

**GOVERNMENT
OF
THE DISTRICT OF COLUMBIA**

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

**MONDAY,
JUNE 10, 2013**

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

ZONING COMMISSION MEMBERS PRESENT:

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

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

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

**JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic
Preservation**

STEPHEN GYOR

JOEL LAWSON

STEPHEN MORDFIN

KAREN THOMAS

MATT JESICK

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

JACOB RITTING, ESQ.

**The transcript constitutes the
minutes from the Regular meeting held on June
10, 2013.**

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

(6:39 p.m.)

CHAIRMAN HOOD: Okay, this meeting will please come to order. Good evening, ladies and gentlemen. This is the June 10th, 2013, public meeting of the Zoning Commission for the District of Columbia.

My name is Anthony Hood. Joining me are Vice Chair Cohen, Commissioner Miller, Commissioner May, Commissioner Turnbull. Officers on the staff, Ms. Sharon Schellin. Office of Attorney General, Mr. Ritting. Office of Planning, Ms. Steingasser and Mr. Lawson, Mr. Jesick, and Ms. Thomas.

Okay, copies of today's meeting agenda are available to you and are located in the bin near the door. We do not take any public testimony at our meetings unless we request someone to come forward.

Please be advised this proceeding is being recorded by a court reporter and is also webcast live. Accordingly, we must ask

1 you to refrain from any disruptive noises or
2 actions in the hearing room. Please turn off
3 all beepers and cell phones at this time.

4 Does the staff have any
5 preliminary matters?

6 MS. SCHELLIN: We do have two
7 closed meetings we'd like for the Commission
8 to consider voting on this evening.

9 CHAIRMAN HOOD: We sure do, Ms.
10 Schellin, and do I need to read those
11 separately?

12 MS. SCHELLIN: Yes, sir.

13 CHAIRMAN HOOD: Okay. I'm going
14 to do 618 first. As chairman of the Zoning
15 Commission for the District of Columbia and in
16 accordance with 407 of the District of
17 Columbia Administrative Procedures Act, I move
18 that the Zoning Commission hold a closed
19 meeting on Tuesday, June 18th, 2013 from 9:00
20 a.m. to 12:00 p.m. for the purpose of
21 receiving training as permitted by the D.C.
22 Official Code 2-575(b)(12). Is there a

1 second?

2 VICE CHAIR COHEN: Second.

3 CHAIRMAN HOOD: It's moved and
4 properly seconded. Will the secretary please
5 take a roll call vote on the motion before us
6 now that has been seconded?

7 MS. SCHELLIN: Yes, sir.

8 Chairman Hood?

9 CHAIRMAN HOOD: Yes.

10 MS. SCHELLIN: Vice Chair Cohen?

11 VICE CHAIR COHEN: Yes.

12 MS. SCHELLIN: Commissioner

13 Miller?

14 COMMISSIONER MILLER: Yes.

15 MS. SCHELLIN: Commissioner May?

16 COMMISSIONER MAY: Yes.

17 MS. SCHELLIN: Commissioner

18 Turnbull?

19 COMMISSIONER TURNBULL: Yes.

20 MS. SCHELLIN: The vote carries.

21 CHAIRMAN HOOD: Thank you. As it
22 appears the motion has passed, I request the

1 that the Office of Zoning provide notice of
2 this closed meeting in accordance with the
3 act.

4 Next, I will do 627. As Chairman
5 of the Zoning Commission for the District of
6 Columbia, and in accordance with 405 and 406
7 of the District of Columbia Administrative
8 Procedures Act, I move that the Zoning
9 Commission hold a closed meeting on Thursday,
10 June 27, 2013, for the purpose of seeking
11 legal advice for our council and deliberating
12 upon Zoning Commission Case 05-36G per D.C.
13 Official Code 2-575(b)(4) and (13). Is there
14 a second?

15 VICE CHAIR COHEN: Second.

16 CHAIRMAN HOOD: Okay, it's been
17 moved and properly seconded. Will the
18 secretary please take a roll call vote on the
19 motion before us now that has been seconded?

20 MS. SCHELLIN: Yes. And just to
21 clarify, this is going to be at 6 o'clock p.m.

22 CHAIRMAN HOOD: 6 o'clock, okay.

1 MS. SCHELLIN: Yes. Okay,
2 Chairman Hood?

3 CHAIRMAN HOOD: Aye.

4 MS. SCHELLIN: Vice Chair Cohen?

5 VICE CHAIR COHEN: Yes.

6 MS. SCHELLIN: Commissioner
7 Miller?

8 COMMISSIONER MILLER: Yes.

9 MS. SCHELLIN: Commissioner May?

10 COMMISSIONER MAY: Yes.

11 MS. SCHELLIN: Commissioner
12 Turnbull?

13 COMMISSIONER TURNBULL: Yes.

14 MS. SCHELLIN: The vote carries.

15 CHAIRMAN HOOD: As it appears the
16 motion is passed, I request that the Office of
17 Zoning provide notice of this closed meeting
18 in accordance with the act.

19 Ms. Schellin, do we have anything
20 else? Thank you very much. Remember that
21 last closed meeting starts at 6:00 p.m. Okay.

22 Okay, let's go right into our

1 agenda. Let's go to the Consent Calendar
2 item, our Zoning Commission Case Number 06-
3 08D, Fort Lincoln/Gateway Village, LLC,
4 request for minor modification to PUD at
5 Square 4325.

6 Let me ask, is there anyone that
7 sees that this needs to come off the consent
8 calendar item? Anyone? Okay, not hearing or
9 seeing any objections, Ms. Schellin, could you
10 --

11 MS. SCHELLIN: Yes. As you say,
12 the applicant is requesting a minor
13 modification. They're requesting a change to
14 Condition 2 of Order 06-08C. The Office of
15 Planning submitted a report at Exhibit 6
16 stating that it does not object to redirecting
17 the funds to the future community center.
18 However, it thinks the applicant should
19 provide additional detail about how the funds
20 would be used.

21 At Exhibit 7 we have an ANC
22 SMD5C03 letter in support. We ask the

1 Commission to consider action this evening.

2 CHAIRMAN HOOD: Okay,
3 Commissioners, we have the request before us.
4 We also have a request to get specific
5 information on this particular item. While I
6 don't think it's major, I think we possibly
7 may need to leave additional time. But let me
8 open it up and see if there's any discussion.

9 COMMISSIONER MILLER: Mr.
10 Chairman?

11 CHAIRMAN HOOD: Okay.

12 COMMISSIONER MILLER: Is it
13 possible if there's a representative of the
14 applicant who could provide us with that
15 information tonight?

16 CHAIRMAN HOOD: Since we asked,
17 Mr. Tummonds, if you could come up and --

18 COMMISSIONER MILLER: The
19 information is the OP's asking for the
20 additional detail about the exact use of the
21 funds in the new community center. Since the
22 existing proffer is specific about what items

1 will be purchased with the money, the new
2 proffer should provide a similar level of
3 detail.

4 MR. TUMMONDS: Good evening. My
5 name's Paul Tummonds, Goulston & Storrs.
6 Unfortunately, just by the very nature of us
7 having to reprogram these funds, that decision
8 of what is going to happen with the Thurgood
9 Marshall School with the rec center is
10 somewhat in a state of flux now.

11 The dialogue that is going on
12 between the Ward 5 council member, DCPS, DPR,
13 as to what needs to happen, we just don't know
14 what the specifics would be. Hence, that's
15 the basis for why we're requesting this
16 flexibility to move it on so that in two years
17 we will know.

18 (Off microphone comments)

19 COMMISSIONER MILLER: Got you, Mr.
20 Chairman. I don't know if OP would know this
21 or the applicant's representative. Is the
22 project to convert the Thurgood Marshall

1 School facilities into the Thurgood Marshall
2 Community Center, is it in the budget, the
3 capital budget that was just approved, the
4 five-year, '14 through whatever it is, 1918?

5 MR. TUMMONDS: I don't know.

6 COMMISSIONER MILLER: Does OP
7 know?

8 CHAIRMAN HOOD: Any other
9 questions of Mr. Tummonds or Office of -- Mr.
10 Turnbull?

11 COMMISSIONER TURNBULL: Well, I
12 guess, how do we approach something if we
13 don't know if the building's actually going to
14 be used for -- who's going to, if the
15 building's going to be approved? I mean I'm
16 all in favor of having a little bit of leeway
17 in trying to do things.

18 I mean the old order simply said
19 that it would be for the renovation of space
20 within the Hagans Cultural Center. I mean I'd
21 be willing to say that we could say something
22 similar, that it would be for the renovation

1 of the space within the other building. You
2 know, if they had changes then you could come
3 back for a modification of something later.

4 But I mean I don't want to end
5 this, but right now we're up in the air. But
6 maybe said some language that's at least
7 defining it. I don't know whether the
8 applicant's attorney would --

9 MR. TUMMONDS: I'm fine with that
10 proposal, renovation of space. I don't know
11 what my colleagues think or if that makes
12 sense.

13 CHAIRMAN HOOD: I really think
14 that we probably need to back up, because we
15 don't want to write a blank check. And I
16 think that as what's being requested, at least
17 from Office of Planning, and even from us,
18 typically we know.

19 Because that first, the way it was
20 written previously in the first proposal, we
21 knew exactly and the community knew exactly
22 what the money was going to be spent for --

1 chairs, the basketball hoop. And I'm not
2 saying that's what it was, but I think that's
3 what we need, some specificity here also.

4 And right now, you say it's two
5 years out, do we delay this for awhile and
6 give it a date certain to revisit it or what?
7 I mean what's the urgency?

8 MR. TUMMONDS: The urgency of the,
9 the precipitating event that required the
10 filing of this was that these contributions
11 were required to be made in order for certain
12 building permits to be issued.

13 The good story here is that the
14 sales of units in the villages Washington
15 Gateway have been very robust, and, you know,
16 I guess in an exciting way that they are
17 moving forward and we are moving into Phases
18 2 and 3.

19 So that is what triggered this so
20 that the zoning administrator could issue more
21 building permits for more of these units to be
22 built. That is why we are here probably,

1 maybe, a little early. But we can hold this.
2 I mean if you want to hold it so that we, you
3 know, hold it in abeyance until we can provide
4 more information, you know, that's another
5 possibility as well.

6 CHAIRMAN HOOD: Okay. Let me open
7 it up then. Vice Chair Cohen?

8 VICE CHAIR COHEN: Thank you, Mr.
9 Chairman. What percentage of the total
10 proffer package is this, because \$25,000 is
11 not a lot of money and I don't want to hold up
12 the building permit. So I would think that we
13 could make an exception to this particular
14 case and be less specific until they know.

15 MR. TUMMONDS: The previous
16 amenities package called for \$148,000 in
17 amenities in addition to the \$25,000. So I
18 can't do the math, but it's \$25,000 and
19 \$148,000.

20 VICE CHAIR COHEN: I would let
21 this go. I don't know what my other
22 colleagues feel.

1 CHAIRMAN HOOD: Commissioner May?

2 COMMISSIONER MAY: Yes, the thing
3 that makes me a little uncertain about this is
4 that we don't really even know that the new
5 project is going to happen, so why change it?
6 I mean the new neighborhood center or whatever
7 it is, whatever they're calling it, community
8 center.

9 So unless there's a reason to do
10 it immediately, I would be inclined to just
11 hold it off and you can come back and tell us.
12 I mean it seems pretty clear that it makes
13 sense to do it, it's just a matter of being
14 able to say instead of, you know, this item in
15 detail, let's do this other item in detail.

16 And, you know, I'm happy to put
17 that in abeyance. And I think that even if it
18 were to be a problem in terms of the timing of
19 issuing building permits or something like
20 that, maybe we could attach to some other
21 trigger that's a little bit later in the
22 process that would give you time to figure

1 this out.

2 CHAIRMAN HOOD: Okay, any other
3 comments on that? And plus, I'd like to see
4 things when it's worked out with the
5 neighborhood as best as possible. And
6 obviously, to have that much specificity
7 previously it was worked out with the
8 community of where that \$25,000, how it was
9 going to be disbursed. And I'd like to see
10 that same action happen here.

11 I would agree with Commissioner
12 May. If we could find some kind of way, and
13 we'll work with AOG, find some kind of way
14 that hopefully won't hold up the building
15 permits, but also though this is an unresolved
16 item that we need to deal with once the
17 council member in the community and everybody
18 weighs in.

19 Do we need to put a time certain?

20 MR. RITTING: I don't know if that
21 question was addressed to me. I don't know if
22 there's a need for a time certain. It might

1 be a very useful thing for the secretary to
2 have a time frame to track this matter.

3 CHAIRMAN HOOD: Even if we don't
4 do anything and they need a little more time,
5 just a time certain for us to kind of do a
6 check-in.

7 MR. TUMMONDS: Knowing that it's
8 June 10th, I would think that the likelihood
9 of, you know, some sort of resolution of this
10 prior to August is, I think, unlikely. So I
11 think, you know, if we can look in late fall.

12 CHAIRMAN HOOD: Well, that's
13 actually a lot sooner. I was thinking when
14 you said June 10th, you were going to say
15 maybe June 10th of next year.

16 MR. TUMMONDS: I'd take a year as
17 well.

18 CHAIRMAN HOOD: But let's see,
19 let's come up with a reasonable time. Maybe
20 fall, September, October? Revisit maybe
21 October?

22 MR. TUMMONDS: Yes, end of

1 October?

2 CHAIRMAN HOOD: End of October.

3 Is that okay, Commissioners, to revisit it?

4 Okay.

5 MS. SCHELLIN: We have one meeting

6 in October. That would be October 21st.

7 CHAIRMAN HOOD: October 21st, can

8 we schedule it for that?

9 MS. SCHELLIN: Okay, so we'll

10 defer action until October 21st.

11 MR. TUMMONDS: Fantastic.

12 MS. SCHELLIN: Are you going to be

13 following up with this or they're just going

14 to take it up? Are we expecting a filing from

15 you?

16 MR. TUMMONDS: I will have a

17 filing at least ten days prior to --

18 MS. SCHELLIN: You're going to

19 trigger my memory, because it doesn't work so

20 well anymore.

21 MR. TUMMONDS: I will have a

22 filing at least ten days prior to October 20.

1 I will file on October 11th to give kind of a
2 status, and then perhaps that way too we'll
3 know, we don't have an answer, we're working
4 towards it.

5 MS. SCHELLIN: Okay, no later than
6 the 11th.

7 MR. TUMMONDS: Perfect.

8 CHAIRMAN HOOD: Okay, so we're all
9 set. Any other questions? Mr. Tummonds, are
10 we all set?

11 MR. TUMMONDS: Yes, we are.

12 CHAIRMAN HOOD: Thank you very
13 much.

14 MR. TUMMONDS: Thank you.

15 CHAIRMAN HOOD: Great idea,
16 Commissioner Miller, for bringing Mr. Tummonds
17 up. We got a lot further than we would have
18 been. Thank you.

19 Okay, let's go to Final Action,
20 Zoning Commission Case Number 12-18. Ms.
21 Schellin?

22 MS. SCHELLIN: Yes, sir. In this

1 case we have the procedural order and post
2 hearing submissions submitted by the applicant
3 in Exhibits 49 through 52B. At Exhibit 55 we
4 have then Office of Planning memo per the
5 Commission's request regarding background on
6 how private alley and street areas are
7 considered in the calculation of FAR. And
8 we'd ask the Commission to consider final
9 action on this case this evening.

10 CHAIRMAN HOOD: Okay,
11 Commissioners, Ms. Schellin has teed it up for
12 us. We have some information that we may have
13 requested, some clarification on FAR and some
14 other issues that we had asked for. And I'd
15 just like to open it up for any comments.

16 And then I'll -- we actually
17 wanted to run through some of the before and,
18 well, some of the what's been approved and
19 some were modified, if those issues kind of
20 raise any flags to anyone or any have any
21 comments. So let me just open it up.

22 Unless you all want to do page by

1 page. I know a lot of people don't like when
2 I do page by page. You all want to do page by
3 page? Okay, excuse me.

4 COMMISSIONER TURNBULL: Well, Mr.
5 Chair, I think a couple of the items that I
6 had some concern with have been addressed.
7 And one of that was the tower at 6th and H
8 Street, which they've removed and simply
9 recessed that upper floor, and I think the
10 streetscape looks better for that.

11 And they addressed some issues I
12 had with the roof, the trellis away from the
13 front of the building, or the setback of the
14 building I should say. So my concerns,
15 architecturally, have been addressed.

16 CHAIRMAN HOOD: Okay, thank you,
17 Mr. Turnbull. Anybody else? Any other
18 concerns that were brought up?

19 VICE CHAIR COHEN: Thank you, Mr.
20 Chairman. I just want to modify the
21 submission of the zoning order on the Draft
22 Order Page 14, Paragraph 55, where they're

1 stating that the PUD is consistent with many
2 guiding principles of the comprehensive plan,
3 and one of them is managing growth and change.

4 And I understand it's a guiding
5 principle, but frankly, when you are providing
6 inclusionary zoning at 80 percent of median
7 income which translates to about \$85,000,
8 you're really not providing opportunities of
9 living in the district. They are not equally
10 available to everyone in the city.

11 So I would like that to be
12 modified. Want to just be a little bit more
13 transparent as to who we are helping.

14 CHAIRMAN HOOD: Okay. That's a
15 request to modify, and that's in the findings
16 of fact?

17 VICE CHAIR COHEN: Yes, sir.

18 CHAIRMAN HOOD: Okay, so noted.
19 Any objections to that? Okay, no objections.
20 Does anyone have any issues with this
21 easement?

22 One of the other things that was

1 brought up is the mitigation for the, I think,
2 the Bradley family. And we did receive that
3 in a letter. I don't believe the Bradleys, to
4 my knowledge I don't think the Bradleys
5 participated in a hearing, but they did submit
6 something in writing.

7 Anybody? Mr. Turnbull?

8 COMMISSIONER TURNBULL: Yes, Mr.
9 Chair. No, I agree. There was a letter
10 submitted, but I think in the course of the
11 hearings and our discussions with the
12 applicant and the community, I don't think
13 that ever came up as a stopping point or
14 something that was an impact on the project.

15 I mean the Bradleys were not here.
16 I don't think that was discussed in the
17 hearing. I don't think anything came up about
18 that in the hearing, per se. I don't think
19 there are any other arguments that -- I mean
20 if I look at the plan, I mean there is enough
21 room.

22 So without the Bradleys actually

1 coming before the Zoning Commission and
2 discussing their concerns, it's really hard to
3 get your arms around if there really is a
4 problem or what the real issues were.

5 I don't know if we need to address
6 -- I mean since it didn't come up it's hard to
7 go out on a limb and say yes, it's a definite
8 impact and, or is it just their own, a
9 perceived impact? It was never talked about.

10 CHAIRMAN HOOD: Right.

11 COMMISSIONER TURNBULL: So I guess
12 I'm reluctant to include any measures in the
13 order that would totally address the
14 mitigation.

15 I mean I think there was
16 discussion in there about what the applicant
17 was willing to do for them, and I think there
18 was a discussion as, you know. But the
19 Bradleys never ever came back and said yes, we
20 agree to that and go ahead do it.

21 So it's hard to, again without the
22 Bradleys actually coming here and talking to

1 us about it, I guess I'm reluctant to jump
2 ahead and totally address it as an impact.
3 But I don't know what my other colleagues
4 might think about it.

5 CHAIRMAN HOOD: Okay. Thank you,
6 Mr. Turnbull. Let's see, Vice Chair?

7 VICE CHAIR COHEN: Thank you, Mr.
8 Chairman. I believe, and maybe somebody could
9 shake their head yes or no, but that there is
10 a, the alley's about 20 feet away from the
11 house. So I think that that might be adequate
12 for there not being too much of an impact,
13 maybe.

14 (Off microphone comments)

15 VICE CHAIR COHEN: A range, okay.
16 So I think that there is sufficient distance
17 to preclude some of the issues that the party,
18 Bradleys, were concerned about.

19 CHAIRMAN HOOD: Any other
20 discussion? Okay, I -- Commissioner Miller?
21 Okay, I would also agree with my colleagues.
22 I think the record was clear. I think when we

1 look at the renderings, I think that any
2 impacts, there were no impacts presented. I
3 think the merits of the case stands on its
4 own, and I think that there were no adverse
5 impacts at least presented to us.

6 And I don't think there's any even
7 in the record that would hinder the Bradleys
8 in this particular case. So I don't think any
9 mitigation methods need to be put in place.
10 I just don't see the adverse impact, so I
11 would go along with my colleagues on that one.

12 Okay, the other thing is -- any
13 other comments? Let's talk about the parking
14 flexibility. Okay, also the applicant wanted
15 to provide 442 spaces for the original
16 submission and 438 for the grocery store. But
17 the applicant -- the flexibility to provide
18 only the number of required by the zoning
19 regulations.

20 And someone maybe would help me
21 refresh my memory. While I know that every
22 time we do an H Street there's a parking

1 issue, but this applicant is providing what's
2 required under zoning. Would we like to see
3 more? Possibly so, but can we mandate it?

4 No, but we can give them the
5 flexibility they requested. Because what may
6 happen, they may obviously petition to build
7 with additional parking spaces, which I'm sure
8 would take a load off of the neighborhood and
9 I'm sure folks would like it.

10 But under the requirements in our
11 law, our zoning law, they asked for an
12 alternative basically just to provide what's
13 required in the zoning law, and possibly more.
14 I mean some of the neighbors, I'm sure, would
15 like more, but I don't know if we can hold
16 them to the 400 or so parking spaces. I think
17 they just need to require especially what's
18 under zoning. Everything above, I think, is
19 helpful to the community.

20 So let me open it up. Any further
21 discussion on that? Commissioner Miller?

22 COMMISSIONER MILLER: Not on that,

1 Mr. Chairman. I was just going to say that
2 I'm comfortable with moving forward. I think
3 the applicant, I mean I think it's a project
4 that's going to bring more than 400 units of
5 housing and possibly another grocery store on
6 H Street.

7 And I think the applicant,
8 following the hearing, did address a number of
9 the issues that were raised at the hearing as
10 Commissioner Turnbull and others have said,
11 including removal of the west facade tower
12 elements, simplification of the rear facade,
13 and more information on the roof structures
14 and responding to DDOT's concerns and spelling
15 out the compliance.

16 It will be in compliance with
17 inclusionary zoning which, given the over 400
18 units, there will be a significant number of
19 inclusionary zoning units associated with this
20 project.

21 And the applicant is working with,
22 has tried to work with the adjacent property

1 owner to address that property owner's
2 concerns, so I'm prepared to make a motion if
3 that's appropriate at this time.

4 CHAIRMAN HOOD: Okay, I just
5 wanted to make sure though that was the
6 outstanding issue, the parking issue, and make
7 sure we don't have -- does anyone have issue
8 on the parking issue? Okay, we've heard
9 Commissioner Miller's recap. Are there any
10 more issues outstanding?

11 Commissioner May?

12 COMMISSIONER MAY: Yes, I don't
13 have an issue on parking, and I agree with the
14 recap, and would also note the detail that was
15 provided on the work that would be done at the
16 National Park Service site.

17 COMMISSIONER MILLER: I left that
18 one out because I figured you might --

19 COMMISSIONER MAY: Thank you. I
20 was wondering if you were going to let me pick
21 it up. But also then, the Blair House amenity
22 was clarified as well. So that and the

1 architectural changes, I am satisfied with
2 this the way it is before us.

3 (Off microphone comments)

4 COMMISSIONER MAY: There was not
5 actually a motion.

6 COMMISSIONER MILLER: I'll make
7 the motion, Mr. Chairman, to approve Zoning
8 Commission Case Number 12-18, USL - WDC H
9 Street LLC and L Street South Storage LLC, The
10 Apollo.

11 COMMISSIONER TURNBULL: Second.

12 CHAIRMAN HOOD: Okay, it's been
13 moved and properly seconded. Any further
14 discussion? Are you ready for the question?
15 All those in favor?

16 (Chorus of ayes)

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

20 MS. SCHELLIN: Yes. Staff records
21 the vote 5 to 0 to 0 to approve final action
22 in Zoning Commission Case Number 12-18.

1 Commissioner Miller moving, Commissioner
2 Turnbull seconding, Commissioners Cohen, May
3 and Hood in support.

4 CHAIRMAN HOOD: Okay, let's go to
5 Final Action Zoning Commission Case Number 04-
6 08C/02-45, D.C. Department of Mental Health,
7 PUD modification at Square 5868S.

8 Ms. Schellin?

9 MS. SCHELLIN: The only thing
10 staff has to add is that at Exhibit 18 we did
11 receive draft findings of fact and conclusions
12 of law from the applicant.

13 CHAIRMAN HOOD: Okay,
14 Commissioners, as you all recall, we took some
15 of the land out of the PUD. I think a lot of
16 this was hashed out in our proposed action.
17 And I'll just open it up for any further
18 discussion. Any further discussion?

19 Okay, and we just removed certain
20 areas out of the original PUD, and I think we
21 hashed a lot of that out. So I will move
22 approval of Zoning Commission Case Number 04-

1 08C/02-45, and ask for a second.

2 COMMISSIONER MILLER: Second.

3 CHAIRMAN HOOD: It's been moved
4 and properly seconded. Any further
5 discussion? All those in favor?

6 (Chorus of ayes)

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin will you please
9 record the vote?

10 MS. SCHELLIN: Staff records the
11 vote 5 to 0 to 0 to approve final action on
12 Zoning Commission Case Number 04-08C/02-45.
13 Commissioner Hood moving, Commissioner Miller
14 seconding, Commissioners Cohen, May and
15 Turnbull in support.

16 CHAIRMAN HOOD: Okay. Next,
17 Zoning Commission Case Number 10-28. This is
18 901 Monroe Street, LLC, procedural order on
19 remand from D.C. Court of Appeals. Ms.
20 Schellin?

21 Okay, I'll just frame this.
22 Commission intends to issue an order that

1 fully complies with the remand instructions to
2 aid in the process of the Commission request
3 to the applicant as the prevailing party to
4 provide a proposed order on remand that makes
5 the determinations, explanations and findings
6 required by the opinion.

7 The proposed order should contain
8 such findings of facts and conclusions of law
9 as are required. Again, it's noted in the
10 remand, the applicants shall file and serve
11 its proposed order no later than 3:00 p.m.,
12 June 24th, 2013, and shall also make an
13 electronic version available to other parties
14 in the Land Use and Public Works section of
15 the Office of Attorney General, which would
16 include the 200 Footers, the BNCA and the ANC
17 5A.

18 May each provide a response that
19 identifies any alleged errors or omissions in
20 the findings of facts and conclusions of law
21 stated in the procedural proposed order. Any
22 such response shall be filed and served no

1 later than 3:00 p.m. on July the 9th, 2013.
2 No other filings that bear upon the substance
3 of this application will be accepted.

4 Commissioners, do you all agree
5 with what I just read as a procedural as
6 moving forward?

7 VICE CHAIR COHEN: Yes, sir.

8 CHAIRMAN HOOD: Okay, can I get a
9 motion that we accept the process in moving
10 forward?

11 COMMISSIONER TURNBULL: Mr.
12 Chairman, I would move that we approve Zoning
13 Case Number 10-28, 901 Monroe Street, LLC,
14 procedural order on remand from D.C. Court of
15 Appeals, and look for a second.

16 VICE CHAIR COHEN: I will second
17 that.

18 CHAIRMAN HOOD: It's been moved
19 and properly seconded. Any further
20 discussion?

21 COMMISSIONER MILLER: Mr.
22 Chairman, I just wanted to note that I did not

1 participate in the original case and I'm not
2 participating in the remand.

3 CHAIRMAN HOOD: Okay. It's been
4 moved and properly seconded, and so noted,
5 Commissioner Miller. Any further discussion?
6 All those in favor?

7 (Chorus of ayes)

8 CHAIRMAN HOOD: Not hearing any
9 objection, Ms. Schellin, will you record the
10 vote.

11 MS. SCHELLIN: Yes. Staff records
12 the vote 4 to 0 to 1 to approve the procedural
13 order schedule that was voted, or approved
14 this evening. Commissioner Turnbull moving,
15 Commissioner Cohen seconding, Commissioners
16 Hood and May in support, Commissioner Miller
17 not voting, having not participated in the
18 case.

19 And I would ask that if the
20 parties are in the audience, I do have a copy
21 if they would come forward and receive a copy
22 of the order. That would be the ANC --

1 (Off microphone comments)

2 MS. SCHELLIN: The ANC 5B now?
3 They're not here?

4 MS. KAHLOW: They're not here.

5 MS. SCHELLIN: So the 200 Footers,
6 Brookland Neighborhood Association, Ms.
7 Caroline Petti, Mr. Tummonds, those are the
8 four that are involved in this process.

9 CHAIRMAN HOOD: I want to thank
10 Ms. Kahlow for reminding me of that.
11 Commissioner Shirley Smith was the chairperson
12 of ANC 5B.

13 And actually this happened in the
14 next case we're getting ready to go to also,
15 where the ANC managers have changed. So we
16 need to make sure that we're cognizant of
17 that. Instead of it being -- well, I'll wait
18 until we get to that case. Okay, thank you,
19 Ms. Kahlow, for mentioning that. Okay,
20 anything else on this particular case?

21 All right, thank you. Let's move
22 on to Zoning Commission Case Number 06-40B.

1 This is the Gateway Market Center, Inc. two-
2 year PUD time extension in Square 3587.

3 Ms. Schellin?

4 MS. SCHELLIN: Yes, sir. The
5 applicant is requesting a two-year PUD time
6 extension to April 18th, 2015, per their
7 supplemental filing that was received today at
8 Exhibit 7. Exhibit 4 is an OP report in
9 support. Exhibit 5 is a letter from DMPED in
10 support. Exhibit 6 is a letter from ANC
11 SMD5D01 in support. I would ask the
12 Commission to consider action this evening.

13 CHAIRMAN HOOD: Okay. Well, you
14 corrected me, Ms. Schellin. If it's from 5D
15 we're in the right ANC. I thought I saw
16 something from 5B.

17 MS. SCHELLIN: 5D01 is the one we
18 received --

19 CHAIRMAN HOOD: Well, we're in the
20 right ANC. Okay, that must have been
21 something old I read. All right. Thank you,
22 Ms. Schellin.

1 Let's open it up for comments. We
2 have two requests in front of us. We have a
3 request for a two-year time extension per the
4 supplemental filing. I've got myself
5 confused. I think --

6 VICE CHAIR COHEN: No, this is
7 just one request for the extension.

8 CHAIRMAN HOOD: But I think my
9 issue is why the extension is being requested.
10 Okay, maybe that's it. Would someone like to
11 tee it up so we can start?

12 VICE CHAIR COHEN: Maybe if we ask
13 the Office of Planning what possible status
14 this modification has because, frankly, this
15 is quite unusual to have an extension that's
16 for an expired, well, soon to be expired PUD.
17 Is there any time frame you can give us on
18 when this modification come forward?

19 MR. LAWSON: Joel Lawson with the
20 Office of Planning. We're continuing to work
21 with the applicant to resolve some issues with
22 the application before we bring forward to set

1 down. They're also working with DDOT to
2 resolve some circulation issues. At this
3 point we don't have a time frame for bringing
4 forward a set down.

5 VICE CHAIR COHEN: Thank you, Mr.
6 Lawson.

7 Chairman, I have concerns about
8 this extension and, you know, I know this is
9 up for discussion so, you know, I'll have my
10 colleagues comment on this. But we have no
11 information in front of us that even says the
12 hotel is feasible. They said that the office
13 now is, they've decided is infeasible.

14 And frankly, in 2011 when they
15 came forward for an extension, at that time I
16 would believe the office was also infeasible.
17 So without having any idea that the hotel now
18 is considered feasible, why would we want to
19 just, you know, jump into this?

20 I know we got a letter of support
21 from the deputy mayor's Office of Economic
22 Development. I think they should have been on

1 top of this. This is city-owned land and, you
2 know, this has been in planning since the year
3 2000, and now it's 2013.

4 And I know that development takes
5 a long time and there's been an issue since
6 2007 with the financial situation, but in 2011
7 that actually improved and today it's
8 improved.

9 So I'm very uncomfortable about
10 this particular development going forward on
11 not having any evidence that this new plan is
12 going to work. So I know that they're working
13 with the Office of Planning. I know that
14 they're working with DDOT and there are
15 issues. But we have no feel that this will
16 move ahead.

17 And as far as, you know,
18 financing, I would think a hotel is going to
19 be a harder, to attract money to this
20 particular area. It's just so fluid that I'm
21 very uncomfortable with the whole extension
22 request without knowing more about the

1 modification.

2 CHAIRMAN HOOD: Any other
3 comments, Commissioners? Commissioner May?

4 COMMISSIONER MAY: I'd just like
5 to say that I share Vice Chairman Cohen's
6 unease about approving a time extension for
7 this when we don't know what the prospects are
8 for the change or approving the change to the
9 PUD.

10 You know, it sounds like they
11 almost need to just throw in the towel and
12 just come back to us when they're ready with
13 a more mature proposal and file a new PUD.
14 I'm not saying that's what I support at this
15 moment, but it's, you know, this is not well
16 formulated at this moment and I share the
17 discomfort at this stage.

18 CHAIRMAN HOOD: I too am not in
19 favor of an extension for something that
20 basically we've already been told indirectly
21 is not going to be built. So we extended
22 something that we know is not going to happen,

1 so why don't we maybe find some time and give
2 some time certain for hopefully an opportune
3 time for the modification to come forward to
4 us.

5 That's kind of the lines I'd like
6 to go down. Let me open it up and hear my
7 other two colleagues. Any more discussion on
8 it? Okay, so --

9 COMMISSIONER MILLER: I would
10 concur with you, Mr. Chairman, that we perhaps
11 should defer consideration of the time
12 extension until we get the PUD modification
13 request before us for a set down so that we
14 can consider them simultaneously like the
15 Commission normally does.

16 So I would be comfortable with
17 just deferring our action to a date certain,
18 the end of the year or some date like that
19 when we know we can get the PUD modification
20 before us at the same time.

21 CHAIRMAN HOOD: Okay,
22 Commissioners, we're all in agreement with

1 moving that way. Can we all agree on a date?

2 COMMISSIONER TURNBULL: December?

3 CHAIRMAN HOOD: Okay, our meeting
4 in December, can we check in on that? Any
5 objection to that?

6 VICE CHAIR COHEN: Yes. I feel
7 that, I believe that we need to really be,
8 crackdown on the expectation that we'll just
9 automatically grant extensions and know that
10 again development is a very complex and
11 difficult process.

12 But I think we need to send a
13 message whether it's city-owned land or not
14 that there has to be much more compelling
15 cases to put in front of us. So I think we
16 should go ahead and vote, but I just wanted to
17 make sure that it should never be assumed that
18 we're going to extend something without a much
19 more compelling and detailed and timely
20 request.

21 CHAIRMAN HOOD: I think what we're
22 doing though, Vice Chair, we're just giving

1 them more time, opportune time to come back
2 with a modification. We're not giving them an
3 extension. We want them to come back with a
4 mod, modification.

5 VICE CHAIR COHEN: I understand.
6 No, I do understand that.

7 CHAIRMAN HOOD: Okay. All right,
8 I just wanted to make sure.

9 VICE CHAIR COHEN: I just have to,
10 you know, express my frustrations in public.

11 CHAIRMAN HOOD: Okay, go right
12 ahead. Okay. So is --

13 COMMISSIONER MAY: I share that
14 frustration as well and quite sympathetic
15 about it. In effect, we're giving them an
16 eight-month extension. Now maybe that's the
17 reasonable thing to do at the moment.

18 Again, I wouldn't be troubled at
19 all with the idea of simply having them start
20 over, but if the Commission would like to
21 extend until the beginning of December in
22 order to give them time to figure it out, I'll

1 go along with that.

2 But I think we should send a
3 strong message to the applicant that there's
4 a lot of figuring out to do and it better be
5 done well or I would not be inclined to vote
6 for an extension when they come around next
7 time. I mean I'm looking for a highly
8 favorable recommendation from the Office of
9 Planning at setdown.

10 CHAIRMAN HOOD: I just don't like
11 the word we're using. I guess I'm going to
12 get into semantics about extension. What I
13 consider us doing is continuing the matter.
14 Because I agree with Herb Franklin in the late
15 '90s, when he had problems with PUDs and
16 action items which stayed on the agenda for so
17 long.

18 And every time I hear of
19 extension, I'm sure Herb Franklin's not
20 watching this these many years later, but
21 every time I hear of extension I always think
22 about Herb Franklin and the late Jerrily Kress

1 and how we had those conversations. Thank you
2 for allowing me to regress back into that
3 time.

4 MS. SCHELLIN: Now you can think
5 about me.

6 CHAIRMAN HOOD: Okay, so I just
7 don't think we're giving them an extension.
8 I think we're giving them an opportune time to
9 come forward with a modification. That's
10 where I am.

11 COMMISSIONER MAY: I'm just saying
12 it's eight months. We're giving them eight
13 months of breathing room. We can call it
14 whatever you want, but we're giving them an
15 extra eight months to figure it out. I just
16 hope that they take advantage of that time and
17 really figure it out well. That's all I'm
18 saying.

19 CHAIRMAN HOOD: I'm sure they're
20 listening, and they know not to come here on
21 the, I think we said the 9th, Mr. Turnbull?
22 December 9th?

1 COMMISSIONER TURNBULL: I didn't
2 say. I was looking at Ms. Schellin. It could
3 be the 9th, but I'm not sure.

4 CHAIRMAN HOOD: Can we do December
5 9th?

6 MS. SCHELLIN: Yes, it is December
7 9th.

8 CHAIRMAN HOOD: Does everybody
9 agree?

10 (Off microphone comments)

11 MS. SCHELLIN: And just to make
12 sure that staff is clear, you want to defer
13 action until December 9th. However, to make
14 sure I understand, if the modification is set
15 down then we will just, I will then move it
16 until final action is taken on the
17 modification, and then it will be considered
18 at the same time final action is considered on
19 the modification.

20 So then it may or not happen in
21 December. It depends on what happens with the
22 modification. If the modification doesn't get

1 set down then we'll take this up December 9th.
2 Otherwise I'll move it at the same time final
3 action is taken on the modification if it's
4 set down, correct?

5 CHAIRMAN HOOD: Yes. We're giving
6 them time up until December 9th to bring that
7 modification.

8 MS. SCHELLIN: Right. And if the
9 modification is set down then this will get
10 moved to when final action is taken.

11 CHAIRMAN HOOD: And then we'll
12 have something to work with, exactly right.

13 MS. SCHELLIN: Okay, I just wanted
14 to make sure.

15 CHAIRMAN HOOD: Is that agreeable
16 with everyone?

17 MS. SCHELLIN: That's correct.

18 CHAIRMAN HOOD: Everyone except --
19 (Simultaneous speaking)

20 COMMISSIONER MAY: So we don't
21 actually need to vote to defer this action.

22 MS. SCHELLIN: No. I just want to

1 make sure that --

2 CHAIRMAN HOOD: Yes, I like that.
3 Yes, we don't need to vote.

4 MS. SCHELLIN: Okay, I just want
5 to make sure I have permission to move it if
6 that happens.

7 CHAIRMAN HOOD: Yes, we don't need
8 to vote. Okay. Thank you, Commissioner May.

9 Okay, now I got mixed up. Where
10 are we? Okay, let's go to Proposed Actions.
11 Proposed actions, Zoning Commission Case
12 Number 07-18D, Jemal's Up Against the Wall,
13 PUD modification at Square 347.

14 Ms. Schellin?

15 MS. SCHELLIN: Yes, sir. Exhibit
16 28 is the ANC 2C report in support, which the
17 Commission left the record open to receive
18 that. Exhibits 29 and 31 are the applicant's
19 post hearing submissions. We'd ask the
20 Commission to consider proposed action on this
21 case.

22 CHAIRMAN HOOD: Okay, thank you,

1 Ms. Schellin. Let's go through this PUD
2 modification, Commissioners. Exhibit 30 and
3 what was the other exhibit?

4 (Off microphone comments)

5 CHAIRMAN HOOD: I'm sorry, 29 and
6 30. Okay, thank you. Again, the applicant
7 showed us what was approved and what was being
8 modified in Exhibit 30. Let's open it up for
9 any comments, questions.

10 It's good to see the ANC letter of
11 support. That's our Exhibit Number 28. We
12 did hold the record open because I think, Ms.
13 Schellin, as you stated, we didn't have an ANC
14 report prior, and I think, according to that
15 letter the applicant went out to the ANC and
16 they had a quorum of three commissioners.
17 Okay, and the vote was 3 to 0. Anything else?

18 VICE CHAIR COHEN: Mr. Chairman,
19 if there is no discussion then I will move to
20 approve Zoning Case Number 07-18, Jemal's Up
21 Against the Wall, PUD modification at Square
22 347.

1 CHAIRMAN HOOD: Okay.

2 COMMISSIONER MILLER: I second
3 that.

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

7 COMMISSIONER MILLER: And I would
8 note that I think one of the things that came
9 out of the hearing was the additional retail
10 along F Street, and I think it's a very
11 attractive project. And we'll finally get the
12 Waffle House relocated to another downtown
13 location as well as part of this project. So
14 I think it's, prepared to support it.

15 CHAIRMAN HOOD: Okay. And I
16 really just want to say I really appreciate
17 Exhibit 30 which shows what we discussed
18 thoroughly, previously, and what's been
19 modified. And I know at this particular
20 hearing we got a lot of stuff hashed out, and
21 I think the record speaks for itself. No
22 sense in being redundant.

1 Okay, it's been moved and properly
2 seconded. Any further discussion? All those
3 in favor?

4 (Chorus of ayes)

5 CHAIRMAN HOOD: Not hearing any
6 opposition, Ms. Schellin, will you record the
7 vote.

8 MS. SCHELLIN: The staff records
9 the vote at 5 to 0 to 0 to approve proposed
10 action on Zoning Commission Case Number 07-
11 18D. Commissioner Cohen moving, Commissioner
12 Miller seconding, Commissioners Hood, May and
13 Turnbull in support.

14 CHAIRMAN HOOD: Okay, next.
15 Zoning Commission Case Number 06-11J and 06-
16 12J. This is the George Washington University
17 2nd Stage PUD at Square 77. Ms. Schellin?

18 MS. SCHELLIN: Yes, sir. We had
19 two exhibits come in after the hearing.
20 Exhibit 31 was the testimony of Ms. Kahlow.
21 Exhibit 32 is the post hearing statement of
22 the applicant. We ask the Commission to

1 consider proposed action on this case.

2 CHAIRMAN HOOD: Okay,
3 Commissioners, any comments? Any follow-up
4 concerns?

5 COMMISSIONER MAY: Well, I guess I
6 should say that I at least appreciate the fact
7 that they acknowledged that there were some
8 suggestions of things that they needed to look
9 at in the design.

10 I mean I think that's pretty much
11 what I asked for the first time around. That
12 was a pretty mild request and I wasn't
13 expecting new designs for it. But hopefully
14 they will make some improvement in that area.

15 And it's not the biggest issue
16 from our perspective, from the Zoning
17 Commission's perspective, I think.

18 CHAIRMAN HOOD: And one of my
19 issues in this particular case, what I wanted
20 to know was, and this is really probably not
21 even germane to this discussion, but how do we
22 keep West End all the time from being -- what

1 do we need to do to make sure some of things
2 that are in their application as far as some
3 of the things that when West End is objecting
4 to some of these projects about pedestrian,
5 how can George Washington University help
6 mitigate that?

7 Like I mentioned at the hearing,
8 we've had other cases, other universities in
9 this city who have kind of closed that gap.
10 Let's start closing the gap here. And I know
11 this may not be germane to this discussion,
12 but I'm going to be saying this from now on.

13 When I see George Washington and I
14 see West End, particularly Ms. Kahlow
15 representing West End, how do we start
16 bridging that gap? Because I can tell you
17 it's been successful in other parts of this
18 city. So I'll leave it at that.

19 Any other discussion on the zoning
20 matter? Any other discussion?

21 COMMISSIONER TURNBULL: Mr. Chair,
22 I would just like to say that I have reviewed

1 the record since I was not there for the
2 original hearing, and ready to act on this.
3 And I want to acknowledge your acknowledgment
4 on Mr. Avitabile's advancement to parenthood.
5 I thought that was very appropriate at the
6 time and now how he's going to join sleepless
7 nights of the rest of those parents.

8 CHAIRMAN HOOD: I hope that made
9 for some very interesting -- did you read it
10 or view it? Which one?

11 COMMISSIONER TURNBULL: I think
12 reading it was enough. I could picture your
13 faces saying these things.

14 CHAIRMAN HOOD: Yes, so that
15 definitely was that hearing.

16 Okay, anything else,
17 Commissioners? And this is probably again, we
18 hash a lot out in our discussions in these
19 hearings which you said previously and I think
20 the record speaks for itself. Anything else?

21 Okay. I would move approval for
22 Zoning Commission Case 06-11J/06-12J, and ask

1 for a second.

2 COMMISSIONER MILLER: Second.

3 CHAIRMAN HOOD: It's been moved
4 and properly seconded. Any further
5 discussion? All those in favor?

6 (Chorus of ayes)

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin, will you record the
9 vote.

10 MS. SCHELLIN: Yes, Staff would
11 record the vote 5 to 0 to 0 to approve
12 proposed action Zoning Commission Case Number
13 06-11J/06-12J. Commissioner Hood moving,
14 Commissioner Miller seconding, Commissioners
15 Cohen, May and Turnbull in support.

16 CHAIRMAN HOOD: Okay. Do we have
17 a status report tonight from the Office of
18 Planning?

19 MS. STEINGASSER: We do not have a
20 ZRR status report, but we do have some OP
21 issues we just wanted to raise. We've
22 recently released an accounting of the

1 comprehensive plan implementation, and we
2 would like to have the director come and give
3 a presentation to the Zoning Commission and go
4 through the steps and highlight a lot of the
5 actions obviously have been executed here.

6 So if the Commission is open to
7 that we'd like to work with the Office of
8 Zoning and get that scheduled.

9 CHAIRMAN HOOD: I think it sounds
10 good. I think that would be very helpful.

11 COMMISSIONER MAY: I appreciate
12 the fact that we got copies of the report as
13 well last week.

14 CHAIRMAN HOOD: So if we work with
15 Office of Zoning and Office of Planning and we
16 can get that scheduled, that would be great.
17 That's it?

18 Mr. Lawson, do you have anything?

19 MR. LAWSON: No, sir.

20 CHAIRMAN HOOD: Okay, good. All
21 right. Ms. Schellin, do we have anything
22 else?

1 MS. SCHELLIN: We'll figure out a
2 day and then we'll announce another closed
3 meeting, but yes.

4 CHAIRMAN HOOD: We've got to do --
5 okay. We can't out here?

6 MS. SCHELLIN: If you want to do
7 it out in the open, if that's what they want
8 to do then we could do that, yes.

9 MS. STEINGASSER: It would be an
10 open meeting.

11 MS. SCHELLIN: If you want to do
12 it out here, then yes, we can do that.

13 MS. STEINGASSER: We'll just get
14 on the agenda.

15 CHAIRMAN HOOD: Okay. We could do
16 that at a regular meeting then, right? What
17 would we need, about 30 minutes, an hour?

18 (Off microphone comments)

19 CHAIRMAN HOOD: Okay. Yes, we can
20 just squeeze it in at one of our meetings, one
21 with maybe one or two items on it. Do we have
22 any of those?

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MS. SCHELLIN: Maybe.

CHAIRMAN HOOD: No, I doubt it.
Okay. We'll do it on a volleyball night.

Okay, so I want to thank everyone
for their participation for this meeting, and
this meeting is adjourned.

(Whereupon, the foregoing matter
went off the record at 7:31 p.m.)

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In the matter of: Regular Meeting

Before: DCZC

Date: 06-10-13

Place: Washington, DC

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