

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING  
1128th MEETING SESSION (3rd of 2002)

+ + + + +

MONDAY

FEBRUARY 11, 2002

+ + + + +

The Regular Meeting convened in Hearing Room 220 South,  
441 Fourth Street, N.W., Washington, D.C., pursuant to notice at  
1:35 p.m., Anthony J. Hood, Vice Chairman, presiding

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD	Vice Chairman
JOHN G. PARSONS	Commissioner
PETER G. MAY	Commissioner
JAMES HANNAHAM	Commissioner

OFFICE OF ZONING STAFF PRESENT:

Jerrily R. Kress, Director  
Alberto P. Bastida, Secretary  
Sharon Sanchez, Staff Member

OFFICE OF PLANNING STAFF PRESENT:

Andrew Altman, Director  
Ellen McCarthy, Deputy Director  
Maxine Brown-Roberts, Staff Member  
Jennifer Steingasser, Staff Member  
John Fondersmith, Staff Member  
David McHettigan, Staff Member  
Arthur Jackson, Staff Member

D.C. OFFICE OF CORPORATION COUNSEL:

Alan Bergstein, Esq.  
Marie Sansone, Esq.

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

(1:35 p.m.)

VICE CHAIRMAN HOOD: Good afternoon, ladies and gentlemen. This is the regular monthly meeting of the D.C. Zoning Commission, Monday, February the 11th, 2002, at approximately 1:35. Joining me are Commissioners Parsons, May and Hannaham. Chair Mitten is out of town but has left a number of proxies and will be participating today in this meeting by proxy.

I. PRELIMINARY MATTERS

VICE CHAIRMAN HOOD: Mr. Bastida, do we have any preliminary matters?

MR. BASTIDA: No, Mr. Chairman, we have no preliminary matters. The staff has no preliminary matters. Thank you.

VICE CHAIRMAN HOOD: For the record, I have a few changes in the agenda. First, we will not be considering or dealing with American University's Motion for Reconsideration. The motion to reconsider the American University case, which is Case Number 00-36CP/16638, we will be dealing with that next month due to wanting to have a full quorum of colleagues so we can see whether or not we want to proceed and how we are going to proceed due to the information that has been provided to us at such a late time frame.

The other addition that I would like to make on

1 the hearing action is Alphabet F, and that is to clarify Chapter  
2 13, and that will read as follows:

3 "Amendments to Title 11, DCMR Chapter 13, the  
4 Neighborhood Commercial Overlay District."

5 So I ask that you make note of that correction in  
6 the agenda. Okay. With that, I believe that's all I have.  
7 Okay.

8 II. ACTION ON MINUTES

9 A) PUBLIC MEETING MINUTES OF DECEMBER 10, 2001

10 VICE CHAIRMAN HOOD: Okay. Now we will have our  
11 action on our minutes. Mr. Bastida.

12 MR. BASTIDA: Mr. Chairman, the staff has  
13 provided the minutes of December 10th, January 7th and January  
14 24th, and the staff requests action on those minutes, and I  
15 would imagine that it would be the preference of the  
16 Commissioners to take each one one at a time.

17 VICE CHAIRMAN HOOD: Okay. We will deal with  
18 public meeting minutes of December the 10th, 2001. Colleagues,  
19 do we have any changes, any corrections? Any comments?

20 (No response.)

21 COMMISSIONER PARSONS: Move approval.

22 VICE CHAIRMAN HOOD: There has been a motion to  
23 approve. Is there a second?

24 COMMISSIONER MAY: Second.

25 VICE CHAIRMAN HOOD: It has been moved and

1 properly seconded.

2 I will just say for the sake of discussion, our  
3 Chair, Ms. Mitten, has provided me a number of corrections.  
4 What I will do, as opposed to reading them, I will hand them in  
5 to staff. And with that, I will call for the vote. All those  
6 in favor?

7 (Chorus of ayes.)

8 VICE CHAIRMAN HOOD: Opposed?

9 (No response.)

10 VICE CHAIRMAN HOOD: So ordered. Staff, would  
11 you record the vote.

12 MR. BASTIDA: Mr. Chairman, you have a proxy, an  
13 absentee vote from Ms. Mitten, regarding --

14 VICE CHAIRMAN HOOD: I am working for two today.  
15 Bear with me. Yes. Yes, she's in favor.

16 MR. BASTIDA: Okay. The staff will record the  
17 vote five to zero, Mr. Parsons moving and Mr. May seconded, Ms.  
18 Mitten, Mr. Hood and Mr. Hannaham voting in the affirmative.

19 B) PUBLIC MEETING MINUTES OF JANUARY 14, 2002

20 MR. BASTIDA: I would like to make a correction.  
21 It's January 14th, B., the public meeting minutes.

22 VICE CHAIRMAN HOOD: Thank you, Mr. Bastida. Our  
23 public meeting minutes of January 14th.

24 Colleagues, any comments?

25 (No response.)

1 VICE CHAIRMAN HOOD: If not, I will ask for a  
2 motion.

3 COMMISSIONER MAY: Move approval.

4 VICE CHAIRMAN HOOD: January 14th.

5 COMMISSIONER MAY: January 14th, minutes of  
6 January 14th.

7 VICE CHAIRMAN HOOD: Right.

8 COMMISSIONER MAY: Public meeting.

9 VICE CHAIRMAN HOOD: We have a motion. Can I get  
10 a second?

11 COMMISSIONER PARSONS: Second.

12 VICE CHAIRMAN HOOD: Moved and properly second.  
13 Again, discussion?

14 Our Chair has a number of changes, and I will be  
15 providing those as opposed to reading them.

16 With that, all those in favor, by the usual sign  
17 of voting. Aye.

18 (Chorus of ayes.)

19 VICE CHAIRMAN HOOD: Any opposition?

20 (No response.)

21 VICE CHAIRMAN HOOD: So ordered.

22 Staff, would you record the vote? Ms. Mitten  
23 also is in the affirmative.

24 MR. BASTIDA: Okay. The staff will record the  
25 vote to approve with corrections five to zero, Mr. May moving,

1 Mr. Parsons seconding, Ms. Mitten, Mr. Hood and Mr. Hannaham  
2 voting in the affirmative. Thank you.

3 C) SPECIAL MEETING MINUTES OF JANUARY 24, 2002

4 VICE CHAIRMAN HOOD: Okay. Our special meeting  
5 minutes of January the 24th we will be taking up at this time.  
6 Can I get a motion, colleagues?

7 COMMISSIONER HANNAHAM: Mr. Chairman, I do have  
8 one correction.

9 VICE CHAIRMAN HOOD: Okay.

10 COMMISSIONER HANNAHAM: I am not listed as  
11 present. I was actually in attendance January 24th.

12 VICE CHAIRMAN HOOD: Okay. We will make note of  
13 that.

14 COMMISSIONER PARSONS: Correct the vote on the  
15 second page.

16 VICE CHAIRMAN HOOD: Just bear with me one second  
17 here. I seem to have misplaced --

18 MR. BASTIDA: Staff will check the transcript and  
19 make the necessary correction.

20 VICE CHAIRMAN HOOD: Okay. Any other  
21 corrections?

22 (No response.)

23 VICE CHAIRMAN HOOD: Okay. With that, I will ask  
24 for a motion.

25 COMMISSIONER MAY: I move approval of the meeting

1 minutes of the special meeting, January 24th, 2002.

2 VICE CHAIRMAN HOOD: It has been moved. I will  
3 second that.

4 Let me also add again, Chair Mitten has some  
5 corrections. I will not read them for the record, but I will be  
6 supplying them to staff to make the corrections.

7 With that, all those in favor?

8 (Chorus of ayes.)

9 VICE CHAIRMAN HOOD: Any opposition?

10 (No response.)

11 VICE CHAIRMAN HOOD: So ordered.

12 Staff, would you record the vote.

13 MR. BASTIDA: Yes. Mr. Hood, you have a proxy?

14 VICE CHAIRMAN HOOD: Yes. Chair Mitten is in  
15 favor.

16 MR. BASTIDA: Thank you.

17 The staff will record the vote five to zero, Mr.  
18 May moving, Mr. Hood seconding; Ms. Mitten, Mr. Hannaham, Mr.  
19 Parsons voting in the affirmative. Thank you.

20 VICE CHAIRMAN HOOD: Again, colleagues, I would  
21 ask if you would indulge me. I am trying to do the work of two  
22 Commissioners in looking through my stuff and what was left for  
23 me. It's rather difficult, but we are going to make it.

24 COMMISSIONER PARSONS: On January 14th, Mr.  
25 Bastida, I think I should abstain from that. The 24th. Excuse

1 me. Just because I wasn't there.

2 MR. BASTIDA: Okay. Then the staff will record  
3 the vote four to zero, Mr. May moving, Mr. Hood seconding, Mr.  
4 Hannaham and Ms. Mitten voting in the affirmative, Mr. Parsons  
5 not voting, not being present at that meeting. Thank you.

6 VICE CHAIRMAN HOOD: Okay. With that, thank you.

7 III. STATUS REPORT

8 A) OFFICE OF PLANNING MONTHLY STATUS REPORT

9 VICE CHAIRMAN HOOD: With that, we will now move  
10 to our status report, the Office of Planning.

11 MS. MCCARTHY: Thank you, Mr. Chair. In the  
12 interest of time, since we have such a full agenda, I will just  
13 ask if the Commission has any questions on the status report.

14 VICE CHAIRMAN HOOD: Are there any questions,  
15 colleagues, on the status report from the Office of Planning?

16 (No response.)

17 VICE CHAIRMAN HOOD: Hearing none, we will  
18 proceed. Again, I want to thank the Office of Planning. Since  
19 we changed that a year and a half or so ago, things have really  
20 been moving forward and it's a lot simpler for us to deal with  
21 when we're doing our homework at home.

22 Thank you.

23 MS. MCCARTHY: Thank you, Mr. Chairman.

24 COMMISSIONER PARSONS: Mr. Chairman, I did want  
25 to ask about the March meeting. What is really going to happen

1 there? We've got Buzzards Point, Capitol Point and Florida  
2 Rock. How do you see that being sequenced? On the rezoning and  
3 overlay, Mr. Brandis is going to come and just give us a status  
4 report?

5 MR. ALTMAN: Actually, what would be before you  
6 would be the final language --

7 COMMISSIONER PARSONS: Okay.

8 MR. ALTMAN: -- of Buzzard Point. So the idea, I  
9 believe, what Chair Mitten requested was that rather than hear  
10 these separately, to look in the context of not only the Buzzard  
11 Point overlay but the two major pending PUD extension requests  
12 so you could -- there were questions related I think  
13 particularly to Florida Rock with respect to the amenity site  
14 that had implications for the overlay and wanted to see all  
15 these in context.

16 So how we handle that meeting I think we can  
17 discuss. Whether you would want to have us walk through all the  
18 issues and the three, and then you could go back and determine  
19 whether you want to make decisions on one or all of those cases  
20 separately, we could decide. But the intent is to bring a  
21 recommendation forward on each of those final recommendations.

22 COMMISSIONER PARSONS: I guess that's what I was  
23 going to suggest, is that somehow we could have a presentation.  
24 You will have individual reports as well, right?

25 MR. ALTMAN: Yes.

1 COMMISSIONER PARSONS: So have a presentation on  
2 all three rather than take them on one at a time. Does that  
3 make sense to you?

4 MR. ALTMAN: I think that makes sense. I think  
5 that was the intent so you could sort of get the total picture  
6 and then decide accordingly.

7 COMMISSIONER PARSONS: Okay. Good. Thanks.

8 MR. BASTIDA: Excuse me, Mr. Chairman.

9 VICE CHAIRMAN HOOD: Yes.

10 MR. BASTIDA: Then would you reopen the record to  
11 accept all those reports from the Office of Planning --

12 VICE CHAIRMAN HOOD: Mr. Parsons --

13 MR. BASTIDA: -- on Buzzard Point, yes. On  
14 Capitol Point and --

15 COMMISSIONER PARSONS: Reopen the record?

16 MR. BASTIDA: On Buzzard Point, yes, because you  
17 are asking for additional information from the Office of  
18 Planning on Buzzard Point, and that would be a proposed action.

19 COMMISSIONER PARSONS: You mean the request for  
20 the extension.

21 MR. BASTIDA: No, on the request for the  
22 extension, you do not.

23 COMMISSIONER PARSONS: Right.

24 MR. BASTIDA: But I thought that you had  
25 requested additional information on Buzzard point.

1 COMMISSIONER PARSONS: No, there's a -- he's  
2 going to be bringing the final language to us.

3 MR. BASTIDA: But final language on Buzzard  
4 Point, the record is not open for that.

5 MR. BERGSTEIN: The Office of Planning put in a  
6 report --

7 VICE CHAIRMAN HOOD: Mr. Bergstein, can you turn  
8 your microphone on, please?

9 MR. BERGSTEIN: Oh, I'm sorry. I thought I had  
10 it on.

11 I think that the Commission has before it a  
12 report from Office of Planning on Buzzard's Point that contains  
13 the language that the Commission will be requested to take  
14 proposed action on in March. So there has been a report that  
15 was put in -- I can't remember when; November, December -- from  
16 the Office of Planning that contains what I think is the  
17 proposed language that will be presented to you for your  
18 consideration in March.

19 COMMISSIONER PARSONS: I certainly wasn't asking  
20 for any new information.

21 MR. BERGSTEIN: I understand that. I think  
22 that's what Mr. Bastida was thinking you were doing and I was  
23 just trying to clarify that --

24 COMMISSIONER PARSONS: Thanks.

25 MR. BERGSTEIN: -- you do have a report already.

1       Okay.

2                   MR. BASTIDA:   If that's the case, I thought that  
3 perhaps OP was providing additional information and that's -- I  
4 might have misunderstood what Mr. Altman was talking about.

5                   VICE CHAIRMAN HOOD:   Can we have clarification  
6 what was asked for so we can understand what's going on, Mr.  
7 Altman?

8                   MR. ALTMAN:    I think at this point, just to  
9 clarify, we don't see, with respect to Florida Rock, the need to  
10 submit any additional information.    I think you have the  
11 recommendation before you.   The question before had been -- it  
12 was the Florida Rock portion of the Buzzard Point recommendation  
13 that I think was at issue, and I think there's not any new  
14 language that we're submitting with respect to that at this  
15 point.

16                   VICE CHAIRMAN HOOD:   Okay.   Thank you.

17                   Before we leave the Office of Planning, I did  
18 have something, and I finally found my notes, I did have  
19 something that I wanted to mention.   Norm McGrath -- I hate to  
20 call his name, but Mr. McGrath had a concern about this laundry  
21 list in which the Zoning Commission and the Office of Planning  
22 -- we are accumulating.   His statements, and I'm not quoting  
23 him, but his statements were that it would never get  
24 accomplished, and I think that was dealing with the ordinance.

25                   Does the Office of Planning have any mechanism

1 where we can start dealing with the laundry list, or maybe Corp  
2 Counsel, whoever is in the best position to answer this  
3 question, as of yet, so we won't fall into just putting stuff on  
4 a list and not actually dealing with them?

5 MS. McCARTHY: I think that Mr. McGrath was  
6 talking about the list of the 200-odd proposed corrections to  
7 the zoning regulations?

8 VICE CHAIRMAN HOOD: Right.

9 MS. McCARTHY: And I believe that's one of the  
10 agenda items on the joint meeting that we have scheduled, the  
11 Office of Planning, Office of Zoning and Office of Corporation  
12 Counsel, on Wednesday, is to take a look at that list and begin  
13 to set some time frames for addressing those issues as to  
14 whether they should be -- time frames and responsibilities as to  
15 whether they are basically technical corrections and they are in  
16 the bailiwick of the Office of Corporation Counsel or whether  
17 they need to be -- whether there are some planning policy issues  
18 and they need to be addressed with a set-down report.

19 So we do -- that was one of the major benefits we  
20 thought that we would see from that joint coordinating effort,  
21 so we certainly are intending to work our way through that list.

22 VICE CHAIRMAN HOOD: Okay. Thank you.

23 IV. HEARING ACTION

24 A) ZONING COMMISSION CASE NO. 01-29MA

25 VICE CHAIRMAN HOOD: With that, we will move

1 right along with our agenda. Under Hearing Action, Zoning  
2 Commission Case Number 01-29MA, United House of Prayer.

3 MS. MCCARTHY: Mr. Chair, Ms. Brown-Roberts is  
4 here to address the proposed rezoning.

5 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman  
6 and members of the Board.

7 The subject property is a long and narrow  
8 property developed with an old apartment building that does not  
9 currently meet current building codes and is unhabitable. Due  
10 to the shape of the building and the building -- and the  
11 building that would be allowed by right, the site is under-  
12 utilized.

13 The applicant has requested a variance to  
14 demolish the building and replace it with a building that would  
15 be in excess of the permitted lot occupancy; however, this was  
16 denied by the Board of Zoning Adjustments, and at the time they  
17 recommended that the applicant may want to seek a rezoning of  
18 the site.

19 The property is close to the Shaw-Howard  
20 University Metro Station and it is also located close to  
21 properties to the west and north of C-2-B zone, and that is also  
22 covered by the arts-overlay.

23 We believe that extending the zoning category to  
24 the subject property would allow for mixed-use development that  
25 would allow better utilization of the site at this critical

1 location.

2 At this site, extending the C-2-B zone with the  
3 arts-overlay would also allow for mixed use closer to the Metro  
4 station and it would be compatible to the surrounding uses.

5 We have discussed this with the applicant and  
6 they have concurred with revising the zoning category to include  
7 the arts-overlay zone. We therefore would recommend amending  
8 the application to include the arts-overlay.

9 Thank you, Mr. Chairman.

10 VICE CHAIRMAN HOOD: Okay. Thank you, Ms.  
11 Brown-Roberts. I think I got that correct.

12 MS. BROWN-ROBERTS: Yes, you did.

13 VICE CHAIRMAN HOOD: Good.

14 Colleagues, we have in front of us the hearing  
15 action on Zoning Commission Case 01-29MA, United House of  
16 Prayer. Any discussion? Any concerns?

17 (No response.)

18 VICE CHAIRMAN HOOD: If not, I have a statement  
19 from the Chair that I have been informed to read  
20 enthusiastically, so if I don't, please do not tell her.

21 (Laughter.)

22 VICE CHAIRMAN HOOD: The Chair says as follows:

23 "I sat on the BZA case where the applicant was  
24 requesting a use variance to construct an apartment building in  
25 the R-4 zone. What became clear in the BZA case was the fact

1 that the only appropriate means to gain the right to construct  
2 an apartment building was through a rezoning, and I am pleased  
3 that the applicant has pursued this course of action.

4 "What is also clear is that notwithstanding the  
5 generalized land use map designation for moderate-density  
6 residential use for the site, which we know is a soft-edged  
7 concept, part of our mission is to ensure efficient and economic  
8 use of land. The depth of this site precludes efficient use of  
9 land in the R-4 zone and I support set-down of this case in  
10 accordance with the recommendations of the Office of Planning  
11 for inclusion in the Uptown Arts-Overlay District."

12 So with that, colleagues, any other comments?

13 COMMISSIONER PARSONS: Well, looking at the  
14 aerial photograph that is attached to the Office of Planning  
15 report, I wonder if there is value in taking a look at the rest  
16 of this block to see if there are other circumstances that would  
17 lead us to the same conclusion.

18 I see a couple of lots almost identical on Rhode  
19 Island Avenue, but I don't know the real estate, so I don't --  
20 is there a potential for other owners saying, me too, and coming  
21 in a subsequent hearing process, or should the Office of  
22 Planning give us a general report that this is good R-4, solid  
23 R-4 stock here and it's not anticipated that that would or  
24 should occur?

25 I don't mean to have a hearing on the whole

1 block, please; let's just have a section of the report that  
2 talks about the remainder of the block.

3 VICE CHAIRMAN HOOD: Okay.

4 MS. BROWN-ROBERTS: Yes, we would be willing to  
5 do that.

6 COMMISSIONER PARSONS: All right.

7 VICE CHAIRMAN HOOD: All right. Any other  
8 comments?

9 COMMISSIONER MAY: I have just a couple of  
10 observations on the report that was written. There is reference  
11 to the proposal -- the proposed building that includes retail  
12 and arts uses that have not been identified at this stage, and I  
13 don't see any indication of that in the actual submission and I  
14 am wondering what that actually is. If you can answer it now,  
15 great, but otherwise in your final report.

16 MS. BROWN-ROBERTS: Okay. Just to be brief, in  
17 the original application by the applicant, they had just  
18 requested the C-2-B zone with -- just covering apartments. When  
19 we took a closer look at it, because of the surrounding uses and  
20 the location close to the Metro, we thought that this would be  
21 good to include within that area.

22 MS. MCCARTHY: And the arts-overlay does provide  
23 for ground-floor retail. So when we discussed that with the  
24 applicant, they were willing to redesign the building to  
25 accommodate that.

1 COMMISSIONER MAY: So that started with OP  
2 essentially.

3 MR. ALTMAN: Yes. It wasn't started in response  
4 to a specific proposal as much as what would be the appropriate  
5 overlay for that site.

6 COMMISSIONER MAY: Okay.

7 VICE CHAIRMAN HOOD: Any other comments?

8 (No response.)

9 VICE CHAIRMAN HOOD: With that, I would move that  
10 we set down Zoning Commission Case Number 01-29MA, United House  
11 of Prayer.

12 COMMISSIONER MAY: Second.

13 VICE CHAIRMAN HOOD: It has been moved and  
14 seconded. Any further discussion?

15 (No response.)

16 VICE CHAIRMAN HOOD: All those in favor by the  
17 usual sign of voting. Aye.

18 (Chorus of Ayes.)

19 VICE CHAIRMAN HOOD: Any opposition?

20 (No response.)

21 VICE CHAIRMAN HOOD: So ordered. Staff will  
22 record the vote.

23 MR. BASTIDA: Mr. Chairman, do you have a proxy  
24 from Ms. Mitten?

25 VICE CHAIRMAN HOOD: Oh. Thank you. Yes. Ms.

1 Mitten is in favor of setting down the rezoning. Also we need  
2 to identify that this is a contested case.

3 MR. BASTIDA: Contested case, right.

4 Then the staff will record the vote five to zero  
5 for this case, that it will be a contested case. Mr. Hood  
6 moving; I believe Mr. Parsons seconded? Mr. May seconded?

7 VICE CHAIRMAN HOOD: Mr. May seconded.

8 MR. BASTIDA: Okay. Thank you. And Mr. Parsons,  
9 Mr. Hannaham and Ms. Mitten voting in the affirmative.

10 VICE CHAIRMAN HOOD: Okay.

11 MR. BASTIDA: Thank you.

12 VICE CHAIRMAN HOOD: Thank you.

13 B) ZONING COMMISSION CASE NO. 01-11TA

14 VICE CHAIRMAN HOOD: Next we will go with Zoning  
15 Commission Case Number 01-11TA; also Zoning Commission Case  
16 Number 01-11TA -- I'm sorry -- Emergency Rulemaking and Text  
17 Amendments to Permit Public Recreation and Community Centers as  
18 a Matter-of-Right Use in the R-1 Zone.

19 Office of Planning.

20 MS. STEINGASSER: Yes, sir. My name is Jennifer  
21 Steingasser, I'm with the Office of Planning and I will be  
22 giving the report on this case.

23 The Department of Parks and Recreation approached  
24 OP and requested that two actions be proposed. One was the  
25 adoption of an emergency text amendment to allow for municipal

1 recreation and community centers as a matter of right, and the  
2 other is to move forward with a set down for permanent  
3 consideration of the same language. OP is agreed and recommends  
4 both actions.

5 The intent of the text amendment is to provide a  
6 matter-of-right use category for these municipal recreation and  
7 community centers as well as park land for the city.

8 The emergency regulation and rulemaking provides  
9 an immediate process to allow DPR to proceed with the timely  
10 renovation of the city's community and rec centers.

11 They have moved forward with a significant  
12 capital improvement program and unaware that there was no use  
13 category under which they could apply for a permit, it would  
14 provide significant delay at this point.

15 The CIP program that Parks and Rec proposes  
16 allows for the modernization of many of the city's recreation  
17 and community centers. I believe it's 21 at this point, eight  
18 of which are on the verge of proceeding to building permit. The  
19 programs include both the renovation, reconstruction and  
20 addition to many of the facilities.

21 The need for the zoning action stems from a 1990  
22 City Council legislation that made District properties subject  
23 to zoning. Section 106 of the zoning regulations sets out the  
24 applicability of the zoning to various city-owned properties and  
25 Subsection D requires, quote, "any change or expansion in the

1 use of land or building or any new construction or addition to  
2 building should be subject to zoning." It's that trigger which  
3 brought DPR, Parks and Rec, to the realization that they needed  
4 some emergency legislation.

5 While most of the properties themselves are  
6 outside the central area and are therefore zoned, the use  
7 category is not included in the text. Public schools, however,  
8 are allowed as a matter of right in the R-1 zone and OP believed  
9 that public recreation facilities are very similar in use and  
10 magnitude.

11 A lack of use category left Parks and Rec in a  
12 situation that required them either to obtain a use variance for  
13 almost all of their properties or, more appropriately, we  
14 believe, to go forward with a Code amendment to allow the use as  
15 a matter of right.

16 Historically, these properties have been allowed  
17 as a matter of right by virtue of the fact that they were not  
18 subject to zoning. The proposed zoning allowing them as a  
19 matter of right in the R-1 zone continues their historic matter-  
20 of-right operation but does employ some bulk area and height  
21 requirements more consistent with the residential characters or  
22 the various zones as they move forward.

23 Allowing the public recreation uses on an  
24 emergency basis allows the renovation and construction to  
25 continue on their critical time schedule and avoids the variance

1 and costly delay to Parks and Rec. They are obviously very  
2 season sensitive in their construction and being able to get up  
3 on a particular time.

4 As I stated earlier, we believe the Parks and  
5 Recreation community centers are similar community-supporting  
6 uses to public schools and churches which are currently allowed  
7 in the R-1 zone as a matter of right.

8 We have included Park's rec and community centers  
9 within the same statements throughout the regs as public  
10 schools. We also believe that they are compatible use within  
11 the R-1 district which is set out in Section 201 and states that  
12 it is intended to stabilize residential areas and promote a  
13 suitable environment for family life. We believe the rec  
14 centers, community centers, do meet that intent.

15 Again, the matter-of-right uses will carry  
16 forward to all other zoning districts. Currently under the  
17 regs, a rec center is not permitted until the SP zone, which is  
18 outside of all the residential zones. The height, bulk and core  
19 area lot occupancy standards are set out in the Code similar to  
20 public schools with the exception of allowing a possible  
21 extension to an R-5-B FAR to allow for the expansion of existing  
22 facilities only.

23 Corporate Counsel has advised that the proposed  
24 language in Section 402 should include the word "expansion" to  
25 make that more clear.

1 Corporation Counsel has also advised that the  
2 parking proposed by OP, which reads, quote, "Public recreation  
3 community centers may have less parking if determined to be  
4 appropriate" should be deleted and it's not an appropriate  
5 language to be included at that time. OP has no objections to  
6 those modifications.

7 We believe that the proposed text amendment is  
8 consistent with many of the comprehensive plan goals, including  
9 102, which addresses stabilizing and improving the District's  
10 neighborhoods.

11 Chapter 11 of the comprehensive plan, land use,  
12 also identifies adequate recreation opportunities and access to  
13 cultural and educational facilities as necessary ingredients to  
14 neighborhood quality.

15 All eight of the ward plans -- of the  
16 comprehensive plan identify the need to upgrade and maintain rec  
17 and community centers and identifies them as essential services  
18 to the quality of neighborhood life.

19 Quotes from all these sections have been included  
20 in the staff report and I won't quote them here as they are  
21 pages long.

22 The emergency regulations and rulemaking is also  
23 consistent with Chapter 6, the public facilities, which calls  
24 for the cost-effective delivery of municipal programs and  
25 services and to support the economic development of neighborhood

1 improvement objective.

2 In conclusion, the Department of Parks and Rec  
3 and OP believe that the proposed text amendments recognize the  
4 historical matter-of-right nature of these uses, but currently  
5 also provides some FAR and bulk limits to these. We believe  
6 they are consistent with the comprehensive plan and we believe  
7 the efficiency of the rulemaking will allow the 20-odd projects  
8 to move forward, avoiding significant delay for the necessary  
9 building permits.

10 VICE CHAIRMAN HOOD: Thank you, Ms. Steingasser.

11 Colleagues, any comments?

12 COMMISSIONER PARSONS: Mr. Chairman, I wanted to  
13 inquire about the height restrictions.

14 Most of the buildings that you are speaking about  
15 or Recreation is speaking about are probably historic buildings  
16 in their own right. They also have a setting of park-like  
17 environment. To suggest that we would allow buildings 60- and  
18 90-feet high in these facilities troubles me, and certainly we  
19 wouldn't want members of the community to come in here and  
20 testify that they think these buildings would be intrusive,  
21 because I presume we would agree.

22 So not to complicate life here, but could we pick  
23 a -- I would think most of these buildings don't exceed 50 feet,  
24 most of them are one-story. Is there some lesser height that we  
25 could select that would be less inflammatory and -- we could do

1 it during the hearing, but I wouldn't want people to come in  
2 here and have to testify about this height.

3 I wanted to pick the single-family 40, 40/50, but  
4 it's kind of arbitrary to sit here and do that. And I know  
5 you're trying to make it consistent with public schools, but --

6 MS. STEINGASSER: We could have for you by the  
7 next hearing a list of all the heights.

8 COMMISSIONER PARSONS: Okay. Maybe that's  
9 something we could do at the hearing, but I certainly hope we  
10 don't end up here. High-rise buildings in parks just don't make  
11 it for me.

12 Then I wasn't quite clear what you meant by --

13 MS. STEINGASSER: Commissioner Parsons, we've  
14 just been informed that there is nothing greater than 40 feet  
15 that currently would be moving forward with a building permit.

16 COMMISSIONER PARSONS: Could we pick up on the  
17 single-family heights of 40/40, 50/60?

18 MS. STEINGASSER: Yes, sir, that should be --

19 COMMISSIONER PARSONS: I don't know. It's just a  
20 suggestion.

21 MR. ALTMAN: Yes, why don't we look at -- I think  
22 that's probably the right range and we will just confirm that  
23 100 percent. But I think that's reasonable.

24 COMMISSIONER PARSONS: And I think Ms.  
25 Steingasser mentioned something -- I'm at page 6 now -- about

1 the Department of Recreation director along with the zoning  
2 administrator deciding about parking, and you say you deleted  
3 that?

4 MS. STEINGASSER: Yes, sir, at the advice of the  
5 Corporation Counsel.

6 COMMISSIONER PARSONS: I think that was good  
7 advice.

8 (Laughter.)

9 MS. STEINGASSER: I'm sure he appreciates that.

10 COMMISSIONER PARSONS: So what will be the  
11 parking requirement? Because we don't want to pave over the  
12 ball fields in order to --

13 MS. STEINGASSER: It will stay at the existing  
14 one space for each 2,000 square feet devoted to the building  
15 use.

16 COMMISSIONER PARSONS: So can we have a little  
17 evaluation as to whether that might be difficult --

18 MS. STEINGASSER: Yes.

19 COMMISSIONER PARSONS: -- and they've got to run  
20 to BZA when the idea is to get this program going, right?

21 MS. STEINGASSER: Yes, sir.

22 COMMISSIONER PARSONS: I mean, it's wonderful  
23 what they're doing. All right. Thank you.

24 VICE CHAIRMAN HOOD: Any other comments,  
25 colleagues? Mr. Hannaham?

1 COMMISSIONER HANNAHAM: I was just curious as to  
2 the extent of the new development and rehab that is envisioned  
3 by the Department of Parks and Rec. I just wondered how widely  
4 spread are they around the city and how many are impacted by  
5 this particular emergency proposal?

6 MS. STEINGASSER: I believe all told, there are  
7 21 that are impacted by the proposal, and they are spread evenly  
8 throughout the city.

9 COMMISSIONER HANNAHAM: Okay.

10 MS. STEINGASSER: All wards, almost all  
11 neighborhoods.

12 COMMISSIONER HANNAHAM: Okay. So it's a mixture  
13 of new and renovations, the whole mix of changes and upgrades  
14 throughout those centers?

15 MS. STEINGASSER: Yes, sir.

16 COMMISSIONER HANNAHAM: Okay.

17 MS. STEINGASSER: There's both raze and  
18 reconstruction, addition and complete renovation.

19 COMMISSIONER HANNAHAM: Okay. Thank you.

20 VICE CHAIRMAN HOOD: Any further questions?

21 (No response.)

22 VICE CHAIRMAN HOOD: If not, I will read the  
23 comments of our Chair. First before I read her comments, let me  
24 just put my two cents in.

25 Colleagues, I am going to ask -- we've been asked

1 to do emergency rulemaking and I am going to ask that we take a  
2 vote on that, and also that we give the flexibility to the staff  
3 to fine-tune what is going to be advertised.

4 Also, with the set down -- then we're going to  
5 take a vote on setting down the proposed language. If everyone  
6 is in agreement, no problems, that is how we will proceed.

7 Let me just read the comments of our Chair:

8 "Recreational building and use are defined in  
9 Section 199. Community centers are not defined. In the context  
10 of the discussion of private community centers in Section 209,  
11 there is a distinction between community center building and  
12 other facilities such as swimming pools. If other facilities  
13 are included, we should specify them for clarity," and then she  
14 has, "or define the term `public recreation or community  
15 center.'"

16 The second issue:

17 "I have a concern regarding granting the  
18 Department of Parks and Recreation and the zoning administrator  
19 authority to alter the parking requirement without a public  
20 process or any assurance that OP or the affected ANC would be  
21 given great weight."

22 I think we have dealt with that issue, but I  
23 needed to read that in the record.

24 So with that, I would ask for a motion. I will  
25 move that we set -- let me do it this way: I will move that we

1 set down -- that we pass emergency rulemaking on Zoning  
2 Commission Case Number 01-11TA, going into it knowing that the  
3 Office of Corporation Counsel, Office of Planning, Office of  
4 Zoning, the staff will do any corrections that we need for  
5 advertisement.

6 COMMISSIONER PARSONS: Second.

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

9 (No response.)

10 VICE CHAIRMAN HOOD: All those in favor by the  
11 usual sign of voting. Aye.

12 (Chorus of ayes.)

13 VICE CHAIRMAN HOOD: Any opposition?

14 (No response.)

15 VICE CHAIRMAN HOOD: So ordered.

16 Staff, would you record the vote with Ms. Mitten  
17 also in the affirmative.

18 MR. BASTIDA: The staff would record this as a  
19 rulemaking case and would like a clarification. On the  
20 emergency rulemaking, you are limiting the height to 40 feet?  
21 Was that the intent of Mr. Parsons?

22 COMMISSIONER PARSONS: Well, what I was  
23 suggesting is that we --

24 MR. BASTIDA: This is only for the proposed  
25 rulemaking -- the emergency rulemaking.

1 COMMISSIONER PARSONS: Right. Well, yes. Now  
2 that I review the single-family dwellings, they get to 90 feet.  
3 How does that happen?

4 MR. BASTIDA: Ninety feet.

5 VICE CHAIRMAN HOOD: Let me just ask --

6 COMMISSIONER PARSONS: And I'm looking at the  
7 chart, page 3.

8 VICE CHAIRMAN HOOD: But this is for the  
9 emergency -- I think we're going to have a set down, a hearing.  
10 I mean, we --

11 COMMISSIONER MAY: Forty across.

12 MR. BASTIDA: This is only for the emergency  
13 rulemaking, I'm asking. You can advertise it more explicitly.

14 COMMISSIONER MAY: Forty across all zones, yes.

15 VICE CHAIRMAN HOOD: Is that a problem?

16 MR. ALTMAN: I would just request, we want to  
17 just confirm -- I think we just want to confirm that. I mean, I  
18 think it sounds reasonable. We would like to get back with  
19 Parks and Recreation, make sure that that's the exact number. I  
20 mean, we could say, you know, 50 feet, and then we can look at  
21 and make sure that nothing exceeds that. I'm sure it's right,  
22 but we just want to double-check.

23 MR. BASTIDA: Mr. Chairman?

24 VICE CHAIRMAN HOOD: Yes?

25 MR. BASTIDA: The problem with -- the difficulty

1 with the staff is that the staff can make changes to the vote  
2 for legal sufficiency. We believe that this goes beyond those  
3 parameters. Accordingly, we need a precise number for the  
4 emergency rulemaking; otherwise, we will have to come back to  
5 you and request a vote on the emergency rulemaking.

6 VICE CHAIRMAN HOOD: I believe, and hopefully Mr.  
7 Parsons will agree with me, I stated in my motion that we would  
8 give staff the flexibility. If that's not the way Mr. Parsons  
9 wants to proceed --

10 COMMISSIONER PARSONS: Yes.

11 VICE CHAIRMAN HOOD: We will give staff the  
12 flexibility so you won't have to come back to me -- back to us,  
13 rather; not me.

14 MR. BERGSTEIN: Maybe what we can do, because I  
15 think that that is too specific, with all due respect, Mr.  
16 Chair, for staff, that degree of specificity in terms of height.

17 At least we need to know the parameters. Is what you're  
18 suggesting that it would be 40 feet unless Mr. Altman informs us  
19 that that would not be acceptable, and then we will go with what  
20 is in the original text? Because we need really one or the  
21 other or the option, but we can't have a range in there that we  
22 would just sort of have to fathom.

23 So at least I would appreciate an indication that  
24 it would be the preference for 40 feet unless Mr. Altman advises  
25 us after consultation with Recreation that we would go with what

1 the original text is here, so at least we would have one or the  
2 other to go with.

3 VICE CHAIRMAN HOOD: Mr. Bergstein, I think your  
4 comments -- that is exactly the way we will proceed. Unless the  
5 Office of Planning and Mr. Altman has an issue with it and they  
6 get back to staff, I think that's the way we will go with it if  
7 that's in compliance.

8 MR. ALTMAN: That would be fine.

9 VICE CHAIRMAN HOOD: Okay. Good.

10 Okay. Where were we? Did we call the vote?

11 MR. BASTIDA: Yes. The staff would record the  
12 vote for the emergency rulemaking five to zero, Mr. Hood moving  
13 and Mr. Parsons seconding; Mr. Hannaham, Mr. May, and Ms. Mitten  
14 by absentee ballot, voting in the affirmative.

15 VICE CHAIRMAN HOOD: Okay. Thank you.

16 Next we have the set-down for Zoning Commission  
17 Case 01-11TA. Colleagues, any more discussion?

18 (No response.)

19 VICE CHAIRMAN HOOD: If not, I move that we set  
20 this down for a hearing.

21 COMMISSIONER PARSONS: Second.

22 VICE CHAIRMAN HOOD: It has been moved and  
23 properly seconded. All those in favor?

24 (Chorus of ayes.)

25 VICE CHAIRMAN HOOD: Any opposition?

1 (No response.)

2 VICE CHAIRMAN HOOD: So ordered.

3 Also Chair Mitten is in favor of setting this  
4 down.

5 MR. BASTIDA: The staff will record the vote in  
6 this rulemaking case five to zero, Mr. Hood moving and Mr.  
7 Parsons seconding, Ms. Mitten, Mr. Hannaham and Mr. May voting  
8 in the affirmative.

9 C) ZONING COMMISSION CASE NO. 01-34M/00-35TE

10 VICE CHAIRMAN HOOD: Okay. Next on the agenda,  
11 we have Zoning Commission Case Number 01-34M/00-35TE, the  
12 National Academy of Science.

13 MR. BASTIDA: Mr. Chairman, with indulgence of  
14 the Office of Planning, the staff would like to make a point  
15 that the applicant's lawyer submitted a letter on Friday shortly  
16 after three o'clock requesting a consent calendar consideration.

17 Even though the regulations allow for it to be on  
18 the consent calendar if all the parties have been notified, it  
19 has been the policy so far that without the consent of all the  
20 parties, those cases have not been put in the consent calendar.

21 In this instance, the Committee of 100 had expressed verbally  
22 to the staff doubts about if they really could endorse the  
23 proposal or not.

24 Accordingly, the staff did not put it in the  
25 consent calendar, but the Commissioner can do, based on the

1 rules, what it wishes.

2 Thank you.

3 VICE CHAIRMAN HOOD: Mr. Bastida, let me just  
4 ask. Our regulations state that we get a document from the  
5 Director of the Office of Zoning. Do we have that?

6 MR. BASTIDA: No, I did not provide that.

7 VICE CHAIRMAN HOOD: So we don't have a formal  
8 request for this to go on the consent calendar from the Director  
9 of the Office of Zoning.

10 MR. BASTIDA: That is correct.

11 VICE CHAIRMAN HOOD: Mr. Bastida, before we go to  
12 the Office of Planning, can you give me a little history? I  
13 understand it may have been put on the consent calendar once  
14 before, taken back off, and I'm trying to get a -- give us a  
15 little history so we can proceed.

16 MR. BASTIDA: Since December, the applicant has  
17 been trying to put this on the consent calendar and the parties  
18 did not provide, as it has been the policy, a consent on going  
19 forward. The same thing happened in January.

20 I have been in touch with the applicant,  
21 expressed to them what the deadlines and the timetables were.  
22 The Committee of 100 -- I have tentatively put it also for the  
23 February meeting. The Committee of 100 expressed their concern  
24 regarding having it on the consent calendar.

25 VICE CHAIRMAN HOOD: Mr. Bastida, let me

1 interrupt. Does the Committee of 100 have anything here in  
2 writing?

3 MR. BASTIDA: No.

4 VICE CHAIRMAN HOOD: Okay. I wanted to deal with  
5 those who -- and I would agree with the ANC, there has been  
6 ample opportunity for people to comment, and I don't know about  
7 my colleagues, but I'm not in favor of taking anything verbally.

8 I think that everyone has had an opportunity, and I see here  
9 where 6A has weighed in on it. And who are the other parties?

10 MR. BASTIDA: The Committee of 100.

11 VICE CHAIRMAN HOOD: Okay.

12 MS. MCCARTHY: And the D.C. Preservation League.

13 VICE CHAIRMAN HOOD: The D.C. Preservation  
14 League?

15 MS. MCCARTHY: Which endorsed the change.

16 VICE CHAIRMAN HOOD: They endorse the change?  
17 And I see they have a strong recommendation from the ANC, and  
18 unfortunately, if it -- I'm sure that it's of great concern to  
19 the Committee of 100, but I think we -- we have two other  
20 organizations in the city besides the Committee of 100, the ANC  
21 which we're required to give great weight, and now I understand  
22 the D.C. Preservation -- I don't know if they supplied anything.

23 If they did, I haven't seen it.

24 But what I have in front of me is an organization  
25 that we're supposed to give great weight and they have expressed

1 their support for this project. I would not have any problems  
2 with this going to the consent calendar, but before we do that,  
3 Mr. Bastida, let me ask, are you finished? If you are, then I  
4 will go to the Office of Planning.

5 MR. BASTIDA: Yes, Mr. Chairman, the staff has  
6 completed its presentation.

7 VICE CHAIRMAN HOOD: Okay. Thank you, Mr.  
8 Bastida.

9 Colleagues, any comments before we go to the  
10 Office of Planning?

11 (No response.)

12 VICE CHAIRMAN HOOD: Okay. Next, the Office of  
13 Planning?

14 MR. FONDERSMITH: Yes, Mr. Chairman. I'm John  
15 Fondersmith, the Office of Planning.

16 We recommended that the -- the Office of Planning  
17 recommended that the Zoning Commission approve this. This is a  
18 minor modification to substitute museum use for retail use in  
19 the approved PUD.

20 We noted in our report that this development has  
21 had a long history. It is under construction now and with  
22 completion expected in June. That's a basic building. And the  
23 National Academy of Sciences has come in with this request to  
24 change the space on E Street from retail to an interactive  
25 science museum.

1           The planning issue here, as we see it, and has  
2           been noted, this is, of course, a small portion of the overall  
3           area of the building, which is primarily an office building for  
4           the National Academy of Sciences, and the idea of retail space  
5           originally was both to serve the area and the occupants of the  
6           building and to animate E Street.

7           We are especially interested, the Office and the  
8           city is especially interested in what a museum use here can do  
9           in this area, and I believe that the map that we prepared -- has  
10          that been -- the Commission has that.

11          The city is really developing here an east/west  
12          band generally extending from Union Station over to the White  
13          House of a whole mix of attractions, and at the same time --  
14          and, of course, that corridor of attractions extends for a block  
15          or two on each side of that, and there is another corridor along  
16          7th Street of attractions.

17          So right around Gallery Place -- and this is a  
18          couple of blocks from Gallery Place -- is a major new cluster of  
19          attractions and, of course, related retail and a variety of  
20          things that will attract people to this area and, of course,  
21          leading to the Convention Center north of Mount Vernon Square.

22          We believe that adding this interactive science  
23          museum at this location will further that critical mass of  
24          attractions in this area and may very well do more to animate  
25          the area than the retail space would have.

1                   We think this is important in terms of the  
2 downtown plan concept, and so we have recommended that this  
3 change be made and be made as a minor modification.

4                   MS. MCCARTHY: And Mr. Chair, we would recommend  
5 that it be approved as a minor modification. The Office of  
6 Planning is in agreement with some of the conditions recommended  
7 by the D.C. Preservation League and would request a condition in  
8 the final order that provides for working out the design details  
9 to make sure that there is an adequate presence of the museum on  
10 the street and that the hours that the museum keeps are hours  
11 that would have been consistent with the retail presence there  
12 in terms of being open during non-working hours so that it does  
13 contribute to the vitality of that corridor.

14                   MR. ALTMAN: Just for clarity, I think what we  
15 are also recommending by saying that we recommend that this be  
16 approved as a minor modification, we don't believe this needs to  
17 be set down for a public hearing at a later date. We think that  
18 -- we're recommending that the Zoning Commission can take action  
19 today based on what we think is a positive change and minor  
20 modification to this application.

21                   VICE CHAIRMAN HOOD: Okay. So your  
22 recommendation is that we deal with it on a consent calendar.

23                   Let me just ask, Ms. McCarthy, that is the only  
24 condition, I believe, that is coming from -- that I see here  
25 that's going to be attached, is what the Historic Preservation

1 League has asked, and everyone is in agreement with that.

2 MS. McCARTHY: Yes. We have spoken to the  
3 applicant, they are as well, and to the hours, to those minor  
4 conditions that we discussed.

5 VICE CHAIRMAN HOOD: Okay. Thank you.

6 Colleagues, any comments or questions?

7 I guess the first thing is, we need to decide  
8 whether we're going to deal with this on a consent calendar.  
9 Before we do, I could read our Chair's comments. Let me read  
10 our Chair's book -- I mean her comments.

11 (Laughter.)

12 VICE CHAIRMAN HOOD: I had to throw that one in.

13 Okay. "I would be in favor of moving this to the  
14 consent calendar. There is an issue raised in the Traffic  
15 Impact Assessment, Tab 23, that deserves some consideration,  
16 although not necessarily a public hearing. At page 1, the last  
17 line of the second to the last paragraph reads, 'For either  
18 scenario, a bus-scheduling system should be implemented to  
19 provide spacing between bus arrivals and departures.' I agree  
20 with the need for a bus-scheduling system. I also think there  
21 should be a limit on the number of buses that can que on the  
22 adjacent streets. If one of the goals that we are seeking to  
23 achieve is to animate the sidewalk, a line of five or six buses  
24 is not conducive to that."

25 Did everybody get that? Okay. She is raising

1 the issue on Tab 23. Colleagues, let's just turn to Tab 23,  
2 page 1.

3 COMMISSIONER PARSONS: Well, I guess what she is  
4 suggesting is that we put a condition that a bus-scheduling  
5 system will be implemented that will not result in continuous  
6 bus use along the curb, rather than delaying this. I don't  
7 think she's suggesting that, right?

8 VICE CHAIRMAN HOOD: No, I don't see anything --  
9 I think her concern is exactly that buses will be queuing. Let  
10 me just read that again, not all of it, but part of it"

11 "At page 1, the last line of the second to last  
12 paragraph reads, 'For either scenario, a bus-scheduling system  
13 should be implemented to provide spacing between bus arrivals  
14 and departures.' I agree with the need for a bus-scheduling  
15 system." Okay. Yes. "I also think there should be a limit on  
16 the number of buses that and can que on the adjacent streets.  
17 If one of the goals that we are seeking to achieve is to animate  
18 the sidewalk, a line of five or six buses is not conducive to  
19 that."

20 So she is asking that at any given time, there  
21 are not greater than five or six buses, so I guess three at a  
22 time is -- I'm just throwing that out there off the top of my  
23 head trying to figure that out.

24 Any other comments, colleagues?

25 COMMISSIONER MAY: Just from a practical point of

1 view. I mean, I can see conditioning the order on having a  
2 bus-scheduling system, but I don't know, Commissioner Parsons, I  
3 don't know what your experience has been with trying to control  
4 buses, but ours hasn't been very good.

5 COMMISSIONER PARSONS: Well, I was trying to  
6 figure out whether the attraction of buses isn't really limited  
7 to school buses here; in other words, as opposed to the tour  
8 buses, which are --

9 COMMISSIONER MAY: I think you're right.

10 COMMISSIONER PARSONS: -- not as easily  
11 organized.

12 COMMISSIONER MAY: Right.

13 COMMISSIONER PARSONS: Let me phrase that way.  
14 Possibly this will be attractive enough for the high school kids  
15 from Des Moines, Iowa, coming in for their week to go there, but  
16 I was thinking more along the problem that exists for the  
17 Kennedy Center, for instance: 90 buses show up and have to find  
18 a place to stay for two hours.

19 COMMISSIONER MAY: Right.

20 COMMISSIONER PARSONS: Anyway, I would support  
21 moving to the consent calendar. Do we need to move that to a  
22 different part of the agenda?

23 VICE CHAIRMAN HOOD: Yes. I think what we will  
24 do is -- I'm not sure what's legally correct. Maybe Mr.  
25 Bergstein can help me. But since it's on the table, I would go

1 ahead and deal with it right now.

2 MR. BERGSTEIN: We're in agreement with that.  
3 Take your first vote on moving to the consent calendar and then  
4 go ahead and take up the matter immediately.

5 VICE CHAIRMAN HOOD: Okay. Colleagues, are we in  
6 favor of -- I would like to get a motion to move Zoning  
7 Commission Case 01-34M/00-35TE, the National Academy of Science,  
8 to the consent calendar.

9 COMMISSIONER PARSONS: So moved.

10 COMMISSIONER MAY: Second.

11 VICE CHAIRMAN HOOD: It has been moved and  
12 properly seconded. All those in favor?

13 (Chorus of ayes.)

14 VICE CHAIRMAN HOOD: Any opposition?

15 (No response.)

16 VICE CHAIRMAN HOOD: So ordered.

17 Also, Chair Mitten is in the affirmative with the  
18 Commission.

19 Staff, would you record the vote?

20 MR. BASTIDA: The staff will record the vote to  
21 move it to the consent calendar five to zero; Mr. Parsons moving  
22 and Mr. May seconding; Ms. Mitten, Mr. Hannaham and Mr. Parsons  
23 voting in the affirmative.

24 VICE CHAIRMAN HOOD: Okay. I guess we can still  
25 deal with this and --

1 MR. BASTIDA: Yes, you can dispose of it now.

2 VICE CHAIRMAN HOOD: Okay. Let's dispose of this  
3 right now.

4 The issue with Mrs. -- I'm trying to make sure  
5 that the concern that she has is addressed.

6 COMMISSIONER PARSONS: I would move that we  
7 approve this minor modification with the condition that a -- let  
8 me use the right term here -- condition that a bus-scheduling  
9 system be developed which precludes extended stays of buses on  
10 the fronting streets.

11 VICE CHAIRMAN HOOD: Okay. It has been moved and  
12 seconded. Can I just --

13 COMMISSIONER HANNAHAM: Second.

14 COMMISSIONER MAY: Discussion?

15 VICE CHAIRMAN HOOD: Anybody second?

16 COMMISSIONER HANNAHAM: I second.

17 VICE CHAIRMAN HOOD: Okay. It's been seconded.  
18 Discussion?

19 COMMISSIONER MAY: Okay. Should this also be  
20 conditioned on the applicant also continuing to work with the  
21 Office of Planning to address some of the other issues that were  
22 raised in OP's report, specifically issues of hours of use and  
23 whatnot? I mean, I did not think of it until the issue was  
24 raised, but if this became a Monday-through-Friday, you know,  
25 ten-to-four kind of museum, it is a very different nature of use

1 than the retail which was originally proposed in the PUD. So, I  
2 mean, what is the proper way to incorporate that kind of a  
3 consideration into what we are doing here?

4 VICE CHAIRMAN HOOD: I guess -- I'm not sure. I  
5 want to make sure that we're legal. Always have to depend on  
6 Mr. Bergstein. But I don't see where we would have a problem  
7 with that, with a continued dialogue and working with the Office  
8 of Planning.

9 Mr. Bergstein, are we okay with that?

10 MR. BERGSTEIN: You can request that they  
11 continue to work with the Office of Planning to resolve  
12 outstanding issues identified in the Office of Planning report,  
13 but that's as much as you can do. You can't require them to  
14 comply with the Office of Planning, but you can require them to  
15 consult and work with the Office of Planning.

16 VICE CHAIRMAN HOOD: Okay. I guess that's all we  
17 can do, that's what we'll just have to do.

18 Mr. Parsons, would you accept that amendment,  
19 friendly amendment?

20 COMMISSIONER PARSONS: Yes.

21 VICE CHAIRMAN HOOD: Also, I just want to also  
22 say for the record that the Historic League had also asked for a  
23 condition. I want to make sure that's in the order, too. Mr.  
24 Parsons, do you accept that in --

25 COMMISSIONER PARSONS: Yes.

1 VICE CHAIRMAN HOOD: Okay. Is there anything  
2 else?

3 (No response.)

4 VICE CHAIRMAN HOOD: It has been moved and  
5 properly seconded. All those in favor?

6 (Chorus of ayes.)

7 VICE CHAIRMAN HOOD: Any opposition?

8 (No response.)

9 VICE CHAIRMAN HOOD: So ordered. Ms. Mitten is  
10 also voting in the affirmative.

11 MR. BASTIDA: Staff will record the vote five to  
12 zero, Mr. Parsons moving and Mr. Hannaham seconding, and Ms.  
13 Mitten, Mr. Hood, and Mr. May voting in the affirmative. Thank  
14 you.

15 D) ZONING COMMISSION CASE NO. 01-35P

16 VICE CHAIRMAN HOOD: Okay. Next, moving with our  
17 agenda, we will go to Zoning Commission Case Number 01-35P,  
18 Waterside Mall.

19 Office of Planning.

20 MR. JACKSON: Mr. Chairman, my name is Arthur  
21 Jackson, I work with the Office of Planning, and I will  
22 summarize briefly the proposed amendment, request another zoning  
23 application, 01-35.

24 The proposed amendment involves the section of  
25 the zoning regulations Number 2521 involving permission to allow

1 certain changes in the former Southwest Urban Renewal Area.  
2 This in particular deals with the Waterside Mall.

3 The Waterside Mall is an existing two- and  
4 three-story retail building that was constructed in phases  
5 between the 1960s and 1985 in what was formerly Area C of the  
6 former Southwest Urban Renewal Area.

7 The applicants are anticipating a complete  
8 renovation of the mall and as part of that renovation, they are  
9 proposing, at the urging of the Office of Planning, to reopen  
10 the former Fourth Street, Southeast, right-of-way.

11 We should note that this reopening would include  
12 the property that is currently part of the mall, but it is  
13 contingent on negotiations underway with the National Park  
14 Service involving some park land that is located immediately  
15 south of the northern property boundary.

16 If you look at the illustration, the photo zoning  
17 map at the rear of your package, you note that I Street and M  
18 Street are the northern and southern boundaries of an area  
19 that's generally described as Waterside Mall. A formal  
20 right-of-way would connect two portions of Fourth Street,  
21 Southwest, which existed prior to the construction of the mall  
22 and, as I noted, at the northern, along I Street, there is a  
23 property that's identified as being Federal. That land is not  
24 under the control of the mall, and again the continuity of this  
25 opening all the way to I Street is continued on ongoing

1 negotiations.

2 In any case, the applicant is requesting an  
3 amendment to Section 2521 of the zoning regulations to allow the  
4 opening of this right-of-way and the renovation of the two  
5 buildings that will result from the opening.

6 As a result of this opening, however, you have  
7 two lots with divided parking and divided FAR, and what they  
8 would like to do is continue to consider this property for  
9 zoning purposes as being one lot. As such, they are requesting  
10 a new amendment to the zoning regulations which will add a  
11 condition, a Section H, to the existing regulations.

12 Based on this proposal, its being consistent with  
13 the zoning regulations and consistent with the goals of zoning  
14 regulations, and it's consistent with the comprehensive plan,  
15 the Office of Planning recommends -- supports this amendment as  
16 being consistent with the planning goals for the area, and we  
17 recommend set down.

18 I am available for any questions that you might  
19 have concerning this proposal.

20 VICE CHAIRMAN HOOD: Okay. Thank you, Mr.  
21 Jackson.

22 Are there any questions?

23 (No response.)

24 VICE CHAIRMAN HOOD: No questions?

25 Can I get a motion?

1                   Before we do that, let me just ask Mr. Jackson.  
2                   I was looking at a drawing or a schematic. Is the proposal for  
3                   the right-of-way on Fourth Street, is that similar to Iverson  
4                   Mall, if you're familiar with Iverson Mall? Is that what the --  
5                   it's going to be like an underpass, or is it taking off that  
6                   building on both sides?

7                   MR. ALTMAN: It's actually going -- demolishing a  
8                   part of that structure and returning a street through. In other  
9                   words --

10                  VICE CHAIRMAN HOOD: The way it exists now, there  
11                  is a mall.

12                  MR. ALTMAN: Right. It would be creating two  
13                  separate structures, so it would literally be taking the center  
14                  out of the mall. In other words, so it would be -- it's one  
15                  building now.

16                  VICE CHAIRMAN HOOD: All the way up.

17                  MR. ALTMAN: Right, and just -- so it goes  
18                  straight through to the sky, so it's literally two buildings,  
19                  and then you would have -- that allows for the possibility of  
20                  ground-floor retail and putting the street back through.

21                  VICE CHAIRMAN HOOD: Okay. So it's nothing --

22                  MR. ALTMAN: It's not a gallery, it's not a --

23                  VICE CHAIRMAN HOOD: Okay.

24                  MR. ALTMAN: Yes.

25                  VICE CHAIRMAN HOOD: Any other questions,

1 colleagues?

2 Thank you.

3 Any other questions?

4 (No response.)

5 VICE CHAIRMAN HOOD: With that, I will entertain  
6 a motion, if there are no questions.

7 COMMISSIONER MAY: I move that we set down for a  
8 public hearing Zoning Case 01-35P, Waterside Mall.

9 COMMISSIONER PARSONS: Second.

10 VICE CHAIRMAN HOOD: It has been moved and  
11 properly seconded. Any discussion?

12 (No response.)

13 VICE CHAIRMAN HOOD: Hearing none, all those in  
14 favor, aye?

15 (Chorus of ayes.)

16 VICE CHAIRMAN HOOD: Any opposition?

17 (No response.)

18 VICE CHAIRMAN HOOD: So ordered. Also, Chair  
19 Mitten is in favor.

20 MR. BASTIDA: Mr. Chairman, the staff would  
21 record on this rulemaking case the vote five to zero, Mr. May  
22 moving and Mr. Parsons seconding, Ms. Mitten, Mr. Hood and Mr.  
23 Hannaham voting in the affirmative.

24 VICE CHAIRMAN HOOD: Okay. Thank you.

25 E) ZONING COMMISSION CASE NO. 02-04

1 VICE CHAIRMAN HOOD: Moving right along with our  
2 agenda, now we will deal with hearing action Zoning Commission  
3 Case Number 02-04, the D.C. Housing Authority - New East Capitol  
4 Consolidated PUD and Map Amendment for the Senior Building.

5 MR. BASTIDA: Mr. Chairman, the staff is passing  
6 a letter requesting -- from the law office of Arnold & Porter  
7 requesting a waiver for the late filing of the report.

8 VICE CHAIRMAN HOOD: Any objection?

9 (No response.)

10 VICE CHAIRMAN HOOD: No objection? We will do  
11 that by consensus. So accepted.

12 Office of Planning.

13 MR. MCGHETTIGAN: Good afternoon, Mr. Vice  
14 Chairman, members of the Commission. My name is David  
15 McGhettigan from the Office of Planning.

16 Before you is an application for planning and  
17 development of the new East Capitol development. The application  
18 is part of a Hope Six project to redevelop three former public  
19 housing projects. The overall project will provide 550 units in  
20 a variety of housing types, a commercial center with a grocery  
21 store, retail and office space, a community center and day care  
22 center.

23 A component of this overall development is a  
24 senior building which will provide 150 one-bedroom units.  
25 Indoor and outdoor recreation spaces are provided to meet the

1 needs of the residents. The lot is currently unzoned, and the  
2 applicant proposes an R-5-A zone, which permits multi-family  
3 dwellings with a special exception, and no flexibility is  
4 required from height or bulk with the senior building.

5 The proposed R-5-A zone is compatible with the  
6 existing zoning adjacent to the site and consistent with the  
7 moderate-density residential designation of the land use map.

8 The Office of Planning recommends the senior  
9 building portion of the application be set down for public  
10 hearing, and additional issues that should be addressed are in  
11 our staff report.

12 VICE CHAIRMAN HOOD: Thank you, Mr. McHettigan.

13 Colleagues, any comments, questions? And I think  
14 we're being asked only to set down the senior portion of the  
15 building.

16 Mr. McHettigan, let me make sure I understand  
17 exactly what is happening. Okay. This is obviously a two-stage  
18 PUD. You are going to come back next month and ask us to set  
19 down the rest of the PUD or another PUD? I'm not following  
20 that.

21 MR. MCGHETTIGAN: I think we will have to do a  
22 separate PUD, so it will be a set down of a Stage 1 of a PUD for  
23 the whole development and the senior building will go on on its  
24 own as a combined PUD, a separate application.

25 VICE CHAIRMAN HOOD: Okay. Thank you for that

1 clarification.

2 Colleagues, any discussion? Any comments?

3 (No response.)

4 VICE CHAIRMAN HOOD: Let me see what's in my book  
5 here. I don't have anything to read. Hopefully we're not being  
6 videotaped or anything.

7 Mr. Hannaham?

8 COMMISSIONER HANNAHAM: No, I know this part of  
9 the city very well and I'm really pleased to see that there is a  
10 possibility of this kind of a general upgrade in the quality of  
11 housing and the quality of living in that far Northeast section  
12 of D.C. So I am looking forward to pursuing the interaction  
13 that is going to be provided in our hearing on this Phase 1,  
14 this PUD.

15 Thank you.

16 VICE CHAIRMAN HOOD: Thank you, Mr. Hannaham. I  
17 also would associate my comments, as someone who is in that area  
18 frequently, associate my comments with yours.

19 COMMISSIONER MAY: Sounds like a motion and a  
20 second to me.

21 VICE CHAIRMAN HOOD: I think we better do it  
22 procedurally and correctly.

23 COMMISSIONER MAY: Oh. Sorry.

24 VICE CHAIRMAN HOOD: Can I get a motion?

25 COMMISSIONER HANNAHAM: So moved.

1 VICE CHAIRMAN HOOD: Okay. I will second it.  
2 All those in favor by the usual sign of voting.

3 (Chorus of ayes.)

4 VICE CHAIRMAN HOOD: Any opposition?

5 (No response.)

6 VICE CHAIRMAN HOOD: So ordered.

7 Let me just state for the record and for clarity  
8 of the record that we just set down and just voted for hearing  
9 action in Zoning Commission Case Number 02-04, the D.C. Housing  
10 Authority New East Capitol Consolidated PUD and Map Amendment  
11 for the Senior Building. Also for the record, Chair Mitten is  
12 in favor of the set down in this contested case.

13 Staff, would you record the vote?

14 MR. BASTIDA: The staff will record the vote on  
15 this contested case five to zero, Mr. Hannaham moving and Mr.  
16 Hood seconding, Ms. Mitten, Mr. Parsons and Mr. May voting on  
17 the affirmative.

18 Thank you.

19 VICE CHAIRMAN HOOD: Thank you.

20 F) ZONING COMMISSION CASE NO. 02-06

21 VICE CHAIRMAN HOOD: Next we will move right  
22 along again with our hearing action, and this is to clarify  
23 Chapter 13, Amendments to Title 11, DCMR Chapter 13, the  
24 Neighborhood Commercial Overlay District.

25 I am going to call on our Office of Zoning

1 Director, Ms. Jerrily Kress.

2 MS. KRESS: Thank you, Mr. Chairman.

3 I would be very brief and just bring to your  
4 attention that the Department of Consumer and Regulatory Affairs  
5 put a public notice together to adopt standards of operating  
6 procedures for Chapter 13, particularly relating to the  
7 Neighborhood Commercial Overlay District.

8 In review, staff, in conjunction with the chair  
9 of the Zoning Commission, felt there were certain elements that  
10 were a part of their procedures that would better be handled by  
11 changes to the actual zoning regulations, and including some  
12 issues which we believe the Office of Zoning and several members  
13 of the Zoning Commission have problems with.

14 So what we're proposing is that, as is allowed by  
15 statute in 1953 as Alan Bergstein was just sharing with me, that  
16 the zoning administrator bring forth proposed changes to the  
17 Zoning Commission.

18 So basically what we're going to do is we're  
19 going to be handling what has been published February 8th by the  
20 Department of Consumer and Regulatory Affairs as an appropriate  
21 recommendation by the Zoning Commission -- by the zoning  
22 administrator to the Zoning Commission for set down referral to  
23 Office of Planning hearing and a full regulatory process.

24 So I come with the recommendation of both staff  
25 and Carol Mitten that we set down amendments to Title 11,

1 Chapter 13, Neighborhood Commercial Overlay District, as written  
2 for purposes of hearing and discussion.

3 VICE CHAIRMAN HOOD: Colleagues, any questions of  
4 Ms. Kress? And I think we're going to be referring to this as  
5 Zoning Commission Case 02-06; am I correct, staff?

6 MS. KRESS: Yes.

7 MR. BASTIDA: Yes, that's correct, Mr. Chairman.

8 VICE CHAIRMAN HOOD: Any questions? Any clarity?

9 COMMISSIONER PARSONS: Well, I want to make sure  
10 that everything in this notice dated February 8th is, in the  
11 opinion of the staff, zoning related. You know, there's some  
12 aspects of this that are not the case and we don't want to have  
13 a hearing on things that we don't have jurisdiction over,  
14 either.

15 MS. KRESS: Absolutely. There are -- this would  
16 take some time to rewrite in our typical format. I believe the  
17 thinking was that it would go forward exactly as it had been  
18 written, and those pieces that will reflect themselves in  
19 changes in zoning regulations will be the discussion of the  
20 hearing.

21 Perhaps we can have, prior to the hearing, a  
22 listing of issues that will not be discussed for clarification  
23 purposes. As you say, it would be a waste of this Commission's  
24 time to be discussing things that they have no control over.

25 COMMISSIONER PARSONS: For instance, 6 seems like

1 a biggie, and it's treatment of vacated eating and drinking  
2 establishments, which I don't think we really want to spend much  
3 time hearing, if, in fact, not at all. So maybe we could just  
4 rely on the staff to say we will have a hearing on 1, 6, 3, 7,  
5 whatever.

6 MS. KRESS: Except even under number 6, you are  
7 getting into the linear street frontage and the Board of Zoning  
8 --

9 COMMISSIONER PARSONS: All right.

10 MS. KRESS: -- Adjustments ruled in that. And  
11 particularly, more and more, we have had, and on our amendment  
12 list, which we will be talking about on Wednesday, our  
13 clarifications relating to how things are measured, and this has  
14 a lot of that as a part of it.

15 VICE CHAIRMAN HOOD: Okay. Thank you, Ms. Kress.

16 Let me read the Chair's comments:

17 "I am very appreciative of the extensive effort  
18 that was undertaken by DCRA to develop a standard operating  
19 procedure for implementing the controls in Chapter 13 that  
20 relate to eating and drinking establishments. I understand that  
21 the exigencies -- well, urgent need -- involved made them take  
22 prompt action to clarify this regulation as best they could.

23 "Notwithstanding the zoning administrator's  
24 authority to interpret the regulations where they are ambiguous  
25 or silent, it is not the Zoning Commission's intention, in my

1 view, to abdicate its responsibility for amending the  
2 regulations from time to time as conflicts or voids are  
3 discovered in favor of policy statements by DCRA.

4 "The Zoning Commission is charged with submitting  
5 any substantive changes in the regulations or in their  
6 application to scrutiny through the public hearing process, and  
7 the Zoning Commission is charged with giving great weight to the  
8 Office of Planning and the affected ANC in such cases.

9 "I support set down of this matter for public  
10 hearing subject to conversion of the content proposed by DCRA  
11 into a series of amendments to Chapter 13, and I support  
12 referral of this matter to the Office of Planning for their  
13 review prior to scheduling of the public hearing."

14 And one of the questions that the Chair raises  
15 regarding posting notice: "Do all existing Neighborhood  
16 Commercial Overlay Districts get posted?" I don't know if we  
17 need an answer to that question now, but we need to come back  
18 with one as we're dealing with it.

19 MS. KRESS: I would think so, but that would be  
20 something to be discussed. I would think we would want to post  
21 all of the neighborhood commercial areas.

22 VICE CHAIRMAN HOOD: Okay.

23 Colleagues, any other questions or comments?

24 (No response.)

25 VICE CHAIRMAN HOOD: If not, I move that we set

1 down Zoning Commission Case 02-06 for hearing.

2 COMMISSIONER MAY: Second.

3 MR. BASTIDA: Mr. Hood, before you --

4 VICE CHAIRMAN HOOD: Any discussion? Staff?

5 MR. BASTIDA: Would you give us enough latitude  
6 for legal sufficiency so we can do that in order to provide for  
7 the referral and the advertisement?

8 VICE CHAIRMAN HOOD: Right. We will do that.  
9 That's fine.

10 MR. BASTIDA: Thank you.

11 VICE CHAIRMAN HOOD: We will give staff the  
12 flexibility.

13 Okay. It has been moved and properly seconded.  
14 Any further discussion?

15 (No response.)

16 VICE CHAIRMAN HOOD: All those in favor, aye.

17 (Chorus of ayes.)

18 VICE CHAIRMAN HOOD: Any opposition?

19 (No response.)

20 VICE CHAIRMAN HOOD: So ordered.

21 Also Chair Mitten is in favor, too, in the  
22 affirmative. Thank you.

23 Can you record the vote, staff?

24 MR. BASTIDA: Yes. The staff would record the  
25 vote five to zero in this rulemaking case, Mr. Hood moving and

1 Mr. May seconding, Ms. Mitten, Mr. Hannaham, Mr. Parsons voting  
2 in the affirmative.

3 Thank you.

4 VICE CHAIRMAN HOOD: Thank you.

5 Okay. We are going to move out of hearing action  
6 and go into proposed action. Thank you, Ms. Kress.

7 V. PROPOSED ACTION

8 A) ZONING COMMISSION CASE NO. 01-15M

9 VICE CHAIRMAN HOOD: We are going to go into  
10 proposed action, Zoning Commission Case Number 01-15M, the  
11 Tivoli.

12 I need to do a disclosure for the Chair before we  
13 get started.

14 "For the record, I need to disclose that at the  
15 oversight hearing for the Office of Zoning before the City  
16 Council, I became aware of Councilmember Graham's position on  
17 the proposed application. Although I believe that I can  
18 eliminate the influence of this ex-parte communication in my  
19 decision in this case, I ask Mr. Hood now to cast my absentee  
20 vote in this case if there are objections from any of the  
21 parties."

22 Mr. Bastida, for the record, if you could help  
23 me, who are the parties in this case? Are all the parties  
24 present? Well, let me do it like this. Without figuring out  
25 who the parties are, are there any objections to anyone that's

1 involved with this case, Zoning Commission Case 01-15M, for Ms.  
2 Mitten's proxy to be inclusive in our vote?

3 Mr. Field.

4 MR. FIELD: Mr. Chairman, Phil Field on behalf of  
5 Tivoli Partners. We have no objection.

6 VICE CHAIRMAN HOOD: Okay.

7 Are there any other parties present?

8 MR. PAPSON: Tom Papson on behalf of Save the  
9 Tivoli. No objection.

10 VICE CHAIRMAN HOOD: Okay.

11 COMMISSIONER PARSONS: Mr. Chairman, as you know,  
12 I didn't participate in this case, so I will be leaving the room  
13 while you deliberate on it.

14 VICE CHAIRMAN HOOD: Okay. Thank you, Mr.  
15 Parsons.

16 MR. BASTIDA: Mr. Chairman, we have a preliminary  
17 matter regarding this case. Mr. Graham has sent a letter  
18 requesting the reopening of the record in order to allow for  
19 that letter to come into the record. The staff would like to  
20 know the wishes of the Commission regarding that request.

21 VICE CHAIRMAN HOOD: I think, out of due respect,  
22 I would be in favor of opening the record. But let me just ask,  
23 has anyone else asked to open the record to put anything else  
24 in, or just Mr. Graham?

25 MR. BASTIDA: We have not received any other

1 written requests regarding that matter.

2 VICE CHAIRMAN HOOD: Colleagues, do we have any  
3 problems with Mr. Graham's letter? It looks like he is in  
4 support. He has a letter of support that we have not been  
5 given. Any problems with opening for his letter only?

6 COMMISSIONER MAY: No problem.

7 COMMISSIONER HANNAHAM: No problem.

8 VICE CHAIRMAN HOOD: Okay. We will do that by  
9 general consensus. If we could have the letter?

10 MR. BASTIDA: Yes. Thank you, Mr. Chairman.

11 VICE CHAIRMAN HOOD: Thank you. Just give us a  
12 moment and we will review that.

13 MR. BASTIDA: The letter is being distributed.  
14 It's a very short letter.

15 VICE CHAIRMAN HOOD: Okay. Thank you.

16 MR. BASTIDA: You only have to look at the second  
17 and third page because you received the first one requesting the  
18 waiver to admit that into the record. Thank you.

19 VICE CHAIRMAN HOOD: Mr. Bastida, to save time,  
20 is anything different in here other than the support, anything  
21 substantive? Is he asking for anything?

22 MR. BASTIDA: No.

23 VICE CHAIRMAN HOOD: Okay.

24 MR. BASTIDA: He supports the project completely  
25 as proposed.

1 VICE CHAIRMAN HOOD: Okay.

2 Colleagues, I guess I could read the Chair's  
3 statement to start with, but -- no, let me just say what I have  
4 to say first.

5 One of the things that I think that we had  
6 mentioned was the traffic. We had gotten a revised or updated  
7 traffic report, and I was just wondering did we want the  
8 Division of Transportation to analyze that?

9 I haven't seen anything -- I didn't see anything  
10 in the record and I wanted to know whether we wanted to hold  
11 anything up for that or whether my colleagues thought that maybe  
12 that was something pertinent where we needed to hold up so we  
13 could get a response from the government.

14 Is anyone here from the -- and I know we don't  
15 normally do this -- from the Department of Transportation?

16 (No response.)

17 VICE CHAIRMAN HOOD: I ask that because my next  
18 comment is normally I haven't seen much difference in that --  
19 and I am not trying to put anyone on the spot -- not too much  
20 difference in that and what the applicant usually provides, so I  
21 kind of tossed with that. But I wanted to make sure the record  
22 was complete. But if my colleagues are ready to proceed, then  
23 we can. I don't necessarily see why that may be that much of a  
24 major factor, but I wanted to put that out for discussion. Any  
25 discussion on that?

1 (No response.)

2 VICE CHAIRMAN HOOD: So we will proceed. Any  
3 comments?

4 (No response.)

5 VICE CHAIRMAN HOOD: No comments. Okay. With  
6 that, I will read the Chair's book again -- I mean, her  
7 comments. Excuse me.

8 "The party in opposition, Save the Tivoli,  
9 emphasizes in its proposed findings of facts and conclusions of  
10 law from the applicant's perspective. It seeks this map  
11 amendment in order to facilitate construction on the project  
12 that arises from the exclusive rights agreement. With the RLA,  
13 now NCRC, the Zoning Commission has not reviewed the project  
14 that will be developed under the ERA.

15 "In fact, I have no opinion about the project.  
16 From the Commission's perspective, this is, first and foremost,  
17 a zoning consistency case. We have a site that is currently  
18 zoned R-4 but has a generalized land use map designation for a  
19 mix of medium-density commercial and medium-density residential.

20 "Further, we know that prior to 1998, the  
21 medium-density commercial-residential land use designation only  
22 applied to the 14th Street frontage of this block. The eastern  
23 portion of the block was formerly designated moderate-density  
24 residential.

25 "In the 1998 comp plan amendments, the

1 medium-density mixed-use designation was extended to the entire  
2 square, which indicates that the Council conscientiously decided  
3 that at least the potential for commercial use was appropriate  
4 throughout this square.

5 " Absent some form of development controls, the  
6 opposition is concerned that C-3-A zone designation is  
7 inherently incompatible with the adjacent residential zoning,  
8 and I am sympathetic to the friction that sometimes arise when  
9 commercial and residential uses are adjacent; however, if one  
10 examines the juxtaposition -- I'll tell her about these words --  
11 of the C-3-A zoning with other residential zones throughout the  
12 city, one will see examples, such as Wisconsin Avenue in  
13 Tenleytown and Connecticut Avenue at Van Ness, where C-3-A  
14 zoning is adjacent to R-1-B zoning. I do not find the  
15 opponent's argument compelling on this point.

16 "As in every rezoning case, especially when a mix  
17 of uses is intended, there is more than one possible zoning  
18 configuration. Is this the best possible configuration?  
19 Perhaps not. But has the applicant met their burden of proof  
20 that the proposed zoning configuration is acceptable? The  
21 Office of Planning thinks so, the ANC thinks so, and I am  
22 inclined to agree."

23 Okay. That is the Chair's statements.  
24 Colleagues, any other comments, questions?

25 The only thing that I have, I wanted to see

1 something that was in the Save the Tivoli's findings of facts  
2 included in the order, but while I'm looking for that,  
3 colleagues, any comments? Let me find that.

4 COMMISSIONER MAY: I just want to add for the  
5 record that our Chairman has summarized the nature of the case I  
6 think pretty accurately that this is a zoning consistency case  
7 and the concerns for the eventual development of the property  
8 are certainly valid concerns, but they are concerns that are  
9 inherent in any portion of the city undergoing a level of  
10 development with this sort of juxtapositional zoning, as the  
11 Chair has put it.

12 I should also note, I think, that some of the  
13 concerns surrounding the particulars of this project having to  
14 do with the Section 106 review and historic preservation  
15 concerns I don't feel fall into the area of the Zoning  
16 Commission's concern, and that we are not the arbiters of issues  
17 of historic preservation.

18 When it comes to Section 106, I think our sole  
19 obligation is to make sure that what we do does not preclude the  
20 follow-through that Section 106 necessitates, and I think that  
21 what has been proposed here does not preclude anything, that  
22 those controls, other controls still exist. And that is what I  
23 would have to say.

24 VICE CHAIRMAN HOOD: Mr. Hannaham, do you have  
25 anything you want to add?

1                   COMMISSIONER HANNAHAM: My feeling is generally  
2 in accord with the Chairman's comments, really. I have not been  
3 persuaded by the opposition during the course of the hearing,  
4 and I see this as a positive and beneficial circumstance for  
5 that community.

6                   VICE CHAIRMAN HOOD: Okay. Thank you.

7                   I am just sorry to hear my colleague,  
8 Commissioner May, say about the 106 because that was two items  
9 that I was going to ask to be added in the final order.

10                  COMMISSIONER MAY: Well, please share with us.

11                  VICE CHAIRMAN HOOD: I just thought that the --  
12 and I am sure Mr. Bergstein will help me out if I'm going too  
13 far left field. I just thought that in the findings of facts  
14 and conclusions of law of Save the Tivoli, that we could add 16  
15 and 17 on page 6 where it says, "historic landmarks impacted by  
16 the application," and those would be the only ones that I would  
17 ask that we add to the final order.

18                  If it's out of our jurisdiction, then I will  
19 withdraw my comments, but I think that that will be an integral  
20 piece, if that's not a problem.

21                  Give us a few moments.

22                  (Pause.)

23                  COMMISSIONER MAY: If I understand you, you're  
24 simply suggesting that the status of the existing structure and  
25 of the neighborhood with regard to the National Register be

1 noted --

2 VICE CHAIRMAN HOOD: In the order.

3 COMMISSIONER MAY: Yes.

4 VICE CHAIRMAN HOOD: Right.

5 COMMISSIONER MAY: I don't see that there is any  
6 issue with that, but then this is a legal question as well as a  
7 Zoning Commission judgment question.

8 MR. BERGSTEIN: We don't have any strong feelings  
9 about putting it in or not putting it in. It's a statement of  
10 fact, it's not dispositive in your decision.

11 VICE CHAIRMAN HOOD: Okay.

12 MR. BERGSTEIN: If you want to note it, I don't  
13 see any problem with that.

14 VICE CHAIRMAN HOOD: Okay. With that,  
15 colleagues, and with the comments from our Chair, I would move  
16 that we approve for proposed action Zoning Commission Case  
17 01-15M, the Tivoli.

18 COMMISSIONER MAY: Second.

19 VICE CHAIRMAN HOOD: It has been moved and  
20 properly seconded. All those in favor by the usual sign of  
21 voting. Aye.

22 (Chorus of ayes.)

23 VICE CHAIRMAN HOOD: Any opposition?

24 (No response.)

25 VICE CHAIRMAN HOOD: So ordered.



1 Commission Case Number 01-09C, Station Place.

2 Mr. Bastida.

3 MR. BASTIDA: Mr. Chairman, the staff has  
4 provided you with the proposed final order, and the staff would  
5 like to add that we have received a letter on Friday from NCPC  
6 that states that they believe that the proposal will not  
7 adversely affect their interest nor be inconsistent with the  
8 comprehensive plan for the National Capitol.

9 In addition, the Commission requests that this  
10 Commission add a condition to the guideline condition as a  
11 standard that any crucial security element located in a public  
12 right-of-way be submitted to NCPC to assure consistency with the  
13 recommendations of the Security Task Force.

14 That concludes my brief remarks and I will be  
15 glad to answer any questions you might have if you so wish.  
16 Thank you.

17 VICE CHAIRMAN HOOD: Colleagues, we have the  
18 final order in front of us.

19 Mr. Bastida, let me just ask, did Chair Mitten  
20 fax or e-mail you anything on her proxy for this case?

21 MR. BASTIDA: Let me double-check.

22 VICE CHAIRMAN HOOD: Because that's one I didn't  
23 get. I don't have that. Okay.

24 MR. BASTIDA: Mr. Chairman, in the proposal that  
25 was sent to you, we received a letter from Holland & Knight

1 requesting a condition on the timetable for the construction of  
2 the building, and I am sorry that I overlooked mentioning that  
3 to you a little earlier.

4 VICE CHAIRMAN HOOD: Colleagues, I think there  
5 was an issue raised about the phasing of the construction of  
6 Phase 1, 2 and 3 or whatever it was that was mentioned. Any  
7 comments to that? Mr. May?

8 COMMISSIONER MAY: Yes. The proposed language  
9 that we received essentially states that the applicant would  
10 have two years from the issuance of the C of O for Building 1 to  
11 file for a building permit for Building 2, and then three years  
12 from that date to start construction, and then the same sort of  
13 sequence repeats between Building 2 and Building 3.

14 The concern that I have with that is that, in  
15 effect, for all three buildings to be built, we are creating a  
16 time line that if everything were, you know, were run out to  
17 sort of the limit, notwithstanding the statements that  
18 construction is going to start right away, but that if  
19 everything worked out with those longer limits, that we could  
20 have a 15-year life on this order before the buildings are  
21 completed and you add in the time to actually construct the  
22 buildings and -- or the time from when construction starts until  
23 the C of O is issued.

24 I think that there needs to be an upper limit on  
25 this in some fashion, and I am not sure what that is. I think

1 you may have other thoughts on that.

2 VICE CHAIRMAN HOOD: Commissioner May, would you  
3 like to put a recommendation that you may have on this on the  
4 floor and we can discuss it?

5 COMMISSIONER MAY: Well, looking back at what was  
6 in the language that was proposed by the applicant, I mean,  
7 there is an indication that construction would start right away  
8 and the first building would be occupied within two years, which  
9 if you then add to that three years to start construction on the  
10 second building, and then a couple of years to build it, and  
11 then three years beyond that to start construction on the last  
12 one -- I mean, I think the absolute outer limit for all of this  
13 to start construction on the third building should be ten years,  
14 adding those numbers together.

15 I would be willing to entertain something shorter  
16 than that because it seems like an awfully long time. But it  
17 would be -- I mean, we could write this in such a way that we  
18 have -- you know, it's tied to the C of O of each individual  
19 building, so the ten-year limit could actually be quite a bit  
20 less if they go ahead and start Building 2 in two years. Then  
21 the whole thing will be done within five or six.

22 VICE CHAIRMAN HOOD: Okay. Mr. May -- his  
23 proposal to us, colleagues, is that we stay within the time  
24 frame of the full completion of the project within ten years; am  
25 I correct?

1 COMMISSIONER MAY: Yes, in addition to the  
2 conditions that are being proposed for two years from the C of O  
3 for Building 1 to start Building 2, et cetera.

4 VICE CHAIRMAN HOOD: Any other comments on that?

5 I would be inclined to go along with that. I would like it  
6 quicker, too, but I don't want to put anyone in a position of  
7 any other issues, because sometimes we do one thing, something  
8 else erupts. So I think that would be sufficient.

9 Any other comments, colleagues, on that, or any  
10 comments in general?

11 COMMISSIONER PARSONS: So we would make the PUD  
12 effective for a period of ten years under this suggestion.

13 COMMISSIONER MAY: As a maximum.

14 COMMISSIONER PARSONS: Yes. And Condition Number  
15 33 now says two years, and within that time, you must file for a  
16 building permit, and then construction shall begin within three  
17 years of the effective date of the order. It doesn't speak to  
18 Buildings 1, 2 or 3.

19 MR. BERGSTEIN: Mr. Parsons, that's correct. I  
20 had suggested some revised language to correct that if you were  
21 going to stick with the original condition which would have  
22 required building permits for all three buildings to be filed  
23 within two years. That's how you would cure that if you were  
24 going to stick with the original intent the Commission has  
25 expressed at the last meeting.

1 COMMISSIONER PARSONS: And then we have Mr.  
2 Quinn's proposal, which is January 28th, to amend that. Mr.  
3 Bergstein, you say you submitted something as well?

4 MR. BERGSTEIN: I had submitted a memorandum to  
5 the Office of Zoning which --

6 COMMISSIONER PARSONS: Found it.

7 MR. BERGSTEIN: And you will see that I proposed  
8 at the end a revision to Condition 33 as you now see it to be  
9 consistent with the intent that was expressed by the Commission  
10 at the close of the proposed meeting to make it plural for  
11 applications, make it plural for the three buildings, and all  
12 within two years, if that's what your intent was as opposed to  
13 accepting the proposal from the applicant to create a phased  
14 construction.

15 COMMISSIONER PARSONS: So if we were to follow  
16 Mr. May's lead, we should change the last sentence of your  
17 proposal to ten years; is that correct?

18 MR. BERGSTEIN: Well, either that, or you use the  
19 proposed language from the applicant, but say in essence that in  
20 no event -- that notwithstanding that the PUD would expire, and  
21 I would need clarity on this, that an application for a building  
22 permit for Building 3 must be filed by the tenth year or that  
23 construction must begin by the tenth year or that Building 3  
24 must be occupied by the tenth year. Those are the three  
25 scenarios that you would have before you.

1 COMMISSIONER PARSONS: But their proposal adds up  
2 to 15 years, doesn't it?

3 MR. BERGSTEIN: Unless they're very quick, yes.

4 COMMISSIONER MAY: Depends on how fast they build  
5 the building.

6 MR. BERGSTEIN: But we would have to modify --  
7 you cannot -- my revision was for a simultaneous requirement of  
8 everything being filed within three years. What you would have  
9 to do is take sort of the original language, which would be that  
10 Building 2, the building permit must be filed within two years,  
11 and the construction must begin within three years; and with  
12 respect to all remaining buildings, that they must have building  
13 permits filed and construction begun no later than ten years  
14 from the effective date of the order, something like that.

15 COMMISSIONER PARSONS: So, Mr. May, you've done  
16 the math on Mr. Quinn's proposal and it's a minimum of ten, a  
17 maximum of 15?

18 COMMISSIONER MAY: Well, the minimum really all  
19 depends on how quickly they can finance and build the building.

20 COMMISSIONER PARSONS: Oh, sure.

21 COMMISSIONER MAY: I am sure that they would have  
22 -- they would love to be able to comply with the language that  
23 has been suggested by Corporation Counsel, filing for all  
24 permits within two years and starting construction within three  
25 years on all buildings. I don't know that that's a realistic

1 hope at this point.

2 But in terms of a maximum, it's very easy to  
3 imagine that if they take the full three years to start  
4 construction on Building 1, that it could take a couple of years  
5 to build the building, and that we would go through that same,  
6 you know, three years to start and two years to build it for  
7 each building, and so three and two times five is -- times three  
8 buildings.

9 COMMISSIONER PARSONS: So would you take Mr.  
10 Quinn's proposal but add to the end, "but in no case shall this  
11 take more than ten years?"

12 COMMISSIONER MAY: I would cap it, and the outer  
13 limit would be ten years. I would be very willing to discuss  
14 something less than ten years. I mean, all it essentially means  
15 is that the applicant would have to return for --

16 COMMISSIONER PARSONS: Right.

17 COMMISSIONER MAY: -- an extension of the order,  
18 which is a necessary control.

19 COMMISSIONER PARSONS: So I sense we should not  
20 be calling this the May proposal because you're not agreeing to  
21 ten years.

22 COMMISSIONER MAY: Well, I was asked to put a  
23 number on it.

24 COMMISSIONER PARSONS: Okay.

25 COMMISSIONER MAY: And so that's the number that

1 I put on it. But this is a discussion, so --

2 VICE CHAIRMAN HOOD: I would be inclined -- are  
3 you finished, Mr. Parsons?

4 COMMISSIONER PARSONS: Yes.

5 VICE CHAIRMAN HOOD: Oh, okay. I would be  
6 inclined, colleagues, to go along with the ten years, but I  
7 would not say, and I don't know if this was included, I would  
8 not be inclined to say that it needs to be occupied, Building 3  
9 would need to be occupied.

10 COMMISSIONER MAY: No.

11 VICE CHAIRMAN HOOD: Okay. I just wanted to get  
12 that clarification.

13 COMMISSIONER MAY: No, I would suggest start of  
14 construction within ten years.

15 VICE CHAIRMAN HOOD: Mr. Bergstein, is that  
16 enough information?

17 MR. BERGSTEIN: I think it is. In other words,  
18 what you're saying, that all three buildings must -- well,  
19 Building 1, you want to keep that they have to file a building  
20 permit within two years, start construction within three years.

21 With respect to the remaining buildings, 2 and 3, construction  
22 must have begun for both no later than the tenth year of this  
23 order?

24 COMMISSIONER MAY: No. I think we have to adopt  
25 the language that has been suggested by the applicant, which

1 ties it to the C of O.

2 MR. BERGSTEIN: All right. So this language  
3 provided that construction must have begun for Building 3; is  
4 that it? Do you want to specify Building 3 or for all  
5 buildings?

6 COMMISSIONER MAY: Yes, I think just Building 3  
7 is the only one that has to be out there.

8 MR. BERGSTEIN: All right. Okay. So this PUD  
9 will expire if construction for Building 3 is not begun ten  
10 years from the effective date of the order. Okay.

11 COMMISSIONER MAY: I think that's right.

12 VICE CHAIRMAN HOOD: Okay. Sounds good.  
13 Hopefully we won't go out of order with Building. But anyway,  
14 okay, any other comments or discussion, colleagues? I would ask  
15 for how do we wish to proceed.

16 COMMISSIONER PARSONS: Well, there's another  
17 matter. The Planning Commission wrote suggesting that we add a  
18 condition regarding security, that it be referred to NCPC, and,  
19 of course, in a public space, that's not really our  
20 jurisdiction, but I think we could make a recommendation, or I  
21 don't know what the proper term would be, to the applicant that  
22 it would be well to coordinate this with NCPC, who has got this  
23 interagency security task force for all Federal buildings in the  
24 city leased and owned. So maybe Mr. Bergstein could help us  
25 with what the right language is, but I would like to honor their

1 request and agree that we can.

2 VICE CHAIRMAN HOOD: Okay. Okay. Thank you, Mr.  
3 Parsons.

4 Mr. Bergstein, if we can make sure that that's  
5 included however it can be included.

6 Any other discussion?

7 COMMISSIONER MAY: I have one other question, and  
8 it has to do with the paragraphs in the proposed order, 135,  
9 136, regarding the measurement of building height and how that  
10 is done, and frankly, we've been back and forth on the subject a  
11 number of times now, and I would like to have this clarified for  
12 our purposes.

13 I never quite bought into the notion that we were  
14 measuring -- we could measure the height of the building from  
15 the height of the overpass that passes by the building, and that  
16 seems to be -- I guess the fact that it was testified to is not  
17 the issue; it's whether we agree to that. And maybe it's  
18 elsewhere in the order that we actually speak on this subject.

19 VICE CHAIRMAN HOOD: Mr. May, if you bear with  
20 me, I'm trying to find out where you are.

21 COMMISSIONER MAY: Page 29.

22 VICE CHAIRMAN HOOD: Twenty-eight?

23 COMMISSIONER PARSONS: Twenty-nine.

24 VICE CHAIRMAN HOOD: Twenty-nine.

25 COMMISSIONER PARSONS: One-thirty-four, 135, 136.

1 VICE CHAIRMAN HOOD: Okay. I see it.

2 COMMISSIONER MAY: And then 137 basically states  
3 that we find Mr. Sher's arguments persuasive with regard to  
4 measuring the building height, and I'm not sure that I do. So  
5 what does the rest of the Zoning Commission think?

6 COMMISSIONER PARSONS: I guess the problem is  
7 that the building height remained the same even if they measured  
8 from F, right?

9 COMMISSIONER MAY: I think it's within the  
10 allowable --

11 COMMISSIONER PARSONS: Right.

12 COMMISSIONER MAY: -- for the PUD, as I recall.  
13 Is that correct? OP, do you recall?

14 MR. MCGHETTIGAN: Yes. With a PUD, you're  
15 allowed to go up to 130, I believe.

16 COMMISSIONER PARSONS: So we really didn't spend  
17 a lot of time in the hearing on this because of the fact that it  
18 wasn't the sole point of measurement, as I remember it.

19 COMMISSIONER MAY: Right. It was measured every  
20 which way, and so long as it complied with the PUD, which is  
21 what was presented to us, I guess -- I mean, I didn't have a  
22 problem with -- it was not an issue for the discussion.

23 COMMISSIONER PARSONS: Right. So now you're  
24 worried about the precedent of saying, yes, we agree with that.

25 COMMISSIONER MAY: Yes.

1 COMMISSIONER PARSONS: Any time you've got a  
2 bridge, keep measuring. How about the Whitehurst Freeway? That  
3 works, too, right? I'm kidding. For the record, I'm kidding.  
4 Very much I'm kidding.

5 Well, that's a dilemma. I'm glad you brought  
6 that up because who knows where this might crop up again?  
7 Because I had the same concern that you are now expressing, but  
8 we didn't do anything about it.

9 COMMISSIONER MAY: I would prefer that the  
10 language stayed exactly what we've discussed here, that -- I  
11 don't know whether we say that we do not find the arguments  
12 persuasive, but that we saw no need to enter that particular  
13 debate or resolve that issue, simply that it falls within the  
14 limits of the zone with the PUD.

15 VICE CHAIRMAN HOOD: I'm just sitting here  
16 thinking. It seems like every time that issue comes up, it's  
17 something different, and I'm just trying to figure out what has  
18 been done in the past, because it seems like it changes.

19 COMMISSIONER MAY: Do staff have any idea what  
20 has occurred in the past?

21 MR. BASTIDA: The staff believes that the safest  
22 way to go would say that it falls within the height of the PUD.

23 COMMISSIONER MAY: Okay. But back to the issue  
24 of previous cases.

25 MR. BASTIDA: Yes, that's what usually has been

1 the norm.

2 COMMISSIONER MAY: So we've avoided it in the  
3 past.

4 MR. BASTIDA: Yes and no, but the area was much  
5 clear-cut than in this instance, because if you adopt the  
6 language as proposed, then you are establishing a way to measure  
7 the height, and maybe in another case it will not be as  
8 clean-cut as it appears here.

9 VICE CHAIRMAN HOOD: So, Commissioner May, if I  
10 understand you correctly, you're saying that we will incorporate  
11 in either 136 or -37 that we do not find Mr. Sher's arguments  
12 persuasive -- no reflection if he's listening -- and proceed in  
13 that manner, so that may leave us kind of open for further  
14 cases.

15 COMMISSIONER MAY: Well, I think we would have to  
16 state -- if we're not going to make a decision about the issue,  
17 then I think that we would have to state that we express no  
18 opinion on Mr. Sher's arguments but simply find that the  
19 building as measured from F Street falls within the limits of  
20 the PUD as it has been proposed. So we approve the PUD and make  
21 no opinion about how to measure building height since no matter  
22 how you do it, it works.

23 COMMISSIONER PARSONS: That's good. I agree.

24 VICE CHAIRMAN HOOD: Got a consensus? We will go  
25 with that. Is that okay, Mr. Bergstein?

1 MR. BERGSTEIN: Yes.

2 MR. BASTIDA: Basically, we are leaving also the  
3 legal latitude to do it in a fashion that expresses the opinion  
4 of the Commission.

5 VICE CHAIRMAN HOOD: Okay. Thank you.

6 COMMISSIONER PARSONS: And you will do that about  
7 Number 137, somewhere in that --

8 MR. BERGSTEIN: We will just say in essence that  
9 because if you measured from F Street, it falls within the  
10 guidelines. There is no need at this point to address the -- to  
11 create the precedent that in essence Mr. Sher is inviting us to  
12 do.

13 VICE CHAIRMAN HOOD: Okay. With that --

14 MR. BASTIDA: I would mention, Mr. Chairman, Ms.  
15 Mitten didn't provide me with a proxy vote.

16 VICE CHAIRMAN HOOD: I have her proxy.

17 MR. BASTIDA: Okay.

18 VICE CHAIRMAN HOOD: I have so much, but it's  
19 sitting right here in front of me.

20 MR. BASTIDA: Thank you. In the book.

21 VICE CHAIRMAN HOOD: In the book. I will tell  
22 her you said that.

23 (Laughter.)

24 VICE CHAIRMAN HOOD: Okay. Colleagues, we are  
25 ready to proceed with Zoning Commission Case Number 01-09C. I

1 make a motion that we approve with the input expressed by the  
2 Commission, also with the condition from the National Capital  
3 Planning Commission. Was that a condition? No, that was --  
4 they were asking. Okay.

5 MR. BASTIDA: A suggestion.

6 VICE CHAIRMAN HOOD: A suggestion. Okay.

7 MR. BASTIDA: We have no authority to --

8 VICE CHAIRMAN HOOD: To make it a condition.  
9 Okay. Okay.

10 Anything else, colleagues, I'm leaving out?

11 COMMISSIONER MAY: We had a number of other  
12 editorial questions that were raised by the Chairman and I was  
13 wondering how we were going to address any of those.

14 VICE CHAIRMAN HOOD: Okay. What we can do, let's  
15 do this. Let's put the motion -- can I get a second?

16 COMMISSIONER PARSONS: Second.

17 VICE CHAIRMAN HOOD: Okay. We will do that under  
18 discussion. Now we can go into discussion. I hadn't had a  
19 chance to read that part of the book.

20 COMMISSIONER MAY: This is the second edition, I  
21 guess. The rest of us have this? Okay.

22 MR. BASTIDA: Mr. May, a couple of the issues  
23 were addressed already.

24 COMMISSIONER MAY: Yes, a couple of them were.  
25 With Findings of Fact Number 38, I mean, these are fairly

1 editorial in nature for the most part, I think. This is the  
2 third paragraph of a message that we had gotten regarding  
3 Findings of Fact Number 38, amenities and benefits, simply  
4 taking out the word "superior."

5 VICE CHAIRMAN HOOD: Right. I think that that's  
6 all she has asked for, is that we not use the word "superior."

7 COMMISSIONER MAY: Right. And I agree with that.  
8 I caught that word.

9 VICE CHAIRMAN HOOD: Okay. Let's just run down  
10 her list.

11 COMMISSIONER MAY: Okay. The benefits are not  
12 superior. The implication in the statement is the amenities and  
13 benefits are superior to those of other PUDs, which they are  
14 not, and I think that's a reasonable statement. They are  
15 certainly good amenities and part of the whole package, but  
16 "superior" is the word that was a concern.

17 Condition 29 should reference the initial term of  
18 the lease and the information that is in the record.

19 MR. BASTIDA: You had dealt with that.

20 COMMISSIONER MAY: We have dealt with that?

21 MR. BASTIDA: Yes. Oh, they haven't? Oh, I'm  
22 sorry.

23 COMMISSIONER MAY: No, it's the lease. It's not  
24 the --

25 MR. BASTIDA: Yes, you are right.

1 COMMISSIONER MAY: Okay. Language of Condition  
2 Number 30(e) -- I have to read that one again.

3 MR. BASTIDA: That is regarding Commission of  
4 Fine Arts initiating a modification to the proposed PUD rather  
5 than -- she's referring to the problem with 1957 E Street in  
6 which the Commission of Fine Arts really approved certain  
7 modifications that were initiated by the applicant. So any  
8 modifications to the PUD will have to be initiated by the  
9 Commission of Fine Arts.

10 COMMISSIONER PARSONS: Well, that's what it says,  
11 as I read it. It says "changes requested or required."

12 MR. BASTIDA: Right, by the Commission of Fine  
13 Arts. She wants to make sure that that is worded that way so  
14 there is not the reverse, like it is indicated that 1957 E  
15 Street, the changes were initiated by the applicant and approved  
16 by the Commission of Fine Arts.

17 COMMISSIONER PARSONS: Okay.

18 MR. BASTIDA: They want that the changes are  
19 initiated by the Commission of Fine Arts itself.

20 COMMISSIONER PARSONS: So she wants to replace  
21 the word "requested."

22 MR. BASTIDA: Right.

23 COMMISSIONER PARSONS: Which implies that the  
24 applicant requested it.

25 MR. BASTIDA: Right. Initiated.

1 COMMISSIONER PARSONS: I don't think it does, but  
2 "initiated," if that's better, fine.

3 VICE CHAIRMAN HOOD: Okay.

4 MR. BERGSTEIN: It would be initiated and  
5 required.

6 MR. BASTIDA: And required.

7 MR. BERGSTEIN: You can change the "or" to an  
8 "and."

9 MR. BASTIDA: Yes. "Initiated and required."

10 VICE CHAIRMAN HOOD: Okay. I think we've  
11 satisfied that requirement.

12 I am going to go back to Condition 29. Have we  
13 finished 30?

14 COMMISSIONER MAY: Yes.

15 VICE CHAIRMAN HOOD: I think we need to go back  
16 to 29, this 14-year, and I need to read it again and understand  
17 what she is asking for, whether or not we agree with this.

18 MR. BERGSTEIN: Can I perhaps explain?  
19 Initially, Chairman Mitten requested that there be a condition  
20 in essence that the only occupant of the building would be SEC.

21 But if you just said that, that would be open-ended. So I  
22 think Chairman Mitten's intent would be to cap that obligation  
23 by the initial term of the lease, whatever that might be. I  
24 think the record indicates that the initial term of the lease is  
25 14 years, but it's not really necessary to state that. The

1 intent is that at least for the initial term of the lease, the  
2 occupant of Building 1 would be SEC.

3 So the revised -- the conditions you have before  
4 you just say "in accordance with the lease," and the suggestion  
5 is to narrow that and make that clearer and to say that the  
6 Building 1 shall be occupied as office space for the SEC during  
7 the initial term of the lease.

8 VICE CHAIRMAN HOOD: Okay. I guess, colleagues,  
9 any problems with what was submitted by Chairman Mitten?

10 (No response.)

11 VICE CHAIRMAN HOOD: So if we can make those  
12 corrections and additions, any problems, colleagues, with that?

13 (No response.)

14 VICE CHAIRMAN HOOD: Where were we?

15 COMMISSIONER HANNAHAM: Got a motion, got a  
16 second.

17 VICE CHAIRMAN HOOD: Okay. All those in favor?

18 (Chorus of ayes.)

19 VICE CHAIRMAN HOOD: Any opposition?

20 (No response.)

21 VICE CHAIRMAN HOOD: So ordered.

22 Also, we have the favorable approval of Chair  
23 Mitten.

24 Staff, would you record the vote.

25 MR. BASTIDA: Yes. At this time, we will record

1 the vote five to zero. Mr. Hood, you moved the case, right?

2 COMMISSIONER PARSONS: Yes. He made the motion  
3 and I seconded.

4 MR. BASTIDA: Okay. Mr. Hood moving and Mr.  
5 Parsons seconding, Ms. Mitten, Mr. Hannaham and Mr. May voting  
6 in the affirmative.

7 Thank you.

8 VICE CHAIRMAN HOOD: Okay. Thank you.

9 VII. CONSENT CALENDAR

10 A) ZONING COMMISSION CASE NO. 00-28T

11 VICE CHAIRMAN HOOD: Moving right along, our  
12 consent calendar, Zoning Commission Case Number 00-28T, the EEF.

13 Mr. Bastida.

14 MR. BASTIDA: The staff is requesting the final  
15 approval of the proposed rulemaking that the Commission approved  
16 on November 19th, 2001, that it was published in the Register on  
17 November 19th and no comments were received regarding the  
18 proposed rulemaking.

19 VICE CHAIRMAN HOOD: Okay. Colleagues, we have  
20 the EEF proposal in front of us. I move approval of Zoning  
21 Commission Case 00-28T.

22 COMMISSIONER MAY: Second.

23 VICE CHAIRMAN HOOD: All those in favor?

24 (Chorus of ayes.)

25 VICE CHAIRMAN HOOD: Any opposition?

1 (No response.)

2 VICE CHAIRMAN HOOD: So ordered.

3 I do not have a proxy from Chair Mitten.

4 Staff, would you record the vote.

5 MR. BASTIDA: Yes. The staff will record the  
6 vote three to zero. Mr. Hannaham was not present and not voting  
7 on the previous rulemaking, nor did he participate.  
8 Accordingly, I would say that Mr. Hood moving and Mr. May  
9 seconding and Mr. Parsons voting in the affirmative, Ms. Mitten  
10 not voting, not being present, Mr. Hannaham present but not  
11 voting since he didn't participate in the proposed rulemaking.

12 VICE CHAIRMAN HOOD: Okay. Thank you.

13 B) ZONING COMMISSION CASE NO. 00-04

14 VICE CHAIRMAN HOOD: Next, Zoning Commission Case  
15 Number 00-04, the Correction of Editorial Mistakes of 2403.10.  
16 I believe you want to add something?

17 MR. BASTIDA: Yes, Mr. Chairman. We are in the  
18 process of providing the Office of the Register with all the  
19 what we believe are still discrepancies with the rulemaking and  
20 what the Register has provided us electronically, and going  
21 through that process, we established approximately nine or ten  
22 items that we believe are very minor in scope and they are  
23 almost editorial, and we would like to have the 11 DCMR, when  
24 it's finally published after we have been working on it for over  
25 two years, to be as precise as possible.

1                   Accordingly, we are requesting that you approve  
2 the modifications as Ms. Marie Sansone will outline to you, and  
3 there will be a short comment period of ten days for good  
4 reason. The good reason is that that way, those modifications  
5 would appear on the Title 11 of DCMR that Mr. Faylason has  
6 committed himself to have them published, the Title 11, in the  
7 second half of March.

8                   Marie Sansone now will go over what we believe  
9 are very minor modifications. Thank you.

10                   MS. SANSONE: Mr. Chairman, I would be happy to  
11 go over them in detail, but I think the Commission has probably  
12 had an opportunity now to review the notice of proposed  
13 rulemaking, so I will probably just explain briefly that these  
14 amendments are intended to clarify or correct nine or ten  
15 sections of the zoning regulations to bring them into alignment  
16 with existing case law or existing administrative practices or  
17 to make them consistent with other provisions in the  
18 regulations.

19                   There are proposed amendments to Section 201.1H,  
20 214.1, 901.4, 2115.11, 2405.2, 2500.5, 3003.3E, 3004.10, 3125.5  
21 and 3134.16A and B. If the Commission has any questions with  
22 regard to any of those, I would be happy to answer any  
23 questions.

24                   VICE CHAIRMAN HOOD: Colleagues, any questions?  
25 Ms. Sansone, we have reviewed what's in front of us and I think

1 we will leave it at that. With that, Colleagues, would someone  
2 like to make a motion, or do we have some unreadiness, or what  
3 do we have?

4 COMMISSIONER MAY: Are we still reading?

5 VICE CHAIRMAN HOOD: Still reading?

6 COMMISSIONER PARSONS: Well, I would move that we  
7 set down the Case Number 00-04 and deal with the correction of  
8 editorial mistakes in 2403.10 and other sections.

9 MR. BASTIDA: Mr. Parsons, you mean you are  
10 approving the proposed rulemaking?

11 COMMISSIONER PARSONS: Right. We are going to  
12 have a hearing on this?

13 MR. BASTIDA: No, we are not.

14 COMMISSIONER PARSONS: Well, then, I don't want  
15 to do it until next month.

16 VICE CHAIRMAN HOOD: Okay.

17 COMMISSIONER PARSONS: I haven't read them. I  
18 mean, I just haven't had enough --

19 VICE CHAIRMAN HOOD: Okay.

20 COMMISSIONER PARSONS: I am just concerned.

21 VICE CHAIRMAN HOOD: Okay. In all fairness, I  
22 guess, because this was provided to us earlier, we will postpone  
23 it.

24 Mr. Bastida, are we causing any detriment or  
25 problems if we do by next month's meeting?

1 MR. BASTIDA: I think that Mr. Faylason then will  
2 not include them in the proposed publication for the March DCMR  
3 11 because he wanted a rulemaking. He said that they have been  
4 in the book so long that he doesn't believe that he can do it as  
5 editorial comments.

6 VICE CHAIRMAN HOOD: So he is getting ready to go  
7 to print, so that's the problem.

8 MR. BASTIDA: That is why we were rushing to do  
9 that, and I apologize that the Commissioners got it so late.

10 VICE CHAIRMAN HOOD: Do we want to take ten  
11 minutes, Mr. Parsons, and review it and come back and see if we  
12 can deal with it today? Because he's getting ready to do a mass  
13 publication.

14 COMMISSIONER PARSONS: Well, it's ten or twelve  
15 pages, isn't it?

16 MR. BASTIDA: I believe there are five pages.

17 VICE CHAIRMAN HOOD: Five pages.

18 MR. BASTIDA: Of which the last two ones just  
19 summarize what the proposed rule would look like, what it is  
20 it's striking out, and that takes about a page and a half.

21 VICE CHAIRMAN HOOD: If not, colleagues, if we  
22 wait until next month, it won't be included in the mass printing  
23 of Title 11. If we want to take an additional -- you know how  
24 hard it is anyway to provide accurate information to the public  
25 and we want to make sure we will be as accurate as possible, but

1 if it's an issue and we are not prepared, then either we can  
2 take ten or 15 minutes and do it now or --

3 COMMISSIONER PARSONS: What is being asked here?  
4 Are we going to solicit this for public comment or what are we  
5 going to do?

6 MR. BASTIDA: It would be a proposed rulemaking  
7 in which we will give ten days for comment.

8 COMMISSIONER PARSONS: Ten days.

9 MR. BASTIDA: Yes. Because of good cause, we  
10 were advised that, in fact, the changes are so minor, and  
11 because of the good cause, to provide the best possible 11 DCMR  
12 in years, that that will be sufficient time, and that was the  
13 suggestion of Mr. Faylason and that's what we were trying to do.

14 We just sent to Mr. Faylason all the corrections  
15 on Friday of 11 DCMR where we found that there were still  
16 discrepancies which were in the -- what he had provided us.

17 MR. BERGSTEIN: If it's any comfort at all, Mr.  
18 Parsons, you will get another crack at this when you take final  
19 action. So if you review this and you ultimately disagree and  
20 believe there needs to be greater time to think about it, you  
21 could simply vote against this on final action.

22 This is not going to make it final; this would  
23 send it out just for proposed comment; and it would have to come  
24 back to you for you to take a final action at the next decision  
25 meeting. So you would have an opportunity at that point, if you

1 disagreed with these rules, to simply vote against going final  
2 with it.

3 COMMISSIONER PARSONS: Right. I understand.

4 Well, I think ten days is ridiculous to -- I  
5 don't know what they are, but to notify the public that they've  
6 got ten days to respond to, what, ten or twelve changes to our  
7 regulations just -- but if that's what we have to do, I want to  
8 read them, so we will take a ten-minute recess.

9 VICE CHAIRMAN HOOD: Okay. We will take --

10 COMMISSIONER PARSONS: We won't get any public  
11 comments.

12 MR. BASTIDA: Mr. Parsons, even in many of the  
13 rules that we have, proposed rulemakings that really have been  
14 very extensive, we don't get that many comments, even with  
15 sometimes 45 days. I mean, I'm not telling you -- I'm just  
16 sharing that with you.

17 VICE CHAIRMAN HOOD: Let me just say this. With  
18 that, we will take a ten- to 15-minute break so the  
19 Commissioners will be able to review the comments and  
20 corrections that are going to be advertised, and we will be back  
21 in this room at about four o'clock. Thank you.

22 **(Whereupon, a short recess was taken.)**

23 VICE CHAIRMAN HOOD: We are reconvening our  
24 regular scheduled meeting. The time now is four o'clock.

25 What we're going to ask, colleagues -- we have

1 had an opportunity to review the text amendments for 00-04TA.  
2 Any comments, colleagues? Any questions?

3 (No response.)

4 VICE CHAIRMAN HOOD: Okay. Hearing none, I will  
5 obtain a motion.

6 COMMISSIONER PARSONS: I move that we authorize  
7 the circulation. Is that the proper term?

8 MR. BERGSTEIN: Proposed action.

9 VICE CHAIRMAN HOOD: Public advertisement.

10 COMMISSIONER PARSONS: Publication.

11 VICE CHAIRMAN HOOD: I will second. All those in  
12 favor?

13 (Chorus of ayes.)

14 VICE CHAIRMAN HOOD: Any opposition?

15 (No response.)

16 VICE CHAIRMAN HOOD: So ordered.

17 Let me also state for the record that the Chair  
18 is in favor of the advertisement. Let me also say before Mr.  
19 Bastida records the vote that all the ANCs and the major law  
20 firms will be notified in the next day or two is what I am being  
21 told, okay?

22 MR. BASTIDA: That is correct, Mr. Chairman.

23 VICE CHAIRMAN HOOD: I want to thank everyone for  
24 their patience while we go ahead and try to proceed as  
25 expeditiously as possible.

1 MR. BASTIDA: Could I record the vote, sir?

2 VICE CHAIRMAN HOOD: Oh, you haven't done that  
3 yet?

4 MR. BASTIDA: No.

5 VICE CHAIRMAN HOOD: Okay.

6 (Laughter.)

7 MR. BASTIDA: The staff will record the vote five  
8 to zero, Mr. Parsons moving, Mr. Hood seconding, Ms. Mitten, Mr.  
9 May and Mr. Hannaham voting in the affirmative.

10 I would like to thank the Commissioners for  
11 indulging the staff on putting so much pressure on you to  
12 provide us with this vote. Thank you.

13 VICE CHAIRMAN HOOD: Okay. Thank you.

14 VIII. LEGISLATIVE REPORT

15 VICE CHAIRMAN HOOD: We have no legislative  
16 report.

17 IX. LITIGATION

18 VICE CHAIRMAN HOOD: The litigation is there for  
19 our perusal.

20 X. CORRESPONDENCE

21 VICE CHAIRMAN HOOD: The correspondence is there,  
22 I believe, for our perusal.

23 MR. BASTIDA: Actually, the councilmember is  
24 requesting the reopening of the record on that letter.

25 COMMISSIONER PARSONS: Yes. She's asking for

1 citizens to have an opportunity to comment on OP's  
2 recommendations in their November 19th meeting -- report, the  
3 one that is going to be presented to us next month.

4 VICE CHAIRMAN HOOD: I guess what -- and I must  
5 have omitted that -- but she is asking us to reopen the record,  
6 then, apparently?

7 MR. BASTIDA: To accept comments on that report  
8 that is already on the record.

9 VICE CHAIRMAN HOOD: Okay. Colleagues, we've had  
10 a chance to review Councilmember Ambrose's request, and I  
11 believe I did read that, I'm pretty sure I did. I think it's in  
12 order that people have the comment period where they can comment  
13 on things that Office of Planning has put out. I am not sure  
14 what that may open up, but I would be inclined to move approval  
15 for that.

16 COMMISSIONER PARSONS: Well, I would agree, but I  
17 wonder what the impact on timing is because we plan to deal with  
18 this at our March meeting, Florida Rock, Capitol Point, and  
19 this. If we announced today that we are going to accept  
20 comments, the Office of Planning would probably want an  
21 opportunity to respond to those, right?

22 VICE CHAIRMAN HOOD: Yes, I believe you are  
23 correct, Mr. Parsons.

24 COMMISSIONER PARSONS: So it sounds like a  
25 postponement for a month.

1 MR. BASTIDA: Right, because we will have to  
2 advertise it and all that stuff and give people enough time.  
3 Maybe what we should do is, anybody who -- if you take a  
4 proposed rule -- a proposal on the March meeting, then we can  
5 send it to everybody who participated at the hearing or who  
6 testified, have the witnesses and parties -- no, there were no  
7 parties; it's a rulemaking -- anybody who participated in the  
8 hearing and -- well, actually, we can give it a 45- to 60-day  
9 proposed rulemaking to give plenty of time to the individuals to  
10 do that, to respond to it, if you decide to take it.

11 COMMISSIONER PARSONS: All right. That seems  
12 reasonable, because any more delay on our consideration of this  
13 is getting ridiculous.

14 MR. BASTIDA: And you can establish with a little  
15 more time how many -- if you want to go for a 45-day -- usually  
16 30 days. You can go to 45 or, you know, whatever, and that way,  
17 there is a proposed action and there will be only the final  
18 action two months later.

19 VICE CHAIRMAN HOOD: So we will still proceed  
20 next month with proposed action.

21 MR. BASTIDA: Correct.

22 VICE CHAIRMAN HOOD: And in that time frame,  
23 there will be opportune time for those to comment to the Office  
24 of Planning before we go to -- on the Office of Planning's  
25 report before we go to final action.

1 MR. BASTIDA: Right. And what I will do is we  
2 will notify the councilmember that that is your intent right  
3 now, and that way, even prior to your decision, if you make a  
4 decision in March, she will be aware of that, which will give  
5 her and the people who contacted her basically two and a half  
6 months to address that issue.

7 VICE CHAIRMAN HOOD: Okay. Okay. Can we just do  
8 that by general consensus?

9 MR. BASTIDA: Yes, you can.

10 VICE CHAIRMAN HOOD: Colleagues, any --

11 COMMISSIONER PARSONS: I guess we would have to  
12 write back to her.

13 MR. BASTIDA: Yes, indeed. We intend to do that.  
14 We will do that this week.

15 VICE CHAIRMAN HOOD: Okay. So, Mr. Bastida, the  
16 Commission consents with her request.

17 MR. BASTIDA: Okay. Thank you so much. Well,  
18 you are not reopening the record, so you are doing something to,  
19 in fact, accommodate her without reopening the record.

20 VICE CHAIRMAN HOOD: We are enabling folks to  
21 respond to the Office of Planning's report.

22 MR. BASTIDA: Respond. Right. Right. Okay.  
23 Thank you, Mr. Chairman.

24 VICE CHAIRMAN HOOD: Thank you. And that's it,  
25 that's all we are opening up for. I mean, we are not opening,

1 but that's all we are asking for, is a response.

2 MR. BASTIDA: Well, in any proposed rulemaking,  
3 we always have to open the record to address the proposed  
4 rulemaking issues. Sometimes some people try to use a proposed  
5 rulemaking to go outside the boundaries of the rulemaking, and  
6 then we don't address those comments on our final rulemaking.

7 MR. BERGSTEIN: There are really two comment  
8 periods. There's the comment period that involves the hearing  
9 itself, and then if you decide after a hearing to take proposed  
10 action, there is a second comment period which is a written  
11 comment period.

12 So all you are deciding to do here is to consider  
13 when you take proposed action of allowing more time during that  
14 second written comment period for people to respond to the  
15 specific aspects of the OP report and anything else that's  
16 germane to the rulemaking.

17 So there will be another comment period, it will  
18 be after you take the proposed action, and I think what you're  
19 telling the councilmember is that you're going to consider  
20 making that a longer period to allow people to address those  
21 concerns.

22 VICE CHAIRMAN HOOD: Okay. That's fine. I was  
23 just thinking in terms of narrowing the scope just to the Office  
24 of Planning's report, comments in their report, but I guess  
25 that's not the way we can proceed, then we won't. Okay. Fine.

1 MR. BASTIDA: Thank you, Mr. Chairman.

2 VICE CHAIRMAN HOOD: Let's keep it as we have it.

3 MR. BASTIDA: Thank you.

4 VICE CHAIRMAN HOOD: Okay. With that, I will ask  
5 my colleagues to give us five minutes after we adjourn so we can  
6 do the reminder schedule for the BZA. Let me check my book and  
7 make sure I have everything in order.

8 MR. BASTIDA: I think that we have one --

9 VICE CHAIRMAN HOOD: One more thing. Yes, I've  
10 got it, Mr. Bastida.

11 MR. BASTIDA: Okay. Thank you, Mr. Chairman.

12 VICE CHAIRMAN HOOD: Let me just say I want to  
13 thank, for the record, the Office of Zoning, Office of Planning,  
14 the LBOC and the DOES. I am sure Mr. Bastida at the next  
15 meeting will be giving us a status update report. I think the  
16 initial meeting that we had, we also had business community and  
17 all involved. I think it was an excellent meeting. The Chair,  
18 Mr. Hannaham and myself attended.

19 I think we're actually trying to get something  
20 going, and I think the interest is there, it has been jump-  
21 started, everybody is on board, and now we just need to get  
22 everybody on the same page, and I think that effort has been  
23 started as a result of the last meeting.

24 XI. ELECTION OF OFFICERS

25 VICE CHAIRMAN HOOD: So with that, next on our

1 agenda, we have Elections of Officers. Mr. Bastida. Why do I  
2 go to Mr. Bastida for the election of officers?

3 MR. BASTIDA: I cannot nominate myself. Sorry  
4 about that.

5 VICE CHAIRMAN HOOD: That's why I was wondering  
6 why did I go to -- okay. Let me just say that, colleagues, and  
7 I will open it up, Chair Mitten, I think, has done a fabulous  
8 job. She has put in an extraordinary amount of time. She has  
9 prepared herself very well. I think she has led this Commission  
10 in a fantastic way. Unfortunately, she is not here to hear  
11 those good comments. Maybe she will read the record.

12 I would just, if there are no other comments or  
13 problems with proceeding, just leave it as it is with her being  
14 the Chair, and if somebody else wants to be Vice Chair, they  
15 can, but I would just leave it just as it is.

16 I open that up for comments.

17 COMMISSIONER HANNAHAM: I have no problem with  
18 that at all.

19 VICE CHAIRMAN HOOD: Okay.

20 COMMISSIONER MAY: I agree.

21 COMMISSIONER PARSONS: What does she say about  
22 this in her book?

23 (Laughter.)

24 VICE CHAIRMAN HOOD: Actually, since she is not  
25 here, she actually says that she could go either way, either

1 going back to Vice Chair and me being the Chair, or I can -- but  
2 since she's not here, I will leave her as Chair. I think she's  
3 done a fabulous job. I enjoy working with her, I'm learning a  
4 lot from her, and I think all of us probably feel the same way,  
5 and I am sure Mr. Bastida doesn't want me to be Chair again  
6 anyway.

7 (Laughter.)

8 MR. BASTIDA: Can we strike that from the record,  
9 please?

10 (Laughter.)

11 VICE CHAIRMAN HOOD: But I can assure him that  
12 next year is coming.

13 But with that, is that okay, general consensus?

14 MR. BASTIDA: No, the staff would prefer a vote,  
15 --

16 VICE CHAIRMAN HOOD: Okay.

17 MR. BASTIDA: -- please, if you don't mind.

18 VICE CHAIRMAN HOOD: Well, somebody else put the  
19 motion up.

20 COMMISSIONER MAY: I move that we elect Carol  
21 Mitten as the Chairman of the Commission and Anthony Hood as  
22 Vice Chairman of the Commission.

23 COMMISSIONER HANNAHAM: Second.

24 VICE CHAIRMAN HOOD: It has been moved and  
25 properly seconded. All those in favor?

1 (Chorus of ayes.)

2 VICE CHAIRMAN HOOD: Any opposition?

3 (No response.)

4 VICE CHAIRMAN HOOD: So ordered.

5 Also Ms. Mitten is in favor of that motion.

6 (Laughter.)

7 MR. BASTIDA: The staff would record the vote  
8 five to zero, Mr. May moving and Mr. Hannaham seconding, Mr.  
9 Parsons, Mr. Hood and Ms. Mitten voting in the affirmative.

10 VICE CHAIRMAN HOOD: Okay.

11 MR. BASTIDA: Congratulations.

12 VICE CHAIRMAN HOOD: Thank you.

13 I want to thank you all again. If you can give  
14 us five minutes --

15 MR. BASTIDA: Five minutes. Yes.

16 VICE CHAIRMAN HOOD: -- five minutes in the back  
17 for the reminder schedule.

18 This meeting is adjourned.

19 (Whereupon, at 4:12 p.m., the meeting adjourned.)