

GOVERNMENT OF THE DISTRICT OF COLUMBIA

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ZONING COMMISSION

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REGULAR MEETING
1141st MEETING SESSION

+ + + +

MONDAY,
NOVEMBER 18, 2002

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The Regular Meeting of the District of Columbia Zoning Commission convened at 1:30 p.m. in the Office of Zoning Hearing Room at 441 4th Street, Northwest, Washington, D.C., Carol J. Mitten, Chairperson, presiding.

BOARD MEMBERS PRESENT:

Carol Mitten	Chairperson
Anthony Hood	Vice Chairperson
James Hannaham	Commissioner
John Parsons	Commissioner
Peter May	Commissioner

STAFF PRESENT:

Alan Bergstein	Corporation Counsel
Sharon Sanchez	Office of Zoning
Alberto Bastida	Secretary, Zoning
Ellen McCarthy	Office of Planning
Maxine Brown-Roberts	Office of Planning
Jennifer Steingasser	Office of Planning

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

(1:39 p.m.)

CHAIRPERSON MITTEN: Good afternoon ladies and gentlemen. This is the regular monthly meeting of the Zoning Commission of the District of Columbia for Monday, November 18, 2002.

My name is Carol Mitten. And joining me this afternoon are Vice Chairman Anthony Hood and Commissioners Peter May, John Parsons, and James Hannaham.

I'd just like to advise you that agendas for our meeting are available on the table near the door. And for clarification purposes, I'll just remind folks that we only accept public comments at our meetings by invitation of the Commission only. If you have any concerns during the meeting, please direct them to staff, Mr. Bastida or Ms. Sanchez.

So, Mr. Bastida, before we begin, do we have any preliminary matters?

SECRETARY BASTIDA: No, madam Chairman. Staff has no preliminary matters.

CHAIRPERSON MITTEN: Thank you. Then we'll move to action on the minutes.

Mr. Bastida.

SECRETARY BASTIDA: Yes, madam Chairman.

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1 The staff has provided you with a draft of the public
2 meeting minutes and requests an action for the
3 September 30, 2002 session and for the October 17th
4 session also.

5 CHAIRPERSON MITTEN: All right. Let's
6 take these separately.

7 We have the meeting minutes for our
8 special public meeting of September 30th. Is there a
9 motion?

10 VICE CHAIRPERSON HOOD: I make a motion we
11 approve public meeting minutes for September 30th.

12 CHAIRPERSON MITTEN: Second.

13 Any discussion?

14 (No response.)

15 CHAIRPERSON MITTEN: All those in favor,
16 please say "aye".

17 (Chorus of ayes.)

18 CHAIRPERSON MITTEN: All those opposed,
19 please say "no".

20 (No response.)

21 CHAIRPERSON MITTEN: Ms. Sanchez, would
22 you record the vote.

23 MS. SANCHEZ: Yes. Staff would record the
24 vote five-to-zero to zero to approve the minutes of
25 September 30, 2002. The motion was made by

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1 Commissioner Hood; seconded by Commissioner Mitten;
2 and in favor by Commissioners Parsons, May, and
3 Hannaham.

4 CHAIRPERSON MITTEN: Thank you. Now we
5 have the special public meeting minutes from October
6 17, 2002. And I would move approval of those minutes
7 with a few editorial changes that I'll hand into
8 staff.

9 VICE CHAIRPERSON HOOD: Second.

10 CHAIRPERSON MITTEN: Any discussion?

11 (No response.)

12 CHAIRPERSON MITTEN: All those in favor,
13 please say "aye".

14 (Chorus of ayes.)

15 CHAIRPERSON MITTEN: All those opposed,
16 please say "no".

17 (No response.)

18 CHAIRPERSON MITTEN: Ms. Sanchez.

19 MS. SANCHEZ: Yes. Staff would record the
20 vote five-to-zero to zero to approve the minutes of
21 October 17, 2002. Commissioner Mitten making the
22 motion; Commissioner May seconding; Commissioners
23 Hannaham, Hood, and Parsons in favor.

24 CHAIRPERSON MITTEN: Thank you. And then
25 I assume at our December meeting we'll take up the

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1 regular public meeting minutes from October 28th, is
2 that correct?

3 MR. BERGSTEIN: That is correct, madam
4 Chairman.

5 CHAIRPERSON MITTEN: Thank you. Let's
6 turn to the status report from the Office of Planning.

7 Ms. McCarthy, good afternoon.

8 MS. MCCARTHY: Good afternoon, madam Chair
9 and members of the Commission.

10 As you see, there are two cases for set
11 down today, listed under set down. Under cases, we
12 had listed the Recreation and Community Center use
13 text amendment. The supplemental report was
14 originally going to be submitted for today's meeting,
15 but the Department of Parks and Recreation has some
16 additional issues that they want to consider, so we
17 will be postponing that for a month while we work
18 those issues out with them.

19 CHAIRPERSON MITTEN: Are you fairly
20 confident that we'll be able to take that up in
21 December?

22 MS. MCCARTHY: Yes, I think so. I think
23 we've pretty much ironed things out, but we just, we
24 didn't have them straightened out in time to get the
25 report to you early to be read for this meeting.

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1 CHAIRPERSON MITTEN: All right.

2 MS. MCCARTHY: And we did submit a
3 supplemental report at the end of October on the high-
4 density retail residential overlay, and expect, do
5 expect to meet the deadline on the supplemental report
6 for the neighborhood commercial overlay by December
7 9th.

8 And then, let me just skip to the third
9 page where we deal with cases outstanding because the
10 rest of it is basically cases that have been
11 scheduled. We expect to come back to you in December
12 for set down on the first two cases: the Takoma
13 Industrial area rezoning, which is a rezoning to put
14 that case in conformance with the Takoma plan that was
15 recently adopted by the City Council; and the
16 Southeast Federal Center initial zoning.

17 At least at this point in time, the
18 timetable that we had discussed with the GSA was to
19 come in with that for December set down so that it can
20 be set down when they release a RFP for the
21 development of the remainder of the Southeast Federal
22 Center property.

23 With regard to the planned unit
24 development for the U.S. Department of Transportation
25 Headquarters, we had put January 2003 because that was

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1 the timetable that the applicant had originally
2 indicated they were looking for a set down report.
3 But I think as we've been working through the issues
4 with the applicant, it's become clear that there are a
5 number of very complicated issues with regard to that
6 project. And, we don't expect to have a set down by
7 January. I'd say February would be the earliest, but
8 it's not clear that it would even be ready by that
9 point in time.

10 For the Eastgate Hope 6 initial zoning,
11 the application was very recently filed after this
12 report was done. And we expect to come in with a set
13 down for that in December. That case is on --HUD has
14 changed their guidelines so that a case now has to be
15 at least set down for public hearing within the month
16 in which the application is filed. So, we've
17 committed to them that we will have our report done in
18 time to submit to you for the December meeting.

19 And the last item, which isn't on there,
20 is arcades, which is mentioned in the, under
21 "Correspondence", or under "Hearing Action" in our
22 agenda today. We did receive an application, I
23 believe filed through the actions of the D.C. Building
24 Industry Association Retail Committee. And we do
25 expect to have a set down report on that for the

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1 December meeting of the Zoning Commission.

2 The rest of it I think is fairly self-
3 explanatory.

4 CHAIRPERSON MITTEN: Thank you. I have a
5 question on the Takoma Industrial area rezoning. And
6 one of the concerns, and I've raised this in the past
7 is, is the Takoma small area plan technically part of
8 the comprehensive plan?

9 Because when we take up a case that is
10 meant to be consistent with the small area plan, the
11 overriding concern for us is consistency with the
12 comprehensive plan. So how does that mesh with the
13 comp plan?

14 MS. MCCARTHY: It's my understanding that
15 by adopting that, by the Council adopting that as a
16 small area plan, officially that makes it part of the
17 comprehensive plan, and thus qualifies as more
18 specific guidance.

19 There are some legal aspects in which it's
20 not quite the same. But, I would have to defer to Mr.
21 Bergstein on what those, some of those shadings are
22 because I don't fully understand the differences.

23 CHAIRPERSON MITTEN: All right. Maybe
24 when we take this up for set down, Mr. Bergstein, if
25 you could provide us with some guidance on the degree

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1 to which we defer to the small area plan over whatever
2 might be in the larger comprehensive plan, if you
3 could provide that for us.

4 MR. BERGSTEIN: Certainly.

5 CHAIRPERSON MITTEN: Thank you. Any
6 questions for Ms. McCarthy on the OP status report?

7 (No response.)

8 CHAIRPERSON MITTEN: All right. Thank you
9 very much.

10 Next, we have hearing action. Mr.
11 Bastida.

12 SECRETARY BASTIDA: Madam Chairman, staff
13 has provided you with copies of the entire file on
14 Zoning Commission case 02-41, Building Bridges, and
15 that amendment. And staff requests an action on this
16 matter.

17 CHAIRPERSON MITTEN: Thank you. And I'll
18 turn to the Office of Planning for a summary of this
19 case.

20 COMMISSIONER PARSONS: Madam Chairman, I
21 should announce that I have to recuse myself from this
22 case.

23 CHAIRPERSON MITTEN: Oh. Thank you, Mr.
24 Parsons.

25 MS. BROWN-ROBERTS: Good afternoon, madam

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1 Chairman and members of the Commission.

2 The subject property is owned by the U.S.
3 Government with use and operational jurisdiction
4 transferred to the District of Columbia, Department of
5 Parks and Recreation in particular, with recreational
6 and related purposes. The District has leased the
7 property to the applicant to construct a community
8 center to be known as the Town Hall Education Arts
9 Recreation Center.

10 The subject property is unzoned and the
11 applicant is proposing the SP-1 zone. The area in the
12 vicinity of the site is mainly R-5-A and R-2 districts
13 and is developed with a mixture of apartments and
14 townhouses.

15 One of the general provisions of the SP
16 district is that it is designed to stabilize those
17 areas adjacent to C-3-C and C-4 districts and other
18 appropriate areas that contain existing apartments,
19 offices and institutions, and mixed use buildings.

20 Although the property is not in the
21 specified commercial zone, it meets the requirements
22 of being an appropriate area, as the area's intensive
23 development of apartments and townhouses.

24 The SP-1 zone is a transitional zone that
25 permits uses that are not typically located together.

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1 The zone permits a hybrid of uses that is proposed
2 for this site. Additionally, the proposed development
3 will be at a scale that is compatible with adjacent
4 uses, and extent of development will be controlled by
5 the lease agreement with the Department of Parks and
6 Recreation.

7 The generalized land use map recommends
8 parks, recreation, and open space for the subject
9 site, and specifically district government parks and
10 recreation centers, cemeteries, national capital open
11 space system. The proposed uses and zoning would be
12 consistent with these recommendations.

13 As part of the transfer of the property
14 from the federal government, it is required that the
15 property be used for recreational uses. The federal
16 government has reviewed the application and states
17 that it meets this qualification. OP recommends that
18 the application for map amendment be set down for
19 public hearing.

20 Thank you, madam Chairman.

21 CHAIRPERSON MITTEN: Thank you, Ms. Brown-
22 Roberts.

23 Any questions for the Office of Planning?
24 Mr. Hannaham.

25 COMMISSIONER HANNAHAM: Has work already

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1 started at that site, development started?

2 MS. BROWN-ROBERTS: Yes. The property was
3 proposed to be developed in two phases. And the phase
4 one portion of that development is about 99 percent
5 done. There's a phase two that is proposed also.

6 COMMISSIONER HANNAHAM: Okay, thanks.

7 Thanks, madam Chair.

8 CHAIRPERSON MITTEN: Thank you, Mr.
9 Hannaham, for pointing that out.

10 We have a number of cases. This is
11 probably the most egregious where they built the whole
12 phase of the project without even coming for --
13 without having any zoning in place. But we get a lot
14 of these projects that are on a fast track, and it's
15 the district. And the district, you know, there was a
16 decision made probably more than ten years ago now
17 that the district would be subject to zoning for its
18 projects.

19 I don't know why the message isn't getting
20 through to the agencies, but it's pretty significant
21 when they just ignore with someone's advice that they
22 even need to have zoning in place.

23 I have a concern about this because,
24 notwithstanding the fact that the applicant and the
25 park service have come to some agreement about the

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1 nature of the use as being construed by the park
2 service to be recreation, the property in the
3 generalized land use map is designated for recreation.

4 And we are in the process, when we return
5 to the case on recreation and community centers, that
6 we are making a distinction between recreation centers
7 and recreation-oriented uses that might have some
8 adjunct uses that are not recreation predominantly,
9 and community centers that have these community-
10 oriented uses and perhaps some secondary recreation
11 use. And to me, this is more squarely in the latter
12 category.

13 What I would like to propose is,
14 particularly since we have the assurance of the Office
15 of Planning that we'll be able to take up the
16 recreation center case in December, that we have an
17 additional submission from the applicant as to why
18 this does not constitute spot zoning, and specifically
19 as it relates to the land use map designation.

20 And then we'll have the benefit of our
21 discussion on recreation centers and community
22 centers. And then at that time, after we have the
23 additional submission from the applicant related to
24 spot zoning, then we can take up the matter, the set
25 down issue at that point.

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1 That's what I'd like to recommend to the
2 Commission. So, I would just defer this another month
3 while we get some information on that.

4 Mr. Hannaham.

5 COMMISSIONER HANNAHAM: I would concur,
6 madam Chairman. Was that a motion? If that was a
7 motion, I'll second.

8 CHAIRPERSON MITTEN: Okay. I move that we
9 postpone the consideration of the set down pending a
10 submission from the applicant as to why the proposal
11 does not constitute spot zoning.

12 So, we have a second on that.

13 COMMISSIONER HANNAHAM: Second.

14 CHAIRPERSON MITTEN: Any further
15 discussion?

16 (No response.)

17 CHAIRPERSON MITTEN: All those in favor,
18 please say "aye".

19 (Chorus of ayes.)

20 CHAIRPERSON MITTEN: Those opposed, please
21 say "no".

22 (No response.)

23 CHAIRPERSON MITTEN: Ms. Sanchez, would
24 you record that vote?

25 MS. SANCHEZ: Yes. Staff would record the

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1 vote four-to-zero to one to defer this case 02-41
2 until a later date to allow the applicant to provide
3 some additional information that's been requested.
4 The motion was made by Commissioner Mitten, seconded
5 by Commissioner Hood, and in favor by Commissioners
6 Hannaham and May.

7 CHAIRPERSON MITTEN: I just want to
8 clarify something, which is that we want to take this
9 up at our December meeting.

10 So, Mr. Bastida, if you could give a date
11 by which the applicant would need to file.

12 SECRETARY BASTIDA: Yes, madam Chairman.
13 The applicant must file no later than Friday, November
14 the 29th by 3:00.

15 CHAIRPERSON MITTEN: Thank you. The next
16 case, Zoning Commission case number 02-45.

17 Mr. Bastida.

18 SECRETARY BASTIDA: Yes, madam Chairman.

19 The staff has provided you with a copy of
20 the file and requests an action on this matter. The
21 staff would like to make sure that the Commission, and
22 I'm sure, understand that it's a PUD and a permanent
23 map amendment. It's not a related map amendment.

24 CHAIRPERSON MITTEN: Would you repeat the
25 last thing that you just said? It's a permanent map

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1 amendment --

2 SECRETARY BASTIDA: Yes.

3 CHAIRPERSON MITTEN: -- as opposed to?

4 SECRETARY BASTIDA: A related map
5 amendment to the PUD. So, the Commission will be
6 rezoning this site to the requested zoning category,
7 and then approving or disapproving that PUD based on
8 those conditions -- or approving the map or
9 disapproving the map.

10 CHAIRPERSON MITTEN: May I ask where you
11 draw that distinction from because my reading of the
12 application was that this was a PUD related map
13 amendment.

14 SECRETARY BASTIDA: Alan?

15 MR. BERGSTEIN: Well, when I read the
16 submittal, madam Chair, it seemed that they were
17 talking about a rezoning. It wasn't clear to me that
18 it was related to the PUD. And if I misunderstood
19 that, I apologize.

20 But it wasn't clear from the actual
21 submittal whether or not it was intended to be a
22 permanent rezoning of this area or PUD related. I
23 didn't see the word "PUD related" in the actual
24 submittal, and I did not see the application.

25 So, maybe OP can clarify because I don't

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1 want to be mistaken about that.

2 CHAIRPERSON MITTEN: Okay. Just give me
3 one moment and I'll find the section I was referring
4 to.

5 Oh, you're right. Thanks. Page 7 under
6 letter "E", second paragraph:

7 "The applicant requests SP-1 special
8 purpose medium-density zoning in
9 conjunction with this PUD."

10 COMMISSIONER PARSONS: Well, let me read
11 from page 1.

12 CHAIRPERSON MITTEN: Okay.

13 COMMISSIONER PARSONS: It says:

14 "This application also requests the zoning
15 map amendment for the site for unzoned government
16 property to SP-1."

17 CHAIRPERSON MITTEN: All right. Let's --

18 COMMISSIONER PARSONS: So, maybe we need
19 some clarification from the applicant.

20 CHAIRPERSON MITTEN: Okay. Can Office of
21 Planning answer the question, or do we need to have
22 the applicant come forward before we even go any
23 further?

24 MS. MCCARTHY: The applicant has indicated
25 that that is what they were proposing to do.

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1 CHAIRPERSON MITTEN: Which one?

2 MS. MCCARTHY: I'm sorry. To have it be a
3 permanent map amendment change. But you may want to
4 hear from the applicant why they are proposing that
5 approach instead of doing it as a PUD related map
6 amendment.

7 CHAIRPERSON MITTEN: Let's just proceed.
8 Now that we've gotten it clarified, let's just
9 proceed. If you'd like to give us a summary of the
10 proposal, then we can see what the pleasure of the
11 Commission is after we get that.

12 Anybody from OP who would like to give a
13 summary of the proposal?

14 (No response.)

15 CHAIRPERSON MITTEN: I'm sorry. My cues
16 are not getting through over there.

17 (Laughter.)

18 CHAIRPERSON MITTEN: Take it away, Office
19 of Planning.

20 MS. BROWN-ROBERTS: Okay. The Department
21 of Mental Health is consolidating the operations of
22 the East site in a new hospital building that will
23 replace existing John Howard Pavilion on the East
24 Campus.

25 The new proposed building will be state of

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1 the art mental health facility to serve non-secure and
2 secure populations, and it will incorporate the newest
3 ideas and innovations and institutional design for
4 mental healthcare that will most effectively serve the
5 patients, caregivers, and employees. The hospital
6 will have a total of 290 beds.

7 The Office of Planning has preliminarily
8 reviewed the proposed map amendment and concluded that
9 the SP-1 district is an appropriate designation for
10 the consideration and public hearing. The proposed
11 use is consistent with the objectives of SP-1 district
12 and is not inconsistent with the comprehensive plan.

13 The proposed SP-1 district is designed to
14 stabilize those areas adjacent to C-3-C and C-4
15 districts and other appropriate areas that contain
16 existing apartments, offices and institutions, and
17 mixed use buildings.

18 The predominant zoning is on the
19 northwest, and northeast of the site is R-5-A. The
20 remainder of the campus to the west of the site is
21 currently unzoned, but it is envisioned that
22 redevelopment will include a variety of uses.

23 Although the surrounding zoning districts
24 are not in the C-3-C and C-4 districts, placing the
25 SP-1 zone adjacent to the R-5-A is appropriate because

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1 the community is developed with merely moderate-
2 density residential, including apartments, some
3 detached units, and rural houses.

4 The SP-1 district on the property will
5 allow the development to be the scale that does not
6 negatively impact the existing residences, and is
7 consistent with the intensity of the adjacent
8 neighborhood.

9 The Office of Planning supports the PUD
10 application as it will facilitate a site-specific
11 project and provide assurances to the site's
12 development and use in the absence of the completed
13 redevelopment plan for the entire campus.

14 The generalized land use map recommends a
15 subject site for local public facilities.
16 Additionally, the generalized land use policies map
17 designates the overall St. Elizabeth's Hospital as a
18 special treatment area.

19 The proposed zoning to the SP-1 district
20 is consistent with these recommendations. OP
21 recommends that the application for the map amendment
22 and first stage PUD be set down for public hearing.

23 Thank you, madam Chairman.

24 CHAIRPERSON MITTEN: Thank you. Any
25 questions for Ms. Brown-Roberts?

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1 (No response.)

2 CHAIRPERSON MITTEN: Anybody?

3 Mr. May.

4 COMMISSIONER MAY: Yes. What's the state
5 of the framework plan for the campus, the St. E's
6 campus?

7 MS. BROWN-ROBERTS: The Office of Planning
8 is currently working on the framework plan. Ellen?

9 MS. MCCARTHY: We have hired a project
10 manager and we have hired a firm, and they are
11 beginning work on the plan, along with the Ward 8
12 planner who we hired recently, who is working on the
13 Community Outreach portion.

14 COMMISSIONER MAY: Okay. So it's actually
15 starting as opposed to being --

16 MS. MCCARTHY: It is actually starting.
17 And the time period that has always been discussed is
18 for that planning process to take approximately a
19 year.

20 COMMISSIONER MAY: There is mention in the
21 report, I guess in your report, that it's appropriate
22 to consider this particular case outside the context
23 of that framework plan in part because the framework
24 plan isn't ready, but also because it's, because this
25 is somewhat removed from the main body of the campus,

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1 that it can be considered separately and wouldn't be
2 terribly problematic once, you know, given these sort
3 of head starts on the, on the framework plan.

4 And I guess I'd like to have, in the
5 process of doing the full report, that there be
6 further discussion of that issue because this is the
7 second time that we're looking at parts of this campus
8 on its own, saying that, well, the framework plan is
9 going to come later.

10 And not that we're about to finish the
11 whole campus without the framework plan, but then
12 again, each time we do this, it just makes me a little
13 bit uneasy. And when you look at the size or the
14 relative amount of area being zoned here, this is a
15 very significant portion of the campus, at least the
16 East Campus if I have that right.

17 So, that's a big concern from my point of
18 view.

19 MS. MCCARTHY: Right. Well, that was
20 definitely a concern of ours as well. But, we were
21 also conscious of the fact that St. Elizabeth's
22 property is essentially -- it's there because of the
23 mental health use of St. Elizabeth's. And that has
24 been the primary use of the site.

25 So if anything changes in the course of

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1 looking at the new plan, the one thing that's not
2 going to change is that that is the location for the
3 major mental health facility.

4 But, the existing mental health facility
5 is subject of a court order, which holds that the
6 state of those current facilities is inappropriate.
7 The condition is very poor, and that it is
8 inappropriate as a place to house people with serious
9 mental illnesses. So, we are attempting to expedite
10 that because of the court order.

11 It also is -- when we say "disconnected"
12 or somewhat remote from the rest of the site, there is
13 a very large swale, which goes along the left-hand
14 side of the drawing you have that accompanies our
15 report, and some cemeteries on the other side which do
16 separate it from the immediate neighborhood.

17 It is, however, close to the Metro station
18 and that will definitely be one of the issues that we
19 look at, is how to maximize the use of the Metro
20 station and how to make that connection work best for
21 pedestrians and for all of the employees that will be
22 there at the hospital.

23 And I should add that one of the reasons
24 that the Office of Planning has been finally able to
25 proceed with the study of St. Elizabeth's is because,

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1 as part of their amenity package, the Department of
2 Mental Health has given us the remainder of the money
3 that was necessary to undertake the planning study.

4 So until we had that money and the money
5 that we had from UCC, that -- that's what's allowing
6 us to do the planning work.

7 COMMISSION MAY: Well, that's good you got
8 enough money before the land was gone.

9 CHAIRPERSON MITTEN: Thank you both.

10 COMMISSIONER HANNAHAM: Madam Chair, I
11 have a --

12 CHAIRPERSON MITTEN: Oh, Mr. Hannaham,
13 please.

14 COMMISSIONER HANNAHAM: Ms. McCarthy,
15 knowing that you've already started the master
16 planning, I just wanted to get some ideas as to the
17 participants. I know the people in the community
18 expressed a great deal of interest and they were
19 invited in. I would assume that this -- you have done
20 that.

21 I would just like to get an idea as to how
22 widespread or to the degree at which the community is
23 participating in an advisory role in this planning.

24 MS. MCCARTHY: I seem to recall from our
25 presentation of the Urban Land Institute pre-study or

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1 initial assessment that was done that, correct me if
2 I'm wrong, that St. Elizabeth's touches basically
3 every ANC in Ward 8. It has a portion or is adjoining
4 at least one portion. So, we've considered that our
5 outreach has to encompass all of those ANCs.

6 In addition, there's friends of
7 Elizabeth's, St. Elizabeth's and other groups that are
8 also to be included.

9 But I know our Ward 8 planner, Ms. Ray
10 from our staff was the Ward 8 planner. So she's been
11 able to work, transition with our new Ward 8 planner
12 to make sure that the contacts -- the contacts and
13 discussions that she's had in the past with other
14 groups in that neighborhood and the expectations that
15 they have had about participating in that process were
16 able to be transferred to the new Ward 8 planner.

17 COMMISSIONER HANNAHAM: Okay. So this is
18 still to be done?

19 MS. MCCARTHY: Well, no. They've already
20 --

21 COMMISSIONER HANNAHAM: I mean you've set
22 the stage for it so far. But, have you had initial
23 meetings already for the master plan? I mean have
24 these community people been represented at this early
25 stage?

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1 MS. MCCARTHY: Right. There's a task
2 force that has already met or is about to meet. But
3 there already have been -- when our St. Elizabeth's
4 planner came on board and when the Ward 8 planner came
5 on board, they already began meeting with various
6 groups in the community as had the Department of
7 Mental Health, which has had contacts with those
8 community groups over the years.

9 COMMISSIONER HANNAHAM: So this task group
10 is the mechanism then? There'll be a community
11 advisory element in this task group?

12 MS. MCCARTHY: Right.

13 COMMISSIONER HANNAHAM: Okay. Could I ask
14 another question? It relates to the communications
15 center.

16 When we discussed that, there was concern
17 over the optimum use of the Congress Heights Metro
18 station. And at that time, the folks said that they
19 had put off further consideration of it until we got
20 to the hospital. And I would think now that you're
21 getting into the planning for the hospital, you won't
22 lose sight of the fact that we had discussed the,
23 making access to the unified communications center and
24 the hospital from Congress Heights a reality as well.

25 MS. MCCARTHY: That's right. That's why I

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1 was indicating to Mr. May that that's a very important
2 consideration. We feel in the planning, in the site
3 planning and the work we'll be doing with the
4 Department of Mental Health to make sure that that
5 pedestrian access is, it is maximized in terms of the
6 attractiveness in that pedestrian access.

7 There is also a whole portion of the site
8 along Alabama Avenue, which is not affected by this
9 project, but which we expect, because it's close to
10 the Metro station and also close to the residential
11 area, will be a place that we will look at as
12 potentially a transit oriented development type
13 location with maybe some neighborhood serving
14 commercial development as well as additional, as
15 additional residential.

16 But that, you know, that's all something
17 that the plan will have to take a look at.

18 COMMISSIONER HANNAHAM: That will be part
19 of the larger planning to come?

20 MS. MCCARTHY: Right.

21 COMMISSIONER HANNAHAM: You know, the big
22 picture.

23 MS. MCCARTHY: Right. This was, St.
24 Elizabeth's and the Congress Heights Metro station was
25 one of the sites that we specifically had as part of

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1 the Office of Planning's transit-oriented development
2 workshop last -- I think it was last May.

3 And so, we had some people from the
4 community who were interested in development around
5 the Congress Heights Metro station, who already sat
6 down and gave us some suggestions and some input about
7 what they saw as appropriate development around
8 Congress Heights.

9 COMMISSIONER HANNAHAM: Okay. Thank you
10 very much.

11 CHAIRPERSON MITTEN: I don't want to get
12 into a big discussion about this now, but in the
13 context of our discussion about the rezoning, and I
14 don't want -- I want Mr. Hood to block his ears when I
15 say this.

16 When we had another request for a blanket
17 rezoning of a property, of course it involved a
18 hospital, we had great concern about the fact that, we
19 wanted it to be a PUD. And if we were to do just a
20 map amendment and a PUD, and then somehow the PUD
21 didn't go forward, then we'd have the potential for a
22 lot of development that would have, that could have
23 implications on transportation and so on.

24 And so, I would want to treat those cases
25 similarly. So I just ask you to, to give us some

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1 discussion on the merits of having this be a PUD
2 related map amendment verses a permanent map
3 amendment, keeping in mind --

4 MS. MCCARTHY: That's what you would like
5 to see in our hearing report?

6 CHAIRPERSON MITTEN: Yes, please.

7 MS. MCCARTHY: Yes. And we did, we raised
8 that issue with the applicant when they came in to see
9 us, which is why this is being done as a planned unit
10 development and not simply as a map amendment. But, I
11 hear you about specifically addressing that issue in
12 our hearing report.

13 CHAIRPERSON MITTEN: All right. Thank
14 you.

15 Any other questions?

16 Mr. Parsons.

17 COMMISSIONER PARSONS: This whole area of
18 St. Elizabeth's, including this tract, is a missing
19 tooth in the Fort Circle Park System. And, I'm hoping
20 that through this planning process we can sort that
21 out.

22 But I wanted to talk about a diagram here,
23 which is called Circulation Plans. It's the second,
24 third foldout. And well, possibly I should go to the
25 first foldout that says about this parcel, not

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1 included in the PUD. It's this strange-shaped thing
2 with the Metro in the corner.

3 But it appears as though the primary
4 access to this facility is from Alabama Avenue through
5 this parcel. Are you following me? The gray dashed
6 line on diagram 3.

7 (No response.)

8 COMMISSIONER PARSONS: As I understand it,
9 there appears to be parking or something along that
10 roadway. But it says that this parcel is not included
11 in the PUD, if I read it correctly on the first
12 diagram.

13 CHAIRPERSON MITTEN: Are you referring to
14 the parcel that says, "The Alabama Avenue parcel not
15 in PUD", that's 4.6 acres?

16 COMMISSIONER PARSONS: That's right. And
17 then apparently being used for main access to the
18 hospital, where I don't believe there's a road now.

19 CHAIRPERSON MITTEN: Are you following
20 him, Ms. McCarthy?

21 MS. MCCARTHY: I'm following him, but I
22 believe that is the existing driveway to John Howard
23 Pavilion, which is the hospital that's being replaced.

24 Was that your concern, that this was a new
25 road that was being done to service the PUD, but it

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1 wasn't included within the PUD?

2 COMMISSIONER PARSONS: Well, only because
3 the prior diagram had no road on it, I suspected that
4 it was not there. But if it is there, that's fine.

5 MS. MCCARTHY: Yes, it is.

6 COMMISSIONER PARSONS: I'll go back to my
7 original point of trying to use this opportunity and
8 the -- which I thought was going to be part of the
9 overall master planning for St. Elizabeth's, to link
10 Fort Stanton to the river. This piece of real estate,
11 that is St. Elizabeth's, is an important link to do
12 that. So, I wouldn't want to ignore that during this
13 planning process.

14 I believe there is a unit in the Office of
15 Planning that's looking at the Potomac Heritage Trail
16 as an assignment that you've got?

17 MS. MCCARTHY: I believe so, yes.

18 COMMISSIONER PARSONS: Fine.

19 MS. MCCARTHY: So we'll definitely
20 highlight this for them to make sure that they are
21 recognizing St. Elizabeth's as something that needs to
22 be considered as part of that, especially as they look
23 at Fort Stanton and the Heritage River Trail.

24 COMMISSIONER PARSONS: Excellent. Thank
25 you.

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1 CHAIRPERSON MITTEN: Anyone else?

2 (No response.)

3 CHAIRPERSON MITTEN: All right. We have a
4 recommendation to set down Zoning Commission case
5 number 02-45, and I would so move.

6 COMMISSIONER PARSONS: Second.

7 CHAIRPERSON MITTEN: Any further
8 discussion?

9 (No response.)

10 CHAIRPERSON MITTEN: All those in favor,
11 please say "aye".

12 (Chorus of ayes.)

13 CHAIRPERSON MITTEN: Those opposed, please
14 say "no".

15 (No response.)

16 CHAIRPERSON MITTEN: Ms. Sanchez.

17 MS. SANCHEZ: Yes. Staff will record the
18 vote five-to-zero to zero to set down case number 02-
19 45. Commissioner Mitten moving, I believe it was
20 Commissioner Parsons seconding, Commissioners
21 Hannaham, Hood, and May in favor.

22 CHAIRPERSON MITTEN: Thank you. And this
23 will be a contested case.

24 Next is proposed action, or how I spent my
25 weekend.

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1 (Laughter.)

2 CHAIRPERSON MITTEN: Mr. Bastida.

3 SECRETARY BASTIDA: Madam Chairman, the
4 staff has provided the Commission with all the
5 information that came in to the file after the last
6 public hearing and requests an action on this matter.

7 Thank you.

8 CHAIRPERSON MITTEN: Thank you.

9 Before we begin, I'd like to again thank
10 the Office of Planning, and Jennifer Steingasser in
11 particular, and all the folks that participated in the
12 Antenna Task Force in bringing these regulations to us
13 and participating in our hearing. And I just wanted
14 to make a few comments before we get into our
15 discussion.

16 There were a number of assertions that
17 these regulations had been brought solely in response
18 to the Broadcast Tower that was being built by the
19 American Tower Company. And, in fact, there was a
20 broader reason for that. And that is that there was
21 an informal process that had developed with the Office
22 of Planning to review certain antennas that would
23 otherwise have required BZA review.

24 And we're moving towards regulations that
25 are actually more friendly than the ones that were in

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1 place, and that we hope will allow public
2 participation when it's appropriate.

3 Also, I'd like to just respond to some of
4 the recommendations that we've had, that we explore
5 our jurisdiction over antennas in public space. We
6 have no jurisdiction over antennas in public space.
7 Public space regulations are in Title 24, and issues
8 regarding signs are both in the building code and in
9 Title 24 in the public space regulations.

10 So, I just wanted to make mention of that
11 before we start in. And I neglected to thank
12 Corporation Counsel for their work, both in the past
13 and in the future on the antenna regulations as we go
14 forward.

15 First, let's take up the request by the
16 Office of the People's Counsel. They asked to keep
17 the record open until the 19th for their submission,
18 which they couldn't get in prior to our meeting today.

19 And I suspect the way that things will go, we will
20 have ample opportunity to incorporate their additional
21 submission.

22 So is there any objection to allowing the
23 Office of the People's Counsel to make their
24 additional submission? Any objection?

25 (No response.)

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1 CHAIRPERSON MITTEN: So without objection,
2 we'll accept that final submission from the Office of
3 the People's Counsel.

4 I know for myself and perhaps the
5 Commissioners, in trying to digest all the information
6 that we received, I have some additional questions,
7 and they're not incidental questions, that I would
8 like to have the Office of Planning give us some
9 guidance about.

10 So, I would like us to have a discussion
11 today that leads to putting questions, any additional
12 questions that we have and the guidance from the
13 Office of Planning, and get that guidance and then
14 move at a later time to taking specific action because
15 I think the issues are large enough that we're not
16 quite ready today. But, we need to have a discussion
17 about, about these items.

18 So is there anyone who is in a different
19 frame of mind than I am on that?

20 (No response.)

21 CHAIRPERSON MITTEN: All right. Then I
22 think the first issue I'd like to begin with is the
23 issue that we sort of ended with at the end of the
24 hearing, which was the proposal to exclude antenna
25 towers and monopoles in the residential zones and in

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1 the C-1 zone.

2 And there's a concern that an outright
3 exclusion like that would be in violation of the
4 Telecommunications Act. And I share that concern
5 because of the submission that was made by the
6 industry folks, which shows the vast area that would
7 not be available for antenna towers and monopoles.

8 I'd like to get some more information from
9 the Office of Planning on how we can deal with that.
10 And I'd like to find out if any of the other
11 Commissioners have that concern, if you'd like to put
12 some comment in the record.

13 Mr. May.

14 COMMISSIONER MAY: Yes, I would echo the
15 concern. I think the maps are particularly
16 demonstrative of how difficult this prohibition would
17 be in terms of its net effect.

18 And it seems to me that there is a
19 legitimate cause to limit or regulate such placements,
20 as evidenced in the BZA's recent experience with
21 monopoles. But, that an outright ban in R-1 districts
22 is going to be a very difficult thing to do and not be
23 a problem with the federal regulations.

24 CHAIRPERSON MITTEN: Well, it's not only
25 R-1. It's R-1 through R-5. So --

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1 COMMISSIONER MAY: Oh, I'm sorry. All --

2 CHAIRPERSON MITTEN: -- it's all R
3 spectrums.

4 COMMISSIONER MAY: Right, and C-1.

5 And it seems to me that with more specific
6 criteria for special exceptions, that we can effect an
7 appropriate level of regulation. And that, the
8 guidelines for granting a special exception, the way
9 it is now verses the way it would be under the new
10 regulations, I think that we can demonstrate enough --
11 or put it this way: I'm looking for a way that would
12 allow us to avoid some of the problems that come up
13 with an ill-considered monopole proposal.

14 CHAIRPERSON MITTEN: I agree with that.
15 And one of the things that I was struggling with is, I
16 think there are certain zones where you should have a
17 very, very, very high burden of proof for an
18 applicant.

19 And typically when we think of the more
20 restrictive posture for approval, it's a variance
21 posture. But it would be impossible, or merely
22 impossible -- there's probably one or two
23 circumstances where it could apply, where an applicant
24 could meet the burden of proof for a use variance
25 under, to qualify, which is what they would need if

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1 there was an outright prohibition.

2 And I would agree. I think if we can
3 narrow down the zones that we most want to protect and
4 have a legitimate non-health related -- since that's
5 out of our hands -- reason for doing that, and then
6 set a very high standard there, higher than the
7 typical special exception provisions that would be
8 already included in 26-11, then we can go a long way
9 to having that kind of control in place, but still
10 having enough flexibility so we're not in violation of
11 the Telecommunications Act.

12 What I'd also like to see some more
13 discussion on is the rationale for, as we try to figure
14 out those zones that we want to protect the most. The
15 first pass at it was to say, "all residential zones
16 and C-1". And as someone who lives in a SP zone --
17 and there's lots of people who live in SP zones and in
18 CR zones and W zones, and for some reason they're in a
19 different category than folks who live in R5-D and R5-
20 E. And I don't think there's anything fundamentally
21 differently about those zones.

22 So, I don't know if that was just maybe
23 too general a pass at trying to draw some distinction.

24 It seems to me the distinction should be more related
25 to height. And I don't know where the cut should be.

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1 I don't know if it should be at 50 feet or 60 feet.
2 But my sense is that it should be more height related
3 since we're talking about things that are tall.

4 But, I'll leave that to the Office of
5 Planning to make whatever counterproposals they think
6 are appropriate, along with ample support for that.

7 Anyone else on this particular subject?

8 Mr. Parsons.

9 COMMISSIONER PARSONS: On a couple of
10 points. But I wanted to follow up on the one you just
11 made because the industry reported to us that
12 monopoles are between 80 and 120. So I'm not sure
13 what your last point was because they exceed the
14 heights that you're referencing in these zones.

15 CHAIRPERSON MITTEN: Right. I don't
16 really know what the concern is. But if we to -- I
17 know we're not going to be able to narrow it down to
18 only those zones that have 80 foot height limits or
19 above. But if height is a concern, then we should
20 certainly be protecting those zones that typically
21 have very low height. So, a 40-foot height limit.

22 COMMISSION MAY: I see.

23 CHAIRPERSON MITTEN: And so, that may not
24 even be the major criterion for making this
25 distinction. But if height is important, then I think

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1 we should be saying, okay, we'll protect those zones
2 that have very low heights. That was my point.

3 COMMISSIONER MAY: I'd like to point out
4 one potential contradiction within that philosophy.

5 CHAIRPERSON MITTEN: Okay.

6 COMMISSIONER MAY: In that, if we're
7 dealing with areas where there's an inherently low
8 height restriction, it seems to me that that's the
9 area where a monopole is probably most needed from a
10 technical point of view because there aren't enough
11 tall buildings around to be able to mount antennas to
12 start with.

13 CHAIRPERSON MITTEN: Right.

14 COMMISSIONER MAY: So I'm not sure that
15 that tying the consideration of the height of the
16 monopole to the other height restrictions within that
17 zone is -- I mean I'm not sure that that's exactly
18 what you were suggesting.

19 But from this point of view, I think it's
20 more difficult to regulate against a monopole in a R-1
21 district than it is in a R-5. I mean in a R-5 you
22 wouldn't really have the need. In R-1, you may have
23 more. There's a lot of R-1.

24 CHAIRPERSON MITTEN: I understand what
25 you're saying, and I guess there's two things. One

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1 is, what you're saying presumes that there's been
2 enough development in the area to the maximum height
3 that's permitted, that they would have the alternative
4 to locate on the building, which isn't necessarily the
5 case.

6 COMMISSIONER MAY: Right.

7 CHAIRPERSON MITTEN: But my point is,
8 let's say you take R-1 where there's a 40 foot height
9 limit, and you're going to put a monopole there --
10 which I agree with you. It's more likely that they
11 would need one because there's not something sort of
12 to locate on top of. But that's exactly -- it's going
13 to stand out more. So that's where you need to have
14 these more strict requirements for protecting the
15 surround area --

16 COMMISSIONER MAY: Right.

17 CHAIRPERSON MITTEN: -- because it's going
18 to stand out more.

19 COMMISSIONER MAY: Setbacks and --

20 CHAIRPERSON MITTEN: Right. That's what I
21 was driving at.

22 COMMISSIONER MAY: Right. I got it.
23 Okay.

24 CHAIRPERSON MITTEN: And Mr. Parsons, I'm
25 sorry. We digressed.

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1 COMMISSIONER PARSONS: So possibly the
2 industries should begin building churches --

3 (Laughter.)

4 COMMISSIONER PARSONS: Which are a matter
5 of right in those zones, and solve the problem.

6 COMMISSIONER MAY: I think that that's
7 what they were arguing for in some of the discussion
8 of stealth structures, that they want to build more --
9 or every house gets a steeple.

10 COMMISSIONER PARSONS: And I also wanted
11 to clarify the point of your opening questions or
12 remarks.

13 Are you asking for a legal opinion as to
14 whether the proposed regulations violate the
15 Telecommunications Act on the one hand, and then
16 asking OP to look at lesser restrictions? Are there
17 two questions here, or have you come to the conclusion
18 that maybe we are in violation of the
19 Telecommunications Act?

20 CHAIRPERSON MITTEN: Well --

21 COMMISSIONER PARSONS: Or we would be if
22 adopting these.

23 CHAIRPERSON MITTEN: I mean I think I've
24 drawn my own conclusion.

25 COMMISSIONER PARSONS: The law firm of --

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1 CHAIRPERSON MITTEN: No. I draw a
2 conclusion, not a legal conclusion. But, I mean it
3 appears that we would be in violation of the
4 Telecommunications Act on the point that, if we had
5 the outright prohibition.

6 But I also just think from a public policy
7 standpoint, we haven't had adequate, we have not had
8 an adequate, adequate support given for why all the R
9 zones and C-1 zone were selected. I mean I can
10 understand --

11 COMMISSIONER PARSONS: I understand. I
12 just wondered if it would helpful to get the opinion
13 of the Corporation Counsel on the first question at
14 the same time because some of us might argue in the
15 other direction.

16 CHAIRPERSON MITTEN: Okay. Okay, that's
17 good.

18 So, Mr. Bergstein, we would want you to
19 weigh in on any aspects of the proposed regulations
20 that you would want to caution us against putting in
21 place if it, for fear that we would be in violation of
22 the Telecommunications Act.

23 MR. BERGSTEIN: Yes.

24 CHAIRPERSON MITTEN: Thank you.

25 VICE CHAIRPERSON HOOD: Madam Chair, as we

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1 proceed in this discussion, and you may have mentioned
2 it earlier and I just missed it, but could we set up
3 some kind of process for, more or less, the issues
4 where industry says one thing, Office of Planning says
5 -- something that's all in one place because actually
6 in reading this weekend and over the last couple of
7 weeks, things are all over the place.

8 CHAIRPERSON MITTEN: Right.

9 VICE CHAIRPERSON HOOD: And I think that
10 would help, I know, this Commission a lot better if I
11 could look at one sheet. I'm not saying I'm not
12 flexible, but it would be a lot easier to look at one
13 sheet and see what the main issues are. And I think
14 that would help fine-tune our discussions.

15 CHAIRPERSON MITTEN: That would be very
16 helpful. And I think McCarthy is eager to provide
17 such a document.

18 MS. MCCARTHY: Right. I think the Office
19 of Planning feels that the maps submitted by the
20 industry -- perhaps the best words would be
21 "overstates the case" -- and that we would be happy to
22 provide a map back providing what we think is a
23 slightly different view of this information.

24 So, that will help the Commission and the
25 Office of Corporation Counsel make up their mind about

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1 the ability to comply with federal regulations or not.

2 CHAIRPERSON MITTEN: Okay.

3 MS. MCCARTHY: That's all.

4 COMMISSIONER PARSONS: So you'll do this
5 side-by-side analysis that Mr. Hood was just asking
6 for.

7 Certainly, this map got my attention
8 because the only thing that pops off the map are
9 public lands. That is, it's almost three-dimensional
10 how the parks have been lifted off the face of this
11 map. I'm looking at this one here for example.

12 MS. MCCARTHY: And it didn't even have to
13 be in red for you to notice that.

14 COMMISSIONER PARSONS: Right. And, of
15 course, there are federal laws that direct the federal
16 government to provide access to federal properties.
17 And, of course, this would give the potential
18 applicants a reason for doing that because they're
19 prohibited in so many areas.

20 So, I'd be anxious to your version of this
21 map and anything else in this November 8th document,
22 which you take exception to. That's all.

23 CHAIRPERSON MITTEN: Okay. Has everyone
24 said their peace on that particular subject?

25 VICE CHAIRPERSON HOOD: Madam Chairman, I

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1 know we have an agenda as to how we want to proceed,
2 but I just want to also make sure that we add this
3 issue about OCTO.

4 I'm not sure, I'm not clear whether
5 they're still trying to be exempt from the regulations
6 or not. Hopefully that's in line with the agenda and
7 how we're going to proceed because I do want to --

8 CHAIRPERSON MITTEN: Well, I'm glad you--

9 VICE CHAIRPERSON HOOD: -- have a
10 discussion on that.

11 CHAIRPERSON MITTEN: I'm glad you reminded
12 me of that because I would, I would like to have a
13 recommendation from the Office of Planning.

14 And apparently, OCTO hasn't shared enough
15 information with the Office of Planning, and
16 therefore, I would say with us to draw a conclusion
17 about the exemption. And I would just ask that OP
18 continue to work with OCTO to get a sufficient amount
19 of information. And, we would accept whatever
20 information they would provide into the record so that
21 we could take up this issue, you know, with the full
22 knowledge of what the implications would be.

23 So, thank you.

24 VICE CHAIRPERSON HOOD: Madam Chairman, I
25 would just say for the record that I am appalled that

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1 OCTO, at least from what I have here in front of me,
2 would try to exempt themselves. I mean we're trying
3 to put some regulations in place. I would hope that
4 the government would at least be -- I'm not talking
5 about federal. But I would hope that the government
6 would at least be an example.

7 And I'm saying that not knowing the issue.

8 At least that's my approach right now before I have
9 all the information I need. It's been blatantly asked
10 to be exempt.

11 CHAIRPERSON MITTEN: Thank you.

12 Mr. May.

13 COMMISSIONER MAY: I would agree that the
14 information from OCTO has been oversimplified and
15 incomplete. And it would be helpful to have more
16 information, more explanation, and not just a blanket
17 request.

18 And frankly, also there's information that
19 can be gleamed from this fax, this fax that we
20 received that I would have thought would've warranted
21 an opinion from OCTO, issues from interference and
22 whatnot that should've been addressed in the execution
23 of their duties and they have not been.

24 Now, maybe they have been, they have
25 spoken on this and I've missed it somehow in here.

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1 But, essentially, we've gotten very little.

2 CHAIRPERSON MITTEN: I don't think you
3 missed anything. I think their main participation was
4 to ask for a blanket exemption and not provided a
5 whole lot of support for why the exemption was
6 appropriate.

7 And I think it just goes back to, you
8 know, a lot of the agencies don't want to have to
9 conform to zoning. And, it just hasn't become part of
10 the culture that they need to comply.

11 So, without more compelling evidence,
12 which maybe they can provide, you know, we'll give
13 them the opportunity at least to weigh in.

14 COMMISSIONER MAY: I would think they'd
15 also want to say something about the issues of
16 interference that have been raised, you know, I mean
17 the need for this -- I mean, we basically have the
18 industry arguing on behalf of public safety officials
19 that this is, that certain regulations are onerous and
20 problematic. And yet we hear virtually nothing from,
21 from OCTO.

22 CHAIRPERSON MITTEN: Well, the other issue
23 -- and maybe if OCTO were to get their oar in the
24 water, in a broader sense, we could get more
25 information.

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1 I just read an article in the *New York*
2 *Times* today that the reason that there are problems
3 with service is not exclusively because there aren't
4 enough antennas. It has to do with the availability
5 of frequencies and a whole, various other things.

6 So, I think that OCTO is in a position to
7 advise us from a technical standpoint about how much
8 of, your know, how much of this is really related to -
9 - you know, how much of an impediment are we, are
10 zoning regulations to providing ubiquitous and robust
11 service verses some of the other issues that plague
12 the industry.

13 So, we would ask the Office of Planning to
14 see if they could get OCTO to weigh in on that.

15 The next issue I'd like to take up is in
16 Section 26-01, which is this whole certification
17 issue. Issues have been raised about the requirements
18 for the certification and that they exceed the
19 requirements that the FCC has. I think that's fairly
20 clear, that they do in fact exceed the requirements
21 because there are numerous antennas that are
22 categorically exempt.

23 But then my concern, and I'd like to get
24 some feedback from the Office of Planning on this
25 subject, is, it's my understanding that if there were,

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1 if it were determined after an antenna was installed
2 that the RF emissions coming from that antenna or
3 tower or whatever it is, exceeded the FCC limits, that
4 the District of Columbia has no authority to enforce
5 the FCC regulations.

6 And so, if that's true -- and we've
7 encountered this in other guises, in other zoning
8 cases -- we don't want to give the public the
9 impression that through zoning they can seek
10 enforcement of something that we don't have the
11 authority to enforce, that the Zoning Administrator
12 doesn't have the authority to enforce.

13 So, I like to have some feedback from the
14 Office of Planning on this whole certification issue
15 and what is it that we're really trying to accomplish.

16 Because, if we can't enforce these requirements, then
17 why are we collecting all of this information?

18 Anyone else want to weigh in on the
19 certification issue?

20 All right, Mr. May.

21 COMMISSIONER MAY: I would just want to
22 add, this is one of those issues where I think getting
23 something more from Corporation Counsel would be
24 helpful.

25 CHAIRPERSON MITTEN: Oh, absolutely.

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1 Absolutely.

2 Mr. Bergstein, you can consider anything
3 that we discuss that you think you need to give us
4 some advice about, that we would welcome it.

5 MR. BERGSTEIN: I understand.

6 CHAIRPERSON MITTEN: Thank you.

7 Stealth structures. I understand the
8 concern about stealth structures and the concern over
9 the potential proliferation of stealth structures.
10 But, what I'd like to see is if we could somehow,
11 rather than as some folks have been encouraging us, is
12 to put all stealth structures through the BZA process
13 if that is appropriate in that case.

14 And I don't know if this is workable, but
15 I got to think it is. That, we can almost have a list
16 of or a description of a type of stealth structure and
17 a number per site, for instance, that would be deemed
18 pre-approved because they're considered to be, okay,
19 we've already addressed issues of, we'll address
20 issues of set back, height, physical appearance. And
21 maybe by limiting the number we won't have, you know,
22 proliferation of them.

23 There might not be a way to at least
24 allow, encourage the kind of stealth structure and the
25 numbers that we want, and everybody else would have to

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1 go for special exemption review. But to sort of have
2 a hybrid of what's being proposed, which is not a
3 total exclusion, not a total -- not just allowing
4 every stealth structure to go forward, but saying,
5 look, these are the ones that we're comfortable with,
6 and we'll let those go forward.

7 So, I'd welcome come feedback about that.

8 Anybody want to weigh in about stealth structures?

9 VICE CHAIRPERSON HOOD: Madam Chairman,
10 let me just ask you: In your comments, are you
11 speaking in terms of the kind, like the streetlight --

12 CHAIRPERSON MITTEN: Yes.

13 VICE CHAIRPERSON HOOD: Okay. As long as
14 it is that -- industry will come up and it will be
15 something objectionable or it'll come up with
16 something else. But as long as there's something in
17 line with like those streetlights bans, which I
18 understand we don't have any in the city, I don't see
19 that being too much of an issue.

20 CHAIRPERSON MITTEN: Well, you know, if
21 the height is limited and the number is limited too,
22 if it's a light in a parking lot or something like
23 that, you know, there's a certain amount of judgment
24 that you have to rely on the Zoning Administrator to
25 exercise.

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1 And given the discretion at any point, if
2 he feels that it doesn't fit with the parameters of
3 what was approved, and not get into special exception.

4 VICE CHAIRPERSON HOOD: Right. And I'm
5 looking here at the one example that I have. And the
6 lights are much lower in the rest of the structure.
7 Stealth is going further up.

8 CHAIRPERSON MITTEN: Right.

9 VICE CHAIRPERSON HOOD: So again, I would
10 agree with that. I would agree with that, and given
11 the Zoning Administrator has the flexibility to use
12 his discretion.

13 CHAIRPERSON MITTEN: Anyone else on
14 stealth structures?

15 (No response.)

16 CHAIRPERSON MITTEN: All right. Then I
17 have a whole variety of other questions that, some are
18 relatively small. But since we're putting our
19 questions forward, to get some additional guidance, I
20 wanted to ask them all.

21 In 26-03.1(g), the question was raised in
22 one of the submissions, and I think it was a good
23 question. It says, "the antenna shall not be visible"
24 -- this is for a ground-mounted antenna.

25 "The antenna shall not be visible from any

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1 public park that is within the central
2 employment area or from any street that
3 the lot abuts."

4 And I'd be curious to know why we're
5 limiting it to the central employment area.

6 In 26-03.1(b) and (c), I can already
7 anticipate that when we start measuring something at
8 its highest point above the ground -- and we don't say
9 what ground or where's the ground -- that we're going
10 to have a problem. So if we could nail that down a
11 little bit better, that would help.

12 The question was raised, this would be in
13 26.04, about whether or not by definition antenna
14 towers or monopoles may be roof-mounted. And if they
15 can be, there might be some other implications about
16 that. So, I wanted to raise that and seek some
17 clarification.

18 The issue -- this was raised by the
19 industry and Mr. Bergstein can weigh in on this too --
20 as it relates to the outdoor recreation space and the
21 direction of the antenna relative to outdoor
22 recreation space, I'd like to know if there's any
23 reason besides a health related reason that that could
24 be included because that appears to be health related
25 and that would be beyond our jurisdiction relative to

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1 the Telecommunications Act.

2 Also, in 26-05, for building mounted
3 antennas -- 26-05.1(h), it says, "building mounted
4 antennas shall be" -- oh, never mind. It says,
5 "screened and/or painted." I just wanted to make sure
6 it wasn't "screen and painted".

7 In 26-06.3, this was raised in one of the
8 submissions, there is reference made to a super high
9 frequency. This would be in the little grid that
10 shows the numbers, and it's the third type of antenna:
11 residential type, superhigh frequency. Superhigh
12 frequency, it was noted as not defined. And it was
13 also suggested that there's no evidence why an antenna
14 of this type would be outdoors in the first place.
15 So, I'd just for some further clarification about
16 that.

17 And then the question was also raised in a
18 submission, same section, why we would not permit a
19 ground-mounted dish or building-mounted dish, if not
20 in the front yard or mounted on the front of a
21 dwelling. The dish, as it is in the chart, dish
22 antennas are limited to a roof application. So, just
23 more discussion of that.

24 COMMISSIONER MAY: With regard to that, I
25 think that it's important that front not be defined

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1 simply as the front of a house, but any -- I mean
2 houses are built on corners, and you know, a front is
3 anything that faces the street.

4 CHAIRPERSON MITTEN: Good point. I think
5 what we want is some further discussion about whether
6 there might not be some opportunity for flexibility
7 with dish antennas and their placement and whatever
8 that might look like. But, you raise a good point.

9 COMMISSIONER MAY: Limited flexibility.

10 CHAIRPERSON MITTEN: Limited flexibility,
11 yes.

12 In 26-08, this is the antenna towers and
13 monopoles in the M zone. There doesn't seem to be the
14 flexibility -- and this is raised in a submission --
15 to have a ground-mounted antenna on a site that has a
16 tower or a monopole. It would require instead that
17 the, if there were an additional antenna like a small
18 dish, that it be mounted on the monopole or tower, and
19 that may be more obtrusive than if it were allowed to
20 be mounted on the ground.

21 And the example was given that a small
22 satellite dish may be used to receive data that would
23 then be retransmitted via an antenna on the tower or
24 monopole. So, I just ask you to consider that as
25 well.

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1 In 26-11.11(i), it says:

2 "The applicant has to provide
3 documentation of the relative height of
4 the antenna tower or monopole to the tops
5 of surrounding trees as they presently
6 exist."

7 You're going to need to set a distance.

8 Can you recommend a distance?

9 The issue is raised by the industry, and
10 I'd like some feedback from the Office of Planning on
11 this, in 26-12 related to non-conforming antennas.
12 And I think -- they have a specific concern, which is
13 that the regulations as they're written, the proposed
14 regulations provide a disincentive to replace towers
15 that might otherwise cause a safety concern.

16 And I'd like you in your response to not
17 only address that, but also how is, is this really
18 creating a different sort of treatment for non-
19 conforming uses? Or, is this consistent or
20 inconsistent with the way that we treat other non-
21 conforming uses or structures?

22 In the removal provisions, which were in
23 your October 3rd supplemental report, how are we going
24 to know that an antenna, an antenna tower, a monopole,
25 or an equipment cabinet has not been used for a period

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1 of a year? It goes back to our issue with, when does
2 a restaurant, you know, stop being used.

3 There was a suggestion that an additional
4 category of antenna be included, which is the "long
5 wire antenna" that's used in amateur radio
6 transmission. There was a term. It sounded like it
7 might be kind of innocuous than some of these other
8 things.

9 And I don't know if it's just another word
10 for something that we already have defined, but the
11 term "microcell" was used. And I don't know if that's
12 yet another kind of antenna that might be smaller and
13 less obtrusive that you might want to treat
14 differently.

15 And then there were a number of terms that
16 I think need be added, or at least I would like the
17 Office of Planning to consider. The industry folks
18 suggested making a distinction between broadcast tower
19 and wireless tower. And I like to know whether or not
20 you endorse that distinction, making that distinction,
21 and to what use we could make of it in the regulations
22 if we were going to treat those types of towers
23 differently.

24 I'd like the definition of ground-mounted
25 antenna, roof-mounted antenna, and building-mounted

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1 antenna.

2 And then there was another term that was
3 used as if it were somehow different from -- I don't
4 know if it's different in any other aspect than as it
5 relates to health issues. But to the extent that it
6 is different as it relates to some other
7 characteristic of antennas, a transmitting antenna
8 verses a receiving antenna. Is that a distinction
9 that we care about?

10 And then, finally, Mr. Cohen had in his
11 little report that he submitted, he had said:

12 "No risk of exposure to RF emissions from
13 wireless telecommunications facilities
14 that are properly installed and
15 maintained" --

16 "There is no risk of exposure to RF
17 emissions from wireless telecommunications
18 facilities that are properly installed and
19 maintained in accordance with existing
20 regulations."

21 And I think that the concern is the issue
22 of "properly installed and maintained". But to the
23 extent that we require maintenance plans and so forth,
24 which we don't do for any other type of property,
25 again, I'm asking you to weigh in on whether or not

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1 we're straying into territory where we have no
2 enforcement authority.

3 Anybody else have any other issues they
4 want to raise?

5 Mr. Hood.

6 VICE CHAIRPERSON HOOD: Madam Chair, can
7 we go back to the emissions, the RF emissions? I'm
8 going to read this because this is a concern of how
9 it's actually handled here in the city.

10 And I'll just say:

11 "Section 3-3-2-C-7 prohibits state and
12 local government from regulating the
13 placement and construction and
14 modification of personal wireless service
15 facilities on the basis of the
16 environmental effects of RF emissions to
17 the extent that the facilities comply with
18 the FCC regulations concerning such
19 emissions."

20 So -- and I'm not sure if this came out at
21 the hearing. Is there someone from the FCC that goes
22 around periodically and checks to make sure that
23 they're in compliance, or how does that work?

24 Maybe someone can help refresh my memory.

25 Because, we're sitting here getting ready to do some

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1 things, and if the emissions is told up front, the
2 amount of power it's putting out, and nobody ever
3 checks it, then a lot of this stuff, we're just
4 shouldn't be wasting our time in my opinion.

5 CHAIRPERSON MITTEN: Well, I think the
6 concern that was expressed is that there is no one,
7 there is no one from the FCC that goes around and
8 actually checks these things. It's done based on, you
9 know, there's a certification that's done and it's
10 either that you say, I'm exempted, I'm categorically
11 exempted or I have another kind of antenna and here
12 are my -- or, I have my findings available in my file,
13 and I certify to you, the FCC, that my antenna will
14 not exceed the RF emissions standards for that kind
15 and also for the cumulative effects in the area.

16 But I think what you're raising is a
17 concern, which is there's no one who goes back and
18 checks all this or checks periodically. But then the
19 concern for us is: Is that our role, our
20 jurisdiction? And if it's not, do we want to give
21 people the impression that it is?

22 VICE CHAIRPERSON HOOD: Well, I know it's
23 not our jurisdiction to a point. And, I see a fine
24 line here. I'm just trying to make sure we actually
25 do what's within our jurisdiction --

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1 CHAIRPERSON MITTEN: Right.

2 VICE CHAIRPERSON HOOD: -- to the fullest
3 extent that we can.

4 CHAIRPERSON MITTEN: Right.

5 VICE CHAIRPERSON HOOD: And I just don't
6 think -- I have problems anytime with something not
7 being enforced. I guess we all do because we're
8 sitting out here day in and day out and making all
9 these regulations, and everybody's doing whatever they
10 want to do.

11 But then on the other hand, for the sake
12 of the industries, I also have a problem when my cell
13 phone drops. You know, I get totally upset about that
14 too. So, you know, it's a balancing deal here. But I
15 would like to see if it's within our, how far it is
16 within our jurisdiction and also, if the FCC will
17 respond to us.

18 I know there were some submittals, but I
19 think they need to just kind of let us know that
20 process because I think that is a concern of the
21 residents of the city and probably all over the
22 country. And if they're actually not following up on
23 it, I know we can't tell the federal government what
24 to do, but at least we could let them know that we
25 have a concern here in this city as far as that goes.

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1 The other thing is the embellishments of
2 the towers in the regulations. And it may be there,
3 Ms. Steingasser, but I was concerned about towers
4 being used as architectural embellishments that are
5 brought in front of you, the Zoning Commission, and
6 the BZA, and then later on it goes online. I think
7 that if it's going to be used for an embellishment, it
8 needs to specially be used for an embellishment.

9 I don't know if the Commission wants to
10 cut it off and say it can never go online or what.
11 But, I think that we should have something in place
12 for that.

13 CHAIRPERSON MITTEN: I agree with that. I
14 think we can have a whole discussion about
15 architectural embellishments besides antennas, and I
16 look forward to doing that sometime.

17 Anybody else with concerns that they'd
18 like the Office of Planning to address?

19 Mr. Parsons.

20 COMMISSIONER PARSONS: The section that
21 deals with view from streets and landmarks and parks,
22 it talks about a quarter of a mile distance. And, I
23 don't want to trap ourselves.

24 The most offensive towers in the city are
25 -- well, in my judgment, are the transmission towers.

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1 The one in particular is out at Georgia Avenue behind
2 the police stations. It's seen from the George
3 Washington Memorial Parkway in Virginia. As you
4 approach the city, it competes with the Washington
5 Monument.

6 Similarly, along Nebraska Avenue, in that
7 vicinity the antennas compete with the National
8 Cathedral as seen from quite a distance. And I want
9 to make sure that we go back to the preamble or the
10 purpose of the antenna regulations, which speak to the
11 aesthetics of the city and so forth. And I don't want
12 to put something in here that says we're only
13 concerned about something a quarter of a mile away.

14 That may be true with a monopole. But
15 when we get to the 600-foot range, it's a different
16 circumstance. So, I want to make sure we deal with
17 the two of them separately somehow.

18 I mean I had the same question you did
19 about, why are the parks in the central employment
20 area different than others. But, I'll just
21 reemphasize your point.

22 CHAIRPERSON MITTEN: Thank you.

23 Mr. May.

24 COMMISSIONER MAY: Well, I know Ms.
25 Steingasser would be disappointed if I didn't bring up

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1 my favorite subject, which is dish antennas.

2 But also in the context of some of the
3 other discussions that have occurred with regard to
4 requirements -- I just don't want to lose sight of the
5 fact that we're trying to regulate a very broad range
6 of things here and not just wireless or broadcast
7 antennas.

8 And we are talking about residential uses
9 of things like dish antennas, which are springing up
10 like warts all over the city and need to be regulated
11 not just in historic districts, where there does seem
12 to be some attention to it or at least I'm told there
13 is -- although I can't say that any of the ones that
14 I've reported in my historic district have actually
15 been taken down yet. But, I know that they've been
16 reported.

17 I mean there is a requirement when anyone
18 puts an antenna on their house -- even though it's a
19 matter of right to install it, there is a requirement
20 that they get a building permit. And that doesn't go
21 away with these regulations.

22 And, it is also true with these dish
23 antennas, which -- you can go down to the store and
24 buy yourself and install yourself. But, they are not
25 supposed to be installed on the face of the building

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1 the way I interpret these regulations.

2 I don't know that it warrants any
3 different language than what's been proposed. And
4 maybe this is all just a matter of enforcement. But,
5 the process for people to get a permit to install one
6 of these things on their house, whether on the roof
7 where it's allowed by the regulations or if there is
8 other flexibility on putting them on the backs of
9 buildings, I mean it has to be easy enough that people
10 will do it.

11 But there also has to be some enforcement
12 so that we don't wind up with neighborhoods with dish
13 antennas popping off sides of all the building or all
14 the apartment buildings, which is another completely
15 unsightly circumstance which seems to be occurring
16 with apartment buildings.

17 Anyway, that's it.

18 CHAIRPERSON MITTEN: I think what should
19 be done -- I don't know who will do it -- but at a
20 minimum, I think the ANCs could be made aware of the
21 fact that people who install dish antennas, even if
22 it's for their own personal use, need a building
23 permit. I mean they're the people who are the eyes
24 and ears of enforcing a lot of things, and they can
25 help get the word out and also perhaps help us get rid

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1 of some of the ones that are more unsightly that
2 should've gone through some kind of review process.

3 COMMISSIONER MAY: And in truth, this is
4 not an attempt to limit anyone's access to it because,
5 I mean they can be installed. They just have to be on
6 the roof instead of -- in fact, you're making it,
7 these regulations are making it legal for them to be
8 on the roof of a 25-foot building, whereas they were
9 not legal before.

10 So, anyway --

11 CHAIRPERSON MITTEN: Thank you. Anyone
12 else?

13 (No response.)

14 CHAIRPERSON MITTEN: All right. Given the
15 fact that our next public meeting is in about three
16 weeks, Ms. Steingasser, do you think you'll be ready
17 for that?

18 (Laughter.)

19 MS. STEINGASSER: I would have to request
20 perhaps January would be a better time.

21 CHAIRPERSON MITTEN: Do you think January
22 is realistic?

23 MS. STEINGASSER: Actually, I guess
24 between holidays and Christmas, would February be
25 sufficient? I mean, if the Commission would accept

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1 February, I would prefer February.

2 CHAIRPERSON MITTEN: What we'd like is
3 that we get, that we get a comprehensive submission
4 from you so that when we take it up again we can
5 actually make a decision.

6 MS. STEINGASSER: Well, I think February
7 would be best because I think it would be only fair to
8 meet with the industry reps again as we go through
9 that with the neighborhoods and go over the various --

10 CHAIRPERSON MITTEN: That would be great.
11 Okay.

12 So when's our February meeting, Mr.
13 Bastida?

14 MR. BASTIDA: The February meeting is on
15 the 10th. And I would like the Office of Planning to
16 file their comments by Friday, January 31st.

17 CHAIRPERSON MITTEN: You know what? Let's
18 have two weeks because, you know, it really ruins your
19 weekend when you have to try and understand all this
20 stuff. So, if we could just kind of spread it out for
21 the Commission's sake.

22 MR. BASTIDA: Okay. Then I will need them
23 on Thursday, January 23rd to be able to send it to the
24 Commission on that Friday.

25 CHAIRPERSON MITTEN: That would be great,

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1 and then we could have some additional time to digest
2 it all.

3 MS. STEINGASSER: You really meant,
4 "really consumes" your weekend rather than "ruins"?

5 CHAIRPERSON MITTEN: Yes, I'm sorry. That
6 was just -- I misspoke there.

7 MS. STEINGASSER: Yes, I thought so.

8 COMMISSIONER PARSONS: I will not be here
9 for the February meeting so that will give me more
10 time to review.

11 (Laughter.)

12 COMMISSIONER PARSONS: So, I could get a
13 proxy vote to you.

14 CHAIRPERSON MITTEN: It's going to be a
15 long one I think.

16 All right. So we all know how we're going
17 to proceed from here. Thank you very much.

18 All right. Mr. Bastida, I think we're
19 ready for final action.

20 MR. BASTIDA: The first case on the final
21 action is Zoning Commission case number 02-24, which
22 is the Solar Building.

23 CHAIRPERSON MITTEN: Thank you. And I'm
24 going to ask Vice Chairman Hood to take over since I'm
25 recused on this case.

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1 VICE CHAIRPERSON HOOD: Commissioners, we
2 have in front of the Zoning Commission, case number
3 02-24, the Solar Building.

4 Any discussion?

5 (No response.)

6 VICE CHAIRPERSON HOOD: Hearing none, I
7 move approval of Zoning Commission case number 02-24,
8 Solar Building, minor modification I believe -- with
9 modification.

10 I'll ask for a second.

11 COMMISSIONER MAY: Second.

12 VICE CHAIRPERSON HOOD: So moved and
13 seconded.

14 All those in favor?

15 (Chorus of ayes.)

16 VICE CHAIRPERSON HOOD: Any opposed?

17 (No response.)

18 VICE CHAIRPERSON HOOD: So ordered.

19 Staff, would you record the vote?

20 MS. SANCHEZ: Yes. Staff will record the
21 vote four-to-zero to one to approve Zoning Commission
22 case number 02-24. Commissioner Hood moving,
23 Commissioner May seconding, and Commissioners Hannaham
24 and Parsons in favor.

25 CHAIRPERSON MITTEN: Thank you.

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1 Thank you, Mr. Hood.

2 VICE CHAIRPERSON HOOD: Thank you for
3 letting me chair for a minute.

4 CHAIRPERSON MITTEN: You haven't lost your
5 touch.

6 (Laughter.)

7 CHAIRPERSON MITTEN: Okay. And the next
8 case is Zoning Commission case number 96-3/89-1.

9 MR. BASTIDA: Madam Chairman, this case,
10 it was brought up by the staff. There was not an
11 explicit approval of the referral to NCPC when the
12 Commission took the final action, and the staff would
13 like to have an action by the Commission blessing that
14 referral to NCPC. And that way, we can prepare the
15 final rulemaking.

16 COMMISSIONER PARSONS: So moved.

17 CHAIRPERSON MITTEN: All right. We have a
18 motion that would include in our -- correct me if I'm
19 wrong as I articulate this, Mr. Parsons -- that would
20 include a referral to NCPC under section 16-03 of the
21 proposed regulations, in addition to the other changes
22 that were part of this most recent rulemaking.

23 COMMISSIONER PARSONS: That's exactly what
24 I had in mind.

25 CHAIRPERSON MITTEN: Okay.

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1 COMMISSIONER PARSONS: Thank you.

2 VICE CHAIRPERSON HOOD: Second.

3 CHAIRPERSON MITTEN: All right. Any
4 discussion?

5 (No response.)

6 CHAIRPERSON MITTEN: All those in favor,
7 please say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON MITTEN: Those opposed, please
10 say "no."

11 (No response.)

12 CHAIRPERSON MITTEN: Ms. Sanchez.

13 MS. SANCHEZ: Yes. Staff would record the
14 vote five-to-zero to zero. Commissioner Parsons
15 moving, Commissioner Hood seconding, Commissioners
16 Mitten, Hannaham, and, Franklin by proxy, to approve.

17 CHAIRPERSON MITTEN: Thank you.

18 All right. Next, what do we have on the
19 consent calendar?

20 MR. BASTIDA: Yes. Madam Chairman, there
21 is a proposed modification to Zoning Commission Order
22 number 746-C, which 1-9-5-7 E. Street. The staff has
23 provided you the request from the applicant, the
24 objection from the ANC and the West End Advisory
25 Neighborhood, and also provided the staff report

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1 regarding matters on the consent calendar, and
2 requests an action by the Commission.

3 CHAIRPERSON MITTEN: Thank you, Mr.
4 Bastida.

5 First I'd like to turn to Mr. Bergstein
6 and ask whether this issue is properly before us given
7 that there is an appeal that has been filed in the
8 Court of Appeals.

9 MR. BERGSTEIN: Thank you, madam Chairman.

10 Essentially, the parties in opposition are
11 arguing that what you had before you is really an
12 untimely motion for reconsideration. And they would
13 be correct that, if this were a matter, a request for
14 reconsideration, because this matter is before the
15 Court of Appeals, the Zoning Commission would not have
16 jurisdiction.

17 However, your rules provide for
18 modifications of planned unit developments, and this
19 request is couched in terms of being a modification to
20 a planned unit development. And, I think it could be
21 fairly construed as such.

22 And the fact that the Zoning Commission
23 Order with respect to planned unit developments may be
24 on appeal does not mean that the Zoning Commission
25 could not later entertain a request to modify those

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1 orders. And because that's how I think this request
2 can fairly be characterized, I believe you do have
3 jurisdiction to entertain this request.

4 CHAIRPERSON MITTEN: Is the only
5 circumstance under which we would not have
6 jurisdiction is if the Court of Appeals had stayed our
7 Order?

8 MR. BERGSTEIN: If the Order had been
9 stayed, I don't know if it's a matter of jurisdiction
10 as much as the issue would not be alive. It would
11 almost be moot for someone to request a modification
12 of a stayed PUD. It would be a non-action.

13 So, I don't know if it's a matter of
14 jurisdiction. But, it's not something that I think
15 you would do.

16 CHAIRPERSON MITTEN: All right. Thank
17 you.

18 So this issue is properly before us, and
19 we have a recommendation from staff that we take it up
20 as a consent calendar item.

21 Is there any objection from a member of
22 the Commission to having this as a consent calendar
23 item?

24 (No response.)

25 CHAIRPERSON MITTEN: Okay. Without

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1 objection, we'll take it up on the consent calendar.

2 And the modification that is before us is
3 summarized on page 4 of the, Shaw-Pittman's
4 submission, and it's the underlined text. And it just
5 anticipates -- we are not passing judgment on whether
6 or not this would kick in because I personally don't
7 want to get involved in making the judgment. This
8 merely provides an alternative in the event that the
9 foundation neither establishes the feeding program nor
10 identifies an alternative food service program.

11 VICE CHAIRPERSON HOOD: Madam Chair, the
12 only thing I would like to add to what's on page 4 is
13 that we have some language in there that says "not
14 affiliated with the university".

15 CHAIRPERSON MITTEN: Where would you place
16 that language?

17 VICE CHAIRPERSON HOOD: I haven't got to
18 that point yet. I was hoping maybe you could assist
19 with that.

20 But I can assure you that I just see this
21 as -- I'm not making an accusation, but I just want to
22 make sure that the community and the neighborhood get
23 what's just due.

24 And, I guess maybe at the end.

25 CHAIRPERSON MITTEN: Well, is it your

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1 concern that the alternative food service program
2 would somehow be affiliated with the university and
3 that would then, instead of benefiting --

4 VICE CHAIRPERSON HOOD: -- the
5 neighborhood, it may trickle back in to starting to
6 benefit the university.

7 CHAIRPERSON MITTEN: I understand that.

8 Okay, so maybe the best place would be,
9 starting on the, at the end of the second line, "nor
10 identifies an alternative existing food service
11 program" --

12 VICE CHAIRPERSON HOOD: -- not affiliated.

13 CHAIRPERSON MITTEN: Not affiliated with
14 the university. Oh, you know what? That's not where
15 it goes. I'm sorry.

16 It's down farther. "The university shall
17 select a non-profit food service and/or homeless
18 program operating within the Foggy-Bottom area" and
19 not --

20 VICE CHAIRPERSON HOOD: Not affiliated
21 with the university.

22 CHAIRPERSON MITTEN: Okay. Sorry about
23 that. I think that's a good addition.

24 VICE CHAIRPERSON HOOD: Well, with that
25 madam Chair, are you ready for a motion?

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1 CHAIRPERSON MITTEN: Yes.

2 VICE CHAIRPERSON HOOD: I will make a
3 motion that we approve modifications to the Zoning
4 Commission Order 746-C.

5 CHAIRPERSON MITTEN: With the
6 modification?

7 VICE CHAIRPERSON HOOD: With the
8 modification to the language on page 4, I believe it
9 was. Yes, page 4.

10 CHAIRPERSON MITTEN: All right. I'll
11 second that.

12 Any further discussion?

13 (No response.)

14 CHAIRPERSON MITTEN: All those in favor,
15 please say "aye".

16 (Chorus of ayes.)

17 CHAIRPERSON MITTEN: Those opposed, please
18 say "no".

19 COMMISSIONER PARSONS: Abstention. I
20 didn't participate in the case.

21 CHAIRPERSON MITTEN: Okay.

22 COMMISSIONER PARSONS: Excuse me.

23 CHAIRPERSON MITTEN: Thank you.

24 Ms. Sanchez, would you record the vote.

25 MS. SANCHEZ: Yes. Staff would record the

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1 vote four-to-zero to one. Commissioner Hood moving,
2 Commissioner Mitten seconding, Commissioners Hannaham
3 and May in favor of the Motion, Commissioner Parsons
4 not voting, having abstained. And this is for
5 approval of the modification for 01-17-M with the
6 change suggested by Mr. Hood.

7 CHAIRPERSON MITTEN: Yes. And Mr. Parsons
8 I think misspoke. He was not voting, not having
9 participated in the case as opposed to abstaining.

10 MS. SANCHEZ: Okay.

11 CHAIRPERSON MITTEN: Thank you.

12 All right. Next, under "Correspondence",
13 Mr. Bastida.

14 MR. BASTIDA: Yes, madam Chairman. The
15 staff has provided you a copy of the Office of
16 Corporation Counsel's memorandum regarding combined
17 lot development provisions in the Arts Overlay
18 District, and would like to hear from the Commission
19 some discussion regarding that memo.

20 CHAIRPERSON MITTEN: Okay. Thank you.

21 Does anyone have any thoughts they would
22 like to share on this memo?

23 Mr. May.

24 COMMISSIONER MAY: In the memorandum, in
25 the second paragraph there's a recommendation that

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1 there be a clarifying amendment to indicate that the
2 FAR may be allocated between two lots within the Arts
3 Overlay without regard to the FAR limitation
4 applicable to the particular lots so as long as the
5 lots when combined remain within the FAR cap.

6 As I recall from what I understand of this
7 issue, I think that a clarifying amendment is in order
8 since it is apparent in the interpretation of the
9 original Arts Overlay that this issue is not perfectly
10 clear. So, I would support the notion of having a
11 clarifying amendment.

12 COMMISSIONER PARSONS: I would agree. Is
13 that a motion?

14 COMMISSIONER MAY: Yes, sure.

15 COMMISSIONER PARSONS: All right. I
16 second that.

17 CHAIRPERSON MITTEN: All right. Before we
18 vote that up or down, do you have specific language to
19 propose, Mr. May, or are we just merely voting on yes,
20 we would like to have clarifying language but we don't
21 yet know what it is?

22 MR. BERGSTEIN: It's the latter. I first
23 wanted to make sure that you saw the need. And then
24 if you felt --

25 CHAIRPERSON MITTEN: Oh, I see.

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1 MR. BERGSTEIN: And then if you felt that
2 you needed to -- for example, I don't have a sense if
3 you feel that there's a need to somehow cap the amount
4 of FAR that could be allocated between two lots. I
5 don't have a sense of what that might be, and I'm
6 certainly not in a position to recommend that.

7 If you either wanted to defer this for a
8 hearing action, or decide today they want to set this
9 down with a suggestion for what that cap swing might
10 be, or refer it to the Office of Planning for their
11 consideration as to what might be the appropriate cap.

12 And, there might be more than one cap given. There's
13 more than one underlying zone.

14 CHAIRPERSON MITTEN: Okay.

15 MR. BERGSTEIN: And we also just need to
16 confirm that you believe that there is in fact an
17 overall cap of .5 on the lots, notwithstanding that
18 there's two ways of bringing that density up. That,
19 you can clear up today and we can come up with a text.

20 But, the other question is a matter of
21 policy and discretion for you.

22 CHAIRPERSON MITTEN: All right.

23 MR. BERGSTEIN: And planning.

24 CHAIRPERSON MITTEN: Thank you.

25 COMMISSIONER PARSONS: Well, in that this

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1 provision is what, ten years old?

2 CHAIRPERSON MITTEN: Probably.

3 COMMISSIONER PARSONS: Well, time flies
4 when I'm having this much fun. But, it seems to me
5 the Office of Planning needs to evaluate this.

6 CHAIRPERSON MITTEN: I agree.

7 COMMISSIONER PARSONS: Certainly there
8 needs to be clarifications.

9 CHAIRPERSON MITTEN: I agree on both
10 counts.

11 COMMISSIONER PARSONS: It appears that that
12 would be stop number one, and then a consultation with
13 Corporation Counsel, we'd have some language brought
14 before us, and then we'd proceed from there towards
15 hearing.

16 CHAIRPERSON MITTEN: Okay. That sounds
17 good.

18 And I would just want to add, if this
19 affects any other overlay that has combined lot
20 provisions, that we'd want to deal with everything at
21 the same time.

22 So the motion is to have the clarification
23 of the combined lot provisions in the Arts Overlay,
24 and that we would seek recommendations from the Office
25 of Planning before setting down specific language. Is

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1 that a fair statement?

2 COMMISSIONER MAY: Yes.

3 CHAIRPERSON MITTEN: All right.

4 Any further discussion?

5 (No response.)

6 CHAIRPERSON MITTEN: All those in favor,
7 please say "aye".

8 (Chorus of ayes.)

9 CHAIRPERSON MITTEN: Those opposed, please
10 say "no".

11 (No response.)

12 CHAIRPERSON MITTEN: Ms. Sanchez.

13 MS. SANCHEZ: Yes. Staff would record the
14 vote five-to-zero to zero. Commission May moving,
15 Commissioner Parsons seconding, Commissioners Mitten,
16 Hood, and Hannaham in favor of clarifying the combined
17 lot development provisions in the Arts Overlay
18 District and any other overlay districts, and to seek
19 recommendations from the Office of Planning before
20 setting this matter down for hearing.

21 CHAIRPERSON MITTEN: Thank you.

22 The second item under "Correspondence",
23 Mr. Bastida.

24 MR. BASTIDA: Yes. It's a letter from
25 Holland & Knight regarding Zoning Commission case

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1 number 01-07C, which is 1700-1730 K. Street.

2 The staff would be interested on receiving
3 comments from the Commission regarding the request by
4 the law firm of Holland & Knight.

5 CHAIRPERSON MITTEN: Thank you.

6 Well, I think we should be thankful that
7 Holland & Knight has reminded us that we wanted to
8 revisit our housing linkage policy, and that we need
9 additional rulemaking to clarify what has become an
10 area of contention in our interpretation as it relates
11 the linkage provisions when the project in question is
12 a renovation as opposed to new construction or an
13 outright donation to the Housing Production Trust
14 Fund.

15 So I would like to put this in the same
16 category as the last piece of correspondence, which I
17 would move that we do need clarifying language of the
18 PUD regulations, and that we refer this case to the
19 Office of Planning for proposed language for set down
20 at a future date.

21 Is there a second?

22 COMMISSIONER MAY: Second.

23 MS. MCCARTHY: Madam Chairman, could I
24 just address that briefly please?

25 CHAIRPERSON MITTEN: Sure.

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1 MS. MCCARTHY: This is a really difficult
2 and complex issue. And as we have done research and
3 investigated it internally, I think one of our
4 conclusions is that, in as much as this regulation was
5 promulgated in response to City Council action and in
6 as much as there are so many different providers and
7 developers that are involved and that interests in
8 various aspects of this, that it might be best to do a
9 roundtable and solicit opinions on this.

10 And we would be happy to, as we did with
11 inclusionary zoning and other roundtables, kind of do
12 a short policy paper that lays out what are some of
13 the key issues that we would like some additional
14 input on. But I think it might be instructive to
15 everybody to have an opportunity to do that.

16 CHAIRPERSON MITTEN: Let me just give you
17 a counterproposal, which is, I think that the linkage
18 provisions are too complicated and too unpredictable
19 as they are. But, they arise from some complicated
20 language that's in the comprehensive plan.

21 And I have spoke to Council Member Ambrose
22 about my desire and her desire to have this be more
23 simple and more predictable. But, that's for another
24 day because it requires the comprehensive plan to be
25 amended in order to do that.

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1 What we want to focus on is a relatively
2 narrow aspect of the linkage provisions, which is, you
3 know, how is the interpretation to be made when the
4 project is not new construction and it's not a
5 donation, outright donation, is how much money is
6 appropriate to require an applicant to provide when
7 you're doing a renovation.

8 And while everybody loves a good
9 roundtable, I think the purpose of a roundtable is
10 when the issues are broad and we're really kind of
11 casting around for what we want to do next. I don't
12 think there's that kind of uncertainty. I think there
13 would be if we were going to take on the larger issue
14 of the whole, the whole way we do housing linkage.

15 But I think this is more narrow. And I
16 would like us -- I don't think there's that many
17 alternatives to be proposed, and I would like to move
18 to hearing quicker than that myself.

19 MS. MCCARTHY: Well --

20 CHAIRPERSON MITTEN: Would you turn on
21 your microphone for me?

22 MS. MCCARTHY: I'm sorry.

23 Maybe I should be sure we're on the same
24 wavelength because I thought one of the key issues
25 that the applicant was raising was when you have a

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1 project as we had in this case, where there was a pro
2 forma and where it was clear what the pro rata share,
3 what the pro rate cost of each square foot of
4 development, whether it be reconstruction or
5 rehabilitation or new construction, what that was,
6 that's the standard that was considered and which the
7 applicant agreed to meet, although the applicant had
8 previously negotiated a lower per square foot amount
9 that was acceptable to the Community Development
10 Corporation.

11 CHAIRPERSON MITTEN: Right.

12 MS. MCCARTHY: And so, one of the issues
13 we were grappling with is do you compel something that
14 is a straight, a straight translation of what is the
15 cost per square foot of actually producing it
16 regardless of whether -- you know, I think Mr.
17 Bergstein had the best counterexample of, you know,
18 what if you've got 6,000 Boy Scouts or Girls Scouts
19 that were willing to provide this amount of square
20 footage of affordable housing for free?

21 Is that perfectly okay, or does the
22 developer have to pay what would be the cost of
23 providing that square footage. And that's been where
24 it's been really difficult for us to figure out how
25 you turn that into a regulation.

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1 But, if the Commission was instead looking
2 at the more narrow issue of rehab verses new
3 construction, that's --

4 CHAIRPERSON MITTEN: Well, now that you
5 mention it, I think it's not as narrow as I had
6 suggested, which is it's really about whether it is
7 new construction or whether it is rehab. It's how
8 much is -- is it pro rata of what the actual cost is
9 or not? So, I characterized it too narrowly.

10 But what I'd like to see is some language
11 that comes back that is your best -- first of all,
12 this is a stopgap thing because hopefully we're going
13 to revisit the housing linkage and make it more
14 simple.

15 But the way that it's working now is, it's
16 not accomplishing what was intended, which is to have
17 substantive contributions made to these providers,
18 housing providers so that it makes a difference when
19 you have housing linkage. You actually are providing,
20 you know, you are providing the money that makes the
21 difference between having, you know, "X" number of
22 units or "X" plus. And the "X" plus is what's
23 required. I mean that's what we're just striving for.

24 So take your best shot at it, and ask Mr.
25 Bergstein to weigh in, and let's get some language set

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1 down, and then just have a hearing. That's what I'd
2 like to do.

3 MS. MCCARTHY: Okay.

4 CHAIRPERSON MITTEN: Is there anyone else
5 who would rather have a roundtable first?

6 (No response.)

7 CHAIRPERSON MITTEN: All right.

8 So, let's see. We have a motion and a
9 second that we want to revisit the language for the
10 housing linkage in Chapter 24, and that we are
11 referring this to the Office of Planning for language
12 to be considered for set down at a future time.

13 All those in favor, please say "aye".

14 (Chorus of ayes.)

15 CHAIRPERSON MITTEN: Those opposed, please
16 say "no".

17 CHAIRPERSON MITTEN: Ms. Sanchez.

18 MS. SANCHEZ: I know the vote is five-to-
19 zero to zero, but I didn't hear who seconded that.

20 CHAIRPERSON MITTEN: Mr. Parsons.

21 MS. SANCHEZ: Okay. The motion was moved
22 by Commissioner Mitten, seconded by Commissioner
23 Parsons, and approved by Commissioners Hannaham, Hood,
24 and May to review the language in Chapter 24 and
25 referral to Office of Planning for report.

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1 CHAIRPERSON MITTEN: Thank you.

2 And I would just make a comment, which is
3 the last line before the closing paragraph of the
4 letter from Holland & Knight says, the balance of the
5 contribution -- I'm paraphrasing here -- to Jubilee
6 will be held in escrow pending resolution of the
7 housing linkage policy and a determination of whether
8 a contribution of a lesser amount to Jubilee would
9 suffice.

10 That's not consistent with the language of
11 condition number 24 of our decision. And although my
12 comment doesn't carry any weight, I would just say it
13 for the record that that would not be my
14 interpretation.

15 COMMISSIONER PARSONS: You say that your
16 comment doesn't have any weight --

17 CHAIRPERSON MITTEN: Well, I don't have
18 any authority to enforce our order.

19 COMMISSIONER PARSONS: Oh, I see. I see.

20 CHAIRPERSON MITTEN: If it carries weight,
21 then that's great.

22 VICE CHAIRPERSON HOOD: Well, shouldn't
23 that be sent to the Zoning Administrator?

24 CHAIRPERSON MITTEN: I don't know. Maybe
25 the Office of Planning could share it with him.

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1 VICE CHAIRPERSON HOOD: Well, that goes
2 back to my point I made earlier. That, we're making
3 these decisions and passing rules and regulations, and
4 it's not carried out.

5 CHAIRPERSON MITTEN: It's a concern.

6 All right. Anything else, Mr. Bastida?

7 MR. BASTIDA: No, madam Chairman. The
8 remainder items --

9 CHAIRPERSON MITTEN: Could you turn on
10 your microphone?

11 MR. BASTIDA: I'm sorry. Thank you.

12 The remainder items on the agenda are for
13 your information. And unless you have any questions,
14 we can conclude the hearing.

15 CHAIRPERSON MITTEN: Thank you, Mr.
16 Bastida.

17 I now declare this meeting adjourned.

18 (Whereupon, the above-entitled matter was
19 concluded at 3:26 p.m.)

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