

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

SPECIAL MEETING

+ + + + +

THURSDAY

SEPTEMBER 4, 2014

+ + + + +

The Special Meeting of the District of Columbia Zoning Commission 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 5:03 p.m., Anthony J. Hood, Chairman, presiding.

The transcript constitutes the

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minutes from the Special meeting held on  
September 4, 2014.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman  
MARCIE COHEN, Vice Chair  
MICHAEL G. TURNBULL, FAIA,  
Commissioner (AOC)  
PETER G. MAY, Commissioner (NPS)  
ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SARA BENJAMIN BARDIN, Director  
SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,  
Development Review & Historic  
Preservation  
JOEL LAWSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

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

5:05 p.m.

CHAIRMAN HOOD: Good evening, ladies and gentlemen. We're going to start the hearing.

Okay, this meeting will please come to order. Good evening, ladies and gentlemen.

This is the Public Meeting of the Zoning Commission for the District of Columbia. My name is Anthony Hood. Joining me are Vice Chair Cohen, Commissioner Miller, Commissioner May and Commissioner Turnbull.

We're also joined by the Office of Zoning staff, Ms. Sharon Schellin, as well as our Director Ms. Bardin and Ms. Z. Hill, Special Assistant.

Also, Office of Attorney General, Mr. Bergstein. Also of the Office of Planning, Ms. Steingasser, as well as Mr. Lawson.

Copies of today's meeting agenda are available to you and will be near the door. We do not take any public testimony in our

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meetings, unless the Commission requests someone to come forward.

Please be advised this proceeding is being recorded by a Court Reporter and is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noise or actions in the hearing room, including display of any signs or objects.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Okay, if not, colleagues, let's proceed with the agenda.

I do have two preliminary matters. I want to commend, and I know this is not necessary germane to the Special Public Meeting, but I want to do it while we're being webcast live.

I want to commend the Office of Zoning, as well as the Office of Planning for going to a community yesterday with about 75

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folks of the North Michigan Park area of the city, and presenting things dealing with the zoning revision review.

One of the things that I challenged in the North Michigan Park, to come up to speed on some of the things that we do here, was to watch us.

So, to find out whether they watched us, what I'm going to do, if you're watching us, I'm going to ask that if -- and this is during the hearing, if you're watching us, if you can talk to President Grace Lewis and let her know that you did watch the Zoning Commission for educational purposes.

So, I'm going to say it now, and I'm going to say it again. That's how I can kind of feel if people actually did, because there was a lot of concern and a lot of great interest, and I can tell you, the Office of Planning's presentation was very well received from what I was told, because I had to leave the room, and also, I want to thank the Office of Zoning, and

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I understand also, they did a great job, also.

So, anyway, do I have any other --  
okay, that's it.

Okay, let's go straight to Hearing  
Action Zoning Commission Case No. 14-13. This  
is Office of Planning Text Amendment Rooftop  
Penthouse Regulations for All Non-Low-Density  
Residential Development, and we're going to go  
to the Office of Planning, Mr. Lawson.

MR. LAWSON: Sure, good evening,  
Mr. Chair, members of the Commission.

Just a couple of short comments  
here. You, of course, first started to review  
this at your July 28th meeting. We provided a  
report that was in response to a request from  
you and from various members of the Development  
community for proposed amendments to the zoning  
regulations intended to reflect the recent  
changes, Federal changes to the 1910 Height  
Act.

At that meeting, you requested that  
we work with OAG, the Office of the Attorney

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General, to prepare a draft text prior to set-down.

The Commission also provided additional feedback on text that you wished to have drafted, which would be advertised in the notification in the alternative.

So, that's what we did. We worked closely with OAG and we've submitted the draft text in a report dated August 28th, 2014.

The report included both the proposed and the alternative text, as requested by the Zoning Commission.

Since we submitted that, we have identified a few non-substantial typos and other corrections that would need to be made, before the notification. We also identified one somewhat more substantial change.

In the draft that we submitted on page 28 of the attachment, there is a new Section 2608.3 proposed. The intent of that section was to clarify that a request to amend a previously approved PUD or a design review

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project could be filed and could be considered by the Zoning Commission as a minor modification.

The proposed language however was not as clear as it should be, and in further discussions with OAG, it was felt that it would be more appropriate to be placed as part of Section 411, with new wording that is clearer in its intent.

To this end, we're proposing that Section -- the proposed Section 2608.3 be replaced instead with a new Section 411.20, which would read to the effect of, "A request to add penthouse space to building approved by the Zoning Commission as a planned unit development or through the design review requirements of Chapter 16, 18, 28 or 29 prior to," and that would be, "prior to the date of approval of these amendments may be filed as a minor modification for placement on the Zoning Commission consent calendar, pursuant to Section 3030."

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This makes it clear that this applies to previously approved PUD or design review only, and that it would apply to the addition of not just residential penthouse space.

With that, OP would recommend that the Zoning Commission set this text down for a public hearing at this time. We would, of course, continue to work with the Office of the Attorney General to make any modifications at the direction of the Zoning Commission, prior to the publication of a public hearing notice. Thank you, and I'm available for questions.

CHAIRMAN HOOD: Okay, thank you, Mr. Lawson. Commissioners, any questions on the proposal in front of us? Vice Chair Cohen?

VICE CHAIR COHEN: Thank you, Mr. Chairman. Mr. Lawson, your modifications to a couple of the sections, is that available in this latest submission that we got, actually today?

MR. LAWSON: It's not. That's a

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change that was identified after we submitted that -- the actual draft text.

VICE CHAIR COHEN: So, will you be providing us -- if we do set this down, you'll obviously provide it?

MR. LAWSON: Absolutely, it will be provided, and if that's -- if the Zoning Commission concurs with that direction, that would be part of the notification, as well.

VICE CHAIR COHEN: Okay, I have a couple of other questions.

One question relates to, how did you derive the contributions in the inclusionary zoning language? It's page eight of the attachment one.

MR. LAWSON: Well, there is kind of two different requirements. One is for residential space and one is for non-residential space.

IZ would apply for new residential space, and that would be provided in the IZ chapter, which is Chapter 28.

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The amendments to provide for housing linkage for non-residential space, that's the section you're referring to, which is in Section -- or we're proposing a new Section 414.

It's very much, very closely -- the OP proposal is very much based on the current housing linkage requirement, and that's the housing linkage requirement that's contained both within the comprehensive plan and in the zoning regulations for PUD's, in the comprehensive plan also for alley and street closings. So, it's very much centered on that.

The alternative takes it a bit -- a step further. At the direction of the Zoning Commission, you asked us to provide alternative language, which would provide for a more extensive housing requirement and that's what the alternative language in Section 414.6 would do.

It would be -- it would require -- it would result in a higher level of

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affordability requirement.

VICE CHAIR COHEN: One of my concerns goes to 2607.1(c) on page 25 of the attachment, and regards the change of use, and the proof -- what you're asking for is proof that continuation of the rental use is no longer economically feasible.

Who determines the economically feasible?

MR. LAWSON: This is a section from the existing regulations. So, we carried it forward, so it would apply to these regulations, as well.

We tried not to, to be honest, to amend the existing regulations any more than we felt we had to, to incorporate the penthouse changes.

I'd be happy to take that question back, because as you know, Office of Planning is working on a more comprehensive set of changes to the inclusionary zoning chapter, and we can make sure that that's addressed and

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that's clarified through that amendment, which should be coming to you shortly.

VICE CHAIR COHEN: I would suggest -- well, I could expand upon this more maybe, but I really do think that it is a problem because the technical expertise to determine that does not necessarily come with the Commissioners, the Zoning Commission or the BZA, and that we would need greater guidance on this.

So, I really think that we need to get down to the basics, as to how we're going to carry this out.

I'd ask -- I actually know that it exists today, but I'm still questioning the capacity to judge, when there is any possible opposition and frankly, we always have to address this when there is an extension and they -- the claim is that, you know, it's not a bankable -- they have a hard time finding financing.

That's not necessarily the case.

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It's rather, you know, the applicant may not want what's available in the marketplace and wants to wait it out.

So, there are things that we need to, I think, get down to the basics on this.

In 411-11, again, it comes to operating difficulties and again, it's on page four, paragraph A under 411.11.

You know, again, that's not a -- it's not a science. It's an art, and we need a great deal of explanation, as to how to determine that.

Then lastly, I would just like to say that many penthouses have to comply, I believe with other, you know, acts of the city, and one of the concerns I would have is the concern of noise, that everything should be enclosed or at best, mitigated up front, so that noise does not become an issue emanating in a -- especially a commercial zone that's adjacent to a residential zone, and you know, the commercial properties will probably be looking

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for the highest and best use, which may be a restaurant and they're going to want loud music possibly.

So, I just think we need to zero in on that possibility too.

MR. LAWSON: We don't disagree, and in our first report, we suggested a possible alternative that maybe the Zoning Commission wanted to establish rooftop -- certain rooftop uses as being special exception uses as opposed to by-right uses, that if the Zoning Commission wishes to proceed down that road, we didn't get that instruction to proceed down that road at the last meeting. But if you would like us to, we could certainly incorporate language to that effect in the proposed text amendment, before it goes out for notification, either as an alternative or as your preferred text.

VICE CHAIR COHEN: Well, I would prefer it, but I will also like to hear from my colleagues, and I believe those were my questions, Mr. Chairman. So, if I have

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anymore, I will obviously step forward.

CHAIRMAN HOOD: Okay, anybody else? Okay, Commissioner May?

COMMISSIONER MAY: I just have a couple or maybe 20 questions.

I agree that rooftop uses should be -- certain rooftop uses should be treated as special exceptions, and I had a note to that effect on my notes from the initial set-down report, but it doesn't look like I said anything about it, but I would support including such a restriction or an additional language to address that.

I'll try to go through these quickly, but I do have a series of questions, and I'll start at the beginning and work my way through.

The first is generally, there is the issue of applicability of the height limit and that R-1 through R-4 zones are treated differently. They have lower heights, as do single-family residential buildings and flats

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in the other zones.

But I'm concerned about some of the other zones that are kind of co-mingled with, you know, R-2, R-3, R-4, such as C-1 and C-2A and I'm concerned about what can happen in those circumstances, whether there needs to be additional restrictions on use or additional restrictions on the height, because already, there are a number of circumstances where you wind up with, you know, a piece of C-2A that has not been used for commercial purposes and is populated mostly by row-houses and then all of the sudden, somebody can build a 50-foot tall building and now, they can build a 50-foot tall building with a penthouse unit that's not subject to FAR, if these regulations go through.

So, I think that we should be considering C-1 and C-2A or anything else that's, you know, right next door to R-1 through R-4, as a rule, and I'd be interested in hearing what other Commissioners say about that.

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I'm not sure it has to be treated -- whether we have to identify the zones or whether there is some other way to approach it through, you know -- when it's adjacent to an R-4 zone or something like that.

I don't want to be too restrictive about it, but then again, I don't want to make the problem that we're seeing with certain types of pop-up structures get worse, as a result of this.

I would also -- let's see, under -- let's see, moving on, 400.7(b) we have the typical reference to being set back from all exterior walls, and I know that's probably taken directly from the Height Act, but I'm wondering about what we actually consider an exterior wall to be, because I've seen some things that make me sense that perhaps, the Zoning Administrator is -- has a different idea of what an exterior wall is than say, I would or the Zoning Commission would.

So, I mean, exterior wall is

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literally one that is facing a public way. Is that -- I mean, how do we define exterior wall?

MR. LAWSON: Well, it has been something that's changed over time, and we've certainly proposed a clarification of that through the zoning regulations review process.

So, that's certainly one approach that could be taken. Certainly, in light of these changes that are being proposed, the Zoning Commission might want us to take another look at that, about how we're addressing that.

We'd certainly be happy to incorporate additional clarification or direction I guess, on how that set-back would be measured as part of this modification, if you would like us to, so people would be much more clear on that.

In general, I believe right now the Zoning Administrator and the accepted determination is that the set-back is certainly required from any front property line. The set-back is, I believe required from a real

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property line.

It becomes more questionable when it's required from an interior court, and typically, that is -- well, I shouldn't say typically, because honestly, I've seen it required and not required from an interior court, and then there's the side yard issue, when and where it applies against a side yard, and as I said, if you would like us to prepare some clarification language on that and include it as part of this, we could certainly do that.

COMMISSIONER MAY: Well, I think if we're intending to address it in the new zoning regulations, then we ought to be consistent here and maybe adopt that portion of language sooner. Frankly, I do not remember what we did to clarify it or what we were considering to clarify it, but I think that we should be consistent and try to address some of these circumstances because there are all sorts of problematic results that could come.

Let's see, now I'm at 400.7(e) and

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I note that we are prohibiting basically -- you know, the limit is absolute on whatever the -- you know, the maximum height permitted.

But one of the issues that came up recently that has concerned me is the placement of mechanical equipment on top of penthouses, and I'm -- I mean, in particular, solar panels on top of penthouses.

I think we ought to include some very explicit prohibition against any additional stuff on top, with the possible exception of antennas because they're controlled by a different section.

Four-11.2, the new provision, I think it's generally fine. I think that though the exception, you know, particularly a penthouse located within the R-1 through R-4 or any one-family dwelling or flat in any other zone may only be used to house mechanical equipment, stairway or elevator overrides or ancillary space directly associated with a rooftop deck. That last phrase troubles me

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because that is the sort of thing that gets stretched by, you know, developers seeking permits for it.

You know, you've got your rooftop deck and so, the ancillary space is, you know -- it may be intended to cover the -- you know, the four-by-four closet that has -- you know, where you keep the chairs that have to be moved inside or the cushions or something like that, but that grows and grows and grows and all of the sudden, it's an extra room and it's considered ancillary and there's precedent for it and so on.

So, I would simply say that it should be limited to stairways, elevator overrides and mechanical equipment. I don't know that there is really a need for ancillary space. If somebody needs to have, you know, space to have, you know, their seat cushions put away, then they can buy a cabinet or something like that, that those things can go in to.

I mean, is there really a need to

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cover ancillary space or can we put a limit on how big it is?

MR. LAWSON: We thought there was a need to cover it. It's something that's permitted now. So, we didn't feel that it was appropriate to make it more restrictive than the current regulations.

It is fairly common for people to have rooftop decks on top of their row-house, and there is a need for storage space up there.

We could certainly narrow that definition of what's considered ancillary space, if that makes the Commission more comfortable, but I think there is a need for the space, if we're going to accept that a rooftop deck is something that's permitted, then I think the need for the space is there.

COMMISSIONER MAY: You know, by allowing or encouraging development of penthouses, in essence, I think that we open the door for more potential abuse of this provision.

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So, I think that anything we can do to tighten it up would be an improvement.

Four-11.5 and 6, now, was it five or six? Just six. This goes to the enclosure walls of unequal height, yes, 411.6 where it's deleted, and I still don't like having lots of different heights of enclosure walls.

I can see that having a single enclosure wall encourages having 18 or 20-foot walls over things that only need a 10-foot wall, but you know, I'm afraid that this then will become solely, something that's driven by cost and so, you'll wind up with penthouse enclosures that go up and down and all over the place, just because they have to be a minimum height, and the developer wants to build it as cheaply as possible.

So, I mean, did you consider doing anything that was more kind of in between? You're allowed to have two different heights or --

MR. LAWSON: It's actually

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interesting you asked that, because we had some discussions with the Historic Preservation Office staff and they were actually expressing concerns to us, about the current provision that things be of equal height, because they were seeing penthouses that were artificially overly large, which in their mind, was a problem on some of the historic buildings that they were dealing with.

So, they were also looking at some additional language. Again, I felt it was a bit beyond the scope of this, so I didn't pursue it too strongly.

In this case, it really was just to provide the flexibility, so that people could provide a penthouse that was heighted, I guess, that provided a height that was appropriate to what was going on that penthouse.

If was interesting, in talking to Historic Preservation Office, and stop me if I'm going too long here, but they also did agree that having, you know, numerous heights of

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screens in penthouses was also distracting, and so, providing some certainty, they felt was appropriate, and one of the things that they talked to me about was allowing for one height for the penthouse and then allowing a second height for screening for mechanical equipment, which is something that we do see with the mechanical equipment all at one height and the penthouse all at one height, but those two heights didn't need to be the same, as long as neither one of them exceeded the maximum penthouse height.

So, all the screening at say, 15 feet and all the penthouses at 18.5 feet, but anything else would require BZA review.

So, that's one possibility that has been raised.

COMMISSIONER MAY: Okay, well, I think that's an excellent way to address is. So, you know, hopefully, more of the Commissioners will agree with -- that we ought to have some flexibility, but not allow things

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to just kind of go crazy up there.

So, I made a note here about 411.8, which is says, "Penthouse shall not be included in the calculation of the buildings as they are," you know, and what this reminded me of is the whole debate about the Height Act, where one of the reasons why -- one of the expressed reasons why -- or for raising the height limit was to allow developers and architects a little bit more freedom to go a little bit higher, so they don't necessarily have to just build great big boxes, and if we do the penthouses not subject to floor area limitations, then we wind up with all of the -- you know, the buildings being built out to their maximum envelope and then the penthouses being built out to their maximum envelope and it doesn't give you that kind of flexibility.

I don't -- I mean, at this moment, suggesting that we need to remove it. I think we'd like to hear from the public before we address anything like that. There is nothing

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in here that needs to be changed, but I would just note a certain -- it's an interesting circumstance, that on the one hand, we want to advocate for better designed buildings, and on the other hand, we're promoting, you know, bigger boxes.

Let's see. I agree with Commissioner Cohen on the -- on 411.11, operating difficulties is kind of a squishy term and it's very difficult to interpret when we're dealing with BZA cases, but I'm not sure what we can do to address that here.

So, we can skip that one. All right, 414.1, which is the -- is basically the trigger for housing linkage, right?

MR. LAWSON: That's correct.

COMMISSIONER MAY: Okay.

MR. LAWSON: That's for non-residential.

COMMISSIONER MAY: Exactly, for non-residential. So, it's only -- and it only applies to non-residential -- non-residential

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penthouse space, because I mean, it only applies to non-residential penthouse space?

MR. LAWSON: Correct.

COMMISSIONER MAY: Okay, so, what does that mean if on top of a residential building, I want to build a community room?

MR. LAWSON: That would be considered ancillary to the residential use. So, that would be residential space.

COMMISSIONER MAY: It would be considered residential space?

MR. LAWSON: Yes, yes. So, we're talking office space on an office building, not even -- you know, like a management office space on a residential building. That would still be considered residential.

COMMISSIONER MAY: Okay, all right.

MR. LAWSON: Because it's ancillary to the residential use.

COMMISSIONER MAY: Okay, I just wanted that to be clear. I'm not sure where I

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see that in the regulations, but then again, I have not memorized them.

But I just wanted to make sure that we were not discouraging, inadvertently discouraging community rooms and things like that on rooftops.

COMMISSIONER TURNBULL: Mr. May, the next Section 414.2.

COMMISSIONER MAY: Excellent. I will take that home and study it. Okay, I read that one too, and somehow, I didn't get that.

So, on 537.2, the gross-floor area of penthouses permitted in the section shall not be counted in determining the amount of off-street parking, as required elsewhere in this title.

So, if you were able to add four or five penthouse units, that would not trigger any additional parking requirement?

MR. LAWSON: That's correct.

COMMISSIONER MAY: Okay, just making sure. I'm not sure how I feel about

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that. We'll see how that goes with the hearing.

On 1203.2(b)1, where it says, "The penthouse shall not be -- shall not exceed 10 feet or one-story in height above the roof, which is located." Shouldn't that be 'and one-story'?

MR. LAWSON: It could be. The intent was that both of those provisions would apply, yes.

COMMISSIONER MAY: Right, both of them would apply.

MR. LAWSON: Yes.

COMMISSIONER MAY: Right, so, it can't be over 10 feet. It can't be more than one-story, okay.

MR. LAWSON: That's correct.

COMMISSIONER MAY: All right, because the way it's 'or', it would allow it to be more than 10 feet, assuming it was one-story.

I believe that is the end of my questions. Let me just double-check the last

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couple of pages.

Otherwise, thank you very much. I really appreciate the fact that you've put this into language for us. I feel much more comfortable at this stage, and I'm interested to know whether the -- you know, my fellow Commissioners support some of the changes that I suggested in this discussion.

So, that would be the exterior walls, further clarification, the ancillary space, tightening that up. The solar panels and such on top of penthouses being prohibited.

The possibility of two heights for penthouse enclosures, and I think that was it for the ones where I thought there were -- I was suggesting some changes to the language that might be published. Thank you.

Whether it counts to FAR, no, I think that's one we'll just hear from the public on, on whether it should count or not. I was just noting -- you know, the irony of it. Thank you.

CHAIRMAN HOOD: Okay, Commissioner

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Miller?

COMMISSIONER MILLER: Thank you, Mr. Chairman and many thanks to the Office of Planning and the Office of Attorney General, for producing the proposal to text and particularly, the alternative proposal suggested by some of the Commissioners for the affordable housing linkage to penthouse space.

I had just a couple questions. Well, regarding Commissioner May, while it's somewhat fresh in my mind.

I guess I don't have an objection to that being -- those suggestions being proposed in the alternative, but in general, I was comfortable with the Office of Planning's proposal.

But so, I have no objection to that being advertised in the alternative, to include those, to get more feedback on specific points that Commissioner May raised, although I think you might get that anyway.

On the -- so, many of the issues that

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Commissioner May and Commissioner Cohen raised are -- go to existing language that you were just carrying forward from the housing linkage provisions or inclusionary zoning provisions, and there is that dilemma, do we deal with here? Do we wait for the IZ? Do we deal with these rooftop clarification issues here?

So, it's -- there is that dilemma, but let me pose a couple more, in that category.

I think this is the first one. I just have a few.

So, in the -- in 414.3, this is the affordable housing production. This is the section providing affordable housing production requirement generated by construction of penthouse non-residential gross-floor area.

So, you are carrying forward, the language in the existing housing linkage that is in the -- as you pointed out, in both the -- the zoning regulations and in the comp plan.

So, one of the exemptions in the

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existing housing linkage provisions for non-residential space is the -- is when there is a minimum residential use requirement. It's 414.3(a), is what I'm asking about.

Isn't that the DDD? Is that the DDD, the Downtown Development District?

MR. LAWSON: Those are DDD sections, yes.

COMMISSIONER MILLER: Right, so, when these housing linkage provisions were being drafted, there was concern that the -- and we didn't -- and we were -- and there were downtown housing requirements being proposed and we didn't know whether they would -- they would actually get the downtown housing that we wanted out of those housing -- the DDD, there was the exemption from DDD because -- for that reason, that we wanted to not discourage housing in the downtown development district.

We now have housing in the downtown development district. This is additional space, office space on top of office buildings

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in the downtown, and it just seems to me that there shouldn't be this exemption. The purpose of the exemption, it does not exist in this particular case for the penthouse -- for the additional penthouse space.

So, I would request that that be looked at by OP and perhaps, advertised in the alternative, to exclude the exemption or just exclude the exemption all together, because I don't think that it -- it's appropriate at this time, for this particular kind of additional commercial space that's being provided in downtown, that isn't currently available downtown.

So, that's --

MR. LAWSON: I think it would be -- we would be happy to take a look at that, and certainly, happy to include that language in the advertisement, as well.

COMMISSIONER MILLER: Okay, great.

MR. LAWSON: I think that makes great sense.

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COMMISSIONER MILLER: But I realize, you're just carrying it forward. So, that made sense, that it would -- so, in that same vein, well, I don't know if it's the same vein.

But on 414.3, this is where a contribution is being given to the housing production trust fund, instead of -- instead of the production off-site housing.

In the existing formula, it's one-half of the assessed value of the proposed additional office space. In this case, it's one-half of the assessed value of the proposed penthouse non-residential gross-floor area for office use.

I'm just wondering whether or not that since we have the alternative language that's requiring a one-to-one, if you could get one square foot of office penthouse space, you're going to have one square foot of residential affordable housing, somewhere.

I'm wondering whether this should

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be really 100 percent, to be consistent with the one-to-one alternative, any alternative, as advertised in the alternative.

So, if you could consider advertising that one in the alternative, if anything -- if it makes sense, what I'm trying to --

MR. LAWSON: It makes total sense. I totally understand what you're saying. We're happy to also include that as alternative language. We think that you will get a lot of comments on that and --

COMMISSIONER MILLER: Sure, we will.

MR. LAWSON: -- prior to the hearing, we would probably provide some additional information on just exactly what that would mean in some numerical terms.

COMMISSIONER MILLER: Yes, that would be helpful.

MR. LAWSON: Yes, sure.

COMMISSIONER MILLER: And then I

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guess I'd forgotten about this existing provision in the housing linkage provision, that we've limited -- that we limited -- if they go for the production option, there is a limitation of 20 years for it to be affordable housing.

MR. LAWSON: That is the current provision, yes.

COMMISSIONER MILLER: That provision may need to be looked at generally. I mean, maybe it made sense -- maybe it still makes sense. I'm not sure where the 20 comes from, whether that's tied to some tax credits or something, but it seems like since we -- since this linkage provision was written, we have an IZ policy that's requiring affordable housing and perpetuity, which I think other provisions in here will require it, and perpetuity, I don't know if the 20 year limitation makes any sense here or in general for -- in this -- in the existing housing linkage provision.

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So, it's just something that if OP could look at, and maybe make some recommendations either in this case or generally.

I had only one other question, I think, Mr. Chairman. Sorry, my notes are not organized.

On the same provision 537.2, that Commissioner May raised a question about, that the gross-floor area of penthouses permitted under this section shall not be counted in determining the amount of off-street parking, as required elsewhere in the site.

Is FAR used to require -- to calculate requirements other than off-street parking? Does this -- I just didn't know what the ramifications -- if there was a rationale for -- if it makes sense to exclude it here for off-street parking. Is there other -- are there other areas where FAR triggers requirements, where it should be looked at? I just don't know what the ramifications are.

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I didn't necessarily have the concern about not providing additional parking, but I just didn't know if this -- if this provision needed to be looked at in the overall zoning regulations, as well.

MR. LAWSON: Sure, although there are, of course, the two main parking triggers right now, and residential is triggered by units, number of units mainly, and in non-residential, it's typically triggered by square footage of particular kinds of space.

There are some exemptions from space that triggers parking requirements. This is kind of one of them, but there are a number of exemptions.

So, those are the two triggers. So, we can certainly look at that, in terms of a residential trigger or in terms of a non-residential, like office space trigger or both, at the direction of the Zoning Commission.

COMMISSIONER MILLER: I will yield

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my time, the balance of my time, Mr. Chairman, but I'm going to look through my notes, try to be a little more organized, if you come back to me afterwards.

CHAIRMAN HOOD: We'll go to our newest colleague, I'll new colleague, I'm sorry, that was Mr. TURNBULL. I didn't recognize you.

COMMISSIONER TURNBULL: You're just jealous.

CHAIRMAN HOOD: That's true, I am.

COMMISSIONER TURNBULL: I'm going to look very cute, when it comes in, according to my wife, anyway.

Well, I would echo the comments by my fellow Commissioners, and thank OP for their report and getting into the weeds, which I don't think they wanted to do as much, but they followed our request, and thank you very much.

I think the Commissioners, my fellow Commissioners have added -- picked up a lot of -- most of the things that I had.

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I would agree with Commissioner Miller, that the -- his three major points on the housing linkage aspects are very good to look at, and I think we really need to be able to do that. So, I want to thank him for that.

Let me get back to one of the items that Commissioner May had mentioned, which was about the set-backs, and I think -- I mean, we've all sat on BZA cases, even on Zoning Commission cases, where if it's an interior courtyard of a space, we often allow a penthouse to encroach on it.

Now, with the additional height in certain areas, especially in the Capitol Gateway, with some of the alley areas, those additional heights, I'm not sure what that impact -- I'm worried whether we're making canyons, backed by alley areas.

So, I think looking at -- looking at that a little bit more would be helpful. I'm not opposed to allowing the continuation with the additional height, the same way we're

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going. I just think we might need to look at it a little bit more and just see what the impacts would be.

I guess my only other concern was on the penthouse and what is it, 411.18, where we talk about there's going to be 20 feet, but it could also be two-stories.

Now, this is kind of a -- now, whether those are two occupy-able stories or whether the second story is basically a mechanical space for additional stuff that they want to put up there.

I mean, typically, the elevator, when it comes up, I mean, depending upon which architect and engineer is here testifying, you get different viewpoints on how much extra space they need for the hoist-way.

But one of the things, if you get an elevator coming up to the roof, you can occupy that first floor, but going up to the second floor is, I think practically going to be a little bit different. I don't think that's

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going to be an accessible space, if it's the second floor, by elevator.

I mean, otherwise you're going to have architects and engineers coming up and saying, "Oh, we need another little penthouse on our penthouse for the traction equipment, to get the elevator up."

So, I think we need to be clear, and I think you've said it in the documents, that 20 feet is the limit, but it's just an open-ended thing where is the second floor a habitable space? Is it an occupy-able space, but it's not going to be a handicapped accessible space, and once they add another little lift in that space -- I mean, this is a design issue and everything else.

But from a zoning standpoint, we may get requests coming back saying, "Oh, we need relief on this penthouse to be able to really use it the way we want to use it, as a community space."

So, I don't know if you talked to

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people or had any comments back on that.

MR. LAWSON: We've certainly talked about it kind of amongst ourselves, and we share your concern.

We think there are a couple of opportunities for the use of the two levels. One of them is one that we've already seen a little bit in the 18 foot six-inch current height limit, where occasionally, people are putting mechanical equipment in a level above, you know, like a pool room or something that's enclosed --

COMMISSIONER TURNBULL: Which makes sense.

MR. LAWSON: -- which can happen now. So, that's basically two levels within that space right now.

The other possible likely -- because you're absolutely right, if it's accessible space to the residents or the workers in the building in general, it must be accessible, which means elevator access.

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There are some ways that maybe architects can get around that without having anything go above that 20 foot, and we agree with you, that there should be no mechanical equipment. There should be no elevator override or anything like that above that 20 feet.

But the other place where we see that it could happen would be in residential buildings, where the elevator goes up to the lower of the level, and then there are two level units up there.

COMMISSIONER TURNBULL: Okay.

MR. LAWSON: So, loft space above

--

COMMISSIONER TURNBULL: Yes.

MR. LAWSON: -- above living space.

So, that is one. That is one place where it could happen.

But certainly, once you give designers that flexibility, I think that they'd be able to work it out, but we think that it --

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we totally agree with you, that the language needs to be very clear, that the 20 foot is your limit. You're not going to get an elevator override over that 20 feet.

COMMISSIONER TURNBULL: Okay, I think, Mr. Chair, everyone else has covered my other comments. So, I will yield to you.

CHAIRMAN HOOD: Okay, thank you, Commissioner Turnbull, with the new look, very distinguished.

COMMISSIONER TURNBULL: Thank you.

CHAIRMAN HOOD: Maybe I should try that. That might help me a little bit.

But anyway, let me just ask for to Office of Planning, what is the status of the amendment of comprehensive plan updates, and I know we've got -- I feel like a body swimming. My arm is going straight and my hips are going to the left. I'm going all over the place.

But I'm just curious, what is the status of the comp -- the new updates?

MS. STEINGASSER: The

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comprehensive plan will begin its updating in early 2015. The staff, the long-range division staff will begin their work this Fall, with consultants on how to -- how to design an outreach program and how to begin outreaching.

That was one of the first things they wanted to do, was actually have some community forums on what's an appropriate way to structure that outreach. Then they'll start that work in the -- I guess it would be the Winter of 2015.

CHAIRMAN HOOD: Okay, so, that is on schedule? Is that the typical? Okay, I thought we were behind on that.

Mr. Lawson, help me with 414.6, and help me understand what's proposed, the alternative and what you mentioned in the discussion. Just give me a 101 class on 414.6.

MR. LAWSON: Sure. Well, under the proposed language, that is the current language from the housing linkage requirement right now, and the housing linkage requirement,

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as I said, applies to -- mainly, to PUD's that gain additional office space through the PUD process and it applies to street and alley closings, that result in new office space.

So, this is simply setting out if the developer is going to provide -- actually provide actual housing, this is not for a contribution to the housing production trust fund, but if somehow they're going to actually provide housing, and we wanted to leave that option open, in case they wanted to, this sets out the calculations for how much housing they would need to provide, as it relates to how much density the -- how much new density -- the new space they gained.

CHAIRMAN HOOD: Okay, and the alternative, when you say down here in your notes, where it's a more extensive requirement, I'm not following on that.

MR. LAWSON: Sure. In the existing language, which is in the language in the existing zoning regulations, which is the

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proposed language, there is a fraction, I guess, of the space that's being gained, that you need to provide as affordable housing, and that fraction varies, depending on how close that housing is to the site in question, and that's what we proposed here.

In the alternative, that fraction would go away, and instead of providing for example, one-quarter of the space as affordable housing, you'd be providing 100 percent of that space as affordable housing.

So, it's just more space, more affordable housing space that would be required, and the fractions go away.

CHAIRMAN HOOD: Okay, I too, want to thank -- I join in with my colleagues, and thank the Office of Planning and the Office of Attorney General, as well, and the Office of Zoning. I don't ever want to leave them out, for providing this text for us.

We greatly appreciate it. I know it's on the fast track, but the Office of

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Planning and the Office of Attorney General and Office of Zoning, you all always come through.

Let me just ask that when we get ready to have the hearing, if it's set down, I think I will be supporting the set-down, let me just ask that where applicable, if we could have some graphs or some drawings, that would be very helpful for this Commission, to see exactly what we're -- what we're creating up on the roof, and you know, as far as height and what we're actually doing.

MR. LAWSON: That's a great idea. We'd anticipated providing that before the hearing.

CHAIRMAN HOOD: I will reserve the rest of my questions for the hearing. Some of my questions may get answered at the hearing. So, I would like to work in that fashion. Vice Chair Cohen?

VICE CHAIR COHEN: Yes, I just want to comment and again, it's probably -- I really don't understand solar panels, because I always

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felt that they -- I mean, I thought they were flat on the roof, but some, I guess are tilted to capture some --

COMMISSIONER MAY: They're tilted and usually to some optimum angle, based on the angle of the sun.

VICE CHAIR COHEN: But I don't want to in any way, discourage the use of solar panels. So, I just want to be assured --

COMMISSIONER MAY: No, I wouldn't either, except that I would not want them on top of a 20-foot penthouse.

VICE CHAIR COHEN: So, where would the put --

COMMISSIONER MAY: It would be on the roof.

VICE CHAIR COHEN: On the roof itself?

COMMISSIONER MAY: It would be on the roof itself.

VICE CHAIR COHEN: Okay, so, penthouse obviously, is not resting on the

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entire roof?

COMMISSIONER MAY: Right, there is the accessible area --

VICE CHAIR COHEN: Specifically, there is a set-back.

COMMISSIONER MAY: There's a mandatory set-back area.

VICE CHAIR COHEN: That's not that much, the set-back area.

COMMISSIONER MAY: It's one-to-one, so it's got to be 20 feet wide, all the way around the perimeter of the building.

VICE CHAIR COHEN: Okay, and so, that would accommodate a solar --

COMMISSIONER MAY: It's not -- you know, the more area you could have, the better obviously, and if they had a perfectly flat solar collector that was -- you know, didn't increase the height of the penthouse, certainly they could do that.

I just -- you know, there is just -- there is a recent BZA case that's still pending,

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where they -- you know, they were asking for relief, so that they could take a -- you know, put solar panels on top of a penthouse, and I don't think that's something that we should allow, as a matter of course.

You know, maybe in that case, it would turn out to be justified, but I think it should be explicit, because I don't think that it really is explicit now.

VICE CHAIR COHEN: Currently, are you aware of the -- I guess the practical installation issues related to it?

COMMISSIONER MAY: I have solar panels on my roof, yes. I'm very well aware.

VICE CHAIR COHEN: Okay, but do you have a flat roof before or --

COMMISSIONER MAY: I have a flat roof.

VICE CHAIR COHEN: Yes, that's the difference. I just want to have some comfort in knowing that we're not in any way, discouraging

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COMMISSIONER MAY: It would be limiting the amount of rooftop area that could be used, but it is not currently allowed, and I'm just trying to make it explicit, that it would not be allowed.

It's not more restrictive than what we have right now, because it's not allowed right now.

VICE CHAIR COHEN: Okay, all right. So, it's really not changing the rules of the game. That's what I think you're saying.

COMMISSIONER MAY: Right.

VICE CHAIR COHEN: All right, thank you.

CHAIRMAN HOOD: Okay, any other questions? Commissioner May? I mean, I'm sorry, any other questions, Office of Planning? I got distracted there. Any other questions?

COMMISSIONER MAY: I have a question.

CHAIRMAN HOOD: Okay, sure.

COMMISSIONER MAY: So, I went back

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and looked at 414.2. I didn't have to take it home and study it, and I guess what I found unsatisfying there is that the reference to space that might be considered sort of the community room on the rooftop, is that -- are you suggesting that space accessory to rooftop deck space, such as storage, restrooms, change rooms, etcetera, that that is inclusive of a community room? I'm asking Mr. Bergstein.

MR. BERGSTEIN: I don't think it's -- well, I don't think it's intended to cover a community room. I don't think it's intended to cover -- it's intended to maintain the status quo. This is language from the current regulations.

COMMISSIONER MAY: Right.

MR. BERGSTEIN: So, and that -- and the current regulations don't permit an enclosed space for that purpose.

COMMISSIONER MAY: Correct.

MR. BERGSTEIN: So, it's not -- it's only intended to maintain the current --

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what's permitted as being -- as not being included in non-residential penthouse GFA.

COMMISSIONER MAY: So, you know, what happens when we refer to that space as accessory to the rooftop use space, is that we then get into the game of calculating, you know, what is 20 percent of the rooftop use, and I would not want to put that sort of limitation on it.

I think, you know, honestly, one of the things that was most important to me in the entire Height Act debate was that when we create these spaces, we're creating them for communal use, rather than for, you know, luxury penthouses, so that there could be rooftop community use by the residents of the buildings, and I don't think we want to have anything in the language that in any way, discourages that.

Now, I'm -- you know, Mr. Lawson assured me that that was not the case, that such use would be considered ancillary to the

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residential use and would not trigger the housing linkage.

I just want to make absolutely sure that that's the case. So, I'll leave it at that. You guys could figure it out, or if you're totally comfortable with the way things are, that's fine. I just didn't see that -- when you referred me to 414.2, I found that unsatisfying.

CHAIRMAN HOOD: Okay, any other comments, colleagues? Questions?

(No audible response.)

CHAIRMAN HOOD: Okay, somebody make a motion.

COMMISSIONER MILLER: Mr. Chairman, I would move that we -- that the Zoning Commission set-down Zoning Commission Case No. 14-13, text amendment to the zoning regulation, rooftop penthouse regulation for all non-low-density residential development, with the modifications that Mr. Lawson presented in his presentation here today, and

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with the consideration of the alternatives that some of the Commissioners suggested here today, and ask for a second.

VICE CHAIR COHEN: Second.

CHAIRMAN HOOD: Okay, it's been moved and properly seconded. Any further discussion?

(No audible response.)

CHAIRMAN HOOD: Are you ready for the question? All those in favor?

(Chorus of aye.)

CHAIRMAN HOOD: Not hearing any opposition, well, hearing all five voting in the affirmative, Michelle, would you please record the vote?

MS. SCHELLIN: Yes, staff records the vote 5-0-0 to set-down Zoning Commission Case No. 14-13 as a rule-making case. Commissioner Miller moving, Commissioner Cohen second. Commissioners TURNBULL, Hood and May in support.

CHAIRMAN HOOD: Okay, Commissioner

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MR. BERGSTEIN: Can I --

CHAIRMAN HOOD: Yes.

MR. BERGSTEIN: -- just ask one guidance, in terms of this public hearing notice?

I understand that you -- it's my belief that you all want there to be an advertisement of an alternative for special exceptions for some penthouse uses, and what I'm wondering is if we could put that in as a concept, rather than text.

In other words, say that the Commission would be interested in hearing public comment, as to whether any penthouse uses shall be subject to special exception requirement and if so, should there be specific criteria, and if so, what those criteria should be, as opposed to just writing out the text and figuring --

CHAIRMAN HOOD: I would like to see it that way, as in context. Anyone?

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COMMISSIONER MAY: Again, I would agree, but can I suggest that maybe some of the potential uses that might be subject to special exception be listed?

MR. BERGSTEIN: As examples?

COMMISSIONER MAY: Yes, exactly.

CHAIRMAN HOOD: Does everybody agree with that? Any disagreement?

COMMISSIONER MILLER: No, I agree with the -- I just wanted to say, I agree with the concept, but I don't generally agree that there should be special exception process for all permitted uses in the zone.

So, since uses is --

COMMISSIONER MAY: You're asking for --

COMMISSIONER MILLER: Yes, right now, I have no problem with it.

CHAIRMAN HOOD: Okay, Mr. Lawson?

MR. LAWSON: If I may, I'd like to ask for one bit of clarification.

If you'd like to give us some

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examples of some of those uses that you would like to see spelled out, that would be helpful.

COMMISSIONER MAY: The one that immediately comes to -- the one that immediately comes to mind would be restaurant uses or restaurant related uses, anything that falls under that broad general category.

There are certainly other uses that are potential noise generators, and I mean, we could go through the list. You know, you certainly don't want things like kennels on the roof, not that we would necessarily allow that, but who knows? I mean, if it's allowed in the zone, then it's allowed under these regs, right?

So, you know, without looking at the entire list, I don't think I could -- I could give examples, but I think you --

MR. LAWSON: That was actually very helpful.

COMMISSIONER MAY: Okay, good.

MR. LAWSON: Thank you.

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CHAIRMAN HOOD: Anybody have anything to add to that?

(No audible response.)

CHAIRMAN HOOD: Okay, thank you, Commissioner May, for taking the lead on that. Anything else? Did we call -- we had the motion and everything?

Also, I meant to mention this in preliminary matters. It's like 90 or 95 degrees, colleagues, and I can tell you it was rough with this tie today, anyway, but I can tell you that I would suggest, due to the weather, that we again, extend our dress code until maybe October 1st. Any objections?

PARTICIPANT: None at all.

CHAIRMAN HOOD: Okay, all right. It's not too bad in here today, but it's rough when you're outside, trust me.

Okay, so, we're going to extend our dress code until October 1st.

Okay, anything else, Ms. Schellin?

MS. SCHELLIN: No.

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CHAIRMAN HOOD: Okay, so, we need five minutes, so we can get ready, right? We can move right into our hearing. So, if you can just give us five minutes for the Court Reporter to do what he needs to do, and we'll get started.

Okay, so with that, this Special Public Meeting is adjourned.

(Whereupon, the above-entitled matter went off the record at 6:05 p.m.)

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