

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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PUBLIC HEARING

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IN THE MATTER OF: :

:

Comprehensive Zoning :

Regulations Review: : Case No.

Administration, Enforcement : 08-06-15

and Procedures :

:

-----:

Thursday,

February 17, 2011

Hearing Room 220 South

441 4th Street, N.W.

Washington, D.C.

The Public Hearing of Case No. 08-06-15 by the District of Columbia Zoning Commission convened at 6:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, N.W., Washington, D.C., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Chairman
KONRAD SCHLATER	Vice Chairman
GREG M. SELFRIDGE	Commissioner

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

2 6:31 p.m.

3 CHAIRMAN HOOD: Good evening,
4 ladies and gentlemen. This is the Public
5 Hearing of the Zoning Commission for the
6 District of Columbia for February 17, 2011.

7 My name is Anthony Hood. Joining
8 me are Vice Chairman Schlater, Commissioner
9 Selfridge, Commissioner May, and Commissioner
10 Turnbull.

11 We are also joined by the Office
12 of Zoning staff, Director Weinbaum, Ms. Sharon
13 Schellin, Ms. Esther Bushman, Ms. Sara Bardin.

14 Also, this proceeding is being
15 recorded by a court reporter. It is also
16 webcast live. Also, we are joined -- Let me
17 back up. We are joined by the Office of
18 Planning, Mr. Travis Parker and Mr. Jesick.

19 Accordingly, we must ask you to
20 refrain from any disruptive noises or actions
21 in the hearing room.

22 The subject of this evening's

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1 hearing is Zoning Commission Case No. 08-06-
2 15. This is a request by the Office of
3 Planning for the Commission to review and
4 comment on proposed concepts for text
5 amendments to the Zoning Regulations.

6 This is one in a series of
7 hearings on various subjects currently under
8 review as part of a broader review of the
9 Zoning Regulations. Tonight's hearing will
10 consider general administration and
11 enforcement of the Zoning Regulations, as well
12 as Zoning Commission and Board of Zoning
13 Adjustment procedures.

14 Notice of today's hearing was
15 published in the D.C. Register on December 31,
16 2010, and copies of that announcement are
17 available to my left on the wall near the
18 door.

19 This hearing will be conducted in
20 accordance with revisions of 11 DCMR 30-21 as
21 follows: Preliminary matters; presentation by
22 the Office of Zoning; presentation by the

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1 Office of Planning; reports of other
2 government agencies; report of the ANC, which
3 is all organizations and persons in support,
4 organizations and persons in opposition.

5 The following time constraints
6 will be maintained in this hearing:
7 Organizations, five minutes; individuals,
8 three minutes. The Commission intends to
9 adhere to the time limits as strictly as
10 possible in order to hear the case in a
11 reasonable period of time. The commission
12 reserves the right to change the time limits
13 for presentations, if necessary, and notes
14 that no time shall be ceded.

15 All persons appearing before the
16 Commission are to fill out two witness cards.

17 These cards are located to my left on the
18 table near the door. When you are finished
19 speaking, please turn your microphone off, so
20 that your microphone is no longer picking up
21 sound of background noise.

22 The decision of the Commission in

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1 this case must be based exclusively on the
2 public record. The staff will be available
3 throughout the hearing to discuss procedural
4 questions.

5 Please turn off all beepers and
6 cellphones at this time, so not to disrupt
7 these proceedings.

8 At this time, the Commission will
9 consider any preliminary matters. Does the
10 staff have any preliminary matters?

11 MS. SCHELLIN: No, sir.

12 CHAIRMAN HOOD: I think we have a
13 joint presentation. What I would like to do -
14 - and we can talk about the process, because
15 we have a number of items, and I know that we
16 have at least two people who, I believe, will
17 be testifying. I would ask them at this point
18 to come to the table.

19 What I want to do is -- I think
20 what we will do is take -- and I am not sure
21 who is going to lead off. Okay, Director
22 Weinbaum is going to lead off. What I would

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1 like to do is for us first -- and I will wait
2 and give them a chance to be seated.

3 What I would like to do first is
4 for us, after we go through the first one, we
5 will ask our questions, and if either Ms.
6 Kahlow or Ms. Gates have an issue on that
7 particular one, we will go to them. I think
8 that will be more of a better exchange.

9 MR. WEINBAUM: Will it be for each
10 question, sir -- each recommendation, rather?

11 CHAIRMAN HOOD: Each
12 recommendation. Let me ask you all, is that
13 okay with you, if we move in that fashion?

14 MS. KAHLOW: It is all right with
15 me. My testimony covers both within the OP
16 and a whole separate section on what is left
17 out. So I will still need to testify on what
18 is left out that we thought should be added
19 additionally. Is that okay?

20 CHAIRMAN HOOD: Well, why don't we
21 do this. Since you are the only two, we will
22 just go ahead, and we will go through it and

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1 ask ours, since you already have prepared
2 testimony. That way, we can get the fullness
3 of your testimony at one time, but we won't
4 break up your testimony. So you can still sit
5 there, but we will wait until we finish, and
6 then we will come to you.

7 MS. KAHLOW: That is fine. I am
8 willing to entertain, though, when you go one
9 by one. That would be wonderful, but then if
10 I could also add the other things, because
11 what I do is I go one by one, one, two, three,
12 four, so and so, and then I have a whole
13 'nother section on what is missing.

14 CHAIRMAN HOOD: Vice Chairman, did
15 you want to add something?

16 VICE CHAIRMAN SCHLATER: I think
17 maybe the best way to go ahead with it is
18 maybe to have them give their testimony first.

19 That way, we understand maybe some of the
20 issues beforehand, and that can inform our
21 questions.

22 CHAIRMAN HOOD: So we want to hear

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1 from them before we hear from the Director of
2 Office of Planning? Is that what we want to
3 do? Somebody said no.

4 COMMISSIONER MAY: No.

5 VICE CHAIRMAN SCHLATER: I think
6 Ms. Gates was going to --

7 CHAIRMAN HOOD: Ms. Gates?

8 MS. GATES: If we are going to
9 present testimony -- and I also have an
10 opening statement that has, really, nothing to
11 do with this particular case -- I think it
12 would be best if we just go with the normal.

13 CHAIRMAN HOOD: Okay, let's do
14 that. I wandered off of that. I got it. So
15 okay.

16 MS. KAHLOW: So should we go back
17 then to the --

18 CHAIRMAN HOOD: Oh, you can sit at
19 the table. You can turn your mikes off so we
20 won't overhear any comments that you might
21 want to make.

22 Director, are you going to start

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1 off?

2 MR. WEINBAUM: Yes, I will. thank
3 you very much, Chairman Hood, and good
4 evening, Commissioners.

5 I am going to take you through a
6 series of recommendations, but before I start,
7 I will just say this was the only series of
8 working groups that the Office of Zoning had
9 an official role in participating in. So
10 along with the Office of Planning, we worked
11 together to host the public at, I believe,
12 four different -- three or four different
13 working group meetings -- three.

14 As well, we went to the Task Force
15 with some recommendations, and met with them.

16 So we have been looking at this for a while.

17 Before we even began this process and going
18 out to the public, I conducted a number of
19 internal working group meetings.

20 We broke it up into Zoning
21 Commission and BZA, and met with Office of
22 Zoning staff members last spring in a series

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1 of 10 meetings, actually, on Zoning Commission
2 issues, Chapter 30, and 10 meetings on Chapter
3 31 with BZA, and really, with the Office of
4 Zoning staff bringing a tremendous amount of
5 expertise with respect to these rules, they
6 are the ones who are sitting here pouring
7 through them every day. So I really wanted to
8 hear from everybody on the team to find out
9 what they think works and where we can make
10 improvements.

11 So we did that, and I think it
12 will inform us as we go through, not only with
13 these recommendations but when we eventually
14 bring you text. There were a lot of items
15 that are smaller that don't rise to the level
16 of actual recommendations, but things that
17 maybe weren't written in the way that are sa
18 helpful as they can be. So when we get to
19 that point in the process, you will see that.

20 For this evening, it boils down
21 from the Office of Zoning to about seven main
22 recommendations. Our first recommendation --

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1 COMMISSIONER MAY: Could I
2 interrupt for just a second? I thought that
3 in previous hearings on zoning and the zoning
4 rewrite that we had asked that we get a
5 PowerPoint at the start of the presentation, a
6 version of this. Am I incorrect on that?

7 MR. WEINBAUM: Sure. This has
8 been -- Travis. This is the first one I have
9 participated like this.

10 MR. PARKER: You are not, and we
11 did not do so tonight.

12 COMMISSIONER MAY: Do you have
13 paper copies of it that the staff could make
14 copies of? It would just be very helpful,
15 because there is so much good stuff in these
16 presentations.

17 MR. WEINBAUM: Okay, Sara, do you
18 want to get one, and Donna will make the
19 copies.

20 MR. PARKER: I apologize, because
21 this was a joint presentation, and we hadn't--

22 COMMISSIONER MAY: Understand.

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1 Thanks.

2 CHAIRMAN HOOD: So what we will
3 do, so we will get the full effect out in
4 front of us, we will wait about five minutes.

5 It won't take long. You all have good copies
6 in the office. Right?

7 MR. WEINBAUM: Yes. Sara is going
8 to run, and we will get copies.

9 MR. PARKER: My apologies.

10 CHAIRMAN HOOD: You are doing all
11 right. Thank you. We will just wait about
12 five minutes.

13 (Whereupon, the foregoing matter
14 went off the record at 6:39 p.m. and went back
15 on the record at 6:48 p.m.)

16 CHAIRMAN HOOD: Okay. I think we
17 can go back on the record, and we can go ahead
18 and get started. Director, you may continue.

19 MR. WEINBAUM: Thank you very
20 much. Again, good evening, and I will get
21 right to the first of the recommendations,
22 which is with respect to the Chairperson of

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1 the Board and the Zoning Commission.

2 As a common practice, the
3 Chairperson of each of these bodies has been a
4 District resident, Mayoral appointee, but in
5 the official code, what it says is that the
6 Chairman of the Zoning Commission shall be
7 selected by the members, and that the Board of
8 Adjustment, meaning the Board of Zoning
9 Adjustment, shall choose its chairman and its
10 other officers.

11 So our first recommendation is
12 that we create a requirement that the
13 Chairperson of the Zoning Commission and the
14 BZA be one of the three District resident
15 Mayoral appointees of each body.

16 The rationale here is that we
17 received a lot of feedback in the working
18 group meetings indicating that there is a
19 perception with respect to the bodies of two
20 much Federal involvement or Federal control in
21 zoning processes in the District, and
22 individuals felt that it would be simply

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1 codifying a common practice to put this into
2 the regulations.

3 As well, if we were to do this,
4 the Vice Chair could still be a Federal
5 representative and, of course, the provision
6 could always be waived if we were to ensure
7 that, much like the regulations now, which
8 allow any section to be waived, that we ensure
9 that this section could be waived. So that is
10 the first recommendation based on our work
11 with the working group.

12 Do you want me to keep going or do
13 you guys want to comment at this point?

14 CHAIRMAN HOOD: Let's comment. I
15 would like to comment after each one. Let me
16 start off. I think we want to make sure going
17 forward that we put the correct information
18 out there, not in this case of what you have
19 on the handout, but I am looking at Office of
20 Planning's report.

21 I don't know. I guess it is a tag
22 team effort here. In the report in one of

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1 your paragraphs -- I think it is the third
2 paragraph under discussion -- change is
3 particularly important, because the
4 Chairperson of each body is responsible to
5 testify before the District's City Council
6 pertaining to the performance and budget of
7 the Office of Zoning, and participate in
8 hiring and oversight of the Director of the
9 Office of Zoning and, by extension, the Office
10 of Zoning staff.

11 If you read that, it implies that
12 the Board of Zoning Adjustment Chairperson has
13 something to do with the hiring of the Office
14 of Zoning Director, while someone who is hired
15 to, I wish they would have. I will tell you,
16 they have nothing to do with it. It is three
17 Mayoral appointments of the Zoning Commission.

18 Also, when we put information they
19 testify in front of the City Council, the
20 Chairperson, yes, the Chairperson possibly may
21 testify, but the Vice Chairperson also may
22 testify, because in the past there has been

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1 instances where the Chairperson of this
2 Commission was not able to testify, and I was
3 the Vice, and I had to go down and testify,
4 which means the Vice at sometime possibly may
5 be a Federal employee.

6 Now while I agree with the
7 recommendation we have there, Mr. Director,
8 the issue is what we say here in this report.

9 That is what people will go back and look and
10 read, and then we will be more mixed up than
11 what we were now.

12 So I just would like to see this
13 either stricken from the record, because the
14 Chairperson of the BZA has nothing to do with
15 the hiring, while I might wish they did have,
16 but they did not have -- or they will not have
17 anything, at least under the charter.

18 MR. WEINBAUM: I think that was
19 just an error. We will get that fixed.

20 CHAIRMAN HOOD: Okay. Any other
21 questions, Commissioners? Comments? Okay,
22 thank you.

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1 MR. WEINBAUM: Recommendation
2 Number 2 is with respect to proponents and
3 opponents in Zoning Commission and BZA cases.
4 The issue here is that individuals often
5 discuss both positive and negative aspects of
6 an application or a petition when testifying
7 before the Commission or the Board. Yet they
8 are forced under our current regulations to
9 come out either in favor or in opposition to
10 an application or a petition when they fill
11 out their witness card.

12 So our recommendation this evening
13 would be to remove the requirement that
14 individuals wishing to testify in a Zoning
15 Commission or BZA case identify whether they
16 are in support of or in opposition to a case.

17 The rationale here is that there
18 really isn't a rationale for why individuals
19 have to take a side in cases. if we were to
20 eliminate this need, individuals would really
21 be able to provide any type of comment,
22 including clarifying statements.

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1 Parties would present their cases,
2 and then all public witnesses would be called
3 to testify, much as how, if you go before the
4 Council, they just call public witnesses, and
5 it is not that you have to come down in favor
6 or opposed to legislation or anything like
7 that.

8 Here, from what we heard from the
9 public, they sometimes get very worried or
10 concerned: Well, we are really not opposed to
11 all this, but we are forced to say we are in
12 opposition, because there is one aspect we
13 don't like, or we are forced to say we support
14 it when we really have a few reservations.

15 So to just get them up in panels
16 in the order that they sign up in seems to be
17 -- you know, you guys could -- Our opinion is
18 you guys could ferret out, okay, well, they
19 are in opposition or they are in support. It
20 is not necessary to be tagged as one or the
21 other.

22 CHAIRMAN HOOD: Commissioner May.

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1 COMMISSIONER MAY: What you are
2 saying seems to be contrary to what I thought
3 I read in the report, which was that -- Let's
4 see. Hold on a second. Oh, parties in
5 support and parties in opposition and then all
6 public witnesses.

7 MR. WEINBAUM: Yes.

8 COMMISSIONER MAY: Oh, okay. When
9 I first read that, I thought it was all
10 witnesses in support and all witnesses in
11 opposition.

12 I honestly think there is some
13 utility in having the people who are in favor
14 and against a particular project testify as a
15 group, for a couple of reasons. One is that
16 we are dealing with so much information. It
17 is helpful to have it grouped like that and
18 hear all of the arguments for at one time and
19 then hear all of the arguments against
20 afterward.

21 Now I understand the problem of
22 people who don't know where they are, but they

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1 have something to say, and I could see having
2 those people testify at the end so that they
3 are not forced to identify themselves one way
4 or the other.

5 The other reason I think it is
6 good sometimes to have people who are on one
7 side or another of a case testify at the same
8 time is that there is a certain synergy from
9 dealing with a panel of all supporters or all
10 opposed, particularly since we now have this
11 lovely new array of tables and microphones,
12 and we can get a whole bunch of people up
13 there at the same time.

14 I think we get something out of
15 that, because we can ask a question of one of
16 the folks, and somebody else might have
17 something to add, and we often accept that
18 testimony. So I think there is a reason to do
19 that. That is my two cents on that one.

20 CHAIRMAN HOOD: Any other
21 comments?

22 MR. WEINBAUM: Can I respond? I

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1 don't want to cut anybody off.

2 CHAIRMAN HOOD: Okay, go ahead.

3 MR. WEINBAUM: One thing we did
4 consider, and it is a great comment,
5 Commissioner May, is we did consider when we
6 talked about it really doing three groupings,
7 those in support, those in opposition, and
8 those who wish to make general comments.

9 If the Commission is more
10 comfortable with that, we can certainly break
11 it down into three categories. It seems to me
12 -- My strong recommendation would be that we
13 not keep it simply support/opposition and that
14 is it, because that is really what makes
15 people feel uncomfortable, from what we are
16 hearing.

17 If you weren't comfortable having
18 them all just in whatever they sign up, my
19 recommendation would be that we do support,
20 opposition, and then give some area for people
21 who just have general comments to provide
22 those. I will throw it to you, but that would

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1 be my recommendation then.

2 COMMISSIONER MAY: I would just
3 think that the way we could handle this is
4 have both options available for us when we
5 take any action on this.

6 MR. WEINBAUM: That is totally
7 fine. Yes.

8 COMMISSIONER MAY: And if you all
9 want to make a recommendation for one of those
10 options, that is fine, too.

11 MR. WEINBAUM: Okay.

12 CHAIRMAN HOOD: Any other
13 comments?

14 COMMISSIONER TURNBULL: Yes. I
15 guess I would agree that someone need not
16 declare what position they are on, but if they
17 wanted to, they could.

18 CHAIRMAN HOOD: Okay.
19 Commissioner Selfridge.

20 COMMISSIONER SELFRIDGE: i would
21 just agree with Commissioner May in terms of
22 having that third option seems to be the best

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1 way to do it. You have seen people come up
2 here, and they are, as you say, very
3 uncomfortable. They just want to make the
4 comments. But his point about kind of a
5 synergy in terms of the way the information is
6 presented is very helpful.

7 I don't know if we want to discuss
8 it or if we need to have options. It makes
9 sense to me.

10 CHAIRMAN HOOD: Let me also
11 associate myself with Commissioner May's
12 comments. The way I look at it, if it is not
13 broken, don't fix it. But I have dealt with
14 those who had reservations, and I think this
15 Commissioner has handled it well, but I think
16 having that third column -- I didn't buy what
17 I had here in front of me, but having that
18 third issue of opposition but reservations or
19 support with reservations -- having that third
20 key there, I think, might be very helpful.

21 MR. WEINBAUM: Okay. Do you still
22 want both or it seems like there is agreement

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1 that doing three would be the way to go, but I
2 am just curious.

3 CHAIRMAN HOOD: We probably want
4 both, because as we think about it, it may
5 change between then. Just give us -- Let's
6 keep going.

7 COMMISSIONER MAY: Yes. We are
8 talking about it now. Let's do the decision
9 making when we have to.

10 CHAIRMAN HOOD: We are thinking
11 out loud right now. As we read it again, we
12 will be thinking to ourselves.

13 MR. WEINBAUM: No problem.

14 CHAIRMAN HOOD: And it is
15 dangerous when we think out loud. Okay.

16 COMMISSIONER MAY: Thus we have
17 public witnesses who have something to say on
18 this topic. We want to have the benefit of
19 that before we make any decisions.

20 MR. WEINBAUM: Okay.
21 Recommendation 3 is regarding language.
22 Basically, right now while the Zoning

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1 Commission can hear all cases that the BZA can
2 hear and provide any type of relief the BZA
3 can, it is not stated anywhere in Chapters 30
4 or 31 as they currently stand.

5 So our recommendation would be
6 that we clarify that the Zoning Commission can
7 determine at its sole discretion to hear any
8 case the BZA can hear. This can't be sought
9 or requested by any party or individual,
10 however.

11 The rationale here is that we
12 think there should be some more clarity for
13 applicants, and we talked about this in the
14 working group, that cases properly before the
15 BZA but perhaps more appropriately before the
16 Zoning Commission can, in fact, be heard by
17 the Zoning Commission.

18 An example I will give is a
19 project where an applicant might be seeking a
20 variance and a map amendment. It may be more
21 appropriate for the Zoning commission to hear
22 all of that as one case rather than the

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1 applicant filing their variance before the BZA
2 and then their map amendment before the Zoning
3 Commission.

4 So even if we were to just put in
5 the regulation something that the Zoning
6 Commission has this power, and it is not
7 something, again, that can be sought or
8 requested, it would probably work out more
9 either as an administrative matter through the
10 Office of Zoning, in fact, or perhaps, if
11 there was a Zoning Commissioner who was on the
12 BZA and maybe saw it or what-not.

13 It is a little different than sua
14 sponte. It is more about kind of processing
15 it and which body it goes before.

16 COMMISSIONER TURNBULL: Well, how
17 would that get determined? I mean, normally
18 when the schedules come out, somebody has
19 either gone before -- they are either choosing
20 BZA or the Zoning commission. How would this
21 body -- Would we be looking at a BZA schedule
22 or how would that be determined?

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1 MR. WEINBAUM: I think, because
2 oftentimes we are the one who gets the call in
3 the office where somebody has both or they are
4 going to both, there is a communication;
5 because Rick, who is the one who schedules and
6 sees all the BZA cases, is Sharon's
7 supervisor. So Rick and Sharon are often in
8 concert in terms of all the cases that are
9 coming forward.

10 So when we are dealing with
11 potential applicants, we will see these cases
12 and that they might want to go before both
13 bodies, will be unsure how to do it, and it
14 would then be that we would make a
15 recommendation: Hey, you can file this before
16 the Zoning Commission; they could handle both,
17 and if you guys are comfortable with that.

18 Again, it is your sole discretion
19 to be comfortable with it, if it is filed like
20 that. You may decide you don't want to hear
21 that part of it. That is, again, your call.
22 It is more just clarifying that you have that

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1 power, which you do have. It just doesn't say
2 it anywhere in the 30 or 31.

3 COMMISSIONER TURNBULL: Does that
4 happen in Executive Session or is this out in
5 the public forum then?

6 MS. SCHELLIN: Director Weinbaum,
7 if I may remind the Commission, recently there
8 is a map amendment case that you guys set down
9 and, if you recall, they asked permission or
10 asked you guys to also hear and allow them to
11 file -- I can't remember if it was a special
12 exception or a variance to go along with that
13 map amendment, and that you guys hear it along
14 with the map amendment. It is just recently.

15 I don't think the hearing has actually come
16 up yet. So I don't want to go into any
17 details about it. So it would be that kind of
18 situation.

19 MR. WEINBAUM: If I could just
20 add, I think that it was something where they
21 were unsure, and we advised them, you know, it
22 is possible; the Zoning Commission has the

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1 authority all these matters. But if it was in
2 Chapter 30 or 31, if it was in the
3 regulations, they would perhaps know that, but
4 they didn't know of that power that you had.
5 So it is really getting it in the regs that
6 you have that power, because it is not.

7 CHAIRMAN HOOD: Vice Chairman
8 Schlater?

9 VICE CHAIRMAN SCHLATER: What
10 about the situation where the process has
11 already started in front of the BZA, and a
12 member of the Zoning Commission thinks it
13 would be more appropriate for it to be heard
14 in front of the Zoning Commission? Are you
15 saying mid-process, we could pull a case from
16 BZA and hear it in front of the Zoning
17 Commission?

18 MR. WEINBAUM: I think that is sua
19 sponte. I think, once a case has gone --

20 VICE CHAIRMAN SCHLATER: No. Sua
21 sponte, my understanding, it doesn't happen
22 until --

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1 MR. WEINBAUM: No, you are right.

2 VICE CHAIRMAN SCHLATER: -- after
3 the order has been issued. But I think it
4 could be more timely and effective to jump in
5 the process midway, something to consider.

6 CHAIRMAN HOOD: Let me just,
7 somewhere in this report, in the Office of
8 Planning's report, it mentioned about
9 clarifying -- I don't know if this would be
10 the recommendation, but clarifying the sua
11 sponte, because we had a request from an
12 outside person about sua sponte, and we want
13 to make sure that we clarify that.

14 Is this the recommendation? I
15 read it somewhere.

16 MR. WEINBAUM: No.

17 CHAIRMAN HOOD: Okay. Well, we
18 haven't got there. There that is fine. So we
19 are coming to that point, because I agree with
20 it. I just wanted to know where it was. It
21 was somewhere, but anyway --

22 MR. WEINBAUM: Yes. It is

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1 somewhere.

2 VICE CHAIRMAN SCHLATER: So is
3 that the intention, I guess, is the question?
4 Can we pull a case that is already in the
5 middle of the process?

6 MR. WEINBAUM: That wasn't the
7 intention.

8 VICE CHAIRMAN SCHLATER: Because
9 the way it reads, you could infer that from
10 reading this recommendation.

11 MR. WEINBAUM: You could, because
12 it doesn't say that it -- The recommendation
13 doesn't specifically say this is before a case
14 is filed.

15 VICE CHAIRMAN SCHLATER: And I
16 don't understand. It also says the Zoning
17 Commission can determine at its sole
18 discretion, but we don't even know anything
19 about the case. So how would it be at our
20 discretion to determine whether it is coming
21 to us or BZA?

22 MR. WEINBAUM: Executive Session?

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1 MS. SCHELLIN: Yes, and I think it
2 is more, Commissioner Schlater, if you think
3 about like the CG Overlay cases, you know,
4 they can also file. It is like it is stuff
5 that you are already doing, but actually
6 putting it in the regulations, like the CG
7 Overlay, the Southeast Federal Center, and
8 Travis may help me out here, if I am
9 incorrect.

10 In those cases, they can also ask
11 for special exceptions and variances, which
12 typically go before the BZA, but Southeast
13 Overlay reviews and the CG Overlay reviews
14 come to the Zoning Commission.

15 So rather than coming to you for
16 those reviews, the design reviews, and then
17 having to go to the BZA for the variance and
18 special exceptions, you guys hear all of it at
19 the same time.

20 So it is just basically
21 memorializing what you are already doing, I
22 think, is the intent of this. It is not

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1 taking anything from the BZA that they are
2 doing. It is just basically memorializing in
3 writing what you are already doing, because it
4 doesn't state it.

5 MR. WEINBAUM: The power you have.

6 MS. SCHELLIN: If I am incorrect,
7 Travis?

8 MR. PARKER: No, you are correct.

9 Maybe the language of this recommendation
10 should say the Office of Zoning may at its
11 discretion send cases, and the Zoning
12 Commission can always send it back to the BZA,
13 but say the Office of Zoning can send cases to
14 the BZA hen they feel it appropriate.

15 COMMISSIONER MAY: Yes. I think
16 this is a -- I hate slippery slope arguments,
17 but this is a slippery slope, because it is
18 understandable when it is part of some other
19 process, when it is part of a map amendment or
20 a CG Overlay or whatever, that you would want
21 to take care of everything at the same time.
22 It makes sense. It is efficient. We are

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1 doing things. You know, we are not making the
2 applicant go through a lot of extra hoops.

3 The idea that this would somehow
4 open the door potentially to certain cases,
5 certain BZA type cases, coming to the Zoning
6 Commission because the Zoning Commission wants
7 to assert its authority over a particular
8 case, because -- for whatever reason it may
9 be, and I can imagine a whole lot that I don't
10 need to say on the record -- I am not sure
11 that this is something that really has to be -
12 - Well, it certainly does not have to be
13 memorialized, because it is already in the
14 regulations to allow it, and to memorialize it
15 is to encourage people to urge us to take
16 these things on in one form or another.

17 I don't think we want to do that.

18 I am getting ahead of myself, because we are
19 not at a decision making. I just think this
20 is -- You have to think about all of the
21 potential bad that could come from this, if it
22 is codified, and think carefully about that

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1 when you make a recommendation to us.

2 MS. SCHELLIN: But I think that
3 what you just said is correct. It is only if
4 it is part of a case that the Zoning
5 Commission already has the authority over. It
6 is not like --

7 COMMISSIONER MAY: Is that what
8 you are proposing be codified, because that is
9 not what I read.

10 MR. WEINBAUM: That is actually:
11 not what we are saying with this
12 recommendation. That is not to say we
13 couldn't, but it is a power you have already.

14 COMMISSIONER MAY: Right.

15 MR. WEINBAUM: So the question is
16 -- What we saw and what we heard from the
17 working group is people don't know that it is
18 possible that you guys could hear a variance
19 when they have, let's say, a map amendment,
20 that you have that power.

21 COMMISSIONER MAY: Right. But a
22 map amendment is going to go through the

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1 Office of Planning, and the Office of Planning
2 is aware of that, and they can suggest that it
3 is the most efficient thing to do, and that is
4 the way we have seen them in the past.

5 The one most recently decided that
6 comes to mind was the Francis Gregory Library
7 where we did a map amendment and certain
8 variance or special exception relief.

9 Anyway, I am just suggesting that
10 maybe we are trying to fix a problem that
11 doesn't really exist or it is not really that
12 bad a problem.

13 MR. WEINBAUM; I don't think it is
14 a huge problem, to be frank. I think what we
15 heard form the community is it would be good
16 if the regulations said it, because some
17 people are in the know, and other people
18 aren't in the know that this exists.

19 You know, you guys get calls in
20 your office where you say, actually, it is
21 possible for the Zoning Commission to hear
22 this whole thing. Oh, well, we didn't know

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1 that; where does it say that -- things like
2 that.

3 COMMISSIONER MAY: I am afraid of
4 those. What some people might make of this is
5 that, oh, this means that I can appeal
6 directly to the Zoning Commission in some
7 form, or someone can make that appeal on my
8 behalf. So it becomes a lobbying effort to
9 get us to hear a case instead of the BZA on
10 any BZA type case. So anyway, I have said
11 enough.

12 CHAIRMAN HOOD: Let me ask. I am
13 hearing on these recommendations "what we
14 heard from the community." Was it the work
15 group and the Task Force or was it the work
16 group, the Task Force and the community?

17 MR. WEINBAUM: I think that it
18 depends on the recommendation. I don't think
19 we can say this was a recommendation the
20 community said. I think it was a cumulative
21 effort. We talked among our internal working
22 group and then we vetted ideas before the

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1 working group that we held among the public,
2 and kind of comprised this. It was a joint
3 effort to put these together.

4 CHAIRMAN HOOD: So it in front of
5 the Task Force?

6 MR. WEINBAUM: Yes.

7 CHAIRMAN HOOD: Was there more
8 than one person there?

9 MR. WEINBAUM: At the Task Force?
10 We had about four.

11 CHAIRMAN HOOD: So I have a
12 problem with that already. Okay. Already I
13 have a problem with that. Thank you.

14 COMMISSIONER TURNBULL: Would this
15 also -- You said any case. That would be
16 appeals?

17 MR. WEINBAUM: Right now, I
18 believe the Zoning Commission has the power to
19 hear any case the BZA can hear. I believe
20 that is appeals. We can get clarification on
21 that. Yes, we can get clarification on that.

22 MR. PARKER: I think that is the

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1 issue here. It is not -- I understand what
2 you are saying, Commissioner May, that we run
3 a risk by informing people that this right
4 exists. But I think it is a basic equity
5 issue, that if that is the actual procedure,
6 it needs to be written down somewhere, or if
7 that is the actual regulation.

8 COMMISSIONER MAY: And I agree
9 with you, if our intention was to open the
10 door for us to start hearing appeal cases or
11 other BZA cases. I mean, if that is what we
12 are trying to do, that is one thing, but if
13 what we are trying to do is make it more
14 efficient for an applicant who has a map
15 amendment and a variance or a special
16 exception case, I am just suggesting there
17 might be other ways to make that clear to
18 people that are just more efficient and
19 doesn't open the door for potential abuse.

20 Sorry. I spend a lot of time
21 worrying about potential bad outcomes on
22 things.

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1 MR. WEINBAUM: Okay. Our next
2 recommendation is with respect to ANC's
3 setdown form. This was an issue that we got a
4 lot of feedback on. Right now, only the
5 Office of Planning may submit a report to the
6 Zoning Commission to be considered at setdown.
7 ANCs cannot weigh in, independent of going
8 through the Office of Planning.

9 So our recommendation here would
10 be that we allow affected ANCs to submit an
11 ANC setdown form prior to the Zoning
12 Commission setdown meeting in contested or
13 potentially contested cases in which ANCs
14 could provide comments on particular items
15 related to the proposed project.

16 The why here is that we found, and
17 we talked again at the working group, about
18 this, and there were lots of comments on this
19 one. ANCs and community groups who felt that
20 they have useful information to convey that
21 can be of value to the Commissioners in
22 deciding whether to set down a case, whether a

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1 case should be set down as contested or as a
2 rulemaking, and whether there are items the
3 Commissioners should ask to be addressed at
4 the hearing or by the time of the hearing.

5 With this one, we heard from
6 members of the public, and I am sure you will
7 hear tonight from members of the public, and
8 they feel that it is not even just ANCs, that
9 community groups as well should be allowed to
10 file something for the Commission to consider
11 at setdown.

12 The Office of Zoning, in
13 discussing it -- Our view was that this was a
14 middle ground. The ANCs are the
15 representatives of the public, and allowing
16 for a limited opportunity for the ANCs to
17 weigh in at this stage would be helpful to the
18 Commissioners, rather than doing -- There
19 wouldn't be any oral testimony. It would be a
20 form that the Office of Zoning would create,
21 and that form would say, you know, we probably
22 have the three -- we haven't created the form,

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1 but it would probably say, you know, the
2 issues about whether it should be contested or
3 rulemaking, whether there are items the
4 Commissioners should ask to be addressed by
5 the time of the hearing, and whether there is
6 a consistency with the Comprehensive Plan,
7 those sort of basic things that setdown is
8 officially for. The ANCs would get to
9 complete that form.

10 Here, there were concerns which
11 the Office of Planning actually put into the
12 report about timing and about what this would
13 look like. One of the Office of Planning
14 concerns was map amendments, and specifically
15 whether they should be included. They felt
16 that PUDs would work, and PUDs with related
17 map amendments would work, but because map
18 amendments may be contested and they may be
19 rulemaking cases, it would become difficult.
20 If it was a rulemaking or if you had a number
21 of affected ANCs, you might get a number of
22 letters.

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1 personally, I don't think that it
2 is overly burdensome if the Commissioners were
3 to receive a number of letters or forms,
4 rather, because again it is not a whole
5 report. You are not listening to testimony.
6 It would just be something else in your
7 package that you would have more information
8 to review.

9 Then there is also raised a side
10 issue, which is that, if you are going to
11 allow for ANCs to weigh in at setdown, there
12 needs to be sufficient time between when the
13 application is filed and when setdown occurs
14 for the ANC to actually meet.

15 So a byproduct of this would be
16 that there would not be any setdown before 35
17 days had passed since an application is filed,
18 and that would provide sufficient time for the
19 ANCs to meet to discuss whether or not they
20 wanted to submit an ANC setdown form in the
21 matter.

22 There, it brings up the question

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1 of, well, does that really slow up the
2 process? We did a study internally, which
3 Sharon ran for us, looking at how much time
4 has elapsed in the process. We did three
5 years, I think -- three years -- between when
6 an application is filed and when setdown
7 occurs, and there were instances, certainly,
8 where it was less than 35 days.

9 I don't remember if we had the
10 direct percentage. It was like 25 percent.
11 It was like low. In maybe 20 percent of the
12 cases, it is less than 35 days, and there may
13 be a time where there is an urgency for that.

14 So what we thought is that what
15 might work is if an applicant can get the
16 Office of Planning and the affected ANC to
17 sign off that they were okay with a waiver of
18 the 35 day waiting period, they put that in
19 with their application. Then Sharon would go
20 ahead and schedule it sooner.

21 So if you already know you have
22 that support and everyone wants to go forward,

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1 and you are not waiting, you could still have
2 it. But if not, it is an opportunity for the
3 ANC.

4 We felt this was really a window
5 to give the ANCs a little more of a voice at
6 that stage, but again not a door, not saying
7 everybody put in a form if they want, not
8 saying even the community groups. I know that
9 has been a dispute in the community groups.
10 We will speak about that, but that is our
11 recommendation, if that makes sense. I will
12 answer any questions.

13 CHAIRMAN HOOD: Any questions?

14 COMMISSIONER MAY: Could you
15 structure the form in such a way that -- and
16 the regulation in such a way that it cannot be
17 set down until the form has been received,
18 because sometimes it is not going to take 35
19 days, and if the form is received sooner,
20 particularly if there is a checkbox on the
21 form saying, you know, no objection, and the
22 applicant can work with the ANC, get it heard

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1 timely, get the checkbox done, get the form
2 submitted, and then you are good to go, you
3 know, just as a way of shortening the process.

4 MR. WEINBAUM; Yes, I think that
5 is possible if it comes in. It is just a
6 question of us getting it on the meeting
7 schedule to be set down.

8 CHAIRMAN HOOD: Let me ask this
9 about the affected ANC. When we say affected
10 ANC, typically it is within the bounds of ANC,
11 and then sometimes there is a project that is
12 right on the corner. I mean right on the same
13 street, right across the street.

14 So when we say affected, are we
15 going to be clear? Are we going to do it
16 where the project is within the ANC or are we
17 saying affected ANC?

18 MR. WEINBAUM: We would do it to
19 both. We would send it to both ANC in that
20 instance. That is our common practice now.
21 If there is one on the cusp, we make sure we
22 send it out to both.

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1 CHAIRMAN HOOD: Okay, because the
2 one on the cusp is the one that we have to
3 grant party status when we do party status.
4 They don't just get it automatically. We have
5 to grant it.

6 MR. WEINBAUM: Right. They
7 request it.

8 CHAIRMAN HOOD: So all that stuff,
9 I think, still needs to be clear. Well, since
10 you automatically send it -- but who is going
11 to make that decision? It might not be right
12 on the line. It may be two blocks over.

13 MS. SCHELLIN: If it was in 200
14 feet or across the street, when we look at
15 them -- It is just like now. When we do our
16 referral letter when a case comes in, we
17 actually look at the map and see what ANC they
18 are in, but then we also look, because of
19 prior instances, across the street and see if
20 there is an ANC across the street or within
21 the boundaries; because sometimes, as you
22 said, there is another ANC that is affected.

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1 CHAIRMAN HOOD: So what happens if
2 its an ANC that -- We had one case, they were
3 like six or seven blocks away.

4 MS. SCHELLIN: We are not sending
5 it to them. They are not considered an
6 affected ANC. They could apply for party
7 status. That is a whole different thing.
8 They are not going to be that we are going to
9 send notice to, but it doesn't mean that they
10 couldn't apply for party status, but that is
11 at the hearing stage.

12 CHAIRMAN HOOD: Realistically, it
13 sounds real easy, but I am just thinking.
14 While I agree with you, but I am just thinking
15 we have to make stuff very clear of that,
16 because we don't want to mislead community
17 folks, and also let them think that we are not
18 -- that we don't want to hear from them,
19 because if I was not informed on zoning and I
20 wasn't here all the time, I would think that I
21 am being excluded, and we need to make sure it
22 is very clear. Thank you. Comments?

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1 COMMISSIONER SELFRIDGE: When I
2 was reading -- Thank you, Mr. Chairman. When
3 I was reading the OP report, the thing that
4 jumped out at me -- and it was addressed by
5 Director Weinbaum -- is just any additional
6 delays. You know, sometimes the wheels of
7 government can move slowly.

8 When I read this, I was thinking
9 of something like the Office of Administrative
10 Hearings. It can take months, and I would
11 hate to see that this process slowed that
12 down.

13 So, to what Mr. May said, anything
14 that we can do to maybe streamline this
15 process or allow for a way to shorten any
16 potential delays and not automatically build
17 in the 35 days, I think, would be helpful to
18 applicants going forward and, certainly, I
19 think, would be a beneficial part of the
20 process.

21 MR. WEINBAUM: Should I go on to
22 the next recommendation?

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1 CHAIRMAN HOOD: Any other
2 comments? Okay, yes.

3 MR. WEINBAUM: Recommendation
4 number 5: The issue is that for the Zoning
5 Commission an affidavit of posting is required
6 to be filed 30 days prior to the hearing, but
7 no evidence is submitted before the hearing
8 that the applicant is ensured that the posting
9 has been properly maintained.

10 This is something that came from
11 our internal working group as a staff. There
12 was a concern we had. I don't actually know
13 if somebody on the staff had received calls
14 about this, but basically, we were a little
15 worried; because it seems like, if you put in
16 your affidavit of posting 30 days before,
17 there is no check that does the posting
18 actually stay up.

19 So we thought a good idea here in
20 our recommendation is that we require
21 applicants in Zoning Commission cases to
22 submit an affidavit of maintenance of posting

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1 between two and six calendar days before the
2 hearing.

3 This would basically ensure, like
4 I said, that it remains in place during the
5 time leading up to the hearing, and we would
6 do two to six days, because it would give us
7 an opportunity to obtain the affidavit before
8 the hearing and, if we didn't get it, we would
9 have a chance to contact the applicant if it
10 wasn't timely to ask them to submit a waiver
11 form for you all to consider.

12 Sometimes when things aren't due
13 until the hearing, it becomes a little
14 trickier because, if they haven't done it, we
15 are not telling them until that night you
16 didn't do it, and if they are trying to waive
17 it, it becomes a little harder.

18 It is a little easier
19 administratively for us to administer it, if
20 it is due between two and six days before. If
21 you make it due more than six days before,
22 then again you have a longer period of time

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1 where it may come down. So we thought this
2 was a good way to ensure that the posting
3 actually stays up for neighbors to see.

4 COMMISSIONER TURNBULL: So it is
5 basically a check. They still have to submit
6 the affidavit of posting.

7 MR. WEINBAUM: Right.

8 COMMISSIONER TURNBULL: Two to six
9 days before, they got to basically come back
10 and say, hey, it is still there.

11 MR. WEINBAUM: Yes.

12 COMMISSIONER TURNBULL: Okay.

13 CHAIRMAN HOOD: Any other
14 questions?

15 MR. WEINBAUM: Our next
16 recommendation is: Right now, there is no
17 ethics section in the Zoning Commission or BZA
18 rules discussing disqualification or
19 disciplinary responsibilities of Commissioners
20 and Board members.

21 This was something that also came
22 up from our internal working group. As a

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1 staff, we looked at certain other boards and
2 commissions in other jurisdictions, and I
3 think it only makes our regulations better if
4 we have a strong ethics section which talks
5 about some of the issues that, of course, all
6 of you adhere to now, but to have that in the
7 regulations strengthens, I think, the
8 reputation of the bodies.

9 So our recommendation would be
10 that such language become added and, while we
11 haven't drafted it yet, we would look toward
12 conduct for the District of Columbia courts,
13 canons such as that, to provide us with some
14 models and examples.

15 COMMISSIONER MAY: Is this
16 something that is actually codified somewhere
17 else for boards and commissions? I mean,
18 rather than incorporate it into our regs, is
19 it something that simply can be incorporated
20 by reference?

21 MR. WEINBAUM: I would have to go
22 back and look again to refresh my memory on

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1 general boards and commissions, but I have
2 seen it also with specific regulations for
3 other boards. So it is not that no other
4 board does this in their regulations.

5 COMMISSIONER MAY: I think it just
6 might be worth checking to see if there is
7 something there that already fits the bill.

8 CHAIRMAN HOOD: It actually is.
9 It is actually in the -- Boards and
10 Commissions some years ago had a document.
11 Now the issue is I don't know if it applies to
12 everyone. I know it applies to the Mayoral
13 appointees. So that may be the out for
14 Commissioner Turnbull and Commissioner May,
15 but it applies to us.

16 Okay, any other questions? Okay.

17 MR. WEINBAUM: Our last
18 recommendation for the Office of Zoning is
19 regarding the stay of final decision pending
20 appeal. The issue here is that the Zoning
21 Commission and BZA may choose to stay a final
22 decision pending an appeal, but the

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1 regulations don't actually articulate that.

2 So we think it would be good to
3 clarify the ability of the Zoning Commission
4 and BZA to stay a final decision pending
5 appeal. Essentially, if there is a power that
6 you all have, we think that it makes sense,
7 certainly here, to spell this out.

8 In this instance, there is a four-
9 part test that makes up the parameters that
10 each body uses to make a determination, and we
11 could put that in so that individuals and
12 parties would know that.

13 That test includes whether there
14 is a substantial likelihood of success on
15 appeal, whether the denial of the stay would
16 result in irreparable injury, whether granting
17 a stay would prejudice other parties and the
18 public interest.

19 That is a test, and I think it is
20 certainly a power you and the Board have, and
21 I think it makes sense to have that in the
22 regulations, and that was something that came

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1 from an attorney in our Task Force meeting.

2 VICE CHAIRMAN SCHLATER: So the
3 Zoning commission is going to make a decision,
4 and then immediately after making that
5 decision, it is going to make an evaluation of
6 whether there is a substantial likelihood of a
7 success on appeal?

8 MR. WEINBAUM: It is a power the
9 Zoning Commission and the Board have. They
10 have stayed decisions in the past.

11 VICE CHAIRMAN SCHLATER: No, but
12 making -- You are going to make that
13 determination? That is the part I am a little
14 confused about. If you are voting on
15 something, I assume you wouldn't think there
16 is a substantial likelihood of success on
17 appeal. I wouldn't vote for it if I thought
18 there was a substantial likelihood of success
19 on appeal. It doesn't seem to make sense to
20 me.

21 MR. WEINBAUM: Okay. That is just
22 the legal test they have used that has been

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1 the test for appeals. I didn't create that
2 one.

3 CHAIRMAN HOOD: Any other
4 comments?

5 VICE CHAIRMAN SCHLATER: That may
6 well be the legal test, but it might be the
7 test that a higher court uses when evaluating
8 a lower court's decision, as opposed to the
9 same body making that ruling that just made
10 the decision. It just doesn't seem to fit in
11 this context.

12 CHAIRMAN HOOD: Okay. Anything
13 else? Let's go ahead. You have a
14 recommendation or we can deal with it in
15 deliberation?

16 VICE CHAIRMAN SCHLATER: I think
17 we can just deliberate.

18 CHAIRMAN HOOD: Go ahead.

19 MR. WEINBAUM: So those are our
20 recommendations. I didn't know if you wanted
21 to hear from the public on those or just go on
22 to Office of Planning's.

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1 CHAIRMAN HOOD: Let me ask. What
2 is the pleasure of my colleagues? I could go
3 either way. You know, they have their
4 testimony outlined the way they want it, and
5 we can deal with that accordingly. So why
6 don't we just go ahead to the Office of
7 Planning, if we all agree. Let's go straight
8 to Office of Planning? Okay.

9 MR. JESICK: Thank you, Mr.
10 Chairman and members of the Commission. The
11 Office of Planning looked at three chapters,
12 Chapters 20 which deals with nonconforming
13 uses and structures; Chapter 25, the
14 miscellaneous zoning chapter; and Chapter 32,
15 which is the administration and enforcement
16 chapter. I will take our recommendations
17 through in that order.

18 Now to begin, we looked at Chapter
19 20 and the organization of that chapter, and
20 through our own experience we have found that
21 Chapter 20 has a lot of overlap between use
22 regulations and structure regulations.

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1 Just by looking at the titles of
2 the sections in the chapter, you can see that
3 those two concepts are intermingled:
4 Nonconforming structures devoted to conforming
5 uses, nonconforming uses within structures,
6 changing uses within structures, etcetera.

7 So we have found that this chapter
8 is somewhat cumbersome, and our recommendation
9 is to clarify the organization of the chapter
10 by separating, to the extent possible, the use
11 regulations from the structure regulations.

12 We feel that this will meet some
13 of the overall zoning review goals of clarity
14 and ease of use, generally make the chapter
15 more user friendly, and this would also be
16 conforming with direction that has been taken
17 in other areas of the zoning review to
18 separate rules for buildings from rules for
19 uses.

20 So that is our first
21 recommendation. Any questions?

22 One particular section we looked

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1 at in Chapter 20 is 2001.3, which is familiar
2 to most of us. This deals with additions to
3 nonconforming structures, and what it says is
4 that additions can be made to that structure,
5 provided (a) the existing structure conforms
6 to lot occupancy, (b) don't expand an existing
7 nonconformity, and (c) don't create a new
8 nonconformity.

9 Now the second two bullets
10 definitely make sense and are kind of no-
11 brainers. The first one is where we see some
12 issues when BZA applications come through our
13 office. The reason is the current regulations
14 for lot occupancy were developed as averages
15 over the entire city, and they don't
16 necessarily recognize the variable sizes of
17 the lots in the District, especially due to
18 our numerous angled avenues.

19 I think the numbers bear that out.

20 Almost a fifth of buildings in residential
21 zones are already over lot occupancy, and when
22 you look at the R-4 through R-5-B zones, about

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1 a third of buildings are already over lot
2 occupancy.

3 We do want homeowners in the
4 District to be able to make small, reasonable
5 additions to their houses to make them more
6 livable, and for minor additions we would like
7 them to be able to avoid the variance test, if
8 possible.

9 So we are recommending to delete
10 Section 2001.3(a), which is the section that
11 states that a building must be conforming with
12 lot occupancy at the time of the application.

13 On the right, you can see an
14 example of what happens with our angled
15 streets where a relatively consistent building
16 footprint exists throughout the square, but
17 there is a high variability of lot occupancy,
18 and those people on the smaller lots, if they
19 want to make minor changes to their homes,
20 would certainly be forced into a variance to
21 2001.3.

22 Now it should be noted that any

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1 additions permitted by this change would be
2 within the Matter of Right building envelope
3 unless, of course, additional variance relief
4 is sought, but we feel that this change will
5 give a little more flexibility to the
6 homeowners in the city.

7 CHAIRMAN HOOD: We might be
8 digesting some of it again. Commissioner
9 Turnbull.

10 COMMISSIONER TURNBULL: I am
11 assuming this is the principal structure, not
12 accessory structures.

13 MR. JESICK: That is correct.
14 2001.3 addresses the principal structure.

15 CHAIRMAN HOOD: Any other
16 questions? Okay. Thank you.

17 MR. JESICK: Another section we
18 looked at is 2003, and this is the section
19 which addresses changes between two
20 nonconforming uses. We feel that the intent
21 of this section is fine as it is. However, it
22 is based on the hierarchy of uses between

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1 zones, where one zone builds on another zone.

2 Under the proposed use category
3 system, however, you couldn't say that one
4 zone necessarily consists of more intense uses
5 than the zone below it. So what we would like
6 to do is keep the same intent as the current
7 system, but simply make it work for the use
8 category system.

9 So there would still be a hearing
10 before the BZA, and the BZA would still use
11 evaluative criteria such as the ones that
12 exist in 2003 today. We feel that this would
13 present an opportunity before the public for
14 the BZA to judge the impacts of any use, to
15 make sure that it is the same or less intense
16 than the preceding use, and of course, it
17 would give an opportunity for the neighborhood
18 to weigh in on whether the new use is
19 appropriate.

20 CHAIRMAN HOOD: Okay. This has
21 nothing to do with this recommendation, but I
22 need to ask this question. You did a working

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1 group, your working group, and also the Task
2 Force. How many people were in attendance?

3 MR. JESICK: At the working group
4 meetings, we had anywhere from -- Well, I
5 can't remember the exact numbers. I would say
6 15 to 20 members of the public.

7 CHAIRMAN HOOD: That is better
8 than, with all four. Okay.

9 MR. JESICK: Right. The Task
10 Force did have a lower attendance. I don't
11 remember the exact number. It was the same
12 that Mr. Weinbaum referenced.

13 CHAIRMAN HOOD: So it was four
14 people there?

15 MR. JESICK: I think there were
16 actually a few more than that, but --

17 CHAIRMAN HOOD: Go ahead.

18 COMMISSIONER TURNBULL: Now you
19 need to do a special exception. Are you still
20 looking to do a special exception?

21 MR. JESICK: That is correct. It
22 would still be a special exception. The one

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1 section in there references the hierarchical
2 use system, and that is how it makes its
3 judgment on what uses are appropriate. This
4 would be just based on the special exception
5 criteria dealing with noise, traffic, light
6 impacts for the uses.

7 COMMISSIONER TURNBULL: Okay.

8 CHAIRMAN HOOD: Any other
9 questions? Okay.

10 MR. JESICK: Now the working group
11 brought up the idea of grandfathered uses, and
12 these are uses that exist and are considered
13 conforming uses, but would not be allowed as
14 new uses today.

15 Some common examples are hotels in
16 R-5. If a hotel existed before 1980 in an R-5
17 zone, it is considered a conforming use, but
18 you couldn't start a new hotel in an R-5 zone
19 today. Same with Pepco facilities in some
20 areas that have been rezoned from industrial
21 to some other zone. Another example is in the
22 CG overlay, industrial uses are considered

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1 conforming, but they are not permitted as new
2 uses today, and if it ceased operation, it
3 would not be able to resume.

4 So our recommendation is to create
5 a new section to address these types of uses
6 to formalize the rules that are now just
7 scattered throughout the regulations, and we
8 are calling these nonexpandable conforming
9 uses.

10 The reason this is necessary is
11 because these uses -- they need conforming
12 status to get insurance and financing, if they
13 want to make improvements to their property.
14 It is important to note that they are
15 different than nonconforming uses, because if
16 a nonconforming use is destroyed by an act of
17 God, it cannot rebuild. However, these uses
18 could rebuild, if destroyed. But again, in
19 all cases, the nonexpandable conforming uses,
20 as the name suggests, cannot expand in size.
21 Any questions?

22 COMMISSIONER SELFRIDGE: Just by

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1 way of example, this addresses that issue we
2 discussed previously as well about the corner
3 stores in the R-4 zones. They burn down; they
4 can build them back up. So it would help
5 preserve some of those types of businesses?

6 MR. JESICK: Well, that would
7 actually be a nonconforming use. So that
8 would be governed by the other rules in
9 Chapter 20 which deal specifically with the
10 nonconforming uses.

11 This is a slightly different
12 animal that, over time, a few uses have been
13 designated as conforming legally, but you
14 couldn't start a new business in that zone,
15 for whatever reason.

16 COMMISSIONER SELFRIDGE: So if it
17 is nonconforming and it burns down, it is
18 gone, stays gone?

19 MR. JESICK: Yes, right.

20 CHAIRMAN HOOD: Any other
21 questions?

22 MR. JESICK: So moving on to

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1 Chapter 25, 2507 deals with alley lots. What
2 we have heard anecdotally and seen in
3 applications that come through our office is
4 that tax lots are being created, sold, and
5 then the new owner expects to be able to build
6 something on that lot.

7 We want to make extra clear in the
8 regulations that a record lot is required to
9 obtain a building permit on an alley lot and,
10 if that lot doesn't meet the dimensional or
11 area requirements for a lot in that zone, that
12 you would need a variance just like any other
13 vacant lot.

14 A conforming change would also
15 require a slight modification to Section 401,
16 which talks about frontages for record lots,
17 and in this case the lots on the alley would
18 also need that same amount of frontage.

19 Now we value our alley lots. We
20 think they are a resource. However, they can
21 be problematic, we have heard from various
22 city agencies, for emergency vehicle access,

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1 utility access, etcetera. So we do want to
2 prevent, to the extent possible, the creation
3 of new alley lots.

4 Again, many tax lots exist without
5 a corresponding record lot underneath, and the
6 example on the screen is something that we do
7 see at various locations in the city. You see
8 two main homes facing the main street, two
9 smaller dwellings facing the alley, all with
10 their own tax lot. When you remove the tax
11 lot layer, however, you see that they are all
12 on a single lot of record.

13 This, of course, is a historical
14 example, but we do want to prevent this
15 situation from recurring in the future. So
16 that is the purpose of our recommendation.
17 Questions?

18 VICE CHAIRMAN SCHLATER: Would
19 this in any way restrict people from dividing
20 up their record lot into A&T lots and then
21 selling off the existing alley structures?

22 MR. JESICK: I don't believe so.

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1 Tax lots can be created by the Office of Tax
2 and Revenue. I don't think the zoning can
3 necessarily prevent that. You know,
4 technically, you do need a record lot to
5 obtain a building permit. So if they want to
6 make any kind of improvements to those
7 structures, they would still need to get a
8 record lot.

9 VICE CHAIRMAN SCHLATER: You
10 could conceivably still build an alley
11 structure, if it was an accessory unit or
12 something like that?

13 MR. JESICK: Yes, sure. If your
14 zone allows accessory buildings on your record
15 lot, you could still build an alley structure.

16 VICE CHAIRMAN SCHLATER: Has ZRR
17 looked into that? I know I had a few cases at
18 BZA looking for variances with respect to
19 alley dwellings, and OP at the time said this
20 is something that we are going to take a fresh
21 look at as part of ZRR. It is something we
22 want to encourage, because it is good for the

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1 vitality of the city.

2 This seems to be swinging a little
3 bit in a different direction. So I am
4 surprised to see the recommendation.

5 MR. PARKER: We did look pretty
6 comprehensively at alley lots. This is a
7 minor piece of alley lots, just clarifying
8 this record lot issue. I think what you are
9 talking about is the use of buildings, whether
10 residential can be in them or not.

11 We started down that path, looking
12 into that as part of this working group, and
13 we met with D.C. Water and Public Works and
14 Fire and a bunch of people, and one thing that
15 we realized is this is going to take a much
16 more significant time investment to determine
17 what the appropriate standards are for either
18 defining city-wide standards or more probably
19 looking block by block where these alleys
20 exist and mapping where there are houses,
21 because some of these alleys are appropriate
22 for homes that have sewer and water, etcetera.

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1 Some are inappropriate, either because of
2 access, because of utilities.

3 It has turned into a much bigger
4 task than we can accomplish as part of this.
5 So we are still committed to doing that work,
6 but it is probably not going to come forward
7 as part of this process.

8 VICE CHAIRMAN SCHLATER: I guess I
9 am just confused as to why this needs to be
10 clarified. Is this something the -- Is the
11 Zoning Administrator -- My understanding is
12 you can't -- you have to look to the record
13 lot in order to get a building permit. So is
14 it just practice that this was treated
15 differently?

16 MR. JESICK: We are not sure how
17 the practice of generating A&T lots and then
18 getting building permits for them -- how that
19 all happened, but it has been happening. We
20 would just like to make it as clear as
21 possible for potential purchasers of those
22 lots that, really, you do need a record lot.

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1 You are absolutely correct. That
2 is the current standard. They do need a
3 record lot. We just want to make it
4 abundantly clear in the regulation.

5 VICE CHAIRMAN SCHLATER: Okay,
6 thanks.

7 COMMISSIONER TURNBULL: We are
8 looking not to create any new ones, but on
9 existing ones, looking at the definitions on
10 lot lines, the alley would correspond to a
11 street lot line?

12 MR. JESICK: That is the
13 corresponding edit that I mentioned to Section
14 401.

15 COMMISSIONER TURNBULL: You would
16 change?

17 MR. JESICK: Right. We would say
18 that they need frontage on the alley. It
19 couldn't be like a pipestem lot, for example.

20 COMMISSIONER TURNBULL: Right.
21 And then all your other definitions follow.
22 They would be similar to those. I don't think

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1 it affects. It is just the alley has to be in
2 parentheses after street, I guess.

3 MR. JESICK; Right. It would be a
4 very similar thing.

5 VICE CHAIRMAN SCHLATER: Just a
6 follow-up question for Mr. Parker. So you say
7 you looked at it, particularly this whole
8 issue of alley lots and allowing residential
9 on alleys. Just avoid the topic altogether,
10 aside from this change, or are there other
11 changes sprinkled through other working
12 groups?

13 MR. PARKER: I wouldn't say avoid.
14 I have to say punt. Basically, what we found
15 is it is a block by block determination
16 whether residential should be allowed in alley
17 lots. It has really become -- We did spend a
18 lot of time on it, and it is really a
19 complicated issue.

20 VICE CHAIRMAN SCHLATER: It is not
21 a purely zoning issue? You are saying it is a
22 city service issue?

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1 MR. PARKER: It is a city services
2 issue. It is a fire protection access issue.

3 There is a lot of issues on the table, and it
4 is something that we really feel strongly
5 about getting solved, but it is something that
6 is going to be a major time commitment on top
7 of all the other work we are doing. So it is
8 something that we are looking right now as
9 follow-up to this general work.

10 VICE CHAIRMAN SCHLATER: Okay.
11 Thank you.

12 COMMISSIONER TURNBULL: You know,
13 just going back to the recent map amendment we
14 did regarding H Street, we had a couple of
15 situations in which we didn't go along with
16 the recommendation for alley areas. Are those
17 areas -- Talking about things we are going to
18 look at as what could be developed and what
19 couldn't, are those the kinds of things you
20 need to -- Is that the block by block?

21 You get into situations where you
22 could have something. I mean, it is a huge

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1 area back there. What can happen?

2 MR. PARKER: Yes. That is the
3 sort of thing we are talking about. We
4 originally looked at using alley width as the
5 determining factor of whether something would
6 be allowed. Right now, if you have a 35-foot
7 wide alley, you can do residential use, and we
8 looked at, you know, is 20 feet right, is 15
9 right.

10 We found out that that is not the
11 only variable, and so the more work we put
12 into it, the more variables came up. So that
13 was our issue.

14 CHAIRMAN HOOD: Any other
15 comments? Okay.

16 MR. JESICK: Moving on to Section
17 2516, of course, this is the section that
18 allows multiple buildings on a residential
19 record lot, and a suggestion by our working
20 group was to look at modifications to a single
21 family home within a development that had been
22 approved through Section 2516.

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1 Our recommendation is that, when
2 an individual homeowner applies for a small
3 change -- say, the addition of a deck or a
4 small expansion of their house -- that it may
5 be reviewed in an expedited review. This
6 would be similar to, say, a 223 application
7 which today could be reviewed in an expedited
8 manner.

9 Now the reason for this is that
10 2516 cases are approved as a unit for the
11 entire development. So they have to be
12 modified in the same way, but we want to make
13 that process as quick and as easy for
14 individual homeowners as possible.

15 CHAIRMAN HOOD: Okay, any
16 comments, questions? Okay.

17 MR. JESICK: Another
18 recommendation coming from our working group
19 was to examine institutional uses in the
20 context of 2516, and they actually recommended
21 exempting institutions from that process, the
22 reason being that in the Institutions Working

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1 Group, recommendations coming out of that
2 group said there would be two processes for
3 institutions, either a special exception or a
4 full blown campus plan, depending on the size
5 of your institution, and those processes would
6 look at the same things that a 2516 would,
7 arrangement of buildings, traffic impacts, lot
8 occupancy, open spaces, etcetera. So doubling
9 up on the review, we felt, was unnecessary.
10 Any questions?

11 CHAIRMAN HOOD: Okay.

12 MR. JESICK: Next recommendation:
13 We want to clarify in the regulations that
14 private rights-of-way may not be used in FAR
15 calculations in 2516 developments.

16 This is really to get at an apples
17 to apples comparison. Of course, public
18 rights-of-way are not counted toward land area
19 for FAR calculation purposes, and if private
20 rights-of-way were to be counted, they would
21 result in effectively higher floor areas for
22 those developments.

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1 Right now, it does say this in the
2 regulations, but it is not very clear. We
3 just want to make sure that any future
4 applicants know right up front that they
5 cannot count their private rights-of-way
6 toward their lot area.

7 COMMISSIONER MAY: I am glad this
8 is in here. That's all. I want to understand
9 how this works with the next one, though. I
10 am just suggesting that we might want to
11 actually talk about 15 and 16 at the same
12 time.

13 MR. JESICK: Sure. Well, our next
14 recommendation, just to jump right in, is to
15 prohibit private streets. There are concerns
16 from various District agencies, FEMS, D.C.
17 Water, about the maintenance of infrastructure
18 on private streets.

19 Of course, we all know about fire
20 hydrants. Now there are some concerns about
21 access for emergency vehicles, even the water
22 and sewer infrastructure under these streets.

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1 There are these concerns out there about how
2 well they are being maintained.

3 So our recommendation is to
4 prohibit private streets for subdivisions or
5 extended apartment complexes, require that
6 those streets be dedicated to the public, but
7 allow private driveways to a single apartment
8 building or a small cluster of apartment
9 buildings, or as access to a parking area.

10 We feel that in the long run the
11 public maintenance of utilities will lead to a
12 greater degree of public safety. Now I think
13 Commissioner May is correct that, if we do
14 require public streets, then perhaps our
15 previous recommendation will no longer be
16 needed. We wanted to throw that last
17 recommendation in there, just out of an
18 abundance of caution.

19 VICE CHAIRMAN SCHLATER: Is it a
20 purely administrative process, accepting a
21 street for dedication, or do you have to go
22 through a City Council legislative process?

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1 MR. PARKER: It is a legislative
2 process, but it is not --

3 VICE CHAIRMAN SCHLATER: That
4 takes a long time, doesn't it?

5 MR. PARKER: It can. It can.

6 VICE CHAIRMAN SCHLATER: And while
7 DDOT may -- and part of that process is
8 building those streets to DDOT standards,
9 which I understand is part of the impetus
10 behind this recommendation, but you also have
11 a fairly -- People who I know who have gone
12 through that process, it is like banging your
13 head up against the wall, frankly, because you
14 have to pay for DDOT inspectors to go out
15 there and watch the construction of the
16 street. You need them to sign off then on the
17 street, to accept the dedication.

18 I know that it is a huge
19 undertaking, getting a street dedicated in the
20 District. So I would be concerned about
21 adding this.

22 MR. PARKER: I know they have made

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1 some -- I don't know if they have made
2 improvements in the timing, but I know they
3 have made some -- They have started accepting
4 narrower streets, for example, with narrower
5 street legislation.

6 VICE CHAIRMAN SCHLATER: They are
7 accepting -- Their ability to accept a
8 narrower street is not the same thing as them
9 accepting narrower streets. It just means
10 they have the authority to do so.

11 MR. PARKER: Understood.

12 I think we could -- how to say
13 this? We've got definitions of what the
14 difference between an alley and a private
15 street is. I think we could potentially
16 develop standards for what a private street --
17 you know, certain minimum standards for what a
18 private street needs to achieve, but to put
19 somebody through a public street opening
20 process seems like a big step.

21 COMMISSIONER SELFRIDGE: Vice
22 Chairman, I don't have the familiarity with

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1 this. Is there a cost savings to the District
2 if there is private streets done or how does
3 that work?

4 VICE CHAIRMAN SCHLATER: There is
5 a cost savings to the District in that the
6 District doesn't have to then maintain the
7 streets. The first thing is that there is
8 always the possibility that DDOT is not going
9 to want the street, and they can just say,
10 no, we are not accepting it, and we are not
11 going to go through that process.

12 So then what happens? If we have
13 outlawed private streets as a zoning matter,
14 then DDOT -- then you are empowering DDOT to
15 basically shape the site plan of one of these
16 projects by saying, no, we actually want a 65-
17 foot right-of-way here. It has got to be to
18 our standards, and it has to be shaped in a
19 certain way, or we just don't want to maintain
20 it. It is going to be public, but you are
21 going to have to maintain it. It seems to
22 open up a low of issues, only because I have

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1 seen it happen in real life before.

2 So does it add cost to the
3 District? It adds the ongoing maintenance
4 costs, and it adds up-front costs for the
5 developer, because the standards of
6 construction are significantly different as
7 well.

8 MR. PARKER: If I could reframe
9 the issue, though, right now there is no such
10 thing as a private street. Private streets --
11 All streets are defined as public streets in
12 the zoning regs. 2516 has a loophole that
13 allows private drives, and the difficult is
14 when private drives, which are 24 foot and not
15 built to DDOT standards, are used for large
16 subdivisions of mainly single family homes.

17 The problems that we have heard
18 from the public agencies are they don't have
19 control of the land; they don't have access to
20 the underground, the sewer pipes, the water
21 pipes. The fire hydrants are often
22 substandard and can't be maintained as well.

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1 Snow removal: Over time, the pressure from
2 these neighborhoods on the city to -- you
3 know, why isn't my snow being removed? Why
4 aren't my potholes being filled?

5 In the short term, it is a cost
6 saving for the developer. It is a cost saving
7 for the city. In the long term, it is
8 generally a loss for the city, and that is
9 what we are hearing from all of these city
10 agencies.

11 VICE CHAIRMAN SCHLATER: In order
12 to go through -- In order to put one of these
13 private drives through your subdivision, you
14 either need to go through a BZA or a Zoning
15 Commission process, which affords the
16 opportunity for DDOT, Fire and EMS, and any
17 other city agencies to provide comments, and
18 we haven't been hearing a lot of those
19 comments recently.

20 COMMISSIONER TURNBULL: In one
21 version of this, in the hearing notice, it
22 talks about -- It is a little different from

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1 what you have got here, but it talks about, in
2 limited circumstances where private drives
3 are permitted in order to ensure safety,
4 standards should be based on provision of
5 public utilities and road engineering
6 standards. But I think you really want to say
7 D.C. road engineering standards.

8 I think, instead of being generic,
9 pin it down so that there is a definite set of
10 guidelines that they have to follow.

11 VICE CHAIRMAN SCHLATER: Just
12 following up on Commissioner Turnbull, I think
13 I like the idea of creating standards for what
14 these streets are, and I don't even know if
15 that is a zoning issue, frankly.

16 To me, it may be a building code
17 issue, which is -- I am not sure exactly where
18 it belongs. It doesn't feel like a zoning
19 issue, but if you want to build a private
20 drive that is going to be basically acting
21 like a public street, then you need to build
22 it to public street standards.

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1 So I think a lot of these concerns
2 can be addressed short of push these
3 applicants through a street opening dedication
4 process.

5 COMMISSIONER MAY: I am not
6 convinced that we need to back away from this
7 proposal. Just out of curiosity, we have
8 three images here of site developments. Are
9 those all actually within the District?

10 MR. JESICK: Yes. Those are all
11 within the District.

12 COMMISSIONER MAY: The one on the
13 left is kind of understandable, although it is
14 just an awful lot of paving, and then the sort
15 of spaghetti in the middle with cul de sacs.

16 I think I am a little bit
17 concerned that, by prohibiting private streets
18 for the sake of infrastructure, we are opening
19 the door for sort of civil engineering
20 concerns to overtake good urban design.

21 So I am not totally convinced of
22 the rationale here. I hope that there is

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1 enough of an urban design component that some
2 of the things that we do want to have, like
3 narrower streets and alleys and things like
4 that that are part of what makes the great
5 neighborhoods of this city great -- that those
6 are achieved. But I, frankly, have never been
7 comfortable with private streets that have
8 come to us for approval as parts of PUDs. I
9 can't remember an example where a really good
10 street was being created.

11 So I am definitely open to the
12 idea of prohibiting private streets entirely.

13 I also think it is a little bit odd that we
14 have streets that connect to the grid, and
15 they don't theoretically look any different,
16 but they are private streets. They are not
17 public streets. So they are not going to get
18 the same services, and they are not going to
19 get plowed or what have you.

20 I mean, I don't know who we have
21 to rely on for maintenance in those
22 circumstances, but I am not sure that that

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1 model of development is what we really want to
2 be encouraging anyway. There is nothing wrong
3 with extending the grid of streets and making
4 them public. In the long run, that is, I
5 think, the best way to get a really good
6 structure for the city.

7 So I am definitely open to that.
8 I think that there is more to understand about
9 it, because if we are sending -- if we are
10 going to condemn potential development
11 projects to an endless street dedication
12 process, then maybe we need to move slowly in
13 implementing something like this, and maybe
14 there is some intermediate step or what have
15 you while they get the street dedication
16 process smoothed out. But I am definitely
17 open to the idea. I just think a little more
18 information would help us make the decision.

19 In the meantime, I think we have
20 to keep recommendation 15 going, no matter
21 what.

22 MR. JESICK: Our final

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1 recommendation in Chapter 25 deals with Zoning
2 Administrator flexibility. Right now,
3 scattered throughout the regulations, are a
4 few different sections that grant the Zoning
5 Administrator flexibility to make minor
6 adjustments to approvals or to the zoning
7 standards themselves. We would like to
8 consolidate those flexibility standards into
9 one location, establish consistency between
10 different types of approvals.

11 For example, the regulations say
12 that the ZA can make decisions on flexibility
13 from PUD orders, but makes no mention of BZA
14 orders. We would also like to add criteria by
15 which the ZA could determine if that
16 flexibility request is appropriate.

17 This would, of course, simplify
18 the regulations and make them more logical.
19 If the ZA had the ability to accommodate minor
20 deviations from a BZA order, that would
21 eliminate a lot of trips back to the BZA for
22 public hearings.

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1 Then right now, the only guidance
2 the ZA has in the regulations to determine if
3 flexibility is appropriate is that it has to
4 meet the intent of the regulations. If we can
5 flesh that out a little bit by saying what the
6 intent is -- you know, to provide light and
7 air and privacy, etcetera -- even if there are
8 some basic guidelines there, the Zoning
9 Administrator has said that that would help
10 him make those judgments.

11 COMMISSIONER TURNBULL: I just
12 have one concern. I mean, I am all for the
13 flexibility, but I just want to be very
14 careful that -- and I know on a Zoning
15 Commission order, there are some very specific
16 aspects, whether it involves what is being
17 proper for community groups and everything
18 else -- that we are very careful that there is
19 -- I mean, he can do minor modifications.

20 I think we have got to be very
21 clear, because otherwise -- I sat on a BZA
22 case. There was an appeal by a community

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1 group on a ZA interpretation, and I believe he
2 exceeded it, and I was going to sua sponte it,
3 but the situation resolved itself.

4 So I guess I am just very nervous
5 about how much -- I want him to be able to
6 make the minor mods, but I think, when we do
7 these orders, I think there are some very
8 specific things in thee that, if they are
9 going to be changed or modified, they should
10 come back to the body that put the order
11 together.

12 So I know you haven't got that
13 language set up, but I would be --

14 MR. JESICK: Maybe I should
15 clarify. We are not proposing to change what
16 the ZA has the power to change. That is
17 spelled out, you know, two percent of certain
18 parameters, 10 percent of other parameters.

19 COMMISSIONER TURNBULL: Right.

20 MR. JESICK: That would all stay
21 the same. We just want to allow it for BZA
22 approvals.

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1 COMMISSIONER TURNBULL: As long as
2 -- Again, it is for minor mods, however you
3 define minor modifications.

4 MR. JESICK: Yes. That is all
5 spelled out. So we wouldn't touch that.

6 All right. Moving on to Chapter
7 32, the administration and enforcement
8 chapter, our first recommendation here is to
9 institute a sunset clause for setdowns.

10 This is important, because
11 especially in the case of map amendments, once
12 an area is proposed to be remapped and that
13 proposal is set down, property owners must
14 abide by the more strict of the two zones.

15 In a few cases over the years,
16 this has gone on for several years. We would
17 like to provide more certainty to those
18 property owners that this ambiguous state of
19 affairs will not continue indefinitely. With
20 a two-year sunset clause, we feel that would
21 provide them a little bit more certainty about
22 what the eventual possibilities for their

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1 property can be.

2 COMMISSIONER TURNBULL: Let me
3 just ask one thing. I thought that on -- I
4 thought it came up at a BZA hearing that --
5 and I don't know whether it is written in the
6 order that expires at a certain time or
7 whether -- I thought some BZA orders expired
8 after a year already.

9 MR. PARKER: We are not talking
10 about the orders here. We are talking about
11 the setdown. So when the Zoning Commission
12 sets down a case and then it doesn't come back
13 to you for hearing, that setdown is right now
14 indefinite.

15 COMMISSIONER TURNBULL: I will
16 step back. Thank you.

17 MR. JESICK: All right. Section
18 3202 deals with building permits, and we would
19 like to describe what specific building
20 permits vest the zoning regulations for a
21 property.

22 Now what is happening here is, if

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1 you get a building permit, say, for a 90-foot
2 building which is permitted, then for some
3 reason the zoning changes on your property to
4 only permit 65-foot buildings, you would still
5 be entitled to what you got your building
6 permit approved for.

7 That is where the vesting comes
8 in. However, Title 12 lists numerous types of
9 building permits, Title 12 being the building
10 code, and we would like to pull out four
11 specific building permits that we feel are
12 substantial enough to vest a property, vest
13 the zoning on a property.

14 All of these would either
15 establish a new use as a principal use or
16 establish a new structure as a principal
17 structure. Of course, number one, just being
18 new construction of a building. Number seven
19 is a canopy or a tent as a principal
20 structure, television or telecom antennas as a
21 principle structure, and then the changing of
22 a use or occupancy, etcetera.

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1 So we feel that these will, again,
2 clarify that some minor permits will not vest
3 a property like the construction of a fence or
4 something, and give more clarity to the
5 regulations.

6 CHAIRMAN HOOD: Any comments?
7 Anything else, Mr. Jesick?

8 MR. JESICK: That concludes our
9 presentation, but we would be happy to
10 entertain any other questions.

11 CHAIRMAN HOOD: Any additional
12 questions or comments? Director, any last
13 comments?

14 MR. WEINBAUM: No, sir.

15 CHAIRMAN HOOD: I think what we
16 will do then is go to the --

17 MS. SCHELLIN: Before we do, Mr.
18 Chairman, can we -- Ms. Simon, do you have the
19 testimony you could submit to us, or not? I
20 just wanted to check before we started.

21 CHAIRMAN HOOD: Okay. Ms.
22 McCarthy, could you join us at the table. I

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1 think I don't need the witness list. I think
2 I know everybody's name.

3 Let me start to my left, to your
4 right. I will start with Ms. Simon, and we
5 will go down, Ms. Simon, then Ms. Gates, then
6 Ms. Kahlow, and then Ms. McCarthy.

7 COMMISSIONER MAY: Wait a minute.
8 Are they all in support?

9 MS. KAHLOW: How long each are
10 going to have, because there are only four of
11 us.

12 CHAIRMAN HOOD: We have already
13 extended the -- As a result of what I heard
14 yesterday, we have already extended it. Is
15 anybody representing -- All represent
16 organizations?

17 MS. KAHLOW: No, she is not.

18 CHAIRMAN HOOD: We will give her
19 five minutes. Does anybody have a problem? I
20 will tell you what. Let's do six minutes. Is
21 that okay?

22 MS. KAHLOW: Thank you.

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1 CHAIRMAN HOOD: As a result of the
2 good testimony we heard yesterday, we will do
3 six minutes. We will start with Ms. Simon.

4 MS. SIMON: Thank you. My name is
5 Marilyn Simon, and I would like to address
6 OP's recommendation 4 to allow effective ANCs
7 to submit an ANC setdown form prior to a
8 Zoning Commission setdown meeting in all
9 contested or potentially contested cases.

10 At previous hearings and in
11 working groups, I spoke about the benefit of
12 having public input prior to the setdown
13 meeting. In the past, that had been allowed,
14 and the Commission benefitted from having that
15 information.

16 At the setdown meeting, the Zoning
17 Commission was able to provide the applicant
18 with guidance as to how they might revise
19 their project or additional information that
20 would be useful to the Zoning Commission that
21 they might include in their prehearing
22 submission.

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1 In more recent years, that was not
2 allowed. OP's proposal is a step in the right
3 direction, and I believe it is a mistake to
4 limit pre-setdown input to ANC's. Given the
5 time constraints, the ANC's notice requirements
6 and meeting schedules, it is difficult for the
7 ANC to provide input in a timely manner,
8 especially if the ANC is going to want to be
9 able to include comments on the OP report,
10 which is only received a fairly short time
11 before the setdown meeting.

12 More importantly, it is frequently
13 the citizens or civic associations or an ad
14 hoc neighborhood group that is in the best
15 position to review the application and provide
16 the Commission with information that might be
17 missing from the application or the OP report.

18 In my earlier testimony on PUD
19 recommendations, I gave an example of
20 information provided to the Zoning Commission
21 on a 2002 PUD application. In that case,
22 several neighbors wrote letters, which

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1 included photographs of trees on the site, as
2 well as providing basic information about the
3 square footage that would be allowed as a
4 matter of right on that site, information that
5 was not included in the OP report.

6 The information in those letters
7 was discussed by the Commissioners on the
8 dais, and they provide guidance to the
9 developer, guidance that resulted in
10 improvements in the project prior to the
11 hearing.

12 I would also ask that you consider
13 leaving the record open for a reasonable
14 period of time for additional comments. Thank
15 you very much.

16 CHAIRMAN HOOD: Thank you very
17 much, Ms. Simon. Ms Gates.

18 MS. GATES: I am going to start
19 off on a little different track. If you have
20 read my testimony, you know that.

21 Good evening, Chairman Hood and
22 members of the Commission. I am Alma Gates

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1 representing the Committee of 100 on the
2 Federal City. The Committee of 100 is before
3 you tonight as a Zoning Task Force member who
4 is concerned about zoning regulation rewrite,
5 about the rewrite process, procedures and
6 communication.

7 This is not intended to be
8 personal. So I apologize if anyone interprets
9 my comments otherwise.

10 I clicked on the Office of Zoning
11 website to print out the meeting notice for
12 production, distribution, and repair for
13 tonight, and discovered tonight's hearing was
14 something different than what has been noticed
15 to the Task Force.

16 OP does have a change noted on its
17 website, but frankly, the notice from the
18 staff to the Task Force that is attached as
19 the back page is what I was using as guidance.

20 Task Force members who are still
21 participating have been somewhat overwhelmed
22 by the ZRR process, as you have, and this was

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1 noticed at yesterday's oversight hearing.

2 The proposed schedule on the
3 announcement is more ambitious than what was
4 previously proposed, and speeding up the
5 process may not be the best way to address a
6 new zoning code for the city. After all, we
7 are no longer working under a hurry up and get
8 it done mandate in the city.

9 Also, it would be very useful if,
10 as a matter of course, Task Force members were
11 sent hearing and meeting notices on the ZRR.
12 Communication and transparency are lacking in
13 this process. Little effort has been made to
14 move the ZRR beyond the Zoning Commission
15 hearing room.

16 There are lots of residents who
17 are going to be very surprised when the
18 rewrite is released, and they are afforded a
19 30-day comment period.

20 I ask that the Zoning Commission
21 hold open the record on Case No. 08-06-15
22 until the close of business on March 5th for

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1 all submissions on this case be put in the
2 file.

3 I do have some comments to make on
4 this case. Recommendation 4: I am going to
5 pretty much echo what Ms. Simon said. I want
6 to comment about the actual form before I go
7 on, and this is not in here.

8 The Public Space Committee
9 requires the ANC to complete a form as well,
10 and it notes what the decision was. The
11 entire Commission must vote on it, and the
12 date of the hearing. So that might be helpful
13 for you.

14 This recommendation was widely
15 discussed during the Work Group meetings and
16 by the Task Force, and I will say, this work
17 group was well attended, and I think people
18 were really engaged in it.

19 Recommendations were also
20 resisted. In her testimony on October 4th,
21 Marilyn Simon stated the following: First,
22 the Zoning Commission should have access to

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1 input from the community prior to the setdown
2 meeting. This should not be limited to the
3 applicants or OP's summary of the community
4 concerns. The Zoning Commission should be
5 able to read comments from the ANC, community
6 organizations, and individuals prior to the
7 setdown meeting. In the past, this was
8 possible and, based on those comments, the
9 Zoning Commission provided the applicant with
10 guidance for preparing its prehearing
11 submission.

12 In the form, the ANC does not
13 carry great weight, and if it is to be
14 accepted into the record prior to the hearing,
15 why not community groups. They are often more
16 on top of issues than a group of elected
17 individuals who represent diverse areas.

18 A lengthy discussion took place
19 about when a record is created. Perhaps the
20 Zoning Commission would add at what point a
21 record exists to its list of issues, items in
22 need of clarification.

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1 If a record does not exist prior
2 to a hearing, where does the OP report go?
3 Logic would tell us that lots of paper exists
4 before a record exists, and it must be going
5 into some type of file or record.

6 Allowing communities to file a
7 form similar to that proposed for ANCs is not
8 going to prove burdensome, and goes a long way
9 in showing balance that the community often
10 feels is missing when contested cases come
11 before the Zoning Commission. I think Mr.
12 Weinbaum also noticed that he didn't think it
13 would be overwhelming.

14 Just from your comments on
15 recommendation 9, this argument appears to
16 create more rather than reduced nonconforming
17 structures. Why are there so many? Is it
18 because we just continue to issue special
19 exceptions, and suddenly we are facing that?

20 Recommendation 10: An additional
21 note I have on this work group meeting
22 addressed Section 2005, Discontinuance. It

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1 was suggested that the term be changed to
2 Abandonment. This doesn't appear anywhere in
3 the notes.

4 Recommendation 17, work with the
5 Zoning Administrator: This recommendation is
6 timely, and criteria are clearly needed. A
7 thorough review of the proposed criteria
8 should cycle through the same process as other
9 changes under the ZRR.

10 I would just end by asking, are
11 you convinced the ZRR is simplifying the
12 zoning process? I am not.

13 CHAIRMAN HOOD: Thank you, Ms.
14 Gates. Ms. Kahlow.

15 MS. KAHLOW: Thank you. I,
16 Barbara Kahlow, live at 820 25th Street. I am
17 testifying on behalf of the West End Citizens
18 Association, the oldest citizens organization
19 in Foggy Bottom/West End.

20 I wanted to mention my
21 professional qualifications. For those
22 looking on television, I spent 25 years at the

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1 Office of Management and Budget in the
2 Executive Office of the President where I was
3 primarily involved in regulatory policy
4 development.

5 After OMB, I served in the
6 legislative branch for seven years, retiring
7 as Staff director of the House Government
8 Reforms Subcommittee on Regulatory Affairs.
9 This was the only subcommittee in either
10 chamber devoted to regulatory process and
11 policy. I have been recognized by the Zoning
12 Commission as an expert in the regulatory
13 process.

14 First, I want to go to the actual
15 draft test, and then I have other recommended
16 changes. Because the time -- you are
17 shortening the amount of time we have, I will
18 only be discussing certain of the sections.

19 I participated in five working
20 groups, including this group. During the five
21 groups, OP largely ignored comments from the
22 permanent residential community participants.

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1 Because of this unfortunate and unusual
2 practice, which I have never seen in a
3 rulemaking in any other body in the United
4 States, few community activists participated
5 as time went on, particularly in this working
6 group. Only three, Mr. Hood -- Only three,
7 the three ladies right here, were the only
8 community activists who participated in this
9 working group, unlike, let's say, the
10 university one. You may have had 30 people in
11 the room.

12 The bottom line is the process is
13 not working as the Mayor and the Commission
14 had intended. The only exception where I felt
15 the community's voice was heard was during the
16 first meeting of this group, which was chaired
17 by the Office of Zoning. I think Mr. Weinbaum
18 listened. He wanted our input in four areas:
19 prehearing; hearing; post-hearing; and
20 administrative items.

21 Now let me go into different
22 sections that I want to mention, particularly.

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1 Recommendation 2: I strongly support -- We
2 strongly support removing the requirement for
3 witnesses to identify if they are in support
4 or in opposition.

5 Part of the reason, and the most
6 important reason, is so parties can testify
7 before non-parties. We just sat through a
8 hearing, as you know, a week or so ago where
9 we had to sit through a bunch of witnesses
10 before we could present our case. That was
11 actually not helpful, I think, to the
12 Commission.

13 Recommendation 4: I echo what the
14 two other ladies to my right said. I
15 previously participated in many setdown cases
16 where you were able to hear a our
17 recommendations. They made a great deal of
18 difference. It was the AG who stopped that
19 practice. We do not know why.

20 We think it is important that
21 citizens associations like the WECA be allowed
22 to provide information. I have numerous

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1 examples, which I keep mentioning to you guys,
2 of recent cases where we have provided
3 information to the Office of Planning, and
4 they have neglected to provide it to you at
5 setdown.

6 In fact, you have asked questions.

7 Mr. Schlater asked the Office of Planning in
8 one case recently was there any -- what did
9 the community say, and they said, ah, nothing.

10 Well, they had in front of them what we had
11 said, and it is very frustrating for us. So
12 we think that -- and I have listed some cases
13 -- that it is very important that we be given
14 an opportunity.

15 The ANCs often have too many
16 things on their plate. They don't have the
17 time to do pre-setdowns. They are not experts
18 in this or almost anything else.

19 Recommendation 14: I don't
20 understand it, but anything that removes
21 requirements for campus plans and universities
22 gets me very nervous.

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1 Recommendation 17, Zoning
2 Administrator flexibility: This two percent,
3 10 percent is not unsubstantial. Ten percent
4 is a pretty big deal, and I think that the
5 Zoning Administrator should be required to
6 reach out to the ANC, especially if they are
7 10 percent, and the immediately affected
8 residents, the 200-footers or the next-door
9 owners.

10 This was a big deal. The 10
11 percent, for example, is for rear yard and
12 side yard. We should not just allow this
13 flexibility, as Ms. Gates said. We need to
14 look at this and see if it makes sense
15 anymore.

16 Now as for other recommended
17 changes, I am only going to mention a few of
18 them, and then I go by the sections to the
19 2002.3, my first one, adding a cite to the
20 considerable case law on nonextension of
21 grandfathered nonconforming uses. This
22 addition would have helped the BZA make a

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1 different decision in the case.

2 Number 2, 2500, Accessory Uses:
3 Since there is Federal preemptive law,
4 referencing would help the Zoning Commission
5 and the BZA make more informed decisions.

6 Number 4, Penalties: I think
7 that, for violations, they should be more than
8 \$100 a day. People are willing to take that
9 risk.

10 Number 5 is the most important,
11 Building Permits, Section 3202. I think you
12 need to add a clarifying requirement to
13 identify which applications for building
14 permits require pre-issuance review by the
15 ANC, as required by law.

16 Currently, almost no building
17 permits, including biggies, are sent to the
18 ANC. That is just not the way the statute,
19 the ANC statute, was written, and it doesn't
20 help anybody, because then we are in the
21 appeal stage all over again.

22 On number 6, Compliance With

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1 Conditions and Orders, for poor compliance I
2 think we need to add dollar penalties for
3 noncompliance and the threat of a possible CFO
4 revocation.

5 Lastly under Hearing Procedures --
6 and this is very difficult. To ensure
7 fairness, we recommend that there be training
8 for new BZA members. We suffered through a
9 BZA hearing where we were not allowed -- We
10 were the appellant, and we were not allowed to
11 present our case.

12 In fact, of my eight-page
13 statement, I was allowed to present about a
14 page and a half. Thank goodness, it is in the
15 written record, but now as a consequence, the
16 end result is we have to go to the D.C. Court
17 of Appeals for something that they, clearly,
18 did not understand the law and did not provide
19 us a fair opportunity to be heard.

20 So the WECA respectfully requests
21 that you ask OP to make the recommended
22 changes and additions. Thank you for your

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1 consideration of our testimony.

2 CHAIRMAN HOOD: Thank you very
3 much. Ms. McCarthy.

4 MS. MCCARTHY: Good evening, Mr.
5 Chair and members of the Commission.

6 Generally, most of what you have
7 before you are good suggestions. So I won't
8 spend time on them, but I want you to know
9 that I feel that way, because I will just
10 focus on things I have issues with, and I
11 don't want it to seem unduly negative.

12 My primary concern is the
13 provisions permitting comment by ANCs on
14 setdown. I think this is a very ill advised
15 provision, and my concerns are in no way to be
16 taken as denigrating ANCs, but land use is a
17 matter of striking a balance, as you know well
18 from your position.

19 On the one hand, in order to have
20 good development, there needs to be good
21 communication between developers and community
22 members, especially with PUDs. On the other

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1 hand, developers and their investors and
2 lenders need predictability and certainty of
3 process, especially now when the capital
4 markets are still in such a fragile state.

5 So let's review the purpose of a
6 setdown. A setdown is not to hear the pros
7 and cons of a case. That is the public
8 hearing. A setdown is merely to confirm that
9 a prima facie case has been made, that the
10 application meets the zoning regulation
11 requirements, and there is a presumption built
12 into the zoning regs in favor of every
13 applicant deserving their day in court.

14 If you want to deny setdown, you
15 have to have an absolute majority of the
16 Board, not just a simple majority of whichever
17 members must be sitting. That is very
18 different than accepting setdown and for
19 making any other kinds of decisions. So,
20 clearly, the regs felt that it was important
21 for people, as long as they met the basic
22 requirements, to have the ability to have a

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1 public hearing.

2 The issues that the Office of
3 Zoning is asking ANC's to address are just not
4 appropriate. Consistency with the
5 Comprehensive Plan? That is what the Office
6 of Planning, whose professional responsibility
7 is drafting and maintaining the Comprehensive
8 Plan -- that is what they are experts in.

9 I don't understand why there is a
10 need to have someone else commenting on that,
11 particularly because the Office of Planning is
12 looking at the overall Comprehensive Plan, and
13 the ANC is just looking at a perception of how
14 the Comprehensive Plan addresses their local
15 circumstance.

16 Contested case or not? Again,
17 that is an objective, technical consideration.

18 That is not something that requires or is
19 even appropriate for the ANC to weigh in on.

20 Last, additional issues: That is
21 a great one for the ANC, but that is what we
22 have the public hearing for, so the ANC can

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1 address any additional issues, things that
2 they want the Zoning Commission to take a look
3 at, concerns they have, whatever.

4 A good reason not to go into that
5 at the setdown is that very frequently, as you
6 know, there are substantial changes that are
7 made to applications from what is originally
8 submitted to you and set down to what is
9 actually submitted in the prehearing statement
10 because of the negotiations that take place
11 during that period of time between ANC's and
12 the Office of Planning.

13 So you may end up wasting your
14 time considering objections or concerns that
15 are made in an ANC form that aren't even in
16 the case when you finally get to the public
17 hearing.

18 All this wouldn't be so important,
19 but for the prospect of what, I fear, are
20 serious delays. Mr. Weinbaum indicated
21 earlier that there were several cases that had
22 less than 35 days between the submission of

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1 the application and setdown.

2 At the Office of Planning, we
3 encouraged that, because we encouraged
4 applicants to come in and work with us closely
5 through the process, so that submitting a
6 setdown report took very little time, because
7 we were already very familiar with the case.

8 A PUD, for example, takes between
9 six and 12 months, and six is near miraculous.

10 A developer before that time works to acquire
11 the property, get the financing, get the
12 design done, meet with the Office of Planning,
13 DDOT, get a traffic engineering report done,
14 all the rest of it.

15 By the time the developer is ready
16 to submit, they need to move quickly. They
17 have made a major investment in this project.

18 So what if the ANC doesn't meet in December
19 or August, as is frequently the case? What if
20 the ANC didn't have a quorum for the session
21 that was taking place after they received this
22 application? The Zoning Commission doesn't

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1 meet in August and has limited dates in
2 December.

3 So first of all, there is likely
4 to be a real burden on you of ANCs coming back
5 to you and saying, well, you know, we know
6 there was a 35-day delay, but you know, we
7 didn't have a quorum or there was a holiday or
8 we received it; when we received the
9 application, we didn't have time to notice the
10 meeting that was coming up, and the next
11 meeting won't be held until after the 35 days
12 are over with.

13 It is a nightmare, and you will be
14 there, not even being able to consider the
15 merits of the case, because you will have to
16 be deciding, well, should I give an extra
17 delay or not? I don't that is something that
18 you want to get into.

19 Mr. May talked about slippery
20 slopes earlier, and not liking them. So I am
21 sorry about getting into this, Mr. May, but
22 one part of the slipper slope is the demand

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1 for delay because of the reasons I gave
2 already, that the ANC couldn't get their vote
3 in on time.

4 You start this, and there will be
5 a demand that great weight be given to the ANC
6 reports. I think that is only a matter of
7 time. Then every time you would make a
8 setdown decision, you are also going to have
9 to have an order published explaining why you
10 did or did not give the ANC great weight.
11 Other community groups will want to weigh in.

12 Ms. Simon was talking about
13 commenting on the Office of Planning report in
14 the reports that would be submitted for
15 setdown, which is beyond even the scope of
16 what you are talking about and, certainly, not
17 appropriate for consideration at the setdown
18 of a case.

19 So I think those are all pretty
20 serious reasons to be very careful about that
21 requirement.

22 I have a number of other issues

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1 that I wanted to raise. Let me just mention
2 with regard to the vesting provisions two
3 issues. Number one, in addition to the
4 building permits that are listed as permits
5 that should vest setdown, I would certainly
6 say it ought to include the sheathing and
7 shoring, which is a standard initial building
8 permit, and once somebody has dug a deep hole
9 in the ground, it is not like they are then
10 likely to turn around and leave or not follow
11 through with the project. So I think that is
12 a pretty serious commitment.

13 Secondly, there is a discrepancy
14 now in the rules. The zoning rules say you
15 can only vest for two years that the building
16 permit is valid. But in fact, through DCRA
17 building permit procedures, permits can be
18 valid for up to two and a half years, and the
19 way the regs work now, you may be a developer
20 with a perfectly valid building permit, as one
21 of my clients was. You turn around and try to
22 proceed with your building and be informed by

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1 the Zoning Administrator, oh, no, see, this
2 provision of the zoning regs only says that
3 your vesting provisions last for two years.

4 So at the very least, that
5 discrepancy needs to be rectified. I think it
6 is just a technical issue, but it can be very
7 important for somebody that is caught in that
8 six-month Neverland. Thank you.

9 CHAIRMAN HOOD: Okay. I want to
10 thank you all for your testimony. I am going
11 to take a page out of Ms. Gates' book, and I
12 am going to do something different.

13 I know that we have our
14 recommendations in front of us in a particular
15 hearing, but after two days in a row of
16 hearing the process of the ZRR -- and I am not
17 sure where my colleagues are, and what I am
18 getting ready to say, everybody is going to
19 probably cringe, but I will tell you that I
20 have been around long enough to know that,
21 when we proceeded with the campus plan -- I
22 don't want to say takeover, but when we dealt

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1 with the campus plans, we were going back and
2 forth whether or not the Zoning Commission
3 should have a campus plan.

4 What we did at that time, we had a
5 roundtable, and we heard from the public. We
6 are hearing from -- I just want to make sure
7 we afford the opportunity, because I am
8 hearing that one or two people are only coming
9 to the Task Force, and I think, Mr. Parker,
10 you were there, I heard, yesterday, and I am
11 hearing a lot of that.

12 I know that the advertisement has
13 been out there. The reason I know that,
14 because I have done it myself in my own ward.

15 when I go to meetings, I have talked to Ward
16 4. I have been in Ward 7 personally. But for
17 some reason, we don't get a response.

18 I guess what I want to know is why
19 we are not getting response, but I will tell
20 you this. The way I understand it is that,
21 when people are making suggestions or making
22 comments, they are feeling as though that the

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1 plan is already made, and they are having
2 problems with it, because when it gets there -
3 - I will tell you, I am not going to say
4 exactly what I am dealing with right now, but
5 every time -- I have been making a suggestion
6 for about five years, and I have gotten to the
7 point that I am kind of -- I don't even go to
8 the meeting anymore.

9 So if that is what indicative of
10 what is going on here, then we have a problem,
11 and I am going to be recommending to my
12 colleagues -- now, you know, I am only one
13 vote -- that at some point in time, either we
14 need to slow down the process and figure out
15 why people are not participating, but on the
16 other hand, just like we just heard here, you
17 know, about the ANC form, we want to make sure
18 that we at least make every attempt to make
19 sure that we get it out to the public.

20 As I have heard people say, that
21 things are going to change, and people are
22 going to wake up one morning, and the whole

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1 zoning in their neighborhood has changed.
2 That is not going to go over well. I can tell
3 you, that is not going to go over well in this
4 city, and this city can be very mean, and I
5 don't want to be one of the ones that had a
6 part with it, when I know we have not
7 exhausted all we can do to make sure we get
8 the word out.

9 Case in point: I want to use this
10 example tonight. Three people testifying that
11 they wanted the ANC form, and I understand
12 that some people want to take it a little
13 further, and I have further comments on that.

14 One person testified that that will be
15 burdensome.

16 Now I will tell you, I really want
17 to hear what a lot of the folks in the city
18 have to say, at least afford them the
19 opportunity. Now we are not going to get
20 everybody down here.

21 I will tell you, the ladies we
22 have in front of us are consistent, and I want

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1 to applaud you, and I appreciate you coming
2 down and being consistent, but there are some
3 other people who are out here in this city who
4 may agree with them or who may not, and the
5 case is, have we done all we can do to reach
6 out to them.

7 So I will tell you, what I am
8 proposing -- everyone can cringe -- at some
9 point we need to have a process roundtable.
10 The question is what do -- Some people say, we
11 are not going to get anything out of that?
12 Well, we are going to get the same thing. But
13 guess what? We made an attempt.

14 I remember telling the late Ms.
15 Zartman a while back that we tried to stop the
16 process. Let's revisit our process. Why
17 aren't the people on the Task Force coming to
18 the Task Force meetings? I keep hearing it.
19 Why have they stopped coming?

20 I know why I stopped coming, but
21 why have they stopped coming? Let me just
22 ask. Ladies, can you tell me, why have people

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1 stopped coming to the -- well, I am not going
2 to say the work groups, but I know the Task
3 Force. Why have they stopped coming? If you
4 want to respond, you can. If not, I
5 understand.

6 MS. GATES: I think both Ms.
7 McCarthy and I are on the Task Force.

8 CHAIRMAN HOOD: Oh, okay. I am
9 sorry.

10 MS. GATES: I think -- I really
11 did think about this. I don't know whether it
12 was the fact that the meetings were moved from
13 North Capital Street down to the Office of
14 Planning Headquarters. It is much more
15 difficult to get there.

16 The hearings -- Things have not
17 been done -- and again, this is not personal.

18 Things have not been done in a consistent
19 way. So I might go to a meeting tonight on
20 PDR, but tomorrow night there is a Zoning
21 Commission hearing on a totally different
22 subject.

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1 So if I want to come and give
2 testimony tomorrow night, just -- I often say
3 I feel as if my head is a Cuisinart, and I
4 have all this stuff whirling around in it, and
5 it is really hard to keep it straight.

6 So there has been a lot of
7 information put out there. It has been done
8 in a less than -- It hasn't been easy to
9 follow the progress of where the zoning
10 rewrite is going. Surely, you have
11 experienced the same concerns through this
12 hearing process. Nothing is building on
13 anything else. It is just a whole bunch of
14 stuff happening.

15 Perhaps it is that people come and
16 make recommendations, have concerns, and they
17 are not -- They don't see their recommendation
18 in any of the recommendations put forth to the
19 Commission. So I suppose that is part of it.

20 I will just turn the microphone
21 over to Ms. McCarthy.

22 MS. MCCARTHY: I think that there

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1 -- Let's see. Part of it probably stems from
2 some of the issues that Ms. Gates was talking
3 about, that we have gone from having meetings
4 at OP's 801 to 14th and U, to One Judiciary
5 Square, to the new OP Headquarters.

6 So it has been a little confusing,
7 and not all of them are equally easy to get to
8 by Metro or for those Task Force members that
9 don't do Metro and drive, and meetings at 14th
10 and U were like a sweat bath. But that is
11 just -- You know, that is what you had to deal
12 with all the time during the day. We only had
13 to deal with it for a few hours at night.

14 I think that the initial notion of
15 the working groups was designed to try to
16 reach out and get a broad cross-section of
17 people. It didn't really end up that way. It
18 ended up being a lot of what Claude Rains
19 would describe as the usual suspects, but it
20 also burnt out everybody, because many of the
21 members of the Task Force were interested in
22 the working groups. So they would go to a

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1 working group meeting. They would have a Task
2 Force meeting. They had have testimony before
3 you all, and I suspect that burnout is a big
4 part of it.

5 So I definitely got to the point
6 where, for Task Force meetings, if it wasn't
7 on a subject that I felt I had a lot to add or
8 there was of burning of interest to me, you
9 know, I just decided I could skip that night,
10 or sometimes, you know, clients have you, you
11 have to go to an ANC meeting or whatever.
12 There are other things that interfere.

13 So I think, you know, we -- I know
14 that under the Lewis plan, even when Harold
15 Lewis brought the regs down from New York and
16 presented them in whole cloth to the District
17 of Columbia, it took a year of meetings with
18 various advisory committees and making
19 presentations and all of that before the
20 regulations were adopted, and that was a point
21 in time in which there were a lot fewer people
22 in the city. There were a lot fewer empowered

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1 people in the city.

2 So I think it is a very good idea
3 for the Commission to think about what other
4 mechanisms can we use to get out there and tap
5 a broader set of people. Certainly, we
6 discovered from parking, because it was picked
7 up by many elements of the blogosphere, that
8 there was a lot of input and concern about
9 that, and we ought to think about what else we
10 can do. But zoning regulations are really
11 important.

12 So if it is going to take more
13 time to get more input and discuss it,
14 especially when we have more understanding of
15 how the whole thing is going to fit together,
16 you know, let's take more time and discuss it
17 and reach out and make sure that in the end,
18 when we adopt something, it is something that
19 people can be relatively comfortable with.

20 CHAIRMAN HOOD: Thank you. My
21 next question is the ANC form. Again, I am
22 going to preface it with this. I am a civic

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1 association president myself, and when I have
2 thought this thing over and over again, I
3 think what is being presented in front of us
4 tonight is the way to go, and I want to put
5 this especially to Ms. Kahlow, who I know
6 represents WECA a lot.

7 Oftentimes -- and I am not sure.
8 I can't remember exactly what area. I can see
9 us trying. If one group says, well, I am the
10 real civic association, the other group says,
11 I am the one, I can see us having -- If we go
12 that far, I just see us having a lot of
13 problems, and then we ask people to bring
14 their -- I don't know where we got this from,
15 but we ask them to bring their constitution
16 and bylaws down. I don't know what the reason
17 was for that, but I can just tell you that I
18 can just see us going down -- I don't want to
19 say a slipper slope. I just see us slipping,
20 because while we were creative, if we open it
21 up any further than what we have done is mass
22 confusion, because we heard tonight from Ms.

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1 McCarthy -- and I am asking a question,
2 because I am trying to figure out how do we
3 get there.

4 I have heard from Ms. McCarthy
5 that we shouldn't even do the form. We
6 shouldn't even do it, and the ANC
7 commissioners are the elected officials.
8 Civic associations are supposed to be working
9 with their ANC commissioners, but I know some
10 -- I know everybody don't function the same.
11 Some ANC commissioners might not bring it like
12 we might want them to bring it.

13 I just think, though, that that is
14 when we have to vote our ANC commissioners
15 out. So I think that needs to be -- That is
16 another form, but I just think that, if we
17 open it up any further than what has already
18 been recommended by the Office of Zoning, I
19 think we are going down a road that is going
20 to cause us a lot of problems. But I will
21 hear from you, Ms. Kahlow.

22 MS. KAHLOW: I hear what your

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1 point of view is. I don't agree. I think, if
2 we limit to factual information. The
3 Commission asks, one, is there an objection.
4 You can hear it. But more importantly,
5 factual information.

6 I am thinking of the case in
7 Brookland where I am representing a group in
8 Brookland, and you haven't heard the case yet.
9 You will hear it eventually.

10 CHAIRMAN HOOD: Can we just not
11 maybe mention Brookland. Just don't say
12 anything.

13 MS. KAHLOW: Okay, not to say what
14 the case is. But the Office of Planning that
15 supposedly knows its stuff has been told what
16 the law is, what the applicable regulations
17 are, and they agree, but they do not intend to
18 show it to you. You, the Commission, need to
19 know it is inconsistent with the Comprehensive
20 Plan. It is inconsistent with the Small Area
21 Plan, and you deserve to hear that as a
22 factual matter, and if the Office of Planning

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1 is not going to tell you, how are you going to
2 know?

3 That is the key. I think that, to
4 make a decision on setdown, you need to know
5 the factual things. So you could limit some
6 opinions to facts, and I would be perfectly
7 happy.

8 CHAIRMAN HOOD: I have a comment,
9 but let me go to Commissioner May

10 COMMISSIONER MAY: I appreciate
11 the sentiment, but trying to say, okay, you
12 can only present factual information is just
13 impossible. I think the only thing that we
14 can do is say, you know -- is define the
15 format in which the input can come and who it
16 can come from, and I think that is a valid
17 question to ask, you know, whether it should
18 be just ANCs or whether it should be ANCs and
19 groups, but then there is ANCs and groups and
20 people within 200 feet, ANCs, groups and --
21 you know.

22 So you have to be very careful

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1 about the prospect of opening the door at all,
2 and then define exactly what it is open for.
3 Like I say, I appreciate the idea of trying to
4 state some sort of difference between what is
5 fact and what is not, but frankly, very few of
6 the things that we deal with here are facts
7 that are not in dispute.

8 So when a fact is in dispute, is
9 it a fact or not? So I am not really looking
10 to debate how you define what a fact is.

11 MS. KAHLOW: I wasn't there.
12 These are not facts in dispute. These are
13 facts that weren't presented to you.

14 COMMISSIONER MAY: It doesn't
15 really matter. There is a reason why it
16 wouldn't be presented to us, if it wasn't
17 going to be presented. That is why it is -- I
18 mean, a lot of this stuff is premature,
19 because it is a question of whether something
20 is ripe for a hearing. That is really all we
21 are deciding at that point, and it is rare
22 that we actually turn something away

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1 completely.

2 I am not aware of any case that I
3 have been on where we simply -- well, maybe
4 there probably has been one or two; can't
5 remember them, though -- where we just simply
6 decided not to set something down, but we have
7 decided on many occasions that something is
8 simply not ready and told them to go away and
9 work on it some more.

10 MS. KAHLOW: Well, how about -- I
11 put it in my testimony. I didn't get a chance
12 to say it out loud. How about if we send
13 something to OP asking them to attach it? I
14 mean, that is -- You know, if they refuse to
15 mention it, at least they could attach it.

16 CHAIRMAN HOOD: I think, in the
17 report -- and I am not going to belabor, but
18 in the report -- and a lot of times we ask the
19 question to the Office of Planning, what are
20 you hearing from the community? I know I have
21 asked that question a number of times.

22 Also, there is a spot in the OP

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1 report which tells us kind of where the
2 community -- where it is. I mean it doesn't
3 go in depth. It is not in detail. It may be
4 one or two lines, but it triggers to us that
5 there is a problem. There is an issue, or
6 there may not be a problem, either way.

7 MS. KAHLOW: But we have
8 experienced they are saying there is no
9 problem when, in fact, they have a memo in
10 front of them laying out a lot of problems.
11 So they have not given you proper information.

12 COMMISSIONER MAY: But this memo
13 is something that you have produced. Right?

14 MS. KAHLOW: Yes.

15 COMMISSIONER MAY: Right, and so I
16 appreciate the desire to share that
17 information with us, and we want to hear it,
18 but it is a question of when we will hear it,
19 and the fact that it doesn't get in at setdown
20 doesn't mean that it is not going to be heard
21 during the hearing.

22 If the Office of Planning does not

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1 agree with what you have stated in their memo,
2 they may not spell out everything that is in
3 your memo, but I wouldn't necessarily expect
4 them to spell out and then refute every piece
5 of information that they have gotten from the
6 community.

7 MS. KAHLOW: I would be happy if
8 they just did as Mr. Hood said. There are
9 objections from the community groups. I would
10 be happy if they said that. They don't say
11 it.

12 COMMISSIONER MAY: That is what we
13 expect from them. If we find -- Well, I have
14 not -- I haven't personally experienced that
15 they have misled us in that section, but they
16 are here tonight, and I think that they
17 probably would get the sense that we don't
18 want to be misled about community concerns.
19 Right? Right.

20 MS. SIMON: We have certainly had
21 instances where we have actually met with OP,
22 and the things we discussed with OP were not

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1 included in the OP report, and we have also
2 had the instance where we actually wrote
3 letters before the setdown meeting. We
4 provided information such as what the matter
5 of right size of the building could be and
6 comparing it to what they were asking for.
7 That was not in the OP report. It should have
8 been in the OP report. It wasn't, and that --
9 Actually, seeing that stark comparison changed
10 the type of discussion that the Commission had
11 and what the told the developers about scaling
12 down the building somewhat to be a little bit
13 closer.

14 COMMISSIONER MAY: And that all
15 happened during the hearing.

16 MS. SIMON: No, that happened at
17 the setdown meeting.

18 COMMISSIONER MAY: At setdown, and
19 how did the information come up at --

20 MS. SIMON: This was before the
21 rules changed.

22 COMMISSIONER MAY: Oh, before the

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1 rules changed.

2 MS. SIMON: And there were other
3 things such as being able to tell whether or
4 not it is consistent with the Comprehensive
5 Plan, because there are a lot of things the
6 neighbors know, say, about the trees on the
7 site, other issues that bring in the Comp Plan
8 concerns and are facts that OP may not have
9 seen. The developer may not have included it
10 in the application.

11 COMMISSIONER MAY: Right. Well,
12 we are not looking for the Office of Planning
13 to present the laundry list of neighborhood
14 concerns and then their own reaction or
15 explanation of those things.

16 The setdown report necessarily is
17 summary in nature and describes the state of
18 the project overall, and if the input that you
19 are providing to them is, in fact, not coming
20 through and we see a gap in that, then we have
21 an issue with the Office of Planning. But I
22 am not sure that simply having to receive all

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1 that information at the setdown is the best
2 way for that information to come to us,
3 because we have, in effect, having two
4 hearings on a case.

5 You know, you talk about your mind
6 being like a Cuisinart -- I mean, you know,
7 the number of cases that we have to juggle, we
8 have to take this in mouthfuls that we can
9 digest.

10 MS. SIMON: We are talking about a
11 handful of written letters.

12 COMMISSIONER MAY: But we are not
13 necessarily talking about that. We could have
14 100 letters in a given case, depending on what
15 is going on with that case. There is no way
16 to say that it is only going to be a few, if
17 you start to open the door too much.

18 I am not saying I have decided
19 anything about this. I think, actually, when
20 it comes to deliberation, we might want to
21 consider a range of alternatives on this one,
22 so that we have this debate at that point,

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1 having had a chance to digest these mouthfuls.

2 MS. GATES: I served as Chair of
3 an ANC for four years. We never got setdown
4 reports. We never got reports on BZA cases
5 from the Office of Planning. We never got
6 them from the Department of Transportation.

7 So what you are hearing tonight is
8 that there is an information vacuum.
9 Communities have a lot invested. They want to
10 be heard, and if that little form allows them
11 a voice at the table, that is one thing, but
12 it goes much further than that. It really
13 does.

14 it goes back to how we process
15 information, how we get it out there, and that
16 is what you are talking about.

17 COMMISSIONER MAY: Can I follow up
18 on a question on that.

19 CHAIRMAN HOOD: You are going to
20 ask a question. Let me just follow up with
21 Ms. Gates. Let me ask you, Ms. Gates, I
22 wonder if I remember. What year were you the

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1 Chairperson?

2 MS. GATES: 2002 to 2006.

3 CHAIRMAN HOOD: Okay. We should
4 have been -- I will tell you, 1998 when I
5 first got here, the Office of Planning was not
6 giving even us reports on BZA cases. So it
7 took a while to staff it up. So when you said
8 you all weren't getting reports, I am thinking
9 to myself, I wasn't even getting reports in
10 1998. But 2000 when you were the Chair, we
11 should have been given reports. All right.

12 COMMISSIONER MAY: So my question
13 is whether there is an opportunity here for
14 the Office of Zoning to actually make these
15 reports more available, because right now, you
16 know, in the Park Service, when we do planning
17 processes, we post documents online all the
18 time as we get them. Comments, things like
19 that that come in, they get posted.

20 I know NCPC does the same thing
21 for their public discussions. Everything gets
22 posted, and people know when they are going to

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1 get posted, you know, how many days before
2 meetings and so on.

3 MR. WEINBAUM: May I respond?
4 This is something that was brought up at the
5 working group, and these ladies can attest.
6 As soon as it was brought up, what we did is
7 we linked to the OP reports through our
8 website, because --

9 MS. KAHLOW: The OP reports are
10 not posted timely. That is the problem,
11 because I immediately went back. So you can't
12 get them, Mr. May, because they won't post
13 them.

14 COMMISSIONER MAY: Because Office
15 of Planning doesn't post them?

16 MS. KAHLOW: That is correct. So
17 you need to, because they won't.

18 COMMISSIONER MAY: Is there any
19 reason why you can't post them?

20 MR. WEINBAUM: If we get them
21 electronically, we can. It is the manhours.
22 If we get them, then we have to scan them in,

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1 but if we get them from OP, we are happy to
2 post them on our website if we get them
3 electronically.

4 We have been linking to OP's
5 website. After the working group where they
6 mentioned that they couldn't find them on OP's
7 website, we created an icon right on our Home
8 Page so you could do that, as Ms. Kahlow
9 asked, but if I am hearing now that OP doesn't
10 have them --

11 MS. KAHLOW: That is correct.

12 MR. WEINBAUM: -- if we get them
13 from OP timely, we are happy to post them.

14 MR. PARKER: When was the last
15 time you checked? They are posted weekly.

16 MS. KAHLOW: The last two cases,
17 they were not posted right before the hearing.

18 MR. PARKER: That doesn't sound
19 right.

20 MS. GATES: If we are talking
21 about procedures tonight, this is something we
22 might want to consider getting put into the

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1 regs about furnishing reports.

2 COMMISSIONER MAY: I understand
3 the desire to have them actually furnished,
4 but delivery of these things, I think, is more
5 problematic. I think the idea -- If we could
6 simply just get everything posted on the OZ
7 website, even if it does come in on paper and
8 it has to be scanned, I think we should have
9 the entire thing electronically and available
10 online. It is not that hard to do.

11 MS. GATES: But, Mr. May, I also
12 think that the Office of Planning staff member
13 responsible for a case should show the
14 courtesy to the ANC to let them know, and
15 email "we have posted the report." It just
16 doesn't happen.

17 COMMISSIONER MAY: I don't
18 disagree with that sentiment, and I think the
19 Office of Planning will be wise to heed that
20 advice, but we don't really have any say over
21 what the Office of Planning does with their
22 staff and their staff time. But we do have

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1 some influence over the Office of Zoning.

2 MS. GATES: But you heard me.

3 CHAIRMAN HOOD: So did Office of
4 Planning.

5 MR. PARKER: We hear you.

6 MS. KAHLOW: Can I try to
7 elaborate on something Ms. Simon said? This
8 used to work. I have a series of PUDs that I
9 was involved in before the AG cut this off
10 where we would send stuff in, and it was used
11 in setdown, and you decided not to set down
12 cases.

13 I can use the Blacky's Parking
14 Lot, which is now the Ritz, and I have used
15 this example with you guys many times. They
16 came at 25 percent residential, then 33
17 percent. Eventually you set it down at 50
18 percent, and it was only when we told you what
19 the history of the whole thing was, factual
20 matters, because it wasn't presented in OP's
21 report. You said, aha, and did not set it
22 down twice.

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1 So it worked before, and I don't
2 know why it can't work again to get essential
3 information to the Commission.

4 COMMISSIONER MAY: Is it
5 conceivable that the same result might have
6 come if the project was actually heard at 25
7 percent, and we received all that factual
8 information at the hearing?

9 MS. KAHLOW: I think now, because
10 Ms. Simon makes wonderful points in meetings,
11 which was the cost, the cost to the community.

12 We had to hire a transportation person, and
13 we had to hire a lawyer, and it is just too
14 much cost for us for every single one.

15 COMMISSIONER MAY: I am just
16 asking you about presenting exactly the same
17 information at the hearing.

18 MS. KAHLOW: Our experience has
19 not been positive at all that you will reject
20 it in the hearings. It is, I think, more
21 efficient for our time and your time if you
22 reject it at setdown, and it used to work.

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1 COMMISSIONER MAY: Was it a
2 rejection or was it a --

3 MS. KAHLOW: Rejection. You
4 rejected it. You would not set it down at 25
5 percent.

6 COMMISSIONER MAY: Okay. This is
7 a finer point. We did not set it down or we
8 dismissed it? I was not on that case.

9 CHAIRMAN HOOD: You are talking
10 about the Ritz Carlton?

11 MS. KAHLOW: The Ritz Carlton, and
12 it was before it was a Ritz. It was a
13 Blacky's Parking Lot.

14 COMMISSIONER MAY: We simply
15 deferred. We said, no, this is not ready.

16 MS. KAHLOW: No. You rejected
17 it. It was dismissed for -- to go back to the
18 drawing board. I don't know -- Denied. It
19 was denied.

20 COMMISSIONER MAY: It was denied.

21 MS. KAHLOW: Twenty-five percent
22 was denied; 33 percent was denied; 50 you

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1 actually had a conversation.

2 COMMISSIONER MAY: We did -- I
3 mean, there are other cases in recent history
4 where we simply did not set something down and
5 sent the applicant away.

6 MS. SCHELLIN: You are saying that
7 they came back at 50 percent.

8 MS. KAHLOW: They came back the
9 third time.

10 MS. SCHELLIN: So then what they
11 did is they revised their application.

12 MS. KAHLOW: But what I am saying
13 is it used to work. You used to get all that
14 community input, and it used to be very
15 helpful, and it was very simple and factual
16 stuff, and history of the zoning on the site
17 or whatever, if it wasn't in an OP report. If
18 it worked before, why can't we do it now?

19 MS. GATES: Mr. Hood, have we
20 moved away from your original point of a
21 process roundtable?

22 CHAIRMAN HOOD: No. Actually, I

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1 am going to be bringing it up. I know
2 everybody is going to cringe, and they are
3 going to go home tonight and think about how
4 they can kill me, but I am actually going to
5 bring it up at our next meeting. That way, I
6 have the Office of Planning. I have Office of
7 Zoning. I am scared to look over there. No,
8 I am not -- and also my colleagues.

9 I want to have that dialogue. I
10 don't know where it is going to go. I may be
11 the only one thinking that, but I know, when
12 we did the campus plans, I know exactly how
13 that process went, because I will tell you,
14 this city will be mean to you. I know. I
15 have been out there. This city will be mean.
16 The community will.

17 This happened. We have done all
18 this, and they didn't know about it. We are
19 going to have some problem. But I want to
20 make sure we have exhausted every possibility
21 or every resource within budget or within
22 reason to get it out there.

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1 Like I said, personally I have
2 been in different wards in a few meetings.
3 People were there, and I have expounded,
4 please get involved with this process; we have
5 the work group. Contact the Office of
6 Planning. I have done it personally on more
7 than one occasion, but I am hearing one and
8 two people come into the Task Force meeting.

9 Again, you talk about having a
10 conglomerate of information. All the stuff I
11 heard yesterday at the Oversight hearing and
12 then hearing it again, and this is not the
13 first time we have heard it.

14 So yesterday -- not because you
15 went in front of the Council, but it is time
16 now for us to take a step back. We need to do
17 a roundtable. Guys, I know nobody is
18 interested in having another, but at some
19 point in time we need to take a step back and
20 look at our process. That is where I am. I
21 may be the only one there, but that is where I
22 am. Anyone else?

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1 COMMISSIONER MAY: I am not
2 cringing.

3 CHAIRMAN HOOD: You are not?

4 COMMISSIONER MAY: I am not
5 cringing.

6 CHAIRMAN HOOD: Okay, good. That
7 is one person. Any other questions for this
8 panel?

9 MR. WEINBAUM: I would like to
10 respond, if I could, to the public with
11 respect to this recommendation, if that is all
12 right.

13 First, I just wanted to say, with
14 respect to the process in general, the Office
15 of Zoning has only had a co-lead role on these
16 two chapters that we did, but with our working
17 group, one of the things we really wanted is,
18 even if every recommendation wasn't going to
19 make it into the recommendations that came out
20 of the Office of Planning/Office of Zoning, we
21 really wanted to try to work with the
22 community so they understood the basis, even

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1 if we were going in a slightly different
2 direction.

3 I think the ANC setdown form is
4 pretty much the prime example of where we were
5 hearing certain things from some folks, other
6 things from other folks. Ms. McCarthy was at
7 the Task Force meeting and was real vocal
8 about how she wasn't in favor of the form at
9 all, but we felt that this form struck the
10 right balance in terms of these are
11 representatives, and I agree wholeheartedly
12 with what you said.

13 The ANC members are the
14 representatives of the community, and it
15 provides an avenue for some limited input at
16 that time. It, of course, doesn't do anything
17 to take away from the opportunity to provide
18 input at the hearing.

19 The one thing I will also point
20 out is that, when an application is filed, I
21 think it is important that everyone
22 understand, the Notice of filing is only sent

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1 to the relevant affected ANC, to the register,
2 and to the relevant Council member. There is
3 no notice to people within 200 feet.

4 So what that means is that the
5 types of folks and community groups who might
6 be putting in forms, if we were to allow it to
7 be community groups, are those who are more in
8 the know, probably the folks who are
9 represented here.

10 There may be other community
11 groups who don't get to put in a form, because
12 they don't know until a hearing is set, and
13 then the notice of the hearing goes out to
14 those within 200 feet.

15 What I mean by that is I don't
16 think it will foster a level playing field if
17 those community groups that are more aware of
18 zoning issues get their forms in, and those
19 other ones don't, as opposed to ANCs where
20 they are always going to have the notice of
21 filing at that stage.

22 So I think, if you open it to

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1 community groups, the community groups you are
2 going to see are these community groups. Not
3 to take away from them. They are as involved
4 as they can be, but I think we are not going
5 to hear from all the community groups at that
6 time, and I think it might create an
7 imbalance, and I am concerned about that.

8 CHAIRMAN HOOD: Then again, I also
9 think that, at least what I read -- I don't
10 know if it was in the OP report or Office of
11 Zoning's report -- is there are some factors
12 that will not constitute us delaying a case,
13 just because -- Now I will take it -- I forgot
14 who mentioned it about not having a quorum.
15 Now I don't think that is a factor, but I will
16 tell you, doing something around August when
17 commissions don't meet, and December around
18 the holiday season, that is something that we
19 need to consider, and we need to figure out
20 how we work that. But I understand, at least
21 what I read, is that some things will not
22 factor or constitute anything as far as

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1 stopping us from moving forward with setdowns.

2 MR. WEINBAUM: That is correct,
3 yes.

4 CHAIRMAN HOOD: So I would agree
5 with that, but I also want to take in
6 consideration August. So, you know, that is a
7 -- and that was a good point. I forgot who
8 made it, but that is something that we need to
9 look at.

10 MR. WEINBAUM: I will say, though,
11 because the Commission also doesn't meet in
12 August, it is unlikely that you would have the
13 period where they had to have the
14 consideration happen when they were on
15 holiday, because you are on holiday at the
16 same time, just so you are aware.

17 CHAIRMAN HOOD: I will tell you,
18 Director, in this city I have heard enough
19 sitting down here that, if you want to try to
20 get something over on people, do at the Zoning
21 Commission, you do it in July and August.
22 I've heard that enough. That is why I don't

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1 like to do really anything in July and August,
2 especially not August.

3 All right. Any other comments?
4 I'm sorry. Ms. McCarthy.

5 MS. MCCARTHY: While you were on
6 the subject of process, just in case I am not
7 around for the roundtable, I wanted to
8 mention: In spirit of bipartisanship and
9 Democrats and Republicans sitting together for
10 the State of the Union, etcetera, we have
11 already addressed not requiring people to say
12 that they had to be in support or in
13 opposition.

14 A pet peeve of mine -- and I bet
15 it applies to all of my fellow testifiers up
16 here -- is why do -- Unlike the City Council,
17 we still will say, okay, supporters, you
18 testify first; opponents, you go after that.
19 Maybe we will have neutral after that.

20 As somebody who represented a
21 number of community groups over the years, I
22 kind of felt like I was getting the short end

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1 of the stick when I was always the one
2 testifying at 10:30 when the Commission was,
3 obviously, tired, and I wondered.

4 When the City Council doesn't
5 require supporters to come first and opponents
6 to come afterward, why do we? Why don't we
7 just say, in the order that anybody signs up,
8 they can testify?

9 CHAIRMAN HOOD: That is actually a
10 very good point. You know, we don't usually
11 get tired until about 11:30, but I shouldn't
12 have told you that, but 11:30 is when we
13 usually get tired.

14 I know that people say, well, you
15 know, I sit here all night. That is why, if
16 you notice, we try to refrain from some of our
17 questions so we can hear from the public.
18 Oftentimes, it doesn't happen. Actually, all
19 of us get a little itchy when we start asking
20 questions for an hour of the developer, and we
21 know that we have a roomful of citizens who
22 volunteer who want to come in here.

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1 I will tell you, like I said
2 yesterday, it doesn't fall on deaf ears. It
3 does not go unnoticed, but I think you bring
4 up a good point, and I am sure in
5 deliberations we will hash that out. There
6 may be a reason for us to -- We will see and
7 see how it goes. Commissioner Selfridge?

8 COMMISSIONER SELFRIDGE: Just a
9 real quick comment, Mr. Chairman. I saw the
10 same thing you did in the OP report about
11 failure to file a form will not be sufficient
12 grounds to seek a postponement of the Zoning
13 Commission consideration of the setdown of the
14 case.

15 This slipper slope argument which
16 has come up numerous times in favor and
17 against -- I think this is a very
18 accommodating Commission. You often give
19 people additional time to testify.

20 CHAIRMAN HOOD: That is a good
21 point, because I heard tonight -- We doubled
22 the time, didn't we? Did we double it? And I

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1 heard tonight I still didn't give enough time.

2 MS. KAHLOW: One minute more. You
3 gave us one minute more. You doubled it for
4 her, but for the rest of us, you gave us one
5 minute more.

6 CHAIRMAN HOOD: Okay, one minute
7 more. But even at that, look at the
8 discussion. Look how this dialogue has been.
9 That is additional time. Sometime we got to
10 -- you know. Okay. I will remember that next
11 time.

12 MS. KAHLOW: Thank you. That is
13 why I asked.

14 CHAIRMAN HOOD: I didn't mean to
15 cut you off.

16 COMMISSIONER SELFRIDGE: No, no.
17 It is an important point. I guess I would
18 only say, as we deliberate on this, that
19 certainly in my short time, I have rarely seen
20 the Chairman deny somebody an opportunity to
21 weigh in. So I could see, even though it
22 wouldn't be grounds to have a postponement of

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1 a setdown or consideration of a setdown, I
2 could see that happening, and that these
3 things would be delayed, and they would be
4 delayed again.

5 That would be my only concern as
6 we kind of work through this process, because
7 I think the devil is in the details, is that
8 we find a way to keep the process on track.

9 CHAIRMAN HOOD: I will tell you
10 that I think this has been a very good
11 discussion. Again, I will be bringing it back
12 up. I would ask Ms. Schellin to put the
13 process under whatever it needs to be on for
14 our next meeting on the agenda. If I don't
15 see it, I will try to remember it. Hopefully,
16 somebody will be here when we have our
17 meeting. Then I can look at you, and I will
18 remember it.

19 Anyway, I think the discussion
20 tonight has been very helpful to us, and I am
21 looking forward -- I am sure we are all
22 looking forward to deliberations on these

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1 issues. Anything else for tonight?

2 MS. SCHELLIN: We need to decide
3 whether we are going to leave the record open
4 or not on this case.

5 CHAIRMAN HOOD: Did we have a
6 request to leave the record open?

7 MS. SCHELLIN: Until March 5th.

8 CHAIRMAN HOOD: March 5th? Okay.
9 March 5th is fine?

10 MS. SCHELLIN: So we will leave
11 the record open for everybody until March 5th?

12 CHAIRMAN HOOD: Yes.

13 MS. SCHELLIN: Then we are
14 expanding the process right tonight.

15 CHAIRMAN HOOD: We are doing it
16 already.

17 MS. SCHELLIN: We are doing it
18 already.

19 CHAIRMAN HOOD: Ms. Shelling, you
20 know what? That requires another gold star.

21 MS. SCHELLIN: I will be expecting
22 it on Tuesday. So we will leave the record

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1 open until March 5th, and we will put this on
2 our agenda for guidance. Mr. Parker, when
3 would you like to do guidance?

4 MR. PARKER: There is a meeting
5 the following week, isn't there?

6 MS. SCHELLIN: That is pushing it.
7 I think we have a proposed action that night,
8 so we can't really do it then. How about
9 March 14th?

10 MR. PARKER: That works.

11 MS. SCHELLIN: Okay, March 14th,
12 because the record is not going to close until
13 March -- Yes, March 14th, the following week,
14 that will work. I was thinking February. So
15 march 14th for guidance.

16 MR. PARKER: So if we have the
17 worksheet in by the 14th, is that sufficient?
18 -- or by the 5th, I mean. Sorry.

19 MS. SCHELLIN: The 5th? Actually,
20 you know what, we can't close the record on
21 the 5th, because that is a Saturday, and there
22 will be no one here to accept. So we need to

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1 do that on the 4th, march 4th. Does that
2 work?

3 MS. GATES: Sure. I guess I just
4 looked at my calendar without my glasses.

5 MS. SCHELLIN: So March 4th. Does
6 that work, Mr. Parker? Okay. So if you could
7 have it on the 4th, then we could still
8 schedule for the 14th.

9 CHAIRMAN HOOD: Okay. Is there
10 anything else, Ms. Schellin, for us?

11 MS. SCHELLIN: That is it.

12 CHAIRMAN HOOD: I want to thank
13 everyone for their participation. I think it
14 has been a very healthy discussion, and on
15 behalf of my Commissioners and myself, we
16 greatly appreciate it, and all the work that
17 the Office of Zoning has done, and all the
18 work that the Office of Planning has done, and
19 all the work that you all do in these cases.
20 Thank you very much.

21 MS. KAHLOW: Thank you for really
22 giving us an opportunity.

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CHAIRMAN HOOD: All right. With that, this hearing is adjourned.

(Whereupon, the Public Hearing was concluded at 9:12 p.m.)

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