTEN: Oh.

24 COMMISSIONER HILDEBRAND: And the size
25 of household that's going to live there is going to

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1 be different. You wouldn't want to set the rent
2 rate--

3 CHAIRPERSON MITTEN: Oh, good point.

4 COMMISSIONER HILDEBRAND: -- for an
5 efficiency at 50 percent of or 30 percent to 50
6 percent of the AMI for a four-person household.
7 That doesn't make sense.

8 CHAIRPERSON MITTEN: Good point.

9 COMMISSIONER HILDEBRAND: But I think it
10 fluctuates based on the size of the unit which is, I
11 think, why that language is written the way it is.

12 MR. BERGSTEIN: Well, actually, and I'm
13 sorry, but it didn't put it in what I gave you. But
14 the petition does have an adjustment based upon the
15 size. For example, an efficiency the adjustment
16 factor is 70 percent. For a one bedroom, 80
17 percent. For a two bedroom, 90 percent. Three
18 bedroom, 100 percent. Four bedroom, 110 percent.

19 CHAIRPERSON MITTEN: Of what?

20 MR. BERGSTEIN: Of the earlier--of the
21 base price. In other words, as I understand this--

22 COMMISSIONER JEFFRIES: Now, I'm a
23 little confused.

24 MR. BERGSTEIN: You come up with the
25 price, the affordable price and then that gets

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1 adjusted based upon the bedroom size. And I may
2 misunderstand that, but that's what the petition
3 has, if you actually have the rule making, the
4 proposed text. It's on page 14 and page 15 of the
5 proposed text and that's what I was working from.

6 Let me just share it with you.

7 CHAIRPERSON MITTEN: Thanks. I'm
8 getting closer to what Mr. Parsons is suggesting.

9 COMMISSIONER JEFFRIES: I'm totally
10 confused at this point.

11 CHAIRPERSON MITTEN: Okay. It can get
12 into, I mean, I'm glad Mr. Hildebrand pointed out
13 the units. That just goes to show you how the level
14 of complexity is amplified once you start to slice
15 it up.

16 So, I guess I would advocate now for
17 what I thought was going to be some more clarity.
18 But I think we should leave this general and let the
19 implementing agency decide what's affordable for
20 that level.

21 COMMISSIONER JEFFRIES: But there will
22 be obviously some--they won't decide that in a
23 vacuum.

24 CHAIRPERSON MITTEN: Right.

25 COMMISSIONER JEFFRIES: I mean, that's

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1 the only thing I'm concerned about.

2 CHAIRPERSON MITTEN: Yes. We need to--

3 COMMISSIONER JEFFRIES: We've done a lot
4 of work here and I just don't want us to hand it off
5 to an agency without the proper --

6 CHAIRPERSON MITTEN: Well, then let's
7 integrate the items that Mr. Rogers ticked off.

8 Would you be in favor of factors to be
9 considered in setting the affordability? Would you
10 guys agree with that?

11 VICE CHAIRMAN HOOD: As Mr. Parsons
12 said, I'm definitely not an expert on this issue,
13 but rather than to have some of my friends or
14 someone else to look at, I would rather--I think
15 somebody mentioned 30 percent. I would rather go
16 back there and leave it at 30 percent as opposed to
17 me sitting here trying to give some direction.
18 Because I don't have any direction myself. And I'm
19 not the expert on that subject.

20 CHAIRPERSON MITTEN: The only problem
21 with saying 30 percent. The next question is 30
22 percent of what? And then if you say 30 percent of
23 gross income and then it's of whom? And then it's
24 of targeted households and then who is that?

25 VICE CHAIRMAN HOOD: How are we going to

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1 get direction?

2 COMMISSIONER JEFFRIES: Well, no. No.
3 Vice Chair--

4 VICE CHAIRMAN HOOD: Commissioner
5 Parsons.

6 COMMISSIONER JEFFRIES: The only thing
7 that I was just concerned about is if a particular
8 agency has an need to 30 percent of area medium
9 income, you know, at a particular area or whatever,
10 I mean, because they have certain objectives, which
11 might be very different than some of the work that's
12 been done here as it relates to the Office of
13 Planning and the campaign quite frankly. Working
14 with some of the developers. You know, I just think
15 it's important that that work gets somehow
16 transmitted to this agency.

17 Now, how they decide to do it is, I
18 guess, it's their call, but I think there should at
19 least be just some understanding about the framework
20 that was set up as related to how we came about
21 these numbers.

22 VICE CHAIRMAN HOOD: I can agree with that.
23 So, what you're saying is let --all the work that
24 has been put, how they arrived at 30 percent and
25 take it from there. Whether they go with it or not.

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1 We're making just a suggestion. We're not saying
2 this is what you need to go by. This is the
3 framework you need to do.

4 COMMISSIONER JEFFRIES: Because, I mean,
5 there was a lot of work put into why 50 percent,
6 half of 50 percent versus 80 percent of a certain
7 height and so forth. And I just want to make
8 certain that that body of work is transmitted to
9 whoever the agency is. And they understand how
10 those things work.

11 VICE CHAIRMAN HOOD: Okay.

12 COMMISSIONER JEFFRIES: It's not just
13 sort of looking at affordable housing and the kind
14 of targets that they might want, you know, based on
15 whatever their goals are, their particular agency.

16 That's the only thing I was, you know--

17 VICE CHAIRMAN HOOD: Let's go for it.

18 COMMISSIONER HILDEBRAND: I guess my
19 other concern is that we continue to reach the
20 target level of affordability that OP has
21 recommended.

22 In other words, if you leave it open-
23 ended, can the agency who defines it establish
24 criteria that reaches a significantly higher level
25 of people or a significantly deeper level of people

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1 in affordability by changing those numbers and what
2 impact does that have?

3 Perhaps OP could say if that is a risk
4 in leaving it open-ended?

5 MR. ROGERS: I guess it is a risk
6 leaving it open-ended. But the standard that a lot
7 of affordable housing programs use is 30 percent of
8 the targeted household. But I think it needs to be
9 clear that the rent or the purchase price is not set
10 by the individual household, if it's fixed for that
11 unit. And then the household can choose to afford
12 that or not.

13 It may end up only being 28 percent of
14 their income or, you know, 30 percent of their
15 income. Or maybe 35 percent of their income.

16 But the general standard is that the
17 cost of the units is fixed. And based on 30 percent
18 of our target incomes.

19 I think, if that addresses the
20 Commission's--

21 CHAIRPERSON MITTEN: What you're saying
22 is there's a generic target and that generic target
23 sets the price, then you qualify to compete for that
24 rent or price by being within the range of
25 affordability. You're at or below 50 percent of the

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1 AMI. And as you said, that can be anything on a
2 scale of affordability or a percentage of your gross
3 income, that the price was set with the generic
4 benchmark.

5 MR. ROGERS: Correct. I mean, you know,
6 landlords will make a decision on the person's
7 credit on what they think they're ability to pay is,
8 on whether or not they accept that tenant just as a
9 bank does when they grant a mortgage.

10 MS. MCCARTHY: And presumably the council
11 in choosing an agency to set this is going to choose
12 the Department of Housing and Community Development
13 or somebody whose mission is to provide affordable
14 housing. So, they have no incentive to put that
15 higher than what would be a reasonable correlation
16 between the income and rental price.

17 CHAIRPERSON MITTEN: Is everybody okay
18 now?

19 The idea would be that we're basically
20 going to defer the establishment of the rent or the
21 price to the implementing agency with the guidance
22 based on what Mr. Rogers articulated as the factors
23 that the committee had come up with and that is
24 similar to what they do in Montgomery County.

25 Do we have a consensus about that?

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1 COMMISSIONER PARSONS: Well, I'm not
2 familiar with any place in our regulations that we
3 have guidelines. In other words, our regulations
4 are regulatory. They're not guidelines.

5 You mean in a letter of transmittal--

6 CHAIRPERSON MITTEN: No.

7 COMMISSIONER PARSONS: -- kind of thing?

8 CHAIRPERSON MITTEN: I'll tell you where
9 we have guidelines is we provide guidelines to the
10 BZA all the time about what the special exception
11 for this kind of thing or that kind of thing, what
12 you're supposed to consider.

13 COMMISSIONER PARSONS: Okay.

14 CHAIRPERSON MITTEN: It's what you're
15 supposed to consider.

16 COMMISSIONER PARSONS: All right. I
17 thought that's where you were going earlier. You
18 were going to have Mr. Rogers tick off again.

19 CHAIRPERSON MITTEN: Well, can you tick
20 off the things you ticked off for us before?

21 MR. ROGERS: Again, I think it's general
22 changes in the economics of development. It's
23 changes in income, so each year for instance, HUD
24 will publish a new AMI for the region and the
25 implementing agency would then base the targeted

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1 incomes on the target households based on that
2 change in income. So, it would be income.

3 The Commission might include interest
4 rates, construction costs. I'm trying to remember
5 some of the other factors that are listed in
6 Montgomery County's regulations.

7 COMMISSIONER PARSONS: And those are
8 zoning regulations or--

9 MR. ROGERS: In the case of Montgomery
10 County, it's actually a law and then they implement
11 a law.

12 COMMISSIONER PARSONS: I see.

13 VICE CHAIRMAN HOOD: So, Mr. Rogers.
14 Madam Chair, if I could ask Mr. Rogers.

15 So, your statement was you think we
16 should move forward leaving it open-ended. So, with
17 that guidance, does that close the loop? That was
18 your statement. We should leave it open-ended. So,
19 does that now close the lop with the guidance or
20 would you still rather see that percentage in there?
21 Be advised to put that percentage?

22 MR. ROGERS: I think what the
23 Commission--one way to approach this the Commission
24 might choose is at what point--well, first, there
25 would be reporting to the Commission of what the

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1 prices are, you know, what's been the production.
2 Those kind of things. And then secondly, the
3 Commission could decide if circumstances
4 significantly change the economics of development,
5 then the Commission would choose to tweak the
6 program.

7 VICE CHAIRMAN HOOD: Okay. So, we stand
8 not closing the loop then, even with the guidance
9 that we're moving forward? That's my point. In
10 your words, I mean, your opinion.

11 MR. ROGERS: Yes. I think it's safe to
12 say that you would set the price based on 30 percent
13 of the targeted household's income. But there are
14 factors that weigh in to what that does.

15 VICE CHAIRMAN HOOD: Okay.

16 VICE CHAIRMAN HOOD: Mr. Parsons, I
17 agree with you.

18 CHAIRPERSON MITTEN: We kind of need to
19 move on so--

20 VICE CHAIRMAN HOOD: I agree.

21 CHAIRPERSON MITTEN: Okay. All right.

22 Then we have an issue about whether or
23 not entities like non-profits or the Housing
24 Authority should be able to purchase a certain
25 percentage of affordable units, if the units are for

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1 sale in a building?

2 VICE CHAIRMAN HOOD: Madam Chair, I
3 appreciate you wanting to move on, but I just
4 wonder, did we solve the last issue? Maybe you all
5 have solved it. Maybe I don't understand it. Or
6 are we going to solve it? What are we going to do
7 with it?

8 There were two options on the table.
9 Put a percentage on it. I hate to go back, but you
10 know, I think we need to know where we're going,
11 unless we're going to put this in the parking lot
12 also and come back later.

13 CHAIRPERSON MITTEN: Okay. Okay. Okay.
14 Good. Let's be clear.

15 What my understanding was is that we
16 would basically defer to the implementing agency
17 what would be affordable, whether it's in a rental
18 context or a for sale context. And providing them
19 items for consideration in determining the
20 affordability as guidance and the transcript will,
21 and perhaps Mr. Rogers, if he looks at the
22 Montgomery County ordinance, can add a few things.

23 But the notion would be to give this
24 similar guidance as is used in Montgomery County but
25 allow the implementing agency to determine what's

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1 affordable.

2 VICE CHAIRMAN HOOD: Thank you.

3 CHAIRPERSON MITTEN: Is anybody?

4 COMMISSIONER JEFFRIES: Mr. Rogers, I
5 just want to, you know, and let's just--we keep
6 saying other agency. Let's say it's DHCD. Okay.
7 And we are looking at not a stick-constructed
8 building, but steel and glass, you know, a ten story
9 building. And we've, based on your work, we should
10 really be looking at units that are identified--
11 affordable units at 80 percent of area medium
12 income. DHCD needs to understand how we came to
13 that 80 percent number versus them coming up and
14 saying, well, I think it should be 50 percent.

15 I guess that's the--am I missing
16 something here? I mean, as it relates to making
17 certain that they have some blueprint as to how we
18 came about with certain targeted income levels?

19 MR. ROGERS: Well, I certainly think
20 that the income levels that you decide to target
21 should be stated in the regulations. That's
22 definite.

23 As I've stated before, the standard that
24 HUD programs use is 30 percent of the income.

25 COMMISSIONER JEFFRIES: Absolutely.

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1 Yes.

2 So, the long and short and I know the
3 back up. I mean, it's you know, if you can afford
4 30 percent of your monthly household income really
5 fits the price of the actual units. Sort of back
6 up. I understand that. But, again, I'm just
7 dealing with the fact that we have done some
8 layering here of how we're going to distribute
9 affordability. And I just want to make certain that
10 that is conveyed. And that's all I'm saying,
11 whether than, you know, DHCD just going forward and
12 saying, well, you know. We really have a need to do
13 more 30 to 50 percent units or whatever. They're
14 going to take instruction or at least, you know,
15 they will get that information from the work that's
16 been done.

17 CHAIRPERSON MITTEN: Well, let's be
18 clear about something. They don't get to change who
19 is the target. They don't get to change that. They
20 just get to change--they get to determine what
21 constitutes affordable--an affordable amount of what
22 portion of your income is appropriate to--do you
23 know what I'm saying?

24 COMMISSIONER JEFFRIES: I'm following
25 you now. So, really, they're just really dealing

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1 with sort of qualifying people. They're not going
2 to get in the business of determining where that--
3 yes.

4 MR. ROGERS: No. I don't think the
5 targeted income would change. That's definitely not
6 on the table.

7 But what I think I was driving at though
8 is that the price of the unit might fluctuate
9 because of interest rates. If interest rates go up,
10 the price of the units might be lower. But if it
11 gets to the point where that price of the unit gets
12 really out of whack and puts the model out of whack,
13 then I think there has to be some flexibility.

14 But it's the price that will fluctuate.

15 COMMISSIONER JEFFRIES: Right. I get it
16 now.

17 CHAIRPERSON MITTEN: But if the model
18 gets out of whack, then they don't get to change--
19 they still don't get to change the targeted income.
20 That's the time when people come back to us.

21 COMMISSIONER JEFFRIES: Okay. Great.

22 Vice Chair, where are you on this?

23 VICE CHAIRMAN HOOD: I think I'm going
24 to go back to school and be an economist or
25 something different.

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1 I'm fine with what the Chair said when I
2 asked her, you know. I forgot what the rendition
3 was, but it was to provide some guidance to the
4 agency. I don't know what your desk going to do but
5 I have to yield to that.

6 CHAIRPERSON MITTEN: Before this gets
7 published, we'll see it again and we'll see it in
8 writing. We'll see these factors. We'll see what
9 it sounds like and we can modify it at that point
10 before we decide to publish it if we want to.

11 COMMISSIONER JEFFRIES: I mean, the long
12 and short is that an agency such as DHCD is in the
13 business of qualifying people for these kinds of
14 things.

15 CHAIRPERSON MITTEN: Yes.

16 COMMISSIONER JEFFRIES: The Zoning
17 Commission is not. So, it's really best that they
18 do that, as long as they're not going to be fooling
19 around with, you know, these things where, you know,
20 the units will be, I'm fine.

21 VICE CHAIRMAN HOOD: Actually, I'm fine
22 with that.

23 COMMISSIONER JEFFRIES: Yes.

24 VICE CHAIRMAN HOOD: That's where we
25 should be.

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1 COMMISSIONER PARSONS: Let's move on
2 before we change our mind.

3 CHAIRPERSON MITTEN: Thank you. Okay.

4 So, then what I had introduced as the
5 next topic has to do with non-profits, qualifying
6 non-profits or the Housing Authority being able to
7 purchase a certain percentage or a certain number of
8 affordable units in for sale buildings.

9 And I don't know where you all are in
10 terms of the time period for affordability. But I
11 think this is really driven by programs that are not
12 long-lasting and that by allowing the non-profits or
13 a housing authority in certain jurisdictions to
14 purchase the units, that's a way of insuring longer-
15 lasting affordability. I don't see the need for it
16 if we agree that there won't be any lapse in the
17 affordability requirements.

18 COMMISSIONER PARSONS: So, why don't we
19 skip to number--the next page then where that deals
20 with that?

21 CHAIRPERSON MITTEN: Okay.

22 COMMISSIONER PARSONS: And then come
23 back.

CHAIRPERSON MITTEN: Okay.

24 Well, you know my view.

25 COMMISSIONER PARSONS: What's your view?

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1 CHAIRPERSON MITTEN: My view is that the
2 requirements should be in perpetuity.

3 COMMISSIONER PARSONS: Perpetuity?

4 CHAIRPERSON MITTEN: Or whatever you can
5 get away with.

6 COMMISSIONER PARSONS: That's a long--

7 CHAIRPERSON MITTEN: Yes. Well, the
8 reason--I don't know what we can do if we're limited
9 to--I mean. I don't know where we'd be limited.
10 Some jurisdictions do 99 years. I don't know if
11 there's some kind of legal requirement.

12 COMMISSIONER PARSONS: Well, that's a
13 common threshold in leases and that kind of thing is
14 99 years. Right?

15 CHAIRPERSON MITTEN: Right. I guess the
16 only thing is that you --

17 COMMISSIONER PARSONS: I mean, how far
18 can we see?

19 CHAIRPERSON MITTEN: Well, the reason I
20 say in perpetuity is because then we don't have to
21 do anything about the control period ending. There
22 is no end is my point, as is true of every other
23 zoning provision we put in place until we change it.

24

25 COMMISSIONER PARSONS: I understand.

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1 Yes. CHAIRPERSON MITTEN: And the
2 reason--let me just--let me just fill this out a
3 little bit. Depending on where you are about the
4 length of a control period, once you get past about
5 20 years, the economic impact is -- the incremental
6 economic impact to go beyond 20 years is marginal
7 because the bulk of the economic impact is in the
8 first 20 years because of the time value of money.

9 So, that's why I'm saying. We're
10 already going to impose the bulk of that--whatever
11 the burden is and for the reasons that Mr.
12 Hildebrand said about this is a permanent--you know,
13 we're permanently trading height and density. And I
14 think the benefits should also be permanent. I
15 think the need is not going to go away. And it
16 makes the whole thing a lot simpler in terms of buy-
17 outs and all that stuff.

18 COMMISSIONER HILDEBRAND: We're talking
19 about number 6 or have we moved on?

20 CHAIRPERSON MITTEN: No. We're on
21 number 8.

22 COMMISSIONER PARSONS: Very persuasive.

23 CHAIRPERSON MITTEN: We skipped ahead
24 because then we could go back and--

25 COMMISSIONER PARSONS: That would go for

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1 rental or for sale. It doesn't make any difference.

2 COMMISSIONER HILDEBRAND: I absolutely
3 agree with the Chair on that.

4 CHAIRPERSON MITTEN: Okay. It will
5 simplify a lot of the conversation going forward.

6 COMMISSIONER JEFFRIES: So, maybe--

7 CHAIRPERSON MITTEN: Get another reason
8 to agree.

9 COMMISSIONER JEFFRIES: So, that's the
10 area where we deal with this whole motion of wealth
11 creation or whether people who are living in these
12 units are able to realize some --if they move on.

13 I mean, I guess, I'm trying to get a
14 better understanding of exactly how it works if
15 someone is in one of these units for 10, 15 years,
16 how were they able to pull cash out of this and move
17 on? I mean--

18 CHAIRPERSON MITTEN: They're not.

19 COMMISSIONER JEFFRIES: They're not.

20 CHAIRPERSON MITTEN: The way that I
21 think that they benefit is that presumably people
22 have an income level. Okay. They make a certain
23 amount of money at a given point in time. And I
24 think the typical anticipation and, you know, some
25 of us have Government jobs, some of us have private

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1 sector jobs. The idea is you start at a certain
2 level and incrementally over time you're income
3 increase because you become more proficient in your
4 job. Because the standard of living generally
5 increases and so on.

6 You're given an opportunity at a time
7 when your income was at a certain level to enter
8 into this contract, whether it is a lease or a
9 purchase contract. And I think that in general, the
10 benefit is you maintain that affordability -- you
11 maintain the opportunity to enjoy a level of
12 affordability that hopefully over time your income
13 will take you out of that range and that gives you
14 the opportunity to save money so that if you do want
15 to create wealth, you'll save a down payment and
16 then you'll be able to go out and buy a market rate
17 unit.

18 COMMISSIONER HILDEBRAND: It sounds real
19 good. But there still is an opportunity, I think,
20 to make your house an investment still. Because the
21 affordable rate that you're going to sell it at in
22 20 years after you purchased it is going to be
23 considerably higher than the affordable rate that
24 you purchased it.

25 So, there is going to be some trading

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1 there as well. So, I don't think it eliminates the
2 possibility of nest-egging some equity in your
3 property. It just reduces the full potential of it
4 by allowing your successor to have the same benefit
5 that you had moving into it.

6 And I agree with the chair in this in
7 that the affordable issues aren't going to
8 mysteriously disappear in 30 years or 50 years.
9 They're going to be with the city for the
10 foreseeable future. And I think we would be remiss
11 if we didn't address that now.

12 COMMISSIONER JEFFRIES: Well, clearly if
13 if someone is in a house. I'm really dealing
14 probably more with a fore sale for 20 years. I
15 mean, they're going to see some--I mean a definite
16 appreciation and so forth that they can take out.
17 I'm just dealing with someone that's in the house
18 for five years or so.

19 And, you know, Madam Chair, you talk
20 about saving and so forth. But I've known people
21 who, you know, even though they're getting their
22 bonuses or rents and their raises and so forth. I
23 mean, it still continues to be a little bit of a
24 struggle. And I'm just--so many of us are able to
25 take money out of our houses and step up or move

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1 into other aspects. And, you know, I don't know,
2 you know, how maybe in fact, you know, this is
3 something that really just can't be dealt with in
4 zoning. But I'm just not as comfortable with this
5 long term here of 99 years or whatever. You know, I
6 was looking at more like 30 years or so.

7 But I will say that it is compelling,
8 this whole notion of density and something that is
9 fixed and will last forever. You know, in exchange
10 for, you know, something that--affordability that
11 lasts forever.

12 So, I understand that.

13 CHAIRPERSON MITTEN: And I don't want
14 to--I mean, I think there were a number of folks
15 that testified and you're taking to heart their
16 position about wealth creation. And, you know, I
17 don't want to minimize that. But this is something
18 --this is an opportunity for people to own something
19 that they would not otherwise have. And that
20 doesn't necessarily--this particular product does
21 not give you a windfall at the end. It gives you an
22 opportunity to do something you wouldn't otherwise
23 be able to do which is to, perhaps, remain in the
24 city. Perhaps do the work that you want to do to be
25 close and live in an environment that you want to

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1 live in rather than, you know, move to the suburbs,
2 commute extensively. Live in a more sterile
3 uninteresting environment.

4 And, you know, the fact that you don't
5 get to create wealth. Well, you know, if you want
6 to create wealth, then there's another way to do
7 that, you know. If your affordability level is
8 such, then maybe you shouldn't be buying into this
9 particular situation. But, you know, I think what
10 this does is it keeps people who are willing to
11 sacrifice the full benefit of capturing, you know,
12 unfettered market value in 30 years. There's an
13 offsetting benefit that they cannot otherwise enjoy.
14 And that is living in the city.

15 And I for one, I think that's worth a
16 lot.

17 VICE CHAIRMAN HOOD: I would agree,
18 Madam Chair. But, you know, they have an
19 opportunity at this point to stay in the city and I
20 would agree with that.

21 But also, I don't think we need to
22 stagnate or stifle their ability to be able to do
23 like everybody else who has--because this is about
24 opportunity. And also because just like those
25 people who purchase a house. The opportunity may

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1 cut off and bear with me, Commissioner Parsons.
2 Just hold tight.

3 COMMISSIONER PARSONS: I'm having
4 trouble.

5 VICE CHAIRMAN HOOD: You're troubled?
6 Oh, you're having trouble. Okay. Well, you'll get
7 over it.

8 But, anyway, my point is, we don't want
9 to stagnate their point so they can have an
10 opportunity. But let's look back at the testimony
11 in the stuff that we received. I didn't see
12 anything. I think I saw one jurisdiction whose had
13 experience with this that had, I think, 99 years, if
14 I'm correct. Everybody else had like 20 or 30.

15 So, I'm thinking there's a reason that
16 that was done. I mean, yes. We can start at 99 and
17 then maybe revisit it later on and bring it down
18 some. But I think the control period from what I
19 remember or recollect was that the majority of them
20 had anywhere from 20 to 30.

21 And then when I look in what the
22 mandatory campaign proposed, I thought it was good.
23 Another way to insure that affordable units produced
24 under the IZ program remained affordable is to
25 provide a first right to purchase or rent a

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1 percentage of the units to a local housing agency or
2 non-profit housing developer.

3 So, you know, I'm just putting that out
4 there. But I'm going to cut it off because Mr.
5 Parsons is having trouble--

6 COMMISSIONER JEFFRIES: No, no, no.
7 Don't worry about Commissioner Parsons. You do what
8 you need to do here.

9 VICE CHAIRMAN HOOD: I never do.

10 COMMISSIONER JEFFRIES: But I would
11 like, you know, if the Office of Planning could
12 refresh me.

13 What were, just across the board of a
14 municipality's jurisdiction--

15 CHAIRPERSON MITTEN: I have them in
16 front of me.

17 COMMISSIONER JEFFRIES: Okay. What do
18 you have?

19 CHAIRPERSON MITTEN: Okay. We got
20 Montgomery Country which for sale is 30 years and
21 rental is now 99 years.

22 Rockville is 30 years. Fairfax for sale
23 is 15, rental is 20. Burlington, Vermont, is 99.
24 Portland Oregon is 60. Boulder, Colorado is
25 permanent so that's perpetuity. For sale in Denver,

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1 Colorado, is 15. Rent and sale is Mt. Laurel, New
2 Jersey, is 30. Boston, Massachusetts, not less than
3 30 years with a 20-year extension allowed.
4 Cambridge, Massachusetts, 50 years for rentals.
5 Newton, Massachusetts is eight five-year
6 automatically renewable terms so a total of 40 for
7 rentals.

8 And then San Francisco is 50. Fifty
9 years.

10 COMMISSIONER HILDEBRAND: I guess what I
11 would offer in that too is that in the Montgomery
12 County case, particularly, they started with a much
13 shorter period and have gradually grown to a longer
14 period. And I'm not sure if you polled them today,
15 they wouldn't say that ideally they would like to
16 see the for sale units at a longer period than 30
17 years.

18 COMMISSIONER JEFFRIES: Did they say
19 that?

20 COMMISSIONER HILDEBRAND: I said if you
21 polled them. I didn't say we did.

22 COMMISSIONER JEFFRIES: Oh, you don't
23 really know that?

24 COMMISSIONER HILDEBRAND: I don't really
25 know that.

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1 COMMISSIONER JEFFRIES: Okay.

2 COMMISSIONER HILDEBRAND: And I don't
3 think I stated it as though--

4 COMMISSIONER JEFFRIES: Okay. I just
5 wanted to--

6 COMMISSIONER HILDEBRAND: -- a
7 hypothetical.

8 But if you look at this as the
9 District's step into this issue, wouldn't you way we
10 would go beyond what others have done to try to make
11 this affordable housing available for a longer
12 period? It makes perfect sense to me. And I think
13 it really does allow for some equity development in
14 a for sale unit, even though it is capped in a
15 certain way by allowing the next successor to
16 achieve a level of affordability. The original
17 purchaser would still see equity in their investment
18 at the end of their tenure in the unit.

19 COMMISSIONER JEFFRIES: Well, what I
20 heard in the recitals from Madam Chair is that there
21 seem to be some different treatment between rental
22 and for sale. And I can definitely go along with
23 longer term for rental. It's the for sale that I'm
24 still having some difficulty with.

25 And I think that if someone is in their

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1 home for 20 years, I think they will see
2 considerable appreciation and so forth. But, you
3 know, five years, you know, again. I think it's not
4 just about providing affordable housing for people.
5 But it's also and maybe I shouldn't be expanding it
6 the way that I am. But it just seems that, you
7 know, there should be for some of these individuals
8 an opportunity to be able to take monies or cash out
9 to move onto a larger house or so forth and stay
10 within the District.

11 You know, maybe, Madam Chair, we can
12 revisit this one. But I'm just right now I'm just
13 not ready to sign on to 99 years at least for sale.
14 But, I think you guys all might want to go there.

15 CHAIRPERSON MITTEN: Okay. Well, let me
16 just try one more perspective on you which is if you
17 agree that it is appropriate to recognize the fact
18 that affordable housing will be a problem for the
19 foreseeable future, that in a rental context, and
20 that so that it's going to be the same. This is
21 really about benefitting a few individuals at a
22 particular juncture in time. They happen to be
23 there at the end of the affordability period if they
24 are owning the unit.

25 But if you look at the benefit and

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1 that's what I tried to express in the beginning,
2 that the number of units is one thing. And you take
3 the number of units and you expand it over time, and
4 the number of individuals that you were able to help
5 is amplified by the amount of time that amplified.

6 So, if we focus too closely on the
7 opportunity for a few individuals to create wealth.
8 Not that they can't create some wealth through long-
9 term ownership of their units because they will get
10 some benefit of appreciation. But if you say I
11 really think that it's more important that we create
12 a substantial amount of wealth for a few
13 individuals, then you're saying that that benefit is
14 more important than that long-term benefit that
15 other people could enjoy by preserving that unit as
16 affordable, you know, into--you know, fro 100 years.

17
18 And I just don't find that a good trade
19 off. I think it's better to benefit more people
20 over a longer period of time.

21 COMMISSIONER JEFFRIES: Why can't these
22 things be mutually exclusive? I mean, why can't you
23 do both? I mean, why is one on top of the other? I
24 guess that's what I'm not following?

25 CHAIRPERSON MITTEN: Because when the

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1 individual--if you say the control period for the
2 for sale unit is 20 years or 30 years, when the
3 person who is there at the end of the line gets
4 their windfall, the affordability is gone.

5 COMMISSIONER JEFFRIES: If you were to
6 look at--and I think you stated that there were a
7 couple of municipalities that had renewal
8 situations. You know, we never know sort of where
9 things will be in 30 years or 40 years.

10 You know, again, it's compelling this
11 whole notion of density. And if we're offering up
12 bonus density that's there, that somehow it makes
13 sense that, you know, the benefit should be there as
14 well because that's a permanent fixture of sorts.

15 So, I see that part. I'm just really--
16 I'm just challenged around that notion.

17 So, we can move on. I mean--

18 CHAIRPERSON MITTEN: Let me just see
19 where everybody is on this.

20 VICE CHAIRMAN HOOD: Can I just add?

21 CHAIRPERSON MITTEN: Yes.

22 VICE CHAIRMAN HOOD: In your picture--in
23 your picture that you're pointing out to us, it
24 sounds as though you're saying there would be no
25 more construction. You know, they still have to

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1 come up with whatever is approved. They still have
2 to come up. We still are going to have new
3 construction. So, there will still be opportunity
4 for affordable housing, at least the way I see it
5 unless I'm missing something.

6 CHAIRPERSON MITTEN: But think of it
7 this way. That when we think about, well, how many
8 units are we going to see over the next 10 years.
9 And one of the reactions that we've heard from a
10 number of people is, well, that's not very many.

11 But what happens is, if you allow them
12 to go out of the market, then you never are going to
13 reach a critical mass of affordable units, because
14 you're going to allow a bunch of them to lapse and
15 maybe will be replaced by others instead of just
16 always having more over time. Thirty years, they'll
17 still be building more affordable units. Guess
18 what? We still have the ones we built 30 years ago.
19 This is all just increasing the number.

20 VICE CHAIRMAN HOOD: I see what you're
21 saying. So, it never goes out of stock.

22 CHAIRPERSON MITTEN: Yes.

23 VICE CHAIRMAN HOOD: I got it straight
24 on that.

25 But just let me ask.

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1 Commissioner Hildebrand, you mentioned
2 that if we revisit it and I know they didn't say it.
3 Montgomery County. But I wanted to make a point
4 that Montgomery County has revisited this regulation
5 more than 20 times. So, I'm sure if there was a
6 problem with their time period and control periods,
7 I mean. I just wanted to say that because I'm sure
8 they would have addressed it.

9 So, these people who have done this,
10 obviously have the stuff in place for a reason.

11 CHAIRPERSON MITTEN: Okay. Mr.
12 Bergstein just pointed something out to me too which
13 actually needs to be factored into this.

14 Which is, on the for sale units, at
15 least the way it was crafted, is that the control
16 period restarts at the end of each sale. So, it
17 would only be if someone--if one individual stayed
18 for that period, whatever that period would be.

19 So, it would reward the person who stuck
20 it out.

21 COMMISSIONER JEFFRIES: So, at the end
22 of that period--

23 CHAIRPERSON MITTEN: That's as it was
24 proposed. I'm not saying that we can't adapt it.

25 COMMISSIONER JEFFRIES: But I just want

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1 to make sure I understand the concept.

2 So, at the end of the period that the
3 person is there, they could sell that unit at what
4 number?

5 CHAIRPERSON MITTEN: Market. Right, Mr.
6 Bergstein?

7 MR. BERGSTEIN: Maybe I could just read
8 the actual text that was proposed.

9 If a for sale inclusionary unit is sold
10 to the eligible purchaser within 20 years after the
11 initial sale, the unit shall be treated as a new for
12 sale inclusionary unit and a new control period
13 shall begin on the date of the sale.

14 And I believe there is a formula for
15 determining what the price would be for the next
16 purchaser. But the 20-year period really only
17 terminates when an eligible household has remained
18 for that 20-year period. And then and only then
19 would that household be able to be eligible to sell
20 it at market price. And then based upon what you
21 would do with the percentage of the net profit would
22 be able to receive that amount.

23 COMMISSIONER JEFFRIES: I wonder if
24 there could be a proposal for some sort of declining
25 basis? I mean, you know, to the extent. I mean,

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1 you just don't have the sort of drop dead date at
2 year 20.

3 Okay. No. I'm making it more
4 complicated. But I just, you know, just because--
5 again, I mean, this wealth creation thing. I mean,
6 it's a real deal. It's a real issue and I've heard
7 this in Chicago and other cities and New York as
8 well. That, you know, people are sort of kept in
9 this perpetual sort of, you know, lower, mid-class
10 status. And that we need to do more about getting
11 people to move to other areas.

12 And most of us, a lot of us, you know,
13 end up being able to get our wealth through our
14 homes.

15 And I just want--that's the only piece
16 that I'm focused on here. So, I would like to
17 revisit that, you know, 20 years, you know, for that
18 to be just a drop dead date that, you know, if you
19 were to walk out after 15 years, you know, you would
20 be able to recoup a certain percentage and so forth
21 and so on.

22 CHAIRPERSON MITTEN: Okay. Mr. Parsons,
23 where are you?

24 COMMISSIONER PARSONS: I'm confused now
25 that I've heard it read aloud.

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1 I sit in my house for 20 years. I sell
2 it at market rate. To who?

3 CHAIRPERSON MITTEN: To anybody.

4 COMMISSIONER PARSONS: Anybody? Then
5 what happens?

6 CHAIRPERSON MITTEN: Then everyone goes
7 on their merry way. You take your sack of money--

8 COMMISSIONER PARSONS: No. I heard the
9 clock started over again.

10 CHAIRPERSON MITTEN: No. At the end of
11 20 years. I'm sorry, I thought you said you waited
12 20 years.

13 COMMISSIONER PARSONS: Stayed in the
14 house for 20 years.

15 CHAIRPERSON MITTEN: The control period
16 ended. And you sold your house for a bunch of
17 money.

18 COMMISSIONER PARSONS: I
19 thought you said the clock started over again?

20 CHAIRPERSON MITTEN: Within--prior to
21 the expiration of the control period.

22 COMMISSIONER PARSONS: Oh, I'm sorry.
23 Thank you. Okay.

24 VICE CHAIRMAN HOOD: Who is -- to all
25 this? That's probably not the right question, but
26 anyway. I'm just curious.

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1 COMMISSIONER PARSONS: We were told it
2 would be within the existing resources. There's no
3 impact on the city at all.

4 COMMISSIONER JEFFRIES: We haven't
5 gotten to that section yet.

6 COMMISSIONER PARSONS: I stick with,
7 Madam Chair, on perpetuity, but I would only add a
8 caveat and maybe it's self-evident or until the
9 building is demolished. I mean, everything reaches,
10 you know, its--except the Lincoln Memorial.
11 Everything reaches its ultimate life.

12 CHAIRPERSON MITTEN: Yes. Mr. Hood,
13 where are you?

14 VICE CHAIRMAN HOOD: I pass.

15 CHAIRPERSON MITTEN: You can't pass.

16 Well, the reason why I think it's
17 important that we get some consensus about this is,
18 is because it impacts a lot of the rest of the
19 things that we're going to discuss. Which is why we
20 started this because there was this other provision
21 that we--

22 COMMISSIONER JEFFRIES: Well, let me ask
23 the Office of Planning. I just want to be clear as
24 relates to, I mean, your proposal on this particular
25 topic.

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1 Can you just walk me through it?

2 MR. ROGERS: Well, I think the first
3 things is that if it's sold within the 20 years, a
4 new 20-year clock is set for that affordable
5 purchaser.

6 Secondly, at the end of the 20 years,
7 there is a recapture provision where the--

8 COMMISSIONER JEFFRIES: Oh, wait, hold
9 it. I want to make certain that my colleagues are
10 hearing this. I'm sorry, go on.

11 MR. ROGERS: At the end of the 20 years,
12 I think both the campaign and OP proposed that there
13 was a recapture of the portion of the market
14 proceeds. So, when the unit gets sold at market,
15 they split what would be the control price and what
16 would be the market price.

17 So, that money would be deposited into a
18 housing production trust fund to further build other
19 affordable units, presumably somewhere else in the
20 District.

21 COMMISSIONER JEFFRIES: But that unit
22 then does away though?

23 MR. ROGERS: That's true. It does go
24 away.

25 COMMISSIONER JEFFRIES: And it becomes

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1 the market rate and as Vice Chair Hood has said
2 that, you know, the assumption is that there will
3 be other opportunities to build housing and
4 affordable units and so forth. And we start the
5 clock ticking again.

6 CHAIRPERSON MITTEN: So, then Mr.
7 Parsons wouldn't get his big bag of money? He
8 would just get part of a bag of money?

9 COMMISSIONER JEFFRIES: That's my
10 understanding. He's get half of it.

11 CHAIRPERSON MITTEN: Which I think, I
12 mean, depending on what you think Commissioner
13 Jeffries, then at the juncture when someone would
14 sell at the end of the control period if you
15 subscribe to the proposals that the campaign and the
16 Office of Planning had suggested, then the
17 opportunity is really going to be to take, you know,
18 some fraction of the cost of providing an affordable
19 unit. And put that in with other fractions and try
20 and build the next wave, as opposed to just having
21 the affordable unit.

22 COMMISSIONER JEFFRIES: I agree with
23 this whole notion. I think it's sort of is a win--
24 it's a win-win situation for the people who are in
25 these units as well for the District to share those

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1 proceeds. I mean, it seems to make sense to me.

2 And so, therefore, I mean, I'm almost.

3 I can't believe that we're even looking at 99 years
4 quite frankly, given that that's so considerably
5 less than what's been proposed. I mean, this is the
6 only area that we're going in the opposite
7 direction.

8 CHAIRPERSON MITTEN: Mr. Hood? And you
9 can't pass, so don't ask.

10 VICE CHAIRMAN HOOD: I can do anything I
11 want. I can pass too.

12 No. Let me ask because unfortunately I
13 was reading something and talking to you. But, Mr.
14 Rogers was saying that apparently when it gets to
15 the end of the control period and splits. Is that
16 what you were saying?

17 MR. ROGERS: Yes. Essentially, when
18 it's within the control period, there's a control
19 price, right, that will change each year based on
20 how you decide to change it. Whether it's CPI or
21 the medium income changing or whatever.

22 You still use that control price as the
23 basis beyond the control period. And it's the
24 difference between what the market price is and what
25 that control price is that is split half and half.

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1 So, the occupant, the original occupant,
2 would get the control price plus half of the
3 difference between the control and the market.

4 VICE CHAIRMAN HOOD: Okay. Is that the
5 direction you were going, Madam Chair?

6 COMMISSIONER JEFFRIES: Well, that, no.

7 CHAIRPERSON MITTEN: That's the
8 direction that--

9 COMMISSIONER JEFFRIES: That's the
10 direction that I'm supporting and I hop that you
11 support. And we don't know what our other
12 colleagues are--

13 VICE CHAIRMAN HOOD: It sounds good to
14 me so I think we all should support that.

15 CHAIRPERSON MITTEN: Well, two of your
16 colleagues don't agree, which would be myself and
17 Mr. Parsons and now we're waiting to hear from Mr.
18 Hildebrand.

19 COMMISSIONER PARSONS: The only thing I
20 would ask, are you sticking with the 20-year that
21 the Office of Planning proposed?

22 VICE CHAIRMAN HOOD: We can--

23 COMMISSIONER JEFFRIES: We can do a 20-
24 year with--

25 VICE CHAIRMAN HOOD: 20, 30. I'm

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1 flexible with that. 20, 30.

2 CHAIRPERSON MITTEN: Why don't you guys
3 get your proposed rates?

4 VICE CHAIRMAN HOOD: Fine. When do you
5 want us to do it?

6 COMMISSIONER JEFFRIES: I am supportive
7 of the Office of Planning's recommendation.
8 However--

9 CHAIRPERSON MITTEN: 20 years? 30
10 years?

11 COMMISSIONER JEFFRIES: 20, 20, 20.
12 That's the proposal.

13 VICE CHAIRMAN HOOD: To get the vote if
14 Mr. Parsons will go along with 30 under the same
15 context, I would go to 30.

16 COMMISSIONER JEFFRIES: If Parsons will
17 agree. Well, Parsons will agree with 30, I will for
18 30.

19 COMMISSIONER HILDEBRAND: We haven't
20 heard from him with a proposal.

21 CHAIRPERSON MITTEN: It's on you now,
22 Mr. Hildebrand.

23 COMMISSIONER HILDEBRAND: I am actually
24 in agreement with the Chair and Mr. Parsons on this.
25 I think the longer control period is of great

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1 benefit to the longevity of the city.

2 If there were to be a compromise, I
3 would certainly compromise with for resale units, a
4 30-year control period with an automatic redoubling
5 of it to get 60 years as a possible compromise.

6 CHAIRPERSON MITTEN: Well, if we have
7 three people who are in agreement, we don't need to
8 compromise.

9 COMMISSIONER JEFFRIES: Well, wait.
10 Wait. Commissioner Parsons one more time.

11 COMMISSIONER PARSONS: No, no. But I
12 haven't changed my mind.

13 COMMISSIONER JEFFRIES: Okay.

14 COMMISSIONER PARSONS: I don't
15 understand an automatic 30. Thirty automatic to 60.
16 What do you mean? That sounds like 60 to me.

17 COMMISSIONER JEFFRIES: Yes. It
18 actually was 60.

19 CHAIRPERSON MITTEN: He was just trying
20 to make it sound more like 30.

21 COMMISSIONER HILDEBRAND: I was trying
22 to make it sound better. But, I agree that the
23 longer the period of affordability is the best
24 scenario for the city.

25 COMMISSIONER JEFFRIES: I will say that

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1 I will revisit this one again. I will have a
2 serious problem with this one towards the end as we
3 go forward.

4 CHAIRPERSON MITTEN: Now, we have to
5 have some agreement about going forward, because the
6 control period, if there's no end, then we don't
7 have to do all the things. We don't have to
8 consider all the things that happened at the end.

9 So, I guess, in the interest of time, I
10 would not like, in order to satisfy two
11 commissioners who appear that they will not on the
12 prevailing side about the control period, to deal
13 with all of those issues that relate to what happens
14 when the control period is over.

15 COMMISSIONER JEFFRIES: Madam Chair, my
16 only issue is that there's a body of--the crafting
17 of this mandatory inclusionary zoning. I mean, for
18 me to go forward and even agree to go forward with
19 it, there needs to be certain things. And I guess
20 what I'm saying is I feel very strongly about that
21 one.

22 So, I will have to think about this.
23 That's the only point I'm making.

24 CHAIRPERSON MITTEN: Okay.

25 VICE CHAIRMAN HOOD: Madam Chair, I'm

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1 not going to throw everything out of tube on this
2 one. You know, while I'm not agreeing in
3 perpetuity, but I think the record and those who
4 have experienced this speak for it. You know, I
5 think you get one person with 99 years. One
6 jurisdiction.

7 There is a reason in everything. A
8 reason why people do something. They have a track
9 record. We don't. And I understand your point
10 about keeping it affordable and multiplying units.
11 But, you know, there's a flip side of that too.
12 Unfortunately, I'm just going by what was presented
13 in the record of the 30 years and the 20 years. And
14 I think we need to be cautious.

15 CHAIRPERSON MITTEN: Okay. I had one of
16 the commissioners whisper in my ear for a minute and
17 so I just need to--I think we just need to take
18 maybe two minutes right now to take a little break.
19 And then we'll decide how we're going to proceed.

20 Okay. COMMISSIONER PARSONS: Sure.

21 CHAIRPERSON MITTEN: Okay. So, we're
22 just going to go and take a little break for about
23 two minutes.

24 (Whereupon, off the record from 9:45
25 p.m. to 9:49 p.m.)

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1 CHAIRPERSON MITTEN: Okay. What we'd
2 like to do since it's getting late is we'd like to
3 continue this conversation at our public meeting on
4 Monday because we have an agenda that is not too
5 heavily weighted. So, we think we can continue at a
6 reasonable hour which I'm not going to predict now,
7 but if you'd like to see copies of the Monday
8 meeting agenda, Mrs. Schellin can provide them to
9 you so you can gauge if you'd like to catch the
10 second half of our discussion. But I think in the
11 interest of everybody's fatigue at this point, we're
12 going to continue this.

13 But I thank you all for your interest
14 tonight and we'll continue our discussion on this
15 matter on Monday.

16 And the meeting itself starts at 6:30,
17 but we won't get to this for at least the first
18 hour.

19 And we're adjourned.

20 Thanks.

21 (Whereupon, the above matter was
22 concluded at 9:50 p.m.)
23
24
25

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