GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

ZONING COMMISSION

+ + + + +

PUBLIC HEARING

IN THE MATTER OF: TEXT AMENDMENTS TO REQUIRE THE PROVISION OF AFFORDABLE HOUSING - INCLUSIONARY ZONING	Case No. 04-33

Monday,
July 25, 2005

Hearing Room 220 South
441 4th Street, N.W.
Washington, D.C.

The Public Hearing of Case No. 04-33 by the District of Columbia Zoning Commission convened at 6:33 p.m., in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., 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 SCHELLIN	Acting Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER

D.C. OFFICE OF THE ATTORNEY GENERAL:

ALAN BERGSTEIN, ESQ.

This transcript constitutes the minutes from the regular meeting held on June 25, 2005

I N D E X

Preliminary Matters (None)

Panel Presentation:

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

6:33 P.M.

CHAIRPERSON MITTEN: I will now convene our public hearing for tonight and it's nice to see all the faces out there. Welcome.

This is a public hearing of the Zoning Commission of the District of Columbia for Monday, July 25, 2005.

My name is Carol Mitten and joining me this evening are Vice Chairman Anthony Hood and Commissioners Kevin Hildebrand, John Parsons, and Greg Jeffries.

The subject of this evening's hearing is Zoning Commission Case No. 04-33. This proceeding was initiated through the filing of a petition by the Campaign for Mandatory Inclusionary Zoning for text amendments to Title 11 of the District of Columbia municipal regulations, that's the zoning ordinance, to require new housing projects with 10 or more units to set aside a certain percentage of units at prices affordable to households within specified income ranges.

The Commission also advertised a somewhat different concept proposed by the Office of Planning.

I just want to remind everyone the

Commission specifically decided not to advertise a map amendment that would specify the areas where the affordable housing requirement of either proposal would apply. The Commission will take up that question if it adopts some form of mandatory inclusionary zoning.

Public notice will be given if and when such hearings are held. As for tonight, no testimony may be offered concerning the impact of the proposal, including the additional density contemplated in both on any particular project or neighborhood. I'm asking for your cooperation in that.

Given the large number of people who are here to testify, I hope all witnesses will voluntarily adhere to this limitation. So we're talking about the substance of the inclusionary zoning proposal, not where we're going to map it. And I just want to remind you that I will not hesitate to interrupt and strike testimony that goes beyond the scope of this hearing and will, if necessary, disallow further testimony of a noncompliant witness of which we will have none, I'm sure.

Notice of today's hearing was published in the D.C. Register on June 3, 2005 and copies of that hearing announcement are available in the wall bin near the door.

This hearing will be conducted in accordance with the provisions of 11 DCMR Section 3021 and I'll read the normal order of procedure and then I'll talk a little bit about how we're going to change that up to try and hear from as many people as possible tonight.

Normally, we begin with preliminary matters followed by the presentation of the Petitioner, followed by the presentation of the Office of Planning. We'll hear from any other government agencies present. We take reports or statements of those representing their ANCs who are in attendance as opposed from individual Commissioners testifying on their behalf.

Then we will take organizations and persons in support and organizations and persons in opposition.

So the first change we'd like to make to that is we'd like to with the agreement of the Office of Planning have the Office of Planning go later. We're going to have at least one more and possibly two more hearings, actually, it's likely we will have two more and the Office of Planning will go later, so we can hear from more individual people tonight. Is that acceptable to you? Okay.

Then we will take those representing ANCs after the Petitioner. And then what we'd like to do is just take people who have signed up to testify in the order that they've signed up to testify so we'll have a mix of opposition and persons testifying in support, all mixed up as opposed to segregating those. So we'll just take them in the order that you signed up.

And people should continue to sign in, if you didn't call ahead and we will hear from everyone. If you signed up to testify tonight and you know someone who is not here, we'll hear them at a later opportunity. Or if you didn't sign up tonight, but we get through everybody and we'll hear from everybody in due time. It's our intention to make sure no one is excluded.

And since we are anticipating that we will go for a third night, I want to announce that which you probably know we're scheduled to go on Thursday of this week at 6:30 and we have a third session that we're going to schedule for Monday, August 1st which is just a week from tonight at 6:30. So spread the word that if anybody didn't get a chance, they can come on Monday, a week from today and we'll be happy to take anybody's written testimony in addition to that.

So all that being said, we intend to maintain the following time constraints so that we can hear from as many people as possible. Those representing organizations will have five minutes. And if there are multiple people here from organizations, only one of those people will have five minutes. The rest, and any other individuals, will have three minutes.

We intend to adhere to these time limits as strictly as possible in order to hear the case tonight in a reasonable period of time and we reserve the right to change the time limits for presentations, if necessary, and we note that no time shall be ceded. And since we do plan on having three sessions, we're going to go until about 10 o'clock tonight. So depending on when you signed up and look at the sign-in sheet and we encourage everyone to stay in here to hear other folk's testimony, but if it gets late and you'd like to come back another night, please do that.

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

Please be advised that the proceeding is being recorded by the court reporter and is also being web cast live, so we're all on everyone's computer tonight. Accordingly, we ask you to refrain from making any disruptive noises or actions in the hearing room. I'd also remind folks that as this room gets crowded, we have overflow seating in the hallway and there's a monitor and we prefer that people not stand inside the Hearing Room for fire code purposes. So you'd be more comfortable and we do have a few chairs up front, if anyone would like to come up and take those now.

So when you come forward, give your cards to the reporter and then when you present your information to the Commission, we're going to ask you to sit at one of the four chairs at the table in front of us. You need to touch the button on the base and turn the microphone on and then you turn on and speak into the microphone and we'd like everyone when they begin speaking to state their name and home address.

When you're finished speaking, plese turn the microphone off because they tend to pick up background noise.

The decision of the Commission in this case must be based 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.

Ms. Schellin will be available throughout the hearing to answer any procedural questions, so if you have any questions, just direct those to her.

Now I'd like to ask that you all turn off your beepers and cell phones, if you have any one, so as not to disrupt the proceedings, including the members of the Commission who may have their beepers or cell phones on.

Now we'll take up any preliminary matters. Ms. Schellin, are there any preliminary matters before we proceed?

MS. SCHELLIN: Staff has no preliminary matters.

CHAIRPERSON MITTEN: Okay, then we'd like to begin by having the representatives from the Campaign for Mandatory Inclusionary Zoning come forward and make the initial presentation.

We're going to put you on the clock for 45 minutes and I'll ask you to just organize, you're the orchestra leader for this part and we'll hold our questions until you're done, so just continue making your presentation until you're finished.

MS. SPENCER: Good evening, my name is Mary Spencer and I'm a member of DC ACORN. I've lived in D.C. my entire life. ACORN was one of the founding members of the D.C. Campaign for Mandatory Inclusionary Zoning that includes almost 60 housing advocacy groups, labor leaders, social service providers, civic associations and political organizations. They came together to advocate for a mandatory inclusionary zoning policy to be adopted in the District.

On November 17, 2004, following almost three years of research, outreach and discussion, the Campaign submitted a petition for a text amendment to the Zoning Commission that would establish a mandatory inclusionary zoning program. The Mayor set a goal to attract more than 100,000 new residents to the District over the next 10 years. Then our members recognized that there were lots of new developments and saw a gentrification of our neighborhoods. This is when ACORN and other coalition members that are here, that are with us today, decided to do something about the desperate need for more affordable housing, especially for those who make the city run: for the teachers, the firefighters, the public work employees, administrative assistants that aid our day to day activities that we often take for granted.

We began to meet and hold forums in the community and found overwhelming support for affordable housing. People were concerned about their communities' transition. Last winter we collected over 2,000 postcards from all over the Metro area, people from every walk of life that felt that affordable housing should be available in the District.

Those postcards were addressed to the Mayor and presented to the City Administrator, Robert Bobb. Also, early in the process we met with the City Council Chair, Linda Cropp, who has always been supportive and even spearheaded the introduction of a resolution to support mandatory inclusionary zoning in February that was passed unanimously earlier this month.

Families pay too much for housing. Since 1999, housing prices have increased four times faster than income and the price of rental units have shot up three times faster. This community is looking for some relief from the skyrocketing housing boom here in the D.C. area.

As mentioned earlier, the rising cost of the newly developed housing is displacing long-time home owners because of increasing property taxes from development. We are not opposed to new development, but families cannot continue to be priced out of their homes.

D.C. has always been a melting pot for diverse living, but this is changing rapidly. We are looking gentrification that is taking place in D.C. and we are facing a city that will be developing neighborhoods that are exclusive, rather than inclusive, of various ethnic groups. Our long-time residents are being displaced. Many families are finding it difficult to make a choice between buying groceries, paying for medicine or paying their rent. The community is looking for a commitment to affordable housing that will help the District increase its base of taxpayers without displacing existing residents.

Evidence from jurisdictions coast to coast makes it clear that mandatory inclusionary zoning programs produce more affordable housing than voluntary policies. Washington, D.C. should adopt the mandatory policy given the clear benefit that we will be outlining today. Mandatory inclusionary zoning will foster mixed income communities by promoting balance and equitable housing development, ensuring housing for a diverse labor force, increasing opportunities for residents living in high poverty neighborhoods and designing consistent regulatory guidelines for developing affordable housing.

I am raising two grandchildren in fear that they will not be able to live in this area due to the outrageous cost of housing in the future. We must take this opportunity to make a difference in a housing crisis that is upon us in the D.C. area. We need to take care of all D.C. residents and not just those on the high end of the wage earnings.

The District of Columbia needs a policy that will foster mixed income communities and that policy is our proposal for mandatory inclusionary zoning.

Thank you.

MS. DASTUR: Good evening members of the Zoning Commission, my name is Nina Dastur. I'm a resident of Ward I. I live at 2363 Champlain Street, N.W., in Adams Morgan and I'm an Equal Justice Works Scholar at the Center for Community Change.

I'm very pleased to be here tonight to

discuss the Campaign's petition and I'll start by giving you a quick overview of the issues that my fellow panelists and I will address in support of our proposal.

I'll briefly discuss the goals and principles on which our proposal is based, and why the Commission should adopt them as the foundation for an effective inclusionary zoning policy in the District. Then Tad Baldwin will review the methodology that we used to generate the technical aspects of our proposal.

Cheryl Cort will discuss the benefits that more compact growth can create and why transit-oriented development is critical in the context of regional growth. And then Jim Campbell will critique the economic model used by the Office of Planning.

We'll end with Fred Allen who will describe the impact of the affordable housing shortage on low and moderate income workers and explain why this policy is critical to the continued growth and vitality of this city.

As we described more fully in the memorandum included in the supplemental materials we submitted to the Commission, we developed the Campaign's proposal based on three principles: first, to reach the deepest affordability levels possibility, that is to make units available to truly lower and moderate income households. In particular, we wanted to ensure that the program helped to preserve and create stable, mixed income communities by targeting affordable units to households otherwise priced out of the housing market.

Second, we wanted to maximize the number of units that would be produced. Inclusionary zoning is not a silver bullet that will solve the District's affordable housing crisis, but a strong IZ program, as part of a comprehensive housing strategy, can produce a significant amount of affordable housing at little to no public cost.

Third, we wanted to balance the costs associated with the program with some form of compensation. We appreciate the analysis conducted by the Office of Planning that supports the feasibility of providing bonus density as a form of compensation and support the adjustments to other zoning regulations that they have proposed in order to reasonably accommodate extra density in different zones across the city.

We believe that achieving these goals is a key to an effective inclusionary zoning program and just as importantly that in seeking to achieve these goals, an inclusionary zoning program should promote both transparency and consistency.

We urge you to use these principles as a basis for your evaluation of the two mandatory proposals before you today. Toward that end, I want to touch on a few areas where in our view the proposals depart from each other in achieving these goals.

First, our proposal reaches deeper levels of affordability. Half of all units created under our proposal would be accessible to families making less than 50 percent of the area median income, regardless of whether those units are constructed in low rise or high rise developments. The Office of Planning proposal only serves these families in low rise projects.

We also reached deeper affordability by providing a first right to purchase or rent up to 40 percent of the units that are created to nonprofit housing developers or the D.C. Housing Authority. These entities can layer in additional subsidies to make inclusionary housing units even more affordable with the added benefit of maintaining the affordability of the units in perpetuity.

A second significant difference between the two proposals is that the Campaign uses set asides to define as a percentage of the units in the development project while the Office of Planning uses square footage. While this makes it difficult to compare them exactly, our analysis suggests that the proposals could generate roughly the same number of affordable units.

That said, however, the Office of Planning's approach raises a number of related concerns that could ultimately undermine the effectiveness of an inclusionary zoning program, if not properly addressed. For example, it will be the responsibility of the City Council to pass legislation authorizing most of the administrative and enforcement aspects of an inclusionary zoning program.

It is critically important that the Zoning Commission adopt a program that will not be unduly complex or burdensome to implement and it lends itself to being rigorous, robust, transparent to the public and consistent both as it's applied to development projects and with other D.C. programs.

We've only been able to identify one other jurisdiction that bases set asides on a square footage formula, rather than as a percentage of units, so there isn't much learning available as to how such programs are best administered and enforced.

We also note that action that the Council has already taken to establish inclusionary housing requirements on the Anacostia waterfront and legislation that it is now considering to extend inclusionary housing requirements to all publicly-owned land are based on set asides by units, not square footage. It's unnecessary and unwieldy to ask that the Council craft separate administrative schemes to cover these programs.

If the Commission does consider adopting a formula based on square footage, we urge you to take steps to ensure that the program is designed to produce the maximum number of affordable units and that this application is again both transparent and consistent so that they can be monitored and enforced over the term of the affordability control period. This would include establishing minimum and perhaps maximum unit sizes and requiring that affordable units be produced of the same type by bedroom size, and in the same ratios as market rate units in the developments.

It will be necessary to translate the square footage requirements into the number of affordable units to be generated in each development project, to require developers to designate the units in the property that will be made affordable, and to designate the affordable units in public records and covenants recorded with the deeds on the property.

A final area in which our proposals differ significantly, particularly in promoting consistency in the application of requirements and transparency regarding compliance is in whether and when a developer may be permitted to build units off-site or otherwise seek a waiver from part or all of the program requirements. Our proposal contemplates that a developer that would suffer a significant economic hardship if required to comply with the inclusionary zoning program could appeal for an exception with alternative forms of compliance.

In cases where the developer demonstrates that the requirements would deprive him or her of all economically viable use of the property, the requirements could be waived all together.

To make this process faster and easier while ensuring transparency, we would support exempting the BZA's consideration of some waivers from the definition of contested case and permitting it to make a determination without a public hearing.

Conversely, the Office of Planning proposal establishes a range of circumstances giving rise to different levels and standards of review. We are concerned that the complexity and discretion provided for in the Office of Planning proposal could undermine the program overall.

First, the Office of Planning proposal would assign a significant part of the waiver process to individual negotiation between developers and an administrative agency. This case by case review would provide little of the consistency that developers told us would be a key to their success in working under an inclusionary zoning program while remaining competitive in the development market.

Additionally, it would undermine transparency to the public in knowing where inclusionary units were to be built and the basis for granting a developer a variance or waiver from the requirements.

Finally, as a social policy, inclusionary zoning programs are intended to do more than just produce affordable housing. They're also designed to create and preserve diverse, vibrant, mixed income communities which is especially important in a city that is as divided along racial and economic lines and that is facing as overwhelming gentrification pressures as the District.

Toward those ends, it's important that affordable units be constructed on site to the greatest extent possible. Off-site development should be permitted only in exceptional circumstances and permitting developers to decide when to build affordable units on site will undermine this goal and can undermine the confidence of the community of the District's commitment to ensuring the development of mixed income communities.

So now I'll turn to Tad Baldwin, who will explain the technical components of our policy in more detail.

MR. BALDWIN: Good evening, Tad Baldwin. My address is 3507 Morrison Street, N.W., Ward 3. I'm a 45-year resident of the District and a retired developer of affordable housing.

I'll briefly explain the technical methodology upon which the CMIZ proposal is based. My primary role within the Campaign was number work; a secondary role, sharing useful insights from my long working experience with Montgomery County inclusionary zoning program.

First, our analysis had been built upon

construction of soft cost numbers provided to us by the local building community. That analysis shows the developers of low rises will be able to make a profit on even the affordable units they are required to provide. The high rise affordable units are close to break even, with some developers needing to utilize part of their profit on bonus uses to make up for the difference in the cost and allowable sales rental prices of the affordable units.

Secondly, by way of example, you have several sheets behind my testimony that are in green. If you would take a look at those. They provide a simplified example of an affordable two-bedroom garden apartment condo. The first phase provides components of the estimated building costs of such a unit which totals $101,136 excluding land. The second sheet summarizes these costs again and then focuses on unit affordability by income level. A three-person household or 65 percent of the AMI, Area Median Income, spending 30 percent of their income for the sale of housing will end up after taxes, insurance and condo fees with $11,172 for mortgage expenses. I've capitalized that payment stream with rates ranging from 7 to 8 percent and find that at 7.5 percent a mortgage of $133,200 is supportable. This amount exceeds the unit cost noted above by $32,000, allowing profit on even these affordable units in addition to the normal profit on a bonus market rate units.

This difference will also allow an affordability gap to be created if the maximum price charged if an affordable unit is reduced so that families at 5 or 10 percent below the maximum AMI can more easily afford to buy or rent.

Thirdly, one of our primary goals was to serve as low an income population as possible. We subtracted and then added 15 percent to the 65 percent of AMI level calculated above for affordability and recommend that half the affordable units be provided to households of 50 percent of AMI and half at 80. We believe it important to require the same mix for both low and high rise units for the following reasons: first, a sharper pencil in designing smaller affordable units permitted can improve on project economics making 80 percent too high an income target for all high rise units. Fewer affordable and more market rate bonus units are specified. This permits a portion of the normal profits from bonus units to be directed to cover a portion of affordable unit costs if break even on the affordable high rise unit is not achieved.

Thirdly, using only the 80 percent measure for high rise structures, as OP recommends, will exclude those most in need of the more prestigious and higher cost areas of the city, weakening the income integration of such a key advantage of this program.

Housing choice vouchers only work for all unit sizes at 50 percent of the AMI, excluding their use in high rises, if the 80 percent only measure is accepted. Also, the 80 percent unit price level will be too high for the Housing Authority or nonprofits to purchase or lease these units, eliminating the ability to reach income levels even below 50 percent.

Third, a program with one set of basic rules is easier for consumers to understand and government employees to administer.

The fourth major point is we have recommended a 25 percent bonus of units in all cases and set the low rise requirement of affordable units as 15 percent. These same numbers are used widely nationally. Because of the added cost of high rise housing, we've reduced the affordable requirement of 12 percent, thereby reducing the cost of providing these lower cost units and increasing the number of market rate and bonus units. Since substantial rehab is such an active element of the current D.C. housing scene, and those buildings rehabbed generally serve only higher income households, we've recommended a 7.5 percent portion of those units also become part of this program. The OP proposal is silent on substantial rehab.

Fifthly, long controlled periods on both sale and rental housing are essential since the affordable housing crisis will always be with us, 20 years on sale units and 50 years on rental are about mid-range nationally. Montgomery County has lost over 7,000 of its 11,000 affordable units built under a similar program because of short price controls. This winter, they went to 30 years for sale units and 99 for rental. The OP proposal is silent on controlled terms.

The D.C. Housing Authority and qualified nonprofits have the exclusive right to purchase or rent 40 percent of the affordable units produced. Utilized in Montgomery County also, this clause permitted additional outsized subsidies to allow households at even below 50 percent AMI to benefit from the program. This assures that the program will not cream off the top of the affordable housing need and also allows special needs serving nonprofits to provide affordable housing resources in diverse locations.

No less important is the fact that these units generally remain affordable in perpetuity, the expected length of need for affordable housing. The OP is silent on this point.

Thank you for the opportunity to share these thoughts and I turn to Cheryl Cort next.

MS. CORT: Thank you. My name is Cheryl Cort. I'm the Executive Director of the Washington Regional Network for Livable Communities. And I live at 1438 Florida Avenue, N.W., in Ward 1 where I have resided in the District of Columbia for 16 years.

Inclusion zoning is part of a strategy to create smart, equitable growth for the city and the region. Over the next 25 years, the Washington region will generate 1.6 million new jobs, 2 million new residents requiring over 800,000 new homes. Over three decades of decline and population loss -- I'm sorry, after three decades of loss in the District of Columbia, we're growing again. And for the first time in years, D.C., as the core of the region, has an opportunity to capture a share of the region's growth.

This is a good thing for D.C. and for the region. Growth in the core fosters more environmentally-friendly lifestyles as residents drive less than their suburban counterparts. Capturing more growth in the city reduces pressure to convert farm and forest lands into subdivisions and strip malls at the fringe of the region. All this offers reduced air and water pollution and conservation of natural resources. Existing infrastructure can be utilized saving the cost of building and extending and maintaining new public facilities.

As our region grows and the District of Columbia continues to attract new residents, strong demand for housing pushes housing prices up. To address this, we need more housing supply, in general, and we need more housing affordable to moderate and low income families who are running our economy. This is why inclusionary zoning makes so much sense.

Providing more housing opportunities in the city, especially near Metro stations and major transit corridors, offers many benefits to the city and the region. In particular, inclusionary zoning takes advantage of existing infrastructure, especially transit, but also sewer and water, schools, emergency services, libraries and other public services.

Inclusionary zoning strengthens the tax base to ensure that we can pay for and upgrade our infrastructure.

Inclusion zoning strengthens neighborhoods by bringing people back to shop at local stores, walk community streets, ride transit and participate in civic life. More housing opportunities, especially near Metro and job centers, give households better transportation choices so that everyone is not dependent on automobiles to get around and thus reducing overall traffic.

More housing opportunities in walkable transit accessible neighborhoods, enables those who do not have access to a car transportation choices. This is critical because 37 percent of all D.C. households do not own a car. Even lower car ownership rates are found among walkable transit accessible neighborhoods where car ownership, where 50 to 70 percent of households do not own cars. Lower income families also tend to own fewer cars. More housing and walkable transit accessible neighborhoods helps families save on costs of car ownership and offers opportunities to invest in lasting assets such as home ownership.

Some neighbors have questioned if more housing in the city, especially near transit, is the best place to direct growth. Where else in the region is a better place? Where else can families save on car ownership and better use traffic-reducing alternatives of walking, bicycling and riding transit.

Inclusionary zoning supports important smart growth goals that help create compact, mixed use neighborhoods where people can walk, bicycle and ride transit to important destinations. Despite the rising amount of driving that most American families do, one quarter of all trips are less than a mile. Eighteen percent are less than one half mile.

If we can offer more households the opportunity to live in mixed use, walkable neighborhoods, many family members can have the choice to walk, bicycle, ride transit to accomplish most of their daily tasks.

Inclusionary zoning offers increased housing choices where there is high demand. Increased housing opportunities in the city for families at income levels -- of all income levels reduces regional traffic, uses public infrastructure more efficiently and gives all of us a cleaner environment.

MR. CAMPBELL: Good evening. My name is Jim Campbell. My address is 5516 Uppingham Street in Chevy Chase, Maryland. I'm principal of Somerset Development Company which is located at 4115 Wisconsin Avenue, N.W. and is active here in development and in other jurisdictions.

Somerset is a private, for profit developer, specializing in multi-family housing. In particular, we specialize in the preservation of affordable housing and in the development of market rate and mixed income housing in urban in-fill locations.

I bring over 27 years' experience in the development and the financing of multi-family housing and commercial real estate. Prior to starting Somerset, I worked for several years as the Chief Investment Officer of the AFL-CIO Investment Trusts. The trusts are probably the largest investor of pension funds in the new construction of multi-family housing in the country. Annually, we invested over $500 million in new development projects in cities throughout the United States.

I have two key points that I'd like to address this evening. One, inclusionary zoning can work and if properly crafted with certain incentives such as the density bonus proposed, can produce affordable housing without impairing market incentives for development to go forward. This has been demonstrated in a number of cities around the country.

Two, a thorough analysis of the actual

marginal costs of adding units under a density bonus and of the actual appropriate cost of capital or return on capital attributable to those increased costs would demonstrate that the Campaign's proposed affordability requirements are achievable and will not impair market decision to proceed with the project.

Inclusionary zoning can work. I've worked on inclusionary housing developments as a city planner, as a private developer, as a lender and as an institutional investor partner. I've participated in inclusionary zoning projects in Boston and in Cambridge, Massachusetts, in New York City, in San Francisco, in Baltimore and many other locations. In most cases, the inclusion of affordable units in an otherwise market development was the result of a negotiated process, building in appropriate incentives in various zoning approvals or other entitlements to offset loss associated with renting or selling the affordable units at below market. These projects all moved forward, were built and achieved market results. In many locations, those cities have moved to formalize an inclusionary zoning program.

Measuring the financial impact of inclusionary zoning on a project, having gone through several deal by deal analyses of including affordable units in an otherwise market transaction, I've been able to gain strong understanding of the actual financial impacts. There are real soft cost and hard cost impacts, potential land cost impacts, opportunity cost impacts, potential profitability impacts and financeability impacts. Each of these needs to be understood when formulating the appropriate requirement for the number or percentage of affordable units and the level of income targeting.

I wanted to commend the Office of Planning for its very diligent and exceptionally professional work in this regard and for putting forward a very viable inclusionary zoning program.

However, the assumptions regarding the marginal costs and adjusted return on capital used in their model for determining the appropriate level of affordability, I believe are overly cautious and conservative, resulting in overly restrictive requirements for the inclusionary affordability levels.

OP's model does not change construction costs at all. It does not reduce the ratio of soft costs. A sharper pencil would reveal significantly lower real marginal costs of adding the additional 20 percent of buildable area. A developer's total project budget includes literally dozens of line items and the construction budget includes maybe two dozen divisions each of which has a dozen or more subline items. A line by line review shows that the costs of adding the additional 20 percent of space is, in fact, significantly lower than that of the base 100 percent of space.

Costs associated with land acquisition, civil engineering, geotechnical engineering, environmental analysis, environmental remediation, schematic design, most entitlements, roofing, are all barely increased if at all. There are then very real economies of scale in design development, structural engineering, mechanical design, foundations, vertical transportation, utilities, electrical service, general conditions, contractor overhead and many other construction line items. The added space will typically also result in improvements in the building's overall efficiency ratio related to gross square feet to net square feet, meaning that the added space is typically more efficient than the base space. You don't have to have proportionately larger lobbies, business centers, health centers and in many cases, you don't require additional vertical transportation, stairs, elevators, etcetera.

Also, the lower cost of finishes for the affordable housing wasn't included at all in OP's analysis. This can be as much as $30,000 lower per affordable unit in a high end condo project. It is, in fact, a very significant savings that the developer, believe me, takes into account.

Out of caution that one exception to this rule is the rare and unlikely case where the additional square footage would require a change in construction type. That is requiring change from stick built to steel or concrete, from low rise to high rise, but the relief proposed to be granted under this circumstance is appropriate.

In addition, situations might arise where other construction thresholds are crossed, for example, an additional elevator bank is required when an addition of below grade parking is necessary which may offset some of the marginal cost savings. However, these, I believe, we will find to be very rare and the unusual exceptions not the rule. Administrative relief could and should be considered in those circumstances.

There is some increase in the time required to complete the project, but I believe that it's less than may have been used in the Office of

Planning model. In any case, significant portion of that time increase is associated with the initial processing which happens before any significant capital has been expended, so that the actual added capital costs of carry for the project as a whole, are minimal.

Also, it's very important in measuring the financial impacts to consider the costs of capital for the added space and the return on capital to be expected for that capital used for the added space. Cost of capital is related to the return of capital expected by the investing entity which is related to the risk profile of the investment. Obviously, for real estate development there are a number of risk factors that drive the cost of capital, zoning and entitlements risk, in construction risk, in mark risk, along with on-going interest rate risk. It is not necessarily the case that the return required for additional 20 percent inclusionary space has to be the same as the base project. In fact, two of the risk factors have been eliminated or substantially mitigated. There is no additional zoning entitlement risk associated with the 20 percent additions of space, and in particular, the market risk, which is probably the most significant risk factor taken into account for determining cost of capital is dramatically reduced for that square footage because of the substantial share of space being rented or sold below market into tremendous demand.

I'd like to conclude by restating that I believe that the Office of Planning inclusionary zoning proposal is workable. It achieves a certain level of included affordability without hindering market forces. However, I believe Campaign's inclusionary zoning proposal is both equally workable and represents stronger, more effective policy to address the severe affordability and workforce housing crisis that exists in the District today. The Campaign's proposal achieves even more affordability, while not hindering market forces and the proposal more than adequate compensates a developer for including the prescribed levels of affordability.

Thank you very much.

MR. ALLEN: Good evening, members of the Zoning Commission. My name is Fred Allen and I am a Board Member and the Treasurer of the Metropolitan Washington Council of the AFL-CIO which represents more than 150,000 members from almost 175 affiliated local unions in the Greater Washington, D.C. area.

In addition, I currently serve on the

Committee on Political Education Chairperson for the District of Columbia and I am an elected member of the Democratic State Committee representing Ward 5.

I am pleased to appear before you today to speak in support of the Campaign for Inclusionary Zoning proposal, Case No. 04-33.

I would like to open my remarks by thanking this panel and all of the endorsing organizations for their hard work in getting us to this hearing. The Metropolitan Washington Council has joined with dozens of community and religious allies to form a campaign for mandatory inclusionary zoning. We did so because we know that affordable housing is a serious issue affecting our members and working families as a whole. The issue is not going to resolve itself and we must implement measures to ensure that we don't run the working class away from this fine city.

Some 50,000 of our members live in the District of Columbia. They perform jobs and deliver services of every type and description from the most basic to the most sophisticated. Increasingly, as housing prices soar, one of their greatest concerns is whether they can afford to live in this city. Many nonunion working families share that same concern.

It is certainly no secret that D.C. is undergoing a boom of unprecedented proportion in the price of residential housing. The high priced housing has some tangible benefits for the city in the form of increased property tax and transfer tax revenues. But as a result, middle and low income working families are being priced out of the housing market.

Currently a District family must earn $85,000 to afford an average home here and $72,000 to afford an average decent rental. But the medium household income is just over $52,000 per year. The result is that each year many working families have to leave the District in search of affordable housing. For many of them though leaving is not an option, they must remain District residents as a condition of employment. Others, such as union retirees and their families must stay because leaving the city presents other issues such as difficulty in accessing transportation, shopping, health care or employment. So they find themselves in a Catch-22. They don't earn enough to afford decent housing here, but if they leave they lose their jobs or become stranded in suburbia, lacking the accessibility and convenience of this city.

The simple fact is that for working class incomes have not risen in tandem with housing prices in the District. From January 1999 to March 2003, the price of homes for sale here rose four times faster than income in the same period; the price for rentals rose three times faster.

What's more, the supply of affordable housing is dwindling and is being replaced by expensive condos and townhouses. The divide between the haves and the have nots grows greater. Yet, the very people and families that are priced out of the housing market are the very same facts who bring diversity, stability and vitality to the neighborhoods.

Something must be done to reverse this trend because I believe that our nation's capital should be a showcase for strong, diverse communities and neighborhoods. There's no single solution to the affordable housing crisis in the District. When the Metropolitan Washington Council first became involved on this issue, we relied upon think tanks such as Policy Link, a national profit organization for their insight on how other regions were attempting to resolve affordable housing issues. According to Policy Link, hundreds of jurisdictions from coast to coast, including our neighbors in Montgomery County, have used inclusionary zoning to help meet their community's affordable housing needs.

Based upon the national analysis that Policy Link conducted for us, we believe that our proposal, on mandatory inclusionary zoning is in accord with the most effective inclusionary zoning program across the country.

I encourage you to read this informative report which I'm hoping you will receive very shortly, if you have not already received it.

We in the labor movement are confident that mandatory inclusionary zoning will prove to be an important tool in maintaining and improving our city's prosperity and the quality of life for all of its citizens, not just for the privileged few. The Labor Council, and its 150,000 members, urge the Zoning Commission to act quickly in adopting the proposal developed by the campaign for mandatory inclusionary zoning. It is a well-researched, IZ proposal and it will help our city become stronger and more supportive of working families.

Thank you for allowing me to testify here today. The members of our panel would love to answer any questions that you may have for us.

CHAIRPERSON MITTEN: Is that it? That's

great. You guys were very efficient in your presentation.

I just want to begin by congratulating you by bringing us to this day. I know you guys have done an awful lot of hard work and you've done a lot of outreach and you've gotten a lot of input from the community and support from the community, so I know you've been working really hard. So I hope you are satisfied with your efforts because this is an important day. I'm glad I could be here.

Okay, questions from the Commission. Okay, then I'll dive in. I'll go first.

One of the things that I was wondering, and there may be a very good reason for this and I'm just not smart enough to figure out what it is, in terms of limiting the number of or the percentage of inclusionary units that would be offered to the Housing Authority and qualified nonprofits, what's the thinking behind limiting it instead of opening it up for as many as they can afford to buy, given that for the reasons that you suggested which is that they can couple the affordability for the inclusionary zoning program with other things that go deeper and also it would alleviate some administrative burden perhaps on another section of the government, I don't know. So

I'm just wondering why there's that limitation.

MR. BALDWIN: In the first place, there are not enough subsidy dollars to really handle even as much as 40 percent at this point in time. The subsidies that have been used by Housing Authorities and nonprofits come from normally housing trust fund, in the old days, Section 8 task credit program, what not. A lot of these programs are, in fact, shrinking and to date, the District's affordable housing community has made a recommendation that the Housing Trust Fund be used other new and rehabilitated properties, rather than pouring a huge amount of assets into this program.

The program, basically, is not intended to have all the units be at the lowest level and intended to be more a low, moderate workforce housing type program at its core. And that's important for political reasons as well, that the middle class has a lot of support politically, normally in most communities and is sometimes tired of more programs for the very low income, so in some cases it's a wise move to have a program that appeals more to that group.

CHAIRPERSON MITTEN: Okay, it's just that I've been in other hearings recently and there's just so much pressure on -- there's so few dollars to reach down to the very low income folks that I was just wondering if there was --

MR. BALDWIN: Just one further thought, in Montgomery County, the fact is that they've had this total for a number of years now, only about half the units are taken by the Housing Authority and nonprofit. Many of the rental units go by the wayside because there's not a program you can add on top of the rental program aside from the housing choice vouchers to bring in, unless you have a local housing subsidy program for rental which the District does not have at this point, I don't believe.

CHAIRPERSON MITTEN: So in Montgomery County, they offer 40 percent of the units and half of the ones that they make available are taken up by their --

MR. BALDWIN: Right.

CHAIRPERSON MITTEN: Okay, well, that's good to know. In terms of the units that are -- if they're for sale units and they have the affordability restriction on them for some period of time, is there some kind of covenant that runs with the land so that a lender would be aware of the fact that there was a limitation? How does that work?

MS. DASTUR: The idea behind the proposal is that there would be covenants recorded against the deed. It would run for a period of 20 years on for sale units. Any time that the property is sold within that original 20-year period, it would have to be sold to an income qualified buyer and at an income qualified price. And our text amendment sets out the calculation for how you would determine the price. It's basically indexed to the CPI and you add in the value of any capital improvements that the current home owner has made to recapture.

If the unit is sold within the 20-year period, let's say I was the first owner of a for sale unit and I sold it to Jim within that 20-year period, Jim has to be income qualified. He has to be a low or moderate income household, depending on how the unit was originally designated. And I have to sell to him at a controlled price. If Jim tries to sell within 20 years, that starts over, so, you know, if I sell in Year 10, Jim takes it subject to a 20-year control period. If he waits for an entire 20 years, he then gets to sell it to any potential buyer and at a market price.

But under our proposal, we would recapture half of the equity that's in the property that would go into something like the Housing Production Trust Fund. At that point, the unit is no longer restricted in terms of affordability. We're losing it out of the affordable housing stock and the idea behind equity sharing is to be able to provide some sort of subsidy to subsidize another affordable housing unit to try to maintain the affordable housing stock.

CHAIRPERSON MITTEN: Okay, and is there some kind of special -- are there any kind of special mortgage provisions that have to be built into it because there's -- you certainly wouldn't want a lender to foreclose and then I guess they'd be bound -- if a lender forecloses on it and then they want to lease it out or something, how do you ensure that it's owner-occupied?

If you have a for sale unit, the sale price is controlled. The sale price is controlled and the income level for the owner is controlled. But what dictates that that owner occupies the property and doesn't then turn around and rent it for some market rate?

MS. DASTUR: Our proposal requires that it be an owner-occupied property, and in fact, it would be a term of the deed that the owner has to actually occupy the property as his or her primary residence, except potentially in an extraordinary circumstance, such as if someone is in the military and they have to go away, they could apply for an administrative variance potentially to someone. The Mayor would designate to allow them to basically sublet the unit while they're away.

But the idea is that the owner has to occupy the property as a term of the deed. And it would be executable by the District government, example, if the person did not live in the property.

CHAIRPERSON MITTEN: Okay. And then when someone decides that they want to sell within the control period, do they go -- they clearly just don't put an ad in the paper and sell it like a normal unit. Do they go to some -- to the agency that administers this and seek a buyer that way?

MS. DASTUR: It's sort of difficult to talk about this given the bifurcation between the control over the administrative aspects, I think that lies with the City Council and the Council will have to pass legislation authorizing how this program is going to be administered. But that's precisely the scenario that mandates that there be a strong administrative agency, actually centralized administration of this program because it's one thing for developers who are used to selling or leasing units to execute the original sale to an income-qualified buyer and at a controlled price.

It's another thing to be an owner, a single owner and have to market a property to somebody who is income qualified. That's the reason that we sort of suggested a centralized administrative agency that will qualify buyers, maintain a pool of qualified buyers so that if I'm selling my unit, I can go to the agency and say I'm getting ready to sell my unit, it's restricted to somebody at 50 percent of the AMI, tell me who I should sell it to. Or send people to me to look at the property and then someone in that office can help them with the administrative aspects of the closing.

CHAIRPERSON MITTEN: If we do the -- if we take your suggestion of having 50 percent of the designated units go to people that are at the 80 percent level and then 50 percent go to 50, then that tracks to a unit.

MS. DASTUR: That's correct.

CHAIRPERSON MITTEN: It then becomes attached to a particular unit.

MS. DASTUR: That's right. That's why I was stressing in my testimony that even if you consider adopting the Office of Planning's approach which designates affordability based on square footage, at some point we're going to have to translate that square footage into number of units in a development project and which units in the development project are actually going to be controlled as affordable so that there can be appropriate covenants on the deed, so that we can properly monitor and enforce the affordability restriction.

CHAIRPERSON MITTEN: I was wondering if you can tell us from the experience of any other jurisdictions in some of the ways of getting administrative -- whether it's administrative or through the BZA. Already, even with this body, we have had reluctance to get fully engaged in economic analysis because we're not experts in that area and your proposal is at one end of the spectrum which is all economic use of the property would have to be eliminated by meeting the requirement or something --

MS. DASTUR: It's actually less than that. A developer could demonstrate economic hardship and seek a variance from the requirements. That means in the first priority either we'd reduce the on-site requirement or we'd permit them to build off-site or we'd permit them to pay an in lieu fee to the Housing Production Trust Fund.

If the developer demonstrates that compliance with the program would deprive him or her of all economically viable use of the property, then the agent, the agency they would be appealing to would have the authority to waive the provisions all together.

CHAIRPERSON MITTEN: I guess the definition of economic hardship is a tough one and we really haven't seen people submitting a lot of analysis, even when that is an issue that has come up in some variance cases and so on. We haven't seen a lot of analysis, so then is that any degree of economic hardship or is that a significant degree and this is a difficult area for us to address at all. And then to have economic hardship as a general premise is difficult because this is not going to work the same way for everybody. People are going to have differences and some of them Mr. Campbell mentioned which is if you throw them into a different building type or something. But I think there's a certain degree of economic hardship that could be borne, as it is. There's economic hardships created by a variety of zoning provisions. So I guess I'm just looking for some guidance about how that works in other jurisdictions, if you are aware of that.

MR. BALDWIN: Let me just recount some of the recent Montgomery County experience on this. The decisions for this was left up to the Director of the Department of Housing Community Affairs which would be somewhat comparable to Office of Planning here. And this eventually led to some rather major problems because a lot of developers of high rise were coming in and saying they couldn't afford to build the units and as a result she was letting them buy out half the requirement for $20,000 a unit which is significantly less than the value of the affordable units. County Council was quite upset. Executives were upset. They spent a two-year process revising this whole thing about how to make these decisions and basically form the triumpherant of the Director of Housing Community Affairs, and also somebody from the Housing Opportunities Commission and somebody from the Planning Board to try -- to rule on these decisions as to a gradual or complete buyout provisions. Developers have to come in with their full pro formas and prove their case financially. And the county keeps records of development costs and a whole lot of information and become fairly skilled at economic analysis of real estate in order to be able to respond.

CHAIRPERSON MITTEN: Okay.

MS. DASTUR: And I can say just from looking at the basic statutes that are municipal regulations that establish these programs in most jurisdictions, they do use language like significant economic hardship and I think what they realize is that they have to sort of back into defining on something of a case by case basis when someone comes in, exactly how much of a hardship it is, what the specific site requirements are or site limitations are on providing the affordable units or accessing something like bonus density.

But in most cases, what they say is that that should happen in rare circumstances. In other words, it shouldn't be at the developers election to decide that they just can't do it in this project and certify to the administrative agency that they want to build the units off-site or that they'd rather pay a fee. In almost every case, there is some level of administrative review and approval before that happens. I think it just tends to happen -- they tend to sort of define that based on what they see as Tad says, when the developers put the numbers in front of them about how realistic it is for them to comply with the terms of the program.

CHAIRPERSON MITTEN: Anything additional that you could submit for the record that would help us kind of nail this down would be helpful.

A related matter for me is we have these housing linkage provisions right now and basically what they say is under certain circumstances you have to -- it's a little bit loosely worded, but you have to facilitate or support the development of housing offsite for certain kinds of development. And what that has led to because we don't have good wording, good tight wording, is that instead of it being okay, if I was going to spend $100 a square foot to build something here, an affordable unit here and instead for whatever reason I can get a waiver and I am going to build it off-site, I'm not necessarily going to spend that same $100. I'm going to find a nonprofit developer who needs some gap funds and I'm just going to support that and so I'm only out $10 or $20 instead of $100.

How do you or how do other jurisdictions guard against that or is that just a problem unique to the District?

MS. DASTUR: Well, most jurisdictions,

particularly when you're talking about something like a set of formula for how it's going to be calculated and we adopted our proposal from what we've seen in other jurisdictions which is that it's basically the difference between the sale price of an otherwise market rate unit and an affordable unit. And that has to go into something like the Housing Production Trust Fund to build affordable housing.

I'll also note that I think -- I mentioned in my testimony that it's difficult to compare our proposal to the Office of Planning's proposal based on the set aside of units versus square footage, but to the extent we've been able to compare them, they seem to produce roughly the same amount, could produce roughly the same amount of affordable housing.

Because they use one of the sort of approaches that they use is a percentage of the bonus that's actually available, that could be translated into a formula to define what an appropriate on-site requirement would be, if someone, for example, can't take full advantage of a density bonus. You take advantage of whatever portion of the bonus density you could actually get and limit the requirements that way.

But there are definitely ways to be more strict than current law requires in the District about buyouts and I think we've laid out some very strong ones, particularly on the in lieu fees.

CHAIRPERSON MITTEN: I have a few more questions, but Mr. Hood?

VICE CHAIR HOOD: Madam Chair, first of all, let me echo the comments of the chair of getting to this day. I appreciate all the work that everyone has done.

Ms. Dastur, I believe, did I pronounce your name right?

MS. DASTUR: Dastur, but anything.

VICE CHAIR HOOD: I'm sorry. You mentioned about the difference in Campaign's model as opposed to the Office of Planning. Are those in negotiations, well, not negotiations, but the hearing process as started, but are you still having dialogue with Office of Planning, trying to get from the point of departure and kind of bridge the gap? Are you still working with Office of Planning, even though we're in the hearing process?

MS. DASTUR: Well, we have been. I think, I mean what I was trying to highlight in the differences was one, the difference in approach and how that can play out in terms of the administration of the program. And to highlight for you the kinds of issues that will be important for the Zoning Commission to address, if for example, you were going to go with the Office of Planning's approach.

In other words, I think it's certainly incomplete and it would lead us to have some concerns about the complexity and the adminsitrability, especially when we look to the City Council and say they're going to be handling, they're going to be setting up an administrative scheme to deal with the Anacostia Waterfront affordability set-aside. They now have this bill in front of them that would establish inclusionary housing requirements on all publicly owned land that's disposed of in the District.

We want something -- the last thing we need in the District is more administrative complexity and three different programs to govern three different types of inclusionary housing programs.

So I think just to keep in mind when you're comparing the proposal is to think you're not passing this in isolation of other affordable housing programs in the District and the other sort of administrative burdens that will be on whatever agency gets delegated to run this program.

VICE CHAIR HOOD: Thank you. Madam Chair, I'd rather hear from all the people that are here to testify anyway, but when Mr. Allen mentioned about residents having to be faced with housing and keeping their jobs, that's an issue and that really hit home and I'm thinking, because I'm going to make the right decision and I'm going to ask for this early, so I hope my colleagues will agree that we have a comparison. That we have a comparison -- even though we have it here, but it's just all over the place, we have a comparison with what OP is recommending, what the Campaign is recommending, and whoever else.

I want to make sure that I make an informed, intelligent decision because this is very serious and I hope my colleagues will agree with me at that point.

CHAIRPERSON MITTEN: Absolutely.

VICE CHAIR HOOD: Thank you. Thank you, Madam Chair.

CHAIRPERSON MITTEN: Anyone else have questions?

MR. HILDEBRAND: I do, just as a follow up to one of your questions earlier and that's the process of which your experience has been with foreclosures on affordable housing in your analysis and research with other jurisdictions, what is the percentage of foreclosures that occur with this program or these types of programs?

MS. DASTUR: I don't know the answer to that, but we can try to find out and get back to you.

MR. HILDEBRAND: I'm curious as to what the mortgage companies' reaction is. Do they go to the Housing Authority that's running the program to find candidates or are they forced on their own to come up with an appropriate buyer?

MR. BALDWIN: If I could just add one thing on that from the county experience here? The foreclosures have been very few, but one of the provisions they added on very early was that the price controls go off units when they go into foreclosure. It's something a lender has tended to insist on that they wouldn't lend into the program without it. So units were foreclosed on. The lender today will get back his full cost and not be constrained by the maximum selling price and they also can sell the unit for whatever the market would bear, but that's just one jurisdiction's experience.

CHAIRPERSON MITTEN: That seems almost like overcompensating. I mean it's one thing to get back your costs. It's another thing to be able to take advantage of whatever the market housing prices are.

MR. BALDWIN: Yes, I tend to agree.

MR. HILDEBRAND: I guess the other question I had is the concept that you could buy out of your affordable housing requirement at the difference between market rate and the sales price for the affordable housing. It's my understanding that that wouldn't always equate to being able to produce an affordable housing unit somewhere else.

But why isn't the provision more closely attached to the cost of providing another unit elsewhere?

MS. DASTUR: Well, there are legal considerations to that. In lieu fees can be considered an exaction and for exaction, there has to be a nexus between the price that's being exacted of the developer and the basis for the exaction in the first place. I think our analysis has been that what we're trying to do is basically replace the affordable unit and that that cost does cover that differential does cover the cost of the subsidy, so that the nexus is there if the program were to be challenged on that basis.

CHAIRPERSON MITTEN: Anyone else? I have

a few more questions.

In the analysis on the green sheets that we have, and we also have some other analysis that's attached to the pre-hearing submission that you made. So I'm aware of the fact that there's more documentation than we have on the green sheets. But did you say on Table 1 that the bottom line, the 101,136 is excluding the land?

MR. BALDWIN: Excluding the land.

CHAIRPERSON MITTEN: Would you turn on your microphone for me?

MR. BALDWIN: I'm sorry, excluding the land cost. There is no land cost on these affordable units since they're built on price part of the density bonus. Right?

CHAIRPERSON MITTEN: Okay, that's presuming that whatever bonus we create is at least neutral for the developer, right?

MR. BALDWIN: Whatever bonus you create, creates some positive bonus units in addition to those that are affordable.

CHAIRPERSON MITTEN: Well, then it doesn't negatively impact the plan value?

MR. BALDWIN: Right, it doesn't negatively impact, yes.

CHAIRPERSON MITTEN: Okay, okay. Mr. Campbell had mentioned a whole bunch of things that create basically economies of scale and other factors when you build -- when you have the bonus and you're building just a larger development. And then in the paper that you had given us from Policy Link goes on and it's on page 42 in Appendix C and about these different cost offsets that are included as well.

How has that -- how have those potential cost offsets been included in your analysis or have they been included in the analysis that you gave us?

Do you know what I'm asking?

MS. DASTUR: I think the answer to that is that the only cost offset that we actually included in our calculations was the bonus density, was compensation provided through a density bonus. We provide that if it seems that a developer can't comply with the terms of the program, and is seeking a variance, then it would be subject to negotiation to potentially vary parking requirements.

The District government could decide as part of the inclusionary zoning program to expedite processing, which is use of the form of compensation in other jurisdictions or to waive certain fees as they do, for example, in Denver, as the only form of compensation in San Francisco. But we didn't build any of those other costs or forms of compensation into the model that Tad developed.

CHAIRPERSON MITTEN: I appreciate that and maybe I was mixing two things up when I asked it. How have you incorporated the fact that the marginal cost of building additional units is not one for one? How have you incorporated that into the analysis?

MR. BALDWIN: Yes, I haven't really incorporated it very well. I made the costs of the marginal unit equal and so the potential of our cost being higher than they are.

CHAIRPERSON MITTEN: I just want to know how to take the information so the way we can look at it is what you show is that there is a sufficient consideration to the developer through the bonus density alone for the affordable unit and yet, in fact, there probably are other that your analysis, even your analysis is generous, relative to you were critiquing the Office of Planning as being conservative and so on. But there's even something built into your analysis that suggests that the bonus is more than sufficient. Is that a fair statement?

MR. BALDWIN: Yes, I think that's fair to say. In fact, what I am saying is for the low rise units, the developers are going to make a profit on the affordable units, let alone the bonus units. They'll more than break even on the affordable units, based on the low rise setting.

CHAIRPERSON MITTEN: I just have to ask this question, so why would you guys of all people be sort of advocating for that. Why wouldn't you go for deeper affordability or a higher percentage or something like that?

MR. BALDWIN: Well, there's a way to adjust that. You can come off the construction costs more directly than income. One of the reasons we came back to income level hitting 50 or 80, we thought it would be easier to administer and doesn't get you into an annual analysis of what building costs are and then go back and revise the whole program.

The way the county program has worked, it has come off more closely off costs and income level and you can do that. One other point that I think is important in the off-sets and things, we have tried to not be dependent on things that people have talked about including tax breaks for these units. We're trying to restrict the government costs of providing these units. And make it as close to a break even proposition for everybody involved as possible and that's been one of our other, I think, important principles in design.

CHAIRPERSON MITTEN: Did you want to say anything?

MR. CAMPBELL: Yes, I think just to follow up on that, one of the principles of the analysis done for the Campaign, I think, was less focused on the return on capital and the rates of return and internal rate of return as the OP model was. And so the relevance of that marginal cost analysis which I think is very rare and will bear out except in those unusual circumstances where there's some offset threshold, is that, in fact, the Campaign's proposal, is conservative in not having an impact negatively on the rates of return and the cost of capital, but expected to build that additional 20 percent of space?

So the analysis is to the extent that one of the key decisions that the Commission needs to make is what is the appropriate level of targeting for depths of income that's supported and the number of units or percentage of units and that both models need to incorporate that marginal analysis and need to incorporate the risk factor in the cost of capital analysis to get to a true impact on the development community. And it argues that you can't have a greater degree of affordability. You can have a deeper targeting of that affordability as the Campaign is proposing.

MS. DASTUR: Let me just echo a point that Tad made very quickly that's related to this in his testimony which is that we've targeted at an average of 50 percent, these units would be targeted at 50 percent of AMI or 80 percent of AMI and there is a little bit of a cushion there. But that recognizes that we're not -- when the agency that's administering this program qualifies people, you're going to have a window, so people will be qualified, basically, between 45 and 50 percent of the AMI. So even though these numbers are based out or penciled out at 50 percent of AMI, it shows that we'll be able to sort of provide for affordable housing for people a little bit less than that to open up a window. Otherwise, we'd be looking just for people who have incomes at 50 percent of the area median income if it were drawn that finely.

CHAIRPERSON MITTEN: Thank you. Commissioner Jeffries?

MR. JEFFRIES: Mr. Campbell, I'm just sort of fascinated with this whole business of the cost of capital and what it sounds like you've recommended is some sort of blended rate that could be looked upon between the market rate component of the building and the affordable. Is that effectively what you're proposing?

MR. CAMPBELL: In effect. I mean I don't know if proposing is the right word, but in terms of analyzing the impact in the analysis, one of the things that was sought to be held constant was the rate of return in terms of the absolute profit to cost and then the IRR in OP's model for coming up with their analysis.

To the extent that that is the goal to try to hold that constant, I think is unnecessarily restrictive, because the rate of return, in fact, could be slightly less in a blended basis because the risk profile of the 20 percent additional unit is dramatically different than the risk profile of the other.

You're now going into a project where 10 percent of your saleable square footable, you don't need to worry about. It is, in effect, a given that it's marketable, that it sold, and so you're sort of overall risk profile is improved every so slightly. So if the result is a reduction in IRR from 37 percent to 34 percent, as I think one of the examples demonstrated, clearly not going to inhibit the developer from either being able to raise capital, either on the equity side or the debt side, or their own motivation and incentive to go forward.

So I think it's not because it's -- if it's 50 percent of the additional 20 percent, then it's only 10 percent, is it 10 or 8 percent, I'm not sure of the numbers, but -- so it is blended, but it's not a huge impact, but it's a marginal impact and it just argues for being less conservative in setting that affordability guideline.

MR. JEFFRIES: So in general, I mean obviously it's another point of departure from OP as it relates to, you just felt that they were generally pretty conservative as relate to a number of their assumptions. Perhaps the cost of -- because of the component of affordability here, they could have looked at a lower number.

In your estimation, what would that delta be, roughly, I mean in terms of basis points or --

MR. CAMPBELL: Basis points in percentage of affordability?

MR. JEFFRIES: No, no, no, in terms of cost of capital. It doesn't have to be on basis points.

MR. CAMPBELL: It would be totally seat of the pants, I do not feel comfortable --

MR. JEFFRIES: Okay.

MR. CAMPBELL: But it's clear that it is a less, a lower threshold for what the cost of capital would be or the rate of return that the developer would expect, given that reduction. I think the larger issue is the issue of the marginal cost of actually producing those affordable units and the bonus units, both market and affordable and that that is a larger impact; secondary, the cost of capital; third, perhaps the carry of the capital for slightly less period of time, but the big one is really that, not taking into account the marginal cost of production.

MR. JEFFRIES: And another point in your testimony, you talked about the lower cost of finishes for the affordable units could be up to $30,000, so I mean what are we talking about in terms of finishes, in terms of differences between affordable units and market rate? I mean what would account for the $30,000?

MR. CAMPBELL: Just using -- that's the high end. That's a differential between the Ritz Carleton condos in Georgetown in which probably have bamboo hardwood floors, bamboo rails and treads on their stairs, 46-inch custom cabinetry with marble tops. It's just the floors alone is probably a $10 square foot differential versus a good moderate size carpeting and bamboo might be as much as a $14 square foot, so you'd be able to -- 1500 square foot luxury condominium, that alone is a very significant -- that's half of your $30,000 right there.

So it's that kind of -- if the baseline for the affordable unit is sort of a builder's standard in terms of flooring, carpeting, formica laminate tops, vinyl flooring, tile flooring, that kind of differential, some minimum threshold for the affordability, but you could easily spend $10,000, $15,000, $20,000, $30,000 above that for interior finishes to sell a $600, $700, $800 square foot condominium.

MR. JEFFRIES: Okay, thank you.

CHAIRPERSON MITTEN: Anyone else before we move on.

I hope you guys will stay with us through all the testimony, because at the end, we'll probably bring you back up to address some of the things. I don't mean at the end tonight, I mean at the end.

Thank you all.

Let me just recap because we've been having people floating in and out. Very shortly, we're going to start into our witness list. I have a couple of -- I'm going to ask for government witnesses and I'll ask for anyone representing their ANC.

I just want to remind people that we're having another hearing on this subject on Thursday of this week at 6:30 and if you don't get to testify tonight, you don't have to have signed up to testify on a specific night. You'll be given the opportunity then, and we're also going to have a third night which is a week from tonight on Monday, August 1st, same time, 6:30. We're going to go about 10 tonight and we clearly aren't going to get through everyone's testimony, so I just wanted to remind folks of that, but we're very happy that you're here and listening to the testimony that's been given so far. So thank you.

Let me ask if there's anyone -- Office of Planning has agreed to defer their testimony so that we can hear from folks that are here tonight, but is there anyone representing a government agency that would like to testify before I ask for ANC?

(Pause.)

While we have this moment, I would just remind people when they come forward to testify, give your witness cards to the reporter before you testify so that he can track who's up.

(Pause.)

Okay, go ahead.

MR. SHEDLOCK: Good evening. My name is Jason Shedlock. I'll be submitting testimony for Council Member Adrian Fenty this evening who apologizes that he can't make it, but wanted to make sure that he got on the record on this very important issue and I'll be reading verbatim his statement.

Good evening. My name is Adrian Fenty, District of Columbia Council Member representing Ward 4. I appreciate the opportunity to testify at this District of Columbia Zoning Commission public hearing on inclusionary zoning.

I'm pleased to be here to voice my unwavering support for mandatory inclusionary zoning in the District of Columbia. As the robust housing market in the District of Columbia continues to forge ahead, we must understand that increased housing costs are pricing low and moderate income residents out of their homes and out of the city. Throughout the country, and including neighboring Montgomery County, jurisdictions have been utilizing this concept of inclusionary zoning as an important tool to help them meet their affordable housing needs and build sustainable, mixed income communities.

It is time for the District of Columbia government to work to ensure that the District is a city that will not turn its back on our low and moderate income neighbors. In order for our city to truly flourish, we must facilitate development and foster the existence of our diverse neighborhoods. We must ensure that the District of Columbia remains a viable place for those of all income levels to live, work and play.

As the co-chairman of the D.C. Council's Task Force on Affordable Housing during the last council period, and as the lead proponent of reserving a significant portion of the Housing Production Trust Fund for low and very low income residents, I believe that we must support the adoption of a mandatory inclusionary zoning policy that requires new and rehabilitated residential developments to include housing units affordable to low and moderate income residents.

Thank you for this opportunity to testify on this important and far-reaching issue and I look forward to continuing to work to ensure that our low and moderate income residents of the District can continue to afford to call Washington, D.C. their home.

Thank you very much.

CHAIRPERSON MITTEN: Thank you. All right, on the witness list I have maybe one person who is designated to speak for their ANC which would be Charles Reed, who is the chair of ANC-2F. Is Mr. Reed here?

Are you speaking on behalf of the ANC?

MR. REED: Yes.

CHAIRPERSON MITTEN: Okay. Is there anyone else who has been authorized to speak on behalf of their ANC?

What's your name? Mindy Moretti, okay.

(Pause.)

Mr. Reed, you go ahead and we'll get everyone else settled down while you deliver your testimony. I need you to turn on your microphone, introduce yourself and tell us where you live. There you go, perfect.

MR. REED: Good evening, Ms. Mitten and members of the Commission. I testify in support of the Campaign for Inclusionary Zoning's proposal number 04-33.

My name is Charles Reed. And my address

is 1310 Q Street, N.W. I have lived there for 30 years. I appear tonight in my own right and as chairman of Advisory Neighborhood Commission 2F which represents the Logan Circle area of Ward 2.

I have a graduate education in chemical engineering and in law. I was a law clerk to Justice Tom Clark at the United States Supreme Court. I practiced law in the District for nearly 40 years, including in the area of land use.

I've also been a developer of both large scale and small projects. I have, for example, developed both residential subdivisions and commercial projects, principally in Charles, Prince George and St. Mary's Counties. I have owned section 8 projects in the District, notably at Bates Street and I have also owned multi-family low income properties.

In view of my background, I believe I have some familiarity with the issues on tonight's discussion. I am an advocate for inclusionary zoning by virtue of my life experiences. In a sense, this is anomalous. I was born and grew up in Texas during the '30s, '40s and '50s. Texas was a heavily segregated state, both racially, as well as economically. And while I viewed myself as unprejudiced, it was nevertheless somewhat of a culture shock to arrive in the District during the most troubled times in the mid and late 1960s. Moving to Logan Circle within a few years of the 1968 riots, I found myself in the middle of the most affected area of those riots.

In the process of restoring a home, raising a family and integrating into a part of the city I have grown to love, the impelling need for low and moderate income housing became quite evident. I will leave for others a discussion of the technical and economic details of why this is so important and how we are to go about it to provide low and moderate income housing in the District. For me, the reasons are self-obvious and more personal. I have lived in a diverse neighborhood and it has enriched my life as well as that of the four children we have raised here. With all of us working together, we have reclaimed the blighted area, reduced its crime, restored its grand buildings and created a community of vibrancy and character.

The Logan Circle area has historically been a diverse area from its inception in the 1870s. The bulk of the community wants it to stay so. We have seen its benefits. As president of the Logan Circle Community Association in the late 1970s, I and others in the community supported the DCRLA project in an innovative Section 8 program that greatly facilitated this goal.

The RLA sold city-owned decrepit properties in our area at below market prices and financing rates. These were sold mainly to upper, middle class professional couples who could demonstrate that they had the credit worthiness and managerial capability to restore the homes. The properties were typically these stunningly attractive, though very much decrepit, Victorian properties that abound in the area. The catch was that the purchasers had to agree to live in the homes for five years and this is the most important part, they had to build one or more units in the property for low income use and maintain them during that time. The program brought low income dwellers in day to day contact with upwardly mobile middle class owners of the properties. Tragically, the program was killed, I assume by the high interest rate regime of the early 1980s, but while it worked, it worked well.

I recall one instance of a welfare mother who moved into one of the units with a child. She ultimately finished school, got a Ph.D. and as far as I know has been off the welfare rolls ever since. The program brought a quality of life to the neighborhood that transcends the pragmatic technical points that I have heard discussed here tonight.

Logan Circle has lost those low and moderate income residents from the dozen or so properties that were involved in the RLA program and we are losing more each day. The restoration of the are has brought many welcomed changes. Ours has become one of the most sought after residential areas in the city, but demand has driven up prices and without a mechanism to incentivize, protect and preserve affordable housing in the area, we will lose the character and perhaps the soul of the place where I live.

My view is not isolated. As I mentioned at the outset, I'm also here as the chairman of ANC-2F. My ANC has unanimously endorsed the CMIZ proposal with respect to rental housing and with but a single dissenting vote, endorses the provisions as it relates to for sale properties. I urge you to adopt the CMIZ proposal.

Thank you very much.

CHAIRPERSON MITTEN: Thank you, Mr. Reed, and if you'd just hold your seat until we finish the panel and then we'll see if the Commission has any questions. And I just want to remind people that we typically don't time ANC -- people who are testifying on behalf of an ANC, so when your time is up, I will be on you, to keep things moving. So that's why I didn't stop Mr. Reed.

Ms. Moretti, why don't we have you go next?

MS. MORETTI: Good evening, my name is Mindy Moretti. And I'm an Advisory Neighborhood Commissioner in Adams Morgan, ANC-1C. Washington, D.C. derives much of its strength from the city from its diversity and its many thriving mixed income neighborhoods. Adams Morgan has long been one of the most diverse neighborhoods in Washington. However, that diversity is being threatened on a daily basis as more and more single family homes and smaller multi-unit buildings are being replaced by hulking projects offering luxury lofts and condos starting in the affordable low $400s as an example.

While the prices offered on the new luxury lofts and condos may be affordable for some, they are hardly affordable to the families that have made Adams Morgan the vibrant, diverse community it is today. As developers and real estate agents capitalize on the neighborhood's diversity as a selling point for their luxury units, the very folks who bring diversity to

Adams Morgan, be it ethnic, racial or economic, are being driven from the neighborhood by ever-increasing rents and the skyrocketing real estate prices that put most of the property out of reach for low to moderate income families.

ANC-1C has taken a strong stand on a variety of housing issues including a resolution to support a request in 2004 for a revision of the Reed Cook overlay to change low and moderate income to very low and low income as the price level for affordable units. To date, we have heard nothing from the Zoning Commission regarding this request.

In February 2005, by a vote of 8 to 0, ANC-1C voted to support the inclusionary zoning proposal submitted to the Zoning Commission by the Campaign for Mandatory Inclusionary Zoning. We believe that mandatory inclusionary zoning is a critical tool for achieving the goals of producing affordable housing, discouraging displacement, creating opportunities for home ownership and maintaining and creating mixed income communities.

Without quick adoption of a text amendment submitted in Case 04-33 by the Campaign for Mandatory Inclusion Zoning, Adams Morgan, and in fact, all the District of Columbia is threatened by the very real possibility of becoming a city divided between the very rich and the very poor with no room in the middle.

CHAIRPERSON MITTEN: Thank you. Mr. Bjorge.

MR. BJORGE: Hello, good evening, members of the Commission. My name is Mark Bjorge. I represent ANC-2B. I'm the Commissioner for a Single Member District 2B05.

Our ANC has considered over a course of four meetings the mandatory inclusionary zoning proposal. We did not rush into our decision. We really did want to give it a fair and due consideration. After such consideration and consistent with our oath to the city as a whole, we passed the following resolution which I would now like to read to you. It's fairly brief.

At its regular meeting on June 8, 2005, the Dupont Circle Advisory Neighborhood Commission considered Zoning Commission Case No. 04-33, a mandatory inclusionary zoning proposal. With eight of nine Commissioners in attendance, a quorum as duly been noticed. And the Commission approved the following motion by unanimous vote 8 to 0. ANC-2B urges the Zoning Commission's expeditious review and approval of the mandatory inclusionary zoning as embodied in the principle outlined in Case 04-33, an amendment submitted to the D.C. Campaign for Mandatory Inclusionary Zoning on November 17, 2004.

ANC-2B further believes mandatory inclusionary zoning should include appropriate protections for historic districts. The Commission believes that such policies can produce thousands of units of affordable housing in the years ahead for moderate and low-income households whose members wish to both work and live in the District of Columbia and that mandatory inclusionary zoning will contribute significantly to the creation of vibrant, diverse neighborhoods throughout the District.

I'm speaking on behalf of our chair, Darin Bowie. He's included his contact information. I've passed copies of our resolution to your staff for review.

Thank you.

CHAIRPERSON MITTEN: Thank you. Ms. Moretti, I have to ask you to send again your resolution changing the provisions in the Reed Cook overlay because when we get correspondence that comes -- it's usually presented to us with our monthly meeting agenda and I do not recall and I don't know if any other Commissioners recall having that correspondence come to us and we would be more than happy to take it up.

MS. MORETTI: Okay, it was November, I believe, when we -- it may have been October when we passed the resolution, so I will make sure that you get another copy.

CHAIRPERSON MITTEN: We'll be looking for it this time.

Ms. Steingasser?

MS. STEINGASSER: Madam Chair, we do have a copy. It was actually filed as a case and it's in our status report and we discussed it with the Commission shortly after it was filed that we would keep it because of the economic analysis that this case would yield throughout that AMI without understanding its impact.

CHAIRPERSON MITTEN: Okay.

MS. STEINGASSER: It has been there. The Commission is aware of it.

CHAIRPERSON MITTEN: Great. Good. All is well again.

Does anyone have any questions for the panel? Okay, thank you all and thanks for bringing this up in your ANCs.

Okay, now we're going to start plowing through our list of witnesses.

I'm just going to call people up in the order that I have you down and I believe this is the order that people had called. So we'll have a mixture of proponents and opponents sitting happily together at the table.

Audrey Ray, David Bowers, Jenefer Ellingston, Christopher Dyer. We're going to do panels of four. So Ms. Ray is going to get five minutes and maybe you'll tell us what group you're representing and Ms. Ellingston is going to get five minutes representing the Statehood Green Party and the other folks get three.

Ms. Ray, you're up.

MS. RAY: Good evening, Zoning Commission. My name is Audrey Marie Ray and I live in Ward 5 which is the Ivy City neighborhood. My address is 1830 Providence Street, N.E. and I am here in support of the Campaign for Mandatory Inclusionary Zoning Proposal Case No. 04-33.

I'm sorry, let me backtrack a little bit. I'm here to represent the Historic Ivy City Cremell School Cooperative, as well as I'm a member of the Affordable Housing Alliance as well as I'm a member of

Empower D.C. and I'm also here to represent Trinity Baptist Church.

CHAIRPERSON MITTEN: You have quite a collection of hats.

MS. RAY: There is an affordable housing crisis in D.C., especially for low income and moderate income people which can be eased with an adoption of a mandatory inclusionary zoning policy. The D.C. Housing Authority and qualified nonprofits should have the first right to purchase or rent up to 40 percent of inclusionary units. This component is essential for two reasons. Number one, it enables the inclusionary zoning program to reach even deeper affordability, potentially serving individuals and families at 30 percent AMI by increasing the stock of units that are affordable and accessible by voucher holders.

Number two, it is one of the only mechanisms to provide permanent affordability. Without this safeguard, D.C. will not be building up a stock of affordable housing and when the price control period ends, housing will again become unaffordable. Mandatory inclusionary zoning addresses the cost of affordable housing as well as its location, so it helps to create vibrant, mixed income, multi-racial communities that provide opportunities for community residents.

Affordability control periods and equity sharing are necessary to achieve the CMIZ goals of building a stock of affordable housing, encouraging neighborhood stabilization and promoting racial and economic diversity.

Owner-occupied affordable units are to remain affordable for 20 years and rental affordable units for 50 years. Owner-occupied housing sold after 20 years will provide the seller with half the appreciated value of the home. The other half of the proceeds from the sale will flow to the Housing Production Trust Fund to support the production of affordable housing. It is essential that the affordable housing be constructed on site. The major reasons to favor on-site are: we want to create or maintain mixed income communities.

On-site development is the only way to get affordable housing into neighborhoods that are high cost or largely built out and the most valuable resource in housing development is land and affordable housing developers are having difficulty finding property to develop in today's market.

A contribution to the Trust Fund alone

does not solve this problem, especially as land values escalate. Mandatory inclusionary zoning works. Success stories from across the country demonstrates that inclusionary zoning increases the availability of affordable housing. The benefits of inclusionary zoning could provide some important benefits to the District such as producing affordable housing for lower and moderate income workers, supporting the creation or preservation of mixed income communities, leveraging the expertise and capacity of the private market to develop affordable housing.

In conclusion, I would like to thank the Zoning Commission for the opportunity to testify and that the Zoning Commission will remember my words when deciding voting yeah or nay for this much needed proposal.

Thank you.

CHAIRPERSON MITTEN: Thank you, Ms. Ray. And I just ask everybody to hold their seats and we'll ask questions of the panel at the end.

Mr. Bowers?

MR. BOWERS: Good afternoon, Madam Chair, members of the Zoning Commission. My name is David Bowers and I'm a District resident at 1350 D Street, N.E. I currently serve as a Director of the

Enterprise Foundation's Washington, D.C. office. I'm a former member of the Board of Real Property Assessments and Appeals and a current candidate for the Democratic nomination of City Council-at-Large. I am here to testify today simply as a concerned citizen.

I urge the Zoning Commission to adopt a proposal that adheres as closely as possible to the principles of the Campaign for Mandatory Inclusionary Zoning. First, adopt a proposal that maximizes the number of units that will be produced. Second, adopt a proposal that reaches the deepest levels of affordability possible. And finally, embrace the policy that balances any costs associated with the program of some form of compensation in order to mitigate any impact on developers and land owners.

Madam Chair, we must all admit that we have a housing crisis in our city. Increasingly, hard working families are being priced out of the market, thousands of units of affordable housing have been lost to condominium conversion and other market forces in recent years, with thousands of other affordable units in danger of being lost in the coming years.

As a person who works daily to direct the efforts of an organization committed to preserving and expanding the supply of affordable housing, I am acutely aware that there is no silver bullet solution to the affordable housing crisis we face in our city. That said, I am confident that one necessary component of the response to the crisis is a strong and well thought out mandatory inclusionary zoning policy.

I applaud the Zoning Commission for making a decision to consider only mandatory inclusionary zoning proposals. The key now is to make sure we have a balanced policy that works in the market and one that will produce the maximum number of units serving those most in need to the greatest extent possible.

Specifically, I strongly encourage the Zoning Commission to consider whether the Campaign set-aside ratios and income targeting and the length of price controls. We live in a market where the reality is that many of our working families can't afford the average home for sale or apartment for rent on the market. Nurses, police, teachers, fire fighters, hotel workers and many entry level white collar employees make insufficient income to buy or rent in our city. Even if the market were to cool off, the reality is that market prices will continue to outpace incomes for the foreseeable future.

The Commission needs to ensure that the maximum number of units are provided for at income levels that will help those most in need. We should learn the lessons from our neighbors in Montgomery County that affordable units gained can easily be lost when price controls expire. Many units that could have been produced in recent years were not produced because of the lack of a mandatory inclusionary zoning policy.

The lack of action that led to this reality is a sad one that we cannot only lament, but also learn from today. Let us not lose this opportunity to secure as many units as we can for as long as we can, now that the opportunity presents itself.

In addition, I encourage the Commission to ensure that the requirement for on-site affordable units is a strong one with clear provisions on what constitutes an unreasonable hardship for developers. That said, I also encourage the Commission to establish a reasonable system for developers to request waivers. There is no desire on my part to run developers out of town or out of business. Developers play a critical role in providing the housing that residents need. The Commission, advocates and developers should work to develop a system that allows developers to make appeals that will be considered by clearly defined guidelines in an expeditious manner.

CHAIRPERSON MITTEN: Thank you.

MR. BOWERS: Thank you.

CHAIRPERSON MITTEN: I know you were right at the end. So thank you.

Ms. Ellingston?

MS. ELLINGSTON: My name is Jenefer Ellingston. I'm a member of the Affordable Housing Alliance and I speak on behalf of 5,000 registered Statehood Greens.

My remarks are repetitious. I know that. But sometimes repetition in politics is very necessary.

CHAIRPERSON MITTEN: We're not a political body.

MS. ELLINGSTON: I know, I know.

(Laughter.)

MS. ELLINGSTON: Well, behind the scenes. And I understand that I'm not addressing the City Council, but the pure Zoning Commission. So we have to understand that.

D.C. has an affordable housing crisis. Crises are characterized by being sudden, unexpected and short term. This crisis not sudden, unexpected or short term. We've been in the crisis mode for four or five years, probably longer, but a serious crisis mode. We saw it coming. We recognize the tsunami of gentrification and at this very late date, we are taking small steps to stop the harm done to less than wealthy residents.

Our city government blindly embraces economic development, fueled by market forces. They regard displaced lives in its wake as collateral damage. They ignored the social obligation to secure a level playing field for all its citizens. Instead, our government gave its allegiance to trickle down economics. There was no trickle down.

Property prices and property taxes went up, but incomes did not. Until this year, the city government stood by, wrung its hands, but mostly ignored the disastrous reality. Naturally, they cheered the added revenue that came with the raised housing and property prices, never mind their obligation to spend the added revenue for public prosperity and public needs.

Consequently, citizen coalitions such those who are here this evening, formed to fight for affordable housing and elected officials came on board. With the election of 2004, new council members joined the defenders of the public interest and together we have made measurable advances in the housing sphere. Of course, that does nothing for the thousands who have been forced to sell or leave their homes.

This year, finally, enforcement and strengthening of laws already on the books has slowed the tied of displacement and reaffirmed that middle and low-income residents can afford to live here.

And that brings us to the issue on the table this evening, mandatory inclusionary zoning. It is one of the tools designed to enable middle income citizens to live in D.C. -- and lower incomes. City Council has declared its support for MIZ and of course, the Campaign for MIZ has offered in detail to the Zoning Commission all the explanations and arguments that show its validity.

Many of those arguments will be presented in testimony today and have been. I'm not myself aware of the arguments that oppose the Campaign for MIZ, but I'm sure you all hear them in proper time. The housing crisis is nationwide. D.C. is not breaking new ground. God forbid, the D.C. Council should ever be in the forefront of breaking new ground.

(Laughter.)

We are in the wake of many other cities who installed MIZ years ago. Now it falls to our Zoning Commission to vote in favor of opening the housing market to middle and lower income residents.

Thank you. Oh, and I live in the Sixth Ward.

CHAIRPERSON MITTEN: Thank you. Mr. Dyer?

MR. DYER: Thank you. My name is Christopher Dyer and I'm pleased to testify in favor of this Case No. 04-33. I live at 1420 N Street, N.W., in Ward 2. I am an ANC Commissioner in 2F, although I'm not the designated spokesperson, so I enter this testimony under my own name, but I wanted to sat that. It's important.

I'm testifying in favor of this case, in part as an ANC Commissioner, because I keep hearing that it's important to have affordable housing and this seems to be the only thing I've seen so far that makes sense. I know the devils are in the detail, but the attraction of this is that to me, it rewards developers to add housing stock to this city. The benefits of affordable housing are numerous. It's one of the keys, I think, to help lift people up and to level the economic playing field. A diverse housing stock is critical to the long-term sustainability of the city and inclusionary zoning in my opinion is a good step to starting this process.

As an ANC Commissioner in Logan Circle, I have witnessed a tremendous renaissance in the last five years. I actually bought in Logan Circle in 1999. I was very fortunate. I chose to live in Logan because I enjoy walking to work. If I were to try to buy this property today, I wouldn't be able to afford it because of the increase in housing. I'm not alone. I have a lot of younger constituents and a lot of friends who would make incredibly good long-term investors in the city, but they simply cannot afford to live in downtown and work in downtown. So I think that mandatory inclusionary zoning will help attract that kind -- will attract people like me and people like others to come into the city.

Finally, I grew up in Washington, D.C. In 1975, we moved into Mount Pleasant which is one of the most diverse neighborhoods in the city and it's because of my experiences living in an economically diverse neighborhood that I think really helped me become the person I am today. And I'd love to see that opportunity offered to people all across this great city.

So as I said, for me, inclusionary zoning seems to be a simple thing. It works. It's easy and I strongly encourage you to support it.

CHAIRPERSON MITTEN: Thank you. Any questions for the panel from the Commission? Any questions?

Okay, thank you all.

Next up will be Michelle Victoria. Michelle Victoria, Janet Brown, John MacElwayne.

UNIDENTIFIED AUDIENCE MEMBER: John MacElwayne will submit written testimony. He's not able to be here this evening.

CHAIRPERSON MITTEN: Okay. Marta Beresin, B-E-R-E-S-I-N.

UNIDENTIFIED AUDIENCE MEMBER: She'll be here shortly. She's probably still putting children to bed.

CHAIRPERSON MITTEN: Okay. Carol Casperson. Carol Casperson, Habitat for Humanity. Craig Pascal.

UNIDENTIFIED AUDIENCE MEMBER: He'll be submitted written testimony also.

CHAIRPERSON MITTEN: Okay. Babak Movahedi. Okay, I think that gives us four.

Okay, Ms. Brown.

MS. BROWN: Good evening. I'm Janet Brown. I live at 1746 Q Street, N.W. and have been a resident of the District for the last 48 years.

I'm here this evening speaking for the Affordable Housing Alliance which is made up of more than 35 organizations interested in preserving affordable housing and increasing the stock. And we always emphasize that we most interested in working on the low end of the income scale where the greatest need is.

The Alliance has been a very strong contributor to the work of the Campaign for Mandatory Inclusionary Zoning from the beginning and we consider this our proposal, as well.

I want to discuss the differences between the DCOP proposal, as I understand them. We haven't had it for very long. And our own proposal.

Number one, the DCOP inclusionary zoning alternative runs counter to our efforts to lower the income eligibility of renters and purchasers of property, especially in high rise buildings. Eighty percent AMI is the allowance that they would offer and I'm not sure in waterfront properties whether there would be any affordable units at all.

The problem here is that there's just a huge difference between the real median income of District residents and the area median income which is what these percentages apply to. The fact is that almost half of all D.C. residents have incomes below 50 percent of the regional AMI. So when we talk about 50 percent, we're not talking about really, really low income residents in the District. We're talking about half the population.

And in setting the eligibility at 80 percent rules about almost three quarters of the population of the city. Now this is not, in our opinion, inclusionary. You'll mix up 25 to 30 percent of the highest income people in this city, that's not giving you a mixed income community.

Using the 80 percent figure ends the hope that we'll ever have any more really affordable units in the more expensive parts of the city. It means that we'll never have -- that the working class, the working people in this city will never have a chance to live where there's a glimpse of the Anacostia River, despite the amount of public infrastructure and expenditure that's going to go into the preparation of those sites.

Eighty percent does not even meet the

requirements of DCPO's own vision of an inclusive city, the title for the comprehensive plan.

Secondly, under the guise of flexibility, the DCOP would allow several complicated and tricky exemptions, permitting developers to build 50 percent or more in some cases, of units off-site. Mixed income neighborhoods cannot be realized by building 10 units somewhere else in the ward. DCOP would give developers extremely lucrative bonuses for these high rise buildings in return for building a few units at 80 percent of AMI.

What's more, the exemptions will encourage, we believe, ongoing negotiations over each development. There will be arguments over the suitability of off-site locations, over the comparability of units, over the relative costs of sites. Six or seven developers with whom we vetted this proposal before we submitted the amendment in November, told us that if we had IZ in the city, it had to be -- the rules had to be clear and that the playing field had to be equal and the rules had to apply to everybody because that was the only way that it would work and it would be fair and that they could not afford to spend a lot of time negotiating every single project with the city administration.

The advice from other jurisdictions also is that we should, in fact, take their experience into account. And Tom Perez, the chair of the Montgomery County Council at the forum in Washington here last month, said that we shouldn't do as they did, but we should do instead, make no exceptions.

DCOP in this respect, leaves too much discretion in the administration's hands and you will hear from people in the room this evening that have not a great deal of faith in allowing that amount of discretion and indeed, it has taken the administration four years to come up with their promise of inclusionary zoning.

CHAIRPERSON MITTEN: I need you to wrap up.

MS. BROWN: Which was made in April 2001. We call the DCOP proposal IZ Lite, half the calories, half the effect, half the units.

Thank you.

CHAIRPERSON MITTEN: Good closing line. I'm glad I didn't step on it too badly.

(Laughter.)

CHAIRPERSON MITTEN: No comment on OP, it was just a good line.

(Laughter.)

Ms. Beresin.

MS. BERESIN: Thank you, good evening, Commissioners. My name is Marta Beresin and I live in the Glover Park neighborhood of Ward 3 with my husband and two children. I'm here to speak as a D.C. resident in favor of the mandatory inclusionary zoning text amendment that was submitted by the Campaign for Inclusionary Zoning in November.

We, my husband and I bought our rowhouse in 1998 for $315,000 and it's now worth more than twice that amount which makes me feel extremely lucky that we bought it when we did, because today we would not be able to live in Glover Park.

We moved to Ward 3 because of its good elementary schools, safe neighborhoods, easy access to park lands, playgrounds, restaurants and supermarkets. The amendment proposed by the Campaign will help ensure that Stoddard Elementary school teachers, Georgetown Hospital nurses and public interest lawyers like myself are able to live in Ward 3 and in all parts of the city. And I want the guy who fixes my roof and my dear nanny who cares for my two children to have access to good schools and safe communities just like I do.

Frankly, I'm here tonight because I think that good schools and safe communities should not be a luxury of just the very wealthy in the District. But right now, the fact is that unless you bought a home or an apartment a long time ago or you're a lawyer or a doctor, you can't afford to live, own or rent in most of Ward 3. And I can't imagine my neighborhood with no artists or college professors, elementary school teachers, police officers or fire fighters. I don't know about you, but I don't want to live in a community of professionals. I live in D.C. because I love the diversity that city life offers and from speaking with many of my neighbors, they feel the same way.

I also stand before you as a part-time lawyer for homeless families. When I'm not caring for my two small children, I work for a nonprofit called the Washington Legal Clinic for the Homeless. This work has made me keenly aware of the need for inclusionary zoning as one of the policy tools that the District can use to develop affordable housing. You may be surprised to hear this, but many of my clients work at full or part-time jobs in the District, but can't find rental housing in the District that they can afford. The fair market rent for a two-bedroom in D.C. is $1,187 per month. Most of my clients earn the minimum wage and would have to work 152 hours a week or 21 hours a day to afford a two-bedroom unit. Mandatory inclusionary zoning is an important tool the District can add to its tool kit to increase affordable housing and created mixed income neighborhoods and it's a tool that costs the District very little financially because it leverages the expertise and capacity of the private market to develop affordable housing.

While it wouldn't resolve the housing problems of very low wage workers like my clients, the amendment proposed by the Campaign will contribute more substantially to the city's stock of affording housing than the alternative. It would do so by creating housing for folks earning between $40,000 and $70,000 a year, creating more moderately priced housing throughout the city, decreases the competition that my clients face in finding lower income units. This, in turn, creates more housing for the poorest of the poor and enables some of them to escape homelessness.

The bottom line is that while D.C. is largely an economically segregated city, most of us live here because we cherish diversity and believe in opportunity for all, but every day we're losing what little diversity we've got left because as the real estate market goes up and up, more folks are being priced out.

If you value --

CHAIRPERSON MITTEN: We'll have to make that be your final word. We have your written testimony for the last few sentences.

MS. BERESIN: Thank you.

CHAIRPERSON MITTEN: Thank you. Ms. Casperson.

MS. CASPERSON: Good evening. My name is Carol Casperson. I'm the Executive Director of D.C. Habitat for Humanity which is the nation's capital affiliate of Habitat for Humanity International.

I'm speaking in favor of mandatory inclusionary zoning. I live and for the last 26 years, I've lived at 1423 and a half 22nd Street, S.E., yes, there was urban renewal back then.

D.C. Habitat builds homes with low income residents of the nation's capital and sells them at no profit, no interest on a 25-year mortgage. And I just wanted to say when I was listening to the other testimony that we wouldn't have any trouble finding a new owner for anybody that wanted to sell their unit in an inclusionary unit. We have over 8,000 people on our list who are wanting to buy a D.C. Habitat for Humanity home and I don't think that you could blame them when a three-bedroom monthly principal payment is about $330. And then we escrow their taxes and insurance each month so that they can be paid at the end of the year.

For most families that buy Habitat homes, this is much less than they were paying to rent an apartment, even to rent a Housing Authority Unit. And according to the Joint Center for Housing Studies of Harvard University, nearly one in three American households spends more than 30 percent of their income on housing and more than one in eight spends upwards of 50 percent. Incomes have not kept pace with the cost of housing in the District, and as you've heard before, have increased four times faster than income.

In 2002, D.C. Habitat received several lots in Northeast D.C. at a discounted price from the Collins Family for $5,000 each. Similar lots in the neighborhood were selling at that time for $20,000 each, so this was a great donation from the Collins family.

More recently, we tried to buy some of the same type buildable lots in the same neighborhood and the asking price was $50,000. This is happening in

Ward 7, where there was only one application for a building permit the year before we started our 53-home community in 2003.

Right now, you can go down 56 Place Northeast and see eight houses under construction between Blaine and Clay. We used to be the only people, the nonprofits used to be the only people building in Ward 7 and 8. This is just a small indication of what is happening all over this city. Every neighborhood is a hot neighborhood, a hot property. If something isn't done soon, there will be no land or vacant homes left to rehab for affordable homes.

I urge the Zoning Commission to use mandatory inclusionary zoning to meet affordable housing needs and help build vibrant, mixed income communities in the nation's capital.

Thank you.

CHAIRPERSON MITTEN: Thank you. Mr. Movahedi.

MR. MOVAHEDI: Good evening, Madam Chair an members of the Board. My name is Babak Movahedi and I am a Commissioner for Single Member District 2B07, and I would like to thank you for the opportunity to speak to you tonight as a representative of our Dupont Circle community.

This June, our ANC unanimously voted to support the D.C. Campaign for Inclusionary Zoning -- a proposal that will bring much needed affordable housing to a city experiencing rapidly rising property costs.

Inclusionary zoning is not a unique solution. It has been used by hundreds of cities and counties across the country for almost 30 years to encourage developers to build mixed income housing and foster diversity. We believe mandatory inclusionary zoning will have the same success here in the District of Columbia. By promoting mixed income communities we are helping to create neighborhoods where residents live, shop and work within walking distance. In doing so, we keep more cars off our streets and reduce the demand on our public transportation.

As a real estate professional, I have seen first-hand the exponential growth and development of the housing market in the District. Neighborhoods are being renovated, property values are up, neighborhoods have been rebuilt, and an increasing number of high-income individuals are moving into Washington. Our city has benefitted from this trend. Our streets are cleaner, more employers are locating here, and the city coffers are filled with new tax revenue.

However, left behind and often displaced by this trend are our middle and low-income workers. Our workers are being displaced by skyrocketing rents and real estate prices. These workers are our teachers, firemen and police. They are the clerk at the local grocery, the single mothers, and the young professionals. I believe mandatory inclusionary zoning will make more housing available to Washington's working families.

In closing, I have three requests, one that was suggested by ANC 2B and two that were not brought before the ANC at the time of its meeting. One, that properties in historic districts remain protected. Two, that the Commission keep the income requirements at the level suggested by the Campaign for Inclusionary Zoning. And three, I strongly believe that the offsite development should be restricted. The purpose of inclusionary zoning is to promote neighborhood diversity. By not absolutely restricting offsite developments, the benefits of inclusionary zoning will be lost.

Thank you for your time.

CHAIRPERSON MITTEN: Thank you. Any questions for this panel from the Commission? Thank you all for coming down and taking the time to prepare some testimony for us.

Stephen Wade, George Rothman, Leslie Steen, Rosemarie Flynn. Is Leslie Steen here? Okay. Naomi Mitchell. Naomi Mitchell? Charles Barber.

You can be the pioneer in the opponents are. So please, have a seat.

Mr. Wade? Let's have you go first.

MR. WADE: Good evening. Thank you for this opportunity to testify, Commissioners. My name is Stephen Wade. I'm Program Associate for the Washington Regional Network for Liveable Communities and I've been closely associated with the Campaign for Mandatory Inclusion Zoning. But tonight, I'm testifying on behalf of myself as a resident of D.C.

I live at 1701 Park Road, N.W. in Mount Pleasant in Ward 1.

I live in one of D.C.'s great neighborhoods. The neighborhood is racially and economically diverse, the streets are safe because they are vibrant and alive with people walking, biking and riding buses. The stores are local, eclectic and successful because of this same vibrancy.

Unless this diversity and intensity of activity is maintained, diversity of race, income, interests, background, language, music, Mount Pleasant will no longer have the characteristics that make it the safe and special community that it is.

I see the Campaign's proposal as an essential policy that will help my neighborhood and many others like rapidly changing Columbia Heights retain their uniqueness while growing and changing during this unprecedented development boom.

The Campaign's proposal reaches lower income families. The people who work in my apartment building and community should be able to live in the neighborhood. Also, the Campaign's proposal requires that the affordable housing be built on-site. It is important to me that people of various income levels live next to each other, not just down the street. This relationship and exchange represents and important principle for the District.

Since my neighborhood has a number of older residential buildings, I want rehabilitated buildings to be included in this policy and so that a reasonable number of them can be offered for moderate and low-income households. I want more people living in my neighborhood, more people walking on my street. Most importantly, I want everyone to have the choice and opportunity to live in my neighborhood.

Please endorse the Campaign's policy to help make this happen. Thank you for your time.

CHAIRPERSON MITTEN: Thank you, Mr. Wade.

Mr. Rothman?

MR. ROTHMAN: Good evening, Commission Members. I'm George Rothman, president and CEO of Manna, Inc., a 23-year-old nonprofit developer and builder of affordable home ownership housing throughout D.C.

I'm here today on behalf of our staff and aspiring lower income home buyers to strongly support the proposed mandatory inclusionary zoning text amendment, put forth by the Campaign, with certain provisions and changes.

The changes we propose are limited to for sale affordable housing and are based on many years of experience as practitioners. They're also based on the express desires and needs of our many aspiring first time lower and moderate income buyers. The changes we propose are based on fairness and workability.

Home ownership has always been a primary way lower income people have had to overcome poverty. It's not to permit a quick windfall, nor is it to provide substantial equity as a gift. Ideally, beginning with settlement, the affordable buyer should have the same opportunity to enjoy the financial remarks of home ownership as others.

Now I'd like to access the specific topics.

Eligible incomes and percent set aside that must be devoted to that population. Based on costs and market forces for home ownership, it's unrealistic to require a 50 percent set aside for those with incomes up to 50 percent of AMI. And remember, this testimony is being presented by an organization which strives to serve incomes as low as possible on the affordability spectrum.

We believe the program will be more successful and feasible with the more relaxed standard. Fifty percent set aside at 80 percent of AMI with the remainder negotiable, depending on the project and the current status of the economy.

In today's market, a 50 percent set aside for 50 percent AMI could be too stringent, I regret to say. Condo fees make a big difference in the ability of low income persons to qualify for mortgages. Lower prices and low interest rates won't provide the requisite help if condo fees are high. Therefore, to make IZ units affordable, we suggest that condominium projects subject to IZ regulations be required to calculate condo fees by the PAR value method, rather than the square footage method. And furthermore, that the PAR value method bear substantial relationship to the proposed selling prices in the public offering statement.

Furthermore, initial condo fees on affordable units should be adjusted in the future to coincide with the expiration of the of the control period.

Pricing methodology. It's unrealistic to limit sales such that monthly payments cannot exceed 30 percent of gross income. This provision shows a lack of understanding about affordable home ownership and the mortgage loan process. There should be no limitation on percentage of income devoted to housing costs for home ownership. That should be determined by the seller and lender. In high cost cities such as Washington, it could be and often is necessary to pay over 40 percent of gross income for housing costs and IZ should not limit that. It could hurt those who want and need affordable housing and are willing to pay for it and have good credit. A 40 to 42 percent guideline is more realistic and workable.

Control period. In short, we propose a

recapture of public subsidies, both direct and indirect through personal covenants and a reasonable limit of 5 to 15 years on any type of sharing of capital gains. In projects where there is a government subsidy, that subsidy should be recaptured and revolved back into the Housing Production Trust Fund or similar vehicle so that benefits can continue into the future for affordable housing.

And home ownership as opposed to rental, this is more preferable than excessive control periods which just discourage buyers and discriminate against the low income folk home ownership is supposed to be benefit.

A provision called renewability where a new owner has to sell to a second owner in the same income category ignores the reality of enforcement. While theoretically DHCD or the Housing Authority could administer this, in reality, say 10 years after the initial closing, there's a high probability that virtually no one will remember the project financing or want to get involved with the program they know nothing about. This is a reality that we often encounter as people come and go in D.C. government agencies.

Relief from requirements. Manna's

position today, as it has been consistently for years, is to maximize the production of affordable units and preservation of existing units. That means not requiring developers of buildings in the downtown core of the city to build affordable units on site. The owners and developers of downtown real estate should, by right, be able to opt for in lieu of fees to the Trust Fund or off-site development in neighborhoods all over the city. It means being able to build an all affordable project.

We do believe in and support the principle requiring trade offs to occur in certain near downtown neighborhoods like Shaw and Columbia Heights. However, it's possible that there may be no sites available and then developers should be able to go to other neighborhoods in the city to fulfill their requirements for affordable homes.

Eligibility requirements for persons seeking housing made available through the program. The public person option is a wonderful idealistic notion, but is out of touch with reality. In general, government agencies don't have the nimbleness to administer or manager a scattered site program and nonprofits then have the resources or the property management ability to undertake the risk.

Thank you.

CHAIRPERSON MITTEN: I'm impressed that you got that just down to the bell.

I know we're going to have questions for you, Mr. Rothman.

Ms. Flynn. Would you turn on your microphone for me?

MS. FLYNN: Good evening. My name is Rosemarie Flynn. I live in Bethesda, Maryland, but I'm speaking for the Gray Panthers of Metropolitan Washington which has been active for more than 30 years, chiefly in the District in very many housing and other economic and social advocacy sessions.

The Zoning Commission hearing Case No. 04-33, as we all know, is on the Campaign for Mandatory Inclusionary Zoning. We are pleased to testify in favor of this. The approval of this amendment will provide a means for the District of Columbia to increase so-called workforce housing in new and rehabilitated buildings in all parts of the District, since half of the set aside units would be affordable to households earning 50 percent of the area median income and half at 80 percent of AMI.

Since an important part of the proposal is to provide integrated and diverse communities, it is not appropriate to limit the set aside units in highrise buildings only for those at 80 percent AMI. The opportunity for the D.C. Housing Authority and qualified nonprofit groups to purchase or rent half the set aside units or 40 percent, I guess it is. so that housing choice voucher users can also benefit from IZ is another important part of this proposal.

The proposed text amendment has been carefully worked out after consideration of best practices found in other communities which have IZ requirements. Compensation to developers and alternatives have been discussed with developers in the area and a strong attempt has been made to ensure fair treatment for developers. The exact percentage of set aside units is varied according to type and height of developments and it had been decided that a unit set aside requirement would be more practical and more easily monitored and enforced than a square footage requirement.

IZ has been criticized because it does not solve all housing problems. There is no single solution to a situation which has been years in the formation, but it is one piece in an array of programs. We urge the Zoning Board to move forward on this proposal so that it can join rent control, set aside requirements in buildings developed on public land and use of housing production trust fund money in increasing and maintaining affordable housing so badly needed in the District of Columbia. We do not want to lose long time residents of D.C. and we want those who teach in the schools, provide for public safety, or provide any services to the other residents of D.C. to be able to move back to the District.

CHAIRPERSON MITTEN: Thank you. Mr. Barber.

MR. BARBER: Good evening. My name is Charles Barber. I'm co-chair of the Legislative and Governmental Affairs Committee of D.C. Building Industry Association.

Some of you may know me as senior counsel at George Washington University. I'm not here tonight representing G.W., although G.W. is a member of DCBIA. It has relatively modest views on this subject and what views G.W. has will be submitted through the Consortium of Universities through a separate document.

Tonight, I'm representing DCBIA. DCBIA comprises some 400 firms related to real estate in the District of Columbia, developers, architects, engineers, attorneys. All of them are directly involved in the housing development in the city.

DCBIA strongly supports affordable housing. Let me emphasize that. Many of our members, both nonprofit and for profit groups are directly engaged in the production of affordable housing and have produced thousands of affordable homes in the District of Columbia over many years and we are interested in programs that advocate and promote affordable housing.

DCBIA and a number of its members have cooperated with D.C. Chair Linda Cropp during the past several weeks and participated in numerous discussions initiated by her and coordinated by the Office of Planning. Our members were generous with their time and shared significant amounts of information about their business, their livelihood, their production of housing, with all parties in the discussion, including several representatives of the Campaign for Inclusionary Zoning for the District of Columbia.

Notwithstanding these discussions, DCBIA has substantial concerns about the means selected for increasing affordable housing in the District of Columbia, i.e., the mandatory inclusionary zoning proposal before the Commission today including the recommendations of the Office of Planning.

Now during this hearing there are others who will follow me who are -- including several residential developers, who will address specific concerns about the MIZ proposals. The following is a more general view of DCBIA as a whole.

My first broad point is that the Commission should exercise extreme caution in adopting any type of mandatory inclusionary zoning policy. Mandatory inclusionary zoning has been adopted in less than 5 percent of the local jurisdictions around the country, state and local jurisdictions.

CHAIRPERSON MITTEN: Can I just ask you since you seem to be going directly through your pages and you're going to run out of time.

MR. BARBER: Do you want me to highlight?

CHAIRPERSON MITTEN: Yes.

MR. BARBER: All right, first of all, let me point to the attachment which explores the experience of other jurisdictions. Basically, we have found that the gains they have made in affordable housing are modest at best and they're far more difficult to achieve in urban environments.

Mandatory inclusionary zoning implies a blanket mandate which leads to regulatory regime which is costly, complex and uncertain an outcome. The basic premise is that the cost and the risk is placed on the housing developer. And in theory, the additional density to compensate to developer, but as a practical matter, striking the balance among all the inter-related variables the developer faces can ultimately act as a disincentive to the development of housing, not only affordable housing, but market rate housing as well.

This difficulty of one size fits all approach is what led DCBIA to opt for more flexible approach, an incentive-based approach. And if we're really serious about affordable housing and we've taken a look at this, there really should be a more community-oriented approach that has a broad base funding mechanism to provide for more affordable housing.

A greater range of incentives, as well as a streamline of existing programs. The program you have today, unfortunately, is too limited in scope and will involve substantial cost and complexity, far outweighing the meager results it's likely to achieve.

If a mandatory program is adopted and that's the second part of presentation, I will hit the highlights. They're in my testimony and there are others who will speak to these issues as well.

But if a mandatory program is adopted, there is a variety of moving parts and they're all interrelated, but let me hit some of the problems that have been put on the table. Application to substantial rehabilitation, we do not believe that any mandatory program should include substantial rehabilitation where the results can only be counterproductive to the preservation of older properties.

The amount of affordable housing. Seventy-five percent of the bonus density or 10 percent of the matter of right density for lower density buildings, we think it cuts it too close. It's a problem of one size fits all because they may work in some substances, but not in others. DCBIA recommends a program that considers ratios less likely are to threaten the current revival of residential development in the District.

The length of affordability. You've heard various terms, length of time, how long an affordable unit should remain under price controls. For sale units, DCBIA recommends that there be incentives for affordable housing to feel and act like owners. I'll conclude with this point. This can be accomplished, for example, by a 10-year affordability requirement with a gradual increase over time of the percent of equity, in percent of the equity that the affordable owner could retrain.

CHAIRPERSON MITTEN: And we'll have to read the rest of what you have submitted.

MR. BARBER: Yes.

CHAIRPERSON MITTEN: Questions for this panel? I had a question for Mr. Rothman.

You mentioned and then I don't think you specifically addressed that there should be a distinction between rental and for sale housing and I'm wondering are you suggesting that we need to mandate what someone is going to build or are you saying we need to treat the property --

MR. ROTHMAN: I'm saying for regulatory standpoint or from specifications or from provisions, whatever you want to call it. Rental should be treated differently from for sale and we're here speaking about home ownership. Rental, as far as we're considering, can be 100 years of affordability, but we favor a situation where low income people are encouraged to and can accumulate equity in their houses, so they can trade up later, so they can borrow money through second trusts or home equity loans, send their kids to college. So that's how we differ from the proposal on the table.

CHAIRPERSON MITTEN: Okay. And I guess I don't know how the mission of your organization might differ in some ways from some of the others, but one of the goals, as I understand it of this and other programs is to preserve the affordability where it is, so that not allow someone to basically have the unit and benefit from it and then possibly move -- to actually capture that equity, move away and then the affordability -- the idea is to have people that are at lower income levels remain in the community, not give them an incentive to move.

MR. ROTHMAN: I'm not talking about giving them an incentive to move. We're talking about treating them fairly and making, doing something that's workable. Suppose a person buys a unit as a single and gets married and then wants to have a family? What do you suggest they do? They won't be able to trade up because they will not have built up any equity, so what are they to do?

CHAIRPERSON MITTEN: These are challenging points.

MR. BARBER: Could I add to that point?

CHAIRPERSON MITTEN: Sure, why not?

MR. BARBER: It's similar to the point we were making, particularly for a sale unit, you want people to act and feel like owners and so to give them more of an incentive, a share in the upside. Now you can talk about certainly they shouldn't capture all of the upside. There should be some kind of sliding scale, but it has to do with the attitude of the people there that they have a vested interest here and they're not just here for a period of time and they're not going to remain stuck where they are in terms of their economic status.

MR. ROTHMAN: I would like to go back to something I said before and that's to recapture the public subsidy, whether it's direct or indirect. That could be 80 to 100,000 per unit in the form of a covenant, so that you can get big chunks of money coming back to the city for affordable housing in the future, if it's done right.

CHAIRPERSON MITTEN: I guess one of the underlying premises of this is that the market continues to go up which may, in fact, not be true. I mean I hope that it slows down a little bit at some point, but I'm just concerned about the loss of the affordability where it is, where we intend it to be to integrate it into the communities, and then just providing -- I don't know if we had a different standard, are we providing an incentive for more -- I think there should be a balance between rental housing that's being provided through this program and for sale housing and then if there were sort of early shorter provisions would we be providing an incentive for people to build more for sale housing. This is not something that Mr. Rothman would be against, certainly. Right?

MR. ROTHMAN: If you're recapturing the subsidy, I mean the subsidy, that's the difference between the market rate and the effective price being charged to the buyer. That's a huge amount of money to come back into affordable housing. It's not an incentive for them to buy. It's an incentive for them to stay, really. In other words, they're on a level playing field with the market rate buyer, the affordable buyers -- I mean under the way we would like to see it, be on a level playing field at closing.

CHAIRPERSON MITTEN: But recapturing the -- taking the subsidy back and plowing it back into more affordable housing, the biggest problem that we have right now is the supply of land to build on and that's not going to change. So just recapturing it means that there's going to be fewer opportunities to integrate affordability into neighborhoods where land is scarce now.

MR. ROTHMAN: Well, that's true, but you know, we think about people too and what they deserve and how they view their future and would like to accomplish, otherwise, you're creating a permanently depressed lower income class in the city. How are they going to get out of that? How are they --

CHAIRPERSON MITTEN: I'm not unsympathetic to your position. I'm just trying to explore it.

MR. ROTHMAN: Sure.

CHAIRPERSON MITTEN: Commissioner Jeffries?

MR. JEFFRIES: Yes, thank you. Mr. Rothman, I appreciate your comments and that's sort of what I got from what you were saying that effectively, you really want to give people some of the benefits of home ownership and wealth creation, and let them move on and become market rate individuals. You don't want to keep this class of subsidized individuals just for the sake of having a diverse neighborhood.

My question is have you thought about -- we talk about supply and we talk about limited land, but there are -- and I'd like for you to comment on it. There are possibilities for increased supply of housing in the District in a number of large-scale developments.

Do you see the possibility that it's possible that in some of these other areas where there's land that we could look to -- maybe look at some off-site, more off-site development such that some of the units that would be affordable could eventually become market rate and we can sort of stagger it into some of the other locations, like Reservation 13, McMillan Reservoir, those places?

MR. ROTHMAN: Yes, we would like to see that. We would also like to see provisions made whereby nonprofits could -- as opposed to getting a certain percentage of the affordable units in a disposition project, get a piece of land on which to develop their own projects, because we could bring them in, I think, a lot cheaper than the large-scale developers.

MR. JEFFRIES: Also, did you have -- how extensive were your conversations with the Campaign for Mandatory? Did you speak, did you spend a lot of time?

MR. ROTHMAN: We were involved early on, but we sort of butted heads on a few particular issues.

MR. JEFFRIES: Okay, and then my last question for Mr. Barber. In terms of this whole notion that that there was not -- you didn't find in other municipalities that there was a lot of increase in affordable housing were these all mandatory inclusionary zoning programs or were they just incentive-based? What was the breakdown?

MR. BARBER: There were a variety. There were a number of mandatory ones. And you kind of have to go beyond what they say on the face. For example, in Boston, it's set up as I suppose discretionary because it's tied to requested zoning relief, and so it looks like a PUD, but then you need a zoning relief for almost everything, so it acted more like a mandatory. So there were a number of mandatory programs, but notably there are a number who opted for more incentive-based, I think, New York City, in particular.

MR. JEFFRIES: Okay --

MR. BARBER: I'm sorry, in trying to answer your question, in terms of the modest gains, I think it was true for the mandatory program as well, particularly if they're in a more urban environment. In the earlier days of Montgomery County, when there was more -- land was available, you saw greater increases in affordable housing. That became more of a challenge as the area became more built up.

MR. JEFFRIES: Okay, and so some of these municipalities in terms of -- they didn't have the height restrictions and things of that sort. Are we looking apples to applies as it relates to the District?

MR. BARBER: The District carries that problem of an urban dense environment even a step further because it is a very constricted area because of some of the things you named: historic preservation, height restrictions. It's tough to get the extra density. For example, I think it's in Cambridge, Cambridge allows a 30 percent density and strikes the balance that way. The District probably couldn't do that. There's just not that much density. Twenty percent is going to be a challenge in many areas.

MR. JEFFRIES: So we have to look very carefully in sort of making, sort of comparisons between the District of Columbia and other municipalities as we take, as we look at this whole --

MR. BARBER: Very much so.

MR. JEFFRIES: Thank you.

CHAIRPERSON MITTEN: For Mr. Barber, you

mentioned a couple of different times about how costly, complex and uncertain an outcome mandatory inclusionary zoning measures are. When you say it's costly, it's costly to whom?

MR. BARBER: I hear there needs to be a strong administrative enforcement. And depending upon how it works, we have some suggestions to make it less costly, but the extent in which you have to have another government entity or a significant increase in authority on the government to administer this program, particularly if they're going to come and take some of the housing units, the government is going to spend a fair amount of money. The government and the taxpayer will spend a fair amount of money.

Again, how much affordable housing units you get from this type of program will be relatively modest. There is a tension between maximizing affordable housing in a manner in which like Manna is talking about in which you can do in other areas of the city and the notion of economic diversity. A laudable notion, but you lose a number of affordable housing units when you try to build them in a single market rate housing unit downtown. You just don't get the same number of units. And so the cost per unit will be higher in terms of the administrative burden overall.

CHAIRPERSON MITTEN: I appreciate that, but I think, the message that I've been given in a number of different ways, both -- well, from the Council is I was recently testifying about another matter, but I posed the question to the chair about the fact that there is going to have to be the Council is going to have to fund this effort. And her response was I'm prepared to do whatever it takes. The city knows that we're in crisis and it's clear, but I think the City Council is willing to step up and put forward whatever they need to do to accomplish this.

I guess I'd be more interested if you thought that the incentives that were the bonus density and so on is inadequate.

MR. BARBER: That's right.

CHAIRPERSON MITTEN: And that's a greater concern, I would say. We want to hear that from the development community.

MR. BARBER: I appreciate that and I really should address that and there will be certainly other developers behind me who will address it in great detail.

But yes, we think the way both the

Campaign and the Office of Planning have cut the bonus density on how much additional affordable housing is to be required, can injure developers. Can some developers make these numbers work? Yes.

The market as a whole, the question will be significant, what kind of impact it will have. Now and as the market inevitably changes. We think 75 percent of the bonus density for lower -- for smaller buildings and then a one for one, a 50 percent ratio for larger buildings is cutting it close. There are many people, developers in our group who have taken a look at these same numbers and say we need -- perhaps we can do a third of the bonus density without doing injury to the production of housing, so that 2 to 1, however you phrase the figure, but a third of the bonus will go towards affordable and the rest, of course, goes towards marketing.

I would urge you to listen to those people who do this for a living, who have taken a hard look at these numbers and have come out in a very different position from Office of Planning on this 75 percent or 50 percent ratio. Of course, it is tied to the level of AMI. If you go up the AMI scale, you can be a little bit more generous on the amount of affordable housing. Conversely, the tighter the AMI, the harder it's going to be to hit those affordable housing goals.

CHAIRPERSON MITTEN: I hear you and I'm also glad you included in your testimony if it's going to be adopted, then what because that's probably a good way to look at what's going to happen.

MR. BARBER: I thought it might be.

CHAIRPERSON MITTEN: But one of the things, the tension that we have to deal with is on the one hand, we've heard over and over again in this and other cases that they want a predictable mechanism and consistently applied and all that and on the other hand, you're advocating for -- you're advocating a one size fits all approach doesn't work.

So we're trying to strike a balance so that at least you know what's expected. And this idea, if you think mandatory programs don't result in much, try a voluntary program. I mean that's not going to cut it. So --

MR. BARBER: Well, that's not on the table. Our sense of a voluntary program has adequate incentives that goes beyond the bonus density. I think that can get you there. But that's not on the table, so I won't waste a lot of your time with that.

But if you're going to go through a

mandatory system, then I think it sounds like doctors. You have to first do no harm. You want to increase the affordable housing, you certainly do. But you don't want to hurt the housing development industry because housing developers do have choices. I mean there are hot markets outside the District of Columbia and you don't want to do injury to the market.

At the same time, we recognize that affordable housing is a significant need and so we do want to join the effort to find that proper balance.

CHAIRPERSON MITTEN: Okay, does anyone else have questions for this panel?

Mr. Hildebrand?

MR. HILDEBRAND: I guess one thing that I've been grappling with is the idea of long-term maintenance on affordable housing. I know one of the things that's in the OP proposal is in R-4, looking at individual townhouses as for saleable, affordable housing units.

And as anyone knows, there's a shelf life to certain aspects of a home. You have to paint it so often. You have to replace the roof in 15 years. What is your experience with the building association as far as the maintenance aspect of affordable housing? Have you looked at that all?

MR. BARBER: I'd have to defer, quite frankly, to some of the people who have more hands on experience with that.

Let me address it in this way in terms of my knowledge. It comes out in condominium fees which is the idea of collecting to preserve the common areas. That's going to be a problem in an affordable housing regime. Do you charge the same condominium fees for the affordable unit? There are some legal problems about charging different fees. In that narrow area, there is a concern. But I will also defer to some of the specific developers who have more of the hands-on experience about the long-term maintenance needs of affordable housing.

MR. HILDEBRAND: I'd be interested to hear more about that and the impact on low-income home owners of what the significance to maintenance fees could be.

CHAIRPERSON MITTEN: Okay, anyone else? Okay, thank you very much.

Sir, in the back room, I'm going to ask you to lower that sign for us. When you're turn comes to testify, you can show us that sign. I've been told that we've been joined by Council Member Mendelson and we typically extend the courtesy to have you testify.

Oh, there you are.

MR. MENDELSON: Thank you and good evening. I'm Phil Mendelson, an at-large member of the Council. I am here to express my support for mandatory inclusionary zoning. Mandatory inclusionary zoning is an essential tool that will enable an increase in the supply of affordable housing for residents in the District of Columbia.

I come to this issue with several perspectives. First, as a long-time resident of McLean Gardens, I experienced first hand the success and failure of inclusionary housing with the development of a PUD at that location, along Wisconsin Avenue in the 1980s. As part of the developer's effort to win community support for the development of over 500 housing units, the developer promised that in return for discounted HFA financing, it would set aside 20 percent of the units for low-income residents. I was both an active resident at and ANC Commissioner for the McLean Gardens area at the time. The inclusion of 20 percent low-income housing created not a ripple of concern or opposition in the community. Low-income residents live side by side with market-rate residents.

As a result, the community received a dose of mixed incomes, a supply of housing was made available to low-income residents. And there were none of the ills associated with low-income housing when its location is concentrated in one location such as with the traditional public housing project.

On the other hand, the requirement for inclusionary housing at McLean Gardens was tied to the financing. About 10 years after construction, ownership changed to a government pension entity that did not need the benefits of HFA financing. After re-financing, the inclusionary housing was discontinued and there was great upset with the displacement of scores of low-income households.

I have seen firsthand that inclusionary housing can be successful, but that it's provision through zoning must be mandatory, rather than voluntary.

My second perspective is as a regional leader at the Council of Governments. There is an enormous shortage of housing in the Washington metropolitan region. This shortage is immediate. Yet, the region is expected to grow by over 2 million people and by almost 1.4 million jobs in the next 25 years. The projected growth has enormous implications, most of which will be adverse, if we cannot concentrate more housing in the city and close in suburbs.

The adverse consequences include greater urban sprawl, environmental impacts such as on air quality and a degraded transportation system. If we cannot provide more housing in the District, especially housing that is affordable to the lowest income worker or attainable to the typical middle income worker, then we will find ourselves in the perverse situation where those least able to afford it, will pay the most to commute and will be living farther and farther from the region's core, forced to commute three to four hours daily to their meager jobs.

The Council of Governments has identified the need to increase the supply of affordable housing as one of the region's highest priorities. Inclusionary zoning is a necessary tool to meet this goal.

My third perspective is as an at-large Council Member. A need to maintain and increase the supply of affordable housing is one of the greatest concerns among District residents. Many fear they will be forced out of their homes and communities if we do not do something more to increase the supply.

Others are concerned that we are becoming a very polarized city economically, which also has its implications racially. Whether it is out of good policy, public policy or out of fear, I hear the demand constantly across the city.

The proposal before by the Campaign for Mandatory Inclusionary Zoning is the best land use proposal to meet the demand for more affordable housing.

In this regard, I wish to make several additional points. First, inclusionary zoning must be mandatory, not voluntary. Otherwise, we will not see a substantial increase in supply.

Second, inclusionary zoning must be provided on-site, not off-site. Third, the affordability control period must be substantial, equal at least to the estimated useful life of the unit before renovation or rehabilitation.

Fourth, the zoning regulation must be simple, not complicated.

Let me elaborate briefly on a couple of these points. Allowing exceptions to inclusionary housing by permitting payments into the Housing Trust Fund or permitting off-site construction at a specified location, defeats many of the benefits. The experience at McLean Gardens was laudable because the housing was provided on-site.

Further, creating possibilities for exceptions means administering and/overseeing the regulations will be complicated and therefore more expensive and less productive with the possibility of less compliance.

Finally, you know that the Council recently adopted resolution 16-218 in support of amending the zoning regulations to include mandatory inclusionary zoning. The details of the Council's position are found in Section 3 of the resolution and are not substantially inconsistent with my testimony.

I appreciate your providing me with this opportunity to comment.

CHAIRPERSON MITTEN: Thank you. Any questions for Council Member Mendelson?

Thanks for coming down.

MR. MENDELSON: Thank you, thank you very much.

CHAIRPERSON MITTEN: Okay, next up is Jeffrey Gelman, Don Deutsch, Merrick Malone, Jeremy Rubenstein.

(Pause.)

CHAIRPERSON MITTEN: Okay, I noticed that some of you have submitted lengthy written testimony and I appreciate that and we like to read lengthy, written testimony, but we'd like you to keep your oral remarks to five minutes.

So Mr. Gelman?

MR. GELMAN: Thank you. Those were exhibits.

CHAIRPERSON MITTEN: Okay.

MR. GELMAN: Good evening, members of the Zoning Commission.

I am Jeff Gelman, a real estate and housing attorney with the law firm of Greenstein, DeLorme and Luchs. I have devoted the majority of my time during the past 20 years focusing on the creation and preservation of low-income housing. I have volunteered thousands of hours of time assisting nonprofits and associations to provide housing and supportive services to the homeless and lower-income families and individuals. And I've served on many advisory groups, committees, task force on housing policy, housing programs, economic and community development and public housing. I've worked extensively with most of the housing programs that have existed during the past 20 years, both locally and nationally and I have experienced what works and what does not work in creating and preserving affordable housing.

I am extremely concerned that mandatory inclusionary zoning, as currently proposed, will not work in the District of Columbia for many reasons. I will use my few minutes to focus on my remarks concerning the misconceptions and on the experience of other jurisdictions and the conclusion that inclusionary zoning as a means of creating of affordable inclusive housing has had extremely mixed results and is at best, inefficient and an excessively expensive way of creating a relatively small number of affordable units compared to other more effective housing programs.

I know I don't have enough time to read my testimony, so I'm going to hit some of the more important points.

One of the main determinations in other jurisdictions is other than those few IZ units that are created, the uncompensated costs to development of those housing units go to push up the cost and prices of all other housing units. That is well documented and there is in my submission I have some very recent studies by some professors who made very extensive studies of the fact.

It's ranged from $22,000 to more than $100,000, pushing up the price of other housing. So the objective is not to make this a city of rich and poor. We should put our effort in traditional, proven housing programs that will produce tens of thousands of units, not a few hundred in jurisdiction to jurisdiction.

There are about maybe 200 plus IZ programs in the country over the last 32 years, producing about 100,000 units; 11,000 in Montgomery County. For a county of that size, over a 32-year period, it only produced 300 to 350 units a year, most of which were in the early years where there was more developable land. So you have to look at these reports.

Now my point is the studies and experience in other jurisdictions is inconclusive and it's really what your perspective is. And I want to be very candid here. If you want to be optimistic and believe it's going to work, you're going to believe it's going to work. If you want to believe it's not going to work, you're going to believe it's not going to work.

The information out there from other jurisdictions will support whatever conclusion you want to reach. And all we're saying is you must be very, very deliberate. We have met with the Campaign for Inclusionary Zoning dozens of times since they submitted their text amendment and not one comma has changed. And we are very, very disappointed because as an industry, we came to the table. We said we think we make a program work for this city. We need to have some adjustments, some flexibility, some fairness and not one comma has changed.

So I'm here, frustrated and disappointed that after dozens and maybe hundreds of hours of effort in the last year and I've been working on this for four years, that we haven't come closer on resolving many of these issues. How do we deal with historic properties? How do we deal with substantial rehab in a distressed property that's getting government subsidies? Why won't they exempt otherwise affordable housing projects? Because they want credit for those affordable units under their IZ program.

I mean there are other government policies involved here that are going to be interfered with, very important government policies and we think the program will work, but it needs to be a flexible, fair program and it's got to be one unique to the District, not one based on Montgomery County or a large county, Orange County of California. It needs to be something that is tailored to D.C. from the experience of developers, housing professionals, government officials. We have a very lack of the government housing experts at the table. We're mostly working with planners and zoning experts, which is important, but we need to broaden this debate to bring in more administration representatives from DHCD, HFA, the Housing Authority, the Deputy Mayor's Office.

This is going to be one of the most dramatic policies for this city -- okay, I'll conclude with that.

CHAIRPERSON MITTEN: Thank you. We'll just go down the line. Mr. Malone.

MR. MALONE: Good evening and members of the Zoning Commission. I'm Merrick Malone. I'm a principal in Metropolis Development Company which is developing in Logan Circle and on the 14th Street corridor. I am also president of Harris and Malone Development that's currently doing Home Again Initiatives, doing redevelopment of the city's Home Again Initiative.

I also have served simultaneously as the District's Deputy Mayor for Economic Development and the Director of Housing and Community Development. And throughout my private and public sector career I've built, renovated, financed and developed and implemented policies to create more affordable housing in the District of Columbia and I can say that what a difference a decade makes. It's interesting. The people you've talked to, I've done private/public partnerships, created a lot of affordable housing units in this city when, as George pointed out, only the nonprofit developers were doing housing. We couldn't give away funding to private developers to come in and develop at the time, and don't talk about financing in Anacostia, because the same people who now want to develop there, CARR couldn't even go across the bridge back then, so I'm saying to you I understand affordable housing. I've done it. I would not take a back seat to anyone in terms of this.

I think George's point was correct. Back then our whole notion was to take people who were in rental properties of low income or moderate income and make them homeowners, part of the American dream, and help them build their net worth. So that was the point back then. The market has, in fact, changed and of course, there's a shortage of affordable housing. So we had to put this in context. At one point, we were begging as a city and administration just to have market rate housing. That has now happened in a huge way, but in the process, the downside of it was that it created a shortage of affordable housing.

In the following time that I have I want to talk about a couple of things. One, the goal of affordable housing in the District is increasing and requires this comprehensive, interrelated, coordinated effort from all branches of government. You are actually asking, being asked to essentially create or mandate housing policies actually without the benefit of the analysis that everyone is wrestling with, the intricacies and the vagaries of implementation and the knowledge that's required for the human and financial resource to administer such a program.

And don't feel bad because everybody is wrestling with that right now and therein lies the problem. There are major consequences. When we talk about an administration that's going to have to administer this program, it's very complex. It's interagency relationship and we're talking about certain agencies that have problems administering the current Housing Production Trust Fund. This is a very complex issue and if it's not done right and one of the proponents mentioned and I think it's true, it has to be properly crafted and implemented, not to impair the market.

I also talk about a couple of things. I

want to actually commend OP and their staff for really bringing us together and thoughtfully looking at this, but understanding there are a number of devil details that are still out there and the vagaries and uncertainties create anxiety.

Whenever you impose some overlay, I think about the downtown development overlay which had a goal to develop housing, residential, mixed use in a vibrant kind of downtown and that was a similar imposition. And essentially that was done, I think, in the late 1970s or early 1980s and that was supposed to promote this. And what happened, there were so many things in that aspect of it it really was a disincentive and you don't have to believe me. You just have to kind of look at the marketplace. There are some -- and you can debate it. But there are some parcels right now that are only being developed and those parcels -- and I see Steve looking at me, but I remember when I was the Deputy Mayor and we were looking at Gallery Place when you did the value of the land, which we did, you take the overlay off of it, the land had a $100 million value. With the overlay, it was reduced to $65 million. I'm just saying that we need, when we start imposing things, we need to look at those consequences and get them done correctly. What really happened there was the fact that you also had another parcel that was underneath that overlay that is now just being developed and that's the Was Museum. It was included as part of that, but it didn't happen before the market was ready for it to happen.

We just have to be very careful, as we craft the policy, so there's no harm done.

CHAIRPERSON MITTEN: Thank you. Mr. Deutsch.

MR. DEUTSCH: Thank you. I actually thought I had three minutes, so I can speak much more slowly.

Thank you for the opportunity to speak tonight on the subject of inclusionary zoning. My name is Don Deutsch and I'm the senior managing director of Fayes and Associates and I live at 400 Mass. Avenue, Northwest.

We are active multi-family developers in the District and have completed and have under construction over 800 units representing an investment in this market of well over $300 million. Like most of the developers that will speak tonight, I choose to support the goals of inclusionary zoning. We have built affordable housing as part of the development in

Adams Morgan and have been involved in many of the discussions that have preceded this hearing tonight.

While we share the goal of increasing the availability of affordable housing in the District, I do have a number of concerns with an approach that essentially places the resolution to this issue at our doorstep.

First let me state the results of our efforts and the risks that we take every day are evident in the $1.2 billion surplus that the District now enjoys. These surpluses are paid for to a large extent by the taxes generated by the increase in property values that result from our developments and the 10 percent franchise tax that we pay on our profits.

We simply do not understand the logic of additionally burdening the one group that has already contributed substantially to the financial health of the District. If affordable housing is a social goal and we believe that it is, why does the District of Columbia not use some of the gains that result from our investment in this city to address this need, rather than driving away investment with this ill-considered resolution?

I believe the resolution is ill-considered in a number of areas. First, we question the economic assumptions of the OP report. We simply disagree that one affordable unit for each market rate unit of bonus density is an acceptable tradeoff for the substantial losses that we will incur on each affordable unit. Our calculations show that in many instances, particularly with high rise construction, as opposed to stick built, we would need two to three market rate units to pay for the cost to develop one affordable unit, though our analysis has been largely ignored.

I'm happy to test the advocates' assumptions. They can buy all of the bonus units, market and affordable at a one to one ratio at our cost. If there's a profit, they can have it. Of course, they won't do this because it is more fun to let somebody else bear the cost of one's assertions.

Second, the assumptions in the OP report are based upon current cost and sales assumptions. We currently enjoy a strong market environment. This will not last. All markets cycle. The only stressing of the assumptions in the OP numbers was to assume that interest rates rise one percent. That is hardly a stress and all of us remember far more difficult markets in a 7.5 percent interest rate environment.

The problem with the OP recommendation is that it is inflexible. This is a policy that assumes a stable market and one that does adjust when the market environment changes. Who would ever invest in a business in which the profitability was assured only in the best of cases?

Third, given that we believe this will have a negative impact on our overall profitability, there's likely to be a negative impact on land values in the District. Just the risk of this occurring should give the Zoning Commission pause to enact this program. To the extent that one analyst in the Office of Planning is wrong in his assumptions and there will be a lot of smart people parading in front of you that explain why he is, there will be an enormous consequence to the tax base in the District.

Fourth, and finally, there exists in the District an economic system of transferrable development rights. The TDR system has been in place many years and many developers and land owners have enormous investments in these rights or have vested rights that are assets that may be severely undermined by this legislation. There's nothing in the OP report that addresses this issue. Has any consideration been given to the undermining of this economic system and the potential liability the city will have as these assets become far less valuable as demand for these rights evaporate.

To conclude, we have had a few years of success that has greatly benefitted the tax base of the city, but this will not always be the case. The market will slow and interest rates will rise, but this policy will still be in place, making residential development in the District increasingly difficult and property values increasingly lower.

This policy assumes a permanently strong housing market and there is no such thing. Use the gains that we generate to further the goals of affordable housing. Do not destroy them by which these surpluses were created.

Thank you.

CHAIRPERSON MITTEN: Thank you. Mr. Rubenstein.

MR. RUBENSTEIN: Yes, thank you very much. My name is Jeremy Rubenstein and I'm president of Metro Properties. We have developed several hundred together and with partners units, condominium units in the District of Columbia. I'd like to thank the members of the Zoning Commission and although I disagree with the recommendation, I would like to commend the members of the Office of Planning for their hard work.

I'm going to try to hit the highlights of this thing and try and do the best I can.

I think -- when I was listening to some of the advocates for mandatory inclusionary zoning, I was struck by the tension between two assertions. One was they're going to get more than enough for this, I mean they're going to make money on this, there's lots of incentive. They don't need any more of the ratio. On the other hand, it's got to be mandatory or they won't get built. Now I submit to you that these two things cannot both be true. Okay? And the fundamental issue with a mandatory program as opposed to a voluntary program, an incentive-based program, is that it is inflexible. And anyone who tells you that this thing is going to be easily administered and that it's going to get simpler over time, and that it is not going to have a substantial delaying effect on development process in the District of Columbia is simply giving you pie in the sky. It ain't gonna be that way.

Now the issue is whether there is going to be enough juice, enough economic vitality in the system that's going to override all of that stuff and I think Don put it exactly right. We are in a tremendous boom market. Peculiarly, it's gotten to the point where despite the fact that the market is doing very well, it's a much more difficult market to develop in right now. I echo what people have said about the coffers of the District of Columbia have been filled by development activity and people should be very careful.

We must also remember the few thousand units of condominiums that we have developed in the District of Columbia over the past few years did not cause this affordable housing crisis. I mean the interest rates and market forces caused this affordable housing crisis. I have tremendous sympathy for people in the District of Columbia who have difficulty affording housing. At the same time, however, the question is what is a solution?

Now real estate is very cyclicle. I've gone into it, but right now the risk of developing the District of Columbia because we don't know how much froth there is in there. We've got crazy people coming in from out of town bidding up prices on the land and in a very speculative way. We have a huge number of condominium purchasers that are purchasing for investment, that are purchasing with dangerous types of mortgages. We can't stop that. But the notion that everything is always going to be the same is crazy.

Now I don't know. It could be five years. It could be 10 years. Everything could work out fine. Who knows? But there is a lot of risk in the system right now.

A mandatory system would discourage development under many circumstances. Now it may be that right now there is so much juice that it's not going to do anything, but you guys should take a look at the report. It's cited in my testimony that was done by the Fuhrman Center for Real Estate and Urban Policy, the New York University School of Law. It's entitled "Reducing the Cost for New Housing Construction in New York City" and their chapter on inclusionary zoning which has much more stress tested models in there states that the financial mode shows that the financial feasibility under IZ mandates is very much a function of market conditions and a mandatory regime that is financial feasible today may become infeasible in the future.

I'd also like to highlight the fact that there is so much site-specific -- there are so many site-specific issues that you have to deal with and to be thrown into a bureaucratic administrative procedure where you've got to prove your economic hardship or viabilities is just going to mean you're going to walk. If I've got dig another level of parking, if there's environmental costs to that, there's all kinds of times when it just is not going to be worth it.

And finally, I'd just like to note that there are so few units that we're talking about. According to Delta Associates, something like 3,000. Maybe that's an understatement, but very few units of 3,000 new condominiums were done in D.C. in 2004. Any way you want to slice those numbers, you're not going to get the solution to the housing crisis off of this, but you may screw up D.C.'s financial renewal.

And finally, I think it's really interesting to note that the one jurisdiction in the D.C. area that has something akin to a mandatory zoning requirement, Montgomery County, has produced far less units. In the Delta Report, and I'll end on this, in 2004, new condominium sales in all of suburban Maryland totaled 952 units or less than one third of that in the District of Columbia which was over 3,000 and less than one fifth of that in Northern Virginia. You mess with this stuff and you make it mandatory as opposed to flexible, voluntary system, at your peril.

CHAIRPERSON MITTEN: Okay.

MR. RUBENSTEIN: Was that clear? Do you wonder how I really feel?

(Laughter.)

CHAIRPERSON MITTEN: Since Mr. Gelman, in particular, has a lot of attachments to his testimony, what would be really helpful for us, we don't take, we do not take our responsibility lightly. We know that we're tampering with the financial situation, but what's happened so far is we have the Campaign's proposal and then as I understand it, OP has been kind of the conduit for mediating between the two sides. So I don't know what level of specificity you've gotten into and Mr. Deutsch confronted a couple of specific issues, but if you have things that you specifically object to and you want to make your case in the alternative, then having specific numbers like they've been put in front of us by the Campaign and as they have been put in front of us by OP is really what I think it's going to take to convince us that your position is a credible one.

So I encourage you, if you haven't already done that through your attachments to do that to the extent you feel that you can.

Are there questions from the Commission for the panel?

The one thing that I'd like to say, especially since, Mr. Malone, you used the downtown development district overlay as an example, I really admire the people on the Commission that put the DD overlay in place in the first place. And I admire them not because they got it perfect because we had to go back and we had to tweak a whole bunch of things because the market conditions weren't right to really create the incentive to build housing and it was a requirement, but what it did is it didn't miss the opportunity. We didn't lose the chance to have residential development in the DD overlay area. So while I doubt we'll get this perfectly right the first time, we need to stop losing the opportunity is my view. So whatever you all can do to convince us of what the right mix is in terms of having incentives, that would be very helpful to the Commission, instead of having -- which I'm not invalidating your concerns, but if they're abstract, it's hard for us to deal with the more specific proposals that have been put in front of us.

So Mr. Jeffries?

MR. JEFFRIES: Just a quick question, Mr. Rubenstein. I just wanted to know, you stated that there were about 3,000 market rate units that were produced in the District in 2004?

MR. RUBENSTEIN: I'm citing the 2004 Delta Report. As I stated in my written testimony, I'm sure that these numbers leave out a lot and they're not exact. But the point --

CHAIRPERSON MITTEN: You know what, your mic is not on. I'm sorry, we've been missing --

MR. RUBENSTEIN: I'm sorry. The point -- most people can hear me regardless.

CHAIRPERSON MITTEN: He can't and that's the guy we care about.

MR. RUBENSTEIN: The point is that even if it's wrong by a factor of two, you really are not talking about significantly solving the issue or even having really a significant impact. You're just taking a lot of risk on the tax dollars that are generated.

MR. JEFFRIES: Did that Delta Report talk about the amount of affordable housing that was produced in 2004?

MR. RUBENSTEIN: No, it did not break out between affordable and nonaffordable. I'm sure a certain number of those units because of the PUD process and the District's land disposition process did include some affordable.

MR. JEFFRIES: So effectively, you don't think the system is really broken. I mean you talk about the voluntary program. I mean if we decided not to go the mandatory route, what are we doing?

MR. RUBENSTEIN: Actually, we actually produced, we're one of the few -- I think our company is the only developer that actually used the Uptown Arts District zoning that has an incentive base that allows you to produce something, it was a 2 to 1 ratio. Most people don't use it because in the Uptown Arts District there are many different types of things that are bonuses and some of which are required, such as ground floor retail at certain locations. So in many situations people didn't bother because it's not a huge bonus to begin with and also they were doing it otherwise. But we found it made sense on a 2 to 1 ratio.

It's not that I don't think that things are going well, I just -- in terms of affordable housing, but I think the notion that you're somehow going to repeal the tsunami of market forces by this mechanism as opposed to use the tax revenue that's generated from the real estate market and address it directly like Jeff has stated, is foolish and that it's better to take a slightly lower percentage and do it on a voluntary basis, eliminate all of the horrible problems of administration. And anybody who tells you that it's not going to be horrible just needs to look at rent control.

MR. JEFFRIES: It might be interesting and maybe this has already been done, but you spoke about the incentive-based programs that exist. We might have those numbers and I've just missed them, but it will be interesting to know what those numbers look like and how much sort of affordable housing has been produced and --

MR. RUBENSTEIN: In D.C. or elsewhere?

MR. JEFFRIES: In D.C.

MR. RUBENSTEIN: I think virtually none. Aside -- at least in the Uptown Arts District, virtually none has been done. I mean in terms of downtown and some of the other units, I don't know. And we can certainly -- I think the DCBIA can get together and we can get some of that.

MR. JEFFRIES: Thank you.

CHAIRPERSON MITTEN: Anyone else? Okay, we look forward to reading all of the nice attachments you've given us.

Okay, we're going to take one more panel before we close it out for tonight and I'm just going to remind everybody we're going to reconvene on Thursday at 6:30 and then we'll have another session on Monday, the 1st at 6:30.

Ernie Marcus, Michael Huke, Bradley Fennel, Kenneth Rothschild.

(Pause.)

CHAIRPERSON MITTEN: So we don't have Bradley Fennel here, right? Courtney Kyles. So we'll start with Mr. Marcus. Go right ahead.

MR. MARCUS: I'm Ernie Marcus of Marcus Asset Group, an LSDBE firm in the District and I'm a resident of Ward 4. In a number of capacities, I'm involved in affordable and market-rate housing in the District, both for sale and rental. I'm a certified general appraiser in the District and perform considerable number of reports for DCHFA and nonprofit housing providers, tenant groups, as well as private developers.

Secondly, as a partner in Triangle Ventures, I'm involved in the ground up development and substantial rehabilitation of for sale and rental housing in the District, including mixed income condominiums and mixed use sites.

I am in favor of providing a framework in which developers must provide affordable housing in new developments and under specific circumstances, substantial rehabs. But I do have a number of concerns over some provisions in the proposals put out by OP and the Campaign.

Broadly, if the program is not fair and predictable with workable incentives, I am concerned that the IZ regulations could decrease housing activity and hurt the production of housing, particularly when the market returns to a more normal level of production and appreciation.

The following touches on just a few of my concerns. The economics of providing affordable housing at a specific site vary widely based on a myriad of factors so that an inflexible and/or cumbersome process could be a roadblock to desired development.

Again, each site is unique so that the amendment must reflect possible economic hardship for individual owners. Factors that might impact some sites, but not others might include physical underground issues such as underground subway tunnels which we're actually building over one. Poor soil bearing capacity or contamination. The presence of rock. The need for deep sheeting and shoring. The size and shape of sites can have a significant impact.

Sites below a certain size can be much more expensive to both construct vertical improvements and underground parking. And the efficiency of each floor can be significantly impacted.

Physical issues that can make producing smaller size units as has been suggested in some of the proposals, because of light and air issues can be nearly impossible.

If an affordable one-bedroom unit can sell for only a fixed amount, then if the unit has to be larger, it will have a significantly greater impact on the developer. I would also note locations in historic districts as has been mentioned, can have a dramatic impact.

The relevance of all of these factors are several. First, project may not be able to be built to the currently allowed FAR, much less accommodate additional density. We have found that in our Park Triangle project because of the presence of the subway tunnel, we were not actually able to build all the density that we could build under the existing zoning, so if we had been forced to provide additional density, we would not have been able to do it.

The factors that were listed above can also significantly decrease the profit margin of the developer, again, these extra costs that I talked about, so that the cost of providing affordable units is much greater on these impacted sites than a site that does not have these issues.

A developer -- I might note that a developer whose site does not accommodate additional density because of these factors I've mentioned, should not then be required to pay for affordable housing on site or off site if he does not have a corresponding or offsetting benefit.

A couple of other sort of side factors, I'd like to mention that the selection of the affordable units within the project is very important. We're building a project now where we're 20 percent affordable. It makes a significant difference how big those units are, unit mix, the finishes and the location within the projects. For instance, if you were required to have across the board, you may end up with units that have thousand square foot decks on the top, if you were spreading it equally across the building. I would just urge flexibility on these types of points.

Finally, I'd like to point out that the general confusion in the city over the setting of prices of affordable dwelling units which I've observed really all over, a lot of people ask me these questions and I'll tell you this confusion that the city, nonprofits, developers, everyone is confused. There's no set way to look at it and how you treat the use of HPAP funding, VPAP, debt ratios, all can have a major impact on the supportable price.

Manna was here earlier and I would certainly say they're a good resource for you in thinking about those issues.

In summary, I would urge the Commission to enact amendments that strike an appropriate balance.

CHAIRPERSON MITTEN: Thank you. Mr. Huke.

MR. HUKE: I'm Michael Huke, Chief Executive Officer of the CIH Companies with over 30 years of experience in residential real estate. Over the past several years CIH has developed more than 2300 condominium and cooperative, rental and single-family homes. In addition, CIH currently manages a portfolio of approximately 4,000 homes affordable for very low to moderate income renters and home owners. As an aside, I'd like to say I've been building and developing in Ward 7 and 8 for 20 years, finishing a project right now that includes units affordable to those with 25 percent incomes equal -- incomes equal to 25 percent of area median income. So I'm certainly a proponent of affordable housing.

That's our business. We concentrate on areas within the beltway and concentrate within the District of Columbia.

I would like to begin by suggesting a general note of caution your consideration of the inclusionary zoning proposal that's now before you. My experience indicates that the successful production of affordable housing in high cost markets inevitably requires some form of substantial public subsidy to make the economics work. IZ, however, attempts to avoid the costs of that public subsidy by shifting it to the housing market. To prevent any resulting slowdown in residential development, IZ programs usually offer so-called density bonuses, but such bonuses are rarely structured as true incentives. Instead, they are devised to provide just enough of a cost offset to keep local housing markets humming with any shortfall absorbed by market rate buyers.

Unfortunately, market conditions change and the bonus formula, if it ever worked, breaks down, at which point the humming stops, in the absence of true incentives, little affordable housing gets built, as the experience of other jurisdictions so clearly demonstrates.

I'd like to point out in the Office of Planning position paper it said that estimates of buyer mortgages were conservative even if they were 100 basis points or 1 percent over the then market. In the past week and a half, that's been cut in half. So right now its projection is half a percent over the existing market. It shows you how rapidly the market changes.

I would like to now turn to more specific comments that really affect the sort of work I do regarding substantial rehabilitation in the current zoning proposals. Applying inclusionary zoning requirements to properties that are undergoing substantial rehabilitation simply will not work. There is typically no way to economically and practically expand the physical side of existing structures to accommodate density bonuses. In fact, given the smaller apartment sizes often found in older properties, units are typically reconfigured and combined and substantial rehab, reducing the number of available units within the existing building envelope.

Renovating older properties to make them competitive in price and features with new properties requires avoiding the complexity and costs of modifying base structures. Attempting to add bonus density units then would add excessive costs, delays and risks undermining the economic feasibility of the project.

The application of IZ requirements will only retard major rehabs, resulting in a continued decay or demolition of older properties instead of their preservation and renewal as much needed additions to the District's stock of decent and affordable housing.

I would also like to mention something not in my written testimony, that I would strongly encourage any IZ requirements to exclude projects built to be affordable such as the projects I do, to exempt them from the burdens and costs of IZ regulations and allow us to produce cost-effective affordable housing.

I also in the question period would have an answer to the issue of maintenance on home ownership in the townhouses that were questions asked earlier.

CHAIRPERSON MITTEN: Okay. Thank you.

MR. HUKE: Thank you.

CHAIRPERSON MITTEN: Mr. Rothschild? Would you turn on your microphone for me?

MR. ROTHSCHILD: I would like five

minutes. I said I was speaking for the D.C. Coalition for Rent Control.

CHAIRPERSON MITTEN: I'm sorry, we didn't have you on the list for that.

MR. ROTHSCHILD: I saw that I wasn't and I don't know why.

CHAIRPERSON MITTEN: Okay.

MR. ROTHSCHILD: I may not need the five.

CHAIRPERSON MITTEN: Okay.

MR. ROTHSCHILD: But I would like to speak to some of the things that have come up. I'll try not to repeat everything. But as far as -- I'm Kenneth Rothschild. I live at 3900 16th Street and I'm speaking for the D.C. Coalition for Rent Control.

In the past, in the 1970s, I served as ANC Commissioner in the Dupont Circle area for two and a half terms and had substantial experience with PUDs.

I noticed with the PUDs, a lot of times when we went back to check the amenities and the improvements that we were supposed to get for the added densities, it never seemed to turn out the way we thought it would. You get a little statue or something in the middle of a park that you could hardly find and so I'm very concerned.

I don't know whether the administration

will come under your jurisdiction, but I find this the forum to speak about it because the administration of the final zoning terms will be a very important part and I think it should be important that it gets off to a good start because it's hard to change things once it gets established. It's hard to move people out of their homes and out of their -- okay, so that's important.

I think there should be some penalties provided in whatever is considered because without penalties nothing works. There has to be a way to say this wasn't done properly or it wasn't done in the way in which we agreed to, so penalties should be there.

One of the things I'm concerned about is that whatever you pass, everybody is going to be looking for loopholes, so there probably should be a periodic review by an outside agency of some type to see how well whatever is finally accepted and is in place, how well it's working and that ought to be reviewed periodically to see that there are not gaping loopholes being established because there will be a tendency to look for that.

And by the way, when I said penalties, I mean that for residents as well as developers. I think people should be hiding their incomes and things like that, so we should be very determined to administer this thing justly from both sides, both for developers and for residents.

Also, I think that the term period for the sale for homes should be longer than 20 years, the reason being is sure we want families to be considered as home owners and so forth, but the bottom line in this is available housing and there should be housing established now and there should be housing for people who need it in the future.

Now people whose family circumstances change can reapply. There can be provisions for families that grow, but I don't think a windfall profit to those who are lucky enough and we know this is going to be a small amount of units no matter what we do, that profit to the residents should be a major consideration. I think the housing aspect is far more important now and in the future.

I also would like the Commission to consider, the Board to consider the effect that this will have on tenant purchases. There may be some special considerations that are necessary when tenants actually purchase buildings and so forth. So those type of deals are not made unprofitable, so tenants actually will be able to purchase their units.

And basically, if everybody looks at -- if anybody looks at the projections for population growth in this metropolitan area, sure there may be a slump in the housing situation for a while, but it's unlikely that housing and development of housing in this area is going to go away any time soon. So what I think we should do is titrate this thing, those of you who are familiar with chemistry, and find that point where we can really get some good affordable housing out of the value of the metropolitan area which is not due to the developers, which is due to the development of the Metro and the federal buildings and all the other things that have come to our area.

So developers are an important part of this area, but so are the workers and the people whose salaries are not keeping up. Thank you.

CHAIRPERSON MITTEN: Thank you very much.

Ms. Kyles?

MS. KYLES: Good evening and thank you for the opportunity for me to testify. My name is Courtney Kyles and I reside at 3003 Van Ness Street, Northwest. I am a summer law clerk of the Coral Moring Affordable Housing Initiative at the Washington Legal Clinic for the Homeless. As a part of my work, I assist a staff attorney in representing tenants at risk of losing their homes, generally through the termination of a federal subsidy.

In addition, I help educate tenants about their rights under the D.C. Housing Codes. I will read my testimony as it is and I would like to later submit a longer written testimony before the close of the hearing record, if that's okay.

From my legal studies and work experience at the Washington Legal Clinic, I have decided to do public interest work that will allow me to actively give back to my community on a daily basis. For me and many others, doing legal public interest work, the monetary downside in pursuing this work is that I will not make anywhere close to the six figure salary of around $125,000 of some of my fellow classmates who go on to work in private law firms.

With the ongoing depletion of affordable housing, the large increases in the cost to purchase a home and my need to pay back my student loans, it seems the only way I can pursue my career of choice is to live outside of D.C.

That is an unfortunate result for a Howard University School of Law graduate. I am here tonight to urge the Zoning Commission to adopt the mandatory inclusionary zoning text amendment to help assure that affordable housing is maintained in the District of Columbia. I am here because I want the neighborhoods in the District of Columbia to continue to be diverse, with residents of all financial backgrounds, not just a neighborhood full of persons with six figure salaries such as doctors, lawyers and investment bankers.

Currently, many of the clients at the Washington Legal Clinic cannot afford rental housing in the District. In 2003, there were 55,000 renter households in D.C. with incomes below $20,000 and only 24,000 apartment units affordable to them at $500 per month. In addition, this year, Congress underfunded the voucher program by almost $570 million which means that about 80,000 vouchers will not be available to low-income people in need of housing assistance.

Given the loss of low rent affordable housing through condominium conversions and the loss of subsidy housing, the city must institute a plan to counter this loss.

Currently, many nonsubsidized, low-income residents are competing for the same apartments as those who earn between $40,000 and $70,000 per year. The fair market rent currently on a two-bedroom apartment in the District is $1187 per month and the hourly wage to afford this rent is $22.83 per hour at 40 hours per week.

Many of our clients at the Legal Clinic earn the minimum wage of $6.60 per hour and will have to work approximately 138 hours per week in order to afford a two-bedroom unit in the area of fair market rent which demonstrates that they have a greater need for the $500 per month apartment. Although this amendment does not address the problem of affordable units for those persons earning minimum wage, the amendment will lessen the competition for rental units which are affordable to low wage workers.

In addition, Commissioners, I urge you to consider the character of the neighborhood without mandatory inclusionary zoning. A neighborhood's character is what makes D.C. so appealing. Soon, without this measure, the District will only be filled with individuals who make six figure salaries and everyone else will be displaced.

In the past five years, the median house price in the District of Columbia has risen 107 percent to $385,000. It is doubtful that a person making $40,000 to $70,000 per year would be approved by a bank to purchase a home at that median price. If all residents in each neighborhood are comparably the same economically, there is nothing as to distinguish each neighborhood from the others in the District.

Inclusionary zoning would aid and decrease in the vast economic divide between areas in the District which tends to lead to a racial divide as well.

Thank you, Commissioners for your attention and I hope that you take my comments under consideration. Thank you.

CHAIRPERSON MITTEN: Thank you very much. Questions from the Commission for this panel?

MR. HILDEBRAND: You said you could speak a bit to the maintenance issue?

MR. HUKE: Yes, I could.

CHAIRPERSON MITTEN: Would you turn on the mic for me?

MR. HUKE: Certainly. I think you were asking about a question of maintenance of row houses or townhomes and houses really do have an economic life and a difficulty and I have experienced this by observation and trying to help a number of communities, that when you have the burdens of home ownership without the benefits, the burdens become excessive.

Through the country, you may be familiar anecdotally that maybe the best model might be comparing that sort of situation to limited equity co-ops where the advantage to the home owner is very limited. Typically, a home owner might put something like $500 down and the return is limited to something like a 5 percent increase per year which would be $25 plus the return of their investment. And so it does not put folks typically in a home ownership mode.

And across the country, limited equity cooperatives are failing and HUD is becoming very, very aggressive with enforcement procedures in foreclosures. They seem to have concluded that limited equity cooperatives often don't work very well.

One of the things I do is help limited equity cooperatives, as well as tenant associations with projects that are facing foreclosure, so I've seen this up close in a number of instances. So I would agree with George Rothman that financial benefit of home ownership is extremely important. It certainly can be shared with the jurisdiction that's providing some of the benefit and very much to the benefit of all parties.

I think there's a real problem in mixing tenure within a single community in a single building and that's mixing rental with home ownership. I think you can see that evidenced by FannieMae, FreddieMac requirements that limit the number of renters within their condominium or townhouse projects. So I think there's a real serious problem, if there's not benefits of home ownership. And when you take a limited equity cooperative, turn it into a market rate cooperative, you can keep it affordable for the existing members and boy, a lot of the problems just disappear like magic.

CHAIRPERSON MITTEN: Thank you. Thank you all for coming down tonight. And thanks to the rest of you for being patient and we'll look forward to seeing you either this Thursday or next Monday. And we're adjourned for tonight. Thank you.

(Whereupon, at 10:14 p.m., the public hearing was adjourned, to reconvene Thursday, July 28, 2005 at 6:30 p.m.)