

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

+ + + + +

REGULAR MEETING

+ + + + +

MONDAY

FEBRUARY 11, 2019

+ + + + +

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

The transcript constitutes the minutes from the Regular meeting held on February 11, 2019.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)
PETER G. MAY, Commissioner (NPS)
PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

SHARON S. SCHELLIN, Secretary

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director, Development
Review & Historic Preservation
KAREN THOMAS
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MAXIMILIAN TONDRO, ESQ.

DISTRICT DEPARTMENT OF ENERGY AND ENVIRONMENT STAFF PRESENT:

TARESA LAWRENCE, PhD, Deputy Director, Energy
Administration

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

(6:31 p.m.)

1
2
3 CHAIRMAN HOOD: Okay, we're ready to begin. This
4 meeting will please come to order.

5 Good evening, ladies and gentlemen. This is a
6 public meeting of the Zoning Commission for the District of
7 Columbia. My name is Anthony Hood. Today's date is
8 Monday, February the 11th, 2019. And it is approximately
9 6:30 p.m.

10 We are located in the Jerrily R. Kress Memorial
11 Hearing Room. Joining me this evening are Commissioner
12 Shapiro, Commissioner May, and Commissioner Turnbull.

13 We are also joined by the Office of Zoning staff,
14 Ms. Sharon Schellin, Office of Attorney General, Mr. Tondro,
15 the Office of Planning, Ms. Steingasser, Ms. Vitale, and Ms.
16 Thomas.

17 Copies of today's meeting agenda are available to
18 you and are located in the bin near the door.

19 We do not take any public testimony at our
20 meetings unless the Commission requests someone to come
21 forward.

22 Please be advised this proceeding is being
23 recorded by a court reporter and is also webcast live.

24 Accordingly, we must ask you to refrain from any
25 disruptive noises or actions in the hearing room, including

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1 display of any signs or objects.

2 Please turn off all electronic devices at this
3 time.

4 Does the staff have any preliminary matters?

5 MS. SCHELLIN: The staff would just ask the
6 Commission to consider two closed meetings.

7 CHAIRMAN HOOD: Okay.

8 MS. SCHELLIN: The first one would be for training
9 on February 20th, 2019.

10 The second one would be a closed meeting for Case
11 Number 16-23, Valor Development on February 25th.

12 CHAIRMAN HOOD: Okay. I believe I can read these
13 -- let me try to do them both together.

14 As Chairman of the Zoning Commission for the
15 District of Columbia, in accordance with 405c of the Open
16 Meetings Act, I move that the Zoning Commission hold the
17 following closed meetings.

18 On Wednesday, February 20th, 2019 at 9:00 a.m. for
19 purpose of receiving training as permitted by D.C. Official
20 Code.

21 The subjects of the training are types of
22 architectural issues with rowhouse additions and character
23 elements, providing renderings for non-design related relief,
24 determining factors to assess how far beyond the ten-foot
25 rule is acceptable, building height measurement rule, and

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1 then, we say how it's calculated, update on various and
2 special variances and special exceptions.

3 Also, which I want to add to this, this may or may
4 not happen, is the Department of DOES, Department of
5 Employment Services may also be in attendance so we can talk
6 about proffers that come from the job readiness program.

7 So, some of that may be -- that last one is off
8 the cuff, that may be added. So, I wanted to make sure since
9 we're doing this that I add that to the announcement.

10 And that date is February the 20th.

11 The next date is February 25th, a good day in the
12 country, anyway, actually, it's my birthday, for those who
13 don't know. I've got to come in here on my birthday.

14 But, anyway, that case is February 25th, 2019 at
15 5:00 p.m. for the purpose of obtaining legal advice from our
16 counsel and to deliberate upon, without voting on, Zoning
17 Commission Case Number 16-23, that's Valor Development.

18 Now, for both of those, is there a second?

19 COMMISSIONER SHAPIRO: Second.

20 CHAIRMAN HOOD: Will the Secretary please take
21 roll call and vote on the motion before us now that has been
22 seconded?

23 MR. SCHELLIN: Yes. Chairman Hood?

24 CHAIRMAN HOOD: Yes.

25 MS. SCHELLIN: Vice Chair Miller?

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1 (No response.)

2 MS. SCHELLIN: Absent.

3 Commissioner Shapiro?

4 COMMISSIONER SHAPIRO: Yes.

5 MS. SCHELLIN: Commissioner May?

6 COMMISSIONER MAY: Yes.

7 MS. SCHELLIN: Commissioner Turnbull?

8 COMMISSIONER TURNBULL: Yes.

9 MS. SCHELLIN: Motion carries.

10 CHAIRMAN HOOD: Okay, thank you.

11 With the -- as it appears, the motions for both
12 closed sessions have been passed. I request the Office of
13 Zoning provide notice of these closed meetings in accordance
14 with the Act.

15 Ms. Schellin, do we have anything else?

16 MS. SCHELLIN: No, sir.

17 CHAIRMAN HOOD: Okay. With that, let's go right
18 into our agenda.

19 First, modification of consequence for
20 determination and scheduling, Zoning Commission Case Number
21 16-13D, JS Congress Holdings, PUD modification of consequence
22 is Square 748.

23 Ms. Schellin?

24 MS. SCHELLIN: Yes, the Applicant is seeking a
25 modification of Condition Number B2 of Order Number 16-13c

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1 so that it is required to make its contribution to Habitat
2 for Humanity by June 30th, 2019.

3 This is updated from their initial request of
4 prior to the issuance of the building permit.

5 Exhibit 6 is an OP report recommending approval
6 with the set date to ask the Commission to consider setting
7 a time for the, I believe, the ANC was the only party to
8 respond, and a date for deliberations.

9 CHAIRMAN HOOD: Okay, I guess the first question
10 that I want to ask, does anyone believe that this is not a
11 modification of consequence?

12 (NO AUDIBLE RESPONSE)

13 CHAIRMAN HOOD: Are there any follow up questions
14 or comments on this?

15 (NO AUDIBLE RESPONSE)

16 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
17 could you do the determination of the schedule?

18 MS. SCHELLIN: Yes, do you want to put this on for
19 February 25th or March 11th? Do you want to allow the ANC
20 more time or --

21 CHAIRMAN HOOD: So, we don't know when the ANC
22 meets, I don't think, so we might better do this March the
23 11th.

24 MS. SCHELLIN: Okay. So, if we could have the
25 Applicant reach out to the ANC and ask them to submit by

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1 March 4th and then we can put this on for March 11th.

2 CHAIRMAN HOOD: So, do we know yet how our March
3 11th agenda looks?

4 MS. SCHELLIN: There's not a whole lot on there.

5 CHAIRMAN HOOD: Okay, so that's just one other
6 case?

7 MS. SCHELLIN: Right.

8 CHAIRMAN HOOD: Okay, all right.

9 All right, any other questions on this? Anything
10 else on this, Ms. Schellin?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: All right.

13 Next for deliberation, Zoning Commission Case
14 Number 16-10, Ranger Sagamore Florida Avenue, LLC and MOB
15 Hotel DC, LLC, PUD modification of consequence at Square
16 3588.

17 Ms. Schellin?

18 MS. SCHELLIN: Yes, sir, before we go into
19 anything else, this afternoon, we received, I believe it's
20 at Exhibit 4, a request by a non-party to allow them to
21 submit correspondence, a waiver request.

22 CHAIRMAN HOOD: Okay.

23 MS. SCHELLIN: That's from Union Market Neighbors.

24 CHAIRMAN HOOD: Let me look at this.

25 MS. SCHELLIN: Let me make sure, I think it's

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1 Exhibit 4. Yes.

2 COMMISSIONER HOOD: Okay, I don't see, if I'm
3 looking at Exhibit 4, I see the form is for non-parties only.
4 If you are a party, please request to accept an untimely
5 filing or to reopen the record.

6 And they are asking -- I don't see where they have
7 anything -- which one are they asking for here? To reopen
8 the record or untimely filing?

9 MS. SCHELLIN: They would like to -- they were
10 advised that only parties respond on consent calendar items.
11 So, they said then they would file a motion to allow them to
12 submit a response as a non-party.

13 CHAIRMAN HOOD: Typically, I think we have rules
14 on that, but my problem is their submission, unless somebody
15 can point to me what they're asking for, it says either
16 accept an untimely filing or reopen the record.

17 Are they asking for both? Are they asking for
18 one?

19 COMMISSIONER SHAPIRO: I believe, Mr. Chair,
20 there's specific ground to reopen the record.

21 CHAIRMAN HOOD: To open the record for -- okay,
22 accept correspondence showing that this is a major
23 modification that brings impacts.

24 Okay, let me open it up for comments on this. And
25 this just came in at what time, Ms. Schellin?

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1 MS. SCHELLIN: This afternoon just before 5:00.

2 CHAIRMAN HOOD: Okay. All right, any comments on
3 this? Are we like to grant this waiver? This is a non-party
4 and I'm not sure exactly off the top of my head what our
5 specific regulations are about parties being able to respond,
6 especially after we have been through a case.

7 I don't know what the -- I know it's a reg, off
8 the top -- I don't know what it is right off the top of my
9 head, but we've had these requests before and I don't
10 remember us accepting one.

11 I think we have fleshed this out, it's now been
12 duly and properly in front of us for consideration. And
13 moving on with the parties because this has been already
14 vetted.

15 So, I don't know what others feel, but I would
16 deny this request and especially the late hour. And we need
17 to re-look at also our regulations about sending stuff in
18 because we work diligently over the weekends and at night on
19 some of these. And if you send something in at 5:00, we do
20 have jobs as well and we're not able to really grasp and see
21 a lot of this stuff.

22 And, I really don't -- this is not enough
23 information for me to ask why, but they are saying the
24 correspondence showing this is a major modification that
25 brings impacts.

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1 If there were any impacts, I think we vetted this
2 and I don't think this is a major modification, honestly, at
3 least from my standpoint.

4 Let me open it up, any other comments?

5 COMMISSIONER MAY: I concur, Mr. Chair.

6 CHAIRMAN HOOD: Okay, anybody else?

7 Okay, so I --

8 COMMISSIONER TURNBULL: I would agree also, Mr.
9 Chair. I don't think that this submission rises to the
10 occasion of us changing anything.

11 CHAIRMAN HOOD: Okay.

12 So, I would move that we deny the request from
13 Ilaf Ayyash, Union Market Neighbors and ask for a second.

14 COMMISSIONER TURNBULL: Second.

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

17 (NO AUDIBLE RESPONSE)

18 CHAIRMAN HOOD: All in favor?

19 (CHORUS OF AYES)

20 CHAIRMAN HOOD: Any opposition?

21 (NO AUDIBLE RESPONSE)

22 CHAIRMAN HOOD: Not hearing any.

23 Ms. Schellin, would you please record the vote?

24 MS. SCHELLIN: Yes, staff records the vote 4-0-1
25 to deny the waiver request from Union Market Neighbors to

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1 allow a non-party to make a submittal.

2 Commissioner Hood moving, Commissioner Turnbull
3 seconding, Commissioners May and Shapiro in support,
4 Commissioner Miller not present, not voting.

5 So, we're moving on --

6 CHAIRMAN HOOD: Okay, so, you're going to tee it
7 up?

8 MS. SCHELLIN: Yes.

9 CHAIRMAN HOOD: Okay.

10 MS. SCHELLIN: Okay, are you ready for that?

11 CHAIRMAN HOOD: Yes, I'm ready. I was going to
12 tee it up, but if you're going to do it, thank you.

13 MS. SCHELLIN: Oh, I'm sorry, well, you already
14 called the case, I was just going to go into what's --

15 CHAIRMAN HOOD: Go right ahead.

16 MS. SCHELLIN: So, there were no new exhibits that
17 were received. The two ANCs were given until February 4th
18 to provide their responses.

19 We received no response from either the, it's my
20 understanding, the adjacent ANC decided not to submit
21 anything.

22 Since only parties are allowed to respond, the
23 full ANC took it up -- took the case up and this was from the
24 SMD, they took the case up but had no issues but did not --
25 would not be submitting anything to the record.

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1 I mean, that was just a verbal information from
2 the SMD who is not a party.

3 CHAIRMAN HOOD: Again, Commissioners, I think --
4 I don't know what the major impacts, so that's why I was very
5 unfamiliar with the request.

6 But, again, this is basically, the Applicant has
7 requested that these two conditions, we're dealing with two
8 conditions that we have, be subdivided, to allow the
9 construction of the public space improvements in phases in
10 line with the construction phase of the project. First the
11 residential and then the hotels.

12 So, the CFO, the improvements would happen along
13 when the residential is done, those sidewalk improvements
14 would happen when the residential is done.

15 When the hotel is done, those improvements will
16 happen when the hotel is done, vice versa.

17 So, I think one goes in tandem, it goes right
18 along with the others. So, I'm not sure what the major
19 impact is.

20 And I think that's pretty much the way I would get
21 to the gist of what's being asked for.

22 Any -- let me open it up, any comments?

23 (NO AUDIBLE RESPONSE)

24 CHAIRMAN HOOD: Any additions?

25 (NO AUDIBLE RESPONSE)

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1 CHAIRMAN HOOD: So, it would also go in sync with
2 what our previous order said, so I would move that we approve
3 this as a minor modification. I think it's very
4 straightforward under Zoning Commission Case Number 16-10
5 with the modification to conditions B8 and C3 of Zoning
6 Commission Order 16-10 and ask for a second.

7 COMMISSIONER MAY: Second.

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

10 (NO AUDIBLE RESPONSE)

11 CHAIRMAN HOOD: All in favor?

12 (CHORUS OF AYES)

13 CHAIRMAN HOOD: Any opposition?

14 (NO AUDIBLE RESPONSE)

15 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
16 would you please record the vote?

17 MS. SCHELLIN: Yes, sir.

18 And just to clarify, you meant a modification of
19 consequence and not minor mod, correct?

20 CHAIRMAN HOOD: What did I say?

21 MS. SCHELLIN: Minor mod.

22 CHAIRMAN HOOD: Whatever I said, whatever we
23 spoke, yes.

24 MS. SCHELLIN: Okay, I just wanted to clarify.

25 CHAIRMAN HOOD: I probably was talking too fast.

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1 MS. SCHELLIN: So, staff records the --

2 CHAIRMAN HOOD: Modification of consequence.

3 MS. SCHELLIN: Yes, staff records the vote 4-0-1
4 to approve final action in Zoning Commission Case Number 16-
5 10A.

6 Commissioner Hood moving, Commissioner May
7 seconding, Commissioners Shapiro and Turnbull in support,
8 Commissioner Miller not present, not voting.

9 CHAIRMAN HOOD: For that correction, I guess it
10 felt so minor that I thought it was a minor mod, so okay.

11 MS. SCHELLIN: Right, I think they called them
12 minor, but yes.

13 CHAIRMAN HOOD: Okay, all right, thank you.

14 All right, where are we? Time extensions.

15 Zoning Commission Case Number 13-05D, Forest City
16 Washington, two year PUD time extension in Square 744S.

17 Ms. Schellin?

18 MS. SCHELLIN: The Applicant is requesting a two
19 year time extension, this is their third time extension and
20 they have requested a waiver from the limit of two time
21 extensions and that it can only be for one year.

22 The Applicant has stated that the relocation of
23 DC Water's operations has caused them delay and is outside
24 of their control.

25 At Exhibit 4, you have an OP report supporting the

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1 extension to February 7, 2021. Exhibit 5 is the letter in
2 support from DMPED. ANC 6D and DC Water are the only parties
3 to the case and they have had over 30 days to respond but
4 neither has provided a response to the application request.

5 So, we'd ask the Commission to consider final
6 action this evening.

7 CHAIRMAN HOOD: Okay. Let me open it up for any
8 comments.

9 Commissioner May?

10 COMMISSIONER MAY: Mr. Chairman, I think that
11 there is sufficient information in the record about the saga
12 that has occurred with this particular PUD.

13 And, you know, although I'm generally skeptical
14 of many time extensions, it seems like the case has been made
15 here given the complications of the Applicant working with
16 DC Water and trying to accommodate the development of their
17 building next door plus also maintaining the access that they
18 need and so on.

19 So, I mean, I think it's pretty straightforward.
20 So, I am in favor of approving this time extension.

21 CHAIRMAN HOOD: Okay, thank you, Commissioner May.
22 Anything else?

23 Commissioner Turnbull?

24 COMMISSIONER TURNBULL: Thanks, Mr. Chair.

25 I would agree with Commissioner May. The only

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1 thing I would add is that I think at some point within those
2 two years, they're going to be back before us again looking
3 for some modifications.

4 Because it sounds like they've lost their lease,
5 the theater design is going to change and they're going to
6 have to come back and they're going to come back with
7 something else that there's a new for us.

8 From what I'm trying to read between the various
9 letters that are in here. So, I'm in favor but I don't think
10 it's going away. I think they're going to be coming back
11 again.

12 COMMISSIONER MAY: I think you're right. I mean,
13 I saw that, too. They're going to have come back. There may
14 be major changes to the building.

15 COMMISSIONER TURNBULL: Yes.

16 COMMISSIONER MAY: So, we'll have to see.

17 CHAIRMAN HOOD: Okay. Anything else?

18 I would concur with Commissioner May and
19 Commissioner Turnbull. But let me see if we can -- any other
20 comments?

21 (NO AUDIBLE RESPONSE)

22 CHAIRMAN HOOD: Not hearing any.

23 Commissioner May, would you like to make a motion?

24 COMMISSIONER MAY: Wow, okay. I would like to
25 move approval of Zoning Commission Case Number 13-05D Forest

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1 City Washington two year PUD time extension at Square 744S.

2 CHAIRMAN HOOD: Second.

3 It's been moved and properly seconded, any further
4 discussion?

5 (NO AUDIBLE RESPONSE)

6 CHAIRMAN HOOD: All in favor?

7 (CHORUS OF AYES)

8 CHAIRMAN HOOD: Any opposition?

9 (NO AUDIBLE RESPONSE)

10 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
11 would you please record the vote?

12 MS. SCHELLIN: Staff records the vote 4-0-1 to
13 approve final action in Zoning Commission Case Number 13-05D.

14 Commissioner May moving, Commissioner Hood
15 seconding, Commissioners Shapiro and Turnbull in support,
16 Commissioner Miller not present, not voting.

17 CHAIRMAN HOOD: Okay, next, hearing action, Zoning
18 Commission Case Number 19-04 Office of Planning text
19 amendment establish community renewable energy facilities
20 amendments to Subtitles B, C, H, K, and U.

21 Ms. Vitale?

22 MS. VITALE: Yes, good evening, Mr. Chair and
23 members of the Commission. Elisa Vitale with the Office of
24 Planning.

25 And, we're joined this evening by Dr. Taresa

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1 Lawrence with the District Department of Energy and
2 Environment. She's the Director of the Energy Administration
3 with DOEE.

4 CHAIRMAN HOOD: Welcome to you, Dr. Lawrence. Is
5 this your first time to the Commission?

6 DR. LAWRENCE: Yes.

7 CHAIRMAN HOOD: Okay.

8 DR. LAWRENCE: It is.

9 CHAIRMAN HOOD: Well, welcome.

10 DR. LAWRENCE: Thank you.

11 MS. VITALE: The Office of Planning is requesting
12 set down of a text amendment to Subtitles B, C, H, K, and U.
13 The text amendment would define community renewable energy
14 facilities and permit such facilities as a matter of right
15 in all zones subject to the yard and height development
16 standards.

17 OP notes there was an oversight in the set down
18 report. The reference to the yard and height standards
19 should apply in the NCHE St. Elizabeth's and Walter Reed
20 zones in addition to the other zones. We just wanted to make
21 that clarification.

22 OP is bringing forward this emergency rulemaking
23 because, through the Solar for All program, DOEE is
24 partnering with organizations to locate community renewable
25 energy facilities that would benefit low income renters and

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1 residents in multi-family buildings.

2 The Zoning Administrator has determined that solar
3 panels generating energy for offsite use, this would include
4 things such as a community renewable energy facility.

5 These fall within the basic utility use category
6 and that use generally requires a special exception.

7 DOEE has an ongoing grant program and there are
8 grantees that have received funding, both Phase I and Phase
9 II funding through the Solar for All program to install
10 community renewable energy facilities and they are required
11 to complete that work prior to September 30th, 2019.

12 So, this special exception requirement for a
13 utility use is adding delay, uncertainty, and expense to
14 these DOEE funded projects and this could jeopardize the
15 ability of DOEE and its grantees to meet their legislative
16 mandate under Solar for All.

17 So, in light of these grant requirements, OP is
18 requesting that the Commission adopt the proposed text on an
19 emergency basis.

20 The Office of Planning is also requesting an
21 expedited public hearing and immediate publication of the
22 notice of proposed rulemaking.

23 This concludes my report, I'm happy to answer any
24 questions and we have Dr. Lawrence here as well, if you have
25 questions specific to the program.

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1 Thank you.

2 CHAIRMAN HOOD: Okay, thank you, Ms. Vitale.

3 And I also want to thank Dr. Lawrence for coming.

4 It seems like if this is not moved upon, it goes
5 against everything that I think that this city has been
6 trying to move forward on. So, I am in favor of doing
7 everything that's being requested.

8 But, before I -- I'm just putting that out there
9 because when I've heard the report was very well done, Ms.
10 Vitale, and I greatly appreciate it.

11 Because it basically puts us -- it's taking us
12 three steps backwards and I think this city is moving
13 forward, especially with renewable energy credits and RECs,
14 they like to call them RECs, I believe. I'm still learning
15 about some of this.

16 But I think this is very -- a very important
17 endeavor for us to take as a Commission. But let me hear
18 what others have to say.

19 Commissioner May?

20 COMMISSIONER MAY: Yes, so I have a couple
21 questions. Can you be a little bit more specific about what
22 this means in terms of the solar arrays? I mean, are we just
23 talking about more rooftop solar or are we going to have
24 people with, I don't know, with --

25 CHAIRMAN HOOD: Solar panels in the back yard?

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1 COMMISSIONER MAY: -- solar panels in the back
2 yard or just over parking spaces? I mean, how we are going
3 to -- how is it actually going to physically manifest itself?

4 MS. VITALE: With respect to the community
5 renewable energy facilities, these are arrays that, through
6 net metering, generate energy that goes back to the grid and
7 benefits in the instance of the Solar for All program, low
8 income households.

9 And so, these aren't arrays that you would
10 typically see on a single family home. These, generally DOEE
11 has been partnering with schools and churches, those types
12 of facilities for the installation of the CREFs through the
13 Solar for All program.

14 So, you would certainly see rooftop mounted solar
15 and these would be required to meet the penthouse
16 regulations, so they would be subject to the, you know, the
17 height and setback that would apply to a penthouse under
18 zoning.

19 There have been applications filed for ground
20 mounted arrays and this, I think is really where the rubber
21 kind of met the road and how we ended up here tonight.

22 Because the Zoning Administrator has determined,
23 if it's not attached to a building, it can't be considered
24 an accessory use if the solar energy that's generated by the
25 array isn't being used by the property or the building that

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1 it's located on.

2 That's how they arrived at this determination that
3 it wasn't, you know, accessory to another principal use on
4 the property.

5 So, this would allow for a standalone ground
6 mounted array. As we've said, it should be subject to the
7 height and yard, so any front yard, rear yard, side yard
8 setback requirements of the zone in which it's located as
9 well as the maximum height standard.

10 One other item that's come to our attention that
11 we're proposing through this amendment, there have been
12 instances where there are parking -- structured parking
13 facilities that have been constructed and they're at the
14 maximum permitted height under the zone, but somebody would
15 then want to come in and locate a solar canopy over the
16 parking stalls on the top level of the garage.

17 Right now, the Zoning Administrator has indicated
18 that if you're at the maximum permitted height under zoning,
19 anything above that is considered penthouse.

20 He has determined that these would be considered
21 mechanical penthouses. So they are then subject, again, to
22 the required setbacks.

23 And then, for a mechanical penthouse, you're
24 required to enclose them for screening so that would render
25 a solar, you know, array kind of worthless. So that didn't

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1 really make sense.

2 If it's not -- if it's on a parking garage not
3 above the maximum permitted zoning height, we understand the
4 Zoning Administrator treats it like a floor.

5 So, it could go up straight would be limited by
6 height.

7 So, I think those are kind of the three scenarios
8 on a roof, subject to the penthouse setback requirements, on
9 the ground subject to the height and yard requirements, and
10 then, permitted on the top level of a parking garage and
11 there are some nuances there whether or not the parking
12 garage is at its maximum permitted height under zoning.

13 COMMISSIONER MAY: So, when it's in a yard, is it
14 a -- I mean, is it just treated as a structure within the
15 yard?

16 MS. VITALE: If it's permanently -- if affixed to
17 the ground and greater than four-feet in height, it would be
18 considered a structure.

19 COMMISSIONER MAY: Right. And isn't that what we
20 would typically find or are we going to have a lot of below
21 four-feet kind of deployment?

22 MS. VITALE: I will let DOEE speak to that because
23 I think they probably know more about the --

24 COMMISSIONER MAY: Yes. The reason I'm asking
25 these questions is that we are being asked to take emergency

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1 action. And, when there's an emergency action, it means the
2 public has no ability to speak up about this.

3 And if it's bound by -- if we are certain that
4 it's not going to be -- have any undue impact across the
5 board because of, you know, what we know it to be, I'm more
6 comfortable with it.

7 But, if there's circumstances where we're going
8 to have neighbors' objections to these sorts of things, it
9 would have been a mistake to simply allow it under an
10 emergency.

11 So, maybe you can tell us more about what we're
12 likely to see in those yard deployments.

13 DR. LAWRENCE: That's in relation to the ground
14 mounts? Those type of projects?

15 COMMISSIONER MAY: Yes, when it's a ground mount,
16 I mean, where are we going to see it and what's it going to
17 look like?

18 DR. LAWRENCE: Right, well, the current project
19 that's planned for a ground mount is the one at Oxon Run
20 which is --

21 COMMISSIONER MAY: So, Reservation 501?

22 DR. LAWRENCE: The brown field.

23 COMMISSIONER MAY: Yes.

24 DR. LAWRENCE: Yes, and related to that, we know
25 that we need to do significant outreach and education to the

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1 folks that live in the surrounding areas. That's who we want
2 to benefit from the output from that particular installation.

3 For any other ground mount, the same rules would
4 apply. We definitely want to, you know, provide that type
5 of education.

6 COMMISSIONER MAY: Right.

7 DR. LAWRENCE: In some cases, there will be job
8 opportunities just -- and training, you know, all of those
9 ancillary benefits.

10 COMMISSIONER MAY: And those are all good things,
11 and that's not what I'm asking about. I'm just asking, you
12 know, what is it going to look like is really all I'm caring
13 about.

14 DR. LAWRENCE: I'm not sure if --

15 COMMISSIONER MAY: But, I mean, that's okay. I
16 mean, if -- I know that if that's the only one --

17 DR. LAWRENCE: At this time.

18 COMMISSIONER MAY: -- that's likely to be affected
19 by the emergency action.

20 DR. LAWRENCE: Yes.

21 COMMISSIONER MAY: All right, so that's helpful
22 to know.

23 Are there rooftop sort of garage top ones that are
24 -- that you have current applications for as well?

25 DR. LAWRENCE: Yes, one of the current grantees

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1 is currently planning a solar canopy over a parking garage.

2 And, for some that we have that will be coming
3 through the D.C. Sustainable Energy Utility which is also
4 moving into this space with the current contract modification
5 that council recently approved, some of the applications are
6 also to make use of parking garages, the roof space on top
7 of parking garages.

8 COMMISSIONER MAY: So, but, there -- so there may
9 be several in the pipeline that would be -- that would
10 benefit from this emergency action?

11 DR. LAWRENCE: Correct.

12 COMMISSIONER MAY: Okay. I mean, that's what
13 makes me a little bit uneasy, not knowing, you know, what
14 we're effectively approving here.

15 And, let me ask one other thing, the -- I
16 understand that the September 30th deadline, but that's --
17 that relates to a program that DOEE is running, right?

18 DR. LAWRENCE: Mm-hmm.

19 COMMISSIONER MAY: Could DOEE simply not extend
20 that deadline? I mean, I heard a reference tonight in the --
21 from Mr. Tolley that it was going to be -- that we'd be
22 violating certain law, but is that -- I didn't see that in
23 the report, so I'm curious.

24 DR. LAWRENCE: Well, the main concern is retaining
25 the funds for this purpose. If the funds are not spent by

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1 September 30, there's no guarantee that the funds will not
2 be diverted to the general fund or be put at risk somehow.

3 And, the projects that are in process will then
4 be, you know, placed at jeopardy.

5 COMMISSIONER MAY: Really? You think the Mayor's
6 going to cut the money for this program?

7 DR. LAWRENCE: Well, I can't speak for the Mayor.

8 COMMISSIONER MAY: Or the council's going to do
9 that? I mean, they're the ones who were pushing you to do
10 this in the first place.

11 DR. LAWRENCE: Right, but within, you know,
12 certain time frames. After the passage of the Act that
13 established this program, this program is funded by funds
14 that come in each year.

15 So, they, you know, they may say, well, use next
16 year's allocation and there's a lot of uncertainty with
17 regard to the amount of funds that will come in from year to
18 year because it's based on a fine -- a fee that's paid by the
19 alternative suppliers who don't meet the RPS. So, we just
20 don't know how much will come in.

21 And, the projects that are moving forward now,
22 it's very sensitive in terms of getting to financial close.
23 Everything has to be very sequential.

24 COMMISSIONER MAY: Okay.

25 DR. LAWRENCE: So, it's difficult.

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1 COMMISSIONER MAY: Okay. I appreciate the -- how
2 the money will flow. I understand that explanation.

3 I guess the last question I have is, when did the
4 Zoning Administrator make the determination that these types
5 of systems would be considered a utility and, therefore, not
6 be allowed in most zones?

7 MS. VITALE: I am aware of a recent determination.
8 Like I said, it came up specifically with respect to one of
9 the Solar for All grantees.

10 I know that some solar arrays have been installed
11 where they were able to demonstrate that the school or church
12 was going to use a majority of the power generated.

13 So, if they would benefit, you know, from 51
14 percent or more of the power generated onsite, the Zoning
15 Administrator had determined that it was an accessory use and
16 didn't qualify as a basic utility use.

17 But, I can't speak to a specific, you know, date
18 when the Zoning Administrator made the determination.

19 COMMISSIONER MAY: Dr. Lawrence, do you know when
20 the Zoning Administrator made that determination?

21 DR. LAWRENCE: I cannot speak with 100 percent
22 certainty, but I believe it was in the last two months since
23 the calendar year began, three weeks, within the last three
24 weeks.

25 COMMISSIONER MAY: All right, okay. I appreciate

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1 your trying to answer my questions.

2 It's just that, you know, with an emergency
3 action, I'm really -- I get really nervous. And so, I'm
4 mostly at ease, but we'll see what the rest of the Commission
5 thinks.

6 CHAIRMAN HOOD: Okay, Commissioner Shapiro?

7 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

8 I would just say, I had some of the same questions
9 and concerns that Commissioner May asked. And I appreciated
10 the explanation and, yes, I think it -- those are reasonable
11 justifications.

12 So, I don't have any objection to this.

13 CHAIRMAN HOOD: Okay.

14 Commissioner Turnbull?

15 COMMISSIONER TURNBULL: Thank you, Mr. Chair.

16 I just had a -- if we take an emergency action and
17 if we have an expedited hearing, but during that expedited
18 hearing, we find that we have to tweak some of the
19 regulations that we're passing, how is that going to affect
20 what we do as an emergency?

21 Is there going to -- or what people are relying
22 upon by this legislation or by the -- or by what we're here
23 if it ends up being tweaked at some point at the expedited
24 hearing?

25 I mean, what will be the impact to some of the

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1 projects that may be in the pipeline then?

2 MS. STEINGASSER: There would be no impact to
3 those which already have their building permit. And the
4 emergency provides a window in which the pending arrays can
5 get their building permit.

6 The public hearing would then actually allow for
7 that, for public comment and tweaking if necessary.

8 COMMISSIONER SHAPIRO: Okay.

9 MS. STEINGASSER: So, but it would not stop the
10 projects that already have their permit.

11 COMMISSIONER SHAPIRO: Okay, thank you.

12 CHAIRMAN HOOD: Okay, I think I put my position
13 out there earlier, because I see some other things that I
14 envision some other things happening with this that will
15 benefit the city as a whole.

16 And I do understand uncertainty, but, you know,
17 this won't be the first time we had to tweak or the first
18 time we had to go back and make a change.

19 So, I think this is a path going forward.

20 So, any other questions or comments?

21 (NO AUDIBLE RESPONSE)

22 CHAIRMAN HOOD: So, with that, would somebody like
23 a motion or would they might rather for me to do it?

24 Okay, I will move that we set -- I'm going to read
25 how I think that we're supposed to do it and if I don't have

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1 anything correct, Mr. Tondro, if you could help me make sure
2 I have this properly crafted in the motion.

3 I will move that we set down Zoning Commission
4 Case Number 19-04, that we also -- I guess we did this --
5 waive our rules to accept the late filing of the report, that
6 we do an adoption on the text amendment on the emergency
7 basis, and that we set this down for an expedited public
8 hearing and authorize of immediate publication a notice of
9 proposed rulemaking.

10 And I ask for a second.

11 COMMISSIONER SHAPIRO: Second.

12 CHAIRMAN HOOD: It's been moved and properly
13 seconded. Mr. Tondro, does that include everything?

14 MR. TONDRO: Yes, I believe so, yes.

15 CHAIRMAN HOOD: Okay. Moved and properly
16 seconded, any further discussion?

17 (NO AUDIBLE RESPONSE)

18 CHAIRMAN HOOD: All in favor?

19 (CHORUS OF AYES)

20 CHAIRMAN HOOD: Any opposition?

21 (NO AUDIBLE RESPONSE)

22 CHAIRMAN HOOD: Not hearing any, Ms. Schellin,
23 would you please record the vote?

24 Did I leave anything out?

25 MS. SCHELLIN: Yes, and you referenced the

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1 changes, that included the changes that were made, yes, okay.

2 So, staff records the vote 4-0-1 to grant the
3 waiver for the late filing of the report, to adopt the text
4 on an emergency basis along with the changes that were
5 discussed, to set down the case as a rulemaking case for an
6 expedited hearing, and that would be for a 30-day notice
7 period, and authorize the immediate publication of a notice
8 of proposed rulemaking.

9 Commissioner Hood moving, Commissioner Shapiro
10 seconding, Commissioners May and Turnbull in support,
11 Commissioner Miller not present, not voting.

12 CHAIRMAN HOOD: And, I want to thank Ms. Vitale
13 and Dr. Lawrence for giving us that insight and that
14 information. We greatly appreciate it.

15 COMMISSIONER MAY: Mr. Chairman?

16 CHAIRMAN HOOD: Yes?

17 COMMISSIONER MAY: When it comes time for the
18 hearing, it would be helpful to see examples of the things
19 or if you actually have proposals on what they're going to
20 be so we understand what they look like, that would be very
21 helpful.

22 CHAIRMAN HOOD: And, I'm sure DOEE will be here
23 when we have our hearing, correct? Okay, all right.

24 COMMISSIONER MAY: Well, they're all here now.

25 CHAIRMAN HOOD: Yes, I see. So, I want to make

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1 sure they're here when we have our hearing because that's
2 when we're going to need it.

3 So, Ms. Schellin, so, do we have a reference date,
4 30 days out? Do we know roughly --

5 MS. SCHELLIN: Yes, but --

6 CHAIRMAN HOOD: -- roughly, sometime in March?

7 MS. SCHELLIN: Possibly.

8 CHAIRMAN HOOD: Sometime in March, okay. All
9 right, I mean, once you go through --

10 MS. SCHELLIN: Maybe early May, yes.

11 CHAIRMAN HOOD: I thought it was -- this is
12 February.

13 MS. SCHELLIN: I mean, I'm sorry, April, sorry.

14 CHAIRMAN HOOD: That's what I usually do.

15 MS. SCHELLIN: You're rubbing off.

16 COMMISSIONER MAY: You certainly made sure they
17 were awake.

18 MS. SCHELLIN: You're just rubbing off. I mean,
19 you know.

20 CHAIRMAN HOOD: Yes, I must be rubbing off. I
21 would have said May, but okay.

22 MS. SCHELLIN: I was making sure you guys were
23 still awake. You know?

24 CHAIRMAN HOOD: Okay, all right, so we're looking
25 at some time in March. All right, all right, I just --

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1 MS. SCHELLIN: April, probably, early April
2 probably because we have to allow for the notice. It --

3 CHAIRMAN HOOD: Okay, 30 days, this is the --
4 okay.

5 MS. SCHELLIN: Yes.

6 CHAIRMAN HOOD: This is -- okay, all right, as
7 long as it's not May. All right, I'm just trying to see so
8 we'll know. All right.

9 All right, let's go to, let me see here, under
10 correspondence. Let's go to Zoning Commission Case Number
11 03-05 JBG Southeast Federal Center Venture, LLC, notice from
12 the Zoning Administrator on a minor modification pursuant to
13 11a DCMR 304.5.

14 Ms. Schellin?

15 MS. SCHELLIN: Yes, this was on the January 28th
16 agenda and the Commission deferred action, asking that the
17 ZA provide something that explained the minor modification
18 that the Applicant had requested from the ZA.

19 And, that can be found in the record at Exhibit
20 81a to ask the Commission to consider that document and go
21 from there.

22 CHAIRMAN HOOD: Okay, thank you.

23 Okay, Commissioners, we -- this is something that
24 we asked for and this is being done. We do have a
25 correspondence from the Zoning Administrator of what he's

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1 requiring and he's using for his flexibility.

2 And, is there any comments? Do we agree or are
3 there any concerns of what's being proposed by the -- what
4 the Zoning Administrator's proposing to do for using this
5 flexibility?

6 COMMISSIONER MAY: Mr. Chairman?

7 CHAIRMAN HOOD: Commissioner May?

8 COMMISSIONER MAY: Yes, I do have some issues with
9 this. As I understand it, the Zoning Administrator has the
10 authority to approve changes in the FAR only as a result of
11 structural or building code requirements.

12 Yet, this does effectively double the FAR within
13 that small structure. It's not a huge change, but it is a
14 change.

15 And, it does not expand the footprint, but it,
16 again, it is an increase in the FAR.

17 Second, the Zoning Administrator has limited
18 authority to approve design changes in the Code. It doesn't
19 fit under those authorities.

20 But, there is more in the order for this case.

21 However, even within the order for this case,
22 allows for a minor modification to the location and design,
23 to vary color selections, and to make minor refinements
24 needed to gain the final building permit.

25 I don't see how this change -- I mean,

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1 essentially, we're taking a small outbuilding on this
2 project, completely redesigning the exterior of it, adding
3 in a second floor, again, without changing the height or bulk
4 of the building, but doubling the FAR.

5 And, it, you know, I just don't see how that falls
6 within what the Zoning Administrator is permitted to do.

7 So, I think that it, at the very least, it's a
8 minor modification. It may be a modification of consequence,
9 but it should be submitted as one of those and we can take
10 it on from there.

11 And, of course, we'd need to see, I think, more
12 information on this.

13 CHAIRMAN HOOD: Commissioner Shapiro?

14 COMMISSIONER SHAPIRO: I agree with that analysis,
15 Mr. Chair.

16 CHAIRMAN HOOD: Okay.

17 COMMISSIONER TURNBULL: I would just add that,
18 they're also including, for the first time, an occupiable
19 roof, flat roof, which has not been in the original project.

20 So, instead of just one single floor of a
21 building, there's the second floor and the occupiable roof.
22 So, it is a significant change and I would agree with
23 Commissioner May's analysis.

24 CHAIRMAN HOOD: Okay. So, we all, I think, agree
25 that this does not fall within the proposed design changes,

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1 fall within the flexibility that the ZA has.

2 I'm not sure if we need to send him correspondence
3 or let him know that that is the case. And I think we need
4 to have this as a -- either a minor mod or a modification of
5 consequence, however we want to word it. But, I will leave
6 it up to staff.

7 Ms. Schellin?

8 MS. SCHELLIN: Okay, so I'll notify the ZA that
9 the Applicant should take a look at it and they can make the
10 determination whether they're going to file a modification
11 of consequence or minor mod for the Commission to take up.

12 It'll be up to them which way they want to file
13 it. And, just notify the ZA that way.

14 CHAIRMAN HOOD: Okay.

15 MS. SCHELLIN: Thank you.

16 CHAIRMAN HOOD: All right, thank you.

17 And that's all we need to do on that, right?

18 MS. SCHELLIN: That is it.

19 CHAIRMAN HOOD: Okay.

20 All right, let's go to our next case. I think
21 this is our last case. Okay, next we have Zoning Commission
22 Case Number 85-16F/84-20P, Donohoe Company, notice from
23 Zoning Administrator on a minor medication pursuant to 11a
24 DCMR 304.5.

25 Ms. Schellin?

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1 MS. SCHELLIN: Yes, sir. On this one, late this
2 afternoon, the Zoning Administrator submitted an email which
3 is in the record as Exhibit, I believe, 185, staying the time
4 on this one so that the 45 days starts today.

5 Their notice -- your time period rather to review
6 this. Because the Applicant would like time to work with the
7 ANC, because they have some issues.

8 So, staff would suggest that this case be moved
9 to the March 11th agenda, which is 30 days plus or minus a
10 day or two, maybe about 28 days, and that would allow the
11 Applicant the time that they need and then it would still put
12 the Commission within the 45 day period to get back to the
13 ZA.

14 CHAIRMAN HOOD: Okay, thank you, Ms. Schellin.

15 We've heard the recommendation of staff and we're
16 dependent upon our staff to keep us at least within the time
17 sequence. And I think it's already been laid out.

18 Any questions or comments?

19 COMMISSIONER SHAPIRO: No objection, Mr. Chair.

20 CHAIRMAN HOOD: Ms. Schellin, do we need to vote
21 on this?

22 MS. SCHELLIN: No.

23 CHAIRMAN HOOD: Okay. So, we would allow the
24 March -- we will deal with this on March the 11th.

25 Okay, do we have anything else?

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1 MS. SCHELLIN: Yes, vote on officers under other
2 business.

3 CHAIRMAN HOOD: Okay, other business,
4 Commissioners, I don't want to dominate that discussion, of
5 course, as you can expect.

6 But, I open up the floor for any nominations for
7 Chairman and Vice Chair of the Zoning Commission.

8 Commissioner Shapiro?

9 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

10 Is it our protocol that this is one vote or two
11 votes? Or one nomination or two nominations at the same
12 time?

13 MS. SCHELLIN: It can be either.

14 COMMISSIONER SHAPIRO: I would move that we
15 nominate Mr. Hood as Chair and Mr. Miller as Vice Chair.

16 COMMISSIONER TURNBULL: I would second that.

17 COMMISSIONER SHAPIRO: Okay, all in favor, please
18 say aye.

19 (Chorus of ayes.)

20 COMMISSIONER SHAPIRO: Opposed?

21 (No audible response.)

22 COMMISSIONER SHAPIRO: The ayes have it.

23 CHAIRMAN HOOD: Okay, I'm sure on behalf of Vice
24 Chair Miller and myself, we appreciate it, again, the
25 confidence. Even though I didn't hear Commissioner May vote,

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1 but I appreciate the --

2 No, I'm just -- I just had to do that, I had to
3 say something.

4 We appreciate the -- I'm just messing with you.
5 You're the one I can mess with.

6 So, we appreciate your confidence, again, as we
7 continue to move forward to make the best decisions possible
8 for the city. So, we appreciate that. I think I can speak
9 on behalf of the Vice Chair as well.

10 Okay, did you record the vote?

11 MS. SCHELLIN: No, you jumped in.

12 CHAIRMAN HOOD: Oh.

13 MS. SCHELLIN: You were so excited.

14 CHAIRMAN HOOD: Don't I always -- no, I was not
15 excited, I just jumped in. But anyway, Ms. Schellin, could
16 you record the vote?

17 MS. SCHELLIN: Staff records the vote 4-0-1 to --
18 on the vote of officers, Chairman -- Chairman Hood to remain
19 as Chair and Vice Chair Miller to remain as Vice Chair.

20 Commissioner Shapiro moving, Commissioner Turnbull
21 seconding, Commissioner May in support and Commissioner Hood
22 in support, Commissioner Miller not present, not voting.

23 CHAIRMAN HOOD: I'm sure that if he was here, he
24 would vote for himself and vote for the whole slate, I would
25 hope.

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1 Anyway, let me ask, is there anything from the
2 Office of Planning?

3 MS. STEINGASSER: No, sir.

4 CHAIRMAN HOOD: Ms. Schellin, do we have anything
5 else?

6 MS. SCHELLIN: I have nothing else.

7 CHAIRMAN HOOD: Okay, so with that, I want to
8 thank everyone for their participation tonight and this
9 meeting is adjourned.

10 (Whereupon, the above-entitled matter went off the
11 record at 7:14 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Regular Meeting

Before: DC ZC

Date: 02-11-19

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

Neal R Gross

Court Reporter

NEAL R. GROSS

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