

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC MEETING

+ + + + +

TUESDAY

SEPTEMBER 17, 2013

+ + + + +

The Regular Public Meeting convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4<sup>th</sup> Street, N.W., Washington, D.C., 20001, pursuant to notice at 9:40 a.m., Lloyd Jordan, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LLOYD JORDAN, Chairperson  
S. KATHRYN ALLEN, Vice-Chairperson  
JEFF HINKLE, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
JOHN NYARKU, Zoning Specialist  
STEPHEN RICE, Zoning Specialist  
STEPHEN VARGA, Zoning Specialist  
PAUL YOUNG, Zoning Data Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

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MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN GYOR

MAXINE BROWN-ROBERTS

The transcript constitutes the minutes from the Public Meeting held on September 17, 2013.

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T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(9:40 a.m.)

CHAIRMAN JORDAN: Good morning ladies and gentlemen. We're here for the meeting and hearing of the Board of Zoning Adjustment. We're located at the Jerrily R. Kress Memorial Hearing Room at 441 4th Street, Northwest. Today's date is September 17, 2013.

My name is Lloyd Jordan, Chairperson. To my right is S. Kathryn Allen, Vice Chair. To her right is Jeffery Hinkle, Board Member. To my left is Michael Turnbull, member of the Zoning Commission.

Please be advised that these proceedings are being recorded by a court reporter and are also being web cast live. Therefore, I'm going to ask you to refrain from any disruptive noises here in the hearing room.

Some of our cases today are hearing cases in which we'll be taking

1 testimony. And if you're here to provide a  
2 statement or provide testimony in regards to  
3 any case on our docket today, I need you to do  
4 two things.

5 The first thing I need you to do  
6 is to complete two witness cards for each  
7 person, two witness cards for each person.  
8 And prior to your testimony, please give them  
9 to the court reporter who is seated to my  
10 right.

11 The second thing I need you to do  
12 is for you to stand at this time and take the  
13 oath of affirmation being given by the Board's  
14 secretary, Mr. Moy. So, if you are going to  
15 provide testimony today, two things. One,  
16 complete two witness cards per person, give  
17 them to the court reporter, and now stand to  
18 be sworn by Mr. Moy.

19 (WITNESSES SWORN)

20 MR. MOY: Good morning. Do you  
21 solemnly swear or affirm that the testimony  
22 that you're about to present in this

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1 proceeding is the truth, only the truth and  
2 nothing but the truth? Ladies and gentlemen,  
3 you may consider yourself under oath.

4 CHAIRMAN JORDAN: Okay. Let's  
5 have a couple preliminary issues and items.  
6 Mr. Moy, what preliminary matters do you  
7 think, or do you want to handle by case? Do  
8 you have those?

9 MR. MOY: Yes. We can, well, a  
10 couple things for the record, Mr. Chairman.  
11 First, the appeal of 18612 of Terry Hopkins  
12 has been withdrawn from your agenda. Also, as  
13 a preliminary matter, Mr. Chairman, one of the  
14 decision cases this morning, which is the  
15 Lincoln Banneker case, 18576. I have a motion  
16 to include into a record a filing from the  
17 applicant which was not one of the requested  
18 post entered documents by the Board.

19 CHAIRMAN JORDAN: 18576. That's  
20 the one where we requested the applicant to  
21 meet with the Civic Association --

22 MR. MOY: That's correct.

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1                   CHAIRMAN JORDAN:  -- and so this  
2                   is actually their report back that they did  
3                   repos.

4                   MR.  MOY:        That's  correct,  Mr.  
5                   Chairman.

6                   CHAIRMAN JORDAN:  We'll  accept  
7                   that  in  the  record.

8                   MR.  MOY:  Thank  you,  sir.

9                   CHAIRMAN JORDAN:  As  a  preliminary  
10                  matter,  I  would  like  to  see,  is  there  a  
11                  representative  here  on  case  18630?  Anyone  
12                  from  Office  of  Planning  is  handling  18610,  
13                  18630  excuse  me  18630?  This  is  a  matter  that  
14                  was  on  an  expedited  docket.  So,  the  applicant  
15                  is  not  required  to  be  here.

16                  However,  I'm  inclined,  let  me  get  
17                  some  information  on  this.  Let  me  know  when  
18                  you're,  all  right,  introduce  yourself.

19                  MR.  GYOR:        Good  morning,  Mr.  
20                  Chairman  and  members  of  the  Board.  I'm  
21                  Stephen  Gyor  with  the  Office  of  Planning.

22                  CHAIRMAN JORDAN:  Mr.  Gyor,  has

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1 this matter, there was some concerns from the  
2 Office of Planning report that you didn't have  
3 all the documents for your to properly  
4 evaluate this. Have you gotten the documents?

5 MR. GYOR: I have not. I have  
6 attempted to contact the applicant and the  
7 expediter. And have been unable to attain the  
8 narrative.

9 CHAIRMAN JORDAN: Thank you. I  
10 appreciate that. I'm going to pull this one,  
11 18630, if that's okay with the Board, because  
12 I want to be sure the Office of Planning has  
13 reviewed this and had all the information that  
14 you needed regarding this application. If we  
15 can give notice to the applicant, Mr. Moy,  
16 give the 30 day date.

17 MR. MOY: Yes, sir. For the  
18 report, we give a 30 day date. And we're  
19 looking at October the 22nd. Unless you want  
20 it down for October 29th. We have two appeals  
21 that day.

22 CHAIRMAN JORDAN: Whatever you

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1 prefer.

2 MR. MOY: I would suggest, Mr.  
3 Chairman, we put it for the 29th. Ease of  
4 your docket.

5 CHAIRMAN JORDAN: Okay. For the  
6 29th?

7 MR. MOY: Yes, sir.

8 CHAIRMAN JORDAN: What's on that  
9 docket for the 29th?

10 MR. MOY: You have one, two,  
11 three, four, five application type cases and  
12 one appeal.

13 CHAIRMAN JORDAN: Okay. Thank  
14 you. Our next matter I wanted to handle  
15 preliminarily, I wanted to, I'm going to  
16 suggest to the Board that we move 18031, the  
17 appeal to West End Citizen's Association. I'm  
18 not comfortable at this particular point, and  
19 we're still receiving the legal advice in  
20 regards to what we need to do.

21 This is a more very complex case  
22 that's going to set a, kind of recharge how we

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1 do business for this Board. And I want to  
2 make sure we're going to make proper decisions  
3 that we thoroughly briefed, which we have  
4 received briefings, as well as being able to  
5 absorb the issues. And it has issues that  
6 really effect even more this Board, other  
7 Boards also.

8 And it also has something in  
9 regards to the relationship with the Board of  
10 Zoning Adjustment and its relationship with  
11 the Zoning Commission. So, I'm going to  
12 suggest that we move this from today's agenda.

13 If no one's opposed to that, then we can do  
14 it by consent. Would that be correct? Mr.  
15 Moy, what would be a date we can move this to?

16 MR. MOY: The earliest date  
17 concerning the size of your docket, Mr.  
18 Chairman, I would suggest the morning of  
19 October the 8th.

20 CHAIRMAN JORDAN: Let move to  
21 October 8th. This is, this matter is really  
22 something we need to thoroughly look at. We

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1 want to make sure it's effect upon the  
2 citizenship is going to be substantial. So,  
3 let's move that. So, it will be moved to  
4 October 8th.

5 MR. MOY: Thank you, Mr. Chairman.

6 CHAIRMAN JORDAN: That's 18031.  
7 Next for preliminary matters. Is there a  
8 representative here for 18608? 18608. Would  
9 you please come forward. Take a seat please,  
10 and identify yourself

11 MR. EISLEY: My name is Ken  
12 Eisley.

13 CHAIRMAN JORDAN: Let's make sure  
14 a microphone is turned on. Push the button  
15 that says push, and it should turn green, a  
16 very bright glow.

17 MR. EISLEY: My name is Ken  
18 Eisley.

19 CHAIRMAN JORDAN: And Mr. Eisley  
20 you are?

21 MR. EISLEY: Employed by Moonkor  
22 Corporation.

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1                   CHAIRMAN JORDAN: And are you the  
2 designated representative?

3                   MR. EISLEY: No. Actually I'm the  
4 guy who did all the filing for them.

5                   CHAIRMAN JORDAN: Okay.

6                   MR. EISLEY: So, I'm just here  
7 because he doesn't understand too good.

8                   CHAIRMAN JORDAN: Okay.

9                   MR. EISLEY: In a sense, I'm  
10 representing them, yes. I'm representing.

11                   CHAIRMAN JORDAN: You should have  
12 filed a representation letter. And would you  
13 introduce the gentlemen to your right?  
14 Introduce himself or can you?

15                   MR. EISLEY: Mr. Moon.

16                   CHAIRMAN JORDAN: Mr. Moon is what  
17 in regards to this case?

18                   MR. EISLEY: He's the owner.

19                   CHAIRMAN JORDAN: Mr. Eisley, we  
20 really do need Mr. Moon to complete an  
21 Authorization of Representation in the file  
22 for you. Is it Schuman who actually filed

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1 some documents in this case?

2 MR. EISLEY: She was the owner of  
3 the building. He's the owner of the business.

4 CHAIRMAN JORDAN: And we see  
5 nothing in the file giving you authorization  
6 or Mr. Moon to prosecute this, to make this  
7 application in its behalf, which is required.

8 MR. EISLEY: Yes.

9 CHAIRMAN JORDAN: This file is  
10 riddled with a lot of our procedural  
11 deficiencies as well as some other evidence  
12 that's necessary.

13 MR. EISLEY: Yes.

14 CHAIRMAN JORDAN: I'm going to  
15 suggest that we, we're missing also some other  
16 information, I think Office of Planning may  
17 have asked or the Board needs to see. I'm  
18 going to pull this from today's docket, and  
19 give you an opportunity to meet with the  
20 Office of Planning and the Office of Zoning.  
21 And making sure that you have everything  
22 that's necessary to go forward with this case.

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1 MR. EISLEY: Yes, sir.

2 CHAIRMAN JORDAN: If that's okay  
3 with the Board. Let's do that by consent and  
4 move that to a new date, Mr. Moy. Go across  
5 the hall after you leave here, and they will  
6 give you advice about what you should be  
7 doing, who you should talk to.

8 MR. EISLEY: Okay.

9 CHAIRMAN JORDAN: Number one, you  
10 need a letter from the building owner saying  
11 that you can do what you're doing.

12 MR. EISLEY: I'm new at this.

13 CHAIRMAN JORDAN: I understand  
14 that.

15 MR. MOY: Mr. Chairman,  
16 considering what I've just heard to allow  
17 sufficient time, I would suggest October 29th.  
18 And so that way, Mr. Chairman is sitting on  
19 that day as well.

20 CHAIRMAN JORDAN: Oh Good. So,  
21 it's been moved to October 29th. And so  
22 there's some things that you have to do.

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1 Really be very diligent about that. Is there  
2 also, did you post this hearing notice in your  
3 application?

4 MR. EISLEY: Yes, sir.

5 CHAIRMAN JORDAN: All right then.  
6 Those things have to be filed. So, there's  
7 some requirements.

8 MR. EISLEY: Okay.

9 CHAIRMAN JORDAN: Just follow  
10 through on them.

11 MR. EISLEY: I will. I've never  
12 done this before.

13 CHAIRMAN JORDAN: Oh yes. Hey,  
14 you got this far.

15 MR. EISLEY: Okay. Thanks a lot.

16 CHAIRMAN JORDAN: Thank you.

17 MR. EISLEY: Yes.

18 CHAIRMAN JORDAN: Let's move to  
19 our decision matters. Well, decision and  
20 expedites. We have two cases remaining on the  
21 docket under Expedited Review. We certainly,  
22 the Board, you've reviewed these cases, I'm

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1 sure. Unless there is an issue that members  
2 of the Board have, then I would move by  
3 consent that we grant the relief requested in  
4 18627 and 18634, our remaining two expedited  
5 matters.

6 MEMBER TURNBULL: I have no  
7 problem, Mr. Chair.

8 VICE CHAIRPERSON ALLEN: Second.

9 CHAIRMAN JORDAN: Motion made and  
10 seconded. Any unreadiness? All those in  
11 favor signify by saying aye.

12 BOARD MEMBERS: Aye.

13 CHAIRMAN JORDAN: Those opposed,  
14 nay. The motion carries. Mr. Moy.

15 MR. MOY: Yes, sir. Staff will  
16 record to vote on the two cases on the  
17 Expedited Review Calendar as four to zero.  
18 This on the motion of Chairman Jordan to  
19 approve these two cases which are cases 18627,  
20 18634. Second motion of Chairperson Allen  
21 also support Mr. Turnbull and Mr. Hinkle and  
22 we have a Board seat vacant. Motion carries.

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1                   CHAIRMAN JORDAN:   Okay.   Thanks.  
2   What do we have next on the docket here?  
3   18576, is that correct?

4                   MR. MOY:   Yes, sir.

5                   CHAIRMAN JORDAN:   You need to call  
6   it or just --

7                   MR. MOY:   Well, I'll give the  
8   title for the transcript, Mr. Chairman.   That  
9   would be application number 18576, Fort  
10   Lincoln Banneker Townhouses, LLC.   This is  
11   relief for special exception under Section 25-  
12   16.   And variances, I probably should record  
13   the variances.

14                   This is special exception, as I  
15   said, under Section 25-16 variances from the  
16   front yard requirement under subsection 25-  
17   16.5.   Theoretical lot under subsection 25-  
18   16.4 to allow construction of 42 townhouses in  
19   R-5-D and C-2-B Districts along Fort Lincoln  
20   Drive North East and Banneker Drive North East  
21   Square 4325, Lots 29, 31, 813 and 814.   On the  
22   variance of the requested Mr. Chairman.

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1 CHAIRMAN JORDAN: Thank you

2 VICE CHAIRPERSON ALLEN: I'd like  
3 to just again say for the record that I have a  
4 business relationship with this client, so I  
5 have recused myself.

6 CHAIRMAN JORDAN: With this  
7 applicant?

8 VICE CHAIRPERSON ALLEN: With this  
9 applicant.

10 MEMBER HINKLE: And Mr. Chairman,  
11 I need to note that I was not at the hearing  
12 on, I guess, that was July 9th. But I have  
13 read the record and will participate.

14 CHAIRMAN JORDAN: Very good.  
15 Thank you. With that then, is that Board  
16 ready to deliberate on this matter? Not you.

17 Is everybody else other than Kathryn ready to  
18 deliberate on this matter? This is a matter,  
19 I think, it really becomes straight forward  
20 after the evidence was provided and review of  
21 the record.

22 A request for special exception,

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1 in order to do that, it must be in harmony  
2 with the general purpose of the zoning  
3 regulation, zoning map and not have an adverse  
4 effect upon neighboring property. And also,  
5 taken the characteristics of the respective  
6 neighborhoods and districts, the project has  
7 been, I think it's pretty well, thoroughly  
8 designed and accounts for the topographical  
9 challenges of the property.

10 And it fits kind of well in this  
11 situation. Vehicle traffic, as the reports  
12 indicated, are not going to be any substantial  
13 impact and be very minimal in the additional  
14 increases. And they're going to have parking  
15 spaces.

16 So, the creation of 93 parking  
17 spaces for the 42 townhouses seem to me to be  
18 sufficient. And for the variance relief, we  
19 all know the variance standard. And that I  
20 think that this property meets the  
21 requirements for variance standard to support  
22 the relief requested from variance. The

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1 property is vacant and it's a wooded area.

2 It's irregularly shaped and  
3 includes about five acres of land. And the  
4 grade and the area itself is very challenging,  
5 and there is a grade drop off, I think, at  
6 various points up to about 70 feet. With  
7 these things, they surely present a practical  
8 difficulty and further than that, compliance  
9 with the area of restrictions would be  
10 burdensome on them, in my opinion.

11 Although they are seeking some  
12 relief for the front yard, they are providing  
13 front yards in most of the units. Some are  
14 being reduced from 10 feet. They are going to  
15 range from 10 feet to 15 feet. Fifteen feet  
16 in length for some of these, from the ones in  
17 some of the lots.

18 So, it's kind of a mixture, and  
19 they seem like they are trying to do the best  
20 to fit that in. The real yards are the lots  
21 that have retaining walls. It also gives them  
22 to effect of one that's issued with the size

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1 of where it fits in the variance request. The  
2 requirements for a 16 foot, I believe, front  
3 yard.

4           However, as I just said, they have  
5 these challenges and are doing some front  
6 yards to the best of their ability in these  
7 properties. The reason why we have a kind of  
8 a staggered, they have it kind of staggered  
9 front line if you continue a line of  
10 townhouses, yes, it's one by, kind of by  
11 design. But it's also one that I think really  
12 fits this project.

13           And it fits into what their needs  
14 are and why we should allow the variance  
15 requirement here, that they meet the variance  
16 requirements. I think that's pretty much what  
17 I think about this. Anybody else? Mr.  
18 Hinkle.

19           MEMBER HINKLE: Yes. I just  
20 wanted to note that the applicant did propose  
21 some conditions on here. I'm not sure if you  
22 had had an opportunity to reviews those, Mr.

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1 Chairman.

2 CHAIRMAN JORDAN: I did, but go  
3 ahead. Why don't you read what the conditions  
4 are.

5 MEMBER HINKLE: Well, one was that  
6 the applicant agrees that private trash  
7 removal will be provided for the 42 townhouses  
8 on the property. And bylaws for the  
9 homeowners association shall include a  
10 requirement that all trash bins must be  
11 removed from the internal street within 18  
12 hours of trash removal.

13 And then the second condition is  
14 that the bylaws for the homeowners association  
15 shall include a prohibition for all residence  
16 and their guests from parking cars in the  
17 driveway in a manner that would block the  
18 sidewalk or extend the car into the street.

19 CHAIRMAN JORDAN: Okay. And I'm  
20 glad you reminded me of that. Because that's  
21 the only area where I do have problems in  
22 regards to the conditions. For this to really

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1 work, the bylaws are not sufficient enough for  
2 me to have the restrictions here.

3 And it's condo bylaws, the  
4 condominium association has created at some  
5 point, they can vote to change their bylaws.  
6 I would like to have the conditions actually  
7 run with the land either by covenant or even  
8 by statement and declaration of the condo so  
9 that it kind of runs with the land. And so,  
10 that would be my only change to the  
11 conditions. It would be my change to the  
12 conditions.

13 MEMBER HINKLE: Sure, I can agree  
14 with that.

15 CHAIRMAN JORDAN: Let me see. Is  
16 there a representative here in that case? Do  
17 you understand my change to your condition?

18 PAUL TUMMONDS: Yes. Absolutely.

19 For the record, Paul Tummonds on behalf of  
20 the applicant. We're fine with that revision.

21

22 CHAIRMAN JORDAN: Thank you. Any

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1 other questions or concerns? Well, with that  
2 then, I would move that we grant the relief  
3 requested with the conditions proposed but the  
4 with the change that I indicate that there  
5 needs to be a covenant or declaration of the  
6 condo to indicate the conditions as we line  
7 them. And so I would move that the Board  
8 adopt, excuse me, approve the application as  
9 stated.

10 MEMBER HINKLE: I'll second that.

11 CHAIRMAN JORDAN: Motion made and  
12 seconded. Any unreadiness? All those in  
13 favor signify by saying aye.

14 BOARD MEMBERS: Aye.

15 CHAIRMAN JORDAN: Those opposed,  
16 nay. The motion carries. I do believe we  
17 have an absentee.

18 MR. MOY: Yes, sir. Mr. Chairman,  
19 we have an absentee ballot from a participant,  
20 Ms. Cohen. And her absentee ballot is to, her  
21 road is to approve such conditions as proposed  
22 by the Board. So, that would give a final

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1 vote of three to zero on the motion of  
2 Chairman Jordan to approve with the revisions  
3 to the conditions.

4 Second the motion is Mr. Hinkle  
5 also support, of course, Ms. Cohen. We have  
6 one recusal and one vacancy. So, again, vote  
7 carries three to zero.

8 CHAIRMAN JORDAN: All right and  
9 thank you. Let's move into our next matter  
10 for decision.

11 MR. MOY: Okay. I have, okay,  
12 this would be the last decision case for the  
13 meeting session. This is the applicant's  
14 request for a two year time extension of  
15 application number 17837 of Hillcrest Homes,  
16 LP. As the Board will recall, the Board last  
17 week moved this request to September the 17th.

18 I will just conclude there, Mr. Chairman.

19 CHAIRMAN JORDAN: All right. You  
20 don't want to read the dissertation that goes  
21 with it? All right. 17837 has pretty  
22 straightforward request for an extension of

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1 time to construct the 54 unit dwelling.

2 This matter has kind of walked  
3 around for a while due to a lot of other  
4 things. And it's now prime for us. I think  
5 the application certainly supports the, the  
6 submission supports the extension of time.

7 It's been cited economic  
8 uncertainty, and they filed those things up  
9 with the inability to obtain financing and the  
10 market conditions at the point where because  
11 of this long walk it's taken not primed to get  
12 this project moving. So, with that, I see no  
13 reason not to grant the request for time  
14 extension. Anyone else?

15 MEMBER HINKLE: Yes, Mr. Chairman,  
16 usually I like to see a little bit more  
17 evidence in these requests in terms of efforts  
18 that have been made in order to finance these  
19 projects, but I'm relatively comfortable. I  
20 mean, we do have a lot of information in the  
21 affidavit that was provided. So, I could  
22 second the motion.

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1                   MEMBER TURNBULL: Yes, Mr. Chair,  
2 I would agree with Mr. Hinkle. I like to  
3 usually see a little bit more evidence, but  
4 Tab B or Exhibit B of Exhibit 68, I think,  
5 give a little bit of a rationale for the  
6 history of the project. So, I could go along  
7 with that.

8                   CHAIRMAN JORDAN: Very good. With  
9 that then, I move that we grant the request  
10 for extension.

11                   MEMBER TURNBULL: Second.

12                   CHAIRMAN JORDAN: Motion made and  
13 seconded. Any unreadiness? All those in  
14 favor signify by say aye.

15                   BOARD MEMBERS: Aye.

16                   CHAIRMAN JORDAN: Those opposed,  
17 nay. And the motion carries. Mr. Moy.

18                   MR. MOY: Yes, sir. Staff will  
19 record the vote at four to zero. This is on  
20 the motion Chairman Jordan to approve the  
21 request for a two year time extension.  
22 Seconded the motion, Mr. Turnbull. Also

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1 support Vice Chairperson Allen and Mr. Hinkle.

2 And we have a Board seat vacant.

3 Just for clarification for me when

4 I spoke earlier about moving this case from

5 last week, I was thinking of a different case.

6 Sorry about that.

7 CHAIRMAN JORDAN: It's the one

8 that we're about to move to.

9 MR. MOY: Which is where we're

10 going to pick up next.

11 (Whereupon, the hearing in the

12 above-entitled matter was concluded at 10:04

13 a.m.)

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