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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

SKYLAND HOLDINGS, LLC : Case No.

: 09-03

:

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COPY

Wednesday,

April 21, 2010

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 09-03 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., 20001, Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

- ANTHONY J. HOOD, Chairman
- WILLIAM WARREN KEATING, Vice Chair
- MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
- PETER MAY, Commissioner (NPS)

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OFFICE OF ZONING STAFF PRESENT:

ESTHER BUSHMAN, General Counsel
SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER
MAXINE BROWN-ROBERTS

D.C. DEPT. OF TRANSPORTATION STAFF PRESENT:

JEFF JENNINGS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Public Hearing held on April 21, 2010.

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

2 6:47 p.m.

3 CHAIRMAN HOOD: Good evening.

4 This is a Public Hearing of the Zoning
5 Commission of the District of Columbia for
6 Wednesday, April 21, 2010. My name is Anthony
7 Hood.

8 Joining me are Vice Chairman
9 Keating, Commissioners May and Turnbull.
10 Also, the Office of Zoning staff and Office of
11 Planning staff.

12 Since this is our third hearing
13 I'm just going to try to hit the highlights.
14 We can supply the rest of it for the record.

15 This is our fourth hearing? I
16 must have missed a night. Okay.

17 Notice of today's hearing was
18 published in the DC Register on October 16,
19 2009. Copies of that announcement are
20 available to my left on the wall near the
21 door.

22 The hearing will be conducted in

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1 accordance with provisions of 11 DCMR 3022 as
2 follows: preliminary matters, applicant's
3 rebuttal, cross-examination.

4 As you know, all persons appearing
5 before the Commission are to fill out two
6 witness cards. Upon coming forward to speak
7 to the Commission, please give both cards to
8 the reporter sitting to my right before taking
9 a seat at the table.

10 The decision of the Commission in
11 this case must be based exclusively on the
12 public record. To avoid any appearance of the
13 contrary, the Commission requests that persons
14 present not engage members of the Commission
15 in conversation during any recess or at any
16 time. The staff will be available throughout
17 the hearing to discuss procedural questions.

18 Please turn off all beepers and
19 cell phones at this time so not to disrupt
20 these proceedings.

21 Again, as noted, this is the
22 fourth hearing. The subject of this evening's

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1 hearing is Zoning Commission Case No. 09-03.
2 This is a request by Skyland Holdings, LLC for
3 approval of Consolidated PUD and related Map
4 Amendment for the property located at Squares
5 5632, 5633, 5641, 5641-N, and various parcels.
6 It is a continuation of our February 17, 2010
7 hearing.

8 I will just submit this for the
9 record. Okay.

10 Let's get right into it.

11 Do we have any preliminary
12 matters, Ms. Schellin?

13 MS. SCHELLIN: Yes, sir. There
14 are several preliminary matters.

15 CHAIRMAN HOOD: Let's do one at a
16 time.

17 MS. SCHELLIN: Okay. Let's do the
18 easy one first. Do you want to do the easy
19 one?

20 CHAIRMAN HOOD: We have some easy
21 ones?

22 MS. SCHELLIN: We have one easy

1 one.

2 We have a request from Hillcrest
3 Civic Association. They made a submission of
4 Exhibit 106. They were a little late with
5 their submission and they did ask for the
6 Commission to accept their late submission.
7 It was a submission that the Commission asked
8 for.

9 So if the Commission would open
10 the record to accept that late submittal?

11 CHAIRMAN HOOD: Colleagues, again,
12 this is a community group organization, not
13 paid. I think it would behoove us to accept
14 it, especially when I read the cover letter.
15 It's something that apparently we asked for.
16 Sometimes I know it takes a little while for
17 volunteers to get their information together
18 and present it.

19 Do we do a motion?

20 MS. SCHELLIN: You can do it by
21 consensus.

22 CHAIRMAN HOOD: Do we have any

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1 objections to accepting this late submission,
2 Exhibit 106?

3 No objections? Okay.

4 MS. SCHELLIN: All right.

5 CHAIRMAN HOOD: Let's move right
6 to the next one.

7 MS. SCHELLIN: All right. Exhibit
8 103, which was a submittal from the applicant,
9 something that was requested. It contains
10 several requests from the Commission.

11 On page 2 the applicant has asked
12 that the Commission accept William Carnes as
13 an expert in geotechnical instructional
14 engineering. In addition, they are requesting
15 to present some additional testimony to allow
16 Mr. Carnes to testify on the issue of
17 construction techniques that they have
18 addressed in that submission, and how they
19 will effectively mitigate construction impacts
20 from development of the PUD project on the
21 Fort Baker Drive properties.

22 So if the Commission would decide

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1 whether, (1) to allow the additional
2 testimony, and (2) to accept Mr. Carnes as an
3 expert witness.

4 CHAIRMAN HOOD: Okay. Thank you,
5 Ms. Schellin.

6 I believe, Commissioners, and I
7 could stand to be corrected, but I think we
8 asked for everything in writing. I think that
9 what we have here from Mr. Carnes is
10 sufficient. And I would not be in favor of
11 hearing Mr. Carnes come testify on what we
12 have here in the submission.

13 While I know that there's some
14 question about the validity of what he's
15 submitted by the opposition, I think what we
16 have here is sufficient. We asked for the way
17 I think it's been presented. And I would not
18 be in favor of hearing Mr. Carnes' testimony
19 this evening.

20 Let me open up. Anyone disagree
21 or want to move in a different fashion?

22 Do we need a few minutes?

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1 PARTICIPANT: Yes.

2 CHAIRMAN HOOD: Okay.

3 (Whereupon, at 6:52 p.m. off the
4 record until 6:53 p.m.)

5 CHAIRMAN HOOD: Okay. We're back
6 on the record.

7 Apparently, the Sunshine Act, we
8 all agree that that is the way we are going to
9 proceed as I subscribed earlier?

10 Okay. Can we move to the next
11 issue?

12 MS. SCHELLIN: I'm sorry. How are
13 you going to proceed, to allow or not allow?

14 CHAIRMAN HOOD: We're going to
15 allow the submission because we asked for the
16 submission.

17 MS. SCHELLIN: Yes.

18 CHAIRMAN HOOD: We're going to
19 allow the submission.

20 No offense, Mr. Carnes, if you're
21 here.

22 We don't really need to hear from

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1 Mr. Carnes.

2 MS. SCHELLIN: Okay. Are you
3 going to accept him as an expert?

4 COMMISSIONER MAY: Yes. I have no
5 objection to that.

6 VICE CHAIRMAN KEATING: No
7 objection.

8 CHAIRMAN HOOD: Okay. No
9 objection.

10 MR. TUMMONDS: As a follow-up to
11 that, as we discussed in our last hearing,
12 this is the opportunity for the applicant to
13 present its rebuttal testimony this evening.
14 So I don't see that there is any problem with
15 having Mr. Carnes present a rebuttal
16 testimony.

17 It is the same testimony that he
18 presented addressing the same issue in our
19 March 29 submission. The rebuttal witnesses
20 that we expect to present this evening are
21 presenting additional, if you will, background
22 to the information that you requested on March

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1 29.

2 So I guess before we go too far
3 down that, the other rebuttal witnesses that
4 we expect to present tonight are the civil
5 engineer Dan Duke who will talk about
6 information that was submitted into the record
7 on September 21, 2009 in our initial Appendix
8 materials; our architect, Cheryl O'Neill --

9 CHAIRMAN HOOD: You know what, Mr.
10 Tummonds?

11 MR. TUMMONDS: Yes?

12 CHAIRMAN HOOD: I would like to
13 just deal with one at a time.

14 MR. TUMMONDS: Absolutely.

15 CHAIRMAN HOOD: I multitask all
16 day and then, you know, towards the evening
17 your brain starts slowing up.

18 MR. TUMMONDS: Sure. I will
19 shorten my question.

20 With the idea that Mr. Carnes will
21 not present testimony in chief, are you saying
22 that you do not want to hear a rebuttal

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1 testimony?

2 CHAIRMAN HOOD: Well, the issue, I
3 think -- I want to make sure that we move
4 legally sufficient and correct. I think the
5 issue, at least from what I've read from the
6 opposition, is that people want to have a
7 chance.

8 We do cross-examine the rebuttal,
9 right?

10 MS. SCHELLIN: On rebuttal, yes.

11 CHAIRMAN HOOD: Okay. That will
12 be some time.

13 Because we have a submission, we
14 asked for it in writing -- I guess what I'm
15 trying to achieve is not to have another
16 hearing, not to start the hearing over where
17 we go through that. I think we can accomplish
18 the same thing in rebuttal.

19 MR. TUMMONDS: I agree.

20 CHAIRMAN HOOD: Even with what the
21 opposition has, the issues that I've seen,
22 what they have written.

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1 Are we clear on that one, Mr.
2 Tummonds; are we clear, we're all straight?

3 MR. TUMMONDS: Yes. Mr. Carnes is
4 going to present rebuttal testimony tonight.

5 CHAIRMAN HOOD: On what has been
6 submitted. And he will be crossed on that.
7 Well, possibly crossed in rebuttal.

8 MR. TUMMONDS: Sure.

9 CHAIRMAN HOOD: Okay. Are we all
10 right, Mr. Sullivan?

11 MS. SCHELLIN: He's not giving
12 testimony.

13 CHAIRMAN HOOD: No. He's not
14 giving testimony.

15 MR. TUMMONDS: Right. We are
16 proposing that he gives a rebuttal testimony.

17 CHAIRMAN HOOD: On what his
18 submissions are, what we already have here.

19 MR. TUMMONDS: Yes. His
20 discussion of the construction techniques.

21 But I want to be clear. The
22 PowerPoint materials that we're going to

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1 submit tonight for Mr. Carnes' testimony
2 includes information that was not included on
3 March 29. So if you tell me you don't want to
4 see that, we won't have that seen. He'll just
5 present testimony on the written documents
6 that he submitted. That's fine.

7 The other rebuttal witnesses will
8 only be testifying to information that has
9 already been submitted into the record.

10 CHAIRMAN HOOD: So do we have
11 something that we'd find as new other than
12 what we have?

13 MS. SCHELLIN: I need to have a
14 moment with the Commissioners, please.

15 MR. TUMMONDS: Okay.

16 CHAIRMAN HOOD: We're going to
17 proceed with caution. We're going to take a
18 5 minute break.

19 We're going to be consulting with
20 our attorney. I'm sure nobody is going to
21 take us to court but we're going try to -- I
22 can say that now. Okay. We're going to

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1 consult with our attorney because we actually
2 want to make sure we proceed accordingly.

3 Thank you. Give us 5 minutes.

4 (Whereupon, at 6:59 p.m. off the
5 record until 7:14 p.m.)

6 CHAIRMAN HOOD: Okay. We are back
7 on.

8 You have heard the --

9 MR. RICHARDS: It was -- if
10 appropriate, there would be cross-examination,
11 and that you were going to allow him to be
12 treated as an expert?

13 CHAIRMAN HOOD: That's kind of
14 where we were going. Yes.

15 MR. RICHARDS: Okay. The ANC
16 doesn't have any objection to that.

17 CHAIRMAN HOOD: Okay. No
18 objection from the ANC.

19 Mr. Sullivan?

20 MR. SULLIVAN: Just to be clear,
21 we're talking about Mr. Carnes?

22 CHAIRMAN HOOD: Yes.

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1 MR. SULLIVAN: We have no
2 objection.

3 CHAIRMAN HOOD: No objection?
4 Okay.

5 I will tell you, unless my
6 colleagues see otherwise, we will listen to
7 that and we will do a provisional. We may re-
8 look at the transcript and see if it's
9 basically germane to what we need to do in our
10 decision-making. And we may at a later time,
11 Mr. Tummonds, not even use it.

12 MS. SCHELLIN: I think if we could
13 have Mr. Tummonds actually provide from the
14 prior transcripts where Mr. Carnes' testimony
15 actually rebuts?

16 CHAIRMAN HOOD: Right. That would
17 be helpful.

18 MS. SCHELLIN: If you could
19 actually just provide that for us?

20 MR. TUMMONDS: Absolutely.

21 MS. SCHELLIN: That would be very
22 helpful since there's pages and pages. It

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1 would save us some time.

2 CHAIRMAN HOOD: And all this is
3 provisional. We will have to see what you
4 supply and what we hear. And they will have
5 an opportunity to cross-examine him. We'll
6 move in that fashion.

7 Commissioner May?

8 COMMISSIONER MAY: Yes. I just
9 wanted to ask, do we want to get a proffer of
10 what the rebuttal testimony would actually be
11 to see how it actually rebuts the testimony of
12 the opposition?

13 CHAIRMAN HOOD: Okay. Mr.
14 Tummonds?

15 MR. TUMMONDS: Sure. Mr. Carnes
16 will testify that in the last hearing there
17 was a lot of concerns about whether or not
18 this project could be constructed in a manner
19 that would not have detrimental impact to the
20 homes on Fort Baker Drive.

21 Mr. Carnes is going to testify
22 that there are numerous construction

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1 techniques that could be utilized to
2 adequately protect those homes on Fort Baker
3 Drive.

4 COMMISSIONER MAY: What we're, I
5 think, sort of struggling with is the actual
6 relevance of that. I mean, to some extent,
7 the constructability of this project without
8 damaging the neighboring houses is not
9 actually a Zoning matter. It's the extent to
10 which this impacts some of the proffered
11 elements of the project, such as the
12 Construction Management Plan, that I think it
13 becomes more relevant.

14 So the fact that something was
15 said in opposition doesn't necessarily mean
16 that it has to be rebutted if it's not
17 relevant to the Zoning decision. Maybe I'm
18 getting ahead of my fellow Commissioners.

19 CHAIRMAN HOOD: I think you're
20 exactly right. I know there are other avenues
21 as far as building codes and things you could
22 look at.

1 Again, you alluded to the
2 Construction Management Plan. I think it's
3 kind of weak, something we can beef up.

4 I don't even know if we need to go
5 down this line of rebuttal. I don't know.
6 It's up to my colleagues. But I would
7 recommend that we not go down the line of
8 rebuttal, we not call up Mr. Carnes.

9 MR. TUMMONDS: I would say yes.
10 Based on the testimony presented this evening,
11 I remove my request to have Mr. Carnes be
12 admitted as an expert and be able to present
13 testimony this evening.

14 COMMISSIONER MAY: Since he's
15 provided written documentation, I think we are
16 already okay with him being admitted as an
17 expert. And that information is in the record
18 and it was requested. So I think that's okay.

19 I think it's the question of, do
20 we need anything more? And I don't believe we
21 do.

22 MR. TUMMONDS: Okay. As revised

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1 by Mr. May, I ask that Mr. Carnes be admitted
2 as an expert and we will not proceed with any
3 testimony from him this evening.

4 That being said, he is here to
5 answer any questions that you may have based
6 on the information we submitted on March 29.

7 CHAIRMAN HOOD: Okay. Are we all
8 on the same page, Commissioner Richards, Mr.
9 Sullivan, Commissioners, everybody?

10 MR. RICHARDS: Well, we have a
11 concern and the concern is this. We have
12 always viewed the construction technique as an
13 adverse impact. And when the ANC voted in
14 support of this project, it did so upon the
15 condition that the developer would work out an
16 arrangement that protected the interest of the
17 Fort Baker residents. That was a condition of
18 our support.

19 Since we treat this as an adverse
20 impact, it seems to us to be something that is
21 squarely before the Zoning Commission and
22 needs to be addressed by you.

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1 CHAIRMAN HOOD: Okay. Thank you,
2 Commissioner Richards.

3 Mr. Sullivan?

4 MR. SULLIVAN: I would echo that
5 and just say our concerns were more focused on
6 the erosion issues that have beset my clients'
7 homes. The construction mitigation agreement
8 didn't really address our concerns about
9 construction issues.

10 I would just echo what he said.
11 Both our experts are on the record as long as
12 our expert is admitted, as well with his
13 report. I don't have anything to add.

14 CHAIRMAN HOOD: Okay. I think,
15 colleagues, unless I hear something different,
16 we are going to stand with not having any
17 rebuttal from Mr. Carnes. We're going to go
18 ahead and move forward.

19 We will accept him as an expert
20 witness. We will not hear from him in
21 rebuttal. We will deal with the submission
22 and we will take what you have both said in

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1 advisement. I think there is another avenue
2 for what is not within our jurisdiction, as
3 far as trying to dealing with those homes to
4 a point. I think that's how we will proceed.

5 Thank you all on that.

6 Do we have another issue?

7 MS. SCHELLIN: Yes, we do.

8 The next couple of preliminary
9 matters would be from the Fort Baker Drive
10 party. They have three expert witnesses.
11 We'll take them one at time.

12 The first one is Curt Westergard,
13 to accept him as an expert in photography.

14 CHAIRMAN HOOD: Okay. Mr.
15 Westergard, let's pull his resume.

16 MS. SCHELLIN: That's in Exhibit
17 105; Exhibit A, I believe, of that attachment.

18 CHAIRMAN HOOD: 105 or 108?

19 MS. SCHELLIN: 105.

20 CHAIRMAN HOOD: All right. I have
21 it.

22 We have Mr. Westergard being

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1 proffered as an expert in photography.

2 Commissioners, I actually have a
3 question that I would like to ask Mr.
4 Westergard.

5 Mr. Westergard, are you here?
6 Would you come forward?

7 MS. SCHELLIN: Sit at the table,
8 please.

9 CHAIRMAN HOOD: Mr. Westergard,
10 good evening. I'm looking at your resume.
11 Unless I'm missing something, you're being
12 proffered as an expert in photography. I see
13 over 25 years of experience in visual impact
14 simulations of architectural planning and
15 engineering projects in the United States.

16 Let me ask you a question. When
17 you take a photograph, do you fill the frame?

18 MR. WESTERGARD: Usually, yes.

19 CHAIRMAN HOOD: So every picture,
20 the frame should be filled?

21 MR. WESTERGARD: There's no hard
22 rule. It depends on what we're photographing.

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1 CHAIRMAN HOOD: But generally,
2 professional photographers, do you fill the
3 frame?

4 MR. WESTERGARD: No. Not if we're
5 trying to do an impact study and show what the
6 normal human vision would see. We try to show
7 what the average person would see, not zooming
8 in or zooming out unnecessarily.

9 CHAIRMAN HOOD: Okay. If you take
10 an individual picture of me -- well, not
11 necessarily of me but anybody. If you're
12 taking a picture of a human being would you
13 fill the frame?

14 MR. WESTERGARD: I guess if I was
15 doing a portrait I'd leave a little space
16 around it for composition and context.

17 CHAIRMAN HOOD: Okay. Thank you.

18 Any other questions,
19 Commissioners?

20 COMMISSIONER TURNBULL: Well, I
21 guess my only -- the way it's presented is a
22 little light.

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1 CHAIRMAN HOOD: That's why I asked
2 the question.

3 COMMISSIONER TURNBULL: I mean, we
4 usually have a fuller resume that gives
5 universities, degrees, where you've worked.
6 This thing is just a very -- like something
7 you'd -- to me, it's a lot of highlights but
8 it doesn't really -- I look at some of these
9 other resumes that have been submitted and
10 they're a lot more thorough than this. This
11 is kind of -- this is usually what we don't --
12 we don't accept these.

13 COMMISSIONER MAY: Well, maybe we
14 could get a little -- we could get some of
15 that from -- maybe Mr. Sullivan could ask a
16 few questions that would fill out the picture
17 of Mr. Westergard's career and we can make a
18 judgment based on that. We've done that
19 before.

20 CHAIRMAN HOOD: Let me ask Mr.
21 Westergard this.

22 In line with what I was asking

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1 you, are you familiar with Gordon Parks and
2 Howard Bingham?

3 MR. WESTERGARD: Who?

4 CHAIRMAN HOOD: You're not
5 familiar with Gordon Parks and Howard Bingham?

6 MR. WESTERGARD: No, sir.

7 CHAIRMAN HOOD: Okay. We'd better
8 let you, Mr. Sullivan, ask the questions.

9 MR. SULLIVAN: Mr. Westergard, can
10 you explain to us your experience with balloon
11 tests and how often you've done balloon tests?

12 MR. WESTERGARD: Sure. As a
13 licensed landscape architect, I've been doing
14 balloon tests for about 12 years over the East
15 Coast. I probably have completed 1,300-1,400
16 of them.

17 MR. SULLIVAN: So you do 100 a
18 year?

19 MR. WESTERGARD: At least.

20 MR. SULLIVAN: Can you give us
21 some examples of others that you've done in
22 the area?

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1 MR. WESTERGARD: I think we've
2 done balloon tests for every Verizon Wireless
3 cell tower and rooftop cell in within about 40
4 miles from here, many of them for AT&T. We
5 presently are doing a number of them for
6 Potomac Edison, Dominion Virginia Power, and
7 other power-related companies. It's all we
8 do.

9 COMMISSIONER MAY: Well, Mr.
10 Chairman, I'm fairly satisfied that he knows
11 something about balloon tests. He's testified
12 on the record that he's done 1,300-1,400. It
13 seems pretty reasonable. I'm not sure if that
14 makes him an expert on photography but
15 certainly balloon tests, which seems to be
16 what the relevance of the submission is.

17 Is that right?

18 MR. WESTERGARD: Well, really
19 photography is just the moniker that we're
20 going under. It's really visual impact
21 studies and visual effects of engineering or
22 architectural projects on the landscape and to

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1 communities. Photography is just the tool we
2 use most to communicate that.

3 CHAIRMAN HOOD: Okay. Anyone
4 else?

5 Commissioner Turnbull?

6 COMMISSIONER TURNBULL: What is he
7 an expert in, balloon tests?

8 CHAIRMAN HOOD: It's not
9 photography.

10 COMMISSIONER MAY: Visual impact
11 studies.

12 CHAIRMAN HOOD: I will tell you, I
13 will not be supporting him as an expert in
14 photography. I would be more inclined to find
15 another subject matter.

16 I know what's being proffered. I
17 don't think it's in our jurisdiction to change
18 it. But what I will do in consideration of
19 Mr. Westergard is call for the vote, and I'll
20 just let my colleagues --

21 I'll be voting against your expert
22 status in photography. Visual impacts or

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1 something else, possibly. But photography,
2 no.

3 MR. WESTERGARD: Maybe I could
4 clarify this. As a landscape architect we are
5 not involved when sighting buildings, but
6 showing what their impacts would be to nearby
7 residences. So our work has literally taken
8 us from the World Trade Center, doing the line
9 of sight studies for that and for most of the
10 major buildings that have been built recently
11 in Rosslyn, Crystal City, Downtown DC.

12 If it makes a difference to you,
13 the chairman of the CFA, the Fine Arts
14 Commission, gave us a great endorsement on
15 locating the line of sight studies for the
16 World War II Memorial and a number of the
17 antennas on the Congress building, which I
18 think Mr. Tummonds also worked on.

19 CHAIRMAN HOOD: Okay. Any other
20 questions?

21 COMMISSIONER TURNBULL: Where are
22 you licensed as an architect?

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1 MR. WESTERGARD: In the state of
2 Maryland.

3 COMMISSIONER TURNBULL: ASLA?

4 MR. WESTERGARD: ASLA.

5 COMMISSIONER TURNBULL: Why
6 doesn't it say that on this piece of paper?

7 MR. WESTERGARD: This is a
8 brief --

9 MR. SULLIVAN: If I could revise
10 the request to have him admitted as an expert
11 in visual impact studies and just that?

12 CHAIRMAN HOOD: I can go with
13 that.

14 Commissioners, I will be
15 supporting that. I will be in favor of that.

16 MR. SULLIVAN: And it's my
17 apologies for not nailing that in my request.
18 That probably could have saved us all this.

19 CHAIRMAN HOOD: Visual impact
20 studies. Okay.

21 Commissioners, any problem with
22 Mr. Westergard being proffered as an expert

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1 witness in visual impact studies?

2 MR. TUMMONDS: No objection.

3 CHAIRMAN HOOD: Okay. Thank you.

4 Ms. Schellin, next?

5 MS. SCHELLIN: Okay. Next on the
6 list would be Greg Budnik as an expert in
7 civil engineering. That's is again the same
8 Exhibit number, behind Tab B.

9 CHAIRMAN HOOD: Commissioners, is
10 there any objection or do you need a chance to
11 look at it again?

12 MS. SCHELLIN: Okay. No
13 objection?

14 CHAIRMAN HOOD: No objection.

15 MS. SCHELLIN: Next one would be
16 Dan Rahm as an expert in geotechnical
17 engineering.

18 CHAIRMAN HOOD: Any objection?

19 MR. TUMMONDS: No.

20 CHAIRMAN HOOD: No objection?

21 Okay.

22 MS. SCHELLIN: Okay. And I think

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1 the last request, just for the Commission to
2 address although I think it is no longer
3 valid, is the Fort Baker Drive party had asked
4 to provide additional testimony responsive to
5 the applicant's testimony to be given at the
6 hearing this evening. But since the applicant
7 will not be giving any testimony --

8 CHAIRMAN HOOD: Okay. And ANC,
9 Commissioner Richards' and Mr. Sullivan's
10 organization, will be able to cross-examine on
11 rebuttal?

12 MS. SCHELLIN: On rebuttal,
13 correct.

14 CHAIRMAN HOOD: Okay. Do we have
15 anything else?

16 MS. SCHELLIN: That's all I have.

17 CHAIRMAN HOOD: Okay. Thank you,
18 Ms. Schellin. Thank you for running us
19 through that as quickly as you did.

20 Mr. Tummonds, let's begin
21 rebuttal.

22 MR. TUMMONDS: Thank you. Paul

1 Tummonds with the law firm of Goulston &
2 Storrs. Based on our earlier discussion, we
3 will have three witnesses providing rebuttal
4 testimony this evening.

5 Our first witness is Dan Duke, the
6 civil engineer for this project. Mr. Duke was
7 previously admitted as an expert witness in
8 the field of civil engineering.

9 Mr. Duke?

10 MR. DUKE: Thank you.

11 The purpose of my testimony today
12 is to provide information regarding concerns
13 that have been raised regarding the potential
14 for erosion to occur as a result of the
15 Skyland development, and to provide further
16 information regarding the stormwater
17 management facilities proposed for this
18 project.

19 The potential for erosion concerns
20 can be placed in two basic categories: the
21 potential for erosion in the swale behind the
22 Fort Baker Drive neighbors' homes, and the

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1 potential for erosions that can occur during
2 construction.

3 Having walked the subject property
4 which includes the swale, it is my opinion
5 that within the channel there are no major
6 erosion conditions in the swale due to runoff
7 and the existing condition. There is no major
8 unvegetated areas or exposed channel banks,
9 and the trees within the area appear to be
10 intact and unaffected by the flows through the
11 channel.

12 As a result of the Skyland
13 development the drainage area to the swale
14 will be reduced by approximately 1.1 acres,
15 from 4.0 acres to 2.9 acres. Therefore,
16 because the drainage area will be reduced, the
17 rate of flow will be reduced. And
18 consequently, no erosive conditions in the
19 swale will be created in the post-development
20 condition.

21 Additionally, the existing
22 vegetation in the swale will remain in the

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1 post-development condition. Maintaining the
2 existing vegetation within the swale will
3 continue to protect the swale from eroding.

4 The next erosion concern would
5 result from activities during construction
6 that release sediment from the Skyland
7 property, or that the slope would be
8 detrimentally impacted by the construction
9 activities. The best way to prevent slope
10 erosion is to preserve the trees.

11 This slide shows the preservation
12 of a 35 foot buffer from the property line to
13 the start of the Skyland grading. Preserving
14 the trees will help to stabilize and minimize
15 any detrimental impacts to the slope itself.
16 I will also note that the grading is all
17 outside of the tree preservation area.

18 So as you're looking at the slide,
19 it goes from property line to the tree
20 preservation area to the beginning of grading,
21 all on the applicant's property.

22 This sheet is Sheet 11 from the

1 civil drawings included in the Appendix
2 materials which were submitted to the Zoning
3 Commission on September 21, 2009.

4 This slide depicts the conceptual
5 erosion control devices that have been
6 proposed for the area above the slope at Block
7 1. This plan specifically identifies the
8 controls that will be used to protect the
9 slope and direct runoff away from the slope.

10 The controls include:

11 (1) the tree preservation area,
12 which is hatched;

13 (2) a diversion dike that will
14 push the runoff during construction away from
15 the slope, above the Fort Baker Drive swale;

16 (3) a sediment trap that will
17 collect the runoff, remove the sediment; and,

18 (4) a piped slope drain that will
19 convey the runoff via pipe down the slope to
20 28th Street for connection to the public
21 street storm drain system.

22 All of these devices are designed

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1 to keep water off of the Fort Baker Drive
2 slope and to direct the runoff during
3 construction to 28th Street.

4 The applicant has expended an
5 extensive amount of effort to study the
6 stormwater management and runoff
7 characteristics prior to design and
8 preparation of the civil drawings that were
9 included in the Appendix materials.

10 This included providing plans and
11 meeting with DC WASA and DDOE to discuss the
12 stormwater design intent. The stormwater
13 management system that we are proposing for
14 this project is consistent with the items
15 discussed with WASA and DDOE.

16 This slide is a compilation of the
17 grading and utility plans consisting of Sheets
18 8, 9, and 10 of the civil drawings submitted
19 to the Zoning Commission on September 21,
20 2009.

21 The design depicts four distinct
22 points of concentrated discharge. Each point

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1 of discharge contains a separate stormwater
2 management facility which will provide
3 quantity and quality control as necessary.

4 The points of discharge are
5 located on 28th Street, which is labeled as
6 point of discharge 1; Naylor Road, which is
7 discharge point 2; discharge point 3 is Good
8 Hope Road; discharge point 4 is behind Akron
9 Place. The Akron Place discharge point
10 contributes to the Fort Baker swale.

11 The total drainage area going to
12 Fort Baker Drive will be reduced with the
13 Skyland development. Currently, approximately
14 4 acres drains to Fort Baker Drive. This
15 project will reduce that drainage area by over
16 an acre. The drainage area to Fort Baker
17 Drive will total 2.9 acres after development
18 of the property.

19 In conclusion, the drainage to the
20 Fort Baker Drive swale will be reduced.
21 Therefore, no new erosion will be created.
22 The best way to prevent slope erosion is to

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1 preserve the existing trees, and to provide
2 the erosion controls during construction as
3 described in the PUD documents. Finally, the
4 current design reduces the drainage area to
5 Fort Baker Drive, which will benefit the
6 existing swale.

7 Thank you.

8 MR. TUMMONDS: Our next rebuttal
9 witness is Gary Rappaport who will discuss the
10 need for the proposed number of parking
11 spaces.

12 CHAIRMAN HOOD: Let me ask this,
13 Commissioners and everyone but especially
14 Commissioners. If we have any questions do we
15 want to ask them, or are we waiting until the
16 end on this rebuttal if we need further
17 clarification? I just want to see how we want
18 to proceed.

19 Okay. We'll just go all the way
20 through. Thanks.

21 MR. RAPPAPORT: Thank you. My
22 name is Gary Rappaport.

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1 As it relates to parking and as it
2 relates specifically to retail, we have a plan
3 that right now averages slightly over four
4 spaces per 1,000 square feet of retail for the
5 town center. If not in an urban area, a more
6 suburban area generally has five spaces per
7 1,000 square feet. And as it relates to
8 restaurant use, 10 spaces per 1,000 square
9 feet. In this particular plan development we
10 have four spaces per 1,000.

11 Over the last what is now coming
12 up to 8 years, I've met at the site many times
13 with the two anchor tenants that we have. One
14 is Wal-Mart, one is Target. Both of them have
15 interest in the site and both of them have
16 requested that we have a minimum of four
17 spaces per 1,000 square feet on retail use.

18 While we've had experiences that
19 we know about another property that might
20 perceive we actually have more parking than we
21 need, we do have two anchor tenants that are
22 requiring four spaces per 1,000 square feet.

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1 And why do they do that? They do
2 that because in the last three months of the
3 year which really relate to back to school,
4 Thanksgiving, and Christmas, those are the
5 times of the year when they do all their
6 business and when they need to make sure they
7 have enough parking. And there's no question
8 that the other nine months of the year, one
9 does see vacant spaces on shopping centers
10 whether they are town centers or whether they
11 are projects such as DC USA, as an example.

12 So we sit here right now and we
13 recognize that if we don't have four spaces
14 per 1,000 square feet, especially where
15 there's an anchor tenant, we surely are going
16 to have bleed-off into the neighborhood in the
17 three months at the end of each year, which is
18 something that nobody would like to have.

19 And two, we have a requirement
20 that is defined by our anchor tenants to make
21 a commitment to come to this property, which
22 is what makes the property be able to be

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1 developed.

2 The issue relates to phasing of
3 the parking and the long-term security that
4 these anchor tenants whom are quite
5 sophisticated want to make sure they have.
6 And that is, they want to make sure they
7 always have four spaces per 1,000 square feet.

8 So we sit here with a plan that,
9 at this point, we need to make sure we can
10 guarantee the anchor tenant that we don't have
11 four spaces per 1,000 square feet in Phase I.
12 And then, in a condition that we can guarantee
13 to them that when we eventually have 3,000
14 square feet of retail, we're not going to have
15 four spaces per 1,000 square feet, or
16 approximately 1,200 spaces, for the retail.

17 If we sit with Wal-Mart one of the
18 first things they're going to ask, I know --
19 I've said it in all the meetings we've had
20 with LP or anyone else -- is even if we have
21 four spaces per 1,000 on Phase I, if we can't
22 guarantee to them that those spaces will not

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1 be used by possibly restaurant tenants or
2 other uses in Phase II -- thus those people
3 could be possibly using spaces that would be
4 needed by Wal-Mart or Target, especially in
5 those last three months of the year -- then
6 they are not going to make a commitment to
7 come to Skyland.

8 So what I'm saying, and what I'm
9 trying to make sure everyone understands, is
10 that we cannot have a Phase II that has a
11 condition that sets parking that's not defined
12 with a tenant. Wal-Mart or Target has the
13 right to know that they have four spaces per
14 1,000 square feet.

15 Thus, we need to make sure we have
16 a project that we can guarantee to the anchor
17 tenant who will be in Phase I that we will
18 always have four spaces per 1,000 square feet
19 of parking within the development of Skyland.

20 MR. TUMMONDS: Thank you, Mr.
21 Rappaport.

22 Our next witness is Steve Green.

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1 MR. GREEN: Good evening, members
2 of the Commission. I am Stephen Green of the
3 William C. Smith Company.

4 The Skyland Development Team has
5 met with the ANC on several occasions,
6 starting as early as December 2007, to discuss
7 specifically the proposed and requested
8 community benefits. Most recently, we met
9 with the representatives from ANC 7B on March
10 15 at WCS offices to again review the proposed
11 public benefits and project amenities.

12 The ANC representatives presented
13 us with a revised list of 22 items. Their
14 original list included 21 items. Of the list
15 of 22 items four were deleted, leaving 18
16 items to review.

17 The applicant believes several
18 items were agreed to at the meeting, such as
19 the applicant improving the pocket park at
20 25th Street and Naylor Road. However, the ANC
21 made no revisions to their list submitted to
22 the Zoning Commission.

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1 The applicant believes the
2 benefits and amenities package submitted to
3 the Zoning Commission on March 29 met the
4 intent of most of the ANC's requests.

5 Since March 29 we have sent
6 multiple requests to the ANC seeking a follow-
7 up meeting. While we appreciate the fact that
8 ANC members are community members who
9 volunteer their time to the betterment of the
10 community, unfortunately the ANC has not been
11 able to provide us with another date for such
12 a meeting.

13 Exhibit H of the applicant's March
14 29 submission details the proposed public
15 benefits and community amenities of the PUD
16 application. Please note that these materials
17 were reviewed and revised as requested by
18 Commissioner Turnbull.

19 I would like to highlight the
20 following components of the benefits and
21 amenities package:

22 (1) the transportation and traffic

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1 improvements pursuant to the ANC's requests
2 under item 16;

3 (2) improve and maintain the
4 pocket park at 25th and Naylor Street pursuant
5 to the ANC's request;

6 (3) set up a contractor loan fund
7 to ensure timely payment for small CBE side
8 contractors.

9 We agreed on at the March 15
10 meeting with the ANC that any proceeds left in
11 the fund at the end of the construction shall
12 be added to the CBE retailer build-out
13 subsidy.

14 In regard to the proposed bus
15 commuter store, the applicant will not charge
16 rent to the operator of the store. Therefore
17 the \$250,000 cost of constructing the store is
18 truly a project amenity that would not be
19 required as a matter-of-right development.
20 The \$250,000 is the card cost of constructing
21 that commuter store. It has nothing to do
22 with the operations of the store.

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1 The applicant will allow the Ward
2 7 Arts Collaborative to display art in vacant
3 retail spaces until they are leased, dedicate
4 space in the public spaces within the center
5 for the Ward 7 Arts Collaborative to display
6 artwork, and to hold annual arts festivals in
7 conjunction with the Ward 7 Arts
8 Collaborative.

9 We have also agreed to increase by
10 \$50,000 the amount of money that we would
11 contribute towards two new libraries in the
12 neighborhood.

13 The value of the public benefits
14 and project amenities package totals over \$5.2
15 million. The total value of the public
16 benefits and project amenities is significant,
17 particularly when compared to the relatively
18 small degree of development incentives that
19 are requested in this application.

20 In reference to Fort Baker Drive,
21 the applicant has been accused of not meeting
22 in good faith to resolve the Fort Baker Drive

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1 concerns. We believe this is simply just not
2 true. The applicant has met with Fort Baker
3 Drive residents on several occasions and
4 developed a plan that considers the impact on
5 the Fort Baker Drive homes.

6 The evidence of the applicant's
7 consideration for the Fort Baker Drive homes
8 includes designing a project that does not
9 seek to maximize the density permitted on the
10 Skyland property through the PUD process, or
11 even achieve the matter-of-right density.

12 But rather, fits in with the
13 surrounding community, setting back the
14 buildings by as much as 72 feet from the
15 property line on the Fort Baker Drive side,
16 maintaining 1.4 acres of tree preservation
17 area, installing a landscape buffer and
18 security fence, internalizing the ramp to
19 Block 1 to reduce noise, and installing
20 Greenscreens on the buildings in Block 1 and
21 4 to reduce the visual impact to the Fort
22 Baker Drive residents.

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1 The applicant has studied several
2 construction techniques and subsurface
3 structural methodologies that could be used at
4 the Skyland site. Existing conditions warrant
5 implementing soil improvement measures to
6 develop the PUD projects.

7 We had it recommended to us to do
8 certain kinds of compaction to stabilize the
9 existing soil as the most appropriate
10 technique. However, alternative techniques
11 are also being considered, including soil
12 surcharging, compaction grouting, mat
13 foundation, and drilled micropiles, all of
14 which would cause an amount of vibration far
15 less than what's considered high-risk.

16 MR. SULLIVAN: Can I object,
17 please? If this is the testimony that wasn't
18 going to be permitted because it was new
19 testimony, and now I think he's talking about
20 the same thing that Mr. Carnes was --

21 CHAIRMAN HOOD: Mr. Sullivan, we
22 actually have that in our submission. You

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1 should have this dated March 29.

2 MR. TUMMONDS: It's verbatim.

3 CHAIRMAN HOOD: Yes. Anyway,
4 March 29 is Exhibit 103 and it's the last
5 paragraph. But we have it. It's there. He's
6 basically saying the same thing.

7 MR. SULLIVAN: That's what he's
8 rebutting or he's just repeating what the --
9 okay.

10 CHAIRMAN HOOD: It's in their
11 rebuttal. The way I see it, they can do it
12 because that was an issue. But it's here in
13 Exhibit 103.

14 And let me say this, Mr. Green; we
15 do have it.

16 MR. GREEN: Regardless of the
17 technique, we believe there will be no adverse
18 impact on the adjacent properties.

19 The applicant is willing to work
20 with the Fort Baker Drive residents to develop
21 a construction monitoring plan to help
22 alleviate their concerns about potential

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1 impacts on their homes and to monitor the
2 impacts if there are any. However, in order
3 to have an agreement there needs to be two
4 parties willing to negotiate.

5 We submitted a draft construction
6 mitigation agreement to the Fort Baker Drive
7 neighbors and never received comments to that
8 agreement other than a request, a dictum, that
9 we either purchase their homes or they will
10 sue us.

11 If the Fort Baker Drive neighbors
12 do not want to enter into an agreement that
13 allows us access to their properties to
14 conduct pre and post-construction surveys and
15 place instruments to monitor construction
16 vibrations, there is not much that we can do
17 other than the items noted in the Construction
18 Management Plan that we have already proposed
19 as a condition of the approval of this PUD
20 project.

21 The best construction mitigation
22 agreement or plan is to utilize a construction

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1 process which minimizes impacts on the
2 adjacent properties. As noted in previous
3 testimony, the construction techniques and
4 soil erosion control measures proposed in the
5 PUD project do just that.

6 As indicated in the record, the
7 applicant has presented the Development Plan
8 numerous times. In fact, the applicant has
9 met with the community 16 times since the PUD
10 application was filed in February 2009. Most
11 recently, the applicant met with
12 representatives from ANC 7B to discuss the
13 community amenities, and again the entire ANC
14 7B on March 18 to present the current plan
15 before you tonight.

16 The applicant has gone to great
17 lengths to ensure community input and to keep
18 the community informed. In addition to the
19 meetings, we have created a Web site for the
20 public to review plans and presentations, as
21 well as summaries of our community meetings
22 for anyone that may have missed them. There

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1 is also a feature on the Web site for contact
2 information should anyone have any follow-up
3 questions.

4 The applicant has met with
5 residents of Fort Baker Drive and Akron Place
6 to listen to their concerns and develop a plan
7 that considers our future neighbors. The
8 applicant has presented a public benefits and
9 project amenities package that is reasonable
10 for a project of this magnitude; a project and
11 amenity by itself that will transform a
12 dilapidated shopping center into a vibrant new
13 town center, bring new retail to an
14 underserved area and new home ownership
15 opportunities.

16 For these reasons we request that
17 the Zoning Commission approve the PUD and
18 Zoning Map Amendment Application proposed in
19 Zoning Commission Case No. 09-03.

20 Thank you very much.

21 MR. TUMMONDS: Thank you.

22 The final issue that I'd like to

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1 address in rebuttal deals with a letter dated
2 February 4, 2010 that was filed in the record
3 of this case which raised questions about the
4 title to the Skyland properties, whether the
5 applicant's application materials satisfied
6 all relevant filing requirements, and other
7 issues. I will address the relevant matters
8 raised in those issues.

9 First, the District does have
10 title to all the properties that are included
11 in this project. We will submit this evening
12 a spreadsheet showing the title to these
13 properties is in the District of Columbia.

14 Second, all of the properties
15 included in the PUD project are contiguous and
16 the required notice was provided to all
17 current lessees on the property. These
18 lessees were given the opportunity to
19 participate in this process and make their
20 concerns known.

21 The other issues raised in this
22 letter are a request for more information on

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1 agreement between DC, the District of
2 Columbia, government and Skyland Holdings; the
3 identity of a possible anchor tenant; Shaw
4 Pittman's legal representation of previous
5 property owners. All of those issues are
6 outside the scope and review authority of this
7 Board.

8 With that, that concludes our
9 rebuttal testimony. We are available to
10 answer any questions that you may have.

11 CHAIRMAN HOOD: I like when people
12 tell us that it's outside of our authority.
13 That makes me ask that question.

14 Let's do this. Before we go to
15 cross on rebuttal, let's see if we have some
16 clarifying questions.

17 Commissioners, any questions?

18 Commissioner Turnbull?

19 COMMISSIONER TURNBULL: Thank you,
20 Mr. Chairman.

21 I'd like to ask Mr. Duke, the four
22 discharge points that you mentioned, what

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1 actually happens at the discharge points?

2 MR. DUKE: At each discharge point
3 there's a pipe that collects the runoff from
4 the property, brings it together to a pipe
5 that outlets then into a storm drain system
6 within the public waterways, or discharges it
7 at the property line.

8 COMMISSIONER TURNBULL: Going back
9 into the city's system, then?

10 MR. DUKE: Correct.

11 COMMISSIONER TURNBULL: Okay.
12 Thank you.

13 Mr. Green, on the amenities I
14 noticed that you did list for the green
15 features that the \$3 million is above the
16 statutory limits or the required limits for
17 the LEED features. Is that correct?

18 MR. GREEN: That's correct. That
19 \$3 million is for the green roofs that we're
20 proposing to put on the top of the parking
21 garages.

22 There's no requirement in LEED, in

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1 fact you get very few points in LEED, for
2 green roofs. It isn't done for stormwater
3 systems. The ANC, when we met in December
4 2007, one of the top items on their list was
5 a desire to have as green and environmentally
6 sustainable project as possible. This is
7 something that I think is important to a lot
8 of people. But it's not a requirement.

9 COMMISSIONER TURNBULL: Okay. I
10 guess one of the other items which I'm trying
11 to -- the transportation infrastructure and
12 traffic management. You're not giving the
13 money to DDOT; you're doing those as part of
14 the project?

15 MR. GREEN: That's correct.

16 COMMISSIONER TURNBULL: Okay.
17 Same with the public space improvements;
18 that's under your contract?

19 MR. GREEN: Yes. We had to get a
20 public space permit and etcetera. But, yes.

21 COMMISSIONER TURNBULL: Same with
22 the pocket park?

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1 I'm just looking at some of these
2 public amenities that none of them is going to
3 DC for anything to do.

4 MR. GREEN: No. We would execute
5 that in our agreement not only to do it but
6 to, probably more importantly, maintain it.

7 COMMISSIONER TURNBULL: Okay.
8 Some of the other ones -- the contractor loan
9 fund. Are you looking to add an escrow
10 account, or how will you be administrating
11 some of these other funds that you've got for
12 these different things?

13 MR. GREEN: Well, the contractor
14 loan fund is something we just set up
15 internally, typically, and make available
16 outside of our normal draw process that we'll
17 do with our funding sources.

18 We'll capitalize it initially and
19 use it in conjunction with the general
20 contractor to make, as I said, payments
21 available on a very quick turnaround basis for
22 small contractors. It helps the contractors

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1 for whom meeting payroll and getting
2 materials, particularly if it's a large
3 material requirement -- we've found it to be
4 a very useful tool in helping small
5 contractors who have the skill but don't have
6 the capital necessary to execute.

7 Generally, you just don't use --
8 whatever is left we would contribute over to
9 the subsidy fund that we'll establish for
10 providing build-out subsidy to local
11 retailers.

12 COMMISSIONER TURNBULL: What about
13 the bus/commuter store; how does that figure
14 in?

15 MR. GREEN: We would propose
16 building that store designed in conjunction
17 with DDOT and the Office of Planning, and sort
18 of provide it to them on a turnkey basis.

19 COMMISSIONER TURNBULL: So they're
20 doing the fit-out; you provide basically a
21 tenant space?

22 MR. GREEN: Yes. We would

1 provide, I think, probably a warm light shell,
2 as they call it. We wouldn't provide the
3 technical equipment. But I think we'd be
4 ready; it would be finished floors and ready
5 to provide the racks for the literature and
6 any machines that are I think as anticipated
7 to provide bus passes, etcetera, add money to
8 Smart Cards.

9 COMMISSIONER TURNBULL: Okay.

10 Thank you.

11 CHAIRMAN HOOD: Any other
12 questions?

13 I just want to again talk about
14 the homes on Fort Baker Drive. I will tell
15 you, I may not be around to vote on this, but
16 that troubles me.

17 Look at page 3. Particularly Mr.
18 Green and Mr. Tummonds, if you could help me
19 with that?

20 It says, "The applicant remains
21 committed to negotiating a construction
22 mitigation agreement with the Fort Baker Drive

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1 neighbors, and is ready to resume such
2 negotiations as soon as the Fort Baker Drive
3 neighbors are ready to do so."

4 I think Mr. Green, I heard in your
5 testimony that you said we are at a point
6 where we are; this is the best that we can do.
7 But when I read the submission -- and I don't
8 want to put words in your mouth. Maybe you
9 didn't say that; maybe that's just the way I
10 interpreted it.

11 But when I look at page 3 it's
12 like there's still some more working room.
13 But obviously, maybe the members of Fort Baker
14 Drive have not come to the table. That's the
15 way I'm reading that.

16 MR. GREEN: I think that's a
17 fairly -- I'm not sure I -- we submitted a
18 copy to them and got no response. We entered
19 a meeting and they said, "Either buy me out or
20 I'm going to sue you." That hardly
21 constitutes a negotiation.

22 So if we got written comments back

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1 as one typically does, we might be able to
2 address further concerns. But we've never
3 received any substantive comments to the
4 document itself, either in written or in oral
5 form.

6 We do remain willing to have an
7 agreement that looks at monitoring the houses,
8 doing a pre-construction survey. We've talked
9 to different entities about doing it. It's
10 done with videotaping and photography. But
11 I'm not going to get into it; the experts are
12 involved in that.

13 CHAIRMAN HOOD: Are you an expert
14 photographer?

15 MR. GREEN: And you know, you do
16 micrometers to measure cracks and openings and
17 stuff like that. There's various places away
18 from the houses where you put vibration
19 monitors, etcetera.

20 We're prepared to enter into that
21 kind of agreement and to be -- we're very
22 concerned about those houses. We don't

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1 believe -- we have a long reputation in
2 building and developing in this city. We've
3 been here for 40 years. We've never had a
4 problem like this. We believe very strongly
5 in being a good neighbor. It's just not
6 something we're going to do. We're not going
7 to enter into something we consider to be a
8 risk to our reputation.

9 CHAIRMAN HOOD: Mr. Green, thank
10 you. I'm glad to hear you say that for the
11 record.

12 Okay. Let's go to cross-
13 examination.

14 Commissioner Richards?

15 MR. RICHARDS: Could you give me a
16 moment, please?

17 CHAIRMAN HOOD: You want me to go
18 to Mr. Sullivan first? Okay.

19 Mr. Sullivan?

20 MR. SULLIVAN: I'll start with Mr.
21 Duke.

22 Mr. Duke, I think you testified

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1 that the runoff would be reduced. Is that
2 correct?

3 MR. DUKE: I said the drainage
4 area to Fort Baker Drive would be reduced.

5 MR. SULLIVAN: Okay. Does that
6 mean the volume of the runoff would be
7 reduced?

8 MR. DUKE: The area contributing
9 to Fort Baker Drive would be reduced by over
10 an acre. So therefore, the rate will be
11 reduced and there will also be stormwater
12 management controls for any rates that are
13 increased, to control that runoff at the other
14 discharge points on the site.

15 MR. SULLIVAN: Okay. So my
16 question then, would the volume of runoff be
17 increased on the site?

18 MR. DUKE: I haven't done all the
19 calculations that would go with the technical
20 submittal. But with an area reduction of over
21 an acre, from 4 acres to 2.9 acres, there is
22 going to be a significant amount of runoff in

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1 the post-development condition that is
2 eliminated from that swale.

3 MR. SULLIVAN: I guess I'm not --
4 it seems like a yes or no question. Is the
5 volume of runoff going to be increased when
6 you create this additional impervious surface?

7 MR. DUKE: The volume of runoff to
8 where?

9 MR. SULLIVAN: The total volume of
10 runoff on the site. Will it be increased?

11 MR. DUKE: The total volume of
12 runoff from the site will be increased. Yes.

13 However, that's why we provide the
14 stormwater management facilities to detain the
15 rate. And we have infiltration facilities and
16 other things going into the site to control
17 the volume.

18 MR. SULLIVAN: So the volume is
19 controlled and it runs over a longer period of
20 time rather than -- it regulates the volume;
21 is that right?

22 MR. DUKE: It runs over a longer

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1 period of time.

2 MR. SULLIVAN: So the rate runs
3 over a longer period of time. Would the
4 channel behind Fort Baker Drive be exposed to
5 runoff for a longer period, then?

6 MR. DUKE: Again, we haven't done
7 all the technical designs that would go with
8 it to determine what the total length of time
9 is that is associated with it. But again,
10 with the reduction in the area that's going to
11 the Fort Baker Drive swale, the overall rate
12 in the amount of water that's going back there
13 is going to be reduced.

14 MR. SULLIVAN: The amount; the
15 volume will be reduced?

16 MR. DUKE: Correct.

17 MR. SULLIVAN: How does a
18 reduction in runoff going to affect the
19 groundwater; if the groundwater is reduced how
20 does it impact the slope and the condition of
21 the soil as it relates to vegetation and
22 erosion?

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1 MR. DUKE: In my opinion, the
2 amount of groundwater that could conceptually
3 be reduced isn't going to be impactful to the
4 existing slope. There's a significant amount
5 of impervious area up there right now. I
6 don't think it's going to have a major impact.
7 Mr. Carnes could speak more to the groundwater
8 effects as our geotechnical expert.

9 MR. SULLIVAN: That's all I have
10 for Mr. Duke.

11 Mr. Green, did somebody actually
12 use the word "sue;" they said they would sue
13 you?

14 MR. GREEN: Yes, they did.

15 MR. SULLIVAN: Under oath you say
16 that? Okay. Rather, was it more something
17 like they would fight to protect their homes
18 from being destroyed, something along those
19 lines?

20 MR. GREEN: No. They said they
21 would sue us.

22 MR. SULLIVAN: All right. Was

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1 there any indication after you provided the
2 one draft of a construction mitigation
3 agreement and we had a meeting -- you did have
4 some indication of the Fort Baker Drive
5 residents' opinion of that draft, correct?

6 MR. GREEN: I don't recall.

7 MR. SULLIVAN: You weren't
8 completely in the dark without some response
9 in writing?

10 MR. GREEN: Wasn't completely in
11 the dark? That probably is technically right.
12 I was not completely in the dark.

13 MR. SULLIVAN: Did you contact the
14 Fort Baker Drive residents again, or did you
15 provide another draft or a revised draft?

16 MR. GREEN: I would say that the
17 response we got was at times rhetorical and
18 was not specific to the document. It would
19 have been, in a normal course of business,
20 reasonable to expect some kind of a response,
21 asking for it to address further areas of
22 concern, etcetera. The discussion was not

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1 germane hardly at all.

2 MR. SULLIVAN: So not withstanding
3 the applicant's assertion at the last hearing
4 that you would reach out to the Fort Baker
5 Drive residents, you did not reach out to the
6 Fort Baker Drive residents?

7 MR. GREEN: Did not reach out
8 when?

9 MR. SULLIVAN: After the last
10 hearing; between now and the last hearing?

11 MR. GREEN: Not specifically.

12 MR. SULLIVAN: I don't have any
13 further questions.

14 CHAIRMAN HOOD: Okay.
15 Commissioner Richards, you know I didn't mean
16 to -- I almost forgot about you.

17 Mr. Sullivan, you said you were
18 finished, right?

19 MR. SULLIVAN: Yes.

20 CHAIRMAN HOOD: Okay.
21 Commissioner Richards?

22 MR. RICHARDS: Yes. I just had a

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1 couple of questions for Mr. Green.

2 You did receive a list of our
3 community amenities and benefits on March 29?

4 MR. GREEN: Yes, we did.

5 MR. RICHARDS: And essentially,
6 that was pretty much the same thing as was
7 presented in the March 15 meeting?

8 MR. GREEN: I believe so. I don't
9 have the documents in front of me. But it was
10 generally the same. Yes.

11 MR. RICHARDS: Okay.

12 MR. GREEN: I think there were
13 some deletions between the two of the ones
14 that were --

15 MR. RICHARDS: I think if you
16 would take a look at the March 15 submission
17 -- I'll get a copy for you.

18 CHAIRMAN HOOD: I think he has
19 that copy with him, doesn't he?

20 MR. GREEN: March 29 here.

21 CHAIRMAN HOOD: March 29?

22 Commissioner Richards, he has a

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1 copy.

2 PARTICIPANT: No. He doesn't have
3 that one.

4 CHAIRMAN HOOD: He doesn't have
5 March 29?

6 MR. RICHARDS: He said he doesn't
7 have March 15.

8 CHAIRMAN HOOD: Oh, 15th? I'm
9 sorry.

10 MR. RICHARDS: So are the March 15
11 and March 29 substantially the same?

12 MR. GREEN: I think you know the
13 answer to that. Are you telling me that they
14 are the same?

15 MR. RICHARDS: I believe they are
16 the same. Do you believe they are the same?

17 MR. GREEN: Substantially the
18 same, yes.

19 MR. RICHARDS: So you've known
20 what the position of the ANC was with regard
21 to the community benefits and amenities since
22 at least March 15?

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1 MR. GREEN: Yes.

2 MR. RICHARDS: You also note where
3 there's a substantial difference between what
4 you had presented and what the ANC was asking
5 for?

6 MR. GREEN: There is certainly a
7 difference.

8 MR. RICHARDS: It boils down to
9 the LEED items, is that correct; that's a
10 difference?

11 MR. GREEN: I didn't think we
12 disagreed on the LEED items.

13 MR. RICHARDS: Okay. And the
14 construction build-out items and the
15 contractor loan fund items?

16 MR. GREEN: We disagreed on them?

17 MR. RICHARDS: Yes. Didn't we?

18 MR. GREEN: What do you mean by
19 the construction build-out items?

20 MR. RICHARDS: Wasn't it the
21 position of the ANC that those items were not
22 really what we identified as the community

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1 amenities and community benefits?

2 MR. GREEN: What construction --
3 I'm confused as to specifically what items
4 you're referencing.

5 MR. RICHARDS: In your draft that
6 was presented to us, it's listed as Exhibit G.
7 I don't know the exact number in the Zoning
8 Commission. But if you'd like to take a quick
9 look at what I'm reading from?

10 COMMISSIONER TURNBULL: Are you
11 referring to the CBE retailer build-out
12 subsidy?

13 MR. RICHARDS: That's right.

14 CHAIRMAN HOOD: Commissioner
15 Richards, I'm trying to follow your point.
16 Your point is --

17 MR. RICHARDS: My point is that at
18 the earlier hearings, the Zoning Commission
19 asked the developer to identify those things
20 which were either required by law or were a
21 part of the normal development process, and
22 therefore really shouldn't be included in

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1 community amenities and community benefits.

2 That is an item that remains on
3 their list of community benefits which we
4 believe doesn't fall into the categories of
5 things which the Commission asked them to keep
6 on their list. It should have been removed.

7 CHAIRMAN HOOD: Okay. Thank you.

8 COMMISSIONER TURNBULL: Are you
9 saying that the build-out for local retailers
10 is not a community amenity?

11 MR. RICHARDS: That's correct.
12 It's a part of their development process.

13 MR. GREEN: There's no requirement
14 that we do that. It's something that we've
15 proposed doing that's above and beyond any
16 kind of, you know, code or regulatory
17 requirement whatsoever.

18 Green roofs fall into that
19 category as do other items: the financial
20 contributions, sponsorship of local community
21 events, job preparedness training, the
22 contractor loan fund, the homeownership

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1 counseling, as well as the contribution to the
2 two libraries.

3 MR. RICHARDS: So it's your
4 position that you're just going to rent space
5 to your prospective tenants as just empty
6 space and there's not going to be any build-
7 out?

8 MR. GREEN: I think what there is
9 -- typically, you provide a build-out dollar
10 amount to tenants. Although I'm not the
11 expert so much as -- well, I'm not as much of
12 an expert on retail. But what we're proposing
13 to do is to subsidize the amount of money that
14 the tenant has to put up in order to get moved
15 in. We're going above and beyond what's
16 typically done.

17 Retail is done different ways.
18 Some people provide cold dark shells;
19 sometimes people provide a warm light shell,
20 as they say. But there's always a cost to the
21 retailer to move in. I'm sure there are some
22 cases where there's a retailer that moves in

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1 with no money of his own on the transaction,
2 but it's extremely unusual.

3 What we're proposing to do is to
4 subsidize to provide additional money to the
5 local retailers to assist them in moving in.
6 They might not be able to move in otherwise.
7 So I think it is, in fairness, truly above and
8 beyond what is typically done in a normal
9 course of retail development.

10 MR. RICHARDS: Where are these
11 tenants going to be coming from?

12 MR. GREEN: We can agree on a
13 designated area. We're certainly not looking
14 for one person to move out of one store into
15 another and moving around. We would like it
16 to be additive to the community. But the
17 whole idea is that they be local retailers,
18 and local is typically defined as Wards 7 and
19 8.

20 MR. RICHARDS: So you're going to
21 be taking tenants who are already in business
22 in Ward 7 or 8 and subsidizing them to move

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1 into your building, and leaving the previous
2 area where they're coming from as vacant?

3 MR. GREEN: No. In fact, I just
4 said that that wouldn't be a good outcome and
5 that we wouldn't look to do that.

6 But if you have an existing
7 retailer there's -- a great example of a local
8 retailer is CakeLove, who has expanded his
9 operation into multiple different places.

10 There's a number of those kinds of
11 retailers. Yes Organic Market, although it's
12 not necessarily local so I'm not saying he
13 fits that, but he's an expansion. With the
14 District's help and other developers' help,
15 he's been able to replicate his store, I think
16 an enormously attractive store, in different
17 locations. So that's the kind of thing we're
18 looking to do.

19 I just said we would not consider
20 it to be a success if someone moved out of one
21 location, created a vacancy, and moved into
22 ours. We would not consider that a success.

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1 MR. RICHARDS: All right. Are you
2 aware of the ANC's position on the bus store?

3 MR. GREEN: I think that you're
4 generally not in support of it. Is that
5 correct?

6 MR. RICHARDS: That's correct.
7 Yet it remains on your list of community
8 benefits?

9 MR. GREEN: Yes. We have multiple
10 entities that we're trying to work with and
11 it's high on someone else's list.

12 MR. RICHARDS: You're daring me to
13 ask him who, right? I don't think I'll ask
14 that question.

15 No further questions.

16 CHAIRMAN HOOD: All right. Thank
17 you very much.

18 Let's go to closing remarks.

19 MR. TUMMONDS: Thank you.

20 The application that we have
21 presented and our written submissions and
22 testimony fully satisfies the PUD Evaluation

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1 Standards enumerated in Section 2403 of the
2 Zoning Regulations.

3 As noted in the applicant's
4 submissions, testimony, and the Office of
5 Planning's report, the proposed PUD project
6 offers numerous public benefits and project
7 amenities that are superior in quality and
8 quantity to a typical mixed-use matter-of-
9 right project.

10 Specifically, this project
11 includes an affordable housing component which
12 exceeds the IZ requirements for this property.
13 The applicant has entered into, first,
14 sourcing CBE agreements that would not be
15 required for a matter-of-right project.

16 This project also includes
17 significant streetscape and landscape
18 improvements, which would similarly not be
19 required in a matter-of-right project.

20 This project includes significant
21 job creation and the application includes a
22 public benefits and project amenities package

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1 valued at \$5.2 million.

2 As noted in our March 29, 2010
3 filing, this project is proposing an amount of
4 development on the site that includes
5 approximately 360,000 to 1.1 million square
6 feet less than the matter-of-right density
7 allowed on this property.

8 The total value of the public
9 benefits and project amenities provided in
10 this PUD project is significant, especially
11 compared to the relatively small degree of
12 development incentives that are requested in
13 this application.

14 As noted in Mr. Green's rebuttal
15 testimony this evening and as presented to the
16 Zoning Commission on December 10, 2009, the
17 applicant has engaged in significant
18 discussion and dialogue with the surrounding
19 community. The changes that have been made to
20 the PUD project during this public hearing
21 process fully address the issues raised by the
22 Zoning Commission and the party opponents, as

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1 well as comments raised by District agencies
2 such as the Urban Forestry Administration, the
3 Department of the Environment, and the Fire
4 and Emergency Management Services.

5 In particular, these changes
6 address action item FNS 2.7-B of Chapter 17 of
7 the Comprehensive Plan, which requires that
8 the applicant work with property owners to
9 develop and maintain a suitable visual, sound,
10 and security buffer between the Skyland
11 Shopping Center and the adjacent residential
12 areas along Fort Baker Drive.

13 In response to those issues raised
14 by the property owners on Fort Baker Drive,
15 the building on Block 1 for this project was
16 pulled back from the property line an
17 additional 37 feet, for a total distance of 72
18 feet. In addition, a 58,000 square foot tree
19 preservation area was created, and the ramp of
20 the roof parking was internalized into the
21 building on Block 1.

22 As shown in the materials

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1 submitted into the record on March 29, a
2 matter-of-right multi-family residential
3 project could be developed on the R-5-B Zone
4 portion of the Skyland property adjacent to
5 the Fort Baker Drive properties, which would
6 have a much more significant impact on the
7 Fort Baker Drive properties than the proposed
8 PUD project.

9 Similarly with regards to Action
10 Item FNS 2.7-B, in response to security issues
11 raised by the property owners on Akron Place,
12 a site plan was created which did not allow
13 direct pedestrian or vehicular access from
14 Akron Place into this project, but instead
15 allowed for the establishment of a significant
16 landscape buffer area between the project and
17 those properties along Akron Place.

18 The tree preservation area located
19 near the adjacent Fort Baker Drive and Akron
20 Place properties responds to policy FNS 1.2.4
21 of Chapter 17 of the Comprehensive Plan, which
22 seeks to reduce soil erosion and stabilize

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1 slopes at far northeast and southeast erosion
2 "hotspots," particularly the Skyland and
3 Alabama Avenue area.

4 As noted in the extensive
5 testimony from representatives from the Office
6 of Planning, in OP's report, and in the
7 applicant's pre-hearing statement, this PUD
8 project is not inconsistent with, and in many
9 aspects fully consistent with, numerous
10 elements of the Comprehensive Plan including
11 the Future Land Use Map and the Generalized
12 Land Use Policies Map.

13 For all of these reasons, we
14 request that the Zoning Commission approve the
15 PUD and Zoning Map Amendment Application
16 proposed in Zoning Commission Case No. 09-03.

17 Thank you very much.

18 CHAIRMAN HOOD: Thank you very
19 much.

20 Ms. Schellin, unless my colleagues
21 have anything else they would like to add or
22 ask for, I guess what we need to do now is

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1 come up with some dates.

2 MS. SCHELLIN: Yes. I don't think
3 that unless you guys have some additional
4 information you want we just need to set a
5 date to allow the parties to provide proposed
6 findings of fact and conclusions of law if
7 they choose to do.

8 I would ask that they do that by
9 3:00 p.m. on May 14. We could put this on our
10 May 24 meeting agenda for consideration for
11 proposed action.

12 CHAIRMAN HOOD: Okay.
13 Commissioners, I don't know if -- and it's up
14 to you guys.

15 Again, the Construction Management
16 Plan as I understand it -- I would like for
17 the applicant to make another -- well, not
18 just the applicant; the community also,
19 especially Fort Baker Drive. Because I'll
20 tell you, I'm really troubled. And I know
21 there are other avenues that they can deal
22 with the building codes. I understand all of

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1 that.

2 But I would like to see something
3 that really kind of addresses that, other than
4 the applicant getting sued. And if that's
5 being said then I will withdrawal my comments
6 because I take people's testimony down here
7 very seriously. If you're concerned about
8 your property, I expect that you're not trying
9 to just get somebody to buy you out or I'll
10 sue you. I just expect a little more.

11 I would like to see if that
12 Construction Management Plan can address some
13 of those issues or be more specific to some of
14 those issues, looking out for the folks on
15 Fort Baker Drive. That's really my major
16 concern.

17 I may not be here when you do it,
18 but hopefully my colleagues will carry that on
19 and look and see how the Construction
20 Management Plan has been tweaked to try to
21 address some of those concerns.

22 Anything else?

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1 MS. SCHELLIN: So you would like
2 that submission? Because I would like to
3 schedule a date for that.

4 CHAIRMAN HOOD: Yes, if they can
5 do that. Hopefully they can do that within
6 that time frame.

7 MS. SCHELLIN: Well, I need to
8 schedule a date because we'll have to also ask
9 for time for the parties to have an
10 opportunity to respond to only that submittal.

11 So in order to keep this timeline,
12 if the applicant could provide that by May 5;
13 does that sound okay?

14 MR. TUMMONDS: Absolutely.

15 MS. SCHELLIN: And that would be
16 by 3:00 p.m. The parties would have until
17 3:00 p.m., May 12 to respond to that submittal
18 only. The record will be closed to all other
19 submittals.

20 CHAIRMAN HOOD: If you're going to
21 deal with this on May 24, when will final
22 action be? That probably wouldn't be until

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1 June.

2 MS. SCHELLIN: Final action could
3 be considered June 28. That's if proposed
4 action is taken on the 24th; that's assuming
5 it is taken.

6 CHAIRMAN HOOD: Okay. Anything
7 else, Ms. Schellin?

8 MS. SCHELLIN: No, sir.

9 CHAIRMAN HOOD: I want to thank
10 everyone for their participation.

11 The Commission will take this up
12 on the dates so noted.

13 I appreciate everyone's
14 participation. Skyland has been -- you've
15 been hearing about it for years. I'm hoping
16 that something happens very positive out of
17 this. I appreciate the community also.

18 With that, I want to thank
19 everybody for their participation tonight.

20 This hearing is adjourned.

21 (Whereupon, at 8:23 p.m. the
22 hearing was concluded.)

CERTIFICATE

This is to certify that the foregoing transcript
in the matter of: Skyland Holdings, LLC

Before: D.C. Government
Zoning Commission

Date: April 21, 2010

Place: Washington, D.C.

represents the full and complete proceedings of the
aforementioned matter, as reported and reduced to
typewriting.

Sam Wojack

Sam Wojack