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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission

Special Public Meeting
1442nd Meeting Session [21st of 2016]

6:07 p.m. to 6:39 p.m.
Thursday, July 28, 2016

Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220 South
Washington, D.C. 20001

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1 Board Members:

2 ANTHONY HOOD, Chairman

3 MARCIE COHEN, Vice Chair

4 ROBERT MILLER, Commissioner

5 MICHAEL TURNBULL, Commissioner

6

7 Office of Zoning:

8 SHARON SCHELLIN, Secretary

9

10 Office of Planning:

11 JOEL LAWSON

12 STEPHEN COCHRAN

13

14 Office of Attorney General:

15 ALAN BERGSTEIN, ESQ.

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

2 CHAIRPERSON HOOD: Good evening, ladies and
3 gentlemen. This is a special public meeting for the
4 Zoning Commission. Today's date is July the 28th,
5 2016.

6 My name is Anthony Hood. Joining me are Vice
7 Chair Cohen, Commissioner Miller, and Commissioner
8 Turnbull. Also the Office of Zoning staff, Ms.
9 Sharon Schellin, as well as the Office of Attorney
10 General, Mr. Bergstein, as well as Office of
11 Planning, Mr. Lawson, and Mr. Cochran.

12 Again, we do not take any public testimony at
13 our meetings unless we ask someone to come forward.
14 We ask that you please turn off all electronic
15 devices so as not to disrupt these proceedings.

16 I would like to first call Zoning Commission
17 Case No. 15-34. This is final action for Sherman
18 Avenue, LLC., consolidated PUD and related map -- I'm
19 sorry. I keep saying that. In Square 7823. Ms.
20 Schellin.

21 MS. SCHELLIN: Yes, sir. The applicant did
22 file some additional documents at Exhibits 49 through
23 49B, and they are asking for final action to be
24 considered this evening.

25 CHAIRMAN HOOD: Okay. I know there were two

1 outstanding issues, the DDOT loading plan. It looks
2 like that's been worked out. And the ADU plan, it
3 looks like -- well, I believe, I will go to Mr.
4 Turnbull. Are you satisfied with it?

5 MR. TURNBULL: Yes.

6 CHAIRMAN HOOD: Okay.

7 MR. TURNBULL: Actually, the plan was fine
8 the other day. I had read it wrong, so I stand and
9 apologize to the applicant that I was not looking at
10 the right section at the right time in looking at it.
11 But it's fine. The ADU plan is fine.

12 CHAIRMAN HOOD: Okay. And that was not a
13 major for me, to hold up the -- the major thing was
14 DDOT but I'm glad we got clarification on the AU plan
15 also.

16 Did we have anything else that I may not
17 remember? That was it, huh?

18 MS. SCHELLIN: For that case, yes.

19 CHAIRMAN HOOD: That case. So, colleagues,
20 any other discussion? So with that I would vote that
21 we approve Zoning Commission for final action in
22 Zoning Commission Case No. 15-34, and note that the
23 outstanding issues that we had were resolved, and ask
24 for a second.

25 MS. COHEN: Second.

1 CHAIRMAN HOOD: It's been moved and properly
2 seconded. Any further discussion?

3 [Vote taken.]

4 CHAIRMAN HOOD: Did we have a proxy on this
5 too?

6 MS. SCHELLIN: We did.

7 CHAIRMAN HOOD: Okay.

8 MS. SCHELLIN: So staff would record the five
9 to zero to zero to approve final action in Zoning
10 Commission Case No. 15-34, Commissioner Hood moving,
11 Commissioner Cohen seconding, Commissioners Miller
12 and Turnbull in support, Commissioner May in support
13 by absentee ballot.

14 CHAIRMAN HOOD: Okay. Next, and I'm going to
15 do like we did the other night, I'm going to call
16 Zoning Commission Case No. 15-15, and then after we
17 will do 05-23B. Let me do it in that order, Ms.
18 Schellin.

19 MS. SCHELLIN: Yes. In case number 15-15
20 there were some additional filings. Staff sent DHCD
21 a memo on behalf of the Zoning Commission at Exhibit
22 56, asking them to make a further submission
23 responding to the Commission's questions, and they
24 did that at Exhibit 57. And then at Exhibit 58 we
25 have a letter from the applicant regarding maker

1 definition refinement. So the three new exhibits are
2 from 56 through 58, and we'd ask the Commission to
3 consider final action on that case. And there was
4 nothing new filed in 05-23B. I think that all the
5 questions were answered in that case the other night.

6 CHAIRMAN HOOD: Okay. Let me begin by
7 thanking DHCD for responding with this letter that it
8 did for us, I guess yesterday or today, or whenever
9 they gave it to us. I appreciate them calling for
10 the call that was made in response, and also the
11 applicant, dealing with the maker definition issue.

12 So, I don't know what other issues there were
13 with that. I may be leaving one or two of them out,
14 but let me open it up for discussion, either one of
15 the -- let's discuss the DHCD letter the last -- and
16 any issues on the maker definition? Anybody?
17 Commissioner Miller.

18 MR. MILLER: Thank you, Mr. Chairman. I just
19 wanted to thank the applicant for revising the list
20 of uses in the maker proffer as we had discussed.
21 When was that? Monday night? And they indicate that
22 OP agrees with the language and I just wanted to get
23 the official confirmation from Office of Planning
24 from Mr. Cochran that that is the case.

25 MR. COCHRAN: That is the case.

1 MR. MILLER: Great. Thank you very much.

2 CHAIRMAN HOOD: Any other comments on that?

3 Okay. Let's get back into this request for
4 the waiver from the IZ. Let's open it up for
5 discussion. And again, we have a follow up letter
6 and I will give my opinion later. Vice Chair Cohen?

7 MS. COHEN: Thank you, Mr. Chairman. I too
8 want to thank Director Donaldson for her
9 clarification and expansion on her argument. I
10 acknowledge that she does have legitimate concerns.
11 However, on this particular case I think the Zoning
12 Commission not only did we balance the proffers with
13 the extra density and other flexibility that the
14 applicant stated, but also we have to give great
15 weight to the ANC, and early on OP also approved what
16 was being offered by the applicant when it came to
17 affordability.

18 I think that DHCD had an opportunity when OP
19 sent them this -- the applicant's material. So I
20 strongly believe that we should move ahead with what
21 was determined. I believe that the Zoning Commission
22 is about five steps ahead of everybody else in the
23 city because we have responded to the citizens of the
24 city and the administration with regard to deeper
25 affordability and IZ.

1 Now, this is one project and we do evaluate
2 each project on its merits, so maybe the next project
3 that comes down the pike will not have the same
4 arguments that were acceptable to us prior to hearing
5 from DHCD on Monday and today. And so I am in
6 support of moving ahead with this project as the
7 applicant has proffered. And DHCD's points can be
8 and probably will be taken into account in the
9 future, and they had an opportunity, as I said. I am
10 going to give great weight, though, to the ANC and to
11 OP's, you know, reports that we received. Thank you.

12 CHAIRMAN HOOD: Okay. Anybody else?
13 Commissioner Miller.

14 MR. MILLER: Thank you, Mr. Chairman. I
15 appreciate that DHCD did respond to your request to
16 provide further elaboration as to why they oppose an
17 applicant proffering a 60 percent AMI level of
18 affordable housing to meet an Inclusionary Zoning
19 requirement that says not more than 80 percent AMI.
20 But I don't understand why the administration is
21 unable to implement 60 percent AMI under the
22 Inclusionary Zoning Program, when the Inclusionary
23 Zoning Program, both the program that this Commission
24 adopted, the regulations that the DHCD adopted, the
25 statute that the council adopted, all said not less

1 than 80 percent AMI, or not less than 50 percent AMI
2 would meet the requirement in certain types of
3 developments.

4 So when the applicant comes forward with 60
5 percent AMI and the administration says, oh, we can't
6 -- that doesn't meet the not less than 80 -- that
7 doesn't meet the 80 percent AMI level, they have to
8 either do 80 or 50 and it's this rigid scheme, that's
9 why they had to then come back and ask for a waiver
10 because DHCD couldn't figure out how to do basic
11 arithmetic to do a 60 percent AMI level under the
12 Inclusionary Zoning Program, when it's a very simple
13 proposition.

14 And it's very disappointing that that's the
15 position that they have taken, a position that
16 they've taken, I might add, only after the
17 development industry came forward with their
18 philosophical position that they would not be in
19 favor. The overwhelming majority of ANCs and
20 testimony that we heard in the IZ case was that 60
21 percent AMI was what was needed instead of 80 percent
22 AMI, because that's where the need was in the
23 program, on the waiting list, and in the city.

24 So, I probably didn't need to vent that much,
25 but with the conscience of the -- the conscience of

1 our Vice Chair exiting on this issue I thought I
2 should be preparing myself to maybe try to fulfill
3 her shoes in that respect a little bit. So I thought
4 I'd try that out tonight and say that I'm prepared to
5 go forward with this project. If DHCD has to
6 administer a 60 percent AMI offer under an ADU
7 program instead of the IZ Program because they can't
8 figure out how to do it under the IZ Program, then
9 that's what they'll have to do, and monitor and
10 enforce it that way going forward.

11 As we know, if we go forward with our
12 preliminary action on the overall IZ case it will be
13 at the 60 percent AMI level, or not less -- not more
14 than 60 percent AMI level for all rental units for
15 the set aside of affordable housing. So they'll have
16 to figure it out at that point if they can't figure
17 it out now.

18 So I'm ready to go forward and appreciate all
19 the input that we've gotten on this case.

20 CHAIRMAN HOOD: Okay. Mr. Turnbull.

21 MR. TURNBULL: Thank you, Mr. Chair. I had
22 been ready to go ahead on this. But I'm a little bit
23 have mixed feelings right now. I guess the last
24 paragraph of the DHCD's letter it says, "To this end
25 DHCD approached the applicant's counsel and offered

1 to discuss modification to the affordable level --
2 affordability level by increasing the number of 50
3 percent of AMI in the PUD. However, the applicant
4 declined to negotiate.

5 So am I reading that they wanted a mix of 80
6 percent and 50 percent? That's what I'm
7 understanding on the DHCD level, from their letter.

8 CHAIRMAN HOOD: Actually, two had a problem
9 with that at the bottom of page 1, Mr. Turnbull. You
10 took exactly what I was going to recite. I had a
11 issue with that even being in the letter. I didn't
12 know all that was going on. But anyway, I'll let you
13 finish that.

14 MR. TURNBULL: Well, yeah. No. So, I mean,
15 80/50 is what we've done on other PUDs, and that's
16 been not an issue. I think 60 percent is a big
17 bonus, but the 80/50 is, when you weigh things all
18 out, it's also, it's a mix but I think Ms. Schellin
19 is just -- we've got a message from Mr. May,
20 Commissioner May, that he would like to weigh in on
21 this, that he would like us -- that he would like to
22 discuss this whole situation. And I think he wants
23 us to defer this until he can come in and sit with us
24 and talk about this whole issue.

25 So that won't happen until September, but he

1 feels very strongly about talking about this and
2 weighing all the different issues involved. So, I'm
3 sort of at odds here as to what to do or how to
4 proceed. I don't understand why the applicant didn't
5 want to discuss it.

6 MS. COHEN: Can I interrupt because I know
7 I --

8 CHAIRMAN HOOD: No, hold on. Hold on, let me
9 say this. We're going to go in order tonight. I'm
10 going to have my say, we're going to hear from
11 Commissioner May, and then we'll do a second round.

12 MR. TURNBULL: So, notwithstanding that again
13 I thought the 60 percent was a great offer, I think
14 it's a good offer. But in light of -- and I was
15 ready to go ahead last Monday. But DHCD's letter
16 now, I mean, the discussion of 80 and 50, if that --
17 I mean, it's a compromise. I realize that. It's a
18 compromise. We're not getting exactly the
19 affordability that the applicant had suggested. But
20 80/50 would solve us until we get legally our order
21 issued, and then that would set what's going to be
22 going on in the future.

23 And the fact that Commissioner May now has
24 weighed in and wants to participate in this makes me
25 a little bit reluctant to jump ahead.

1 CHAIRMAN HOOD: Okay. I would concur. And
2 that was one of the issues I brought up because I
3 think, I wanted to have a full commission. I know
4 this letter came in late. But as I stated on Monday,
5 it gives me great cause, and I think in the comments
6 I've heard, just from my commissioners previously
7 about, it brings up some good points. Yeah, it
8 brings up some good points.

9 So the problem I'm having here is a lot of
10 times we make these rulings here and we think it's
11 going out one way and it's in the order. And when
12 you look at stuff later on, it did not happen that
13 way. It's stuck somewhere in a forest. It's lost.
14 And I just believe that while I understand we want
15 the deeper affordability, but if the leading agency
16 is telling us that there are some problems with it, I
17 think we need to follow that.

18 And I understand about the ANC giving great
19 weight. We give them great weight. We take that
20 under consideration and I think this whole argument
21 has given consideration. But I think there's a lot
22 more to this than what we see. Yeah, I would like to
23 do 30 percent, and I've said that before. But I've
24 heard reasons of why we can't, why we shouldn't, what
25 it does, how it puts the developer in a bad way, now

1 it won't work. And I've heard all that.

2 But as far as this goes here, I think this is
3 too important to rush through it and not make the
4 right decision. And then make a decision in agreeing
5 with the applicant, and then nothing never really
6 gets done because they even talk about what happens
7 afterwards, and I think this letter -- that's why I
8 wanted further clarification, I think this letter
9 really points out that there's more to it than just
10 the Zoning Commission saying, yes, this is what we
11 want. This is what we're going to approve. We're
12 going to agree with the applicant.

13 But I think that the comments of Mr. Turnbull
14 and the same thing, to this end. DHCD approached the
15 applicant counsel, and offered to discuss
16 modifications to the affordability level by
17 increasing the number of 50 percent of the AMI, units
18 in the PUD or however the applicant declined to
19 negotiate. I don't even want to know why. I mean,
20 that's between the applicant and DHCD.

21 But the issue here for me is how it's going
22 to be administered. Can it be done? Yeah, we can
23 make the rules all day long up here. But as we know,
24 and we know in the past, we sit here and pass a whole
25 lot of stuff that doesn't actually happen. And I see

1 the same thing going here again. Yeah, it's cute,
2 but at the end of the day is it going to really
3 materialize? We need to deal with the leading agency
4 and move forward in that fashion.

5 Now, before I go back to you Vice Chair, we
6 do have a proxy, or whatever it's called from
7 Commissioner May. And yes, we reached out to them
8 because he did not have the benefit of receiving this
9 letter when he examined this case. This letter came
10 in late. So, Ms. Schellin, could you read his note?

11 MS. SCHELLIN: Yes. "DHCD's letter raises
12 issues that require further discussion and go beyond
13 this case. Therefore, I would request that the
14 Commission refrain from taking a vote so that I can
15 participate in the deliberation. Either special
16 public meeting to be scheduled, or at the next
17 meeting in September."

18 CHAIRMAN HOOD: Okay. So that's where we
19 are. Let's see, Vice Chair.

20 MS. COHEN: I know I have one foot out the
21 door, but I do recall at the public hearing, I asked
22 the question of the applicant, did they have
23 experience with low income housing tax credits, which
24 do address 60 percent of median income. And they
25 said yes, and they're fully engaged and aware of the

1 requirements and those requirements are very familiar
2 to DHCD.

3 I think it is totally unfair for DHCD to come
4 in at the 11th hour and try to push their agenda,
5 when we have balanced -- we spent a lot of time, I
6 read the record several times. And we ended up
7 spending time balancing what was proposed with what
8 again was being asked for.

9 I think it's a process issue and that we are
10 competent enough and I think DHCD has to assume their
11 responsibilities, whether it's under this program or
12 the Low Income Housing Tax Credit Program, or any
13 other programs that they are charged to evaluate, to
14 do so. And I don't think that it's necessary to now
15 go back and rereview everything that we've already
16 reviewed from OP, from the ANC. I think the train
17 left the station.

18 Now, it's the decision of course of the rest
19 of my colleagues with regard to postponing this. But
20 I think it's not -- I mean, one of the arguments that
21 DHCD made was predictability. Well, I think this
22 particular applicant is looking towards us as the
23 predictable decision makers, and we have gone through
24 the whole process and now we're going to reconsider
25 based on -- and again, I think it's mostly process

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1 that DHCD is bringing to our attention.

2 CHAIRMAN HOOD: Okay. Thank you.
3 Commissioner Miller.

4 MR. MILLER: Thank you, Mr. Chairman. Well,
5 you know, we're in an unusual situation here. I
6 mean, I normally would give deference to a
7 commissioner who wants to participate, who has
8 participated before. Meanwhile, by postponing we're
9 not going to be able to have the participation of
10 another member just by the fact that she's leaving.
11 The Chairman is informing me that may not be true.

12 CHAIRMAN HOOD: I do have a recommendation if
13 we ever finish.

14 MR. MILLER: Okay. All right. Well, then
15 that would take care of that concern that I had.
16 That, you know, while we give deference to one
17 commissioner who wants to participate, we know this
18 is the last -- this is supposed to be the last
19 meeting of another commissioner.

20 I have a question to OAG or OP to answer
21 regarding one of the statements that DHCD makes on
22 page 3, the last paragraph on page 3 of its most
23 recent letter dated today.

24 It says, "DHCD observes that of all the
25 existing non-inclusionary affordable dwelling units

1 that it currently administers, none were created by a
2 PUD with waived IZ requirements."

3 It's my recollection that as Commissioner
4 Turnbull has stated, yes, we have accepted proffers
5 where only 80 percent AMI levels were required, and
6 they came back and said, okay, we'll do half at 50
7 and half at 80. But it's also my recollection that
8 there have been cases that maybe DHCD isn't
9 administering because they've only recently been
10 approved in the last year or so, and the projects
11 haven't been built yet, where the applicant came back
12 with a 60 percent AMI level as what they were willing
13 to do. And since that couldn't be done under the IZ
14 program, because DHCD can't figure out how to do
15 basic arithmetic under that program, we had to waive
16 the -- we had to ask them to -- the administration
17 asked them to ask for a waiver from that program so
18 it could be -- the 60 percent AMI could be
19 administered under a different ADU program that they
20 do administer on a regular basis.

21 So I just, with all that background, can OAG
22 or OP confirm my recollection that we have done at
23 least one or more cases where IZ was required at an
24 80 percent AMI level, that an applicant came in and
25 proffered it at all 60 percent, or at some 60 percent

1 AMI level. And in the order we had to waive the IZ
2 requirement and had to have that 60 percent AMI
3 administered under separate -- different monitoring
4 enforcement agreements than the IZ program.

5 And if you don't recall it off the top of
6 your head, I'm not meaning to put you on the spot,
7 you don't have to answer that. But that is my
8 recollection that we had done this once, or at least
9 a few times. It's not something unprecedented.
10 Maybe those projects haven't been built and so they
11 haven't had to administer them yet, but they do
12 administer on a regular basis, 60 percent AMI
13 programs. In fact, I think that's a lot of what they
14 do at DHCD.

15 So, I don't know if OP can confirm that off
16 the top of their head. You obviously don't have the
17 cases in front of you. Or OAG, you drafted -- helped
18 draft many of those orders. I remember looking at
19 those -- at waivers, and I think those were the cases
20 where it was at a level that DHCD said they couldn't
21 administer, so that's why the waiver was in there.

22 MR. BERGSTEIN: The only one I recall was a
23 fairly recent one, MRP Realty. But I can't remember
24 off the top of my head. It was a 50-something and OP
25 can, you know, has a recollection of that. That was

1 the case where they were doing one unit at 50, the
2 rest, 80, and they wanted to do one unit at 60. So
3 for that one there was a waiver. That's the only one
4 I can recall and that was fairly recent so there
5 wouldn't have been any, I don't think, possibility of
6 immediate administration of that.

7 I don't recall any others. There may have
8 been cases that received exemptions pursuant to 2403,
9 something, F. You know, if you are a subsidized
10 project you're exempted from IZ, provided that you
11 meet the basic IZ programs. But I do not know what
12 those projects were, other than I sort of remember
13 McMillan being one, but McMillan isn't going forward
14 at the moment because of where it is, I guess.

15 But that's --

16 MR. MILLER: Okay.

17 MR. BERGSTEIN: That's my basic recollection.

18 MR. MILLER: Thank you. I don't know if OP
19 has anything else to offer on that but --

20 MR. TURNBULL: But weren't there some 80/50?
21 I thought we had approved some 80/50.

22 MR. MILLER: Well, we definitely have and
23 they --

24 MR. TURNBULL: I know.

25 MR. MILLER: That's where they say they can

1 administer it because they know how to calculate that
2 math.

3 CHAIRMAN HOOD: Okay. What I would suggest
4 is that if we're able to -- and I really honestly
5 don't like meeting in August. We will do this for
6 this time if -- I've already checked with the Vice
7 Chair, who is the departing person, asked her could
8 we meet August the 8th. Commissioner May had been
9 mentioned. I believe that he could do it any time
10 before that, but I don't want to hold us up until
11 September. I don't know what everybody's schedule
12 looks like, so if you could look at your schedule for
13 August the 8th, to come in for 6:00 and be done. I
14 think that's a Monday. Yeah.

15 MR. TURNBULL: You're lucky I canceled my
16 leave already, so.

17 CHAIRMAN HOOD: You canceled leave?

18 MR. TURNBULL: I was going to be gone, but
19 I've changed the plan.

20 CHAIRMAN HOOD: So you canceled leave so you
21 can come in and comment on this?

22 MR. TURNBULL: No, I'm not that much of a die
23 hard. Other issues.

24 CHAIRMAN HOOD: Okay. August. Is everybody
25 fine with August 8th?

1 MR. MILLER: Yes. I am fine with that. I
2 appreciate you --

3 CHAIRMAN HOOD: Then we have a full
4 commission, the Vice Chair will be here. See, the
5 Chairman has to think all that stuff out all day
6 long. No, I'm just playing. But I want to think
7 this thing through so we can have a full commission,
8 we can make the decision, and move forward.

9 MR. MILLER: I just want to note one other
10 thing, Mr. Chairman. You know, if they came back
11 with 80 and -- we can talk about that in two weeks,
12 but if they came back with half at 80 and half at 50,
13 which DHCD was suggesting, that will be at a higher
14 blended level than if it was just all 60, which is
15 what they proffered. And if they came back at all
16 80, that would meet with DHCD -- that would meet what
17 they're able to administer, and they may -- and then
18 we'll have a, you know, a worse project.

19 So they can comply with DHCD's and create a
20 much less affordable situation and sometimes you
21 really should grab for that fruit when it's being
22 offered to you, because you may not be there when you
23 want it later.

24 CHAIRMAN HOOD: I can agree with that. I
25 don't disagree with anything. But I know that

1 sometimes -- I've been around and I've seen projects
2 built. I've been here long enough to see them. And
3 I've seen stuff that I know we voted on and I go back
4 and look at it. And I know it happens all the time.
5 And I'll go back and look at it and I say, that's not
6 what we voted on.

7 And, you know, and that really turns me off
8 and I hate when I sit here and we vote and spend all
9 night working on stuff and then you find out it
10 doesn't work. So but they're sending us a strong
11 signal, and I know that you all are saying this is
12 simple arithmetic and everything, but I'm not all
13 into that, so I don't know what the mechanics are;
14 what the moving parts are in the bureaucracy. I
15 don't know all that.

16 So, because I don't know all that I have to
17 depend on the subject matter experts, agency. Now,
18 we can sit here and say all that all we want, but
19 we're not the ones that's carrying it out. Our order
20 sometimes, I hate to tell you all this, do not get
21 carried out.

22 MR. MILLER: We are an independent agency.

23 CHAIRMAN HOOD: Yes, we are. We are.

24 MR. MILLER: Just for this type of reason.

25 CHAIRMAN HOOD: I know we're independent

1 agency and I know who wrote the legislation.

2 MR. TURNBULL: We do not have to accept a
3 proffer at all 80 percent. And in fact I, myself,
4 would not accept a proffer at all 80 percent.

5 CHAIRMAN HOOD: Eighty percent. Yes. So, I
6 mean, we can put a whole lot of what-ifs and changes
7 and that. But my issue is I have a concern that --
8 well, some of us have a concern that was raised. We
9 were all grabbing at it, but when the SME came in and
10 came with this letter, then it had -- it made me
11 change my course. Okay? And that happens all the
12 time. This is not the first time.

13 We're going to deal with it August 8th. I
14 don't think I need to hear from anyone else. We have
15 not turned you down. We have not -- trust me, we
16 have not said, we have not said -- we have not denied
17 anything. We just want to have a discussion. So I
18 don't think we really need to hear -- now, if we
19 denied you I would have to bring you to the table.

20 But do you have anything other than --
21 because you see where we're moving. It's not going
22 to change the way we're moving. If that's what
23 you're going to try to do, you might want to just
24 stay where you are.

25 MR. TURNBULL: Well, are you looking for the

1 applicant to submit any additional --

2 CHAIRMAN HOOD: Do we need to -- did we ask
3 for anything?

4 MS. SCHELLIN: That's what I was going to
5 ask. Do you want the applicant to respond to DHCD's
6 letter prior to the August 8th meeting?

7 CHAIRMAN HOOD: Yeah, then they're going to
8 respond. Everybody responding. I don't know what
9 more -- come on, Mr. Utz, I'm not going to do that.
10 I just don't want -- just do me a favor, don't try to
11 change the August 8th date.

12 MR. UTZ: Okay.

13 CHAIRMAN HOOD: Unless you can't be here, and
14 that's the only way we can change it.

15 MR. UTZ: No, I think we checked with our
16 folks and it's going to work for our team. I think
17 we also just wanted to find out what would be
18 discussed on the 8th. What it would be? Would it be
19 a chance for us to present kind of a response or --

20 CHAIRMAN HOOD: We're going to continue our
21 deliberations but we're going to have a full
22 commission.

23 MR. UTZ: Uh-huh.

24 CHAIRMAN HOOD: We're going to continue our
25 deliberation. Just what you heard tonight. We're

1 going to continue our deliberations.

2 MR. UTZ: Okay.

3 CHAIRMAN HOOD: Whether we accept what you
4 gave, whether we look at DHCD, or whatever, you know.
5 I can't predict what happens on the 8th.

6 MR. UTZ: Right. Okay. There are things in
7 here that I think would be good for us to address or
8 correct, because I think there are several
9 inaccuracies.

10 CHAIRMAN HOOD: We will give you that
11 opportunity if you choose to do it. Don't make it a
12 17-page, because August, and technically in August,
13 we're on break.

14 MR. UTZ: Uh-huh. Right.

15 CHAIRMAN HOOD: So make it a soundbite
16 submission.

17 MR. UTZ: Okay.

18 CHAIRMAN HOOD: Okay?

19 MS. SCHELLIN: And we need to get that a week
20 before the meeting.

21 MR. UTZ: Got it.

22 MS. SCHELLIN: Thanks.

23 MR. UTZ: The 1st.

24 CHAIRMAN HOOD: All right. Thank you. I'm
25 not being hard on you but I think --

1 MR. UTZ: I appreciate you all.

2 MR. TURNBULL: My only concern is we might be
3 at an impasse at the end of the next meeting because
4 what's on the table? I mean, right now we had 60
5 percent. This letter, I'm not sure if it really says
6 80 and 50 or just 80.

7 CHAIRMAN HOOD: Well, they had a few
8 recommendations, but you know, I don't know what was
9 discussed. I wasn't -- I didn't -- I wasn't at the
10 negotiations or if there were even any negotiations.

11 MR. TURNBULL: I think the applicant ought to
12 have a chance to submit an option that might work
13 based upon this letter then.

14 CHAIRMAN HOOD: Okay. So you have an option.
15 And you can submit something based upon the letter we
16 receive, or you don't have to. It's up to you.

17 MR. UTZ: Okay.

18 CHAIRMAN HOOD: Okay?

19 MR. UTZ: I appreciate that.

20 CHAIRMAN HOOD: We will accept -- we will
21 accept something from the applicant if they want to
22 respond.

23 MR. UTZ: Thanks.

24 MR. BERGSTEIN: And then it's my
25 understanding that you would not accept any response

1 to that.

2 CHAIRMAN HOOD: Yeah, we're going to be
3 responding. This response that we got today is what
4 we asked for.

5 MR. BERGSTEIN: Right.

6 CHAIRMAN HOOD: And the response that they're
7 going to give, that's all we need, is a response.

8 MR. BERGSTEIN: Just to clarify, no further
9 response is --

10 CHAIRMAN HOOD: That's it.

11 MR. BERGSTEIN: -- going to be received
12 into --

13 CHAIRMAN HOOD: We're responding --

14 MR. BERGSTEIN: Okay.

15 CHAIRMAN HOOD: -- all August. Yeah. So,
16 okay. Anything else on this?

17 So I guess we need to hold off on the
18 modification also. Okay. All right.

19 MR. UTZ: Okay.

20 CHAIRMAN HOOD: Okay. Thank you.

21 MR. UTZ: Thanks.

22 CHAIRMAN HOOD: All right. So with that,
23 anything else, Ms. Schellin?

24 We're going to take five minutes before we
25 start our case and this special public meeting is

1 adjourned.

2 [Special public meeting adjourned at 6:39
3 p.m.]

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