GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

ZONING COMMISSION

REGULAR PUBLIC MEETING

MONDAY
NOVEMBER 8, 2010

The Regular Meeting of the District of Columbia Zoning Commission convened in 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.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
KONRAD SCHLATER, Vice Chairman
GREG SELFRIDGE, Commissioner
PETER MAY, Commissioner (NPS)
MICHAEL G. TURNBULL, FAIA, Commissioner (AOC)

OFFICE OF ZONING STAFF PRESENT:

JAMISON WEINBAUM, Director
SHARON S. SCHELLIN, Secretary
DONNA HANOUSEK, Zoning Specialist
ESTHER BUSHMAN, General Counsel
OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director
JOEL LAWSON
STEVEN COCHRAN
MATT JESICK
TRAVIS PARKER
ARLOVA JACKSON
ART RODGERS
ARTHUR JACKSON

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN H. BERGSTEIN, ESQ.

The transcript constitutes the minutes from the Regular meeting held on November 8, 2010.
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CHAIRPERSON HOOD: Okay. First, let me apologize for being a few moments late. Before we get started I'd like to advise everyone that there's a gentleman in the room, if you look over your shoulders, from the Office of Cable Television who will be filming for an internal video for the Office of Zoning. So I'm being assured that you won't see yourself on 16, 13 or any other channel. This is internal. So, okay. Okay. This meeting will, please, come to order. Good evening, ladies and gentlemen. This is the November 8, 2010 Public Meeting of the Zoning Commission of the District of Columbia.

My name is Anthony Hood. Joining me are Vice Chairman Schlater, Commissioner Selfridge, Commissioner May, Commissioner Turnbull. We are also joined by the Office of Zoning staff, Director Weinbaum. I see Ms.
Bushman, Ms. Sharon Schellin and Dr. Donna Hanousek. Also the Office of the Attorney Mr. Alan Bergstein. The Office of Planning under the leadership of Ms. Steingasser.

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

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

Please, be advised that these proceedings are being recorded by a Court Reporter and is also webcast live. Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. Please, turn off all beepers and cell phones.

Does the staff have any preliminary matters?

MS. SCHELLIN: No, sir.

CHAIRPERSON HOOD: If not, let's proceed with our agenda.
First Consent Calendar item, Zoning Commission Case No. 08-14A Kelsey Gardens Property Company, LC, Minor modification to PUD at Square 421.

Ms. Schellin?

MS. SCHELLIN: Yes, sir. If the Commission will recall, this case was on our agenda, the October 18th agenda, rather, and at that time the Commission asked the applicant to provide some supplemental information, which the applicant has done. And therefore, the staff would ask the Commission to please consider this case this evening.

CHAIRMAN HOOD: Okay. Commissioners, if you look at Exhibit 10 there was some questions that I believe we asked when we had this in front of us previously. And it addressed the questions, and I won't read all the responses we have in front of us. We've already reviewed it.

Let me just ask the colleagues are
your uncertainties or your questions answered in this submission? Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Mr. Chairman, I ask for one clarification on the timing of construction for both phases. And the applicant has clarified that condition and proposed making an amendment to it. I think it looks good and I think it's ready to go.

CHAIRMAN HOOD: Okay. Were there any other outstanding issues? Okay. If not, I would move that we approve on the Consent Calendar Zoning Commission Case 08-14A Kelsey Gardens, Minor modification to PUD at Square 421 and ask for a second.

VICE CHAIRMAN SCHLATER: Second.

CHAIRMAN HOOD: It's been moved and properly second. Any further discussion? Are you ready for the question?

All those in favor aye?

ALL: Aye.

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

    MS. SCHELLIN: Yes. The staff would record the vote five to zero to zero to approve final actions in Zoning Commission Case 08-14A. Commissioner Hood moving, Commissioner Schlater seconding, Commissioners May, Selfridge, Turnbull in support.

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

    Under Final Action Zoning Commission Case No. 10-03 (Parcel Seven Associates-Consolidated PUD at Square 912).

    Ms. Schellin?

    MS. SCHELLIN: Yes, sir. This case is before the Commission for final action. NCPC has submitted a report at Exhibit 53 stating that they have no issues with this case.

    Staff would ask the Commission based on the applicant's request to reopen the record, to accept a full set of architectural plans. I do have those if the Commission would
accept such a request and would put those in
the record if they'll do so.

CHAIRMAN HOOD: Okay. Do we do
need to do a vote or can we just do a general
consensus?

MS. SCHELLIN: General consensus
would be okay.

CHAIRMAN HOOD: We have a request
in front of us to reopen the record. It looks
like we have a general consensus.

MS. SCHELLIN: Okay.

CHAIRMAN HOOD: So we will reopen
the record for that.

You want to those out or do we
already --

MS. SCHELLIN: They're just for the
record.

CHAIRMAN HOOD: Oh, just for the
record. Okay.

For the record, let's move on.

We had a number of questions,
Commissioners, and we have in front of us
responses to the procedural order, responses, submissions to some of the issues, Exhibit 55.

And I think Ms. Schellin's already mentioned this, but NCPC says "I find that the proposed Consolidated PUD development Square 912, Lot 55 would not be inconsistent with the Comprehensive Plan for the National Capital Area, nor would it adversely effect any other identified federal interests."

But I want to call your attention to Exhibit 55. And we had some additional questions and some outstanding issues. I think one of them in particular we spoke about thee mid-alley vehicle egress to the retail would not reduce traffic in the private alley and might increase it. And that was one of the issues. And I think the applicant tries to address that in Exhibit 55. We had a number of things, but let's look at that first. And I think it's spelled out on page 2. I'm not sure who brought that up or how it got there, but whatever Commissioner it was
just chime in.

COMMISSIONER MAY: Mr. Chairman, I don't know if anybody else was concerned about that, but I certainly was. And I was interested to see if it could work. And I'm not sure that I'm totally convinced that it doesn't work, but I think that the explanation was reasonable enough and I'm ready to move on from that issue.

CHAIRMAN HOOD: Okay. Thank you, Commissioner May. Was anyone else sharing that concern?

VICE CHAIRMAN SCHLATER: I think I asked. And it was looked at, and they don't think it works. And I think that's okay.

CHAIRMAN HOOD: Okay. All right. The other issue was the option. I thought we gave them flexibility whether it was bollards or concrete, and I may be getting it mixed up.

But I thought we gave them flexibility to go with either Option 1 or Option 2, as I recall.

COMMISSIONER MAY: I think that's
right, but that was not the bollards versus the planter. The bollards and planters is a new thing.

CHAIRMAN HOOD: Oh, that's a new thing?

COMMISSIONER MAY: Yes.

CHAIRMAN HOOD: So that's another issue that we have to deal with?

COMMISSIONER MAY: It's the parking access, is that right?

CHAIRMAN HOOD: Wait a minute. Maybe somebody could help me, but I thought was that egress?

MR. BERGSTEIN: Option 1 and Option 2 concerns how the vehicles would enter in the private alley and the difference between the two options was whether or not there would be one large curb cut that would be accessed by both trucks and vehicles as opposed to two separate ones. And that was an option on Option 2.

And it's my understanding it's your
recollection, you're right. decided they could do either.

Bollards versus concrete planter issue was that there is an area within the alley itself that they had proposed a five foot buffer for the residential properties. The original drawings that were submitted proposed actually showed bollards in that area. You asked them to see if they could enhance the security for the adjacent neighbors. They came back with an alternative suggesting that in lieu of the bollards they could do a concrete planter. And so the question is do you want to specify one or the other, or both. Have a flexibility to do either.

CHAIRMAN HOOD: Okay. So with the issue with the curb cut, we've already decided that. Thank you for the recollection, Mr. Bergstein. We've already decided that we would give them flexibility.

The other issue then is bollards
and the concrete curb, I believe. We asked them to look, a particular home was right there, and we asked them to look at it. So we're now being faced with on page 01 of the submission, the rendering, we have Option 1 and Option 2.

COMMISSIONER TURNBULL: Mr. Chairman, I'm not opposed to either Option 1 or Option 2. The only thing on Option 2, and it's not just a concrete planter, it does have a brick facing on it which I think is appropriate. I think the applicant is being--I think that's very acceptable.

I think the other thing I'd be concerned about is drainage, that the planter drains either back into the alley or away from the property owner's townhouse. But other than that, I think either one would be acceptable.

CHAIRMAN HOOD: Mr. Turnbull, I'm not putting you on the stand, but do you think Option 1 would we still have a problem with drainage?
COMMISSIONER TURNBULL: Well, it looks like it's slopping toward the alley. That's mainly a landscaping issue. I'm not concerned as much there other than the built up planter.

CHAIRMAN HOOD: No. I'm talking about reasonable action. I actually like Option 2.

COMMISSIONER TURNBULL: Well, I think Option 2 is very -- it's a very handsome structure.

CHAIRMAN HOOD: So, unless I hear something, I like Option 2. So I guess the only concern we have is to make sure of the drainage.

COMMISSIONER TURNBULL: Yes, that would be only concern; just to make sure that the drainage from the planter does not interfere with the townhome in some way.

CHAIRMAN HOOD: Okay. So does everyone agree with Option 2 or do we want to give them flexibility with this one also?
VICE CHAIRMAN SCHLATER: Mr. Chairman?

CHAIRMAN HOOD: Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: I think Option 1 and Option 2 are both fine with me. I guess I wouldn't support Option 2 if for whatever reason the homeowner didn't support it. But if they are in support of it, and I don't know if that was addressed in the submission, then I would definitely support Option 2.

COMMISSIONER TURNBULL: That's a good point that the Vice Chair brought up. I would agree with that also.

CHAIRMAN HOOD: So it looks like we're going flexibility. So, we'll just do everything with flexibility and go home, huh?

COMMISSIONER MAY: Yes, I would prefer that we have that flexibility because I think I could make an argument either way about what the best solution was. And if I
lived right next to it, I might have more
opinions about which would be best.

So, I think that it's best to leave
some flexibility on this issue.

On the curb cut issue and the
access to the parking, I'm a little bit
inclined to go with the single curb cut and
have folks enter off the alley rather than off
the street. So I'm inclined toward Option 2
in that regard.

CHAIRMAN HOOD: So are you
revisiting our first option that we gave for
it? Is that what you're doing?

COMMISSIONER MAY: Yes, I mean,
we've been bouncing back and forth a little
bit. I don't think we quite put the access to
parking issue completely to bed there. But
maybe we should just do these one at a time.

So, bollards versus planter, I
think flexibility. I think the consensus was
flexibility, is that right?

CHAIRMAN HOOD: Right.
COMMISSIONER MAY: Lots of heads nodding.

CHAIRMAN HOOD: Yes. And I thought the first was flexibility, which I thought we decided that at the hearing.

VICE CHAIRMAN SCHLATER: I don't think Commissioner May, were you at the hearing?

CHAIRMAN HOOD: Oh, is that what it was?

COMMISSIONER MAY: I was not at the hearing. No.

CHAIRMAN HOOD: Okay. All right. So, Commissioner May, what would you like to do? Option 2?

COMMISSIONER MAY: I think Option 2 is better.

CHAIRMAN HOOD: Does anyone else feel moved or changed to go against our already decided flexibility to go along with Commissioner May? Not hearing anything, Commissioner May, so I think it dies.
COMMISSIONER MAY: That's okay.

CHAIRMAN HOOD: We won't even put up a motion to go forward.

COMMISSIONER MAY: No. I'm not going to push it that far.

CHAIRMAN HOOD: All right.

COMMISSIONER MAY: It's just a slight preference.

CHAIRMAN HOOD: Gotcha. Okay.

One of the other questions was the affordable housing amenity as a public benefit. I'm not sure how that rolls, but that's one of the questions.

VICE CHAIRMAN SCHLATER: Mr. Chairman, I probably raised that.

CHAIRMAN HOOD: Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: I think we were going through the list of proffered public benefits and amenities just to make sure they were in fact benefits and amenities. And I don't think anybody would argue that
affordable housing is a good and excellent thing. I think just in this case the inclusionary zoning regulations do apply to PU projects. The applicant is not providing anymore than the minimum percentage affordable housing. They're in fact required to provide 8 percent of the gross floor area for affordable residential units.

So, I just don't think it should be considered a proffered public benefit and amenity, and I would recommend striking it from the list.

CHAIRMAN HOOD: I would wholeheartedly concur, Vice Chairman Schlater, with your analysis and your recommendation.

Anyone else? Okay. So ordered.

VICE CHAIRMAN SCHLATER: Mr. Chairman, I will say I also asked the applicant to follow-up on whether LEED Silver in fact exceeded the requirements under the Green Building Act. And they came back and did the analysis, and it does in fact exceed the
requirements, and therefore we should be giving them credit for providing that as a benefit and amenity.

CHAIRMAN HOOD: Okay. Let me ask Vice Chairman Schlater, were you the one also about the public projects benefits? Did you ask about that?

MR. BERGSTEIN: I added into the email that I sent you just because in the event you decided that the affordable housing wasn't a public benefit, then the question is does that change your views as to the sufficiency of the public benefits versus the zoning flexibility proffered. So, I don't think anybody raised that. I just raised that as a final -- there was a lot of discussion, proposed action about whether or not the amenities were sufficient. Commissioner Schlater described them as light at one point.

The applicant responded in their submission explaining why they felt that the public benefits were similar to other projects of the
same sort.

So, since you did raise the issue on proposed actions to sufficiency of the amenities I thought and asked for a response, which you got, I thought you should then resolve the issue.

CHAIRMAN HOOD: Okay. Well, let me ask does anyone still think even with the issue about the affordable housing not being a public benefit, does anyone believe that the amenities are still liked?

VICE CHAIRMAN SCHLATER: Mr. Chairman, I did raise that at the hearing. And I believe that — I think the reality is that the list of proffered public benefits and amenities, there's not a lot that jumps out at me that says they're providing exceptional things. But in reading the applicant's submission, which was supplemented with letters from the ANC, the Councilmember, the Mayor's office, I think the overarching message that I got from that submission is
that the project itself is the amenity. Just the fact that you're building a new project on a place that's an under utilized site with less than -- you know, it doesn't have street-fronting retail as of now, there is not housing on the site right now. If it does get built, it will go a long way towards developing H Street and bring the east side and the west side of H Street together. I think it's a project everybody wants to see get done. So I'm not going to hold it up over the benefits and amenities issue.

CHAIRMAN HOOD: I just remember a case I thought the amenities was light and it never went through. So, they do have a consistency of -- yes, I think ANC 6A as you already stated. They also have a support letter from the Deputy Mayor's Office from Mr. Derek Woody, and also I thought I saw one other letter.

But anyway, as you stated, it looks like the project -- and it also mentioned I
think somewhere in their submission that they
had been working, I think some three years
with this community to try to get to this
point.

So, anything else on this? Oh,
wait a minute. I'm sorry.

Commissioner May? Roof-top?

COMMISSIONER MAY: Roof-top
structures. Yes. I'm fine with the latest
version of that. I think that was an
improvement in the end.

CHAIRMAN HOOD: And also the
elevator issue.

COMMISSIONER MAY: And, you know, I
could still argue that -- I mean, the
explanation wasn't very detailed, but I'll let
that go.

CHAIRMAN HOOD: Okay. I don't
think there's anything else. Is there
anything else, Commissioners?

Okay. If not, I'll obtain a motion
to approve.
COMMISSIONER TURNBULL: Mr. Chair,
I would like to move that we approve Zoning
Commission Case No. 10-03 Consolidated PUD,
Parcel Seven Associates, LLC, Square 912, Lot
55 and ask for a second.

COMMISSIONER MAY: Second.

CHAIRMAN HOOD: Okay. It's been
moved and properly second. Any further
discussion? Are you ready for the question?
All those in favor aye.

ALL: Aye.

CHAIRMAN HOOD: Not hearing any
opposition, so ordered.

Staff, would you record the vote?

MS. SCHELLIN: Yes, sir. I believe
that Commissioner Selfridge did not
participate in this case, if I'm not mistaken.

So, the staff would record the vote
four to zero to one. Commissioner Turnbull
moving, Commissioner May seconding,
Commissioners Hood and Schlater in support.
Commissioner Selfridge not voting having not
CHAIRMAN HOOD: Commissioners, I think what I'm going to do is we're going to slow up a little bit. I don't want any cases to running together and getting them mixed up like I'm doing. So we're going to slow up just a little bit.

Zoning Commission Case No. 10-16 (Office of Planning Test Amendment to '2515 Open Arcades). Ms. Schellin?

MS. SCHELLIN: Yes, sir. This a test amendment to '2515 for Open Arcades. As you said, we have an NCPC report at Exhibit 13 that shows that they have no issues with this case. And the staff would ask the Commission to please consider final action.

CHAIRMAN HOOD: Okay, Commissioners, as Ms. Schellin has already mentioned, the amendment repeals the provision that incitivizes construction of open arcades through alliance of an FAR credit and expanded authority to close open arcades in all SP,W,
CR, C zoned districts subject to the same limitations that existed in the repeal provisions.

I believe this was fully vetted. I'm not sure if we did a bench decision. But I think this was fully vetted at the hearing. And with that, unless there is any discussion needed, I would move that approve Zoning Commission Case No. 10-16 and ask for a second.

VICE CHAIRMAN SCHLATER: Second.

CHAIRMAN HOOD: It's moved and seconded. Any further discussion? Are you ready for the question? All those in favor.

ALL: Aye.

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

MS. SCHELLIN: Yes. The staff has recorded at five to zero to zero to approve final action in Zoning Commission Case No. 10-
16. Commissioner Hood moving, Vice Chairman Schlater seconding, Commissioners May, Selfridge and Turnbull in support.

CHAIRMAN HOOD: Okay. Next Zoning Commission Case No. 10-15 (Office of Planning Text Amendment to '3004 Minutes). Ms. Schellin?

MS. SCHELLIN: Yes, sir. This case is before the Commission too for final action. It was a text amendment to Section 3004. And because this was a text amendment to the Office of Planning's internal proceedings, it did not need to be referred to NCPC.

CHAIRMAN HOOD: I'm going to first start off by commending the Office of Planning under the leadership of Dr. Weinbaum and others who worked on this. This is something that I noticed that we've been trying to get done now I want to say 12 years. But it's been around a while, so I want to commend the Office of Planning for getting this done.

Again, Commissioners, this is the
Office of Planning the request dated to us July the 1st, 2010 Petition of Zoning Commission for text amendments to remove all reference to meeting minutes in the Zoning Regulations. Office of Planning provided a secondary report on July the 2nd.

So, with that I think this is pretty straightforward. Any discussion? Anybody want to make a motion?

COMMISSIONER TURNBULL: Mr. Chair, I move that we approve Zoning Commission Case No. 10-15 Text Amendment to 11 DCMR Chapter 30 ' 3004 minutes and transcript and ask for a second.

COMMISSIONER MAY: Second.

CHAIRMAN HOOD: Okay. It's been moved and properly second. Any further discussion? Are we ready for the question? All those in favor aye.

ALL: Aye.

CHAIRMAN HOOD: Not hearing any opposition, Ms. Schellin will you please
record the vote?

MS. SCHELLIN: Yes. Staff records the vote five to zero to zero to approval final action in Zoning Commission Case No. 10-15. Commissioner Turnbull moving, Commissioner May seconding, Commissioners Hood, Schlater and Selfridge in support.

CHAIRMAN HOOD: Next for consideration Final Action Zoning Commission Case 09-06. This is the Abdo New York, LLC - Consolidated PUD and Related Map Amendment at Square 4268 and Various parcels. Ms. Schellin?

MS. SCHELLIN: Yes, sir. The Commission may not recall, this was a case that a hearing back in July of 2009 and at that the Commission took proposed action at the conclusion of the hearing. And at the conclusion of the hearing the Commission asked for some additional documents to be provided before final action would be taken. At that time it was indicated that final action would
be scheduled for September of 2009. However, the applicant has not provided those additional documents and therefore, final action has never been scheduled.

Since then I've contacted the applicant's attorney and it's my understanding that the owners no longer have control of this site. And so what staff would ask the Commission tonight is to consider whether they need the additional documents in order to proceed with final action, and just ask the Commission how they would like to proceed with this case.

CHAIRMAN HOOD: Okay. Commissioners, we have a request in front of us, and we also have parts of the transcript. And it looks like, Commissioners, you asked for some pretty specific items which were very important to moving forward in final action. I'd just like to know if those things are still relevant, and if they are, then we will see how we proceed from there.
Let me ask. When I'm looking I see Commissioner Turnbull, I see Commissioner May and I believe I see -- I don't see the Vice Chair in what I have here. You must have been quiet that night. Okay.

Well, let me go to my two colleagues and see if what you asked for before final is very germane. If not, we'll figure out how we're going to proceed.

Commissioner May or Commissioner Turnbull, either one?

MS. SCHELLIN: Chairman Hood, Vice Chairman Schlater was part of that hearing.

CHAIRMAN HOOD: Oh, okay.

MS. SCHELLIN: I think it may have been his first, or one of his first. It was in July. So, it wasn't too long after he started.

CHAIRMAN HOOD: Well, he didn't ask for something that night, so that must have been his first.

Okay. We'll just take our time. It was 2009, it wasn't like it was yesterday.
COMMISSIONER TURNBULL: Mr. Chair,
I think my comments in just going back to the
transcript are those, you know what we often
do when we don't like something with the
designs we're asking for comments. So, I was
concerned about the garages and the facade and
how it related to the rest of the building.
So, I was basically looking for some ideas,
some alternates as to how they could come up
with a better solution. So, I would be
looking for that.

CHAIRMAN HOOD: Great. I think
that's pretty important.

Commissioner May?

COMMISSIONER MAY: Yes, I would
agree. I mean, we certainly could take the
matter up for a vote without this information
in the record. But I think some of the things
we talked about were pretty important to what
we thought would make a successful project.
So, I would much rather see them before we
vote than, you know go with the hand we're
dealt.

CHAIRMAN HOOD: Okay. Okay. The way I see, and my colleagues you can chime it, is due to the time that this has been out there, also due to the comments that Ms. Schellin has mentioned in trying to contact and get this thing moving to get the information to us which we asked for it, and the longevity of it, and also the importance of what my colleagues have asked for, I would suggest and make a recommendation that we do three weeks. And, Ms. Schellin, I ask you for a time certain. And at that time if we have not received any information, and I hate to say this because this is New York Avenue in Ward 5, but that we would have to dismiss this case.

MS. SCHELLIN: That would put us to December 6th, and staff will contact the attorney in this case and let them know the deadline. And then we'll place this on the December 13th agenda. Bring it back to you.
CHAIRMAN HOOD: Okay. So we don't have the submission by December 6th, we will deal with it accordingly. And my recommendation at that time is going to be that we dismiss this case.

MS. SCHELLIN: Okay. Thank you.

CHAIRMAN HOOD: Thank you.

Okay. Let's move right to Zoning Commission Case No. 07-02B. This is the Highland Park West PUD Modification at Square 2672. Ms. Schellin?

MS. SCHELLIN: Yes, sir. This is a case that is before you for final action also. Exhibit 43 is the NCPC report. Again, NCPC has no issue with this case and we would ask the Commission to please consider final action.

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

If you look at Exhibit 45, colleagues, I know I had asked Mr. Danta, I think it was pretty straightforward, I just
asked him about his track record and all the dwellings he has done in the city as far as affordable housing. He has submitted that. I personally don't have any major issues unless my colleagues see something.

But I did have one with Exhibit 46, and I'm just trying to figure out. It says "In addition after final action in this case to ask for request for relief from the Zoning Commission to submit a consolidated set of PUD plans." And I think we normally do that. I know it was somewhere. I think we normally do that before we make final action. And I guess I'm just perplexed of why we're doing this after.

MS. SCHELLIN: I think that the reason why this request was made to do it afterwards was based on the decision that you guys make this evening. And my understanding from the applicant is that we will get those plans within the next day or two.

We have done it this way before. I
mean,, it's a very short time period. It's a matter of based on the decision that you make tonight, they wanted to have the plans based on the decision made tonight. And it was a little bit of a misunderstanding whether they brought them tonight or not.

CHAIRMAN HOOD: Okay.

MS. SCHELLIN: So, we'd just ask that in this case that you allow them to do that.

CHAIRMAN HOOD: Okay. Does anyone have any issues with this or any comments, any questions even about the -- I see we're looking at the pink, green and yellow sheet; any questions about the track record or anything?

Okay. Again, we have a request to submit, the applicant requested relief from the Zoning Commission to submit a consolidated set of PUD plans incorporating the changes made to the plans throughout this application process. I would make sure staff make sure
that our wishes are represented on those plans. I'm sure we can trust the counsel of that applicant.

Okay. Any other questions or comments?

COMMISSIONER SELFRIDGE: Mr. Chairman, I just wanted to touch on Exhibit 45 because originally I had some questions about the affordable housing as well, and it's worth certainly pointing out that the two projects that are cited here, the Kenyon Square Condominium project and both the Highland Park Phase 1, and both of these have over 20 percent of the residential floor area devoted to affordable housing, and they do provide a chart on the back and it shows that it looks like Kenyon Square is a for sale project, and certainly in this case they've met those requirements or very close it. Actually, they have met those requirements, a little variation but basically they have.

And also, on the Highland Park
which is a rental property, I don't see it right here but I know from reviewing it, that that case they did as well. So I think that in both examples they've cited they've certainly met that requirement of over 20 percent of the affordable housing.

CHAIRMAN HOOD: Okay. Vice Chairman?

VICE CHAIRMAN SCHLATER: I, too, was looking at that exhibit. And I just found it interesting that if you look at them, I don't think this says anything about the applicant. I read this and it looks like the applicant's met its commitments in terms of affordable housing. But just when we base our affordable housing based on area median income, which is very high in the District of Columbia MSA, you end up with units that are affordable under the law, but are being sold for $322,000 and that are being rented for over $2,000 a month, which a lot of people wouldn't consider affordable housing.
Just when we're proffered things in terms of moderate income affordable housing targeted towards 80 percent of AMI we should have no illusions that that means those units are seriously affordable.

CHAIRMAN HOOD: I really appreciate your comments because I've questioned 80 and 60 percent at AMI. I look more at 30. I know when we had some hearings and I was even trying to get to 20 and I was told at that time that developers said that couldn't be done. But I do know that we have a project that was just done that all of it was at 30 percent of AMI. That's kind of where I am. But I appreciate your comments and agree what is affordable.

Any other? We have what's in front of us at this time. So, what I would do, I would recommend that we approve this project as it is because we went through it, and actually it has met as Commissioner Selfridge has mentioned, has met his commitment to us or
his commitment especially in his track record, which we asked for.

Okay. That was all the issues I had on that. I would move that we approve Zoning Commission Case No. 07-02B, Highland Park West PUD Modification at Square 2672 and ask for a second.

VICE CHAIRMAN SCHLATER: Second.

CHAIRMAN HOOD: It's been moved and properly seconded. Any further discussion? Are you ready for the question? All those in favor aye?

ALL: Aye.

CHAIRMAN HOOD: Not hearing any opposition, Ms. Schellin could you record the vote?

MS. SCHELLIN: Yes, sir. Staff would just note that Commissioner May did not participate in this case. So, staff would record the vote four to zero to one. Chairman Hood moving, Vice Chairman Schlater seconding, Commissioners Selfridge and Turnbull in
support. Commissioner May not voting having not participated.

CHAIRMAN HOOD: Okay. Next, Zoning Commission Case No. 05-36D, K Street Developers, LLC - Two-Year PUD Time Extension at Square 749. Ms. Schellin?

MS. SCHELLIN: Yes, sir. The applicant is requesting a two year time extension for the additional time is being requested for a permit and to start construction of the second stage of the larger project. So, staff were to ask the Commission to please consider action on this case.

CHAIRMAN HOOD: Okay. Commissioners, we have Exhibit 1 in front of us. Well, anyway, it's dated October the 8th, 2019. Also, we have an extension request second stage of PUD Case 05-36D Office of Planning report, which recommends the Commission approve the requested two year time extension.

The request for a two year
extension of a second stage planning and
development related Zoning Map Amendment
approved by the Zoning Commission as Order
No. 05-36A, which issued on November the 14th,
2008. So the PUD is such that a building
permit application must be filed no later than
November the 14th, 2012. And I think what
we're asked to do is to extend our order from
November 14th, 2008 to November the 14th,
2010, am I correct, Ms. Schellin?

MS. SCHELLIN: Yes, sir.

CHAIRMAN HOOD: All right. For two
years. And again, if you look through the
submissions, it's got a template in there.
But, you know, the economy is an issue, and it
talks about the requirements of the extension.
So, let me just open it for comments. Any
comments?

VICE CHAIRMAN SCHLATER: Ms.
Schellin, is it correct that they've submitted
a modification as well to this PUD?

MS. SCHELLIN: I believe they have.
It's a separate case. I believe that's 05-36E.

VICE CHAIRMAN SCHLATER: But that has no bearing on the extension?

MS. SCHELLIN: No. They are two separate issues under different rules.

VICE CHAIRMAN SCHLATER: Okay.

Thank you.

MS. SCHELLIN: Just to clarify, a modification does not extend the time they have to actually ask for it, separate issues.

CHAIRMAN HOOD: Okay. Commissioner Selfridge?

COMMISSIONER SELFRIDGE: Thank you, Mr. Chairman.

I'm just looking at this letter here, it's Exhibit 6, from Anne Phelps. She's the Single Member District Commission at ANC 6C-04. And I was just struck by she says that the K Street Developers, LLC have been model neighbors, that phase 2 portion of the property, which we're talking about tonight has been secured while maintaining the cover
in grass. The property owners allowed the area to actively programmed as amenity for the community, and they regularly allow the community to make use of the green space. And I just think that that's a pretty good statement coming out of the community of what kind of neighbor the developer has been. So, I think that's worth mentioning.

CHAIRMAN HOOD: And that's a good point, Commissioner Selfridge. Because for some reason I had highlighted, for example, the Noma Bid hosted weekly movies. And that, I just didn't highlight the whole part, but I appreciate that, you're right they've been great neighbors. So, good point.

Anything else, Commissioners?

Commissioner May?

COMMISSIONER MAY: No. I was just going to get ready to second, or make a motion, or second it, whatever.

CHAIRMAN HOOD: Okay. Go right ahead, Commissioner May.
COMMISSIONER MAY: I would move that we draft the extension request for the second stage of PUD in Zoning Commission Case No. 05-36D, 250 K Street Northeast.

COMMISSIONER TURNBULL: Second.

CHAIRMAN HOOD: It's been moved and properly second. Any further discussion? Are we ready for the question? All those in favor aye.

ALL: Aye.

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

MS. SCHELLIN: Yes. Staff records the vote five to zero to zero to approve final action in Zoning Commission Case No. 05-36D. Commissioner May moving, Commissioner Turnbull seconding, Commissioners, Hood, Schlater and Selfridge in support.

CHAIRMAN HOOD: Okay. Let's move upon the Proposed Action. Zoning Commission Case 08-06 (Office of Planning - Comprehensive
Zoning Regulations Review, Use & Height Text).

Ms. Schellin?

MS. SCHELLIN: Yes sir. This is our first text under the ZRR process for the Commission to take proposed action. And so we would ask the Commission to please consider action on the first topic Use and Height.

CHAIRMAN HOOD: Okay. Again, I'll be honest, I was actually looking for the worksheet. But, again, this is our first time doing text, so bear with us. And again, you know what we go through tonight at anytime we may go back and revisit it, but for now let's move forward.

So what I would like to do, and we did ask for, I think, ANC 6B and also Ms. Barbara Kahlow's -- those are the only two submissions I think we asked for. Okay.

So, I would like to work off of Exhibit 37, which is the Office of Planning's supplemental report and work from there. And also they have the proposed chapter for Title
11 subtitle (b), and all that towards the back.

So, let's start with -- I guess the best way is to start with 400.3, 400.21. We'll make explicit relationship between the height regulations and the District Zoning Text and height regulations in the Federal Height Act. And, I'll tell you, that has been going on an on probably for much longer than I've probably been around.

Now, we had a lot of submissions, I want to start it with, from a lot of different people telling us this is how it should be done and that's how it should be done. Some we looked at, some we didn't. It doesn't mean that we're not going to consider it at some point. It's just that now we're just moving forward to try to get something get done, and we may go back and revisit it. Case in point, I'm looking at one where one person talks about the titles include habitual space, if so believes that the height of the tower should
be subject to the height limits. Those sort of things as we go along that we're taking into consideration as we deliberate.

Okay. As we see OP recommends the following revision of the previously propose 400.2 to 400.3. Commissioners, we've already read that. Any issues or any strikes?

I don't necessarily think, and you all can help me with this is, this is the first time we did it, I don't necessarily think I need read it. I don't think so, do we?

Okay. But if someone has a better way to go through this, that'll be great. But I think we've already the text. I don't necessarily want to sit up here and read the whole thing.

COMMISSIONER MAY: Just try to go at it section-by-section or by the topics as organized in the supplemental report from OP.

CHAIRMAN HOOD: I'm going just how it's organized here in the supplemental report.

COMMISSIONER MAY: Okay. Well,
that's fine.

CHAIRMAN HOOD: So what I'm doing now, we're looking at 400.3 and 402.1.

COMMISSIONER MAY: 2.1, right.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: Yes, I think that's fine the way it's been edited in the final version.

CHAIRMAN HOOD: Okay. And I'm hoping everybody's following this who has a copy of it. Everybody has a copy of it. I don't see anybody move their head, nod their head. And are we giving that to the audience also?

MS. SCHELLIN: It's in the record, and I believe OP has made it available on their website.

CHAIRMAN HOOD: Okay. If not, maybe we need to do that. We'll work that out.

COMMISSIONER MAY: It's not an awful lot of words, maybe it's worth just reading 400.3.
CHAIRMAN HOOD: Let me read it.

Okay. 400.3 "In addition to the height limitations of the Zoning Regulations all buildings are subject to and shall conform with the height limitations of the D.C. Official Code 6-601.08, the regulatory interpretation of and rules pertaining to the height adopted by the District Department of Consumer and Regulatory Affairs, DCRA, are location in subtitle (m)."

402.1 "This section provides rules of measurements for the purposes of determining compliance with zone height limitations. Unless otherwise stated the rules of this section are identified two DCRA rules for the measurement of building height under the Height Act which appears in subtitle (m)." Okay. Zoning Commission Case 08-06 (Office of Planning - Comprehensive Zoning Regulations Review, Use & Height Text).

COMMISSIONER MAY: So the objective here, the essence of this is to state that
height is also subject to the Height Act and it's been codified by DCRA, there are regulations related to it, and it references those regulations.

CHAIRMAN HOOD: Okay. I don't want to misspeak, so what I am going to also allow is Mr. Parker, who has worked on this diligently, he also has the award I know, so I want to make sure we don't put words in my mouth, I believe you're right, Commissioner May, but Mr. Parker.

MR. PARKER: Commissioner May is absolutely right. That was the intent of these two sections.

CHAIRMAN HOOD: Okay. All right. I guess what we can do is go through all of them. Maybe we'll take turns in reading. Commissioner May, could you read number two for us, please?

COMMISSIONER MAY: Well, number 2 in the report was a specific question: What was the timetable for DCRA propose codified
and interpretation of the Height Act. And the answer was "DCRA's legal counsel is reviewing the Zoning Administrator's draft regulations related to the Height Act. DCRA has not provided a time table for the completion of this review or for the advertising of proposed regulation."

I mean, I think in this regard what I would be looking for is just comfort in knowing that those regulations will have been established by the time the new Zoning Regulations are enacted. And I think that gives them an awful lot of time. So, I have nods. But we're going to note this, we're going to remember this when it comes to that final decision to make sure that it's all out there.

CHAIRMAN HOOD: Okay.

VICE CHAIRMAN SCHLATER: Well, I wonder if maybe the way to go is approve this on proposed action. I mean, I would like to see what the DCRA's regs are before we
actually approve the language of this section,
I would think.

COMMISSIONER MAY: That's true.

I have a question, actually maybe
Mr. Bergstein needs to weigh in on this, but
I've forgotten now what we had decided in
terms of the process from here. Are we taking
proposed action now and then final action, and
then a final, final action?

MR. BERGSTEIN: You would take
proposed action, have a normal 30 day period
for comment. At the conclusion of the 30 day
period of comment you would take final action.
The final action only be for the adoption of
a final order that would indicate that the
Zoning Commission has adopted the text and
explains why. But you would not issue a
notice of final rulemaking for reasons that
are very complex and have to do with how ODI,
the Office of Documents and Administrative
Issues, puts things in its system. Once we do
a notice of final rulemaking it's impossible,
pretty much, to get that text back and manipulate it without going through a lot of hurt.

So, you would for all of these take proposed action, adopt a notice of final rulemaking -- I'm sorry. Adopt a final order. When all the final orders are done, you'll be presented, and Mr. Parker can correct me if I'm wrong, you'll be presented with a new Title 11 and then you'll have all these final orders that will explain how each and every of that Title 11 came to be. And then if you agreed, you would issue a notice of rulemaking adopting the revised Title 11. I believe that's the process.

COMMISSIONER MAY: Okay. So before we -- it's hard for me to imagine -- well, maybe I'm wrong, but it's hard for me to imagine that we're going to get final DCRA text on the Height Act regulations before we get to take final action. And that first final action which results in an order. Is
that right? I mean, since you're working with both of these things, Mr. Bergstein, maybe you can comment.

MR. BERGSTEIN: I think Mr. Parker has provided you with status there is in terms of DCRA. I think the most you could hope for at this point would be that they would issue a notice of proposed rulemaking before you take final action, which you would be able to see, but just by virtue of the time it takes for them to do notice for proposed action, then another 30 days of comment, if you're starting yours first then, obviously, you'd be prepared to take final action before they're prepared to adopt a final rule.

So, just by nature of how things are going you would be in place to move first before they would be in place to take their final rulemaking action.

So, if you wanted to wait for them to complete their regulatory process, you would have to allow them to issue their notice
of proposed rulemaking, get their 30 day period of public comment and then they may -- we haven't quite worked this out -- they're either going to have issue a notice of final rulemaking or then in essence wait for you to take your final actions. Because ultimately this is going to be a new subtitle (m), which is part of the Zoning Title 11 that doesn't exist it. So, ultimately this is all going to have to come together as a codification event.

COMMISSIONER MAY: So the final, final action that we take would have to be inclusive of whatever they introduced?

MR. BERGSTEIN: Yes. Yes.

COMMISSIONER MAY: So we will certainly have to have that ability to back-check.

MR. BERGSTEIN: That's right. There's going to have to be a Subtitle (m).

COMMISSIONER MAY: However man years now that's going to take.

MR. BERGSTEIN: That's right.
That's right.

COMMISSIONER MAY: Yes, because it doesn't seem like we can get it all to synched up before we take final action on this. But I'm not sure. I mean, it might actually be very good if we could see what the proposed rulemaking is before we take final.

VICE CHAIRMAN SCHLATER: I guess the question is what do we change any of this section if there were items in the Subtitle (m) that conflicted with what we thought we're going to be in there.

COMMISSIONER MAY: Yes. It's hard to know without seeing at least the proposed rulemaking.

VICE CHAIRMAN SCHLATER: And the only reason why I raise this is we've been asked to do something similar with regard to the parking and load and DDOT regulations that are yet to be promulgated and they kind of want us to take the jump. And I don't know --
wants us to go first, that's right.

VICE CHAIRMAN SCHLATER: I did, I felt uncomfortable with it in that regard. Although in this one I could probably go either way.

MR. BERGSTEIN: The one thing I wanted to point out is that under the Zoning Act, whichever is the more stricter applies in terms of height. So, even if they adopted something that was less stringent then what you do, in terms of zoning the more stringent would apply. And since zoning is the lower height threshold anyway, it would pretty much obviate anything they said. An vice versa, if they have more stricter height rules, then those rules would govern.

So, although we're striving for to the maximum possible to get everything identical, even if there is some variation it doesn't mean that a more lenient height approach would happen. You would just have to know, read both in context and understand
which is the stricter approach.

CHAIRMAN HOOD: Okay. So it goes to the point, and I'm reading here from Mr. Kahlow, and you know sometimes the community expects stuff. And I'm one also that it's disheartening when it doesn't happen.

She writes "We were unable to find explicit legal authority for such an interpretative role for the Zoning Administrator, and this DCRA office is understaffed. In fact, for years Zoning Enforcement for which the Zoning Administrator is currently responsible for has not worked satisfactorily."

Let me just ask this, and I know we're waiting for DCRA to give us something, and Mr. Parker, I don't want to necessarily put you on the spot. But I mean are we going to -- we can discuss all day long. Did you give an inclination in your discussions, or Mr. Bergstein, that first of all it's doable, and first of all it's going to happen and
we're not going to hear that we're under
staffed or everybody in that area is fired, or
whatever the case may be? Because I think if
we're going to put something in place, we need
to make sure that first of all that it's going
to be doable and that it's going to actually
materialize. I'm not asking to predict the
lottery. I'm just asking you in your
discussions.

MR. PARKER: I can answer two
things affirmatively. It's doable, legally
and procedurally. And it's underway. And
then the Zoning Administrator is reviewing
with his legal counsel proposed language.

So Mr. Cochran and I have done our
best to stay on top of them, and we will
continue to do so. I can guarantee as much as
possible that something will be done before
this process is over with. I don't know
whether something will be done before your 30
day period is up for your first final action.

CHAIRMAN HOOD: Okay. So before
our final, final action, whenever that is.

Okay. Anything else on that particular point? Okay.

Let's move on to number 3. You had something else, Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: No.

CHAIRMAN HOOD: We're going to split it up. Everybody's going to have a little action to night.

Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: One of the things OP has done in the revised text is to eliminate all references to straight based height rules in the zoning text. I think I don't have to read each section and street based limits have been deleted, just to say that anywhere where they did appear, they've been deleted. But I'm comfortable with it.

CHAIRMAN HOOD: Great. Any comments?

COMMISSIONER MAY: That's something that had to be cleaned up, it's cleaned up.
That's good.

CHAIRMAN HOOD: Great.

Number 4, Commissioner Selfridge.

COMMISSIONER SELFRIDGE: Thank you, Mr. Chairman.

Number 5 deals with structures permitted atop the roof, changeover roof element to enclosing roof element as appropriate. And OP recommended the following revisions that particularly now number G penthouses, "Be fully or partially enclosing utilitarian features, including but not limited to mechanical equipment may be built above the zoned height limitations subject to conditions." I might have gotten -- "The following structures be built above zoned height limitations subject to the following conditions in this section." Penthouses fully or partially enclosing utilitarian features was a change they made. And then penthouses fully or partially enclosing accessory amenity features such as communal recreation space,
structure accessories to outdoor recreation space.

And then in 401.1(a) they added (b) "Incompatible with the purpose and the intent of the height regulations listed in 400.2 and not in conflict with the Height Act."

MR. BERGSTEIN: And, Commissioners, this is one where I discussed with you that that reference to "and not in conflict with the Height Act," at least I'm recommending that it be eliminated. And I've discussed this with Office of Planning and they don't object to it because it would put the BZA in a position of looking at compliance with other regulations other than the Zoning Regulations. And since these types of applications would come self-certified before the Zoning Administrator would have an opportunity to review the application for compliance with the Height Act, I think it's premature and goes beyond the scope of what's necessary for a special exception review. So, this is one
change that OP has suggested that it'd be my
recommendation for you to strike.

VICE CHAIRMAN SCHLATER: Mr. Bergstein, is subtitle (m) part of the Zoning Regulations?

MR. BERGSTEIN: Not the way it's going to be written. The introductory portion of the Title 11 is going to indicate what comprises the Zoning Regulations, which may well be every subtitle other than (m). Although for ease of understanding in terms of BZA rules and Zoning Administrator, and possibly other procedural rules, we may want to differentiate between the Zoning Regulations that are really substantive in nature that those deal with changes, area requirements, use requirements, the Map as opposed to merely procedural rules like minutes which really aren't part of the Zoning Regulations which don't have to go to NCPC.

So we need to mark that out. But it's going to be a clear explanation at the very
beginning of revised Title 11 that at least subtitle (m) and possibly other things aren't the Zoning Regulations as that term is meant in the Zoning Act.

VICE CHAIRMAN SCHLATER: Mr. Bergstein, I seemed to remember when we had the hearing on height whether or not to include subtitle (m) as part of the Zoning Regulations, or at least reference them was an issue. Because there's going to be certain cases before us where certain elements of a design may be blatantly in conflict with the Height Act, but we wouldn't be able to speak to them, I guess, was the concern. And I thought we were going to reference subtitle (m) as part of the Zoning Regulations so that we'd be able to weigh in on that.

MR. BERGSTINE: Well, there's two things. One is whether or not maybe this should be a private discussion, whether or not you could bootstrap jurisdiction over the Height Act by merely saying it's in the Zoning Regulations.
Regulations. It would also bring in NCPC into the picture in a different way. Because once you assume that you can actually interpret the Height Act and regulate the Height Act as opposed to the Zoning Administrator and you believe that's within your jurisdiction, then if it's part of the Zoning Regulations, then it would have to go to NCPC for review. It would go to BZA for review on errors.

So, what I thought the decision was at the time you set this down was to recognize that the Height Act was an Act that was passed by Congress ten years before the Zoning Act was. That its interpretation is made by the Zoning Administrator. And that to the extent the Zoning Administrator has historically made interpretations in terms of the Height Act, that it would be the Zoning Administrator to promulgate regulations pertaining them.

VICE CHAIRMAN SCHLATER: I think that's true, Mr. Bergstein, when you said the Zoning Administrator would promulgate the
regulations. But I also remember a conversation whereby we would incorporate portions of -- what's it called? Subtitle (m) by reference so that we would be able to speak to that.

MR. BERGSTEIN: Well, that's what this -- what the text that is before you says is that the text is identical to what's in subtitle (m) except what otherwise noted. So, rather than incorporating by reference what this text does is it interprets the zoning height limits as opposed to the street-based height limits and makes only those recommendations or interpretations that are needed.

For example, what was taken out of this text and moved to subtitle 11 is what is a residential street, what is a business street. Because that is something that's uniquely relevant to the Height Act and it's for the Zoning Administrator to make that determination.
So this text contains just those provisions that are relevant to the zoning height. Subtitle (m) will have very similar, hopefully identical provisions as to those areas. But will also have additional regulations that will identify what is a resident street, what is a business street, how one gets a waiver from the Height Act, what are the standards that will be applied for Height Act waivers, which aren't germane to zoning height.

So, to the extent that the subject matter is the same, the text should be the same, and that's what the introduction to this subchapter says, that the text is identical unless stated otherwise.

VICE CHAIRMAN SCHLATER: We don't have any control over whether they'll be the same.

MR. BERGSTEIN: Well, we'll have to change that if it turns out not to be the case. We are proceeding with hope and
confidence that that will occur.

VICE CHAIRMAN SCHLATER: Okay.

MR. BERGSTEIN: And based upon feedback we've had from the Zoning Administrator, I mean he's seen the text, I've seen some suggestions from him. But fundamentally, the text is the same as I've seen it. The last version I saw the text was identical except for some minor tweaking.

VICE CHAIRMAN SCHLATER: Okay. I'll give you a hypothetical then. Say that we have a project come before us, a PUD project. It conforms to the zoning height limits but is clearly not conforming to the Height Act height limit. Are we able to weigh in on that subject when that project is before us?

MR. BERGSTEIN: In past PUD orders when that has come up, and it has come up a lot, usually through an NCPC comment, they will say it doesn't look to us like this is a true tower. You should deny this PUD because it's not a true tower and it's not waivable
under the Height Act.

What the Commission has said is certainly we would not approve a PUD where there is no reasonable explanation as to its divergence from another District law, including the Height Act. But where the design is a matter of interpretation, we will defer that interpretation to the Zoning Administrator. So that's how it's been handled in the past.

VICE CHAIRMAN SCHLATER: And under these regs that's how it will be handled in the future?

MR. BERGSTEIN: Yes. In other words if someone submits a building plan that's blatantly intrudes onto to public space and there's no possibility that the Public Space Committee could grant a public space permit, I think you'd be reasonable in saying there's no sense in approving stuff that'll never be built. And I think the same thing is true for the Height Act.
So, that is how the Commission has stated in the past. And yes, I would expect that that would happen in the future.

VICE CHAIRMAN SCHLATER: Okay. Thank you.

CHAIRMAN HOOD: I wanted to piggyback on some of that. But I think where it's blatant in front of the Zoning Commission in the past, what we have done we have simply gone back and asked the applicant to revise that because it was just blatant. But like you said, where it falls on rule of interpretation, then we would always says that we would leave it to the Zoning Administrator.

I want to make sure that if it's blatant and we sit here and we know it's blatant, it's in violation, then we usually kick it back to the applicant, at least that's what we've done in the past.

MR. BERGSTEIN: Yes, you've never denied a PUD in this circumstances. But if someone were to propose a penthouse that's
clearly habitable above the Height Act, you can't get a waiver for that. It's just plain, simple illegal.

CHAIRMAN HOOD: Okay.

MR. BERGSTEIN: So in that circumstance you would say you've got to change those plans, not show human habitation above the Height Act limit.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: Well, and it's not just a matter of the Zoning Administrator. I mean, we don't kick everything if it's -- you know, unless it's a blatant violation. I mean, I can remember some that were a matter of interpretation and we were not going to, for example, interpret a vaulted skylight as a dome; that didn't pass the test with us. And so we sent the applicant back to work on that. So, that wasn't really blatant. I mean, that was theoretically, it might have been a matter of interpretation, but we didn't buy the interpretation, I guess.
VICE CHAIRMAN SCHLATER: I think my point on that, and I think we've hashed it out sufficiently, is that because we're saying these regs are going to promulgated by DCRA and they're gong to be the ones who interpret the Height Act, I don't think that means we're getting out of the business of looking at the height of buildings and interpreting what's appropriate and what makes sense.

Is that OP's understanding of the state?

MR. PARKER: I'm sorry, could you repeat your question?

VICE CHAIRMAN SCHLATER: If a project coming before the Zoning Commission and there's a Height Act interpretation, is it within the Zoning Commission's authority under these regulations to basically either deny a project or ask them to change it because they don't conform to what we think is a proper interpretation of the Height Act?

MR. PARKER: I don't think I can
speak to the Zoning Commission's authority. But I'll second Mr. Bergstein's comments that it would certainly be under your purview to deny a project that was clearly in violation of any law outside of the Zoning Regulations.

CHAIRMAN HOOD: Okay. Anything on that? Let's see. Okay. Let's go to number 5--

COMMISSIONER MAY: Hold on. I'm still on number 4.

CHAIRMAN HOOD: Oh, you're doing it. Okay.

COMMISSIONER MAY: I'm doing it, I have something to say about 403.1. We spent all this time on 404.1.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: We're on 403.1. So 403.1, I just have a question about --

CHAIRMAN HOOD: Oh, you were asking the question.

COMMISSIONER MAY: I'm not asking a question about it.
CHAIRMAN HOOD: That's where you were. You were asking questions. I thought you were doing it.

COMMISSIONER MAY: He was leading the discussion of number 4.

CHAIRMAN HOOD: Okay. We're right here. Thank you.

COMMISSIONER MAY: Okay. 403.1(k).

(k) has fully or partially enclosing accessory amenity features such as communal recreational space and structures accessory to outdoor recreation space.

I'm assuming, I mean in my mind, things like that which are occupiable space in effect, it's like having another floor of the building in certain ways. I mean, that would count towards the regular FAR of the building, it would not be part of that allowance that you get for penthouses, right?

MR. PARKER: Well, you have to keep in mind one of the changes in this chapter from our current regs is the current regs have
an allowance in FAR for penthouses. You get
.37 over your traditional FAR.

The way that we propose calculating
FAR differently in the future is FAR is only
calculated through the top of the building and
penthouses are limited by footprint and not
included in FAR calculations.

COMMISSIONER MAY: So you can have
a big door indoor recreation space on the
penthouse level and it wouldn't count on the
FAR?

MR. PARKER: It would be limited by
floor area. Like, for example, in the current
situation you could have a big enclosed space
up above with bathrooms and space accessory to
your outdoor pool, it doesn't count in your
base FAR. It would be in the .37 bonus.

COMMISSIONER MAY: In the .37
bonus.

MR. PARKER: And under our proposal
you have a 40 percent footprint limit for
that. So, it's a very similar limit to how
much space on the room can be used as a penthouse.

COMMISSIONER MAY: And the 40 percent limit would be inclusive of everything that's enclosed?

MR. PARKER: Yes. And actually I should point out, the 40 percent is actually in many ways more restrictive because right now if your existing building envelop doesn't use up all of your allowed FAR, you can use on your roof the .37 plus whatever is unused in your building.

Under the new proposal the two are separate. You count FAR for the building and you count 40 percent for the roof structure, but you can go above the 40 percent. Is that clear?

COMMISSIONER MAY: Yes, I guess. We haven't gotten to the point of -- since we're writing our first section of text tonight, we haven't gotten to the point of writing a text about how you calculate FAR.
MR. PARKER: No, but that will be coming.

COMMISSIONER MAY: Okay. Well, I think we should just have a discussion of this issue when we have that matter before us. I'm not saying that I have any problem or issue with it one way or another, I just want to make sure we have that discussion in the right context.

MR. PARKER: Okay. But to be clear -- well, a couple of things with that.

We aren't really proposing any major changes to how to calculate FAR. When you see a chapter, it will just mainly codify existing practice. But I think the --

COMMISSIONER MAY: But at some point you're going to be dealing with penthouses at a 40 percent limit, right?

MR. PARKER: I guess what I'm saying is that's in the text --

COMMISSIONER MAY: That's in this here? This is the entirety of it?
MR. PARKER: Is the entirety of it. It's 403.4, I believe.

VICE CHAIRMAN SCHLATER: And then the definition of FAR will specifically exclude penthouse space --

COMMISSIONER MAY: Anything about this.

VICE CHAIRMAN SCHLATER: -- is that how that will work?

MR. PARKER: Yes. I had assumed -- you know before this very second I had assumed that this was in this section as well. It will have to be in one or the other, yes. It makes sense to have it in with the FAR.

So I withdraw my earlier comment. We will discuss it at the FAR chapter.

COMMISSIONER MAY: Okay. It's limited to 40 percent of the building's total footprint.

MR. PARKER: Right.

COMMISSIONER MAY: So, I mean, the total footprint that would include for a
commercial building it's a 100 percent of the site.

MR. PARKER: Yes. Well --

COMMISSIONER MAY: And the building itself at the roof might be only 60 percent of the building's FAR?

MR. PARKER: Keep in mind right now you get .37 FAR, which is 37.5 percent of the lot, not of the building.

COMMISSIONER MAY: Right. Okay. I mean, if you got a 100 percent lot occupancy, this is an increase? If you've got less than 100 percent occupancy, it's probably going to be a decease?

MR. PARKER: Correct.

COMMISSIONER MAY: Okay. Okay. It's good enough for me for now, I guess.

CHAIRMAN HOOD: Anybody else, any other questions? Okay.

I think now, Commissioner May, can I go to Commissioner Turnbull now? Thank you.

Commissioner Turnbull?
COMMISSIONER TURNBULL: Thank you, Mr. Chair.

.5 was to clarify how the point from which height is to be measured shall be determined when the location of that point is ambiguous. And I think I'd better read OP's proposed 402.4.

"When the curb grade has been artificially changed by a bridge, viaduct, embankment, ramp, abutment, excavation tunnel or other type of artificial elevation or depression, the height of a building shall be measured using the first of the following four methods that is applicable to the site:

(a) elevation or means of determination established for a specific zone elsewhere in this title;

(b) an elevation for the site that prior to the effective date of this section by the Zoning Administrator or the redevelopment land agency, its predecessor or successors;

(c) a street frontage of the
building not affected by the artificial
elevation, or;

(d) a level determined by the
Zoning Administrator to represent the logical
continuation of the surrounding street grid
where height is not affected by the
discontinuation of the natural elevation."

I think there's quite a bit going
on. This, I believe, would refer to
developments such as Union Station, behind
Union Station, any built area.

COMMISSIONER MAY: I don't think
this actually applies at Union Station because
there's not been anything measured off the
viaduct there, right?

MR. PARKER: No. but I think in
theory subsection (a) would apply to Union
Station.

CHAIRMAN HOOD: An evaluation meets
the --

COMMISSIONER MAY: Right, right.

And that special zoning for Union Station that
sets height limits that are measuring points or something like that, it's dealt with explicitly. And I think that is preferable. I mean, when it comes to something like Union Station we don't want it -- that should be treated as a special case rather than trying to find some rule that would specifically impose a measuring standard that doesn't really apply in that kind of a circumstance. It's a very odd circumstance.

I think where it's more likely to apply are things like L'Enfant Plaza where there's been an elevated grade and there are height limits that have been established by previous rulings, right?

CHAIRMAN HOOD: I don't know. I was going along with Mr. Turnbull. Because I was trying to think we had a situation, at least over near Union Station if it wasn't Union Station on H Street when we were trying to find the measure point.

COMMISSIONER TURNBULL: Are you
talking about Station Place?

CHAIRMAN HOOD: No, I don't think it was Station Place.

MR. PARKER: It was Station Place.

CHAIRMAN HOOD: Okay. And, Mr. Parker, you're saying (a) goes down that line, is that what you're saying?

MR. PARKER: I think what we're saying these are the same four sections that you saw at the hearing. One of the requests that we had from you, and I think it made a lot sense, was to set them in order of precedence. And it actually maybe is a little counterintuitive because it's not in order of occurrence. You know, the most common are going to be (c) and (d). I think (a) and (b) are fairly rare. But (a) and (b) certainly take precedent if they exist. So anywhere that the Zoning Code calls out a place like Union Station it says this is how you will measure, then that takes precedence over anything else on this list. And if that
doesn't exist, areas like you said like L'Enfant or the Portals development that have a previously determined measuring point, then if that exists, that would take precedent. And then if neither of those exist, then we go into (c) and (d) which are the Zoning Administrator and making a determination.

CHAIRMAN HOOD: Okay. Any other comments or any other -- we can take our time with this. We don't have to rush.

COMMISSIONER MAY: With regard to (b), I think one of the concerns I had was whether we had any sense of how often that has already occurred. And my recollection was that there isn't really catalogue of these things, but there may be in someone's loan records or a building owner's records or something like that some determination that was made at some point. So, we don't really have a way of getting a grasp on what that is.

MR. COCHRAN: So far the only two that we're aware of are L'Enfant Plaza and
Portals.

COMMISSIONER MAY: Okay.

MR. COCHRAN: There may well be some others.

COMMISSIONER MAY: Okay.

MR. COCHRAN: Those are the only ones that have been brought to our attention.

COMMISSIONER MAY: Okay. Well, it's encouraging that those are the only ones that you actually are aware of. Because was hearing that there were, you know, all sorts of other ones that are just out there that haven't been discovered yet.

MR. PARKER: If so, they haven't been brought to our attention yet.

COMMISSIONER MAY: Yes. Okay.

CHAIRMAN HOOD: Okay. Anything else? Any other questions or comments? Okay.

Okay. Include flats in 402.5. So we're changing it to six. One and two family dwellings and any building setback from all lot lines by a distance of at least equal to
its own height shall be measured from the
ground level at the midpoint of the building
face closest to the nearest public right-of-
way. I'm reading it again for myself.

MR. PARKER: Do you want an
explanation of this one?

CHAIRMAN HOOD: Yes, I was going to
read it again. But, no, go ahead and give me
the explanation. Maybe I won't have to read it
again.

MR. PARKER: Basically this is
saying if you have a single family or two
family home unlike all the other buildings in
the city you don't measure from the property
line, you measure from the front of the
building. And also, there's a clause in the
middle, you also do that according to the
Height Act for any building that's set back a
distance equal to its height. So, if a 40 foot
building is setback 40 feet, even if it's not
a one or two family home, it would measure
that way as well. Every other building that's
CHAIRMAN HOOD: I'm looking at this. Where does it say that I measure? Maybe I'm missing something. Where does it say that we're measuring from the --

MR. PARKER: The second half of the sentence, "Shall be measured from the ground level at the mid-point of the building face closest to the --"

CHAIRMAN HOOD: Okay. Building face closest to the nearest part -- okay. Thank you.

Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: I'm sorry. I have to go back to 402.4. Just so I understand clearly. If I'm a property owner adjacent to an bridge, a viaduct, embankment or ramp will I be able to take height off of that bridge, viaduct or ramp under these new regulations if there is not a specific zone or
interpretation existing under the RAI or the Zoning Administrator?

MR. PARKER: If (a) or (b) doesn't apply, you're going to (c).

VICE CHAIRMAN SCHLATER: So we're basically taking down -- so there have been a number of instances where buildings have been taking their height off of these embankments or ramps, correct?

MR. COCHRAN: You allowed one PUD that hasn't been constructed yet at New York and Florida to take its height off of New York Avenue, which was not considered to be a bridge. It's actually something that's been in existence for 60 years or something. It's a street grading. It's on earth. But as I recall, when you discussed Station Place there was discussion of a developer wanting to take the height off of H Street, but in that instance there was a curb on, I believe, either 2nd or 3rd Street from which the height could have been derived. And that would be in
accordance with the Height Act.

   It's my understanding that in the case of Union Station the only curb that exists that surrounds that site just happens to be the curb on H Street. So by the Height Act it's possible that one could interpret it so that that would be the logical measuring point. But each of these have been different instances. But that does say the curb

   COMMISSIONER MAY: In the H Street case and subsequent to Station Place, Zoning Commission wrote specific text that basically made it impossible to measure off of a viaduct like that. And that was ruled out as a result of that case, as a result of Station Place, for the purposes of zoning. Maybe not for the purposes of the Height Act, but for the purposes of zoning.

   And I think that generally speaking that's the direction we want to stay consistent with, not leaving it out there for interpretation, but if there are going to be
special circumstances like the Union States Air Rights development where there isn't really a good place to measure from, that we do it in some manner that's appropriately considered and thoughtful and not somebody's ingenious interpretation of the Height Act or the Zoning Regulations..

VICE CHAIRMAN SCHLATER: And I think that's the result of this text. Putting aside (b), for a second, which is only exists in a couple of situations you really have either the Zoning Commission acts affirmatively and says this is how we will measure in a certain instance or you go to (c) which is, you know Station Place or someone else shall measure off of another right-of-way.

VICE CHAIRMAN SCHLATER: And I guess I wasn't aware of the subsequent action of the Zoning Commission after that case. Because I know there are instances out there in matter-of-right projects where people were
getting height off of these bridges and viaducts and it had nothing to do with Zoning Commission.

And maybe before final action on this text, I'd just like to see where -- if you could just give me the reference and maybe you could do it right now that addresses this specific issue within the current regs?

MR. PARKER: I can't do it off the top of my head, but we can do that.

Oh, yes, actually, yes. It's in the definition of building height in 199

CHAIRMAN HOOD: Let's go back to 402.6. Any comments? I've asked my question about the measurement being on the front side, and it says a mid-point of the building faced closest to the nearest public right-of-way.

Any other comments? Okay.

Let's go into -- that's the height general chapter. Let's look at the use general chapter. I don't believe there were any changes for the use general chapter, were
there, Mr. Parker?

MR. PARKER: No. You didn't request any additional information or changes. So the chapter from the Notice of Public Hearing or Notice of Public stands. Sorry.

CHAIRMAN HOOD: Any comments?

Chapter 2 Use Category Relations. 201 relationship to land use subtitles. It just goes on, 202 rules for determining use categories.

Let's just take a few minutes and look through all this. I know there may still be uncertainties about the definitions. I think I remember seeing some submissions saying definitions should be more clear. And, you know, at some point we have to have a starting point.

Emergency shelter happens to jump out at me. And again, I think we vetted this during the hearing. There were no changes requested by us, but I want to make sure there's adequate time.
Commissioner May?

COMMISSIONER MAY:  What about the term accommodation versus lodging?

CHAIRMAN HOOD:  Where is that?

COMMISSIONER MAY:  It's the definition 206.2.

CHAIRMAN HOOD:  202.6?

MR. PARKER:  I think we're open to that change.

COMMISSIONER MAY:  Okay.

CHAIRMAN HOOD:  Okay.

COMMISSIONER MAY:  Yes.  Because the word "accommodation" has so many meanings outside of the Zoning Regulations.

CHAIRMAN HOOD:  And the change is "lodging"?

COMMISSIONER MAY:  Lodging is a little bit more consistent, I think.

CHAIRMAN HOOD:  Okay.

COMMISSIONER MAY:  Although, you know you have to figure out the slightly different definition because you can't define
lodging as lodging. Maybe you could identify as an accommodation.

CHAIRMAN HOOD: Any use providing customers with temporary lodging for an agreed upon term of less than 30 consecutive days when use for lodging is offered to the public for compensation and is open to transient rather than permanent guests. These uses differ from the residential category because of the short tenure of residence. Yes. I agree. That change lodging as opposed to accommodation.

COMMISSIONER MAY: Mr. Chairman, it means a whole lot of renumbering and everything, too. Because it changes the order. Oh well.

CHAIRMAN HOOD: Okay. Anybody else have anymore comments or need more time?

Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Mr. Chairman, I just wanted to point out that we'd received a letter from ANC 6B requesting that
we take a look at a few items. The first one was "ANC 6B previously communicated to the Zoning Commission its concerns over a point of measurement with respect to the determination of what constitutes a cellar or a story."

The second issue is, I guess, the Commission is also concerned that the current proposal is somewhat ambiguous on the issue of point of measurements; the words "building," "building face" and "facade are all used in the same section, apparently, to mean the same thing without any definition.

And the last thing is the Commission is specifically concerned services might be prohibited or discouraged in areas where there would be a benefit.

So, I just wanted to throw those out there, as the ANC had taken the time to--

CHAIRMAN HOOD: Okay. That's going back to, I think, our height limits.

The last one a use?

VICE CHAIRMAN SCHLATER: The last
one was a use.

    CHAIRMAN HOOD: Okay. Well, let's start with the last one and let's try to get through use and then we'll back and try to reconcile with the height.

    What was the last one, Vice Chairman Schlater? Proposed regulation for--

    VICE CHAIRMAN SCHLATER: It's service versus retail.

    CHAIRMAN HOOD: And they're asking us to --

    VICE CHAIRMAN SCHLATER: I'm not exactly sure. But maybe Mr. Parker read the letter.

    CHAIRMAN HOOD: Did you read the letter, Mr. Parker?

    MR. PARKER: I did. And I've actually had a conversation with them. The real issue I think here is how we set the permission level. I think they're concerned that part of the reason that service and retail are distinguished as categories is
there are instances where we may want to limit
service uses in favor of retail uses. Service
uses like banks and travel agencies, limiting
them in order to promote active vibrant retail
space and street frontages.

The discussion I had with 6B is
they're concerned that in some instances that
may have the impact of prohibiting uses that
they want; dry cleaner is the example they
give. And I think this isn't so much an issue
with whether we should have retail services
different categories, but just where and how
we limit services.

VICE CHAIRMAN SCHLATER: Okay.
That seems right.

CHAIRMAN HOOD: So, Mr. Parker.
because I know that's probably not applicable
to everywhere in the city. So, we would kind
of go back to what this whole intent is is to
try to tailor these new regulations to
neighborhoods?

MR. PARKER: Right. Yes. And this
isn't anything that would change overnight. I mean, one of the strengths of the system that we're proposing is that instead of overlays having to create a list, we want these 30 uses allowed. We can use these categories to encourage and discourage different types of uses. And so one of the possibilities of this is to use this system to discourage services uses where we want more active uses on the ground floor. ANC 6B thinks that might cause some additional problems, but again I think that's a discussion to be hand when we're talking about how and where to limit service uses, not an issue with whether we define service uses or not.

CHAIRMAN HOOD: Okay. Before we go back to height, general chapter on height, any other issues with the uses? Okay.

Okay. Since obviously since you read the letter, can you comment?

MR. PARKER: Sure. There are two issues. The first one I think is fairly easy
to deal with. It talks about, you know the difference between a cellar and a story. By virtue of the change that we've made in height, in simply limiting height to a number of feet rather than in the existing code it's a number of fact and a number of stories. By doing that we've eliminated the need for a lot of these distinctions.

In the current districts we have a limit of three stories. So we have to define an attic and a cellar and a story to determine what is and what is not something that counts against one of those three stories.

The proposal is just to limit to 40 feet or 30 feet or some number of feet and within that feet we no longer have a need to determine what is a story.

So, my argument here is basically to say that their first point is somewhat mute. It is a problem with the existing code, but not with the proposed code.

Their second point is well taken.
There are words in the text that will still need definitions, and there are going to be words in every chapter that you see for the next year that are going to need definition. And eventually, you know one of the chapters that you see will be the definitions of all the terms that we've dealt with in the code. Part of the reason to wait until the end is: (a) to have the complete list of terms that need to be defined, and (b) to make sure that the definitions work across all of the chapters and work equally well. But if there are terms in here that the definition might change how they'd be interpreted, we're more than willing to add some clarity. And Mr. Cochran has something to add as well.

MR. COCHRAN: Our intention was to measure from street frontage as often as that is possible. You'll notice that's in 402.2. It's only if a building doesn't have frontage on a street that we intended to come up with another way of measurement. In that case, it
would be from a facade nearest a public street that would substitute for a street frontage when there is no street frontage. Unfortunately, we did say building face closest to the nearest public right-of-way when we were talking about one and two family dwellings. But the concept was meant to be the same. You're talking about facade nearest a public right-of-way, and we'll clear up that kind of language so that it's consistent words.

But generally it's street frontage unless there's not a street right-of-way, in which case it's a building face nearest the street right-of-way. That's the concept.

VICE CHAIRMAN SCHLATER: Every item that's going to be defined is in italics, is that right, or are they --

MR. PARKER: To the best of our ability. There's a lot of auditing that will need to be done as we finish more and more chapters. So, there may be additional words
that we italicized. But we've tried to do that.

VICE CHAIRMAN SCHLATER: Okay.

Well, I think OP's addressed the major issues identified in that letter to my satisfaction.

CHAIRMAN HOOD: Okay. Any other comments on either the height or use? Does anybody need additional time?

Okay. Commissioners, this is our text, and I'm sure -- or we might have captured everything here. And we will have another bite at the apple at some point in time, I believe.

So is this all one case, Ms. Schellin, 08-06?

MS. SCHELLIN: It is. All of the text will be under 08-06.

CHAIRMAN HOOD: All of the test?

MS. SCHELLIN: Yes.

CHAIRMAN HOOD: Okay. I would move approval, I want to say tentatively, but I would move approval of 08-06. Do I need to
say the general height chapter and use chapter as noted thus far in the Office of Planning's recommendations and the comments that have been made by other submissions so noted, and ask for a second.

      COMMISSIONER MAY: Second.

      CHAIRMAN HOOD: Okay. It's been moved and properly second. Any further discussion? All those in favor aye.

      ALL: Aye.

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

      MS. SCHELLIN: The staff would record the vote at five to zero to zero to take proposed action in Zoning Commission Case 08-06 with regard to the chapters on height and use. Commissioner Hood moving, Commissioner May seconding, Commissioners Schlater, Selfridge, Turnbull in support.

      CHAIRMAN HOOD: And I will tell you that it is our first time doing the text, it
may be another, I'm not going to say easier way, I don't think anything is going to be easy. Another way that we can do this. But let's all think about it. We're not going to come up with it tonight, but let's figure out is there another way where we can do this when we're doing our proposed action. Is there an easier way that we kind of capture the comments as well as OP's recommendation. Let's think about it. Nobody has to -- we don't have to come up with the idea tonight. So, just food for thought.

Okay. Proposed Action, the next 04-33D (Office of Planning - Text Amendment the IZ exemptions for Federal and District Funded Affordable Housing Development. Ms. Schellin?

MS. SCHELLIN: Yes, sir. OP has provided some revised text for the Commission to consider. And they are asking the Commission to take emergency action on this revised text along with proposed action.
CHAIRMAN HOOD: Thank you, Ms. Schellin.

For the record, I have reviewed the record, and I'm going to ask Vice Chairman Schlater who actually led that hearing tonight to lead the discussion this. While I have reviewed the record, he was here and know a lot more of the specifics and details.

So, Vice Chairman, if you can take over? Thanks.

VICE CHAIRMAN SCHLATER: Thank you, Mr. Chairman.

Well, I think the text before us is very much changed from the text that we had the hearing on and is responsive to a number of the comments that were raised at the hearing.

I think no longer does the developer have the option of whether to opt into the requirements under IZ, whether or not they use bonus density which was one thing that I think concerned people.
I think also the affordability requirements will meet or exceed the IZ requirement under all circumstances and they will be for as long as the IZ period.

So, I think I could go through our individual comments, but I won't. What I would say is under the current text I think they've gone a long way. There was only two questions that I had. One is there was a question as to whether -- I think there was general consensus that the conflicts between federally funded projects and IZ made it important to give those federally funded projects an IZ exemption. There is an open question as to whether District funded projects should be included in that waiver. So, that's open for discussion.

And the second is technical and administration is after the control period ends for these federal affordability programs and District affordability programs if we so choose, whether or not these units would fall
into the administrative framework of IZ. And
I think as it's written now those units would
be administered outside of IZ but they would
have the same affordability requirements as
they would if they were included in the IZ
program.

I think I'm comfortable with the
way the text has been drafted in this case. I
feel like the District Government projects,
there's an open question as to whether those
should be included in the exemption, but I do
understand that the Housing Production Trust
Fund and some of these other programs have
their own statutory requirements and that they
often conflict with IZ. So, I'm open for
making life a little bit simpler on the
implementor of DHCD in this case.

So, I'll open it up for questions.

But I think I'm comfortable with where it's
at now. And I'm open to moving on an emergency
today so that there's no laps in that
emergency.
COMMISSIONER MAY: Yes, I would just say that on the subject of whether it's federally financed or District financed, I think the important improvement in the language that we have right now is that it's explicit that requirements of IZ would be met in the project no matter what. And that it would continue in perpetuity once the other restrictions are no longer applicable. So it's not like anybody's going to get a free ride and not be subject to IZ. We're going to have something that's equivalent to IZ or better in the beginning. And then when the extra regulations fall away, we'll still be left with IZ equivalent in terms of the numbers of units and protection, and so on.

And I am comfortable with the revised language for setting it down on emergency basis tonight. So, I think it was smart not to take action the other time. I think we were right to put it off because I think what we have now is much better.
COMMISSIONER TURNBULL: Mr. Chair,
I would just concur with both my colleagues.
I think we should go forward.

COMMISSIONER SELFRIDGE: I agree,
Mr. Chair. Thank you.

VICE CHAIRMAN SCHLATER: I'd like
to OP and DHCD and OAG for all working
together and improving the text here. It's
good to see DHCD down before the Commission
and working with us. And we look forward to
working with you in further ways to make the
administration of IZ work better.

That being said, I would move if I
could find the right paper that we approve on
an emergency basis Zoning Commission Case No.
04-33D Text amendment regarding inclusionary
zoning.

COMMISSIONER TURNBULL: Second.

MR. BERGSTEIN: And you take
proposed action as well.

VICE CHAIRMAN SCHLATER: Emergency
and proposed action.
MR. BERGSTEIN: Yes. Okay. Thank you.

VICE CHAIRMAN SCHLATER: Well, let's have a vote on this. All in favor say aye.

ALL: Aye.

VICE CHAIRMAN SCHLATER: All against? No. I think we've got a unanimous vote. Ms. Schellin?

MS. SCHELLIN: Yes. Staff would record the vote five to zero to zero to approve emergency action and proposed action on Zoning Commission Case No. 04-33D. Vice Chairman Schlater moving, Commissioner Turnbull seconding, Commissioners Hood, May, Selfridge in support.

CHAIRMAN HOOD: Thank you very much, Vice Chairman. I will tell you as I was reading the transcript it looked like the proposed text that was given to us tonight definitely differs from what you guys had at the hearing. And also, I read Director
Edmonds' comment, as well as some other comments. I think Mr. Stucker and others. I think that you guys had a great hearing in flushing out the issues and I think we definitely, as Commissioner May said, got a better piece to deal with and to vote on tonight.

So, we voted on the emergency, and we also did proposed action. Thank you very much, Vice Chairman.

Okay. Let move to the Hearing Action. Zoning Commission Case No. 04-33E (Office of Planning - Text Amendment to Add '2602.3 Inclusionary Zoning to Exempt Property Disposed by DHCD).

Office of Planning, we're going to go to Mr. Cochran

MR. COCHRAN: Thank you, Mr. Chair.

OP recommends the Commission set down an additional text amendment to Chapter 26 Inclusionary Zoning that's related to the amendment you just acted on on an emergency
basis. But it requires a separate consideration because it wasn't previously advertised.

The proposed new section '2602.3, which is showing on page 2 of OP's October 29th report would exempt from IZ certain developments on property that DHCD disposed of under two specific empowerments. The first is the D.C. Code Section 42-4171.03 which allows the Mayor to acquire and dispose of abandoned or deteriorated property for the purpose of eliminating slum and blight.

And the second is Mayor's Order 2007-209 which delegates the Mayor's authority under that law that I just cited to the Director of DHCD, and the types of property are generally described as abandoned or deteriorated or vacant and abandoned.

And DHCD has asked OP to introduce this proposal to give their Department the ability to dispose of city owned properties for residential development without always
having to require the production of affordable units that would have otherwise have been required by IZ.

The District sometimes has properties in areas of concentrate poverty where DHCD believes healthier and more stable neighborhoods could be achieved by giving the Department more flexibility in the amount of affordable housing or the targeted household income levels then is permitted by IZ.

DHCD points out that not all your other disposition programs to which this exemption would be applied required to focus on eliminating slum and blight. The appropriateness of the disposition requirements for the properties that would be exempted are further insured by the proposed dispositions being subject to a public hearing and requiring formal notice to the City Council. And OP would also be updating the Commission on the proposed exempt dispositions as part of the annual IZ reporting process.
OP understands DHCD's concerns and recommends the Commission schedule a public hearing on the proposed amendment at its earliest convenience.

I'm available to answer any questions and so is Mr. Stucker from DHCD.

CHAIRMAN HOOD: Okay. Mr. Cochran, as I looked at this, Ms. Schellin, when would we probably have a hearing on this case? Do we have a date?

MS. SCHELLIN: Probably not until February or March.

CHAIRMAN HOOD: You know, what concerns me is, I'm not sure if this is going to make a difference or not, but I've been around long enough when Administrations change, things change. That office may change, the Mayor we know is going to change even though we're not politically driven. But recommendations, I've seen it where recommendations change. You know, you might not want to hear this, but I will tell you in
November there was one recommendation from the Office of Planning about 12 years ago, and when the Administration changed it was in support and when the Administration changed it was in opposition.

So, I guess, I'm looking at, you know, I don't have a problem with setting it down. But I think like anything else, I think the new Administration needs to have the courtesy to review this, whether it be DHCD's directly if it changes or not, or whatever the case is. I would like to see that done, and I want to know that that has been done if I'm still here. If I'm not here, I don't have to worry about it. But if I'm still here, then I would like to know that that has been done at that point in time.

Okay. Let me open it up for any other questions. Any other questions? Commissioner May?

COMMISSIONER MAY: Yes. I would just say that, you know because DHCD has asked
for this, you know just on the basis of a District agency asking for an amendment to the Zoning Regulations, I'm inclined to give them the benefit of the doubt and -- but I will say that I think this is a pretty high threshold for me. And I think the case has to be made very clearly as to why this is really necessary and why it's going to be helpful and beneficial to the city. And so far all I have is the impression that it would make things a little bit easier for DHCD, I'm not sure that that's compelling enough. But the case may well be made. I jus want to make sure that it's know that while I'm willing to set it down, there's I think a high hurdle to clear to get it approved.

CHAIRMAN HOOD: Okay. Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Mr. Chairman, I'm inclined to set this down as well. From what I heard at the hearing it seemed that DHCD had been asking for a much
broader exemption. I may be wrong about that, but it seems to have come in much more narrowly focused on this one program. So, I'm willing to hear the case as to why this program should be exempted and I look forward to getting it.

I don't think we don't got -- oh, okay. No problem. And OP says for the hearing they'll provide an analysis of the authority of DHCD history of the properties disposed. I think all of that will be helpful and illuminating. So, I look forward to the hearing.

CHAIRMAN HOOD: Okay. Now any comments or questions?

COMMISSIONER TURNBULL: Yes. Mr. Chair, I would just add I think that in our hearing basically on 04-33E or D before, I think we found at the hearing that the whole subject had grown. We suddenly got a binder, you know two inches thick put on our dias up here. And I think it became obvious that it
would have to be a separate issue.

So, I think we could have the hearing, but I would agree with Commissioner May that the threshold is going to be high for the explanation as to why we need to go this extra measure.

CHAIRMAN HOOD: Okay. Great.

So it sounds as though no objection to maybe setting this down. And nothing worse than making a motion and don't get a second. So, I would move that we set down Zoning Commission Case No. 04-33E and ask for a second.

COMMISSIONER MAY: Second.

CHAIRMAN HOOD: It's moved and properly second. Any further discussion? All those in favor aye.

ALL: Aye.

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

MS. SCHELLIN: The staff would
record the vote five to zero to zero to set
down Zoning Commission Case No. 04-33E as a
rulemaking. Commissioner Hood, Commissioner
May seconding, Commissioners Schlater,
Selfridge and Turnbull in support.

CHAIRMAN HOOD: Okay. I think at
this point we just have one more thing on our
agenda, which shouldn't take that long, but
we're going to take five. And we'll come
back in five minutes.

(Whereupon, at 8:34 p.m. off the
record until 8:43 p.m.)

CHAIRMAN HOOD: Okay. Let's
reconvene.

And also, I should have done this
probably an hour and a half or two hours ago.

We've also been joined by Ms. Buschman and
the Office of Planning staff. So forgive me
for being only an hour and a half late, or
maybe two hours late.

Okay. Let's go ahead. Next on our
agenda is the ZRR Guidance. Zoning Commission
Case No. 08-06-12 Office of Planning ZRR PUDs.

And I'm going to have Mr. Parker walk us through it, and we will let him known our recommendations as we proceed.

Mr. Parker.

MR. PARKER: Good evening, Mr. Chairman, members of the Commission. I'm Travis Parker, Office of Planning.

So there are a series of recommendations from our hearing on the planned unit development. I'll walk you through them one at a time.

The first recommendation is sort of the overarching recommendation. We've talked about basically dismantling our existing PUD process and creating three new processes. None of them are exactly like the existing one, but all of them have some components of the existing PUDs.

The first process we've recommended is basically a design review process. This would be optional city-wide, in some cases it
could mandatory, places where it's mandatory
now including the Capital Gateway and H Street
Northeast. But this would be a process where
dimensional flexibility, lot occupancy, yards,
some height would be available in executive
for design review.

The second process would involve
limited bonus density. Process 2 would also
include design review and dimensional
flexibility, but would include the possibility
for some bonus density in exchange for public
benefit.

Process 3 would be greater amounts
of density availability in exchange for a
greater amount of benefits. And would also
included, again, design review and dimensional
flexibility.

So that in a very short nutshell
encapsulates OP's main recommendation.

A second option would be for you to
alter those three types that we've recommended
in some different way.
Option 3 would be to just reject outright our recommendation and stick with one type of PUD process.

I'm happy to offer more explanation or walk you through our reasonings again if you'd like.

CHAIRMAN HOOD: Okay. Commissioners, we have a number of requests. But let's open it up for any questions. Commissioner May?

COMMISSIONER MAY: Yes. I just wanted to ask, it's not stated here but there were differences in the processes for each of the three. Is that embedded in your recommendation here? Because I don't see that discussed anywhere else.

MR. PARKER: That is except where it's part of another recommendation like the lot size and stuff. But, yes, that's a good point. The processes would be embedded in our recommendation. I believe we had a supplemental filing.
COMMISSIONER MAY: There was a little chart that showed.

And as I recall for type 1 design review there was no setdown and there was just a final action, is that right?

MR. PARKER: Type 1, correct.

COMMISSIONER MAY: Okay. And then for type 2 we asked you to reintroduce the setdown?

MR. PARKER: Yes. The chart here just encapsulates what was in our PowerPoint that you asked us to submit. But, yes, we're open to having a setdown in type 2.

COMMISSIONER MAY: Okay. And then the final one, type 3 was the traditional setdown plus proposed action, plus final action?

MR. PARKER: Correct.

COMMISSIONER MAY: With regard to type 2, I don't know how the rest of the Commission feels on this, but I'm inclined to make sure we have a setdown for type 2, but I...
don't have any difficulty with going straight
to a final action there. It may be that we
take final action a little bit more slowly in
some cases. Because, you know a lot of stuff
happens between proposed and final. But I
don't have any difficulty in a type 2 review
going just a setdown and final action. And I
think no setdown and just a final action in
type 1 if it goes okay.

VICE CHAIRMAN SCHLATER: In the
chart that we've been provided, and it says
for type 1, there is no final action. Just
wanted to clarify that.

MR. PARKER: Well, it would
certainly be an option but just like the BZA
you could take action at the hearing. Just
one vote, but that could take place at the
hearing.

CHAIRMAN HOOD: I'm lost. You said
no final action type --

VICE CHAIRMAN SCHLATER: One.

MR. PARKER: In other words, no
separate meeting would be required unless you opted for it.

VICE CHAIRMAN SCHLATER: But there's no separate meeting required for us, I guess to take action now.

CHAIRMAN HOOD: So basically what this is saying you take action at the public hearing; that's what we're trying achieve?

MR. PARKER: Yes, that would be the preferred method.

COMMISSIONER MAY: But I mean even at BZA that's not an automatic.

MR. PARKER: Right. Absolutely.

COMMISSIONER MAY: So I think that your chart more correctly should show that there would be a single final action.

CHAIRMAN HOOD: Final action at least.

COMMISSIONER MAY: And it could be done at the hearing.

MR. PARKER: Right. I think the intent was final action on a separate date.
But you're right, there is final action taken.

CHAIRMAN HOOD: Right. Because if I walk in the door in a type 1, I just automatically know it's going to be, more than likely, pretty much approval in a public hearing, and that's not actually the case.

I think we need to have final action. Well, I guess as far as I'm concerned. I think that's a good point, whoever brought it up. I think it was, Vice Chair.

COMMISSIONER MAY: I think that the analysis of the approximate number of cases that fall into those categories, I think that was also a helpful thing to see. And we see that the majority of the PUDs were type 3, but there's a significant enough a number of type 1 and type 2 to make them viable methods, if you will.

CHAIRMAN HOOD: So the recommendation, Commissioners, I think Commissioner May is saying under type 2 we
have a setdown.

COMMISSIONER MAY: Yes.

CHAIRMAN HOOD: Yes. And under type 1 final action we have that option, but we want to make sure we have final action, yes. It doesn't necessarily mean that the final action will be taken at a public hearing, but we're trying to achieve mainly to get final action at the public hearing. Actually, we always try to achieve that.

Anything else?

VICE CHAIRMAN SCHLATER: Mr. Chairman, I'd just ask I think I'm okay with these three different tracks because they do represent three distinct types of cases and it's good to characterize them that way. And I think it's okay to streamline the processes.

One issue that is does raise that's not really addressed in our worksheet is how these different processes, you know what additional steps there may be that might be helpful.
and one thing I find, and I think I mentioned this at the hearing, is that in our current design review process I don't think it works particularly well. I don't get the sense that we're pushing the architects and developers very hard with respect to their designs. I don't feel like we are given enough -- I feel like there needs to be additional help with respect to these designs whether it's criteria for what actually -- if we're going to grant relief and they need this design review process, what are the criteria that the developers -- what are the hurdles that they have to get over? Do they need a more articulated facade? Do they need to use higher quality building materials? Do they need to do something above and beyond what's normally done in D.C. architecture? Because what they're all asking for is flexibility on heights, yards, lot occupancy. And if we're going to give them that, we want to get something in return.
So, the first thing I would ask is that when we have text we come up with clear criteria for how the design review is going to be judged.

And then the second thing I'd like to ask is look at best practices around the country about how design review processes work in New York City, San Francisco, Portland. Do we ask the applicant to go out and find a third party reviewer for these plans, and you get an architect? Because I would certainly be in support of that.

Do we set up an architectural review panel that provides independent third party comments on these designs? Because I would find that to be helpful. Because we need more ammunition. I'm not an architect. I'm not qualified necessarily to say what's good design and what's bad design. But sometimes when we get people who can put it into better words, that helps us.

And so I think we really need to as
part of this entire zoning rewrite, and I think it's specifically related to this option -- well it relates to all three types here, but I want to beef up our design review process so that we can ensure that we're actually getting good architecture.

I know that when we have PUDs come before us, often times they're deemed as a public -- you know, their benefits is that they're superior architecture but in fact they're not. They're supremely average architecture. So, we need to figure out a way to improve that. And I think we have a great opportunity to do that here. Let's look at best practices and try to do a better job.

MR. PARKER: If I could, you've actually hit on the one area that we haven't finished. We have one of our 20 working groups remaining, and that's the working group specifically to look at design review. And I think you've hit on the main component of that and we'll be setting up these criteria.
COMMISSIONER MAY: I just want to say I guess I agree sort of what that idea that it needs to be beefed up. I'm a little bit concerned by some of the suggestions. Because I'm not sure that we necessarily are going to benefit from seeing a peer review report or something like that.

I guess I'd be interested in knowing what some other cities do in their design reviews, and we may find simply that the design reviewers are actually designers which I'm not sure what embodies for us. But I do think that the idea that we have some criteria upon which to base decision making for granting flexibility I think would be helpful. So, knowing for example superior quality materials is one of the areas where you get some credit for how good your design is, or better use of public space. You know, better sustainability features, or things like that. You know, what's going to matter to us.

I think having that codified in
some manner in the actual language I think would be helpful. I'm just not too sure we can go too far in setting rules as a design review body.

So, that's my couple of cents on that.

VICE CHAIRMAN SCHLATER: I think I agree with that. But if our only purpose in a third of these cases is for design review, I guess we just -- I think I agree with you.

I don't know what the right answer is. I think it would be helpful to look at some best practices.

COMMISSIONER TURNBULL: I think both of you -- I think, Vice Chair, your idea is a good one. I just think that a peer review is difficult. I've been through a number of peer review setup like that, and the cost; you have to pay for the peer review period and it adds more time. I think it would probably complicate our job more than it would help, to some extent. And depending upon
who the jurors and where you get them from,
you get into a whole debate on how to pick
these people.

I mean, we've already gone through
-- we've had several PUDs where we've had a
lot of design review. I know and one of the
big issues we come at is what I would call
three dimensional design for a building. Some
buildings, whether they're in the downtown
area built up, they have an alley facade or
something, the materials definitely get
lesser. But I can remember when we had a
project on South Capitol Street right across
from the stadium and you had your South
Capitol Street facade, and then the other
three sides changed dramatically even though
there's townhouses right on the other side.
And the view is going to be looking at the
back of this building. And we were able to,
after several hearings continued on, I think
with Commissioner Parsons I think we were able
to finally get them to change it.
Again, not dramatically. It wouldn't match the front of the building. But we did get them to change significantly the back of it. So we've been able to do it in the past, but it would be nice to have a little bit more ammunition to look at these things to some criteria of some sort.

I think Commissioner May is right. I think we do need to beef up viability to do it, but we don't want to make it so complicated that it adds more to the process of it. But I agree, design review is going to be an interesting topic to discuss.

CHAIRMAN HOOD: Commissioner Selfridge?

COMMISSIONER SELFRIDGE: Thank you, Mr. Chairman.

I, too, agree with Vice Chairman Schlater's points.

On the Commission we really benefit from the expertise that Commissioner May and Commissioner Turnbull bring with their
background in architecture. But there could certainly be a time when gentlemen with their skill sets aren't on the Commission. And to have some sort of best practices or guidelines I think would be helpful going forward. I don't know if a full commission or review commission is practicable, but the idea that there be a little more guidance I think would be helpful.

CHAIRMAN HOOD: So you don't like my design reviews?

All right. You know, and I'm sitting here listening to this conversation and I'm thinking about a conversation that's been had in this city for quite a while, and that's the Planning Commission that ups from time-to-time. And that's not a best word around here for me to use, but I know that there was a lot of discussions. And that's always been the case whether or not we should have a planning commission. But, I will leave that alone.
I actually like what's before us, but I do not agree with -- I think I know where one of the ANC -- I read one letter of one of the ANC's talked about doing away with the three PUD process. I actually think this is good. With some refining, as we've already mentioned, I think this is exactly along the lines of which we should go. And I'm fully supportive of at least recommendation 1, 2 and 3 of the three types of PUDs as stated. And unless I hear objection, we can move on. Any objections with the refinements of what my colleagues have already mentioned.

Okay. Mr. Parker?

You want to hit your microphone.

MR. PARKER: Excuse me.

So action was in favor of option 1 subject to the refinements we heard? All right.

Number 2, the first option here and OP's recommendation is to basically distinguish between types 2 and type 4 through
a standard percentage above matter-of-right. So whether you're going through a type 2 or type 3 process would be determined by how much density above matter-of-right you're requesting. And we propose that cut-off to be 20 percent above matter-of-right for residential projects and 30 percent above matter-of-right for commercial projects. These numbers, basically, represent what the average differential is now for when people apply for PUDs and what's available within the same zone.

Option 2 would be to have a standard percentage, but some other standard than what OP has recommended.

And option 3 is not changing the existing process.

CHAIRMAN HOOD: Any comments for discussion? Commissioner May?

COMMISSIONER MAY: I would just say that I'm not completely comfortable with the percentages at this point, but I think that
for a starting point I think that's fine. I think it's going to be part of a continuing discussion.

I guess, you know often with these things it's hard for me to grapple with them in only a theoretical or a statistical kind of way. And it may be that we need some case studies that show us massing of things or what have you that show what the net effect is of adding these percentages would be. But as I said, I think that option 1 is okay because we're just trying to set a direction at this moment and I think that we can further refine numbers. And if we have the percentages need to be a little different, we can sort that out as this moves forward.

VICE CHAIRMAN SCHLATER: Mr. Parker, the additional OP data in response to Commission request provides a chart for us. It corresponds to page 8 of the PUD report. Those are the proposed FAR amounts by zones?

MR. PARKER: For residential
VICE CHAIRMAN SCHLATER: For residential projects?

I think what would be helpful, and I guess what was in my head when we asked for this, is that you compare that to what the existing limits are in one chart?

MR. PARKER: I certainly now.

VICE CHAIRMAN SCHLATER: So that we can just see, okay, today 1.0 is allowed, in the future 1.4 will be allowed, or whatever the amount is. It's just it would be helpful to see where the greatest changes are occurring in which zones.

I'm okay making the increase a standard amount. I'd like to see that chart to understand whether 20 percent or 30 percent, 40 percent is the right amount.

MR. PARKER: Certainly.

CHAIRMAN HOOD: Anybody else?

So, I think we're looking at option 1, but I think there's some uncertainty of the
percentages. am I right, Commissioner May?

Okay.

COMMISSIONER MAY: We'll proceed with option 1 and revisit the percentages at the time of text, okay?

CHAIRMAN HOOD: Okay. Let's move right on.

MR. PARKER: Number 3 is setting a lot size minimum for each type. And this would largely be based on the existing lot size minimums.

For type 1 in low and moderate density residential zones, R-1 to R-4, it would basically be a two acre minimum. And in commercial and higher density residential zones there would be no minimum. Again, this would keep you from doing a design review for single family homes and flats and small apartment buildings, but would allow it for commercial corridors and larger residentials.

For type 2 and type 3 these basically aren't applicable in the low and
moderate density residential zones because we don't use FAR in those zones so there's no such thing as bonus density in those zones. In the other zones the limit would be what it is now, 15,000 square feet.

And option 2 if for you to set other limits as you desire.

CHAIRMAN HOOD: So we have two options, option 1 and option 2. Any comments?

OP is recommending option 1.

VICE CHAIRMAN SCHLATER: I apologize, but I can't read actually on the worksheet. There's a chart under this question. And I read the second and third rows, but I can't read the first row.

MR. PARKER: I apologize.

There's nothing in the very top left, but the next three columns are type 1, type 2, type 3.

VICE CHAIRMAN SCHLATER: And the Commission has the option, as we do now, to waive these minimums if we so choose, correct?
MR. PARKER: That's true. And in recommendation 4 that we'll talk about next is actually the criteria for those waivers.

VICE CHAIRMAN SCHLATER: Okay. I'm comfortable with this, Mr. Chairman.

CHAIRMAN HOOD: Okay. Anybody else, comments? Okay. Thank you. We will move with option 1.

Let me ask, what is 2 AC?

MR. PARKER: Two acres.

CHAIRMAN HOOD: Oh. It must be getting late, close to my bedtime. Okay. I was thinking Atlantic City.

Okay. Mr. Parker?

MR. PARKER: So number 4 actually is, as we talked about, the criteria for waiving those lot size minimum. Right now there's just general criteria. What we've proposed is adding some potential categories of criteria that the Zoning Commission could use to waive that, including redevelopment and consistent with the small area plan,
government projects, or in fill that is compatible with its surrounding development.

Option 2 would be to just ignore it, leave the criteria as they are now and/or add additional criteria as you see fit.

VICE CHAIRMAN SCHLATER: Would the regulations say, would it be, I guess, the Commission may waive? What are we looking at in terms of --

MR. PARKER: I don't have the language in front of me, but basically it says. That the Commission may waive up to 50 percent of the lot size minimum, and right now again it's under general criteria and we would add these as things that the Commission may consider in waiving.

VICE CHAIRMAN SCHLATER: By 50 percent?

MR. PARKER: That's the existing standard. We hadn't proposed changing it. Oh, we have. No reason.

VICE CHAIRMAN SCHLATER: I don't
know what we wouldn't just maintain flexibility on that point. I don't know why 50 percent is a magic number.

MR. PARKER: I'm sorry. We can take away. Fifty percent is the existing number.

VICE CHAIRMAN SCHLATER: I understand that.

MR. PARKER: We can change that number.

VICE CHAIRMAN SCHLATER: In my mind--

MR. PARKER: Okay. Understood.

CHAIRMAN HOOD: Is everyone in agreement? I don't want to get into 50/40.

Okay. So, as we stand now we will go with option 1, I believe. Any differences?

Okay.

Thank you, Mr. Parker. Let's move on.

MR. PARKER: Okay. Option 5 is another big paradigm shift. Basically again, from our best practices what we learned is
that other jurisdictions in the country don't
do their public benefits acceptance through
just negotiation and proffers. They actually
define a list of what they want to see as
public benefits in their PUDs. And that's
basically the crus of number 5 is codifying a
list of acceptable public benefits. And OP's
recommendation for standards for things being
on that list being that they must be
measurable and specific, cannot include
monetary contributions with the except of
District Housing Fund, and should last for the
life of the project unless specified.

In the hearing we had a proposed
two page list of ideas. This is still -- you
know, between now and text we're going to put
a lot more into that, but that was to give you
an idea of how that list would look and how it
would work.

CHAIRMAN HOOD: Okay. I remember
we talked about this, and I just want to make
sure. We talked about not giving monetary
contributions. We didn't necessarily say not
give them, we said give them with direction or
instead of giving the money, give the
contribution. Is that what I think? Ms.
Steingasser, I think you elaborated on that
for me.

MS. STEINGASSER: We did. We talked
about money could be given to a particular
program as long as the Commission had
assurance of how it would be spent, or they
could just buy the item. So instead of giving
to a little league, they could just buy the
uniforms.

CHAIRMAN HOOD: Okay. Gotcha.

COMMISSIONER TURNBULL: Mr. Chair,
just sort of following up on your question. So
that doesn't eliminate material or
"construction"?

MS. STEINGASSER: Oh, no. It
encourages material and construction.

COMMISSIONER TURNBULL: Okay. So
they could build something, provide something
but just not cash.

MS. STEINGASSER: Right.

COMMISSIONER TURNBULL: Okay.

CHAIRMAN HOOD: Anyone have a problem with option 1?

COMMISSIONER MAY: I just want to touch on a couple of points that relate to this.

We got into the discussion with regard to public benefits having to do with the extent to which they need to accrue to the immediately effected community. I don't see that addressed here. And, you know, I think there is an obligation to do that; that's been our practice and it was one of the subjects at the hearing. So, I'd like to determine a direction by now as we head towards developing the text here.

CHAIRMAN HOOD: You mean as far as-

COMMISSIONER MAY: Well, I mean in other words, I think there is a specific
obligation that the benefits substantially accrue or something like that to the immediately effected community.

CHAIRMAN HOOD: Right.

COMMISSIONER MAY: And we need to have language that reflects that intent in some manner.

CHAIRMAN HOOD: Okay. I think we've so noted on what he said. The effected area should be the one --

MR. PARKER: It's just a matter of how we want to effectuate that. I think our answer was of our list of benefits something like two-thirds of those that were available benefits accrue to the local community. We didn't necessarily want to tie the hands of the Zoning Commission or the developers to say you must pick two-thirds of the development that do because there might be neighborhoods that don't need things off that that want more general things.

VICE CHAIRMAN SCHLATER: I think
you list the contributions to a District housing program as an example. I could imagine a project being done downtown that decides to contribute $5 million to the Housing Production Fund, and I don't think you could make an argument that that benefits the immediate neighborhood. But I think I would look favorably upon that.

So, I don't think it needs to be a hard and fast rule that it accrue directly to the neighborhood. That's my thinking on that particular point.

COMMISSIONER MAY: I don't think it should be a hard and fast rule, but I think that there should be an intention when we're granting this increased benefits to the property owner in some manner, that there be some immediate attention in the neighborhood. Now in some circumstances it may not be as important as in others. But I think that emphasis and an intention to do something that benefits the effected community I think is an
important thing to express at this point.

And I think simply having a chart
with point values on it, of which many are
local, I don't think that's enough. I think
that we need to have some sort of incentive or
encouragement, or statement about the
intention that there be a local benefit. I
think it needs to be explicit.

I don't necessarily want our hands
tied.

MR. PARKER: So an intent statement
in the code prior this section or --

COMMISSIONER MAY: I mean if we
could do something that's more than intent,
that would be great. But retain flexibility.

MR. PARKER: Is it a matter of just
valuing local benefits higher?

COMMISSIONER MAY: It very well
could be.

CHAIRMAN HOOD: Let's do this: We
actually had a case like that, and I can't
remember what the local benefits were. But
let's take a real example. And I can't remember, because I'm getting ready to go on a limb here. The Watergate case. That was a live example where the affordability, which I know a lot of people frown when I ask for the affordable housing component that was supposed to be on site at the time, and it was off site. It was in another ward versus what the neighborhood got. And I'm not sure exactly how that panned out.

But let's take a live example, and I think that kind of ties in to what Vice Chairman Schlater is saying about the Housing Production Trust Fund. Because there have been cases where I think, I want to say a million dollars, but I'm not sure. I thinking that case it was a million dollars. And also, I'm not exactly sure if the neighborhood got it.

I kind of agree both. Let's just find out how we get there. Let me open it up to Commissioner Turnbull.
COMMISSIONER TURNBULL: Yes. I guess maybe OP could think about it and provide some options.

I mean, I don't want to get caught in a rigid percentage formula, you know like 75 percent or 66 percent. But I think we might like some direction on how we could weight on this, and maybe if there was some language in there that the Zoning Commission can waive those things depending upon a condition that we have the ability. But, there should be some standards, I think. But I'm not sure and we look to you to try to come up with some ideas on how to structure that.

MR. PARKER: We'll certainly put some work into it.

Another difficulty, not to make excuses, is everyone's opinions differ on what is something that accrues to the local community. But we'll certain work on that.

COMMISSIONER TURNBULL: That's true. You know, I don't think it's an easy --
I think Commissioner May and the Vice Chair both got some very good points that need to be massaged so we have a direction on this.

I think I'm persuaded to have more money or more of the amenities focused on the area where the project is, but I also see the point of the expanded view of the whole city where the community at large is benefitting too. So I think there's a little bit of play there.

CHAIRMAN HOOD: Commissioner Selfridge

COMMISSIONER SELFRIDGE: Thank you, Mr. Chairman.

I think like so many is saying the devil's in the details, how do you get there? And I just come back to the idea of the point system and a point that Vice Chairman Schlater made. We're setting the system up to be gamed perhaps a little a bit. And how do you really make a qualitative judgment about these public benefits, particularly if you have a point...
system in place and somebody hits that number, if it's 20 points or 25 points.

I would almost be more comfortable opening it back up and stepping back from these rigid requirements and leaving the discretion with the Commission to maybe make these judgments with the input of the community, as they're the people who are really going to be able to tell us whether or not there's some benefits that are accruing and if it's sufficient for the local area.

CHAIRMAN HOOD: That's a very good point, Vice Chairman Schlater.

I know these kind of go hand-in-hand with public benefits and then we're talking about this value system. We're kind of trying those together. And I know they go hand-in-hand.

Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Yes, just piggy-backing on Commissioner Selfridge's point. I think when you do go through the
list there are some things that people are
going to disagree on whether they're valuable.
And I know you've said we can tweak the point
system as we go along, but I am worried that
people are going to use this as a menu and
they're going to cherry pick, and they're
going to look an they're going to say "How can
I as cheaply as possible get out of this PUD
process? And I'm just going to go through
each one and, oh, I've already got some tree
canopy, so I'm going to take that point. I've
got do LEED anyway, because that office
buildings are almost required to do at this
point. So check off, I get points for that.
And I was going to provide retail in my
project anyway, so that's good. We're done
with that one,"

Here's what I like about the list.
I like that a lot of things are specific,
measurable and lasting. I have a problem with
a lot of the PUD amenities that are put
forward that are gone the day after the money
is put in. So, if it's overhead, general and administrative expenses for a nonprofit, I think however worthy those nonprofits are, and I think most of the ones that do get money are extraordinarily worth, I don't think that's what we're trying to get at with these proffered benefits and amenities. These are projects that are going to be around for a 100 years. We want to see items that are going to last a similar amount of time so that future generations will benefit from these benefits and amenities.

And I think it's important that when we come up with these benefits we look at it through that lens, which is are these proper benefits and amenities going to be around 50 years from now?

I'll get to the point system when we get to that. Because I think whether or not you create a specific list of measurable public benefits, it's pretty much tied to the points system. I think I have some problems
with it.

CHAIRMAN HOOD: Okay. Anybody else?

And one things that I like about it is bullet point 3: Should last for the life of the project unless specified. I really like that. So that gets me through that.

So, any other comments on number 5?

So are we asking, Commissioner Turnbull, for a little more massaging?

COMMISSIONER TURNBULL: Yes. You know, I guess the point system I think is one way of doing it. I'm not opposed to that. I'm just concerned that like LEED, architects and engineers can work the LEED point system too picking the very low hanging fruit. So at one point you're LEED certified, but you really haven't done a hell of a lot.

So, you know I'd just say be careful as we go through this and as we start to have a workable process involved in this. You know, I'm not sure what you replace that
with. I mean, I think the point system is still probably the way to go, but I would look carefully at how you structure it.

CHAIRMAN HOOD: Commissioner May?

COMMISSIONER MAY: I would agree that we have to be careful on how this gets structured. I think the idea is very useful. There have been many PUDs we're we don't have a very strong sense of whether it's adequate or not, and it's hard to judge. I think we've gotten better about that over the years that I've been here. But it still, I think, can be codified in some way. And I think that we need to make sure that there is some structure to it, but there's also some flexibility to it. Because we may well faced with a project where it's essentially all just low hanging fruit for the developer and they're getting off easy. And, you know, we may want more in that circumstance, or the opposite could happen. It could be an onerous burden to try to incorporate some of this stuff into something
that's smaller or has significant other benefits.

I think it's a yes, let's go forward, let's come up with a system. But it's a cautious system and it is kind of dependent on what we wind up with. And I think there's got to be a significant community input on that. And, of course, I also think there has to be local benefit to much of whatever benefits are established for a given project. Just getting lead points and those sorts of things are not enough to help the immediately effected community.

CHAIRMAN HOOD: Okay. Commissioner Selfridge?

COMMISSIONER SELFRIDGE: Mr. Chairman, I want to reference a letter we have here that speaks to this. I don't know if it belongs in 5 or 6, or they're kind of running together here. So, I'm just going to talk about it.

It's from ANC 6B, my ANC actually,
on October 13, 2010. And the ANC basically says that it would support the revision for the PUDs with the added provision that the Zoning Commission be specifically authorized to require additional public benefits if it believes the packaged offered by the developer is not sufficient.

And then skipping down it says:
"We believe the Zoning Commission should have the power to expand the public benefits package if requirement. The Zoning Commission already has the power to put in other changes and restrictions; it should have this power as well."

So, I think ANC 6B maybe has some of the same concerns we do about this being a little too prescribed.

CHAIRMAN HOOD: Okay. I actually looked at that letter also and for so the second paragraph I have a question mark and the third paragraph I have "Not sure." And I actually sat on that particular case. And I'm
not sure. It leaves open for, I think, some additional massage and maybe a valid point.

I just think that we could -- if my colleagues agree, we can go with option 1. I think Mr. Parker has heard some of our concern and he can maybe massage is the word I think that we're using. Right, Commissioner Turnbull?

COMMISSIONER TURNBULL: Yes. Correct.

CHAIRMAN HOOD: Thank you. So I think he's heard all of our concerns and issues with the broad range. And I'm sure that he could maybe by that time kind of fine tune this and refine this a little bit for us.

So, if we say option 1 with all the refinements and comments, and we go along with that, Commissioners? Okay. Thank you.

Now, let's move right on, which we kind of elaborate somewhat anyway this point system, the value of the benefits. Let's right on to six. Mr. Parker, do you have
anything to add?

MR. PARKER: No. I think you've already got started down the path of number 6.

CHAIRMAN HOOD: Okay. Let's talk about this value system, and I think it was -- who mentioned it first? Somebody started talking about it, actually.

VICE CHAIRMAN SCHLATER: I did.

CHAIRMAN HOOD: Oh. Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Thank you, Mr. Chairman.

I think I've raised my concerns, which is cherry picking. In the hearing I think I did mention the possibility that this would be used a floor so you'd have a point system, you'd have to clear that hurdle in the point system and the Zoning Commissioners could determine whether it's appropriate to ask for more. And so just by clearing the point system hurdle wouldn't mean that you had met the test at that point. It's just a bar
that you have to clear and just to demonstrate that you are providing benefits and amenities. And I think that's a road that I would be willing to go down.

I think the point system needs to be carefully evaluated. I think each item instead of -- well, in evaluating each item on the scorecard, I think you need to place a dollar value, frankly, on each of them today so that you have a sense of whether -- because this is exactly how people are going to be evaluating it when they go through. They're going to say "How much money is this going to cost me?"

And I think it's also very important when you look at these items if they're already required for some reason or another, you shouldn't be getting credit for it. So I think of the Green Building Act requires that an office building pulling a permit in January 2012 has to meet LEED Silver criteria. So, I don't think they should be
getting two points of credit for meeting that
criteria. Or, if you're required to provide a
certain amount of retail, you shouldn't be
getting credit for that.

So, with those caveats I would say,
look, try to appropriation some dollar value
on it and that will give you sense of whether
you're weighing the point system properly.
Like, bike racks aren't that expensive
compared to affordable housing, yet they're
getting a similar amount of points.

So, I think we just need to take a
careful look at it.

And then the other thing is we just
need to have the flexibility if a different --
if there's always going to be something dreamt
up that's not on your list in your menu, and I
know that's addressed somewhere in your
report, but if the community developer agree
that something that's not on the list should
be provided and it meets all the tests that
we've set out for these benefits an amenities,
it should be allowed to be included and given
certain point value.

    I think that's it for me.

CHAIRMAN HOOD: Any other comments
on the point system?

    Let me just say one thing. When I
look at the point system, I think I kind of go
along with Vice Chairman Schlater to some
point. But where I think we're departing,
case in point and I like live example. When I
look at park maintenance for me, when an
applicant comes down and in front of this
Commission and talks about they want three
points, they have adopted a park, and it's
stated here in the list, and they're adopting
a park is putting up a sign. That's how they
have adopted a park. I don't think that's
three points.

    I mean, from my standpoint I don't
think that's three points. I think we need to
fully flush out how you have adopted the park.

    How long are you going to help maintain the
park in collaboration or cooperation with the community? Are you going to do it for two years? And I think that's when we start getting to that full three points. Because just to put a sign up I don't even think is worth a point. So that's how I look at this point system, and I may not be looking at it like my other colleagues are, but that's how I envision this point system. Because I will not be inclined to give anybody a point for just putting a sign up and say I adopted park.

I need to know how you're going to care for that park, how you're going to work in collaboration, what kind of greenery are you going to buy for that park. What are you going to do for that park? How you going to help the neighborhood keep that park up? And kind of like what we do now. And then I would be willing to maybe give them points, or maybe 22. So, anyway, that's my three cents worth.

Any other comments? Commissioner May?
COMMISSIONER MAY: Yes. Well, I would agree with, believe it or not, both what Vice Chairman Schlater and the Chairman has said in this regard. And there is a lot more to adopting a park than putting up a sign.

I would say also -- I mean, this isn't really covered here but I want to mention it before it gets away from me. But along the lines of what Commissioner Schlater was saying, you know where there are certain things that you might be required to do anyway, like LEED Silver or what have you. Along the same lines, some of the things that a PUD, some of the actions that a developer may have to take on a PUD may not actually be considered a benefit, but actually a mitigation from a specific impact from that project. I mean things like traffic lights, for example, come to mind for me. And there's costs associated with those, but they may be necessary simply to deal with the traffic impact of a project. And I think we need to
make sure that it's well defined and that there is language in the regulations that items that are included in the project as mitigation for specific impacts of the project should not be considered benefits.

CHAIRMAN HOOD: Commissioner Selfridge?

COMMISSIONER SELFRIDGE: I just wanted to reiterate the idea that I remain concerned that this is going to be we're getting the minimum in public benefits. We're almost negotiating with ourselves here. We're giving a list of things they can get, and potentially developers could do the bare minimum and that would be all, and we would be powerless to ask for or compel more. And I guess that that's a concern that if we don't end up with less than maybe we would have anyways through the regular process.

COMMISSIONER TURNBULL: Yes, Mr. Chair. I guess I would look at it that leaving the threshold point on a point system doesn't
guarantee you from my standpoint, approval by
the Zoning Commission of your project. I
think it gets you a seat at the table where we
get to we get on the route to getting there,
but it doesn't necessarily mean you
automatically are going to get approval by the
Zoning Commission.

I think, as all the other members
have said, you know whether it's mitigation
factors or other issues, there's a lot of
things that come into play. And I think we
need some standards that we can work from, but
I think that just meeting the standards isn't
necessarily it.

As I said before with the LEED, you
can meet the very minimum LEED standards
fairly easily. But is that really what we
want?

So, I'm not sure if that maybe is
not giving much direction to the Office of
Planning, but as I say, I think once you get
to that threshold you're at least in the range
of getting a meaningful project, a meaningful PUD. But there's got to be more to it than just simply meeting those levels. We have to begin to look at a lot of different factors.

COMMISSIONER SELFridge: I agree with Commissioner Turnbull. It'd be interesting if that was clearly articulated that that's maybe even the minimum, that that's where you start. And I think that you need to set an expectation in terms of how the Commission is going to view that when somebody hits that minimum threshold that it's very clear that that's not what it take to meet that criteria. But that gets you on the road towards maybe satisfying the requirement. But, I think it's important to articulate that that's not where the process ends, but that's where it begins.

CHAIRMAN Hood: I think we still would have the opportunity even if we did a numbering system to use a word that I've used previously, and Vice Chairman just used today,
you're package is weak. You know, you might have the points, but when you specifically spell it out -- I keep going back to the sign in the park. You know, if that's all you're doing, your package is weak. And I think this Commission can kind of do kind of what we do now, evaluate.

But I take Commissioner Selfridge's point to heart, and I understand exactly he's saying. And we don't want to sell ourselves or the community short. But I'm willing to kind of equate these numbers and everything just with my park example. And I may be looking at it differently or looking at -- I may be out of school, but I believe that's how I think it would work. I'm not sure.

MR. COCHRAN: I think that when we were trying to develop this system, there might be a slight misunderstanding. We weren't trying to relate points directly to density. That would be inappropriate and probably illegal.
What we're trying to do is come up with an approach that will give some predictability and consistency to you and to the community so that when we're, say, tallying up points it gives you the ability to relate, for instance, what you've done in a project with a certain number of points in the past to what you might want to be doing with this project that has a similar or remarkably different number of points in the present. So that you have some ways of gauging consistency of your own actions when it comes to how much bonus density there might be, whether here's how much bonus density they're asking for, do they have fewer or more proffers of quality than a similar project that asked for this much density gave you.

It's not meant to be a if you give us this, we'll give you that. No. I think I explained, it's to help guide you.

VICE CHAIRMAN SCHLATER: Question.

Is there going to be one point value for type
2 and type 3 projects in each zone that you have to clear no matter how much additional density you're aiming to achieve?

MR. PARKER: I think anything's on the table right now. We've talked about a couple of different ways of doing it. Through the working group we talked about setting a threshold. So if you just had to accomplish 20 points if you were going to do a type 2 project, and then you could do your type 2 project.

We also talked at various stages about 20 points equaled 20 percent. So if you were only going up 10 percent, you only had to ten points. So, I think we're open to your guidance on how you want to proceed and how we should envision the system.

VICE CHAIRMAN SCHLATER: Okay.

CHAIRMAN HOOD: Commissioner Selfridge, you want to add something? Okay.

COMMISSIONER SELFRIDGE: I feel like this was said, but just the idea that
different amenities have different values to different communities. You know, I feel like this was said, so if I'm piggy-backing on someone or stealing that, I apologize.

And I know a lot of work has gone into this. I understand the idea. I don't think we mean to minimize it, but just the difficulty of getting the details of it. If it means more to a certain neighborhood, how does it -- you know. An outdoor children's play area, I could see certainly in some neighborhoods where there's a high concentration of children and there's maybe a lack of facilities, that that would be extremely valuable. In other neighborhoods, you know it wouldn't. So, I don't know, how do you kind of weigh those differences?

MR. PARKER: I think the answer to that and the goal of the system is to get away from a straight negotiation where coming into the hearing nobody knows what the outcome is going to be. I think the goal of this system
is to get to a point where we've set a good value threshold for how many points we want to see for a project of X density, and we have reasonable values on the various public benefits and amenities. And I think what that means is a lot of work both up front and on an ongoing basis into making sure that the list is right. Making sure that if neighborhood X puts more value on a certain amenity, that we increase the benefit of that or increase the value of amenity in that area, in that Ward, in that ANC. And there's a flexibility to do that.

I think what we should try and stay away from, though, based on what we've seen around the country and other jurisdictions is just using this as guidance, and just saying well, you know, come in and we'll tell you what more you have to do. That doesn't give the predictability, the clear guidance of what needs to be done up front, which is sort of what this is getting at.
I think the goal of this is to put as much work in up front and on an ongoing basis on getting the list right and the number of values right so that there is predictability so that you don't have to spend a lot of time negotiating each and every project.

CHAIRMAN HOOD: Okay. Vice Chairman?

Okay. Let me try this. Let me see, is there anyone who would like to go option 2 where it says do not create a point system to relate density to public benefits? Does anyone favor that? Okay.

So, we're only in favor of option 1, but taking into consideration our comments that we made. I'm sure that's telling you exactly what we want.

Okay. Well, good. I hope you understand it. All right.

MR. PARKER: I don't know if I do
understand it. I understand that everyone's in general in favor of option 1. I guess what I might take away is we're going to put a ton of work into what the list should be, what should be in it, what the values should be.

The one question I have remaining is is the sense of the Commission that we should have a threshold for a type 2 and a threshold for type 3 or there should be more of a valuation scale? I know we heard some comment at the public hearing.

If through a type 2 I can get 20 percent extra density but I only need ten percent, do I have to do the full 20 points or can I do ten?

VICE CHAIRMAN SCHLATER: Here's my two cents on that. I think there should be a starting amount where you should have to provide 20 points if you're going to go through the PUD process. And then the more density you're requiring up to the maximum, you would increase the amount of points.
I can't tell you exactly off the top of head what the scale would be, whether it would be start at 20 and you end at 40 or you start at 20 and you end at 60; I'm not sure. But I think there should be a hurdle you have to get over, and I think it should increase as more density is granted. Because we have had a few PUDs that come through that don't ask for a lot of extra density and I think we have evaluated -- I mean, I think if you look at the current standard for evaluation of PUDs, it would say that if you're not granting a lot of additional density, it's okay to have a lighter benefit than amenities package. And I think that I personally would be in favor of continuing that.

CHAIRMAN HOOD: Does that help you?

Does everybody agree with that? I don't know if I agree with all of it, but that's a starting point. It's a starting point?

MR. PARKER: That's a starting
CHAIRMAN HOOD: Thank you for getting us started, Vice Chairman Schlater. I can probably add to that, but not tonight.

Okay.

MR. PARKER: Recommendation 7.

CHAIRMAN HOOD: Recommendation 7.

MR. PARKER: All right. This is to add a step for the type 2 and type 3 processes prior to application. So basically this is saying that a developer interested in going through a type 2 or type 3 process would be required to submit the application first to the ANC and allow the ANC up to 45 days to schedule and hold a public meeting of the ANC. The developer and OP would then attend that meeting.

At the end of 45 days whether a meeting had been held or not, the applicant could then submit their application and they would submit along with their application any correspondence, any information that came from
the ANC as well as detailing any changes that they made as a result of this community interaction.

Option 2 we could adopt some sort of different process based on your feedback. And option 3 skip it altogether and keep with our current just ten day notification policy.

CHAIRMAN HOOD: Okay. I'm going to start off on this one. I have a question. You said after an applicant submits to the ANC and after the ANC reviews it, then the applicant and I guess Office of Planning and the ANC have a meeting. Whether they have it or not, then the applicant can then send us the application.

MR. PARKER: In other words, an ANC can't kill a project by just refusing to hold a meeting. So the developer notifies the ANC. The ANC has 45 days to hold a meeting. The ANC can choose not to hold a meeting, or they can even notify the developer and the OZ that
they have no interest in holding the meeting, the applicant could file sooner. But under no circumstances does the developer have to wait longer than 45 days to submit their application if the ANC chooses not to have a meeting.

CHAIRMAN HOOD: Well, I'm going to tell you, I can understand if the ANC chooses not to hold a meeting. I could go along with that, and they come down and tell us the ANC wouldn't set them up for a meeting. But what I can't understand is a developer who is going to do something in the community not wanting to be a good neighbor and hold an ANC meeting. So, I can tell you, that second part is going to be very difficult for this Commissioner to go in that direction.

I think at some point it needs to be a specific reason, or a very good reason actually for any developer not to want to hold a meeting in a community. First of all, probably in which they don't live in. And the
reason I don't understand why they don't want to meet with the existing folks who live in the neighborhood.

So, I mean, the first part I can understand. And if the ANC pushes back, you're right the applicant should come down here. But if the ANC is open to it and the applicant just say I don't want to go to the ANC.

MR. PARKER: Well, let me clarify. This requires them to.

CHAIRMAN HOOD: It requires them to go, but you also I think the second part -- unless I misunderstood it. I'll take it. But you said that the applicant also can choose not to go.

MR. PARKER: No. No, no, no. The applicant can submit whether or not the ANC chooses to hold a meeting.

CHAIRMAN HOOD: Okay. I got that.

MR. PARKER: But if the ANC holds a meeting, the applicant goes to the meeting.
CHAIRMAN HOOD: Okay. So the only way they don't go to the ANC is if the ANC chooses not to hold a meeting?

CHAIRMAN HOOD: Okay. We're all right. Okay.

Any other questions, comments?

And I will tell you that I saw some comments about going to the civic associations. And I don't have any biases, I'm a civic association president myself. But as I looked at that, I saw the confusion it probably would cause.

I know I think one of the other civic associations or groups asked that it also go to the community organizations. I would suggest, and we need to make it known that maybe the community organizations needs to work with their ANC. Because the ANC is a formalized elected body in this city. And I saw that way of doing it in that fashion as to not confuse everything. Because I will tell you, I see a lot of times groups start up for
different cases.

But the other thing is, one of the things that was mentioned also about party status. And I don't know if this is the right time. But we really need to look at that, the party status process. And after saying not going to the other communities groups, and this is something that just didn't start with the zoning rewrite. This has been out there for a long time about early potential of granting party status. Maybe we could do it at setdown, or something of that nature. And I don't know if this is the right time to input that, but I think that's something that we need to consider, at least I would like to see it before we come back.

But I'll open it up.

COMMISSIONER MAY: Mr. Chairman, that's exactly the point I was going to make. I think that there has to be a process or there should be a process for establishing party status in advance of PUD hearing dates.
And I don't know how you get it integrated in here, but we have meetings frequently enough that we can take up party status applications for upcoming hearings as part of the meeting process. And, you know, take them up at that point and get people some advance ability to make their case.

You know, I've been a party in a zoning case before as part of a group. And--

CHAIRMAN HOOD: Well, how were you treated? Were you treated pretty good?

COMMISSIONER MAY: I was treated wonderfully.

CHAIRMAN HOOD: Because I remember that case.

COMMISSIONER MAY: Yes, I know. But it would be disappointing after all the effort that we put into that particular case to come to the hearing on that night and being told that we'd get just five minutes and we wouldn't have the rights of a party. I mean, we were a party in support, which was
relatively unusual. All we got was 20 minutes instead of five. So that was the only substantial benefit. But I'm sure it's the same for other people.

I mean, there's a lot of effort that goes into making your case in support or in opposition to a particular PUD. And knowing whether or not you're going to be able to act as a party I think is a really big thing. So, there has to be a way to do it in advance.

CHAIRMAN HOOD: Any other comments?

VICE CHAIRMAN SCHLATER: Mr. Chairman?

CHAIRMAN HOOD: Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Mr. Parker, you're saying that the type 1 projects would not need to go through this extra level of community input?

MR. PARKER: Correct.

VICE CHAIRMAN SCHLATER: Because
they're only design review?

MR. PARKER: Correct.

VICE CHAIRMAN SCHLATER: And that's because -- what's the logic behind that?

MR. PARKER: Well, I think the logic is these are not projects that are asking for any additional density. These are not projects that are proposing necessarily to have any additional impact. These are projects that are looking -- they're basically special exceptions. They're looking for a change in their building envelop without adding additional density. And it's a design review.

I guess it would be similar to requiring an additional step for special exceptions. But it could be useful in cases, but the whole goal of setting up this is to create a quicker, more mainline process.

VICE CHAIRMAN SCHLATER: They're going to have to go down to their local ANC anyway, right? Because once we set it down
for public hearing, we're going to be looking for ANC input. They're going to go down to the ANC, hopefully get a favorable letter. So if they're already going there, might these projects not benefit from going there a little bit earlier so that the community is notified?

Sometimes we find that these ANC reviews, the timelines are pretty tight in terms of their ability to look at a project and comment on it insightfully. And so, I don't know.

I think that more community input is definitely an admirable goal, and I would be open to extending it to all different type of PUD projects, not just type 2 and 3.

CHAIRMAN HOOD: I actually would agree. So we're all inclusion I think it's type 1, right? Yes, I would agree. Because when I heard the word "special exception," we go now for special exceptions so why would we change it? And I understand, that's just what it is, a special exception.
All right. Anything else? Anybody else? So we're going with the option 1 with just the comments.

MR. PARKER: I'm hearing option 1 but have it apply to all three types.

CHAIRMAN HOOD: All three types, right. Okay.

MR. PARKER: All right.

COMMISSIONER MAY: And a process for establishing party status in advance?

MR. PARKER: Actually, I think that's larger than just PUDs. That's all. We're going to be talking about that with the Administration Enforcement recommendations that are coming to you in a month or so.

CHAIRMAN HOOD: Okay.

COMMISSIONER MAY: Okay.

MR. PARKER: That's all contested cases.

COMMISSIONER MAY: Okay.

CHAIRMAN HOOD: Okay. Let's move on.
Number 8 extension and expiration of PUDs. This is a recommendation to adopt time periods. So right now PUDs are eligible for two years and they can have, I believe, an unlimited number of extensions. The proposal here is two year approval limit for PUDs and up to two year extensions.

We did hear at the hearing, you know there may be an issue with legal cases that extend beyond six years, and we're open to reconsidering the number of extensions or the length of extensions.

We also have a list of additional criteria for extensions as part of this recommendation.

CHAIRMAN HOOD: Vice Chairman Schlater?

VICE CHAIRMAN SCHLATER: Thank you, Mr. Chairman.

I think this is a great approach, particularly in the type 2 and type 3. I think limiting the number of extensions is
appropriate. I think these get stale after a
while and it's important to provide those
limits.

The only question I have with these
type 11s, I can understand how they go through
a different process. It's a different level
of review.

I think you may want to have a time
limit on that approval, say ten years, and
just leave it at that. Because they'll get
stale too eventually.

MR. PARKER: Okay.

CHAIRMAN HOOD: I kind of like that
ten years. I know a former colleague, Mr. Herb
Franklin, he always thought ten years was long
enough for any PUD. Hopefully, he's watching.
He would be happy after ten years we're
getting this thing right.

Any other comments? Any other
comments?

So, we'll go with option -- what
was that, option 1?
MR. PARKER: Option 1 and with the change that the original approval for a type 1 would be ten year with no extensions available.

CHAIRMAN HOOD: Okay. Let's go to number 9.

MR. PARKER: Number 9 post-hearing filing requirements. This is adding some things that will make administration and enforcement of PUDs a lot easier.

Prior to proposed action, and again proposed action just applies to type 3s, prior to a proposed action the applicant must provide a table showing the proposed benefits, the number of points earned for each benefit and how the standard for each benefit is met.

Prior to final action the applicant must provide in the case of a type 2 that benefit information, but also full and comprehensive set of updated plans, the table showing all the approved benefits with a time table of when they'll be provided, and any
other documents required by the Zoning Commission.

So basically, this helps with the final order writing making sure that all the documents that are in the final order represent what the Zoning Commission approved rather than what was in the original packet.

CHAIRMAN HOOD: Any comments?

Okay. I think we can go with option 1.

MR. PARKER: Okay.

CHAIRMAN HOOD: So you need conditions of enforcement.

MR. PARKER: The final recommendation is just dealing with how the Zoning Administrator deals with PUD conditions. You'll well aware that there have been instances of PUD conditions that could be met and had to be modified and changed. And basically what this would do would allow the Zoning Administrator in the case where a condition had not been met by the time of the
C of O and the standard should be that they all should be met before the C of O is issue. If for some reason for good cause a condition hadn't been met, the Zoning Administrator could issue a temporary C of O for six to 12 months. The applicant would have that time period in which to finish that condition. If it hadn't been met by the expiration of the temporary C of O, the applicant would have to come back to the Zoning Commission to amend their application to change their benefit list to provide an equivalent number of points in some other way.

CHAIRMAN HOOD: Okay. Anyone have any problems with option 1?

COMMISSIONER TURNBULL: No. I guess what I wanted to -- are you also trying to cover modifications of a PUD that the Zoning Administrator can get into?

MR. PARKER: Not here. Actually what this would be would create sort of a new modification where if an applicant couldn't
meet their condition for some reason, you know they proffered to plant tress and the ground washed away, basically they would do a modification to change their benefit list. So this would sort of be a new. But different types of modifications wouldn't be effected by this recommendation.

COMMISSIONER TURNBULL: Okay. I mean, I guess I get -- because right now I think the Zoning Administrator can basically do -- I think in the Regs there's four things that he's covering that he can make a modification. And other than that, it has to come back to the Zoning Commission for a modification.

And there's this one case on the BZA where a community organization had appealed the C of O that the Zoning Administrator had issued. And basically it was an escrow account, and it's not GW. This is another one. But it had to do -- my feeling, and I was going to sua sponte this,
but eventually they took back their appeal.

    And I'm just concerned about when we get into modifications and what the ZA, when he looks at the provision of a PUD what exactly he's allowed to do and when it has to come back to the Zoning Commission either dealing with the amenity package or whatever.

    MR. PARKER: Well, I think what we've proposed here will hopefully solve that problem. Because we're getting away from money escrow. The benefits list that will be approved with PUDs will be a set number of things that are built or provided.

    What we've proposed here is a process for if for good cause they can't be provided by the time of C of O, the process for how long the Zoning Administrator has to offer a temporary, and then they actually would have to come back. The Zoning Administrator cannot modify the public benefits that have been proffered. This only creates the process for how and when they have
to come back to get them modified if they haven't met them.

COMMISSIONER TURNBULL: Okay. So you're coming back with something else on modification to PUDs or --

MR. PARKER: I thinking whether there's anything on that in our -- we finished our working group on administration and enforcement. And in the next months or so you're going to see some recommendations on general, just PUD, but processes, Zoning Commission, BZA process stuff. I don't remember off the top of my head whether there's anything changes in that working group on that.

COMMISSIONER TURNBULL: Okay. Because I don't know if -- there's like four items that he basically can make changes on.

MR. PARKER: I don't remember any changes off the top of my head that we've made to that, to what's in the roadmap.

COMMISSIONER TURNBULL: Okay.
Thank you.

CHAIRMAN HOOD: Any other questions or comments?

Commissioner Turnbull, are you okay with moving with option 1?

COMMISSIONER TURNBULL: Absolutely.

CHAIRMAN HOOD: Everybody's okay with option 1? Okay.

Mr. Parker, we'll go with option one.

MR. PARKER: Very good.

CHAIRMAN HOOD: Okay. I think that concludes that exercise, Mr. Parker. Thank you very much.

It's getting late. I see a few people yawning, including myself. Anything else, Ms. Schellin, for now?

MS. SCHELLIN: No, sir.

CHAIRMAN HOOD: Well, on behalf of all your Commissioners, we want to wish you a happy birthday. You'll be 25, I think, on Wednesday and so we want to wish you a happy
birthday. And we want you to thank nothing but zoning.

Okay. So with that, I believe this meeting we will adjourned.

(Whereupon, at 9:59 p.m. the meeting was adjourned.)