

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING

+ + + + +

MONDAY

SEPTEMBER 15, 2014

+ + + + +

The Regular Meeting of the District of Columbia Zoning Commission convened in the Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 6:38 p.m., Anthony J. Hood, Chairman, presiding.

ZONING COMMISSION MEMBERS PRESENT:

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

OFFICE OF ZONING STAFF PRESENT:

- SARA BENJAMIN BARDIN, Director
- SHARON S. SCHELLIN, Secretary
- ZELALEM HILL, Special Assistant

OFFICE OF PLANNING STAFF PRESENT:

JENNIFER STEINGASSER, Deputy Director,
Development Review & Historic Preservation
JOEL LAWSON
STEVEN COCHRAN
ELISE VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

ALAN BERGSTEIN, ESQ.

The transcript constitutes the
minutes from the Regular meeting held on
September 15, 2014.

A G E N D A

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ZRR 18

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

2 6:38 p.m.

3 CHAIRMAN HOOD: Okay. We are ready
4 to start. This meeting will please come to
5 order.

6 Good evening, ladies and gentlemen.
7 This is the public meeting of the Zoning
8 Commission of the District of Columbia for
9 Monday, September the 15th, 2014. The time now
10 is 6:30. We are located in the Jerrily R. Kress
11 Memorial Hearing Room.

12 My name is Anthony Hood. Joining me
13 is Vice Chair Cohen, Commissioner Miller and
14 Commissioner Turnbull. And, again, we wish
15 Commissioner May a speedy recovery.

16 We are also joined by the Office of
17 Zoning Staff, Ms. Sharon Schellin, also our
18 Director of the Office of Zoning, Ms. Bardin,
19 and also Special Assistant Ms. Zee Hill, and Mr.
20 Bergstein, Office of Attorney General, as well
21 as Office of Planning, Ms. Steingasser, Mr.
22 Lawson, Ms. Vitale, and Mr. Cochran.

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1 I have not seen Mr. Ritting lately.

2 I'm just curious, is he B- is Mr. Ritting B-

3 MR. BERGSTEIN: He's fine.

4 CHAIRMAN HOOD: Okay.

5 MR. BERGSTEIN: He just said I would
6 handle this meeting.

7 CHAIRMAN HOOD: Okay, not that we
8 didn't want you to come. I just B-

9 MR. BERGSTEIN: That's fine. That's
10 fine.

11 CHAIRMAN HOOD: Copies of today's
12 meeting agenda are available to you and are
13 located in the bin near the door. We do not take
14 any public testimony at our meetings unless the
15 Commission requests someone to come forward.

16 Please be advised this proceeding
17 is being recorded by a court reporter, and also
18 is web cast live. Accordingly, we must you to
19 refrain from any disruptive noises or actions
20 in the hearing room, including a display of any
21 signs or objects. Please turn off all beepers
22 and cell phones.

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1 Does the Staff have any preliminary
2 matters?

3 MS. SCHELLIN: No, sir.

4 CHAIRMAN HOOD: Okay, if not, let's
5 go right into Final Action. Zoning Commission
6 Case Number 05-36J. This is Toll DC II, LP,
7 One-Year PUD Time Extension at Square 749. Ms.
8 Schellin?

9 MS. SCHELLIN: Yes, sir. This is a
10 request from the Applicant for a one-year time
11 extension of the second stage PUD so that the
12 building permit for Phase IIA of the
13 development must be filed no later than
14 November 14th, 2015. And we B- they do have a
15 hearing on this case coming up. I believe it's
16 October 30th, so I ask the Commission to either
17 consider action this evening, or hold this in
18 abeyance until Final Action on that case.

19 CHAIRMAN HOOD: Okay.
20 Commissioners, you've heard the report of our
21 Secretary. Any questions or comments? Vice
22 Chair Cohen. Sorry, Commissioner Turnbull?

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1 COMMISSIONER TURNBULL: No, let's go
2 right ahead. I think the Vice Chair can go
3 ahead.

4 CHAIRMAN HOOD: Oh, I'm sorry. Okay.

5 VICE CHAIR COHEN: I would move to
6 approve the one-year extension for PUD Case
7 05-36J, an extension request for Phase II.

8 CHAIRMAN HOOD: Okay, it's been
9 moved.

10 COMMISSIONER TURNBULL: Yes, I will
11 second that, but I think the major issue we had
12 at the time was that when the Applicant came
13 before us there was some B- it looked like in
14 the language of the documents we got there was
15 going to be some architectural modifications to
16 it, and we said just because you had a change
17 in order someone's still got to come before us
18 and do the modification process. So, I'm fine
19 with extending it, or holding it in abeyance,
20 whatever. But if the motion on there is to
21 extend it for a year, I'm fine with that. I'll
22 second that.

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1 CHAIRMAN HOOD: Okay. So, I think
2 it's been moved and properly seconded. But I
3 think, Mr. Turnbull, I think you're exactly
4 right. The changes in the drawings and some of
5 the alterations, changes they're making, I
6 think the Commission expressed that they still
7 wanted to see it.

8 Anyway, it's been moved and
9 seconded. Any further discussion? Okay, all
10 those in favor, aye.

11 (Chorus of ayes)

12 CHAIRMAN HOOD: Not hearing any
13 opposition of those present, I think we have a
14 proxy, Ms. Schellin?

15 MS. SCHELLIN: Yes, we do. Staff
16 would record the vote 5-0-0 to approve Final
17 Action Zoning Commission Case Number 05-36J.
18 Commissioner Cohen moving, Commissioner
19 Turnbull seconding, Commissioners Hood and
20 Miller in support, Commissioner May in support
21 by absentee ballot.

22 CHAIRMAN HOOD: Okay. Next, let's go

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1 to Miscellaneous. A request from the Office of
2 Zoning to extend waiver of 3030 Granted on
3 September 12, 2011, Consent Calendar Memos. Ms.
4 Schellin?

5 MS. SCHELLIN: Yes, sir. On
6 September 12th, 2011, staff had requested and
7 the Commission granted a waiver of Section 3030
8 which required the Director to provide the
9 Zoning Commission with a Consent Calendar or a
10 memo that basically stated that the Applicant
11 had complied with the regulations whenever they
12 filed for a minor modification. Since those
13 regulations were put in place, the office has
14 created a application form that pretty much
15 eliminates the need for that memo. And the
16 Commission agreed with that, and in 2011
17 granted a waiver for that memo. And at that
18 time, granted a two-year waiver thinking, I
19 believe, that the new regulations would be in
20 place and would do away with this section of the
21 reg. But that will be October 1st, and the new
22 regs have not been completed, so we are asking

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1 for another waiver, an extension of that
2 waiver.

3 CHAIRMAN HOOD: And we ask for
4 another two years.

5 MS. SCHELLIN: If we could because of
6 the fact that by the time the regs are finished,
7 and then not knowing how B- when you guys are
8 going to choose an effective date, whether
9 that's six months, a year. It probably could be
10 two years before that happens, so just to be
11 safe it's probably best to do two years.

12 CHAIRMAN HOOD: Okay. Commissioners
13 thank you, Ms. Schellin, and you've heard the
14 report from the Secretary. Any comments? Okay.
15 Not hearing any, I would move that we grant the
16 waiver requested by the Office of Zoning for the
17 extension of the waiver that we granted on the
18 Consent Calendar memos two years ago, and allow
19 another two years based on the fact of us
20 completing the regulations and putting those
21 B- the new ZRR Zoning Regulations in place
22 within the next two years. So, that's my motion.

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1 Give me a second.

2 VICE CHAIR COHEN: I second that.

3 CHAIRMAN HOOD: It's been moved and
4 seconded. Any further discussion? All those
5 in favor, aye.

6 (Chorus of ayes)

7 CHAIRMAN HOOD: Not hearing any
8 opposition, Ms. Schellin, would you record the
9 vote and the proxy we have.

10 MS. SCHELLIN: Yes, sir. Staff
11 records the vote 5-0-0 to grant a two-year
12 extension of waiver of Section 3030 to the
13 Office of Zoning to not require the Director to
14 comply with providing the memo. Commissioner
15 Hood moving, Commissioner Cohen seconded,
16 Commissioners Miller and Turnbull in support,
17 Commission May in support by absentee ballot.

18 CHAIRMAN HOOD: Okay, thank you.
19 Next let's go to Correspondence. Zoning
20 Commission Case Number 12-18 USL WDC H Street,
21 LLC, letter from Zoning Administrator pursuant
22 to 3409.8. Ms. Schellin?

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1 MS. SCHELLIN: Yes, this is a copy of
2 a letter that was written to the Applicant from
3 the Zoning Administrator advising of the
4 decision that the Zoning Administrator made
5 regarding the modification to the development
6 that he is going to B- or he's planning to grant
7 with regard to Zoning Commission Order Number
8 12-18.

9 As you'll recall, new regs require
10 B- Section 2409.8 requires the Zoning
11 Administrator to notify the Zoning Commission
12 of any modification he plans to grant, and then
13 the Zoning Commission has 45 days to respond to
14 the Zoning Administrator. So, we'd ask the
15 Commission to advise how they want to proceed
16 on this.

17 CHAIRMAN HOOD: Okay. Again,
18 Commissioners, I think this is something that
19 we asked a long time ago that when the Zoning
20 Administrator did anything using his
21 flexibility that he let us know first, and I
22 think that is one of those cases. So, let's open

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1 it up. Any questions or comments? We do have one
2 from Commissioner May, but let's see if our
3 colleagues here have any questions or comments.
4 Okay.

5 COMMISSIONER TURNBULL: I guess, Mr.
6 Chair, without actually seeing any kind of
7 drawings, I mean, just reading the language in
8 the letter it's hard to exactly say what the
9 projections are doing. I think the key part that
10 I see in here which is that the setback area does
11 not impact the retail area on the ground floor.
12 That still is to be held as originally intended.
13 So, I guess without knowing B- looking at all
14 the elevation and seeing what it does, I guess
15 I'm okay with this.

16 CHAIRMAN HOOD: Mr. Turnbull,
17 there's B- if you turn the page, I think you'll
18 B- what page is it? Yes, the back, yes. That
19 didn't do it for you?

20 COMMISSIONER TURNBULL: Well, as I
21 say, I think it's fine just looking at the
22 ground floor plan and looking at B-

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1 CHAIRMAN HOOD: Okay.

2 COMMISSIONER TURNBULL: Without
3 actually seeing what it would look like, I'm
4 still okay with just seeing this graphic
5 footprint of what the outline would be like. I'm
6 fine with it.

7 CHAIRMAN HOOD: Okay. But if you want
8 to see more, we can ask for it. I'm just, you
9 know B- make sure we have a comfort level before
10 we B-

11 COMMISSIONER TURNBULL: Unless
12 Commissioner May wants it, I'm okay with it.

13 CHAIRMAN HOOD: Okay. What he
14 B- what Commissioner May asked is that B- he
15 first wanted to ask Office of Planning, I don't
16 know if you all had a chance to look at this.
17 He wanted to get your opinion on it, because he
18 recalls that the setback was something that you
19 strongly supported along H Street to make the
20 sidewalks a bit more generous. In any case,
21 given the wording of the order and the other
22 aspects of the case, he didn't necessarily see

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1 any objections, but he wanted to see what Office
2 of Planning thought.

3 MS. STEINGASSER: Unfortunately,
4 Chairman, Office of Planning has not seen that
5 interpretation or the drawings.

6 CHAIRMAN HOOD: Okay. All right. I
7 hate to hold off a Correspondence item, but I
8 think that since you all have not seen it, I
9 think that's what we're going to do. Okay. Any
10 objections to that? And then maybe we can get
11 B- I'm not sure whose case this is. Maybe Mr.
12 Glass because he's the only one here. I didn't
13 have to go to school to figure that one out.

14 MS. SCHELLIN: We do have a meeting
15 on September 29th, so that's still within the
16 time frame.

17 CHAIRMAN HOOD: So, why don't we try
18 to do that September the 9th.

19 MS. SCHELLIN: 29th.

20 CHAIRMAN HOOD: 29th. You heard the
21 discussion. Let's let the Office of Planning,
22 you all can look at it and see, because I think

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1 from what Commissioner May is recalling, that
2 you all were very strong on the setback piece.
3 So, anyway, regardless, let's go ahead and see
4 it, and then maybe we can address some of the
5 concerns that Mr. Turnbull B- anything in
6 particular, Mr. Turnbull, besides what we have
7 here that you would like to see?

8 COMMISSIONER TURNBULL: No, I'm
9 fine. I just think if OP hasn't seen this, it
10 would be good to have their comments.

11 CHAIRMAN HOOD: Okay.

12 COMMISSIONER TURNBULL: And also, as
13 I say, basically from the language it sounds
14 like there's some elevation changes within the
15 setback area on the upper floors, but I think
16 the B- if I'm interpreting this right, the
17 ground floor plan still remains as originally
18 intended. But I think OP should have a good look
19 at it.

20 CHAIRMAN HOOD: Okay, so we will do
21 this B- we will take this back up at our
22 September 29th meeting. Do we have a lot on the

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1 agenda? This shouldn't take long.

2 MS. SCHELLIN: If we do this, you
3 could always move this up. You guys can
4 rearrange the agenda at any time you want.

5 CHAIRMAN HOOD: Right, okay. All
6 right. Any other comments, colleagues? Okay,
7 thank you.

8 Let's go to B-

9 COMMISSIONER MILLER: Mr. Chairman?

10 CHAIRMAN HOOD: Commissioner
11 Miller.

12 COMMISSIONER MILLER: Just
13 following up on that last discussion. I think
14 as a matter of course, the Office of Planning
15 should probably see these when we see these. And
16 we should always try to get their comments on
17 it. In fact, it has to be done administratively
18 by our office.

19 CHAIRMAN HOOD: I think in the past
20 that's always happened. It's always happened.
21 But I think B- I don't know what happened here,
22 but anyway. One time out of the many, I don't

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1 think B- but yes, that's a good point. But I
2 thought in the past it always has happened, so
3 okay.

4 All right. Let me see, where are we?
5 Let's go to the ZR B- I think we've at number
6 VIII, ZRR, Office of Zoning, Zoning Commission
7 Case Number 08-06A, Zoning Regulations Review,
8 Discussion of Next Steps and Dates for
9 Deliberation. Office of Zoning?

10 MS. SCHELLIN: Yes, sir. We provided
11 the Commissioners with a proposal for
12 deliberations in October. We've given four
13 dates that we've set aside, October 6th, 7th,
14 8th, and 9th, Monday through Thursday starting
15 at 6:00 p.m. each of those nights, and we've
16 broken down just generally; of course, we'll
17 give worksheets as far as the items, the
18 specifics that need to be B- when the time comes
19 for discussion, discussion points that need to
20 be discussed that evening, but this is just the
21 topics to give you an idea for each of those
22 nights. So, I'm presenting you with the

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1 schedule to see what you think about it.

2 CHAIRMAN HOOD: Okay. I want to first
3 thank the Office of Zoning for helping us in our
4 proposal for our ZRR deliberations, which is a
5 lot. And I appreciate the effort of going into
6 this. But let me open it up, colleagues, you see
7 what's proposed night one, night two, night
8 three, night four, and see what the topics are,
9 but let's open it up and see if we want to run
10 like concurrent, like if we do night one, do we
11 continue on night two, or do we tell people to
12 come down night one. This is what I'm going to
13 talk B- there a number of things we can quickly
14 talk about. We don't have to make it a
15 three-hour deliberation tonight. We can talk
16 B-

17 COMMISSIONER TURNBULL: Yes.

18 CHAIRMAN HOOD: Commissioner
19 Turnbull.

20 COMMISSIONER TURNBULL: Mr. Chair,
21 I'm okay with the schedule as presented. My
22 only, I guess B- I think as you're alluding to,

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1 for instance, let's say night one follows the
2 schedule and we can get through that fairly
3 easily, but then when we get on night two, if
4 we get into a lot of discussion on certain acts,
5 accessory apartments, corner stores, because
6 there was a lot of comments. And if it takes us
7 a long time to get B- if we take the whole night,
8 or we don't finish at a reasonable time, then
9 if we've already set up times for these other
10 nights B- I mean, I guess what you're saying,
11 do we simply roll on, or do we have like another
12 set ahead to finish this night? And that's my
13 only concern.

14 I don't know how we B- if you've got
15 a rolling night. I mean, we may have people in
16 the audience listening to us, but B- and they
17 might be coming for specific things, so I don't
18 know whether we simply schedule it for like
19 you've got, and simply when we get to a B- at
20 a certain point say we're not going to finish
21 our deliberations tonight. We're going to carry
22 it on for, you know, another week for this one

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1 set of topics. I mean, I'm open to do it either
2 way, rolling or B- I just don't know whether
3 people are going to be coming for a certain
4 night if we advertise these. I don't know if we
5 advertise these. We don't advertise them, so
6 it's mainly our schedule then, I guess. So, in
7 that case I'm open to either way, either have
8 it rolling, or go as far as we can. Maybe it's
9 easier to do it rolling then so we finish
10 consecutive things. I'm open to hear what
11 others have got to say.

12 CHAIRMAN HOOD: Okay, Vice Chair.

13 VICE CHAIR COHEN: Thank you, Mr.
14 Chair. Ms. Schellin, does this get advertised,
15 though, this B- in any way?

16 MS. SCHELLIN: No, these are
17 meetings.

18 VICE CHAIR COHEN: Okay, so it's not
19 on any B-

20 MS. SCHELLIN: No.

21 VICE CHAIR COHEN: Okay.

22 MS. SCHELLIN: I mean, it's an agenda

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1 that we will just say that it's ZRR, the case
2 number and it's, you know, Proposed Action, so
3 to speak.

4 VICE CHAIR COHEN: Then I think my
5 preference would be roll B-

6 MS. SCHELLIN: Five days before?

7 VICE CHAIR COHEN: Yes. My
8 preference would be then rolling.

9 MS. SCHELLIN: Yes.

10 VICE CHAIR COHEN: Because we might
11 as well take advantage of the time that is
12 permitted. I think a lot of it, you know, is not
13 going to fit neatly into a particular schedule,
14 so that would be my preference. I don't know
15 what the others B-

16 COMMISSIONER TURNBULL: So, if we
17 don't get finished at the end of the week, we
18 simply carry it into the next week?

19 VICE CHAIR COHEN: Yes.

20 COMMISSIONER TURNBULL: Okay.

21 VICE CHAIR COHEN: Or if we finish
22 early by any chance B-

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1 COMMISSIONER TURNBULL: Right.

2 VICE CHAIR COHEN: B- then we go
3 into the next topic, and then we B- we may want
4 to stop because it's a logical place to stop,
5 and the Chairman's judgment is usually quite
6 accurate when doing that.

7 CHAIRMAN HOOD: I'm moved, my
8 judgment is accurate tonight.

9 VICE CHAIR COHEN: Sir, you're
10 always accurate. May not agree with your
11 accuracy, but B- all right. So, that's just
12 C-- I think rolling might be the best and
13 simplest way to manage the entire meeting as we
14 deliberate.

15 CHAIRMAN HOOD: Okay. Commissioner
16 Miller, you want to comment on this?

17 COMMISSIONER MILLER: Yes, thank
18 you, Mr. Chairman. Yes, I think these have been
19 organized in a useful way to focus us, to focus
20 our discussion. And I have no problem with the
21 way it's been set out. And then if we get through
22 what's listed for night one, go on to what's

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1 listed for night two, so I guess that's the
2 rolling method.

3 But I also think there might be some
4 value in putting on the meeting agenda for the
5 public what is on night one.

6 MS. SCHELLIN: No, we are going to
7 just B- we are, we're going to put on our
8 website the whole list and just B- we're going
9 to advertise the dates so that way it's a
10 rolling schedule.

11 COMMISSIONER MILLER: Right. So, I
12 thought it just might be useful to have it that
13 B- have it published almost like this somehow
14 and to say that. But if they get through B-

15 MS. SCHELLIN: Right, so we're going
16 to B-

17 COMMISSIONER MILLER: B- what's on
18 night one early, we'll go into night two, so
19 people know the order of our discussion. I think
20 that's useful.

21 CHAIRMAN HOOD: Okay. I think all
22 comments B- I would agree with all the comments

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1 that I've heard. And I think that is exactly how
2 we should do it, and we just make a note that
3 we may continue. And then, Vice Chair, I would
4 also say that, you know, it's a point in time
5 sometime when we get tired, too, so we would all
6 have to know, you know, it's not just on the
7 Chairman. All of us, you know, as we talk, we
8 may start getting tired, and we want to make
9 sure we have our best effort when we're doing
10 this, so it may be a point where somebody may
11 say well, look, I'm getting kind of tired, or
12 we're getting tired. Let's stop here at this
13 point and go to the next, and do it the next
14 night. So, I mean, it's a number of factors.
15 Unfortunately, I'm probably one of the only
16 ones up here who have never done a rewrite of
17 regulations before, so you all yield, I mean,
18 pardon my inexperience at this. I'm being
19 joking, I don't think anybody was here in 1958
20 at least doing this, I don't think. If you were,
21 how come you didn't tell us earlier what to do?

22 But I think, everything I've heard

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1 from our colleagues I think is germane to how
2 I think we should proceed. So, I don't know if
3 we need to do anything in particular, but B-

4 MR. BERGSTEIN: I think you can go by
5 consensus for this.

6 CHAIRMAN HOOD: By consensus? Okay.
7 All right. So, any B- what did Commissioner May
8 B-

9 MS. SCHELLIN: He just had B- if you
10 guys wanted to, he just recommended since he
11 thought night one was the easy night, to move
12 it to night four, and put the harder nights up,
13 but it sounds like you guys are just going to
14 roll in, so it sounds like you're okay.

15 CHAIRMAN HOOD: Well, since he can't
16 send them back to me, night four must have been
17 a volleyball night.

18 MS. SCHELLIN: I think he's out of
19 commission for a while.

20 CHAIRMAN HOOD: Oh, okay. Well,
21 anyway, we'll go ahead and do as we said. I think
22 we've got a good plan. And, again, as

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1 Commissioner Miller mentioned, we mention it,
2 and then we just let people know we possibly may
3 roll on. I just don't want us to be tired up here
4 about 10:30, 11:00 still trying to do this. We
5 need to have our best effort forward.

6 Okay. Do we have anything else?

7 MS. SCHELLIN: No, sir. We do have a
8 copy of the Ward 4, 5 Industrial Land
9 Transformation Study for you, though.

10 CHAIRMAN HOOD: Okay, so everybody
11 has a copy and we appreciate that.

12 VICE CHAIR COHEN: Maybe we should be
13 serving Red Bull that night.

14 CHAIRMAN HOOD: That night? Okay.
15 Ms. Steingasser, does Office of Planning have
16 anything?

17 MS. STEINGASSER: No, sir.

18 CHAIRMAN HOOD: Okay. Ms. Bardin,
19 does Office of Zoning have anything?

20 MS. BARDIN: No, sir.

21 CHAIRMAN HOOD: Okay. So with that,
22 Ms. Schellin, anything else?

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1 MS. SCHELLIN: That's it.

2 CHAIRMAN HOOD: Okay, so with that,
3 this meeting is adjourned. Thank you.

4 (Whereupon, the above-entitled
5 matter went off the record at 6:59 p.m.)
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