

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

PUBLIC HEARING

+ + + + +

IN THE MATTER OF:	)	
	)	
	)	Case No. 02-51A
RHODE ISLAND ASSOCIATES LP	)	
	)	

Thursday,
September 29, 2005

The Public Hearing of Case No. 02-51A by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Former Council Chamber at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

CAROL J. MITTEN	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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This transcript constitutes the minutes from the public hearing held on September 29, 2005.

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

6:43 p.m.

CHAIRPERSON MITTEN: Good evening, ladies and gentlemen.

This is a Public Hearing of the Zoning Commission of the District of Columbia for Thursday, September 29th, 2005.

My name is Carol Mitten and joining me this evening are Commissioners Kevin Hildebrand and John Parsons.

The subject of this evening=s hearing is Zoning Commission Case No. 02-51A. This is a request by Rhode Island Associates Limited Partnership for a time extension and approval of a modification of an approved Planned Unit Development for property located 1616 Rhode Island Avenue, N.W. and known as lots 82 and 83 in square 182.

Notice of today=s hearing was published in the DC Register on July 22nd 2005 and copies of the hearing announcement are available to you and they are located on the table by the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3022 which are the rules of procedure for contested cases.

The order of procedure this evening will

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be as follows:

We will take up any preliminary matters followed by the presentation of the Applicant=s case.

The report by the Office of Planning, report by any other Government agencies, report of the affected Advisory Neighborhood Commission, in this case it=s 2B, organizations and persons in support and organizations in persons in opposition.

The following time constraints will be observed in this hearing:

The Applicant will have 45 minutes. Organizations will have 5 minutes and individuals will have 3 minutes. The Commission intends to adhere to the time limits as strictly as possible in order to hear the case in a reasonable period of time. The Commission reserves the right to change the time limits for presentations if necessary and notes that no time shall be ceded.

All persons appearing before the Commission are to fill out 2 witness cards. Those cards are also on the table by the door. Upon coming forward to speak with the Commission, please give both cards to the reporter who is sitting to our right.

Please be advised that this proceeding is being recorded by the Court Reporter. Accordingly, we

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ask you to refrain from making any disruptive noises in the hearing room.

When presenting information to the Commission, please come forward and sit at the table and then turn on and speak into the microphone first stating your name and home address. When you are finished speaking, turn off your microphone so that it is not picking up sound or background noise.

The decision of the Commission in this case must be based exclusively on the public record. To avoid any appearance to the contrary, the Commission requests that persons present not engage the members of the Commission in conversation during a recess or at any other time. And Mrs. Schellin will be available throughout the hearing to answer any procedural questions you may have.

I ask you to turn off all beepers and cell phones at this time so as not to disrupt the hearing.

Now we'll take up any preliminary matters and, Mrs. Schellin, I know we have a number of them so would you like me to just pick them right up?

There's a few things that we need to talk about. We have some correspondence from the University of California who is represented by Mr. Aguglia. They have requested status as a party as what

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I will call a Co-Applicant because they were part of the original PUD. The Applicant opposes granting that status. That=s one issue.

We have a request from both the University of California and the ANC to postpone the hearing this evening. That=s another issue.

Then we also have something that is lacking in the record that I think bears on everything that is before us which is that the Applicant has not addressed the burden of proof for the time extension that is required in Section 2408.10 where you have to meet the 3 requirements to show the Commission why an extension should be granted. To some extent, that bears on what we might think about the status of the University of California. And I think that because so much time has passed that it would be appropriate for the Applicant to have put this in the record for response by people and parties who may want to comment on that.

Let me bring up, let=s who should we start with? Well, let me ask first, does the Commission have any comments on any of that?

Okay. I am just going to ask each of the folks who are represented to come forward and comment on anything that I just mentioned as issues and we=ll

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hear from the Applicant first, Mr. Feola.

MR. FEOLA: Thank you, Madam chair. For the record, my name is Phil Feola with Pillsbury Winthrop Shaw Pittman representing Rhode Island Associates Limited Partnership, the Applicant and owner of the property.

Which one do you want to talk about first?

CHAIRPERSON MITTEN: Feel free to comment as you like on the issues that I raised. I guess what I'd like you to focus on if you want to comment further on the granting party status or the request for party status by the University of California. Rhode Island Associates is, to some extent, wanting to rely on the PUD as an ongoing single entity because you rely on some of the things that were provided by the University of California in justifying the granting the request. For instance, the fact that there is a residential requirement or there is a residential component that has been satisfied by the University of California. So in one sense, you are sort of embracing the University of California and then in another sense you are pushing them away.

MR. FEOLA: Okay, I see. Okay. I understand.

CHAIRPERSON MITTEN: Okay. So it's either,

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I'd like you comment on is the PUD alive as an entity?

In which case, I would think you would find it difficult to push away the University of California.

MR. FEOLA: No, we would not object to the University of California being a party in this case had they followed the rules and filed them in a timely manner. We object to the fact that they filed the day before the hearing and requested party status when the rules, your rules suggest that they must do that 14 days prior. They must identify witnesses. They must explain to the Commission why they are especially effected. Just follow the rules. I don't think it's fair for a party, an entity, the University of California, which had the application in April. Had the pre-hearing submission in June. Had phone conversations with me in that interim about it. We are not talking about Mrs. Jones, a little old lady that doesn't know the rules. They have more lawyers on their staff than I probably have in my law firm. They have staff architects. I talked to one of them. So, to wait until the day before the hearing and say AWhoops, we object and we want to be party@, I don't think is a fair way to proceed.

CHAIRPERSON MITTEN: I think, and Mr. Early can speak to this, but what I'd like to have you focus

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on is they are coming to us not as an outside party who has to meet the test but as an entity that is automatically a party because they are an Applicant or they consider themselves a Co-Applicant.

MR. FEOLA: They still, like the ANC, have to file with you their position 14 days in advance. They still have to identify witnesses and issues that they are going to raise. Not the day before.

CHAIRPERSON MITTEN: Okay. And then we have the issue of the request for -- Mr. Parsons?

MR. PARSONS: Why are they not a Co-Applicant with you?

MR. FEOLA: Well, that=s a good question.

MR. PARSONS: We are considering this whole PUD, why didn=t you invite them to participate in that way?

MR. FEOLA: There was a ruling by this Commission, which was sustained by the Court of Appeals. Actually, I was on the losing side of that argument. I think Mr. Gell was on the winning side of that argument. That basically says that the owner of the real estate is the party that can or cannot make that application. This was 1330 Connecticut Avenue. The old Machinist Building Project. It=s that simple. That=s the law of the land so to speak in the

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District of Columbia.

MR. PARSONS: So how is it we are able to consider the amenities and the past of this PUD? Yours should be a stand-alone PUD then.

MR. FEOLA: No, because the PUD governs the covenant that is recorded now on the land records governs both separate buildings. It covers both properties.

MR. PARSONS: But you are only representing the owners of half of the building?

MR. FEOLA: Of half of it, that=s correct.

MR. PARSONS: I still don=t understand it but go ahead.

MR. FEOLA: The original PUD order and then the subsequent modification, the University of California modification, let=s call it for simplicity state, encompasses all 32,000 square feet of this site. It granted two different buildings on the site, your order, one for the University of California and one for Suites Hotel. All the constraints that are in that order track both property owners. Whatever you said must be done is the responsibility of both property owners, Notwithstanding, they are in separate ownership.

MR. PARSONS: Let=s go to the architecture

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of the hotel then. What the University is complaining about is the light and air that has been shut off. And how are we going to deal with that?

MR. FEOLA: I think that=s an issue --

MR. PARSONS: The PUD required that courtyard.

MR. FEOLA: That=s correct.

MR. PARSONS: And you are asking for relief from that. Is that it?

MR. FEOLA: That=s correct. And we would not have a problem with the University presenting its position to the Commission on that issue. I mean, probably the example I can give is if a homeowner at the Hillendale Planned Unit Development come in and wanted to put a deck on the back of his or her house. That=s one big 42 acre PUD. That homeowner would not, and this is the thinking of the court, would not be required to get co-application from all 267 other unit owners in that planned unit development. However, it=s still one planned unit development. It still has one access point. All of those other constraints. Tree preservation areas and things that the Commission required.

So that homeowner that wants to put a deck on is still constrained by those things even if they

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are coming in for a modification for their part of the property.

MR. PARSONS: So are you relying on the amenities that were in the previous PUD that have been implemented already as part of your application? I haven't read it that thoroughly. I mean is there something that you are borrowing from this PUD to apply to your case?

MR. FEOLA: Yes.

MR. PARSONS: What would that be?

MR. FEOLA: The package that this Commission approved for the hotel and the University of California was a combined package, if you will, of amenities. The residential use which the University is providing for example. The contribution to the Ross Elementary School which Rhode Island Associates made for the entirety of the PUD. The mentoring program the University made. The contribution to the Dupont Circle Resource Center the Partnership made. There was a joint application by two parties. It'd be hard to separate them out now.

MR. PARSONS: All right. Thank you.

MR. FEOLA: Another way to look at it, if I might, is there is no matter of right use on the vacant piece of land right now. It's either hotel or

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come back and ask the Commission for a modification because the PUD covenant is drawn around the entire boundary. Had the University played in the rules, we would not be opposed to their participating as a party.

CHAIRPERSON MITTEN: This raises an interesting question though which that if there is no matter of right used, then the concern about the time extension, what you are suggesting is that it=s either we grant the modification or if we don=t grant the time extension, then this will be perpetually a parking lot because nothing could be built as a matter of right. That=s actually something that I=d like to have more understanding of from whatever lawyers might want to brief it for us. Because I think that=s important for the Commission to understand as we move through this.

So could you address the request by, you can consider it the request solely by the ANC since they do have party status or you can consider it a request from both the University and the ANC for a postponement and then the final issue relates to the time extension.

MR. FEOLA: Time extension. Sure.

I think that postponement is just one

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again of fairness. The ANC, like the University, had notice of this application and had meeting with the Applicant and representatives of the Applicant since April of this past year. And to ask now for 3 or 4 more months -- I'm sorry, 3 or 4 more weeks so they can get their positions together I don't think is terribly fair on an Applicant who has been in the process.

With regard to the ANC, it seems like from the pleading, the ANC is asking for more time so they can get an economic analysis to determine whether or not the benefits package is sufficient or not. But they have already taken a position that the benefits package is not so it seems me a government agency should take a more logical approach in May if they thought the amenities package wasn't good enough. They should have gotten an analysis to see whether they are right or not. I mean, what happens now if their analysis comes back and says it is enough? We've wasted four weeks. O mean they've taken a position and now they are going to defend their position with expert testimony. It seems to me that's backwards.

We're just opposed to the extension. Certainly if the Commission chooses, they can have the

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report done and submitted into the record, but we don't think that the hearing should be postponed.

CHAIRPERSON MITTEN: Okay. And then to the time extension.

MR. FEOLA: Yes, I guess I'm confused because we filed what I thought was a fairly by the law extension request. So I'm not really sure --

CHAIRPERSON MITTEN: Well, let me tell you what I thought was missing. What I believe what you focused on is 2408.11 which sort of elaborates what the good cause is in 2408.10C. The part that I find lacking was what's required by 2408.10B which is that there is no substantial change in any of the material facts upon which the Commission based its original approval of the PUD that would undermine the Commission's justification for approving the original PUD. And given that the original PUD was approved in 1989 and we've found in other circumstances that there has been a lot of change. And in fact, I would like people to comment on it but there has been a lot of change throughout the city. So, that very critical piece hasn't been addressed.

MR. FEOLA: Right. Well, I guess, and maybe this wasn't clear, we were taking the extension from the current modification which was 1999. Not

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from 1989.

CHAIRPERSON MITTEN: But it does say in 2408.10B that would undermine the Commission's justification for approving the original PUD so --

MR. FEOLA: That original PUD has since now been modified by a quarter of the Commission.

CHAIRPERSON MITTEN: I understand. I understand.

MR. FEOLA: So we think there have been less circumstances that have changed except to the detriment of doing a hotel.

CHAIRPERSON MITTEN: Haven't the modifications that have taken place to the PUD all been focused on your client's lot 82 as opposed to the total site? Isn't that right?

MR. FEOLA: Not from the original PUD because intervening in there the University of California built a building with --

CHAIRPERSON MITTEN: No, but were any of the modifications focused on the University of California piece or have all of the modifications been focused on that agent?

MR. FEOLA: No, the University piece was a modification to the original PUD.

CHAIRPERSON MITTEN: Okay.

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MR. FEOLA: The original PUD, and we were going to get into this a little bit in the testimony and some of the reasons why the client doesn't have the ability to build a hotel or some of the reasons for that. The original PUD as you pointed out was approved in 1989 and there was a whole series of things that happened and it never got built. In 1998, the property owner, Rhode Island Associates, came forward with 2 contract purchasers: The University of California and Homestead Suites, Homestead Village Suites, or whatever their name was, to bifurcate the property and build 2 separate buildings. In 1999, that was approved by this Board. The University of California went forward and purchased the property and built their building. The Homestead organization, which is a subsidiary of Hyatt, decided after spending a lot of money and leaving a big deposit on the table that they couldn't make a go of it and left. And so the property owner was Rhode Island Associates was left with half the PUD, so to speak, and for awhile it tried to market the site to other hotel developers and owners. And in the intervening 6 years, they have not been able to do that. So hence, the request for this change.

CHAIRPERSON MITTEN: Okay. Did you have

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anything else you want to say about the time extension or the 2408.10B?

MR. FEOLA: No.

CHAIRPERSON MITTEN: Okay. Then I'm going to ask Mr. Gell to come up and comment on the 3 issues, well actually you probably don't want to comment on the first for the ANC.

MR. GELL: Madam Chair, members of the Commission, we filed a request.

CHAIRPERSON MITTEN: Would you just identify yourself for the record?

MR. GELL: I'm sorry. I am Stephen Gell. I am an attorney representing the Advisory Neighborhood Commission 2B.

The ANC filed a request for postponement because after spending a good deal of time with the developer trying to reach an agreement on the amenities package, which might have if it had been sufficient, been enough to overcome some of the other problems that the ANC had with the proposal as a whole finally concluded that it: (a) Did not have enough information on which to base a decision and had a feeling that based on their own information and their own calculations that the amenities package simply was insufficient. They could not very well

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hire an expert, spend the money and so forth until they were in a position to oppose, and that could not take place until they had taken a vote which occurred on September 14th. At that point, they hired me. We have tried to get an appraiser onboard and I have been told by a good 12 or so appraisers that 4 to 6 weeks would be a minimum to get testimony from an expert on the issues that are important to the ANC. On the strength of that, we felt we had no other recourse but to ask for the postponement.

We feel there are some other problems with this whole proposal. Because Mr. Feola says that they are going back to the amendment, the modification but in fact they are going back to the modification for some things and they are going back to the original PUD for others.

Look at the FAR for instance. The original FAR was 8.5 for the entire site. Now in the first modification, that was changed to 8.5 for the University of California site which became the University of California site and 7.9 for the remainder of the site which would have been a hotel. Not 8.2 which Mr. Feola says was permitted because 8.2 was the FAR for the entire site.

So, what we are finding here the more we

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look into this is that figures that were given are not accurate based on our review of the records. And then if you go to some of the other issues, they indeed go back to the modification, and it depends on which one benefits them the most whether they go to the original PUD or go to the modification. And I can go through those, but I'm not sure this is the appropriate time to do that.

CHAIRPERSON MITTEN: Let's stop there. Does the Commission have any questions for Mr. Gell? Okay. Then I'd like to have Mr. Aguglia come forward and address the 3 issues for the University of California.

MR. GELL: May I add one more thing?

CHAIRPERSON MITTEN: Yes.

MR. GELL: The other change that took place was the adoption of the overlay zone. Now the overlay zone says that the underlying zone should control in determining whether a PUD should be granted. This took place after 1989. Subsequently, there was a change and, of course, the Zoning Commission did not adopt the overlay zone but rather they simply made a modification to the PUD. The Zoning Commission now has an opportunity to look at the entire project and see whether in fact its original or its modification

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were correct because it=s being asked for an extension. And that really takes into consideration the changes in the neighborhood, the changes in the Dupont Circle overlay zone, the attempts to protect the historic area which, this is not in an historic area, but certainly touches upon it. All of these issues can be looked at by the ANC, not the narrow -- I=m sorry, by the Zoning Commission. Not the narrow issue simply of whether there should be an extension and this additional modification to a commercial use.

CHAIRPERSON MITTEN: Okay. Thank you, Mr. Gell.

MR. FEOLA: If I could answer, if I might?

I think what Mr. Gell just raised, a brand new issue, is exactly the reason why this Commission has rules for filing ahead of time. This is the first time the Applicant has heard anything about a relation back to some other zone or the Dupont Circle overlay. All I can tell you is there is a PUD covenant as required by order number 638 that has changed the zoning of this site from SP2 to C-4. It is on the record. It=s in the land records. It=s there. But to just allow people with counsel just to come in anytime and throw things out, I don=t think is fair to this process.

CHAIRPERSON MITTEN: I understand. Thank

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you.

Mr. Aguglia, did you want to come and address the 3 issues?

MR. AGUGLIA: Can you hear me or is there something I have to press here?

CHAIRPERSON MITTEN: Can you hear him okay? We're fine, just keep it close.

MR. AGUGLIA: Thank you. It's Richard Aguglia with the law firm of Hunton and Williams representing the University of California. And I have with me the Associate Director for the Washington Campus and her name is Karen Akerson.

As a very brief preface I would say that we are not interested in delaying this process. We're not interested in keeping this as a vacant lot. I don't think that the Commission is either. We are not even opposed to the change in use because I do believe that the Applicant's theory that it would be hard to put a hotel here is probably true.

What we do want is for them to respect the integrity of its fellow member of the PUD and their emphasis has seemed to be more concerned with the street scape and the Human Rights Campaign Building rather than being complementary to the other half of the PUD which in fact is providing much of the

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amenities of this PUD.

Now with respect to our request to come in late, I did appreciate the Commission's thought that sort of almost practically if not technically we are sort of a Co-Applicant and we feel that we have been overlooked in their architectural process. It is true that as Mr. Feola has said in his reply, it is true that the University officials did have a discussion with him on May 13th and voice certain concerns. I think that the University was somewhat naive in believing that they would be understood without making some sort of an objection. The University has never had local zoning counsel, not even in the 1998 PUD. It is true that in June, they did not get a response from their May meeting. The response essentially was in June, mid-June, the Applicant filed their pre-submission report with their designs and it did not show any concerns -- did not solve any or resolve any of the concerns that the University had raised about the building being flush right against the new building. The new office building being flush against the University building.

But essentially, I think they were a little bit naive in how they thought they should go about this. They did not retain me until last week.

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I was slightly impeded in getting to the file because it=s only Commission was moving my -- I was called on Friday. My paralegal showed up Friday afternoon promptly and could not get a file. So you can appreciate my position, my own position.

And the other thing is that the University really does not have a lot of money to put into this to hire outside counsel and they were sort of hoping perhaps beyond hope that they could get the Applicant to change their design plans and then at the last minute say it=s not going to happen. We need to get local counsel to represent us.

So again, I just would reiterate that I think your point was well taken that the Applicant wants to embrace us in terms of amenity -- but not allow and being part of the PUD as an overall but not allow us to participate in the process when in fact we feel that there is a problem with being complimentary to our site.

So that --

CHAIRPERSON MITTEN: Request for the postponement.

MR. AGUGLIA: You know, again, I don=t want to delay, I thought perhaps a brief postponement for the parties to get together, all the parties to get

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together to try and work this out might benefit the Commission. But absent that, perhaps you=d allow us to leave the record open to submit whatever plans that we think would better compliment -- in terms of setback would better compliment the University building, we=d ask you that as an alternative measure.

CHAIRPERSON MITTEN: Okay. And then did you want to comment on the issue of the time extension?

MR. AGUGLIA: I really haven=t focused on that. And if you want the parties to brief it or us to brief it. You mean, your issue that the Applicant did not fully set forth under the regulations the grounds for extending the PUD?

CHAIRPERSON MITTEN: Yes.

MR. AGUGLIA: I haven=t focused on it and I could brief it at Commission=s pleasure.

CHAIRPERSON MITTEN: Okay. Thank you.

Mr. Gell.

MR. GELL: Madam Chair, members. One additional thought since Mr. Aguglia raised the issue of possibly having the hearing but submitting something afterwards. The ANC doesn=t feel that that would be in its interest since it would really be negatively impacted on its ability to ask the right

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questions in cross examination. It simply felt that it would not have enough information to conduct an adequate cross examination.

CHAIRPERSON MITTEN: Okay, I do want to just comment on what the ANC is attempting to do. Because in other cases we've had community groups come in and basically trying to value what the Applicant is seeking to gain through the PUD process. And it's difficult. The Commission, you know there is a waiting that goes on between the relief that is being requested and the benefits and amenities that the Applicant is providing and they're not all quantitative, they are qualitative as well. So in other cases that we've had, and one is very much in my mind but I won't mention it, it just isn't a one for one. And I guess I just want to suggest that you think about that. I'm not suggesting that you should perceive it any differently but just think about the fact that the waiting is quantitative and qualitative so it's not just about dollars. Okay. I just wanted to --

MR. GELL: I agree.

CHAIRPERSON MITTEN: Okay. So, comments from the Commission on what you've heard and then I'll try and shape it into some things if you want to just

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give general comments first.

Mr. Parsons?

MR. PARSONS: I need a phone book, too. Kevin is taller than all of us tonight. He got a phone book.

The zoning forum is really not well suited as a mediation panel, and I think that=s exactly the three gentlemen sitting in front of us need to be doing on their own and not in this forum. I think a postponement or a continuance would serve all of us. That we would come back here with a much crisper understanding of the 3 parties and maybe a resolution of this matter without our help.

CHAIRPERSON MITTEN: Anyone else? Mr. Hildebrand.

MR. HILDEBRAND: I actually would agree with that, too. I think it would be helpful to go back and look at the original PUD more closely, too. Because I didn=t have access to that as part of the prep and I would really like to have a chance to see that.

CHAIRPERSON MITTEN: The order was in what we consider that set down. But did you want to see more of the original designs and all of that?

MR. HILDEBRAND: Yes. Yes.

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CHAIRPERSON MITTEN: Okay. Mr. Jeffries?

MR. JEFFRIES: I do apologize for coming in late and missing some of the testimony here, but I normally am not in favor of granting postponements. My experience in the time that I have been on this Commission is that most of the Applicant=s developers are very adapt at community outreach and making certain that they cross their T=s and dot their I=s. I just have difficulty embracing this whole notion that the community was not quite informed or didn=t have the requisite information in order to respond and so forth. So I would probably like to listen to Madam Chair here, but I am not quite at the moment ready to sign on to granting a postponement.

CHAIRPERSON MITTEN: Okay. I have to agree with Mr. Parsons. I think that there is certainly a dialogue that is incomplete among the parties. I mean I feel strongly that one way or another that University of California deserves to be a party and that there=s a little bit of a unusual circumstance here. And I take Mr. Feola=s point that coming in at the last minute but they have valid concerns. And if you are going to be relying on benefits that they brought to the table, then they deserve a seat at the table. So, I have that point. And so I think that

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so that the Applicant isn't disadvantaged or that Rhode Island Associates isn't disadvantaged, they're entitled to have time to adequately respond to the issues raised by the University of California.

I guess, my view about the postponement, I'm less inclined to do it for the reason that's advance by the ANC because I'm just not sure that the analysis they are seeking to do is going to be persuasive to the Commission but I think that there's probably room for more conversation between the community and Rhode Island Associates.

And then I really would like to have a greater understanding about and hear from everybody about whether or not the burden of proof is being met for 2408.10B, whether it's going back to the last time that the PUD was modified or going back to the original PUD. And I want to have a thorough discussion of that because, as I said, this PUD has been around for quite some time and I just have a sense that a fresh eye is better than just trying to B you know, it's almost like we keep trying to resuscitate this proposal. Poor lot 82 has just been, it's one proposal after another that doesn't seem to be able to get its legs under it. So, I guess that's why I put that out there and I think that no one is

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really prepared to do a thorough presentation on that matter tonight. So, those are the reasons why I would be in favor of a postponement.

MR. JEFFRIES: Madam Chair, I actually appreciate your comments around Mr. Gell's comments. I'm just not so much in favor. But given that it's late notice, the University of California probably should be party and we should probably have a better understanding of their part of this. So I would go for it as well.

CHAIRPERSON MITTEN: So without necessarily hanging our hat on whether or not the University of California was required to make an application for party status or whether they should be granted party status as a Co-Applicant, do we have a consensus that in fact, the University of California will be considered a party going forward? Do we have a consensus? Okay. I just want to make that clear as we move forward.

So, what we have is we have a case that was cancelled for a hearing date that we had scheduled for November 10th which is actually earlier than we thought we would be able to schedule this. So, if the parties can deal with November 10th, we would postpone it to that date.

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MR. FEOLA: Is that a Monday or a Thursday do?

CHAIRPERSON MITTEN: It's a Thursday.

MR. FEOLA: I have just been advised that the project architect is out of the country on that day, so we can't.

CHAIRPERSON MITTEN: The next available date would be December 1st. Sometimes we like to ask the architect questions. You know it's just kind of a funny thing we have.

MR. FEOLA: You're not going to be in on December 1st? It has to be December 1.

CHAIRPERSON MITTEN: Okay. Mr. Aguglia?

MR. AGUGLIA: You asked me.

CHAIRPERSON MITTEN: Mr. Gell is checking. Mr. Gell, how does that work?

MR. GELL: The Chair Dan Bowie says he is going to be out of town but he is willing for us to go forward. Mr. Bjorge, who is the single member, will give the testimony for the ANC.

CHAIRPERSON MITTEN: Okay. That's great.

MR. GELL: I have one other question. I don't know if it's appropriate now if you want to take it up. Mr. Bjorge had asked for party status individually.

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CHAIRPERSON MITTEN: Oh. Thanks. There are so many preliminary matters that we -- do we have that? Just bear with us.

We don't have a copy of that request in the record.

MR. GELL: Mr. Feola says he didn't get a copy of -- we are willing to make sure there is one in the record. I assume it can be submitted anytime up to 2 weeks before the hearing since the hearing hasn't started.

CHAIRPERSON MITTEN: Do you have any objection to that? We haven't taken it up yet, but you don't have any objection to that.

MR. FEOLA: No.

CHAIRPERSON MITTEN: Okay. That's fine. That can be filed then. As long as it's up to 2 weeks prior.

MR. GELL: I assume anyone can seek party status up to 2 weeks before the hearing actually starts.

CHAIRPERSON MITTEN: Yes. Okay.

MR. GELL: Thank you. So we'll hold off.

MR. FEOLA: So are we going to open this up to -- is this just a continuance, is it not?

CHAIRPERSON MITTEN: Yes. Basically. So

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you were willing to let Mr. Bjorge in.

MR. FEOLA: Yes. But I don't think I'd be willing to let the entire Western world apply for party status.

CHAIRPERSON MITTEN: What do you guys think?

MR. GELL: Madam chair. Whoever seeks party status is going to have to show that they meet all the tests for a party.

MR. FEOLA: But they should have done it 2 weeks ago. That's my point.

CHAIRPERSON MITTEN: Yeah. That's Mr. Feola's point.

MR. GELL: But the hearing has not started and --

CHAIRPERSON MITTEN: Let's --

MR. GELL: I think the rules do permit it.

CHAIRPERSON MITTEN: Okay. Then I am just going to take the little comment that was whispered in my ear. Mr. Bjorge can make a filing and Mr. Feola would not object to our consideration of that, and no one else. Okay? Because Mr. Feola's point is well taken which is the hearing was scheduled to start tonight and we've designated the University of California as a party. And so we'll allow Mr.

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Bjorge=s filing to come in. Okay?

MR. AGUGLIA: Madam Chair. Are you going to set a time for the briefing of the extension?

CHAIRPERSON MITTEN: I guess 2 weeks before. What=s 2 weeks before the 1st if you could have those in that=d be great. November 17th. Okay. So any briefings 3:00p.m. November 17th. And then we=ll see you all back here at 6:30p.m. on December 1st. Not here, that right that will be good. We=ll be upstairs in our brand new hearing room. Okay.

Thank you all for coming out tonight.

We=re adjourned.

(Whereupon, the above matter was concluded at 7:26 p.m.)

